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A-6141-08T3

DONALD J. TRUMP,  
Plaintiff/Appellant,  
v.  
TIMOTHY L. O'BRIEN; TIME  
WARNER BOOK GROUP, INC.; and  
WARNER BOOKS, INC.,  
Defendants/Respondents.

) SUPERIOR COURT OF NEW JERSEY  
) APPELLATE DIVISION  
) DOCKET NO.: A-6141-08T3  
)  
) ON APPEAL FROM THE  
) SUPERIOR COURT OF NEW JERSEY  
) LAW DIVISION - CAMDEN COUNTY  
)  
) SAT BELOW  
) HONORABLE MICHELE M. FOX, J.S.C.  
)

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APPENDIX TO BRIEF OF PLAINTIFF/APPELLANT DONALD J. TRUMP  
Volume III  
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- TOB-EF-00004461 - 4466
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- TOB-EF-00000688 – 0691
- TOB-EF-00000871 – 0872
- TOB-PD-00003231 – 3281
- TOB-PD-00004194 – 4214
- TOB-PD-00003282 – 3331

In addition, the following Bates ranges encompass other documents produced in this litigation, which I consulted, reviewed, read, analyzed, or relied upon, among others, in connection with the Book, and which relate to various topics regarding Mr. Trump, including his finances and net worth:

- TOB-PD-00000326 – 0349 (*Larry King Live transcript*)
- TOB-PD-00003549 – 3564 (*State of New Jersey, Report on the Financial Condition of Donald J. Trump*)
- TOB-PD-00003565 – 3684 (*State of New Jersey, Preliminary Report on the Financial Condition of Donald J. Trump*)

- TOB-PD-00003685 – 3758 (Report of the Division of Gaming Enforcement to the Casino Control Commission, *In the Matter of the Joint Petition of Trump Taj Mahal Associates Limited Partnership and Trump Hotel Management Corporation*, for renewal of their casino licenses)
- TOB-PD-00003759 – 3760 (Hudson Waterfront Associates LLP, Third Modification to Restrictive Declaration)
- TOB-PD-00003761 – 3799 (Mortgage, Assignments of Leases and Rents and Security Agreements from Penn Yards Associates to the Chase Manhattan Bank)
- TOB-PD-00003800 – 3805 (HUD Application, Hudson Waterfront Associates I, L.P.)
- TOB-PD-00003806 – 3822 (Assignment of Mortgages by Chase Manhattan Bank to Hudson Westside Associates, L.P.)
- TOB-PD-00003823 – 3877 (Mortgage Modification Agreement between Penn Yards Associates and the Chase Manhattan Bank)
- TOB-PD-00003878 – 3892 (Third Modification to Restrictive Declaration)
- TOB-PD-00000843 – 0887 (ABC News transcript)
- TOB-PD-00001051 – 1075 (*Larry King Live* transcript)
- TOB-PD-00001103 – 1112 (CNN transcript)
- TOB-PD-00001258 – 1282 (*Larry King Live* transcript)
- TOB-PD-00001283 – 1292 (CNN transcript)
- TOB-PD-00001303 – 1309 (*Today Show* transcript)
- TOB-PD-00001505 – 1555 (material from *The Apprentice* website)
- TOB-PD-00001796 – 1845 (ABC News transcript)
- TOB-PD-00002118 – 2121 (excerpt from Form 10-K)
- TOB-EF-00001461 – 1511 (information from *The Apprentice* website)

- TOB-EF-00007077 – 7087 (posts from [www.blogmaverick.com](http://www.blogmaverick.com))
- TOB-EF-00001627 – 1638 (ABC News transcript)
- TOB-EF-00002363 – 2386 (*Larry King Live* transcript)
- TOB-EF-00002987 – 2993 (*Today Show* transcript)
- TOB-EF-00007260 – 7263 (excerpt from Form 10-K)
- TOB-EF-00003409 – 3433 (*Larry King Live* transcript)
- TOB-EF-00003461 – 3470 (CNN transcript)
- TOB-EF-00003597 – 3606 (CNN transcript)
- TOB-EF-00007424 (Property Transfer Record for Gosman estate)
- TOB-EF-00007425 (Property Transfer Record for Gosman estate)
- TOB-EF-00004354 – 4398 (ABC News transcript)
- TOB-PD-00003991 (Property Transfer Record, Palm Beach County)
- TOB-PD-00003992 (Property Transfer Record, Palm Beach County)
- TOB-PD-00000001 (Weiser letter to David McCraw)
- TOB-PD-00000035 – 0037 (press release)
- TOB-PD-00004273 – 4277 (Trump promotional literature)
- TOB-PD-00003999 – 4024 (will of Fred Trump)
- TOB-PD-00004025 – 4079 (THCR Annual Report 1995)
- TOB-PD-00004080 – 4115 (Bear Stearns New Purchase Recommendation)
- TOB-PD-00003038 (printout from [Smokinggun.com](http://Smokinggun.com))
- TOB-PD-00004116 – 4146 (THCR Form S-8, 2004)
- TOB-PD-00003039 – 3058 (press releases)

- TOB-PD-00004147 – 4181 (bankruptcy documents)
- TOB-PD-00003070 – 3093 (press releases)
- TOB-EF-00004642 – 4661 (Order in Hudson Waterfront litigation)
- TOB-EF-00005902 – 5926 (*Larry King Live* transcript)
- TOB-EF-00005954 – 5964 (CNN transcript)
- TOB-EF-00005965 – 5975 (NBC News transcript)
- TOB-EF-00007373 – 7383 (NBC News transcript)
- TOB-EF-00004628 – 4631 (press release)
- TOB-EF-00004815 – 4819 (information from THCR 10-K)
- TOB-EF-00006039 – 6063 (*Larry King Live* transcript)
- TOB-EF-00006064 – 6074 (CNN transcript)
- TOB-EF-00007731 (Property Transfer Record for Gosman estate)

Last, in addition to the above documents that I consulted, reviewed, read, analyzed, or relied upon, further relevant documents include those identified in defendants' privilege log dated October 17, 2006, as well as those others that may be identified in the documents that defendants produced in response to plaintiff's first set of document requests and other documents that defendants will produce in the coming weeks.

#### **INTERROGATORY NO. 12**

Identify all publishing houses to which the Work or a proposal concerning the Work was submitted.

#### **OBJECTIONS AND ANSWER TO INTERROGATORY NO. 12**

A proposal relating to the Work was submitted to the following publishing houses:

- Broadway Books, Charlie Conrad, 1745 Broadway, New York, NY 10019
- Gotham Books, Brendan Cahill, 375 Hudson Street, New York, NY 10014

- Harper Collins, David Hershey, 10 E 53<sup>rd</sup> Street, New York, NY 10022
- Penguin Books, Scott Moyers, 375 Hudson Street, New York, NY 10014
- Random House, Andrew Miller, 1745 Broadway, New York, NY 10019
- Rodale, Zachary Schisgal, 733 Third Avenue, New York, NY 10017
- Simon & Schuster, Marty Beiser, 1230 Avenue of the Americas, New York, NY 10020
- Warner Books Inc. (now known as Grand Central Publishing, which was a subsidiary of Time Warner Book Group Inc., now known as Hachette Book Group USA, Inc.), Richard Wolff, 1271 Avenue of the Americas, New York, NY 10020
- W. W. Norton & Company, Robert Weil, 500 Fifth Avenue, New York, NY 10110

**INTERROGATORY NO. 13:**

Describe the process by which facts asserted in the Work were checked, including but not limited to identifying all persons who conducted or assisted with fact-checking the Work.

**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 13:**

Defendant objects to this Interrogatory on the ground that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsmen's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, I principally fact-check my own work rather than rely on outside parties, and this was the case with respect to the Book. As is my practice, I relied upon primary sources – such as first-hand participants and official filings – and then conducted additional interviews and other research to verify the substance of the information I had gathered. In writing the Book, I relied upon the accuracy of my notes in recording witness statements, as well as the accuracy of the information contained in the relevant documents. On a rolling basis, I corroborated this information in order to ensure the accuracy of what was published. In addition, fact-checking of the Book also occurred with the assistance of editors who reviewed the text, as well as an attorney retained by the publisher to conduct a legal review of the Book prior to its publication. Likewise, all of my articles about Mr. Trump that were published in The New York Times, including the excerpt of the Book, were fact-checked consistent with my above practices; fact-checking of these articles also

occurred with the assistance of Times editors and Times attorneys who reviewed the articles.

**INTERROGATORY NO. 18:**

Identify all persons at Warner Books who performed any work on or assisted in any way with the Work, and describe their role.

**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 18**

Defendant objects to this Interrogatory on the ground that the phrase "performed any work on or assisted in any way with the Work" and the term "role" are ambiguous and vague. Subject to the foregoing general and specific objections, it is my understanding that the following individuals at Warner Books Inc., excluding attorneys, assisted with the Work:

- Emi Battaglia
- Laura Bonner
- Bob Castillo
- Ivan Held
- Laura Jorstad
- Dennis Kao
- Kelly Leonard-O'Keefe
- Rob Nissen
- Rebecca Oliver
- Martha Otis
- Jason Pinter
- Les Pockell
- Jamie Raab
- Jennifer Romanello



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- Renee Supriano
- Flamur Tonuzi
- Anne Twomey
- Richard Wolff

The respective titles and roles of the individuals identified above are detailed in the July 23, 2007 supplemental response of Time Warner Book Group Inc. and Warner Books Inc. to Interrogatory No. 3.

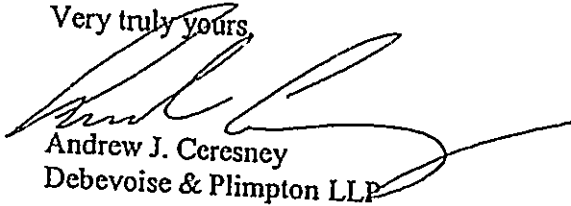
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Please contact me if you have any questions.

Very truly yours,



Andrew J. Ceresney  
Debevoise & Plimpton LLP

/s/ Mark S. Melodia

Mark S. Melodia  
Reed Smith LLP

cc: Mark P. Ressler, Esq. (Via Email and Regular Mail)  
Maria Gorecki, Esq. (Via Email and Regular Mail)  
James F. Dial, Esq. (Via Email and Regular Mail)

October 23, 2005, Sunday Late Edition - Final

Section 3 Page 1 Column 2 Desk: Money and Business/Financial Desk

Length: 5603 words

What's He Really Worth?

By TIMOTHY L. O'BRIEN

For decades, Donald Trump, America's most effervescent rich guy, has made his wealth a matter of public discourse. But sometimes his riches are hard to find. This article was adapted from "TrumpNation: The Art of Being the Donald," by Timothy L. O'Brien, a reporter for The New York Times. The book, to be published on Wednesday by Warner Books, looks inside Mr. Trump's wallet.

BY 1993, with his casinos in hock, most of his real estate holdings either forfeited or stagnant and his father slipping into the fog of Alzheimer's disease, Donald Trump, at the age of 47, had run out of money. There were no funds left to keep him aloft, and as the bare-bones operation he maintained in Manhattan started to grind to a halt, he ordered Nick Ribis, the Trump Organization's president, to call his siblings and ask for a handout from their trusts. Donald needed about \$10 million for his living and office expenses, but he had no collateral to provide his brother and sisters, all three of whom wanted a guarantee that he would repay them.

The Trump children's anticipated share of their father's fortune amounted to about \$35 million each, and Donald's siblings demanded that he sign a promissory note pledging future distributions from his trust fund against the \$10 million he wanted to borrow.

Donald got his loan, but about a year later he was almost broke again. When he went to the trough the second time, he asked his siblings for \$20 million more.

His brother Robert Trump, who briefly oversaw Donald's casinos before fleeing the pressure of working for him to take over their father's real estate operation, balked. Desperate to scrape some money together, Donald tasked Alan Marcus, one of his advisers, to contact his brother-in-law John Barry and see if he could intervene with Robert and his other siblings.

"John and I spoke about it a few times," Mr. Marcus told me. "In fact, we spoke about it in the conference room in Trump Tower. John then went around and addressed it with the family."

Mr. Marcus said that Mr. Barry successfully lobbied other members of the Trump clan and that another handout was arranged, with Donald agreeing again that whatever he failed to pay back would be taken out of his share of their father's estate.

"We would have literally closed down," said another former member of the Trump Organization familiar with Donald's efforts to keep the company afloat. "The key would have been in the door and there would have been no more Donald Trump. The family saved him."

Donald disagreed with this version of events. "I had zero borrowings from the estate," he told me. "I give you my word." Donald's brother, Robert, did not respond to repeated interview requests. Mr. Barry is deceased. His widow, Maryanne Trump Barry, a federal judge, said that she could not recollect any efforts to offer her brother financial help. Donald's other sister, Elizabeth, was unavailable for comment.

But Mr. Marcus and two other executives who worked closely with Donald all said the family's financial lifeline gave the developer the support he needed to get through the rough waters separating his early years of overblown, overhyped acquisitions and the later years of small, sedate deals preceding his resurrection on "The Apprentice." Both of Donald's parents died during that time, he parried with Ivana Trump in a bitter divorce battle that hinged on properly valuing his dwindling assets, he remarried and divorced again, and then he did what anyone else in his situation would do when confronted with limited options: he ran for president of the United States.

Before Donald could get to Phase 2 of his career, he had to muscle his way through the dismantling of his business empire and a thorny financial restructuring with his bankers and bond holders that left him on the precipice of personal and corporate bankruptcy. As bankers who once fell over one another to throw money at him now lined up for their share of what was left over, Donald scrambled to hang on to whatever he could while maintaining his facade as America's most savvy entrepreneur. And in terms of maintaining his popular mojo, Donald proved remarkably resilient.

"When I was in trouble in the early 90's, I went around and — you know, a lot of people couldn't believe I did this because they think I have an ego — I went around and openly told people I was worth minus \$900 million," Donald recalled. "And then I was able to make a deal with the banks."

To survive a process as tortuous and unpredictable as a debt workout, however, requires a large dose of gumption. Donald had gumption in spades.

"You're out there alone. I mean, it's not fun," he advised me. "I went from being a boy wonder, boy genius, to this [expletive] guy who has nothing but problems."

Although Donald's brush with bankruptcy separated him from some of his showiest assets and from the banks whose loans had first puffed him up, his penchant for claiming billionairehood remains. To this day, he closely monitors his ranking on Forbes magazine's annual list of America's wealthiest individuals, the Forbes 400, and his ability to float above the wreckage of his financial miscues and to magically add zeroes to his bank account has ensured that he remains an object of fascination. But how much is Donald Trump really worth?

IN September 1982, with Trump Tower a year away from completion, Forbes published the Forbes 400 for the first time. (In 1918, Forbes produced a list of America's 30 richest people, but that was a one-time event.) Chock-full of anecdotes about how the rich became rich and what they did with their richly deserved riches, the Forbes 400 was financial pornography of the most voyeuristic and delicious sort.

While there was a refreshing inclusiveness about the list (Mafia treasurer Meyer Lansky made the inaugural tally, for example), some on the roster held rank upon the loosest of foundations. For those whose wealth was based on a stake in a publicly traded company, calculating their Forbes worthiness was relatively straightforward: put a value on their stock. But for those with privately held money who weren't a Rockefeller, Mellon, du Pont or Kennedy, the process of ascertaining fortunes was trickier. Forbes relied on those people to willingly fork over an honest and somewhat exact self-appraisal of their wealth.

It also turned out that some big buckaroos, understandably averse to receiving an avalanche of phone calls from charities or scamsters that would follow such publicity, loathed being on the list. Nonetheless, the Forbes 400 drew scads of attention from the moment it was published. The list became capitalism's Rosetta stone, a decoding device for divining the American Way. Even prominent economists parsed it for social truths.

"At a trivial level, it is almost impossible not to be interested in Forbes magazine's annual list of the 400 wealthiest individuals, minimum net worth \$150 million, and 82 wealthiest families, minimum net worth \$200 million," wrote Lester Thurow, an M.I.T. economist, in 1984. "Subconsciously, we read their biographies hoping to find the elixir that will add us to the list. While the elixir -- a rich father -- is to be found (all of the 82 families and 241 of the 400 wealthiest individuals inherited all or a major part of their fortunes), it doesn't help most of us to point this out to our fathers."

Professor Thurow added: "Great wealth is accumulated to acquire economic power. Wealth makes you an economic mover and shaker. Projects will happen, or not happen, depending upon your decisions. It allows you to influence the political process -- elect yourself or others -- and remold society in accordance with your views. It makes you an important person, courted by people inside and outside your family. Perhaps this explains why some people try to persuade Forbes that they are wealthy enough to merit inclusion."

This, then, was the dividing line: Those who were secure enough not to reveal their wealth abhorred the Forbes 400, or at least tried to avoid it; those who were less secure, needed to keep score and had their identities wrapped up in the

concept of billionairehood turned the list into a white-collar fetish. For the latter group, to be off the Forbes 400 represented emotional and social exile.

Donald, paradoxically, was a loner who did not want to live in exile. He was obsessed with the Forbes list. And his propensity for inflation, matched with Forbes's aversion to hiring the sizable staff it might need to assess accurately the wealth of each of its designated 400, got Donald on the magazine's inaugural list in 1982. Forbes gave him an undefined share of a family fortune that the magazine estimated at \$200 million -- at a time when all Donald owned personally was a half-interest in the Grand Hyatt hotel and a share of the yet-to-be-completed Trump Tower.

Donald and the Forbes 400 were mutually reinforcing. The more Donald's verbal fortune rose, the more often he received prominent mentions in Forbes. The more often Forbes mentioned him, the more credible Donald's claim to vast wealth became. The more credible his claim to vast wealth became, the easier it was for him to get on the Forbes 400 -- which became the standard that others in the news media, and apparently some of the country's biggest banks, used when judging Donald's riches.

IN some years, Donald insisted on impossibly high figures for his net worth and then, in a faux fit of complaining, settled for an estimate that Forbes convinced itself was conservative -- even though it was often wildly high anyway. The one gap in this mating dance was 1990 to 1995, when Donald didn't appear on the list at all. Forbes was apparently so chastened by the \$2.6 billion difference in its estimate of Donald's wealth between 1989 and 1990 that the magazine needed a six-year hiatus before it had the confidence to begin helping him inflate his verbal fortune again.

Forbes's odes to Donald and his father, Fred Trump, went like this over the years:

1982 Wealth: Share of Fred's estimated \$200 million fortune. Forbes explains: "Consummate self-promoter. Building Trump Tower next to Tiffany's. Angling for Atlantic City casino." Forbes quotes Donald: "Man is the most vicious of animals and life is a series of battles ending in victory or defeat." While Forbes estimates that the family's fortune was over \$200 million, it says that "Donald claims \$500 million."

1983 Wealth: Share of Fred's estimated \$400 million fortune. (Author note: Observe that although 1982 to 1983 was a particularly brutal recession year, the Trump family's real estate fortune doubles.)

1984 Wealth: Fred has \$200 million; Donald has \$400 million.

1985 Rank: 51; Wealth: \$600 million. (Donald becomes a solo Forbes 400 act; Fred disappears from the list.)

1986 Rank: 50; \$700 million.

1987 Rank: 63; \$850 million.

1988 Rank: 44; \$1 billion.

1989 Rank: 26; \$1.7 billion. (Observe that Donald's wealth has grown by \$1.1 billion during a four-year period when he was borrowing huge sums to buy money-losing properties.)



1990 Dropped from the list! Forbes explains: "In 1990 the rich have been getting poorer. Trump is the most noteworthy loser. Once a billionaire, Trump's net worth may actually have dropped to zero." (That makes things clearer. Was he ever a billionaire? Maybe his net worth just stayed the same? Maybe it always had been zero?)

1991 AWOL.

1992 AWOL.

1993 AWOL. (These are the times that try men's souls. Hang in there, Donald.)

1994 AWOL.

1995 AWOL.

1996 He's back. Rank: 373; \$450 million. Forbes explains: "Trump, polite but unhappy, phoning from his plane: 'You're putting me on at \$450 million? I've got that much in stock market assets alone. There's 100 percent of Trump Tower, 100 percent of the new Nike store -- they're paying \$10 million a year in rent!' Add it all up, said Trump, and his net worth is 'in the \$2 billion range, probably over \$2 billion.'" (Don't worry, Donald. One year from now Forbes will help you find another easy \$1 billion.)

1997 Rank: 105; \$1.4 billion. Forbes explains: "Net worth was negative \$900 million in 1990, but the Donald now claims to have \$500 million in cash alone. Disputes our estimate. 'The real number,' he insists, 'is \$3.7 billion.'"

1998 Rank: 121; \$1.5 billion. Forbes explains: "Unstoppable salesman, master of hyperbole. Net worth was negative \$900 million in 1990, now claims our estimate

is low by a factor of three: 'The number is closer to \$5 billion.'"

1999 Rank: 145; \$1.6 billion. Forbes explains: "We love Donald. He returns our calls. He usually pays for lunch. He even estimates his own net worth (\$4.5 billion). But no matter how hard we try, we just can't prove it."

2000 Rank: 167; \$1.7 billion. Forbes explains: "In the Donald's world, worth more than \$5 billion. Back on earth, worth considerably less."

2001 Rank: 110; \$1.8 billion.

2002 Rank: 92; \$1.9 billion.

2003 Rank: 71; \$2.5 billion.

2004 Rank: 189; \$2.6 billion. Forbes explains: "America's love affair with the Donald reaching impossibly new highs; his reality show, 'The Apprentice,' was prime-time television's highest-rated series last year After nearly defaulting on its debt obligations, Trump's gaming properties to reorganize No matter. For Donald, real estate is where his real wealth lies. Over 18 million square feet of prime Manhattan space."

Forbes, if not entirely skeptical of Donald, had, of course, grown accustomed to his intense lobbying. "There are a couple of guys who call and say you're low on other guys," said Peter Newcomb, a veteran editor of Forbes's rich list, "but Trump is one of the most glaring examples of someone who constantly calls about himself and says we're not only low, but low by a multiple." Mr. Newcomb said that Forbes works hard to ensure the accuracy of its data but that it also relies on information provided by those whom it surveys.

The Forbes 400, of course, has always loomed large in Donald's imagination.

"When you think of it, I've been on that list for a long time. I think they work very hard at the list," he told me. "It seems to be that they're the barometer of individual wealth. It doesn't really matter. It matters much less to me today than it mattered in the past. In the past, it probably mattered more."

Donald's verbal billions were always a topic of conversation whenever we visited. In my first conversation with him, in 1996, he brought up his billions. When Donald and I spent time together one weekend in Palm Beach, Fla., earlier this year, the subject inevitably came up. Donald had gamely and openly fielded a diverse range of questions all day, so I was curious to see where he would go when we got to money. When I popped the wealth question, he paused momentarily and scrunched his eyebrows. We had reached a crossroads. Out it came. He pursed his lips a little bit. Out it came. He blinked. Out it came, rising up from deep within him.

"I would say six [billion]. Five to six. Five to six," he said.

Hmm. The previous August he told me that his net worth was \$4 billion to \$5 billion. Then, later that same day that August, he said his casino holdings represented 2 percent of his wealth, which at the time gave him a net worth of about \$1.7 billion. In the same day, Donald's own estimates of his wealth differed by as much as \$3.3 billion. How could that happen? Was Donald living in his own private zone of wildly escalating daily inflation, a Trump Bolivia? And his \$1.7 billion figure in August was well below the \$2.6 billion that Forbes would credit him when it published its rich list just a couple of months later.

Now Donald was saying he was worth \$5 billion to \$6 billion.

"Five to six. Five to six."

And on the nightstand in my bedroom at Donald's Palm Beach club, Mar-a-Lago, was a glossy brochure that said he was worth \$9.5 billion.

WHEN I sat down in a Trump Tower conference room one afternoon earlier this year with Allen Weisselberg, the Trump Organization's chief financial officer, he claimed that Donald was worth about \$6 billion. But the list of assets that Mr. Weisselberg quoted, all of which were valued in very inflated and optimistic terms and some of which Donald didn't own, totaled only about \$5 billion. Where might the rest have been? "I'm going to go to my office and find that other billion," Mr. Weisselberg assured me.

Did he ever return? No, he never returned. His assessment of Donald's wealth is outlined in the accompanying chart.

But Mr. Weisselberg's analysis left me confused. So I asked around for guidance.

Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million and \$250 million. (Donald's casino holdings have recently rebounded in value, perhaps adding as much as \$135 million to these estimates.) By anyone's standards, this still qualified Donald as

comfortably wealthy, but none of these people thought that he was remotely close to being a billionaire.

Donald dismissed this as naysaying.

"You can go ahead and speak to guys who have 400-pound wives at home who are jealous of me, but the guys who really know me know I'm a great builder," he told me.

However illusory, it was Donald's fixation on billionaire bragging rights and real estate prowess — in addition to the financial lifeline his siblings tossed to him — that kept his mojo rising during his brush with financial extinction in the early to mid-1990's. But the Donald who emerged on the other side of his business meltdown was a financial shadow of his earlier, acquisitive, debt-laden self, and would remain so right up to the debut of "The Apprentice."

Financial turmoil, of course, didn't stop Donald from spouting. The all-time howler award for a publication taking his verbal billions at face value belonged to Playboy. In early 1990, just a month before the Taj Mahal opened in Atlantic City and began a financial slide that would take Donald's empire down with it, the magazine profiled the developer and said he had amassed "a fortune his father never dreamed possible," including "a cash hoard of \$900 million" and a "geyser of \$50 million a week from his hotel-casinos."

In the real world, New Jersey casino auditors estimated in public reports that as of September 1990, Donald was worth about \$206 million — almost all of which was tied up in hotels, an airline, casinos and other properties that were devaluing

rapidly or about to be taken away from him. Donald's cash on hand was only \$17 million, and that was dissolving quickly as well.

Regulators projected Donald's 1991 income from trusts and rentals at \$1.7 million, offset by \$9.7 million in debt payments, \$6 million in personal business expenses and \$4.5 million to maintain his Trump Tower triplex and estates in Greenwich, Conn., and Palm Beach for the year – meaning that he would be about \$18.5 million in the hole at the end of 1991. Regulators projected Donald's income for 1992 to sink to \$748,000 and his 1993 income to drop even further, to \$296,000 – with all of his debt payments and personal expenses continuing to pile up. At the end of 1993, his personal cash shortfall would amount to about \$39 million and there would still be \$900 million in personally guaranteed loans hanging over his head.

In the midst of all of this, Donald reached a property settlement with Ivana Trump after their divorce. According to a 1991 New Jersey regulatory report, the settlement called for Ms. Trump to get a \$10 million payment, the couple's Greenwich estate, \$350,000 in annual alimony, \$300,000 in annual child support, a \$4 million housing allowance, use of some Trump properties and a \$350,000 salary for running the Plaza Hotel. Donald didn't have the \$10 million to pay his ex-wife; he ended up using part of the \$65 million that banks had loaned his business the prior year to pay her, according to regulators who said in their report that the payment to Ms. Trump "depleted most of Mr. Trump's personal cash."

Throughout early 1991 and into the summer, Donald helped his banks begin to dismantle his holdings so he could pay off \$3.4 billion in business debt and release himself from the \$900 million in personal arrears attached to that pile. Absent an overhaul, Donald would be wiped out.

The little ray of sunshine in all of this for Donald was that the real estate collapse sweeping the country in the early 1990's left banks with wads of bad loans in their coffers. They could choose to put their borrowers out of business and be left owning companies they didn't want to run, or force debtors into messy bankruptcy proceedings that would involve paying whopping legal fees and suffering through years of delays. Neither alternative appealed to the banks.

"That was sort of the bottom of the heap. Deep trouble. They could have really done a big number. There was a personal guarantee on the loan," Donald told me. "My father was a pro. My father knew, like I knew, you don't personally guarantee. So I wrote a book called 'The Art of the Deal,' which as you know is the biggest of all time. In the book, I say, 'Never personally guarantee.'"

But, Donald added, "I've told people I didn't follow my own advice."

Donald's enthusiasm for the Forbes 400 also waned during his flirtation with bankruptcy. In his sequel to "The Art of the Deal," a book called "Trump: Surviving at the Top," he offered a new take on his view of a rich list to which he no longer belonged.

"It always amazed me that people pay so much attention to Forbes magazine," wrote Donald, who always paid a lot of attention to Forbes magazine. "Every year the Forbes 400 comes out, and people talk about it as if it were a rigorously researched compilation of America's wealthiest people, instead of what it really is: a sloppy, highly arbitrary estimate of certain people's net worth."

DONALD managed to weather the slings and arrows of doubters during these lean years and hunkered down with his bankers and with his debts. As the negotiations progressed, Donald's bankers looked for every alternative they could find to bankruptcy, because none of the banks wanted to contend with the mess that would ensue if the talks collapsed. And the Trumpster kept singing a happy tune. "He was always upbeat," recalled Harvey Miller, a lawyer representing Citibank. "One thing I'll say about Donald, he was never depressed."

Unbeknownst to his creditors, Donald was just as worried about a bankruptcy as they were. He later told me that he wanted to avoid bankruptcy at all costs because he felt that it would permanently taint him as a failure or a quitter.

Sanford Morhouse, a lawyer representing Chase Manhattan bank in the Trump negotiations, said: "I did a lot of workouts in those days on behalf of Chase, with a lot of real estate developers who had similar problems, and big ones. Almost all of them, at one point or another in that era, filed for bankruptcy protection. And Donald, to his credit, did not."

Donald whittled down his mammoth personal debts by forfeiting most of what he owned. Chase Manhattan, which lent Donald the money he needed to buy the West Side yards, his biggest Manhattan parcel, forced a sale of the prized tract to Asian developers. Though Donald would claim after the yards were sold that he remained a principal owner of the site, property records did not list him as such.

According to former members of the Trump Organization, Donald did not retain



any ownership of the site's real estate -- the owners merely promised to give him about 30 percent of the profits once the site was completely developed or sold. Until that time, the owners kept Donald on to do what he did best: build. They gave him a modest construction fee and a management fee to oversee the development. They also allowed him to slap his name on the buildings that eventually rose on the yards because his well-known moniker allowed them to charge a premium for their condos.

Retained for his building expertise and his marquee value, Donald was a glorified landlord on the site; he no longer controlled it. (Earlier this year, the owners negotiated to sell the site without consulting Donald; terms of the prospective sale are in dispute.)

EVEN as the national real estate bubble was bursting, fresh funds began rushing onto Wall Street, fueling a historic run-up in both the stock market and initial public offerings of often barely viable companies. If you had a good story and a prominent name, it suddenly became quite easy to sell stock. And it turned out, against all odds, that investors were willing to gamble on Donald's name -- even though they were getting a chief executive whose sense of his responsibilities as the steward of a publicly traded company and the guardian of other people's money was somewhat ill defined.

"Something gnawed at me, and I knew what it was -- the whole head-of-a-public-company routine," Donald wrote in "Surviving," relating his previous experience as a manager of Resorts International. "Although I certainly agreed with the theory of stockholder-owned corporations and was absolutely committed to fulfilling my fiduciary duties, I personally didn't like answering to a board of directors."

In a tribute to the sucker-born-every-minute theorem, Donald managed to take two of the Trump casinos public in 1995 and 1996, at a time when he was unable to make his bank payments and was heading toward personal bankruptcy. The stock sales allowed Donald to buy the casinos back from the banks and to unload huge amounts of debt. The offering also yanked Donald out of the financial graveyard and left him with a 25 percent stake in a company he once owned entirely. Trump Hotels and Casino Resorts traded at \$14 a share initially and, along with a fresh bond offering, the new company raised about \$295 million.

Exactly what investors thought they might get for their Trump Hotels investment wasn't entirely clear. Donald had already demonstrated that casinos weren't his forte, and investors were buying stock in a company that was immediately larded with debts that made it difficult, if not impossible, to upgrade the operations. Even so, Trump Hotels' shares rose to about \$36 in 1996, giving Donald a stake worth about \$290 million. With little real estate left to speak of in Manhattan, Donald's wealth was centered on his casinos.

But in subsequent years Trump Hotels' stock price tanked. Had Donald tried to pare down some \$1.8 billion in debt smothering the casino company and spruced up the operation, he might have ridden a reignited gambling boom and grown his newly seeded fortune. Instead, Trump Hotels, which never earned a profit in any year between 1995 and 2005, became Donald's private stockpile of ready cash. In 1996 alone, Trump Hotels' shares fell to \$12 from \$35.50. About a decade later, the New York Stock Exchange delisted the shares entirely and any kid with a quarter could buy the stock. (Trump Hotels recently reorganized as Trump Entertainment Resorts; it now carries \$1.2 billion in debt, and Donald's stake in the company is worth about \$135 million.)

When I interviewed Donald in 1996, he was effusive about his casinos and somehow seemed to forget that he owned relatively little Manhattan property at the time.

"Donald Trump is in two businesses," he told me. "I have this huge company that's real estate. I also have this huge company that's gambling. So I have two huge companies."

Donald continued to carve out a niche for himself in New York real estate as the manager of other people's properties. In 1994, General Electric was looking for someone to refurbish the old Gulf & Western building on Columbus Circle in Manhattan, and retained Donald. Presto, the renovated skyscraper was christened Trump International Hotel and Tower. Even though Donald didn't own the building, it later flashed across the opening credits of "The Apprentice" as if he did.

And Donald did scramble back to gain control of some other Manhattan buildings, including 40 Wall Street, which he spent about \$35 million to buy and refurbish in 1996. The building has about \$145 million in debt attached to it, and New York City tax assessors currently value the property at about \$90 million. Donald values it at \$400 million.

Donald's recent golf course ventures have produced some sterling new properties, but the values he assigns those deals appear to be hyper-inflated. Donald's Palm Beach course, for example, has about 285 members who paid \$250,000 for memberships, for a total of \$71.25 million. Donald borrowed about \$47 million to build the course and a new clubhouse. So he banked about \$24

million on the deal, before other costs. He leases the land beneath the course from Palm Beach County; he doesn't own it. But Donald carries the course on his books as an asset worth \$200 million.

Forbes, in bestowing a \$2.6 billion fortune on Donald in its 2004 rich list, credited him with owning 18 million square feet of Manhattan property, which certainly is an impossibility. On one occasion, Donald told me that the West Side yards, which he doesn't own, would have 10 million square feet of salable space when the site, now known as Riverside South, was completed. (Mr. Weisselberg told me, alternatively, that the site would have about five million square feet of salable space.) However measured, the yards were by far the biggest property in Donald's former Manhattan real estate portfolio -- but he no longer owned the tract.

Between 2000 and 2004, Forbes allowed Donald's verbal billions to grow by \$1 billion. The jump came during a period when the stock market bubble burst, Donald's stake in his casinos -- one of his most valuable assets until "The Apprentice" came along -- had fallen in value to \$7 million and, despite Manhattan's red-hot real estate market, he owned much less real estate there than he let on.

Donald said his casinos' myriad problems -- no profits, suffocating debt, disappearing cash -- did not mean that he had failed in Atlantic City. Instead, he described his management of the casinos as an "entrepreneurial" success, defining "entrepreneurial" as his ability to take cash out of the casino company and use it for other things.

"Entrepreneurially, not as a person who drives up stock, but as a private person,

it's been a very good deal," he told me. "If I would have worked Atlantic City the way I worked real estate, I would probably be the biggest casino company in the world rather than just a nice company, et cetera, et cetera."

Two weeks ago, Forbes published its 2005 list of America's wealthiest people. Donald held 83rd place with what Forbes described as a \$2.7 billion fortune. "My net worth has tripled," Donald told the magazine.

Images: Photos: At left, Donald J. Trump and his wife, Melania, were recent guests on Martha Stewart's talk show. Center, Mr. Trump, in 1980, stood next to a model of the Trump Tower. Above, Carolyn Kepcher, Mr. Trump and George Ross regularly decide who is fired on "The Apprentice." (Photos by from left: Anders Krusberg/Martha Stewart Living Omnimedia; Don Hogan Charles/The New York Times; NBC Universal)(pg. 6); Donald J. Trump, in 1985, announcing a plan for the West Side yards, which he then owned. He later lost control of the site in a debt crisis. (Photo by Neal Boenzi/The New York Times)(pg. 7)

Drawing (Drawing by Martin O'Neill)(pg. 1)

Chart/Photos: "How Trump Adds it All Up"

In April this year, Donald Trump itemized the value of his stakes in various enterprises, totaling \$5.35 billion to \$5.47 billion.

#### NEW YORK PROPERTIES

TRUMP TOWER: \$565 million

TRUMP WORLD TOWER: \$300 million

TRUMP PARK AVENUE: \$160 million

40 WALL STREET: \$155 million

OTHER PROJECTS

RIVERSIDE SOUTH (West Side yards): \$1.3 billion

4 GOLF COURSES: \$800 million

CASH: \$500 million

"CONDO INVENTORY" (his term): \$400 million

CHICAGO SKYSCRAPER: \$300 million to \$350 million

LAS VEGAS CONDOMINIUMS: \$250 million to \$300 million

"THE APPRENTICE": \$100 million

SHOPPING CENTERS: \$40 million to \$50 million

PALM BEACH REAL ESTATE: \$100 million

"PROFIT SHARING" (his term): \$100 million

MISS UNIVERSE PAGEANT: \$40 million to \$50 million

"OTHER LAND" (his term): \$200 million

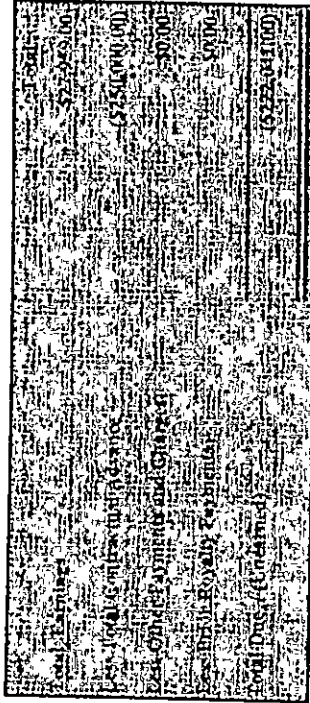
LICENSING AND MERCHANDISING TRUMP NAME: \$40 million

(Source by "TrumpNation: The Art of Being the Donald" by Timothy L. O'Brien)

Hachette Book Group USA  
 Three Center Plaza, Boston, MA 02108  
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**Royalty Statement for the Period Ending June 30, 2008**

**Timothy L. O'Brien's Royalty Statement Summary**



Blauer Books Literary Agency  
 124 West 60th Street  
 # 37L  
 New York, NY 10023

762a

|                          | Current Period |          | Cumulative |          |
|--------------------------|----------------|----------|------------|----------|
|                          | Units          | Earnings | Units      | Earnings |
| TrumpNation              |                |          |            |          |
| Hardcover                | 568            | \$1,192  | 10,556     | \$24,223 |
| Paperback                | 84             | \$35     | 4,341      | \$1,934  |
| Audio                    | 23             | \$49     | 519        | \$740    |
| Electronic               | 3              | \$4      | 79         | \$123    |
| Audio                    | 65             | \$42     | 1,211      | \$932    |
| Subsidiary Rights Income |                | \$0      |            | \$7      |
| Title Subtotal           | 743            | \$1,322  | 16,706     | \$27,959 |
| Total Earnings           | 743            | \$1,322  | 16,706     | \$27,959 |

| <b>Schedule A - Royalty Earnings</b> |                    |   |                               |  |           |                        |      |                  |                     |
|--------------------------------------|--------------------|---|-------------------------------|--|-----------|------------------------|------|------------------|---------------------|
| <b>TrumpNation</b>                   |                    |   |                               |  |           |                        |      |                  |                     |
| ISBN                                 | 0446578541         | Format  | Hardcover                     | HBG BOOKS, INC. / GRAND CENTRAL PUBLISHING |           |                        |      |                  |                     |
| Price:                               | US Catalog \$24.95 | Canadian Catalog  | \$33.95 (in Canadian Dollars) | As of                                      |           | OCT-2005               |      |                  |                     |
| Original Pub Date                    | 10/26/05           | Royalty Calculation for the Period JAN-2008 to JUN-2008 |                               |  |           |                        |      |                  |                     |
| Earnings Based On                    | Net Units          | Net Sales (US Dollars)                                  | Rate                          | Royalty Earnings                           | Net Units | Net Sales (US Dollars) | Rate | Royalty Earnings | Cumulative Activity |
| Regular                              | Catalog Price      | 363   | 10%                           | \$0.00                                     | 5,000     | \$10,786.65            | 10%  | \$0.00           | \$12,475.00         |
| Discounted                           | Net Receipts       | 16  | 12.5%                         | \$1,132.11                                 | 3,176     | \$2,661.60             | 10%  | \$16.82          | \$9,905.15          |
| Export                               | Net Receipts       | 161   | 10%                           | \$16.82                                    | 1,462     | \$321.31               | 5%   | \$16.07          | \$1,078.67          |
| Remainder/Overstock                  | Net Receipts       | 28  | 10%                           | \$26.77                                    | 161       | \$321.31               | 10%  | \$26.77          | \$266.16            |
| Canada                               | Net Receipts       | 28  | 10%                           | \$26.77                                    | 504       | \$4,817.81             |      |                  | \$16.07             |
| Sub Total                            |                    | 568   |                               | \$1,191.77                                 | 10,556    | \$24,222.83            |      |                  | \$481.78            |
| <b>TrumpNation</b>                   |                    |   |                               |  |           |                        |      |                  |                     |
| ISBN                                 | 0446578541         | Format  | Paperback                     | HBG BOOKS, INC. / GRAND CENTRAL PUBLISHING |           |                        |      |                  |                     |
| Price:                               | US Catalog \$16.00 | Canadian Catalog  | \$5.00 (in Canadian Dollars)  | As of                                      |           | OCT-2005               |      |                  |                     |
| Original Pub Date                    | 10/01/05           | Royalty Calculation for the Period JAN-2008 to JUN-2008 |                               |  |           |                        |      |                  |                     |
| Earnings Based On                    | Net Units          | Net Sales (US Dollars)                                  | Rate                          | Royalty Earnings                           | Net Units | Net Sales (US Dollars) | Rate | Royalty Earnings | Cumulative Activity |
| Regular                              | Catalog Price      | (4)   | 7.5%                          | (\$4.80)                                   | 6         | \$25,690.57            | 7.5% | \$7.20           | \$7.20              |
| Export                               | Net Receipts       | 88  | 7.5%                          | \$39.61                                    | 4,335     | \$1,926.79             |      |                  | \$1,926.79          |
| Sub Total                            |                    | 84  |                               | \$34.81                                    | 4,341     | \$1,933.99             |      |                  | \$1,933.99          |



| TrumpNation   |                   | HBG BOOKS, INC. / GRAND CENTRAL PUBLISHING |                               |                        |      | Cumulative Activity |                        |                  |
|---|-------------------|--|-------------------------------|------------------------|------|---------------------|------------------------|------------------|
| ISBN  | Price: US Catalog | Format                                     | Canadian Catalog              | Net Sales (US Dollars) | Rate | Net Units           | Net Sales (US Dollars) | Royalty Earnings |
| 0759514682  | \$9.99            | Electronic                                 | \$0.00 (in Canadian Dollars)  | \$15.19                | 25%  | 3                   | \$205.43               | \$51.36          |
| Original Pub Date 10/01/05                              |                   |  |                               |                        |      |                     |                        |                  |
| Royalty Calculation for the Period JAN-2008 to JUN-2008 |                   |  |                               |                        |      |                     |                        |                  |
| Regular   |                   |  |                               |                        |      | 3                   | \$3.80                 | \$3.80           |
| Sub Total   |                   |  |                               |                        |      | 3                   | \$3.80                 | \$51.36          |
| TrumpNation   |                   | HBG BOOKS, INC. / GRAND CENTRAL PUBLISHING |                               |                        |      | Cumulative Activity |                        |                  |
| ISBN  | Price: US Catalog | Format                                     | Canadian Catalog              | Net Sales (US Dollars) | Rate | Net Units           | Net Sales (US Dollars) | Royalty Earnings |
| 0759514682  | \$17.95           | Electronic                                 | \$0.00 (in Canadian Dollars)  | \$0.00                 | 25%  | 3                   | \$287.98               | \$72.00          |
| Original Pub Date 10/01/05                              |                   |  |                               |                        |      |                     |                        |                  |
| Royalty Calculation for the Period JAN-2008 to JUN-2008 |                   |  |                               |                        |      |                     |                        |                  |
| Regular   |                   |  |                               |                        |      | 40                  | \$287.98               | \$72.00          |
| Sub Total   |                   |  |                               |                        |      | 40                  | \$287.98               | \$72.00          |
| TrumpNation   |                   | HBG BOOKS, INC. / HACHETTE AUDIO           |                               |                        |      | Cumulative Activity |                        |                  |
| ISBN  | Price: US Catalog | Format                                     | Canadian Catalog              | Net Sales (US Dollars) | Rate | Net Units           | Net Sales (US Dollars) | Royalty Earnings |
| 1594830843  | \$24.98           | Audio                                      | \$33.98 (in Canadian Dollars) | \$224.89               | 10%  | 20                  | \$6,097.61             | \$609.76         |
| Original Pub Date 10/26/05                              |                   |  |                               |                        |      |                     |                        |                  |
| Royalty Calculation for the Period JAN-2008 to JUN-2008 |                   |  |                               |                        |      |                     |                        |                  |
| Regular   |                   |  |                               |                        |      | 527                 | \$4,362.46             | \$218.12         |
| Discounted  |                   |  |                               |                        |      | 1                   | (\$1.24)               | (\$0.06)         |
| Export  |                   |  |                               |                        |      | 36                  | \$723.21               | \$16.74          |
| Remainder/Overstock                                     |                   |  |                               |                        |      | 5                   | \$9.98                 | \$0.50           |
| Canada  |                   |  |                               |                        |      | 3                   | \$32.14                | \$2.41           |
| Sub Total   |                   |  |                               |                        |      | 65                  | \$42.08                | \$932.33         |

|                            |   |                                  |      |                  |                     |                        |                  |  |  |  |
|----------------------------|---|----------------------------------|------|------------------|---------------------|------------------------|------------------|--|--|--|
| TrumpNation                |   |                                  |      |                  |                     |                        |                  |  |  |  |
| ISBN 1594832560            | Format Audio  | HBG BOOKS, INC. / HACHETTE AUDIO |      |                  |                     |                        |                  |  |  |  |
| Price: US Catalog \$14.98  | Canadian Catalog \$16.98 (in Canadian Dollars)          | As of JUN-2008                   |      |                  |                     |                        |                  |  |  |  |
| Original Pub Date 10/26/05 | Royalty Calculation for the Period JAN-2008 to JUN-2008 |                                  |      |                  |                     |                        |                  |  |  |  |
| Earnings Based On          | Net Units   | Net Sales (US Dollars)           | Rate | Royalty Earnings |                     |                        |                  |  |  |  |
| Downloadable Audio         | 3   | \$26.07                          | 25%  | \$6.52           |                     |                        |                  |  |  |  |
| Sub Total                  | 3   |                                  |      | \$6.52           |                     |                        |                  |  |  |  |
| TrumpNation                |   |                                  |      |                  |                     |                        |                  |  |  |  |
| ISBN 1594832560            | Format Audio  | HBG BOOKS, INC. / HACHETTE AUDIO |      |                  |                     |                        |                  |  |  |  |
| Price: US Catalog \$16.98  | Canadian Catalog \$18.95 (in Canadian Dollars)          | As of MAR-2008                   |      |                  |                     |                        |                  |  |  |  |
| Original Pub Date 10/26/05 | Royalty Calculation for the Period JAN-2008 to JUN-2008 |                                  |      |                  |                     |                        |                  |  |  |  |
| Earnings Based On          | Net Units   | Net Sales (US Dollars)           | Rate | Royalty Earnings |                     |                        |                  |  |  |  |
| Downloadable Audio         | 8   | \$76.87                          | 25%  | \$19.22          |                     |                        |                  |  |  |  |
| Sub Total                  | 8   |                                  |      | \$19.22          |                     |                        |                  |  |  |  |
| TrumpNation                |   |                                  |      |                  |                     |                        |                  |  |  |  |
| ISBN 1594832560            | Format Audio  | HBG BOOKS, INC. / HACHETTE AUDIO |      |                  |                     |                        |                  |  |  |  |
| Price: US Catalog \$24.98  | Canadian Catalog \$33.98 (in Canadian Dollars)          | As of OCT-2005                   |      |                  |                     |                        |                  |  |  |  |
| Original Pub Date 10/26/05 | Royalty Calculation for the Period JAN-2008 to JUN-2008 |                                  |      |                  |                     |                        |                  |  |  |  |
| Earnings Based On          | Net Units   | Net Sales (US Dollars)           | Rate | Royalty Earnings |                     |                        |                  |  |  |  |
| Downloadable Audio         | 12  | \$94.41                          | 25%  | \$23.60          |                     |                        |                  |  |  |  |
| Sub Total                  | 12  |                                  |      | \$23.60          |                     |                        |                  |  |  |  |
| Total                      | 743   |                                  |      | \$1,321.80       |                     |                        |                  |  |  |  |
|                            |   |                                  |      |                  | Cumulative Activity |                        |                  |  |  |  |
|                            |   |                                  |      |                  | Net Units           | Net Sales (US Dollars) | Royalty Earnings |  |  |  |
|                            |   |                                  |      |                  | 3                   | \$26.07                | \$6.52           |  |  |  |
|                            |   |                                  |      |                  | 3                   |                        | \$6.52           |  |  |  |
| TrumpNation                |   |                                  |      |                  |                     |                        |                  |  |  |  |
|                            |   |                                  |      |                  | Cumulative Activity |                        |                  |  |  |  |
|                            |   |                                  |      |                  | Net Units           | Net Sales (US Dollars) | Royalty Earnings |  |  |  |
|                            |   |                                  |      |                  | 8                   | \$76.87                | \$19.22          |  |  |  |
|                            |   |                                  |      |                  | 8                   |                        | \$19.22          |  |  |  |
| TrumpNation                |   |                                  |      |                  |                     |                        |                  |  |  |  |
|                            |   |                                  |      |                  | Cumulative Activity |                        |                  |  |  |  |
|                            |   |                                  |      |                  | Net Units           | Net Sales (US Dollars) | Royalty Earnings |  |  |  |
|                            |   |                                  |      |                  | 508                 | \$2,836.99             | \$714.25         |  |  |  |
|                            |   |                                  |      |                  | 508                 |                        | \$714.25         |  |  |  |
|                            |   |                                  |      |                  | 16,706              |                        | \$27,952.50      |  |  |  |

**Schedule B - Licensing Revenue**

TrumpNation

ISBN 1594832560

Pub Date 10/26/05

Format Audio

HBG BOOKS, INC. / HACHETTE AUDIO

Licensing Revenue Calculation for the Period JAN-2008 to JUN-2008

| Audio Edition | Income Amount | Contributor's Share | Contributor's Earnings | Cumulative Activity |                        |
|---------------|---------------|---------------------|------------------------|---------------------|------------------------|
|               |               |                     |                        | Income Amount       | Contributor's Earnings |
|               | \$0.00        | 50%                 | \$0.00                 | \$12.99             | \$6.50                 |
| Sub Total     | \$0.00        |                     | \$0.00                 | \$12.99             | \$6.50                 |
| Total         | \$0.00        |                     | \$0.00                 | \$12.99             | \$6.50                 |

**Schedule C - Payments and Other Charges**

|   | Current Period Activity | Cumulative Activity |
|---|-------------------------|---------------------|
| Type of Charge                                | Amount Paid             | Amount Paid         |
| Advance Delivery And Acceptance Of Manuscript |                         | \$83,333.00         |
| Advance Hardcover Publication                 |                         | \$83,334.00         |
| Advance Signing                               |                         | \$83,333.00         |
| <b>Total</b>                                  |                         | <b>\$250,000.00</b> |

7/ 104

REDACTED

- DT probably is 200-300M.  
Juts aggressive. 150-250M is  
probably much more realistic.  
"Safest bet is to  
say 150-250M" for DT's  
[not worth.]

- He's got debts all over  
and very little liquidity. He  
knows this better than  
anybody, save maybe ~~\_\_\_\_\_~~  
and Wallace.

REDACTED

Yards deal  
He is not an owner. He  
gets @ 30% of the profits after  
the owners jack out all  
of their costs. He may get

very little. - The call put  
she owns nothing. He has  
a % of an LP that gives him  
a cash pay out; nothing more

- Would be generous to say  
200-300M for Dr. Pirovsky  
safer to say 150-250M. "And  
I think it could be below  
\$100M"

REDACTED

9, 104

REDACTED

reaffirms DT is in 200-300m range.

↳ But you're better off using ~~the~~ #150-250M

↳ "#. " - "It's a better, smarter

REDACTED

REDACTED

- TPlaza: built for \$100M  
"Has a construction genius." He  
understands quality and great  
location "Charmed Kent #1" Aug 3  
casino - AC: ~~██████~~ Essex & Hydrant H.

CONFIDENTIAL



- Kenny Shapiro was "a mobster"  
and Danny Sullivan "a prick."  
w/ big influence

Doesn't know who got  
him in, but thinks it was  
Paddy McMan. Shapiro was  
rumored to be able to fix all  
politics, Sullivan lab probz in AK.

REDACTED

REDACTED

"He's the worst" seller ever. That's

CONFIDENTIAL

774a

TOB-PD-00004395

why bill constantly get lured,  
because he just won't let  
go. There's something emotional  
that won't allow him  
to do it. He's been ~~spoiled~~  
spoiled his whole life  
and he always believed  
there's another penny behind  
every offer he gets so he  
won't let go."

REDACTED

- My reports on borrowing  
from Fred Astaire and  
OT's net worth are accurate

REDACTED

3 05

- He used his ~~notoriety~~ <sup>notoriety</sup> well  
in the casinos. His game paths  
were by draws. "The gamblers  
like to see him and touch  
him." '95-196-197: casinos  
went public. DT was focused.  
DT knew he needed the  
\$ out of the casinos.

REDACTED

- He had > \$1B in personal  
debt. No one had ever worked  
themselves out of that type.  
They signed an override  
agreement w/ the banks  
that gave them rights to  
all assets in exchange for no  
bankruptcy filing.  
- Sold 50% Hyatt interest back

to Hyatt. DT had an allowance of  
@ \$4000/month to start.

- It took 6 years to work  
DT through debt

REDACTED

"He was no idea when  
it comes to \$\$. DT only  
cares @ how much he had  
to live on each month."

~~Mar-a-Lago~~  
- Mar-a-Lago was important  
to him to keep. So was Playa  
Hotel. He really wanted those. They  
kept T Tower out of override agreement

REDACTED

"It was important to him to  
get that back: the Playa & Mar-a-Lago  
But the Prime was a big city <sup>and the</sup> ~~shower~~ <sup>could it</sup>  
- DT had filed a plan himself  
to convert the entire Playa into

condos just like Israelis are  
driving the ~~the~~ hotel now.

REDACTED

#37.5M mortgage on front  
and they gave it back to First  
Boston.

- Ullico gave him a new  
mortgage on Mar. a. says  
Eddie Molloy and (TR)  
at Ullico did it. Bill Fugazy  
arranged this w/ Ullico.  
head of construct  
trader union.

REDACTED

- "Donald did a great job  
seducing the bankers. He was

great at it, at work; then over,  
He'd get them on the plane  
and take them down to  
Mar-a-lago."

- DT didn't understand <sup>casino</sup> ~~#~~  
~~and~~ by and hated AC. But  
~~DT~~ knew he needed the  
# that came out of AC.

REDACTED

REDACTED

- DT's firm rate is @ \$1M  
a month then, maybe  
new.

REDACTED



- "When the spotlight moves, Donald will be in trouble because publicity is his ~~main~~ <sup>main</sup> ~~business~~ <sup>herring</sup>. He has no real businesses. He makes no \$ real money.

- "His business intellect is excellent and he could have been one of the richest guys in the world. But he loves publicity more than anything else, and when you focus on publicity you can't run a business."

- "Think @ his life: used to go to Europe maybe twice. He lives on the 55<sup>th</sup> floor of T Tower and takes the elevator down to his

office on the 26F. And he'll have a  
beautiful woman

Chases to wolf Chef Boyardee  
out of the can in front of  
the TV. Maybe he'll have a  
burger with it and watch TV.  
He's the oddest guy on the  
planet."

- Great ability in real estate  
and construction. Great instincts  
but he doesn't have the \$ or  
discipline to follow.

- OE: they put in \$9M.  
Conserv. \$295M. NOT Approved for  
Deutsche Bank

REDACTED  
Steve <sup>Hungary</sup> Val Conserv was  
a thief and would do anything.

\* → Banks would not trust  
him when Conserv went south  
and they went w/ Macklowe. He  
lost arbitration on OE penalty  
and got a check for @ \$11M!

- ~~Frays~~ Frump International; GE  
owns the hotel. We got a  
~~#26M fee for~~ \$25M fee for  
developing and selling the  
units.

---

- 59<sup>th</sup> Park: Sales have  
been unsuccessful GE paid  
for that as well

REDACTED

DT  
and Robert hate each other

now. RT very gentle and OT  
treated him like a dog.

↳

REDACTED

DI says the ~~the~~ estate was worth @  
\$600M, but it was worth  
only @ ~~\$600M~~ <sup>(\$50M-160M)</sup> cash,  
and that had to be  
split 4 ways, so they  
each got \$25M.  
- 1931-94 he needed \$20M.  
Fun were almost broke again. REDACTED

REDACTED

CONFIDENTIAL

784a

TOB-PD-00004405

REDACTED

They  
had the tough agreement  
got \$20M, but had to agree  
that it went right back to  
estate when estate settled.  
\* Siblings believed that  
DT wouldn't pay back and  
would take them to court.

REDACTED

\* Robert at Jump Plaza @ 61<sup>ST</sup>  
and 3<sup>RD</sup>. Very sick. 2 heart  
valves replaced. Can barely walk.  
- Elizabeth is an alcoholic  
and Maryann was  
~~the~~ turned into a  
drunk since John Barry  
died. DT and Robert had  
never touched alcohol cuz they knew how bad it  
would be.

REDACTED

REDACTED

REDACTED

U- Marla was stashed on  
4F of St. Moritz and then  
\* she was stashed at  
the Castle.

REDACTED

CONFIDENTIAL

786a

TOB-PD-00004407

REDACTED

↳ DT will say he has a 50% ownership of Yards or just gives it outright. He'll also say its worth \$2.5B to \$3B. But he owns none of the land, none. He only gets to participate in the profits - and that's @ 30% not 50%. He only gets profits after the Asians get a maximum return. He may see nothing depending on how Asians structure it -) They get to decide when and how the property is sold - DT will play no role - that because he's not an owner.

↳ DT is just an LP on the site, not a GP. Nobody in NYC real estate market considers him an owner.

REDACTED

5 '05

- DT net is 150-250. May  
be 200-300M, but why use  
that number cuz we  
think too low

↳ #650M  
is too low

REDACTED

REDACTED

CONFIDENTIAL

788a

TOB-PD-00004409



8 104

REDACTED

Must keep on if background or  
DT will sue him!

REDACTED

- Always amazed at how media  
brought into idea of DT as a  
"billionaire." → "There is no way  
he's a billionaire. He's always  
heavily leveraged."

↳ Thinks he's probably  
only worth @ \$60M, but certainly  
not more than \$250M.  
- \$200-300M is a good range.  
Could go higher if casino recap  
comes through → if casino  
stake goes south, the \$150-  
\$250M would be range.

- Press always inflates DT's wealth.

and reports that he gives the  
uncritically.

REDACTED

good sense of DT's  
'balance sheet. Confidential  
assessment of net worth.

REDACTED

- Re attempts to recap THCR  
and limit DT's role:

→ "moving it out of Donald's hands and into an institution's hands makes sense."

↳ What @ \$55M that DT has to pony up?

REDACTED

↳ "He doesn't have billions. He has millions. It may be hard for him to write a check that is @ 1/2 to 1/4 of his net worth."

REDACTED

In some form, the recap has  
to go through. TCH bondholders  
may hold off to get par,  
they will be getting 96%.

REDACTED

- Sarbanes Oxley is making  
it harder for owners to  
run garbage through their  
books. DOT used to run all  
sorts of personal expenses  
through his casino accounts.  
He can't do that now.

- Who's going to buy the  
properties that are spun off  
of MGM, etc., because all  
the big players are  
merging.

"This is a very mature deal  
for him."

↳ He will make more  
\$ off of this thing over the  
next few years than  
ever before.

REDACTED

81 '04

REDACTED

- DT "definitely" pursued from the family in the early '90s. John Barry arranged it.
- Chicago project is floundering. DT over \$100 million of dollars. Huge cost overruns.
- Fred Trump's real estate portfolio was recently sold to Rubin Schronef (sp?) for @ \$600M. DT may have gotten a piece of that but hard to tell. Very leveraged on everything.
  - ↳ He may be using part of the RS payout to

invest in the casino recap.

- DT net worth? Maybe \$150-250M. He leverages everything, immediately, and then just spends like crazy.

- He's not Tushman, or Ford, or any other "titan": DT is a "buffoon," a "cartoon character."

- I should come by his office.

- Not to get to Wallach. AW knows a lot @ DT's finances

REDACTED

He thinks that < \$100M is lowballing net worth. 150 → 250 seems right.

REDACTED

81 / 04

REDACTED

there are huge  
problems on the Chicago  
property.

↳ cost overruns, delays, subsequent  
problems, skidmore (hasn't)  
been paid.

REDACTED



8 / of

- <sup>Hotel</sup> Playa, OM build, retail at Junco Parc, West Side Yards: "He's given up more land than he's ever developed."

- Construction problems at many projects, particularly The Condos.

problems; - Jump Tower and plumbing Jump Playa (6152 & 340) and terrace problems.

REDACTED

"Donald is always impulsive  
and gut. Never, never  
thinks long term."

\* Koch letter: sacrificed  
long term gain or W's yards for  
short term int.

- Woolma: DT put up <sup>no</sup> \$;  
Parks financed. No \$. Construct  
manager. DT claimed all  
profits or Woolma went  
to charity. you never  
see his name or anything  
charitable

→ Rose, Pule, Fisch are  
all charitable. DT does  
very little. Ask him for  
list of charitable  
contributions over the last  
few years. Cerebral Palsy  
donat was a Jersey  
pledg. that Fred gave.

PQ

- Wolman: any \$ to Cheryl  
for his operating fees.  
DeCapades operated  
it, not him.

- George Ross was an atty of  
Dwyer & Frank. Used to  
handle the Kauld Estate  
which had a T Tower site  
that he moved to DT.

↳ George is very wealthy.  
Owns radio stations. Owns  
a company that makes  
fake granite. George loaned  
\$ to DT during chad times.

↳ DT signed a contract  
w/ George to pay him  
out a monthly retainer  
from GM pulling line. George  
covered @ home.

- Playa Hotel, Trump Parc  
retail, Trump Palace retail,

Trump Palace garage, wrap mortgage  
on Plaza Hotel sold it beneath  
him, Wiards: all lost.

- Wiards: he gets \$100K per  
month and Trump Corp  
manages some of the  
condo

- 5 Star Award & American  
Academy of Hospitality  
Services (by Man-A-Lago)  
↳ Boque award

REDACTED

- Trump Tower has not  
been a retail success. all  
ground floor space.

↳ Vertical retail has  
not been a success in the  
city because shoppers want  
horizontal experience.

- Residential is 26F and  
above. TO leased part  
of 14F to a health club.  
owned by the condo  
association → he gouged  
the condo association on  
the per square foot to  
lease the space.

↳ unit owners will  
know this #. much more  
than \$/sq ft. elsewhere in city.

- All the art in the  
apartment is Impressionist  
prints.

REDACTED

REDACTED

- HBE WALLACE: art theft  
Abe said he was holding  
stolen art for a friend  
and didn't take it. Abe's  
problems endangered CCC  
license.  
Abe a broker w/ Carlton

REDACTED

\* V.L.I.C.O.: D† made a  
contribution to the Catholic  
Museum, which was a gift

CONFIDENTIAL

for a hooker the Ulico guy  
was peddling. Ulico  
put @ \$10-\$15M into Mar-  
a-lago. Can't recall name.

REDACTED

- \$650M was value of Fied's  
findings.

REDACTED

- DT never had any cash

flow from his real estate  
because he leveraged  
everything up.

REDACTED

CONFIDENTIAL

806a

TOB-PD-00004427



- No CAAs on staff. Matt  
Calamari named COO recently.  
DT's big man and fear.

REDACTED

DT met him at  
the US Open. Met MC  
at US Open - early '80s.

↳ MC used to hide  
Marla at St. Monty. That's  
why

REDACTED

- DT gave All Weisberg  
an apartment at 100 CPS.  
Weisberg put son there

→ Lat, Bollstad

"Donald has never kept quality people. He doesn't empower people because there's nothing to empower. His entire 'empire' is smoke and mirrors. There's nothing there."

- Sales at Jump Park Avenue is not going well. Check mortgage closing.

- Ivana: "She was a big spender. There was no relationship at the end. Originally, though, he set her up as a pedestal."

REDACTED

REDACTED

Why wasn't we able to sell  
40 Wall St.?

Darcy STACOM is picked  
at JCA Richard Ellis, she  
was trying to sell it for  
him - 10x and couldn't.

Big turnover - building.

↳ America Express  
gave up leases.

- DT has leveraged funds  
(40 Wall) to buy. \$150M to  
\$200M

- "Donald has a very good sense of timing and he has a great eye for how to overwhelm a building."

- T Tower Plumbing a problem  
T Palaces: outside terraces were cracki  
T Playa: leaking terraces  
plumbing problems

REDACTED

- Family made DT sign notes when he borrowed against estate. He thinks it was initial #6-7M. The up to \$30M.

- He sold a house to  
Marianne for Mar-a-Lago  
for ~~the~~ way more than  
he paid for it. When  
For Berry was sick  
and they needed Florida.

REDACTED

- DT lost the boat.  
He had invested \$1M in  
a yacht building company  
overseas @ '90 in  
Netherlands. He lost  
all the \$.

↳ all bullshit that  
DT got out before '87  
crash. lost his investment  
America Airlines investment.  
Also lost \$ on Alexander's

when Von ~~was~~ <sup>outro</sup> reached out  
~~him~~.

REDACTED

"DT was very impressed.  
He never ~~felt~~ ~~anybody~~  
anybody. He had  
somebody else do it."

REDACTED

12 104

REDACTED

- DT and Saccoccia invested in  
Trays of West Palm Beach in  
'87 or '88. LI got out right  
away and made a good chunk of  
\$.

↳ DT held on and then took  
a bath when he lost the properties  
to the banks in '91.

- DT, he thinks based on  
seeing the assets and knowing  
enough about @ the debts  
(i.e. 40 Wall and other properties  
that he has totally leveraged)

↳ some casino tanks  
in the bankruptcy proceeding  
his net worth is @ \$150 to  
\$250M.

↳ won't be able to  
really pinpoint unless DT gives  
a full accounting of debts. Ape  
Wallach would know. Art

to get to him. He uses small  
accounty firms that provide  
 bogus audits (Cold Spring  
 Hills firm? maybe). He  
 is not indebted - maybe  
 100% leverage - use he  
 spends excessively. Can't budget,  
 can't restrain himself.

- Kept MM on 3<sup>rd</sup> floor of  
 St. Monty. Had assignments  
 there w/ MM during office. She  
 used Fitzgibbon as a beard.



