

Fontaine Exhibits: [http://www.fontainesdomains.com/DMM/Fontaine%20Depo%20Exhibits%20\(3\).pdf](http://www.fontainesdomains.com/DMM/Fontaine%20Depo%20Exhibits%20(3).pdf)

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www.FontaineV CapeCodTimes.com

The record now fully established, 9 years of litigation, ALL evidence belonging to CCT itself, shows:

Throughout the 2002 negotiations for the Oct 31, 2002 purchase of Fontaine's dominant CapeCodRealEstate.com and CapeCodRental.com (etc) Internet advertising business, CCT Management was aggressively plotting to divert millions of dollars in applicable Revenue Share proceeds, intending to Steal my money instead.

CCT had induced Fontaine with a Projection of up to \$4,300,000 during the 2002-2006+ RS deal. On January 9, 2003, 70 days after the p&s, CCT sends out a Memo (Font Exh 19), which they claim to propose a new concept "Bundles". And guess what, CCT has a Bundle "Policy" that requires 90% of all Internet/Print Bundling revenue to be allocated to Print, excluded from RS. A non-disclosed policy.

The Barnstable Court and the Appeals Court explicitly held that CCT's Bundles were "contemplated" on Jan 9, 2003. [But Fontaine had found the Smoking Gun, CCT's own 2002-2006 Plan for the "Merger", named after CapeCodRealEstate.com, which Counts "Bundles" to the dollar, for the entire sale, in 2002!](#)

This Hidden document is fully itemized, includes actual CCT planned Pricing, and when accounting for their "Bundles" projects \$1,300,000 in 2002-2006 revenues. Full year 2002 Bundles are show at 90/10.

THEREFORE, when CCT gave Fontaine a \$4,300,000 projection in July, and invented Bundles in January 2003, it was all for show, fraudulent inducements. \$4,300,000 was an inducement. Jan 9 was planted!

Evidence of 2002 Bundles is EVERYWHERE. Counsel ALONE backed the fake Jan Email. AND WON!

Since 2007 and Continuing Today, Counsel insists CCT innocently "hatched" Bundles in "early 2003", while vouching for a January 9, 2003 CCT Management Email, CCd to Fontaine, 70 days after the p&s, as the conception of Cape Cod Time's Bundling Plans. The distinction would mean \$900,000+- to Fontaine.

Holland & Knight's 2014 Motion Seeking "Protection" from pro se Fontaine Defined the Dispute:
"Fontaine's summary judgment opposition and appellate briefs focus, almost exclusively, on the following argument: That the CCTimes secretly intended to market "bundled" print and internet real estate advertising products prior to the execution of the Purchase and Sale Agreement, and that CCTimes concealed this bundling strategy from Fontaine in order to fraudulently induce him to sign the Purchase and Sale Agreement".

And Counsel has for years, substantiated the validity of the January 9, 2003 evidence. **It Was Planted!**

NUTTER MCLENNEN & FISH CONVINCED THE BARNSTABLE COURT that CCT could NOT have hidden Bundles from Fontaine in 02, as CCT had not even through of Bundling until Jan 2003. [Barnstable 5/2/12:](#)

"In sum, Plaintiff has not offered evidence that the topics allegedly misrepresented to him were even contemplated by CCT at the time the P&S was executed, much less actively concealed from him. Rather, plaintiff admits that bundling was not discussed during negotiations, and the record reflects this concept was not formally proposed until January 2003". (pg 8, Barnstable 5/3/12 SJ Ruling).

HOLLAND AND KNIGHT THEN CONVINCED THE MASSACHUSETTS APPEALS COURT that CCT's Bundling began on January 9, 2003:

"After the agreement was executed, CCTimes began to sell Internet advertising in a "bundle", with print advertising...Charging a discounted price for the internet". (Mass Appeals Court Ruling 12/23/13).

H&K would earn legal fees for years asserting that false claim:

"the only substantiated evidence establishes that the CCTimes conceived of the print and internet bundling strategy in early 2003, after the execution of the Purchase and Sale Agreement.."
(9/18/14, 7/7/14, 5/22/14, 4/8/13, 3/15/13).

THAT SHOULD BE A PROBLEM FOR COUNSEL! Because ALL of the legitimate evidence established that CCT did indeed have an undisclosed Bundle Plan in place, for THIS DEAL throughout 2002 negotiations!

CCT Depositions admit their 2002 Bundle Policy. CCT's 2003 email discussed the 2002 Bundle – to 1/10th of 1 percent. The Smoking Gun Counts 2002 Bundles For This Deal. And Counsel itself admits 2002 Bundles in CCT SOF Reply 52 on 6/14/11! **Counsel hid ALL of this 2002 Bundle evidence from the Court.**

1) THE SETUP:

***October 12 2001** (Font Exh 2) **The misrepresentations of CCT began right out of the Gate.** An email exchange between CCT Internet Manager Kempf. The 5/3/12 Barnstable SJ Ruling concurred with CCT, that this email shows Fontaine AGAIN contacting CCT after they had ignored his prior contact. Fontaine's "pursuit of a deal" is how Meyer explained it.

***October 13 2001 Reply by CCT** in that same Exhibit, makes clear this was not the posture of the parties, as Internet Manager Kempf responds to Fontaine – "sorry to be out of touch for so long" – "sorry not to call" – "we are still very much interested in working with you" – "we've been getting various levels of management on board. It's a process" – "Thanks for checking in and thanks for your patience".

Fontaine had already met with President Meyer, had been taken to lunch several times by Internet manager Kempf and Ad Manager Molly Evans. The "levels of management" they refer to had to be Dow Jones, Ottaway Newspapers, the parent company who issues the initial \$60,000 sale check.

