

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER
DEPARTMENT W7

TRAVEL AMERICA, INC., A DELAWARE)
CORPORATION, ET AL.,)
)
 PLAINTIFFS,)
)
VS.) CASE NO. 789743
)
CAMP COAST TO COAST, INC., A DELAWARE)
CORPORATION, ET AL.,)
)
 DEFENDANTS.)
_____)

THE HONORABLE JOHN H. SMITH, JR., JUDGE PRESIDING

REPORTER'S TRANSCRIPT

MAY 18, 2000

APPEARANCES:

FOR THE PLAINTIFFS: GERALD M. SHAW
ATTORNEY AT LAW

TERRY M. MOSHENKO
ATTORNEY AT LAW

FOR THE DEFENDANTS: ALSCHULER, GROSSMAN, STEIN & KAHAN
BY: MICHAEL A. SHERMAN, ESQ.

RUTAN & TUCKER
BY: IRA G. RIVIN, ESQ.

HEIDI K. STEWART, CSR #6058
OFFICIAL COURT REPORTER

INDEX

WITNESSES FOR THE PLAINTIFFS:

	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
ROBERT FRANK MITCHELL					
BY MR. SHAW:		1212 (CONT.)			
BY MR. RIVIN:		1331			1312

E X H I B I T S

IN EVIDENCE

EXHIBIT NO. 1567, CONTRACT	1234
EXHIBIT NO. 285, MEMO DATED 1/90	1253
EXHIBIT NO. 46	1272
EXHIBIT NO. 1563, LETTER	1315
EXHIBIT NO. 1632	1327

1 WESTMINSTER, CALIFORNIA - THURSDAY, MAY 18, 2000

2 MORNING SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
4 COURT IN THE PRESENCE OF THE JURY:)

5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

6 THE JURY: GOOD MORNING, YOUR HONOR.

7 THE COURT: CONTINUE WITH MR. MITCHELL.

8 MR. SHAW: MR. MITCHELL, RESUME THE STAND.

9 THE COURT: PROCEED, COUNSEL.

10 MR. SHAW: THANK YOU, YOUR HONOR.

11 ROBERT FRANK MITCHELL,

12 PREVIOUSLY CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS,

13 HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND

14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION (CONTINUED)

16 BY MR. SHAW: Q MR. MITCHELL, WHEN WE BROKE
17 YESTERDAY, YOU HAD EXPRESSED YOUR OPINION IN THIS CASE THAT
18 THE ACTIONS OF THE DEFENDANTS, COAST TO COAST, THEIR
19 ACTIONS, BEHAVIOR AND CONDUCT CAUSED DAMAGE TO THE
20 PLAINTIFFS IN THIS CASE; IS THAT CORRECT?

21 A CORRECT.

22 Q AND THEN I WAS QUESTIONING YOU AT THE
23 CHALKBOARD ABOUT YOUR PERSONAL KNOWLEDGE ON WHICH YOU BASED
24 YOUR OPINIONS, AND WE WERE TALKING ABOUT YOUR MEETING
25 MR. NOVELLI IN OR ABOUT 1995 REGARDING THE FIESTA VILLAGE
26 WHEN YOU WERE CONSULTING FOR A LENDER, AND YOU INTRODUCED

1 HIM BECAUSE HE WAS A WORKOUT SPECIALIST.

2 I NOW WANT TO TURN TO THE DAVE VOPNFORD
3 THOUSAND ADVENTURES, THE BANKRUPTCIES WE TALKED ABOUT
4 YESTERDAY, AND WHAT YOUR CONTACT WITH MR. NOVELLI WAS IN
5 THAT REGARD.

6 WHEN DID THAT CONTACT OCCUR?

7 A THAT WOULD HAVE BEEN, I THINK, SOMETIME
8 IN -- I THINK YESTERDAY I SAID JULY, BUT AS I THOUGHT ABOUT
9 IT, IT WAS COLD. AND IT'S NOT COLD IN TEXAS IN JULY. SO
10 IT WAS PROBABLY ABOUT APRIL OF '97, I BELIEVE.

11 Q AND WHO INITIATED THAT CONTACT WITH
12 MR. NOVELLI?

13 A I INITIATED THE CONTACT WITH MR. NOVELLI
14 EARLIER THAN THAT, PROBABLY A MONTH OR TWO, MAYBE THREE
15 MONTHS EARLIER, PUT IN NUMEROUS TELEPHONE CALLS TO HIM.
16 MR. DAVIS, I HAD SUGGESTED SINCE WE HAD A POSITIVE
17 EXPERIENCE WITH MR. NOVELLI WORKING OUT OUR PROBLEMS WITH
18 THE PHILIPPINE FIESTA VILLAGE, AND HE HAD BEEN SUCCESSFUL
19 WITH THE ALL SEASONS PROJECT, THAT WE MIGHT APPROACH HIM
20 AGAIN WITH REGARD TO THE VOPNFORD PROBLEM.

21 I CALLED HIM ON NUMEROUS OCCASIONS AND
22 DIDN'T RECEIVE A RESPONSE. AFTER SOME EXTENDED TIME, I
23 FINALLY GOT THROUGH TO HIM. AND AFTER A FEW PHONE CALLS
24 AND SOME DIALOGUE, HE AGREED TO ATTEND A MEETING IN TEXAS.

25 AS I SAY, I THINK IT WAS SOMETIME IN APRIL
26 BECAUSE IT WAS STILL CHILLY, PROBABLY FIRST OF APRIL.

1 Q AND WHO ATTENDED THAT MEETING?

2 A THAT MEETING WAS ATTENDED BY A GROUP OF
3 FINANCIAL PEOPLE AND BANKERS WHO COLLECTIVELY IN THE
4 AGGREGATE HAD LENT MR. VOPNFORD ABOUT A HUNDRED MILLION
5 DOLLARS.

6 Q AND THAT WAS THE HUNDRED MILLION DOLLARS
7 THAT WAS RELATED TO SOME OF THESE BANKRUPTCIES AND ATTORNEY
8 GENERAL MATTERS AND LAWSUITS AND JUDGMENTS AND VARIOUS
9 THINGS?

10 A THAT'S CORRECT, SIR.

11 Q OKAY. AND YOUR PRIOR EXPERIENCE WITH
12 MR. NOVELLI REGARDING FIESTA VILLAGE, DO YOU HAVE ANY
13 PERSONAL KNOWLEDGE AS TO WHETHER HE INVESTED ANY OF HIS OWN
14 MONEY IN THE FIESTA VILLAGE ISSUE?

15 A YES.

16 Q HOW MUCH DID HE INVEST?

17 A ABOUT A MILLION DOLLARS.

18 Q AND, NOW, YOU SET UP THIS MEETING, INITIATED
19 THIS MEETING IN TEXAS. CAN YOU TELL ME THE NAMES OF THE
20 INDIVIDUALS WHO WERE PRESENT? YOU SAID THEY WERE MAINLY
21 BANKERS, THAT YOU CAN RECALL.

22 A YES. PRINCETON CAPITAL CORPORATION,
23 ALLSTATE FINANCIAL, TRAVELERS, MR. CLOUD REPRESENTING SOME
24 BANKS IN TEXAS, AND BONDHOLDERS IN TEXAS, AND ANOTHER CHAP
25 WHO ESCAPES ME THAT REPRESENTED A MAJOR EUROPEAN BANK. IT
26 MAY HAVE BEEN THE E.N.G. GROUP OR ANOTHER EUROPEAN BANK,

1 FOUR TO FIVE LENDERS. AND THEN THEY HAD SUPPORT PERSONNEL
2 WITH THEM. PROBABLY EACH ONE OF THEM HAD TWO OR THREE
3 OTHER ACCOUNTANTS AND LAWYERS, AND SO ON, WITH THEM.
4 MR. CLOUD, AS I MENTIONED. MR. NOVELLI CAME WITH
5 MR. THOMPSON.

6 Q IS THAT MR. ROBERT THOMPSON?

7 A THAT'S CORRECT. AND MR. VOPNFORD WAS THERE,
8 AND HE MAY HAVE HAD SOME PERSONS, SUPPORT PERSONS, WITH HIM
9 ALSO. I DON'T RECALL.

10 Q NOW, YOU MENTIONED THE COMPANY THAT YOU WERE
11 CONSULTING FOR.

12 A TRAVELERS CORPORATION.

13 Q TRAVELERS.

14 WAS THE INDIVIDUAL THERE THE MR. CHRIS DAVIS
15 THAT YOU TALKED ABOUT YESTERDAY?

16 A YES, SIR.

17 Q OKAY. HE WAS THE MAIN REPRESENTATIVE FOR
18 TRAVELERS AT THAT MEETING?

19 A YES. TRAVELERS WASN'T A LENDER. TRAVELERS
20 HANDLED THE SERVICING ON THESE ACCOUNTS OR SUBSTANTIAL
21 PORTION OF THESE ACCOUNTS FOR MANY OF THESE LENDERS. AND
22 MR. DAVIS THROUGH ME HAD -- AS A PROFESSIONAL COURTESY, HAD
23 FACILITATED THIS MEETING FOR THE LENDERS.

24 Q OKAY. NOW, THESE ARE THE LENDERS THAT HAD
25 APPROXIMATELY A HUNDRED MILLION DOLLARS WITH THOUSAND
26 ADVENTURES AND MR. VOPNFORD; CORRECT?

1 A THAT'S CORRECT, SIR.

2 Q OKAY. WHAT -- WHAT WAS THE PURPOSE FOR THE
3 MEETING?

4 A THE PURPOSE FOR THE MEETING WAS TO TRY TO
5 CONVINCED MR. NOVELLI TO TAKE ON THIS UGLY MESS, AND AGREE
6 TO TRY TO FIND A WAY TO WORK THIS PROBLEM OUT, BUY THESE
7 PARKS FROM MR. VOPNFORD, OR SOME, OR ALL OF THEM, AND BE
8 ABLE TO CONTINUE TO PROVIDE SERVICES TO THE MEMBERS SO THAT
9 THE INTEGRITY OF THE CONTRACTS WOULD BE PROTECTED, AND
10 THESE LENDERS WOULD GET THEIR MONEY, ULTIMATELY.

11 Q NOW, AT THIS POINT IN TIME, MR. VOPNFORD AND
12 THOUSAND ADVENTURES WAS IN SEVERAL BANKRUPTCIES; IS THAT
13 CORRECT?

14 A OH, SERIOUS, YEAH. SEVERAL BANKRUPTCIES,
15 YES, SIR.

16 Q WAS THERE ANY DISCUSSION IN THAT MEETING IF
17 MR. NOVELLI GOT INVOLVED HE WOULD HAVE TO BE DEALING WITH
18 THESE BANKRUPTCY COURTS?

19 A OH, WELL, YES. IN OTHER WORDS, THAT'S THE
20 CLASSIC REALITY. IF HE WERE TO ASSUME THE RESPONSIBILITIES
21 BY PURCHASING OR ANY METHOD AT ALL FOR THESE MEMBERS AND
22 THESE RESORTS, THEN HE WAS THE ONE WHO WAS GOING TO HAVE TO
23 WORK OUT THESE PROBLEMS THAT MR. VOPNFORD HAD CREATED OVER
24 A NUMBER OF YEARS.

25 Q SO IF HE BOUGHT INTO THE PROGRAM, HE WAS
26 GOING TO BE INVOLVED IN THOSE BANKRUPTCIES AT THAT POINT IN

1 TIME?

2 A THAT WAS THE PACKAGE. AND THAT'S KIND OF
3 THE CARROT AND THE STICK THING. REWARD THE UGLINESS AND
4 IF YOU CAN GET IT WORKED OUT, IT'S GREAT. BUT IT'S PRETTY
5 UGLY IN DOING IT.

6 Q AND HOW ABOUT THE ATTORNEY GENERALS'
7 OPINIONS AND THE VARIOUS LAWSUITS AND THE JUDGMENTS, THOSE
8 CAME ALONG WITH THE HUNDRED MILLION DOLLARS OF DEBT?

9 A YEAH. THERE WERE NUMEROUS ATTORNEY GENERAL
10 ACTIONS THAT HAD OCCURRED OVER A NUMBER OF YEARS WITH
11 MR. VOPNFORD. THIS WAS NOT SOMETHING THAT HAPPENED IN ONE
12 SECOND OR ONE DAY. OVER A NUMBER OF YEARS HE HAD HAD
13 VARYING KINDS OF SANCTIONS AND FINES AND SO ON, AND FINES
14 ON FINES FOR VIOLATIONS OF CONSENT ORDERS.

15 I DON'T THINK AT THAT POINT THAT HE HAD ANY
16 CLASS-ACTION SUITS BY HIS MEMBERS, BUT I DO KNOW THAT THERE
17 WERE MEMBER GROUPS IN FLORIDA AND I BELIEVE ILLINOIS OR
18 OHIO THAT WERE -- EITHER HAD FILED OR WERE ATTEMPTING TO
19 FILE, IN THE PROCESS OF FILING, AND ULTIMATELY DID FILE.

20 Q NOW, PRIOR TO APPROACHING MR. NOVELLI, AND
21 YOU MADE THE APPROACH, HAD YOU ON BEHALF OF THESE HUNDRED
22 MILLION DOLLARS OF LENDERS APPROACHED ANYBODY ELSE TO COME
23 IN AND WORK OUT THIS SITUATION?

24 A NO.

25 Q WHY NOT?

26 A THERE WASN'T ANYBODY ELSE THAT WAS CAPABLE

1 OF DOING IT OR WOULD DO IT. THERE WAS NO ONE IN THE
2 INDUSTRY THAT WOULD HAVE HAD THE RESOURCES TO DO IT.

3 Q AND YOUR UNDERSTANDING WAS THAT MR. NOVELLI
4 COULD GET THE JOB DONE? HE COULD WORK OUT THIS SITUATION?

5 A YES. THAT AT LEAST HE WOULD TRY.

6 Q ANYTHING ELSE ABOUT THAT MEETING THAT WE
7 SHOULD -- CAN TESTIFY ABOUT AT THIS POINT IN TIME?

8 A THE MEETING WAS A MEETING THAT WAS -- YOU
9 KNOW, THE PEOPLE CAME IN ON A FRIDAY NIGHT INTO AUSTIN,
10 TEXAS. MR. CLOUD HAS A LARGE RANCH, 40,000 ACRES EAST OF
11 THE AUSTIN, TEXAS. IT WAS KIND OF A SOCIAL "HELLO, HOW ARE
12 YOU," AND EVERYONE WENT TO BED.

13 THE NEXT MORNING THERE WAS A SOCIAL
14 BREAKFAST MEETING, AND THEN IT BROKE INTO THE LENDER GROUP,
15 WHICH MR. DAVIS AND I SPENT TIME WITH, SAYING TO THE
16 LENDERS, "LISTEN, IF WE CAN GET THIS NOVELLI TO WORK THIS
17 THING OUT, WILL YOU GUYS COOPERATE AND GIVE US A LITTLE
18 ROOM HERE? IT'S IN YOUR INTEREST TO DO SO; OTHERWISE, YOU
19 WILL LOSE ALL YOUR MONEY." AND THEY AGREED TO THAT.

20 AND MR. CLOUD TOOK MR. NOVELLI, AND THEN
21 MR. VOPNFORD DID NOT COME IN FRIDAY NIGHT. I THINK HE CAME
22 IN ON SATURDAY MORNING. AND HE TOOK MR. NOVELLI AND
23 MR. VOPNFORD FOR WHAT HE CALLED A LITTLE WALK OUT BEHIND
24 THE BARN TO THE BACK 40 AND INDICATED WHEN HE CAME BACK
25 THAT EVERYONE WAS GOING TO AGREE.

26 Q AND DID IN FACT MR. NOVELLI GET INVOLVED TO

1 YOUR KNOWLEDGE?

2 A NOT AT THAT POINT IN TIME. BUT, HE DID, I
3 GUESS, SOMETIME SHORTLY THEREAFTER. THERE WAS NO AGREEMENT
4 AS SUCH TO MY KNOWLEDGE, SAVE THE FACT THAT MR. VOPNFORD
5 WAS ESSENTIALLY INSTRUCTED BY HIS LENDERS HE BETTER DO
6 ANYTHING THEY WANT; OTHERWISE, HE MIGHT BE ENJOYING SOME
7 TIME IN THE JAIL.

8 Q WHAT WAS -- AND SO YOU FOLLOWED -- THEN,
9 AFTER MR. NOVELLI'S INVOLVEMENT, YOU FOLLOWED HIS
10 INVOLVEMENT IN THE THOUSAND ADVENTURES AND THE MEMBERS THAT
11 WERE THERE WITH THOUSAND ADVENTURES?

12 A NO, I DIDN'T. MY JOB WAS TO BRING THESE
13 PEOPLE TOGETHER AND TRY TO GET SOMETHING THAT WOULD MAKE
14 THIS THING WORK. ONCE THAT -- MY JOB WAS DONE, I DID NOT
15 FOLLOW IT. I REALLY DIDN'T HAVE ANY CONTINUATION WITH IT.

16 Q ALL RIGHT. WE TALKED ABOUT FIESTA VILLAGE.
17 WE TALKED --

18 A PHILIPPINE FIESTA VILLAGE.

19 Q WE TALKED ABOUT MR. VOPNFORD AND THOUSAND
20 ADVENTURES.

21 DO YOU HAVE ANY PERSONAL KNOWLEDGE OF ANY
22 OTHER INVOLVEMENT BY MR. NOVELLI IN THE WORKOUT FOR ANY
23 OTHER LENDERS?

24 A ONLY HIS -- WHEN HE GOT INTO THE INDUSTRY --
25 I WAS IN THE INDUSTRY BEFORE MR. NOVELLI WAS AND ACTUALLY
26 BEFORE THE PEOPLE WHO OWNED COAST TO COAST WAS IN.

1 Q AND THAT WAS ALL SEASONS RESORTS; CORRECT?

2 A YEAH, THE PEOPLE WHO ORIGINALLY STARTED ALL
3 SEASONS REPORT, BILL PAER AND BOB PAPPUS AND MR. TOOHEY,
4 WERE FROM THE THOUSAND TRAILS OPERATION. I KNEW THESE
5 PEOPLE WELL. I HAD WORKED -- AS A MATTER OF FACT,
6 MR. TOOHEY AND I WERE JOINT CONSULTANTS ON THE BEECHWOOD
7 RESORT PROJECT INITIALLY.

8 Q THAT WE TALKED ABOUT YESTERDAY?

9 A RIGHT. AND MY COMPANY GOT THE OPERATIONAL
10 CONTRACT FOR IT. BUT HE AND I BOTH WORKED ON THE PROJECT.
11 MR. PAPPUS I KNEW WELL. MR. PAER, THEY HAD STARTED ALL
12 SEASONS RESORTS. AND MR. SITES, RALPH SITES, WHO I KNEW,
13 WHO IS DEAD NOW, AND I KNOW HIS SON, HAD TAKEN THE COMPANY
14 PUBLIC. MR. SITES HAD TAKEN MOST ALL OF THE CAMP RESORT
15 COMPANIES PUBLIC.

16 Q AND YESTERDAY YOU HEARD MR. SHERMAN'S
17 OPENING STATEMENT ABOUT ALL SEASONS RESORTS' BANKRUPTCY
18 THAT OCCURRED EARLIER THAN THE THOUSAND -- THE VOPNFORD
19 THOUSAND ADVENTURES BANKRUPTCY; CORRECT?

20 A WELL, YES, WHEN MR. NOVELLI ACQUIRED --

21 Q LET ME STOP, AND LET ME LAY SOME
22 FOUNDATION.

23 WHEN DID YOU BECOME -- LET ME STOP AND START
24 AGAIN.

25 DO YOU HAVE ANY PERSONAL KNOWLEDGE THAT
26 MR. NOVELLI GOT INVOLVED WITH THE ALL STATES RESORTS --

1 A ALL SEASONS.

2 Q -- TO WORK OUT THEIR FINANCIAL PROBLEMS?

3 A YES.

4 Q WHEN DID MR. NOVELLI GET INVOLVED WITH ALL
5 SEASONS RESORTS TO WORK OUT THEIR FINANCIAL PROBLEMS?

6 A I BELIEVE THAT WAS AROUND 1985. IT MIGHT
7 HAVE BEEN '84, '85, IN THAT RANGE.

8 Q SO SOMETIME PRIOR TO THE BANKRUPTCY IN 1987?

9 A YES.

10 Q THAT MR. SHERMAN TALKED ABOUT?

11 A WHEN BARCLAY'S BANK -- ALL SEASONS RESORTS
12 OWED BARCLAY'S BANK AND OTHER LENDERS I THINK \$50 MILLION.
13 THEY, ALL SEASONS, HAD GOTTEN KIND OF PANSY PANTS. THEY
14 HAD FANCY CARS AND YACHTS AND AIRPLANES AND ALL KINDS OF
15 THINGS THAT I QUESTIONED. AND THEIR COST OF OPERATION HAD
16 GONE -- OBVIOUSLY THEY WERE IN BIG TROUBLE.

17 BARCLAY'S CONTACTED MR. NOVELLI. I THINK
18 THAT THEY HAD SOME PREVIOUS RELATIONSHIP. MR. NOVELLI HAD
19 NOT BEEN IN THE CAMP RESORT BUSINESS, BUT HE APPARENTLY HAD
20 DONE SOME WORKOUT WITH BANKS IN THE PAST. SO THEY HAD SOME
21 RELATIONSHIP. SO HE PUT MONEY INTO IT AND TOOK IT OVER,
22 AND I BELIEVE WITHIN A YEAR OR --

23 Q IF I CAN JUST STOP YOU FOR A SECOND. I
24 APOLOGIZE, MR. MITCHELL.

25 A SURE.

26 Q BUT JUST TO STAY ON THIS POINT, SO PRIOR TO

1 MR. NOVELLI'S INVOLVEMENT IN ALL SEASONS RESORTS OR A.S.R.,
2 IT ALREADY HAD THE BARCLAY'S \$50 MILLION WORTH OF DEBT THAT
3 MR. NOVELLI WAS REQUESTED TO COME IN AND TRY TO WORK IT
4 OUT; IS THAT CORRECT?

5 A YES.

6 MR. RIVIN: YOUR HONOR, I NEED TO OBJECT TO THIS.
7 THIS IS ALL HEARSAY. LACK OF FOUNDATION. IT'S ALL BASED
8 ON WHAT THIS WITNESS HEARD.

9 MR. SHAW: I'LL WITHDRAW AND START AGAIN.

10 THE COURT: THANK YOU.

11 BY MR. SHAW: Q I JUST WANT TO STAY ON YOUR
12 PERSONAL KNOWLEDGE ABOUT WHAT YOU KNEW BACK AT THAT POINT
13 IN TIME.

14 YOU KNEW THE ALL SEASONS RESORTS PEOPLE.
15 YOU TALKED ABOUT MR. PAIR AND THESE INDIVIDUALS.

16 DID YOU HAVE ANY DISCUSSIONS AT THAT POINT
17 IN TIME WITH ANYONE REGARDING BARCLAY'S AND ITS \$50 MILLION
18 WORTH OF INDEBTEDNESS, AND THE FACT THAT -- THAT
19 MR. NOVELLI BECAME INVOLVED?

20 A I HAD DISCUSSIONS PRIOR TO MR. NOVELLI'S
21 INVOLVEMENT WITH THE FOUNDERS OF THE COMPANY AT THEIR
22 OFFICES. I'VE HAD EMPLOYEES THERE OF -- AND DISCUSSIONS
23 REGARDING THE WAY THE COMPANY WAS OPERATING, THE COMPANY'S
24 DEBT, AND MY JAUNDICE EYE AT SOME OF THEIR PERKS AND MONIES
25 I THOUGHT THEY WERE SPENDING WERE INAPPROPRIATE.

26 Q SO YOU WERE CONSULTING AT THAT POINT IN TIME

1 WITH ALL SEASONS?

2 A NO. THOSE DISCUSSIONS OCCURRED BECAUSE WE
3 WERE FRIENDS IN THE INDUSTRY. WE WERE BOTH ON THE --
4 INVOLVED IN THE WASHINGTON STATE CAMPGROUND ASSOCIATION.
5 WE ALL INTERFACED WITH THE ATTORNEYS GENERAL, THE ATTORNEY
6 GENERAL, STATE OF WASHINGTON, IN PARTICULAR, MR. JOHN PEG,
7 WHO IS BASICALLY THE GUY WHO WROTE -- ALL THE LAWS WE HAVE
8 IN THIS COUNTRY ARE MODELS OF MR. PEG'S WORK.

9 Q BUT THE POINT IS, YOU BECAME AWARE OF YOUR
10 OWN PERSONAL KNOWLEDGE THAT MR. NOVELLI WAS NOT INVOLVED
11 WITH ALL SEASONS RESORTS WHEN IT INCURRED THE \$50 MILLION
12 WORTH OF DEBT?

13 A THAT'S CORRECT.

14 Q IS THAT CORRECT?

15 OKAY. AND THAT THAT -- MR. NOVELLI THEN
16 CAME IN AT SOME POINT WITH BARCLAY'S BECAUSE OF --
17 BARCLAY'S BANK TO WORK OUT THAT DEBT; CORRECT?

18 MR. RIVIN: YOUR HONOR, AGAIN, THIS IS ALL BASED ON
19 HEARSAY.

20 THE COURT: OVERRULED.

21 BY MR. SHAW: Q IS THAT CORRECT?

22 A YES, SIR. AND THEN --

23 Q I'M SORRY. GO AHEAD.

24 A THEN AFTER ABOUT A YEAR, HE HAD TROUBLE
25 FIGHTING OFF SOME OTHER CREDITORS THAT WERE NOT PART OF THE
26 BARCLAY'S GROUP, I THINK. AND SO HE PUT IT INTO BANKRUPTCY

1 TO KEEP THOSE IRATE CREDITORS FROM BRINGING THE WHOLE THING
2 DOWN AND THEREBY LOSING THE RESORTS AND THE MEMBERS LOSING
3 THEIR BENEFITS.

4 Q SO BANKRUPTCIES THAT WE'VE TALKED ABOUT, OR
5 MR. SHERMAN TALKED ABOUT THOUSAND -- AT LEAST THE THOUSAND
6 ADVENTURES WHICH WE'VE TALKED ABOUT WITH VOPNFORD, AND THE
7 BANKRUPTCY WITH ALL SEASONS RESORTS, WERE SITUATIONS THAT
8 OCCURRED PRIOR TO MR. NOVELLI; CORRECT?

9 A ALL OF THE -- VOPNFORD'S STUFF WAS NOT
10 NOVELLI'S RESPONSIBILITY AND PRIOR TO HIM. AND I WOULD SAY
11 THAT THE 1987 BANKRUPTCY AND ANYTHING THAT FLOWED FROM THAT
12 IN THE FUTURE WAS AS A RESULT OF HIS TAKING OVER THE
13 PROBLEMS OF ALL SEASONS WITH ITS ORIGINAL \$50 MILLION IN
14 DEBT.

15 Q NOW, YESTERDAY WE HEARD MR. SHERMAN TALK
16 ABOUT A BOAT OR A YACHT -- I FORGET WHAT THE PHRASE WAS. I
17 THINK A YACHT -- THAT MR. NOVELLI -- MR. NOVELLI HAD A
18 PLANE AND SOME OTHER TOYS, IF YOU WILL. I CAN'T THINK OF
19 ANOTHER TERM.

20 DO YOU KNOW WHERE -- DO YOU KNOW OF YOUR OWN
21 PERSONAL KNOWLEDGE WHERE MR. NOVELLI GOT THOSE ITEMS?

22 A WELL, THE YACHT CAME IN THE PURCHASE OF ALL
23 SEASONS RESORTS. THAT WAS ONE OF THOSE THINGS THAT ALL
24 SEASONS HAD THAT I THOUGHT WAS PERHAPS QUESTIONABLE.

25 Q AND YOU HAVE --

26 A THEY SAID THEY USED IT FOR BUSINESS

1 PROMOTION, THINGS LIKE THAT, AND THEY DID. BUT I KIND OF
2 FROWNED ON THOSE KIND OF THINGS.

3 MR. RIVIN: OBJECTION. HEARSAY.

4 THE COURT: OVERRULED.

5 BY MR. SHAW: Q I'D LIKE TO CHANGE SUBJECTS,
6 MR. MITCHELL, AND TALK ABOUT SOME OF THE SUBJECTS THAT WE
7 DEALT WITH YESTERDAY, WHEN YOU DESCRIBED FOR US THE
8 EVOLUTION OF THE CAMPGROUND ITSELF TO A PARK AND THEN TO A
9 RESORT.

10 AND SO YOU'VE GOT NOW THE RESORT, AND THE
11 PLAINTIFFS IN THIS CASE ARE THE DEVELOPERS OF THE RESORT;
12 IS THAT CORRECT?

13 A YES.

14 Q AND YESTERDAY WITH YOUR BACKGROUND,
15 EXPERIENCE AND TRAINING AND SKILL YOU TALKED ABOUT HOW THE
16 RESORTS MARKET TO THE MEMBERS.

17 A YES.

18 Q AND YOUR TESTIMONY WAS THAT IF YOU GOT A
19 \$5,000 MEMBERSHIP FEE, IT TAKES 50 TO 70 PERCENT -- 75
20 PERCENT --

21 A 70.

22 Q 70 PERCENT OF COST OF GOODS, WHICH BY MY
23 CRUDE MATH WOULD BE \$2500 TO 3300, JUST TO HAVE A MEMBER;
24 CORRECT?

25 A THAT'S THE COST TO DEVELOP THE MEMBER,
26 THAT'S CORRECT.

1 Q AND AT THIS STAGE COAST TO COAST ISN'T
2 INVOLVED, THE DEFENDANT, AT ALL?

3 A NO. COAST IS A COLLATERAL PRODUCT. IT
4 OCCURS AFTER -- COAST DOESN'T DEVELOP THE RESORTS. THEY
5 DON'T SELL THE MEMBERS. THEY DON'T SOLICIT PEOPLE TO
6 BECOME MEMBERS.

7 THAT'S LIKE -- COAST IS A PRODUCT THAT THE
8 RESORT HAS, AMONGST OTHERS. THEY MAY HAVE A TRAVEL AGENCY.
9 THEY MAY HAVE -- WHO KNOWS WHAT -- OTHER THINGS THAT THEY
10 HAD IN THEIR PACKAGE, SO-TO-SPEAK, AND A RECIPROCAL
11 SERVICE. SOME OF THEM HAD COAST. SOME OF THEM HAD R.P.I.
12 NOT AT THAT TIME BECAUSE R.P.I. DIDN'T EXIST IN THE
13 BEGINNING. BUT --

14 Q BUT THE DEVELOPER FINDS THE DIRT, DEVELOPS
15 THE DIRT, PUTS THE MONEY INTO THE DIRT?

16 A ALL THE CAPITAL INVESTMENT. AND THE WAY
17 THEY GET THE CAPITAL INVESTMENT BACK IS THROUGH THAT
18 INITIATION FEE ON THE FRONT END.

19 SO, HYPOTHETICALLY, LET'S SAY THAT IT COSTS
20 YOU A MILLION DOLLARS FOR YOUR RESORT. AND THEN THE
21 RESORTS ARE LIMITED BOTH BY COAST RULES AND BY LAW IN SOME
22 STATES AS TO THE NUMBER OF MEMBERS THEY CAN HAVE ON THE
23 RESORT. AND THOSE LAWS MAY BE CAMPGROUND LAWS. THEY MAY
24 BE -- ALSO ARE AFFECTED BY THE LAWS OF THINGS LIKE FIRE
25 LAWS, OCCUPANCY, THE NUMBER OF PEOPLE YOU CAN HAVE.

26 Q YOU'RE JUMPING AHEAD OF ME JUST A LITTLE

1 BIT. I WANT TO STAY WITH THIS --

2 A I'M SORRY.

3 Q -- THIS SUBJECT TO FOLLOW THROUGH.

4 THE DEVELOPER FINDS THE DIRT, INVESTS THE
5 MILLION?

6 A RIGHT.

7 Q AND THEN GOES OUT AND CREATES THE MEMBERS?

8 A RIGHT. HE HAS GOT TO RECOVER HIS CAPITAL
9 COSTS FOR THAT RESORT, AND HE HAS TO BE ABLE TO ALSO
10 DEVELOP ANY CAPITAL THAT -- HE WOULD BE REQUIRED TO FULFILL
11 PROMISES THAT HE MADE FOR THINGS THAT WOULD BE IMPROVED IN
12 THE FUTURE.

13 SO THAT'S WHAT THAT \$5,000 IS FOR. YOU HAVE
14 TWO ELEMENTS IN THAT \$5,000: THE COST TO MARKET, WHICH IS
15 THAT 50 TO 70 PERCENT. THE REMAINDER OF THAT MONEY COVERS
16 THE COST TO ACQUIRE THE RESORT, THE COST TO DEVELOP IT,
17 IMPROVE, AND ADD ADDITIONAL AMENITIES WHICH MAY HAVE BEEN
18 OFFERED.

19 Q FOR EASE OF MATH, IF THE DEVELOPER SPENDS --
20 THIS IS 3,000 -- LET'S TAKE THAT NUMBER -- OVER AND ABOVE
21 THE MILLION. IT'S 3,000 TO GENERATE THE MEMBER?

22 A OH, YEAH. HE HAS GOT -- IN OTHER WORDS,
23 EXACTLY. THE \$3,000 IS GONE OUT THE DOOR. THAT'S JUST TO
24 GET THE MEMBER.

25 Q AND THEN IF HE GETS THE SPREAD OR THE
26 DIFFERENCE BETWEEN \$3,000 AND \$5,000 IS 2,000?

1 A THE 2,000 WOULD THEN GO TO THE COST OF
2 ACQUISITION OF THE PROPERTY, DEVELOPMENT OF THE PROPERTY.

3 Q SO HE WOULD NEED 500 MEMBERS?

4 A 500 MEMBERS AT \$2,000 APIECE --

5 Q AT 2,000?

6 A -- TO RECOVER THE MILLION DOLLARS. RIGHT.

7 Q TO GET THE MILLION.

8 BUT HE IS -- STILL HAS THE INVESTMENT OF THE
9 \$3,000 IN THIS, INTO THIS 500 --

10 A OH, YES.

11 Q -- MEMBERS?

12 A SURE.

13 Q WHICH WOULD BE A MILLION FIVE?

14 A WAIT A MINUTE HERE. I WANT TO BE CAREFUL ON
15 OUR MATH. OKAY. THE -- HE GOT \$5,000 OF WHICH HE PAID
16 \$3,000 TO GET THE MEMBER.

17 Q CORRECT.

18 A SO THAT'S HIS INVESTMENT IN HIS MEMBERS.

19 Q YES.

20 A THE \$2,000 IS WHAT HE IS GOING TO USE TO PAY
21 FOR THE RESORT AND THE DEVELOPMENT. SO HE NOW HAS THE
22 RESORT -- HYPOTHETICALLY, LET'S SAY, THAT HE SOLD THE 500
23 MEMBERS. HE NOW HAS THE RESORT PAID FOR. AND HE HAS --
24 INSTEAD OF HAVING -- IF -- LET'S SUPPOSE IF HE GOT THE
25 WHOLE 5,000 AND IT DIDN'T COST HIM ANYTHING TO GET THE
26 MEMBERS, HE WOULD HAVE \$3,000 FOR EACH MEMBER IN THE BANK

1 OR \$1.5 MILLION IN THE BANK. HE DOESN'T HAVE IT IN THE
2 BANK, BUT HE DOES IN THE SENSE IF HE HAS IT IN THE BANK
3 BECAUSE HIS MEMBERS ARE NOW HIS INVESTMENT. SO HE HAS THE
4 MEMBERS WHICH ARE THE EQUIVALENT OF THE \$3,000.

5 Q RIGHT. AND THE MEMBERS PAY DUES?

6 A THAT'S CORRECT.

7 Q AND DO THE OTHER THINGS --

8 A AND THE DUES ARE FOR THE ANNUAL MAINTENANCE
9 OF THE PARK, NOT FOR CAPITAL INVESTMENTS AND IMPROVEMENTS.
10 THE DUES WILL NOT COVER CAPITAL INVESTMENTS AND
11 IMPROVEMENTS.

12 Q NOW, THE PLAINTIFFS AS DEVELOPERS, THEY HAVE
13 THIS OPERATION, AND THEN ON THIS SIDE BECOMES THE
14 RELATIONSHIP WITH --

15 A COLLATERAL.

16 Q -- WITH COAST; CORRECT?

17 A COAST, THE RECIPROCAL NETWORK PROVIDER
18 SERVICE. IN THIS CASE IT'S COAST. AND SOME OF THEM HAVE
19 COAST AND R.P.I. AND OTHERS.

20 Q AND COAST HAS A NETWORK OF RESORTS THAT IT
21 CONTRACTS WITH; IS THAT CORRECT?

22 A RIGHT. THEY -- WELL, THEY DON'T HAVE THE
23 RESORTS, BUT THEY HAVE DEVELOPED A NETWORK BY LICENSING OF
24 VARIOUS RESORTS TO SELL THEIR PRODUCT.

25 Q SO THESE ARE LICENSEES, THEN?

26 A YEAH.

1 Q JUST TO GIVE US --

2 A AFFILIATES I THINK IS THE CURRENT TERM OF
3 ART. AFFILIATES.

4 Q SO AT THIS POINT, WHEN THIS CONTRACT OCCURS,
5 COAST HASN'T DONE ANY OF THE DEVELOPING, ANY OF THE
6 GENERATING OF THE MEMBERS?

7 A COAST HAS NO EXPENSE SAVE THE COST --

8 Q AS FAR AS THESE MEMBERS, AS FAR AS THESE
9 MEMBERS ARE CONCERNED, COAST HAS ZERO --

10 A CORRECT.

11 Q -- INTO DEALING WITH THESE MEMBERS?

12 A THAT'S CORRECT.

13 Q NOW, LET'S STAY ON THE COAST SIDE FOR A FEW
14 MINUTES AND TALK ABOUT THAT RELATIONSHIP.

15 YOU HAVE BEEN PERSONALLY AN OWNER; SO
16 YOU'VE BEEN AT THIS POINT --

17 A YES, SIR.

18 Q -- WITH THE RESORTS?

19 AND YOU HAVE HAD CONTRACTS THROUGHOUT THE
20 YEARS, AND WE DIDN'T BORE EVERYBODY BY GOING THROUGH ALL
21 THE RESORTS THAT YOU WERE INVOLVED WITH.

22 BUT YOU HAD PERSONAL KNOWLEDGE OF THE
23 CONTRACTS WITH COAST AND WHAT THEY SAID; CORRECT?

24 A YES, THAT'S CORRECT.

25 Q I'D LIKE TO TALK ABOUT THE CONTRACT WITH
26 COAST GENERALLY, AND THEN I WANT TO LOOK AT SOME

1 DOCUMENTS. I WANT TO LOOK AT THE CONTRACT ITSELF, BECAUSE
2 THE CONTRACTS CHANGE; IS THAT CORRECT?

3 A OH, YES. THEY CHANGED NUMEROUS TIMES.

4 Q BUT FOR OUR PURPOSES, THERE WAS A PRE-1990
5 CONTRACT, AND THEN THERE WAS A POST-1990 CONTRACT.

6 NOW, THE CONTRACT ALSO, TO YOUR PERSONAL
7 KNOWLEDGE --

8 MR. RIVIN: YOUR HONOR, I DIDN'T HEAR AN ANSWER TO
9 THAT QUESTION. WAS THERE AN ANSWER?

10 THE WITNESS: I DIDN'T KNOW THAT WAS A QUESTION. I
11 THOUGHT IT WAS STATEMENT.

12 MR. SHAW: THANK YOU, COUNSEL. I WILL CLEAR UP THE
13 RECORD.

14 Q MR. MITCHELL, I WANT TO TALK TO YOU TODAY,
15 AND I'M GOING TO BE SHOWING YOU SOME EXHIBITS IN A FEW
16 MINUTES, THAT SHOW THE PRE-1990 CONTRACT. BECAUSE AT SOME
17 POINT IN TIME TO YOUR KNOWLEDGE THE LANGUAGE -- CERTAIN
18 LANGUAGE IN THE CONTRACTS CHANGE.

19 A YES.

20 Q FROM IN OR ABOUT PRE-1990 TO POST-1990;
21 CORRECT?

22 A YES.

23 Q AND YOU HAVE PERSONAL KNOWLEDGE OF THAT?

24 A YES.

25 Q ALL RIGHT. WE'RE GOING TO BE TALKING ABOUT
26 SOME OF THAT.

1 BUT IN BOTH THE CONTRACTS, THEY MAKE
2 REFERENCE TO SOME DOCUMENTS THAT ARE OUTSIDE THE CONTRACTS;
3 IS THAT CORRECT?

4 A YES.

5 Q WHAT DO THEY MAKE -- WHAT DO THESE CONTRACTS
6 MAKE REFERENCE TO?

7 A WELL, THERE IS A MANUAL WHICH ARTICULATES --
8 I THINK IT'S CALLED THE LICENSEE'S MANUAL.

9 Q SO IT'S A COAST MANUAL?

10 A YES. THAT SETS FORTH THE MORE DETAIL WITH
11 REGARD TO THE BEHAVIOR BETWEEN THE PARTIES, WHAT COAST CAN
12 DO, WHAT THEY CAN'T DO, WHAT THE RESORT DEVELOPER CAN DO,
13 WHAT HE CAN'T DO, AND THAT MANUAL MAY CHANGE FROM TIME TO
14 TIME.

15 THERE ALSO ARE FROM TIME TO TIME MEMORANDUMS
16 AND OTHER EDICTS THAT ARE SET FORTH BY COAST THAT THEY
17 INDICATE GIVE THEM THE RIGHT TO MODIFY OR CHANGE THAT
18 CONTRACT JUST BECAUSE THEY SENT IT OUT.

19 Q AND THERE'S ALSO ONE OTHER DOCUMENT, ISN'T
20 THERE, A COAST TO COAST APPLICATION?

21 A WELL, THERE'S AN APPLICATION WHEN ONE
22 BECOMES A COAST LICENSEE. AND THERE'S AN APPLICATION THAT
23 IS FILLED OUT WHEN YOU SELL COAST SERVICES TO YOUR
24 MEMBERS. AND THEY BECOME PART OF THE COAST RECIPROCAL
25 PROGRAM. SO BOTH LICENSEE FILLS OUT A FORM, AND THE
26 INDIVIDUAL MEMBER FILLS OUT A FORM.

1 Q NOW, YESTERDAY WE TALKED ABOUT THE CONTRACT
2 IN GENERAL TERMS, AND I'D LIKE TO REFER COUNSEL TO EXHIBIT
3 1567.

4 MR. RIVIN: COULD YOU GIVE US A MOMENT? DO WE HAVE
5 A COPY FOR THE COURT AND THE WITNESS?

6 MR. SHAW: YOUR HONOR, MAY I HAVE MR. DURAN OF
7 MR. MOSHENKO'S OFFICE APPROACH THE WITNESS TO SEE IF THE
8 BOOKS ARE -- I THINK THE BOOKS ARE BACK HERE. THANK YOU.

9 MR. MOSHENKO: YOUR HONOR, THIS WILL BE THE FIRST
10 TIME WE USE THIS PROCESS. MAY I PARTICIPATE SO WE CAN ALL
11 BE FAMILIAR WITH EXACTLY HOW IT'S WORKING?

12 MR. SHAW: YOUR HONOR, I'LL GENERALLY TRY TO SPEED
13 THIS UP. SINCE THIS IS THE FIRST GO AT IT, I WANT TO MAKE
14 SURE I FOLLOW THE PROPER PROTOCOL WITH MR. RIVIN AND GIVE
15 HIM ADVANCE NOTICE OF WHAT WE'RE DEALING WITH AND FOLLOW
16 THROUGH WITH IT.

17 Q MR. MITCHELL, TAKE A MINUTE AND LOOK AT
18 EXHIBIT 1567 BECAUSE I WANT TO ASK YOU SOME QUESTIONS ABOUT
19 IT.

20 MR. RIVIN: YOUR HONOR, MAY WE APPROACH?

21 THE COURT: YOU MAY.

22 (DISCUSSION OFF THE RECORD.)

23 BY MR. SHAW: Q CAN YOU IDENTIFY THAT,
24 MR. MITCHELL?

25 A YES.

26 MR. SHAW: YOUR HONOR, WE OFFER TO STIPULATE

1 EXHIBIT 1567 INTO EVIDENCE.

2 MR. RIVIN: NO OBJECTION.

3 THE COURT: IT WILL BE SO RECEIVED.

4 (WHEREUPON, EXHIBIT NO. 1567, CONTRACT, WAS
5 RECEIVED IN EVIDENCE.)