1 DONALD J. TRUMP ) SUPERIOR COURT OF NEW JERSEY  
2 vs. ) LAW DIVISION, CIVIL PART  
3 TIMOTHY O'BRIEN, TIME )  
WARNER BOOK GROUP INC. ) CAMDEN COUNTY  
4 and WARNER BOOKS INC. )  
5 ) CASE NO. CAM-L-545-06

7 ORAL VIDEOTAPED DEPOSITION

8 LEIGH MICHELLE LOKEY

9 F/K/A MICHELLE LOKEY SCARBROUGH

10 SEPTEMBER 7, 2007

11  
12 ORAL VIDEOTAPED DEPOSITION OF LEIGH MICHELLE LOKEY,  
13 produced as a witness at the instance of the Defendants  
14 and duly sworn, was taken in the above-styled and  
15 numbered cause on the 7th day of September, 2007, from  
16 7:40 a.m. to 2:21 p.m., before Staci Williams and Nancy  
17 A. Salinas, Certified Shorthand Reporters in and for the  
18 State of Texas, reported by computerized stenotype  
19 machine at the offices of Strasburger & Price, LLP, 600  
20 Congress Avenue, Suite 1600, Austin, Texas, pursuant to  
21 the applicable Rules of Civil Procedure and the  
22 provisions stated on the record or attached hereto.  
23  
24  
25

| <p style="text-align: center;">2</p> <p style="text-align: center;">APPEARANCES</p> <p>FOR DEFENDANTS:</p> <p>Mr. Andrew J. Ceresney<br/>Mr. Andrew M. Levine<br/>Debevoise &amp; Plimpton, LLP<br/>919 Third Avenue<br/>New York, New York 10022<br/>Telephone: (212) 909-6947</p> <p>FOR PLAINTIFF:</p> <p>Mr. William M. Tambussi<br/>Brown &amp; Connery, LLP<br/>360 Haddon Avenue<br/>Westmont, New Jersey 08108<br/>Telephone: (856) 854-8900</p> <p>Ms. Maria Gorecki<br/>Kasowitz, Benson, Torres &amp; Friedman, LLP<br/>1633 Broadway<br/>New York, New York 10019<br/>Telephone: (212) 506-1700</p> <p>ALSO PRESENT:</p> <p>Mr. Brendt Fisher, Videographer</p>  | <p style="text-align: center;">4</p> <p style="text-align: center;">EXHIBITS (cont.)</p> <table border="1"> <thead> <tr> <th>EXHIBIT</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>10</td> <td>Documents represented to be in room 4-21-05</td> <td>93</td> </tr> <tr> <td>11</td> <td>License agreement for the White Plains residential property</td> <td>96</td> </tr> <tr> <td>6 12</td> <td>O'Brien notes of 4-21-05 meeting</td> <td>106</td> </tr> <tr> <td>13</td> <td>4-26-05 e-mails, Alexander and Lokey</td> <td>156</td> </tr> <tr> <td>14</td> <td>10-21-05 letter, Ms. Lokey to New York Times</td> <td>163</td> </tr> <tr> <td>15</td> <td>4-2-05 e-mail, O'Brien to Lokey</td> <td>177</td> </tr> <tr> <td>16</td> <td>4-26-05 e-mail, Lokey to O'Brien</td> <td>180</td> </tr> <tr> <td>12 17</td> <td>5-9-05 e-mail, O'Brien to Lokey</td> <td>183</td> </tr> <tr> <td>14 18</td> <td>6-2-05 O'Brien notes of conversation with Lokey</td> <td>197</td> </tr> <tr> <td>19</td> <td>8-23-05 e-mail, O'Brien to Lokey</td> <td>205</td> </tr> <tr> <td>16 17 20</td> <td>10-20-05 e-mail, O'Brien to Lokey and Graff</td> <td>215</td> </tr> <tr> <td>21</td> <td>10-21-05 O'Brien handwritten notes on conversation with Lokey</td> <td>219</td> </tr> </tbody> </table> | EXHIBIT | DESCRIPTION   | PAGE | 10             | Documents represented to be in room 4-21-05 | 93                           | 11  | License agreement for the White Plains residential property | 96 | 6 12    | O'Brien notes of 4-21-05 meeting | 106  | 13   | 4-26-05 e-mails, Alexander and Lokey                       | 156 | 14      | 10-21-05 letter, Ms. Lokey to New York Times | 163 | 15   | 4-2-05 e-mail, O'Brien to Lokey        | 177 | 16   | 4-26-05 e-mail, Lokey to O'Brien       | 180 | 12 17   | 5-9-05 e-mail, O'Brien to Lokey   | 183 | 14 18 | 6-2-05 O'Brien notes of conversation with Lokey   | 197 | 19   | 8-23-05 e-mail, O'Brien to Lokey     | 205 | 16 17 20 | 10-20-05 e-mail, O'Brien to Lokey and Graff | 215 | 21   | 10-21-05 O'Brien handwritten notes on conversation with Lokey | 219 |   |
|--|--|---------|---|------|----------------|---|------------------------------|-----|---|----|---------|----------------------------------|------|------|--|-----|---------|--|-----|------|--|-----|------|--|-----|---------|---|-----|-------|---|-----|------|--------------------------------------|-----|----------|---|-----|------|---|-----|---|
| EXHIBIT  | DESCRIPTION  | PAGE    |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 10   | Documents represented to be in room 4-21-05  | 93      |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 11   | License agreement for the White Plains residential property  | 96      |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 6 12   | O'Brien notes of 4-21-05 meeting   | 106     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 13   | 4-26-05 e-mails, Alexander and Lokey   | 156     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 14   | 10-21-05 letter, Ms. Lokey to New York Times   | 163     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 15   | 4-2-05 e-mail, O'Brien to Lokey  | 177     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 16   | 4-26-05 e-mail, Lokey to O'Brien   | 180     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 12 17  | 5-9-05 e-mail, O'Brien to Lokey  | 183     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 14 18  | 6-2-05 O'Brien notes of conversation with Lokey  | 197     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 19   | 8-23-05 e-mail, O'Brien to Lokey   | 205     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
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| 21   | 10-21-05 O'Brien handwritten notes on conversation with Lokey  | 219     |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| <p style="text-align: center;">3</p> <p style="text-align: center;">INDEX</p> <table border="1"> <thead> <tr> <th></th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>LEIGH MICHELLE LOKEY Examination by Mr. Andrew Ceresney</td> <td>6</td> </tr> <tr> <td>Signature Page</td> <td>240</td> </tr> <tr> <td>Court Reporter's Certificate</td> <td>242</td> </tr> <tr> <td>Witness instructed not to answer</td> <td>26</td> </tr> </tbody> </table> <p style="text-align: center;">EXHIBITS</p> <table border="1"> <thead> <tr> <th>EXHIBIT</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>11 1</td> <td>Statement of financial condition with certification to UBS</td> <td>61</td> </tr> <tr> <td>12 13 2</td> <td>Corrected copy of Exhibit 1</td> <td>63</td> </tr> <tr> <td>14 3</td> <td>12-02 Casino Control Commission filing</td> <td>65</td> </tr> <tr> <td>15 4</td> <td>01-04 Indiana Gaming Commission filing</td> <td>65</td> </tr> <tr> <td>16 17 5</td> <td>Audited financial statements for Trump Tower Commercial for the year ending December 31st, 2004</td> <td>69</td> </tr> <tr> <td>18 6</td> <td>Audited financial statements for 40 Wall Street, LC for the year ending December 31, 2004</td> <td>69</td> </tr> <tr> <td>19 7</td> <td>11-20-06 letter, Gorecki to Ceresney</td> <td>77</td> </tr> <tr> <td>20 22 8</td> <td>40 Wall Street mortgage loan documents</td> <td>79</td> </tr> <tr> <td>21 9</td> <td>4-5-07 letter, Gorecki to Levine</td> <td>87</td> </tr> </tbody> </table> |  | PAGE    | LEIGH MICHELLE LOKEY Examination by Mr. Andrew Ceresney | 6    | Signature Page | 240   | Court Reporter's Certificate | 242 | Witness instructed not to answer                            | 26 | EXHIBIT | DESCRIPTION                      | PAGE | 11 1 | Statement of financial condition with certification to UBS | 61  | 12 13 2 | Corrected copy of Exhibit 1                  | 63  | 14 3 | 12-02 Casino Control Commission filing | 65  | 15 4 | 01-04 Indiana Gaming Commission filing | 65  | 16 17 5 | Audited financial statements for Trump Tower Commercial for the year ending December 31st, 2004 | 69  | 18 6  | Audited financial statements for 40 Wall Street, LC for the year ending December 31, 2004 | 69  | 19 7 | 11-20-06 letter, Gorecki to Ceresney | 77  | 20 22 8  | 40 Wall Street mortgage loan documents      | 79  | 21 9 | 4-5-07 letter, Gorecki to Levine                              | 87  | <p style="text-align: center;">5</p> <p style="text-align: center;">PROCEEDINGS</p> <p>THE VIDEOGRAPHER: My name is Brendt Fisher of Nationwide Video Productions, Inc. representing Doerner &amp; Goldberg, Inc., located in Roseland, New Jersey. The date today is September 7th, 2007, and the time is approximately 7:41. The deposition is being held at the office of Strasburger &amp; Price located at 600 Congress, Suite 1600, Austin, Texas, 78701. The caption of this case is Donald Trump versus Timothy O'Brien, et al. in the Superior Court of New Jersey, Law Division, Civil Part, Camden County, Case No. CAM-L-545-06. The name of the witness is Michelle Lokey. At this time the attorneys will identify themselves and the parties they represent, after which our court reporter Staci Williams, Doerner &amp; Goldberg, will swear in the witness and we can proceed.</p> <p>MR. CERESNEY: Andrew Ceresney and Andrew Levine of Debevoise &amp; Plimpton, LLP, in New York, representing the Defendants Timothy O'Brien, Time Warner Book Group, and Warner Books.</p> <p>MR. TAMBUSI: William Tambussi and Maria Gorecki representing Donald Trump.</p> |
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| 15 4   | 01-04 Indiana Gaming Commission filing   | 65      |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
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| 20 22 8  | 40 Wall Street mortgage loan documents   | 79      |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |
| 21 9   | 4-5-07 letter, Gorecki to Levine   | 87      |   |      |                |   |                              |     |   |    |         |                                  |      |      |  |     |         |  |     |      |  |     |      |  |     |         |   |     |       |   |     |      |                                      |     |          |   |     |      |   |     |   |

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| <p>1 these documents?</p> <p>2 A. Probably.</p> <p>3 Q. And that was over the course of three days or</p> <p>4 so?</p> <p>5 A. Two or three days.</p> <p>6 Q. Now, you mentioned that these were deal</p> <p>7 binders?</p> <p>8 A. Yes.</p> <p>9 Q. What types of documents typically are contained</p> <p>10 in a deal binder?</p> <p>11 A. Whether -- the means for acquiring the asset,</p> <p>12 whether it's a limited liability company or a</p> <p>13 corporation, and so the -- that document would be in</p> <p>14 there. Some of the things provided had loan</p> <p>15 information, had a bill of sale, all the typical</p> <p>16 documents associated with an asset purchase. The deed.</p> <p>17 Some of the condo docs were provided with respect to</p> <p>18 Trump Tower, so.</p> <p>19 Q. When you say "condo docs" with respect to Trump</p> <p>20 Tower, what do you mean?</p> <p>21 A. Condominium plans and deal binders related to</p> <p>22 those plans.</p> <p>23 Q. Was -- were there any other categories of</p> <p>24 documents that you recall pulling?</p> <p>25 A. No.</p>             | <p>54</p> <p>1 A. No.</p> <p>2 Q. Did you keep a list of what you collected?</p> <p>3 A. No. Not that time.</p> <p>4 Q. Now, have you ever seen personal financial</p> <p>5 statement compilations prepared by Weiser, LLP?</p> <p>6 A. Yes.</p> <p>7 Q. When did you see those in your employment at</p> <p>8 the Trump organization?</p> <p>9 A. I believe sometime in late 2005, 2006.</p> <p>10 Q. So after the meeting with Mr. O'Brien?</p> <p>11 A. Yes.</p> <p>12 Q. And in what context did you see those?</p> <p>13 A. Maybe related to his Forbes ranking.</p> <p>14 Q. And tell us what the circumstances were.</p> <p>15 A. I -- you know, I'm not entirely sure. I may</p> <p>16 have had to produce them. That's not -- I may have had</p> <p>17 to gather them for our loans for the Chicago and Las</p> <p>18 Vegas loans, but they were part of the production I sent</p> <p>19 to -- to the lenders.</p> <p>20 Q. And the lenders would have wanted that</p> <p>21 information for what purpose?</p> <p>22 A. He was a guarantor.</p> <p>23 Q. On the loans?</p> <p>24 A. Correct.</p> <p>25 Q. And therefore they'd want information on his</p> |
| <p>55</p> <p>1 Q. And you included -- did you include transaction</p> <p>2 binders for all the properties that you had identified?</p> <p>3 A. Either transaction binders or loose-leaf if it</p> <p>4 was just a small acquisition and there wasn't a binder</p> <p>5 and there was an LLC agreement or something of that</p> <p>6 nature.</p> <p>7 Q. And these --</p> <p>8 A. With a deed.</p> <p>9 Q. These binders didn't contain any valuations of</p> <p>10 the properties, did they?</p> <p>11 A. Some of them contained loan documents.</p> <p>12 Q. Loan documents.</p> <p>13 A. Mm-hmm.</p> <p>14 Q. For the amount of the initial loan?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Did they contain information on the</p> <p>17 amount of the loans that were outstanding on April 21st?</p> <p>18 A. Not outstanding, no.</p> <p>19 Q. Did they contain revenue and expense</p> <p>20 information for 2004, 2005?</p> <p>21 A. No.</p> <p>22 Q. Did they contain appraisals of the properties?</p> <p>23 A. I don't know.</p> <p>24 Q. Do transaction binders typically contain</p> <p>25 appraisals?</p> | <p>57</p> <p>1 net worth?</p> <p>2 A. Yes.</p> <p>3 Q. And the purpose I take it of providing these</p> <p>4 financial statements was to provide his purported assets</p> <p>5 and liabilities?</p> <p>6 A. I assume. I don't know why they -- I mean, I</p> <p>7 assume that would be why they want them.</p> <p>8 Q. That was your understanding?</p> <p>9 A. Yes.</p> <p>10 Q. And so you provided the Weiser documents you</p> <p>11 believe in connection with those loans for Las Vegas and</p> <p>12 for Chicago?</p> <p>13 A. Yes.</p> <p>14 Q. You also mentioned Forbes.</p> <p>15 A. Mm-hmm.</p> <p>16 Q. Were these documents provided to Forbes?</p> <p>17 A. No, they were not.</p> <p>18 Q. Okay, so then what -- in what context --</p> <p>19 A. Actually, I don't think so, but I can't say</p> <p>20 definitively. I was again only there for the asset</p> <p>21 ownership piece of it.</p> <p>22 Q. So what was Forbes shown when you -- let me ask</p> <p>23 it this way: At any point did you meet with people from</p> <p>24 Forbes?</p> <p>25 A. I did.</p>   |

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| <p>1 A. That they had something to do with his net<br/>2 worth and his licensing and being licensed as a casino<br/>3 operator.<br/>4 Q. And when you say his net worth, that purports<br/>5 to show his assets and liabilities?<br/>6 A. I don't know that I even thought or knew that.<br/>7 I think I knew that it had something to do with him<br/>8 getting a gaming license.<br/>9 Q. And that it had some information on it<br/>10 pertaining to net worth?<br/>11 A. Yes.<br/>12 Q. Are these filed under oath, do you know?<br/>13 A. I don't know.<br/>14 Q. Okay. Just take a look at Defendant's Exhibit<br/>15 4, if you could, page 2.<br/>16 A. Okay.<br/>17 Q. Second page. See its certification there that<br/>18 these statements and information are true?<br/>19 A. Mm-hmm.<br/>20 Q. To the best of --<br/>21 MR. TAMBUSI: Whoa, whoa, whoa. Read the<br/>22 whole certification.<br/>23 Q. "I, Donald Trump" --<br/>24 MR. TAMBUSI: Don't mischaracterize it.<br/>25 Q. (BY MR. CERESNEY) "I, Donald Trump, hereby</p>   | <p>66 68<br/>1 Q. Okay. And then looking to page 6 of the<br/>2 document, does that purport to set forth assets and<br/>3 liabilities as of April 30th, 2003? I'm sorry, the<br/>4 document that has .06 as the last -- that one.<br/>5 MR. TAMBUSI: (Indicating).<br/>6 A. Looks like it. Of 2003.<br/>7 Q. Did you provide this to Mr. O'Brien on April<br/>8 21st, 2005?<br/>9 A. No.<br/>10 Q. Okay. And why not?<br/>11 A. Because it didn't pertain to his ownership of<br/>12 property.<br/>13 Q. Okay. Did you provide any casino filings to<br/>14 Mr. O'Brien on April 21st, 2005?<br/>15 A. No.<br/>16 Q. And why not?<br/>17 A. It didn't pertain to his property ownership.<br/>18 MR. CERESNEY: This is a good time for a<br/>19 break.<br/>20 MR. TAMBUSI: Sure.<br/>21 MR. CERESNEY: We'll go off the record.<br/>22 THE VIDEOGRAPHER: This is the end of tape<br/>23 1, we are off the record at 8:57.<br/>24 (Recessed from 8:57 to 9:04 a.m.)<br/>25 THE VIDEOGRAPHER: This is the beginning</p>                      |
| <p>67<br/>1 I certify to the Indiana Gaming Commission that there have<br/>2 been no adverse -- material adverse changes to my<br/>3 qualifications since the filing of the last update to my<br/>4 personal disclosure form 1. 2, I am attaching true and<br/>5 correct copies of my federal tax returns for the years<br/>6 2000, 2001, and 2002. I am enclosing a copy of my most<br/>7 recent financial statement. I hereby certify and affirm<br/>8 that the foregoing statements by me and the information<br/>9 submitted herewith are true and complete to the best of<br/>10 my knowledge."<br/>11 MR. CERESNEY: Okay?<br/>12 MR. TAMBUSI: Correct.<br/>13 Q. (BY MR. CERESNEY) Is that what it says?<br/>14 A. Yes.<br/>15 Q. Do you understand that to be a certification<br/>16 that the information that was submitted here with the<br/>17 certification is correct?<br/>18 A. Yes.<br/>19 Q. Now, looking at page 3, does that contain a<br/>20 Weiser statement of financial condition for the year<br/>21 ended April 30th, 2003?<br/>22 MR. TAMBUSI: Page 3 or page 4?<br/>23 A. 4.<br/>24 Q. I'm sorry, page 4.<br/>25 A. Yeah. Yes.</p> | <p>69<br/>1 of tape 2. We are back on the record at 9:05.<br/>2 Q. (BY MR. CERESNEY) Okay. I've been showing you<br/>3 some documents, let me just show you a few more, a<br/>4 couple more, actually. We'll mark Defendant's Exhibits<br/>5 5 and 6.<br/>6 (Exhibits 5 and 6 marked)<br/>7 Q. (BY MR. CERESNEY) There's 5, and here's 6. Do<br/>8 you recognize 5 to be financial statements for Trump<br/>9 Tower Commercial for the year ending December 31st,<br/>10 2004, audited financial statements for that year?<br/>11 A. Looks like it.<br/>12 Q. Okay. And Defendant's Exhibit 6, do you<br/>13 recognize that to be audited financial statements for 40<br/>14 Wall Street, LLC?<br/>15 A. Looks like it.<br/>16 Q. For the year ended December 31st, 2004?<br/>17 A. Mm-hmm.<br/>18 MR. TAMBUSI: Say yes.<br/>19 A. Yes, yes.<br/>20 MR. TAMBUSI: Thank you.<br/>21 Q. Have you seen these before?<br/>22 A. No.<br/>23 Q. Did you have access to these when you were at<br/>24 the Trump organization?<br/>25 A. No.</p> |

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| <p>70</p> <p>1 Q. Is it fair to say that these financial<br/>2 statements would show income from the assets for the --<br/>3 at least the year ended December 31st, 2004, and for<br/>4 other periods as well?<br/>5 A. I assume it shows that, but I can't say<br/>6 definitively.<br/>7 Q. Okay. So let me just ask you to look, take for<br/>8 example page 3 of the -- of Exhibit 5.<br/>9 A. Mm-hmm.<br/>10 Q. Do you see where it says, "Revenues" --<br/>11 A. Wait a minute.<br/>12 Q. Oh, I'm sorry.<br/>13 MR. TAMBUSI: Page 4?<br/>14 MR. CERESNEY: Page 3 of Exhibit 5.<br/>15 MR. TAMBUSI: 5?<br/>16 MR. CERESNEY: Page 3, No. 3, No. 3 on the<br/>17 bottom, I'm sorry. Not of the exhibit but of the actual<br/>18 financial statement.<br/>19 Q. (BY MR. CERESNEY) Do you see where there's a<br/>20 listing of revenues and then expenses, net income, do<br/>21 you see that?<br/>22 A. Yes.<br/>23 Q. Does that appear to show both revenues,<br/>24 expenses, income for that year?<br/>25 A. Seems to.</p> | <p>72</p> <p>1 those?<br/>2 A. The financial department.<br/>3 Q. Were those provided to Mr. O'Brien on April<br/>4 21st, 2005?<br/>5 A. Not during my meeting with him.<br/>6 Q. Okay. Do you have any knowledge that they were<br/>7 provided at any other point?<br/>8 A. I don't know if they were or not.<br/>9 Q. Have you ever seen statements from banks, loan<br/>10 statements from banks that set forth current balances on<br/>11 loans?<br/>12 A. No.<br/>13 Q. Do you know who within the organization would<br/>14 have access to them?<br/>15 A. The financial department.<br/>16 Q. Were those provided to Mr. O'Brien on April<br/>17 21st, 2005, or thereafter?<br/>18 A. Not during my meeting, and I don't know if<br/>19 after my meeting on the same day or thereafter.<br/>20 Q. How about bank statements showing current<br/>21 balances in accounts, did you have access to those?<br/>22 A. No, I did not have access.<br/>23 Q. Were those provided to Mr. O'Brien on April<br/>24 21st, 2005?<br/>25 A. Not during my meeting with him.</p>   |
| <p>71</p> <p>1 Q. Okay. Do you know whether or not that<br/>2 information is relevant in valuing retail property?<br/>3 MR. TAMBUSI: Objection to the form of<br/>4 the question. You can answer it.<br/>5 A. I believe it would be.<br/>6 Q. Okay. Did you provide this information to<br/>7 Mr. O'Brien on April 21st, 2005?<br/>8 A. No.<br/>9 Q. And why not?<br/>10 A. Because it didn't relate to the property that<br/>11 was owned, specifically the property itself.<br/>12 Q. In other words, the ownership of the property?<br/>13 A. Correct.<br/>14 Q. Okay. Have you seen Mr. Trump's personal tax<br/>15 returns?<br/>16 A. Isn't that -- oh, his tax returns?<br/>17 Q. Tax returns, yes.<br/>18 A. No.<br/>19 Q. Have you seen corporate tax returns for some of<br/>20 Mr. Trump's corporations and partnerships?<br/>21 A. No.<br/>22 Q. Did you have any access to them while you were<br/>23 at the Trump organization?<br/>24 A. No.<br/>25 Q. Who within the organization had access to</p>              | <p>73</p> <p>1 Q. Did you have discussions with anyone about<br/>2 whether or not to provide the types of documents I just<br/>3 reviewed with you --<br/>4 A. No.<br/>5 Q. -- to Mr. O'Brien?<br/>6 A. No.<br/>7 Q. Anything else that you can recall about the<br/>8 selection of the documents to provide to Mr. O'Brien<br/>9 other than what we've discussed today?<br/>10 A. No.<br/>11 Q. Now, did there come a time after this lawsuit<br/>12 was brought when you created a list of what had been<br/>13 shown to Mr. O'Brien on April 21st, 2005?<br/>14 A. Maybe. I might have.<br/>15 Q. And when did that occur?<br/>16 A. Could have been when we were preparing for<br/>17 Forbes. I might have created it and -- in preparation<br/>18 for that.<br/>19 Q. How did you know -- how did you determine what<br/>20 was in the room if you didn't have a list?<br/>21 A. I don't understand the question.<br/>22 Q. Okay. When you pulled the documents for<br/>23 Mr. O'Brien, did you keep a list of what you had pulled?<br/>24 A. No.<br/>25 Q. Was there any record of what you had pulled at</p> |

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1 the time?

2 A. No.

3 Q. I take it -- what did you do with the documents

4 after Mr. O'Brien left on April 21st?

5 A. Returned them to everyone's office who they

6 belonged to.

7 Q. At some later time you wanted to recreate that

8 set?

9 A. Yes.

10 Q. How did you go about recreating that set?

11 A. I wish I'd had a list. I knew the assets, went

12 back over them with Allen to make sure that I had these

13 same documents, and repulled them, but I had put sticky

14 notes on the inside of every binder saying who they

15 belonged to, so I found all the notebooks that I had put

16 sticky notes on.

17 Q. What kind of sticky notes are you talking

18 about?

19 A. Like a square sticky note.

20 Q. Like a Post-it note?

21 A. A Post-it note that had their initials on it.

22 Q. And so when you pulled up Mr. O'Brien, you put

23 those on --

24 A. The inside cover.

25 Q. -- each inside cover so that you could

75

1 determine who to return it to?

2 A. Yes.

3 Q. And so when you went and repulled them, you

4 found those --

5 A. Sticky notes.

6 Q. -- sticky notes on the inside of each binder?

7 A. Yes.

8 Q. Did you only pull binders that had the sticky

9 notes on the inside of them?

10 A. No, I pulled all the binders that I had pulled.

11 If a sticky note might have been missing, I still knew I

12 had pulled that binder.

13 Q. How did you recall exactly what you had pulled

14 other than the sticky notes?

15 A. I pulled everything related to the ownership of

16 the property.

17 Q. Okay. And you did that in connection with

18 Forbes, is that the next time you did that?

19 A. Yes.

20 Q. And that was the meeting that we talked about

21 earlier in late 2005, early 2006?

22 A. Yes, yes.

23 Q. Did you keep a record at that time of what you

24 had pulled?

25 A. I might have.

76

1 Q. Do you know where that record is today?

2 A. No.

3 Q. Do you know whether or not it exists?

4 A. No, I'm not sure. I think I may have had my

5 assistant do it this time.

6 MR. CERESNEY: I'd call for the production

7 of that list if it exists.

8 MR. TAMBUSSE: If it exists. No objection

9 to it, we'll look for it. If it exists, we'll produce

10 it.

11 MR. CERESNEY: Okay.

12 Q. (BY MR. CERESNEY) Did there come another point

13 after that when you compiled a list of what had been in

14 the room with Mr. O'Brien?

15 A. Not a list.

16 Q. Okay, what -- what was the next thing that

17 happened in connection with the documents that you

18 pulled for Mr. O'Brien in that room?

19 A. I don't understand the question.

20 Q. You said you didn't create a list again.

21 A. I mean, if I created something, I handwrote all

22 the assets out again and I went through and checked off

23 and that's what I would have done with it.

24 Q. Did there come a time after the Forbes meeting

25 when you had to recreate again what had been in the room

77

1 with Mr. O'Brien?

2 A. The document production.

3 Q. And at that time how did you go about -- let me

4 ask it this way, strike that. After the Forbes meeting

5 did you give the binders back to the owners?

6 A. Yes, yes.

7 Q. Did you have to then go back again --

8 A. Yes.

9 Q. -- and recreate that collection of documents?

10 A. Yes.

11 Q. And how did you do that when you were doing it

12 for the document production?

13 A. I did it the same way, made a handwritten list

14 of the assets. I don't think I ever wrote it, I don't

15 think I ever typed it up, I think I handwrote it each

16 time. By that point I was familiar with what I was

17 pulling.

18 Q. Did there come a time when you understood that

19 you needed to provide a list of those documents in

20 litigation?

21 A. That was the third time I pulled them, yes.

22 Q. Okay. Let me show you Defendant's Exhibit 7.

23 (Exhibit 7 marked)

24 Q. (BY MR. CERESNEY) This is a November 20th,

25 2006, letter from Maria to me, Maria Gorecki to Andrew

20 (Pages 74 to 77)

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|  |   |
|--|---|
| <p style="text-align: right;">94</p> <p>1 in the Trump Equitable Fifth Avenue Company in 1986?</p> <p>2 A. Yes.</p> <p>3 Q. Is this what you provided -- well, let me ask</p> <p>4 it this way: The April 5th, 2007, letter, represents</p> <p>5 that this is what was provided to Mr. O'Brien on Trump</p> <p>6 Tower, is that true?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall anything else -- let me ask the</p> <p>9 question this way: The April 5th, 2007, letter does not</p> <p>10 provide any other documents on Trump Tower?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. And my question to you is, would documents</p> <p>13 showing the acquisition of a property, this property, in</p> <p>14 1986 allow anyone to establish the value of that</p> <p>15 property on April 21st, 2005?</p> <p>16 MR. TAMBUSI: Objection to the form of</p> <p>17 the question. You can answer it.</p> <p>18 A. No, except to the extent of what was paid for</p> <p>19 the interest.</p> <p>20 Q. In 1986?</p> <p>21 A. Going to the value in 1986.</p> <p>22 Q. Okay.</p> <p>23 A. And that percentage.</p> <p>24 Q. So you would know how much was paid in 1986?</p> <p>25 A. For that percentage of that asset.</p> | <p style="text-align: right;">96</p> <p>1 Q. How generally was Mr. Trump compensated or is</p> <p>2 Mr. Trump compensated under licensing agreements?</p> <p>3 A. Every deal varies, but some of the deals he is</p> <p>4 compensated initially up front, and he -- a percentage</p> <p>5 on the back side is negotiated.</p> <p>6 (Exhibit 11 marked)</p> <p>7 Q. (BY MR. CERESNEY) Is -- in this case let me</p> <p>8 show you one example of a license agreement that was</p> <p>9 provided to Mr. O'Brien, it's Defendant's Exhibit 11,</p> <p>10 And it's the license agreement for the White Plains</p> <p>11 residential property. Are you familiar with this</p> <p>12 licensing agreement?</p> <p>13 A. Yes.</p> <p>14 Q. What -- is this -- just to clarify, does this</p> <p>15 agreement allow another entity to develop a property in</p> <p>16 White Plains that would bear Mr. Trump's name?</p> <p>17 A. Yes.</p> <p>18 Q. Does Mr. Trump get compensation under this</p> <p>19 agreement?</p> <p>20 A. I don't know under this agreement. Under a</p> <p>21 typical deal that is what would happen.</p> <p>22 Q. Okay, let me direct you to the last page of the</p> <p>23 document which sets forth in schedule 1 the license fee.</p> <p>24 A. Mm-hmm, yes.</p> <p>25 Q. Okay. Does that provide that when the gross</p> |
| <p style="text-align: right;">95</p> <p>1 Q. You would not be able to tell from that how</p> <p>2 much that property is worth in 2005?</p> <p>3 A. No.</p> <p>4 Q. Is that correct?</p> <p>5 A. No.</p> <p>6 MR. TAMBUSI: Michelle, you've got an</p> <p>7 awful lot of stuff piled in front of you.</p> <p>8 MR. CERESNEY: Yeah, that's -- I agree,</p> <p>9 why don't we clear that away because I'm about to move</p> <p>10 to a different topic.</p> <p>11 A. Did you want the rubber band on this?</p> <p>12 Q. (BY MR. CERESNEY) Why don't you just keep them</p> <p>13 together. Okay, thank you. I apologize for the volume</p> <p>14 of paper.</p> <p>15 A. Do you want me to keep those?</p> <p>16 Q. Yeah, that would be great, because I have one</p> <p>17 final set of questions about that, I think, which is</p> <p>18 some of the documents that are identified in there are</p> <p>19 licensing agreements.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Did you provide some licensing</p> <p>22 agreements to Mr. O'Brien?</p> <p>23 A. I provided them for him to review.</p> <p>24 Q. To review that day on April 21st?</p> <p>25 A. Yes.</p>  | <p style="text-align: right;">97</p> <p>1 sales exceed 118 million he's going to get 10 percent of</p> <p>2 the excess, and when they exceed 148 million -- if they</p> <p>3 exceed 148 million he'll get 25 percent of the excess,</p> <p>4 is that right?</p> <p>5 A. Yes, yes.</p> <p>6 Q. Can you tell from this agreement alone how much</p> <p>7 Mr. Trump will be paid on this deal eventually?</p> <p>8 A. No.</p> <p>9 Q. Why not?</p> <p>10 A. It's dependent on the end result, which I don't</p> <p>11 know if that's happened or not or -- and I don't know if</p> <p>12 it happened at the time.</p> <p>13 Q. Was Mr. O'Brien provided the documents that</p> <p>14 would show the end result?</p> <p>15 A. Again, not related to the ownership of</p> <p>16 property, so I wouldn't -- I don't know whether it was</p> <p>17 provided or not.</p> <p>18 Q. You did not provide it?</p> <p>19 A. I did not provide it.</p> <p>20 Q. And on April 21st, 2005, with regard to</p> <p>21 licensing documents, Mr. O'Brien was solely provided</p> <p>22 with licensing agreements, is that correct?</p> <p>23 A. My portion of it was just licensing agreements.</p> <p>24 Q. Are you aware of any other documents he was</p> <p>25 provided related to licensing?</p>   |

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1 A. I don't. I'm not aware.  
2 Q. Okay. You can put that aside, thank you.  
3 Okay. Let's turn to -- I can just clear these away.  
4 MR. TAMBUSI: I don't like a cluttered  
5 work space.  
6 MR. CERESNEY: Yeah. Actually, if you saw  
7 my office, you wouldn't have that comment. Okay. I  
8 know others don't like a cluttered work space.  
9 Q. (BY MR. CERESNEY) Let's go to April 21st and  
10 the meeting you had with Mr. O'Brien. What did you see  
11 as your role at that meeting?  
12 A. To assist him in determining the entity that  
13 owned the property, showing him the deeds, answering any  
14 questions he had with respect to any of the materials in  
15 the room.  
16 Q. What was Mr. Weisselberg's role in the meeting?  
17 A. His role was to help me to the extent I was  
18 unfamiliar with the deals.  
19 Q. And what information did you understand  
20 Mr. Weisselberg was going to provide?  
21 A. The only information I understood he was to  
22 provide was to assist me in showing assets.  
23 Q. Who was present at the beginning of the  
24 meeting?  
25 A. I believe just myself and Allen Weisselberg and

99

1 Mr. O'Brien.  
2 Q. Did Mr. Trump participate in any portion of the  
3 meeting?  
4 A. He may have come in and said "Hi," but I  
5 honestly don't know. That would be typical for him, but  
6 I don't know whether he was involved or not.  
7 Q. Do you recall whether he was there at the  
8 beginning of the meeting?  
9 A. I don't recall.  
10 Q. Do you recall if he greeted Mr. O'Brien when he  
11 arrived?  
12 A. Probably did, but don't recall it.  
13 Q. Do you recall whether he returned to the  
14 meeting at any point?  
15 A. I don't think so.  
16 Q. Did Mr. Trump give you any instructions, say  
17 anything to you prior to the meeting about what you  
18 should do at the meeting?  
19 A. No, other than show him all the materials that  
20 he requested and that I pulled, in those conversations  
21 we discussed earlier.  
22 Q. Now, you said Mr. Weisselberg and you were at  
23 the meeting at the beginning?  
24 A. Yes.  
25 Q. With Mr. O'Brien?

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1 A. Yes.  
2 Q. How long did Mr. Weisselberg stay?  
3 A. 15 minutes, maybe.  
4 Q. Was that it?  
5 A. He may have come back at the end too, but 15  
6 minutes in the beginning.  
7 Q. And what happened during the 15 minutes?  
8 A. We talked generally about some of the -- some  
9 of what we were going to talk about for the day, and I  
10 think Mr. O'Brien asked Mr. Weisselberg several  
11 questions related to appraisals, maybe, or whether there  
12 were appraisals or related to the net -- not net worth  
13 but the value of the assets and liabilities maybe.  
14 Q. And what did Mr. -- what exactly did  
15 Mr. O'Brien ask, whether they were in the room?  
16 A. No, he didn't ask if they were in the room.  
17 Q. And what did he ask?  
18 A. He asked -- I honestly don't specifically know  
19 what he asked. He asked questions of Allen related to  
20 financial matters, financial matters related to the  
21 assets and liabilities, etcetera.  
22 Q. Let me just -- it sounds like you mentioned a  
23 couple of things. One, you asked whether he -- you said  
24 something about how he asked him some information about  
25 appraisals. What in particular did he ask about

101

1 appraisals?  
2 A. I don't know.  
3 Q. Do you remember if Mr. O'Brien asked whether  
4 the information that was in the room included IRS forms,  
5 bank statements, audits --  
6 A. I don't recall him --  
7 Q. Hold on, let me finish the question. Or  
8 Department of Gaming Enforcement information?  
9 A. I don't think he asked that.  
10 Q. You don't recall or you don't think he did?  
11 A. I don't think he asked specifically about  
12 gaming.  
13 Q. How about financial statements?  
14 A. I don't recall if he asked specifically about  
15 financial statements.  
16 Q. How about appraisals?  
17 A. I do think he said something about appraisals.  
18 He may have mentioned something about financial  
19 statements.  
20 Q. Okay. And do you remember what Mr. Weisselberg  
21 responded when he asked about them?  
22 A. He responded verbally answering him, I believe,  
23 and the answer was no, none of those documents were in  
24 the room, but he verbally answered Mr. O'Brien's  
25 questions.

26 (Pages 98 to 101)

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| <p>1 wrote, but I don't recall.</p> <p>2 Q. Okay, having now read these two pages regarding</p> <p>3 the West Side Yards, Bates numbers 4300 to 4302, does</p> <p>4 that refresh your recollection about what was said about</p> <p>5 the West Side Yards at the meeting?</p> <p>6 A. It doesn't necessarily refresh it, but I</p> <p>7 remember still what I remember about it.</p> <p>8 Q. Okay. So you don't know whether or not this</p> <p>9 information was imparted to Mr. O'Brien during that</p> <p>10 meeting?</p> <p>11 A. Right.</p> <p>12 Q. Let me ask you then to turn to page 4302. You</p> <p>13 see there's a mention of Trump Tower?</p> <p>14 A. Yes.</p> <p>15 Q. And then there's a page, a little bit less than</p> <p>16 a page of notes about Trump Tower. What do you recall,</p> <p>17 before you look at these notes, about the discussion of</p> <p>18 Trump Towers?</p> <p>19 A. I'm sorry -- I'm sorry, ask that again.</p> <p>20 MR. TAMBUSI: Take your time.</p> <p>21 Q. Take your time, I'm not --</p> <p>22 A. Do I recall --</p> <p>23 Q. I was saying before you look at the notes, just</p> <p>24 sitting here today, and then I'll ask you to look at the</p> <p>25 notes, what do you recall about the discussion of Trump</p> | <p>114</p> <p>1 explain what that meant, and how Mr. Trump made money on</p> <p>2 it and more about the construction of it and how</p> <p>3 complicated the construction was and things more</p> <p>4 specifically related to the actual property.</p> <p>5 Q. Okay. Do you know whether, now having looked</p> <p>6 at these notes, they're accurate about what was said</p> <p>7 about the property? Can you recall one way or the</p> <p>8 other? Take your time.</p> <p>9 A. I think the 27 million sounds familiar.</p> <p>10 Q. That's the amount it was bought for?</p> <p>11 A. Yes. The residential lots sounds familiar. I</p> <p>12 don't recall the "can't sell memberships because it's a</p> <p>13 public course" and I don't recall -- I mean, that seems</p> <p>14 like his personal note. "Doesn't know the income stream</p> <p>15 from the property," I don't think that was said.</p> <p>16 Q. He might have asked a question, do you recall a</p> <p>17 question whether he knows the income stream?</p> <p>18 A. I don't recall a question.</p> <p>19 Q. Okay. Look to the next page.</p> <p>20 A. Okay.</p> <p>21 Q. There's a half a page about the Bedminster golf</p> <p>22 course, do you see that? Before looking at this again,</p> <p>23 did you have any recollection of what was said about</p> <p>24 Bedminster?</p> <p>25 A. Again I think on both courses it was -- or all</p> |
| <p>115</p> <p>1 Tower?</p> <p>2 A. I don't recall very much at all about the Trump</p> <p>3 Tower. I mean, the Daewoo I believe happened, but</p> <p>4 that's more because I saw the notes.</p> <p>5 Q. So anything else, having now looked at the</p> <p>6 notes, that you recall?</p> <p>7 A. No.</p> <p>8 Q. Okay. There's a note in here that "Donald</p> <p>9 Trump walks in, 'Am I rich or am I rich,'" in quotes,</p> <p>10 "arms outstretched, he's wearing a bright yellow tie."</p> <p>11 Do you remember that?</p> <p>12 A. I don't, but again that wouldn't surprise me if</p> <p>13 he did do that.</p> <p>14 Q. But you have no recollection of it?</p> <p>15 A. No.</p> <p>16 Q. Then there's a discussion on the next page of</p> <p>17 the Palos Verde golf course in California.</p> <p>18 A. Yes.</p> <p>19 Q. Before you looked at these notes did you have</p> <p>20 any recollection of a discussion of that?</p> <p>21 A. I remember talking about it a little bit, yes.</p> <p>22 Q. Okay. And what do you recall about the</p> <p>23 discussion?</p> <p>24 A. I remember him, Mr. O'Brien saying it's leased,</p> <p>25 talking about it being leased, and then us trying to</p>   | <p>117</p> <p>1 four courses it was just a cursory discussion of them.</p> <p>2 Q. Looking now at the notes, do you have any</p> <p>3 recollection of whether these are accurate or not?</p> <p>4 A. I don't have any recollection of whether</p> <p>5 they're accurate or not.</p> <p>6 Q. Do you have any reason to believe they're not</p> <p>7 accurate?</p> <p>8 A. I don't know that they're not his own thoughts</p> <p>9 and not necessarily what was said. I don't know that he</p> <p>10 didn't combine some of what he was thinking and what he</p> <p>11 already thought he knew with what was being said.</p> <p>12 Q. Is there anything in here that makes you think</p> <p>13 that that's what he was doing?</p> <p>14 A. Well, the note back here, "doesn't know the</p> <p>15 income stream."</p> <p>16 Q. Right, although couldn't that have been a</p> <p>17 question about whether he knows the income stream?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. Anything in these notes that suggests to</p> <p>20 you that this is not what was said?</p> <p>21 A. Nothing jumps out.</p> <p>22 Q. Okay. And then there's a half a page of the</p> <p>23 Palm Beach Golf Club and half a page on the Westchester</p> <p>24 golf course, do you see that?</p> <p>25 A. Mm-hmm.</p>   |

30 (Pages 114 to 117)

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| <p style="text-align: right;">118</p> <p>1 Q. Again, do you have any recollection other than<br/>2 what you've said so far about the golf course<br/>3 discussions, about these two golf courses being<br/>4 discussed?<br/>5 A. No.<br/>6 Q. Okay. And now having looked at what you've --<br/>7 what's in these notes, do you have any -- does it<br/>8 refresh your recollection about what was discussed about<br/>9 these two golf courses?<br/>10 A. Not really.<br/>11 Q. Okay. Do you have any reason to believe that<br/>12 what's written down here is not what was said at the<br/>13 meeting?<br/>14 A. No.<br/>15 Q. Okay. Then it says at the bottom of page 4305,<br/>16 "AW breaks out wealth on next page," do you see that?<br/>17 A. Yes, I see that.<br/>18 Q. And then there's a chart with "\$6 billion net<br/>19 worth" at the top, do you see that?<br/>20 A. Yes.<br/>21 Q. Do you recall Mr. Weisselberg providing the<br/>22 estimate of \$6 billion of Mr. Trump's net worth?<br/>23 A. Yes.<br/>24 Q. Do you recall what he did after that? Did he<br/>25 break down the assets by valuations?</p>  | <p style="text-align: right;">120</p> <p>1 with all the materials together.<br/>2 Q. And what materials did he say he would get<br/>3 together?<br/>4 A. I think lists of his assets and liabilities.<br/>5 Q. And how about financial statements?<br/>6 A. I don't know, I don't think financial<br/>7 statements was discussed, I think it was a list of<br/>8 assets and liabilities which could come from financial<br/>9 statements, but.<br/>10 Q. Right. So do you recall him going through and<br/>11 giving these valuations that you see here?<br/>12 A. I recall him listing, listing off some of<br/>13 Mr. Trump's assets. I don't recall the amounts, though.<br/>14 Q. So do you have any -- so you don't recall<br/>15 whether these amounts were what was assigned by<br/>16 Mr. Weisselberg to each property?<br/>17 A. Right, I don't recall that.<br/>18 Q. And this list, just to be clear, has -- starts<br/>19 with \$500 million cash as being how much cash Mr. Trump<br/>20 has, do you recall that being said?<br/>21 A. I don't recall.<br/>22 Q. Do you have any reason to believe that the<br/>23 numbers that are in this list for each of these<br/>24 properties or assets were what Mr. Weisselberg provided<br/>25 to Mr. O'Brien on April 21st?</p>   |
| <p style="text-align: right;">119</p> <p>1 A. I think he gave a cursory breakdown of the<br/>2 assets just off the top of his head.<br/>3 Q. Did he have anything in front of him when he<br/>4 gave that?<br/>5 A. He had something in his hand, but I don't -- it<br/>6 wasn't -- I don't think it was valuations or -- I don't<br/>7 think he prepared anything related to this question, I<br/>8 think it was just a question Mr. O'Brien asked that he<br/>9 was trying to answer.<br/>10 Q. So it wasn't -- it was sort of back of the<br/>11 envelope?<br/>12 A. I'm not sure what that means.<br/>13 Q. Well, you used the word cursory. He didn't<br/>14 prepare anything?<br/>15 A. Right. He answered the question to the best of<br/>16 his ability without having the materials in front of<br/>17 him.<br/>18 Q. Okay. Did he offer to go back and get<br/>19 documents that would support his --<br/>20 A. I think he did.<br/>21 Q. -- statements?<br/>22 A. I think he did.<br/>23 Q. And did he then go get those documents?<br/>24 A. No, I think he said he would get them together,<br/>25 but even at the time I didn't assume he would come back</p> | <p style="text-align: right;">121</p> <p>1 A. I don't have a reason not to know, but I don't<br/>2 have a reason to know that they're correct.<br/>3 Q. You just don't recall?<br/>4 A. I don't recall.<br/>5 Q. Okay. And then does this list refresh your<br/>6 recollection about anything else that was said about the<br/>7 West Side Yards? There's a reference here to that the<br/>8 valuation is us not based upon an accountant's<br/>9 projections of cash flows, doesn't know time periods or<br/>10 interest rates. There's a reference to some information<br/>11 about the Vegas condos. On page 4307 there's a<br/>12 reference to some other properties. Does any of this<br/>13 refresh any recollection about what was said at the<br/>14 meeting for you?<br/>15 A. No.<br/>16 Q. No? Okay. Now, the notes seem to indicate<br/>17 that at some point Mr. O'Brien noted that this list<br/>18 didn't add up to \$6 billion and asked Mr. Weisselberg<br/>19 about that and then Mr. Weisselberg said he was going to<br/>20 go to his office and find the other billion, do you<br/>21 recall that?<br/>22 A. I don't recall it being said that way. I know<br/>23 that's how it's been characterized, but I don't recall<br/>24 it being said that way specifically.<br/>25 Q. Okay, what do you recall?</p> |

31 (Pages 118 to 121)

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\* \* \* C O N F I D E N T I A L \* \* \*  
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

DONALD J. TRUMP, )  
 )  
Plaintiff, )  
 )  
. vs. )  
 )  
TIMOTHY L. O'BRIEN, TIME )  
WARNER BOOK GROUP INC., )  
and WARNER BOOKS INC., )  
 )  
Defendants. )  
----- )

No. CAM-L-545-06

January 7, 2008  
10:02 a.m.

Deposition of ALLEN WEISSELBERG, held  
at the offices of Kasowitz, Benson, Torres &  
Friedman, 1633 Broadway, New York, New York,  
before Laurie A. Collins, a Registered  
Professional Reporter and Notary Public of  
the State of New York.

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| <p>1<br/>2 APPEARANCES:<br/>3<br/>4 BROWN &amp; CONNERY LLP<br/>5 Attorneys for Plaintiff<br/>6 360 Haddon Avenue<br/>7 Westmont, New Jersey 08108<br/>8 BY: WILLIAM M. TAMBUSI, ESQ.<br/>9 WILLIAM F. COOK, ESQ.<br/>10 - and -<br/>11 KASOWITZ, BENSON, TORRES &amp; FRIEDMAN LLP<br/>12 1633 Broadway<br/>13 New York, New York 10019-6799<br/>14 BY: MARK P. RESSLER, ESQ.<br/>15 MARIA GORECKI, ESQ.<br/>16<br/>17 DEBEVOISE &amp; PLIMPTON LLP<br/>18 Attorneys for Defendants<br/>19 919 Third Avenue<br/>20 New York, New York 10022<br/>21 BY: ANDREW J. CERESNEY, ESQ.<br/>22 ANDREW M. LEVINE, ESQ.<br/>23 MARY JO WHITE, ESQ. (p.m. only)<br/>24 JULIE S. SUH, ESQ.<br/>25</p> | <p>1<br/>2 THE VIDEOGRAPHER: Good morning. This<br/>3 is Tape Number 1 of the videotaped deposition<br/>4 of Allen Weisselberg taken by defendants in<br/>5 the matter of Donald J. Trump, plaintiff,<br/>6 versus Timothy O'Brien, Time Warner Book<br/>7 Group, Inc., and Warner Books, Inc.,<br/>8 defendants, in the Superior Court of New<br/>9 Jersey, Law Division: Camden County, Case<br/>10 Number CAM-L-545-06.<br/>11 This deposition is being held at 1633<br/>12 Broadway, New York, New York, on January 7th,<br/>13 2008. The time is 10:02 a.m.<br/>14 My name is Ed Ford. I'm the certified<br/>15 legal video specialist. The court reporter is<br/>16 Laurie Collins. We're in association with<br/>17 Veritext, 1350 Broadway, New York, New York.<br/>18 For the record will counsel please<br/>19 introduce themselves.<br/>20 MR. RESSLER: For Plaintiff Donald J.<br/>21 Trump from the firm Kasowitz, Benson, Torres &amp;<br/>22 Friedman, Mark Ressler and Maria Gorecki.<br/>23 MR. TAMBUSI: Also for plaintiff from<br/>24 the firm of Brown Connery, William Tambussi<br/>25 and William Cook.</p> |
| <p>1<br/>2 APPEARANCES (continued):<br/>3<br/>4 ALSO PRESENT:<br/>5 EDWARD FORD, CLVS, Videographer<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>  | <p>1<br/>2 MR. CERESNEY: For Defendants Timothy<br/>3 O'Brien, Time Warner Book Group and Warner<br/>4 Books, Inc., Andrew Ceresney, Andrew Levine,<br/>5 and Julie Suh from the firm of Debevoise &amp;<br/>6 Plimpton LLP.<br/>7 THE VIDEOGRAPHER: Okay. Now will the<br/>8 court reporter please swear in the witness.<br/>9 ALLEN WEISSELBERG,<br/>10 called as a witness, having been duly sworn<br/>11 by the notary public, was examined and<br/>12 testified as follows:<br/>13 EXAMINATION BY<br/>14 MR. CERESNEY:<br/>15 Q. Good morning, Mr. Weisselberg.<br/>16 A. Good morning.<br/>17 Q. Let me just introduce myself on the<br/>18 record. I'm Andrew Ceresney from Debevoise &amp;<br/>19 Plimpton. We represent the defendants in this<br/>20 matter. I'll be asking you some questions in<br/>21 connection with a lawsuit that Mr. Trump, your<br/>22 employer, has brought against my clients.<br/>23 A. Okay.<br/>24 Q. And I apologize, I have a cold today.<br/>25 So if you don't -- I apologize in advance if my</p>   |

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2 that they went to almost laughable lengths to  
3 assure me they weren't lying, as when Abe Wallach,  
4 Trump's finance man, produced a letter from a  
5 company \$120 million for a piece of Trump  
6 property. This is not concocted, Trump told me,  
7 though I never suggested such a thing. This is  
8 real, end quote.  
9 Do you recall this article from April  
10 of 2000, Mr. Weisselberg?  
11 A. I don't -- I know there was an article.  
12 I don't recall the exact content, it was so long  
13 ago.  
14 Q. Does this article suggest that  
15 Mr. Trump exaggerates his net worth publicly?  
16 MR. RESSLER: Objection to the form of  
17 the question.  
18 A. The article certainly suggests that  
19 seems to be the intent.  
20 Q. Let me show you Defendants' Exhibit  
21 119. This is a Time magazine article that  
22 appeared in April of 2004. I'll direct you to the  
23 second page. The title of the article is Trump's  
24 Reality Grows. I'll read the paragraph second  
25 from the bottom: How rich is the Donald? To

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2 interviewers he hints that his wealth is somewhere  
3 between \$2 billion and \$6 billion. Rival  
4 developers estimate it's nowhere near even the  
5 lower figure, but he has certainly brought home  
6 some lucrative deals.  
7 Do you see this?  
8 A. I see it.  
9 Q. Does this suggest that there are rival  
10 developers who indicate that they believe that  
11 Mr. Trump is exaggerating his wealth?  
12 MR. RESSLER: Objection to the form of  
13 the question.  
14 A. There's no way of -- I couldn't tell  
15 you what Macklowe is worth after reading a  
16 three-page article about him in yesterday's New  
17 York Times.  
18 These are private individuals. No one  
19 has any clue as to what someone else is worth if  
20 you're a privately held company. If you are  
21 Vornado or SL Green and you're a publicly held  
22 REIT, yeah, you can judge what the company is  
23 worth. But what is the individual behind the  
24 company worth? I don't know how any other  
25 developer can make a public statement as to what

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2 Mr. Trump's net worth is.  
3 Q. Does the article discuss how people  
4 believe that Mr. Trump exaggerates his net worth?  
5 MR. RESSLER: Objection to the form of  
6 the question.  
7 A. Does it believe that?  
8 Q. Does it suggest that?  
9 MR. RESSLER: Objection to the form of  
10 the question.  
11 A. Based on what the writer is writing.  
12 It reminds me of a writer coming in to do an  
13 article with an objective in mind before the  
14 article is written. I've known that person too.  
15 Q. Let me show you what's already marked  
16 as Defendants' Exhibit 95. This is an article  
17 that appeared in April of 2004 in Fortune magazine  
18 called The Trophy Life. You think Donald Trump's  
19 hit reality show is a circus, spend a few weeks  
20 watching him work.  
21 I'll direct your attention to page 2 of  
22 the article, about a third of the way down the  
23 page: In Trump's real life, he has managed by  
24 force of personality --  
25 A. I don't see that. Where are you?

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2 Q. I'm sorry, about nine lines down from  
3 the top, in the first full paragraph, four lines  
4 into that paragraph, towards the end, "in Trump's  
5 real life." Do you see that?  
6 A. Yeah.  
7 Q. In Trump's real life he has managed by  
8 force of personality insane attention to certain  
9 details, charisma, bluntness, self promotion and  
10 connections to build an empire of steel, marble,  
11 beauty package entities, casinos, and some of the  
12 most incredible mouldings you will ever see.  
13 The total value? If you believe Trump,  
14 \$6 billion, but few people actually believe him,  
15 and there's good reason. Trump is the reality  
16 tycoon. He lives his life straight out of the  
17 survivor handbook. Start with the truth, then add  
18 enough drama, celebrity, sex, and what might very  
19 charitably be called creative editing to make  
20 something entirely outlandish.  
21 I'll ask you then to turn to page 4 of  
22 this article, and I'll ask you to look at the  
23 second full paragraph -- actually the third full  
24 paragraph that starts with "of course." Do you  
25 see that?

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2 A. I have no way of knowing that. I hope

3 he did.

4 Q. Because what you're saying is he

5 shouldn't necessarily take your word for it;

6 right?

7 A. That's not what I'm saying. I'm saying

8 a good reporter does due diligence properly. He

9 doesn't rely upon the word of one person. You

10 said I work for Mr. Trump and I'm biased. If he

11 thought that, why didn't he go out to a third

12 party and verify it?

13 Q. And if he had tried to do that and

14 couldn't find a third party that would talk to him

15 and give him those valuations?

16 MR. RESSLER: I'm sorry, is there a

17 question there?

18 MR. CERESNEY: Well --

19 MR. RESSLER: Would you like to ask a

20 question?

21 Q. Mr. Weisselberg, sitting here today,

22 you have no idea what Mr. O'Brien did beyond

23 talking to you about these particular properties,

24 do you?

25 A. I'm going to answer that question two

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2 ways. Number one, I hope he did go there. I hope

3 he did go to third parties and get some answers,

4 because that should have been in his book. If he

5 didn't go, shame on him for not going, because he

6 should have gone. That's what a good reporter

7 does; they verify their facts by more than one

8 source.

9 Q. Let me ask you this: Did you pull the

10 statement of financial condition to show him on

11 April 21st?

12 MR. RESSLER: Objection, asked and

13 answered. We went through this. He answered

14 the question.

15 Q. What's the answer?

16 A. Mr. Trump walked in with it. I did not

17 give it to him before the meeting.

18 Q. The statement of financial condition

19 contains valuations of assets; correct?

20 A. Well, except for cash. That's real --

21 that's not a valuation; that's actual dollars.

22 Q. Correct?

23 A. (Nods head.)

24 Q. It also contains a list of liabilities;

25 correct?

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2 A. Correct.

3 Q. Did you pull casino control commission

4 submissions to show to Mr. O'Brien, casino

5 control, casino agency, or state agency

6 submissions that Mr. Trump had made to show to

7 Mr. O'Brien?

8 A. What has that got to do with ownership?

9 Q. Right, because they --

10 A. They don't have to do with ownership.

11 We showed him ownership documents.

12 Q. You showed him valuations documents;

13 right?

14 A. There were none.

15 Q. Well, doesn't -- don't state agency

16 commissions to casino control commissions show

17 claim valuations for properties?

18 MR. RESSLER: Objection to the form of

19 the question.

20 A. Agencies will come in, and they will

21 ask whatever they want. They are given -- they

22 can go to any file in our office. They can --

23 when they look at our financial statement, they

24 can do anything they like. They can do

25 independent verifications. They can listen to our

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2 valuation methodology. At the end of the day,

3 they can do whatever they like. What these

4 agencies do, I don't know.

5 Q. But do you submit applications or -- do

6 you submit information to casino control

7 commissions on your claimed valuations of

8 particular properties?

9 A. You would have to ask Jeff McConney.

10 He does that for us. I don't do that.

11 Q. You don't know whether or not the Trump

12 Organization submits to casino control commissions

13 values of properties or assets that Mr. Trump has?

14 A. I don't know.

15 Q. Did you show Mr. O'Brien any

16 projections for Las Vegas or for Chicago, for

17 example?

18 A. Well, let's see. We met with

19 Mr. O'Brien in April of '05. We hadn't got our

20 financing for Las Vegas until July of '05. So we

21 didn't really know where that project would be

22 going. The most we could have done would be to

23 say we spent X dollars so far through various soft

24 costs: architects, lawyers.

25 But more than that we couldn't have

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| <p style="text-align: right;">178</p> <p>Weisselberg - Confidential</p> <p>1 really done because we didn't have anything to<br/> 2 show. All we had was basically all of our costs<br/> 3 that we incurred and paid for in that job, whether<br/> 4 it's for land acquisition or legal fees or<br/> 5 accounting fees or architectural fees or<br/> 6 engineering fees. That would have made up the<br/> 7 valuation at that point.</p> <p>8 You can't value something unless you<br/> 9 actually have financing to build it, because you<br/> 10 can't sell one apartment in a building unless you<br/> 11 have the proceeds, the money, to build that<br/> 12 building. We didn't get that financing until July<br/> 13 of '05.</p> <p>14 Q. So for Vegas that market value of that<br/> 15 property would have been minimal?</p> <p>16 A. I don't know how much we spent. I<br/> 17 mean, the value of the land could have been \$100<br/> 18 million. If you call that minimal, I don't know.</p> <p>19 Q. At the time you spoke to Mr. O'Brien,<br/> 20 the market value of that property was minimal?</p> <p>21 MR. RESSLER: I object to the form of<br/> 22 the question.</p> <p>23 Q. What was the market value of the<br/> 24 property?<br/> 25</p>                          | <p style="text-align: right;">180</p> <p>Weisselberg - Confidential</p> <p>1 ownership and not valuation?</p> <p>2 A. No, we didn't discuss anything about<br/> 3 it. I would just hand him that myself. But as<br/> 4 far as ownership, he would -- understand one<br/> 5 thing: Mr. O'Brien continuously, no matter how<br/> 6 much Donald talked, did not believe we owned<br/> 7 anything on the west side. He didn't believe it.<br/> 8 There was only one way to prove it: show him the<br/> 9 documents that show evidence of ownership.</p> <p>10 Q. Did you discuss with Mr. Trump<br/> 11 valuations, that is, what you should provide --</p> <p>12 A. No.</p> <p>13 Q. -- with regard to valuations?</p> <p>14 A. No.</p> <p>15 Q. Did you compile a list of what<br/> 16 documents were provided to Mr. O'Brien on April<br/> 17 21st?</p> <p>18 A. I did not.</p> <p>19 Q. What other discussions do you recall in<br/> 20 advance of the April 21st meeting with either<br/> 21 Mr. Trump or Ms. Lokey?</p> <p>22 A. Constant conversation was finding every<br/> 23 binder that we had in our place. That was the<br/> 24 constant conversation. I mean, if you would have<br/> 25</p>                        |
| <p style="text-align: right;">179</p> <p>Weisselberg - Confidential</p> <p>1 A. I don't recall. Whatever -- whatever<br/> 2 we had probably paid/spent in dollars at that time<br/> 3 probably would have been the valuation on the<br/> 4 statement of financial condition.</p> <p>5 Now, once we had financing in place in<br/> 6 '05 --</p> <p>7 Q. July of '05?</p> <p>8 A. July of '05. Once we began converting<br/> 9 reservations into hard contracts, we began to see<br/> 10 a pattern of how things were going and we were<br/> 11 able to raise pricing and just keep getting more<br/> 12 and more. That would have now given me enough<br/> 13 substance to begin to do a projection.</p> <p>14 But prior to that without financing in<br/> 15 place, I wouldn't do a projection. The deal may<br/> 16 have fell apart.</p> <p>17 Q. Did Mr. Trump give you any instructions<br/> 18 on what you should provide to Mr. O'Brien?</p> <p>19 A. No. Other than -- yes, he did. I<br/> 20 showed him everything we have in our possession to<br/> 21 show ownership: every document, every binder,<br/> 22 every recorded deed. We showed him everything so<br/> 23 he walks out of there feeling comfortable.</p> <p>24 Q. So Mr. Trump specifically mentioned<br/> 25</p> | <p style="text-align: right;">181</p> <p>Weisselberg - Confidential</p> <p>1 been in my office those couple of weeks, we had<br/> 2 ten people finding all these documents to make<br/> 3 sure we had everything.</p> <p>4 Q. How did you determine that you had, as<br/> 5 you say, everything?</p> <p>6 A. Well, we knew the assets that we had.</p> <p>7 Q. How did you know that?</p> <p>8 A. It's on our statement of financial<br/> 9 condition.</p> <p>10 Q. So you checked the statement of<br/> 11 financial condition?</p> <p>12 A. I know -- I'm there 34 years. I think<br/> 13 I should know the assets that we own. And I gave<br/> 14 her -- I told her what they were, and she went out<br/> 15 and found every piece of paper that indicated the<br/> 16 ownership of those assets.</p> <p>17 Q. What did you do to prepare for the<br/> 18 meeting other than pulling these documents?</p> <p>19 A. Not knowing the questions that were<br/> 20 going to be asked of me, same thing I'm doing<br/> 21 today: I'm walking in just with my knowledge of<br/> 22 being in the company all these years and a sense<br/> 23 of what goes on on a day-to-day basis. I really<br/> 24 didn't do much.<br/> 25</p> |

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2 the question.  
3 Q. Do you know?  
4 A. No, I don't. It wasn't me.  
5 Q. Do you have any knowledge of who at the  
6 Trump Organization handled those types of  
7 financial matters at the time?  
8 MR. RESSLER: Objection to the form of  
9 the question.  
10 A. No, I honestly don't know.  
11 Q. Any other details you recall about this  
12 loan from the early nineties?  
13 MR. RESSLER: Objection to the form of  
14 the question.  
15 MR. CERESNEY: What is your objection  
16 to the form?  
17 MR. RESSLER: "Any other details"?  
18 It's a ridiculously open-ended question,  
19 Andrew. If you want to ask him a specific  
20 question, ask him a specific question. "Any  
21 other details"? You mean like what day of the  
22 week? You mean like what color tie he was  
23 wearing? You mean like what car he was  
24 driving?  
25 Q. Do you recall anything else about this

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2 loan in the early 1990s?  
3 MR. RESSLER: Objection to the form of  
4 the question.  
5 Q. You can answer.  
6 A. Anything else and details aren't the  
7 same thing? No, I don't. I do know that the  
8 interest rate that was charged was an appropriate  
9 rate that was prescribed to them based upon  
10 whatever the IRS requirements were for family  
11 kinds of loans, making it an arm's length  
12 transaction.  
13 Q. What kinds of requirements apply to  
14 those types of loans?  
15 A. I don't know, whatever the outside  
16 accounting firm required us to do we did. We took  
17 their guidance.  
18 Q. What was your involvement in the  
19 repaying of the interest of the loans over time?  
20 A. We would just every month or quarter,  
21 whatever the case was, we would pay the interest,  
22 normal payment, like any other bill.  
23 Q. Would records of that loan still be in  
24 the possession of the Trump Organization today?  
25 A. Whew. I don't know. It should be, but

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2 who knows, it's so many years ago. How much we're  
3 required to keep records that long? It goes back  
4 to 1991, let's say? This is 1990 -- 2008, 17  
5 years? I can't say for sure.  
6 Q. Are there any records, financial  
7 records, in the Trump Organization's possession  
8 today from the early 1990 period?  
9 A. There may have been some binders of  
10 acquisitions of properties that we keep that we  
11 still own for argument's sake that we still have  
12 that we go to, as we do with Mr. O'Brien. There  
13 could be some binders around. We try to follow  
14 whatever the regulations are as far as the length  
15 of time to keep records. Otherwise we would run  
16 out of space.  
17 Q. Understood.  
18 Do you have a storage location where  
19 you keep records that are old from the Trump  
20 Organization?  
21 A. Well, unfortunately we had a problem.  
22 We had to move all of our -- all of our records to  
23 one location. We did it over the past year and a  
24 half. We had it at three or four different  
25 locations.

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2 And the reason why we moved everything  
3 was because one place was our tennis courts at  
4 Grand Central Terminal. And we found out that  
5 there was some problem with mold. So they  
6 wouldn't let us into our own record room. So we  
7 had to get permission to go in there and get all  
8 the records out of there and have the room cleaned  
9 up, with men with white suits, the whole bit.  
10 So things of that nature caused us to  
11 move our records away from three or four locations  
12 and now put them into one location. As a result,  
13 we lost a lot of records because of mold and water  
14 damage.  
15 Q. Where are those records now?  
16 A. Some warehouse, some typical facility  
17 where they maintain records for you, maybe it's  
18 Long Island City or somewhere.  
19 Q. Is it a company that maintains records?  
20 A. When you say "maintains" -- they're in  
21 storage.  
22 Q. Like an Iron Mountain or Icon or  
23 something like that?  
24 A. I don't know the name of the place, but  
25 it's one of the typical office retention companies

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2 where you store things. You can retrieve them  
3 with some -- with a phone call.  
4 Q. Now, let me ask you, going back to  
5 April 21st, 2005, at the Trump Organization  
6 offices and your meeting with Mr. O'Brien. Where  
7 did Mr. O'Brien go that day when he first arrived?  
8 A. Where did he go?  
9 Q. Where did he go, within the office.  
10 A. I assume he came to the twenty-sixth  
11 floor and went to the reception desk, and they  
12 probably --  
13 MR. RESSLER: Don't assume or say  
14 "probably."  
15 THE WITNESS: That's the only place to  
16 go.  
17 MR. RESSLER: I should have objected to  
18 the form of the question. I think the  
19 question was asking the witness what he  
20 observed.  
21 MR. CERESNEY: Yes.  
22 Q. I'm asking based upon your observations  
23 that day where did you see Mr. O'Brien go when he  
24 arrived? Did you see him when he arrived?  
25 A. No.

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2 Q. Where did you first see Mr. O'Brien?  
3 A. In the large conference room.  
4 Q. Who was in the conference room when you  
5 arrived?  
6 A. Mr. O'Brien and I believe -- nobody. I  
7 think -- maybe a receptionist or somebody who  
8 walked him back there. Then Michelle Lokey and I  
9 joined him in the conference room.  
10 Q. Was Mr. Trump there at the time you  
11 arrived?  
12 A. No.  
13 Q. So it was Mr. O'Brien in the conference  
14 room alone?  
15 A. No. I believe he was standing just  
16 outside. We sort of got there simultaneously, and  
17 the three of us walked in together.  
18 Q. How did you know that he arrived? Did  
19 you get a call from someone?  
20 A. Probably the reception desk telling me  
21 Mr. O'Brien was here and he was going to be  
22 escorted back to the conference room.  
23 Q. Do you know if Mr. O'Brien saw  
24 Mr. Trump before he came to the conference room?  
25 A. I don't know.

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2 Q. Did you and Mr. O'Brien and Ms. Lokey  
3 then enter the conference room?  
4 A. I don't recall if he was there first  
5 and we came in or met at the door simultaneously  
6 or -- it all happened pretty much the same time.  
7 Q. Then you went into the conference room  
8 and met with Mr. O'Brien; right?  
9 A. Correct.  
10 Q. Who was present during the meeting that  
11 you had with Mr. O'Brien?  
12 A. Mr. O'Brien was sitting at the head of  
13 the table, where this gentleman is sitting with  
14 the camera, and I was sitting off to his left.  
15 And Michelle Lokey was sort of walking back away  
16 from the conference room table towards the back,  
17 making sure the documents that she put out were  
18 properly organized.  
19 Q. At some point did Ms. Lokey join you at  
20 the table?  
21 A. Yeah, but then she kept getting up and  
22 going back and just fidgeting around and checking,  
23 because she really wasn't too much into the  
24 valuation stuff that he was going to ask questions  
25 about. But she was in the room the whole time.

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2 She never left.  
3 Q. How big was the conference room?  
4 A. Did I measure it? It's a large --  
5 bigger than this.  
6 Q. Where were the documents that you  
7 mentioned earlier?  
8 A. They were on all on the conference room  
9 table, laid out, end to end.  
10 Q. Anybody else there during the point --  
11 during the period that you were meeting with  
12 Mr. O'Brien and Ms. Lokey? Anybody else enter the  
13 room?  
14 A. Mr. Trump came in once to see how  
15 things were going.  
16 Q. At what point during -- how long into  
17 your discussion with Mr. O'Brien did Mr. Trump  
18 come in?  
19 A. I don't recall. I wasn't looking at  
20 any watch. I don't -- I have no idea.  
21 Q. And what did he say when he entered the  
22 room?  
23 A. How are things going. I think he  
24 actually brought a copy of his financial statement  
25 with him.

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2 number looks correct. I have to assume it's

3 correct.

4 Q. And the amount that Mr. Trump paid GE

5 to buy out GE, which is 140 million listed here,

6 that's accurate?

7 A. That's accurate. It may be 143. I

8 don't remember exactly. Maybe 140, 143. That's

9 about right.

10 Q. Here it also says, estimates he will

11 sell units for 300 to 400 million dollars, values

12 it at about -- values it at about \$160 million.

13 A. What that probably means is 300 million

14 all together, 140 going to pay back the bank, and

15 160 above that.

16 Q. Is that what you told Mr. O'Brien?

17 A. It sounds like -- again, the numbers

18 seem to make sense, yes.

19 Q. Let's go to the next project, Chicago.

20 A. What is that?

21 Q. I'm going to read it, and you tell me

22 whether this your understanding of what it says.

23 A. Okay.

24 Q. It says, ESTS. 1.1 billion. And this

25 is the disputed dash. 1.1 billion --

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2 A. You want to believe a dot or dash means

3 the word "in"? My wife took Gregg in school

4 called shorthand. She can probably argue that

5 with you.

6 Q. Okay. Let's just ignore that word for

7 the moment.

8 A. Okay.

9 Q. Estimates 1.1B sales. Okay?

10 A. Projected sales.

11 Q. Was that approximately what you and the

12 Trump Organization were projecting would be sold

13 at Chicago in 2005?

14 A. No, not in 2005. The job hadn't even

15 been constructed yet. That's over time.

16 Q. Excuse me. My mistake in the question.

17 In 2005 were you projecting that the

18 sales ultimately in Chicago would be \$1.1 billion,

19 approximately?

20 A. That's correct. As a -- can I expand

21 on that?

22 Q. Sure.

23 A. As a matter of fact, we had sold, out

24 of the box, so to speak, \$550 million of units in

25 a relatively short period of time.

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1 Weisselberg - Confidential

2 Q. Okay. And we're going to talk about

3 Chicago later.

4 A. Go ahead.

5 MR. RESSLER: Are you finished with

6 your --

7 THE WITNESS: Uh-huh.

8 Q. Then it says mezzanine debt and

9 Deutsche Bank, 770 million.

10 Is that the approximate amount of the

11 debt that Deutsche Bank and the mezzanine debt?

