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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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THE UNIVERSITY OF ILLINOIS FOUNDATION,

Plaintiff and
Counterclaim Defendant,

-against-

BLONDER-TONGUE LABORATORIES, INC.,

Defendant and
Counterclaimant,

-against-

JFD ELECTRONICS CORPORATION,

Counterclaim Defendant.

Civil Action
No. 66 C 567

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Examination before trial of the defendant and counterclaimant BLONDER-TONGUE LABORATORIES, Inc., by HARRY GILBERT, held at the offices of Messrs. Ostrolenk, Faber, Gerb & Soffen, 10 East 40th Street, New York, N. Y., on February 7, 1967, at 10 o'clock A.M., pursuant to notice and

subsequent adjournment, before Isaac H. Shapiro, a Notary Public of the State of New York.

A p p e a r a n c e s:

MESSRS. HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD,
Attorneys for Defendant and Counterclaimant,
By: JULIUS E. FOSTER, ESQ.,
Of Counsel and Local Solicitor,
420 Lexington Avenue,
New York, N. Y.

MESSRS. SILVERMAN & CASS,
Attorneys for Counterclaim Defendant,
By: MESSRS. OSTROLENK, FABER, GERB & SOFFEN,
(Jerome M. Berliner), of Counsel,
10 East 40th Street,
New York, N. Y.

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IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the transcript of the record of the within deposition may be subscribed and sworn to by the witness before any officer legally authorized to administer an oath with the same force and effect as if subscribed and sworn to before a Clerk or Justice of this Court.

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H A R R Y  G I L B E R T, called as a witness, being first duly sworn by the Notary Public, testified as follows:

MR. FOSTER: I desire to place on record certain facts:

I am of counsel and local solicitor here in New York and my function here as local solicitor is merely to initiate local process such as might be necessary, such as notices of examination or subpoenas which under local rules of the District Court require the signature of a local member of the Bar.

The attorney for the defendant and counter-claimant, Blonder-Tongue Laboratories, Inc., is Robert H. Rines, of Boston, Massachusetts, who is not here present today and who alone is fully acquainted with all of the intricate details of this case.

Prior commitments of Mr. Rines made it necessary for him to be in London, England on Monday, February 6, 1967, the date for which this examination of Blonder-Tongue Laboratories, Inc. was noticed by JFD Electronics Corporation.

The schedule of Mr. Rines provided that he would return to New York today, February 7th

and his plane is scheduled to arrive about 9:10 this evening.

I am informed that the Court in this case, before passing on an objection to this notice of examination of Blonder-Tongue Laboratories, Inc. by the counterclaim defendant, JFD Electronics Corporation, was told that I was fully acquainted with the details of this case and presumed otherwise fully adequate to take care of what might be necessary as an attorney attending this deposition.

Apparently on the basis of what was told to the Court, the Court felt that the absence of Mr. Rines would not be serious and that my presence would be adequate to protect Blonder-Tongue Laboratories, Inc. in connection with this examination and deposition.

Since my connection with the case is not of a full attorney, and since I am not fully acquainted with all the details of this case which I have already indicated are intricate, I personally and on behalf of Blonder-Tongue Laboratories, Inc. enter an objection for the use of Blonder-Tongue Laboratories, Inc. in this case

to the enforced requirement of Blonder-Tongue Laboratories, Inc. to be present at this examination without the presence of its attorney.

While I appreciate the problems that the Court may be imposing on me whom it does not know, I do feel that the Court was not fully informed and to that extent was misinformed about my ability to adequately take care of what might be necessary and cannot be foreseen in connection with an examination in a case of this kind.

Specifically I make the objection that the Court's order that Blonder-Tongue Laboratories, Inc. submit itself to examination at this time without the presence of its attorney was an abuse of judicial discretion.

EXAMINATION BY MR. BERLINER:

Q Mr. Gilbert, please state your full name and address for the record.

