1 UNITED STATES DISTRICT COURT.
EASTERN DISTRICT OF NEW YORK
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EAST END ERUV ASSSOCIATION,
4 INC., et al.,
: CV 11-0213
5
Plaintiffs,
6 : United States Courthouse
-against- Central Islip, New York
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THE VILLAGE OF WESTHAMPTON
8 BEACH, et al.,
: June 15, 2010
9 Defendants. 2:00 p.m.
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TRANSCRIPT OF HEARING
11 THE HONORABLE LEONARD D. WEXLER
UNITED STATES DISTRICT COURT JUDGE
12

13 APPEARANCES:

14 For the Plaintiffs: WEIL, GOTSHAL & MANGES LLP
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-and-
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10 Proceedings recorded by mechanical stenography;
transcript produced by computer aided transcription MR.
11 SUGARMAN: Good afternoon, your Honor.

12 Robert Sugarman, pro bono, from Weil Gotshal & Manges. My

13 colleagues, Jessie Mishkin, Christopher Luise, and Joshua

14 Schlenger.

15 MS. DEJONG: Good afternoon, your Honor.

16 Jeltje DeJong with the firm of Devitt Spellman

17 Barrett, representing the Village of Quogue, Peter

18 Sartorius, Randy Cardo, Jeanette Obser, Kimberley Payne

19 and Ted Necarsulmer.

20 MS. HAMILTON: Marci Hamilton representing the

21 same defendants.

22 MR. SOKOLOFF: Brian Sokoloff for the Village of

23 Westhampton Beach --

24 THE COURT: I thought we were only doing Quogue.

25 MR. SOKOLOFF: This is only involving Quogue?

1 THE COURT: Yes, because Jeltje has to leave.
2 MR. SOKOLOFF: Just one point, your Honor. I'm
3 happy to just sit in and watch on this, but we got a
4 notice from the plaintiffs, either yesterday or the day
5 before, that they are calling witnesses they think will
6 apply to all three cases, and I don't know --
7 THE COURT: No, they are not. It's only one
8 case I'm taking, the Quogue, because of the particular
9 problem.
10 MR. SUGARMAN: Your Honor, what Mr. Sokoloff is
11 mentioning is the following: There are two witnesses we
12 plan to call today. One is a third-party witness,
13 Mr. Balcerski from Verizon. His testimony will apply to
14 all three municipalities. And since he's a third-party
15 witness, we would hope he would only testify once and be
16 cross-examined once.
17 The other witness --
18 THE COURT: I'll go along with that provided if
19 we don't complete the hearing by today -- one of the
20 defendant lawyers is leaving, so I'll adjourn the case
21 until she gets back. Here I thought I was doing a favor
22 for you to move this ahead expeditiously and not wait for
23 her to get back. But if you want to call the witness, it
24 is okay with me.
25 MR. SUGARMAN: I appreciate you doing this.

1 We'll be happy to call Mr. Tuchman back for
2 cross-examination by the other two.
3 I would appreciate it if we can have
4 Mr. Balcerski of Verizon, the third-party witness, and
5 then have a cross-examination. I don't think that will
6 lengthen it too much.
7 THE COURT: The understanding is -- you're
8 right. We'll do it.
9 Jeltje, you'll go first --
10 MR. SUGARMAN: But I'm confident we can finish
11 Quogue today.
12 THE COURT: I don't know. That's your choice.
13 I thought I was doing you a favor.
14 MR. SUGARMAN: And we appreciate that.
15 THE COURT: What do you have to say?
16 MR. CAMHI: In light of that ruling, your Honor,
17 we represent the Town of Southampton.
18 MS. LICCIONE: I'm Maureen Liccione from
19 Southampton, and my partner, Stan Camhi.
20 MR. SOKOLOFF: May I raise one issue with your
21 Honor before we get started? And it's a very serious
22 issue.
23 THE COURT: Serious issues? I don't think we
24 handle serious issues in this court.
25 Go ahead.

1 MR. SOKOLOFF: The plaintiff filed a complaint
2 here against three municipalities, and in paragraph 34 of
3 the Complaint, they describe what it is that they are
4 seeking.
5 They are seeking an eruv that says -- that
6 involve lechis, and, quote: The lechis proposed to be
7 used in the eruv at issue in this community are smooth,
8 sanded, soft wood strips that are no larger than 1 by 4 by
9 40 inches and would be affixed vertically to the poles.
10 In connection with their motion for a
11 preliminary injunction that your Honor is now hearing,
12 they submitted affidavits, including an affidavit from a
13 Rabbi, Peretz Steinberg, describing these lechis as
14 40 inches.
15 Now, your Honor directed that the parties submit
16 prehearing statements, and we got them.
17 And in a footnote to their prehearing
18 statement -- it is footnote 4 at page 4 -- they say the
19 following: Plaintiffs have been made aware that most of
20 the lechis will be 10 to 15 feet long, not the 40-inch
21 length that they had previously understood.
22 They also, yesterday or the day before, e-mailed
23 us a new contract with Verizon, not the contract that is
24 alleged in the complaint. It's not the contract that they
25 attached to the complaint as an exhibit.

1 They also sent us two days ago a map of the
2 eruv. The map is completely different from the eruv in --
3 the map we got two days ago than the eruv that was
4 described previously.
5 And, your Honor, this is a shell game, a Three
6 Card Monte game. But the defendants and the Court have a
7 right to know what it is we're having a hearing about, and
8 it should rest on the Complaint.
9 And the plaintiffs have a right to amend their
10 Complaint once, as a matter of course, before defendants
11 answer. And we haven't answered. But I think they ought
12 to amend the Complaint first and then come back and have a
13 hearing.
14 And we're having a hearing on the allegations of
15 the Complaint, not something knew they throw in with
16 different contracts and different facts two days before
17 the hearing. It's really not fair.
18 THE COURT: All right.
19 Are you ready to proceed with the hearing?
20 MR. SUGARMAN: I would like to proceed with the
21 hearing.
22 THE COURT: Call your first witness.
23 MR. SUGARMAN: I would just like to apologize to
24 the Court for some of the misstatements --
25 THE COURT: Call your first witness.

1 MR. SUGARMAN: Thank you.
2 My first witness is Morris Tuchman.
3 **M O R R I S T U C H M A N**,
4 called as a witness, having been first
5 duly affirmed, was examined and testified
6 as follows:
7 THE WITNESS: T-U-C-H-M-A-N. Morris,
8 M-O-R-R-I-S.
9 THE COURT: I'm sorry, give me your last name
10 again?
11 THE WITNESS: T-U-C-H-M-A-N.
12 THE COURT: Go ahead, Counsel.
13 DIRECT EXAMINATION
14 BY MR. SUGARMAN:
15 Q Mr. Tuchman, where do you reside?
16 A I live in Westhampton Beach. I vote and pay taxes
17 there. I also have a residence in Queens, New York.
18 Q Briefly describe your education after high school.
19 A John Hopkins University in Baltimore, Maryland. Also
20 attended Eretz Yisrael Rabbinical College. I ultimately
21 graduated from Queens College, and then I attended New
22 York Law School where I received a JD degree.
23 Q And briefly describe your professional history.
24 A I am -- I've been practicing labor and employment law
25 since 1976.

1 Q Mr. Tuchman, as we all know, this case is about the
2 attempt to establish an eruv.
3 Would you explain to the Court -- and please
4 direct your attention to the Court -- why is it important
5 to have an eruv in Westhampton Beach, Quogue, in the Town
6 of Southampton?
7 A Well, the observance of the Sabbath, or Shabbat, is
8 one of the central tenets, certainly, for observing Jews.
9 Obviously, the observance of Shabbat is one of ten
10 commandments, one of the very critical aspects in the
11 observance of the Jewish faith.
12 One of the principal tenets of observance of
13 Shabbat is the prohibition of carrying items from the home
14 to the public domain.
15 And as established -- the Talmud said it was
16 established at the time of King Solomon. The
17 establishment of an eruv permits the ability to carry
18 objects from the private domain into the public domain.
19 There's an entire chapter of the Talmud that speaks about
20 eruv.
21 So, at present, for instance, I'm unable to
22 carry ID when I go back from the synagogue on Shabbat. I
23 can't carry keys. When I drive the car to the synagogue,
24 I leave the key on the tire.
25 Most profoundly for me is that at this point my

1 children and grandchildren can't come for Shabbat to
2 Westhampton Beach, because now the children and
3 grandchildren are very young.
4 My dad, who just passed away two months ago, was
5 unable to come to Westhampton because he couldn't attend
6 services in the synagogue. We live 1.9 miles from the
7 synagogue, and as long as he was able to walk, that would
8 be fine. But once he's unable to walk, he would use a
9 wheelchair, and that would require an eruv.
10 So I'm not alone. There are many, many, many
11 people who are directly affected in the same way.
12 MS. DEJONG: Objection.
13 THE COURT: Overruled.
14 I'll let you cross-examine him.
15 MR. CAMHI: One clarification. Are the other
16 defendants allowed to object to portions of the testimony,
17 too?
18 THE COURT: That's the agreement we had.
19 MR. CAMHI: My understanding, Mr. Tuchman will
20 come back again with regard to the other villages. But if
21 he's testifying now to what I consider inappropriate, am I
22 allowed to make an objection to his testimony?
23 THE COURT: You can make an objection.
24 MR. CAMHI: Thank you, your Honor.
25 BY MR. SUGARMAN:

1 Q Please continue.
2 A So if an eruv is established in these communities, we
3 would be able to -- it would not have to be a situation
4 where my children -- my grandchildren go to camp, day
5 camp, in Westhampton Beach, yet they return every Friday
6 back to Queens where they live, because otherwise they are
7 unable to go to the synagogue.
8 The little babies are unable to walk to the
9 synagogue, obviously, so it has a very profound and
10 important impact.
11 So, yes, that's the reason that it is so
12 important for us to have an eruv in this area.
13 Q For how long have you owned a home in Westhampton
14 Beach?
15 A Since 1994.
16 Q Could you explain to the Court why it is, then, that
17 the move to establish an eruv started three, four years
18 ago as opposed to in the '90s or even in the early 2000s?
19 A Well, you know, when I moved into Westhampton Beach,
20 my older daughter was 22, my younger daughter was 19, my
21 father was in his mid seventies. You know, I'm not saying
22 that we were able to carry ID or keys at that time either,
23 but the situation was not as profoundly problematic that
24 we literally can't have a family Shabbat because of the
25 lack of eruv.

1 Yes, times have changed. Times have changed.
2 People have gotten married; they've had children. People
3 have gotten older, and that's the reason.
4 MR. SUGARMAN: I'm going to put up on the easel
5 a blowup of a map that we produced to the defendants, I
6 believe it was last Friday, and I'm going to ask
7 Mr. Tuchman some questions about it.
8 Can you see that, your Honor?
9 THE COURT: Yes.
10 MS. DEJONG: Your Honor, may we sit over here?
11 THE COURT: You can sit anywhere you want. It's
12 nonjury.
13 MS. DEJONG: Thank you.
14 MR. SUGARMAN: Judge, for yours and your law
15 clerk's convenience, we have a binder.
16 THE COURT: Did you give the other side a copy?
17 MR. SUGARMAN: Your Honor, I suggested to the
18 other side that we exchange exhibits before the trial.
19 They objected and did not want to do that, so I haven't.
20 THE COURT: All right.
21 BY MR. SUGARMAN:
22 Q Mr. Tuchman, would you, with the use of that map,
23 explain to the Court how physically the eruv will be
24 established?
25 THE WITNESS: Can I stand up and show your

1 Honor?
2 THE COURT: Sure.
3 Do you want to mark it, if you wish?
4 MR. SUGARMAN: It's a demonstrative. We can
5 mark it -- you mean as an exhibit?
6 THE COURT: I'll give you a pointer.
7 MR. SUGARMAN: Can we mark it Plaintiffs'
8 Exhibit for identification 1?
9 THE COURT: I'm looking for a marker.
10 MR. CAMHI: Your Honor, I would just object.
11 Lack of foundation.
12 BY MR. SUGARMAN:
13 Q Okay, Mr. Tuchman. Would you please explain how the
14 eruv would be established?
15 A Yes.
16 So the eruv, as your Honor sees the red lines,
17 or the line, that is the perimeter of the area.
18 Now, there are three parts to the actual
19 construction of the eruv. There are existing structures,
20 like, for instance, the Long Island Rail Road fencing, and
21 there are natural boundaries, like the bulkheads from the
22 boats that are moored. And those count. There are
23 natural structures here that are acceptable for use as an
24 eruv. It is predominantly in this area, north, south,
25 and north-south --

1 THE COURT: Where do you live in respect to
2 this?
3 THE WITNESS: Right there (indicating).
4 THE COURT: Why don't you put a mark on there so
5 I know where you live.
6 THE WITNESS: With a pen, you mean?
7 THE COURT: Do you have a marker?
8 Somebody give the witness something.
9 MR. SUGARMAN: There's a circle, your Honor.
10 THE WITNESS: So as I was saying, your Honor, on
11 the north-south, on some of the utility poles that are
12 running north-south, there would be attached a lechi.
13 THE COURT: Why is some in yellow?
14 THE WITNESS: The map is showing this is
15 Westhampton Beach, this is showing this is Quogue, and
16 this is showing this is Westhampton.
17 So this is just the map colors that they wanted
18 to delineate for people what is in Westhampton Beach, what
19 is in Quogue, and what is in Westhampton. Not something
20 we did; something from the map resource.
21 MR. SUGARMAN: Your Honor, that's the way the
22 map was when we got it.
23 THE COURT: What do you mean "the map was"? I
24 have a map of Suffolk County. Why don't you put that in.
25 It's a map.

1 MR. SUGARMAN: The map we use, your Honor, is
2 the map of the portion of this area that is the area.
3 That's why we used it, so that was the way -- the colors
4 on the map.
5 THE COURT: I'm trying to figure out why you
6 picked that area over, let's say, the whole county.
7 MR. SUGARMAN: Why did we pick that area? the
8 Eruv Association pick that area?
9 THE COURT: Yes.
10 MR. SUGARMAN: I think we'll get to that in the
11 way that this follows.
12 Please continue.
13 A So as I said, on the north-south, on some of the
14 poles there would be attached a lechi, which is at this
15 point a five-eighths-inch PVC that would start at the base
16 of the utility pole and run up until about three inches
17 from the lowest wire.
18 Q Let me show you what we'll mark as Plaintiffs'
19 Exhibit 2, also produced by Verizon to the defendants.
20 And is this what you were referring to in terms of the
21 description of the lechi?
22 A Right.
23 So the lechi --
24 THE COURT: Wait. You said this was Exhibit 2?
25 MR. SUGARMAN: Yes, your Honor.

1 THE COURT: It's marked Exhibit 1.
2 THE WITNESS: It's marked as Exhibit 1, but it
3 comes from Verizon as an exhibit to their contracts.
4 THE COURT: I don't care. For me it is
5 Exhibit 2. I don't care.
6 Would you kindly mark it Exhibit 2?
7 MR. SUGARMAN: Yes.
8 MR. SOKOLOFF: Also, may I ask where this
9 picture was taken?
10 THE COURT: That's cross-examination, Counsel.
11 Go ahead.
12 BY MR. SUGARMAN:
13 Q Where did this exhibit, No. 2, come from?
14 A From an exhibit attached to a pro forma contract that
15 Verizon issues when you want to do a lechi agreement with
16 them. Tells you how far it has to be from the wire and
17 the structure.
18 Q And these specifications are Verizon's
19 specifications?
20 A Absolutely. Those are Verizon's specifications.
21 Q How many lechis will be attached to the poles in the
22 three municipalities, total?
23 A I think 58. Fifty-eight.
24 Q And do you know how many Verizon poles there are in
25 these three municipalities?

1 A I was told 15,000.
2 Q Now, you said that this was provided, this Exhibit 2
3 was provided by Verizon in connection with its contract
4 that was executed this week.
5 A That's correct. That's correct.
6 Q Let me show you --
7 MS. DEJONG: Mr. Sugarman, are you done with the
8 map for identification?
9 MR. SUGARMAN: For the moment. We'll probably
10 get back to it.
11 Well, maybe we can do it now so that you don't
12 have to be --
13 MS. DEJONG: Thank you.
14 BY MR. SUGARMAN:
15 Q There has been some mention of the fact that the
16 boundaries of the area have been expanded. Mr. Sokoloff
17 referred to that before.
18 Let me --
19 THE COURT: When were they expanded?
20 MR. SUGARMAN: I will bring that out, your
21 Honor.
22 BY MR. SUGARMAN:
23 Q I will show you what has been marked as Exhibit 1-A
24 and ask you to point out to the Court -- first of all,
25 describe what this is, and then point out the difference

1 between this and the map that we looked at just a second
2 ago.
3 A This was an earlier outline of the eruv. And if your
4 Honor will see, the eruv is slightly east of where it was
5 going to be now. And it was on the clock side. It was
6 slightly west of where it is going to be now (indicating).
7 And the reason that happened --
8 Q First of all, when did it happen?
9 A That happened about three weeks ago, three or four
10 weeks ago.
11 Q And the reason for it?
12 A Because when we had -- when the map was circulated,
13 we had a lot of people that told us that they were going
14 to fall outside of the eruv. And so they were upset and
15 asked us if we could expand the eruv so they could be
16 within it.
17 You know, it's a two-and-a-half-mile distance.
18 So they might be excused in assumption they didn't want
19 it, but they definitely did want it, and that's the reason
20 we asked the rabbis if we could expand it to encompass
21 those people.
22 Q On the Southampton side, what street --
23 A This was going up on Seabreeze.
24 Q And now?
25 A Now it is going up on Tanners Neck and Summit.

