

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 24, 2000

APPEARANCES:

FOR THE PLAINTIFFS: 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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| EXHIBIT | IN EVIDENCE |
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1 WESTMINSTER, CALIFORNIA - WEDNESDAY, MAY 24, 2000

2 MORNING SESSION

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

5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

6 THE JURY: GOOD MORNING.

7 THE COURT: FROM TIME TO TIME DURING THE COURSE OF
8 THE TRIAL, WE HAVE MAYBE SOME EVIDENTIARY MATTERS TO
9 CONSIDER IN CHAMBERS. SO I APOLOGIZE FOR THE DELAY GETTING
10 STARTED THIS MORNING, BUT WE HAVE BEEN WORKING.

11 THE JURY: SURE. YEAH.

12 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

13 MR. MOSHENKO: THANK YOU. AL BROCKLEY.

14 ALAN RICHARD BROCKLEY,
15 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING
16 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
17 FOLLOWS:

18 THE CLERK: TAKE A SEAT IN THE WITNESS STAND,
19 PLEASE.

20 STATE YOUR FULL NAME FOR THE RECORD AND
21 SPELL YOUR LAST NAME, PLEASE.

22 THE WITNESS: ALAN RICHARD BROCKLEY,
23 B-R-O-C-K-L-E-Y.

24 DIRECT EXAMINATION

25 BY MR. MOSHENKO: Q GOOD MORNING, MR. BROCKLEY.

26 WHAT IS YOUR CONNECTION TO THE PLAINTIFFS' RESORTS?

1 A I'M PRESENTLY THE MANAGER OF TWO SPRINGS
2 R.V. RESORT.

3 Q ALL RIGHT. AND NOW LET'S GO BACK AND GET
4 SOME OF YOUR BACKGROUND AND EXPERIENCE.

5 WHAT WAS -- WAS THIS -- HAS RESORT
6 MANAGEMENT ALWAYS BEEN YOUR PRINCIPAL OCCUPATION?

7 A NO. I SPENT 26 YEARS IN THE MILITARY, FOUR
8 YEARS WORKING FOR THE GOVERNMENT. AND THEN I RETIRED AND
9 STARTED R.V.'ING FULL TIME.

10 Q WHAT MILITARY WERE YOU ASSOCIATED WITH?

11 A I WAS IN THE NAVY FOR 26 YEARS, IN THE
12 SPECIALTY FORCES, WHICH IS THE RECREATION DEPARTMENT OF THE
13 MILITARY, DEALING WITH LEISURE ACTIVITIES, CAMPGROUNDS,
14 VARIETY OF FITNESS TRAINING, ET CETERA.

15 Q ALL RIGHT. AND AFTER THOSE -- WERE YOU AN
16 R.V.'ER OR A CAMPER DURING THAT TIME?

17 A NO.

18 Q AFTER LEAVING -- I DIDN'T KNOW ANY MILITARY
19 PERSON WASN'T A CAMPER AT SOME TIME.

20 A NOT THE CAMP --

21 Q AFTER LEAVING THE MILITARY, WHAT WAS THE
22 GOVERNMENT POSITION THAT YOU OCCUPIED?

23 A I WORKED FOR THE GOVERNMENT IN THE CAPACITY
24 AS AN ADVISOR RELATING TO -- RELATING TO BARS, ET CETERA,
25 AND PROBLEMS THAT SOME BARS WERE HAVING WITH OPERATIONS,
26 ET CETERA.

1 Q BARS AS IN PLACES WHERE YOU GO DRINK?

2 A YES.

3 Q OKAY. SO, ALL RIGHT. AND AFTER THOSE FOUR
4 YEARS -- DURING THOSE FOUR YEARS WERE YOU AN R.V.'ER?

5 A NO. I BECAME AN R.V.'ER IN 1994, WE
6 STARTED.

7 Q OKAY. SO -- AND IN 1994 WHAT WAS IT THAT
8 BROUGHT YOU INTO THE R.V. INDUSTRY?

9 A WELL, I RETIRED FROM THE MILITARY AND THE
10 GOVERNMENT, AND DECIDED -- WE BOTH DECIDED THAT WE'D LIKE
11 TO GO R.V.'ING. WE CHECKED IT OUT, LOOKED INTO IT. IT
12 TOOK US A YEAR DURING THE -- 1994 TO GET ORGANIZED, AND WE
13 STARTED R.V.'ING FULL TIME IN 1995.

14 Q WHAT DO YOU MEAN WHEN YOU SAY "R.V.'ING FULL
15 TIME"?

16 A WELL, R.V.'ING -- MY WIFE AND I ARE DOERS.
17 WE LIKE TO HAVE FUN, AND WE LIKE TO TRAVEL. SO WE BOUGHT
18 OURSELVES A 36-FOOT FIFTH WHEEL, BOUGHT A TRUCK, DECIDED TO
19 HIT THE ROAD, SEE SOME OF THE COUNTRY, AND SOME FUN WHILE
20 WE DID IT. THAT'S WHY WE -- BASICALLY WHY WE DECIDED TO GO
21 R.V.'ING. WE HAD CHECKED OUT IN 1994, WENT TO A LOT OF
22 RESORTS, SEEING WHAT WAS HAPPENING AT DIFFERENT RESORTS AND
23 DECIDED THIS IS A GREAT WAY TO LIVE, GREAT WAY TO SEE THE
24 COUNTRY. SO THAT'S WHY WE DECIDED TO GO R.V.'ING.

25 Q SO WHAT PERCENTAGE OF THE TIME ARE YOU ON
26 THE ROAD R.V.'ING AND WHAT PERCENTAGE ARE YOU NOT, THAT

1 YOU'RE IN YOUR HOME?

2 A WELL, WE R.V. FULL TIME. SO WE LIVE IN
3 THE -- OUR FIFTH WHEEL FULL TIME. AND WE GO FROM AREA TO
4 AREA. SOMETIMES WE STAY TWO WEEKS, COULD BE A MONTH, COULD
5 BE SIX MONTHS.

6 Q ALL RIGHT. AND SO YOU'VE BEEN R.V.'ING FULL
7 TIME SINCE 1994?

8 A '94, YES.

9 Q DID THERE COME A TIME WHEN YOU CAME INTO
10 CONTACT WITH A RESORT, ONE OF THE RESORTS THAT WE'RE
11 REFERRING TO AS THE PLAINTIFFS' RESORTS?

12 A YES. 1995.

13 Q WHAT RESORT WAS THAT?

14 A THAT WAS TWO SPRINGS R.V. RESORT.

15 Q AND THAT'S LOCATED WHERE?

16 A THAT'S LOCATED NORTH PALM SPRINGS, IN THE
17 DESERT.

18 Q OKAY. NOW, DID THERE COME A TIME WHEN YOU
19 ACTUALLY JOINED AND BECAME A MEMBER OF ONE OF THE
20 PLAINTIFFS' RESORTS?

21 A I BECAME A PRESIDENT'S CLUB MEMBER, NOT A
22 TRAVEL AMERICA MEMBER. I JOINED THE PRESIDENT'S CLUB WHICH
23 ALLOWED US THE OPPORTUNITY TO USE THOSE RESORTS.

24 Q WHICH RESORTS?

25 A THE PRESIDENT'S CLUB RESORTS AND TRAVEL
26 AMERICA RESORTS.

1 Q NOW, YOU UNDERSTAND THAT TRAVEL AMERICA WAS
2 FORMED IN 1997?

3 A THAT'S CORRECT.

4 Q SO WHEN YOU SAY YOU USED THE TRAVEL AMERICA
5 RESORTS, YOU'RE NOT SAYING THE RESORTS AS TRAVEL AMERICA
6 RESORTS, BUT THE SAME. YOU'RE SAYING THE SAME RESORTS THAT
7 ARE NOW PART OF TRAVEL AMERICA?

8 A THAT ARE NOW PART OF TRAVEL AMERICA.

9 Q SO YOU USED THE TERM "TRAVEL AMERICA"
10 BROADLY --

11 A YES.

12 Q -- TO ENCOMPASS BEFORE 1997, AS WELL; RIGHT?

13 A THAT'S CORRECT.

14 Q ALL RIGHT. NOW, SO IT WAS TWO SPRINGS IN
15 '94.

16 WHAT HOME RESORT WAS YOUR HOME RESORT WHEN
17 YOU WERE WITH THE PRESIDENT'S CLUB?

18 A IT WAS 1995. AND IT WAS SUNRISE. WE HAD
19 JOINED ORIGINALLY SUNRISE RESORTS SYSTEM IN NORTHERN
20 WASHINGTON. AND WE BOUGHT OUR PRESIDENT'S CLUB MEMBERSHIP
21 THROUGH THAT RESORT.

22 Q WHAT IS THE PRESIDENT'S TRAVEL CLUB OR
23 P.T.C., PRESIDENT'S TRAVEL CLUB; WHAT IS IT?

24 A WELL, IT'S A GROUP OF PARKS THAT AFFORDED US
25 THE OPPORTUNITY OF SPENDING -- THEIR SYSTEM -- YOU CAN STAY
26 FOR TWO WEEKS IN, AND YOU LEAVE FOR ONE WEEK, AND YOU STAY

1 FOR TWO WEEKS IN. A GROUP OF PARKS -- AND I'M NOT SURE,
2 DON'T RECOLLECT RIGHT OFF THE TOP OF MY HEAD HOW MANY PARKS
3 WERE IN THE SYSTEM AT THAT TIME. BUT WE TRAVELED BASICALLY
4 FROM PARK TO PARK.

5 Q HAVE YOU VISITED MEMBER PARKS WHERE THERE
6 WAS A -- LIKE A SINGLE PARK IN THAT PARK SYSTEM?

7 A YES.

8 Q AND YOU HEARD THE EXPLANATIONS FROM PARKS
9 PROBABLY MANY TIMES ABOUT WHAT MEMBERSHIP CAN BRING TO YOU
10 IF YOU JOIN?

11 A YES.

12 Q OKAY. I WANT TO ASK YOU SOME QUESTIONS SO
13 THAT WE CAN BETTER UNDERSTAND THE DIFFERENCE, IF ANY,
14 BETWEEN P.T.C., PRESIDENT'S TRAVEL CLUB, AND, FOR EXAMPLE,
15 A SINGLE PARK MEMBERSHIP PARK.

16 WHAT ARE THE DIFFERENCES?

17 A WELL, WE PREFER THE GROUP PARKS BECAUSE IT
18 SEEMS THAT WHEN YOU GO FROM ONE PARK TO ANOTHER PARK,
19 YOU'RE ALWAYS MEETING PEOPLE THAT YOU MET AT OTHER PARKS.
20 AND IT'S -- BECOMES ALMOST LIKE A FAMILY. YOU CAN SIT AND
21 TALK AND DISCUSS WHERE YOU'VE BEEN, WHAT YOU'VE DONE. WE
22 JUST PREFERRED THE IDEA OF JOINING A GROUP PARK TO MEET
23 PEOPLE, BECAUSE WE ARE NOT R.V.'ERS WHO STAY IN THE R.V. AT
24 NIGHT. WE'RE OUT DOING THINGS, ATTENDING ALL THE FUNCTIONS
25 THAT ARE OFFERED.

26 Q NOW, TAKE, FOR EXAMPLE, THOUGH, ONE OF THESE

1 SINGLE PARK MEMBERSHIPS THAT YOU MENTIONED.

2 IS IT YOUR UNDERSTANDING THAT THERE ARE
3 LIMITATIONS AS TO THE NUMBER OF NIGHTS PER YEAR THAT YOU
4 CAN OCCUPY THAT PARK?

5 A I BELIEVE SO, YES.

6 Q AND WHAT IS AN EXAMPLE OF THE DIFFERENCE
7 BETWEEN ACCESS -- FREQUENCY OF ACCESS TO A SINGLE PARK
8 VERSUS FREQUENTLY OF ACCESS TO A MULTIPLE PARK SYSTEM?

9 A IN A SINGLE PARK YOU'RE ALLOWED TO STAY
10 THERE FOR A CERTAIN LENGTH OF TIME PER YEAR. WITH THE
11 MULTIPLE PARKS YOU CAN TRAVEL FROM ONE PARK TO ANOTHER PARK
12 TO ANOTHER PARK, AND YOU CAN BE IN THAT SYSTEM AND TRAVEL
13 AROUND. YOU DON'T HAVE TO BE WORRYING ABOUT WHERE YOU'RE
14 GOING TO -- WHERE YOU CAN STAY. YOU CAN JUST KEEP
15 TRAVELING AROUND AND GOING TO DIFFERENT PARKS AT ALL TIMES.

16 Q DOES THAT INCREASE THE NUMBER OF DAYS AND
17 NIGHTS THAT YOU HAVE THE RIGHT TO USE THE PARK, BEING IN A
18 MULTIPLE PARK SYSTEM VERSUS A SINGLE PARK?

19 A YES.

20 Q NOW, ARE YOU FAMILIAR WITH WHETHER OR NOT
21 THERE'S A DIFFERENCE BETWEEN A PRESIDENT'S TRAVEL AMERICA
22 MEMBERSHIP IN THE PLAINTIFFS' PARKS AND WHAT'S CALLED AN
23 ORDINARY MEMBERSHIP OR A NON-PRESIDENT'S TRAVEL CLUB
24 MEMBERSHIP?

25 A WELL, THE PRESIDENT'S CLUB MEMBER CAN GO
26 TO -- WHEN THEY FORMED THE TRAVEL AMERICA CLUB, PRESIDENT'S

1 CLUB MEMBER WHO PAID MORE, OBVIOUSLY, FOR THE MEMBERSHIP
2 WERE AFFORDED THE OPPORTUNITY TO TRAVEL TO ANY OF THE
3 PRESIDENT'S CLUB PARKS PLUS THE TRAVEL AMERICA CLUB PARKS;
4 WHEREAS A TRAVEL AMERICA MEMBER COULD ONLY GO TO THE TRAVEL
5 AMERICA PARKS.

6 Q OKAY. SO LET'S JUST TAKE -- GO BACK TO THE
7 SINGLE PARK OWNER.

8 IF YOU JOINED THAT PARK, YOU'D HAVE "X"
9 NUMBER OF DAYS OF USE OF THAT PARK --

10 A YES.

11 Q -- WITH YOUR MEMBERSHIP?

12 IF YOU JOINED A MULTIPLE PARK SYSTEM LIKE
13 THE PLAINTIFFS' AND MR. NOVELLI'S PARKS, WERE -- YOU'D HAVE
14 MORE NIGHTS?

15 WOULD YOU HAVE MORE NIGHTS TO STAY IN MORE
16 PARKS?

17 A YES. YOU'D HAVE MORE NIGHTS TO STAY.

18 Q DO YOU HAVE SOME UNDERSTANDING OF HOW MANY
19 MORE?

20 A WELL, FOR EXAMPLE, WE COULD STAY FOR TWO
21 WEEKS AND THEN MOVE TO ANOTHER PARK FOR TWO WEEKS AND MOVE
22 TO ANOTHER PARK FOR TWO WEEKS AND JUST KEEPING DOING THAT
23 365 DAYS A YEAR.

24 Q COULD YOU SPEND 52 WEEKS --

25 A NOT IN ONE PARK. YOU HAVE TO LEAVE.

26 Q BUT IN MULTIPLE PARKS?

1 A RIGHT. YOU CAN TRAVEL AROUND TO THE VARIOUS
2 PARKS.

3 Q COULD YOU STAY 52 WEEKS IN A SINGLE PARK
4 SYSTEM?

5 A NO.

6 Q OKAY. SO, NOW, YOU WENT TO A SINGLE TO A
7 MULTIPLE PARK SYSTEM.

8 NOW, WHAT DOES THE PRESIDENT'S TRAVEL CLUB
9 GIVE YOU THAT YOU DON'T ALREADY HAVE IN THE MULTIPLE PARK
10 SYSTEM?

11 A THE TRAVEL AMERICA PARK, IS THAT WHAT YOU'RE
12 REFERRING TO?

13 Q YES.

14 A THEY HAVE "X" NUMBER OF PARKS THAT PEOPLE
15 CAN GO TO. BUT THEY DO NOT GO TO THE -- THEY'RE CONFINED
16 TO A CERTAIN NUMBER OF PARKS. JUST WITH THE PRESIDENT'S
17 CLUB, YOU HAVE MORE PARKS THAT YOU CAN GO TO.

18 Q OKAY. MORE PARKS, MORE TIME IN A MULTIPLE
19 PARK SYSTEM?

20 A YES.

21 Q NOW, MR. BROCKLEY, WHAT IF YOU WANTED TO GO
22 TO A PARK THAT WASN'T AMONG YOUR 40- OR 50-PARK SYSTEM;
23 WHAT CAN YOU DO THEN?

24 A WELL, THERE'S VARIOUS OPTIONS THERE. YOU
25 CAN BUY COAST TO COAST MEMBERSHIP. YOU CAN BUY AN R.P.I.
26 MEMBERSHIP. YOU CAN GO TO PUBLIC PARKS.

1 Q OKAY. SO YOU CAN EVEN EXPAND BEYOND YOUR
2 MULTIPLE PARK SYSTEM?

3 A YES.

4 Q AND USE OTHER PARKS THAT ARE NOT OWNED BY
5 YOUR MEMBERSHIP HOME PARK; RIGHT?

6 A CORRECT.

7 Q OKAY. SO DID YOU EVER DO THAT? DID YOU
8 EVER JOIN A RECIPROCAL USE SYSTEM LIKE R.P.I. OR COAST TO
9 COAST?

10 A YES, I HAVE.

11 Q WHEN DID YOU DO THAT?

12 A I BELIEVE IT WAS IN 1994, AS WE WERE GETTING
13 ORGANIZED AND TALKING TO VARIOUS CAMPERS BECAUSE WE WERE
14 OUT IN LEFT FIELD WITH R.V.'ING. WE CHECKED IT OUT AND
15 SAID, OKAY, WHAT DO WE NEED TO GO R.V.'ING FULL TIME,
16 BESIDES HAVING TO GO OUT AND BUY A NEW TRUCK, ET CETERA.
17 THEN YOU NEVER GET A STRAIGHT ANSWER. WE
18 ENDED UP -- PEOPLE WERE TELLING US THAT WE SHOULD HAVE
19 COAST TO COAST. SO WE WENT OUT AND WE BOUGHT COAST TO
20 COAST MEMBER --

21 Q OKAY. WHEN YOU SAY YOU BOUGHT COAST TO
22 COAST, WHERE DID YOU GO TO BUY IT?

23 A WHEN WE JOINED THE SUNRISE RESORTS, I
24 RECOLLECT THAT WE PICKED IT UP AT THAT RESORT.

25 Q THROUGH YOUR HOME PARK?

26 A YES, THROUGH THE HOME PARK.

1 Q DID YOU EVER SEE ANYBODY THAT SAID, "HI, AL,
2 I'M FROM COAST TO COAST. COME JOIN US"?

3 A NO. IT WAS -- I CAN'T REMEMBER WHETHER IT
4 WAS MENTIONED AT OUR BRIEFING OR NOT BECAUSE THESE
5 BRIEFINGS ARE NORMALLY A LITTLE BIT OF HIGH-PRESSURE SALES
6 TRYING TO GET PEOPLE TO JOIN. SO THERE'S A LOT OF INFO
7 THROWN AT YOU ALL AT ONCE.

8 SO I CAN'T REMEMBER. I JUST REMEMBERED
9 PEOPLE SAYING THAT WE SHOULD LOOK INTO OBTAINING A
10 MEMBERSHIP TO COAST TO COAST, AND WE DID.

11 Q OKAY. AND TO DO THAT YOU DEALT WITH PEOPLE
12 FROM THE HOME RESORT, NOT FROM COAST TO COAST; RIGHT?

13 A THE HOME RESORT.

14 Q OKAY. NOW, YOU HEARD A REFERENCE TO THE
15 PRIMARY PRODUCT RULE; HAVE YOU EVER HEARD OF THAT?

16 A JUST RECENTLY.

17 Q OKAY. AND A SECONDARY PRODUCT. DID YOU
18 JOIN THE SYSTEM TO GET COAST TO COAST PRIMARILY, OR DID YOU
19 JOIN TO GET YOUR PARK?

20 MR. SHERMAN: OBJECTION. LACKS FOUNDATION. THE
21 WITNESS HAS TESTIFIED HE JUST RECENTLY LEARNED OF THIS
22 PRIMARY ISSUE.

23 THE COURT: SUSTAINED.

24 MR. MOSHENKO: I'M NOT ASKING HIM SPECIFICALLY
25 ABOUT THE PRIMARY RULE. I ASKED WHAT WAS HIS MOTIVATION
26 FOR JOINING. WHY DID YOU JOIN YOUR PARK?

1 THE COURT: I WILL ALLOW THAT.

2 THE WITNESS: WE JOINED COAST TO COAST --

3 BY MR. MOSHENKO: Q EXCUSE ME. THE QUESTION IS,
4 WHY DID YOU JOIN YOUR PARK, NOT COAST TO COAST?

5 A THE PARK? WELL, WE JOINED THE PARK, WE
6 WERE -- WE SAW AN ADVERTISEMENT, AND WE THOUGHT, "WELL,
7 WE'RE GOING TO START GOING R.V.'ING FULL TIME." SO WE
8 THOUGHT WE BETTER CHECK OUT TO FIND OUT WHAT SOME OF THESE
9 RESORTS OFFER.

10 AND WE CHECKED OUT SUNRISE RESORTS IN
11 NORTHERN WASHINGTON. WE LIKED THE PARK. WE LOOKED AT THE
12 LOCATIONS AND DECIDED TO BUY THE MEMBERSHIP SO THAT WE
13 COULD TRAVEL FROM PARK TO PARK IN NORTHERN WASHINGTON AT
14 THAT TIME. AND IT WAS THEN THAT WE PICKED UP COAST TO
15 COAST'S OFFER.

16 Q WAS YOUR PRIMARY REASON FOR JOINING A PARK
17 TO GET COAST TO COAST OR TO GET THE PARK?

18 A NO. WE JOINED TO GET THE PARK. AND THEN OF
19 COURSE THEY HAVE THE -- ALL THESE OTHER OPTIONS. YOU CAN
20 PICK UP PRESIDENT'S CLUB IF YOU WANTED, YOU CAN PICK UP
21 VARIOUS THINGS. AND THEY MADE US A DEAL THAT IF WE JOINED
22 THE SUNRISE RESORTS, THEY WOULD -- FOR "X" NUMBER OF
23 DOLLARS WE CAN PICK UP PRESIDENT'S CLUB. SO WE DID. WE
24 PICKED UP A PRESIDENT'S CLUB MEMBERSHIP.

25 Q LET ME STOP YOU RIGHT THERE.

26 ARE YOU SAYING YOU HAD A MEMBERSHIP IN THE

1 PARK BEFORE, AND THEN YOU ADDED ON, OR ENHANCED AND PICKED
2 UP THE PRESIDENT'S CLUB MEMBERSHIP?

3 A YES.

4 Q SO YOU -- ACTUALLY TWO STEPS; CORRECT?

5 A YES.

6 Q OKAY. NOW, THEN -- DID YOU THEN GO ON AND
7 ADD ON AGAIN AND PICK UP A COAST TO COAST MEMBERSHIP?

8 A YES.

9 Q ARE YOU STILL A COAST TO COAST MEMBER?

10 A NO, I'M NOT.

11 Q WHY NOT?

12 A WE -- I RECOLLECTED THAT WE HAD COAST TO
13 COAST IN '95, '96, '97. I BELIEVE OURS ENDED IN 1998. AND
14 THE REASON BEING, WE KEPT IT UP -- WE ONLY USED THE PARK
15 THAT I RECALL ONCE, MAYBE TWICE. AND THE REASON WHY WE
16 KEPT IT THE THREE YEARS, EXTRA THREE YEARS, WAS BASICALLY
17 IT'S -- THE PARK THAT WE WORKED AT OFFERED US OUR COAST TO
18 COAST MEMBERSHIP. IF YOU WERE AN EMPLOYEE, YOU WERE ABLE
19 TO HAVE THE COAST TO COAST MEMBERSHIP FOR \$20. SO FOR \$20
20 WE SAID, WHAT THE HECK? WE MIGHT AS WELL KEEP IT. WE
21 NEVER KNOW WHEN WE'LL BE WANTING TO USE IT. SO WE KEPT
22 IT. PLUS WE HAD ABOUT \$100 WORTH OF CARDS.

23 Q COAST CARDS?

24 A YEAH. AND SO WE THOUGHT, WELL, WE MIGHT AS
25 WELL KEEP IT SINCE WE'VE GOT ALL THESE CARDS. YOU NEVER
26 KNOW WHEN IT MIGHT COME IN HANDY SOME DAY. SO THAT WAS OUR

1 BASIC REASON FOR KEEPING IT.

2 Q YOU HEARD MR. GUIRE TESTIFY ABOUT SOME MONEY
3 THAT WAS OWED BY COAST THAT WASN'T PAID RELATING TO CARDS?

4 A YES.

5 Q ARE YOU TALKING ABOUT THE SAME CARDS?

6 A THE SAME CARDS. AND I CAN'T RECALL BECAUSE
7 IT CHANGED. THERE WERE \$1 CARDS, OR THERE WERE \$3 CARDS
8 THAT WE HAD, AND WENT TO \$4 CARDS. BUT -- SO YOU ENDED UP
9 HAVING ALL THESE \$3 CARDS THAT -- WE ENDED UP BUYING UP
10 SOME \$1 CARDS. AND THE NEXT THING YOU KNOW, YOU GET ALL
11 THE CARDS. TO US WHEN YOU'RE FIRST GETTING IN THE
12 INDUSTRY, AND YOU START COMING UP WITH THESE CARDS, IT'S
13 VERY CONFUSING. SO I JUST LEFT IT TO MY WIFE.

14 Q OKAY. BUT MR. GUIRE TALKED ABOUT THE CARDS
15 FROM THIS STANDPOINT: OF THE RESORT MANAGER. YOU HAD THE
16 CARDS FROM THE STANDPOINT OF A RESORT TRAVELER AND VISITOR?

17 A A TRAVELER, YES.

18 Q SO TELL US WHAT HAPPENED WITH THOSE CARDS.
19 HOW DID YOU USE THEM?

20 A WELL, WE GO INTO A RESORT, AND YOU WOULD
21 WANT TO STAY "X" NUMBER OF NIGHTS. AND THEY WOULD ASK YOU
22 FOR "X" NUMBER OF CARDS. SO YOU PULL OUT WHATEVER NUMBER
23 OF CARDS, FILL THEM OUT, GIVE THEM TO THE PERSON THAT'S
24 REGISTERING YOU. AND THEN YOU GOT YOUR CAMPSITE.

25 Q AND THE CARDS GAVE YOU A -- THE RIGHT TO
26 STAY THERE FOR HOW MUCH MONEY? NO MONEY? NO MORE MONEY?

1 A NO, I DON'T BELIEVE IT WAS ANYMORE MONEY.
2 IT WAS JUST THE CARDS, WHATEVER THE AMOUNT THE CARDS CAME
3 TO. AND I'M NOT SURE BACK THEN, WHETHER IT WAS \$3 OR \$4.
4 BECAUSE I KNOW IT'S UP TO \$5 OR \$6 NOW.

5 Q ALL RIGHT. SO YOU GOT A NIGHT'S LODGING, IF
6 YOU WILL, FOR 3 OR 4 DOLLARS?

7 A RIGHT. UH-HUH.

8 Q NOW, TO BE ABLE TO DO THAT, THOUGH, YOU HAVE
9 TO PAY DUES; RIGHT?

10 A YES.

11 Q YOU PAY DUES TO YOUR HOME PARK?

12 A YES.

13 Q AND HOW MUCH WERE YOU PAYING IN DUES, ANNUAL
14 DUES, TO YOUR HOME PARK --

15 A FOR THE --

16 Q -- TO BELONG TO THE HOME PARK?

17 A IN OUR HOME PARK?

18 Q YES.

19 A I'M NOT REALLY SURE. I LET MY WIFE HANDLE
20 ALL THE PAYING OF THE BILLS. I THINK IT WAS AROUND \$180 WE
21 PAID TO THE HOME PARK, OR \$120, SOMETHING LIKE THAT. AND
22 THEN WE WOULD PAY AN ANNUAL FEE FOR OUR PRESIDENT'S CLUB
23 MEMBERSHIP AND ANNUAL FEE FOR THE COAST TO COAST
24 MEMBERSHIP.

25 Q BUT BEFORE YOU GET TO THE DUES YOU HAD TO
26 BUY A MEMBERSHIP; RIGHT?

1 A OH, YES. YES.

2 Q HOW MUCH DID YOU PAY FOR THE MEMBERSHIP?

3 A OH, \$3,000, I BELIEVE IT WAS.

4 Q OKAY. AND IN YOUR CASE DID YOU PAY FOR IT
5 ALL AT ONCE, OR DID YOU PAY SOME DOWN AND PAYMENTS?

6 A I BELIEVE WE PAID FOR IT ALL AT ONCE.

7 Q OKAY. ALL RIGHT. SO YOU PAID -- YOU PAID
8 TO JOIN, AND THEN YOU PAY AN ANNUAL DUES YOU SAID OF \$180?

9 A YES.

10 Q AND THEN YOU PAID SOME DUES FOR -- YOUR
11 PRESIDENT'S TRAVEL CLUB MEMBERSHIP WAS AN ADD-ON OR
12 ENHANCEMENT; HOW MUCH DID YOU PAY FOR THAT, ANNUALLY?

13 A ANNUALLY? FOR OUR PRESIDENT'S CLUB?

14 Q APPROXIMATELY, YES.

15 A I REALLY CAN'T REMEMBER HOW MUCH IT WAS.

16 Q OKAY. THAT'S ALL RIGHT.

17 A I CAN'T REMEMBER.

18 Q SO THEN YOU ALSO HAD TO PAY YOU SAID \$20 FOR
19 COAST?

20 A YES. BECAUSE WE WERE WORKING FOR A PARK
21 SYSTEM, WHO IT WAS A FRINGE BENEFIT FOR THE EMPLOYEES; THAT
22 IF YOU KEPT THE COAST TO COAST, YOU COULD HAVE \$20 VERSUS
23 THE \$49 OR \$59 THAT IT COST.

24 Q WHICH PARK SYSTEM WERE YOU WORKING FOR?

25 A FOR THE HOLIDAY TRAILS SYSTEM.

26 Q OKAY. AND, NOW, YOU ALSO HAD TO PAY \$4 OR

1 \$3 TO GET THOSE CARDS; CORRECT?

2 A YES.

3 Q NOW, YOU SAY YOU THEN STOPPED GOING TO COAST?

4 A UH-HUH.

5 Q OR BELONGING OR PAYING DUES TO COAST. WHY?

6 A WELL, WE'D BEEN TRAVELING AND WORKING AT
7 PARKS, BUT WE'D BEEN TRAVELING. AND IT DIDN'T TAKE US TOO
8 LONG TO FIGURE OUT THAT WHEN WE TRIED TO GO TO NUMEROUS
9 PARKS IN THE COAST TO COAST SYSTEM, WE WERE FULL-TIMERS.
10 WE JUST DIDN'T WANT ONE OR TWO NIGHTS. WE WANTED -- WE
11 WOULD LIKE TO HAVE HAD THE SEVEN NIGHTS. YOU'RE ALLOWED UP
12 TO SEVEN NIGHTS. A LOT OF THE PARKS ONLY GAVE YOU THREE
13 NIGHTS.

14 HOWEVER, IF YOU TOOK A TOUR, A MEMBERSHIP
15 TOUR, THEY WOULD ADD ON THE EXTRA FOUR NIGHTS. IT WAS
16 SOMETHING THAT A LOT OF THE PARKS ARE DOING. IF I WANTED
17 TO TAKE A TOUR AND BUY SOMETHING, THEN THAT'S SOMETHING I
18 WANT TO DO. I DON'T WANT TO HAVE TO BE FORCED INTO IT
19 BECAUSE OF -- SO THAT I CAN STAY SOMEWHERE FOR AN EXTRA
20 FOUR NIGHTS. I DON'T THINK IT'S RIGHT.

21 SO, THEREFORE, WE CHECKED INTO ANOTHER
22 SYSTEM, AND WE BOUGHT INTO ANOTHER SYSTEM, WHICH IS CALLED
23 THE R.P.I. SYSTEM, WHICH HAS A 1-800 NUMBER. YOU PHONE
24 IT. YOU MAKE A RESERVATION FOR SEVEN NIGHTS, YOU GET SEVEN
25 NIGHTS. IF YOU WANT FOUR NIGHTS, YOU CAN HAVE FOUR
26 NIGHTS. AND SO THAT'S WHAT WE DID. WE BOUGHT INTO THE

1 R.P.I. SYSTEM.

2 Q OKAY. AND YOU DON'T HAVE TO GO INTO A SALES
3 PITCH OR ANYTHING WITH R.P.I.?

4 A NO.

5 Q WHEN YOU GOT INTO COAST, DID ANYBODY SAY
6 ANYTHING TO YOU ABOUT HAVING TO ATTEND SALES PITCHES TO USE
7 YOUR R.P.I. MEMBERSHIP -- YOUR COAST MEMBERSHIP?

8 A NO.

9 Q DID YOU EVER TRY TO COMPLAIN TO THE OTHER
10 RESORTS THAT WERE AFFILIATED WITH COAST THAT WERE TELLING
11 YOU THAT IN ORDER TO STAY YOU HAD TO GO TO THIS MARKETING
12 EVENT?

13 A NO. BASICALLY WE SAID, LOOK, WE'D LIKE TO
14 HAVE SEVEN NIGHTS. AND THE RESORTS -- THERE WAS SOME
15 RESORTS WE WENT TO THAT WE GOT SEVEN NIGHTS. LIKE I SAY, I
16 ONLY USED IT A COUPLE TIMES, AND WE DIDN'T USE THE COAST TO
17 COAST SYSTEM BECAUSE WE CHANGED OVER AND GOT THE R.P.I.
18 WHEN WE WERE TRAVELING.

19 Q BUT BEFORE YOU CHANGED OVER, DID YOU EVER
20 COMPLAIN TO THE RESORT OPERATOR, WHO WAS NOT YOUR HOME PARK
21 SYSTEM, BUT WAS THE COAST TO COAST SUPPLIED RESORT, ABOUT
22 THIS CONDITION OF HAVING TO GO TO MARKETING PRESENTATIONS?

23 A NO.

24 Q DID YOU EVER COMPLAIN TO COAST, LOOK, I
25 DON'T THINK THAT'S WHAT WAS PART OF THE PACKAGE?

26 A NO.

1 Q YOU JUST DECIDED TO INVESTIGATE R.P.I. AND
2 MADE A CHANGE?

3 A WE JUST LOOKED AROUND -- I MEAN, WE TALKED
4 TO OTHER CAMPERS AND R.V.'ERS AND SAID -- AND THEY SAID,
5 "YOU KNOW, IT'S NOT RIGHT. BUT, YOU KNOW, THERE'S NOT MUCH
6 YOU CAN DO ABOUT IT, IF THAT'S WHAT THE PARKS ARE DOING."

7 WE WERE VERY GREEN WHEN WE STARTED R.V.'ING.
8 IT TOOK A FEW YEARS TO CATCH ON TO THE SYSTEM AND HOW IT
9 WORKS. BUT THROUGH TALKING WITH OTHER R.V.'ERS, THEY'RE
10 THE ONES THAT PUT US ON TO WELL, WHY DON'T YOU GO TO R.P.I.
11 IT'S A 1-800 NUMBER. YOU CAN MAKE THE RESERVATION. YOU
12 GET A CONFIRMATION NUMBER. YOU WANT SEVEN DAYS, IN YOU GO.
13 NO MESS, NO FUSS.

14 Q YOU'RE BASICALLY SAYING YOU WERE UNHAPPY
15 WITH COAST AND YOU CHANGED?

16 MR. SHERMAN: OBJECTION. LEADING.

17 THE COURT: SUSTAINED.

18 BY MR. MOSHENKO: Q SO WERE YOU HAPPY WITH COAST?

19 A WE DIDN'T REALLY USE THE COAST TO COAST
20 SYSTEM ENOUGH TO MAKE --

21 Q MR. BROCKLEY, WHEN YOU DID USE THE COAST TO
22 COAST SYSTEM, DID YOU LOOK AT THE COAST DIRECTORY THAT
23 MR. SHERMAN HELD UP YESTERDAY AND SAID, "YOU'VE GOT ACCESS
24 TO ALL THESE PARKS"?

