

**ORAL ARGUMENT -- 01/15/03**  
**01-0788**  
**FORBES V. GRANADA BIOSCIENCES**

DONALDSON: We are asking this court to reverse the CA's decision and reinstate the TC's grant of summary judgment. Because, among other reasons, there is no evidence of actual malice with regard to the Forbes' Article.

On the way to making its erroneous determination, the CA did not employ the type of rigorous analysis that these cases require, and certainly did not meet the standard that this court has set in its analysis of cases like Huckabee, Turner and most recently \_\_\_\_\_ v. Bunton(?). And equally important, the CA misapplied Turner, and failed to require the kind of specific affirmative proof of actual malice that Turner requires.

There's no question as we review this case that the actual malice standard applies in this case. That's not an issue before the court as we understand it. Clearly, actual malice is the case.

PHILLIPS: Nobody disputes that or is \_\_\_\_\_?

DONALDSON: Nobody disputes that. And that was the finding in the CA. And here that issue is not even being challenged. The CA erred by finding that there was a fact issue regarding actual malice as to Forbes and Mr. Barrett's state of mind, and did not tie that conclusion to any alleged false statement of fact. Instead that whole discussion about actual malice has to do with conversations between Mr. Barrett and the Ellers, at a time when the article had already been published. As the Ellers themselves and the respondents themselves in their summary judgment evidence show.

ENOCH: Is it your position that where there error is is in the failure of the rigorous analysis?

DONALDSON: Our belief is that had they applied the kind of analysis that this court has applied in these kind of cases, there is no question they would have found no evidence of actual malice. And the factors that the CA focused on concerned things that happened after the article was published. They focused on matters that related to whether or not a letter could be sent in to be reviewed before the article was published. But there was no specific discussion of any false statements of fact that the Ellers were raising. At that point, Mr. Barrett had determined that there was one matter that was not completely accurate in his article in terms of the identification of one of the plaintiffs who was involved in one of the very serious lawsuits that had been filed against Granada and is reported on in this story.

Honestly, the respondents really aren't trying to defend the CA's decision.

They have a new theory that they are advancing here in this court, that there can be evidence of actual malice because the references in the article, there are references to entities like Granada Corp., and Granada and Granada Biosciences and Granada Foods.

O'NEILL: We've quoted in Turner and Golden Bear \_\_\_\_\_ a quotation that I've written down, and that is, the basis of the action lies in the just(?) position of truthful statements about one company, the previous statements about the illegal operations of an independent company of the same name. Now why isn't this case on all fours with that statement?

DONALDSON: Golden Bear is different. Because in Golden Bear there were distinct companies that were not affiliated with one another, other than the fact that they have the same name. In this case, we have an organization, a Granada organization that includes as part of it the Granada Biosciences and Granada Food Company. So in that sense, I think that distinguishes Golden Bear.

WAINRIGHT: Didn't in fact Mr. Barrett say in his affidavit on several occasions that even though he used the term "generically Granada", that he really didn't mean GBC or GBI or GFC in certain situations? Didn't he actually admit that in his affidavit?

DONALDSON: In his affidavit he does discuss Granada generically. But he also makes it very clear that when he intended to talk about Granada Biosciences and Granada Foods specifically, he mentioned them specifically. And their names appear specifically. Another distinction of Golden Bear is that in this article there are references to various parts of Granada Corp. There's a reference right in the headline to Granada Corp. There's a reference to the Granada Organization. That is identified as a series of private and public entities. There's a reference to some partnerships that were part of the Granada organization before they became part of the public companies.

So there's a distinction that's drawn there as opposed to trying to suggest that both these references to Golden Bear are exactly the same company. There are references in here that make distinctions between the companies, the organization itself broadly, or Granada Corp. or the individual companies, Granada Biosciences, Granada Foods. And more importantly that while there may be some argument over how this can be read and whether Granada \_\_\_\_\_, Granada Biosciences, Granada Foods to a reasonable reader, that's not the issue before the court here. The issue is actual malice. What did Mr. Barrett intend? And the evidence before the court is that there's no indication that he intended when he said Granada, the organization generally, that that was going to be specifically about Granada Biosciences or Granada Foods. The evidence is the opposite. He intended when he said Granada Biosciences, Granada Foods, only to discuss them when discussed Granada Biosciences and Granada Foods.

