TUCKER

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FOIA RD 56806 (URTS 16302) DOCID:
70104958

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**********FAX TRANSMITTAL SHEET**********

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(Including Cover Page)

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REMARKS:

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Memorandum **Office of the Independent Counsel**

To : All OIC Attorneys Date 5/26/95

From : Steven M. Colloton

Subject: Status of Tucker/Marks/Haley investigation

CONFIDENTIAL -- INCLUDES GRAND JURY MATERIAL

This memorandum sets forth possible criminal charges and supporting evidence developed in the investigation of an SBIC loan involving Jim Guy Tucker and William J. Marks, Sr., and cable television transactions involving Tucker, Marks, and John Haley.

The memorandum is marked DRAFT because the investigation continues with interviews and review of documents. For example, important new information was gathered in grand jury and interviews on May 24 and 25. This draft also does not include complete citations to documents and testimony. It is distributed at this time because of the need for decision in short order.

A detailed discussion of the evidence developed is necessarily lengthy. Although the memorandum is very long, I have erred on the side of overinclusion so that everyone may be apprised of as many useful facts as possible.

For those of you who do not have time to study the entire document, I have prepared a summary at the beginning that outlines the evidence. This summary is accompanied by helpful charts and diagrams prepared by Jim Rickards of the computer support group, and one diagram obtained as evidence.

Discussions of statements by potential witnesses are summaries based upon reports of interviews or transcripts. They should not be construed as verbatim statements for purposes of the Jencks Act.

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MEMORANDUM

DRAFT

To: Kenneth W. Starr
Independent Counsel

All OIC Attorneys

From: Steven M. Colloton
Associate Counsel

Date: May 26, 1995

Re: Status of investigation of Tucker/Marks/Haley

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I. INTRODUCTION

The investigation has developed evidence to support several possible criminal charges against Tucker, Marks, and/or Haley. We have narrowed our focus at this time to three principal charges: (1) conspiracy to defraud the United States by impeding the lawful functions of the Internal Revenue Service, in violation of 18 U.S.C. § 371 (a Klein conspiracy); (2) false statements to a small business investment company, in violation of 18 U.S.C. § 1014, and (3) conspiracy to make false statements to an SBIC, in violation of 18 U.S.C. §§ 1014 and 371.

The elements of a Klein conspiracy, in violation of 18 U.S.C. § 371, are:

> One, two or more persons reached an agreement or understanding to defraud the United States by impeding, impairing, obstructing or defeating the lawful functions of the Internal Revenue Service in the ascertainment, computation, assessment, or collection of income taxes;
>
> Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;
>
> Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and
>
> Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more overt acts.

The elements of a violation of 18 U.S.C. § 1014 are:

One, the defendant made a false statement to a federally-chartered small business investment company;

Two, the defendant did so for the purpose of influencing the SBIC's action;

Three, the statement was false as to a material fact; and

Four, the defendant made the false statement knowingly.

The elements of conspiracy to violate 18 U.S.C. § 1014 are the same as those for the Klein conspiracy, except that the first element is changed to reflect an agreement to make a false statement to an SBIC.

The statute of limitations for 18 U.S.C. § 1014 is ten years. There is no immediate statute problem with regard to that part of the investigation.

The statute of limitations for a Klein conspiracy is six years. United States v. White, 671 F.2d 1126, 1133-34 (8th Cir. 1982). The statute of limitations in a conspiracy begins to run from the last overt act proved. Grunewald v. United States, 353 U.S. 391, 397 (1957). With regard to an individual return, the law appears clear that when a return is received by the IRS within the time prescribed by statute (including any extensions), then the statute begins to run on the date that the return was received. 26 U.S.C. § 7502; First Charter Financial Corp. v. United States, 669 F.2d 1342, 1345 (9th Cir. 1982).

Tucker's 1988 tax return, which is central to the investigation, was filed on June 10, 1989. The return was due, pursuant to an extension, on August 15, 1989. Tucker's attorney has said that Tucker mailed the return on June 7, 1989.

The prosecution is not required to prove that each member of a conspiracy committed an overt act within the statute of limitations. As the evidence set forth below shows, there is a substantial argument that the conspiracy under investigation extended beyond June 10, 1989. Nonetheless, in order to avoid any question about whether there are overt acts after June 10 for which Tucker is accountable, or a dispute about whether the Tucker return was filed when received or when mailed, we have focused on June 7 as a final decision date. That is subject to amendment, of course, if there are sound legal and practical reasons for a different course.

II. SUMMARY

There are two tax concepts that are important to understanding this investigation. The first is that of "basis" and its relationship to taxable "gain" on the sale of an asset. Generally speaking, the basis in an asset is the amount that the owner paid for the asset. Basis may be adjusted upward over time to reflect subsequent capital expenditures on the asset, or downward to reflect deductions for depreciation of the asset.

When an asset is sold, the "adjusted basis" is the number used to determine the "gain" or "loss" on the sale for tax purposes. The gain on the sale is the sale price paid for the asset reduced by the adjusted basis. Absent other adjustments, the seller of an asset is subject to tax on this gain. Thus, the higher the basis in an asset, the less gain that will be realized in a sale, and the fewer taxes that must be paid.

The second tax concept is that of the corporate income tax. Subchapter C of the Internal Revenue Code treats corporations as independent tax-paying entities. A corporation operating under subchapter C rules is referred to as a "C corporation." If a C corporation earns income -- gain from the sale of an asset, for example -- that income is taxed to the corporation as it is received. If the income is distributed later to shareholders of the corporation, or if the shareholders sell their stock, the same income is taxed again by the personal income tax on the shareholder.

Subchapter S of the Internal Revenue Code creates an exception to this two-tier regime of taxation. That subchapter applies only to "small business corporations," which are defined as certain domestic corporations with no more than 35 shareholders or more than one class of stock. An eligible corporation may elect to be treated as an "S corporation" under the Code. If such an election is made, the corporation is not subject to the corporate income tax. Corporate income, whether or not distributed to the shareholders, is taxed to the shareholders. But the income is taxed only once.

Two corporate entities and three individuals are central to this investigation. The individuals are Jim Guy Tucker, Governor of Arkansas; John Haley, attorney in Little Rock; and William J. Marks, Sr., a cable television businessman. The entities are Cablevision Management, Inc. (CMI), an Arkansas S corporation, Planned Cable Systems Corporation (PCS), an Iowa C Corporation, and Landowners Management Systems, Inc. (LMS), a Texas C corporation.

In February 1987, CMI was owned 100% by Tucker. PCS was owned 82% by Meredith Corporation and 18% by Marks. Meredith also held a note for $7.9 million that it was owed by PCS for

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money advanced from Meredith to PCS. Both PCS and CMI owned cable TV systems. Meredith wanted to sell its interest in PCS for its book value of $6 million. Marks and Tucker knew this was substantially less than the market value of the company.

Tucker and Marks agreed that they would borrow several million dollars from a bank; Tucker would use some of the loan proceeds to buy Meredith's interest in PCS; and Tucker and Marks would merge PCS into CMI. Tucker and Marks would then have a 50/50 joint venture in the cable business.

On March 1, 1987, Tucker signed a purchase agreement with Meredith in which he agreed to buy for $6 million the 82% of PCS stock and the $7.9 million note. In May 1987, Fleet National Bank agreed to loan Tucker and Marks $8.5 million for the project. Fleet required Tucker and Marks to pledge all assets of PCS and CMI as collateral. Fleet also required Tucker and Marks to set up a $500,000 cash collateral account.

Tucker approached David Hale at Capital Management Services (CMS) to raise $300,000 for the cash collateral account. Tucker told Hale that he wanted a loan for that amount to D&L Telecommunications, Inc., a Florida cable construction company. Marks and one Don Smith of Florida each owned 50% of D&L. Smith was president of D&L and the controlling shareholder.

Hale agreed to lend $300,000. Tucker arranged for Hale to send the money to Fleet, and Tucker directed Fleet to deposit the money into the cash collateral account that secured the personal loan to Tucker and Marks. The promissory note was signed by Marks as president of D&L, Betty Tucker as secretary of D&L, and by Tucker individually.

None of the loan proceeds went to D&L. Don Smith of D&L says that he had no knowledge of the loan. Smith says that he never authorized Marks or the Tuckers to use D&L to borrow money. Tucker and Marks paid back CMS for the loan in a timely fashion. (See Figure 1)

On June 10, 1987, the Fleet loan closed. Tucker used $6 million of the proceeds to purchase Meredith's 82% of the stock in PCS and the $7.9 million note. Tucker assigned $4.6 million of the note to Marks. (See Figure 2).

Simultaneous with the closing of the Meredith sale to Tucker, PCS merged into CMI. Tucker and Marks contributed to CMI their stock in PCS and their portions of the $7.9 million note. In return, CMI issued stock to Tucker and Marks, and a note to Marks. As a result, Tucker and Marks each owned 50% of CMI. (See Figure 3).

On June 10, Tucker and Marks also contemplated a -

potentially lucrative sale of one of the cable systems in Plantation, Florida. (See Figure 3). On September 25, 1987, Tucker and Marks signed an agreement to sell the Plantation system to American Cablesystems of Florida for $12.75 million and $2 million in non-competition payments. (See Figure 4).

Tucker and Marks expressed concern about the tax implications of the sale of the Plantation system. They hired Coopers & Lybrand to calculate the basis in the system, and the gain on a possible sale of the system for $15 million. On October 9, C&L advised Tucker's accountant that the basis would be about $1.75 million, and the gain would be over $13 million. In November, C&L advised Tucker that a revised calculation showed a lower basis of $1.26 million. (See Figure 4).

On October 12, there was a meeting among Tucker, his attorney, John Haley, and two accountants from Frost & Company. Haley presented a "ten step chart" that showed a plan to rescind the CMI/PCS merger, to merge PCS into a Marks-controlled entity called Sattech, to place Sattech in bankruptcy, and to distribute the cable assets of PCS to Tucker and his company CMI. There is evidence that reduction of taxes was at least one of the purposes, if not the primary purpose, of this proposal. (See Figure 5).

On or about November 17, Tucker and Marks signed an agreement to rescind the PCS/CMI merger. The rescission was based upon an alleged material omission by Marks about the existence of another stockholder in PCS, and a technical flaw in the consummation of the merger. The result of the rescission differed from the status quo ante in two significant ways: (1) Tucker's ownership of 82% of the PCS stock was transferred to Marks' wife, Donna; and (2) The $7.9 million note -- which was purchased from Meredith by Tucker, assigned in part to Marks, and contributed to CMI -- was recreated and owned entirely by Tucker. (See Figure 6).

On November 13, 1987, Marks was assigned the Carrollton cable system to own individually. Marks made the assignment as president of PCS. The assignment claimed that the corporation did not own the system because Marks had advanced the money to construct the system. (See Figure 6).

On November 24, after the rescission of the PCS/CMI merger, PCS merged into a Texas shelf corporation called LMS. Haley obtained LMS from a former colleague in Texas. LMS had never issued stock before November 1987. After Haley acquired LMS, 82% of the stock was issued to Mikado Leasing Company, a car leasing company owned by Haley. The other 18% was issued to Marks. (See Figure 7).

On November 30, 1987, LMS filed a Chapter 11 bankruptcy

petition in Texas. Tucker was listed as a secured creditor based on the $7.9 million note that he bought from Meredith. Tucker's company, CMI, was listed as a creditor based upon money that it had advanced to PCS/LMS between June and November. To discharge these debts, the Plantation cable system was distributed to Tucker, and three Texas cable systems were distributed to CMI. (See Figure 8).

Analysis of the bankruptcy pleadings, which were signed by Marks as president of LMS, shows the following:

(1) The pleadings said Meredith sold 82% of the stock in PCS/LMS to Mikado Leasing Company for $1 on June 10, 1987. In fact, Tucker bought 82% of the stock along with the note upon which he based his claim in bankruptcy. The bankruptcy court was not notified that Tucker had purchased the 82% of the PCS stock only five months earlier.

(2) The pleadings said that Tucker's claim of $8.85 million was equal to or greater than the fair market value of the Plantation system. The pleadings did not disclose the signed purchase agreement to sell the Plantation system for $12.75 million and $2 million in non-compete payments.

(3) Fleet Bank, which had a first lien on all assets of PCS and CMI was not listed as a secured party, and it did not receive notice of the bankruptcy.

(4) The bankruptcy court was not told that Tucker owned CMI, or that Tucker and Marks were business partners in the cable companies appearing in the bankruptcy.

(5) None of the numerous trade or business creditors of PCS/LMS was notified of the bankruptcy. The listed creditors all were parties with close relationships to Tucker or Marks, and some were even unaware of the basis for their claims.

On December 28, 1987, Tucker and Marks signed a new purchase agreement for the sale of the Plantation system. The new agreement showed Tucker as a seller. The sale closed on January 4, 1988. The buyer was not told why there was a change in the sellers. Tucker received $11.75 million for the system. (See Figure 9).

On February 8, 1988, Haley's law firm received from Tucker legal fees of $100,000 as partial payment for work on the Plantation acquisition and the LMS bankruptcy. The firm received another $50,000 from Tucker in December 1988.

On June 10, 1989, the Tuckers filed their tax return for 1988. They reported the sale of the Plantation system for $11.75 million. Because they obtained the system through the

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bankruptcy, their basis was $7.28 million rather than the $1.26 million calculated by Coopers & Lybrand prior to the bankruptcy. The taxable gain was reduced accordingly. There also was no corporate tax on the sale because it was sold by Tucker individually.

In May and October 1989, CMI and Marks, respectively, filed their 1988 tax returns. On February 29, 1988, Marks had sold the Carrollton system to Falcon Cable Media, and CMI had sold to Falcon the Texas systems obtained in the bankruptcy. (See Figure 10). Because Marks is an individual, and CMI was an S corporation, no corporate tax was paid. Without the distribution of the Carrollton system to Marks through the assignment, or the Texas systems to CMI through the bankruptcy, corporate tax would have been imposed on the sales.

The IRS has calculated preliminarily that the transfer of the Plantation system through the bankruptcy resulted in a loss of tax revenue of over $2.5 million. The IRS indicates that the aggregate loss is much greater if we consider all of the systems transferred through the bankruptcy and related events.

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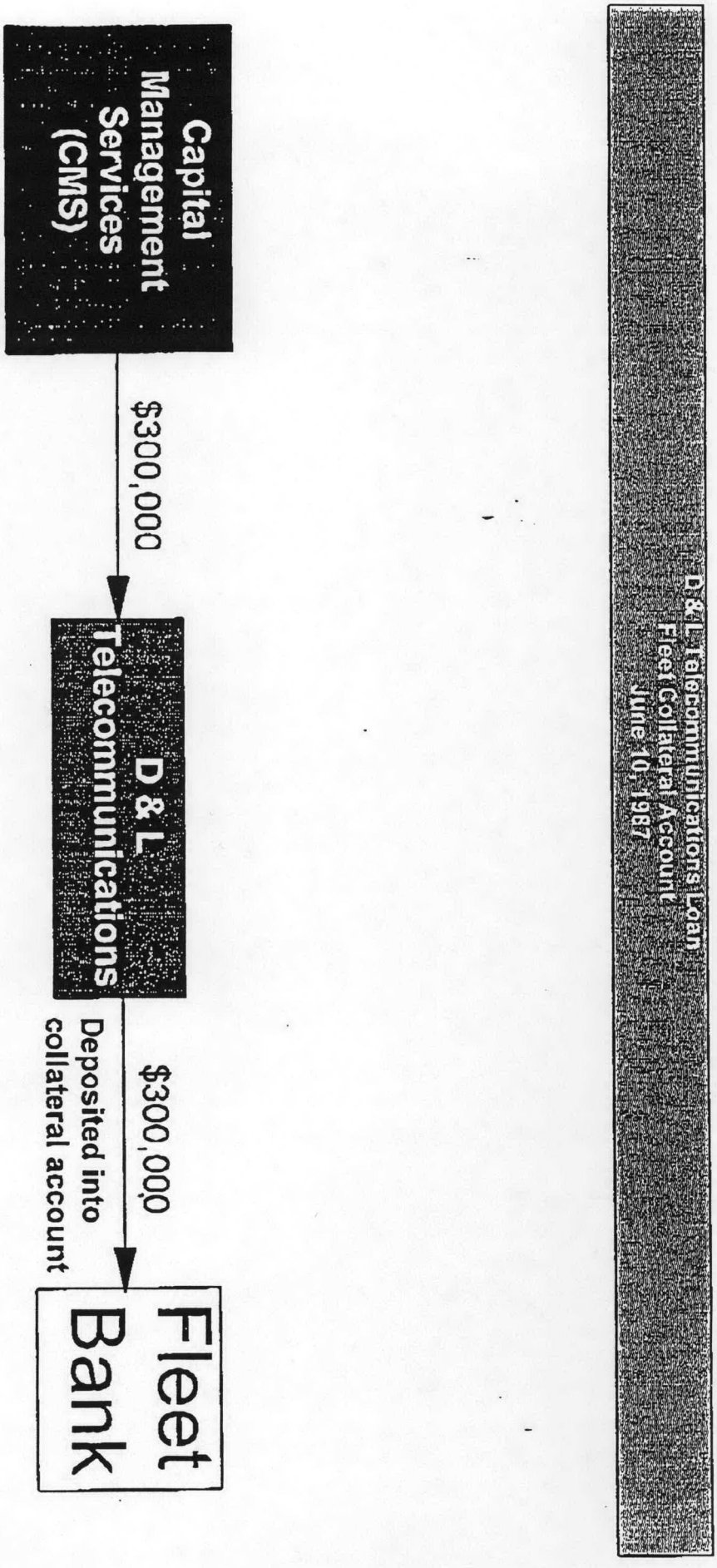

Figure 1

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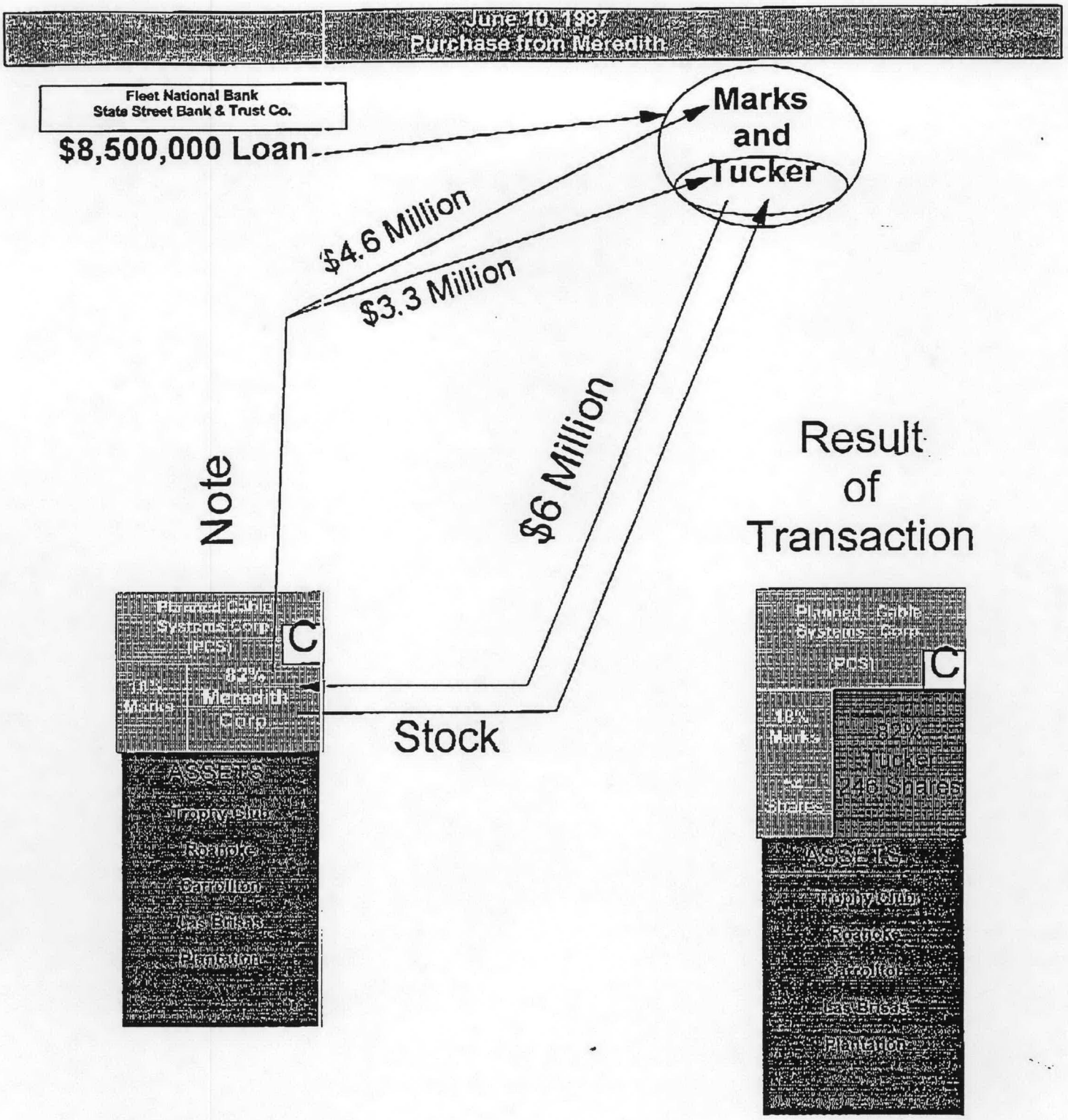

Figure 2

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INDEP COUNSEL
221 8707
012

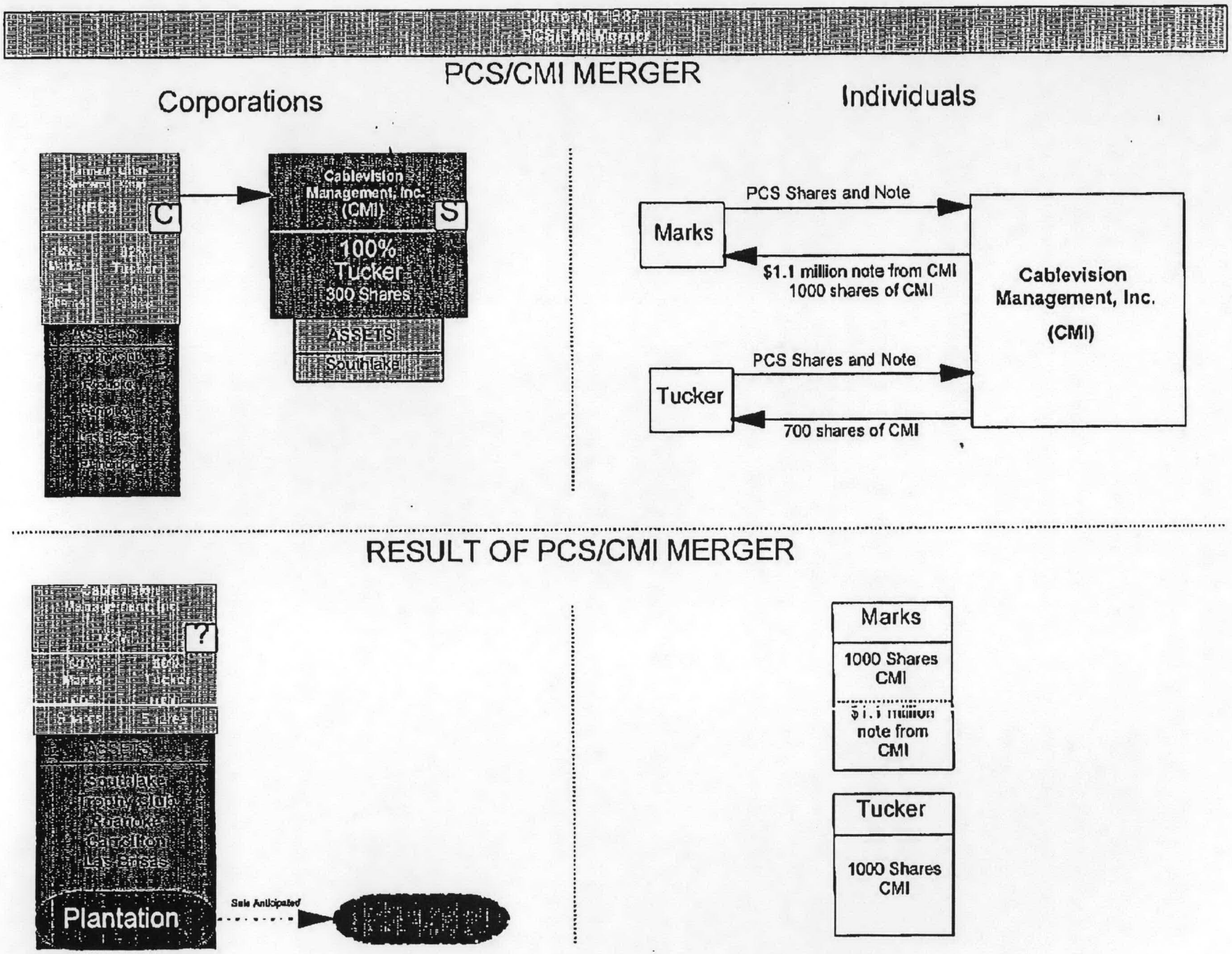

Figure 3

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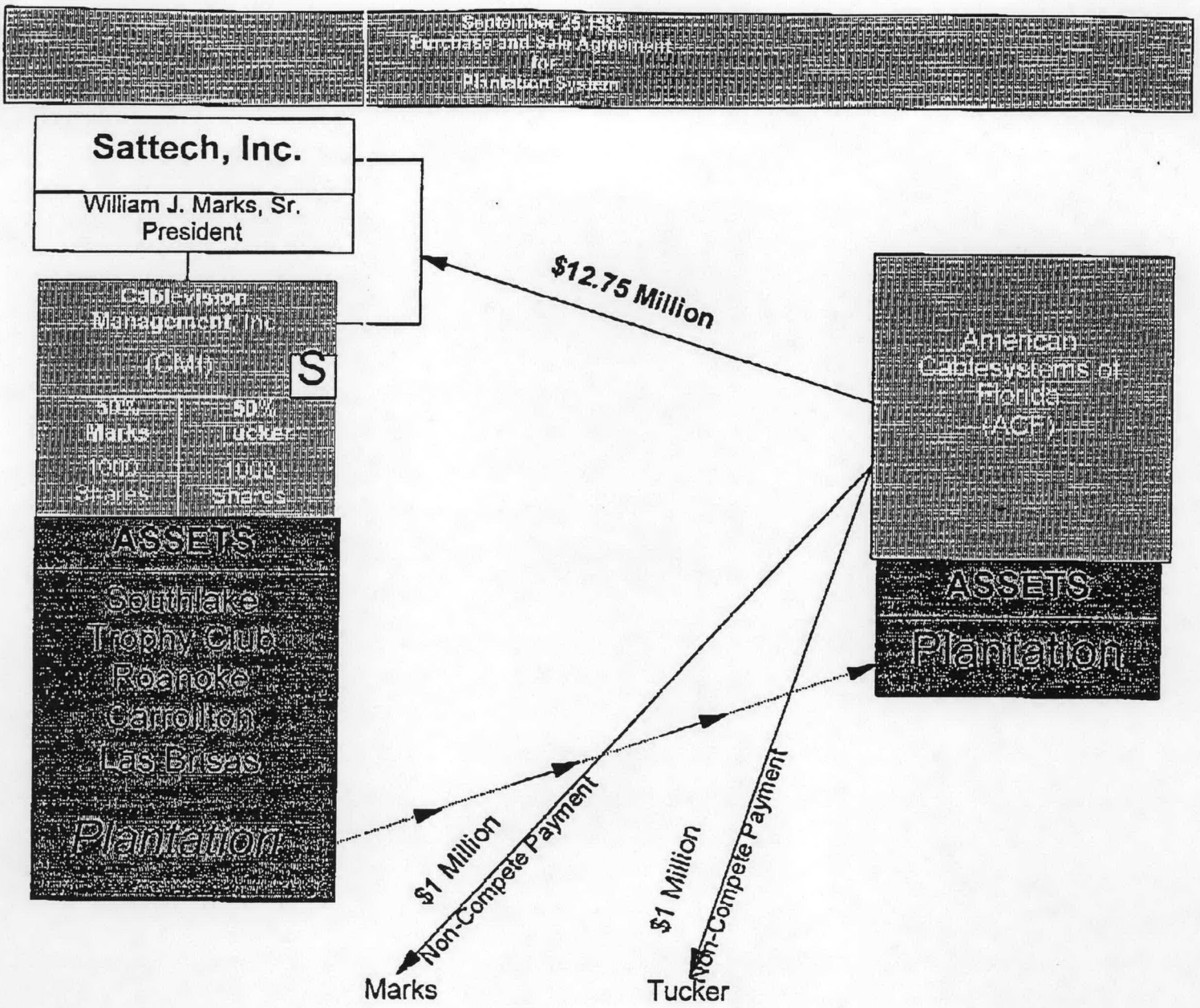

Tax Information

Assets		Non-Compete Income	
Sale Price:	$12,750,000		
Basis: (As calculated by Coopers & Lybrand)	$1,258,372	Marks:	$1,000,000
		Tucker:	$1,000,000
Gain:	$11,491,628		

Figure 4

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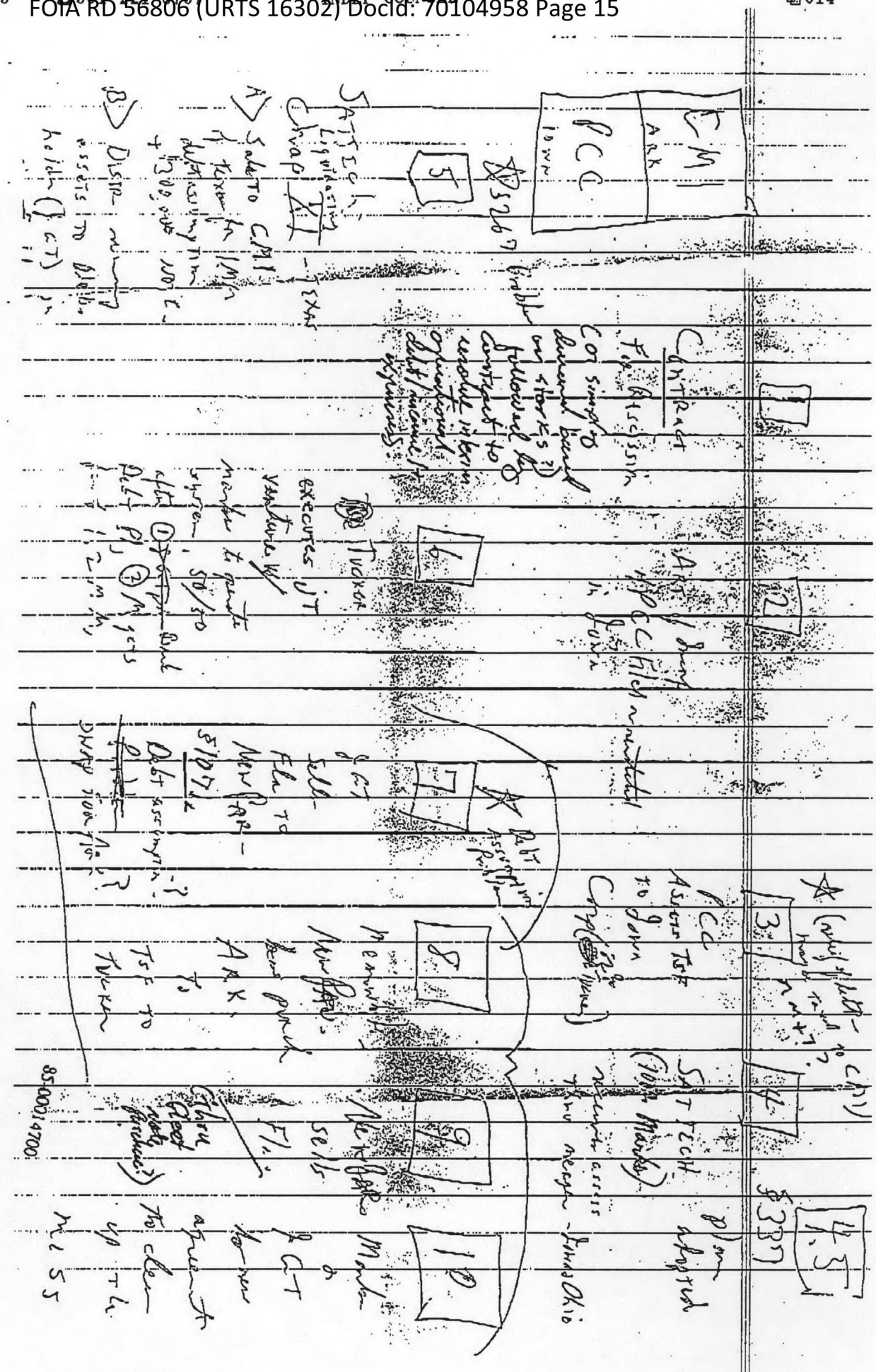

Figure 5

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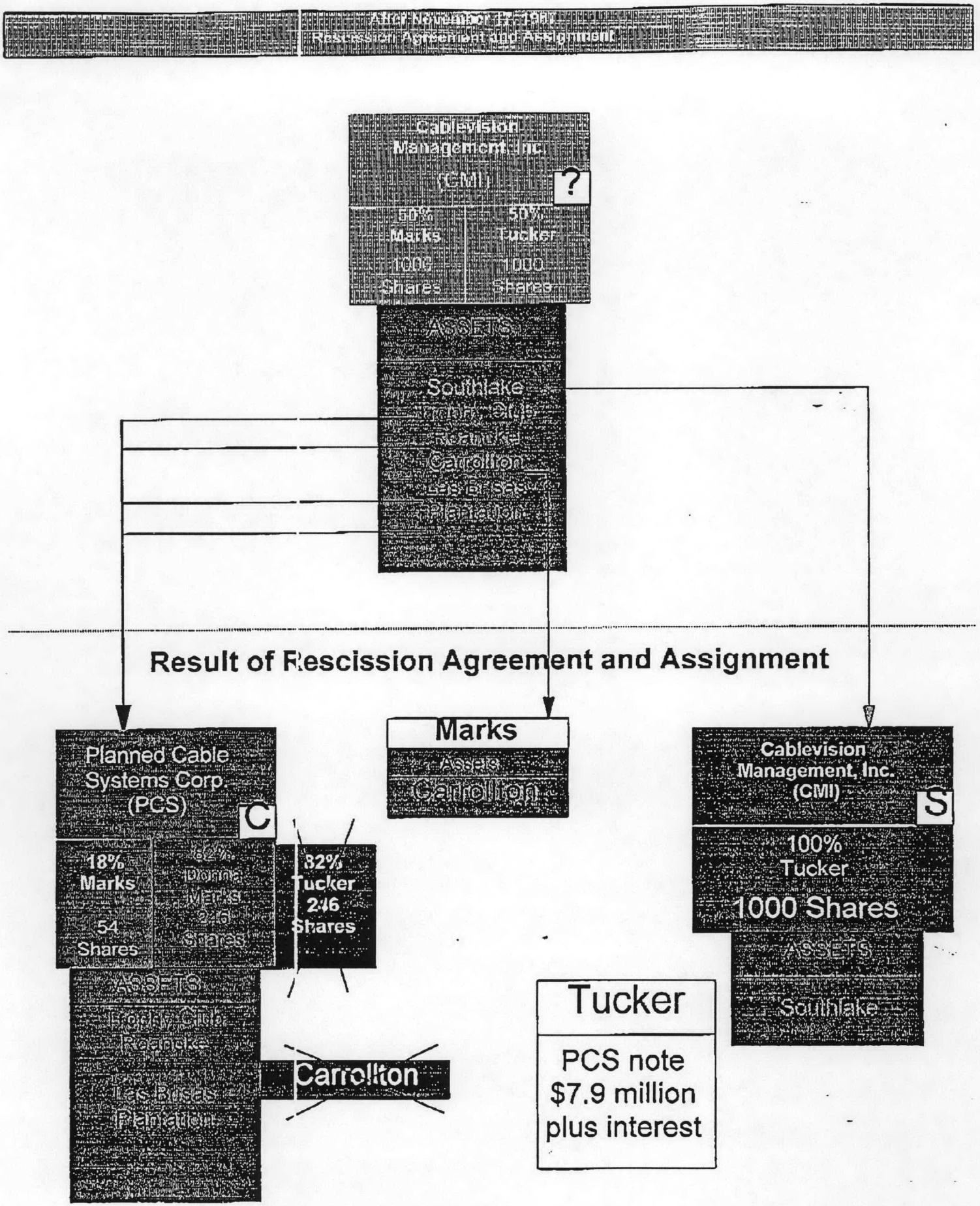