25 A YES, WE'VE SEEN THE DIRECTORY.

26 Q NOW, WHEN YOU WENT TO R.P.I. DID YOU GET A

1 SIMILAR-TYPE OF DOCUMENT, A DIRECTORY, WITH RESORTS THAT
2 YOU CAN VISIT?

3 A YES.

4 Q AND DID YOU NOTICE WHETHER ANY OF THE --
5 WHETHER THE TWO DIRECTORIES INCLUDED SOME OF THE SAME PARKS
6 AND RESORTS?

7 A THEY INCLUDE A LOT OF THE SAME RESORTS. SO
8 THAT'S ANOTHER REASON WHY WE LOOKED AT THE R.P.I. AND SAID,
9 "WELL, WE CAN GO TO THOSE PARKS THAT ARE COAST TO COAST
10 ANYWAY. THEY TAKE BOTH COAST TO COAST OR R.P.I. SO WE
11 THOUGHT WE'RE NOT REALLY LOSING ANYTHING.

12 Q YOU'RE SAYING YOU DROPPED YOUR COAST, BUT
13 BECAUSE YOU HAD R.P.I., YOU FELT YOU WEREN'T LOSING
14 ANYTHING?

15 A WELL, WITH R.P.I., WE COULD GO TO ALL THE
16 COAST TO COAST PARKS ANYWAY, THE ONES THAT WE WANTED TO GO
17 TO.

18 Q ARE THERE ANY OTHER THINGS THAT YOU CAN TELL
19 THIS JURY BY YOUR EXPERIENCE WITH R.P.I. VERSUS YOUR
20 EXPERIENCES WITH COAST THAT WILL LET THEM UNDERSTAND THE
21 DIFFERENCES BETWEEN THE TWO, THE ADVANTAGES OR
22 DISADVANTAGES?

23 A WELL, THE ADVANTAGES IS OF MAKING A
24 RESERVATION. AND THAT'S -- THAT IS EXTREMELY IMPORTANT TO
25 A PERSON WHO IS R.V.'ING FULL TIME. YOU'RE ON THE ROAD
26 TRAVELING. YOU WANT TO KNOW WHERE YOUR NEXT -- WHERE

1 YOU'RE GOING TO BE STAYING. SO YOU PHONE UP. YOU MAKE
2 RESERVATIONS, THE TOLL-FREE NUMBER. AND YOU GOT A
3 CONFIRMATION NUMBER.

4 YOU DON'T HAVE TO WORRY THAT NEXT WEEK YOU
5 DON'T HAVE A PARK TO STAY IN, ESPECIALLY IF ONE OF YOUR
6 RESORT PARKS THAT YOU BELONG TO THAT YOU JOINED -- IF THERE
7 ISN'T ONE HANDY TO YOU, AND IT'S GOING TO TAKE YOU TWO
8 NIGHTS TO GET THERE, YOU KNOW, THAT YOU CAN PULL INTO THE
9 PARK, MAKE A RESERVATION. YOU KNOW YOU HAVE A PLACE -- YOU
10 DON'T NEED -- THERE'S ENOUGH AGGRAVATION ON THE HIGHWAY
11 WITHOUT ADDING MORE TO IT BY NOT KNOWING WHERE YOU'RE GOING
12 TO BE ABLE TO STAY FOR THE NIGHT.

13 Q ARE YOU STILL WITH R.P.I.?

14 A YES, WE ARE.

15 Q EVEN THOUGH YOU'RE A RESORT MANAGER, YOU
16 STILL TRAVEL?

17 A WE DON'T TRAVEL FOR THE PAST THREE YEARS.
18 WE HAVEN'T BEEN TRAVELING, NO.

19 Q LET'S TALK ABOUT THAT.

20 THERE CAME A TIME WHEN YOU KIND OF SETTLED
21 IN ON TWO SPRINGS?

22 A YES.

23 Q WHEN WAS THAT?

24 A THAT WASN'T TILL 1998. WE HAD BEEN GOING TO
25 THE PARK SINCE 1995 VISITING THE PARK. WE ENJOYED THE
26 PARK. IT'S A GORGEOUS PARK. AND THE DESERT, WITH

1 BEAUTIFUL FOUNTAINS. AND WE LOVED THAT PARK. SO THAT'S
2 THE ONE THAT WE USED TO GO BACK TO QUITE A BIT. YOU SORT
3 OF GET ATTACHED TO A CERTAIN PARK, AND THAT'S THE ONE THAT
4 YOU SEEM TO ALWAYS WANT TO GO BACK TO.

5 Q DID YOU HAVE FRIENDS AND FAMILY THAT YOU --
6 KEPT COMING BACK TO THERE?

7 A YES. THERE'S THE SAME PEOPLE. YOU SORT OF
8 MEET THEM EVERY ONCE IN A WHILE, AND I DON'T THINK WE'VE
9 EVER GONE BACK INTO THE PARK THAT WE LIKED, WHICH WAS TWO
10 SPRINGS, THAT THERE WEREN'T TWO OR THREE OTHER R.V.'ERS WHO
11 WE KNEW VERY WELL, AND THE COMRADERY THAT WE HAD, AND GET
12 TOGETHER FOR DINNERS. AND IT'S GREAT. IT'S A LOT OF FUN.

13 Q IS COMRADERY A BIG THING FOR R.V.'ERS?

14 A YES, IT IS.

15 Q ALL RIGHT. NOW, SO YOU SAY YOU WERE
16 VISITING TWO SPRINGS REGULARLY IN '95, '96, '97, INTO '98,
17 YOU BECAME A MEMBER?

18 MR. SHERMAN: OBJECTION. LEADING.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES.

21 BY MR. MOSHENKO: Q AND IN '98 BECAME THE MANAGER?

22 A YES. IN '98.

23 Q I'D LIKE YOU TO TELL THE JURY SOMETHING
24 ABOUT THE TWO SPRINGS RESORT.

25 WHAT ARE THE AMENITIES -- WHAT WAS THE
26 CONDITION? HOW WAS IT MAINTAINED IN '95, '96 AND '97,

1 BEFORE YOU'RE THE MANAGER?

2 A BEFORE? WELL, LIKE I SAY, WE ARRIVED THERE
3 IN '95. WE DIDN'T KNOW WHAT TO EXPECT. WE WENT DOWN THE
4 HIGHWAY. YOU'RE IN THE DESERT. THERE'S NOTHING AROUND,
5 AND ALSO THERE'S -- WHICH I KNOW NOW IT'S ABOUT 44 ACRES OF
6 PROPERTY, WHICH IS AN OASIS IN THE DESERT, COMPLETELY
7 SURROUNDED WITH 50-FOOT-HIGH TREES. IT'S VERY WELL TREED
8 AND SHRUBBED, BEAUTIFUL FOUNTAINS WHEN YOU ENTER, A LOT OF
9 LAWN AREA, WHICH I FOUND VERY SURPRISING FOR THE DESERT,
10 KNOWING WHAT THE WATER COSTS.

11 LOTS OF TREES. ALL THE SITES ARE VERY LARGE
12 THERE. IN FACT, IT USED TO BE A MOBILE HOME PARK. LOTS OF
13 SHRUBS AROUND ALL THE SITES. SO YOU DO HAVE SOME PRIVACY
14 WHEN YOU'RE IN THE RESORT, IN YOUR SITE. IT WAS VERY WELL
15 MAINTAINED, WHICH THE STAFF -- BASICALLY THEY HAD A GOOD
16 STAFF THERE, AND A LOT OF US WHO WOULD JUST, SAY --
17 SOMETIMES BEING YOUNG -- I WAS ONLY -- WELL, I WAS ONLY,
18 WHAT, 45 WHEN WE FIRST STARTED GOING THERE, 46. SO WE USED
19 TO HELP OUT. IF YOUR SITE NEEDED TO BE FIXED UP A BIT, YOU
20 GET THE RAKE FROM ONE OF THE WORKERS, RAKE YOUR OWN SITE
21 UP, FIX IT UP, TREAT IT LIKE BASICALLY YOUR OWN LITTLE
22 PIECE OF HOMELAND WHILE THE TWO WEEKS THAT WE WERE THERE.

23 WE FOUND A LOT OF ACTIVITIES GOING ON WHEN
24 WE WERE THERE. THAT'S WHY WE LIKED THE PARK AND KEPT GOING
25 BACK TO IT. THERE WAS LINE DANCE CLASSES. THERE WAS
26 CLASSES IN THE SWIMMING POOL WHICH MY WIFE ENJOYED. THERE

1 WAS ARTS AND CRAFTS. THEY HAVE TWO BEAUTIFUL TENNIS COURTS
2 THERE THAT ARE WELL MAINTAINED. HORSESHOE PITS.
3 VOLLEYBALL. AND NUMEROUS OTHER ACTIVITIES ALWAYS GOING
4 ON. CRAFTS. THEY ALWAYS HAD A CRAFT PERSON HIRED TO TEACH
5 CRAFTS, WHICH A LOT OF PEOPLE ATTENDED. POOL TABLES. THEY
6 HAVE ONE POOL ROOM THERE.

7 I DON'T THINK I'VE LEFT ANYTHING OUT AS FAR
8 AS THE AMENITIES. THERE'S A LOT OF ACTIVITIES HAPPENING.
9 AND IT'S THE PEOPLE THERE THAT PULL TOGETHER TO HAVE A GOOD
10 TIME BECAUSE THAT'S WHAT R.V.'ING IS ABOUT. IF YOU'RE NOT
11 UP THERE HAVING A GOOD TIME, GET A CONDO SOMEWHERE.

12 Q ALL RIGHT. THANK YOU, MR. BROCKLEY.

13 YOU KNOW, MR. BROCKLEY, I'M GOING TO GO BACK
14 FOR ONE MOMENT TO THE R.P.I., PRESIDENT'S CLUB, TRAVEL
15 AMERICA QUESTIONING AND ASK IF WE CAN HAVE EXHIBIT 2098,
16 PAGE 61, WHICH IS THE BACK COPY, COUNSEL, OF THE NEWS AND
17 VIEWS.

18 I'LL HAND YOU A COPY. IT'S EXHIBIT 2098.

19 MR. SHERMAN: WHAT PAGE?

20 MR. MOSHENKO: PAGE 61, WHICH IS THE LAST PAGE.

21 MR. SHERMAN: COUNSEL, COULD YOU SHOW ME EXHIBIT
22 61? THE EXHIBIT THAT I HAVE DOES NOT HAVE A 61.

23 MR. MOSHENKO: IT DOESN'T HAVE THE NUMBER ON IT?

24 MR. SHERMAN: I HAVE TWO OF THEM. I DON'T SEE A
25 PAGE 61.

26 MR. MOSHENKO: I'M SORRY. PAGE 60.

1 MR. SHERMAN: YOU MEAN THE LAST.

2 MR. MOSHENKO: THE LAST PAGE.

3 COULD WE HAVE IT PUT UP ON THE SCREEN,
4 PLEASE.

5 IT'S A BIT HARD TO SEE. BUT, YOUR HONOR, I
6 HAVE BROUGHT ORIGINALS. AND I'LL ASK THE COURT'S
7 PERMISSION LATER TO ALLOW THE JURORS TO EACH HAVE AN
8 ORIGINAL COPY.

9 Q OKAY. COULD YOU -- LET'S GO TO THE TOP OF
10 THE PAGE, AND LET'S PICK UP ON TRAVEL AMERICA AND
11 PRESIDENT'S CLUB RIGHT HERE.

12 MR. SHERMAN: EXCUSE ME, YOUR HONOR. COULD WE JUST
13 HAVE A FOUNDATION LAID THAT THIS WITNESS HAS SEEN THIS
14 DOCUMENT, EXHIBIT 2098, PLEASE?

15 THE COURT: YES.

16 BY MR. MOSHENKO: Q WERE YOU THE MANAGER OF THE
17 TWO SPRINGS RESORT IN DECEMBER -- WERE YOU A VISITOR OF THE
18 TWO SPRINGS RESORT AND A MEMBER OF PRESIDENT'S TRAVEL CLUB
19 IN DECEMBER '97 AND JANUARY '98?

20 A YES.

21 Q AND DID YOU RECEIVE THE NEWS AND VIEWS THAT
22 WAS MAILED TO THE MEMBERS BACK AROUND THAT TIME?

23 A YES.

24 Q OKAY. AND LET ME JUST SHOW YOU A COPY SO
25 YOU CAN HAVE IT RIGHT IN FRONT OF YOU.

26 AND, NOW, DOES THE BACK SIDE OF THAT WHERE

1 IT SHOWS IN PICTURE FASHION "TRAVEL AMERICA RESORTS" AS
2 IMPOSED UPON A U.S. MAP, AND "PRESIDENT'S CLUB" IMPOSED ON
3 U.S. MAP, ACCURATELY DESCRIBE YOUR UNDERSTANDING OF WHAT
4 RESORTS YOU HAD ACCESS TO THROUGH TRAVEL AMERICA AND HOW
5 THE PRESIDENT'S TRAVEL CLUB ADDED TO THE TRAVEL AMERICA
6 RESORTS?

7 A YES.

8 Q ALL RIGHT. SO THERE APPEARED TO BE A LOT
9 MORE PRESIDENT'S CLUB RESORTS IN THE LOWER PART OF THE
10 EXHIBIT THAN TRAVEL AMERICA CLUBS OR RESORTS AT THE TOP; IS
11 THAT CORRECT?

12 A THAT'S CORRECT.

13 Q OKAY. NOW, IF WE COULD SEE THE R.P.I.,
14 WHICH IS THE THIRD ONE DOWN, AND THEY HAVE THAT EXPANDED.
15 NOW, BY JOINING R.P.I., YOU HAD ACCESS TO --
16 HOW MANY PARKS DID YOU UNDERSTAND YOU HAD ADDITIONAL ACCESS
17 TO?

18 A OH, HUNDREDS.

19 Q IS THAT ROUGHLY COMPARABLE IN YOUR RECALL TO
20 THE NUMBER OF PARKS THAT YOU HAD ACCESS TO THROUGH COAST TO
21 COAST?

22 A I THINK THEY WERE FAIRLY SIMILAR.

23 Q OKAY. AND -- A GREAT MANY OF THESE PARKS
24 YOU'VE TESTIFIED WERE THE COAST TO COAST, AS WELL AS R.P.I.
25 PARKS; RIGHT?

26 A YES.

1 Q ALL RIGHT.

2 A IF YOU SUPERIMPOSE THEM, A LOT OF THE PARKS,
3 R.P.I. PARKS, ALSO HAVE COAST TO COAST.

4 Q ALL RIGHT. THANK YOU.

5 NOW, LET ME GO BACK TO THE SUBJECT OF YOUR
6 TWO SPRINGS RESORT.

7 WHY DID YOU BECOME -- DECIDE TO BECOME A
8 MANAGER?

9 A I DIDN'T.

10 Q HOW DID YOU BECOME A MANAGER?

11 A THAT WAS ANOTHER CON JOB. NO. WE HAD BEEN
12 GOING TO TWO SPRINGS FOR A GREAT NUMBER OF YEARS, AND WE
13 WERE AT ONE OF THE SISTER PARKS FOR A TIME, BECAUSE WE WERE
14 STAYING IN CATHEDRAL PALMS, WHICH WAS A SISTER PARK TO TWO
15 SPRINGS, AND WE DECIDED TO GO OVER TO TWO SPRINGS. AND
16 WHILE WE'RE OVER THERE, THEY NEEDED SOMEBODY -- I BELIEVE
17 IT WAS IN FEBRUARY. THEY NEEDED SOMEBODY TO HELP IN THE
18 OFFICE, ET CETERA. AND MY WIFE, WHO IS RATHER GOOD AT
19 OFFICE WORK AND COMPUTERS, ET CETERA, WENT AND WORKED FOR
20 THEM IN THE OFFICE.

21 SO RATHER THAN ME SITTING AROUND DOING
22 NOTHING, I DECIDED TO HELP OUT AND LEND A HAND WHEREVER I
23 COULD, WHETHER IT BE TRIMMING BUSHES OR HELPING OUT WITH
24 VARIOUS ACTIVITIES IN THE CLUBHOUSE. GOT INVOLVED. AND
25 THE MANAGER AT THAT TIME SAID -- WAS INFORMING US THAT HE
26 WAS GOING TO BE LEAVING THE PARK AS MANAGER. HE WAS AROUND

1 69 YEARS OLD, 70, AND HE WANTED TO DO SOME TRAVELING AND
2 DIDN'T WANT TO STAY ON AS MANAGER, AND ASKED IF WE'D BE
3 INTERESTED.

4 SO MY WIFE AND I TALKED ABOUT IT, AND
5 THOUGHT, WELL, WE'RE NOT DOING ANYTHING FOR THE NEXT SIX
6 MONTHS OR THREE MONTHS. LET'S HAVE A LOOK AT IT. SO
7 THAT'S BASICALLY WHAT WE DID.

8 WE -- I STARTED WORKING WITH THE MANAGER, MY
9 WIFE AND I. AND AFTER THE COUPLE MONTHS HAD ELAPSED, HE
10 SAID, "THAT'S IT. I'M PULLING OUT OF HERE." AND HE TALKED
11 TO THE OWNERS AND GAVE OUR RESUME TO THE OWNERS, AND THEY
12 HIRED US AS MANAGERS OF TWO SPRINGS.

13 Q ALL RIGHT. NOW, PLEASE, CAN YOU RETURN TO
14 THE CONDITION OF THE PARK AND MAINTENANCE IN 1997, BEFORE
15 YOU BECAME MANAGER?

16 A THERE'S ALWAYS ONGOING PROJECTS IN THAT
17 PARK. IT'S AN OLD PARK. IT HAS AN HISTORICAL SITE THERE
18 IN THE PARK. IT'S A PLACE WHERE THE FIRST WAGONS, AND
19 WHATEVER, STAGE COACH STOP USED TO BE. AND THEY WERE DOING
20 SOME RENOVATIONS TO THAT BUILDING, PUTTING IN CEMENT FLOORS
21 INTO THE WORKSHOP AREA. IT USED TO BE ALL DIRT FLOORS.
22 AND THEY LAID CEMENT IN THERE. I WASN'T INVOLVED IN THAT
23 AT THE TIME. I HAD ARRIVED THERE AFTER THAT.

24 BUT THERE WAS ALWAYS ONGOING PROJECTS AND
25 ALWAYS TRIMMING, AND A LOT OF THE R.V.'ERS JUST GAVE IT A
26 GENERAL HELPING HAND WHENEVER, GRABBED A RAKE, GRABBED A

1 SHOVEL IF NEED BE.

2 Q DO MEMBERS DO THAT, JUST HELP MAINTAIN THE
3 PARKS?

4 A YEAH. A LOT OF RESORTS, THERE ARE A LARGE
5 NUMBER OF THE MEMBERS.

6 Q WHY DO THEY DO THAT?

7 A BECAUSE IT'S A FAMILY -- YOU'RE TREATED AS
8 FAMILY. THEY GET TOGETHER FOR A FEW LAUGHS, DO A LITTLE
9 BIT OF WORK. THE IDEA IS THEY'RE TRYING TO IMPROVE THE
10 PARK FOR THEIR BENEFIT, AS WELL. IF THERE'S SOMETHING
11 LAYING ON THE GROUND, THEY PICK IT UP. THEY THROW IT IN
12 THE TRASH. THEY DON'T JUST WALK BY IT.

13 Q ALL RIGHT. NOW, RELATING TO THE CONDITION
14 OF THE PARK, I HAVE IN MY HAND 16 PHOTOGRAPHS.

15 MR. SHERMAN: YOUR HONOR, MAY WE APPROACH?

16 THE COURT: YOU MAY.

17 (DISCUSSION OFF THE RECORD.)

18 BY MR. MOSHENKO: Q ALL RIGHT. BACK TO THE
19 QUESTION OF THE TWO SPRINGS PARK.

20 DID YOU AND YOUR WIFE ATTEND SIGNIFICANTLY
21 IN 1997, A LOT OF TIME?

22 A YES.

23 Q WERE YOU ABLE TO OBSERVE HOW FULL THE PARK
24 WAS, THAT IS, HOW MANY PEOPLE WERE COMING AND VISITING?

25 A YES.

26 Q HOW WOULD YOU CHARACTERIZE THE NUMBER OF

1 VISITORS IN, LET'S SAY, THE FIRST 3/4THS OF 1997?

2 A WELL, IN '-- I RECALL IN '95, '96 WHEN WE
3 WERE THERE, THE PARK WAS ALWAYS EXTREMELY BUSY. THERE
4 WOULD EVEN BE PEOPLE IN OVERFLOW, WHAT THEY ALL OVERFLOW.
5 IN OTHER WORDS, YOU HAVE A SPOT. YOU MIGHT HAVE
6 ELECTRICITY ONLY. AND THEN YOU MIGHT HAVE TO WAIT FOR ONE
7 NIGHT UNTIL PEOPLE LEFT THE NEXT DAY, AND THEN YOU WOULD
8 GET INTO A SITE THE VERY NEXT DAY. WE HAD SEEN QUITE A BIT
9 OF THAT HAPPENING. IN '97 IT WAS BUSY, AS WELL.

10 Q OKAY. DID THERE APPEAR TO YOU TO BE A
11 CHANGE IN THE AMOUNT OF VISITORS DEMANDING USE OF THE PARK
12 IN 1998, VERSUS THE 1997, '96, '95 PERIOD?

13 A WELL, MY WIFE -- I WANT TO CLARIFY
14 SOMETHING. MY WIFE AND I -- I HAVE TO LIVE WITH HER. SO
15 WE ARE BOTH MANAGERS OF TWO SPRINGS R.V. RESORT, AND I
16 BETTER GET THAT IN.

17 Q MY FAULT. I SHOULD HAVE ASKED THAT.

18 A SO WE'RE A MANAGEMENT TEAM. THE -- WHEN WE
19 TOOK OVER IN APRIL-MAY, WE WERE GEARING UP. THAT WAS OUR
20 DOWN SEASON. BASICALLY THE BUSY SEASON HAD FINISHED,
21 BECAUSE A LOT OF PEOPLE DON'T RELISH STAYING IN 113- TO
22 121-DEGREE WEATHER.

23 SO IN THE SUMMERTIME, TWO SPRINGS, THE --
24 VERY FEW R.V.'ERS THERE. ONE OR TWO MAY STRAY OFF THE
25 HIGHWAY. THEY PROBABLY GOT LOST, TOOK A WRONG TURN
26 SOMEWHERE.

1 SO IN -- WE WERE GEARING UP AT THAT TIME FOR
2 A VERY BUSY SEASON OF WHAT WE HAVE SEEN IN THE PREVIOUS
3 YEARS. SO WE WERE GUNG HO BEING NEW MANAGER. WE WERE GUNG
4 HO TO IMPRESS EVERYBODY WHEN THEY GOT THERE. SO WE HAD
5 EVERYTHING ORGANIZED AND READY TO GO. AND DID WE SEE A
6 DECLINE, YES. IN 1998, THERE WAS A DECLINE, BUT NOT A
7 TREMENDOUS -- BUT, I MEAN, THERE WAS A DECLINE IN THAT --
8 WHERE THE PARK USED TO BE IN OVERFLOW FOR ESPECIALLY
9 FEBRUARY, FOR NUMEROUS -- SAY, THE MONTH OF FEBRUARY WHERE
10 IT USED TO BE EXTREMELY BUSY, I THINK WE ONLY HAD THREE
11 NIGHTS WHERE WE HAD SOMEBODY IN OVERFLOW.

12 Q WHAT DO YOU MEAN BY NUMEROUS WHEN YOU WERE
13 VERY BUSY; HOW MANY NIGHTS A MONTH WAS THE PARK IN
14 OVERFLOW, BEFORE 1998, IN THE SAME COMPARABLE SEASON?

15 A OH, IN -- NORMALLY ABOUT THE MIDDLE OF
16 JANUARY TOWARDS THE END OF JANUARY AND ALL OF FEBRUARY, THE
17 PARK IS EXTREMELY BUSY. THOSE ARE THE EXTREME BUSY MONTHS
18 IN TWO SPRINGS.

19 Q SO THE OVERFLOW THAT TOOK IN 1998 WAS TWO,
20 THREE NIGHTS IN THE MONTH, WAS APPROXIMATELY HOW MANY
21 NIGHTS IN PREVIOUS EXPERIENCE IN THE MONTH?

22 A OH, I WOULD SAY MAJORITY OF -- I'D SAY 20,
23 30, IN AROUND THAT.

24 Q ALL RIGHT. NOW, WERE THERE ANY CHANGES,
25 NEGATIVE CHANGES THAT YOU ARE AWARE OF THAT OCCURRED TO THE
26 CONDITION OF THE PARK THAT COULD HAVE ACCOUNTED FOR THE

1 DROP-OFF OF MEMBERSHIP ATTENDANCE?

2 A NO. THERE WAS ACTUALLY -- THE PARK -- THE
3 PARK WAS ALWAYS UNDER IMPROVEMENTS. WE JUST REALLY
4 COULDN'T UNDERSTAND WHY WE WEREN'T -- IT WASN'T AS BUSY.
5 BUT WE THOUGHT, OH, WELL, IT WILL COME, YOU KNOW, MAYBE
6 NEXT WEEK. MAYBE WE'RE JUST TOO EARLY. MAYBE WE HAD -- WE
7 JUST FIGURED THAT IT WAS GOING TO HAPPEN AT ANY TIME.
8 WE'RE GOING TO GET EXTREMELY BUSY. AND IT DIDN'T HAPPEN.

9 WE WERE BUSY, BUT WE WERE NOT SUBSTANTIALLY
10 BUSY WHERE WE HAD PEOPLE IN OVERFLOW AND I HAD TO GET OUT
11 EXTRA ELECTRICAL CORDS, ET CETERA, TO HOOK UP, TO
12 FACILITATE THE PEOPLE THAT WERE COMING IN. BECAUSE OUR
13 POLICY IN THE PRESIDENT'S CLUB IS THAT WE REFUSE NO MEMBER
14 A SITE. WE WILL MAKE ARRANGEMENTS FOR THEM TO GET OFF THE
15 HIGHWAY AT NIGHT AND TO HAVE A PLACE TO STAY FOR THE NIGHT.

16 Q MR. BROCKLEY, YOU SAID YOU FREQUENTLY
17 VISITED RESORT TWO SPRINGS IN '96 AND '97?

18 A YES.

19 Q DID IT EVER COME -- WHILE AS A MEMBER;
20 RIGHT?

21 A AS A MEMBER.

22 Q DID IT EVER COME TO YOUR ATTENTION THAT
23 THERE WAS A BANKRUPTCY, REORGANIZATION PROCEEDING, EXISTING
24 THAT AFFECTED THE TWO SPRINGS RESORTS DURING THOSE YEARS?

25 A NO, I NEVER HEARD ANYTHING ABOUT THAT.

26 Q DID YOU NOTICE ANY DROP-OFF OF MEMBERSHIP

1 DURING THOSE TWO YEARS THAT YOU BELIEVE COULD HAVE SOMEHOW
2 BEEN CONNECTED TO A BANKRUPTCY?

3 A NO.

4 MR. SHERMAN: OBJECTION. LACKS FOUNDATION, YOUR
5 HONOR. HE TESTIFIED HE DIDN'T KNOW ABOUT A BANKRUPTCY.

6 THE COURT: SUSTAINED.

7 BY MR. MOSHENKO: Q DID ANY OF THE MEMBERS THAT
8 YOU WERE WITH ALL THE TIME EVER TALK ABOUT BANKRUPTCY
9 FILINGS WITH YOU?

10 A NO.

11 Q DID YOU NOTICE ANY DROP-OFF THAT YOU CAN
12 ISOLATE IN 1996 OR 1997 -- OR 1996 -- 5 OR 6, IN
13 MEMBERSHIP?

14 A DID I NOTICE A DROP-OFF IN MEMBERSHIP?

15 Q YES.

16 A NO.

17 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

18 THE COURT: OVERRULED.

19 BY MR. MOSHENKO: Q DO YOU KNOW RAYMOND NOVELLI?

20 A YES.

21 Q HAS HE VISITED THE RESORT WHEN YOU WERE
22 THERE?

23 A YES, HE DID, WHEN I WAS -- BEFORE I WAS THE
24 MANAGER?

25 Q EITHER WAY.

26 A YES, HE DID.

1 Q WHICH WAS IT, BEFORE YOU WERE A MANAGER, OR
2 AFTER?

3 A BEFORE AND AFTER.

4 Q OKAY. WHAT KIND OF MEMBERSHIP RESPONSE DOES
5 RAYMOND NOVELLI GET WHEN HE VISITS THE RESORT?

6 A IT'S NORMALLY A WELL -- IT'S A WELL
7 TURNOUT. JUST ABOUT EVERYBODY IN THE PARK COMES. AS A
8 MATTER OF FACT, A LOT OF PEOPLE -- THEY HAVE A COUPLE
9 HUNDRED SEATS AVAILABLE FOR PEOPLE, AND NORMALLY PEOPLE
10 STILL HAVE TO BRING THEIR OWN CHAIRS BECAUSE THERE'S NOT
11 ENOUGH SEATING ROOM. IT'S NORMALLY ALWAYS HELD OUTSIDE
12 BECAUSE THE CLUBHOUSE ONLY SEATS 180 PEOPLE. SO THEY USE A
13 LARGE LAWN AREA OUTSIDE THE CLUBHOUSE, AND IT IS PACKED.

14 Q AND WHAT OCCURS -- WHAT HAS OCCURRED FROM
15 YOUR OBSERVATION DURING THOSE VISITS; WHAT DOES MR. NOVELLI
16 DO?

17 A HE NORMALLY ARRIVES ON SITE WITH HIS WIFE
18 AND A FEW STAFF MEMBERS. THEY ALWAYS HAVE A BARBECUE. AND
19 HE AND HIS WIFE, THANK GOODNESS, DO ALL THE BARBECUING.
20 THEY COOK ALL THE HAMBURGERS, ET CETERA, WHICH IS A TREAT
21 FOR THE STAFF AT TWO SPRINGS. AND EVERYBODY BASICALLY GETS
22 TOGETHER FOR AN AFTERNOON. IT'S NORMALLY IN THE AFTERNOON,
23 AN AFTERNOON OF HAVING SOME GOOD FOOD AND SOME CONVERSATION
24 AND REFRESHMENTS.

25 MR. MOSHENKO: I WONDER IF I COULD ASK THAT EXHIBIT
26 2099, WHICH IS THE SAME ONE WE WERE WORKING WITH, COUNSEL,

1 PAGE 10, BE PUT UP.

2 Q YOU CAN'T SEE THAT ONE EITHER. ALL RIGHT.

3 YOU HAVE THE HARD COPY RIGHT THERE, DO YOU NOT?

4 A WHAT PAGE ARE YOU ON?

5 Q PAGE 10 OF THE NEWS AND VIEWS.

6 YOUR HONOR, I'M GOING TO OFFER THIS NEWS AND

7 VIEWS INTO EVIDENCE AT THIS TIME.

8 MR. SHERMAN: NO OBJECTION.

9 MR. MOSHENKO: AND ASK IF I CAN ALLOW THE JURORS TO
10 LOOK AT PAGE 10.

11 THE COURT: DO IT QUICKLY.

12 BY MR. MOSHENKO: Q WHILE THE DOCUMENTS ARE BEING
13 PASSED OUT, MR. BROCKLEY -- SO IT'S STANDING ROOM ONLY?

14 A YES.

15 Q NOW, HAVE YOU EVER HEARD OF MR. NOVELLI
16 REFERRED TO AS "GOOD TIMES RAY"?

17 A YES, I HAVE.

18 Q WHEN DID YOU HEAR THAT?

19 A PROBABLY IN THE EARLY PART OF OUR TRAVELING,
20 AFTER WE HAD -- I HADN'T HEARD THE PHRASE UNTIL ACTUALLY WE
21 WERE DOWN IN TWO SPRINGS, AFTER A COUPLE TIMES -- AFTER A
22 COUPLE WEEKS, WHATEVER, BEING IN THE RESORT. WE HAD PICKED
23 UP THE ISSUE. I HAD LOOKED AT IT. AND MY FIRST INKLING
24 WAS "GOOD TIME RAY; WHERE DID THAT COME FROM?" AND I
25 THOUGHT, "OH, YEAH, RIGHT. REALLY." UNTIL I MET THE
26 INDIVIDUAL. AND I HAD ONLY MET HIM FROM A DISTANCE IN THE

1 BEGINNING. I NEVER HAD ANY PERSONAL CONVERSATIONS WITH
2 HIM. AND THAT'S NOT IN THIS BOOK, BY THE WAY.

3 JUROR NO. 18: HE IS LOOKING IN ANOTHER BOOK.

4 THE WITNESS: WHAT BOOK ARE YOU IN? I WAS GOING TO
5 SAY, I THINK IT'S THE WRONG ISSUE.

6 BY MR. MOSHENKO: Q DOES THE LABEL FIT, GOOD TIMES
7 RAY?

8 A YES. I WOULD SAY THAT'S A --

9 Q WHAT WERE THE GOOD-TIMERS?

10 A WELL, THE GOOD-TIMERS ARE THE R.V.'ERS.

11 Q THE WHO?

12 A THE R.V.'ERS.

13 Q OH, THE R.V.'ERS?

14 A SURE. WE HAVE GOOD TIMES.

15 Q SO WHO CALLS RAY THE GOOD TIMES --

16 A I'M NOT REALLY SURE WHERE THE TERM
17 ORIGINATED FROM. I CAN'T RECALL WHERE THAT NAME CAME
18 FROM. BUT IT CERTAINLY SUITS HIM, AS FAR AS BECAUSE HE
19 LIKES TO GET OUT, HAVE A GOOD TIME WITH THE R.V.'ERS,
20 ASSOCIATE WITH THE R.V.'ERS, LISTEN TO THEIR WANTS AND
21 NEEDS, I GUESS, YOU MIGHT SAY. AND GENERALLY HE IS ALWAYS
22 VERY APPROACHABLE BECAUSE NO MATTER WHERE HE IS, THERE
23 SEEMS TO BE A CROWD OF PEOPLE AROUND HIM.

24 THE COURT: EXCUSE ME. LET'S JUST TAKE A MINUTE
25 AND LET THE JURORS LOOK AT THIS PAGE 10.

26 MR. MOSHENKO: VERY WELL.

1 THE COURT: AND THEN WE CAN CONCENTRATE ON YOUR
2 TESTIMONY. GET A QUICK LOOK AT PAGE 10, LADIES AND
3 GENTLEMEN.

4 BY MR. MOSHENKO: Q MR. BROCKLEY, DO YOU HAVE IT
5 IN FRONT OF YOU?

6 A YES.

7 Q CAN YOU TELL THE JURY WHERE TO FIND
8 RAY AND MARLIES NOVELLI IN THOSE PHOTOGRAPHS?

9 A WELL, THEY'RE IN ALL THREE PHOTOGRAPHS,
10 ACTUALLY. BUT RAY IS IN THE TOP LEFT, RAY AND MARLIES ON
11 THE RIGHT PHOTOGRAPH, AND THE BOTTOM PHOTOGRAPH SLIGHTLY TO
12 THE -- RIGHT OFF CENTER.

13 Q SITTING ON THE GROUND THERE?

14 A SITTING ON THE GROUND, YES.

15 Q AND IN THE TOP LEFT, THAT'S HIM KIND OF
16 KNEELING DOWN?

17 A YES, THAT IS.

18 Q AND THESE PHOTOGRAPHS WERE AT TWO SPRINGS;
19 RIGHT?

20 A YES. THESE WERE TAKEN AT TWO SPRINGS, AND
21 THEY WERE WELCOMED WITH THE YELLOW RIBBON AROUND THE TREE,
22 SIGNIFYING WHAT THEY NORMALLY DO TO WELCOME TO THE PARK.

23 Q WELL -- IN THE UPPER LEFT PHOTOGRAPH, THE
24 YELLOW RIBBON AROUND THE TREE THERE?

25 A UH-HUH.

26 MR. MOSHENKO: ALL RIGHT. THANK YOU, MR. BROCKLEY.

1 AND I HAVE NO FURTHER QUESTIONS.

2 THE COURT: THANK YOU. LET'S TAKE 20.

3 (RECESS TAKEN.)