A Harry Gilbert, 103 Wilshire Drive, Cranford, New Jersey.

Q What is your occupation?

A I am the general manager of Blonder-Tongue Laboratories, Inc.

Q What are your duties as general manager?

A Supervision of various departments of Blonder-Tongue Laboratories, Inc.

Q Does Engineering report to you?

A No.

Q Does Sales report to you?

A Sales reports to me.

Q Does Advertising report to you?

A Well, that is part of Sales.

Q Are you acquainted with Blonder-Tongue's sales efforts in connection with marketing of TV and FM antennas?

A Yes.

Q Have you had any contact with Blonder-Tongue's customers in this connection?

A Infrequently. I am in the home office mostly.

Q Do any Blonder-Tongue employees report to you about their contacts with customers?

A The Director of Marketing, yes.

Q Who is that?

A Richard Helhoski.

Q Do you have occasion to speak to anyone else in the Sales Department concerning antenna sales?

A When they come in off a road trip we will have a meeting of Mr. Helhoski and the field men to discuss

a field trip as a result of any problems or anything of significance.

Q Is it then correct to say that if your field men run into any problems that you would be advised of that?

A I would say most.

Q And in connection with trips made by your field men in their attempts to sell TV and FM antennas have there arisen any problems because of activities of JFD Electronics Corporation, the counterclaim defendant herein?

A Yes.

Q Please explain those difficulties.

A Well, we had a report back that we were not able to sell some customers because of a patent that JFD had on their antenna and before the customers would buy, at least the ones I knew about, we had to give them a letter of indemnification.

Q Is that the only difficulty you found out about?

A That is the major one that comes to mind.

Q Are there any others that come to mind?

A Not at the moment. Can I hold that off for a few minutes?

Q Do you believe you have any records in your office to refresh your recollection on this matter?

A Well, these are with my field men personally.

Q These letters are with your field men. Is that to say you do not have copies?

A With me I have nothing.

Q In your own files do you have copies?

A Letters would rarely be addressed to me. They would be addressed to the Director of Marketing and on rare exceptions I would get a report direct to me.

Q Do you recall the names of these customers who you have been required to give indemnity letters to?

A Allied Radio, Radio Electric. This is to the best of my recollection.

I know we had problems but whether I gave a letter to Radio Electric in Philadelphia I am not sure. I know they raised the problem and there is one customer out in California whose name I don't recall. It might be Altshuler. I don't know if I gave a letter of indemnification to these people or not.

MR. BERLINER: These people Mr. Gilbert was referring to was Sacramento Electric Supply in Sacramento.

Q Do you recall the names of your field men

who have made reports to you that JFD had threatened your customers with suit?

A Jerry Balash.

Q Any others?

A I would say Graham Sisson. I would say those are the two that come to mind right now.

Q How about Jerry Cohn?

A To the best of my recollection Jerry Cohn, if he raised the point, never brought it to me or to Richard Helhoski.

Q How about John Linneman?

A To the best of my recollection by the time John Linneman joined us I no longer was getting this kind of information.

I could be wrong. I don't believe there are any letters of indemnification given out from me under July or August. Again, that is my recollection.

Q Have you received any reports that JFD has refused to sell JFD antennas unless the customers also buy auxiliary equipment such as converters or amplifiers?

A Yes. To my recollection not in writing. I don't recall a written report on it but we have had much discussion on it.

Q Who was present at these discussions?

A It would be Richard Helhoski and Jerry Balash and at this point I can't be sure but perhaps John Linnaman in a subsequent period.

Q Do you recall seeing any written documents relating to this subject?

A No.

Q Have you ever discussed this subject with any Blonder-Tongue customers or potential customers?

A Personally, no.

Q Have you ever received any reports that JFD salesmen had refused to sell JFD antennas to Blonder-Tongue customers unless they stopped buying Blonder-Tongue products?

A I have heard talk but again I don't recall any written report.

Q You do not recall seeing any written report?

