

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 23, 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

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1 WESTMINSTER, CALIFORNIA - TUESDAY, MAY 23, 2000

2 MORNING SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN
4 CHAMBERS:)

5 THE COURT: WE'RE HERE TO DISCUSS THIS -- WHAT
6 WOULD YOU CALL IT?

7 MR. MOSHENKO: WELL, IT'S AN ADMONITION TO
8 WITNESSES, YOUR HONOR --

9 THE COURT: OKAY.

10 MR. MOSHENKO: -- THAT I PLANNED TO PERSONALLY GIVE
11 TO MY WITNESSES. AND THE REASON I ASKED THE COURT TO LOOK
12 AT IT IN ADVANCE OF MY GIVING IT TO ANY WITNESSES, BECAUSE
13 THE COURT HAS PREVIOUSLY ORDERED THAT THE FACT THAT
14 MR. NOVELLI HAS FELONY CONVICTIONS IN HIS PAST SHOULD NOT
15 BE MENTIONED BY ANY WITNESSES.

16 BUT IN THE EVENT, QUOTE, THE PLAINTIFFS
17 "OPEN THE DOOR," THAT THE DEFENDANTS MAY BE ALLOWED TO GO
18 INTO THE AREA. AND SO WE ARE OBVIOUSLY CONCERNED THAT WE
19 DON'T -- THAT THE PHRASE "OPEN THE DOOR" IS UNCERTAIN, AND
20 WE DON'T KNOW WHERE TO DRAW THE LINE. AND SO WE'RE ASKING
21 FOR THE COURT'S ADVANCE INDICATION OF WHERE THE LINE IS SO
22 THAT IF WE -- WE DON'T INADVERTENTLY OPEN THE DOOR.

23 SO I PREPARED THIS DOCUMENT, AND IT'S
24 SELF-EXPLANATORY FOR ITS CONTENT, THE IDEA BEING TO
25 INSTRUCT AND ADMONISH OUR WITNESSES WHAT THEY -- THEY
26 CANNOT SAY. AND WHAT IF -- ASSUMING IT IS TRUE -- IT SAYS,

1 ASSUMING IT'S TRUE, THESE ARE SOME THINGS THAT YOU MAY SAY.

2 WHO IS THE OBJECTIONER?

3 MR. SHERMAN: LET ME START WITH WHAT MR. MOSHENKO

4 SAID ABOUT WE DON'T REALLY KNOW WHERE THE LINE IS. IT

5 SOUNDS A LITTLE BIT LIKE THE SUPREME COURT ON OBSCENITY.

6 IT IS WHAT WE SAY IT IS. I THINK THAT THE COURT'S

7 INTENTION --

8 THE COURT: I CAN'T DEFINE IT, BUT I KNOW IT WHEN I

9 SEE IT.

10 MR. SHERMAN: THAT'S RIGHT. I THINK THE COURT'S

11 INTENTION WAS TO KEEP A LEVEL PLAYING FIELD.

12 AND I WILL TELL YOU, YOUR HONOR, THAT WHEN

13 THE ISSUE CAME UP YESTERDAY, FOR EXAMPLE, WITH MR. MITCHELL

14 AND THE DEPOSITION TESTIMONY ABOUT HOW SOME PEOPLE THOUGHT

15 MR. NOVELLI WAS CROOKED, MR. RIVIN AND I HAD NOT HAD A

16 CHANCE TO DISCUSS THAT IN ADVANCE. BUT IT IS MY DECISION,

17 AND IT'S OUR TEAM'S DECISION THAT WE'VE TOLD WITNESSES AND

18 WILL BE TELLING WITNESSES YOU MAY NOT USE THE "CROOKED"

19 WORD. YOU MAY NOT USE THE "CRIMINAL" WORD. DON'T SAY IT.

20 IT'S NOT HERE.

21 OKAY. BUT HERE IS THE CHALLENGE: THE

22 WAY -- FIRST OF ALL, IF MR. MOSHENKO WANTS TO GIVE THIS TO

23 HIS WITNESSES, GOD BLESS. BUT I DON'T THINK WE NEED A

24 COURT BLESS. IF A PERSON KNOWS MR. NOVELLI REAL RECENTLY

25 AND HAS NO KNOWLEDGE ABOUT HIS CRIMINAL PAST, THE THREE

26 FELONY CONVICTIONS AND THE FUGITIVE STATUS, THEN, YOU KNOW,

1 MAYBE THEY COULD SAY, "I TRUST RAY" OR "I BELIEVE IN RAY,"
2 WHATEVER. BUT SOMEONE WHO GOES BACK FOR 20 OR 30 YEARS AND
3 HAS KNOWN HIM FOR 20 OR 30 YEARS MAYBE WHEN HE WAS JUST
4 GETTING OUT OF PRISON WITH HIS NEW CIVILIAN CLOTHES AND
5 THINGS LIKE THAT, I MEAN, I GOT REAL PROBLEMS WITH THAT.

6 WE CAN'T HAVE A BLANKET RULE. IT'S GOING
7 TO DEPEND UPON THE FACTS AS THEY COME UP.

8 THE COURT: LET ME SHORTEN THIS UP A LITTLE BIT. I
9 SEE NOTHING WRONG IN, AS YOU SAY, IN MR. MOSHENKO AND
10 MR. SHAW GIVING THIS ADMONISHMENT TO THEIR WITNESSES. GO
11 AHEAD. GIVE IT TO THEM. AND THEN WE'LL HAVE TO SEE WHAT
12 THEY COME UP WITH.

13 MR. SHERMAN: I ASSUME, YOUR HONOR, THAT YOU'RE
14 NOT, THEREFORE, SAYING "HERE IS THE LINE."

15 THE COURT: NO.

16 MR. SHERMAN: FAIR ENOUGH.

17 MR. MOSHENKO: PER SE SOMEONE SAYING, "I TRUST HIM,
18 I BELIEVE IN HIM, I CONSIDER HIM TO BE RESPONSIBLE" WOULD
19 NOT BE OPENING THE DOOR.

20 THE COURT: I WOULDN'T THINK SO, NO.

21 MR. SHERMAN: CAN I ADDRESS THAT JUST REAL
22 BRIEFLY?

23 THE COURT: SURE.

24 MR. SHERMAN: AT SOME POINT IN THIS TRIAL, WHEN WE
25 HEAR ENOUGH WITNESSES TAKE THE STAND, YOU KNOW, ONE AFTER
26 ANOTHER, THE AMEN CHORUS OF "I LOVE RAY, I TRUST RAY, RAY

1 IS GREAT, RAY IS THIS, RAY IS THAT," AT SOME POINT LET'S
2 ASSUME THAT'S ALL THESE PEOPLE SAY, YOU'LL HEAR FROM US
3 AGAIN, BECAUSE THERE'S A CUMULATIVE EFFECT OF THAT; THAT WE
4 HAVE THE RIGHT AT SOME POINT IN TIME TO SAY, "WELL, YEAH,
5 YOU SAY YOU TRUST RAY, BUT, YOU KNOW, WERE YOU AWARE OF THE
6 FACT THAT HE WAS USING AN ALIAS FOR TWO YEARS AND HIDING
7 OUT FROM THE LAW AND DECEIVING EVERYONE? WERE YOU AWARE
8 THAT HE HAD COMMITTED BANK FRAUD? WERE YOU AWARE THAT HE
9 HAD COMMITTED MAIL FRAUD?"

10 SO, ALL I'M ASKING, YOUR HONOR, IS FOR YOU
11 TO GO BACK AND DRAW THE LINE IN THE SAND THAT YOU DREW LAST
12 TIME, WHICH IS IF THE DOOR IS OPEN, AND WE'LL KNOW IT WHEN
13 WE SEE IT.

14 THE COURT: THAT'S RIGHT.

15 MR. SHERMAN: OKAY. FAIR ENOUGH.

16 MR. SHAW: SINCE WE'RE ON THE RECORD, I JUST WANT
17 TO MAKE AN OBJECTION THAT WHAT MR. SHERMAN HAS BEEN SAYING
18 ASSUMES FACTS NOT IN EVIDENCE AND DOES LACK FOUNDATION. I
19 JUST WANT THAT TO BE ON THE RECORD.

20 MR. SHERMAN: YOUR HONOR, I HAVE TRIAL EXHIBITS
21 HERE, CERTIFIED COPIES OF HIS CRIMINAL CONVICTIONS, OF THE
22 PROBATION REPORT WHERE HE WAS KNOWN BY AN ALIAS WHEN HE WAS
23 A FUGITIVE FROM THE LAW. IF MR. SHAW WOULD LIKE, IF THE
24 COURT WOULD LIKE, I'LL GO OUT AND I'LL GET THEM, AND I'LL
25 BRING ALL OF THEM IN RIGHT NOW.

26 THE COURT: NOT AS FAR AS I'M CONCERNED.

1 MR. SHERMAN: BUT THEY'RE CERTIFIED, ALL
2 SELF-AUTHENTICATING, THE OFFICIAL U.S. SEAL. WE'VE SEEN
3 THEM. WE DISAGREE WITH YOUR ARGUMENT.

4 THAT'S ALL I WANT TO SAY.

5 MR. MOSHENKO: I BELIEVE THAT SUCH PHRASES LIKE
6 "ARE YOU AWARE HE HAS COMMITTED BANK FRAUD" OR "HE WAS A
7 CRIMINAL HIDING OUT FROM THE LAW" IS TANTAMOUNT TO TALKING
8 ABOUT THE CONVICTIONS.

9 THE COURT: THAT'S RIGHT.

10 MR. SHERMAN: CAN WE CROSS THAT BRIDGE WHEN WE COME
11 TO IT?

12 THE COURT: YES.

13 MR. SHERMAN: THANK YOU.

14 MR. MOSHENKO: IT WON'T COME OUT AS THE COURT
15 PREVIOUSLY ORDERED, UNLESS AND UNTIL COUNSEL FIRST COMES TO
16 THE COURT.

17 THE COURT: RIGHT.

18 MR. MOSHENKO: AND SAYS, "YOUR HONOR, I THINK WE'VE
19 GONE TOO FAR."

20 THE COURT: RIGHT.

21 MR. SHERMAN: I HEARD YOUR HONOR THE FIRST TIME. I
22 HEAR YOUR HONOR AGAIN THIS TIME.

23 THE COURT: OKAY. LET'S HIT IT.

24 MR. SHAW: THANK YOU, YOUR HONOR.

25 (THE FOLLOWING PROCEEDINGS WERE HELD IN
26 OPEN COURT IN THE PRESENCE OF THE JURY:)

1 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

2 THE JURY: GOOD MORNING, YOUR HONOR.

3 THE COURT: YOU'RE STILL UNDER OATH, MR. MITCHELL.

4 ROBERT MITCHELL,

5 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING

6 BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS

7 FOLLOWS:

8 REDIRECT EXAMINATION

9 BY MR. SHAW: Q GOOD MORNING, MR. MITCHELL.

10 A SORRY FOR BEING LATE.

11 Q I DON'T WANT TO TAKE TOO MUCH TIME THIS

12 MORNING. I WANT TO GET TO A COUPLE OF POINTS THAT

13 MR. RIVIN RAISED YESTERDAY, AND I WANT TO START WITH HIS

14 END OF HIS DAY AND COME BACKWARDS.

15 MR. HAHN, WOULD YOU PUT EXHIBIT 39 ON THE

16 OVERHEAD FOR US.

17 AND, MR. MITCHELL, DO YOU HAVE IT IN FRONT

18 OF YOU?

19 A I'M SORRY. I'VE GOT A LOT OF THINGS.

20 Q YOU'VE GOT A LOT OF THINGS. OKAY. LET ME

21 SEE IF I CAN FIND --

22 A THERE'S SOME OTHER BOOKS OVER HERE.

23 Q THAT'S IT, I BELIEVE. 39, THERE WE GO.

24 A OKAY.

25 MR. SHAW: MR. HAHN, COULD YOU BLOW UP THE VERY

26 LAST PARAGRAPH FOR US.

1 Q MR. MITCHELL, THIS IS THE LETTER THAT YOU
2 TESTIFIED THAT MR. NOVELLI WROTE TO CAMP COAST TO COAST
3 TAKING CERTAIN RESORTS OUT OF THE COAST TO COAST RECIPROCAL
4 SYSTEM?

5 A YES, SIR.

6 Q DO YOU SEE THE LAST PARAGRAPH? COULD YOU
7 READ THAT FOR US.

8 A YES.

9 "FIRST NATIONWIDE RESORTS MANAGEMENT, INC.,
10 CONSIDERS" --

11 Q THAT'S ONE OF THE PLAINTIFFS; CORRECT?

12 A YES, SIR.

13 "CONSIDERS THOSE MEMBERS ENROLLED IN THE
14 COAST TO COAST RECIPROCAL PROGRAM TO BE PROPRIETARY; AS
15 SUCH, COAST IS PUT ON NOTICE THAT ANY ATTEMPT TO TRANSFER
16 FIRST NATIONWIDE RESORTS MANAGEMENT MEMBERS, DISTRIBUTE THE
17 LIST OF FIRST NATIONWIDE RESORTS MANAGEMENT MEMBERS TO MY
18 OTHER CAMP RESORT OR BUSINESS, OR OTHERWISE VIOLATE THE
19 CONFIDENTIALITY OF THE FIRST NATIONWIDE RESORTS MANAGEMENT
20 MEMBER LIST, WILL BE CONSIDERED BY FIRST NATIONWIDE RESORTS
21 MANAGEMENT TO BE A SERIOUS INTERFERENCE WITH FIRST
22 NATIONWIDE RESORTS MANAGEMENT, INC., ABILITY TO CONDUCT ITS
23 BUSINESS."

24 Q AND DESPITE MR. NOVELLI PUTTING THEM ON
25 NOTICE THAT ANY ATTEMPT TO TRANSFER WOULD BE A SERIOUS
26 INTERFERENCE, THEY TRANSFERRED ANYWAY?

1 A YES, SIR.

2 Q IS THAT CORRECT?

3 LET'S LOOK AT EXHIBIT 72.

4 AND MR. HAHN, IF YOU COULD GO TO THE SECOND
5 PAGE AND BLOW UP PARAGRAPH 2 FOR US. THAT'S THE COAST TO
6 COAST MEMBERSHIP APPLICATION.

7 AND PARAGRAPH 2 SAYS, MR. MITCHELL, THAT "IF
8 YOUR HOME RESORT CEASES TO BE A COAST TO COAST AFFILIATED
9 RESORT FOR ANY REASON, YOUR COAST TO COAST MEMBERSHIP WILL
10 REMAIN IN EFFECT FOR THE REMAINDER OF THAT CALENDAR YEAR."

11 SO WE HAVE EXHIBIT 39 THAT WAS DATED AUGUST
12 27, 1997, THAT WENT TO COAST TO COAST. AND ACCORDING TO
13 THIS MEMBERSHIP APPLICATION, WHICH IS PART OF THE CONTRACT,
14 THE MEMBERS THEN HAD TILL THE END OF THE CALENDAR YEAR,
15 PURSUANT TO COAST TO COAST, FINDING A NEW HOME RESORT; IS
16 THAT CORRECT?

17 A NOT EXACTLY. THEY ACTUALLY HAD TILL THE END
18 OF THE CALENDAR YEAR BY THAT MEMBERSHIP AGREEMENT, THAT
19 INSTRUMENT WITH COAST TO COAST. BUT AS A MATTER OF POLICY
20 AND SPOKEN TO BY MR. RANDALL, VICE-PRESIDENT, OPERATIONS,
21 COAST GIVES THEM ANOTHER YEAR BEYOND THAT. SO THEY WOULD
22 HAVE CONTINUED TO BE ABLE TO ACCESS THE COAST TO COAST
23 PROGRAM FOR THE THREE MONTHS FROM SEPTEMBER TO JANUARY,
24 AND THEN FOR ANOTHER 12 MONTHS THEREAFTER, OR A TOTAL OF 15
25 MONTHS AT THE MINIMUM, THAT THEY WOULD HAVE BEEN ABLE TO
26 USE THEIR COAST PROGRAM, EVEN IF THEY DIDN'T HAVE A HOME

1 RESORT.

2 Q AND COAST TO COAST, MR. HAHN, IF YOU WILL
3 LOOK AT THE -- I'M SORRY. MR. DURAN, IF WE CAN LOOK AT
4 EXHIBIT 1563.

5 THIS THE LETTER FROM -- THE TRANSFER LETTER
6 THAT YOU TESTIFIED ABOUT, AND YOU SEE AN OCTOBER 1997 DATE.
7 SO MR. NOVELLI'S EXHIBIT 39 IS AUGUST 27, 1997, AND THEN
8 THE COAST TO COAST LETTER GOES OUT.

9 AND, MR. O'CONNER, COULD YOU BLOW UP THE
10 SECOND PARAGRAPH FOR US WHERE IT SAYS, "SINCE WE REALIZE
11 THAT FINDING ANOTHER RESORT MAY CREATE AN INCONVENIENCE FOR
12 YOU, WE HAVE MADE ARRANGEMENTS TO HAVE YOUR COAST TO COAST
13 HOME RESORT MEMBERSHIP TRANSFERRED TO THE TIMBERLINE
14 CAMPGROUND, LEBANON, TENNESSEE."

15 SO WHAT WE SEE IS A LETTER FROM COAST TO
16 COAST TRANSFERRING THEM TO A NON-PLAINTIFF RESORT; CORRECT?

17 A THAT'S CORRECT, SIR.

18 Q AND THAT'S DESPITE MR. NOVELLI TELLING THEM
19 ANY ATTEMPT TO TRANSFER IS GOING TO BE A SERIOUS
20 INTERFERENCE?

21 A THAT'S CORRECT, SIR.

22 Q CORRECT?

23 MR. HAHN, COULD YOU PUT BACK UP EXHIBIT 39
24 FOR US? BLOW UP THE SECOND PARAGRAPH FOR US, PLEASE.

25 SO DESPITE MR. NOVELLI TELLING THEM, "DON'T
26 DO IT, THIS IS PROPRIETARY," THEY WENT AHEAD AND DID IT

1 ANYWAY?

2 A THAT'S CORRECT.

3 Q AND THEY DIDN'T WAIT THIS -- TO THE END OF
4 THE CALENDAR YEAR OR THE 15 MONTHS THAT YOU TESTIFIED WAS
5 THEIR CUSTOM AND PRACTICE?

6 A THAT'S CORRECT.

7 Q NOW, WE LOOKED AT THE CONTRACT ITSELF IN
8 THIS CASE.

9 AND, MR. HAHN, COULD YOU GIVE US EXHIBIT
10 570, PLEASE.

11 AND IF YOU WILL TURN TO PAGE 7, PARAGRAPH
12 3 -- I'M SORRY -- PAGINATED PAGE 7 DOWN AT THE BOTTOM. AND
13 SPECIFICALLY, MR. MITCHELL, IT SAYS THAT "THE AFFILIATION
14 AGREEMENT" -- NOW READING FROM PARAGRAPH 3, COAST TO
15 COAST'S AFFILIATION AGREEMENT. "THE AFFILIATION AGREEMENT
16 DETAILS HOW COAST TO COAST AND THE LICENSEE WORK TOGETHER.
17 IT VERY SPECIFICALLY SETS FORTH THE RESPONSIBILITY OF BOTH
18 PARTIES AND SHOULD BE REVIEWED PERIODICALLY. SUPPLEMENTAL
19 OPERATING PROCEDURES, RULES AND REGULATIONS ARE
20 PERIODICALLY PUBLISHED IN INSIDE NEWS AND WILL BE
21 INCORPORATED INTO THIS MANUAL."

22 SO YOUR TESTIMONY WAS -- WE LOOKED AT THE
23 AFFILIATION CONTRACT, THE LICENSEE CONTRACT THAT
24 INCORPORATES THIS MANUAL INTO THE CONTRACT, AND THEN THIS
25 MANUAL FURTHER INCORPORATES THE INSIDE NEWS INTO THE
26 CONTRACT; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 MR. SHAW: MR. HAHN, WOULD YOU GO TO PAGE PAGINATED
3 PAGE 19.

4 Q NOW, MR. RIVIN READ THIS TO YOU YESTERDAY,
5 AND AS YOU RECALL -- MR. HAHN, COULD YOU GO TO THE PAGE
6 BEFORE THAT AND BLOW UP THE MEMBERSHIP TRANSFERS.

7 AS YOU RECALL, ON DIRECT EXAMINATION YOU
8 WENT OVER THIS PROCESS IN THE MANUAL AS PART OF THE
9 CONTRACT THAT SAYS YOU HAVE TO HAVE A HOME, YOU HAVE TO
10 HAVE A LETTER FROM THE MEMBER, YOU HAVE TO HAVE A LETTER
11 FROM THE HOME RESORT APPROVING THE TRANSFER, AND YOU HAVE
12 TO HAVE A LETTER FROM THE HOME RESORT ACCEPTING THE MEMBER.
13 AND THAT'S THE TRANSFER PROCESS THAT'S PART OF THE COAST TO
14 COAST CONTRACT; CORRECT?

15 A YES, SIR.

16 Q NOW, YESTERDAY -- AND, MR. HAHN, IF -- TURN
17 TO THE NEXT PAGE.

18 YESTERDAY MR. RIVIN ASKED YOU, ISN'T THERE
19 ANOTHER CIRCUMSTANCE? AND THIS SAYS, "AT THE MEMBER'S
20 REQUEST, COAST TO COAST RESERVES THE RIGHT TO TRANSFER THE
21 HOME RESORT OF ANY MEMBER DUE TO UNUSUAL OR EXTENUATING
22 CIRCUMSTANCES WITHOUT THE APPROVAL OF THE ORIGINAL HOME
23 RESORT."

24 AS YOU REVIEWED THE FACTS AND CIRCUMSTANCES
25 IN THIS CASE, DID YOU EVER SEE ANY MEMBER OF THE PLAINTIFFS
26 REQUEST COAST TO COAST TO TRANSFER THEM TO ANOTHER RESORT?

1 A NO, SIR.

2 Q AND YOU KNOW FROM COAST TO COAST'S OWN
3 DOCUMENTS THAT 34,000 OF THOSE TRANSFER LETTERS THAT WE
4 LOOKED AT A MINUTE AGO, EXHIBIT 1563, THAT WENT OUT TO
5 34,000 OF PLAINTIFFS' MEMBERS; CORRECT?

6 A THAT'S CORRECT.

7 Q DESPITE THE FACT THAT MR. NOVELLI WROTE TO
8 THEM AND SAID, "DON'T DO IT" --

9 A THAT'S CORRECT.

10 Q -- "BECAUSE IT'S GOING TO CAUSE A SERIOUS
11 INTERFERENCE" THEY DID IT ANYWAY; RIGHT?

12 A THAT'S CORRECT.

13 Q AND YOU KNOW FROM LOOKING AT COAST TO COAST
14 DOCUMENTS THAT CLOSE TO 23,000 OF THE MEMBERS, OF
15 PLAINTIFFS' MEMBERS, DID LEAVE?

16 A THAT'S CORRECT.

17 Q AND DID YOU SEE IN ANY OF THOSE 34,000 THAT
18 ANY MEMBER OF THE PLAINTIFF MADE A REQUEST TO COAST TO
19 COAST TO MAKE A TRANSFER OF THEIR HOME RESORT?

20 A NO, SIR.

21 Q AND, IN FACT, MR. MITCHELL, I WANT TO TAKE
22 YOU BACK TO MR. RIVIN'S TESTIMONY YESTERDAY WHERE HE ASKED
23 YOU IF YOU HAD SOME OPINIONS, AND HE NEVER ASKED YOU WHAT
24 YOUR OPINION WAS.

25 AND, SPECIFICALLY -- AND I WROTE IT DOWN --
26 HE ASKED YOU, "DO YOU HAVE ANY OPINIONS ON WHETHER COAST TO

1 COAST HAS THE RIGHT TO TREAT PLAINTIFFS' MEMBERS AS
2 ORPHANS, AND MAKE A TRANSFER OF THEIR HOME RESORT?" DO YOU
3 REMEMBER THAT QUESTION?

4 A YES, SIR.

5 Q AND YOU SAID YES, YOU DID HAVE OPINIONS?

6 A YES, SIR.

7 Q AND THEN HE DIDN'T ASK YOU THE NEXT
8 QUESTION, AND I'M GOING TO ASK YOU NOW. WHAT IS YOUR
9 OPINION?

10 A MY OPINION IS THAT COAST HAD NO RIGHT TO
11 MAKE SUCH A TRANSFER. IT VIOLATED THE CONTRACTS THAT EXIST
12 BETWEEN THEM AND THEIR LICENSEES. IT VIOLATED THEIR NORMAL
13 CONDUCT OF BUSINESS OVER 20 YEARS AND, MY PERSONAL OPINION,
14 UNETHICAL.

15 Q NOW, WE TALKED A LOT ABOUT ORPHANS, AND I'M
16 NOT GOING TO BORE -- BEAR OR BORE, AS THE CASE MAY BE,
17 EVERYBODY ABOUT ORPHANS ANYMORE.

18 BUT I WANT TO ASK YOU IF ANYWHERE IN THE
19 MANUAL THAT WE LOOKED AT THAT MR. HAHN WAS KIND ENOUGH TO
20 PUT UP FOR US, AND ANYWHERE IN THE CONTRACT THAT WAS
21 EXHIBIT 5 THAT WE'RE GOING TO TAKE A CLOSER LOOK AT IN A
22 MINUTE, ANYWHERE IN WRITING IN A COAST TO COAST CONTRACT
23 DOES IT USE THE TERM OR REFER TO THE TERM "ORPHAN"?

24 A I HAVE NEVER SEEN ANY WRITINGS OF THE TERM
25 "ORPHAN," OR ANY DEFINITION OF THE ORPHAN POLICY WRITTEN BY
26 COAST TO COAST IN ANY CONTRACT, IN ANY MANUAL, IN ANY

1 MEMORANDUM, IN ANY LETTER, IN ANY COMMUNICATION, SAVE THE
2 ACTIONS OF IT VIS-A-VIS THE TRANSFER.

3 Q AND YESTERDAY MR. RIVIN READ TO YOU TWO OR
4 THREE TIMES FROM YOUR DEPOSITION TRANSCRIPT WHEN HE WAS
5 TRYING TO DEFINE WHAT -- IT DEPENDS ON WHAT THE WORD "IS"
6 IS, IF YOU WILL, TO USE THE CURRENT VERNACULAR.

7 YOU HAD A DEFINITION OF "ORPHAN" THAT SAID
8 THE PARK HAD TO BE CLOSED DOWN?

9 A YES. MY -- MY UNDERSTANDING OF THE, QUOTE
10 UNQUOTE, NONEXISTENT, NONWRITTEN ORPHAN POLICY WAS THAT THE
11 PARK HAD TO NOT EXIST ANYMORE.

12 Q AND YET HE READ TO YOU FROM YOUR
13 DEPOSITION -- AND WE WON'T GO OVER IT AGAIN -- ABOUT WHAT
14 YOU UNDERSTOOD COAST TO COAST'S UNDERSTANDING OF THE TERM
15 WAS. AND TO SUM UP YOUR TESTIMONY, YOU SAID YOU UNDERSTOOD
16 THEY MEANT THAT IT'S WHEN A DISAFFILIATION OCCURRED; IS
17 THAT CORRECT?

18 A YES. IN OTHER WORDS, THIS -- OBVIOUSLY WE
19 HAVE NO WRITTEN POLICY HERE. IT CAN BE KIND OF MOLDED AND
20 USED, WHATEVER YOU REALLY FEEL LIKE DOING.

21 Q ANYWAY, JUST TO WRAP UP IN THIS AREA --

22 A THAT'S NOT WHAT -- IN OTHER WORDS, THE
23 PRACTICE, WHETHER OR NOT THEY CHOOSE TO CALL THIS THING AN
24 ORPHAN OR THAT THING AN ORPHAN TODAY AND NOT TOMORROW AND
25 DIFFERENT YESTERDAY, MY 20-YEAR EXPERIENCE IN THE PRACTICE
26 THAT THEY ENGAGED WAS THAT THEY NEVER ORPHANED MEMBERS.

1 ORPHAN MEMBERS WERE NOT ORPHANED UNLESS THE PARKED
2 DISAPPEARED, AND IT WAS NO LONGER AN OPERATION. AND THAT
3 WAS THE CASE.

4 Q OKAY. NOW, LET'S TALK --

5 A AND THERE WERE NO AFFILIATES WITHIN THAT
6 SYSTEM, OBVIOUSLY. I SHOULD SAY THAT, TOO.

7 Q NOWHERE IN THIS WRITING, NOWHERE IN THE
8 LICENSE AGREEMENT OR THE MANUAL DOES IT DEFINE OR MAKE ANY
9 REFERENCE TO THE TERM "ORPHAN"?

10 A NO, IT DOES NOT.

11 Q OKAY. NOW, LET'S TURN TO THE -- MR. HAHN,
12 IF YOU COULD PUT UP EXHIBIT 5 FOR ME, PLEASE. AND GO TO
13 PAGINATED PAGE 4.

14 THIS IS THE AFFILIATION AGREEMENT THAT
15 MR. RIVIN WAS ASKING YOU ABOUT YESTERDAY.

16 AND, MR. HAHN, WOULD YOU BLOW UP EXHIBIT --
17 I'M SORRY -- PARAGRAPH D AS IN DAVID. THIS IS THE ONE WE
18 LOOKED AT YESTERDAY?

19 A EXHIBIT 5? YES, SIR.

20 Q PAGE 4, WHERE IT SAYS, AND I QUOTE, "OWNER
21 SHALL PROVIDE TO EACH PURCHASER OF A MEMBERSHIP THE COAST
22 APPLICATION AND THE FORM PROVIDED TO COAST TO OWNER. OWNER
23 SHALL PROMPTLY FORWARD TO COAST THE EXECUTED APPLICATION
24 AND APPLICABLE ENROLLMENT FEE."

25 LET'S STOP THERE FOR A MOMENT. WE LOOK AT
26 THAT APPLICATION. THAT WAS EXHIBIT 72. AND THAT'S THE

1 APPLICATION THAT'S BEING REFERRED TO HERE IN EXHIBIT 5?

2 A YES, SIR.

3 Q OKAY. NOW, LET'S GO TO THE NEXT PARAGRAPH
4 THAT'S UNDERLINED. "LISTS OF MEMBERS OF COAST COMPILED BY
5 COAST FROM SUCH APPLICATIONS ARE THE PROPERTY OF COAST FOR
6 ALL PURPOSES AND MAY BE USED BY COAST, IN ITS DISCRETION,
7 FOR ENHANCEMENT OF THE COAST MEMBERSHIP."

8 WITH YOUR BACKGROUND AND EXPERIENCE AND
9 HAVING BEEN A LICENSEE, HAVING BEEN IN ONE OF THESE
10 CONTRACTS, WHAT'S YOUR UNDERSTANDING OF THAT PARTICULAR
11 SENTENCE?

12 A WE SEND THE APPLICATIONS IN. WE, THE RESORT
13 OPERATORS, SEND THE APPLICATIONS IN. FROM THOSE
14 APPLICATIONS THEY MAKE UP A LIST. THEY CAN USE THAT LIST
15 INTERNALLY FOR ENHANCING A PROGRAM, CONTACTING MEMBERS FOR
16 SALE OF VARIOUS PRODUCTS, UNLESS THERE'S SOME AGREEMENT TO
17 THE SIDE RESTRICTING THAT; AND THAT THE LIST THAT THEY MADE
18 UP, THAT THEY CONSTRUCTED, THE LIST IS THEIRS, NOT THE
19 MEMBERS'. THE LIST CERTAINLY IS THEIRS. THEY PAID TO PUT
20 THE LIST TOGETHER.

21 SO MY UNDERSTANDING IS THE LIST WAS THEIRS,
22 CERTAINLY NOT THE MEMBERS'. I CAN'T IMAGINE ANY PERSON
23 EVER ENGAGING A LICENSE WITH COAST -- AND I NEVER WOULD AND
24 NEVER RECOMMEND TO MY CLIENTS -- IF COAST TOLD ME ON THE
25 FRONT END THAT ALL OF MY MEMBERS SUDDENLY WOULD BE THEIRS.
26 AND IF I DECIDED I DIDN'T WANT TO DO BUSINESS WITH COAST

1 ANYMORE, THEY HAD A RIGHT TO GO TAKE MY MEMBERS AND GIVE
2 THEM TO SOMEBODY WHO WAS DOING BUSINESS WITH COAST. I
3 WOULD NEVER EVEN DO BUSINESS WITH THEM. NO ONE WOULD.

4 Q BUT THEY DID THAT BY MAKING THE TRANSFER TO
5 OTHER THAN PLAINTIFF --

6 A CERTAINLY THEY DID IT, YES.

7 Q AND THIS -- BUT THIS SENTENCE DOESN'T SAY
8 THEY HAVE THE RIGHT TO DO THAT, DOES IT?

9 A NO. THIS SENTENCE ONLY DESCRIBES THEIR
10 RIGHT TO THE PHYSICAL LIST, NOT THE MEMBERS ON THE LIST.

11 Q WELL, ISN'T IT MORE CIRCUMSCRIBE? I HATE TO
12 USE THAT WORD.

13 ISN'T IT MORE LIMITED THAN THAT? ISN'T IT
14 THEY CAN USE THE LIST IF ITS DISCRETION FOR ENHANCEMENT OF
15 THE COAST MEMBERSHIP?

16 A EXACTLY. I BELIEVE THAT MY UNDERSTANDING
17 ALWAYS WAS AND UNDERSTANDING OF A LICENSEE'S OPERATORS WAS
18 THAT THIS LIST THAT THEY COMPILED FROM OUR MEMBERS WAS TO
19 BE USED LIMITED TO MARKETING OTHER PRODUCTS AND SERVICES
20 THAT COAST MAY (DEVELOP TO ENHANCE THE MEMBERSHIP.

21 Q OKAY. NOW, IN OTHER PLACES IN THIS
22 CONTRACT, IT EVEN BECOMES MORE CLEAR, DOESN'T IT, THAT THIS
23 SENTENCE IS TALKING ABOUT LISTS ONLY, AND NOT THE MEMBERS;
24 THAT IS, THE MEMBERS OF THE PLAINTIFFS' RESORTS BECOMING A
25 MEMBER OF COAST TO COAST?

26 A YES, THERE IS OTHER LANGUAGE IN THE CONTRACT

1 THAT SPEAKS TO THAT.

2 Q LET'S LOOK AT PAGE 1, MR. HAHN, IF YOU
3 WOULD. THERE'S A PARAGRAPH FOR DEFINITIONS. AND,
4 MR. HAHN, IF YOU WOULD BLOW UP SUBPARAGRAPH D AND E FOR ME,
5 PLEASE.

6 IT SAYS, "THE FOLLOWING TERMS SHALL HAVE THE
7 MEANS SET FORTH BELOW WHEN USED IN THIS AGREEMENT."

8 MR. HAHN, CAN YOU BLOW UP FURTHER D AND E,
9 PLEASE.

10 "MEMBERSHIP. A RIGHT TO USE A RESORT, OR
11 PORTION THEREOF, WHETHER BY PURCHASE OF A MEMBERSHIP,
12 LICENSEE, UNDIVIDED INTEREST, FEE OR OTHER INTEREST, AS MAY
13 BE OFFERED BY OWNER."

14 NOW, MR. HAHN, WOULD YOU BRING US BACK TO
15 FULL PAGE, AND THEN GO UP TO THE TOP WHERE IT STARTS WITH
16 "THIS AGREEMENT" AND BLOW UP.

17 WHO IS THE OWNER IN THIS CONTRACT, EXHIBIT
18 5? IT SAYS, "THE AGREEMENT, MADE AS OF THE 10TH DAY OF
19 JULY BY AND BETWEEN CAMP COAST TO COAST, INC., A DELAWARE
20 CORPORATION, COAST, WHOSE PRINCIPAL PLACE OF BUSINESS IS 64
21 INVERNESS DRIVE EAST, ENGLEWOOD, COLORADO, AND THE PARTY
22 NAMED AND DESCRIBED IN SCHEDULE A HERETO," IN QUOTES,
23 "OWNER."

24 ON THIS CONTRACT THE OWNER -- AND I WON'T GO
25 TO RAY NOVELLI'S SIGNATURE BECAUSE MR. RIVIN TALKED TO YOU
26 ABOUT IT.

1 BUT IN THIS AFFILIATION AGREEMENT, THE
2 OWNERS ARE THE PLAINTIFFS OR SOME OF THE PLAINTIFFS;
3 CORRECT?

4 A YES. THE OWNER WOULD BE WHOEVER THE RESORT
5 OPERATOR WAS. THE OWNER OF THE RESORT THAT SIGNS THE
6 AFFILIATION AGREEMENT, THE LICENSE AGREEMENT WITH COAST,
7 THAT'S THE OWNER.

8 MR. SHAW: NOW, MR. HAHN, WOULD YOU TAKE ME BACK TO
9 THE DEFINITIONS, SUBPARAGRAPH D AND E AND BLOW THOSE UP FOR
10 ME, PLEASE. THANK YOU.