12 A. Sounds about right.

13 Q. It says, Fortress gets kicker and

14 interest.

15 Does that look accurate?

16 A. Yes.

17 Q. Is Fortress actually getting a kicker

18 and interest on the loan?

19 A. The kicker comes at the end, and the

20 interest is accrued while the construction is

21 going on.

22 Q. Just to be clear, Fortress is the

23 entity that lent the mezzanine debt on this

24 project, correct?

25 A. That's correct.

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1 Weisselberg - Confidential

2 Q. Then it says, so there's -- and then

3 there's an A with a circle -- 400 million of

4 equity. The building and -- in the building, and

5 DT will get A with a circle 300 to 350 million.

6 Does that appear approximately correct

7 as to what you understood in 2005?

8 A. Yeah, well, I don't -- I guess he's

9 taking the 770 of total debt and backing out --

10 backing out -- backing it out from a billion one

11 and coming up with a net number. It's about

12 right.

13 Q. Does this refresh your recollection

14 that you told him that in --

15 A. Sounds reasonable, yeah.

16 Q. -- in April of 2005?

17 MR. RESSLER: Objection to the form of

18 the question.

19 A. Uh-huh.

20 Q. Yes?

21 A. Yes.

22 Q. Let's go to the next one, 40 Wall

23 Street.

24 A. Okay.

25 Q. They have been offered 350, and it's

|   |   |
|---|---|
| <p style="text-align: right;">242</p> <p>1 Weisselberg - Confidential</p> <p>2 cut off. It says, DT bought 1 million, and 34</p> <p>3 million in improvements equals 35 million, and the</p> <p>4 building has 145 million in leverage.</p> <p>5 MR. RESSLER: Line.</p> <p>6 Q. Line leverage.</p> <p>7 MR. RESSLER: Thank you.</p> <p>8 Q. Is that accurate, that Mr. Trump had</p> <p>9 been offered, in 2005, \$350 million?</p> <p>10 A. I recall a letter coming in, which we</p> <p>11 immediately ignored because we felt it was worth</p> <p>12 somewhere in excess of \$400 million at that point,</p> <p>13 and we didn't accept that offer.</p> <p>14 Q. Do you think you told Mr. O'Brien that?</p> <p>15 A. I don't recall the date the offer came</p> <p>16 in with 350 on it. I don't recall the date.</p> <p>17 Q. It's possible you told him that?</p> <p>18 A. Possibility. I just don't recall.</p> <p>19 Q. The next part says that Mr. Trump</p> <p>20 purchased it for a million dollars, 40 Wall; is</p> <p>21 that correct?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. And that there was \$34 million made in</p> <p>24 improvements. Was that accurate?</p> <p>25 A. At the time, uh-huh.</p>                             | <p style="text-align: right;">244</p> <p>1 Weisselberg - Confidential</p> <p>2 A. It doesn't say that here. It says</p> <p>3 leverage. I don't know what that means.</p> <p>4 Q. You don't know what the word "leverage"</p> <p>5 means?</p> <p>6 A. Not in this vein.</p> <p>7 Q. You don't know that sometimes debt is</p> <p>8 referred to as leverage?</p> <p>9 MR. RESSLER: Objection to the form of</p> <p>10 the question.</p> <p>11 A. Leverage -- it can be -- it can be</p> <p>12 termed that. But I don't recall the number 145</p> <p>13 and the word "leverage" meaning the same thing.</p> <p>14 The debt was 150. I don't believe it was 145. I</p> <p>15 think it was 151, actually. That would have been</p> <p>16 the debt. 145 is not a debt number. So when you</p> <p>17 say 145 and tie it into the word "leverage," I</p> <p>18 don't get that same -- I don't get that same</p> <p>19 conclusion.</p> <p>20 Q. Okay. All right. Let's keep going.</p> <p>21 A. Sure.</p> <p>22 Q. So A with a circle \$180 million and</p> <p>23 then the dash debt on building. Okay?</p> <p>24 A. Wait, now I'm really confused. What</p> <p>25 does that say, go at 180?</p> |
| <p style="text-align: right;">243</p> <p>1 Weisselberg - Confidential</p> <p>2 Q. And the time being in 2005?</p> <p>3 A. Yeah. We've done some things since</p> <p>4 that time, but for the large part, yes.</p> <p>5 Q. And then it talks about the building</p> <p>6 has \$145 million in leverage, which I assume means</p> <p>7 debt. Is that approximately correct?</p> <p>8 A. I don't know what that means. I don't</p> <p>9 know.</p> <p>10 Q. How much was the debt outstanding at</p> <p>11 the time, approximately?</p> <p>12 A. The debt -- we refinanced the building</p> <p>13 a number of times, three or four times. It was</p> <p>14 65, and then it went to 125, and then it went to</p> <p>15 151, and now it's at 160. So I don't know at what</p> <p>16 points in time each of those happened. So I'm not</p> <p>17 sure of the number at any one given time. But we</p> <p>18 started out with 65 million that went to I think</p> <p>19 125 that went to 151 that went to 160. I just</p> <p>20 don't recall the dates of when those things</p> <p>21 happened.</p> <p>22 Q. Do you believe you told Mr. O'Brien</p> <p>23 that it was approximately 145 million at the time?</p> <p>24 A. The debt?</p> <p>25 Q. The debt.</p> | <p style="text-align: right;">245</p> <p>1 Weisselberg - Confidential</p> <p>2 Q. It says A with a circle?</p> <p>3 A. That means at, go at 180.</p> <p>4 Q. Right. Debt on building. Agrees that</p> <p>5 city assesses at \$90 million.</p> <p>6 Do you see that?</p> <p>7 A. I see it. I don't know what it means.</p> <p>8 Q. Does the 180 appear to be the sum of</p> <p>9 the 145 million and the 35 million dollars that's</p> <p>10 mentioned in the prior paragraph?</p> <p>11 MR. RESSLER: Objection to the form of</p> <p>12 the question.</p> <p>13 Q. You can answer.</p> <p>14 A. Does the 180 --</p> <p>15 Q. Appear to be the sum of the 145 million</p> <p>16 in leverage that's mentioned and the \$35 million</p> <p>17 in improvement that's mentioned in the prior</p> <p>18 paragraph.</p> <p>19 MR. RESSLER: Objection to the form of</p> <p>20 the question.</p> <p>21 A. I could assume that he's adding those</p> <p>22 numbers together.</p> <p>23 MR. RESSLER: I'm sorry for</p> <p>24 interrupting, but you shouldn't assume because</p> <p>25 these of course aren't your jottings or</p>   |

62 (Pages 242 to 245)

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1 Weisselberg - Confidential  
2 the question.  
3 A. If it's a rental building, you're not  
4 selling anything; you're renting. So to say that  
5 we'll sell 1.6 billion in rentals, you're making  
6 an assumption we're going to take those entire  
7 building as a rental building and sell the entire  
8 building. That was never contemplated.  
9 So I don't know what that means. I  
10 don't know what that means.  
11 Q. You don't recall that?  
12 A. No. I don't recall what it means. You  
13 don't -- unless you're going to sell a rental  
14 building, then all you do is receive rent. You  
15 write a check out every month. That's it.  
16 Q. It was never contemplated that -- I'm  
17 sorry, did it ever occur that the general  
18 partnership that owned -- the limited partnership  
19 that owned the West Side Yards sold these  
20 buildings wholesale?  
21 A. The limited partnership? You mean --  
22 that's us.  
23 Q. No, the limited partnership that owned  
24 the West Side Yards in which Mr. Trump was one of  
25 the limited partners, isn't it true that at some

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1 Weisselberg - Confidential  
2 point in May or June of 2005 that limited  
3 partnership sold the West Side Yards wholesale?  
4 A. It wasn't a limited partnership that  
5 sold the property. You mean -- you call -- okay.  
6 We're limited partners, the limited partnership.  
7 Yeah, and that's why there's a lawsuit.  
8 Q. So that actually occurred?  
9 A. No. It occurred -- it didn't occur  
10 when we had this meeting.  
11 Q. Right.  
12 A. I didn't know about a sale then, unless  
13 I was Houdini. I wouldn't have known about a sale  
14 in '05 that would have taken place later on.  
15 Q. You don't know where O'Brien got these  
16 numbers?  
17 MR. RESSLER: Objection to the form of  
18 the question.  
19 A. I would say that it's a possibility we  
20 did an analysis to say over a certain time period  
21 we could derive -- it actually says that, ten-year  
22 period. See, there's a contradiction. We will  
23 sell 1.6 -- no, over a ten-year period, we will  
24 take in \$1.6 billion of rental income, not sales,  
25 at a cost of X dollars, which you see there, which

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1 Weisselberg - Confidential  
2 will derive \$1.2 billion.  
3 So it's not a sale, because it actually  
4 says it right there, see?  
5 Q. Is that what you think you told  
6 Mr. O'Brien?  
7 A. Which makes sense. Over a ten-year  
8 period, we can derive \$1.6 billion in rental  
9 income from those 11 buildings or whatever number  
10 buildings it is.  
11 Q. Then the next entry: Commercial space  
12 is 1.8 million square feet, and the net on that  
13 will be \$650 million. Over what period of time?  
14 Doesn't know. Will get back to me.  
15 Do you recall telling Mr. O'Brien that  
16 the commercial space will be approximately 1.8  
17 million square feet and the net on that will be  
18 approximately \$650 million?  
19 A. I don't recall that. It's possible,  
20 but I just don't recall it.  
21 Q. Do you recall whether those were  
22 accurate numbers at the time?  
23 A. At one point it does sound accurate.  
24 Q. Did Mr. O'Brien ask you over what  
25 period of time that commercial space would come on

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1 Weisselberg - Confidential  
2 line?  
3 A. If he did, I wouldn't have been able to  
4 give him the answer, because I don't know the  
5 answer to that.  
6 Q. Did you tell him you would get back to  
7 him?  
8 A. I would have no way of getting back to  
9 him. I don't know the answer. I mean, how -- if  
10 we're negotiating and there was a possibility at  
11 Columbia University was contemplating -- did you  
12 go to that school?  
13 Q. Yes, I actually did.  
14 A. You're smiling.  
15 There was some contemplation at one  
16 point -- we met with Mr. Lerner, who owned a  
17 credit card company; I forget which one it is.  
18 Q. MBNA.  
19 A. Okay. Who was -- they were  
20 contemplating putting the business school and some  
21 other schools in the that facility. It didn't  
22 come to fruition. So for me to know what time  
23 period a commercial development would take place,  
24 I wouldn't know that.  
25 Q. The last entry says, total net is 4

65 (Pages 254 to 257)

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1           Weisselberg - Confidential  
2 billion, and DT gets 30 percent of that.  
3     A. 1.2.  
4     Q. Is that what you told Mr. O'Brien?  
5     A. The mathematics work.  
6     Q. Is that your recollection?  
7     A. If it's 1.2 and that's how we derived  
8 it, then it's probably what I told him, yes.  
9     Q. Let's look at the next page. DT has  
10 200 million. We have the line with the dot on  
11 top, debt on the site and sells to New World for  
12 85 million, open paren, Chase sells because they  
13 had mortgage and became owner when DT defaulted.  
14       Does that appear to be what it says?  
15     A. The Chinese came along that bought the  
16 property from Chase Manhattan Bank for \$85  
17 million.  
18     Q. That was accurate?  
19     A. That was accurate.  
20     Q. Did you tell Mr. O'Brien that that day?  
21     A. I don't recall. It's certainly in  
22 public documents. It may have come from me.  
23     Q. Then it says, DT is a partner on the  
24 site and gets portion of net on all sales.  
25 There's an arrow. Then it says, but he is not

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1           Weisselberg - Confidential  
2 general partner. And then -- well, let me just  
3 ask you about that.  
4       Do you recall that part of the  
5 discussion?  
6     A. No, but he's a limited partner, so  
7 that's an accurate statement.  
8     Q. An accurate statement?  
9     A. It's an accurate -- two words: It's an  
10 accurate statement that he's a limited partner and  
11 not a general partner.  
12     Q. I just thought you said "inaccurate"  
13 and I wanted to make sure the record is clear.  
14     A. That's okay.  
15     Q. Then it says, Is he an owner? "He gets  
16 profits just like other owners." But is he an  
17 owner? "He is a partner."  
18       Is that an interchange you had with  
19 Mr. O'Brien that day?  
20     A. It sounds like something a continuation  
21 of an ongoing conversation about ownership. If  
22 you're an ongoing partner, you will receive a  
23 percentage of the profits at the end of the day.  
24 Then what do you think you are if not an owner?  
25     Q. Was that the debate or was that the

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1           Weisselberg - Confidential  
2 disagreement that you were having with  
3 Mr. O'Brien, whether a limited partner was an  
4 owner?  
5     A. He didn't get it. He just did not  
6 understand the concept. The fact we didn't have  
7 certain rights as a limit partner but we had  
8 certain restrictions did not necessarily mean that  
9 when a building was sold we wouldn't get 30  
10 percent of it.  
11     Q. Was he denying that you were a 30  
12 percent limited partner?  
13     A. Correct.  
14     Q. No, no, was he denying whether you were  
15 a 30 percent limited partner?  
16       MR. RESSLER: Objection, asked and  
17 answered.  
18     Q. Was he deny --  
19       MR. RESSLER: He just said correct.  
20     Q. Let me ask it a different way. You  
21 contrasted ownership with being a limited partner.  
22 Did Mr. O'Brien deny that Mr. Trump was a 30  
23 percent limited partner in the property?  
24       MR. RESSLER: Objection to the form of  
25 the question.

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1           Weisselberg - Confidential  
2     Q. You can answer.  
3     A. He didn't understand that we were a  
4 limited partner with a 30 percent right to  
5 profits. That's what the documents were on the  
6 table to prove to him we were. He just didn't get  
7 the concept of what I was talking about.  
8     Q. What did he understand was Mr. Trump's  
9 interest?  
10     A. He didn't know what it was. He -- he  
11 didn't -- he didn't understand the concept of  
12 limited partnership and ownership being one and  
13 the same.  
14     Q. He understood limited partnership as  
15 different than ownership?  
16       MR. RESSLER: Objection to the form of  
17 the question.  
18     A. I'm not sure he understood what a  
19 limited partner really was.  
20     Q. Why do you say that?  
21     A. Based upon the answers and the comments  
22 he was making about ownership. Why would a  
23 limited partner not be an owner? If he understood  
24 what a limited partner was, he would never even  
25 raise the issue.

56 (Pages 258 to 261)

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1 Weisselberg - Confidential  
2 Q. It says management fee of 2 million a  
3 year. Was that accurate?  
4 A. Yeah.  
5 Q. Do you think you told Mr. O'Brien that?  
6 A. Yes.  
7 Q. Let's go to the next one. It says  
8 Trump Tower.  
9 A. Okay.  
10 Q. Commercial space is fully leased, and  
11 their revs -- which I'm going to assume is  
12 revenues; you tell me after I read the whole thing  
13 whether that's accurate -- are 12 million per  
14 year. Net is 565 million to DT for comm.  
15 space/NikeTown.  
16 Does that refresh your recollection  
17 what you told Mr. O'Brien?  
18 MR. RESSLER: Objection to the form of  
19 the question.  
20 A. I don't -- I don't understand what this  
21 means. What does net is 565 to DT for comm.  
22 space/NikeTown mean? What does 565 mean? That's  
23 not something I gave him.  
24 Q. Let me break it down --  
25 A. Sure.

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1 Weisselberg - Confidential  
2 Q. -- because there's a couple of numbers  
3 here.  
4 A. Okay. Good.  
5 Q. Did you tell Mr. O'Brien the revenues  
6 were approximately \$12 million a year for Trump  
7 Tower?  
8 A. That's plausible. That's something I  
9 might have said, yes.  
10 Q. The \$565 million number for the  
11 commercial space and NikeTown, isn't that what you  
12 valued Trump Tower and NikeTown together on the  
13 statements of financial condition as?  
14 A. How would -- how would he have known  
15 that?  
16 Q. Did you tell him that?  
17 A. But what does "net is to Donald" mean?  
18 What does "net" mean?  
19 Q. Did you tell him that the value that  
20 you ascribe to those two properties --  
21 A. I may have said value.  
22 MR. RESSLER: You have to wait for him.  
23 Q. Did you tell him on April 21st that the  
24 value that you and -- that you ascribed to the  
25 commercial space in Trump Tower and NikeTown was

264

1 Weisselberg - Confidential  
2 approximately \$565 million?  
3 A. That's certainly a possibility. I  
4 don't know what the word "net" is -- I don't know  
5 what that means.  
6 Q. Okay. Fair enough.  
7 Let's go to the next entry.  
8 A. Can I just go back on that a moment?  
9 Q. Sure.  
10 A. If the asset value was 565, he's not  
11 deducting indebtedness against that. There's a  
12 small mortgage on Trump Tower as well as the lines  
13 that we created -- are you familiar -- do you want  
14 to go into a conversation about that or you would  
15 rather not?  
16 Q. Let me ask this way: Do you recall  
17 telling Mr. O'Brien about the debt you just  
18 mentioned on Trump Tower and NikeTown that day?  
19 A. Well, you can't -- you can't use the  
20 word "net" without conducting indebtedness. These  
21 are not my words; these are his. So I don't want  
22 to assume anything.  
23 MR. RESSLER: You should not.  
24 A. Then I won't. I'll let it go.  
25 MR. RESSLER: You should not.

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1 Weisselberg - Confidential  
2 THE WITNESS: Okay.  
3 Q. You shouldn't assume anything. I'm  
4 just asking for your recollection whether you  
5 recall telling Mr. O'Brien about the debt on Trump  
6 Tower and NikeTown.  
7 A. I probably told him the value of  
8 NikeTown and Trump Tower Commercial is 565.  
9 Q. Okay. Fair enough.  
10 Then it says. DT walks in. "Am I rich  
11 or am I rich?"  
12 Do you remember Mr. Trump walking in  
13 and saying that?  
14 A. Well, I thought he walked in. I didn't  
15 recall what he said exactly. Now I know what he  
16 said, if this is correct. I don't recall what he  
17 said.  
18 MR. RESSLER: He's just asking you what  
19 you recall.  
20 A. I don't recall what he said. That's  
21 what I indicated before.  
22 Q. Then it says, arms outstretched. He's  
23 wearing a bright yellow tie.  
24 Do you remember what color tie  
25 Mr. Trump wore that day?

67 (Pages 262 to 265)

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1 Weisselberg - Confidential  
2 A. I don't know what I'm wearing right  
3 now. No, I don't recall what color tie he was  
4 wearing.  
5 Q. DT says of yards, I own 30 percent --  
6 "I own 30 percent of the job, the land, the  
7 buildings, everything." And then there's an  
8 arrow, ax, that he's a limited partner. "I own 30  
9 percent of it." AW: "He has all the ups and none  
10 of the downs."  
11 Do you recall that exchange?  
12 A. I remember that, yeah.  
13 Q. What do you recall about that exchange?  
14 A. That again he was trying to prove one  
15 more time that we own 30 percent of the West Side  
16 Yards as a limited partner, which means that there  
17 were no capital calls to you. If things don't go  
18 well, we don't get hit with any capital calls.  
19 All we can do is benefit and not get hurt. The  
20 best of all worlds. That's what that meant by he  
21 has all the ups and none of the downs.  
22 Did that go in the book, that line?  
23 That's a good line.  
24 Q. Let's go to the next entry, Palos  
25 Verdes golf course CA. Do you see it says, bought

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1 Weisselberg - Confidential  
2 in '02 for 27 million?  
3 A. Yes.  
4 Q. Has A with the circle 7 million, the  
5 dash with the period on top, equity. 75.  
6 residential lots and will sell each for A with the  
7 circle 6 million per lot (AW estimates). How many  
8 sold so far? Two.  
9 And then it says can't sell  
10 memberships --  
11 A. Not allowed to --  
12 Q. -- base which I think is -- I can't  
13 read the next word, but then it says it's a public  
14 course. Doesn't know the income stream from the  
15 property.  
16 Now, let's break it down. Is this  
17 accurate that in '02 Mr. Trump purchased the  
18 property for 27 million?  
19 A. Yes.  
20 Q. And that he has 7 million in equity in  
21 the property?  
22 A. Correct.  
23 Q. Do you remember telling Mr. O'Brien  
24 that on April 21st?  
25 A. I don't recall. But if it's down here,

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1 Weisselberg - Confidential  
2 I have to assume it came from me or came from an  
3 outside source. I don't know.  
4 MR. RESSLER: You shouldn't assume  
5 those things.  
6 A. The numbers are accurate. The numbers  
7 are accurate, though.  
8 Q. Again, I'm not asking you to assume  
9 anything.  
10 A. Okay.  
11 Q. I'm asking for your recollection.  
12 Okay? That's all I'm asking.  
13 A. Okay.  
14 Q. Okay?  
15 A. Sure.  
16 Q. Seventy-five residential lots that will  
17 sell for \$6 million per lot by your estimate. Do  
18 you recall telling Mr. O'Brien that?  
19 A. Yes, but I don't think I told him 75  
20 lots. We had 75 lots, of which 55 lots were going  
21 to be sold. And we I believe took over 20 lots  
22 for a driving range that we could, if we wanted to  
23 close down and sell those lots as well.  
24 By the way, the \$6 million is a net  
25 number, meaning that we took off -- we took a

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1 Weisselberg - Confidential  
2 gross number, less the cost to build the house,  
3 and we netted out about \$6 million.  
4 Q. So you believe you told that to  
5 Mr. O'Brien on April 21st?  
6 A. Yes.  
7 Q. Then it says, How many sold so far?  
8 Two.  
9 Did you tell that to Mr. O'Brien?  
10 A. I don't recall saying that.  
11 Q. Was that accurate as of the time?  
12 A. I don't recall.  
13 Q. And is it accurate the next line about  
14 can't sell memberships because it's a public  
15 course, was that accurate?  
16 A. That's correct.  
17 Q. Did you tell that to Mr. O'Brien?  
18 A. I don't recall.  
19 Q. Do you recall whether Mr. O'Brien asked  
20 you for the income stream on the property?  
21 A. I don't recall him asking that  
22 question, no.  
23 Q. Let's go to the next page, Bedminster  
24 golf course.  
25 A. Okay.

68 (Pages 266 to 269)

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1 Weisselberg - Confidential

2 Q. Bought, and there's that line with the

3 period on top, '02. Paid 18 million. They

4 assumed 10 million mortgage and 8 million debt

5 held by previous group developing the course. DT

6 refied -- which I assume means refinanced, but you

7 tell me if that's your understanding -- won't sell

8 extra land for homes. Will build second course.

9 Let's stop there for a moment.

10 Is this what you told Mr. O'Brien on

11 April 21st?

12 A. I don't recall getting into that kind

13 of detail with him about that property.

14 Q. Was it accurate that Mr. Trump paid

15 approximately \$18 million in 2002 for the

16 property?

17 A. That's accurate.

18 Q. Is it also accurate that he assumed a

19 \$10 million mortgage and an \$8 million debt at the

20 time?

21 A. No, that's not correct.

22 Q. What in fact were the correct numbers?

23 A. There was an \$18 million -- there was

24 an \$18 million acquisition price, which included

25 \$8 million of debt. What he really means here is

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1 Weisselberg - Confidential

2 10 million plus 8 is 18. That's accurate.

3 Q. Did Mr. Trump refinance that debt?

4 A. Later on, yes.

5 Q. "Later on" meaning prior to April 21st,

6 2005?

7 A. Correct.

8 Q. After he acquired the property?

9 A. Correct.

10 Q. The next line says, course one 250 to

11 265 K/membership (300 mems).

12 Do you recall telling Mr. O'Brien that?

13 A. The number is accurate. I don't recall

14 saying it to him, but the number's accurate. What

15 does 300 mems mean? Oh, number of memberships.

16 Yeah, that's accurate.

17 Q. The 250-265K/membership, did you tell

18 him that to him as well?

19 A. That's sounds correct, and that's what

20 we're getting for memberships now, then too.

21 Q. Then it says, course two, and there's

22 some quotes if you see below the 250 to

23 265K/membership, 300 members, which to me -- and

24 again, you tell me -- but is it your understanding

25 that that traditionally means ditto, as in the

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2 same facts apply to the other entry?

3 MR. RESSLER: Objection, objection to

4 the form of the question.

5 Q. Let me ask it this way --

6 MR. RESSLER: Whoever wrote these notes

7 can tell the jury what he or she meant by the

8 notes.

9 Q. Let me rephrase the question. Do you

10 recall telling Mr. O'Brien that there was going to

11 be a second course built?

12 A. I don't recall -- I don't recall the

13 conversations with Mr. O'Brien regarding

14 Bedminster. If he asked the questions, I gave him

15 responses. I don't recall the questions that were

16 asked.

17 Q. The next line says --

18 MR. RESSLER: The next line is the 500?

19 At that point, because I think it's the end of

20 a section of these notes, we can take a break?

21 MS. WHITE: The time is almost up.

22 MR. CERESNEY: The time is almost up.

23 I just want to -- let me finish the page, and

24 then we'll take a break.

25 MR. RESSLER: Do you want to finish the

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2 page?

3 MR. CERESNEY: Let me finish the page.

4 It will take two more minutes.

5 MR. RESSLER: Okay.

6 Q. The next entry is Palm Beach golf

7 course. Do you see that? It says, cost 22

8 million for course and clubhouse cost 18 to 20

9 million dollars, they borrowed \$47 million.

10 Did you tell Mr. O'Brien that?

11 A. Absolutely not. The number is totally

12 inaccurate.

13 Q. So let me just make sure I understand.

14 A. Sure.

15 Q. Did the clubhouse cost 18 to 20 million

16 dollars to build?

17 A. No, it did not.

18 Q. How much did it cost to build?

19 A. 10.4 million.

20 Q. This is Palm Beach we're talking about?

21 A. Palm Beach.

22 Q. Did the course cost \$22 million to

23 build?

24 A. Probably a little more, 24 million.

25 Q. And did Mr. Trump borrow \$47 million on

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|   |   |
|---|---|
| <p style="text-align: right;">274</p> <p>1 Weisselberg - Confidential</p> <p>2 that course?</p> <p>3 A. Never.</p> <p>4 Q. How much did he borrow?</p> <p>5 A. I think it's under \$10 million.</p> <p>6 Q. Then it says, memberships average 250K,</p> <p>7 and he sold 285, for a total of approximately</p> <p>8 71.25 million.</p> <p>9 Is that what you told Mr. O'Brien on</p> <p>10 April 21st?</p> <p>11 A. That he had sold 285 at that point in</p> <p>12 time?</p> <p>13 Q. Yes, at average 250,000 for a total of</p> <p>14 71.25 million.</p> <p>15 A. The number of memberships sounds</p> <p>16 accurate. It's close.</p> <p>17 Q. Do you believe you told Mr. O'Brien</p> <p>18 that?</p> <p>19 A. I believe so.</p> <p>20 Q. Okay.</p> <p>21 A. Yeah.</p> <p>22 Q. Thinks they can sell another 300</p> <p>23 memberships. Is that what you recall telling</p> <p>24 Mr. O'Brien?</p> <p>25 A. That's correct.</p>   | <p style="text-align: right;">276</p> <p>1 Weisselberg - Confidential</p> <p>2 A. Correct.</p> <p>3 Q. How long did you meet with them for?</p> <p>4 A. Well, we kibitzed around a little bit,</p> <p>5 we had lunch. I'd say a couple hours.</p> <p>6 Q. Anything else that you did in</p> <p>7 preparation for today's testimony?</p> <p>8 A. No.</p> <p>9 Q. Separate and apart from the documents</p> <p>10 you reviewed with them, have you reviewed any</p> <p>11 documents in preparation for today?</p> <p>12 A. No. I watched football all weekend.</p> <p>13 Q. Did you --</p> <p>14 A. The Giants won.</p> <p>15 Q. Did you review the testimony given in</p> <p>16 this case by Ms. Lokey, Mr. McConney, or</p> <p>17 Mr. Trump?</p> <p>18 A. I did not see Ms. Lokey's. I did not</p> <p>19 see Mr. Trump's. I may have glanced at a couple</p> <p>20 of small things from Mr. McConney, but never read</p> <p>21 cover to cover.</p> <p>22 Q. When you say you glanced at some things</p> <p>23 from Mr. McConney, do you mean you glanced at the</p> <p>24 transcript of Mr. McConney's depositions?</p> <p>25 A. Truthfully I never even read it. I</p>   |
| <p style="text-align: right;">275</p> <p>1 Weisselberg - Confidential</p> <p>2 MR. CERESNEY: We'll take a break now.</p> <p>3 THE VIDEOGRAPHER: The time is 3:19</p> <p>4 p.m. January 7th, 2008. This is the end of</p> <p>5 Tape 4 of the deposition of Allen Weisselberg.</p> <p>6 (Recess taken from 3:19 to 3:36.)</p> <p>7 THE VIDEOGRAPHER: The time is 3:36</p> <p>8 p.m., January 7th, 2008. This is Tape 5 of</p> <p>9 the deposition of Allen Weisselberg.</p> <p>10 Q. Mr. Weisselberg, I want to go on to a</p> <p>11 different topic and come back to April 21st in a</p> <p>12 little bit. A couple of questions just about</p> <p>13 preparation for this deposition.</p> <p>14 Did you do anything to prepare for</p> <p>15 today's deposition?</p> <p>16 A. Not really. I met with our</p> <p>17 attorneys --</p> <p>18 MR. RESSLER: You can say.</p> <p>19 A. -- on Friday. We spoke for a little</p> <p>20 bit. Other than that, no.</p> <p>21 Q. This past Friday?</p> <p>22 A. This past Friday, yes.</p> <p>23 Q. When you say "a little bit," how long</p> <p>24 did you meet with -- Mr. Ressler and Mr. Tambussi,</p> <p>25 Mr. Cook and Ms. Gorecki?</p> | <p style="text-align: right;">277</p> <p>1 Weisselberg - Confidential</p> <p>2 looked at the front page of it, I saw how boring</p> <p>3 it looked, and I just put it away. I didn't even</p> <p>4 read it.</p> <p>5 Q. And did you do this separate and apart</p> <p>6 from your meeting with the attorneys?</p> <p>7 A. Yes.</p> <p>8 Q. Were you provided with a copy of</p> <p>9 Mr. McConney's transcript?</p> <p>10 A. Actually, Mr. McConney had it in his</p> <p>11 office. He mentioned he had it. I picked it up,</p> <p>12 looked at it for a couple seconds, and said okay,</p> <p>13 and gave it back.</p> <p>14 Q. Are you familiar or do you have any</p> <p>15 understanding as to what any of those</p> <p>16 individuals -- Mr. Trump, Mr. McConney, or</p> <p>17 Ms. Lokey, or any of the Weiser witnesses -- have</p> <p>18 said in their depositions?</p> <p>19 A. I didn't discuss really much of it with</p> <p>20 anyone. I don't speak to Michelle Lokey. She's</p> <p>21 out of town. Mr. McConney I see on a daily basis.</p> <p>22 He just talked about how long and tedious it was.</p> <p>23 We didn't get into too much -- well, it's true.</p> <p>24 We didn't get into much detail as to things he</p> <p>25 said. Mr. Trump, not really. He was leaving. He</p> |

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1 Weisselberg - Confidential  
2 beginning: When I sat down in a Trump Tower  
3 conference room one afternoon with Allen  
4 Weisselberg, the Trump Organization's chief  
5 financial officer, he claimed Donald was worth  
6 about \$6 billion.  
7 Do you see that?  
8 A. I do, and I recall saying to you maybe  
9 between 5 and 6, which was a combination of the  
10 statement of financial condition along with some  
11 branding value.  
12 Q. Is it accurate to say, then, that  
13 Mr. O'Brien included a higher number in terms of  
14 claimed net worth for Mr. Trump than the number  
15 that's in the statement of financial condition?  
16 MR. RESSLER: I'll object to the form  
17 of the question.  
18 A. Are you saying that --  
19 Q. I'm saying isn't it true that  
20 Mr. O'Brien, in reporting on Mr. Trump's claimed  
21 net worth that you provided him on April 21st  
22 provided a number of 6 billion, which is higher  
23 than the \$3.5 billion number that's in the  
24 statement of financial condition?  
25 MR. RESSLER: Objection to the form of

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1 Weisselberg - Confidential  
2 the question.  
3 A. I don't think he provided it. I think  
4 he's saying that we provided it.  
5 Q. Right. Is Mr. O'Brien, in his book,  
6 reporting that you provided a number of \$6  
7 billion?  
8 MR. RESSLER: Objection to the form of  
9 the question.  
10 A. Correct.  
11 Q. And is that a higher number than the  
12 number \$3.5 billion that appears in Defendants'  
13 Exhibit 35?  
14 A. It is higher.  
15 Q. Is that number represented to be the  
16 amount that you claimed Mr. Trump is worth?  
17 MR. RESSLER: Objection to the form of  
18 the question.  
19 A. Is which amount?  
20 Q. Six billion.  
21 A. I said 5 to 6.  
22 Q. And that's higher, though, than the 3.5  
23 billion in the statement of financial condition?  
24 A. Because of branding.  
25 Q. The statement of financial condition is

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1 Weisselberg - Confidential  
2 a statement of what Mr. Trump believes he's worth;  
3 correct?  
4 MR. RESSLER: Objection to the form of  
5 the question.  
6 A. The statement of financial condition  
7 discusses the valuation of assets and liabilities  
8 that we had as of that date without taking into  
9 consideration the value for the brand, which is  
10 mentioned in the statement.  
11 Q. And the values that are contained in  
12 the statement of financial condition are the  
13 values attributed to those properties by  
14 Mr. Trump; correct?  
15 MR. RESSLER: Objection to the form of  
16 the question.  
17 A. Correct.  
18 Q. In fact, if you look at the first page  
19 of the statement of financial condition --  
20 A. Yep.  
21 Q. -- and we read the accountants'  
22 compilation report, second paragraph, does it say,  
23 A compilation is limited to presenting, in the  
24 form of financial statements, information that is  
25 the representation of the individual whose

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1 Weisselberg - Confidential  
2 financial statements are presented.  
3 We, that is, Weiser, have not audited  
4 or reviewed the accompanying statement of  
5 financial condition and, accordingly, do not  
6 express an opinion or any other form of assurance  
7 on it.  
8 What is your understanding of that  
9 statement?  
10 MR. RESSLER: Objection to the form of  
11 the question.  
12 A. My understanding of that is the fact  
13 that we provided the information to Weiser, who,  
14 in conjunction with us, prepared this statement.  
15 Q. What is your understanding as to  
16 whether Weiser expressed any views on the  
17 valuations that are contained in the statement of  
18 financial condition?  
19 A. I believe there were times where Jeff  
20 McConney would come into me, after talking to  
21 Gerry Rosenblum or to Donald Bender, in going over  
22 certain values, and they may have felt that we  
23 should do things a little differently, give some  
24 suggestions to us. But ultimately it was our  
25 decision to make as far as valuations are

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DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER  
BOOK GROUP INC., and WARNER  
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

CIVIL ACTION

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MEMORANDUM OF LAW OF DEFENDANTS TIMOTHY L. O'BRIEN, TIME  
WARNER BOOK GROUP INC., AND WARNER BOOKS INC.,  
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

---

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| <u>Renz v. Shreiber,</u><br>832 F. Supp. 766 (D.N.J. 1993) .....                                 | 2          |

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## NEWSPAPER ARTICLES

|  |   |
|--|---|
| <u>Leslie Eaton, Trump Financial Affairs Face Political Scrutiny</u> ,<br>N.Y. Times, Jan. 9, 2000, at A11.....  | 5 |
| <u>David Henry, Trump's Net Worth Not So Easy to Calculate</u> ,<br>USA Today, Sept. 30, 1996, at 2B.....  | 5 |
| <u>Roxanne Roberts, They Do, They Do, Already! Six Years, One Baby and<br/>a Zillion Bucks or So Later, the Trump-Maples Merger</u> ,<br>Wash. Post, Dec. 20, 1993, at B1..... | 5 |
| <u>Jon Talton, Tuesday Notebook</u> ,<br>The Arizona Republic, Aug. 17, 2004, at 1D.....   | 5 |
| <u>Jerry Useem, What Does Donald Trump Really Want</u> ,<br>Fortune, Apr. 3, 2000, at 188.....   | 5 |
| <u>Paul Wiseman, How Rich is Trump?</u> ,<br>USA Today, Mar. 9, 1990, at 1B.....   | 5 |

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| <u>Robert D. Sack, Sack on Defamation</u> (3d ed. 1996)..... | 13, 21 |

Pursuant to R. 4:6-2(e), defendants Timothy L. O'Brien, Time Warner Book Group, Inc.,<sup>1</sup> and Warner Books, Inc. (collectively, the "defendants") hereby move to dismiss the Complaint of plaintiff Donald J. Trump ("Trump" or the "plaintiff") for failure to state a claim upon which relief may be granted.

#### PRELIMINARY STATEMENT

On January 23, 2006, Trump filed this defamation suit seeking \$5 billion in damages, claiming that the book written by O'Brien, entitled TrumpNation: The Art of Being The Donald (the "Book"), and verbal statements made by O'Brien in connection with the Book, "grossly misrepresent[ ] Trump's net worth." (Complaint ¶ 2.) Trump's primary grievance with the Book arises from a single paragraph found in Chapter Six of the Book, a 32-page chapter that in great detail describes the long-running public discussion about Trump's net worth and the inherent challenge in determining his net worth with any precision.

In that chapter, O'Brien recounts numerous different estimates of Trump's current net worth, originating not only from published reports but also from Trump and his designees. Many of these estimates are in the billions of dollars and span a range of over \$9 billion. See chart, infra at 9. Immediately following the Book's presentation of multiple but inconsistent statements by Trump placing his net worth in the mid-billions, O'Brien states that "[t]hree people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought [Trump's] net worth was somewhere between \$150 million to \$250 million. By anyone's standards this still qualified Donald as comfortably wealthy, but none

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<sup>1</sup> On March 31, 2006, Time Warner Book Group, Inc. and its subsidiaries were sold to Hachette Livre, and are now known as Hachette Book Group USA, Inc.



of these people thought he was remotely close to being a billionaire.” (Book at 154.)<sup>2</sup> This statement is followed immediately by Trump’s denial of these lower estimates and a full-page chart listing the values Trump assigned to each of the real estate, media, and other assets he claimed to hold. Trump’s Complaint provides a distorted characterization of Chapter Six as somehow concluding that Trump is worth approximately \$200 million, even though O’Brien makes no such claim but instead recounts this estimate among others.

Trump attempts to buttress his Complaint by asserting that O’Brien made colorful comments during the promotion of the Book that allegedly defamed Trump, including: Trump is a “cartoon figure ... he’s Baby Huey with P.T. Barnum mixed in”; “He is not a good businessman ... as a businessman he is a train wreck”; “Trump’s net worth is definitely inflated”; and Trump “adds zeros here and there.” (Complaint ¶¶ 31-32.)

But Trump’s wish that the Book had omitted references to lower estimates of his net worth and that the author had only flattering things to say about him does not translate into a cognizable defamation claim. Trump’s Complaint is fatally flawed for several reasons, any one of which subjects it to dismissal, especially under the heightened level of scrutiny that courts apply to libel claims against a media defendant arising from statements on matters of public interest.

First, the challenged statements simply are not defamatory as a matter of law. Trump’s Complaint purports to sue over “statements” by O’Brien that literally do not appear in the Book

---

<sup>2</sup> The Court may take judicial notice of the Book, which is referenced in the Complaint. See, e.g., Fudge v. Penthouse Int’l, Ltd., 840 F.2d 1012, 1015 (1st Cir. 1988), cert. denied, 488 U.S. 821 (1988) (noting that on a motion to dismiss, court may consider a copy of the publication that is the basis of the defamation claim); Renz v. Shreiber, 832 F. Supp. 766, 771 (D.N.J. 1993) (holding that court may consider on a motion to dismiss the full text of documents excerpted in the complaint). For the Court’s reference, a copy of the Book has been submitted along with this motion. See Certification of Andrew J. Ceresney (“Ceresney Certif.”), Exhibit A.

– O'Brien does not, as Trump claims, say that Trump is worth \$150 to \$250 million. Instead, O'Brien notes that some knowledgeable people believe that to be the case, in the context of reciting many other estimates and in the course of explaining why Trump's net worth is so hard to pin down. It cannot be defamatory to raise questions about the scope of Trump's wealth by presenting, without endorsement, the estimate Trump challenges as one among many different estimates, including several multi-billion dollar estimates from Trump himself. In any event, even had the Book concluded that the plaintiff was worth approximately \$200 million – a truly staggering amount of money – Trump still could not show that such a large figure subjected him to hatred, ridicule or ill repute, or otherwise so undermined his reputation as to lower him in the estimation of a community of reasonable readers, as is required to make out a viable libel action.

Second, to sustain a defamation claim against a media defendant relating to statements on a matter of public concern, Trump must set forth more than conclusory allegations of actual malice, *i.e.*, knowledge of falsity or reckless disregard for the truth. Yet, despite all of the rhetoric in the Complaint, nowhere does Trump aver that he or anyone else provided O'Brien with access to documents or other information regarding Trump's debts and liabilities that would have allowed O'Brien definitively to ascertain Trump's net worth. Trump therefore has failed to plead facts which, if proved, would show that the defendants knew that the multiple valuations presented in the Book, including the \$150 million to \$250 million estimates, were false or recklessly disregarded the truth.

Third, only statements of verifiable fact, and not hyperbolic or figurative comments, are actionable, and therefore O'Brien's alleged oral statements – all of which used colorful, figurative language that is not subject to empirical verification – cannot form the basis for a defamation claim.

Fourth, Trump has failed to plead facts sufficient to overcome the fair comment privilege, a doctrine that protects O'Brien's balanced and accurate reporting on this matter of public concern.

This action is a misguided outburst by a larger than life personality over a biography that the subject did not find sufficiently flattering. Indeed, even while O'Brien was interviewing Trump for the Book, Trump cautioned that "[p]eople don't want to read about a negative Trump.... And I'm going to attack the shit out of [negative statements]." (Book at 237 (quoting Trump).) That explains in a nutshell why we are here: Trump is exploiting the judicial process as a means of avenging publication of the Book. Certainly, Trump is free to mount attacks about net worth estimates in the court of public opinion; indeed, he explicitly acknowledged that he "ha[s] the ability to fight back in the media." (Id.) But Trump should not be permitted to chill the defendants' constitutional rights – and waste this Court's resources and time – with a meritless defamation claim.

#### STATEMENT OF FACTS

O'Brien, an award-winning, veteran business reporter, is a staff writer with The New York Times, having been recruited there while he was a reporter at the Wall Street Journal. (Book, Jacket Flap.) After writing several articles for the New York Times about Trump, O'Brien decided to write a book about him. Over the course of several months in early 2005, O'Brien interviewed Trump for the Book on a number of occasions (generally recording these conversations). He also engaged in extensive research about Trump, and interviewed many other people about him.

### *The Book*

The heart of this case concerns Chapter Six, which includes the challenged statements – among the many different estimates of Trump’s net worth – as part of an extensive discussion about the past and ongoing efforts to ascertain how much Trump is worth.

Long before the publication of the Book, Trump’s net worth was the subject of considerable public speculation. For example, as O’Brien discussed in the Book, a Washington Post reporter stated in September 2004:

Actually, it’s hard to know exactly what percent of Trump’s net worth is tied to the casino business, because most of Trump’s portfolio is in privately held companies that don’t report earnings.... He’s described himself as “a billionaire many times over,” but who knows? There are skeptics out there who believe Trump has \$300 million, tops. And the guy has a reputation for, let’s say, shading the news in a light that reflects his enthusiasms.

(Book at 227 (quoting Wash. Post, Sept. 9, 2004).)<sup>3</sup> As part of the Book, O’Brien wrote about this phenomenon of public interest and speculation regarding Trump’s wealth.

### Forbes’ Estimates of Trump’s Net Worth

The portion of Chapter Six that discusses the different valuations begins with Forbes magazine, which publishes an annual list purporting to identify the nation’s 400 wealthiest

<sup>3</sup> Prior to publication of the Book, press reports characterized Trump’s putative billionaire status as “exaggerated,” see Jerry Useem, What Does Donald Trump Really Want, Fortune, Apr. 3, 2000, at 188 (“The predictable result is the steady stream of articles debunking Trump’s exaggerated claims – particularly his oft-repeated assertion that he’s worth \$5 billion.”); Leslie Eaton, Trump Financial Affairs Face Political Scrutiny, N.Y. Times, Jan. 9, 2000, at A11 (noting that other real estate titans roll their eyes at Trump’s claim to be “by far the biggest developer in New York”); and readily acknowledged the difficulty even of examining his finances because most of his assets are in private real estate holdings, see e.g. Jon Talton, Tuesday Notebook, The Arizona Republic, Aug. 17, 2004, at 1D; Paul Wiseman, How Rich is Trump?, USA Today, Mar. 9, 1990, at 1B; and because much of his debt is not publicly discernible, see David Henry, Trump’s Net Worth Not So Easy to Calculate, USA Today, Sept. 30, 1996, at 2B. One Washington Post reporter concluded that Trump is “a man possessed of an elusive net worth.” Roxanne Roberts, They Do, They Do, Already! Six Years, One Baby and a Zillion Bucks or So Later, the Trump-Maples Merger, Wash. Post, Dec. 20, 1993, at B1. See Ceresney Certif., Exhibits B-G for copies of these articles. The Court may take judicial notice of these widely circulated reports. See N.J.R.E. 201.

individuals. As the Book points out, in September 2004, in its most recent list at the time of the Book's publication, Forbes stated that Trump was worth \$2.6 billion. O'Brien also reviews in detail the history of Trump's appearance on, disappearance from, and reappearance on the Forbes 400 list over the prior 23 years. The Book recounts how Trump disputed various Forbes valuations at the time of their publication, a fact which completely undermines Trump's assertion in his Complaint that O'Brien should have relied on Forbes. (Complaint ¶¶ 2, 24-27.) For example, the Book notes that when Forbes measured Trump's wealth at \$1.4 billion in 1997, Trump reportedly "[d]ispute[d] the estimate. 'The real number,' he insist[ed], 'is \$3.7 billion.'" (Book at 151 (quoting Forbes)). And in 1999, when Forbes calculated Trump's wealth at \$1.6 billion, the magazine noted that Trump "estimates his own net worth (\$4.5 billion). But no matter how hard we try, we just can't prove it." (Id. at 151-52 (quoting Forbes)). In 2000, Forbes "explain[ed]: 'In The Donald's world, worth more than \$5 billion. Back on Earth, worth considerably less.'" (Id. at 152 (quoting Forbes)). Thus, as the Book describes, even the publication upon which Trump now places great reliance has provided estimates billions of dollars below Trump's over the years.

#### *Trump's Own Contradictory Net Worth Estimates*

The Book explains that further fueling the uncertainty over Trump's net worth are the disparate net worth estimates from *Trump himself*, who furnished widely varying estimates of his net worth to O'Brien within a very short time frame. The Book recounts that when Trump and O'Brien spoke in August 2004, Trump told O'Brien that his net worth was between \$4 billion and \$5 billion. (Book at 153.) It continues: "Then, later that same day in August, [Trump] said his casino holdings represented 2 percent of his wealth, which at the time gave him a net worth of about \$1.7 billion." (Id.) About seven months later, on March 5, 2005, when O'Brien

“popped the wealth question[,] ... [Trump stated,] ‘I would say six [billion]. Five to six. Five to six.’” (*Id.* (quoting Trump, Interview of Trump, Mar. 5, 2005).) But around the same time, “on the nightstand in [O’Brien’s] bedroom at Donald’s Palm Beach club was a glossy brochure that said he was worth \$9.5 billion.” (*Id.* at 154.)

Just weeks after Trump gave these different estimates to O’Brien, O’Brien met with the Trump Organization’s Chief Financial Officer, Allen Weisselberg, about Trump’s net worth. (*See id.*) As O’Brien notes, the CFO “claimed Donald was worth about \$6 billion. But the list of assets Weisselberg quoted, all of which were valued in very inflated and optimistic terms and some of which Donald didn’t own, totaled only about \$5 billion. Where might the rest have been? ‘I’m going to go to my office and find that other billion,’ Weisselberg assured [O’Brien]. Did he ever return? No, he never returned.” (*Id.* (quoting Weisselberg, Interview of Weisselberg, Apr. 21, 2005).) Trump’s Complaint does not dispute these accounts of Trump or his CFO’s statements.

In the only chart appearing in the Book, and directly following Trump’s denial of the challenged statements, O’Brien specifically details Weisselberg’s assessment of Trump’s worth. (*See* Book at 155.) The chart includes Trump’s claimed stake in several properties in New York, Chicago, Las Vegas, Palm Beach, and other locations, the value of Trump’s golf courses, the purported worth of the television show The Apprentice and the Miss Universe contest, revenue from the licensing and merchandising of Trump’s name, and Trump’s cash on hand. (*Id.*)

#### *The Challenged Statement*

As the Book describes, O’Brien tried to sort through these contradictory estimates, including the inconsistent values Trump himself provided directly to O’Brien, by “ask[ing] around for guidance.” (Book at 154.) Three sources who had direct knowledge of Trump’s

finances, “people who had worked closely with him for years, told [O’Brien] that they thought his net worth was somewhere between \$150 million and \$250 million.” (*Id.*) O’Brien merely recounts these estimates without endorsement.

#### *Trump’s Denial and Response*

But the Book did not simply recite the estimates by the three sources who had worked with Trump. Instead, O’Brien probed further by going back to Trump. Asked to explain the lower estimates – which were roughly commensurate with a previously published account of “\$300 million, tops” (see Book at 227 (quoting *Wash. Post*, Sept. 9, 2004)) – Trump, as the Book reports, denied their assessments. (*Id.* at 154.) Rather than taking issue with the sources’ financial analysis, Trump told O’Brien: “You can go ahead and speak to guys who have four-hundred pound wives at home who are jealous of me, but the guys who really know me know I’m a great builder.” (*Id.* (quoting Trump, Interview of Trump, Apr. 25, 2005).) Thus, the passage about which Trump has complained itself was a balanced account of the questions that indisputably swirl around the subject of Trump’s wealth.

Ultimately, after discussing Trump’s financial situation over the prior 15 years, and reviewing various Trump assets, the chapter closes by noting the public’s “fascination” with Trump’s net worth, quoting another reporter who placed Trump in the company of other “[l]ucky billionaires.” (Book at 174 (quoting Bill Cope, *The Boise Weekly*); see also *id.*, Jacket flap (characterizing Trump as “America’s favorite billionaire”).)

#### *The Chapter’s Bottom Line*

In sum, Chapter Six of the Book portrays the challenges associated with definitively determining the extent of Trump’s net worth, while citing throughout the statements from Trump himself. Indeed, the bottom line conveyed by the Chapter – as illustrated in the chart below – is

that over the course of a year, O'Brien was furnished by Trump and others with a range of estimates of Trump's net worth that spanned over \$9 billion, driving home the point that this is an area of great uncertainty, fueled in large part by Trump himself.

| Estimate                                   | Source   | Date       | Page         |
|--|--|------------|--------------|
| \$4 to \$5 billion                         | Trump  | Aug. 2004  | Page 153     |
| \$1.7 billion                              | Trump (based on statement of percentage of wealth represented by casino holdings)  | Aug. 2004  | Pages 153-54 |
| \$300 million                              | <u>Washington Post</u> , referring to "skeptics"   | Sept. 2004 | Page 227     |
| \$2.6 billion                              | <u>Forbes</u> list   | Sept. 2004 | Page 152     |
| \$9.5 billion                              | Palm Beach club brochure   | Fall 2004  | Page 154     |
| "Lucky billionaire"                        | <u>The Boise Weekly</u>  | Jan. 2005  | Page 174     |
| \$5 to \$6 billion                         | Trump  | Mar. 2005  | Pages 153-54 |
| \$150 to \$250 million                     | Three sources with knowledge of Trump's finances   | 2004/2005  | Page 154     |
| \$6 billion (or approximately \$5 billion) | Trump Organization's CFO, who stated he would search for "the other billion" and indicate its source(s) to O'Brien but failed to do so | Apr. 2005  | Page 154     |
| "America's favorite billionaire"           | Book description   | Oct. 2005  | Book Jacket  |



## ARGUMENT

### I. Courts are Required to Apply Heightened Scrutiny to Motions to Dismiss Defamation Claims

Trump's Complaint should be dismissed because the facts alleged are insufficient as a matter of law to state a claim for defamation. See Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). To sustain a claim, the plaintiff bears the burden of proving, in addition to damages: (1) the assertion of a false and defamatory statement concerning him; (2) the unprivileged publication of that statement to a third party; and (3) the requisite level of fault by the publisher. See, e.g., DeAngelis v. Hill, 180 N.J. 1, 12-13 (2004).

A defamation complaint, on a motion to dismiss, is given particularly exacting scrutiny. Thus, "the court may not simply take the facial assertion as a given, but rather must evaluate the circumstances as best it can to determine whether there is any reasonable basis upon which the defamation claim can be seen to be viable." Darakjian v. Hanna, 366 N.J. Super. 238, 248 (App. Div. 2004) ("It is not enough for [a] plaintiff[ ] to assert ... that any essential facts that the court may find lacking can be dredged up in discovery.") (internal quotations omitted); see also Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101-02 (App. Div. 1986), certif. denied, 107 N.J. 32 (1986). Indeed, the scrutiny applied to defamation actions is even higher where, as here, the allegedly defamatory remarks touch on a matter of public concern. See, e.g., Rocci v. Ecole Secondaire Macdonald-Cartier, 165 N.J. 149, 156 (2000) (stating that in such circumstances, "the interests of free speech justify, and fairness to individual reputation permits, application of a strict and high burden of proof to establish actionable defamation") (internal citations omitted). "[S]peech on 'matters of public concern' ... is 'at the heart of the [federal Constitution's] First Amendment's protection.'" Sisler v. Gannett Co., 104 N.J. 256, 264-65 (1986) (quoting Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 758-59 (1985)). New Jersey courts'

“decisions, pronounced in the benevolent light of New Jersey’s constitutional commitment to free speech, have stressed the vigor with which New Jersey fosters and nurtures speech on matters of public concern,” interpreting the state’s constitutional clause as even “more sweeping in scope than the language of the First Amendment[, invoking] broader free speech rights than its federal counterpart.” Sisler, 104 N.J. at 271-72, 275 (confirming the propriety of “application of a strict and high burden of proof to establish actionable defamation”).

Trump does not dispute that the discussion in issue, including the specific statements to which he objects, relate to a matter of public concern. As he himself pleads, he is involved in state-regulated activities; he has exploited the press to garner publicity about himself; he has written five books, including: The Art of the Deal, How to Get Rich, and Think Like a Billionaire; his television show, The Apprentice, is premised on competition to display financial and business acumen; and he routinely seeks public attention about his business endeavors. (Complaint ¶¶ 3-4, 23, 25.) Not surprisingly, Trump’s Complaint is devoid of any allegation that his financial status is not a matter of public concern. Indeed, the New Jersey Superior Court could have been talking about Trump when it stated that “any person or business which opens itself to the general public thereby subjects itself to the scrutiny that naturally comes with the attention it seeks, and thus creates a subject of legitimate public interest.” Turf Lawnmower Repair, Inc. v. Bergen Record Corp., 269 N.J. Super. 370, 376 (App. Div. 1994), aff’d on other grounds, 139 N.J. 392 (1995), cert. denied, 516 U.S. 1066 (1996).

## II. The Challenged Statements are Not Defamatory as a Matter of Law

Trump’s Complaint cannot withstand a motion to dismiss because the challenged statements in the Book are not defamatory as a matter of law. “Whether [a] statement is susceptible of a defamatory meaning is a question of law for the court.” DeAngelis, 180 N.J. at

14; accord Higgins v. Pascack Valley Hosp., 158 N.J. 404, 426 (1999) (quoting Ward v. Zelikovsky, 136 N.J. 516, 529 (1994)). Thus, "it is the function of the court, not the jury, in the first instance to determine whether the language used is reasonably susceptible of a defamatory meaning." Hermann v. Newark Morning Ledger Co., 48 N.J. Super. 420, 429-30, (App. Div. 1958), adhered to 49 N.J. Super. 551 (App. Div. 1958); see also Leers v. Green, 24 N.J. 239, 253 (1957); Barbetta Agency v. Evening News Publ'g Co., 135 N.J. Super. 214, 218 (App. Div. 1975). To do so, "a court must scrutinize the language 'according to the fair and natural meaning which will be given it by *reasonable persons* of ordinary intelligence.'" Romaine v. Kallinger, 109 N.J. 282, 290 (1988) (emphasis added).

A. The Book's Inquiry Into Trump's Wealth is Not Defamatory

In this action, a reasonable reader would understand the Book to be about an inquiry into Trump's net worth and an exploration of the phenomenon of the public debate and uncertainty surrounding that net worth, and not an effort to specifically quantify Trump's wealth. Contrary to Trump's claim in his complaint that O'Brien himself "grossly misrepresent[ed] Trump's net worth" by placing Trump's net worth at \$150-\$250 million (Complaint ¶ 2), the Book merely recounts the net worth estimates of others, including the \$150 to \$250 million estimates, without endorsing any of them and then discusses a number of Trump's assets.

Trump may not premise a defamation claim on allegations that the Book *questioned* the extent of Trump's net worth. "[T]he mere raising of questions is, without more, insufficient to sustain a defamation suit . . . . Questions are not necessarily accusations or affronts. Nor do they necessarily insinuate derogatory answers. They may simply be . . . expressions of uncertainty." Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1098 (4th Cir. 1993); see also id. at 1094 ("The question simply provokes public scrutiny of the [plaintiff's] activities. Voluntary public figures

must tolerate such examination.”) (internal quotations omitted). As now U.S. Court of Appeals Second Circuit Judge Robert Sack observed, if a statement reflects “a search for information, a rhetorical statement of opinion, or a report of an open or possible question, liability would be inappropriate. The issue is significant....[T]he mere asking of a question may cast a shadow on the reputation of a person about whom the question is asked. But a genuine effort to obtain information cannot be defamatory. A contrary rule would render legitimate reporting impossible.” Robert D. Sack, Sack on Defamation, § 2.4.8 at 2-51 (3d ed. 1996).

Nor may Trump pluck a lower estimate from an entire chapter’s discussion about his net worth and contend that readers will credit the statement exclusively even in the face of numerous higher estimates. Trump zeroes in on the sentence in the Book concerning the \$150 million to \$250 million estimate from three sources, keen to focus the Court’s attention on this sentence even in the face of inconsistencies Trump himself created and the pre-existing controversy he fueled. He even rearranges the structure of the sentence to suggest that O’Brien endorsed that view (Complaint ¶¶ 2, 17), which O’Brien assuredly did not. But Trump cannot manufacture a claim by removing the sentence from context. The Court is obliged to consider the challenged statements in context, see, e.g., Ward, 136 N.J. at 532-33, and “[a] sentence or phrase may not be seized upon and detached from its context to support an action for libel, if the publication as a whole is not, in fact, defamatory.” Dressler v. Mayer, 22 N.J. Super. 129, 135 (App. Div. 1952) (internal citations omitted). In context, the lower estimate included in Chapter Six is but one of many estimated valuations from multiple sources that raise legitimate questions about Trump’s net worth.

Courts have emphasized that an invitation to the public to ask questions “is the paradigm of a properly functioning press...[and] we need and must permit a free press to ask the question.”

See, e.g., Chapin, 993 F.2d at 1096. For example, in Lee v. Bankers Trust Co., 166 F.3d 540 (2d Cir. 1999), the U.S. Court of Appeals for the Second Circuit, applying New Jersey law, affirmed the dismissal of a defamation claim. There, the plaintiff claimed that the bank that employed him damaged his reputation when it investigated alleged wrongdoing by the plaintiff by searching the plaintiff's desk and excluded him from his office, which resulted in press reports of serious wrongdoing by the plaintiff. See id. at 542-43, 546. The Court reasoned that "[t]o a reasonable observer, [the bank's] actions connoted, at worst, its suspicion of [the plaintiff] and its opinion that he might be involved in wrongdoing," and therefore the actions could not be defamatory. Id. at 546.

The Book presents a far more compelling case for dismissal of the plaintiff's claim. Defendants here did not create suspicion that Trump committed any *wrongdoing*. It is not wrongful to raise the question of whether an individual might be worth hundreds of millions instead of billions of dollars. That suggestion does not imply any sort of criminal activity or other misdeed, does not provide any definitive conclusion on the issue, and thus does not give rise to any reputational damage. If, under New Jersey defamation law, intimations of suspicion that an individual might be involved in improper handling of funds – which allegedly, in Lee, led to a request for the plaintiff's resignation, press reports of possible wrongdoing, and the filing of a "Suspicious Activity Report" with the United States Attorney's Office – cannot sustain a defamation claim on a motion to dismiss, then most assuredly a statement that three sources quantified Trump's net worth at roughly \$200 million, without any suggestion of impropriety, and in the context of many other estimated valuations, cannot give rise to a cognizable claim.

B. It is Not Defamatory to Assert that Trump has a Net Worth of \$150 to \$250 Million

Even assuming for the sake of argument that a reasonable reader would conclude that O'Brien had presented the \$150 million to \$250 million estimate as the "correct" assessment of Trump's net worth, Trump would still fail to state a claim because this estimate of Trump's wealth simply is not susceptible of defamatory meaning. To reasonable people of ordinary intelligence, someone with a net worth in the \$200 million range is fabulously wealthy and successful. Such a characterization of Trump's net worth scarcely subjects Trump to "hatred, contempt, or ridicule," Romaine, 109 N.J. at 289, or "lower[s] him in the estimation of the community or . . . deter[s] third persons from associating or dealing with him," Ward, 136 N.J. at 529 (quoting Restatement (Second) of Torts, § 559). The context of the statement underscores this point: immediately after referring to the \$150 million to \$250 million net worth estimate, the Book confirms that Trump is wealthy "*by anyone's standards.*" (Book at 154 (emphasis supplied).) Thus, a reasonable reader would readily conclude that Trump is a man of affluence, and certainly draw no inference of opprobrium.

Courts have regularly rejected defamation claims based on far less favorable statements about a plaintiff's financial status than a net worth in the hundreds of millions of dollars. See, e.g., Metzger v. Washington Post Co., 40 App. D.C. 565, 567 (1913) ("The mere charge that a person is a *pauper* can hardly be libelous *per se*. . . .") (emphasis supplied); Birmingham v. Daily Mirror, Inc., 175 Misc. 372, 372-73 (N.Y. Sup. Ct. 1940), aff'd, 261 A.D. 838 (N.Y. App. Div. 1941) (holding that it was not defamatory to report that the plaintiff's job with the Depression-era Works Progress Administration failed to provide "enough money for food in the tenement flat" of his family); cf. Chapin, 993 F.2d at 1094 ("Insolvency is often, maybe most often, simply the result of bad luck, and our society closed its debtors' prisons long ago."); Bell

Enters. v. Tulsa County Fairgrounds Trust Auth., 695 P.2d 513, 517 (Okla. 1985) (noting that references to indebtedness do not give rise to liability for libel, including when the publication indicates that a dispute exists as to the debt). Courts evaluate the allegedly defamatory impact of statements based on a standard of reasonable readers of ordinary intelligence, see, e.g., Romaine, 109 N.J. at 290, and such people would never regard as defamatory a view of Trump's net worth that would make him a mega-millionaire as opposed to a mega-billionaire. Moreover, Trump effectively confirmed to O'Brien that his reputation would not be harmed even within Trump's own financial circles when Trump opined, "the guys who really know me know I'm a great builder." (Book at 154.) Accordingly, Trump's claims should be dismissed because the challenged statements are not defamatory.

III. The Complaint's Conclusory Actual Malice Allegations are Fatally Insufficient

As a public figure, Trump must demonstrate by clear and convincing evidence that defendants published the allegedly false statements with actual malice, i.e., with knowledge of falsity or reckless disregard for truth or falsity. See New York Times Co. v. Sullivan, 376 U.S. 254, 280 (1964). Thus, Trump must plead "particularized facts" that, if proved, would establish this standard of fault. See Darakjian, 366 N.J. Super. at 250. "[I]t is not sufficient... given the expressive interests and constitutional policies at stake, merely to allege that the report of a defamatory comment was made and that the press defendants knew or should have known it was false. The Complaint, even with the especially indulgent treatment accorded contentions on motions to dismiss, must also allege sufficient particularized facts...." Id. at 249-50. Were the rule "otherwise, any person or entity claiming First Amendment protection would be at the mercy of a claimant's empty assertions unsupported even by any contentions regarding surrounding facts." Id.

While long on rhetoric, Trump's Complaint ultimately consists merely of conclusory allegations of actual malice. Significantly, Trump not only fails to plead what he *is* worth,<sup>4</sup> but he also does not allege that he provided the defendants with specific financial information relating to his liabilities that would have positioned them to assess definitively the "truth" about Trump's *net* worth. Essentially, Trump asks the Court to conclude that the defendants knew the sources' estimates were false or recklessly disregarded the truth, without averring any facts as to *why* the defendants supposedly could have had such a state of mind.

At best, Trump's Complaint merely alludes to two bases for alleged actual malice, neither of which is availing.<sup>5</sup> First, Trump alleges that he provided O'Brien with access to information showing his net worth and that O'Brien failed to review those materials. Assuming *arguendo* that Trump's allegations are true for the purposes of this motion, Trump's pleading reveals its own deficiency. Trump claims that he provided O'Brien with access to information that "detail[ed] his holdings, assets and ownership thereof" (Complaint ¶¶ 19-20), but he does *not* allege that O'Brien was furnished any records that purportedly substantiated his outstanding indebtedness, the valuation of these properties, or any of the liabilities attached to these properties. Indeed, conspicuously absent from the Complaint are allegations that Trump ever shared any information or documents about his liabilities, debts, or valuations with O'Brien, or

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<sup>4</sup> The sole specific figures Trump avers are within a single paragraph of the Complaint, in which he alleges that he currently has invested approximately \$380 million in cash in various real estate ventures, and that he still has \$117 million in cash on hand. (Complaint ¶ 28.) But these figures are meaningless in computing net worth without some factual specification of where his cash was invested, the loans or other indebtedness in existence or incurred during the period to which the Book refers, and the relevant valuations of the properties purportedly acquired with this cash.

<sup>5</sup> Indeed, with regard to defendants Time Warner Book Group and Warner Books, Trump fails to plead any facts in support of his claim of actual malice.



that O'Brien had access to that information from any other source.<sup>6</sup> Without this information, O'Brien could not definitively determine Trump's net worth. Accordingly, O'Brien could not have knowingly misstated it.

Second, Trump purports to rely on Forbes' valuation of his assets at \$2.7 billion in 2005 as evidence of the "truth" of his net worth that defendants recklessly disregarded. (See Complaint ¶ 25.) But this allegation plainly cannot save the Complaint from dismissal. For one thing, prior to publication of the Book, Trump himself publicly questioned the reliability of the Forbes list, thereby belying any suggestion that defendants should have deemed its valuation conclusive. As the Book recounts, Trump published a statement in his own book denigrating the reliability of the Forbes lists, stating: "It always amazed me that people pay so much attention to Forbes magazine.... Every year the Forbes 400 comes out, and people talk about it as if it were a rigorously researched compilation of America's wealthiest people, instead of what it really is: a sloppy, highly arbitrary estimate of certain people's net worth." (Book at 161 (quoting Surviving at the Top)). And as the Book also points out, Trump repeatedly disputed in past years – and even in 2004 – the accuracy of Forbes' valuation of his wealth. (See id. at 150-52 (quoting Forbes' statements about Trump's challenges to its "richlist" quantum of Trump's wealth).) It is quite remarkable that Trump now suggests that O'Brien's refusal blindly to rely on Forbes – which Trump himself had disparaged – somehow substantiates that O'Brien knew that the sources' \$150 to \$250 million net worth estimate was false.

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<sup>6</sup> Trump's Complaint asserts that O'Brien "scarcely glanced" at documents made available to him when he met with Trump's lawyer, Michelle Scarbrough ("Scarbrough") on or about April 21, 2005, and makes additional scurrilous allegations regarding O'Brien's conduct towards Scarbrough and others. (Complaint at ¶¶ 20-22, 36-37.) While the allegations of improper conduct by O'Brien are egregiously false, as Scarbrough's contemporaneous statements to third parties demonstrate, this motion to dismiss must assume all the allegations are accurately stated. As noted above, however, absent from the Complaint is any allegation that Scarbrough provided O'Brien with any information relating to Trump's liabilities or valuations of Trump's properties – a necessary component of any definitive assessment of Trump's net worth.

In any event, the mere fact that O'Brien reported that Forbes and others reached different conclusions based on their analyses of the limited information available to them does not demonstrate actual malice. See, e.g., Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 157 (1986) (ruling that despite author's knowledge of test results contradicting what author reported, actual malice was not established); Liberty Lobby, Inc. v. Anderson, 1990 U.S. Dist. LEXIS 19587, at \*24-25 (D.D.C. May 2, 1990) ("[D]efendants' knowledge of the existence of a contradictory source, without more, does not constitute clear and convincing evidence of actual malice." (citing Brown v. Herald Co., 698 F.2d 949, 951 (8th Cir. 1983))). In addition, Trump alleges that Forbes based its own valuation of his net worth on the very same materials "detailing his holdings and ownership thereof which were made available to O'Brien," thereby in his view demonstrating the reliability of the Forbes estimate. (Complaint ¶ 25.) But as described above, Trump's allegations reveal that the materials allegedly supplied to both O'Brien and Forbes omitted the very information relating to debt that was necessary to reach a definitive determination of Trump's net worth. When viewed against the backdrop of the constitutionally-rooted protections accorded to speech on matters of public concern, Trump's conclusory allegations of actual malice fall far short, furnishing yet another independent ground for the Complaint's dismissal. See, e.g., Darakjian, 366 N.J. Super. at 250 (dismissing claim on motion to dismiss that failed to allege actual malice sufficiently and citing similar cases).

#### IV. O'Brien's Non-Verifiable Alleged Oral Statements are Not Actionable

The challenged oral statements, which were not statements of verifiable facts, are subject to dismissal as well. A statement that "cannot reasonably be interpreted as stating actual facts" is not actionable. Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990). "Loose, figurative, or hyperbolic language will be less likely to imply specific facts, and thus more likely to be deemed

nonactionable as rhetorical hyperbole or a vigorous epithet.” *Id.* at 17 (internal quotations omitted).