Figure 6

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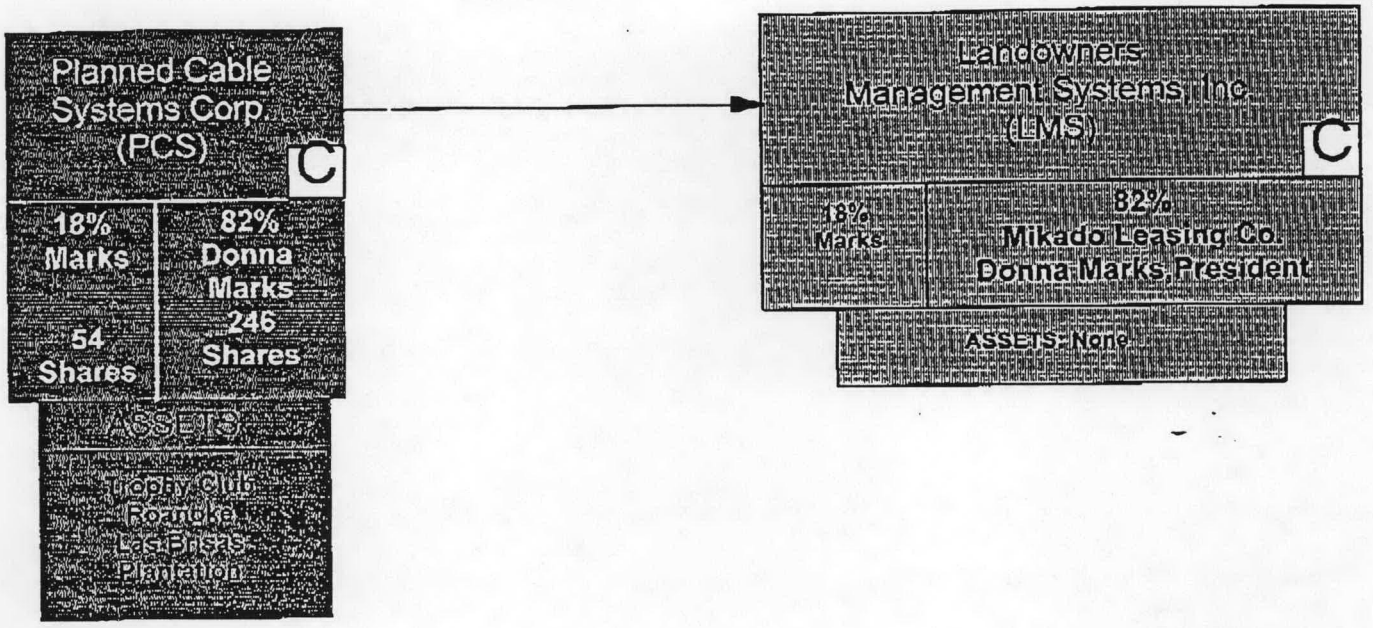
November 24, 1987
PCS/LMS Merger

PCS/LMS Merger



Result of PCS/LMS Merger

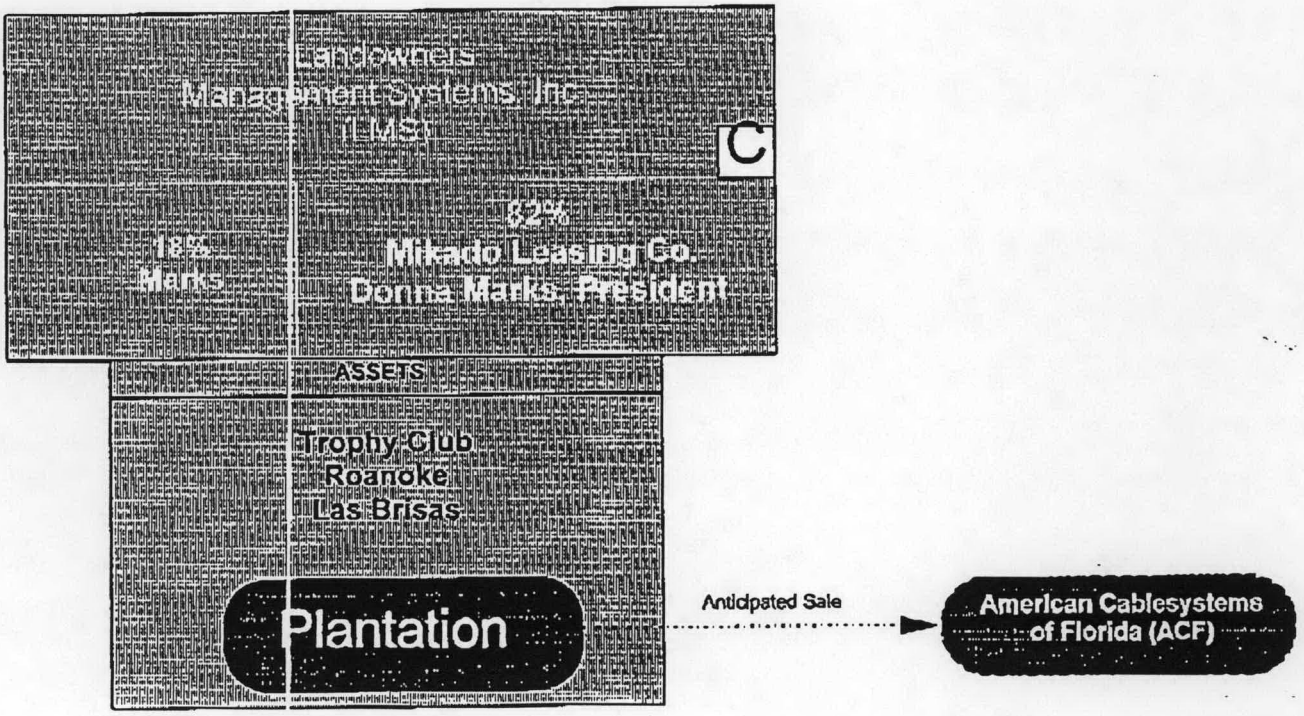


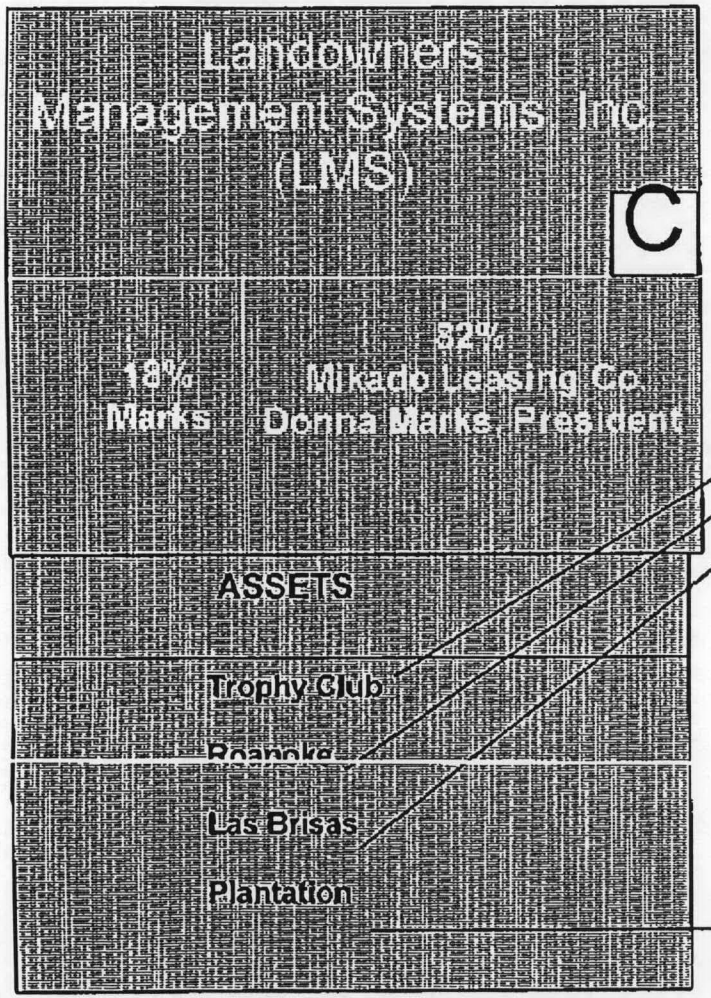
Figure 7

05/26/95 14:38 ☑017
FOIA RD 56806 (URTS 16302) Docld: 70104958 Page 18
INDEP COUNSEL
3501 221 8707

Landowners Management Systems, Inc.
Bankruptcy
Filed: November 30, 1987

DEBTOR

CREDITORS



Unsecured

Cablevision Management, Inc. (CMI) S

To discharge debt ($ 1.15 Million)

Unsecured

William Marks	$ 265,000.00
S. Feldman	$ 37,500.00
CCLP	$ 66,408.00
Frost & Co.	$ 6,000.00
Linda Harlan	$ 450.00
Dwight Harlan	$ 250.00

Secured

Tucker

To discharge note
($ 7.9 Million + interest)

Figure 8

Confirmed: December 18, 1987

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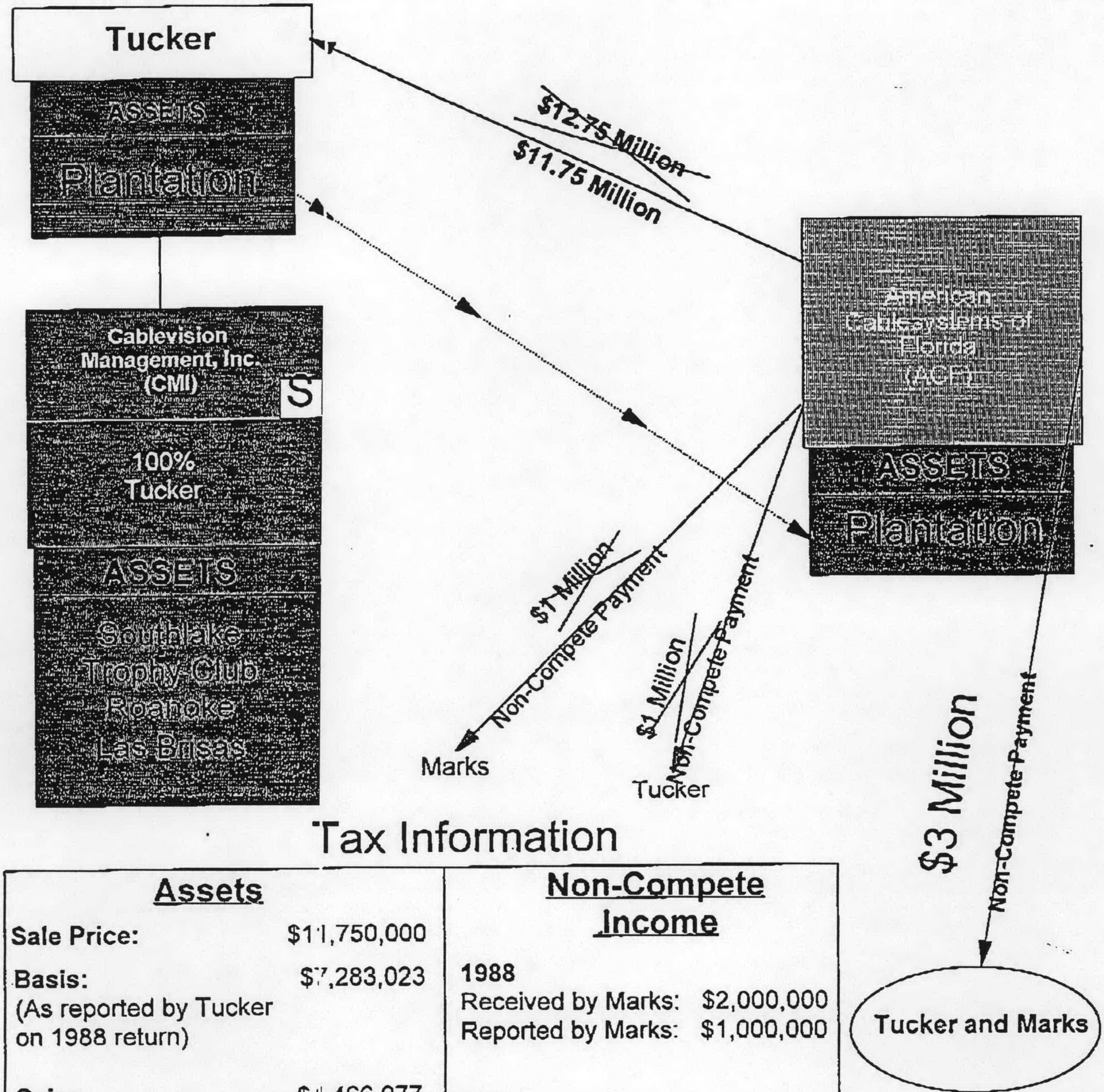
December 28, 1987 Purchase and Sale Agreement for Plantation System



Tax Information

Assets		Non-Compete Income	
Sale Price:	$11,750,000	**1988**	
Basis: (As reported by Tucker on 1988 return)	$7,283,023	Received by Marks:	$2,000,000
		Reported by Marks:	$1,000,000
Gain: (As reported by Tucker on 1988 return)	$4,466,977	**1989**	
		Received by Marks:	$1,000,000
		Reported by Marks:	$ 500,000

Closing – January 4, 1988

Figure 9

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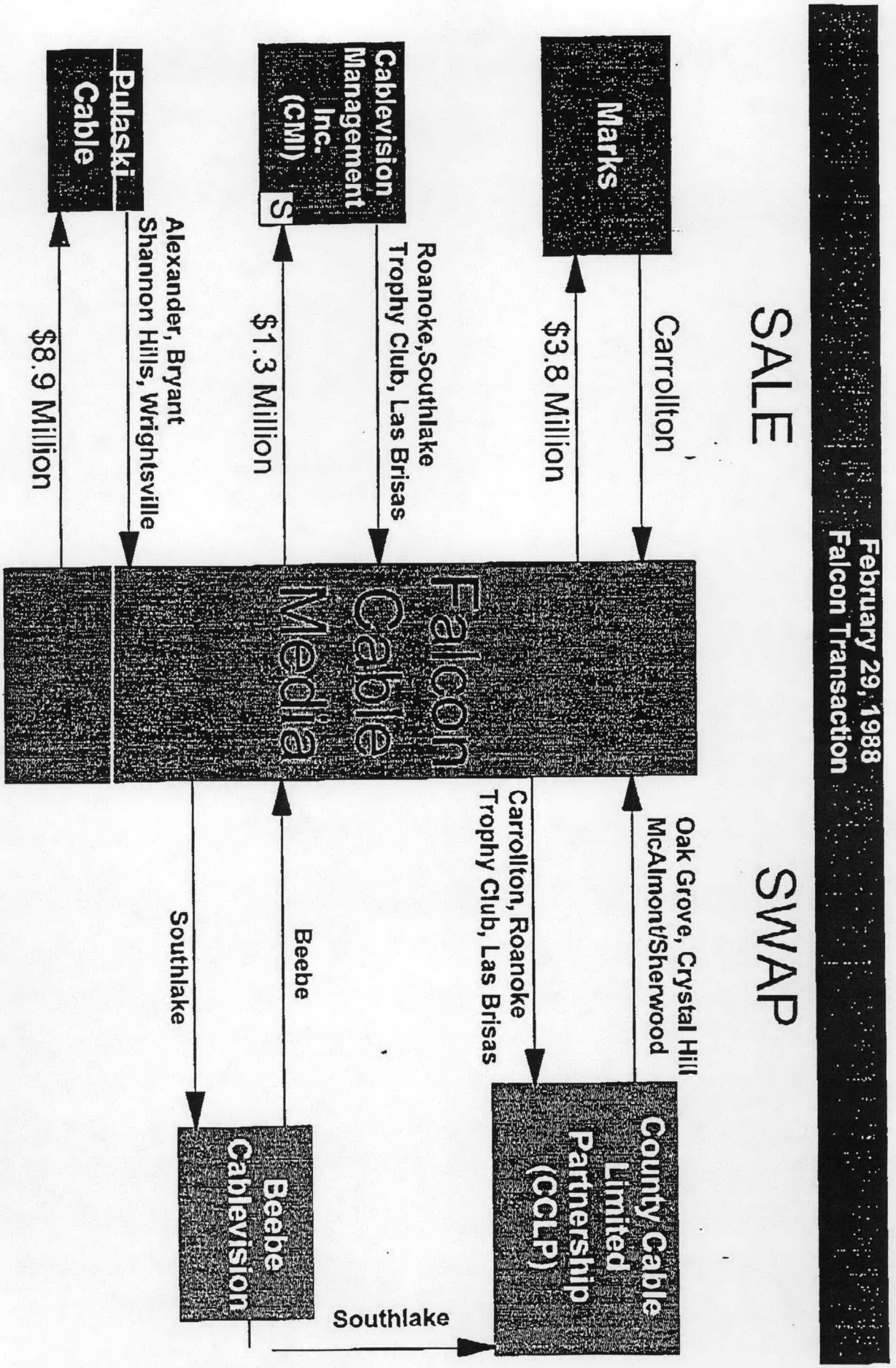

Figure 10

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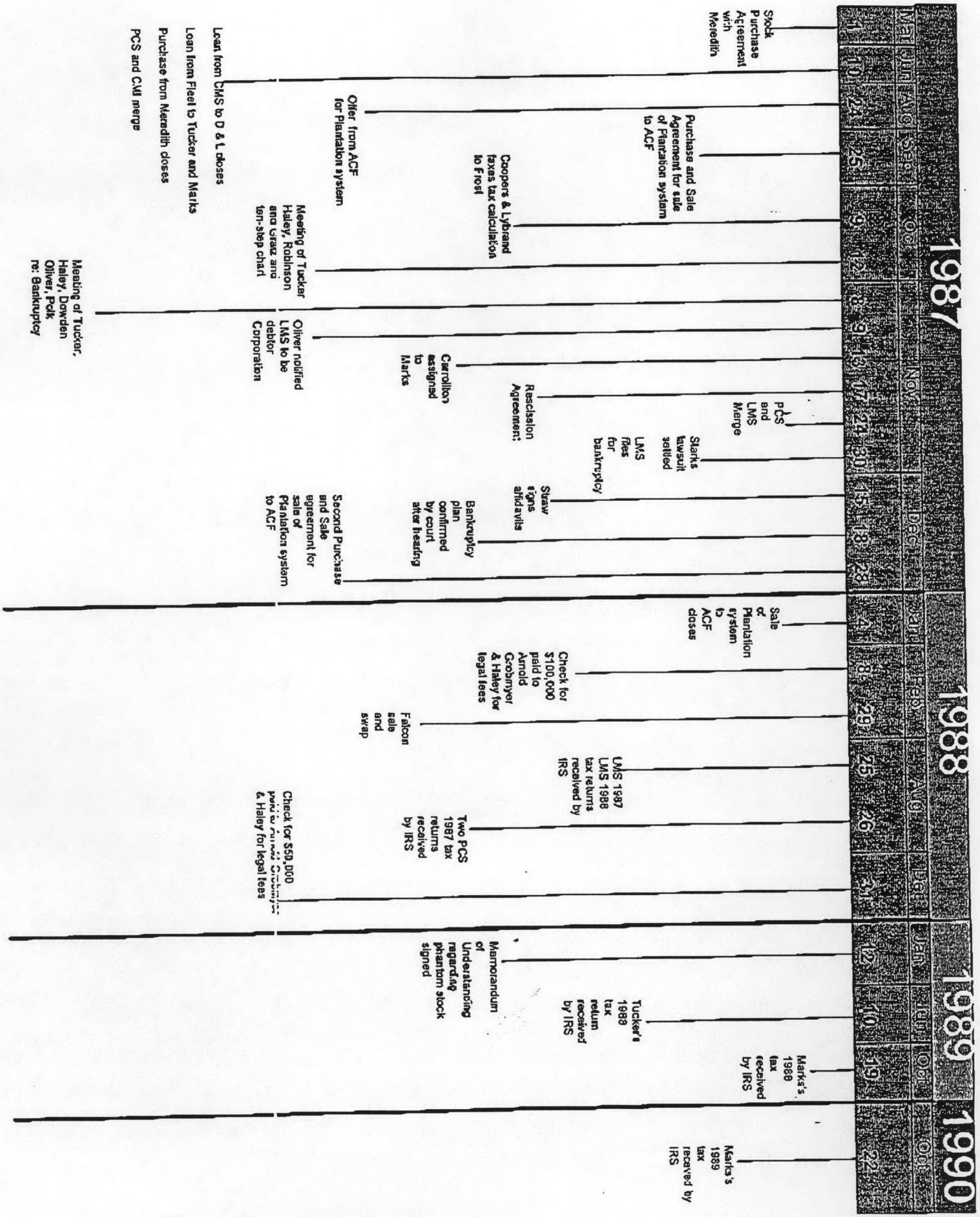

Figure 11

MEMORANDUM

DRAFT

To: Kenneth W. Starr
Independent Counsel

All OIC Attorneys

From: Steven M. Colloton
Associate Counsel

Date: May 26, 1995

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In February 1987, CMI was owned 100% by Tucker. PCS was owned 82% by Meredith Corporation and 18% by Marks. Meredith also held a note for $7.9 million that it was owed by PCS for

money advanced from Meredith to PCS. Both PCS and CMI owned cable TV systems. Meredith wanted to sell its interest in PCS for its book value of $6 million. Marks and Tucker knew this was substantially less than the market value of the company.

Tucker and Marks agreed that they would borrow several million dollars from a bank; Tucker would use some of the loan proceeds to buy Meredith's interest in PCS; and Tucker and Marks would merge PCS into CMI. Tucker and Marks would then have a 50/50 joint venture in the cable business.

On March 1, 1987, Tucker signed a purchase agreement with Meredith in which he agreed to buy for $6 million the 82% of PCS stock and the $7.9 million note. In May 1987, Fleet National Bank agreed to loan Tucker and Marks $8.5 million for the project. Fleet required Tucker and Marks to pledge all assets of PCS and CMI as collateral. Fleet also required Tucker and Marks to set up a $500,000 cash collateral account.

Tucker approached David Hale at Capital Management Services (CMS) to raise $300,000 for the cash collateral account. Tucker told Hale that he wanted a loan for that amount to D&L Telecommunications, Inc., a Florida cable construction company. Marks and one Don Smith of Florida each owned 50% of D&L. Smith was president of D&L and the controlling shareholder.

Hale agreed to lend $300,000. Tucker arranged for Hale to send the money to Fleet, and Tucker directed Fleet to deposit the money into the cash collateral account that secured the personal loan to Tucker and Marks. The promissory note was signed by Marks as president of D&L, Betty Tucker as secretary of D&L, and by Tucker individually.

None of the loan proceeds went to D&L. Don Smith of D&L says that he had no knowledge of the loan. Smith says that he never authorized Marks or the Tuckers to use D&L to borrow money. Tucker and Marks paid back CMS for the loan in a timely fashion. (See Figure 1)

On June 10, 1987, the Fleet loan closed. Tucker used $6 million of the proceeds to purchase Meredith's 82% of the stock in PCS and the $7.9 million note. Tucker assigned $4.6 million of the note to Marks. (See Figure 2).

Simultaneous with the closing of the Meredith sale to Tucker, PCS merged into CMI. Tucker and Marks contributed to CMI their stock in PCS and their portions of the $7.9 million note. In return, CMI issued stock to Tucker and Marks, and a note to Marks. As a result, Tucker and Marks each owned 50% of CMI. (See Figure 3).

On June 10, Tucker and Marks also contemplated a

potentially lucrative sale of one of the cable systems in Plantation, Florida. (See Figure 3). On September 25, 1987, Tucker and Marks signed an agreement to sell the Plantation system to American Cablesystems of Florida for $12.75 million and $2 million in non-competition payments. (See Figure 4).

Tucker and Marks expressed concern about the tax implications of the sale of the Plantation system. They hired Coopers & Lybrand to calculate the basis in the system, and the gain on a possible sale of the system for $15 million. On October 9, C&L advised Tucker's accountant that the basis would be about $1.75 million, and the gain would be over $13 million. In November, C&L advised Tucker that a revised calculation showed a lower basis of $1.26 million. (See Figure 4).

On October 12, there was a meeting among Tucker, his attorney, John Haley, and two accountants from Frost & Company. Haley presented a "ten step chart" that showed a plan to rescind the CMI/PCS merger, to merge PCS into a Marks-controlled entity called Sattech, to place Sattech in bankruptcy, and to distribute the cable assets of PCS to Tucker and his company CMI. There is evidence that reduction of taxes was at least one of the purposes, if not the primary purpose, of this proposal. (See Figure 5).

On or about November 17, Tucker and Marks signed an agreement to rescind the PCS/CMI merger. The rescission was based upon an alleged material omission by Marks about the existence of another stockholder in PCS, and a technical flaw in the consummation of the merger. The result of the rescission differed from the status quo ante in two significant ways: (1) Tucker's ownership of 82% of the PCS stock was transferred to Marks' wife, Donna; and (2) The $7.9 million note -- which was purchased from Meredith by Tucker, assigned in part to Marks, and contributed to CMI -- was recreated and owned entirely by Tucker. (See Figure 6).

On November 13, 1987, Marks was assigned the Carrollton cable system to own individually. Marks made the assignment as president of PCS. The assignment claimed that the corporation did not own the system because Marks had advanced the money to construct the system. (See Figure 6).

On November 24, after the rescission of the PCS/CMI merger, PCS merged into a Texas shelf corporation called LMS. Haley obtained LMS from a former colleague in Texas. LMS had never issued stock before November 1987. After Haley acquired LMS, 82% of the stock was issued to Mikado Leasing Company, a car leasing company owned by Haley. The other 18% was issued to Marks. (See Figure 7).

On November 30, 1987, LMS filed a Chapter 11 bankruptcy

petition in Texas. Tucker was listed as a secured creditor based on the $7.9 million note that he bought from Meredith. Tucker's company, CMI, was listed as a creditor based upon money that it had advanced to PCS/LMS between June and November. To discharge these debts, the Plantation cable system was distributed to Tucker, and three Texas cable systems were distributed to CMI. (See Figure 8).

Analysis of the bankruptcy pleadings, which were signed by Marks as president of LMS, shows the following:

(1) The pleadings said Meredith sold 82% of the stock in PCS/LMS to Mikado Leasing Company for $1 on June 10, 1987. In fact, Tucker bought 82% of the stock along with the note upon which he based his claim in bankruptcy. The bankruptcy court was not notified that Tucker had purchased the 82% of the PCS stock only five months earlier.

(2) The pleadings said that Tucker's claim of $8.85 million was equal to or greater than the fair market value of the Plantation system. The pleadings did not disclose the signed purchase agreement to sell the Plantation system for $12.75 million and $2 million in non-compete payments.

(3) Fleet Bank, which had a first lien on all assets of PCS and CMI was not listed as a secured party, and it did not receive notice of the bankruptcy.

(4) The bankruptcy court was not told that Tucker owned CMI, or that Tucker and Marks were business partners in the cable companies appearing in the bankruptcy.

(5) None of the numerous trade or business creditors of PCS/LMS was notified of the bankruptcy. The listed creditors all were parties with close relationships to Tucker or Marks, and some were even unaware of the basis for their claims.

On December 28, 1987, Tucker and Marks signed a new purchase agreement for the sale of the Plantation system. The new agreement showed Tucker as a seller. The sale closed on January 4, 1988. The buyer was not told why there was a change in the sellers. Tucker received $11.75 million for the system. (See Figure 9).

On February 8, 1988, Haley's law firm received from Tucker legal fees of $100,000 as partial payment for work on the Plantation acquisition and the LMS bankruptcy. The firm received another $50,000 from Tucker in December 1988.

On June 10, 1989, the Tuckers filed their tax return for 1988. They reported the sale of the Plantation system for $11.75 million. Because they obtained the system through the

bankruptcy, their basis was $7.28 million rather than the $1.26 million calculated by Coopers & Lybrand prior to the bankruptcy. The taxable gain was reduced accordingly. There also was no corporate tax on the sale because it was sold by Tucker individually.

In May and October 1989, CMI and Marks, respectively, filed their 1988 tax returns. On February 29, 1988, Marks had sold the Carrollton system to Falcon Cable Media, and CMI had sold to Falcon the Texas systems obtained in the bankruptcy. (See Figure 10). Because Marks is an individual, and CMI was an S corporation, no corporate tax was paid. Without the distribution of the Carrollton system to Marks through the assignment, or the Texas systems to CMI through the bankruptcy, corporate tax would have been imposed on the sales.

The IRS has calculated preliminarily that the transfer of the Plantation system through the bankruptcy resulted in a loss of tax revenue of over $2.5 million. The IRS indicates that the aggregate loss is much greater if we consider all of the systems transferred through the bankruptcy and related events.

D & L Telecommunications Loan
Fleet Collateral Account
June 10, 1987

Figure 1

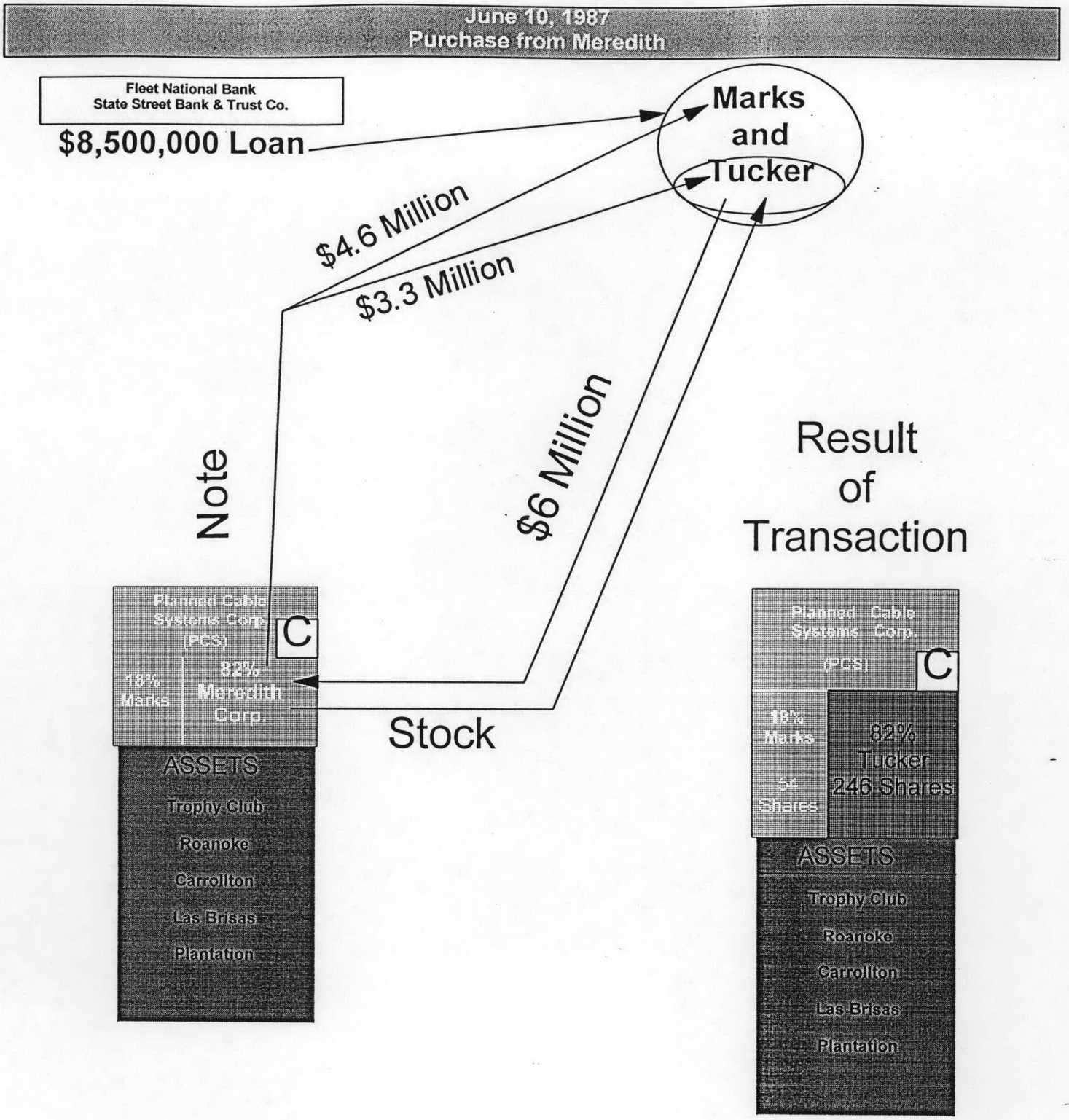
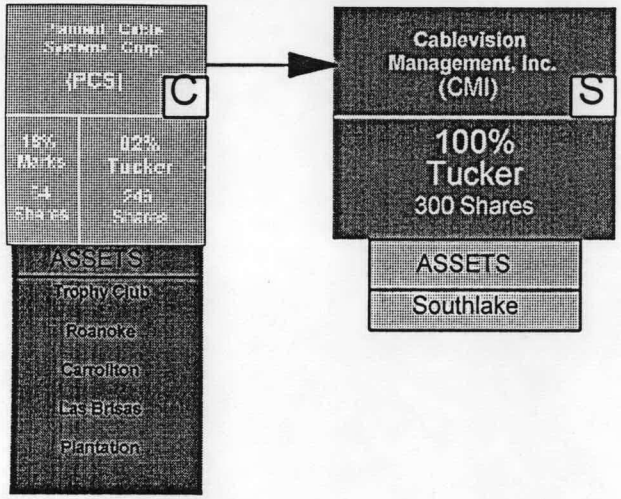

June 10, 1987
Purchase from Meredith
Fleet National Bank
State Street Bank & Trust Co.
$8,500,000 Loan
Marks and Tucker
$4.6 Million
$3.3 Million
$6 Million
Note
Stock
Result of Transaction
Planned Cable Systems Corp. (PCS)
C
18% Marks
82% Meredith Corp.
ASSETS
Trophy Club
Roanoke
Carrollton
Las Brisas
Plantation
Planned Cable Systems Corp. (PCS)
C
18% Marks
54 Shares
82% Tucker 246 Shares
ASSETS
Trophy Club
Roanoke
Carrollton
Las Brisas
Plantation

Figure 2

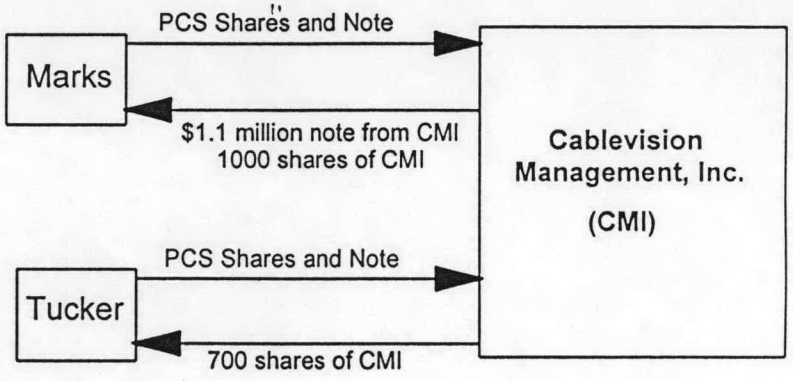
June 10, 1987
PCS/CMI Merger

PCS/CMI MERGER

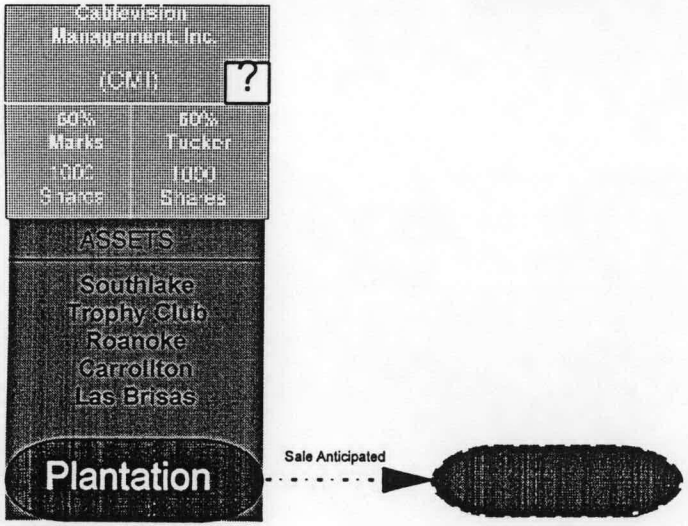
Corporations



Individuals



RESULT OF PCS/CMI MERGER



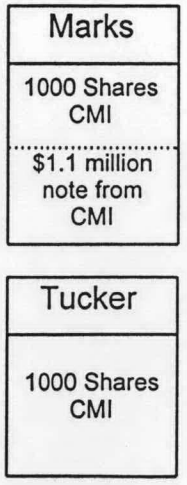
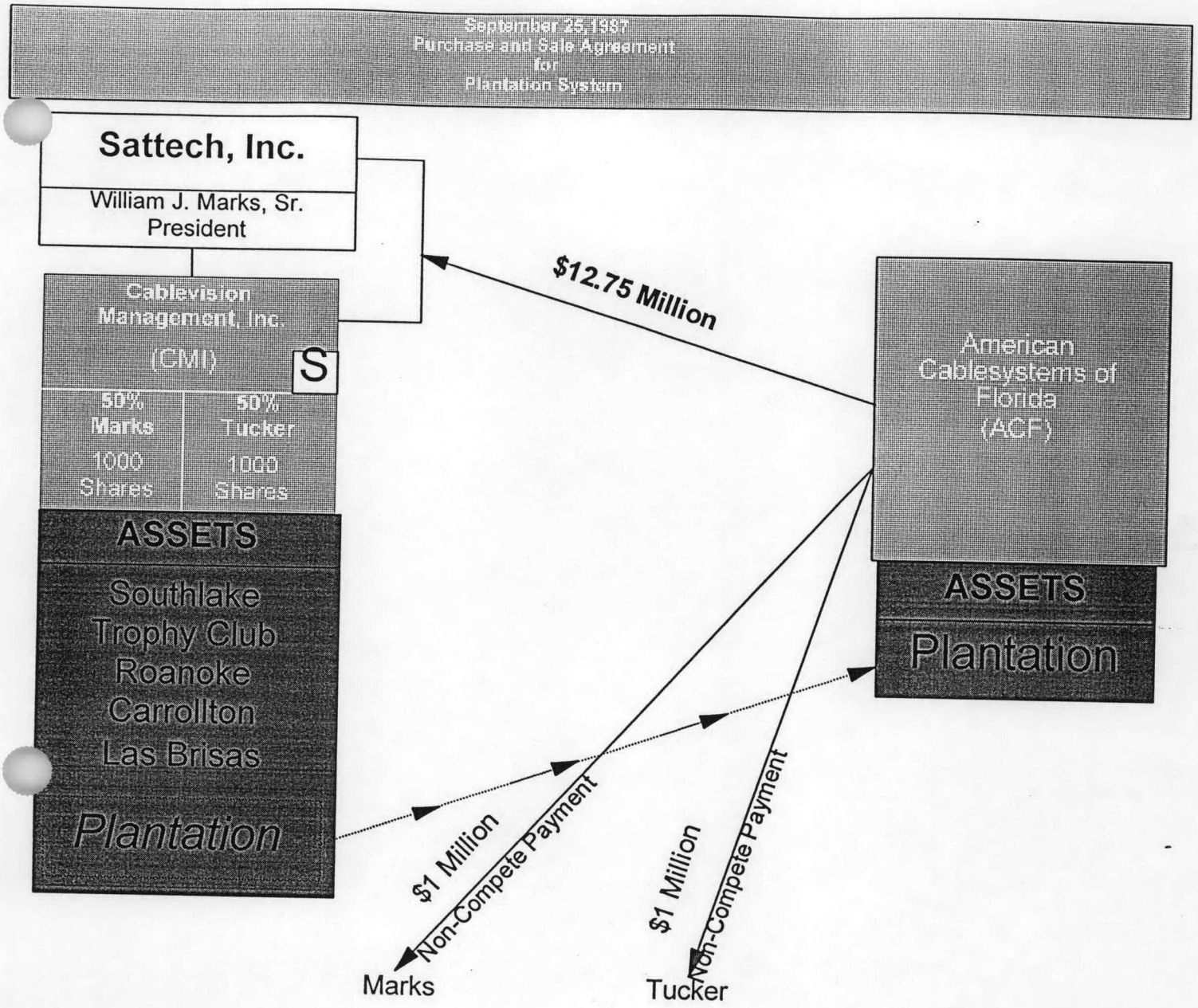


Figure 3



Tax Information

Assets		Non-Compete Income	
Sale Price:	$12,750,000		
Basis: (As calculated by Coopers & Lybrand)	$1,258,372		
Gain:	$11,491,628		
		Marks:	$1,000,000
		Tucker:	$1,000,000

Figure 4

FOIA RD 56806 (URTS 16302) DocId: 70104958 Page 33

CMI ARK

PCC IOWA

1 — CONTRACT For Rescission or simply demand based on stocks ?) followed by contract to resolve interim operational debt/income/+ expenses?