And In 2001 CCT had created a revenue analysis that projects Full Year 2002-2006 Internet revenues, including "Bundles" as CCT will price under our "Merger". On 6/14/11 **Nutter lawyers confirm this fact:**

Plaintiff's SOF Response #52: "Real Estate Merger Analysis" showed the amount of revenue the Internet expected to receive each year from the bundle concept as follows: **2002-\$7,300, 2003-\$8,500, 2004-\$10,000, 2005-\$12,000, 2006-\$14,000".**

Cape Cod Time's Reply #52 signed June 14, 2011: "CCT does not dispute Plaintiff's Response 52". (p3)

*Not that they had a choice - They would have to dispute the validity of their own document if they had.

RE Merger - CapeCodRealEstate.com Product Mix and Revenue Projections 2002-2006 was named after Fontaine's Business - **CCT had fully priced the entire 4 year Revenue Share "Merger",** with Bundles priced at 90% allocation to their Print Department. Excluded from sale price. CCT does not disclose this \$1,300,000 Pricing Plan for our deal. **Fontaine locates this Smoking Gun during 2008 litigation.**

March 2002 (Font Exh #4), CCT makes an offer, to include Employment only, Fontaine refuses. Discussions continue, Fontaine provides CCT access to financials, client lists, website code, etc.

June 2002 CCT makes Fontaine an offer @ 18% 2002-2006, less \$100k per year deductible. Refused.

July 2002 CCT makes counter @ 20%, 2002-2006, 6 mo of 07, less \$100k, receive 6 additional domains. In both instances **CCT gives Fontaine an unsolicited set of projections of up to \$4,300,000 for the deal.** So At 20% Revenue Share & 10% Employment Commission, consideration could exceed \$1,000,000.

Importantly, and as Fontaine Complaint and his many filings point out, in her Aug 2010 Deposition, Ad Manager Evans describes the effort she, Kempf and Meyer had placed in creating these set of 3 July 2002 Projections for the sale (Font Exh 8).

“We had come up with three different scenarios, financial scenarios, on an Excel spread sheet. I have a visual of the spread sheet in my mind. It had three different likely scenarios of what the revenue and the bottom line might look like if we bought Mr. Fontaine’s company and merged the two websites.

It was projected out for a multiple of years, five years, or something like that. It was a low case scenario, a middle range and a high. I remember that Peter and Bob Kempf and I poured over it and poured over it. Bob Kempf had prepared it, messaged it and messaged it. We kept looking at it trying to come up with, because we were new in this business ourselves, what the revenue might look like going forward and whether this was something we wanted to enter into, whether it was good for our business.”. Evans goes on to say (p62) that “I just remember that we spent some time on it and wanted to be as accurate as we could”.

WHAT EVANS FAILED TO EXPLAIN WAS, WHY DID THESE 3 NEED ANY PROJECTIONS IN JULY 2002?

RE Merger shows they already had the deal completely priced out 2002-2006 WITH Bundles, and using their intended pricing, using their 90% allocation Policy, \$53,000 in total will get to Internet Department from their Bundle efforts for the entire deal. THIS REAL PRICING EXPECTS \$1,300,000 FOR THE DEAL.

SO “ACCURATE” were these 3 executives, that they had already priced the entire 2002-2006 deal, including Bundles at 90% Policy, they alone know it will result in about \$1,300,000, but they tell Fontaine instead \$4,300,000, and then pretend to invent Bundles in 2003.

All this effort, this \$4,300,000 projection that ignores the pricing they intend to use, had NOTHING to do with what “revenue might look like” – they had stolen control of consideration! It was a conspiracy to commit fraud so they could divert millions in potential, applicable, revenues.

July 18, 2002, (Importantly noted in 12/13/03 Appeal ruling) I ask CCT if there is anything I should know of “Bundling”. They disclose nothing. Because CCT had secreted in “**But Not Limited To**”, the Court sees them giving them Unlimited Rights. The Appeal Ruling viewed this as Fontaine’s lack of due diligence.

But this Court believed(s), and Ruled, that CCT’s Bundles “Began” in 2003 - because Holland & Knight ignored Kempf and Evans Depositions, ignore the Smoking Gun, ignored Nutter’s SOF #52 Reply, and supported instead, the fake January 9 2003 Bundle evidence.

The three Judge Panel: **“After the agreement was executed, CCTimes began to sell Internet advertising in a “bundle”, with print advertising...”**

FN3 *“The plaintiff’s focus on when CCTimes conceived of the bundling idea and his insistence that CCTimes knew of and failed to tell him of its plan to bundle services is misplaced. In a July 18, 2002, letter from the plaintiff to CCTimes, he specifically questions how commissions on customers opting for both online and print advertising would be credited, indicating that if CCTimes “sells them “print” and “gives them internet, I would never have much chance to earn a commission or count that money towards the sale price, which would in turn defeat my ability to make money from helping you build a rental portal. . . . I will need some clarification on this”.*

Thus relatively early in negotiations, the plaintiff was aware that bundle sales were a possibility. Negotiations proceeded after this letter but the record does not reflect, and the plaintiff does not contend, that CCTimes ever promised or made any assurances that it would not combine sales or “give” Internet advertising or other services at a reduced rate. CCTimes cannot be faulted for the plaintiff’s decision to sign the agreement without any protective provisions in this regard”.

The 2013 Appeals Court assumed Fontaine simply failed to protect himself, not happy with results, made a bad deal. When in Reality, CCT AND Counsel were fully aware of 2002 Bundles.