WAINWRIGHT: Those two statements may be accurate based on the record, but there's another part of this that's pointed out in some of the briefing that even though Mr. Barrett used Granada generically to refer to the family of companies or the whole set of companies and entities, he did state on several occasions in his affidavit did he not that on some of those occasions when he used Granada generically he did not intend it to apply to one or both of the specific respondents here.

Didn't he?

DONALDSON: As he went through each of the passages, yes. I think the way the evidence is set up, or when the affidavit is set up, is that he says that when I intended to speak specifically about Granada Biosciences and Granada Foods, I mentioned them by name. And I did discuss Granada, the organization generically, and that organization is some of the private companies, Granada Corp. and it includes in generally Granada Foods and Granada Biosciences as part of that total organization.

And the problem here now raises the issue of a group liable claim. Our concern is that when you talk about a group of folks, and then you talk about a specific people, if you're not under the group liable theory, the fact that you mentioned something about a general group cannot be claimed by an individual, specific individuals, as being about them specifically.

ENOCH: COULDN'T HEAR QUESTION.

DONALDSON: The way that this article is set up, and the way it reads, read the article it does identify a group - Granada organization. But then it discusses specifically Granada Biosciences and Granada Foods when it attempts to discuss them.

The other issue on your response is well suppose that you say something that's true as to the whole group. Well it is true as to the whole group if there is some other entity that committed that activity. In other words, if you say that Granada organization had an entity that had an issue about backdating documents, that is true. The problem is, that's not about Granada Foods or Granada Biosciences. But it is true as the Granada organization in general. And that's the problem. In group liable cases, which is the beginning of your question, the whole idea is that the people who are complaining about the statement made about the group are members of the group. And the problem is if the statement is about a group and they are members of the group, their argument is well that wasn't true as to me, and, therefore, I have been libeled. Even though the discussion is true as to other members of the group.

That's our whole point. If you apply a group liable analysis, initially you don't even get to the actual malice issue, because ultimately the article anytime it refers to Granada if you apply that analysis it's substantially true. But more importantly if you're not satisfied with that analysis, you still have to look at the issue of actual malice and what did the author intend.

The respondents have set this case up before this court essentially arguing that Turner didn't say what it said. In Huckabee and in Turner and most recently in the Bentley v. Bunton case, this court has made it clear that you cannot use a claim that an article or a publication or a broadcast creates a false impression, and then assert an actual malice existed when the person that created that publication or broadcast never intended it to be taken in a fashion that's now being claimed by the respondents. If in fact the rule is that you have to show that it was intended to be taken in the fashion that the respondents claim, you have to show that intent in order to prove actual

malice they lose. And they do lose because in their Huckabee and Turner and Bentley, this court has made it clear if you're going to make a false impression case you've got to show that that was part of the intention of the people who put the presentation together. And that has not been shown here.

HECHT: The respondent argues that you are carving out reckless indifference to that argument. Is that your \_\_\_\_\_?

DONALDSON: I don't understand the suggestion of reckless indifference. I don't believe that that's our case. You have to show either intent or either even if you have to show knowledge under either standard they don't meet that here.

PHILLIPS: CAN'T HEAR.

DONALDSON: That's right. Did they know or strongly suspect, I think is the language that this court has used. And there's no evidence here before this court or in the record that shows that Mr. Barrett knew or should strongly suspected that when he talked about the Granada organization generally, or he talked about another Granada entity, he intended to talk about Granada Biosciences or Granada Foods.

PHILLIPS: Was the \$2 billion number based on anything other than the comment from the spouse that she corrected when \_\_\_\_\_?

DONALDSON: It is based on the comments by Linda Eller concerning the \$2 to \$3 billion actually, I believe is what she said initially.

PHILLIPS: In the same phone conversation, she revised that.

DONALDSON: That's in her affidavit or in testimony. That's what the claim is made. I think it's in the telephone conversation with Mr. Barrett after the article had been published. She claims that that's what she did.

JEFFERSON: Are there any cases at all discussing whether a reporter might be guilty of actual knowledge if I intentionally \_\_\_\_\_ the other side of the argument. That this reporter knows that there are two sides and one side is right and one side is wrong. And the reporter takes side A, and decides not even to inquire about Side B, not to accept any of Side B's point of view. Is there ever actual malice in that context?