6 MR. SHAW: MR. O'SHEA CAN, YOU BRING THIS OUT FOR
7 US?

8 BY MR. SHAW: Q MR. MITCHELL, I INVITE YOUR
9 ATTENTION TO PAGE 3, PARAGRAPH ROMAN NUMERAL III-B.

10 AND YOU TESTIFIED YESTERDAY AND AGAIN TODAY
11 THAT THE CONTRACT PROVIDES THAT THE OWNER WILL ACCEPT
12 GUESTS AT THE RESORTS IN ACCORDANCE WITH THE POLICIES AND
13 PROCEDURES SET FORTH IN THE MANUAL; THAT COAST RESERVES THE
14 RIGHT TO MODIFY, FROM TIME TO TIME, THE MATTERS SET FORTH
15 IN THE MANUAL IN SUCH MANNER AS MAY BE REASONABLY NECESSARY
16 TO THE WELFARE OF MEMBERS OF THE PROGRAM AND GUESTS TO THE
17 OPERATION OF COAST RECIPROCAL USE AND THE PROTECTION OF
18 COAST'S BUSINESS, GOODWILL, AND REPUTATION.

19 IS THE MANUAL THE COAST MANUAL THAT YOU WERE
20 REFERRING TO?

21 A YES, SIR.

22 Q AND YOU ALSO TESTIFIED YESTERDAY ABOUT
23 CERTAIN CUSTOMS AND PRACTICES IN THE INDUSTRY; THAT YOU HAD
24 DISCUSSIONS WITH COAST TO COAST OVER THE YEARS AS YOU OWNED
25 AND OPERATED RESORTS?

26 A YES.

1 Q I'D LIKE YOU TO TURN TO PAGE 4, PARAGRAPH
2 IV.

3 AND AGAIN -- AND I WON'T -- THE DOCUMENT
4 WILL SPEAK FOR ITSELF. BUT, AGAIN, WE'RE TALKING ABOUT
5 COAST USING ITS EFFORTS FOR A MANUAL AS AMENDED FROM TIME
6 TO TIME.

7 WHEN YOU HAD A CONTRACT, AND I'M NOT JUST
8 REFERRING TO THIS PARTICULAR EXHIBIT 1567. BUT WHEN YOU
9 HAD A CONTRACT THAT REFERRED TO THE MANUAL, DID YOU AS THE
10 OWNER UNDERSTAND WHAT MANUAL WAS BEING REFERRED TO?

11 A THE COAST MANUAL?

12 Q THE COAST MANUAL.

13 A YES.

14 Q YOU KNEW WHAT IT WAS?

15 A OH, YES, SURE.

16 Q YOU NEVER HAD ANY MISUNDERSTANDING THAT THAT
17 WAS REFERENCE TO THEIR COAST MANUAL?

18 A NO. AND OTHER MATERIALS THEY WOULD SEND,
19 YES.

20 Q AND I BELIEVE YOU TESTIFIED THAT THERE
21 WERE -- I WROTE IT UP ON THE BOARD. THERE WERE OTHER MEMOS
22 AND OTHER DOCUMENTATION?

23 A CORRECT.

24 Q I'D LIKE YOU TO NOW TO TURN TO PAGE 5, VI.

25 AND AT THE TOP, ON PAGE 5 OF EXHIBIT 1567, THERE'S A
26 TERMINATION PROVISION. AND WHAT WAS YOUR UNDERSTANDING

1 WHEN YOU HAD A CONTRACT WITH COAST OF THIS 90 DAYS PRIOR
2 WRITTEN NOTICE TERMINATION PROVISION?

3 MR. RIVIN: YOUR HONOR --

4 MR. SHAW: I'LL WITHDRAW THE QUESTION, COUNSEL.
5 I'LL WITHDRAW.

6 Q ALL RIGHT. I'D LIKE TO NOW GO TO THE MANUAL
7 ITSELF.

8 COULD YOU TURN TO 1596, WHICH I BELIEVE IS
9 IN YOUR BOOK -- IT'S ACTUALLY 1544.

10 MR. SHAW: THANK YOU, MR. DURAN.

11 COUNSEL, 1544.

12 MR. RIVIN: 1544?

13 MR. SHAW: YES, IT IS, YOUR HONOR. LET ME JUST
14 MAKE SURE I'M NOT MISSPEAKING. I THOUGHT I PICKED IT UP.
15 IT IS VOLUME I, YOUR HONOR. THANK YOU.

16 Q MR. MITCHELL, CAN YOU IDENTIFY THIS
17 DOCUMENT?

18 A YES.

19 Q WHAT IS THIS?

20 A THIS IS A LICENSE AGREEMENT MANUAL,
21 LICENSEE'S MANUAL, WHICH IS PART OF THE CONTRACT. WHEN YOU
22 AGREE TO BE A LICENSEE OF COAST TO COAST, YOU AGREE TO THE
23 CONDITIONS OF THE MANUAL, AS I PREVIOUSLY INDICATED. THIS
24 IS ONE OF THE MANUALS. IT LOOKS LIKE IT'S SOMETHING
25 PROBABLY AROUND THE '90'S.

26 Q I BELIEVE ON THE FRONT PAGE IT SAYS 1996.

1 I'D JUST INVITE YOUR ATTENTION.

2 A YES.

3 Q I GOT YOU ALL THE WAY TO PAGE 18, BUT I
4 THINK ON THE FRONT --

5 A JUST FROM READING IT, MY RECOLLECTION, I
6 KNEW IT WAS IN THE '90'S. THE ONES PREVIOUS TO THAT WERE
7 SOMEWHAT DIFFERENT.

8 Q I'D LIKE TO INVITE YOUR ATTENTION TO PAGE 18
9 AND OFFER THIS EXHIBIT, WHICH IS A DEFENSE EXHIBIT, INTO
10 EVIDENCE.

11 MR. RIVIN: YOUR HONOR, THIS IS --

12 MR. SHAW: I'M SORRY. I MISSPOKE. IT IS NOT A
13 DEFENSE EXHIBIT. IT'S A PLAINTIFFS' EXHIBIT.

14 MR. RIVIN: ALTHOUGH, I DIDN'T EVEN PICK THAT UP.

15 THE CONCERN I HAVE ABOUT THAT, YOUR HONOR,
16 IS THAT THIS IS NOT A COMPLETE COPY OF THE MANUAL. THERE
17 ARE PAGES MISSING. WE HAVE -- THE DEFENDANTS HAVE OFFERED
18 ANOTHER COPY OF THE LICENSEE MANUAL IN OUR EXHIBIT LIST
19 WHICH I BELIEVE IS A COMPLETE COPY. WE HAVE NO PROBLEM
20 WITH A COMPLETE COPY COMING IN, BUT THIS IS NOT.

21 MR. SHAW: WE WILL OFFER THE COMPLETE COPY INTO
22 EVIDENCE, YOUR HONOR. WHATEVER THE DEFENDANTS' EXHIBIT IS,
23 WE'LL JUST SUBSTITUTE THAT.

24 MR. SHERMAN: THIS BEGINS ON PAGE 4.

25 THE COURT: WHAT'S THE NUMBER, EXHIBIT NUMBER?

26 MR. RIVIN: WE'RE NOT YET AT ONE WITH THE EXHIBITS.

1 THE COURT: WHEN YOU COME UP WITH IT, LET ME KNOW.

2 MR. SHAW: YOUR HONOR, MAY WE SHOW A PART ON THE
3 SCREEN?

4 THE COURT: ALL RIGHT.

5 BY MR. SHAW: Q MR. MITCHELL, PAGE 18, PARAGRAPH 7
6 ON THE MEMBERSHIP TRANSFERS.

7 MR. O'SHEA, COULD YOU GIVE US A LARGE
8 VERSION OF PARAGRAPH 7.

9 MR. MITCHELL, YESTERDAY YOU WERE TALKING
10 ABOUT THE TERM "HOME RESORT," AND I WANT TO FOCUS ON THAT
11 FOR A MINUTE.

12 IN MY CRUDE, OLD-FASHIONED CHALKBOARD, THE
13 HOME RESORT WOULD BE -- FOR EXAMPLE, ON MY CHALKBOARD,
14 WOULD BE THE PLAINTIFFS'/DEVELOPERS' RESORT?

15 A WELL, IT WOULD BE IF THE PLAINTIFF HAD ONLY
16 ONE RESORT AND THE MEMBER ONLY HAD ONE MEMBERSHIP. THE
17 HOME RESORT REFERS I THINK MORE ACCURATELY HERE TO COAST'S
18 POLICIES BEING THAT WHEREVER THEY PURCHASED THE COAST
19 PROGRAM FIRST IS THE HOME RESORT.

20 Q SO IF -- FOR EXAMPLE, IN WHAT YOU'VE JUST
21 SAID, IF THIS WAS THE FIRST RESORT THAT A MEMBER
22 PURCHASED --

23 A WITH THE SERVICES.

24 Q -- WITH ONE OF THE PLAINTIFFS FROM THE
25 SERVICES THAT WAS GENERATED BY THE DEVELOPER, THEN THIS
26 WOULD BE THE HOME RESORT --

1 A IF THAT WAS THE FIRST RESORT THAT THE
2 CONSUMER PURCHASED A MEMBERSHIP FROM THE RESORT OWNER AND
3 RECEIVED ALSO WITH THAT MEMBERSHIP THE COAST SERVICES,
4 COAST WOULD IDENTIFY THAT AS THE HOME RESORT.

5 MR. SHAW: OKAY. NOW, MR. O'SHEA, YOU CAN TAKE
6 THAT DOWN JUST FOR A MOMENT, BUT KEEP IT THERE. I'M GOING
7 TO COME BACK TO IT IN A SECOND.

8 Q BUT, I WANT TO TALK ABOUT THE CONCEPT,
9 MR. MITCHELL, OF SOME OF THE OTHER ITEMS THAT YOU REFERRED
10 TO YESTERDAY.

11 YOU TALKED ABOUT A PRIMARY PRODUCT RULE --

12 A YES.

13 Q -- IN THE INDUSTRY.

14 WHAT DOES THE PRIMARY PRODUCT RULE HAVE TO
15 DO WITH THE COAST CONTRACT WITH THE RESORT?

16 A THE PRIMARY PRODUCT RULE OF COAST IS THAT
17 THE RESORT DEVELOPER, THE ONES SELLING THE MEMBERSHIPS,
18 MUST FIRST SELL HIS PROPERTY, OR HIS PROGRAM, HIS RESORT,
19 AS OPPOSED TO SELLING THE COAST RECIPROCAL PROGRAM. AND --

20 Q SO THIS MEMBERSHIP SALE COMES FIRST?

21 A THAT'S CORRECT. ALTHOUGH THEY -- YOU KNOW,
22 THE ACTUAL SIGNING OF THE DOCUMENTS MAY BE SIMULTANEOUS,
23 THE PRIMARY PRODUCT RULE REQUIRES THE RESORT OPERATOR TO
24 SELL AND MARKET. IT'S IMPORTANT BECAUSE YOU CAN'T MARKET
25 COAST TO COAST. IN THEORY HE HAS TO SELL AND MARKET HIS
26 PRIMARY PRODUCT FIRST, THE PRIMARY PRODUCT BEING HIS

1 RESORT. EVERYTHING AFTER HIS RESORT IS SECONDARY OR
2 COLLATERAL.

3 AND THE PRIMARY REASON FOR THE PRIMARY
4 PRODUCT RULE -- PARDON MY USE OF THAT DOUBLE -- IS BECAUSE
5 THERE'S A RESORT. NOW, HERE IS A RESORT WHERE SOMEBODY
6 SPENT A LOT OF MONEY TO BUY PROPERTY, BUILD A RESORT, AND
7 SO ON.

8 THERE'S TWO KINDS OF OPERATORS IN THE COAST
9 SYSTEM. THERE'S RESORTS, AND THEN THERE'S THE GUYS THAT
10 SELL THE COAST PROGRAM. AND THEY DON'T HAVE A LOT OF MONEY
11 TIED UP IN RESORTS.

12 Q THAT'S OVER HERE. THE LICENSEES?

13 A WELL, THERE'S TWO KINDS OF LICENSEES; THE
14 ONE THAT'S GOT A RESORT, GOT A LOT OF CAPITAL INVESTMENT IN
15 IT, AND HE SELLS THIS RESORT MEMBERSHIP FOR ABOUT \$5,000.

16 THE OTHER GUY DOESN'T HAVE A BIG CAPITAL
17 INVESTMENT, AND HE EITHER GIVES AWAY OR SELLS THE COAST
18 MEMBERSHIP FOR SOMETHING LIKE \$500. HE DOESN'T HAVE A
19 CAPITAL EXPENSE TO RECOVER. HE DOESN'T HAVE ANY BIG BUCKS.
20 SO WHAT HE IS TRYING TO DO IS JUST DEVELOP A SOURCE OF
21 REVENUE FROM DUES, KNOWING THAT THE PERSON BUYING THIS
22 COAST MEMBER PROGRAM IS NOT GOING TO IMPACT UPON HIS
23 RESORT, BECAUSE THEY'RE GOING TO BE TRAVELING AROUND THE
24 COUNTRY.

25 Q OKAY. SO THE PLAINTIFFS WOULD BE LICENSEES,
26 NUMBER 1 UNDER YOURS. THEY SPENT THE DOLLARS IN THE

1 RESORT, AND THEY SPENT THE MONEY TO GENERATE THE
2 MEMBERSHIP. AND THEN THERE ARE GIVE-AWAY LICENSEES THAT
3 DON'T SPEND THE MONEY ON RESORTS BUT ARE JUST IN THE SYSTEM
4 TO COLLECT THE DUES?

5 A THAT'S PRETTY MUCH CORRECT. I COULD SPEND A
6 LOT OF TIME ON THE SUBTLETIES ON IT, BUT THAT'S THE SUM AND
7 SUBSTANCE OF IT, YES.

8 Q LET ME TOUCH ON ONE OTHER ITEM.
9 WHAT IS THE COST UNDER THIS CONTRACT BETWEEN
10 THE RESORT AND COAST? WHAT IS THE COST TO THE MEMBER FOR
11 THE COAST MEMBERSHIP?

12 WE TALKED ABOUT \$5,000 MEMBERSHIPS FOR THE
13 RESORT.

14 A WELL, CURRENTLY I THINK IT'S \$69. IT
15 STARTED OUT ABOUT \$16 BACK IN THE '70'S, AND I THINK IT'S
16 \$69 APPROXIMATELY NOW FOR THE COAST BASIC PROGRAM. THE
17 COAST DELUXE OR UPGRADE PROGRAM IS MORE EXPENSIVE.

18 Q SO \$5,000 FOR THE MEMBER TO BE A MEMBER OF
19 THE RESORT --

20 A RIGHT.

21 Q -- WHICH IS THE PRIMARY PRODUCT?

22 AND THEN \$69 FOR THE MEMBER TO HAVE --

23 A RIGHT. AND GENERALLY WHAT HAPPENS WHEN THEY
24 SELL THAT, THE RESORT DEVELOPER WILL PACKAGE THAT IN AND
25 SAY, "WE'RE GOING TO GIVE YOU" -- THEY'LL PAY THE FEE, AND
26 "WE'RE GOING TO GIVE YOU THIS COAST PROGRAM. TRY IT OUT

1 FOR A YEAR. IF YOU LIKE IT, THEN YOU HAVE TO RENEW IT AND
2 PAY THE DUES IT -- THEREAFTER. WE WON'T DO THAT."

3 Q NOW, YOU TALKED ABOUT PRIMARY PRODUCT.
4 YESTERDAY YOU ALSO TALKED ABOUT A 125-MILE OR 250-MILE -- I
5 BELIEVE YOU SAID YESTERDAY -- RULE. WHAT IS THAT IN
6 CONTEXT TO THE RESORT AND THE COAST CONTRACT?

7 A THESE MILEAGE RULES HAVE TO DO WITH THE
8 RESTRICTIONS ON AN INDIVIDUAL RESORT'S RIGHT TO MARKET, BY
9 STATING THAT THE -- THIS IS AN OUTGROWTH, AND IT FLOWS FROM
10 THE FACT THAT THERE ARE TWO DIFFERENT KIND OF OPERATORS IN
11 THE COAST PROGRAM. THE RESORTS --

12 Q AND THE GIVE-AWAY?

13 A THE GIVE-AWAY GUYS.

14 NOW, THE GIVE-AWAY GUYS, WHICH THERE MAY BE
15 A BETTER TERM FOR. BUT SINCE YOU USED IT, THE GIVE-AWAY
16 GUYS WOULD SELL MEMBERSHIPS ALL OVER THE COUNTRY. THEY RUN
17 ADS IN NEWSPAPERS. THEY RUN PHONY ADS SAYING THEY WERE A
18 MEMBER THAT WANTED TO SELL HIS MEMBERSHIP AND SO ON. AND
19 SO THE PEOPLE -- IF I HAVE A RESORT, LET'S SAY, IN NORTH
20 CAROLINA. AND I'M ADVERTISING IN MAINE, I CAN PRETTY MUCH
21 BET I'M NOT GOING TO HAVE THESE PEOPLE VISITING ME ON THE
22 WEEKEND USING MY ELECTRICITY AND SUCH. AND THE REASON THEY
23 PURCHASED THE PROGRAM, THEY DIDN'T CARE ABOUT MY RESORT.
24 THEY WANTED TO BE ABLE TO GO TRAVEL AROUND FOR A DOLLAR A
25 NIGHT IN THE COAST PROGRAM. SO THAT THAT'S THE DIFFERENCE.

26 NOW, WHEN RESORT OPERATORS WOULD SPEND A LOT

1 OF MONEY TO DEVELOP RESORTS, COMPLAINED ABOUT THIS -- AND
2 SOME OF THESE WERE MAJOR CORPORATIONS LIKE RANK CORPORATION
3 THAT OWNS UNIVERSAL STUDIOS AND OUTDOOR WORLD.

4 Q THEY COMPLAINED ABOUT THE GIVE-AWAY POLICY?

5 A YES. THEN THE 125-MILE RULE, THE 250-MILE
6 RULE, THE 500-MILE RULE, VARIOUS RULES WHICH CAME IN THE
7 FORM OF MEMOS, WHICH ACCORDING TO THE COAST LICENSE
8 AGREEMENT BECAME PART OF THE AGREEMENT, WERE SENT TO THE
9 OPERATORS BY COAST SAYING, "WELL, YOU CAN'T MARKET A MEMBER
10 THAT'S NOT WITHIN 125 MILES OF YOUR RESORT," AND/OR -- AND
11 THERE WERE VARIOUS INCARNATIONS OF THESE RULES.

12 ONE TIME RULE ALSO SAID FOR A WHILE THAT
13 "AND/OR HE CAN'T USE ANY PARKS WITHIN 125 MILES." IN OTHER
14 WORDS, IF I BUY PARK "X," I CAN'T USE ANY OF THE PARKS
15 WITHIN 125 MILES, ANY OF THE OTHER COAST RECIPROCALLS WITHIN
16 125 MILES.

17 Q SO IT WAS A TERRITORIAL KIND OF A CONCEPT?

18 A RIGHT.

19 Q TO PROTECT THE RESORTS WHO HAD SIGNIFICANT
20 CAPITAL INVESTED?

21 A YEAH. WELL, I DON'T KNOW IF I'D GO SO FAR
22 AS TO USE THE TERM "PROTECT." THAT WASN'T THE REALITY OF
23 IT. THE RULE CAME INTO PLAY AND EVOLVED OVER THE YEARS
24 TO -- "MANAGE" MIGHT BE A BETTER WORD -- MANAGE THE ANGRY
25 GUYS OVER HERE WHO SAID YOU SHOULDN'T HAVE THESE GUYS OVER
26 HERE SELLING THESE CHEAP PROGRAMS.

1 WELL, COAST DIDN'T WANT TO GET RID OF THE
2 GUYS SELLING THE CHEAP PROGRAMS BECAUSE THEY DON'T CARE HOW
3 MUCH THE RESORT DEVELOPERS GET. THEY ONLY CARE ABOUT THEIR
4 \$69. IT DOESN'T MAKE ANY DIFFERENCE TO THEM. ALTHOUGH IT
5 VIOLATED THEIR RULES, THEY ALLOWED IT TO OCCUR, UNTIL SUCH
6 TIME AS THE GUY OVER HERE, WHO HAD A RESORT, SCREAMED SO
7 LOUD THAT HE SAID HE WAS GOING TO LEAVE, AND/OR HE WAS
8 GOING TO TAKE A WHOLE BUNCH OF OTHER RESORT DEVELOPERS AND
9 LEAVE. THEN A RULE WOULD COME IN TO TRY TO MITIGATE THAT
10 OR MANAGE IT.

11 MR. RIVIN: YOUR HONOR, MAY WE APPROACH THE BENCH
12 FOR A BRIEF CONFERENCE?

13 THE COURT: YOU MAY.

14 (DISCUSSION OFF THE RECORD.)

15 MR. RIVIN: YOUR HONOR, I'D LIKE TO MOVE TO STRIKE
16 THE WITNESS'S LAST ANSWER ON THE BASIS OF LACK OF
17 FOUNDATION.

18 THE COURT: MOTION TO STRIKE IS GRANTED.

19 MR. RIVIN: THANK YOU.

20 BY MR. SHAW: Q MR. MITCHELL, LET'S STAY WITH THE
21 SUBJECT OF WHAT YOU TESTIFIED ABOUT YESTERDAY, AND THAT IS
22 NOT ONLY IS THERE A WRITTEN CONTRACT, BUT THERE'S THE
23 MANUAL, THERE'S THE MEMOS, AND THERE'S ALSO A CUSTOM AND
24 PRACTICE IN THE INDUSTRY; IS THAT CORRECT?

25 A YES.

26 Q NOW, ONE OF THE CUSTOMS AND PRACTICES YOU

1 TALKED ABOUT YESTERDAY WAS THE UNDERSTANDING OF THE
2 CONFIDENTIALITY OF THIS MEMBER RESORT MEMBERSHIP -- THIS
3 CONTRACTUAL ARRANGEMENT. YOU TESTIFIED ABOUT THAT
4 YESTERDAY?

5 A YES.

6 Q NOW, ON THAT SUBJECT, THE CONFIDENTIALITY OF
7 THE MEMBERSHIP BETWEEN THE RESORT AND THE MEMBER, DID YOU
8 EVER HAVE ANY CONVERSATIONS AT ANY TIME WITH ANYONE FROM
9 COAST ABOUT THE CUSTOM AND PRACTICE IN THE INDUSTRY THAT
10 THIS MEMBERSHIP WAS CONFIDENTIAL?

11 A YES.

12 Q ON HOW MANY OCCASIONS?

13 A NUMEROUS.

14 Q WHEN DID YOU FIRST HAVE THESE NUMEROUS
15 CONVERSATIONS?

16 A ANY DIALOGUE WITH REGARD TO THAT PROBABLY
17 WOULD HAVE FIRST OCCURRED AROUND 19 -- OH, I'M THINKING
18 '84, IN THAT RANGE.

19 Q OKAY. NOW, WHO WAS THE PRESIDENT OF COAST
20 TO COAST IN 1984?

21 A OH, BOY. ACE OR DENY BROWN. I DON'T THINK
22 THAT PAT BUTLER CAME IN UNTIL ABOUT '87 OR '88 WHEN THE
23 AFFINITY -- NO. AS A MATTER OF FACT, IT WAS PAT BUTLER
24 BECAUSE PAT CAME IN WITH AMERICAN BAKING.

25 Q SO YOUR DISCUSSION REGARDING THE FACT THAT
26 THE MEMBERSHIP BETWEEN THE RESORT AND THE MEMBER WAS

1 CONFIDENTIAL WAS WITH MR. BUTLER?

2 A I DON'T RECALL HAVING THAT CONVERSATION WITH
3 MR. BUTLER, NO.

4 Q WHO DO YOU RECALL HAVING THE FIRST
5 CONVERSATION WITH ABOUT THAT SUBJECT?

6 A I THINK AT THAT TIME THEIR REGIONAL
7 REPRESENTATIVE, STEVE VINCENT, MAY HAVE BEEN ONE, OR
8 ANOTHER REGIONAL REPRESENTATIVE WHO HAD PURVIEW OVER THE
9 WEST COAST AREAS, BECAUSE THOSE CONVERSATIONS WOULD HAVE
10 OCCURRED AS A RESULT OF MY OWNERSHIP AND MANAGEMENT OF
11 PROPERTIES. SO THAT IS HOW IT WOULD HAVE OCCURRED.

12 Q SO IT WAS SOMEONE WHO WAS A --

13 A A REGIONAL MANAGER OF COAST TO COAST.

14 Q AND WHAT DID YOU SAY TO MR. VINCENT ABOUT
15 THAT SUBJECT?

16 A JUST THAT, YOU KNOW, THERE WAS NO QUESTION
17 ABOUT THESE ARE OUR MEMBERS. WE DEVELOP THEM. WE OWN
18 THEM. THE MAILING LISTS ARE OURS. THE SUBJECT CAME UP AS
19 A RESULT OF SITUATIONS WOULD OCCUR WHERE SALESMEN WOULD
20 PERHAPS GET PARTS OF YOUR MEMBER LIST AND PROSPECT AND GO
21 TO A DIFFERENT RESORT AND TRY TO RAID YOUR MEMBERS. AND SO
22 THIS WAS CONSTANTLY AN ISSUE.

23 ONE OF THE TWO PRIMARY UNDERPINNING ISSUES
24 OF THE RELATIONSHIP WAS THAT THE RESORTS OWNED THE
25 MEMBERS. AND THE MEMBER LISTS WERE CONFIDENTIAL. AND
26 COAST REINFORCED THAT. AND FROM TIME TO TIME THEY EVEN

1 SENT OUT MEMORANDUMS INDICATING THAT IT WAS CONFIDENTIAL.

2 MR. RIVIN: OBJECTION, YOUR HONOR.

3 THE WITNESS: AND THEY WOULD CAUTION US ABOUT
4 KEEPING THEM --

5 THE COURT: EXCUSE ME. THERE'S AN OBJECTION
6 PENDING.

7 MR. RIVIN: I WANTED THE WITNESS TO FINISH, BUT I
8 MOVE TO STRIKE THE ANSWER ON THE BASIS IT WAS NOT
9 RESPONSIVE TO THE QUESTION. IT WENT WAY BEYOND, WAY BEYOND
10 THE QUESTION.

11 THE COURT: MOTION GRANTED.

12 BY MR. SHAW: Q LET'S TAKE IT AT SMALL BITES,
13 MR. MITCHELL.

14 A OKAY.

15 Q ONE STEP AT A TIME.

16 YOU TESTIFIED THAT WHEN YOU WERE INVOLVED AS
17 AN OWNER AND CONSULTING WITH RESORTS, THAT YOU HAD
18 CONVERSATION WITH REGIONAL MANAGERS OF COAST TO COAST, THIS
19 MR. VINCENT, ABOUT THE SUBJECT THAT THE RESORT MEMBERSHIPS
20 WERE CONFIDENTIAL AS IT RELATED TO COAST TO COAST; CORRECT?

21 A CORRECT.

22 Q AND YOU HAD THIS CONVERSATION WITH
23 MR. VINCENT ON MORE THAN ONE OCCASION?

24 A CORRECT.

25 Q NOW, AND WHAT WAS MR. VINCENT'S RESPONSE?

26 A MR. VINCENT'S RESPONSE WAS, IS THAT

1 OBVIOUS -- IN OTHER WORDS, IT WAS PROACTIVE. IN OTHER
2 WORDS, YOU GUYS BETTER NOT LET YOUR SALESMEN HAVE ANY OF
3 THESE LISTS. BECAUSE IF THEY LEAVE, THEY'RE GOING TO GO
4 OUT AND TRY TO RAID YOUR MEMBERS, AND YOU BETTER KEEP THESE
5 THINGS CONFIDENTIAL. AND WE KEEP THEM CONFIDENTIAL. AND
6 THESE ARE YOUR MEMBERS, AND THIS IS A PROTECTED AND
7 VALUABLE ASSET. AND OFTEN CAUTIONING DEVELOPERS TO NOT LET
8 THESE LISTS BE BANDIED ABOUT.

9 MR. RIVIN: ONCE AGAIN, YOUR HONOR, THE WITNESS IS
10 GOING BEYOND THE QUESTION AND TALKING ABOUT SUPPOSEDLY WHAT
11 HAPPENS WITH OTHER DEVELOPERS. THE QUESTION ASKED HIM
12 ABOUT CONVERSATIONS THAT HE HAD. OBJECT. MOVE TO STRIKE.

13 THE COURT: SUSTAINED.

14 MR. SHAW: I JUST WANT TO BE HEARD ON THAT.

15 MY UNDERSTANDING, IT WAS THE CONVERSATION
16 THAT HE HAD WITH MR. VINCENT, AND HE DISCUSSED THESE
17 VARIOUS SUBJECTS. HE DID INITIALLY TALK ABOUT THAT, BUT
18 THEN HE WENT ON TALKING ABOUT CONVERSATIONS SUPPOSEDLY THAT
19 HAPPENED WITH OTHER DEVELOPERS.

20 AND I DON'T DISAGREE WITH COUNSEL. BUT I
21 WOULD AT LEAST LIKE THE MOTION TO STRIKE BE FOCUSED OR
22 DELINEATED AS TO THAT LATTER PORTION AND NOT THE FIRST
23 PORTION.

24 MR. RIVIN: THAT'S THE WAY I INTENDED IT.

25 THE COURT: ERASE THAT FROM YOUR MEMORY.

26 BY MR. SHAW: Q ALL RIGHT. NOW, THAT WAS WITH

1 MR. VINCENT. LET ME MOVE FORWARD IN TIME FROM THE '80'S.

2 WHEN WAS THE NEXT CONVERSATION YOU HAD WITH
3 ANYONE AT COAST REGARDING THE FACT THAT THE MEMBERSHIP
4 LISTS WERE CONFIDENTIAL?

5 A I DON'T RECALL A SPECIFIC DATE. OVER A
6 PERIOD OF 13 TO 14 YEARS I HAD NUMEROUS CONVERSATIONS.

7 Q YOU DON'T RECALL THE DATES.

8 THEN TELL ME WHO YOU HAD THE CONVERSATIONS
9 WITH.

10 A I'VE HAD CONVERSATIONS WITH REGIONAL
11 REPRESENTATIVES, MR. JAM -- I FORGET HIS NAME. REGIONAL
12 REPRESENTATIVES. I'VE HAD CONVERSATIONS WITH MR. EVERETT,
13 THE CURRENT PRESIDENT OF COAST TO COAST. I HAD
14 CONVERSATIONS WITH MR. BUTLER. I'VE HAD CONVERSATIONS WITH
15 OTHER LICENSEES AT ROUND-TABLE MEETINGS SPONSORED BY COAST
16 TO COAST, AND AT CONVENTIONS SPONSORED BY COAST TO COAST.

17 Q LET'S TAKE THE CONVERSATIONS WITH MR. BUTLER
18 ABOUT THE SUBJECT OF THE RESORT MEMBERS BEING
19 CONFIDENTIAL. WHAT DID YOU SAY TO MR. BUTLER?

20 A SIR, I APOLOGIZE. I CAN'T RECALL SPECIFIC
21 LANGUAGE. THIS WAS A LONG TIME AGO.

22 Q CAN YOU RECALL THE GENERAL GIST AND THE
23 SUBSTANCE OF THE CONVERSATIONS?

24 A YES. THE ISSUE OF CONFIDENTIALITY OF MEMBER
25 LISTS ALWAYS AROSE WHEN --

26 Q NO. I'M SORRY. I WANT YOU TO STAY WITH --

1 I WANT YOU TO STAY WITH WHAT YOU SAID, THE GIST AND
2 SUBSTANCE OF WHAT YOU SAID. I DON'T NEED A PREAMBLE. I
3 JUST NEED WHAT THE GIST AND SUBSTANCE OF WHAT YOU SAID.

4 A I'M NOT PREPARED TO SPEAK TO THAT BECAUSE I
5 DON'T REMEMBER, AND I DON'T WANT TO SPECULATE. AND I DON'T
6 WANT TO FABRICATE. I JUST DON'T REMEMBER.

7 Q FAIR ENOUGH.

8 THE SUBJECT, THOUGH, AS YOUR UNDERSTANDING
9 IS, IT IS THE CUSTOM AND PRACTICE IN THE INDUSTRY AS LONG
10 AS YOU'VE BEEN IN THE INDUSTRY WITH YOUR BACKGROUND AND
11 EXPERIENCE THAT THE MEMBERSHIP LISTS OF THE RESORTS WERE
12 CONFIDENTIAL?

13 A YES.

14 Q NOW, WHAT DOES THAT MEAN, THAT THEY'RE
15 CONFIDENTIAL? CONFIDENTIAL TO WHOM? AND HOW IS IT
16 PROTECTED?

17 A WELL, IT MEANS THAT -- IT IMPLIED IN THAT
18 OBVIOUSLY THE OWNERSHIP OF THOSE MEMBER LISTS BELONG TO THE
19 RESORT, AND THAT THEY ARE THEIR PROPERTY. AND THE
20 CONFIDENTIALITY SUGGESTS THAT WE OUGHT TO KEEP THESE SECURE
21 AND NOT LET ANY THIRD PARTIES BECOME PRIVY TO THIS
22 INFORMATION.

23 MR. RIVIN: YOUR HONOR, I THINK THIS GOES TO THE
24 SUBJECT OF OUR LAST SIDEBAR, AND I WOULD LIKE TO APPROACH
25 AGAIN. I APOLOGIZE, BUT I THINK WE NEED TO, IF YOUR
26 HONOR --

1 THE COURT: I DON'T THINK IT'S NECESSARY AT THIS
2 TIME, MR. RIVIN. LET'S TAKE OUR MORNING BREAK. SEE YOU
3 ALL IN 20 MINUTES.

4 MR. RIVIN: THANK YOU.

5 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
6 COURT OUT OF THE PRESENCE OF THE JURY:)

7 MR. RIVIN: I HAVE CONCERNS. MR. SHAW TRIED TO LAY
8 THE FOUNDATION FOR THIS WITNESS'S KNOWLEDGE ABOUT COAST'S
9 PRACTICES AND COAST'S INTENTIONS AND THE INTERPRETATION OF
10 THESE CONTRACTS, AND HE COULDN'T DO IT. THE WITNESS
11 COULDN'T REMEMBER THOSE CONVERSATIONS. SO HE GOES BACK.
12 HE NOW GOES BACK TO THESE GENERALIZED COMMENTS ABOUT WHAT
13 THIS CONFIDENTIALITY -- THE CONFIDENTIALITY OF THESE LISTS
14 SUPPOSEDLY MEANT. AND I THINK THERE IS A LACK OF
15 FOUNDATION FOR IT, AND I THINK IT'S INAPPROPRIATE.

16 MR. SHERMAN: YOUR HONOR, I WANTED TO SAY ONE
17 THING.

18 OBVIOUSLY I'VE BEEN QUIET THIS MORNING.
19 THIS IS MR. SHAW AND MR. RIVIN'S WITNESS. BUT I'LL TELL
20 YOU WHAT THE LATE BERNARD WITKIN HAD TO SAY ABOUT THIS. I
21 READ WHAT HE HAD TO SAY LAST NIGHT. CUSTOM AND USAGE IS
22 GREAT, BUT IF YOU'VE GOT A CONTRACT AND THE CONTRACT SAYS
23 SOMETHING, IT SPEAKS FOR ITSELF.

24 THE COURT: SPEAKS FOR ITSELF.

25 MR. SHERMAN: AND THIS IS WHAT'S CONCERNING ME.
26 THIS PAID HIRED-GUN WILL SAY WHATEVER THEY WANT HIM TO SAY.

1 OBVIOUSLY IT'S -- THIS IS SAID OUTSIDE THE JURY, AND IT'S
2 JUST NOT RIGHT. LET'S START WITH THE CONTRACT. THAT'S
3 WHAT BERNIE WITKIN SAYS.

4 MR. SHAW: I DID THIS MORNING. THAT CONTRACT SAYS
5 MANUAL OR OTHER -- AND I'M PARAPHRASING NOW -- OR OTHER
6 THINGS GOOD IN THE WELFARE IN THE INDUSTRY. THAT'S CUSTOM
7 AND PRACTICE.

8 MR. SHERMAN: WHAT ABOUT THE CONFIDENTIALITY, THE
9 CLAUSE?

10 THE COURT: WELL --

11 MR. SHERMAN: IT'S RIGHT THERE.

12 THE COURT: IT'S NOT A BIG POINT. I THINK EVERYONE
13 KNOWS WHAT "CONFIDENTIALITY" MEANS.

14 MR. SHAW: WE'LL MOVE ON.

15 MR. SHERMAN: AND IT'S IN THE CONTRACT. HE HASN'T
16 SHOWN HIM THAT.

17 THE COURT: SEE YOU IN 20 MINUTES.

18 MR. SHERMAN: THANK YOU, YOUR HONOR.

19 MR. SHAW: THANK YOU.

20 (RECESS TAKEN.)

21 (WHEREUPON THE FOLLOWING PROCEEDINGS WERE
22 HELD IN OPEN COURT IN THE PRESENCE OF THE JURY:)

23 THE COURT: PROCEED, COUNSEL.

24 MR. SHAW: THANK YOU, YOUR HONOR.

25 Q MR. MITCHELL, I'D LIKE TO STAY ON THE
26 SUBJECT OF THE CONFIDENTIALITY OF THE MEMBERSHIP LISTS AND

1 REFER NOW TO EXHIBIT 285 OF DEFENDANTS' EXHIBITS.

2 YOUR HONOR, WE'D LIKE TO MOVE 285 INTO
3 EVIDENCE.

4 THE COURT: NO OBJECTION? RECEIVED.

5 MR. RIVIN: NO OBJECTION.

6 (WHEREUPON, EXHIBIT NO. 285, MEMO DATED
7 1/90, WAS RECEIVED IN EVIDENCE.)

8 BY MR. SHAW: Q MR. MITCHELL, I'D LIKE YOU TO
9 LOOK AT EXHIBIT 285.

10 WE WERE DISCUSSING CONVERSATIONS YOU HAD
11 WITH PEOPLE AT COAST REGARDING THE MEMBERSHIP ISSUE.

12 MR. MITCHELL, MAYBE YOU CAN HELP US WITH
13 WHAT WAS UP AT THE TOP.

14 THAT'S A COAST TO COAST DOCUMENT?

15 A THAT'S CORRECT, FROM THE OFFICE OF THE
16 PRESIDENT, FROM THE TIME FRAME THAT -- I THINK THAT'S
17 ROGER RYMAN, MAYBE.

18 Q AND WE LOOKED AT THE CONTRACT EARLIER THAT
19 WAS 1567. I BELIEVE THAT SHOWED THAT THE CONTRACT
20 INCLUDING A MANUAL AND OTHER MEMOS AND OTHER THINGS THAT
21 CAME FROM COAST?

22 A YES.

23 Q AND WAS THIS ONE OF THOSE ITEMS THAT CAME
24 FROM COAST?

25 A YES.

26 Q AND THIS TALKS ABOUT IN EARLY JANUARY.

1 THAT'S EARLY JANUARY OF 1990; IS THAT CORRECT?

2 A WELL, THERE'S A DATE AT THE TOP OF IT. IT
3 SAYS 1/90. I'LL TAKE THE LEAP AND SAY THAT THAT'S THE
4 DATE, YEAH.

5 Q IT SAYS, "THIS REPORT PROVIDES YOU A LIST OF
6 ALL YOUR MEMBERS WHO ARE CURRENTLY CARRIED AS MEMBERS OF
7 COAST TO COAST, PROVIDES YOU AN OPPORTUNITY TO MAKE ANY
8 MODIFICATIONS THAT YOU FEEL ARE NECESSARY AND USE IT AS A
9 MANAGEMENT TOOL."

10 SKIPPING. "THE CONFIDENTIALITY OF THIS LIST
11 CANNOT BE EMPHASIZED ENOUGH. THE MEMBERSHIP LIST IS A
12 PRIMARY ASSET OF EVERY RESORT. ACCORDINGLY, COAST TO COAST
13 DISTRIBUTES THIS LIST BY CERTIFIED MAIL."

14 LET ME JUST STOP THERE AND ASK, DID YOU HAVE
15 ANY UNDERSTANDING -- YOU SAW THIS MEMO IN OR ABOUT 1990?

16 A YES.

17 Q DID YOU HAVE ANY UNDERSTANDING WHEN YOU SAW
18 IT WHY COAST TO COAST WOULD DISTRIBUTE IT BY CERTIFIED
19 MAIL?

20 A YES.

21 Q WHY?

22 A BECAUSE OF THE VALUE OF THESE MEMBERS. AS
23 WE DISCUSSED, THE COST TO DEVELOP MEMBERS IS QUITE
24 EXPENSIVE. IF A COMPETITOR COULD GET AHOLD OF A RESORTS
25 MEMBER LIST, THEN THEY COULD RAID THAT LIST AND ATTEMPT TO
26 SELL THEIR PRODUCT AND SERVICE TO THOSE MEMBERS. AND SO IT

1 WAS SOMETHING THAT SHOULD BE HIGHLY CONFIDENTIAL.

2 SOME OF THE OPERATORS WERE PERHAPS NOT AS
3 SOPHISTICATED AND UNDERSTANDING AS THEY SHOULD BE, AND THEY
4 WOULD HAVE SALESPEOPLE THAT WOULD BE WORKING FOR THEM AND
5 TAKE ALL OR PART -- MOSTLY PART OF THEIR LIST. AND IT HAD
6 BECOME A SIGNIFICANT PROBLEM, AND COAST WAS ATTEMPTING TO
7 ALERT --

8 THE COURT: YOU ANSWERED THE QUESTION, SIR.

9 MR. SHAW: THANK YOU, YOUR HONOR.

10 Q IN FACT, MR. MITCHELL, IT SAYS, "IT'S
11 STRONGLY RECOMMENDED THAT EACH RESORT ESTABLISH A SYSTEM,
12 IF ALREADY NOT IN EXISTENCE, TO PROTECT THE MAILING." AND
13 IT SAYS, "OUR POLICY IS QUITE CLEAR IN THAT WE DO NOT LEND,
14 RENT, SELL, OR SHARE ANY OF THE NAMES ON YOUR RESORT'S
15 LIST. ON THE OTHER HAND, WE'VE BEEN TOLD THAT NUMEROUS
16 RESORTS' LISTS HAVE BEEN SOLD OR PROVIDED TO OUTSIDE
17 SOURCES BY DISGRUNTLED EMPLOYEES."

18 AND THAT'S THE CONVERSATION YOU HAD WITH
19 MR. VINCENT ABOUT THESE DISGRUNTLED EMPLOYEES THAT MAY TAKE
20 A LIST AND USE IT FOR OTHER PURPOSES?

21 A CORRECT.

22 Q AND THIS EXHIBIT 285, DEFENDANTS' EXHIBIT
23 285, IS YOUR UNDERSTANDING OF COAST'S POLICY IN REGARDS TO
24 PROTECTING THE CONFIDENTIALITY OF THE MEMBERSHIP LISTS OF
25 EACH RESORT?

26 A CORRECT.

1 Q AND THAT POLICY TO YOUR KNOWLEDGE CONTINUED
2 AFTER JANUARY 1990, EVEN UP TO THE PRESENT?

3 A THE POLICY OF PROTECTING -- YES, CORRECT.

4 Q AND JUST TO FINISH THE POINT, THIS WAS ONE
5 OF THE MEMOS THAT WAS REFERRED TO IN THE -- WE LOOKED AT A
6 PRE-1990 CONTRACT, BUT IT WAS ONE OF THE MEMOS THAT WAS
7 REFERRED TO.

8 THE CONTRACT SAYS -- AND I'M PARAPHRASING.
9 WE LOOKED AT THE EXHIBIT THIS MORNING. SAYS THAT THE
10 CONTRACT INCLUDES THE MANUAL AND OTHER MEMOS THAT THEY MAY
11 SEND AND OTHER ITEMS IN THE INDUSTRY; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q NOW, LET'S LOOK AT WHAT WE'VE -- WHAT
14 DEFENDANTS HAVE MARKED AS EXHIBIT 334, COUNSEL.

15 WELL, COUNSEL, I'M SORRY. IF YOU CAN JUST
16 KEEP IT THERE, I'M GOING TO MOVE ON AND COME BACK TO IT.
17 I'M NOT GOING TO DEAL WITH IT RIGHT THIS MOMENT. THANK
18 YOU.

19 LET ME TALK ABOUT A SUBJECT THAT YOU TOUCHED
20 ON YESTERDAY, MR. MITCHELL, AND THAT WAS THE ORPHAN
21 PROGRAM, USING MY CRUDE MARKINGS HERE ON THE BLACKBOARD.