1 Q And on the Quogue side?
2 A On the Quogue side it was going up on Old Main
3 Street, as you see here, and now it is more toward this
4 direction. And if you turn the map over, you will see
5 that is now included.
6 Q And did this modification that you've just described
7 necessitate the designation of new poles on which to put
8 the lechis?
9 A Not a change in number but a change in the actual
10 poles we would be using, because it is the same
11 north-south that -- there are some lechis required on some
12 of the poles, but obviously it's not the same north-south.
13 So it will be the same poles you will be attaching lechis
14 to.
15 Q Explain how the size of the lechis went from
16 40 inches to 15 feet and why they changed from wood to
17 PVC.
18 A So because of the nature of the poles -- the poles
19 are wood poles, so there is warping and movement in the
20 pole. It's not a straight up.
21 And if you are using a metal pole, then
22 Verizon's normal 40-inch 1-by-2 wood would be fine,
23 because it would be a straight up to the lowest line
24 (indicating).
25 But once you have a pole that is either leaning

1 or warped, then the bottom of the lechi will not line up
2 with the lowest wire. And so as a result, you have to
3 have run from the bottom two or three inches from the
4 lowest wire, and that required a longer lechi.
5 As soon as that happened, Verizon said, whoa,
6 whoa, then we want PVC. If you want the longer one, we
7 want PVC, and this is the way we want it. This is how we
8 do the lechi agreements when we have a long lechi.
9 Q So Verizon has one standard agreement for the wooden
10 stakes and one for the longer PVC?
11 A Absolutely. Right.
12 THE COURT: And when did this change occur?
13 THE WITNESS: The change --
14 THE COURT: -- of the poles from the 40 inches
15 to 15-foot?
16 THE WITNESS: Within the last two to three
17 weeks.
18 THE COURT: Okay.
19 BY MR. SUGARMAN:
20 Q Let me show you Plaintiffs' Exhibit 3, and I would
21 like to ask you to identify it.
22 MS. DEJONG: May I see a copy, your Honor?
23 THE COURT: Pardon?
24 MS. DEJONG: May we see a copy?
25 MR. SUGARMAN: Yes (handing).

1 BY MR. SUGARMAN:
2 Q Mr. Tuchman, what is that?
3 A This is the most recent agreement between the East
4 End Eruv Association and Verizon, and this is the one that
5 incorporates the longer lechi.
6 MR. SUGARMAN: Your Honor, I offer 3, 2 and 1 in
7 evidence. I'll introduce the other contracts right now.
8 THE COURT: Okay.
9 Just mark them, because I don't know what is
10 what.
11 MR. SUGARMAN: I have this one which is
12 Plaintiffs' Exhibit 3.
13 THE COURT: I'll give you stickers so you have
14 them.
15 BY MR. SUGARMAN:
16 Q Mr. Tuchman, let me show you what is marked as
17 Plaintiffs' Exhibit 4.
18 Can you identify that?
19 A Yes. That was the original agreement in August of
20 2010 between the East End Eruv Association and Verizon.
21 Q And let me show you what has been marked as
22 Plaintiffs' Exhibit 5.
23 MR. SUGARMAN: These are in your binders.
24 MR. SOKOLOFF: I'm sorry, we don't have copies.
25 MR. SUGARMAN: Yes, I'm sorry.

1 THE COURT: Counsel, obviously we'll not finish
2 this hearing today. That's the reason I proposed only one
3 of the villages to a limit, so we can dispose of that and
4 then do the balance before July 5th, because one of the
5 lawyers has to leave. You say we'll do the same thing.
6 MR. SUGARMAN: I don't think I have another 10
7 or 15 minutes.
8 THE COURT: But there'll be cross-examination by
9 all of them.
10 MR. SUGARMAN: No, Mr. Tuchman will come back
11 for cross-examination for the other two. So Quogue can
12 cross-examine him, and he'll come back for
13 cross-examination for the others.
14 THE COURT: Okay. Okay.
15 I know you object. You can have your objection
16 on the record.
17 MR. SOKOLOFF: Thank you, Judge.
18 THE COURT: Go ahead.
19 BY MR. SUGARMAN:
20 Q Would you identify that?
21 A Plaintiffs' Exhibit 5 is the agreement that was
22 signed by Long Island -- well, LIPA and the East End Eruv
23 Association in July and August of 2010.
24 MR. SUGARMAN: Your Honor, I offer it.
25 THE COURT: In evidence.

1 MR. SUGARMAN: As both 4 and 5, your Honor.
2 THE COURT: Okay.
3 (Whereupon, Plaintiff Exhibits 1, 2, 3, 4 and 5
4 were received in evidence.)
5 BY MR. SUGARMAN:
6 Q The Judge asked you to point out where you live, and
7 there is a circle around where you live.
8 Could you explain to the Judge why it is that
9 you live in Westhampton Beach but it is necessary to have
10 lechis in Quogue in order to include you in the eruv?
11 A Yes. Because if it was just in Westhampton Beach, I
12 would be outside of the eruv (indicating). This would be
13 the boundary; then I would be outside the area. Because
14 it is here, I'm within the eruv (indicating).
15 Q And with the lechis in Quogue, you are in the eruv?
16 A Yes.
17 Q Mr. Tuchman, are you familiar with an allocation that
18 was made to Westhampton Beach in 2008?
19 A Yes.
20 MR. SOKOLOFF: Objection.
21 MS. DEJONG: Yes, objection.
22 MR. SOKOLOFF: Judge, they are now going into
23 Westhampton Beach. I thought this was about Quogue.
24 THE COURT: What is your objection?
25 MS. DEJONG: My objection is the same objection,

1 your Honor. We have nothing to do with Westhampton Beach.
2 THE COURT: I'll allow it.
3 Go ahead.
4 I will separate it, even though it may not have
5 anything to do with it.
6 A Yes, I'm familiar with an application in 2008 with
7 respect to Westhampton Beach.
8 BY MR. SUGARMAN:
9 Q Briefly describe what that application was.
10 A That was an application that sought a proclamation
11 pursuant to Jewish law for the establishment of a much
12 smaller eruv in Westhampton Beach.
13 Q Now, the Eruv Association has not, as I understand
14 it, applied to Westhampton Beach, Quogue and the Town of
15 Southampton for a proclamation in connection with this
16 eruv.
17 Would you explain why that is?
18 A That is correct.
19 We were advised by the rabbinic authorities that
20 under the circumstances of this eruv, we do not require a
21 proclamation, the proclamation as I explained to you
22 earlier.
23 MR. CAMHI: Objection.
24 THE COURT: Sustained.
25 A And --

1 THE COURT: You can't testify. I sustained the
2 objection.
3 You are a lawyer. You know that.
4 BY MR. SUGARMAN:
5 Q You've explained why the difference, and that's fine,
6 and I'll move it along.
7 Will the establishment of the eruv presently
8 contemplated, which is on Exhibit 1, have any impact on
9 non-Jews or nonobservant Jews?
10 MS. DEJONG: Objection.
11 MR. SOKOLOFF: Objection.
12 THE COURT: Overruled.
13 Go ahead.
14 A None whatsoever.
15 THE COURT: I realize everybody likes to make
16 objections, but go ahead. The jury will understand. This
17 is a nonjury case.
18 BY MR. SUGARMAN:
19 Q To be more specific, will the existence of an eruv,
20 for example, restrict the ability of non-Jews or
21 nonobservant Jews to drive through the area that is
22 encompassed within the eruv?
23 A Absolutely not. It has no impact on anyone except
24 observant Jews that need an eruv in order to carry or push
25 items on the Sabbath and on Yom Kippur.

1 Q Are you familiar with the steps that were taken --
2 are you affiliated with the East End Eruv Association?
3 A Yes.
4 Q And for how long have you been affiliated with them?
5 A Practically since it was established.
6 Q And are you familiar with the steps that the Eruv
7 Association took to establish the eruv that is outlined on
8 Exhibit 1?
9 A Yes.
10 Q Before I get to that, is --
11 THE COURT: Where do you live? I know you put a
12 mark, but I can't see.
13 Let's make it a real mark so I can see.
14 Go ahead.
15 BY MR. SUGARMAN:
16 Q Before I get to that, just a couple of questions.
17 What constitutes the outline of the eruv?
18 A The outline of the eruv is what you see right here.
19 The red line that I said earlier utilizes natural
20 structures, natural boundaries, existing structures and
21 poles, and some poles with lechis. There are poles
22 without lechis and poles with lechis.
23 Q But the lechis alone outline the eruv?
24 A They do nothing to the outline of the eruv, no.
25 Q Does the outline alone delineate that?

1 A If you publish a map, this is what it would look
2 like.
3 Q And that is the red line that is on Exhibit 1?
4 A Yes. Nowhere within the lechi.
5 Q What steps did the East End Eruv Association take to
6 establish the eruv that is contemplated on Exhibit 1?
7 A We contacted LIPA and Verizon and asked them for
8 agreements to attach lechis. This is something they've
9 done hundreds of times.
10 MS. DEJONG: Objection.
11 MR. SOKOLOFF: Okay.
12 THE COURT: I'm going to take it because they'll
13 be a witness.
14 MR. SUGARMAN: Yes.
15 THE COURT: So go ahead.
16 THE WITNESS: So we asked them for a lechi, or a
17 lechi agreement. Both of them, as I said earlier, signed
18 off on lechi agreements, and we did a pole walk,
19 designating the poles. And they were about to issue
20 licenses, as far as we were told.
21 BY MR. SUGARMAN:
22 Q And then what happened?
23 A Then they received a letter, first from Quogue,
24 asserting that attaching lechis to the poles would violate
25 a statute under the Quogue laws. And then after that, a

1 letter was received from the Town of Southampton,
2 literally as the licenses were being typed, and then they
3 just said, whoa, whoa. They were threatening us with
4 fines, and we have to step back, and so they did not issue
5 the licenses.
6 MR. SUGARMAN: Your Honor, I will just do Quogue
7 now, and we'll come back to Westhampton Beach and
8 Southampton.
9 THE COURT: Okay. On another date.
10 MR. SUGARMAN: Sorry?
11 THE COURT: On another date.
12 MR. SUGARMAN: Yes, I understand.
13 These will be somewhat out of order.
14 THE COURT: That's okay.
15 BY MR. SUGARMAN:
16 Q I'd like to ask you, Mr. Tuchman, to look at what has
17 been marked as Plaintiffs' Exhibit 6 and identify that, if
18 you would.
19 A Yes, this is a letter sent by The Village of Quogue,
20 the mayor, to Verizon and LIPA, asserting that attaching
21 the lechis would violate chapter 158 of the Quogue village
22 code.
23 MR. SUGARMAN: I offer it in evidence, your
24 Honor.
25 THE COURT: In evidence.

1 (Whereupon, Plaintiff Exhibit 6 was received in
2 evidence.)
3 BY MR. SUGARMAN:
4 Q And I'd like to show you what has been marked as
5 Plaintiffs' Exhibit 7 and ask if you can identify that.
6 A Yes. This is another letter sent by The Village of
7 Quogue to Verizon in response to correspondence I received
8 from the East End Eruv Association -- if I could correct
9 myself. It's in response to correspondence they received
10 from Verizon, from Verizon's counsel.
11 MR. SUGARMAN: I offer that, your Honor.
12 THE COURT: In evidence.
13 (Whereupon, Plaintiff Exhibit 7 was received in
14 evidence.)
15 BY MR. SUGARMAN:
16 Q And I'd like to show you what I've marked as
17 Plaintiffs' Exhibit 8. And identify that, if you will.
18 A This is a further letter from Quogue to counsel for
19 Verizon, and I suppose it speaks for itself.
20 THE COURT: What exhibit is that?
21 THE WITNESS: It's Exhibit 8, your Honor.
22 THE COURT: Exhibit 8?
23 THE WITNESS: Dated December 17, 2010, your
24 Honor. And it's Exhibit 9 in the Court's folder.
25 THE COURT: What date is it?

1 THE WITNESS: December 17, 2010.
2 MR. SUGARMAN: I'm going to change that to
3 Exhibit 9, your Honor, so it conforms to your binder.
4 And to save time, I'll not read from the
5 letters. I just offer it in evidence.
6 MS. DEJONG: Your Honor, I would object until at
7 least Mr. Balcerski or Mayor Sartorius testifies with
8 regard to these letters. They were sent to the mayor from
9 Verizon and from Verizon -- from the mayor to Verizon.
10 THE COURT: Are you objecting that it was sent?
11 MS. DEJONG: No. I would object to any
12 testimony from this gentleman since it wasn't sent to him.
13 MR. SUGARMAN: I'm not planning to have any
14 testimony.
15 THE COURT: He just offered them.
16 MR. SUGARMAN: I just offered them and move on.
17 THE COURT: In evidence.
18 (Whereupon, Plaintiff Exhibit 9 was received in
19 evidence.)
20 MR. SUGARMAN: As I say, your Honor, I'll leave
21 Westhampton Beach and Southampton for the future, and I
22 have no further questions at this time.
23 THE COURT: Okay.
24 CROSS-EXAMINATION
25 BY MS. DEJONG:

1 Q Good afternoon, Mr. Tuchman.
2 A Good afternoon.
3 Q So you've been living in Westhampton Beach for
4 approximately 17 years?
5 A Since 1994, December of 1994.
6 Q And that would be approximately 17 years?
7 A Approximately.
8 Q Okay. And you also live in Queens, you testified; is
9 that correct?
10 A That's correct.
11 Q For how long have you lived in Queens?
12 A Since 1979.
13 Q And which one is the home that you reside in
14 permanently?
15 A As I said, I vote in Westhampton Beach, I pay taxes
16 from Westhampton Beach, so I reside permanently in
17 Westhampton Beach.
18 Q And you reside in Westhampton Beach in the winter?
19 A Mostly in the city during the week, and occasionally
20 on the weekend in Westhampton Beach.
21 Q Would it be accurate to say for the most part you
22 reside in Westhampton Beach in the summer?
23 A I would say, yes, that's accurate, from April to
24 October.
25 Q And I believe you testified that your father is

1 deceased as of this date?
2 A Yes. He died two months ago.
3 Q I'm sorry to hear that.
4 And your children, where do they reside?
5 A They reside in Queens.
6 Q And so for approximately 17 years, you have practiced
7 your religion without the benefit of an eruv -- is it eruv
8 or eriv [phonetic] --
9 A Eruv.
10 Q So for 17 years you have practiced your religion
11 without the benefit of an eruv?
12 A Yes.
13 Q So for 17 years you have had to not be able to carry
14 your keys or your ID; is that correct?
15 A That's correct.
16 Q And that's basically it for you, right, with regard
17 to not being able to carry anything?
18 A Well, you can't carry a prayer shawl. You can't
19 carry a prayer book.
20 If my wife needs a second pair of shoes besides
21 the 1.9 mile walking shoes in the synagogue, they have to
22 be brought to the synagogue on Friday afternoon.
23 Q And you've been doing that for 17 years?
24 A Yes, that's correct.
25 Q And I believe you testified that, you know, why now.

1 Now is because the times have changed; is that correct?
2 A That's correct.
3 Q Seventeen years ago, weren't there also other
4 families who had children and grandchildren who couldn't
5 worship because there was no eruv? Do you know?
6 A That is possible, but it certainly -- I think it is
7 fair to say the synagogue was established some 20 years
8 ago, and as that process continued, people moved in and
9 the circumstances changed from what the population was and
10 what the needs were to what it is today.
11 Q And are you the president of the synagogue, sir?
12 A Yes, I am.
13 Q And so -- withdrawn.
14 It is accurate to say, is it not, that there are
15 people within, who worship at the synagogue, who are in
16 fact against the establishment of the eruv?
17 A I'm unaware of people that worship in the synagogue
18 that are against the establishment of the eruv.
19 Q And what about Ms. Lublinger? Isn't she a person who
20 in fact helped create the synagogue?
21 A In the 17 years that I've been in Westhampton Beach,
22 I've never seen her in the synagogue.
23 Q But you are familiar with the fact that she's against
24 the eruv?
25 A Yes, I recall that.