2 — ART. of Merger PCC Files [illegible] in Iowa

☆ (relief if lost maybe taxed to CMI) or M+T?

3 — PCC Assets TSF to Iowa Corp ([illegible] owner)

4 — SAT TECH (100% Marks) [illegible] assets thru merger - Iowa Ohio

4.5 — $337 plan adopted

☆ $267 Problem

☆ Debt Assumption Problem

5 — SATTECH - Liquidating Chap XI - TEXAS

A) Sale to CMI of Texas for 1M in debt assumption + $300,000 note -

B) Distr [illegible] assets to Deb. holder (J&T) in [illegible]

6 — Tucker executes JT. venture w/ Marks to operate system, 50/50 after (1) [illegible] Bank Debt Pd, (2) M gets fee of 1.2 M,

7 — J&T sells Fla to New FAR - $107, Debt assumption -? [illegible] ? SWAP FOR ARK?

8 — Meanwhile New FAR [illegible] purch ARK. To TSF to Tucker

9 — New FAR sells Fla. (thru Fleet note purchase?)

10 — Marks & J&T to new agreement to clean up the mess

85-00014700

Figure 5

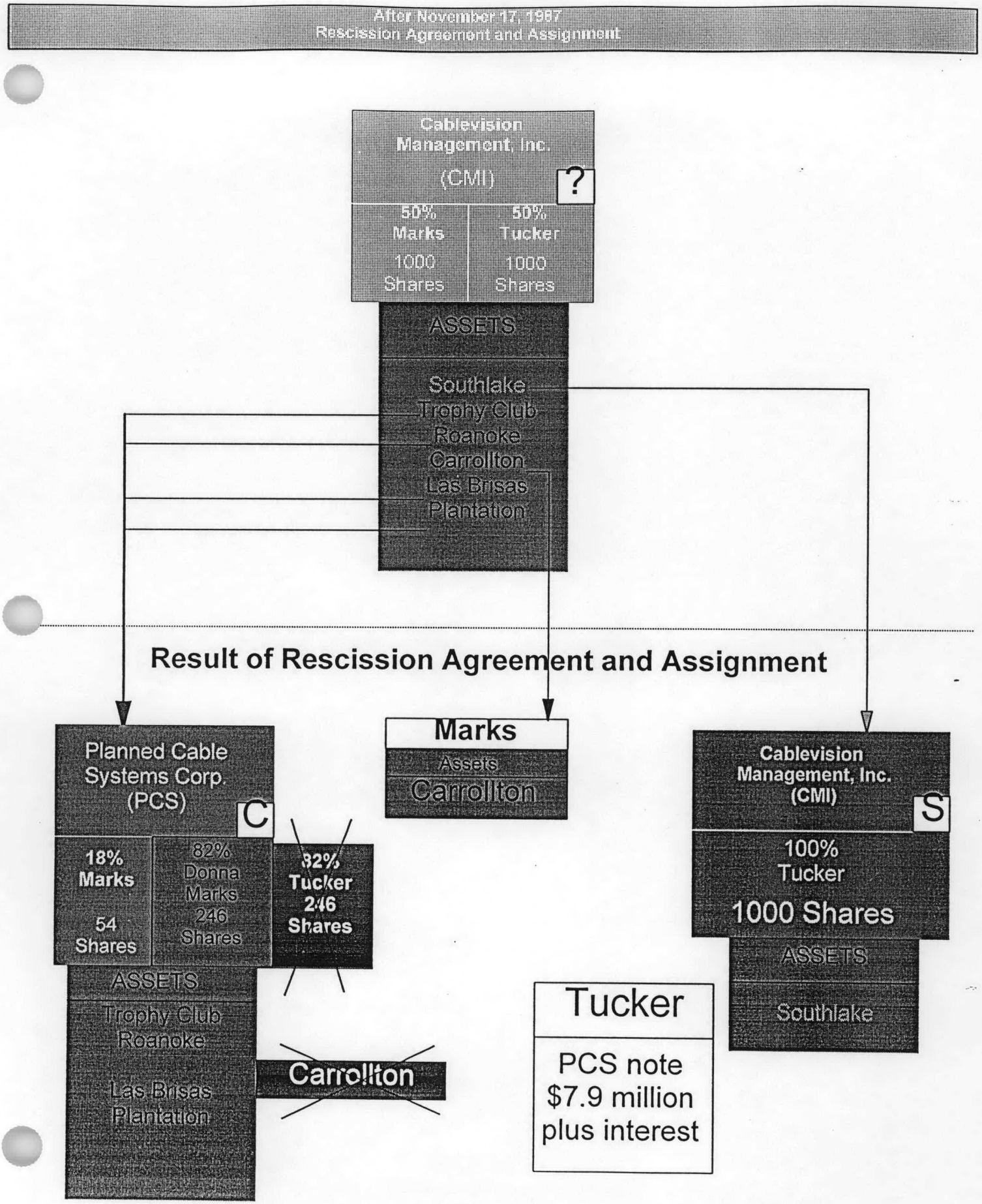
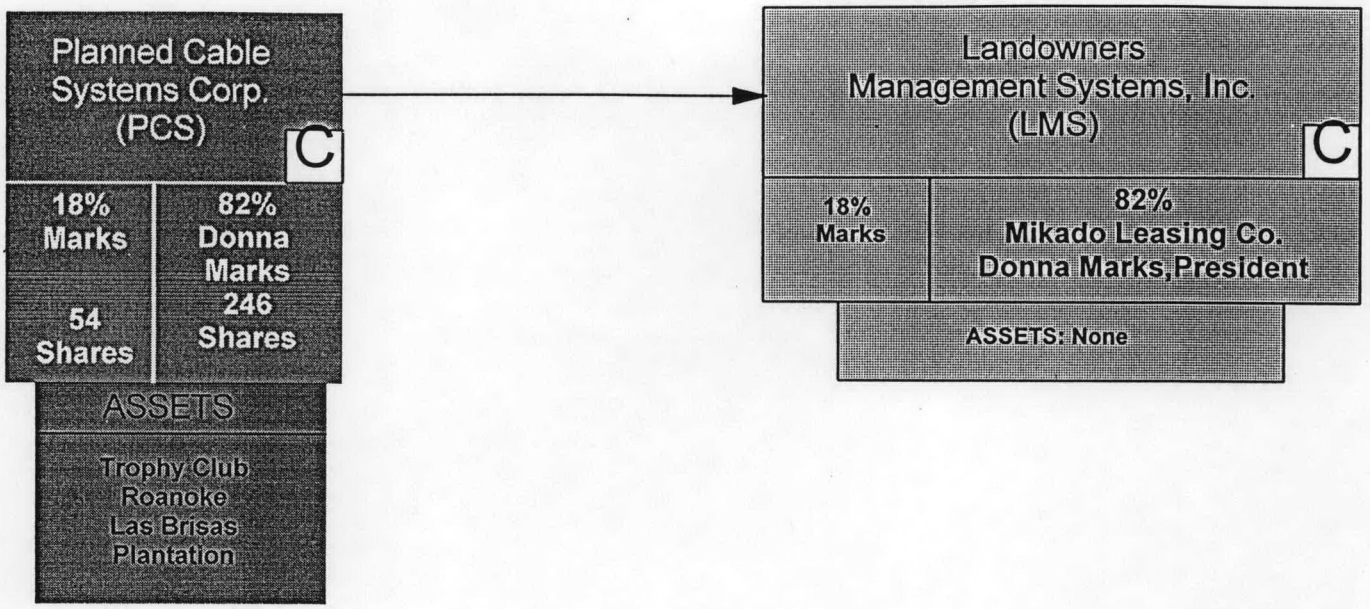

After November 17, 1997
Rescission Agreement and Assignment
Cablevision Management, Inc. (CMI)
?
50% Marks
1000 Shares
50% Tucker
1000 Shares
ASSETS
Southlake
Trophy Club
Roanoke
Carrollton
Las Brisas
Plantation
Result of Rescission Agreement and Assignment
Planned Cable Systems Corp. (PCS)
C
18% Marks
54 Shares
82% Donna Marks
246 Shares
82% Tucker
246 Shares
ASSETS
Trophy Club
Roanoke
Las Brisas
Plantation
Carrollton
Marks
Assets
Carrollton
Cablevision Management, Inc. (CMI)
S
100% Tucker
1000 Shares
ASSETS
Southlake
Tucker
PCS note
$7.9 million
plus interest

Figure 6

November 24, 1987
PCS/ LMS Merger

PCS/LMS Merger



Result of PCS/LMS Merger

Figure 7

Landowners Management Systems, Inc.
Bankruptcy
Filed: November 30, 1987

DEBTOR

Landowners Management Systems, Inc. (LMS) **C**

18% Marks	82% Mikado Leasing Co. Donna Marks, President

ASSETS

- Trophy Club
- Roanoke
- Las Brisas
- Plantation

CREDITORS

Unsecured

Cablevision Management, Inc. (CMI) **S**

To discharge debt ($ 1.15 Million)

Unsecured

William Marks	$ 265,000.00
S. Feldman	$ 37,500.00
CCLP	$ 66,408.00
Frost & Co.	$ 6,000.00
Linda Harlan	$ 450.00
Dwight Harlan	$ 250.00

Secured

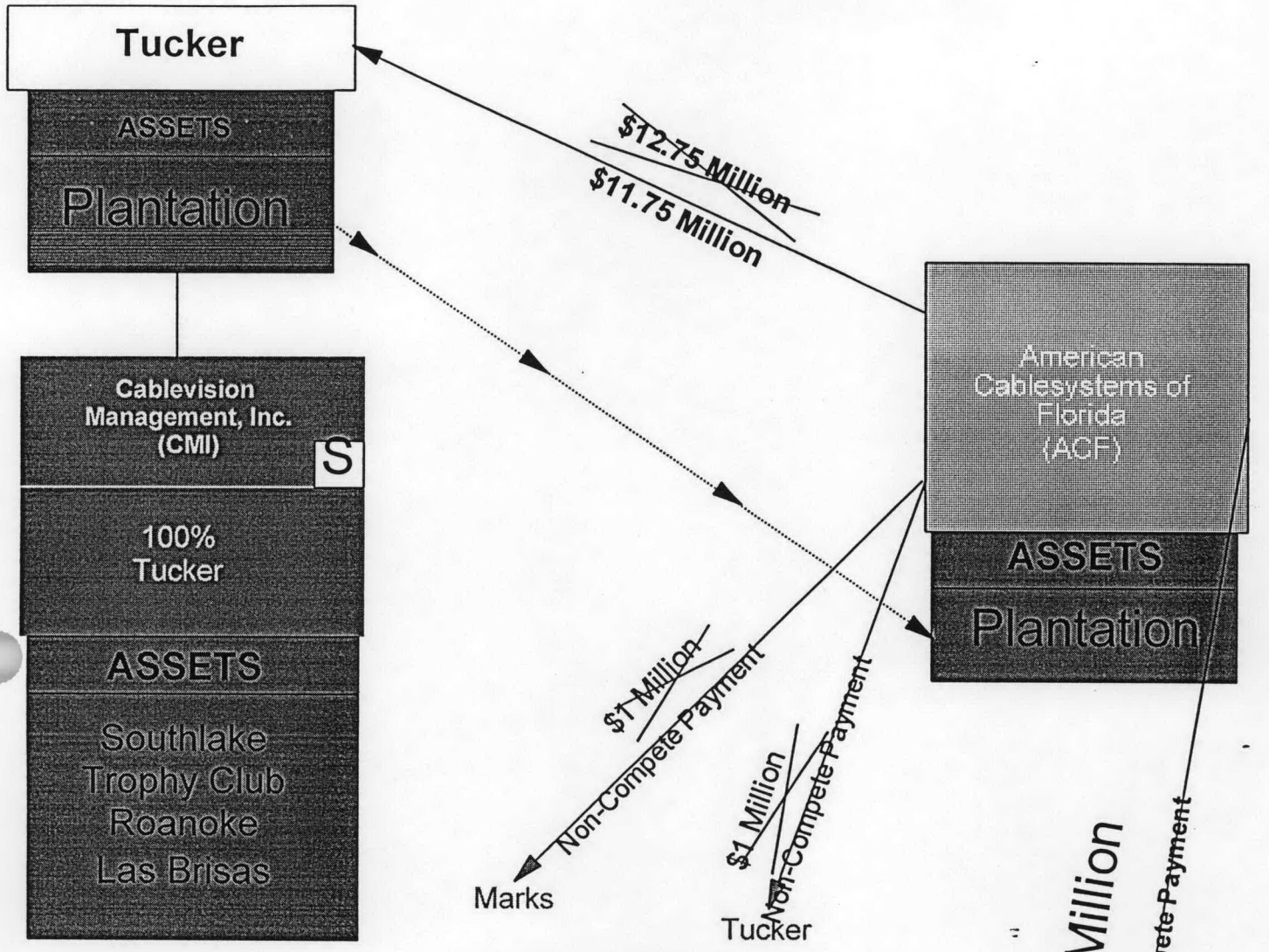
Tucker

To discharge note ($ 7.9 Million + interest)

Confirmed: December 18, 1987

Figure 8

December 28, 1987
Purchase and Sale Agreement
for Plantation System



Tax Information

Assets		Non-Compete Income	
Sale Price:	$11,750,000	**1988**	
Basis: (As reported by Tucker on 1988 return)	$7,283,023	Received by Marks:	$2,000,000
		Reported by Marks:	$1,000,000
Gain: (As reported by Tucker on 1988 return)	$4,466,977	**1989**	
		Received by Marks:	$1,000,000
		Reported by Marks:	$ 500,000

Closing -- January 4, 1988

Figure 9

February 29, 1988
Falcon Transaction

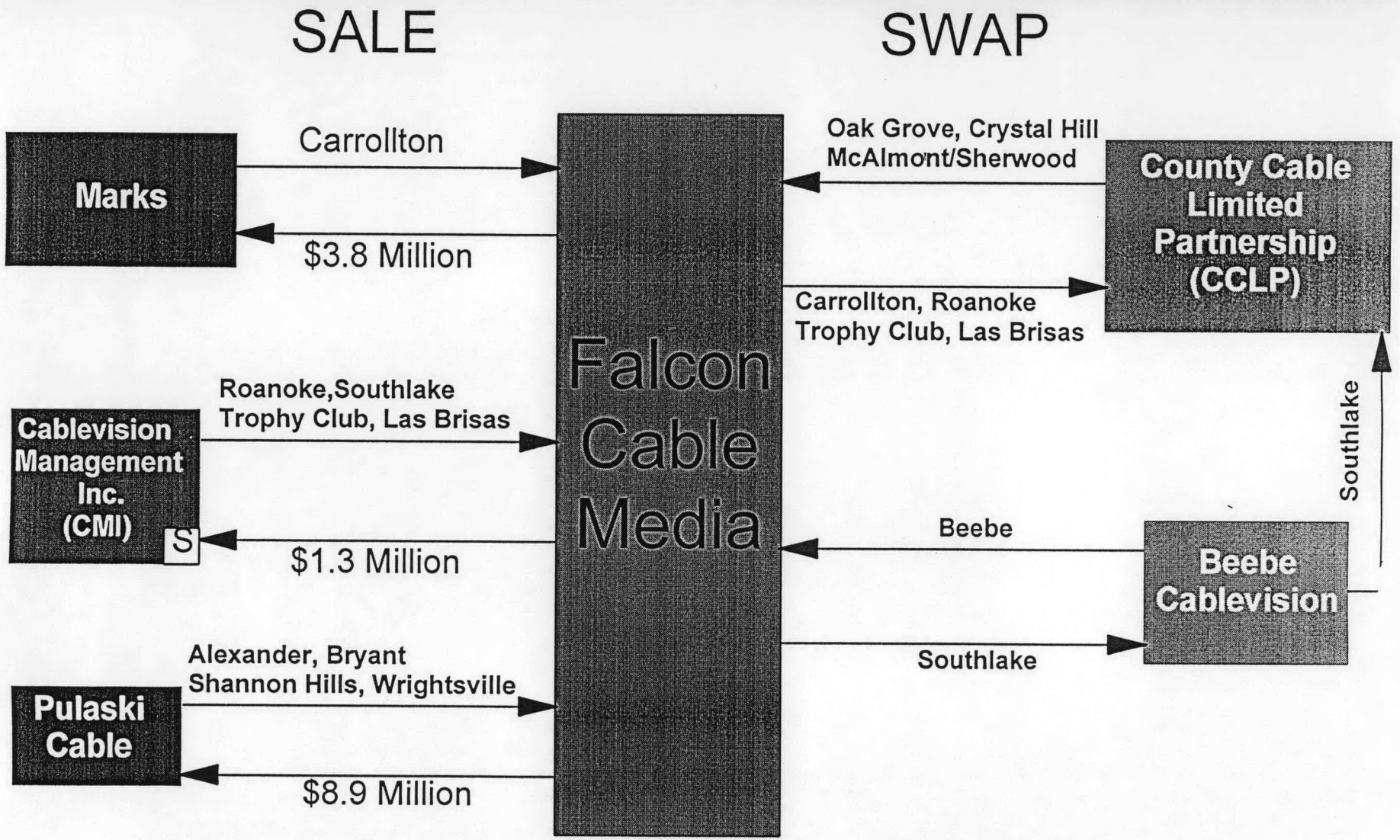


Figure 10

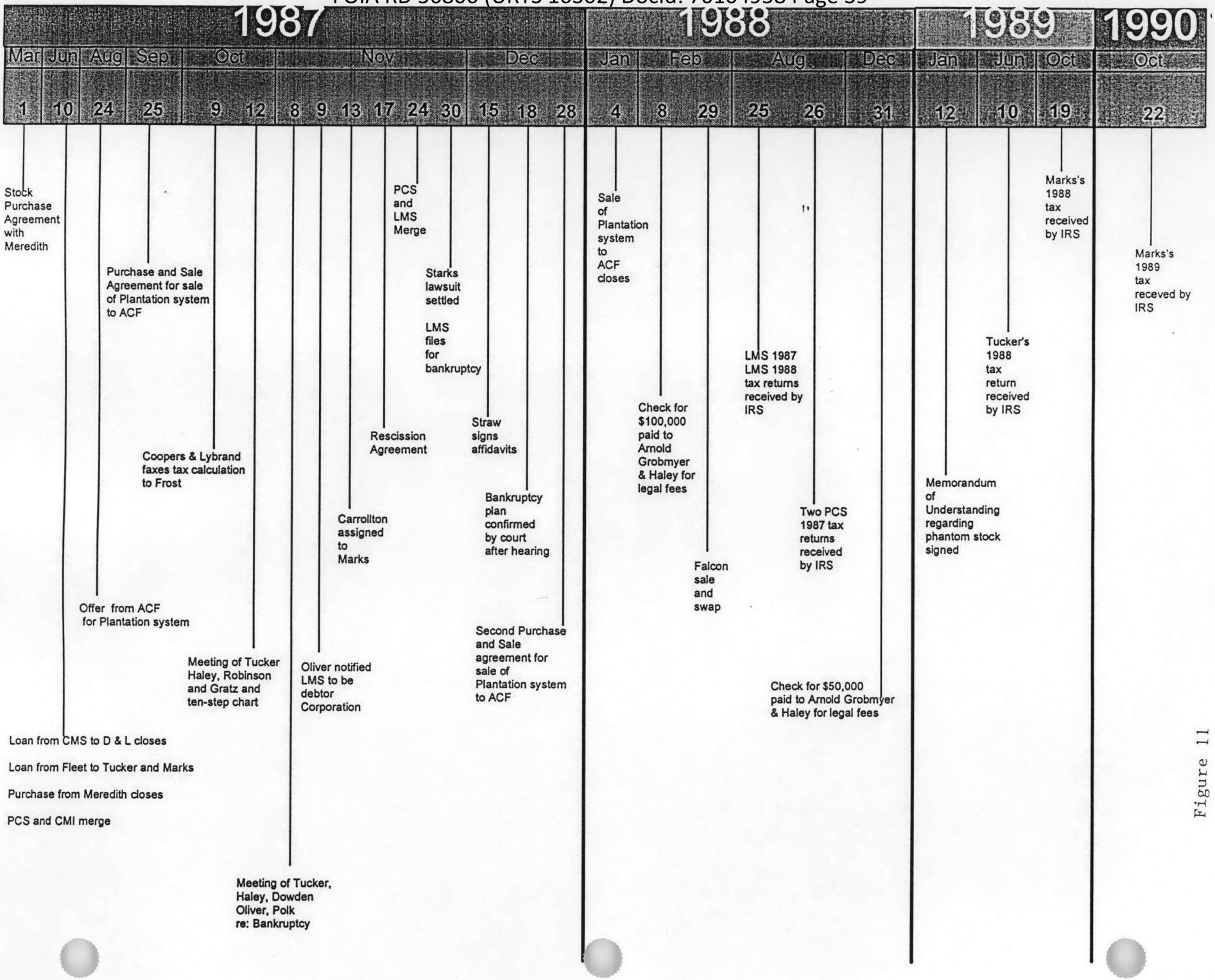

1987
1988
1989
1990
Mar
Jun
Aug
Sep
Oct
Nov
Dec
Jan
Feb
Aug
Dec
Jan
Jun
Oct
Oct
1
10
24
25
9
12
8
9
13
17
24
30
15
18
28
4
8
29
25
26
31
12
10
19
22
Stock Purchase Agreement with Meredith
Purchase and Sale Agreement for sale of Plantation system to ACF
Offer from ACF for Plantation system
Coopers & Lybrand faxes tax calculation to Frost
Meeting of Tucker Haley, Robinson and Gratz and ten-step chart
Meeting of Tucker, Haley, Dowden Oliver, Polk re: Bankruptcy
Oliver notified LMS to be debtor Corporation
Carrollton assigned to Marks
Rescission Agreement
PCS and LMS Merge
Starks lawsuit settled
LMS files for bankruptcy
Straw signs affidavits
Bankruptcy plan confirmed by court after hearing
Second Purchase and Sale agreement for sale of Plantation system to ACF
Loan from CMS to D & L closes
Loan from Fleet to Tucker and Marks
Purchase from Meredith closes
PCS and CMI merge
Sale of Plantation system to ACF closes
Check for $100,000 paid to Arnold Grobmyer & Haley for legal fees
Falcon sale and swap
LMS 1987 LMS 1988 tax returns received by IRS
Two PCS 1987 tax returns received by IRS
Check for $50,000 paid to Arnold Grobmyer & Haley for legal fees
Memorandum of Understanding regarding phantom stock signed
Tucker's 1988 tax return received by IRS
Marks's 1988 tax received by IRS
Marks's 1989 tax receved by IRS

Figure 11

III. STATEMENT OF THE EVIDENCE

A. Cablevision Management, Inc. and Jim Guy Tucker

Jim Guy Tucker is the Governor of Arkansas. According to a resume from 1987, Tucker graduated from Harvard in 1964 and the University of Arkansas Law School in 1968. He was a partner in the law firm of Mitchell, Williams, Selig, Jackson & Tucker, specializing in trial work, corporate matters, and real estate matters. Tucker served in the United States House of Representatives from 1977 to 1979. He was Arkansas Attorney General from 1973 to 1977, and he was the Prosecuting Attorney for the Sixth Judicial District of Arkansas from 1971 to 1973.[1]

Cablevision Management, Inc., (CMI) was incorporated in Arkansas by Jim Guy Tucker on May 13, 1985. The articles of incorporation state that the corporation would "engage in the business of providing management, billing, operational consulting and related services to cable television partnerships and companies, including service as a managing general partner of limited partnerships."[2] The articles further state that CMI would "buy, sell, lease, use, develop, mortgage, improve and otherwise deal in and dispose of all types of personal property in connection with the conduct of the business enterprise."[3] The articles authorized 300 shares of common stock,[4] and 300 shares were issued to Jim Guy Tucker on May 13, 1985.[5]

Tucker was active in the cable television business before May 1985. One of his principal ventures was with a man named Bill Cost. [redacted]

Although this information is not directly relevant to the investigation of events in 1987, it shows similar acts by Tucker that may be admissible pursuant to Federal Rule of Evidence 404(b). This information also provides a background to Tucker's involvement in the cable business.

[redacted]

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

[1] 85-43862

[2] 199-174885

[3] 199-174855

[4] 199-174866

[5] 202-2545

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Cost hired an attorney from the Mitchell Law Firm named Chris Barrier to handle legal matters relating to CCI. Barrier asked Cost whether he would like a partner in the cable business. Cost replied that he would, because he was "dead broke" and needed someone to finance his ventures. Barrier suggested that Cost meet Jim Guy Tucker.

Cost received a telephone call from Tucker, and they arranged a meeting at Tucker's law offices. At that meeting, Tucker and Cost agreed on a 50/50 partnership in the cable business. Tucker told Cost that he would "start drawing up the papers." On August 29, 1983, Cost and Tucker signed a partnership agreement between County Cable, Inc., and Jim Guy Tucker. The new partnership, in which CCI and Tucker each had 50% shares, was named County Cable Limited Partnership (CCLP).[8]

Cost began to build the cable system near Maumelle, and Tucker began to try to raise money. Cost tried to borrow money from the Small Business Administration, but was rejected because of a personal bankruptcy in 1978. Tucker was upset because Cost had not disclosed to Tucker the bankruptcy, but told Cost not to worry about financing. Tucker said that he knew a man in Little Rock named David Hale, who had a Small Business Investment Corporation, and that Hale could possibly lend money to CCLP. Tucker arranged for Cost to meet Hale, and in September 1983, Cost obtained a $50,000 loan from Hale's SBIC, Capital Management Services, Inc. (CMS).

Tucker arranged for other bank loans needed by CCLP. Cost did not study the financing arrangements made by Tucker. He simply trusted Tucker on those matters. For example, Cost related one occasion when Tucker called him to a conference room where several financing contracts were laid out around a large table. Tucker introduced Cost to several lawyers and bankers in the room, and then directed Cost to "start right here," and sign the contracts. Cost signed the documents without understanding them. He emphasized that he believed that he could trust Tucker, who was former Attorney General of Arkansas and a distinguished attorney.

In 1985, Cost began to feel uncomfortable at CCLP. Cost and Tucker had purchased an existing CATV system in Shannon

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[6] 199-513

[7] GJ Exh. 623

[8] 199-4125

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Hills, Arkansas. The manager of this system, Dwight Harlan, continued to work for CCLP after the purchase. Because Harlan was an experienced manager, while Cost worked in construction, Cost sensed that his future role at CCLP would be limited. Cost was also disturbed by some of Tucker's business dealings, which he felt were not honest.

[redacted]

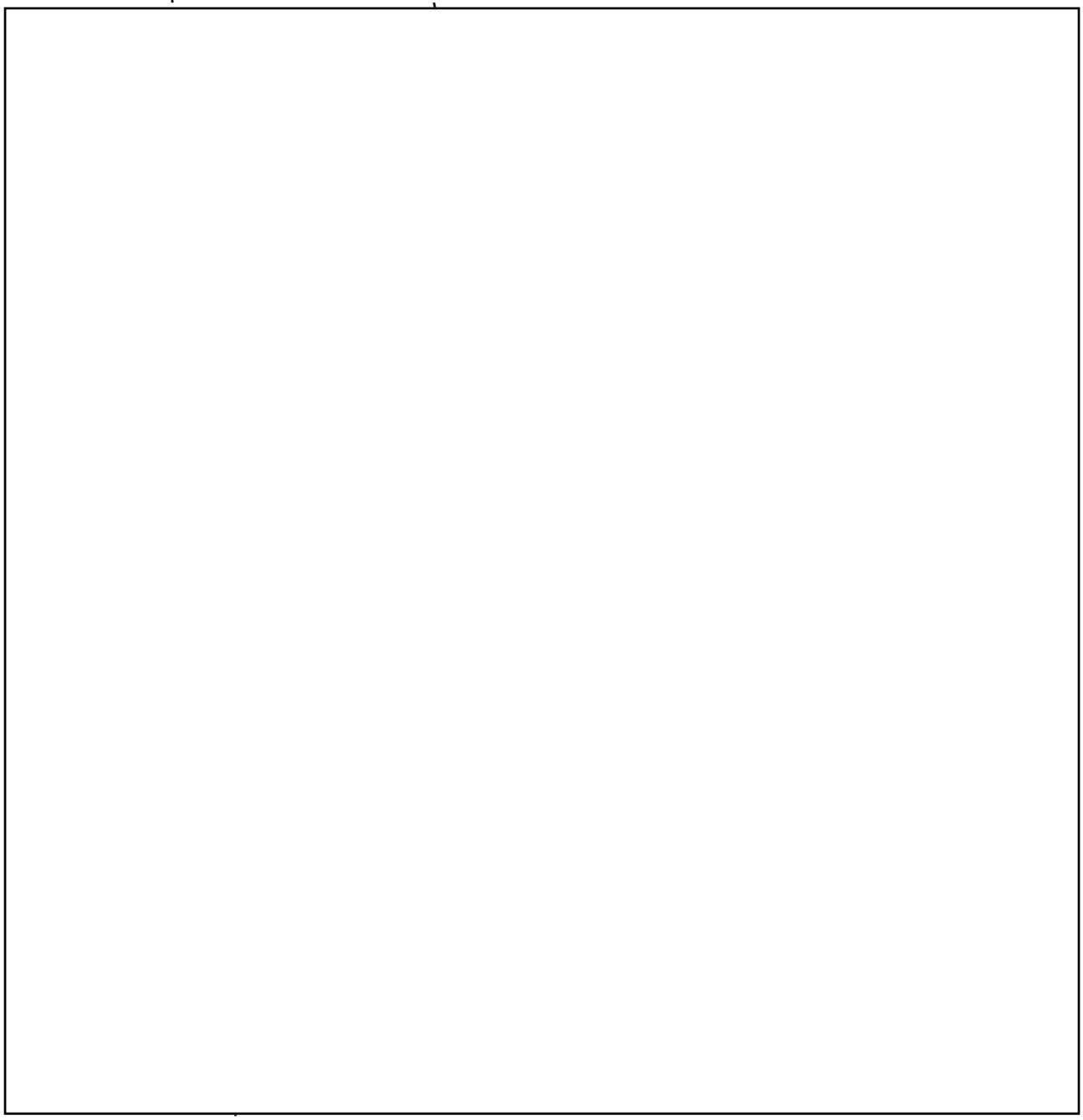
9 [redacted]

10

11

12 [redacted]

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury



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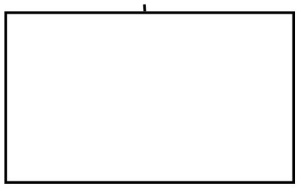

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Cost moved to Louisiana after he left Arkansas. He now lives in Houston, Texas. He has not worked for the last year, because he has had emotional problems. Cost said in an interview that he suffers from post traumatic stress disorder, which is related to child abuse that he suffered. He also has a bipolar disorder for which he takes medication. Cost told agents that he recently learned that he was adopted, and this caused many of his recent problems.

B. Planned Cable Systems Corporation and William J. Marks, Sr.

According to a biography from 1987, William Marks has worked in the cable television industry since 1968. A profile in "CATV Weekly" from August 1976 characterized Marks as "a zealous cableman if there ever was one."[18] Gene Fink of Gamco Industries was quoted as saying, "Wild Bill Marks is a real maverick. He's the type of guy who says and does exactly what he thinks is right, and you can take it or leave it." The 1987 biography says that he graduated from Akron University in 1965, and that he received a law degree from the Thomas Jefferson College of Law in 1980. He and his wife, Donna Marks, lived in Las Colinas, Texas.[19]

[redacted]

To formalize this financing arrangement, Meredith and PCS entered a Secured Loan Agreement on March 21, 1984.[21] This agreement consolidated previous and future lending into three notes: a Principal Note in the amount of $4,378,678.98; an Interest Note for the interest due on the Principal Note; and a Line of Credit Note covering future advances of up to $1,600,000. The Agreement was amended on April 5, 1984, to increase the Line of Credit Note to $1,772,000.[22]

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[18] 199-149050

[19] 85-43858

[20] [redacted]

[21] 269-1868

[22] 253-1331

Also on March 21, 1984, Meredith and PCS entered into a Security Agreement to establish collateral for the secured loans of that date.[23] In the Security Agreement, PCS granted Meredith a continuing security interest in all PCS assets then existing or thereafter acquired. This Security Agreement appears in later transactions that are important to the tax fraud investigation.

On October 10, 1984, Meredith and PCS entered into a Shareholder's Agreement that altered the ownership of PCS.[24] As a result of the agreement, Meredith owned 246 shares of PCS, and Marks owned 54 shares of PCS. Meredith owned 82% of the PCS stock, and Marks owned 18%.

Also on October 10, 1984, Meredith and PCS entered into a Loan Amendment Agreement that amended the March 21 secured loan agreement.[25] The Loan Amendment Agreement provided that the total debt under the notes of March 21 was $7,906,888.48. PCS executed an Income Note for that amount, which represented the aggregate amount owed by PCS to Meredith.[26] Subsequent events relating to this Income Note are critical to the tax fraud investigation.

The Loan Amendment Agreement also provided that the Security Agreement of March 21 applied to the new Income Note. In other words, the October 10 note for $7.9 million continued to be secured by all of the assets of PCS -- i.e., the cable systems owned by the company.

[redacted]

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

[23] 253-1147

[24] 269-1063

[25] 253-1333

[26] 253-1267

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

[redacted]

C. The Meeting of Tucker and Marks

Dwight Harlan was interviewed by agents on December 28, 1994. Harlan explained that he introduced Tucker and Marks in 1986 or 1987. Harlan said that he worked as general manager of CCLP in Mabelvale, Arkansas, from 1984 to 1988. Around 1986, Harlan worked to obtain a cable franchise for CCLP in Southlake, Texas. In 1986 or 1987, Tucker expressed an interest in selling the Southlake franchise.

Before moving to Arkansas, Harlan had worked as construction manager and general manager for Planned Cable Systems Corporation in Trophy Club, Texas. During that time, Harlan met Bill Marks, who was a shareholder of PCS. Harlan kept in touch with Marks after Harlan moved to Arkansas. Marks continued to work with PCS in Texas, and PCS operated cable systems near Southlake.

When Tucker stated that he wanted to sell the Southlake franchise, Harlan recalled that Marks had expressed an interest in purchasing that system. Harlan set up a meeting in Texas between Tucker and Marks in 1986 or 1987.

A "Rescission Agreement" dated November 1987 and signed by Tucker and Marks was produced to OIC by Tucker. It provides the following account of the initial Tucker-Marks meeting: Tucker and Marks met near Dallas on January 13, 1987. Tucker wanted to sell the Southlake system to PCS. Marks explained that Meredith Corporation, which owned 82% of PCS, wanted to sell its interest in PCS. Thus, Marks told Tucker that PCS would not buy Southlake, but that Tucker should consider buying Meredith's interest in PCS.[28]

[redacted]

[27] [redacted]

[28] 199-222039

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D. The Tucker-Meredith Stock Purchase Agreement

Shortly thereafter, on March 1, 1987, Tucker and Meredith entered into a Stock Purchase Agreement.[29] Subject to a price adjustment described below, Meredith agreed to sell Tucker 246 shares of PCS and the Income Note for $7.9 million in exchange for $6 million. The agreement provided, inter alia, that PCS "shall have valid and binding cable television franchise agreements for the cities of Plantation, Florida; [and] Carrollton and Roanoke, Texas."[30] The closing date for the transaction was set for on or before May 8, 1987.

The agreement further provided that "[t]he purchase prices shall be increased by an amount equal to the sum of any funds advanced by seller between the date of this contract and the closing date . . . and used by [PCS] in connection with the construction or operation of a cable television system in the City of Carrollton, Texas."[31] The increase was not to exceed $500,000 plus interest. Straw explained that the purchase price adjustment was included so that Meredith would be reimbursed by Tucker for any monies spent by Meredith on construction at Carrollton between the date of the purchase agreement and the date of the closing.

[redacted]

Straw said that Marks' action in Carrollton put him in a difficult position. He was trying to sell Meredith's interest in the system, and he was thus not in a position to ask his superiors to inject more money into PCS for Carrollton. On the

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[29] 85-44181

[30] 85-44186

[31] 85-44182

[32] [redacted]

[33]

[34] GJ Exh. 588

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[redacted]

Accordingly, two promissory notes were issued. One note evidenced a loan from Meredith to Marks for $500,000, and included a restriction that the proceeds be spent solely in connection with construction of a CATV system in Carrollton.[38] The second note said that PCS promised to pay Marks $500,000.[39]

[redacted]

E. Tucker and Marks: Joint Venture Planning

The evidence shows that contemporaneous with the Stock Purchase Agreement, Tucker and Marks planned to combine their cable television interests into some sort of joint venture. [redacted]

[35] [redacted]

[36] Id.