Oct 16, 2002 (Font Exh 13) THIS OCT 16 2002 EXCHANGE EXPOSES THE EXTREMES CCT WOULD GO TO EXECUTE THEIR FRAUD! I ask CCT to disclose anything that would “effect the net”. **CCT fails to identify any such product, agrees to remove the terms “Expenses” and “but not limited to” – and did!**

OCT 16/17 - CCT is forced to remove terms that THEY ALONE KNOW WILL CONTRACTUALLY RENDER THEIR \$1,300,000 2002-2006 RE Merger Plan for the Deal, as useless. Instead of Identifying the Bundles they’ve already Counted, instead of identifying a 90%/10% allocation Policy they’ve sold the Courts, instead of placing the Term “Bundles” in the p&s, they agreed to remove the terms “Expenses” and then “But Not Limited To”. AND DID.

CCT would then secretly reinsert “But Not Limited To” into the p&s we signed in their offices, without lawyers, and create a fake January 9, 2003 Memo claiming to invent Bundles. 70 days after p&s they are sending the entire outside sales staff to sell Bundles, stealing the very advertising business I sold them to help US acquire, under the guise of Helping Fontaine. We now know why they were so reluctant to concede those terms, they needed then to enact the January 9, 2003 portion of their fraud.

EXHIBIT
Fontaine
12/8/02 SMB

#1) 2 weeks before p&s, 2 mo AFTER the expected Aug_02 Closing, still trying to get CCT to Identify ANYTHING that effects Net.
#2) CCT Responds by removing the terms allowing them to deduct Bundles. No mention of Bundles or 90/10 Policy.
But the p&s their lawyer controlled, his license suspended in 2015 for filing false docs with the court, HAS BEEN ALTERED!
CCT was Hiding RE Merger, 2002-2006 Bundles, 90% "Policy".

-----Original Message-----
From: Robert Kempf <mailto:robert.kempf2@verizon.net>
To: Robert Fontaine <mailto:bob@capecodrealestate.com>
Sent: Thursday, October 17, 2002 5:12 PM
Subject: RE: Deal Documents

Hi Bob:

@good talking with you today. Following each of your questions below are some answers. Also attached is a new revision of the P&S with the words "but not limited to" deleted from 1.3 b.(iii). As I mentioned earlier, Peter has been in touch with an attorney who we think can give you some decent tax advice. I anticipate we should be able to put you in touch with him tomorrow.

Assuming we're all set, why don't we set a date and time to sign and move forward? Early next week would be good for us.

Again, thanks for your patience.

Bob Kempf

-----Original Message-----
From: Robert Fontaine [mailto:bob@capecodrealestate.com]
Sent: Wednesday, October 16, 2002 6:36 PM
To: rkempf@capecodonline.com
Cc: Robert Fontaine
Subject: Re: Deal Documents

Hi Bob.

Making a valliant effort over there.

Work with me here and we can get this thing done. I'm not trying to be an arse, but I do want to identify these elements as definitively as possible, as does CCT, I'm sure.....

P&S

#1 ITEM #1.

1.3 b 111) While i'm clearly in agreement that some revenue should be excluded, I don't understand why CCT can't simply define what is excluded? To remove the word "expenses" and leave in this term: "various costs and charges, including but not limited to" Tell me what IS IT LIMITED TO?

What other factors effect the net? That is a BIG TIME legitimate question for me to ask.

If you can define it, is there some reason you can't define it in the agreement?

#2 [Robert Kempf] We have deleted "but not limited to" from the language here. See attached revision.

The "Attached p&s" with agreed upon terms. In litigation we see they Secreted the term back in!

(ii) For purposes hereof, Net Revenue shall be calculated by deducting various costs and charges, including bad debt, credits, discounts and excluded revenue (i.e. revenue described in paragraph 1.3 b(ii) above), from gross revenue derived from CCTimes' new real estate web site(s), Fontaine's Web Sites (and/or their successor web sites), CapeCodRealEstate.com, and all web sites within the CCTimes' umbrella Internet real estate vertical including real estate, rental, building and mortgage verticals; 10/16/02	(iii) For purposes hereof, Net Revenue shall be calculated by deducting various costs and charges, including but not limited to bad debt, credits, discounts and excluded revenue (i.e. revenue described in paragraph 1.3.b(ii) above), from gross revenue derived from CCTimes' new real estate web site(s), Fontaine's Web Sites (and/or their successor web sites), CapeCodRealEstate.com, and all web sites within the CCTimes' umbrella Internet real estate vertical including real estate, rental, building and mortgage verticals; 10/31/02
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On July 18 2002 and again on October 16 2002 – CCT fails to disclose Bundles or 90% Bundle Policy. THEY HAVE A \$1,300,000 PLAN FOR THE DEAL IN HAND, WITH BUNDLES. TELL FONTAINE \$4,300,000.

October 31, 2002, 2 weeks later, the Net Revenue Share and Employment Agreements are signed.\

2) CCT EMPLOYS THE NEXT STEP IN THEIR SCHEME, JANUARY 9, 2003:

On January 9, 2003 (Font Exh 19) , 70 days after the p&s, CCT PRETENDS TO INVENT "BUNDLES!

Fontaine is the only recipient unaware this Jan 9, 2003 email is a complete farce, Part Of CCT's Scam!

Jan 9 Internet Manager Kempf circulates an email "proposal" to Print Managers and Ad Manager Molly Evans, "CCD" to Fontaine.

Kempf is "proposing" a real estate "bundle plan" to the other managers - where Internet ads and Print ads would be sold in a package to Realtors, for a single price A Bundle. Kempf proposes 40% would be allocated to his Internet Department (RS inclusive), and 60% to Print. He instruct all Managers to get the outside sales staff to go sell Bundles.