1 Q Now, that circle on the map, is that an accurate
2 depiction of where you reside, or are you closer to
3 Westhampton Beach?
4 If you look at Quantuck Bay, would you say you
5 are more towards the center of that bay?
6 A The number of my house is 35, so it is about 17
7 houses from my house to Quogue.
8 I'm familiar with this because we walk there
9 often, so that's how I can tell. But that's -- it's 17
10 houses.
11 Q I believe you've testified that you've been involved
12 with the East End Eruv Association since the beginning,
13 since the beginning of the association.
14 A Yes.
15 Q How long would that have been?
16 A My memory is in the spring of 2010.
17 Q And how many members does the East End Eruv
18 Association have?
19 A I believe at present, I believe it is five.
20 Q And who are those members, sir?
21 A There's a couple by the name of Pollack,
22 P-O-L-L-A-C-K, myself, Marvin Tenzer and Jeffrey Lean,
23 L-E-A-N.
24 Q Is Alan Schechter also a member, sir?
25 A I don't believe he's a member.

1 Q I will show you what has been marked as Defendants'
2 Exhibit Q-O. I put Q, for Quogue, and hyphen, O.
3 Are you familiar with this document?
4 A I'm not, but I can read it.
5 THE COURT: No. No. Are you familiar with it?
6 Q If you are not familiar with it, sir, that's okay.
7 A Okay.
8 Q Do you know exactly when members of the Eruv
9 Association officially became members?
10 A This seems to be dated May 12, 2011.
11 THE COURT: But we're not going by what this is
12 dated, because this is not in evidence.
13 Q Do you have any independent recollection,
14 Mr. Tuchman?
15 A No, I don't.
16 Q Does that document that has been marked as
17 Defendants' Exhibit Q-O refresh your recollection as to
18 when members officially became members of the association?
19 THE COURT: Now, wait before you answer that.
20 The question is, does it refresh your
21 recollection, not what it says there.
22 Does it refresh your recollection when they
23 became members, or do you have to go by what it says?
24 THE WITNESS: The latter, your Honor.
25 THE COURT: Sustained.

1 MS. DEJONG: Thank you, your Honor.
2 BY MS. DEJONG:
3 Q Now, how does the East End Eruv Association work?
4 Did you have meetings?
5 A I mean, I'm not familiar with the intricacies of this
6 part of the circumstances.
7 We were advised by counsel that there should be
8 members, and that's what -- that's the advice that we
9 followed.
10 Q So were you involved in any meetings?
11 A I mean, we've met about the issue of the eruv. So if
12 you are asking if we met, the answer is yes.
13 If you are asking if it's a formal meeting or a
14 corporate-type meeting or things like that, not that I
15 know of.
16 Q Okay. At any time did you, Mr. Tuchman, speak to any
17 of the village officials from The Village of Quogue with
18 regard to the eruv?
19 A Personally, no.
20 Q Did you ever submit anything in writing on behalf of
21 the East End Eruv Association to The Village of Quogue
22 with regard to the eruv?
23 A No.
24 Q So are you aware of anybody from the East End Eruv
25 Association who ever sought permission from The Village of

1 Quogue to establish an eruv within the village?
2 A I'm aware that they did not.
3 Q Okay.
4 And can you tell me, is Jeffrey Lean a member of
5 the East End Eruv Association?
6 A Not that I'm aware of.
7 Q Okay --
8 A I'm sorry. Jeffrey Lean? Did you say Jeffrey Lean?
9 Q I did say Jeffrey Lean.
10 A I'm sorry, he is a member of the East End Eruv
11 Association.
12 Q Do you know when he became a member?
13 A About the same time as everyone else became members.
14 Q Which was about when?
15 A Well, apparently I don't have any independent
16 recollection of that, so I can't answer you.
17 Q Okay. Okay.
18 Now, who decides what an eruv looks like?
19 A Can you clarify your question?
20 Q I'll be more specific.
21 In the case of this particular East End Eruv
22 Association, who decides what an eruv should look like?
23 A There's a rabbi who determines what poles, if you
24 need poles, or what boundaries, if you need boundaries,
25 are used in the establishment of an eruv.

1 It's highly, highly technical, as I said to the
2 Court earlier. There's an entire chapter of the Talmud
3 that speaks to eruv, so that's how it would be structured.
4 I would not know what area is permissible, what
5 can be in an eruv, what cannot be in an eruv.
6 Q So it's up to a rabbi?
7 A Yes.
8 Q So for about how long, if you know, has this concept
9 of an eruv been in place or in existence?
10 A The Talmud said it started in the court of King
11 Solomon.
12 Q And is it the Rabbi --
13 THE COURT: Could you put a date on that?
14 THE WITNESS: I would guess two and a half to
15 3,000 years ago.
16 THE COURT: That's close enough.
17 BY MS. DEJONG:
18 Q And is it the Rabbi who determines whether or not
19 there is string or wire that goes from pole to pole that
20 connects to the lechi?
21 A Yes, yes.
22 Q So in this case there will be no wire or string that
23 goes from the lechis; is that correct?
24 A That's correct, yes.
25 Q You are using the wires that are on the poles

1 already?
2 A The existing wires is what we would be using, yes.
3 Q And who makes that decision?
4 A The Rabbi.
5 Q Which rabbi is involved in this particular eruv?
6 A There are several, but the one who is most on the
7 ground is Rabbi Unsdorfer, U-N-S-D-O-R-F-E-R. We call him
8 Rabbi U for the same reason.
9 THE COURT: A rabbi of what? There are
10 different types of rabbis. So he's a rabbi of what?
11 THE WITNESS: He's an expert in eruv.
12 THE COURT: Yes, but what branch?
13 THE WITNESS: He's orthodox Jewish branch of
14 Judaism.
15 THE COURT: Yes.
16 BY MS. DEJONG:
17 Q At some point in time, was it Rabbi Unsdorfer that
18 decided that the lechis should be wooden lechis, 40 inches
19 long?
20 A As I said earlier, the specifications were attached
21 pro forma to the first contract that was sent from
22 Verizon.
23 Q So it was Verizon who dictated what the lechis looked
24 like?
25 A Yes, yes. Those were the specifications.

1 Q And at what point in time were you made aware that
2 the 40-inch wooden boards were now going to be 10- to
3 15-foot PVC pipes?
4 A As I said earlier, about three to four weeks ago.
5 Q And these PVC -- again, Plaintiffs' Exhibit 2, that
6 comes from Verizon also?
7 A Yes, that is correct.
8 Q And these lechis are made of five-inch half-round
9 black plastic molding?
10 A Five-eighth half-round. I thought you said
11 five-inch.
12 Q Five-eighth.
13 A I'm sorry.
14 Q And it goes from the ground -- does it go from the
15 ground?
16 A Yes.
17 Q All the way up to three inches below the wire?
18 A That's correct.
19 Q Did the Rabbi have to approve this?
20 A I'm sorry?
21 Q I'm sorry.
22 Did the Rabbi have to approve this, this
23 particular lechi, or are we just -- did he have to approve
24 this?
25 A I mean, look, this is a standard lechi that would be

1 for a larger pole.
2 Q So the Rabbi did not have to approve it?
3 A Well, I don't know what that means. I don't know
4 what it means.
5 He will work with that. If that's the lechi --
6 he has worked with a plastic lechi and he has worked with
7 a wooden lechi.
8 Q So he will work with that lechi?
9 A Yes.
10 Q Okay.
11 Now, who made the decision to change the
12 boundaries of the eruv?
13 A It was -- I was involved in that decision, Marvin
14 Tenzer was involved in that decision, because we were
15 getting a lot of people.
16 Q My question was, who made the decision, sir?
17 A Okay.
18 It was a decision that was made by Mr. Tenzer,
19 myself, in consultation with counsel, to attempt to
20 enlarge the boundaries.
21 Q Okay.
22 And when did you first begin working to expand
23 the boundaries of the eruv?
24 A As I said, about three or four weeks ago, five weeks
25 ago.

1 Q Now, was part of the reason why you expanded the
2 boundaries to put Mr. Lean within those boundaries of the
3 eruv?
4 A Yes, amongst others, yes.
5 Q Because at the time we were in court the last time,
6 Mr. Lean was not within those boundaries, correct?
7 A Yes, he would not have been within the eruv.
8 Q And I believe you testified that a rabbi advised the
9 association there was no need for a proclamation from a
10 governmental authority. Is that accurate?
11 A That's correct.
12 Q So the East End Eruv Association will not be seeking
13 a proclamation from any municipality that governs this
14 area?
15 A That's correct.
16 Q Are you aware of any other eruvs where no
17 governmental proclamation was granted?
18 A I imagine there are many, many.
19 Q But are you aware of that?
20 A I'm not aware of, you know, how an eruv was
21 established in the myriad of other communities, so ...
22 Q Now, do you recall explaining in an affidavit,
23 initially, that --
24 MS. DEJONG: Your Honor, I will change the map
25 to the earlier eruv.

1 Q Do you recall, Mr. Tuchman, in an affidavit advising
2 that the boundary of the eruv had to go through Quogue
3 here (indicating), and you live here (indicating), because
4 otherwise you would not be enclosed within the eruv?
5 A Yes.
6 Q And do you recall saying in that affidavit that that
7 was because it was not feasible for the eruv to be across
8 the Quantuck Bay? Do you recall saying that in the
9 affidavit?
10 A Yes.
11 Q Why wasn't it feasible to go on the Quantuck Bay?
12 A The Rabbi told us it was not possible.
13 Q Did the Rabbi tell you why that was not possible?
14 A Under Jewish law, you could not use that as a
15 boundary. You could use, perhaps, bulkheads over here
16 (indicating), but unless you have bulkheads on Quantuck
17 Bay, you don't have an eruv.
18 Q And are there bulkheads on Quantuck Bay?
19 A Not sufficiently that the Rabbi would say you could
20 put an eruv using it.
21 Q Let me ask you with regard to the current one --
22 MS. DEJONG: You know what, Judge, I have a
23 smaller map. I'm afraid it will topple over.
24 BY MS. DEJONG:
25 Q I will show you what has been marked as Defendants'

1 Exhibit Q-L.
2 Is this a smaller map of the first eruv
3 boundary?
4 A Yes.
5 Q Okay. And in this boundary, again, you are -- why
6 don't we put an X --
7 MS. DEJONG: Your Honor, I move that into
8 evidence, Defendants' Exhibit Q-L.
9 MR. SUGARMAN: No objection.
10 THE COURT: In evidence.
11 (Whereupon, Defendants' Exhibit Q-L was received
12 in evidence.)
13 BY MS. DEJONG:
14 Q Sir, would you put an X about where you reside?
15 A (Witness complies.)
16 THE COURT: Counselor, you may know, he may
17 know, but the one who has to make a decision doesn't know.
18 It's not on mine.
19 MS. DEJONG: Your Honor, I can only --
20 MR. SUGARMAN: Your Honor, I submit if we are
21 trying to save time, this whole discourse about Jewish law
22 and inside and outside is really not relevant to the
23 decision that a civil court --
24 THE COURT: It's not.
25 I do want to know what she's talking about. I

1 have to know.
2 THE WITNESS: Your Honor, that part is the same;
3 in other words, the same place that your Honor marked on
4 the other one.
5 THE COURT: No, you marked. I just made a
6 circle around it. I don't know where.
7 THE WITNESS: Okay.
8 (Witness complies.)
9 You see this is Quogue, so yet -- in other
10 words, here is where.
11 Westhampton Beach ends on the mainland west of
12 my home, so that's the quandary. So Westhampton Beach
13 ends to the west on the mainland.
14 THE COURT: Where would you say you live?
15 THE WITNESS: Here.
16 THE COURT: Mark that.
17 THE WITNESS: (Witness complies.)
18 BY MS. DEJONG:
19 Q Mr. Tuchman, when you go to the synagogue, which way
20 do you go?
21 A I walk along Dune Road to the west. Then I walk
22 along Beach Lane and ultimately arrive at the synagogue,
23 which is on Sunset.
24 THE COURT: Put another circle there so I know
25 where the synagogue is.

1 THE WITNESS: (Witness complies.)
2 THE COURT: Are you sure you put it in the right
3 place?
4 THE WITNESS: Well --
5 THE COURT: I don't think so.
6 THE WITNESS: I'm sorry, I'm messing up your
7 map.
8 THE COURT: No, it's your map.
9 THE WITNESS: Yes, I think about here
10 (indicating).
11 THE COURT: For the record, I thought the
12 witness showed a different place where he put the mark.
13 That's the reason I said I think you are wrong. Not that
14 I know where the synagogue is. I have never been there.
15 BY MS. DEJONG:
16 Q So, Mr. Tuchman, would it be accurate to say when you
17 walk to the synagogue, when you are in Westhampton Beach,
18 you walk internally through the town of Westhampton Beach?
19 A The Village of Westhampton Beach.
20 Q I mean The Village of Westhampton Beach?
21 A Yes.
22 Q And again, in your affidavit, you stated that it was
23 not feasible for the eruv to go over the water.
24 Do you recall that, making that statement?
25 A It's possible. It's possible. I don't recall it

1 independently, but it's possible.
2 Q Now let me show you -- and this is just a smaller map
3 of the expanded eruv, the map that is in evidence as
4 Exhibit 1 which I've marked Defendants' Exhibit Q-M.
5 Mr. Tuchman, were you involved with the Rabbi in
6 establishment of the eruv in Q-M?
7 A I'm not involved in the establishment of the eruv.
8 He established the boundaries of the eruv, so -- but I'm
9 aware of what he did.
10 Q Okay. Looking at --
11 MS. DEJONG: Your Honor, I move that in evidence
12 as Defendants' Exhibit Q-M.
13 MR. SUGARMAN: No objection.
14 THE COURT: In evidence.
15 (Whereupon, Defendants' Exhibit Q-M was received
16 in evidence.)
17 BY MS. DEJONG:
18 Q Looking at Q-M, would it be accurate to say that part
19 of the boundary of the eruv in fact crosses over Moriches
20 Bay?
21 A It would -- the way -- I think you are referring to
22 this (indicating).
23 Q I am.
24 A And if these bulkheads that would be used for that,
25 and the bridge and that -- so if anything -- if this is a

1 somewhat incorrect piece of the line -- somewhat -- but
2 here's where you will be using these bulkheads and
3 crossing the bridge (indicating).
4 Q Okay. So for the record, the red boundary on the
5 west side that goes from Dune Road up to the Westhampton
6 Beach shoreline over Moriches Bay is not accurate?
7 A No, this would be within the eruv, but you asked me
8 if you would be using the water. And what I said, you
9 would be using the bulkhead. The outline is right. All
10 of this would be within the eruv, but it would be using
11 the bulkheads here and crossing over with the bridge just
12 like that.
13 MS. DEJONG: I'm sorry.
14 Q Again, are there bulkheads over here in Quantuck Bay?
15 A As I said earlier, it is certainly not sufficient
16 that we could use for an eruv, because that's why we
17 didn't use it -- that's why the Rabbi didn't use it.
18 That's why you have to have the poles.
19 So there's a difference. You know, it depends
20 on the structures that exist on the water.
21 Q Let me ask you this. There is a continuing red line
22 that goes west of Westhampton Beach and goes, again,
23 across Moriches Bay and again across water, correct?
24 A Yes, and it would be the same. There have to be
25 bulkheads that permit the enclosure.

1 Q Are there bulkheads there, sir?
2 A I can only tell you what the Rabbi marked off.
3 You know, it is likely that he's using this
4 north-south.
5 MR. CAMHI: I object, Judge.
6 MR. SUGARMAN: Your Honor, I will object too.
7 We're not talking about the Rabbi's decision under Jewish
8 law what the eruv consists of, what the orthodox --
9 THE COURT: What is your objection?
10 MR. CAMHI: He's reading what the Rabbi said. I
11 think the Jewish law is very important to this case, and
12 if the Rabbi took the position, he's the one that should
13 be testifying.
14 THE COURT: Will the Rabbi be testifying?
15 MR. SUGARMAN: No, your Honor, because the cases
16 are clear. The issue of what constitutes an eruv under
17 Jewish law is not relevant to a civil action with respect
18 to any of the issues --
19 THE COURT: I'll let the cross-examination
20 continue.
21 MS. DEJONG: Your Honor, I would also request
22 that the plaintiff produce the Rabbi in order to establish
23 this.
24 THE COURT: Overruled.
25 You who have to be finished by today --

1 MS. DEJONG: Yes, your Honor.
2 THE COURT: -- can't make requests to produce
3 other people who couldn't be here today, because you are
4 just making it now. And I set this emergency trial this
5 afternoon to help you, not adjourn it.
6 MS. DEJONG: Your Honor, I appreciate that. But
7 we had said it before --
8 THE COURT: But you didn't do anything about it.
9 So continue.
10 BY MS. DEJONG:
11 Q Okay. You testified that there were members of the
12 community who wanted an expansion of the eruv.
13 Can you tell me who in -- looking at Q-M,
14 Defendants' Q-M, looking at the northeast corner in
15 Quogue, the northeast corner that runs along Quogue
16 Riverhead Road -- look at the small map --
17 A I'm sorry.
18 Q I asked you to look at the small map, which is the
19 same map just a smaller size.
20 A Okay.
21 Q Could you tell me who you were accommodating when you
22 ran this border up to the northeast corner there at Quogue
23 Riverhead Road?
24 A I know in particular Jeffrey Lean and Henry Marcus.
25 Q Who? Henry Marcus?