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

6 THE COURT: YOU MAY PROCEED WITH YOUR
7 CROSS-EXAMINATION.

8 CROSS-EXAMINATION

9 BY MR. SHERMAN: Q GOOD MORNING, MR. BROCKLEY.

10 A GOOD MORNING.

11 Q MR. BROCKLEY, MAYBE I COULD PICK UP WHERE
12 PLAINTIFFS' LAWYER LEFT OFF ON SOME OF THOSE NEWS AND VIEWS
13 MAGAZINES THAT YOU GOT AND YOU RECEIVED OVER TIME.

14 I BELIEVE THAT PLAINTIFFS' LAWYER SHOWED YOU
15 TWO NEWS AND VIEWS MAGAZINES. IF WE COULD PUT THE FIRST
16 ONE UP ON THE BOARD, EXHIBIT 2098.

17 AND PERHAPS SINCE YOU WERE SO KIND,
18 MR. MOSHENKO, TO HAVE THOSE HANDED OUT TO THE JURORS, IF WE
19 COULD HAVE THOSE AVAILABLE.

20 MR. MOSHENKO: HE HAS ASKED ME TO HAND OUT
21 MAGAZINES TO THE JURY. IS THAT WHAT YOUR HONOR WANTS?

22 MR. SHERMAN: CAN WE DO THAT, YOUR HONOR?

23 THE COURT: OH, YEAH, SURE.

24 MR. SHERMAN: THE ONE WITH THE FLAG ON IT.

25 THE COURT: JUST PASS THEM OUT. THEY CAN FIND THE
26 PAGES.

1 MR. SHERMAN: OH, NO. THAT'S FINE.

2 JUROR NO. 18: IF I GET PAID BETTER MONEY AT THE
3 TABLE, I'LL GO WORK AT THE TABLE.

4 MR. MOSHENKO: YOUR HONOR, THIS IS EXHIBIT 2098
5 THE PARTIES STIPULATE CAN GO INTO EVIDENCE.

6 THE COURT: WILL BE SO RECEIVED.

7 (WHEREUPON, EXHIBIT NO. 2098, NEWS AND VIEWS
8 MAGAZINE, WAS RECEIVED IN EVIDENCE.)

9 MR. SHERMAN: THE VERY FIRST PAGE, ACTUALLY.

10 THE COURT: JUST PASS THEM OUT, BRIAN. THEY CAN
11 READ THE NUMBERS.

12 THE BAILIFF: OKAY. YOU GOT IT, YOUR HONOR.

13 BY MR. SHERMAN: Q SO, MR. BROCKLEY, THIS EXHIBIT
14 2098, THIS IS A NEWS AND VIEWS MAGAZINE THAT YOU RECEIVED
15 SOMETIME IN EARLY '98?

16 A YES.

17 Q OKAY. AND YOU RECEIVED THIS BECAUSE NOT
18 ONLY YOU'RE A PARK MANAGER, BUT ALSO YOU'RE A MEMBER OF
19 TRAVEL AMERICA?

20 A I'M A PRESIDENT'S CLUB MEMBER.

21 Q RIGHT.

22 SO ALL THE PRESIDENT'S CLUB MEMBERS WOULD
23 GET THIS MAGAZINE?

24 A THAT'S CORRECT.

25 Q AND SO LET'S TURN TO THE VERY FIRST PAGE
26 WITH THE TWO SMILING GENTLEMEN. AND THAT'S A PICTURE OF

1 MR. NOVELLI AND MR. DAVID VOPNFORD; RIGHT?

2 A YES.

3 MR. MOSHENKO: YOUR HONOR, OBJECTION. BEYOND THE
4 SCOPE.

5 THE COURT: IT IS BEYOND THE SCOPE.

6 MR. SHERMAN: IT'S THE SAME MAGAZINE THAT COUNSEL
7 SHOWED THE JURY.

8 MR. MOSHENKO: EXCUSE ME. NO. I SHOWED THE JURY
9 THIS MAGAZINE.

10 MR. SHERMAN: YOUR HONOR, HE SHOWED BOTH MAGAZINES.

11 MR. MOSHENKO: I SHOWED ONE PAGE, THE BACK PAGE OF
12 THIS ONE.

13 THE COURT: HE TALKED ABOUT ONE PAGE.

14 MR. SHERMAN: OF THE MAGAZINE.

15 THE COURT: YEAH. I'LL ALLOW IT. GO AHEAD.

16 BY MR. SHERMAN: Q OKAY. SO MR. BROCKLEY, WHEN
17 YOU GOT THIS MAGAZINE, YOU SAW THAT MR. VOPNFORD AND
18 MR. NOVELLI WERE TEAMING UP TOGETHER?

19 A I READ THE ARTICLE AT THE TIME.

20 Q RIGHT.

21 YOU KNEW THAT MR. VOPNFORD AND MR. NOVELLI
22 WERE WORKING TOGETHER?

23 A NO. I HAVE NO IDEA WHO THIS GUY IS.

24 Q AND WHEN YOU READ THIS ARTICLE, YOU NOTICED
25 IN THE SECOND COLUMN "WORKING TOGETHER THROUGH TRAVEL
26 AMERICA"; RIGHT?

1 A RIGHT.

2 Q AND SO YOU REALIZED THAT THERE WERE
3 COMPANIES THAT WERE COMING TOGETHER THAT WERE NOW GOING TO
4 BE WORKING TOGETHER THROUGH TRAVEL AMERICA?

5 A YES. MY WIFE AND I DISCUSSED IT AND FIGURED
6 SOMETHING IS HAPPENING. WE DIDN'T -- WE HADN'T HEARD --
7 YOU HAVE TO REALIZE THAT WE DON'T GET THESE ISSUES MAILED
8 TO US RIGHT AWAY, AND IT TAKES SOME MONTHS FOR US TO
9 RECEIVE THEM AFTER THEY'RE PUBLISHED. BUT I REMEMBER
10 READING THIS ONE.

11 Q SO IT MAY NOT HAVE BEEN UNTIL MAYBE MID-'98
12 UNTIL YOU HEARD THIS?

13 A YES. BUT WHAT I WAS ABOUT -- I REALLY
14 DIDN'T UNDERSTAND IT AT THE TIME BECAUSE I HAD NO KNOWLEDGE
15 OF WHAT WAS GOING ON.

16 Q NOW, WHEN YOU SAY YOU HAD NO KNOWLEDGE OF
17 WHAT WAS GOING ON, YOU WERE IN 1998 AN EMPLOYEE, IF YOU
18 WILL, OF THE PLAINTIFFS' COMPANIES; RIGHT?

19 A YES. THAT WAS IN MAY.

20 Q MAY OF '98?

21 A YES.

22 Q AND AS OF MAY '98, YOU DIDN'T KNOW WHAT WAS
23 GOING ON WITH TRAVEL AMERICA EXACTLY; IS THAT RIGHT?

24 A NO, BECAUSE I WAS NEW TO THE COMPANY, AND
25 BEING NEW TO THE COMPANY, MY WIFE AND I BOTH RUN THE
26 RESORT. I LET -- SHE HANDLES ALL THE ADMINISTRATIVE

1 ASPECTS OF THE RESORT, AND I BASICALLY DO THE DIRTY WORK.

2 I'M OUTSIDE. THAT'S WHY I HAVE A GOOD TAN.

3 Q BUT AT SOME POINT AFTER YOU WERE -- AFTER
4 YOU HAD STOPPED BEING NEW TO THE COMPANY, YOU LEARNED THAT
5 A BUNCH OF COMPANIES HAD COME TOGETHER TO FORM TRAVEL
6 AMERICA?

7 A THAT'S CORRECT.

8 Q AND MR. VOPNFORD'S COMPANIES WERE AMONG
9 THOSE?

10 A I HAVE NO KNOWLEDGE OF VOPNFORD, ONLY UNTIL
11 SITTING IN THE COURTROOM HERE HAVE I -- THAT'S THE MOST
12 INFORMATION I'VE RECEIVED SINCE I'VE STARTED WORKING WITH
13 THE COMPANY, IS WHAT I HEARD HERE.

14 Q OKAY. FAIR ENOUGH.

15 BUT WHEN YOU READ THIS MAGAZINE -- WHY DON'T
16 WE TURN TO PAGE 6 OF THE MAGAZINE. AND ACTUALLY PAGE 6 --
17 YOU REALLY NEED TO LOOK AT PAGE 6 AND 7 TOGETHER BECAUSE
18 THERE'S A BANNER AT THE TOP, "WELCOME TO TRAVEL AMERICA";
19 IS THAT RIGHT?

20 OKAY. SO WHEN YOU READ THE MAGAZINE, YOU
21 READ THIS ARTICLE, TOO?

22 A YES.

23 Q SO YOU KNEW THAT ALL THE -- AND THE OTHER
24 PRESIDENT'S TRAVEL CLUB MEMBERS SOMETIME BETWEEN MID-'98
25 WOULD BE WELCOMED TO TRAVEL AMERICA?

26 A THAT'S CORRECT.

1 Q AND YOU READ -- WHEN YOU READ THIS
2 ARTICLE -- LET'S GO DOWN TO THE FIRST PARAGRAPH. YOU SEE
3 THE PARAGRAPH THAT BEGINS WITH "ALTHOUGH THE PROBLEMS OF
4 LATE 1995, ALL OF 1996"; DO YOU SEE THAT?

5 A YES.

6 Q OKAY. AND MY COPY IS A LITTLE HARD TO
7 READ. I'M THE ONLY ONE I THINK THAT DOESN'T HAVE THE
8 ORIGINAL. BUT THAT'S OKAY.

9 MR. MOSHENKO: HERE YOU GO.

10 MR. SHERMAN: OH, THANK YOU. NOW I'LL BE ABLE TO
11 READ IT.

12 MR. MOSHENKO: OH, WAIT. GIVE IT BACK.

13 BY MR. SHERMAN: Q OKAY. AND IN THAT SECOND
14 PARAGRAPH BEGINNING WITH "ALTHOUGH THE PROBLEMS OF LATE
15 1995," THE ARTICLE STATES IN THAT SAME LONG FIRST SENTENCE
16 "THERE TRULY IS A SILVER LINING IN THOSE DARK CLOUDS THAT
17 HAVE SURROUNDED US." DO YOU SEE THAT?

18 A YES.

19 Q AND YOU UNDERSTOOD IN MID-1998 THAT THERE
20 HAD BEEN REAL DARK CLOUDS THAT HAD BEEN HOVERING OVER ALL
21 MR. NOVELLI'S COMPANIES FOR QUITE SOME TIME?

22 A NO, I DID NOT KNOW THAT.

23 Q WAS IT A SURPRISE TO YOU WHEN YOU READ ABOUT
24 DARK CLOUDS?

25 A I WASN'T AWARE OF WHAT THEY'RE REFERRING
26 TO. IT SEEMED TO ME THAT IT WAS A WELL-WRITTEN ARTICLE

1 WITH A LOT OF NICE WORDS THAT THEY'RE TRYING TO COME UP
2 WITH SOMETHING NEW. I THOUGHT, "WELL, WHAT'S THIS ALL
3 ABOUT?" OTHER THAN THAT, I HAD NO PREVIOUS KNOWLEDGE OF
4 RAY NOVELLI'S COMPANY AT ALL.

5 Q OKAY. AND IN -- THE NEXT SENTENCE READS,
6 "BY ELIMINATING THE MISTAKES THAT WE MADE IN THE PAST OR AT
7 LEAST REDUCING THEM UNTIL WE CAN ELIMINATE THEM, AND BY
8 RETAINING THE GOOD THINGS THAT WE HAVE ALL LEARNED, WE ARE
9 ABLE TO PRESENT TO YOU A YOUNG BUT EVER-INCREASING
10 FINANCIALLY STABLE RESORT SYSTEM, TRAVEL AMERICA."

11 THIS REFERENCE TO ELIMINATING MISTAKES THAT
12 HAD BEEN MADE IN THE PAST, WERE YOU AWARE WHEN YOU BECAME
13 MANAGER THAT THERE HAD BEEN A LOT OF MISTAKES MADE IN THE
14 PAST BY THE NOVELLI COMPANIES?

15 A NO. BUT I'M SURE WE'VE ALL MADE MISTAKES IN
16 ALL WALKS OF LIFE.

17 Q NOW, THE NEXT PAGE, PAGE NUMBER 7, THE SAME
18 ARTICLE, SEE -- THERE'S ACTUALLY A PARAGRAPH THAT STARTS AT
19 THE BOTTOM OF PAGE 6 ABOUT ZONES, ABOUT RESTRUCTURING THE
20 SYSTEM INTO ZONES; DO YOU SEE THAT?

21 A YES.

22 Q AND THEN ON PAGE 7, THAT CONTINUATION OF
23 THAT SAME PARAGRAPH, IT READS, "THEN AS WE BEGAN TO
24 EXPAND"; DO YOU SEE THAT?

25 A YES.

26 Q "THEN AS WE BEGAN TO EXPAND AND ACQUIRED

1 MORE AND MORE PROPERTIES, THE HANDS-ON MANAGEMENT AND
2 COMMUNICATION BETWEEN MANAGEMENT AND THE MEMBERS GREATLY
3 SUFFERED."

4 NOW, JUST FOCUSING ON THAT STATEMENT,
5 MR. BROCKLEY, YOU AGREE THAT THERE HAD BEEN SOME
6 DIFFICULTIES IN COMMUNICATION THAT YOU HAD NOTICED BEFORE
7 TWO SPRINGS; RIGHT?

8 A NO.

9 Q AND THEN STAYING IN THAT SAME COLUMN,
10 "TRAVEL AMERICA" -- WHICH IS UNDER THE HEADING
11 "EXPANSION" -- "WAS NOT WITHOUT ITS PROBLEMS"; DO YOU SEE
12 THAT SECTION THAT BEGINS THERE?

13 A YES.

14 Q AND THEN THEY SAY, "HOWEVER, AS WE EXPANDED
15 AND BOUGHT NEW RESORTS, WE INHERITED A LOT OF THEIR
16 PREVIOUS PROBLEMS LIKE IRATE OWNERS ASSOCIATIONS,
17 ENVIRONMENTAL PROBLEMS, ET CETERA. IN TIME, IT BECAME
18 APPARENT THAT THERE IS A LIMIT TO WHAT WE COULD OVERCOME.
19 WHEN WE COULD NOT OVERCOME PROBLEMS AS WELL AS WE HAD IN
20 THE PAST, WE LOST A LOT OF MEMBERS' CONFIDENCE."

21 DO YOU SEE THAT?

22 A YES.

23 Q I TAKE IT YOU WEREN'T SPECIFICALLY AWARE OF
24 THAT BECAUSE YOU WERE NEW TO THE JOB; RIGHT?

25 A THAT'S RIGHT. I SKIMMED OVER THE ARTICLE,
26 NEVER REALLY GAVE IT MUCH THOUGHT BECAUSE, FIRST OF ALL, I

1 WAS NOT AWARE OF THE BACKGROUND OF THE COMPANY. WE
2 BECAME -- BASICALLY BECAME MANAGERS ONLY BECAUSE WE LIKED
3 THE PARK, AND WE LIKED WHAT WE DO AS -- GETTING A BUNCH OF
4 R.V.'ERS TOGETHER AS A BIG FAMILY AND HAVING SOME FUN. AND
5 WE FIGURED WITH MY BACKGROUND THAT WE COULD CONTRIBUTE
6 GREATLY TO THE RESORT. AND IF IT -- WE ALWAYS SAID IF IT
7 DOESN'T, IF THE FUN IS OUT OF IT, WE'RE OUT OF THERE.
8 WE'VE ALWAYS SAID THAT.

9 Q IT MAKES SENSE. IT MAKES SENSE.
10 STAYING WITH THIS ARTICLE, YOU'VE GIVEN SOME
11 TESTIMONY ABOUT HOME PARKS. MR. MOSHENKO ASKED YOU A LOT
12 OF QUESTIONS ABOUT THAT.

13 A YES.

14 Q AND YOU BELONG TO HOME PARKS?

15 A PARDON ME?

16 Q YOU'VE BELONGED TO HOME PARKS?

17 A YES.

18 Q AND YOU'RE FAMILIAR WITH THE HOME PARK
19 CONCEPT?

20 A UH-HUH.

21 Q AND YET IN THE SECOND COLUMN THERE'S THIS --
22 THIS SECTION OF THIS ARTICLE, "WHERE IS MY HOME PARK," DOT
23 DOT DOT.

24 DO YOU SEE THAT?

25 A YES.

26 Q DID YOU THINK THAT MEMBERS OF MR. NOVELLI'S

1 ORGANIZATIONS WERE HAVING QUESTIONS AS TO WHERE THEIR HOME
2 PARK WAS?

3 A IT HAS BEEN MY EXPERIENCE AS MANAGER, AND --
4 THAT WE'VE HAD PEOPLE COME IN WHO ARE PRESIDENT'S CLUB,
5 TRAVEL AMERICA MEMBERS, R.P.I., COAST TO COAST, AND THEY
6 DON'T HAVE A CLUE WHAT THEY GOT. THEY ARE MEMBERSHIP
7 OVERLOAD. AND WE SORT OF SAY, "WELL, COULD YOU SORT OF PUT
8 YOUR STUFF OUT IN THE DESK THERE, AND WE'LL PICK ONE FOR
9 YOU?" AND ALL OF A SUDDEN WE LOOK UP AND SAY, "WHY DIDN'T
10 YOU SIGN UNDER PRESIDENT'S CLUB FOR TRAVEL AMERICA?
11 THERE'S YOUR CARD RIGHT THERE."

12 THEY GO, "OH, DO WE HAVE ONE OF THOSE?"
13 SO THESE ARTICLES ARE WRITTEN IN THIS
14 MAGAZINE. AND I BELIEVE AFTER THIS ISSUE AND OTHER ISSUES,
15 IT BECAME APPARENT -- IT'S MY BELIEF THAT THE ARTICLES ARE
16 PUT THERE TO REINFORCE MEMBERS, AND BECAUSE SOMETIMES THEY
17 HAVE A SENIOR MOMENT AND FORGET.

18 Q OKAY. SO THIS SECTION, "WHERE IS MY HOME
19 PARK," CAMP COAST TO COAST IS NOT MENTIONED THERE?

20 A I DON'T SEE IT MENTIONED THERE.

21 Q R.P.I. IS NOT MENTIONED THERE?

22 A NO.

23 Q TRAVEL AMERICA IS MENTIONED HERE?

24 A UH-HUH.

25 Q AND AS FAR AS THE CONFUSION, SIR, THAT
26 YOU'VE BEEN TALKING ABOUT, THERE HAS BEEN A LOT OF

1 CONFUSION AMONG PRESIDENT'S TRAVEL CLUB AND OTHER MEMBERS
2 IN MR. NOVELLI'S PARKS WHEN THEY COME INTO -- AS THE
3 MANAGER, AND THEY SAY, "WHERE IS MY HOME PARK"?

4 A WELL, THEY'RE GIVEN A HOME PARK CARD. I
5 MEAN, THEY HAVE -- A LOT OF PEOPLE HAVE A CARD. THEY JOIN
6 THE PRESIDENT'S CLUB, AND THEY HAVE A HOME PARK. AND YOU
7 ASK THEM FOR THE HOME PARK CARD, AND THEY GO, "WHAT IS IT?"
8 THEY'RE CONFUSED ONLY BECAUSE -- THE CONFUSION IS THERE
9 BECAUSE THERE'S SO MANY CARDS WHEN YOU'RE TRAVELING. YOU
10 SOLD YOUR HOME LIKE MY WIFE AND I DID. WE GOT RID OF ALL
11 THE FURNITURE AND THE TV'S AND VCR'S, AND WE WENT TRAVELING
12 FULL TIME. YOU ACCUMULATE. AND A LOT OF PEOPLE WE MEET AT
13 THE RESORTS GET A BINDER, GET ALL YOUR CARDS TOGETHER, PUT
14 THEM IN ORDER, WALK IN, OPEN IT UP, AND BE A LITTLE BIT
15 ORGANIZED. BECAUSE WE ALL HAVE A TENDENCY TO MISPLACE
16 THINGS.

17 AND THE RESORTS, WE SORT OF -- WE KNOW THIS,
18 AND WE TRY TO HELP THEM OUT AS BEST WE CAN. IT'S JUST
19 SOMETHING WE DO.

20 Q THERE'S BEEN A LOT OF CONFUSION ABOUT HOME
21 PARKS; CORRECT?

22 A NO, THERE'S NO CONFUSION. IF THEY HAVE --
23 IF THEY FIND THEIR CARD, IT'S WRITTEN RIGHT ON THEIR CARD.

24 Q IF THEY'RE NOT CONFUSED -- THERE'S NO
25 CONFUSION?

26 A THAT'S RIGHT.

1 Q BUT IF THEY DON'T KNOW WHERE THEIR HOME PARK
2 IS, THEY'RE CONFUSED?

3 A MOST OF THEM KNOW WHERE THEIR HOME PARK IS.
4 THEY'LL BE ABLE TO VERBALLY TELL YOU. THERE'S A SMALL
5 PERCENTAGE THAT ARE A LITTLE CONFUSED.

6 YOU HAVE TO REALIZE THAT WE'RE DEALING WITH
7 PEOPLE HERE THAT ARE 75, A LOT OF THEM, IN CASES 75 PLUS.
8 THEIR HUSBAND JUST HAD A STROKE. THE WIFE HAS TO TAKE OVER
9 EVERYTHING, AND SHE HAS NEVER DONE IT BEFORE. AND THEY GET
10 CONFUSED, AND THAT'S VICE VERSA. WE HAVE LADIES THAT ARE
11 85 YEARS OLD THAT ARE DRIVING BIG RIGS, AND THEY PULL INTO
12 OUR PARK, AND THEY DO A GREAT JOB. AND SOME OF THEM EVEN
13 DO BETTER THAN THE GUYS DO IT. BUT THEY'RE A LITTLE
14 CONFUSED ONLY BECAUSE THEY'VE BEEN SORT OF INTO THIS
15 POSITION BECAUSE OF THE HUSBAND'S MEDICAL PROBLEM.

16 Q LET'S STAY ON THE SUBJECT OF MEMBER
17 CONFUSION AND TRAVEL AMERICA. I'D LIKE TO GO TO EXHIBIT
18 99, THE SPRING 1998 NEWS AND VIEWS. AND WHY DON'T YOU --
19 DO YOU HAVE THAT ONE IN FRONT OF YOU? TERRIFIC.

20 AND ON THE SUBJECT OF MEMBER CONFUSION,
21 MR. BROCKLEY, LET'S TURN TO PAGE NUMBER 6. IT'S PTE 00079
22 FOR THE SCREEN.

23 IF YOU'D LIKE, YOUR HONOR, I CAN HAND THOSE
24 OUT.

25 MAYBE YOU COULD BLOW THAT UP A BIT, MIKE.

26 AND YOU SAW THIS ARTICLE AS WELL; RIGHT,

1 MR. BROCKLEY?

2 A I DON'T REMEMBER READING IT. BUT I'VE SEEN
3 THE MAGAZINE. BUT --

4 Q YOU SAW THIS ISSUE OF THE MAGAZINE?

5 A I'VE SEEN THE ISSUE.

6 Q OKAY. AND THIS ARTICLE BEGINS WITH "WHAT IS
7 TRAVEL AMERICA?" WITH A QUESTION MARK; RIGHT?

8 A UH-HUH.

9 Q YES?

10 A YES.

11 Q AND THEN THERE'S AN EXPLANATION HERE,
12 "DURING 1995, 1996 AND 1997, THOUSAND ADVENTURES, ALL
13 SEASONS, CUTTY'S, FIESTA AND VARIOUS INDIVIDUAL MEMBERSHIP
14 CAMPGROUNDS EXPERIENCED FINANCIAL DIFFICULTIES"; DO YOU SEE
15 THAT?

16 A YES.

17 Q OKAY. LET'S JUST STOP RIGHT THERE.

18 "THOUSAND ADVENTURES, ALL SEASONS, CUTTY'S,
19 FIESTA" -- LEAVE OUT THE "VARIOUS INDIVIDUAL."

20 NO ONE EVER TOLD YOU THE REASON WHY THOUSAND
21 ADVENTURES, ALL SEASONS, CUTTY'S, AND FIESTA EXPERIENCED
22 FINANCIAL DIFFICULTIES WAS BECAUSE ANYTHING THAT MY CLIENT,
23 COAST TO COAST, DID, DID THEY?

24 A NO.

25 Q NOW, LET'S CONTINUE READING HERE.

26 "FOR OVER A YEAR, REPRESENTATIVES FROM

1 VARIOUS RESORTS AND RESORT COMPANIES HAVE WORKED TO DEVELOP
2 A NEW RESORT SYSTEM, WHICH IS NAMED 'TRAVEL AMERICA.'
3 ALTHOUGH TRAVEL AMERICA IS THE LARGEST RECIPROCAL HOME
4 RESORT SYSTEM IN AMERICA TODAY, SIZE ALONE IS NOT THE MOST
5 IMPORTANT PART OF BEING A MEMBER" --

6 THE COURT: A LITTLE SLOWER, PLEASE.

7 BY MR. SHERMAN: Q "ALTHOUGH TRAVEL AMERICA IS NOT
8 THE LARGEST RECIPROCAL HOME RESORT SYSTEM IN AMERICA TODAY,
9 SIZE ALONE IS NOT THE MOST IMPORTANT PART OF BEING A MEMBER
10 OF TRAVEL AMERICA."

11 AND THEN LET'S SKIP DOWN TO THE PHOTOGRAPH
12 BELOW THAT, TWO PHOTOGRAPHS DOWN, "AS WITH ANYTHING NEW."
13 IT SAYS, "AS WITH ANYTHING NEW, NO MATTER HOW MUCH WE TRY,
14 THERE HAS BEEN CONFUSION AMONG MEMBERS AS TO WHY WAS TRAVEL
15 AMERICA FORMED, WHY WERE MEMBERSHIPS TRANSFERRED TO TRAVEL
16 AMERICA, IF THERE IS ANYTHING NEW TO BUY, ET CETERA,
17 ET CETERA. THERE HAVE BEEN LOTS OF QUESTIONS. PERHAPS
18 YOURS HAS GONE UNANSWERED. WHY IS THAT?"

19 NOW, MR. BROCKLEY, YOU WERE TALKING ABOUT
20 THESE SENIOR CITIZENS, SOMETIMES HUSBAND HAD A STROKE, OR
21 THEY MAY NOT KNOW EVERYTHING THAT'S GOING ON; IS THAT
22 RIGHT?

23 A THAT'S CORRECT.

24 Q AND HERE IN TRAVEL AMERICA'S MAGAZINE, THERE
25 IS REFERENCE TO CONFUSION AMONG MEMBERS. THESE WERE TRAVEL
26 AMERICA MEMBERS; RIGHT?

1 A THAT'S CORRECT.

2 Q AND THESE ARE THE SAME PEOPLE WHO YOU WERE
3 JUST TALKING ABOUT A FEW MOMENTS EARLIER?

4 A THAT'S CORRECT. BUT DO REALIZE AT THE SAME
5 TIME THAT WHEN YOU ARE R.V.'ING FULL TIME, YOUR MAIL IS NOT
6 DELIVERED TO YOUR R.V. YOU HAVE NO -- YOU HAVE TO HAVE
7 MAIL FORWARDED. YOU HAVE TO UNDERSTAND THE WHOLE SCOPE OF
8 R.V. LIFE. YOU JUST DON'T RUN TO A MAILBOX AND PICK UP
9 YOUR MAIL EVERY MORNING LIKE YOU DO IF YOU LIVE IN A HOUSE.

10 SO A LOT OF PROBLEMS THE MEMBERS -- THAT'S
11 MAILED OUT TO MEMBERS. HOWEVER, DO ALL THE MEMBERS GET THE
12 ISSUE? YES, EVENTUALLY. SOMETIMES IT MIGHT EVEN TAKE THEM
13 A YEAR BECAUSE THEIR MAIL FORWARDING FORWARDS ONLY CERTAIN
14 MATERIAL THAT THEY ASK TO BE -- THEY MAY SAY, "NO, I DON'T
15 WANT MAGAZINES FORWARDED TO MY LOCATION."

16 SO THE ONLY TIME THAT THEY MAY ACTUALLY PICK
17 ONE OF THESE UP IS IF THEY'RE IN THE RESORT AND THEY'RE
18 AVAILABLE. AND WE ALWAYS TRY TO HAVE COPIES FOR ALL THE
19 MEMBERS AVAILABLE SO WHEN THEY COME IN, SAY, "OH, BY THE
20 WAY, DID YOU GET THE LAST ISSUE OF NEWS AND VIEWS?"

21 "NO."

22 "WELL, HERE YOU GO."

23 SO -- AND ALSO A LOT OF MEMBERS WOULD -- IF
24 THEY'RE CONFUSED ABOUT ANYTHING, THEY WRITE LETTERS TO THE
25 COMPANY. I IMAGINE THE COMPANY IS INUNDATED WITH THOUSANDS
26 OF LETTERS ASKING QUESTIONS OF EVERYTHING IMAGINABLE. AND

1 WHAT THEY'RE TRYING TO DO HERE IS MAKE A STATEMENT AND
2 TRYING TO ANSWER -- LIKE I SAID, THE -- MOST ISSUES NOW
3 HAVE THESE LITTLE -- IT'S ALMOST LIKE A LITTLE TRAINING
4 SEMINAR TO BRING PEOPLE UP TO DATE OF WHAT'S HAPPENING WITH
5 PRESIDENT'S CLUB, TRAVEL AMERICA. THAT'S WHAT THIS IS.
6 IT'S JUST INFORMING PEOPLE. AND I WOULD EXPECT A PARAGRAPH
7 LIKE THAT TO START OUT LIKE THAT, "IF YOU ARE CONFUSED."

8 NOW, IF YOU GO IN, IT STARTS TELLING
9 PEOPLE -- THEY TAKE PROBABLY SOME OF THE INFORMATION THAT
10 PEOPLE WRITE AND TRY TO ANSWER AS MANY QUESTIONS AS THEY
11 CAN, THE PEOPLE HAVE. SO IT GOES OUT TO EVERYBODY.

12 Q NOW, YOU FIRST LEARNED ABOUT TRAVEL AMERICA
13 SOMETIME WHEN YOU BEGAN TO START YOUR JOB AS THE MANAGER OF
14 TWO SPRINGS; RIGHT?

15 A THAT'S RIGHT.

16 Q THE MIDDLE OF 1998?

17 A YES.

18 Q YOU DIDN'T KNOW, WHEN YOU FIRST STARTED YOUR
19 JOB AS MANAGER OF TWO SPRINGS, THAT TRAVEL AMERICA HAD
20 ALREADY BEEN IN EXISTENCE FOR NEARLY A YEAR?

21 A AND WHAT WAS THE QUESTION AGAIN?

22 Q YOU DIDN'T KNOW, WHEN YOU FIRST STARTED YOUR
23 JOB AT TWO SPRINGS, IN THE MIDDLE OF '98, THAT TRAVEL
24 AMERICA HAD BEEN IN EXISTENCE FOR NEARLY A YEAR?

25 A NO, THAT'S NOT CORRECT. PRESIDENT'S CLUB I
26 KNEW WAS THERE. TRAVEL AMERICA, THROUGH READING THE

1 ARTICLES. WHEN I FIRST READ THE ARTICLE OF IT, WE KNEW
2 THAT THERE WAS SOMETHING COMING. AND I HAD THE BASIC
3 OVERVIEW WITH THE COMPANY THAT WE HAD PRESIDENT'S CLUB AND
4 TRAVEL AMERICA.

5 Q YOU FIRST LEARNED ABOUT TRAVEL AMERICA
6 SOMETIME IN 1998?

7 A WHENEVER THE FIRST ISSUE WAS.

8 Q WELL, YOU GOT THE FIRST ISSUE SOMETIME
9 AFTER?

10 A YES.

11 Q THE BEGINNING OF '98; RIGHT?

12 A THAT WOULD BE '98.

13 Q AND YOU FIRST LEARNED ABOUT THE EXISTENCE OF
14 TRAVEL AMERICA SOMETIME IN 1998?

15 A THAT'S CORRECT.

16 Q OKAY. NOW, ON THE NEXT PAGE OF THIS
17 MAGAZINE THERE'S A REFERENCE, THE FIRST COLUMN, "HOW DID I
18 BECOME A MEMBER?" IT'S THE SECOND TO THE LAST PARAGRAPH.

19 A YES.

20 Q IT'S KIND OF HARD TO READ THERE, BUT MAYBE
21 YOU COULD READ IT ALONG WITH ME.

22 "HOW DID I BECOME A MEMBER OF TRAVEL
23 AMERICA?" DO YOU SEE THAT?

24 A YES, I DO.

25 Q AND THEN THERE'S AN ANSWER PROVIDED. SEE
26 THAT?

1 A YES.

2 Q AND THE ANSWER IS, "IF YOU WERE A MEMBER OF
3 THOUSAND ADVENTURES" -- LET ME JUST STOP RIGHT THERE.

4 IF YOU WERE A MEMBER OF THOUSAND ADVENTURES,
5 YOUR MEMBERSHIP RIGHTS WERE ASSUMED BY TRAVEL AMERICA;
6 CORRECT?

7 A I DIDN'T HEAR YOU.

8 Q YOUR MEMBERSHIP RIGHTS WERE ASSUMED BY
9 TRAVEL AMERICA?

10 A MY MEMBERSHIP RIGHTS?

11 Q IF YOU WERE A MEMBER OF THOUSAND ADVENTURES,
12 YOUR MEMBERSHIP RIGHTS WERE ASSUMED BY TRAVEL AMERICA?

13 A YOUR LINE OF QUESTIONING IS -- AND I JUST
14 WANT YOU TO KNOW, I DON'T GET INTO THE FINE DETAILS --

15 Q FAIR ENOUGH.

16 A -- OF ALL THESE MERGERS OR -- MY WIFE AND I
17 ARE BOTH -- I LET HER KNOW ALL THE ADMINISTRATION. I KEEP
18 UP-TO-DATE ON A LOT OF THE STUFF. BUT WITH THE SIZE
19 CAMPGROUND THAT WE OPERATE, I DON'T HAVE ENOUGH TIME TO BE
20 GOING INTO ALL THE DETAILS OF THE ADMINISTRATION ASPECT OF
21 THE CAMPGROUND. SO I LET HER HANDLE THAT. AND I HANDLED
22 THE PHYSICAL LABOR OF THE CAMPGROUND ON THE SITE.

23 Q LET'S JUST TALK ABOUT THE CONTACT YOU'VE HAD
24 WITH MEMBERS, MR. BROCKLEY.

25 I ASSUME MEMBERS HAVE COME TO YOU,
26 ESPECIALLY IN THE EARLY TIME WHEN YOU FIRST BECAME MANAGER,

1 AND SAID WORDS TO THE EFFECT OF "HOW DID I BECOME A MEMBER
2 OF TRAVEL AMERICA"?

3 A UH-HUH.

4 Q IS THAT RIGHT?

5 A IF THEY -- YEAH, THEY HAVE. AND I'VE SENT
6 THEM INTO THE OFFICE TO DISCUSS IT WITH MY WIFE. SHE
7 HANDLES ALL THE THINGS TO DO WITH PEOPLE. SHE ANSWERS ALL
8 THE QUESTIONS AS FAR AS TO DO WITH THE PRESIDENT'S CLUB,
9 TRAVEL AMERICA, ANY QUESTIONS THEY HAVE TO DO WITH THEIR --
10 WELL, ANYTHING THEY HAVE, I SEND THEM IN THERE. BECAUSE
11 NORMALLY I'M OUTSIDE DOING THE -- REPAIRING BROKEN LINES OR
12 WHATEVER, BECAUSE WE JUST FINISHED HAVING A TREMOR.

13 YOU KNOW, SO I DON'T HAVE TIME TO STOP AND
14 TALK TO ALL THE PEOPLE WHEN I'VE GOT -- WHEN I'M UP TO MY
15 ELBOWS IN WEEDING AND TRIMMING AND WHATEVER.

16 Q BUT MEMBERS HAVE COME TO YOU AND BASICALLY
17 SAID, WITHOUT REGARD TO WHAT YOU DID AFTERWARDS, REFERRING
18 TO YOUR WIFE AND SO FORTH -- BUT MEMBERS HAVE COME TO YOU
19 AND SAID, IN EFFECT, HOW DID I BECOME A MEMBER OF TRAVEL
20 AMERICA?

