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MAGNA FYI



Courtney Tarsa

Robson Forensic



Timothy Morse, Ph.D.

Exponent

BATTLE OF THE EXPERTS

Interview with the Experts - Conference Photos - Shadow Juror Insights - One on One with Sandra Gravanti, Tosca LTD



Benjamin Cornelius

LERA Consulting Structural Engineers



Paul Marsenison

Rimkus Consulting Group, Inc.

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Vice President of Sales

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LEGAL SERVICES



EDITOR'S note...

PETER HECHT

PARTNER & EXECUTIVE VICE PRESIDENT OF SALES

By now you may have heard one rumor or another about the investment in Magna Legal Services by private equity firm CIVC, like... “They sold the company,” or “Bob Ackerman retired to Greenland.” Even better, “Mark is fishing in Greenland with Bob.” Then there is the one that I love, “Jon is going to law school.” However, my favorite is “Magna was involved in the Area 51 alien cover up and Peter’s there now for further experimentation since he has alien DNA.” I know... total BS, except I am most probably an alien.

Here’s what you really need to know about Magna... All the partners are here. We are NOT going anyplace! We are still significant owners of Magna LS and we will continue to lead the company in the years to come in our same roles and as board members. Translation... We will continue to grow the company organically and through acquisition, and to do all that well, we will be adding players to our team. There’s a ton of work that goes on with M&A and we will be ready. Your takeaway is... Magna is still Magna and, yes, we are looking to BUY companies in the Court Reporting, Record Retrieval and Jury Consulting space. If you have some leads, please send them over!

Now, let’s talk about some real “NEW” news at Magna LS:

1. Sign up now for our 7th annual Chopped for CHOP event on 11/6 & 11/7 in Atlantic City at The Borgata Hotel and Casino to see Susan Metcalfe defend her title against Ted Schaer in the “Battle of the Champions”.
2. JuryConfirm 3.0 will finally be revealed by Mark Calzaretta at the Chopped for CHOP event on 11/6 & 11/7 in Atlantic City at The Borgata Hotel and Casino.
3. Spin to Win client appreciation end-of-summer parties are coming to Philly, NYC, Chicago, LA, Miami, and Houston. Dates to be released soon.

4. Ross Suter, Esq. was recognized by 82% of the world’s population as 2019’s “Most Popular and Engaging CLE Presenter.” Reserve him now at 866-624-6221.
5. The ALM readers continue to choose Magna LS as Best Of for 2019 in:
 - Litigation Consulting
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 - Court Reporters
 - Video Deposition Services
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I hope you enjoy this issue of MagnaFYI and if you need to check in on the BS, call me anytime direct at 732-331-2410.

PETER HECHT
PARTNER & EXECUTIVE VICE PRESIDENT OF SALES



BATTLE OF THE EXPERTS

Conference Photos









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Be Greater Than!





Test your Jury knowledge!

Rachel York Colangelo, Ph.D., National
Managing Director of Jury Consulting



- 1. What is the purpose of jury selection?**
 - a) To identify and strike the worst jurors for your case.
 - b) To begin conditioning jurors to your key themes.
 - c) To address the elephant in the room – bring out the bad facts and/or sensitive issues and gauge potential jurors' reactions.
 - d) All of the above.
- 2. What are the best types of questions to ask during voir dire?**
 - a) Yes or No questions (Are you biased against corporations?)
 - b) Pro forma questions (Will you promise to be fair? Will you vote for my client if I prove my case?)
 - c) Open-ended, exploration questions (Please describe... Tell me about... What did you think about...)
 - d) All of the above.
- 3. During voir dire, the attorneys should do most of the talking.**
 - a) True. This is the only chance jurors have to get to know the attorneys and for the attorneys to speak directly to jurors. It is important to build rapport with the jurors during voir dire.
 - b) False. Voir dire is the attorneys' only opportunity

- 4. Of the following list, what is the most important thing to find out about a potential juror?**
 - a) What bumper stickers he or she has on his/her vehicle.
 - b) His or her propensity for sympathy and to award damages.
 - c) Whether he or she has served on a prior jury.
 - d) All of the above.
- 5. Which of the following is a common myth about jury selection?**
 - a) Demographics and other easily observable information are useful in predicting behavior.
 - b) Jury selection is about finding your best jurors.
 - c) You should always avoid asking questions that produce negative responses.
 - d) All of the above.