Meyer's Aug 2010 affidavit claims they started Bundling to Help Fontaine's sale price... yet they alone knew of 90%/10% allocation policy, they alone had the \$1,300,000 PLAN in hand, while giving Fontaine a

\$4,300,000 "Projection" instead. And Meyer certainly knows CCT's REAL financials HAVE to show that \$73,000 in 2002 Bundle revenue, meaning January 9, 2003 is wholly fabricated!

CCT was secretly planning to frustrate the very purpose of the deal. The fundamental tool of this devious plan to divert millions of applicable revenue under the sale, was the "Bundling" of print & internet advertising, primarily Realtors in this case. The same pool of advertisers our deal anticipates.

Fontaine was the ONLY Employee allowed to sell direct into the websites, for the entire deal, without doing so through selling Bundles, where 90% of every dollar will be excluded from sale price. As if Fontaine had intentionally bargained for such a situation!

Fontaine's 10% Sale Commissions were responsible for about \$1,200,000 of about \$1,200,000 in Total revenues under the deal (Font Exh 16). Bundles ensures that. CCT didn't Share revenue, they Stole it!

3) Evidence of Cape Cod Time's 2002 "Bundle" Advertising is, EVERYWHERE:

(p = Bar Complaint):

- 1) March 2010 Internet Manager Kempf Deposition states CCT was selling Bundles by **2000**. (p9)
- 2) August 26, 2010 Ad Manager Evans Deposition states CCT was selling Bundles in 2002. (p10)
*Meyer's Aug 23 2010 Depo, asked when bundles began "**I actually don't know when it started**". 2/1/11 Nutter's SJ Memo backs Jan 2003. Barnstable 5/2/12 Ruling states "P3. ***In his affidavit, Meyer states that such product bundling began in early 2003***".

So, with absolute knowledge of 2002 Bundles, Meyer & Counsel looked it up, and lied to the Court on 2/1/11 – And Ever Since.

- 3) 9/13/03 Kempf & Evans email discuss the 2002 Bundle: "*Subject: RE: Budget RE Book. ". . . In 2002 the online revenue for the Real Estate book was 11.4% of total revenue. To date in 2003 the online revenue share is running 18.1%. Given the fact that we provided more online elements in '03, the increase in rate is understandable. **We have agreed to scale back the bundle** to a simple 1:1 for properties. Given the increase in online traffic and balance of this product's value proposition (sic), I think a 15% revenue share is appropriate.*" (Font appeal Apx 16). (p23)
- 4) July 2002 CCT was Marketing Bundles as shown by Archive.org to be CCT's "**July –August 2002**". "**Your advertised properties will appear online at No Extra Charge!**" Classic Bundle. (p26)
- 5) **On 6/14/11 Nutter lawyers admit in CCT SOF Reply #52 that CCT expected 02 Bundle Revenue:** Plaintiff's Response #52: "Real Estate Merger Analysis" showed the amount of revenue the Internet expected to receive each year from the bundle concept as follows: 2002-\$7,300, 2003-\$8,500, 2004-\$10,000, 2005-\$12,000, 2006-\$14,000". Cape Cod Time's Reply #52 signed June 14, 2011: "**CCT does not dispute Plaintiff's Response 52**". (p3)
*Nutter's Summary Judgment Memo of 2/1/11 is unequivocal Bundles Began in Jan 2003!

That \$7,300 to Internet Department represents \$73,000 in total Bundle revenue CCT expected in 2002. Because CCT convinced the Courts their Bundle Policy required they allocate 90% of ANY "Bundle" revenue to the Print Department, and the Court accepted in it's Holding.

CCT was required to pay Fontaine for this 2002 revenue, just as they had (even at the reduced 90% scam), for all other years under the contract. But they couldn't disclose 2002 Bundles, as the plan was to conceive of them in January 9, 2003, so they Hid that revenue and Breached the Contract instead.

- 6) On 3/12/13 Fontaine placed "RE Merger", named for Fontaine's CapeCodRealEstate.com, and listing 2002 Bundle Revenue, the entire sale, atop his Appellate Reply Brief – **The Smoking Gun**:

[NOTICE THIS IS A COPY]
(Fontaine Underlines Bundle 3/23/13)

Confidential
MCS - p16

Real Estate Merger Analysis, Attachment C

CapeCodRealEstate.com Product Mix and Revenue Projections
 2002-2006

Ad Type	2002	2003	2004	2005	2006
Photo Ads	7800	15600	17000	18000	20000
Sponsorship	6000	12000	18000	18000	24000
MLS Search, Cape-wide	7800	26000	31200	39000	52000
MLS Search, regions	10400	20800	31200	31200	36400
Realtor Directory	18000	48000	50000	55000	60000
Banner Rotation	2700	10800	12000	14000	15000
Tile Rotation	1350	5400	6000	8000	10000
Real Estate Book Bundle	7300	8500	10000	12000	14000
Rental Database	10000	20000	30000	40000	45000
Interstitials		9000	12000	12000	12000
Ad Revenue	71350	176100	217400	247200	288400
Development	25000	25000	25000	25000	25000
IDX Platform	15000	30000	40000	45000	50000
Total Revenue	111350	231100	282400	317200	363400

* Photo Ads:
 1 large @ \$100/wk - property of week
 3 small @ \$50/wk - featured properties

* Sponsorship: Skyscraper @ \$1000/month exclusive

* MLS Search: Main Cape Cod MLS search box @ \$300/wk - '02; \$500/wk - '02-'03

* MLS Search: regions: \$100/wk

* Realtor Directory: \$300/yr x 90 customers

* Banner Rotation: max 6 @ \$150/month

* Tile Rotation: max 6 @ \$75/month

* Rental Directory Listings @ \$100/season

* Interstitials (transitional pop-ups, 4 @ \$250/month

* Price Increases: '04-'06

* 2002 for 6 months

MCS Studies

- 7) 3/15/13 CCT's Appeal Brief, Holland & Knight informs the Court that this Document Counting the 2002-2006 sale, and listing 2002 Bundles, was "fully disclosed" to Fontaine in 2002:

"More fundamentally, the "Real Estate Merger Analysis" was fully disclosed and provided to Fontaine during the negotiations. Therefore, Fontaine's argument that information contained in this document was somehow hidden from his is specious".