DONALDSON: In Harte Hanks v. \_\_\_\_\_, the US SC addressed that issue. The facts of that case are important, because in that case there was an allegation that a candidate for office had offered gifts and a job to someone to come forward and give damaging testimony to someone who was related to his opponent. And the candidate learned of that allegation before the publication, presented five witnesses that said no, that's not true. That's not the conversation that happened. Presented a tape recording of the conversation and also identified another neutral witness, that wasn't

affiliated at all with the candidate and said, you need to go talk to these people before you publish that. And they didn't do any of those things. They did not listen to the tape recording. They did not try to find the neutral witness. Yes, those things happened.

However, this court has also recognized, and did so in the Huckabee case, that if you have someone who is actively researching, who does talk to both sides, who did speak with several officials with the company, which Mr. Barrett did, and did do research, did look at the public filings, in the Huckabee case this court recognized when you have that kind of extensive research, that eliminates a claim of purposeful avoidance of the truth.

Even to make a claim of purposeful avoidance, you have to show that there is some reason to doubt the information that you have. And in this context, there is no basis for finding that Mr. Barrett had reason to doubt. Sure there were disagreements. Sure there were denials. But none of those things are enough to show actual malice.

O'NEILL:               Where is our focus in looking at actual malice? Do we look at Barrett's subjective intent in terms of how we \_\_\_\_\_, or do we look at what a \_\_\_\_\_  
\_\_\_\_\_ ? Where do we start?

DONALDSON:           You start with Barrett's subjective intent. Remember this is an actual malice case, which requires proof that Mr. Barrett knew what he was saying was false, or probably false.

O'NEILL:               So you're saying we have to take his word from his affidavit that he intended to infer to the whole organization when he used the word Granada except where he specified otherwise? We have to take that at face value regardless of how it could be perceived to be ever true?

DONALDSON:           It's not what a reader understands what the writer intends. It's not what the reader takes out of it. It's what the writer intends. Now I don't want to take that too far. Sure, could there be situations where it's just totally unreasonable for Mr. Barrett to think that a reader...

O'NEILL:               But how do we determine that? How do we determine where you take it too far?

DONALDSON:           The way that you start is to look at his affidavit and see what he says, what his intent is, and then look at the content of the story itself and see if it supports that intent. People may disagree, but if it is one of the things that if in reviewing the article you can see how his position could be accurate, then there's no evidence to rebut or no suggestion that when he says this is what intended, there's nothing to suggest otherwise. It is enough and should be the standard that if he says this is what I intended to say, and the article with a reasonable reading fairly supports that, then that should be the standard.

JEFFERSON:           You say in the brief that Granada had to prove by summary judgment evidence

that the omission or the misleading \_\_\_\_\_ position had to specifically show how that caused the false impression. How do you create summary judgment evidence on what that just position conveys? What does the summary judgment have to look like?

DONALDSON: I think in that situation before you even have to talk about evidence you have to talk about what is their position. They have to set out what they believe the article says.

You have to know what it is, the impression they think is created by the article. You have to set that out specifically. That must be the standard. And then at that point whether there may be evidence that may be relevant to that or not it may depend on the circumstances.

JEFFERSON: What does that evidence look like of the false impression?

DONALDSON: Potentially it could look like a situation where the reporter himself says after I read it, I realized that it had that impression. It could be an admission in a deposition to that effect. It could be testimony from others concerning their understanding of the article once they read it.

WAINWRIGHT: In regard to J. Jefferson's question. Are you asking this court to establish a new pleading requirement that is establish and cite provably false factual connotations, which I think you would say is implied in the Turner v. KTRK case? I think the amicus brief was a little more direct about it that you believe that the provably false connotation should be set out. And if that's in the appellate context, I would imagine that you believe that should be a pleading requirement in the TC for this type of a case. Is that what you're asking?

DONALDSON: Yes. We do believe that that's where this court should end up. But here all we're asking is for this court to grant the DC's motion for summary judgment. I think that's where you end up. And I think that is the standard now. Under pleading requirements you have to at least give some notice of what it is that you're claiming. And I think in this situation the way this court has set up the standards, that you have to give notice of what impression you believe the article creates.

O'NEILL: But under your analysis even if we were to presume that there was a provably false connotation, you go back to what he actually intended when he wrote that provably false connotation or when he read the article that connoted something was provably false, if there's any way to read the article to support his statement or his intent we have to \_\_\_\_\_?