A No. I will check my files with this specific question in mind, but I don't recall.

Q Do you recall the names of any Blonder-Tongue customers that were involved in such allegations?

A No.

Q Do you recall the names of any Blonder-Tongue customers or potential customers who were involved in any allegations concerning JFD's requirement that they

would not sell antennas unless other products of JFD were also purchased by the customer?

A I would be guessing at this point. No. There are names that I know of JFD accounts that we have had contact with but I can't be sure that it is in response to your specific question.

Q What position does Graham Sisson have with your company?

A He was at that time the regional sales manager in the southeast territory of the United States. He is now in the western territory.

Q Is he a Blonder-Tongue employee?

A Yes.

Q Do you know his address?

A San Jose; that's all I know.

Q California?

A Right.

Q Was Graham Sisson reporting to Jerry Balash?

A No, he reports to Richard Malhoski.

Q Would you say Mr. Sisson's position was on the level with that of Jerry Balash?

A No. I would say it is one notch below.

Q Do you know of any instances where JFD sought to induce Blonder-Tongue customers to drop the

Blonder-Tongue line by offering special promotions?

A Personally, no.

Q Have you received any reports of such activities on the part of JFD?

A I don't recall any written reports on it.

Q How about oral reports?

A Oral reports I have heard.

Q Who gave you these reports?

A Jerry Balash.

Q Anyone else?

A It would be Jerry Balash with Richard Helhoski or Jerry Balash sent in to me or Richard Helhoski.

Q Do you know of any customers concerned with these matters?

A No.

Q Do you have any records to indicate the identity of the customers concerned?

A The records would all be either the reports that we have on file or the files that Jerry Balash had kept, copies that he had, and they are no longer on the premises.

Q Do you know who has those files?

A They disappeared the week he left.

Q Who made the decision for Blonder-Tongue

to go into the antenna business?

A I would say Mr. Blonder.

Q Were you consulted at that time?

A The way I am with any other product line that we have to look into potential.

Q Is it true to say that before a decision was made to go into the antenna field you had conducted or had an investigation conducted to determine the potential of the market?

A Yes.

Q What was the result of that investigation?

A The antenna field was a good field to go into.

Q When was the decision made to go into the antenna field by Blonder-Tongue?

A I would put it probably about 1962.

Q How soon after this decision was made did Blonder-Tongue start showing antennas to the field?

A To the best of my recollection probably in 1963. We came out with the Golden Dart and the Golden Arrow. I am not sure of these dates.

Q Was it the feeling of Blonder-Tongue that by entering the antenna field that the sales of related products would be improved?

A Yes.

Q In fact, have the sales of related products improved since the entry into the antenna field by Blonder-Tongue?

A I would say yes. With the exception of cyclical fluctuations the answer is yes.

Q Have the improvements lived up to your expectations?

A On related products or the antenna?

Q On related products first.

A As to related products we were going along pretty much on forecast. I would say with related products, yes.

Q How about antennas?

A No.

Q Do you know a former JFD employee named Mort Leslie?

A No.

Q If he has not been employed by Blonder-Tongue has Mr. Leslie done any work on behalf of Blonder-Tongue?

A Absolutely, as a consultant.

Q Please be specific about the type of consultant work Mr. Leslie has done.

A We gave Mr. Leslie an assignment to review the antenna field and to recommend to Blonder-Tongue the

types of antennas that he felt in his opinion was needed to be in effect a competitor and to recommend policies. That was specifically the assignment, and to make a complete analysis of all competitive lines in the field.

Q Did Mr. Leslie contact customers on behalf of Blonder-Tongue?

A Yes, some.

Q When did Mr. Leslie and Blonder-Tongue first discuss the consulting arrangement between them?

A Perhaps, going by recollection, somewhere in September and October, 1966.

Q Prior to that time had there been any contact between Mr. Leslie and Blonder-Tongue?