11 Q SO IN THIS DEFINITION OF MEMBERSHIP, IT'S
12 THE USE OF THE RESORT AND SO ON, AS OFFERED BY THE OWNER,
13 WHO IN THIS CONTRACT, EXHIBIT 5, IS OR ARE THE PLAINTIFFS;
14 CORRECT? SOME OF THE PLAINTIFFS?

15 A THAT'S CORRECT, SIR.

16 Q NOW, LET'S LOOK AT "E." LET'S LOOK AT WHAT
17 THE COAST OFFERS. THEY OFFER -- AND IT SAYS "PROGRAM," IN
18 QUOTES. "A MEMBERSHIP PROGRAM OFFERED BY COAST AS
19 DESCRIBED IN THE MANUAL." NOW, THAT'S THE MANUAL WE LOOKED
20 AT THAT WAS EXHIBIT 570?

21 A YES, SIR.

22 Q SO IN THE DEFINITION, WE HAVE THE MEMBERSHIP
23 DEFINED AS THE MEMBERS OF THE OWNER. AND THE PROGRAM
24 DEFINED AS SOMETHING OFFERED BY COAST; CORRECT?

25 A THAT'S CORRECT, SIR.

26 Q MR. HAHN, WOULD YOU TAKE US TO PAGE 2,

1 PLEASE.

2 AND IF YOU COULD BLOW UP PARAGRAPH II-A-1
3 FOR ME, PLEASE.

4 UNDER NUMBER 1, I INVITE YOUR ATTENTION,
5 MR. MITCHELL. IT SAYS THAT COAST -- LET ME START AT THE
6 TOP.

7 "UPON THE TERMS AND CONDITIONS SET FORTH" --

8 A EXCUSE ME. IS THAT NUMBER TWO.

9 Q II?

10 A OKAY.

11 Q RESORT AFFILIATION, A -- AND I QUOTE, "UPON
12 THE TERMS AND CONDITIONS SET FORTH HEREIN AND IN THE
13 MANUAL, COAST HEREBY APPOINTS OWNER AS ITS LIMITED AGENT
14 FOR THE SOLE PURPOSES OF: NUMBER ONE, OFFERING TO
15 PURCHASERS OF MEMBERSHIPS, AT THE TIME OF SUCH PURCHASE,
16 THE RIGHT TO PURCHASE AN ADDITIONAL AND SEPARATE MEMBERSHIP
17 IN THE COAST PROGRAM.

18 LET'S STOP THERE. SO THE MEMBERSHIP THAT'S
19 BEING DEFINED, OFFERING THE PURCHASERS OF MEMBERSHIPS,
20 THAT'S THE PLAINTIFFS' MEMBERSHIPS BECAUSE WE SAW THE
21 DEFINITION EARLIER?

22 A THAT'S CORRECT, SIR.

23 Q AND THEN THEY CAN ALSO OFFER AN ADDITIONAL
24 AND SEPARATE MEMBERSHIP TO COAST; DO YOU SEE THAT?

25 A YES. PRIMARY PRODUCT, SECONDARY PRODUCT.

26 MR. SHAW: LET'S GO DOWN, MR. HAHN, TO PARAGRAPH

1 II-2-C, PLEASE. AND IF YOU COULD BLOW THAT UP FOR ME.

2 Q IT SAYS, "C, OWNER ACKNOWLEDGES THAT THE
3 MEMBERSHIPS ARE OWNER'S PRODUCT."

4 IT DOESN'T SAY ANYWHERE IN THERE THAT THOSE
5 ARE COAST'S MEMBERS?

6 A NO, SIR.

7 Q AND "COAST HAS NO CONTROL OVER THE NATURE
8 AND QUALITY OF THE RESORT. OWNER IS NOT RELYING ON COAST
9 TO COAST PROGRAMS FOR THE SALE OF MEMBERSHIPS," END OF
10 QUOTES.

11 AND THAT'S THE OWNER'S PRODUCT AND THE
12 OWNER'S MEMBERSHIP; IS THAT CORRECT?

13 A THAT'S CORRECT, SIR.

14 Q LET'S GO TO PARAGRAPH D.

15 MR. HAHN, WOULD YOU BLOW THAT UP FOR ME,
16 PLEASE.

17 AND THAT SAYS, AND I QUOTE, "OWNER
18 ACKNOWLEDGES AND AGREES THAT THE MEMBERSHIP IN THE RESORT
19 IS THE PRIMARY PRODUCT, AND THAT THE OPPORTUNITY TO USE
20 COAST'S PROGRAM IS A SECONDARY PRIVILEGE TO BE ENJOYED LESS
21 FREQUENTLY WHEN ITS MEMBERS DESIRE TO GO ON LONGER TRIPS.

22 "OWNER, WHETHER IN CONNECTION WITH ITS SALE
23 OF MEMBERSHIPS, IN ITS ADVERTISING, OR OTHERWISE, SHALL DO
24 NOTHING TO SUGGEST THAT THE OPPORTUNITY TO PARTICIPATE IN
25 COAST'S PROGRAMS IS OR SHOULD BE OTHER THAN A SECONDARY
26 CONSIDERATION."

1 DOESN'T SAY ANYWHERE IN THERE THAT COAST --
2 THAT THE MEMBERS OF THE RESORT BECOME COAST MEMBERS, DOES
3 IT?

4 A NO, SIR.

5 Q NOW, LET'S LOOK AT E, PARAGRAPH E.

6 WILL YOU BLOW THAT UP FOR ME, MR. HAHN.

7 NOW, THIS SAYS THAT "BY SIGNING THIS
8 AGREEMENT, OWNER AGREES TO ABIDE AND BE BOUND BY THE RULES
9 AND REGULATIONS PROMULGATED BY COAST FROM TIME TO TIME SET
10 FORTH IN COAST'S NEWSLETTERS TO RESORTS, IN THE MANUAL, AND
11 IN THIS AGREEMENT, WHICH RULES AND REGULATIONS ARE ALL
12 INCORPORATED HEREIN BY REFERENCE," END OF QUOTES.

13 NOW, YOU SEE WHERE IT SAYS "SET FORTH IN
14 COAST'S NEWSLETTERS"?

15 A YES, SIR.

16 Q THAT'S THE NEWSLETTER CALLED "INSIDE NEWS";
17 ISN'T THAT CORRECT?

18 A THAT'S CORRECT. THAT'S THE HOUSE ORGAN THAT
19 COAST SENDS TO ITS DEVELOPERS, ITS LICENSEES.

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

21 THE COURT: YOU MAY.

22 (DISCUSSION OFF THE RECORD.)

23 BY MR. SHAW: Q MR. MITCHELL, LET'S STAY WITH THE
24 CONTRACT WHERE IT SAYS, "SET FORTH IN COAST'S NEWSLETTERS."
25 NOW LET'S LOOK AT THE NEWSLETTER, EXHIBIT 285, IF WE COULD,
26 MR. HAHN.

1 WOULD YOU BLOW UP THE SECOND PARAGRAPH FOR
2 ME.

3 THIS IS THE INSIDE NEWS. THIS IS THE
4 NEWSLETTER THAT'S BEING REFERRED TO?

5 A GIVE ME JUST A MINUTE, IF YOU WOULD. I
6 DON'T KNOW IF I HAVE THAT.

7 Q LET ME PUT IT IN FRONT OF YOU, EXHIBIT 285.
8 YOU HAD IT YESTERDAY.

9 A OKAY. THANK YOU, YES.

10 Q AND I INVITE YOUR ATTENTION TO THE SECOND
11 SENTENCE OF THE SECOND PARAGRAPH WHERE IT SAYS, IN QUOTES,
12 "OUR POLICY" -- AND THAT'S COAST'S POLICY, CORRECT?

13 A THAT'S CORRECT.

14 Q IT SAYS OUR POLICY IS QUITE CLEAR, IN THAT
15 WE DO NOT LEND, RENT, SELL, OR SHARE ANY OF THE NAMES ON
16 YOUR RESORT'S LIST. END OF QUOTES.

17 NOW, IS IT YOUR UNDERSTANDING, THAT'S WITH
18 YOUR BACKGROUND, TRAINING, SKILL AND EXPERTISE AND AS A
19 FORMER LICENSEE OF COAST'S, THAT THEIR POLICY AS STATED IN
20 THIS INSIDE NEWS IS THE POLICY THAT APPLIES TO PROTECTING
21 THE PLAINTIFFS LIST?

22 A YES.

23 MR. RIVIN: OBJECTION, LEADING, YOUR HONOR.

24 THE COURT: OVERRULED.

25 MR. RIVIN: THIS IS DIRECT.

26 THE COURT: YOU CAN LEAD AN EXPERT WITNESS.

1 THE WITNESS: YES, SIR.

2 BY MR. SHAW: Q AND DESPITE THIS POLICY AND THEIR
3 AGREEMENTS AND MR. NOVELLI TELLING THEM IN EXHIBIT 39,
4 "DON'T TRANSFER OUR MEMBERS BECAUSE IT'S GOING TO CAUSE
5 SERIOUS INTERFERENCE," THEY DID IT ANYWAY?

6 A YES, SIR, THEY DID.

7 Q NOW, ONE LAST -- MR. HAHN, IF YOU CAN TAKE
8 US TO EXHIBIT 5 AGAIN AND PAGE 10. IF I CAN GET EXHIBIT
9 285 FROM YOU AGAIN. THANK YOU.

10 MR. HAHN, CAN YOU BLOW UP B, AS IN BOY,
11 PARAGRAPH FOR ME, PLEASE.

12 NOW, THIS IS A PARAGRAPH IN THE CONTRACT
13 THAT SAYS, AND I QUOTE, "THIS DOCUMENT AND THE MATERIALS
14 REFERRED TO HEREIN," AND THEN I'VE GOT --

15 A THAT PARAGRAPH --

16 Q THAT WORD HEREIN?

17 A WHICH PARAGRAPH ARE YOU ON?

18 Q "B" AS IN BOY ON PAGE 10.

19 A ALL RIGHT. THANK YOU.

20 Q IT SAYS, "THIS DOCUMENT AND THE MATERIALS
21 REFERRED TO HEREIN CONTAIN THE ENTIRE AGREEMENT OF THE
22 PARTIES AND SUPERSEDES ANY AND ALL ORAL OR WRITTEN
23 REPRESENTATIONS, STATEMENTS, INDUCEMENTS, AND PROMISE NOT
24 CONTAINED HEREIN."

25 UP IN THE FIRST PARAGRAPH WHERE IT SAYS,
26 "THE DOCUMENTS AND THE MATERIALS REFERRED TO HEREIN," WAS

1 IT YOUR UNDERSTANDING THAT THE MATERIALS REFERRED TO HEREIN
2 ARE THE MANUAL THAT WE LOOKED AT, EXHIBIT 570, THAT WAS
3 INCORPORATED BY REFERENCE?

4 A YES.

5 Q THE INSIDE NEWS NEWSLETTER THAT WAS
6 INCORPORATED BY REFERENCE?

7 A YES.

8 Q OKAY. SO THOSE ARE THE ITEMS THAT ARE BEING
9 REFERRED TO THIS PARAGRAPH?

10 A ANYTHING THAT COAST SENDS TO A DEVELOPER IN
11 ANY FORM THAT MAKES A RULE OR CHANGES A RULE OR SETS A
12 POLICY BECOMES PART OF THE LICENSE AGREEMENT, AND THE
13 DEVELOPER IS BOUND THEREBY, I GUESS.

14 Q EVEN EXHIBIT 285, THAT SAYS, "MEMBERSHIP
15 LIST PROTECTION; IT'S OUR POLICY THAT WE WILL DO NOTHING TO
16 LEND, RENT, SELL OR SHARE ANY OF THE NAMES ON YOUR RESORT'S
17 LIST"?

18 A YES. IT STATES THAT THAT BECOMES POLICY,
19 TOO. ONCE COAST WRITES IT, IT BECOMES PART OF THE
20 AGREEMENT.

21 Q LET'S LOOK AT EXHIBIT 1644.

22 THANK YOU, MR. HAHN.

23 LET'S LOOK AT 1644. IS THAT ONE OF THE
24 DOCUMENTS THAT YOU REVIEWED IN ARRIVING AT YOUR OPINION?

25 A YES, SIR.

26 Q NOW, YESTERDAY MR. RIVIN TOOK YOU THROUGH

1 THE RAGATZ REPORT. AM I PRONOUNCING IT CORRECTLY?

2 A YEAH. RICHARD RAGATZ. ONE OF THE --
3 RICHARD RAGATZ. WE DIDN'T REALLY GO THROUGH IT. HE ASKED
4 A QUESTION FROM IT, YES, SIR.

5 Q AND THIS IS ANOTHER REPORT THAT YOU REVIEWED
6 IN ARRIVING AT YOUR OPINION?

7 A YES, SIR. THIS IS A 1993 INTERNAL REPORT
8 DEVELOPED BY COAST REGARDING THE CONDITION OF THEIR
9 BUSINESS AND PROBLEMS THAT THEY HAD TO DEAL WITH.

10 Q MR. O'CONNOR, CAN YOU PUT UP THE FIRST PAGE
11 OF 1644 FOR ME, PLEASE. CAN YOU BLOW UP TAB NUMBER 3.

12 DO YOU SEE COAST TO COAST UP AT THE TOP,
13 MR. MITCHELL; THIS IS A COAST TO COAST DOCUMENT?

14 A YES, SIR.

15 Q AND IT SAYS TAB 3 IS COMPETITION. PROVIDES
16 A PROFILE OF CURRENT COMPETITIVE ORGANIZATIONS, WHICH
17 INCLUDE RESORT PARKS INTERNATIONAL, R.P.I., THOUSAND
18 ADVENTURES, INC., ALL SEASONS PRESIDENT'S CLUB. LET ME
19 STOP THERE.

20 IS ALL SEASONS PRESIDENT'S CLUB -- WAS
21 THAT -- DOES THAT HAVE ANY RELATIONSHIP TO THE PLAINTIFFS
22 IN THIS CASE?

23 A IT'S ONE OF MR. NOVELLI'S COMPANIES, AND ALL
24 SEASONS PRESIDENT'S CLUB, AND STILL MAY WELL BE.

25 Q I'D LIKE TO TALK A LITTLE BIT NOW -- AND
26 USING THIS REPORT -- ABOUT THE OWNER'S MEMBERSHIPS, THE

1 OWNER'S PRODUCT, ITS PROPRIETARY ASPECTS OF THE MEMBERS, AS
2 POINTED OUT BY COAST TO COAST ITSELF IN ITS EXHIBIT 285.

3 AND, MR. O'CONNOR, CAN YOU PUT UP THE PAGE.
4 IT STARTS WITH "COAST TO COAST INDUSTRY ISSUES MARKETING
5 COST."

6 ARE YOU WITH ME, MR. -- IT HAS A BATES STAMP
7 DOWN AT THE BOTTOM.

8 A YES. I FOUND IT. THANK YOU. YES.

9 Q COULD YOU BLOW UP THE FIRST TWO PARAGRAPHS
10 FOR ME, PLEASE.

11 NOW, THIS IS NOT -- LET ME ESTABLISH THIS,
12 MR. MITCHELL.

13 THIS IS NOT YOUR DOCUMENT? YOU DIDN'T
14 PREPARE THIS DOCUMENT?

15 A NO, SIR. THIS WAS PREPARED BY COAST.

16 Q YOU DIDN'T HAVE ANY INPUT IN THIS DOCUMENT?

17 A NOT TO MY KNOWLEDGE, SIR.

18 Q IT SAYS, "COAST TO COAST DOES NOT
19 DIRECT-SELL MEMBERSHIPS. MEMBERSHIPS ARE SOLD BY THE
20 AFFILIATED RESORTS WITH THE MEMBERSHIP ACTUALLY PURCHASED
21 AT A RESORT, BEING A HOME RESORT MEMBERSHIP, FOR WHICH THE
22 PURCHASER PAYS AN UP-FRONT FEE AND ANNUAL MAINTENANCE
23 DUES. COAST TO COAST DOES NOT COLLECT ANY COMMISSIONS OR
24 ROYALTIES ON THE MEMBERSHIP FEES OR DUES.

25 "ONCE AN INDIVIDUAL IS A MEMBER OF AN
26 AFFILIATED RESORT, HE IS THEN ELIGIBLE TO JOIN COAST TO

1 COAST FOR A SEPARATE ANNUAL FEE OF \$51 OR \$54."

2 NOW, LET'S SKIP DOWN TO THE NEXT PARAGRAPH
3 WHERE IT SAYS, "THE HIGH COST OF MARKETING CAMP RESORT
4 MEMBERSHIPS HAS ALWAYS BEEN, AND CONTINUES TO BE, A PROBLEM
5 THAT PLAGUES THE INDUSTRY, GENERALLY RUNNING AT BETWEEN 50
6 TO 70 PERCENT COST OF SALE.

7 "FOR EXAMPLE, IN THE CASE OF A MEMBERSHIP
8 SELLING AT \$5,000, THE UP-FRONT MARKETING AND SALES COSTS,
9 IN MOST CASES, WILL BE AT LEAST \$2500."

10 DO YOU SEE THAT? AND, AGAIN, THAT'S COAST'S
11 INFORMATION?

12 A YES, SIR.

13 Q AND YOU WERE A MEMBER OF THE BOARD WHEN WE
14 TALKED ABOUT IT, AND MR. RIVIN GAVE ME AN "F" FOR MY MATH
15 ON THE BOARD AND POINTED OUT I COULDN'T DO THE MATH.

16 THE 50 TO 75 PERCENT IS THE 2500 TO 3500,
17 AND THAT WAS YOUR OPINION WITHOUT REFERRING TO THE COAST
18 DOCUMENT. BUT COAST ESSENTIALLY AGREES WITH YOUR OPINION;
19 RIGHT?

20 A YES, SIR.

21 Q NOW, LET'S GO DOWN TO THE THIRD PARAGRAPH,
22 MR. O'CONNOR, AND LET'S START WITH THE SENTENCE THAT SAYS,
23 "RESORT OWNERS AND MARKETERS HAVE BEEN FORCED INTO
24 ALTERNATIVE LEAD GENERATION PROGRAMS SUCH AS REFERRALS."

25 DO YOU SEE THAT, MR. MITCHELL?

26 A YES, SIR.

1 Q AND THEN IT SAYS, "O.P.C.," WHICH IS
2 OFF-PREMISE CONTACT, "BOX AND TAKE-ONES AND EXHIBITS AT
3 MALL, R.V. SHOWS AND FAIRS, NONE OF THESE PROGRAMS PRODUCES
4 THE VOLUME OF TOURS THAT DIRECT MAIL DID, MAKING IT
5 DIFFICULT TO SELL A SUBSTANTIAL NUMBER OF MEMBERSHIPS IN A
6 REASONABLE AMOUNT OF TIME, GENERALLY TWO YEARS, TO ACHIEVE
7 A POSITIVE CASH FLOW."

8 DO YOU SEE THAT?

9 A YES, I DO. I DON'T NECESSARILY AGREE WITH
10 THE STATEMENT, BUT I SEE IT, YES.

11 Q THEN IT SAYS, "MOST RESORTS DO NOT ACHIEVE
12 THIS UNTIL AT LEAST 50 PERCENT SOLD. IN GENERAL, THE SALES
13 INVENTORY IN MOST RESORTS IS 10 MEMBERSHIPS PER R.V. SITE
14 AND 20 MEMBERSHIPS UNIT"-- "PER RENTAL UNIT."

15 NOW, IS THAT THE 10-TO-1 RULE AND 20-TO-1
16 RULE THAT WE TALKED ABOUT IN YOUR OPINION?

17 A YES, SIR. AND IT ALSO EXISTS AS A MATTER OF
18 LAW IN SOME STATES.

19 Q NOW, YOU SAY YOU DISAGREE WITH IT TAKES TWO
20 YEARS TO ACHIEVE A POSITIVE CASH FLOW. SO A DEVELOPER LIKE
21 MR. NOVELLI COMES IN, PUTS THIS MILLION DOLLARS INTO THE
22 RESORT, THEN STARTS TO SELL MEMBERSHIPS. COAST TO COAST
23 SAYS IT WILL TAKE AT LEAST TWO YEARS OF 50 TO 70 PERCENT OF
24 THE \$5,000, OR 2500 TO 3500, BEFORE THEY CAN SELL ENOUGH
25 MEMBERSHIPS TO GET POSITIVE CASH FLOW.

26 WHAT ABOUT THAT DON'T YOU AGREE WITH?

1 A WELL, I THINK IT'S KIND OF A BROAD-BRUSHED
2 APPROACH. I'D SAY TWO YEARS WOULD BE THE MINIMUM. AND
3 GIVEN A HYPO UP HERE ON -- THE AVERAGE RESORT IS GOING TO
4 NEED ABOUT 1500 MEMBERS AT 300 TO 350 A YEAR PER MEMBER, OR
5 SOMEWHERE BETWEEN \$500,000 AND \$650,000 TO OPERATE. NOW,
6 IF YOU'RE OPERATING AN UGLY PIECE OF DIRT, AND YOU'RE NOT
7 CHARGING HIGH FEES AND YOU DON'T HAVE COSTS AND
8 IMPROVEMENTS AND STAFF AND SO ON, YOU CAN DO IT IN A LESSER
9 PERIOD OF TIME.

10 SO I WOULD SAY THAT THE TWO YEARS WOULD BE
11 OPTIMISTIC, AND UNIQUE. THE AVERAGE RESORT DEVELOPER WILL
12 TAKE LONGER THAN TWO YEARS TO RECOVER THE COSTS IT TAKES TO
13 DEVELOP THE RESORT AND RECOVER THE 50 TO 70 PERCENT COST OF
14 SALES BEFORE HIS CASH IS FLOWING.

15 Q BUT THAT'S A RISK THAT THE RESORT, THE
16 PLAINTIFF, TAKES?

17 A SURE.

18 Q IS THAT CORRECT?

19 A YES.

20 Q COAST TO COAST DOESN'T TAKE THAT RISK?

21 A OH, THEY TAKE NO RISK. THE RESORT DEVELOPER
22 IS THE ONE THAT PUTS THE MONEY UP AND TAKES THE CHANCES.

23 Q IS THAT ONE OF THE REASONS WHY IN YOUR
24 OPINION IN THE COAST CONTRACTS IT SAYS THE OWNERS HAVE THE
25 PRODUCT, THE OWNERS HAVE THE MEMBERS, AND COAST TO COAST
26 WILL MAINTAIN THE PROPRIETARY ASPECT AND PROTECT THOSE

1 CUSTOMER LISTS, BECAUSE THE PLAINTIFF DEVELOPER TOOK THE
2 RISK AND SPENT THE MONEY ON DEVELOPING THOSE MEMBERS?

3 A YES. AND IF YOU WILL NOTICE IN THAT INSIDE
4 NEWSLETTER MEMORANDUM, BEYOND WHAT YOU ASKED ME, JUST BELOW
5 THAT IT STATES SPECIFICALLY THAT COAST HAS BECOME AWARE
6 THAT THESE LISTS ARE BEING PIRATED, SOLD AND GIVEN TO
7 COMPETITORS AND THAT IT'S A VALUABLE ASSET. AND COAST
8 INTENDS TO PROTECT IT FOR THE BENEFIT OF THE RESORT
9 DEVELOPER, AND THE RESORT DEVELOPER BETTER PROTECT IT
10 HIMSELF.

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

13 THE COURT: YOU MAY.

14 (DISCUSSION OFF THE RECORD.)

15 MR. SHAW: MR. O'CONNOR, WOULD YOU GIVE ME PAGE 3,
16 THE TOP OF THE PAGE. THE NEXT PAGE. COULD YOU BLOW UP THE
17 FIRST PARAGRAPH FOR ME.

18 Q I JUST WANT TO FOCUS ON THE FIRST SENTENCE,
19 MR. MITCHELL. THIS IS A DOCUMENT, A COAST DOCUMENT --

20 A WHAT PAGE ARE YOU ON, SIR?

21 Q THE BOTTOM PAGINATED PAGE 3 DOWN AT THE
22 BOTTOM. THE TOP, IT SAYS, "LACK OF FINANCING." ARE YOU
23 WITH ME?

24 A YES.

25 Q "FURTHER EXACERBATING THE MARKETING DILEMMA
26 IS THE LACK OF ACQUISITION, DEVELOPMENT AND END-LOAN

1 (RECEIVABLES) FINANCING. FINDING END-LOAN FINANCING HAS
2 BEEN PARTICULARLY TROUBLING TO THE COAST TO COAST
3 AFFILIATE. WITH UP-FRONT MARKETING COSTS ANYWHERE BETWEEN
4 50 TO 70 PERCENT."

5 THAT'S THE NUMBER WE LOOKED AT EARLIER?

6 A YES, SIR.

7 Q "AND CASH DOWN PAYMENTS ON MEMBERSHIPS AT
8 GENERALLY NO MORE THAN 20 PERCENT, THE SALE OF A MEMBERSHIP
9 BECOMES A CASH-NEGATIVE TRANSACTION."

10 DID YOU TAKE INTO CONSIDERATION THOSE TWO
11 SENTENCES IN ARRIVING AT YOUR OPINION IN THIS CASE THAT THE
12 TRANSFERS BY THOSE TRANSFER LETTERS AND THE 34,000 LETTERS
13 CAUSED THE DAMAGE TO THE PLAINTIFFS IN THIS CASE?

14 A YES, SIR.

15 MR. SHAW: LET'S LOOK AT -- MR. O'CONNOR, WOULD YOU
16 BLOW UP THE TWO PARAGRAPHS, MEMBERSHIP PRICING.

17 Q AND IN THE FIRST SENTENCE IT SAYS,
18 "EXORBITANT MARKETING COSTS AND LACK OF END-LOAN FINANCING
19 HAVE CREATED THE PHENOMENON OF GIVEAWAY OR LOW-COST
20 MEMBERSHIPS THAT WERE VIRTUALLY UNHEARD OF IN THE EARLY AND
21 MID-80'S WHEN MEMBERSHIPS RARELY SOLD FOR LESS THAN \$4,000,
22 \$5,000." AND MR. RIVIN ERASED MY "GIVE-AWAY."

23 BUT IS THAT THE DIFFERENCE BETWEEN THE TWO
24 RESORTS THAT YOU GAVE YOUR OPINION ON, THAT IS, ONE SELLS
25 THE MEMBERSHIPS AT 4- TO 5,000, AND THE OTHER HAS A
26 GIVEAWAY PROGRAM?

1 A YES, SIR.

2 Q AND THEN THE SECOND PARAGRAPH UNDER
3 "MEMBERSHIP PRICING" WHERE IT STARTS, "THIS SITUATION HAS
4 CREATED A MAJOR INDUSTRY CONTROVERSY IN WHICH COAST TO
5 COAST HAS BEEN CAUGHT IN THE MIDDLE. THE HIGHER PRICED
6 RESORTS ARE SCREAMING THAT THEIR MARKETING COSTS ARE RISING
7 EVEN HIGHER BECAUSE OF CONSUMER AWARENESS OF GIVEAWAY
8 MEMBERSHIPS. MANY OF THESE SCREAMERS SEE IT AS INCUMBENT
9 ON COAST TO COAST TO BECOME INVOLVED, WHICH THE ANTITRUST
10 LAWS PROHIBIT US FROM DOING. THE DILEMMA FOR COAST TO
11 COAST IS THAT WHILE GIVING-AWAY MEMBERSHIPS MAY BE A
12 FINANCIALLY SOUND BUSINESS COURSE OF ACTION, IT'S PERCEIVED
13 BY SOME TO FLY IN THE FACE OF OUR BASIC PREMISE THAT THE
14 PRIMARY PRODUCT IS THE HOME RESORT, NOT THE COAST TO COAST
15 SYSTEM."

16 DID YOU USE ANY OF THIS LANGUAGE IN ARRIVING
17 AT YOUR OPINION IN THIS CASE?

18 A I'M SORRY?

19 Q DID YOU USE THIS CONCEPT OF THE GIVEAWAY?

20 A OH, YEAH. I WAS FULLY AWARE OF IT. THIS
21 REINFORCED WHAT I ALREADY KNEW, AND I CERTAINLY USED THIS
22 AS LIKE A SUPPORT FOR PROPOSITION IN ANY OPINIONS, YES,
23 SIR.

24 MR. SHAW: LET'S GO TO PAGE NUMBER 4,
25 MR. O'CONNOR, PAGINATED PAGE 4 DOWN AT THE BOTTOM. CAN YOU
26 BLOW UP THE VERY LAST PARAGRAPH FOR ME THAT SAYS

1 "COMPETITION" DOWN AT THE BOTTOM, PLEASE.

2 "IN 1981, RESORT PARKS INTERNATIONAL WAS
3 STARTED AS ANOTHER CAMP RESORT RECIPROCAL USE SYSTEM.
4 COAST TO COAST ATTEMPTED TO CREATE EXCLUSIVITY WITH ITS
5 AFFILIATES; HOWEVER, R.P.I. LEGALLY CHALLENGED THAT AND
6 PREVAILED."

7 WILL YOU GO ON TO THE NEXT PAGE,
8 MR. O'CONNOR. AND IF YOU WILL BLOW UP THE LAST TWO
9 PARAGRAPHS.

10 MR. RIVIN: YOUR HONOR, I'D LIKE TO HAVE ANOTHER
11 SIDEBAR, PLEASE, TO DISCUSS THE MATTER WE JUST TALKED ABOUT
12 IN THE LAST ONE.

13 THE COURT: MR. SHAW?

14 (DISCUSSION OFF THE RECORD.)

15 (THE FOLLOWING PROCEEDINGS WERE HELD IN
16 CHAMBERS:)

17 MR. RIVIN: THANK YOU, YOUR HONOR.

18 I HAVE -- I MADE ONE OBJECTION DURING THE
19 COURSE OF MR. MITCHELL'S REDIRECT ON THE BASIS THAT
20 MR. SHAW WAS LEADING THE WITNESS. YOUR HONOR RULED THAT
21 THE -- YOU CAN LEAD AN EXPERT. I DON'T BELIEVE THAT'S
22 CORRECT. I BELIEVE THAT YOU CAN CROSS-EXAMINE AN EXPERT
23 WITH LEADING QUESTIONS. I DON'T BELIEVE THAT YOU CAN LEAD
24 AN EXPERT ON DIRECT. I THINK THAT'S IMPROPER. AND I THINK
25 THAT'S EXACTLY WHAT MR. SHAW IS DOING. IT'S WHAT HE HAS
26 BEEN DOING THROUGHOUT THE MORNING IN LEADING THIS WITNESS

1 THROUGH DOCUMENTS THAT ARE HEARSAY. THE WITNESS HASN'T
2 TESTIFIED AS TO PASSAGES THAT HE RELIED UPON.

3 WHAT MR. SHAW IS DOING IS SHOWING HIM
4 SPECIFIC PASSAGES, AND THEN MR. MITCHELL HE WANTS TO DO --
5 JUST SIMPLY SAYS, "YES, I RELIED UPON THAT." THAT IS NOT
6 PROPER. THAT IS LEADING.

7 AND BY DOING THIS, WHAT MR. SHAW IS DOING IS
8 ESSENTIALLY SHOWING TO THE JURY A DOCUMENT WHICH IS NOTHING
9 BUT HEARSAY. IT IS NOT OTHERWISE ADMISSIBLE. AND HE IS
10 GETTING AROUND THE GENERAL RULE THAT AN EXPERT CAN RELY
11 UPON HEARSAY, AND I UNDERSTAND THAT AN EXPERT CAN RELY UPON
12 HEARSAY. BUT YOU CAN'T GET THE HEARSAY BEFORE THE JURY IN
13 THIS MANNER SIMPLY BY READING IT TO THE JURY. AND THAT'S
14 WHAT WE'RE SEEING.

15 NORMALLY WITH AN EXPERT WHO RELIES UPON
16 HEARSAY, THE EXPERT CAN TALK ABOUT THE DOCUMENT. THE
17 EXPERT CAN SAY THE MANNER IN WHICH HE RELIED UPON THE
18 DOCUMENT. BUT WHAT WE'RE DOING IS WE'RE GOING THROUGH THE
19 ENTIRE DOCUMENT, PARAGRAPH -- AND NOT EVERY PARAGRAPH, BUT
20 WE'VE HAD THE LAST 10 MINUTES OF TESTIMONY ABOUT THIS
21 DOCUMENT WITH MR. SHAW READING IT TO THE JURY. THIS IS
22 GETTING THIS DOCUMENT BEFORE THE JURY WHEN IT'S NOT
23 ADMISSIBLE. IT'S INAPPROPRIATE. AND I WANTED TO MAKE
24 THOSE OBJECTIONS ON THE RECORD.

25 MR. SHAW: AND I WANT TO RESPOND TO SEVERAL.

26 IT'S NOT HEARSAY. IT'S A COAST TO COAST

1 DOCUMENT. IT'S AN ADMISSION BY A PARTY OPPONENT, EXCEPTION
2 TO THE HEARSAY RULE. THERE'S NO DOUBT ABOUT THE FOUNDATION
3 AND THE AUTHENTICATION OF THIS DOCUMENT. IT IS A COAST TO
4 COAST DOCUMENT.

5 MR. RIVIN ON CROSS-EXAMINATION YESTERDAY
6 TOOK A RAGATZ DOCUMENT NOT CREATED BY ANY OF THE PARTIES IN
7 THIS CASE. I OBJECTED THAT IT WAS NOT A DOCUMENT THAT --
8 RELIED ON BY THIS EXPERT. MR. RIVIN PUT IT UP AND READ
9 LINE-BY-LINE THROUGH THAT DOCUMENT. I BELIEVE HE HAS
10 OPENED THE AREA ABOUT REPORTS AS TO WHAT REPORTS CAN BE
11 REVIEWED.

12 THIS HAS -- GETS OVER THE HEARSAY RULE OR IS
13 AN EXCEPTION TO THE HEARSAY RULE. AND I BELIEVE HE HAS GOT
14 EVERY RIGHT TO TALK ABOUT IT.

15 AS TO THE LEADING, I THINK VERY SIMPLY AN
16 EXPERT CAN BE LED. I DON'T KNOW. COUNSEL HASN'T MET HIS
17 BURDEN OF SHOWING ANY EVIDENCE CODE SECTION OR ANY CASE LAW
18 THAT SAYS THAT AN EXPERT CAN'T BE LED.

19 BUT AS TO THIS DOCUMENT, IT'S NOT HEARSAY,
20 NUMBER ONE; NUMBER TWO, AN EXPERT CAN RELY ON HEARSAY, EVEN
21 IF IT IS, EVEN IF MY EXCEPTION TO THE HEARSAY RULE DOESN'T
22 APPLY AS A COAST TO COAST DOCUMENT. HE CAN RELY ON A
23 HEARSAY DOCUMENT. HE DID RELY ON IT, AND HE IS TESTIFYING
24 ABOUT IT. AND I CAN ASK THE LEADING QUESTIONS.

25 MR. RIVIN: LET ME JUST MENTION WHAT I DID WITH
26 MR. MITCHELL YESTERDAY WITH THE RAGATZ SURVEY.

1 MR. MITCHELL TESTIFIED ON DIRECT THAT AMONG THE DOCUMENTS
2 THAT HE RELIED UPON IN FORMING HIS OPINIONS WAS THE RAGATZ
3 SURVEY, THE RAGATZ STUDY. AND WHAT I DID IS TAKE THE
4 RAGATZ STUDY -- NOT GO THROUGH IT PAGE-BY-PAGE. I WENT TO
5 ONE SPECIFIC PROVISION IN THE RAGATZ STUDY, AND I ASKED
6 MR. MITCHELL WHETHER HE TOOK THAT INTO CONSIDERATION IN
7 FORMING HIS OPINIONS. THAT'S ABSOLUTELY THE APPROPRIATE
8 WAY TO USE THAT TYPE OF A DOCUMENT. AND THAT'S WHAT I DID
9 WITH IT. AND THAT WAS ALL -- AND I PUT THAT PASSAGE, THAT
10 ONE PASSAGE UP ON THE SCREEN.

11 THAT'S NOT WHAT MR. SHAW IS DOING. HE IS
12 GOING THROUGH, AND HE IS BASICALLY USING MR. MITCHELL TO
13 MAKE HIS ARGUMENT IN THE CASE. HE IS USING MR. MITCHELL TO
14 BE ABLE TO JUST GO THROUGH THAT DOCUMENT
15 PAGE-BY-PAGE-BY-PAGE. HIS QUESTIONS ARE LEADING AND
16 THEY'RE IMPROPER.