In *Biospherics, Inc. v. Forbes, Inc.*, for example, a statement in a magazine article that optimistic projections about a company’s stock were based on “hype and hope” and that investors “would sour” on a particular company were deemed to have “represented the kind of irreverent and indefinite language that indicated that the writer was not stating actual facts.” 151 F.3d 180, 184-86 (4th Cir. 1998); see also *NBC Subsidiary (KCNC-TV), Inc. v. Living Will Ctr.*, 879 P.2d 6, 13-14 (Colo. 1994) (en banc) (reversing an appellate court’s decision denying a dispositive motion to dismiss a defamation claim premised, *inter alia*, on a statement in which viewers of a broadcast were asked “Is it worth it?”; noting that “the worth of a given service or product is an inherently subjective measure which turns on myriad considerations and necessarily subjective economic, aesthetic, and personal judgments”).

Trump may not redeem his deficient claim about the Book through allegations about O’Brien’s verbal comments about the content of the Book. Assuming for purposes of this motion to dismiss that Trump accurately pleads oral statements made by O’Brien, hyperbolic statements such as “financial pornograph[er]” (Complaint ¶ 5; see also *id.* ¶ 32);<sup>7</sup> Trump is a “cartoon figure ... he’s Baby Huey with P.T. Barnum mixed in” (*Id.* ¶ 32); and “He is not a good businessman ... as a businessman he is a train wreck” (*Id.*), simply are not actionable. No reasonable reader would believe that Trump is Baby Huey, P.T. Barnum, or a “train wreck.”<sup>8</sup>

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<sup>7</sup> The Book refers not to Trump but to “the Forbes 400 [as] financial pornography of the most voyeuristic and delicious sort.” (Book at 146.) In any event, even as pleaded, the alleged oral statement by O’Brien is clearly unverifiable and not actionable.

<sup>8</sup> Indeed, as the Book recounts, Trump’s own sister, Hon. Maryanne Barry, referred to him as “P.T. Barnum.” (Book at 217.)

These are plainly unverifiable statements. Likewise, O'Brien's statement that Trump "adds zeros here and there," is no more than a colorful description of Trump's propensity to offer varying estimates of his wealth, and routinely to describe aspects of his worth as "huge." (See, e.g., Complaint ¶ 3.) It also reflects the net worth estimates Trump provided to O'Brien, which as noted varied widely even on a single day. See, e.g., Biospherics, 151 F.3d at 185-86 (First Amendment protection was accorded to a specific statement that "the few independent analysts who follow the company think its stock is worth \$2 on current business.").

In sum, Trump cannot bootstrap an otherwise meritless defamation claim through ancillary statements that are not themselves actionable, and his claim relating to the oral statements must also be dismissed.

V. The Challenged Statements Are Protected by the Fair Comment Doctrine

Finally, even if Trump had pleaded adequately actual malice – which he has not, see supra Section III – Trump's pleadings still would be subject to dismissal, because O'Brien's reporting on the public debate surrounding Trump's wealth falls within the protections of the fair comment doctrine. The fair comment doctrine – a privilege that protects public debate by "sheltering communications about matters of public concern," Sack supra, § 4.4.1 at 4-59 – applies "however incorrect be the views expressed by the critic, or however exaggerated or even prejudiced be the language of the criticism; the 'limits of criticism are exceedingly wide.'" Leers, 24 N.J. at 255. A number of courts have held that a report on a matter of public controversy by a media defendant is insulated completely from liability for defamation as long as the report conveys the statements made in the public debate with substantial accuracy, even if the statements made by the participants in that debate are erroneous. See, e.g., Green v. CBS Broadcasting, Inc., 286 F.3d 281, 284 (5th Cir. 2002), cert. denied, 537 U.S. 887 (2002)

(dismissing a media report of allegations that mother had fabricated abuse allegations against former husband; "In cases involving media defendants, such as this, the defendant need not show the allegations are *true*, but must only demonstrate that *the allegations were made and accurately reported.*") (emphasis supplied); Dolcefino v. Randolph, 19 S.W.3d 906, 918 (Tex. App.-Houston 14th Dist. 2000, pet. denied) (stating media defendants need not establish the substantial truth of reported allegations); cf. Campbell v. Citizens for Honest Gov't, Inc., 255 F.3d 560, 569-70 (8th Cir. 2001) (ruling that plaintiffs failed to meet their burden of showing the existence of a genuine issue of falsity where, notwithstanding denials of involvement in alleged murder, defendants accurately stated that witnesses had implicated the plaintiffs and alleged that they had been involved in a cover-up). Accordingly, even were Trump able to prove that the three sources' estimates were *wrong*, he still cannot prevail on his defamation claim against the defendants because the Book accurately reported those statements. In addition, although some New Jersey case law holds that fair comment is a qualified privilege that can be overcome by a showing of actual malice, see Dairy Stores, 104 N.J. at 137, here, as discussed above, Trump failed to plead adequately that the defendants acted with the requisite state of mind. The fair comment doctrine thus protects O'Brien's reporting and provides yet an additional ground for dismissal.

CONCLUSION

For the foregoing reasons, defendants Timothy L. O'Brien, Time Warner Book Group, Inc., and Warner Books, Inc. respectfully request that the Court grant their motion to dismiss the Complaint with prejudice.

Dated: May 15, 2006

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SUPERIOR COURT OF NEW JERSEY  
CAMDEN COUNTY - LAW DIVISION  
CIVIL PART  
DOCKET NO. CAM-L-000545-06  
APP. DIV..NO.

DONALD TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN,  
et als.,

Defendant.

:  
:  
: TRANSCRIPT  
:  
:  
: OF  
:  
: MOTION TO DISMISS  
:  
:  
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:  
:

Place: Camden County Hall of Justice  
101 South 5th Street  
Camden, NJ 08103

Date: August 18, 2006

B E F O R E:

HONORABLE FAUSTINO J. FERNANDEZ-VINA, J.S.C.

TRANSCRIPT ORDERED BY:

JAMES F. DIAL, ESQ., (Reed Smith, LLP)

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Colloquy

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(Proceedings begin)

THE COURT: Trump v O'Brien, Number 63.  
I think my other -- my clerk realized that today was going to be a bad day, she took vacation. Poor Georgette got stuck with it.

All right. This is -- appearances please.

MR. TAMBUSI: Your Honor, William M. Tambussi of the firm of Brown & Connery for Plaintiff Donald Trump. With me, admitted pro hac vice is Mark Ressler of Kasowitz, Benson, Torres & Friedman of New York. Mr. Ressler will be arguing, Your Honor.

THE COURT: All right.

MR. RESSLER: Good morning, Your Honor.

THE COURT: Good morning.

All right. Your appearance please.

MS. WHITE: Mary Jo White of Debevoise & Plimpton for the defendant O'Brien and the publisher defendants.

THE COURT: All right. Great.  
This is a motion to dismiss plaintiff's complaint pursuant to 4:6-2(e).  
Counsel, since some of you haven't appeared be me before because I don't recognize you, let me just point out to you, to save you some time, I have tabs, notes, highlights; I've read the cases, not just what



1 you gave me, but the actual cases. I have my own bunch  
2 of notes so you don't need to go through everything. I  
3 kind of -- you may not have -- you may walk out of here  
4 not -- thinking I don't know what I'm doing or disagree  
5 with my ruling, but you'll never walk out of here  
6 thinking I didn't read the papers or don't know the  
7 facts, or didn't read them.

8 So with that in mind; just because you  
9 haven't been here before, don't feel compelled to give  
10 me the whole thing. Just tell me what you think I  
11 should -- you should emphasize for oral argument, or  
12 whatever you -- I'm not going to curtail you because I  
13 know you've been here for a long time, but --

14 MS. WHITE: No, no. Thank you, Your Honor.  
15 I will be brief. And I know you have read  
16 the papers, the cases, and the book. You know, the  
17 basis of our motion to dismiss the complaint --

18 THE COURT: I have tabs on the book, too.  
19 MS. WHITE: Okay. Me, too. Me, too, Your  
20 Honor.

21 THE COURT: I have tabs on the book, just  
22 so --

23 MS. WHITE: I'm actually going to refer to  
24 that, so maybe it will be the same tab. I hope so.  
25

THE COURT: All right.

1 MS. WHITE: The basis of our motion to  
2 dismiss, I think is clear, and that is the complaint  
3 that's been filed in this lawsuit viewed most favorably  
4 to Mr. Trump, simply and clearly fails as a matter of  
5 law to state a cause of action for defamation. We do  
6 submit that this is the relatively rare case that is  
7 dismissable. It can be and should be dismissed on the  
8 pleadings, particularly in light of the first amendment  
9 issues that are implicated in writing and examining  
10 questions about high profile figures such as Donald  
11 Trump.

12 The first, and we submit fatal, flaw of the  
13 complaint, is that it fails to allege a statement from  
14 the book that is defamatory. As Your Honor knows, to  
15 be actionable, a statement must be both false and  
16 defamatory, and the essence of Trump's claim is that  
17 the book libeled him by purportedly stating that he is  
18 worth 150 million to 250 million dollars. That's what  
19 his complaint alleges and that is what he continues to  
20 say in his opposition papers.

21 THE COURT: There are two parts of the  
22 complaint and two prongs to your motion. There's also  
23 the statements that were made during the --

24 MS. WHITE: The promotion --

25 THE COURT: -- book sale -- promotional --

1 MS. WHITE: Yes, Your Honor. And we --  
2 THE COURT: Right.  
3 MS. WHITE: -- believe that they fall in the  
4 same category.  
5 THE COURT: Right.  
6 MS. WHITE: I will address those, too --  
7 THE COURT: Right.  
8 MS. WHITE: -- as we do in our -- in our  
9 papers.  
10 THE COURT: Right.  
11 MS. WHITE: But the essence of the claim as  
12 to the book is certainly that the purported claim that  
13 there is a statement in the book that Mr. Trump is  
14 worth 150 to 250 million dollars. We submit that that  
15 is -- that claim, Your Honor, is a strawman and it -- a  
16 strawman that actually had no legs. In any event,  
17 because such a statement, assuming for the purposes of  
18 this motion, that it was made in the book by the author  
19 and that it were false, would not be susceptible of a  
20 defamatory meaning.  
21 THE COURT: Would you agree with me that in  
22 order to examine the statements, I have to take them in  
23 the -- in the context of the individual who alleges he  
24 was defamed and his position as -- as an individual;  
25 that it's not an objective type standard, where I just

1 look at the statement, but rather I consider the  
2 context of the statements and the person as to whom the  
3 statements are made?  
4 MS. WHITE: Your Honor, I would not agree  
5 with that and we do not agree with that proposition. I  
6 think the words themselves are decided as a matter of  
7 law as to whether they're defamatory, they're read from  
8 the perspective, as Your Honor knows -- perspective of  
9 a reasonable reader of average intelligence. I think  
10 the relevance of his -- Mr. Trump's billionaire status  
11 would go to impact of defamatory statement, if any. No  
12 case law is cited.  
13 THE COURT: Doesn't Ward v Zelikovsky, 136  
14 N.J. at -- indicate that they must be viewed in the  
15 context of a particular plaintiff's business,  
16 lifestyle, conduct, or other unique characteristics?  
17 MS. WHITE: Your Honor, I think what --  
18 THE COURT: And then I have to -- that means,  
19 when I used to word "in context," that's my word, but  
20 that's what I --  
21 MS. WHITE: No. I --  
22 THE COURT: -- where I take --  
23 MS. WHITE: And I think context is, you know,  
24 obviously, critically important to assessing the  
25 statement that's alleged to be defamatory, as well.

1 But I think what the Ward case and other  
2 cases cited by the plaintiff in that context are  
3 getting at is that you can be defamed in your business  
4 or profession, but what Mr. Trump is trying to, in our  
5 view, bootstrap, is that his profession isn't that he's  
6 a billionaire, his profession is that he is involved as  
7 a real estate mogul and, you know, no one is disputing  
8 that.

9 But the defamatory statement -- statements,  
10 counting the oral statements, is to be decided as a  
11 matter of law, based on the words, and there's not a  
12 different standard, we would submit, Your Honor, for  
13 Mr. Trump or anyone else.

14 But to go back to -- you know, the first leg  
15 of our argument, there is no defamatory statement, the  
16 one that's alleged. It's actually stated in the book.  
17 I know Your Honor's read the book.

18 THE COURT: Your argument is that it's simply  
19 a reporting of numerous estimates.

20 MS. WHITE: That's correct, Your Honor.

21 THE COURT: That's there's --

22 MS. WHITE: That's our first argument.

23 THE COURT: -- no -- no position taken by the  
24 author, but rather that he's simply taking numerous  
25 estimates from various sources and reporting what all

1 the estimates provide from a high to a low.

2 MS. WHITE: That's correct, Your Honor. And  
3 if the book -- if you look at Chapter 6, which is the  
4 relevant chapter and has the relevant paragraph in it,  
5 I know you've read it, you've got those tabs on that  
6 book.

7 THE COURT: Trump book, Chapter 6.

8 MS. WHITE: Trump book, Chapter 6. And it  
9 really discusses that -- that chapter, the ups and  
10 downs of Trump's finances. His comeback from  
11 bankruptcy since the early 1990s when Trump himself  
12 publicly acknowledged that he was worth minus 900  
13 million dollars. And it's in that context, speaking of  
14 "context," that the different estimates of Trump's net  
15 worth over time were discussed, including Trump's ups  
16 and downs on the -- the Forbes 400 list.

17 And nowhere does the book say, Your Honor,  
18 that the author believes Mr. Trump is worth 150 to 250  
19 million dollars. Instead, it discusses the public  
20 debate and controversy about his net worth over time  
21 and the difficulty of determining, indeed, what in fact  
22 it is, and the difficulty of getting access to the  
23 other side of the ledger, to a net worth equation, and  
24 that is the debts and liabilities.

25 So what -- essentially, what you have in the

1 book in the space of a few pages there is a listing of  
 2 different estimates. Forbes estimates, if you look at  
 3 Page 150 and 151, and Mr. Trump's issues with the  
 4 Forbes listings. And I think if I could direct your  
 5 attention, Your Honor, to Page 151 to look at the  
 6 listing from 1998 and 1999, and these are Forbes'  
 7 listings, which essentially puts Mr. Trump at 121st in  
 8 1998 and wealth 1.5 billion dollars. What does Forbes  
 9 say, "Unstoppable salesman, master of hyperbole, net  
 10 worth was negative 900 million in 1990 now pledge our  
 11 estimate is low by a factor of three, the number is  
 12 closer to five billion."  
 13 '99, similarly, the net worth is put at 1.6  
 14 billion. Forbes expressed, "We love Donald, he returns  
 15 our calls: He usually pays for lunch. He estimates  
 16 his own net worth 4.5 billion, but not matter how hard  
 17 we try, we just can't prove it."  
 18 So that's the first set of estimates that's  
 19 set forth.  
 20 THE COURT: All right. Well, let me -- and,  
 21 by the way, I just want to point out, both briefs were  
 22 very well written and made my life a lot easier than  
 23 some -- as you were here before, you saw that some  
 24 briefs are not as well written. So I appreciate that  
 25 very much. They were lengthy, but very well written.

1 MS. WHITE: Thank you, Your Honor.  
 2 THE COURT: If the author, in providing the  
 3 estimates, either express or implicitly endorses the  
 4 individual's providing the estimates acumen or  
 5 credibility or the estimates, and this discredits the  
 6 credibility of the high estimates, as a whole in the  
 7 entire context of the paragraph, for purposes of a 4:6-  
 8 2(e) motion, or as you know -- I don't have to repeat  
 9 the rules, but for the record, maybe I should. And I  
 10 had it written down because I knew I'd forget, but  
 11 essentially, all -- the court's -- searches the  
 12 complaint to see whether it sets forth a cause of  
 13 action. I have to search the complaint in depth and  
 14 with liberality to determine if a cause of action can  
 15 be gleaned even from an obscure statement, particularly  
 16 if any discovery will be taken.  
 17 And this is a motion for summary judgment.  
 18 The Court has the option of turning these motions into  
 19 a motion for summary judgment, if it needs more facts  
 20 or wants to address the facts, but both parties  
 21 conceded and agreed not only in these briefs, but in  
 22 the briefs a few weeks ago seeking to stay discovery,  
 23 that this should be decided based on the complaint and  
 24 the book.  
 25 MS. WHITE: That's correct, Your Honor.

1 THE COURT: Now if --  
 2 MS. WHITE: And other things you could take  
 3 judicial notice on, yes.  
 4 THE COURT: If reasonable minds could infer  
 5 from the statements in -- in Chapter 6 that the author  
 6 seems to have given imprimatur to the low statements  
 7 and discredit the high statements, so that he is taking  
 8 a position, although not expressly -- expressing that  
 9 position, for purposes of this motion, isn't that  
 10 sufficient to -- to sustain a cause of action to  
 11 another day?  
 12 MS. WHITE: Your Honor, I --  
 13 THE COURT: Because you have a high burden.  
 14 You have to -- you have to concede that --  
 15 MS. WHITE: No. No question.  
 16 THE COURT: -- you have a -- a very high  
 17 burden today.  
 18 MS. WHITE: We accept that. We accept that  
 19 high burden, and that's why I began by saying, you  
 20 know, read absolutely most favorable to him, we really  
 21 think this is the rare case that's dismissal on the  
 22 pleadings.  
 23 And it is, obviously, our position that  
 24 nowhere in the book does the author endorse as his own  
 25 the -- any estimate, frankly, but certainly the one

1 that is challenged here. And, indeed, what he also  
 2 sets forth, Your Honor --  
 3 THE COURT: All right. Let me --  
 4 MS. WHITE: -- are Trump's own disparate  
 5 estimates throughout.  
 6 THE COURT: All right.  
 7 MS. WHITE: You're allowed to be quizzical,  
 8 you're allowed to be sarcastic, you're allowed to cite  
 9 inconsistencies without crossing the line into  
 10 defamation, actionable defamation.  
 11 THE COURT: Shouldn't the finder-of-fact  
 12 determine that?  
 13 For example, and -- and at Page 172, I  
 14 believe, and I'll get the book, but I have some notes -  
 15 - I have about 14 pages of notes because this is a --  
 16 It says, "Forbes in 2004 credited Donald with  
 17 owning 18 million square feet of Manhattan property."  
 18 And then he goes, "which certainly is an  
 19 impossibility." Is he at that point crossing the line,  
 20 at Page 172, from merely reporting to taking a  
 21 position, or --  
 22 MS. WHITE: Your Honor --  
 23 THE COURT: -- at Page 173, it says, "The  
 24 sale," and referring to the sale of some real estate,  
 25 "further undermine that Donald" -- that's okay if it

1 undermines it, but "already flimsy claim to be  
2 Manhattan's biggest real estate developer."

3 And the one where we were at -- I think it's  
4 at page -- yeah, Page 174 it says, "His ability to" --  
5 and I'll skip some of the middle of it. It says, "His  
6 ability to float above the wreckage of his financial  
7 miscues and magically add zeros to his bank account."

8 Don't they, for purposes of this motion, go  
9 beyond --

10 MS. WHITE: Well, Your Honor, I suppose there  
11 are several responses. I mean, one, the statement  
12 that's alleged to be defamatory in the complaint is the  
13 one we discussed first, which is this 150 to 250-  
14 million-dollar net worth estimate. Our position is, we  
15 don't in any way, explicitly or implicitly, endorse  
16 that estimate or any other. So we don't make that  
17 statement.

18 Our further argument on that, though, Your  
19 Honor, is that even assume we make that statement, and  
20 I'll come back to your -- the others as well, but  
21 assume that we actually make the statement, endorse 150  
22 to 250 million, which I think is actually contrary to  
23 the book read in context, read in -- in particular,  
24 that the words that are used, that three sentences of  
25 that one paragraph, is they're not susceptible under

1 the case law of New Jersey to a defamatory meaning.

2 I mean that -- you know, being --

3 THE COURT: Under the --

4 MS. WHITE: You know, a net worth of 150  
5 million to 250 million is hardly something that  
6 subjects to the plaintiff to -- to ridicule or being  
7 shunned by anyone else. You're fabulously wealthy.  
8 And so it just is not susceptible for that reason.

9 THE COURT: Well, no one cites the well pled  
10 complaint doctrine, but you're familiar with it. You  
11 appear in federal court and it applies to the state  
12 courts. Under the well pled complaint doctrine and the  
13 fact that New Jersey is a notice pleading state, as  
14 opposed to some states that are factual pleading,  
15 assuming for the sake of argument that Mr. O'Brien does  
16 not adopt the 150, 200 million -- 150, 200-million-  
17 dollar estimate I believe it is, in light of the -- the  
18 remaining content of that chapter, and the rest of the  
19 book has other things that don't need -- because this  
20 is the main chapter and I don't want to -- see what I'm  
21 saying?

22 Isn't that sufficient under the well pled  
23 complaint doctrine to -- for this complaint to remain?

24 MS. WHITE: Your Honor, with respect to, I  
25 think the opposite is -- is so. When you read the

1 whole chapter, you read it in context. You know,  
2 argument one, not endorsed in context, what does it  
3 mean. Well, if you actually look, you know, at Chapter  
4 6, and I know you -- I know you've read it --

5 THE COURT: I even looked at the photographs.  
6 MS. WHITE: And even the photographs.

7 THE COURT: Just to make sure that there was  
8 something there that --

9 MS. WHITE: I looked at the photographs, too.  
10 THE COURT: -- that wasn't --

11 MS. WHITE: But you --

12 THE COURT: I didn't -- I just wanted to make  
13 sure there was something there that I didn't miss.

14 MS. WHITE: Right, something that you didn't  
15 miss.

16 THE COURT: I didn't want somebody to come  
17 here and say you didn't look at Photograph 8 on page --

18 MS. WHITE: Your Honor, I guess I'd say a  
19 couple of things. First, you know, all those Forbes  
20 listings that we looked at --

21 THE COURT: Right. Yes.

22 MS. WHITE: You know, and they do have  
23 figures in their -- in the billion dollar range. So to  
24 the extent the defamation is supposedly that we're --  
25 we're saying he's not a billionaire, but a mega

1 millionaire, those statements recite the billion-dollar  
2 estimates; then we recite all of Trump's estimates in  
3 the billion-dollar category.

4 If you look at Page 174, Your Honor, of the  
5 book --

6 THE COURT: I'm right on it.

7 MS. WHITE: Okay. And what you'll see there,  
8 this is at the end of Chapter 6, you see the author,  
9 you know, adopting with approval the quote that calls  
10 Mr. Trump a lucky billionaire. If you look, and Your  
11 Honor still has your jacket on the book, too, unlike my  
12 colleague here, but if you look at the back jacket, you  
13 know, of the book, Trump is described, obviously, by  
14 the defendants, the author, "America's favorite  
15 billionaire."

16 So those are hardly the words of someone who  
17 has concluded that he has -- or taken sides with the  
18 position that he's only a mega millionaire, as asserted  
19 in Chapter 6. So I say -- so in context --

20 THE COURT: Have you ever been in court --  
21 and I don't mean to say -- because I sincerely meant  
22 the briefs were great, well written. But have you ever  
23 had a judge say to your adversary, great job counsel,  
24 when you know he was only doing it to be nice?

25 MS. WHITE: Yes.

1 THE COURT: And if you say, Trump is my  
2 favorite billionaire, but you're really only doing that  
3 tongue in cheek, can I consider that?  
4 MS. WHITE: Well, but I -- Your Honor, I  
5 don't see how -- yes, you could, but my response to  
6 that is, it's not tongue in cheek. I mean,  
7 essentially, there -- you know; on the jacket of the  
8 book, which, you know, the author is obviously  
9 expecting the public to read, he is described as a  
10 favorite billionaire. The chapter ends with him being  
11 called a lucky billionaire. And, more importantly, for  
12 the -- for this purpose of this complaint and our  
13 motion to dismiss, he recites multiple estimates of  
14 Trump's net worth.  
15 THE COURT: Right.  
16 MS. WHITE: Not adopting the mega millionaire  
17 one, as opposed to the billionaire one.  
18 So our position is, there's no defamatory  
19 statement in the book that's alleged in the complaint,  
20 that's susceptible of a defamatory meaning.  
21 THE COURT: All right. Let me break this  
22 down because it will make it easier for everybody  
23 because you've been talking for a while, so that you  
24 could -- you could take a deep breath and rest, let me  
25 hear from you on that and I want to talk about actual

1 malice that -- because we can agree Trump is a public  
2 figure, so there's an actual malice requirement. So  
3 let's --  
4 MR. RESSLER: Yes.  
5 THE COURT: Just tell me about the 150, 250  
6 estimate and whether the statements are defamatory.  
7 MR. RESSLER: Your Honor, with respect to  
8 this argument that the author in this book was merely  
9 reporting numerous estimates and not taking any  
10 position, I think the phrase they used in their papers,  
11 the defendants did, was a mere sorting through, merely  
12 reporting on various estimates. Judge, you've read the  
13 book. I don't think any reader, any reasonable reader,  
14 and that's the standard, could come away from this book  
15 believing anything other than Tim O'Brien, the author  
16 here, has --  
17 THE COURT: Well, that's a higher standard  
18 than is required. It's not that any reasonable -- just  
19 reasonable minds could differ. You don't have to  
20 convince everybody, just some.  
21 MR. RESSLER: Correct, Judge.  
22 THE COURT: So you're imposing a standard on  
23 yourself that's higher than what's really required.  
24 MR. RESSLER: I think that the only  
25 impression, once you come away upon reading this book,



1 is that Tim O'Brien absolutely does take sides and does  
2 endorse the 150 to 250-million-dollar valuation.

3 Now with respect to this book, before you  
4 even get to Chapter 6, by the way, which is entitled,  
5 "Trump Broke," thereby conveying the author's view of  
6 Mr. Trump, before you even get to the text of the book,  
7 the front jacket flap has these -- has these phrases.  
8 It advertises that Tim O'Brien is going to talk about  
9 the "glaring cracks in the shimmering facade of Donald  
10 Trump." Tim O'Brien promises to "pull back the velvet  
11 curtain surrounding the wizard of hype known simply as  
12 The Donald."

13 And then in the back flap, you have Mr.  
14 O'Brien referring to --

15 THE COURT: Well, isn't that hyperbole, that  
16 part of it?

17 MR. RESSLER: Judge, we're --

18 THE COURT: Isn't that -- that's not -- I  
19 don't think --

20 MR. RESSLER: No.

21 THE COURT: -- that's a factual statement by  
22 any stretch of the imagination.

23 MR. RESSLER: I agree, Your Honor. The  
24 reason I'm pointing that out is it sets the tone with  
25 respect to this author taking sides. This is before

1 you even get to the defamatory statement, but already  
2 you know that this author is coming at this issue not  
3 just neutrally, not making a neutral inquiry, but  
4 taking sides.

5 And then in the back, it refers to Mr. Trump  
6 as inhabiting a personal Oz he created out of smoke and  
7 mirrors.

8 Then you get to the epigraph, which is a  
9 quote from the Cheshire Cat in Alice in Wonderland's  
10 book, a literary character famous for being deceitful  
11 and deceptive and dishonest, then you get --

12 THE COURT: I hold my motion review to just  
13 one book per motion, so I didn't read that one. Okay?  
14 I didn't read that. I didn't read that one. I read  
15 this one.

16 MR. RESSLER: So then, after -- after the  
17 author lays the groundwork, if you will, then and only  
18 then do you get to Chapter 6 entitled, "Trump Broke,"  
19 and you have phrases, as Your Honor pointed out,  
20 referring to Mr. Trump's "ability to float above the  
21 wreckage of his financial miscues and magically add  
22 zeros to his bank account."

23 You have at least a dozen statements in this  
24 book referring to Donald's verbal billions, thereby  
25 conveying, in the author's view, that Donald Trump has

1 lied about being a billionaire and that he's very far  
2 from being a billionaire.

3 And then all of the sudden, Judge -- and then  
4 you also have a reference to Mr. Trump inflating his  
5 income. And then when you get to the actual --

6 THE COURT: Just for the purpose of the  
7 record, because this -- I don't know if this will go  
8 for further review, but if it does, two that no one has  
9 mentioned -- obviously, I don't think Miss White would  
10 mention it, but you might, but I just want to put on  
11 the record is at Page 149 it talks about -- and this is  
12 part and parcel of what I was -- I was discussing  
13 earlier where it appears -- if he appeared to discredit  
14 some sources and give an aura of credibility to some,  
15 and it says -- talking about the Forbes list, and I  
16 don't need to read a lot about whether Mr. Trump secure  
17 or not in his wealth, but the part that says, "He was  
18 obsessed with the Forbes list. And his propensity for  
19 inflation, matched with Forbes's aversion to hiring a  
20 sizable staff it might need to accurately assess the  
21 wealth of each of its designated 400." And publicity .  
22 . . . there are men on the list . . . "got Donald on the  
23 magazine's inaugural list in 1982."

24 I think that's a statement where it attacks  
25 the credibility of Forbes and seems to discredit that.

1 And another one that is at Page 154, where it  
2 talks about the -- their financial -- Mr. Weisselberg.  
3 And it says, "but list of assets Weisselberg quoted,  
4 all of which were valued in very inflated and  
5 optimistic terms, some which Donald didn't own." I  
6 think the author is injecting into that his -- his  
7 discreditation -- discrediting of Mr. Weisselberg, who  
8 is --

9 MR. RESSLER: Deceased.

10 THE COURT: -- the chief financial officer,  
11 deceased.

12 MR. RESSLER: The CFO, yeah.

13 THE COURT: CFO.

14 MS. WHITE: Your Honor, may I respond?

15 THE COURT: Sure. Absolutely. Yeah. Go  
16 ahead. Let her --

17 MS. WHITE: I mean I --

18 THE COURT: Because that's not fair, because  
19 they're against her.

20 MS. WHITE: No. No. Absolutely. And it's -  
21 - but I think one point that is critical to add to the  
22 mix is that the first amendment law of defamation  
23 allows commentary, allows criticism, allows an  
24 expression of skepticism without converting what is  
25 said into defamation, and we cite cases --

1 THE COURT: Sure.  
 2 MS. WHITE: -- at Pages 8, 9, and 12 of our  
 3 reply brief. And so if in fact the law of defamation  
 4 prevented one --  
 5 THE COURT: I have tabs and highlights on  
 6 them..  
 7 MS. WHITE: Okay.  
 8 THE COURT: Go ahead.  
 9 MS. WHITE: If in fact the law of defamation  
 10 prevented a reporter, an author, from raising questions  
 11 about a public figure, like the ones that are raised  
 12 here --.  
 13 THE COURT: Right.  
 14 MS. WHITE: -- you know, that would really  
 15 chill --  
 16 THE COURT: It would have a chilling effect.  
 17 MS. WHITE: -- our first amendment rights.  
 18 THE COURT: Yes. Absolutely.  
 19 MS. WHITE: So the fact that there may be  
 20 some critical references or citing to inconsistencies  
 21 or skepticism about answers given, the case law is very  
 22 clear that that does not convert those statements into  
 23 defamation.  
 24 And I think if you -- Your Honor looks at  
 25 Page 155, I mean, these are -- these are the figures

1 that were given by Trump's, you know, CFO.  
 2 What they didn't give, and the complaint  
 3 doesn't allege it, is the other half of the Jello box,  
 4 so to speak. You know, the liabilities and the debts.  
 5 THE COURT: Well, they argue that -- and a  
 6 reputable expert, I suppose it would be -- if the case  
 7 were to go all the way to trial, an attempt to qualify  
 8 him, perhaps a Swanus (phonetic) hearing -- New Jersey  
 9 -- as to the expert's ability to provide the opinion,  
 10 whether the -- New Jersey doesn't follow the Dalbert  
 11 test, but whether it's scientifically reliable.  
 12 Isn't that an issue of fact?  
 13 MS. WHITE: Well --  
 14 THE COURT: They say right now that they can  
 15 get -- they can obtain an expert that would say that  
 16 you don't need what you say you need.  
 17 MS. WHITE: Well, Your Honor, the issue is  
 18 net worth. You know, "net" being the --  
 19 THE COURT: Right.  
 20 MS. WHITE: -- operative word.  
 21 THE COURT: Right. I understand. But I'm  
 22 not an expert --  
 23 MS. WHITE: Plus a --  
 24 THE COURT: -- in --  
 25 MS. WHITE: Plus and minus --

1 But my point is --  
 2 THE COURT: I don't have a hundred million or  
 3 one million.  
 4 MS. WHITE: What we've set -- what we've set  
 5 forth here, along with every other estimate that Mr.  
 6 Trump gave, and, again, gave different ones in  
 7 different days --  
 8 THE COURT: Right.  
 9 MS. WHITE: -- but they're all set forth and  
 10 questions are raised, no question about it.  
 11 THE COURT: Yes.  
 12 MS. WHITE: As they have been 15 years before  
 13 this --  
 14 THE COURT: Yes.  
 15 MS. WHITE: -- book and after this book --  
 16 THE COURT: I think questions that are --  
 17 MS. WHITE: -- about what's he really worth.  
 18 THE COURT: Questions that are fair comment.  
 19 MS. WHITE: Yeah.  
 20 THE COURT: I mean, I think --  
 21 MS. WHITE: Yes. Exactly.  
 22 THE COURT: -- questions --  
 23 MS. WHITE: Exactly.  
 24 THE COURT: You're going to have to -- you  
 25 don't have to accept --

1 MS. WHITE: Exactly.  
 2 THE COURT: -- blindly, but there's a line as  
 3 to whether reasonable minds could consider when you --  
 4 in the totality, whether they're defamatory.  
 5 MS. WHITE: Well, and I -- one other point  
 6 that I think you also -- we also need to distinguish  
 7 between Mr. O'Brien's being critical, in our view  
 8 rightly so, of Forbes's methodology, Mr. Trump himself  
 9 was critical when he wasn't on the list, and defaming  
 10 Mr. Trump. I mean, so, clearly, you know, saying that  
 11 Forbes's work is not, you know, up to snuff, in terms  
 12 of the analysis, is not a defamation of Mr. Trump in  
 13 any way.  
 14 I'm sorry. I didn't mean to interrupt.  
 15 THE COURT: No, no, no. That's -- I -- don't  
 16 worry. It's okay. Thank you.  
 17 MR. RESSLER: Judge, I think Your Honor has  
 18 correctly pointed out various phrases that convey what  
 19 I was suggesting, and that is that Tim O'Brien is  
 20 endorsing a side.  
 21 And then, of course, when you get to the  
 22 defamatory statement concerning the anonymous sources,  
 23 the author's change sudden -- the author's tone  
 24 suddenly changes and it's very -- it's a distinctive  
 25 change. Now the author is cloaking the anonymous

1 sources who talk about the 150 to 250-million-dollar  
2 evaluation, the low ball evaluation, if you will. The  
3 author is cloaking those sources with credibility,  
4 saying that they have worked closely with Trump for  
5 years and that they have direct knowledge of Donald's  
6 finances.

7 So I think there's no question but that the  
8 author is identifying with the low ball evaluation,  
9 he's endorsing that, and throughout the book, he's  
10 taking shots at all of the evaluations that come in in  
11 the billions, whether they're by Trump, whether they're  
12 by Trump's CFO, whether they're by Forbes Magazine. I  
13 think that's clear from reading the book.

14 And then briefly --

15 THE COURT: How is that actual malice,  
16 though? I mean, he --

17 MR. RESSLER: Well, with respect to actual  
18 malice, we enumerated in our papers and all of these  
19 are in the complaint, 11 separate bases from which a  
20 jury could infer that Tim O'Brien and the publisher  
21 knew or should have known that their defamatory  
22 statements were false. And I'm not going to go through  
23 all of those 11 bases, but let me point to the first  
24 one because this isn't even an inference, Judge. This  
25 is an admission.

1 The complaint alleges that before this book  
2 was published, Tim O'Brien told a Trump employ --  
3 O'Brien admitted to a Trump employee that he knew, that  
4 O'Brien knew that a Trump parcel of property in  
5 Manhattan's Upper West Side, the so-called Trump Place  
6 Development, was by itself worth 500 million dollars,  
7 that Donald Trump had a 500-million-dollar ownership  
8 interest in that parcel of property.

9 Now that doesn't appear anywhere in the book.  
10 I would say -- I would say that that's not even asking  
11 the jury to infer. That's an admission by O'Brien, and  
12 I think that's about as good as actual malice evidence  
13 could get. It's obviously going inside somebody's  
14 head. Here we have an allegation that the author  
15 himself acknowledged that he knew Trump was worth at  
16 least 500 million dollars. And then we have a similar  
17 example, Your Honor, with respect to an excerpt from  
18 this Trump Broke chapter, Chapter 6, that appeared in  
19 The New York Times, again, before the book came out,  
20 and in that excerpt, the author, O'Brien, states that  
21 Donald's casino properties have recently rebounded in  
22 value to the tune of 135 million dollars. Yet when the  
23 book comes out, after that newspaper article, there's  
24 absolutely no mention of this increase in value.

25 That's another example; again, not really an

1 inference. I mean, that's clear evidence of actual  
2 malice that this author knew that the statement that  
3 Trump was worth 150 to 250 million dollars was not  
4 true.

5 Another example, Judge, Mr. O'Brien  
6 advertises himself in the book as a veteran  
7 investigative reporter with immense financial  
8 background for The Wall Street Journal and The Times,  
9 and he is such an author and he knows that it's really  
10 impossible to ascribe a net worth to Donald Trump, of  
11 all people, without taking into account the value of  
12 the Trump brand name. Yet, in the book, there's not a  
13 cent ascribed to Donald Trump's brand name. We've  
14 alleged in our complaint that experts place the value  
15 of the band name alone, the Trump brand name alone at  
16 least half a billion dollars.

17 So that's an inference a jury could draw that  
18 a skilled reporter would know that you can't ascribe a  
19 net worth to someone -- you can't go through that  
20 calculation without taking into account the brand name  
21 of Donald Trump.

22 THE COURT: But is that actual malice?

23 MR. RESSLER: Well, no, it's a sufficient  
24 bases. Yeah. I mean, Judge, we would suggest that  
25 that is a sufficient basis to ask a jury to infer

1 actual malice. So there's that one. There's the  
2 allegation that O'Brien admitted he knew that Trump had  
3 a 500-million-dollar ownership in another piece of  
4 property. The allegation that O'Brien knew that the  
5 casino properties had risen in value above the low ball  
6 figure, that doesn't appear in the book. We have an  
7 allegation that O'Brien spent two hours in Mr. Trump's  
8 offices, he was there, ostensibly, to review financial  
9 data and he sat there, didn't even glance at the  
10 materials, did not avail himself of the opportunity to  
11 interview or ask questions of the CFO and in-house  
12 lawyer.

13 Now the defendants have factually disputed  
14 that, but that's for the jury to decide. The fact of  
15 the matter was, we've alleged that the kinds of  
16 financial documents that Forbes used to reach their  
17 conclusion that Trump is worth 2.7 billion were made  
18 available to O'Brien and O'Brien chose not even to look  
19 at those materials.

20 We've also alleged, with respect to actual  
21 malice, that Trump associates and employees and former  
22 employees have stated that they were harassed and  
23 intimidated and pressured by O'Brien to give up  
24 negative statements to O'Brien about Trump and Trump's  
25 net worth. Again, that's about as good, we submit, as

1 an actual malice allegation.

2 THE COURT: I think you submitted something  
3 about that he was asking all the employees for a date,  
4 but I don't think that's actual malice. I think  
5 romance, at best, and not actual malice. I don't  
6 see --

7 MR. RESSLER: Yeah. That --

8 MS. WHITE: Also not true and irrelevant, I  
9 think, Your Honor.

10 THE COURT: I don't know that because this is  
11 not a --

12 MS. WHITE: In this context. In this  
13 context.

14 THE COURT: -- summary judgment. The  
15 discovery will bear that out and I'm sure they will  
16 be --

17 MS. WHITE: We can assume all facts as  
18 correct, as we must in this motion.

19 THE COURT: Yes. There will be many heated  
20 calls to the judge during the depositions regarding  
21 that issue, I anticipate that.

22 MR. RESSLER: Judge, that allegation was only  
23 intended to bring home the point that here's Trump and  
24 his people making all these financial documents  
25 available to O'Brien, O'Brien spends two hours in the

1 office and he's just seeking to go on a date with  
2 Trump's in-house counsel.

3 There's a separate allegation in the  
4 complaint concerning O'Brien pressuring and  
5 intimidating other Trump employees into coming up with  
6 bad information about Trump and Trump's net worth.

7 THE COURT: All right. Let me -- Miss White,  
8 let me hear from you.

9 MS. WHITE: Yes.

10 THE COURT: And bearing in mind that actual  
11 malice also includes reckless disregard for the truth.

12 MS. WHITE: No. Absolutely.

13 THE COURT: And if -- if information is  
14 available and you choose to purposefully avoid it, that  
15 could be a reckless disregard for the truth.

16 MS. WHITE: Let me start with that, Your  
17 Honor. Although there's -- there's -- obviously,  
18 there's case law about, you know, a poor investigation,  
19 which we do not concede at all occurred here. I think  
20 a very thorough investigation occurred. There is not  
21 enough to make out sufficient case for actual malice.

22 THE COURT: I guess that all depends on the --  
23 -- on the intent -- the way I read the case law, but I  
24 don't know, it depends on the intent or the reason why  
25 the investigation was poor.

1 MS. WHITE: I understand, Your Honor, and  
2 point well taken.

3 But I think -- let me start with, you know,  
4 did he ignore relevant information on this, as a  
5 demonstration of -- of actual malice or any basis for  
6 alleging actual malice. Again, back to one of my  
7 favorite pages, 155, you know, in the book. That is  
8 the information that the CFO was giving Mr. O'Brien  
9 when they met. What wasn't given, once again, is any  
10 information on the other half of the Jello box of net  
11 worth, liabilities.

12 THE COURT: Right.

13 MS. WHITE: Or debts. And so --

14 THE COURT: Right.

15 MS. WHITE: But the point is, no ignoring of  
16 the information, it's --

17 THE COURT: It's right there.

18 MS. WHITE: -- it's right here.

19 Just to answer very briefly Mr. Ressler's  
20 comments about the 500,000-million-dollar, you know,  
21 telephone conversation, which actually we address on  
22 Pages 17 and 18 of our brief, obviously, having a  
23 conversation, and we're assuming it's true for purposes  
24 of this motion about a 500-million-dollar valuation on  
25 an asset, again tells you nothing about net worth. You

1 don't know what the other assets are, you don't know  
2 what the debts and liabilities are, so it doesn't --

3 THE COURT: But in that particular -- the  
4 argument on that one, as I understand it, not so much --  
5 -- your argument is that it's not complete, the  
6 information, because it's missing the -- the  
7 liabilities from most of these things, but the argument  
8 now is that he ignored it completely.

9 MS. WHITE: Well, I think the argument on  
10 that, again, he sets forth Trump's own estimates --

11 THE COURT: Right.

12 MS. WHITE: -- throughout this.

13 THE COURT: Yes.

14 MS. WHITE: As well as his CFO's estimates  
15 throughout this. And very prominently, I might add,  
16 you know, in a chart that sets out -- sets out all it.

17 In terms of the 135 million comment that was  
18 made in The New York Times article, in terms of the  
19 enhancement of the value of his casino holdings, again,  
20 I think it's ironic that one criticizes Mr. O'Brien for  
21 being fair and balanced and I think, you know, it's  
22 quite clear that even though the book, you know, came  
23 out a few days after that article, it clearly was in  
24 the can, you know, long before that. I think the clerk  
25 can take judicial notice of that.



1 In terms of the -- the allegations of actual  
2 malice, we, obviously, do contend that they're not  
3 sufficient. We know they're 11 on the list and -- but  
4 I don't think Your Honor will find on that list, you'll  
5 look in vein on that list for an allegation, you'll  
6 look in vein in the complaint for an allegation of what  
7 is it that Mr. Trump is worth. There's no allegation  
8 of what -- what he is worth.

9 There is also no allegation that Mr. O'Brien  
10 was given by -- by Trump or his CFO any information on  
11 debts and liabilities. And so in that context, it is  
12 simply not possible and the facts aren't alleged to  
13 substantiate actual malice on the part of -- of Mr.  
14 O'Brien, when even assuming he made the statement about  
15 the 150 million to 250-million-dollar estimate. He  
16 could not have known it was false. He wasn't given the  
17 information. He didn't ignore the information from  
18 which he could have concluded that it was.

19 And everything points, Your Honor, we would  
20 submit, in this -- in this book to very careful  
21 researching, very carefully setting forth the different  
22 positions, the different estimates of everyone in an  
23 effort to set forth the public controversy that does  
24 exist surrounding what Mr. Trump is actually worth.

25 One final point, again. The last time I will

1 refer to Page 155, Your Honor, but in fact Mr. O'Brien  
2 does set forth a valuation for the Trump name. It's  
3 the very last line, licensing, merchandising, Trump  
4 name. That's the valuation given on the --

5 THE COURT: Right. He gives is 40 million.

6 MS. WHITE: -- brand name --

7 THE COURT: Right.

8 MS. WHITE: -- Mr. Trump's own CFO. So I  
9 think it's --

10 THE COURT: I had a tab on that page.

11 MS. WHITE: Yes. It's right there. Right  
12 there.

13 So, Your Honor, I -- you know, that's --  
14 unless you have further questions, I mean, it is --

15 THE COURT: No.

16 MS. WHITE: -- our position that this is a  
17 complaint --

18 THE COURT: Right.

19 MS. WHITE: -- that should be dismissed with  
20 prejudice.

21 THE COURT: Anything you want to add,  
22 Counsel?

23 MR. RESSLER: No, Your Honor.

24 THE COURT: All right. As I told you when  
25 you were here for the motion, I was going to decide it

1 today and give you the -- I believe you know a case  
2 best when -- when you hear it and you should decide.

3 Rather than waste a lot of your time, we've  
4 already discussed what the -- what the standards are  
5 and that these motions are granted only on rare  
6 instances, defendants argue that there's a heightened  
7 standard, so I'll just -- I have some notes here and  
8 I'll try to put them into some type of opinion.

9 This matter comes before the Court on a  
10 motion to dismiss plaintiff's complaint for failure to  
11 state a cause of action, pursuant to Rule 4:6-2(e).  
12 Defendant's motion seeks dismissal both as to the  
13 allegation of plaintiff's complaint that the book was  
14 defamatory and the allegations that the author's oral  
15 statements are also actionable.

16 The Court must rule whether the complaints  
17 sets forth a cognizable cause of action. The standard  
18 on a motion to dismiss for failure to state a claim  
19 requires the Court to search the complaint in depth and  
20 with liberality to determine whether a cause of action  
21 can be gleaned even from an obscure statement,  
22 particularly if any discovery will be taken. Every  
23 reasonable inferences is accorded to the plaintiff;  
24 that's Printing Mart v Sharp Electronics, 116 N.J. 739.

25 If the complaint does -- state no basis for

1 relief and discovery does not provide one, dismissal of  
2 the complaint would be appropriate. The cases that  
3 support, Energy Rec. v Department of Environmental  
4 Protection at 320 N.J. Super. 59 support that.

5 With respect to defendant's first argument  
6 that we discussed, they argue that the author, O'Brien,  
7 only notes that some knowledgeable people believe that  
8 Trump's networth is between 150 to 250 million and that  
9 this is in the context of residing -- reciting other  
10 estimates in the course of explaining why Trump's  
11 networth is so hard to pin down.

12 The Court has read the publication in  
13 question, TrumNation The Art of Being the Donald in  
14 detail, particularly Chapter 6 entitled, "Trump Broke."  
15 On the applicable standard of review, it can be  
16 inferred that the book does not merely recount the  
17 networth estimates of others, including the  
18 aforementioned estimate without endorsing any estimate  
19 and only discussing Trump's assets by reporting them  
20 without question, but that the author endorses the  
21 information of individuals, providing all estimates and  
22 adapts -- adopts those, while at the same time  
23 discounting the reliability and credibility of higher  
24 estimates and the individuals who provided the higher  
25 estimates. The many examples have been read into the -

1 - have been discussed and have gone into the record.

2 The statements are reasons sufficient for the  
3 purpose of a 4:6-2(e) motion to set forth the  
4 cognizable cause of action. Discovery may reveal  
5 otherwise in a motion for summary judgment, but that's  
6 not before the Court, nor is the Court making --  
7 passing comment on the viability of the case or whether  
8 summary judgment will be successful or not.

9 They further argue that no one would be --  
10 considered themselves defamed if they were attributed  
11 150 to 250 million dollars worth of assets or wealth to  
12 them; however, under the case law previously discussed,  
13 Ward and Printing Mart, the issue is whether the -- the  
14 derogatory statements could cause apprehension about a  
15 person's ability to conduct business and if so, they  
16 may be defamatory. Printing Mart again addresses that  
17 issue.

18 And it does not require great financial  
19 business to recognize it in order to engage the  
20 financial enterprises -- financial backing, as well as  
21 the reputation for financial acumen are necessary. It  
22 requires no great insight for reasonable minds to  
23 determine that there are claims of one's wealth or  
24 business or financial expertise that could impair his  
25 ability to conduct business.

1 Defendants next argue that the complaint's  
2 actual malice allegation are insufficient and conceding  
3 that Trump is a public figure; and, therefore, must  
4 demonstrate by clear and convincing evidence that  
5 defendant's published the allegedly false statement  
6 with actual malice or a reckless disregard for the  
7 truth or fallacy. The New York Times Company v  
8 Sullivan, 376 U.S. 254.

9 Defendants argue that if the Court were to  
10 accept plaintiff's argument there was actual malice of  
11 reckless disregard for the truth because of the author  
12 to review all of the materials provided by Trump's  
13 networth, they motion the records were incomplete and  
14 the author was not furnished with any records to  
15 substantiate to the outstanding indebtedness or  
16 violation of properties or any of the liabilities  
17 attached to the properties.

18 Plaintiffs argue that those factors are not  
19 appropriate and any expert knowledgeable in the field  
20 will testify to that.

21 As I've stated earlier, if I were to convert  
22 the motion for dismissal into a motion for summary  
23 judgment, at most, I would find that there were issues  
24 of fact that needed to be determined at this point, but  
25 the Court is not going to do that because the parties

1 agree that this should be done based on the book and  
2 the complaint.

3 The complaint alleges the author had a motive  
4 to know and disregard the truth, which consisted of a  
5 personal animus against Trump evidenced by a history of  
6 maligning Trump in articles over the years. I think  
7 discovery will expose the -- whether that is in fact  
8 true or not through the discovery process.

9 The second prong of defendants' motion is  
10 premised on the argument that the actor is -- author is  
11 not -- alleging all statements are inactionable. They  
12 rely on Milkovich v Loraine, 497 U.S. 1 for the  
13 proposition that a statement that cannot reasonably be  
14 interpreted as stating actual facts is not actionable  
15 and they argue that the -- O'Brien's statements such as  
16 financial pornographer, Trump is a cartoon figure, he's  
17 Baby Hughey and P.T. Barnum mixed in, that no  
18 reasonable reader would believe that Trump is Baby  
19 Hughey, P.T. Barnum and a train wreck.

20 They further argue, that O'Brien's statement  
21 that Trump adds zeros here and there is no more called  
22 for -- that it called for a description of Trump to  
23 offer varying estimates of his wealth and to routinely  
24 describe aspects as worth -- aspects of his worth as  
25 huge.

1 The statement that Trump adds zeros here and  
2 there and other statements of that nature, which were  
3 done -- as oral statements, may be considered  
4 actionable under Romain v Kallinger, 109 N.J. 282,  
5 reasonable minds could consider other statement  
6 similarly -- reasonable minds could consider other  
7 statements defamatory -- defamatory under Printing  
8 Mart, as they may adversely affect plaintiff's business  
9 or office.

10 The Court does not find that -- that Mr.  
11 Trump's wealth is a matter of public concern. The  
12 cases and the arguments presented by the defendants  
13 have not shown that there's any public concern with Mr.  
14 Trump's wealth. With respect to the fair comment  
15 doctrine, defendants concede at Page 22 of the brief  
16 that it's a qualified privilege that can be overcome by  
17 a showing of actual malice. Cosequently, the Court's  
18 opinion is that there inextricably intertwined and if  
19 there's no showing of actual malice, then fair comment  
20 may apply, but -- because of the Court's finding that  
21 with respect to actual malice -- for purpose of the  
22 4:6-2(e) motion it goes forward. The Court can't then  
23 decide that fair comment applies until there's been  
24 actual showing or disproof of actual malice.

25 Based on that, the motion under 4:6-2(e) is

1 denied.

2 And that's it. Thank you for coming, Folks.

3 MR. RESSLER: Thank you, Your Honor.

4 MS. WHITE: Thank you, Your Honor.

5 Mr. Ceresney has one further application,  
6 Your Honor.

7 MR. CERESNEY: Yes, Your Honor. When we were  
8 before you a couple weeks ago, you extended discovery  
9 two weeks from today, I think.

10 THE COURT: Yeah.

11 MR. CERESNEY: And we had talked about -- and  
12 you had said that we would, obviously, begin -- we've  
13 begun. I guess we're asking again, particularly in  
14 light of today's ruling, whether we could have a little  
15 extra time on it.

16 THE COURT: You're putting me in a difficult  
17 spot because after today I don't have this case anymore  
18 and the next judge may say to me, what are you doing,  
19 you're messing up my list, but, yeah. This is a case  
20 that's going to require -- you're all going to be here  
21 for more discovery. I mean, I'm not so naive as to  
22 think that this can be done quickly, but why don't we  
23 do this and send me an order -- let's extend paper  
24 discovery -- I assume you haven't even started on  
25 depositions.

1 MR. TAMBUSI: No, Judge. Judge, the point  
2 is that we're still going to get back to the point are  
3 we going to get discovery or are we going to get  
4 objections.

5 If we get an objections --

6 THE COURT: Well, you're going to get  
7 objections for some stuff. So here's what I want to  
8 do.

9 By the way, there was a motion that came  
10 after I ruled by plaintiff to dismiss the complaint. I  
11 called and had them withdraw it because -- and that's  
12 my ruling. So that's not -- that's not an issue.

13 It's still a lot of paper discovery, Mr.  
14 Tambussi. Here's what I'm going to do.

15 I'm going to give you another two weeks  
16 beyond that to have your motions filed for -- for  
17 protective orders, if that's what you want, or to  
18 provide the other discovery. So get everything done  
19 that you're going to give them within four weeks.

20 MR. TAMBUSI: You've already ruled on the  
21 protective order motion, Judge.

22 MR. CERESNEY: The stay. The motion for --

23 MS. WHITE: For a stay. That's a stay.

24 THE COURT: Yeah. For the stay. But, no,  
25 I'm talking about -- I assume that with respect to the

1 identity of the source, the unidentified sources,  
2 you're going to have motions on that; newspaper  
3 misprivilege or shield, all that type of thing. I  
4 assume that among other things, there's going to be --  
5 there are going to be motions either to prohibit you  
6 from -- from obtaining the discovery, which is a  
7 protective order under 4:10-3.

8 So what I want to do is join everything and  
9 get it done, and I -- I assume you've been served with  
10 discovery, too, right?

11 MR. TAMBUSI: I don't know that we have,  
12 Judge.

13 MR. RESSLER: No.

14 THE COURT: No. All right. Let's get that  
15 done, too.

16 MR. TAMBUSI: See, Judge, here's the point.

17 THE COURT: Okay.

18 MR. TAMBUSI: There's certain questions that  
19 are clearly not objectionable.

20 THE COURT: Right.

21 MR. TAMBUSI: And there's certain questions  
22 that we expect that objections will be raised.

23 THE COURT: Yeah. Right. Yes.

24 MR. TAMBUSI: There's no reason why we can't  
25 receive within this next two-week period because it's

1 now been four weeks since you ruled, an idea of what  
2 questions they deem objectionable and what answers that  
3 they will provide.

4 THE COURT: Can you -- can you get the  
5 discovery you intend to give them -- I know it takes  
6 longer to file motions, obviously, but I'm sure your  
7 associates are awaiting anxiously to -- to bill some  
8 time, but can you --

9 MR. CERESNEY: We've got plenty of other  
10 matters, Judge.

11 MS. WHITE: Right.

12 THE COURT: I'm sure. I'm sure this not the  
13 only cases any of you have.

14 Can you get him whatever you're going to give  
15 him within two weeks?

16 MR. CERESNEY: That's why I'm asking for an  
17 extra week, Your Honor, on that -- on that point.

18 THE COURT: All right. I'll give you -- I'll  
19 give him an extra week.

20 MR. CERESNEY: That's all I'm asking for.  
21 It's really a --

22 THE COURT: I'll give you an extra week for  
23 that.

24 MR. CERESNEY: -- really post Labor Day.

25 THE COURT: And.--

1 Mr.CERESNEY: And then -- and then after that  
2 we'll file responses, objections, and we'll also then  
3 make available --

4 THE COURT: Under the theory that honest  
5 people ask for less time than they need, I'm going to  
6 give you another week because you -- you didn't ask for  
7 that much the last time and I gave you two weeks. I'll  
8 give you one more week.

9 MR. CERESNEY: Okay.

10 THE COURT: All right.

11 MR. CERESNEY: We'll file responses and  
12 objections that day.

13 THE COURT: Yeah. And give them discovery  
14 and then the motions -- and get the motions.

15 It's Labor Day.

16 MR. TAMBUSI: That's fine, Judge.

17 THE COURT: The practice of law --

18 MR. CERESNEY: After Labor Day.

19 THE COURT: -- is difficult --

20 MS. WHITE: After Labor Day.

21 THE COURT: -- enough without having to run  
22 around all hours of the day and night, so let's give a  
23 little more time.

24 Unfortunately, since I won't have the case  
25 anymore, you're going to have to deal with -- although

1 he's a -- I don't know which -- whether Judge Snyder or  
2 Judge Millenky or Judge Colalillo are getting this  
3 because I don't know how we're going to do the --  
4 they're going to do the numbers, the docket numbers,  
5 but they're all very reasonable, very good judges, so  
6 I'm sure they'll understand that some cases take a  
7 little more time, like medical malpractice and these  
8 kind of things to get some -- but let's get moving on  
9 it.

10 MR. TAMBUSI: Well, fair enough, Judge, but  
11 we'll include --

12 MS. WHITE: Thank you, Your Honor.

13 MR. TAMBUSI: -- in this order the fact that  
14 discovery responses and objections will be received by  
15 September 8th.

16 THE COURT: Right.

17 MR. TAMBUSI: Thank you.

18 THE COURT: And then -- and that motions for  
19 protective orders will be filed by the next week. Can  
20 you get that done?

21 MS. WHITE: By the following week?

22 THE COURT: Right. Which is September --  
23 eight and seven is what, fifteen?

24 MR. TAMBUSI: 15th.


25 THE COURT: Yeah. Let's do that.

1 MR. TAMBUSSI: Fair enough.  
2 THE COURT: Okay.  
3 MS. WHITE: Thank you, Your Honor.  
4 THE COURT: All right.  
5 MS. WHITE: Thank you.  
6 MR. TAMBUSSI: Thank you, Judge.  
7 MR. RESSLER: Thank you, Judge.  
8 MR. CERESNEY: Thank you, Your Honor.  
9 (Proceedings concluded)

10  
11 CERTIFICATION

12 I, Lisa A. Mullen, the assigned transcriber,  
13 do hereby certify the foregoing transcript of  
14 proceedings at the Camden County Superior Court, on  
15 August 18, 2006, Tape No. 1/3042 to 2/248, is prepared  
16 in full compliance with the current Transcript Format  
17 for Judicial Proceedings and is a true and accurate  
18 compressed transcript to the best of my knowledge and  
19 ability.  
20

21  
22 Dated: 8/23/06

23   
24 Lisa A. Mullen, AD/T 413  
25 KLJ Transcription Service

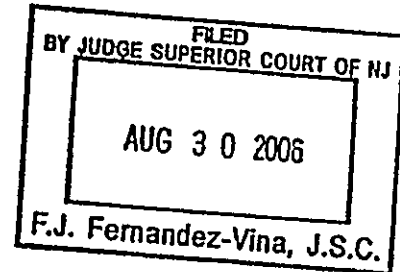


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**DONALD J. TRUMP,**

Plaintiff,

vs.

**TIMOTHY O'BRIEN, TIME WARNER  
BOOK GROUP INC., AND WARNER  
BOOKS INC.,**

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAMDEN COUNTY

Docket No. L-545-06

**ORDER**

THIS MATTER having come before the Court on Defendants' Motion to Dismiss the Complaint pursuant to R. 4:6-2; and Mary Jo White, Esq. and Andrew J. Ceresney, Esq., of Debevoise & Plimpton LLP, and Stephen J. Picco, Esq., of Reed Smith LLP, appearing on behalf of the Defendants Timothy L. O'Brien, Time Warner Book Group, Inc. and Warner Books, Inc.; and Mark P. Ressler, Esq., of Kasowitz, Benson, Torres and Friedman LLP, and William M. Tambussi, Esq., of Brown & Connery LLP appearing for Plaintiff Donald J. Trump; and the Court having considered the arguments of counsel; and for good cause shown,

IT IS HEREBY ORDERED AND ADJUDGED this 30<sup>th</sup> day of AUGUST, 2006, that Defendants' Motion to Dismiss the Complaint is DENIED; and

IT IS FURTHER ORDERED that Defendants' responses to Plaintiff's First Request for Production of Documents to Timothy O'Brien, Plaintiff's First Request for Production of Documents to Time Warner Book Group, Inc., Plaintiff's First Request for Production of Documents to Warner Books, Inc., Plaintiff's First Set of Interrogatories to Timothy O'Brien, Plaintiff's First Set of Interrogatories to Time Warner Book Group, and Plaintiff's First Set of Interrogatories to Plaintiff Warner Books, Inc. are due on September 8, 2006; and

IT IS FURTHER ORDERED that any motions by Defendants with respect to the foregoing discovery requests shall be filed on or before September 15, 2006; and

IT IS FURTHER ORDERED that, pursuant to R. 4:6-1(b), Defendants shall file an Answer on or before August 28, 2006, which is ten (10) days following notice of the disposition of Defendants' Motion to Dismiss.



\_\_\_\_\_  
Faustino J. Fernandez-Vina, J.S.C.

*Opposed*

**REASON ON RECORD**

*8-18-06*

AM-44-0013

ORDER ON MOTION

RECEIVED

DONALD J TRUMP  
VS  
TIMOTHY L OBRIEN

APPELLATE DIVISION

OCT 17 2006

SUPERIOR COURT  
OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. AM-000044-06T3  
MOTION NO. M -000342-06  
BEFORE PART: E  
JUDGE(S): WEFING  
YANNOTTI

MOTION FILED:  
ANSWER(S) FILED:

SEPTEMBER 18, 2006  
SEPTEMBER 28, 2006

BY: TIMOTHY L OBRIEN  
BY: TRUMP

DONALD J

SUBMITTED TO COURT: OCTOBER 11, 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS  
12 DAY OF October, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT  
- FOR LEAVE TO APPEAL

GRANTED ( ) DENIED (X) OTHER ( )

SUPPLEMENTAL:

FILED  
APPELLATE DIVISION

OCT 17 2006

*Jal m. Chacko*  
CLERK

CAM L-545-06

FOR THE COURT:

JUKMC1

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.  
*Jal m. Chacko*  
CLERK OF THE APPELLATE DIVISION

*Dorothea O'C. Weffing*  
DOROTHEA O'C. WEFFING P.J.A.D.

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Attorneys for Plaintiff

Donald J. Trump

-----x  
DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME  
WARNER BOOK GROUP INC. and  
WARNER BOOKS, INC.

Defendants.  
-----x

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION, CIVIL PART  
: CAMDEN COUNTY  
:

: Case No. L-545-06  
:

: PLAINTIFF DONALD J. TRUMP'S  
: FIRST SET OF INTERROGATORIES  
: TO DEFENDANT TIMOTHY L. O'BRIEN  
:  
:

TO: Mary Jo White, Esq.  
Andrew J. Ceresney, Esq.  
Andrew M. Levine, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

James F. Dial, Esq.  
Reed Smith LLP  
Princeton Forrestal Village  
136 Main Street, Suite 250  
P.O. Box 7839  
Princeton, New Jersey 08543

Attorneys for Defendants

PLEASE TAKE NOTICE that plaintiff Donald J. Trump, through his counsel, hereby demands that defendant Timothy L. O'Brien answer the following Interrogatories in the manner and within the time prescribed by the New Jersey Court Rules. These Interrogatories are continuing in nature so as to require you to amend and supplement the responses in accordance with New Jersey Court Rule 4:17-7 if you obtain additional or different information before trial, and to serve upon plaintiff such amended or supplemental responses.

KASOWITZ, BENSON, TORRES &  
FRIEDMAN LLP

By:   
Mark P. Ressler

DATED: \_\_\_\_\_

BROWN & CONNERY LLP

By:   
William M. Tambussi

DATED: \_\_\_\_\_

Attorneys for Plaintiff  
Donald J. Trump

## DEFINITIONS AND INSTRUCTIONS

As used herein:

- A. The terms "you" or "your" means Timothy L. O'Brien.
- B. The term "Warner Books" means Time Warner Book Group Inc. and Warner Books Inc. and each of their current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation their current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on their behalf.
- C. The term "*The New York Times*" means *The New York Times* and each of its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on its behalf
- D. The term "Work" means the literary property entitled *TrumpNation: The Art of Being the Donald*, and any proposals, drafts, manuscripts, excerpts, sections, galley proofs or dummies of same.
- E. The term "Litigation" means the lawsuit captioned, *Donald J. Trump v. Timothy L. O'Brien, Time Warner Book Group Inc. and Warner Books, Inc.*, Case No. L-545-06, filed in the Superior Court of New Jersey Law Division, Civil Part, Camden County.
- F. The term "Mr. Trump" refers to Donald J. Trump.
- G. The term "Trump Entity" refers to any corporation, partnership, association, organization, property or product that bears the "Trump" name or is controlled by Mr. Trump.

H. The term "manuscript" means the original form of a work submitted for publication.

I. The term "galley proof" means the pre-publication copy sent to an author for final proofreading or to reviewers for pre-publication reviews.

J. The term "dummy" means a page or set of pages assembled in the exact position, form and style desired for the finished piece of printed work.

K. The term "person" means natural persons, corporations, partnerships, associations, joint ventures, sole proprietorships, firms, entities, businesses enterprises, contractors, stock exchanges, governmental or regulatory agencies or boards, as well as all divisions, subdivisions, bureaus, offices or other units thereof.

L. The term "communication" means every manner of transmitting, transferring, exchanging or sharing information, facts, opinions or thoughts in any form, whether orally, in writing or otherwise, by any means whatsoever, including without limitation by memorandum, letter, note, mail, telephone, facsimile transmission, telex, telecopy, e-mail or any other means.

M. The terms "concerning" and "in connection with" mean relating to, referring to, regarding, referencing, reflecting, describing, discussing, evidencing, supporting, indicating, stating, mentioning, embodying, pertaining to, setting forth, commenting on, assessing, recording, constituting, comprising, touching upon, summarizing or having any logical or factual connection whatsoever to the subject matter in question.

N. The term "document" means any kind of written or graphic matter, however produced and reproduced, including matter written or produced by hand, typed, recorded, taped, photocopied, filed, telecopied, filmed, microfilmed, transcribed or otherwise created, generated or prepared, and including all originals, masters, drafts and non-identical copies bearing

notations or marks not found on the originals, whether sent or received, and including without limitation any and all correspondence, memoranda, drafts, notes, diaries, cards, letters, statistics, summaries, analyses, submissions, applications, forms, reports, sketches, drawings, designs, specifications, telegraphs, minutes, agendas, schedules, contracts, agreements, addenda, studies, files, affidavits, financial records, account statements, checks, check stubs, general ledgers, calculations, journals, ledgers, purchase orders, invoices, receipts, bills, bills of lading, brochures, manuals, pamphlets, books, magazines, articles, instructions, directions, directives, rules, regulations, policy books, guidelines, work plans, questionnaires, surveys, licenses, vouchers, blueprints, notebooks, catalogues, bids, prospectuses, transcripts, stenographic or handwritten notes, regulatory reports or filings, publications, circulars, pictures, photographs, videotapes, films, computer printouts, computer disks, computer tapes, computer data, computer memory, e-mails, affidavits, declarations, expense records, logs, voice recordings, charts, compilations, press releases, resumes, inter-office and intra-office communications, offers, bulletins, worksheets, papers, photographs, graphs, microfiche, microfilm, videotape, motion pictures, audio tape, cassettes, discs and any other data compilations of any kind or in any other form capable of being read, heard or otherwise understood.

O. The term "and" as well as the term "or" shall be construed both disjunctively and conjunctively, as necessary, to bring within the scope of these Interrogatories all documents and responses which might otherwise be considered to be beyond their scope.

P. The term "all" means "any and all," the term "any" means "any and all" and the term "each" means "all and each."



Q. The singular form of a word shall be construed as a plural, and the plural as the singular, as necessary, to bring within the scope of these Interrogatories all documents and responses which might otherwise be considered to be beyond their scope.

R. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these Interrogatories all documents and responses which might otherwise be considered to be beyond their scope.

S. The use of capital letters, lower case letters or quotation marks in these Interrogatories shall not be construed to limit the scope of any specific request contained herein.

T. The term "identify" means, when used in reference to:

- (1) a natural person, his or her:
  - (a) full name;
  - (b) present residence address or, if unknown, last known residence address; and
  - (c) business affiliations, positions and business addresses at all times relevant to the interrogatory in question
- (2) a company, corporation, association, partnership, or legal entity other than a natural person:
  - (a) its full name;
  - (b) a description of the type of organization or entity;
  - (c) the address of its principal place of business;
  - (d) the jurisdiction of incorporation or organization;
  - (e) the date of its incorporation or organization; and
  - (f) the principal persons of said entity

- (3) a document:
- (a) the type of document (e.g., chart, letter, memorandum);
  - (b) its title;
  - (c) the date, if any, the document bears;
  - (d) the date it was actually prepared and, if signed, the date it was signed;
  - (e) each person who prepared it or who participated in its preparation and the nature of his or her participation;
  - (f) each person who issued, signed, or placed any marks or notations upon the document;
  - (g) each addressee;
  - (h) each person who received a copy of the document or to whom the contents thereof were communicated;
  - (i) the number of pages;
  - (j) its subject matter;
  - (k) its present location; and
  - (l) its custodian and, if any document is not in your possession, custody or control, the disposition that was made of it, the reason for such disposition and the date thereof
- (4) an oral communication:
- (a) the date and time when it occurred;
  - (b) the place where it occurred;
  - (c) the complete substance of the communication; and

(d) the identity of each person to whom such communication was made, by whom such communication was made, and who was present when such communication was made

U. If any of these Interrogatories cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating whatever information, knowledge or belief you do have concerning the unanswered portion.

