

ORIGINAL

PUBLIC

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



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In the Matter of

Docket No. 9320

REALCOMP II LTD.,

Chief Administrative Law Judge  
Stephen J. McGuire

Respondent.

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**RESPONDENT REALCOMP II, LTD'S ANSWER OPPOSING  
COMPLAINT COUNSEL'S MOTION IN LIMINE REQUESTING  
AN ORDER TO PRECLUDE LAY WITNESS TESTIMONY  
REGARDING CERTAIN HYPOTHETICAL LEGAL ISSUES**

FOSTER, SWIFT, COLLINS & SMITH, P.C.  
Steven H. Lasher (P28785)  
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Dated: May 30, 2007

## INTRODUCTION

On May 18, 2007, Complaint Counsel filed a "motion in limine requesting an order to preclude lay opinion testimony regarding certain hypothetical legal issues" (for simplicity, "Legal Issues Motion"). Complaint Counsel assert that Respondent Realcomp II, Ltd. ("Realcomp") has indicated that it expects four of its lay witnesses (Karen Kage, Robert Taylor, Douglas Hardy, and Douglas Whitehouse) (collectively the "Witnesses") to offer testimony that requires expert legal opinions on contract law as it applies to certain alleged hypothetical disputes between brokers ("Alleged Hypothetical"). Complaint Counsel's motion lacks merit and should be denied.

## ARGUMENT

### **A. COMPLAINT COUNSEL MISCHARACTERIZES THE WITNESSES' PROPOSED TESTIMONY.**

Complaint Counsel contend that the Witnesses are going to offer legal opinions. (Legal Issues Motion, p 6). That is not Realcomp's intention. With the exception of Mr. Taylor who has served as an arbitrator in real estate disputes and who will offer testimony regarding his personal experiences with that process, Realcomp's Final Proposed Witness List ("Witness List") does not indicate that Ms. Kage, Mr. Whitehouse, or Mr. Hardy will offer any of the testimony that Complaint Counsel argue should be precluded. (Realcomp's Final Proposed Witness List, pp 1-4, attached at Tab 1 to Legal Issues Motion); (Taylor Dep. 102:21-103:1-19, attached at Tab 1 to Legal Issues Answer.)

Contrary to Complaint Counsel's assertions, the Witnesses' testimony will be based upon their personal experience with the rules at issue, the practical application of these rules, and their personal perceptions as real estate professionals. This testimony does not require legal expertise.

**B. REAL ESTATE COMMISSION DISPUTES REQUIRE FACTUAL INTERPRETATION.**

Complaint Counsel state that real estate commission determinations are an issue of contract law. (Legal Issues Motion, p 6-7.) Yet, commission disputes inherently involve issues of fact under Michigan law, and therefore cannot be resolved in a legal vacuum.

Complaint Counsel argue that the pivotal factor in any commission dispute is whether there was a procuring cause for the sale. (Legal Issues Motion, p 6-7.) Complaint Counsel cites various cases in support of its argument, including *Advance Realty Co. v. Spanos*, 348 Mich 464, 467-68; 83 NW2d 342, 344-45 (1957). In relying on the following quote in *Advance Realty Co.*, Complaint Counsel fails to provide the full statement of the Michigan Supreme Court: "Michigan has frequently held that the test of a real estate agent's right to a commission was generally whether or not he was the procuring cause of the sale; and when the evidence was in conflict, **this question was generally held a jury question.**" *Id.* at 345 (emphasis added). *Advance Realty Co.* relied on *Wood v. Wells*, 103 Mich 320; 61 NW 503 (1894). In *Wood*, the "question involved was whether a broker was a procuring cause of sale, and it was held under the testimony to be a **question of fact properly submitted to the jury.**" *Davis-Fisher Co. v. Hall*, 182 Mich 574, 579; 148 NW 713 (1914) (emphasis added).

The Witnesses possess knowledge and experience regarding procuring cause. For instance, Mr. Hardy testified about how procuring cause is largely a factual inquiry:

*Q.* Right. But the offer of compensation regardless of who's responsible for paying it is due to the cooperating broker so long as they're the procuring cause of sale, is that right?