22 HOW DOES A MEMBER BECOME AN ORPHAN, AND HOW
23 DO YOU DEFINE AN ORPHAN, AS YOU ALLUDED TO IT YESTERDAY?

24 A WELL, A MEMBER, ACCORDING TO THE ACTIONS --
25 NOT WRITTEN ANYWHERE. THERE'S NO WRITTEN DEFINITION OF
26 THIS. BUT THE PROCEDURE AND THE UNDERSTANDING IN THE

1 INDUSTRY WAS AN ORPHAN BECOMES A MEMBER WHEN THE RESORT,
2 THE HOME RESORT, WHERE HE PURCHASED HIS FIRST MEMBERSHIP
3 FROM THE HOME RESORT AND HE RECEIVED THE COAST RECIPROCAL
4 PROGRAM AS PART AND PARCEL OF THAT MEMBERSHIP, IN THE EVENT
5 THAT RESORT WOULD CLOSE DOWN FOR ANY REASON, THEN THOSE
6 MEMBERS WOULD BE IDENTIFIED BY COAST AS ORPHANS.

7 Q SO THIS GOES OUT OF -- FOR WHATEVER REASON,
8 CLOSES DOWN, ALL THESE MEMBERS BECOME ORPHANS; IS THAT
9 CORRECT?

10 A THAT'S CORRECT.

11 Q AND THAT'S WHAT COAST WOULD CALL THEM,
12 ORPHANS?

13 A COAST WOULD CALL THEM ORPHANS, THAT'S
14 CORRECT.

15 Q AND THEN HOW WOULD COAST -- IF YOU KNOW, HOW
16 WOULD COAST -- WHAT WAS THEIR POLICY IN DEALING WITH THOSE
17 ORPHANS, ORPHAN MEMBERS?

18 A WHEN THOSE CONDITIONS WOULD OCCUR, COAST
19 WOULD SEND A LETTER TO THOSE PEOPLE, IF THEY WEREN'T
20 ALREADY AWARE OF IT, ADVISING -- THEY WERE UNDOUBTEDLY
21 AWARE OF IT ALL RIGHT, BUT THEY WOULD SEND A LETTER, AND
22 THEY WOULD SAY, YOUR HOME RESORT IS NOT THERE ANYMORE.
23 HERE IS A LIST OF ONE, TWO, THREE WHATEVER RESORTS MIGHT --
24 I'VE NEVER SEEN THEM SEND MORE THAN THREE. GENERALLY IT'S
25 TWO OR THREE.

26 AND THEY SAY, HERE IS A LIST OF TWO OR THREE

1 RESORTS IN YOUR AREA, WITHIN THE 125 MILES, OR SOME CLOSE
2 PROXIMITY, THAT YOU MIGHT WANT TO GO AND VISIT AND LOOK AT
3 THOSE RESORTS AND TALK TO THOSE PEOPLE ABOUT JOINING THEIR
4 PROGRAM. BECAUSE YOUR ACCESS TO THE COAST RECIPROCAL
5 SERVICES IS REQUIRED TO HAVE A HOME RESORT. WE WILL RETAIN
6 YOU UNTIL THE END OF THE CALENDAR YEAR. BUT YOU HAVE UNTIL
7 THE END OF THE CALENDAR YEAR TO CONTACT ONE OF THESE OR
8 SOMEONE ELSE, IF YOU LIKE. BUT IN PARTICULAR WE'RE GIVING
9 YOU THIS INFORMATION AS A HELPFUL TOOL. AND GO TALK TO
10 THESE PEOPLE AND CUT WHATEVER DEAL YOU WANT TO JOIN THEIR
11 RESORT, THEREBY GETTING YOURSELF A NEW HOME RESORT SO YOU
12 COULD CONTINUE ACCESS TO THE COAST PRODUCT, THE RECIPROCAL
13 PROGRAM, AFTER THE END OF THE CALENDAR YEAR, BECAUSE YOUR
14 MEMBERSHIP -- EVEN THOUGH YOUR RESORT WAS CLOSED, THEY
15 WOULD KEEP YOU ACTIVE UNTIL THE END OF THE CALENDAR YEAR.
16 BUT AFTER THAT, THEY WERE SUPPOSED TO GET RID OF YOU. SO
17 YOU HAD TO HAVE YOUR OWN RESORT.

18 Q SO THE IDEA WAS TO GET THESE ORPHANS BACK
19 INTO A RESORT SOMEWHERE?

20 A CORRECT.

21 Q OKAY. NOW, ONE -- ONE LAST AREA, AS WE'RE
22 DEFINING SOME TERMS, THE TERM COLLATERAL -- I THINK IT'S
23 COLLATERAL SERVICES; IS THAT THE RIGHT PHRASE?

24 A YEAH. FACILIATORY, COLLATERAL, OR IT
25 DEPENDS ON WHAT YOU'RE TALKING TO, LOTS OF TERMS, ANYTHING
26 OTHER THAN THE HOME RESORT MEMBERSHIP ITSELF. RECIPROCAL

1 PROGRAM, A TRAVEL PROGRAM, WHATEVER IT MIGHT BE.

2 Q OTHER THAN THIS \$5,000 MEMBERSHIP WITH THE
3 HOME RESORT, COLLATERAL SERVICES WOULD BE ANYTHING OVER AND
4 ABOVE THIS.

5 FOR EXAMPLE, WOULD COAST RECIPROCAL
6 ARRANGEMENT BE A COLLATERAL SERVICE?

7 A YES, IT COULD BE CALLED THAT, YES.

8 Q WHAT OTHER TYPES OF COLLATERAL SERVICES IN
9 YOUR EXPERIENCE WOULD BE SOLD TO MEMBERS?

10 A WELL, WHEN I GOT INTO THE BUSINESS, ONE OF
11 THE THINGS THAT WE RECOGNIZE IS THE PEOPLE NEEDED TRAVEL
12 SERVICES. SO OUR COMPANY HAD OUR OWN TRAVEL AGENCY SO THAT
13 THE MEMBERS COULD CALL, AND THEY HAD THEIR OWN CAPTIVE
14 TRAVEL AGENCY. AND THEY COULD CALL UP, AND THOSE PEOPLE
15 WOULD HELP THEM WITH TRAVEL ARRANGEMENTS AND SO ON. THERE
16 MAY BE OTHER TYPES OF SERVICES SIMILAR TO THAT THAT ARE
17 RELATED TO HOW THESE PEOPLE WOULD CHOOSE TO ACCESS
18 RECREATIONAL SERVICES, IF THEY WANTED TO GO ON A CRUISE
19 SHIP OR CLIMB A MOUNTAIN, OR WHATEVER IT MIGHT BE.

20 Q ALL RIGHT. I'D LIKE TO SHIFT SUBJECTS NOW
21 AND TALK ABOUT CONVERSATIONS YOU'VE HAD IN THE PAST WITH
22 PEOPLE FROM COAST, OTHER THAN THIS MEMBERSHIP PROTECTION.
23 NOW I'M MOVING ON TO A DIFFERENT SUBJECT.

24 A DO I NEED THIS ANYMORE?

25 Q NO. YOU DON'T. AND LET ME TAKE IT FROM YOU.

26 A THANK YOU.

1 Q TO KEEP IT UN-CLUTTERED.

2 NOW, YOU TALKED ABOUT THE CONVERSATION WITH
3 MR. VINCENT, ONE OF THE REGIONAL MANAGERS, ABOUT THE
4 MEMBERSHIP PROTECTION, AND WE LOOKED AT EXHIBIT 285.

5 A YES.

6 Q DID YOU HAVE ANY CONVERSATIONS WITH
7 MR. RYMAN IN OR ABOUT 1994, 1995, ABOUT THE R.D.A.?

8 A YES.

9 Q WHEN -- CAN YOU BE MORE PRECISE FOR ME AS TO
10 WHEN YOU HAD THAT CONVERSATION WITH MR. RYMAN?

11 A I CAN'T BE EXACTLY PRECISE. I KNOW THAT THE
12 CONVERSATION OCCURRED THE DAY AFTER THE FORMATION MEETING
13 OF THE R.D.A. IN FLORIDA, WHICH I ATTENDED. AND SO THAT
14 WOULD BE THE DATE -- SOMETIME IN '95 TO THE BEST OF MY
15 RECOLLECTION. IT WOULD HAVE ALSO -- I CAN NARROW IT DOWN
16 MORE BECAUSE MY RECOLLECTION IS, IS THAT I FLEW FROM
17 FLORIDA THE NEXT DAY TO LAS VEGAS, NEVADA, AND I MET WITH
18 MR. RYMAN AND GENE EVERETT AND PROVIDED THEM INFORMATION
19 ABOUT WHAT WAS GOING ON WITH THE R.D.A. DEVELOPMENT.

20 Q THE R.D.A. IS AN ACRONYM OR SOME INITIALS
21 FOR SOME OTHER WORDS?

22 A THE RESORT DEVELOPERS ASSOCIATION.

23 Q AND WHAT IS THE RESORT DEVELOPERS
24 ASSOCIATION?

25 A AT THAT TIME IT WAS A -- BEING SET UP AS A
26 TRADE GROUP SO THAT -- THESE RESORT OPERATORS FELT THAT

1 THEY WEREN'T GETTING ADEQUATE SUPPORT FROM COAST AND FROM
2 R.D.A., AND THEY WERE LOOKING FOR WAYS TO COME TOGETHER AND
3 GAIN GIRTH AND POWER SO THAT THEY COULD DEAL WITH
4 LEGISLATIVE ISSUES AND LICENSING ISSUES WITH COAST TO
5 COAST. AND THEY WERE LOOKING FOR A WAY TO GAIN A LITTLE
6 GIRTH AND PRESSURE ON COAST; ALTHOUGH, THEY COUCHED IT IN
7 THE FORM OF A TRADE ASSOCIATION. I THINK ITS REAL PURPOSE
8 WAS TO GAIN SOME PRESSURE AGAINST COAST.

9 Q NOW, SO THAT WAS ABOUT THE POINT IN TIME
10 IN -- THE CONVERSATION IS WITH MR. RYMAN AND MR. EVERETT;
11 CORRECT?

12 A I HAD A MEETING WITH MR. RYMAN AND
13 MR. EVERETT AT THE A.R.D.A. CONVENTION IN LAS VEGAS THE DAY
14 AFTER I ATTENDED THE ORGANIZATIONAL MEETING OF A.R.D.A.,
15 CORRECT, AND I REPORTED TO THEM WHAT OCCURRED --

16 Q YOU SAY THE ORGANIZATION MEETING OF
17 A.R.D.A.?

18 A I'M SORRY, R.D.A. THE NAMES ARE ALL THE
19 SAME, OF THE R.D.A., THE RESORT DEVELOPERS ASSOCIATION.

20 Q YOU USED THE ACRONYM A.R.D.A. WHAT DOES
21 THAT MEAN?

22 A A.R.D.A. IS THE AMERICAN RESORT DEVELOPERS
23 ASSOCIATION. THAT IS A LEGITIMATE TRADE ASSOCIATION. THAT
24 IS THE GROUP THAT FLOWED FROM THE ORIGINAL ASSOCIATION SOME
25 30 YEARS AGO CALLED A.L.D.A., THE AMERICAN LAND DEVELOPERS
26 ASSOCIATION.

1 Q ALL RIGHT. LET'S FOCUS ON THIS CONVERSATION
2 NOW THAT YOU HAD WITH THE TWO GENTLEMEN.

3 WHAT DID YOU SAY TO THEM?

4 A I ADVISED THEM OF WHAT WENT ON AT THE
5 MEETING AND TOLD THEM THAT MR. NOVELLI HAD ATTENDED THE
6 MEETING. BECAUSE HE SOME YEARS EARLIER HAD BEEN ATTEMPTING
7 TO ORGANIZE A GROUP IN CALIFORNIA BECAUSE OF PROBLEMS HE
8 FELT HE WAS HAVING AND OTHER RESORT DEVELOPERS WERE HAVING.

9 Q I WANT TO BE CAREFUL. I WANT TO STICK TO
10 WHAT YOU TOLD THEM.

11 A I TOLD THEM THAT THEY HAD GOTTEN ORGANIZED,
12 AND THAT MR. NOVELLI HAD DROPPED OUT, AND THAT
13 MR. BERLINGAME FROM MOUNTAIN LAKES HAD TAKEN THE LEAD
14 CONTROL AND AGREED TO PUT UP ALL THE MONEY NECESSARY TO
15 MAKE THE THING WORK; AND THAT THEY HAD TAKEN
16 MR. BERLINGAME'S RIGHT-HAND MAN, MR. LAM, AND OSTENSIBLY
17 MADE HIM THE MANAGING DIRECTOR OF THE ASSOCIATION. AND
18 FROM THE INITIAL GROUP THAT WAS THERE OF A HALF A DOZEN
19 RESORT OPERATORS, THEIR INTENTION WAS TO GO OUT
20 AGGRESSIVELY AND ATTEMPT TO SOLICIT OTHER COAST AFFILIATES
21 TO JOIN THEIR R.D.A. PROGRAM.

22 Q WAS THIS GOING TO BE IN COMPETITION WITH
23 COAST, THEN?

24 A YES. I TOLD THEM -- ALTHOUGH, THEY
25 DIDN'T -- THEY KIND OF SHADOWED IT A LITTLE BIT. IT WAS MY
26 EXPERT OPINION THAT THEIR REAL INTENTION WAS TO ESTABLISH A

1 COMPETING RECIPROCAL ORGANIZATION. AND SHORTLY THEREAFTER
2 THEY DID SO IN THE NAME OF A PROGRAM CALLED "RESORTS OF
3 DISTINCTION."

4 Q AND WHAT WAS MR. RYMAN OR MR. EVERETT'S
5 RESPONSE TO WHAT YOU WERE TELLING THEM ABOUT THE R.D.A.?

6 A BOTH OF THEM WERE APPROPRIATELY CONCERNED.
7 THEY WERE PLEASED TO SEE MR. NOVELLI WASN'T INVOLVED
8 ANYMORE. AND THEY WERE CONCERNED ABOUT THE POTENTIAL
9 DEVELOPMENT OF THIS ORGANIZATION AS COMPETITION AS MUCH AS
10 THEY REALLY DIDN'T HAVE ANY.

11 Q SO AS OF 1995, THIS TIME PERIOD WHEN YOU'VE
12 HAD THIS MEETING, NOW THE ISSUE OF COMPETITION AMONG THE
13 RECIPROCAL GROUP BECOMES A SOURCE OF DISCUSSION -- OR A
14 SUBJECT OF DISCUSSION? EXCUSE ME.

15 A COMPETITION HAD BEEN DISCUSSED BEFORE, BUT
16 THAT -- YES, THAT WAS -- OUR DISCUSSION AT THAT MEETING IN
17 LAS VEGAS WAS LIMITED TO THE INFORMATION I PROVIDED THEM
18 WITH REGARD TO WHAT WAS GOING ON WITH THIS GROUP OF THEIR
19 AFFILIATES ATTEMPTING TO ESTABLISH THEIR OWN PROGRAM TO GO
20 AROUND THEM.

21 Q NOW, DID YOU HAVE ANOTHER CONVERSATION WITH
22 SOMEONE FROM COAST, A MR. YORK IN SAN DIEGO, IN 1995?

23 A SAN DIEGO CONVENTION, THE COAST TO COAST
24 CONVENTION, YES.

25 Q AND WHAT WAS THE PURPOSE FOR THAT
26 CONVERSATION WITH MR. YORK?

1 A IT WAS SOCIAL.

2 Q AND WHAT SUBJECT WAS DISCUSSED REGARDING
3 COAST TO COAST?

4 A IT WAS BROAD, PRIMARILY FOCUSING ON
5 COMPETITION, WHAT WAS GOING ON IN THE INDUSTRY, WHAT I
6 THOUGHT WOULD BE HAPPENING IN THE FUTURE, WHAT MY
7 PERSPECTIVE OF WHAT WOULD BE OCCURRING WITH REGARD TO THE
8 INDUSTRY IN GENERAL AND COAST TO COAST AND ITS LICENSEES.

9 Q AT ABOUT THIS POINT IN TIME, DID YOU HAVE
10 ANY DISCUSSION WITH ANYONE AT COAST TO COAST ABOUT THE
11 ALLEN REPORT?

12 A I THINK THE ALLEN REPORT CAME OUT, TO THE
13 BEST OF MY RECOLLECTION, SOMETIME SHORTLY AFTER THAT. WE
14 MAY HAVE DISCUSSED THEIR OWN INTERNAL 1992 REPORT. BUT I
15 DON'T BELIEVE WE DISCUSSED THE ALLEN REPORT, NO.

16 Q IS THE ALLEN REPORT ONE OF THE DOCUMENTS
17 THAT YOU'VE RELIED ON IN REACHING YOUR OPINION?

18 A YES.

19 Q WHAT IS THE ALLEN REPORT?

20 A THE ALLEN REPORT WAS A REPORT COMMISSIONED
21 BY COAST FROM AN EXTERNAL CONSULTING GROUP TO ANALYZE THE
22 PRODUCTION OF EACH OF COAST'S LICENSEES, THE RELATIONSHIP
23 BETWEEN THE SALES THEY WERE MAKING, AND THE HOSTING THEY
24 WERE DOING. IT SET FORTH WHO WAS DOING THE SELLING.

25 IT ARTICULATED THAT PROBABLY 20 PERCENT OF
26 THEIR LICENSEES WERE SELLING 80 PERCENT OF THE PRODUCT. IT

1 ALSO COUCHED AND CLEARLY DEFINED THE DILEMMA, IF YOU WILL,
2 THAT COAST WAS CAPTIVE AND REALLY HELD HOSTAGE FROM THE
3 STANDPOINT OF REVENUE GENERATION TO THEIR LICENSEES,
4 BECAUSE THEY'RE THE ONES WHO SOLD THEIR PROGRAM, AND THAT
5 THEY HAD SPLIT INTO TWO GROUPS.

6 Q NOW, THE LICENSEES -- AGAIN, JUST BECAUSE I
7 DON'T WANT TO GET LOST IN THE LANGUAGE.

8 A RIGHT.

9 Q THE LICENSEES ARE THE RESORT OWNERS?

10 A RIGHT. THE AFFILIATES, RIGHT.

11 Q AND I'D LIKE YOU TO TAKE A LOOK AT WHAT IS
12 PLAINTIFFS' EXHIBIT 1711.

13 AND, YOUR HONOR, I'D LIKE TO MOVE INTO
14 EVIDENCE EXHIBIT 1711.

15 MR. RIVIN: WE OBJECT, YOUR HONOR. THERE IS NO
16 FOUNDATION FOR THIS DOCUMENT AT THIS POINT. MAYBE THERE
17 WILL BE LATER IN THE CASE, BUT CERTAINLY THE FOUNDATION
18 CAN'T BE LAID THROUGH THIS WITNESS.

19 THE COURT: THANK YOU. SUSTAINED.

20 MR. SHAW: LET ME JUST, THEN --

21 THE WITNESS: WHAT DID YOU SAY, SIR?

22 THE COURT: SUSTAINED.

23 BY MR. SHAW: Q LET ME JUST TALK ABOUT THE -- WHAT
24 IS THE TITLE ON THE DOCUMENT?

25 A SALES AND MARKETING ANALYSIS AND
26 RECOMMENDATIONS PREPARED FOR COAST TO COAST RESORTS

1 DEVELOPED BY THE HENRY ALLEN GROUP, OCTOBER 11TH, 1995.

2 Q OKAY. WHO IS THE HENRY ALLEN GROUP?

3 A I DON'T KNOW INTIMATE -- IN OTHER WORDS,
4 DETAILS ABOUT THEM, BUT THEY'RE A CONSULTING FIRM. THEY'RE
5 A MANAGEMENT CONSULTING GROUP THAT ANALYZES BUSINESSES AND
6 MARKET ACTIVITIES.

7 Q AND THE TITLE SPEAKS FOR ITSELF. IT SAYS

8 "SALES AND MARKETING ANALYSIS"?

9 A YES.

10 MR. RIVIN: YOUR HONOR, MAY WE APPROACH?

11 THE COURT: YOU MAY.

12 (DISCUSSION OFF THE RECORD.)

13 BY MR. SHAW: Q MR. MITCHELL, BACK TO THE

14 ALLEN REPORT, EXHIBIT 1711.

15 IS THIS A DOCUMENT THAT YOU REVIEWED IN
16 FORMING YOUR OPINION IN THIS CASE THAT THE ACTIONS AND THE
17 CONDUCT AND BEHAVIOR OF COAST TO COAST CAUSED DAMAGE TO THE
18 PLAINTIFFS?

19 A YES.

20 Q WHAT -- WITHOUT GETTING INTO THE SPECIFIC
21 LANGUAGE, CAN YOU TELL ME GENERALLY WHAT IN THAT DOCUMENT
22 YOU RELIED ON IN ARRIVING AT YOUR OPINION?

23 A THE DOCUMENT IS A WELL DONE PIECE OF WORK,
24 AND IT SPEAKS TO THE OVERALL CONDITIONS IN THE MARKETPLACE
25 AND COAST'S POSITION AND, IN PARTICULAR, ADDRESSES ISSUES
26 REGARDING COMPETITION, AND DEALS WITH AND PROFILES THE TYPE

1 OF COMPETITION. AND MR. -- PRESIDENT'S CLUB PROGRAM AND
2 OTHERS ARE ARTICULATED AND DEALS WITH THE SINGLE PROBLEM
3 COAST WAS HAVING WITH REGARD TO THESE.

4 TWO TYPES OF THE ORGANIZATION BROKE INTO TWO
5 TYPES OF PLAYERS: THE RESORTS AND THE GIVE-AWAY GUYS, AND
6 THE CONFLICT IN HOW THEY MIGHT DEAL WITH THIS AND MANAGE
7 THIS AND WHATEVER, THEY OUGHT TO KEEP GOING ON WITH THE
8 RESORTS, OR SHOULD THEY STAY WITH THE GUYS THAT ARE DOING
9 THE GIVE-AWAYS, BECAUSE THEY WERE PRODUCING MORE BUSINESS
10 THAN THE RESORT GUYS WERE. AND COAST APPROPRIATELY SHOULD
11 MAKE A DECISION IN THEIR SELF-INTEREST.

12 AND IT ALSO DISCUSSES THE RAMIFICATIONS OF
13 MAKING THOSE DECISIONS. EITHER WAY. AND POSES THE
14 QUESTION, PERHAPS, TOO, THAT SHOULD COAST JUST ABANDON ALL
15 OF THAT AND GO AND SELL MEMBERSHIPS DIRECT.

16 MR. RIVIN: YOUR HONOR, I OBJECT. I THINK WHAT THE
17 WITNESS JUST DID IS EXACTLY WHAT WE WERE TALKING ABOUT. HE
18 JUST BASICALLY WHAT WAS -- HE RECITED WHAT WAS IN THAT
19 REPORT OR A PORTION OF THAT REPORT AND DIDN'T TIE IT INTO
20 ANY OPINION. I THINK IT'S HEARSAY.

21 MR. SHAW: YOUR HONOR, I BELIEVE HE DID TIE IT IN.
22 IT'S ONE OF THE DOCUMENTS THAT HE REVIEWED AS HIS BASIS FOR
23 HIS OPINION.

24 THE COURT: OVERRULED.

25 BY MR. SHAW: Q ANYTHING ELSE ABOUT THAT REPORT,
26 EXHIBIT 1711, THAT YOU RELIED ON IN ARRIVING AT YOUR

1 OPINION?

2 A WELL, MOST OF THE INFORMATION IN THAT REPORT
3 I WAS AWARE OF BEFORE, AND I HAD DISCUSSIONS WITH COAST
4 PEOPLE. THIS IS MORE OF A -- FROM MY PURPOSES, A VERY
5 FINE, GOOD SCIENCE ARTICULATION OF THE CONDITIONS PRESENT
6 AT THE TIME AND THE CHOICES THAT WOULD HAVE TO BE MADE FOR
7 THE SURVIVAL OF THE PLAYERS.

8 Q SO THIS JUST REINFORCED -- THAT REPORT
9 REINFORCED YOUR BACKGROUND AND EXPERIENCE?

10 A YEAH. I MEAN, I ALREADY HAD THESE
11 DISCUSSIONS OVER THE YEARS. COAST WAS ALREADY AWARE OF
12 THIS. THEY HAD A 1992 REPORT THEY DID INTERNALLY WHICH
13 BASICALLY SAID MUCH OF THE SAME THING. THIS WAS A
14 VALIDATION OF WHAT EVERYBODY KNEW. AND GOOD SCIENCE
15 BECAUSE IT DID. IT WAS VERY GOOD SCIENCE. IT WAS
16 EXTERNAL. IT WAS NOT AN INTERNAL REPORT. IT WASN'T DONE
17 BY SOMEBODY IN THE INDUSTRY. SO IT WASN'T BIASED. IT WAS
18 GOOD SCIENCE. IT WAS A GOOD REPORT.

19 Q NOW, I'D LIKE TO STAY -- I'LL MOVE AWAY FROM
20 EXHIBIT 1711, AND YOU MENTIONED A 1992 REPORT I HAD SOME
21 TROUBLE FINDING --

22 A IT MIGHT BE THE 1993 REPORT. I APOLOGIZE.
23 SOMEWHERE IN THAT TIME FRAME.

24 Q WHATEVER THAT REPORT IS, I'LL HAVE IT FOR
25 YOU IN A FEW MOMENTS.

26 BUT TO KEEP GOING, I WANT TO TALK ABOUT

1 DISCUSSIONS WITH COAST TO COAST ABOUT COAST TO COAST'S
2 VIOLATIONS OF THEIR OWN RULES.

3 DID YOU EVER HAVE ANY DISCUSSIONS WITH
4 ANYONE AT COAST TO COAST ABOUT THEIR RULES AND POSSIBLE
5 VIOLATIONS?

6 A MANY DISCUSSIONS WITH EVERYBODY.

7 Q I'M SORRY. I MISSED YOUR POINT. ANY
8 DISCUSSIONS?

9 A I SAID MANY.

10 Q I'M SORRY. I THOUGHT YOU SAID "ANY." I
11 APOLOGIZE.

12 A MANY DISCUSSIONS WITH EVERYONE FROM THE
13 PRESIDENT TO THE JANITOR.

14 Q OKAY. NOW, CAN YOU --

15 A NOT REALLY THE JANITOR.

16 Q CAN YOU ISOLATE ON SPECIFIC DISCUSSIONS AS
17 OPPOSED TO THE GIST AND SUBSTANCE OF DISCUSSIONS OVER A
18 PERIOD OF TIME?

19 A THIS WAS A SUBJECT COVERED AT ROUND-TABLE
20 MEETINGS AND PERSONAL DIALOGUES I HAD WITH PRESIDENTS. I
21 CAN'T RECALL -- I MEAN, THIS WAS AN ONGOING THING OVER A
22 NUMBER OF YEARS. THIS WAS CONSTANTLY DISCUSSIONS BECAUSE
23 AS I WAS REPRESENTING REAL RESORTS, BOTH MYSELF AND MY
24 CLIENT WERE VERY OFFENDED BY THESE GIVE-AWAY GUYS. AND SO
25 WE WERE CONSTANTLY COMPLAINING, AS WELL AS OTHERS. SO I
26 CAN'T REDUCE IT TO DATE, TIME AND PERSON. ONLY TO SAY OVER

1 A PERIOD OF 10 YEARS, IT HAD -- WE HAD A LOT OF DIALOGUE
2 ABOUT THIS.

3 Q AND WHAT SUBJECTS OF VIOLATIONS WERE
4 DISCUSSED?

5 A VIOLATIONS OF THE PRIMARY PRODUCT RULE, THE
6 FACT THAT RESORTS WERE SUPPOSED TO BE MAINTAINED UNDER THE
7 LICENSE AGREEMENT TO CERTAIN QUALITIES AND STANDARDS,
8 VIOLATIONS OF THE 10 TO 1 RULE, VIOLATIONS OF THE 20 TO 1
9 RULE. WHY DIDN'T COAST TAKE LISTS OR AFFILIATION LISTS
10 AWAY FROM PEOPLE WHO WERE FOUND TO BE ENGAGED IN DECEPTIVE
11 AND FRAUDULENT MARKETING PRACTICES BY ATTORNEYS GENERAL,
12 THAT TYPE OF THING.

13 Q OKAY. SO THOSE WERE THE SUBJECTS, THE
14 GENERAL SUBJECTS, THAT WERE DISCUSSED?

15 A YES.

16 Q LET'S TAKE THEM ONE AT A TIME AND TALK ABOUT
17 WHAT YOU SAID TO THEM ABOUT VIOLATIONS OF THE PRIMARY
18 PRODUCT RULE.

19 A WELL, I -- ANY TIME VIOLATIONS OCCURRED, I
20 WOULD RAISE IT TO THEIR ATTENTION. AND THEY WERE VERY
21 GRACIOUS TO LET ME DO IT AND LET ME DO IT OUT IN THE OPEN
22 AT THEIR CONVENTIONS. THEY DIDN'T DO ANYTHING ABOUT IT,
23 BUT THEY WERE GRACIOUS.

24 THE PRIMARY PRODUCT RULE -- AND THIS BECAME
25 QUITE HEATED WHEN RESORT OPERATORS IN BANDERA TEXAS -- LET
26 ME QUALIFY THAT. PEOPLE WHO HAD SOME PROPERTIES THAT MIGHT

1 HAVE HAD SOME SITES ON IT IN BANDERA, TEXAS AND OF COURSE
2 MR. BALDELLI IN NORTH CAROLINA WERE SELLING MEMBERSHIPS ALL
3 OVER THE UNITED STATES, PELL-MELL, WHOLESAL, PUTTING ADS
4 IN PAPERS. AND THESE PEOPLE THEY WERE SELLING TO WERE NOT
5 GOING TO -- EVER GOING TO THE RESORT AND VIOLATED THE
6 PRIMARY PRODUCT RULE. AND SO I WOULD COMPLAIN ABOUT IT.

7 Q AGAIN, ANY PRIMARY PRODUCT RULE WAS YOU HAD
8 TO SELL THE RESORT MEMBERSHIP FIRST?

9 A RIGHT.

10 Q AND THEN THE COAST AS A COLLATERAL SERVICE?

11 A RIGHT IN PAR AND PARCEL TO THAT, THE PEOPLE
12 HAD TO VISIT THE RESORT PHYSICALLY BEFORE THEY COULD BUY.
13 AND THESE PEOPLE WOULD SELL THESE MEMBERSHIPS THROUGH THE
14 MAIL.

15 MR. HOPKINS, FOR EXAMPLE, HAD A -- ONE OF
16 THE LICENSE PERSONS HAD AN UNDEVELOPED 20-ACRE PIECE OF
17 DIRT THAT HAD ABSOLUTELY NOTHING ON IT, AND HE WAS
18 ADVERTISING IN NEWSPAPERS ALL OVER THE UNITED STATES
19 ALLEGING HIMSELF TO BE A MEMBER WHO WAS TRYING TO SELL HIS
20 EXISTING MEMBERSHIP, WHICH WAS AN ABSOLUTE LIE.

21 Q LET'S STOP --

22 A AND THEN -- I'M SORRY. AND SO THAT WAS THE
23 KIND OF THING THAT I WAS ANGRY ABOUT.

24 Q OKAY. AND THAT YOU DISCUSSED WITH COAST?

25 A CORRECT.

26 Q I WANT TO STOP ON THE SUBJECT.

1 YOU SAID THAT PROSPECTIVE MEMBERS HAD TO
2 VISIT THE RESORT; THAT WAS A REQUIREMENT, THAT THEY VISIT
3 THE RESORT?

4 A YES.

5 Q I'D LIKE TO SHOW YOU WHAT DEFENDANTS HAVE
6 MARKED AS EXHIBIT 45.

7 LET'S LOOK AT EXHIBIT 46.

8 I'D LIKE TO MOVE EXHIBIT 46 INTO EVIDENCE.

9 THE COURT: IS THAT DEFENSE?

10 MR. SHAW: IT IS.

11 MR. RIVIN: IT'S ONE OF OUR EXHIBITS. NO

12 OBJECTION.

13 THE COURT: THANK YOU.

14 (WHEREUPON, EXHIBIT NO. 46 WAS RECEIVED IN
15 EVIDENCE.).

16 BY MR. SHAW: Q CAN YOU IDENTIFY EXHIBIT 46?

17 A THIS APPEARS TO BE --

18 MR. SHERMAN: EXCUSE ME, YOUR HONOR.

19 MR. RIVIN: THERE IS SOMETHING MISSING AT THE TOP
20 OF THAT DOCUMENT, AT THE VERY TOP ABOVE "MEMBERSHIP
21 APPLICATION" IT SAYS, "COAST TO COAST RESORTS." THERE IT
22 IS. THANK YOU.

23 MR. SHAW: THANK YOU, MIKE.

24 Q THIS IS THE COAST TO COAST RESORTS '
25 MEMBERSHIP APPLICATION?

26 A THIS IS THE APPLICATION THAT THE AFFILIATES

1 MEMBERS FILL OUT TO GET COAST TO COAST SERVICES, THAT'S
2 CORRECT.

3 Q SO THIS WOULD BE SIGNED BY COAST ON THE ONE
4 HAND, AND THE AFFILIATE OR THE RESORT ON THE OTHER HAND?

5 A WELL, I DON'T THINK SO. I MEAN -- THIS IS
6 SIGNED BY THE PERSON ACQUIRING THE SERVICES AND THE
7 AFFILIATED RESORT, BUT I'VE NEVER SEEN COAST SIGN ANYTHING.

8 Q I MISSPOKE.

9 A OKAY.

10 MR. SHAW: LET'S TURN, IF YOU WILL, MIKE, THE
11 SECOND PAGE.

12 COULD YOU, MIKE, ISOLATE ON PARAGRAPH 1.

13 Q NOW, WE TALKED YESTERDAY AND EARLIER THIS
14 MORNING ABOUT THE HOME RESORT. THE COAST TO COAST
15 APPLICATION SAYS YOU MUST BE IN GOOD STANDING WITH YOUR
16 HOME RESORT TO PARTICIPATE IN COAST TO COAST. YOU'RE ONLY
17 ENTITLED TO ONE COAST TO COAST MEMBERSHIP.

18 A IS THERE A QUESTION THERE?

19 Q THAT'S THE HOME?

20 A YES.

21 Q THAT'S THE HOME RESORT WE WERE TALKING ABOUT
22 EARLIER?

23 A YES, THAT'S THE HOME RESORT.

24 Q AND THEN IT TALKS ABOUT THE HOME RESORT
25 CEASES TO BE A COAST TO COAST AFFILIATED RESORT FOR SOME
26 REASON, YOUR COAST TO COAST MEMBERSHIP WILL REMAIN IN

1 EFFECT FOR THE REMAINDER OF THAT CALENDAR YEAR, THEREBY
2 ALLOWING YOU A REASONABLE PERIOD TO BECOME A MEMBER OF
3 ANOTHER COAST TO COAST AFFILIATE WITHOUT INTERRUPTING YOUR
4 BENEFITS.

5 IS THERE SOMEPLACE IN THIS LANGUAGE ON THE
6 SECOND PAGE THAT TALKS ABOUT THE VISIT, THE VISIT TO THE
7 HOME RESORT LOCATION?

8 MR. RIVIN: YOUR HONOR, OBJECT. THE DOCUMENT --
9 FIRST, THE DOCUMENT SPEAKS FOR ITSELF. AND SECONDLY,
10 MR. SHAW PUT THE WORD "SOME" IN THERE FOR -- AND THE
11 REASON. THE CORRECT WORD IS "ANY." IT'S ANY REASON.

12 MR. SHAW: THANK YOU, MR. RIVIN. I APPRECIATE THAT.

13 Q MR. MITCHELL --

14 A WAS THERE A QUESTION?

15 Q NOW THERE WILL BE.

16 A OKAY.

17 Q IT SAYS, "I ACKNOWLEDGE AND AGREE TO ABIDE
18 BY THE TERMS OF THE INDIVIDUAL MEMBERSHIP. I UNDERSTAND
19 RULES AND REGULATIONS PERTAINING TO THE COAST TO COAST
20 SYSTEM ARE SET FORTH IN THE ANNUAL COAST TO COAST
21 DIRECTORIES."

22 WHAT ARE THE ANNUAL COAST TO COAST
23 DIRECTORIES?

24 A WELL, THAT'S THE BOOK. THAT WAS THE
25 BEGINNING OF COAST TO COAST. LIKE AS I SAID YESTERDAY,
26 LIKE THE AAA BOOK. THIS IS THE BOOK THAT ARTICULATES THE

1 RESORTS WHICH ARE AFFILIATED WITH COAST TO COAST AND GIVES
2 A GENERAL DESCRIPTION OF THEM, PROVIDES A MAP OF WHERE
3 THEY'RE LOCATED, PHONE NUMBERS TO ACCESS THEM, AGAIN, AS I
4 SAID, AN ARTICULATION OF WHAT'S ON THOSE RESORTS, HOW MANY
5 SITES THEY HAVE, FULL HOOKUPS, PARTIAL HOOKUPS, AMENITIES
6 OF THE RESORT, AND THE HOURS IN WHICH ONE MIGHT BE ABLE TO
7 CHECK INTO THAT FACILITY, AND ALSO IF THEY HAVE ANY
8 SEASONAL LIMITATIONS. SOME RESORTS ARE CLOSED DURING
9 SEASONS BECAUSE OF WEATHER. SO IT WILL TELL THAT KIND OF
10 INFORMATION SO THAT THE PERSON TRAVELING CAN KNOW WHETHER
11 OR NOT THE PLACE IS GOING TO BE OPEN. DO THEY WANT TO GO
12 THERE? DOES IT LOOK LIKE SOMETHING THEY WANT TO GO TO OR
13 THEY DON'T WANT TO GO?

14 Q THE LAST SENTENCE SAYS, "I HAVE PERSONALLY
15 TOURED AND INSPECTED MY HOME RESORT."

16 IS THAT THE ISSUE THAT YOU WERE TESTIFYING
17 ABOUT EARLIER, THAT THERE WERE SOME PROBLEMS -- I THINK YOU
18 MENTIONED MR. BALDELLI AND SOME OTHER NAMES THAT PEOPLE
19 WERE --

20 A YEAH. MR. BALDELLI WASN'T THE ONLY OFFENDER
21 AT THIS. HE WAS JUST BEST AT IT.

22 Q AND WHAT WAS THE PROBLEM?

23 A WELL, THE PROBLEM -- THIS PROBLEM WAS
24 BECAUSE IF THE PERSON PURCHASING THE PROGRAM HADN'T VISITED
25 THE PROPERTY, THEY'RE BUYING A PIG IN A POKE. ALLEGEDLY,
26 THEY WERE SUPPOSED TO BE BUYING. THEY WERE SUPPOSED TO BE

1 BUYING FIRST THE PRIMARY PRODUCT OF HOME RESORT. IF THEY
2 HADN'T SEEN IT, HOW COULD THEY MAKE ANY DECISION ABOUT
3 BUYING IT.

4 THIS WAS FURTHER -- HAD FURTHER GRAVITY
5 BECAUSE ATTORNEYS GENERAL IN SEVERAL STATES HAD BROUGHT
6 ACTIONS AGAINST THESE RESORT OPERATORS FOR EXACTLY THAT
7 REASON. THEY SAID, "LISTEN, YOU CAN'T BE SELLING THIS
8 PRODUCT TO PEOPLE IF THEY HAVEN'T SEEN IT."

9 Q AND, IN FACT, I INVITE YOUR ATTENTION TO
10 PARAGRAPH NUMBER 3 ON THE EXHIBIT 46.

11 A YES.

12 Q IT SAYS, "YOU ACKNOWLEDGE AND AGREE THAT YOU
13 ARE SATISFIED WITH YOUR HOME RESORT, AND THAT YOU HAVE
14 BECOME A MEMBER OF YOUR HOME RESORT, BASED PRIMARILY ON THE
15 ATTRIBUTES OF THAT RESORT, THE OPPORTUNITY TO BECOME A
16 MEMBER OF COAST TO COAST BEING A SECONDARY CONSIDERATION"?

17 A YES.

18 Q WE'RE BACK TO THIS PRIMARY PRODUCT ISSUE?

19 A EXACTLY.

20 Q AND WHOEVER IS SIGNING THIS, WHOEVER --
21 WHATEVER MEMBER SIGNS THIS FOR COAST TO COAST IS
22 ACKNOWLEDGING THAT THEY HAVE BEEN TO THE HOME RESORT;
23 THEY'RE SATISFIED WITH IT, THEY HAVE TOURED IT, AND THAT'S
24 THE VIOLATION THAT YOU'RE DISCUSSING NOW, IS THAT PEOPLE
25 LIKE MR. BALDELLI AND OTHERS WERE SELLING THESE MEMBERSHIPS
26 AND SIGNING UP MEMBERSHIPS --

1 A MR. HOPKINS, MR. BALDELLI, WHO HAD BEEN --
2 YEAH. THEY WERE PREDOMINANT AND GOOD AT IT. I DON'T
3 REMEMBER THE PEOPLE IN BANDERA, TEXAS, BUT THE THREE OF
4 THEM WERE REAL GOOD.

5 MR. RIVIN: OBJECTION. OBJECTION. I THINK WE'RE
6 GETTING SOME LEADING QUESTIONS AND ARGUMENT BY COUNSEL.

7 THE COURT: TRY TO REPHRASE.

8 MR. SHAW: POINT THEN, YOUR HONOR. THANK YOU.

9 THANK YOU, MR. RIVIN.

10 Q THIS IS THE SUBJECT -- IS THIS THE SUBJECT
11 MATTER THAT YOU WERE DISCUSSING WITH THE PEOPLE FROM COAST
12 TO COAST ABOUT WHAT VIOLATIONS WERE TAKING PLACE IN THE
13 INDUSTRY?

14 A THIS IS ONE OF THE MANY VIOLATIONS, YES.

15 Q WHAT OTHER VIOLATIONS WERE YOU DISCUSSING
16 WITH THEM?

17 A WELL, WE DISCUSSED THE RAIDING RULES, THE
18 125-MILE RULE, AND ITS SUBSEQUENT INCARNATIONS, TO 250 AND
19 500.

20 Q CAN I STOP YOU ON THE 10-TO-1 RULE. I KNOW
21 WE TALKED ABOUT IT YESTERDAY.

22 A YES.

23 Q BUT I WANT TO BE CLEAR ON IT, IF I CAN.

24 A UH-HUH.

25 Q WHAT IS THE 10-TO-1 RULE?

26 A THE 10-TO-1 RULE ACTUALLY COMES OUT OF

1 NEGOTIATIONS WITH ATTORNEY GENERALS WHERE --

2 Q I'M SORRY. FIRST TELL ME WHAT IT IS, AND
3 THEN WE'LL TALK ABOUT WHERE IT CAME FROM.

4 A I'M SORRY. THE 10-TO-1 RULES THAT YOU
5 SHOULD NOT BE SELLING, YOU SHOULDN'T HAVE ANYMORE MEMBERS
6 ON YOUR PARK THAN WOULD EQUAL 10 TIMES THE NUMBER OF
7 PHYSICAL SITES YOU HAVE FOR R.V.'S.

8 SO, FOR EXAMPLE, IF YOU HAD 100 R.V.
9 HOOKUPS, THAT WOULD ALLOW YOU TO SELL 1,000 MEMBERS.

10 THERE'S ALSO A 20-TO-1 RULE WITH REGARD TO
11 THE LODGING FACILITIES THAT YOU HAVE ON YOUR SITE; THAT YOU
12 OUGHT NOT BE SELLING MORE THAN 20 MEMBERSHIPS TO ACCESS
13 THOSE LODGINGS FOR EACH LODGING STRUCTURE YOU HAVE. AND
14 THIS IS A GOOD THING BECAUSE WHAT IT DOES IS, IS WITHOUT
15 THAT, THESE GUYS WOULD SELL -- AS I MENTIONED IN THE CASE
16 OF MR. BALDELLI, I THINK HE HAS 121 SITES AND 4,000
17 MEMBERS. WELL, OBVIOUSLY, IF THESE PEOPLE SHOWED UP ON A
18 SATURDAY TO USE THE FACILITY, THEY'RE GOING TO HAVE A
19 PROBLEM.

20 SO THE IDEA WAS, IS TO KEEP THESE GUYS FROM
21 DOING THIS AND SELLING A PRODUCT TO A CONSUMER THAT THE
22 CONSUMER COULDN'T USE, AND THESE ARE GOOD THINGS.