21 A HOW DO I?

22 Q HOW DID I.

23 A OH, NO. I'VE NEVER HAD ANYBODY ASK ME HOW
24 DID I BECOME A MEMBER. NO. I'VE NEVER HAD ANYBODY ASK ME
25 THAT QUESTION.

26 Q HOW DID YOU KNOW YOU WERE GOING TO BE CALLED

1 AS A WITNESS IN THIS CASE?

2 A I RECEIVED A CALL FROM -- WELL, I DIDN'T
3 PERSONALLY RECEIVE A CALL. MY WIFE RECEIVED A CALL THAT WE
4 WERE GOING TO BE CALLED AS A WITNESS.

5 Q YOU RECEIVED -- AND THE CALL CAME FROM WHO?

6 A IT CAME FROM THE CORPORATE OFFICE.

7 Q WHO?

8 A I'M NOT SURE. I WASN'T THERE WHEN THE PHONE
9 CALL CAME IN.

10 Q DID YOU SPEAK BEFORE YOUR TESTIMONY TODAY
11 WITH EITHER MR. NOVELLI OR MRS. NOVELLI?

12 A OTHER THAN SAYING, "GOOD MORNING," THAT'S
13 ABOUT ALL THE CONVERSATION WAS THIS MORNING.

14 Q WHAT ABOUT YESTERDAY OR THE DAY BEFORE? I
15 KNOW YOU'VE BEEN HERE FOR A FEW DAYS.

16 A OH, I HAVE TALKED WITH THEM.

17 Q DID MR. NOVELLI WANT YOU TO TESTIFY TODAY?

18 A PARDON ME?

19 Q MR. NOVELLI WANTED YOU TO TESTIFY TODAY?

20 A WE NEVER DISCUSSED IT.

21 Q WHO IS YOUR BOSS?

22 THE COURT: HIS WIFE.

23 THE WITNESS: YEAH.

24 MR. MOSHENKO: I WAS GOING TO OBJECT. UNCERTAIN.

25 MR. SHERMAN: I HAVEN'T BEEN MARRIED LONG ENOUGH,
26 YOUR HONOR.

1 THE WITNESS: MY WIFE AND I ARE -- REPORT TO RESORT
2 SERVICES, ACTUALLY. THE HEAD OF RESORT SERVICES IS OUR
3 BOSS.

4 BY MR. SHERMAN: Q AND THAT'S MARLIES NOVELLI?

5 A THAT'S CORRECT.

6 Q RAYMOND NOVELLI'S WIFE?

7 A THAT'S CORRECT.

8 Q SO SHE IS YOUR BOSS?

9 A YES. AND A GOOD ONE.

10 Q SHE TELLS YOU WHAT TO DO?

11 A YES. SHE -- WE WORK TOGETHER.

12 Q AND SHE AND MR. NOVELLI SIGN YOUR PAYCHECKS?

13 A THAT'S SOMETHING ELSE I'D HAVE TO TALK TO MY
14 WIFE ABOUT. I HAVEN'T SEEN IT. YES, THAT'S CORRECT.

15 Q SPEAKING ABOUT PAYCHECKS, SINCE YOU BECAME
16 MANAGER OF TWO SPRINGS IN SPRING '98, HAVE YOUR PAYCHECKS
17 EVER BOUNCED?

18 A SINCE THE SPRING OF '98, YES.

19 Q HOW MANY TIMES?

20 A I DON'T RECALL HOW MANY.

21 Q NOW, ON DIRECT EXAMINATION YOU MENTIONED THE
22 PROCESS OF JOINING A HOME RESORT AND HOW IT WORKS. DO YOU
23 RECALL THAT TESTIMONY GENERALLY?

24 A UH-HUH. YES.

25 Q AND I WANT TO ASK YOU SOME QUESTIONS ABOUT A
26 TOUR THAT YOU MENTIONED; DO YOU UNDERSTAND?

1 A YES.

2 Q YOU WENT ON A TOUR AT SOME POINT IN TIME OF
3 SOME FACILITY?

4 A YES.

5 Q AND THAT WAS NOT A COAST TOUR; RIGHT?

6 A NO.

7 Q COAST DIDN'T LEAD THAT TOUR?

8 A NO. IT'S A HOME PARK, OR THE PARK THAT WE
9 WERE IN.

10 Q AND YOU ALSO REFERENCED SOME HIGH-PRESSURE
11 SALES ON ONE OCCASION; RIGHT?

12 A YES.

13 Q THAT WASN'T ANY COAST HIGH-PRESSURE SALES,
14 WAS IT?

15 A I'M NOT AWARE OF THE PERSON -- IF THE PERSON
16 WAS FROM COAST TO COAST OR NOT. I REALLY DON'T KNOW.

17 Q YOU'VE NEVER SAT IN A PRESENTATION WHERE YOU
18 UNDERSTOOD SOMEONE FROM COAST, A REPRESENTATIVE OF COAST,
19 WAS TRYING TO SELL YOU SOMETHING?

20 A NOT THAT I'M AWARE OF.

21 Q THE TIME YOU ACQUIRED COAST WAS WHEN YOU
22 WENT TO THE HOME PARK, AND YOU GOT IT AT THE TIME YOU
23 BOUGHT YOUR HOME PARK MEMBERSHIP?

24 A THAT'S CORRECT.

25 Q YOU BOUGHT A COAST MEMBERSHIP, TOO?

26 A I BOUGHT A COAST MEMBERSHIP FROM THE

1 SALESPERSON AT THE TIME.

2 Q AND ON THE SUBJECT OF YOUR USAGE OF COAST
3 WHILE YOU WERE A MEMBER, YOU ONLY USED IT A COUPLE OF TIMES?

4 A WE'D ONLY USED IT A COUPLE OF TIMES, THAT'S
5 CORRECT.

6 Q AND SOME OF THE TIMES YOU USED IT, YOU WERE
7 PLEASED WITH IT?

8 A YES.

9 Q OF THE COUPLE TIMES?

10 A YES. I MEAN, WE ENJOYED THE PARK. I MEAN,
11 IT AFFORDED US THE OPPORTUNITY TO GO TO THE PARK. WE HAD A
12 GREAT STAY. I WAS A LOVELY PARK. AND WE HAD A GOOD TIME.

13 Q AND YOU UNDERSTOOD YOU HAD A MEMBERSHIP
14 CONTRACT WITH COAST, RIGHT, WHEN YOU WERE A COAST MEMBER?

15 A YES.

16 Q AND SO YOU HAD A MEMBERSHIP CONTRACT WITH
17 YOUR HOME RESORT?

18 A YES.

19 Q AND A MEMBERSHIP CONTRACT WITH COAST?

20 A THAT IS CORRECT.

21 Q AND YOU HAD TWO MEMBERSHIPS?

22 A YES.

23 Q AND YOU FILLED OUT A MEMBERSHIP APPLICATION?

24 A I DIDN'T PERSONALLY, BUT --

25 Q THE BOSS DID?

26 A RIGHT.

1 Q JUST LIKE THE MEMBERSHIP APPLICATION I
2 SHOWED MR. GUIRE YESTERDAY?

3 A ACTUALLY I HAVE NEVER SEEN ONE.

4 Q BOSS HAS?

5 A THAT'S RIGHT.

6 Q OKAY. AND YOU'RE AWARE THAT RENEWAL FORMS
7 WERE RECEIVED?

8 A NO, NOT REALLY.

9 Q OKAY. BUT UNTIL YOU DECIDED TO STOP BEING A
10 COAST MEMBER, YOU DID RENEW EACH YEAR?

11 A YES. IT WAS ADVANTAGEOUS FOR US TO DO THAT,
12 ESPECIALLY WHEN WE WERE WORKING AT A RESORT BECAUSE IT ONLY
13 COSTS US \$20 TO DO IT. WHY NOT HAVE IT JUST IN CASE?

14 Q RIGHT.

15 AND YOU PAID THE ANNUAL DUES TO COAST?

16 A AND WE PAID THE ANNUAL DUES.

17 Q AND BY BECOMING A MEMBER AT COAST, YOU
18 RECEIVED COAST'S TRAVEL MAGAZINE?

19 A THAT'S CORRECT.

20 Q EIGHT TIMES A YEAR?

21 A WHENEVER. I USED TO SCAN THROUGH THEM.

22 MR. SHERMAN: IF WE COULD, EXHIBIT 899 ARE SOME OF
23 THE TRAVEL MAGAZINES.

24 YOUR HONOR, MAY I JUST SHOW THESE?

25 THE COURT: YES.

26 BY MR. SHERMAN: Q SO THESE ARE THE COAST TRAVEL

1 MAGAZINES, THE KIND OF COAST TRAVEL MAGAZINES THAT YOU
2 RECEIVED?

3 A THAT'S CORRECT.

4 Q I SUPPOSE AT SOME TIME IF THE JURY WOULD
5 LIKE TO SEE IT JUST LIKE WE HANDED OUT THE NEWS AND VIEWS
6 WE CAN DO THAT, YOUR HONOR.

7 THE COURT: WE'LL SEE.

8 MR. SHERMAN: OKAY.

9 MR. MOSHENKO: IS THAT "WE'LL SEE"?

10 THE COURT: I SAID WE'LL SEE.

11 MR. SHERMAN: OKAY.

12 MR. MOSHENKO: THAT'S WHAT MY MOTHER ALWAYS SAID.
13 I KNEW WHAT IT MEANT, TOO.

14 BY MR. SHERMAN: Q AND YOU ALSO RECEIVED A
15 DIRECTORY; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q AND THOSE WERE AMONG THE BENEFITS THAT YOU
18 GOT BY BEING A MEMBER OF COAST?

19 A THAT'S CORRECT.

20 Q IN ADDITION TO THE BENEFIT OF BEING ABLE TO
21 TRAVEL THE COAST RECIPROCAL SYSTEM?

22 A YES.

23 Q COAST TO COAST?

24 A UH-HUH.

25 Q NOW, I WANT TO TURN TO THE SUBJECT OF
26 RESERVATION SYSTEM IN R.P.I.; UNDERSTAND?

1 A YES.

2 Q COAST HAS A RESERVATION SYSTEM IF YOU WANT
3 TO JOIN THAT PART OF COAST; RIGHT?

4 A NOT THAT I'M AWARE OF.

5 Q COAST HAS A COAST DELUXE SYSTEM; RIGHT?

6 A I'VE HEARD OF COAST DELUXE.

7 Q AND YOU'VE HEARD THAT COAST DELUXE OFFERS
8 YOU THE ABILITY TO CALL A 1-800 NUMBER AND CALL AHEAD FOR
9 RESERVATIONS?

10 A I'M NOT AWARE OF THAT. I THREW THE
11 SALESPERSON OFF MY LOT WHEN THEY TRIED TO SELL IT TO ME.
12 EVERY TIME YOU TURN AROUND, SOMEBODY IS TRYING TO SELL YOU
13 MORE MEMBERSHIPS, AND ENOUGH IS ENOUGH. I REALLY DON'T
14 KNOW ANYTHING ABOUT COAST DELUXE. I WOULDN'T ALLOW THE
15 PERSON TO EVEN TALK TO ME.

16 Q NOW, WHEN YOU BECAME A COAST MEMBER, YOU
17 SAW A MAP OF ALL THE COAST RESORTS; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q IT WAS A BIG -- ONE OF THOSE RAND MC NALLY
20 SCHOOL MAPS; IS THAT RIGHT?

21 A THAT'S CORRECT. THEY'RE NOT AS BIG A MAP
22 TODAY. THERE'S NOT AS MANY PARKS IN THE SYSTEM ANYMORE.

23 MR. SHERMAN: YOUR HONOR, MAY I APPROACH?

24 THE COURT: YOU MAY.

25 MR. SHERMAN: MR. MOSHENKO, DO YOU WANT TO JOIN ME?

26 MR. MOSHENKO: OH, I THOUGHT YOU WANTED TO APPROACH

1 THE WITNESS.

2 (DISCUSSION OFF THE RECORD.)

3 THE COURT: PROCEED.

4 MR. SHERMAN: THANK YOU, YOUR HONOR.

5 Q SO THIS IS ONE OF THE COAST MAPS THAT -- THE
6 TYPE OF COAST MAP THAT YOU SAW WHEN YOU BECAME A MEMBER;
7 RIGHT?

8 A YES.

9 MR. SHERMAN: AND THAT'S EXHIBIT 945. WE MOVE THAT
10 INTO EVIDENCE.

11 MR. MOSHENKO: NO OBJECTION. ALTHOUGH, WE SHOULD
12 HAVE A FOUNDATION AS TO TIME, YOUR HONOR.

13 MR. SHERMAN: WE'LL PROVIDE ONE AT THE APPROPRIATE
14 TIME.

15 MR. MOSHENKO: WELL, I'D LIKE --

16 THE COURT: LET'S LAY THE FOUNDATION.

17 MR. MOSHENKO: OBJECT. LACKS FOUNDATION.

18 BY MR. SHERMAN: Q YOU'VE SEEN THIS MAP?

19 A I'VE SEEN ONE LIKE IT, YES.

20 MR. SHERMAN: WE'LL MOVE IT INTO EVIDENCE.

21 THE WITNESS: I DON'T KNOW HOW CURRENT THIS ONE IS.

22 MR. MOSHENKO: OBJECT. LACKS FOUNDATION AS TO
23 TIME.

24 THE COURT: SUSTAINED. I'LL TAKE THE MATTER UNDER
25 SUBMISSION.

26 MR. SHERMAN: THANK YOU, YOUR HONOR.

1 Q AND YOU SAW EITHER THIS MAP OR ONE LIKE IT
2 WHEN YOU WERE DECIDING TO BECOME A MEMBER; RIGHT?

3 A RIGHT.

4 Q AND THAT INFLUENCED YOUR DECISION?

5 A NOT REALLY. THE REASON WHY WE GOT INTO THE
6 SYSTEM WAS THERE'S CERTAIN PARKS THAT WE WANTED TO GO --
7 THERE'S CERTAIN AREAS THAT WE WANTED TO GO TO, AND WE
8 BOUGHT IT. WE BOUGHT INTO THE SYSTEM BECAUSE WE FIGURED
9 THAT WE WOULD BE USING IT.

10 AND AFTER A FEW -- AFTER A COUPLE OF YEARS,
11 WE REALIZED, NO, WE'RE NOT GOING TO BE USING IT. SO IF
12 YOU'RE NOT GOING TO USE SOMETHING, GET RID OF IT. SO
13 THAT'S WHAT WE DID BASICALLY. WE DIDN'T USE THE SYSTEM.

14 Q THE GREEN DOTS ON THIS MAP --

15 A YES.

16 Q -- YOU UNDERSTAND THOSE GREEN DOTS REPRESENT
17 THE DIFFERENT COAST AFFILIATED RESORTS?

18 A THAT'S CORRECT.

19 Q NOW, I WANT TO ASK YOU SOME QUESTIONS ABOUT
20 YOUR MEMBERSHIP IN PRESIDENT'S TRAVEL CLUB; DO YOU
21 UNDERSTAND?

22 A YES.

23 Q YOU JOINED THE PRESIDENT'S TRAVEL CLUB?

24 A YES.

25 Q AND YOU TRAVELED AMONG THE PARKS THAT WERE
26 INCLUDED IN THE PRESIDENT'S TRAVEL CLUB?

1 A UH-HUH.

2 Q AND FROM TIME TO TIME YOU'D FIND OUT THAT A
3 PARK THAT YOU THOUGHT WAS IN THE PRESIDENT'S TRAVEL CLUB
4 WAS REALLY NOT, WAS NO LONGER IN THE PRESIDENT'S TRAVEL
5 CLUB?

6 A NO, I DID NOT EXPERIENCE THAT BECAUSE WE
7 ONLY WENT TO CERTAIN -- WE WERE BASICALLY ON THE WEST COAST
8 SIDE, AND WE ONLY VISITED MAYBE THREE OR FOUR OF THE PARKS
9 THAT WE TRAVELED. SO THOSE ARE THE PARKS THAT WE WERE
10 INTERESTED IN.

11 THOSE -- BUT I AM AWARE THAT THERE'S PARKS
12 THAT DROPPED OUT OF THE -- THAT NO LONGER EXIST FOR
13 WHATEVER REASON.

14 Q RIGHT.

15 YOU'RE AWARE THAT THERE ARE PARKS THAT HAD
16 BEEN PART OF THIS PRESIDENT'S TRAVEL CLUB THAT DROPPED OUT?

17 A YES.

18 Q AND THEY DROPPED OUT FOR VARIOUS REASONS?

19 A FOR WHATEVER REASONS, YES.

20 Q AND YOU'VE HEARD THAT PARKS DROPPED OUT
21 BECAUSE THEY WEREN'T BEING PAID?

22 A NO, THAT'S NOT TRUE.

23 Q YOU HAVEN'T HEARD THAT?

24 A NO. I HAVEN'T, NO.

25 Q NOW, I WANT TO ASK YOU SOME QUESTIONS ABOUT
26 PARK CONDITIONS, PHYSICAL CONDITIONS OF PARKS. I KNOW

1 YOU'VE GIVEN SOME TESTIMONY ABOUT TWO SPRINGS.

2 A YES.

3 Q ARE YOU FAMILIAR WITH THE PHYSICAL CONDITION
4 OVER THE PERIOD, SAY, PAST FOUR, FIVE YEARS, OF GRASS LAKE,
5 A PARK IN ALL SEASONS?

6 A I HAVEN'T BEEN THERE.

7 Q SO YOU DON'T KNOW ABOUT ITS PHYSICAL
8 CONDITION?

9 A NO.

10 Q DO YOU KNOW ABOUT THE PHYSICAL CONDITION OF
11 A PARK IN THE ALL SEASONS RESORT SYSTEM, HIDDEN SPRINGS?

12 A NO, I HAVEN'T BEEN.

13 Q DO YOU KNOW ABOUT THE PHYSICAL CONDITION OF
14 A PARK IN THE ALL SEASONS RESORT SYSTEM, HONEYBROOK?

15 A NO.

16 Q DO YOU KNOW ABOUT THE PHYSICAL CONDITION OF
17 A PARK IN THE ALL SEASONS SYSTEM, ORLANDO?

18 A NO.

19 Q DO YOU KNOW ABOUT THE PHYSICAL CONDITION OF
20 A PARK IN THE ALL SEASONS SYSTEM, TRAIL INN?

21 A NO.

22 Q WHAT ABOUT THE PHYSICAL CONDITION OF FOX
23 RIVER?

24 A NO.

25 Q NOW, YOU WERE AT ONE POINT IN TIME, I GUESS,
26 EITHER A MEMBER OR USED THE CATHEDRAL PALMS MEMBERSHIP

1 CAMPGROUND?

2 A YES. WE HAVE STAYED THERE.

3 Q NOW, LET'S DISTINGUISH BETWEEN A MEMBERSHIP
4 CAMPGROUND AND AN OPEN TO THE PUBLIC OR COMMERCIAL
5 CAMPGROUND.

6 CATHEDRAL PALMS IS NO LONGER A MEMBERSHIP
7 CAMPGROUND; RIGHT?

8 A TO MY KNOWLEDGE IT IS A PUBLIC CAMPGROUND
9 AND AT CERTAIN TIMES OF THE YEAR IS ALLOWING THE MEMBERSHIP
10 TO GO THERE FOR A CERTAIN STAY.

11 Q BUT IT'S NO LONGER A MEMBERSHIP CAMPGROUND?

12 MR. MOSHENKO: OBJECTION. ASKED AND ANSWERED.

13 THE COURT: SUSTAINED.

14 BY MR. SHERMAN: Q MEMBERS OF CATHEDRAL PALMS WERE
15 TRANSFERRED TO TWO SPRINGS?

16 A I'M NOT AWARE OF THE ADMINISTRATIVE ASPECT
17 OF THAT.

18 Q PHILIPPINE FIESTA WAS A PARK IN THE
19 PRESIDENT'S TRAVEL CLUB NETWORK?

20 A THE FIRST TIME I HEARD OF THAT PARK WAS WHEN
21 I WAS HERE.

22 Q BECAUSE AS FAR AS YOU'RE CONCERNED AS A
23 MANAGER, IT DOESN'T EXIST?

24 A WELL, IT'S -- YES. IT DOESN'T EXIST. IT
25 WASN'T ON THE LIST, AND I DIDN'T DIG INTO THE PAST HISTORY
26 OF THE COMPANY BEFORE I BECAME MANAGER.

1 Q AND STAYING ON PHYSICAL CONDITION OF PARKS,
2 YOU DON'T KNOW ANYTHING ABOUT THE PHYSICAL CONDITION OF ALL
3 SEASONS PARK, LAKE FRANCE?

4 A NO.

5 Q OR ALL SEASONS PARK, EAGLE LAKE?

6 A NO.

7 Q OR ALL SEASONS PARK, SKYVIEW?

8 A NO.

9 Q OR ALL SEASONS PARKS, WISCONSIN DELLS?

10 A NO.

11 Q OR ROGERS LAKES?

12 A NO.

13 Q OR ANY OF THE THOUSAND ADVENTURES PARKS?

14 A NO.

15 Q NOW, ARE YOU FAMILIAR WITH THE PARK INDIO?

16 A INDIO.

17 Q IT MAY BE LOCATED IN THE TOWN OF INDIO.

18 CYPRESS FIESTA?

19 A I'VE BEEN THERE, YES.

20 Q THAT'S ONE OF THE FIESTA PARKS; RIGHT?

21 A YES. I'VE BEEN IN THE PARK TO LOOK AROUND.

22 Q THAT WAS PART OF THE PRESIDENT'S TRAVEL

23 CLUB?

24 A I BELIEVE THAT WAS.

25 Q SHUT DOWN?

26 A LIKE I SAY, I'VE BEEN IN THE PARK TO DRIVE

1 IN, NOT TO STAY THERE. I DON'T REALLY KNOW THE HISTORY
2 BEHIND -- IF -- THAT PARTICULAR PARK GOING OUT OF THE
3 SYSTEM. I HAVE NOT MUCH KNOWLEDGE ON IT AT ALL, ACTUALLY.

4 Q YOU DON'T KNOW WHETHER MEMBERS OF FIESTA
5 CYPRESS WERE MOVED INTO YOUR PARK AT TWO SPRINGS?

6 A I DON'T KNOW.

7 Q CAN YOU PUT UP ON THE BOARD EXHIBIT 39. I
8 BELIEVE IT'S ALREADY ADMITTED. IT'S THE PULL-OUT LETTER.

9 THE COURT: ALL RIGHT.

10 BY MR. SHERMAN: Q MR. BROCKLEY, WITH REFERENCE TO
11 EXHIBIT 39, I TAKE IT THE FIRST TIME YOU SAW THIS, THIS
12 DOCUMENT, WAS WHEN YOU WERE SITTING HERE IN THE COURTROOM?

13 A THAT'S CORRECT.

14 Q AND AS FAR AS TWO SPRINGS IS CONCERNED, YOU
15 DIDN'T LEARN ABOUT TWO SPRINGS BEING PULLED OUT OF COAST,
16 THE COAST SYSTEM, UNTIL ABOUT THE TIME WHEN YOU STARTED AS
17 A MANAGER; RIGHT?

18 A THAT'S CORRECT.

19 Q AND THE DATE ON THIS LETTER, EXHIBIT 39, IS
20 AUGUST 27, 1997; YOU SEE TWO SPRINGS IS THERE, AND YOU
21 BECAME A MANAGER IN THE SPRING OF '98?

22 A THAT'S CORRECT.

23 Q SO ABOUT, OH, EIGHT MONTHS, NINE MONTHS
24 AFTER THE PULL-OUT, YOU LEARNED FOR THE FIRST TIME THAT TWO
25 SPRINGS WASN'T IN THE SYSTEM?

26 A WELL, I KNEW IT WASN'T IN THE COAST SYSTEM.

1 I HAD HEARD THAT IT WAS NO LONGER IN THE COAST TO COAST.

2 Q AND YOU HEARD IT FOR THE FIRST TIME WHEN YOU
3 BECAME A MANAGER?

4 A NO. BEFORE BEING A MANAGER I KNEW THAT
5 COAST TO COAST WAS -- TWO SPRINGS WASN'T IN THE COAST TO
6 COAST SYSTEM, JUST FROM OTHER PEOPLE HAD MENTIONED IT.
7 THAT IT WAS NO LONGER COAST TO COAST. AND I WENT, "OH,
8 OKAY." THERE WAS NO REAL CONCERN TO ME BECAUSE WE WERE
9 MEMBERS. SO --

10 Q WELL, YOU WERE A MEMBER OF MR. NOVELLI'S
11 OTHER PARKS IN 1997; RIGHT?

12 A I WAS A PRESIDENT'S CLUB MEMBER, YES.

13 Q RIGHT.

14 BUT AS A PRESIDENT'S CLUB MEMBER, YOU DIDN'T
15 LEARN ABOUT THE PULL-OUT FROM THE PRESIDENT'S CLUB UNTIL
16 YOU SAW THAT NEWS AND VIEWS?

17 A I'M NOT REALLY SURE. I CAN'T HONESTLY SAY
18 WHETHER I READ IT OR WHETHER IT WAS MENTIONED TO ME. I
19 HAVE NO RECOLLECTION, REALLY, HOW I LEARNED OF IT.

20 Q NOW, I WANT TO ASK YOU SOME QUESTIONS ABOUT
21 SOME CHANGES IN USAGE LEVEL THAT YOU MAY HAVE OBSERVED IN
22 1998 AT TWO SPRINGS COMPARED TO EARLIER TIME PERIODS; DO
23 YOU UNDERSTAND?

24 A UH-HUH.

25 THE COURT: LET'S PICK THAT UP AT 1:30.

26 MR. SHERMAN: OKAY.

1 THE COURT: SEE YOU ALL AT 1:30, LADIES AND
2 GENTLEMEN.

3 (WHEREUPON THE COURT WAS IN RECESS UNTIL
4 1:30 P.M. OF THE SAME DAY.)

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1 WESTMINSTER, CALIFORNIA - WEDNESDAY, MAY 24, 2000

2 AFTERNOON SESSION

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

5 THE COURT: PROCEED, COUNSEL.

6 CROSS-EXAMINATION (CONTINUED)

7 BY MR. SHERMAN: Q GOOD AFTERNOON, MR. BROCKLEY.

8 A HI.

9 Q WHEN YOU FIRST STARTED R.V.'ING, DID PEOPLE
10 TELL YOU THAT YOU OUGHT TO JOIN COAST TO COAST?

11 A IT WAS RECOMMENDED TO US, YES.

12 Q AND YOU LEARNED OVER THE YEARS THAT THERE
13 ARE A LOT OF LOYAL COAST TO COAST MEMBERS?

14 A YES.

15 Q AND WHEN YOU JOINED THE PRESIDENT'S TRAVEL
16 CLUB, HOW MUCH DID YOU PAY FOR IT?

17 A I BELIEVE IT WAS AROUND A COUPLE THOUSAND
18 DOLLARS.

19 Q ABOUT 2- OR \$3,000?

20 A YES.

21 Q AND SO THAT PRESIDENT'S TRAVEL CLUB GAVE YOU
22 THE ABILITY TO USE SOME OF THE PARKS THAT WERE WITHIN
23 MR. NOVELLI'S ORGANIZATION AND A FEW OTHER PARKS; RIGHT?

24 A THAT'S CORRECT.

25 Q AND I TAKE IT THAT THE MOST YOU EVER PAID
26 FOR COAST SINCE YOU WERE MANAGER WAS \$20 A YEAR?

1 A YES.

2 Q NOW, YOU TALKED A LITTLE BIT ABOUT THE USAGE
3 PATTERN, NUMBER OF PEOPLE SHOWING UP IN 1998 AT TWO
4 SPRINGS. AND IN 1998, IT IS -- ALL THE COAST MEMBERS,
5 PEOPLE WHO WERE JUST COAST MEMBERS, WERE NO LONGER ABLE TO
6 USE THE TWO SPRINGS PARK; IS THAT RIGHT?

7 A NO, THAT'S NOT RIGHT.

8 Q WELL, PEOPLE WHO WERE MEMBERS OF COAST TO
9 COAST, BUT NOT MEMBERS OF ANY OF THE PARKS IN THE NOVELLI
10 ORGANIZATION, DIDN'T HAVE ANY RECIPROCAL PRIVILEGES INTO
11 TWO SPRINGS AT THAT TIME; RIGHT?

12 A WOULD YOU REPEAT THAT?

13 Q SURE. LET ME TRY A LITTLE DIFFERENTLY.

14 I SHOWED YOU THAT LETTER A LITTLE EARLIER,
15 AUGUST 1997, MR. NOVELLI PULLS TWO SPRINGS OUT OF THE COAST
16 NETWORK; RIGHT?

17 A YES.

18 Q OKAY. SO AUGUST 1997, IF YOU'RE A COAST
19 MEMBER AND NOT A MEMBER, SAY, OF PRESIDENT'S TRAVEL OR TWO
20 SPRINGS, AND YOU WANT TO USE TWO SPRINGS, YOU CAN'T JUST GO
21 IN WITH RECIPROCAL PRIVILEGES; IS THAT RIGHT?

22 A YES, COAST TO COAST MEMBERS STILL CAME INTO
23 THE PARK. THEY HAD THE PRIVILEGE OF USING THAT UP TO
24 THE -- FOR THAT YEAR. SO THEY WERE ALLOWED TO USE THE
25 PART --

26 Q TILL THE END OF '97?

1 A YES.

2 Q OKAY. SO STARTING IN '98, THOUGH; STARTING
3 IN '98, SINCE TWO SPRINGS WASN'T PART OF COAST?

4 A UH-HUH.

5 Q IS THAT RIGHT?

6 A THAT'S RIGHT.

7 Q OKAY. SO TWO SPRINGS ISN'T PART OF COAST,
8 AND THEN WHAT THAT MEANS IS, THAT MEMBERS OF COAST WHO WERE
9 NOT MEMBERS OF TWO SPRINGS, OR PRESIDENT'S TRAVEL OR TRAVEL
10 AMERICA, CAN'T USE TWO SPRINGS?

11 A NO. THEY COULD STILL -- AS A MATTER OF
12 FACT, THEY STILL USED -- COAST TO COAST MEMBERS STILL COME
13 INTO TWO SPRINGS TODAY.

14 Q THAT'S IF THEY'RE A MEMBER OF R.P.I. OR SOME
15 OTHER NETWORK?

16 A NO. THEY'RE A MEMBER OF COAST TO COAST.

17 Q THEY DON'T COME INTO TWO SPRINGS TODAY ON A
18 STRENGTH OF THEIR COAST MEMBERSHIP?

19 A YES, THEY DO.

20 Q YOU LET THEM IN AS COAST MEMBERS?

21 A OF COURSE, BECAUSE WE'RE -- WE'RE NOT GOING
22 TO SEE ANYBODY STRANDED. WE DON'T GET THAT MANY. BUT WE
23 CERTAINLY DO GET COAST TO COAST MEMBERS THAT COME IN, AND
24 WE DON'T TAKE COAST TO COAST CARDS. THEY PAY A HIGHER FEE,
25 OF COURSE, THAN OUR MEMBERS DO TO USE OUR PARK. BUT WE'VE
26 HAD COAST TO COAST MEMBERS. I BELIEVE LAST WEEK WE HAD A

1 COAST TO COAST MEMBER.

2 Q LET ME SEE IF I UNDERSTAND.

3 YOU DON'T LIKE TO SEE PEOPLE STRANDED OUT IN
4 THE DESERT?

5 A THAT'S CORRECT.

6 Q SO EVEN IF I WERE DRIVING AROUND MY R.V., IF
7 I CAME IN AND SAID, "HEY, CAN I SPEND A NIGHT?" YOU'D SAY,
8 "YEAH. COME ON IN"?

9 A THAT'S CORRECT.

10 Q OKAY. AND YOU WOULD CHARGE ME A HIGHER RATE
11 THAN IF I WAS A MEMBER?

12 A YES. I WOULD DEFINITELY CHARGE YOU A HIGHER
13 RATE.

14 Q AND YOU CHARGE THE FOLKS WHO ONLY HAVE A
15 COAST CARD A HIGHER RATE THAN YOU CHARGE OTHER MEMBERS?

16 A THAT'S CORRECT.

17 Q OKAY. AND SO THE QUARTER OF A MILLION
18 MEMBERS OF CAMP COAST TO COAST WHO ARE EITHER NOT MEMBERS
19 OF TRAVEL AMERICA OR TWO SPRINGS OR PRESIDENT'S TRAVEL
20 CLUB, NOWADAYS THEY HAVE TO PAY A HIGHER RATE TO USE TWO
21 SPRINGS?

22 A THAT'S CORRECT.

23 Q AND SO BECAUSE THERE'S A DECLINE IN USAGE IN
24 1998, IN PART YOU'VE GOT HIGHER CHARGES TO PEOPLE WHO ONLY
25 HAVE A COAST MEMBERSHIP?

26 A WELL, WE SORT OF -- WE'VE BEEN DIRECTED THAT

1 WE WILL TAKE COAST TO COAST FOR A CERTAIN FIGURE, CERTAIN
2 AMOUNT. I BELIEVE IT'S \$9 A NIGHT THEY PAY IF THEY WANT TO
3 STAY AT OUR PARK. AND I'M DIRECTED TO DO THAT. AND THAT'S
4 WHAT WE DO.

5 Q AND IT'S A HIGHER RATE?

6 A IT'S A HIGHER RATE, YES. AND PUBLIC COME,
7 THEY PAY A HIGHER RATE THAN A MEMBER OR COAST TO COAST
8 WOULD PAY.

9 Q NO. I UNDERSTAND.

10 SO, IN OTHER WORDS, IF YOU'RE A COAST MEMBER
11 AND ARE REALLY PRICE-SENSITIVE ABOUT THE ISSUE --

12 A GO SOMEPLACE ELSE.

13 Q -- YOU WOULDN'T GO TO TWO SPRINGS?

14 A PARDON ME?

15 Q YOU WOULDN'T GO TO TWO SPRINGS?

16 A WELL, THAT'S AN OPTION, YEAH. THEY HAVE AN
17 OPTION WHERE THEY WANT TO GO. WE HAVE A LOT OF COAST TO
18 COAST PEOPLE WHO LIKE THAT PARK, AND THEY SEEM TO SHOW UP
19 EVERY SO OFTEN, STAY AT OUR PARK.

20 MR. SHERMAN: NOW, AS WE'VE DONE WITH EXHIBIT 69,
21 THE LETTERS THAT WERE PRODUCED BY PLAINTIFFS, I'D LIKE TO
22 PUT A COUPLE LETTERS UP ON THE BOARD, YOUR HONOR.

23 THE COURT: NO OBJECTION.

24 MR. SHERMAN: THESE ARE PRODUCED BY PLAINTIFFS IN
25 THIS CASE.

26 THE COURT: ALL RIGHT.

1 MR. SHERMAN: I'D LIKE TO PUT UP EXHIBIT -- FROM
2 EXHIBIT 59. THE BATES NUMBER AT THE BOTTOM IS 191.

3 Q AND, IN FACT, IT'S ON THE STAND IN FRONT OF
4 YOU, MR. BROCKLEY. THERE'S AN EXHIBIT 69 THERE.

5 MAY I APPROACH, YOUR HONOR?

6 THE COURT: YOU MAY.

7 MR. SHERMAN: IT'S 69-048.

8 MR. MOSHENKO: BATES NUMBER WHAT?

9 MR. SHERMAN: 191.

10 MR. MOSHENKO: MY EXHIBIT 69 GOES TO 180.

11 MR. SHERMAN: I DON'T KNOW WHAT TO SAY ABOUT THAT.

12 MR. MOSHENKO: THIS IS WHAT YOU GUYS PROVIDED US.

13 MR. SHERMAN: WHY DON'T YOU LOOK --

14 MR. MOSHENKO: IT HAS TO DO WITH THE COURT'S
15 PREVIOUS RULINGS.

16 MR. SHERMAN: OKAY.

17 MR. MOSHENKO: THANK YOU. SORRY FOR THE DELAY.

18 BY MR. SHERMAN: Q NOW, MR. BROCKLEY, YOU SEE THIS
19 IS A LETTER TO TRAVEL AMERICA, AND ALSO IT SAYS, "DEAR TWO
20 SPRINGS RESORT"?