*A.* I think that's right.

*Q.* And what do you understand the procuring cause to mean?

A. It's another one of those vague terms, like transaction coordinator.

• • •

Q. Do you know whether or not the National Association of Realtors has defined procuring cause?

A. I know procuring cause comes up in a number of inter board arguments.

Q. Have you been involved in any of those inter board arguments?

A. Yes.

Q. And the - so in these arbitrations, the arbitrators have to determine whether or not a buyer's agent was the procuring cause for the sale, right?

A. And I have never seen a uniform standard applied to procuring cause in the industry.

Q. And it depends on – procuring cause depends on a number of factors, right?

A. *I think each case is individual, and in my experience that's what I've seen is, that's why I wasn't — never really heard of the definition.*

• • •

Q. But [procuring cause] depends on the factors of the case?

A. *Every case is unique.*

(Hardy Dep. 44:1-8; 45:14-46:1-5, attached at Tab 2 to Legal Issues Answer (emphasis added).)

Complaint Counsel also cite *Reisenfeld & Co v. Network Group Inc.*, 277 F3d 856, 859-863 (6th Cir. 2002), as posing the same factual situation as the "Alleged Hypothetical." (Legal Issues Motion, p 8). *Reisenfeld* is legally distinguishable from the present case because it applies Ohio contract law, and not Michigan law. *Id.* at 860. *Reisenfeld* resolved the commission dispute by applying theories of Ohio quasi-contract law and cited to various tangentially-related Ohio opinions

because there was no case law on point in Ohio. *Id.* at 861. *Reisenfeld* may well have reached a different outcome had it applied Michigan law in light of the above authority recognizing that procuring cause involves questions of fact. Complaint Counsel take an unsupportable position in contending that commission disputes must be resolved wholly as a matter of law.

**C. THE WITNESSES ARE PROFESSIONALS AND WILL OFFER TESTIMONY REGARDING THEIR PERCEPTIONS AND OPINIONS.**

The Witnesses are all professionals and each has developed personal perceptions through his or her work in the real estate industry. Realcomp does not contend that any of these Witnesses will provide "expert testimony," but that each will testify based upon their personal knowledge, and offer opinions that are rationally based upon their experience. As set forth in greater detail in Respondent Realcomp Ltd. II's Answer Opposing Complaint Counsel's Motion in Limine To Bar Lay Opinion Testimony Regarding Comparisons of Southeastern Michigan With Other Locales("Answer To Comparison Motion")<sup>1</sup>, it is inaccurate for Complaint Counsel to argue that the Witnesses lack personal knowledge under F.R.E. 602 and that the Witnesses will be offering testimony that requires legal expertise. (Legal Issues Motion, p 3-4). A lay witness's personal knowledge includes the witness's experiences. *See, for example, United States v. Pavia*, 892 F.2d 148, 157 (1st Cir. 1989) ("The individual experience and knowledge of a lay witness may establish his or her competence, without qualification as an expert, to express an opinion on a particular subject outside the realm of common knowledge."); *United States v. Thompson*, 559 F.2d 522 (9th Cir. 1977) (recognizing that

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<sup>1</sup> In addition to the legal argument set forth in this Legal Issues Motion, Realcomp incorporates by reference the argument set forth in its Answer to Comparison Motion, where Realcomp briefs the argument that lay witnesses may present testimony, including opinions and inferences, based upon their experience in the real estate industry. (Answer to Comparison Motion, p 1-3).

a restaurant manager had ample personal knowledge to testify about restaurant procedures). The Witnesses have substantial knowledge of, and experience in, the real estate industry. Pursuant to F.R.E. 701 and accompanying case law, industry knowledge and experience provide a sufficient foundation for lay opinion testimony. *Agro Air Assocs., Inc. v. Houston Casaulty Co.*, 128 F.3d 1452, 1455 (11<sup>th</sup> Cir. 1997); *Burlington Northern R. Co. v. State of Neb.*, 802 F.2d 994, 1004 (8<sup>th</sup> Cir. 1977). The Witnesses possess personal knowledge and may testify as to opinions that are rationally based upon their perceptions.