1. d) All of the above
2. c) Open-ended, exploration questions (Please describe... Tell me about... What did you think about...)
3. b) False. Voir dire is the attorneys' only opportunity to hear from and get to know the jurors. Attorneys should encourage the jurors to open up and do most of the talking. The attorneys' most important job during voir dire is to listen.
4. b) His or her propensity for sympathy and to award damages.
5. d) All of the above.



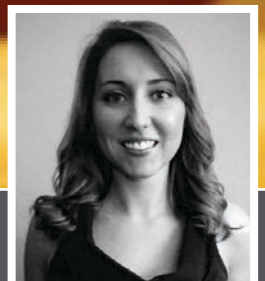




Juror Experiences Shape How They Evaluate Your Expert Witnesses

Shadow Juror Insights

Brittany Cross, M.A.
Litigation Consultant



Nepotism, conspiracy, and treadmill disasters were just a few of the case scenarios Magna's "Shadow Jury" provided feedback on for this year's "Battle of the Experts". The theme this year, "Successful strategies for defeating expert witness testimony" offered captivating insights and perspectives from attorneys, adjusters, and general counsel in multiple industries. Battle participants and attendees had the rare opportunity to "peek inside the mind of a juror" as mock jurors evaluated expert witness testimony in real-time. This uncensored mock juror feedback sparked new avenues of questioning, reinforced established cross-examination techniques, and highlighted unorthodox interpretations of arguments and evidence.

Perhaps the most critical key takeaway that emerged from this year's conference was that jurors have distinct personal experiences that frame how they perceive and interpret expert witnesses' credentials, analyses, and conclusions. The magnitude specific juror experiences have on the perception of expert witnesses is far-reaching. If jurors have difficulty believing your expert witness because their testimony does not align with juror experiences, they will be reluctant to find the overall case credible. The main stage to do a deep dive into whether a juror's experiences will be a friend or foe to your expert witness's testimony is during the voir dire process.

By way of background, the Shadow Jury was comprised of jury eligible citizens from the Miami area. These mock jurors heard four case fact patterns and expert witnesses' testimony for four case scenarios. Experienced attorneys challenged each other on direct and cross-examination of the expert witnesses.

- The first case involved a family claiming a home restoration company, that placed a space heater in their home to dry it out after a hurricane, was improperly situated within the home sparking a fire. The fire destroyed the family's \$4.5 million-dollar mansion. The restoration company denies that it was the space heater that caused the fire and retained an engineering expert to support the theory that the cause and origin of the fire was something other than the space heater.
- The tragic death of a man who was demolishing an unused railroad overpass. His death exposed nepotism and negligence in a small-town community for the second case scenario. The man's family sued the various companies responsible for safety on the project. The lawsuit uncovered contracts awarded to family companies and back-door deals all the way to the governor's office. The defendant hired a safety engineer expert to support its position.
- The third case claimed an actress was violently thrown from a treadmill at her gym resulting in her inability to get a job in the entertainment industry. She claims the gym never enforced any of the standards recommended by the manufacturers of its fitness equipment, including its treadmills and the gym willfully ignored known safety measures that would have prevented her tragic injury. The gym retained a sports, fitness, and education expert who supports its position that the plaintiff signed a "waiver" form and, while they sympathize with her unfortunate tragedy, this accident was her own doing.
- Finally, jurors heard a dispute between a company and a construction contractor hired to build the company's new premier building location. The owner claims that the contractor deviated from the contract documents and took measures to conceal the deviations until it was too late to repair them and salvage the building. On the other hand, the contractor counterclaims that the problems are the result of design defects and that the building is repairable. The defendant hired a structural engineer to testify that the alleged deviations were small and that the building could have easily been repaired and re-engineered without harm or damage.



Key Takeaways

Jurors filter testimony through the lens of their daily lives. During *voir dire*, it is important to discuss these case-related experiences with jurors and determine how those experiences impact the three primary components of an expert witness: credentials, analyses, and conclusions. Below are specific examples of how mock jurors evaluated these three areas using their personal experiences and the importance of identifying those experiences during the jury selection process.