21 A YES.

22 Q AND IT SAYS, "AS OF NOVEMBER 1ST, 1997, WE
23 ARE TRANSFERRING"-- "WE ARE TRANSFERRING OUR MEMBERSHIP
24 FROM TWO SPRINGS, CALIFORNIA TO EMERALD COVE, EARP,
25 CALIFORNIA SO THAT WE MAY CONTINUE IN THE COAST TO COAST
26 SYSTEM.

1 "THEFORE, PLEASE CANCEL OUR MEMBERSHIP IN
2 TWO SPRINGS RESORT, CALIFORNIA. WE ARE PLANNING ON
3 RETAINING OUR PRESIDENT'S CLUB MEMBERSHIP, AS BEFORE."

4 SIGNED BY THE RIDINGS IN SALEM, OREGON.

5 AND AFTER YOU BECAME THE MANAGER, DID YOU
6 LEARN THAT THERE WERE TWO SPRINGS MEMBERS WHO DECIDED --
7 THEY CHOSE TO TRANSFER THEIR MEMBERSHIP SO THAT THEY COULD
8 CONTINUE IN THE COAST TO COAST SYSTEM?

9 MR. MOSHENKO: OBJECTION. THE QUESTION ASSUMES A
10 FACT NOT IN EVIDENCE, THE PERSON MADE THE CHOICE, AND THAT
11 THEY, QUOTE, DECIDED. IT'S ARGUMENTATIVE.

12 THE COURT: SUSTAINED.

13 BY MR. SHERMAN: Q DID YOU LEARN WHETHER COAST TO
14 COAST MEMBERS CHOSE TO STAY WITH COAST?

15 A NO, I WAS NOT AWARE OF THAT, BECAUSE I
16 WASN'T MANAGER AT THE TIME IN 1997.

17 Q SO I TAKE IT, THEN, THAT AS FAR AS WHETHER
18 TWO SPRINGS MEMBERS CHOSE TO STAY WITH COAST OR NOT, THAT'S
19 SOMETHING OVER WHICH YOU HAVE NO FAMILIARITY?

20 A THAT'S CORRECT.

21 Q AND THEN THE NEXT LETTER, BATES NUMBER 192.
22 AT THE BOTTOM IT'S 69-049.

23 LET ME ASK YOU, MR. BROCKLEY -- WHY DON'T WE
24 GET THE WHOLE DOCUMENT UP THERE FIRST.

25 THE TOP PART OF THAT DOCUMENT, IS THAT A
26 BILLING STATEMENT? IS THAT WHAT YOU UNDERSTAND THAT TO BE?

1 A YES.

2 Q SO THERE IS BILLS SENT TO MEMBERS OF TWO
3 SPRINGS; IS THAT RIGHT?

4 A THE BILLS ARE SENT TO TWO SPRINGS?

5 Q NO. THERE ARE BILLS SENT TO MEMBERS OF TWO
6 SPRINGS?

7 A I WOULD GATHER SO, YES.

8 Q OKAY. NOW, YOU'RE NOT INTIMATELY INVOLVED
9 IN THE SENDING OF BILLS?

10 A I'M NOT IN THE BILLING OF MEMBERSHIPS, NO.

11 Q BUT YOU SEE THIS IS A BILL.

12 IF WE COULD HIGHLIGHT THE DATE AT THE TOP,
13 THE DUE DATE, JULY 1, 1998.

14 DO YOU SEE THAT?

15 A YES.

16 Q AND TO THE LEFT OF THAT -- TO THE LEFT OF
17 THAT DUE DATE DO YOU SEE THERE'S AN "A.S.R."?

18 A CORRECT.

19 Q YOU'RE FAMILIAR WITH THE INITIALS A.S.R.?

20 A NOT REALLY. IT'S A CODE THAT THEY USE.

21 Q DO THE INITIALS A.S.R. IN YOUR ORGANIZATION
22 REFER TO ALL SEASONS RESORTS?

23 A YES.

24 Q AND SO THIS WAS A BILL SENT TO THE SMITHS IN
25 CLEAR LAKE, CALIFORNIA?

26 A UH-HUH.

1 Q IS THAT RIGHT?

2 A YES.

3 Q AND HAVING TO DO WITH THEIR MEMBERSHIP IN
4 TWO SPRINGS; IS THAT RIGHT?

5 A CORRECT.

6 Q AND SO THE SMITHS GOT THIS BILL, AND THEN
7 THEY WROTE BACK TO TRAVEL AMERICA IN THEIR OWN HANDWRITING.
8 DO YOU SEE THAT?

9 A YES.

10 Q IT SAYS, "WE ARE NO LONGER USING TWO
11 SPRINGS. NO ONE BOTHERED TO NOTIFY ABOUT THE CHANGE. WE
12 ARE STAYING WITH C TO C.

13 I PRESUME THAT'S COAST TO COAST.

14 A YES.

15 Q DID YOU LEARN AFTER YOU BECAME MANAGER THAT
16 THERE WERE PEOPLE WHO DECIDED TO GO ON AND GO TO OTHER
17 COAST-AFFILIATED RESORTS BECAUSE THEY WANTED TO STAY WITH
18 COAST TO COAST?

19 A NO, I'M NOT AWARE OF THAT. BUT I CAN SEE
20 PEOPLE MOVE AROUND. THEY CHANGE THEIR MINDS ON VARIOUS
21 THINGS, AND IT'S A PERSON THAT -- ONE OF HOW MANY THOUSANDS
22 IN THE SYSTEM WHO DECIDED TO CHANGE. I DON'T KNOW THE
23 CIRCUMSTANCES WHY THEY CHANGED. I DON'T THINK ANYBODY IN
24 THE COURTROOM REALLY KNOWS WHY THEY CHANGED THEIR MINDS.
25 IT COULD BE VARIOUS REASONS WHY THEY CHANGED THEIR MINDS.

26 Q I TAKE IT YOU DON'T KNOW WHETHER ANY MEMBERS

1 LEFT TWO SPRINGS OR, IF THEY DID, WHY THEY LEFT TWO
2 SPRINGS?

3 A NOT REALLY. PEOPLE CHANGE THEIR MIND FOR
4 VARIOUS REASONS. ONCE IN A WHILE WE'LL HAVE A CONVERSATION
5 WITH SOMEBODY THAT SAYS, "THAT'S IT. I'VE BEEN R.V.'ING
6 FOR 18 YEARS. I'M TIRED. I WANT A CONDO BY THE OCEAN, AND
7 WE'RE GIVING UP R.V.'ING."

8 I SAY, "HEY."

9 AND THEY SAY, "YOU KNOW OF ANYBODY WHO I CAN
10 GIVE MY MEMBERSHIP TO?"

11 BUT I SAID, "I DON'T KNOW. CONTACT THE HOME
12 OFFICE. THEY'LL PROBABLY BE HAPPY TO HELP."

13 WE GET CONVERSATIONS LIKE THAT EVERY ONCE IN
14 A WHILE, PEOPLE THAT THE HUSBAND DIED OR THE WIFE DIED AND
15 THEY KNOW LONGER WANT TO R.V. THERE'S MANY REASONS WHY
16 PEOPLE CHANGE OR GIVE UP THEIR MEMBERSHIPS INTO THE
17 CAMPGROUND INDUSTRY.

18 Q MANY REASONS?

19 A THERE'S MANY REASONS WHY PEOPLE DO IT.

20 MR. SHERMAN: MR. BROCKLEY, THANK YOU VERY MUCH.

21 THE WITNESS: YOU'RE WELCOME.

22 THE COURT: REDIRECT?

23 MR. MOSHENKO: YOUR HONOR, MY REQUEST OF THE COURT
24 IS THAT I BE ALLOWED TO DELAY MY REDIRECT SO THAT I CAN
25 TAKE JAMES JOSEPH OUT OF ORDER SO THAT HOPEFULLY WE CAN
26 COMPLETE HIM AND GET HIM ON HIS WAY TODAY. AND THEN I

1 WOULD PICK UP WITH MR. BROCKLEY AFTER WE COMPLETED
2 MR. JOSEPH.

3 THE COURT: NO PROBLEM?

4 MR. SHERMAN: NONE.

5 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN,
6 SUBJECT TO RECALL.

7 CALL MR. JOSEPH.

8 MR. MOSHENKO: JAMES JOSEPH.

9 JAMES J. JOSEPH,
10 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING
11 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
12 FOLLOWS:

13 THE CLERK: TAKE A SEAT IN THE WITNESS STAND,
14 PLEASE.

15 MR. SHERMAN: MAY WE HAVE ONE MOMENT WITH THE
16 COURT?

17 THE COURT: YES.

18 (DISCUSSION OFF THE RECORD.)

19 THE CLERK: WOULD YOU STATE YOUR FULL NAME FOR THE
20 RECORD AND SPELL IT FOR THE REPORTER, PLEASE.

21 THE WITNESS: JAMES J. JOSEPH, J-O-S-E-P-H.

22 DIRECT EXAMINATION

23 BY MR. MOSHENKO: Q ALL RIGHT. MR. JOSEPH, WHAT
24 IS YOUR CURRENT OCCUPATION?

25 A I'M AN ATTORNEY AT LAW.

26 Q AND YOU DO HAVE A POSITION THAT RELATES TO

1 THE PLAINTIFFS IN THIS ACTION. WHAT IS THAT POSITION?

2 A I AM THE CHAPTER 7 BANKRUPTCY TRUSTEE OF ONE
3 OF THE PLAINTIFFS.

4 Q OKAY. AND THE PLAINTIFF COMPANY THAT YOU
5 ARE THE CHAPTER 7 BANKRUPTCY TRUSTEE FOR IS WHAT? WHO?

6 A FIRST NATIONWIDE RESORT MANAGEMENT.

7 Q OKAY. I'D LIKE TO ASK YOU SOME QUESTIONS
8 ABOUT YOUR BACKGROUND.

9 YOU TOLD US YOU'RE AN ATTORNEY. WHERE DID
10 YOU COMPLETE YOUR LAW SCHOOL?

11 A I OBTAINED MY LAW DEGREE FROM THE UNIVERSITY
12 OF CALIFORNIA, BERKELEY, BOALT HALL.

13 Q AND WHEN WAS THAT?

14 A IN 1972.

15 Q ALL RIGHT. PRIOR TO THAT, YOU DID YOUR
16 UNDERGRADUATE COLLEGE WORK WHERE?

17 A REED COLLEGE IN PORTLAND, OREGON.

18 Q FOLLOWING 1972, DID YOU GO INTO THE PRACTICE
19 OF LAW?

20 A YES.

21 Q AND SO WE CAN PUT SOME PARAMETERS ABOUT IT,
22 WAS THERE A TIME THAT YOU BEGAN TO ACT AS A TRUSTEE IN
23 BANKRUPTCY?

24 A YES.

25 Q WHEN WAS THAT?

26 A IT WAS IN 1981.

1 Q BETWEEN 1972 AND 1981, DID YOU SPECIALIZE IN
2 BANKRUPTCY LAW?

3 A I DID.

4 Q DID YOU PRACTICE EXCLUSIVELY IN THE FIELD OF
5 BANKRUPTCY?

6 A ALMOST EXCLUSIVELY.

7 Q ALL RIGHT. ALL RIGHT. SO NOW YOU'VE TOLD
8 THIS JURY YOU'RE A TRUSTEE IN A BANKRUPTCY CASE; WHAT DOES
9 IT MEAN TO SAY SOMEONE IS A TRUSTEE IN A BANKRUPTCY CASE?

10 A WELL, A TRUSTEE IN A BANKRUPTCY CASE IS THE
11 RESPONSIBLE OFFICER OF THE BANKRUPTCY ESTATE, AND THE
12 BANKRUPTCY ESTATE IS CREATED OUT OF ALL THE ASSETS OF THE
13 DEBTOR AT THE TIME THE BANKRUPTCY CASE IS FILED.

14 Q HOW DOES ONE -- HOW DOES -- ARE TRUSTEES ALL
15 ATTORNEYS?

16 A NO.

17 Q HOW DOES A PERSON BECOME QUALIFIED AS A
18 TRUSTEE IN A BANKRUPTCY?

19 A WELL, NORMALLY TRUSTEES ARE SELECTED -- THE
20 ACTIVITY OF TRUSTEES IS OVERSEEN BY SOMETHING CALLED "THE
21 OFFICE OF THE UNITED STATES TRUSTEE," WHICH IS A PART OF
22 THE UNITED STATES DEPARTMENT OF JUSTICE. AND THAT OFFICE
23 APPOINTS TRUSTEES TO SERVE ON PANELS. I WAS APPOINTED TO
24 THE ORANGE COUNTY PANEL OF TRUSTEES IN 1981. NORMALLY
25 THAT'S HOW ONE BECOMES A TRUSTEE.

26 THE BANKRUPTCY CODE DOES, HOWEVER, PERMIT

1 THE ELECTION OF TRUSTEES IN BOTH CHAPTER 7 CASES AND
2 CHAPTER 11 CASES SO THAT AN INDIVIDUAL COULD BE ELECTED TO
3 SERVE AS A TRUSTEE IN A CASE. THAT'S THE EXCEPTION, NOT
4 THE RULE.

5 Q WELL, WHAT DOES THE USUAL TRUSTEE DO TO
6 BECOME APPOINTED TO THE PANEL? WHAT QUALIFICATIONS AND
7 EXPERIENCE, IF ANY, ARE REQUIRED?

8 A WELL, THERE IS AN FBI BACKGROUND CHECK.
9 NORMALLY ONE HAS TO SHOW ONESELF TO BE CAPABLE AND
10 EFFICIENT AND KNOWLEDGEABLE.

11 Q ALL RIGHT. SO, NOW, IN 1982 YOU WERE
12 APPOINTED TO THE PANEL AND THEREBY WERE ALLOWED TO USE THE
13 TITLE THAT YOU'RE A TRUSTEE?

14 A IN 1981, SIR.

15 Q I'M SORRY. '81.

16 AND FROM THEN ON HAVE YOU CONTINUALLY AND
17 CONSISTENTLY EMPLOYED OR OCCUPIED YOURSELF AS A TRUSTEE IN
18 BANKRUPTCY CASES?

19 A IT IS SOMETHING I DO IN ADDITION TO
20 PRACTICING LAW.

21 Q WELL, ALL RIGHT. CAN YOU GIVE ME AN
22 ESTIMATE OF HOW MANY INDIVIDUAL BANKRUPTCY CASES YOU HAVE
23 BEEN APPOINTED TO ACT AS THE TRUSTEE?

24 A BOTH CHAPTER 7 AND 11?

25 Q ALL TYPES OF BANKRUPTCY CASES.

26 A IT WOULD BE THOUSANDS. I COULDN'T GIVE YOU

1 A NUMBER.

2 Q OKAY. ALL RIGHT. NOW, YOU ARE AN OFFICER
3 OF THE UNITED STATES OF AMERICA?

4 A NO.

5 Q AS A TRUSTEE?

6 A NO. TRUSTEES ARE PRIVATE INDIVIDUALS WHO
7 ARE SELECTED TO SERVE AS TRUSTEES BY THE OFFICE OF THE
8 UNITED STATES TRUSTEE. THAT OFFICE IS A PART OF THE UNITED
9 STATES DEPARTMENT OF JUSTICE. BUT I AM NOT A PART OF THE
10 DEPARTMENT OF JUSTICE, NOR AM I A FEDERAL EMPLOYEE.

11 Q ARE YOU AN OFFICER OF THE COURT OTHER THAN
12 THE SENSE ALL LAWYERS ARE CONSIDERED OFFICERS OF THE COURT?

13 A I THINK ALL ATTORNEYS ARE OFFICERS OF THE
14 COURT, YES.

15 Q BUT DOES THE TRUSTEE CONSTITUTE, IN ESSENCE,
16 AN AGENT OF THE COURT WHEN HE FUNCTIONS AS A TRUSTEE?

17 A NO.

18 Q IS HE AN AGENT OF ANY OF THE PARTIES WHO ARE
19 IN A BANKRUPTCY CASE?

20 A NO.

21 Q WHO ARE THE PARTIES TO A BANKRUPTCY CASE?

22 A THE DEBTOR IS CERTAINLY A PARTY. CREDITORS
23 ARE PARTIES IN INTEREST. THE TRUSTEE HIMSELF OR HERSELF IS
24 A PARTY IN INTEREST.

25 Q ALL RIGHT. SO THE TRUSTEE IS NOT THE AGENT
26 OF THE DEBTOR; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q HE IS NOT THE AGENT OF THE CREDITORS?

3 A THAT'S CORRECT.

4 Q OKAY. SO WHAT IS HIS FUNCTION AND
5 RESPONSIBILITY; WHAT ROLE DOES HE PLAY?

6 A HE IS THE RESPONSIBLE OFFICER OF THE ASSETS
7 OF THE ESTATE. THE TRUSTEE HAS THE POWER TO SELL ASSETS;
8 HE HAS THE POWER TO OPERATE ASSETS; HE HAS THE POWER TO
9 PROPOSE A PLAN; HE HAS THE POWER TO PROSECUTE LAWSUITS.

10 Q WHO IS HE RESPONSIBLE TO? WHO DOES HE
11 ANSWER TO?

12 A WELL, IN A BANKRUPTCY CASE, ALL PARTICIPANTS
13 ARE ULTIMATELY RESPONSIBLE TO THE BANKRUPTCY COURT.

14 Q ALL RIGHT. THAT'S ULTIMATELY.

15 IS HE RESPONSIBLE TO THE CREDITORS? DOES HE
16 OWE ANY DUTY OR RESPONSIBILITY TO THE CREDITOR?

17 A THE TRUSTEE IN BANKRUPTCY OWES A DUTY TO ALL
18 PARTIES IN INTEREST TO PERFORM PROPERLY, TO MAKE PROPER USE
19 OF ASSETS OF THE ESTATE. HE OWES A FIDUCIARY DUTY, I
20 THINK, TO ALL PARTIES IN INTEREST.

21 Q NOW, I HEARD YOU USE THE TERM "MAKE PROPER
22 USE OF THE ASSETS." WHAT DOES THAT MEAN?

23 A WELL, IF IT'S A CHAPTER 7, THAT'S NORMALLY A
24 LIQUIDATION. THE TRUSTEE'S DUTY WOULD BE TO LIQUIDATE THE
25 ASSETS FOR THE BENEFIT OF, PRIMARILY, CREDITORS. BUT IF
26 IT'S A SURPLUS CASE -- AND SOMETIMES WE RUN INTO SURPLUS

1 CASES -- THEN HIS DUTY EXTENDS BEYOND CREDITORS TO THE
2 DEBTOR, BECAUSE THE DEBTOR ALSO HAS AN INTEREST IN WHETHER
3 THOSE ASSETS ARE PROPERLY SOLD.

4 HE HAS A RESPONSE -- HE OR SHE HAS A
5 RESPONSIBILITY TO TAKE THE PROCEEDS OF ASSETS THAT ARE
6 LIQUIDATED AND TO PAY CLAIMS IN THEIR PROPER PRIORITY,
7 ACCORDING TO THE BANKRUPTCY CODE. IF THERE ARE ACTIONS TO
8 BRING, THE TRUSTEE HAS THE RESPONSIBILITY TO BRING THEM AND
9 TO PROSECUTE THEM -- I'M SORRY. WAS YOUR QUESTION WHAT ARE
10 THE RESPONSIBILITIES OF A TRUSTEE?

11 Q WELL, I WAS REFERRING TO YOUR TERM "PROPER
12 HANDLING OF THE ASSETS"?

13 A YES, THAT'S CERTAINLY ONE.

14 Q NOW, I HEARD YOU SAY "IN A CHAPTER 7
15 BANKRUPTCY." ARE THERE DIFFERENT KINDS OF BANKRUPTCIES?

16 A YES.

17 Q WHAT KINDS ARE THERE?

18 A THERE'S A CHAPTER 7, WHICH REFERS TO CHAPTER
19 7 OF TITLE 11 OF THE UNITED STATES CODE, WHICH IS A
20 LIQUIDATION, NORMALLY. THERE IS A CHAPTER 11, WHICH IS A
21 CASE FOR A REORGANIZATION. THERE IS A CHAPTER 12, WHICH I
22 BELIEVE IS FAMILY FARM OR DEBT RELIEF. AND THERE IS A
23 CHAPTER 13, WHICH IS DESIGNED FOR AN INDIVIDUAL WITH
24 REGULAR INCOME. AND THERE IS A CHAPTER 9, WHICH IS A
25 MUNICIPAL REORGANIZATION.

26 Q SO WE HAVE A CHAPTER THAT APPLIES TO

1 INDIVIDUALS THAT ARE NOT CORPORATIONS OR COMPANIES;

2 CORRECT?

3 A A CHAPTER 13 IS EXCLUSIVELY FOR INDIVIDUALS,
4 YES.

5 Q I'M GOING TO ASK IF WE CAN TALK ABOUT THE
6 ONES THAT RELATE TO CORPORATIONS, THE 11 AND THE 7; IS THAT
7 CORRECT?

8 A 11'S AND 7'S, YES.

9 Q AND DO THEY APPLY EXCLUSIVELY TO
10 CORPORATIONS?

11 A NO.

12 Q OR WHAT OTHER ENTITIES ARE COVERED?

13 A INDIVIDUALS CAN BE DEBTORS IN BOTH CHAPTER
14 7'S AND CHAPTER 11'S. PARTNERSHIPS CAN BE DEBTORS IN BOTH
15 CHAPTER 7 AND CHAPTER 11, AS CORPORATIONS CAN.

16 Q ALL RIGHT. NOW, YOU MENTIONED A
17 REORGANIZATION CHAPTER 11. WHAT IS THAT?

18 A A CHAPTER 11 CASE IS A CASE FILED BY A
19 DEBTOR OR WITH RESPECT TO A DEBTOR WHOSE INTENT IS TO
20 REORGANIZE, REORGANIZE HIS, HER OR ITS BUSINESS AFFAIRS.

21 Q WHAT DOES THAT MEAN, REORGANIZE HIS BUSINESS
22 AFFAIRS?

23 A THE PURPOSE AND THE INTENT OF A CHAPTER 11
24 CASE IS FOR THE DEBTOR OR CREDITOR OR TRUSTEE, IF ONE IS
25 APPOINTED, TO PROPOSE A PLAN OF REORGANIZATION WHEREBY THE
26 DEBTOR ENTITY'S DEBTS ARE RESTRUCTURED BY VIRTUE OF A PLAN

1 OF REORGANIZATION, WHICH CREDITORS AND PARTIES IN INTEREST
2 VOTE ON.

3 Q WELL, OKAY. NOW, YOU USED ANOTHER TERM,
4 "DEBTS ARE RESTRUCTURED." WHAT DOES THAT MEAN TO US
5 NON-BANKRUPTCY EXPERTS?

6 A DEBTS CAN BE EXTENDED IN A CHAPTER 11 CASE,
7 WHICH IS TO SAY, THE TIME TO PAY THE DEBT CAN BE EXTENDED.
8 DEBTS CAN BE PARTLY FORGIVEN IN A CHAPTER 11 CASE.
9 NORMALLY IF ONE IS TALKING ABOUT DEBT RESTRUCTURE, THOSE
10 ARE THE TWO ELEMENTS. EITHER THE DEBT IS PARTLY FORGIVEN
11 IN EXCHANGE FOR PART OF IT BEING PAID, THE TERM OF THE DEBT
12 CAN BE EXTENDED, THE MATURITY DATE CAN BE EXTENDED.

13 AND OFTENTIMES CREDITORS WILL ACCEPT STOCK
14 AND EQUITY PARTICIPATION IN THE DEBTOR IN EXCHANGE FOR
15 THEIR DEBT IN WHOLE OR IN PART. THERE ARE NOT AN INFINITE
16 NUMBER, BUT THERE ARE LARGE -- IT'S A LARGE SCOPE, IN TERMS
17 OF THE FORM THAT A PLAN OF REORGANIZATION MAY TAKE.

18 SO LOTS OF DIFFERENT THINGS CAN HAPPEN TO
19 DEBT IN A CHAPTER 11 CASE. RESTRUCTURE, EXCHANGE FOR
20 EQUITY, EXTENSION OF THE DEBT ARE THREE EXAMPLES.

21 Q AND THE ULTIMATE PURPOSE OF RESTRUCTURING IS
22 TO ASSIST THE REORGANIZATION OF THE COMPANY, OR ARE THEY
23 SYNONYMOUS?

24 A SOMETIMES THE COMPANY IS REORGANIZED IN THE
25 SENSE THAT NEW EQUITY -- THE EQUITY THAT DID EXIST IS WIPED
26 OUT, AND CREDITORS BECOME THE EQUITY HOLDERS OF THE

1 COMPANY. SOMETIMES THE COMPANY IS ASSISTED BY SIMPLY AN
2 EXTENSION OF DEBTOR MORATORIUM.

3 BUT YES, THE PURPOSE OF A CHAPTER 11 IS FOR
4 THE DEBTOR TO REORGANIZE AND TO CONFIRM A PLAN OF
5 REORGANIZATION, WHICH ADJUSTS ITS AFFAIRS WITH CREDITORS,
6 AND TO CONTINUE OPERATING.

7 Q MR. JOSEPH, A LOT OF PEOPLE THINK THAT
8 BANKRUPTCY'S THERE TO EVADE YOUR DEBTS.

9 DOES A CHAPTER 11 ENABLE THE DEBTOR TO EVADE
10 OR AVOID PAYING HIS DEBTS?

11 MR. SHERMAN: OBJECTION, YOUR HONOR. THIS GOES
12 BEYOND THE SCOPE. THIS WITNESS WAS NOT DESIGNATED AS AN
13 EXPERT WITNESS.

14 THE COURT: I'M GOING TO ALLOW THE QUESTION.
15 OVERRULED.

16 THE WITNESS: COULD I HAVE THE QUESTION AGAIN,
17 COUNSEL.

18 MR. MOSHENKO: COULD I ASK THE COURT REPORTER TO
19 READ IT BACK.

20 (THE FOLLOWING TESTIMONY WAS READ BACK:

21 "MR. JOSEPH, A LOT OF PEOPLE THINK THAT
22 BANKRUPTCY'S THERE TO EVADE YOUR DEBTS.

23 "DOES A CHAPTER 11 ENABLE THE DEBTOR TO
24 EVADE OR AVOID PAYING HIS DEBTS?")

25 THE WITNESS: NO. A CHAPTER 11 IS A CASE OR IS A
26 FEDERALLY MANDATED PROCEDURE WHERE A DEBTOR SUBJECTS ALL OF

1 HIS ASSETS TO THE JURISDICTION OF THE COURT, BANKRUPTCY
2 COURT, AND ESSENTIALLY PROPOSES A PLAN TO CREDITORS WHO ARE
3 AFFECTED TO WHOM IT OWES MONEY. AND THOSE CREDITORS VOTE
4 ON THE PLAN. AND THE PLAN TO SUCCEED MUST BE ACCEPTED BY A
5 MAJORITY IN NUMBER, AND 2/3RDS AN AMOUNT OF THE PARTICULAR
6 CLASS.

7 AND WHILE THE DEBTOR IS OPERATING IN THE
8 CHAPTER 11 AND TRYING TO PROPOSE A PLAN THAT ITS CREDITORS
9 WILL ACCEPT, IT IS OPERATING UNDER THE JURISDICTION OF A
10 COURT. ALL OF ITS ASSETS ARE SUBJECT TO COURT JURISDICTION
11 AND TO SCRUTINY BY THE OFFICE OF THE UNITED STATES
12 TRUSTEE. AND THAT'S TRUE WHETHER IT'S A TRUSTEE OPERATING
13 OR A DEBTOR IN POSSESSION.

14 Q ALL RIGHT. SO DO CREDITORS NOT WANT CHAPTER
15 11 BANKRUPTCIES TO BE IMPOSED UPON THEM?

16 PROBABLY A DUMB QUESTION.

17 MR. SHERMAN: OBJECTION. VAGUE AND AMBIGUOUS.
18 CALLS FOR SPECULATION.

19 THE COURT: HE ALREADY SAID IT'S A DUMB QUESTION.

20 MR. MOSHENKO: THAT'S NOT AN OBJECTION. THAT'S MY
21 OBJECTION. OKAY.

22 Q DO CREDITORS RECEIVE SOME BIT OF PROTECTION
23 BY THE FILING OF A CHAPTER 11 BANKRUPTCY?

24 A OH, IN MY VIEW, YES.

25 Q WHO GETS PROTECTED BY THE FILING OF A
26 CHAPTER 11 BANKRUPTCY?

1 A THE ASSETS GET PROTECTED, IN MY VIEW.

2 Q AND WHO BENEFITS?

3 A BEFORE A PLAN OF REORGANIZATION CAN BE
4 CONFIRMED, THERE ARE CERTAIN STATUTORY MANDATES. ONE OF
5 THOSE IS THAT CREDITORS MUST DO BETTER -- NO MATTER WHO
6 VOTES FOR THE PLAN OR DOESN'T VOTE FOR THE PLAN, CREDITORS
7 MUST DO BETTER IN A CHAPTER 11 THAN THEY WOULD IN A
8 LIQUIDATION. IT'S CALLED THE BEST INTEREST TESTS.

9 AND BEFORE A PLAN CAN BE CONFIRMED, IT MUST
10 BE DEMONSTRATED TO THE BANKRUPTCY JUDGE THAT THAT'S
11 SATISFIED; THAT THE CREDITORS DO BETTER IN THE PLAN THAN
12 THEY WOULD WITH A LIQUIDATION. THAT HAS TO BE SHOWN.

13 SO ASSUMING A PLAN IS PROPOSED AND
14 CONFIRMED, THE COURT MUST FIND THAT CREDITORS ARE BETTER
15 OFF WITH THE PLAN THAN THEY WOULD BE IN A STRAIGHT
16 LIQUIDATION OF THE DEBTOR'S ASSETS.

17 Q WE REALLY DIDN'T TELL THE JURY WHAT A
18 STRAIGHT LIQUIDATION REALLY MEANS. COULD YOU EXPLAIN WHAT
19 THAT IS?

20 A WELL, A STRAIGHT LIQUIDATION IS WHAT A
21 CHAPTER 7 IS. A STRAIGHT LIQUIDATION IS WHERE THE ASSETS
22 OF THE DEBTOR ARE LIQUIDATED. THE PROCEEDS OF THOSE ASSETS
23 ARE USED TO PAY CLAIMS OF CREDITORS, AND THAT IS THE
24 PROCESS.

25 Q SO -- AND THAT'S A CHAPTER 7?

26 A YES. THERE IS NORMALLY NOT A CONTINUATION

1 ON OF THE DEBTOR'S BUSINESS.

2 Q WHEREAS IN A REORGANIZATION, THE BUSINESS
3 CONTINUES ON?

4 A ASSUMING A PLAN IS PROPOSED AND CONFIRMED,
5 YES.

6 Q CONTINUES DURING THE BANKRUPTCY?

7 A THE OPERATION?

8 Q YES.

9 A YES. IN A CHAPTER 11 CASE THE DEBTOR'S
10 BUSINESS IS CONTINUED TO BE OPERATED.

11 Q OKAY. ARE YOU FAMILIAR WITH THE TERM
12 "DEBTOR IN REORGANIZATION"?

13 A NO.

14 Q OKAY. WHO MANAGES THE BUSINESS WHILE A
15 CHAPTER 11 BANKRUPTCY IS PENDING?

16 A IT'S ONE OF TWO ENTITIES. NORMALLY UPON THE
17 FILING OF A CHAPTER 11 CASE, AN ESTATE IS CREATED. AND THE
18 RESPONSIBLE OFFICER OF THAT ESTATE IS WHAT'S CALLED A
19 DEBTOR IN POSSESSION. IT IS THE DEBTOR AND THE DEBTOR'S
20 MANAGEMENT.

21 BUT THEY HAVE A NEW ROLE, IF YOU WILL, AS
22 DEBTOR IN POSSESSION, WITH ALL THE SAME FIDUCIARIES,
23 OBLIGATIONS THAT ANYONE HAS IN A BANKRUPTCY CASE. AND THE
24 DEBTOR REMAINS IN CONTROL OF ITS ASSETS IN THAT CAPACITY.

25 Q AND YOU SAID THAT DEBTOR -- THAT'S THE SAME
26 PERSON THAT OWNED THE COMPANY BEFORE IT WENT INTO

1 BANKRUPTCY; RIGHT?

2 A NO. LEGALLY IT IS A NEW ENTITY THAT IS
3 CREATED UPON THE FILING OF THE BANKRUPTCY CASE. IT IS NOT
4 THE DEBTOR. IT IS CALLED THE DEBTOR IN POSSESSION.

5 MR. SHERMAN: YOUR HONOR, MAY WE APPROACH?

6 THE COURT: YOU MAY.

7 (DISCUSSION OFF THE RECORD.)

8 BY MR. MOSHENKO: Q RETURNING TO WHERE WE WERE,
9 MR. JOSEPH, YOU INDICATED THAT NORMALLY MANAGEMENT IS DONE
10 BY A DEBTOR IN POSSESSION, WHICH IS A DIFFERENT -- I THINK
11 YOU SAID ENTITY?

12 A IT'S A DIFFERENT LEGAL ENTITY.

13 Q A DIFFERENT LEGAL ENTITY.

14 WHEN IT COMES TO PEOPLE, UNDER THE
15 CIRCUMSTANCE WHERE THE DEBTOR IN POSSESSION IS MANAGING,
16 DOES THAT LEGAL ENTITY HAVE TO BRING IN OUTSIDERS, OR DO
17 YOU JUST USE THE SAME PEOPLE WHO WERE, IN EFFECT, MANAGING
18 FORMERLY?

19 A NORMALLY THE LATTER.

20 Q THE SAME PEOPLE WHO WERE IN THE FORMER
21 ENTITY?

22 A THAT'S CORRECT. NORMALLY THE DEBTORS
23 PRE-BANKRUPTCY MANAGEMENT OR PRE-CHAPTER 11 MANAGEMENT
24 CARRIES ON AFTER THE CHAPTER 11 CASE IS FILED. BUT IT IS
25 NOW A BANKRUPTCY ESTATE THAT THEY'RE OPERATING AND, HENCE,
26 THE CHANGE IN DESIGNATION FROM "DEBTOR" TO "DEBTOR IN

1 POSSESSION."

2 Q NOW, YOU TESTIFIED THAT THAT DEBTOR IN
3 POSSESSION MANAGER OR MANAGEMENT HAD SOME RESPONSIBILITY,
4 PERHAPS DIFFERENTLY FROM WHAT THOSE PEOPLE HAD BEFORE THEY
5 WERE IN BANKRUPTCY; IS THAT CORRECT?

6 A THAT'S MY VIEW, YES.

7 Q AND WHAT WAS THAT ADDED OR DIFFERENT
8 RESPONSIBILITY THAT THEY NOW HAD?

9 A IT IS MY VIEW THAT ANYONE OPERATING A
10 BANKRUPTCY ESTATE, BE IT A DEBTOR IN POSSESSION OR A
11 TRUSTEE, IS NOW IN THE ROLE OF A FIDUCIARY TO PRIMARILY
12 CREDITORS.

13 Q SIMILAR TO A TRUSTEE ACTS IN THEIR ROLE AS A
14 FIDUCIARY?

15 A EXACTLY THE SAME.

16 Q EXACTLY THE SAME. OKAY.

17 ALL RIGHT. NOW, SO DURING THE
18 REORGANIZATION BANKRUPTCY, THE DEBTOR IN POSSESSION
19 OPERATES THE COMPANY.

20 DOES HE HAVE ANY REPORTING RESPONSIBILITIES?

21 A YES.

22 Q WHAT ARE THOSE?

23 A WELL, THE OFFICE OF THE UNITED STATES
24 TRUSTEE HAS PROPOUNDED A LIST -- RATHER LENGTHY LIST, ABOUT
25 THAT THICK -- OF WHAT THEY CALL "GUIDELINES." AND THOSE
26 GUIDELINES IMPOSE REPORTING REQUIREMENTS ON ANY ENTITY IN A

1 CHAPTER 11 CASE TO REPORT MONTHLY WITH RESPECT TO CASH
2 FLOW, TO REPORT MONTHLY WITH RESPECT TO OPERATING PROFIT OR
3 LOSS, TO REPORT WITH RESPECT TO WHETHER THESE ASSETS ARE
4 INSURED, TO REPORT WITH RESPECT TO, ARE ANY INSIDERS OF THE
5 DEBTOR CORPORATION BEING COMPENSATED? IF SO, WHO AND HOW
6 MUCH?