A No, I had never met Mr. Leslie. I had seen him at one of his shows and that was the extent of my contact with him.

Q Did Mr. Leslie advise Blonder-Tongue of sales methods used by JFD?

A Specifically, I would say no, general, yes.

MR. FOSTER: What is that answer?

THE WITNESS: The specific methods used, no. In general, yes, because in general we had gone through every competitive manufacturer on the same basis.

Q So I take it you know the general method JFD uses in connection with its sales of antennas?

A Generally, yes.

Q Is this general method any different from the general method that Blonder-Tongue uses?

A Yes, very much so.

Q Would you point out the differences, please?

A Well, basically Blonder-Tongue is a one-price house in that we, by custom, practice, policy, sell all customers off a price sheet that is printed.

We have one deal for everybody and there is no wheeling and dealing, as it is called, in the industry.

Basically once we evolve a pattern, this pattern is national. The difference between Blonder-Tongue and JFD, as I understand it, is that with JFD there is a lot of flexibility in the hands of the salesman to make deals on the spot with different deals to different customers depending on what it takes to sell, to get the order.

Q And you gleaned this from Mr. Leslie's discussions?

A Most from Mr. Balash's discussions.

Q Are there any other general differences

between the business methods of JFD and Blonder-Tongue?

A On direct knowledge, no.

Q How about indirect knowledge?

A Indirect, I have had all kinds of reports given to me, deals of all kinds and threats to customers.

Q Please be specific. Mention names, places.

A I can't. I don't have any. That is why I said I don't have any direct knowledge. If I had the names and places I would give them to you.

Q Did Mr. Leslie supply you with the names of any JFD customers?

A To me directly, no, and I have no knowledge if he supplied any names to Blonder-Tongue.

Q Is Mr. Leslie still used as a consultant by Blonder-Tongue?

A Yes.

Q Has Mr. Leslie completed his review of the antenna field for Blonder-Tongue?

A The first part. We don't have a final report.

Q Has Mr. Leslie completed his analysis of competitive antennas?

A I would say so.

Q Has he made recommendations as to the parts of antennas which can best be sold by Blonder-Tongue?

A Yes.

Q Now, as for the analysis of competitive antennas, is that a written report?

A I do not know. Actually, I would like to change that to I don't remember. I have a part of the report but I just don't recall.

The major portion that I recall is the section I was interested in which is the recommendation as to what Blonder-Tongue should be making rather than all the supporting data. I just don't recall whether that is in the report.

Q What was Jerry Balash's position with Blonder-Tongue?

A From beginning to end?

Q Well, let us say at the beginning of 1966 until the end.

A At the beginning of 1966 Jerry Balash was the distributor of products, product manager.

Q Did his position change from the beginning of 1966 until the time when he terminated employment?

A It did.

Q Be more specific.

A On approximately May 9 we put a new man on to handle the antenna portion of the distributor products in an

attempt to put a greater emphasis on the antennas and to give Jerry Balash more time and adequate time to handle other devices, Blonder-Tongue boosters and converters.

Q Is it then accurate to say that after the new man was hired in May of 1966 that Mr. Balash's responsibility with respect to Blonder-Tongue's antennas was just nominal, if at all?

A Nominal is the word.

Q Was Jerry Balash the organizer of Blonder-Tongue's complete antenna business? I am paraphrasing from the counterclaim.

A No.

Q Who was the organizer of Blonder-Tongue's antenna business?

A It would be Richard Helbeski.

Q Was there ever a time when Mr. Balash was the sole and key executive in Blonder-Tongue's antenna business. A Yes.

Q When was that time?

A When we introduced our Ranger series of antennas.

Q When was that?

A To the best of my recollection somewhere around August through October, 1965. Somewhere in that area.

Q At that time was he the sole and key executive or the sole executive? Was he ever the sole executive?

A No, not the sole executive. He was the product manager in charge of antennas but he reported to a Director of Marketing and he couldn't make the decisions himself.