Credentials. *“How can you issue a report if you’re not licensed in the state?”* Simply because an expert has an elite education and written peer-reviewed articles does not automatically instill trust with the jury. A jury is comprised of the local workforce with individuals from all backgrounds and education levels. Many of these jurors are required to maintain licenses or participate in continuing education in their field. One of the experts was an engineer not licensed in the state where the accident occurred when he issued his report. The lack of having a license was paramount for jurors who, themselves, have had to routinely maintain licenses in their work.

Analyses. *“I’ve had a lot of experience with OSHA and that just doesn’t make sense.”* One of the fact patterns involved the destruction of an overpass and an expert engineer’s testimony about the construction and safety of the overpass. Jurors with OSHA experience were critical of the lack of safety measures and questioned the expert’s knowledge and experience because part of the testimony deviated from their personal experience. Inquiring about juror employment history, specifically, with safety and compliance is necessary to uncover these potentially biased attitudes. Jurors who have been in the workforce for an

extended period of time or have been employed in a variety of industries will have accumulated extensive knowledge and be willing to apply that knowledge to your expert’s analyses.

Conclusions. *“Everyone has been on a treadmill.”* When it comes to experts, jurors value neutrality and common sense. Fact pattern #3 involved a personal injury accident on a treadmill. The expert testified that it was not outside the standard of care to have glass several feet behind the treadmill. Jurors expressed familiarity with treadmills as well as being gym members, and several concluded early on after hearing the case that it was unreasonable to have glass directly behind a treadmill even if it was within regulation. This conclusion did not match jurors’ ideals of common sense and asked them to deny their own reality. Jurors put themselves in the situation based on their personal experiences which led to questioning the conclusions of the expert witness. Focusing on jurors’ experiences with the location of an accident (i.e. the gym) and how they logically evaluate situations during jury selection would help determine how jurors perceive the expert’s testimony.

Final Thoughts

Once you have your expert, divide their testimony into these three buckets and ask, “What types of juror experiences will be favorable or unfavorable to my expert?” If you have a standard of care expert physician, do you want a juror with medical experience? If you have an expert engineer, is a juror in human resources more favorable or unfavorable to your case? Will a mom of four children believe your pediatrician expert? The key to a successful *voir dire* is to understand the types of perceptual filters that will be important for evaluating your expert’s testimony and develop questions and themes to help identify those jurors.





INTERVIEW WITH THE EXPERTS



Our experts from Round 2: Battle of the Experts let us pick their brain about their experience as experts, their recommendations for trial, and their takeaway from our conference. Here's what they said!

Q: How did you become an expert? Can you share your career path?

Timothy Morse: I joined Exponent after finishing my Ph.D. in mechanical engineering and started doing engineering failure analysis work right away. Initially, I mostly supported more senior engineers who had testifying roles. After about five years or so, I started getting projects where I was the testifying expert.

Benjamin Cornelius: I have always loved buildings. From the time I was very young, I was fascinated with what

makes buildings stand up--to people, the environment, and time--and also why some buildings fall short. After 20 years of designing various types of structures--including tall buildings, museums, sports facilities, residential buildings, and others--I got my first opportunity to work on a forensic investigation of Wembley Stadium. I was hooked. I loved working with the attorneys and taking what I know about how building structures are designed and constructed, and putting that together with what I know about how decisions are made on construction projects, and using it to get to the bottom of why problems occur.

Paul Marsenison: 20 plus years of working as a general contractor and engineer led me to want to utilize my skills in another arena to help clients.

Q: What do you think are the most important factors to jurors when hearing expert testimony?

TM: Credibility, credibility, and credibility. The jurors need to trust me. That means my opinions must be based on rigorous engineering analysis and I must be able to explain my opinions in a clear and compelling way.

BC: How well-prepared and how genuine the expert is on the stand. I think that being well-prepared is a sign of respect to the jury. If you're well-prepared, you've developed a thoughtful and well-substantiated opinion and you are able to communicate it in a clear, well-organized, and compelling way. If you're disorganized in your direct testimony or you're thrown off by questions from opposing counsel that challenge your opinions, you're not well-prepared and I think juries react badly to that. I think it's also important to be genuine. By that, I mean that the jury should see the expert as someone who is there to try to help them clearly understand what the expert was asked to do, what he or she found, and how those findings are relevant to the decisions the jury needs to make. If the jury thinks the expert is just there to push a story that makes his or her client look good, they will become suspicious and begin to discount the expert's opinions.