V. If any document is withheld or not identified under a claim of privilege, immunity or otherwise, identify each such document and state the date of the document, its author and addressee, each person to whom copies of the document were furnished or to whom the content thereof were communicated, a summary of the subject matter of the document, the basis upon which the asserted privilege, immunity or other reason for non-disclosure is claimed and the interrogatories to which the document is responsive.

W. If any information other than a document is withheld or not identified under a claim of privilege, immunity or otherwise, identify the nature of the information withheld, the basis upon which the asserted privilege, immunity or other reason for non-disclosure is claimed and the interrogatories to which the information is responsive.

X. If any Interrogatory is objected to by you as inquiring into privileged matter, set forth fully in your objection the facts upon which you rely as the basis for your objections.

INTERROGATORIES

1. On page 154 of *TrumpNation: The Art of Being the Donald*, you state:

So I asked around for guidance. Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million and \$250 million. By anyone's standards this still qualified Donald as comfortably wealthy, but none of these people thought he was remotely close to being a billionaire.

Identify the three persons referenced in this passage.

Answer:

2. Identify (a) any person to whom you have disclosed the identity of any of the three persons referenced in Interrogatory Number 1, or (b) any person you believe knows the identity of any of the persons referenced in Interrogatory Number 1, and describe the basis for your belief.

Answer:

3. Identify any communications concerning Mr. Trump's finances and net worth that you had with each of the three persons referenced in Interrogatory Number 1.

Answer:

4. Identify any persons you interviewed, communicated with or obtained information from in connection with the Work.

Answer:

5. Identify any communications concerning Mr. Trump's finances and net worth that you had with each of the persons you identify in response to Interrogatory Number 4.

Answer:

6. Identify any documents concerning Mr. Trump's finances and net worth that were given to you, shown to you or specifically or generally referred to by any of the three persons referenced in Interrogatory Number 1.

Answer:

7. Identify any documents concerning Mr. Trump's finances and net worth that were given to you, shown to you or specifically or generally referred to by any of the persons referenced in Interrogatory Number 4.

Answer:

8. Identify any documents relating to Mr. Trump's finances and net worth that you consulted, reviewed, read, analyzed, or relied upon in any way in connection with the Work.

Answer:

9. On page 241 of *TrumpNation: The Art of Being the Donald* you state, "Tina Brown, Manhattan's magazine goddess, gave astute advice when I was considering this book." Identify the advice referenced in this passage.

Answer:

10. Identify all literary agents you sought to represent you in connection with the Work.

Answer:

11. Identify any literary agent, sub-agent or corresponding agent who performed any work or services in connection with the Work.

Answer:

12. Identify all publishing houses to which the Work or a proposal concerning the Work was submitted.

Answer:

13. Describe the process by which facts asserted in the Work were checked, including but not limited to identifying all persons who conducted or assisted with fact-checking the Work.

Answer:

14. Identify any communications you had with any publishing house, including but not limited to Warner Books, concerning Mr. Trump's finances and net worth.

Answer:

15. Identify all editors of the Work.

Answer:

16. Identify all research assistants who assisted with the Work.

Answer:

17. On page 241 of *TrumpNation: The Art of Being the Donald*, you state, "Joseph Plambeck . . . conducted more than a dozen interviews with insight and wit." Identify the persons whom Joseph Plambeck interviewed.

Answer:

18. Identify all persons at Warner Books who performed any work on or assisted in any way with the Work, and describe their role.

Answer:

19. Identify any legal vetting or legal review of the Work that was conducted prior to its publication.

Answer:

20. Describe any changes or revisions to the Work, or drafts thereof, concerning Mr. Trump's finances or net worth or the value of any Trump Entity.

Answer:

21. Describe the chronology that culminated in publication of the Work, including but not limited to the date when you (or a person acting on your behalf) (a) provided a manuscript of the Work to Warner Books (or any other publisher); (b) provided any revision of the Work to Warner Books (or any other publisher); (c) received an edited manuscript from Warner Books (or any other publisher); and (d) received galley proofs and dummies.

Answer:

22. Identify the sales of the Work by numbers of copies sold, by state and, if applicable, by foreign country.

Answer:

23. Describe the total amount of compensation you have received in connection with sales of the Work, to date, including but not limited to all advances, royalties and other payments you have received or that have been credited to you in connection with the Work.

Answer:



24. Identify any appearances you made in connection with promoting, marketing or generating publicity for the Work, including but not limited to appearances on television, on radio, at lectures, in on-line chat rooms, in advertisements or at book signings, book readings or book discussions.

Answer:

25. Describe any subsidiary rights to the Work that you or any other person sold, including but not limited to serialization rights.

Answer:

26. Identify any articles, columns or books that you have written, contributed to, worked on or edited that mentioned or referred to Mr. Trump or any Trump Entity.

Answer:

27. Describe any instances in which you were terminated or disciplined by an employer in connection with any conduct by you concerning (a) writing, reporting and editing duties; (b) your interactions with sources, potential sources, subjects or potential subjects of articles, potential articles, books or potential books; and (c) your interactions with editors, colleagues and office workers.

Answer:

28. Identify any book deals that you have entered into other than the Work.

Answer:

29. Identify any book proposals that you have submitted to any person, including but not limited to any publisher or agent, that were rejected.

Answer:

30. Identify any instance in which you had an agreement to publish a literary work, such work was not published and you subsequently received or requested a kill fee.

Answer:

31. Describe any instance or circumstance in which you have been accused of plagiarism, libel, slander or defamation in connection with an article or book you have written or a statement you have made, including the nature of the accusation, the date of the accusation, the work in question and the resolution, if any.

Answer:

32. Identify all lawsuits to which you have been a party, including but not limited to the name of the case, the court, the docket number, the year the lawsuit was filed, whether you were a plaintiff or a defendant, the allegations and the outcome.

Answer:

33. Were you named as an additional insured on any media perils policy in connection with the Work and, if so, identify the insurance company, policy number and all insureds on each such policy.

Answer:

34. For each person answering these interrogatories, state your name, date of birth, home address, work address, job title.

Answer:

35. Beginning with tenth grade, please list each and every educational institution which you have attended. Include with your answer the dates of attendance, your major and degrees received, if any.

Answer:

36. State the name, address and job title of each person with knowledge or information pertaining to any claim or defense asserted in this action and provide a summary of their knowledge and how it was acquired.

Answer:

37. Identify any and all persons you intend to call as a witness at the time of trial. In responding to this Interrogatory, set forth a summary of each person's expected testimony.

Answer:

38. State the name, occupation and address of any and all experts consulted by the responding party concerning the Litigation, regardless of whether or not you expect that expert to testify.

Answer:

39. As to each and every expert you intend to call as a witness at the time of trial:

- (a) State the subject matter on which the expert is expected to testify.
- (b) State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
- (c) Annex hereto full and complete copies of any and all reports rendered by such experts to the responding party. (If oral, set forth a complete rendition of the oral report.)
- (d) Identify and attach any and all material used by the expert in his investigation and/or preparation of his report.
- (e) Attach a copy of the expert's *curriculum vitae*.
- (f) Identify any and all codes, standards, statutes, regulations, books, writings, periodicals or literature about which the expert will testify, to which he will refer or upon which he relied in preparation of his report.
- (g) Identify each case in which the expert has given testimony at trial in the past 10 years, setting forth the name of each case, the docket number, and counsel representing the parties (including the party that retained the expert), and annex hereto any report the expert issued in that case.

Answer:

40. Has any party in this case made any admission(s) related to this matter? If so, for each admission:

- (a) Identify the party that made the admission.
- (b) Set forth with detail and in particularity the substance of the admission.

- (c) State the date and time the admission was made.
- (d) State whether the admission was in writing or oral.
- (e) State the names and addresses of any witnesses to any admission, including which such admissions they witnessed.
- (f) If the admission was written, or if the admission is contained in a written transcription of an oral communication, attach a copy hereto.

Answer:

41. Has any person made a declaration against interest related to this matter? If so:
- (a) Identify the person who made the declaration.
  - (b) Set forth with detail and in particularity the substance of the declaration.
  - (c) State the date and time the declaration was made.
  - (d) State whether the declaration was in writing or oral.
  - (e) If the declaration was written, or if the declaration is contained in a written transcription of an oral communication, attach a copy hereto.

Answer:

42. State whether you intend to assert any defenses at the time of trial. If so, name every such defense. For every such defense,

(a) If the defense is based upon the common law, state the principle involved and fully provide the factual basis for the defense.

(b) If the defense is based upon a statute, regulation or other written rule, identify each such statute, regulation or rule and fully provide the factual basis for any such defense.

Answer:

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that I have read the foregoing answers to interrogatories and that said answers are true, correct and complete. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

\_\_\_\_\_  
Timothy L. O'Brien

DATED: \_\_\_\_\_, 2006

**KASOWITZ, BENSON, TORRES & FRIEDMAN LLP**

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Attorneys for Plaintiff

Donald J. Trump

-----X  
DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME  
WARNER BOOK GROUP INC. and  
WARNER BOOKS, INC.

Defendants.  
-----X

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION, CIVIL PART  
: CAMDEN COUNTY

:  
: Case No. L-545-06

:  
: **PLAINTIFF DONALD J. TRUMP'S**  
: **FIRST REQUEST TO DEFENDANT**  
: **TIMOTHY L. O'BRIEN FOR THE**  
: **PRODUCTION OF DOCUMENTS**

Pursuant to Rule 4:18-1 of the New Jersey Rules Governing Civil Practice, plaintiff Donald J. Trump hereby requests that defendant Timothy L. O'Brien produce and make available for inspection and copying the documents in his possession, custody or control that are described herein, within thirty (30) days from the date of service upon defendant's counsel, at the offices of Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York



10019, at which time the documents should be segregated and identified by the number of the specific request to which they are responsive.

DEFINITIONS AND INSTRUCTIONS

As used herein:

- A. The terms "you" or "your" means Timothy L. O'Brien.
- B. The term "Warner Books" means Time Warner Book Group Inc. and Warner Books, Inc. and each of their current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation their current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on their behalf.
- C. The term "*The New York Times*" means *The New York Times* and each of its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on its behalf.
- D. The term "Work" means the literary property entitled *TrumpNation: The Art of Being the Donald*, and any proposals, drafts, manuscripts, excerpts, sections, galley proofs or dummies of same.
- E. The term "Litigation" means the lawsuit captioned, *Donald J. Trump v. Timothy L. O'Brien, Time Warner Book Group Inc. and Warner Books, Inc.*, Case No. L-545-06, filed in the Superior Court of New Jersey Law Division, Civil Part, Camden County.
- F. The term "Mr. Trump" refers to Donald J. Trump.

- G. The term "Trump Entity" refers to any corporation, partnership, association, organization, property or product that bears the "Trump" name or is controlled by Mr. Trump.
- H. The term "manuscript" means the original form of a work submitted for publication.
- I. The term "galley proof" means the pre-publication copy sent to an author for final proofreading or to reviewers for pre-publication reviews.
- J. The term "dummy" means a page or set of pages assembled in the exact position, form and style desired for the finished piece of printed work.
- K. The term "person" means natural persons, corporations, partnerships, associations, joint ventures, sole proprietorships, firms, entities, businesses enterprises, contractors, stock exchanges, governmental or regulatory agencies or boards, as well as all divisions, subdivisions, bureaus, offices or other units thereof.
- L. The term "communication" means every manner of transmitting, transferring, exchanging or sharing information, facts, opinions or thoughts in any form, whether orally, in writing or otherwise, by any means whatsoever, including without limitation by memorandum, letter, note, mail, telephone, facsimile transmission, telex, telecopy, e-mail or any other means.
- M. The terms "concerning" and "in connection with" mean relating to, referring to, regarding, referencing, reflecting, describing, discussing, evidencing, supporting, indicating, stating, mentioning, embodying, pertaining to, setting forth, commenting on, assessing, recording, constituting, comprising, touching upon, summarizing or having any logical or factual connection whatsoever to the subject matter in question.
- N. The term "document" means any kind of written or graphic matter, however produced and reproduced, including matter written or produced by hand, typed, recorded, taped,

photocopied, filed, telecopied, filmed, microfilmed, transcribed or otherwise created, generated or prepared, and including all originals, masters, drafts and non-identical copies bearing notations or marks not found on the originals, whether sent or received, and including without limitation any and all correspondence, memoranda, drafts, notes, diaries, cards, letters, statistics, summaries, analyses, submissions, applications, forms, reports, sketches, drawings, designs, specifications, telegraphs, minutes, agendas, schedules, contracts, agreements, addenda, studies, files, affidavits, financial records, account statements, checks, check stubs, general ledgers, calculations, journals, ledgers, purchase orders, invoices, receipts, bills, bills of lading, brochures, manuals, pamphlets, books, magazines, articles, instructions, directions, directives, rules, regulations, policy books, guidelines, work plans, questionnaires, surveys, licenses, vouchers, blueprints, notebooks, catalogues, bids, prospectuses, transcripts, stenographic or handwritten notes, regulatory reports or filings, publications, circulars, pictures, photographs, videotapes, films, computer printouts, computer disks, computer tapes, computer data, computer memory, e-mails, affidavits, declarations, expense records, logs, voice recordings, charts, compilations, press releases, resumes, inter-office and intra-office communications, offers, bulletins, worksheets, papers, photographs, graphs, microfiche, microfilm, videotape, motion pictures, audio tape, cassettes, discs and any other data compilations of any kind or in any other form capable of being read, heard or otherwise understood.

O. The term "and" as well as the term "or" shall be construed both disjunctively and conjunctively, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

P. The term "all" means "any and all," the term "any" means "any and all" and the term "each" means "all and each."

Q. The singular form of a word shall be construed as a plural, and the plural as the singular, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

R. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

S. The use of capital letters, lower case letters or quotation marks in these Requests shall not be construed to limit the scope of any specific request contained herein.

T. In the event that any document or portion of any document within the scope of these Requests is withheld from production upon a claim of privilege, work product or for any other reason, you are requested to furnish, with respect to each such document, the following:

- a. a statement regarding the basis for any claim of privilege, work product or other forms of non-disclosure; and
- b. a sufficient description of the document, including:
  - i. the title of the document and the nature and subject matter of its contents;
  - ii. the date the document was prepared or any date appearing on the document;
  - iii. the number of the document's pages, attachments and appendices;
  - iv. the names of the persons who authored or prepared the document, and an identification by employment and title of each such person;
  - v. the names of each person to whom the document, or a copy thereof, was sent, shown or made accessible, or to whom it was explained, together with an identification of each such person; and

vi. the number of each paragraph of these Requests to which the document relates.

U. The documents produced in response to these Requests shall be produced as they are kept in the ordinary course of business and shall be organized so that Plaintiff can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

V. Each and every non-identical duplicate of a document within the scope of any request, whether different from the original because of stamps, indications of recipient, handwritten notes, marks, comments or attachment to different documents, or for any other reason, is a separate document to be produced in response hereto.

W. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

X. In the event that any document requested herein was formerly in your possession, custody or control and has been lost, destroyed or otherwise disposed of, you are requested to furnish a list identifying each such document and stating the following information with respect to each document:

- a. the title of the document and the nature and subject matter of its contents;
- b. the identity(ies) of the person(s) who prepared or authored the document, and, if applicable, the persons to whom the document was sent or was intended to be sent;
- c. the date on which the document was prepared or transmitted; and

d. the date on which the document was lost, destroyed or otherwise disposed of, the manner and conditions of and reasons for such destruction or other disposition and the persons requesting and performing the destruction or other disposition.

Y. Documents are to be produced in full and unexpurgated form without abbreviation or redaction.

Z. These Requests are continuing in nature and oblige you to produce promptly additional documents or information whenever they are acquired, discovered or come into existence after the date of the initial production.

AA. Each of these Requests seeks all documents, wherever located, which are in the actual or constructive possession, custody or control of you or of your present or former attorneys, financial advisors, accountants, bookkeepers, agents, representatives, directors, officers, partners, shareholders or employees, and its affiliated partnerships, as well as all documents which are known to exist and can be obtained by you from any other source.

## DOCUMENT REQUESTS

1. All documents concerning the Work.
2. All drafts of the Work.
3. All manuscripts, galley proofs and dummies, and any drafts of each, in connection with the Work.
4. All documents you created, generated, distributed, reviewed or relied upon in connection with the Work.
5. All documents evidencing or concerning any communication in connection with the Work.
6. All documents concerning the Litigation.
7. All documents evidencing or concerning any communication in connection with the Litigation.
8. All documents evidencing or concerning Mr. Trump.
9. All documents evidencing or concerning any Trump Entity.
10. All documents evidencing or concerning Mr. Trump's finances or net worth.
11. All documents evidencing or concerning the financial condition, value, assets or liabilities of any Trump Entity.
12. All documents evidencing or concerning any agreement or contract in connection with the Work, including but not limited to any agreement or contract involving you or involving any literary agent, publishing house, public relations firm, law firm, accounting firm, graphics firm, advertising firm, newspaper or magazine, marketing firm or consulting firm.
13. All documents supplied or shown by you to Warner Books concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

14. All documents supplied or shown by Warner Books to you concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

15. All documents evidencing or concerning any communication between you and Warner Books in connection with the Work, the Litigation, Mr. Trump or any Trump Entity.

16. All documents evidencing or concerning any communication between you and *The New York Times* in connection with the Work, the Litigation, Mr. Trump or any Trump Entity.

17. All documents supplied or shown by you to *The New York Times* concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

18. All documents supplied or shown by *The New York Times* to you concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

19. All documents concerning the Work, the Litigation, Mr. Trump or any Trump Entity supplied or shown by you to any person, including but not limited to the following: (a) any literary agent; (b) any publishing house; (c) any marketing, advertising or public relations firm; (d) any of the persons listed in the "Acknowledgments" Section at pages 241 to 243 of *TrumpNation: The Art of Being the Donald*; (e) any bookstore; (f) any television, radio or other media outlet; (g) any internet outlet; and (h) any person you interviewed, used as a source or with whom you otherwise communicated in connection with the Work.

20. All documents concerning the Work, the Litigation, Mr. Trump or any Trump Entity supplied or shown to you by any person, including but not limited to the following: (a) any literary agent; (b) any publishing house; (c) any marketing, advertising or public relations firm; (d) any of the persons listed in the "Acknowledgments" Section at pages 241 to 243 of *TrumpNation: The Art of Being the Donald*; (e) any bookstore; (f) any television, radio or other



media outlet; (g) any internet outlet; (h) any person you interviewed, used as a source or with whom you otherwise communicated in connection with the Work.

21. All documents evidencing or concerning any communication in connection with the Work, the Litigation, Mr. Trump or any Trump Entity between you and any person, including but not limited to the following: (a) any literary agent; (b) any publishing house; (c) any marketing, advertising or public relations firm; (d) any of the persons listed in the "Acknowledgments" Section at pages 241 to 243 of *TrumpNation: The Art of Being the Donald*; (e) any bookstore; (f) any television, radio or other media outlet; (g) any internet outlet; and (h) any person you interviewed, used as a source or with whom you otherwise communicated in connection with the Work.

22. All documents evidencing or concerning any proposal to any publishing house, literary agent or other person concerning the Work.

23. All documents evidencing or concerning any communication between you and any person in connection with Mr. Trump, Mr. Trump's finances and net worth and any Trump Entity.

24. All documents evidencing or concerning the "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years," who are referenced at page 154 of *TrumpNation: The Art of Being the Donald*.

25. All documents supplied or shown by you to any of the "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years," who are referenced at page 154 of *TrumpNation: The Art of Being the Donald*.

26. All documents supplied or shown to you by any of the "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years," who are referenced at page 154 of *TrumpNation: The Art of Being the Donald*.
27. All documents evidencing or concerning any communication between you and the "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years," who are referenced at page 154 of *TrumpNation: The Art of Being the Donald*.
28. All documents evidencing or concerning the "confidential source" who is referenced at page 254, footnote 44 to Chapter 4, of *TrumpNation: The Art of Being the Donald*.
29. All documents supplied or shown by you to the "confidential source" who is referenced at page 254, footnote 44 to Chapter 4, of *TrumpNation: The Art of Being the Donald*.
30. All documents supplied or shown to you by the "confidential source" who is referenced at page 254, footnote 44 to Chapter 4, of *TrumpNation: The Art of Being the Donald*.
31. All documents evidencing or concerning any communication between you and the "confidential source" who is referenced at page 254, footnote 44 to Chapter 4, of *TrumpNation: The Art of Being the Donald*.
32. All documents evidencing or concerning any notes taken by you or by any person in connection with research, interviews, meetings or communications concerning the Work.
33. All documents evidencing or concerning any communication between you and any of the persons referenced in the "Acknowledgments" section of *TrumpNation: The Art of Being the Donald* at pages 241 to 243, in connection with the Work, the Litigation, Mr. Trump or any Trump Entity.
34. All documents evidencing or concerning the formulation, computation or selection of the publishing date or launch date for the Work.

35. All documents evidencing or concerning any marketing plans or strategies, sales plans or strategies, business plans or strategies, promotional efforts or other efforts to generate publicity in connection with the Work.

36. All documents evidencing or concerning all activities and efforts undertaken by any person to promote, market or generate publicity for the Work.

37. All promotional, publicity and marketing materials for the Work, including but not limited to print ads, television ads, radio ads, on-line ads, click ads and blogs.

38. All documents evidencing or concerning all efforts to promote, market or generate publicity for the Work through the Internet, including but not limited to all e-mail blasts and communications with bloggers.

39. All documents evidencing or concerning any communication between you and any person who participated in promoting, marketing or generating publicity for the Work.

40. All documents evidencing or concerning any communication between you and any other person in which you referenced, referred to, mentioned or described the Work or the Litigation, including but not limited to promotional, pitch and marketing materials concerning you or the Work.

41. All documents evidencing or concerning all communications between Warner Books and any other person in which Warner Books referenced, referred to, mentioned or described the Work, including but not limited to promotional, pitch and marketing materials concerning you, the Work or the Litigation.

42. All documents evidencing or concerning any appearances you made in connection with the Work, including but not limited to any appearance on television, on radio, at lectures, in

on-line chat rooms, in advertisements or at book signings, book readings, book discussions or similar appearances.

43. All documents evidencing or concerning distribution of the Work.
44. All documents evidencing or concerning sales of the Work, including but not limited to documents evidencing or concerning the number and location of such sales, the revenues generated by such sales and the profits generated by such sales.
45. All documents evidencing or concerning any advances, royalties or other payments you received or were credited for the Work.
46. All documents evidencing or concerning all fees, monies, payments and any other form of consideration, compensation or remuneration paid or rendered by any person in connection with the Work.
47. All documents evidencing or concerning serialization of or other subsidiary rights in the Work.
48. All documents evidencing or concerning the reissuing of the Work in paperback edition.
49. All documents evidencing or concerning the publication, distribution, promotion, marketing or advertising of the Work outside of the United States of America.
50. All documents evidencing or concerning publication of any excerpt of the Work, including but not limited to publication of the excerpt of the Work that appeared in the October 23, 2005 edition of the Sunday Business Section of *The New York Times*.
51. All audio tapes, videos or other recordings in connection with the Work.

52. All audio tapes, videos or other recordings of any persons you or any other person interviewed, or with whom you or any other person communicated, in connection with the Work, Mr. Trump or any Trump Entity.

53. All computer files, zip drives, CD Roms, diskettes or other computer storage system evidencing or concerning the Work or your communications in connection with the Work.

54. All audio tapes, videos or other recordings in connection with any employee of the Trump Organization or any affiliated company, including but not limited to Mr. Trump, Allen Weisselberg and Michelle Lokey Scarbrough.

55. All complaints and trial testimony, in whatever form, concerning any lawsuit in connection with your writing, editing or other work as an author, reporter or employee of a newspaper, magazine or other media company.

56. All documents evidencing or concerning all insurance policies that apply or may apply to losses resulting from the claims against you or Warner Books in this litigation.

57. All entries from your diaries, calendars, day planners, day timers, filofaxes and any other scheduling documents, whether on paper or in electronic format, from January 2000 to the present, concerning the Work or any meetings or communications you had or planned to have in connection with the Work.

58. All documents evidencing or concerning any public statements or comments you made or issued in connection with the Work or the Litigation, including but not limited to:

- a. all articles, press releases or other public statements appearing in any medium, whether in print, computer-generated or otherwise;
- b. all documents created, generated, prepared or reviewed in connection with such articles, press releases or public statements, including but not limited to all communications, guidelines, instructions, proposals, directives or

announcements concerning your public statements or responses to press inquiries regarding the Work or the Litigation; and

- c. all documents concerning all communications between you and any public relations, marketing or promotional firm in connection with the Work or the Litigation.

59. All documents evidencing or concerning any public statements or comments Warner Books made or issued in connection with the Work or the Litigation, including but not limited to:

- a. all articles, press releases or other public statements appearing in any medium, whether in print, computer-generated or otherwise;
- b. all documents created, generated, prepared or reviewed in connection with such articles, press releases or public statements, including but not limited to all communications, guidelines, instructions, proposals, directives or announcements concerning Warner Books' public statements or responses to press inquiries regarding the Work or the Litigation; and
- c. all documents concerning all communications between Warner Books and public relations firms regarding the Work or the Litigation.

60. All joint defense agreements, cost-sharing agreements or common interest agreements concerning the Litigation.

61. All invoices, bills or time records relating to any witness from whom you intend to elicit expert opinion testimony at trial.

62. All documents reviewed by any witness from whom you intend to elicit expert opinion testimony at trial.

63. All documents, including but not limited to reports and drafts of reports, prepared by or on behalf of any witness from whom you intend to elicit expert opinion testimony at trial.

64. All resumes and curricula vitae of each witness from whom you intend to elicit expert testimony at trial.

65. All resumes and curricula vitae of each witness from whom you do not intend to elicit expert testimony at trial, but whose work product has been reviewed by any witness from whom you intend to elicit expert testimony at trial.

66. All documents evidencing or concerning communications with any witness from whom you intend to elicit expert opinion testimony at trial.

Dated: June \_\_, 2006

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FRIEDMAN LLP

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Attorneys for Plaintiff  
Donald J. Trump

-----X  
DONALD J. TRUMP,  
Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME  
WARNER BOOK GROUP INC. and  
WARNER BOOKS, INC.  
Defendants.  
-----X

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION, CIVIL PART  
: CAMDEN COUNTY

:  
: Case No. L-545-06

:  
: PLAINTIFF DONALD J. TRUMP'S  
: FIRST REQUEST TO DEFENDANT TIME  
: WARNER BOOK GROUP INC. FOR THE  
: PRODUCTION OF DOCUMENTS

Pursuant to Rule 4:18-1 of the New Jersey Rules Governing Civil Practice, plaintiff Donald J. Trump hereby requests that defendant Time Warner Book Group Inc. produce and make available for inspection and copying the documents in his possession, custody or control that are described herein, within thirty (30) days from the date of service upon defendant's counsel, at the offices of Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New



York, New York 10019, at which time the documents should be segregated and identified by the number of the specific request to which they are responsive.

DEFINITIONS AND INSTRUCTIONS

As used herein:

A. The terms "you" or "your" means Time Warner Book Group Inc. and each of its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on its behalf.

B. The term "Warner Books, Inc." means Warner Books, Inc. and each of its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on its behalf.

C. The term "Warner Books" means Time Warner Book Group Inc. and Warner Books, Inc.

D. The term "*The New York Times*" means *The New York Times* and each of its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting or purporting to act on its behalf.

E. The term "Work" means the literary property entitled *TrumpNation: The Art of Being the Donald*, and any proposals, drafts, manuscripts, excerpts, sections, galley proofs or dummies of same.

F. The term "Litigation" means the lawsuit captioned, *Donald J. Trump v. Timothy L. O'Brien, Time Warner Book Group Inc. and Warner Books, Inc.*, Case No. L-545-06, filed in the Superior Court of New Jersey Law Division, Civil Part, Camden County.

G. The term "Mr. Trump" refers to Donald J. Trump.

H. The term "Trump Entity" refers to any corporation, partnership, association, organization, property or product that bears the "Trump" name or is controlled by Mr. Trump.

I. The term "O'Brien" refers to defendant Timothy L. O'Brien.

J. The term "manuscript" means the original form of work submitted for publication.

K. The term "galley proof" means the pre-publication copy sent to an author for final proofreading or to reviewers for pre-publication reviews.

L. The term "dummy" means a page or set of pages assembled in the exact position, form and style desired for the finished piece of printed work.

M. The term "person" means natural persons, corporations, partnerships, associations, joint ventures, sole proprietorships, firms, entities, businesses enterprises, contractors, stock exchanges, governmental or regulatory agencies or boards, as well as all divisions, subdivisions, bureaus, offices or other units thereof.

N. The term "communication" means every manner of transmitting, transferring, exchanging or sharing information, facts, opinions or thoughts in any form, whether orally, in

writing or otherwise, by any means whatsoever, including without limitation by memorandum, letter, note, mail, telephone, facsimile transmission, telex, telecopy, e-mail or any other means.

O. The terms "concerning" and "in connection with" mean relating to, referring to, regarding, referencing, reflecting, describing, discussing, evidencing, supporting, indicating, stating, mentioning, embodying, pertaining to, setting forth, commenting on, assessing, recording, constituting, comprising, touching upon, summarizing or having any logical or factual connection whatsoever to the subject matter in question.

P. The term "document" means any kind of written or graphic matter, however produced and reproduced, including matter written or produced by hand, typed, recorded, taped, photocopied, filed, telecopied, filmed, microfilmed, transcribed or otherwise created, generated or prepared, and including all originals, masters, drafts and non-identical copies bearing notations or marks not found on the originals, whether sent or received, and including without limitation any and all correspondence, memoranda, drafts, notes, diaries, cards, letters, statistics, summaries, analyses, submissions, applications, forms, reports, sketches, drawings, designs, specifications, telegraphs, minutes, agendas, schedules, contracts, agreements, addenda, studies, files, affidavits, financial records, account statements, checks, check stubs, general ledgers, calculations, journals, ledgers, purchase orders, invoices, receipts, bills, bills of lading, brochures, manuals, pamphlets, books, magazines, articles, instructions, directions, directives, rules, regulations, policy books, guidelines, work plans, questionnaires, surveys, licenses, vouchers, blueprints, notebooks, catalogues, bids, prospectuses, transcripts, stenographic or handwritten notes, regulatory reports or filings, publications, circulars, pictures, photographs, videotapes, films, computer printouts, computer disks, computer tapes, computer data, computer memory, e-mails, affidavits, declarations, expense records, logs, voice recordings, charts,

compilations, press releases, resumes, inter-office and intra-office communications, offers, bulletins, worksheets, papers, photographs, graphs, microfiche, microfilm, videotape, motion pictures, audio tape, cassettes, discs and any other data compilations of any kind or in any other form capable of being read, heard or otherwise understood.

Q. The term "and" as well as the term "or" shall be construed both disjunctively and conjunctively, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

R. The term "all" means "any and all," the term "any" means "any and all" and the term "each" means "all and each."

S. The singular form of a word shall be construed as a plural, and the plural as the singular, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

T. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

U. The use of capital letters, lower case letters or quotation marks in these Requests shall not be construed to limit the scope of any specific request contained herein.

V. In the event that any document or portion of any document within the scope of these Requests is withheld from production upon a claim of privilege, work product or for any other reason, you are requested to furnish, with respect to each such document, the following:

- a. a statement regarding the basis for any claim of privilege, work product or other forms of non-disclosure; and
- b. a sufficient description of the document, including:

- i. the title of the document and the nature and subject matter of its contents;
- ii. the date the document was prepared or any date appearing on the document;
- iii. the number of the document's pages, attachments and appendices;
- iv. the names of the persons who authored or prepared the document, and an identification by employment and title of each such person;
- v. the names of each person to whom the document, or a copy thereof, was sent, shown or made accessible, or to whom it was explained, together with an identification of each such person; and
- vi. the number of each paragraph of these Requests to which the document relates.

W. The documents produced in response to these Requests shall be produced as they are kept in the ordinary course of business and shall be organized so that Plaintiff can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

X. Each and every non-identical duplicate of a document within the scope of any request, whether different from the original because of stamps, indications of recipient, handwritten notes, marks, comments or attachment to different documents, or for any other reason, is a separate document to be produced in response hereto.

Y. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

Z. In the event that any document requested herein was formerly in your possession, custody or control and has been lost, destroyed or otherwise disposed of, you are requested to furnish a list identifying each such document and stating the following information with respect to each document:

- a. the title of the document and the nature and subject matter of its contents;
- b. the identity(ies) of the person(s) who prepared or authored the document, and, if applicable, the persons to whom the document was sent or was intended to be sent;
- c. the date on which the document was prepared or transmitted; and
- d. the date on which the document was lost, destroyed or otherwise disposed of, the manner and conditions of and reasons for such destruction or other disposition and the persons requesting and performing the destruction or other disposition.

AA. Documents are to be produced in full and unexpurgated form without abbreviation or redaction.

BB. These Requests are continuing in nature and oblige you to produce promptly additional documents or information whenever they are acquired, discovered or come into existence after the date of the initial production.

CC. Each of these Requests seeks all documents, wherever located, which are in the actual or constructive possession, custody or control of you or of your present or former attorneys, financial advisors, accountants, bookkeepers, agents, representatives, directors, officers, partners, shareholders or employees, and its affiliated partnerships, as well as all documents which are known to exist and can be obtained by you from any other source.

DOCUMENT REQUESTS

1. All documents concerning the Work.
2. All drafts of the Work.
3. All manuscripts, galley proofs and dummies in connection with the Work.
4. All documents evidencing or concerning any communication in connection with the Work.
5. All documents concerning the Litigation.
6. All documents evidencing or concerning any communication in connection with the Litigation.
7. All documents evidencing or concerning Mr. Trump.
8. All documents evidencing or concerning any Trump Entity.
9. All documents evidencing or concerning Mr. Trump's finances or net worth.
10. All documents evidencing or concerning the financial condition, value, assets or liabilities of any Trump Entity.
11. All proposals for the Work that were submitted to you by O'Brien.
12. All agreements and contracts between you and O'Brien.
13. All agreements and contracts between you and any literary agent of O'Brien concerning the Work.
14. All documents evidencing or concerning any agreement or contract in connection with the Work, including but not limited to any agreement or contract involving you or involving

any literary agent, author, publishing house, public relations firm, law firm, accounting firm, graphics firm, advertising firm, newspaper or magazine, marketing firm or consulting firm.

15. All documents evidencing or concerning any communication between you and any other person concerning the Work, the Litigation, Mr. Trump or any Trump Entity, including but not limited to any literary agent, author, publishing house, public relations firm, law firm, accounting firm, graphics firm, advertising firm, newspaper or magazine, media outlet, marketing firm or consulting firm.

16. All documents concerning the Work, the Litigation, Mr. Trump or any Trump Entity supplied or shown to you by any person, including but not limited to any literary agent, author, publishing house, public relations firm, accounting firm, graphics firm, advertising firm, newspaper or magazine, media outlet, marketing firm or consulting firm.

17. All documents concerning the Work, the Litigation, Mr. Trump or any Trump Entity supplied or shown by you to any person, including but not limited to any literary agent, author, publishing house, public relations firm, accounting firm, graphics firm, advertising firm, newspaper or magazine, media outlet, marketing firm or consulting firm.

18. All documents supplied or shown by you to O'Brien concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

19. All documents supplied or shown by O'Brien to you concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

20. All documents evidencing or concerning any communication between you and O'Brien in connection with the Work, the Litigation, Mr. Trump or any Trump Entity.

21. All documents supplied or shown by you to O'Brien's literary agent concerning the Work, the Litigation, Mr. Trump or any Trump Entity.



22. All documents supplied or shown by O'Brien's literary agent to you concerning the Work, the Litigation, Mr. Trump or any Trump Entity.

23. All documents evidencing or concerning any communication between you and O'Brien's literary agent in connection with the Work, the Litigation, Mr. Trump or any Trump Entity.

24. All documents evidencing or concerning any communication between you and any person in connection with Mr. Trump's finances and net worth.

25. All documents evidencing or concerning any communication between O'Brien and any person in connection with Mr. Trump's finances and net worth.

26. All documents evidencing or concerning the persons O'Brien interviewed in connection with the Work.

27. All documents evidencing your policies, practices and procedures for fact-checking books that you publish.

28. All documents evidencing or concerning your fact-checking of the Work.

29. Documents sufficient to identify all of your employees and contractors who were involved in any way with the Work.

30. All documents evidencing or concerning the formulation, computation or selection of the publishing date or launch date for the Work.

31. All documents evidencing or concerning marketing plans or strategies, sales plans or strategies, business plans or strategies, promotional efforts or any other efforts to generate publicity in connection with the Work.

32. All documents evidencing or concerning all activities and efforts undertaken by any person to promote, market or generate publicity for the Work.
33. All promotional, publicity and marketing materials for the Work, including but not limited to print ads, television ads, radio ads, on-line ads, click ads and blogs.
34. All documents evidencing or concerning all efforts to promote, market or generate publicity for the Work through the Internet, including but not limited to all e-mail blasts and communications with bloggers.
35. All documents evidencing or concerning any communication between you and any person who participated in promoting, marketing or generating publicity for the Work.
36. All documents evidencing or concerning any communication between you and any other person in which you referenced, referred to, mentioned or described the Work or the Litigation, including but not limited to promotional, pitch and marketing materials concerning the Work.
37. All documents evidencing or concerning all communications between O'Brien and any other person in which O'Brien referenced, referred to, mentioned or described the Work, including but not limited to promotional, pitch and marketing materials concerning O'Brien, the Work or the Litigation.
38. All documents evidencing or concerning any appearances O'Brien made in connection with the Work, including but not limited to any appearance on television, on radio, at lectures, in on-line chat rooms, in advertisements or at book signings, book readings, book discussions or similar appearances.
39. All documents evidencing or concerning distribution of the Work.

40. All documents evidencing or concerning sales of the Work, including but not limited to documents evidencing or concerning the number and location of such sales, the revenues generated by such sales and the profits generated by such sales.

41. All documents evidencing or concerning any advances, royalties or other payments O'Brien received or was credited for the Work.

42. All documents evidencing or concerning all fees, monies, payments and any other form of consideration, compensation or remuneration paid by you to any person in connection with the Work.

43. All documents evidencing or concerning all fees, monies, payments and any other form of consideration, compensation or remuneration paid by any person to any person in connection with the Work.

44. Your financial books and records concerning the Work.

45. All documents evidencing or concerning serialization of or other subsidiary rights in the Work.

46. All documents evidencing or concerning the reissuing of the Work in paperback edition.

47. All documents evidencing or concerning the publication, distribution, promotion, marketing or advertising of the Work outside of the United States of America.

48. All documents evidencing or concerning publication of any excerpt of the Work, including but not limited to publication of the excerpt of the Work that appeared in the October 23, 2005 edition of the Sunday Business Section of *The New York Times*.

49. All documents evidencing or concerning any communication between you and *The New York Times* in connection with the Work or the Litigation.
50. All documents supplied or shown by you to *The New York Times* concerning the Work or the Litigation.
51. All documents supplied or shown to you by *The New York Times* concerning the Work or the Litigation.
52. All audio tapes, videos or other recordings in connection with the Work.
53. All audio tapes, videos or other recordings of any persons interviewed by O'Brien or any other person in connection with the Work, the Litigation, Mr. Trump or any Trump Entity.
54. All computer files, zip drives, CD Roms, diskettes or other computer storage system evidencing or concerning the Work or your communications in connection with the Work.
55. All audio tapes, videos or other recordings in connection with any employee of the Trump Organization or any affiliated company, including but not limited to Mr. Trump, Allen Weisselberg and Michelle Lokey Scarbrough.
56. All documents evidencing or concerning all insurance policies that apply or may apply to losses resulting from the claims against you and O'Brien in this litigation.
57. All entries from the diaries, calendars, day planners, day timers, filofaxes and any other scheduling documents, whether on paper or in electronic format, from January 2000 to the present, of all of your employees and contractors who were involved with the Work, concerning the Work or any meetings or communications they had or planned to have in connection with the Work.

58. All documents evidencing or concerning public statements or comments you made or issued in connection with the Work or the Litigation, including but not limited to:

- a. all articles, press releases or other public statements appearing in any medium, whether in print, computer-generated or otherwise;
- b. all documents created, generated, prepared or reviewed in connection with such articles, press releases or public statements, including but not limited to all communications, guidelines, instructions, proposals, directives or announcements concerning your public statements or responses to press inquiries regarding the Work or the Litigation; and
- c. all documents concerning all communications with public relations firms regarding the Work or the Litigation.

59. All documents evidencing or concerning public statements or comments O'Brien made or issued in connection with the Work or the Litigation, including but not limited to:

- a. all articles, press releases or other public statements appearing in any medium, whether in print, computer-generated or otherwise;
- b. all documents created, generated, prepared or reviewed in connection with such articles, press releases or public statements, including but not limited to all communications, guidelines, instructions, proposals, directives or announcements concerning O'Brien's public statements or responses to press inquiries regarding the Work or the Litigation; and
- c. all documents concerning all communications with public relations firms regarding the Work or the Litigation.

60. All joint defense agreements or cost-sharing agreements or common interest agreements concerning the Litigation.

61. All invoices, bills or time records relating to any witness from whom you intend to elicit expert opinion testimony at trial.

62. All documents reviewed by any witness from whom you intend to elicit expert opinion testimony at trial.

63. All documents, including but not limited to reports and drafts of reports, prepared by or on behalf of any witness from whom you intend to elicit expert opinion testimony at trial.

64. All resumes and curricula vitae of each witness from whom you intend to elicit expert testimony at trial.

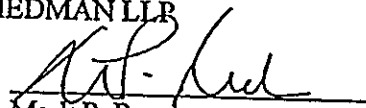
65. All resumes and curricula vitae of each witness from whom you do not intend to elicit expert testimony at trial, but whose work product has been reviewed by any witness from whom you intend to elicit expert testimony at trial.

66. All documents evidencing or concerning communications with any witness from whom you intend to elicit expert opinion testimony at trial.

Dated: June \_\_, 2006

KASOWITZ, BENSON, TORRES &  
FRIEDMAN LLP


By:

  
Mark P. Ressler

1633 Broadway  
New York, New York 10019  
(212) 506-1768

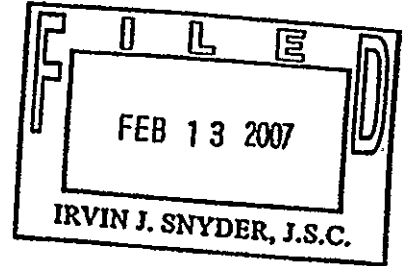
BROWN & CONNERY LLP

By:

  
William M. Tambussi

360 Haddon Avenue  
Westmont, New Jersey 08108  
(856) 854-8900

Attorneys for Plaintiff  
Donald J. Trump



BY THE COURT

**TRUE COPY**  
**SUPERIOR COURT OF NEW JERSEY**

DONALD J. TRUMP,  
  
Plaintiff,  
  
vs.  
  
TIMOTHY O'BRIEN, TIME WARNER  
BOOK GROUP INC., AND WARNER  
BOOKS INC.,  
  
Defendants.

SUPERIOR COURT OF NEW JERSEY LAW  
DIVISION, CIVIL PART CAMDEN  
COUNTY

Docket No. L-545-06

ORDER

THIS MATTER having come before the Court on December 20, 2006 on plaintiff's motion to compel production of materials withheld by defendants pursuant to the newsperson's privilege, and on such discovery and other issues raised by the parties; and Mark P. Ressler, Esq. of Kasowitz, Benson, Torres & Friedman, LLP and William M. Tambussi, Esq. of Brown & Connery, LLP, appearing for plaintiff Donald J. Trump; and Andrew J. Ceresney, Esq. of Debevoise & Plimpton LLP and Mark S. Melodia, Esq. of Reed Smith LLP, appearing for defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc.; and the Court having considered the arguments and submissions of counsel; and for good cause shown,

IT IS on this 13<sup>TH</sup> day of February, 2007, ORDERED as follows:

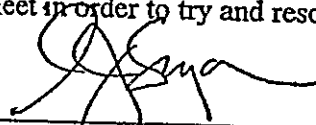
I. **Plaintiff's Motion to Compel Discovery (Returnable December 20, 2006)**

1. For the reasons set forth on the record on December 20, 2006:
  - a. New York law governs the applicability and scope of the newsperson's privilege (see N.Y. Civ. Rights Law § 79-h (2006) ("New York Shield Law")), relating to the documents or other information – including confidential and non-confidential sources – gathered or generated in connection with researching, writing, publishing, or promoting *TrumpNation: The Art of Being the Donald* (the "Book").
  - b. The New York Shield Law does not protect from discovery the documents or other information – including confidential and non-confidential sources – gathered or generated in connection with researching, writing, publishing, or promoting the Book.
  - c. No constitutional or common-law journalist's privilege protects from discovery the documents or other information – including confidential and non-confidential sources – gathered or generated in connection with researching, writing, publishing, or promoting the Book.
2. Defendants shall produce all responsive documents or other information previously withheld on the basis of the newsperson's privilege within thirty days (30) hereof.
3. Defendants shall provide plaintiff a revised privilege log and a revised redaction log that reflect all documents withheld or redacted pursuant to any basis other than the newsperson's privilege.



II. **Further Orders by the Court**

1. By March 2, 2007, plaintiff shall provide defendants the information they have requested regarding any business opportunities that plaintiff claims he lost because of the allegedly defamatory statements.
2. By March 9, 2007, plaintiff shall provide defendants the remaining documents to be produced by Weiser LLP pursuant to this Court's Order of November 3, 2006 and a redaction log relating to those documents.
3. Counsel for all parties are directed to meet in order to try and resolve this case.



---

Honorable Kevin J. Snyder, J.S.C.

**REED SMITH LLP**  
*Formed in the State of Delaware*  
Princeton Forrestal Village  
136 Main Street, Suite 250  
P.O. Box 7839  
Princeton, New Jersey 08543-7839  
(609) 987-0050

**DEBEVOISE & PLIMPTON LLP**  
919 Third Avenue  
New York, New York 10022  
(212) 909-6000

Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER  
BOOK GROUP INC., and WARNER BOOKS  
INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

CIVIL ACTION

DEFENDANT TIMOTHY L.  
O'BRIEN'S RESPONSES AND  
OBJECTIONS TO PLAINTIFF'S  
SECOND SET OF  
INTERROGATORIES

To: Mare E. Kasowitz, Esq.  
Daniel R. Benson, Esq.  
Mark P. Ressler, Esq.  
Maria Gorecki, Esq.

William M. Tambussi, Esq.  
William F. Cook, Esq.

Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, NY 10019

Brown & Connery LLP  
360 Haddon Avenue  
Westmont, NJ 08108

PLEASE TAKE NOTICE that the following are the responses and objections of  
defendant Timothy L. O'Brien ("defendant" or "O'Brien") to plaintiff Donald J. Trump's

("plaintiff" or "Trump") Second Set of Interrogatories to Defendant Timothy L. O'Brien  
(the "Interrogatories").

Dated: January 11, 2008

**DEBEVOISE & PLIMPTON LLP**

By: 

Mary Jo White, Esq.

Andrew J. Ceresney, Esq.

Andrew M. Levine, Esq.

919 Third Avenue

New York, New York 10022

**REED SMITH LLP**

Mark S. Melodia, Esq.

James F. Dial, Esq.

Princeton Forrestal Village

136 Main Street, Suite 250

P.O. Box 7839

Princeton, New Jersey 08543-7839

Attorneys for Defendants

Pursuant to R. 4:17 of the New Jersey Court Rules (the "Rules"), defendant O'Brien, by his attorneys Debevoise & Plimpton LLP and Reed Smith LLP, hereby answers and objects as follows to plaintiff's Interrogatories.

Subject to the following general and specific objections, defendant answers plaintiff's Interrogatories as set forth below. The answers reflect O'Brien's present knowledge of the matters covered by the Interrogatories and O'Brien's best efforts to understand the Interrogatories and identify responsive information. O'Brien reserves the right to amend or supplement his answers and objections herein.

#### Introductory Statement

All of the General Objections set forth herein are incorporated in each of the specific responses and objections to the Interrogatories set forth below and have the same force and effect as if fully set forth therein. Any objection, or lack of objection, to any portion of any Interrogatory should not be deemed an admission that defendant has information sought in a particular Interrogatory.

Nothing in defendant's answers and objections herein shall be construed as a waiver of defendant's rights to: (i) object on the grounds of competency, relevance, materiality, hearsay, or any other proper ground to the use of any information provided in these responses for any purpose, in whole or in part, in any proceeding in this or any other action; (ii) object on any and all grounds, at any time, to any other discovery relating to the subject matter of the Interrogatories; or (iii) assert the attorney-client privilege, work product doctrine, or newperson's privilege (N.J.S.A. 2A:48A-21 to 21.8 or similar protections afforded by other states), as well as constitutional (federal and

state) and common law protections, or any other privilege or right. Furthermore, nothing in defendant's answers and objections herein shall be construed as prejudicing defendants' interlocutory appeal regarding the newsperson's privilege, which currently is pending before the Appellate Division.

#### General Objections

1. Defendant objects to the Interrogatories to the extent they purport to impose burdens other than or beyond those imposed by R. 4:10-2 and R. 4:17-4. Defendant will respond to the Interrogatories only pursuant to the requirements of the Rules.
2. Defendant objects to the Interrogatories to the extent they seek discovery of information neither relevant to the subject matter of this action, material and necessary to the prosecution or defense of this action, nor reasonably calculated to lead to the discovery of admissible evidence.
3. Defendant objects to the Interrogatories to the extent they seek information protected from disclosure by the attorney-client privilege, work product doctrine, newsperson's privilege, or any other applicable privilege or protection from discovery recognized by federal or state Constitution, statute, at common law, or by the Rules. Defendant particularly objects to the Interrogatories to the extent a response would require disclosure of information protected by the newsperson's privilege that could potentially lead to the disclosure of the identities of defendant O'Brien's confidential sources. To the extent privileged information or attorney work-product is inadvertently disclosed in defendant's answers to the Interrogatories, such disclosure is

without prejudice to, and is not a waiver of, any subsequent assertion of privilege or attorney work-product by defendants as to the information disclosed or as to other information.

4. Defendant objects to the Interrogatories to the extent they call for the production of confidential business, personnel, or personal information.

5. Defendant objects to the Interrogatories to the extent that they are oppressive, vague, ambiguous, unduly burdensome, and overly broad.

6. Defendant objects to the Interrogatories to the extent that they seek information for improper purposes, including the use of any information outside of this litigation.

7. Defendant objects to the Interrogatories to the extent they are unreasonably cumulative or duplicative.

8. Defendant objects to the Interrogatories to the extent they seek information that already is in the possession, custody, or control of plaintiff, is as readily available to plaintiff as to defendant, or is ascertainable by plaintiff from public sources.

9. Defendant objects to the Interrogatories to the extent they seek information outside defendant's possession, custody, or control. Defendant's answers herein are limited to information that is within his business or personal information.

10. Defendant objects to the Interrogatories as overly broad to the extent no time limitation is included in the Interrogatories.

11. Defendant's objections and responses to the Interrogatories do not constitute, and shall not be interpreted as, defendant's agreement with, or admission as to

the truth or accuracy of any legal or factual characterizations or allegations stated or implied in any of the Interrogatories.

12. The information in these responses is provided as of the date hereof. While reserving the right to supplement or amend the answers set forth herein, defendant declines any obligation to supplement such answers except as required by the Rules.

**Objections and Answers to Specific Interrogatories**

**INTERROGATORY NO. 1:**

With reference to your October 15, 2007 deposition testimony, please answer the following interrogatories:

- a. Identify all "documented evidence, as well as media reports," that you relied upon "as a basis for measuring [the statements of the three unnamed sources cited on page 154 of the Work] against that which was demonstrably true," (see O'Brien Deposition Transcript (herein, "Transcript"), at 356).
- b. Identify all "other individuals who were familiar with [the three unnamed sources cited on page 154 of the Work] who assessed their level of intimacy with the Trump organization," (see Transcript at 357).
- c. Identify all "other information from" the three unnamed sources cited on page 154 of the Work and all "financial information pertaining to Donald's business activities and his finances that [you were] able to verify with a great deal of certainty," (see Transcript at 357).

**OBJECTIONS AND ANSWERS TO INTERROGATORY NO. 1:**

a. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, the "documented evidence, as well as media reports," that I relied upon "as a basis for measuring [the statements of the three [confidential] sources on page 154 of the Work] against what was demonstrably true," included documents identified in response to Plaintiff's First Set of Interrogatories, Interrogatory Nos. 7 and 8, as supplemented by letter dated August 1, 2007.

b. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, the "other individuals who were familiar with [the three [confidential] sources cited on page 154 of the Work]," with whom I had non-confidential communications to assess the three confidential sources' "level of intimacy with the Trump organization," included individuals listed in response to Plaintiff's First Set of Interrogatories, Interrogatory No. 4, as supplemented by letter dated August 1, 2007.

c. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsperson's privilege, as well as by other constitutional, statutory, and



common law protections. Subject to the foregoing general and specific objections, the “other information from” the three confidential sources cited on page 154 of the Work and “financial information pertaining to Donald’s business activities and his finances that [[I was]] able to verify with a great deal of certainty,” included information relating to the following: (1) plaintiff’s interest in the limited partnerships that owned the West Side Yards project; (2) plaintiff’s negotiations with Hilton in the mid-1990s regarding the potential sale of plaintiff’s casino company; (3) plaintiff’s business dealings with Kenneth Shapiro and Daniel Sullivan; (4) negotiations regarding the restructuring of Trump Hotels and Casino Resorts, Inc. in 2004; (5) the sale of Fred Trump’s real estate portfolio in Brooklyn in 2004; (6) plaintiff’s interest in 40 Wall Street and the level of borrowings relating to that property; (7) plaintiff’s interest in the GM Building and litigation surrounding that interest; (8) plaintiff’s interest in Trump International Hotel and Tower on Columbus Circle in New York; (9) plaintiff’s borrowings from Ullico in connection with Mar-a-Lago; and (10) plaintiff’s financial condition and the restructuring of plaintiff’s outstanding debt during certain periods.

**INTERROGATORY NO. 2:**

With reference to your October 16, 2007 deposition testimony, please answer the following interrogatories:

- a. Set forth with specificity all steps you took to “background” each of the three unnamed sources cited on page 154 of the Work and “their respective bona fides independently,” (see Transcript at 670).

b. Set forth with specificity all steps you took "to do research to corroborate statements" that each of the three unnamed sources cited on page 154 of the Work made to you.

c. Identify each and every person whom you communicated with prior to October, 2005, to "background" each of the three unnamed sources cited on page 154 of the Work.

d. Identify each and every person whom you communicated with prior to October, 2005, to "background" the "respective bona fides independently" of each of the three unnamed sources cited on page 154 of the Work.

e. Identify each and every document that you reviewed prior to October, 2005 to "background" each of the three unnamed sources cited on page 154 of the Work.

f. Identify each and every document that you reviewed prior to October, 2005 to "background" the "respective bona fides independently" of each of the three unnamed sources cited on page 154 of the Work.

**OBJECTIONS AND ANSWERS TO INTERROGATORY NO. 2:**

a. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, the steps I took to "background" each of the three confidential sources cited on page 154 of

the Work and "their respective bona fides" included: (1) reviewing documentary evidence, including media reports, relating to the confidential sources and/or plaintiff; (2) conducting interviews with individuals knowledgeable about plaintiff's and/or the sources' backgrounds; (3) conducting interviews with the sources themselves; and (4) verifying information the three confidential sources provided against information available to me from other sources. Defendant also refers plaintiff to those steps described in: (1) defendant's response to Plaintiff's First Set of Interrogatories, Interrogatory No. 13, as supplemented by letter dated August 1, 2007, which explained defendant's fact-checking practices; and (2) defendant's deposition testimony, including at pages 44-48, 356-57, and 670.

b. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, the steps I took "to do research to corroborate statements" that each of the three confidential sources cited on page 154 of the Work made to me, included: (1) reviewing documentary evidence, including media reports, relating to the confidential sources and/or plaintiff; (2) conducting interviews with individuals knowledgeable about plaintiff's and/or the sources' backgrounds; (3) conducting interviews with the sources themselves; and (4) verifying information the three confidential sources provided against information available to me from other sources. Defendant also refers plaintiff to those steps described in: (1) defendant's response to Plaintiff's First Set of Interrogatories,

Interrogatory No. 13, as supplemented by letter dated August 1, 2007, which explained defendant's fact-checking practices; and (2) defendant's deposition testimony, including at pages 44-48, 356-57, and 670.

c. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, persons with whom I had non-confidential communications prior to October 2005 to "background" each of the three confidential sources cited on page 154 of the Work included individuals listed in response to Plaintiff's First Set of Interrogatories, Interrogatory No. 4, as supplemented by letter dated August 1, 2007.

d. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, persons with whom I had non-confidential communications prior to October 2005 to "background" the "respective bona fides" of the three confidential sources cited on page 154 of the Work included individuals listed in response to Plaintiff's First Set of Interrogatories, Interrogatory No. 4, as supplemented by letter dated August 1, 2007.

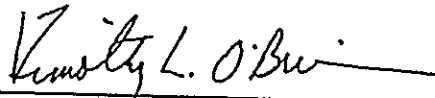
e. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsperson's privilege, as well as by other constitutional, statutory, and

common law protections. Subject to the foregoing general and specific objections, documents that I reviewed prior to October 2005 to "background" the three unnamed sources cited on page 154 of the Work included documents identified in response to Plaintiff's First Set of Interrogatories, Interrogatory Nos. 7 and 8, as supplemented by letter dated August 1, 2007.

f. Defendant objects to this Interrogatory to the extent that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, documents that I reviewed prior to October 2005 to "background" the "respective bona fides independently" of the three unnamed sources cited on page 154 of the Work included documents identified in response to Plaintiff's First Set of Interrogatories, Interrogatory Nos. 7 and 8, as supplemented by letter dated August 1, 2007.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the foregoing answers are true and correct. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Timothy L. O'Brien

DATED: January 11, 2008

CONFIDENTIAL

\* \* \* C O N F I D E N T I A L \* \* \*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

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DONALD J. TRUMP, )  
)  
Plaintiff, )  
)  
vs. )  
)  
TIMOTHY L. O'BRIEN, TIME )  
WARNER BOOK GROUP INC., )  
and WARNER BOOKS INC., )  
)  
Defendants. )  
----- )

No. CAM-L-545-06

December 5, 2007  
9:37 a.m.

Deposition of JEFFREY S. McCONNEY, held  
at the offices of Kasowitz, Benson, Torres &  
Friedman, 1633 Broadway, New York, New York,  
before Laurie A. Collins, a Registered  
Professional Reporter and Notary Public of  
the State of New York.

2

1  
 2 APPEARANCES:  
 3  
 4 BROWN & CONNERY LLP  
 5 Attorneys for Plaintiff and Witness  
 6 360 Haddon Avenue  
 7 Westmont, New Jersey 08108  
 8 BY: WILLIAM M. TAMBUSI, ESQ.  
 9 WILLIAM F. COOK, ESQ.  
 10 - and -  
 11 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
 12 1633 Broadway  
 13 New York, New York 10019-6799  
 14 BY: MARK P. RESSLER, ESQ.  
 15 MARIA GORECKI, ESQ.  
 16  
 17 DEBEVOISE & PLIMPTON LLP  
 18 Attorneys for Defendants  
 19 919 Third Avenue  
 20 New York, New York 10022  
 21 BY: ANDREW J. CERESNEY, ESQ.  
 22 ANDREW M. LEVINE, ESQ.  
 23 JULIE S. SUH, ESQ.  
 24 - and -  
 25

4

1  
 2 THE VIDEOGRAPHER: Good morning. We  
 3 are on the record. Today's date is December  
 4 5, 2007. The time on the video monitor is  
 5 9:37 a.m. This is the beginning of Tape  
 6 Number 1 in the videotaped deposition of  
 7 Jeffrey McConney in the case of Donald J.  
 8 Trump versus Timothy L. O'Brien, Time Warner  
 9 Book Group, Incorporated, et al., Case Number  
 10 CAM-L-545-06. This case is filed in the  
 11 Superior Court of New Jersey, Law Division:  
 12 Camden County.  
 13 At this time will counsel please state  
 14 their appearance.  
 15 MR. TAMBUSI: William Tambussi and  
 16 William Cook of Brown & Connery; and Maria  
 17 Gorecki of Kasowitz, Benson for Donald Trump.  
 18 MR. CERESNEY: Andrew Ceresney, Andrew  
 19 Levine, and Julie Suh from Debevoise &  
 20 Plimpton; and Mark Melodia from Reed Smith on  
 21 behalf of the defendants, Timothy O'Brien,  
 22 Time Warner Book Group, and Warner Books, Inc.  
 23 THE VIDEOGRAPHER: Would the court  
 24 reporter please swear in the witness.  
 25

3

1  
 2 APPEARANCES (continued):  
 3  
 4 REED SMITH LLP  
 5 Princeton Forrestal Village  
 6 136 Main Street, Suite 250  
 7 P.O. Box 7839  
 8 Princeton, New Jersey 08543-7839  
 9 BY: MARK S. MELODIA, ESQ.  
 10  
 11 ALSO PRESENT:  
 12 DEVERELL WRITE, Videographer  
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 2 JEFFREY S. McCONNEY,  
 3 called as a witness, having been duly sworn  
 4 by the notary public, was examined and  
 5 testified as follows:  
 6 EXAMINATION BY  
 7 MR. CERESNEY:  
 8 Q. Good morning, Mr. McConney.  
 9 A. Good morning.  
 10 Q. Let me just reintroduce myself on the  
 11 record. I'm Andrew Ceresney. I'm from Debevoise,  
 12 and I represent the defendants in this matter.  
 13 I'm going to ask you a few questions today about  
 14 the lawsuit brought by Mr. Trump against my  
 15 clients.  
 16 Are you represented by counsel today?  
 17 A. Yes.  
 18 Q. Who are your lawyer or lawyers?  
 19 A. Maria Gorecki and Mr. Tambussi.  
 20 Q. Do they represent you in your personal  
 21 capacity?  
 22 A. Yes.  
 23 Q. Your testimony is under oath, and it's  
 24 being taken down by a stenographer and  
 25 videographer and may be played at trial or used



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|---|--|
| <p style="text-align: right;">134</p> <p>1           McConney - Confidential<br/> 2 that you will provide GAAP financial statements<br/> 3 for Mr. Trump?<br/> 4     A. I'm sorry, one more time.<br/> 5     Q. Is Mr. Borbet asking you to confirm<br/> 6 that Mr. Trump can make the representation in<br/> 7 these loan documents that he will provide GAAP<br/> 8 financial statements for himself?<br/> 9     A. If I read this correctly, usually what<br/> 10 happens is we provide the financial statement to<br/> 11 the bank. And this clause is saying that we<br/> 12 provided them the financial statement already, and<br/> 13 that statement was in accordance with GAAP.<br/> 14     Q. It's a reference to the personal<br/> 15 financial statement; correct?<br/> 16     A. I believe so, yes.<br/> 17     Q. And it's a reference to it being<br/> 18 prepared in accordance with GAAP; correct?<br/> 19     A. Correct.<br/> 20     Q. And Mr. Borbet is asking whether it's<br/> 21 appropriate to say this financial statement has<br/> 22 been prepared in accordance with GAAP; correct?<br/> 23     A. I may be saying the same thing in<br/> 24 different words, but I think he's saying does<br/> 25 Donald's statement say it's not prepared in</p> | <p style="text-align: right;">136</p> <p>1           McConney - Confidential<br/> 2     A. I don't think so.<br/> 3     Q. Because net worth is inherently assets<br/> 4 minus liabilities; correct?<br/> 5     A. As I know it, yes.<br/> 6     Q. Where does Weiser get the information<br/> 7 on liabilities that they use in compiling the<br/> 8 statements of financial condition?<br/> 9     A. I believe there's two sources. One, I<br/> 10 give them a schedule by entity of the outstanding<br/> 11 loans, the interest rate, maturity dates. They<br/> 12 also do audits on some of those books and records,<br/> 13 so they would have it confirmed by a third party.<br/> 14 It can also be in those financial statements.<br/> 15 They also have access to all our documents.<br/> 16     Q. Do you know if they actually check all<br/> 17 your documents or if they just take your list and<br/> 18 accept that?<br/> 19     A. I don't know.<br/> 20     Q. Where do you compile your list from?<br/> 21     A. The list of the outstanding loan<br/> 22 obligations?<br/> 23     Q. Right.<br/> 24     A. I compile it from a list of monthly<br/> 25 interest statements or loan payment statements.</p> |
| <p style="text-align: right;">135</p> <p>1           McConney - Confidential<br/> 2 accordance with GAAP.<br/> 3     Q. Right. And what's your response up<br/> 4 top? You see there's an e-mail from you up top in<br/> 5 response to this chain?<br/> 6     A. In C can we delete "in accordance with<br/> 7 GAAP" and replace it with "on a consistent basis"?<br/> 8     Q. And why did you suggest that?<br/> 9     A. Because it wasn't prepared in<br/> 10 accordance with GAAP.<br/> 11     Q. The financial statements were not<br/> 12 prepared in accordance with GAAP?<br/> 13     A. Correct. And they say so.<br/> 14     Q. And therefore you couldn't, in a loan<br/> 15 document, represent that you're going to provide<br/> 16 financial statements prepared in accordance with<br/> 17 GAAP?<br/> 18     A. Right. And I'm not going to make a<br/> 19 representation to the bank, especially if they<br/> 20 read the opinion and see it's not there. It would<br/> 21 be a blatant misrepresentation.<br/> 22     Q. One other question before we take a<br/> 23 break. Is it possible to determine a person's net<br/> 24 worth without looking at the individual<br/> 25 liabilities?</p>   | <p style="text-align: right;">137</p> <p>1           McConney - Confidential<br/> 2     Q. Where do you get those from?<br/> 3     A. The statements?<br/> 4     Q. Yeah.<br/> 5     A. From the banks that want to get paid.<br/> 6 They will send us a statement, and we maintain the<br/> 7 files. I have somebody pull out the statements<br/> 8 for the relevant month, and we compile -- compile<br/> 9 is not the right -- prepare a statement based on<br/> 10 the information.<br/> 11     Q. How long does it take you to do that?<br/> 12     A. It just depends.<br/> 13     Q. A few hours?<br/> 14     A. If I sat in a dark room by myself, half<br/> 15 an hour, to an hour.<br/> 16     Q. It's not hard to prepare?<br/> 17     A. No. On a normal day with 48 phone<br/> 18 calls and 68 different e-mails, it would take<br/> 19 hours. Actually now I have somebody else prepare<br/> 20 them, and I just check.<br/> 21     Q. Do you provide that to Weiser so they<br/> 22 can determine what liabilities are outstanding;<br/> 23 correct?<br/> 24     A. Twofold: one for the liabilities on<br/> 25 the liabilities side, and also for the footnote</p>   |

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\* \* \* C O N F I D E N T I A L \* \* \*  
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

DONALD J. TRUMP, )  
)  
Plaintiff, )  
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vs. )  
)  
TIMOTHY L. O'BRIEN, TIME )  
WARNER BOOK GROUP INC., )  
and WARNER BOOKS INC., )  
)  
Defendants. )  
----- )

No. CAM-L-545-06

December 6, 2007  
9:10 a.m.

Continued deposition of JEFFREY S. McCONNEY, held at the offices of Kasowitz, Benson, Torres & Friedman, 1633 Broadway, New York, New York, before Laurie A. Collins, a Registered Professional Reporter and Notary Public of the State of New York.

312

1  
 2 APPEARANCES:  
 3  
 4 BROWN & CONNERY LLP  
 5 Attorneys for Plaintiff  
 6 360 Haddon Avenue  
 7 Westmont, New Jersey 08108  
 8 BY: WILLIAM M. TAMBUSI, ESQ.  
 9 WILLIAM F. COOK, ESQ.  
 10 - and -  
 11 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
 12 1633 Broadway  
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 14 BY: MARK P. RESSLER, ESQ.  
 15 MARIA GORECKI, ESQ.  
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 17 DEBEVOISE & PLIMPTON LLP  
 18 Attorneys for Defendants  
 19 919 Third Avenue  
 20 New York, New York 10022  
 21 BY: ANDREW J. CERESNEY, ESQ.  
 22 ANDREW M. LEVINE, ESQ.  
 23 JULIE S. SUH, ESQ.  
 24 - and -  
 25

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1  
 2 THE VIDEOGRAPHER: We're on the record.  
 3 Today's date is December 6th, 2007. The time  
 4 on the video monitor is 9:10 a.m. This is the  
 5 beginning of Tape Number 1, Volume II, of the  
 6 continued videotaped deposition of Jeffrey  
 7 McConney.  
 8 JEFFREY S. MCCONNEY,  
 9 resumed as a witness, having been previously  
 10 sworn by the notary public, was examined and  
 11 testified further as follows:  
 12 EXAMINATION CONTINUED BY  
 13 MR. CERESNEY:  
 14 Q. Good morning, Mr. McConney.  
 15 A. Good morning, Mr. Ceresney. How are  
 16 you?  
 17 Q. Good. How are you?  
 18 A. Great.  
 19 Q. I remind you you are still under oath  
 20 and all the understandings and guidelines that we  
 21 discussed at the start of yesterday still apply.  
 22 A. Okay.  
 23 Q. I want to talk a little bit about the  
 24 West Side Yards project. Are you familiar with  
 25 that project?