17 THE COURT: OKAY. SUBMIT?

18 MR. SHAW: SUBMIT.

19 THE COURT: OBJECTION IS OVERRULED.

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

22 BY MR. SHAW: Q MR. MITCHELL, LET'S GO BACK TO
23 EXHIBIT 1644.

24 AND, MR. O'CONNOR, IF YOU WOULD GO BACK TO
25 THAT. IF YOU WILL DO PAGE 4 FOR ME FIRST.

26 I'M SORRY. IT WOULD BE PAGE 5 DOWN AT THE

1 BOTTOM. ONE MORE PAGE. THE LAST TWO PARAGRAPHS.

2 MR. MITCHELL, THESE TWO PARAGRAPHS, ONE SAYS
3 THAT "THE PRESIDENT'S CLUB, ANOTHER RECIPROCAL SYSTEM
4 OPERATED BY RAY NOVELLI, OWNER OF ALL SEASONS RESORTS, IS
5 VIRTUALLY IDENTICAL IN MODUS OPERANDI TO A.O.R."

6 WHO IS A.O.R.?

7 A THAT'S A RECIPROCAL PROGRAM THAT WAS
8 DEVELOPED IN FLORIDA BY ONE OF COAST'S LICENSEES AND SOME
9 OTHER INDIVIDUALS. AND THEY PREDOMINANTLY -- THEY HAD
10 ABOUT 40 -- MY RECOLLECTION IS 40, 45 PROPERTIES, MAYBE 60.

11 Q IS THAT "ADVENTURE OUTDOOR RESORTS"?

12 A YES, SIR. I'M SORRY. I THOUGHT YOU WANTED
13 AN UNDERSTANDING OF WHAT IT WAS.

14 Q IT SAYS, "THAT SYSTEM NOW HAS 45 RESORTS
15 WITH 60,000 MEMBERS, 44- OF WHICH ARE COAST TO COAST
16 AFFILIATED."

17 THAT'S THE PRESIDENT'S CLUB. THAT'S
18 MR. NOVELLI. THAT'S ONE OF THE PLAINTIFFS IN THIS CASE;
19 CORRECT?

20 A THAT'S CORRECT. AND I BELIEVE THE
21 PRESIDENT'S CLUB EXISTED BEFORE A.O.R. I COULD BE WRONG,
22 BUT I THINK IT DID.

23 Q THE NEXT PARAGRAPH SAYS, "IN SUMMARY, COAST
24 TO COAST FACES COMPETITION ON SEVERAL FRONTS. WITH
25 R.P.I. -- AND THAT'S THE RESORT PARKS INTERNATIONAL?

26 A THAT'S CORRECT.

1 Q "WE ARE COMPETING NOT ONLY FOR THE LOYALTY
2 OF EXISTING MEMBERS WHO HOLD DUAL MEMBERSHIPS BUT FOR NEW
3 MEMBER SALES, AS WELL. NOW MORE THAN EVER WE ARE FEELING
4 COMPETITION FROM R.P.I. IN AFFILIATING NEW RESORTS. R.P.I.
5 HAS GROWN TO A SYSTEM OF 276 CAMP RESORTS AND 42
6 CONDOMINIUM DEVELOPMENTS. OF THE 276 R.P.I. CAMP RESORTS,
7 226 ARE ALSO COAST TO COAST AFFILIATES. ON PAPER, AT
8 LEAST, THEY LOOK VIABLE. WE RECENTLY HAVE LOST TWO
9 AFFILIATES WHO CHOSE R.P.I. OVER COAST TO COAST."

10 MR. -- CAN YOU GO ON TO THE NEXT PAGE,
11 MR. O'CONNOR. BLOW UP THE FIRST PARAGRAPH AT THE TOP.

12 IT SAYS, "WITH THOUSAND ADVENTURES, A.O.R.
13 AND THE PRESIDENT'S CLUB, OUR CONCERN IS AT WHAT POINT THE
14 MEMBERS OF THOSE SYSTEMS WILL FEEL THEY ARE ADEQUATE ENOUGH
15 SO THAT THEIR COAST TO COAST MEMBERSHIP IS NO LONGER
16 NEEDED. FOR THE SYSTEMS THEMSELVES, THE QUESTION IS AT
17 WHAT POINT WILL THEY BECOME LARGE ENOUGH WHERE THEY CAN
18 STAND ALONE OR JOIN TOGETHER AND PULL OUT OF COAST TO
19 COAST," END OF QUOTES.

20 NOW, THE EXHIBIT 59, MR. NOVELLI SENT A
21 LETTER TAKING HIS PLAINTIFFS OUT OF COAST TO COAST SYSTEM?

22 A YES, SIR.

23 Q HE DIDN'T TAKE THEM OUT OF A RECIPROCAL USE
24 SYSTEM?

25 A NO. HE HAD THE PRESIDENT'S CLUB, WHICH IS
26 IDENTIFIED IN HERE. AND IT'S MY UNDERSTANDING THAT HE WAS

1 NEGOTIATING WITH R.P.I. AND THEN SUBSEQUENTLY MADE
2 AGREEMENT. SO THEY WOULD HAVE HAD A RECIPROCAL SYSTEM
3 EQUAL TO IF NOT BETTER THAN COAST'S.

4 Q SO INSTEAD OF COAST, HE WAS USING R.P.I. OR
5 ALL PRESIDENT'S CLUB, THE THINGS THAT WE LOOKED AT UP THERE
6 POINTED OUT BY COAST IN EXHIBIT 1644?

7 A YES.

8 Q CORRECT?

9 A THAT'S CORRECT, SIR.

10 Q NOW, I WANT TO -- BEFORE WE GO ON TO ANOTHER
11 REPORT, I WANT TO TALK ABOUT FIESTA VILLAGE FOR JUST A
12 BRIEF MOMENT.

13 YESTERDAY YOU TESTIFIED AND MR. RIVIN SHOWED
14 YOU SOME OF MR. NOVELLI'S DEPOSITION TESTIMONY ABOUT FIESTA
15 VILLAGE. DO YOU REMEMBER THAT?

16 A I REMEMBER TALKING ABOUT FIESTA VILLAGE. I
17 DON'T REMEMBER IT SPECIFICALLY.

18 Q AND MR. --

19 A REFRESH ME.

20 Q AND I'M PARAPHRASING. MR. NOVELLI SAID THE
21 BANK WENT OUT OF BUSINESS?

22 A CORRECT. THE BANK WENT OUT -- I THINK IT
23 WAS TAKEN OVER BY WHATEVER FEDERAL REGULATORY AGENCY
24 OVERSAW THAT BANK. I DON'T REMEMBER WHETHER IT WAS STATE
25 BANK OR FEDERAL BANK OR WHATEVER, BUT THAT'S CORRECT. THE
26 BANK WENT BROKE, AND THE FEDS TOOK IT OVER.

1 Q SO HE WENT INTO THE FIESTA VILLAGE WITH THIS
2 COMPANY, MADE A MILLION DOLLARS, I BELIEVE YOUR TESTIMONY
3 WAS?

4 A IT MIGHT HAVE BEEN SOMETHING LESS THAN
5 THAT. HE PAID, I THINK, THREE HUNDRED SOME ODD THOUSAND IN
6 CONTRACTS. HE PAID ANOTHER \$350,000 IN CASH. AND THEN HE
7 INCURRED EXPENSES.

8 Q AND THEN --

9 A 800,000 PLUS.

10 Q AND THEY CLOSED DOWN THE PARK?

11 A I WAS NOT INVOLVED IN THAT. I HEARD THAT
12 FROM TESTIMONY, YES.

13 Q OKAY. AND WHAT -- ASSUME WITH ME THIS
14 HYPOTHETICAL: WHAT IF MR. NOVELLI DIDN'T COME ALONG?

15 A WELL --

16 Q WHAT WOULD HAVE HAPPENED?

17 A WHEN I WAS INVITED TO LOOK AT THE PROBLEM
18 AND FIX IT, THE STATE OF CALIFORNIA, DEPARTMENT OF
19 CORPORATIONS, HAD CLOSED THE PARK.

20 Q SO THE PARK WAS ALREADY CLOSED?

21 A YES. AND THEY WERE -- SO MEMBERS DIDN'T
22 HAVE ACCESS TO IT, AND IT WAS NONOPERATIONAL. AND HAD
23 MR. NOVELLI NOT COME INTO IT, THE PARK WOULD HAVE STAYED
24 CLOSED. THE PEOPLE WHO OWNED THE PARK WOULD HAVE BEEN
25 SUFFERABLE TO, AT THE MINIMUM, FINES, AND THERE MAY HAVE
26 BEEN SOME OTHER HARMS. THE LENDERS WOULD HAVE LOST THE

1 MONEY. THE MEMBERS WOULD HAVE HAD NOTHING.

2 Q NOW, DIFFERENT SUBJECT.

3 MR. RIVIN ASKED YOU ABOUT EXHIBIT 62
4 YESTERDAY HAVING TO DO WITH SOME LETTERS?

5 A OH, THE LETTERS FROM PEOPLE WHO WERE
6 TRANSFERRED BY COAST, AND THEY WROTE LITTLE NOTES ON THEIR
7 BILLS.

8 Q CORRECT. AND WE LOOKED AT A FEW OF THOSE.

9 A YES, SIR.

10 Q I THINK MR. RIVIN SHOWED YOU FIVE YESTERDAY?

11 A YES, SIR.

12 Q AND OF THOSE FIVE, JUST SO WE CAN PUT IT IN
13 CONTEXT, 34,000 LETTERS, COAST LETTERS, WENT OUT --

14 A YES, SIR.

15 Q -- TO PLAINTIFFS' MEMBERS. 23,000 -- AND
16 THESE ARE FROM COAST'S OWN DOCUMENTS. 23,000 LEFT THE
17 PLAINTIFFS?

18 A YES, SIR.

19 Q AS MR. NOVELLI SAID THEY WOULD -- SAID, "IF
20 YOU SEND LETTERS TO MY PEOPLE, THAT SERIOUS INTERFERENCE
21 WOULD HAPPEN. WE LOOKED AT THAT ON EXHIBIT 39; RIGHT?

22 A YES, SIR.

23 Q AND WE LOOKED AT FIVE LETTERS ABOUT THE
24 COAST TO COAST. IS THAT A SIGNIFICANT NUMBER TO YOU, IN
25 TERMS OF 34,000 BEING SENT?

26 A WELL, FIRST OF ALL, THEY WEREN'T LETTERS.

1 THEY WERE NOTES ON BILLS THAT WERE SENT FOR MONIES THAT
2 WERE DUE BY THOSE FOLKS. BUT I THINK THERE WERE LETTERS
3 BECAUSE HE ASKED ME ABOUT LETTERS. I SAW LETTERS.

4 NO. IT'S ABSURD. 34,000 VERSUS 5.
5 LET'S -- I'M NOT AN EXPERT IN STATISTICAL ANALYSIS, BUT
6 A STATISTICIAN WOULD TELL YOU THAT YOU NEED MORE NUMBERS TO
7 DRAW ANY KIND OF CONCLUSIONS AT ALL.

8 Q LET'S SAY IT WAS 500 LETTERS. LET'S SAY
9 MR. RIVIN SHOWED 500 LETTERS YESTERDAY, NOT FIVE. ASSUMING
10 THAT, IS THAT -- IN YOUR OPINION, IS THAT SOMETHING
11 SIGNIFICANT, AS FAR AS RENDERING YOUR OWN OPINION, THAT THE
12 TRANSFER BY COAST TO COAST, DESPITE MR. NOVELLI TELLING
13 THEM NOT TO AND DESPITE THEIR OWN CONTRACTS SAYING THEY
14 COULDN'T DO IT, THAT THAT TRANSFER CAUSED DAMAGE TO THE
15 PLAINTIFFS?

16 A WELL, YES. WHAT YOU HAVE IS THE TIP OF THE
17 ICEBERG PROGRAM. THE PEOPLE WHO SEND A LETTER, A --
18 COMMUNICATING ABOUT A PROBLEM OR A CIRCUMSTANCE, REPRESENT
19 A SMALL PERCENTAGE AGAINST THE TOTAL POPULATION BASE THAT
20 IS IN FACT IMPACTED BY IT. AND CERTAINLY THE MOST DRAMATIC
21 THING WITH REGARD TO THOSE LETTERS IS THAT THE MAJORITY OF
22 THEM THAT I SAW WERE NOT LETTERS, BUT RATHER NOTES ON
23 STATEMENTS.

24 AND THE LANGUAGE WAS ALL THE SAME. THE
25 LANGUAGE DISTURBED ME BECAUSE IT ALWAYS SAID TRANSFERRED,
26 TRANSFERRED, TRANSFERRED. AND THAT'S TOTALLY INCONSISTENT

1 WITH THE NORMAL BEHAVIOR OF MEMBERS.

2 Q AND I'M NOT GOING TO TAKE YOU THROUGH A LOT
3 OF LETTERS, BUT I'M GOING TO SHOW YOU EXHIBIT 1618.

4 MR. MOSHENKO: MR. DURAN, OUR PAGES ARE 155, 166..

5 MR. DURAN: THE NINTH PAGE IN.

6 MR. MOSHENKO: IS IT THE ONE WITH 160 AT THE
7 BOTTOM?

8 MR. SHAW: CORRECT.

9 MR. RIVIN: ONE MOMENT, PLEASE.

10 MR. SHAW: YES.

11 MR. RIVIN: YOUR HONOR, COULD WE GET A FOUNDATION
12 LAID FOR THESE DOCUMENTS? I WANT TO MAKE SURE THAT THE
13 WITNESS KNOWS WHAT THESE DOCUMENTS ARE.

14 MR. SHAW: I'D BE HAPPY TO.

15 Q ARE THESE -- CAN YOU IDENTIFY EXHIBIT 1618?
16 AND I'M ASKING YOU NOW SPECIFICALLY FOR THE ONE THAT HAS
17 THE BATES STAMP PTE 08362.

18 A YES, SIR.

19 Q AND WHAT IS THAT DOCUMENT?

20 A THIS DOCUMENT LOOKS LIKE A PAYMENT HISTORY.

21 Q I'M SORRY, MR. MITCHELL. HAVE YOU SEEN IT
22 BEFORE?

23 A YESTERDAY WHEN I WAS REVIEWING DOCUMENTS
24 WITH -- MR. RIVIN ASKED ME ABOUT THIS IS PART OF THEM, YES,
25 SIR.

26 Q THIS IS WHAT PART OF WHAT THE QUESTIONING

1 MR. RIVIN HAD OF YOU YESTERDAY?

2 A YES. AND I'D SEEN THEM BEFORE, AND I DIDN'T
3 REMEMBER THE SPECIFIC DOCUMENT UNTIL HE WENT THROUGH
4 DOCUMENTS YESTERDAY.

5 Q BUT IS THIS ONE OF THE DOCUMENTS THAT
6 PREVIOUSLY YOU REVIEWED IN --

7 A THIS IS PART OF A PACKAGE OF MATERIALS. IT
8 WAS A LARGE GROUP OF THEM, YES. INCLUDED LETTERS.
9 MR. RIVIN ORIGINALLY ASKED ME ABOUT LETTERS, AND I SAID I
10 HAD ONLY SEEN ONE I THOUGHT AND -- AS OPPOSED TO THESE
11 STATEMENTS WITH NOTES ON THEM.

12 MR. RIVIN: I THINK WE STILL DON'T HAVE A
13 FOUNDATION, YOUR HONOR. MR. SHAW ASKED THE WITNESS IF HE
14 HAD REVIEWED THE DOCUMENT, AND MR. MITCHELL SAID, "I
15 REVIEWED A PACKET." LACK OF FOUNDATION.

16 THE COURT: REPHRASE.

17 BY MR. SHAW: Q YOU -- IN ARRIVING AT YOUR
18 OPINION, YOU REVIEWED A LOT OF LETTERS AND HANDWRITTEN
19 NOTES THAT TALKED ABOUT MEMBERSHIPS BEING TRANSFERRED; IS
20 THAT CORRECT?

21 A YES, SIR.

22 Q AND YOU USED THAT INFORMATION AND REVIEWED
23 THAT INFORMATION TO ARRIVE AT YOUR OPINION IN THIS CASE
24 THAT THE COAST TO COAST TRANSFER OF PLAINTIFFS' MEMBERS,
25 DESPITE BEING ASKED NOT TO, AND DESPITE THE CONTRACT SAYING
26 THEY COULDN'T DO IT, CAUSED DAMAGE TO THE PLAINTIFFS;

1 CORRECT?

2 A THIS INFORMATION WAS PART OF THE MATERIAL I
3 REVIEWED TO COME TO THAT POSITION, YES, SIR.

4 MR. SHAW: YOUR HONOR, I'D LIKE TO PUT UP -- THIS
5 IS AN EXPERT. HE IS RELYING ON DOCUMENTS TO ARRIVE AT HIS
6 OPINION. I'D LIKE TO PUT IT UP ON THE OVERHEAD. MR. RIVIN
7 PUT HIS UP YESTERDAY.

8 THE COURT: YES. PROCEED.

9 MR. SHAW: MR. O'CONNOR, WOULD YOU PUT UP --

10 MR. RIVIN: NO OBJECTION, YOUR HONOR.

11 MR. SHAW: CAN YOU BLOW UP THE HANDWRITTEN.

12 Q DO YOU SEE THAT, MR. MITCHELL? WHAT ABOUT
13 THAT LANGUAGE, SAYING TRANSFERRED TO EMERALD COVE IN 1997
14 BY COAST TO COAST, LED YOU TO YOUR CONCLUSION THAT COAST TO
15 COAST CAUSED DAMAGE TO THE PLAINTIFFS?

16 A WELL, AGAIN, THE WORD "TRANSFERRED," WHICH
17 IS CONSISTENT WITH THE LANGUAGE IN THE LETTER THAT COAST
18 USED, AND TOTALLY INCONSISTENT WITH ANY OFFERINGS I HAD
19 EVER SEEN FROM MEMBERS BEFORE WITH REGARD TO THESE TYPES OF
20 SITUATIONS. SO OBVIOUSLY THERE'S A CORRELATION BETWEEN
21 THIS MEMBER LEAVING OR DISCONTINUING MR. -- THE PLAINTIFFS'
22 RESORTS, AND THE LETTER THAT WAS SENT BY COAST TO COAST.
23 OTHERWISE, WE WOULDN'T BE HAVING THE SAME LANGUAGE,
24 "TRANSFERRED." AND IT WOULDN'T BE SO AFFIRMATIVE AS THIS
25 IS, AN ACT THAT HAS HAPPENED, AND THAT'S THE WAY IT IS.
26 AND GOODBYE.

1 Q I'M ONLY GOING TO LOOK AT ONE OTHER ONE.
2 I'M NOT EVEN GOING TO TAKE YOU THROUGH FIVE LIKE MR. RIVIN
3 SHOWED YOU. I'M JUST GOING TO SHOW YOU ONE MORE.

4 BUT THERE ARE A LOT OF LETTERS LIKE THIS
5 THAT TALK ABOUT BEING TRANSFERRED BY COAST TO COAST; IS
6 THAT RIGHT?

7 A YES, SIR.

8 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

9 THE COURT: OVERRULED. HE SAID HE HAS REVIEWED
10 THEM.

11 BY MR. SHAW: Q AND, NOW, ONE LAST ONE. IF YOU
12 COULD PUT UP BATES STAMP PTE 08385.

13 THIS IS ANOTHER LETTER THAT YOU LOOKED AT.

14 COULD YOU BLOW UP THE HANDWRITING,

15 MR. O'CONNOR.

16 A COULD YOU GIVE ME THAT NUMBER AGAIN, THE
17 BATES NUMBER?

18 Q YEAH. LET ME JUST SHOW IT TO YOU.

19 A THIS IS A LITTLE DIFFERENT.

20 Q WHILE YOU'RE LOOKING AT IT, I'LL FIND IT FOR
21 YOU JUST TO MAKE SURE WE HAVE IT IN OUR -- IT'S THERE. I
22 JUST WANTED TO MAKE SURE IT WAS IN THE EXHIBIT BOOK ALSO.

23 WHAT ABOUT THAT LETTER LED YOU TO YOUR
24 OPINION THAT COAST TO COAST TRANSFERRED, DESPITE
25 MR. NOVELLI ASKING THEM NOT TO, AND DESPITE THE CONTRACT
26 SAYING THEY COULDN'T DO IT, CAUSED DAMAGE TO THE

1 PLAINTIFFS?

2 A WELL, THE OPENING LINE IN THE LETTER SAYS,
3 "I'VE BEEN TRANSFERRED BY COAST." OBVIOUS AS A BRICK.

4 Q I'D LIKE TO MOVE TO ANOTHER SUBJECT,
5 MR. MITCHELL, SPECIFICALLY THE SUBJECT OF A DOCUMENT THAT
6 YOU REFERRED TO ON DIRECT EXAMINATION. AND THEN MR. RIVIN
7 ASKED YOU SOME QUESTIONS ABOUT REPORTS THAT YOU REVIEWED.
8 AND YOU TALKED ABOUT THE HENRY ALLEN REPORT?

9 A YES, SIR.

10 Q THAT'S EXHIBIT 1711. I'D LIKE TO HAVE YOU
11 GET THAT IN FRONT OF YOU.

12 MR. RIVIN: YOUR HONOR, I BELIEVE THIS GOES BEYOND
13 THE SCOPE OF THE DIRECT. I DID NOT ASK THE WITNESS
14 ANYTHING ABOUT THE HENRY ALLEN REPORT TO THE BEST MY
15 RECOLLECTION.

16 THE COURT: I DON'T RECALL HE DID.

17 MR. SHAW: MR. RIVIN IS CORRECT, AS DIFFICULT AS
18 THAT IS FOR ME TO ADMIT.

19 AND, MR. MITCHELL, I HAVE NOTHING FURTHER.
20 THANK YOU.

21 THE COURT: ANY REDIRECT -- I MEAN, RE-CROSS?

22 MR. RIVIN: YES, YOUR HONOR. I DO HAVE SOME.

23 THE COURT: DO YOU NEED A BREAK YET?

24 THE JURY: YES.

25 THE COURT: OKAY. TAKE 20.

26 (RECESS TAKEN.)

1 (THE FOLLOWING PROCEEDINGS WERE HELD IN
2 CHAMBERS:)

3 MR. SHAW: EXHIBIT 1711 IS THE -- I PUT IT BEFORE
4 YOUR HONOR, BUT IT'S THE SALE AND MARKETING ANALYSIS AND
5 THE RECOMMENDATIONS PREPARED FOR COAST TO COAST RESORTS.
6 ON DIRECT EXAMINATION A COUPLE OF DAYS AGO WE WERE NOT
7 ABLE -- I MOVED THIS INTO EVIDENCE, AND WE WERE -- LACK OF
8 FOUNDATION. IT WAS NOT ABLE TO COME INTO EVIDENCE.

9 I'VE SPOKEN WITH HENRY ALLEN, THE AUTHOR OF
10 THE REPORT. HE WILL COME FROM TEXAS TO AUTHENTICATE THIS
11 DOCUMENT. HE IS NOT ON OUR WITNESS LIST BECAUSE I DIDN'T
12 THINK WE WERE GOING TO HAVE A PROBLEM. IT'S A COAST TO
13 COAST -- PREPARED FOR COAST TO COAST. I VIEWED IT IN
14 ANALYZING THE EVIDENCE AS BEING AN ADOPTIVE ADMISSION.
15 THEY PAID FOR IT. THEY HAD IT DONE. IT'S SOMETHING THAT'S
16 THEIRS.

17 BUT IF IT'S A FOUNDATIONAL PROBLEM, I
18 UNDERSTAND THE EVIDENCE CODE, AND I HAVE TO NOW LAY A
19 FOUNDATION FOR IT. BUT I THINK THERE'S ANOTHER WAY I CAN
20 DEAL WITH IT. THAT'S WHY I'VE ASKED FOR THIS IN-CHAMBERS.

21 MR. -- LIKE THE COAST TO COAST EXHIBIT THAT
22 WE JUST LOOKED AT ON THE SCREEN -- AND I'M NOT GOING TO
23 SHOW A LOT OF THIS, BUT THERE'S LIKE TWO OR THREE SPECIFIC
24 SENTENCES. I BELIEVE THIS WITNESS RELIED ON IT. AND I
25 DIDN'T GO INTO IT FURTHER BECAUSE IT WASN'T AUTHENTICATED
26 FOR EVIDENCE.

1 I'D LIKE TO MAKE A MOTION TO REOPEN REDIRECT
2 TO JUST TALK ABOUT THIS DOCUMENT AND GO INTO A COUPLE OF
3 SENTENCES. I BELIEVE IT'S NOT HEARSAY BECAUSE IT WAS
4 PREPARED FOR COAST TO COAST. WE RECEIVED IT FROM COAST TO
5 COAST. BUT EVEN IF IT IS, EVEN IF THERE IS AN ISSUE, THIS
6 IS A DOCUMENT THAT THIS EXPERT WITNESS RELIED ON IN
7 RENDERING HIS OPINION. AND WE WOULD LIKE TO REOPEN TO HAVE
8 HIM TESTIFY ABOUT IT.

9 MR. SHERMAN: YOUR HONOR, IT'S BLACK-LETTER LAW
10 THAT EXPERT WITNESSES CAN RELY ON ALL SORTS OF THINGS,
11 INCLUDING HEARSAY, PROVIDED THAT THEY'RE REASONABLY
12 RELIABLE.

13 IT'S ALSO BLACK-LETTER LAW THAT UNLESS THE
14 DOCUMENT IS IN EVIDENCE WITH A PROPER FOUNDATION -- IT'S
15 NOT IN EVIDENCE, AND THE FACT THAT A WITNESS -- THE FACT
16 THAT AN EXPERT WITNESS RELIED ON IT DOESN'T GET IT INTO
17 EVIDENCE. WE ALL KNOW THAT.

18 IF IT COMES INTO EVIDENCE AT SOME POINT IN
19 TIME IN THE CASE BECAUSE THE FOUNDATION IS LAID, THEN IT'S
20 IN EVIDENCE.

21 BUT I REALLY DON'T UNDERSTAND THE ISSUE. WE
22 ALL KNOW THAT EXPERT WITNESSES CAN RELY UPON HEARSAY, BUT
23 THAT DOESN'T MEAN YOU GET TO SHOW THE HEARSAY TO THE JURY.

24 THE COURT: LET ME ASK YOU THIS: ARE YOU GOING TO
25 REQUIRE THAT THIS MAN COME OUT FROM TEXAS TO AUTHENTICATE
26 IT?

1 MR. SHERMAN: MY SUSPICION IS THAT AT SOME POINT IN
2 THE CASE, IF MR. SHAW IS CORRECT ABOUT THIS BEING SOME SORT
3 OF A SO-CALLED ADOPTIVE ADMISSION -- AND I'M NOT PREPARED
4 TO ACCEPT THAT IT IS OR IT ISN'T -- THEN MR. SHAW WILL HAVE
5 HIS GO AT IT. THERE'S PLENTY OF COAST'S WITNESSES THAT HE
6 WILL BE ABLE TO ASK QUESTIONS ABOUT OF THIS DOCUMENT. BUT
7 I DON'T REQUIRE MR. SHAW TO BRING MR. ALLEN OUT, IF HE
8 FEELS HE CAN MAKE A GO OUT OF IT WITH COAST WITNESSES. I
9 DON'T BELIEVE IT'S AN ADOPTIVE ADMISSION.

10 THE COURT: YOU'RE SAYING YOU DON'T OBJECT TO HIM
11 ASKING MR. MITCHELL QUESTIONS ABOUT IT, THEN?

12 MR. SHERMAN: I OBJECT TO IT BEING SHOWN TO THE
13 JURY. IT'S NOT IN EVIDENCE. IT IS LACKING IN FOUNDATION.
14 WHETHER IT EVER IS PROPERLY MOVED INTO EVIDENCE, I THINK
15 CUTTING THROUGH WHAT MR. SHAW SAYS, WE'LL SEE. AND I KNOW
16 OF NO SUCH PROCEDURE THAT SAYS THAT BECAUSE COUNSEL REALLY
17 WOULD LIKE TO GET IT INTO EVIDENCE AND IT'S NOT IN
18 EVIDENCE, THAT OTHERWISE LACKING IN FOUNDATION, HEARSAY
19 DOCUMENTS CAN BE BROUGHT INTO EVIDENCE.

20 THE COURT: WE'LL JUST LEAVE IT OPEN FOR MR. SHAW
21 TO RECALL MR. MITCHELL SOMETIME WHEN IT COMES INTO EVIDENCE.

22 MR. SHERMAN: THAT'S FINE.

23 MR. SHAW: OKAY. THAT'S FINE.

24 MR. RIVIN: THAT'S FINE.

25 THE COURT: ALL RIGHT.

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN

1 COURT IN THE PRESENCE OF THE JURY:)

2 THE COURT: MR. RIVIN.

3 MR. RIVIN: THANK YOU, YOUR HONOR

4 RE-CROSS-EXAMINATION

5 BY MR. RIVIN: Q MR. MITCHELL I HAVE A FEW

6 FOLLOW-UP QUESTIONS FOR YOU.

7 YOU TALKED ON REDIRECT IN RESPONSE TO

8 MR. SHAW'S QUESTIONS ABOUT EXHIBIT 2885, WHICH WAS THAT

9 INSIDE NEWS PARAGRAPH; DO YOU RECALL THAT?

10 A YES, SIR.

11 Q NOW, THAT WAS FROM 1990; ISN'T THAT RIGHT?

12 A I BELIEVE THAT'S CORRECT, YES. I OF '90, I

13 BELIEVE.

14 Q YOU ACTUALLY TALKED ABOUT THAT, THAT

15 DOCUMENT, IN YOUR ORIGINAL TESTIMONY IN THIS CASE IN DIRECT

16 EXAMINATION AS WELL.

17 AND ISN'T IT TRUE THAT THAT MEMO, THAT

18 INSIDE NEWS, WAS SENT OUT BY COAST IN THE CONTEXT OF

19 CONCERNS THAT WERE BEING EXPRESSED ABOUT DISHONEST

20 EMPLOYEES STEALING MEMBERSHIP LISTS?

21 A I HAVE NO KNOWLEDGE OF WHY IT WAS SENT. I

22 WASN'T THERE WHEN THEY DECIDED TO SEND IT. I JUST -- I

23 CAN'T SPECULATE ON IT.

24 Q I THOUGHT I HEARD YOU TESTIFY EARLIER AS TO

25 WHY IT WAS SENT, BUT YOU DON'T HAVE ANY KNOWLEDGE?

26 A I TESTIFIED TO THE LANGUAGE IN IT, NOT WHY

1 IT WAS SENT. THERE WAS LANGUAGE IN IT THAT CAUTIONED THE
2 RESORT DEVELOPERS.

3 Q YOU HAD DISCUSSIONS ABOUT THAT DOCUMENT --
4 DID YOU HAVE DISCUSSIONS ABOUT THAT DOCUMENT?

5 A DISCUSSIONS?

6 Q WITH ANYONE?

7 A I MAY HAVE. I DON'T RECALL SPECIFICALLY.

8 Q DO YOU HAVE A RECOLLECTION THAT THAT EDITION
9 AT INSIDE NEWS -- THAT PARAGRAPH WAS PREPARED BECAUSE OF
10 CONCERNS ABOUT THEFT OF MEMBERSHIP LISTS BY DISHONEST
11 EMPLOYEES?

12 A NO. I HAD NO -- I DON'T RECALL ANY SPECIFIC
13 CONVERSATION. THERE'S LANGUAGE IN IT THAT SPEAKS TO THE --
14 TO THAT ISSUE AND THE IMPORTANCE OF KEEPING IT PRIVATE.

15 Q I WOULD LIKE TO SHOW THE WITNESS SOME
16 TESTIMONY FROM HIS DIRECT EXAMINATION, I BELIEVE, ON
17 THURSDAY, PAGE 1254, I. BELIEVE IT STARTS AT LINE 3,
18 CONTINUES TO 1255, LINE 7.

19 DO YOU REMEMBER TESTIFYING TO THIS ON
20 THURSDAY, MR. MITCHELL?

21 A IF YOU'D BE KIND ENOUGH TO READ IT TO ME,
22 SIR.

23 Q SURE.

24 WE'RE TALKING ABOUT -- MR. SHAW WAS
25 QUESTIONING YOU ABOUT EXHIBIT 285, AND HE SAID, "IT SAYS
26 THIS REPORT PROVIDES YOU A LIST OF ALL YOUR MEMBERS WHO ARE

1 CURRENTLY CARRIED AS MEMBERS OF COAST TO COAST, PROVIDES
2 YOU AN OPPORTUNITY TO MAKE ANY MODIFICATIONS THAT YOU FEEL
3 ARE NECESSARY AND USE IT AS A MANAGEMENT TOOL."

4 SKIPPING, "THE CONFIDENTIALITY OF THIS LIST
5 CANNOT BE EMPHASIZED ENOUGH. THE MEMBERSHIP LIST IS A
6 PRIMARY ASSET OF EVERY RESORT. ACCORDINGLY, COAST TO COAST
7 DISTRIBUTES THIS LIST BY CERTIFIED MAIL."

8 "MR. SHAW: LET ME JUST STOP THERE AND ASK.
9 DID YOU HAVE ANY UNDERSTANDING -- YOU SAW THIS MEMO IN OR
10 ABOUT 1990?

11 "ANSWER: YES.

12 "QUESTION: DID YOU HAVE ANY UNDERSTANDING
13 WHEN YOU SAW IT WHY COAST TO COAST WOULD DISTRIBUTE IT BY
14 CERTIFIED MAIL?

15 "ANSWER: YES.

16 "QUESTION: WHY?

17 "ANSWER: BECAUSE OF THE VALUE OF THESE
18 MEMBERS. AS WE DISCUSSED, THE COST TO DEVELOP MEMBERS IS
19 QUITE EXPENSIVE. IF A COMPETITOR COULD GET AHOLD OF A
20 RESORT'S MEMBER LIST, THEN THEY COULD RAID THAT LIST AND
21 ATTEMPT TO SELL THEIR PRODUCT AND SERVICE TO THOSE
22 MEMBERS. AND SO IT WAS SOMETHING THAT SHOULD BE HIGHLY
23 CONFIDENTIAL."

24 "SOME OF THE OPEN" -- CAN YOU HIGHLIGHT THE
25 FIRST SEVEN LINES, PLEASE.

26 "SOME OF THE OPERATORS WERE PERHAPS NOT AS

1 SOPHISTICATED AND UNDERSTANDING AS THEY SHOULD BE, AND THEY
2 WOULD HAVE SALESPEOPLE THAT WOULD BE WORKING FOR THEM AND
3 TAKE ALL OR PART -- MOSTLY PART OF THEIR LIST. AND IT HAD
4 BECOME A SIGNIFICANT PROBLEM, AND COAST WAS ATTEMPTING TO
5 ALERT" --

6 AND THEN THE COURT SAID, "YOU'VE ANSWERED
7 THE QUESTION."

8 A YES, I RECALL THAT. SIR, YES.

9 Q SO YOU SAID COAST WAS ATTEMPTING TO ALERT
10 ITS RESORTS, ITS AFFILIATED RESORTS, OF THE CONCERN ABOUT
11 THESE -- ABOUT THE POSSIBILITY OF THEFT AND DISHONEST
12 EMPLOYEES TAKING THE MEMBERSHIP LIST.

13 ISN'T THAT THE CONTEXT IN WHICH THIS WAS
14 CREATED?

15 A RESORT OWNERS WERE COMPLAINING TO COAST THAT
16 THEIR MEMBERS WERE BEING RAIDED, AND COAST SENT THAT
17 LETTER. I THINK THAT YOUR OBSERVATION IS REASONABLE.

18 Q THAT THERE WERE DISHONEST EMPLOYEES WHO WERE
19 TAKING MEMBERSHIP LISTS?

20 A THAT WAS CERTAINLY HAPPENING IN THE
21 INDUSTRY. THAT'S CORRECT.

22 Q ALL RIGHT. ON REDIRECT MR. SHAW SHOWED YOU
23 A COPY OF THE AFFILIATION AGREEMENT. I BELIEVE IT'S
24 EXHIBIT -- LET ME SHOW YOU AN AFFILIATION AGREEMENT THAT WE
25 TALKED ABOUT. IT'S EXHIBIT 5. MR. SHAW TOOK YOU THROUGH
26 THIS DOCUMENT ON REDIRECT.

1 AND I'D LIKE TO -- I'D LIKE YOU TO TAKE A
2 LOOK AT PAGE 2. II-A-1.

3 A MR. RIVIN, SIR, COULD I GET A COPY OF THAT,
4 PLEASE?

5 Q ABSOLUTELY.

6 A AND WAS THAT PAGE 5 YOU WANTED TO GO TO?

7 Q YES. PAGE 2.

8 A OH, PAGE 2. I'M ON PAGE 2, SIR.

9 Q ALL RIGHT. LET'S LOOK AT THE FIRST TWO
10 PARAGRAPHS.

11 IT SAYS, "UPON THE TERMS AND CONDITIONS SET
12 FORTH HEREIN AND IN THE MANUAL, COAST HEREBY APPOINTS OWNER
13 AS ITS LIMITED AGENT FOR THE SOLE PURPOSES OF:

14 "OFFERING TO PURCHASERS OF MEMBERSHIPS, AT
15 THE TIME OF SUCH PURCHASE, THE RIGHT TO PURCHASE AN
16 ADDITIONAL AND SEPARATE MEMBERSHIP IN THE COAST PROGRAM
17 SPECIFIED IN SCHEDULE A FOR THE APPLICABLE RESORT."