23 Q AND THEN WE'VE ALREADY TALKED ABOUT THIS
24 125-MILE/250-MILE RULE.

25 AND THEN YOUR LAST POINT -- SECOND TO THE
26 LAST POINT TO DO WITH THE QUALITY OF THE PARKS, RESORTS,

1 YOU HAD THOSE CONVERSATIONS WITH COAST TO COAST?

2 A WELL, YES, BECAUSE COAST HAS IN THEIR
3 AGREEMENTS LANGUAGE THAT STATES THAT YOU HAVE TO MAINTAIN
4 THIS FACILITY TO CERTAIN REASONABLE QUALITIES AND SO ON,
5 WHICH IS A GOOD THING. IT'S A GOOD THING. AND VERY OFTEN
6 NEW GUYS STARTING IN THE BUSINESS, UNDER-CAPITALIZED, WEAK,
7 WOULD BUY SOME PIECE OF JUNK PROPERTY, AND IT DIDN'T HAVE A
8 PROPER STANDARD. IT DIDN'T HAVE -- IT MAY NOT HAVE FULL
9 HOOKUPS. IT MAY NOT HAVE PROPER TOILET FACILITIES AND
10 VARIOUS AND SUNDRY THINGS. DIDN'T HAVE A CLUBHOUSE. YOU
11 NAME IT.

12 AND AS A RESULT, THESE PROPERTIES DIDN'T
13 MEET COAST'S MINIMUM STANDARDS. AND IT WAS IN COAST'S
14 SELF-INTEREST TO TRY TO RAISE THE QUALITY OF THESE
15 PROPERTIES. BECAUSE PEOPLE ARE TRAVELLING AROUND TO THEM.
16 AND WHEN THEY GO VISIT ONE THAT WAS AN UGLY PLACE, THEY
17 WOULD SCREAM BLOODY MURDER.

18 Q I WANT TO NOW TALK ABOUT ATTORNEY GENERALS
19 ISSUES. AND I'LL TAKE THIS BACK. THANK YOU.

20 DID YOU HAVE ANY -- LET ME WITHDRAW THAT,
21 START AGAIN.

22 DID YOU HAVE CONVERSATIONS WITH ANYONE AT
23 COAST TO COAST ABOUT ISSUES THAT COAST TO COAST HAD WITH
24 ATTORNEY GENERALS?

25 A YES.

26 Q ON MORE THAN ONE OCCASION?

1 A YES.

2 Q CAN YOU RECALL FOR ME THE TIME WHEN YOU HAD
3 THE FIRST CONVERSATION ABOUT THE SUBJECT WITH SOMEONE FROM
4 COAST TO COAST?

5 A I HAD CONVERSATIONS WITH PAT BUTLER WHEN HE
6 WAS PRESIDENT. I HAD CONVERSATIONS WITH MR. ROGER RYMAN,
7 AND MR. GENE EVERETT, ALL OF THEM.

8 Q OKAY. SO WE'VE BEEN -- OR I HAVE BEEN
9 BANDYING ABOUT THOSE NAMES THROUGHOUT THE AFTERNOON AND THE
10 MORNING.

11 PAT BUTLER WAS THE PRESIDENT. WHEN WAS HE
12 PRESIDENT OF COAST TO COAST?

13 A HE WAS PRESIDENT OF COAST TO COAST FROM THE
14 TIME AMERICAN BAKING CORPORATION BOUGHT IT FROM ACE AND
15 DENY BROWN. IT'S A LONG TIME BACK. I'M GOING TO GUESS
16 SOMETIME BACK IN '86, IN THAT RANGE, '85, MAYBE.

17 Q AND HOW LONG DID HE REMAIN PRESIDENT?

18 A I THINK HE WAS PRESIDENT INTO THE '90'S, AND
19 THEN MR. RYMAN, DAN GOODMAN, WHO WAS HIS -- HIS
20 VICE-PRESIDENT, TOOK OVER WHEN MR. BUTLER AND MR. ADAMS
21 DECIDED TO PART COMPANY.

22 Q OKAY. SO HOW LONG WAS MR. RYMAN PRESIDENT?

23 A HE MAY HAVE BEEN PRESIDENT FOR, GOSH, UP
24 UNTIL MAYBE -- INTO THE LATE '90'S WHEN MR. EVERETT BECAME
25 PRESIDENT. MR. EVERETT WAS MR. RYMAN'S VICE-PRESIDENT.

26 RYMAN RETIRED, AND MR. EVERETT SUCCEEDED TO

1 THE PRESIDENCY.

2 Q AND MR. EVERETT'S PRESIDENCY, THEN, HAS BEEN
3 RELATIVELY RECENT?

4 A YES. WITHIN THE LAST FEW YEARS, PROBABLY.

5 Q OKAY. NOW, LET'S GO BACK.

6 YOU TALKED TO MR. BUTLER ABOUT PROBLEMS WITH
7 THE ATTORNEY GENERALS. WHAT DID YOU TALK TO HIM ABOUT?

8 A WELL, MY BASIC POSITION WAS I TOOK THE
9 POSITION THAT COAST HAD A DUTY NOT TO ALLOW PEOPLE TO USE
10 THEIR PRODUCT TO DISADVANTAGE CONSUMERS. AND I FELT THAT
11 IF, IF AN INVESTIGATION WAS ENTERED INTO BY AN ATTORNEY
12 GENERAL, PERHAPS THEY OUGHT TO SUSPEND THE RIGHT FOR THAT
13 AFFILIATE TO USE THEIR PRODUCT. AND I FELT ABSOLUTELY THAT
14 IF AN ATTORNEY GENERAL FOUND THAT THE RESORT DEVELOPER WAS
15 ENGAGED IN MISREPRESENTATION AND ANY OTHER ACT THAT WAS
16 ILLEGAL TO THE DETRIMENT OF CONSUMERS, THAT COAST SHOULD
17 REMOVE FROM THEM THE ABILITY TO USE THEIR PRODUCT AND
18 CANCEL THEIR LICENSE.

19 Q SO LICENSEES AND AFFILIATES OVER HERE; THERE
20 WERE CIRCUMSTANCES WHERE THE ATTORNEY GENERAL FROM A
21 PARTICULAR STATE WOULD BE INVESTIGATING THE ACTIVITIES OF
22 THE LICENSEES OR THE AFFILIATES?

23 A CORRECT.

24 Q AND THIS IS THE DISCUSSION REGARDING THE --
25 THIS ISSUE?

26 A RIGHT. I FELT THAT THIS HURT THE INDUSTRY.

1 IT WASN'T GOOD FOR CONSUMERS. IT WASN'T GOOD FOR ME,
2 BECAUSE I WOULD BE PAINTED WITH THE SAME BRUSH. IF THESE
3 GUYS WERE ALLOWED TO ENGAGE IN THIS SHABBY ACTIVITY AND USE
4 COAST AS A TOOL OR DEVICE TO MAKE MONEY, THAT I -- I WOULD
5 BE SUBJECT TO, CONSIDERED TO BE THE SAME THING. AND NOT
6 ONLY ME, OTHER LEGITIMATE OPERATORS.

7 Q NOW, IS THERE EVER A TIME WHEN YOU HAD THIS
8 CONVERSATION WITH MR. BUTLER OR ANY PRESIDENT AT COAST TO
9 COAST WHERE THERE WAS AN ATTORNEY GENERAL INVESTIGATION,
10 AND FOR WHATEVER REASON COAST TO COAST DECIDED NOT TO
11 TERMINATE THE LICENSE AGREEMENT WITH THEM?

12 A NUMEROUS TIMES.

13 Q DO YOU HAVE ONE PARTICULAR CIRCUMSTANCE IN
14 MIND THAT YOU HAVE PERSONAL KNOWLEDGE OF?

15 A WELL, I RAISED THIS ISSUE WITH REGARD TO
16 NUMEROUS SITUATIONS ON MANY OCCASIONS REGARDING
17 MR. VOPNFORD, WHO OVER A PERIOD OF YEARS WAS CITED BY THE
18 ATTORNEY GENERAL IN EVERY STATE HE OPERATED IN.

19 Q AND WHAT DID -- NOW, WOULD THAT HAVE BEEN
20 WITH MR. RYMAN; WAS THAT HIS PRESIDENCY?

21 A MR. RYMAN AND/OR MR. EVERETT.

22 Q AND WHAT DID YOU SAY TO THEM ABOUT
23 MR. VOPNFORD?

24 A I SAID, "YOU'VE GOT TO STOP THIS GUY. HE IS
25 RAISING HAVOC IN THE INDUSTRY. HE HAS BEEN CITED BY
26 NUMEROUS ATTORNEYS GENERAL FOR ENGAGING IN

1 MISREPRESENTATION, AND HE HAS SIGNED CONSENT ORDERS THAT HE
2 HAS VIOLATED. HIS PROPERTIES LOOK LIKE JUNK. HE DOESN'T
3 IMPROVE THEM. THIS IS A BAD THING FOR EVERYBODY. AND
4 COAST WAS IN A DIFFICULT POSITION. I APPRECIATED THAT.
5 THERE WERE LEGAL ISSUES.

6 Q OKAY. WHAT DID THEY SAY TO YOU IF ANYTHING
7 ABOUT THE LEGAL ISSUES?

8 A WELL, THEY TOLD ME THAT THEY WERE -- YOU
9 KNOW, THEIR HANDS WERE SOMEWHAT TIED. I DIDN'T BELIEVE
10 THEIR HANDS WERE TIED, BUT THEY WERE CONCERNED IF THEY TOOK
11 ONE OF THESE GUY'S LISTS AWAY, HE MIGHT COME BACK AND SUE
12 THEM.

13 Q ANY OTHER DISCUSSIONS REGARDING ATTORNEY
14 GENERALS ISSUES?

15 A I'M SURE THERE WERE, BUT I DON'T REMEMBER
16 THE SPECIFICITY OF THEM. IT WOULD HAVE BEEN ABOUT THE SAME
17 CONCEPT, THE SAME CORE ISSUE.

18 Q NOW, STAYING WITH THAT CORE ISSUE, THE ISSUE
19 OF YOUR DISCUSSION WITH COAST, THEY'RE TAKING ACTION
20 BECAUSE OF CERTAIN VIOLATIONS HAPPENING THAT YOU FELT WERE
21 VIOLATIONS. WERE THERE -- AND I'M GOING TO USE THE TERM
22 "ENFORCEMENT," THAT IS, YOUR DISCUSSION WITH COAST TO COAST
23 OF THEM ENFORCES THEIR RULES AGAINST THE LICENSEES?

24 A YEAH. I FELT UNDER THEIR LICENSE AGREEMENT
25 THAT THEY HAD THE POWER TO CUT THESE GUYS OFF WHO WERE
26 ENGAGED IN THIS KIND OF BEHAVIOR, AND I WOULD CONSTANTLY

1 BERATE THEM ABOUT THEIR DUTY TO DO THAT. AND THEY WOULD
2 TELL ME ABOUT THE PROBLEMS THEY MIGHT HAVE, IF THEY DID
3 THAT. AND I APPRECIATED THEIR SENSITIVITY TO IT.

4 I MAY HAVE VIEWED IT DIFFERENTLY, BUT THEY
5 HAD A RIGHT TO DO WHAT THEY THOUGHT WAS MOST IMPORTANT FOR
6 THEIR BUSINESS. THAT WAS OKAY. I DIDN'T LIKE IT, BUT I
7 UNDERSTOOD IT.

8 Q AND SO THERE WERE TIMES WHEN YOU RECOMMENDED
9 A DISAFFILIATION WITH COAST TO COAST BECAUSE OF CERTAIN
10 CIRCUMSTANCES?

11 A "RECOMMENDED" IS SOFT LANGUAGE. YES, THERE
12 WERE DEFINITELY.

13 Q OKAY. I'D LIKE TO NOW GO TO A SUBJECT OF
14 WHETHER YOU HAVE ANY PERSONAL KNOWLEDGE OF WHETHER COAST TO
15 COAST CANCELLED OR TERMINATED ANY OF THEIR AGREEMENTS WITH
16 THE LICENSEES OR AFFILIATES.

17 A TO THE BEST OF MY KNOWLEDGE COAST HAS NEVER
18 CANCELLED A LICENSE AGREEMENT BECAUSE A LICENSEE WAS EITHER
19 INVESTIGATED OR FOUND TO BE GUILTY OF FRAUD OR
20 MISREPRESENTATION BY AN ATTORNEY GENERAL.

21 Q I'D LIKE TO NOW TURN TO A DIFFERENT SUBJECT
22 REGARDING COAST TO COAST. AND THAT IS, LET ME SET THE
23 STAGE FOR THE ISSUE.

24 YOU HAVE A SITUATION WHERE THE MEMBER
25 BECOMES AN ORPHAN. SOMETHING HAS HAPPENED TO THE HOME
26 RESORT. DO YOU HAVE ANY PERSONAL KNOWLEDGE OF

1 CIRCUMSTANCES WHERE COAST WOULD VIOLATE ANY OF ITS OWN
2 RULES AND REGULATIONS IN TRANSFERRING THE ORPHAN TO A PARK
3 FURTHER AWAY THAN 125 MILES OR 250 MILES?

4 A YES.

5 Q WHAT CIRCUMSTANCE WAS THAT?

6 A WELL, THE MASS TRANSFER OF THE TRAVEL
7 AMERICA MEMBERS WAS CERTAINLY THE MOST EGREGIOUS EXAMPLE OF
8 THAT IN THE HISTORY OF COAST TO COAST. IT'S NEVER BEEN
9 DONE. THAT'S THE BIGGEST EXAMPLE THAT I KNOW OF.

10 Q AND THAT'S --

11 MR. RIVIN: YOUR HONOR, I'D LIKE TO OBJECT ON THE
12 BASIS OF LACK OF FOUNDATION. THIS WITNESS HAS NOT
13 TESTIFIED AS TO HIS PERSONAL KNOWLEDGE OF ANY OF WHAT HE IS
14 TESTIFYING.

15 THE COURT: PERHAPS YOU CAN CLEAR THAT UP.

16 MR. SHAW: I WILL, YOUR HONOR. I WILL DEVELOP IT
17 FURTHER.

18 Q BUT BEFORE I GET TO THE TRAVEL AMERICA,
19 BECAUSE I DO WANT TO TAKE SOME TIME WITH THAT, I WANT TO
20 TALK ABOUT A COUPLE OF OTHER ISSUES THAT WE CAN GET THROUGH
21 RELATIVELY QUICKLY.

22 AND THAT IS, THE SALE OF COAST MEMBERSHIPS
23 FOR A LESS-THAN-RETAIL PRICE ON A WHOLESALE PRICE BASIS.
24 WERE YOU EVER AWARE OR HAVE ANY PERSONAL KNOWLEDGE OF THOSE
25 SALES OCCURRING?

26 A I CAN'T ANSWER YOUR QUESTION. YOU HAVE TO

1 GET A LITTLE MORE SPECIFIC. BECAUSE ARE YOU SAYING DID
2 COAST EVER OFFER ITS AFFILIATES WHOLESALE PRICES FOR THEIR
3 MEMBERSHIPS WHICH THEY SUBSEQUENTLY WOULD SELL OR GIVE TO
4 THEIR MEMBERS?

5 Q YOU JUST SAID IT MORE ARTFULLY THAN I DID.

6 A IS THAT WHAT YOU'RE SPEAKING TO?

7 Q YES.

8 A AS OPPOSED TO THE RETAIL BEING THE \$5,000
9 GUY AND THE WHOLESALE BEING THE THROW-AWAY GUY?

10 Q CORRECT.

11 A OKAY. YES. EARLY ON IN COAST -- I DON'T
12 KNOW THAT THIS OCCURRED. I DON'T RECALL. AND I DON'T HAVE
13 ANY DIRECT KNOWLEDGE OF THIS OCCURRING WHILE THE AFFINITY
14 GROUP OWNED COAST. SO I WOULD SAY THAT I DON'T THINK THAT
15 THE AFFINITY GROUP EVER DID THAT.

16 BUT IT WAS A COMMON PRACTICE IN THE INITIAL
17 TIMES OF COAST BECAUSE IT WAS A PRODUCT. IT WAS LIKE I BUY
18 10 LOAFES OF BREAD. I GET 50 LOAFES OF BREAD. AND EARLY ON
19 YOU COULD BUY THESE MEMBERSHIPS, AND YOU GET REDUCED RATES
20 AND DISCOUNTS. YOU BUY MORE OF THEM. AND THEN WHEN YOU
21 SIGN PEOPLE UP -- WHEN YOU SOLD THEM A MEMBERSHIP AND YOU
22 SIGNED PEOPLE UP FOR COAST SERVICES, THEN YOU JUST FILL OUT
23 THE THINGS AND SEND THEM IN. YOU ALREADY BOUGHT THEM, IF
24 YOU WILL.

25 Q OKAY. THE OTHER SUBJECT IS A --

26 A BUT AFFINITY DIDN'T DO THAT TO MY KNOWLEDGE.

1 Q OKAY. THE NEXT SUBJECT IS THE AMERICAN
2 ADVENTURE BANKRUPTCY. I'D LIKE TO TALK ABOUT THAT
3 SUBJECT.

4 DO YOU HAVE PERSONAL KNOWLEDGE OF THAT
5 CIRCUMSTANCE?

6 A I WAS IN THE BUSINESS WHEN IT OCCURRED AND
7 WHILE THE EVENTS LEADING UP TO IT OCCURRED.

8 Q DID YOU HAVE ANY CONVERSATIONS WITH ANYONE
9 AT COAST REGARDING THE AMERICAN ADVENTURE BANKRUPTCY?

10 A I DON'T RECALL ANY SPECIFIC CONVERSATIONS
11 WITH ANYONE AT COAST REGARDING THE AMERICAN ADVENTURE
12 BANKRUPTCY. I'M SURE THAT I DID HAVE BECAUSE IT WAS A VERY
13 SIGNIFICANT EVENT IN THE INDUSTRY. AMERICAN ADVENTURE WAS
14 ONE OF THE ORIGINAL FOUR OR FIVE COMPANIES.

15 Q OKAY. LET'S STOP AND TALK ABOUT THE
16 AMERICAN ADVENTURE BANKRUPTCY.

17 MR. RIVIN: YOUR HONOR, I THINK MR. SHAW TRIED TO
18 LAY A FOUNDATION AND COULD NOT. OBJECT ON THAT BASIS.
19 LACK OF FOUNDATION. HEARSAY.

20 THE COURT: SUSTAINED.

21 MR. SHAW: I WOULD LIKE TO TRY TO DEVELOP IT
22 FURTHER.

23 THE COURT: ALL RIGHT.

24 BY MR. SHAW: Q TELL ME WHAT YOUR KNOWLEDGE IS
25 ABOUT THE AMERICAN ADVENTURE BANKRUPTCY.

26 A THE AMERICAN ADVENTURE BANKRUPTCY --

1 MR. RIVIN: THE SAME OBJECTION, YOUR HONOR. THE
2 WITNESS IS GOING TO TESTIFY AS TO HIS KNOWLEDGE WITHOUT
3 LAYING THE FOUNDATION FOR IT.

4 THE COURT: REPHRASE.

5 MR. SHAW: I'LL GET AT IT A DIFFERENT WAY.

6 Q AS AN EXPERT WITH YOUR TRAINING, SKILL,
7 KNOWLEDGE, EXPERTISE, DID YOU ANALYZE THE CIRCUMSTANCES OF
8 THE AMERICAN ADVENTURE BANKRUPTCY AS A BASIS FOR, A REASON
9 FOR YOUR OPINION THAT YOU ARTICULATED YESTERDAY, THAT COAST
10 TO COAST'S ACTIONS AND CONDUCT AND BEHAVIOR CAUSED DAMAGE
11 TO THE PLAINTIFFS?

12 A YES.

13 MR. RIVIN: YOUR HONOR, MAY WE APPROACH, PLEASE?

14 THE COURT: YES.

15 MR. RIVIN: THANK YOU.

16 (DISCUSSION OFF THE RECORD.)

17 BY MR. SHAW: Q MR. MITCHELL, AMERICAN ADVENTURE
18 BANKRUPTCY, WHAT DID YOU ANALYZE AND INVESTIGATE REGARDING
19 THE AMERICAN ADVENTURE BANKRUPTCY TO FORMULATE YOUR
20 OPINION?

21 A I REVIEWED MY KNOWLEDGE OF THE COMPANY FROM
22 ITS INCEPTION. IT STARTED AS ROBERTS BROTHERS CONSTRUCTION
23 COMPANY IN SEATTLE, WASHINGTON. I WAS FAMILIAR WITH THEIR
24 INITIAL PARK. THEY WERE ONE OF THE FIRST FOUR CAMP
25 RESORTS. AND THIS GOES BACK TO -- PARDON ME, CAMPGROUND.
26 THIS IS THE OLD DAY. MEMBERSHIP CAMPGROUND PROGRAMS.

1 I REVIEWED EVERYTHING FROM THE INCEPTION OF
2 THEIR COMPANY UP THROUGH THE FINAL DISSOLUTIONMENT THROUGH
3 BANKRUPTCY AND THE THOUSANDS OF MEMBERS WHO LOST MONEY AND
4 JUST -- AND THEIR PARKS TO USE.

5 Q WHY DID THEY GO INTO BANKRUPTCY?

6 A THEY WERE FORCED INTO BANKRUPTCY. I BELIEVE
7 THAT THEY WENT INTO BANKRUPTCY TO PROTECT THEMSELVES FROM
8 CREDITORS. THIS IS WHY PEOPLE GO INTO BANKRUPTCY. THIS
9 ORIGINALLY STARTED AS A REORGANIZATIONAL BANKRUPTCY, AND SO
10 THEY WERE --

11 Q WHAT WE CALL A CHAPTER 11?

12 A A CHAPTER 11 BANKRUPTCY. AND THEY HAD
13 FINANCIAL DIFFICULTIES. AND THEY -- THOSE DIFFICULTIES
14 FLOWED FROM THE WAY THEY SOLD THEIR PRODUCT, MANAGED THEIR
15 COMPANY. AND WHEN CREDITORS CAME TO VISIT ON THEM, THEY
16 APPROPRIATELY, TO TRY TO SAVE THE COMPANY, PUT IT INTO A
17 CHAPTER 11 SO THEY WOULD HAVE PROTECTION FROM CREDITORS.

18 GENERALLY WHAT HAPPENS WHEN THINGS START TO
19 GO BAD, EVERY CREDITOR WANTS TO BE IN LINE FIRST. SO HE IS
20 GOING TO GO IN THERE AND TRY TO GRAB WHAT HE CAN. AND THIS
21 KIND OF BEHAVIOR IS WHAT CAUSES COMPANIES TO GO DOWN
22 COMPLETELY.

23 SO THAT'S WHAT CHAPTER 11 IS FOR. SO IT
24 STARTED IN THAT WAY, AND I WAS OPERATING UNDER THOSE
25 CONDITIONS FOR AN EXTENDED PERIOD OF TIME.

26 AND THEN DURING THE COURSE OF THIS PROCESS,

1 THE COAST TO COAST FOLKS BECAME A CREDITOR. THEY PROVIDED
2 SERVICES UNDER MR. BUTLER'S DIRECTION, WHICH I WAS ALWAYS
3 VERY SUSPECT OF. THESE PEOPLE COULDN'T PAY THE LIGHT BILL
4 FOR -- I DON'T KNOW WHAT THEY NEEDED A PHONE RESERVATION
5 FOR.

6 Q SO WHILE THEY WERE IN BANKRUPTCY, COAST TO
7 COAST CONTRACTED WITH THEM TO PROVIDE SERVICES?

8 A CORRECT. AND THE NET RESULT OF IT WAS THAT
9 UNDER MR. BUTLER, COAST ENDED UP BEING A SIGNIFICANT
10 CREDITOR. MR. NOVELLI HAD BOUGHT ALL THE STOCK OF COAST TO
11 COAST.

12 Q I'M SORRY. YOU MISSPOKE. COAST TO COAST?

13 A I'M SORRY. OF AMERICAN ADVENTURE.
14 MR. NOVELLI HAD BOUGHT THE STOCK OF AMERICAN ADVENTURE WITH
15 THE IDEA OF GOING BEFORE THE BANKRUPTCY COURT AND TAKING IT
16 OVER AND REHABILITATING THE COMPANY AS HE HAD DONE IN THE
17 PAST; ALTHOUGH, IT WAS THE FIRST TIME I HAD EVER KNOWN
18 HIM -- I DIDN'T KNOW HIM THEN, BUT I HEARD OF HIM
19 SOLICITING. USUALLY PEOPLE CAME TO HIM.

20 Q NOW, WHAT -- TRY TO GET PRECISE ABOUT WHAT
21 YEAR THIS WAS, IF YOU CAN.

22 A OH, I'M THINKING. AND THIS IS HAPPENING IN
23 THE LATE '80'S. AND MAYBE '86, '87, SOMEWHERE IN THAT
24 RANGE. AND --

25 Q DO YOU RECALL THIS MORNING YOU TALKED
26 ABOUT ON MR. SHERMAN'S TIME LINE THAT THE -- ALL SEASONS

1 RESORTS' BANKRUPTCY, AND WHEN BARCLAY'S ASKED MR. NOVELLI
2 TO COME IN?

3 A YEAH. IT WAS AFTER THAT.

4 Q IT WAS AFTER?

5 A AFTER MR. NOVELLI WAS IN THE BUSINESS.

6 AND SO HE HAD BOUGHT THE STOCK, AND
7 MR. BUTLER GOT -- OF COURSE, HAD MADE HIMSELF A CREDITOR,
8 MADE COAST TO COAST A CREDITOR. AND HE GOT TOGETHER WITH
9 ONE OR MORE OTHER CREDITORS AND SAID, "WELL, WAIT A MINUTE,
10 MR. NOVELLI. CAN'T, HE MAY HAVE BOUGHT THIS STOCK, BUT HE
11 CAN'T HAVE IT BECAUSE WE'RE CREDITORS. AND SO THEY MANAGED
12 TO RANKLE A LITTLE, DO A LITTLE DANCING AND GET THE COURT
13 TO AGREE. AND MR. NOVELLI LOST HIS INVESTMENT IN STOCK OR
14 WHATEVER.

15 AND MR. BUTLER AND COAST TO COAST BEGAN
16 OPERATING -- WELL, THEY DIDN'T OPERATE IT. THEY WERE -- IT
17 WAS A BANKRUPTCY SITUATION. BUT THEY BEGAN TO PARTICIPATE
18 IN THE OPERATION OF AMERICAN ADVENTURE.

19 THERE WERE -- THIS WAS -- THESE PEOPLE HAD,
20 YOU KNOW, ALREADY SUFFERED, THE MEMBERS HAD ALREADY
21 SUFFERED SUBSTANTIAL DEVASTATION. THE DUES WERE RAISED.
22 THEY WERE ASKED TO PAY ADDITIONAL FEES. THEY WERE
23 UNDIVIDED INTERESTS IN THE COMPANY SOLD. AND EVERYONE MADE
24 A LOT OF MONEY.

25 AND THEN ONE DAY, BOOM, BOOM, BOOM. THE
26 WHOLE THING WENT INTO BANKRUPTCY AND EVERYONE LOST. SO

1 THOUSANDS OF MEMBERS NOT ONLY LOST THEIR INITIAL
2 INVESTMENT, BUT THE ADDITIONAL MONEY THEY PUT IN TO TRY TO
3 KEEP THIS THING ALIVE, AND THEN THEY LOST IT ALL.

4 Q AND YOU SAID COAST TO COAST WAS INVOLVED IN
5 THE OPERATION OF THE AMERICAN ADVENTURES RESORTS FOR A
6 PERIOD OF TIME, OR WERE THEY JUST CREDITORS OFFERING A
7 SERVICE?

8 A WELL, THEY WERE A CREDITOR. BUT THEN THE
9 COURT GAVE COAST TO COAST AN OWNERSHIP POSITION IN THE
10 COMPANY. AS CREDITOR YOU COULD -- YOU KNOW, THE COURT
11 SAID, WELL, YOU'RE A CREDITOR. YOU OBVIOUSLY -- BECAUSE
12 THE CREDITORS IN A SENSE OWNED THE COMPANY. THEY HAVE A
13 LIEN.

14 LIKE, IF YOU WILL, LIKE IF I OWN PROPERTY
15 AND I HAVE A LIEN AGAINST IT, YOU DON'T PAY MY LIEN, THEN I
16 OWN YOUR PROPERTY. SO, IN THAT SENSE, THAT'S HOW IT
17 OCCURRED.

18 AND DURING THAT TIME, ADDITIONAL MONIES WERE
19 EXTRACTED FROM THE MEMBERS. AND THE NET RESULT WAS, IS THE
20 PARKS ULTIMATELY WERE SOLD OFF, AND AMERICAN ADVENTURES
21 DOESN'T EXIST. AND LOTS OF HARD-WORKING, RETIRED PEOPLE
22 LOST \$6500 APIECE.

23 Q NOW, YOU'VE TALKED ABOUT -- THIS MORNING WE
24 TALKED ABOUT THE VOPNFORD/THOUSAND ADVENTURES BANKRUPTCIES.
25 WE TALKED ABOUT THE ALL SEASONS RESORTS BANKRUPTCIES. NOW
26 WE'VE TALKED ABOUT THE AMERICAN ADVENTURES BANKRUPTCIES.

1 IN YOUR PERSONAL KNOWLEDGE WITH THOSE
2 BANKRUPTCIES, DO YOU HAVE AN OPINION AS TO WHETHER
3 BANKRUPTCIES CAN BE GOOD FOR THE MEMBERS?

4 A THEY CAN BE GOOD, AND THEY CAN BE BAD. IT
5 DEPENDS ON HOW THEY'RE MANAGED.

6 Q NOW, WHEN YOU SAY "HOW THEY'RE MANAGED,"
7 WHAT DO YOU MEAN BY HOW THEY'RE MANAGED?

8 A I MEAN, IF THE -- IF THE -- IT'S A CHAPTER
9 11 BANKRUPTCY, AND THE INTENTION IS TO GET THIS COMPANY OUT
10 OF TROUBLE TO THE BENEFIT OF THE MEMBERS, AND THAT PROCESS
11 OCCURS -- IN OTHER WORDS, IF THE THING STAYS ALIVE AND THE
12 PARKS ARE THERE AND THE MEMBERS GETS SERVICES, THAT'S
13 GOOD.

14 IF IT IS MANAGED IN SUCH A WAY THAT IT ENDS
15 UP BEING A CHAPTER 7, AND IT GOES AWAY, AND THOSE MEMBERS
16 ARE NOT GIVEN ALTERNATIVES, THEN THEY DON'T GET SOMETHING,
17 THEN THAT'S BAD. BECAUSE THE MEMBERS PAY FOR ALL OF THIS.
18 I MEAN, THE MEMBERS ARE THE BIGGEST CREDITOR THAT ANY OF
19 THESE COMPANIES HAVE.

20 Q NOW, BASED ON THAT OPINION THAT YOU JUST
21 GAVE, WAS THE AMERICAN ADVENTURES BANKRUPTCY A GOOD OR BAD
22 BANKRUPTCY?

23 A I WOULD TAKE A DIFFERENT POSITION THAN
24 MR. BUTLER, WHO INDICATED IT WAS A GOOD BANKRUPTCY, BECAUSE
25 ALL THE PROFESSIONALS GOT PAID. AND I AGREE MR. BUTLER GOT
26 PAID. I WOULD CONSIDER IT TO BE A BAD BANKRUPTCY BECAUSE

1 THE MEMBERS LOST. ANY -- TO ME, I'M A REAL SIMPLE GUY, IF
2 THE CONSUMER LOSES, IT'S BAD.

3 Q AND IN THAT BANKRUPTCY THEY -- BUT YOUR
4 KNOWLEDGE WAS COAST TO COAST GOT PAID, BUT THE MEMBERS LOST
5 BECAUSE THE COMPANY WENT -- WAS LIQUIDATED?

6 A WELL, COAST TO COAST GOT PAID. MR. BUTLER
7 GOT PAID. OTHER PROFESSIONALS GOT PAID, ACCOUNTANTS,
8 LAWYERS. NO DISRESPECT INTENDED.

9 Q NO DISRESPECT TAKEN.
10 I'D LIKE TO MOVE TO ANOTHER SUBJECT BEFORE
11 WE GET INTO THE TRANSFERS AND TO USE THE NEXT 10 MINUTES.
12 AND THIS IS IN THE AREA OF MARKETING AND SALES.

13 YESTERDAY AFTERNOON WE TALKED ABOUT HOW THE
14 RESORT GOES ABOUT GENERATING THESE SALES, GETTING PEOPLE TO
15 THE RESORTS, GIVING PRESENTATIONS, GIVING THEM COLLATERAL
16 SERVICE SUCH AS COAST RECIPROCALLS TO GET THEM TO BECOME
17 MEMBERS.

18 A CAN I SPEAK TO THAT?

19 Q NO. I WANT TO FRAME A QUESTION NOW.

20 A I'M SORRY. IS THAT A QUESTION?

21 Q I DIDN'T WANT YOU TO BE TALKING TO MY BACK.
22 SO I WAS TRYING TO BE COURTEOUS.

23 A THANK YOU. THANK YOU.

24 Q IF COAST CALLED COMPETITIVE RESORTS,
25 COMPETITIVE RESORTS OF THE PLAINTIFFS, MY CLIENTS, AND TOLD
26 THEM THAT THEY COULD TAKE -- THEY HAD TO TAKE ORPHAN

1 MEMBERS FOR A LOWER MEMBERSHIP FEE OR NO MEMBERSHIP FEE,
2 WOULD THAT BE WRONG UNDER THE COAST RULES AND REGULATIONS?

3 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

4 THE COURT: OVERRULED. I'M GOING TO ALLOW THE
5 QUESTION.

6 THE WITNESS: YES, I BELIEVE THAT WOULD BE WRONG.

7 BY MR. SHAW: Q WHY?

8 A WELL, IT WOULD BE WRONG FOR MANY REASONS,
9 NONE THE LEAST OF WHICH IS THAT THEY WOULDN'T PHYSICALLY
10 VISIT THE RESORT. ALL THESE LITTLE RULES.

11 BUT ALSO THERE'S ANOTHER POINT HERE. IF
12 COAST REQUIRES A RESORT DEVELOPER -- AND THAT MEANS WHETHER
13 THEY REQUIRE THEM BY GIVING THEM A CARROT OR A STICK TO
14 ACCEPT THESE ORPHANED MEMBERS, THAT THEY DON'T GET ANY
15 UP-FRONT FEE WITH REGARD TO THAT. ALL THEY'RE GOING TO GET
16 IS DUES. SO --

17 Q I MEAN, THE RESORT WOULD NOT GET ANY
18 UP-FRONT FEES?

19 A RIGHT.

20 NOW, AS A RESULT, SINCE WE HAVE AN ABSOLUTE
21 REALITY, YOU CAN ONLY HAVE SO MANY MEMBERS ON THE PROPERTY.

22 Q THIS 10-TO-1 RULE?

23 A RIGHT. AND YOU KNOW YOU HAVE TO RECOVER THE
24 COSTS TO BUILD THE PROPERTY AND PROVIDE THE AMENITIES TO
25 THE MEMBERS. THAT MEANS YOU AREN'T GOING TO GET THE MONEY
26 FOR THAT. SO WHERE DOES IT COME FROM? IT'S NOT GOING TO

1 COME OUT OF THE DUES BECAUSE THE DUES ARE ALL USED IN
2 SUPPORTING THE RESORT, IF YOU HAVE A REAL RESORT, AS
3 OPPOSED TO, LET'S SAY, A GIVE-AWAY PROGRAM.

4 SO, YES --

5 Q AND THE RESULT OF THAT WOULD BE THAT IF
6 THERE'S NO MONEY BECAUSE OF THESE GIVE-AWAYS, THEN THE
7 TOILETS BACK UP?

8 A RIGHT.

9 Q THE PARK ISN'T MAINTAINED; THE TRASH BILL IS
10 UP?

11 A WELL, THAT CERTAINLY COULD HAPPEN. I DON'T
12 THINK IF COAST FORCED OR SUGGESTED OR ASKED SOMEBODY TO
13 TAKE 10 OR 20 MEMBERS THAT THIS WOULD BE SOMETHING OF
14 EXTRAORDINARY FINANCIAL CONSEQUENCE. BUT, YES, THAT COULD
15 HAPPEN.

16 AND MANY OF THE RESORT AFFILIATES AND
17 LICENSEES THAT COAST CONTACTED AND ASKED TO TAKE THESE
18 MEMBERS REFUSED TO DO SO FOR EXACTLY THAT REASON.

19 THESE RESORTS WERE VERY CLOSELY SOLD OUT, OR
20 THEY HAD -- THE FINITE REALITY THEY HAD TO DEAL WITH, THEY
21 JUST TOLD THEM, "I CANNOT AFFORD TO DO THAT. THAT'S NOT
22 GOING TO WORK FOR ME."

23 Q THE SECOND SUBJECT, WE LOOKED ON THE
24 EXHIBIT, I BELIEVE IT WAS 46 WHEN WE WERE LOOKING AT IT,
25 THE COAST APPLICATION, DEFENDANTS' 46, THE COAST
26 APPLICATION, IF YOU HAVE THAT IN MIND WITH ME. I WON'T

1 TAKE THE TIME TO PUT IT UP --

2 A YES.

3 Q -- BEFORE LUNCH.

4 BUT IN THAT, SOME OF THE LANGUAGE WE READ,
5 WE TALKED ABOUT THE FACT THAT IF THEIR AFFILIATION WITH THE
6 RESORT WAS TERMINATED FOR SOME REASON, THEY COULD REMAIN,
7 THE MEMBERSHIP COULD REMAIN THROUGH THE END OF THE YEAR.

8 A YEAH, AS A CONTRACTUAL REALITY, THAT'S THE
9 AGREEMENT COAST HAS WITH ITS LICENSEES AND THE PEOPLE THAT
10 BUY THE COAST PRODUCT. THE PRACTICAL REALITY IS SOMETIMES
11 THERE ARE GUYS THAT REMAIN ON COAST'S BOOKS FOR YEARS THAT
12 DON'T HAVE HOME PARKS.

13 Q I'D LIKE TO TALK ABOUT THAT.

14 DO YOU BELIEVE THAT'S WRONG, IN YOUR
15 OPINION, BACKGROUND, TRAINING AND EXPERIENCE, THAT IF COAST
16 SAYS IN THEIR APPLICATION CONTRACT THAT YOU CAN STAY ONLY
17 THROUGH THE END OF THE CALENDAR YEAR, BUT IF THEY ALLOW
18 THEM TO CONTINUE TO REMAIN, IS THAT WRONG?

19 MR. RIVIN: OBJECTION, YOUR HONOR. LACK OF
20 FOUNDATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: YOU'RE TALKING ABOUT MORALS, RIGHT
23 AND WRONG. I DON'T KNOW IF RIGHT AND WRONG IS THE RIGHT
24 TERM. IT CLEARLY IS A VIOLATION OF THE LICENSE AGREEMENT.
25 AND IT CLEARLY I THINK BEYOND THAT VIOLATES, I THINK, A
26 TRUST BETWEEN THE OTHER MEMBERS, THE ONES THAT HAVE TO PAY

1 THEIR DUES AND HAVE TO BE A MEMBER OF A HOME PARK. IF
2 PEOPLE ARE ALLOWED TO CONTINUE BEYOND THE TERMS OF THE
3 AGREEMENT AND NOT BE ASSOCIATED WITH A HOME PARK, I THINK
4 THAT THAT VIOLATES AGREEMENTS.

5 THE COURT: YOU'VE ANSWERED THE QUESTION.

6 BY MR. SHAW: Q FINALLY, BEFORE LUNCH,
7 MR. MITCHELL, IF COAST WOULD TRANSFER MEMBERS, RESORT
8 MEMBERS FROM THE HOME RESORT, AND -- LET'S SAY, SACRAMENTO,
9 CALIFORNIA. I HAVE DELTA ISLE RESORT IN MIND. FROM
10 SACRAMENTO TO A PAT BUTLER RESORT -- YOU MENTIONED
11 MR. BUTLER WAS A PRESIDENT, FORMER PRESIDENT?

12 A YES.

13 Q TO A BUTLER RESORT IN SAN PHILLIPI, MEXICO,
14 WOULD THAT BE A VIOLATION OF COAST RULES?

15 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

16 THE COURT: SUSTAINED.

17 BY MR. SHAW: Q LET ME BE MORE GENERIC, THEN.
18 I'LL LEAVE OUT THE DELTA ISLE, AND I'LL LEAVE OUT THE
19 PAT BUTLER, SAN PHILLIPI.

20 IF COAST SENT OUT A TRANSFER NOTICE -- WE'RE
21 GOING TO TALK ABOUT THAT THIS AFTERNOON. BUT THEY SENT OUT
22 A TRANSFER NOTICE TO THESE MEMBERS TRANSFERRING THEIR HOME
23 RESORT FROM A PARTICULAR LOCATION TO SOMEPLACE FURTHER THAN
24 250 MILES, WOULD THAT BE A VIOLATION OF THE COAST RULES AND
25 REGULATIONS?

26 A YES.

1 Q AND WHY?

2 A WELL, BECAUSE THEY HAVE THESE RULES WITH
3 REGARD TO MARKETING. AND ALSO THE IDEA IS THAT HOW IN THE
4 WORLD CAN I USE A PRODUCT THAT IS 1200 MILES AWAY IN
5 ANOTHER COUNTRY? I MEAN, THAT'S ABSURD.

6 Q BECAUSE YOU'RE AT THAT HOME RESORT BECAUSE
7 OF ITS PROXIMITY --

8 A YES. AND, FURTHERMORE, COAST HAD RESORTS IN
9 THE IMMEDIATE PROXIMITIES. THERE ARE OTHER COAST RESORTS
10 WITHIN 125 MILES OF DELTA ISLE. THEY COULD HAVE -- IN
11 OTHER WORDS, IF THEY'RE JUST LOOKING TO TRANSFER THEM. AND
12 ALSO THE TRANSFER ITSELF IS QUESTIONABLE.

13 Q WE'LL TALK ABOUT THAT TRANSFER THIS
14 AFTERNOON.

15 YOUR HONOR, I THINK THIS IS PROBABLY A GOOD
16 PLACE TO BREAK.

17 THE COURT: VERY. WELL, WE'LL SEE YOU ALL AT 1:30.

18 (WHEREUPON THE FOLLOWING PROCEEDINGS WERE
19 HELD IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY:)

20 THE COURT: WILL THERE BE ANY OTHER WITNESSES THIS
21 AFTERNOON FOR THE PLAINTIFF?

22 MR. MOSHENKO: I WOULD SAY I DOUBT IT. MR. SHAW I
23 THINK WILL TAKE SOME MORE TIME --

24 MR. RIVIN: YOUR HONOR, BEFORE MR. MITCHELL LEAVES,
25 I HAVE A QUESTION. HE HAS GOT DOCUMENTS. HE HAS -- I
26 THINK HE HAS BEEN REFERRING TO DOCUMENTS AT THE WITNESS

1 STAND. NOT THE EXHIBITS, BUT OTHER DOCUMENTS. WE'D LIKE
2 TO SEE WHAT THEY ARE.

3 MR. SHERMAN: THE EXPERT WITNESS KNOWS THAT'S ALL
4 DISCOVERABLE.

5 MR. SHAW: I'M SORRY. I WASN'T PAYING ATTENTION.

6 MR. RIVIN: THE WITNESS APPEARED TO BE READING
7 FROM, REVIEWING DOCUMENTS OTHER THAN GIVEN TO HIM.

8 MR. SHERMAN: HE IS HOLDING THEM IN HIS HANDS RIGHT
9 NOW.

10 MR. MOSHENKO: THAT WOULD BE A PRELIMINARY SHOWING
11 THAT IN FACT HE HAS BEEN READING AND USING THOSE DOCUMENTS.
12 AND IF THAT IS SO, THEN I WOULD AGREE THEY SHOULD BE
13 ALLOWED --

14 MR. RIVIN: WHETHER HE IS READING OR NOT --

15 THE COURT: HE SHOULD BE ALLOWED TO SEE THEM.

16 MR. MOSHENKO: IF HE HAS HIS WIFE'S GROCERY LIST.

17 MR. SHERMAN: WE DON'T WANT TO SEE -- THEY WERE
18 OPEN ON THE WITNESS STAND RIGHT BELOW THE BOOK, AND HE JUST
19 CLOSED IT. AND I WATCHED HIM DO IT AND THEY ARE NOT
20 PRIVILEGED.