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1  
 2 APPEARANCES (continued):  
 3  
 4 REED SMITH LLP  
 5 Princeton Forrestal Village  
 6 136 Main Street, Suite 250  
 7 P.O. Box 7839  
 8 Princeton, New Jersey 08543-7839  
 9 BY: MARK S. MELODIA, ESQ.  
 10  
 11 ALSO PRESENT:  
 12 DEVERELL WRITE, Videographer  
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315

1 McConney - Confidential  
 2 A. Yes.  
 3 Q. Let me ask you to look at Defendants'  
 4 Exhibit 35, which I've placed in front of you.  
 5 A. I don't have it.  
 6 Q. Excuse me, which I will place in front  
 7 of you now, which is the June 30th, 2004,  
 8 statement of financial condition. If you could  
 9 spend a moment just taking a look at that, and I  
 10 want to direct your attention to the page that has  
 11 the Bates number on the bottom NF 123, which is a  
 12 list of Mr. Trump's assets.  
 13 Do you see that there's an entry there  
 14 for something called Trump Place, upper west side,  
 15 New York, New York?  
 16 A. Yes.  
 17 Q. What is Trump Place, upper west side?  
 18 A. Trump Place is - originally known as  
 19 Penn Yards, also known as Television City. It's a  
 20 development on the upper west side. Hudson  
 21 Waterfront Associates I believe partnerships 1  
 22 through 5 is what it could be known as now on a  
 23 technical basis or ownership basis.  
 24 Q. So there are five limited partnerships  
 25 that make up essentially the partnerships that own

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1           McConney - Confidential  
2 the Trump Organization, to indicate any loans  
3 other than the one any loans from Mr. Trump's  
4 estate -- Mr. Trump's father's estate or mother's  
5 estate, other than the one you've just mentioned?  
6     A.    Again, that's been a long time ago. I  
7 barely remember this one. There could have been  
8 other ones. I just don't remember.  
9           We're not talking normal day-to-day  
10 business activities; correct? We're talking about  
11 a loan.  
12    Q.    Well, what do you consider normal  
13 day-to-day business activities?  
14    A.    Suppose when Donald Trump was working  
15 with -- still in Fred Trump's office, one of the  
16 entities paid a bill for whatever reason for  
17 Donald Trump, that would be a liability on  
18 Mr. Trump's books and receivables and that  
19 entity's books.  
20           Two of them that years and years and  
21 years ago -- I don't know if they still exist --  
22 Trump Village Shopping Center, and there's also an  
23 entity called I believe TVCC, which may be one and  
24 the same, for some small amounts. To me that's --  
25 you can I guess consider that a loan, if that's a

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1           McConney - Confidential  
2 loan receivable, loan payable.  
3           But based on your questions about the  
4 money borrowed from the father or father's estate,  
5 it's something different.  
6    Q.    Have you ever had a conversation with  
7 Mr. Trump about a loan that he received from the  
8 estate of either his father or his mother?  
9    A.    No.  
10   Q.    Have you ever had a conversation with  
11 Mr. Weisselberg about that?  
12   A.    I'm sure we had many conversations.  
13   Q.    About a loan he received from his  
14 father's estate?  
15   A.    Not specifically about the loan; maybe  
16 about the loan balance, how it was repaid, the  
17 computation of the interest on the loan, when and  
18 how that gets paid back.  
19   Q.    This is the same loan you mentioned  
20 earlier?  
21   A.    The \$10 million loan.  
22   Q.    The \$10 million loan.  
23   A.    If we had a loan from the father, I'm  
24 sure it was an arm's length transaction and there  
25 was interest paid back to the father on the loan.

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1           McConney - Confidential  
2 So I'm sure we had conversations regarding the  
3 loan at some point in time. Not the initiation of  
4 the loan but something related to the loan.  
5           MR. TAMBUSI: We need to take a break  
6 now.  
7           MR. CERESNEY: For your call?  
8           MR. TAMBUSI: Yeah.  
9           MR. CERESNEY: Fine.  
10          MR. TAMBUSI: Thank you.  
11          THE VIDEOGRAPHER: The time on the  
12 video monitor is 1:55 p.m. We're off the  
13 record. This ends Tape 3, Volume II.  
14          (Recess taken from 1:55 to 2:24.)  
15          THE VIDEOGRAPHER: We're back on the  
16 record. The time on the video monitor the  
17 2:24 p.m. This starts Tape 4, Volume II.  
18    Q.    Mr. McConney, let me ask you some  
19 questions about some of the licensing deals. What  
20 generally is your involvement in the real estate  
21 licensing deals?  
22    A.    On the real estate side, usually  
23 when -- after negotiations go on between the  
24 development team, whoever that is, and the other  
25 side, they've reduced the agreement down to paper,

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1           McConney - Confidential  
2 they've come up with a structure of some sort for  
3 the fee to be paid to Mr. Trump.  
4           That part of the document is drafted,  
5 and because each deal is different, they just give  
6 it to me to check the mathematical computations  
7 and the mathematical part of it.  
8    Q.    So you hear of it essentially when it's  
9 at the point of being reduced to paper?  
10   A.    It's been reduced to paper already, and  
11 it's -- I don't know how far along the process it  
12 is, but it's -- I would assume it's usually pretty  
13 far along.  
14   Q.    Are there deals when it never comes to  
15 your attention because it doesn't reach that  
16 stage?  
17   A.    I'm sure there are a lot of deals that  
18 don't come to my attention.  
19   Q.    Do you hear about the deals that don't  
20 get to the stage where you are asked to review the  
21 documents?  
22   A.    Not usually. If there's a huge dealing  
23 going on of some sort, maybe. If it's just  
24 somebody went out to negotiate a deal, they had a  
25 conversation with somebody or conversations or

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1 McConney - Confidential  
2 trips, usually I won't even recognize it.  
3 Q. Those situations where there's just a  
4 conversation or a discussion or an initial  
5 negotiation, would you hear about those in the  
6 context of the statement of financial condition?  
7 A. No.  
8 Q. Why not?  
9 A. Because they're just not concrete  
10 enough to warrant putting in the financial  
11 statement.  
12 Q. Because before they actually get down  
13 on paper they're too speculative?  
14 A. They're not -- there's no real  
15 agreement. The agreement could still change. So  
16 we wouldn't have I guess anything to really  
17 compute numbers on.  
18 Q. Is it fair to say that a deal could  
19 fall apart at any time until it gets to the  
20 writing stage?  
21 A. Yes. It could fall apart afterwards  
22 too.  
23 Q. Right. So even once it's written down,  
24 it may well be speculative as to what the profits  
25 will be; correct?

501

1 McConney - Confidential  
2 A. Right.  
3 Q. In fact, is it fair to say that until  
4 something is written down there's typically no  
5 loan financing in place; correct?  
6 A. I don't know. I don't know how the  
7 other side puts everything in place. They may  
8 have a deal in place with financing. There was  
9 one deal, the Dezer deal we spoke about before,  
10 they had everything up and running. I believe the  
11 Sonesta was underway.  
12 Mr. Trump -- they came into contact or  
13 Mr. Trump contacted them. They got together.  
14 They had some units sold, and the Dezers asked  
15 Mr. Trump to put his name to the property and  
16 enhance it and for that they would give him a fee.  
17 That credit was already well along.  
18 Q. Is that Dezer, is that the right --  
19 A. Dezer, Dezer, D-E-Z-E-R.  
20 Q. And that wasn't placed on the statement  
21 of financial condition, though, until you had a  
22 contract; correct?  
23 A. I don't know at what point in time we  
24 had it. I don't know how long ago the contract  
25 was signed. I know it's -- the proceeds that we

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1 McConney - Confidential  
2 were expecting to derive have been on the last few  
3 statements. I don't know how far it's been on.  
4 Q. What are the reasons that deals that  
5 you've heard of that are being discussed but have  
6 not been reduced to an agreement, a written  
7 agreement, have fallen apart?  
8 A. I don't get into that part. That's  
9 between either our legal side, the development  
10 side, and whoever they're negotiating with. I  
11 just get into the numbers side of it.  
12 Q. Over the years have you heard various  
13 reasons for why deals fall apart?  
14 A. I may have heard a reason, but I just  
15 don't remember them.  
16 Q. Are there various reasons you've heard  
17 over the years?  
18 A. I don't remember.  
19 Q. You mentioned even after the agreement  
20 is signed sometimes the project is speculative;  
21 correct?  
22 A. I didn't say it is speculative. I said  
23 sometimes they do fall apart.  
24 Q. And it's hard sometimes to determine  
25 what the profit will be from that project at

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1 McConney - Confidential  
2 certain times -- correct? -- post agreement, even?  
3 A. Could you ask that again?  
4 Q. Sure. Let me actually rephrase my  
5 question in a way that's more -- that's clearer.  
6 Are there projects that get sidetracked  
7 for various reasons? Let me give you an example.  
8 Let me withdraw that.  
9 Let's talk, for example, about the  
10 Toronto contract.  
11 A. Okay.  
12 Q. That's been a contract that's been in  
13 place for a number of years; correct?  
14 A. Correct.  
15 Q. And over the course of those years,  
16 have there been some issues with that contract?  
17 A. I don't know about the contract itself.  
18 I know the deal has started and stopped. The  
19 developer -- the name of the developer on the  
20 other side has changed. I don't know if the  
21 owners of the developer has changed. They finally  
22 got or they got construction financing a few weeks  
23 ago, and so the deal is moving forward now. But,  
24 yeah, that was bumps in the road, if you want to  
25 call it that.

\* \* \* C O N F I D E N T I A L \* \* \*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

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DONALD J. TRUMP, )  
 )  
 Plaintiff, )  
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 vs. )  
 )  
 TIMOTHY L. O'BRIEN, TIME )  
 WARNER BOOK GROUP INC., )  
 and WARNER BOOKS INC., )  
 )  
 Defendants. )  
----- )

No. CAM-L-545-06

November 29, 2007  
10:01 a.m.

Deposition of DONALD BENDER, held at  
the offices of Debevoise & Plimpton, 919  
Third Avenue, New York, New York, before  
Laurie A. Collins, a Registered Professional  
Reporter and Notary Public of the State of  
New York.

|  |   |
|--|---|
| 2  | 4   |
| <p>1<br/>2 APPEARANCES:<br/>3<br/>4 BROWN &amp; CONNERY LLP<br/>5 Attorneys for Plaintiff<br/>6 360 Haddon Avenue<br/>7 Westmont, New Jersey 08108<br/>8 BY: WILLIAM M. TAMBUSI, ESQ.<br/>9 WILLIAM F. COOK, ESQ.<br/>10 - and -<br/>11 KASOWITZ, BENSON, TORRES &amp; FRIEDMAN LLP<br/>12 1633 Broadway<br/>13 New York, New York 10019-6799<br/>14 BY: MARIA GORECKI, ESQ.<br/>15<br/>16 DEBEVOISE &amp; PLIMPTON LLP<br/>17 Attorneys for Defendants<br/>18 919 Third Avenue<br/>19 New York, New York 10022<br/>20 BY: ANDREW J. CERESNEY, ESQ.<br/>21 ANDREW M. LEVINE, ESQ.<br/>22 JULIE S. SUH, ESQ.<br/>23<br/>24<br/>25</p> | <p>1<br/>2 THE VIDEOGRAPHER: We're now going on<br/>3 the record at approximately 10:01 a.m. This<br/>4 is the videotaped deposition of Donald Bender<br/>5 taken in the Superior Court of New Jersey, the<br/>6 Camden County Division, CAM-L-545-06.<br/>7 The deposition is being held today,<br/>8 November 29th, 2007, at the offices of<br/>9 Debevoise &amp; Plimpton, 919 Third Avenue, New<br/>10 York, New York.<br/>11 I'm Kevin Gallagher, the videographer.<br/>12 The court reporter is Laurie Collins. We're<br/>13 both from the independent firm of Veritext<br/>14 Court Reporting. Will counsel now identify<br/>15 themselves for the record.<br/>16 MR. CERESNEY: Andrew Ceresney, Andrew<br/>17 Levine, and Julie Suh from Debevoise &amp;<br/>18 Plimpton, representing the defendants, Timothy<br/>19 O'Brien, Time Warner Book Group, and Warner<br/>20 Books.<br/>21 MR. MANISERO: Thomas Manisero of<br/>22 Wilson Elser representing Weiser and the<br/>23 witness, Mr. Bender.<br/>24 MR. TAMBUSI: William Tambussi and<br/>25 William Cook from Brown Connery and Maria</p> |
| 3  | 5   |
| <p>1<br/>2 APPEARANCES (continued):<br/>3<br/>4 WILSON ELSER MOSKOWITZ<br/>5 EDELMAN &amp; DICKER LLP<br/>6 Attorneys for Weiser and Witness<br/>7 3 Gannett Drive<br/>8 White Plains, New York 10604-3407<br/>9 BY: THOMAS R. MANISERO, ESQ.<br/>10<br/>11 ALSO PRESENT:<br/>12 KEVIN GALLAGHER, Videographer<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>  | <p>1 Bender - Confidential<br/>2 Gorecki from Kasowitz, Benson representing<br/>3 Donald Trump.<br/>4 DONALD BENDER,<br/>5 called as a witness, having been duly sworn<br/>6 by the notary public, was examined and<br/>7 testified as follows:<br/>8 EXAMINATION BY<br/>9 MR. CERESNEY:<br/>10 Q. Good morning, Mr. Bender.<br/>11 A. Good morning.<br/>12 Q. Let me introduce myself on the record.<br/>13 I'm Andrew Ceresney from Debevoise &amp; Plimpton. I<br/>14 represent the defendants in this matter. I'll be<br/>15 asking you some questions today in connection with<br/>16 a lawsuit that Mr. Trump has brought against my<br/>17 clients. Okay?<br/>18 Are you represented by counsel today?<br/>19 A. Yes, I am.<br/>20 Q. Is that Mr. Manisero?<br/>21 A. Yes, it is.<br/>22 Q. Your testimony today is under oath, as<br/>23 you see, and is being taken down by the<br/>24 stenographer and videographer. And it may be read<br/>25 or played at trial or used for other purposes in</p>   |

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|---|--|
| <p style="text-align: right;">114</p> <p>1 Bender - Confidential<br/> 2 material to his overall holdings.<br/> 3 What did you mean by "since many of the<br/> 4 values are subjective"?<br/> 5 A. I don't recall at this moment.<br/> 6 Q. Were you referring to the valuations<br/> 7 that are in the statement of financial condition<br/> 8 for Mr. Trump's assets?<br/> 9 A. I believe we were referring to the<br/> 10 financial statement April 30th, 2003.<br/> 11 Q. And on those financial statements were<br/> 12 you saying that the values that are provided on<br/> 13 those financial statements are subjective?<br/> 14 A. I think we're saying they were a<br/> 15 representation of management and we don't have the<br/> 16 detail.<br/> 17 Q. Were you also saying that management's<br/> 18 estimates are subjective views on valuation?<br/> 19 A. I don't know.<br/> 20 Q. And what was the purpose of you<br/> 21 mentioning that here?<br/> 22 A. I think I'm trying to state that, if<br/> 23 his net worth was half, \$55 million would not be<br/> 24 material.<br/> 25 Q. And so it's possible that because these</p> | <p style="text-align: right;">116</p> <p>1 Bender - Confidential<br/> 2 qualifications to answer that question. I can<br/> 3 give my personal -- I have personal thoughts, but<br/> 4 I have no professional qualifications.<br/> 5 Q. And you've never expressed an opinion<br/> 6 upon his net worth; correct?<br/> 7 A. I have never expressed a professional<br/> 8 opinion of his net worth.<br/> 9 Q. And that's because the valuations that<br/> 10 are provided to you are provided by Mr. Trump;<br/> 11 correct?<br/> 12 A. And I do not have the professional<br/> 13 qualifications to answer that -- I would never be<br/> 14 engaged to do that type of work.<br/> 15 Q. Do you even have the information that<br/> 16 would be required to make the determinations as to<br/> 17 valuations?<br/> 18 A. I might have some information in-house<br/> 19 that would assist in that.<br/> 20 Q. Do you have all the information you'd<br/> 21 need?<br/> 22 A. I don't have the professional<br/> 23 qualifications to know what I would need.<br/> 24 Q. Would you also need to know liability<br/> 25 information?</p> |
| <p style="text-align: right;">115</p> <p>1 Bender - Confidential<br/> 2 valuations are subjective someone might say his<br/> 3 net worth is actually half of what is in the<br/> 4 statement of financial condition. Is that what<br/> 5 you're trying to say?<br/> 6 A. No. I'm just thinking worst-case<br/> 7 scenario.<br/> 8 Q. Worst-case scenario.<br/> 9 A. That may be the wrong terminology. I'm<br/> 10 just saying to be very, very conservative, if I<br/> 11 took half, what would it be.<br/> 12 Q. Why did you use half?<br/> 13 A. I don't recall.<br/> 14 Q. Why did you mention the subjectivity?<br/> 15 A. I don't recall.<br/> 16 Q. Is it fair to say that a worst-case<br/> 17 scenario is that someone who might be conservative<br/> 18 with regard to valuations might determine that<br/> 19 Mr. Trump's net worth is half of 3 billion 60<br/> 20 million?<br/> 21 A. I have no -- I'm not an appraiser, so I<br/> 22 can't tell you what Mr. Trump's net worth is.<br/> 23 Q. You have no idea what Mr. Trump's net<br/> 24 worth is?<br/> 25 A. I don't have the professional</p>                                  | <p style="text-align: right;">117</p> <p>1 Bender - Confidential<br/> 2 A. Pertaining to the value of his assets?<br/> 3 Q. Yeah. In other words, would you need<br/> 4 to know liability to determine his net worth?<br/> 5 A. Would I need to know liabilities --<br/> 6 Q. To determine net worth.<br/> 7 A. Yes.<br/> 8 Q. Because liabilities are --<br/> 9 A. Yes.<br/> 10 Q. In order to determine someone's net<br/> 11 worth, you need to know their assets and their<br/> 12 liabilities; correct?<br/> 13 A. Yes.<br/> 14 Q. Is it fair to say that at the time you<br/> 15 wrote this memo you were not expressing any view<br/> 16 necessarily on what his net worth was; you were<br/> 17 taking the net worth in the compilation and you<br/> 18 were taking a worst-case scenario? Is that what<br/> 19 you're saying?<br/> 20 A. That's a fair assumption.<br/> 21 Q. Why didn't you choose a third?<br/> 22 A. I don't recall.<br/> 23 Q. Do the statements of financial<br/> 24 condition talk about the subjectivity of the<br/> 25 values?</p>  |



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1 Bender - Confidential  
2 A. I don't recall every sentence in the  
3 financial statement.  
4 Q. Do you recall the sentence that relates  
5 to the subjectivity of the values?  
6 A. I don't recall every sentence in the  
7 financial statement.  
8 MR. MANISERO: How about that one in  
9 particular, if there is one?  
10 THE WITNESS: I don't know if there is.  
11 Q. Do you remember a statement in the  
12 financial statements that talked about  
13 considerable judgment is necessary to interpret  
14 market data and develop the related estimates of  
15 current value?  
16 Accordingly, the estimates presented  
17 herein are not necessarily indicative of the  
18 amounts that could be realized upon disposition of  
19 the assets or payments of later liabilities, the  
20 use of different market assumptions, and/or  
21 estimation methodologies may have a material  
22 effect on the estimated current value amounts.  
23 Do you see that?  
24 A. I don't have the financial statement.  
25 MR. MANISERO: Here you go.

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1 Bender - Confidential  
2 What page are you asking about?  
3 Q. Do you have it in front of you? On the  
4 bottom 1617, in Footnote 1, the basis of  
5 presentation.  
6 A. What paragraph?  
7 Q. Paragraph 2. I was reading from the  
8 second sentence on. Do you see that?  
9 A. Considerable judgment?  
10 Q. Uh-huh.  
11 A. I see that sentence.  
12 Q. When you wrote here the values are  
13 subjective, is that essentially also reflected in  
14 this footnote regarding the considerable judgment  
15 necessary here when valuing assets? Is that what  
16 you were thinking of?  
17 A. I assume that to be a reasonable  
18 assumption.  
19 Q. When you say the values are subjective,  
20 do you mean that -- do you mean that Mr. Trump  
21 might reach a different conclusion about the value  
22 of this property than somebody else looking at the  
23 same property?  
24 A. I don't really know what I recall. I  
25 don't know if that was -- I don't know if I ever

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1 Bender - Confidential  
2 thought of that.  
3 Q. So you don't, sitting here today --  
4 A. I don't recall if that was part of my  
5 scenario in 2004.  
6 Q. Do you believe that different people  
7 could reach different conclusions about the  
8 valuation of the same property?  
9 A. I don't have -- it's not my area -- I'm  
10 not an appraiser. It's not my job.  
11 Q. So sitting here today, an accountant  
12 for 25 years, someone who has focused on real  
13 estate for 25 years, can you tell me whether  
14 different people valuing the same property can  
15 reach different conclusions about the valuation?  
16 A. I'm not an appraiser. I'm an  
17 accountant.  
18 Q. So you can't answer that question?  
19 A. I don't have the professional expertise  
20 to discuss valuations.  
21 Q. So you don't have the professional  
22 expertise to even give me an opinion or a sense of  
23 your understanding of whether different  
24 individuals can reach different determinations  
25 regarding valuation?

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1 Bender - Confidential  
2 MR. MANISERO: Objection,  
3 argumentative.  
4 MR. TAMBUSI: Objection.  
5 Q. You can answer the question.  
6 THE WITNESS: Can I speak to you? I  
7 can go off the record; right? I can speak to  
8 my counsel?  
9 Q. I'd like an answer to the question  
10 again.  
11 A. Okay. What's the question again?  
12 Q. Sitting here today --  
13 MR. CERESNEY: Can you read back the  
14 question.  
15 MR. TAMBUSI: And when you do, note  
16 the objection following the question.  
17 MR. CERESNEY: Yes.  
18 (Record read.)  
19 A. I can give you a personal opinion. I  
20 don't feel comfortable giving you a professional  
21 opinion.  
22 Q. And that personal opinion would just be  
23 based upon -- would that be based upon your years  
24 as an accountant?  
25 A. As an accountant, but not any knowledge

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His Casino Business May Be Down, But Donald Trump Is on a Roll

BYLINE: David Segal, Washington Post Staff Writer

DATELINE: NEW YORK

BODY:

If you spot Donald Trump in the flesh and cannot resist the urge to walk up and introduce yourself, he will smile and shake your hand. But he won't be happy about it. He'll be disgusted, if you want to know the truth, and there is a good chance he'll head straight to the men's room and scrub both palms with soap and hot water. Nothing personal. He feels the same way about everybody's hands.

"People tell me, 'Oh, Donald, Donald, you're so elitist, you don't want to shake people's hands.' But it's not elitist," Trump says, sitting in his Fifth Avenue office, a photo-stuffed shrine to all things Donald with a verdant treetop view of Central Park.

"I wouldn't mind a little bow. In Japan, they bow. I love it. Only thing I love about Japan. But read books! Read statistics! Shaking hands causes viruses and flus. Tremendous germs are on the hands. It's not elitist. It's just common sense."

A flamboyant dealmaker, tireless self-aggrandizer and longtime connoisseur of arm-candy babes, Trump has been wincing his way through unbidden handshakes for much of his adult life. But now, at the age of 58, it's getting ridiculous. His starring role in last year's reality TV hit "The Apprentice" — which begins its second season tonight on NBC — sent his Q-rating to a stratum where there is very little oxygen and even less privacy.

So Trump shakes dozens of hands these days, outwardly smiling, inwardly repulsed. Even at restaurants like Le Cirque and "21," where he's stopped constantly on the way to what he calls "my table." Handshakes all around, even for the maitre d', which he considers a whole other level of gross, because the maitre d' glad-hands all day. A shake even for a guy, recently, who'd just walked

out of the men's room and strode by to say hello.

"Mr. Trump, Mr. Trump, I'm such a big fan," Trump recalls, sourly reliving the moment. "Now his hands are wet, and he's drying them off, shaking them in the air. Disgusting. But if I don't shake his hand, he'll be devastated. If I do, it won't be so bad. I just won't eat." He says this with a Jewish mother's resignation. "So, I shake his hand and I don't eat."

And it's not just adults anymore, not just the grown-ups who've followed his riches-to-rags-to-riches career as a real estate mogul, or bought his best-selling books, or applauded when he gave rambling speeches while testing out a run for the presidency in 2000. Ten-year-olds spot him in public and spontaneously shout, "You're fired!" the show's catch-phrase closer. During an interview last week, Trump complained, halfheartedly and with characteristic exaggeration, about this new level of acclaim. ("If I walked on the streets with you right now we'd have a crowd of a thousand within seconds.") But he won't try to hide his euphoria about all the attention.

"After I agreed to do the show a friend said, 'Why would you do this? Ninety-five percent of shows fail and they're off the air.' And it's funny because I was with Whoopi Goldberg at the 'upfronts' – that's where the networks announce the new programs every year – Rob Lowe, all these guys, and they're all gone. All these people. They're all gone, and they were cut viciously and quickly. And here I sit, talking to you about the number one show."

Trump's desk is covered, like every other surface in this room, with Trump-related publicity. Framed on the wall are dozens of magazine covers bearing Trump's face, and over on a table by the door is a stack of recent publications waiting for frames. "This is just a small number of them," he says, on his feet and browsing through the pile.

Trump's craving for fame and his need to be the object of mass envy are so all-consuming that they seem both pathological and charming. He never hides his parade float of an ego. Instead he introduces you to it and urges you to marvel at its size. He works on the top floor of a building named for him (Trump Tower), in a company named for him (the Trump Organization) where he oversees the merchandising of products bearing his name. His latest bestseller is called "Trump: How to Get Rich," and he's readying the Trump Signature Collection, a line of business suits and golf wear.

Moments after you meet, he's spilling leaflets and press clippings, crowing over the fabulosity of his career. Everything in Trumpworld is fabulous, or in first place, or better looking, or richer or taller or it has bigger breasts.

"Right now I'm the biggest developer in the New York City, by far," Trump says. He also waves a copy of the DVD of the first season of "The Apprentice." "Can

you believe this? Huge bestseller."

As it happens, this is a supremely awkward moment for Trump to reassume the role of corporate maestro on a reality TV show. In August, Trump's perpetually stricken, publicly traded hotel and casino company — just one of his many businesses — announced plans to enter Chapter 11 bankruptcy. Staggering under nearly \$2 billion in debt, Trump's Atlantic City properties have been hurt by competitors with newer and flashier facilities, and anyone who owned a piece of DJTC — a ticker symbol that includes Trump's initials — has lost money. Shares that traded at \$35.50 eight years ago now trade for less than 40 cents on a good day. The company's bonds are at the junkier end of the junk bond spectrum.

"They're rated a triple-C-plus and on review for a downgrade to D," says Andrew Susser, an analyst with Bank of America. "In general, a lot of people want to be part of the Trump mystique. But in the bond world you don't buy something based on a brand name. You buy based on credit quality combined with a judgment about where the credit momentum is going."

To rescue Trump Hotels & Casino Resorts, as the company is formally known, an arm of Credit Suisse First Boston recently announced it would pump in \$400 million, reducing Trump's own stake to about 25 percent and stripping him of majority control over operations. He also had to give up the rights to his likeness in the operation of the casinos. It's strong medicine, but as painful as that must be, Trump isn't flinching, at least in public.

"Let me explain," he says. "The business has been great. One aspect of the business is the casino business, and that's a very small percent of my net worth, like much less than 2 percent and maybe less than 1 percent. But I want to fix it and the way to fix it is to reduce the debt, the way to reduce the debt is to do what I'm doing. Which is what I've been doing."

Actually, it's hard to know exactly what percent of Trump's net worth is tied to the casino business, because most of Trump's portfolio is in privately held companies that don't report earnings. He's described himself as "a billionaire many times over," but who knows? There are skeptics out there who believe Trump has \$300 million, tops. And the guy has a reputation for, let's say, shading the news in a light that reflects his enthusiasms.

Even his claim that "The Apprentice" is the No. 1 show is only sort of true. It finished seventh in the ratings overall, behind "Survivor" and "American Idol," among others. It finished third with 18-to-49-year-olds, the demographic that NBC says it uses for advertising sales. It was, however, the top new show among viewers 18 to 49. In other words, it's "No. 1" only with the right caveats.

The larger point is the way Trump is viewed as a businessman. As a private

developer, he's gifted and relentless at crafting deals, winning allies, fighting enemies, exploiting legal loopholes, charming, bullying and making sure the cement is delivered on time. He also knows his market, the upscale buyer willing to pay extra for a style of conspicuous luxury that is heavy on pink marble and gilt. His properties have always commanded a premium because of the marquee value of his brand.

"You can't take away his talent," says onetime Trump critic and former mayor Ed Koch. "Not just the ability to make himself the center of attention in any room, but in designing buildings that people want to live in."

But stock and bond markets view Trump as a bit of a joke, which is what happens when shares in a company you run plunge by 99 percent. So Trump is saddled with the paradox of life as highly public but erratically successful executive: The people who know the least about business admire him the most, and those who know the most about business admire him the least. Which irks the man who is forever complaining that his achievements as corporate rainmaker are overshadowed by his latest brand-name spinoff and his soap-opera love life.

"Irks" might understate it, actually. Stock analyst Marvin Roffman criticized Trump Hotel/Resorts in the press years ago, prompting Trump to call the man's employer, the major Wall Street firm Janney Montgomery Scott, and demand the analyst either apologize or be fired. Roffman wouldn't apologize.

"I was the first apprentice!" quips Roffman, who now runs a money management firm, Roffman Miller Associates, and still keeps his eye on gaming stocks. He doesn't sound particularly surprised that his dire predictions about Trump's venture came true. "Stocks make money based on earnings and dividends, and this company never had either."

It doesn't seem to matter, at least not to those more interested in Trump as a symbol than as a CEO. This is a guy who nearly went bankrupt in the early '90s, when his real estate holdings were so over-leveraged that he needed a bank bailout to stay afloat and was forced to sell some of his most treasured assets. Anyone else might have retreated. Trump buffaloes his way back into the game and turned the fiasco into a best-selling book, "The Art of the Comeback."

There are plenty of developers in his league and beyond in New York and nobody knows their names. (Jerry Speyer ring a bell?) Trump alone is selling something bigger than any skyscraper, something you don't need a decent income and good references to buy into — the fantasy of life as a very rich man, with the dames and the cars and planes and gold-plated everything. He's what Americans think they could be if only they had the gumption to finagle their way into a fortune.

"He's a caricature and that works for him," says Eric Dezenhall, who runs a media crisis management firm in Washington. "If your goal is to get people in the American heartland to watch your TV show, having outrageous hair and pink ties and using superlatives is a legitimate pathway to that goal. If your object is to earn the respect of other moguls, that's not the route."

The beautiful part is that Trump the caricature and Trump the man are essentially the same person. This isn't an act. He brings a genuinely unembarrassed joy to the role of high-rolling, model-squiring aristocrat and he doesn't know the meaning of "overexposed." He can't imagine, for instance, why anyone would turn down the opportunity to shill on TV for fast food.

"Somebody asked me a question recently," Trump says. "Why do you do commercials, for Verizon or McDonald's, or any of the big commercials you've done?' Visa, recently, I don't know if you saw that one. 'No other billionaire would do that.' I said, 'No, they would do it but they're not asked to do it because nobody cares about them.'"

Trump's compulsion to build, earn and see his name in print seems a matter of both nurture and nature. Fred Trump, his father, was a renowned developer, too, though his forte was apartments for low-income residents in Brooklyn and Queens. From the father, the son learned a penny pincher's attention to detail and a foundational belief in the value of publicity.

Fred floated Trump ads on a barge near a beach, according to Gwenda Blair's biography "The Trumps: Three Generations That Built an Empire," and attached discount coupons to balloons that he let loose on Coney Island, worth \$50 off the purchase of a Trump house. He also swamped local newspapers with news releases containing everything from the results of company-sponsored surveys to his personal opinion on national defense.

So young Donald learned about the care and feeding of the press the way other kids learn about fishing. Amazingly for a such a high-profile guy, he doesn't have a public-relations rep. To get in touch, you call his secretary – not the buttoned-up vixen on "The Apprentice" but a woman named Norma – and leave a message. If Trump is interested, you'll know soon.

"What can I do for you?" he asks, calling a half-hour after receiving a message from The Washington Post. "It's a great honor, great paper," Trump says when invited to sit for a profile. "How does 9 a.m. on Monday work?"

Up close Trump has the sort of unwrinkled smoothness that looks expensive. He's tall and broad, and his lips are pursed when he isn't speaking. His hair, a wonder on TV, is a riddle in person. None of his elaborately swirled locks appears to actually touch his head. The whole thing somehow hovers, like one of those high-end turntables that float on magnets and aren't attached to anything.

It's apparently a look with appeal. Trump is getting ready for his third marriage, this time to a busty Slovenian model named Melania Knauss. A natural optimist, Trump likes his odds this time around, in part because Knauss sounds ready to be a homemaker and doesn't issue the sort of demands made by his previous wives, Ivana Trump and Marla Maples.

"They were both good women but they had a hard time competing with my business," he says. "Melania is very easy for me to be with. And I believe in marriage. It's the best way to go, when you get it right."

Trump's office is more than a dozen stories above the fake boardroom seen on the television show. On this particular morning, the "boardroom" is a mess. All of the filming for the second season of "The Apprentice" was finished a few weeks ago, with the exception of the final episode, which is broadcast live. A couple of construction men are cleaning up debris, readying the hammers for Season 3, which starts production next month.

"It's under renovation," explains George Ross, a Trump lawyer and one of two judge-mentors who flank and advise Trump during the round robin of backstabbing that ends each show. Ross, who is 76, works just a few yards down the hall from Trump. He didn't think much of it when his boss first asked him to help out with a new reality TV show.

"He said, 'George, I'm planning on doing this show, I'd like you to be a judge. Maybe it'd take two, three hours a week,' " he recalls. "I thought, what does it matter if I'm getting paid to do legal work or paid to be on a show? Either way, he's paying me."

That time estimate turned out to be dramatically off, particularly on the second season. Some of those boardroom scenes took around five hours, Ross says — five hours of pleading and counterpleading and not a single retake. Ross also had to travel. After the success of the first season, companies lined up to hand over upward of \$3 million each, he says, to serve as settings for the weekly tasks devised by the show, and some of those companies are based out of town.

Not the one in tonight's episode, which takes place at Manhattan offices of Mattel and finds the contestants scrambling to design and build a toy for 7-year-old boys. But often Ross was shepherding his minions in some faraway corporate office at an hour when he's usually getting ready for bed.

"Nine weeks of hell," Ross says, smiling. You'd never know it from his stoical on-air persona, but he's kind of jovial, a side that he works hard to conceal when the cameras are on. "At one point I had to say, 'I can do the show, but Donald, we've got a contract hanging that's worth millions.' "

Perhaps it didn't help that Ross has never been paid for his "Apprentice" work, while Trump reportedly earned around \$180,000 per episode this year. But there have been side benefits. Ross turned up on "The Tonight Show," where he joshed with David Arquette ("I said whoever designed his suit should be fired") and recently he was flown to Seattle and handed a large check for speaking at a motivational seminar along with Rudy Giuliani and Goldie Hawn, in an arena with 15,000 attendees.

At the moment, the boardroom table looks like a slab of stripped-down particle board. The makeshift dorm where the contestants live, eat and connive is actually right next door, not an elevator ride away, as the show regularly implies.

"It's not a bad place to live," says Ross, walking through the brightly painted rooms, now vacant. "Except for the cameras."

They're black and hung from the ceiling, planted everywhere but over the bathroom. On the plus side, there's a balcony overlooking Fifth Avenue and a kitchen with stainless steel appliances. (It was stocked with Trump Ice, the Donald's own bottled water.) A few feet away there's a basketball hoop and space for dribbling.

It looks calm considering that it was recently the scene of a highly ritualized melee — 18 contestants, whose names will soon become fleetingly famous, winnowed down, one "You're fired" at a time.

Trump says he came up with that devastatingly concise send-off during the first week of shooting last year. He said it, spontaneously, then heard crew members in the background screaming. He knew he'd hit on something.

"It's both a horrible and beautiful phrase," Trump says. It's not a phrase he's used very often. "In real life if I were firing you, I'd tell you what a great job you did, how fantastic you are, and how you can do better someplace else. If somebody steals, that's different, but generally speaking you want to let them down as lightly as possible. It's not a very pleasant thing. I don't like firing people."

This has come as a surprise to some viewers. All his alpha-male preening aside, Trump doesn't seem like a jerk. He finds the surprise over his inner core of decency as amusing as anything else about his latest, greatest and most personal sales pitch yet to the American public.

"It's a sad commentary, but most people think I'm a much nicer person after watching the show," Trump says, "and all I do is fire people."



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Trump's Reality Woes  
He does the firing, but his battered casino empire suggests he's a better pitchman  
than manager

Dan Kadlec With reporting by Daren Fonda/New York

In a recent episode of the hit TV show *The Apprentice*, Donald Trump challenged a gaggle of fawning dealmaker wannabes to boost revenue at his Taj Mahal casino in Atlantic City, N.J. Eager to impress, Trump's pupils got right to work. But they might have just as quickly asked, Who the heck is Trump to judge? After all, his casino empire has been losing money for years.

So much money, it was revealed last week, that auditing firm Ernst & Young warned of "substantial doubt" that the publicly traded gaming company run by Trump Hotels & Casino Resorts could continue as a viable enterprise. The prospect of a flashy failure could tousele the Donald's carefully coiffed image as a business guru. Fighting back, he declared last week that his casinos "have always been a good company" and that he will prove it by focusing on them until they are fixed.

Trump's forte is brand building, and he is the brand, the Martha of money. Trump does commercials for Verizon, was host of Saturday Night Live and last week unveiled Trump Visa, which rewards cardholders with casino discounts. There is now Trump Ice bottled water and a hot-selling book, *How to Get Rich*. Publicity, in other words, is his strength.

But can he run a business? Trump Hotels' shareholders have concerns. "I don't think he knows a thing about running the casinos," asserts Marvin Roffman, an analyst and longtime Trump critic at the investment firm Roffman Miller. The cash-starved casinos are run down and have been losing customers to newer outfits like the Borgata Hotel Casino & Spa, which opened last year. Since selling initial shares to the public in 1995, Trump Hotels has never recorded an annual profit and the stock has fallen 84%. If Trump gets the deal he wants to recapitalize the company, existing shareholders may get wiped out.

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Trump is asking investors, who hold \$1.8 billion in bonds, for a lower interest rate and what amounts to some debt forgiveness in return for stock and other considerations. He would not retain a controlling stake but would stick around in a high-profile role to promote the casinos. The key is a proposed \$400 million investment by Credit Suisse First Boston, which would then own most of the company. Trump says he will use the infusion to pay off debt and reinvest in the properties. Some of Trump Hotels' bondholders are furious at the request to restructure the debt and may opt for bankruptcy if Trump pushes too hard. Just a year ago, they bailed him out of a cash crunch by buying a new round of bonds.

But Trump may get most of what he wants anyway--not because of his managerial acumen but because the brand he has promoted so tirelessly is a key asset. "His name has cachet," says Kim Noland, debt analyst at Gimme Credit newsletter. "That might actually help with customer count." Trump is a tough negotiator too. He knows from experience that when you owe billions, the creditors are in just as much trouble as you are. And he isn't all that desperate. His outsize ego could no doubt handle the potential Atlantic City bankruptcy, and his stake in the casino properties is, he says, only about 1% of his net worth.

Trump's patchy management record extends even to real estate, where he made his name. Insiders question how effective he is at the nuts and bolts of development--acquiring land, raising financing and dealing with architects and subcontractors. In the past decade, some assert, he has acted more as a front man who, for a cut of the action, lends his name to projects backed and managed by others. Trump says that characterization is "false." He says he owns at least 50% of the numerous buildings bearing his name in Manhattan. But even if the claims were true, he says, "that's hardly an insult. You build the brand so you can do that." Privately, even rivals concede that the Trump name adds up to \$100 per sq. ft. to a building's value.

How rich is the Donald? To interviewers, he hints that his wealth is somewhere between \$2 billion and \$6 billion. Rival developers estimate it's nowhere near even the lower figure. But he has certainly brought home some lucrative deals. In the early 1990s, he bought the dilapidated 70-story office tower known as 40 Wall Street, designed in the 1920s to be the world's tallest building. He invested about \$100 million, including renovations. Experts say the building is now worth more than twice that and generates \$10 million a year in rental profit. You don't need many of those to get filthy rich. Then all you have to do is tend to your brand--and the deals will come to you. --With reporting by Daren Fonda/New York

THE TRUMP BALANCE SHEET --CASINOS: Swamped with debt, his gaming company bleeds money. He could lose control of it --REAL ESTATE: With his strong brand, Trump has become more front man than hands-on developer --BOTTOM LINE: He won't make the CEO hall of fame, but he knows how to make a buck

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The girl and the car, obviously. Respect, maybe. And he could definitely use a mortgage--soon. Whatever he's after, he's his own worst enemy.

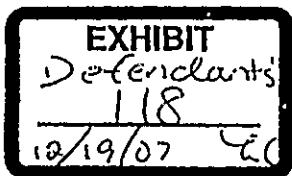
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Donald Trump wasted no time in being Donald Trump. "I've brought some things for you," he said, handing me a sheaf of papers as he boarded his private 727. These included some glossy brochures and a copy of New York Construction News, which, it seemed, had named Trump owner and developer of the year for 1999. "Owner and developer of the year," he pointed out with his uncommonly stubby fingers, "which is unusual."

It was early January, and the plane was headed for Minnesota, where Trump was to meet with Governor Jesse Ventura to discuss running for President on the Reform Party ticket. Onboard were a handful of journalists, Trump's son Donny Jr., and his political adviser, Roger Stone, a former Nixon and Reagan handler who favors three-piece pinstriped suits and a pocket watch. Also onboard were some gold-plated sinks, a double bed, and gilt-framed works of art with signatures like "Renoir." Nobody I asked seemed to know if they were real, or to care.

"We've done internal polls that have been amazing," Trump was saying, ensconced in a red-velvet seat while Stone sat nearby in his Jay Gatsby getup. "If I feel I could win--win--then I'd run. I think I have a good chance." He explained why. "Hey, I've got my name on half the major buildings in New York," he said. "I went to the Wharton School of Finance, which is the No. 1 school. I'm intelligent. Some people would say I'm very, very, very intelligent." Plus, he had written three best-selling books. "Not bestsellers," Trump clarified. "No. 1 bestsellers."



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Another thought occurred to him: "You know I am the highest-paid speaker in the country?"

Trump had inked a deal with Tony Robbins, the frighteningly upbeat motivational speaker, by which Robbins would pay Trump \$ 1 million to give ten speeches at his seminars around the country. Crucially, Trump had timed his political stops to coincide with Robbins' seminars, so that he was "making a lot of money" on those campaign stops. "It's very possible that I could be the first presidential candidate to run and make money on it," Trump said, adding that "there's no way a good businessman" would have blown the kind of money Steve Forbes had. I wondered whether Trump was proposing his own special version of campaign finance reform here. I also wondered where he was planning to come up with the \$ 100 million he was promising to spend if nominated, considering that his cash flow seemed much more precarious than he claimed.

But talk turned to Trump's women, prompting a reporter from the New York Post to ask whether he found Monica Lewinsky attractive. Trump screwed up his face and stuck his tongue out slightly, as if to gag.

"There's a John F. Kennedy-type charisma that's very hard to put your finger on," Stone told me later on, when I asked him to describe Trump the politician. "He's probably the best speaker on the circuit." Once on the ground in Minneapolis, Trump was greeted on the frozen tarmac by a passel of Reform Party officials, who whisked him off by limousine to the hotel conference center.

After the Jesse Ventura action figures went on sale in the lobby, and not long after Ventura insisted he once saw Muhammad Ali levitate--no kidding, levitate!--off somebody's kitchen floor, Trump took the stage to address an audience of Ventura backers. Though he dispensed with his usual critiques of Pat Buchanan ("a Hitler lover"), Bill Bradley ("a total disaster"), George W. Bush ("no Einstein"), Fidel Castro ("a bad guy"), North Korea ("run by some very bad people"), and Russia ("totally mixed up"), Trump did tell an unflattering joke about his second wife, Marla Maples, and crescendoed from a story about Jay Leno to the oblique observation that he'd count on people's support "if I decide to do the thing that I very well might decide to do." This, it turned out, was the applause line. "It was awfully disjointed," one of Ventura's people worried afterward. "Does he speak better than that?" But by then Trump had already headed out the door, past the "Trump 2000" posters, for a weekend of golf at Mar-a-Lago, his Palm Beach estate.

At age 53, a good decade and a half after he came to national prominence, Donald Trump is possibly the most famous businessman in America. According to the Gallup Organization, fully 98% of Americans know who he is. Bill Gates and Ross Perot also score in the high 90s. None of the other grandees of American business--not Jack Welch, not Warren Buffett, not Steve Jobs, not Ted Turner--even come close.

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This embarrassing state of affairs might be likened to the time when Betty Crocker polled as the second-most-admired woman in America (behind Eleanor Roosevelt, who had the advantage of being a real person) or when kids voted Hulk Hogan their favorite athlete a few years back. For Donald Trump is to business what professional wrestling is to sports: part of it, certainly, but also a cartoonish parody of it. Which is why FORTUNE decided it was necessary to investigate and uncover, once and for all, why it is we feel compelled to write about Donald Trump in the first place.

The most impressive aspect of Trump's celebrity, to begin with, is not its grandeur but its durability. Not only has he far outlasted the decade that produced him, but--unlike other products of the 1980s who've managed to stay in the limelight through self-reinvention a la Michael Milken--Trump has done it without any discernible personal growth. Like a cryogenically frozen Austin Powers, he stands as an almost perfectly preserved specimen of the era, an unreconstructed hedonist who persists in calling the plantings on his new golf course the "Rolls-Royce of oak trees."

That changelessness, no doubt, is partly to account for his appeal. In an age when wealth is paper, assets move electronically, and moguls wear jeans, Trump's mandarin tastes and almost sensual love of money can seem a refreshing throwback. "I, personally, like feeling the asset," he said during a stop in Silicon Valley. "With the dot-com, it's nothing that you see so easily."

It's one of the paradoxes of Trump that this aura of exclusivity goes over best with some of the most excluded elements of society. In an 800-person survey conducted by Democratic pollster Rob Schroth, Trump scored a 67% favorable rating among blacks (vs. 21% unfavorable), 62% among Hispanics, and 66% among whites earning under \$ 25,000, substantially higher than either Al Gore or Bill Bradley in each category. Real estate agents say Trump is also big among immigrants, many of whom flock to his buildings. Admiring rap artists have recorded odes like "Black Trump" and "Trump Change." "I think people say, 'If I won the lottery, that's how I'd want to live,'" says Roger Stone. "The plane, the boat, the estate in Florida, the beautiful girls--our polling showed that people identified with it." Trump is, in short, a workingman's plutocrat: a nonbusinessman's idea of what a businessman should be. (Supporters standing in line at a Trump Tower book signing included a Greenwich Village artist who was "attracted to the power of myth in our society," an Orthodox rabbi who "heard he loves the Jews," and a soccer mom who noted, optimistically, that "he's never been indicted.")

Among Trump's theoretical peers, which is to say other rich business people, the situation is different. When FORTUNE asked several thousand of them to rank 469 companies for its 1999 list of Most Admired Companies, they put Trump's casino company dead last. More specifically, they ranked it worst in quality of

management, use of corporate assets, employee talent, long-term investment value, and social responsibility.

Trump tries to shrug off such opinions, noting in his new book, *The America We Deserve*, "Rich people who don't know me never like me. Rich people who know me like me." But deep down, the disrespect clearly rankles. "I was a little surprised FORTUNE hadn't done a cover on me in the last year and a half, because I'm the biggest developer in New York," he said on the plane. "Now I'm getting a story not because I'm the biggest real estate developer but because I'm running for President. There's something about that that I don't really like."

Did he mean he doesn't get the recognition he deserves as a businessman? "I don't think anybody knows how big my business is," Trump replied. "People would rather talk about my social life than the fact that I'm building a 90-story building next to the U.N. They cover me for all sorts of wrong reasons."

Right or wrong, his presidential dalliance had generated coverage and then some; Trump recounted how Don King, the furious-haired boxing promoter, called up to declare, "This is the single greatest promotion I have ever seen!" It was widely presumed, of course, that Trump's political noodlings were just that: a promotion, a cynical ploy to sell books and condos—politics as the continuation of salesmanship by other means, if you will. But after spending time with Trump over several weeks, I became convinced otherwise. The man seriously wanted to seek the American presidency—to win, as he put it, "the whole megillah."

If that sounds far-fetched, it may be because you haven't yet grasped the governing principles of the Trumpian universe. Consider, for instance, his beef with America's trade representatives: It's that they have low name recognition. "Who are these people?" Trump sputtered at one point. "Nobody's ever heard of them!" As for candidates who had made less money than he: "They're losers. Who the hell wants to have a person like this for President?" More famous, more money: To those who objected that he had no obvious qualifications for politics other than a Bob Dole-like tendency to refer to himself in the third person, Trump offered the vaguely articulated but firmly held notion that he was, like, the top guy, and therefore worthy of the nation's top office. He even noted at several points that he was good at sports in high school. "Because I've been successful, make money, get headlines, and have authored bestselling books," he wrote in his new book, "I have a better chance to make my ideas public than do people who are less well known."

Just so. But it all raised the question: Just how successful a businessman is he?

A couple of weeks after the Minnesota trip I was sitting in the Trump Tower offices of the Trump Organization, surrounded by magazine covers featuring Donald Trump and flanked by two of Trump's lieutenants. In front of me sat Donald Trump. He was wearing a blue suit, cuff links, and one of his famous red

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ties; his hair, as usual, seemed to be levitating slightly above his skull in a baroque swirl. "People liked the speech," Trump began. "You even liked it, I heard. Did you like my speech?" I mumbled something polite, then turned the conversation to the task at hand: figuring out what Trump's empire actually consisted of.

Easier said than done. Trump delights in the sort of elaborate shell games and impenetrably complex deals that frustrate the most conscientious efforts to assess a person's true worth. "It's always good to do things nice and complicated," he once told an interviewer, "so that nobody can figure it out."

That difficulty is compounded by Trump's astonishing ability to prevaricate. No one's saying Trump ought to be held to the same standards of truthfulness as everyone else; he is, after all, Donald Trump. But when Trump says he owns 10% of the Plaza hotel, understand that what he actually means is that he has the right to 10% of the profit if it's ever sold. When he says he's building a "90-story building" next to the U.N., he means a 72-story building that has extra-high ceilings. And when he says his casino company is the "largest employer in the state of New Jersey," he actually means to say it is the eighth-largest.

The predictable result is the steady stream of articles debunking Trump's exaggerated claims—particularly his oft-repeated assertion that he's worth \$ 5 billion. Trump and his aides are so used to their veracity being questioned that they went to almost laughable lengths to assure me they weren't lying, as when Abe Wallach, Trump's finance man, produced a letter from a company offering \$ 120 million for a piece of Trump property. "This is not concocted," Wallach told me, though I'd never suggested such a thing. "This is real." And to assure me that Trump had received many, many offers on his building at 40 Wall Street, Wallach summoned his assistant Diane to tell me about a recent call from a potential buyer, "just so you know I'm not making this up."

"What did he want to know?" Wallach asked Diane.

"If it was for sale," Diane responded.

"What did I say?"

"No."

Turning to me, Wallach added, "This is unrehearsed." That bit of office theater complete, Wallach pulled out the partnership agreements for several of Trump's properties so that I could check, among other things, whether Trump's ownership stakes in them were in fact what he said they were (see box).

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But here's the weird thing about Donald Trump: Try as he might to be a figure of ridiculous fun, lie as he might about things large and small, Trump appears to be an enormously skilled developer. Associates describe an unfailing knack for spotting and ferreting out waste; a memory like a Zip drive; a grasp of byzantine zoning laws so detailed that he routinely requires the city to close loopholes only he had the wherewithal (many would say gall) to exploit. There's Trump walking the construction sites every day, yelling that the concrete is the wrong kind, that the marble isn't flat enough, that the ceiling should be ripped out and redone. "He can look at a type of window glass and tell you what type it is and its energy-efficiency rating," says a former employee.

Then, too, Trump brings the sheer power of his persona to bear. He negotiates with subcontractors himself instead of relying on a purchasing department and isn't opposed to using his celebrity to better the terms. To seal one deal, Trump agreed to call the subcontractor's mother and wish her a happy birthday. "He has this ability to relate to the doorman, to the guy who's carrying the iron or steel, and make that guy feel good and important," says Colony Capital CEO Tom Barrack.

And while Trump's lifestyle hasn't changed much since the 1980s, his dealmaking approach has. Chary of the sort of leverage that pushed him close to bankruptcy in the early 1990s, he refrains from putting up large sums, instead partnering with financial backers—General Electric's pension fund among them—that want to tap the power of his name and retain him as a sort of jungle guide. (Yes, people do pay more to live in Trump buildings: The Corcoran Group, a New York real estate agency, estimates his condos command an 80% premium.) In one extreme instance, developers paid Trump a flat \$ 5 million licensing fee for the right to brand a Trump Tower in Seoul.

Trump's rivals seize on such deals to label him a mere front man for financial interests—a brand slapped on buildings he doesn't own—which in turn sends Trump into paroxysms of outrage. "I own at least 50% of everything I do," he says, not quite accurately. "I'm the biggest developer in the hottest city in the world."

In truth, Trump's strategy resembles less a Potemkin village than a fast-expanding game of SimCity, which is to say he has a lot of big projects in the works. On Manhattan's East Side, he and partner Daewoo are erecting Trump World Tower, the "90-story" colossus that is going to cast a shadow on the United Nations and block Walter Cronkite's view. Over on the West Side, he and a group of Hong Kong investors are two buildings into an 18-building residential project along the Hudson River, the creatively titled Trump Place, which will fill up Manhattan's last big parcel of undeveloped land. Condo sales from both are benefiting from the hottest real estate market anyone can remember. As for the three trophy properties Trump calls "my other children"—Trump Tower, 40 Wall Street, and the General

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Motors Building, which he purchased in 1998 with insurance company Conseco—he has lately succeeded in jacking up rents.

Trump's partners seem pleased. "We were never projecting the numbers that he's producing routinely now," says Conseco executive vice president Ngaire Cuneo. "His attention to detail and to what potential tenants will want has been uncanny," adds CEO Steve Hilbert. "The results have been stunning for us at Conseco."

Colony Capital's Barrack, who hired Trump to convert the Mayfair Regent Hotel into condos, has similar words: "Bottom line is, the project came in under budget, four months ahead of schedule, and at sales prices that were 40% above what we had pro forma'd. We didn't have one work stoppage, not one strike, not one city red tag. Everything was perfect." Even former New York mayor Ed Koch, a Trump hater if there ever was one, told me he is a great builder.

If only Trump were content to leave it at that. For the rest of the story is much darker. Nowhere are Trump's self-defeating tendencies more evident than with his casino company, Trump Hotels & Casino Resorts, which he took public in 1995 under the monogram ticker symbol DJT. It was Trump's salvation at the time, raising \$ 140 million that he used to pay off creditors. "Without the casino company, Donald would not be alive today," one of his employees says. The stock climbed to \$ 34—then headed straight for the toilet. These days it's hovering somewhere above \$ 3, and Trump's 42% stake in the company has shriveled from more than half-a-billion dollars to \$ 53 million.

Surprisingly, the underlying assets are in good shape. Trump's three New Jersey casinos command nearly a third of all gaming revenues in Atlantic City, a slow-growing market that has nonetheless withstood challenges from Connecticut's new megacasinos. All are well-run operations with top-drawer management; the New Jersey Casino Control Commission says they all have clean records. The flagship Taj Mahal, an onion-domed complex with some 4,500 slot machines, throws off nearly \$ 100 million in cash annually; the smaller Trump Marina has almost doubled its own cash flow to \$ 53 million in three years. Add in Trump Plaza and a riverboat outside Gary, Ind., and the company generates more than \$ 240 million in cash a year. "Donald is not blowing smoke when he says there is a lot of money in that business," says Barrack.

A cash cow it may be, but most of the cash goes toward the care and feeding of another beast: the \$ 1.8 billion in high-yield debt that has saddled the company almost since its inception. The debt servicing eats up \$ 216 million of the cash flow, leaving the company precious little capital to reinvest in its properties and even less in the way of earnings for shareholders. The company lost \$ 134 million after depreciation and special items in 1999, and S&P recently lowered Trump's bond rating from junk to junkier.

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But most disquieting is Trump's tendency to use the casino company as his own personal piggy bank. It's not just the \$ 5 million bonus he drew one year, or the fact that the pilots of his personal 727 are on the casino company's payroll. In 1996 he sold Trump Marina (then called Trump's Castle) to the company for what many shareholders considered too rich a price. Trump insists it was a "good deal." Yet he further angered investors in 1998 when he had the already cash-strapped company lend him \$ 26 million to pay off a personal loan from Donaldson Lufkin & Jenrette.

Trump denies misusing company funds and says he'll repay the \$ 26 million when it comes due May 15. Two sources close to Trump say that to raise the money, he is trying to mortgage Mar-a-Lago. Trump confirms that he is considering a \$ 25 million to \$ 30 million mortgage on that property, but insists he has the money to meet the obligation. "Our cash flow has been tremendous," Trump says. He is sensitive on this point: Trump had his lawyer send a letter threatening to sue FORTUNE and me, saying, "It is our information that the article will contain false and misleading material concerning, among other things, the net worth and cash flow of The Trump Organization and/or Mr. Trump." During one of our telephone discussions (which Trump later admitted he had begun taping), Trump said he would "sue the ass off of FORTUNE" if I were to "disparage [his] cash flow." But one of Trump's senior executives confirmed that Trump is seeking a mortgage on Mar-a-Lago, and possibly on Trump Tower, to pay back the \$ 26 million.

Meanwhile, a shareholder has sued for breach of fiduciary duty. And as if all this weren't enough to undermine Trump's Street cred, the company was accused of overstating last year's third-quarter results when it failed to disclose that \$ 17 million in revenues came from a one-time event.

A couple of people close to Trump and otherwise sympathetic to him suggested to me that he's unfit to be running a public company. Given that the low stock price seems partly a function of Wall Street's allergic response to Trump's flamboyance—analysts call it "the Donald factor"—the obvious solution would be for Trump to remove himself from management. One industry executive estimates that step alone would bring a 30% bump in the stock.

But Trump has chosen the opposite tack: Having paid little attention to the casinos for several years, he's promising to become more involved with them than ever. He says he'll even join investor conference calls. "When I get involved in something, it gets hot," he says, stabbing the air with his index finger for emphasis. "Watch what I do to that company. Just watch."

Trump has started by firing Taj Mahal President Rudy Prieto the day before Christmas Eve. He may soon be searching for a new CEO too: Recent word is that the highly capable Nick Ribis, tired of having his hands tied by restrictive debt covenants and his stock options several million dollars underwater, is on his

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way out. And in February, Trump settled his five-year feud with Mirage Resorts' now former boss Steve Wynn—a feud that had Trump flinging lawsuits to stop Mirage from entering Atlantic City, Wynn countersuing for restraint of trade, both men throwing around words like "imbecile," and a Mirage operative allegedly wearing a "modified jockstrap" equipped with listening devices. The settlement should save Trump \$ 3.5 million a year in legal fees.

Now it appears Trump will attempt to deleverage the company by unloading one of the casinos within the next six months; the Indiana riverboat seems the likely candidate. If that doesn't goose the stock price, well, there are already internal discussions about taking the company private.

Another puzzling aspect of Trump's public image is that even though he runs two companies that together employ 22,000 people, one never gets the sense of an organization underneath him. Indeed, one could easily come to the conclusion that he's not only a sole proprietor but a sole employee. But in fact Trump has assembled an extremely loyal crew within his 50-person corporate office: CFO Allen Weisselberg began working for Trump's father in 1973; Nick Ribis began as Trump's lawyer in 1977. Both current and former employees describe Trump as a loyal if not especially well-paying boss, citing stories of birthdays remembered, of sick relatives visited in the hospital. Yet some of them bristle at the popular perception of Trump as a one-man show. "He's got a very good team. It's not just a show front," says Abe Wallach. "This is a professionally run real estate organization."

His point is perhaps blunted by the I [LOVE] DONALD TRUMP bumper sticker on his office wall, but then theirs is a complex relationship. Around 1990, when Trump's empire seemed on the verge of collapsing under its own weight, Wallach—then a senior vice president at New York real estate firm First Capital Management but a stranger to Donald—began speculating to the press about Trump's fate, telling the Washington Post that people would soon be saying "Donald who?" On the MacNeil/Lehrer Newshour, he said of Trump, "If your ego is as large as his is and you just buy everything in sight, part of the blame has to squarely rest in your own lap."

Never one to sit idly by and take that sort of treatment, Trump decided he wouldn't. According to one account, Wallach opened his door one day to find himself served with a \$ 250 million lawsuit. When Trump and Wallach got in touch to discuss the situation, the story goes, they ended up hitting it off, and Trump eventually hired Wallach instead of suing him. Trump says he never threatened litigation but confirms the rest of the story. Wallach at first denied it altogether, saying he met Trump in a cordial fashion through Trump's father, then admitted it was all true. Whatever.

Oddly enough, for a man who all but lives in the media, Trump has no public relations machinery to speak of. In a day when even petty tycoons insulate

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themselves with platoons of spokespeople and media consultants, he relies only on his longtime assistant Norma Foederer and returns most reporters' calls personally, making him one of the most accessible businessmen anywhere. Sometimes overbearingly accessible: When FORTUNE once assembled a list of billionaires, Trump called so many times to haggle over his net worth that an intern was assigned to field his calls.

And while Trump can spend workaholically long hours at the office, sleeping only four hours a night and consuming as many as eight newspapers a day, one wonders how much of that time is spent calling celebrities like Leonardo DiCaprio or simply turning the media wheels. During one of my stops at his office he handed me a thick care package of clippings that included the same New York Construction News honor and an article naming him the second-best self-promoter of all time, behind only Muhammad Ali, an act that presumably put him on a still more select list of people who have self-publicized their own abilities as a self-publicist.

All the while, Trump takes pains to maintain a pretense of exclusive access, at one point summoning Foederer into his office so that she could show me the stack of requests for interviews (59 last week alone!). "Half of the press corps in the country is upset that they're not on this plane," Trump assured me on the way to see Ventura, which may not have been entirely untrue: Given the alternatives of covering Steve Forbes' robot routine in New Hampshire or living it up on Air Trump, political reporters seemed all in favor of the latter.

It occurred to me, though, that for a guy who seems to value "loyalty" so much, Trump's media-soaked life must feel like a series of betrayals, as journalist after journalist chooses to accept his advances and then turns on him. While at first blush Trump can come off as a thick-skinned believer in the adage that there's no such thing as bad publicity, that doesn't quite hit the mark: Like a true publicity-holic, Trump repeatedly indulges in publicity and then rails against the consequences. "A lot of reporters are scum," he told me, denouncing "that little moron" from such-and-such financial publication and the "piece of shit" from another. Recently, he threatened to sue George after the magazine seemed to suggest that he had filed for personal bankruptcy in the early '90s. This got me thinking that the cause of his behavior perhaps wasn't so much egotistical as medical. I even called a psychiatrist to get his clinical assessment of Trump. (He suggested an overmastering need to escape the shadow of his father, Fred, a successful outer-borough developer who died last year and whom Trump rarely mentions.)

But the real puzzler is what, exactly, Donald Trump wants. As we walked through the half-gutted lobby of the General Motors Building, Trump insisted he most wanted to be respected as a builder. "The thing I do best is I build," he said. "Everyone says, 'Oh, Trump is a great promoter.' I don't think I'm even a good promoter. You build a great product, it becomes successful." He paused to touch

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some liny bronze fixtures. "See, these were all corroded—they looked disgusting," he said. "Now it's great, right?"

But even while Trump complains he'd like to be covered "more in business and less in social," he can't seem to help himself. In the end, one is simply humbled before the awesome insularity of his logic. "I own a lot of things that I don't have my name on," he explained at one point. "But when I don't put my name on it, nobody knows that I own it. That's one of the reasons I like putting my name on things."

Outside the General Motors Building, Trump and I paused by his limo for a few seconds to stare up at the huge trump lettering on the facade. "See how understated that is?" he said in a rare outburst of irony. A foreign-sounding woman on the street recognized him. "Are you going to be a President?" she asked. "Absolutely," said Trump. "No doubt about it."

Three weeks later (after FORTUNE had flown with him to St. Louis for some final politicking and, yes, a Tony Robbins speech) Trump announced he wasn't running. The proximate cause was the Reform Party meeting that ended with red-faced delegates screaming and jostling one another for microphones, and Jesse Ventura's subsequent secession from the "dysfunctional" party. Privately, I wondered if Trump had begun to doubt his own constitutional capability for certain political rituals, notably the concession speech. But the final nail in the coffin was John McCain's surprise surge in the polls. Roger Stone felt robbed: "He's running on Trump's message."

As I was finishing up the story, Trump called me nearly every day, unsolicited, to offer tidbits of information, including details of the "very successful" tennis tournament he'd hosted over the weekend. (He and a partner had beaten Michael Milken and John Lloyd in the finals.) He deluged me with faxes about recent triumphs, had friends and associates call me to serve as character witnesses of sorts.

"One more thing," he said one time just before hanging up. "Did you know that New York Construction News named Donald Trump the developer and owner of the year?"

REPORTER ASSOCIATE Theodore Spencer

SIDEBAR:

**TRUMP, TRUMP, TRUMP**

"It's hard to put a negative slant on Trump," says Donald Trump. "The deals I've done are all huge successes." Here are the major landmarks in Trump World:

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--Trump Tower. Trump says he owns "100%" of the saw-toothed glass monument he erected in 1983, by which he means the lower 26 floors of commercial space and his three-floor apartment. He neglects to mention a \$ 35 million mortgage taken out a few years back. How much is the building worth? Trump claims it throws off \$ 16 million a year and has a value of more than \$ 200 million.

--40 Wall Street. Trump bought the dilapidated, mostly vacant 1929 landmark for \$ 1 million in 1995. Now even his critics call it the steal of the century. Renovated and fully occupied, the building generates \$ 32 million a year, according to Trump. Its worth? Trump's people estimate as much as \$ 500 million (minus a \$ 125 million mortgage), but the city has it appraised at \$ 90 million.

--The General Motors Building. Trump and fifty-fifty partner Conesco paid a lofty \$ 800 million for the edifice in 1998. But Trump has raised rents as high as \$ 100 per square foot--possibly the highest in the country--and the building was recently appraised at \$ 1.29 billion. Now the partners are trying to reduce the more than \$ 780 million in debt they incurred to acquire the property.

--Trump World Tower. The controversial monolith, scheduled for completion in 2001, would be the tallest residential building in the world. Though construction is only at the 40th floor, sales of its condominiums have already topped \$ 250 million. Trump put up only \$ 6.5 million in equity to Daewoo's \$ 58.5 million--though Trump will qualify for 50% of the profits if his performance is up to snuff--and Germany's HypoVereinsbank provided a \$ 295 million loan. Trump says he is trying to buy out Daewoo's stake.

--Trump Place. Trump sold an interest in Manhattan's West Side railyards to Hong Kong investors in 1994, launching an 18-building residential project on the land. The proceeds from the first two buildings--a rental and a condo--are being used to finance the next two, currently under construction. Trump stands to make 45% of the profits, but only after his partners have earned back their investment.

--Mar-a-Lago. Trump bought the Palm Beach Xanadu, former home of cereal heiress Marjorie Meriweather Post, for \$ 8 million in 1985. Trump International Golf Club recently opened nearby.

--Golf courses. Trump owns one golf course in Westchester County and wants to build three more on plots he owns there. First, he must clear a thicket of zoning and environmental hurdles.

--Other assets. Besides his 42% stake in publicly traded Trump Hotels & Casino

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Resorts, Trump owns the Miss Universe and Miss USA pageants, a modeling agency, and 50% of the land under the Empire State Building. He owns the retail spaces in Trump-branded buildings he no longer controls, and says he's considering lending his name to projects in Dallas, Chicago, London, Vienna, Tel Aviv, and Seoul.

--Jerry Useem and Theodore Spencer

The New York Post

April 18, 1999, Sunday

SECTION: All Editions; Pg. 014

LENGTH: 2901 words

HEADLINE: TRUMP: THE SMARTS OF THE DEAL ; HOW DONALD USES (MOSTLY) OTHER PEOPLE'S MONEY TO BUILD A KINGDOM IN HIS NAME

BYLINE: ALLEN SALKIN

BODY:

Call him the Master Magician of Manhattan.

Donald Trump's name is all over the place these days, from Wall Street to the Upper West Side, from hotels to office towers to luxury condos.

He's built his empire not with smoke and mirrors, but with artful dealmaking that gives him an array of different roles in the high-profile projects.

They range from outright ownership to complex arrangements that call for a share of future profits.

Trump wants people to believe he is no mere frontman, that he owns and controls the "Trump" buildings.

"Nobody owns me," he told The Post.

But Trump knows one thing about priests, Hong Kong money men, New York banks, Saudi princes and TV networks: they're all willing to make a deal.

And without putting much of his own money into any of his recent projects, Trump has managed to retain a heck of a lot of control of them - and made a heap of dough.

For the first time, Trump reveals fascinating details of the deals he's made.

TOB-PD-00002405



LOAD-DATE: April 19, 1999

The Property Report  
Donald's Wealth Estimates Trump Reality --- Several Billions Are Based On Profits  
That Are Far In the Developer's Future  
By Linda Sandler  
Staff Reporter of The Wall Street Journal  
1,236 words  
19 January 2000  
The Wall Street Journal

B10  
English

(Copyright (c) 2000, Dow Jones & Company, Inc.)

Donald Trump, who hates to shake hands, happily pumps the grimy hands of construction workers who are laying the 19th floor of his latest condominium project, Trump World Tower. "That's good working dirt," he explains, glancing at Manhattan's United Nations buildings below.

All of the 53-year-old developer's site tours these days are practice for a possible \$100 million presidential run, which he says he'll announce a decision on soon. "I'm rich and I'm successful," Mr. Trump says. "Isn't that the kind of president you want?" Well, maybe. But just how rich and how successful is Mr. Trump? He puts his net worth at \$5 billion, and indeed lives a lavish lifestyle, including a gold-lettered 727 jet and helicopter, a penthouse apartment in Trump Tower on Fifth Avenue, assorted houses and long-legged models.

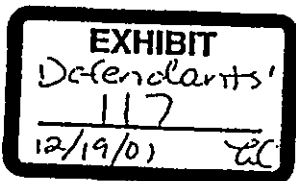
But a look at the major sources of his wealth, including the Trump Place apartment development on New York City's west side, the 70-story Trump World Tower project and the midtown General Motors Building, shows that several of his billions are based on profits that are far in the future -- and far from guaranteed.

"Donald exaggerates sometimes. He's talking of futures," says Mr. Trump's aide, Abraham Wallach, executive vice president of Trump Organization. Indeed, many real-estate professionals privately assert that Mr. Trump's real worth, consisting of assets and fees that are more or less in hand, falls far short of the \$1.6 billion tallied by Forbes magazine.

This needn't hurt Mr. Trump's chances with the Reform Party he's espousing. "What blue-collar workers [who are the core of the party] really like about Trump is he's a rich guy who got knocked down, and he got up off the mat," says Roger Stone, who is running the pre-campaign, referring to Mr. Trump's reverses and the Trump casinos' bankruptcy reorganization in the early 90s.