18 NOW, THIS IS THE AGREEMENT THAT WAS
19 SIGNED -- THIS IS THE FIRST NATIONWIDE AGREEMENT SIGNED BY
20 MR. NOVELLI; DO YOU RECALL THAT?

21 A YES, SIR.

22 Q IN DIRECT EXAMINATION MR. SHAW TALKED TO YOU
23 ABOUT MEMBERSHIPS, AND THE DEFINED TERM "MEMBERSHIPS"
24 MEANING A MEMBERSHIP THAT THE OWNER HAD IN THE HOME PARK;
25 IS THAT RIGHT? DO YOU REMEMBER THAT?

26 A YEAH. I THINK HE WAS REFERENCING THE FIRST

1 PAGE OF THE CONTRACT.

2 Q THAT'S RIGHT.

3 A THAT'S CORRECT? YES. YES, I REMEMBER THAT,
4 YES.

5 Q BUT YOU GLOSSED OVER THE REST OF THAT
6 PARAGRAPH THAT WHAT THE HOME RESORT HAD THE RIGHT TO DO IS
7 TO OFFER ITS MEMBERS THE RIGHT TO PURCHASE AN ADDITIONAL
8 AND SEPARATE MEMBERSHIP IN THE COAST PROGRAM?

9 A I DON'T THINK I WAS ASKED ABOUT THAT
10 PARAGRAPH, SIR.

11 Q ISN'T IT TRUE THAT WHAT THE OWNER SOLD AT
12 THE RESORTS WAS IN ADDITION TO THEIR MEMBERSHIP IN THE HOME
13 RESORT, A SEPARATE AND -- ADDITIONAL AND SEPARATE
14 MEMBERSHIP IN THE COAST PROGRAM?

15 A COAST PRODUCT, CORRECT. ABSOLUTELY, MEMBER
16 PROGRAM.

17 Q MEMBER PROGRAM. IT WAS ADDITIONAL AND
18 SEPARATE?

19 A RIGHT. IT WAS SUPPOSED TO BE SECONDARY TO
20 SELL A PRIMARY PRODUCT RESORT FIRST AND ANY OTHER PRODUCT
21 SECONDARY, CORRECT.

22 Q AND WHEN THE PLAINTIFFS' PREDECESSORS SOLD
23 THEIR MEMBERS MEMBERSHIPS IN THE COAST PROGRAM, THESE WERE
24 SEPARATE MEMBERSHIPS IN COAST; SO THESE PEOPLE JOINED
25 COAST; IS THAT RIGHT?

26 A YES, SIR. YES, SIR.

1 Q AND WHEN THE PLAINTIFFS -- WHEN MR. VOPNFORD
2 AND MR. NOVELLI SENT OUT THEIR LETTERS IN AUGUST OF 1997
3 TELLING COAST THAT THEY WERE DISAFFILIATING ALL OF THEIR
4 PARKS FROM THE COAST SYSTEM, MR. NOVELLI AND MR. VOPNFORD
5 WERE ATTEMPTING TO TAKE AWAY FROM THOSE COAST MEMBERS THEIR
6 COAST MEMBERSHIP; ISN'T THAT CORRECT?

7 A WELL, NO. ACTUALLY THEY COULDN'T EVEN DO
8 IT. IT WASN'T POSSIBLE. BECAUSE IRRESPECTIVE OF THEIR
9 ACTIONS, COAST LET THAT MEMBERSHIP CONTINUE FOR 15 MONTHS
10 AT LEAST. SO THEY DIDN'T HAVE ANY POWER TO TAKE ANYTHING
11 AWAY. THERE WAS NOTHING TAKEN AWAY.

12 Q THEY PULLED THE HOME PARKS OUT OF THE COAST
13 SYSTEM?

14 A THEY TOOK THE HOME PARKS OUT, BUT THAT
15 DIDN'T LOSE THEIR MEMBERS THE RIGHT TO USE THE COAST
16 PRODUCT. THOSE MEMBERS OF THOSE RESORTS STILL HAD THE
17 RIGHT TO USE THE COAST PRODUCT FOR ANOTHER 15 MONTHS.

18 Q THEY WOULD HAVE TO FIND ANOTHER HOME PARK?

19 A THAT'S CORRECT.

20 Q THEY --

21 A IN THAT PERIOD OF TIME.

22 Q THEY WOULD HAVE TO FIND ANOTHER HOME PARK?

23 A THAT'S CORRECT.

24 Q SO THEY WOULD HAVE A CONTINUING RIGHT TO USE
25 COAST FOR SOME PERIOD OF TIME; BUT EVENTUALLY IF THEY
26 WANTED TO KEEP COAST, THEY WOULD NEED TO FIND ANOTHER HOME

1 PARK?

2 A ABSOLUTELY. ULTIMATELY THEY WOULD.

3 Q MR. SHAW SHOWED YOU A COUPLE OF LETTERS FROM
4 MEMBERS AND TRIED TO MINIMIZE THE SIGNIFICANCE OF THE
5 LETTERS THAT I SHOWED YOU ON CROSS-EXAMINATION, THE SIX
6 LETTERS THAT I SHOWED YOU ON CROSS-EXAMINATION FROM PEOPLE
7 WHO SAID, "YOU'VE PULLED OUT OF COAST TO COAST. I DON'T
8 WANT TO STAY WITH YOUR PARK. I WANT TO STAY WITH COAST TO
9 COAST." AND YOU INDICATED IN CROSS-EXAMINATION -- IN
10 DIRECT EXAMINATION THAT YOU REMEMBERED SEEING ONE LETTER
11 LIKE THAT, AND I SHOWED YOU ABOUT -- I SHOWED YOU SIX;
12 RIGHT?

13 A YES, SIR.

14 Q I SHOWED YOU A FEW LETTERS?

15 A YOU SHOWED ME LETTERS. I DON'T KNOW IF THE
16 LANGUAGE WAS THE SAME AS YOU'VE OFFERED. THE LETTERS I
17 DON'T RECALL SAYING "I WANT TO PULL OUT OF COAST TO COAST."
18 MY RECOLLECTION IS -- AND MOST PROMINENT IN MY MIND IS "I
19 HAVE BEEN TRANSFERRED," THE PHRASE "I HAVE BEEN
20 TRANSFERRED."

21 Q MR. MITCHELL, YOU TESTIFIED THAT YOU WENT
22 THROUGH -- YOU WENT THROUGH THOSE LETTERS, THAT PACKET OF
23 MATERIAL --

24 A YES, SIR.

25 Q -- THAT MR. SHAW SHOWED YOU. THESE WERE
26 LETTERS THAT WERE PRODUCED BY THE PLAINTIFFS. YOU WENT

1 THROUGH THOSE MATERIALS, AND YOU FORMED YOUR OPINION ABOUT
2 THE DAMAGES SUSTAINED BY THE PLAINTIFFS BASED IN PART ON
3 THOSE MATERIALS; ISN'T THAT RIGHT?

4 A VERY SMALL PART.

5 Q BUT IT WAS A PART?

6 A YES.

7 Q SO YOU WENT THROUGH, GENERALLY WENT THROUGH
8 THOSE MATERIALS?

9 A YES. I WENT THROUGH AN AWFUL LOT OF
10 MATERIALS. THERE'S SOME 300 BINDERS, EACH CONTAINING
11 SOMEWHERE IN THE AREA OF A THOUSAND PAGES, I THINK, OF
12 MATERIALS THAT ARE INVOLVED IN THIS CASE, ON JUST ONE SIDE.

13 Q WASN'T IT IMPORTANT TO YOU TO SEE IF YOU
14 COULD FIND ANY MORE ABOUT HOW THE MEMBERS ACTUALLY REACTED,
15 HOW THE MEMBERS ACTUALLY RESPONDED TO WHAT THE
16 DEFENDANTS -- EXCUSE ME -- WHAT THE PLAINTIFFS HAD DONE IN
17 PULLING OUT OF THE PARK, OR WHAT THE DEFENDANTS DID WITH
18 THE COAST LETTERS?

19 WASN'T IT IMPORTANT TO YOU TO FIND OUT WHAT
20 THE MEMBERS REALLY THOUGHT IN COMING TO YOUR CONCLUSIONS
21 THAT THE PLAINTIFFS WERE DAMAGED?

22 A ABSOLUTELY.

23 Q AND YOU DIDN'T TALK TO ANY MEMBERS; ISN'T
24 THAT RIGHT?

25 A OH, NO, SIR.

26 Q BUT THERE WERE A NUMBER OF LETTERS THAT WERE

1 PROVIDED TO YOU BY THE PLAINTIFFS SHOWING HOW THE MEMBERS
2 REACTED; ISN'T THAT RIGHT?

3 A YEAH, THERE WERE A VARIETY OF REACTIONS,
4 CORRECT, SIR.

5 Q THAT'S RIGHT. AND YOU SAW ONE LETTER --

6 A TWO BASIC GROUPS.

7 Q ALL RIGHT. LET'S LOOK AT SOME OTHER --

8 LET'S LOOK AT SOME OTHER LETTERS. AND I'LL ASK YOU IF YOU
9 REMEMBER SEEING THESE LETTERS AND WHETHER THEY AFFECTED YOU
10 IN FORMING YOUR CONCLUSIONS THAT THE PLAINTIFFS WERE
11 DAMAGED.

12 A SURE.

13 Q THIS IS FROM EXHIBIT 69. AGAIN, THESE ARE
14 LETTERS THAT WERE PRODUCED -- PRODUCED BY THE PLAINTIFFS
15 FROM MEMBERS. PAGE 12.

16 A MR. RIVIN, I'M GOING TO NEED A COPY OF THAT,
17 IF I CAN, PLEASE.

18 Q IT SHOULD BE ABOUT THE 12TH PAGE, I THINK.
19 74. LET ME READ THE HANDWRITTEN NOTE.

20 AGAIN, THIS IS A HANDWRITTEN NOTE FROM A
21 MEMBER RESPONDING TO A BILL THAT WAS SENT TO THEM BY TRAVEL
22 AMERICA.

23 IT SAYS, "WILL YOU PLEASE WRITE TO ME AND
24 EXPLAIN WHY I SHOULD PAY ANY MORE TO YOU FOR THIS WHEN
25 PONDEROSA PARK IS NO LONGER AFFILIATED WITH COAST TO COAST.
26 I BELIEVE THAT IS WHAT WE ARE PAYING FOR." SIGNED BY

1 CARMEN AND ESTHER -- I CAN'T READ THAT.

2 DID YOU SEE THAT LETTER?

3 A IF IT WAS IN THE PACKET, I SAW IT. I DON'T
4 HAVE A SPECIFIC RECOLLECTION OF IT. BUT I SAW THIS LETTER
5 AND SIMILAR LETTERS, SIMILAR LANGUAGE.

6 Q THIS LANGUAGE DOESN'T SAY ANYTHING ABOUT
7 TRANSFER, THAT I'M TRANSFERRING MY MEMBERSHIP; RIGHT?

8 A NO. IT SAYS THAT THEY ARE -- I SHOULD PAY
9 ANY MORE TO YOU FOR THIS WHEN PONDEROSA PARK IS NO LONGER
10 AFFILIATED. NO. IT STATES THAT THE PARK IS NO LONGER
11 AFFILIATED AND -- WITH THE COAST SYSTEM. IT DOESN'T STATE
12 THAT --

13 Q AND THAT WAS A TRUE STATEMENT, WASN'T IT?

14 A I DON'T KNOW. 4/1/98? I WOULD BELIEVE THAT
15 TO BE TRUE BECAUSE I BELIEVE THAT THE WITHDRAWALS OCCURRED
16 IN '97. SO I THINK THAT'S A FACTUAL STATEMENT, YES.

17 Q RIGHT. SO THAT PERSON WAS SAYING, "YOU
18 PULLED PONDEROSA PARK OUT OF COAST. WHY SHOULD I STAY WITH
19 YOU? I WANT COAST."

20 LET'S TAKE A LOOK AT PAGE 17. SO THAT
21 SHOULD BE FIVE PAGES LATER, MR. MITCHELL. IT HAS AN "88"
22 AT THE BOTTOM RIGHT-HAND CORNER. THE TOP RIGHT.

23 NOW, THIS IS NOT A NOTE. THIS -- SOMEBODY
24 TOOK THE TIME TO WRITE A LETTER.

25 A THERE'S A NOTE AND A LETTER.

26 Q RIGHT.

1 A THERE'S A NOTE AND A LETTER, BOTH, YES.

2 Q AND THIS PERSON SAYS -- AGAIN, A TRAVEL
3 AMERICA MEMBER -- "WE HAVE BEEN MEMBERS OF COAST TO COAST
4 FOR MANY YEARS AND HAVE DECIDED TO KEEP OUR MEMBERSHIP WITH
5 THEM. PLEASE CANCEL OUR TRAVEL AMERICA MEMBERSHIP."

6 NOW, DID YOU -- DO YOU REMEMBER SEEING THIS
7 LETTER WHEN YOU WENT THROUGH THE MATERIALS?

8 A DO YOU WANT ME TO COMMENT OR JUST IF I SAW
9 IT?

10 Q I WANT YOU TO TELL ME IF YOU SAW IT.

11 A YES, SIR.

12 Q WHY DON'T YOU -- WHAT DID YOU WANT TO SAY?

13 A PARDON?

14 Q WHAT DID YOU WANT TO SAY ABOUT THAT LETTER?

15 A WELL, ONLY THAT IT REINFORCES THE POSITION
16 THAT I HAVE TAKEN. OBVIOUSLY IF THIS INDIVIDUAL COULD
17 SUSTAIN A COAST MEMBERSHIP WITHOUT ANY COST TO HIM AND NOT
18 PAY DOUBLE COSTS, THEN HE IS GOING TO BE PERFECTLY HAPPY.
19 IT'S VERY REASONABLE.

20 IF I'M A MEMBER OF THE PLAINTIFFS' RESORTS
21 AND COAST WRITES ME A LETTER AND SAYS, "HI, YOU'RE
22 TRANSFERRED OVER TO THIS RESORT, AND IT DOESN'T COST YOU A
23 DIME," I'M PERFECTLY HAPPY WITH THAT.

24 Q THIS MEMBER PULLED OUT OF THE PLAINTIFFS.
25 THIS MEMBER CHOSE TO STOP PAYING THE PLAINTIFFS?

26 A EXACTLY.

1 Q BECAUSE -- BECAUSE THE PLAINTIFFS PULLED OUT
2 OF COAST TO COAST?

3 A WELL, YOU'RE GIVING A WRONG IMPRESSION.
4 THEY DIDN'T DO IT BECAUSE THEY PULLED OUT OF COAST TO
5 COAST. THEY DID IT BECAUSE THEY PULLED OUT OF COAST TO
6 COAST AND COAST OFFERED THEM A NO-COST OPTION. IF THEY HAD
7 TO DO IT THE WAY IT'S BEEN DONE FOR 20 YEARS AND THE WAY IT
8 OUGHT TO HAVE BEEN DONE AND WHAT THE GAME WAS, THEY WOULD
9 HAVE HAD TO PAY A FEE AT ANOTHER RESORT. AND THEN YOU
10 WOULD HAVE HAD AN ENTIRELY DIFFERENT REACTION.

11 Q DID YOU TALK TO THIS MEMBER AND FIND OUT WHY
12 THIS PERSON DECIDED TO STOP PAYING?

13 A NO. I BELIEVE THE LETTER -- THEY STOPPED
14 PAYING THE PLAINTIFF FOR WHAT THEY SAY. THEY WERE OUT OF
15 COAST TO COAST, AND THEN WE HAVE TO ADD THE FACT THAT COAST
16 SENT A MASS TRANSFER LETTER AND ADVISED THE PEOPLE, "NO
17 PROBLEM. YOU'RE JUST TRANSFERRED. NO MONEY. NO
18 HEADACHES. YOU DON'T GOT TO TAKE ANY RESPONSIBILITY ON
19 YOURSELF," AS REQUIRED BY THE COAST CONTRACT. SO THEY DID
20 A PERFECTLY REASONABLE THING. NICE AND EASY FOR THEM. AND
21 THEY WROTE LETTERS SAYING, "HELL, I'M NOT GOING TO PAY
22 TWICE." THEY'D BE FOOLS TO PAY TWICE. I WOULD TELL THEM
23 NOT TO PAY TWICE.

24 Q DO YOU KNOW WHEN MR. NOVELLI NOTIFIED HIS
25 MEMBERS THAT HE HAD PULLED HIS PARKS OUT OF COAST; DO YOU
26 KNOW?

1 A AFTER THE TRANSFER IS MY UNDERSTANDING. I
2 DON'T KNOW EXACTLY.

3 Q THE LETTER -- YOU'RE TALKING ABOUT THE
4 LETTERS FROM MR. RANDALL?

5 A YEAH. IN OTHER WORDS --

6 Q YOU'RE TALKING ABOUT THE LETTERS FROM
7 MR. RANDALL IN OCTOBER OF 1997?

8 A CORRECT. AT OR ABOUT THAT TIME. I THINK IT
9 WAS AFTER THE LETTERS GOT TO THE MEMBERS.

10 Q SO MR. NOVELLI AND MR. VOPNFORD SENT THEIR
11 LETTER TO COAST SAYING WE'RE PULLING OUT OF -- OUR PARKS
12 OUT OF COAST; YOU'RE PULLING OUR PARKS OUT OF COAST?

13 A RIGHT. I BELIEVE THAT OCCURRED IN AUGUST.

14 Q RIGHT.

15 A AND THEN LETTERS BEGAN FROM COAST IN OCTOBER
16 OR SEPTEMBER, NOVEMBER.

17 Q AND SO PLAINTIFFS PULLED THE PARKS OUT OF
18 COAST. MR. NOVELLI AND MR. VOPNFORD PULLED THEIR PARKS OUT
19 OF COAST BUT DIDN'T NOTIFY THE PEOPLE IN SEPTEMBER THAT
20 THEY HAD PULLED THEIR PARKS OUT OF COAST, AND APPARENTLY
21 DIDN'T NOTIFY THE PEOPLE IN OCTOBER THAT THEY HAD PULLED
22 OUT OF COAST.

23 SO ISN'T IT TRUE THAT THE WAY THAT MOST
24 PEOPLE FOUND OUT THAT THE PARKS HAD BEEN PULLED OUT OF
25 COAST IS BY THE COAST LETTER, BECAUSE COAST NOTIFIED THEM
26 BECAUSE THE PLAINTIFF, MR. NOVELLI AND MR. VOPNFORD, DIDN'T

1 DO SO?

2 A YEAH. IT WOULDN'T HAVE HAD ANY IMPACT ON
3 THEM BECAUSE THEY STILL HAD FULL USE OF COAST.

4 Q ISN'T THAT TRUE THAT THE WAY THESE -- MOST
5 OF THESE PEOPLE, IF NOT ALL OF THESE PEOPLE, FOUND OUT THAT
6 MR. NOVELLI AND MR. VOPNFORD PULLED OUT OF THE COAST SYSTEM
7 IS BY COAST TELLING THEM?

8 A YES, THE MASS TRANSFER LETTER, ABSOLUTELY.
9 YOU'RE CORRECT.

10 Q LET'S LOOK AT THE NEXT PAGE.

11 A IT LOOKS LIKE '94.

12 Q PAGE 91 AT THE BOTTOM.

13 A THAT FROM MRS. R. KOCH --

14 Q YES. THE SAME MESSAGE. "WE ARE CANCELLING
15 OUR MEMBERSHIP WITH TRAVEL AMERICA. YOU ARE NOT PART OF
16 COAST TO COAST, WHICH WE HAD WITH ALL SEASONS, AND WE ARE
17 STAYING WITH COAST TO COAST."

18 LET'S GO TO THE NEXT LETTER -- LET ME ASK
19 YOU A QUESTION.

20 HAVE YOU SEEN --

21 A I DON'T THINK THE SEASONS PARKS WERE PULLED
22 OUT OF COAST TO COAST WHEN THIS WAS WRITTEN. I DON'T
23 KNOW. I'M SORRY. GO AHEAD, SIR.

24 Q YOU DON'T THINK THE ALL SEASONS PARKS WERE
25 PULLED OUT OF COAST TO COAST?

26 A WELL, I WAS GOING TO SAY THAT, AND I

1 SHOULD'N'T SAY THAT BECAUSE THERE'S NO DATE ON THIS LETTER.
2 SO I HAVE NO -- IT WOULD BE ABSURD TO SAY THAT. I
3 APOLOGIZE. BECAUSE THERE IS NO DATE ON THE LETTER. I HAVE
4 NO IDEA WHEN THIS LETTER WAS WRITTEN.

5 Q WHAT HAPPENED WITH THE ALL SEASONS PARKS?

6 A MY RECOLLECTION IN THE MATERIALS THAT I
7 REVIEWED WAS THAT THEY WERE JUST TAKEN OUT ARBITRARILY BY
8 COAST; THAT THERE WAS NO LETTER SENT. I DON'T RECALL
9 SEEING A LETTER SAYING, "I'LL TAKE ALL SEASONS PARKS OUT."

10 Q WEREN'T THE ALL SEASONS PARKS TRANSFERRED
11 INTO TRAVEL AMERICA?

12 A ULTIMATELY, YES, SIR.

13 Q THEY WERE TAKEN IN TO TRAVEL AMERICA?

14 A I BELIEVE THAT'S THE CASE.

15 Q AND ALL THOSE PARKS BECOME PART OF TRAVEL
16 AMERICA?

17 A I BELIEVE THAT'S THE CASE.

18 Q AND NONE OF THOSE PARKS WERE PART OF COAST?

19 A I BELIEVE THAT'S CORRECT, SIR.

20 Q LET'S GO TO THE NEXT ONE, PLEASE, PAGE 25.

21 IT SAYS "PAGE 129" AT THE BOTTOM. THIS WILL
22 BE THE 25TH PAGE, MR. MITCHELL. ANOTHER FIVE PAGES.

23 A OKAY. 129?

24 Q YES, AT THE BOTTOM.

25 A OKAY.

26 Q LET ME READ THIS. THAT'S A LITTLE --

1 "I AM WRITING THIS LETTER TO INFORM YOU
2 THAT" -- AGAIN, THIS IS A LETTER TO TRAVEL AMERICA -- "THAT
3 I WILL NOT BE CONTINUING TO PAY THE MAINTENANCE FEES TO
4 YOU. WHEN I PURCHASED A MEMBERSHIP TO YOUR RESORT, I DID
5 SO TO USE COAST TO COAST. LAST FALL, YOU NOTIFIED ME THAT
6 YOU WERE WITHDRAWING YOUR RESORT FROM THE COAST TO COAST
7 SYSTEM. SINCE I WISH TO CONTINUE TO UTILIZE COAST TO
8 COAST, I HAD TO GO TO ANOTHER RESORT WHICH REMAINED IN THE
9 COAST TO COAST SYSTEM. I AM NOW A MEMBER OF SYCAMORE RANCH
10 AND AM PAYING DUES TO THEM SO THAT I MAY UTILIZE THE COAST
11 TO COAST SYSTEM. THEREFORE, YOU MAY RECLAIM MY MEMBERSHIP
12 AND RESELL IT OR DO WITH IT AS YOU WISH.

13 "FURTHERMORE, I FEEL YOU SHOULD REIMBURSE ME
14 AT LEAST 50 PERCENT OF THE DUES THAT I PAID YOU LAST YEAR.
15 THIS IS DUE TO THE FACT THAT WHEN YOU WITHDREW FROM THE
16 COAST TO COAST SYSTEM, I WAS NOT ABLE TO PARTICIPATE IN
17 THAT SYSTEM USING DELTA ISLE AS MY HOME PARK.

18 "AS STATED ABOVE, I DO NOT WISH TO CONTINUE
19 MY MEMBERSHIP WITH YOU AND WOULD APPRECIATE MY REFUND OF
20 DUES AS SOON AS POSSIBLE."

21 DID YOU SEE THAT LETTER WHEN YOU WENT
22 THROUGH THE MATERIALS?

23 A YES, SIR. I DON'T HAVE AN INSTANT
24 RECOLLECTION OF IT, BUT, YES, SIR.

25 Q IS THIS THE ONE LETTER THAT YOU REMEMBER
26 HAVING REVIEWED --

1 A I DON'T KNOW.

2 Q -- WHERE A MEMBER SAID THAT THEY WERE
3 PULLING OUT OF THE -- OR REFUSING TO PAY THE PLAINTIFFS
4 BECAUSE THE PLAINTIFFS HAD PULLED OUT OF COAST?

5 A I DON'T REMEMBER WHICH ONE IT WAS.

6 Q BUT THERE WAS ONE?

7 A THERE WAS CERTAINLY. I SAID TO YOU THERE
8 WAS ONE I SPECIFICALLY REMEMBERED. AND THERE WERE
9 UNDOUBTEDLY MORE THAN THAT.

10 Q LET'S GO TO 10 PAGES FURTHER. IT WILL BE
11 PAGE 35. AND IT HAS A "149" AT THE BOTTOM.

12 DO YOU REMEMBER SEEING THIS LETTER BEFORE?

13 A PARDON?

14 Q DO YOU REMEMBER SEEING THIS LETTER BEFORE?

15 A NOT SPECIFICALLY. BUT IF IT WAS IN THE
16 PACKAGE, IT WAS REVIEWED.

17 Q LET ME READ THE FIRST PARAGRAPH. THIS,
18 AGAIN, IS TO TRAVEL AMERICA FROM A MEMBER.

19 "YOU INHERITED OUR MEMBERSHIP AS A RESULT OF
20 THE THOUSAND ADVENTURES BREAKUP. WITHOUT GOING INTO
21 DETAIL, I CAN ASSURE YOU THAT THE PAST YEAR OR SO HAS BEEN
22 EXTREMELY FRUSTRATING FOR US. OUR MAIN CONCERN HAS BEEN
23 RETAINING COAST TO COAST ELIGIBILITY."

24 THAT MEMBER REFERS TO THE INHERITANCE THAT
25 TRAVEL AMERICA -- SAYING, "YOU INHERITED OUR MEMBERSHIP";
26 DO YOU SEE THAT?

1 A YES, SIR.

2 Q LET ME POINT YOU TO THAT LITTLE DRAWING THAT
3 I DID YESTERDAY, THAT RATHER CRUDE DRAWING THAT I DID OF
4 THE THOUSAND ADVENTURES MEMBERS --

5 A YES.

6 Q -- TO TRAVEL AMERICA?

7 A YES, SIR.

8 Q THAT'S BASICALLY WHAT THAT MEMBER IS
9 REFERRING TO; RIGHT?

10 A YEAH. THIS WOULD HAVE BEEN A MEMBERSHIP
11 THAT WAS ACQUIRED BY TRAVEL AMERICA --

12 Q RIGHT.

13 A -- AS A RESULT OF SOME PURCHASE OR SOME
14 MANNER.

15 Q SOMETHING THAT HAPPENED?

16 A IN SOME MANNER THESE WERE ACQUIRED BY TRAVEL
17 AMERICA.

18 Q WHETHER LEGAL OR NOT, YOU HAVE NO IDEA HOW
19 THAT HAPPENED?

20 A WELL, I IMAGINE IF IT WAS ILLEGAL, SOMEBODY
21 WOULD BE IN JAIL.

22 Q DO YOU HAVE ANY KNOWLEDGE OF THAT ONE WAY OR
23 THE OTHER --

24 A NO, I DON'T.

25 Q -- WHETHER THERE ARE ANY LEGAL DOCUMENTS
26 SUPPORTING THAT --

1 A NO, SIR.

2 Q -- TRANSFER?

3 A NO, I HAVE NO KNOWLEDGE OF THAT.

4 Q ALL RIGHT. THANK YOU.

5 A YOU DON'T WANT TO TALK ABOUT THAT.

6 Q LET'S GO TO PAGE 40.

7 A DO YOU HAVE A NUMBER ON THE BOTTOM?

8 Q YES, I DO. IT'S FIVE MORE PAGES, AND IT IS
9 174 AT THE BOTTOM. LET ME JUST READ THE HIGHLIGHTED
10 PORTION, WHICH IS HANDWRITTEN.

11 "WE ARE NOT SWITCHING."

12 LET'S GO UP AND LET'S SEE WHO THE BILL IS
13 FROM. I GUESS -- OH, THERE IT IS.

14 A IT SAYS, "MAKE CHECK PAYABLE TO TRAVEL
15 AMERICA" HERE ON THE SIDE.

16 Q EXACTLY. SO TRAVEL AMERICA -- SO SUDDENLY
17 THIS PERSON, THIS PERSON WHO BELONGED TO EITHER ALL SEASONS
18 OR THOUSAND ADVENTURES, IS GETTING A BILL FROM TRAVEL
19 AMERICA. THIS PERSON GETS A BILL FROM TRAVEL AMERICA. AND
20 THIS PERSON SAYS, "WE ARE NOT SWITCHING TO TRAVEL AMERICA.
21 WE'RE STAYING WITH COAST TO COAST."

22 DO YOU REMEMBER SEEING THIS LETTER WHEN YOU
23 WENT THROUGH THE MATERIALS?

24 A THE ANSWER IS THE SAME. I DON'T RECALL IT
25 SPECIFICALLY, BUT IT CONTINUES TO REINFORCE MY POSITION.

26 Q I UNDERSTAND THAT.

1 A OKAY.

2 Q HAVE WE LOOKED AT EXHIBIT 1563, PAGE 7, 188
3 AT THE BOTTOM?

4 A I'LL NEED A COPY OF THAT, SIR.

5 Q LET ME GIVE YOU MINE.

6 COULD YOU HIGHLIGHT THE FIRST FEW LINES,
7 PLEASE.

8 "TO TRAVEL AMERICA. I WOULD STILL BE A
9 MEMBER OF THOUSAND ADVENTURES HAD THEY THOUGHT -- THE
10 "THEY" IS MISSING -- "HAD THEY THOUGHT ENOUGH ABOUT ME AND
11 INFORMED ME WHAT WAS HAPPENING. INSTEAD, THEY TOOK MY DUES
12 WITHOUT INFORMATION ON RESORTS AVAILABLE. WITH THOSE
13 DUES I MANAGED TO STAY A COUPLE OF NIGHTS AT A T.A.I.
14 RESORT." COULD YOU GO TO THE VERY BOTTOM, PLEASE.

15 "I'M NOT GOING TO PAY DUES TO MORE THAN ONE
16 RESORT. IT'S T.A.'S FAULT, NOT MINE. JUST DROP ME AS A
17 MEMBER OF TRAVEL AMERICA."

18 DO YOU REMEMBER SEEING THAT LETTER?

19 A AGAIN, NOT SPECIFICALLY. BUT THE LAST
20 PARAGRAPH SUPPORTS MY CONCLUSIONS. "I DON'T WANT TO PAY AT
21 TWO RESORTS." THAT'S WHAT THEY'RE SAYING. THE MEMBER IS
22 SAYING THAT.

23 Q DO YOU HAVE KNOWLEDGE OF ANY MEMBERS, ANY
24 MEMBERS WHO LEFT -- WHO LEFT THE PLAINTIFFS -- WHO STOPPED
25 PAYING THE PLAINTIFFS BECAUSE THEY FELT THEY HAD BEEN
26 TRANSFERRED BY COAST TO COAST?

1 A WELL --

2 Q DO YOU HAVE ANY PERSONAL KNOWLEDGE?

3 A THERE'S A WHOLE BOOK OF LETTERS THAT SAYS
4 THAT HERE. I MEAN, THE LETTERS THAT YOU JUST ASKED ME TO
5 REVIEW STATE THAT.

6 Q SO ALL OF THE LETTERS THAT I'VE SHOWN YOU
7 SUPPORT YOUR CONCLUSION THAT THE REASON THAT THESE PEOPLE
8 STOPPED PAYING THE PLAINTIFFS IS BECAUSE THEY WERE
9 TRANSFERRED BY COAST TO COAST; IS THAT YOUR TESTIMONY?

10 A SIR, THESE PEOPLE PAID THE PLAINTIFFS ALL
11 THE TIME UP UNTIL --

12 Q THE PLAINTIFFS PULLED --

13 A -- UNTIL THE MASS TRANSFER LETTER OCCURRED.
14 SO THE CONCLUSION TO BE DRAWN FROM THAT IS THAT THIS MASS
15 TRANSFER LETTER HAD SOME IMPACT UPON THESE PEOPLE. AND THE
16 FACT THAT THEY WERE ABLE TO FACILITATE THEIR DESIRES
17 WITHOUT ANY PROBLEM WHATSOEVER AND NO COST, AND THEY DIDN'T
18 HAVE TO PAY TWO PLACES, THOSE FACTS WOULD SAY TO ME THAT
19 THEIR REASON FOR MAKING THAT DECISION WAS BECAUSE THEY
20 DIDN'T HAVE TO PAY OTHER FEES. IT WAS QUICK AND EASY.
21 THEY COULD ACCESS COAST TO COAST. AND THAT THEY HAD
22 RECEIVED THE MASS TRANSFER LETTER, YES, SIR.

23 Q MR. MITCHELL, WHAT HAPPENED BEFORE THE COAST
24 TO COAST LETTER WAS SENT; WHAT HAD THE PLAINTIFFS DONE?

25 A DONE WHEN?

26 Q IN AUGUST OF 1997, WHAT HAD THE PLAINTIFFS

1 DONE?

2 A ARE YOU REFERRING TO THEIR WITHDRAWAL FROM
3 COAST?

4 Q YES.

5 A THEY HAD SENT LETTERS I BELIEVE AT THE END
6 OF AUGUST. I THINK AUGUST 27TH.

7 Q CORRECT.

8 MR. VOPNFORD AND MR. NOVELLI PULLED THEIR
9 PARKS OUT OF COAST.

10 A RIGHT.

11 Q AND EVERY -- IN EVERY ONE OF THE LETTERS
12 THAT I'VE JUST SHOWN YOU, EACH OF THESE PEOPLE SAID, "I'M
13 NOT GOING TO PAY YOU ANY LONGER BECAUSE YOU PULLED OUT OF
14 COAST"?

15 A SURE.

16 Q "I WANT TO STAY WITH COAST"?

17 A YOU BET. AND IF COAST HAD SAID TO THEM,
18 LIKE THEY NORMALLY DID, "YOU HAVE TO GO OUT AND FIND
19 ANOTHER HOME PARK. YOU'RE GOING TO HAVE TO PAY THEM \$5,000
20 TO JOIN, AND YOU'RE STILL GOING TO HAVE TO HONOR YOUR
21 PREVIOUS OBLIGATIONS," NO ONE WOULD HAVE MOVED AN INCH.

22 MR. RIVIN: I HAVE NO FURTHER QUESTIONS.

23 THE COURT: THANK YOU.

24 ANYTHING FURTHER?

25 MR. SHAW: NO, YOUR HONOR.

26 THE COURT: YOU MAY STEP DOWN, SUBJECT TO RECALL.

1 THE WITNESS: THANK YOU.

2 THE COURT: CALL YOUR NEXT WITNESS FOR THE
3 PLAINTIFF.

4 MR. MOSHENKO: ROBERT GUIRE.

5 ROBERT GUIRE,

6 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING
7 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
8 FOLLOWS:

9 THE CLERK: TAKE A SEAT IN THE WITNESS STAND,
10 PLEASE.

11 THE COURT: SPEAK INTO THE MICROPHONE.

12 PLEASE STATE YOUR FULL NAME AND SPELL YOUR
13 LAST.

14 THE WITNESS: BEG YOUR PARDON?

15 THE COURT: SPEAK INTO THE MICROPHONE.

16 PLEASE STATE YOUR FULL NAME AND SPELL YOUR
17 LAST FOR THE RECORD.

18 THE WITNESS: MY NAME IS ROBERT GUIRE. G AS IN
19 GEORGE, U-I-R-E. I'M A LITTLE HARD OF HEARING. WE MAY
20 HAVE A PROBLEM.

21 ANYTHING ELSE?

22 THE COURT: THAT'S IT.

23 DIRECT EXAMINATION

24 BY MR. MOSHENKO: Q MR. GUIRE, I THOUGHT YOU TOLD
25 ME YOU HAD A HEARING AID.

26 A WELL, I HAVE TWO OF THEM.

1 Q YOU DON'T HAVE IT WITH YOU?

2 A NO, SIR. I HAVE ONE BEING WORKED -- BEING
3 REPAIRED, AND I HAVE A CAT THAT DOESN'T LIKE THE OTHER ONE.
4 AND HE BURIED IT IN THE SAND BOX OR HID IT SOMEPLACE. HE
5 IS A MONSTER TYPE OF CAT.