PM: Clearly and definitively laying out the facts in a simple, concise, and convincing manner.

Q: Did you feel that your demonstratives helped the jurors understand the case facts?

TM: I am always looking for ways to connect with the jury. If I can get up out of my chair and teach them something, I

can be much more engaging. Clear demonstratives are a great way to do that.

BC: I do believe the demonstratives helped the jury. I always like to use visual aids in communicating my opinions to triers-of-fact. They allow me to orient the jury to the technical issues more rapidly and reliably and build the jury's confidence in my evaluation and opinions.

Q: What did you learn by taking part in Magna's "Battle of the Experts"?

PM: That success at trial is the result of solid teamwork and good communication and preparation between the attorney and the expert... working together is the key to success!

Q: What do you like most about what you do?

TM: The variety of projects I get to work on. I might be at a fire scene digging through debris, in a lab looking at a broken pipe under a microscope, and in a courtroom testifying on an intellectual property matter, all within the span of a week.

BC: Having spent a big part of my career designing building structures and working with some of the top structural engineers, architects and contractors in the field, I like using the insider knowledge I've gained to help legal teams better understand problems on their clients' construction projects, make good decisions, and successfully navigate disputes. I also enjoy crafting clear, thoughtful, well-substantiated expert reports because they serve as a solid foundation for clear, compelling testimony. And finally, I like helping triers-of-fact understand what I have been asked to do, what I have found, and how my findings are relevant to the decisions that they must make in the case--especially when it involves my sketching ideas for them on a white board!

PM: The variety of work that I am exposed to and helping our clients to achieve the best possible outcome. I enjoy the "consultant" piece of the process.

Q: If I was a client what would you say to convince me to hire you for my case?

TM: To prevail in litigation you need to stay a step ahead of the opposing side, to anticipate what the challenges are going to be, and be ready to respond to them. This requires quick, strategic thinking while under pressure. I do that better than any other expert you could hire.

BC: That my team and I have the knowledge, experience, and skill you need to understand the structural engineering issues in your case and prepare your best legal arguments, and that I recommend you speak with the many attorneys we've served in the past about the value that we bring to each matter we work on. The high level of expertise, attention to detail, commitment to integrity, and clear communication LERA applies to our design work carries over to all of our investigation projects, as well, and our deep bench of knowledge gives our clients access to the best service in the world.

PM: My skills, training and experience enable me to assist you with this matter as a true consultant and expert.

Q: Courtney, tell us about Robson Forensic, how did the company get started?

Courtney Tarsa: Robson Forensic began as two engineers in a basement working together to solve technical problems involving highway design and vehicle crashes. Since then we've grown to over 100 highly qualified experts, who are individually vetted and work exclusively within the firm.

Q: How long has Robson Forensic been in business and what is your company's mission?

CT: Robson Forensic was founded in 1987. In our 30+ years and 60,000+ cases our mission has been to provide excellent and comprehensive technical services to our clients, but it goes beyond our casework to pursue technology and knowledge for the public good. Our experts continually apply lessons from our forensic casework to explore new research and develop new technologies that promote public safety.

Q: What sets Robson Forensic apart from other companies?

CT: Internally, we often describe Robson Forensic as a

forensic firm. Many of our experts remain active in industry, but our primary focus is on forensic casework. This focus is reflected in the technical diversity of our workforce, the reach of our technical library, and the severity of our casework.

We approach every assignment as though it's destined for litigation. At Robson Forensic, the expert who will be called to testify is the same expert who does the investigation and analysis. This approach ensures that our clients benefit from the wisdom of experience throughout their case and there is no risk of communication missteps as cases develop.

Q: Do you have a specific niche in the Industry?

CT: We are best known for our ability to take on highly technical or especially contentious disputes. Having experts in foundational disciplines of science and engineering has allowed us to expand our technical reach without sacrificing quality. Our ability to hire experts in highly specialized fields has allowed us to provide qualified experts in unusual areas of expertise, even as the standards for qualifying experts have become more stringent.

Q: Do you have a story you can share that demonstrates Robson's excellence?