21 MR. MOSHENKO: WHERE ARE YOU -- WERE YOU READING
22 FROM DOCUMENTS?

23 MR. SHERMAN: THEY WERE OPEN.

24 MR. RIVIN: THEY WERE THERE.

25 THE COURT: WHAT ARE THOSE DOCUMENTS?

26 THE WITNESS: THEY'RE THE DOCUMENTS THAT WERE UP ON

1 THE SCREEN. I CAN'T SEE THAT, AND SO THEY'RE -- I HAD
2 THEM, THE SAME DOCUMENTS. FOR EXAMPLE, THE MEMBERSHIP
3 AGREEMENT.

4 MR. RIVIN: THERE'S SOME OTHER REASONS.

5 THE WITNESS: YOU ASKED ME THE ONES I WAS READING
6 FROM. I WASN'T READING FROM THE OTHERS. I WAS READING
7 FROM THE ONES THAT WE DISCUSSED.

8 THE COURT: WELL, MAKE THOSE AVAILABLE.

9 THE WITNESS: BUT -- YEAH, SURE. GREAT.

10 (WHEREUPON THE COURT WAS IN RECESS UNTIL
11 1:45 P.M. OF THE SAME DAY.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 WESTMINSTER, CALIFORNIA - THURSDAY, MAY 18, 2000

2 AFTERNOON SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
4 COURT IN THE PRESENCE OF THE JURY:)

5 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

6 THE JURY: GOOD AFTERNOON.

7 THE COURT: PROCEED.

8 MR. SHAW: THANK YOU, YOUR HONOR.

9 Q MR. MITCHELL, I'D LIKE TO ASK YOU TO LOOK AT
10 WHAT'S BEEN MARKED AS DEFENDANTS EXHIBIT 237, PAGE 3. AND
11 I'D LIKE YOU TO READ PARAGRAPH E AS IN EDWARD. AND THEN
12 WE'LL -- I'LL WAIT TILL COUNSEL GETS A COPY. BUT IF YOU'D
13 READ THAT WHILE WE'RE PULLING UP THE EXHIBIT.

14 COUNSEL, ARE YOU THERE?

15 MR. RIVIN: YES.

16 MR. SHAW: THANK YOU.

17 Q MR. MITCHELL, THERE'S A WORD IN THAT
18 SENTENCE THAT'S "ENHANCEMENT"; DO YOU SEE THAT WORD?

19 A YES.

20 Q IS THERE A TERM IN THE INDUSTRY THAT HAS A
21 DEFINITION OF ENHANCEMENT AS IT RELATES TO COAST TO COAST'S
22 CONTRACTS WITH THE RESORTS?

23 I'M JUST TALKING ABOUT THE WORD
24 "ENHANCEMENT." DOES THAT HAVE ANY -- IS THAT A TERM OF
25 ART?

26 A YES.

1 Q WHAT DOES IT MEAN?

2 A ESSENTIALLY IT MEANS THAT TO -- ENHANCEMENT
3 IS TO ADD ON TO, TO IMPROVE, EMBELLISH, IF YOU WILL.

4 Q NOW, CAN YOU PUT THAT IN REAL TERMS?
5 WHAT WOULD BE AN ENHANCEMENT FOR A RESORT, A
6 RESORT MEMBER? WHAT WOULD BE AN ENHANCEMENT?

7 A WELL, THE RECIPROCAL SYSTEM WOULD BE AN
8 ENHANCEMENT OF THEIR HOME MEMBERSHIP PROGRAM. A TRAVEL
9 SERVICE WOULD BE AN ENHANCEMENT. ANY KIND OF AN ADDITIONAL
10 PRODUCT OR SERVICE THE MEMBER WOULD RECEIVE IS PART AND
11 PARCEL TO HIS RESORT MEMBERSHIP.

12 Q AND THIS MORNING --

13 A COULD BE AS FAR AS ENHANCEMENT.

14 Q THIS MORNING WE TALKED ABOUT COLLATERAL
15 SERVICES. IS THAT --

16 A SAME.

17 Q -- KIND OF THE SAME CONCEPT?

18 A IN THIS APPLICATION THEY WOULD BE
19 INTERCHANGEABLE.

20 Q OKAY. ALL RIGHT.

21 NOW, I'D LIKE TO GO BACK TO THIS ORPHAN
22 SITUATION. AND JUST MAKE SURE THAT WE DEFINE IT, I'D LIKE
23 YOU TO TALK TO -- TELL ME ABOUT THE ORPHAN SITUATION.

24 WHEN THE RESORT CLOSES DOWN, THE RESORT
25 CLOSES DOWN, THERE'S NO MORE PARK?

26 A CORRECT.

1 Q THE DEVELOPER IS OUT OF BUSINESS?

2 A RIGHT.

3 Q THESE MEMBERS NOW ARE LEFT?

4 A YES.

5 Q THEIR MEMBERSHIP FUNDS ARE GONE, AND THEY'RE
6 LEFT. IS THAT THE DEFINITION OF AN ORPHAN?

7 A THAT WOULD BE THE DEFINITION THAT COAST
8 WOULD APPLY TO AN ORPHAN, YES.

9 Q NOW, ASSUME FOR ME A SITUATION WHERE THE
10 RESORT DOESN'T GO OUT OF BUSINESS. THE RESORT STAYS IN
11 BUSINESS. BUT IT TERMINATES ITS RELATIONSHIP WITH COAST TO
12 GO WITH ANOTHER RECIPROCAL SYSTEM. WHAT WOULD BE ANOTHER
13 RECIPROCAL SYSTEM IN THE INDUSTRY OTHER THAN COAST TO
14 COAST?

15 A SIGNIFICANTLY SMALLER, BUT OF EQUAL QUALITY
16 OR COMPARABLE, WOULD BE R.P.I. THEN THERE'S A.O.R.
17 THERE'S --

18 Q LET'S TAKE R.P.I. FOR THE PURPOSES OF -- SO
19 PLAINTIFFS DECIDE TO TERMINATE THEIR RELATIONSHIP WITH
20 COAST AND TAKE THEIR MEMBERS TO ANOTHER RECIPROCAL USE,
21 BUT THIS TIME R.P.I.

22 UNDER THAT SITUATION, ARE THE MEMBERS
23 ORPHANS?

24 A NO.

25 Q AND WHY NOT?

26 A WELL, BECAUSE THEIR RESORT STILL EXISTS.

1 FOR THEM TO BE ORPHANS, THE RESORT WOULD HAVE HAD TO HAVE
2 GONE OUT OF BUSINESS OR BURNED DOWN OR IN SOME WAY
3 DISAPPEARED AND NOT BE AVAILABLE FOR THEIR USE.

4 Q SO ORPHAN ONLY HAPPENS WHEN THE DEVELOPER
5 AND THE RESORT GO OUT OF BUSINESS?

6 A THAT'S CORRECT.

7 Q NOW, ARE THE MEMBERS ORPHANS IF THE
8 PLAINTIFF -- LET ME WITHDRAW THAT AND START AGAIN.

9 ARE THE MEMBERS ORPHANS IF THE RESORT GOES
10 INTO A BANKRUPTCY --

11 A NO.

12 Q -- AND CONTINUES TO MAINTAIN ITS
13 RELATIONSHIP WITH COAST?

14 MR. RIVIN: YOUR HONOR, I OBJECT TO THIS
15 QUESTIONING. I THINK IT'S VAGUE AND AMBIGUOUS. I'M NOT
16 SURE WHAT THE WITNESS IS TESTIFYING TO, AS TO WHOSE
17 INTERPRETATION OF THE TERM "ORPHAN."

18 MR. SHAW: COAST'S DEFINITION OF ORPHAN.

19 MR. RIVIN: SO THE WITNESS -- I WANTED TO MAKE SURE
20 THAT'S CLEAR. THE WITNESS IS TESTIFYING HOW COAST
21 INTERPRETS ORPHANS.

22 MR. SHAW: HIS BACKGROUND AND EXPERIENCE IN THE
23 INDUSTRY, HOW COAST HAS TREATED MEMBERS, DEPENDING ON THE
24 SITUATION.

25 MR. RIVIN: SO THAT HE IS SAYING THAT COAST -- I
26 SHOULDN'T GET INTO A DIALOGUE. I'LL WAIT UNTIL IT'S MY

1 TURN.

2 MR. SHAW: THANK YOU.

3 Q SO IF A BANKRUPTCY IS FILED, MR. MITCHELL,
4 THAT DOESN'T MEAN THE ORPHANS BECOME -- I MEAN -- EXCUSE
5 ME -- THE MEMBERS BECOME ORPHANS?

6 A OF COURSE NOT. THE RESORT IS STILL THERE.
7 THEY'RE STILL GETTING SERVICES. THEY'RE NOT ORPHANS.

8 Q NOW, I WANT TO TURN TO THE SUBJECT OF
9 TRANSFERS -- I'M SORRY. MR. MOSHENKO HAS REMINDED ME THERE
10 WAS ONE OTHER SITUATION, WHERE THE RESORT, THE HOME PARK,
11 FOR WHATEVER REASON, TRANSFERS THEIR MEMBERS TO ANOTHER ONE
12 OF THEIR PARKS, ANOTHER HOME PARK, ANOTHER RESORT OWNED BY
13 THIS DEVELOPER.

14 SO YOU'VE GOT A RESORT. I'LL CALL IT NUMBER
15 2, OWNED BY THE SAME DEVELOPER. AND THIS DEVELOPER
16 TRANSFERS ITS MEMBERS TO ANOTHER RESORT. DO THESE MEMBERS
17 BECOME ORPHANS ON THAT TRANSFER?

18 A SO YOU HAVE A RESORT OPERATOR WITH MULTIPLE
19 PROPERTIES. FOR WHATEVER REASON HE TRANSFERS THE HOME
20 RESORT FROM ONE OF HIS PROPERTIES TO ANOTHER. THOSE ARE
21 NOT ORPHANS.

22 Q SO, JUST TO FINALIZE THIS, THE -- COAST
23 VIEWS THE MEMBERS AS ORPHANS ONLY WHEN THE DEVELOPER AND
24 THE RESORT GO OUT OF BUSINESS?

25 A THAT'S BEEN THE HISTORICAL PATTERN, YES.
26 THAT'S MY UNDERSTANDING.

1 Q NOW, YOU TESTIFIED THAT YOUR OPINION IS THAT
2 THE ACTS AND CONDUCT AND BEHAVIOR OF COAST TO COAST AND THE
3 DEFENDANTS CAUSED THE DAMAGE TO THE PLAINTIFFS; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q WHAT ACTS, CONDUCT AND BEHAVIOR OF COAST
7 CAUSED THE DAMAGE TO PLAINTIFFS?

8 MR. SHERMAN: OBJECTION.

9 MR. RIVIN: OBJECTION, LACK OF FOUNDATION.

10 THE COURT: OVERRULED. I'LL ALLOW IT.

11 THE WITNESS: THE MASS TRANSFER OF THE MEMBERS.

12 BY MR. SHAW: Q OKAY. LET'S TALK ABOUT THE MASS
13 TRANSFER.

14 WHEN YOU SAY "MASS TRANSFER," DESCRIBE FOR
15 ME WHAT YOU MEAN.

16 A WELL, IF COAST SENT LETTERS TO THE
17 DEFENDANTS' MEMBERS WHEN THE DEFENDANT WITHDREW THEIR
18 PROPERTIES FROM COAST -- AND OF COURSE THE PROPERTIES WERE
19 STILL THERE AND FUNCTIONING. AND SO COAST SENT OUT LETTERS
20 TO APPROXIMATELY 34,000 OF THE DEFENDANTS' MEMBERS AND TOLD
21 THEM THAT THEY WERE TRANSFERRED TO OTHER RESORTS. THEY
22 DIDN'T ASK THEM IF THEY WANTED TO BE TRANSFERRED. THEY
23 DIDN'T GIVE THEM CHOICES. THEY JUST SAID, "HI, YOU'RE
24 TRANSFERRED."

25 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

26 UNRELIABLE DATA. YOUR HONOR, THIS EVIDENCE IS NOT BEFORE

1 THE COURT. IT HASN'T BEEN ADMITTED. HE IS TESTIFYING AS
2 TO MATTERS --

3 THE COURT: LAY SOME FOUNDATION.

4 BY MR. SHAW: Q HOW DID YOU KNOW THAT THE LETTERS
5 WENT OUT TO 34,000 PEOPLE?

6 A I'VE READ THE REPORTS THAT COAST GENERATED
7 INDICATING THAT THEY SENT LETTERS TO 34,000 PEOPLE. AND OF
8 THE 34,000 PEOPLE THAT THEY TRANSFERRED IN THE MASS
9 TRANSFER, SOME 22,000 OF THEM WERE MOVED TO OTHER RESORTS.

10 Q AWAY FROM THE PLAINTIFFS?

11 A RIGHT.

12 MR. RIVIN: MOVE TO STRIKE THE ANSWER ON THE BASIS
13 THAT IT WAS NOT RESPONSIVE TO THE QUESTION.

14 AGAIN, THERE'S A LACK OF FOUNDATION. IF
15 THAT DOCUMENT EXISTS, LET'S SEE IT. THIS WITNESS IS SIMPLY
16 TESTIFYING AS TO THE FACTS AS HE HAS SEEN IT WITHOUT ANY
17 FOUNDATION.

18 MR. SHAW: YOUR HONOR, THIS IS EXPERT TESTIMONY.
19 HE CAN TESTIFY ABOUT WHAT DOCUMENTS HE RELIED ON.

20 MR. RIVIN: IT'S GOT TO BE -- IT HAS TO BE BASED ON
21 SOMETHING THAT'S REASONABLY RELIABLE. MOREOVER, THE
22 WITNESS IS NOT TESTIFYING TO THAT. HE IS TESTIFYING TO
23 PERCIPIENT WITNESS MATTERS. HE IS NOT TESTIFYING AS AN
24 EXPERT ON THESE MATTERS.

25 THE COURT: I'LL ALLOW IT, COUNSEL.

26 PROCEED.

1 BY MR. SHAW: Q YOU SAW A COAST DOCUMENT THAT
2 SHOWED THAT THEY TRANSFERRED -- THEY SENT LETTERS TO 34,000
3 OF PLAINTIFFS' MEMBERS?

4 A CORRECT.

5 Q AND THAT 22,000 --

6 A ALMOST 23,000.

7 Q ALMOST 23,000 CHANGED THEIR RESORT
8 RELATIONSHIP FROM THE PLAINTIFFS?

9 A ACCORDING TO THE COAST DOCUMENT, YES.
10 THAT'S 1808 AND 1809 ARE THE COMPUTER RUNS THAT WERE
11 GENERATED BY COAST INDICATING ONES THEY SENT LETTERS TO,
12 AND THE ONES THAT TRANSFERRED.

13 Q AND YOU ALSO WERE PRESENT DURING
14 MR. RANDALL'S DEPOSITION. DID YOU READ MR. RANDALL'S
15 DEPOSITION?

16 A I READ -- I WASN'T PRESENT DURING
17 MR. RANDALL'S DEPOSITION. I DID READ HIS DEPOSITION, YES.

18 Q AND DID HE TESTIFY ABOUT THE NUMBER OF
19 LETTERS AND WHO THEY WERE SENT TO?

20 A THAT'S CORRECT.

21 Q OKAY. AND DID HE TESTIFY 34,000 LETTERS
22 WENT OUT TO PLAINTIFFS' MEMBERS?

23 A APPROXIMATELY. I THINK HE USED A MORE
24 SPECIFIC NUMBER. BUT THAT WAS THE APPROXIMATE NUMBER.

25 Q OKAY. NOW, WAS IT -- LET ME WITHDRAW AND
26 START AGAIN.

1 WE LOOKED AT THIS MORNING EXHIBIT 1544, THE
2 COAST LICENSE MANUAL, AND WE INTRODUCED INTO EVIDENCE
3 DEFENDANTS' COPY OF THIS BECAUSE IT WAS MORE COMPLETE. AND
4 MY QUESTION, REFERRING TO PAGE 18 IS --

5 MR. RIVIN: ONE MOMENT, PLEASE.

6 THE COURT: IS THAT 1544?

7 MR. SHAW: CORRECT.

8 MR. SHERMAN: 570.

9 MR. SHAW: PAGE 18.

10 Q THIS IS THE COAST TO COAST LICENSEE MANUAL,
11 1996, AND ON PAGE 18 OF THAT MANUAL IT TALKS ABOUT THE
12 PROCESS OR THE METHOD OF TRANSFERRING A MEMBER; DO YOU SEE
13 THAT, MR. MITCHELL?

14 A PARAGRAPH 7, MEMBERSHIP TRANSFERS.

15 Q AND THAT HAS TO BE DONE BY A LETTER FROM THE
16 MEMBER STATING HIS OR HER DESIRE TO TRANSFER AND STATING
17 THE REASONS, A LETTER FROM THE FORMER HOME RESORT LICENSEE
18 APPROVING THE TRANSFER, AND A LETTER FROM THE NEW HOME
19 RESORT LICENSEE ACCEPTING THE MEMBER INTO THE NEW RESORT.

20 UPON THE RECEIPT OF SUCH LETTERS -- AND IT
21 LOOKS TO ME TO BE THREE LETTERS, ONE FROM THE MEMBER, ONE
22 FROM THE FORMER HOME RESORT, AND ONE FROM THE NEW ONE --
23 THAT COAST WILL MAKE THE TRANSFER IN THE MEMBER FILE AND
24 NOTIFY THE MEMBER AND THE RESORTS IN WRITING THAT THE
25 TRANSFER HAS BEEN ACCOMPLISHED.

26 IS THAT YOUR UNDERSTANDING OF THE PROCESS OF

1 TRANSFERRING MEMBERS THAT COAST HAD USED PRIOR TO THE MASS
2 TRANSFER THAT TOOK PLACE OF THE 34,000 PLAINTIFFS' MEMBERS?

3 A YES.

4 Q SO THIS PROCESS, TO YOUR KNOWLEDGE, WAS USED
5 IN TRANSFERS PRIOR TO THE MASS TRANSFER?

6 A YES.

7 Q NOW, LET'S LOOK AT THE -- WELL, LET ME
8 WITHDRAW THAT AND START AGAIN.

9 LET'S TALK ABOUT THE MASS TRANSFER.

10 YOU USED THAT TERM "MASS TRANSFER." WHAT
11 ENCOMPASSED THE MASS TRANSFER? THAT OCCURRED WITH THE MASS
12 TRANSFER?

13 MR. RIVIN: OBJECTION. HEARSAY. LACK OF
14 FOUNDATION.

15 THE COURT: YOU MAY ANSWER, IF YOU KNOW, FROM
16 PERSONAL KNOWLEDGE.

17 THE WITNESS: THE MASS TRANSFER ENCOMPASSED SENDING
18 LETTERS, MAKING PHONE CALLS TO RESORT OWNERS TO CAUSE THEM
19 TO ACCEPT THESE PEOPLE, AND ALSO MAKING PHONE CALLS
20 DIRECTLY TO MEMBERS.

21 MR. RIVIN: YOUR HONOR, I WOULD AGAIN MOVE TO
22 STRIKE. I WOULD ASK THAT MR. SHAW LAY A FOUNDATION FOR
23 THIS WITNESS TO DETERMINE IF HE HAS ANY PERSONAL KNOWLEDGE.

24 THE COURT: OBJECTION IS SUSTAINED. FOUNDATION,
25 MR. SHAW.

26 MR. SHAW: THANK YOU, YOUR HONOR.

1 Q LET ME LAY SOME FOUNDATION, MR. MITCHELL.
2 YOU USED THE TERM "MASS TRANSFER." WHAT
3 PERSONAL KNOWLEDGE DO YOU HAVE OF THE MASS TRANSFER THAT
4 OCCURRED?

5 A DURING THE TIME IT WAS TAKING PLACE, I
6 TALKED TO OPERATORS WHO DISCUSSED IT WITH ME WHO INDICATED
7 THAT THEY HAD RECEIVED CALLS FROM COAST TO COAST REQUESTING
8 THAT THEY TAKE THESE MEMBERS.

9 Q AND HAVE YOU SEEN ANY OF THE LETTERS THAT
10 WENT OUT TO THE 34,000?

11 A YES.

12 Q AND I'M GOING TO -- IN A MINUTE WHEN I FIND
13 IT I'LL SHOW YOU THE LETTER, AND WE'LL LOOK AT THE LETTER
14 THAT WENT OUT.

15 MR. RIVIN: OBJECTION. LACK OF FOUNDATION ON --
16 YOUR HONOR, THE WITNESS -- MAY I TAKE THE WITNESS ON VOIR
17 DIRE?

18 THE COURT: YOU MAY.

19 MR. RIVIN: THANK YOU.

20 VOIR DIRE EXAMINATION

21 BY MR. RIVIN: Q MR. MITCHELL, YOU DID NOT TALK
22 WITH COAST ABOUT THE LETTER THAT YOU'VE REFERRED TO?

23 IT'S CALLED THE TRANSFER LETTER; IS THAT
24 CORRECT?

25 A THAT'S CORRECT, SIR. I DID NOT.

26 Q YOU DID NOT RECEIVE A COPY OF THE LETTER

1 BACK IN 1997; IS THAT CORRECT?

2 A THAT'S CORRECT, SIR.

3 Q YOU DID NOT TALK WITH ANY OF THE PLAINTIFFS
4 ABOUT THE LETTER IN 1997?

5 A THAT'S CORRECT.

6 Q YOU DID NOT SEE THE LETTER IN 1998?

7 A THAT'S CORRECT.

8 Q YOU DID NOT TALK ABOUT MASS TRANSFERS IN
9 1997 WITH COAST?

10 A NOT WITH COAST.

11 Q OR WITH THE PLAINTIFFS?

12 A NOT WITH THE PLAINTIFFS.

13 Q THEN YOU HADN'T SEEN THE LETTER UNTIL YOU
14 WERE HIRED BY THE PLAINTIFFS IN THIS CASE; IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q SO YOU HAD NO KNOWLEDGE OF THE LETTER AND
17 WHAT WAS CONTAINED IN THE LETTER THAT PLAINTIFFS' COUNSEL
18 IS REFERRING TO UNTIL YOU WERE HIRED AS AN EXPERT IN THIS
19 CASE?

20 A THAT'S NOT CORRECT.

21 Q HOW DID YOU KNOW OF WHAT WAS IN THE
22 LETTER -- WHO TOLD YOU THAT; WHO TOLD YOU WHAT WAS IN IT?

23 A I COMMUNICATED WITH RESORT OPERATORS WHO
24 TOLD ME THEY WERE CONTACTED BY COAST AND TOLD ME OF THE
25 LETTER.

26 Q DID THEY TELL YOU WHAT WAS IN THE LETTER?

1 A NOT EVERY WORD. JUST THE GRAVAMEN OF IT.

2 Q SO -- BUT YOU FOUND OUT ABOUT IT FROM THIRD
3 PARTIES, NOT SEEING THE LETTER?

4 A THAT'S CORRECT.

5 MR. RIVIN: MOVE TO -- MOVE TO STRIKE THE WITNESS'S
6 TESTIMONY ON THIS ON THE BASIS OF HEARSAY, LACK OF
7 FOUNDATION.

8 MR. SHAW: MAY I RESPOND, YOUR HONOR?

9 EXPERT WITNESS DOESN'T HAVE TO HAVE PERSONAL
10 KNOWLEDGE. EXPERT WITNESS HAS BEEN SHOWN THE DOCUMENTS TO
11 ASK TO RENDER AN OPINION BASED ON SOMETHING THAT IS HIS
12 SPECIAL EDUCATION, TRAINING, SKILL, EXPERTISE THAT'S BEYOND
13 THE COMMON EXPERIENCE TO THE TRIER OF FACT. THAT'S WHAT HE
14 HAS DONE. THAT'S WHAT HE IS HERE TO TESTIFY ABOUT. AND HE
15 HAS EVERY RIGHT TO DO THAT UNDER 2034 AND THE EVIDENCE
16 CODE, SECTION 800, 801, 802.

17 MR. RIVIN: WITNESS IS NOT TESTIFYING IN THAT
18 MANNER, YOUR HONOR. HE IS TESTIFYING AS TO HEARSAY. HE IS
19 TESTIFYING AS THOUGH HE PARTICIPATED AND HE KNEW ABOUT IT
20 AT THE TIME. IT'S INAPPROPRIATE.

21 THE COURT: WELL, I'M GOING TO DENY THE MOTION TO
22 STRIKE. I THINK THAT COUNSEL IS CORRECT IN HIS ASSESSMENT
23 OF IT.

24 MR. SHAW: THANK YOU, YOUR HONOR.

25 LET'S LOOK AT EXHIBIT 1563.

26 YOUR HONOR, I'D LIKE TO MOVE EXHIBIT 1563

1 INTO EVIDENCE.

2 MR. SHERMAN: CAN WE SEE IT FIRST?

3 NO OBJECTION.

4 THE COURT: THANK YOU.

5 (WHEREUPON, EXHIBIT NO. 1563, LETTER, WAS
6 RECEIVED IN EVIDENCE.)

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. SHAW: Q MR. MITCHELL, WHAT ABOUT EXHIBIT
9 1563 CAUSED DAMAGE TO THE PLAINTIFFS?

10 A WOULD YOU REPEAT YOUR QUESTION, PLEASE.

11 Q WHAT ABOUT EXHIBIT 1563 CAUSED DAMAGE TO THE
12 PLAINTIFFS?

13 A I'M NOT CERTAIN I UNDERSTAND YOUR QUESTION,
14 WHAT ABOUT IT.

15 Q WELL, WHAT ABOUT THIS LETTER WAS WRONG BEING
16 SENT BY COAST TO COAST TO THE PLAINTIFFS?

17 A OH, WELL, THE LETTER HAS FLAWS OF FACT IN
18 IT. AND THE COLLECTION OF THE LETTER AND THE LANGUAGE OF
19 THE LETTER IS DESIGNED TO CAUSE THE READER TO BOTH BE
20 TRAUMATIZED, AND THEN THEY'RE SUPPOSED TO FEEL COMFORTABLE
21 BECAUSE COAST HAS SAVED THEM FROM SOMETHING THAT NEVER
22 HAPPENED.

23 Q AND WHAT ABOUT THIS LETTER -- OBVIOUSLY, IT
24 SPEAKS FOR ITSELF.

25 WHAT ABOUT THE LETTER HAS THAT EFFECT, IN
26 YOUR OPINION?

1 A WELL, FOR EXAMPLE, THE OPENING SENTENCE
2 SAYS, "AS YOU ARE PROBABLY AWARE, WE HAVE RECEIVED NOTICE
3 FROM MR. NOVELLI THAT YOUR COAST TO COAST HOME RESORT,
4 ABBEY'S ALPINE LAKES RESORT, HAS BEEN TAKEN OUT OF THE
5 COAST SYSTEM."

6 AND COAST HAD NO KNOWLEDGE WHETHER THESE
7 PEOPLE WERE AWARE OR NOT. I BELIEVE IT'S AN INACCURATE
8 STATEMENT. AND IT'S DESIGNED -- IF I'M THE READER, IF I
9 GET THIS AND I'M SITTING AT HOME WITH MY WIFE, AND I'M A
10 COAST MEMBER, AND I GO, "WHOA, MY GOODNESS, MY RESORT HAS
11 BEEN TAKEN OUT OF THE SYSTEM" -- BUT I DON'T THINK YOU CAN
12 TAKE ANY INDIVIDUAL WORD OR SENTENCE OUT OF THE CONTEXT.

13 IN OTHER WORDS, THIS IS A -- YOU HAVE TO
14 LOOK AT THE WHOLE THING. BECAUSE WHEN YOU GET TO THE NEXT
15 LINE, "WHILE WE CANNOT UNDO THE ACTIONS OF OTHERS," THAT'S
16 PEJORATIVE. IT SOUNDS AS THOUGH SOMEBODY DID SOMETHING
17 BAD.

18 "WE ARE PREPARED TO TAKE ACTION TO PRESERVE
19 AND PROTECT THE MEMBERS OF COAST'S FAMILY," AS THOUGH THEY
20 WERE SUFFERING SOME POTENTIAL HARM WHEN THE FACT OF THE
21 MATTER IS, THEY HAD NO HARM AT ALL BECAUSE THEIR
22 MEMBERSHIP, AT THE MINIMUM -- THIS IS OCTOBER '97 -- BY
23 CONTRACT WOULD HAVE BEEN AVAILABLE TO THEM UNTIL THE END OF
24 THE YEAR.

25 AND, FURTHERMORE, COAST STATES THAT THEY
26 COULD RENEW FOR ANOTHER YEAR, EVEN IF THEY DIDN'T HAVE A

1 HOME PARK. AND THE FACT OF THE MATTER IS THAT COAST HAS
2 RENEWED MEMBERSHIPS FOR PEOPLE WITHOUT HOME PARKS FOR A
3 YEAR OR LONGER, AND I WAS INVOLVED IN THE SIERRA PACIFIC
4 MATTER WHERE THEY DID THAT.

5 Q NOW, THE NEXT SENTENCE SAYS, "SINCE WE
6 REALIZE FINDING ANOTHER RESORT MAY CREATE AN INCONVENIENCE
7 FOR YOU, WE HAVE MADE ARRANGEMENTS TO HAVE YOUR COAST TO
8 COAST HOME RESORT MEMBERSHIP TRANSFERRED TO MINING CAMP
9 RESORT, CREEDE, COLORADO."

10 A WELL THAT'S AN EXTRAORDINARY OFFERING. I
11 KNOW OF NO INSTANCE IN THE HISTORY OF COAST TO COAST WHERE
12 THEY ARBITRARILY JUST SAID, "HI, YOUR MEMBERSHIP IS
13 TRANSFERRED." THE HISTORICAL OPERATING PATTERN OF COAST
14 FOR 20 YEARS IN AN INSTANCE WHERE ORPHAN MEMBERS EXISTED
15 WAS TO SEND A LETTER TO THE MEMBER AND TELL THEM THAT THEY
16 COULD CONTINUE THEIR MEMBERSHIP FOR THE CALENDAR YEAR --

17 Q CAN I STOP YOU JUST FOR A MOMENT? I'M SORRY
18 TO BE RUDE AND INTERRUPT. BUT FIRST I WANT TO LAY SOME
19 FOUNDATION.

20 THE ALPINE LAKES WAS THE RESORT THAT THEY --
21 WAS THEIR HOME RESORT?

22 A ABBEY'S ALPINE LAKES RESORT THIS SAYS, YES.

23 Q NOW, THE ONE THAT COAST TO COAST IS
24 TRANSFERRING THEM TO, THE MINING CAMP RESORT, CREEDE,
25 COLORADO?

26 A RIGHT.

1 Q YOU ARE AWARE THAT THAT IS NOT ONE OF
2 PLAINTIFFS' RESORTS; CORRECT?

3 A CORRECT.

4 Q SO THEY'RE TRANSFERRING THIS MEMBER,
5 PLAINTIFFS' MEMBER, TO A RESORT, ANOTHER RESORT, THAT'S
6 AFFILIATED OR, IN MY EXAMPLE, TO ONE OF THESE RESORTS THAT
7 IS NOT PART OF THE PLAINTIFFS' RESORT GROUP?

8 A THAT'S CORRECT. THEY TRANSFERRED THE MEMBER
9 TO THE PLAINTIFFS' COMPETITION.

10 Q AND HAS THAT EVER BEEN DONE IN YOUR
11 KNOWLEDGE --

12 A NEVER.

13 Q -- BY COAST TO COAST?

14 A NEVER.

15 Q ALL RIGHT. LET'S CONTINUE WITH THE LETTER.

16 "YOU WILL BE HEARING SOON FROM A
17 REPRESENTATIVE OF THIS RESORT TO ACTIVATE YOUR MEMBERSHIP."

18 HAVE YOU EVER IN YOUR EXPERIENCE WITH COAST
19 TO COAST BECOME AWARE OF THE FACT THAT THEY HAVE HAD
20 COMPETING RESORT OWNERS CALLING THE MEMBERS OF PLAINTIFFS'
21 RESORTS TO TRANSFER MEMBERS?

22 A NO. I HAVE NEVER SEEN THAT OCCUR.

23 Q NOW, YOU MADE A COMMENT EARLIER THAT --
24 WELL, BEFORE I MOVE TO THAT, WE SAW -- AND I WON'T PUT THE
25 EXHIBIT BACK UP, BUT WE SAW THE TRANSFER PROCESS IN THE
26 LICENSEE MANUAL?

1 A YES.

2 Q LETTER FROM THE MEMBER, LETTER FROM THE
3 FORMER HOME RESORT, WHICH IN THIS CASE WOULD HAVE BEEN THE
4 ABBEY'S ALPINE LAKES, THE PLAINTIFFS?

5 A THE PLAINTIFFS, CORRECT.

6 Q AND THEN A THIRD LETTER WAS FROM THIS NEW
7 RESORT, THE MINING CAMP RESORT, CREEDE, COLORADO?

8 A CORRECT.

9 Q THAT IS -- THAT IS COAST TO COAST'S
10 CONTRACT, THEIR MANUAL; THAT'S HOW THEY DO THE TRANSFER?

11 A THAT'S CORRECT.

12 Q SO IF IT WAS TO BE DONE ACCORDING TO THE
13 CONTRACT IN THIS CASE, THIS MASS TRANSFER WOULD HAVE HAD,
14 ACCORDING TO THE CONTRACT, A LETTER FROM THE MEMBER, A
15 LETTER FROM ABBEY'S ALPINE LAKES, AND A LETTER FROM MINING
16 CAMP RESORT, CREEDE, COLORADO; CORRECT?

17 A THAT'S CORRECT.

18 Q DID YOU SEE ANY OF THOSE THREE LETTERS IN
19 YOUR ANALYSIS AS AN EXPERT OF THIS MASS TRANSFER?

20 A NO. THEY DIDN'T DO THAT.

21 Q THEY DIDN'T FOLLOW THEIR OWN CONTRACT?

22 A THAT'S CORRECT.

23 Q ALL RIGHT. LET'S LOOK AT -- IN YOUR
24 ANALYSIS AND INVESTIGATION, YOU TESTIFIED THEY DIDN'T DO IT
25 ACCORDING TO THEIR OWN CONTRACT, THEIR OWN LICENSEE
26 MANUAL. WHAT DID THEY DO?

1 A THEY DID SOMETHING THEY HAD NEVER DONE
2 BEFORE IN THE HISTORY. THEY TRANSFERRED -- SENT THE LETTER
3 TO THE MEMBERS JUST SAYING, "HI, YOU'RE TRANSFERRED."
4 THAT'S NEVER BEEN DONE.

5 THE HISTORICAL PROCEDURE HERE WAS TO DO WHAT
6 YOU'VE INDICATED, AND THEN -- AND SEND A LETTER TO THE
7 MEMBER AND SAY, "HERE ARE TWO OR THREE RESORTS IN YOUR
8 AREA. YOU CAN GO VISIT THOSE PROPERTIES AND NEGOTIATE YOUR
9 OWN ARRANGEMENTS WITH THOSE OTHER COAST AFFILIATES FROM
10 YOUR AREA." AS THE OTHER -- WHEN WE WERE PUTTING JURORS
11 UP, THERE WAS A FELLOW THAT HAD BEEN --

12 Q LET'S --

13 A HE GAVE A GOOD EXAMPLE OF IT. BUT THE
14 BOTTOM LINE HERE IS THIS: NO, THAT HAS NEVER BEEN DONE
15 BEFORE, AND IT'S DIFFERENT FROM THEIR PROCEDURES, YES.

16 Q AND THE FACT THAT IT'S NEVER BEEN DONE THAT
17 WAY BEFORE, IS THAT ONE OF THE REASONS WHY, IN YOUR
18 OPINION, THIS MASS TRANSFER CAUSED THE DAMAGE TO THE
19 PLAINTIFFS?

20 A YES.

21 MR. RIVIN: YOUR HONOR, MAY WE APPROACH?

22 THE COURT: YOU MAY.

23 (DISCUSSION OFF THE RECORD.)

24 BY MR. SHAW: Q ALL RIGHT. MR. MITCHELL, YOU
25 TESTIFIED THAT YOU SAW COAST TO COAST DOCUMENTS TO HOW MANY
26 PEOPLE OR HOW MANY MEMBERS THAT LETTER WENT OUT TO AND WHAT

1 WAS THE EFFECT; CORRECT?

2 A YES.

3 Q DO YOU KNOW WHY, AFTER YOU'VE ANALYZED THE
4 DOCUMENTS IN THIS CASE, AS TO WHY -- DO YOU HAVE AN OPINION
5 AS AN EXPERT IN THIS INDUSTRY AS TO WHY COAST TO COAST SENT
6 THAT LETTER?

7 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. BASED
8 ON SPECULATION, CONJECTURE. IMPROPER MATTER.

9 THE COURT: OVERRULED. HE IS TESTIFYING AS AN
10 EXPERT HERE.

11 THE WITNESS: YES.

12 BY MR. SHAW: Q AND WHY?

13 A WELL, THEY DID IT BECAUSE THEY -- IT WAS IN
14 THEIR SELF-INTEREST. LOSE 34,000 MEMBERS, ESPECIALLY
15 GIVEN THAT WOULD HAVE REPRESENTED SOMEWHERE BETWEEN 16 TO
16 18 PERCENT OF THEIR TOTAL MEMBER BASE. I HAVEN'T ANALYZED
17 THEIR FINANCIAL STATEMENTS, BUT JUST MY OPINION WOULD BE IT
18 WOULD HAVE BEEN SEVERE HARM, VERY BAD HARM TO THEM. AND
19 THEY HAD TO ACT IN THEIR SELF-INTEREST. THEY DID WHAT
20 BUSINESS PEOPLE DO.

21 Q DID YOU SEE ANY DOCUMENTS, ANY COAST
22 DOCUMENTS, THAT TALKED ABOUT TAKING ACTION AGAINST THE
23 PLAINTIFFS?

24 A WELL, YES. THE PLAINTIFFS -- YES.

25 Q I'D LIKE TO SHOW YOU EXHIBIT 334,
26 DEFENDANTS' EXHIBIT 334.

1 IS THAT THE LETTER THAT YOU WERE REFERRING
2 TO, OR THE MEMO, I GUESS, THAT YOU WERE REFERRING TO?

3 A THIS IS ONE OF THEM, YES, THAT I WAS
4 FAMILIAR WITH.

5 MR. SHAW: YOUR HONOR, I'D LIKE TO MOVE EXHIBIT 334
6 INTO EVIDENCE. AND IT ALSO IS MARKED, YOUR HONOR, AS
7 PLAINTIFFS' 1571.

8 MR. RIVIN: YOUR HONOR, I DON'T THINK ANY
9 FOUNDATION HAS BEEN LAID FOR THIS DOCUMENT BEING ADMITTED
10 AT THIS TIME. WE MAY NOT OBJECT AT A LATER TIME, BUT I
11 DON'T THINK IT'S APPROPRIATE.

12 THE COURT: I'LL TAKE IT UNDER SUBMISSION.

13 MR. SHAW: YOUR HONOR, AT THIS TIME CAN WE SHOW IT
14 ON THE OVERHEAD?

15 MR. RIVIN: NO.

16 THE COURT: I SAID YES.

17 MR. RIVIN: IT'S NOT IN EVIDENCE.

18 THE COURT: I KNOW. I'LL TAKE IT UNDER
19 SUBMISSION. THEY CAN TALK ABOUT IT. IT MAY OR MAY NOT GO
20 INTO EVIDENCE.

21 MR. SHAW: THANK YOU, YOUR HONOR.

22 Q I'D LIKE YOU TO LOOK AT THIS MEMO FROM
23 KERWIN PYLE TO ROGER RYMAN DATED NOVEMBER 18, 1993,
24 REGARDING ALL SEASONS GUARDIAN AND THE PRESIDENT'S CLUB:
25 WHO WAS ALL SEASONS GUARDIAN AND THE PRESIDENT'S CLUB?

26 A THOSE WERE -- ALL SEASONS RESORTS WAS A, I

1 BELIEVE, ELEVEN-UNIT RESORT SYSTEM WITH, AT THIS TIME,
2 PROBABLY ABOUT 18,000 MEMBERS. AND GUARDIAN WAS A -- I
3 THINK A FINANCING ENTITY OR CONTRACT HOLDING ENTITY, WHICH
4 HELD CONTRACTS WHICH WERE SOLD WITH THE ALL SEASONS
5 MEMBERSHIP. AND THE PRESIDENT'S CLUB WAS THE RECIPROCAL
6 ENHANCEMENT PROGRAM THAT WAS SOLD BY THE PLAINTIFFS.

7 Q I'D LIKE TO TAKE YOU TO THE FIRST SENTENCE:
8 "IN THE SPRING OF 1991 AT A MEETING WITH CLIFF PERKINS, I
9 WAS GIVEN A SHORT LIST OF OBJECTIVES, WHICH I WILL CALL THE
10 NOVELLI-THOMPSON MANIFESTO. ELIMINATING THE NEED FOR AN
11 OUTSIDE SOURCE OF RECIPROCAL USE WAS THE GOAL OF THE
12 MANIFESTO."

13 THAT MEANS ELIMINATING THE USE FOR COAST TO
14 COAST?

15 A THAT'S CORRECT.

16 Q "THE OBJECTIVE ON THE LIST WAS TO USE THE
17 NEW GROUP'S STRENGTH TO EXERT POWER OVER BOTH COAST TO
18 COAST AND R.P.I., IN ESSENCE, TO CHANGE THE WAY WE DO
19 BUSINESS IN RELATION TO HOW WE TREAT THE RESORTS IN MATTERS
20 SUCH AS PROFIT SHARING, NEW PROGRAMS, ET CETERA."

21 LET'S GO TO THE NEXT PARAGRAPH.

22 "IN 1991 THERE WERE 25 RESORTS UNDER SOME
23 CONTROL OF THE NOVELLI GROUP. TODAY THE CLAIM IS OVER 60
24 PARKS WHICH ARE AFFILIATED IN ONE WAY OR ANOTHER FOR THE
25 NOVELLI OPERATION."

26 LET'S GO TO THE SECOND PAGE, AND I'D LIKE TO

1 GO TO PHASE II PARAGRAPH.

2 "WHEN THE GOAL OF 100 PARKS AND 100,000
3 MEMBERS HAS BEEN REACHED, THE SQUEEZE BEGINS. FIRST, ALL
4 100 PARKS QUIT SELLING COAST TO COAST. SECOND, THE 100,000
5 MEMBERS THEY CONTROL ARE ENCOURAGED NOT TO RENEW COAST TO
6 COAST. THE 100 PARKS WILL ALWAYS SERVICE COAST TO COAST,
7 BUT WILL NOT SELL IT. THINK ABOUT IT. 100 SELLING PARKS
8 QUIT SELLING COAST TO COAST. IT COULD MEAN 10,000 SALES.
9 IF 50 PERCENT OF THOSE 100,000 MEMBERS DON'T RENEW NEXT
10 YEAR, WOULD THIS GET OUR ATTENTION? MY FEAR IS THAT THE
11 INTENT FROM WORD ONE IS TO REPLACE US, NOT JUST GET OUR
12 ATTENTION. THE SCENARIO JUST DONE IS SUPPOSEDLY ONLY TO BE
13 USED IF THE CURRENT RECIPROCAL PROVIDERS DON'T COME AROUND.
14 BUT I BELIEVE THINGS WILL HAVE REGRESSED SO FAR BY THE TIME
15 PHASE II BECOMES A REALITY THAT WE WON'T HAVE ANY CHOICE
16 BUT TO REACT IN SUCH A MANNER AS TO FORCE A BATTLE OR
17 CHOOSING SIDES. THE TIME TO REACT IS BEFORE THEY GET THE
18 STRENGTH," END OF QUOTES.

19 MR. MITCHELL, IN YOUR OPINION, IS THAT MASS
20 TRANSFER THE TIME TO REACT BEFORE THEY GET THEIR STRENGTH?

21 A IN 1991 --

22 Q 1993 IS THE MEMO.

23 A YES, I KNOW. BUT THEY HAD A MEETING WITH
24 MR. PERKINS IN 1991. I KNOW MR. PERKINS. BY THAT POINT
25 AND ABSOLUTELY BY 1993, PRESIDENT'S CLUB, MR. NOVELLI, AND
26 OTHER SIGNIFICANTLY LARGE OPERATORS HAD BEEN DEFINED AS A

1 THREAT AND COMPETITION TO COAST. AND COAST FROM THAT POINT
2 FORWARD ENGAGED ALL THEIR ACTIONS ACCORDINGLY TO LIMIT THE
3 GROWTH OF THESE PARTICULAR ORGANIZATIONS SO THEY DIDN'T
4 ACHIEVE THIS 100 PARKS AND 100,000 MEMBERS, WHERE THEY
5 COULD APPLY PRESSURE ON COAST TO CHANGE THEIR OPERATING
6 PROCEDURES.