1 A Henry Marcus.
2 Q Where does Henry Marcus live?
3 A Just slightly west of that northeast corner you are
4 talking about.
5 Q And you don't know what the distance is from that
6 northeast corner to the synagogue?
7 A As I understand it, it's about three miles, but I
8 could be wrong.
9 Q And Mr. Lean lives well within that boundary, does he
10 not?
11 A I think Mr. Lean lives in like this area
12 (indicating), Park Circle. Is that right? I'm not sure,
13 but I think so.
14 MS. DEJONG: Okay. I have no further
15 questions -- just a second, Judge.
16 THE COURT: Who is your next witness?
17 BY MS. DEJONG:
18 Q Mr. Tuchman, does an eruv send a message to Jews?
19 A A message?
20 Q Yes.
21 A I don't know what that means.
22 I mean, if people know there's an eruv, they are
23 able, if they are observant, to carry items from their
24 homes to the public domain. I don't know what sort of
25 message. I mean, the lechi has no message, no writing,

1 and the eruv doesn't in itself, I imagine, send a message.
2 Q And do you know whether or not the Eruv Association
3 went out to look for a residence in Quogue in order to be
4 able to continue with this lawsuit?
5 A As you know, we were surprised that Mr. Lean was
6 about a block outside of the eruv, so, all right, it was
7 something that we had to correct.
8
9 REDIRECT EXAMINATION
10 BY MR. SUGARMAN:
11 Q Mr. Tuchman, Ms. DeJong asked you a number of
12 questions, would it be fair to say, in terms of leaving
13 without an eruv.
14 Would it also be fair to say that the presence
15 of an eruv would significantly enhance your ability to
16 practice your religion?
17 A Absolutely. I mean --
18 Q You don't have to explain.
19 MR. SUGARMAN: No further questions.
20 Our next witness is Jeffrey Lean.
21 THE COURT: How many questions do you have on
22 the issue of Quogue?
23 MR. SUGARMAN: Just the Verizon witness, and we
24 had noticed Mr. Sartorius, who is the supervisor. So it's
25 a Quogue witness, and then that's the only other witness

1 that we have on Quogue.
2 THE COURT: Okay.
3 You may step down.
4 You are subject to recall when we set the case
5 down for cross-examination by the other defendants.
6 MR. SUGARMAN: Your Honor, there'll be more
7 direct with respect to the other defendants as well.
8 THE COURT: Yes, I know.
9 THE WITNESS: Thank you, your Honor.
10 (Witness excused.)
11 THE COURT: You may be seated.
12 Raise your right hand.
13 **J E F F R E Y L E A N**,
14 called as a witness, having been first
15 duly affirmed, was examined and testified
16 as follows:
17 THE WITNESS: My name is Jeffrey Lean.
18 THE COURT: You have to talk louder. I can't
19 hear you.
20 THE WITNESS: Jeffrey, J-E-F-F-R-E-Y, Lean,
21 L-E-A-N.
22 DIRECT EXAMINATION
23 BY MR. SUGARMAN:
24 Q Mr. Lean, where do you reside?
25 A I reside in Quogue.

1 Q What is your address?
2 A 9 Park Circle.
3 Q Would you put an X --
4 THE COURT: Why don't you bring the map to him.
5 He has problems.
6 THE WITNESS: It's okay.
7 THE COURT: It's easier.
8 MR. SOKOLOFF: Can the record indicate which
9 exhibit number he just made a mark on?
10 MR. SUGARMAN: Yes. This is Exhibit 1.
11 Yes. And I'll put a circle around the X.
12 THE COURT: Yes.
13 BY MR. SUGARMAN:
14 Q Mr. Lean, are you a member of the Hampton synagogue?
15 A Yes, I am.
16 Q Do you have a position at the Hampton synagogue?
17 A Yes, I do. I'm what is known as the gabbai,
18 G-A-B-B-A-I.
19 Q And would you explain to the Court what the
20 responsibilities of a gabbai are?
21 A To protect the Torahs. To stand aside as the Torah
22 is being read by the Torah reader. To protect and to
23 close the Torahs, and to assist in their delivery back
24 into the ark after the services are concluded.
25 Q When, during the week, are the Torahs taken out of

1 the ark and are the services of the gabbai required?
2 A The services are required Mondays, Thursdays,
3 Shabbat, and on holidays.
4 Q How long have you been a gabbai at the Westhampton
5 synagogue?
6 A Seven years, approximately.
7 Q Mr. Tuchman marked the location of the Hampton
8 synagogue on the map.
9 Approximately how far is the Hampton synagogue
10 from your home?
11 A About two and a half miles.
12 Q When you go to the synagogue, how do you presently
13 travel?
14 A I used to walk. I can't any longer, so now I must
15 drive.
16 Q And does that include on the Sabbath?
17 A Yes, it does.
18 Q When you say you used to walk, for how long have you
19 been unable to walk?
20 A About five years.
21 Q And just briefly explain why that was.
22 A I had an automobile accident which made me disabled,
23 and I've had a number of operations, two more to go, and
24 I'm not ready --
25 THE COURT: Counselor, we don't have to go into

1 it. He's not able to walk now.
2 BY MR. SUGARMAN:
3 Q When you determined that you had to drive, did you
4 consult with any rabbis with respect to the laws and the
5 rules about Shabbat?
6 MS. DEJONG: Objection.
7 THE COURT: Unless you will cross-examine him on
8 it. Are you? If you won't, I'll sustain the objection.
9 MR. SUGARMAN: I'm happy to move on.
10 MS. DEJONG: I'll let him answer the question,
11 Judge.
12 BY MR. SUGARMAN:
13 Q So did you consult with any rabbis with respect to
14 the rules of Shabbat?
15 A I knew the rules myself. I consulted with the
16 rabbis. The rabbis told me I should not go to schul, and
17 some other rabbis said because of my disability, it
18 allowed me to do what I needed to do. But I knew in my
19 heart it is not appropriate, but I'm required.
20 Q Mr. Lean, why is it important for you to have an eruv
21 as it is presently proposed?
22 A Being included in the eruv allows me to, with my
23 conscience in good standing, go to the synagogue because
24 I'm able to be pushed, or I'm able to go with my family to
25 the synagogue.

1 MR. SUGARMAN: I have no further questions, your
2 Honor.
3 CROSS-EXAMINATION
4 BY MS. DEJONG:
5 Q Good afternoon, Mr. Lean.
6 A Good afternoon.
7 Q How long have you resided in Quogue?
8 A Since 1991.
9 Q And you have a family?
10 A Yes, I do.
11 Q And who are the members of your family?
12 A I have a son. I have a daughter --
13 THE COURT: You will have to speak up a little
14 louder.
15 THE WITNESS: Yes. I apologize.
16 THE COURT: Go ahead.
17 THE WITNESS: I have a son. I have two
18 daughters; one resides, still, with me -- and my wife.
19 Q I'm sorry. You forgot your wife.
20 A Yes.
21 Q If the eruv was in place, how do you foresee that
22 improving your ability to practice your religion?
23 A It would improve my conscience. It would allow me
24 and my wife to go together, and I would be more observant,
25 and I would be in more good graces with my daughter.

1 Q Do you perceive you would be using a wheelchair?
2 A That's a definite possibility, or some other device
3 that would allow me to travel alongside them without being
4 pushed, or me being -- pushing myself to get to the
5 synagogue, yes.
6 MS. DEJONG: I have no further questions.
7 MR. SUGARMAN: No further questions, your Honor.
8 THE COURT: You may step down.
9 Let's take a short break, ten minutes, no
10 longer, and then you will call your next witness.
11 MR. SUGARMAN: Thank you, your Honor.
12 (Whereupon, a recess was taken.)
13 THE COURT: All right. Are you ready to
14 proceed?
15 MR. SUGARMAN: Yes, your Honor.
16 THE COURT: Call your next witness.
17 MR. SUGARMAN: William Balcerski,
18 B-A-L-C-E-R-S-K-I.
19 THE CLERK: Do you swear or affirm?
20 THE WITNESS: I affirm.
21 **W I L L I A M B A L C E R S K I**,
22 called as a witness, having been first
23 duly affirmed, was examined and testified
24 as follows:
25 THE WITNESS: William Balcerski,

1 B-A-L-C-E-R-S-K-I.
2 THE COURT: Spell that again, please?
3 THE WITNESS: B-A-L-C-E-R-S-K-I.
4 THE COURT: Okay. Go ahead.
5 DIRECT EXAMINATION
6 BY MR. SUGARMAN:
7 Q Mr. Balcerski, by whom are you employed?
8 A I'm employed by Verizon.
9 Q And what is your position at Verizon?
10 A I'm an assistant general counsel.
11 Q And are you familiar with an organization called the
12 East End Eruv Association?
13 A Yes, I am.
14 Q And are you familiar with a series of events that led
15 to the execution of contracts between Verizon and the East
16 End Eruv Association?
17 A I am.
18 Q I show you what's been marked as Plaintiffs'
19 Exhibit 3 and ask if you can identify it (handing).
20 A Yes. A contract between Verizon and the East End
21 Eruv Association for the installation of lechis on
22 Verizon's poles.
23 Q Approximately when was that contract --
24 MR. SUGARMAN: I offer it in evidence, your
25 Honor. It might be in already.

1 MS. DEJONG: I think it is in.
2 THE COURT: It's all right.
3 (Whereupon, Plaintiff Exhibit 3 was received in
4 evidence.)
5 BY MR. SUGARMAN:
6 Q What's the date of the contract?
7 A The signature date is June 13, 2011.
8 Q Was there a prior contract between the Eruv
9 Association and Verizon?
10 A There was.
11 THE COURT: Is that 2001, you said?
12 THE WITNESS: '11. 2011.
13 THE COURT: I thought you said one.
14 BY MR. SUGARMAN:
15 Q And what were the circumstances that precipitated the
16 entry of this new contract, Exhibit 3?
17 A We understood that the Eruv Association wished to
18 install the 14, 15-foot PVC lechis on our poles, and we
19 required the execution of this agreement (indicating) in
20 order for them to make those attachments.
21 Q Is this agreement, which is Exhibit 3, a standard
22 form agreement that Verizon has for an eruv?
23 A Yes, it is.
24 Q Was the previous agreement that Verizon entered into
25 with the Eruv Association also a standard form agreement?

1 A Yes.
2 Q I'll not go into the provisions; they speak for
3 themselves.
4 Has Verizon issued to the Eruv Association any
5 licenses to place lechis on Verizon's poles?
6 A No.
7 Q Can you explain why?
8 A In order to obtain a license, the abrogant, in this
9 case the Eruv Association, needs to produce certain
10 information, such as certificate of insurance, and they
11 have to go through a walk-through with Verizon engineering
12 personnel to determine the exact location of the lechis
13 and the exact poles on which the lechis will be installed.
14 Q Did Verizon issue any licenses pursuant to the
15 earlier Verizon-East End Eruv Association agreement?
16 A No.
17 Q And why was that?
18 A There was opposition from a number of the towns to
19 the installation of the lechis, as indicated in letters
20 that I received and in numerous press articles that I had
21 also read.
22 Q I show you what has been marked as Plaintiffs'
23 Exhibit 10 and ask if you can identify it.
24 A Yes. This is a letter that I received from the
25 incorporated village of Westhampton Beach --

1 MS. DEJONG: Objection, Judge, this going into
2 evidence.
3 MR. SOKOLOFF: I join in the objection. This is
4 a hearing on Quogue.
5 MR. SUGARMAN: As I said before, Mr. Balcerski
6 is a third-party witness. He's here from New Jersey, and
7 I don't think it appropriate or fair to have him back
8 three times.
9 So what I asked for before, and notified the
10 other attendants, that he would testify with respect to
11 all three -- it will not take very long -- and then each
12 cross-examine him as opposed to requiring him to come back
13 twice more.
14 THE COURT: What time do you think we'll be
15 finished?
16 MR. SUGARMAN: My examination of Mr. Balcerski
17 will be another ten minutes. Then there is cross, and
18 then I go home.
19 THE COURT: Most of us were here when the jury
20 came in. As I said, I have to let her go, and that was my
21 plan, to limit it. You want to extend it.
22 MR. SUGARMAN: The only reason I want to extend
23 it is because Mr. Balcerski is a third-party witness and
24 he has come from New Jersey. I would like to see --
25 THE COURT: That's not from across the world.

1 He can come back again.
2 Can you come back if I order you?
3 THE WITNESS: If you order me, yes.
4 THE COURT: Okay. Good.
5 So let's keep it to the Quogue case only.
6 BY MR. SUGARMAN:
7 Q Mr. Balcerski, let me show you what has been
8 previously been marked as Plaintiffs' Exhibit 6 and ask if
9 you can identify it.
10 A Yes, this is a letter I received from The Village of
11 Quogue.
12 MR. SUGARMAN: To the extent it hasn't been
13 offered, I offer it.
14 MS. DEJONG: No objection.
15 THE COURT: In evidence.
16 What exhibit is it?
17 MR. SUGARMAN: Dated September 9th. It's
18 Exhibit 6.
19 (Whereupon, Plaintiff Exhibit 6 was received in
20 evidence.)
21 BY MR. SUGARMAN:
22 Q Did you respond to that letter?
23 A I did.
24 Q I show you what has been marked as Plaintiffs'
25 Exhibit 12. And would you identify that letter?

1 A Well, this is a letter from -- well, it's from
2 yourself --
3 MR. SUGARMAN: Right.
4 A -- to the East End Eruv Association, dated
5 October 4th, 2010. And I'm familiar with that letter.
6 Q Did you forward that letter to the people at Quogue?
7 A I believe I did.
8 MR. SUGARMAN: I offer it, your Honor.
9 MS. DEJONG: Judge, I object.
10 What it is, it's a legal opinion, and it really
11 has nothing substantive. Mr. Balcerski just said he
12 thinks he forwarded it. We don't know for sure whether he
13 forwarded it to my client or not. So I would object.
14 THE COURT: Overruled.
15 BY MR. SUGARMAN:
16 Q Mr. Balcerski, let me now show you what has been
17 marked as Plaintiffs' Exhibit 13 and ask if you can
18 identify that.
19 A Yes, I can. This is a letter I wrote dated
20 October 26, 2010, to Mayor Sartorius of The Village of
21 Quogue.
22 MR. SUGARMAN: Again, your Honor, I will not
23 read it. It's in evidence. I'll move it along. We'll go
24 to the next one.
25 Q Mr. Balcerski, let me show you what has previously

1 been marked as Plaintiffs' Exhibit 7 and ask if you can
2 identify that.
3 A Yes, I can. A letter dated November 22, 2010,
4 addressed to me from Mayor Sartorius.
5 Q Let me now show you what has been marked as
6 Plaintiffs' Exhibit 9 and ask if you can identify that.
7 A Yes, I can. This is a letter dated December 17,
8 2010, addressed to me from Mayor Sartorius.
9 THE COURT: What date is that?
10 MR. SUGARMAN: December 17th, your Honor.
11 THE COURT: What exhibit?
12 MR. SUGARMAN: It's Exhibit --
13 THE WITNESS: -- 9.
14 MR. SUGARMAN: -- 9.
15 THE COURT: Okay.
16 BY MR. SUGARMAN:
17 Q Would you read into the record the next to the last
18 paragraph of that letter?
19 A Starting with "in short"?
20 In short, there are laws we believe clearly
21 prohibit the attachment of lechis to utility poles without
22 the village's permission, and we will enforce them against
23 Verizon and LIPA as the owners of the poles. The
24 village's ordinance provides for fines of $1,000 per day
25 and other penalties.