Touting his wealth Mr. Trump says, "I have assets you don't even know about." However, he isn't as big as he says.

Take Trump Place, which he deems "the largest development ever approved by the New York City Planning Commission." Finished, it would have 16 apartment buildings on 75 acres. Entitled to 30% of future profit, Mr. Trump says it's already worth \$2 billion to \$3 billion to him, making it appear the biggest single component of his net worth. But only two buildings are complete, with richly appointed lobbies and great views but cut off from the Hudson River by an elevated highway. A third building has just begun. Meanwhile, the Hong Kong investors who control the development tried to sell part of it in 1998, but couldn't get the price they wanted from bidders such as Related Cos.



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If the market turns down, it could take 10 years to make a profit, Mr. Wallach says. He maintains that in 10 years Mr. Trump could still "walk away with \$1 billion." But factoring in uncertainty and delay that \$1 billion would have to be severely discounted when tallying Mr. Trump's current net worth.

Mr. Trump's Atlantic City casinos show the danger of counting chickens before they hatch. Two years ago, he shopped the casinos for \$1 billion -- Mr. Trump now says he was only thinking of selling part of the company. But his 42% stake today is valued in the market at a mere \$50 million or so. "That's my biggest sleeper," he says.

Counting his wealth, Mr. Trump may be a bit premature, too, with the \$360 million Trump World Tower project, where he boasts of having put up only \$6.5 million, or 10% of the equity, to get 50% of the profit. Typically Mr. Trump, having once lost his shirt, risks little money but earns a profit -- paid only after lenders and partners get their money back -- by acting as developer and promoter. He currently values his stake in what will be very fancy waterfront condos at \$250 million. To get that number, he assumes condo prices will keep rising through the sales period ending in mid- to late-2002.

But conservative accounting would require Mr. Trump to discount -- by 20% to 30%, say real-estate investors -- the \$250 million he expects from Trump World Tower, as the money is three years away and may be reduced by a slowdown or failure to finish the building on time. Even Mr. Trump sometimes worries about an end of the long condo boom.

Mr. Trump likes to boast that he owns 50% of the General Motors Building, the pin-striped office tower that looms over Central Park. He says the building is worth "much more" than the \$800 million paid in a 1998 bidding war. But to see a profit, he must reduce debt and pray the office market doesn't cool. He and insurer Conseco Inc. each invested only \$9 million of equity, according to confidential documents of the transaction, while heaping debt of about \$780 million onto the trophy building, including an \$80 million subordinated loan from Conseco.

Meanwhile, an advertised plan to make a quick profit by selling offices as condos seems to have fizzled. And though Mr. Trump says, "I'll make more money without it" because leases are turning over at high prices, there are signs that Conseco may be restless.

A Conseco spokesman says, "We're happy with the investment." But Mr. Wallach, just back from Germany to try and raise \$400 million, says, "We're actively working to pay off Conseco's subordinated debt as well as a piece of the other debt."

For sure, Mr. Trump is "a great builder," says Robert Dowling, managing director, real-estate lending, for Germany's HypoVereinsbank AG, which lent \$295 million for Trump World Tower, whose great height has drawn neighbors' ire.

Mr. Trump's renovation of 40 Wall Street, a once-distressed 1929 office building, is widely applauded. But while Mr. Trump says it is now worth \$350 million, Mr. Wallach says a would-be buyer valued it at \$150 million, net of debt.

One of Mr. Trump's specialties is fees: He expects to earn \$50 million of them this year. After licensing his name to the Trump Tower Seoul, he hopes to name buildings in Dallas and Vienna in the next year or so. From Trump World Tower condo sales, Mr. Trump stands to earn sales commissions and incentives of \$30 million over three years, plus a \$10 million fee for licensing his name. He gets fees for managing buildings and for marketing services to his casinos, which despite their poor performance also paid him compensation of about \$3 million in 1998, including stock options.

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The self-made man downplays the amount he'll get when his late father's will is distributed this year. He is entitled to a one-fourth share of an estimated \$200 million. While bankers in the bad days put him on a budget of \$5.4 million a year, he says it is less now. "Most of the restaurants I go to don't charge me," he says. "They want me there."

Trump Asserts Net Worth Totals Up to \$1.6 Billion

By Mitchell Pacelle

Staff Reporter of The Wall Street Journal

481 words

7 April 1992

The Wall Street Journal

PAGE C8

English

(Copyright (c) 1992, Dow Jones & Co., Inc.)

The New Jersey Casino Control Commission, in renewing the Trump Taj Mahal's license yesterday, said Donald Trump asserted his net worth was \$437 million to \$1.6 billion, though he fell short of his cash-flow projections for last year. Mr. Trump was deemed to have presented sufficient evidence of his own financial stability to continue operating the casino, where he is a 50% owner. But regulators cautioned that his worth -- assets minus liabilities -- was "difficult to quantify," because it depended on Mr. Trump's own estimates of the value of his properties. The commission also said Trump Organization, of New York, was falling short of its forecasts from last year. Mr. Trump posted a year-end cash balance of \$1.7 million, \$700,000 less than the forecast balance of \$2.4 million.

In addition, while the commission pointed out that Mr. Trump's debt-restructuring agreements had enabled him "to avoid a forced bankruptcy proceeding and remain financially viable" through yearend 1991, it said the deal with his lenders "should not be viewed as a long-term solution to Mr. Trump's financial difficulties."

The commission added: "Due to the uncertainty surrounding his forecasted cash flows, we believe the commission should continually monitor Mr. Trump's cash position and future financial viability."

In response to Mr. Trump's request that the financial report be sealed, the commission declined to release such details as what values Mr. Trump placed on his holdings, how much income he derives from various assets, and where he had deviated from forecasts.

In submissions to the commission in June, it appeared that Mr. Trump's financial viability was contingent on sales of apartments he owns in Trump Tower and of his Fifth Avenue retail and residential property. His debt restructuring deal permits him to keep as much as \$10 million from the those apartment sales. But as of mid-March, he had netted only \$1.8 million, and there are no new sales agreements, the panel said. To compensate for the shortfall, Trump Organization cut costs, deferred interest on some debt, and used cash from non-gambling properties.

Mr. Trump forecast that by June 30, 1992, his cash balance will have grown to \$5.3 million, up from the year-end 1991 balance of \$1.7 million. That figure, however, is contingent on further Trump Tower sales, and restructuring a \$75 million loan on the building.

Mr. Trump also will have to restructure a \$12 million mortgage, currently in default, on Mar-A-Lago, his Florida estate. He also must complete restructurings of Plaza Hotel in New York, and the Trump Plaza and Trump Castle casinos in Atlantic City, N.J. The commission noted that Mr. Trump's debt now totals \$2.6 billion.

TOB-PD-00002417

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BY EMAIL AND REGULAR MAIL

July 5, 2007

William M. Tambussi, Esq.  
Brown & Connery LLP  
360 Haddon Avenue  
P.O. Box 539  
Westmont, NJ 08108

Donald J. Trump v. Timothy L. O'Brien, et al.

Dear Mr. Tambussi:

As indicated in defendants' June 27, 2007 submission to the Court, defendant Timothy L. O'Brien agreed to supplement four responses to plaintiff's interrogatories. In particular, this letter contains Mr. O'Brien's supplemental responses to Interrogatory Nos. 2 (persons to whom Mr. O'Brien revealed the identities of the confidential sources), 15 (editors), 29 (rejected book proposals), and 31 (accusations of libel). Additionally, Mr. O'Brien hereby supplements his response to Interrogatory No. 12 (publishing houses to which his proposal for TrumpNation was submitted).

Supplemental Interrogatory Responses of Mr. O'Brien

**INTERROGATORY NO. 2**

Identify (a) any person to whom you have disclosed the identity of any of the three persons referenced in Interrogatory Number 1, or (b) any person you believe knows the identity of any of the persons referenced in Interrogatory Number 1, and describe the basis for your belief.

<sup>1</sup> We have reviewed your email of June 5, 2007 regarding Interrogatory No. 15 (editors of the Work) and believe your expanded definition of "editor" is beyond the scope of your request. Furthermore, to the extent plaintiff now seeks the names of any persons who made any suggestions regarding the Work, we maintain that information is protected by the newsperson's privilege. In addition, Mr. O'Brien does not intend to supplement Interrogatory No. 17 (individuals interviewed by Joseph Plambeck), unless ordered to do so by the Court; this information is available from defendants' privilege log.

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**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 2**

Defendant objects to this Interrogatory on the ground that it calls for the production of information protected by the attorney-client privilege, work product doctrine, and newsmen's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, I have not disclosed to any non-privileged party the identities of the confidential sources.

**INTERROGATORY NO. 12**

Identify all publishing houses to which the Work or a proposal concerning the Work was submitted.

**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 12**

A proposal relating to the Work was submitted to eight publishing houses:

- Broadway Books, Charlie Conrad, 1745 Broadway, New York, NY 10019
- Gotham Books, Brendan Cahill, 375 Hudson Street, New York, NY 10014
- Harper Collins, David Hershey, 10 E 53<sup>rd</sup> Street, New York, NY 10022
- Penguin Books, Scott Moyers, 375 Hudson Street, New York, NY 10014
- Random House, Andrew Miller, 1745 Broadway, New York, NY 10019
- Rodale, Zachary Schisgal, 733 Third Avenue, New York, NY 10017
- Simon & Schuster, Marty Beiser, 1230 Avenue of the Americas, New York, NY 10020
- Warner Books Inc. (now a subsidiary of Hachette Book Group USA, Inc. and known as Grand Central Publishing), Richard Wolff, 1271 Avenue of the Americas, New York, NY 10020

**INTERROGATORY NO. 15**

Identify all editors of the Work.

**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 15**

Defendant objects to this Interrogatory to the extent the word "editors" is ambiguous and vague. Subject to the foregoing general and specific objections, the

July 5, 2007

Work's editor was Richard Wolff (Vice President and Executive Editor), the assistant editor was Jason Pinter (Assistant Editor), and the copy editor was Bob Castillo (Managing Editor). In addition, as Sunday Business Editor of The New York Times, Jim Impoco edited the excerpt of the Work that appeared in The New York Times.

**INTERROGATORY NO. 29**

Identify any book proposals that you have submitted to any person, including but not limited to any publisher or agent, that were rejected.

**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 29**

Defendant objects to the Interrogatory on the ground that it seeks discovery of information neither relevant to the subject matter of this action, material and necessary to the prosecution or defense of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing general and specific objections, of the publishing houses identified in response to Interrogatory No. 12 as having received the TrumpNation proposal, only Warner Books Inc. offered me a contract. To the extent that this Interrogatory seeks information regarding book proposals other than for TrumpNation, such information is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 31**

Describe any instance or circumstance in which you have been accused of plagiarism, libel, slander or defamation in connection with an article or book you have written or a statement you have made, including the nature of the accusation, the date of the accusation, the work in question and the resolution, if any.

**OBJECTIONS AND ANSWER TO INTERROGATORY NO. 31**

Defendant objects to the Interrogatory on the ground that it seeks discovery of information neither relevant to the subject matter of this action, material and necessary to the prosecution or defense of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing general and specific objections, in connection with my reporting of a critical story about Emanuel Zeltser for publication in The New York Times, Zeltser and certain of his associates made false allegations about me. These claims are recounted at <http://www.russianlaw.org/obrien.htm>. In addition, counsel for Nadhmi Auchi complained in a letter to The New York Times that an April 30, 2003 article I wrote had defamed Mr. Auchi. However, after The New York Times expressed its view that the article was accurate and therefore refused the request of Mr. Auchi's counsel for a monetary payment, neither Mr. Auchi nor his counsel ever again contacted The New York Times or me regarding their claim.

William M. Tambussi, Esq.

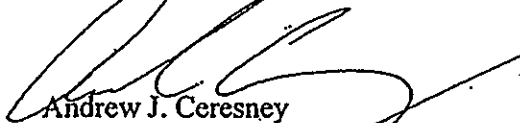
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July 5, 2007

\* \* \*

Please contact me if you have any questions.

Very truly yours,



Andrew J. Ceresney  
Debevoise & Plimpton LLP

/s/ Mark S. Melodia  
Mark S. Melodia  
Reed Smith LLP

cc: Mark P. Ressler, Esq. (Via Email and Regular Mail)  
Maria Gorecki, Esq. (Via Email and Regular Mail)  
James F. Dial, Esq. (Via Email and Regular Mail)

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BY FAX AND REGULAR MAIL

September 28, 2006

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Brown & Connery LLP  
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P.O. Box 539  
Westmont, NJ 08108

Donald J. Trump v. Timothy L. O'Brien, et al.

Dear Mr. Ressler and Mr. Tambussi:

We are in receipt of your September 12, 2006 letter, as well as your subsequent letters, seeking additional information in connection with our interrogatory responses. Although we do not believe our responses were deficient in any way, in order to narrow the scope of any disputes, we have provided below some supplemental information responsive to your requests.

First, we supplement Time Warner Book Group ("TWBG") Interrogatory Response No. 10 and O'Brien Interrogatory Response No. 21 as follows:

INTERROGATORY NO. 10 / 21:

Describe the chronology that culminated in publication of the Work, including but not limited to the date when: (a) O'Brien (or a person acting on his behalf) provided a manuscript of the Work to you; (b) O'Brien (or a person acting on his behalf) provided any revision of the Work to you; (c) you sent O'Brien (or a person acting on his behalf) an edited manuscript; and (d) you sent O'Brien (or a person acting on his behalf) galley proofs and dummies.

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OBJECTIONS AND ANSWER TO INTERROGATORY NO. 10 / 21:

Defendants object to this Interrogatory on the ground that it calls for the production of information protected by the newperson's privilege, as well as by other constitutional, statutory, and common law protections.

Subject to the foregoing general and specific objections, and without waiving any such privilege or objection, O'Brien provided the initial draft of the manuscript in portions to TWBG from January 2005 through May 2005. Both prior to and following the submission of the initial draft of the manuscript, O'Brien provided TWBG with certain revisions to the manuscript of the Work; other changes to the manuscript of the Work were made both prior to and following the submission of the initial draft as a result of copyediting and other editorial suggestions. On or about June 6, 2005, O'Brien was provided with a copyedited manuscript for his review. O'Brien made revisions to the copyedited manuscript. Bound galleys of the Work were received by TWBG in or about late July 2005, a copy of which was sent to O'Brien soon thereafter. O'Brien made revisions to the galleys.

Second, we supplement TWBG Interrogatory Response No. 16 and O'Brien Interrogatory Response No. 36 as follows:

INTERROGATORY NO. 16 / 36:

State the name, address and job title of each person with knowledge or information pertaining to any claim or defense asserted in this action and provide a summary of their knowledge and how it was acquired.

OBJECTIONS AND ANSWER TO INTERROGATORY NO. 16 / 36:

Defendants object to this Interrogatory on the ground that it is premature. Defendants further object to this Interrogatory on the ground that it calls for the production of information protected by the newperson's privilege, as well as by other constitutional, statutory, and common law protections. Subject to the foregoing general and specific objections, and without waiving any such privilege or objection, defendants refer plaintiff to the Complaint and to the content of the Work for certain information responsive to this Interrogatory. Furthermore, upon information and belief, the following persons have knowledge, and known contact information is provided where available:

- Donald J. Trump, Chairman and President, The Trump Organization, 725 Fifth Avenue, New York, NY 10022 – Mr. Trump is believed to have information relevant to his net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the

Complaint, and is believed to have acquired that information through his involvement in his own business dealings.

- Allen Weisselberg, The Trump Organization, 725 Fifth Avenue, New York, NY 10022 – Mr. Weisselberg is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, including the content of his discussions with Mr. O'Brien, and is believed to have acquired that information through his role as Chief Financial Officer for the Trump Organization.
- Michelle Scarbrough, Attorney, The Trump Organization, 725 Fifth Avenue, New York, NY 10022 – Ms. Scarbrough is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, including the content of her discussions with Mr. O'Brien, and is believed to have acquired that information through her role as an attorney for the Trump Organization.
- New Jersey Casino Control Commission, Arcade Building, Tennessee Avenue & Boardwalk, Atlantic City, New Jersey 08401 – The Casino Control Commission is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through filings by Trump and his related entities.
- New Jersey's Department of Gaming Enforcement, P.O. Box 047, Trenton, NJ 08625 – The Department of Gaming Enforcement is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through filings by Trump and his related entities.
- Credit Suisse, 11 Madison Avenue, New York, NY 10010-3629 – Credit Suisse is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions.

- Deutsche Bank, 60 Wall Street, New York, NY 10005 – Deutsche Bank is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions.
- Morgan Stanley, 1585 Broadway, New York, NY 10036-8293 – Morgan Stanley is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions:
- General Electric, 3135 Easton Turnpike, Fairfield, CT 06828-0001 – General Electric is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions.
- New World Development Company Limited, New World Tower, 18 Queens Road Central, 30<sup>th</sup> Floor, Hong Kong – New World Development Co. is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions.
- Ullico, 1625 Eye Street, N.W., Washington, DC 20006 – Ullico is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions.

- Weiser LLP, 399 Thornall Street, Edison, NJ 08837 – Weiser is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from Trump and his related entities as part of its work as accountant to Trump and related entities.
- Mark Burnett, c/o Mark Burnett Productions, Inc., 640 N. Sepulveda Blvd., Los Angeles, CA 90049 – Mark Burnett is believed to have information relevant to Mr. Trump's net worth and business dealings, as well as the business dealings of Trump-related entities and other allegations in the Complaint, and is believed to have acquired that information through documents and other information obtained from and about Trump and his related entities in connection with business transactions.
- Richard LeFrak, c/o The LeFrak Agency, 40 W. 57th St., New York, NY 10019 – Richard LeFrak is believed to have information relevant to Trump's business dealings, as well as other allegations in the Complaint, arising from his involvement with Trump and others in the real estate industry.
- Mort Zuckerman, c/o Boston Properties, 599 Lexington Avenue New York, NY 10022-6004 – Mort Zuckerman is believed to have information relevant to Trump's business dealings, as well as other allegations in the Complaint, arising from his involvement with Trump and others in the real estate industry.
- *Forbes* Magazine, 60 Fifth Avenue, New York, NY 10011 – *Forbes* Magazine is believed to have information relevant to the Complaint's allegations relating to its estimates of Trump's net worth, arising from its work in connection with the *Forbes* 400.
- Peter Newcomb, c/o *Forbes* Magazine, 60 Fifth Avenue, New York, NY 10011 – Peter Newcomb, a *Forbes* employee, is believed to have information relevant to the Complaint's allegations relating to *Forbes'* estimates of Trump's net worth, arising from his work in connection with the *Forbes* 400.

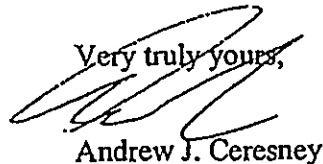
- Timothy L. O'Brien [identified above] – Timothy L. O'Brien has information relevant to the Complaint's allegations based on his reporting at the *New York Times* and in connection with the Work.

In addition to those identified above, persons with knowledge include: (1) past and present employees, contractors, agents, representatives, advisors, and affiliates of Donald Trump and/or of any Trump-related entity; (2) past and present, whether actual or prospective, business partners or associates, investors, financiers, creditors, and guarantors of Donald Trump and/or of any Trump-related entity; (3) past and present family members of Donald Trump; (4) relevant regulatory authorities; (5) those other persons known to plaintiff; (6) certain employees of defendants; and (7) those others who may be identified through discovery.

Third, in connection with O'Brien Interrogatory No. 9, defendants continue to maintain that any statements made to Mr. O'Brien by Tina Brown, in the course of O'Brien's reporting on Trump, are covered by the New Jersey Shield Law, as well as constitutional and common law protections. Nevertheless, defendants have offered to provide the advice that Tina Brown provided to Mr. O'Brien – which was very minimal and is irrelevant to these proceedings – as long as plaintiff agrees that such disclosure does not amount to a waiver of any privilege that may attach to that advice.

Fourth, in connection with TWBG Interrogatory Response No. 7 and O'Brien Interrogatory No. 19, you have asked about any legal vetting or review of the Work before publication. Without waiving any privilege or objection, we state that Christopher Nolan, an attorney and outside contractor, was engaged to conduct a legal review of the Book prior to its publication.

Very truly yours,



Andrew J. Ceresney

cc: Mark S. Melodia, Esq.  
James F. Dial, Esq.



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# Forbes

Forbes

October 6, 2008

**SECTION:** THE FORBES 400; Pg. 208 Vol. 182 No. 6

**LENGTH:** 3614 words

**HEADLINE:** Housing Honchos

**BYLINE:** Edited by Matthew Miller and Duncan Greenberg

**HIGHLIGHT:**

While others are mired in real estate meltdowns, these billionaires have stayed on solid ground.

**BODY:**

While others are mired in real estate meltdowns, these billionaires have stayed on solid ground.

**Samuel Zell \$5 billion Real estate, private equity. Chicago. 67. Twice divorced, remarried; 3 children**

The grave dancer meets "the deal from hell." Took control of Tribune Co. last December in \$8.2 billion deal done with media giant's employees. Colossal debt, massive declines in ad revenue forcing firm to sell off assets. Sold majority interest in New York tabloid *Newsday* to Cablevision in April for \$650 million. Pro baseball's Chicago Cubs—and Wrigley Field—now for sale; Mark Cuban reportedly offered \$1 billion. Made first fortune buying and selling cheap real estate from distressed owners with partner Robert Lurie (d. 1990). Sold Equity Office Properties to Stephen Schwarzman's Blackstone Group for \$39 billion cash in 2007. Still owns large stakes in Equity Residential and Equity Lifestyle REITs. Other investments: housing developments, office parks in China, shopping malls in Brazil.

**Paul Milstein & family \$5 billion Real estate, Emigrant Bancorp. New York City. 86. Married, 4 children**

Father, Morris, founded circle co. 1919; laid hardwood floors and carpeting for Madison Square Garden, Rockefeller Center. Paul took over Circle; brother Seymour (d. 2001) ran a tile manufacturer. Paul sold Circle 1968. Built New York real estate empire. Succession issues threatened to split business; two sides agreed to settlement 2003. Today Milstein Properties owns apartment towers from Battery Park City to the Upper East Side, offices in Midtown, several undeveloped lots across Manhattan. Acquired New York City's oldest savings bank, Emigrant, for \$90 million 1986. Bank assets exceed \$14 billion. Son Howard now oversees entire operation.

**Stephen Ross \$4.5 billion Real estate. New York City. 68. Divorced, remarried; 4 children**

Nephew of late Forbes 400 member Max Fisher (d. 2005) founded real estate developer Related Cos. 1972. Initially focused on building, financing low-income housing; branched into riskier luxury buildings in New York. "Encountered bad times" early 1990s, recovered. Firm has developed more than \$16 billion of property across the U.S., including Time Warner Center in Manhattan. In May nabbed billion-dollar deal to develop Manhattan's West Side rail yards after Tishman Speyer abandoned the project; Related will develop 12 million square feet of office, residential and retail space. Met Jorge Perez, cofounded Related Group of Florida 1979. Partnership continues today with condo and hotel projects in Latin America. Owns stake in Equinox Fitness Clubs; integrating workout centers into new developments. Recently bought 50% stake in Miami Dolphins from Wayne Huizenga.

**Richard LeFrak & family \$4.5 billion Real estate. New York City. 63. Married, 2 children**

Grandfather Harry moved to New York in early 1900s, created glassworks for Louis Comfort Tiffany. Began developing real estate 1901. Father, Sam, expanded in New York City and New Jersey; built LeFrak City in Queens 1959. Richard joined family business in 1970s, became chairman after dad died in 2003. Portfolio includes 5,000 apartments in LeFrak City, 16-million-square-foot commercial, residential, retail complex in Newport, N.J. Newport "mini-city" will soon include 429-room Westin hotel, 2 new residential towers. Diversifying into Los Angeles, London real estate; owns interests in oil and gas wells.

**John Sobrato & family \$3.4 billion Real estate. Atherton, Calif. 69. Married, 3 children**

Fortune down \$200 million in past 6 months as certain real estate markets trend downward. Still up \$400 million since last year's Forbes 400. As U. of Santa Clara student, began career selling residential property; later segued into commercial real estate: Today Sobrato Development owns and manages 7.7 million square feet of commercial office space, 7,400 residential units, 350 vacant acres in Silicon Valley. Took advantage of growing tech companies' demand for prime real estate; collected higher rents. Biggest clients: Apple and Yahoo. Revitalizing portfolio with newer buildings. Recently bought 245-unit condo tower in Portland, Ore. for \$115.5 million. Family foundation gives to nonprofits; recently unveiled Sobrato House Youth Center in San Jose.

**Donald Trump \$3 billion Real estate. New York City. 62. Twice divorced, remarried; 5 children**

"I'm worth \$10 billion." We don't think it's that much, but the Donald continues to build around the world. Began erecting Trump Tower Dubai, his first project in the Middle East, with local developer Nakheel in July. Signed new deals in the Philippines, Egypt, Turkey and Puerto Rico. Opened long-awaited 5-star hotel in Chicago this year. Son of Brooklyn developer invaded Manhattan in mid-1970s, borrowed heavily, talked tough, became a billionaire. Nearly lost it all in 1990 real estate crash; bounced back, embraced reality TV. Prized buildings: Trump Tower, 40 Wall Street, 1260 Avenue of the Americas. Sold a Palm Beach mansion to Russian billionaire Dmitry Rybolovlev for \$95 million in July. A planned \$2 billion golf course near Aberdeen, Scotland raising local ire; embroiled in lawsuits with Trump Tower Tampa condo developers.

**Melvin Simon \$2.8 billion Real estate. Indianapolis. 81. Divorced, remarried; 5 children (1 deceased)****Herbert Simon \$1.6 billion Real estate. Indianapolis. 73. Twice divorced, remarried; 6 children**

Brothers. Mel left native Brooklyn for Midwest, ended up in Army. Sold encyclopedias, spent time as a leasing agent. With younger brother Herb, made fortune covering country with shopping malls. Mel's son David now runs Simon Property Group; duo remain on the board as chairmen emeriti, focusing on international expansion. Publicly traded REIT owns or operates 261 million square feet of leasable space at 383 properties in North America, Europe and Asia. Market cap: \$21 billion. Stock flat in past 12 months. Herb now sole manager of Indiana Pacers; third wife is a former Miss Universe. Simon family donated \$40 million last November to Riley Hospital for Children in Indianapolis.

**Mortimer Zuckerman \$2.8 billion Real estate, newspapers. New York City. 71. Divorced, 1 child**

With partners, bought Manhattan's GM Building from debt-strapped Harry Macklowe for \$2.8 billion in May; highest price ever paid for a building. "It is the best single purchase that I've made since I've been in the business." Also snared Two Grand Central Tower, 540 Madison Ave., 125 West 55th St. for an additional \$1.1 billion through publicly traded Boston Properties; stock up 18% since January. Owner of New York *Daily News* lost to Dolan family on highly contested bid for Tribune's *Newsday* in May. Also owns *U.S. News & World Report*; magazine pulling back to biweekly circulation next year. Son of Montreal tobacco-and-candy seller studied law at Harvard and McGill U. after earning Wharton M.B.A. Cofounded Boston Properties in 1970 with Edward Linde; public 1997. Has donated hundreds of millions of dollars to cancer research; regular on Sunday chat show *The MacLaughlin Group*.

**Archie (Red) Emmerson \$2.5 billion Sierra Pacific Industries. Redding, Calif. 79. Married, 3 children**

Father, Curly, owned a lumber mill. Archie took Sierra Pacific public 1969, private again 4 years later. Bought 522,000 acres of Santa Fe Southern Pacific Railroad timberland with a \$460 million loan in 1988. Today company owns nearly 2 million acres of timberland in California and Washington; nation's second-largest lumber producer by volume. Firm offered \$45 million for bankrupt Pacific Lumber in July; outbid by the Gap's Fisher family. Wears jeans, drives pickup truck. Son Mark handles finances.

**Edward Roski Jr. \$2.5 billion Real estate. Los Angeles. 69. Married, 3 children**

vietnam vet's majestic realty one of country's largest commercial builders; owns 70 million square feet in Los Angeles, Denver, Las Vegas and Dallas. Built Staples Center arena in Los Angeles with Philip Anschutz; also owns stakes in pro basketball's L.A. Lakers, hockey's L.A. Kings. Unveiled plans in April for 75,000-seat stadium to be completed by 2011 NFL season in hopes of luring a team to Los Angeles. USC grad donated \$23 million to alma mater's fine arts school in 2006.

**Alan Casden \$2.4 billion Real estate. Beverly Hills. 62. Twice divorced, remarried; 5 children**

Studied accounting at U. of Southern California; traded bean counting for real estate 1975 with \$1,000 savings. Now owns 209,000 square feet of office space, 3,100 luxury apartments across the U.S. Majority of Casden Properties bought by Aimco in 2002 for \$2.4 billion. Recently completed high-end mixed-use development featuring 350 luxury rental homes in Westwood Village in Los Angeles. Claims to have reaped more than \$400 million in net profits. Partners with Cerberus Real Estate in other California projects. Recently contributed to Museum of Tolerance in L.A.; proceeds were used to build a re-creation of Nazi hunter Simon Wiesenthal's office. Developing 400-foot White City Tower in Tel Aviv.

**Neil Bluhm \$2.2 billion Real estate. Chicago. 70. Divorced, 3 children**

Former lawyer cofounded JMB realty with U. of Illinois roommate 1970. Prospered until early 1990s real estate crash. Didn't give up: founded private equity firm Walton Street Capital 1994. Today JMB Realty portfolio includes Chicago's Four Seasons Hotel, MGM Tower in Los Angeles. Spent \$1 billion building casinos in Mississippi and Canada, developing another in Pittsburgh. Casino valuations languishing as economy tanks. Contemporary art collector donates to Northwestern Hospital, Whitney Museum, Jewish United Fund.

**Matthew Bucksbaum & family \$2.2 billion General Growth Properties. Chicago. 82. Married, 2 children**

Credit crunch and \$90 million legal settlement over antitrust suit by rival developer Caruso crushing the fortune of America's second-largest shopping mall owner. Net worth down \$1.1 billion in past 12 months as shares of General Growth Properties have fallen 60% from 2007 highs. Grocer's son developed his first shopping center in Cedar Rapids, Iowa 1954 with 2 brothers. Took public 1970; sold stake, doubled his money 15 years later. Relocated to Chicago after brother Martin's death 1995. Today GGP owns more than 200 shopping malls. Sales: \$3.3 billion. Stepped down from



company's board earlier this year, still chairman emeritus. Son, John, is chief exec. Donated \$23 million to Aspen Music Festival.

**H. Ross Perot Jr. \$2.2 billion Perot Systems, real estate. Dallas. 49. Married, 4 children**

Son of Texas billionaire Ross Perot Sr. debuts on The Forbes 400 thanks to oil-rich real estate. Father and son real estate outfit Hillwood sold natural gas interests under land on Texas' Barnett Shale to Quicksilver Resources in August. Hillwood retains the rights to develop on the land above. Started developing 40 million square feet of residential, office, retail and hotel buildings off the coast of Abu Dhabi in June. Chairman of Perot Systems sold pro basketball's Dallas Mavericks to Mark Cuban in 2000. Airman completed first-ever round-the-world helicopter flight in 1982.

**Sheldon Solow \$2 billion Real estate. New York City. 80. Married, 2 children**

New York City developer owes his fortune to one building: iconic 9 West 57th Street. One of Manhattan's premier office buildings, with panoramic views of Central Park and Midtown; home to several high-profile financial firms, including KKR; commands rents of up to \$200 per square foot. Also owns several apartment buildings on Upper East Side. Received city approval in March for \$4 billion plan to redevelop 9.8 acres of former Con Edison land along Manhattan's East River. Recently donated land to aid expansion of NYU's Institute of Fine Arts.

**Jerry Speyer \$2 billion Real estate. New York City. 68. Divorced, remarried; 4 children**

Founded developer Tishman Speyer in 1978 with former father-in-law Robert Tishman; today firm remains a global real estate powerhouse. Owns stakes in New York landmarks Chrysler Building and Rockefeller Center. Bought Stuyvesant Town and Peter Cooper Village apartment and retail complexes in Manhattan for \$5.4 billion from MetLife in 2006. Won rights for Manhattan's coveted West Side rail yards project in March; deal collapsed 2 months later following rezoning disagreements with New York State's transit authority. Bought apartment landlord Archstone-Smith last October, acquiring national portfolio of 88,000 luxury rental units. Family business: wife, Katherine, runs emerging markets division, plans to develop \$2 billion town in India. Son and daughter also work for firm.

**Alfred Taubman \$1.9 billion Real estate. Bloomfield Hills, Mich. 84. Divorced, remarried; 3 children**

University of Michigan dropout amassed a fortune in shopping malls. Founded Taubman Centers 1950; today owns 23 malls in 10 states. Stock flat amid real estate crash. Son Robert joined in 1976, chief executive since 1990. Purchased venerable auction house Sotheby's 1983; took private. Public again 1988. Spent 9 months in jail on price-fixing charges 2004; wrote memoir *Threshold Resistance* about experience. Owns 4% stake in company; stock down 36% in past 12 months. Value of large contemporary art collection soaring in art market rally.

**Tamir Sapir \$1.9 billion Real estate. New York City. 61. Divorced, 4 children**

Russian immigrant and former cabdriver borrowed against his taxi medallion to open electronics store selling to Soviet diplomats and officials. Invested in Russian oil, then Manhattan real estate during 1990s recession. Today owns 7 office buildings in Manhattan. Son, Alex, became president of Sapir Organization in 2006; oversees Trump SoHo condo hotel project with Donald Trump Jr. Daughter married at Mar-a-Lago estate in December. Documents related to legal battle with Moscow Oil Refinery were stolen from his Moscow office during an illegal search in December. Owns penthouse overlooking Acapulco Bay in Mexico, Versace-accented yacht. Plans to house vast ivory collection in famed Duke-Seamans Mansion.

**Edward DeBartolo Jr. \$1.8 billion Real estate. Tampa, Fla. 61. Married, 3 children**

Father, Edward Sr., bought the NFL's San Francisco 49ers in 1977; garnered four Super Bowl Championship rings between 1982 and 1990. Edward Jr. no longer owns team; forced to swap his share with sister Denise for hefty stake in

publicly traded Simon Property Group in 2000 following conviction on federal bribery charges. Today Ohio native owns 15.2 million SPG shares worth \$1.4 billion. Also owns stake in Famous Famiglia pizza joints, DeBartolo Sports & Entertainment. Agency reportedly hired renowned quarterback coach Steve Clarkson to head up new amateur sports division in December. Still developing retail, residential real estate projects in several states.

**Richard Peery \$1.8 billion Real estate. Palo Alto, Calif. 68. Married, 4 children**

**John Arrillaga \$1.7 billion Real estate. Palo Alto, Calif. 71. Widowed, remarried; 2 children**

Converted California farmland into valuable Silicon Valley office space during the 1960s. Sold offices to tenants Google and Cisco, created cities of Mountain View and Sunnyvale. Sold half of their portfolio in 2005; the next year made \$1.1 billion selling more than 5 million square feet of office space and research facilities. Lifelong partners keep out of the limelight. Arrillaga: son of Basque immigrants, attended Stanford, gave the school \$100 million in 2006. Peery: devout Mormon; father was an executive for Bank of America.

**George Argyros \$1.8 billion Real estate, investments. Newport Beach, Calif. 71. Married, 3 children**

Second-generation Greek-American born in Detroit, raised in Pasadena, Calif. Studied business and economics at Michigan State. Sold and leased land at busy intersections to oil companies to set up gas stations 1962. Today privately held Arnel & Associates owns, manages 5,200 apartments and 2.5 million square feet of commercial space. Founded private equity firm Westar Capital 1987; invests in pet products (Dorskocil), coolers (Igloo). Former U.S. ambassador to Spain raising money for John McCain; hosted a \$25,000-per-couple dinner for Republican nominee at his Newport Beach home earlier this year.

**Carl Edwin Berg \$1.7 billion Real estate. Atherton, Calif. 71. Married, 1 child**

"I was 2 weeks too late." Tycoon still owns his Mission West Properties. Tried to flip firm last summer; refused to bend on \$1.8 billion asking price, pulled portfolio from the market when potential buyers could no longer get financing. Former vending machine repairman worked night shifts to pay his way through U. of New Mexico. Bought real estate investment trust Mission West in 1997; now manages 8 million square feet across 110 properties. Counts Microsoft, Apple among Silicon Valley office tenants. Engaged in rezoning discrimination lawsuit with San Jose City Council. Focusing on outside investments: cancer research, technology startups.

**Igor Olenicoff \$1.7 billion Real estate. Lighthouse Point, Fla. 66. Married, 2 children (1 deceased)**

Pleaded guilty to tax felony for stashing more than \$350 million in Europe; paid \$52 million in fines, sentenced to 2 years' probation and 120 hours community service, and ordered to return money to U.S. Today Olen Properties buying distressed property below cost and owns more than 6.4 million square feet of office space, nearly 12,000 residential units in Las Vegas, Arizona, Florida. Faith in commercial real estate: "Companies might be moving factories overseas, but they all want their headquarters in the U.S."

**Brad Kelley \$1.6 billion Tobacco. Nashville. 51. Married, 3 children**

Farmer's son founded Commonwealth Brands 1990, made fortune with discount cigarettes. Spent little on advertising; outperformed big brands by keeping prices low. Sold for \$1 billion in 2001, netted an estimated \$750 million. Reinvested in real estate: owns 1.7 million acres in New Mexico, Florida, Texas. Wildlife conservationist sold stake in Kentucky Downs this year.

**Leon Charney \$1.5 billion Real estate. New York City. 67. Divorced, remarried; 2 children**

Son of a sewing supplies salesman inherited \$34 when father passed away; paid for Brooklyn Law School by singing in synagogues. Considered career as vocalist, chose entertainment law instead. Star client: Sammy Davis Jr.

Built practice by figuring out way to maximize tax benefits for oil partnerships. Jimmy Carter adviser claims to have helped broker Camp David Accords between Egypt and Israel 1978. Bought first building--One Times Square--on the night Carter lost reelection to Reagan in 1980. Borrowed, reinvested rental income into 12 surrounding buildings. Owns 3 skyscrapers in Times Square, 1.5 million square feet of commercial space. Tenants include Liz Claiborne, Office Depot, Jones Apparel. Hosts *The Charney Report*, nationally syndicated political talk show.

**Robert F. Maguire III \$1.4 billion Real estate. Los Angeles. 73. Divorced, 4 children**

Founded Maguire Properties in 1965. Developed commercial property in downtown L.A., including 73-story U.S. Bank Tower. Public 2003; shares down 45% since. Stepped down as chairman this year after failed attempt to take private; still owns 16.5% of shares (worth \$100 million). Also owns 10 million square feet of commercial property, developable land around Los Angeles and Dallas, Barnett Shale gas reserves in Texas, gate space and maintenance operations at private California airports.

**Walter Shorenstein & family \$1.3 Billion Shorenstein Properties. San Francisco. 93. Widowed, 3 children (1 deceased)**

U. of Pennsylvania dropout started buying commercial real estate in San Francisco after being discharged from military 1946. Onetime owner of 20% of city's office space started selling after tech bubble burst. Today owns more than 29 million square feet across the U.S. In discussions with billionaire Thomas Steyer's Farallon Capital to build a \$700 million cruise ship terminal and office park on the San Francisco waterfront. Son, Douglas, runs property investment funds. Daughter, Carol, has won five Tonys as a Broadway producer.

**Steven Roth \$1.3 billion Real estate. New York City. 66. Married, 2 children**

native new yorker founded interstate Partners 1969; today owns large stake in real estate investment trust Vornado Realty. REIT owns 40 million square feet of office space in New York and Washington, D.C. Also stakes in Merchandise Mart in Chicago, Toys "R" Us, Sears. Hit several rough patches: outbid by Tishman Speyer for rights to Manhattan's West Side rail yards project in March, then lost out to Mort Zuckerman for GM Building in June and wrote off \$47 million in loans to its former owner Harry Macklowe. Shelved \$14 billion reconstruction plan for Madison Square Garden and Penn Station with Stephen Ross because of financing shortfalls, delays in government approvals.

**Jorge M. Perez \$1.3 billion Real estate. Miami. 59. Divorced, remarried; 4 children**

Argentinean-born son of cuban parents started out as urban planner; moved into low-income housing development. Chance meeting with New York developer Stephen Ross led to lifelong partnership; two cofounded Related Group (formerly Related Group of Florida) in 1979. Built affordable housing 1980s, later switched to high-end condo construction. Has constructed 55,000 apartments in Florida since 1982. Business rocked by battered Miami market. Insists sales will remain at \$1.4 billion this year; revenues fell 53% between 2006 and 2007. Developing \$3 billion worth of properties across 15 projects in Argentina, Colombia, Mexico, Uruguay. First development in Puerto Vallarta expected to open in 2009. "I think the market has bottomed out or we are close to it. But it will take at least another year for it to pick up."

**LOAD-DATE: September 22, 2008**

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

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ATLANTA  
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December 19, 2006

BY E-MAIL

Andrew J. Ceresney, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

Re: *Trump v. O'Brien, et al.*

Dear Andrew:

Plaintiff Donald J. Trump hereby supplements his interrogatory responses as follows:

Interrogatory No. 1

Identify each communication that you allege to have been defamatory, including but not limited to the specific words alleged to have been defamatory.

Supplemental Response

Trump objects to this interrogatory on the ground that it is premature because discovery is not yet complete, insofar as, among other things, defendants have withheld more than 700 documents in response to Trump's document requests and have refused to answer numerous interrogatories. Subject to and without waiving any of the foregoing, Trump states that the defamatory communications that defendants wrote or uttered of which Trump currently is aware include the following:

| <u>DATE</u> | <u>PUBLICATION<br/>or PROGRAM</u>               | <u>STATEMENT</u>   |
|-------------|---|--|
| 10/05       | <i>TrumpNation: The Art of Being the Donald</i> | "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million to \$250 million. By anyone's standards this still qualified Donald as comfortably wealthy, but none of those people thought he was remotely close to being a billionaire."<br>(154) |

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|          |                              |  |
|----------|------------------------------|--|
|          |                              | <p>***</p> <p>Repeated references throughout the book to Trump's "verbal billions." (e.g., 152-53, 154, 156, 173, etc.)</p> <p>***</p> <p>"[Trump's] ability to float above the wreckage of his financial miscues and magically add zeroes to his bank account ensured that he remained an object of fascination." (174)</p>   |
| 10/23/05 | <i>New York Times</i>        | <p>"Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million to \$250 million. By anyone's standards this still qualified Donald as comfortably wealthy, but none of those people thought he was remotely close to being a billionaire."</p> |
| 10/31/05 | Squawkbox                    | <p>"[Trump has] occupied center stage by adding zeroes here and there and papering over losses."</p> <p>***</p> <p>Moderator: All right can you tell me . . . unequivocally he's not worth \$2.7 billion, can you just tell me flat out that's what . . .</p> <p>O'Brien: Yeah, I would assume based on my reporting, he's nowhere close to that . . . .</p>               |
| 12/3/05  | David Latko's Money and More | <p>"I mean people I spoke to who are familiar with his finances, think, you know, it [referring to Trump's net worth], it could be anywhere from about \$250 million - \$150 to \$250 million . . ."</p>   |
| 12/12/05 | Coliseum Books Event         | <p>"That's cause [Trump] doesn't have any [money] to invest."</p> <p>***</p> <p>"[Trump's] net worth is definitely inflated. Forbes Magazine puts his worth at \$2.7 billion, but I am almost certain that is a complete work of fiction."</p>   |

Interrogatory No. 12

Set forth the complete factual basis for the claim contained in paragraph 28 of the Complaint that, "prior to the publication of the book, Trump had invested approximately \$380 million in case . . . in various real estate ventures," including but not limited to the following information for each investment: (a) the identity of the real estate venture; (b) the identity of the

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investor (e.g., you or a specific Trump-related entity); (c) structure (e.g., LLC, LLP or Inc.); (d) amount invested; (e) specific source of funds; (f) accounts from which funds were withdrawn; (g) any related loans or other indebtedness or liability for which you or any Trump-related entity were liable, potentially liable, or guaranteed; and (h) the identify of any other parties to the transaction. Identify and attach all documents relevant thereto.

Supplemental Response

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the interrogatory calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for Trump's claim in paragraph 28 of the Complaint that "prior to the publication of the book, Trump had invested approximately \$380 million in cash . . . in various real estate ventures" is as follows:

| <u>ASSET</u>                                  | <u>AMOUNT OF INVESTMENT</u> | <u>INVESTORS</u><br>(Each of the entities listed below is wholly owned by Trump unless otherwise noted)   |
|---|-----------------------------|---|
| <u>Equity in Ventures:</u>                    |                             |   |
| Atlantic City                                 | \$72,000,000                | Trump   |
| Trump International Hotel & Tower - Chicago   | \$37,000,000                | Trump<br>Trump Chicago Member LLC<br>Trump Chicago Managing Member LLC<br>TIHT Chicago Member Acquisition   |
| Trump International Hotel & Tower - Las Vegas | \$33,000,000                | Trump<br>Trump Las Vegas Member LLC<br>Trump Las Vegas Managing Member LLC<br><br>(each of the entities is wholly owned by Trump and his children)  |
| Trump World Tower - Partner Buyout            | \$5,500,000                 | Trump<br>The Trump Corporation<br>Trump Caribbean LLC<br>Trump Lauderdale Development LLC<br>Trump Phoenix Development LLC<br>Trump Chicago Development LLC<br>Trump C Development LLC<br>Trump Canadian Services LLC |

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 December 13, 2006  
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|  |              |   |
|--|--------------|---|
|  |              | Trump Toronto Development LLC<br>Trump Brazil LLC   |
| Trump Park Avenue                                | \$10,000,000 | Trump<br>Trump Delmonico LLC<br>Trump Park Avenue Acquisition LLC   |
| Estate -- 513 N County Drive,<br>Palm Beach      | \$22,000,000 | Trump<br>Trump Properties LLC   |
| Purchase of Trump National --<br>Bedminster, NJ  | \$10,000,000 | Trump<br>LFB Acquisition LLC  |
| Purchase of Trump National --<br>Los Angeles, CA | \$10,000,000 | Trump<br>RPV Development LLC  |
| <u>Construction Expenditures</u>                 |              |   |
| Trump National --<br>Bedminster, NJ              | \$32,904,246 | Trump<br>LFB Acquisition LLC  |
| Trump National -- Los<br>Angeles, CA             | \$45,570,607 | Trump<br>RPV Development LLC  |
| Trump National --<br>Westchester, NY             | \$71,043,943 | Trump   |
| Trump International -- West<br>Palm Beach, FL    | \$29,889,144 | Trump<br>Trump International Golf Club LLC<br>Trump International Golf Club Inc<br>Trump International Golf Club II LLC |

The funds for these investments were generated from many sources, including the sales of other assets, entity operations, the sale of condominium units, TV shows, speeches and various licensing deals. It is not possible to identify the specific source of the funds used in any particular transaction.

Andrew J. Ceresney, Esq.  
 December 13, 2006  
 Page 5

Interrogatory No. 15

Identify any individual known to you or any of your agents who approached O'Brien at the Coliseum Books event referenced in paragraph 32 of the Complaint. State the substance of what the individual said to O'Brien.

Supplemental Response

Trump objects to this interrogatory on the ground that the term "approached" is vague and ambiguous. Trump further objects to this interrogatory on the ground that the interrogatory calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

At the Coliseum Books event, in substance, after O'Brien finished answering questions from the audience, Marc E. Kasowitz asked O'Brien why O'Brien did not disclose the sources referenced on page 154 of *TrumpNation: The Art of Being the Donald*. O'Brien replied, in substance, that he was "comfortable" with his sources.

Interrogatory No. 16

Set forth the complete factual basis for the allegation contained in paragraph 33 of the Complaint that O'Brien has a "history of anti-Trump reporting," and identify and attach all documents relevant thereto.

Supplemental Response

Trump objects to this interrogatory on the ground that it is unduly burdensome and oppressive in that defendant O'Brien has access to his articles about Trump. Subject to and without waiving any of the foregoing, Trump responds as follows:

| TITLE  | SOURCE  | DATE    |
|--|---------|---------|
| <i>Staying Power: Overbuilt and Underbooked, New York City's Hotels Scramble to Attract Travelers and Ride Out Recession</i> | Newsday | 7/22/91 |
| <i>Trump: The Deals and the Downfall</i><br>(O'Brien was not the author, but provided research assistance)                   |         | 1992    |
| <i>Bad Bet: The Inside Story of the Glamour, Glitz, and Danger of America's Gambling Industry</i>                            |         | 1998    |



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| TITLE  | SOURCE            | DATE    |
|--|-------------------|---------|
| <i>Is Trump Headed for a Fall?</i>   | NY Times          | 3/28/04 |
| <i>Trump, the TV Star, Tries to Woo His Creditors</i>  | Int'l Herald Trib | 3/29/04 |
| <i>Trump, the TV Star, Woos Wary Creditors</i>   | NY Times          | 3/30/04 |
| <i>Trump Hotels Reports Loss of \$49 Million for First Quarter</i>                                 | NY Times          | 5/1/04  |
| <i>Trump Hotels Digs Deep for Cash to Try to Prop a Teetering House</i>                            | NY Times          | 5/6/04  |
| <i>Quarterly Report Shows Squeeze at Trump's Casinos; Cash Appears Tight with Debt Payment Due</i> | Int'l Herald Trib | 5/6/04  |
| <i>Trump Woos Indian Tribes (folo); Casino Debt is Pinching Trump</i>                              | Int'l Herald Trib | 5/7/04  |
| <i>Trump Hotels Makes Payments on its Debt</i>   | NY Times          | 5/28/04 |
| <i>Payment Made Late, Trump Seeks Deal</i>   | Int'l Herald Trib | 5/28/04 |
| <i>Trump Hotels Gain Breathing Space</i>   | Int'l Herald Trib | 5/29/04 |
| <i>Losses Increase as Cash Decreases, Straining Trump's Casinos</i>                                | NY Times          | 7/30/04 |
| <i>Trump Hotels Plans to Seek Bankruptcy</i>   | NY Times          | 8/10/04 |
| <i>Humbled, Trump Hotels Seek Debt Relief</i>  | Int'l Herald Trib | 8/11/04 |
| <i>Market Place: Trump Must Ante Up \$55 Million to Hold on to 25% of His Casino</i>               | NY Times          | 8/11/04 |
| <i>Can Trump Afford Casino Stake?</i>  | Int'l Herald Trib | 8/12/04 |

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| TITLE  | SOURCE            | DATE     |
|--|-------------------|----------|
| <i>The Midas Touch, With a Spin on it</i>                        | NY Times          | 8/8/04   |
| <i>Trump: The Image and the Reality</i>                          | Int'l Herald Trib | 9/9/04   |
| <i>Credit Suisse and Trump Hotels Break Off Investment Talks</i> | NY Times          | 9/23/04  |
| <i>Now, Reality for Trump Looks More Like 'Survivor'</i>         | NY Times          | 9/24/04  |
| <i>Trump Hotels Said to Reach Deal to Avoid Bankruptcy</i>       | NY Times          | 10/21/04 |
| <i>Deal Keeps Trump at Hotel-Casino Helm</i>                     | Int'l Herald Trib | 10/22/04 |
| <i>What's He Really Worth?</i>                                   | NY Times          | 10/23/05 |

Interrogatory No. 17

Set forth the complete factual basis for the allegation contained in paragraph 36 of the Complaint that: (a) O'Brien "resorted to unprofessional and unethical tactics, including physical and verbal harassment, to intimidate sources into providing information"; and (b) "Trump received complaints from business associates, employees and former employees that O'Brien was using harassment and threats to try to pressure them into making false, defamatory and misleading statements about Trump." Identify all individuals that O'Brien allegedly harassed, intimidated, or threatened, as well as those individuals reporting such allegations. In addition, identify and attach all documents relevant thereto.

Supplemental Response

Trump objects to this interrogatory on the ground that it is unduly burdensome and oppressive in that defendant O'Brien is in possession of the information called for by subpart (a). Subject to and without waiving any of the foregoing, Trump responds as follows:

(a) The factual basis for the allegation contained in paragraph 36 of the Complaint that O'Brien "resorted to unprofessional and unethical tactics, including physical and verbal harassment, to intimidate sources into providing information" includes: reports from Michelle Scarbrough and Allen Weisselberg that O'Brien harassed them; a letter dated August 26, 2004 from Lawrence S. Rosen to David E. McCraw; an article entitled "Source Turns on Times Reporter" published in the *New York Post* on January 17, 2000; an article entitled "Poisoned at

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the Source" published in *New York Magazine* on March 6, 2000; and articles publicly reported on the Internet at [www.russianlaw.org](http://www.russianlaw.org).

(b) The factual basis for the allegation contained in paragraph 36 of the Complaint that "Trump received complaints from business associates, employees and former employees that O'Brien was using harassment and threats to try to pressure them into making false, defamatory and misleading statements about Trump" includes: reports from Michelle Scarbrough and Allen Weisselberg that O'Brien harassed them; and a letter dated August 26, 2004 from Lawrence S. Rosen to David E. McCraw.

Interrogatory No. 18

Set forth the complete factual basis for the allegations contained in paragraph 37 of the Complaint (upon information and belief) that: (a) "various persons have filed complaints with the New York City Police Department after being stalked and threatened by O'Brien"; (b) "O'Brien has threatened sources by telling them he can 'settle scores' with enemies by writing negative articles about them"; (c) "O'Brien has been accused of attempting to use his position as a reporter to obtain dates, or other entanglements, with women"; (d) "O'Brien was terminated by the *Wall Street Journal* for violation of company policy"; (e) "O'Brien has been accused by sources and subjects alike of a volatile, uncontrollable temper"; (f) "it has been reported that O'Brien has boasted that 'access to the [New York] Timespages to settle personal scores was a fringe benefit available to *New York Times* reporters." Identify and attach all documents relevant thereto, and identify all witnesses with information relating to these allegations.

Supplemental Response

Trump objects to this interrogatory on the ground that it is unduly burdensome and oppressive in that defendant O'Brien is in possession of much if not all of this information. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegations identified in (a) through (f) above includes an article entitled "Source Turns on Times Reporter" published in the *New York Post* on January 17, 2000; an article entitled "Poisoned at the Source" published in *New York Magazine* on March 6, 2000; and articles publicly reported on the Internet at [www.russianlaw.org](http://www.russianlaw.org).

Interrogatory No. 19

Set forth the complete factual basis for the allegation contained in paragraph 38 of the Complaint that Warner "knew of O'Brien's longstanding personal animus toward Trump and O'Brien's Jayson Blair-like proclivity for substituting fiction for fact in his report[ing]," and identify and attach all documents relevant thereto.

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Supplemental Response

Trump objects to this interrogatory on the ground that it calls for publicly available documents that are equally available to defendants as to Trump. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 38 of the Complaint that Warner "knew of O'Brien's longstanding personal animus toward Trump and O'Brien's Jayson Blair-like proclivity for substituting fiction for fact in his report[ing]" includes: the numerous articles O'Brien has authored and co-authored about Trump, which are identified in response to Interrogatory No. 16; an article entitled "Source Turns on Times Reporter" published in the *New York Post* on January 17, 2000; an article entitled "Poisoned at the Source" published in *New York Magazine* on March 6, 2000; and articles publicly reported on the Internet at [www.russianlaw.org](http://www.russianlaw.org).

Modified Interrogatory No. 22

Identify any accountants, accounting firms, or financial professionals who were retained from 2002 to the present for work relating to valuing Trump's net worth.

Supplemental Response

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump retained Gerald Rosenblum, CPA and Donald Bender, CPA of Weiser LLP to prepare his Statement of Financial Condition.

Modified Interrogatory No. 29

For the period January 2002 to the present, identify all written estimates of Trump's net worth including those made in mortgage loan applications or other applications to financial institutions.

Supplemental Response

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

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Trump is aware of estimates of his net worth that were made by Weiser LLP and by *Forbes*. To the extent mortgage loan applications or other applications to financial institutions called for a written estimate of his net worth, Trump provides a copy of his current Statement of Financial Condition.

\*\*\*

We will supply Trump's supplemental response to Interrogatories Nos. 21 and 31 after further consultation with the client. As always, please feel free to contact me with any questions.

Sincerely,



Mark P. Ressler

cc: Mark Melodia (by e-mail)  
William M. Tambussi (by e-mail)



**First American Title Insurance Company**  
27775 Diehl Road, Suite 200  
Warrenville, IL 60555  
Phone: (630) 799-7300 / Fax: (630) 799-6725

PR: 17001

Ofc: 50500

**Final Invoice**

To: Wells Fargo Home Mortgage  
2501 College Avenue, Suite D  
Bloomington, IL 61704

Invoice No.: 500223765  
Date: 03/04/2005  
Our File No.: 1058265  
Title Officer: /  
Escrow Officer: /  
Customer ID: 65796

Attention: Michael White

Your Reference No.:

RE: Property:  
401 North Wabash, Chicago, IL

Liability Amounts  
Owners:  
Lenders:

Buyers: 401 North Wabash Venture LLC, a Delaware  
Sellers:

| Description of Charge | Invoice Amount  |
|-----------------------|-----------------|
| Tract Search          | \$370.00        |
| <b>INVOICE TOTAL</b>  | <b>\$370.00</b> |

Comments:

**Thank you for your business!**

*To assure proper credit, please send a copy of this Invoice and Payment to:  
Attention: Accounts Receivable Department*

Printed On: 03/04/2005, 6:54 AM

Requester: GS

Page: 1

1030a

TOB-EF-00008402

***First American Title Insurance Company***

27775 Diehl Road, Suite 200

27775 Diehl Road, Suite 200, Warrenville, IL 60555

Phone: (630) 799-7300 Fax: (630) 799-6725

**TRACT SEARCH**

**FILE NO.:** 1058265

**DATE:** March 04, 2005

**TO:**

Wells Fargo Home Mortgage  
2501 College Avenue, Suite D  
Bloomington, IL 61704

**PROPERTY ADDRESS:**

401 North Wabash  
Chicago, IL

**EFFECTIVE DATE:** February 07, 2005

**GRANTEE IN THE LAST DEED OF RECORD:** 401 North Wabash Venture LLC, a Delaware Limited Liability Company

**LEGAL DESCRIPTION:**

A tract of land in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian bounded and described as follows: Beginning at the Point of Intersection of the South line of East North Water Street with the West line of North Rush Street as established by Ordinance passed May 27, 1955; thence South 78 degrees 25 minutes 00 seconds West along the South line of East North Water Street and along the Northerly line of Parcel 17, as described in said Ordinance, a distance of 272.18 feet; thence South 32 degrees 10 minutes 50 seconds West along the Northwesternly line of Parcel 17 aforesaid, a distance of 22.62 feet to a point; thence South 60 degrees 01 minutes 51 seconds West, a distance of 3.97 feet to a point; thence continuing South 60 degrees 01 minutes 51 seconds West, a distance of 43.72 feet; thence South 55 degrees 51 minutes 35 seconds West, a distance of 43.85 feet; thence South 52 degrees 21 minutes 58 seconds West, a distance of 32.82 feet; thence South 49 degrees 32 minutes 01 second West, a distance of 32.53 feet; thence South 47 degrees 37 minutes 29 seconds West, a distance of 51.47 feet; thence South 47 degrees 01 minute 53 seconds West, a distance of 2.03 feet; thence South 47 degrees 48 minutes 32 seconds West, a distance of 42.61 feet; thence South 49 degrees 17 minutes 23 seconds West, a distance of 44.057 feet; thence South 53 degrees 26 minutes 39 seconds West, a distance of 24.308 feet; thence South 00 degrees 09 minutes 40 seconds West, a distance of 116.60 feet; thence South 22 degrees 24 minutes 30 seconds East, a distance of 34.47 feet; thence North 67 degrees 35 minutes 30 seconds East, a distance of 105.06 feet; thence South 39 degrees 30 minutes 25 seconds East, a distance of 46.62 feet to a point on the Northerly dock line of the Chicago River; thence North 48 degrees 44 minutes 55 seconds East, a distance of 401.26 feet along said Northerly dock line of the Chicago River to an angle point in said Northerly dock line of the Chicago River; thence North 62 degrees 25 minutes 37 seconds East East, a distance of 100.55 feet along said Northerly dock line of the Chicago River to a point on the West line of North Rush Street; thence North 00 degrees 18 minutes 37 seconds East, a distance of 104.51 feet along the West line of North Rush Street to a Point of Beginning, all in City of Chicago, Cook County, Illinois.

**PROPERTY TAXES AND UNRELEASED ENCUMBRANCES OF RECORD:**

1. General taxes for the year 2004, 2005 and subsequent years which are not yet due and payable.

Tax Identification no.: 17-10-135-025 Vol 501

**Note for Informational purposes 2004 taxes:**

1st Installment in the amount of \$18,077.70 with a status of DUE. (Due Date 03/01/2005)  
2nd Installment in the amount of \$UNKNOWN with a status of UNKNOWN. (Due Date UNKNOWN)

Note: If applicable, an original tax bill must be presented if taxes are to be paid at time of closing.

2. General taxes for the year 2004, 2005 and subsequent years which are not yet due and payable.

Tax identification no.: 17-10-136-008 Vol 501

**Note for informational purposes 2004 taxes:**

1st Installment in the amount of \$575,036.16 with a status of DUE. (Due Date 03/01/2005)  
2nd Installment in the amount of \$UNKNOWN with a status of UNKNOWN. (Due Date UNKNOWN)

Note: If applicable, an original tax bill must be presented if taxes are to be paid at time of closing.

3. Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents and Security Deposits from 401 North Wabash Venture LLC to Fortress Credit Corp. dated October 15, 2004 and recorded October 19, 2004 as Document 0429339100, securing the original principal sum of \$104,000,000.00.
4. Assignment of Sales Contracts, Sales proceeds, Leases, Rents and Security Deposits from 401 North Wabash Venture LLC to Fortress Credit Corp. dated October 15, 2004 and recorded October 19, 2004 as Document 0429339101.
5. Financing statement evidencing an indebtedness from 401 North Wabash Venture LLC, debtor, to Fortress Credit Corp., secured party, filed on October 19, 2004 as number 0429339102.
6. Memorandum of Option made by and between CST Member LLC, Chicago Sun-Times, Inc. and Trump Chicago Managing Member LLC recorded June 5, 2002 as Document Number 0020627917.
7. Memorandum of Option between 401 North Wabash Venture LLC, 401 Mezz Venture LLC and Fortress Credit Corp. dated October 15, 2004 and recorded October 19, 2004 as Document 0429339103.
8. Claim for Mechanics lien in the amount of \$631,428.00 recorded October 22, 2004 as document 0429634139 by Environmental Systems Design, Inc. against subject property.
9. Proceeding pending in a Foreclosure case in the Circuit Court of Cook County, Illinois, Case No. 04 CH 19151, by Environmental Systems Design, Inc. vs. The Trump Organization et al.

Note: Lis Pendens Notice recorded as document 0432444067.

Note: A complete examination of said proceeding has not been made.

10. Access and Construction Agreement between 330 N. Wabash Avenue, LLC, Bovis Lend Lease, Inc. and 401 North Wabash Venture, LLC dated December 17, 2004 and recorded January 31, 2005 as Document 0503122208.



THIS SEARCH REFLECTS THE "GRANTEE IN LAST DEED OF RECORD" OF THE LEGAL DESCRIPTION PROVIDED TO FIRST AMERICAN TITLE INSURANCE COMPANY AS DISCLOSED IN PUBLIC RECORDS ESTABLISHED UNDER STATE STATUTES AND AT THE DATE SHOWN. IF REQUESTED BY THE APPLICANT, IT WILL ALSO ENCOMPASS GENERAL REAL ESTATE TAXES, MORTGAGES, ASSIGNMENTS, JUDGMENTS AND LIENS OF RECORD AS SHOWN IN THE RECORDERS OFFICE OF THE COUNTY WHERE THE SUBJECT PROPERTY IS LOCATED AND WHICH MAY CONSTITUTE A LIEN ON THE DESCRIBED PREMISES. IT DOES NOT CONTAIN A SEARCH OF ANY JUDICIAL PROCEEDINGS IN ANY COURT. THE INFORMATION FURNISHED IN THIS SEARCH IS FOR THE BENEFIT OF THE APPLICANT ONLY. USE OF THIS INFORMATION BY ONE OTHER THAN THE APPLICANT WITHOUT EXPRESS WRITTEN AUTHORIZATION OF THE COMPANY IS PROHIBITED. THIS IS NOT A TITLE INSURANCE POLICY, ABSTRACT, GUARANTY OR OPINION OF TITLE AND MAY NOT BE RELIED UPON AS SUCH. NO AMENDMENT, DELETION OR ENDORSEMENT CAN BE MADE TO THIS SEARCH. IT ONLY REFLECTS THE LAST DEED AS SHOWN IN THE PUBLIC RECORDS. THE COMPANY'S LIABILITY IS LIMITED TO THE ACTUAL AMOUNT PAID FOR THIS SEARCH. ANY CLAIM OF LOSS OR DAMAGE, WHETHER OR NOT BASED ON NEGLIGENCE, SHALL BE LIMITED TO SUCH AMOUNT. IN THE EVENT ANY OF THE ABOVE LIMITING PROVISIONS ARE HELD INVALID OR UNENFORCEABLE THE REMAINING SHALL BE DEEMED NOT TO INCLUDE THAT PORTION AND THEY SHALL HAVE FULL FORCE AND EFFECT.

FOR YOUR PROTECTION, PLEASE OBTAIN A TITLE COMMITMENT AND SUBSEQUENT POLICY OF INSURANCE.

*First American Title Insurance Company*

BY: Gwen Shores

TRUSTEE'S DEED

THIS INDENTURE, dated JUNE 22, 2004 between LASALLE BANK NATIONAL ASSOCIATION, formerly known as LaSalle National Bank a National Banking Association, duly authorized to accept and execute trusts within the State of Illinois, not personally but as Trustee under the provisions of a deed or deeds in trust duly recorded and delivered to said Bank in pursuance of a certain Trust Agreement dated MAY 15, 2003 and known as Trust Number 131086 party of the first part, and 401 NORTH WABASH VENTURE L L C, A DELAWARE LIMITED LIABILITY COMPANY, C/O TRUMP ORGANIZATION, L L C, 725 FIFTH AVENUE, NEW YORK, NY 10022



Doc#: 0428339088  
Eugene "Gene" Moore Fee: \$36.00  
Cook County Recorder of Deeds  
Date: 10/19/2004 01:46 PM Pg: 1 of 7

(Reserved for Recorders Use Only)

party/parties of the second part. WITNESSETH, that said party of the first part, in consideration of the sum of TEN (\$10.00) Dollars and other good and valuable consideration in hand paid, does hereby convey and QUIT-CLAIM unto said party/parties of the second part, the following described real estate, situated in COOK County, Illinois, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF  
SUBJECT TO: SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

Commonly Known As: 401 NORTH WABASH, CHICAGO, ILLINOIS

Property Index Numbers: 17-10-135-025-0000 AND 17-10-136-008-0000

together with the tenements and appurtenances thereunto belonging.

TO HAVE AND TO HOLD, the same unto said party of the second part, and to the proper use, benefit and behoof, forever, of said party of the second part.

This deed is executed by the party of the first part, as Trustee, as aforesaid, pursuant to and in the exercise of the power and authority granted to and vested in it by the terms of said Deed or Deeds in Trust and the provisions of said Trust Agreement above mentioned, and of every other power and authority thereunto enabling. This deed is made subject to the liens of all trust deeds and/or mortgages upon said real estate, if any, recorded or registered in said county.

IN WITNESS WHEREOF, said party of the first part has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by one of its officers, the day and year first above written.

LASALLE BANK NATIONAL ASSOCIATION, as trustee and not personally,

By: Rosemary Collins  
ROSEMARY COLLINS, VICE PRESIDENT

Prepared By: LASALLE BANK NATIONAL ASSOCIATION, 135 S. LASALLE ST, SUITE 2500, CHICAGO IL 60603

STATE OF ILLINOIS ) I, the undersigned, a Notary Public in and for said County and State, do hereby certify  
COUNTY OF COOK ) ROSEMARY COLLINS, VICE PRESIDENT of LaSalle Bank National Association personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that said officer of said association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal this 22ND day of JUNE, 2004

Surrajina McKinley  
NOTARY PUBLIC  
MAIL TO: BOX NUMBERS 416



SEND FUTURE TAX BILLS TO:

City of Chicago Real Estate  
Dept. of Revenue Transfer Stamp  
356261 \$547,600.00  
10/19/2004 10:39 Batch 11888 37

Rev. 8/00

EXHIBIT A  
LEGAL DESCRIPTION

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED, AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17, AS DESCRIBED IN SAID ORDINANCE, A DISTANCE OF 272.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 AFORESAID, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT; THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 43.72 FEET; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET; THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST, A DISTANCE OF 32.82 FEET; THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET; THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET; THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.03 FEET; THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET; THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET; THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET; THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET; THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER; THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER; THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO A POINT OF BEGINNING, ALL IN CITY OF CHICAGO, COOK COUNTY, ILLINOIS:

SUBJECT TO THE PERMITTED EXCEPTIONS ON SCHEDULE B.

PINS: 17-10-135-025-0000 AND 17-10-136-008-0000

ADDRESS: 401 NORTH WABASH, CHICAGO, ILLINOIS

# 2003210\_v1

Permitted Exceptions

1. TAXES NOT YET DUE AND PAYABLE.
2. RIGHTS OF THE PUBLIC AND THE MUNICIPALITY TO THE CONTINUED SUPPORT FOR THE SIDEWALK WHICH HANGS OVER NORTH WATER STREET TOGETHER WITH RIGHTS OF SAID PARTIES BY REASON OF ANY PART OF SAID SIDEWALK BEING LOCATED ON OR OVERHANGING ANY PART OF LAND.
3. RIGHTS OF PUBLIC UTILITIES OR QUASI-PUBLIC UTILITIES TO MAINTAIN EXISTING CATCH BASINS, INLETS, MANHOLES, DRAINS, WATER VALVES AND METAL LIGHT POLES ON THE LAND, ALL AS DISCLOSED BY SURVEY MADE BY CHICAGO GUARANTEE SURVEY COMPANY, 2 PAGES, DATED NOVEMBER 19, 2001, NO. 0109002.
4. RIGHTS OF THE ADJOINING PROPERTY OWNERS IN AND TO THE FREE AND UNOBSTRUCTED FLOW OF THE WATERS OF THE CHICAGO RIVER.  
  