That particular statement by Attorney Mitchell of Holland & Knight is a problem. Previously in his brief he claims "Real Estate Merger makes no mention of any bundles products" and that "no mention of bundling was made prior to the p&s whatsoever".

Does is sound as if the Barnstable Court was told CCT gave Fontaine a document listing 2002 Bundles? "In sum, Plaintiff has not offered evidence that the topics allegedly misrepresented to him were even contemplated by CCT at the time the P&S was executed, much less actively concealed from him. Rather, plaintiff admits that bundling was not discussed during negotiations, and the record reflects this concept was not formally proposed until January 2003". p8.

But Evans didn't mention a 4th projection, because they were hiding that one from Fontaine, mark is "Confidential". And RE Merger itself shows \$4,310,000 and Jan 9, 2003 are Fraud! They were sitting on a 2002 pricing plan of \$1,300,000 and had no reason to invent Bundles in 03.

CCT EMAILS, DEPOSITIONS, ADVERTISING, DOCUMENTS AND COUNSEL SUBSTANTIATE 2002 BUNDLES. Everyone who knew confirms 02 Bundles. Holland & Knight asserts **02 Bundles** were "wholly disclosed".

WHAT DID THE BARNSTABLE COURT THINK OF ALL THIS EVIDENCE OF CCT'S 2002 BUNDLE? [IT DIDN'T!](#)
CCT's LAWYERS IGNORED ALL 2002 BUNDLE EVIDENCE, AND VOUCHERED FOR THE FAKE JAN 03 MEMO!

4) Cape Cod Time's Counsel's Litigation Misconduct Begins:

On February 1, 2011, Nutter McClennen & Fish filed CCT's Memo in Support of Summary Judgement, in which they assert, unequivocally, that Fontaine's accusations are "bald", as "the uncontested evidence" proves CCT's Bundles were not even "hatched" until January 9, 2003.

Because Summary Judgment can deny a litigant access to a jury, it is subject to MRCP Rule 56e: ***"(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."***

Yet the lawyers for the 3 huge out of state corporations, 3 different ownership groups during this litigation, went into Barnstable Court and called Fontaine a liar, backing January 2003 Bundle story:

"the bald allegation that Fontaine reasonably relied on any such statement is squarely contradicted by the uncontested evidence in the record that the bundling plan wasn't even hatched until months after contract execution".

"in January, 2003, AFTER (original emphasis) the contract had been executed, CCT developed a marketing concept which was a combination real estate advertising product".

"... CCT misappropriated the online revenue through its subsequently adopted plan to "bundle' its print and online products, incorporated months after the Agreements were executed,.."

"therefore, because CCT had not yet developed the marketing strategy of offering its customers a combination of advertising space in its print and online editions, rescission is inappropriate."

Nutter McClennen & Fish had completely disregarded ALL legitimate evidence of CCT's 2002 Bundle Program, all of it within the purview of their client, subject to actual knowledge. January 9, 2003 (Fontaine Exhibit 19), relied on by Counsel, hence relied on by both Courts, is shown by ALL 2002 Bundle evidence, to be completely fabricated, planted evidence! A \$1,000,000 Fraud!

5) Barnstable Court 5/3/2012 SJ Held CCT "Contemplated" Bundles in Jan 2003:

"CCT could not have misrepresented to Plaintiff an advertising program that did not exist during the 2002 negotiations".

pg8. *"In sum, Plaintiff has not offered evidence that the topics allegedly misrepresented to him were even contemplated by CCT at the time the P&S was executed, much less actively concealed from him. Rather, plaintiff admits that bundling was not discussed during negotiations, and the record reflects this concept was not formally proposed until January 2003".*

P2. *"In January 2003, Kempf sent the following email to certain CCT staff, on which he copied plaintiff "I am proposing a bundle real estate product and price"..*

pg5. *"Indeed, contrary to plaintiffs assertion, documentary evidence indicates that CCT did not propose - much less implement, a bundled print and online advertising strategy, until 2003."*

P11. *"the record does not support Plaintiffs allegation that CCT executives had expressed or implemented bundle advertising, prior to 2002. To the contrary, the record reflects that Robert Kempf did not propose the concept until January 2003".* (The court had to mean "prior to 2003").

P3. *"In his affidavit, Meyer states that such product bundling began in early 2003".*

In his 2010 Deposition, 8 years after the sale, 6 Mo before SJ Memo, Meyer said *"I'm not really sure"*.

NUTTER ITSELF HAD ADMITTED ON 6/14/11 THAT CCT EXPECTED \$73,000 IN 2002 BUNDLE REVENUE!

The Barnstable Court Held that CCT had Not Contemplated, Proposed, Expressed, Implemented, Began or Conceived of Bundles until Jan 2003. Yet also accepted that CCT had a 90% Bundle "Policy" before 03?

Fontaine has a list of 4 dozen different Boston lawyers with whom he pleaded to assist him in appeal, as he became pro se, but none were willing. Appeals are difficult, the corporation has limitless resources.