7 IT'S NOT UNCOMMON WITH FRANCHISORS,
8 FRANCHISEES, LICENSEES, LICENSORS, THE LICENSEES OR THE
9 FRANCHISEES TRY TO GAIN SOME GIRTH OVER WHAT THEY FEEL IS
10 A -- THE FRANCHISOR CONTROLLING THEIR LIVES AND TELLING
11 THEM WHAT TO DO.

12 Q AND THE MASS TRANSFER LETTER WAS A WAY TO
13 ADVERSELY AFFECT MR. NOVELLI'S BUSINESS?

14 A ABSOLUTELY. AT THAT POINT IN TIME IF
15 MR. NOVELLI WERE ABLE TO HAVE ACCOMPLISHED HIS GOAL, WITHIN
16 A FEW SHORT MONTHS HE WOULD HAVE HAD THE 100,000 MEMBERS,
17 WHICH WE ALL KNOW IN THE INDUSTRY IS THE POINT WHERE HE
18 COULD LEAVE COAST. SO HIS NEGOTIATING POSITION WITH COAST
19 WOULD BE SUBSTANTIALLY ENHANCED.

20 EVEN IF HE DIDN'T CHOOSE TO LEAVE, HE WOULD
21 BE ABLE TO BARGAIN BETTER FOR THE SERVICES FOR HIS MEMBERS
22 THROUGH THEM.

23 Q NOW, I WANT TO TURN TO -- YOU MADE A COMMENT
24 ABOUT THE FACT THAT THE LETTER THAT WE SAW THAT WAS EXHIBIT
25 1563, I BELIEVE IT WAS, THE LETTER THAT WAS 1563, HAD NEVER
26 BEEN SENT OUT BEFORE?

1 A THE MASS TRANSFER LETTER?

2 Q RIGHT.

3 A THAT'S CORRECT. THAT HAD NEVER BEEN DONE.

4 Q LET'S LOOK AT TWO LETTERS THAT HAD BEEN SENT
5 OUT BEFORE BY COAST TO COAST AND COMPARE THOSE WITH 1563.

6 WAS THAT PART OF YOUR ANALYSIS THAT LED YOU
7 TO YOUR OPINION THAT THE ACTIONS BY COAST TO COAST WERE
8 WRONGFUL AND CAUSED THE DAMAGE TO THE PLAINTIFFS?

9 A YES, COMPLETE DEPARTURE FROM NORMAL
10 PROCEDURES AND CONTRACTUAL AGREEMENTS.

11 Q LET'S LOOK AT DEFENDANTS' EXHIBIT 2006, AND
12 COUNSEL WILL BE ALSO LOOKING AT DEFENDANTS' EXHIBIT 1632.

13 MR. RIVIN: YOUR HONOR, WE'RE TRYING TO DETERMINE
14 WHETHER THESE -- THE TWO DOCUMENTS THAT COMPRISE 2006 ARE
15 COMPLETE. IT APPEARS THAT THE FIRST PAGE IS A LETTER. BUT
16 THE SECOND PAGE APPEARS TO BE THE FIRST PAGE OF A LETTER.
17 IT'S NOT COMPLETE. WE DON'T KNOW WHAT THE REST OF THE
18 LETTER MIGHT BE.

19 THE COURT: DO YOU HAVE THE COMPLETE LETTER?

20 MR. SHAW: I THOUGHT WE DID, YOUR HONOR. IF WE
21 DON'T, COULD YOU CHECK 1632 THEN FOR ME, PLEASE.

22 MR. SHERMAN: 1632 IS DIFFERENT THAN 2006.

23 MR. SHAW: YES, IT IS. I'M SORRY.

24 MR. SHERMAN: FORGET THE --

25 MR. SHAW: I DIDN'T MEAN TO INFER THAT 2006 -- THAT
26 1632 WAS A COMPLETE COPY OF 2006. THEY ARE SEPARATE. BUT

1 I'D LIKE TO KNOW IF YOU BELIEVE 1632 IS COMPLETE.

2 THE COURT: MR. BAILIFF.

3 MR. RIVIN: IT DOES APPEAR COMPLETE.

4 MR. SHAW: WE'D LIKE TO MOVE 1632 INTO EVIDENCE.

5 MR. RIVIN: NO OBJECTION.

6 (WHEREUPON, EXHIBIT NO. 1632 WAS RECEIVED IN
7 EVIDENCE.).

8 BY MR. SHAW: Q YOU REVIEWED BOTH 1632 AND 1563?

9 A YES.

10 Q AND HOW IN YOUR OPINION IS EXHIBIT 1632
11 DIFFERENT THAN 1563?

12 A OKAY. YOU'RE GOING TO HAVE TO GIVE ME A
13 LITTLE HELP HERE. YOU MEAN, HOW IS THIS DIFFERENT FROM THE
14 MASS TRANSFER LETTER?

15 Q CORRECT.

16 A OKAY.

17 Q I'M SORRY. I'M USING THE EXHIBIT NUMBERS,
18 AND I REALIZED --

19 A I DON'T KNOW.

20 MR. SHAW: MR. O'SHEA, CAN YOU PUT THEM UP
21 SIDE-BY-SIDE?

22 Q IN EXHIBIT 1632, MY QUESTION IS, YOU HAD
23 TESTIFIED EARLIER THAT THE MASS TRANSFER LETTER WAS
24 DIFFERENT THAN PREVIOUS LETTERS THAT HAD BEEN SENT.

25 A YEAH. THESE LETTERS ARE DIFFERENT AS THE
26 NIGHT IS TO DAY. THE MASS TRANSFER LETTER SAYS, "GOOD

1 MORNING, YOU'VE BEEN TRANSFERRED TO 'X' PARK," AND IT
2 DOESN'T ASK THEM FOR ANYTHING.

3 THE OTHER LETTER -- AND IT SAYS THAT THE
4 OTHER PARK HAS DROPPED FROM THE SYSTEM. THE MASS TRANSFER
5 LETTERS CONNOTES NEGATIVE BEHAVIOR AND SO ON BY SAYING "WE
6 CAN'T BE RESPONSIBLE FOR THE BEHAVIOR OF OTHERS." AND SO
7 IT WAS DELIBERATELY DESIGNED TO CREATE SOME NEGATIVE
8 FEELINGS.

9 THIS LETTER, THIS LETTER DATED OCTOBER 10,
10 1996, IS COMPLETELY CONSISTENT WITH COAST'S POLICY, AND
11 THEIR ACTIONS AND BEHAVIOR IN ALL OTHER TRANSFER SITUATIONS
12 SAVE THIS MASS TRANSFER BUSINESS WITH MR. NOVELLI. THIS
13 LETTER SAYS, "WE HAVE BEEN NOTIFIED THAT THE OWNERS OF
14 SIERRA PACIFIC RESORT -- THAT THE RESORT HAS CHOSEN TO
15 WITHDRAW FROM COAST TO COAST SYSTEM EFFECTIVE DECEMBER
16 31ST, 1996. WE ARE DISAPPOINTED THAT THE OWNER OF THE
17 RESORT HAS DECIDED TO TERMINATE ITS RELATIONSHIP WITH
18 COAST, BUT ITS DECISION HAS BEEN MADE." SO -- INSTEAD OF
19 SAYING "WE HAVE NO CONTROL OVER PEOPLE'S ACTIONS," AND
20 "YOU'RE GOING TO BE TRANSFERRED." IT SAYS --

21 Q AND IT DOESN'T SAY WE CANNOT UNDO THE
22 ACTIONS?

23 A OF COURSE, NO.

24 Q WE ARE PREPARED TO TAKE ACTION TO PRESERVE
25 AND PROTECT THE MEMBERS --

26 A NO. THERE'S NONE OF THIS LANGUAGE,

1 "PRESERVE AND PROTECT THE MEMBERS" AND SO ON, SO FORTH. TO
2 THE CONTRARY THIS STATES THE POLICY OF COAST TO COAST.
3 SKIP DOWN A LITTLE BIT. "ACCORDINGLY, WE ARE CONTINUING
4 OUR OFFER TO YOU TO RENEW YOUR COAST MEMBERSHIP AND RETAIN
5 YOUR COAST BENEFITS THROUGH DECEMBER 31ST, 1997."

6 SO WHAT THEY'RE DOING HERE IS FIRST -- THEY
7 SAY FIRST YOUR CURRENT MEMBERSHIP IS VALID TO THE END OF
8 THE YEAR. THESE LETTERS WERE SENT OUT ALMOST IDENTICAL.
9 THIS LETTER WAS SENT IN OCTOBER OF '96. THE MASS TRANSFER
10 LETTERS FOR THE DEFENDANTS WAS SENT ABOUT THE SAME TIME, IN
11 1997.

12 THESE LETTERS ARE NIGHT AND DAY DIFFERENCE.
13 ONE LETTER TELLS MEMBERS THEY HAVE BEEN TRANSFERRED, AND
14 IT'S A TERRIBLE SITUATION, AND THERE'S NOTHING THEY CAN DO
15 ABOUT IT. OH, GOSH, WE CAN'T UNDO THE ACTIONS OF OTHERS,
16 AND YOU REALLY ARE IN BAD SHAPE.

17 THIS LETTER SAYS, OH, WELL, THAT'S THEIR
18 DECISION, AND WE REALLY RESPECT THEM. AND THEY HAVE DONE A
19 GOOD JOB. AND THEN IT SAYS -- IT STATES THE FACTS. "YOU
20 CAN CONTINUE YOUR MEMBERSHIP THROUGH THE END OF THE
21 CALENDAR YEAR." THEN IT GIVES THEM SOMETHING THAT'S NOT
22 EVEN IN THE CONTRACT. IT TELLS THEM IT WAS OPERATIONAL
23 POLICY OF COAST, AND I THINK A GOOD ONE. WE WILL ALLOW YOU
24 TO HAVE A WHOLE OTHER YEAR WITHOUT A HOME PARK. AND THAT
25 WAS A GOOD THING TO DO. "AND IN ORDER TO CONTINUE YOUR
26 MEMBERSHIPS THEN BEYOND THAT YEAR" -- SO THEY'RE GIVING

1 THEM A YEAR AND THREE MONTHS. THEN THEY SAID THAT'S IT.

2 THEN YOU WILL HAVE TO AFFILIATE WITH ANOTHER PARK.

3 THEN AS I PREVIOUSLY STATED WITH REGARD TO
4 THE POLICIES AND PROCEDURES AND NORMAL ACTIONS OF COAST,
5 THEY SAY TO THEM, "WE WANT TO MAKE YOU AWARE THAT THERE ARE
6 TWO COAST AFFILIATES IN NORTHERN CALIFORNIA" -- AGAIN, IN
7 THEIR IMMEDIATE PHYSICAL PROXIMITY, NOT ANOTHER COUNTRY
8 1200 MILES AWAY -- "THAT YOU MAY DESIRE TO GO VISIT," NOT
9 YOU'VE BEEN TRANSFERRED TO. AND IT LISTS THOSE RESORTS.

10 AND THEN IT GOES ON TO SAY, "YOU'RE UNDER NO
11 OBLIGATION TO CHOOSE EITHER THE RESORTS LISTED HEREIN.
12 YOUR MEMBERSHIP IN THE HOME RESORT UNDER ANY CIRCUMSTANCES
13 DOES NOT AFFECT ANY CONTRACTUAL OBLIGATIONS YOU HAVE AT
14 SIERRA PACIFIC, SO ON, SO FORTH. THIS WAS THE PROCEDURE
15 AND WAS THE PROCEDURE UP UNTIL THE DAY BEFORE COAST SENT
16 THE MASS TRANSFER LETTER WITH REGARD TO YOUR DEFENDANTS.
17 THIS HAS ALWAYS BEEN THE PROCEDURE. THIS WAS ALWAYS THE
18 WAY IT WAS DONE FOR 20 YEARS.

19 MR. SHAW: YOUR HONOR, I HAVE NOTHING FURTHER OF
20 MR. MITCHELL AT THIS TIME. ALTHOUGH, BECAUSE OF COMMENTS
21 OR DISCUSSIONS WE HAD IN CHAMBERS, WE WERE -- WE WILL
22 RESERVE THE RIGHT TO CALL MR. MITCHELL ON DAMAGE ISSUES AT
23 A LATER POINT IN TIME, ONCE WE'VE DEALT WITH THE ISSUES
24 OUTSIDE THE PRESENCE OF THE JURY. THANK YOU.

25 THE COURT: CROSS-EXAMINATION.

26 MR. RIVIN: I THINK SO, YOUR HONOR.

1 CROSS-EXAMINATION

2 BY MR. RIVIN: Q MR. MITCHELL, ON DIRECT YOU SPENT
3 QUITE A BIT OF TIME TALKING ABOUT THE COAST ORPHAN PROGRAM,
4 AND YOU DESCRIBED THE ORPHAN PROGRAM AND WHAT IT IS, HOW IT
5 WORKS.

6 IT'S YOUR TESTIMONY, AS I RECALL, THAT THE
7 COAST ORPHAN PROGRAM APPLIES TO MEMBERS OF PARKS THAT
8 CLOSED; IS THAT CORRECT?

9 A THAT IS CORRECT, SIR.

10 Q SO WHEN A PARK -- WHEN A PARK CLOSES, THOSE
11 MEMBERS NO LONGER HAVE A HOME PARK THAT'S OPEN, AND THEY'RE
12 CONSIDERED ORPHANS?

13 A UNLESS THEY HAVE BEEN TRANSFERRED TO ANOTHER
14 PARK WITHIN THE SYSTEM.

15 Q RIGHT. RIGHT.

16 BUT IF THE PARK CLOSES, THEY'RE CONSIDERED
17 ORPHANS?

18 A THAT IS CORRECT.

19 Q IF A PARK DISAFFILIATES FROM COAST, IN OTHER
20 WORDS, WITHDRAWS FROM COAST, THOSE PEOPLE ARE NOT ORPHANS?

21 A HISTORICALLY THEY HAVE NOT BEEN ORPHANS.

22 Q THOSE ARE NOT ORPHANS; IS THAT RIGHT?

23 A THAT'S MY UNDERSTANDING, CORRECT.

24 Q I'D LIKE TO PUT EXHIBIT 1632 BACK UP ON THE
25 SCREEN, PLEASE.

26 MR. MITCHELL, YOU TESTIFIED THIS WAS A

1 PERFECTLY ACCEPTABLE LETTER FROM COAST; IS THAT RIGHT?

2 A IS THAT THE SIERRA PACIFIC? I DID NOT SAY
3 THAT. I SAID IT WAS CONSISTENT WITH THE 20-YEAR OPERATING
4 POLICY AT COAST. ACCEPTABILITY IS --

5 Q THAT WAS CONSISTENT WITH THE NORMAL
6 PRACTICE, THE WAY COAST SENT FORMAL LETTERS; THIS WOULD
7 HAVE BEEN THE LETTER THAT WOULD GO TO ORPHANS.

8 THE FIRST SENTENCE OF THAT LETTER READS:
9 "WE HAVE BEEN NOTIFIED BY THE OWNER OF SIERRA PACIFIC
10 RESORTS THAT THE RESORT HAS CHOSEN TO WITHDRAW FROM COAST,
11 FROM THE COAST TO COAST SYSTEM, EFFECTIVE DECEMBER 31,
12 1996."

13 THAT PARK DIDN'T CLOSE DOWN?

14 A YES, IT DID, SIR.

15 Q WHEN DID IT CLOSE DOWN?

16 A ON OR ABOUT THAT TIME IT WAS SUBJECT TO
17 INTERNAL REVENUE SERVICE CLOSURE BECAUSE THEY HADN'T PAID
18 THEIR TAXES.

19 Q WHEN WAS IT CLOSED DOWN?

20 A ON OR ABOUT THE TIME THAT THE LETTER WAS
21 SENT.

22 Q AND WHAT HAPPENED TO THE MEMBERS OF THAT
23 PARK; DO YOU KNOW?

24 A PARDON ME?

25 Q DO YOU KNOW WHAT HAPPENED TO THE MEMBERS OF
26 THAT PARK?

1 A THEY RECEIVED A LETTER FROM COAST, AND I
2 CAN'T SPEAK TO THAT, WHAT HAPPENED TO THEM AT ALL. I HAVE
3 NO KNOWLEDGE OF THAT. I DO KNOW THE PARK WAS CLOSED. I DO
4 KNOW IT WAS SUBJECT TO CLOSURE BECAUSE OF BANK LOANS AND
5 BECAUSE OF UNPAID TAXES, AND THE IRS CAME IN.

6 Q AND IS IT STILL YOUR TESTIMONY THAT AN
7 ORPHAN WAS NOT -- WAS ONLY CREATED WHEN A PARK WAS CLOSED;
8 IS THAT RIGHT?

9 A MY EXPERIENCE, THAT'S THE CASE, YES, SIR.

10 Q ALWAYS THE CASE.

11 NOT WHEN A PARK PULLED OUT OF THE SYSTEM,
12 BUT WHEN THE PARK WAS CLOSED?

13 A THAT'S BEEN MY EXPERIENCE.

14 Q DO YOU SOMETIMES USE A DIFFERENT NAME?

15 A NO.

16 Q DO YOU EVER USE THE NAME "J. W. CRANDALL"?

17 A YES.

18 Q THAT'S A NAME THAT YOU'VE USED ON LETTERS
19 THAT YOU'VE SENT OUT?

20 A I'VE USED IT, AND THOUSANDS OF OTHER
21 BUSINESSES IN THE UNITED STATES HAVE USED IT.

22 Q HAVE YOU USED THE NAME "J. W. CRANDALL"?

23 A PARDON?

24 Q HAVE YOU USED THE NAME "J. W. CRANDALL"?

25 A YES, I'VE USED IT. AND I RECOMMENDED THE
26 USE OF THE NAME TO THOUSANDS OF OTHERS.

1 Q SO YOU SENT LETTERS OUT UNDER THE NAME
2 "J. W. CRANDALL"?

3 A I MAY HAVE PERHAPS -- COMPUTERS HAVE, STAFF
4 HAS, BUT --

5 Q YOUR STAFF?

6 A PARDON ME?

7 Q YOUR STAFF?

8 A OF COMPANIES, COMPANY STAFF, TRANSNATIONAL
9 CREDIT CORPORATION, OTHER COMPANIES, YES.

10 Q THE COMPANY THAT YOU WERE C.E.O. OF?

11 A THAT'S CORRECT.

12 Q BY THE WAY, WITH TRANSNATIONAL, YOU
13 MENTIONED YOU WERE C.E.O. AND PRESIDENT OF THE COMPANY?

14 A NO. I WAS PRESIDENT OF TRANSNATIONAL CREDIT
15 CORPORATION. I WAS CHAIRMAN OF THE BOARD OF TRANSNATIONAL
16 COMPANIES, THE HOLDING COMPANY, WHICH -- OF WHICH
17 TRANSNATIONAL CREDIT CORPORATION WAS ONE OF MANY COMPANIES.

18 Q ARE YOU CERTAIN -- YOU SEEM TO BE UNCERTAIN
19 WHEN YOU TESTIFIED ON DIRECT AS TO WHETHER THAT COMPANY WAS
20 A PUBLIC COMPANY?

21 A NO, I WASN'T UNCERTAIN. I SAID IT WASN'T A
22 PUBLIC COMPANY WHEN I WAS THERE. IT MAY HAVE BEEN AFTER
23 THAT.

24 Q SO YOU'RE SURE IT WAS A PUBLIC COMPANY?

25 A NO. THAT'S NOT WHAT I SAID.

26 Q IT WAS NOT?

1 A I SAID I WAS CERTAIN IT WAS NOT A PUBLIC
2 COMPANY WHEN I WAS THERE.

3 Q WHEN THE LETTERS WENT OUT FROM
4 TRANSNATIONAL, WHAT TYPES OF LETTERS ARE WE TALKING ABOUT?
5 ARE THEY COLLECTION LETTERS?

6 ARE THEY COLLECTION LETTERS?

7 A YES. THEY'RE LETTERS SEEKING, AS I
8 EXPLAINED TO YOU -- PARDON ME. EXPLAINED ON DIRECT --
9 TRANSNATIONAL WORKED TO REESTABLISH COMMUNICATIONS BEFORE
10 COLLECTIONS BEGAN.

11 Q WHEN THE LETTERS WENT OUT?

12 A THE REQUEST FOR MONEY, YES, SIR.

13 Q YOU STILL DO SOME COLLECTION WORK?

14 A NOT PERSONALLY. I NEVER DID ANY PERSONALLY.

15 Q YOU'VE DONE IT AS A CONSULTANT?

16 A I'VE ADVISED OTHERS.

17 Q ONLY ADVISED OTHERS?

18 A YES. I MAY HAVE IN A TRAINING PROCESS
19 WRITTEN A LETTER OR COMMUNICATED WITH SOMEONE. I'M CERTAIN
20 I MUST HAVE. I DON'T HAVE A DIRECT RECOLLECTION, BUT I'M
21 CERTAIN I MUST HAVE.

22 Q WHEN THE COLLECTION LETTERS GO OUT, THE NAME
23 "J. W. CRANDALL" IS USED?

24 A PARDON?

25 Q THAT WAS THE NAME THAT WAS USED ON
26 COLLECTION LETTERS YOU SENT OUT?

1 A YES. THAT AND OTHER NAMES.

2 Q DID J. W. CRANDALL EXIST?

3 A WELL, J. W. CRANDALL WAS A REAL PERSON,
4 YES. IT DIDN'T EXIST IN THAT CONTEXT, NO.

5 Q J. W. CRANDALL WAS A PERSON THAT YOU KNEW
6 FROM 20 OR 30 YEARS AGO?

7 A OVER 30 YEARS AGO, YES.

8 Q SO WHEN YOU SENT COLLECTION LETTERS OUT THAT
9 SAID "J. W. CRANDALL," DID YOU -- WAS THAT PERSON -- WAS
10 THAT J. W. CRANDALL SENDING THE LETTERS OUT, OR WERE YOU
11 SIMPLY USING THAT NAME?

12 A IT WAS JUST A NAME. IT'S A COMMON THING IN
13 THE FINANCE INDUSTRY AND OTHER INDUSTRIES TO USE NAMES TO
14 IDENTIFY SO WHEN COMMUNICATION COMES BACK INTO THE BUSINESS
15 YOU KNOW WHAT THEY'RE ABOUT. FOR EXAMPLE, IF I --

16 Q YOU CHOSE NOT TO USE YOUR PERSONAL NAME.
17 YOU CHOSE TO USE THE NAME J. W. CRANDALL; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q YOU PREPARE RESUMES, CURRICULUM VITAE, FROM
20 TIME TO TIME; IS THAT RIGHT?

21 A NO.

22 Q DOES YOUR STAFF DO IT FOR YOU?

23 A YES, THEY MAY.

24 Q DOES YOUR -- DO YOU ASK YOUR STAFF TO
25 PREPARE RESUMES FOR YOU EVER?

26 A I MAY ASK THEM, OR THEY MAY RECEIVE A

1 REQUEST FROM THE OUTSIDE FOR INFORMATION.

2 Q HAVE YOU ASKED YOUR STAFF TO PREPARE RESUMES
3 FOR YOU IN THE PAST?

4 A NO. I DON'T USE A RESUME. I'VE NEVER USED
5 A RESUME. I'M NOT SEEKING EMPLOYMENT. I'VE NEVER BEEN
6 REQUESTED OF ONE. THE LAST TIME I WAS REQUESTED OF A
7 RESUME WAS 35 YEARS AGO, PROBABLY.

8 Q DO YOU REMEMBER PRODUCING A RESUME FOR THIS
9 CASE?

10 A NO. BUT I DO KNOW THAT ONE WAS PRODUCED.

11 Q DID YOU LOOK AT IT BEFORE IT WAS PRODUCED?

12 A NO.

13 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
14 NUMBER 95, PLEASE.

15 MAY I APPROACH THE WITNESS, YOUR HONOR?

16 THE COURT: YOU MAY.

17 BY MR. RIVIN: Q WE'D LIKE TO PUT THE DOCUMENT UP
18 ON THE SCREEN.

19 MR. MITCHELL, THIS IS A BIOGRAPHY. IT SAYS,
20 "BIOGRAPHY OF ROBERT F. MITCHELL; CORRECT?"

21 A THAT'S WHAT IT SAYS, CORRECT.

22 Q DO YOU RECALL WHEN YOUR DEPOSITION WAS TAKEN
23 IN THIS ACTION THAT YOU WERE ASKED TO PRODUCE A NUMBER OF
24 DOCUMENTS AT YOUR DEPOSITION?

25 A YES.

26 Q AND YOU DID PRODUCE A NUMBER OF DOCUMENTS AT

1 YOUR DEPOSITION; IS THAT CORRECT?

2 A YES.

3 Q AND YOU PRODUCED SOME RESUMES, A COUPLE OF
4 RESUMES, AT YOUR DEPOSITION; YOU BROUGHT THEM TO YOUR
5 DEPOSITION; DO YOU RECALL THAT?

6 A YES.

7 Q THIS WAS ONE OF THE RESUMES THAT YOU BROUGHT
8 TO YOUR DEPOSITION.

9 A YES.

10 Q IS THAT RIGHT?

11 THIS LAST SENTENCE OF THE SECOND TO THE LAST
12 PARAGRAPH READS -- AND FORMAL EDUCATION -- "HAS BEEN
13 ELECTED OFFICIAL OF THE STATE OF CALIFORNIA, AND FORMAL
14 EDUCATION INCLUDES LAW SCHOOL."

15 YOU TESTIFIED EARLIER THAT YOU SPENT -- WHAT
16 WAS IT? -- EIGHT MONTHS IN LAW SCHOOL?

17 A PROBABLY LESS THAN THAT. SOMEPLACE BETWEEN
18 SIX AND EIGHT, PERHAPS, YEAH. I QUIT BECAUSE I WENT TO
19 MANAGE THE TRADE ASSOCIATION.

20 Q I UNDERSTAND THAT.

21 DO YOU REMEMBER WHAT YEAR YOU WENT TO LAW
22 SCHOOL?

23 A I THINK '79, '80. I RECALL THAT MY STUDENT
24 BAR CARD WAS REGISTERED ON JANUARY 1ST, 1980.

25 Q AND YOU DIDN'T FINISH YOUR FIRST YEAR?

26 A THAT'S CORRECT.

1 Q DID YOU RECEIVE GRADES, ANY SEMESTER GRADES?

2 A I MAY HAVE.

3 Q YOU DON'T REMEMBER?

4 A I DON'T RECALL. IT WAS 20 YEARS AGO.

5 Q IS THAT YOUR FORMAL EDUCATION? THAT'S

6 REFERRING TO -- IS THAT YOUR LAW SCHOOL FORMAL EDUCATION

7 THAT'S REFERRED TO ON THIS RESUME?

8 A WELL, THERE WAS NO OTHER. SO THAT WOULD BE

9 THAT, YES.

10 Q MR. MITCHELL, IN YOUR -- YOU REMEMBER YOUR

11 DEPOSITION BEING TAKEN IN THIS CASE?

12 A YES.

13 Q AND, AGAIN, AS WE MENTIONED, IT WAS TAKEN ON

14 SEVERAL DAYS.

15 YOU INDICATED AND YOU TESTIFIED ON DIRECT

16 THAT YOU HAD -- YOU HAD KNOWLEDGE OF WHAT WAS GOING ON IN

17 THIS INDUSTRY FOR A PERIOD OF 20 YEARS; IS THAT RIGHT?

18 A YES.

19 Q DID YOU GET VERBAL REPORTS ON A DAILY BASIS

20 FROM EVERY OPERATION IN THE COUNTRY?

21 A OH, CERTAINLY NOT EVERY OPERATION IN THE

22 COUNTRY. THAT WOULD BE A BIT OF OVERREACH. I GET

23 REPORTS -- GOT THEM YESTERDAY -- ON WHAT DIFFERENT

24 OPERATIONS WERE DOING. I GET THEM ALL THE TIME. I'VE BEEN

25 IN THE INDUSTRY A LONG TIME.

26 Q MY QUESTION WAS, SIR, DO YOU GET VERBAL

1 REPORTS ON A DAILY BASIS FROM EVERY OPERATION IN THE
2 COUNTRY?

3 A NO, I DON'T THINK THAT'S A FAIR STATEMENT.

4 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS A PORTION
5 OF HIS DEPOSITION TESTIMONY, PAGE 436, LINES 9 THROUGH 12.
6 I BELIEVE YOUR HONOR HAS THE -- I THINK THE DEPOSITION
7 TRANSCRIPTS SHOULD BE UP THERE.

8 THE CLERK: WHAT WAS THE PAGE, COUNSEL?

9 THE COURT: PAGE 436, LINES 9 THROUGH 12. I DON'T
10 HAVE IT, BUT I DON'T NEED IT.

11 MR. MOSHENKO: YOUR HONOR, MR. SHAW INFORMS ME THAT
12 HIS VOLUME IS IN HIS CAR. IF THE COURT WOULD BE INCLINED
13 TO TAKE YOUR AFTERNOON RECESS AT THIS MOMENT, WE CAN GET
14 THESE TRANSCRIPTS AVAILABLE IN THE PARTY'S HANDS.

15 THE COURT: FAIR ENOUGH. TAKE 20.

16 (RECESS TAKEN.)

17 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
18 COURT IN THE PRESENCE OF THE JURY:)

19 BY MR. RIVIN: Q MR. MITCHELL, I'D LIKE TO PULL
20 UP THE DEPOSITION TESTIMONY THAT YOU TOOK IN THE LAST
21 COUPLE -- THAT YOU GAVE IN THE LAST COUPLE OF MONTHS, PAGE
22 436, LINES 9 THROUGH 12. I ASKED YOU A SERIES OF QUESTIONS
23 IN THE DEPOSITION. YOU ANSWERED. DO YOU RECALL THAT?

24 A YES, SIR.

25 Q DO YOU RECALL TAKING THE SAME OATH --

26 A PARDON ME?

1 Q DO YOU RECALL TAKING THE SAME OATH WHEN YOU
2 WERE TESTIFYING AT THE DEPOSITION THAT YOU'VE TAKEN HERE
3 TODAY?

4 A OH, YES, SIR.

5 Q AND YOUR TESTIMONY WAS AT THE TIME, "I GET
6 REPORTS ON A DAILY BASIS FROM EVERY OPERATION IN THE
7 COUNTRY, VERBAL REPORTS AND PHONE-INS."

8 YOU'VE TESTIFIED HERE THAT YOU DIDN'T GET
9 VERBAL REPORTS ON A DAILY BASIS. IN FACT, YOU DIDN'T GET
10 DAILY REPORTS FROM RAYMOND NOVELLI'S PARKS, DID YOU?

11 A I THINK THERE'S A LITTLE CONFUSION. I GOT
12 REPORTS ON A DAILY BASIS. THE REPORTS MAY HAVE REPRESENTED
13 A WEEK'S WORTH OF ACTIVITY OR A MONTH'S WORTH OF ACTIVITY.
14 BUT I GOT THEM ON A DAILY BASIS. I AM CERTAINLY IN CHARGE
15 OF COLLECTING THAT INFORMATION FROM THE APPROXIMATELY --
16 WELL, RANGING FROM 70 TO 100 OPERATORS. AS YOU KNOW, IN
17 THE COAST SYSTEM, ONLY ABOUT 20 PERCENT OF THE LICENSEES
18 ACTUALLY SELL. AND HIS JOB WAS TO GATHER THE INFORMATION
19 UP ABOUT THE DAILY OPERATIONS OF DIFFERENT PROPERTIES AND
20 TO PROVIDE THAT TO ME. I GOT THEM ON A DAILY BASIS.

21 HOWEVER, IT MAY REPRESENT A WEEK OR IT MAY
22 HAVE REPRESENTED A MONTH IN AN INDIVIDUAL REPORT.

23 Q YOU GOT REPORTS ON A DAILY BASIS FROM
24 DIFFERENT OPERATIONS, BUT THEY CAME IN ON A DAILY BASIS?

25 A YEAH. EVERY DAY I GET DAILY REPORTS.

26 Q DID YOU GET DAILY REPORTS FROM RAY NOVELLI'S

1 PARKS?

2 A FROM ALL SEASONS RESORTS.

3 Q ALL SEASONS OR FIRST NATIONWIDE MANAGEMENT
4 CORPORATION OR REVCON?

5 A WELL, AT THE TIME -- YOU KNOW, AT THE TIME
6 REVCON WAS A MANUFACTURER. AND AT THE TIME THAT I WAS
7 GETTING THOSE REPORTS, THERE WAS NO FIRST NATIONWIDE. AND
8 APOLLO DID NOT OWN PARKS.

9 Q WHEN WERE YOU GETTING THOSE REPORTS?

10 A DURING THE TIME THAT I WAS THE PRESIDENT OF
11 TRANSNATIONAL CORPORATION, TRANSNATIONAL -- PARDON ME. I
12 APOLOGIZE. NATIONAL RESORTS MARKETING.

13 Q WHEN WAS THAT?

14 A OH, FROM -- I GUESS IT WAS ABOUT 80 TO '87
15 OR SOMETHING OF THAT NATURE. MAYBE '88.

16 Q SO WAS IT DURING THE 1980'S THAT YOU GOT
17 REPORTS?

18 A YES. AS I SAID, WHEN I WAS ACTIVE, YES.

19 Q WHEN YOU WERE ACTIVE IN THE INDUSTRY?

20 A YEAH, WHEN I WAS ACTIVE ON A DAILY BASIS
21 MANAGING THE COMPANY.

22 Q WHEN IS THE LAST --

23 A BEFORE I STARTED DOING CONSULTING WORK.

24 Q WHEN IS THE LAST TIME YOU WERE ACTIVE ON A
25 DAILY BASIS OPERATING A COMPANY --

26 A OH --

1 Q -- IN THE MEMBERSHIP CAMPGROUND RESORT
2 INDUSTRY?

3 A I HAVE NOT OPERATED A FACILITY FOR OVER A
4 DECADE.

5 Q WHEN WAS THE LAST TIME YOU ACTUALLY DID?

6 A EXCUSE ME. I THOUGHT I ANSWERED YOU.

7 Q IT'S OVER A DECADE. IT'S 1985, 1984?

8 A OH, 1987, '89, IN THAT RANGE. I'M TRYING TO
9 THINK IF I DID ANY IN THE '90'S. I MAY HAVE DONE SOME IN
10 THE '90'S, BUT IT WASN'T FOR AN EXTENDED PERIOD OF TIME.
11 IT WOULD BE ONLY RELATING TO CONSULTING WORK. I DID DO
12 SOME DAILY OVERSIGHT OPERATION AT WILDERNESS POINT RESORT
13 IN HENDERSON, ARKANSAS IN THE '90'S, AND I WAS PROBABLY --
14 UP UNTIL, OH, I THINK MAYBE '98, IT MIGHT HAVE BEEN AS LATE
15 AS '98 WHEN I -- WILDERNESS POINT, HENDERSON, ARKANSAS.
16 AND WHEN I WAS CONSULTING TO THAT PROPERTY ON SOME
17 OCCASIONS FOR A WEEK OR TWO PERIOD OF TIME, I MIGHT HAVE
18 BEEN THERE EVERY DAY.

19 Q THAT WAS -- ARE YOU NOW TALKING ABOUT
20 WILDERNESS POINT RESORT IN ARKANSAS?

21 A THAT'S WHAT I SAID. HENDERSON, ARKANSAS.

22 Q AND YOU'VE CONSULTED FOR THEM. IN FACT, YOU
23 WERE WORKING IN OPERATIONS FOR THEM ON -- AS CONSULTANT?

24 A AS CONSULTANT. AND ON SOME OCCASIONS THERE
25 WOULD BE -- I WOULD BE THERE FOR A 10-DAY STRETCH WHERE I
26 WOULD BE THERE EVERY SINGLE DAY. BUT BEYOND THAT, I HAVE

1 NOT. I RETIRED FROM THE TRANSNATIONAL -- PARDON ME -- FROM
2 NATIONAL RESORTS IN THE LATE '80'S AND DID -- WENT INTO
3 CONSULTING. SO I DID NOT OPERATE ANY FACILITIES AS A
4 CONSULTANT, SAVE WHATEVER LIMITED TIME I WAS OPERATING
5 FACILITIES AS A CONSULTANT.

6 Q WAS IT AN ATTORNEY FOR WILDERNESS POINT
7 RESORT WHO ACCUSED YOU OF USING THE NAME J. W. CRANDALL
8 WHEN YOU WANTED TO REPRESENT YOURSELF AS AN ATTORNEY?

9 A I DON'T KNOW WHETHER IT WAS AN ATTORNEY. HE
10 MAY HAVE BEEN FOR WILDERNESS POINT. IT WAS CERTAINLY FOR
11 MR. HOPKINS WHO WAS THE OWNER OF WILDERNESS POINT.

12 Q SO, IN OTHER WORDS, YOU WORKED FOR THAT
13 COMPANY IN ABOUT 1988; THAT WAS THE LAST TIME?

14 A MY LAST ENGAGEMENT -- I BELIEVE THAT I SENT
15 THEM A DISENGAGEMENT LETTER AND REFUSED TO WORK FOR THEM
16 SOMETIME IN '98. SHORTLY THEREAFTER I RECEIVED A LETTER
17 FROM AN ATTORNEY REPRESENTING -- HE MAY HAVE BEEN
18 REPRESENTING THEM BOTH. HE CERTAINLY WAS REPRESENTING
19 MR. HOPKINS.

20 Q YOU WORKED FOR WILDERNESS POINT RESORT OVER
21 THE COURSE OF 10 YEARS AS A CONSULTANT?

22 A NO.

23 Q LESS THAN THAT?

24 A OH, YES.

25 Q HOW MANY YEARS?

26 A WELL, FROM THEIR INCEPTION. I DON'T KNOW.

1 FIVE, SIX, SEVEN YEARS. ALTHOUGH, I'VE PROVIDED SUPPORT
2 SERVICES FOR THE OWNER FOR 20 YEARS WHEN HE GOT IN
3 DIFFICULTIES. I HAD OPERATIONS IN THE STATE OF WASHINGTON.
4 THE ATTORNEY GENERAL RAN HIM OUT OF THERE. THEN HE HAD
5 OPERATIONS IN CALIFORNIA. THE ATTORNEY GENERAL RAN HIM OUT
6 OF THERE, AND THEN HE WENT TO ARKANSAS.

7 Q AND YOU KEPT WORKING FOR HIM DURING ALL OF
8 THESE TIMES OF TROUBLE?

9 A YES. HE OWED MY CLIENTS MONEY. AND HE
10 WOULD GET IN TROUBLE, AND I'D HAVE TO GO THERE AND FIX IT.

11 Q WHO WERE YOUR CLIENTS AT THE TIME?

12 A TRAVELERS CORPORATION AND CONRAD CREDIT
13 CORPORATION.

14 Q SO WHEN YOU -- YOU WERE PAID TO WORK FOR
15 WILDERNESS POINT RESORT; IS THAT RIGHT?

16 A WILDERNESS POINT RESORT ACTUALLY PAID ME
17 SOMETIMES; ALTHOUGH, THEY STILL OWE ME MONEY.

18 Q AND TRAVELERS PAID YOU SOMETIMES WHEN YOU
19 WENT TO WILDERNESS POINT RESORT TO HELP OUT?

20 A YES.

21 Q SO TRAVELERS PAID YOU; TRAVELERS WAS A
22 LENDER. THAT WAS THE LENDER YOU CONSULTED WITH?

23 A THEY HAD LENT MR. HOPKINS MONEY, CORRECT.

24 Q TRAVELERS WAS THE COMPANY YOU CONSULTED WITH
25 OVER THE COURSE OF APPROXIMATELY 20 YEARS; IS THAT RIGHT?

26 A THAT'S CORRECT, SIR.

1 Q FROM APPROXIMATELY 1980 THROUGH 1999; IS
2 THAT RIGHT?

3 A THAT'S CORRECT, SIR.

4 Q AND TRAVELERS WAS A LENDER?

5 A THAT'S CORRECT, SIR.

6 Q AND SERVICER --

7 A THAT'S CORRECT.

8 Q -- OF LOANS --

9 A YOU GOT IT.

10 Q -- IN THE MEMBERSHIP CAMPGROUND BUSINESS AND
11 OTHER BUSINESSES; RIGHT?

12 A YES, SIR.

13 Q SO TRAVELERS SENT YOU OUT TO WILDERNESS
14 POINT RESORT; WILDERNESS POINT RESORT WAS DEFAULTING ON
15 SOME OBLIGATIONS THAT WERE OWED?

16 A NO, THEY WEREN'T DEFAULTING AT THAT POINT.
17 BUT THEY WERE -- HAD CREATED SUCH PROBLEMS FOR THEMSELVES
18 THAT THEY WOULD HAVE BEEN DEFAULTING VERY SHORTLY. AND THE
19 PRESIDENT OF TRAVELERS AND MR. HOPKINS HAD HAD A
20 RELATIONSHIP FOR 20 YEARS, AND HE ASKED ME TO HELP HIM.

21 Q YOU HAD A RELATIONSHIP WITH MR. HOPKINS FOR
22 20 YEARS?

23 A AS A RESULT OF THE RELATIONSHIP I HAD WITH
24 TRAVELERS, HE HAD A RELATIONSHIP WITH TRAVELERS FOR 20
25 YEARS.

26 Q SO THEN MR. HOPKINS PAID YOU, TOO?

1 A THAT'S CORRECT, SIR.

2 Q AND HOW MUCH DID MR. HOPKINS PAY? WAS IT
3 ABOUT \$40-, \$50,000 OVER THE COURSE OF SEVERAL YEARS?

4 A WELL, HE NEVER PAID IT. HE IS STILL ON THE
5 BOOKS FOR 10- OR 15,000. SO APPROXIMATELY, I SUSPECT.

6 Q AND IT WAS MR. HOPKINS'S ATTORNEY WHO IN
7 1999 ACCUSED YOU OF USING THE NAME "J. W. CRANDALL" WHEN
8 YOU WANTED TO REPRESENT YOURSELF AS AN ATTORNEY?

9 A I DON'T RECALL -- DO YOU HAVE THE LETTER? I
10 DON'T RECALL THE TEXT OF THE LETTER. BUT IT MAY HAVE BEEN
11 SOMETHING ALONG THOSE LINES. IF YOU HAVE THE LETTER, I'LL
12 BE HAPPY TO LOOK AT IT.

13 Q LET'S SEE IF I CAN LOCATE IT, MR. MITCHELL.

14 A OKAY.

15 MR. RIVIN: MAY I APPROACH THE WITNESS, YOUR HONOR?
16 BRING THE LETTER UP ON THE SCREEN.

17 MR. SHAW: WE'LL OBJECT TO THAT. IT'S HEARSAY.
18 IT'S A LETTER BY OUT-OF-COURT DECLARANT.

19 THE COURT: WELL, HE HASN'T INTRODUCED IT YET.

20 BY MR. RIVIN: Q THAT IS THE LETTER?

21 A OH, YEAH, THAT'S IT.

22 Q THAT IS THE LETTER WHERE THE ATTORNEY FOR
23 MR. HOPKINS ACCUSED YOU OF USING THE NAME
24 "J. W. CRANDALL" --

25 A OH, YES.

26 Q -- AS AN ATTORNEY?

1 A YES.

2 Q DID YOU EVER SUGGEST TO ANYONE THAT YOU WERE
3 AN ATTORNEY?

4 A NO.

5 Q DID YOU EVER LEAD ANYONE TO BELIEVE THAT YOU
6 WERE AN ATTORNEY?

7 A OF COURSE NOT, NO.

8 Q EVEN THOUGH YOU HAD A FORMAL LEGAL
9 EDUCATION?

10 A IT'S NOT RELEVANT. AN ATTORNEY IS SOMEONE I
11 BELIEVE THAT HAS PASSED THE BAR. IT WOULDN'T MATTER HOW
12 MUCH KNOWLEDGE I HAD, WHAT I LEARNED AS AN ATTORNEY.

13 THE COURT: YOU BRING UP AN INTERESTING POINT.
14 THERE IS A DISTINCTION BETWEEN A LAWYER AND AN ATTORNEY.
15 THE LAWYER IS ONE WHO IS LEARNED IN THE LAW. AN ATTORNEY
16 IS ONE WHO IS EMPOWERED TO ACT ON BEHALF OF OTHERS.

17 THE WITNESS: THANK YOU, SIR.

18 MR. RIVIN: PIECE OF KNOWLEDGE. THANK YOU.

19 Q YOU TALKED ABOUT --

20 THE COURT: IT WON'T COST YOU A THING, EITHER.

21 MR. RIVIN: IT MAY LATER, BUT NOT NOW.

22 Q WITH THE EXCEPTION OF WILDERNESS POINT
23 RESORT -- YOU DID SOME WORK IN THE '90'S -- WHEN IS THE
24 LAST TIME YOU DID ANY WORK AS AN OPERATOR OF A PARK?