(AFFECTS PARCEL 1)
5. RIGHT OF WAY FOR EXISTING SEWER AND FOR INSTALLATION OF ANY ADDITIONAL SEWERS OR OTHER MUNICIPAL SEWER FACILITIES NOW LOCATED OR WHICH IN THE FUTURE MAY BE LOCATED AND FOR MAINTENANCE, RENEWAL AND RECONSTRUCTION OF SUCH FACILITIES AS SET FORTH IN THE ORDINANCE BY THE CITY COUNCIL OF THE CITY OF CHICAGO PASSED ON MAY 27, 1955 A CERTIFIED COPY OF WHICH ORDINANCE WAS RECORDED ON AUGUST 2, 1955 AS DOCUMENT 16319219 ACROSS THE NORTHERLY 13.00 FEET OF THAT PART OF THE LAND DESCRIBED AS FOLLOWS:  
  
THAT PART OF VACATED NORTH RUSH STREET, DESCRIBED AS: THAT PART OF WATER LOT 16 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF AND ADJOINING THE EAST LINE OF LOT 12 IN BLOCK 5 IN SAID KINZIE'S ADDITION PRODUCED SOUTH TO THE SOUTHERLY LINE OF SAID WATER LOT 16, SAID PREMISES BEING A PART OF THE LAND HERETOFORE DEEDED TO THE CITY OF CHICAGO BY DEED DATED MAY 9, 1856 AND RECORDED JULY 3, 1856 AS DOCUMENT 73068.  
  
(AFFECTS PARCEL 1)
6. RESTRICTION PROHIBITING THE ERECTION OF BUILDINGS OR OTHER STRUCTURES OR OTHER USE MADE THERETO, WHICH IN THE JUDGMENT OF RESPECTIVE MUNICIPAL OFFICIALS HAVING CONTROL OF THE SERVICES MENTIONED IN EXCEPTION REFERENCE LETTER "5" WOULD INTERFERE WITH THE USE, MAINTENANCE, RENEWAL, RECONSTRUCTION, OR CONSTRUCTION OF SAID SERVICE FACILITIES, AS CONTAINED IN THE ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON MAY 27, 1955, A CERTIFIED COPY OF WHICH ORDINANCE WAS RECORDED AUGUST 2, 1955 AS DOCUMENT 16319219, ACROSS THE NORTHERLY 13.00 FEET OF THAT PART OF VACATED NORTH RUSH STREET, DESCRIBED AS:

THAT PART OF VACATED NORTH RUSH STREET, DESCRIBED AS: THAT PART OF WATER LOT 16 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF AND ADJOINING THE EAST LINE OF LOT 12 IN BLOCK 5 IN SAID KINZIE'S ADDITION PRODUCED SOUTH TO THE SOUTHERLY LINE OF SAID WATER LOT 16, SAID PREMISES BEING A PART OF THE PREMISES HERETOFORE DEEDED TO THE CITY OF CHICAGO BY DEED DATED MAY 9, 1856 AND RECORDED JULY 3, 1856 AS DOCUMENT 73068.

(AFFECTS PARCEL 1)

7. EASEMENT IN FAVOR OF THE CITY OF CHICAGO FOR AN ELEVATED STREET OR VIADUCT WITH PROPER SUPPORTS THEREFOR AS CREATED BY THE GRANT FROM CHICAGO AND NORTH WESTERN RAILWAY COMPANY TO THE CITY DATED AUGUST 5, 1930 AND RECORDED OCTOBER 20, 1930 AS DOCUMENT 10772442.

(AFFECTS "PARCEL 9", "PARCEL 10" AND "PARCEL 11" DESCRIBED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER ON NORTH WABASH AVENUE" PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO JULY 29, 1930 AND RECORDED AS DOCUMENT 10774446)

8. RIGHTS OF THE CITY OF CHICAGO FOR THE MAINTENANCE OF ANY VIADUCT OR ELEVATED STREET NOW EXISTING AND TO MAINTAIN NECESSARY COLUMN AND PIERS TO SUPPORT THE SAME; TOGETHER WITH THE RIGHTS OF THE PUBLIC TO MAKE USE OF SAID VIADUCT AS PROVIDED FOR IN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER ON NORTH WABASH AVENUE" PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO JULY 29, 1930 AND RECORDED AS DOCUMENT 10774446.
9. EASEMENT IN, UPON, UNDER, OVER AND ALONG THE LAND TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS TO SAID EQUIPMENT, AS CREATED BY GRANT TO THE COMMONWEALTH EDISON COMPANY RECORDED APRIL 12, 1961 AS DOCUMENT 18133962.
10. ENCROACHMENTS AS DISCLOSED BY SURVEY MADE BY CHICAGO GUARANTEE SURVEY COMPANY, 2 PAGES, DATED NOVEMBER 19, 2001, NO. 0109002, AS FOLLOWS:


(A) THE METAL LOADING DOCKS LOCATED ON THE LOWER LEVEL OVER AND ONTO THE LAND NORTHWESTERLY AND ADJOINING;


(B) THE COLUMNS LOCATED ON THE LAND NORTHWESTERLY AND ADJOINING OVER AND ONTO THE LAND INSURED HEREIN BY AS MUCH AS 1.96 FEET, FOUND AT THE LOWER LEVEL;

(C) THE WALL, LOCATED ALONG THE WEST AND NORTHWEST PROPERTY LINE OVER AND ONTO THE LAND ADJOINING BY 0.35 FEET WEST AND 0.06 FEET NORTHWEST.

- 11. ACTS OF THE COMPANY OR TRUMP, OR DOCUMENTS OR INSTRUMENTS RECORDED AT THE REQUEST OR ON BEHALF OF TRUMP WITH RESPECT TO THE DEVELOPMENT OF THE SUBJECT PROPERTY.
- 12. MEMORANDUM OF OPTION MADE BY AND BETWEEN CST MEMBER LLC, CHICAGO SUN-TIMES, INC., AND TRUMP CHICAGO MANAGING MEMBER LLC, RECORDED JUNE 5, 2002 AS DOCUMENT NUMBER 0020627917.
- 13. MEMORANDUM OF SECOND OPTION MADE BY AND BETWEEN CST MEMBER LLC, CHICAGO SUN-TIMES, INC., AND TRUMP CHICAGO MANAGING MEMBER LLC, RECORDED 10-19-04 AS DOCUMENT NUMBER 0429339103.

# 2036077\_v1

|            |   |              |  |
|------------|---|--------------|--|
| COUNTY TAX | <br>COOK COUNTY<br>REAL ESTATE TRANSACTION TAX<br>OCT 19 04<br>REVENUE STAMP | # 0001143207 | REAL ESTATE<br>TRANSFER TAX<br>2650000<br>FP326670 |
|------------|---|--------------|--|

|           |  |             |  |
|-----------|--|-------------|--|
| STATE TAX | <br>STATE OF ILLINOIS<br>DEPARTMENT OF REVENUE<br>REAL ESTATE TAX<br>OCT 19 04 | # 000011428 | REAL ESTATE<br>TRANSFER TAX<br>7300000<br>FP326660 |
|-----------|--|-------------|--|

PQ

PLAT ACT AFFIDAVIT

STATE OF NEW YORK )  
 )  
COUNTY OF QUEENS ) SS.

ROBERT T. SMITH, being duly sworn on oath, states that HE resides at 194 FAIRMOUNT AVE. CHATHAM NJ. That the attached deed is not in violation of 765 ILCS 205/1 for one of the following reasons:

①. Said Act is not applicable as the grantors own no adjoining property to the premises described in said deed:

- OR -

the conveyance falls in one of the following exemptions as shown by Amended Act which became effective July 17, 1959.

2. The Division or subdivision of the land into parcels or tracts of five acres or more in size which does not involve any new streets or easements of access.
3. The divisions of lots or blocks of less than one acre in any recorded subdivision which does not involve any new streets or easements of access.
4. The sale or exchange of parcels of land between owners of adjoining and contiguous land.
5. The conveyance of parcels of land or interests therein of us as right of way for railroads or other public utility facilities which does not involve any new streets or easement of access.
6. The conveyance of land owned by a railroad or other public utility which does not involve any new streets or easement of access.
7. The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use.
8. Conveyances made to correct descriptions in prior conveyances.
9. The sale or exchange of parcels or tracts of land existing on the date of the amendatory Act in no more than two parts and not involving any new streets or easements of access.

CIRCLE NUMBER ABOVE WHICH IS APPLICABLE TO ATTACHED DEED.

Affiant further states that he makes this affidavit for the purpose of inducing the Recorder of Deeds of Cook County, Illinois, to accept the attached deed for recording.

EXECUTED as of Oct 16, 2004

GRANTOR:

CST MEMBER LLC, a Delaware limited liability company

By: Chicago Sun-Times, Inc., a Delaware corporation, its Sole Member and Manger

By: [Signature]

Name:  
Its: **ROBERT T. SMITH  
TREASURER**

CST/WABASH LLC, a Delaware limited liability company

By: Chicago Sun-Times, Inc., a Delaware corporation, its Sole Member and Manager

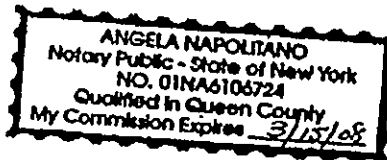
By: [Signature]

Name:  
Its: **ROBERT T. SMITH  
TREASURER**

SUBSCRIBED and SWORN to before me  
This 21 day of June, 2004.

[Signature]  
Notary Public

# 2031817\_v1





**QUITCLAIM DEED**

This instrument was prepared by:  
John McDonough  
Special Assistant Corporation Counsel  
30 N. LaSalle Street, Suite 1610  
Chicago, Illinois 60602  
312/744-9827



Doc#: 0500318010  
Eugene "Gene" Moore Fee: \$32.50  
Cook County Recorder of Deeds  
Date: 01/03/2005 00:44 AM Pg: 1 of 6

(The Above Space For Recorder's Use Only)

2043  
8250923

CITY OF CHICAGO, an Illinois municipal corporation ("Grantor") for and in consideration of Ten and no/100 Dollars (\$10.00) conveys and quitclaims to 401 North Wabash Venture LLC, a Delaware limited liability company ("Grantee"), pursuant to ordinance adopted by the City Council of the City of Chicago on September 1, 2004 and published at C.J. pp 30411-30458 (the "Ordinance"), all interest and title of Grantor in the real property legally described and identified on Exhibit A attached hereto (the "Property"), including but not limited to any interest and title of Grantor pursuant to: map or plat filed by Robert Kinzie February 22, 1833 with the State of Illinois for the area referred to as "Kinzie's Addition to Chicago"; City of Chicago Ordinance entitled, in part, "Providing For The Construction Of A Bridge Across The Main Branch Of The Chicago River On North Wabash Avenue," adopted on July 29, 1930 by the City Council of the City of Chicago and recorded by the Cook County Recorder as Document 10774446; easement dated October 13, 1930 and recorded by the Cook County Recorder as Document 10774442; and instrument dated October 17, 1930 and recorded by the Cook County Recorder as Document 10774447. This Quitclaim Deed is subject to the easements, conditions and covenants set forth in that certain Construction and Easement Agreement, by and between Grantor and Grantee, being recorded on or about the date hereof, which easements, conditions and covenants are a part of the consideration for the Property and which are to be taken and construed as running with the land and binding on Grantee's successors and assigns.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed in its name and behalf and its seal to be hereunto duly affixed and attested, by its Commissioner of Transportation, this 27th day of December, 2004.

q

CITY OF CHICAGO, an Illinois municipal corporation

By: [Signature]  
MIGUEL D'ESCOTO,  
Commissioner of Transportation

[Signature]  
Jeffrey Owen  
Piper, Rudnick  
203 N. LaSalle  
Chicago, IL  
-CHGO220193773.v4

I hereby declare that the attached deed represents a transaction exempt under provisions of Paragraph 4, Section 4, of the Real Estate Transfer Tax Act.

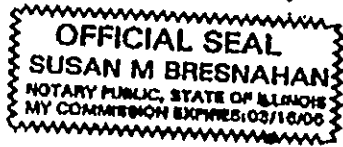
1

[Signature]

STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK )

I, Susan Bresnahan, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Miguel d'Escoto, personally known to me to be the Commissioner of Transportation of the City of Chicago, a municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as Commissioner, he signed the said instrument, pursuant to authority given by the City of Chicago, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of December 2004.



Susan M Bresnahan  
NOTARY PUBLIC

**EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY**

**PARCEL 1:**

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF LOTS 8 TO 14 (BOTH INCLUSIVE) IN BLOCK 2 IN SAID KINZIE'S ADDITION AND CERTAIN PARTS OF THE HIGHWAYS KNOWN AS EAST KINZIE STREET AND NORTH WATER STREET WHICH PARTS OF PUBLIC HIGHWAYS WERE CONVEYED BY THE CITY OF CHICAGO TO THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY BY A QUIT CLAIM DEED RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, AS DOCUMENT 10774448, AND WHICH ARE DENOTED AS PARCELS 16 AND 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, WHICH TRACT OF LAND IS MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17, AS DESCRIBED IN SAID ORDINANCE, A DISTANCE OF 272.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 AFORESAID, A DISTANCE OF 22.62 FEET TO THE POINT OF BEGINNING FOR THE PARCEL HEREIN AFTER DESCRIBED; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT; THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 43.72 FEET; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET; THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST, A DISTANCE OF 32.82 FEET; THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET; THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET; THENCE SOUTH 47 DEGREES 01 MINUTES 53 SECONDS WEST, A DISTANCE OF 2.03 FEET; THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET; THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET; THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET; THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET; THENCE NORTH 39 DEGREES 30 MINUTES 25 SECONDS WEST, A DISTANCE OF 26.15 FEET; THENCE NORTH 3 DEGREES 39 MINUTES 50 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST, A DISTANCE OF 302.23 FEET TO THE POINT OF BEGINNING.  
ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

**PARCEL 2:**

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED; THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT; THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**P.I.N.s:**

Parcel 1: 17-10-135-025-0000

Parcel 2: None.

**Common Address:**

Portions of East North Water Street and North Wabash Avenue adjacent to 401 North Wabash Avenue, Chicago, Illinois

STATEMENT BY GRANTOR AND GRANTEE

The grantor or his agent affirms that, to the best of his knowledge, the name of the grantee shown on the deed or assignment of beneficial interest in a land trust is either a natural person, an Illinois corporation or foreign corporation authorized to do business or acquire and hold title to real estate in Illinois, a partnership authorized to do business or acquire and hold title to real estate in Illinois, or other entity recognized as a person and authorized to do business or acquire and hold title to real estate under the laws of the State of Illinois.

Dated December 30, 2004

Signature:

*John D. McGowan*  
Grantor or Agent Attorney

Subscribed and sworn to before me by the said Grantor

this 30<sup>th</sup> day of December

2004

*Kimberly Eskridge Kimmons*  
Notary Public



The grantee or his agent affirms and verifies that the name of the grantee shown on the deed or assignment of beneficial interest in a land trust is either a natural person, an Illinois corporation or foreign corporation authorized to do business or acquire and hold title to real estate in Illinois, a partnership authorized to do business or acquire and hold title to real estate in Illinois, or other entity recognized as a person and authorized to do business or acquire and hold title to real estate under the laws of the State of Illinois.

Dated December 30, 2004

Signature:

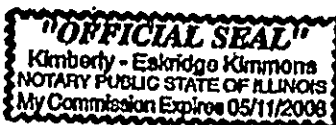
*Peter Rudnick* U.P. Grantor's Attorney, *Kathelle Meltzer Cassel*

Subscribed and sworn to before me by the said Grantee

this 30<sup>th</sup> day of December

2004

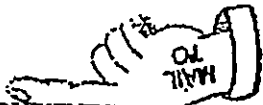
*Kimberly Eskridge Kimmons*  
Notary Public



NOTE: Any person who knowingly submits a false statement concerning the identity of a grantee shall be guilty of a Class C misdemeanor for the first offense and of a Class A misdemeanor for subsequent offenses.

[Attach to deed or ABI to be recorded in Cook County, Illinois, if exempt under provisions of Section 4 of the Illinois Real Estate Transfer Tax Act.]

SH100000



THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:

Marian P. Wexler, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
333 W. Wacker Drive  
Chicago, Illinois 60606



Doc#: 0428339100  
Eugene "Gene" Moore Fee: \$82.00  
Cook County Recorder of Deeds  
Date: 10/19/2004 01:41 PM Pg: 1 of 30

822579902 404-7

MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT,  
FIXTURE FILING AND ASSIGNMENT OF LEASES,  
RENTS AND SECURITY DEPOSITS

30

from

401 NORTH WABASH VENTURE LLC

as Borrower

to

FORTRESS CREDIT CORP.

as Lender

Dated as of: October 15, 2004

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EXHIBITS:

EXHIBIT A – Legal Description



**MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT,  
FIXTURE FILING AND ASSIGNMENT OF LEASES, RENTS  
AND SECURITY DEPOSITS**

MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES, RENTS AND SECURITY DEPOSITS, dated as of October \_\_, 2004 (as amended, supplemented, replaced or otherwise modified from time to time, this "Security Instrument"), is made by 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company ("Borrower"), having its principal office c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022, to FORTRESS CREDIT CORP., a Delaware corporation, having an address at 1251 Avenue of the Americas, 16<sup>th</sup> Floor, New York, New York 10020 (together with its successors and assigns, "Lender").

**RECITALS**

WHEREAS, Borrower is the record and beneficial owner of the fee simple interest in the real property described on Exhibit A attached hereto and hereby made a part hereof (the "Land");

WHEREAS, on the date hereof, in accordance with the terms of that certain Loan and Security Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the original principal amount of \$104,000,000 (the "Loan"), which Loan is evidenced by that certain Promissory Note, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "Note"), made by Borrower in favor of Lender and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, 401 Mezz Venture LLC, a Delaware limited liability company ("401 Mezz"), is the sole owner of the membership interests of Borrower and is an accommodation pledgor with respect to the Loan;

WHEREAS, Borrower, 401 Mezz and Lender have entered into a certain Option Agreement, dated as of the date hereof (the "Option Agreement"), pursuant to which Borrower and 401 Mezz have granted to Lender the right and option, exercisable by Lender at any time following the repayment by Borrower of the Loan, to provide certain mezzanine financing, all as more particularly set forth in the Option Agreement;

WHEREAS, the Loan Agreement provides for the payment by Borrower to Lender of an exit fee in the amount of \$50,000,000 (such fee is referred to in the Loan Agreement and hereinafter as the "Conversion Exit Fee"), subject to certain conditions and qualifications set forth in each such document;

WHEREAS, the Option Agreement provides for the payment by Borrower to Lender of an exit fee in the amount of \$50,000,000 (such fee is referred to in the Option Agreement and hereinafter as the "Option Exit Fee" which, if payable, shall be in lieu of, and not in addition to the Conversion Exit Fee);

WHEREAS, to secure Borrower's obligations under the Loan Agreement, the Note, and the Option Agreement and other Loan Documents, including, without limitation, the obligation to pay to Lender either the Conversion Exit Fee or the Option Exit Fee (as applicable), to the extent either such fee is due and payable, Lender has further required Borrower to enter into this Security Instrument; and

WHEREAS, Borrower and Lender intend these Recitals to be a material part of this Security Instrument.

#### SECURED INDEBTEDNESS

NOW, THEREFORE, in consideration of the Loan to Borrower evidenced by the Note and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

##### TO SECURE:

- (i) payment and performance of all covenants, conditions, liabilities and obligations of Borrower to Lender contained in the Note, the Loan Agreement, the Option Agreement and the other Loan Documents, including, without limitation, the obligation of Borrower to pay to Lender either the Conversion Exit Fee or the Option Exit Fee (as applicable), to the extent the same is due and payable; and
- (ii) payment of the indebtedness evidenced by the Note plus all interest and all fees, including, without limitation, the Prepayment Fee (as defined in the Note) to the extent the same becomes payable pursuant to the Loan Documents; and
- (iii) payment and performance of all covenants, conditions, liabilities and obligations contained in this Security Instrument and any extensions, renewals or modifications hereof; and
- (iv) payment and performance of all covenants, conditions, liabilities and obligations of Borrower contained in the Assignment of Leases (as defined in the Loan Agreement); and
- (v) payment and performance of all covenants, conditions, liabilities and obligations of Borrower contained in each of the other Loan Documents; and
- (vi) without limiting the foregoing, payment of all indebtedness, liabilities, and amounts from time to time incurred by Lender pursuant to the Note, this Security Instrument, the Loan Agreement or such other Loan Documents, even if the aggregate amount of the monetary obligation outstanding at any one time exceeds the face amount of the Note (all of the foregoing indebtedness, monetary liabilities and obligations set forth in clauses (i) through (v) above and this clause (vi), collectively, the "Indebtedness"); and
- (vii) payment of the Indebtedness together with the payment and performance of all other covenants, conditions, liabilities and obligations described and set

forth in clauses (i) through (vi) above and in this clause (vii) (collectively, the "Obligations").

#### GRANTING CLAUSES

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH: that Borrower, in consideration of the premises, the Indebtedness evidenced by the Note, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (a) has mortgaged, warranted, granted, bargained, sold, alienated, released, confirmed, conveyed, pledged and assigned, and (b) by these presents does hereby irrevocably grant and create a first priority Lien on and security interest in, subject to the Permitted Encumbrances and the provisions hereof and of the other Loan Documents, and does hereby GRANT, MORTGAGE, SELL, TRANSFER, SET OVER, ASSIGN AND CONVEY TO LENDER and its successors and assigns forever, all of Borrower's estate, right, title and interest now owned or hereafter acquired in, to and under any and all the property (collectively, the "Property") described in the following Granting Clauses:

- (1) the Land;
- (2) all additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and all additional lands and estates therein which may, from time to time, by supplemental security instrument or otherwise, be expressly made subject to the lien of this Security Instrument;
- (3) all of Borrower's right, title and interest in and to the buildings, foundations, structures, improvements and fixtures now or hereafter located or erected on the Land (the "Improvements");
- (4) all of Borrower's right, title and interest in and to (i) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (ii) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land and/or the Improvements; (iii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land and/or the Improvements; and (iv) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land and/or the Improvements (collectively, the "Appurtenances" and together with the Land and the Improvements, the "Real Property");
- (5) all of Borrower's right, title and interest in and to the machinery, appliances, apparatus, equipment, fittings, fixtures, materials, articles of personal property and goods of every kind and nature whatsoever used in connection with the Real Property and all additions to and renewals and replacements thereof, and all substitutions therefor, now or hereafter affixed to, attached to, placed upon or located upon or in the Real Property, or any part thereof, and used in connection with the use, ownership, management, maintenance, enjoyment or operation of the

Property in any present or future occupancy or use thereof and now owned or leased or hereafter owned or leased by Borrower, including, but without limiting the generality of the foregoing, all heating, lighting, laundry, cooking, incinerating, loading, unloading and power equipment, boilers, dynamos, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, building materials and equipment, elevators, escalators, carpeting, shades, draperies, awnings, screens, doors and windows, blinds, furnishings (other than equipment and personal property of tenants or guests of the Real Property, or any part thereof) (hereinafter collectively called "Building Equipment");

(6) all of Borrower's right, title and interest as lessor or licensor, as the case may be, in, to and under all leases, subleases, underlettings, concession agreements and licenses of the Real Property or any part thereof, now existing or hereafter entered into by Borrower (collectively, "Leases") including, without limitation, any cash and other securities deposited thereunder (collectively, "Security Deposits"), the grant of such cash and securities hereunder being expressly subject to the provisions of the applicable Leases and all of Borrower's right, title and interest, subject to the provisions of Section 5, in the right to receive and collect the revenues, income, rents, issues, profits, royalties and other benefits payable under any of the Leases (collectively, "Rents") and all revenues, income, rents, issues and profits otherwise arising from the use or enjoyment of all or any portion of the Real Property;

(7) subject to the provisions of Section 6.2 of the Loan Agreement, all of Borrower's right, title and interest in and to all proceeds, judgments, claims, compensation, awards or payments hereafter made to Borrower for the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Real Property, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or any other injury to or decrease in the value of the Real Property, whether direct or consequential, which awards and payments are hereby assigned to Lender, who is hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Indebtedness in such order as Lender may determine in accordance with the provisions of this Security Instrument without regard to the adequacy of Lender's security hereunder and notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such awards or payments; and Borrower hereby agrees, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Lender, free, clear and discharged of any encumbrances of any kind or nature whatsoever other than the Permitted Encumbrances (as defined in the Loan Agreement);

(8) all of Borrower's right, title and interest in and to all unearned premiums paid under insurance policies now or hereafter obtained by Borrower to the extent the same insure the Real Property and any other insurance policies required to be maintained pursuant to the Loan Agreement to the extent the same insure the Property or otherwise relate thereto, including, without limitation, liability insurance policies and Borrower's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Real Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of

casualty insurance, title insurance or any other insurance maintained on or with respect to the Real Property (other than liability insurance);

(9) all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Land, hereafter acquired by or released to Borrower or constructed, assembled or placed by Borrower on the Land, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by law, without any further Security Instrument, conveyance, assignment or other act by Borrower, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Borrower and specifically described herein;

(10) all of Borrower's right, title and interest in, to and under, to the extent the same may be encumbered or assigned by Borrower pursuant to the terms thereof without occurrence of a breach or default thereunder and without impairment of the validity or enforceability thereof and to the extent permitted by applicable law, (i) any and all contracts and agreements relating to the Real Property (other than the Leases), and other documents, books and records related to the ownership and operation of the Real Property, including, without limitation all Material Agreements (as defined in the Loan Agreement); (ii) to the extent permitted by law, all Licenses (as defined in the Loan Agreement), warranties, guaranties, building permits and government approvals relating to or required for the construction, completion, occupancy and operation of the Real Property; (iii) all plans and specifications for the construction of the Real Property, including, without limitation, installations of curbs, sidewalks, gutters, landscaping, utility connections and all fixtures and equipment necessary for the construction, operation and occupancy of the Real Property; and (iv) all such other contracts and agreements (other than the Leases) from time to time executed by Borrower relating to the ownership, leasing, construction, maintenance, operation, occupancy or sale of the Real Property, together with all rights of Borrower to compel performance of the terms of such contracts and agreements;

(11) to the extent the same may be encumbered or assigned by Borrower pursuant to the terms thereof and to the extent permitted by law, all of Borrower's right, title and interest in, to and under documents, instruments, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the State in which the Real Property is located (the "UCC"), and credit card receivables and escrows, in any case which now or hereafter relate to, are derived from, or are used in connection with the Real Property, and all contract rights, franchises, books, records, plans, specifications, Licenses, actions and causes of action which now or hereafter relate to, are derived from or used in connection with the Real Property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the property described in the foregoing paragraphs (6), (7), (8), (9), (10) and this paragraph (11), the "Intangibles");

(12) all of Borrower's right, title and interest in all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof; and

(13) all right, title and interest of Borrower as declarant and/or developer under any existing and future condominium documents, or master association or community association documents with respect to the Property or any portion thereof.

UPON CONDITION that, until the occurrence and during the continuance of an Event of Default (as hereinafter defined), Borrower shall be permitted to possess and use the Property, and to use the rents, issues, profits, revenues and other income of the Property and all of the foregoing rights and interests as provided in this Security Instrument, the Loan Agreement and the other Loan Documents.

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, subject only to the Permitted Encumbrances and the terms hereof, unto Lender, its successors and assigns, forever, upon the terms and conditions set forth herein and to secure the performance of, and compliance with, the obligations, covenants and conditions of this Security Instrument and the other Loan Documents all as herein set forth.

1. Definitions. (a) All capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement. Wherever used in this Security Instrument, the following terms, and the singular and plural thereof, shall have the following meanings:

"Appurtenances": Shall have the meaning provided in Granting Clause (4).

"Borrower": Shall have the meaning provided in the Introductory Paragraph.

"Building Equipment": Shall have the meaning provided in Granting Clause (5).

"Closing Date": Shall mean the date of this Security Instrument.

"Events of Default": Shall mean the occurrence of an "Event of Default" pursuant to the Loan Agreement or a default by Borrower in the observance or performance of any of the terms, covenants and provisions of this Security Instrument or any other Loan Document on its part to be observed or performed beyond the expiration of all applicable grace and cure periods.

"Foreclosure Act": Shall have the meaning provided in Section 13.

"Improvements": Shall have the meaning provided in Granting Clause (3).

"Indebtedness": Shall have the meaning provided in the Secured Indebtedness Clause.

"Intangibles": Shall have the meaning provided in Granting Clause (11).

"Leases": Shall have the meaning provided in Granting Clause (6).

"Lender": Shall have the meaning provided in the Introductory Paragraph.

"Loan": Shall have the meaning provided in the Recitals.

"Loan Agreement": Shall have the meaning provided in the Recitals.

**"Maximum Legal Rate"**: shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for in the Loan Agreement or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**"Note"**: Shall have the meaning provided in the Recitals.

**"Obligations"**: Shall have the meaning provided in the Secured Indebtedness Clause.

**"Principal Amount"**: Shall have the meaning provided in the Recitals.

**"Property"**: Shall have the meaning provided in the recitals to the Granting Clause.

**"Protective Advances"**: Shall have the meaning provided in Section 13.

**"Real Property"**: Shall have the meaning provided in Granting Clause (4).

**"Rents"**: Shall have the meaning provided in Granting Clause (6).

**"Security Instrument"**: Shall have the meaning provided in the Introductory Paragraph.

**"UCC"**: Shall have the meaning provided in Granting Clause (11).

(b) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument, and section, schedule and exhibit references are to this Security Instrument unless otherwise specified. The words "includes" and "including" are not limiting and mean "including without limitation."

(c) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

(d) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto executed in writing by all of the parties thereto and, if Lender's consent was required for the original of any such document, consented to by Lender. All references in this Security Instrument to the plural of any document described herein shall mean all of such documents collectively.

(e) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation.

(f) The captions and headings of this Security Instrument are for convenience of reference only and shall not affect the construction of this Security Instrument.

2. **Warranty**. Borrower represents and warrants to, and covenants and agrees with, Lender as follows:

(a) Title. Borrower represents and warrants that Borrower owns good, indefeasible, marketable and insurable fee title to the Property, subject only to the Permitted Encumbrances. This Security Instrument, upon its due execution and proper recordation, is and will remain a valid and enforceable perfected first Lien on and security interest on Borrower's right, title and interest in and to the Property, subject to the Permitted Encumbrances.

(b) All Property. The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower or (ii) used in the operation of the business located on the Property, other than items owned by any Manager, Tenants or contractors and other third Persons performing services in connection with the development of the Property.

(c) Enforceability of Security Instrument. This Security Instrument is the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

### 3. Affirmative Covenants.

(a) Payment of Obligations. Borrower shall promptly pay when due all payment Obligations, all in lawful money of the United States of America in accordance with the Note. All sums payable by Borrower hereunder shall be paid without demand, counterclaim (other than mandatory counterclaims), offset, deduction (except as required by law) or defense. Borrower waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim (other than mandatory counterclaims), setoff, deduction or defense.

(b) Performance and Observance of Loan Agreement Covenants. Borrower shall maintain the Property, pay Impositions and Other Charges, obtain, pay and maintain insurance, keep the Property free of Liens (other than Permitted Encumbrances and such other Liens as are expressly permitted by the terms of the Loan Agreement), pay the utility charges for the Property, perform alterations and repairs in respect of the Property, cause the Property to comply with all Legal Requirements, restore the Property upon any casualty or Taking, all in accordance with and subject to all of the applicable terms and conditions of this Security Instrument, the Loan Agreement and the other Loan Documents. Notwithstanding anything in this Security Instrument to the contrary, Lender hereby acknowledges that Borrower intends to demolish the existing buildings and improvements on the Land and to construct the improvements described in the Loan Agreement, all subject to, and in accordance with, the terms and provisions of the Loan Agreement.

(c) Insurance. Borrower shall, at its sole cost and expense, continuously keep and maintain insurance in respect of the Property and Borrower's operations thereat, of the type, in the form and with insurers as are carried with respect to similar properties by prudent owners thereof and otherwise in compliance with the terms of the Loan Agreement. All Proceeds to which Borrower may be entitled resulting from damage to or destruction of the Property or any part hereof by a casualty or a Taking shall be distributed and applied towards restoration of the



Property or repayment of the Obligations in accordance with the provisions of Section 6.2 of the Loan Agreement.

(d) Maintenance of Validity and Recording.

(i) Borrower covenants that it will forthwith after the execution and delivery of this Security Instrument and thereafter as necessary from time to time cause this Security Instrument and the other Loan Documents and any continuation statement or similar instrument relating to any property subject thereto or to any property intended to be encumbered, granted, conveyed, transferred and assigned by this Security Instrument to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the validity thereof or the grant thereby of the property subject thereto and the interest and rights of Lender therein. Borrower covenants that it has paid or will pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes or other charges arising out of or in connection with the execution and delivery of such instruments.

(ii) Borrower shall maintain the validity, perfection, priority and effectiveness of this Security Instrument and the other Loan Documents. Unless otherwise permitted in this Security Instrument and the other Loan Documents, Borrower will not take any action, will not permit action to be taken by others and will not omit to take any action, nor will Borrower give any notice, approval or consent or exercise, waive or modify any rights under or in respect of the Permitted Encumbrances, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Borrower from, or reduce any of Borrower's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Security Instrument or any of the other Loan Documents or have a Material Adverse Effect, without Lender's consent, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

(iii) Borrower, at its expense, will execute, acknowledge and deliver all such instruments and take all such actions as Lender from time to time reasonably may request or as may be reasonably necessary or proper for the better assuring to Lender of the properties and rights now or hereafter subject to the Lien hereof or intended so to be.

4. Negative Covenants. Borrower covenants and agrees that, without Lender's prior written consent; Borrower shall not (i) transfer or lease all or any part of the Property or any interest therein, except as permitted under Article VIII of the Loan Agreement or (ii) partition the Property.

5. License To Collect Rents. Lender and Borrower hereby confirm that, for so long as no Event of Default shall have occurred and is continuing, Lender has granted to Borrower a revocable license to collect and use the Rents as they become due and payable in accordance with the provisions of the Loan Agreement and the Assignment of Leases; provided that the existence of

such right shall not operate to subordinate the Assignment of Leases to any subsequent assignment, in whole or in part by Borrower, and any such subsequent assignment shall be subject to Lender's rights under this Security Instrument. Borrower further agrees to execute and deliver such assignments of Leases and Rents as Lender may from time to time reasonably request in order to better assure, transfer and confirm to Lender the rights intended to be granted to Lender with respect thereto. In accordance with the provisions of the Assignment of Leases, upon the occurrence and during the continuance of an Event of Default (1) Borrower agrees that Lender may, but shall not be obligated to, assume the management of the Property, and collect the Rents, applying the same upon the Obligations, and (2) Borrower hereby authorizes and directs all tenants, purchasers or other Persons occupying, utilizing or acquiring any interest in any part of the Property to pay all Rents to Lender upon Lender's request. In the event Lender actually receives such Rents after an Event of Default, any application of the Rents by Lender shall not constitute a misappropriation of the Rents by Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the Rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with this Security Instrument, the Assignment of Leases and applicable law.

6. Security Agreement. This Security Instrument constitutes a financing statement and, to the extent required under UCC §9-502(c) because portions of the Property may constitute fixtures, this Security Instrument is to be filed in the office where a Security Instrument for the Land would be recorded. Lender also shall be entitled to proceed against all or portions of the Property in accordance with the rights and remedies available under UCC §9-604(b). Borrower is, for the purposes of this Security Instrument, deemed to be the "Debtor", and Lender is deemed to be the "Secured Party", as those terms are defined and used in the UCC. Borrower agrees that the indebtedness and obligations secured by this Security Instrument are further secured by security interests in all of Borrower's right, title and interest in and to fixtures, equipment, and other property covered by the UCC, if any, which are used upon, in, or about the Property (or any part) or which are used by Borrower or any other Person in connection with the Property. Borrower grants to Lender a valid and effective first priority security interest in all of Borrower's right, title and interest in and to such personal property (but only to the extent permitted in the case of leased personal property), together with all replacements, additions, and proceeds. Except for Permitted Encumbrances, Borrower agrees that, without the written consent of Lender, no other security interest will be created under the provisions of the UCC and no lease will be entered into with respect to any goods, fixtures, equipment, appliances, or articles of personal property now attached to or used or to be attached to or used in connection with the Property except as otherwise permitted hereunder. Borrower agrees that all property of every nature and description covered by the Lien and charge of this Security Instrument together with all such property and interests covered by this security interest are encumbered as a unit, and upon the occurrence and during the continuance of an Event of Default by Borrower, all of the Property, at Lender's option, may be foreclosed upon or sold in the same or different proceedings or at the same or different time, subject to the provisions of applicable law. The Lender shall be authorized to file any financing statement relating to any such property or rights or interests described herein, however, the filing of any financing statement shall not be construed to diminish or alter any of Lender's rights of priorities under this Security Instrument.

7. Reserved.

8. Protection Of Security, Costs And Expenses. Borrower shall appear in and defend any action or proceeding of which it has notice purporting to affect the security hereof or the rights or powers of Lender hereunder and shall pay all costs and expenses actually incurred by Lender, including, without limitation, cost of evidence of title and reasonable attorneys' fees and disbursements, in any such action or proceeding, and in any suit brought by Lender to foreclose this Security Instrument or to enforce or establish any other rights or remedies of Lender hereunder upon the occurrence and during the continuance of an Event of Default. If an Event of Default occurs and is continuing under this Security Instrument or the Loan Agreement, or if any action or proceeding is commenced in which it becomes necessary to defend or uphold the Lien or priority of this Security Instrument or which adversely affects Lender or Lender's interest in the Property or any part thereof, including, without limitation, eminent domain, enforcement of, or proceedings of any nature whatsoever under any Legal Requirement affecting the Property or involving Borrower's bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then Lender, upon reasonable notice to Borrower, may, but without obligation to do so and without releasing Borrower from any obligation hereunder, make such appearances, disburse such reasonable sums and take such action as Lender reasonably deems necessary or appropriate to protect Lender's interest in the Property, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon the Property to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the reasonable judgment of Lender appears to be prior or superior hereto.

9. Lender's Right To Perform. Upon the occurrence and during the continuance of an Event of Default with respect to the performance of any of the Obligations contained herein, Lender may, without waiving or releasing Borrower from any Obligation or Default under this Security Instrument, but shall not be obligated to, at any time perform the Obligations giving rise to such Event of Default, and the cost thereof, with interest at the Default Rate from the date of payment by Lender to the date such amount is paid by Borrower, shall immediately be due from Borrower to Lender and the same shall be secured by this Security Instrument and shall be a Lien on the Property prior to any right, title to, interest in or claim upon the Property attaching subsequent to the Lien of this Security Instrument. No payment or advance of money by Lender under this Section 9 shall be deemed or construed to cure Borrower's Event of Default or waive any right or remedy of Lender hereunder.

10. Remedies. Upon the occurrence and during the continuation of an Event of Default hereunder, Lender may take such actions against Borrower, and/or against the Property or any portion thereof as Lender determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below or as required under applicable law. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Lender's determination of appropriate action may be based on an appropriate real estate or other consultant and/or counsel, and Lender may rely conclusively on such advice. Borrower shall pay such consultants' and reasonable attorneys' fees and expenses incurred by Lender pursuant to this Section 10. Such actions may include, without limitation, the following:

(a) Acceleration. Subject to any applicable provisions of the Note and the other Loan Documents, Lender may declare all or any portion of the unpaid principal balance under the Note, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable.

(b) Entry. Subject to the provisions and restrictions of applicable law, Lender, personally, or by its agents or attorneys, at Lender's election, may enter into and upon all or any part of the Property (including, but not limited to, the Land and any part thereof), and may exclude Borrower, its agents and servants therefrom; and Lender, having and holding the same, may use, operate, manage and control the Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receiver. Upon every such entry, Lender may, at the reasonable expense of the Property and/or Borrower, from time to time, either by purchase, repair or construction, maintain and restore the Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may seem to it to be advisable. Similarly, from time to time, Lender may, at the expense of Borrower (which amounts may be disbursed by Lender from the Property on behalf of Borrower), make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements to and on the Property or any part thereof as it may deem advisable. Lender or its designee shall also have the right to manage and operate the Property or any part thereof and to carry on the business thereof and exercise all rights and powers of Borrower with respect thereto, either in the name of Borrower or otherwise, as may seem to it to be advisable. In confirmation of the grant made in Granting Clause (6) hereof, in the case of the occurrence and continuation of an Event of Default, Lender shall be entitled to collect and receive all Rents to be applied in the order of priorities and amounts as shall be provided for in Section 11 hereof. Lender shall be liable to account only for Rents and other proceeds actually received by Lender.

(c) Phase I Environmental Report. Lender may at its option obtain, at Borrower's reasonable expense, a new phase I environmental report with respect to the Property, and such additional environmental studies as may be recommended in such phase I reports.

(d) Judicial Foreclosure. Upon the occurrence and during the continuance of any Event of Default, Lender, with or without entry, personally or by its agents or attorneys, insofar as applicable, and in addition to any and every other remedy, Lender or the holder or holders of any the Obligations may at its option declare the whole amount or any part, of the Indebtedness remaining unpaid immediately due and payable without notice, by suit or suits in equity or at law to foreclose the same. Appraisement of the Property is hereby waived at the option of Lender, that option to be exercised at or prior to the time judgment is rendered in the judicial foreclosure. The Property may be sold as one parcel or in such parcels as Lender may elect unless otherwise provided by law. Lender may be a purchaser of the Property or any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or otherwise, and Lender may apply the outstanding Indebtedness against the purchase price. Any purchaser shall, upon its purchase, acquire good title to the properties so purchased, free of the security interest and Lien of this Security Instrument.

Lender may conduct any number of sales from time to time. Upon taking title to the Property (whether by foreclosure, deed in lieu or otherwise) by Lender or any other purchaser or assignee of the Property after an Event of Default, Borrower shall assign and transfer all of its

right, title and interest in and to the Property to Lender. Borrower hereby irrevocably appoints Lender as its attorney-in-fact to execute all documents and take all actions necessary to effectuate such assignment and transfer, provided that such power may only be exercised by Lender while an Event of Default exists and is continuing.

(e) Specific Performance. Lender, in its sole and absolute discretion, may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(f) Enforcement of Note. To the extent permitted under the provisions of applicable law, Lender may recover judgment on the Note (or any portion of the Indebtedness evidenced thereby), either before, during or after any proceedings for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument.

(g) Sale of Property.

(i) Lender may postpone any sale of all or any part of the Property to be made under or by virtue of this Section 10 by public announcement at the time and place of such sale, or by publication, if required by law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(ii) Upon the completion of any sale made by Lender under or by virtue of this Section 10, Lender shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. Lender is hereby appointed the true and lawful irrevocable attorney-in-fact of Borrower in its name and stead or in the name of Lender to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, Lender may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof; provided, however, that such power of attorney shall be effective only for so long as an Event of Default shall exist and be continuing. Borrower shall, nevertheless, if so requested in writing by Lender, ratify and confirm any such sale or sales by executing and delivering to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 10 shall operate to divest all the estate, right, title, interest, claim and demand, whether at law or in equity, of Borrower in and to the property and rights so sold, and shall be a perpetual bar, at law and in equity, against Borrower, its successors and assigns and any Person claiming through or under Borrower and its successors and assigns.

(iii) Upon any sale made under or by virtue of this Section 10, Lender may bid for and acquire the Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Note secured by this Security Instrument the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument. The person making such sale shall accept such settlement without requiring the production of the Note or this Security Instrument, and there shall be deemed credited to the Indebtedness and Obligations under this Security Instrument the net proceeds of such sale. Lender, upon acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable laws.

(b) Voluntary Appearance; Receivers. Upon the occurrence and during the continuance of any Event of Default hereunder or pursuant to the Loan Agreement, and immediately upon commencement of (i) any action, suit or other legal proceeding by Lender to obtain judgment for the principal and interest on the Note and any other sums required to be paid pursuant to this Security Instrument, or (ii) any action, suit or other legal proceeding by Lender of any other nature in aid of the enforcement of the Loan Documents or any of them, Borrower will (a) enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Lender, consent to the appointment, of one or more receivers of the Property and all of the Rents. After the occurrence of any Event of Default, or upon the filing of a bill in equity to foreclose this Security Instrument or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of Lender, Lender shall be entitled, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Property, forthwith, either before or after declaring the principal and interest on the Note to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which Lender is authorized to exercise by the provisions of this Section 10, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize. Notwithstanding the foregoing, Lender as a matter of right may appoint or secure the appointment of a receiver, trustee, liquidator or similar official of the Property or any portion thereof, and Borrower hereby irrevocably consents and agrees to such appointment, without notice to Borrower and without regard to the value of the Property or adequacy of the security for the Indebtedness and without regard to the solvency of the Borrower or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Rents pursuant to this Security Instrument or the Assignment of Leases.

(i) UCC Remedies. Lender may exercise any or all of the remedies granted to a secured party under the UCC, specifically including, without limitation, the right to recover the reasonable attorneys' fees and disbursements and other expenses incurred by Lender in the enforcement of this Security Instrument or in connection with Borrower's redemption of the Real Property or Building Equipment or Intangibles. Lender may exercise its rights under this Security Instrument independently of any other collateral or guaranty that Borrower may have granted

or provided to Lender in order to secure payment and performance of the Obligations, and Lender shall be under no obligation or duty to foreclose or levy upon any other collateral given by Borrower to secure any Obligation or to proceed against any guarantor before enforcing its rights under this Security Instrument.

(j) Leases. Lender may, at its option, before any proceeding for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument, treat any Lease which is subordinate by its terms to the Lien of this Security Instrument (and with respect to which non-disturbance agreements exist and is in full force and effect without any default on the part of the Tenant thereunder or under the Lease relating thereto beyond the expiration of applicable notice and cure periods), as either subordinate or superior to the Lien of this Security Instrument.

(k) Other Rights. Lender may pursue against Borrower any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents, subject to the provisions of Section 14 of the Loan Agreement.

(l) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Borrower, or any of its property, or of the Property or any part thereof, Lender, to the extent permitted by law, shall be entitled to retain possession and control of all property now or hereafter granted to or held by Lender under this Security Instrument.

(m) Suits by Lender. All rights of action under this Security Instrument may be enforced by Lender without the possession of the Note and without the production thereof or this Security Instrument at any trial or other proceeding relative thereto, provided, however, Lender shall in any event certify that it is the current holder of the Note. Any such suit or proceeding instituted by Lender shall be brought in the name of Lender and any recovery of judgment shall be subject to the rights of Lender.

(n) Remedies Cumulative. Subject to Section 14 of the Loan Agreement, no remedy herein (or pursuant to the Loan Agreement or any Loan Document) conferred upon or reserved to Lender shall exclude any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission of Lender to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given to Lender by this Security Instrument or any other Loan Document may be exercised from time to time and as often as Lender may deem expedient. Nothing in this Security Instrument shall affect Borrower's obligations to pay the principal of, and interest on, the Note in the manner and at the time and place expressed in the Note.

(o) Waiver of Rights. Borrower agrees that, to the fullest extent permitted by law, it will not at any time, (1) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Loan Document, (2) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or

pursuant to the decree, judgment or order of any court of competent jurisdiction, or (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any State or otherwise to redeem the property and rights sold pursuant to such sale or sales or any part thereof. Borrower hereby expressly waives all benefits and advantages of such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but will suffer and permit the execution of every power as though no such laws had been made or enacted. Borrower for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights and, any and all rights to reinstatement, any and all right to have the property comprising the Property marshaled upon any foreclosure of the Lien hereof.

(p) Partial Foreclosure. Notwithstanding any other provision of this Security Instrument to the contrary, if any one of the Events of Default specified in this Security Instrument shall occur, Lender may, at its option, institute partial foreclosure proceedings with respect to the portion of the Indebtedness so in default, as if under a full foreclosure, and without declaring the entire Indebtedness due, provided that if foreclosure sale is made because of default of a part of the Indebtedness, such sale may be made subject to the continuing lien of this Security Instrument for the unmatured part of the Indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of this Security Instrument and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this subsection. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the Indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the Indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured Indebtedness of any matured portion of the secured Indebtedness without exhausting the power to foreclose and to sell the Property pursuant to any such partial foreclosure for any other part of the secured Indebtedness whether matured at the time or subsequently maturing; and without exhausting any right of acceleration and full foreclosure.

#### 11. Application Of Proceeds.

(a) Sale Proceeds. The proceeds of any sale or foreclosure of the Property or any portion thereof shall be applied to the following in the following order of priority: (i) the payment of the costs and expenses of the foreclosure proceedings with respect to such Property (including reasonable counsel fees and disbursements actually incurred and advertising costs and expenses), liabilities and advances made or incurred under this Security Instrument or any Loan Document, and reasonable receivers' fees and commissions and fees and expenses incurred by Lender, together with interest at the Default Rate to the extent payable, (ii) payment of any other sums advanced by Lender (or any advancing agent on its behalf) in accordance with the terms hereof and not repaid to it by Borrower, together with interest at the Default Rate to the extent payable, (iii) payment of all sums due under the Note and the Loan Documents in such order and priority as Lender shall elect in its sole and absolute discretion; and (iv) payment of any remaining Obligations and (v) any surplus to Borrower or the other party legally entitled thereto.



(b) Other Proceeds. All other proceeds or other amounts collected by Lender following an Event of Default shall be applied (1) first, to reimburse any reasonable expenses related to such collection, and (2) thereafter, as provided in Section 11(a) above. If no Event of Default shall exist and be continuing, any amount available to make payments or applied in lieu of such payments thereon shall be applied (1) first, to interest due or overdue on the Note, (2) then, any amounts applied to pay or applied in lieu of paying principal on the Note then due shall be applied to pay or applied in lieu of paying the Note in order of priority, and (3) thereafter, to Borrower.

12. Miscellaneous.

(a) CERTAIN WAIVERS. TO INDUCE LENDER TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE NOTE AND THIS SECURITY INSTRUMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, EACH OF LENDER AND BORROWER EXPRESSLY AND IRREVOCABLY HEREBY, IN ADDITION TO AND NOT IN DEROGATION OF ALL OTHER WAIVERS CONTAINED IN THE NOTE, THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS, WAIVE AND SHALL WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY, OR COUNTERCLAIM ASSERTED BY LENDER OR BORROWER WHICH ACTION, PROCEEDING OR COUNTERCLAIM ARISES OUT OF OR IS CONNECTED WITH THIS SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT.

(b) Notices. Any notice, election, request, demand, report or statement which by any provision of this Security Instrument is required or permitted to be given or served hereunder shall be in writing and shall be given or served in the manner and to the Persons required by Section 16.6 of the Loan Agreement.

(c) No Oral Modification. This Security Instrument may not be waived, altered, amended, modified, changed, discharged or terminated orally but only by a written agreement signed by the party against which enforcement is sought.

(d) Partial Invalidity. In the event any one or more of the provisions contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

(e) Successors and Assigns. All covenants of Borrower contained in this Security Instrument are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other Person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so. All such covenants of Borrower shall run with the land and bind Borrower, the successors and assigns of Borrower (and each of them) and all subsequent owners, encumbrancers and Tenants of the Property, and shall inure to the benefit of Lender, its successors and assigns.

(f) GOVERNING LAW. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF NEW YORK WITHOUT REGARD TO CHOICE OF LAW RULES AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, PROVIDED HOWEVER, THAT THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS CREATED HEREBY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS TO THE EXTENT NECESSARY FOR THE VALIDITY AND ENFORCEMENT THEREOF.

(g) No Waiver. No failure by Lender to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or right, power or remedy or of any such breach. No waiver of any breach shall affect or alter this Security Instrument, which shall continue in full force and effect, or shall affect or alter the rights of Lender with respect to any other then existing or subsequent breach.

(h) Further Assurances. Borrower, at its own expense, will execute, acknowledge and deliver all such reasonable further documents or instruments including, without limitation, (i) security agreements on any Building Equipment included or to be included in the Property, and (ii) such other documents as Lender from time to time may reasonably request to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Security Instrument or the other Loan Documents. Borrower shall notify Lender in writing no less than thirty (30) days prior to a change of address.

(i) Counterparts. This Security Instrument may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

(j) Merger, Conversion, Consolidation or Succession to Business of Lender. Any Person into which Lender may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which Lender shall be a party, or any Person succeeding to all or substantially all the business of Lender, shall be the successor of Lender hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(k) No Endorsement. Lender shall not become or be considered to be an endorser, co-maker or co-obligor on the Note or on any other Obligation of Borrower secured by this Security Instrument or otherwise.

(l) Usury Savings. The Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of the Note or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of the Maximum Legal Rate, then the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous

payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

(m) Documentary Stamps. If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue documentary stamp tax, intangible taxes or other stamps to be affixed to the Note or this Security Instrument, Borrower will, upon demand, pay for the same, with interest and penalties thereon, if any.

13. Local Law. (a) In the event of any inconsistencies between the terms and conditions of this Section 13 and the other provisions of this Security Instrument, the terms and conditions of this Section 13 shall control and be binding.

(b) Borrower and Lender agree that the enforcement of the terms and provisions of this Security Instrument shall be subject to and accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Foreclosure Act"), 735 ILCS 5/15-1101, et seq. (and to that end, any provision of this Security Instrument that is inconsistent with any provision of the Act shall be deemed superseded by the applicable provisions of the Foreclosure Act, but only to the extent of such inconsistency), and with respect to such Foreclosure Act, Borrower agrees and covenants that:

(i) Borrower and Lender shall have the benefit of all of the provisions of the Foreclosure Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Foreclosure Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(ii) Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale;

(iii) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or the Loan Agreement or by the Foreclosure Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Foreclosure Act. All Protective Advances shall be so much additional Indebtedness se-

cured by this Security Instrument and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Security Instrument shall be a Lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Foreclosure Act;

(iv) In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Foreclosure Act; and

(v) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Foreclosure Act or residential real estate as defined in Section 5/15-1219 of the Foreclosure Act. Pursuant to Section 5/15-1601(b) of the Foreclosure Act, Borrower hereby waives any and all right of redemption.

(c) Notwithstanding anything herein to the contrary, it is agreed that the maximum amount of Indebtedness secured by this Security Instrument, including all advancements, at any one time shall not exceed \$308,000,000.

(d) This Security Instrument secures the full and timely payment of the Indebtedness, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest as provided in the Loan Agreement.

(e) Borrower represents and warrants to Lender (i) that the proceeds to be disbursed under the Loan Agreement and secured by this Security Instrument will be used for the purposes specified in 815 ILCS 205/4(1)(c) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(c), and (ii) that the transaction evidenced by the Loan Agreement is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq.

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IN WITNESS WHEREOF, this Security Instrument has been duly executed and delivered by Borrower on the date first hereinabove written.

BORROWER:

401 NORTH WABASH VENTURE LLC, a Delaware limited liability company

By: 

Name: DONALD J. TAMM  
Title: PRESIDENT

Security Instrument Execution

STATE OF ny )  
COUNTY OF ny ) ss.:

I, Linda Bohdan, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT THE PRESIDENT of 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such DONALD J. TRUMP appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said limited liability company.

GIVEN under my hand and notarial seal this 12 day of October, 2004.

Linda Bohdan  
Notary Public

My Commission Expires:

LINDA BOHDAN  
Notary Public, State of New York  
No. 41-4903548  
Qualified in Queens County  
Commission Expires August 24, 20 05

Security Instrument Execution

EXHIBIT A

Legal Description

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH, 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT;

THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET;

THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET;

THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET;

THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET;

THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET;

THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.033 FEET;

THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET;

THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET;

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THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET;

THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET;

THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET;

THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET;

THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS

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PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED;

THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT;

THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FBET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

NON-EXCLUSIVE EASEMENTS IN FAVOR OF PARCELS 1 AND 2, AS GRANTED IN THAT CERTAIN ORDINANCE BY THE CITY OF CHICAGO APPROVED SEPTEMBER 1, 2004 AS PUBLISHED IN JOURNAL PAGES 30411 TO 30458, BOTH INCLUSIVE, FOR THE IMPROVEMENT, USE AND MAINTENANCE OF PUBLIC WAYS, TO IMPROVE, MAINTAIN, REPAIR, REPLACE, USE AND OCCUPY FOR PEDESTRIAN PURPOSES, AND NOT VEHICULAR PURPOSES, THE FOLLOWING TRACTS OF LAND:

**(A) NORTH WATER STREET PEDESTRIAN EASEMENT**

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF WATER LOTS 16 AND 17 AND A PORTION OF EAST NORTH WATER STREET, NORTH RUSH STREET, ORIGINAL EAST KINZIE STREET AND PART OF LOT 14 IN BLOCK 2 IN KINZIE'S ADDITION, WHICH TRACT OF LAND IS

MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17 AS ESTABLISHED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO A POINT; THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, A CHORD DISTANCE OF 94.53 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 20 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 123.85 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 29.24 FEET TO A POINT; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 24.79 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 16.87 FEET TO A POINT; THENCE NORTHERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE EAST, HAVING A RADIUS OF 240.67 FEET, WITH A CHORD DISTANCE OF 70.72 FEET AND A CHORD BEARING OF NORTH 23 DEGREES 43 MINUTES 54 SECONDS EAST, AN ARC DISTANCE OF 70.98 FEET TO A POINT; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 94.61 FEET TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 52.64 FEET, WITH A CHORD DISTANCE OF 46.28 FEET AND A CHORD BEARING OF NORTH 51 DEGREES 59 MINUTES 36 SECONDS EAST, AN ARC DISTANCE OF 47.92 FEET TO A POINT; THENCE NORTH 25 DEGREES 34 MINUTES 12 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 5.53 FEET TO A POINT ON THE NORTH LINE OF EAST NORTH WATER STREET; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 242.76 FEET TO A POINT; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 55.18 FEET TO A POINT ON THE SOUTH LINE OF SAID EAST NORTH WATER STREET; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 14.61 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39

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SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**(B) NORTH RUSH STREET PEDESTRIAN EASEMENT**

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING BELOW A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF NORTH RUSH STREET BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET EXTENDED, A DISTANCE OF 52.84 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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Doc#: 0429339101  
Eugene "Gene" Moore Fee: \$54.00  
Cook County Recorder of Deeds  
Date: 10/16/2004 01:41 PM Pg: 1 of 16

**ASSIGNMENT OF SALES CONTRACTS,  
SALES PROCEEDS, LEASES,  
RENTS, AND SECURITY DEPOSITS**

from

401 NORTH WABASH VENTURE LLC

to

FORTRESS CREDIT CORP.

Dated as of October 15, 2004

5077

8225749

by

16

Record and Return to:



Skadden, Arps, Slate, Meagher & Flom LLP  
333 W. Wacker Drive  
Chicago, Illinois 60606  
Attention: Marian P. Wexler, Esq.

**ASSIGNMENT OF SALES CONTRACTS,  
SALES PROCEEDS, LEASES,  
RENTS, AND SECURITY DEPOSITS**

ASSIGNMENT OF SALES CONTRACTS, SALES PROCEEDS, LEASES, RENTS, AND SECURITY DEPOSITS, dated as of October 15, 2004 (as amended, supplemented, replaced or otherwise modified from time to time, this "Assignment"), from 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company ("Borrower"), having an office c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022, in favor of FORTRESS CREDIT CORP., a Delaware corporation (together with its successors and assigns, "Lender"), having an office at 1251 Avenue of the Americas, 16<sup>th</sup> Floor, New York, New York 10020.

**WITNESSETH:**

WHEREAS, Borrower is the record and beneficial owner of the fee simple interest in the real property located in Cook County, Illinois and described on Exhibit A attached hereto and made a part hereof (the "Land");

WHEREAS, Borrower proposes to develop and construct on the Land a building containing approximately 688 condominium units (the "Units") and certain other commercial and other space;

WHEREAS, on the date hereof, in accordance with the terms of that certain Loan and Security Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "Loan Agreement"), between Lender, as lender, and Borrower, as borrower, Lender is making a loan to Borrower in the maximum aggregate principal amount of \$104,000,000 (the "Loan"), which Loan is evidenced by that certain Promissory Note, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "Note"); made by Borrower in favor of Lender and secured, inter alia, by that certain Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, and Security Deposits, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "Security Instrument"), from Borrower to Lender and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, as a condition to making the Loan, Lender has required that Borrower deliver this Assignment for the benefit of Lender; and

WHEREAS, the foregoing recitals are intended to form an integral part of this Assignment.

NOW, THEREFORE, in consideration of the Loan, the foregoing premises, Ten Dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Definitions. Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Loan Agreement, unless otherwise expressly provided herein. All references to sections shall be deemed to be references to Sections of this Agreement, unless otherwise indicated.

2. Assignment. Borrower hereby assigns, transfers and sets over unto Lender, subject to the terms hereof, all of the right, title and interest of Borrower in and to any and all contracts for the sale of the Units, whether now or hereafter existing (collectively, the "Sales Contracts") or any proceeds from the sale of any Units arising from the Sales Contracts including, without limitation, to the extent permitted by applicable law, all of Borrower's right, title and interest in and to deposits, down payments and/or earnest money (the "Sales Proceeds") and all of the right, title and interest of Borrower in and to all Leases, Rents, and Security Deposits, all modifications, renewals and extensions of the Sales Contracts and Leases and any guarantees of the purchaser's or lessee's obligations under the Sales Contracts or Leases. In the event that applicable law prohibits Lender from taking a collateral assignment of any particular Sales Proceeds, the provisions of this Agreement shall be deemed inapplicable to those Sales Proceeds (and only to those Sale Proceeds), but only during such time as the collateral assignment thereof is violative of applicable law. This Assignment is an absolute, present and irrevocable assignment made for the purpose of securing (i) the payment and performance by Borrower of all Obligations; (ii) the payment of all sums with interest thereon becoming due and payable to Lender under this Assignment; and (iii) the performance and discharge of each and every obligation, covenant, representation, warranty, indemnity and agreement of Borrower under this Assignment.

3. License to Collect Rent.

(a) Prior to the occurrence of an Event of Default, Lender has granted Borrower a license to cause the Rents to be collected and deposited into an account to be established and maintained by Borrower. The foregoing license granted to Borrower shall terminate upon the occurrence of an Event of Default.

(b) Any time after the occurrence of an Event of Default, Lender, without in any way waiving such Event of Default, at its option and without regard to the adequacy of the security for Obligations and the other obligations secured hereby and by any Loan Document, either in person or by agent or by a receiver appointed by a court, may enter upon and take possession of the Property (as defined in the Security Instrument) and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper. At any time after the occurrence of an Event of Default, Lender, with or without taking possession of the Property, may, to the extent not prohibited by applicable Legal Requirements, demand, sue for or otherwise collect and receive all Rents, and Security Deposits, including any Rent past due and unpaid, and to apply such Rents to the payment of the Obligations and all reasonable expenses of managing the Property, including, without limitation, the reasonable salaries, fees and wages of any manager or managing agent and such other employees as Lender may deem necessary in Lender's sole and absolute discretion and all expenses of operating and maintaining the Property, including, without limitation, all rents, taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which are due and payable and the cost of all alterations, renovations, repairs or replacements for the Property, the fees and expenses

provided for under any Management Agreement, provided such fees and expenses shall be subject and subordinate to the Loan, and all expenses incident to taking and retaining possession and managing the Property, including, without limitation, attorneys' fees and disbursements.

(c) The exercise by Lender of the right to collect the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default under this Assignment or any other Loan Document. Borrower agrees that the exercise by Lender of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Lender a mortgagee-in-possession unless and until such time as Lender takes actual possession of the Property.

4. No Other Assignment.

(a) Borrower represents and warrants that (i) there is no outstanding assignment of the Leases, Sales Contracts, Sales Proceeds, Rents, or Security Deposits, except for this Assignment and the Security Instrument; and (ii) Borrower has not performed any act or executed any instrument, assignment or agreement, and there is no existing instrument, assignment or agreement, which might prevent Lender from exercising its rights under any of the terms and conditions of this Assignment or which would limit Lender in such exercise.

(b) Borrower shall not (i) execute any assignment of the Leases, Sales Contracts, Sales Proceeds, Rents or Security Deposits to any person other than Lender without Lender's consent; or (ii) perform any act or execute any instrument, assignment or agreement which might prevent Lender from exercising its rights under any of the terms and conditions of this Assignment or which would limit Lender in such exercise. Any of the foregoing acts done without the prior written consent of Lender shall be null and void.

5. Covenants.

(a) Borrower will duly perform, observe and comply with all of the affirmative and negative covenants, agreements and obligations to be performed, observed and complied with by Borrower, and all of the other terms and conditions applicable to Borrower, under the terms of Section 5 of the Security Instrument as if each such covenant, agreement, obligation, term and condition were expressly set forth herein in full.

(b) Borrower shall from time to time, at the request of Lender, deliver to Lender certified copies of each and every Lease then affecting all or any part of the Property.

(c) When and if Borrower enters into any Sales Contract or Lease, Borrower shall (i) observe and perform all material obligations imposed upon the seller under the Sales Contracts and lessor under the Leases, (ii) not do or permit to be done anything which individually or in the aggregate is reasonably expected to result in a Material Adverse Effect, (iii) not to collect any of the Rents (exclusive of Security Deposits) more than thirty (30) days in advance of the time when the same shall become due, and (iv) after Borrower's receipt of any notice under any Sales Contract or Lease claiming that Borrower is in default in the performance or observance of any of the terms, covenants or conditions of any Sales Contract or Lease, promptly deliver to Lender a copy of such notice.

(d) At any time after the occurrence and during the continuance of an Event of Default, Lender, without in any way waiving such Event of Default, at its option, upon notice and without regard to the adequacy of the security for the said principal sum, interest and indebtedness secured hereby and by the Security Instrument, either in person or by agent, upon bringing any action or proceeding, or by a receiver appointed by a court, may enter upon and take possession of the premises described in the Sales Contracts, the Leases and/or the Security Instrument and have, hold, sell, manage, lease and operate the same on such terms and/or for such period of time as Lender may deem proper. At any time after and during the continuance of an Event of Default, Lender, either with or without taking possession of said premises in its own name, may demand, sue for or otherwise collect and receive all Sales Proceeds or Rents, including any Sales Proceeds or Rents unpaid or past due, and to apply such Sales Proceeds or Rents to the payment of: (a) all reasonable expenses of selling any Units or managing the Property, including, without limitation, the reasonable salaries, brokers commissions, fees and wages of any real estate broker, mortgage broker, managing agent and such other employees as Lender may reasonably deem necessary and all reasonable expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which are due and payable and the cost of all alterations, renovations, repairs or replacements, and all reasonable expenses incident to taking and retaining possession of the Property and/or the sale of any Units; and (b) the principal sum, interest and indebtedness secured hereby and by the Security Instrument, together with all reasonable costs and reasonable attorneys' fees, actually incurred in such order of priority as Lender may elect in its sole discretion. The exercise by Lender of the option granted it in this Section 4 and the collection of the Sales Proceeds or Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default under the Security Instrument or under the Sales Contracts, the Leases, or this Assignment. Lender agrees that the exercise by Lender of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Lender a mortgagee in possession unless and until such time as Lender takes actual possession of any Property.

6. No Liability. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to sell any Unit or let the Property or any portion thereof or any other act or omission of Lender either in collecting the Sales Proceeds or Rents or, if Lender shall have taken possession of the premises described in the Sales Contracts, Leases and/or the Security Instrument, in selling or managing such premises, as applicable, after any such Event of Default, unless such loss is caused by the gross negligence or willful misconduct of Lender, its employees, officers, agents or representatives. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any Sales Contract or Lease or under or by reason of this Assignment, and Borrower shall, and does hereby agree to, indemnify Lender for, and hold Lender harmless prior to the time that Lender or any Affiliate, nominee or designee of Lender becomes a mortgagee-in-possession or owner of a Unit or the Property or otherwise takes possession of a Unit or the Property, following an Event of Default from, any and all liability, loss or damage which Lender may incur as a result of or related to said Sales Contracts or Leases or under or by reason of this Assignment and the exercise of its remedies hereunder and under the other Loan Documents and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Sales Contracts or Leases. Should Lender



incur any such liability under said Sales Contracts or Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs and expenses and reasonable attorneys' fees and expenses actually incurred, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand, and upon the failure of Borrower to do so Lender may, at its option, exercise Lender's remedies under the Security Instrument as the same relates to the Property. It is further understood that unless and until Lender or its Affiliate, nominee or designee shall become a mortgagee-in-possession or the fee owner of a Unit or the Property, or any portion thereof, or otherwise takes possession or control of a Unit or the Property, or any portion thereof, following an Event of Default, this Assignment shall not operate to place responsibility upon Lender for the control, care, management or repair of said premises or for the carrying out of any of the terms and conditions of any Sales Contracts or Lease; nor shall it operate to make Lender responsible or liable for any waste committed with respect to any Unit or on the Property by purchasers, Tenants or any other parties, or for any dangerous or defective condition of such premises, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant, licensee, employee or stranger other than any of the foregoing arising from the gross negligence, fraud, bad faith or willful misconduct of Lender, its employees, officers, agents or representatives.

7. Tenant Notices. Borrower hereby authorizes and directs all current and future Tenants, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Security Instrument and that an Event of Default exists thereunder or under any other Loan Document, to pay over to Lender, to the extent not prohibited by applicable Legal Requirements, all Rents, and Security Deposits and to continue so to do until otherwise notified by Lender. Borrower hereby authorizes and directs the purchasers named in any Sales Contracts or any other future lessee or occupant of the premises described in the applicable Sales Contract, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Security Instrument and that an Event of Default exists thereunder or under any other Loan Document, to pay over to Lender all Sales Proceeds in connection with the applicable Sales Contract and to continue so to do until otherwise notified by Assignee.

8. Miscellaneous.

(a) Assignments by Lender. No consent by Borrower shall be required for any assignment or reassignment of the rights of Lender under this Assignment to any purchaser of the Loan or any interest in or portion of the Loan.

(b) No Release. Lender may take or release other security for the payment of said principal sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this Assignment.

(c) Conflicts. In the event that any terms or provisions of this Assignment and the Loan Agreement conflict, the terms and provisions of the Loan Agreement shall control.

(d) Expenses. Borrower shall pay to Lender and/or Lender's counsel, on demand, from time to time, all costs and expenses, including, without limitation, reasonable attorneys'