Q Prior to the time when Mr. Balash advised Blonder-Tongue that he was terminating employment did he ever express any dissatisfaction to you with his position at Blonder-Tongue?

A Frequently.

Q Did he ever advise that he was looking around for another position?

A From the very earliest part of his career with Blonder-Tongue this was a repetitive refrain.

Q Did he ever ask you to explore the possibility of making him a representative for Blonder-Tongue's products?

A He may have in the last couple of weeks when he was with us. I think so.

Q Was this prior to his notification that he was terminating employment?

A I couldn't say.

Q In your earlier testimony I believe you

indicated that certain files disappeared about the time Jerry Balash left?

A That's right.

Q Can you be specific as to what these files were?

A We maintain at Blonder-Tongue letters and books which are chronological carbon copies of all correspondence of key executives and the letter books were not there some time during the week following Jerry Balash's departure. His successor couldn't locate them.

Also the files in the desk drawer, in the four-drawer file in the product manager's area had a number of empty folders and one of the major reports, a six-month IBM report for the six months ending April 30, 1966 giving a breakdown by customer, address and product line, was not available and the Weingard catalog and price sheets, we had two copies in the product manager's area, the week following his departure, one of those copies had disappeared.

Q You say "the week following."

A He left, I believe, on the 29th and in the next succeeding few days when the area was reviewed to see what was there these things were missing.

Q Have any of these documents shown up since?

A No.

Q You said the letter books contain carbon copies of correspondence of key executives:

Did they just include letters sent from Blonder-Tongue or the correspondence received from customers or from third parties?

A The correspondence from the one executive to all parties inside Blonder-Tongue and all third parties outside Blonder-Tongue.

It is a complete file of any memorandum he dictated during his stay at Blonder-Tongue.

Q Would the letter books also have copies of incoming mail?

A No.

Q Then I take it all incoming mail is still on the Blonder-Tongue premises insofar as it is relevant to what we are talking about?

A Insofar as it is relevant and if it was not filed in one of the special files for action.

Q When you say letter books were missing I get the impression that there are many letter books, a different one for each executive?

A There is a different one for each executive and each executive may generate in his period with us.

Q Specifically what letter books were missing?
A The Jerry Balash letter books and approximately three or four of them.
Q Were the letter books of any other executives missing?
A Not to my knowledge.
Q And as for the files in the product manager's area, do you know whether or not the empty folders had contained anything?
A No, I do not.
Q Do you now have a copy of the six-month IBM report you have referred to in your previous answer?
A We always had extra copies. It is the product manager's copy that was missing.
Q Did anyone but Mr. Balash have access to the product manager's copy?
A I would say yes.
Q Did anyone but Mr. Balash have access to the letter books including Mr. Balash's letter books?
A Yes, the same as the books over here on the shelf.
Q Was Mr. Balash given advance notice that a new man had been hired to handle antenna products?
A I don't know.
Q Did you so advise Mr. Balash?

A No, I did not.

Q Have you had any conversations with Sidney Love concerning JFD activities in the antenna field?

A Not to my recollection.

Q Have you had any conversations with any personnel at Radio Electric Service Company in Pennsylvania concerning JFD's activities in the antenna field?

A No.

Q The same questions with respect to Dan Levine of Leder?

A The question is on JFD, the answer is no.

Q How about anyone at Thurow Electronics in Florida?

A No.

Q Do you have any documents that you believe would be relevant with respect to the antitrust counterclaim being asserted by Blonder-Tongue in this litigation?

MR. FOSTER: I think that is a question that you should hardly ask him. Those would be legal matters. How would he know whether it is pertinent, a legal matter, especially an antitrust paper?

MR. BERLINER: I just asked him if he knows.

MR. FOSTER: I don't think he would be in a

position to say. It involves an opinion.

MR. BERLINER: He has a belief at this point. Are you objecting to this question.