1 Q Mr. Balcerski, what is Verizon's position with
2 respect to the contracts between the Eruv Association and
3 Verizon?
4 MR. CAMHI: I object to the form of the
5 question.
6 BY MR. SUGARMAN:
7 Q What is Verizon prepared to do or not do under the
8 contracts?
9 MS. DEJONG: Objection.
10 THE COURT: Overruled.
11 A In the event the Court decides that the lechis may be
12 installed on the poles, Verizon will allow the
13 installation of the lechis.
14 BY MR. SUGARMAN:
15 Q Did Verizon commence its own litigation in connection
16 with this eruv --
17 MS. DEJONG: Objection.
18 THE COURT: Is this before us?
19 MR. SUGARMAN: Yes, your Honor.
20 THE COURT: Sustained.
21 BY MR. SUGARMAN:
22 Q And --
23 THE COURT: I may overrule that judge.
24 Q So what is Verizon presently waiting for in order to
25 make its decision as to whether it will go forward and

1 issue the licenses?
2 A We are awaiting a decision from the Court as to
3 whether or not we are permitted to allow the installation
4 of the lechis.
5 Q And is Verizon prepared to do so with that decision?
6 A If the Court rules that we are allowed, we will do
7 so, yes.
8 MR. SUGARMAN: I have no further questions with
9 respect to Quogue.
10 CROSS-EXAMINATION
11 BY MS. DEJONG:
12 Q Good afternoon.
13 A Good afternoon.
14 Q Mr. Balcerski, how long have you been assistant
15 general counselor to Verizon?
16 A I've been with Verizon for 25 years.
17 Q And are there other attorneys in the office?
18 A Yes, there are.
19 Q About how many --
20 A Verizon employs several hundred attorneys.
21 Q -- attorneys?
22 Now, as general counsel to Verizon, do you
23 review the pole attachment agreements? Is that part of
24 the job?
25 A Well, I wish I'm general counsel, but I'm assistant

1 general counsel. Yes, I do review the pole attachment
2 agreements.
3 Q I'm sorry, assistant general counsel.
4 Now, the Verizon utility poles that are at issue
5 in this case are within The Village of Quogue
6 rights-of-way; is that correct?
7 A Yes.
8 Q That's your understanding?
9 A Yes.
10 Q And Verizon owns the poles, right?
11 A Yes.
12 Q But Quogue owns the real property upon which the
13 poles are located, correct?
14 A I believe the poles are located on the public
15 rights-of-way, streets of Quogue --
16 Q The Quogue streets?
17 A Yes.
18 Q Are you aware of any specific franchise agreements
19 between Verizon and Quogue regarding the poles at issue?
20 A No.
21 Q Now, when Verizon wants to construct or erect a new
22 pole on village rights-of-way, does it have to ask
23 permission from the village?
24 A I believe we obtain a permit in order to construct
25 new poles.

1 Q And you obtain a permit from the village board of
2 trustees, correct?
3 A I'm not sure who the permit is obtained from, because
4 I do not myself obtain the permits.
5 Q But you agree Verizon's use of the village street
6 and/or rights-of-way is subject to the village's police
7 power of regulation. You would agree to that, sir?
8 A The village certainly has power over its
9 right-of-way.
10 Q And it is able to, from your experience, from an
11 assistant general -- I'm sorry, general counsel?
12 A Yes.
13 Q -- to regulate use of those poles, to an extent,
14 reasonably?
15 A I'm not sure what you mean by regulating.
16 Q Well, to your knowledge, are they entitled to pass
17 ordinances with regard to the health, safety, welfare and
18 aesthetics with regard to anything on their rights-of-way?
19 MR. SUGARMAN: Objection, your Honor. I'm not
20 sure this witness is qualified to testify.
21 THE COURT: If he knows.
22 A I believe municipalities have the general rights to
23 enact ordinances for the public general health, welfare
24 and public safety.
25 BY MS. DEJONG:

1 Q When application for pole attachments are made to
2 Verizon, applicants have to submit evidence of the local
3 municipality's permission for this attachment; is that
4 correct?
5 A That is not correct.
6 Q That is not correct. Okay.
7 Well, let me show you what's been marked as
8 Defendants' Exhibit Q-A.
9 "THE COURT: When you say "marked, you mean in
10 evidence or just marked?
11 MS. DEJONG: For identification, your Honor.
12 THE COURT: For identification. There's quite a
13 difference. So, please, both sides, if it's an exhibit in
14 evidence, tell me. If it's just for identification, it
15 just means there is a mark on it. Nothing else.
16 MS. DEJONG: For identification, your Honor. I
17 apologize.
18 THE COURT: Okay.
19 BY MS. DEJONG:
20 Q Mr. Balcerski, I ask that you look at what has been
21 marked for identification as Defendants' Exhibit Q-A.
22 Is this familiar to you?
23 A Yes, it looks familiar.
24 Q And is this a document that is issued by Verizon?
25 A I believe it is.

1 Q And this is entitled Information With Respect to
2 Licensing Pole Attachment, correct?
3 A Correct.
4 MS. DEJONG: Your Honor, I move this into
5 evidence as Defendants' Exhibit Q-A.
6 MR. SUGARMAN: No objection.
7 THE COURT: In evidence.
8 (Whereupon, Defendants' Exhibit Q-A was received
9 in evidence.)
10 BY MS. DEJONG:
11 Q You will note on the first page, Mr. Balcerski, it
12 says, does it not, that we require the applicant to give
13 evidence that it has the locality's permission to place
14 its plant on the street?
15 THE COURT: What does "its" refer to, a plant
16 that grows on trees or a pole or what?
17 MS. DEJONG: I'll ask Mr. Balcerski, your Honor.
18 THE COURT: If he knows.
19 MS. DEJONG: It has to do with attachments to
20 the pole.
21 BY MS. DEJONG:
22 Q Mr. Balcerski?
23 A "Plants" here would refer to, in telephony speak, the
24 poles, wire, equipment. And we refer to that generally as
25 telephone plant.

1 Q So that would be something that is placed on the pole
2 in this case?
3 A Correct.
4 Q So it says: We require the applicant to give
5 evidence that it has the locality's permission to place
6 its plants in the street. Correct?
7 A That's exactly what it says.
8 Q Further, it says: No application for a pole
9 attachment or a conduit occupancy agreement will be
10 accepted unless the applicant presents with the
11 application evidence of a valid and subsisting rights use
12 of streets and roads from all municipalities having
13 jurisdiction in the area.
14 That's what it states, correct?
15 A That's what it states, yes.
16 Q And again, that is because while Verizon owns the
17 pole, it is within the municipality's right-of-way, right?
18 A Correct.
19 Q And in this case, the case that we're talking about
20 right now, several of the poles are within Quogue's
21 right-of-way, correct?
22 A Yes.
23 Q Now, when the East End Eruv Association submitted its
24 agreement to Verizon on May 11, 2010, it did not submit
25 any evidence that it had the village's permission,

1 correct?
2 A I believe that is correct.
3 Q In fact, they submitted a letter from their attorney,
4 correct?
5 A Correct.
6 Q In that letter --
7 MS. DEJONG: Your Honor, I'm going to ask -- I'm
8 going to show the witness what has been marked for
9 identification as Defendants' Exhibit Q-B, as in boy.
10 Q Do you know, sir -- does this letter look familiar to
11 you?
12 A Yes.
13 Q Do you know, sir, is this a copy of the letter that
14 was submitted with the application by the East End Eruv
15 Association?
16 A I believe so.
17 Q Okay.
18 And in this letter, Mr. Sugarman advises it is
19 their conclusion, based upon the review of the village
20 bylaws of the villages of Westhampton Beach and Quogue,
21 the local laws of The Village of Westhampton Dunes, the
22 code of The Town of Southampton, the laws of Suffolk
23 County and the laws of New York State, and because of that
24 review, he believes that no approval is necessary,
25 correct?

1 A Correct.
2 Q Now, in this letter -- did you review this letter at
3 all prior to the signing of the agreement?
4 A This letter?
5 Q Yes.
6 A I saw it, yes.
7 Q You saw it.
8 Did you see it when it was submitted with the
9 pole attachment agreement in May of 2010?
10 A Not -- I didn't receive the pole attachment agreement
11 application, but I had seen this letter.
12 Q Okay.
13 And in this letter, does it state anywhere in
14 this letter the specific code provision for The Village of
15 Quogue that Mr. Sugarman looked at to make that
16 determination?
17 A There is no reference to specific provisions.
18 Q In fact, when it refers to The Village of Quogue, it
19 states that based on a review of the village bylaws of the
20 villages of Westhampton Beach and Quogue -- correct?
21 A Correct.
22 Q Do you know if there is anything within the village
23 bylaws that has nothing anything to do with the
24 regulations of the streets and highways of The Village of
25 Quogue?

1 A I do not know the bylaws.
2 MS. DEJONG: Your Honor, I move this in evidence
3 as Defendants' Exhibit Q-B, as in boy.
4 THE COURT: In evidence.
5 Any objection?
6 MR. SUGARMAN: No, your Honor.
7 THE COURT: In evidence.
8 (Whereupon, Defendants' Exhibit Q-B was received
9 in evidence.)
10 BY MS. DEJONG:
11 Q Now, as a result of the submission of this letter and
12 the executed agreement in May of 2010 and the liability
13 insurance policy and the list of the poles and a map of
14 the eruv, the agreement was signed, correct?
15 A Correct.
16 Q Okay.
17 And it was signed by Verizon on August 16, 2010,
18 right?
19 A I don't have the agreement in front of me.
20 THE COURT: We'll assume you are telling the
21 truth.
22 MS. DEJONG: Your Honor, I'm telling the truth.
23 It's just that -- I have my exhibits, but Mr. Sugarman
24 already introduced it, and I don't have any.
25 BY MS. DEJONG:

1 Q To your knowledge, did anyone from Verizon discuss
2 this potential eruv with anybody from The Village of
3 Quogue, to your knowledge?
4 A To my knowledge, no.
5 Q You never discussed anything about the use of your
6 poles in The Village of Quogue with the mayor, correct?
7 A Correct.
8 Q Now, at some point in time you received a letter from
9 the mayor of Quogue regarding the eruv, right?
10 A I think I received several letters, I believe.
11 Q The first letter would be what is marked as
12 Plaintiffs' Exhibit 6 -- I believe it is in front of you
13 and in evidence -- a letter dated September 9th, 2010,
14 from Mayor Sartorius to you, correct?
15 A I don't see that one in front of me, but --
16 THE COURT: It may be 7.
17 MS. DEJONG: It's 6, your Honor.
18 THE COURT: In our book it is 7.
19 MS. DEJONG: Your Honor, this will confuse us
20 even more --
21 THE COURT: In our book it is 7, but, okay.
22 MS. DEJONG: Your Honor, I'm going to -- may I
23 introduce this as my exhibit?
24 THE COURT: Sure.
25 MS. DEJONG: I'll introduce what has been marked

1 for identification and which I'm assuming will go into
2 evidence as Defendants' Exhibit Q-D, which is the same as
3 Plaintiffs' Exhibit 6, and it is a letter dated
4 September 9th, 2010, from Peter Sartorius to Mr. Balcerski
5 and to Linda Nicolino from LIPA. I move that into
6 evidence.
7 THE COURT: In evidence.
8 (Whereupon, Defendants' Exhibit Q-D was received
9 in evidence.)
10 BY MS. DEJONG:
11 Q Is this the letter you received from the mayor on or
12 around -- I'm sorry, on September 13, 2010?
13 A Yes.
14 Q And in this letter, is this the first time you
15 communicated or had a communication with anyone from The
16 Village of Quogue with regard to this eruv?
17 A I believe that is correct.
18 Q So that would be September 9, 2010, and that would be
19 approximately a month after the agreement was signed,
20 right? Approximately?
21 A Yes.
22 Q Okay.
23 And in this letter, Mayor Sartorius advises you
24 he's been made aware of this possible establishment of an
25 eruv, correct?

1 A Correct.
2 Q And he also advises you about chapter 158 of the
3 Quogue village code which prohibits encroachment or
4 projections?
5 A Correct.
6 Q Any attachment of a nonutility device to any utility
7 pole located in the right-of-way would be prohibited.
8 That's what he states in the letter, right?
9 A Correct.
10 Q Did you at that point look at what chapter 158 of the
11 Quogue village code was?
12 A I believe I did.
13 Q Okay. And did you make a determination?
14 A I remember when I looked at it, it wasn't clear one
15 way or the other.
16 Q So what did you do as a result of this letter, that
17 being Q-D?
18 A I don't believe I responded to the letter, but
19 Verizon continued not to issue any licenses.
20 Q I'm sorry?
21 A We did not issue any licenses.
22 Q Now, by e-mail dated September 17, 2010, you advised
23 Mr. Tenzer of the East End Eruv Association that Verizon
24 would not license any attachments to the poles in Quogue
25 until he obtains approval from the municipality; is that

1 right?
2 A I believe that is correct.
3 Q Let me show you what has been marked for
4 identification as Defendants' Exhibit Q-E.
5 I'll ask that you look at this.
6 Is this e-mail familiar to you?
7 A Yes.
8 Q Is this the e-mail you wrote on December 17, 2010 --
9 A Yes.
10 Q -- to Mr. Tenzer from the East End Eruv Association?
11 A Yes.
12 MS. DEJONG: Your Honor, I move this into
13 evidence as Quogue Exhibit Q-E.
14 THE COURT: And what is it in my exhibits; do
15 you know?
16 MS. DEJONG: Your Honor, did I give you one? I
17 apologize. Sorry, Judge.
18 BY MS. DEJONG:
19 Q So would it be fair to say, Mr. Balcerski, that on
20 December 11, 2010, you were of the opinion that the East
21 End Eruv Association requires proof of permission from The
22 Village of Quogue?
23 A Yes.
24 Q And you also stated in that e-mail that you will not
25 allow attachments to the poles under these circumstances

1 until the town and the Eruv Association reach an
2 agreement, correct?
3 A That is correct.
4 Q Now, as a result of sending that e-mail on
5 September 17th, did you receive any correspondence from
6 the East End Eruv Association?
7 A I did receive correspondence, but I'm not sure when.
8 Q I'll show you what has been marked for identification
9 as Defendants' Exhibit Q-F (handing).
10 Have you looked at this document?
11 A Yes.
12 Q Does this look familiar to you?
13 A Yes.
14 Q Is this an accurate copy of a letter written to you
15 by Mr. Tenzer, a member of the East End Eruv Association,
16 on October 5, 2010?
17 A Yes.
18 MS. DEJONG: Your Honor, I move this into
19 evidence as Defendants' Exhibit Q-F.
20 MR. SUGARMAN: No objection.
21 THE COURT: In evidence.
22 (Whereupon, Defendants' Exhibit Q-F was received
23 in evidence.)
24 BY MS. DEJONG:
25 Q In that letter, Mr. Tenzer advises you that the

1 mayor's assertion is erroneous as a matter of law, does he
2 not?
3 A Yes.
4 Q And Mr. Tenzer's opinion is based upon yet another
5 legal opinion provided by the attorney for East End Eruv
6 Association, correct?
7 A Correct.
8 Q And Mr. Tenzer also states that your insistence that
9 the East End Eruv Association obtain approval from this
10 town, from these towns, is disingenuous?
11 A Yes.
12 Q And did you believe at the time that you required him
13 to show or submit evidence of permission that that was
14 disingenuous on your part?
15 A Repeat that.
16 Q It's a little convoluted, I know.
17 At the time you wrote this e-mail requiring them
18 to show they got consent from The Village of Quogue, did
19 you believe you were being disingenuous?
20 A No.
21 Q And in this letter, again -- and I'm going back to
22 Q-F -- Mr. Tenzer claimed that you were disingenuous since
23 you were, quote, certainly aware that Westhampton Beach
24 has repeatedly stated it would not approve an eruv.
25 Were you aware of that, sir?

1 A Aware that Westhampton Beach would not approve the
2 eruv? Yes, I was aware of it.
3 Q That they repeatedly --
4 THE COURT: He said yes.
5 Q Were you aware of The Village of Quogue at any point
6 in time making a position on that?
7 A I don't think there was any -- I don't remember
8 seeing anything from Quogue on that, no.
9 Q At that time, to the best of your knowledge, there
10 was no opposition from Quogue, was there?
11 A I don't think so.
12 Q And were you aware of that at the time that you wrote
13 that e-mail, that there wasn't any opposition from Quogue?
14 A From Quogue. Yes, I was not aware of any opposition
15 from Quogue at the time I wrote the e-mail.
16 Q In fact, you were not aware of any statement that The
17 Village of Quogue made at that time with regard to an
18 eruv, correct?
19 A At that time, correct.
20 THE COURT: Since it is nonjury and we're moving
21 along, have they since that time made a statement
22 concerning the granting of a permit?
23 THE WITNESS: Yes, they have.
24 THE COURT: And what was that and when?
25 THE WITNESS: Well, these are some of the

1 letters that we -- that they just introduced, where they
2 made it very clear that an eruv could not be established
3 without their permission.
4 THE COURT: Okay.
5 And what do they say about giving them
6 permission?
7 THE WITNESS: It just said that they hadn't
8 given permission, that their ordinance required that the
9 Eruv Association needed permission before they could
10 construct poles, and threatened Verizon with fines if we
11 were to allow the Eruv Association to proceed with the
12 construction.
13 THE COURT: Okay.
14 BY MS. DEJONG:
15 Q How many times did The Village of Quogue advise you,
16 sir, that the plaintiffs needed to obtain permission from
17 the village before they were able to attach objects to the
18 poles? How many times, sir?
19 A Well, I think I have at least two letters or three
20 letters (perusing).
21 September 9, 2010; November 22, 2010;
22 December 17, 2010.
23 Q Was there not also an e-mail from Mr. Sartorius to
24 you?
25 A There may have been, but I would need to --

1 Q Now, Mr. Tenzer stated in that letter, Q-F, that
2 Quogue had no standing to object to the eruv.
3 Do you remember reading that?
4 A If it's in the letter, I remember reading it.
5 Q Did you ever have any thoughts whether that was
6 accurate or not, Mr. Balcerski?
7 A Any --
8 Q -- thoughts?
9 A Regarding?
10 Q Whether or not The Village of Quogue had standing to
11 require permission.
12 A Well, I had the letter from September of 2010 that
13 said that Quogue needed to give its permission in order
14 for the eruv to be created.
15 Q Correct.
16 And Mr. Tenzer, in that letter, actually accuses
17 Verizon of conspiring to violate the plaintiff of its
18 civil rights?
19 A Yes.
20 Q And were you conspiring?
21 A I don't think we were conspiring.
22 Q In fact, you were just asking if they would provide
23 permission, which is the general way in which Verizon
24 dealt with all of their attachment applications, correct?
25 A Not quite correct.