7 IT IS A VERY COMPREHENSIVE LIST OF REQUIRED
8 REPORTS OF AN ENTITY IN CHAPTER 11.

9 Q ALL RIGHT. SO WE KNOW THAT MANAGERS,
10 DEBTORS IN POSSESSION, HAVE TO DO THAT. WHO FOLLOWS UP ON
11 IT, POLICES THAT IT GETS DONE?

12 A THE OFFICE OF THE UNITED STATES TRUSTEE.

13 Q AND ARE THEY AN AGENT OF THE JUDGE?

14 A NO.

15 Q THEY ARE AN AGENT OF THE U.S., AND YOU WOULD
16 CHARACTERIZE THEIR FUNCTION AS WHAT?

17 A WELL, THE OFFICE OF THE UNITED STATES
18 TRUSTEE IS A PART OF THE DEPARTMENT OF JUSTICE. THEIR
19 FUNCTION IS TO OVERSEE OPERATIONS, LIQUIDATIONS, EVERY
20 ASPECT OF A BANKRUPTCY CASE, BE IT CHAPTER 7 OR CHAPTER 11.

21 Q TO INSURE COMPLIANCE WITH THE LAW?

22 A INSURE COMPLIANCE WITH THE LAW, COMPLIANCE
23 WITH THEIR REPORTING REQUIREMENTS, YES.

24 Q AND TO -- DO THEY HAVE THE RESPONSIBILITY TO
25 DETERMINE IF THERE ARE IRREGULARITIES OR IMPROPRIETIES
26 TAKING PLACE ON THE PART OF THE DEBTOR IN POSSESSION?

1 A YES.

2 Q AND WHAT METHOD OR METHODS DO THEY USE TO DO
3 THAT?

4 A WELL, THE PRIMARY METHOD IS TO SEE THAT
5 THESE REPORTS ARE FILED. IF THEY'RE NOT FILED, THEY WILL
6 FILE A MOTION TO CONVERT THE CASE TO A CHAPTER 7 OR TO
7 APPOINT A CHAPTER 11 TRUSTEE.

8 IF THEY FIND IRREGULARITIES IN THE REPORTS,
9 THEY WILL TAKE THE SAME ACTION. IT'S BASICALLY A GENERAL
10 OVERSIGHT, WATCH-DOG AGENCY OF THE UNITED STATES.

11 Q I JUST HEARD YOU USE THE TERM THEY COULD
12 TAKE THE STEP OF MAKING A MOTION TO "CONVERT THE CASE TO A
13 CHAPTER 7"; WHAT DOES THAT MEAN?

14 A YES. THAT MEANS THAT THE UNITED STATES
15 TRUSTEE, AS A PARTY IN INTEREST IN THE -- IN ALL BANKRUPTCY
16 CASES, WILL MAKE A MOTION TO THE BANKRUPTCY JUDGE TO SAY,
17 FOR INSTANCE, "THIS DEBTOR IN POSSESSION IN THIS CHAPTER 11
18 CASE HAS FAILED TO FILE OPERATING REPORTS FOR THE LAST
19 THREE MONTHS, AND WE'VE TOLD THEM ABOUT IT. AND THEY
20 HAVEN'T CORRECTED THE DEFICIENCY. THIS CASE OUGHT NOT TO
21 BE OPERATING IN CHAPTER 11 IF THEY WON'T COMPLY. JUDGE,
22 CONVERT IT TO A CHAPTER 7 CASE, A STRAIGHT LIQUIDATION."

23 Q AND IN THE CHAPTER 7, THAT MEANS THE DEBTS
24 ARE GOING TO BE LIQUIDATED?

25 A THE ASSETS.

26 Q THE ASSETS ARE GOING TO BE LIQUIDATED.

1 DEBTS ARE GOING TO BE PAID TO THE EXTENT
2 THERE ARE ASSETS?

3 A YES.

4 Q AND THAT'S DIFFERENT FROM ALLOWING THE
5 REORGANIZATION TO CONTINUE; IS THAT CORRECT?

6 A IT IS DIFFERENT, YES.

7 Q IN THE REORGANIZATION, THE GOAL IS TO GET
8 THE DEBTS PAID; IS THAT CORRECT?

9 A IN THE REORGANIZATION, THE GOAL IS TO
10 PROPOSE A PLAN WHICH IS ACCEPTABLE TO THE REQUISITE NUMBER
11 OF CREDITORS, WHO WILL VOTE FOR IT, AND PERMIT THE DEBTOR
12 TO CONTINUE TO OPERATE OUTSIDE THE BANKRUPTCY CASE.

13 Q OF COURSE IN YOUR EXPERIENCE THOSE CREDITORS
14 VOTE FOR IT BECAUSE WHY?

15 A WELL, THEY VOTE FOR IT BECAUSE THEY -- I
16 PRESUME THEY BELIEVE IT'S THEIR BEST ALTERNATIVE. IT'S A
17 BETTER ALTERNATIVE THAN HAVING A LIQUIDATION AND GETTING
18 LESS. AND IT ALSO IS USUAL THAT CREDITORS WHO HAVE DEALT
19 WITH THE COMPANY BEFORE THE CHAPTER 11 ARE ABLE TO DEAL
20 WITH IT AND SUPPLY IT WITH GOODS AND SERVICES AFTER IT
21 EMERGES. SO IT IS IN THE CREDITOR'S INTEREST OFTEN TO
22 PRESERVE A CUSTOMER.

23 Q NOW, MAYBE WE HAVE MORE CONTEXT TO WHAT IT
24 WAS.

25 YOU SAID THAT FOR A PLAN TO BE APPROVED, IT
26 MUST MEET CERTAIN CRITERIA RELATING TO THE BEST INTEREST.

1 WHAT WAS THAT?

2 A THERE ARE CERTAIN STANDARDS THAT THE COURT
3 MUST FIND BEFORE IT CAN CONFIRM A PLAN OF REORGANIZATION;
4 THAT THE PLAN IS IN THE BEST INTEREST OF CREDITORS.
5 THEY'LL GET MORE THAN THEY WOULD UNDER A LIQUIDATION; THAT
6 SOLICITATIONS OF CONSENTS TO THE PLAN WAS PROPERLY DONE;
7 THAT THE PLAN COMPLIES WITH ALL THE REQUIREMENTS OF TITLE
8 11; THAT THE DISCLOSURE STATEMENT, WHICH IS SOMETHING THE
9 COURT HAS TO APPROVE BEFORE YOU CAN SOLICIT CONSENTS TO A
10 PLAN, HAS BEEN PROPERLY DISSEMINATED BEFORE PEOPLE VOTE ON
11 A PLAN. THOSE ARE SOME OF THE REQUIREMENTS.

12 IN ADDITION TO THAT, THE AFFECTED CREDITORS
13 NEED TO VOTE ON THE PLAN.

14 Q WHAT ARE THE DISCLOSURE STATEMENTS THAT YOU
15 NOW MENTIONED?

16 A BEFORE A DEBTOR -- BEFORE THE PROPONENT OF A
17 PLAN OF REORGANIZATION IS ENTITLED TO ASK CREDITORS TO VOTE
18 YES OR NO, THE COURT MUST APPROVE WHAT'S CALLED A
19 DISCLOSURE STATEMENT AND FIND THAT THE DISCLOSURE STATEMENT
20 CONTAINS ADEQUATE INFORMATION. AND ONLY WHEN THAT IS DONE
21 MAY THE PROPONENT OF THE PLAN GO ASK PEOPLE TO VOTE YES OR
22 NO ON IT AND PROVIDE THEM WITH THAT DISCLOSURE STATEMENT,
23 WHICH THE COURT HAS FOUND IS ADEQUATE DISCLOSURE ABOUT THE
24 COMPANY'S HISTORY, ITS ASSETS, ITS PROSPECTS IN THE FUTURE,
25 RISK FACTORS, WHAT HAVE YOU.

26 IT'S RATHER LIKE THE KIND OF A DISCLOSURE

1 STATEMENT YOU'D HAVE TO FILE WITH THE S.E.C. BEFORE YOU CAN
2 GO SOLICIT PEOPLE TO BUY STOCK FROM THEM. THAT'S THE
3 FUNCTION OF IT.

4 BUT THE COURT HAS TO APPROVE IT AS BEING
5 ADEQUATE BEFORE YOU CAN GO TO A CREDITOR AND SAY, "LOOK,
6 VOTE FOR MY PLAN." YOU HAVE TO GIVE THE CREDITOR THIS
7 DISCLOSURE STATEMENT SO HE KNOWS WHAT HE IS VOTING ON.

8 Q AGAIN, SO COULD YOU GIVE US A CHECKLIST OF
9 WHAT HAS TO BE DISCLOSED?

10 A THE HISTORY OF THE DEBTOR, THE DEBTOR'S
11 OPERATIONS BEFORE AND AFTER THE CHAPTER 11 WAS FILED, THE
12 PROJECTION OF THE DEBTOR'S FUTURE BUSINESS, WHO THE
13 OFFICERS AND DIRECTORS OF THE REORGANIZED DEBTOR WILL BE,
14 WHAT THEY'RE GOING TO BE PAID. THOSE ARE THE BASICS.
15 THERE MAY BE MORE.

16 Q BUT IF A DEBTOR WANTS TO HIDE INFORMATION
17 FROM INTERESTED PARTIES, SPECIFICALLY HIS CREDITORS, IS A
18 CHAPTER 11 A GOOD WAY TO DO IT?

19 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: NO.

22 BY MR. MOSHENKO: Q WHY NOT?

23 A FOR THE REASON I JUST DESCRIBED. YOU'RE
24 OPERATING UNDER A COURT'S SUPERVISION. YOU'RE OPERATING
25 UNDER SUPERVISION OF A PART OF THE DEPARTMENT OF JUSTICE.
26 YOU CAN'T GET OUT OF THE CHAPTER 11 UNLESS YOUR CREDITORS

1 VOTE FOR IT. AND YOU CAN'T ASK THEM TO VOTE FOR IT UNTIL
2 THE COURT APPROVES A DISCLOSURE STATEMENT AS BEING ADEQUATE
3 INFORMATION BEFORE YOU CAN EVEN ASK THEM TO VOTE YES OR NO.

4 Q YOU SAY YOU CAN'T EVEN DROP THE CASE ONCE
5 YOU FILED IT?

6 A NO. A DEBTOR HAS THE RIGHT, ONCE YOU FILE A
7 CHAPTER 11 CASE, TO CONVERT IT TO A CHAPTER 7. YOU CAN DO
8 THAT, NORMALLY. UNLESS A TRUSTEE IS APPOINTED. THEN YOU
9 CAN'T DO THAT.

10 Q WHAT DID YOU MEAN WHEN YOU SAY YOU CAN'T GET
11 OUT OF A CHAPTER 11?

12 A WELL, THE DEBTOR IS NOT THE ONLY PARTY WHO
13 CAN PROPOSE A PLAN. A CREDITOR CAN PROPOSE A PLAN. A
14 TRUSTEE CAN PROPOSE A PLAN. SO IF THE DEBTOR IS IN A
15 CHAPTER 11 CASE, AND CREDITORS WANT A CERTAIN DISPOSITION
16 OF THE ASSETS, THEY'RE IN A POSITION TO PROPOSE THEIR OWN
17 PLAN. AND EVEN IF THE DEBTOR WANTS OUT, SO-TO-SPEAK, IF
18 THE CREDITORS FEEL THAT THIS COMPANY SHOULD GO A CERTAIN
19 WAY, AND THEY'D LIKE CERTAIN THINGS TO HAPPEN IN THE
20 FUTURE, THEY HAVE THE RIGHT TO PROPOSE A PLAN.

21 SO ONCE YOU'RE IN A CHAPTER 11, THE CONTROL
22 OF YOUR BUSINESS, THERE ARE WAYS TO -- YOU CAN LOSE THAT.

23 Q SO UNDER THAT CIRCUMSTANCE WHERE THE
24 CREDITORS PROPOSE A PLAN --

25 A YES.

26 Q -- IF THE COMPANY THAT -- THE BANKRUPT

1 DEBTOR SAYS, "I DON'T LIKE THIS," IT'S IMPOSED UPON HIM?

2 A OH, INDEED.

3 Q ALL RIGHT. NOW, YOU MENTIONED A DEBTOR IN
4 POSSESSION CONTROLS OR MANAGES A COMPANY IN A CHAPTER 11.
5 ARE THERE ALSO CIRCUMSTANCES WHERE A TRUSTEE, SUCH AS
6 YOURSELF, CAN BE BROUGHT IN TO MANAGE A COMPANY UNDER A
7 CHAPTER 11 REORGANIZATION?

8 A YES.

9 Q WHAT ARE THOSE CIRCUMSTANCES?

10 A THEY'RE IN THE CODE. THE COMPETENCE OF THE
11 DEBTOR'S MANAGEMENT, IMPROPER ACTS BY THE DEBTOR'S
12 MANAGEMENT, OR A GENERAL STANDARD, IF THE APPOINTMENT OF
13 THE TRUSTEE WOULD BE IN THE BEST INTEREST OF ALL CONCERNED.

14 Q WHO DECIDES IF IT'S IN THE BEST INTEREST OF
15 ALL CONCERNED?

16 A IT IS THE COURT THAT ORDERS THE APPOINTMENT
17 OF THE TRUSTEE IN THE CHAPTER 11 CASE.

18 Q DOES THAT -- IS THAT USUALLY PRECEDED BY
19 SOMEBODY ASKING THE COURT TO DO THAT?

20 A YES.

21 Q WHO CAN ASK?

22 A CREDITOR CAN ASK. THE U.S. TRUSTEE CAN ASK.

23 Q WHAT DOES IT MEAN TO SAY IT'S IN THE BEST
24 INTEREST OF -- WHAT DID YOU SAY?

25 A THE BEST INTEREST OF ALL THE PARTIES.

26 Q "ALL THE PARTIES," WHAT DOES THAT MEAN?

1 A IT MEANS WHAT IT SAYS. THE COURT WOULD MAKE
2 A DETERMINATION THAT, ALL THINGS CONSIDERED, A TRUSTEE
3 WOULD BE BETTER OFF AS THE REPRESENTATIVE OF THIS ESTATE
4 THAN NOT.

5 Q ALL RIGHT. SO UNDER THAT CIRCUMSTANCE --
6 AND, IN FACT, THAT'S WHAT YOU'RE TALKING ABOUT WHEN YOU
7 SAY -- IF YOU SAY, "I WAS A TRUSTEE IN A CHAPTER 11
8 BANKRUPTCY," YOU'VE BEEN APPOINTED BY THE COURT?

9 A NOT BY THE COURT.

10 Q BY WHOM?

11 A A PARTY IN INTEREST ASKS THE COURT TO DIRECT
12 THE APPOINTMENT OF A TRUSTEE. THE COURT ENTERS AN ORDER
13 DIRECTING THE APPOINTMENT -- DIRECTING THE U.S. TRUSTEE'S
14 OFFICE TO APPOINT A TRUSTEE. THE U.S. TRUSTEE'S OFFICE
15 APPOINTS A TRUSTEE, TAKES THE NAME BACK TO THE BANKRUPTCY
16 JUDGE, WHO THEN CONFIRMS THE EMPLOYMENT.

17 SO THAT'S -- THOSE ARE THE STEPS. BUT THE
18 ACTUAL SELECTION OF THE TRUSTEE IS BY THE OFFICE OF THE
19 UNITED STATES TRUSTEE.

20 Q AND WHERE THAT OCCURS, WHAT THEN IS THE
21 RELATIONSHIP, IF ANY, BETWEEN THE DEBTOR AND THE TRUSTEE,
22 WHEN IT COMES TO MANAGEMENT OF THE COMPANY?

23 A UPON THE APPOINTMENT OF A CHAPTER 11
24 TRUSTEE, THE TRUSTEE IS IN COMPLETE CONTROL OF THE DEBTOR'S
25 ASSETS.

26 Q HE CHOOSES MANAGEMENT?

1 A YES.

2 Q AND YOU HAVE --

3 A HE IS MANAGEMENT. HE OR SHE.

4 Q OKAY. NOW, YOU HAVE, I IMAGINE, THOUSANDS
5 OF TIMES IDENTIFIED AND SELECTED MANAGEMENT OF A COMPANY
6 THAT YOU'RE IN CONTROL OF AS A TRUSTEE?

7 A WHEN I SAID "THOUSANDS OF CASES," I MEANT
8 THOUSANDS OF CHAPTER 7 AND CHAPTER 11 CASES. THE CHAPTER 7
9 CASES ARE MUCH, MUCH MORE NUMEROUS. I HAVEN'T BEEN TRUSTEE
10 IN THOUSANDS OF CHAPTER 11 CASES.

11 Q GIVE US AN ESTIMATE, IF YOU COULD, PLEASE.

12 A THIRTY-FIVE, 30.

13 Q OKAY. IS IT -- IS THERE A USUAL OR UNUSUAL
14 STANDARD THAT CAN BE APPLIED TO THERE BEING A TRUSTEE IN A
15 CHAPTER 11 BANKRUPTCY?

16 A DO YOU MEAN THE QUALIFICATIONS OF THE
17 TRUSTEE?

18 Q NO.

19 I MEAN, IS IT UNUSUAL TO HAVE A CHAPTER 11
20 REORGANIZATION WITH A TRUSTEE?

21 A IT IS NOT THE NORM.

22 Q NOT THE NORM.

23 A YES.

24 Q OKAY. NOW, I'M TALKING ABOUT YOU AND YOUR
25 PERSONAL EXPERIENCES.

26 NOW, YOU HAVE BEEN A TRUSTEE, YOU ALREADY

1 TOLD US, FOR FIRST NATIONWIDE RESORTS MANAGEMENT?

2 A YES.

3 Q CORRECT?

4 THAT HAD TO OCCUR BECAUSE SOMEBODY FILED FOR
5 A BANKRUPTCY; IS THAT CORRECT? I MEAN, AFTER SOMEONE
6 FILED --

7 A YES.

8 Q THE FILING OF A BANKRUPTCY HAS TO HAPPEN
9 BEFORE A TRUSTEE GETS INVOLVED; RIGHT?

10 A YES.

11 Q NOW, ARE THERE -- IS THERE SUCH A THING AS A
12 VOLUNTARY VERSUS AN INVOLUNTARY BANKRUPTCY?

13 A YES.

14 Q COULD YOU EXPLAIN TO THE JURY WHAT THAT
15 MEANS, WHAT THOSE THINGS ARE?

16 A VOLUNTARY BANKRUPTCY CASE IS WHERE THE
17 DEBTOR ASKS TO BE IN THE BANKRUPTCY. AN INVOLUNTARY
18 BANKRUPTCY CASE IS WHERE THE DEBTOR'S CREDITORS ASK THAT
19 THE DEBTOR BE IN THE BANKRUPTCY.

20 Q YOU MEAN A CREDITOR CAN FORCE SOMEONE INTO
21 BANKRUPTCY?

22 A YES.

23 Q WHAT DOES IT TAKE FOR THERE TO BE AN IMPOSED
24 BANKRUPTCY?

25 A WELL, THE STANDARD FOR AN IMPOSED BANKRUPTCY
26 IS THAT YOU HAVE -- ASSUMING YOU HAVE MORE THAN 12

1 CREDITORS OVERALL, AND THREE OF THOSE UNSECURED CREDITORS
2 GET TOGETHER AND FILE A PETITION ALLEGING THAT YOU'RE NOT
3 PAYING YOUR DEBTS AS THEY COME DUE. AND IF THE COURT FINDS
4 THAT TO BE THE CASE, THEN YOU CAN BE ADJUDICATED A DEBTOR
5 AGAINST YOUR WILL.

6 Q A DEBTOR IN A BANKRUPTCY?

7 A YES.

8 Q AND DOES IT APPLY TO CHAPTER 11
9 REORGANIZATION?

10 A YES. THERE CAN BE AN INVOLUNTARY CHAPTER
11 11.

12 Q AND ARE THERE INVOLUNTARY CHAPTER 7
13 LIQUIDATION BANKRUPTCIES?

14 A THERE ARE.

15 Q OKAY. SO THE CREDITORS DECIDE THEY WOULD
16 RATHER SEE YOU UNDER THE CONTROL OF A BANKRUPTCY COURT
17 AND/OR TRUSTEE, AND THAT'S WHAT HAPPENED?

18 A HISTORICALLY. HISTORICALLY A BANKRUPTCY WAS
19 A CREDITORS' REMEDY. IT WAS SOMETHING YOU DID TO SOMEONE
20 TO GET THEIR ASSETS UNDER THE CONTROL OF THE BANKRUPTCY
21 COURT. AND IT STILL IS. ALTHOUGH, BY IN LARGE, MOST
22 CHAPTER 7 BANKRUPTCIES ARE VOLUNTARY. THEY'RE CONSUMER
23 CASES. BUT IT'S NOT UNCOMMON IN BUSINESS CASES FOR
24 CREDITORS TO WANT THE DEBTOR IN A BANKRUPTCY UNDER COURT
25 CONTROL, WITH THE DEBTOR'S ASSETS SUBJECT TO COURT
26 SUPERVISION.

1 Q WHY WOULD A DEBTOR VOLUNTARILY FILE A
2 CHAPTER 11 REORGANIZATION AND PUT HIMSELF UNDER THE
3 CONTROL?

4 A WELL, BECAUSE ALONG WITH THE CONTROL COMES
5 CERTAIN PROTECTIONS. THE DEBTOR'S PROPERTY CAN'T BE WILLIE
6 NILLIE GRABBED AT BY WHICHEVER CREDITOR GOT TO THE JUDGMENT
7 FIRST, TO THE DETRIMENT OF OTHER CREDITORS. AND YOU'RE
8 GIVEN TIME. YOU'RE GIVEN PROTECTION FROM YOUR CREDITORS IN
9 A CHAPTER 11 TO PROPOSE A PLAN TO SEE WHETHER YOUR
10 CREDITORS WILL VOTE ON IT OR NOT, AND HOPEFULLY TO
11 DEMONSTRATE TO THEM THAT THIS PLAN IS A BETTER ALTERNATIVE
12 FOR THEM THAN THE LIQUIDATION.

13 Q ALL RIGHT. AND IF I CAN RETURN TO THE FIRST
14 NATIONWIDE RESORTS MANAGEMENT BANKRUPTCY.

15 IS IT YOUR UNDERSTANDING THAT PRIOR TO THE
16 FILING BY FIRST NATIONWIDE RESORTS, THAT CORPORATION HAD A
17 BOARD OF DIRECTORS THAT MADE THE DECISION THAT IT SHOULD
18 FILE?

19 A IF IT WAS A VOLUNTARY CHAPTER 11 FILING,
20 YES, IT HAD TO. THE BOARD OF DIRECTORS --

21 Q GO AHEAD. I'M SORRY.

22 A IT IS THE BOARD OF DIRECTORS THAT AUTHORIZES
23 THE OFFICER OF THE CORPORATION TO EXECUTE THE PETITION.

24 Q OKAY. AND, AGAIN, I THINK YOU DID SAY IT
25 WAS VOLUNTARY?

26 A I BELIEVE IT WAS A VOLUNTARY CASE, YES.

1 Q OKAY. NOW, THOSE -- UNDER THAT -- IN THAT
2 BANKRUPTCY YOU BECAME APPOINTED AS A TRUSTEE. SO WAS THERE
3 A PROCESS WHERE SOMEONE DETERMINED IT WAS IN THE BEST
4 INTERESTS OF EVERYONE CONCERNED THAT THERE BE A TRUSTEE?

5 A MY UNDERSTANDING WAS THAT THE CREDITOR'S
6 COMMITTEE, WHICH IS SOMETHING THAT GETS APPOINTED IN A
7 CHAPTER 11 CASE, NEGOTIATED WITH THE PRINCIPALS OF THE
8 DEBTOR, ADVISED THAT THEY WANTED A TRUSTEE, AND THAT THE
9 PRINCIPALS OF THE DEBTOR CONSENTED TO THE APPOINTMENT OF A
10 TRUSTEE.

11 Q OKAY. SO FIRST NATIONWIDE WENT ALONG WITH
12 THE APPOINTMENT OF A TRUSTEE?

13 A MY UNDERSTANDING WAS THAT THERE WAS A
14 CONSENT, A STIPULATED ORDER THAT A TRUSTEE BE APPOINTED, TO
15 WHICH THE DEBTOR AGREED.

16 Q ALL RIGHT. SO NOW YOU -- YOU WERE
17 APPOINTED, THEN, BY THE UNITED STATES TRUSTEE'S OFFICE?

18 A THAT'S CORRECT.

19 Q TO ACT AS TRUSTEE?

20 A THAT'S CORRECT.

21 Q AND WHEN DID THIS HAPPEN, APPROXIMATELY?

22 A I'M NOT SURE. I THINK IT WAS SEPTEMBER --
23 JULY, SEPTEMBER '96 OR THEREABOUTS.

24 Q NOW, THERE WAS -- I FORGOT TO ASK YOU ONE
25 OTHER QUESTION ABOUT A DEFINITION OF TERMS.

26 I HAD ASKED YOU WHAT WERE THE BENEFITS TO

1 THE DEBTOR IN FILING A BANKRUPTCY, AND YOU SAID HE RECEIVED
2 CERTAIN PROTECTIONS.

3 A YES.

4 Q WHAT DOES THE PHRASE "STAY ORDER" REFER TO?

5 A IT'S A MISNOMER.

6 Q OKAY. THAT SHOWS YOU I'M NOT A BANKRUPTCY
7 EXPERT.

8 A UPON THE FILING OF A BANKRUPTCY CASE,
9 PURSUANT TO SECTION 362 OF TITLE 11 OF THE UNITED STATES
10 CODE, A STAY COMES INTO EFFECT AUTOMATICALLY. AND THAT
11 STAY, AMONG OTHER THINGS, PREVENTS CREDITORS FROM PURSUING
12 THE DEBTOR TO COLLECT PRE-BANKRUPTCY DEBTS. IT RESTRAINS
13 CREDITORS FROM OBTAINING LIENS ON THE DEBTOR'S ASSETS. IT
14 RESTRAINS CREDITORS FROM TRYING TO ENFORCE LIENS AGAINST
15 THE DEBTOR'S ASSETS. IT'S BASICALLY A STANDSTILL ORDER --
16 IT'S A NOT AN ORDER -- A STANDSTILL STATUTE AS FAR AS
17 ATTEMPTS TO COLLECT DEBT IS CONCERNED.

18 Q THE REASON IT'S A MISNOMER IS BECAUSE IT'S
19 AUTOMATIC?

20 A IT IS AUTOMATIC.

21 Q AND IT DOESN'T TAKE A MOTION FOR THE COURT
22 TO ORDER IT?

23 A NO. IT'S AUTOMATIC.

24 Q OKAY. AND WHAT DOES IT MEAN TO SAY THERE'S
25 A VIOLATION OF A STAY?

26 A IT MEANS SOMEONE HAS VIOLATED THE PROVISION

1 OF SECTION 362 OF THE CODE.

2 Q DISREGARDED A PROTECTION THAT THE STAY
3 ALLOWS THE DEBTOR?

4 A YES.

5 Q ALL RIGHT. NOW, YOUR DEALINGS WITH FIRST
6 NATIONWIDE RESORTS MANAGEMENT AS ITS TRUSTEE CAUSED YOU TO
7 COME INTO CONTACT WITH RAYMOND NOVELLI; IS THAT CORRECT?

8 A YES.

9 Q NOW, YOU HAVE HAD CONTACT WITH MR. NOVELLI
10 BEFORE 1996; ISN'T THAT TRUE?

11 A TRUE.

12 Q WHEN WAS IT THAT YOU FIRST MET MR. NOVELLI?

13 A I FIRST MET MR. NOVELLI WHEN I WAS APPOINTED
14 CHAPTER 11 TRUSTEE IN A DIFFERENT CHAPTER 11 CASE CALLED
15 "ALL SEASONS RESORTS."

16 Q ALL RIGHT. NOW, YOUR UNDERSTANDING IS --
17 WHAT WAS YOUR UNDERSTANDING OF THE CONNECTION BETWEEN ALL
18 SEASONS RESORTS AND RAYMOND NOVELLI?

19 A MR. NOVELLI WAS THE PRINCIPAL, AND I DON'T
20 KNOW WHETHER HE WAS THE PRESIDENT OR THE VICE-PRESIDENT OR
21 WHAT. BUT HE WAS THE PRINCIPAL OR A PERSON HAVING TO DO
22 WITH THE CONDUCT OF THE AFFAIRS OF ALL SEASONS RESORTS.

23 Q CAN YOU TAKE THE WORD "PRINCIPAL," AND PUT
24 IT IN KIND OF MORE BASIC LAY TERMS?

25 A HE SEEMED TO BE MANAGEMENT.

26 Q OKAY. DID THE SAME FACT APPEAR TO BE SO AS

1 REGARDS FIRST NATIONWIDE?

2 A YES.

3 Q OKAY. NOW, I ASSUME WHEN YOU ARE TRUSTEE
4 AND YOU ARE IN CHARGE OF MANAGING THE AFFAIRS OF A COMPANY
5 IN A CHAPTER 11, THAT YOU PERSONALLY DON'T GO DOWN THERE
6 AND DO HANDS-ON MANAGEMENT WORK; IS THAT CORRECT?

7 A I'M NORMALLY NOT THERE EIGHT HOURS A DAY
8 EVERY DAY. THAT IS TRUE.

9 Q IS YOUR ROLE MORE OF AN OVERSIGHT AND
10 DECISION-MAKER, MANAGER TYPE?

11 A YES, EXCEPT ALL TRUSTEES HAVE ONE
12 NONDELEGABLE DUTY.

13 Q WHAT IS THAT?

14 A SIGNING CHECKS.

15 Q SO HOW IS IT THAT YOU ACTUALLY, IN YOUR
16 PRACTICE, HANDLE THE HANDS-ON MANAGEMENT OF THE AFFAIRS OF
17 THE COMPANY THAT'S IN A CHAPTER 11?

18 A WELL, I'M ENTITLED TO EMPLOY PEOPLE AS
19 EMPLOYEES OF THE ESTATE. AND I'M ENTITLED TO EMPLOY PEOPLE
20 TO -- CALLED AGENTS TO BE INVOLVED IN THE OPERATION. THE
21 ONE THING -- AS I SAY THAT, I DO NOT DELEGATE, CANNOT
22 DELEGATE IS, I CONTROL ALL DISBURSEMENTS OF FUNDS.

23 Q OKAY. SO HOW DO YOU DECIDE WHO YOU SHOULD
24 EMPLOY WHEN YOU'RE MAKING A DECISION TO EMPLOY SOMEBODY TO
25 MANAGE THE HANDS-ON AFFAIRS OF THE COMPANY?

26 A WELL, MY NORMAL COURSE IS UNLESS THERE IS

1 SOME KIND OF A RED FLAG, IS THAT THE PEOPLE WHO HAVE BEEN
2 MANAGEMENT BECOME MY EMPLOYEES; THAT THEY'RE THE ONES WHO
3 WERE OPERATING THE BUSINESS PRIOR TO MY APPOINTMENT, AND I
4 NORMALLY RELY ON MANAGEMENT TO CONTINUE AS MY EMPLOYEES.
5 BUT OF COURSE THEY LOSE CONTROL OF THE ABILITY TO SPEND
6 MONEY. THAT IS RESERVED TO ME.

7 Q NOW, WHEN WAS THE ALL SEASONS RESORTS
8 BANKRUPTCY THAT YOU WERE TRUSTEE ON; WHAT YEAR WAS THAT?

9 A '89, '90.

10 Q OKAY. AND DO YOU RECALL THE PROCESS THAT
11 RESULTED IN YOUR BEING APPOINTED AS A TRUSTEE, THAT IS WAS
12 THERE A MOTION? WAS THERE A REASON?

13 A I DON'T KNOW. SOMEONE FROM THE U.S.
14 TRUSTEE'S OFFICE CAME UP TO ME AND ASKED ME WHETHER I WOULD
15 DO IT.

16 Q OKAY. AND YOU CONSENTED, OBVIOUSLY?

17 A YES.

18 Q WITH THE UNDERSTANDING IT WAS FOUND TO BE IN
19 THE BEST OR AGREED TO BE IN THE BEST INTEREST OF THE ESTATE?

20 A AGAIN, I DON'T KNOW THE CIRCUMSTANCES OF WHY
21 THE APPOINTMENT OF A TRUSTEE WAS ORDERED. ALL I KNOW IS
22 THAT THE APPOINTMENT OF TRUSTEE WAS ORDERED, AND I WAS
23 ASKED TO FILL THAT ROLE.

24 Q AND SO WHO DID YOU DESIGNATE TO DO YOUR
25 HANDS-ON MANAGEMENT OF A.S.R.'S AFFAIRS?

26 A WELL, I SELECTED AN AGENT WHOSE NAME WAS

1 FRED BRIDGEMAN TO BASICALLY BE ON SITE ALMOST ALL THE
2 TIME. AND I PRETTY MUCH RETAINED MOST OF THE EXISTING
3 MANAGEMENT THAT WAS THERE; ALTHOUGH, WE MADE SOME VERY
4 SUBSTANTIAL STAFF CUTS.

5 Q OKAY. NOW, MR. -- WHAT'S MR. BRIDGEMAN'S
6 ROLE?

7 A MR. BRIDGEMAN'S ROLE WAS TO OVERSEE THE
8 OPERATION ON KIND OF A DAILY BASIS FOR ME.

9 Q ALL RIGHT. WAS MR. NOVELLI EMPLOYED BY YOU
10 IN ALL SEASONS RESORT'S BANKRUPTCY TO CARRY OUT SOME
11 FUNCTION?

12 A YES. HE WAS EMPLOYED AT A -- YES.

13 Q WHAT FUNCTION WAS THAT?

14 A MR. NOVELLI -- MR. NOVELLI HAD THE SALES
15 EXPERTISE THAT WAS CERTAINLY PART OF THE ALL SEASONS
16 OPERATION. AND MR. NOVELLI SEEMED TO BE A PERSONALITY WHO
17 WAS SORT OF KNOWN TO THE MEMBERS AND APPRECIATED BY THE
18 MEMBERS. AND I THOUGHT IN THOSE CAPACITIES HE COULD BE
19 USEFUL FOR THE OPERATION.

20 Q WE'VE HEARD REFERENCE IN THIS TRIAL TO
21 RESORT SERVICES DEPARTMENT, WHICH HANDLES THE REALLY NITTY
22 GRITTY OF RUNNING A RESORT. WHAT DID THAT?

23 A MY RECOLLECTION IS THAT MRS. NOVELLI, HIS
24 WIFE, SERVED THAT FUNCTION BEFORE. AND I RETAINED HER IN
25 THAT FUNCTION -- I SHOULD SAY BOTH MR. AND MRS. NOVELLI --
26 AT REDUCED SALARIES.

1 Q OH, WHAT ABOUT SALARIES OF DEBTORS IN
2 POSSESSION, MANAGERS, WHAT HAPPENS WHEN THE COMPANY IS IN
3 BANKRUPTCY TO SALARIES?

4 A WELL, ANYONE OPERATING A BUSINESS HAS TO PAY
5 SALARIES TO EMPLOYEES. SO THE DEBTOR IN POSSESSION OR THE
6 TRUSTEE DOES THAT.

7 Q OKAY. SO MANAGERS IN BANKRUPTCY ARE
8 ENTITLED TO BE PAID SALARIES?

9 A EMPLOYEES OF THE CHAPTER 11 TRUSTEE OR
10 EMPLOYEES OF THE DEBTOR IN POSSESSION ARE ENTITLED TO A
11 SALARY. THE TRUSTEE IS NOT ENTITLED TO A SALARY.

12 Q OKAY. AND THAT MEANS EVEN IF IT'S THE
13 PERSON WHO WAS THE PRINCIPAL; I THINK YOU SAID THE MANAGER
14 IN CHARGE?

15 A ONCE THERE'S A TRUSTEE IN CHARGE OF A
16 CHAPTER 11 ESTATE, THE TRUSTEE IS THE ONLY PRINCIPAL.
17 EVERYONE ELSE WHO WORKS IN THE ESTATE IS HIS EMPLOYEE, OR
18 HIS INDEPENDENT CONTRACTOR. BUT THERE IS NO -- THE TRUSTEE
19 IS THE ONLY MANAGEMENT.