"If you tell the truth, you don't have to remember anything."

— Mark Twain

5) CCT'S 3/15/2013 APPEAL BRIEF, by Holland & Knight, Is Hard To Believe:

FALSE STATEMENT #12) *"The cited Real Estate Merger analysis makes no reference to any bundled products, and was simply a revenue projection used in the negotiation of Fontaine's Net Revenue Share baseline in connection with the proposed "merger" of Fontaine's websites and the CCTimes."*

FALSE STATEMENT #13) *"It has nothing to do with bundled products".*

FALSE STATEMENT #14) *"To the contrary, the only substantiated evidence establishes that the CCTimes conceived of the print and internet bundling strategy in early 2003, after the execution of the Purchase and Sale Agreement, and that no representations concerning internet bundling were made to Fontaine whatsoever during the negotiations of the Purchase and Sale Agreement".*

FALSE STATEMENT #15) ***“More fundamentally, the “Real Estate Merger Analysis” was fully disclosed and provided to Fontaine during the negotiations (emphasis added). Therefore, Fontaine’s argument that information contained in this document was somehow hidden from his is specious”***.

6) FALSE STATEMENTS OF COUNSEL RE THE 2003 BUNDLE IN OTHER FILINGS:

“..in early 2003, CCT introduced the concept of offering a combination real estate advertising product” (CCT Rule 9A(5)(b) SOF #50). False.

“The record evidence involving the package pricing for the real estate book Cape at Home and Internet advertising for real estate was part of an overall plan set out in a memo dated Jan 9, 2003” (CCT JA REPLY FACT 56). False.

“To the contrary, the only substantiated evidence establishes that the CCTimes conceived of the print and internet bundling strategy in early 2003, after the execution of the Purchase and Sale Agreement, and that no representations concerning internet bundling were made to Fontaine whatsoever during the negotiations of the Purchase and Sale Agreement”. (CCT 9/18/14, 7/7/14, 5/22/14, 4/8/13, 3/15/13). False. (AN ADMISSION “BUNDLES” WERE NOT DISCLOSED)

7) CCT’S 4/8/2013 SUR-REPLY BRIEF (DENIED):

Fontaine placed “RE Merger”, the Smoking Gun, atop his 2013 Appellate reply brief, pointing out the absurdity of Counsel’s claim that RE Merger “makes no reference to any Bundled Products”.

Holland & Knight, now recognizing, apparently (disturbingly), for the 1st time, that Bundles are indeed shown on The Smoking Gun “RE Merger” attempts to file a Sur-Reply brief (Denied).

Holland & Knight Injects DIFFERENT FALSE ASSERTIONS! Atty Mitchell is changing his story at will:

p.4 “Even if Real Estate Merger Analysis establishes that The CCTimes conceived of the print and Internet bundling strategy prior to the execution of the Purchase and Sale Agreement (which it does not)”. False.

“Even if”? THIS lawyers has multiple outstanding affidavits substantiating evidence that CCT’s Bundles were conceived in Jan 2003! “which it does not”? – The document counts the sale with 2002 Bundles.

“Contrary to Fontaine’s assertions, the Real Estate Merger Analysis, with it’s line –item entry for the “Real Estate Book Bundle,” has absolutely nothing to do the products that Fontaine has complained about.”. False.

AHHHHHHH now he sees what Fontaine had underlined in his Reply Brief “Real Estate Book Bundles, \$7,300, 2002”, but it has “absolutely nothing to do” with Fontaine’s business” Aside from the title. 3 weeks prior he swore the document didn’t even “reference Bundles”, now he knows all about them!

When all is said and done, CCT and Counsel admit the very crimes Fontaine accused them of. And they won anyway, lawyers affidavits trumping actual evidence and admissions.

The 3 CCT executives, Meyer, Evans and Kempf had set me up during 8 months of 2002. The effort the 3 execs describe in the 2010 depositions, in “messaging” the unsolicited July 02 projections, given to Fontaine with their offer, of up to \$4,300,000 for our deal, was made exclusively to induce me, to advance their scheme. We know this because there is a full year 2002 Smoking Gun Document Pricing the entire sale, which total \$1,300,000.

After 5 years in Real Estate, in 1995 Fontaine starts CapeCodRental.com & CapeCodRealEstate.com Mass Re-Hab Commission paid for my RE license training, due to effects of childhood disease. He has a GED. I mention that because CCT Counsel convinced the court that these were two sophisticated parties.

2000+- Fontaine partnered with best Read Guide selling their RE in Print & his Websites. This one year deal expired and was not renewed, no assets were exchanged. I continued to grow the site into a dominant RE & Rental Portal, 145+ advertisers, Realtors, Lawyers, Banks. Tops in search engines, 1,000,000 yearly visitors. Generic domain names. I went to CCT in good faith, I ended up in CCT Hospital.

Counsel’s entire defense is premised on the completely fraudulent Jan 2003 Evidence. And it worked.

Both Courts explicitly agreed CCT COULD not hide in 2002 Bundles CCT had not even “conceived” until Jan 9 2003. Yet CCT Mgt depositions admit Bundles were in place by 2002, CCT’s document shows 2002 Bundles FOR THIS SALE, CCT admits 2002 Bundles in SOF #52. **Counsel affidavits alone assert Jan 2003!**

The 1st law firm (Nutter) listed a retired Barnstable Superior Copurt Judge, the 2nd (Holland & Knight) a lawyer who worked on Facebook litigation. Fontaine was pro se by the 2012 Appeal.