1 Q Okay. How is it not correct, sir?
2 A We don't require proof of the permission before
3 attachment applications are made. Only if at a later
4 point in time a town were to say that the attacher did not
5 gain permission from the town, then we would go back to
6 the attacher and say, you need to obtain that. We do not
7 require it up front.
8 Q So referring you back to Defendants' Exhibit Q-A,
9 where it states that we require the applicant to give
10 evidence that it has the locality's permission to place
11 its plants in the streets, that is not accurate?
12 A The statement is accurate, but we don't require that
13 as part of the application.
14 THE COURT: Counsel, what time are you leaving
15 tomorrow?
16 I mean, you are making a frown. I'm trying to
17 help you. We're running late.
18 MS. DEJONG: I appreciate that.
19 THE COURT: I'm entitled to an answer. Here I'm
20 concerned about your interests, and you are giving me
21 dirty looks.
22 MS. DEJONG: Judge, I apologize. I didn't mean
23 to give you a dirty look.
24 THE COURT: I'm just asking you: Can we have
25 time in the morning or not?

1 MS. DEJONG: No, your Honor, we can't have time
2 in the morning.
3 THE COURT: What time are you leaving?
4 MS. DEJONG: Well, I'm leaving tomorrow night,
5 but I haven't had a chance to do anything in order to get
6 this trip together. I would prefer not to come in
7 tomorrow morning.
8 THE COURT: Well, I'm afraid the way you're
9 going, we may have to.
10 BY MS. DEJONG:
11 Q So you are claiming, Mr. Balcerski, that the only
12 time that Verizon requires proof of consent from a
13 municipality is when a municipality actually advises you
14 that they have a problem with the application?
15 A When they raise some type of objection to the
16 attachment.
17 Q And would you agree that Verizon has their poles on
18 the rights-of-way by privilege or license? Would you
19 agree with that?
20 A I would not.
21 Q You would not.
22 A We have our poles on the public rights-of-way
23 pursuant to section 27 of the Transportation Corporations
24 Law.
25 Q And that law --

1 A That law grants Verizon the right to place its
2 telephone poles on the public rights-of-way.
3 Q And that grants the right to place the poles on the
4 public rights-of-way in order to provide electricity and
5 supply and distribute electricity to the general public,
6 correct, for the public purpose?
7 A I don't believe. I don't have the schedule in front
8 of me. I don't believe the statute says for what purpose
9 that we can place telephone poles on the areas.
10 Q So under the Public Transportation Law, you are able
11 to put poles on rights-of-way for any purpose?
12 A Well, for the purposes of providing telephone
13 service. I don't have the law in front of me to say
14 exactly what else it says.
15 Q Now, in response to your letter dated October 26 to
16 Mr. Sartorius in which you advise him of counsel's opinion
17 and your concerns and in which you invite him to provide a
18 counteropinion, did you receive an e-mail from
19 Mr. Sartorius?
20 A I may have.
21 Q And I will show you what has been marked as
22 Defendants' Exhibit Q-H.
23 Have you had an opportunity to review that?
24 A Yes.
25 Q Is -- do you recognize this?

1 A Yes.
2 Q Is it an accurate copy of an e-mail that was sent to
3 you from Mr. -- Mayor Sartorius on October 29th?
4 A Yes.
5 MS. DEJONG: Your Honor, I move that into
6 evidence as Defendants' Exhibit Q-H.
7 MR. SUGARMAN: No objection.
8 THE COURT: In evidence.
9 (Whereupon, Defendants' Exhibit Q-H was received
10 in evidence.)
11 BY MS. DEJONG:
12 Q And so by this e-mail, Mayor Sartorius was again
13 discussing the fact that the eruv needed approval by the
14 municipality, correct?
15 A Correct.
16 Q And also is asking you for time in order to be able
17 to find the expertise to put together an opinion to
18 counter Mr. Sugarman's opinion?
19 A Yes.
20 Q And you gave him that time, correct?
21 A Yes.
22 Q Now I'm going to ask that you look at what has been
23 marked -- I'm going to look at what has been marked for
24 identification as Defendants' Exhibit Q-I.
25 Do you remember this letter, Mr. Balcerski?

1 A I do.
2 Q Is it a cover letter with an opinion by Mr. DePetris
3 and Ms. Hamilton annexed?
4 A Correct.
5 Q Is that how you received it?
6 A That's correct.
7 MS. DEJONG: Your Honor, I move this into
8 evidence as Defendants' Exhibit Q-I.
9 THE COURT: In evidence.
10 (Whereupon, Defendants' Exhibit Q-I was received
11 in evidence.)
12 BY MS. DEJONG:
13 Q In that letter, Mayor Sartorius requests that Verizon
14 not interfere with the village's procedures by granting
15 permission which is beyond the village's authority,
16 correct?
17 A Correct.
18 Q Now, had Verizon ever licensed pole attachments
19 within The Village of Quogue without proof of village
20 approval, to your knowledge?
21 A To my knowledge, I would think we have, yes.
22 Q Do you have any proof of that, sir?
23 A Well, I don't have any proof, but to the extent that
24 another telecommunications company or cable company wants
25 to attach to our poles, they come to us and apply for a

1 license, typically enter into a license agreement.
2 Q So you are basically making an assumption, knowing
3 the cable companies have lines on your poles?
4 A Correct.
5 Q Other than cable companies, are you aware of any
6 other company or individual in The Village of Quogue to
7 allow attachments to the poles without permission?
8 A I don't know, except as I said before, maybe other
9 telecommunication companies.
10 Q Did you know that Cablevision asked permission from
11 The Village of Quogue on a yearly basis?
12 A Yes.
13 Q So they ask permission and get the right to attach to
14 the poles?
15 A Correct.
16 THE COURT: Sustained. You are now testifying
17 on his behalf.
18 THE WITNESS: I don't think that is correct.
19 BY MS. DEJONG:
20 Q I'm sorry?
21 A I don't think that is correct.
22 Q You don't think that Cablevision comes to The Village
23 of Quogue and asks for permission?
24 A They come to the village to get permission to provide
25 cable service in Quogue, but I don't think they go to the

1 village to get permission to attach to our poles. They
2 come to Verizon in order to attach to our poles.
3 Q I believe you have the letter dated December 17,
4 2010, from Mayor Sartorius to yourself as Plaintiffs'
5 Exhibit 9 in front of you?
6 A Yes. Yes, I do.
7 Q In that letter, Mayor Sartorius responds yet again to
8 the latest opinion by Mr. Sugarman?
9 A Correct.
10 Q And he believes, still believes, that there are laws
11 prohibiting the licenses to attaching of lechi to utility
12 poles?
13 A Yes.
14 Q And he advises you that it's the village's
15 responsibility to enforce those laws?
16 A Right.
17 Q This latest agreement, entered just two days ago, did
18 you review this agreement before it was signed?
19 A I did not.
20 Q You did not?
21 A I did not.
22 Q When an agreement is signed, before an agreement is
23 signed, the applicant has to submit several documents,
24 correct?
25 A I believe that is correct.

1 Q Okay. They have to submit an agreement. They have
2 to submit a description of the lechi, right?
3 A I believe that is correct.
4 Q They have to submit a list of the poles that are part
5 of the lechi boundaries, correct?
6 A I think so.
7 Q And they also usually do a pole walk, don't they?
8 A They do pole walks, yes.
9 Q Are you aware if there was a pole walk done for this
10 contract entered --
11 MR. SUGARMAN: -- two days ago.
12 A I don't believe it has taken place.
13 BY MS. DEJONG:
14 Q You don't believe it has happened yet?
15 A No.
16 Q Okay.
17 You testified earlier during Mr. Sugarman's
18 examination that it was the East End Eruv Association who
19 decided that they wanted the lechis to be plastic; is that
20 right?
21 A I believe that is correct.
22 Q Okay. So it wasn't Verizon telling the East End Eruv
23 Association, was it? It was them telling Verizon what
24 kind of attachment they wanted to the poles?
25 A That is correct.

1 Q Now, do you know whether or not anybody from Verizon
2 contacted the mayor of Quogue or the Quogue board of
3 trustees with regard to this new, expanded eruv
4 boundaries?
5 A With respect to the new boundaries?
6 Q Right. Of the eruv.
7 A I don't think anyone has.
8 Q You don't think anybody did. Okay.
9 Are you aware that the expansion of the eruv is
10 now much -- has a greater area in Quogue than it had
11 before?
12 MR. SUGARMAN: Objection.
13 A I don't know.
14 THE COURT: He says he doesn't know.
15 MS. DEJONG: Okay.
16 BY MS. DEJONG:
17 Q Do you know if anybody from Verizon ever spoke to
18 anybody from Quogue about this new contract?
19 A I don't think so.
20 Q Now, again, if you want to dig a new pole into the
21 right-of-way, you have to ask permission, right?
22 A To open up the streets, we have to get permission.
23 MS. DEJONG: Your Honor, may I have a second?
24 THE COURT: Yes.
25 BY MS. DEJONG:

1 Q Mr. Balcerski, you just testified that it was the
2 East End Eruv Association that advised you that they were
3 switching from the wooden lechis to the plastic, correct?
4 A I believe it was East End. I didn't speak to anybody
5 personally, but I was told someone came from Verizon
6 saying we're switching from the wooden to the plastic.
7 Q Did they also say instead of the 40-inch plastic,
8 they wanted 10- to 15-foot plastic?
9 A That's my understanding.
10 MS. DEJONG: I have no further questions.
11 REDIRECT EXAMINATION
12 BY MR. SUGARMAN:
13 Q You said Verizon needs permission to put in a new
14 pole because it digs into the right-of-way.
15 A Correct.
16 Q And that's the reason why permission is required?
17 A When we want to place a new pole, we need to go get a
18 permit, if it's in the public right-of-way, in order to
19 dig up the street to place the pole.
20 Q The attachment of a lechi to a pole doesn't require
21 digging up any public street, does it?
22 A That's correct.
23 Q With respect to the change from wood to PVC, when a
24 lechi is 40 inches long, does Verizon have a standard form
25 agreement to cover that length?

1 A Yes, we do.
2 Q And what is the nature of the substance that is
3 required by Verizon for that length?
4 A The nature of the --
5 Q Is it wood? Is it PVC? Is it aluminium?
6 A We have two agreements. One covers the 40-inch wood
7 attachment, and the other one covers the longer PVC
8 attachment.
9 Q And when the Eruv Association switched from the
10 40-inch-long attachment to the 15-feet-long attachment,
11 did that require a new agreement with Verizon?
12 A Yes, it did.
13 Q Is that because Verizon requires that on longer ones
14 you have PVC and on shorter ones you have wood?
15 A Correct.
16 Q Now, looking back at Defendants' Exhibit Q-A, which
17 is the information with respect to licensing pole
18 attachments, in the second paragraph, second sentence
19 says: We have an obligation under federal and state law
20 to provide telephone service to our customers, and
21 included in this is an obligation to protect these
22 services against interruptions and deterioration from
23 outside causes.
24 Do you see that?
25 A I do.

1 Q Does a placement of a lechi on a pole impact at all
2 on the obligation to provide telephone services and to
3 protect those services?
4 A It does not.
5 Q Then it goes on to say: We also have to consider the
6 fact that work of outside parties can endanger the safety
7 of our employees.
8 Does the putting or affixing of a lechi to a
9 Verizon pole endanger the safety of your employees?
10 MR. SOKOLOFF: Objection.
11 MR. SUGARMAN: First of all, I don't know why
12 Southampton Beach's attorney is objecting at this point.
13 THE COURT: He can object. Overruled.
14 THE WITNESS: Could you repeat it?
15 BY MR. SUGARMAN:
16 Q The question is whether the placement of a lechi
17 endangers the safety of Verizon employees.
18 A Well, if it's placed as we prescribed, it will not
19 endanger our employees.
20 Q And you describe it in very detailed --
21 THE COURT: Counsel, that wasn't raised in
22 cross-examination.
23 MR. SUGARMAN: Yes, your Honor, it's right out
24 of the document that Ms. DeJong showed him.
25 THE COURT: Okay. Continue.

1 BY MR. SUGARMAN:
2 Q That document also uses the word "plants," places
3 plants in the streets.
4 Is a lechi meant to be included in the word
5 "plants"?
6 It's in the third paragraph, the second line.
7 A Generally, "plant" refers to telecommunications
8 facilities and equipment. I would not consider a lechi to
9 be telecommunication facilities and equipment.
10 These -- I guess we'd call this information.
11 This information package is intended to cover a broader
12 audience, including cable television companies, other
13 local exchange companies. All of them would have
14 telephone plant, cable boxes, cross-boxes, things like
15 that --
16 Q So these guidelines are not designed to cover the
17 five-eighth-inch PVC?
18 A These guidelines are intended -- are given to any
19 applicant who wishes to attach it to our poles.
20 Q Were you ever advised by anybody from Quogue of any
21 statute or law other than section 158?
22 A I would have only been advised of whatever was in
23 these letters. And without looking at them again, if it
24 refers to 158, then it refers to them.
25 Q Did anybody from Quogue, either orally or in writing,

1 ever tell you of any provision of their laws which
2 required an application by the Eruv Association to put the
3 lechis on the pole?
4 A I don't recall that.
5 Q Now, Ms. DeJong talked a lot about a Marvin Tenzer
6 e-mail and a Tenzer letter.
7 Look at Exhibit 13 again, which postdates both
8 of those, October 26, 2010. And is it not correct that in
9 the second paragraph, having considered everything up to
10 then, you stated, quote: Verizon does not object to the
11 attachment of lechis to Verizon poles so long as the work
12 is done pursuant to an appropriate license agreement and
13 with appropriate protections to Verizon?
14 Is that what you said?
15 A Correct.
16 Q And you later received Plaintiffs' Exhibit 9, a
17 letter of December 17th, where Mayor Sartorius again
18 asserted that the placement of lechis on the poles would
19 violate 158 and threatens fines of $1,000 per day if
20 Verizon did that. Correct?
21 A Correct.
22 Q And is that letter, along with other letters, what
23 prompted Verizon to basically say, we're not going forward
24 until we are advised we can do so by the Court?
25 A Correct.