20 Q OKAY. SO NOW YOU MENTIONED MR. NOVELLI AND
21 MRS. NOVELLI WERE EMPLOYEES OF ALL SEASONS RESORTS DURING
22 THE BANKRUPTCY WHEN YOU WERE TRUSTEE; RIGHT?

23 A THEY BECAME MY EMPLOYEES IN MY CAPACITY AS
24 TRUSTEE OF THE ESTATE.

25 Q I'LL GET THERE. I CAN SEE THE DISTINCTION.

26 AND YOU SAID AT SUBSTANTIALLY REDUCED

1 SALARIES; DO YOU RECALL WHAT THE SALARIES WERE?

2 A I THINK MR. NOVELLI'S SALARY WAS SOMETHING
3 LIKE IN THE RANGE OF A HUNDRED THOUSAND, AND I THINK
4 MRS. NOVELLI WAS IN THE RANGE OF \$75,000, OR THEREABOUTS.
5 I REDUCED BY ABOUT A THIRD TO 40 PERCENT.

6 Q IT WAS REDUCED TO ABOUT 40 PERCENT?

7 A REDUCED BY ABOUT 40 PERCENT.

8 Q SO IF IT WAS 100, IT WOULD GO DOWN TO 60?

9 A THAT'S MY RECOLLECTION, YES.

10 Q SIXTY STILL SOUNDS LIKE A LOT OF MONEY. WHY
11 DID YOU CONSENT TO A \$60,000 SALARY?

12 A WELL, GIVEN WHAT THE NOVELLIS WERE DOING AND
13 GIVEN THEIR EXPERTISE AND GIVEN THEIR BACKGROUND, I THOUGHT
14 THAT THEY WERE WORTH IT TO THE ESTATE.

15 Q AND NOW LOOKING BACK AT ONCE ALL SEASONS
16 RESORT'S 1990 BANKRUPTCY WAS COMPLETE, WERE THEY WORTH IT
17 TO THE ESTATE?

18 MR. SHERMAN: OBJECTION, YOUR HONOR. THAT LACKS
19 FOUNDATION THAT THE SECOND ALL SEASONS BANKRUPTCY
20 COMPLETED.

21 THE COURT: SUSTAINED.

22 BY MR. MOSHENKO: Q DID THE SECOND ALL SEASONS
23 BANKRUPTCY RESULT IN A PLAN, AND DID THE COMPANY EMERGE
24 FROM THE BANKRUPTCY TO CARRY OUT THE PLAN?

25 A YES.

26 Q SO NOW LOOKING BACK DURING THE TIME THAT YOU

1 WERE THE MANAGER BUT YOU EMPLOYED MR. AND MRS. NOVELLI,
2 WERE THEY WORTH THE SALARIES?

3 A I THINK GIVEN THE CONTRIBUTIONS THAT THEY
4 MADE BOTH AS MY EMPLOYEES AND TO THE ULTIMATE CONFIRMATION
5 OF THE PLAN, WHICH WAS A PLAN THAT I HAD PROPOSED, I DON'T
6 REGRET THE DECISION. I THINK THEY WERE WORTH IT.

7 Q NOW, YOU MENTIONED WHAT YOU CALL "INTERESTED
8 PARTIES" AS BEING THE CREDITORS; AND THE DEBTOR, THE
9 COMPANY THAT FILED THE BANKRUPTCY, IS AN INTERESTED PARTY;
10 RIGHT?

11 A PARTIES IN INTEREST.

12 Q PARTIES IN INTEREST.

13 IN A SITUATION WHERE THE COMPANY IS A
14 MEMBERSHIP RESORT, WHAT ROLE DO THE MEMBERS PLAY? ARE THEY
15 PARTIES IN INTEREST?

16 A TECHNICALLY MEMBERS I WOULD SAY ARE PARTIES
17 IN INTEREST, IN THE SENSE THAT THEY HAVE USUALLY GOT A
18 CONTRACTUAL RELATIONSHIP WITH THE DEBTOR, YES.

19 Q OKAY. AND ARE THOSE CONTRACTS BETWEEN THE
20 DEBTOR AND THE MEMBERS CONSIDERED AN ASSET OF THE ESTATE?

21 A YES. I THINK A CONTRACT SUCH AS THAT IS AN
22 ASSET OF THE ESTATE, YES.

23 Q COULD THOSE CONTRACTS BE CONSIDERED A
24 LIABILITY OF THE ESTATE?

25 A LIKE MOST CONTRACTS, THEY'RE BOTH AN ASSET
26 AND A LIABILITY. THERE'S PERFORMANCE DUE AND PERFORMANCE

1 OWED.

2 Q IN BANKRUPTCIES THE DEBTOR IS REQUIRED TO
3 FILE A LOT OF PAPERS WITH THE COURT DISCLOSING ASSETS AND
4 LIABILITIES; RIGHT?

5 A YES.

6 Q IN YOUR EXPERIENCE -- AND I'M NOW TRYING TO
7 FOCUS YOU IN ON MEMBERSHIP CAMPGROUND RESORT-TYPE
8 BANKRUPTCY.

9 ARE THE MEMBERS' CONTRACTS -- THE CONTRACTS
10 WITH MEMBERS GENERALLY CARRIED IN THE SCHEDULES AS ASSETS
11 OR LIABILITIES, OR BOTH?

12 A THEY'RE ACTUALLY CARRIED IN A SEPARATE
13 SCHEDULE CALLED SCHEDULE OF EXECUTORY CONTRACTS.

14 Q WHAT ARE THE DISCLOSURE REQUIREMENTS FOR A
15 DEBTOR THAT FILES A BANKRUPTCY WITH REGARD TO TALKING ABOUT
16 ITS DEBTS?

17 A I'M SORRY?

18 Q WHAT DOES A DEBTOR WHO FILES A BANKRUPTCY
19 HAVE TO DISCLOSE ABOUT HIS DEBTS?

20 A WHETHER IT'S A VOLUNTARY OR AN INVOLUNTARY,
21 THE DEBTOR IS REQUIRED TO FILE WHAT ARE CALLED SCHEDULES.
22 THEY'RE OFFICIAL FORMS MANDATED BY THE CODE ABOUT WHO THE
23 DEBTOR OWES MONEY TO, WHAT ITS ASSETS ARE, ITS ENTIRE
24 FINANCIAL AFFAIRS, AND THOSE PAPERS ARE SIGNED UNDER OATH
25 AND FILED WITH THE COURT.

26 Q ALL RIGHT. AND IS -- WHAT IS THE PRACTICE

1 REGARDING HOW ONE DECIDES WHAT DEBT TO DISCLOSE IN WHAT
2 AMOUNT?

3 A WELL, IT'S THE JUDGMENT OF THE DEBTOR WHO IS
4 GOING TO SIGN THESE PAPERS UNDER OATH TO SCHEDULE DEBTS
5 THAT IT OWES.

6 Q AND IF YOU LEAVE A DEBT OUT, WHAT IS THE
7 EFFECT?

8 A WELL, IN A CHAPTER 11 CASE?

9 Q YES.

10 A WELL, IF YOU LEAVE A DEBT OUT AND THE
11 CREDITOR DOESN'T HAVE NOTICE OF THE PLAN YOU PROPOSED, THE
12 CREDITOR MAY NOT BE BOUND BY THE PLAN.

13 Q HOW ABOUT IN A CHAPTER 7 CASE, WHAT IS THE
14 EFFECT OF LEAVING A DEBT OUT?

15 A IT CAN BE THAT THE DEBT WILL NOT BE
16 DISCHARGED.

17 Q OKAY. SO IF YOU FIND YOURSELF -- THE ROLE
18 YOU FIND YOURSELF IN A CHAPTER 7 SETTING, IT'S REALLY
19 IMPORTANT TO LIST EVERY DEBT; RIGHT?

20 A I THINK IT IS VERY IMPORTANT FOR A DEBTOR TO
21 LIST EVERY DEBT, YES.

22 Q DO DEBTORS SOMETIMES LIST THINGS THAT THEY
23 DON'T EVEN -- THAT THEY JUST CONCEIVE MIGHT BE A DEBT JUST
24 TO MAKE SURE THEY COVER EVERYTHING?

25 A WELL, IF I WERE ADVISING AN INDIVIDUAL WHO
26 IS FILING A BANKRUPTCY CASE AND THAT INDIVIDUAL OWNED A

1 CORPORATION, I WOULD ADVISE THE INDIVIDUAL TO LIST THE
2 CORPORATION'S DEBTS AS WELL, AS A PRECAUTION, IN CASE SOME
3 CREDITOR MIGHT COME AND SAY, "YOU THOUGHT YOU DID BUSINESS
4 IN A CORPORATE FORM, BUT IN FACT I THINK YOU OWE ME THIS
5 MONEY INDIVIDUALLY FOR WHATEVER REASON." SO, YES, YOU'D
6 WANT TO BE EXPANSIVE.

7 Q EXPANSIVE RATHER THAN RESTRICTIVE?

8 A YES.

9 Q AND, NOW, WHAT ABOUT THE AMOUNT THAT YOU --
10 YOU HAVE TO SHOW THE AMOUNT OF THE DEBT, DON'T YOU?

11 A YOU'RE SUPPOSED TO, YES.

12 Q SO ARE YOU EXPANSIVE IN THAT REGARD, TOO? I
13 ONLY OWE YOU 100 BUCKS, BUT YOU SAY I OWE YOU \$1,000?

14 MR. SHERMAN: EXCUSE ME. OBJECTION, YOUR HONOR.
15 THIS LACKS FOUNDATION. IT'S VAGUE AND AMBIGUOUS AS TO WHO
16 THEY'RE TALKING ABOUT.

17 THE COURT: SUSTAINED.

18 BY MR. MOSHENKO: Q SO WHAT IS THE GENERAL
19 PRACTICE IN CHAPTER 7 FILINGS REGARDING LISTING AMOUNTS OF
20 DEBTS?

21 A YOU NORMALLY LIST THE AMOUNT THE CREDITOR
22 CLAIMS; AND IF YOU DISPUTE IT, YOU SAY "DISPUTED."

23 Q AND WITH RESPECT TO AMOUNTS, HOW DO YOU
24 DECIDE WHAT AMOUNT; WHAT PRACTICES DO YOU ADVISE PEOPLE
25 FOLLOW IN DECIDING WHAT AMOUNT TO LIST?

26 A LIST THE AMOUNT THE CREDITOR CLAIMS. BUT IF

1 YOU DISPUTE THAT AMOUNT, WE'LL REFLECT "DISPUTED" ON YOUR
2 SCHEDULES.

3 Q NOW, RETURNING TO THE ALL SEASONS RESORTS
4 BANKRUPTCY THAT YOU ACTED AS A TRUSTEE ON, FOR HOW LONG WAS
5 ALL SEASONS IN A REORGANIZATION BANKRUPTCY STATUS?

6 A THREE YEARS. THREE AND A HALF YEARS.

7 Q AND IN THAT BANKRUPTCY DURING THOSE THREE
8 YEARS, DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE EFFECTS
9 ON MEMBERS OF ALL SEASONS RESORTS WHILE IT WAS IN
10 BANKRUPTCY?

11 A YES.

12 Q DID THE NUMBER OF MEMBERS IN ALL SEASONS
13 GROW OR DIMINISH WHILE ALL SEASONS WAS IN BANKRUPTCY?

14 A I THINK IT WAS STABLE, MAYBE INCREASED A
15 BIT.

16 Q BEG YOUR PARDON?

17 A MAYBE INCREASED A BIT.

18 Q THERE WAS NO MEMBERS JUMPING OFF DUE TO THE
19 BANKRUPTCY?

20 A I CAN'T --

21 Q TO YOUR KNOWLEDGE?

22 A I CAN'T SPEAK TO AN INDIVIDUAL MEMBER. MY
23 RECOLLECTION IS THAT THE MEMBERSHIP BODY DID NOT SUFFER A
24 SUBSTANTIAL DECLINE DURING THE COURSE OF THAT CHAPTER 11
25 CASE.

26 Q DO YOU HAVE EXPERIENCE WITH OTHER RESORT

1 MEMBERSHIP CAMPGROUND BANKRUPTCIES SO THAT YOU CAN COMPARE
2 YOUR EXPERIENCE IN A.S.R. TO THOSE OTHER?

3 A NO. A.S.R. WAS MY FIRST CAMPGROUND
4 EXPERIENCE.

5 Q COMING ALL THE WAY FORWARD TO TODAY, HAVE
6 YOU HAD OTHER EXPERIENCES?

7 YOU MENTIONED FIRST NATIONWIDE. DID YOU
8 NOTICE A DROP-OFF OF MEMBERS IN FIRST NATIONWIDE IN 1996
9 AFTER IT FILED THE BANKRUPTCY?

10 A THEY FILED THE BANKRUPTCY BEFORE I BECAME
11 TRUSTEE. BUT DURING MY TENURE, I DID NOT -- I DON'T RECALL
12 A SUBSTANTIAL DEGRADATION OF THE MEMBERSHIP IN EITHER CASE.

13 Q AND, NOW, DO YOU HAVE ANY OTHER DEBTORS WHO
14 WERE MEMBERSHIP RESORTS THAT YOU CAN LOOK TO TO SEE IF YOUR
15 EXPERIENCE WAS SIMILAR IN THAT CASE?

16 A NO. THOSE CASES WERE MY ONLY EXPERIENCES AS
17 TRUSTEE OF THAT KIND.

18 Q AND WHAT ABOUT COLLECTION OF DUES DURING THE
19 EXISTENCE OF THE BANKRUPTCY, WHAT WAS YOUR EXPERIENCE AS TO
20 HOW THAT WENT?

21 A AGAIN, I DON'T RECALL A SUBSTANTIAL DROP IN
22 DUES OR MEMBERSHIP DURING -- YOU KNOW, DURING THE CHAPTER
23 11 OPERATION OF EITHER CASE, EXCEPT PERHAPS TOWARD THE END
24 OF THE FIRST NATIONWIDE CASE.

25 Q NEAR THE END; YOU'RE REFERRING TO WHAT YEAR?

26 A I THINK IT -- I THINK IT CONVERTED TO A

1 CHAPTER 7 SOMETIME IN '98. AND IT SEEMED TO ME THERE
2 WAS -- THINGS WERE DIFFICULT IN THAT RESPECT FOR MAYBE THE
3 LAST SIX MONTHS BEFORE THE CONVERSION.

4 Q BY THAT, YOU MEAN THERE APPARENTLY WAS A
5 DROP-OFF OF MEMBERSHIP AND COLLECTION?

6 A I SEEM TO RECALL A DROP-OFF IN DUES.

7 Q ALL RIGHT. NOW, WHEN IT COMES TO THE 1996
8 FIRST NATIONWIDE BANKRUPTCY WHEN YOU WERE APPOINTED
9 TRUSTEE, HOW MANY RESORTS' LOCATIONS, PHYSICAL LOCATIONS,
10 DID YOU COME INTO CONTROL OF?

11 A I BELIEVE I WAS IN DIRECT CONTROL OF PERHAPS
12 THREE OR FOUR.

13 Q OKAY. BY COMPARISON, HOW MANY RESORTS WERE
14 YOU IN CONTROL OF WITH ALL SEASONS RESORTS' BANKRUPTCY?

15 A THIRTEEN OR 14.

16 Q OKAY. AND NOW --

17 THE COURT: MR. MOSHENKO, LET'S TAKE OUR AFTERNOON
18 BREAK. 20 MINUTES, LADIES AND GENTLEMEN.

19 (RECESS TAKEN.)

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

22 THE COURT: PROCEED, COUNSEL.

23 MR. MOSHENKO: THANK YOU, YOUR HONOR.

24 Q RIGHT BEFORE THE BREAK, YOU HAD TOLD US THAT
25 DURING THE FIRST NATIONWIDE BANKRUPTCY -- I'M NOT SURE OF
26 THE EXACT QUOTE, BUT YOU HAD CONTROL OVER APPROXIMATELY

1 THREE OR FOUR RESORTS AS COMPARED WITH ALL SEASONS RESORTS'
2 BANKRUPTCY WHICH WAS -- I THINK YOU SAID 13 OR 14.

3 MY QUESTION NOW IS, DID YOU -- DURING THE
4 FIRST NATIONWIDE RESORTS BANKRUPTCY, DID YOU USE -- YOU
5 APPOINT MR. NOVELLI OR MRS. NOVELLI TO FUNCTION IN THE
6 MANNER IN WHICH THEY HAD FUNCTIONED IN THE ALL SEASONS
7 RESORT IN THE FIRST NATIONWIDE RESORT?

8 A NO. I EMPLOYED NEITHER ONE OF THEM IN FIRST
9 NATIONWIDE.

10 Q AND WHAT WAS THE REASON WHY YOU MADE THAT
11 DECISION?

12 A WELL, ONE, THERE WERE FEWER RESORTS. I
13 DIDN'T NEED THAT SAME QUANTUM OF EMPLOYEES. TWO, THE ALL
14 SEASONS RESORTS HAD MUCH MORE SALES EFFORT IN IT, IN TERMS
15 OF SELLING MEMBERSHIPS WHICH WAS -- AS I TESTIFIED EARLIER,
16 I BELIEVE THAT MR. NOVELLI HAD SALES EXPERIENCE AND
17 EXPERTISE. THAT WAS NOT REALLY THE CASE WITH THE FIRST
18 NATIONWIDE RESORT CASE. I SIMPLY FELT I DIDN'T NEED THEM.

19 Q WHEN IT DID COME TO THE ACTUAL HANDS-ON
20 MANAGEMENT OF THOSE FIRST NATIONWIDE RESORTS, MANAGEMENT OF
21 RESORTS -- I'LL JUST CALL IT FIRST NATIONWIDE RESORTS -- IN
22 1996, 1997, WHERE DID YOU CARRY OUT THOSE FUNCTIONS?

23 A THE FIRST NATIONWIDE PARKS WERE MANAGED IN
24 CONJUNCTION WITH OTHER RESORT PARKS THAT WERE PART OF -- IN
25 A WAY-ONE SYSTEM. AND THAT SYSTEM WAS MANAGED AT A CERTAIN
26 PREMISES, AND I CONTINUED TO MANAGE IT OUT OF THOSE

1 PREMISES, IN THE CASE, SHARING -- SHARING EXPENSE WITH THE
2 OTHER ENTITIES THAT WERE OPERATING OUT OF THE SAME SPACE.

3 Q NOW, THE SYSTEM YOU'RE REFERRING TO IS A
4 SYSTEM WHICH INCLUDED THE OTHER RESORTS THAT WE SOMETIMES
5 REFER TO AS MR. NOVELLI RELATED RESORTS?

6 A YES, THAT'S FAIR.

7 Q AND THOSE PREMISES THAT YOU'VE REFERRED TO
8 ARE THOSE SAME PREMISES WHERE THOSE OTHER PLAINTIFFS OR
9 NOVELLI RESORTS WERE BEING MANAGED AND OPERATED BY
10 MR. NOVELLI AND HIS STAFF?

11 A YES.

12 Q OKAY. AND SO WAS THERE SOME SENSE OF
13 INTERRELATIONSHIP OR COOPERATION BETWEEN YOUR MANAGEMENT
14 FUNCTION AND WHAT WAS GOING ON WITH THE OTHER RESORTS?

15 A WELL, YES. WE -- AS I SAY, WE -- THERE WAS
16 A CERTAIN RENTAL BURDEN FOR THE BUILDING THAT WAS DIVIDED
17 BETWEEN MY ADMINISTRATION AND MR. NOVELLI'S OTHER PARKS.
18 CERTAIN EMPLOYEES, COLLECTION EMPLOYEES, I UTILIZED SOME,
19 HE UTILIZED SOME. GENERALLY THERE WAS A COOPERATION IN THE
20 OPERATION OF THIS SOMEWHAT-RELATED BUSINESS.

21 Q ALL RIGHT. AND THE KIND OF COOPERATION AND
22 EXPERIENCE THAT YOU HAD WITH MR. NOVELLI AND HIS STAFF
23 WAS -- HOW WOULD YOU CHARACTERIZE?

24 A MR. NOVELLI WAS ALWAYS COOPERATIVE WITH ME.

25 Q OKAY. NOW, BUT BOTTOM LINE IS, THERE WAS NO
26 NEED TO HIRE A FULL-TIME NOVELLI -- MARLIES AND

1 RAY NOVELLI TEAM -- IS THAT CORRECT? -- BECAUSE OF THE SIZE
2 OF THE PROJECT?

3 A IN MY JUDGMENT, AND GIVEN THE CASH FLOW FOR
4 THOSE RELATIVELY FEW PARKS, THERE WAS NOT.

5 Q NOW, YOU ALSO TESTIFIED EARLIER TODAY THAT
6 WITH RESPECT TO FIRST -- WITH RESPECT TO FIRST NATIONWIDE
7 RESORTS MANAGEMENT, THERE WAS A DROP-OUT OF OR A DIFFERENCE
8 IN INCOME IN THE LAST SIX MONTHS BEFORE IT CONVERTED, I
9 THINK YOU SAID. WHAT IS THAT A REFERENCE TO?

10 A MY RECOLLECTION IS, THAT UPON MY
11 APPOINTMENT, WHICH I THINK WAS SEPTEMBER -- AUGUST,
12 SEPTEMBER OF '96, THROUGH ABOUT MID-'97, I DON'T REMEMBER
13 CASH FLOW BEING A SUBSTANTIAL ISSUE. AND I RECALL IN THE
14 LAST SIX MONTHS OF THE CASE, BEFORE IT CONVERTED TO A
15 CHAPTER 7, THE CASH WAS TIGHT. AND --

16 Q TELL US WHAT YOU'RE REFERRING TO WHEN YOU
17 SAY IT CONVERTED TO A CHAPTER 7. WHAT HAPPENED?

18 A FIRST NATIONWIDE RESORT MANAGEMENT WAS
19 UNABLE TO PROPOSE A PLAN OF REORGANIZATION. THE CREDITORS
20 COMMITTEE, WHICH IS A PARTY IN INTEREST IN ANY CHAPTER 11
21 CASE, FELT THAT THERE WAS NO REASON TO CONTINUE. AND THE
22 CASE WAS CONVERTED, I THINK ON MY MOTION, TO A CASE UNDER
23 CHAPTER 7 OF THE CODE.

24 Q WHEN YOU SAY "TO CONTINUE," YOU MEAN TO
25 CONTINUE AS A REORGANIZATION BANKRUPTCY, CHANGE IT TO A
26 LIQUIDATION BANKRUPTCY?

1 A THAT IS WHAT HAS OCCURRED, YES.

2 Q THAT WAS AT YOUR REQUEST.

3 AND WHAT CRITERIA DO YOU USE WHEN YOU MAKE
4 THE DECISION -- YOU INDIVIDUALLY IN YOUR ROLE AS A TRUSTEE
5 MAKE THE DECISION THAT A REORGANIZATION BANKRUPTCY SHOULD
6 BE ABANDONED IN FAVOR OF A LIQUIDATION BANKRUPTCY?

7 A WELL, THE PROSPECTS FOR A FEASIBLE PLAN OF
8 REORGANIZATION AND AN ONGOING SUSTAINABLE OPERATION AREN'T
9 THERE.

10 Q SO, BY REVERSE LOGIC, AS LONG AS THERE ARE
11 PROSPECTS FOR A CONTINUATION OF A COMPANY, DO YOU MAKE
12 THAT -- DO YOU TRY TO CONVERT TO CHAPTER 7?

13 A NO. IF THE COMPANY HAS PROSPECTS TO
14 REORGANIZE WITH A SENSIBLE PLAN THAT CREDITORS WILL ACCEPT
15 AND CAN BE RESTRUCTURED IN SUCH A WAY AS TO CARRY ON ITS
16 BUSINESS, THEN I WOULD PREFER NOT TO CONVERT.

17 Q NOW, WHEN WAS THIS CONVERSION TO A CHAPTER 7
18 AS REGARDS THE FIRST NATIONWIDE BANKRUPTCY?

19 A SPRING OF '98 IS ABOUT THE BEST I CAN DO.

20 Q SO YOUR REFERENCE TO A SIX-MONTH CASH FLOW
21 SITUATION IS SIX MONTHS BACK FROM THE SPRING OF '98?

22 A THEREABOUTS, YES.

23 Q OKAY. WHAT -- ONCE OBVIOUSLY -- MAYBE IT'S
24 NOT OBVIOUS.

25 WAS THE CONVERSION TO CHAPTER 7 FINALLY

26 ADOPTED OR APPROVED?

1 A THE COURT GRANTED MY MOTION AND ENTERED AN
2 ORDER CONVERTING THE CASE TO CHAPTER 7.

3 Q OKAY. WHAT HAPPENED TO THE RESORTS THAT
4 WERE A PART OF THE FIRST NATIONWIDE RESORTS AFTER IT WAS
5 CONVERTED?

6 A THE PHYSICAL RESORTS THEMSELVES WERE
7 ABANDONED.

8 Q AND WHAT DOES THAT MEAN?

9 A IN A BANKRUPTCY CASE, IF AN ASSET IS NOT A
10 VALUE TO THE BANKRUPTCY ESTATE BECAUSE IT'S ENCUMBERED
11 BEYOND ITS WORTH, OR USUALLY BECAUSE IT'S ENCUMBERED BEYOND
12 ITS WORTH, OR IT TURNS OUT TO BE ENCUMBERED BEYOND ITS
13 WORTH, ONE CAN APPLY TO THE COURT FOR AN ORDER AUTHORIZING
14 THE ESTATE TO ABANDON THE PROPERTY. AND THAT ABANDONMENT
15 IS ALWAYS BACK TO THE DEBTOR ENTITY.

16 Q OKAY. AND THIS BRINGS US BACK TO THE POINT
17 THAT ONCE THERE IS A BANKRUPTCY FILED, THERE BECOMES KIND
18 OF A SEPARATE EXISTENCE OF THE DEBTOR AS IT PREEXISTED THE
19 FILING AND THE DEBTOR AS IT'S UNDER THE ROLE OF THE
20 BANKRUPTCY COURT; IS THAT A FAIR STATEMENT?

21 A YES, THAT IS CORRECT. UPON THE FILING OF A
22 BANKRUPTCY CASE, THERE COMES INTO AN EXISTENCE -- COMES
23 INTO EXISTENCE SOMETHING CALLED A BANKRUPTCY ESTATE. AND
24 THAT IS A DIFFERENT THING, LEGALLY, THAN THE DEBTOR WHICH
25 EXISTED BEFORE.

26 Q BUT THEY BOTH GO BY THE SAME NAME?

1 A NO.

2 Q NO?

3 A NO. THE DEBTOR IS A DEBTOR. IN ITS
4 CAPACITY AS LEADER OF THE -- LEADER OF THE BANKRUPTCY
5 ESTATE, IT'S CALLED A DEBTOR IN POSSESSION.

6 Q THE DEBTOR IN POSSESSION IN FIRST NATIONWIDE
7 BANKRUPTCY WAS FIRST NATIONWIDE DEBTOR IN POSSESSION?

8 A UNTIL I WAS APPOINTED. AND ONCE -- ONCE A
9 TRUSTEE -- THE ESTATE, WHICH IS CREATED UPON THE FILING OF
10 A BANKRUPTCY CASE, CAN HAVE ONE OF TWO REPRESENTATIVES. IT
11 CAN HAVE WHAT'S CALLED A DEBTOR IN POSSESSION, WHICH IS
12 SORT OF THE FORMER MANAGEMENT, BUT THEY'RE IN THIS NEW
13 ROLE, OR IT CAN HAVE A TRUSTEE, ONE OR THE OTHER. THE TWO
14 ARE MUTUALLY EXCLUSIVE.

15 WHEN FIRST NATIONWIDE FILED ITS CHAPTER 11
16 CASE -- AND I CAN'T RECALL WHEN IT DID -- AN ESTATE WAS
17 CREATED. AND, FURTHER, NATIONWIDE CONTINUED ON AS DEBTOR
18 IN POSSESSION IN MANAGEMENT OF ITS OWN ESTATE UNTIL MY
19 APPOINTMENT --

20 Q LET ME STOP YOU RIGHT THERE FOR A SECOND.

21 THAT DEBTOR IN POSSESSION WAS A DIFFERENT
22 LEGAL ENTITY THAN THE DEBTOR BEFORE THE BANKRUPTCY?

23 A YES.

24 Q OKAY. NOW, GO ON. AFTER THAT, THOSE TWO
25 ARE THERE, NOW WHAT HAPPENS WHEN YOU'RE APPOINTED?

26 A WHEN I'M APPOINTED, I BECOME THE RESPONSIBLE

1 OFFICER OF THAT ESTATE THAT WAS CREATED WHEN THE BANKRUPTCY
2 WAS FILED.

3 Q WAS THIS CALLED THE FIRST NATIONWIDE RESORTS
4 MANAGEMENT ESTATE?

5 A THAT WOULD BE A PROPER WAY TO DESCRIBE IT,
6 YES.

7 Q OKAY. SO NOW BACK TO THIS ABANDONMENT
8 POINT.

9 THIS DOESN'T MEAN THAT, YOU KNOW, YOU
10 ABANDON THE RESORT LIKE IF I LEFT MY CAR IN THE DESERT AND
11 WALKED AWAY FROM IT, IS IT?

12 A NO. IT MEANS THAT THE BANKRUPTCY ESTATE,
13 THAT THING THAT GOT CREATED WHEN THE BANKRUPTCY CASE WAS
14 FILED, IS BASICALLY DISCLAIMING AN INTEREST IN THIS ASSET,
15 AND IT REVESTS IN THE DEBTOR ENTITY THAT OWNED IT BEFORE.

16 Q SO FIRST NATIONWIDE RESORTS MANAGEMENT, THE
17 DEBTOR, WAS AGAIN THE -- MAYBE "OWNER" WAS NOT THE RIGHT
18 WORD. THEY ALWAYS WERE THE OWNER OF THE ESTATE, WEREN'T
19 THEY?

20 A I DON'T -- I DON'T THINK SO. I DON'T THINK
21 ANYONE OWNS AN ESTATE, REALLY.

22 Q OKAY. BUT ANYWAY, FIRST NATIONWIDE RESORTS
23 MANAGEMENT, THE DEBTOR, WAS AGAIN -- WAS THE OWNER OF THOSE
24 RESORTS?

25 A PRIOR TO THE BANKRUPTCY, IT OWNED THE
26 RESORTS. AFTER THE BANKRUPTCY, ITS ESTATE OWNS THE RESORT.

1 AFTER THE ABANDONMENT BY THE ESTATE, OWNERSHIP OF THOSE
2 RESORTS REVESTED WHERE IT WAS BEFORE THE BANKRUPTCY.

3 Q OKAY. AND THAT DEBTOR, THEN, IS ENTITLED TO
4 A -- ALLOWED TO CONTINUE TO OPERATE THOSE RESORTS AS THOUGH
5 THERE WERE NO BANKRUPTCY, NO BANKRUPTCY COURT, NO TRUSTEES?

6 A I THINK -- YES, IT'S A FAIR STATEMENT THAT
7 ONCE THE BANKRUPTCY ESTATE HAS ABANDONED THE ASSET, AND IT
8 REVESTS IN THE DEBTOR, THEN THE DEBTOR IS SORT OF BACK IN
9 CONTROL OF THE THING.

10 Q OKAY. AND THEN THE LAST QUESTION ON THIS
11 POINT IS, WHAT HAPPENS -- WHAT HAPPENED TO THE MEMBERS AS A
12 RESULT OF THE ABANDONMENT OF THE RESORT, THE MEMBERSHIP
13 CONTRACTS, AND THE MEMBER -- INTERESTS IN THE MEMBERS?

14 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

15 THE COURT: OVERRULED.

16 YOU MAY ANSWER IT.

17 BY MR. MOSHENKO: Q DID FIRST NATIONWIDE RESORTS
18 MANAGEMENT CLAIM A RIGHT TO THE MEMBERS AND THE MEMBER
19 CONTRACTS AS A RESULT OF THE CHAPTER 7 LIQUIDATION?

20 A I DON'T BELIEVE YOU CAN BUY AND SELL
21 PEOPLE. I DON'T THINK YOU CAN OWN MEMBERS.

22 AS FAR AS THE RESORTS GO, WE ABANDONED THE
23 RESORTS. I BELIEVE WE ALSO ABANDONED ANY INTEREST WE HAD
24 IN THE MEMBERSHIP CONTRACTS AT THAT TIME.

25 Q AND IT WENT BACK -- WHATEVER IT WAS WENT
26 BACK TO THE DEBTOR?

1 A IF MY MEMORY SERVES ME, AND WE ABANDONED THE
2 PARKS AND THE MEMBERSHIP CONTRACTS, THE EFFECT OF THAT
3 ABANDONMENT WOULD BE TO REVEST THOSE ASSETS INTO THE ENTITY
4 THAT OWNED THEM BEFORE THE BANKRUPTCY OCCURRED.

5 Q NOW, SHIFTING BACK TO ALL SEASONS RESORTS'
6 BANKRUPTCY, WHAT HAPPENED IN THAT BANKRUPTCY TO THE
7 RESORTS, THE PARKS?

8 A IN THAT BANKRUPTCY A PLAN OF REORGANIZATION
9 WAS CONFIRMED, AND THE PARKS REVESTED AS PART OF THE PLAN,
10 NOT THROUGH ABANDONMENT, BUT THE PARKS REVESTED IN THE
11 REORGANIZED COMPANY.

12 Q OKAY. AND WHAT HAPPENED -- THERE WAS A PLAN
13 YOU SAID -- I THINK YOU SAID YOU PROPOSED THE PLAN?

14 A IN THE ALL SEASONS CASE, THE ALL SEASONS
15 CASE IN WHICH I WAS CHAPTER 11 TRUSTEE, YES, IT WAS MY PLAN.

16 Q OKAY. AND WHAT PROVISIONS WERE MADE IN THE
17 PLAN FOR THE CREDITORS?

18 A WELL, THERE WERE SEVERAL. WITH RESPECT TO
19 THE UNSECURED CREDITOR BODY, OTHER THAN THE BONDHOLDERS --

20 Q CAN I JUST STOP YOU AND ASK YOU TO EXPLAIN
21 THE DIFFERENCE BETWEEN A SECURED CREDITOR AND UNSECURED
22 CREDITOR BEFORE YOU GIVE US THAT ANSWER?

23 A AN UNSECURED CREDITOR DOES NOT HAVE
24 COLLATERAL FOR THE DEBT THAT IS OWED TO HIM. A SECURED
25 CREDITOR HAS COLLATERAL. THE DEBT MAY BE DISCHARGED, BUT
26 THE CREDITOR STILL HAS THE RIGHT TO LOOK TO HIS

1 COLLATERAL.

2 COMMON FORM OF COLLATERAL IS A MORTGAGE
3 AGAINST A HOME. THE CREDITOR IS SECURED. BECAUSE WE DON'T
4 MAKE YOUR HOUSE PAYMENT, THE CREDITOR CAN FORECLOSE ON YOUR
5 HOME. THE CREDITOR HAS COLLATERAL. CAR LOAN, THE SAME
6 THING.

7 BUT AN UNSECURED CREDITOR DOES NOT HAVE A
8 SPECIFIC PIECE OF YOUR PROPERTY TO TAKE, IF YOU DON'T PAY
9 THEM.

10 Q OKAY. SO AN UNSECURED CREDITOR'S DEBT CAN
11 BE DISCHARGED. WHAT'S THAT MEAN?

12 A BOTH KINDS OF DEBTS CAN BE DISCHARGED AS A
13 PERSONAL LIABILITY OF THE DEBTOR TO PAY THEM. BUT WHEN YOU
14 DISCHARGE AN UNSECURED DEBT, A CREDITOR REALLY HAS NOWHERE
15 TO GO. WHEN YOU DISCHARGE A SECURED DEBT, HE CAN'T GET
16 MONEY FROM YOU, BUT HE CAN REPOSSESS THE CAR OR FORECLOSE
17 ON THE HOUSE BECAUSE HE HAS THAT COLLATERAL.

18 Q OKAY. AND SO WHEN IT COMES TO ALLOCATION OF
19 ASSETS -- BECAUSE IN A BANKRUPTCY THE ASSETS GET USED TO
20 DEAL WITH -- SATISFY THE CREDITORS, DON'T THEY?