The deposition testimony evidences the Witnesses' vast experience. For instance, Mr. Whitehouse has served on several real estate trade boards, and has held positions of authority on those boards. He obtained his Michigan realtor license in 1981, and has served on the Realcomp Board of Directors for approximately twenty years and as a past Chairman. (Whitehouse Dep. 5:18-20; 10:16-17, attached at Tab 3 to Legal Issues Answer.) Mr. Whitehouse is presently the director of the National Association of Realtors on behalf of the Michigan Consolidated Association of Realtors ("MCAR"), and has served on MCAR's professional standards and arbitration committees. (Whitehouse Dep. 6:1-13; 7:1-5, attached at Tab 3 to Legal Issues Answer.) In the past, he has also served as the director and president of the Michigan Association of Realtors. (Whitehouse Dep. 8:17-22, attached at Tab 3 to Legal Issues Answer.)

As another illustration, Mr. Taylor has personal experience with procuring cause and the "Alleged Hypothetical." Mr. Taylor explains that he has served on the arbitration panels that resolve issues in the industry:

*Q.* Okay. Have you been an arbitrator at procuring cause hearings?

*A.* Yes.

- Q.* Okay. For how long?
- A.* 32 years.
- Q.* So for 32 years you've served on an arbitration panel for procuring cause issues?
- A.* I've served on arbitration hearings for 32 years. Some were procuring cause, some were not.
- Q.* And how often has this issue of whether or not you can be a procuring cause if the commission wasn't paid come up?
- A.* Maybe a half dozen times.
- Q.* Over the course of 32 years?
- A.* More recently.
- Q.* Okay. Over what period of time?
- A.* Maybe the last five or 10.
- Q.* Do you know whether or not-- well, do you know what was the underlying listing type that was involved in those half dozen arbitrations?
- A.* Yes.
- Q.* Were they exclusive right-to sell listings or were they some other type?
- A.* Exclusive Agency.

(Taylor Dep. 102:21-103:1-19, attached at Tab 1 to Legal Issues Answer.)

In addition to their understanding of the market and the application of the rules, the Witnesses can testify regarding the present intent of the rules and how they are designed to protect members of Realcomp. For instance, Mr. Hardy testified regarding why Realcomp limits the IDX feed to exclusive right to sell listings:

*Q.* Do you understand what the purpose of the rule is now?

*A.* I understand the rule, I think, and my understanding of the rule is that if we were to allow all listing types in our IDX feed, it wouldn't be in our members' best interest to promote – to market listings which don't guaranty or don't insure compensation for another member. And my understanding is we see all – that's what I was writing on our exhibits, the addresses appear on all these sites, whether it's a Prudential site or the Remax site you gave me, and a consumer could go knock on the door, buy the house, and there would be no guaranty of compensation for anybody that was involved in bringing that property to somebody's attention.

(Hardy Dep. 103:23-25- 104:1-12, attached at Tab 2 to Legal Issues Motion.)

Similarly, Mr. Whitehouse testified as follows:

*Q.* Okay. And let me – but you don't – let's look at the rules about the Internet publication of only exclusive right-to-sell listings, okay? Can you tell me from firsthand knowledge of any problems or incidents that have occurred because of the publication of a nonexclusive right-to-sell listing on the Internet?

*A.* I can't give you specific times and dates; however, I have heard of members of the public using that information to find out about a property and then buy it directly from the seller.

(Whitehouse Dep. 109:22-110:1-7, attached as Tab 3 to Legal Issues Answer).

These Witnesses have the ability to breathe life into the issues presented in this case, by offering lay witness testimony that is rationally based upon their experiences and perceptions in the industry.