DONALDSON: In a national malice case when you have the reporter giving a declaration of his intent in the article and the content of the article is consistent with that declaration of intent, yes. The bottom line is did he intend for it to be read that way? And if you show that he didn't intend for it to be read that way, you can't then try to visit upon him some different interpretation and claim that well you knew that was false.

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RESPONDENT

CARRIGAN: I am going to tell you how we think that this case ought to be submitted to a jury in such a way that this court can meet all of the constitutional requirements. We do not dispute in view of the same case, which we believe is the best authority now, that we apparently have in this type of situation two constitutional hurdles to overcome. We recognize that in this case there is an intent problem. Our only argument is not that intent doesn't enter into it, but intent just as knowledge in the actual malice includes a reckless disregard or otherwise you have no possibility of ever proving the matter.

The way we have decided that this matter should be submitted is tempered somewhat by your recent decision in Smith v. Harris County, which I recognize was a split decision. But as I understood it all of the parties agreed that on liability factors the Casteel case applied. And the general charge is a problem if it doesn't take care of the simple fact of the liability issues. And in this case we do not believe that there would be a general charge. What we would submit, if we have the opportunity to return to the DC is there would be approximately 9 or 10 issues with regard to statements in the article that we say applied in the mind of the reasonable Forbes reader to Granada Foods and, or Granada Bio.

And what we would suggest using an example in shortchanging on the words is, issue No. 1, Answer the following questions with regard to the statement taken below from the article? And I will use one example. Possibly anticipating a bankruptcy filing, former Granada employees say officials in recent months have moved some farm equipment and vehicles off of Granada books and gotten rid of backup documentation. The first question out of the restatement in the Crosslands(?) case, that the 14<sup>th</sup> court, would the average Forbes reader reasonably understand under all the circumstances that this statement applied to Granada Bioscience, Granada Foods? Are we home free? No.

The next question would be, did Mr. Barrett intend or with reckless disregard write his article in such a manner that the average Forbes reader would reasonably understand that it applied to Granada Foods, Granada Biosciences.

O'NEILL: Your fundamental disagreement then is where do we start. What you told me just now was that if the subjective intent is there and if the text will support that even though a reasonable reader might find something else, if the text will support his statement of intent, we have to go with that. You would disagree with that?

CARRIGAN: I disagree with just as you first asked where the question is false. Then you go down the line in a regular defamation case.

O'NEILL: But in order to determine whether it's false we have to first decide whether it's as to these companies specifically. So we've got to see what the intent is in order to determine

whether it is false?

CARRIGAN: Yes. And that's exactly what I'm trying to do in the very first issue. Does the average reader reasonably understand that applies to one or both of these companies? Then you go to the constitutional lineup. Did Barrett write it in such a way that he either intended, or used reckless disregard in how he wrote it so that that would be how it would be understood. Then you go to the malice questions. First you follow that with was it false? Was it defamatory? And then you go down to whether or not the actual malice, did he know or exercise reckless disregard with whether or not this was true or not?

HECHT: Do you argue that statements about the two public companies themselves were false on their face?

CARRIGAN: I think there are probably one or two that we might submit to a jury. But to me the basis of this case, that the defamation, the damage comes from the use of the general term that is understood to apply in these many instances to give the impression to the average reader that this is what Granada Foods and Granada Biosciences are about. If I had to argue that the statements that expressly refer to General Bio or General Foods, I don't think I would be in front of this court at this time.

HECHT: And there is an argument that's been made towards the end of our briefing that when we have a false impression - the kind of theory that we talked about in Turner, that the defendant has a right to know what the plaintiff thinks is the false impression that is being conveyed. Do you agree with that?

CARRIGAN: I agree with that. I would point out to the court that the 14<sup>th</sup> CA decided that there were 19 references to difference statements within there. I'm just appalled at the suggestion that petitioners have given that they were not on notice of this particular situation.

HECHT: COULDN'T HEAR.

CARRIGAN Yes. First step reckless disregard there. Second step once you get through the falsity that it was a matter of actual malice. I think that is as clear a position as I can make on the situation.

WAINWRIGHT: What do you contend were the actual instances of evidence in the record of actual malice? Just give us a list. What do you contend? I'm asking about actual malice as we've defined it to include both intent and reckless disregard in this situation.