[37] [redacted]

[38] 269-1899

[39] 269-1902

[40] [redacted]

[41] 672-41; [redacted]

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Tucker and Marks declared in an "Assignment" dated March 1 that "Tucker has entered into the Purchase Agreement in contemplation of Tucker and Marks combining the operation and control of the assets of [PCS] and the assets of CCLP into a joint venture or other entity equally controlled by Marks and Tucker," which venture they referred to as "Newco."[42] On March 6, Tucker and Marks signed an "Agreement" that CMI would be the initial entity that would own and control PCS, and that Marks and Tucker should each initially own 50% of CMI.[43] To reach that 50/50 ownership, the parties agreed that CMI would issue 600 shares of stock to Marks in exchange for his 54 shares of PCS, and that Tucker would also have 600 shares.[44] They also agreed to seek a loan of $19 million, on or before June 1, 1987, that would allow them to pay Tucker's obligation of $6 million to Meredith, and Marks' note to Meredith in the amount of $500,000 -- the "proceeds of which were loaned to PCS by Marks for construction of a cable television system in the City of Carrollton."[45]

F. Tax Concerns in Spring 1987

The evidence shows that in March 1987, Tucker began to seek tax advice concerning the reorganization of PCS and CMI, and the sale of assets belonging to PCS. On March 30, 1987, Tucker wrote a memorandum to Richard Williams, a senior tax partner at the Mitchell Law Firm. Tucker explained his pending purchase of the PCS stock and note from Meredith for $6 million. He stated that "[m]anagement of CMI believes that the assets of PCS have a market value of $11.5 million to $12 million."[46]

Tucker told Williams that management of CMI had two concerns: (1) "They wish to retain sub-chapter S status for CMI; and (2) They wish to avoid, if possible a gain on resale measured by the present book value of the CMI assets rather than measured by the purchase price of the stock." The latter was a concern because the book value, or the adjusted basis, of the assets

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[42] 672-138

[43] 672-161

[44] 672-155

[45] 672-163

[46] 85-44179

purchased from PCS was lower than the $6 million purchase price for the stock and note from Meredith. Thus, the taxable gain on a resale of former PCS assets would be lower if the basis were measured by the price of the stock. Accountants later advised Tucker that because he bought the stock of PCS and not just the cable assets, the basis must be measured by the book value of the assets.

By memorandum dated April 17, 1987, Williams advised Tucker and Marks that based on a Revenue Ruling by the IRS, he believed CMI could maintain its subchapter S status after the reorganization, even though PCS (a C corporation) would be merged into CMI. Williams did not address in his memorandum the issue of how to measure the gain on resale of the CMI/PCS assets. In an interview, Williams said that he thought that problem had been resolved, but he could not recall how.

G. Fund-raising for the Meredith Purchase

To raise money for their new venture, Tucker and Marks engaged Waller Capital Corporation to prepare a Debt Placement Memorandum. In an interview, Richard Patterson, vice president to Waller, stated that in early 1987, he received a phone call from Jim Guy Tucker "out of the blue." Tucker told Patterson about his plan to buy Meredith's interest in PCS. Patterson also recalls that he was told, probably by Tucker, that another Florida cable company wanted to buy the PCS system in Plantation, Florida. Patterson said that he recognized immediately that Tucker had arranged a good deal, because the market value of the PCS systems was several million dollars greater than the $6 million price asked by Meredith. Patterson also met Marks during his work on this project. He understood that Tucker and Marks had an agreement to divide equally their collective cable interests.

Tucker provided Patterson with a document entitled "Management Strategy," which described the cable systems owned by PCS and CCLP.[47] The document described the Arkansas systems owned by CCLP, which were in Beebe, West Pulaski, McAlmont and the southeast Pulaski/Northwest Saline areas. The Management Strategy listed PCS systems in Florida (Plantation) and Texas (Trophy Club, Roanoke, Southlake, and Carrollton). The Southlake system was owned by CCLP at the time, but CMI planned to buy it at the time of the closing of the Meredith sale to Tucker.

Part IV of the Management Strategy provided to Patterson by Tucker was entitled "Asset Sale Opportunities." That part stated: "The Plantation system has a present market value of over $10 million. That market value can be increased to

[47] 287-55

$12 million or more in the next year. At that point, the company should consider the relative value of continuing to hold the Plantation system or selling it to pay off company debt and focus on joint venture opportunities."[48] In separate letter to Steve Hansen dated April 23, 1987, Tucker wrote that "[t]he PCS assets with Southlake will have a value of $13.4 million at the closing (Plantation $9.5; Trophy Club, Roanoke, $2.1; Carrollton $1.; Southlake $.8)."[49]

Based on the Management Strategy and financial statements provided by Tucker, Patterson prepared a two-volume Debt Placement Memorandum. In that document, Patterson emphasized that "PCS is being acquired at a below market price. The value of the Plantation system alone exceeds the price being paid for PCS."[50] The Memorandum concluded that the market value of the PCS assets exceeded the Meredith sale price by about $3.5 million.[51] The Memorandum also included the statement that the market value of the Plantation system was over $10 million and could be increased to $12 million in the next year.[52] Throughout the Debt Placement Memorandum, in both the text and accompanying financial statements, the Carrollton system is identified as one of the PCS cable systems.[53]

We have also obtained from Michael Starks, former business manager of PCS, an "office copy" of an undated Strategic Plan for PCS that was prepared at about this time. In interviews, Starks stated that Bill Marks prepared this document after Marks and Tucker agreed to their joint venture. The Strategic Plan includes the Carrollton system in all listings of the PCS systems.[54] The Plan also recounts that representatives of a competitor in Plantation, Florida, "have often tried to buy Planned Cable."

The Strategic Plan does not state a market value of the PCS/CMI assets. Starks told interviewers, however, that he and Marks were overjoyed when the Tucker/Meredith transaction was finalized, because they knew the fair market value of the systems

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[48] 287-77

[49] 199-145292

[50] 85-43803; 287-316

[51] 85-43801

[52] 85-43854

[53] 85-43801, 43831, 43857

[54] 288-37,39,41,69,74,79,84,105,106,107.

was considerably more than the sale price agreed to by Meredith. In February 1985, Starks had reached a written agreement with Marks in which Marks agreed to convey to Starks one-sixth of Marks' shares in PCS. After Marks learned that Meredith would sell its 82% of the PCS stock to Tucker for $6 million, he told Starks, "you are now a millionaire."

There is evidence that Tucker and Marks adopted the statements in the Debt Placement Memorandum prepared by Waller. On April 23, 1987, Tucker sent a copy of the Debt Placement Memorandum to Diane Kaufman of MONY in New York in an effort to obtain funding for CMI/PCS.[55] The letter shows that a copy was sent to Marks. On April 28, 1987, a vice president of First American Bank in Little Rock wrote to Tucker and returned to him the Debt Placement Memorandum.[56] On that same date, Tucker wrote to Steven Hansen and said that Hansen had been provided with a copy of the Debt Placement Memorandum the previous day.[57] On May 13, 1987, Tucker sent a copy to Elizabeth Munnell, attorney for Fleet National Bank, and explained that Volume I contained a "helpful introduction, use of proceeds, and prose description of the companies and their strategy."[58] Again, Tucker sent a copy of the letter to Marks.

H. Initial Arrangements with Fleet National Bank

In May 1987, Tucker and Marks successfully arranged a loan from Fleet National Bank in Providence, Rhode Island and State Street Bank & Trust (SSB) in Boston. Fleet was the lead lender and the agent for SSB. By letter dated May 4, 1987, Colin Clapton, Senior Vice President of Fleet, stated that Fleet would be willing to commit $8.5 million to CMI.[59] Clapton said that the loan would have to be secured by a first lien on the assets of PCS, Tucker's 50% equity interest in CCLP, personal guaranties of Tucker and Marks, and a $500,000 cash collateral account. As discussed below, the loan was ultimately made to Tucker and Marks personally, rather than to CMI.

On May 13, 1987, Tucker sent a detailed memorandum to Munnell, counsel for Fleet.[60] Tucker explained that

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[55] 287-977

[56] 199-148954

[57] 199-145292

[58] 287-174

[59] 199-90767

[60] 287-162

simultaneous with the closing of the loan from Fleet and the purchase of the PCS stock and note from Meredith, he and Marks would also complete a merger of CMI and PCS. Tucker wrote that the right to purchase Meredith's 82% of the PCS stock would be assigned from Tucker to CMI. Marks would contribute his 18% of PCS stock to CMI in exchange for $200,000 plus shares of CMI. The Income Note for $7.9 million "will be negotiated to Tucker and Marks at the Closing and then subordinated to and assigned to Lender as additional collateral."[61] Tucker also wrote that "we presently expect the [Income Note] to be left in place but subordinated to the Fleet loan and assigned to Fleet as additional collateral."[62]

Tucker explained that some loan proceeds would be used to pay the $500,000 advanced by Meredith for construction at Carrollton. He wrote that "[a]t the time of Tucker's purchase from Meredith, Marks, through PCS, was anxious to begin construction of the Carrollton system. Thus, Meredith loaned Marks $500,000 for the purpose of Marks' lending the $500,000 to PCS for the Carrollton construction."[63]

Tucker and Marks also made efforts to locate money for the $500,000 cash collateral account required by Fleet. As described below, a majority of this money eventually was obtained through a loan from Capital Management Services, Inc., to a company called D&L Telecommunications, Inc. In the May 13 memo to Munnell, however, Tucker wrote that "CMI will also post additional cash collateral of $500,000. Those funds are being arranged now."[64]

We also obtained from Tucker a letter dated May 14, 1987, from Marks to Wayne Spencer of Equitable Bank in Dallas, Texas. The letter stated that "Fleet wants Jim Guy and myself to contribute $500,000 in working capital until such time that we bring in new equity into our company, which is to be done almost immediately after closing the loan."[65] The Marks letter proposed to borrow the $500,000 from Equitable Bank. The letter states further that "PCS has had an offer to sell just our Plantation, Florida system for 9.5 million dollars. So, as you can see, with what we have going, it sure gives one a comfortable feeling about the cable television business." The letter

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[61] 287-164

[62] 287-166

[63] 287-165

[64] 287-170

[65] 199-90750

reflects that a copy was sent to Tucker.

I. The D&L Telecommunications Loan from David Hale and CMS

The Fleet requirement of a $500,000 cash collateral account was eventually funded from two sources. Marks funded $200,000 with money that he received from CMI in exchange for his contribution of 54 shares of PCS to the capital of CMI. The other $300,000 was funded by a loan from Capital Management Services to D&L Telecommunications. That loan has been a focus of our investigation.

In 1987, D&L Telecommunications, Inc., was a Florida corporation in the business of constructing cable television systems. It was owned 50 percent by Donald Smith and 50 percent by William Marks. Smith was the president and controlling shareholder of D&L. In a stockholders agreement dated August 29, 1983, Marks granted Smith all voting rights that Marks had in 10 shares of D&L "for the express purpose of granting to Donald Smith a majority and controlling voting interest in and for all shares of stock" of D&L.[66] On the same date, Marks appointed Smith irrevocably as his proxy with full power to vote 10 shares of D&L stock.[67] This arrangement was reaffirmed in an addendum to the stockholders agreement dated June 27, 1985.[68]

In interviews, David Hale, former president of Capital Management Services, said that Tucker approached him in June 1987 about obtaining a loan from CMS to D&L Telecommunications, Inc. Hale had never heard of D&L, but he had a close relationship with Tucker, and was willing to loan to any company affiliated with Tucker. Tucker told Hale that Fleet National Bank was going to give major financing to a joint venture that Tucker had with Marks, but that Fleet required an additional capital contribution before it would make the deal. Tucker told Hale that Marks was the president of D&L.

Tucker did not tell Hale very much about D&L or the use of the loan proceeds. Tucker did say that he would need the money only for a short period of time. Tucker said that he was going to make a lot of money from the sale of a Florida cable system; Hale recalls a figure of about $10 million.

Hale funded the D&L loan within a few days of Tucker's request. Tucker had not sent Hale any loan documents before the loan was funded. Rather than have the $300,000 wired directly to

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[66] 449-331

[67] 449-304

[68] 449-389

the Fleet escrow account, Tucker arranged for D&L to assume certain outstanding loans from CMS to Tucker's cable company, CMI. Hale had several conversations with Betty Tucker to determine the total amount outstanding, and determined that it was approximately $244,000.

After he obtained this figure, Hale authorized a wire transfer of the difference between $300,000 and $244,000, i.e., $56,000, to Fleet National Bank from Pulaski Bank & Trust on June 5, 1987. Tucker arranged for the CMI loans of $244,000 to be paid off by a separate Fleet loan to CCLP that was obtained on June 10, 1987. Tucker then directed that Fleet send the $244,000 directly to the $500,000 cash collateral account that secured the $8.5 million loan.[69] CMS assumed this amount as part of the loan to D&L, for a total of $300,000.

We have obtained from both the SBA and Tucker a letter dated June 4, 1987, from Tucker to Hale. In that letter, Tucker wrote that "D & L is a construction company engaged primarily in underground cable and electrical utility construction." He wrote that Marks "is a principal owner of D&L and a 50% owner and President of Cablevision Management, Inc. ('CMI')." Tucker further stated that "D&L is beginning business in Arkansas and will be doing extensive work for CMI in underground cable construction, especially in west Pulaski County."[70]

With his letter of June 4, Tucker enclosed financial statements for D&L, and a promissory note for $300,000 from Tucker, Marks, and Betty Tucker to CMS. Marks signed the note as President of D&L. Betty Tucker signed as Secretary of D&L.[71]

On August 5, 1987, Tucker sent to Hale originals of loan documents called a "Size Status Declaration" and an "Assurance of Compliance" by D&L.[72] A copy of a cover letter was sent to William Marks. Hale said that he had given Tucker blank forms and waited for him to return them. Hale stated that parts of the Size Status Declaration were completed by Tucker because Hale had no information about D&L other than its name.[73] Tucker wrote that D&L's address was in care of Cablevision Management, Inc., in Little Rock. William J. Marks signed both

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[69] 85-14675; 83-1713.

[70] E-365;83-1714

[71] E-28,356,1716

[72] E-366;83-1709

[73] E-370

forms as President of D&L.[74]

Hale wrote to the SBA on October 9, 1987, and sent an SBA Form 1031, or "Portfolio Financing Report," concerning the D&L loan.[75] In his cover letter, Hale said that the loan had taken a long time to close because of the speed at which CMI was growing. Hale said in his letter to the SBA that D&L was owned by CMI. In interviews, Hale said that this statement was based on knowledge that he obtained from Tucker. Hale believed that D&L was controlled by Tucker, and he thought of D&L and CMI as the same entity. According to Don Smith, president of D&L, his company was never affiliated with CMI.

The Portfolio Financing Report, which was signed by Hale, stated that the proceeds of the D&L loan would be used for "Working Capital."[76] In interviews, Hale said that working capital could be used for anything but the purchase of permanent assets like real property. Hale also said that the proceeds of a loan for working capital could not be used to secure a loan to a third party. Hale explained that a loan to secure another loan is the equivalent of a loan to a third party, and both types of loans were prohibited by SBA regulations. Hale said that Tucker never told him that the D&L loan would be used to secure a personal loan to Tucker and Marks.

Hale also identified a schedule of loans made by CMS between March 1, 1987 and June 30, 1988, which Hale prepared annually for the SBA.[77] This form reports that William Marks was President, Director, and Shareholder of D&L, and that Betty Tucker was Secretary, Director, and Shareholder of D&L. The form also states that Marks and Betty Tucker each owned 50% of D&L. Hale said in interviews that he always called the loan holder to verify ownership before completing his financing schedule. Hale said that the information about the ownership of D&L came from either Jim Guy or Betty Tucker.

Hale said that his listing of Marks and Betty Tucker as owners does not necessarily mean that they owned the company. Hale may have reported this information to get the D&L loan information past the SBA regulators. Hale did not list Jim Guy Tucker as an owner of D&L, because Tucker had other loans from CMS, and Hale and Tucker were concerned that Tucker may have been near the limit for loans that CMS could make to entities

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[74] E-369,370;83-1710,1712

[75] E-367,368

[76] E-367

[77] E-1706

controlled by a single individual.

[redacted]

We obtained from Tucker three documents relating to Don Smith and the D&L loan. An American Express card receipt for cardmember "Tucker" shows a rental from Hertz Rental Car in Fort Lauderdale, Florida, from August 2 through August 4, 1987.[79] A billing record from the Mitchell Law Firm, where Tucker was a partner in 1987, lists work done for CMI in August 1987. That record reflects the following entry on August 4, 1987: "Conference with Mr. Don Smith re P&L Loan."[80] This "conference" with Don Smith is the day before Tucker sent loan documents to Hale on August 5, 1987.

Finally, Tucker produced a letter dated August 7, 1987, from William J. Marks, Sr., to Don Smith.[81] The letter bears the initials of Tucker's secretary Michelle Forbess, and it reflects a carbon copy to Jim Guy Tucker. Forbess said in an interview that she typed the letter at Tucker's request while Marks was in the office. She explained that the phrase "cc: Jim Guy Tucker" was added later on a white strip of sticker. This was done because the letter was signed before the "cc" was needed. Tucker asked to have a copy after the letter was signed, and instead of retyping the letter and obtaining a new signature, Forbess used the white sticker.

The August 7 letter from Marks to Smith states that "[y]ou and I are the sole shareholders of D & L Telecommunications, Inc." It then says that the letter is "to confirm our agreement as stockholders" of statements contained in four numbered paragraphs. First, Marks and Betty Tucker are

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[78] [redacted]

[79] 199-127005

[80] 199-102858

[81] 83-1708

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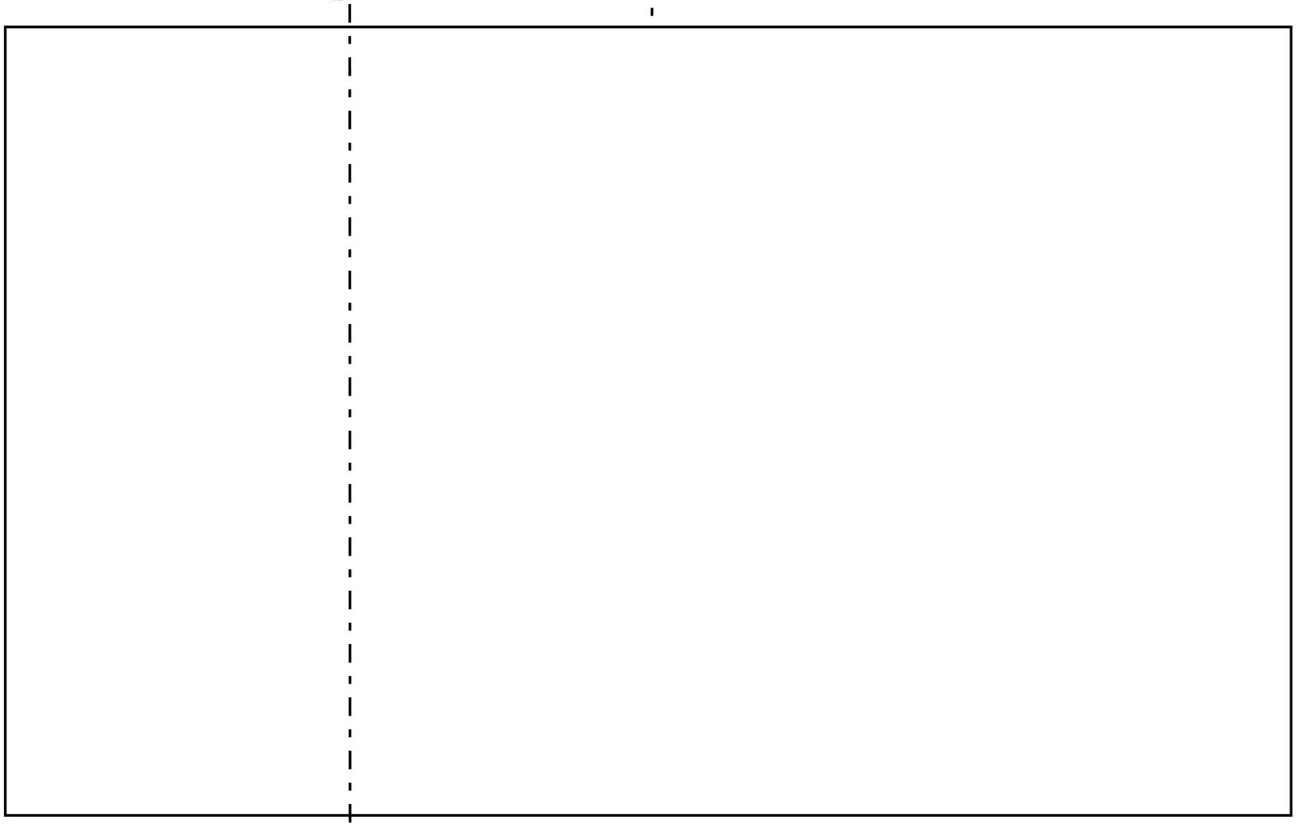
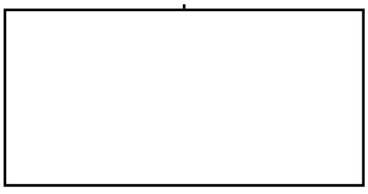
authorized "to have acted and signed as President and Secretary of D&L for the purpose of securing a $300,000 loan from Capital Management Services, Inc." Second, Marks and Tucker will indemnify D&L from any loss on the loan. Third, "D&L will apply for authority to do business in Arkansas and be available for cable construction in Arkansas for CMI as soon as possible." Fourth, "[p]rior to the company's entering into the proposed $800,000 acquisition, you have discussed with me you will give me an opportunity to review the documents and details of the acquisition." The letter appears to be signed by Marks, although attorney Cam Zachry has raised a question whether Marks signed a document relating to D&L.



The D&L loan was repaid on January 5, 1988, immediately after the sale of one of the cable systems that will be discussed below. On that date, Tucker wrote a check from his account at First Commercial Bank to a joint account held by Tucker and Marks at the same bank.[85] Marks wired $150,000 from an account a

82 

83

84

85 444-566

First Republic Bank to the Tucker/Marks account.[86] A check for $300,000 was issued from the Tucker/Marks account to CMS.[87]

[redacted]

We have obtained one other document regarding D&L that may bear on the loan. Attorney Bob Blumenthal of Dallas produced several documents that he received from Tucker's paralegal, Cynthia Wolfe Barnett, in November 1987. The documents came with a cover letter that said it enclosed "all documents relating to the Planned Cable/Cablevision Management Merger."[90] Blumenthal represented Marks at that time.

One of the documents produced by Blumenthal was an unsigned "Memorandum of Understanding and Intentions" between Tucker and Marks dated February 1987. The Memorandum outlined a prospective joint venture of Tucker and Marks. One paragraph stated:

> Marks owns 50% of D&L Telecommunications, Inc. a cable television construction company ("D&L"). Marks will either divert [sic] himself of ownership in D&L, sell one-half of his interest to D&L to Tucker, or sell 100% of his interest in D&L to CMI. Marks and Tucker recognize and acknowledge that D&L . . .[91]

The sentence concerning D&L is not completed. We have found no other evidence that Tucker or CMI planned to acquire an interest in D&L, and neither did acquire such an interest.

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[86] 442-541

[87] 199-74632

[88] 449-400

[89] [redacted]

[90] 893-798

[91] 893-799

J. The Closing on June 10, 1987

June 10, 1987, is an important date in this investigation. Three major transactions closed on that date. First, Tucker and Marks closed their loan from Fleet National Bank and State Street Bank & Trust. Second, Tucker closed his purchase of the 82% of PCS stock and the $7.9 million note from Meredith. Third, a statutory merger of PCS and CMI was effected on that date.

All three transactions were related, and the closing of all of them was consolidated. Fleet National Bank and Tucker produced to OIC closing binders that include all of the documents compiled at the closing.[92] There were two separate loans closed on June 10 -- one for $8.5 million and one for $4.5 million. Only the former is central to this investigation.

Section 2.10 of the loan agreement states that the proceeds of the $8.5 million loan shall be used by Tucker and Marks for five purposes. First, approximately $6 million was to be used to acquire from Meredith 246 shares of PCS and the $7.9 million Income Note. The agreement stated that Tucker had "assigned in part" to Marks his rights under the Stock Purchase Agreement with Meredith. An assignment, dated June 9 and signed by Tucker and Marks, provided that Tucker assigned to Marks his right to purchase $4,603.444.24 of the $7.9 million Income Note, and 96 shares of the PCS stock.[93] Section 2.10 of the agreement further stated that all 246 shares of PCS and the Income Note "shall be contributed" by Tucker and Marks to CMI pursuant to the merger of PCS into CMI, which also took effect on June 10.

Second, approximately $200,000 was to be retained by Marks. Marks agreed to contribute his 18% of PCS (54 shares) to CMI as part of the merger. Fleet had been advised by Tucker's accountants at Frost & Company that if the 82% of PCS stock purchased by Tucker were worth $6 million, then the remaining 18% owned by Marks was worth $1.3 million.[94] In partial recognition of Marks' contribution of his 54 shares in PCS, CMI issued to Marks a subordinated debenture for $1.1 million.[95] The $200,000 in loan proceeds retained by Marks was the balance of his $1.3 million equity contribution to CMI. Marks then contributed this

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[92] 202-2428

[93] 202-2913

[94] 202-3149

[95] 202-3014

$200,000 to the cash collateral account.[96] That sum, together with the $300,000 from the D&L loan, allowed Tucker and Marks to satisfy the $500,000 requirement.

Third, approximately $500,000 was to be reloaned by Tucker and Marks to CMI. This money was to be used to repay the money spent for construction at Carrollton after March 1, 1987. Specifically, the 500,000 was to be used to retire the March 2 note from PCS to Marks, and, in turn, the $500,000 note from Marks to Meredith dated March 1, 1987.

Fourth, approximately $800,000 was to be reloaned to CMI and used to purchase the Southlake cable system from CCLP. Fifth, the balance of the loan proceeds were to be used for working capital of CMI.

The security or collateral for the notes was set forth in Section 2.09 of the loan agreement. The obligations of Tucker and Marks were to be secured by, inter alia, (i) a first priority perfected security interest in all assets of Tucker and Marks used in or related to the operation of the cable systems of CMI and PCS; (ii) a first priority perfected pledge of all shares of CMI, which was wholly owned by Tucker and Marks; and (iii) cash collateral of $500,000. The agreement also provided that any debt owed by Tucker or Marks to CMI, CCLP or any of its affiliates would be subordinate to the debt owed by Tucker and Marks to Fleet.[97]

In a Security Agreement, Tucker and Marks granted to Fleet a security interest in all cable systems owned by CMI and PCS, and all property used in connection with those systems.[98] To perfect the security interests, UCC-1 forms were filed with public offices in Arkansas, Texas, and Florida.[99] The Security Agreement also required Tucker and Marks to deliver all shares of CMI stock to Fleet for the bank to hold as collateral.[100] Tucker and Marks represented that the collateral was free from any other security interest; that no financing statement covering the collateral was on file in any public office; that they would not sell, assign, transfer, or dispose of any shares of CMI pledged as collateral; and that they would keep those shares free

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[96] Cite

[97] 202-2628

[98] 202-2524

[99] 202-2573 to 2596

[100] 202-2525

from any other security interest.[101]

It was a "special condition" of the loan agreement that the merger of CMI and PCS "shall have been consummated in a manner satisfactory to the Lenders," and Tucker and Marks were required to furnish to Fleet satisfactory evidence of the merger.[102] It was also required that Tucker close the purchase of Meredith's interest in PCS. (The closing date had been extended by Meredith and Tucker to June 8, 1987.)[103] Accordingly, numerous documents relating to the Meredith stock purchase and the CMI/PCS merger are included in the loan binders. We also have obtained such documents from Tucker and attorney Bob Blumenthal, who received a letter and "all documents regarding the PCS/CMI merger" from Tucker's paralegal in November 1987.

In a Preincorporation Agreement dated June 4, 1987, Tucker and Marks reached an agreement about what to do after the Fleet loan money was used to purchase the PCS stock and Income Note from Meredith. Tucker and Marks agreed to contribute their respective interests in the all PCS stock and the Income Note to CMI in exchange for 1000 shares of CMI issued to Marks, and 700 shares of CMI issued to Tucker (who already owned 300 shares).[104] The agreement also called for Marks to receive from CMI a "subordinated capital note" for $1.1 million. (The Preincorporation Agreement did not address the various agreements from March 6 that purported to issue Tucker and Marks a total of 600 shares each in CMI, and the CMI stock transfer ledger shows no shares issued on March 6).[105] The agreement provided that "as soon as practicable" after the issuance of CMI stock to Tucker and Marks, they shall cause the merger of PCS into CMI.

To close the Stock Purchase Agreement, Meredith vice president William Straw signed an assignment of Meredith's 246 shares of PCS to Tucker.[106] Meredith also assigned to Tucker and Marks the $7.9 million Income Note and the Security Agreement of March 21, which pledged all PCS assets as security for that Note.[107] Meredith filed UCC-3 termination statements in Texas

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[101] 202-2526

[102] 202-2477

[103] 199-222078

[104] 893-821

[105] 199-173753

[106] 202-2839

[107] 202-2840

and Florida, which state that Meredith no longer claimed a security interest in the PCS assets.[108] In accordance with Tucker's assignment to Marks of part of his rights under the Income Note,[109] Straw signed a "Form of Endorsement" that paid to Tucker $3,303.44 of the principal and to Marks $4,603,444.24 of the principal.[110] (We have found no assignment of 96 shares from Tucker to Marks, as outlined in the June 9 assignment).

An Amendment to the Article of Incorporation of CMI was filed in Arkansas and June 9, 1987.[111] This document increased the total authorized capital stock of CMI from 300 shares of common stock to 10,000 shares. Stock certificates for Tucker's 300 shares and 700 shares of CMI and Marks' 1000 shares of CMI, along with stock assignment certificates signed in blank, were provided to Fleet as collateral.[112]

Articles of Merger of PCS into CMI, signed by Tucker and Marks, were filed on June 10, 1987, with the Secretaries of State of Iowa and Arkansas.[113] These Articles stated that CMI and PCS each had 300 outstanding shares, and that all shares had been voted for the merger. The shareholders and boards of directors of CMI and PCS, respectively, signed documents that consented to a Plan of Merger between CMI and PCS.[114] Tucker and Marks, as the only shareholders of CMI or PCS, signed all of these documents. Fleet received an opinion letter from Richard Williams of the Mitchell Law Firm, which stated that the CMI/PCS merger took effect on June 10, 1987, and that the merger had been "duly authorized by all requisite partnership and corporate action . . . ."[115]

K. Negotiations for Sale of the Plantation System

As suggested by the documents cited above, Tucker and Marks anticipated that they would sell the Plantation cable system for a handsome profit after the merger. According to an

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[108] 253-1353, 253-1354, 199-222165, 199-222166

[109] 202-2913

[110] 202-2842

[111] 202-2988

[112] 202-2545 to 2551

[113] 202-2915, 2921

[114] 202-2926, 2929, 2932, 2935, 2936, 2940

[115] 202-3203

interview of John Chapple, former senior vice president of American Cablesystems of Florida (ACF), his company had been in negotiations with Marks about buying Plantation since 1985. ACF had owned other cable systems in Broward County, Florida, and believed that it would be more efficient if they also owned the PCS system in Plantation. Chapple recalled that Marks never got serious about selling Plantation until Chapple left his position as senior vice president. He was replaced in that post by Thomas Walsh.

In an interview, Walsh said that he first met Marks in July 1986 when Walsh arrived in Florida as vice president and regional manager for ACF. Walsh expressed an interest to Marks about buying Plantation when the two first met, and Walsh said that he pursued the matter aggressively. Walsh said that Marks did not "come to the table" ready to negotiate a sale of Plantation until the summer of 1987.

By letter dated August 24, 1987, from Chapple to Marks, ACF offered to buy the Plantation system from PCS for $15 million.[116] Chapple said that he "didn't have a clue" about the ownership structure of PCS, and that he assumed that Marks was the majority owner. Walsh said that it was not until after the August 24 offer during the course of "due diligence" that he discovered that Marks was not the sole owner of the Plantation system. The offer letter of August 24 was addressed to Marks as President of CMI.

L. Tax Concerns over the Sale of Plantation

In July or August 1987, Tucker began to seek advice about the tax consequences of a sale of one or more of the cable systems that were owned by CMI after the merger with PCS. In an interview, Richard Williams of the Mitchell Law Firm said that in early August, Tucker told him that he might be able to sell some of the cable systems and wanted to know what his tax would be if he sold the assets. Williams told Tucker that he could not provide that information until a tax basis was established for each of the cable systems. Thus, Tucker engaged the accounting firm of Coopers & Lybrand (C&L) in Dallas to determine that information.

Williams said that on August 21, 1987, he met in Dallas with John Furst and Richard Hutchins of C&L, Michael Robinson of Frost & Company, Richard Smith of Gardere & Wynne, and Richard Jans of the Mitchell Law Firm. Williams stated that the purpose of the meeting was to tell C&L to calculate the basis of each system owned by CMI, because Tucker needed this information to get an estimate of his tax liability on a proposed sale.

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[116] 284-2846

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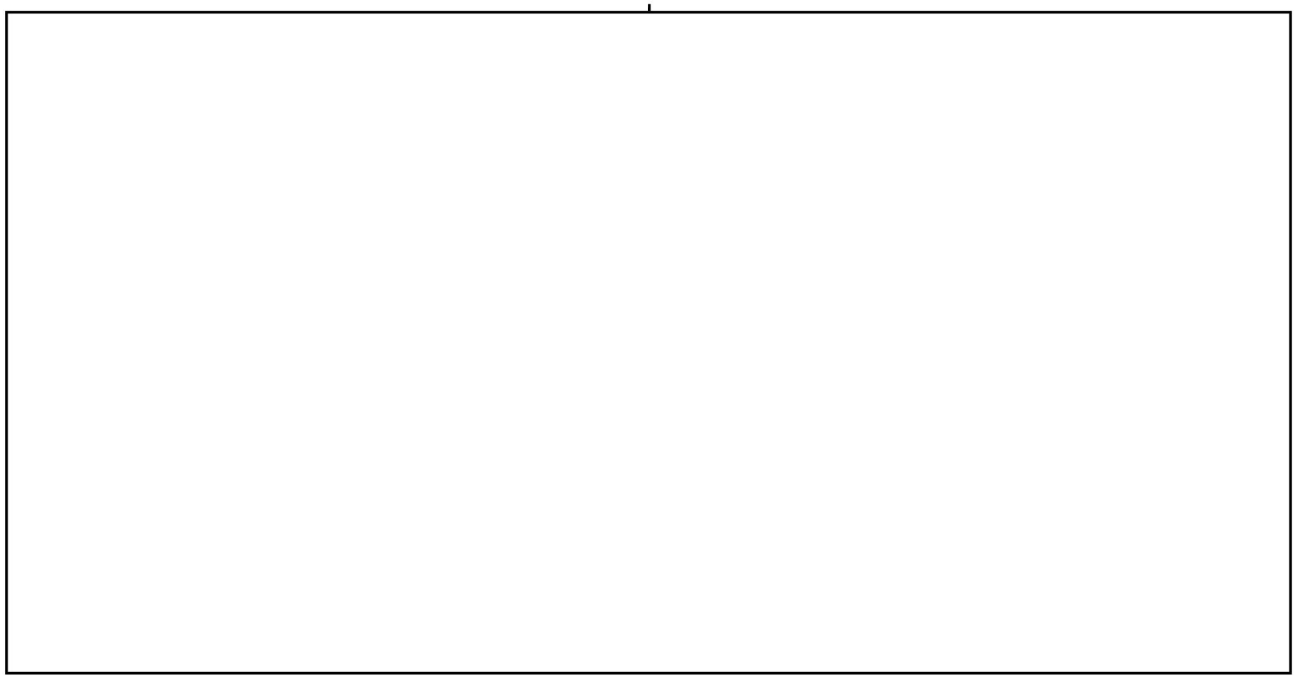
Williams identified a letter that he sent to Smith, Furst, and Hutchins on August 24, 1987, in which he confirmed that "[a]fter we supply you with the current tax information on the Florida and Arkansas properties, Coopers & Lybrand will move forward in the preparation of estimated income tax liability upon the proposed sale of Florida properties and the proposed sale of Arkansas properties."[117]



John Furst was Hutchins' supervisor at C&L. In an interview, he identified a memorandum produced to OIC by C&L, which was addressed to him from Tucker, and dated August 31, 1987.[118] In the memo, Tucker wrote that "[w]e are contemplating a sale of the Plantation, Florida assets to occur on or about October 1, 1987. We urgently need a calculation of the tax consequences. The sale price will be $15 million." Tucker asked, "How much capital gain will we have? At what rate will it be taxed?" He wrote that "[w]e need the tax calculation urgently."

The August 31 memo from Tucker to Furst also stated that a copy of an article on a case called Haley Brothers was attached. The Haley Brothers case was decided by the United States Tax Court in 1986. It held that if an S corporation held a C corporation as a subsidiary for a brief period of time, then

[117] 445-97

[118] 445-128

the S corporation could not maintain its sub-S status.[119] The Haley Brothers decision distinguished, however, an earlier revenue ruling from the IRS that said an S corporation could maintain its status if a C corporation was held by the S corporation only momentarily before a merger and liquidation. Furst could not recall the Haley Brothers decision or any advice given by C&L to Tucker on this issue.

The corporate tax issue was also reflected in notes taken by Richard Hutchins during the engagement. Hutchins' notes from the August 21 meeting, where he wrote "1374 built-in gain problem because most of the appreciated assets in the Sub-S are from a Sub C corporation." Hutchins interpreted this to mean that the client had raised a question whether gain on the sale of one of the cable systems owned by CMI (an S corp.) would be subject to double taxation under Section 1374 of the Internal Revenue Code, because the assets had been owned by PCS (a C corp.) that was merged into CMI.