### **RELIEF**

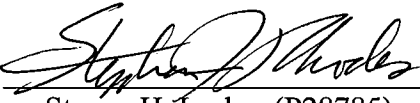
Realcomp respectfully requests that Complaint Counsel's Motion in Limine Requesting An Order to Preclude Lay Opinion Testimony Regarding Certain Hypothetical Legal Issues be denied.



Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Dated: May 30, 2007

By:   
\_\_\_\_\_  
Steven H. Lasher (P28785)  
Scott L. Mandel (P33453)  
Stephen J. Rhodes (P40112)

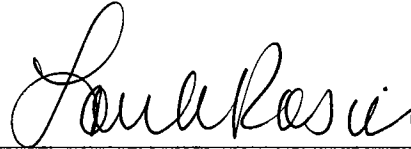
**CERTIFICATE OF SERVICE**

This is to certify that on May 30, 2007, I caused a copy of the attached Respondent Realcomp II, Ltd.'s Answer Opposing Complaint Counsel's Motion *In Limine* Requesting An Order to Preclude Lay Witness Testimony Regarding Certain Hypothetical Legal Issues to be served upon the following persons by Electronic Transmission and First Class Mail:

Sean P. Gates, Esq.  
601 New Jersey Ave., N.W.  
Rm. NJ-6219  
Washington, DC 20001

And two copies of same hand delivered by overnight courier to:

Hon. Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580



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Lorri A. Rosier

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1 and of those meetings which ones I attended.

2 Q. Okay. So you can't tell me for sure what, if any,  
3 reasons the Realcomp board of governors have as a body  
4 for the rules?

5 A. Not etched in my mind.

6 Q. Okay. What you can tell me is your understanding,  
7 your personal opinions of why the rules should be?

8 A. Yes.

9 Q. So if I wanted to know, if I wanted to go find out  
10 about this arbitration rule that you were talking  
11 about earlier where if there's no commission paid what  
12 the definition of a commission is and things like that  
13 in the NAR policy, where would I go?

14 A. National Association of Realtors I would imagine.

15 Q. Any particular documents?

16 A. Probably the arbitration procedures manual.

17 Q. So what are you relying on for your understanding of  
18 the arbitration rules?

19 A. Discussion that's taken place of procuring cause  
20 hearings.

21 Q. Okay. Have you been an arbitrator at procuring cause  
22 hearings?

23 A. Yes.

24 Q. Okay. For how long?

25 A. 32 years.

1 Q. So for 32 years you've served on an arbitration panel  
2 for procuring cause issues?

3 A. I've served on arbitration hearings for 32 years.  
4 Some were procuring cause, some were not.

5 Q. And how often has this issue of whether or not you can  
6 be a procuring cause if the commission wasn't paid  
7 come up?

8 A. Maybe half a dozen times.

9 Q. Over the course of 32 years?

10 A. More recently.

11 Q. Okay. Over what period of time?

12 A. Maybe the last five or 10.

13 Q. Do you know whether or not -- well, do you know what  
14 was the underlying listing type that was involved in  
15 those half dozen arbitrations?

16 A. Yes.

17 Q. Were they exclusive right-to-sell listings or were  
18 they some other type?

19 A. Exclusive agency.

20 Q. Any documents that we could go to find and verify  
21 that?

22 A. No.

23 Q. And that's because the records of arbitration hearings  
24 are destroyed after they're done?

25 A. Are they?

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1 Q. Right. But the offer of compensation regardless of  
2 who's responsible for paying it is due to the  
3 cooperating broker so long as they're the procuring  
4 cause of sale, is that right?

5 A. I think that's right.

6 Q. And what do you understand the procuring cause to  
7 mean?

8 A. It's another one of those vague terms, like  
9 transaction coordinator.

10 Q. Okay.

11 A. I would ramble.

12 Q. Let me give you a sentence and see if you agree with  
13 it. Procuring cause depends on a number of factors  
14 which together demonstrate that the unbroken efforts  
15 of a specific broker were responsible for the buyer  
16 making the decision to consummate the sale on terms  
17 which a seller found acceptable.