CT: Investigating thousands of mishaps per year occasionally brings our attention to gaps in technical research that prevent scientists or engineers from answering important and difficult questions. In line with our mission of providing for the public good, the experts at Robson Forensic have on many occasions endeavored to perform primary research to fill those gaps that science had previously left unanswered. Examples of research performed by the firm in the past include projects involving the visibility of watercraft, the crash performance of infant child seats, the storage and retrieval of medical devices, and the use or non-use of automotive safety devices.





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MOCK TRIAL CHALLENGE

BATTLE OF THE CHAMPIONS

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Litigation Resource Management

BRIAN BORNSTEIN

AIG, Zonal Claims Executive –
Northeast Zone

WILLIAM BUSH

AIG, VP Excess Casualty

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Magna One On One with: **Sandra Gravanti** General Counsel, Tosca LTD



When life gives you lemons,
make limoncello. Or at least
make sure to ship them in a
Tosca RPC.

It's the middle of summer and 100% humidity in Atlanta. That is a problem when running is your hobby that brings you stress relief and peace of mind. So, Tosca general counsel Sandra Gravanti works around the heat (as much as possible) and starts her morning run at 5 AM.

In the same way, Gravanti has added a twist to her background in tax law and security operations into becoming the first ever general counsel for Tosca, which specializes in reusable plastic containers (RPCs) for shipping food. One way she does it: Thinking outside the box – pun intended.

You went to college and law school in Florida and now helm Tosca's legal operations based out of Atlanta. What is it with your attraction to the heat and humidity?

Well, I was born in Saudi Arabia. My father was working for the Italian embassy at the time. I was an Italian citizen before we moved to the States, and when I was 16 I became a naturalized US citizen.

Were you ever interested in getting into politics?

Politics was never one of my dreams. I wanted to be an opera singer when I was young – namely, a famous soprano. Obviously, I didn't realize I wanted to be general counsel. But now that I'm here, I like it.

Prior to this position you were Vice President of Risk Management and Associate General

Counsel for U.S. Security Associates, a nationwide company that provides security guards, loss prevention officers, etc. How did you get involved with them?

I was a tax lawyer and did some contract work for the company. I worked with the general counsel and he eventually asked me to join the company as AGC to manage the litigation as he thought my attention to detail would be useful. The work was challenging and high-paced and I ended up working there for eight years.

My position there was a combination of litigation, contracts work and risk management.

What challenges does a security company face?

It was non-stop given that we had almost 60,000 employees spread across the country and it led to litigation in every single state - except maybe Idaho and North Dakota. It seemed like every time there was an incident at a Walmart or shopping mall, or office building, they would sue both us and our customer. For example, if someone got their purse snatched in the parking lot, they would sue alleging insufficient security.

In that sense, I saw how critical indemnification provisions were. Or to put it another way, how valuable or destructive those provisions can be to a company depending on how their contracts are written.

I notice you did auto litigation at U.S. Security Associates. How did that come into play?

We had a fleet of almost 2,000 vehicles for patrol, so accidents occurred from time to time.

Do you feel that at the end of the day you were just doing routine, standard legal work or was there something different about the job because you were immersed in the world of security?

Everyone cares about security. The job was more interesting because of that and because the venues were prominent: NFL games, music festivals and shopping malls. There were a lot of high-profile cases, and when security goes wrong, it's usually significant.

What are some of your thoughts on security best practices?

Security is everyone's business. And no person or entity can foresee enough to keep everyone safe, so be aware of your surroundings.

Also, some companies look at security as something they want to get as cheaply as possible - i.e. one security guard and treat it as insurance. But that may not be enough for themselves, their customers, and their employees.

How do you go from security to shipping crates?

Tosca needed a general counsel, and the company and I had a mutual connection who recommended me. Although of course one of the first things that went through my mind was the famous Puccini opera – Tosca.

Tosca (the company) provides reusable plastic containers (RPCs) that look like modified milk crates and the company promotes a sort of farm to market model: Use these containers to pack your produce on the farm, smartly stack them into trucks and bring them to market. Once there, some containers have features such as a drop-down panel so that the crates can now be placed on the shelves and double as display racks.

It is more than a crate. It's a crate with a purpose that reduces labor and reduces waste significantly.