6 MR. MOSHENKO: YOUR HONOR, MAY I QUESTION THE
7 WITNESS FROM UP THERE?

8 THE COURT: SURE.

9 MR. MOSHENKO: THANK YOU.

10 Q SO I'LL STAND HERE AND ASK THE QUESTIONS
11 FROM THIS POINT, IF YOU DON'T MIND.

12 ALL RIGHT. MR. GUIRE, WHAT IS YOUR CURRENT
13 OCCUPATION?

14 A I AM RETIRED.

15 Q AND WHAT -- I KNOW THAT YOU DO SOME WORK.
16 WHAT KIND OF WORK DO YOU DO?

17 A I WAS A GENERAL BUILDING CONTRACTOR
18 SUBDIVIDER, DEVELOPER.

19 Q WHEN DID YOU BECOME A BUILDING CONTRACTOR,
20 SUBCONTRACTOR, DEVELOPER?

21 A OH, BACK IN THE LATE '50S.

22 Q OKAY. AND HOW LONG DID YOU DO THAT?

23 A UNTIL 1990 -- ABOUT 1990.

24 Q ALL RIGHT. AND WERE YOU A CAMPGROUND
25 ACTIVIST OR INVOLVED PERSON?

26 A I RAN A -- I WAS A RANGER FOR THE BOY SCOUTS

1 OF AMERICA, CAMP JOSEPHO IN PACIFIC PALISADES FOR THREE
2 YEARS.

3 Q WHAT YEARS WERE THOSE THAT YOU WERE A
4 RANGER?

5 A IT WAS IN 1990 TILL ABOUT 199 -- THE END OF
6 '94.

7 Q IS THAT HOW YOU FIRST BECAME INVOLVED IN
8 CAMPGROUND ACTIVITIES?

9 A PRIMARILY, YES.

10 Q OKAY. AND IN THE COURSE OF WHAT YOU WERE
11 DOING, DID IT CAUSE YOU TO GO AROUND AND VISIT VARIOUS
12 CAMPGROUNDS OR RESORTS?

13 A OH, YES.

14 Q ALL RIGHT. YOU TOOK THE BOY SCOUTS WITH YOU?

15 A SOME ON OCCASIONS, YES.

16 Q SO WHAT WAS YOUR NEXT EXPERIENCE THAT
17 BROUGHT YOU INTO CONNECTION WITH THE CAMPGROUND INDUSTRY?

18 A IN 1995 I JOINED TWO SPRINGS OVER IN DESERT
19 HOT SPRINGS. I WAS MEMBER OF ANOTHER RESORT, CATALINA SPA,
20 IN THE DESERT HOT SPRINGS AREA SINCE 1986. AND I HAD GONE
21 ON DOING SOME TRAVELING WHEN I DID RETIRE.

22 Q HAVE YOU EVER USED THE COAST TO COAST
23 RECIPROCAL USE SYSTEM?

24 A OCCASIONALLY, YES.

25 Q OKAY. WHEN WAS IT THAT YOU ADDED THE COAST
26 TO COAST SERVICE TO YOUR MEMBERSHIP IN A RESORT?

1 A WHEN I INITIALLY BOUGHT INTO THE CATALINA
2 SPA IN 1986, '87, I JOINED THE COAST AT THAT TIME.

3 Q DO YOU UNDERSTAND THE TERM "HOME RESORT" OR
4 A HOME PARK?

5 A YES, I DO.

6 Q WHAT DOES IT MEAN?

7 A THAT IT IS THE PARK THAT I BELONG TO, THE
8 PARK THAT I JOINED, WHICH WAS CATALINA SPA AT THE TIME.

9 Q NOW, HOW LONG WERE YOU WITH THE CATALINA
10 SPA?

11 A I STILL AM WITH THEM, AS WELL AS TWO
12 SPRINGS.

13 Q ARE YOU -- YOU UNDERSTOOD THAT YOU PURCHASED
14 WHAT COAST TO COAST CALLS A MEMBERSHIP IN COAST TO COAST?

15 A YES, I UNDERSTAND THAT.

16 Q AND YOU STILL HAVE THAT?

17 A NO, I DON'T.

18 Q WHY NOT?

19 A I DIDN'T USE IT. I WAS NOT ABLE TO -- THE
20 PARKS, FEW PARKS THAT I TRIED TO USE IT, I WAS NOT TREATED
21 LIKE I FELT THAT I SHOULD HAVE BEEN TREATED. AND SO I JUST
22 DIDN'T -- THE PEOPLE WANTED -- INSTEAD OF ME PAYING GIVING
23 THEM THE CARD, THAT I GAVE THEM THE TICKETS THAT WE BOUGHT,
24 THEY PREFERRED ME TO PAY THEM IN CASH. SO I JUST -- I
25 NEVER USED IT THAT MUCH.

26 Q SO WHAT ARE YOU DOING TODAY IN THE

1 CAMPGROUND INDUSTRY?

2 A JUST SITTING AROUND SPENDING ALL MY
3 RETIREMENT MONEY FROM SOCIAL SECURITY.

4 Q I KNOW. BUT DO YOU HAVE SOME CONNECTION
5 WITH A CAMPGROUND OR PARK RESORT TODAY?

6 A I WAS A MANAGER FOR DELTA ISLE FOR FOUR
7 YEARS IN NORTHERN CALIFORNIA.

8 Q OKAY. AND UP IN THE DELTA REGION NEAR
9 SACRAMENTO?

10 A IN THE DELTA, YES. ISLETON.

11 Q OKAY. NOW, WHICH FOUR YEARS WERE YOU THE
12 MANAGER OF THAT RESORT?

13 A FROM 19 -- JUNE THE 21ST, 1995, UNTIL THE
14 LATTER PART OF JUNE OF '99.

15 Q THAT'S WHY YOU SAY YOU'RE NOT DOING IT
16 TODAY.

17 OKAY. YOU'RE NOT DOING THAT ANYMORE TODAY;
18 RIGHT?

19 A NO, I'M NOT.

20 Q OKAY. NOW, SO YOU WERE THE MANAGER OF --
21 STRIKE THAT.

22 WAS DELTA ISLE ONE OF THE -- WE CALL THE
23 PLAINTIFFS' RESORTS BACK IN 1997?

24 A DO I WHAT?

25 Q IS DELTA ISLE A PLAINTIFFS' RESORT?

26 A YES.

1 Q RIGHT?

2 A YES.

3 Q SO YOU WERE THE MANAGER OF ONE OF THE
4 PLAINTIFFS' RESORTS, AND IN THE FALL OF 1997?

5 A YES, I WAS.

6 Q OKAY. NOW, YOU HAVE SEEN THIS LETTER THAT
7 EVERYBODY HAS TALKED ABOUT THAT WAS SENT BY COAST TO COAST
8 TO THE PLAINTIFFS' MEMBERS?

9 A YES, I HAVE.

10 Q OKAY. MR. DURAN, COULD WE HAVE A COPY OF
11 THE LETTER PUT UP ON THE BOARD. IT'S THE SAME AS ONE
12 EVERYBODY HAS BEEN LOOKING AT.

13 MR. DURAN: THE SAME ONE?

14 MR. MOSHENKO: NOT NECESSARILY. ONE OF THE OCTOBER
15 1997 LETTERS TO DEAR COAST TO COAST MEMBER. AND THEN
16 PLEASE ENLARGE THE TEXT.

17 Q CAN YOU SEE THAT, MR. GUIRE?

18 A YES, I CAN.

19 Q WHEN DID YOU FIRST SEE A COPY OF THIS KIND
20 OF LETTER?

21 A OH, IT WAS IN THE LATTER PART OF 1997.

22 Q AND WHAT WERE THE CIRCUMSTANCES THAT BROUGHT
23 IT TO YOUR ATTENTION?

24 A ONE OF THE DELTA ISLE MEMBERS BROUGHT IT TO
25 ME AND ASKED ME WHAT I THOUGHT ABOUT IT, WHAT IT WAS. I
26 TOLD THEM WHAT I THOUGHT ABOUT IT.

1 Q BEFORE I GET TO THAT, NOW, IN THE COURSE OF
2 YOUR ROLE AS MANAGER OF THE RESORT, I IMAGINE YOU GET TO
3 SEE AND TALK TO A LOT OF PEOPLE ALL THE TIME; RIGHT?

4 A YES, I DID.

5 Q ARE THERE A LOT OF WHAT I WOULD CALL
6 REGULARS THAT COME TO THE RESORT EVERY YEAR?

7 A YES.

8 Q OVER AND OVER?

9 A YES.

10 Q OKAY. AND YOU GET TO KNOW THEM PERSONALLY?

11 A PRETTY MUCH SO, YES. I RECOGNIZED THEM.

12 AND YES, I KNEW THEM, A LOT OF THEM PERSONALLY.

13 Q A LOT OF THESE REGULARS ARE GOOD FRIENDS
14 WITH EACH OTHER. SO THEY'RE LIKE A GROUP TOGETHER?

15 A YES. IT WAS A VERY FRIENDLY PARK.

16 Q HAVE YOU EVER HEARD THE PHRASE "FAMILY
17 MEMBERS" BEING USED WITH RESPECT TO THE PEOPLE THAT COME TO
18 YOUR HOME PARK?

19 A YES.

20 Q HOW IS THAT USED, THAT PHRASE?

21 A WELL, I DON'T FOLLOW WHAT YOU WANT.

22 Q IN WHAT SENSE DO THESE PEOPLE THINK OR FEEL
23 OR BELIEVE THEY'RE FAMILY MEMBERS TOGETHER, EVEN THOUGH
24 THEY'RE NOT REALLY FAMILY?

25 A WELL, HELP -- IT WAS JUST AN EXTREMELY
26 FRIENDLY PARK. ALL OF THE PEOPLE -- IT WAS ALL THE

1 ACTIVITIES, GOOD ACTIVITIES, GOOD FOOD, GOOD -- GOOD
2 GENERAL ACTIVITIES. IT WAS ALWAYS WHAT WAS PUT OUT INTO
3 THE AREA OF WHAT WAS HAPPENING IN THE AREA IS WHAT TYPE OF
4 ACTIVITIES WAS BEING SPONSORED BY VARIOUS OF THE
5 ORGANIZATIONS THROUGHOUT THE PARK. IT WAS A -- IT WAS JUST
6 A FAMILY-ORIENTED PARK. IT WAS JUST EVERYBODY WAS ONE BIG
7 HAPPY FAMILY UP THERE.

8 Q WHAT KIND OF PEOPLE DO YOU FIND OR DID YOU
9 FIND VISITED YOUR DELTA ISLE RESORT OVER AND OVER AGAIN,
10 AGE, OCCUPATION, THINGS LIKE THAT?

11 A OH, PEOPLE THAT -- IT WAS MOSTLY FROM THE
12 AREA. THEY LIVED -- THEY CAME UP PRIMARILY ON THE
13 WEEKEND. JUST HAD A GOOD TIME. WE HAD A -- GOOD SWIMMING
14 FACILITIES, GOOD FISHING FACILITIES. 14 FEET BELOW THE SEA
15 LEVEL UP THERE. SOME OF THEM WOULD LIKE TO SIT THERE IN
16 THE HIGH TIDE, SIT ON THE PATIO AND SEE THE BOTTOM OF THE
17 BOATS AS THEY WENT BY.

18 OTHER THAN THAT, IT WAS 14 FEET BELOW SEA
19 LEVEL. I DON'T KNOW. THE PARK WAS ON A -- IT WAS BUILT
20 100 YEARS AGO. THE DELTAS WERE BUILT 100 YEARS AGO. IT'S
21 A FLOATING ISLAND. IT ALL JUST FLOATS. IT'S ALL FILL, AND
22 IT -- AS THE TIDE RISES AND LOWERS, SO DOES THE LAND RAISES
23 AND LOWERS IN THE AREA. AND YOU HAVE TO PUMP THE LEVIES
24 OUT UP IN THAT AREA BECAUSE OF THE WATER TABLE IS SO HIGH
25 UP THERE, THAT THEY HAVE TO -- NOW THEY PLANTED A LOT OF
26 FRUIT TREES IN THERE. IT'S ALL FARMING IN THE AREA, AND

1 THEY PLANTED ALL THE FRUIT TREES. AND THEY HAD TO LOWER
2 THE WATER LEVEL.

3 Q LET ME ASK YOU THIS: HOW MANY R.V. SITES
4 ARE THERE AT DELTA ISLE?

5 A TWO HUNDRED.

6 Q AND DO YOU HAVE SOME UNDERSTANDING BACK IN
7 1997 ABOUT HOW MANY MEMBERS ARE -- DELTA ISLE HAD WHICH
8 WERE MEMBERS OF ITS RESORT?

9 A I REALLY DON'T KNOW HOW MANY.

10 Q OKAY. YOU HAVE NO ESTIMATE AT ALL BASED ON
11 YOUR --

12 A I WOULD SAY THAT THERE WAS A COUPLE
13 THOUSAND, ANYWAY.

14 Q ALL RIGHT. NOW, A LOT OF THESE PEOPLE WERE
15 COAST TO COAST PEOPLE; RIGHT?

16 A YES, THEY WERE.

17 Q AND, NOW, YOU SAID -- LET'S GO BACK TO THE
18 LETTER.

19 YOU SAID YOU SAW THAT LETTER BACK IN -- IN
20 1997. DID YOU SEE IT MORE THAN ONE?

21 A YES, I DID.

22 Q GIVE ME A GUESSTIMATE OF HOW MANY YOU SAW.

23 A PROBABLY HUNDREDS OF THEM.

24 Q ALL RIGHT. NOW, I HEARD MR. RIVIN ASK
25 MR. MITCHELL, "DID YOU THINK IT WAS IMPORTANT TO FIND OUT
26 HOW MEMBERS REACTED TO THAT LETTER?"

1 DID YOU HAVE AN OPPORTUNITY TO DEAL WITH THE
2 MEMBERS TO FIND OUT HOW THE MEMBERS REACTED TO THAT
3 LETTER?

4 A THEY SEEMED TO BE VERY CONFUSED.

5 Q WHAT IS IT THAT YOU HEARD AND SAW MEMBERS
6 SAY AND DO THAT CAUSED YOU TO BELIEVE THAT THEY SEEMED TO
7 BE VERY CONFUSED?

8 MR. SHERMAN: OBJECTION. HEARSAY.

9 THE COURT: SUSTAINED.

10 MR. MOSHENKO: NOT OFFERED FOR THE TRUTH. IN FACT,
11 OFFERED TO PROVE THAT THE MEMBERS -- WHAT THE MEMBERS SAID
12 WAS NOT TRUE, YOUR HONOR. IT'S A STATE OF MIND, AND IT'S A
13 CONDUCT OFFERING. NOT OFFERED FOR THE TRUTH.

14 MR. SHERMAN: OBJECTION. HEARSAY.

15 THE COURT: IT SEEMS TO ME IT WOULD BE HEARSAY,
16 COUNSEL.

17 MR. MOSHENKO: ALL RIGHT, YOUR HONOR.

18 Q DID ANY OF THE MEMBERS THAT YOU SAW WITH THE
19 LETTER LEAVE THEIR MEMBERSHIP AT DELTA AND GO ELSEWHERE?

20 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: NOT TO MY KNOWLEDGE, NO.

23 BY MR. MOSHENKO: Q WELL, DID YOU SEE ANY EFFECTS
24 RELATING TO -- THAT YOU CONCLUDED WERE RELATING TO THE
25 LETTERS WITH RESPECT TO THE NUMBER OF MEMBERS THAT CAME
26 BACK IN 1998 AS COMPARED TO 1997?

1 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: I'M GETTING FEEDBACK. I DIDN'T
4 UNDERSTAND THAT QUESTION.

5 BY MR. MOSHENKO: Q DID YOU SEE ANY DIFFERENCES IN
6 THE NUMBER OF PEOPLE THAT CAME TO YOUR RESORT IN 1998
7 COMPARED TO 1997?

8 A I SAW PEOPLE COME IN THAT I HAD NEVER SEEN
9 BEFORE BECAUSE THEY HAD RECEIVED THE LETTERS AND WANTED
10 EXPLANATIONS AND WHAT WAS GOING ON. I DIDN'T SEE ANY -- I
11 DIDN'T REALLY SEE ANY OF THE REGULARS, SO-TO-SPEAK. TOO
12 MUCH DROP-OFF. BUT I DID SEE AN INCREASE OF PEOPLE THAT I
13 HAD NEVER SEEN BEFORE. BECAUSE THEY HAD RECEIVED THIS
14 LETTER THAT WE HAD SENT OUT, THE NEWSLETTER THAT DELTA ISLE
15 HAD SENT OUT ON ITS OWN TO THE MEMBERS THAT WE HAD THAT WE
16 WERE ABLE TO FACILITATE THIS TOO. AND THEY WOULD COME IN
17 TO FIND OUT WHAT THE HECK WAS GOING ON. AND A LOT OF THE
18 FOLKS WERE OLD FOLKS THAT I DIDN'T -- I HAD NEVER SEEN
19 BEFORE AND NEVER SEEN SINCE.

20 Q THERE WERE A NUMBER OF PEOPLE THAT YOU HAD
21 SEEN OVER AND OVER FOR YEARS AND THEN STARTING IN 1998
22 SEEMED TO DISAPPEAR?

23 A SOME OF THEM, YES.

24 Q ALL RIGHT. DID YOU EVER HAVE THE EXPERIENCE
25 WHERE IT CAME TO YOUR ATTENTION THAT PERSONS WHO HAD BEEN
26 WITH OTHER RESORTS HAD THEIR MEMBERSHIPS TRANSFERRED TO

1 DELTA ISLE RESORT BY MR. NOVELLI?

2 A I'VE HAD MEMBERS. I PERSONALLY COULD NOT DO
3 THAT. THAT HAD TO BE DONE FROM THE CORPORATE OFFICE.

4 Q OKAY. BUT PEOPLE SHOWED UP WITH THE --
5 GIVING YOU THE UNDERSTANDING THAT THEY HAD BEEN WITH A
6 DIFFERENT RESORT?

7 A YES.

8 Q AND GOT TRANSFERRED TO YOUR RESORT?

9 A YES.

10 Q NOW, DID YOU SEE -- DID YOU NOTE WITH
11 RESPECT TO THOSE PEOPLE THAT WERE TRANSFERRED IN ANY
12 SIGNIFICANT DROP-OFF IN THOSE PEOPLE STAYING WITH THE
13 DELTA ISLE RESORT?

14 A YES, I DID.

15 Q OKAY. NOW, WHEN ARE YOU REFERRING TO?

16 A PARDON?

17 Q WHEN ARE YOU REFERRING TO?

18 A WELL, '98 WAS PROBABLY 25 PERCENT DROP-OFF.
19 '99 -- THE FIRST HALF OF '99 WHEN I WAS THERE, THERE WAS
20 VERY SIGNIFICANT DROP-OFF. AND LIKE I SAY, I LEFT IN JUNE,
21 THE FIRST OF JULY OF '99, AND TURNED IT OVER TO ANOTHER
22 MANAGER.

23 Q WELL, LET'S TALK ABOUT THE PHYSICAL LOCATION
24 OF THE DELTA ISLE RESORT.

25 YOU SAID IT WAS 14 FEET BELOW SEA LEVEL?

26 A YES, IT WAS.

1 Q BACK IN 1996, 1997, WHAT WAS THE CONDITION
2 OF THE RESORT FACILITIES?

3 A BEAUTIFUL RESORT. ALL GRASS. 22 AND A HALF
4 ACRES OF 99 PERCENT GRASS AND TREES. ALL THE SITES WERE
5 GRASS, ALL THE RIGS. EVERYTHING WAS PARKED ON GRASS. IT
6 WAS CLEAN, WELL MAINTAINED. IT'S LIKE A BIG GOLF COURSE,
7 BIG, BEAUTIFUL MANICURED GOLF COURSE.

8 Q ALL RIGHT. MR. SHERMAN, THE DEFENDANTS
9 LAWYER, SAID IN HIS OPENING STATEMENT THAT THERE WERE
10 COMPLAINTS ABOUT DELTA ISLE RELATING TO THE DOCKS. CAN YOU
11 TALK ABOUT THE CONDITION OF THE DOCKS IN 1996, 1997 AND
12 1998?

13 A THE CONDITION OF THE DOCK WAS THE DOCKS.
14 THEY FLOATED. AS THE TIDE RAISED, CAME IN AND WENT OUT,
15 THE DOCKS -- THE SLIPS AND THE DOCKS -- NOT THE DOCKS, BUT
16 THE SLIPS AND THE RAMP DOWN TO THE SLIP WOULD RISE AS THE
17 TIDE CAME IN AND LOWER AS THE TIDE WENT OUT.

18 AND IN THE WINTER -- AND BELIEVE ME, IT
19 GOT -- WE GOT SOME WINTERS UP THERE. YOU TALK ABOUT RAIN.
20 WE DON'T GET IT OUT HERE. WE GOT RAIN UP THERE. AND I
21 HAVE SEEN -- THE DOCKS WOULD -- THEY WERE PILON DRIVEN TO
22 HOLD THE SLIPS INTO PLACE. AND I HAVE SEEN THEM RAISED
23 WHERE YOU HAVE TO WALK UP INSTEAD OF DOWN TO GET TO THEM
24 YOU WALK UP TO GET TO THE DOCK. I LOST TWO SLIPS. I
25 DIDN'T LOSE THEM. I LOST THE FLOTATION DEVICES THAT HOLD
26 THE SLIPS OUT OF THE WATER, KEEP THEM FROM SINKING, BECAUSE

1 THEY'RE METAL AND WOOD DECKS. AND I DID LOSE THE TWO
2 FLOTATION DEVICES, WHICH WERE REPLACED.

3 BUT THEY -- THE WOOD, ALL THE PLANKING AND
4 EVERYTHING ON THE DOCKS WERE WELL MAINTAINED. YOU COULD
5 NOT PAINT THEM AND DO ANYTHING TO THEM BECAUSE YOU PAINT,
6 AND THEN IT MADE THEM TOO SLICK. BUT THEY WERE WELL
7 MAINTAINED. THEY WERE FIRMLY SECURED. AND THE DOCKS --
8 OUT OF 40 SOME SLIPS, EVERY SLIP WAS AVAILABLE AND USABLE.

9 WHEN I GO UP THERE IN 1995, THE -- THE
10 PREVIOUS WINTER, IT TORE THE RAMP FROM THE DOCK DOWN TO THE
11 SLIPS. THE TIDES IN THE HEIGHT OF THE WATER TORE THIS RAMP
12 DOWN. I PUT IT IN. I WENT UP THERE ON THE 21ST OF JUNE,
13 BEFORE THE 4TH OF JULY. THE SLIP -- THIS WAS BACK DOWN --
14 THE FIRST TIME IT HAD BEEN PUT BACK DOWN WAITING FOR THE
15 INSURANCE COMPANY TO PAY FOR IT TO PUT IT BACK IN. IT COST
16 ME \$337 TO HAVE TO PUT IT IN. AND I MADE A LOT OF PEOPLE
17 HAPPY THERE BECAUSE I WAS THE NEW KID IN TOWN, AND THEY
18 WERE WAITING TO SEE ME FAIL.

19 BUT THE SLIPS -- THE DOCK IS BEAUTIFUL.
20 THEY WERE USABLE, AND THEY WERE USED EVERY DAY.

21 MR. MOSHENKO: VERY WELL. THANK YOU.

22 YOUR HONOR, IT'S 12:00.

23 THE COURT: WE'LL TAKE OUR NOON RECESS, LADIES AND
24 GENTLEMEN. SEE YOU ALL AT 1:30.

25 (WHEREUPON THE COURT WAS IN RECESS UNTIL
26 1:30 P.M. OF THE SAME DAY.)

1 WESTMINSTER, CALIFORNIA - TUESDAY, MAY 23, 2000

2 AFTERNOON SESSION

3 THE COURT: AS YOU KNOW, WE'RE GOING TO RECESS AT
4 3:30. SO WE'LL SEE IF WE CAN MAKE IT WITHOUT A BREAK. IF
5 NEED BE, RAISE YOUR HAND.

6 PROCEED.

7 MR. MOSHENKO: THANK YOU, YOUR HONOR.

8 DIRECT EXAMINATION (CONTINUED)

9 BY MR. MOSHENKO: Q MR. GUIRE, WHEN WE BROKE FOR
10 LUNCH, WE'RE TALKING ABOUT THE CONDITION OF THE DELTA ISLE
11 RESORT IN 1996 AND 1997.

12 WHILE YOU WERE MANAGER, DID DELTA ISLE EVER
13 HAVE ANY SEPTIC PROBLEMS?

14 A NOT IN -- NOT AFTER -- NO, NOT IN '96, '97.
15 '95 IT WAS MILD, YES.

16 Q MR. NOVELLI AND THE PLAINTIFF ORGANIZATION
17 ACQUIRED DELTA ISLE AND THEN PUT IT INTO BANKRUPTCY; IS
18 THAT WHAT HAPPENED?

19 A YES.

20 Q AND WERE YOU THE MANAGER AT THE TIME THAT IT
21 WAS PLACED INTO A BANKRUPTCY --

22 A YES.

23 Q -- REORGANIZATION?

24 A YES, I WAS.

25 Q OKAY. AND DID YOU THEN CONTINUE TO KNOW THE
26 PEOPLE THAT -- PEOPLE THAT CAME DURING THE TIME OF THE

1 BANKRUPTCY?

2 A YES.

3 Q DID YOU NOTICE ANY DROP-OFF OF MEMBERSHIP --

4 A NO.

5 Q -- WHILE IT WAS IN BANKRUPTCY?

6 A NO, I DID NOT.

7 Q DID YOU SEE ANY CHANGE IN THE WAY THE
8 MEMBERS REACTED TO THE RESORT BECAUSE OF THE BANKRUPTCY?

9 A THEY WERE VERY RESPONSIVE TO IT. THEY DOVE
10 IN AND HELPED TO -- EVERY WAY THEY COULD. ANYTHING THAT
11 THEY COULD POSSIBLY HELP, THEY HELPED, ALL MEMBERS.

12 Q DO MEMBERS DO THAT, GET IN AND HELP -- WHAT
13 DO YOU MEAN "HELP"? WHAT DID THEY DO?

14 A WELL, INTO -- WE WENT INTO THE BANKRUPTCY.
15 WE HAD A REFEREE. I GUESS IT WAS CALLED A RECEIVER,
16 WHATEVER.

17 Q AN EXAMINER?

18 A AN EXAMINER. HIS NAME IS MR. MUTO, WHO ALL
19 HE WANTED TO DO IS SELL THE PARK TO SOMEBODY ELSE. IT WAS
20 NOT -- HE WAS NOT TRYING TO HELP US IN ANY RESPECT THROUGH
21 THE BANKRUPTCY. HE WAS FIGHTING ME. I WAS PUT ON BY THE
22 JUDGE ON THE SIGNATURE CARD FOR THE BANK ACCOUNT THAT HE
23 CONTROLLED, AND I DID NOT WANT TO DO IT. UNFORTUNATELY --
24 SO FORTUNATELY I WAS TAKEN OUT ANYWAY.

25 ALL OF THE MEMBERS ALL OF THE WAY -- WE SENT
26 OUT -- WE HAD AN EIGHT-HOUR PERIOD OF TIME TO GET THIS

1 PETITION INTO THE COURT WITH -- SIGNED BY THE MEMBERS OF
2 THE PARK PETITIONING, WANTING TO TRY TO SAVE THE PARK.
3 BEFORE -- DELTA ISLE DID NOT WANT IT TO GO INTO
4 RECEIVERSHIP AND TO BE SOLD IN -- THROUGH THE COURT'S
5 BATTLE, THAT WAY THEY COULD RETAIN IT.

6 THERE WAS SEVERAL HUNDRED OF R.P.I., COAST
7 TO COAST, PRESIDENT'S CLUB, DELTA ISLE MEMBERS, THE FIRST
8 NATIONWIDE MEMBERS -- WELL, FIRST NATIONWIDE WASN'T THERE
9 AT THE TIME. ALL THESE MEMBERS, THEY SIGNED THIS PETITION.
10 WE FAX'D INTO THE COURT AND GOT IT IN THERE WHERE I WAS PUT
11 IN FOR THE HEARING FOR THE NEXT DAY.

12 YES, WE HAD A TREMENDOUS RESPONSE FROM ALL
13 MEMBERS. IT WAS SEVERAL HUNDRED OF THESE PETITIONS SIGNED.

14 Q OKAY. AND THE RESPONSE TO THE BANKRUPTCY
15 WAS -- HOW WOULD YOU CHARACTERIZE IT? FAVORABLE,
16 UNFAVORABLE, WHAT?

17 A VERY FAVORABLE.

18 Q DID THE RESORT GO DOWN IN QUALITY WHILE THE
19 BANKRUPTCY WAS PENDING?

20 A IT DID NOT. IT WENT UP.

21 Q DID THE NUMBER OF MEMBERS GO DOWN?

22 A NO, IT DID NOT.

23 Q DID IT GO UP?

24 A WELL, YES. THERE WAS A SALES PROGRAM GOING
25 ON AT THE TIME, AND THEY WERE MAKING SALES.

26 Q OKAY. WE HEARD MR. SHERMAN IN HIS OPENING

1 STATEMENT TALK ABOUT SOME FLIES. WERE THERE FLIES AT
2 DELTA ISLE?

3 A WHEN YOU HAVE WATER ALL AROUND YOU, THERE
4 WAS FLIES. BUT NOTHING -- NOT NEARLY LIKE MOSQUITOES. A
5 LOT OF MOSQUITOES BECAUSE OF THE WATER THAT WAS STANDING.
6 LIKE I SAID, THIS WHOLE AREA, IN THAT AREA, THE DELTA ISLE
7 AREA -- THE DELTA AREA IS WHAT IT IS -- IT IS A FLOATING
8 ISLAND ON PEAT MOSS, AND IT FLOATS. IT FLOATS IN WHAT USED
9 TO BE A RIVERBED. AND YES, THERE IS SURFACE WATER ALL OVER
10 THE AREA COMPLETELY.

11 IF YOU'VE EVER BEEN UP INTO THE DELTA AREA,
12 YOU WILL KNOW WHAT I'M SAYING. BECAUSE AT ONE TIME IT WAS
13 ALL PART OF THE GREATER SACRAMENTO RIVER, WHICH IS A BIG
14 RIVER.

15 Q ALL RIGHT. SO, MR. GUIRE, IF THERE ARE
16 FLIES, DID IT HAVE ANYTHING TO DO WITH MAINTENANCE?

17 A NO. IT WAS JUST THE NORMAL RUN OF FLIES.
18 THERE WAS -- THERE'S A LOT OF HEAT, A LOT OF HUMIDITY, AND
19 THERE WAS NOT THAT GREAT AMOUNT OF FLIES. YOU COULD SIT
20 OUT ON THE PATIOS WITH -- I PUT IN THE ONE PATIO THERE AT
21 THE CLUBHOUSE. I PUT TWO OF THESE CIRCULAR FANS UP IN THE
22 CEILING. I PUT A MISTER ALL AROUND IT BECAUSE OF THE HEAT
23 AROUND IT. I PUT -- TURN ON THOSE TWO FANS, AND THERE WAS
24 NO FLIES AT ALL IN -- I WOULD SAY NO. THE FLIES WERE
25 REALLY NO PROBLEM.

26 THE MOSQUITOES WERE AT NIGHT, YES, A PROBLEM

1 WITH MOSQUITOES. AND WE DID SPRAY FOR MOSQUITOES AS WELL
2 AS THE COUNTY.

3 Q DO YOU KNOW ANY MEMBERS THAT QUIT DELTA ISLE
4 BECAUSE OF THE BOAT DOCKS?

5 A NO.

6 Q ANY MEMBERS THAT QUIT DELTA ISLE BECAUSE OF
7 THE FACT THAT THERE MIGHT BE FLIES THERE?

8 A NO.

9 Q YOU KNOW RAY NOVELLI?

10 A YES.

11 Q HAVE YOU MET HIM PERSONALLY?

12 A I'VE MET RAY TWICE.

13 Q DOES HE COME TO THE RESORT?

14 A HE HAS BEEN TO THE RESORT, YES.

15 Q WHAT WAS -- WAS IT A SPECIAL OCCASION OR
16 WHAT?

17 A I DON'T THINK IT WAS ANYTHING SPECIAL. HE
18 WAS JUST UP THERE ON A SATURDAY.

19 Q OKAY. NO EVENT -- UNIQUE EVENT GOING ON?

20 A NO.

21 Q OKAY. SO WHAT KIND OF RECEPTION DID
22 RAY NOVELLI GET FROM MEMBERS WHEN HE CAME?

23 A I HAD THE LARGEST TURNOUT FOR DINNER WHEN
24 THEY FOUND OUT THAT RAY AND MARLIES WERE COMING UP WITH
25 SOME OF HIS OTHER PEOPLE THAT I HAVE EVER HAD FOR A WEEKEND
26 FUNCTION AT THAT ONE PARTICULAR TIME. THERE WAS -- WE HAD

1 PLANNED FOR ABOUT 150 MEMBERS BEING THERE, AND THERE WAS
2 OVER 300 PEOPLE SHOWED UP WHEN THEY FOUND THAT THEY WERE
3 COMING OUT.

4 THEY WANTED TO MEET RAY AND MARLIES BECAUSE
5 OF THE -- THEY HAD HEARD -- THEY KNEW OF HIM.

6 MR. MOSHENKO: YOUR WITNESS, MR. SHERMAN.

7 THANK YOU, MR. GUIRE.

8 MR. SHERMAN: GIVEN THE HEARING CHALLENGE, WHAT I'D
9 LIKE TO DO IS WHAT MR. MOSHENKO DID, IF THE COURT DOESN'T
10 MIND.

11 THE COURT: OKAY.

12 CROSS-EXAMINATION.

13 BY MR. SHERMAN: Q YOU ARE A MEMBER OF COAST?

14 A AM I A MEMBER OF COAST?

15 Q YOU WERE A MEMBER OF COAST?

16 A YES, I WAS A MEMBER OF COAST.

17 Q AND YOU WERE A MEMBER FOR ABOUT 10 YEARS?

18 A APPROXIMATELY, YES.

19 Q AND SO YOU STAYED A MEMBER FOR 10 YEARS?

20 A YES.

21 Q AND WHEN YOU BECAME A MEMBER OF COAST, YOU
22 FILLED OUT A MEMBERSHIP APPLICATION?

23 A I ASSUME SO, YES.

24 Q AND BY FILLING OUT A MEMBERSHIP APPLICATION,
25 YOU UNDERSTOOD THAT YOU'D HAVE A CONTRACT WITH CAMP COAST
26 TO COAST TO BE A MEMBER?

1 A YES.

2 Q SO YOU HAD A SEPARATE MEMBERSHIP CONTRACT
3 WITH COAST TO COAST?

4 A YES.

5 Q ONE CONTRACT WITH YOUR HOME RESORT?

6 A YES.

7 Q ANOTHER CONTRACT WITH COAST TO COAST?

8 A I ASSUMED THAT IT WAS, YES.

9 Q TWO CONTRACTS?

10 A YES. I SAY TWO CONTRACTS, YES.

11 Q AND THE MEMBERSHIP APPLICATION THAT YOU
12 FILLED OUT MADE YOU A MEMBER OF COAST?

13 A YES.

14 Q AM I SPEAKING --

15 A NO.

16 Q I'M NOT SPEAKING TOO LOUD?

17 A NO. I CAN HEAR YOU.

18 Q OKAY. I'M JUST CONCERNED ABOUT THAT.

19 OKAY.

20 THE COURT: HIS CAT CAN HEAR YOU, TOO.

21 BY MR. SHERMAN: Q AND YOU RECEIVED RENEWAL FORMS
22 FROM COAST EVERY YEAR?

23 A I RECEIVED A BILL EVERY YEAR, YES.

24 Q AND THE RENEWAL FORMS, THE BILL THAT YOU GOT
25 EVERY YEAR, HAD ON IT A RENEWAL FORM, IF YOU WANTED TO
26 REMAIN AS A MEMBER?

1 A WELL, YES.

2 Q LET ME SHOW THE WITNESS EXHIBIT 827.

3 NOW, I REALIZE YOUR NAME IS NOT ON THIS --

4 A YES. I KNOW.

5 Q -- RENEWAL FORM.

6 BUT IS THIS THE KIND OF RENEWAL FORM THAT

7 YOU WOULD RECEIVE?

8 A YES.

9 Q AND YOU GET THIS RENEWAL FORM ONCE A YEAR IN

10 THE MAIL?

11 A RIGHT.

12 Q AND FOR THE YEARS THAT YOU REMAINED A

13 MEMBER, YOU WOULD SEND BACK YOUR PAYMENT?

14 A THAT'S RIGHT.

15 Q I'D LIKE TO PUT EXHIBIT 827 UP ON THE SCREEN.

16 IF YOU COULD TURN, PLEASE, TO THE SECOND

17 PAGE -- WELL, ACTUALLY FIRST YOU'LL SEE IT SAYS HERE THIS

18 IS THE 2000 -- YEAR 2000 COAST TO COAST MEMBERSHIP RENEWAL.

19 IT SAYS THAT UP TOP, AT THE VERY TOP.

20 DO YOU SEE THAT?

21 A YEAH.

22 Q OKAY. THAT'S THE DUES STATEMENT, CORRECT.

23 LET'S TURN TO THE SECOND PAGE.

24 NOW, THE SECOND PAGE -- THAT'S REALLY THE

25 BACK SIDE OF THE RENEWAL FORM; RIGHT?

26 A THAT'S WHAT IT APPEARS TO BE, YES.

1 Q AND THE BACK SIDE OF THE RENEWAL FORM THAT
2 YOU GOT ON A YEARLY BASIS HAD THE COAST TO COAST RESORTS --
3 IF WE CAN JUST HIGHLIGHT IT ON THE TOP, PLEASE -- THE COAST
4 TO COAST RESORTS TERMS AND CONDITIONS OF INDIVIDUAL
5 MEMBERSHIP.