21 A YES.

22 Q OKAY. SO WHEN IT COMES TO ALLOCATING THOSE
23 ASSETS TO SATISFY THE CREDITORS, ARE THERE -- IS THERE
24 SOMETHING CALLED A PRIORITY OF WHO GETS SATISFIED FIRST?

25 A YES.

26 Q WHEN IT COMES TO CREDITORS, WHO GETS

1 SATISFIED FIRST?

2 A THE PRIORITY RELATES TO UNSECURED
3 CREDITORS. PRIORITY -- AN EXAMPLE OF PRIORITY, UNSECURED
4 CREDITORS, TAXES, ALIMONY, CHILD SUPPORT, CONSUMER
5 DEPOSITS, WAGES. AFTER YOU GET THROUGH THAT, IT'S
6 UNSECURED, JUST GENERAL UNSECURED DEBT.

7 BUT PRIORITY IS NOT A TERM THAT'S USED WITH
8 RESPECT TO SECURED DEBT. THAT'S A DIFFERENT KETTLE OF
9 FISH.

10 THE COURT: COUNSEL, APPROACH BRIEFLY.

11 (DISCUSSION OFF THE RECORD.)

12 MR. MOSHENKO: I DISCUSSED IT WITH HIM, YOUR HONOR.
13 AND I'LL EXPLAIN TO YOU LATER.

14 THE COURT: ALL RIGHT. PROCEED.

15 BY MR. MOSHENKO: Q WE WERE TALKING ABOUT
16 CREDITORS IN THE ALL SEASONS RESORTS BANKRUPTCY.

17 A YES.

18 Q WHAT HAPPENED UNDER THE PLAN THAT WAS
19 APPROVED BY THE COURT WITH RESPECT TO THE DEBTS OF THE
20 SECURED CREDITORS?

21 A THE TWO MAJOR SECURED CREDITORS WHO HAD
22 LIENS ON THE PARKS AT SOME POINT SOLD THEIR POSITIONS TO AN
23 ENTITY THAT WAS CONTROLLED BY MR. NOVELLI. SO HE BECAME
24 THE OWNER, OR HIS ENTITY BECAME THE OWNER OF THAT SECURED
25 DEBT.

26 IN THE PLAN, MR. NOVELLI SUBORDINATED THAT

1 DEBT THAT HE HAD PURCHASED SO THAT THE SECURED CREDITORS AS
2 A BODY, THROUGH A REPRESENTATIVE FOR THEIR BENEFIT, COULD
3 TAKE A PROMISSORY NOTE I THINK FOR ABOUT A MILLION AND A
4 HALF DOLLARS, SECURED BY THE REAL ESTATE THAT USED TO STAND
5 AS COLLATERAL FOR THE DEBTS OF THOSE TWO SECURED CREDITORS
6 THAT MR. NOVELLI OBTAINED.

7 Q I THINK YOU JUST SAID MR. NOVELLI BOUGHT OUT
8 THE SECURED CREDITOR?

9 A HE BOUGHT OUT, AS I RECALL, TWO OF THE --
10 TWO OF THE THREE MAJOR SECURED CREDITORS IN THAT CASE.

11 Q OKAY. AND WAS THIS BEFORE OR AFTER OR AS A
12 RESULT OF THE APPROVAL OF THE PLAN?

13 A NO. THIS IS BEFORE THE PLAN.

14 Q AND, NOW, BACK TO THIS PRIORITY PAYMENT.
15 WHEN IT COMES TO THE SECURED CREDITOR, THAT
16 SECURED CREDITOR HAS A PRIOR ACCESS TO THAT SECURITY, DOES
17 HE NOT, OVER THE UNSECURED CREDITOR?

18 A YES, THE SECURED CREDITOR -- "PRIORITY" IS
19 NOT THE TERM OF ART. BUT THE SECURED CREDITOR HAS THE
20 RIGHT TO LOOK TO THAT COLLATERAL AND NOT SHARE IT WITH
21 OTHER CREDITORS, BE THEY PRIORITY OR UNSECURED.

22 Q OKAY. SO NOW I HEARD YOU SAY MR. NOVELLI
23 SUBORDINATED; AFTER HE BOUGHT THE TWO MAJOR CREDITORS'
24 POSITIONS, HE GOT THE RIGHTS TO THE SECURITY; RIGHT?

25 A YES.

26 Q AND HE COULD HAVE USED, IF HE CHOSE, THAT

1 SECURITY, TAKEN IT AWAY, AND LEFT THE OTHER CREDITORS
2 WITHOUT THE ABILITY TO GO TO IT, ASSUMING THAT HIS DEBTS
3 WERE MORE THAN THE VALUE OF THE SECURITY?

4 A HE COULD HAVE TRIED. IN OTHER WORDS, ONCE A
5 BANKRUPTCY IS FILED -- YOU ASKED ME ABOUT THE AUTOMATIC
6 STAY. AND THE STAY WOULD HAVE PREVENTED HIM FROM TAKING
7 THAT SECURITY AWAY, ABSENT GOING TO COURT AND DEMONSTRATING
8 HIS ENTITLEMENT TO IT. AND THERE MIGHT OR MIGHT NOT HAVE
9 BEEN RESISTANCE.

10 BUT SIMPLY BEING A SECURED CREDITOR IN A
11 BANKRUPTCY, YOU DON'T HAVE THE RIGHT TO TAKE YOUR
12 COLLATERAL WITHOUT ASKING THE COURT FIRST.

13 Q ALL RIGHT. THERE'S A PROCESS CALLED A
14 RELIEF FROM STAY.

15 A YES.

16 Q IF THE COURT ALLOWS IT, THEN THE SECURED
17 CREDITOR IS ALLOWED TO FORECLOSE ON OR TAKE THE SECURITY,
18 IN SPITE OF THE BANKRUPTCY?

19 A YES.

20 Q IS THAT GENERALLY HOW IT WORKS?

21 A THAT IS GENERALLY A TRUE STATEMENT.

22 Q SO MR. NOVELLI, ONCE HE BOUGHT THE
23 POSITIONS, COULD HAVE APPLIED FOR RELIEF OF STAY AND TRIED
24 TO REMOVE THOSE ASSETS FROM THE ESTATE; CORRECT?

25 A YES.

26 Q WHAT DID HE DO?

1 A HE SUBORDINATED THE DEBT TO GIVE A POSITION
2 TO THE UNSECURED CREDITORS ON THOSE ASSETS SENIOR TO THE
3 POSITIONED.

4 Q HE WAS IN FRONT OF THEM, THE UNSECURED
5 CREDITORS, AND HE LET THEM GET IN FRONT OF HIM; IS THAT
6 WHAT IT MEANS?

7 A YES.

8 Q WELL, WAS HE PRESSURED TO DO THAT BY YOU?

9 A A COMPANY DOES NOT GET OUT OF A CHAPTER 11
10 CASE UNLESS THE CREDITORS AFFECTED VOTE FOR IT, CONSENT TO
11 IT. OBVIOUSLY, IN ORDER TO GET OUT OF THIS CHAPTER 11 CASE
12 AND TO REORGANIZE, SOMETHING HAD TO BE DONE FOR THE
13 UNSECURED CREDITORS THAT WAS ACCEPTABLE TO THEM. THAT'S
14 WHAT WAS DONE.

15 Q LET'S TALK FOR A MOMENT ABOUT ALTERNATIVE TO
16 THE REORGANIZATION SUCCEEDING, WHAT WAS THE ALTERNATIVE?

17 A IN THIS PARTICULAR CASE?

18 Q YES.

19 A NORMALLY IF A CHAPTER 11 CASE DOES NOT
20 SUCCEED, WHAT FOLLOWS IS A CHAPTER 7 LIQUIDATION.

21 Q AND THE RESORTS WOULD BE SOLD, AND THE
22 CREDITORS WOULD TAKE WHAT THEY COULD GET; RIGHT?

23 A IF THE SECURED DEBT WAS SUCCESSFUL IN
24 FORECLOSING ON ITS ASSETS, THEN THE UNSECURED CREDITORS
25 WOULD NOT SHARE IN THOSE ASSETS.

26 Q THEY HAVE NOTHING.

1 WHAT ABOUT THE MEMBERS IN THE ALL SEASONS
2 RESORTS BANKRUPTCY, DO YOU HAVE A RECALL OF HOW MUCH -- HOW
3 MUCH MONEY THERE WAS IN MEMBER INVESTMENTS AT STAKE IF THE
4 RESORTS HAD CLOSED AND GONE AWAY?

5 A I DON'T KNOW WHAT YOU MEAN BY "MEMBER
6 INVESTMENT."

7 Q WELL, MEMBERS BOUGHT MEMBERSHIPS IN ALL
8 SEASONS RESORTS.

9 A YES.

10 Q DO YOU HAVE SOME RECALL ABOUT HOW MUCH
11 MEMBER INVESTMENTS THERE WERE BECAUSE MEMBERS BOUGHT
12 MEMBERSHIPS?

13 A I REALLY DON'T. I'M SORRY.

14 Q HAD THE RESORTS BEEN LIQUIDATED AND SECURED
15 CREDITORS TAKEN THEM, IS IT CORRECT THAT IF THERE'S MORE
16 MONEY LEFT OVER AFTER THE FORECLOSURE ON THE RESORTS, THAT
17 CAN BE DISBURSED TO THE UNSECURED CREDITORS? RIGHT?

18 A IF THE PROPERTY, WHICH IS COLLATERAL FOR THE
19 DEBT, EXCEEDS THE VALUE OF THE DEBT SO THAT WITH A
20 FORECLOSURE THERE'S SOMETHING LEFT OVER AFTER THE SECURED
21 DEBT IS SATISFIED, YES, THAT WOULD GO TO UNSECURED.

22 Q THAT'S THE ONE WAY AN UNSECURED CREDITOR
23 NORMALLY CAN GET MONEY OUT OF A CHAPTER 7?

24 A NO. THERE ARE CASES WHERE THE ASSETS ARE
25 NOT ENCUMBERED. THEY'RE FREE AND CLEAR.

26 Q THAT'S WHERE THE ASSET VALUE EXCEEDS THE

1 DEBT AGAINST IT?

2 A NO. SOMETIMES THERE ARE ASSETS THAT DON'T
3 HAVE ANY DEBT AGAINST THEM.

4 Q SO YOU HAVE TO HAVE MORE EQUITY IN THE
5 PROPERTY THAN DEBT AGAINST IT FOR THERE TO BE LEFTOVER
6 MONEY TO PAY THE UNSECURED CREDITOR?

7 A THAT'S TRUE.

8 Q OKAY. SO ABSENT THAT SITUATION, THE
9 UNSECURED CREDITORS DON'T GET ANYTHING?

10 A IF THERE'S NO EQUITY IN A PARTICULAR PIECE
11 OF PROPERTY, THE UNSECURED CREDITORS DO NOT SHARE IN THAT
12 VALUE.

13 Q OKAY. AND ABSENT A SUCCESSFUL
14 REORGANIZATION, THE ALL SEASONS RESORTS MEMBERS WOULD HAVE
15 LOST THEIR RESORTS; IS THAT A TRUE STATEMENT?

16 A IF MR. NOVELLI, WHO HAD PURCHASED THE DEBT
17 AGAINST THE RESORTS, HAD FORECLOSED ON THE RESORTS, IT
18 WOULD BE UP TO HIM WHAT TO DO WITH THEM. HE MIGHT -- I
19 CAN'T SPECULATE WHAT HE WOULD HAVE DONE. BUT A CONSEQUENCE
20 MIGHT HAVE BEEN THAT THEY WOULD NOT BE AVAILABLE TO
21 MEMBERS. I DON'T KNOW. IT DIDN'T HAPPEN.

22 Q NOW, THE BANKRUPTCY -- ALL SEASONS RESORTS'
23 BANKRUPTCY RESULTED IN AN APPROVED AND ACCEPTED PLAN?

24 A YES.

25 Q WHAT IS YOUR VIEW ABOUT WHETHER THAT
26 BANKRUPTCY WAS A BENEFIT TO THE MEMBERS OR NOT?

1 MR. SHERMAN: OBJECTION. CALLS FOR EXPERT OPINION.

2 THE COURT: I'M GOING TO OVERRULE.

3 IF YOU KNOW.

4 THE WITNESS: THE PARK SYSTEM BY VIRTUE OF THE PLAN
5 WAS KEPT INTACT, AND THE MEMBERS WERE NOT DISCOMFORTED. I
6 PRESUME THAT IS BENEFICIAL.

7 BY MR. MOSHENKO: Q WAS THE ALL SEASONS BANKRUPTCY
8 GOOD FOR THE CREDITORS?

9 A THE CREDITORS ACCEPTED OVERWHELMINGLY THE
10 PLAN THAT WAS PROPOSED. I CAN ONLY ASSUME THAT THEY
11 THOUGHT IT WAS IN THEIR BEST INTEREST, GIVEN THE
12 ALTERNATIVE.

13 Q LET ME TURN TO THE SUBJECT OF THE
14 CONFIDENTIALITY OF MEMBERSHIP INFORMATION.

15 MR. JOSEPH, HAVE YOU HAD SOME EXPERIENCE
16 WITH THAT AS IT RELATES TO ALL SEASONS RESORTS' BANKRUPTCY
17 AND MEMBERS?

18 A YES.

19 MR. MOSHENKO: COULD I ASK THAT EXHIBIT 1719 BE PUT
20 UP ON THE BOARD.

21 MR. SHERMAN: EXCUSE ME, YOUR HONOR. COULD WE
22 FIRST SEE IF IT OUGHT TO BE PUT UP ON THE BOARD?

23 THE COURT: SHOW IT TO COUNSEL.

24 MR. MOSHENKO: SURE.

25 MR. SHERMAN: CAN WE HAVE MR. MOSHENKO LAY A
26 FOUNDATION FIRST WITH THIS WITNESS?

1 THE COURT: I ASSUME HE IS GOING TO.

2 MR. SHERMAN: BEFORE IT'S PUT UP ON THE BOARD?

3 THE COURT: ALL RIGHT.

4 MR. MOSHENKO: ALL RIGHT.

5 MR. SHERMAN: I HAVE NO OBJECTION ONCE HE HAS LAID
6 THE FOUNDATION WITH THIS WITNESS.

7 BY MR. MOSHENKO: Q MR. JOSEPH, DID IT COME TO
8 YOUR ATTENTION IN JANUARY OF 1992 THAT THERE WAS -- I'LL
9 CALL IT -- AN ISSUE RELATING TO THE USE OF ALL SEASONS
10 RESORTS' MEMBERSHIP LISTS BY PERSONS FROM CAMP COAST TO
11 COAST AND OTHERS?

12 A YES.

13 Q I'M GOING TO SHOW YOU EXHIBIT 1719 001.
14 HAVE YOU SEEN THAT BEFORE?

15 A YES.

16 Q AND WHAT IS IT?

17 A IT WAS A LETTER DIRECTED BY THE ATTORNEY WHO
18 REPRESENTED ME IN THE ALL SEASONS CASE TO THE PRESIDENT OF
19 COAST TO COAST.

20 Q PATRICK BUTLER AT THAT TIME WAS KNOWN TO YOU
21 TO BE THE PRESIDENT?

22 A IT WAS KNOWN TO MY ATTORNEY, WHO ADDRESSED
23 THIS LETTER.

24 MR. SHERMAN: EXCUSE ME, YOUR HONOR. WE HAVE NO
25 OBJECTION.

26 THE COURT: ALL RIGHT. THANK YOU.

1 MR. MOSHENKO: ALL RIGHT. WELL, THEN, LET'S PLEASE
2 PUT IT UP ON THE BOARD.

3 I'LL OFFER IT INTO EVIDENCE, YOUR HONOR.

4 MR. SHERMAN: THAT'S FINE. NO OBJECTION.

5 THE COURT: IT WILL BE RECEIVED.

6 (WHEREUPON, EXHIBIT NO. 1719 001, LETTER TO
7 PATRICK BUTLER, WAS RECEIVED IN EVIDENCE.)

8 MR. MOSHENKO: COULD WE FIRST JUST LET THE JURY
9 FOCUS ON THE DATE, PLEASE.

10 Q ALL RIGHT. SO WHAT IS IT, MR. JOSEPH, THAT
11 HAPPENED IN OR AROUND JANUARY 30, 1992, THAT CAUSED YOU --
12 DID YOU DIRECT YOUR ATTORNEY TO WRITE THIS LETTER?

13 A YES.

14 Q WHAT IS IT THAT HAPPENED THAT CAUSED YOU TO
15 DIRECT THIS LETTER BEING WRITTEN AND SENT TO CAMP COAST TO
16 COAST?

17 A I OBTAINED A REPORT OR INFORMATION -- I
18 DON'T KNOW FROM WHOM, BUT I PRESUME IT WAS ONE OF MY
19 EMPLOYEES AT ALL SEASONS RESORTS -- THAT OUR MEMBERS WERE
20 BEING CONTACTED, AND THAT THERE WAS AN ATTEMPT UNDERWAY TO
21 SHIFT THEM FROM OUR RESORTS TO ANOTHER CHAIN OF RESORTS.

22 Q AND WHAT WAS IT THAT YOU UNDERSTOOD WAS THE
23 MECHANISM OR THE METHOD USED TO SHIFT THEM?

24 A I THINK THE INFORMATION THAT CAME TO ME WAS
25 THAT THE NAMES OF OUR MEMBERS HAD BEEN OBTAINED BY THESE
26 PEOPLE WHO WERE TRYING TO TAKE THEM FROM COAST TO COAST.

1 Q DID YOU COME TO THE UNDERSTANDING THAT COAST
2 TO COAST HAD LISTS OR ACCESS TO LISTS OF ALL SEASONS
3 RESORTS' MEMBERS?

4 A YES.

5 Q ALL RIGHT. NOW, THIS LETTER SAYS, "DEAR
6 MR. BUTLER, THIS FIRM REPRESENTS JAMES JOSEPH, THE CHAPTER
7 11 TRUSTEE OF ALL SEASONS RESORTS, INC. IT HAS COME TO THE
8 ATTENTION OF MR. JOSEPH THAT REPRESENTATIVES OF A COMPETING
9 CAMPCLUB HAVE OBTAINED A LIST OF ALL SEASONS RESORTS'
10 MEMBERS."

11 NOW, THE REFERENCE TO A COMPETING CAMPCLUB
12 IS WHAT?

13 A I DON'T RECALL EXACTLY WHO IT WAS.

14 Q NOW, YOU TOLD MR. DIAMOND, YOUR ATTORNEY,
15 TO WRITE TO COAST THIS INFORMATION?

16 A SORRY?

17 Q YOU TOLD MR. DIAMOND TO WRITE THIS TO CAMP
18 COAST TO COAST?

19 A YES.

20 Q OKAY. AND WITH RESPECT TO "OBTAINED A LIST
21 OF ALL SEASONS RESORTS," WHAT INFORMATION DID YOU HAVE AS
22 TO HOW THAT CAMPCLUB OBTAINED THAT LIST OF ALL SEASONS
23 RESORTS' MEMBERS?

24 A BECAUSE -- I THOUGHT I ALREADY TESTIFIED --
25 THAT WAS SOMETHING -- I DON'T KNOW HOW WE CAME BY IT. IT
26 WAS SIMPLY SOMETHING THAT WAS TOLD TO ME BY ONE OF THE

1 STAFF, THAT --

2 Q I'M NOT ASKING YOU HOW YOU GOT THE
3 INFORMATION.

4 I WANT YOU TO TELL US, IF YOU WILL, WHAT YOU
5 UNDERSTOOD WAS THE WAY THAT THE CAMPCLUB OBTAINED THE LIST.

6 A WELL, THEY OBTAINED IT WE WERE TOLD FROM
7 CAMP COAST TO COAST.

8 Q ALL RIGHT. SO THE PURPOSE OF YOUR LETTER
9 WAS WHAT WITH RESPECT TO CAMP COAST TO COAST?

10 A THE PURPOSE OF THE LETTER WAS TO TELL THEM
11 TO STOP USING OUR MEMBERSHIP LIST, WHICH WE THOUGHT WAS OUR
12 PROPERTY OF PROPRIETY, FOR A PURPOSE OTHER THAN THE PURPOSE
13 FOR WHICH THEY HAD IT.

14 Q ALL RIGHT. THIS LETTER THEN GOES ON.

15 "THIS LIST CONSTITUTES CONFIDENTIAL AND
16 PROPRIETARY BUSINESS INFORMATION, AND AS PROPERTY OF ALL
17 SEASONS RESORTS, INC., IS THE PROPERTY OF THE BANKRUPTCY
18 ESTATE, WHICH IS UNDER THE JURISDICTION OF THE UNITED
19 STATES BANKRUPTCY COURT."

20 NOW, IS THAT WHAT YOU MEAN WHEN YOU REFER TO
21 "PROPRIETARY BUSINESS INFORMATION"?

22 A WELL, YEAH. THE MEMBERSHIP LIST, WE
23 CONSIDERED THAT --

24 Q WHAT DO YOU MEAN BY "PROPRIETARY BUSINESS
25 INFORMATION"?

26 A TRADE SECRET, SOMETHING OF THAT KIND.

1 Q OKAY. NOW, I HEARD YOU SAY A MOMENT AGO
2 THAT YOUR UNDERSTANDING WAS IT WAS BEING USED FOR PURPOSES
3 OTHER THAN THE LIMITED USE THAT THE LIST WAS PROVIDED FOR,
4 OR WORDS TO THAT EFFECT. WILL YOU EXPLAIN TO THE JURY WHAT
5 YOU MEAN BY THAT?

6 A MY UNDERSTANDING WAS, FROM MY STAFF AND MY
7 EMPLOYEES, THAT IT WAS COMMON FOR A RECIPROCAL AT COAST TO
8 COAST TO HAVE A LIST OF OUR MEMBERS, BUT THAT IT WAS NOT
9 PERMITTED FOR COAST TO COAST TO GIVE THAT LIST TO COMPETING
10 ORGANIZATIONS SO THAT THEY COULD TRY TO -- NOT TO PUT TOO
11 FINE A POINT ON IT -- PIRATE OUR MEMBERS AWAY. THAT WAS
12 NOT A PURPOSE -- THAT WAS NOT WHAT THEY WERE SUPPOSED TO BE
13 DOING.

14 Q ALL RIGHT. AND IT SAYS, "THE TRUSTEE HAS
15 INSTRUCTED THAT A LIST OF THE ALL SEASONS RESORTS MEMBERS
16 IN QUESTION BE ATTACHED FOR YOUR REFERENCE. MR. JOSEPH
17 REQUESTS YOUR ASSISTANCE IN ENSURING THAT NO MEMBERS FROM
18 THE LIST BE ALLOWED TO CHANGE THEIR COAST TO COAST
19 MEMBERSHIP FROM ALL SEASONS RESORTS TO ANY OTHER CAMPCLUB
20 WITHOUT WRITTEN AUTHORIZATION FROM THE TRUSTEE."

21 YOU GAVE THAT INSTRUCTION TO MR. DIAMOND?

22 A WELL, YES. AS I UNDERSTOOD IT, THAT WAS A
23 PROPER REQUEST, GIVEN THE NATURE OF THE CONTRACTUAL
24 RELATIONSHIP BETWEEN COAST TO COAST AND ALL SEASONS.

25 Q ALL RIGHT. AND THEN YOU REQUESTED
26 NOTIFICATION OF ANY ATTEMPTS TO TRANSFER MEMBERS FROM ALL

1 SEASONS TO ANOTHER CAMPGROUND?

2 A YES.

3 MR. MOSHENKO: COULD WE GO TO THE REST OF THE
4 LETTER SO WE CAN FINISH IT UP, PLEASE.

5 THE NEXT PAGE. I NEED TO GO BACK.

6 PLEASE BLOW UP THIS PARAGRAPH HERE, IF YOU
7 WOULD.

8 Q "IN ORDER TO FACILITATE OUR INVESTIGATION,
9 IT IS REQUESTED THAT WE BE NOTIFIED OF ATTEMPTS TO TRANSFER
10 TO ANY OTHER CAMPCLUB. THE TRUSTEE'S INVESTIGATION INTO
11 THE MATTER IS CONTINUING."

12 THIS IS IT: "HOWEVER, YOU SHOULD BE ADVISED
13 THAT HE WILL SEEK APPROPRIATE INJUNCTIVE AND PROTECTIVE
14 ORDERS FROM THE UNITED STATES BANKRUPTCY COURT WITH
15 JURISDICTION OVER THE ASSETS OF ALL SEASONS RESORTS TO
16 PREVENT THE UNAUTHORIZED USE OF ALL CUSTOMER LISTS OR
17 UNAUTHORIZED TRANSFER OF ANY ALL SEASONS RESORTS' MEMBERS."

18 MR. JOSEPH, WHAT IS THIS INJUNCTIVE AND
19 PROTECTIVE ORDER REMEDY THAT YOU WERE TALKING ABOUT? WHAT
20 COULD YOU HAVE DONE?

21 A WELL, BECAUSE ALL SEASONS WAS IN A
22 BANKRUPTCY CASE, IT IS, IN MY VIEW, THE BANKRUPTCY COURT
23 WHICH WOULD HAVE JURISDICTION OF ANY LAWSUIT. WE HAD TO
24 COMMENCE TO SANCTION THE UNAUTHORIZED USE OF THIS LIST.
25 AND THE INJUNCTIVE AND PROTECTIVE ORDERS THAT THE
26 BANKRUPTCY COURT HAS THE POWER TO GRANT WOULD BE THE SAME

1 AS A STATE COURT IN A SIMILAR KIND OF LAWSUIT.

2 Q AND DOES THE COURT ALSO HAVE THE POWER TO
3 AWARD DAMAGES, BOTH COMPENSATORY AND PUNITIVE, IN
4 CONNECTION WITH ANY UNAUTHORIZED USE OF PROPRIETARY
5 INFORMATION?

6 A WELL, YEAH. MY VIEW, THE BANKRUPTCY COURT
7 WOULD HAVE JURISDICTION TO IMPOSE THE SAME REMEDIES AS THE
8 STATE COURT WOULD IN A SIMILAR LAWSUIT.

9 MR. MOSHENKO: ALL RIGHT. THANK YOU.

10 COULD I NOW ASK THAT WE PUT UP 1719, AND
11 I'LL ASK THE WITNESS --

12 MR. SHERMAN: NOW, I'D LIKE A FOUNDATION TO BE LAID
13 FOR 1719 WITH THIS WITNESS.

14 MR. MOSHENKO: SURE.

15 MR. SHERMAN: 17 -- I BELIEVE IT'S 1719, YES.

16 BY MR. MOSHENKO: Q MR. JOSEPH, DID CAMP COAST TO
17 COAST EVER RESPOND TO THAT LETTER?

18 A I BELIEVE IT DID.

19 Q AND IS EXHIBIT 1719 A COPY OF THAT RESPONSE?

20 A IS THIS 1719?

21 Q YES, IT IS.

22 A YES, IT APPEARS TO BE A RESPONSE BY COAST TO
23 COAST TO MR. DIAMOND.

24 Q AND AT THE TIME, WHICH IS FEBRUARY 7, 1992,
25 DID YOU RECEIVE, OR WERE YOU SHOWN A COPY OF THIS RESPONSE?

26 A YES, I BELIEVE IT WAS PROVIDED TO ME BY MY

1 COUNSEL, WHO RECEIVED IT.

2 MR. SHERMAN: WE HAVE NO PROBLEM WITH IT COMING IN.

3 THE COURT: THANK YOU.

4 MR. MOSHENKO: COULD WE SHOW IT ON THE BOARD,
5 PLEASE. AND THE DATE.

6 AND I'D OFFER IT INTO EVIDENCE, YOUR HONOR.

7 MR. SHERMAN: NO OBJECTION.

8 THE COURT: IT WILL BE SO RECEIVED.

9 (WHEREUPON, EXHIBIT NO. 1719, LETTER FROM
10 COAST TO COAST TO MR. DIAMOND, WAS RECEIVED IN EVIDENCE.)

11 BY MR. MOSHENKO: Q THE DATE OF THE RESPONSE IS
12 APPROXIMATELY SEVEN DAYS LATER FROM THE FIRST LETTER,
13 FEBRUARY 7TH.

14 NOW, COULD WE HAVE THE FIRST -- THE
15 ADDRESSEE SHOWN ON THE LETTER. IT SAYS "RICHARD K. DIAMOND
16 ESQUIRE."

17 AGAIN, THAT'S YOUR LAWYER, THE LAW FIRM THAT
18 WAS ASSISTING YOU ON THIS?

19 A HE IS A MEMBER OF THE FIRM THAT REPRESENTED
20 ME AS TRUSTEE IN THIS CASE.

21 Q OKAY. NOW, THE FIRST TWO PARAGRAPHS, PLEASE.

22 "DEAR MR. DIAMOND, I AM WRITING IN RESPONSE
23 TO YOUR LETTER TO PAT BUTLER OF JANUARY 30, 1992. HE IS
24 OUT OF TOWN. I THOUGHT I SHOULD RESPOND IMMEDIATELY AND
25 ACKNOWLEDGE RECEIPT."

26 I THINK WE NEED TO KNOW WHO WROTE THE

1 LETTERS. COULD WE GO TO THE SECOND PAGE. AND EXPAND THIS
2 SECTION HERE.

3 IT SHOWS A ROGER K. RYMAN, EXECUTIVE
4 VICE-PRESIDENT. AND OF COURSE IT'S COAST TO COAST
5 LETTERHEAD.

6 YOU UNDERSTOOD YOU WERE GETTING A RESPONSE
7 TO YOUR ATTORNEY'S LETTER OF JANUARY 30?

8 A THAT'S WHAT I UNDERSTOOD THAT TO BE, YES.

9 Q LET'S GO BACK TO THE FIRST PAGE. AND THIS
10 ONE HERE, PLEASE.

11 "AS A MATTER OF POLICY WE HAVE ALWAYS
12 CONSIDERED RESORT MEMBERSHIP LISTS TO BE PROPRIETARY AND,
13 IN FACT, A PRIMARY ASSET OF ANY RESORT. CONSEQUENTLY" --

14 ALL RIGHT. SO WHEN YOU READ THAT, WHAT WAS
15 YOUR RESPONSE WITH RESPECT TO WHETHER FURTHER ACTION SHOULD
16 BE TAKEN ON THE ISSUE OF WHETHER THESE MEMBERSHIP LISTS
17 WERE PROPRIETARY AND CONFIDENTIAL?

18 A I'M SORRY. MY RESPONSE?

19 Q WHAT RESPONSE, IF ANY, DID YOU DECIDE TO
20 TAKE, GIVEN THE STATEMENT THAT THEY HAVE ALWAYS CONSIDERED
21 THESE LISTS TO BE PROPRIETARY; DID YOU CHOOSE TO GO BACK TO
22 THE BANKRUPTCY COURT AND SEEK A COURT ORDER TO ESTABLISH
23 THE CONFIDENTIALITY AND PROPRIETARY NATURE?

24 A NO. I CONSIDERED THEY CONCURRED WITH OUR
25 POSITION.

26 MR. MOSHENKO: NOW, THE LAST SENTENCE, IF I COULD

1 HAVE THAT HIGHLIGHTED ADDITIONALLY.

2 Q "IN ACCORDANCE WITH MR. NOVELLI'S REQUEST,
3 WE HAVE SUPPRESSED ALL COAST TO COAST PRODUCT SOLICITATION
4 MAILINGS TO ALL SEASONS RESORTS' MEMBERS."

5 DID THAT SATISFY YOU THAT THEY WERE GOING TO
6 NOT BE USING THE MEMBER LISTS FOR SOLICITATION, PRODUCT
7 SOLICITATION MAILINGS?

8 DO YOU HAVE SOME UNDERSTANDING OF WHAT THE
9 USE FOR PRODUCT SOLICITATION MAILING IS A REFERENCE TO?

10 A I'M NOT SURE I -- IF I DID UNDERSTAND WHAT
11 THAT MEANT, I DON'T NOW.

12 Q LET'S GO PAST IT, THEN, AND PICK UP THE NEXT
13 TWO PARAGRAPHS.

14 NOW, YOU REMEMBER IN YOUR LETTER -- OR
15 MR. DIAMOND'S LETTER -- HE COMPLAINED ABOUT TRANSFERS OF
16 MEMBERS POSSIBLY TAKING PLACE OF ALL SEASONS RESORTS'
17 MEMBERS TO OTHER CAMPGROUNDS. AND MR. RYMAN, THE
18 VICE-PRESIDENT, HAS INFORMED YOU THAT THE TRANSFER POLICY
19 REQUIRES, UNLESS UNUSUAL CIRCUMSTANCES EXIST, A REQUEST
20 FROM THE MEMBER, ACKNOWLEDGEMENT OF MEMBERSHIP BY THE NEW
21 RESORT, AND A RELEASE OF CURRENT HOME RESORT.

22 NOW, TO YOUR KNOWLEDGE, SIR, WERE ANY OF
23 THOSE KINDS OF CONSENTS IN WRITING BEING OBTAINED BY CAMP
24 COAST TO COAST IN CONNECTION WITH THE 1992 ISSUE OF
25 TRANSFERS?

26 A OUR CONTENTION IS THAT THEY WERE NOT.

1 Q ALL RIGHT. THANK YOU.

2 ALL RIGHT. MR. JOSEPH, AS A RESULT OF THE
3 RESPONSE THAT YOU GOT TO THIS LETTER, YOU CONSIDERED THE
4 ISSUE CLOSED?

5 A YES.

6 Q AND WERE THERE ANY OTHER -- TO YOUR
7 KNOWLEDGE -- EVENTS RELATING TO YOUR CONTENTION TO COAST TO
8 COAST AND THEIR APPARENT CONCESSION THAT THESE LISTS WERE
9 CONFIDENTIAL AND PROPRIETARY?

10 A IN THE ALL SEASONS CASE?

11 Q YES.

12 A NOT THAT I RECALL.

13 MR. MOSHENKO: THANK YOU. YOUR WITNESS.

14 THE COURT: DO YOU WANT TO START NOW OR DO YOU WANT
15 TO WAIT UNTIL MORNING.

16 MR. SHERMAN: LEAVE IT TO THE JURY.

17 THE COURT: I KNOW WHAT THEIR ANSWER IS. SEE YOU
18 AT 9:00, LADIES AND GENTLEMEN.

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

21 THE COURT: TOMORROW MORNING, CAN WE FINISH WITH
22 MR. JOSEPH BEFORE NOON?

23 MR. SHERMAN: AS I SAY, I'VE GOT ABOUT -- I THINK I
24 HAVE ABOUT TWO AND A HALF HOURS' WORTH OF QUESTIONS.

25 THE COURT: REALLY?

26 MR. SHERMAN: YEAH, I REALLY DO.

1 THE COURT: I DON'T THINK SO. BUT WE'LL SEE.

2 WHO IS NEXT? MR. -- WE FINISHED WITH
3 MR. BROCKLEY?

4 MR. SHERMAN: HE IS PUTTING ON THE CASE NOW.

5 MR. MOSHENKO: I'M GLAD HE FINALLY CONCEDED THAT
6 POINT.

7 THE COURT: WHO ARE YOU GOING TO CALL NEXT?

8 MR. MOSHENKO: MR. MERRITT.

9 THE COURT: AND HE WILL BE AVAILABLE?

10 MR. MOSHENKO: HE IS AVAILABLE.

11 THE COURT: WHAT'S YOUR TIME ESTIMATE WITH
12 MR. MERRITT?

13 MR. MOSHENKO: GUESSTIMATE, AN HOUR AND A HALF.

14 MR. SHERMAN: AND I HAVE A LOT OF QUESTIONS FOR
15 MR. MERRITT. HE IS AN EXPERT WITNESS IN THIS CASE.

16 THE COURT: SO HE WILL BE COMING BACK, THEN,
17 PROBABLY MONDAY -- NOT MONDAY.

18 MR. SHERMAN: TUESDAY. I DON'T WANT TO WORK ON
19 MONDAY.

20 THE COURT: YEAH. I DON'T WANT TO WORK ON MONDAY
21 EITHER.

22 MR. SHERMAN: OKAY.

23 THE COURT: SEE YOU ALL AT 9:00 IN THE MORNING.

24 (WHEREUPON THE COURT WAS IN RECESS UNTIL
25 THURSDAY, MAY 25, 2000, 9:00 A.M.)

26