25 A ACTUALLY DAILY OPERATIONS MANAGEMENT?

26 Q YES.

1 A THAT WOULD BE IT, SIR.

2 Q SO THAT WOULD HAVE BEEN THE LAST TIME WOULD
3 HAVE BEEN BACK IN THE '80'S, OTHER THAN WILDERNESS POINT?

4 A '80, EARLY '90'S. CERTAINLY NOTHING AFTER
5 THE EARLY '90'S.

6 Q OKAY. YOU HAVE NOT BEEN SIGNIFICANTLY
7 INVOLVED IN THE CAMPGROUND RESORT INDUSTRY FOR THE PAST FEW
8 YEARS; ISN'T THAT RIGHT?

9 A FOR THE LAST -- SINCE ABOUT 19 -- MID-'97.
10 I WOULD SAY THAT'S CORRECT, YES, SIR.

11 Q IN THE LAST FEW YEARS YOU SPENT QUITE A BIT
12 OF YOUR TIME AND ENERGIES IN THE INTERNET AND IN THE
13 E-COMMERCE FIELD?

14 A VERY -- SOMEWHAT. NOT ALL, YES. OTHER
15 THINGS, I ALSO HAVE BEEN WORKING ON LARGE DEVELOPMENT IN
16 SOUTHERN CALIFORNIA AND SIMILAR PROJECTS. BUT A LOT IN THE
17 E-COMMERCE AREA.

18 Q THAT'S ALL IN THE LAST -- SO IN THE LAST TWO
19 OR THREE YEARS, YOU'VE BEEN WORKING ON E-COMMERCE. YOU'VE
20 BEEN WORKING ON INTERNET AREAS. YOU'VE BEEN ACTING AS A
21 DEVELOPER. I TAKE IT NOT AS A DEVELOPER IN THE CAMPGROUND
22 INDUSTRY, IN ANOTHER FIELD?

23 A WELL, WE HAVE A 1800-ACRE DEVELOPMENT I'VE
24 BEEN CONSULTING TO. IT INVOLVES A CAMPGROUND, GOLF COURSE.
25 IT'S FIVE HOTELS AND VARIOUS THINGS.

26 AND ALSO I'VE CONTINUED TO CONSULT IN THE

1 CAMP RESORT INDUSTRY UP UNTIL 19 -- MID 1998.

2 Q MID-1998 IN THE CAMPGROUND RESORT INDUSTRY?

3 A YEAH. I CONTINUE TO WORK WITH CLIENTS AND
4 LENDERS.

5 Q UP UNTIL ABOUT MID-1998?

6 A YES, SIR.

7 Q AND SINCE THAT TIME, YOU REALLY HAVEN'T BEEN
8 INVOLVED; YOU'VE BEEN DOING OTHER THINGS, PUBLISHING, LAND
9 DEVELOPMENT, E-COMMERCE, CONSUMER PROTECTION, ET CETERA;
10 THAT'S WHAT YOU'RE DOING?

11 A YES, SIR.

12 Q THAT'S WHAT YOU'RE DOING AT THE PRESENT TIME?

13 A YES.

14 Q AND THAT'S WHAT YOU'VE BEEN DOING FOR THE
15 LAST COUPLE OF YEARS?

16 A YES, SIR. YEAR AND A HALF, TWO YEARS.

17 Q YOU HAVEN'T PUBLISHED ANY ARTICLES IN THE
18 CAMPGROUND RESORT INDUSTRY LATELY BECAUSE YOU DON'T HAVE
19 ANY INTEREST IN DOING THAT; IS THAT RIGHT?

20 A I SAID EVERYTHING I CAN SAY. ANYTHING ELSE
21 IS OFFERED TO BE REDUNDANT. THAT'S CORRECT, SIR.

22 Q I WANT TO ASK YOU SOME MORE QUESTIONS ABOUT
23 YOUR BACKGROUND IN THE COLLECTION INDUSTRY.

24 A SURE.

25 Q YOU MENTIONED -- WE'VE TALKED ABOUT
26 TRANSNATIONAL CORPORATION, VARIOUS CORPORATIONS WITHIN

1 TRANSNATIONAL, AND YOU'VE EXPLAINED JUST WITHIN THE LAST
2 FEW MINUTES ABOUT THE DIFFERENT COMPANIES THAT YOU WERE
3 PRESIDENT OR C.E.O. OF. AND YOU INDICATED THAT
4 TRANSNATIONAL WAS ONE OF THE LARGEST COLLECTION AGENCIES IN
5 THE COUNTRY?

6 A NO, SIR.

7 Q WAS TRANSNATIONAL ONE OF THE LARGER
8 COLLECTION AGENCY IN THE EASTERN UNITED STATES?

9 A TRANSNATIONAL WAS NOT A COLLECTION AGENCY.
10 TRANSNATIONAL WAS NEVER A COLLECTION AGENCY, NEVER LICENSED
11 AS A COLLECTION AGENCY. THE CONCEPT BETWEEN -- WITH
12 TRANSNATIONAL WAS TO AVOID THE COLLECTION AGENCY, FOR THE
13 CONSEQUENCES OF THE BUSINESS AND THE CONSUMER.

14 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS PAGES 899
15 THROUGH 900 OF HIS DEPOSITION.

16 YOUR HONOR, WE'D LIKE TO PUT IT UP, IF WE
17 MAY. ACTUALLY LINES 23 THROUGH 25. 22 THROUGH 25.
18 QUESTION I ASKED YOU IN YOUR DEPOSITION:

19 "IS YOUR COMPANY ONE OF THE
20 LARGER COLLECTION AGENCIES IN
21 THE EASTERN PART OF THE UNITED
22 STATES?

23 "ANSWER: YES."

24 THANK YOU.

25 Q DIDN'T TRANSNATIONAL OPERATE AS A COLLECTION
26 AGENCY THROUGHOUT THE UNITED STATES?

1 A TRANSNATIONAL WAS NOT A COLLECTION AGENCY.
2 IT WAS NEVER LICENSED AS A COLLECTION AGENCY. IT WAS WHAT
3 BECAME KNOWN AS A PRECOLLECTION PROGRAM, THE IDEA BEING
4 THAT IF YOU COULD GET COMMUNICATIONS ESTABLISHED, YOU
5 WOULDN'T HAVE TO DEAL WITH COLLECTION AGENCIES.

6 WHEN YOU ASKED ME THAT QUESTION, SIR, I
7 TRIED TO EXPLAIN TO YOU THE DIFFERENCE, AND I DON'T RECALL
8 EXACTLY WHAT HAPPENED. AND I THINK IT WAS QUICK, AND I
9 JUST RESPONDED TO YOUR QUESTION. YOU DIDN'T WANT TO HEAR
10 THE DIFFERENCE --

11 Q I'D LIKE TO PUT THE QUESTION AND ANSWER --

12 A -- IS MY RECOLLECTION.

13 Q I'D LIKE TO PUT THE QUESTION AND ANSWER UP
14 AGAIN, PLEASE.

15 THERE WAS NO OBJECTION TO THE QUESTION. I
16 THINK THE QUESTION IS PRETTY CLEAR, AND YOUR ANSWER IS NOT
17 EQUIVOCAL.

18 A OKAY.

19 Q WERE YOU TELLING THE TRUTH IN YOUR
20 DEPOSITION?

21 A YES. IT WAS THE LARGEST COMPANY HANDLING
22 ACCOUNTS RECEIVABLE MANAGEMENT IN THE UNITED STATES AND
23 COLLECTED MORE MONEY THAN ANYBODY ELSE. I MISSPOKE WHEN I
24 ANSWERED YOUR QUESTION THAT IT WAS AN AGENCY. I THINK WE
25 GOT THE PROBLEM, IS WITH THE WORD "AGENCY." AND THAT'S THE
26 CONFUSION.

1 BUT TRANSNATIONAL WAS NOT A LICENSED
2 COLLECTION AGENCY AND DIDN'T PERFORM COLLECTION AGENCY
3 SERVICES. IT DID NOT PHONE PEOPLE. IT DID NOT VISIT
4 PEOPLE. ALL IT DID WAS TO DESIGN COMMUNICATIONS FOR
5 BUSINESSES.

6 Q MR. MITCHELL, ISN'T IT TRUE THAT YOU SENT
7 OUT HUNDREDS OF THOUSANDS OF COLLECTION LETTERS A WEEK AND
8 MILLIONS OF COLLECTION LETTERS DURING THE YEARS YOU WORKED
9 FOR TRANSNATIONAL?

10 A OH, YES. MAYBE HUNDREDS OF MILLIONS.

11 Q HUNDREDS OF MILLIONS?

12 A PERHAPS.

13 Q BUT IT WASN'T A COLLECTION AGENCY?

14 A NO, SIR. A COLLECTION AGENCY HAS TO BE
15 LICENSED, AND A COLLECTION AGENCY PERFORMS DIFFERENT
16 TASKS. THEY CALL PEOPLE ON THE TELEPHONE. THEY GO OUT TO
17 THEIR HOUSE AND KNOCK ON THEIR DOOR AND THOSE KIND OF
18 THINGS. THEY SUE PEOPLE. TRANSNATIONAL DID NONE OF THAT,
19 SIR.

20 Q HOW ABOUT ALTERNATIVE RECOVERY MANAGEMENT;
21 THAT WAS A COMPANY THAT YOU MENTIONED, I BELIEVE, YESTERDAY
22 WHEN MR. SHAW WAS ASKING YOU ABOUT YOUR BACKGROUND.

23 YOU INDICATED THAT WAS ONE OF THE COMPANIES
24 THAT I BELIEVE YOU CONSULTED FOR; IS THAT RIGHT?

25 A YES. THAT'S A COLLECTION AGENCY, LICENSED
26 COLLECTION AGENCY IN THE STATE OF CALIFORNIA. ALTHOUGH,

1 THERE IS NO OVERSIGHT BUREAU LEFT BECAUSE THE BUDGET KICKED
2 IT OUT. BUT IT IS A COLLECTION AGENCY, AND IT'S A
3 COLLECTION AGENCY IN THE PROPER UNDERSTANDING THAT WE ALL
4 MIGHT UNDERSTAND WHAT A COLLECTION AGENCY IS. THEY CALL
5 PEOPLE ON THE PHONE, AND THEY SUE PEOPLE, AND THAT KIND OF
6 THING. AND WHAT I DID FOR THEM WAS TO PROVIDE --

7 Q I DIDN'T ASK YOU, SIR.

8 A OH, I APOLOGIZE. I THOUGHT YOU ASKED.

9 Q YOU'VE ANSWERED THE QUESTION.

10 A EXCUSE ME.

11 Q I WILL HAVE FOLLOW-UP QUESTIONS.

12 A OKAY.

13 Q YOU WERE CONSULTANT FOR ALTERNATIVE RECOVERY
14 MANAGEMENT?

15 A YES.

16 Q YOU WROTE ARTICLES ON BEHALF OF ALTERNATIVE
17 RECOVERY MANAGEMENT, OR TALKING ABOUT ALTERNATIVE RECOVERY
18 MANAGEMENT?

19 A I MAY HAVE RECOMMENDED THEIR SERVICES. I
20 DON'T THINK I WROTE AN ARTICLE ABOUT THEM.

21 Q DID YOU WRITE ARTICLES? DID YOU WRITE
22 ARTICLES ABOUT COLLECTIONS, ABOUT HOW LENDERS OR CREDITORS
23 SHOULD COLLECT DEBTS?

24 A I WROTE ARTICLES ABOUT CREDIT GRANTING,
25 EVERYTHING FROM THE CREDIT APPLICATION ALL THE WAY THROUGH
26 AND INCLUDING COLLECTION AND EVERYTHING THAT HAPPENS ON THE

1 WAY, YES, SIR, I DID. THOSE WERE PUBLISHED IN -- SOME OF
2 THOSE ARTICLES WERE PUBLISHED IN DEVELOPMENTAL TRADES, THE
3 INDUSTRY'S PUBLICATION.

4 Q AND THOSE ARTICLES TALKED ABOUT COLLECTING
5 FROM CONSUMERS; IS THAT RIGHT?

6 A OH, YES, SIR.

7 Q COLLECTING FROM CONSUMERS LIKE CAMPGROUND
8 MEMBERS WHO SIGNED LONG-TERM CONTRACTS; IS THAT RIGHT?

9 A OH, YES, DEFINITELY.

10 Q AND YOU HAD A SYSTEM FOR COLLECTIONS; IS
11 THAT RIGHT?

12 A OH, YES.

13 Q AND YOU TAUGHT THAT SYSTEM FOR COLLECTION?

14 A YES.

15 Q AND THAT SYSTEM -- IN FACT, LET'S TAKE A
16 LOOK AT AN ARTICLE THAT YOU WROTE. IT WOULD BE EXHIBIT
17 1017.

18 MAY I APPROACH THE WITNESS?

19 A THANK YOU.

20 Q I WAS WAITING.

21 HAVE YOU TAKEN A LOOK IT?

22 A I DON'T NEED TO READ IT. I WROTE IT.

23 Q THAT WAS AN ARTICLE YOU WROTE WHEN?

24 A THAT I'LL HAVE TO CHECK.

25 Q ALL RIGHT.

26 A THIS APPEARED AS A PART OF A THREE-SERIES

1 ARTICLE. THIS IS PART II OF III THAT APPEARED IN THE
2 APRIL-MAY EDITION OF DEVELOPMENTS MAGAZINE, 1991, THE
3 INDUSTRY'S TRADE PUBLICATION.

4 Q I WOULD LIKE TO PUT IT UP ON THE SCREEN, IF
5 WE COULD.

6 WE RECEIVED IT FROM THE TRADE PUBLICATION,
7 AND WE DO NOT KNOW WHY THERE WAS -- SOME OF THE LANGUAGE UP
8 THERE WAS APPARENTLY BLACKED OUT.

9 DO YOU KNOW WHAT'S BELOW THAT, MR. MITCHELL?

10 A YOU MEAN WHAT'S UNDERNEATH THOSE BLACK
11 MARKS?

12 Q YES.

13 A BOY, I WAS REMEMBERING. I'M TRYING TO
14 REMEMBER.

15 Q IT DOESN'T APPEAR TO BE PART OF THE ARTICLE.

16 A I DON'T KNOW. IT MAY HAVE BEEN SOME
17 HEADLINE I WOULD GUESS FROM -- I'VE BEEN A PUBLISHER. SO
18 I'M GOING TO TELL YOU WHAT MY EXPERT OPINION WAS. THIS WAS
19 A HEADLINE DESCRIBING WHAT THE ARTICLE WAS GOING TO BE
20 ABOUT.

21 Q I SEE.

22 AND WE DON'T KNOW WHY SOMEBODY DECIDED TO
23 BLACK IT OUT, BUT THAT'S THE WAY WE GOT THE ARTICLE?

24 A I DON'T KNOW, SIR.

25 Q THIS IS PART II OF III OF CONTRACT
26 RECEIVABLE MANAGEMENT?

1 A RIGHT.

2 Q SO IT'S ONE -- YOU WROTE TWO OTHER ARTICLES.
3 I HAVEN'T SEEN THOSE TWO OTHER ARTICLES. THIS IS THE ONE
4 I'VE SEEN.

5 A I'M SORRY YOU HAVEN'T.

6 Q I'LL LOOK FOR THEM.

7 A GOOD.

8 Q SEE IF I CAN FIND THEM.

9 DO YOU HAVE COPIES OF THOSE ARTICLES?

10 A NO. YOU ASKED ME FOR THAT BEFORE, AND I WAS
11 THE ONE WHO TOLD YOU WHERE TO GET THIS ONE, YOU MAY
12 RECALL. ACTUALLY MY SECRETARY DID. SHE GAVE YOU THE
13 INFORMATION.

14 Q LET'S TAKE A LOOK AT THIS.

15 YOU NOTICE AT THE BOTTOM OF THE FIRST PAGE
16 OF EXHIBIT 1017 YOU'VE GOT A SYSTEM?

17 A OH, YES.

18 Q AND THE SYSTEM SHOWS -- LET'S SEE. THE
19 FIRST STATEMENT, WHY -- CAN YOU GO THROUGH THAT CHART AND
20 JUST EXPLAIN YOUR SYSTEM FOR COLLECTIONS?

21 A WELL, THIS -- IT'S NOT A SYSTEM FOR
22 COLLECTION. IT'S A SYSTEM TO AVOID THE NECESSITY TO GET
23 INTO COLLECTIONS. THAT'S THE WHOLE POINT. SURE,
24 ABSOLUTELY. PRECURSOR TO -- LET'S BEGIN HERE. FIRST
25 STATEMENT WITHIN 10 DAYS." A PRECURSOR TO THAT IS -- PART
26 OF THIS WHOLE SYSTEM IS, "DID YOU GET A PROPER CREDIT

1 APPLICATION? DID YOU GIVE PROPER TERMS AND CONDITIONS TO
2 THE CUSTOMER? DOES THE CUSTOMER UNDERSTAND WHAT HIS
3 RESPONSIBILITIES AND DUTIES ARE? HAS THAT BEEN FULLY AND
4 CLEANLY DISCLOSED TO THE CUSTOMER? AND IS THE RELATIONSHIP
5 PROPERLY ENTERED INTO?

6 IF THAT IS THE CASE, THEN WITHIN 10 DAYS,
7 THEN YOU SEND THE FIRST STATEMENT, FROM THE DUE DATE. AND
8 YOU SEND A STATEMENT PRIOR TO WHEN IT'S DUE. BECAUSE IN
9 INTERVIEWING CONSUMERS, WE FOUND THAT THEY LIKE IT THAT
10 WAY. THEY LIKE TO GET IT AHEAD OF THE DUE DATE SO THEY GET
11 AN IDEA WHEN IT'S DUE, AND THAT'S NOW A COMMON PRACTICE, I
12 MIGHT ADD, IN THE CREDIT-GRANTING INDUSTRY. SEND PEOPLE A
13 STATEMENT AHEAD OF TIME. NOW YOU KNOW YOU HAVE 10 DAYS
14 PAYMENT DUE. IF THEY HAVEN'T PAID IN 10 DAYS AFTER IT'S
15 DUE, THEN YOU SEND THEM A NOTICE WHICH IS CALLED A DUNNING
16 NOTICE. AND THE REASON IT'S CALLED A DUNNING NOTICE IS
17 BECAUSE KING CHARLES'S TAX COLLECTOR WAS CALLED DUNN,
18 JOHN DUNN. SO THAT'S A TERM OF ART FOR A FEW MONTHS,
19 YEARS. AND ESSENTIALLY A DUNNING NOTICE IS A POLITE WAY OF
20 SAYING, "HI, YOU MAY HAVE FORGOT YOUR PAYMENT."

21 AT THAT POINT YOU'LL NOTICE ON THE LEFT IT
22 SAYS, "DEFAULT CHARGE," BECAUSE YOU'RE GOING TO TELL THE
23 CONSUMER IF THEY DON'T PAY THE PAYMENTS IN A CERTAIN
24 PERIOD, THEY'RE GOING TO BE SUFFERABLE TO A DEFAULT
25 CHARGE.

26 MASTERCHARGE, IF THEY DON'T -- DEFAULT

1 CHARGE, LIKE A CHARGE CARD ACCOUNT WE ALL HAVE. IF WE
2 DON'T PAY WITHIN A CERTAIN PERIOD OF TIME, THEY'RE GOING TO
3 ADD A LITTLE FEE ON THERE.

4 THEN YOU'LL NOTICE YOU WAIT ANOTHER 20 DAYS
5 TO GIVE THE CONSUMER AN OPPORTUNITY TO MAKE A PAYMENT. YOU
6 SEND A SECOND STATEMENT OUT. AND YOU'LL NOTICE UP ON THE
7 RIGHT-HAND UNDER "SECOND STATEMENT" IT SAYS, "AUDIT STAMP."
8 AND, AGAIN, THAT'S A MOTIVATIONAL DEVICE BECAUSE AT THAT
9 POINT THE PERSON DOING THIS SHOULD HAVE RECEIVED AN
10 ACCOUNTS RECEIVABLE AGING REPORT. SO, IN OTHER WORDS, AN
11 AUDIT OF THIS ACTIVITY WOULD HAVE OCCURRED. AND THEY'RE
12 GOING TO PUT ON THAT STATEMENT AN AUDIT STAMP THAT SAYS,
13 "THIS HAS BEEN AUDITED, AND IT'S KNOWN IT'S PAST DUE, AND
14 WE WANT TO EXTEND YOU THE COURTESY OF 15 MORE DAYS TO MAKE
15 THE PAYMENT."

16 SO NOW THE PAYMENT IS 30 DAYS PAST DUE, AND
17 THEN YOU WAIT 40 DAYS PAST DUE, AND/OR APPROXIMATELY A
18 MONTH AND A HALF. AT THE TWO MONTHS PAST DUE POINT, THAT'S
19 WHERE YOU WOULD START WHAT TRANSNATIONAL CREDIT CORPORATION
20 USED TO PROVIDE, WHICH WAS CALLED A FLAT-RATE SERVICE.
21 THAT'S WHEN YOU ENGAGE WHAT'S CALLED THIRD-PARTY
22 PSYCHOLOGY. YOU HAVE ANOTHER PERSON SEND A LETTER SO THAT
23 THE CONSUMER CAN UNDERSTAND THAT YOU HAVE SENSITIVITY AND
24 GRAVITY FOR THIS, AND OTHER PARTIES MAY BE ENGAGED. BUT
25 STILL YOU WANT TO BE COURTEOUS AND RECONCILIATORY. AND YOU
26 WANT TO FIND OUT WHAT THE PROBLEM IS. THE IDEA IS, LET'S

1 FIND OUT WHAT THE PROBLEM IS.

2 SO THE FLAT RATE SERVICE HERE WILL SEND
3 LETTERS FOR 60 DAYS, FOR TWO MONTHS, APPROXIMATELY EVERY 10
4 DAYS, TRYING TO PROVOKE A RESPONSE FROM THE DEBTOR TO
5 WHAT'S WRONG? YOU DON'T HAVE THE MONEY? YOU DON'T LIKE
6 THE SERVICE? YOU WERE OFFENDED? JUST TELL US WHAT'S WRONG
7 SO WE CAN FIGURE OUT WHAT'S GOING ON.

8 NOW, IF THEY DON'T RESPOND, THEN, FOR THAT
9 60 DAYS, WHICH MAKES THEM 100 DAYS PAST DUE, AT THAT POINT,
10 THEN IT WOULD BE REFERRED TO WHAT YOU -- A COLLECTION
11 AGENCY. AND AN ALTERNATIVE RECOVERY MANAGEMENT WAS SUCH AN
12 AGENCY.

13 THE SERVICES I PERFORMED FOR ALTERNATIVE
14 RECOVERY MANAGEMENT WAS TO DEVELOP THAT FLAT RATE ELEMENT
15 SO THERE WAS SOMETHING IN FRONT SO THEY HAD A WAY OF
16 HELPING THEIR CLIENTS DO A -- DIPLOMATICALLY AND AVOID
17 GIVING UP A PERCENTAGE OF THE ACCOUNT SUCH AS THEY HAVE TO
18 DO. SAY THEY HAVE GET A COLLECTION AGENCY OR LAWYER
19 INVOLVED, AND THEY CHARGE A PIECE OF THE ACTION. AND THEN
20 YOU'LL NOTICE THE COLLECTION AGENCY DOESN'T WORK. THEN YOU
21 MAY HAVE TO ENGAGE LEGAL ACTION IF IT'S APPROPRIATE. AND
22 YOU WOULD RETAIN AN ATTORNEY TO DO THAT. AND THERE ARE
23 ATTORNEYS THAT RUN COLLECTION MILLS, AND THEY DO IT VERY
24 EFFECTIVELY.

25 Q LET'S GO TO THE SECOND PAGE, THIRD PAGE OF
26 THIS ARTICLE.

1 A SURE. OH, YEAH. THERE'S THE AUDITOR'S
2 STAMP THERE ON THE SECOND PAGE YOU CAN SEE.

3 Q LET'S GO TO THE SECOND -- THE THIRD PAGE.

4 A UH-HUH.

5 Q SECOND COLUMN. I THINK WE CAN GO THROUGH
6 THIS A LITTLE MORE QUICKLY.

7 A SURE.

8 Q THE MIDDLE OF THE SECOND COLUMN.

9 A OKAY. THE MIDDLE OF THE SECOND COLUMN. IS
10 THAT THE SECOND PARAGRAPH, "THEN, AS WE HAVE PREVIOUSLY"?

11 Q IT IS. IN PHASE I.

12 A PHASE I.

13 Q WHY DON'T YOU READ THE NEXT COUPLE OF
14 SENTENCES.

15 A OKAY. "WE HAVE NOW SENT THE MEMBER/DEBTOR
16 THREE COMMUNICATIONS IN APPROXIMATELY 30 DAYS. IT IS
17 MANDATORY THAT COMMUNICATION BE SENT NO MORE THAN 10 DAYS
18 APART; THAT THEY ARE TIMELY AS TO AND LINES DRAWN. NOT
19 ADHERING TO THIS PROCEDURE WILL WIPE OUT THE EFFECTIVENESS
20 OF SPACED REPETITION IRRITANT FACTOR."

21 Q SO THESE ARE -- THIS IS WHAT YOU'RE TRYING
22 TO ACCOMPLISH. YOU'RE TRYING TO CREATE THIS IRRITANT
23 FACTOR SO THAT THE CONSUMER EVENTUALLY WILL PAY?

24 A WELL, COMMUNICATE, YEAH. YOU'RE DARN
25 RIGHT. YOU WANT THEM TO CALL UP AND SAY, "HEY, I DON'T
26 LIKE THESE LETTERS, AND I DON'T LIKE YOU. AND THAT'S WHY I

1 DIDN'T PAY YOU. YOU DIDN'T PROVIDE THE SERVICE," OR "I
2 DON'T HAVE THE MONEY" OR WHATEVER THE SITUATION IS.

3 Q IN DOING --

4 A BROKEN BRIDGE OF COMMUNICATION. THE WHOLE
5 BUSINESS IN THIS IS PEOPLE AREN'T COMMUNICATING. THEY HAVE
6 GOT TO START TALKING TO EACH OTHER.

7 YES, SIR.

8 Q SO THIS IS -- AS FAR AS YOU'RE CONCERNED,
9 THIS IS REALLY JUST A FORM OF COMMUNICATION; IS THAT RIGHT?

10 A ABSOLUTELY, YES.

11 Q AND THE SPECIAL IRRITANT FACTOR IS JUST AN
12 IRRITATING FORM OF COMMUNICATION?

13 A YOU BET. I MEAN, IF I GOT A LETTER EVERY 10
14 DAYS, I'M IRRITATED. THE ACTUAL -- THAT'S A TERM OF ART IN
15 PSYCHOLOGY. AND IF YOU'D LIKE, I'LL BE HAPPY TO EXPLAIN
16 THE PSYCHOLOGICAL PERSPECTIVE OF IT. BUT --

17 Q NO, THANK YOU.

18 A OKAY. WE MIGHT BE HERE ALL WEEK. I DON'T
19 THINK ANY OF US NEED IT.

20 Q AND IN COMING UP WITH THIS, THE SYSTEM, AND
21 GIVING THIS ADVICE, AGAIN, IT'S ON BEHALF OF LENDERS, NOT
22 CONSUMERS; RIGHT?

23 A I THINK IT'S ON BEHALF OF BOTH PEOPLE, BUT I
24 THINK IT COULD BE WELL ARGUED THEY'RE PAYING ME. SO IT'S
25 ON THEIR BEHALF.

26 Q YOU ALSO WORKED FOR CONRAD CREDIT

1 CORPORATION AND CONSULTED TO CONRAD CREDIT CORPORATION?

2 A YES, SIR.

3 Q THAT WAS A -- WHAT, WAS THAT A COLLECTION
4 AGENCY?

5 A CONRAD CREDIT CORPORATION IS SIMILARLY
6 STRUCTURED AS TRAVELERS IN THAT THEY LEND MONEY; THEY
7 PROVIDE SERVICING. THAT'S THEIR BUSINESS.

8 Q WHEN DID YOU CONSULT FOR THEM, OR CONSULT
9 FOR THAT COMPANY?

10 A SINCE ITS INCEPTION, WHICH IS PROBABLY OVER
11 A DECADE AGO, AND GOT -- SPENT QUITE A BIT OF TIME WITH
12 THEM WHEN MR. HOPKINS OWED THEM A LOT OF MONEY. AND WE HAD
13 TO GET THAT PROBLEM HANDLED, THE WILDERNESS POINT RESORT.

14 Q YOU WERE WORKING WITH CONRAD CREDIT
15 CORPORATION IN CONNECTION WITH THAT?

16 A YES.

17 Q WERE YOU BEING PAID BY THEM?

18 A YES.

19 Q SO YOU WERE BEING PAID BY TRAVELERS, AND YOU
20 WERE BEING PAID BY CONRAD, AND YOU WERE BEING PAID BY
21 WILDERNESS POINT RESORT AS WELL?

22 A YES. THEY WERE ALL AWARE OF IT. THEY ASKED
23 ME TO DO IT. IT WAS THEIR APPROACH AND PROGRAM.

24 Q ISN'T IT TRUE THAT THE LAST TIME THAT YOU --
25 THAT YOU SENT OUT COLLECTION LETTERS ON BEHALF OF A CLIENT
26 AS RECENTLY AS THE LAST COUPLE OF MONTHS?

1 A NO, I DIDN'T PERSONALLY. BUT I DID DESIGN
2 SOME LETTERS FOR SOME FRIENDS OF MINE THAT HAVE A SOFTWARE
3 COMPANY IN WASHINGTON, NICE PEOPLE THAT GOT IN TROUBLE.
4 AND THEY DO BUSINESS WITH BUSINESSES.

5 Q THAT WAS IN APRIL OF THIS YEAR?

6 A YEAH. THEY -- FOR EXAMPLE, THEY SELL TO
7 REAL ESTATE BUSINESSES.

8 Q AND THOSE LETTERS WENT OUT OR MAY HAVE GONE
9 OUT UNDER THE NAME OF "J. W. CRANDALL"; YOU JUST DON'T
10 KNOW?

11 A AS A MATTER OF FACT, WHEN YOU ASKED THAT, I
12 CHECKED. AND THEY WENT OUT UNDER -- SOME WENT OUT UNDER MY
13 NAME, AND SOME WENT OUT ON KATHLEEN WATSON'S NAME.

14 Q THOSE LETTERS?

15 A YES. BECAUSE YOU HAD INQUIRED ABOUT IT. SO
16 I MADE AN INQUIRY ABOUT IT.

17 Q IN YOUR DEPOSITION YOU INDICATED THEY MAY
18 HAVE GONE OUT UNDER THE NAME OF J. W. CRANDALL; IS THAT
19 RIGHT?

20 A YES. AND THAT'S WHY I CHECKED BECAUSE YOU
21 WANTED TO KNOW. SO I FOUND OUT.

22 Q DO YOU REMEMBER THE LAST TIME YOU USED THE
23 NAME "J. W. CRANDALL"?

24 A MAYBE WITH -- IN THE WILDERNESS POINT
25 OFFERING THEY HAD ACCOUNTS RECEIVABLE ISSUES. AND I -- WE
26 PUT THE SYSTEM IN THERE, AND EVERYONE IN THE COUNTRY WHO

1 USED MY SYSTEM USED THE NAME "J. W. CRANDALL." THERE'S
2 LITERALLY THOUSANDS OF BUSINESSES THAT USE IT IN THE UNITED
3 STATES. IT'S BECOME AN ADOPTED KIND OF CONCEPT FOR
4 ACCOUNTS RECEIVABLE MANAGEMENT.

5 Q DO YOU KNOW WHEN YOU LAST USED THE NAME
6 "J. W. CRANDALL"?

7 A I DON'T RECALL. I'M SORRY. I CAN TRY TO
8 FIND OUT IF IT WOULD HELP.

9 THE COURT: HAVE YOU EVER USED THE NAME
10 "JOHN SMITH"?

11 THE WITNESS: NO, SIR. NO, SIR, I HAVEN'T.

12 THE COURT: I'M SAFE.

13 BY MR. RIVIN: Q I WANT TO ASK YOU SOME QUESTIONS
14 ABOUT ANOTHER QUESTION THAT YOU TALKED ABOUT.

15 A SURE. YOU WANT THIS BACK?

16 Q SURE.

17 A OKAY. THERE YOU GO. I'LL GET YOU THE OTHER
18 TWO OF THOSE.

19 Q THAT'S ALL RIGHT, MR. MITCHELL.

20 A OKAY.

21 Q I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE
22 CONSUMER PROTECTION ASSOCIATION OF AMERICA.

23 A OH, SURE. YOU BET. THAT'S ONE OF MY PET
24 PROJECTS.

25 Q IS THAT AN ORGANIZATION YOU'VE BEEN INVOLVED
26 WITH SINCE ITS INCEPTION?

1 A YEAH. I DESIGNED -- YES.

2 Q IS THAT --

3 A YES, SIR.

4 Q SINCE ITS INCEPTION?

5 A YES.

6 Q IN 1997?

7 A I'LL TAKE YOUR WORD FOR IT, YES, SIR.

8 Q YOU'RE ON ITS BOARD OF DIRECTORS?

9 A YES, SIR, I BELIEVE I AM.

10 Q STILL AN OPERATING COMPANY; RIGHT?

11 A YES, SIR.

12 Q I ASKED YOU IN YOUR DEPOSITION IF IT'S A

13 FOR-PROFIT COMPANY; IT IS, ISN'T IT?

14 A I THINK NOW THERE ARE TWO DIVISIONS, ONE FOR

15 PROFIT AND ONE NOT FOR PROFIT.

16 Q WHEN YOU STARTED OUT, WAS IT A FOR-PROFIT

17 COMPANY?

18 A YES, SIR.

19 Q DOES CONSUMER PROTECTION ASSOCIATION OF

20 AMERICA MAKE MONEY BY CHARGING CONSUMERS?

21 A NO. THEY LOSE MONEY BY PROCESSING CONSUMER

22 COMPLAINTS. THEY MAKE MONEY BY CONFLICT RESOLUTION.

23 Q DOES CONSUMER PROTECTION ASSOCIATION OF

24 AMERICA CHARGE CONSUMERS?

25 A OH, YES, SIR. \$35 TO FILE A COMPLAINT, YES,

26 SIR.

1 Q DOES IT CHARGE CONSUMERS FOR ANYTHING ELSE?

2 A I DON'T THINK SO. THEY MAY HAVE, YOU KNOW,
3 EDUCATIONAL MATERIALS OR SOMETHING. I DON'T KNOW OFF THE
4 TOP OF MY HEAD. BUT I BELIEVE THAT THAT'S IT, THE \$25 FEE
5 FOR A CONSUMER TO FILE A COMPLAINT. AND THEN THEY WILL DO
6 WHATEVER IS NECESSARY TO FACILITATE THAT COMPLAINT.

7 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
8 1020, PLEASE. I'D LIKE TO PUT THIS ON THE SCREEN, IF I
9 COULD.

10 Q MR. MITCHELL, I PRINTED THIS OFF OF THE
11 INTERNET. CONSUMER PROTECTION ASSOCIATION OF AMERICA HAS A
12 WEB SITE?

13 A YES. THEY ACTUALLY HAVE TWO WEB SITES. AND
14 THIS IS THE E-COMMERCE WEB SITE OR E SERVICE WEB SITE.

15 Q THAT'S THE OTHER WEB SITE?

16 A THE OTHER ONE IS A SUBSTANTIALLY MORE
17 SOPHISTICATED SITE THAT WILL NOT BE AVAILABLE FOR ANOTHER
18 MONTH. IT'S BEEN SEVEN MONTHS IN DEVELOPMENT. IT'S UP
19 THERE, BUT YOU CAN'T FIND IT UNTIL YOU HAVE A CODE NUMBER
20 TO GO IN.

21 Q THAT'S THE REASON -- MUST BE THE REASON I
22 DIDN'T FIND IT.

23 A EXACTLY.

24 Q I WAS ABLE TO FIND THIS ONE.

25 A THE OTHER ONE YOU HAVE TO HAVE A CODE
26 NUMBER. IT'S WHAT'S CALLED A WORKING SITE. AND THE

1 PROBLEM THAT WE HAD WHEN WE STARTED CONSUMER PROTECTION WAS
2 THAT WE DIDN'T EXPECT IT TO BE SO -- SUCH A BIG DEAL AND SO
3 MANY PEOPLE WOULD BE COMPLAINING.

4 AND SO THE -- WHEN YOU HAVE A WEB SITE,
5 PEOPLE SEE A WEB PAGE UP ON THE SCREEN, THAT'S LIKE THE TIP
6 OF THE ICEBERG. THERE'S A WHOLE BUNCH OF STUFF BEHIND
7 THAT, THE MACHINE THAT DRIVES THAT. THE MACHINE WASN'T BIG
8 ENOUGH TO HANDLE ALL THE COMPLAINTS. SO IT'S BEEN
9 REMODELED. SO THAT'S THE OTHER SITE THEY'RE WORKING ON
10 NOW.

11 Q LET'S GO TO THE --

12 A SURE.

13 Q LET'S GO TO THE SECOND PAGE OF EXHIBIT 1020,
14 PLEASE.

15 YOU SAID, MR. MITCHELL, THAT CONSUMERS PAID
16 \$25 TO FILE A COMPLAINT; IS THAT RIGHT?

17 A I BELIEVE THAT'S THE CASE, YES.

18 Q AND THAT'S THE WAY THAT C.P.A.A. MAKES
19 MONEY. BUT ISN'T IT IN FACT TRUE THAT C.P.A.A. MAKES MONEY
20 BY CHARGING PEOPLE A MEMBERSHIP FEE?

21 A NO. I BELIEVE THEY HAVE A MEMBERSHIP
22 PROGRAM YOU CAN JOIN, BUT IT'S NOT REQUIRED. YOU CAN
23 EITHER JOIN AND GET YOUR COMPLAINTS FREE AND ALL KINDS OF
24 HELP FREE, OR YOU CAN JUST -- OR YOUR COMPLAINT AS AN
25 INDIVIDUAL COMPLAINT, WHATEVER THE CONSUMER WANTS TO DO.
26 SOME FAMILIES THINK THAT THEY LIKE TO JOIN BECAUSE THEN IF

1 THEY HAVE, YOU KNOW, A LOT OF -- BIG FAMILY AND A LOT OF
2 PEOPLE COMPLAINING, IT'S CHEAPER FOR THEM TO BE ABLE TO DO
3 IT. THAT WAY THEY ONLY PAY \$35. SO IT'S AN OPTION. THE
4 CONSUMER CAN DO WHATEVER HE WISHES.

5 Q SO IF A CONSUMER WANTS TO JOIN, IT'S \$69 FOR
6 THE FIRST YEAR, AND \$49 FOR EACH RENEWAL YEAR; IS THAT
7 RIGHT?

8 A YES. I THINK THERE MAY BE OTHER PROGRAMS.
9 I KNOW THEY HAVE ONE FOR \$19 A YEAR, TOO, I THINK FOR
10 SENIORS.

11 Q AND FOR \$69 THEY GET OVER \$830 OF C.P.A.A.
12 SERVICES EACH YEAR?

13 A I CAN'T REMEMBER. I THINK THAT'S A PACKAGE
14 WHERE THEY GET ALL KINDS OF STUFF ON, YOU KNOW, HOW TO SEND
15 OUT LETTERS TO COMPLAIN TO PEOPLE, BOOKS AND EDUCATIONAL
16 MATERIALS, AND UNLIMITED COMPLAINTS AND, YOU KNOW, A WHOLE
17 PACKAGE OF STUFF. I REALLY DON'T KNOW WHAT THE VALUE IS.
18 IF THEY SAY IT'S \$830, I HAVE NO REASON TO QUESTION THAT.
19 I WOULD IMAGINE THAT'S THE AGGREGATE OF THE VARIOUS THINGS
20 THAT ARE AVAILABLE TO THE CONSUMER IF THEY CHOOSE TO
21 ACCESS.

22 Q YOU'RE ON THE BOARD OF DIRECTORS OF
23 CONSUMER -- OF C.P.A.A.?

24 A OH, YES.

25 Q IS THERE -- DO YOU KNOW OF ANYTHING
26 INCORRECT IN THIS STATEMENT?

1 A I DON'T THINK THERE'S ANYTHING INCORRECT
2 THERE, NO, SIR.

3 Q NOW, C.P.A.A. ALSO HAS BUSINESS MEMBERS; IS
4 THAT RIGHT?

5 A THAT'S CORRECT.

6 Q AND HOW DO BUSINESS MEMBERS JOIN?

7 A THEY HAVE TO COMPLETE AN APPLICATION. THEY
8 HAVE TO BE CHECKED OUT TO MAKE SURE THAT THEY ARE NOT DOING
9 ANYTHING THAT IS ILLEGAL OR HAVEN'T DONE OR NOT ENGAGED IN
10 THOSE PRACTICES. THEN THEY HAVE TO FILL OUT AN EXTENSIVE
11 10- OR 15-PAGE QUESTIONNAIRE WHICH ARTICULATES EVERYTHING
12 THEY DO FROM THEIR ADVERTISING ALL THE WAY THROUGH THEIR
13 ACCOUNTS RECEIVABLE MANAGEMENT PROCEDURE SO THOSE COULD BE
14 EVALUATED BY A C.P.A.A. CONFLICT PERSON, AND THEY HAVE TO
15 AGREE TO MAKE CHANGES IN THEIR PROCEDURES IF WE FEEL
16 THERE'S SOMETHING THEY'RE NOT DOING, IS NOT PROPERLY
17 DISCLOSING TO THE PUBLIC, OR THEY'RE ENGAGED IN SOME
18 BEHAVIOR THAT WE FEEL IS INAPPROPRIATE. THEY MUST CHANGE
19 THAT BEFORE THEY CAN BECOME A MEMBER.

20 Q HOW MANY BUSINESS MEMBERS DOES C.P.A.A.
21 HAVE?

22 A I DON'T KNOW.

23 Q MORE THAN 20?

24 A I WOULD SUSPECT.

25 Q BUT YOU'RE NOT SURE?

26 A I HAVEN'T GOT A CLUE. I DON'T GET INVOLVED

1 IN IT.

2 Q HOW MANY CONSUMER MEMBERS DOES IT HAVE?

3 A I HAVE NO IDEA, AND I DON'T WANT TO
4 ANTICIPATE YOU. BUT I DON'T KNOW HOW MANY COMPLAINTS THEY
5 PROCESS EITHER.

6 Q HOW EMPLOYEES DOES THE COMPANY HAVE?

7 A OH, I DON'T THINK VERY MANY.

8 Q LESS THAN FIVE?

9 A OH, I THINK SO, YES. THE IDEA --

10 Q MAYBE LESS THAN TWO?

11 A NO. MORE THAN TWO, LESS THAN FIVE. THE
12 IDEA OF THIS IS TO DO IT THROUGH AN ELECTRONIC SYSTEM;
13 OTHERWISE, YOU COULDN'T DO IT FOR \$35. IT'S JUST
14 IMPOSSIBLE. MOST STATE CONSUMER PROTECTION AGENCIES --
15 ALTHOUGH THERE'S ONLY ABOUT 20 OPERATING IN THE UNITED
16 STATES -- CAN'T DO IT FOR THAT.

17 Q HOW LONG DOES THE C.P.A.A. REVIEW PROCESS
18 TAKE WHEN THE COMPANY REVIEWS BUSINESS MEMBERS? COUPLE
19 WEEKS?

20 A IT MAY BE TWO WEEKS. IT MAY BE SIX MONTHS,
21 DEPENDING ON WHAT THE CONDITIONS ARE.

22 Q ARE YOU AWARE OF ANY -- OF THE NAMES OF ANY
23 BUSINESS MEMBERS OF C.P.A.A.?

24 A SURE.

25 Q HOW MANY DO YOU KNOW?

26 A OH --

1 Q YOU KNOW WHAT?

2 A THAT'S ALL RIGHT.

3 Q LET'S MOVE ON. I DON'T WANT TO TAKE THE
4 TIME.

5 A OKAY.

6 Q TAKE THE TIME TO DO THAT.
7 MAYBE IF WE HAVE TIME LATER ON I'LL ASK.

8 A OH, OKAY. DO YOU NEED THIS BACK, SIR?

9 Q IN A MOMENT. THANK YOU.

10 A OKAY.

11 Q YOU DO WORK FOR -- AND I JUST WANT TO SUM
12 THIS UP.

13 A SURE.

14 Q YOU DO WORK FOR COLLECTION COMPANIES, FOR
15 LENDERS AND COLLECTION COMPANIES; IS THAT RIGHT?

16 A NO.

17 Q YOU DO WORK -- YOU DID WORK FOR TRAVELERS?
18 CORRECT.

19 Q FOR OTHER LENDERS?

20 A CORRECT.

21 Q YOU HELPED COLLECT FROM CONSUMERS?
22 PARDON?

23 Q YOU HELP THEM WITH THEIR COLLECTION FROM
24 CONSUMERS?

25 A NO. THAT'S NOT THE SERVICE I PERFORM FOR
26 TRAVELERS. TO THE CONTRARY, I DIDN'T DO THAT.

1 Q ALL RIGHT.

2 A THE ONLY COMPANY THAT I HELPED DESIGN A
3 PRECOLLECTION SERVICE FOR WAS THE ANNA KUBLER, WHO IS AN
4 OLD FRIEND, WONDERFUL LADY, FOR HER SON'S COMPANY.