6 DO YOU SEE THAT AT THE VERY TOP?

7 A YES.

8 Q AND SO YOU UNDERSTOOD EACH YEAR WHEN YOU
9 WERE SENDING IN YOUR DUES THAT THESE WERE YOUR TERMS AND
10 CONDITIONS OF YOUR MEMBERSHIP?

11 A YES. I ASSUME THEY WERE, YES.

12 Q AND LET'S GO TO THE THIRD ENTRY DOWN THERE.
13 IT SAYS "HOME RESORT."

14 DO YOU SEE WHERE THAT IS?

15 A YES, I DO.

16 Q OKAY. AND ITEM NUMBER 2, ITEM NUMBER 2
17 UNDERNEATH HOME RESORT SAYS, "IF YOUR HOME RESORT CEASES TO
18 BE A COAST TO COAST AFFILIATED RESORT FOR ANY REASON, YOUR
19 COAST TO COAST MEMBERSHIP WILL REMAIN IN EFFECT FOR THE
20 REMAINDER OF THAT CALENDAR YEAR, THEREBY ALLOWING YOU A
21 REASONABLE PERIOD OF TIME TO BECOME A MEMBER OF ANOTHER
22 COAST TO COAST AFFILIATED RESORT WITHOUT INTERRUPTING YOUR
23 BENEFITS."

24 DO YOU SEE THAT?

25 A YES.

26 Q AND YOU SAW THAT LANGUAGE EACH YEAR WHEN YOU

1 RENEWED?

2 A WELL, TO TELL YOU THE TRUTH, I NEVER EVEN
3 PAID ATTENTION TO IT. I HANDED MY WIFE, AND SHE WOULD FILL
4 IT OUT AND SEND THEM A CHECK AND LET IT GO AT THAT.

5 Q YOU KNEW THERE WAS A BACK?

6 A I KNEW.

7 MR. MOSHENKO: YOUR HONOR, MAY I MAKE AN OBJECTION
8 FOR THE RECORD AND ASK THE COURT TO JUST TAKE IT UNDER
9 SUBMISSION? AND THE OBJECTION IS THE DOCUMENT BEING USED
10 IS A DOCUMENT THAT WAS NOT PRODUCED DURING DISCOVERY, AND
11 WE CAN DISCUSS IT LATER. THANK YOU.

12 THE COURT: THANK YOU.

13 BY MR. SHERMAN: Q AND YOU GOT A SEPARATE BILL
14 EACH YEAR FROM COAST?

15 A YES.

16 Q AND YOU RECEIVED A MEMBERSHIP CARD FROM
17 COAST?

18 A YES, I DID.

19 Q YOU CARRIED IT IN YOUR WALLET?

20 A THAT'S RIGHT.

21 Q AND WHEN YOU BECAME A MEMBER OF COAST, YOU
22 RECEIVED COAST'S TRAVEL MAGAZINE EIGHT TIMES A YEAR?

23 A I RECEIVED THE COAST MAGAZINE, YES.

24 Q OKAY. EXHIBIT 899.

25 THESE ARE SOME OF THE COVERS OF THE COAST
26 TRAVEL MAGAZINE; IS THAT RIGHT?

1 A RIGHT.

2 MR. SHERMAN: CAN WE PUT THAT UP ON THE BOARD,
3 PLEASE, EXHIBIT 899, ON THE SCREEN.

4 Q AND SO YOU AND YOUR WIFE WOULD GET TRAVEL
5 MAGAZINES FROM COAST TO COAST EIGHT TIMES A YEAR?

6 A YES.

7 Q AND YOU READ THEM?

8 A NO.

9 Q YOUR WIFE READ THEM?

10 A MY WIFE -- I DON'T KNOW WHETHER SHE READ
11 THEM. NO, I DIDN'T READ THEM. I WASN'T THAT INTERESTED.

12 Q OKAY. BUT, I MEAN, THEY'RE PRETTY COVERS?

13 A I RECEIVED THE MAGAZINE, YES, AND I SCANNED
14 THROUGH THEM.

15 Q AND IN ADDITION TO GETTING A MAGAZINE FROM
16 YOUR MEMBERSHIP CLUB EIGHT TIMES A YEAR, YOU ALSO GOT A
17 DIRECTORY FROM COAST EVERY YEAR; RIGHT?

18 A I ASSUME SO, YES.

19 Q WE'VE HAD THOSE DOCUMENTS MASS-MARKED AS
20 EXHIBIT 863, IF I COULD -- I'M NOT SURE IF ANY ONE IN
21 PARTICULAR IS CRITICAL.

22 COUNSEL, TAKE A DIRECTORY.

23 MR. MOSHENKO: TAKE A DIRECTORY. ANY DIRECTORY.

24 MR. SHERMAN: TAKE A DIRECTORY, ANY DIRECTORY. YOU
25 TOOK THE WORDS OUT OF MY MOUTH.

26 Q I'M PLACING BEFORE YOU A DOCUMENT AMONG

1 DOCUMENTS THAT HAVE BEEN MARKED AS EXHIBIT 899.

2 IS THAT A COAST TO COAST RESORTS DIRECTORY?

3 A YES, IT IS.

4 Q WHETHER YOU RECEIVED THIS ONE OR NOT, YOU
5 RECEIVED DIRECTORIES?

6 A I RECEIVED A DIRECTORY.

7 Q JUST LIKE THIS?

8 A AND THE SMALL ONE.

9 Q YOU ALSO RECEIVED THE POCKET-SIZE ONE?

10 A YES.

11 MR. SHERMAN: DO WE HAVE THE POCKET-SIZE ONE, ALSO?

12 THE WITNESS: I'M EVASIVE ON THIS. I NEVER USED
13 COAST TO COAST. THREE YEARS -- THE FIRST THREE YEARS I HAD
14 IT, I DIDN'T EVEN HAVE AN R.V. AND THEN I WAS MANAGING A
15 PARK FOR FIVE YEARS. SO OUT OF THAT PERIOD OF TIME, I
16 REALLY DIDN'T HAVE THE OPPORTUNITY TO UTILIZE THIS. I
17 RECEIVED THE STUFF NOT ONLY AS AN INDIVIDUAL, I ALSO
18 RECEIVED IT AS A PARK MANAGER.

19 BY MR. SHERMAN: Q AND YOU RECEIVED --

20 A YES.

21 Q -- THE POCKET-SIZE DIRECTORY, AS WELL?

22 A YES.

23 Q AND THE POCKET-SIZE DIRECTORY ACTUALLY HAS A
24 MAP OF THE ENTIRE COAST NETWORK; RIGHT?

25 A RIGHT.

26 Q SO IF YOU'RE A MEMBER WHO WANTS TO TRAVEL

1 THE COAST SYSTEM, YOU CAN KEEP THIS IN THE DASHBOARD OF
2 YOUR R.V.?

3 A THAT'S RIGHT.

4 Q AND SO YOU COULD FIGURE OUT WHERE THE
5 DIFFERENT COAST TO COAST RESORTS ARE; IS THAT RIGHT?

6 A RIGHT.

7 MR. MOSHENKO: YOUR HONOR, FOR THE RECORD, THE SAME
8 OBJECTION; ASK THE COURT TAKE IT UNDER SUBMISSION.

9 THE COURT: UNDER SUBMISSION.

10 BY MR. SHERMAN: Q NOW, AT DELTA ISLE THERE WERE
11 COAST MEMBERS WHO WERE ALSO MEMBERS OF DELTA ISLE; RIGHT?

12 A RIGHT.

13 Q AND THERE WERE ALSO PEOPLE WHO DIDN'T TRAVEL
14 AROUND THE NETWORK MUCH AND JUST BELONGED TO DELTA ISLE?

15 A RIGHT.

16 Q SO YOU HAD TWO TYPES OF PEOPLE THERE; PEOPLE
17 WHO WERE DELTA ISLE MEMBERS AND COAST MEMBERS; RIGHT?

18 A RIGHT.

19 Q AND PEOPLE WHO WERE JUST DELTA ISLE MEMBERS?

20 A THAT'S RIGHT.

21 Q AND SO THE PEOPLE WHO JUST USED DELTA ISLE
22 WEREN'T COAST MEMBERS?

23 A WELL, BOTH COAST AND DELTA ISLE MEMBERS
24 USUALLY, YES.

25 Q RIGHT. BUT IF SOMEBODY JUST JOINED

26 DELTA ISLE, JUST BECAUSE THEY JUST WANTED TO USE

1 DELTA ISLE, THEN THEY WEREN'T A COAST MEMBER?

2 A IF IT WAS JUST DELTA ISLE MEMBERS, NO, NOT
3 NECESSARILY.

4 Q YOU AGREE WITH ME?

5 A I THINK YOU BETTER ASK ME AGAIN.

6 Q OKAY. YOU HAD TWO TYPES OF MEMBERS AT
7 DELTA ISLE; PEOPLE WHO WERE DELTA ISLE MEMBERS AS WELL AS
8 COAST MEMBERS; CORRECT?

9 A RIGHT.

10 Q AND PEOPLE WHO WERE JUST DELTA ISLE MEMBERS?

11 A RIGHT.

12 Q PEOPLE WHO WERE JUST DELTA ISLE MEMBERS BY
13 DEFINITION WEREN'T COAST MEMBERS?

14 A BY DEFINITION, YES.

15 Q OKAY. NOW, I WANT TO ASK YOU SOME QUESTIONS
16 ABOUT THE BANKRUPTCIES AT DELTA ISLE.

17 DO YOU UNDERSTAND?

18 A OKAY.

19 Q DELTA ISLE HAD A LARGE -- HAD A BANK THAT
20 WAS A CREDITOR, SUNRISE?

21 A RIGHT.

22 Q AND SUNRISE BANK WAS A BANK UP IN
23 SACRAMENTO?

24 A YES.

25 Q AND THEY HAD A MORTGAGE ON THE PROPERTY?

26 A RIGHT.

1 Q AND YOU WEREN'T INVOLVED IN THE MORTGAGE
2 YOURSELF, WERE YOU?

3 A NO, I WASN'T.

4 Q BUT YOU KNEW THERE WAS THIS BANK, AND THE
5 BANK WAS OWED A LOT OF MONEY?

6 A THAT'S RIGHT.

7 Q AND THE BANK WASN'T PAID?

8 A THAT'S RIGHT.

9 Q THE BANK WASN'T BEING PAID?

10 A THEY WERE BEHIND ON THE PAYMENTS, YES.

11 Q AND DELTA ISLE WAS BEHIND ON THE PAYMENTS
12 FOR A LONG TIME?

13 A FOR A PERIOD OF TIME, YES.

14 Q AND THEN SUNRISE BANK DIDN'T LIKE THAT, AND
15 SO THEY DECIDED TO FILE A LAWSUIT?

16 A WELL, YES.

17 Q AND IN ADDITION TO FILING A LAWSUIT, THEY
18 BEGAN TO FORECLOSE TO TRY TO TAKE THE PROPERTY BACK?

19 A THAT'S RIGHT.

20 Q AND THIS ALL HAPPENED RIGHT BEFORE MR. MUTO,
21 THE GENTLEMAN YOU MENTIONED, WAS PUT IN AS THE RECEIVER?

22 A YES, DURING THAT PERIOD OF TIME.

23 Q RIGHT.

24 SO THAT WAS IN EARLY 1996; RIGHT?

25 A IT WAS IN '96. I DON'T REMEMBER IF IT WAS
26 EARLY.

1 Q MR. MUTO WAS PUT IN AS THE RECEIVER IN THE
2 SPRING OF '96?

3 A OKAY.

4 Q AND SO SUNRISE BANK WANTED TO ACTUALLY HAVE
5 DELTA ISLE SOLD AT A BANKRUPTCY FORECLOSURE SALE?

6 A THAT'S RIGHT.

7 Q BUT THE OWNERS OF DELTA ISLE STOPPED THAT
8 FOR A TIME; RIGHT?

9 A THAT'S RIGHT.

10 Q BECAUSE THEY THREW THE PARK INTO BANKRUPTCY?

11 A RIGHT.

12 Q AND AFTER THE -- WELL, LET ME BACK UP A
13 LITTLE BIT, SIR.

14 BEFORE THE BANKRUPTCY FILING, THERE WAS
15 ACTUALLY A LAWSUIT THAT SUNRISE HAD FILED; RIGHT?

16 A I THINK SO, BUT I'M NOT CERTAIN.

17 Q AND AFTER THIS LAWSUIT WAS FILED, THAT'S
18 WHEN MR. MUTO, GERALD MUTO, CAME ON THE SCENE?

19 A YOU'RE GETTING OUT OF MY REALM.

20 Q OKAY. BUT GOING BACK TO YOUR TESTIMONY
21 ABOUT MR. MUTO, HE WAS ACTUALLY APPOINTED BY A COURT TO RUN
22 THE PARK?

23 A YES.

24 Q HE WAS YOUR BOSS?

25 A OKAY. YOU SAY SO. I DON'T THINK HE WAS,

26 BUT --

1 Q OKAY. BUT HE WAS RUNNING THE PLACE?

2 A NO, HE WASN'T. HE WAS DOING NOTHING BUT
3 GIVING ME A RASHING, GIVING ME A LOT --

4 Q SO YOU AND MR. MUTO WERE HAVING PROBLEMS
5 WITH ONE ANOTHER?

6 A VERY DEFINITELY WE HAD A PROBLEM.

7 Q AND YOU HAD PROBLEMS AS FAR AS
8 COMMUNICATIONS?

9 A NO. NO PROBLEMS WITH COMMUNICATION.

10 Q I'M TALKING ABOUT COMMUNICATING WITH THE
11 MEMBERS.

12 A I DON'T THINK THAT HE EVER TRIED TO
13 COMMUNICATE WITH THE MEMBERS. TO MY KNOWLEDGE, HE WAS OUT
14 THERE TWICE DURING THIS WHOLE COURSE -- PERIOD OF TIME. HE
15 HAD A REPRESENTATIVE THAT CAME OUT AND WAS A HECK OF A NICE
16 GUY AND HAPPENED TO BE A R.V.'ER HIMSELF, AND HE WAS --
17 WORKED FOR MR. MUTO. HE BROUGHT ME OUT THE CHECKS THAT I
18 REQUESTED TO PAY THE BILLS, ONCE HE SENT THEM OUT TO ME.

19 Q I SEE.

20 SO MR. MUTO HAD THE PURSE STRING FOR A TIME?

21 A PARDON ME?

22 Q MR. MUTO HELD THE PURSE STRINGS?

23 A YES. HE HAD CONTROL OF THE MONEY BECAUSE I
24 SENT HIM A PACKET EVERY WEEK, A COPY OF MY WEEKLY PACKET,
25 AS LONG AS -- EVERY WEEK, AND KEPT A PACKET, COPY OF IT AT
26 MY OFFICE OF EVERY TIME THAT CHECK -- MONEY CAME IN,

1 WHAT CAME IN. I DID NOT COLLECT THE DUES, THIS TYPE OF
2 THING, NO. AND I UNDERSTAND THAT MR. MUTO DID THIS. I
3 DON'T KNOW.

4 Q NOW, AT THE TIME THAT SUNRISE BANK FILED
5 THIS LAWSUIT AND MR. MUTO WAS APPOINTED BY THE COURT, DO
6 YOU KNOW WHO OWNED DELTA ISLE PARK THEN AT THAT TIME,
7 SPRING OF '96?

8 A DO I KNOW WHAT?

9 Q DO YOU KNOW WHO OWNED THE DELTA ISLE PARK
10 THEN IN THE SPRING OF 1996?

11 A DELTA ISLE, I ASSUMED IT WAS OWNED BY THE
12 CORPORATION, OR IN THE PROCESS.

13 Q THE CORPORATION BEING FIRST NATIONWIDE
14 RESORT MANAGEMENT?

15 A I DON'T KNOW WHETHER IT WAS FIRST
16 NATIONWIDE. I ASSUME, YES. I WORKED FOR DELTA ISLE; AND
17 AS FAR AS THE OWNERSHIP WAS CONCERNED, IT WAS FIRST
18 NATIONWIDE.

19 Q SO AFTER MR. MUTO WAS APPOINTED AND THERE
20 WAS THIS FORECLOSURE SALE BEING THREATENED IN THE SPRING OF
21 '96, THAT'S WHEN THE BANKRUPTCY GOT FILED?

22 A YES.

23 Q AND AFTER THE BANKRUPTCY WAS FILED, MR. MUTO
24 STAYED INVOLVED WITH THE RUNNING OF THE BANKRUPTCY
25 OPERATION?

26 A YES.

1 Q AND SO AFTER THE BANKRUPTCY GOT FILED,
2 MR. MUTO WAS -- AS YOU UNDERSTOOD, HE WAS APPOINTED BY THE
3 BANKRUPTCY COURT TO HANDLE WHAT WAS GOING ON WITH
4 DELTA ISLE?

5 A HE WAS APPOINTED, YES. HE WAS APPOINTED --
6 I QUESTIONED WHO HE WAS CONCERNED FOR, FOR THE DELTA ISLE
7 MEMBERS OR THE DELTA ISLE, OR IF HE WAS CONCERNED FOR HIS 5
8 PERCENT COMMISSIONS, GOING TO GET IF HE SOLD THE PROPERTY.
9 AND THAT WAS -- THIS WAS ONE OF THE THINGS THAT WAS MADE
10 KNOWN BY MR. MUTO TO THE DELTA ISLE MEMBERS, AND THEY GOT
11 THEIR BACKS UP. THEY GOT A BURR UNDER THEIR SADDLE, AND
12 THEY DIDN'T CARE FOR IT TOO MUCH. THEY WERE NOT RECEPTIVE
13 TO ANYTHING THAT MR. MUTO WANTED TO DO.

14 Q YOU KNOW, ON THAT POINT, EXHIBIT 938,
15 PLEASE.

16 YOU MENTIONED PEOPLE GETTING THEIR BACKS UP
17 WITH MR. MUTO AND THE FIGHTING THAT WAS GOING ON. I PLACE
18 BEFORE YOU A DOCUMENT THAT'S BEEN MARKED AS EXHIBIT 938,
19 AND I'M REALLY JUST DIRECTING YOUR ATTENTION TO THE FIRST
20 PAGE OF THIS DOCUMENT.

21 DO YOU SEE THE DATE IS OCTOBER 3? NO. THE
22 VERY FIRST PAGE. YES. THAT ONE. TO ALL RESORT MEMBERS.

23 OKAY. THAT'S DATED OCTOBER 3, 1996; DO YOU
24 SEE THAT?

25 A YES, I DO.

26 Q AND YOU WERE TALKING ABOUT SOME OF THE

1 ISSUES WITH THE MEMBERS, AND YOU TALKED ABOUT PEOPLE
2 GETTING THEIR BACKS UP. TAKE LOOK AT THAT. THAT'S A
3 LETTER THAT YOU SAW BACK IN OCTOBER 1996; IS THAT RIGHT?

4 A I DON'T RECALL THIS LETTER, NO.

5 Q YOU DON'T RECALL IT AT ALL?

6 A NO.

7 Q DO YOU RECALL ANY OF THE ISSUES DISCUSSED IN
8 THIS LETTER?

9 A A COUPLE OF THE ISSUES I HAVE SEEN. BUT AS
10 FAR AS SEEING THIS LETTER, NO, I HAVE NOT SEEN THIS LETTER.

11 Q OKAY. FAIR ENOUGH.

12 AS FAR AS SOME OF THE ISSUES IN THIS LETTER,
13 WERE YOU MADE AWARE BY EITHER MEMBERS OR OTHERS AT FIRST
14 NATIONWIDE OR DELTA ISLE ABOUT AN AIRLINE BUSINESS THAT
15 MR. NOVELLI WAS INVOLVED IN?

16 A I KNEW THAT MR. NOVELLI HAD LEASED SOME
17 AIRPLANES, BUT I DIDN'T KNOW HE OWNED A COMPANY. YES, I AM
18 AWARE OF THAT ISSUE.

19 Q YOU WERE MADE AWARE OF AN AIRLINE CALLED
20 "PRESIDENTIAL AIR"?

21 A I DON'T REMEMBER THE NAME, NO.

22 Q DID YOU LEARN THAT MR. NOVELLI HAD TRIED TO
23 GET AN AIRLINE OFF THE GROUND?

24 A I HEARD THIS, YES.

25 Q BUT IT WAS AN ILL-FATED EFFORT; IT DIDN'T
26 WORK?

1 A I DON'T KNOW. I DON'T ASSUME THAT HE DID,
2 NO. I DON'T KNOW THAT IT WAS ILL-FATED. I DON'T KNOW THE
3 PARTICULARS OF IT.

4 Q BUT YOU HEARD ABOUT THIS FROM MEMBERS, TOO;
5 RIGHT?

6 A I HEARD ABOUT IT FROM MEMBERS. I BELIEVE
7 THAT I READ SOMETHING ABOUT IT IN THE NEWSPAPER, TOO, AT
8 ONE TIME.

9 Q AND WHAT YOU HEARD AT DELTA ISLE, YOU HEARD
10 SOME COMPLAINTS FROM MEMBERS ABOUT WHY MR. NOVELLI WAS
11 RUNNING AN AIRLINE WITH THE FINANCIAL PROBLEMS AT THE PARK?

12 MR. MOSHENKO: OBJECTION. HEARSAY.

13 THE WITNESS: NO, I DON'T RECALL.

14 THE COURT: THE OBJECTION IS SUSTAINED.

15 MR. MOSHENKO: MR. GUIRE, HOLD ON. IF I MAKE AN
16 OBJECTION, COULD YOU PLEASE JUST HOLD ON FOR A SECOND.

17 AND THE OBJECTION IS SUSTAINED, YOUR HONOR?

18 THE COURT: SUSTAINED.

19 MR. MOSHENKO: THANK YOU.

20 BY MR. SHERMAN: Q AT THE TIME DELTA ISLE FILED
21 ITS BANKRUPTCY IN 1996, THERE WERE CREDITORS THAT WERE OWED
22 MONEY; IS THAT RIGHT?

23 A I ASSUME THERE WAS, YES.

24 Q THE INTERNAL REVENUE SERVICE WAS OWED ABOUT
25 \$600,000?

26 MR. MOSHENKO: OBJECTION. LACKS FOUNDATION.

1 THE COURT: OVERRULED.

2 MR. MOSHENKO: IS --

3 THE COURT: YOU MAY ANSWER, IF YOU KNOW THE
4 ANSWER.

5 DID YOU HAVE PERSONAL KNOWLEDGE OF THAT?

6 THE WITNESS: I DON'T KNOW.

7 THE COURT: DID YOU HAVE PERSONAL KNOWLEDGE OF
8 THAT?

9 THE WITNESS: NO. I DO NOT HAVE PERSONAL KNOWLEDGE
10 OF THAT.

11 BY MR. SHERMAN: Q OKAY. I'LL MOVE ON.

12 REGARDLESS OF THE AMOUNT, DID YOU LEARN THAT
13 THE INTERNAL REVENUE SERVICE WAS OWED A LOT OF MONEY?

14 A WELL, ANYBODY WITH ANY SENSE AT ALL WOULD
15 ASSUME THAT THERE WAS BACK TAXES OR SOMETHING OF THIS
16 TYPE. I ASSUMED THERE PROBABLY WAS. PERSONALLY I DID NOT
17 KNOW THE AMOUNT OR HOW MUCH OR IF THERE WAS ANY. I ASSUMED
18 THERE WAS. I DO NOT HAVE A RECORD OF THE BUSINESS. I DO
19 NOT HAVE THAT RECORD. STUFF I DIDN'T HAVE.

20 Q LET'S TALK ABOUT SOME OF THE UTILITY
21 SERVICES AT THE PARK.

22 AT THE TIME OF THE BANKRUPTCY FILING IN
23 1996, YOU KNOW, WERE THERE AMOUNTS OWED TO THE UTILITY
24 COMPANIES?

25 A I DON'T RECALL -- I DON'T BELIEVE THERE WAS
26 WHEN IT WAS FILED, NO. IF IT WAS, IT WASN'T A GREAT AMOUNT.

1 Q NOW, THE BANKRUPTCY -- WAS THE BANKRUPTCY OF
2 DELTA ISLE SOMETIME IN ABOUT SPRING OR SUMMER OF '96?

3 A I BELIEVE IT WAS IN '96. '96, EARLY PART OF
4 '97, I BELIEVE IN THAT TIME PERIOD.

5 Q AND MY CLIENT, CAMP COAST TO COAST, THEY HAD
6 NOTHING TO DO WITH THE FACT THAT DELTA ISLE CHOSE TO FILE
7 BANKRUPTCY?

8 A I DON'T IMAGINE SO. WHY WOULD THEY HAVE?
9 THEY DIDN'T HAVE ANYTHING TO DO WITH THE PARK ANYHOW.

10 Q AND ALL THIS FIGHTING THAT YOU WERE TALKING
11 ABOUT WITH MR. MUTO, THE ISSUES WITH MR. MUTO, COAST TO
12 COAST DIDN'T HAVE ANYTHING TO DO WITH THAT, DID THEY?

13 A NO.

14 Q AND THE FACT THAT A LOAN HAD COME DUE TO
15 SUNRISE BANK THAT WASN'T BEING PAID, THAT WASN'T COAST'S
16 FAULT, WAS IT?

17 A NO. OF COURSE COAST DOESN'T OWN ANY PARK.

18 Q NOW, THERE WERE, HOWEVER, MEMBERS OF
19 DELTA ISLE WHO WERE UPSET ABOUT THE FACT THAT DELTA ISLE
20 WAS IN BANKRUPTCY IN 1996, WEREN'T THERE?

21 A NOT TO ANY GREAT EXTENT, NO.

22 Q AND THERE WERE MEMBERS AT DELTA ISLE WHO
23 DECIDED TO CANCEL THEIR MEMBERSHIP WITH DELTA ISLE BECAUSE
24 OF ITS BANKRUPTCY PROBLEMS?

25 MR. MOSHENKO: OBJECTION. LACKS FOUNDATION.

26 ASSUMES FACTS NOT IN EVIDENCE.

1 THE COURT: OVERRULED.

2 YOU MAY ANSWER, IF YOU KNOW.

3 THE WITNESS: PARDON?

4 THE COURT: YOU MAY ANSWER, IF YOU HAVE KNOWLEDGE
5 OF IT.

6 THE WITNESS: TO MY KNOWLEDGE, NO.

7 MR. SHERMAN: BOTH UNDER, YOUR HONOR, CCP SECTION
8 2025(U)(3)(A), THE USE OF A DEPOSITION, AS WELL AS
9 IMPEACHMENT, I'D LIKE TO PLAY THE DEPOSITION TRANSCRIPT OF
10 MEMBER DELTA ISLE MEMBER JUDITH GROESBECK TAKEN ON FEBRUARY
11 2, 2000, PAGE 23, LINE 20 THROUGH PAGE 24, LINE 14.

12 THE COURT: HOW DOES THAT PERTAIN TO THIS WITNESS?

13 MR. SHERMAN: IT IS IMPEACHMENT AND PURSUANT TO CCP
14 SECTION 2025(U)(3)(A).

15 THE COURT: HE JUST SAID HE HAD NO KNOWLEDGE. YOU
16 WANT TO TAKE SOMEBODY'S DEPOSITION -- IS SHE GOING TO
17 IMPLICATE HIM?

18 MR. SHERMAN: SHE IS GOING TO TESTIFY WITH RESPECT
19 TO THE IMPACT THE BANKRUPTCY HAD ON MEMBERS.

20 THE COURT: HE TELLS US HE HAS NO KNOWLEDGE. I
21 DON'T SEE HOW THEY TIE IN.

22 MR. SHERMAN: VERY WELL, YOUR HONOR.

23 Q NOW, EARLIER YOU TALKED ABOUT SOME TRANSFERS
24 OF OTHER NOVELLI PARK MEMBERS INTO DELTA ISLE FROM OTHER
25 PARKS; DO YOU RECALL THAT?

26 A YES.

1 Q AND THOSE WERE TRANSFERS FROM OTHER PARKS IN
2 THE NOVELLI CHAIN THAT HAD CLOSED DOWN?

3 A I WOULD ASSUME THERE WAS MOST OF THEM, YES.
4 NOT ALL OF THEM.

5 Q BUT THESE WERE PARKS THAT WERE EITHER IN
6 BANKRUPTCY OR HAD CLOSED?

7 A SOME OF THEM, YES.

8 Q AND THESE WERE TRANSFERS -- YOU DIDN'T MAKE
9 THE DECISION WITH RESPECT TO THESE TRANSFERS?

10 A NO, I DID NOT.

11 Q THIS WAS, SO FAR AS YOU UNDERSTOOD, A
12 DECISION MADE BY MR. NOVELLI?

13 A THIS WAS A DECISION MADE BY THE CORPORATE
14 OFFICES, YES. NOT BY ME. I DID NOT HAVE THAT AUTHORITY.

15 Q AND THE CORPORATE OFFICE DIDN'T CONSULT WITH
16 YOU ABOUT IT?

17 A AS I RECALL, I WOULD GENERALLY GET NOTICE
18 SO-AND-SO WAS BEING TRANSFERRED OR WAS OFFERED THE
19 OPPORTUNITIES, OR I HAD A LOT OF REQUESTS FROM MEMBERS THAT
20 WANTED TO TRANSFER FROM OTHER PARKS INTO DELTA ISLE, WHICH
21 IT WAS NOT THE POLICY TO DO, NOT ONE THAT I COULD MAKE.

22 Q YOU WEREN'T CONSULTED ABOUT IT AHEAD OF TIME?

23 A PARDON?

24 Q YOU WEREN'T CONSULTED ABOUT IT AHEAD OF
25 TIME?

26 A GENERALLY I WAS CONSULTED, YES.

1 Q NOW, I WANT TO ASK YOU SOME QUESTIONS ABOUT
2 THE SEPTIC TANK PROBLEM IN 1995; DO YOU UNDERSTAND?

3 A OKAY.

4 Q THERE WAS A SEPTIC TANK AT DELTA ISLE?

5 A YES. FIVE OF THEM.

6 Q FIVE OF THEM?

7 A FIVE OF THEM.

8 Q AND IN 1995 YOU HAD A PROBLEM WITH THE
9 SEPTIC TANK?

10 A THE FIRST WEEK I WAS THERE I HAD A PROBLEM
11 WITH THE TANK.

12 Q IN 1995 YOU HAD A PROBLEM WITH THE SEPTIC
13 TANK?

14 A THAT'S RIGHT. THE FIRST WEEK THAT I WAS
15 THERE. THE SECOND WEEK I DID NOT HAVE THAT PROBLEM
16 ANYMORE.

17 Q AND THIS PROBLEM WITH THE SEPTIC TANK, I
18 MEAN, IT CAUSED SOME SMELLS?

19 A NO. NO. NOT IN THE PARK. IN THE LEACH
20 FIELDS, YES. IN THE PARK, NO.

21 Q AND SO WHEN THIS -- THESE SMELLS STARTED IN
22 THE FIELDS, THAT'S BECAUSE THE SEPTIC TANK WASN'T WORKING
23 RIGHT?

24 A THAT'S RIGHT.

25 Q AND WHEN YOU HAVE A SEPTIC TANK THAT DOESN'T
26 WORK RIGHT, AND YOU GET SMELLS, YOU SOMETIMES GET

1 MOSQUITOES AND FLIES?

2 A YOU'LL GET SMELLS, YES. YOU GET SMELLS.

3 Q AND YOU GET MOSQUITOES AND FLIES?

4 A IF YOU HAVE STANDING SEWAGE, YES, YOU WOULD
5 GET MOSQUITOES AND FLIES.

6 Q NOW, AS FAR AS THE CONDITION OF THE DOCK IS
7 CONCERNED, THERE WERE MEMBERS AT DELTA ISLE WHO WERE VERY
8 UNHAPPY WITH THE CONDITION OF THE DOCK?

9 A WHEN I GOT THERE, YES.

10 Q BECAUSE THE DOCK WAS BREAKING APART?

11 A THE DOCK HAD BROKEN APART.

12 Q AND IF YOU WERE A MEMBER OF DELTA ISLE AND
13 WANTED TO GO THERE WITH YOUR BOAT, IT WOULD BE HARD TO MOOR
14 A BOAT TO A BROKEN DOCK?

15 A NO. IT WOULD BE HARD TO MOOR -- TO GET FROM
16 THE SLIPS TO THE DOCK. THERE'S A DIFFERENCE.

17 Q I AGREE. SO YOU CAN'T USE YOUR BOAT?

18 A WITH THE RAMP BROKEN ON THE DOCK, YES, IT
19 WAS HARD TO GET DOWN TO THE SLIPS.

20 WHAT WAS THE QUESTION?

21 Q YOU CAN'T USE YOUR BOAT WITH A BROKEN DOCK?

22 A NUMBER ONE, WE DIDN'T HAVE A DOCK SIDE --
23 AND, YES, YOU COULD USE THE SLIPS, BUT YOU COULDN'T USE THE
24 DOCK. YOU COULD USE THE SLIPS, NOT THE DOCK.

25 Q AS FAR AS THIS SEWAGE TANK THAT BACKED UP
26 WITH THE SMELL IN THE FIELD, THAT WASN'T COAST'S FAULT?

1 A LIKE I SAID, COAST DIDN'T HAVE ANYTHING TO
2 DO WITH IT ANYHOW, NO.

3 Q AND THE BROKEN DOCK, THAT WASN'T COAST'S
4 FAULT?

5 A NO.

6 Q NOW, AS FAR AS THE ACTUAL NUMBER OF MEMBERS
7 OF DELTA ISLE IS CONCERNED, YOU DIDN'T KNOW THE ACTUAL
8 NUMBER OF MEMBERS OF DELTA ISLE IN 1995, DID YOU?

9 A NO, I DIDN'T.

10 Q YOU DIDN'T KNOW THE ACTUAL NUMBER OF MEMBERS
11 IN '96?

12 A NO.

13 Q OR '97?

14 A OR '98.

15 Q OR '99?

16 A OR '99.

17 Q I WANT TO ASK YOU SOME QUESTIONS ABOUT THE
18 LETTER THAT CAMP COAST TO COAST SENT YOU, ITS MEMBERS, IN
19 THE FALL OF '97. DO YOU UNDERSTAND?

20 A ALL RIGHT.

21 Q THAT LETTER WAS SENT AFTER MR. NOVELLI HAD
22 DECIDED TO PULL ALL OF HIS PARKS OUT OF COAST?

23 A I BELIEVE SO, YES. I'M NOT CERTAIN.

24 Q BUT YOU DIDN'T KNOW IN ADVANCE THAT
25 MR. NOVELLI WAS PULLING OUT OF COAST?

26 A WHEN COAST TO COAST DID NOT PAY THE PARK THE

1 MONEY THAT WAS OWED THEM FOR ME HOSTING THEIR MEMBERS, I
2 CALLED THE OFFICE, TOLD THEM -- I SAID THEY OWE \$8500
3 THAT -- FOR THE PEOPLE THAT I HAD HOSTED. AND I CALLED THE
4 OFFICE AND ASKED THEM WHY THEY HADN'T SENT A CHECK. THEY
5 WERE VERY GOOD ABOUT SENDING IN THE CHECKS TO DELTA ISLE
6 FOR THEIR PROPORTION OF THE MONEY. I CALLED AND ASKED HOW
7 COME. THEY SAID, "WE ARE NOT DOING THAT ANYMORE,"
8 SOMETHING TO THAT EFFECT. I DON'T KNOW EXACT WORDS. I
9 DON'T KNOW WHO I TALKED TO.

10 ALL I KNOW IS THEY REFUSED TO SEND ME THE
11 CHECK SO I COULD PUT IT ON MY PACKET AND SEND IT -- IN MY
12 PACKET AND SEND IT IN TO PART OF THE REVENUE COMING INTO
13 THE PARK. THIS I KNOW FOR A FACT. THAT IS WHEN I RECEIVED
14 A LETTER OR A PHONE CONVERSATION THAT SAID DO NOT ACCEPT
15 ANYMORE OF THE TICKETS. HONOR -- HOST THE PEOPLE, BUT
16 DON'T ACCEPT THE TICKETS. IF THEY WANT TO PAY CASH, FINE.
17 IF THEY DON'T WANT TO PAY CASH, DO NOT HOST THEM.