18 Is that -- does that jibe with your --

19 A. It's sounds like a good definition.

20 Q. So you would agree with that, that that is probably a  
21 good definition of procuring cause?

22 A. Would you mind reading it again?

23 Q. Sure. A procuring cause depends on the interplay of  
24 factors which together demonstrate that the unbroken  
25 efforts of a specific broker were responsible for the

1 buyer making the decision to consummate the sale on  
2 terms which the seller found acceptable.

3 A. Yeah, I would agree with that.

4 Q. So if a cooperating broker or someone representing a  
5 buyer simply informed a buyer, potential buyer of the  
6 availability of a home for sale, that's all they did,  
7 wouldn't be a procuring cause, would they?

8 A. I think it would be.

9 Q. You think they would be? Okay.

10 Would you agree with me that the National  
11 Association of Realtors has defined procuring cause  
12 factors?

13 A. I have not seen their definition, unless that was it.

14 Q. Do you know whether or not the National Association of  
15 Realtors has defined procuring cause?

16 A. I know procuring cause comes up in a number of inter  
17 board arguments.

18 Q. Have you been involved in any of those inter board  
19 arguments?

20 A. Yes.

21 Q. And the -- so in these arbitrations, the arbitrators  
22 have to determine whether or not a buyer's agent was  
23 the procuring cause for sale, right?

24 A. And I have never seen a uniform standard applied to  
25 procuring cause in the industry.



1 Q. And it depends on -- procuring cause depends on a  
2 number of factors, right?

3 A. I think each case is individual, and in my experience  
4 that's what I've seen is, that's why I wasn't -- never  
5 really heard the definition.

6 Q. So under your understanding of procuring cause, if a  
7 buyer's agent simply showed a listing to a buyer and  
8 then had no interaction with that buyer at all, the  
9 buyer went out and contacted the listing agent, saw  
10 the home, negotiated the sale, in fact they hired  
11 another agent to represent them and that agent  
12 negotiated the sale on their behalf, would the first  
13 agent that simply showed the listing under your  
14 understanding of procuring cause be entitled to  
15 compensation?

16 A. I think each case is different. I couldn't -- it  
17 would depend on the relationship they had initially  
18 when they're giving out the sheets to the other people  
19 and I don't know.

20 Q. Okay. So let me just take it one step further then.  
21 Under that hypothetical, if the agent who simply  
22 showed a listing to the buyer had no contractual  
23 relationship with them whatsoever, in fact, all that  
24 happened was the buyer came into their office, said  
25 I'm looking for homes, the agent showed them one

1 A. It was like contemporaneous with the events of your  
2 investigation of Realcomp. I truly don't recall.

3 Q. You don't recall what year that was?

4 A. Don't tell my wife I can't remember our anniversary  
5 date. That's really restricted of anything. You  
6 know? I don't -- whenever it happened, you know, it's  
7 kind of been an evolving process. So whenever the  
8 investigation came about, I think, you know, Steve  
9 made us aware of it.

10 Q. And then when you say you investigated or found out  
11 about the rule, other than asking, well, other than  
12 conversations with Mr. Lasher, how did you find out  
13 about the rule and its purpose?

14 A. Uhm, I have never found out the purpose of the rule.  
15 I only asked what the rule was, and so I was told most  
16 likely by Karen Kage at a board meeting, you know,  
17 just read the rule, and that's what -- how I learned  
18 about the rule.

19 Q. So you don't know what the purpose of the rule is then  
20 from the standpoint of the Realcomp Board of  
21 Governors?

22 A. Not at the time it was adopted, no.

23 Q. Do you understand what the purpose of the rule is now?

24 A. I understand the rule now, I think, and my  
25 understanding of the rule is that if we were to allow

1 all listing types in our IDX feed, it wouldn't be in  
2 our members' best interest to promote -- to market  
3 listings which don't guaranty or don't insure  
4 compensation for another member.