Additional notes that Hutchins made on September 8, 1987, state "Planned Cable was bought as a C so Service will view portion of that gain as built in gain, hence taxed at corp and individual rates."[120] Immediately thereafter, Hutchins wrote, "Q - Where S Corp in effect prior to '86 Act acquires C Corp assets, does this cause built in gain?" The Haley Brothers case is cited in the margin. Hutchins did not recall doing work on this issue or providing any conclusion to the client. He is not sure whether his notes of September 8 reflect a conversation with a representative of the client, or with his superior, John Furst.

Although Hutchins could not recall giving advice on the corporate tax issue, the law appears to be clear that gain on the sale of PCS assets would have been subject to double taxation at the corporate and individual levels. Under the law applicable at the time, if an asset held by a C corporation was transferred to an S corporation through a merger and then sold, the gain on the sale of the asset was taxed at the corporate level, even though the seller of the asset was an S corporation. IRC § 1374. In other words, the answer to the question posed by Hutchins' notes -- Does the transfer of PCS assets to CMI cause a built in gain or capital gain that will be taxed at the corporate level? -- is yes.

Hutchins identified a facsimile dated October 9, 1987, from Hutchins to Mike Robinson of Frost & Company in Little

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[119] 87 T.C. 498 (1986)

[120] 445-105

Rock.[121] This facsimile transmitted to Robinson handwritten work papers that showed C&L's computation of the taxable income resulting from a sale of the Plantation system for $15 million. The workpapers were prepared by Amir Khanzadeh of C&L on September 9, 1987, and adopted by Hutchins as C&L's final calculation. They showed a "net book value" or adjusted basis of $1.75 million, and a gain from the sale of at least $13.2 million. The papers indicated that the seller of Plantation would have to pay tax of over $4 million on the sale.[122]

Hutchins later sent a facsimile to Tucker on November 18, 1987, that corrected the calculations based on new information received from Meredith by C&L.[123] The November 18 calculations showed that the basis of the Plantation system was about $1.26 million; the gain on a sale for $15 million would be $13.74 million. The tax owing, based on the rates listed in the October 9 facsimile, would be over $4.1 million.

[redacted] In a letter to John Furst of C&L dated October 26, 1987, Tucker appeared to acknowledge that he had received the October 9 calculations. He wrote Furst that "if any work produce has been created, I would like a copy. So far all I have is a two page handwritten preliminary draft of the basis allocation within the system."[126]

We have obtained other evidence showing that Tucker and Marks were very concerned during the summer or fall of 1987 about their tax liability on the Plantation sale. Marc Nathanson, Chairman, President, and CEO of Falcon Cable TV was interviewed by agents on November 8, 1994. Nathanson explained that he was involved in negotiations in 1987 to purchase cable systems in Arkansas from Tucker and Marks. Nathanson described Tucker and

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[121] 85-14694

[122] 85-14695

[123] 445-278

[124] [redacted]

[125]

[126] 445-133

Marks as "obsessed with taxes," although he said that it was not unusual for sellers of cable systems to be preoccupied with large tax liabilities that could result from sales.

Nathanson identified a memorandum dated September 3, 1987, that he wrote to Hillary Clinton, who was Falcon's local counsel in Arkansas, and M. Goldman, another attorney for Falcon, regarding "Acquisition - Jim Guy Tucker's Cable TV Properties."[127] The memorandum described a dinner meeting that Nathanson had with Tucker and Marks about the Arkansas systems. Nathanson could not recall the conversation at the dinner, but he had no doubt that the memorandum reflects accurately the conversation at the meeting.

Nathanson's memorandum of September 3, 1987, includes the following discussion:

> Tucker and Marks are in negotiations on another complicated deal to sell their system in Plantation, Florida to American Cablevision. They have all kinds of tax problems because Plantation is in a corporation and, according to them, of the $15 million purchase price, they are making a profit of $13 million. They do not want to pay a tax of $4.0 million. They are thinking of some type of three-way swap with the Arkansas properties (value $14.0 million) that we are interested in.[128]

Nathanson recalled that Tucker and Marks, but mostly Marks, were preoccupied with their tax problems resulting from selling their systems. He did not recall which of the two men raised the topic of the Florida sale discussed in his memorandum. Nathanson, who had known Marks prior to these dealings, said that Marks called him often with different proposals to structure a sale to Falcon in a way that would minimize the tax liability for Tucker and Marks.

David Hale told interviewers that not long after he funded the CMS loan to D&L, Tucker told him that he already had someone who wanted to buy the Florida cable property. Tucker told Hale that attorney John Haley was giving Tucker tax advice.

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[127] 502-1104

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[128]

Tucker did not want to pay taxes to the federal government on the sale, and Haley was working to structure the transaction so that Tucker would have to pay as few taxes as possible. According to the draft report of interview, Tucker told Hale that he was going to do whatever it took not to pay the taxes. Tucker said he would make $10 million on the sale. Tucker said that he could make a lot of money, but there was a legal problem, and Tucker wondered if it was worth the chance. Tucker told Hale that John Haley was working on this issue.

M. The Signed Agreement to Sell Plantation

The negotiations with American Cablevision of Florida resulted in a signed Purchase and Sale Agreement for the Plantation system dated September 25, 1987. ACF produced to OIC a draft Agreement of Purchase and Sale from September 15, 1987, and a signed agreement from September 25. The unsigned draft reflected a sale of the Plantation system from CMI to ACF for $13,000,000, and an additional $2 million in non-competition payments to Tucker and Marks.[129]

An Agreement of Purchase and Sale was signed on September 25, 1987.[130] In that agreement, CMI and Sattech, Inc., as sellers, agreed to convey the Plantation cable system to ACF for $12.75 million. The agreement was signed by Marks as president of Sattech and CMI, and by Thomas Walsh for ACF. Sattech, Inc., was an Ohio corporation owned 50% by Marks and 50% by Don Smith. The agreement set a closing date of no later than January 19, 1988.

In addition to the purchase price in the September 25 agreement, ACF agreed to pay to Marks and Tucker, jointly, $2 million as consideration for a non-competition agreement with Marks and Tucker. Tucker and Marks both signed the agreement individually for purposes of the non-competition provisions. A separate Non-Competition Agreement was formed on September 25, 1987, between Tucker, Marks and ACF. In exchange for agreements by Tucker and Marks not to compete in Florida, ACF agreed to pay $500,000 each to Tucker and Marks in January 1988, and $500,000 each to Tucker and Marks on January 2, 1989.[131] Tucker and Marks signed the non-competition agreement.

N. The Starks Dispute

Sometime between June 10 and September 1987, a dispute

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[129] 284-227

[130] 284-131

[131] 284-131, 284-134, 284-165

arose between Marks and a former employee named Michael Starks. Starks had worked for several years with PCS as its business manager. He was the principal employee of Marks during the period when Meredith controlled PCS. As noted, in February 1985, Starks had reached a written agreement with Marks in which Marks agreed to convey to Starks one-sixth of Marks' shares in PCS.[132]

In interviews with OIC, Starks said that after Tucker and Meredith reached their purchase agreement in March 1987, he began to think about leaving PCS. Before the June closing, he approached Marks and said that he wanted to liquidate his share of PCS under the written agreement. Marks responded by offering $750,000, and the two shook hands on that agreement.

On August 18, 1987, Starks wrote to Marks, and thanked him for "allowing me to continue as an employee of PCS/CMI . . . at least until we've had a chance to work out the stock purchase."[133] Marks responded by letter dated September 2, 1987, and said that "[s]ince August 21, you have not been an employee of Cablevision Management, Inc. ("CMI") and you are not an employee at this time."[134]

Starks told interviewers that Marks began to renege on their agreement for a liquidation price of $750,000. Starks says Marks told him that if the assets of PCS, a C corporation, were liquidated and distributed to shareholders, the proceeds would be taxed twice. Thus, Marks argued, the corporate taxes would have to be paid before Starks would receive his $750,000. Marks also told Starks that he could not stay as an employee of CMI, because Tucker did not believe that Starks would fit in.

There is evidence that Tucker was upset about the Marks-Starks stock agreement because he was not notified of it before the Meredith stock purchase and the PCS/CMI merger. We have obtained from Tucker a letter dated September 15, 1987, in which Tucker wrote to Marks and demanded that the merger of PCS and CMI be rescinded.[135] Tucker asserted that neither Marks nor PCS had disclosed the purported stock purchase agreement between Marks, PCS, and Starks before the June 1987 closing. Tucker said that CMI undertook to merge with PCS based on the understanding that PCS had only two shareholders. Tucker complained that "[h]aving Starks as a shareholder of CMI is totally unacceptable

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[132] 893-95

[133] 893-387

[134] 288-305

[135] 893-714

to me," and that Starks' demand raised serious problems concerning "representations to banks that there are no other stockholders in CMI and that there are no adverse claims to the stock or ownership of CMI or its assets."[136]

Tucker told Marks in the September 15 letter that "[i]n view of the fact that you cannot resolve the matter as you had expected, I believe it is critical for CMI to extricate itself from the merger, Starks' claims, and Starks' disputes with you."[137] He wrote that "[o]ur goal should be to get everyone back to pre-merger status so that Starks can have his rights (if any) determined without jeopardizing our ability to operate, borrow funds, and continue in our ordinary course of business."[138]

By this time, Starks had retained attorney Michael McClelland of Dallas to represent him in the dispute with Marks. On September 17, 1987, McClelland had a telephone conversation with Tucker. In interviews with OIC, McClelland says that he has a good recollection of the conversation, and he produced contemporaneous notes of his conversation.[139] According to McClelland, Tucker said that he first saw the Starks-Marks agreement two weeks after the June closing.

Tucker told McClelland that because PCS was a C corporation, income from the sale of PCS assets could be subject to corporate tax and individual tax. Tucker argued, therefore, that the value of Starks' claim was greatly diminished. McClelland wrote to Tucker on September 18, and said that Starks had not yet chosen to involve CMI in his dispute with Marks.[140]

On September 25, 1987, Starks sent Marks a "WRITTEN REQUEST FOR SHARES UNDER AGREEMENT FOR STOCK DISTRIBUTION."[141] Starks made a formal demand for one-sixth of Marks' 1000 shares

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[136] 893-715

[137] 893-715

[138] 893-716

[139] Tucker produced to OIC a document entitled "Telephone Conversation with Mike McClelland and Jim Guy Tucker, September 17, 1987," which appears to be a transcript of a tape of the telephone call described by McClelland. (We have been unable to authenticate the transcript, however, and no witness from the Mitchell Law Firm has said that Tucker tape recorded telephone calls.) 199-175616.

[140] 288-271

[141] 288-734

in CMI. A copy of the request was sent to Tucker. On October 5, 1987, Marks' attorney, Bruce Hallett, wrote to McClelland saying that Marks did not plan to convey to Starks any shares of CMI.

O. The Plan is Hatched: A Ten Step Chart

On October 12, 1987, there was a significant meeting at the offices of Frost & Company among Michael Gratz and Mike Robinson of Frost & Company, Jim Guy Tucker, and John Haley. This meeting took place one week after Marks rejected the Starks request for CMI shares, and three days after Hutchins of C&L faxed to Robinson the calculation that there would be over $13 million in gain on a sale of the Plantation system.

Gratz was the lead account at Frost who handled Tucker's account. Frost and Company produced to OIC documents that Gratz says were made or obtained by him at the October 12 meeting. One document is a "ten step chart" that Haley brought to the meeting.[142] The chart is handwritten. The principal author has not yet been identified, but the circumstances suggest strongly that it is Haley. Tucker's handwriting appears a few places on the chart. The ten step chart appears to outline the following scenario for PCS and CMI:

(1) a contract for rescission of the merger between PCS and CMI;

(2) the reinstatement of the PCS articles of incorporation in Iowa;

(3) transfer of the PCS assets to the Iowa corporation, which the chart identifies as owned 82% by Tucker;

(4) a merger of PCS into Sattech, an Ohio corporation that is listed on the chart as owned 100% by Marks;

(5) liquidation of Sattech through a Chapter 11 bankruptcy in Texas, including (a) a sale to CMI of the Texas cable systems in exchange for assumption of $1 million in debt and a $300,000 note, and (b) distribution of the remaining assets to "debt holder (JGT)";

(6) execution of a joint venture between Tucker and Marks to operate systems 50/50 after (1) bank debt (presumably Fleet) is repaid, and (2) Marks gets a fee of $1.2 million;

(7) Tucker sells the Plantation system to "New Par," apparently to take advantage of § 1071 of the Internal Revenue Code, which allows a seller to defer tax on gain from the sale of

[142] 85-14700

a cable system to a qualified minority, or Tucker swaps the Plantation system to "New Par" for Arkansas cable systems;

(8) Meanwhile, "New Par" has purchased "Ark," presumably the Arkansas cable systems owned by another Tucker entity, CCLP, and transferred them to Tucker;

(9) "New Par" sells the Plantation system, possibly "thru Fleet note purchase," and

(10) Marks and Tucker "do new agreement to clean up the mess."

Gratz made notes within 24 hours of the October 12 meeting, and these notes were produced to OIC. In an interview on July 20, 1994, Gratz said that Haley explained the ten step chart at the meeting. Gratz's notes reflect that he was told at the meeting about the September 25 purchase agreement with ACF for the Plantation system, and the dispute between Starks and Marks.[143] His notes also list a net book value for the Plantation system (1,538,000) that is almost identical to the number sent by Hutchins of C&L in the October 9 fax to Robinson (1,538,196).[144]

In the interview with OIC, Gratz said that the meeting on October 12, 1987, was one of several discussions about the tax impact on PCS of the sale of the Plantation system. Gratz said that there came to be a difference of opinion about the tax treatment of the sale of the Plantation system. He and Robinson believed that the sale of the Plantation system should be reported on the tax return of PCS, and that the gain should be computed using the basis provided by Coopers & Lybrand.

Gratz also said in the interview that one could not transfer the assets of PCS to an S corporation to avoid taxation because there was a recapture provision that would cause the S corporation to owe tax on a sale of the assets. He said that Frost concluded that PCS (a C corporation) would have to report the gain on the sale of the Plantation system. Again, the basis for the system would be that used by Meredith and calculated by C&L.

According to Gratz, Haley proposed to use a bankruptcy action to effect certain tax consequences. As Gratz understood the plan on October 12, the Texas systems would be transferred out of PCS prior to any bankruptcy. The Plantation system would be sold by PCS, and the Fleet loan would be repaid. With the

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[143] 85-14702 to 14703

[144] 85-14703

Fleet loan repaid, there would be no cash remaining in PCS to pay the tax due on the gain from the sale of the Plantation system. Haley suggested that under Section 108 of the Internal Revenue Code, there exists a "technical bankruptcy" if liabilities of the corporation exceed its assets. Thus, Haley proposed to use Section 108 to avoid paying tax on the gain from the Plantation sale.

Gratz said that the plan was "complicated," and that Frost did not prepare the PCS tax returns because of a difference of opinion about the use of Section 108 in these circumstances. Gratz said that Robinson told Tucker that Frost would not prepare such a return. He said that Frost believed there was a reportable gain from the sale of the Plantation system, and they did not see how PCS did not owe tax. On the one hand, Gratz said that Frost was unwilling to sign off on the concept and did not want to prepare a return reporting the transaction, because Frost felt that it might have some exposure if the transaction were ever audited. On the other hand, after Frost decided not to prepare a return, it did not go back to form an opinion on the correctness of Haley's recommendation.

Gratz said that the use of Section 108 to effect a reduction in tax was Haley's idea, and that Tucker relied on Haley as his tax attorney. Haley alone explained the chart, and Gratz believed that Tucker did not understand Haley's proposal. Marks was not involved in any of these discussions.

[redacted]

145 [redacted]

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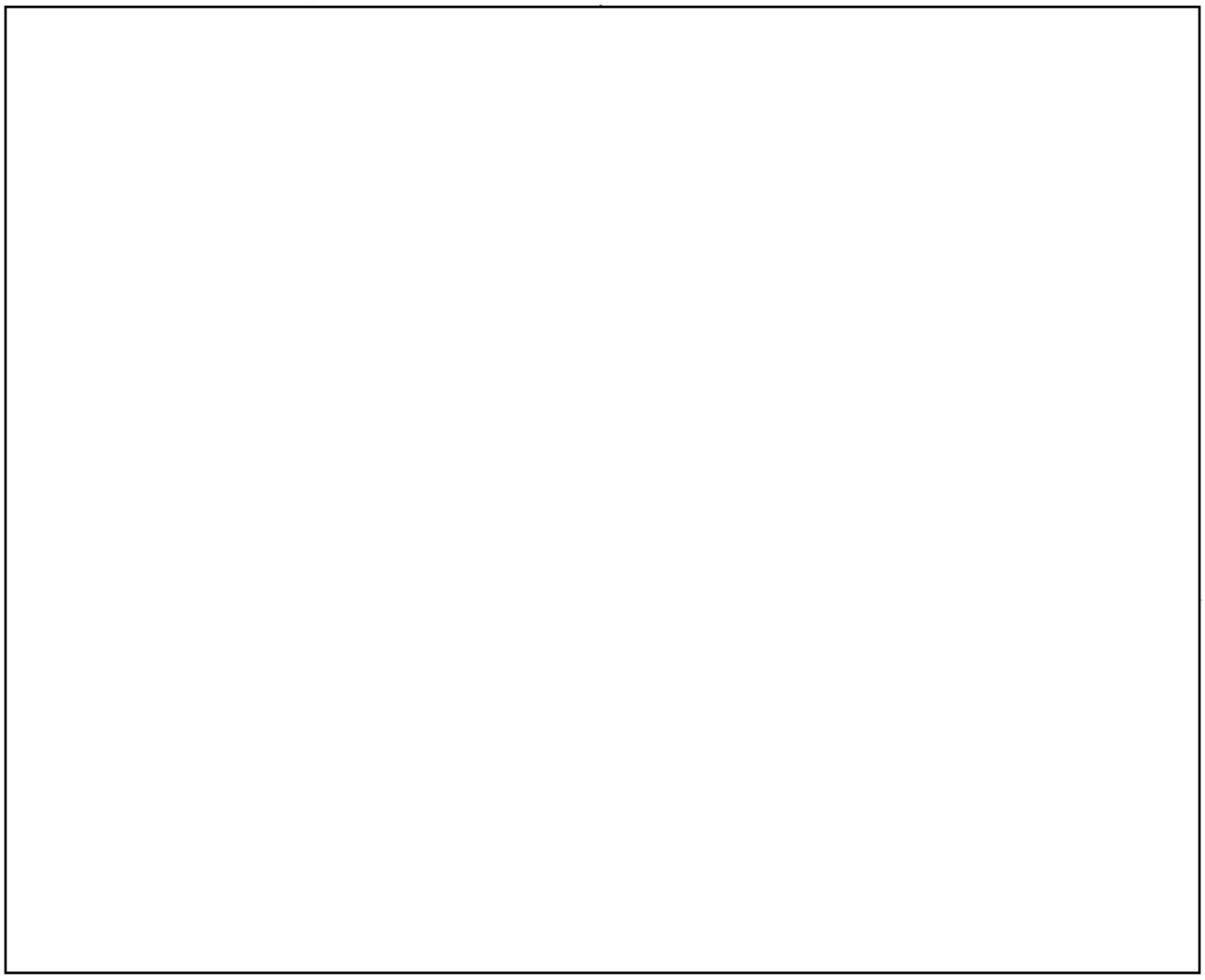
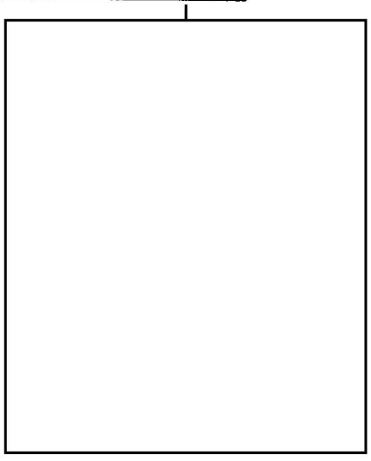


Mike Robinson, who was the senior person at Frost on the Tucker account, was also interviewed about the October 12 meeting. On June 27, 1994, he told agents that he did not remember the meeting or the transactions reflected on the chart.



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In a later interview on November 4, 1994, Robinson said that Haley had told him in 1987 that there was going to be a demerger of PCS and another company because a disgruntled PCS employee claimed to be due a payment or assets. This created a cloud over the title to PCS stock or underlying assets. According to Haley, the demerger and bankruptcy were the speediest way of removing this cloud over the title. Haley said that the lender needed clean title to the assets, and that a demerger and bankruptcy would take care of these problems. Robinson said that Frost was never asked for advice on the demerger or a bankruptcy.

Robinson did say that he asked Haley in 1987 about the tax consequences of the demerger and the bankruptcy. Robinson called Tucker and told him that he did not understand the tax impact of these steps. Robinson told Tucker that he knew of no precedent for the actions described by Haley. Tucker told Robinson that he had no ownership interest in LMS, and that he was a creditor. Robinson told Tucker that he was not certain of the tax consequences of the bankruptcy action, and that Frost would not prepare tax returns reflecting the demerger and bankruptcy described by Haley.

[redacted]

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P. November and December 1987: Rescission and Bankruptcy

(1) Summary

The events of November and December 1987 are critical to this investigation. The following four paragraphs are a summary of those events, followed by a detailed discussion of the evidence.

Tucker and Marks agreed to rescind the merger of PCS and CMI. In the rescission, the 246 shares of PCS stock that were sold to Tucker by Meredith were transferred to Donna Marks, the wife of William Marks. The $7.9 million Income Note from PCS to Meredith, which was assigned to Tucker and Marks in June 1987 and contributed to CMI in the merger, was recreated through the rescission. At some point, the note was negotiated to Tucker in full by William Straw of Meredith. PCS, acting through Marks as president, disclaimed any ownership interest in the Carrollton system and assigned the system to Marks individually.

After these events, PCS merged into a Texas shelf corporation called Landowners Management Systems, Inc. (LMS). LMS had earlier that month issued 82% of its shares to Mikado Leasing Company, Inc., a car leasing company controlled by John Haley, and 18% of its shares to Marks. Donna Marks was declared president of Mikado Leasing Company. On November 30, 1987, LMS filed a Chapter 11 bankruptcy petition in Texas. Tucker appeared as a secured creditor of LMS, based on the $7.9 million Income Note that he had purchased from Meredith. CMI appeared as a secured creditor based on $1.15 million in "advances" that it had provided to PCS and LMS.

To discharge these debts, LMS proposed to transfer the Plantation system to Tucker individually, and the Texas systems to CMI, an S corporation. The plan of reorganization was confirmed by the bankruptcy court. Tucker and Marks reached a superseding purchase and sale agreement with American Cablesystems of Florida to reflect that Tucker was now one of the sellers of the Plantation system.

One tax effect of the bankruptcy was to increase the basis of the Plantation system from the $1.26 million calculated by Coopers & Lybrand to about $7.3 million. The gain was thus reduced from over $13 million to $4.47 million. Tucker reported the higher basis and the lower gain on his 1988 tax return. The change occurred because Tucker's basis in the Plantation system after the bankruptcy included the market value of the Income Note

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that he exchanged for the asset ($6 million), plus related expenses. The new basis supplanted the $1.26 million basis in the assets prior to the bankruptcy. LMS did not pay tax on gain from the sale of the Plantation system through the bankruptcy, and the IRS has advised that this was appropriate because the system was sold in bankruptcy. According to preliminary calculations by the IRS, the tax liability on the Plantation sale was reduced by over $2.5 million.

(2) November 1 through 6: Studying

On November 1 through 3, 1987, billing records from the Mitchell Law Firm show that someone worked to "draft rescission agreement."[169] Also on November 3, time was spent to "study tax consequences of rescission," and to do "legal research regarding cancellation of indebtedness under IRC 108." These entries were posted for the matter captioned "Mike Starks." On November 5, Mitchell records show "study tax issues of sale" on the matter of "Plantation (Sale)."[170] On November 6, Mitchell records show "study rescission issues" on the Mike Starks matter.

(3) November 8: The first bankruptcy meeting

On Sunday, November 8, 1987, Mitchell records show "conference with Messrs. Haley, Polk, Dowden, and Oliver re rescission and Chapter 11." Van Oliver is an attorney with Andrews & Kurth in Dallas, Texas, who represented Landowners Management Systems, Inc., in the Chapter 11 bankruptcy filed in November 1987. James Dowden is a bankruptcy attorney with John Haley's law firm in Little Rock. Joe Polk is a tax attorney with Haley's firm.

Dowden was interviewed and told agents that he recalled attending a weekend meeting at Haley's law firm regarding a bankruptcy. He said that Tucker, Haley, Polk, and Oliver attended. Dowden could recall only that he was asked to do research concerning the procedures for an expedited bankruptcy action. He said that he did not recall anything about a

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[169] 199-122058. Tucker produced to OIC select billing records from the Mitchell Law Firm, including bills to CMI from November 1987. These bills show descriptions of work done on particular days, but they do not show the name of the attorney or staff member who performed the services. Based on interviews of attorneys at the firm, we believe that Tucker is the attorney who did virtually all of the work for CMI, and that he billed his company for his own work. The firm has refused, based on Tucker's assertion of attorney-client privilege, to produce underlying documents that show the name of attorneys who performed the work.

[170] 199-122047

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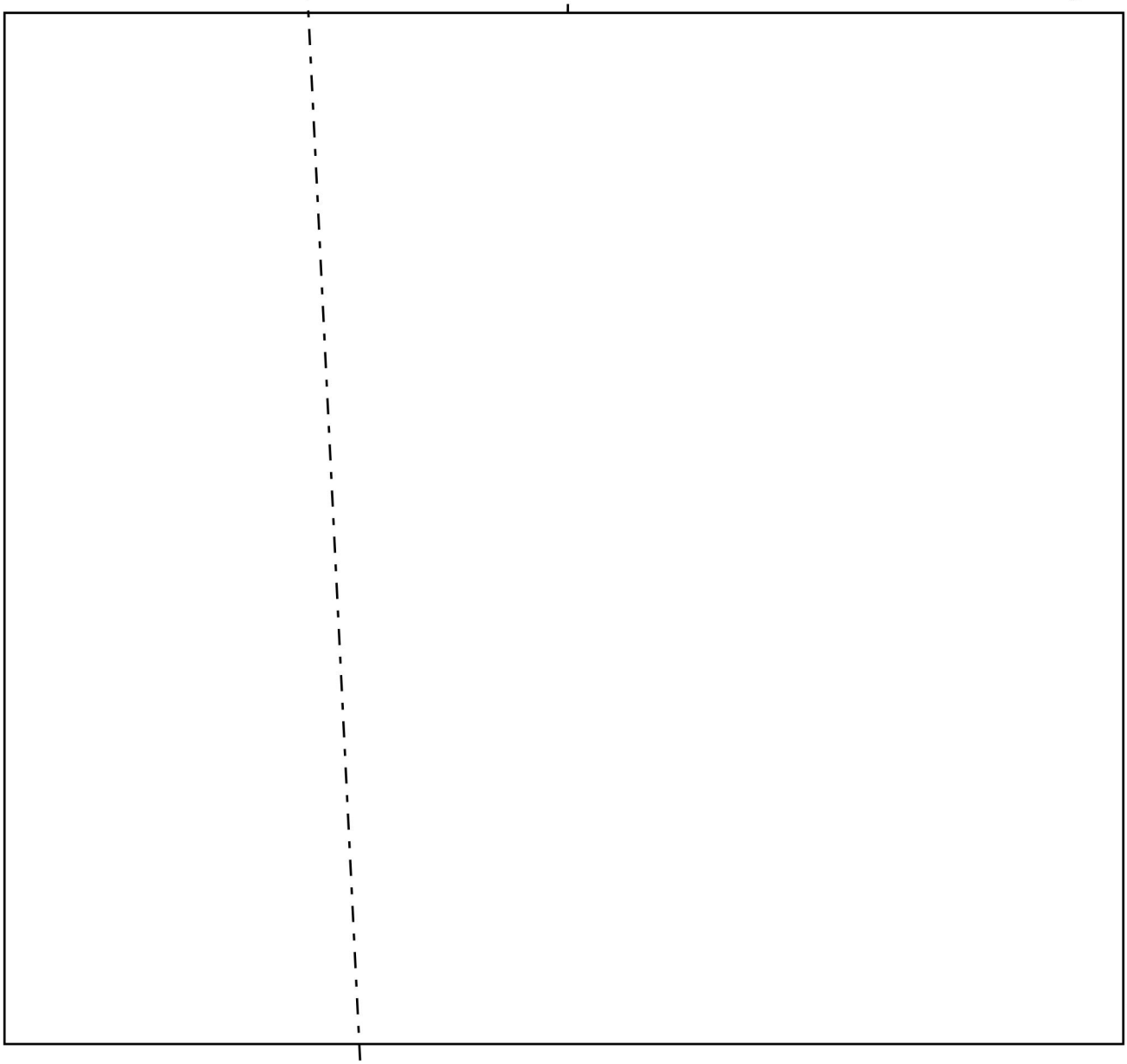
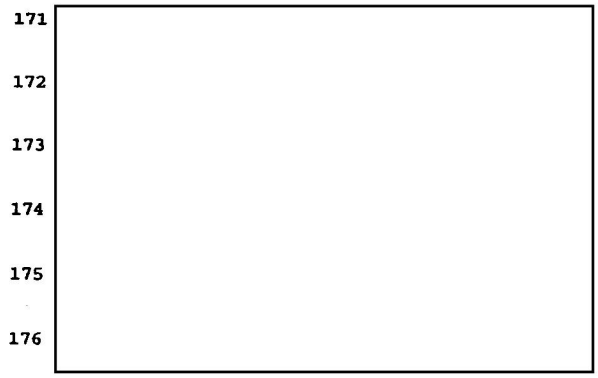
rescission of a merger, or about the reasons for the bankruptcy.





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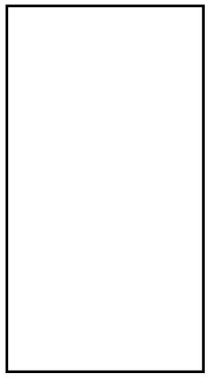
The following day, Haley faxed to Oliver a chart that shows an early version of the proposed plan of rescission and the



bankruptcy. Oliver says that he did not understand the transactions, and that he spoke with Haley to get an explanation. Oliver took contemporaneous notes on Haley's chart. His notes show the following comment about the bankruptcy:

> 2 objectives:
>
> Basis to Tucker of Plantation assets
>
> I. (1) Price paid Meredith $ 6 million
> (2) $1 million of advances from Fleet to
>
> II. Limit Starks claim against Marks to what Marks started out 1/6 of 18% = 3%

(4) November 9: The selection of LMS

On November 9, 1987, the day after the Little Rock meeting, Jim Dowden of Haley's law firm sent a letter to Oliver. In the letter, Dowden wrote, "Attached hereto please find notes from a conference Haley had this morning with Don Windle indicating that the name of the debtor corporation will not be Neighborhood Cable Systems, but rather Landowners Management Systems, Inc."[183] The attached notes say, "Telephone conference with Don Windle - he relayed the following information regarding Texas corporation: Carrollton Corporation - Landowners Management System, Inc."[184] After some general background on the corporation, the notes said, "Don't think there will be any problems, have a record book, seal, certificates, standard corporate kit, no minutes have ever been done, standard Texas bylaws, . . . Just a standard shelf corporation, can probably make it do whatever you need." (emphasis added).[185]

[redacted] Oliver identified two documents from his law firm's production that refer to "NCS, Inc.," apparently Neighborhood Cable Systems, as the client in this matter. Oliver identified his own handwritten notes on this matter that say "NCS, Inc. - Chapter 11," followed by names of Tucker, Marks, Starks, CMI, and other related parties.[186] He also identified a client intake sheet produced to OIC by Andrews & Kurth, dated November 10,

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[183] 253-195

[184] 253-197

[185] 253-198

[186] 253-4

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

1987, which identifies "NCS, Inc. a Texas corporation," as a new client in a Chapter 11 bankruptcy matter.[187]

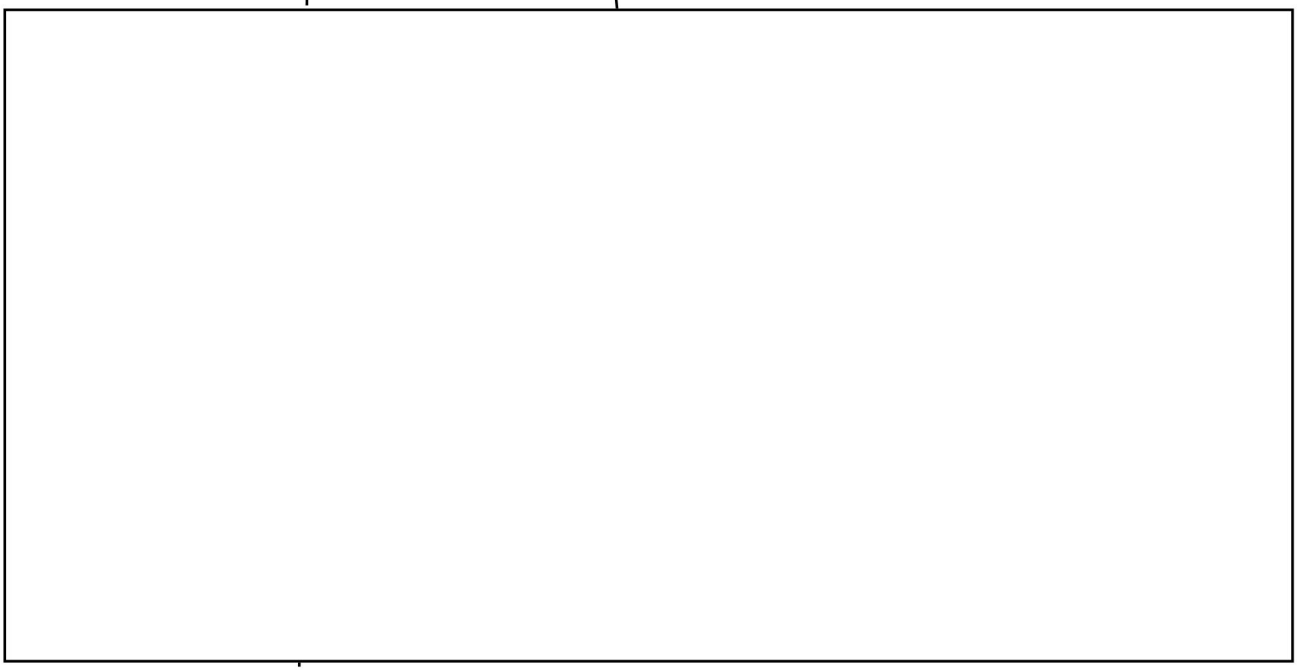
[redacted]

In response to Haley's request for a shelf corporation,

[redacted]

187 253-10

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury



(5) November 11-12: Accounting matters

On November 11, 1987, the Mitchell billing records on the Starks matter show "study appraisal for rescission," "draft affidavits, re voiding merger," "telephone conference with Mr. Haley, re status," and "conference with Mr. Gratz, re basis." Mitchell billing records on the "General" matter show "telephone conference with Messrs. Marks, et al. re cash flow status." We have obtained from Tucker a facsimile dated November 10 from a PCS employee to Tucker, which details the accounts payable for PCS at that time.[199]

On November 12, 1987, the Mitchell billing records on the Starks matter show "draft memorandum to Mr. Gratz on basis of CCLP and Plantation." We obtained from Frost and Company a memorandum of that date from Tucker to Gratz and Joe Polk of Haley's firm, regarding "JGT basis in debenture purchased from Meredith."[200] In that memo, Tucker wrote that the debenture he purchased from Meredith had a value of approximately $8.877 million ($7.9 million in principal, plus interest). Tucker said that "the Plantation assets and 5,000 subscribers could be transferred in bankruptcy to satisfy approximately $8.9 million

197

198

199 199-143785

200 85-23857

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of debt." Tucker's memo went on to calculate his basis in the debenture, his taxable gain on a sale of the Plantation system for $12.70 million, and the total tax payable on the gain ($1.152 million).[201]

(6) November 12: Draft Plan and Disclosure Statement

Also on November 12, 1987, Van Oliver sent to Haley a draft Plan of Reorganization and Disclosure Statement for the LMS bankruptcy. He wrote that he would like to sit down with Haley, Dowden and Tucker to go over the drafts.[202]

[redacted]

The draft disclosure statement was similar to the final disclosure statement filed in the bankruptcy court. LMS was identified as a company that had recently merged with PCS, and which had assets in the cable television business.[204] The draft listed Tucker as the only secured creditor, based on the $7.9 million Income Note that he purchased from Meredith. The draft said that CMI had an unsecured claim of $1.8 million, and that there were general unsecured trade creditors with claims totalling about $500,000. The draft said that the creditors also included "Mr. William Marks and Mr. Lance Allworth, Jr. who respectively own 18% and 82% of the outstanding common stock of

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[201] We obtained from Bob Blumenthal, an attorney who represented Marks in the Starks litigation, a letter from Tucker to Blumenthal dated November 12, 1987. Tucker sent Blumenthal a copy of the $1.1 million debenture issued to Marks in June 1987 in partial exchange for his contribution of PCS shares to CMI. Tucker wrote in pen on the letter that "[t]his debenture will be consumed by the recreation of the old debenture in the rescission between Bill and me."

We obtained from Tucker a memo dated November 12 from Tucker to Mike Gratz of Frost and Steve Feldman, Marks' accountant. The memo said, "I have asked Mike Gratz to prepare a tax return for PCSC for the one month it would not have been a part of the consolidated return for Meredith. If in fact the merger of PCS and CMI are void, this return is now past due." Marks and Haley are listed as copied on the memorandum.

[202] 253-167

[203] [redacted]

[204] 253-171

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LMS."[205] Recall that PCS was owned prior to June 1987 by Marks and Meredith, and that on June 10, Tucker closed his agreement to purchase 82% of the stock from Meredith.