1 MR. SUGARMAN: Nothing further, your Honor.
2 RECROSS-EXAMINATION
3 BY MS. DEJONG:
4 Q So, Mr. Balcerski, is it your opinion that Verizon
5 can attach anything for any private purpose on its poles,
6 regardless what the village code or village law is? Is
7 that your position?
8 A No, I did not say that.
9 Q Okay.
10 And in this case, again, Mr. Sartorius made you
11 aware of the village code, right?
12 A Correct.
13 Q And he also -- I'll ask you to look at Defendants'
14 Exhibit Q-I, which has an opinion letter attached.
15 A Yes.
16 Q In that opinion letter, they specifically discuss 158
17 of the village code, 6602 of the village law and 4-412 of
18 the village law, and they talk about getting permission
19 from the village board of trustees, correct?
20 A Correct.
21 Q And in fact, before all of this happened, you advised
22 the East End Eruv Association that they required
23 permission, correct?
24 A Correct.
25 Q And just one more thing. What has been marked as

1 Q-A, again, this information sheet that Verizon puts out
2 to applicants who are seeking to attach objects to its
3 poles, I'll now direct you to the second page.
4 And in that second page, under two, application
5 for pole attachment or conduit occupancy agreement, it
6 states: The application will be accepted only if
7 accompanied by the following...
8 One of the following is, C: Any other
9 governmental permits or license is required.
10 Correct?
11 A Correct.
12 Q So Verizon isn't about to put anything that anybody
13 wants on the poles, is it?
14 THE COURT: Sustained. He asked that question.
15 MS. DEJONG: Your Honor, I have no further
16 questions.
17 MR. SUGARMAN: Nothing further, your Honor.
18 THE COURT: I have a couple of questions.
19 THE WITNESS: Yes, your Honor.
20 THE COURT: How many of these lechis has Verizon
21 approved in Nassau and Suffolk County?
22 THE WITNESS: I do not know.
23 THE COURT: Can you estimate?
24 THE WITNESS: I know that we have allowed other
25 lechis and the creation of other eruvs, but I do not know

1 the number of lechis or the number of eruvs that have been
2 created.
3 THE COURT: You have no idea?
4 THE WITNESS: No, I do not.
5 THE COURT: Then I would ask you: Have any
6 other villages or counties allowed it to have regulations
7 concerning permission or not?
8 And you would not know?
9 THE WITNESS: I would not know.
10 THE COURT: But you did say utilities or the
11 cable companies don't need the permission of the village
12 to post to what they have to do?
13 THE WITNESS: To attach to our poles.
14 THE COURT: And what do they attach?
15 THE WITNESS: They attach cables.
16 THE COURT: And boxes?
17 THE WITNESS: And boxes, yes.
18 THE COURT: How big are the boxes?
19 THE WITNESS: You know, I'm not all that
20 familiar with the size of the plant of cable companies --
21 THE COURT: Wait a while.
22 Approximately?
23 THE WITNESS: You can have a box that could be
24 as big as that picture there, or smaller.
25 THE COURT: That picture, I think we can

1 estimate, is, I don't know, three by four feet?
2 MR. SUGARMAN: Three feet by four feet.
3 THE COURT: And they don't need permission of
4 the village?
5 THE WITNESS: They need permission from the
6 village to provide cable service within the town. They
7 get permission from us to attach their facilities to our
8 poles.
9 THE COURT: Okay.
10 Anybody else want to ask anything?
11 You may step down.
12 When would you like the next hearing?
13 Now it's to the other side, so he knows when to
14 come back.
15 Wake up.
16 MR. SUGARMAN: Your Honor, there's more
17 Quogue -- there's one more Quogue witness.
18 THE COURT: I know, but he's about to leave.
19 MR. SUGARMAN: I appreciate that. Sorry, your
20 Honor.
21 THE COURT: Maybe I'm in another world.
22 MR. SUGARMAN: No, I think I am, your Honor.
23 Sorry.
24 MR. SOKOLOFF: The week starting July 11th.
25 THE COURT: Denied.

1 MR. SUGARMAN: Your Honor, how about Friday or
2 Monday?
3 THE COURT: We'll do it on the 27th. June 27th.
4 Can you be here, the man from Verizon?
5 THE WITNESS: June 27th, next week, yes.
6 THE COURT: What time would be convenient for
7 you?
8 THE WITNESS: Anytime.
9 THE COURT: 10 o'clock?
10 THE WITNESS: 10 o'clock, yes.
11 THE COURT: 10 o'clock, June 27th.
12 You are excused.
13 Next witness.
14 MR. SUGARMAN: Your Honor, the plaintiffs were
15 going to call Mayor Sartorius on our case. To the extent
16 it will move things along -- and Ms. DeJong wants to
17 examine him first so she doesn't have to come back -- I
18 can cross-examine him tomorrow.
19 THE COURT: Well, she has to be here.
20 MR. SUGARMAN: I'll let her go forward.
21 THE COURT: Okay. Then you may cross.
22 Call him.
23 MS. DEJONG: Your Honor, I'll call Mayor
24 Sartorius to the stand.
25 THE CLERK: Raise your right hand.

1 **P E T E R S A R T O R I U S**,
2 called as a witness, having been first
3 duly sworn, was examined and testified
4 as follows:
5 THE WITNESS: Peter Sartorius,
6 S-A-R-T-O-R-I-U-S.
7 THE COURT: Repeat that, please. I'm sorry.
8 THE WITNESS: S-A-R-T-O-R-I-U-S.
9 THE COURT: Thank you.
10 DIRECT EXAMINATION
11 BY MS. DEJONG:
12 Q Mayor Sartorius -- it's difficult -- by whom are you
13 employed?
14 A I'm employed by The Village of Quogue.
15 Q And in the capacity as a mayor, correct?
16 A Yes.
17 Q Can you tell the Judge how large The Village of
18 Quogue is, approximately?
19 A The Village of Quogue is a total of approximately
20 five square miles. We have, according to the census, 2010
21 census, we have 967 residents, although we have a
22 substantial summer seasonal population.
23 Q In the capacity of mayor, do you sit on the board of
24 trustees?
25 A Yes. I'm one of five.

1 Q Were you made aware of the boundaries of an eruv
2 possibly running through The Village of Quogue?
3 A I was made aware of an eruv that may touch parts of
4 The Village of Quogue. I was not really made aware of
5 boundaries.
6 Q Okay. How were you first made aware of that?
7 A My recollection is Mayor Teller from Westhampton
8 Beach advised me for the first time in August, I would
9 say, 2010, and I think there was at least one newspaper
10 article in August of 2010.
11 Q And when you heard this from Mayor Teller, had you,
12 prior to that, received any communication from anybody,
13 from the East End Eruv Association or any of the
14 individual plaintiffs applying for permission to attach
15 lechis to poles in Quogue?
16 A I had not.
17 Q Had anyone talked to you about this from the East End
18 Eruv Association?
19 A No.
20 Q Had anybody submitted anything in writing to the
21 village, to your knowledge?
22 A No.
23 Q So the first time you know, you hear from Mayor
24 Teller?
25 A I believe that is correct.

1 Q Or you might have read it in the paper?
2 A I'm not positive of the order.
3 THE COURT: You'll have to let go of the mike.
4 That causes static.
5 THE WITNESS: I'm sorry.
6 THE COURT: You didn't know. You can lift it up
7 if you want, but you can't put your hand on it.
8 Okay.
9 BY MS. DEJONG:
10 Q So -- you were here when Mr. Lean testified?
11 A Yes.
12 Q Did Mr. Lean ever approach you about the
13 establishment of an eruv in The Village of Quogue?
14 A No.
15 Q Did Mr. Tuchman ever approach you about establishing
16 an eruv in The Village of Quogue?
17 A No.
18 Q The utility poles within The Village of Quogue, where
19 are they located?
20 A Predominantly, they are located on the side of the
21 road within a few feet of the pavement.
22 Q On the side of Quogue --
23 A The Quogue right-of-way is typically 50 feet wide,
24 and typically the roads are 25 to 28.
25 Q And are these poles in the village's rights-of-way?

A Yes.

Q Now, can anybody just attach anything to utility poles without the permission of The Village of Quogue?

A No.

Q And let me show you what's been marked as Defendants' Exhibit Q-P for identification.

Mayor Sartorius, is this familiar to you?

A A section from the village code, section 158-1 through 158-3.

Q And about how long has this provision been in existence?

A I believe since 1941, according to the note.

Q And is this a provision that regulates what can be put on the public right-of-way?

A Yes, it is.

Q And could you just tell us, if you can, without reading the provision, what specifically -- what does this code say with regard to placing attachments on poles on the right-of-way?

A Well, it says, any structure or device upon, above or under the right-of-way, which is the definition of encroachment.

And then it says, no encroachment or projection upon, into or over any public road or street in The Village of Quogue shall be made or maintained.

1 And it defines "public road" as a street, an
2 area between the extreme lines and the public
3 right-of-way.
4 Q Sir, what is the purpose behind this village code
5 agreement?
6 A The purpose is to keep the right-of-way free of, as
7 it says, encroachment, and that there could be any number
8 of reasons. One is aesthetics. Another is public safety,
9 things that can get in the right-of-way. And then there's
10 the principle -- it's village property, although we hold
11 it subject to public rights. The village has property
12 rights in the right-of-way, and if something is not
13 permitted, it would be trespassing, essentially.
14 Q Okay.
15 Has the village ever attached any banners to
16 utility poles within the village?
17 A Banners?
18 Q Banners.
19 A No, I don't think so. Not to my knowledge.
20 Q How about seasonal decoration to the poles in the
21 village?
22 A No.
23 Q Did they allow holiday declarations to be attached to
24 the poles in the village?
25 A No.

1 Q So what did you do when you first heard about this
2 potential eruv touching upon The Village of Quogue? What
3 did you do?
4 A I believe that I looked at our village code. I
5 probably spoke to our village attorney concerning
6 provisions in the village code that might bear on the
7 question of whether attachments can be put on utility
8 poles.
9 Q And as a result of that, did you communicate with
10 anybody with regard to what you determined?
11 A I did. I sent a letter dated September 9, 2010, to
12 LIPA and to Verizon.
13 Q And what was the purpose of that letter?
14 If you have it in front of you and you need to
15 look at it, that would be fine.
16 THE COURT: Which exhibit -- wait.
17 What exhibit is that?
18 THE WITNESS: I have Defendants' Exhibit Q-D.
19 THE COURT: Okay. Go ahead.
20 MS. DEJONG: Do you have that, your Honor?
21 THE COURT: No, but maybe I'll find it.
22 But he can go ahead.
23 THE WITNESS: The purpose of the letter was to
24 simply tell them that we had a law that prohibits
25 encroachment of projections, as those terms are defined in

1 any public right-of-way, and, therefore, an attachment of
2 a nonutility device to a utility pole in a right-of-way
3 would be prohibited.
4 BY MS. DEJONG:
5 Q As a result of that letter, what happened? Did you
6 get any response?
7 A I did get communication from Mr. Balcerski -- I'm not
8 sure -- well, I did get a communication from Mr. Balcerski
9 conveying, I believe, conveying the opinion of
10 Mr. Sugarman, and a letter or a copy of the letter to
11 Verizon from Mr. Tenzer which had previously been entered.
12 MS. DEJONG: Your Honor, if I may approach the
13 witness and show him what has been marked as Defendants'
14 Exhibit G-G for identification.
15 THE COURT: Sure.
16 THE WITNESS: I guess that was the first
17 communication, dated October 26th.
18 BY MS. DEJONG:
19 Q And as a result of that communication, what, if
20 anything, did you do?
21 A I asked -- I asked -- I engaged special counsel and
22 asked special counsel, Ms. Hamilton and the village
23 attorney, to prepare an opinion letter that would be
24 responsive to the last sentence in Mr. Balcerski's letter,
25 which states: If your counsel has a response to the

1 association letters that you believe we should consider
2 before we allow the association to proceed, please provide
3 it to us as soon as possible.
4 Then I had also requested of Mr. Balcerski more
5 time to respond.
6 Q So Mr. Balcerski had invited you to submit an
7 opinion, and you asked for more time to respond.
8 And did you at some point submit an opinion?
9 A We did. The opinion was under cover of my letter to
10 Mr. Balcerski dated November 17th, is my recollection.
11 Q Okay.
12 And --
13 A I'm sorry, November 22nd.
14 Q And attached to that letter to Mr. Balcerski, did you
15 have an opinion that was issued by the village attorney
16 and Ms. Hamilton?
17 A Yes. It's attached.
18 Q As a result of sending that correspondence, did you
19 again get correspondence from Verizon?
20 A (Perusing) I believe the response from Verizon was
21 to submit a further opinion from Mr. Sugarman. I don't
22 recall that it had any cover letter from Mr. Balcerski
23 associated with it.
24 Q And at some point in time, did you write another
25 letter in December?

1 A On December 17th, I wrote another letter to
2 Mr. Balcerski, yes.
3 Q And why did you write that letter?
4 A Because I felt that the exchange of legal letters was
5 not particularly helpful. It was not going to resolve
6 anything.
7 I thought it was absolutely clear that a
8 village -- the village code, as well as the New York
9 village law, required permission from The Village of
10 Quogue if LIPA and Verizon -- really, my communication was
11 with LIPA and Verizon. If they wanted to allow the Eruv
12 Association to attach things on pole, I felt it should be
13 absolutely clear that the village -- as I said, the
14 village code and the New York village law required
15 approval.
16 Q And in the letter, did you advise that they could
17 seek permission?
18 A Yes. I mean, all my letters, I think, referenced
19 without permission of the village trustees, or the
20 village.
21 Q To your knowledge, are there any attachments to the
22 poles within -- to the Verizon poles within The Village of
23 Quogue that have not been granted permission by the
24 village, other than Verizon's attachments?
25 A Well, Cablevision is on the poles. They have a

1 franchise agreement with the village which expressly gives
2 them the right to include their facilities in the village.
3 I'm reasonably certain that it refers to -- specifically
4 to utility poles. Now that would require --
5 MR. SUGARMAN: Objection, your Honor. I think
6 he's speculating.
7 THE WITNESS: I'm not speculating.
8 THE COURT: The objection is to me, not to you.
9 THE WITNESS: What is that?
10 THE COURT: The objection is to me, not to you.
11 I make the ruling; you don't.
12 THE WITNESS: Okay.
13 THE COURT: Overruled.
14 BY MS. DEJONG:
15 Q So you are reasonably certain, sir?
16 A I am reasonably certain, and that is pursuant to
17 Cablevision had an original ten-year franchise agreement
18 that was renewed at least during my term as mayor, but
19 certainly while I was a trustee.
20 Q And part of that franchise agreement includes
21 specifically stating placing it on utility poles within
22 the village?
23 A Yes. I'm reasonably certainly of that.
24 Q And do you know of any other people or companies that
25 have placed anything on The Village of Quogue poles

1 without permission of the village?
2 A Well, LIPA, of course, has electric lines as well on
3 the poles, and I assume that LIPA and Verizon have an
4 agreement between themselves.
5 Q Other than that, anything else?
6 A No, I'm not aware of any others.
7 Q And does the village employ individuals who enforce
8 the code of The Village of Quogue?
9 A We do. We have our own police force, and we always
10 have our own code enforcement officer.
11 Q Is part of his duties to police the poles within The
12 Village of Quogue?
13 A The entire right-of-way, which includes the poles.
14 MS. DEJONG: I have no further questions.
15 Judge, I have one more. May I? I have one
16 further question.
17 THE COURT: Go ahead.
18 BY MS. DEJONG:
19 Q At one point in time you were served with a lawsuit
20 in this matter, Mayor Sartorius?
21 A I was.
22 Q At the point you were served with this lawsuit, did
23 you have any idea where this eruv was going to be placed?
24 A I did not.
25 Q You had no idea about the boundaries?

1 A Let me amend that. I believe that Mayor Teller at
2 one point had given me a map that he had either received
3 or drawn based on informal communication that he had
4 received. I don't know from whom.
5 Q But you had no idea where this eruv was going to be
6 at the time --
7 A I had no communication, other than that map, which I
8 had no idea whether that was an accurate or an inaccurate
9 map. But I think a map was published in the newspaper at
10 some point, but --
11 Q So you got it from the newspaper and the mayor again.
12 A Exactly.
13 MS. DEJONG: I have no further questions.
14 CROSS-EXAMINATION
15 BY MR. SUGARMAN:
16 Q Mr. Mayor, whether you got it from the Eruv
17 Association or the mayor, you knew in August of 2010 it
18 was planned that the eastern boundary of the eruv would
19 run through The Village of Quogue; isn't that right?
20 A I did not know that. I had been -- I did not know
21 that.
22 Q Were you informed that?
23 A I had been informally advised that maybe it would be.
24 I did not know.
25 Q No. You did see a map that Mayor Teller prepared.

1 A I don't recall, Mr. Sugarman, when that was exactly.
2 Q I thought you said on your direct that it was in
3 August of 2010.
4 A I first heard it from Mayor Teller in 2010. I don't
5 recall he gave me a map in August of 2010.
6 Q I see.
7 Is there any provision of Quogue's laws which
8 requires an application by the Eruv Association to place
9 lechis on poles located in Quogue?
10 A Obviously, not specifically. Chapter 158 that I
11 referred to, I believe, requires somebody to get
12 permission, whether it is the utilities or the East End
13 Eruv Association.
14 Q That depends, does it not, whether the lechis
15 violated 158? If they don't, then no permission is
16 necessary; isn't that right?
17 A Well, that is not right. I mean, the New York
18 village law also gives exclusive control of the village,
19 streets and grounds to the board of trustees, so that that
20 would be an independent basis for requiring approval from
21 the board of trustees.
22 Q But the board of trustees, 41 years ago, enacted 158.
23 And wasn't that the exercise of the village's authority
24 under the state laws? There's no other provision.
25 A I have no idea.

1 Q Can you point to any other provision of the village
2 law that you claim impacts the eruv association's right to
3 put lechis on the pole, the village law, Quogue?
4 A Village code or New York village law?
5 Q Any Quogue statute, code. Just Quogue, not New York
6 State.
7 Anything other than 158?
8 A I haven't done an exhaustive review of the code. I
9 think one provision is ample.
10 Q And that's the one you relied on?
11 A That's the one I relied on when I wrote the letter.
12 Q And that's the one your counsel told you applied; no
13 other?
14 A I don't recall whether counsel told me that or I
15 concluded it on my own.
16 MS. DEJONG: Objection.
17 THE COURT: Overruled.
18 BY MR. SUGARMAN:
19 Q You talked on direct examination about the purpose of
20 158.
21 Is there anything in The Village of Quogue's
22 laws that enumerates and states what the purpose is of
23 section 158?
24 A I don't believe there is anything beyond section 158,
25 no.