For example, eggs were costing retailers millions of dollars in lost products. A quarter of them end up broken and smashed. Then someone has to clean up the broken eggs.

The Tosca egg crate protects the product and has a collapsible wall that drops when you put it on the shelf. This leads to significantly less work time in unloading and displaying the eggs.

If you look at a product such as poultry, the cardboard boxes get covered in goop and fluids. But our crates have no "squishing" and there is drainage at the bottom, so the fluid does not seep back into the product and it is more hygienic. It's also easier to stack and move the Tosca crates because they are more sturdy, and there is no fear of them ripping open when you are carrying them. There's also no need to use box cutters, which can cause injury.

Also, we are not using cardboard that ends up in landfills. Once the retailers are done with the crates – i.e. the eggs are sold – we get them back, sanitize them, and send them back out again.

Sounds like a big switch from focusing on security guards.

I went from the security and safety of people to the security and safety of produce, perishables and supply chain. But they are not all that different: Food safety is one of the most critical components of this job. Although I haven't had any major food safety cases yet, and don't want any.

How did you connect with Magna?

I met Matt Richter at a conference. I was at U.S. Security Associates at the time. Matt was asking me about nationwide court reporting, which is handy.

But I ended up using Magna most significantly in a bizarre case in a tricky venue. I can't provide more details due to confidentiality. But the bottom line was, we did not know what a jury would do, and no one could articulate to me a true value or range of cost for the case. So, Magna did a panel on the case with 100 people. The panel put a finger on the pulse of the local community on how they viewed the case. It gave me insight into how much the case would cost and framed a good settlement range for me. It was done quickly, and the Magna reports were fantastic.

At Tosca, I used Magna for a labor union issue. Our Denver service center was considering unionizing and we used Magna for live translation and document translation given that there were several employees from multiple countries. We were able to communicate directly with our employees to make sure they understood our side. In the end, a union was not formed, which we were happy with.

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LEGAL SERVICES

There is an interesting twist here: You are the first general counsel for Tosca. And this is your first general counsel position.

It is neat starting on the ground floor, and the company and I are working through it together. On the downside: I can't blame my predecessor for anything!

Why did Tosca make the leap to an in-house general counsel?

It was growing so rapidly. They had been using outside counsel and decided it was time to get their own, inside lawyer. And in fact, I am the only inside lawyer. All the other legal work is done by a team of 15 to 20 outside attorneys. My hope is that as the company continues to grow, I will begin to grow my inside legal team as well.

How big is the operation you oversee?

Tosca is private equity owned and we have 14 service centers across country and 1,500 employees. That compares to almost 60,000 security guards at my prior job, but that doesn't mean less legal issues. Tosca is highly automated, which presents different issues. For example, negotiating contracts for large machines built overseas and installed in our facilities in the U.S. is challenging and interesting. They take one to two years to be built. Tosca is much more engineering driven: You need engineers to keep those machines running.

I don't have to negotiate with the machines, but I still have traditional employment cases such as workers' comp, wages, and discrimination.

What is the difference between being associate general counsel at a large company and general counsel at a smaller company?

The job is easier at the bigger company but with the lesser role because you have a bigger staff and more support. Here, I'm building the program from the ground up. But I have only been here since January. Call me in two years.

Now that you are at a company specializing in shipping crates, do you ever think outside the box? Pun intended.

Thinking outside the box is actually one of our biggest marketing campaigns. But I have always thought that is the key to success and am trying to use that technique here.

Since I came into this role with no supply chain or pooling experience, looking at Tosca's contracts for the first time was eye-opening. But with a new set of eyes I was able to restructure the contracts and the terms with our customers to improve our ability to protect our assets and to get them back.

Our business, for example, is based on a pooling concept: We send out the RPCs to a food harvester, or poultry plant, or egg farm; which is then sent to a market or national grocery retailer. Afterwards, it's sent to a sorting facility and then back to Tosca for cleaning. Then the whole process starts again.

So, we want our customers to use the crates, but we also want our contracts to ensure we get them back.

Speaking of marketing campaigns, sounds like you had another good one.

Given my Italian background, I used to say, if life gives you lemons, make limoncello.

Now I like to say, if life gives you lemons, make sure they're shipped in a Tosca RPC.



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