5 And my understanding is we see all --  
6 that's what I was writing on our exhibits, the  
7 addresses appear on all these sites, whether it's a  
8 Prudential site or the Remax site you gave me, and a  
9 consumer could go knock on the door, buy the house,  
10 and there would be no guaranty of compensation for  
11 anybody that was involved in bringing that property to  
12 somebody's attention.

13 Q. Okay. So let's back up for a second. In order to get  
14 a listing on to the MLS there has to be a listing  
15 broker, is that right?

16 A. On to the MLS.

17 Q. Correct.

18 A. Correct.

19 Q. And we're only focusing on the Realcomp MLS. Okay?

20 A. Okay.

21 Q. So in order to get a listing on to the Realcomp MLS  
22 there has to be a listing broker?

23 A. Correct.

24 Q. That listing broker can negotiate whatever they want  
25 with their seller as far as compensation to them in

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1 Farmington Hills, Michigan  
2 Thursday, February 22, 2007  
3 9:45 a.m.

4

5 DOUGLAS WHITEHOUSE,  
6 was thereupon called as a witness herein, and after  
7 having first been duly sworn to testify to the truth,  
8 the whole truth and nothing but the truth, was  
9 examined and testified as follows:

10 EXAMINATION

11 BY MR. GATES:

12 Q. Good morning, Mr. Whitehouse.

13 A. Good morning.

14 Q. I'm Sean Gates and I'm with the Federal Trade  
15 Commission and I'll be asking you a few questions here  
16 this morning. Can we just start out and can you tell  
17 me what positions you have had with Realcomp, if any.

18 A. I've served on their board of directors and in fact I  
19 chaired their board of directors. That's really been  
20 about it.

21 Q. When was that?

22 A. Back in the mid-'80s. I don't have a date for you  
23 specifically.

24 Q. And which boards are you a member of?

25 A. Presently? I'm a member of Metropolitan Consolidated

1 Association of Realtors.

2 Q. And that's MCAR?

3 A. Correct.

4 Q. What positions do you have at MCAR?

5 A. None. I'm sorry, I serve as the director of the  
6 National Association of Realtors on their behalf.

7 Q. Is that like a liaison between MCAR and NAR?

8 A. Because of MCAR's membership count they are entitled  
9 to appoint directors to the National Association of  
10 Realtors and I fill one of those positions.

11 Q. As a director for the NAR, is that the board of  
12 directors for NAR?

13 A. Correct.

14 Q. And how many members of the board of directors are  
15 there for NAR?

16 A. Oh boy, several hundred. Good sized group.

17 Q. So every I guess local board is able to appoint --

18 A. Depends on the size of the board and states have  
19 directors, institutes, societies and councils have  
20 directors.

21 Q. And going back to say 2000, have you had any other  
22 positions at MCAR?

23 A. At MCAR? No.

24 Q. Have you been involved --

25 A. Excuse me, I've served on committees.

1 Q. Okay. Which committees have you served on at MCAR?

2 A. Professional standards, arbitration.

3 Q. So the professional standards and arbitration  
4 committees, when did you serve on those committees?

5 A. I presently serve on them.

6 Q. And when did you start?

7 A. Oh geez, I've served on committees off and on there  
8 for many, many years, since the board -- since MCAR  
9 became a board.

10 Q. Since 2000 have you been on --

11 A. Professional standards and arbitration.

12 Q. And as a member of the committee for the professional  
13 standards for the arbitration panels, have you dealt  
14 with procuring cause disputes?

15 A. Yes.

16 Q. In those procuring cause disputes, do you know what  
17 the underlying agreement is between the listing agent  
18 and the seller?

19 A. You mean what type of listing they take them?

20 Q. Yes.

21 A. Generally that's not -- in the cases I've served on,  
22 that hasn't been an issue, but I would say that maybe  
23 on one or two of them I knew what it was.

24 Q. Generally it's not an issue in a procuring cause  
25 dispute?

1 A. No. It's an issue between two brokers, who is  
2 entitled to the selling commission.

3 Q. As part of the procuring cause arbitration process  
4 then, you don't go and find out what the agreement is  
5 between the seller and the listing agent?