CARRIGAN: Let me take a number of the statements then. I guess the strongest example I can give you is toward the conclusion is we set out after referring to present time, after referring to General Bio and General Foods, we go into this last three paragraphs, which to me are appalling. But the first is that in the Houston court pleaded this summer one Granada entity acknowledged huge



unpaid legal bills. A virtual admission of insolvency. They are talking about Granada Management that's never been mentioned, nobody knows is in existence, and yet they follow that after all this stuff about the two public companies they put that in. And by Mr. Barrett's own admission, if you're over the first hump, that he made this inference with reckless disregard, you automatically have then the actual malice. Because it's false as to the two companies. It's defamatory as to the two companies. And it had to be done with reckless disregard.

WAINWRIGHT: Let me clarify my question and refocus you a little bit. What is the evidence of the writer's state of mind here?

CARRIGAN: The writer's state of mind starts with his background. And that is, he's a lawyer. That he has been with Forbes for a number of years. That he is aware that what they say affects the market condition of public companies. That he then by his own admission lumps two public companies that are being traded on the stock exchange in with a group of other companies. And by the way they talk about 40 companies and so on. The opening statement, and this is 1989 the Wall Street Journal talks about a Houston based parent of several public companies and private entities. You've already narrowed the field down. There's no 42 companies involved in here. But just like his referencing the statement that I read about the huge unpaid legal bills, which is bad enough as it is, because he took it out of the pleadings where they are trying to get a company that has one of these DNO policies to pay up as they run up these bills. And they call that a virtual admission of insolvency, but it's about Houston Management. All they had to do was put parenthesis there. "Houston Management." Okay. Then you know it's not involved. Then they go down to the next one after that and said, possibly anticipating.

The next statement is with regard to possibly anticipating bankruptcy. And they go to former Granada employees, they've moved farm equipment off and gotten rid of backup documents. By Barrett's own admission, that doesn't apply to either one of these companies.

O'NEILL: Let's take Enron for example. There are many articles written about the entities, this was sort of generic Enron \_\_\_\_\_. And by way of example something could have mentioned a specific entity. Is it your position that in order to avoid any sort of business \_\_\_\_\_ finding(?) it has to be set out that when we refer to the overall entities we're not talking about this particular sub, or this particular sub, or this particular entity? Does there have to be a disclaimer?

CARRIGAN: No. Let me tell you the difference between Enron and here. Enron is a parent. Enron is the one who is being publically traded. All these subsidiaries down here are not being. So that anything that they do down here rises up to affect the stock of Enron. We don't have that situation here. We have Granada Corp., which is private, having and owning two public corporations that are being traded. And so they turn around and talk about all the things that Eller allegedly they say is doing with Granada Corp., and never once distinguish that these two down here, the public traded ones, are not guilty of these effects. And who are the important ones are the public investors and those who have their money tied up in those two corporations.

So to me there is a fundamental difference between Enron and the Granada situation here.

By Mr. Barrett's own deposition and testimony, he recognizes that what he says and what they say has an affect on the market.

ENOCH: Assume that you look at the intent of the writer, and that it could be read the way the writer wants it to read and there's no malice. But if you look at the publication that it's put in, it might not be a reasonable interpretation of the article, because the publication really is focused on the \_\_\_\_\_ market.

CARRIGAN: Absolutely. And I think that's exactly what the restatement says. What does it mean to the audience to which this was addressed or intended for. The fact of who and what Forbes is, yes.

We know that Granada by Barrett's own admission, the moving of these - any information he had on moving equipment off and doctoring the books does not apply to either of these two public companies. Why doesn't he say so? Just parenthesis. "Granada Corp." But even then he goes further and in that same paragraph he says, more of this hanky-panky is with regard to a Granada executive employee admitted he back dated a document. Now the 14<sup>th</sup> court picked up on that. First of all this is a horrible statement in the fact that what happened is the back dating itself has a disclaimer, advising the public, I made this on such a date, the director signed it on such a date to back date it at the time. There was no hanky-panky. It was wide open. But it wasn't even a Granada employee. It was an employee of some outfit called Intermodular, etc, which was 70% owned by Granada Corp. All he's got to do is stick in "Intermodular Corp." But he says a Granada employee. With all this running together, and then coming to the final conclusion down here that his unfortunate fellow shareholders. Now how can anybody read anything but the fact that Mr. Barrett and all the readers knew that those last three paragraphs were referring to these public entities.