MR. FOSTER: Yes. It gets beyond the range of an executive to know whether these documents are in an antitrust complaint.

MR. BERLINER: Please answer the question.

THE WITNESS: The first document or first paper that comes to my mind is a report that I wrote when I came back from Boca Raton Country Club in October or November, 1965 where I was at breakfast with my men and Ed Finkel was sitting at a table by himself and he called me over and let me know that he was aware that we were going into the antenna business and he was going to give me some pointers on basic deals on the price of antennas and the one point that he did make was that the special promotion or introductory deal that we had to try to get customers to buy was the kind of deal that the other antenna manufacturers go into during the slow summer months and as the fall season starts they discontinue these deals and start selling at full price and it would be to our best interest to stop the deal and start selling full price and in this way everybody would be able to con-

tinue selling at the full price during the height of the season and then revert to deals when business slacked off.

Q Any other documents you are aware of of this nature?

A Well, that is one that I created. The one I had Jerry Balash make a phone call to California and I don't remember the name of the customer and I could be wrong on that. Jerry came in, I believe, and told me about the phone call and I had Jerry record the gist of the phone call for me so that I would have it in my files.

Q Are you referring to a document that has been marked MT-54? 6014-2

A Yes.

Q Do you recall any other documents of this nature?

A I believe there are several. I don't recall them.

Q Will you go to your files and get all these documents that you believe to be relevant to the anti-trust counterclaim and submit them to your attorney for transmission to us?

A Yes.

Q Do you know of any customers that Monder-Tongue has lost because of the activities of JFD?

A No.

Q Do you have any specific instances where the good will of Blonder-Tongue has been impaired by the activities of JFD?

A No.

Q What is the nature of Blonder-Tongue's special promotion that you have been referring to?

A The introductory promotion, if I recall correctly, was giving one free antenna for every 12 bought.

Q Does Blonder-Tongue use any special promotion sales methods during the so-called slack season in the summer?

A Basically our promotions and sales efforts are year around. If we are giving one for 12 it is pretty much throughout the year. We haven't seen fit to vary it to offer one deal in the summertime and another one in the wintertime so we have been relatively consistent.

Q Using the word "relatively," where were the inconsistencies?

A The inconsistencies were only that we might go two for 12 and offset the cost of co-op advertising for the cost of an antenna; just trading some promotion dollars but that we have a promotion going at all times that is fairly stable.

Q Is a promotion of one form or another offered at all times?

A Yes.

Q Do you ever ship goods on consignment?

A Yes, converters only. I assume when you say "consignment" you don't mean a sample of one or two pieces.

Q I am referring to a standard order where title does not change.

A Right. My answer stands.

Q Is there any standard credit period that is used in the industry?

A I don't follow that.

Q When a bill is sent is it supposed to be paid within 30 days or is there any other time?

A Which industry are you talking about?

Q We are talking about sales by a manufacturer such as Blonder-Tongue to a distributor.

A Our normal terms are two per cent, 10th and 25th, net 30.

Q Did you ever extend the period beyond 30 days?

A For specific promotions we will and by product line we will.

Q What determines whether the extension will be beyond the 30-day period?

A The time of the year and what the usual practice of

competition is.

Q Is this standard procedure with your competitors to extend the normal payment period?

A On antennas, yes.

Q How about converters?

A For a new market you will have it on converters and for an existing market the normal terms prevail.

Q Who are the major competitors of Blonder-Tongue in the TV and FM antenna field?

A It would be Weingard, Channelmaster, JFD and Finney.

Q Do you believe those four companies are the largest in the field?

A Throw Taco in there and I believe we have them covered.

Q From the information available to you have you made any determination as to which of the five companies you have named does the most business in the antenna field?

A In relative spending I think I have a feel for it. I would be going by recollection.

Q Would you try to recall which of the five you named was the largest?

A I think I would put Channel Master first.

Q How about number two and so on?