5 Q LET'S MOVE ON TO THE MEMBERSHIP CAMPGROUND
6 INDUSTRY.

7 A SURE.

8 Q I WANT TO TALK ABOUT THOUSAND ADVENTURES AND
9 DAVE VOPNFORD.

10 YOU'VE TALKED ABOUT -- YOU TALKED ABOUT THEM
11 YESTERDAY AFTERNOON. YOU TALKED ABOUT THEM EARLIER TODAY.

12 THOUSAND ADVENTURES WAS A COMPANY OWNED BY
13 DAVE VOPNFORD?

14 A YES, SIR.

15 Q AND THERE WERE A NUMBER OF COMPANIES, THERE
16 WERE THOUSAND ADVENTURES OHIO, THOUSAND ADVENTURES --

17 A GENERALLY THESE GUYS SET THESE THINGS UP,
18 AND EACH RESORT MAY BE A DIFFERENT ENTITY.

19 Q EXACTLY. BUT YOU TALKED ABOUT -- YOU SAID
20 THIS WAS -- I THINK YOU SAID YESTERDAY THIS WAS THE BIGGEST
21 UGLY SCAR ON THE INDUSTRY.

22 A YES. I THINK THAT'S A FAIR STATEMENT.
23 THERE'S CERTAINLY OTHERS THROUGHOUT THE YEARS THAT DID UGLY
24 THINGS, BUT NOTHING TO THE CAPACITY AND VOLUME AS
25 MR. VOPNFORD.

26 Q THE MOST AGGRESSIVE AND QUESTIONABLE OF

1 SALES ACTIVITIES IN THE COUNTRY?

2 A I WOULD STAND BY THOSE STATEMENTS, YES.

3 Q THEY HAD CLASS-ACTIONS, TAX LIENS AND
4 ATTORNEY GENERALS ACTIONS AGAINST THEM ALL OVER THE
5 COUNTRY?

6 A ABSOLUTELY.

7 Q DO YOU KNOW THAT TWO OF THE PLAINTIFFS IN
8 THIS CASE ARE THOUSAND ADVENTURES OF OHIO AND THOUSAND
9 ADVENTURES OF ALABAMA?

10 A THOSE ARE COMPANIES THAT --

11 Q DO YOU KNOW THAT?

12 A YES.

13 Q LET'S GO BACK TO THE THOUSAND ADVENTURES.
14 I THINK YOU INDICATED IN YOUR DEPOSITION
15 THAT THEY LIKE TO TAKE ADVANTAGE OF THEIR MEMBERS IN
16 SECURITIES AND LOYALTIES; IS THAT RIGHT?

17 A YES.

18 Q THEY ENGAGED IN BUYING JUNK PROPERTIES THAT
19 THEY DIDN'T PUT MONEY INTO; IS THAT RIGHT?

20 A CERTAINLY NOT ALL OF THEM, BUT SIGNIFICANT
21 GROUP.

22 Q SIGNIFICANT NUMBER?

23 A YES, SIR.

24 Q THEY RELOADED MEMBERS?

25 A YES, SIR.

26 Q WHAT IS RELOADING?

1 A RELOAD --

2 Q GO AHEAD.

3 A OKAY. DO YOU WANT ME TO ANSWER?

4 Q GO AHEAD. I ASKED THE QUESTION.

5 A OKAY. RELOADING IS A TERM OF ART IN THIS
6 INDUSTRY AND ALSO IN THE VACATION OWNERSHIP TIME SHARE
7 INDUSTRY. IT'S WHEN YOU HAVE SOMEONE THAT HAS YOUR
8 EXISTING MEMBERSHIP, AND THEN YOU SELL THEM AN ADDITIONAL
9 PRODUCT THAT THE VALUE OF IS SUSPECT. AND I WOULD SEPARATE
10 AN UPGRADE, FOR EXAMPLE, FROM A RELOAD.

11 COAST TO COAST SELLS A COAST DELUXE PRODUCT
12 THAT WAS DESIGNED AFTER THE PRESIDENT'S CLUB PRODUCT. I
13 CONSIDER THAT A GOOD PRODUCT. I CONSIDER COAST PRODUCT A
14 GOOD PRODUCT, AND I WOULD CONSIDER IT AN UPGRADE.

15 I WOULD CONSIDER MR. VOPNFORD'S PRODUCT A
16 RELOAD. THE PRODUCT HE SOLD WAS SOMETHING I DON'T BELIEVE
17 IN THE MAJORITY OF CASES HIS PEOPLE NEEDED. AND HE USED
18 VERY QUESTIONABLE TACTICS IN DOING IT.

19 Q AND, IN FACT, IN YOUR DEPOSITION YOU SAID
20 THAT THEY USED TERRORIST ACTIVITIES OR TERRORISM?

21 A YES.

22 Q THAT WAY THEY TRIED TO SELL THESE RELOADS TO
23 THEIR MEMBERS; IS THAT RIGHT?

24 A THAT'S CORRECT. THAT'S MY OPINION.

25 Q AND YOU TESTIFIED IN YOUR DEPOSITION THAT
26 ALL OF THESE ACTIONS BY THOUSAND ADVENTURES HAD AN EFFECT

1 ON MEMBERS OF THOUSAND ADVENTURES; IN FACT, MEMBERS AS A
2 RESULT OF ALL THIS STOPPED PAYING DUES; IS THAT RIGHT?

3 A I DON'T RECALL THAT, TESTIMONY BUT IF YOU
4 GOT IT AND YOU WANT TO GIVE ME THE CONTEXT, I'LL BE HAPPY
5 TO SPEAK TO IT.

6 Q WE'LL SHOW YOU THE TESTIMONY.

7 A OKAY. WELL, IF I SAID IT, THEN, I MEAN, I
8 DON'T HAVE ANY PROBLEM STANDING BY THAT. I JUST DON'T
9 RECALL SAYING THAT. I MEAN, I'D SAY IT NOW.

10 Q ALL RIGHT. THEN WE DON'T HAVE TO SHOW YOU
11 YOUR DEPOSITION.

12 A NO PROBLEM.

13 Q MEMBERS OF THOUSAND ADVENTURES STOPPED
14 PAYING DUES AS A RESULT OF THE ACTIONS OF THOUSAND
15 ADVENTURES; IS THAT RIGHT?

16 A OH, I WOULD -- I WOULD SUPPORT THAT.

17 Q THE REASON FOR THAT IS BECAUSE THEY WERE
18 LOSING SERVICES, AMONG OTHER REASONS, BUT THEY WERE LOSING
19 SERVICES?

20 A I DON'T -- YEAH. I DON'T THINK THAT WAS THE
21 SIGNIFICANT FACTOR. I THINK THE OTHER REASONS WERE MORE
22 IMPORTANT, BUT CERTAINLY THAT MAY BE PART AND PARCEL TO IT,
23 YES.

24 Q IF YOU WERE A MEMBER OF THOUSAND ADVENTURES
25 AND NOT GETTING YOUR SERVICES, YOU SURE WOULDN'T PAY FOR
26 IT?

1 A DARN RIGHT. AND I'D TELL ANY MEMBER OR ANY
2 CONSUMER THAT WAS BUYING ANYTHING THAT IF THEY DIDN'T GET
3 WHAT THEY WERE CONTRACTED FOR, THEY OUGHT NOT TO PAY FOR
4 IT, YES, SIR.

5 Q THAT'S RIGHT.
6 IF YOU'RE NOT GETTING SERVICES, YOU'RE NOT
7 GOING TO PAY DUES; IS THAT RIGHT?

8 A THAT WOULD BE MY RECOMMENDATION.

9 Q AND IF YOU SIGNED A CONTRACT, YOU'RE NOT
10 GOING TO PAY ON YOUR CONTRACT EITHER IF YOU'RE NOT GETTING
11 WHAT YOU PAID FOR?

12 A THAT WOULD BE MY POSITION, YES, SIR.

13 Q PEOPLE WHO DID THAT WOULD BE FOOLS, IF THEY
14 WENT AHEAD AND PAID?

15 A I DON'T KNOW IF I'D CHARACTERIZE THEM FOOLS.
16 SOMETIMES PEOPLE ARE NAIVE. SOMETIMES THEY'RE A LITTLE
17 INTIMIDATED. I DON'T THINK IT'S FAIR TO CALL THEM FOOLS.

18 Q DO YOU WANT ME TO SHOW THEM YOUR DEPOSITION
19 TESTIMONY?

20 A I MAY HAVE SAID IT. AND I APOLOGIZE. IT'S
21 A LITTLE BIT OF AN OVERREACH. IT WAS VERY FOOLISH OF THEM.
22 PERHAPS I MISSPOKE, BUT IT'S CERTAINLY FOOLISH. THAT
23 DOESN'T MAKE THEM FOOLS.

24 Q IN FACT, YOU WOULD TELL THEM NOT TO PAY?

25 A OH, WITHOUT QUESTION.

26 Q IT'S OBVIOUS THEY SHOULDN'T PAY IN THAT

1 SITUATION; IS THAT RIGHT?

2 A I HAVE NO PROBLEM WITH THAT.

3 Q AND IT'S SIMPLY NOT FAIR FOR SOMEONE TO PAY
4 FOR SOMETHING THEY'RE NOT GETTING?

5 A I HAVE NO PROBLEM WITH THAT. I AGREE WITH
6 YOU. BEYOND HAVING NO PROBLEM, I AGREE WITH YOU.

7 Q GOOD. LET'S TALK ABOUT THE NOTION OF
8 RELOADING.

9 YOU HAD ANOTHER PHRASE FOR RELOADING. THAT
10 WAS, I THINK, MILKING THE COW?

11 A YES. I WROTE AN ARTICLE FOR THE INDUSTRY
12 CALLED "THE COW IS DRY," AND I REFERRED TO IT AS MILKING
13 THE COW, YES, SIR.

14 Q LET'S TALK ABOUT WHY SOME OF THIS HAS
15 HAPPENED OVER THE YEARS.

16 THE INDUSTRY, THE MEMBERSHIP CAMPGROUND
17 RESORT INDUSTRY, HASN'T SOLD MUCH NEW PRODUCT IN THE LAST
18 FIVE TO SEVEN YEARS; IS THAT RIGHT?

19 A THAT'S CORRECT, YES.

20 Q INSTEAD, WHAT CAMPGROUND RESORT OWNERS ARE
21 DOING, LIKE THE PLAINTIFFS, CAMPGROUND RESORT OWNERS,
22 THEY'RE SELLING EXISTING MEMBERS MORE PRODUCTS; IS THAT
23 RIGHT?

24 A I'M SORRY. WOULD YOU -- YOUR QUESTION
25 WAS -- GO BACK AND DO IT AGAIN.

26 Q THEY'RE -- WHAT RESORT DEVELOPERS OR OWNERS

1 DO, WHAT THEY HAVE BEEN DOING FOR THE LAST SEVEN YEARS OR
2 SO, FIVE TO SEVEN YEARS, IS BASICALLY SELLING NEW PRODUCT?

3 A PREDOMINANTLY, THAT'S CORRECT, SIR, YES.

4 Q AND THEY -- SO WHAT THEY DO, THEY CONTINUE
5 TO EXTRACT MORE MONEY OUT OF THE SAME -- MORE MONEY FROM
6 THE SAME PERSON?

7 A EXACTLY, YES, SIR. THEY DEVELOP A NEW
8 PRODUCT.

9 NOW, IN ORDER TO BE FAIR HERE, IF YOU'RE
10 ASKING ME THE QUESTION, WE NEED TO UNDERSTAND THAT THERE IS
11 A DIFFERENCE, WHICH WE PREVIOUSLY DISCUSSED, LIKE COAST
12 DELUXE PROGRAM, IS NOT MILKING THE COW. IT'S A LEGITIMATE
13 PRODUCT. AND PRESIDENT'S CLUB IS LEGITIMATE PRODUCT.
14 THERE ARE SOME LEGITIMATE PRODUCTS THERE, AND I DON'T
15 CONSIDER THAT TO BE INAPPROPRIATE BEHAVIOR.

16 BUT A SUBSTANTIAL AMOUNT OF THE
17 INAPPROPRIATE BEHAVIOR IN SELLING PEOPLE UPGRADES, AND
18 MILKING THE COW, HAS EXISTED IN THE LAST SEVEN YEARS AND
19 MAY REPRESENT THE PREDOMINANT AMOUNT OF GROSS REVENUE
20 GENERATED IN THE LAST SEVEN YEARS.

21 Q LET'S GO BACK TO THOUSAND ADVENTURES FOR A
22 MOMENT.

23 THOUSAND ADVENTURES WAS ONE OF THE WORST
24 OFFENDERS ON THIS RELOADING; IS THAT RIGHT?

25 A IN MY OPINION, YES, SIR.

26 Q WHAT THOUSAND ADVENTURES DID, THEY ACQUIRED

1 SUSPECT OR FAILING PROPERTIES; IS THAT RIGHT?

2 WASN'T THOUSAND ADVENTURES IN THE BUSINESS
3 WHERE THEY WOULD PICK UP PROPERTIES, CAMPGROUNDS THAT WERE
4 SUSPECT OR FAILING, ISN'T THAT WHAT THEY DID?

5 A THEY DIDN'T DO IT ALL THE TIME, BUT VERY
6 OFTEN THAT WAS THE CASE, YES, SIR.

7 Q AND WHAT THEY DID --

8 A SOME OF THEIR PROPERTIES WERE VERY FINE
9 PROPERTIES. THEY HAD SOME GOOD PROPERTIES, BUT CERTAINLY
10 HALF OF THEM WERE UGLY.

11 MR. RIVIN: LET'S GO -- I'D LIKE TO SHOW THE
12 WITNESS HIS DEPOSITION TESTIMONY AT PAGE 253, LINES 23
13 THROUGH 25.

14 I'D LIKE TO PUT IT UP, IF I COULD.

15 Q YOU'RE TALKING ABOUT THOUSAND ADVENTURES.
16 THEY ENGAGED IN BUYING JUNK PROPERTIES THAT THEY DIDN'T PUT
17 ANY MONEY INTO. THEY RELOADED MEMBERS, USING TERRORISM IN
18 DOING SO.

19 AND YOU TALKED ABOUT WHAT RELOADING IS. IN
20 OTHER WORDS, THEY BOUGHT THOSE PROPERTIES. THEY SOLD THE
21 MEMBERS OF THOSE PROPERTIES MORE PRODUCT THAT THEY DIDN'T
22 NEED.

23 IS THAT RIGHT?

24 A NOT ALL THE TIME. BUT IN MY OPINION A
25 SUBSTANTIAL NUMBER OF OCCASIONS, YES.

26 Q AND THEN THEY TRIED TO HOLD ON TO THOSE

1 PARKS AFTERWARDS, WHICH IN YOUR OPINION WAS -- I THINK YOU
2 SAID IT WAS STUPID?

3 A I MAY HAVE SAID THAT. IF I DIDN'T SAY IT, I
4 WILL SAY IT SO WE DON'T HAVE TO WORRY WHETHER OR NOT I SAID
5 IT.

6 Q I DON'T WANT TO PUT WORDS IN YOUR MOUTH.

7 A THAT'S OKAY. I'D BE HAPPY TO COLOR IT THAT
8 WAY. I HAVE NO PROBLEM WITH THAT.

9 Q ALL RIGHT. SO THAT'S WHAT THEY DID.

10 A IT MIGHT HAVE BEEN MORE PROFESSIONAL
11 LANGUAGE THAT SUGGESTS THAT IT WAS VERY BAD BUSINESS
12 JUDGMENT.

13 Q LET'S NOW TURN TO SOME OF THE OTHER
14 PLAINTIFFS IN THIS CASE. THE PLAINTIFFS --

15 A EXCUSE ME. I'M TALKING ABOUT
16 DAVE VOPNFORD'S THOUSAND ADVENTURES.

17 Q YOU'RE TALKING ABOUT THOUSAND ADVENTURES?

18 A THAT WAS THE DAVE VOPNFORD.

19 Q I UNDERSTAND.

20 A THE PLAINTIFFS ARE NOT THE SAME. I THINK
21 YOU'RE CONFUSING --

22 Q NO. I'M NOT CONFUSING -- WE WILL GET TO
23 THAT --

24 A OH, OKAY.

25 Q -- IN YOUR CROSS-EXAMINATION. WE CAN DO IT
26 NOW.

1 A WHATEVER YOU LIKE.

2 Q RAYMOND NOVELLI CAME IN -- YOU TALKED ABOUT
3 THAT THE MEETING AT THE RANCH, AT TOMMY CLOUD'S RANCH IN
4 1997?

5 A YES, SIR.

6 Q RAYMOND NOVELLI CAME IN. HE CAME IN AT YOUR
7 SUGGESTION. WE'LL GET TO THAT. I DON'T WANT TO GET INTO
8 THAT DETAIL.

9 A WE'LL DO IT LATER.

10 Q BUT AS PART OF THAT PROCESS, HE TOOK OVER
11 SOME OF THE THOUSAND ADVENTURES COMPANIES; IS THAT YOUR
12 UNDERSTANDING?

13 A YEAH. THAT'S MY UNDERSTANDING, YES, SIR.

14 Q ALL RIGHT. LET'S GO TO MR. NOVELLI'S
15 COMPANIES.

16 DO YOU UNDERSTAND THAT TRAVEL AMERICA IS ONE
17 OF THE COMPANIES THAT WE REFERRED TO AS MR. NOVELLI'S
18 COMPANIES?

19 A YES, SIR.

20 Q ALL RIGHT. THAT'S RAYMOND NOVELLI. WE'VE
21 HEARD ABOUT HIM, TALKED ABOUT HIM.

22 HE WAS -- YOU'VE DESCRIBED HIM AS A
23 SPECIALIST IN ACQUIRING FAILING PROPERTIES; IS THAT RIGHT?

24 A THAT'S WHAT HE HAS DONE WHEN HE GOT INTO THE
25 INDUSTRY -- WELL, THE ORIGINAL ONE. AND THEN FOR A NUMBER
26 OF YEARS HE DIDN'T ACQUIRE ANYTHING ELSE.

1 Q SO MR. VOPNFORD ACQUIRED FAILING PROPERTIES.
2 MR. NOVELLI ACQUIRED FAILING PROPERTIES. IN FACT,
3 MR. NOVELLI WAS A SPECIALIST IN IT?

4 A THEY DID IT SOMEWHAT DIFFERENTLY.

5 Q THAT'S FINE.

6 A THAT'S CORRECT, YES, SIR. CORRECT, SIR.

7 Q MR. NOVELLI'S PARKS, THE PLAINTIFFS IN THIS
8 CASE, AFTER THEY BOUGHT THESE FAILING PROPERTIES, THEY SOLD
9 THE MEMBERS OF THOSE PARKS UPGRADES ALSO; IS THAT RIGHT?

10 A YES. THEY -- AS A MATTER OF FACT, THE
11 PRESIDENT'S CLUB PROGRAM, WHICH COAST'S DELUXE PROGRAM WAS
12 MODELED AFTER, I BELIEVE THEY SOLD THAT PROGRAM, YES, SIR.

13 Q AND THEN OFTENTIMES WHAT THE PLAINTIFFS DID
14 IS AFTER THEY DID THAT, THEY WOULD EITHER CLOSE THE PARKS
15 OR PUT THEM IN BANKRUPTCY OR BOTH; IS THAT RIGHT?

16 A I BELIEVE THAT HAPPENED ON SEVERAL OCCASIONS.

17 Q MANY OCCASIONS?

18 A I DON'T KNOW HOW MANY, BUT I KNOW IT
19 HAPPENED AT LEAST ONCE.

20 Q LET'S TAKE A LOOK AT -- I'D LIKE TO PUT UP A
21 TIME LINE THAT IS SIMILAR TO THE TIME LINE THAT MR. SHERMAN
22 PUT UP IN HIS OPENING STATEMENT. AND IT'S POWER POINT
23 EXHIBIT -- I BELIEVE IT'S EXHIBIT 901.

24 WE TALKED ABOUT -- THIS IS A DOCUMENT WE
25 TALKED ABOUT IN CHAMBERS, YOUR HONOR.

26 A CAN WE GET THAT A LITTLE CRISPER? I'M

1 HAVING A LITTLE DIFFICULTY READING IT, SIR.

2 Q YOU KNOW WHAT WE'LL DO? AS WE FOCUS ON
3 DIFFERENT PARTS OF IT, I'LL ASK MR. HAHN TO -- HE CAN'T.
4 HE CAN'T DO IT.

5 A EXCUSE ME. DO YOU HAVE A COPY OF IT THAT I
6 CAN -- MAYBE I CAN LOOK AT A COPY HERE, AND THEN EVERYONE
7 ELSE --

8 Q WELL, WE'LL GET YOU A COPY.

9 A OKAY. THANK YOU. THANK YOU VERY MUCH.

10 Q MAY I APPROACH?

11 A THANK YOU. THANK YOU.

12 Q THIS IS THE CHART THAT SHOWS -- AGAIN, AS I
13 SAID, THIS IS SIMILAR TO WHAT WAS ON THE BOARD, WHAT WAS ON
14 THE BOARD YESTERDAY. AND MR. SHAW WAS POINTING OUT -- HE
15 POINTED OUT THOSE THOUSAND ADVENTURES BANKRUPTCIES AND WAS
16 SAYING, I THINK, THAT THESE ARE THOUSAND ADVENTURES
17 BANKRUPTCIES. THESE AREN'T PLAINTIFFS' BANKRUPTCIES.
18 THEY'RE THOUSAND ADVENTURES?

19 A RIGHT.

20 Q WELL, THEN, IF WE LOOK UP ON THE TOP OF THE
21 CHART -- LET'S START UNDER 1997, PONDEROSA PARK BANKRUPTCY.
22 YOU SEE THAT? THAT'S ON THE BOTTOM, UNDER THE LINE.

23 A OKAY. I'M SORRY. YOU SAID THE TOP. LET ME
24 FIND THAT ONE.

25 YES, I SEE THIS. 4/97?

26 Q YES.

1 A YES, SIR.

2 Q OKAY. 4/97. THAT'S FINE. WE CAN TALK
3 ABOUT IT. I DON'T THINK WE NEED TO READ IT.

4 IS PONDEROSA PARK ONE OF THE PLAINTIFFS IN
5 THIS CASE, BY THE WAY?

6 A I BELIEVE SO, YES, SIR.

7 Q AND PONDEROSA PARK FILED BANKRUPTCY IN APRIL
8 OF 1997; YOU KNOW THAT?

9 A REORGANIZATIONAL BANKRUPTCY.

10 Q BANKRUPTCY; IS THAT RIGHT?

11 A REORGANIZATIONAL BANKRUPTCY, YES.

12 Q THEY FILED FOR PROTECTION FROM CREDITORS?

13 A CORRECT.

14 Q REVCOR OVER ON THE LEFT SIDE OF THAT CHART,
15 SEPTEMBER OF 1996. IS REVCOR A PLAINTIFF IN THIS CASE?

16 A I BELIEVE SO, YES, SIR.

17 Q AND THEY FILED FOR BANKRUPTCY?

18 A REORGANIZATIONAL BANKRUPTCY, 9/96.

19 Q FOR PROTECTION FROM CREDITORS; IS THAT RIGHT?

20 A YES, CORRECT.

21 Q FIRST NATIONWIDE FILED FOR BANKRUPTCY IN --
22 BANKRUPTCY PROTECTION IN MAY OF 1996?

23 A YES, THAT'S CORRECT.

24 Q DELTA ISLE FILED BANKRUPTCY IN 1996?

25 A YEAH. IT DOESN'T GIVE A MONTH. BUT 1996,

26 YES.

1 Q RIGHT.

2 AND THEN YOU HAVE THE THOUSAND ADVENTURES
3 PARKS, INCLUDING THOUSAND ADVENTURES OF ALABAMA AND
4 THOUSAND ADVENTURES OF OHIO, WHO FILED BANKRUPTCY IN 1997?

5 A LET ME SEE. THOUSAND ADVENTURES, 7 OF '97,
6 THOUSAND ADVENTURES, 8 OF '97, THOUSAND ADVENTURES, 5 OF
7 '97, AND THOUSAND ADVENTURES, 1 OF '97. ALL PRIOR TO
8 MR. NOVELLI'S ACQUISITIONS, YES.

9 Q OKAY. SO WHAT YOU HAVE IN 1996, 1997, IS
10 YOU HAVE THOUSAND ADVENTURES, DAVE VOPNFORD FILING
11 BANKRUPTCIES; RIGHT?

12 A THAT'S CORRECT. AT LEAST ON ABOUT FOUR
13 OCCASIONS AT LEAST. THERE MAY HAVE BEEN OTHERS.

14 Q AND THEN YOU'VE GOT MR. NOVELLI FILING
15 BANKRUPTCIES ON BEHALF OF HIS COMPANIES IN 1996 AND 1997;
16 IS THAT RIGHT?

17 A 1996 -- THAT'S CORRECT.

18 Q TRAVEL AMERICA IS THE --

19 A TWO OF THEM THERE, YES -- THREE. PARDON ME.
20 YEAH.

21 Q TRAVEL AMERICA IS THE FIRST NAMED PLAINTIFF
22 IN THIS CASE; DO YOU KNOW THAT?

23 A YES. I SAW IT ON THE PLEADINGS.

24 Q TRAVEL AMERICA IS MR. NOVELLI, ONE OF
25 MR. NOVELLI'S COMPANIES; IS THAT RIGHT?

26 A THAT'S MY UNDERSTANDING, YES.

1 Q TRAVEL AMERICA IS NOTHING MORE THAN THE
2 SUCCESSOR TO THOUSAND ADVENTURES; IS THAT RIGHT?

3 MR. SHAW: YOUR HONOR, JUST OBJECT. CALLS FOR A
4 LEGAL CONCLUSION, AND HE IS NOT A LEGAL EXPERT.

5 THE COURT: I'LL SUSTAIN THAT.

6 MR. RIVIN: I'LL ASK THE QUESTION DIFFERENTLY.

7 Q MR. MITCHELL, TRAVEL AMERICA IS NOTHING MORE
8 THAN THOUSAND ADVENTURES IN NEW PACKAGING?

9 MR. SHAW: I'LL OBJECT. VAGUE AND AMBIGUOUS.
10 UNCERTAIN.

11 THE COURT: SUSTAINED.

12 MR. RIVIN: YOUR HONOR, MAYBE I CAN LAY A
13 FOUNDATION FOR THAT QUESTION AND CLEAR IT UP.

14 I'D LIKE TO SHOW THE WITNESS A DOCUMENT THAT
15 WE HAVE NOT PREVIOUSLY DISCLOSED. IT'S AN IMPEACHMENT
16 DOCUMENT. IT'S EXHIBIT NUMBER -- WE'VE IDENTIFIED IT AS
17 EXHIBIT NUMBER 1400.

18 MAY I APPROACH THE WITNESS?

19 THE COURT: YOU MAY.

20 MR. RIVIN: I'D LIKE TO PUT THE DOCUMENT UP ON THE
21 SCREEN, PLEASE. WE'LL MAGNIFY PORTIONS OF IT.

22 THE COURT: WHAT WAS THE NUMBER OF THAT?

23 MR. RIVIN: 1400.

24 THE COURT: DESCRIPTION?

25 MR. RIVIN: THIS IS A LETTER. IT'S A LETTER FROM
26 ROBERT MITCHELL TO DAN HOPPER. IT'S ON THE LETTERHEAD OF

1 CONSUMER PROTECTION AGENCY OF AMERICA DATED DECEMBER 3,
2 1997. LET ME KNOW WHEN YOU FINISHED READING THE LETTER,
3 MR. MITCHELL.

4 A UH-HUH.

5 Q IS THAT YOUR SIGNATURE ON THE LETTER?

6 A YOU BET IT IS. I WROTE IT.

7 Q YOU WROTE IT; YOU SENT IT TO MR. HOPPER?

8 A YES, I DID.

9 Q MR. HOPPER IS A GENTLEMAN IN OHIO WHO WAS
10 A -- WHO IS AN ADVOCATE FOR THOUSAND ADVENTURES MEMBERS WHO
11 WERE BURNED BY THOUSAND ADVENTURES; RIGHT?

12 A YEAH. I THINK AT THE TIME HE WAS TRYING TO
13 GET HIS GROUP TOGETHER.

14 Q RIGHT. AND YOU SENT --

15 A AND I TRIED TO SUPPORT HIM.

16 Q AND YOU SENT HIM THIS LETTER?

17 A YES.

18 MR. RIVIN: CAN WE HIGHLIGHT THE FIRST THREE LINES
19 OF THE SECOND TO THE LAST PARAGRAPH, PLEASE.

20 Q "WE ARE AWARE THAT" -- WHY DON'T YOU READ
21 IT.

22 A SURE. WHERE DO YOU WANT -- I'M SORRY.

23 "WE ARE AWARE THAT T.A.I. MEMBERS ARE BEING
24 AGGRESSIVELY SOLICITED TO PAY DUES AND/OR CONTRACTS
25 RELATING TO THEIR T.A.I. MEMBERSHIPS OR SOME NEW PACKAGING
26 THEREOF CALLED TRAVEL AMERICA. PLEASE NOTE. BOTH STATUTE

1 AND CASE LAW HAVE CLEARLY ESTABLISHED THAT A MEMBER CANNOT
2 BE HELD LIABLE FOR CONTRACT PAYMENTS OR DUES PAYMENTS WHERE
3 THE SERVICES OR PRODUCTS PURCHASED HAVE NOT, OR ARE NOT, OR
4 CANNOT BE DELIVERED BY THE SELLER.

5 "MORE SIMPLY STATED, MEMBERS CANNOT BE
6 FORCED TO PAY FOR THAT WHICH THEY DO NOT RECEIVE."

7 Q SO THE MEMBERS OF THOUSAND ADVENTURES COULD
8 NOT BE FORCED TO PAY THAT FOR WHICH THEY DIDN'T RECEIVE?

9 A NO.

10 Q AND THE SAME IS TRUE -- AND THE SAME IS TRUE
11 WITH THE MEMBERS OF TRAVEL AMERICA?

12 A OH, ANY MEMBERS THAT HAVE CONTRACTED WITH
13 ANYBODY AND THEY DON'T GET WHAT THEY'RE SUPPOSED TO GET
14 OUGHT NOT TO PAY.

15 Q AND TRAVEL AMERICA WAS SIMPLY A NEW
16 PACKAGING FOR THOUSAND ADVENTURES?

17 A WELL, I DON'T KNOW THAT, AND I DIDN'T STATE
18 THAT. SOME NEW PACKAGING THEREOF CALLED TRAVEL AMERICA.

19 Q DOESN'T "THEREOF" REFER TO THOUSAND
20 ADVENTURES?

21 A ACTUALLY, NO. THAT WASN'T MY INTENTION. I
22 DIDN'T EVEN REALLY KNOW ABOUT TRAVEL AMERICA, NEVER HEARD
23 OF THE COMPANY WHEN WE DISCUSSED IT. BECAUSE I WASN'T
24 FAMILIAR -- AS YOU MAY RECALL, I INTRODUCED THESE,
25 MR. NOVELLI TO THE LENDERS, BUT I GOT OUT OF IT. I HAD NO
26 IDEA WHAT THE NAME OF THE COMPANY WAS OR WHO WAS THE

1 PLAYERS AT ALL. SO IF --

2 Q MR. MITCHELL, YOU TESTIFIED EARLIER THIS
3 AFTERNOON THAT YOU WERE TALKING TO PEOPLE IN THE INDUSTRY
4 AT THE TIME THE COAST LETTERS WERE SENT, THAT MASS TRANSFER
5 LETTER, YOU WERE TALKING TO PEOPLE ALL THE TIME IN THE
6 INDUSTRY.

7 A THAT'S CORRECT.

8 Q AND YOU KNEW ABOUT THE LETTER. YOU KNEW
9 ABOUT THOSE LETTERS FROM PEOPLE IN THE INDUSTRY; IS THAT
10 RIGHT?

11 A IT'S OKAY. I HAVE NO PROBLEM WITH THIS
12 LETTER. I'LL STAND BY WHAT I SAID IN THIS LETTER. I HAVE
13 NO PROBLEM WITH IT.

14 Q WILL YOU STAND BY THE STATEMENT THAT TRAVEL
15 AMERICA IS NOTHING MORE THAN NEW PACKAGING?

16 A I DIDN'T SAY THAT, NOTHING MORE THAN NEW
17 PACKAGING. I SAID "OR SOME NEW PACKAGING THEREOF." SURE,
18 I HAVE NO PROBLEM STANDING BY THAT STATEMENT.

19 Q YOU SAID -- YOU'VE TESTIFIED AS TO YOUR
20 OPINION THAT THE PLAINTIFFS LOST -- SUFFERED DAMAGES AS A
21 RESULT OF THE COAST LETTERS. THE PLAINTIFFS ARE THOUSAND
22 ADVENTURES OF OHIO, THOUSAND ADVENTURES OF ALABAMA, TRAVEL
23 AMERICA. WHO ARE THE OTHER PLAINTIFFS?

24 A THERE'S A WHOLE LIST OF THEM.

25 Q WHO ARE THEY?

26 A APOLLO GROUP, THE FIRST NATIONWIDE. WITHOUT

1 SEEING THE PLEADINGS, I DON'T REMEMBER OFF THE TOP OF MY
2 HEAD.

3 Q DO YOU KNOW IF ALL THE PLAINTIFFS SUFFERED
4 DAMAGES AS A RESULT OF WHAT COAST -- WHAT YOU BELIEVE COAST
5 DID?

6 A ANY PLAINTIFF THAT WAS AFFECTED BY THE MASS
7 TRANSFER LETTER CLEARLY SUFFERED DAMAGES, YES.

8 Q DO YOU KNOW THAT EVERY PLAINTIFF WAS
9 AFFECTED BY THE LETTER? YOU DON'T KNOW THAT, DO YOU?

10 A WELL, YES, TO THE EXTENT THAT ALL THOSE
11 PLAINTIFFS OWNED PARKS, AND TO THE EXTENT THAT ACCORDING TO
12 THE COAST TO COAST PRINTOUT THAT I REVIEWED, THE COAST TO
13 COAST SENT LETTERS TO ALL OF THE MEMBERS OF THE PLAINTIFFS,
14 WHICH INCLUDED THE APOLLO GROUP AND FIRST NATIONWIDE AND SO
15 ON. WHICH SPECIFIC PARKS EACH ONE OF THOSE OWNED, HONESTLY
16 I DON'T KNOW. BUT I DO KNOW THAT COAST TO COAST SENT
17 LETTERS TO ALL OF THEM.

18 Q DAVE VOPNFORD CONTINUED TO BE INVOLVED IN
19 TRAVEL AMERICA AFTER THE FORMATION OF THE COMPANY, DID HE
20 NOT?

21 A AT THE TIME THAT I RECEIPT THIS LETTER, I
22 THOUGHT THAT ACCORDING TO THE INFORMATION THAT MR. HOPPER
23 GAVE ME -- AND THIS LETTER IS IN RESPONSE TO MR. HOPPER, AS
24 YOU WELL KNOW. AND ACCORDING TO THE INFORMATION MR. HOPPER
25 GAVE ME, MR. HOPPER IDENTIFIED TRAVEL AMERICA AS BEING A
26 DAVE VOPNFORD PROGRAM PLAN IN VAIL. IN RESPONSE TO

1 MR. HOPPER'S INFORMATION, I SAID, "IF THAT'S THE CASE,
2 THAT'S A BUNCH OF BALONEY." AND I STILL WOULD HOLD THAT
3 POSITION.

4 Q WHAT'S A BUNCH OF BALONEY?

5 A THAT, IN OTHER WORDS, IF THIS THING --
6 TRAVEL AMERICA, I HAD NO IDEA WHO IT WAS AT THE TIME. IF
7 THIS THING, TRAVEL AMERICA, WAS DAVE VOPNFORD IN A NEW
8 PACKAGE, THEN IT WAS WRONG.

9 Q WHEN --

10 A AND I WOULD STATE THAT AGAIN.

11 Q IN 19 -- YOU'VE TESTIFIED AS AN EXPERT IN
12 THIS INDUSTRY?

13 A SURE.

14 Q YOU KNEW WHAT WAS GOING ON IN THIS INDUSTRY,
15 AND YOU MEAN TO TELL ME --

16 A I TOLD YOU.

17 Q YOU DIDN'T KNOW WHO TRAVEL AMERICA WAS?

18 A NOT WHEN MR. HOPPER CONTACTED ME WITH REGARD
19 TO THIS, I DIDN'T. HE EXPLAINED TO ME. HE TOLD ME WHAT
20 TRAVEL AMERICA WAS. HE TOLD ME WHAT HIS PROBLEM WAS. AND
21 IN RESPONSE TO WHAT HE TOLD ME, I SAID, "THAT'S ABSURD AND
22 UNFAIR. ANYTHING I CAN DO TO HELP, I WILL."

23 Q YOU PUT MR. NOVELLI AND MR. VOPNFORD
24 TOGETHER. YOU BROUGHT MR. NOVELLI OUT TO THE RANCH.
25 DIDN'T TRAVEL AMERICA COME INTO EXISTENCE OUT OF THAT
26 MEETING AT THE RANCH?

1 A WELL, I DON'T KNOW WHAT CAME. IN OTHER
2 WORDS, NOTHING CAME OUT OF THAT MEETING. AS I PREVIOUSLY
3 TESTIFIED, NOTHING CAME OF THAT MEETING. SOMETIME
4 THEREAFTER TRAVEL AMERICA OCCURRED. I WAS NOT INVOLVED
5 WITH IT OR PRIVY TO IT. MR. HOPPER CALLED ME BECAUSE HE
6 HAD HEARD ABOUT ME, AND HE WAS SOLICITING MY ASSISTANCE.

7 AND I SAID, "SURE. TELL ME WHAT'S GOING ON
8 HERE."

9 HE SAID, "WELL, DAVE VOPNFORD HAS PACKAGED
10 UP HIS OLD DANCE INTO A NEW ONE."

11 AND I SAID, "THAT'S OUTRAGEOUS. AND WHAT
12 CAN I DO TO HELP?"

13 AND I CONTINUED TO HOLD THAT POSITION.

14 Q SO YOU OFFERRED MR. HOPPER ALL THE HELP YOU
15 COULD GIVE HIM TO GO AFTER TRAVEL AMERICA; IS THAT RIGHT?

16 A SURE. GO AFTER MR. VOPNFORD.

17 Q AND NOW YOU'RE TESTIFYING -- NOW YOU'RE
18 TESTIFYING AS AN EXPERT FOR TRAVEL AMERICA?

19 A PARDON?

20 Q NOW YOU'RE TESTIFYING AS AN EXPERT FOR
21 TRAVEL AMERICA; IS THAT RIGHT?

22 A I'M TESTIFYING AS AN EXPERT. I'M NOT
23 TESTIFYING FOR ANYBODY. I'M ANSWERING QUESTIONS ON BOTH
24 SIDES OF THIS COIN.

25 Q WHO IS PAYING YOU?

26 A TRAVEL AMERICA IS PAYING.

1 Q HOW MUCH?

2 A THAT'S NOT GOING TO CHANGE WHAT I SAY. IT
3 DOESN'T WORK THAT WAY AS YOU OBVIOUSLY HAVE SEEN HERE IN
4 THE LAST FIVE MINUTES.

5 Q HOW MUCH HAVE YOU BEEN PAID TO TESTIFY FOR
6 YOUR TESTIMONY IN THIS CASE?

7 A NOTHING.

8 Q HOW MUCH HAVE YOU BEEN PAID -- HOW MUCH HAVE
9 YOU BEEN PAID FOR THE WORK THAT YOU'VE DONE AS AN EXPERT
10 WITNESS?

11 A OH, THE WORK I'VE DONE REVIEWING ALL KINDS
12 OF DOCUMENTS AND STUFF, I CAN'T BE EXACT. BUT I SUSPECT
13 SOMEPLACE BETWEEN \$15- AND \$20,000, PERHAPS. IT'S BEEN
14 SEVERAL MONTHS I'VE BEEN WORKING.

15 Q DO YOU HAVE ANY FIRSTHAND KNOWLEDGE OF
16 WHETHER RAYMOND NOVELLI AND DAVE VOPNFORD WERE TEEMING UP
17 AS TRAVEL AMERICA IN -- AS TRAVEL AMERICA IN 1997?

18 A MY FIRSTHAND KNOWLEDGE WAS TO THE CONTRARY.
19 WHEN I LEFT THE MEETING IN TEXAS, IT WAS MY UNDERSTANDING
20 THAT MR. VOPNFORD WAS HISTORY. AND IT WAS FURTHER MY
21 UNDERSTANDING THAT ANY USE OF HIM WAS RELATED TO
22 FACILITATING THE TRANSFER OF THESE PARKS TO MR. NOVELLI.

23 I DO KNOW FOR A FACT THAT WHEN I LEFT THAT
24 MEETING IN TEXAS, THAT MR. VOPNFORD WAS HISTORY. THE
25 LENDERS TOOK EVERYTHING AWAY FROM HIM. HE HAD NO FINANCIAL
26 INVOLVEMENT IN TRAVEL AMERICA, THEN OR EVER. AND WAS NOT A

1 PARTICIPANT IN TRAVEL AMERICA.

2 THE SUBSEQUENT PICTURE AND SO ON WHICH YOU
3 SPOKE, TO MY UNDERSTANDING, WAS A PIECE PRODUCED TO
4 ACCOMMODATE THE TRANSFER, FACILITATE A SMOOTH ACTION. BUT
5 I DO KNOW THAT MR. VOPNFORD HAD NO INVOLVEMENT IN TRAVEL
6 AMERICA.

7 WELL, LET ME QUALIFY THAT. NO INVOLVEMENT
8 IN THE NEW ENTITY. I DIDN'T KNOW IT WAS TRAVEL AMERICA.
9 SO I CAN'T SAY TRAVEL AMERICA. BUT I KNOW THAT ANY ENTITY
10 THAT CAME OUT OF THAT MEETING, THAT MR. VOPNFORD WAS NOT
11 GOING TO BE INVOLVED IN BECAUSE THOSE LENDERS WEREN'T GOING
12 TO HAVE IT.

13 AND MR. NOVELLI AND MR. VOPNFORD DIDN'T HIT
14 IT OFF TOO GOOD. THEY NEVER MET BEFORE, AND IT WASN'T
15 EXACTLY WHAT YOU WOULD CALL A NICE RELATIONSHIP WHEN THEY
16 SAID HELLO. THEY HAD DIFFERENCES.

17 SO THE ONLY THING I AM CONFIDENT OF IS THAT
18 MR. VOPNFORD HAD NO PARTICIPATION IN WHATEVER OCCURRED.
19 AND WHEN MR. HOPPER CALLED ME, I WAS VERY CONCERNED,
20 BECAUSE HE TOLD ME -- MR. HOPPER TOLD ME THAT MR. VOPNFORD
21 WAS TRAVEL AMERICA. HE DIDN'T SAY MR. NOVELLI WAS TRAVEL
22 AMERICA. HE SAID MR. VOPNFORD WAS.

23 THE COURT: YOU WON'T FINISH WITH THIS WITNESS
24 TODAY?

25 MR. RIVIN: OH, NO. NO.

26 THE COURT: LET'S GET A BREAK ON THE FREEWAY AND,

1 THEN WE'LL LEAVE AT THIS POINT. SEE YOU ALL MONDAY

2 MORNING, MONDAY MORNING AT 9:00.

3 THE WITNESS: SIR, DO YOU NEED THIS STUFF BACK?

4 MR. RIVIN: YES.

5 THE WITNESS: CAN I JUST LEAVE IT UP HERE FOR YOU?

6 MR. RIVIN: YES.

7 (WHEREUPON THE COURT WAS IN RECESS UNTIL

8 MONDAY, MAY 23, 2000, 9:00 A.M.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