[redacted]

(7) November 13: Draft Schedules and Management Agreement

On November 13, 1987, Mitchell billing records on the "Plantation (Sale) matter show "telephone conference with Mr. Mike Gratz, re PCSC tax return and Florida basis." Van Oliver's billing records show calls with Dowden and Polk regarding status.

We obtained from Andrews & Kurth a letter dated November 13 from Dowden to Tucker, Oliver, Feldman, Marks, and William J. Marks, Jr. (Marks' son).[206] The letter says that Dowden has enclosed "very rough initial draft of the schedules and statement of affairs in the proposed Chapter 11 filing" for LMS. Dowden identified the signature on the letter as that of his secretary, who signed for him. Dowden says that he has no independent recollection of the letter or the drafts. His letter says that he has "attempted to compile information from notes of our meeting last weekend."[207] [redacted]

Dowden's letter of November 13 also says, "enclosed herewith please find John Haley's draft of the Management Agreement by which CMI is operating the systems for PCS and now, LMS."[208] A one-page "Management Agreement" is attached.[209] That draft document says, "[t]his agreement is entered into as of

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[205] 253-175

[206] 253-163

[207] 253-163

[208] 253-164

[209] 253-165

June 10, 1987," and sets forth a brief text of a management agreement between CMI and PCS. The draft disclosure statement sent by Oliver to Haley on November 12 had discussed such a management agreement: "Contemporaneous with the merger of PCS into LMS, LMS entered into a management agreement with CMI pursuant to which CMI has managed and operated LMS's cable television systems . . . ."[210] The draft left blank space for inclusion of the "principal terms and provisions of that agreement." The final disclosure statement filed on November 30 states that CMI is a creditor of LMS based on funds advanced pursuant to a management agreement between CMI and LMS.[211]

(8) November 13: Carrollton Assignment to Marks

We obtained from Tucker a significant document regarding the Carrollton cable system that is also dated November 13, 1987. A "Bill of Sale and Assignment" signed by Marks as president of PCS, says that PCS conveys to Marks the Carrollton cable system. The document states that PCS "acknowledges that it has held bare legal title to the Carrollton CATV assets for the use and benefit of Marks, Marks having provided all funds for its construction and development. Any amounts so advanced by Marks are acknowledged to be for this purpose, and not to be construed as advances which would otherwise constitute an account payable."[212]

(9) November 13: LMS and Mikado Leasing Company

We obtained from Tucker the book of stock certificates for LMS. Those records reflect that on November 13, 1987, 820 shares (82%) of LMS were issued to Mikado Leasing Co., and 180 shares (18%) of LMS were issued to William Marks, Sr.[213] We have not identified the handwriting on the record book.

Mikado Leasing Company, Inc., was incorporated in Arkansas in 1971 by Jack Young.[214] The registered agent for the company was changed on August 15, 1984, from Young to John Haley.[215] Haley signed Mikado Leasing's 1987 federal corporate tax return in September 1988, and listed its principal business

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[210] 253-175

[211] BG-143

[212] 199-126332

[213] 199-193268 to 193269

[214] 448-09

[215] 448-12

activity as leasing automobiles.[216] Haley was listed a president of the company on corporation franchise tax reports filed with the State of Arkansas from 1973 to 1987.[217] A certificate of dissolution for Mikado Leasing was filed with the Arkansas Secretary of State on April 14, 1988. The certificate was signed by John Haley as president and secretary.[218]

(10) November 15-16: More discussions

On November 15 and 16, 1987, Mitchell billing records show telephone conferences with Dowden, Oliver, and Haley, respectively, concerning the bankruptcy. Another record shows a telephone conference with Gratz of Frost regarding "basis in debenture." There is another entry reading "draft management agreement for CMI on remaining PCS assets." Oliver's billing records for November 16 show calls with Tucker, Haley and Dowden regarding the disclosure statement, statement of affairs, and plan of reorganization.

(11) November 17-19: Rescission of the PCS/CMI merger

We have gathered substantial evidence from November 17 through 19 concerning rescission of the merger between CMI and PCS. We obtained from Frost & Company a draft "Rescission Agreement" dated November 17, 1987.[219] No employee of Frost has yet told us the source of the document. Mitchell billing records for November 18 on the "Plantation (Sale)" matter show "attend conference at Mr. Haley's office re rescission." Another record for November 19 says "conference with Mr. Marks, re rescission." Most important, we obtained from Tucker a document entitled "Rescission Agreement," which is signed by Tucker and Marks. The document is dated November 1987, but no specific day is listed.[220]

The signed Rescission Agreement is central to this case. It begins with a recitation of the dispute between Marks and Tucker arising from the claim for PCS/CMI stock by Michael Starks. The agreement then states that "the parties desire to resolve the differences and disputes between them and restore the relative rights and liabilities that existed between the parties prior to the Merger so that the parties may conduct their

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[216] IRS-ML#01-3

[217] 413-68 to 413-89

[218] 448-13 to 14

[219] 85-6115

[220] 199-222032

business and allow time for the resolution of the dispute with Starks without further jeopardy or injury to Tucker or CMI."[221] (emphasis added).

The Rescission Agreement detailed Tucker's view of the effect of Starks' claim on Tucker and CMI. In sum, he believed that Starks and/or Marks intentionally misrepresented and omitted disclosure of Starks' claim until after the PCS/CMI merger. Thus, Tucker claimed that the PCS/CMI merger was "void at the election of Tucker or CMI and Tucker and CMI are entitled to a reformation of the agreements between Tucker, CMI, PCS, and Marks so that Tucker, and CMI and the business operations of Tucker and CMI will not be further adversely affected by Starks' claims."[222] Tucker's view was that the rescission should be "designed to return Tucker, Marks, PCS, and CMI to the status and rights that existed when Tucker contracted to purchase the PCS Note and stock owned by Meredith on March 1, 1987, and prior to any further agreement between Tucker, Marks, CMI, and PCS."[223] (emphasis added). The Agreement noted that the October 10, 1984 Shareholders Agreement between Meredith and Marks prohibited Marks from transferring any shares of PCS to a third party.[224]

The Agreement stated that "[t]he parties agree that the Merger of CMI and PCS is and should be void" under provisions of Arkansas and federal law concerning fraud, "and that the Merger is and should be void, subject to the terms and provisions of this Agreement."[225] The Agreement went on to say that "[i]n the review of the Articles of Merger, Tucker, Marks, PCS and CMI have discovered and agree that only 300 shares of the 2,000 shares of CMI outstanding were voted for the merger and, therefore, the merger having less than 2/3rds of all outstanding CMI stock voted in its favor was never lawfully effected."[226] Richard Williams of the Mitchell Law Firm opined in June 1987 that the merger was properly effected in accordance with state and federal law.[227] In an interview, Williams said that he was never advised of any flaw in the merger or a rescission of the merger, although he volunteered that he has made mistakes before, and the law has

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[221] 199-222033

[222] 199-222046

[223] 199-222047

[224] 199-222049

[225] 199-222047

[226] 199-222047

[227] 202-3200

equitable remedies for mistakes.

The Agreement declared void all agreements among Tucker, CMI, and Marks made on and after the date of the March 1, 1987 Stock Purchase Agreement between Tucker and Meredith.[228] Assets of PCS and CMI were "returned": The Southlake system was declared property of CMI; the Trophy Club, Roanoke, Las Brisas, and Plantation systems were said to be assets of PCS; and the Carrollton system was declared "the property of and an asset of Marks."[229]

The most important part of the Agreement concerns the 82% of stock in PCS and the $7.9 million Income Note from PCS, which were purchased by Tucker in June 1987 and contributed to CMI in the PCS/CMI merger. The Agreement provided that "Marks owns the 18% of the stock of PCS which he owned prior to the June 10, 1987 merger that [sic] Donna Marks owns 82% of the stock of PCS as her separate property. Donna Marks is the beneficiary of the Marks-Meredith Shareholders Agreement . . . and successor to all Meredith's rights therein." (emphasis added).[230] A separate section of the Agreement was titled "Transfer of Title to the 82% Stock of PCS Purchased from Meredith." The text stated, "The 246 shares of PCS stock purchased from Meredith shall become the separate property of Donna Marks." (emphasis added).[231]

The Agreement also declared that "Tucker owns all of the PCS Note," and that "Marks has no claim on or interest therein." Further, "the PCS Note is secured by all the assets of PCS and that $6,000,000 of the principal of the proceeds of the PCS Original Loan plus interest thereon is attributable to the PCS Note purchase."[232] There was no mention in the Agreement of the "Form of Endorsement" signed by William Straw of Meredith in June 1987,[233] which allocated the Income Note among Tucker or Marks.

The Rescission Agreement includes a section entitled "Existence of Lien on PCS Assets." There, the parties agreed that "all assets of PCS . . . existing immediately prior to the Merger were subject to a lien in favor of Meredith Corporation

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[228] 199-222049

[229] 199-222051

[230] 199-222052

[231] 199-222053

[232] 199-222052

[233] 202-2842

securing the payment of the PCS Note dated October 10, 1984 payable to Meredith . . . ."[234] Copies of the $7.9 million Income Note, and the Security Agreement dated March 21, 1984 (between Meredith and PCS) were attached as exhibits. The Agreement also stated that "copies of UCC 1's filed in Florida and Texas creating a lien on the PCS Assets are attached hereto as Exhibit 8."[235] Ironically, the documents attached are UCC-3 financing statements that terminated Meredith's security interest in PCS assets at the time of the sale from Meredith to Tucker.[236]

The pending bankruptcy of LMS was discussed briefly in the Rescission Agreement. It said that "Marks and Donna Marks shall cause the merger of PCS into LMSI and the transfer of all rights to the name 'Planned Cable Systems' to CMI."[237] In a separate section entitled "Inadequacy of PCS' Cash Flow to Serve PCS Debt," the Agreement stated that "[n]either the PCS assets existing on June 10, 1987 or those existing as of the date of this Agreement are adequate or sufficient to service the PCS Note or the debt acquired by Tucker, and/or CMI to acquire the PCS Note or the obligations of the various trade creditors related to the operation of the PCS Assets, or the CMI Note."[238] There was no mention in the Agreement of the executed agreement with ACF for sale of the Plantation system for $12.75 million (plus $2 million in non-compete income).

The Draft Rescission Agreement dated November 17 has a more detailed discussion of the bankruptcy, including a section entitled "Bankruptcy of PCS."[239] That section says PCS, Tucker, CMI, and Marks had agreed that Marks and Donna Marks would cause the merger of PCS into LMS; LMS would file a bankruptcy plan of reorganization providing, inter alia that: (1) LMS shall transfer the Plantation system to Tucker in exchange for release of all claims and security interests under the $7.9 million Income Note; (2) LMS shall transfer the Texas cable systems to CMI in exchange for release for all claims of CMI against LMS. The Draft stated that if the Plan of Reorganization were not approved by December 31, 1987, then the Rescission Agreement would be null and void,

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[234] 199-222048

[235] 199-222048

[236] 199-222165, 199-222166

[237] 199-222053

[238] 199-222053

[239] 85-6136

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and the parties would return to their present positions.[240]

There were several exhibits attached to the signed Rescission Agreement. In an affidavit dated November 20, 1987, and signed by Tucker, he stated that the PCS/CMI merger was void due to Marks' failure to disclose the Starks claim for shares of PCS.[241] In an affidavit dated November 17, 1987, and signed by Marks, he stated that the PCS/CMI merger was void due to a flaw in the number of outstanding shares of CMI that were voted for the merger.[242] This affidavit was filed with the Secretary of State of Iowa.

There are two other important affidavits attached to the Rescission Agreement obtained from Tucker. Both are signed by William Straw, former vice president of Meredith, and dated December 15, 1987.

The first affidavit signed by Straw says that at the time of the execution of the stock purchase agreement between Meredith and Tucker, "it was my opinion that the stock in PCS being sold under the Contract had no value or only nominal value, that the consideration to be paid by Tucker was attributable under the Contract to the value of the secured Promissory Note only."[243]

240 85-6139

241 199-222168

242 199-222169

243 199-222176

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The second Straw affidavit concerns the Carrollton cable system. It states that in December 1986 through February 1987, Marks proposed that PCS acquire a franchise for Carrollton and being construction of a cable TV system. "Financial responsibility for the Carrollton System was not approved by the Board of Planned Cable Systems Corporation ("PCSC") at any time prior to June 10, 1987, and I am not aware of what happened to it after that date." Finally, "[a]s far as I was aware, prior to June 10, 1987, the Carrollton System was funded by loans from William J. Marks, Sr. All assets and liabilities of the system as far as I know were the responsibility of William J. Marks, Sr."[247]

[redacted]

247 199-222174

248 [redacted]

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(12) November 20: PCS/LMS merger process begins

We obtained from Andrews & Kurth and from Tucker a document dated November 20 and entitled "Minutes of Special Joint Meeting of Shareholders and Board of Director of Planned Cable Systems Corporation."[252] This document is signed by Marks and Donna Marks. The minutes report that the shareholder and directors authorized the merger of PCS into LMS.

We obtained from Andrews & Kurth a copy of a corporate resolution of LMS dated November 20, 1987. This document is signed by William and Donna Marks as shareholders and directors of LMS. The resolution states that Marks is authorized to prepare and execute documents necessary to complete a Chapter 11 bankruptcy reorganization.[253] At this point, PCS and LMS were still separate entities.

Van Oliver's billing records show that on November 20, 1987, he had telephone calls with Tucker and Gratz of Frost & Company regarding financial information and revisions to the draft Plan of Reorganization and Disclosure Statement. Mitchell billing records for the Starks matter show "telephone conference with Mr. Van Oliver, re status of plan."

(13) November 21-24: More discussions re: bankruptcy

Mitchell billing records for the Starks matter on November 21, 1987, show "conference with Mr. Marks, re plan of reorganization; conference with Messrs. Marks and Haley, re plan of reorganization; telephone conference with Mr. Feldman; telephone conference with Mr. Gratz." Those records for November 22 show "conference with Mr. Gratz; study valuations; study plan of reorganization; telephone conference with Mr. Oliver." Mitchell records of November 23 show "travel to Texas, conference with attorney and return trip to Little Rock." For November 24, those records reflect "attend conference with counsel for PCS, Van Oliver and Mr. Marks in Dallas; telephone conference with Messrs. Haley and Oliver; telephone conference with Mr. Marks; telephone conference with Mr. Haley's office."

(14) November 24: PCS/LMS merger

[252] 1[illegible]Marks and Donna Marks signed a document dated November 24, 1987, in which they agreed to a merger between PCS and LMS.[253] [illegible]ame date, Marks and Donna Marks signed a "General Conveyance, Assignment, and Transfer" from PCS to LMS.[254] [illegible]ocument includes two interesting typographical errors that may reflect the earlier change in the name of the

[255] 253-2106

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proposed debtor from Neighborhood Cable Systems, Inc. to LMS. One line of the General Conveyance refers to the "merger of PCS and NCC," and another mentions "subrogation of NCC."[256]

On November 24, 1987, the Secretary of State of Iowa issued a Certificate of Good Standing for PCS to attorney Steve Zumbach of Des Moines, Iowa.[257] Zumbach is mentioned in Mitchell billing records as one who was contacted about the rescission of the PCS/CMI merger. The Marks affidavit concerning the flaw in the merger was filed with the Secretary of State in Iowa.

(15) November 25-28: Final revisions for the bankruptcy papers

[redacted]

256 253-2106, 2107

257 199-173692

258 [redacted]

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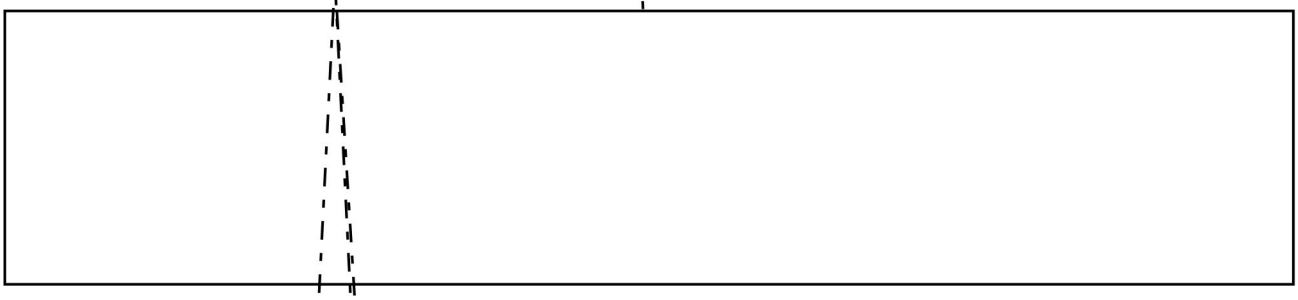
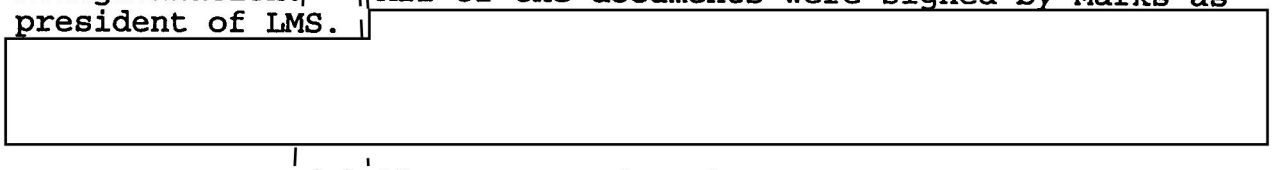
FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury



(16) November 30: The bankruptcy filing

On November 30, 1987, Oliver filed with the bankruptcy court in the Northern District of Texas an Original Petition Under Chapter 11,[264] a Statement of Financial Affairs,[265] a Disclosure Statement,[266] and a Debtor's Plan of Reorganization.[267] All of the documents were signed by Marks as president of LMS.



(a) The Reasons for the Bankruptcy

The Disclosure Statement said that LMS proposed the Plan of Reorganization "after substantial negotiations with J.G. Tucker, its primary secured creditor; with CMI, the present manager of LMS's principal assets and its largest unsecured creditor; and with other parties in interest . . . ."[269] In a discussion of "Reasons for Chapter 11 Filing," the statement cited "substantial, constant, and ever increasing capital and cashflow needs in order to continue the development and growth of their system and fund operating losses . . . ." It continued that "the economic uncertainties associated with the October 19 stock market crash, and the history of company losses, the

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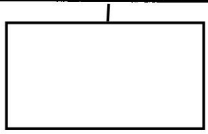
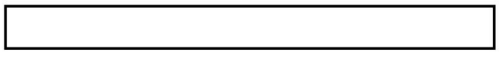
263 

264 BG 283

265 BG-254

266 BG-138

267 BG-102

268 

269 BG-139

Company's highly leveraged position, and insolvency and management's strong belief that the value of the Systems will be irreparably harmed by prolonged proceedings preclude any other approach."[270]

The Statement said that "[i]n its negotiations with Mr. Tucker, LMS sought to allay his fears concerning an improper foreclosure of his liens against the assets of the Florida and Texas Systems, particularly in having them subject to a possible fraudulent transfer action in the event that LMS either were to file voluntarily a Chapter 11 petition after such a foreclosure or were to have an involuntarily [sic] bankruptcy case filed against it within the next year. Accordingly, LMS has determined that, under this Plan, it shall assign to Mr. Tucker the Florida System and related assets free and clear of all liens . . . ." (emphasis added).[271]

(b) The Starks claim

The Starks claim against Marks was discussed only briefly in Section 8.02 on page 15 of the Disclosure Statement. In a section entitled "Previous Failed Merger," the document explained that unbeknownst to Meredith, CMI, and PCS, Starks asserted an interest in one-sixth of Marks' stock ownership in PCS. The Disclosure Statement said that Starks had instituted a law suit against Marks, and that Marks was "defending and denying vigorously the relief requested therein."[272] The Starks claim was not listed as a reason for the filing of the bankruptcy petition.

Attorney Michael McClelland of Dallas represented Starks in his litigation with Marks. In interviews with OIC, McClelland said that he met with Haley on November 30, 1987, concerning the Starks claim. During a lunch at the Texas club, for which McClelland has a dated receipt,[273] Haley asked McClelland how much it would cost to settle the Starks suit. McClelland said "not a penny less than $600,000," and Haley replied, "done." Haley also asked for an agreement that if Tucker and Marks were to sell the Plantation system, Starks would not make a further claim against Marks, Tucker, or CMI. Haley and McClelland agreed that Starks would be entitled to one-sixth of any sale price for Plantation over $14.5 million.

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[270] BG-142

[271] BG-140

[272] BG-152

[273] 288-592

On December 2, 1987, McClelland wrote to Haley and Blumenthal (Marks' attorney) to submit drafts of documents "to formalize the binding agreements reached November 30" by Starks, Marks, Tucker, CMI, and PCS.[274] On December 4, 1987, Haley replied that he would "prefer that PCS not be a debtor under this Settlement Agreement because of some of the plans I have for it."[275] After that change and others were made to the draft, a final settlement agreement was signed by Starks, McClelland, Tucker, Marks, Blumenthal, and Haley on December 15 and 17, 1987. Marks signed a certification of authority for the settlement as president of CMI, which was dated December 15, 1987.

McClelland says that he was never notified before the settlement of the rescission of the PCS/CMI merger, the merger of PCS to LMS, or the bankruptcy of LMS. Nor did Haley or the others ever tell McClelland that a bankruptcy was even in the offing. The first that McClelland learned about these events was during the OIC investigation. McClelland told OIC that if he had known of these events, he would have considered them significant to his litigation on behalf of Starks. Oliver says that he was never told by Haley, Tucker, or Marks that the Starks litigation was settled.

(c) The Creditors

The bankruptcy schedules filed on November 30 listed the following creditors:

Secured:

(1) **Jim Guy Tucker.** Claim based on Income Note valued at $8,722,384.31 (principal and interest as of date of filing of petition), and secured by assets of LMS[276]

Unsecured:

(1) **Cablevision Management, Inc.** Claim based on "advances, plus other consideration under Management Agreement, the total of which equals approximately $1,150,000.00"[277]

(2) **County Cable Limited Partnership.** Claim

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[274] 288-219

[275] 288-1084

[276] BG-266

[277] BG-267

based on $66,408.39 cash advanced to LMS.[278]

(3) **Frost & Company.** Claim based on "accounting services" for $6,000.00[279]

(4) **Dwight Harlan.** Claim for $250.00[280]

(5) **Linda Harlan.** Claim for $450.00[281]

(6) **Steve Feldman.** Claim for $37,500 based on "accounting and bookkeeping services"[282]

(7) **William J. Marks, Sr.** Claim for $265,000 based on "Note advances to Corporation and rights under Employment Agreement (October, 1987)."[283]

As noted, Tucker's claim was based on the $7.9 million Income Note that he obtained from Meredith on June 10, 1987. That note had been contributed to the capital of CMI, but was "recreated" by Tucker and Marks in the rescission of the merger.[284]

On June 10, 1987, the note was divided between Marks and Tucker by the Form of Endorsement signed by William Straw of Meredith Corporation. We obtained the original note from Tucker during the investigation.[285] The back of the note now contains the following statement: "Negotiated to Jim Guy Tucker without recourse." It is signed by William H. Straw for Meredith Corporation.[286] The note in the Fleet loan binders from June 10, 1987, is not signed on the back. The back of the note must have been signed at a later date. Straw identified his signature on the back of the note, but says that he does not recall when he

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[278] BG-267

[279] BG-267

[280] BG-267

[281] BG-268

[282] BG-268

[283] BG-268

[284] 893-772

[285] 199-81557

[286] 199-81558

signed it. Handwritten on the front of the note is the statement, "Satisfied in full by transfer of assets. Jim Guy Tucker."

The bankruptcy papers state that the claim of CMI in the bankruptcy is based largely on advances of funds made by CMI to LMS/PCS under a management agreement. We obtained from Tucker and Andrews & Kurth during the investigation a document styled "Management Agreement" between PCS and CMI.[287] The Agreement says that is "effective as of June 10, 1987," and that it "shall expire on December 31, 1987, if the Plan of Reorganization voted for and approved by [CMI] has not been approved by a United States Bankruptcy Court on or before December 31, 1987." It is clear that the document was created after June 10, 1987, during the rescission of the PCS/CMI merger. The Agreement provides that CMI will manage all aspects of the operation of the PCS cable systems. It is signed by William Marks as president of PCS, and Betty Tucker as vice president of CMI. (The PCS systems are said to be Trophy Club, Roanoke, and Las Brisas; Marks and CMI have a separate Management Agreement covering Carrollton.)[288]

Others listed as creditors have been interviewed during the investigation. Dwight Harlan said that he did not remember how he became a creditor of LMS, but surmised that he may have been owed money for work that he did for Tucker. He does not remember doing any work for LMS. Harlan said that he signed a ballot accepting the Plan of Reorganization because he trusted Tucker, and Tucker told him that he should sign it. The handwriting on the ballot other than the signature appears to be Tucker's.

Linda Harlan was interviewed on December 8, 1994. She said that she does not think she ever was a creditor in a bankruptcy, and she did not think that she ever received $450. When she was shown a ballot accepting the Plan of Reorganization,[289] Harlan identified her signature on the ballot. She did not recall signing the ballot. She said that she has never heard of LMS, and does not think that she was ever notified of a bankruptcy.

Mike Gratz said that he signed a ballot accepting the Plan of Reorganization on behalf of Frost & Company.[290] When

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[287] 199-108990

[288] 199-108982

[289] 253-897

[290] 253-900

asked for the name of the client on whose behalf Frost had provided the accounting services listed in the bankruptcy, Gratz said that it was possible that the charges had been billed internally to the CCLP acquisition account. He did not know if Frost had been paid the $6000 described.

We have obtained from Tucker a memorandum dated May 11, 1988, from Tucker to his bookkeeper, Dorothy Shearer.[291] The memo asked Shearer to make two checks from CMI to Dwight and Linda Harlan for $250 and $450, respectively, and to mark them "Payment in full of claim against Landowners Management Systems, Inc." Shearer indicated on the memo that she did so on May 13, 1988. We have obtained the checks, which were signed by Betty Tucker, and cashed by the Harlans on May 19, 1988.[292]

The May 11 memorandum to Shearer also asks, "Can we identify at least $6000 paid to Frost & Company between November 30, 1987, and now which was for services rendered to PCS (or for its benefit) prior to December 31, 1987? How much can we identify?" At the bottom of the memo is a handwritten note from "DS," saying "Gave Jim Guy copies of invoice for $2100.00, $4980.00 & copies of cks. #470 for $2100.00 & #210 & 321 for $2490.00 each."

We have obtained from Tucker a document entitled "Planned Cable Systems Corp. -- Accounts Payable Detail," which is dated November 30, 1987." A handwritten notation at the top says "Master List, 12/11/87, 6:10 p.m." The document appears to list 18 pages of outstanding accounts owed by PCS.[293] None of these creditors was listed in the schedules filed with the bankruptcy court. We have not yet analyzed this information in detail. We have been able to determine, however, that at least some of the major accounts (such as HBO and Showtime) were paid by CMI in 1988.

In a "Queen for the Day" interview on January 9, 1995, Steve Feldman said that Tucker told him in 1987 that he would be a creditor in the LMS bankruptcy. Feldman said that the money owed to Feldman as salary for the remainder of the year would be listed as the amount of Feldman's claim in the bankruptcy. Feldman said that he was eventually paid the money as salary from CMI.

We have obtained from Frost & Company evidence of one other bookkeeping matter related to the bankruptcy. On November

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[291] 199-252452

[292] 199-36322, 199-36324

[293] 199-86021 to 86038

30, 1987, Tucker signed an agreement in which he agreed to assume $569,000 of CMI's claims against LMS. According to the agreement, CMI was "unwilling to vote for the Plan or to continue to incur expense in the operation of the Florida system, unless Tucker assumes responsibility for certain portions of the CMI claims."[294] Tucker produced to OIC a letter from him to CMI dated June 30, 1988, in which he attached a summary of obligations of LMS, which constituted part of CMI's claim in the bankruptcy, but which Tucker paid instead.[295]

(d) The Plantation Sale

The bankruptcy papers include several statements about the value of the Plantation system transferred to Tucker. The Disclosure Statement describes a lengthy analysis of various methods that could be used to value the assets: capitalization of earnings, cash flow multiplier, per subscriber multiplier, and liquidation analysis.[296] The Statement concludes that "[u]sing a combination of these different valuation methods, the Company has negotiated sales prices for the Systems and proposes to transfer the Systems . . . for what management believes to be the fair market value of each system." (emphasis added).[297] The "fair market value" recited in the Statement was $8.85 million for the Plantation system, and $1.15 million for the Texas systems (Trophy Club, Roanoke, and Las Brisas).[298] Similarly, the Plan of Reorganization said that "management" believed the $8.85 price for Plantation to be "equal to or in excess of the fair market value for the system."[299] None of the documents disclosed the signed purchase agreement to sell the Plantation system to ACF for $12.75 million, plus $2 million in non-compete payments. None of the persons interviewed from ACF had heard anything about a bankruptcy involving the Plantation system that ACF had contracted to purchase.

(e) The Meredith Sale

The Disclosure Statement listed the shareholders of LMS

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294 85-7663 to 7664

295 199-252488

296 BG-150 to 151

297 BG-151

298 BG-151

299 BG-127

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as Mikado Leasing Company (82%) and William Marks (18%).[300] The Statement of Financial Affairs said that "Meredith Corporation sold its 82% stock in the corporation to Mikado Leasing Company, Inc., for $1. Meredith considered the stock to have no value." (emphasis added).[301] The document went on to say that "Mikado Leasing Company, Inc. acquired 82% stock ownership effective June 10, 1987."[302] None of the documents disclosed that Tucker had purchased 82% of the PCS stock from Meredith.

(f) Fleet National Bank

Questions 14(b) and 15 of the Statement of Financial Affairs ask whether the debtor has transferred any property or accounts receivable, for purposes of security, during the year preceding the filing of the petition. Although Fleet National Bank held a security interest in all of the assets of PCS (now LMS), the bank was not listed in response to either question.[303]

Fleet has taken the position that it should have been notified of the rescission and bankruptcy, and that it would not have consented to those actions if it had been notified. Fleet has also said, however, that it suffered no harm as a result of these events, and that it will continue to do business with Marks, who has continued to borrow money from Fleet.

[redacted] In a letter to Citizens Savings Bank dated August 12, 1994, Elizabeth Munnell, attorney for Fleet, said that Fleet would not have consented to the transactions outlined above, but that Fleet suffered no harm, and planned to take no further action.[306]

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300 BG-144

301 BG-262

302 BG-262

303 BG-259 to 260

304 [redacted]

305

306 556-42

Colin Clapton, former vice president of Fleet, and now president of The Marks Group (a Bill Marks company) had a different view of Fleet's statement. Clapton said in an interview that he knows the way Fleet thinks, and that Fleet said it "would not have consented to the transactions," only because "the government would have killed them" if they had said otherwise.

A draft Statement of Financial Affairs dated November 23, 1987, was produced to OIC by Josephine Garrett. That draft stated that accounts or other receivables had been assigned "to Fleet National Bank for the benefit of Jim Guy Tucker."[307] The reference to Fleet is crossed out, and it does not appear in the final version. Oliver says that he was told by Haley to omit Fleet because the Fleet loan was to Tucker and Marks individually, and because CMI rather than LMS was guaranteeing the loan.

(g) The Carrollton System

The Statement of Financial Affairs included a discussion of the Carrollton system. Oliver said in an interview that Haley and/or Tucker drafted this decision. In response to a question about pre-bankruptcy transfers, it stated:

> The Corporation held bare legal title to a CATV system beneficially owned by William Marks. Marks and others on his behalf advanced all sums required from time to time to meet the financial requirement of holding, operating and constructing the system.
>
> The total amount advanced was in excess of $1,200,000. Title to the system was conveyed to William Marks on November 13, 1987, in termination of this bailment.
>
> The Corporation claimed no interest and presently claims no interest in the transferred system, and indeed, were it to adopt the position that it claims ownership of the system, then it would be required to treat as debt the more than $1,200,000 advanced by William Marks and treat as a future liability the continuing construction requirements for the system's fulfilling its franchise obligations of an additional $1,500.00. The sum of these figures exceed the value of the system transferred by at least $600,000.[308]
>
> We have not been able to verify the claim that Marks

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[307] 254-274

[308] BG-259

personally advanced $1.2 million for Carrollton. We have obtained from Tucker a workpaper produced by Bill Huffman of Frost & Company concerning Marks' "potential basis" in Carrollton.[309] That workpaper shows over $1.2 million allocated to Carrollton prior to November 1987. There are remaining questions, however, about whether some of the amounts were properly allocated.

Approximately $500,000 of the money that Marks claims to have "advanced" personally is the money that he borrowed from Meredith on March 1 and loaned to PCS for construction at Carrollton. The November 13 assignment and the Statement of Affairs recharacterize this loan as a personal advance by Marks.

Virtually all of the evidence that we have found shows that the Carrollton system was considered an asset of PCS prior to November 1987. Carrollton was included on PCS financial statements. PCS held the franchise for cable television in Carrollton. William Straw of Meredith and Mike Starks of PCS both have told OIC that they considered Carrollton part of PCS, and that Marks never claimed to own the system individually. The Debt Placement Memorandum circulated by Tucker and Marks to raise funds in the spring of 1987 includes Carrollton as a PCS asset. Marks' own Strategic Plan for PCS refers to Carrollton as part of the corporate assets.

There is one document to show that Marks had made a claim of ownership to the Carrollton system prior to November 1987. An unsigned draft Memorandum of Understanding and Intentions between Tucker and Marks, which was produced to OIC by former Marks attorney Bob Blumenthal contains the following discussion:

> PCS also holds a franchise for the city of Carrolton, Texas ("Carrolton") and a SMATV contract for the development known as Surrey Highlands (and others) in the city of Carrolton. However, Marks believes that the Carrolton franchise and those contracts are rightfully his due to the failure of Meredith to honor certain financing and other obligations to Marks in connection with the obtaining of the Carrolton franchise and SMATV contracts and the construction and operation of the system.
>
> As of 2/9/87, Marks had constructed approximately eight miles of underground cable plant passing 1300 homes, 900 of which

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[309] 199-173219

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are occupied in Carrolton. The city of Carrolton has also issued a franchise to Storer Corporation (?). Marks has overbuilt Storer for approximately five miles.[310]

Straw of Meredith and Starks of PCS say that Marks never voiced these claims during their dealings with Marks through June 1987.

(17) New UCC-1 Financing Statements

On December 16, 1987, Cynthia Barnett of Tucker's law firm sent a UCC-1 financing statement to the Florida Secretary of State. This statement listed PCS as a debtor and Tucker as secured party. The secured property was described as the Security Agreement dated March 21, 1984, between Meredith and PCS, which was assigned to Tucker on June 8, 1987 as part of the closing on the Stock Purchase Agreement. The Security Agreement had pledged all of the PCS assets as collateral for the $7.9 million Income Note from PCS to Meredith. Meredith had terminated its security interest in the PCS assets at the time of the June 1987 closing. A similar UCC-1 financing statement was filed in Texas on December 18, 1987. The apparent purpose of these documents was purportedly to perfect a security interest for Tucker in the PCS assets -- particularly the Plantation system -- that he was to receive through the LMS bankruptcy.

(18) The Bankruptcy Confirmation Hearing

On December 18, 1987, a confirmation hearing was held in Fort Worth on the LMS Disclosure Statement and Plan of Reorganization.[311] Van Oliver and Josephine Garrett appeared for LMS; Haley appeared on behalf of Tucker; and Don Windle appeared for CMI. According to Oliver and Windle, Tucker was also present. At the conclusion of the hearing, the bankruptcy court approved the Plan of Reorganization.

Marks testified at the hearing as president of LMS. Marks said that the Plan was proposed in good faith. He stated that his purpose in proposing the Plan was "to keep Mr. Tucker from foreclosing on the assets."[312]

[redacted]

[310] 893-799 to 800

[311] BG-290

[312] BG-298

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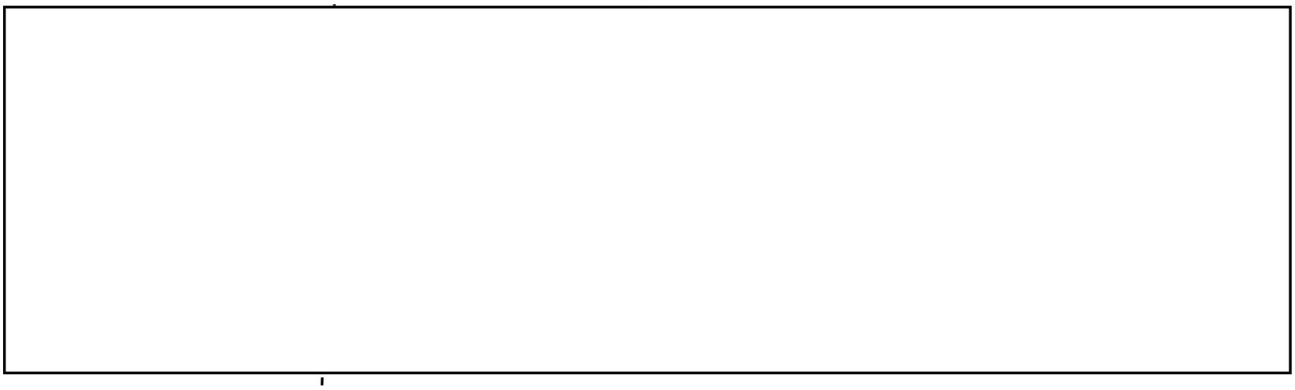
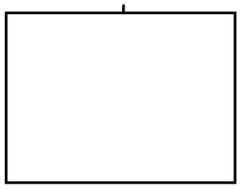


Josephine Garrett of Fort Worth served as local-local counsel for LMS in the bankruptcy. She was contacted by Oliver for that purpose because she was familiar with the presiding judge, Massie Tillman, and she knew the local procedures. In interviews with OIC, Garrett has claimed to have almost no memory about the substance of the bankruptcy. In an interview on December 14, 1994, Garrett characterized her role as "ministerial." She did no independent investigation of the facts as they were presented in the bankruptcy pleadings. Garrett said that she did not know that Fleet National Bank had a security interest in the assets of LMS; that LMS was a "shelf" corporation that had just been merged with PCS; or that an agreement had been signed to sell the Plantation system to ACF for $12.75 million and $2 million of non-competition payments.