I'm going to return to the malice or the reckless disregard part in the earlier instruction. For example they have plans to set up a vertically integrated operation including eateries and retail stores. Now who reading that would think for one minute that these partnerships back in 1987 were in the business of doing food and retail stores. Wouldn't anybody read in that think that this applied to Granada Foods. And right above it Granada lost \$30 million speculating in cattle. He admits that he got most of this information from a "confidential source". I hope discovery if and when we're returned will find out about this confidential source.

The plans that this speculation he says was back in the partnership. If you put this story together in 1989 from the first paragraphs, we know that there were only several companies and private entities. We dropped down and we now know before those come in that those partnerships were rolled over into these two public companies.

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## REBUTTAL

WAINWRIGHT: In Turner, at page 120, the Chief writing for the court states, that although actual malice focuses on the defendant's state of mind, a plaintiff can prove it through objective evidence about the publication's circumstances. If there is a disagreement in the party's positions, one saying state of mind was no malice, actual malice intended; the other saying objective circumstances, or at least arguing that, lead to a conclusion of actual malice, so we have a fact question entitling the parties to present their case to a jury or not?

DONALDSON: It depends on the evidence as presenter of the objective circumstances. But in this case there aren't any objective circumstances that can support an inference of actual malice or either raise a fact question about actual malice. Indeed, one of the things that I think is different about this case is that we have a res \_\_\_\_\_ statement if you will in the tape recorded conversation between Mr. Barrett and the Ellers in which he says, I interviewed all of these people. I really believe it to be true. But if there's something that you think is in error let me know. And in fact, in the one instance where he had found out after the publication that there was an error with regard to a gentleman named Ed Bass, that was corrected in the next issue. And Mr. Barrett in his conversations with Eller expresses his dissatisfaction with the fact that he had ended up getting that part wrong.

There's no objective evidence that Mr. Barrett knew that what he had published was false.

WAINWRIGHT: The parties in their briefing argue about different occurrences that they different positions on whether they show or probative of actual malice, the state of mind or \_\_\_\_\_, take alleged broken promise to let Granada review the article before it was published. The arguments about whether the corrections deadline was misleadingly stated or not, and whether that's even relevant. Eli's affidavit where he said Mr. Barrett was attempting to get him to show ill will towards Granada. And the argument that there's an absence of a written policy or even articulated policy by Forbes regarding verification of facts. The parties have argued about at least those four things that impinge on or may relate to the state of mind here. How does that play into your argument?

DONALDSON: We believe that none of those items individually are any evidence of actual malice, and add them all up and it's still not evidence of actual malice. If you're adding zero, zero, zero, zero, you still get zero.

Broken promises, there is no indication that Mr. Barrett knew that any of his statements in his article were false. And there's no suggestion that he knew a specific problem was there and he did not want to hear the other side. All he did in that situation was simply denied them an opportunity to give another second denial to some of the things they had already denied.

With Mr. Eil's comment about ill-will. This court has already made it pretty clear that ill-will is not a basis for finding...

WAINWRIGHT: Standing alone.

DONALDSON: Standing alone. Finding actual malice. And I don't think adding it to broken promises gets you there either. The absence of a written policy, there's no expert testimony or anything to the effect that the way Forbes does its operation is sloppy, or shows no interest in getting the truth. In fact, Mr. Barrett's testimony was that in addition haven written the story, before he submitted it, he had to go through and specifically double check his facts against his sources, against the information that he had. In the record there is a list of all the facts that he had in his story, and there are okays next to each of them.

WAINWRIGHT: And he had been working on that story for a couple of years didn't he say?

DONALDSON: It depends on what you mean by working on it. He had been paying attention to Granada because Granada had been sending him information trying to encourage him to write a story. And I don't think he actually got down to writing a story until a month or so before the story actually appeared.

But that actually brings up another issue, and that is, that in the materials that the Granada people were sending to him, it was frequent that Granada themselves would refer to the Granada organizations generally.

Forbes talks about lots of different companies. It does talk about public companies, but it also talks about private ones as well. I think under the argument being made here if there was an Enron subsidiary that did not cook the books, that if there was a statement that Enron cooked the books, one of the subsidiaries could come in and say well I'm part of Enron, I'm a subsidiary, I'm part of that. And you said that we cook the books, and you knew that we didn't cook the books. So it created a \_\_\_\_\_ in that fashion.