18 I NEVER REFUSED ANYBODY BECAUSE THEY
19 STAYED. THEY LIKED THE PARK. COAST TO COAST LIKED THE
20 PARK. IT WAS A GOOD PARK. IT WAS A FRIENDLY PARK.

21 BUT I REFUSED, AND I HAD -- THERE WAS A LOT
22 OF PEOPLE THAT HAD THOSE TICKETS, THAT HAD PURCHASED THOSE
23 TICKETS. I KNOW I PERSONALLY HAD \$100 OF THEM THAT I NEVER
24 USED. AND THAT THE -- THE -- SAID, WELL, YOU CAN GO DOWN
25 THE ROAD SOMEPLACE ELSE, AND MAYBE THEY'LL ACCEPT THE
26 TICKETS.

1 OKAY. I TRIED TO HAVE COAST TO COAST
2 MEMBERS WANT TO SELL ME THEIR TICKETS SO THAT I COULD SELL
3 THEM, AND I WOULDN'T TAKE THEM. AND THEN THERE WAS --
4 SHORTLY AFTER THAT, AFTER THIS THAT THE -- IS WHEN THE -- I
5 BELIEVE OUR CONTRACT WITH COAST TO COAST WENT INTO THE
6 FIRST OF JANUARY. THIS WAS TWO OR THREE MONTHS PRIOR TO
7 THAT, AND WE CONTINUED TO HONOR COAST TO COAST MEMBERS AS
8 PER -- AS LONG AS THEY WANTED TO PAY CASH.

9 AND THEN I THINK THAT THE CONTRACT WAS
10 BREACHED BY COAST TO COAST PRIOR TO THAT WHEN THEY REFUSED
11 TO -- AND BECAUSE I HAD JUST HAD A COAST TO COAST
12 INSPECTION, WHICH GAVE ME A FOUR-STAR RATING -- FIVE-STAR
13 RATING IS THE HIGHEST YOU CAN GET. AND THE REASON I DID
14 NOT GET A FIVE-STAR RATING FROM COAST TO COAST -- AND I'M
15 QUOTING, AND I DON'T REMEMBER THE PEOPLE BECAUSE THE PEOPLE
16 COMING IN -- THE REASON I DIDN'T GET A FIVE-STAR RATING,
17 BECAUSE I DID NOT HAVE THE TWO SETS OF BATHROOMS, BATHING
18 FACILITIES IN THE PARK, WHICH I DID NOT NEED. AND I WAS
19 NOT ELIGIBLE FOR A FIVE-STAR RATING. WE HAD A FOUR-STAR
20 RATING, WHICH I WAS WELL SATISFIED WITH IT. ONE OUT OF
21 FIVE.

22 Q BUT YOU DIDN'T KNOW IN ADVANCE THAT
23 MR. NOVELLI WAS PLANNING TO PULL OUT OF COAST?

24 A WELL, NO, I DIDN'T.

25 Q BECAUSE HE DIDN'T TELL YOU?

26 A WHY SHOULD HE? I WAS JUST A DUMB FLUNKY IN

1 THERE.

2 Q SO YOU LEARNED OF MR. NOVELLI'S DECISION TO
3 PULL OUT OF DELTA ISLE AFTER IT HAPPENED?

4 A WELL, THAT WOULD BE THE NORMAL WAY TO BE,
5 BECAUSE HE DOES NOT CONSULT ME IN MATTERS OF THIS TYPE.

6 Q AND YOU LEARNED ABOUT THE PULL-OUT AFTER
7 MEMBERS STARTED COMING TO YOU AND TELLING YOU ABOUT THE
8 COAST LETTERS THAT THEY HAD RECEIVED?

9 A THAT I DON'T RECALL, THE TIME PERIOD.

10 Q NOW, AS FAR AS THE HOME OFFICE IS CONCERNED,
11 YOU DID HEAR FROM TIME TO TIME THAT THE HOME OFFICE HAD
12 RECEIVED COMPLAINTS ABOUT DELTA ISLE?

13 A EVERY MEMBER WAS GIVEN A CARD, COMMENT
14 CARD. AND THE MAJORITY OF THE CARD RATED THE PARK,
15 MANAGEMENT, THE PARK FACILITIES, THE FOOD, EVERYTHING IN
16 THE PARK. AND I WOULD SAY THAT MAYBE 2/3RDS OF THEM WOULD
17 FILL THIS CARD OUT AND LEAVE IT AS THEY LEFT. AND I WOULD
18 SAY THAT MAYBE ONE OUT OF 50 WOULD HAVE AN ADVERSE COMMENT
19 ABOUT THE PARK. THE REST WERE ALL VERY POSITIVE. WE WILL
20 RETURN. WE WILL BE BACK. WE LOVE THIS. WE LOVE THAT.
21 THE FOOD WAS EXCELLENT. THE PARK WAS BEAUTIFUL. THE
22 GRASS WAS GREEN. THE WATER IS GOOD.

23 YES, I WOULD GET A CHEWING OUT OCCASIONALLY
24 BECAUSE I COULDN'T STOP EVERYBODY FROM SMOKING IN THE
25 CLUBHOUSE BECAUSE I COULDN'T SPEND ALL MY TIME IN THE
26 CLUBHOUSE ACTING AS A POLICEMAN TRYING TO KEEP THESE OTHER

1 COOTS FROM SMOKING ALL THE TIME. THAT'S WHAT THEY ARE.

2 THEY ARE LIKE ME. THEY'RE OLD WORN-OUT, TIRED PEOPLE.

3 Q LET ME SEE IF WE CAN'T GO THROUGH SOME OF
4 THOSE LETTERS THAT PLAINTIFFS HAVE PRODUCED ABOUT THE PARK,
5 DELTA ISLE PARK.

6 A WHO ARE THOSE LETTERS FROM?

7 MR. SHERMAN: DO WE HAVE EXHIBIT 69022?

8 MR. MOSHENKO: THIS IS A LETTER FROM A MEMBER?

9 MR. SHERMAN: YES.

10 MR. MOSHENKO: HEARSAY, IF I CAN'T ASK THEM ABOUT
11 MEMBERS COMMENTS TO HIM.

12 MR. SHERMAN: YOUR HONOR, PLAINTIFFS HAVE SHOWN
13 MANY LETTERS. THESE LETTERS WERE PRODUCED BY PLAINTIFFS.
14 THEY COME OUT OF PLAINTIFFS' OWN FILES. THE ISSUE HAS ONLY
15 BEEN WITH RESPECT TO ORAL COMMUNICATIONS WHICH DO NOT HAVE
16 THE SAME INDICIA OF RELIABILITY AS WRITTEN COMMUNICATIONS
17 PRODUCED OUT OF PLAINTIFFS' OWN FILES. I'LL TAKE
18 PLAINTIFFS OWN RECORDS, WHATEVER THEY MAY BE.

19 THE COURT: I'LL ALLOW THEM.

20 MR. MOSHENKO: YOUR HONOR, I'M IN FAVOR OF
21 HEARING -- THE JURY HEARING EVERYTHING THE MEMBERS SAY. IF
22 YOU'RE GOING TO ALLOW THAT, I NEED YOU TO ALLOW ME THE
23 LETTERS, WHAT'S SAID TO HIM. THE PRIOR QUESTIONS WERE
24 RELATING TO AN EXPERT, NOT TO A NON-EXPERT WITNESS.

25 THE COURT: PROCEED.

26 MR. SHERMAN: EXHIBIT 69022, PLEASE. IF WE CAN PUT

1 THAT UP ON THE BOARD.

2 I'M NOT SURE -- YOUR HONOR, COULD I SUGGEST

3 YOU -- MR. GUIRE, IF HE WOULD LIKE TO STAND, HE MAY?

4 THE COURT: SURE.

5 BY MR. SHERMAN: Q NOW, CAN YOU HIGHLIGHT THE

6 ADDRESS THERE AT THE TOP LEFT-HAND CORNER.

7 THAT'S A LETTER TO DELTA ISLE, AND DO YOU

8 SEE THAT?

9 A YEAH, I SEE THAT.

10 Q AND THIS WAS SENT BY THE GROESBECK IN

11 SACRAMENTO, CALIFORNIA. LET'S GO THE BOTTOM THERE. SEE

12 THAT "GEORGE H. GROESBECK AND JUDITH GROESBECK"?

13 A I SEE IT.

14 Q AND LET'S LOOK AT THE SECOND PARAGRAPH HERE.

15 MR. SHAW: I'M SORRY, COUNSEL. IS THERE A DATE?

16 MY COPY IS VERY BAD. I CAN'T SEE. IS THERE A DATE?

17 MR. SHERMAN: NO. IT WAS A LETTER, THOUGH, AS I

18 SAY, PRODUCED OUT OF PLAINTIFFS' OWN FILES. AND I DO KNOW

19 WHAT THE TESTIMONY IS AS TO WHEN THEY WERE -- WHEN THEY

20 WERE SENT.

21 MR. MOSHENKO: OBJECTION, YOUR HONOR. LACKS

22 FOUNDATION AS TO RELEVANCE. THERE IS A REFERENCE TO A 1992

23 FIFTH WHEEL, AND MAYBE THIS LETTER WAS IN 1992.

24 MR. SHERMAN: YOUR HONOR, AS AN OFFER OF PROOF, THE

25 EVIDENCE WILL SHOW THAT --

26 MR. SHAW: YOUR HONOR, I OBJECT TO OFFERS OF PROOF

1 IN FRONT OF THE JURY.

2 THE COURT: APPROACH THE BENCH, PLEASE.

3 (DISCUSSION OFF THE RECORD.)

4 MR. SHERMAN: IF WE COULD PUT THAT DOCUMENT BACK UP
5 ON THE BOARD, PLEASE.

6 Q MR. GUIRE, THIS LETTER FROM THE GROESBECKS
7 SAYS IN THE SECOND PARAGRAPH -- IF WE CAN HIGHLIGHT THAT,
8 PLEASE. THEY'RE TALKING ABOUT A PURCHASE OF A COLLINS S3
9 AND FIFTH WHEEL IN '92.

10 "THE R.V. WEIGHT IS 13,000 POUNDS DRY. WE
11 CANNOT USE YOUR R.V. CAMPGROUND. IT'S UNDERWATER IN WINTER
12 AS IT'S A PEAT BOG. THE SHARP INCLINE TO PULL ONTO THE
13 EXIT WOULD MADE IT IMPOSSIBLE FOR US TO PULL ONTO THE ROAD
14 FROM A DEAD STOP.

15 "IN ADDITION TO YOUR FACILITY BEING UNUSABLE
16 TO US SINCE '91, THE CONTINUED MANAGEMENT PROBLEMS ARE
17 AGAIN IN BANKRUPTCY."

18 NOW, WERE YOU MADE AWARE OF THIS LETTER?

19 A NO.

20 Q THIS WAS NOT ONE OF THE KINDS OF COMPLAINTS
21 THAT YOU WERE TOLD ABOUT?

22 A NO, IT'S NOT, NOTHING THAT I WOULD KNOW
23 ABOUT IN PARTICULAR. I WAS AWARE OF THE WINTER -- HOW WET
24 IT GOT IN THE WINTER UP THERE, YES.

25 Q AND SO THESE MEMBERS WERE UPSET WITH THE
26 MANAGEMENT PROBLEMS AND THE BANKRUPTCIES?

1 MR. MOSHENKO: OBJECTION. CALLS FOR SPECULATION.

2 THE COURT: SUSTAINED.

3 BY MR. SHERMAN: Q THESE PROBLEMS HAD NOTHING TO
4 DO WITH MY CLIENT, CAMP COAST TO COAST?

5 A IS THAT A DELTA ISLE -- A LETTER FROM A
6 DELTA ISLE MEMBER?

7 Q A LETTER TO DELTA ISLE.

8 A A LETTER TO DELTA ISLE.

9 Q YES.

10 A I NEVER SAW IT. IS IT A LETTER FROM A DELTA
11 ISLE MEMBER?

12 Q THAT'S WHAT THEY SAY.

13 A I DON'T RECOGNIZE THE NAME. I DO KNOW THAT
14 WHEN YOU'VE GOT -- YOU'VE GOT ALL -- EVERYTHING IS GRASS,
15 AND YOU'RE GETTING 20, 30 INCHES OF RAIN AND THERE'S NO
16 PLACE TO DRAIN THE WATER, THAT THE WATER DOES STAY IN THE
17 GRASS UNTIL IT DISSIPATES.

18 BUT THEY -- THE PEOPLE WERE GIVEN THE OPTION
19 TO PARK ON THE ROAD. IF THEY WANTED TO PARK ON THE ROAD,
20 THEY COULD COME INTO THE PARK AND PARK ON THE ROAD AND
21 STILL HOOK UP TO A PEDESTAL AND A SEWER AND A WATERLINE
22 THAT HAD ROAD FRONTAGE ACCESS, WHERE THEY COULD LEAVE THEIR
23 RIGS ON THE ROAD ON A HARD SURFACE. THE ROADS WERE NOT
24 SURFACED, BUT THEY WERE ALL -- THEY HAD 16, 18 INCHES OF
25 GRAVEL. AND THEY HAVE THIS OPTION. AND IF THEY DECIDED
26 THEY WANTED TO PULL THESE BIG 50-TON RIGS INTO A SITE THAT

1 THEY KNEW THEY WERE GOING TO SINK IF THEY STEPPED ON IT,
2 THEN THEY HAD TO SIGN A RELEASE BEFORE THEY WERE ALLOWED TO
3 PULL IN ONTO THE SITE. THEN THAT IS WHERE I DIDN'T HAVE TO
4 PULL ITEM OUT. AND I PULLED A LOT OF THEM OUT.

5 BUT THIS IS WHEN THEY WOULD GET STUCK, IS
6 BECAUSE OF DURING THE WINTER, BUT NOT ANY OTHER TIME OTHER
7 THAN WHEN IT WAS RAINING, WHEN THE STORM DRAINS COULD NOT
8 HANDLE IT, HANDLE THE OVERFLOW OF THE WATER, THEN IT WENT
9 INTO THE DITCHES THAT WERE ON THE SIDE ALL THE WAY AROUND
10 DELTA ISLE THAT TOOK THIS WATER OUT DOWN, OH, A MILE OR SO
11 DOWN TO BIG PUMPS THAT PUMPED THE WATER BACK INTO THE
12 RIVER.

13 NOW, THIS IS SOMETHING THAT NATURE TAKES
14 CARE OF, YOU KNOW. THAT'S LIKE -- WELL, ANYHOW, BUT AS FAR
15 AS THE WINTER WATER UP THERE, YES, IT GOT WETTER THAN ALL
16 GET OUT UP THERE.

17 Q IF WE COULD GO TO 69023.

18 AGAIN, MR. GUIRE, IF YOU'D LIKE, IF YOU
19 CAN'T SEE THAT WITHOUT STANDING, FEEL FREE TO DO SO.

20 WHY DON'T WE TRY TO HIGHLIGHT THAT. THANK
21 YOU.

22 THIS IS A LETTER DATED MARCH 12, 1998, TO
23 DELTA ISLE FROM JAMES R. SCHRAMM, CANYON LAKE, CALIFORNIA.
24 "I'M WRITING THIS LETTER TO INFORM YOU I'LL NOT BE
25 CONTINUING TO PAY THE MAINTENANCE FEES TO YOU. WHEN I
26 PURCHASED A MEMBERSHIP TO YOUR RESORT, I DID SO TO USE

1 COAST TO COAST. LAST FALL YOU NOTIFIED ME THAT YOU WERE
2 WITHDRAWING YOUR RESORT FROM THE COAST TO COAST SYSTEM.
3 SINCE I WISH TO CONTINUE TO UTILIZE COAST TO COAST, I HAD
4 TO GO TO ANOTHER RESORT, WHICH REMAINED IN THE COAST TO
5 COAST SYSTEM. I AM NOW A MEMBER OF SYCAMORE RANCH RESORT
6 AND AM PAYING DUES TO THEM SO THAT I MAY UTILIZE THE COAST
7 TO COAST SYSTEM.

8 "THEREFORE, YOU MAY RECLAIM MY MEMBERSHIP
9 AND RESELL IT OR DO WITH IT AS YOU WISH. FURTHERMORE, I
10 FEEL THAT YOU SHOULD REIMBURSE ME AT LEAST 50 PERCENT OF
11 ALL THE DUES THAT I PAID YOU LAST YEAR. THIS IS DUE TO THE
12 FACT THAT WHEN YOU WITHDREW FROM THE COAST TO COAST SYSTEM,
13 I WAS NOT ABLE TO PARTICIPATE IN THAT SYSTEM USING DELTA
14 ISLE AS MY HOME PARK."

15 NOW, DID YOU GET THIS LETTER FROM
16 MR. SCHRAMM?

17 A NO. I DON'T RECALL GETTING IT, NO.

18 Q NOW, BUT WHEN -- DELTA ISLE PULLED OUT OF
19 THE COAST, MR. SCHRAMM HAD TO FIND A NEW HOME PARK?

20 A WELL, THAT WAS HIS OPTION, YES.

21 Q SO HE HAD THE OPTION TO DO THAT; RIGHT?

22 A IF HE WANTED TO PULL OUT OF -- I'VE NEVER
23 SEEN ANYTHING THAT HAS BEEN WRITTEN IN STONE.

24 Q AND THEN WE CAN GO TO 69024.

25 MR. SCHRAMM WROTE DELTA ISLE -- ACTUALLY
26 THIS TIME MR. SCHRAMM WROTE TRAVEL AMERICA A FEW MONTHS

1 LATER, MAY 27, 1998; DO YOU SEE THAT? HE IS REFERENCING
2 HIS LETTER OF MARCH 12, 1998; DO YOU SEE THAT, SIR?

3 A I CAN SEE IT.

4 Q AND HE IS AWAITING A REFUND OF 50 PERCENT OF
5 HIS LAST YEAR'S DUES.

6 WERE YOU MADE AWARE THAT THERE WERE DELTA
7 ISLE MEMBERS WHO AT THEIR OPTION CHOSE TO LEAVE DELTA ISLE
8 AND WANTED THEIR DUES?

9 A NO, I WASN'T AWARE OF IT. BUT THAT'S THEIR
10 PREROGATIVE, TOO. IF THEY CAN DO IT, FINE.

11 Q YOU FELT IT WAS THEIR PREROGATIVE IF THAT'S
12 WHAT THEY WANTED TO DO?

13 A IF THEY THOUGHT THEY COULD DO IT, FINE.
14 COMMON SENSE IS COMMON SENSE. YOU SIGN A CONTRACT, YOU
15 HAVE THE CONTRACT. I WASN'T CONCERNED WITH COAST TO COAST.
16 I WAS CONCERNED WITH THE MEMBERS OF COAST TO COAST BECAUSE
17 THEY'RE PEOPLE. I WAS CONCERNED WITH MY MEMBERS AS DELTA
18 ISLE MEMBERS BECAUSE THEY WERE MY PEOPLE. AND THEY WERE MY
19 PEOPLE, AND I TRIED TO SATISFY ALL OF THEM. AND I THOUGHT
20 I DID A PRETTY GOOD JOB. I WOULDN'T HAVE BEEN THERE FOUR
21 YEARS IF I HADN'T.

22 Q I RESPECT THAT, MR. GUIRE.

23 AND YOU FELT THAT TO TRY TO SATISFY YOUR
24 PEOPLE, IF YOUR PEOPLE WERE GOING TO GO TO YOU AND SAY,
25 "MR. GUIRE, I'VE HAD IT WITH DELTA ISLE. I WANT TO STAY
26 WITH THE COAST SYSTEM," THAT WAS THEIR CHOICE?

1 A I DON'T RECALL ANY OF THEM EVER DOING THAT,
2 NO.

3 Q THAT'S WHAT THEY COULD HAVE DONE?

4 A OH, YEAH. THEY COULD HAVE WHIPPED ME, TOO,
5 IF THEY WAS BIG ENOUGH.

6 Q IF YOU CAN GO TO 69056. 69056 IS A LETTER
7 DATED NOVEMBER 25, 1997. IT'S UP THERE ON THE BOARD. IT'S
8 WRITTEN TO DELTA ISLE. DO YOU SEE THAT? DO YOU SEE THAT,
9 SIR?

10 A I SEE IT.

11 Q OKAY. AND THIS IS FROM MR. AND
12 MRS. JOHN COOK IN EL CERRITO, CALIFORNIA. AND THEY CLOSE
13 THEIR LETTER, QUOTE, "MY ENTIRE EXPERIENCE WITH YOUR
14 FACILITY HAS BEEN AWFUL. I FEEL LIKE I HAVE BEEN CHEATED
15 AND LIED TO. DO NOT SEND ME ANYMORE INVOICES FOR
16 MEMBERSHIPS BECAUSE YOU REPRESENTED YOURSELVES AS A COAST
17 TO COAST MEMBER, AND YOU HAVE LOST THAT PRIVILEGE DUE TO
18 YOUR OWN ACTIONS," CLOSE QUOTE.

19 WERE THERE MEMBERS WHO YOU HEARD WHO
20 BELIEVED THEY HAD BEEN CHEATED AND LIED TO BY DELTA ISLE?

21 A NO.

22 Q BUT IT WAS NOT THE FAULT OF COAST TO COAST
23 THAT THE COOKS BELIEVED THAT THEY HAD BEEN CHEATED; RIGHT?

24 A IT SAYS THAT YOU REPRESENTED YOURSELVES AS A
25 COAST TO COAST MEMBER. WE WERE NOT A MEMBER OF COAST TO
26 COAST. COAST TO COAST WAS A MEMBER OF OUR RESORT.

1 Q AND THESE PEOPLE WROTE --

2 A I THINK THAT THEY MISUNDERSTOOD WHAT THEY
3 WERE READING. I THINK THEY MISUNDERSTOOD IT, YES.

4 Q YOU THINK THAT DELTA ISLE MADE THEM
5 MISUNDERSTAND?

6 A NO. I DON'T THINK DELTA ISLE MADE THEM
7 MISUNDERSTAND. I THINK COAST MADE THEM MISUNDERSTAND
8 BECAUSE REPRESENTING -- COAST TO COAST DOES NOT OWN ANY
9 PARKS. AND A LOT OF PEOPLE -- BELIEVE ME. A LOT OF PEOPLE
10 THOUGHT COAST TO COAST OWNED PARKS. COAST TO COAST TO ME
11 IS NOTHING MORE THAN -- WELL, I BETTER KEEP MY MOUTH SHUT.

12 Q OKAY. WHY DON'T WE END ON 69054, PLEASE.
13 SEE, THIS IS A HANDWRITTEN LETTER OF JULY
14 27, 1998. "TO WHOM IT MAY CONCERN: WE ARE NOT A MEMBER OF
15 DELTA ISLE ANYMORE AS THEY HAVE GOTTEN OUT OF THE COAST TO
16 COAST SYSTEM. WE HAVE JOINED ANOTHER PARK THAT HAS COAST
17 TO COAST. THANK YOU. DONNA AND ALAN COX."

18 NOW, AS FAR AS THE COXES WERE CONCERNED,
19 THEY WANTED TO USE COAST TO COAST AS PER THE LETTER?

20 A FINE.

21 Q AND DELTA ISLE COULDN'T OFFER THAT ANYMORE;
22 RIGHT?

23 A IN '97 THEY COULD HAVE OFFERED IT,
24 DEPENDING ON WHEN IT WAS IN '97.

25 Q AFTER MR. NOVELLI CHOSE TO PULL OUT OF COAST
26 TO COAST, DONNA AND ALAN COX COULDN'T USE COAST TO COAST

1 SYSTEM IF THEY WERE JUST GOING TO BE DELTA ISLE?

2 A NOT IF THEY WANTED TO USE THEIR CARDS THEY
3 COULD NOT USE IT, BUT THEY COULD HAVE USED IT IF THEY
4 WANTED TO HAVE PAID CASH.

5 MR. SHERMAN: I HAVE NO FURTHER QUESTIONS OF THE
6 WITNESS.

7 THE COURT: THANK YOU.

8 THE COURT: ANYTHING FURTHER?

9 MR. MOSHENKO: MR. HAHN, CAN WE GO BACK TO THAT
10 SAME EXHIBIT, 69056.

11 I'D LIKE IF YOU COULD TO HIGHLIGHT THE LAST
12 SENTENCE OF THE FIRST PARAGRAPH.

13 REDIRECT EXAMINATION

14 BY MR. MOSHENKO: Q MR. GUIRE, THAT LETTER SAYS
15 THAT COAST TOLD MR. AND MRS. COOK, "I DON'T HAVE TO PAY YOU
16 ANYMORE MONEY BECAUSE YOU CANNOT PROVIDE WHAT YOU
17 ORIGINALLY SOLD ME."

18 DID YOU GET ANY COMMENTS FROM ANY OF THE
19 MEMBERS THAT YOU SPOKE TO TO TALK ABOUT WHAT COAST TOLD
20 THEM RELATING TO THESE ISSUES?

21 A NO.

22 Q WELL, HOW ABOUT, DID YOU GET ANY COMMENTS
23 FROM THE PEOPLE THAT YOU SPOKE TO RELATING TO THE LETTER,
24 THE OCTOBER 1997 LETTER, THAT THEY RECEIVED FROM COAST?

25 A I RECEIVED COMMENTS, YES.

26 Q OKAY. THESE ARE THE PEOPLE THAT BROUGHT IN

1 YOU SAID HUNDREDS OF LETTERS AND SHOWED THEM TO YOU?

2 A WELL, THEY BROUGHT IN A LOT OF LETTERS, AND
3 THEY SAID SO, AND A LOT OF PHONE CALLS.

4 Q SO WHAT DID THE PEOPLE SAY TO YOU ABOUT THE
5 RECEIPT OF THOSE LETTERS AND WHAT THEY UNDERSTOOD?

6 MR. SHERMAN: OBJECTION. HEARSAY.

7 THE COURT: SUSTAINED.

8 MR. MOSHENKO: THE DISTINCTION BEING ORAL VERSUS
9 WRITTEN, YOUR HONOR?

10 THE COURT: YES.

11 MR. MOSHENKO: OKAY.

12 COULD -- MR. HAHN, COULD YOU GET BACK TO
13 69022.

14 Q THIS IS THE UNDATED LETTER FROM -- I GUESS
15 IT'S GROESBECK, MR. AND MRS. GROESBECK, AND REFERRING TO --
16 THERE IT IS. THE BOTTOM LARGE PARAGRAPH, FIRST SENTENCE.

17 "PER OUR CONVERSATION BY AND BETWEEN A WOMAN
18 CALLING HERSELF ELIZABETH AND HAVING SPOKEN WITH
19 HER MANAGER, THE UNDERSIGNED WE WILL PAY AN AMOUNT EQUAL
20 TO ONE-HALF OF THE DUES OR \$25.36, WHICH YOU MAY HAVE AS A
21 CANCELLATION PAYMENT."

22 DO YOU HAVE --

23 MR. SHERMAN: EXCUSE ME, YOUR HONOR. IT DOESN'T
24 SAY ONE-HALF. IT SAYS 1/12TH.

25 MR. MOSHENKO: 1/12TH. YOU'RE RIGHT. IT DOES SAY
26 1/12TH. I STAND CORRECTED, COUNSEL. THANK YOU.

1 Q SO MY COMMENT, MY QUESTION HAS GONE,
2 BECAUSE IT DOES SAY 1/12TH RATHER THAN ONE-HALF.

3 ALL RIGHT. MR. GUIRE, YOU TESTIFIED -- AND
4 I'LL STEP OVER HERE SO YOU CAN HEAR ME.

5 YOU WERE ASKED QUESTIONS ABOUT COMPLAINTS
6 ABOUT THE DOCK, AND I THINK YOU SAID THERE WAS A PROBLEM
7 THE WEEK YOU GOT THERE.

8 A THAT'S RIGHT.

9 Q WHAT DID YOU DO ABOUT THE DOCK THE WEEK YOU
10 GOT THERE?

11 A I FIXED IT.

12 Q WAS THE PROBLEM THERE THE WEEK AFTER YOU GOT
13 THERE?

14 A NO, IT WASN'T. IT WAS THE SECOND WEEK AFTER
15 I GOT THERE. NO, IT WAS NOT.

16 Q WAS THERE A RECURRENCE OF THE PROBLEM --

17 A NO, THERE WASN'T.

18 Q -- IN THE YEARS FOLLOWING THE TIME YOU WERE
19 THERE?

20 A NO.

21 Q YOU TESTIFIED THAT THE -- ONE OF THE FIVE
22 SEPTIC SYSTEMS HAD A PROBLEM THE WEEK THAT YOU GOT THERE?

23 A PART.

24 Q WHAT DID YOU DO ABOUT IT?

25 A I CORRECTED THE PROBLEM FOR ONE THING.

26 THERE WAS -- THERE WAS -- ALL RIGHT. THE SEPTIC TANK --

1 I'M HEARING A SOUND.

2 THE SYSTEM IS IN -- LIKE I SAY, IS BELOW SEA
3 LEVEL. THE WATER TABLE WAS -- AT THE TIME IN 1995 WHEN I
4 GOT THERE, THE WATER TABLE WAS AT ABOUT 14 INCHES. AND YOU
5 RECEIVED -- YOU GOT WATER, WATER FROM THE RIVER THAT CAME
6 UP THROUGH, THROUGH THIS, THE ONLY SYSTEM THAT WAS AN
7 APPROVED SYSTEM. IT WAS A VERY WELL-ENGINEERED, VERY
8 WELL-DESIGNED SYSTEM FOR THE PARK ORIGINALLY WHEN IT WAS
9 PUT IN. BUT IT HAD FAILED IN A COUPLE OF RESPECTS. THAT
10 DURING THE COURSES OF THE VARIOUS OWNERS OF THE PARK THAT
11 HAD IT, THE SYSTEM WAS A HOLDING PIT, A SEPTIC TANK,
12 ANOTHER HOLDING PIT. THE RAW -- THE BAD STUFF CAME INTO
13 THE ONE HOLDING BANK, WHICH WAS ABOUT 100 GALLONS. IT
14 WOULD SIT THERE AND FILL UP TO THIS POINT, ALL PROTECTED,
15 ALL COVERED, FILLED UP. AND SUBMERSIBLE PUMP WOULD COME IN
16 AND PUMP THIS RAW SEWAGE INTO THE SEPTIC TANK. THE LITTLE
17 BUGS INSIDE THE SEPTIC TANK WOULD GET IN THERE AND EAT AND
18 DO THEIR LITTLE THING, YOU KNOW, AND OVERFLOW AND FLOW INTO
19 ANOTHER HOLDING TANK.

20 AND I HAVE TO EXPLAIN ALL OF THIS SO YOU
21 UNDERSTAND WHAT I'M TALKING ABOUT. THE -- AS THIS TANK
22 WOULD FILL UP, THERE WAS ANOTHER SUBMERSIBLE PUMP WOULD
23 PUMP THIS OUT THROUGH A LINE, A PVC LINE, INTO A LEACH
24 FIELD, WHICH WAS APPROXIMATELY 100 FEET AWAY. THE STARTING
25 OF THIS LEACH LINE, THE LEACH LINE WHEN IT WENT INTO A
26 MANIFOLD, IT WAS LIKE A MANIFOLD ON A CAR, AN EXHAUST ON

1 THE CAR, COMES OUT ALL THE DIFFERENT PLACES. THIS HAD
2 ONE-INCH LINES, PERFORATED LINES, AT ABOUT APPROXIMATELY
3 ONE FOOT BELOW THE SURFACE BECAUSE YOU COULDN'T PUT IT DOWN
4 INTO THE WATER. SO IT WAS -- THIS WAS TO AERATE. THIS WAS
5 PUT OUT THERE UNDER PRESSURE AND -- UNDER APPROXIMATELY 40
6 POUNDS OF PRESSURE, AND IT WOULD HOLD THIS WATER INTO
7 THIS -- INTO THIS -- THESE HUNDREDS OF LEACH LINES. AND IT
8 WOULD DISSIPATE THROUGH THIS UNDER PRESSURE, DISSIPATE UP
9 INTO THE GROUND. AND IT WAS -- THIS WAS WATER THAT WAS --
10 PRACTICALLY YOU COULD DANG NEAR DRINK IT IF YOU WANTED, IF
11 YOU SO DESIRED.

12 ALL RIGHT. WHAT HAD HAPPENED, ONE OF THE --
13 WHEN I GOT THERE, ONE OF THE -- SATURDAY EVENING I WAS
14 SITTING DOWN TO HAVE DINNER. BOOM. HERE COMES THE PUMP
15 TRUCK OUT THERE. AND I SAID, "WHAT THE WORLD IS GOING ON?"
16 AND, WELL, THEY COME OUT HERE TO DO THEIR SATURDAY NIGHT
17 PUMPING. I SAID, "OKAY. FINE. FINE." WELL, I FIND OUT
18 THAT COUPLE OF DAYS LATER WHEN I DUG INTO IT AND FOUND OUT
19 WHAT HAD HAPPENED, THERE WAS A CHECK VALVE THAT TAKES THE
20 PUMP UP, THE FIRST PUMP THAT PUMPS IT IN. THE SECOND PUMP
21 THAT PUMPS INTO THE LEACH FIELD, THEY REMOVED THE CHECK
22 VALVE.

23 I DON'T KNOW IF ANYBODY KNOWS WHAT A CHECK
24 VALVE IS. CHECK VALVE, IT OPENS UP AS WATER GOES OUT. AND
25 AS THE PRESSURE CUTS OFF, THE VALVE CLOSES AUTOMATICALLY.

26 SOMEBODY HAD REMOVED THIS CHECK VALVE. AND

1 ALSO ON A COUPLE OF THE OTHER PUMPS -- THERE WAS FIVE OF
2 THESE LEACH FIELDS WERE ALL THE SAME. I REPLACED THE CHECK
3 VALVES ON THE COUPLE OF THE OTHERS THAT WERE GIVING --
4 TROUBLE WAS THAT THE SUBMERSIBLE PUMPS HAD GOTTEN TIED UP
5 WITH BRAZIER, WOMEN'S PANTIES, MEN'S SHORTS, AND THIS
6 TYPE -- NO, THIS IS FACTS. THIS IS NOT -- I'M NOT JIVING
7 YOU A BIT. BUT THIS IS WHAT WAS PLUGGING UP AND CAUSING
8 THESE SUBMERSIBLE PUMPS TO GO OUT.

9 BUT ONCE I PUT IN -- REPLACED THE CHECK
10 VALVES AND PUT THE CHECK VALVES IN SO THE WATER COULD GO
11 OUT THERE -- AND WHEN THE PUMP CUT OFF, IT DIDN'T COME
12 FLOWING RIGHT BACK DOWN INTO THIS ONE HOLDING TANK. IT
13 WOULD SIT THERE UNDER PRESSURE UNTIL IT DISSIPATES. AND
14 THAT'S THE WAY WE GOT RID OF THE WATER.

15 THAT'S -- I HELPED SOME OTHER PARKS GET RID
16 OF THEIR SEWAGE THE SAME WAY CLOSE. DELTA BAY FOR ONE AND
17 THE LIGHTHOUSE FOR ANOTHER.

18 Q MR. SHERMAN ASKED YOU QUESTIONS ABOUT FLIES
19 FROM SEWAGE. WAS THERE EVER STANDING SEWAGE?

20 A NO.

21 Q OKAY.

22 A NOT AFTER THE FIRST WEEK. THE FIRST WEEK,
23 NO, THERE WAS NO STANDING SEWAGE.

24 Q I'LL ASK THE QUESTION FOR MR. SHERMAN.

25 WAS IT COAST TO COAST'S FAULT THAT SOMEONE
26 REMOVED THE CHECK VALVE?

1 A NO.

2 Q WAS IT RAY NOVELLI OR CORPORATE'S FAULT THAT
3 SOMEONE REMOVED THE CHECK VALVE?

4 A IT WAS PROBABLY REMOVED BEFORE THEY EVER HAD
5 IT. NO.

6 Q WAS IT RAY NOVELLI OR CORPORATE'S FAULT THAT
7 YOU REPAIRED THE PROBLEM?

8 A YES.

9 Q AND THE SAME QUESTION ABOUT THE DOCK THAT
10 WAS A PROBLEM WHEN YOU ARRIVED. WAS IT CORPORATE OR
11 MR. NOVELLI'S FAULT THAT THE DOCK HAD BROKEN?

12 A NO.

13 Q WAS IT THEIR FAULT YOU REPAIRED IT?

14 A YES.

15 Q AND MAINTAINED IT FOR FOUR YEARS?

16 A THAT'S RIGHT.

17 Q NOW, MR. SHERMAN ASKED YOU SOME QUESTIONS
18 ABOUT HOW YOU LEARNED THAT DELTA ISLE WAS NO LONGER GOING
19 TO BE IN COAST. YOU LEARNED IT FROM THE MEMBERS WHO GAVE
20 YOU THE LETTERS.