8) LITIGATION HISTORY – Fontaine V Cape Cod Times:

On Sept 2, 2008 Fontaine filed suit in Barnstable Superior Court, claiming Mass 93a violations including fraudulent inducement and unfair business practices, breach of contract and other causes of action. He sought recession of the fraudulent 10/31/02 transaction, return of his domain assets, and damages.

On May 2, 2012, the Barnstable Court issued a 16 page Dismissal Order, granting Summary Judgment to CCT. Fully HALF of the pages in the decision refer to the “fact” CCT Conceived of “Bundling” advertising in “early 2003”, “After” the 2002 p&s. This key holding is completely erroneous, as the record shows, and CCT Counsel has since been forced to admit.

On July 10, 2012, Fontaine, through counsel, timely filed appeal in Massachusetts Court of Appeals. His Counsel was allowed to withdraw his representation 7 days later, Appeal Docket #2. Fontaine received 7+ feet of case records, 5 years into litigation, and used every resource at his disposal to file his Brief.

On December 23, 2013, the Appeals Court affirmed the Barnstable Decision, erroneously holding that CCT’s “Bundles Began in early 2003”, hence they couldn’t have been withheld from Fontaine in 2002.

On Jan 2, 2014 Fontaine petitioned the Appeals Court for a Re-hearing. Denied.

On Jan 10, 2014 Fontaine petitioned the Supreme Judicial Court for Further Appellate Review. Denied.

In 2014, Fontaine filed TWO (2) Rule 60b Motions with the Barnstable Court, claiming Fraud upon the Court by CCT’s lawyers. Both of those Motions were Denied.

9) As Described in Fontaine's October 2015 Complaint to the Mass Bar, 17 specific statements of Counsel supporting the January 9, 2003 Evidence, which was knowingly, demonstrably, and where self-contradicting, admittedly FALSE!

CCT's Summary Judgment Memo 2/1/11:

FALSE STATEMENT #1) *"the bald allegation that Fontaine reasonably relied on any such statement is squarely contradicted by the uncontested evidence in the record that the bundling plan wasn't even hatched until months after contract execution".*

FALSE STATEMENT #2) *"in January, 2003, AFTER (original emphasis) the contract had been executed, CCT developed a marketing concept which was a combination real estate advertising product".*

FALSE STATEMENT #3) *"... CCT misappropriated the online revenue through its subsequently adopted plan to 'bundle' its print and online products, incorporated months after the Agreements were executed, thus removing profits from the online revenue share which should have been attributable to Fontaine;".* The Jan 2003 60/40 Plan was NOT adopted, the 2002-2006 90/10 'policy' is what CCT used.

FALSE STATEMENT #4) *"therefore, because CCT had not yet developed the marketing strategy of offering its customers a combination of advertising space in its print and online editions, rescission is inappropriate.".* So Evans and Kempf gave false depositions about Bundles being in place in 2002?

Other Statements Filed Support January 9, 2003 Bundles:

FALSE STATEMENT #5) *..in early 2003, CCT introduced the concept of offering a combination real estate advertising product" (CCT Rule 9A(5)(b) SOF #50).*

FALSE STATEMENT #6) *"The record evidence involving the package pricing for the real estate book Cape at Home and Internet advertising for real estate was part of an overall plan set out in a memo dated Jan 9, 2003" (CCT JA REPLY FACT 56). *See the Aug/Sept 2002 version of this 'Jan 03' book below.*

FALSE STATEMENTS #7, 8, 9,10 and 11) *"To the contrary, the only substantiated evidence establishes that the CCTimes conceived of the print and internet bundling strategy in early 2003, after the execution of the Purchase and Sale Agreement, and that no representations concerning internet bundling were made to Fontaine whatsoever during the negotiations of the Purchase and Sale Agreement". (CCT 9/18/14, 7/7/14, 5/22/14, 4/8/13, 3/15/13).*

CCT Appeal Brief 3/15/13:

FALSE STATEMENT #12) *"The cited Real Estate Merger analysis makes no reference to any bundled products, and was simply a revenue projection used in the negotiation of Fontaine's Net Revenue Share baseline in connection with the proposed "merger" of Fontaine's websites and the CCTimes."*

FALSE STATEMENT #13) *"It has nothing to do with bundled products".*

FALSE STATEMENT #14) *"To the contrary, the only substantiated evidence establishes that the CCTimes conceived of the print and internet bundling strategy in early 2003, after the execution of the Purchase*

and Sale Agreement, and that no representations concerning internet bundling were made to Fontaine whatsoever during the negotiations of the Purchase and Sale Agreement”.

FALSE STATEMENT #15) *“More fundamentally, the “Real Estate Merger Analysis” was fully disclosed and provided to Fontaine during the negotiations (emphasis added). Therefore, Fontaine’s argument that information contained in this document was somehow hidden from his is specious”.*

Sur-Reply Brief 4/8/13 Denied:

FALSE STATEMENT #16) p.4 *“Even if Real Estate Merger Analysis establishes that The CCTimes conceived of the print and Internet bundling strategy prior to the execution of the Purchase and Sale Agreement (which it does not)”.* Now he’s hedging his bet (affidavit) *“Even If”.*

Mr. Mitchell should be informed that IF RE Merger establishes 02 Bundles, his Jan 03 defense is a sham!

FALSE STATEMENT #17) *“Contrary to Fontaine’s assertions, the Real Estate Merger Analysis, with it’s line –item entry for the “Real Estate Book Bundle,” has absolutely nothing to do the products that Fontaine has complained about.”*

Every one of those statements is contradicted by either the evidence, the client, successor Counsel, of Counsel themselves. And they are false. While the litigation misconduct of CCT and Counsel has painted Fontaine to be a liar, the record tells us which side was willing to deceive the Court:

A - CCT’s 3 execs “conceived” of Bundles in Jan 2003, after calculating them to the dollar for 2002-2006.