Q. The Plantation Sale -- Superseded

In the midst of the activity surrounding rescission of the merger and the bankruptcy of LMS, Peter Portley, counsel for ACF, wrote to Tucker on November 18, 1987, to say that ACF tentatively approved of a closing date for the Plantation sale of January 4, 1988. After the bankruptcy was completed, Tucker and Marks renegotiated the purchase and sale agreement with ACF.

Tucker wrote to Walsh of ACF on December 9, 1987, and suggested that the name of one seller be changed from Sattech, Inc., to Tucker.[316] On December 28, 1987, Tucker, Marks, and Walsh signed an agreement that a new Purchase and Sale Agreement would supersede the earlier signed agreement from September 25,

313 

314

315

316 284-565

1987.[317]

On December 28, 1987, a new Purchase and Sale Agreement was signed concerning the Plantation system. In this agreement, Tucker and CMI, as sellers, agreed to convey the Plantation cable system to ACF for $11.75 million.[318] In addition, ACF agreed to pay $3 million in non-compete payments to Tucker and Marks, jointly.[319] The agreement was signed by Tucker individually and as president of CMI, and by Thomas Walsh for ACF. Marks signed for purposes of the non-competition agreement. A separate non-competition agreement provided that ACF would pay $2 million to Marks and Tucker in January 1988, and $1 million to Marks and Tucker on or before December 31, 1988. The payments were not allocated between Tucker and Marks.

In an interview with OIC, Walsh of ACF said that he recalled some dispute about who was the owner of the Plantation system, but that it was not of great concern to him. During the closing, Walsh, Tucker, Betty Tucker, Marks, Haley, and ACF's attorney worked for three solid days to reach an agreement. Walsh had never heard of LMS, and he was unaware of any bankruptcy involving LMS or PCS. The ACF attorney, Portley, also said that he did not know about the rescission or the bankruptcy.

R. The Falcon Sale

On February 29, 1988, Marks sold the Carrollton system to Falcon Cable Media for $3.8 million. CMI sold Trophy Club, Roanoke, and Las Brisas to Falcon for $1.3 million. Pulaski Cable Company (another entity controlled by Tucker and Marks) sold systems in South Arkansas to Falcon for $8.9 million.[320] Falcon then immediately swapped those systems to CCLP and Beebe Cablevision (other Tucker-Marks entities), in exchange for other systems in North Arkansas that Falcon wanted to own.

S. Haley's Compensation

On February 8, 1988, John Haley's law firm received a $100,000 payment for work done on the LMS bankruptcy. Tucker wrote a check to himself from the joint account of Tucker and Marks for $100,000.[321] Tucker then paid $100,000 to Arnold,

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[317] 284-811

[318] 199-652

[319] 199-639

[320] 85-43716, 199-16, 199-851

[321] 199-74653

Grobmyer & Haley.[322] Arnold, Grobmyer & Haley received another $50,000 payment from CMI on December 31, 1988.[323] This payment corresponds to a bill dated January 3, 1989, in which Haley's firm billed Tucker for "miscellaneous services rendered 1988 concerning FCC, corporate and tax matters."[324]

T. Post-Confirmation Work

There is substantial evidence that Tucker was personally involved in accounting work related to the bankruptcy during much of 1988. On June 3, 1988, he wrote to Marks, Feldman, and Gratz about "accounting issues that urgently need resolution," including several relating to the report to the bankruptcy court on LMS.[325] On June 21, 1988, CMI paid the legal fees of Andrews & Kurth and Garrett & Garrett for the LMS bankruptcy with checks signed by Tucker.[326] On June 30, 1988, Tucker sent Garrett "the final report to the Bankruptcy Court prepared by Steve Fledman [sic] which I have reviewed and approve."[327] On August 25, 1988, Garrett filed for LMS a post-confirmation report and accounting.[328] The court approved that report on October 20, 1988.[329]

After the Falcon transactions, Tucker and Marks continued their joint venture through the operations of CCLP, which did business as PCS. CCLP operated the Texas systems -- Carrollton, Trophy Club, Roanoke, and Las Brisas -- which it had obtained from Falcon in the asset swap.[330]

U. The Phantom Stock Agreement

In January 1989, Tucker and Marks signed a Memorandum of Understanding to memorialize a 50/50 split of profits on their

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322 83-21144

323 199-223529

324 199-230082

325 85-8112

326 199-102762, 63

327 267-2

328 253-219

329 253-13

330 199-222672

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various CATV and SMATV enterprises.[331] Tucker and Marks wrote that they "both wish to share equally in the profits and losses from the previous sales as well as profits and losses from future operations."[332] The Memorandum provided that all profits from operation of the Texas cable systems would be divided 50% to Tucker and his controlled entities, and 50% to Marks and his controlled entities. Marks and Tucker said that this could be termed a "phantom" stock or parthership interest of Marks. The Agreement was "entered into by Marks and Tucker to memorialize their ultimate objectives, rather than the manner by which they may be accomplished, and will be executed as one original only to be safekept by John Haley for the benefit of both."[333]

In May and June 1989, Tucker and Marks arranged for a new CMI stock certificate to be sent to Fleet National Bank. As collateral for the June 1987 loan, Fleet still held stock certificates of CMI from Tucker and Marks. Fleet was not notified of the rescission of the CMI/PCS merger, however, and it still held 1000 shares of CMI that had been issued to Marks in June 1987 (CMI certificate Number 3).

[redacted]

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[331] 199-222671

[332] 199-222671, 672

[333] 199-222673

[334] 199-136552

[335] 199-173024

[336] 199-172972

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

V. PCS in 1989: Robert Meyer and the Risk Note

During 1989, Tucker and Marks continued to run the Texas systems in Carrollton, Trophy Club, Roanoke, and Las Brisas. The systems were owned by CCLP, doing business as PCS. The general manager of PCS was Robert Meyer.

Meyer was interviewed by OIC agents. He learned some things about LMS during his tenure at PCS. Meyer said that during early 1989, Cynthia Wolfe Barnett of Tucker's law firm made trips to Texas to review boxes of documents that were kept by PCS in a storage area. On one occasion, Meyer saw Barnett tear up documents in his office, and take other documents back to Little Rock in a folder. Shortly after Barnett left his office, Meyer found two pages of a transcript of Marks testifying in a bankruptcy proceeding. Meyer inferred from this that Barnett had been tearing up documents relating to a bankruptcy.

Meyer said that in the fall of 1990, Tucker came to the Texas offices and asked about the boxes that Barnett and others had reviewed. Tucker saw a paper with Mike Starks' name and complained how Starks had "screwed" him. Tucker found three boxes relating to the Plantation system and said, "There's the f***** Plantation stuff we couldn't find." Tucker had Meyer load them into the trunk of his car. Tucker directed that Meyer take the boxes to an incinerator in Carrollton and destroy them.

Meyer never did destroy the boxes. He found that Carrollton had no incinerator. He left the boxes in his trunk for a while, and then removed them when he needed trunk space for his golf clubs. He still had the boxes when OIC agents approached him in March 1995. Meyer provided the boxes to agents.

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[337] 199-173754

[338] 199-173712

Among the boxes were two pages of handwritten notes about cable business that appear to be in Tucker's handwriting. One page calculates the gain and tax on the post-bankruptcy sale of the Plantation system as follows:

Fla. Sale

	11.5	
Basis in note:	(7.0)	
	5.5	Gain
	.32	
	$1.76	tax

The second page of the handwritten notes reads as follows:

Risk

Basis claimed	=	7
Actual basis	=	1
Risk	=	6
		.32
		1.926 + penalties + interest

The "basis claimed" is consistent with the $7.4 million basis claimed on Tucker's 1988 tax return. The "actual basis" corresponds to the $1.26 million in basis calculated by Coopers & Lybrand prior to the bankruptcy.

In 1991, Tucker and Marks sold CCLP to Richard Mays, but Tucker and Marks continued to run the company pursuant to a management agreement. During 1991, Tucker and Mays negotiated to sell CCLP to Harron Communications Corporation. In about August 1991, Meyer participated in a telephone conference with Mays, Cynthia Barnett, and representatives of Harron.

During the conference call, Meyer noticed that some SMATV contracts that would be conveyed to Harron in a sale were in the name of a company that Meyer remembered as "Landholders" or something similar. Meyer asked Barnett, "What is Landholders?" He said that she responded tersely, and told Meyer to call her on a separate telephone. When Meyer called Barnett, she told him never to mention Landholders [sic] to anyone because "Jim Guy will go through the roof."

Meyer said that after this conversation with Barnett, the atmosphere at PCS changed dramatically. Tucker had frequently made lengthy telephone calls to Meyer to discuss the cable business. After the "Landholders" call, Tucker spoke to Meyer only sparingly.

About one week later, Meyer traveled to Philadelphia to

meet with Harron representatives. Tucker told Meyer that he could make the trip, but told him not to discuss PCS. While Meyer was in Philadelphia, he received a message from Marks at a hotel where he was staying. The message said, "Watch your back, you're about to be ambushed."

On Labor Day 1991, Tucker, Betty Tucker, an accountant from Frost, and a locksmith confronted Meyer at the PCS offices. Betty Tucker told Meyer that they thought he was stealing from the company, and did not want him involved in their business. The locksmith changed all the locks in the office.

Tucker alleged that Meyer had misapplied funds to pay entertainment expenses for Bill Marks and others. Meyer told agents that there was a longstanding practice at PCS to use cash payments by cable customers for entertainment expenses. Meyer was careful, however, to obtain money orders for all payments so that he would have a record of the cash expenditures.

Tucker wrote a letter to Harron Communications saying that Meyer and another employee had "established a practice of diverting certain cash from customer payments," and that he used the account improperly.[339] Meyer said in interviews that he did not establish the practice complained of by Tucker; Marks was aware of the practice; Tucker should have been aware of it through review of accounting materials provided to him and his bookkeeper; Meyer never tried to hide the use of the unapplied cash account; and Meyer never personally benefited from the use of any cash. Meyer said that he provided Harron with documentation on the expenditures, and Harron was satisfied that Meyer should continue to be employed to work at the Texas systems.

W. Tax Returns

The Tuckers' tax return for 1987 was prepared by Deborah Newell and R.H. Borengasser of Little Rock. On July 26, 1988, Newell requested information from the Tuckers regarding their 1987 taxes. In particular, she inquired how PCS, LMS, and Mikado Leasing should be included. Tucker wrote to Newell on August 2, 1988, and said the following:

> On June 1, 1987, I purchased from Meredith Corporation a first mortgage promissory note made by Planned Cable Systems Corporation ("PCSC"). I paid $6,000,000 for the note. I borrowed money for the purchase price from Fleet National bank. I owned no stock in PCSC, Landowners Management Systems, Inc. or

[339] 199-116581

Mikado Leasing, Inc. No personal interests in cable systems were sold, exchanged or merged until 1988. (emphasis added)[340]

The tax returns for LMS for 1987 and 1988 were received by the IRS on August 25, 1988.[341] They were prepared by Stephen Feldman and signed by Marks. The LMS returns showed that Marks owned 100% of LMS by attribution (i.e., 82% is attributed to him apparently because it is owned by a company, Mikado Leasing, that was purportedly controlled by his wife, Donna).

Neither of the LMS returns reported any income from the sale of the systems that were distributed through the bankruptcy. We are advised by the IRS that if the bankruptcy is legitimate, the corporations need not report any gain on the sale of those systems through bankruptcy. That conclusion is based on Internal Revenue Code Section 108, which says that income from the discharge of indebtedness in a Chapter 11 bankruptcy is not subject to tax. There is some question about whether the IRS conclusion about Section 108 is correct. Our research has found decisions suggesting that LMS should have paid tax on gain from the sale to Tucker.[342]

Two tax returns for PCS were received by the IRS on August 26, 1988. One covered the period from June 1 to June 30, 1987; the second covered July 1 through November 24, 1987. Both returns were prepared by Stephen Feldman and signed by Marks. Both returns stated that Marks owned 100% of PCS "by attribution." PCS did not report any transaction relating to sale of any of the cable systems on its 1987 returns.

The Tuckers' tax return for 1988 was received by the IRS on June 10, 1989.[343] It was prepared by Deborah Newell, CPA, and signed by the Tuckers. In that return, the Tuckers reported the sale of the Plantation system for $11.75 million. They claimed as their basis $7,283,023. This number was calculated by Frost & Company, and we are advised by the IRS that if the bankruptcy is legitimate, the basis calculation by Frost appears to be appropriate. The total gain reported on the Florida sale by the Tuckers was $4,466,977. The total tax paid by the Tuckers in 1988 was $1,026,646.

The 1988 tax return for CMI was received by the IRS on

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[340] 630-2906

[341] IRS-LMS#06-6, and #06-26

[342] Gehl v. CIR, 1995 WL 115589 (8th Cir. 1995).

[343] IRS-JGT-#02-02

May 17, 1989. It was prepared by Mike Robinson of Frost and signed by Tucker. That return reports gain on the sale to Falcon Cable Media of the Texas systems that were distributed through the bankruptcy.[344] Because CMI is an S corporation, the tax on that gain was passed through to the individual shareholder, Tucker.

The 1988 tax return for Marks and Donna Marks was received by the IRS on October 19, 1989. It was prepared by Feldman and bears signatures for William and Donna Marks. Marks reported the sale of Carrollton on his 1988 return. He also reported only $1,000,000 of the $2,000,000 non-compete money paid in 1988 by ACF.

The 1989 tax return for Marks and Donna Marks was received on October 22, 1990. It was prepared by Feldman and bears signatures for William and Donna Marks. On that return, Marks reports $500,000 of the $1,000,000 non-compete money paid by ACF.

Investigators have traced to Marks all of the $3 million in non-competition payments that were paid by ACF in connection with the Plantation sale. As noted, Marks reported only half of this income on his 1988 and 1989 returns. We obtained draft returns for each year that report the full amount of noncompete money. Both the drafts and the final returns were prepared by Marks' accountant, Feldman. Feldman has given inconsistent explanations for why the final returns reported only half the money. Feldman has a prior conviction for embezzlement from Marks.

X. Tax Consequences

The IRS advises that the redistribution of cable television assets through the bankruptcy provides two principal tax advantages to Tucker and Marks.

First, Tucker and Marks were able to increase the basis in the Plantation system from the $1.26 million calculated by C&L pre-bankruptcy to the $7.2 million reported by Tucker for his post-bankruptcy sale to ACF. This increase in basis reduced the capital gain, and hence the tax on the sale to ACF. A tentative calculation by an IRS revenue agent concluded that the amount lost to the government was about $2.8 million.

Second, Tucker and Marks avoided corporate tax that would have been payable by CMI for the "built-in gain" or "capital gain" on the cable systems formerly owned by PCS, a C corporation. By using a bankruptcy to transfer the Plantation

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system to an individual (Tucker) and the Texas systems to an S corporation (CMI), they were able to avoid corporate tax on the 1988 sales of those systems to ACF and Falcon, respectively. The assignment of the Carrollton system from CMI to Marks individually achieved the same purpose.

The IRS is revising its calculations of the total loss the government, and an estimate should be available shortly.

Y. The 1990 IRS Audit

In 1990, the IRS conducted an audit of CMI's 1988 tax return. The audit resulted in CMI's loss being reduced by $95,000 as a result of adjustments to certain claimed deductions and rental activity. As a result of the audit on the CMI return, the IRS made "flow through" adjustments to the Tuckers' personal return. Because CMI was an S corporation owned by Tucker, changes to the CMI return affected the individual return as well. The IRS also provided Tucker with letters confirming that the 1988 returns of Jim Guy and Betty Tucker and CCLP were audited.

The audit was conducted by Donna Simmons and Arlena Jackson of the IRS. Simmons was the primary auditor, and Jackson was a more experienced agent who did less work on the matter. Bill Huffman of Frost & Company represented the taxpayer at the audit.

In an interview, Simmons stated that she did some work on the Tuckers' individual return. The IRS examiners looked at Tucker's personal return primarily to verify the reporting of figures that passed through to the Tuckers from CMI. Simmons said that she did notice the large gain reported on the sale of Plantation, and that she was not uncomfortable with the way it was reported. But she did not analyze the basis reported.

The audit did examine the sale of Trophy Club, Roanoke, and Las Brisas to Falcon by CMI in 1988. The examiners were thus provided with some information about the LMS bankruptcy. These Texas systems were acquired by CMI in the LMS bankruptcy, and the IRS did not make changes to the reporting of the Falcon transactions. Simmons verified that the basis claimed in the Texas systems was correct based on an Asset Transfer Agreement that showed the acquisition of the Texas systems by CMI in exchange for discharge of $1.15 million of debt in the bankruptcy.

The examiners state that they did not look behind the information provided by Bill Huffman to determine if the assets were legitimately acquired through the bankruptcy. They were told that there was no relationship between Tucker and PCS or LMS. They did not do any research into the history of LMS or the reasons for the bankruptcy.

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Z. Recent witness contacts by Tucker

IV. DISCUSSION

A. Tax Fraud

A tax fraud charge against Tucker, Marks, and Haley would hinge on the evidence of intent to defraud the United States and the IRS. There should be no dispute that they agreed to rescind the CMI/PCS merger and proceed through bankruptcy. There should be no dispute that those events resulted in a reduced tax burden for Tucker and Marks, and entities that they controlled.

The intent argument is straightforward: Tucker and Marks were very concerned about the amount of tax that they would have to pay on the sale of cable assets formerly held by PCS. They obtained a calculation of the basis in the assets, and they expressed concern about the "built in gain" that might be taxable on the assets formerly held by the C corporation. Tucker, Marks, and Haley engineered a rescission of the merger and a fraudulent bankruptcy in order to reduce the taxes payable on the sale of the cable systems. The intent to defraud is shown by material

false statements in the bankruptcy, the use of shelf corporations to hide the true ownership of the entities, and the failure to notify significant parties of the fundamental corporate changes.

In particular:

(1) The rescission did not actually return the parties to the positions that they held prior to the merger. The 82% of PCS stock was transferred from Tucker to Donna Marks.

(2) PCS was merged into a shelf corporation, LMS, immediately before the bankruptcy.

(3) The bankruptcy court was told that Meredith sold 82% of PCS to Mikado Leasing Company. Meredith sold the stock to Tucker.

(4) The bankruptcy court was told that $8.8 million paid for the Plantation system in the bankruptcy was fair market value. But Tucker and Marks had a signed purchase and sale agreement for $12.75 million and $2 million non-competition payments.

(5) Fleet National Bank, which had a first lien on all of the assets of PCS/LMS was not notified of the bankruptcy. Neither were the trade and business creditors of PCS. Some of the creditors who were listed did not know why they were creditors of LMS.

(6) The Carrollton system was "assigned" to Marks by Marks himself acting as president of PCS, despite ownership of the franchise by the corporation, and longtime acknowledgement by all parties that Carrollton was a PCS system.

In short, Tucker, Marks, and Haley took numerous steps to keep secret the bankruptcy in Texas and related events, and to hide the true facts from the bankruptcy court and other interested parties. The result of their efforts was a substantial tax loss to the government, and a substantial tax benefit to them and their entities.

B. SBA Fraud

A false statement charge on the D&L Loan would based on the fact that Tucker applied for a loan on behalf of D&L Telecommunications, Inc., but instead intended to use the money as collateral for a personal loan to Tucker and Marks. The statement to CMS that the loan was for D&L was material; an SBIC cannot loan money to individuals, or to secure personal loans. Tucker knew that the money would not go to D&L, and the controlling stockholder of D&L said that the company never intended to do the work that Tucker represented to CMS. Marks

knew of the false representation that the loan was for D&L, and he also gained the benefit of the proceeds. Marks signed documents as president of D&L, but he knew that Don Smith was president. Marks knew that Don Smith was the controlling shareholder of D&L, but he never sought Don Smith's approval for the loan. Marks and Tucker prepared a false letter addressed to Don Smith about the loan.

V. DEFENSES OR EXPLANATIONS

If this case is charged, we are certain to face a vigorous defense. We have received some indication of likely defenses from several sources.

A. Prior Statements or Explanations

(1) Statements by attorneys for Tucker and Marks

With regard to the possible tax fraud charge, attorney George Collins has said that we will face the strongest advice of counsel defense that we have ever seen. He says that Tucker has one attorney (Haley) who advised him on the propriety of this course of action, and they believe they have others who will say that all parties acted properly.

Bob Davis and Cam Zachry (counsel for Marks) have stated to OIC during a meeting in our offices that the bankruptcy and associated transactions were a "sunlight" deal. By this, they appear to mean that various parties, such as Frost & Company and Andrews & Kurth, were notified of material facts. Thus, they argue, it is difficult to prove criminal intent. Marks' attorneys have also said that Marks relied on advice of counsel from Haley, Oliver, and Tucker.

(2) Statements by Haley to OIC

On April 26, 1994, Haley told OIC attorney Gabrielle Wolohojian how Tucker acquired an interest in PCS:

Governor Tucker bought from Heritage Publishing in Iowa a note payable to it from one of its subsidiaries, Planned Cable Systems (PCS). Tucker also acquired the right to the stock of PCS. In order to finance the growth of the cable systems, Tucker had obtained loan commitments from Fleet Bank and State Street Bank. After Tucker purchased PCS and despite having done due diligence, Tucker discovered that a certain Michael Starks claimed to have a document which entitled him to a percentage ownership of PCS. This was supposedly in a contract between Starks and Marks. Marks denied to Tucker that the contract was ever effectuated. As a result of this cloud on the title of the stock of the company, as well as other problems with creditors, they decided that the only way to clean title for Fleet was to

put the company in bankruptcy. They also paid Starks $600,000 to get rid of his claims.

On July 11, 1994, Haley told OIC attorneys Julie O'Sullivan and Gabrielle Wolohojian about Mikado Leasing Company. Haley said that Mikado Leasing bought vehicles and leased them to lawyers, accountants, and others who wanted to lease rather than own their vehicles. The business ceased in 1986, at which point Mikado became a shelf corporation.

Haley said that in 1987 the stock in Mikado was transferred to Marks by Haley for $10. Haley said that Marks acquired Mikado to hold title to PCS and LMS. Marks had wanted to hold stock in PCS/LMS in corporate form, rather than individually. When Marks no longer needed it for this purpose, he wanted it dissolved. Haley dissolved Mikado for Marks in 1988.

Haley said that he did not have stock records and corporate minute books for Mikado Leasing, because he sent them to Marks. Haley sent the stock certificate and assignment to Marks when he sold him the corporation. Haley said that he does not have the transfer documents. He said that Marks would have them. Haley noted that the transfer documents would consist simply of stock certificates that were cancelled and reissued in Marks' name. The number of Mikado shareholders varied through the years, but the last remaining shareholder prior to the transfer to Marks was Haley.

(3) Statements by Haley to Fleet National Bank

Representatives of Fleet National Bank met with Haley and Marks on July 15, 1994, to discuss the events of 1987. According to a report of interview with Elizabeth Munnell, counsel for Fleet, Haley provided the following explanation for the bankruptcy:

Mike Starks, a former controller for PCS was seeking to blackmail Marks based upon a pre-existing written agreement by which Starks would have an ownership interest in PCS. Starks threatened to derail the sale of the Plantation system by contacting the purchaser, American Cablesystems, and telling them of his claim, and later brought a suit against PCS, claiming an ownership interest in the company. "Nobody wanted to blow that deal," referring to the ACF sale, and the bankruptcy was devised as a defensive tactic in order to deal with Starks' "dangerous litigation."

According to Haley, Starks also had a prior oral agreement whereby he and Marks agreed to settle for $200,000. Starks' lawyer, at one point, admitted they had an oral agreement for that amount. At some point after that agreement, Starks

began to investigate the value of the cable systems, got a lawyer, and later filed suit. At some point during this time, Tucker asked Haley to take care of the Starks problem. Haley devised the bankruptcy in order to extinguish the Starks suit and claimed sole responsibility for it. According to Haley, the Starks litigation was stayed as a result of the bankruptcy, and Starks settled shortly after it was filed.

Munnell said that Haley also told her that after Starks had become vice president of PCS, he and Marks agreed that Starks would be paid $200,000 for his interest in the company. Starks reneged on the agreement after he began investigating the worth of the company. After Starks filed suit, Haley came up with the idea of the bankruptcy in order to "zero out" Marks' interest in PCS, and thereby to eliminate Starks' interest.

Haley went to Andrews & Kurth, where his son works, to file the bankruptcy. Because they were on a "fast track" concerning negotiations over the sale of the Florida property, Haley wanted to file bankruptcy in Texas, to avoid a multi-district case, and hopefully, to get the bankruptcy approved in short order.

To accomplish this, he needed a clean Texas corporation that had not issued any shares. He called Don Windle, who provided LMS. The bankruptcy petition was filed on November 30, 1987, and Haley met with McClelland on the same day. At first, McClelland wanted $500,000 to be paid now, and another $500,000 to be paid at a later date. He settled for $600,000, and asked for 8.33% of the "overage" from the Plantation sale. On December 15, 1987, the settlement agreement was executed.

Munnell asked Haley why Fleet was not notified of the bankruptcy or listed as a creditor. Haley responded that it was an oversight, that things were moving too quickly, and that "they kept it in the Fleet family." Munnell asked Haley if Andrews & Kurth knew about Fleet's secured interest, and Haley said, "yes."

In a letter to Fleet dated July 25, 1994, Haley said that he still had "some difficulty about characterizing Planned Cable Systems or Landowner's Management as a Fleet 'borrower' or having its assets subjec [sic] to a security interest to Fleet when, under the preapproved plan, the assets which were encumbered were being delivered to the Fleet borrowers themselves, hence, raising no problems of exoneration." Haley also sent Munnell documents used by a Pittsburgh law firm to "unmerge" two unrelated companies in March 1987. He said that this precedent was "our authority for proceeding as we did."

(4) Statements by Marks' attorney Bruce Hallett to Fleet

Munnell said that she had also spoken with Marks' attorney Bruce Hallett. Hallett said that Starks and Marks had orally agreed to settle for $200,000, and that Starks went back on his promise and sued Marks for a greater amount. According to Hallett, Starks also called someone at ACF and told them that if they went ahead with the sale, "there would be a problem." Hallett said that Marks did not really understand what was going on, and just assumed that Fleet was taken care of, and that Haley would be able to tell them from a legal perspective what the bankruptcy was all about.

In a letter to Citizens Savings Bank in August 1994, Munnell stated that "Mr. Marks informed Fleet that Mr. Haley was solely responsible for carrying out the general plan, all for the purpose of neutralizing the litigation."[345] Munnell said that she has known and done business with Marks for a long time, and she believes he is a man of his word. She does not believe that he understood what he was doing with respect to the bankruptcy, and she does not believe that he intended to defraud Fleet.

(5) Statements by Haley to the press

Haley was quoted at length about the LMS matter in an article in the Arkansas Democrat Gazette dated January 15, 1995. According to the article by Mary Hargrove, Haley suggested the rescission of the PCS/CMI merger and the subsequent bankruptcy. They were worried, Haley said, "when we found out about this loose cannon out there who was claiming an interest in the business." Starks' lawsuit had put Tucker "in a position of looking at years of litigation before finding out what he owned." The company did not have audited statements, and Haley wondered if there were other stock ownership claims that would suddenly surface.

Haley was quoted as saying, "The problem is if you want to sell a system, then you can sell it, at best, at a severe discount because you've got problems." He said it also would make banks wary of lending money to expand the other systems that were not being sold.

Haley said, "My suggestion was to place the system in bankruptcy where all these problems could be sorted out and you would end up with a clean corporation with a known list of assets and liabilities. So that's what we did."

Haley told the paper that on November 30, 1987, he

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struck a tentative settlement with Starks' attorney. He said, "I told Starks' attorney as little as possible. I certainly told him that a bankruptcy was in the offing. I don't know if I had told him we had filed it that day or not. I don't know why I would have."

Haley also told the newspaper that the IRS audited Tucker's 1987 and 1988 tax returns. He said that auditors reviewed the Florida sale "and approved it without change."

B. Anticipated Defenses -- tax charge

(1) Advice of Counsel

Whatever explanation is offered for the bankruptcy, we are sure to hear that the transactions of November and December 1987 were undertaken by Tucker and Marks upon advice of counsel. The primary advisor is sure to be Haley, who will be characterized as a renowned tax attorney, or in the words of Frost accountant Mike Gratz, a "tax guru." In addition, Marks and perhaps Tucker will attempt to rely on Van Oliver, the bankruptcy attorney from Andrews & Kurth. Marks' attorneys have suggested that he may also claim reliance on Tucker.

Advice of counsel may be considered to determine whether a defendant lacked specific intent to violate the law. If a defendant sought the advice of an attorney in good faith before taking action, made a full and accurate report of all material facts to the attorney, and acted strictly in accordance with advice given, then the defendant would not be willfully doing wrong in doing something that the law forbids. Acting upon advice of counsel, however, does not confer complete immunity. A defendant cannot insulate himself from prosecution simply by having a lawyer tell him that a particular course of action is legal, without regard to the consciousness of wrongdoing on the part of the defendant and his lawyer. United States v. Poludniak, 657 F.2d 948, 959 (8th Cir. 1981).

We have interviewed several attorneys who may have been involved in the bankruptcy, and it appears unlikely that any other than Haley or Oliver could provide a basis for an advice of counsel defense. Jim Dowden from Haley's firm is a bankruptcy lawyer, but he says that his role in this matter was minimal, and he recalls almost nothing about it.

Attorneys from the Mitchell Law Firm say that they were not consulted about the rescission and bankruptcy. Marks' attorney for the Starks litigation, Bob Blumenthal, says that he did not work on the bankruptcy.

Apart from Haley and Tucker, Van Oliver was the attorney most heavily involved in the bankruptcy. There is

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evidence that would allow the defense to assert that Oliver was informed of Tucker's Stock Purchase Agreement with Meredith, the rescission of the PCS/CMI merger, the PCS/LMS merger, the Fleet loan, the Starks claim, and the possible tax advantages of the bankruptcy. Thus, they could argue, he was advised of all material facts, and he approved the bankruptcy filing.

Consider the following defense theory, which incorporates the various statements made by Tucker, Haley, Marks and others:

Marks and/or Starks defrauded Tucker by failing to disclose the Starks agreement prior to the closing on the Meredith stock purchase agreement and the merger of PCS/CMI. That omission, as well as the inadequate number of shares voted for the merger, justified the rescission of the merger. Haley's advice concerning the rescission was based on a similar demerger handled by a Pittsburgh law firm. Tucker and Marks relied on this advice.

The bankruptcy was filed to "zero out" the claims of Starks and any others who might make claims to an interest in the stock of PCS/CMI. Tucker and Marks had made representations to Fleet that they held clear title to all of the assets pledged as collateral. It was thus essential to make sure the title was clear of the Starks claim and any others. Although Starks agreed to settle on the date that the bankruptcy petition was filed, Tucker, Marks, and Haley continued to worry that they might face other such claims in the future. PCS did not have audited financial statements; Marks was known to be a "loose cannon;" and Haley wondered if there were other stock ownership claims that would suddenly surface. With loans over $10 million outstanding, they could not take that chance. Haley advised that this was proper. Oliver was informed of this situation, and raised no concerns about the propriety of the bankruptcy. Tucker relied on Haley. Marks relied on Haley and Tucker.

Moreover, PCS was in poor financial condition. Its cash flow was inadequate to cover expenses, and bankruptcy was justified for that reason alone.

Tucker and Marks decided to merger PCS into LMS before the bankruptcy because they wanted to avoid bad publicity for PCS. PCS was a valuable trade name that they intended to use in the future. Even after PCS was dissolved, Tucker and Marks used "PCS" as a trade name for one of their other cable entities.

Because the merger was void from its inception in June 1987, CMI had spent substantial money running the PCS systems during the period between June and November 1987. The Management Agreement between PCS/LMS and CMI, which was declared "effective June 10, 1987," reflected the reality of what had taken place

between June and November. Although the document was not drafted until November (when the merger was considered void), it is fair to say that the management agreement was effective earlier, because CMI did run the companies from June to November. CMI spent over $1 million on PCS systems during that period, and the CMI claim in bankruptcy was substantiated.

There was no need to notify Fleet of the bankruptcy because the assets were simply transferred from an entity controlled by one of the borrowers (Marks) to another borrower (Tucker). There was no risk to Fleet from the distribution of assets in the bankruptcy.

The only reason that Tucker agreed to buy the PCS stock from Meredith was to merge PCS with CMI. As Meredith's Straw said in his affidavit, the stock was worthless. When Tucker discovered that Marks had defrauded him by not disclosing the Starks claim, he told Marks to take the worthless stock. Knowing that he had wronged Tucker, Marks agreed to take the worthless stock. Marks wanted to hold the stock in a corporation rather than individually, perhaps because he did not want it known that a business of his had filed for bankruptcy. That would be bad for business. Haley agreed to provide Marks with Mikado Leasing Company, an inactive car leasing company, to hold the stock.

It was fair for the bankruptcy papers to say that Meredith sold its 82% of the stock of Mikado Leasing Company, because that reflects the reality of what happened. Tucker and Marks essentially agreed to rescind Tucker's purchase of Meredith's worthless stock because of fraud by Marks or Starks. The effect was that Marks (rather than Tucker) obtained the stock from Meredith on June 10, and he obtained it under the name of the Mikado Leasing Company. The stock was worthless, so the papers reflected a sale price of $1.

The bankruptcy papers fairly stated that the market value of the Plantation system was $8.85 million -- the value of Tucker's note. The signed purchase/sale agreement with ACF for $12.75 million was not a good measure of market value. As long as Starks or others had claims on the ownership of PCS/CMI stock, the ACF sale could not go through. Prospective purchasers would be wary of a title problem, and the value of the system was thus reduced. In fact, Tucker and Marks even heard through the cable TV grapevine that Starks had called ACF and warned them that if they went through with the purchase of Plantation, there would be a title problem.

The actions of Tucker, Marks, and Haley are not consistent with criminal intent. Tucker and Haley explained their plan to Frost & Company. They filed public documents regarding the bankruptcy, and appeared publicly in court. The entire transaction was done in the "sunshine."

The IRS already has audited the Tuckers' tax return for 1988, which reported the sale of the Plantation system that was distributed out of the bankruptcy. The IRS also audited the CMI return for that year, which reported the sale of other systems distributed out of bankruptcy. The auditors were provided with information about the bankruptcy and the rescission of the PCS/CMI merger. They approved the Plantation sale as reported. It was only when the OIC came to town that anyone questioned the propriety of the returns.

C. Anticipated Defenses -- SBA Fraud

We have received some indication from Tucker's attorney, George Collins, about a defense to a false statement charge based on the D&L loan. We might expect something like the following:

The D&L loan was paid back promptly, and there was no loss to the government or the SBIC. Marks told Tucker that he had authority to act on behalf of D&L. To be safe, Tucker even met in Florida with Don Smith of D&L, and Marks sent a letter to Don Smith of D&L showing that Smith ratified the actions of Marks and Betty Tucker to apply for the loan.

The June 4 letter from Tucker to Hale shows that Hale knew that the money was going to Fleet National Bank to secure a loan. If Hale thought Tucker was going to use the money to secure a loan directly to D&L, Hale misunderstood. Tucker told Hale that the loan would be used to secure a personal loan that was for the benefit of the cable companies. It was fair to say that the loan was for the benefit of D&L, because by funding the cable transactions of CMI, D&L was promoting its own cable construction business in Arkansas. Moreover, consistent with the draft memorandum of understanding from February 1987, Tucker and Marks had even considered making D&L part of the CMI corporate entity.

Tucker's representation that D&L would begin work in Arkansas was true at the time. Marks did tell Tucker that he would arrange for D&L to do business in Arkansas for CMI. Don Smith told Tucker the same thing in August, and Marks confirmed that understanding in his letter to Smith. Smith reneged on the agreement, and he is lying when he says that he never agreed to the loan. Smith must be concerned that because the OIC is investigating this loan, he could be subject to charges if he admitted his involvement.

Marks, in turn, could say that Smith told him that D&L would agree to do business in Arkansas, and that Marks and Betty Tucker could sign for the loan. Smith reneged on the agreement to do business in Arkansas, and he is lying when he claims that he did not agree to the loan proposal.

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

6-3-95

DRAFT

UNITED STATES OF AMERICA, Plaintiff, v. JIM GUY TUCKER, WILLIAM J. MARKS, SR., and JOHN H. HALEY, Defendants.	)	No. 18 U.S.C. § 371 18 U.S.C. § 1014 18 U.S.C. § 2

INDICTMENT

The Grand Jury charges:

COUNT ONE

Introduction

At various times material to this indictment:

1. In 1987, JIM GUY TUCKER was a practicing attorney in Little Rock, Arkansas, and was also involved in the cable television business.

2. WILLIAM J. MARKS, SR., was a businessman involved in the cable television industry.

3. Betty Tucker was the wife of Defendant JIM GUY TUCKER.

4. The Small Business Administration ("SBA") was an agency of the United States Government with responsibility for providing financial assistance to small business investment companies ("SBICs") in order to aid SBICs in lending money to small business concerns.

5. Capital Management Services, Inc. ("CMS"), was a privately-owned SBIC licensed by the SBA and located in Little Rock, Arkansas. CMS specialized in making loans to what were represented to be socially or economically disadvantaged small business concerns.

6. D&L Telecommunications, Inc., ("D&L") was a Florida corporation in which Defendant WILLIAM J. MARKS, SR., was a 50 percent shareholder with less than 50 percent voting rights.

7. Fleet National Bank ("Fleet") was a bank headquartered in Providence, Rhode Island.

8. State Street Bank and Trust was a bank headquartered in Boston, Massachusetts.

9. In June 1987, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., arranged to borrow personally $8.5 million from Fleet

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and State Street (collectively "Fleet") for use in a joint cable television venture.

10. Fleet required that Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., pledge $500,000 cash as part of the collateral for the loan. Fleet required that the cash be placed into an escrow account at the bank.