21 ISN'T THAT HOW YOU LEARNED IT?

22 MR. SHERMAN: OBJECTION. LEADING.

23 THE COURT: SUSTAINED.

24 BY MR. MOSHENKO: Q HOW DID YOU LEARN IT?

25 A HOW DID I LEARN IT?

26 Q THE FIRST TIME YOU LEARNED THAT SUPPOSEDLY

1 DELTA ISLE WAS NOT GOING TO BE AT COAST.

2 A THE FIRST TIME I LEARNED IT WAS WHEN I
3 CALLED DOWN AND ASKED WHY I HAD NOT BEEN PAID THE \$8500
4 THAT I HAD NOT BEEN PAID. THAT WAS THE FIRST INDICATION
5 THAT I SUSPECTED THAT THERE MIGHT BE SOME PROBLEMS, BECAUSE
6 OF THE COAST TO COAST. THERE WAS RUMORS, ALL KINDS OF
7 RUMORS FLOATING AROUND ABOUT COAST TO COAST THAT -- AT THAT
8 PARTICULAR TIME. AND IT'S JUST COMPOUNDED. AS FAR AS I
9 WAS CONCERNED, IT COMPOUNDED, MY OPINION. AND WHEN I
10 REQUESTED SOMETHING TO BE DONE ABOUT GETTING MONEY TO DO
11 IT -- BECAUSE THIS WAS MY MONEY, MY PARK'S MONEY.

12 Q WHAT MONEY ARE YOU TALKING ABOUT?

13 A I'M TALKING ABOUT MONEY THAT I -- FUND THAT
14 I HAD HOSTED PEOPLE FOR WITH THEIR CARD, AND I HAD NOT
15 RECEIVED A DIME FOR IT. BUT I HAD HOSTED ALL THESE PEOPLE.

16 Q THE JURY DOESN'T UNDERSTAND WHY COAST WOULD
17 BE PAYING YOU MONEY. COULD YOU EXPLAIN IT?

18 MR. SHERMAN: OBJECTION. LACKS FOUNDATION THAT HE
19 WAS RECEIVING THE MONEY FROM COAST, AS OPPOSED TO ANYONE
20 ELSE.

21 THE COURT: REPHRASE, PLEASE.

22 MR. MOSHENKO: WHAT IS A CONDITION UNDER WHICH
23 COAST PAYS MONEY TO THE RESORT RELATING TO THE HOSTING OF
24 MEMBERS?

25 A YOU COME IN AS A MEMBER, AS A COAST TO COAST
26 MEMBER. YOU PURCHASED A TICKET OR A CARD THAT WAS WORTH

1 \$4. YOU PURCHASED THAT FROM COAST TO COAST. YOU BRING
2 THAT CARD TO ME, GIVE IT TO ME. I HONOR YOU AS THOUGH YOU
3 HAD GIVEN ME \$4 IN CASH. COAST TO COAST WAS TO KEEP A
4 DOLLAR, AND IT WAS SUPPOSED TO REIMBURSE ME WITH THE OTHER
5 3. THEY DID THIS AT FIRST WHEN I FIRST WENT THERE. THEY
6 DID THIS FOR QUITE A PERIOD OF TIME. THEN ALL AT ONCE,
7 BOOM, THEY CUT ME OFF. AND HERE I AM SITTING THERE HANGING
8 OUT WITH --

9 Q SO WHEN APPROXIMATELY WAS IT THAT COAST
10 WOULD NOT -- TO USE THE WORD -- REFUSED TO SEND THE MONEY?

11 MR. SHERMAN: OBJECTION. LACKS FOUNDATION THAT
12 COAST REFUSED TO SEND THE MONEY AS OPPOSED TO CORPORATE NOT
13 SENDING IT.

14 THE COURT: I'LL ALLOW THE QUESTION.

15 BY MR. MOSHENKO: Q WHEN WAS IT?

16 A SOMETIME IN '87.

17 Q AND IT WAS SOMETIME AFTER THAT THAT YOU
18 LEARNED THAT DELTA ISLE WAS NO LONGER GOING TO STAY IN THE
19 SYSTEM?

20 A THAT'S RIGHT.

21 Q YOU MENTIONED THE COAST TO COAST RATING
22 SYSTEM. WHAT DOES THE RATING OF THE RESORTS?

23 A APPARENTLY IT'S -- I DON'T KNOW THIS, IF
24 IT'S A PAID EMPLOYEE OR A VOLUNTEER. BUT IT'S DONE BY
25 COAST TO COAST.

26 Q OKAY. AND YOU MENTIONED THAT YOU HAD A FOUR

1 OUT OF FIVE RATING, FIVE BEING THE HIGHEST, THE BEST?

2 A FIVE WAS IT. FIVE-STAR RATING.

3 Q OVER HOW MANY DIFFERENT YEARS DID COAST TO
4 COAST RATE THE DELTA ISLE RESORT A FOUR OR BETTER?

5 A WELL, FOR THE TIME I WAS THERE, IT WAS
6 ALWAYS FOUR.

7 Q FOUR YEARS IN A ROW?

8 A YES, AS I RECALL IT.

9 Q MR. SHERMAN ASKED YOU SOME QUESTIONS ABOUT
10 MEMBER COMPLAINTS, AND YOU TESTIFIED ABOUT COMMENT CARDS.
11 2/3RDS OF THE PEOPLE WHO VISITED FILLED OUT THE CARDS. ONE
12 OUT OF 50 HAD ADVERSE COMMENTS ABOUT THE PARK YOU
13 TESTIFIED?

14 A IF THERE WAS THAT MANY, YES.

15 Q WHAT ABOUT THE OTHER 49, WHAT KIND OF
16 RESPONDS DID YOU GET?

17 A GOOD.

18 Q WHAT'S THE OCCASIONAL CHEWING OUT YOU GOT?

19 A SOMEBODY SMOKING IN THE CLUBHOUSE, NOT
20 HAVING THE STORE, LITTLE GROCERY STORE THAT HAD \$50 WORTH
21 OF GROCERIES IN IT. ENOUGH OF YOU COULD GO IN THERE -- IF
22 YOU DIDN'T HAVE ANYTHING TO EAT IN YOUR RIG, YOU PULLED IN
23 THERE, YOU COULD GO IN THERE AND BUY ENOUGH IN THAT. YOU
24 COULD BUY A CAN OF VIENNA SAUSAGE, PACK OF CIGARETTES,
25 ALWAYS COULD BUY BEER. ALWAYS PEOPLE DRINK A LOT OF BEER.
26 OR YOU CAN BUY SODAS.

1 BUT I DIDN'T HAVE A SUPERMARKET IN THE --
2 BECAUSE WHEN I HAD TO -- I COULDN'T GET -- FOR THE SMALL
3 LITTLE MOM AND POP OPERATION, FINE. BUT IT'S SMALLER THAN
4 A MOM AND POP. THERE'S SUPERMARKETS WITHIN 10 MILES. WHY
5 SHOULD I STOCK FIVE -- \$5,000 WORTH OF PERISHABLE STUFF,
6 STUFF IN THE STORE, THAT DOESN'T WARRANT IT? IT JUST
7 WASN'T PRACTICAL.

8 I DIDN'T EVEN WANT THE STORE, BUT THAT WAS
9 NEITHER HERE NOR THERE. I DID IT AS A COURTESY.

10 Q ALL RIGHT, SIR. REGARDLESS OF THE CHEWING
11 OUT OR THE ONE OUT OF 50 LETTERS, OR THE LETTERS THAT YOU
12 SAW ON THE SCREEN WHEN MR. SHERMAN WAS QUESTIONING YOU, DO
13 YOU HAVE KNOWLEDGE OF ANY MEMBERS THAT HAVE DROPPED OUT OF
14 DELTA ISLE BEFORE THE OCTOBER 1997 LETTERS WENT OUT BECAUSE
15 OF COMPLAINTS IN THE CONDITION OF THE RESORT?

16 A NO.

17 MR. SHERMAN: OBJECTION. LACKS FOUNDATION WITH
18 RESPECT TO HIS KNOWLEDGE.

19 THE COURT: HE ASKED IF HE HAD ANY KNOWLEDGE. HE
20 WAS THE MANAGER. HE CAN ANSWER.

21 BY MR. MOSHENKO: Q AND THE ANSWER IS?

22 A NO. I DON'T KNOW OF ANYBODY THAT DROPPED
23 OUT BECAUSE OF THAT, NO. NOT AFTER -- I WENT IN THERE.
24 THE WAY I LOOKED AT THESE PEOPLE WHEN I PULLED INTO THE
25 FIRST -- THE FIRST DAY I PULLED IN THERE, THEY HAD A FEW
26 PEOPLE THAT LIKED TO TIP THE BOTTLE. I SAID, UH-HUH.

1 EMPLOYEES, UH-HUH. NOW WE'VE GOT ONE. WE'VE GOT ONE.
2 WE'VE GOT ONE THAT WE CAN LIVE WITH. THIS OLD GUY LOOKS
3 LIKE A GOOD, OLD DRUNK. I'M A DRUNK. I'M AN ALCOHOLIC.
4 BUT I'VE BEEN DRY FOR 25 YEARS. AND IT DID NOT WORK.

5 Q ALL RIGHT. THE LAST SUBJECT, SIR, IS YOU
6 TESTIFIED WHEN MR. SHERMAN WAS QUESTIONING YOU ABOUT
7 MR. MUTO, WHO -- YOU SAID THE MEMBERS GOT THEIR BACKS UP
8 AND COMPLAINED ABOUT MR. MUTO. YOU MENTIONED HE MIGHT HAVE
9 BEEN MORE CONCERNED ABOUT HIS 5 PERCENT.

10 WHAT IS THAT A REFERENCE TO?

11 A WELL, A FINDER FEE, SO-TO-SPEAK.

12 Q FINDER'S FEE FOR WHAT?

13 A HE WAS TRYING TO SELL THE PARK. HE SENT A
14 HALF A DOZEN PEOPLE IN THERE TO PURCHASE THE PARK THAT I
15 HAD TO HOST AND PUT UP FOR NOTHING. INSTEAD OF CHARGING
16 THEM, I WAS GIVING THEM THE COURTESY. MR. MUTO AND I DID
17 NOT -- WE CLASHED PERSONALITY-WISE. I DIDN'T LIKE HIS --
18 WELL, I DIDN'T CARE FOR MR. MUTO.

19 Q OKAY. WHILE MR. MUTO WAS IN CHARGE, WERE
20 YOU -- MR. SHERMAN ASKED YOU ABOUT AMOUNTS OF MONEY OWED TO
21 UTILITY COMPANIES AT THE TIME OF THE BANKRUPTCY, AND YOU
22 SAID NOT AT THE TIME OF THE FILING.

23 NOW, IS IT CORRECT --

24 A I --

25 Q EXCUSE ME. HOLD ON. NOT AT THE TIME OF THE
26 FILING OF THE BANKRUPTCY.

1 WERE THERE UTILITY CHARGES THAT WERE RUN UP
2 AFTER THE FILING OF THE BANKRUPTCY WHEN MR. MUTO WAS IN
3 CHARGE?

4 A HE COMPLAINED ONE TIME WHEN HE TRIED TO FIRE
5 ME, AND THEY WOULDN'T LET HIM FIRE --

6 Q WHO WOULDN'T LET HIM FIRE YOU?

7 A MY BOSS. AND SAID THAT HE DOES NOT HAVE
8 THAT AUTHORITY TO FIRE ME. BUT, ANYHOW, BECAUSE I COULD
9 NOT AGREE WITH CERTAIN THINGS THAT HE WAS DOING, CERTAIN
10 THINGS WHICH I TOLD HIM ABOUT.

11 AS FAR AS THE UTILITY BILLS, HE MADE A
12 COMMENT ONE TIME, WELL, I'M -- THEY ARE GOING TO HAVE TO
13 CUT YOU DOWN ON THE PAYROLL, OR I'M NOT GOING TO BE ABLE TO
14 PAY THE UTILITY BILLS. HOW CAN YOU PUT DOWN FOUR PEOPLE
15 WHEN YOU NEED TEN? THAT'S HOW I HAD -- FAR I HAD CUT IT
16 DOWN TO, CUT EXPENSES DOWN ON IT. AND I'LL BE DAMNED. I
17 WAS TOO OLD TO DO THE MAINTENANCE MYSELF. AND THAT'S WHEN
18 I HAD GOOD MAINTENANCE PEOPLE, AND I REFUSED TO DO IT.

19 Q ALL RIGHT. SO WERE THESE PROBLEMS THAT YOU
20 JUST IDENTIFIED PROBLEMS THAT WERE THE RESULT OF CORPORATE
21 MANAGEMENT OR MR. MUTO?

22 A OH, THE -- I DON'T THINK IT WAS ANYBODY'S
23 FAULT. IT WAS JUST ONE OF THE THINGS THAT WAS HAPPENING IN
24 THE BANKRUPTCY. YOU HAD SO MUCH MONEY TO DO THINGS WITH,
25 AND ONCE THE WELL GOES DRY, WHY, WHAT ARE YOU GOING TO DO?
26 YOU'RE GOING TO WAIT UNTIL THE WATER COMES BACK UP.

1 Q AND I'LL HELP MR. SHERMAN OUT.

2 IT WASN'T COAST'S FAULT EITHER, WAS IT?

3 A NO.

4 Q THE LAST POINT IS, THE MEMBERS, WHEN THE
5 BANKRUPTCIES OCCURRED AND MR. MUTO CAME IN AND WANTED TO DO
6 WHATEVER HE WANTED, THE MEMBERS' REACTION WAS WHAT?

7 A THE MEMBERS' REACTION WAS MOST OF THEM KNEW
8 I DIDN'T LIKE IT. SO THEY SIDED IN WITH ME. THEY DIDN'T
9 LIKE HIM, EITHER.

10 MR. MOSHENKO: THANK YOU. NO FURTHER QUESTIONS.

11 MR. SHERMAN: YOUR HONOR, MAY WE APPROACH?

12 THE COURT: YOU MAY.

13 (DISCUSSION OFF THE RECORD.)

14 THE COURT: TAKE 10.

15 (RECESS TAKEN.)

16 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
17 COURT IN THE PRESENCE OF THE JURY:)

18 MR. MOSHENKO: I'M FINISHED, YOUR HONOR. THE BALL
19 IS IN THEIR COURT.

20 RE-CROSS-EXAMINATION

21 BY MR. SHERMAN: Q MR. MUTO WAS APPOINTED TO BE IN
22 CHARGE OF DELTA ISLE AFTER MR. NOVELLI FAILED TO PAY THE
23 SUNRISE BANK LOAN; IS THAT RIGHT?

24 A YES.

25 Q AND SO MR. MUTO WAS APPOINTED BY THE COURT?

26 A RIGHT.

1 Q AND DURING THE DELTA ISLE BANKRUPTCY --

2 WELL, LET ME BACK UP.

3 I WANT TO ASK YOU A QUESTION OR TWO ABOUT
4 YOUR STAFFING NEEDS WHILE DELTA ISLE WAS IN BANKRUPTCY WHEN
5 YOU FILED IN '96.

6 DO YOU UNDERSTAND?

7 A ASK ME WHAT?

8 Q I WANT TO ASK YOU SOME QUESTIONS ABOUT YOUR
9 STAFFING, YOUR STAFFING, PEOPLE AT THE PARK, WORKING AT THE
10 PARK WHILE YOU WERE IN BANKRUPTCY.

11 DO YOU UNDERSTAND?

12 A RIGHT.

13 Q YOU HAD MENTIONED THAT -- YOUR RESPONSE TO
14 PLAINTIFFS' LAWYERS QUESTION, HOW CAN YOU PUT DOWN FOUR
15 PEOPLE WHEN YOU NEED 10; DO YOU RECALL SAYING THAT?

16 A I RECALL THAT.

17 Q AND YOU NEEDED 10 PEOPLE TO OPERATE THE
18 PARK?

19 A FIGURATIVELY SPEAKING, YES.

20 Q AND THAT'S BECAUSE YOU NEED PEOPLE TO DO THE
21 LANDSCAPING AND TAKE CARE OF THE SANITATION AND RUN ALL THE
22 SERVICES?

23 A RIGHT.

24 Q AND INSTEAD YOU ONLY HAD FOUR?

25 A NO. HE WANTED TO REDUCE IT BY FOUR.

26 Q AND IT WAS REDUCED, THOUGH, WHILE IT WAS IN

1 BANKRUPTCY?

2 A NO, IT WAS NOT REDUCED.

3 Q NOW, AS FAR AS THE BANKRUPTCY WAS CONCERNED,
4 I WANT TO ASK YOU A QUESTION ABOUT ONE OF THE PLAINTIFFS'
5 LAWYER'S QUESTIONS ABOUT WHETHER THE PROBLEMS WERE CAUSED
6 BY CORPORATE MANAGEMENT OR MR. MUTO.

7 DO YOU UNDERSTAND?

8 A I UNDERSTAND.

9 Q AND YOU SAID A MOMENT AGO YOU HAD SO MUCH
10 MONEY TO DO THINGS WITH, AND ONCE THE WELL GOES DRY, WHAT
11 ARE YOU GOING TO DO?

12 THE WELL HAD GONE DRY AFTER DELTA ISLE WAS
13 IN BANKRUPTCY?

14 A THAT'S RIGHT. MR. MUTO HAD COLLECTED THE
15 FEES. HE HAD COLLECTED ALL THE MONEY I HAD TAKEN IN, AND
16 HE WOULD ONLY ALLOW ME SO MUCH TO OPERATE THE PARK WITH.
17 AND THAT'S ALL I HAVE. IF I HAVE \$5, I NEEDED 6 TO MAKE MY
18 PARK OPERATE. I WAS SHORT A DOLLAR, YES.

19 Q AND SO MY CLIENT, COAST TO COAST, WAS NOT
20 RESPONSIBLE FOR THE WELL GOING DRY?

21 A CERTAINLY NOT.

22 Q YOU REMEMBER TESTIFYING ABOUT THAT SEWAGE
23 PUMP?

24 A YES.

25 Q I'D LIKE TO PLAY THE DEPOSITION TESTIMONY
26 GIVEN IN THIS CASE BY DELTA ISLE MEMBER PAUL COMUNELLI

1 ON -- I BELIEVE IT'S FEBRUARY 22, 2000, PAGE 21, LINE 4,
2 THROUGH PAGE 23, LINE 11, DELTA ISLE MEMBER PAUL COMUNELLI.

3 MR. SHAW: YOUR HONOR, I OBJECT. I DON'T KNOW WHAT
4 SECTION OF THIS THAT WE'RE PLAYING. I SHOULD HAVE AN
5 OPPORTUNITY TO SEE IT AND OBJECT TO IT.

6 THE COURT: IS THIS WHAT --

7 MR. SHERMAN: EXACTLY WHAT WE DISCUSSED.

8 MR. MOSHENKO: MR. SHAW -- MY OBJECTION, YOUR
9 HONOR, IS THE TESTIMONY IS HEARSAY. IT'S UNCERTAIN AS TO
10 TIME. LACKS FOUNDATION, AND AS TO PERSONAL KNOWLEDGE.

11 THE COURT: IT'S MY UNDERSTANDING AT THE BENCH THAT
12 YOU SAID THAT YOU COULD LAY THAT FOUNDATION.

13 MR. SHERMAN: I CAN LAY THAT FOUNDATION. IF YOU'D
14 LIKE TO TAKE THE TIME, I CAN LAY THE FOUNDATION NOW. THE
15 FACT IS THAT WE DO HAVE TESTIMONY FROM THIS PERSON AS TO
16 WHO HE IS AND WHO HIS BONA FIDES ARE.

17 THE COURT: LAY THE FOUNDATION AS TO THE DATE, SO
18 FORTH.

19 MR. SHERMAN: MAY I APPROACH, YOUR HONOR?

20 THE COURT: WELL, CAN YOU LAY THE FOUNDATION FOR
21 THE DATE? YOU JUST SAID YOU COULD.

22 MR. SHERMAN: THE DATE IS IN THE TESTIMONY.

23 THE COURT: ALL RIGHT. ALL RIGHT.

24 MR. SHAW: YOUR HONOR, CAN I SEE THE TRANSCRIPT
25 BEFOREHAND? HE SHOULD HAVE THE TRANSCRIPTS LODGED.

26 MR. SHERMAN: SURE.

1 PAGE 21, LINE 4, THROUGH PAGE 23, LINE 11.

2 THE COURT: MRS. MAHMOOD, WHERE IS IT YOU HAVE TO
3 BE, WHAT AREA?

4 JUROR 13: ORANGETHORPE AND VALLEY VIEW.

5 THE COURT: OKAY. YOU'LL MAKE IT.

6 PROCEED.

7 MR. SHERMAN: OKAY. WE WISH TO PLAY THE DEPOSITION
8 TESTIMONY.

9 MR. SHAW: I'M NOT DONE YET.

10 MR. SHERMAN: I UNDERSTAND.

11 AND ON LINE 23 -- PAGE 23, LINE 9, THERE'S A
12 VERY SPECIFIC REFERENCE TO THE DATE, YOUR HONOR, WHICH IS
13 WHAT YOU AND ME AND MR. MOSHENKO HAD DISCUSSED.

14 MR. MOSHENKO: THERE'S MULTIPLE EVENTS BEING
15 REFERRED TO IN THE TESTIMONY.

16 THE COURT: LET'S DO THIS. LET'S LET THE JURY GO.
17 WE'LL TALK ABOUT THIS ON THE RECORD AND PICK IT UP IN THE
18 MORNING.

19 MR. SHAW: THANK YOU, YOUR HONOR.

20 THE COURT: SEE YOU ALL AT 9:00.

21 THE JURY: THANK YOU.

22 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
23 COURT OUT OF THE PRESENCE OF THE JURY:)

24 THE COURT: OKAY.

25 MR. MOSHENKO: ALL RIGHT, YOUR HONOR. THE
26 TESTIMONY REFERRED TO STARTING AT PAGE 21, LINE 4.

1 THE COURT: EXCUSE ME A MINUTE. YOU MAY STEP DOWN,
2 SIR.

3 MR. MOSHENKO: THE TESTIMONY STARTS WITH THE
4 QUESTION "AT SOME POINT IN TIME DID YOU" -- "DID YOUR
5 EXPERIENCE WITH DELTA ISLE CHANGE?"

6 "ANSWER: YES. WHEN WE FIRST JOINED DELTA
7 ISLE, THE PARK WAS IN VERY GOOD SHAPE."

8 THERE'S NO REFERENCE TO WHAT TIME IS BEING
9 REFERRED TO AS WHEN THEY FIRST JOINED. THERE'S NO
10 REFERENCE TO TIME, THAT THE EXPERIENCE CHANGED AT THAT
11 POINT THAT THE QUESTION AND ANSWER ARE GIVEN.

12 THE WITNESS SAYS, "IT KIND OF DETERIORATED
13 AFTER A CERTAIN AMOUNT OF TIME. IT SEEMED TO GO THROUGH
14 OWNERS OR PEOPLE THAT WERE MANAGING IT, WERE CHANGING.

15 THERE'S NO REFERENCE AS TO WHAT TIME HAS
16 BEEN REFERRED TO IN THAT RESPONSE.

17 "QUESTION: ARE YOU REFERRING TO THE
18 MANAGERS THEMSELVES?"

19 "ANSWER: THE MANAGERS OF THE PARK ITSELF,
20 DELTA ISLE, YES.

21 "QUESTION: AND DID YOU NOTICE THE
22 DETERIORATION BECAME WORSE IN THE MID-90'S?"

23 NOW, MR. DE POL, THE ATTORNEY FROM MY OFFICE
24 OBJECTS THAT THE QUESTION IS UNCERTAIN AND OVERBROAD. AND
25 I WOULD SAY UNCERTAIN AS TO THE PHRASE "DETERIORATION."
26 UNCERTAIN AS TO THE PHRASE "BECAME WORSE," AND UNCERTAIN AS

1 TO THE PHRASE "IN THE MID 90'S."

2 THEN THE WITNESS SAYS, "I FELT" -- "WHAT I
3 FELT WAS EVEN -- YES, ABOUT THE '90'S, IT STARTED GOING
4 DOWNHILL. THE DOCKS SEEMED TO BE FALLING APART. THE DOCKS
5 WERE IN WONDERFUL SHAPE WHEN WE FIRST MOVED THERE."

6 THERE'S NO WAY THAT WE CAN DETERMINE WHEN
7 THIS WITNESS IS TALKING ABOUT, WHEN THEY FIRST MOVED
8 THERE. IT COULD HAVE BEEN 1970 OR '80.

9 BUT THEN THE WITNESS STATES, "ABOUT THE
10 '90'S IT STARTED GOING DOWNHILL. THE DOCKS SEEMED TO BE
11 FALLING APART."

12 AND THEN THIS GOES ON TO SAY, "THEY HAD A
13 PROBLEM WITH SEWAGE, WHICH MADE -- DREW A LOT OF FLIES."

14 NOW, WE DON'T KNOW WHETHER THIS OCCURRED
15 BEFORE MY CLIENTS ACQUIRED DELTA ISLE OR AFTER, BECAUSE IT
16 DOESN'T REALLY SPECIFY. IT TALKS ABOUT APPROXIMATELY THE
17 '90'S OR APPROXIMATELY THE MID-'90'S.

18 THERE'S ANOTHER QUESTION: "WAS THIS A
19 PROBLEM YOU REALLY STARTED NOTICING IN APPROXIMATELY THE
20 MID-90'S?"

21 "ANSWER: YES."

22 WHICH CONTRADICTS THE PRIOR TESTIMONY THAT
23 SAYS IT STARTED IN ABOUT THE '90'S. AND SO THE FLAW IN THE
24 OFFERED TESTIMONY IS IT'S REALLY TALKING ABOUT -- STARTS
25 TALKING ABOUT AN UNKNOWN TIME, AND AN UNDEFINED REFERENCE
26 TO DETERIORATION.

1 AND THEN IT CONTINUES TO JUST GET MUDDIER
2 AND FOGGIER, AND WE'RE TALKING ABOUT SOME QUESTION.
3 THERE'S A QUESTION WHERE -- "WHAT PERIOD OF TIME ARE WE
4 TALKING ABOUT? '95, '96?"

5 OBJECTION. THE OBJECTION WOULD BE LEADING,
6 YOUR HONOR.

7 BUT THE ANSWER IS, "I'D SAY '90'S TO '95,
8 '96.

9 "AND OVER TIME IT JUST GOT WORSE?"

10 "YES."

11 OVER WHICH TIME? WHAT ARE WE TALKING
12 ABOUT? IT'S UNCERTAIN AS TO TIME, AND ESPECIALLY GIVEN THE
13 FACT THAT MY CLIENTS DID NOT CONTROL THIS RESORT UNTIL '93
14 OR '94 THAT WE'RE TALKING ABOUT -- THEY'RE OFFERING
15 TESTIMONY THAT IN ALL PROBABILITY AT LEAST HALF OF IT
16 MUST -- MORE THAN HALF OF IT MUST RELATE TO PEOPLE WHO ARE
17 NOT US.

18 MR. SHAW: AND SECOND --

19 MR. SHERMAN: DOUBLE-TEAMED ON THIS ONE.

20 MR. SHAW: YOU ARE.

21 ORDER OF PROOF IN A TRIAL, WE HAVE A JURY.
22 YOU HAVE -- THE PLAINTIFF PUTS ON HIS CASE. YOU DON'T
23 HAVE -- BRING ON AN IMPEACHMENT WITNESS. THEY'RE USING
24 THIS AS IF THEY'RE BRINGING SOMEBODY ON. YOU DON'T STOP A
25 TRIAL AND BRING ON AN IMPEACHMENT WITNESS. WELL, THAT'S
26 WHAT THEY WANT TO DO.

1 ORDER OF PROOF GOES, PLAINTIFF PUTS ON HIS
2 CASE, CROSS-EXAMINATION, WE REST OUR CASE, AND THEN THEY
3 GET A CHANCE TO PUT ON THEIR CASE. THIS VIOLATES THE
4 SIMPLE ORDER OF PROOF, AND I BELIEVE IT'S PREJUDICIAL UNDER
5 352 FOR THEM TO START INJECTING LITTLE BITS AND PIECES OF
6 DEPOSITIONS IN PEOPLE'S TESTIMONY.

7 MR. SHERMAN: YOUR HONOR, TO USE ONE OF MR. SHAW'S
8 FAVORITE PHRASES, WE ARE NOW REVISITING THIS ISSUE. YOUR
9 HONOR HAD AN OPPORTUNITY TO REVIEW THE TRANSCRIPT AT THE
10 SIDEBAR. THERE ARE A COUPLE OF FACTS THAT ARE IMPORTANT
11 HERE.

12 FIRST, THIS WITNESS, MR. COMUNELLI,
13 TESTIFIED IN HIS DEPOSITION THAT HE JOINED DELTA ISLE AND
14 THAT HE BECAME A MEMBER OF COAST TO COAST.

15 SECOND, THIS WITNESS, MR. COMUNELLI,
16 TESTIFIED IN HIS DEPOSITION THAT HE LEFT AFTER THE 1996
17 BANKRUPTCY. I JUST HAD IT MARKED. I'M SORRY. I JUST LOST
18 THE PAGINATION WHERE IT IS.

19 OKAY. SO WE KNOW HE WAS THERE. AND WE KNOW
20 HE LEFT. WE ALSO KNOW SOMETHING ELSE. WE KNOW -- AND I'M
21 NOT SURE THAT THIS PASSES THE STRAIGHT-SMELL TEST WITH THE
22 SEWAGE AND WHATNOT. WE KNOW THAT THE PERIOD OF TIME WE'RE
23 TALKING ABOUT NOW IS, QUOTE, 1995, 1996.

24 "ANSWER: I'D SAY 1990'S TO -- TO '95, '96."

25 "QUESTION: AND OVER TIME IT JUST GOT WORSE?"

26 "ANSWER: YES."

1 THE COURT: WELL, YOU KNOW, ALL THAT ASIDE,
2 MR. SHAW MAKES A GOOD POINT HERE. YOU'RE CALLING HIM OUT
3 OF ORDER.

4 MR. SHERMAN: YOUR HONOR, I LEFT MY COPY OF THE
5 CODE OF CIVIL PROCEDURE I BELIEVE UP AT --

6 THE COURT: IT'S NOT HERE.

7 MR. SHERMAN: OH, OKAY. I THOUGHT I LEFT IT UP
8 THERE. BUT I'M NOT CALLING ANYONE OUT OF ORDER, YOUR
9 HONOR. THIS WITNESS HAS TESTIFIED ON TWO OCCASIONS --
10 BECAUSE MR. MOSHENKO DECIDED TO BRING IT OUT -- ABOUT THE
11 SEWAGE ISSUE, AND AS I POINTED OUT TO THE COURT, ANY PARTY
12 SHALL -- THAT'S US -- MAY USE FOR ANY PURPOSE -- THAT'S
13 EXAMINATION OF THE WITNESS -- THE DEPOSITION OF ANY
14 PERSON -- THAT'S COMUNELLI -- IF THE COURT FINDS ANY OF THE
15 FOLLOWING.

16 A, THAT DEPONENT COMUNELLI RESIDES MORE THAN
17 150 MILES FROM THE PLACE OF THE TRIAL.

18 THAT'S A FACT HERE. WE CAN ESTABLISH THAT
19 FROM THE DEPOSITION. AND WHAT I'M REALLY HEARING IS, THEY
20 DON'T LIKE THE FACT THAT THEY HAVE GOT THIS NICE GENTLEMAN
21 UP HERE WHO APPARENTLY WOULD SAY A LOT OF THINGS THAT THEY
22 WANT HIM TO SAY, AND HE GOT INTO AN AREA HE SHOULDN'T HAVE
23 GOTTEN INTO TALKING ABOUT A SEWAGE PUMP, AND THERE ARE
24 DELTA ISLE MEMBERS WHO LEFT BECAUSE OF THE FLIES AND THE
25 SEWAGE.

26 I CAN UNDERSTAND WHY THEY WOULDN'T LIKE IT;

1 BUT THE FACT IS, THAT THAT'S WHAT THE LAW SAYS WE GET TO
2 DO. THAT'S WHAT THE LAW SAYS WE GET TO DO.

3 AND AS FAR AS THE PARSING THAT TOOK PLACE
4 HERE THAT MR. MOSHENKO MADE OF THIS TRANSCRIPT, I MEAN, I
5 THOUGHT I COULD READ. I THOUGHT -- I MEAN, WE ALL READ --
6 THE THREE OF US READ IT UP THERE. AND '95, '96 IS NOT TWO
7 WEEKS IN '95. A MAN LEFT BECAUSE OF IT. I'D LIKE TO SHOW
8 IT TO THE JURY. THE JURY NEEDS TO SEE THIS, YOUR HONOR.

9 THE COURT: AFTER THEY HAVE HAD THEIR CASE IN
10 CHIEF.

11 MR. SHAW: THANK YOU.

12 MR. SHERMAN: YOU'RE GOING TO LET ME GET IT IN
13 AFTER THEIR CASE IN CHIEF.

14 THE COURT: PROBABLY.

15 MR. MOSHENKO: SO, YOUR HONOR, WE DON'T HAVE TO
16 RE-WORK THE THING AFTER THE CASE IN CHIEF, I'LL INDICATE TO
17 THE COURT IN ADDITION TO WHAT I'VE ALREADY SAID, THAT THE
18 TRANSCRIPT INDICATES THAT THIS MAN WAS WITH DELTA ISLE,
19 QUOTE, COULD HAVE BEEN 20 YEARS AGO. AND SO THE
20 UNCERTAINTY OF WHAT HE IS TALKING ABOUT IS DOUBLED OR
21 COMPOUNDED DRAMATICALLY.

22 THE COURT: WE WILL REVISIT THAT.

23 MR. MOSHENKO: OKAY.

24 MR. SHERMAN: I DON'T THINK THAT THERE'S A DISPUTE
25 THAT THIS MAN WAS WITH DELTA ISLE, AND HE LEFT DELTA ISLE
26 BECAUSE OF THE SMELL, AND THEY WEREN'T DELIVERING ON THEIR

1 PROMISES.

2 THE COURT: WHAT'S THE SCHEDULE FOR TOMORROW?

3 MR. MOSHENKO: I'LL GIVE THE COURT EVERYTHING I
4 KNOW. I HAVE THREE MANAGERS, AND IT'S HARD TO GAUGE HOW
5 LONG EACH WILL TAKE. ONE OF THEM IS AN EXPERT WITNESS.
6 AND I EXPECT HE WILL TAKE LONGER THAN THE OTHER TWO. I
7 THOUGHT THAT MR. GUIRE WOULD BE ON AND OFF IN MAYBE AN
8 HOUR, BUT HE TURNED OUT TO BE MAYBE TWO PLUS HOURS.

9 I'M NOW THINKING THAT MY MANAGERS WILL FILL
10 THE DAY. AND IF IT TURNS OUT WE RUN OUT OF GAS AT 4:00,
11 THEN, YOUR HONOR, MY NEXT WITNESS WOULD BE THE FOLLOWING
12 DAY.

13 MR. SHERMAN: THAT'S OKAY.

14 MR. RIVIN: IS MR. JOSEPH NOT GOING TO GO TOMORROW
15 NOW?

16 MR. MOSHENKO: IS TOMORROW WEDNESDAY?

17 MR. SHERMAN: TOMORROW IS WEDNESDAY ALL DAY.

18 MR. MOSHENKO: I STAND CORRECTED. I'M SORRY. I DO
19 HAVE MR. JOSEPH FOR THE ENTIRE AFTERNOON.

20 THE COURT: TOMORROW.

21 MR. MOSHENKO: AND I HAVE THE MANAGERS THAT WILL
22 FILL THE MORNING AND THEN PROBABLY RUN INTO THURSDAY,
23 DURING THE DAY THURSDAY. I DON'T KNOW HOW LONG MR. JOSEPH
24 WILL TAKE. IF HE TAKES LONGER THAN A HALF A DAY, HE WILL
25 BE BACK THURSDAY MORNING. AND THEN I'LL FINISH THE WEEK
26 WITH MANAGERS, IF YOU WILL, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. SHERMAN: I PRESUME THAT I WILL BE GIVEN THE
3 OPPORTUNITY TO FINISH ANY CROSS IF I'M IN THE MIDDLE OF
4 CROSS OF A WITNESS, AND MR. JOSEPH IS JUST GOING TO HAVE TO
5 HOLD TIGHT.

6 THE COURT: YES.

7 MR. MOSHENKO: OF COURSE. MY PLAN IS TO BRING HIM
8 ON 1:30 TOMORROW OUT OF ORDER, IF I MAY, AND KEEP HIM UNTIL
9 WE FINISH THE DAY AND BRING HIM BACK THE NEXT MORNING.

10 MR. SHERMAN: OUT OF ORDER BUT NOT INTERRUPTING
11 CROSS.

12 THE COURT: FAIR ENOUGH.

13 MR. MOSHENKO: WHATEVER, YOUR HONOR. WHATEVER
14 WORKS. I JUST LIKE TO ACCOMMODATE WITNESSES WHERE WE CAN.

15 THE COURT: SEE YOU IN THE MORNING AT 9:00.

16 (WHEREUPON THE COURT WAS IN RECESS UNTIL
17 WEDNESDAY, MAY 24, 2000, 9:00 A.M.)

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