B - Kempf feigned a Bundle plan in Jan 2003, 60/40 split, in spite of the 2002-2006 90% Bundle ‘policy’.

C - Evans speaks of “three” projections made in July, ignoring Itemized RE Merger, with 2002 Bundles.

D - Meyer Could Not Say when Bundles began, yet the court credits his affidavit they began in 2003.

E - Attorney Dalton drafted CCT’s p&s, which was altered in Oct 02, The Bar took HIS license in 2015.

F - Attorney Langhoff had REAL projections, Ok’d the sale, then left News Corp due to circulation fraud.

G - Nutter claimed records prove 2003 Bundles on 2/1/11, then admitted 2002 Bundles on 6/14/11.

H - Holland & Knight told the court Bundles were conceived in Jan 2003, AND were “Disclosed” in 2002.

The 7th Circuit has stated "*a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final*".

In spite of undeniable (and admitted) evidence establishing CCT’s 2002 Bundle Plan, two Massachusetts Courts, 4 honorable Justices, have signed Rulings Holding CCT conceived of Bundles AFTER the sale, in January 9, 2003. **January 9, 2003 is indeed powerful evidence, of Fraud!**

Fontaine filed a Complaint against CCT’s Counsel with the Mass Board of Bar Overseers in Oct 2015. 3 weeks later they replied, as Bar Counsel writes Fontaine on Nov 4, 2015: “Furthermore, with reference to your allegation that these lawyers made repeated intentional misrepresentations of fact to the tribunals before which this case was heard, the documentation in support of these allegations does not support this claim. Thus, no formal investigation has been commenced at this time”.

A 14 year old fraud, 9 years of litigation misconduct, and my claims are not even worthy of investigating.

Fontaine appealed that Ruling to the Board, and on Dec 11, 2015 they denied his appeal ***“This matter is closed and will remain closed. I thank you for your cooperation throughout the process”***. Needing to add salt to the wound of an individual who has spent thousands of hours and thousands of dollar because licensed attorney were willing to lie to the Courts for a fee.

Once CCT fooled Fontaine Barnstable in The Summary Judgment Decision, Fontaine was in trouble. Once he was forced to proceed pro se, he was done. Not even worthy of consideration. The affidavits of experienced counsel for wealthy corporations more persuasive than actual evidence of the record.

The 1st firm listed a retired Barnstable Superior Court judge, the 2nd in a firm of 100, and Fontaine was pro se, and they simply replaced evidence with false affidavits that back Planted Evidence, in conflict with their client & the legitimate evidence.

This manipulation of the legal process is manifestly unjust! Both law firms and 3 multibillion dollar corporations are incredibly lucky. The False statements on the record by Meyer and Counsel were covering up a million dollar fraud! And I will hound them until the company comes after me legally, and will defend myself, or I will find someone willing to help me go after them, and find vindication.

Those are my remaining choices.

It came as no surprise to Fontaine that Counsel would protect Counsel, in protecting Counsel. Mass Bar Counsel 2015 Annual Report - <http://www.mass.gov/obcbbo/fy2015.pdf>:

“In 79 of these matters, the complainants, pursuant to SJC Rule 4:01, § 8.1(a) and section 2.8(a)(1) of the Rules of the Board of Bar Overseers, requested and received review of bar counsel's decision by a member of the Board of Bar Overseers. In none of these matters did the Board member determine that a file should be opened”. I bet you 79 of those 79 were pro se.

HOW IS MASSACHUSETTS DELIVERING JUSTICE?

The Florida Bar:

“The Florida Bar regulates more than 95,000 lawyers and opens approximately 7,500 files a year to investigate possible misconduct...the Supreme Court issues up to 400 orders for disciplining sanctions”.
<https://www.floridabar.org/tfb/TFBConsum.nsf/0a92a6dc28e76ae58525700a005d0d53/dbac6623cf5c015f85257a3f0060b781!OpenDocument>

The Mass Bar:

“At the close of FY 2015, there were 59,217 Massachusetts lawyers registered on active status and another 11,668 lawyers on inactive status. The Office of Bar Counsel opened 734 complaints against attorneys in FY2015”.

<http://www.mass.gov/obcbbo/fy2015.pdf>

Florida: 95,000 lawyers, investigates 7,500 cases a year, Supreme Court orders 400 Disciplinary Sanctions.
Massachusetts: 59,000 lawyers, 734 complaints opened, NONE OVERTURNED ON APPEAL.

FLORIDA HAS 95,000 LAWYERS, INVESTIGATES 7,500. MASS HAS 59,000 AND INVESTIGATES 734!

(Fontaine was told his complaint didn't warrant investigation, so Mass Bar didn't "open" a Complaint).

IF HE HAD STOLEN A MILLION DOLLARS FROM DOW JONES, OR NEWS CORP, OR GATEHOUSE MEDIA OR NUTTER MCCLENNEN & FISH OR HOLLAND & KNIGHT, AND COMMITTED PERJURY, 9 YEARS OF LITIGATION FRAUD, FONTAINE WOULD BE IN SERIOUS LEGAL JEOPARDY.

I Intent to make as much noise as required. "Contempt" means as little to me as it clearly does to counsel! Contempt is an empty threat to a person in my skin.

<http://www.theperjuryofcapecodtimes.com> – This site, with video, details the litigation fraud.

<http://Fontainevcapecodtimes.com> – This site does the same, except with emphasis on the underlying fraud, and with Links to Rulings, Dockets, Document, Exhibits and more.