1 Q And the purposes that you enumerated before are just
2 purposes that just may come from another part of the
3 Quogue laws, or is it just your own conclusion as to what
4 the purpose is? Isn't that right?
5 MS. DEJONG: Objection as to the form of the
6 question, your Honor.
7 THE COURT: I'll allow it. If he can't answer
8 it, he can't answer it.
9 A It's from my own logic.
10 BY MR. SUGARMAN:
11 Q Look at the drawing I've placed before you,
12 Plaintiffs' Exhibit 2, which comes from Verizon and the
13 specifications for a five-eighth-inch PVC strip.
14 Is it your testimony that the placing of that
15 five-eighths-inch PVC strip will have an adverse impact on
16 the public safety of The Village of Quogue?
17 MS. DEJONG: Objection.
18 THE COURT: Overruled.
19 A I don't know. In any event, it's not my
20 determination; it's the board of trustees'.
21 BY MR. SUGARMAN:
22 Q You enumerated some purposes with respect to public
23 safety. I'm asking you, as the mayor of Quogue, whether
24 you are of the view that putting this five-eighth-inch
25 plastic strip on a utility pole will have any adverse

1 impact on public safety.
2 A It may. I don't know.
3 THE COURT: Would you explain how it would be a
4 public safety involvement by that fifth-eighth-inch tube?
5 THE WITNESS: Judge, part of the reason for the
6 law is that we don't have a lot of things in the
7 right-of-way that are potential distractions. And then
8 also the --
9 THE COURT: So this would be a distraction.
10 THE WITNESS: It could be.
11 THE COURT: Okay.
12 How about the cable boxes? It could be
13 three-by-four-foot. Are they a distraction?
14 THE WITNESS: They are necessary to provide the
15 utilities.
16 THE COURT: Okay.
17 BY MR. SUGARMAN:
18 Q Mr. Mayor, let me show you a document --
19 THE COURT: So they don't need approval because
20 they are necessary for electricity or cable service; is
21 that correct?
22 THE WITNESS: Well, Cablevision has approval
23 from the village to place their facilities on the poles
24 under the terms of their franchise agreement.
25 THE COURT: And that, you feel, is not a

1 distraction, not trespassing and no public safety; is that
2 correct?
3 THE WITNESS: Yes.
4 BY MR. SUGARMAN:
5 Q Mr. Mayor, let me show you a document marked as
6 Plaintiffs' Exhibit 17 for identification. This will be
7 connected through other testimony, but I represent this
8 was a picture taken at Montauk Highway and Jessup Lane in
9 The Village of Quogue; is that correct?
10 A Jessup Avenue, actually.
11 Q Excuse me?
12 A Jessup Avenue.
13 Q Jessup Avenue. Thank you.
14 You are aware, are you not, this pancake
15 breakfast sign was up in the village for some time, are
16 you not?
17 A I'm aware it was up. I don't know about some time.
18 A time.
19 Q A time.
20 A Yes.
21 Q Would you think this was a distraction, this pancake
22 breakfast sign?
23 A Yes, it could be a distraction, but it also has a
24 public purpose.
25 THE COURT: What is the public purpose?

1 THE WITNESS: Well, it's a Quogue village fire
2 department -- the pancake breakfast is for the community
3 to attend and also has a fund-raising function for the
4 fire department.
5 BY MR. SUGARMAN:
6 Q So is it your testimony that the establishment of an
7 eruv has no public purpose in The Village of Quogue?
8 MS. DEJONG: Objection.
9 MR. SOKOLOFF: Objection.
10 MS. DEJONG: Judge, this hasn't even gotten
11 before the board. You are asking him his opinion with
12 regard to distractions and with regard to this. There has
13 been no application before the board.
14 THE COURT: Denied.
15 He gave his opinion through you on what the
16 section is and what the purposes are, representing the
17 village. He's now being questioned concerning those
18 principles. He was the one that said it was public
19 safety, aesthetics and it is trespassing. You asked that,
20 and that's what he said.
21 He has a right to cross-examine him. As a
22 representative, he's not called as some stranger or some
23 cleaning man. He is the mayor, and you called him as the
24 mayor.
25 Go ahead.

1 THE WITNESS: The question was?
2 BY MR. SUGARMAN:
3 Q Isn't there a public purpose in allowing an eruv in
4 The Village of Quogue?
5 A I don't have a view on that.
6 Q Is it a public purpose to enhance the ability of
7 observant people, of whatever religion, to practice their
8 religion? Would that be a valid public purpose?
9 MS. DEJONG: Objection.
10 THE COURT: I'll sustain that objection.
11 Do you have a separate objection, Counsel?
12 MR. SOKOLOFF: I want to be clear that the
13 testimony the mayor is giving with regard to public
14 purposes and annoyance or whatever doesn't apply to
15 Westhampton Beach, and it is only Quogue's case.
16 THE COURT: We've said that ten times. Do you
17 want to say it again? Didn't we say this is only Quogue's
18 case?
19 Okay. Go ahead.
20 BY MR. SUGARMAN:
21 Q Mr. Mayor, I've put before you what has been marked
22 as Exhibit 66. I will represent to you it was taken this
23 morning at Montauk Highway and Quogue Street.
24 Wouldn't you say, Mr. Mayor, that the box and
25 the gray housing, whatever that is, and the wires are much

1 more an encroachment or a projection than the
2 five-eighth-inch lechis would be?
3 MS. DEJONG: Objection. We have no foundation
4 with regard to the --
5 THE COURT: He says it is. If he doesn't have a
6 recollection, I'll strike it all, but I'll take it subject
7 to connection if he can prove it was there. Okay?
8 MS. DEJONG: Yes, your Honor.
9 THE COURT: What is it, first of all?
10 Mayor, do you know what that is?
11 THE WITNESS: I don't know what it is. It looks
12 like cable television equipment.
13 THE COURT: Counsel, do you know what that is?
14 MR. SUGARMAN: What I understand it to be. I
15 don't know. But that will be adduced.
16 MS. DEJONG: Your Honor, I move this be
17 stricken.
18 THE COURT: Yes. I'll strike it.
19 MS. DEJONG: Thank you.
20 BY MR. SUGARMAN:
21 Q Mayor Sartorius, another of the opinions that your
22 counsel gave to you is that the grant of an application by
23 the Eruv Association, if one were to be made, would be a
24 violation of the establishment clause of the federal
25 constitution, correct?

1 MS. DEJONG: Objection, your Honor. I didn't
2 ask that. We didn't go there.
3 THE COURT: Sustained.
4 MR. SUGARMAN: Your Honor, it is in the
5 documents that he was shown. He was asked questions not
6 specifically about this, but it's right in the opinion
7 that he was shown, the opinion by counsel --
8 THE COURT: Show it to me.
9 MR. SUGARMAN: It's Exhibit Q-I that was
10 introduced by counsel for Quogue.
11 THE COURT: What does it say?
12 MR. SUGARMAN: I'll read it.
13 THE COURT: Is it in evidence?
14 MR. SUGARMAN: It is in evidence.
15 THE COURT: And who offered it?
16 MR. SUGARMAN: Excuse me? I'm sorry?
17 THE COURT: Who offered it.
18 MR. SUGARMAN: Ms. DeJong.
19 THE COURT: Oh.
20 MR. SUGARMAN: It's a Q-I exhibit.
21 THE COURT: Let me hear what it is.
22 MR. SUGARMAN: It says on page 3 --
23 THE COURT: Okay, I have page 3.
24 What paragraph?
25 MR. SUGARMAN: In the next to the last

1 paragraph, after citing Board of Education against Kiryas
2 Joel: Based on that holding, the establishment clause
3 does not permit a government to demarcate geographic
4 boundaries --
5 THE COURT: Let's stop right over there.
6 I'm sustaining the objection.
7 MS. DEJONG: And for the record --
8 THE COURT: I don't know who wrote it. I'll not
9 hold him responsible for constitutional interpretation.
10 MR. SUGARMAN: All I meant to adduce, it is the
11 position of the village that they could not give
12 permission because it would violate the clause.
13 MS. DEJONG: Objection.
14 THE COURT: Well, I'm not allowing you to
15 cross-examine the mayor on that. He wasn't elected to
16 give an opinion on constitutional law, with all due
17 respect.
18 BY MR. SUGARMAN:
19 Q Is it your understanding that the village could not
20 give permission to affix the lechis because it would
21 violate the federal constitution?
22 MS. DEJONG: Objection.
23 MR. SOKOLOFF: Objection.
24 MR. SUGARMAN: I'm asking him as a layman. He's
25 the mayor.

1 MS. DEJONG: Your Honor, he's asking him --
2 THE COURT: Sustained.
3 Ask him other questions, which I'll allow, but
4 not that.
5 How about asking him at Christmastime, don't
6 they put up Christmas decorations in The Village of
7 Quogue? Haven't you ever seen them there?
8 THE WITNESS: We have on the village green, the
9 Knights of Columbus come and put --
10 THE COURT: On the telephone poles, we're
11 talking about.
12 THE WITNESS: No.
13 THE COURT: You've never seen decorations on the
14 telephone poles?
15 THE WITNESS: Not in The Village of Quogue.
16 THE COURT: Pardon?
17 THE WITNESS: Not in The Village of Quogue.
18 THE COURT: How about signs concerning fair days
19 or barbecues? Have you ever seen signs like that?
20 THE WITNESS: I've seen the village pancake
21 sign, and it is permitted because it is a fire department
22 in the village.
23 THE COURT: It's a fire department, so it is
24 permissible?
25 THE WITNESS: The village is allowed to put

1 up -- under our sign ordinance, it is allowed to put up
2 public information and safety signs.
3 THE COURT: And the volunteer fire department is
4 a part of the village?
5 THE WITNESS: It is.
6 THE COURT: Okay.
7 How about other signs? Have you ever seen them
8 put on the telephone poles?
9 THE WITNESS: I've seen signs put on the
10 telephone poles, and we do our very best to remove the
11 signs put on the telephone poles, that are put on them,
12 with one exception. I'm sure Mr. Sugarman will state --
13 THE COURT: What is the one exception?
14 THE WITNESS: The one exception is the New York
15 Department of Public Safety, I think it is, sends to our
16 police department "Schools Open" signs at the beginning of
17 the school year, and we're advised that the utilities have
18 allowed those to be put on the telephone poles as long as
19 they are not -- they are affixed with string and not
20 hammered in. And again, this is the village putting up
21 its own public safety signs.
22 BY MR. SUGARMAN:
23 Q Mayor Sartorius, look once more at the picture of the
24 lechi on the exhibit next to you.
25 If you were walking along that street and saw

1 this, would you have any way to determine whether that
2 five-eighth-inch PVC strip is part of an eruv or just
3 something that covers a wire or is part of your cable
4 company?
5 MS. DEJONG: Objection.
6 THE COURT: Overruled.
7 A Well, I mean, it doesn't have any wires coming out of
8 it, so I assume it is not part of the utility.
9 BY MR. SUGARMAN:
10 Q You wouldn't know if there was a wire under it,
11 though, would you?
12 A Could be a wire under it. I guess a wire has a
13 connection somewhere.
14 Q On the top of the pole?
15 A It doesn't go to the top of the pole.
16 Q My question is, if you were walking along the street
17 and saw that, would you have any idea it was part of an
18 eruv?
19 A I would now.
20 Q But if you didn't know what you know now by this
21 specification, you wouldn't know if it was part of an eruv
22 or part of Verizon or cable or whatever?
23 MS. DEJONG: Objection.
24 THE COURT: Overruled.
25 A If I didn't know anything about an eruv, I couldn't

1 know it was an eruv.
2 Q Correct.
3 MR. SUGARMAN: I have no further questions, your
4 Honor.
5 REDIRECT EXAMINATION
6 BY MS. DEJONG:
7 Q When you found out about the pancake house sign, was
8 it taken down?
9 A Yes.
10 Q You testified about the other signs on the poles that
11 you were aware of, the "Schools Open" signs?
12 A Yes. They are taken down a short time after school
13 has been opened.
14 Q Are those the signs that say "Schools Open, Drive
15 Carefully"?
16 A I believe so.
17 Q Again, have you ever, in The Village of Quogue, seen
18 any banners attached to the poles?
19 A No.
20 Q Have you ever seen any holiday decoration attached to
21 the poles?
22 A No.
23 Q Do you have "Welcome to The Village of Quogue"
24 attached to the utility poles?
25 A No.

1 Q Other than this one pancake house sign and schools
2 are opened, are you aware of any other signs attached to
3 the utility poles, attached to the utility poles in The
4 Village of Quogue?
5 A No, other than the illegal signs that are taken down.
6 THE COURT: What legal signs?
7 THE WITNESS: Illegal signs.
8 THE COURT: Which ones have you seen?
9 MS. DEJONG: Illegal.
10 THE WITNESS: People sometimes put up house sale
11 signs, things like that.
12 MS. DEJONG: I have no further questions.
13 MR. SUGARMAN: Nothing further, your Honor.
14 THE COURT: You say the pancake signs were taken
15 down. Were they taken down after the pancake sales were
16 over?
17 THE WITNESS: After the pancake function was
18 held.
19 THE COURT: How long were they up?
20 THE WITNESS: I can't say. Not very long.
21 THE COURT: What does that mean?
22 THE WITNESS: It's at Thanksgiving, and I think
23 it is held the Saturday of Thanksgiving weekend.
24 THE COURT: How many days did you say they are
25 up? A couple of days? Do you think they only put them up

1 for two days' notice?
2 THE WITNESS: Yeah, I'd say a couple of days,
3 yeah.
4 THE COURT: What is "a couple of days" in your
5 version?
6 THE WITNESS: Two to three.
7 THE COURT: Okay.
8 And, also, it's your opinion that the volunteer
9 fire department is a part of the village, and they have
10 the right to put up signs, too, without permission; is
11 that correct?
12 THE WITNESS: It's my opinion that it's part of
13 the village and it's a village sign.
14 THE COURT: Part of the village. That's what I
15 said. The volunteer fire department is now a part of the
16 village, and therefore they can put up signs without
17 approval; is that right?
18 THE WITNESS: Under the terms of our sign
19 ordinance which permits village, public interest and
20 safety signs, they could.
21 THE COURT: Okay.
22 That's it.
23 MR. SUGARMAN: Your Honor, one more question.
24 BY MR. SUGARMAN:
25 Q The lechis are not governed by the sign ordinance,

1 are they? They are governed by section 158, as you
2 understand it, correct?
3 A Yes.
4 MR. SUGARMAN: Nothing further.
5 THE COURT: Anything else?
6 MS. DEJONG: No, your Honor.
7 THE COURT: We're finished with this phase of
8 it. I'll see the other parties on the 27th at 10 o'clock.
9 I suggest you exchange your exhibits before you
10 get here. It's the proper way to do things. They should
11 be numbered properly and exchanged.
12 What would you like to do?
13 MR. SOKOLOFF: So it will be the full hearing on
14 the other two municipalities?
15 THE COURT: Yes. Unless you want all three. I
16 don't know who the third one is.
17 MR. SOKOLOFF: No, it's okay.
18 THE COURT: You have it clear now?
19 MR. SOKOLOFF: What is that?
20 THE COURT: You have it clear now?
21 MR. SOKOLOFF: It's clear.
22 I have plane tickets to go to Florida, but I'm
23 not clear yet, so I'm afraid to say that for sure.
24 THE COURT: Okay.
25 MR. SUGARMAN: Your Honor, I'm flying to Israel

1 that night. If there could be any day before that.
2 I know you suggested a Friday, and I'll check
3 with Mr. Balcerski to see if he can be here on Friday.
4 But if he can be, could I respectfully ask, and it will
5 make easier for Mr. Sokoloff and me?
6 MR. SOKOLOFF: That doesn't make my life easier
7 because, unfortunately, this is not my only case, and
8 there are things scheduled in other cases. That day you
9 set, the 27th, it's free.
10 MR. SUGARMAN: Your Honor, there were no
11 objections to Friday, other than Ms. DeJong. We solved
12 that problem. And I would respectfully request we
13 continue on Friday, as you had originally ordered, so we
14 can get this matter finished sooner rather than later. It
15 has been a long time since the motion has been pending.
16 MS. DEJONG: Your Honor, Mr. Sugarman has not
17 extended any courtesies to any of us with regard to
18 scheduling.
19 THE COURT: Let's cut it out. You've all been
20 impossible and babyish and kindergartners. You object to
21 everything proposed. I can't get a date out of these
22 people.
23 It will be the 27th, period.
24 MR. SOKOLOFF: Thank you.
25 THE COURT: And we'll finish on the 27th.

1 You have to leave on the evening of the 27th?
2 MR. SUGARMAN: I'll figure it out, your Honor.
3 MR. SOKOLOFF: 10 o'clock?
4 THE COURT: 9:30.
5 MR. SUGARMAN: Sounds better.
6 (Whereupon, the proceedings were adjourned until
7 Monday, June 27, 2011, at 9:30 a.m.)
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