The Conspiracy

11. From on or about June 5, 1987, continuing through about January 5, 1988, in the Eastern District of Arkansas and elsewhere, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., did unlawfully, willfully, and knowingly combine, conspire, confederate and agree with each other and with others known and unknown to the Grand Jury to knowingly make false material statements for the purpose of influencing the action of Capital Management Services, Inc. ("CMS"), a federally licensed small business investment company, in connection with a $300,000 loan from CMS, in violation of Title 18, United States Code, Section 1014.

The Purpose of the Conspiracy

12. The purpose of the conspiracy was to make false statements to CMS for the purpose of influencing CMS to lend

money for the personal use of the Defendants.

Manner and Means of the Conspiracy

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

13. It was a part of this conspiracy that the Defendants would apply to CMS for a loan of $300,000.

14. It was part of this conspiracy that the Defendants would represent to CMS that the borrower and beneficiary of the $300,000 loan would be D&L Telecommunications, Inc.

15. It was part of this conspiracy that Defendant JIM GUY TUCKER would represent to CMS that D&L was beginning business in Arkansas, when in fact D&L never did business, intended to do business, or applied as a foreign corporation to do business in Arkansas.

16. It was part of this conspiracy that Defendant WILLIAM J. MARKS, SR., would sign CMS loan documents as president of D&L, when in fact he was not an officer of the corporation.

17. It was part of this conspiracy that the Defendants would arrange for Betty Tucker to sign a promissory note to CMS

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as secretary of D&L, when in fact she was not an officer of D&L.

18. It was part of this conspiracy that instead of using the proceeds of the CMS loan to benefit D&L, the Defendants would arrange for the proceeds of the CMS loan to be placed into the escrow account at Fleet as collateral for the Fleet loan to the Defendants.

19. It was part of this conspiracy that the Defendants would create false documentation purportedly to ratify the actions of Defendant WILLIAM J. MARKS, SR., and Betty Tucker.

20. It was part of this conspiracy that the Defendants would repay the CMS loan with proceeds of the sale of cable television systems acquired with the proceeds of the Fleet loan.

Overt Acts

In furtherance of the conspiracy, and to effect the objects and purposes of the conspiracy, the following overt acts were committed in the Eastern District of Arkansas, and elsewhere:

21. On or about June 4, 1987, Defendant JIM GUY TUCKER asked the president of CMS for a loan of $300,000 to D&L. Defendant JIM GUY TUCKER told the president of CMS that Defendant WILLIAM J. MARKS, SR., was the president of D&L, and that D&L

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would be the surviving entity after a merger between cable television entities owned by Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR..

22. On or about June 5, 1987, Defendant JIM GUY TUCKER caused the president of CMS to transfer proceeds of the CMS loan to the escrow account at Fleet.

23. In or about June 1987, the exact date unknown, Defendant JIM GUY TUCKER sent to the president of CMS a promissory note for $300,000, which promissory note was signed by Defendant WILLIAM J. MARKS, SR., as president of D&L, by Betty Tucker as secretary of D&L, and by Defendant JIM GUY TUCKER, Defendant WILLIAM J. MARKS, SR., and Betty Tucker as individual guarantors.

24. In about June 1987, the exact date unknown, Defendant JIM GUY TUCKER sent to the president of CMS a letter dated June 4, 1987, stating that "D&L is beginning business in Arkansas" and that D&L would be doing extensive work in underground cable construction in West Pulaski County.

25. On or about August 5, 1987, Defendant JIM GUY TUCKER sent to CMS loan documents labeled "Size Status Declaration" and "Assurance of Compliance," which identified D&L as the borrower of the $300,000 loan.

26. On or about August 7, 1987, Defendant WILLIAM J. MARKS, SR., signed the "Size Status Declaration" and the "Assurance of Compliance" as president of D&L, and Defendant JIM GUY TUCKER attested the signature on the "Assurance of Compliance."

27. On or about August 7, 1987, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., created a letter to the actual president of D&L purporting to confirm an agreement that Defendant WILLIAM J. MARKS, SR., and Betty Tucker were authorized to have acted as officers of the corporation to secure the loan from CMS, and that D&L would apply for authority to do business in Arkansas.

28. On or about October 9, 1987, Defendant JIM GUY TUCKER and another conspirator caused CMS to submit a letter to the SBA that represented that the $300,000 lent by CMS was for working capital of D&L Telecommunications, Inc.

29. On or about January 5, 1988, Defendant JIM GUY TUCKER sent to CMS a check for $300,000 signed by Defendant JIM GUY TUCKER and Betty Tucker to repay the loan to D&L.

30. In or about September 1988, Defendant JIM GUY TUCKER and another conspirator caused CMS to represent to the SBA that the stock of D&L was owned 50 percent by Defendant WILLIAM J. MARKS, SR., and 50 percent by Betty Tucker, that Defendant

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WILLIAM J. MARKS, SR., was president of D&L, and that Betty Tucker was secretary of D&L.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

On or about June 5, 1987, in the Eastern District of Arkansas, Defendant JIM GUY TUCKER and Defendant WILLIAM J. MARKS, SR., aided and abetted by each other, knowingly made a false material statement and caused the making of a false material statement for the purpose of influencing the action of Capital Management Services, Inc. ("CMS"), a federally licensed small business investment company, in connection with a $300,000 loan from CMS in that the Defendants represented to CMS that the borrower and beneficiary of the $300,000 loan was a cable construction company called D&L Telecommunications, Inc., when in truth and in fact, as the Defendants well knew, the proceeds of the loan would not be used for D&L Telecommunications, Inc., but as collateral for a personal loan from Fleet National Bank to Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR.

This in violation of Title 18, United States Code, Section 1014, and Title 18, United States Code, Section 2.

COUNT THREE

Introduction

At various times material to this indictment:

1. JIM GUY TUCKER was a practicing attorney in Little Rock, Arkansas. He was also a businessman involved in the cable television industry. In early 1987, he owned 100% of the stock of an Arkansas corporation called Cablevision Management, Inc.

2. WILLIAM J. MARKS, SR., was a businessman involved in the cable television industry. In early 1987, he owned 18% of the stock of Planned Cable Systems Corporation, and he was president of that corporation.

3. JOHN H. HALEY was a practicing attorney in Little Rock, Arkansas, with the firm of Arnold, Grobmyer & Haley.

4. Donna Marks was the wife of Defendant WILLIAM J. MARKS, SR.

5. The Internal Revenue Code is legislation passed by Congress that governs the ascertainment, computation, assessment and collection of revenue, including income taxes, by the United States Government.

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6. The "basis" of an asset for tax purposes generally is the amount that the owner paid for the asset. Basis may be adjusted upward over time to reflect subsequent capital expenditures on the asset, or downward to reflect deductions for depreciation of the asset. The resulting amount is called the "adjusted basis."

7. The "gain" on the sale of an asset is the sale price paid for the asset reduced by the adjusted basis. Generally, the seller of an asset must pay tax on the gain.

8. Subchapter C of the Internal Revenue Code treats corporations as independent tax-paying entities. A corporation operating under subchapter C rules is referred to as a "C corporation." Income earned by a C corporation is taxed to the corporation. If the income is distributed later to shareholders of the corporation, the same income is taxed again to the shareholder.

9. Subchapter S of the Internal Revenue Code applies to "small business corporations," which are defined as certain domestic corporations with no more than 35 shareholders or more than one class of stock. An eligible corporation may elect to be treated as an "S corporation" under the Internal Revenue Code. If such an election is made, the corporation is not subject to

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the corporate income tax. Corporate income, whether or not distributed to the shareholders, is taxed only once to the shareholders.

10. At the beginning of 1987, Cablevision Management, Inc., ("CMI"), was an Arkansas S corporation owned 100% by Defendant JIM GUY TUCKER.

11. At the beginning of 1987, Planned Cable Systems Corporation ("PCS") was an Iowa C corporation owned 82% by Meredith Corporation and 18% by Defendant WILLIAM J. MARKS, SR. PCS owned franchises for cable television systems in the cities of Trophy Club, Roanoke, and Carrollton, Texas, and Plantation, Florida.

12. In 1987, Meredith Corporation ("Meredith") was an Iowa corporation. In addition to owning 82% of the stock of PCS, Meredith held an income note ("the Income Note") that obligated PCS to pay Meredith $7.9 million, plus interest, for money advanced by Meredith to PCS. In early 1987, Meredith wanted to sell its 82% of PCS stock and the Income Note for approximately $6 million.

13. Fleet National Bank ("Fleet") was a bank headquartered in Providence, Rhode Island.

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14. State Street Bank & Trust was a bank headquartered in Boston, Massachusetts.

15. Landowners Management Systems, Inc., ("LMS") was a Texas C corporation. It was incorporated in 1983 by an attorney in Texas, who was known to Defendant JOHN H. HALEY. Prior to November 1987, LMS had issued no shares, had done no business, and had owned no tangible assets.

16. Mikado Leasing Company ("Mikado") was an Arkansas corporation incorporated in 1971. Defendant JOHN H. HALEY was president of the company from 1973 to 1987. The primary business of the company was leasing automobiles.

17. American Cablesystems of Florida ("ACF") was a cable television company headquartered in Massachusetts.

18. The Plantation cable system was a cable television system located in Plantation, Florida. At the beginning of 1987, it was owned by PCS.

19. The Trophy Club, Roanoke, Las Brisas, and Carrollton cable systems were located in Texas. At the beginning of 1987, these systems were owned by PCS.

20. In 1987, Sattech, Inc., was an Ohio corporation owned

50 percent by Defendant WILLIAM J. MARKS, SR.

21. In early 1987, Defendant JIM GUY TUCKER and Defendant WILLIAM J. MARKS, SR., met and agreed to undertake a joint venture in the cable television business in which they would divide equally their profits.

22. On or about March 1, 1987, Meredith and Defendant JIM GUY TUCKER signed a "Stock Purchase Agreement" in which Defendant JIM GUY TUCKER agreed to purchase from Meredith for $6 million its 82% of the stock in PCS and the Income Note.

23. On or about June 10, 1987, Fleet and State Street (collectively "Fleet") lent to Defendant JIM GUY TUCKER and Defendant WILLIAM J. MARKS, SR., the sum of $8.5 million. Approximately $6 million of the proceeds of this loan were used to purchase Meredith's stock in PCS and the Income Note. As part of the collateral for the loan, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., pledged all of the cable television assets of PCS and CMI. As additional collateral, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., pledged a $500,000 cash escrow account, a portion of which was funded by a $300,000 loan purportedly to D&L Telecommunications, Inc., from Capital Management Services, Inc.

24. On or about June 10, 1987, in accordance with the Stock

Purchase Agreement of March 1, 1987, Meredith sold, assigned, and transferred to Defendant JIM GUY TUCKER its 82% of the stock of PCS.

25. On or about June 10, 1987, in accordance with the Stock Purchase Agreement of March 1, 1987, and an Assignment by Defendant JIM GUY TUCKER to Defendant WILLIAM J. MARKS, SR., of part of his rights under that Stock Purchase Agreement, Meredith endorsed the Income Note to Defendant JIM GUY TUCKER in the amount of about $3.3 million, and to Defendant WILLIAM J. MARKS, SR., in the amount of about $4.6 million.

26. On or about June 10, 1987, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., caused the merger of PCS into CMI. Defendant WILLIAM J. MARKS signed the Articles of Merger as president of CMI, and Defendant JIM GUY TUCKER signed as secretary of CMI.

27. On or about June 10, 1987, as part of the merger of PCS into CMI, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., contributed to CMI all of the stock of PCS and the Income Note.

28. On or about June 10, 1987, as a result of the merger of PCS into CMI, the surviving entity, CMI, was owned 50% by Defendant JIM GUY TUCKER and 50% by Defendant WILLIAM J. MARKS, SR. CMI owned the Plantation cable system in Florida and several

systems in Texas.

29. On or about August 24, 1987, American Cablesystems of Florida wrote to Defendant WILLIAM J. MARKS, SR., and offered CMI $15 million for the Plantation cable system.

30. On or about August 31, 1987, Defendant JIM GUY TUCKER wrote to accountants in Dallas, Texas, saying "[w]e are contemplating a sale of the Plantation, Florida assets to occur on or about October 1, 1987. We urgently need a calculation of the tax consequences. The sale price will be $15 million."

31. On or about September 3, 1987, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., discussed a prospective sale of the Plantation cable system. They commented that they would make a profit of $13 million from the sale, and that they did not want to pay a tax of $4 million on the sale.

32. On or about September 25, 1987, ACF and Defendant WILLIAM J. MARKS, SR., on behalf of CMI, signed an "Agreement of Purchase and Sale of Assets" in which ACF agreed to purchase the Plantation cable system from CMI and Sattech, Inc., for $12.75 million, and to pay $2 million in non-competition payments to Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., as part of the sale.

33. On or about October 9, 1987, accountants in Dallas, Texas, notified accountants in Little Rock, Arkansas, working with Defendant JIM GUY TUCKER that the tax basis of the Plantation cable system was approximately $1.75 million, and that the gain on a sale of the system for $15 million would be over $13 million.

34. On or about November 18, 1987, Defendant JIM GUY TUCKER received from accountants in Dallas, Texas, a facsimile reflecting that a corrected calculation showed a basis in the Plantation cable system of approximately $1.26 million, and gain on a sale of the system for $15 million of over $13 million.

The Conspiracy

Beginning no later than October 1987, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including about October 1990, in the Eastern District of Arkansas and elsewhere, Defendants JIM GUY TUCKER, WILLIAM J. MARKS, SR., and JOHN H. HALEY, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree with each other and with other individuals both known and unknown to the Grand Jury, to defraud the United States for the purpose of impeding, impairing, obstructing and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment and collection of the

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revenue: to wit, income taxes.

Manner and Means of the Conspiracy

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

35. It was a part of this conspiracy that the Defendants would devise a scheme to transfer the Plantation cable system owned by PCS to Defendant JIM GUY TUCKER through a fraudulent bankruptcy proceeding in Texas to increase the basis in the system, remove the system from a C corporation, and impede the ability of the Internal Revenue Service to collect taxes that would be due on a subsequent sale of the system.

36. It was a further part of this conspiracy that the Defendants would devise a scheme to transfer other cable systems owned by PCS to individuals or S corporations to impede the ability of the Internal Revenue Service to collect taxes that would be due on subsequent sales of those systems.

37. It was a further part of this conspiracy that Defendants JIM GUY TUCKER and JOHN H. HALEY would devise a "ten-step chart" to demonstrate a "rescission" of the merger between PCS and CMI, a merger of PCS into a dormant corporation, a bankruptcy of the new entity, and the distribution of the cable

television assets of PCS to Defendant JIM GUY TUCKER and CMI.

38. It was a further part of this conspiracy that in an agreement rescinding the merger of PCS and CMI, the Defendants would purport to transfer to Donna Marks ownership of 82% of the stock of PCS, when the Defendants knew that the stock was purchased from Meredith by Defendant JIM GUY TUCKER.

39. It was a further part of this conspiracy that in the rescission of the merger between PCS and CMI, the Defendants would cause the Income Note to be recreated and assigned completely to Defendant JIM GUY TUCKER.

40. It was a further part of this conspiracy that the Defendants would attempt to locate and acquire a "shelf" corporation.

41. It was a further part of this conspiracy that Defendant JOHN H. HALEY would acquire control of a "shelf corporation" in Texas called Landowners Management Systems, Inc.

42. It was a further part of this conspiracy that the Defendants would cause 82% of the stock of LMS to be issued to Mikado Leasing Company, and 18% of the stock of LMS to be issued to Defendant WILLIAM J. MARKS, SR.

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43. It was a further part of this conspiracy that the Defendants would designate Donna Marks as president of Mikado Leasing Company.

44. It was a further part of this conspiracy that the Defendants would cause the merger of PCS into LMS.

45. It was a further part of this conspiracy that the Defendants would cause LMS to file a petition for bankruptcy.

46. It was a further part of the conspiracy that the Defendants would cause the bankruptcy petition to be filed in the Northern District of Texas.

47. It was a further part of this conspiracy that the Defendants would create a "pre-packaged" Plan of Reorganization that was approved by all listed creditors prior to filing of the petition in bankruptcy court.

48. It was a further part of this conspiracy that Defendant WILLIAM J. MARKS, SR., would sign bankruptcy pleadings as president of LMS, and appear in bankruptcy court as the president of LMS.

49. It was a further part of this conspiracy that the Defendants would cause Defendant JIM GUY TUCKER to appear in

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bankruptcy court as the only secured creditor of LMS with a claim of approximately $8.85 million based on the Income Note.

50. It was a further part of this conspiracy that the Defendants would propose a Plan of Reorganization to the bankruptcy court that would transfer ownership of the Plantation cable system from LMS to Defendant JIM GUY TUCKER in exchange for cancellation of the Income Note.

51. It was a further part of this conspiracy that the Defendants would cause CMI to appear in bankruptcy court as an unsecured creditor of LMS with a claim of $1.15 million based in part on funds advanced pursuant to a Management Agreement dated "effective June 10, 1987," but which was created in November 1987.

52. It was a further part of this conspiracy that the Defendants would propose a Plan of Reorganization to the bankruptcy court that would transfer ownership of certain Texas cable systems from LMS to CMI in exchange for cancellation of the debt of $1.15 million purportedly owed by LMS to CMI.

53. It was a further part of this conspiracy that the Defendants would represent to the bankruptcy court that Meredith sold 82% of the stock of PCS to Mikado Leasing Company for $1, when the Defendants knew that Meredith sold 82% of the stock of

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PCS to Defendant JIM GUY TUCKER.

54. It was a further part of this conspiracy that the Defendants would represent to the bankruptcy court that the fair market value of the Plantation cable system was $8.85 million, when the Defendants knew that the fair market value was $14.75 million, because American Cablesystems of Florida had signed an agreement to purchase the Plantation cable system for $12.75 million, plus an additional $1 million in non-competition payments to Defendant JIM GUY TUCKER and $1 million in non-competition payments to Defendant WILLIAM J. MARKS, SR.

55. It was a further part of the conspiracy that the Defendants would represent to the bankruptcy court that there had been arms-length negotiations between Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., that led to the Plan of Reorganization proposed in the bankruptcy, when the Defendants knew that Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., were partners in the cable television business.

56. It was a further part of the conspiracy that the Defendants would represent to the bankruptcy court that Defendant JIM GUY TUCKER was the only secured creditor of LMS, when the Defendants knew that Fleet National Bank had a first lien on all the assets held by LMS, i.e., all those cable systems owned by PCS and CMI as of June 1987 that were later transferred to LMS.

57. It was a further part of the conspiracy that the Defendants would not disclose to Fleet National Bank that the merger of PCS and CMI was rescinded, that PCS was merged into LMS, or that LMS filed for bankruptcy.

58. It was a further part of this conspiracy that the Defendants would cause the $8.5 million loan from Fleet National Bank to be repaid without notice of the rescission, merger, or bankruptcy action.

59. It was a further part of this conspiracy that the Defendants would cause the pleadings filed with the bankruptcy court to omit reference to numerous trade creditors of PCS.

60. It was a further part of this conspiracy that the Defendants would cause numerous trade creditors of PCS to be paid without notice of the bankruptcy action.

61. It was a further part of the conspiracy that the Defendants would not disclose to ACF that ownership of the Plantation system had been distributed in a bankruptcy.

62. It was a further part of the conspiracy that the Defendants would cause to be signed a new Agreement for the Purchase and Sale of the Plantation cable system in which Defendant JIM GUY TUCKER was named as one of the sellers of the

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Plantation cable system, and American Cablesystems of Florida agreed to pay $11.75 million to Defendant JIM GUY TUCKER and CMI, plus $3 million in non-competition payments to Defendants JIM GUY TUCKER and WILLIAM J. MARKS.

63. It was a further part of the conspiracy that of the $14.75 million paid by ACF for the Plantation cable system, Defendant JIM GUY TUCKER would receive $11.75 million, and Defendant WILLIAM J. MARKS, SR., would receive the $3 million in non-competition payments.

64. It was a further part of the conspiracy that Defendants JIM GUY TUCKER would pay Defendant JOHN H. HALEY at least $100,000.00 in legal fees.

65. It was a further part of the conspiracy that the Defendants would cause 1987 tax returns to be filed for PCS and LMS that would not report as income the gain from the sale of the Plantation cable system or any other cable system, and that no corporate tax would be paid on the sale of any of the cable systems owned in 1987 by PCS or LMS.

66. It was a further part of the conspiracy that Defendant JIM GUY TUCKER would report the sale of the Plantation cable system on his 1988 individual tax return.

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67. It was a further part of the conspiracy that as a result of the distribution of the Plantation cable system to Defendant Tucker in the bankruptcy, Defendant JIM GUY TUCKER would claim a "basis" in the Plantation system of approximately $7.4 million and a gain of approximately $4.5 million from the sale of the system to ACF, when Defendant JIM GUY TUCKER knew that the actual basis of the Plantation cable system was approximately $1.26 million, as calculated by accountants in Dallas.

68. It was a further part of the conspiracy that Defendant WILLIAM J. MARKS, SR., would report on his individual tax return for 1988 the sale of the Carrollton cable system.

69. It was a further part of the conspiracy that Defendant WILLIAM J. MARKS, SR., would report on his individual tax returns for 1988 and 1989 some or all of the non-competition payments made by ACF in connection with the purchase of the Plantation cable system.

70. It was a further part of the conspiracy that Defendant JIM GUY TUCKER would cause to be represented to auditors from the Internal Revenue Service that there was no relationship between Defendant JIM GUY TUCKER and PCS, when Defendant JIM GUY TUCKER knew that he had purchased 82% of the stock of PCS.

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71. It was a further part of the conspiracy that Defendant JIM GUY TUCKER would attempt to cause the destruction of documents referring to the tax computations on the sale of the Plantation cable system.

Overt Acts

In furtherance of the conspiracy, and to effect the objects and purposes of the conspiracy, the following overt acts were committed in the Eastern District of Arkansas, and elsewhere:

72. On or about October 12, 1987, Defendants JOHN H. HALEY and JIM GUY TUCKER devised a "ten step chart" to demonstrate the rescission of the merger between PCS and CMI, a merger of PCS into a dormant corporation, a bankruptcy of the new entity, and the distribution of the assets of PCS to Defendant JIM GUY TUCKER and CMI.

73. On or about October 12, 1987, Defendants JOHN H. HALEY and JIM GUY TUCKER presented the "ten step chart" to accountants in Little Rock, Arkansas.

74. In early November 1987, Defendant JIM GUY TUCKER caused to be drafted an agreement to rescind the merger of Cablevision Management, Inc., and Planned Cable Systems Corporation, which was entitled "Rescission Agreement."

75. On or about November 5, 1987, Defendant JOHN H. HALEY contacted a bankruptcy attorney in Dallas, Texas, concerning a possible Chapter 11 bankruptcy filing in Texas.

76. On or about November 7, 1987, Defendant JOHN H. HALEY caused to be sent to the bankruptcy attorney in Dallas, Texas, a draft "Rescission Agreement," which showed that 82% of the stock of PCS would be transferred to an entity called "PCS II."

77. On or about November 8, 1987, Defendants JIM GUY TUCKER and JOHN H. HALEY met in Little Rock with the Dallas bankruptcy attorney and with two attorneys from Defendant JOHN H. HALEY's law firm concerning events leading up to a rescission of the merger between PCS and CMI, and a Chapter 11 bankruptcy proceeding.

78. On or about November 9, 1987, Defendant JOHN H. HALEY sent to the Dallas bankruptcy attorney a diagram that depicted a bankruptcy and the distribution of the Plantation cable system to Defendant JIM GUY TUCKER.

79. On or before November 9, 1987, Defendant JOHN H. HALEY told the Dallas bankruptcy attorney that the debtor in the bankruptcy proceeding would be named Neighborhood Communication Systems, Inc., or NCS, Inc.

80. On or about November 9, 1987, Defendant JOHN H. HALEY advised the Dallas bankruptcy attorney that an objective of the bankruptcy was related to the basis for Defendant JIM GUY TUCKER in the Plantation cable system.

81. On or about November 9, 1987, Defendant JOHN H. HALEY indicated to the Dallas bankruptcy attorney that the owner of 82% of the debtor corporation would be the stepson of Defendant JIM GUY TUCKER.

82. On or about November 9, 1987, Defendant JOHN H. HALEY spoke to an attorney in Texas and arranged to acquire an inactive "shelf" corporation called Landowners Management Systems, Inc.

83. On or about November 9, 1987, Defendant JOHN H. HALEY caused another member of his law firm to notify the bankruptcy attorney in Dallas that the name of the debtor would be Landowners Management Systems, Inc., rather than "Neighborhood Cable Systems."

84. On or about November 12, 1987, Defendant JIM GUY TUCKER wrote a memorandum in which he discussed the tax consequences of a sale of the Plantation cable system after the transfer of that system to Defendant JIM GUY TUCKER in a bankruptcy.

85. On or about November 13, 1987, Defendant JOHN H. HALEY

received from the Dallas bankruptcy attorney a draft Disclosure Statement and Plan of Reorganization concerning a bankruptcy of Landowners Management Systems, Inc., which Disclosure Statement said that 82% of LMS was owned by a stepson of Defendant JIM GUY TUCKER, and 18% of LMS was owned by Defendant WILLIAM J. MARKS, SR.

86. On or about November 13, 1987, Defendant JOHN H. HALEY prepared a draft "Management Agreement" between PCS and CMI that said that agreement was "entered into as of June 10, 1987."

87. On or about November 13, 1987, the Defendants caused the issuance of 820 shares of LMS to Mikado Leasing Company, and 180 shares of LMS to Defendant WILLIAM J. MARKS, SR.

88. On or about November 13, 1987, Defendant WILLIAM J. MARKS, SR., signed as president of PCS a "Bill of Sale and Assignment" that conveyed the ownership of the Carrollton cable system to Defendant WILLIAM J. MARKS, SR., individually.

89. On or about November 16, 1987, Defendant JIM GUY TUCKER and Defendant JOHN H. HALEY conferred with the Dallas bankruptcy attorney about pleadings to be filed in bankruptcy court.

90. On or about November 18, 1987, Defendant JIM GUY TUCKER and Defendant JOHN H. HALEY met in Little Rock with the Dallas

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bankruptcy attorney to discuss pleadings to be filed with the bankruptcy court on behalf of Landowners Management Systems, Inc.

91. On or about November 19, 1987, Defendant JIM GUY TUCKER conferred with the Dallas bankruptcy attorney regarding financial information needed for the LMS bankruptcy pleadings.

92. On or about November 20, 1987, Defendant JIM GUY TUCKER conferred with the Dallas bankruptcy attorney regarding revisions to the Plan of Reorganization and the Disclosure Statement to be filed in the LMS bankruptcy action.

93. On or about November 20, 1987, Defendant WILLIAM J. MARKS, SR., signed "Minutes of Special Joint Meeting of Shareholders and Board of Directors of Planned Cable Systems Corporation," which identified the shareholders of PCS as Defendant WILLIAM J. MARKS, SR., and "Donna Marks, individually and as representative of the shareholder Mikado Leasing Company, Inc."

94. On or about November 20, 1987, Defendant WILLIAM J. MARKS, SR., signed "Minutes of Special Joint Meeting of Shareholders and Board of Directors of Planned Cable Systems Corporation," which stated that the shareholders of PCS approved a merger of PCS into Landowners Management Systems, Inc.

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95. On or about November 20, 1987, Defendant WILLIAM J. MARKS, SR., signed a "Corporate Resolution" that identified Mikado Leasing, Inc., as a shareholder of Landowners Management Systems, Inc., and Donna Marks as President of Mikado Leasing, Inc.

96. On or about November 20, 1987, Defendant WILLIAM J. MARKS, SR., signed a "Corporate Resolution" that authorized Defendant WILLIAM J. MARKS, SR., to take actions necessary to prepare and execute a petition for Chapter 11 bankruptcy and other necessary documents on behalf of Landowners Management Systems, Inc.

97. In or around late November 1987, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., signed a document entitled "Rescission Agreement" that, among other things, purported to (1) rescind the merger of Planned Cable Systems and Cablevision Management, Inc., (2) transfer ownership of 82% of the stock in PCS to Donna Marks, and (3) grant to Defendant JIM GUY TUCKER exclusive rights to the Income Note owed by PCS.

98. In or around late November 1987, Defendant WILLIAM J. MARKS, SR., signed, as president of PCS, a Management Agreement between PCS and CMI that was "effective as of June 10, 1987."

99. On or about November 21, 1987, Defendants JIM GUY

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TUCKER, WILLIAM J. MARKS, SR.,, and JOHN H. HALEY conferred regarding the Plan of Reorganization to be filed on behalf of Landowners Management Systems, Inc.

100. On or about November 22, 1987, Defendants JIM GUY TUCKER and JOHN H. HALEY conferred with the Dallas bankruptcy attorney regarding pleadings to be filed with the court in the LMS bankruptcy.

101. On or about November 24, 1987, Defendant WILLIAM J. MARKS, SR., signed an "Agreement of Merger of Planned Cable Systems Corporation and Landowners Management System, Inc."

102. On or about November 24, 1987, Defendant JIM GUY TUCKER and Defendant WILLIAM J. MARKS, SR., met with the Dallas bankruptcy attorney regarding pleadings to be filed with the court in the LMS bankruptcy.

103. On or about November 24 or 25, 1987, Defendant JOHN H. HALEY caused to be deleted from a draft Statement of Financial Affairs a statement that accounts and other receivables of LMS had been assigned as security "[t]o Fleet National Bank for the benefit of Jim Guy Tucker."

104. On or about November 25, 1987, Defendant JIM GUY TUCKER and Defendant WILLIAM J. MARKS, SR., met with the Dallas

bankruptcy attorney regarding revisions to the Disclosure Statement to be filed with the court in the LMS bankruptcy.

105. On or about November 25, 1987, Defendant WILLIAM J. MARKS, SR., executed a final Disclosure Statement to be filed with the court in the LMS bankruptcy, which stated, among other things, that (1) the shares of LMS were owned 82% by Mikado Leasing, Inc., and 18% by Defendant WILLIAM J. MARKS, SR.,, (2) "management believes" the fair market value of the Plantation cable system is $8,850,000, and (3) LMS had "negotiated" to sell the Plantation cable system to "J.G. Tucker" in lieu of foreclosure on the Income Note held by Defendant JIM GUY TUCKER.

106. On or about November 27, 1987, Defendant WILLIAM J. MARKS, SR., met with the Dallas bankruptcy attorney regarding final revisions of the Statement of Financial Affairs and the petition to be filed with the court in the LMS bankruptcy.

107. On or about November 27, 1987, Defendant JIM GUY TUCKER conferred with the Dallas bankruptcy attorney regarding the Statement of Financial Affairs to be filed with the court in the LMS bankruptcy.

108. On or about November 27, 1987, Defendant WILLIAM J. MARKS, SR., executed, under penalty of perjury, a final Statement of Financial Affairs and accompanying Schedules to be filed with

the court in the LMS bankruptcy, which stated, among other things, that (1) "Meredith Corporation sold its 82% stock in the corporation to Mikado Leasing, Inc., for $1," and (2) Defendant JIM GUY TUCKER was the sole secured creditor of LMS with a claim of approximately $9,000,000.

109. On or about November 30, 1987, the Defendants caused to be filed in United States Bankruptcy Court for the Northern District of Texas, Wichita Falls Division, various pleadings captioned In re: Landowners Management Systems, Inc., Tax Identification No. 75-2001914, including an Original Petition Under Chapter 11, a Statement of Financial Affairs, a Disclosure Statement and Solicitation of Ballots to Plan of Reorganization to be Filed Under Chapter 11 of the United States Bankruptcy Code, and a Debtor's Plan of Reorganization.

110. On or about November 30, 1987, in Dallas, Texas, Defendant JOHN H. HALEY reached a binding settlement agreement to resolve for $600,000 a lawsuit in which a former employee of PCS claimed an interest in that share of PCS and CMI owned by Defendant WILLIAM J. MARKS, SR.

111. On or about December 9, 1987, Defendant JIM GUY TUCKER wrote to a representative of ACF and proposed that the contract for sale of the Plantation cable system be modified to list Defendant JIM GUY TUCKER as one of the sellers.

112. On or about December 15, 1987, the Defendants caused to be presented for signature to an official of Meredith Corporation affidavits regarding PCS.

113. On or about December 18, 1987, Defendant WILLIAM J. MARKS, SR., testified on behalf of the debtor, LMS, at a hearing in United States Bankruptcy Court that the debtor's Plan of Reorganization was proposed in good faith, and that his purpose in proposing the Plan was "to keep Mr. Tucker from foreclosing on the assets."

114. On or about December 18, 1987, Defendant JIM GUY TUCKER appeared as a secured creditor at a hearing in United States Bankruptcy Court to confirm the Plan of Reorganization proposed by LMS.

115. On or about December 18, 1987, Defendant JOHN H. HALEY appeared in United States Bankruptcy Court as the attorney for Defendant JIM GUY TUCKER.

116. On or about December 28, 1987, Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., signed an Agreement with ACF that a new Agreement of Purchase and Sale of Assets for the Plantation cable system would supersede the earlier agreement of September 25, 1987.

117. On or about December 28, 1987, Defendant JIM GUY TUCKER signed a new Agreement of Purchase and Sale of Assets in which ACF agreed to purchase the Plantation cable system from Defendant TUCKER and CMI for $11.75 million, and to pay $3 million in non-competition payments to Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR.

118. On or about February 8, 1988, Defendant JIM GUY TUCKER wrote a check for $100,000 to the law firm Arnold, Grobmyer & Haley for "Plantation & LMS -- partial payment of legal fees & expenses."

119. On or about March 30, 1988, Defendant JIM GUY TUCKER wrote a memorandum to Defendant JOHN H. HALEY and three accountants, with a copy to Defendant WILLIAM J. MARKS, SR.,, stating that responsibility for preparation and filing of tax returns for PCS, LMS, and Mikado Leasing should be determined as soon as possible.

120. On or about May 11, 1988, Defendant JIM GUY TUCKER asked a bookkeeper for CMI to write checks to two persons listed as creditors in the LMS bankruptcy action.

121. On or about August 2, 1988, Defendant JIM GUY TUCKER wrote to his accountant in Little Rock that he purchased the Income Note from Meredith in June 1987, and that he "owned no

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stock" in Planned Cable Systems Corporation.

122. On or about August 25, 1988, the Defendants caused to be filed with the Internal Revenue Service tax returns for Landowners Management Systems, Inc., for the years 1987 and 1988, neither of which reported taxable gain on the sale of the Plantation cable system or other cable systems.

123. On or about August 26, 1988, the Defendants caused to be filed with the Internal Revenue Service two 1987 tax returns for PCS, neither of which reported sales of cable systems.

124. On or about August 25, 1988, the Defendants caused to be filed with the United States Bankruptcy Court in Texas a Chapter 11 Post-Confirmation and Accounting regarding the LMS bankruptcy

125. On or about August 25, 1988, the Defendants caused to be filed in United States Bankruptcy Court in Texas an Application for Final Decree and an Application to Close Proceedings, which applications were granted on December 19, 1988.

126. On or about June 10, 1989, Defendant JIM GUY TUCKER and Betty Tucker caused to be filed a United States Individual Income Tax Return for 1988, which reported the sale of the Plantation

cable system and claimed a basis in that system of $7,906,888.48.

127. On or about June 26, 1989, Defendant JIM GUY TUCKER caused to be sent to Fleet National Bank a new stock certificate for CMI that replaced a previous certificate, which was held by Fleet as collateral for the $8.5 million loan to Defendants JIM GUY TUCKER and WILLIAM J. MARKS, SR., but which had been invalidated by the rescission of the merger between PCS and CMI.

128. On or about October 19, 1989, Defendant WILLIAM J. MARKS, SR., caused to be filed a United States Individual Income Tax Return that reported, among other things, income from the sale of the Plantation cable system.

129. In or around July 1990, when asked by agents of the Internal Revenue Service what was the ownership/relationship of PCS to CMI or Defendant JIM GUY TUCKER, Defendants JIM GUY TUCKER caused agents of the Internal Revenue Service to be told, "None. CMI managed certain cable properties for this entity."

130. On or about October 22, 1990, Defendant WILLIAM J. MARKS, SR., caused to be filed a United States Individual Income Tax Return for 1989 that reported, among other things, income from the sale of the Plantation cable system.

131. In about the fall of 1990, Defendant JIM GUY TUCKER attempted to cause the destruction of documents in Texas relating to the sale of the Plantation cable system, including one page that calculated the gain and tax on the post-bankruptcy sale of the Plantation cable system, and one page that stated:

Risk

Basis claimed = 7

Actual basis = 1

Risk = 6

.32

1.926 + penalties + interest

All in violation of Title 18, United States Code, Section 371.

COUNT FOUR

On or about June 10, 1989, in the Eastern District of Arkansas, Defendant JIM GUY TUCKER, a resident of Little Rock, Arkansas, did willfully make and subscribe a United States Individual Income Tax Return, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center, at Memphis, Tennessee, which tax return he did not believe to be true and correct as to every material matter in that the tax return claimed a basis of $7,283,023 in a cable system in Plantation, Florida, that was sold during 1988, whereas, as he then and there well knew and believed, the actual basis of the Plantation cable system was approximately $1.26 million, as calculated for Defendant JIM GUY TUCKER by accountants in Dallas, Texas.

This in violation of Title 26, United States Code, Section 7206(1).

A TRUE BILL.

_____
FOREMAN

_____
KENNETH W. STARR
INDEPENDENT COUNSEL

Dated: June 6, 1995.

(1)

Tucker Meeting Mon. 6/5

- first issue concerns 337
-

(1)

Tucker Meeting 6/1

(A) preliminary issue - whether it is appropriate to subpoena Tucker to GJ when he might take the 5th or would take the 5th

Marks sent letter saying that he would take 5th

Sam "strongly urges" KWS not to do this
- cannot delegate the issue to the grand jury
- thinks defense may use this as basis for motion to dismiss

Sam - summary
(1) precedent
(2) fairness
(3) appearance of unfairness - days before indictment

- have to trust Δ lawyers

Brad