6 A. Not necessarily, not unless it's a question of  
7 somebody stepping on somebody else's listing or  
8 something like that.

9 Q. Have you dealt with procuring cause disputes where the  
10 buyer has represented to the seller that they were  
11 unrepresented?

12 A. No.

13 Q. Procuring cause disputes that you've been involved in  
14 are between two brokers who claim to be entitled to  
15 the offer of compensation?

16 A. Correct.

17 Q. Are you a member -- have you been a member since 2000  
18 of any other board?

19 A. I've served as a director of the Michigan Association  
20 of Realtors and president of the Michigan Association  
21 of Realtors, and all of the executive chairs in  
22 between.

23 Q. Can you tell me what is the relationship between a  
24 board such as MCAR and the Michigan Association of  
25 Realtors, which I'll refer to as MAR?



1 Q. And Realtors in the state of Michigan?

2 A. Correct.

3 Q. And how many Realtors are there in the state of  
4 Michigan presently?

5 A. How many Realtors? I would say there are probably  
6 somewhere in the vicinity between 30 and 34,000.

7 Q. And you own a real estate brokerage?

8 A. Yes, I do. I'm a partner in a real estate brokerage.

9 Q. You're a partner, and which brokerage is that?

10 A. H-A-N-N-E-T, Wilson & Whitehouse, L.L.C. Realtors.

11 Q. Who are the other partners of that brokerage?

12 A. Kathy Wilson, John and Gail Hannet, and as of a few  
13 days ago, Jerry Burke.

14 Q. Who is the broker of record for that brokerage?

15 A. I am.

16 Q. And when did you get your broker's license?

17 A. Probably 1981.

18 Q. And how long have you been a partner at Hannet, Wilson  
19 & Whitehouse?

20 A. 1993.

21 Q. Prior to that what was your involvement in the real  
22 estate industry?

23 A. I was for eight, nine years the chief executive  
24 officer of Chamberlain Realtors.

25 Q. What was Chamberlain Realtors?

1 not believe that the MLS should have its own public  
2 Internet site.

3 Q. Should the MLS feed listings to other Internet sites?

4 A. I think as Realtors we should have a site that has our  
5 listings on it that's available to the public, yes.

6 Q. A site, a single site?

7 A. I think we should have -- I think every broker should  
8 have their own site. I think that there needs to be a  
9 gathering of all those sites under one common roof.

10 Q. You would agree that in your opinion the MLS system  
11 should not be providing public access on their own to  
12 any listing information, right?

13 A. Correct.

14 Q. So it should be --

15 A. By the broker.

16 Q. Should be by the broker and they should be required to  
17 opt in to any feed of their listing information to  
18 public websites, right?

19 A. Correct.

20 Q. Now, you have opinions about Realcomp's rules, right?

21 A. Sure.

22 Q. Okay. And let me -- but you don't -- let's look at  
23 the rules about the Internet publication of only  
24 exclusive right-to-sell listings, okay? Can you tell  
25 me from firsthand knowledge of any problems or

1 incidents that have occurred because of the  
2 publication of a nonexclusive right-to-sell listing on  
3 the Internet?

4 A. I can't give you specific times and dates; however, I  
5 have heard of members of the public using that  
6 information to find out about a property and then buy  
7 it directly from the seller.

8 Q. And you have heard about that happening where?

9 A. Here locally.

10 Q. Here locally?

11 A. Yeah.

12 Q. And how did those -- how did those listings get to the  
13 Internet then?

14 A. I'm sorry, not from -- okay. I have heard about --  
15 I'm sorry. You're saying exclusive right-to-sell?

16 Q. Anything -- I'm asking of any problems --

17 A. Please restate the question. I'm not sure I  
18 understand.

19 Q. That's fine. I'm asking you, tell me from firsthand  
20 knowledge any problems that have been caused by the  
21 publication of nonexclusive right-to-sell listings on  
22 Internet sites fed by a local multiple listing  
23 service.

24 A. Well, right now there are no Internet sites fed with  
25 the exclusive agency listings.