A Also a matter of changing patterns --

MR. FOSTER: Are you asking now opinions of what he thinks? It doesn't seem to have any bearing on the case. What difference does it make what he thinks is the standing of competitors. It gets into a field of questions and answers where they are meaningless.

MR. BERLINER: Off the record.

(Discussion off the record.)

MR. BERLINER: Please answer the question.

MR. FOSTER: I am objecting to this question or to even this type of question because what you are trying to do is make the witness some sort of commercial expert with his opinions rather than facts that are related to the issues so what he thinks about the standing of these competitors is not an issue in this case and has no bearing and it doesn't lead to any information that would be helpful under the rules.

MR. BERLINER: Please answer the question.

MR. FOSTER: I direct the witness not to answer the question.

Q Has Blonder-Tongue made a determination as to

which of the five competitors you have named is the largest in the antenna field?

A I would say Blonder-Tongue as at this point does not have anything in front of me to let me know what we determined. I don't know personally.

Q Do you know if there is a document to set forth that determination?

A I am pretty sure there must be.

Q Would you please find that document and transmit it to your attorneys for submission to us?

A Yes.

MR. FOSTER: Let me say that for all these documents they will be produced to the extent that they are available and submitted to the attorneys and then the question of whether they are pertinent and will be delivered to you will be considered and taken up as a matter of advisement and we will inform you whether or not we have them and whether we will deliver them to you for the purposes of this case.

MR. BERLINER: I have no further questions of the witness subject to the production of these documents.

MR. FOSTER: You are closing the examination

with this witness subject to the production of the documents you asked for?

MR. BERLINER: Yes.

MR. FOSTER: Since the other two witnesses who were to appear today appear to have been holed in somewhere where they cannot get to this deposition in time for today's deposition, I suggest that they be made available to you since we must assume that conditions would be sufficiently improved so that they can travel here.

I think the record should show that we have blizzard conditions which have been declared so by the Weather Bureau and that the snow has been piled up on the streets of New York and all the roads leading to New York to create a condition of difficult travel.

MR. BERLINER: If conditions clear up by tomorrow so that we are able to conduct depositions, I would like the witness Balash to be the first to be examined.

MR. FOSTER: That is satisfactory to us subject however to this condition:

Mr. Hines who is on his way presumably from London now and should arrive here at 9:15

is the attorney who will be conducting the examination of Mr. Balash when he appears.

I do not know about this case to properly undertake the examination of Mr. Balash and I am sure that the Court would not order me to do so if the Court were fully advised of the situation.

Therefore, I agree with you and I stipulate to this extent that if Mr. Rines will arrive this evening as we expect and hope and is available here tomorrow morning at the time of the examination which we have noticed, we will examine Mr. Balash first so that he may be free to leave since that is what you desire and do you fix any further time on the question of whether Mr. Finkel would be available?

MR. BERLINER: As far as I know Mr. Finkel will be available. However, I would like to examine Messrs. Malhoski and Cohn prior to Mr. Finkel's examination. I suggest that we leave these details up in the air.

MR. FOSTER: We can decide that tomorrow morning. Let us hope that everybody will be here and we will decide then how to proceed.

As of today, as of now this hearing

you are closing.

MR. BERLINER: It is being adjourned.

_____

Subscribed and sworn to before me
this day of 1967.

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- - - - - - - - -

STATE OF NEW YORK }
} SS
COUNTY OF NEW YORK }

I, Isaac H. Shapiro, a Notary Public duly commissioned and qualified in and for the County of Kings, State of New York, do hereby certify that pursuant to notice there came before me the following person, to wit, Harry Gilbert, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon the interrogatories submitted and his examination reduced to writing under my supervision; that the deposition is a true transcript of the record of the testimony given by the witness;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition has been taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of February 1967.

Isaac H. Shapiro

ISAAC H. SHAPIRO
Notary Public of the
State of New York
No. 24-3613000
Commission expires
March 30, 1967

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