

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 25, 2000

APPEARANCES:

FOR THE PLAINTIFFS:

GERALD M. SHAW
ATTORNEY AT LAW

TERRY M. MOSHENKO
ATTORNEY AT LAW

FOR THE DEFENDANTS:

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

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

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E X H I B I T S

EXHIBIT	IN EVIDENCE
EXHIBIT NO. 1691, CONFORMED ORDER OF THE BANKRUPTCY COURT	1885
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1 WESTMINSTER, CALIFORNIA - THURSDAY, MAY 25, 2000

2 MORNING SESSION

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

5 THE COURT: YOU MAY PROCEED, COUNSEL.

6 MR. MOSHENKO: YOUR HONOR, I'VE PLACED EXHIBIT 1691
7 IN FRONT OF THE WITNESS.

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

12 DIRECT EXAMINATION (CONTINUED)

13 BY MR. MOSHENKO: Q BY THE WAY, GOOD MORNING, AND
14 THANK YOU.

15 1691, COULD YOU LOOK AT THAT?

16 ALL RIGHT. WHAT IS EXHIBIT 1691?

17 A IT'S A COPY OF A CONFORMED ORDER OF THE
18 BANKRUPTCY COURT IN THE FIRST NATIONWIDE RESORT MANAGEMENT
19 CASE.

20 Q AND IS THAT -- DOES THAT RELATE TO THE
21 BANKRUPTCY FOR WHICH YOU WERE ACTING AS A TRUSTEE?

22 A YES.

23 Q IN FACT, IT SHOWS YOUR NAME -- YOUR NAME AT
24 THE TOP WHERE IT SAYS THAT THE -- RICHARD DIAMOND OF THE
25 DANNING, GILL, GOULD, DIAMOND & SPECTOR FIRM ARE ACTING AS
26 ATTORNEYS FOR JAMES JOSEPH, CHAPTER 11 TRUSTEE?

1 A RIGHT.

2 Q WAS THIS ORDER APPROVED BY THE COURT
3 GRANTING THE REQUESTED RELIEF, WHICH IS GRANTING A MOTION
4 TO CONVERT THE CASE TO A CHAPTER 7, AND ABANDON THE
5 PROPERTY OF THE ESTATE, AND PERMIT THE VOLUNTARY TRANSFER
6 OF MEMBERSHIP INTERESTS?

7 A YES. THE DOCUMENT INDICATES THE COURT
8 SIGNED THE ORDER.

9 MR. MOSHENKO: YOUR HONOR, I'D LIKE TO OFFER
10 EXHIBIT 1691 INTO EVIDENCE.

11 MR. SHERMAN: STIPULATE.

12 THE COURT: THANK YOU.

13 MR. MOSHENKO: THANK YOU.

14 THE COURT: SO RECEIVED.

15 (WHEREUPON, EXHIBIT NO. 1691, CONFORMED
16 ORDER OF THE BANKRUPTCY COURT, WAS RECEIVED IN EVIDENCE.)

17 BY MR. MOSHENKO: Q MR. JOSEPH, I ASKED THE COURT
18 FOR PERMISSION TO REOPEN TO ASK YOU A FEW MORE QUESTIONS
19 RELATING TO THIS BANKRUPTCY PROCESS.

20 IF I COULD, I'D LIKE TO USE THE BLACKBOARD.

21 NOW, REFERRING TO THE ALL SEASONS RESORT
22 BANKRUPTCY WHICH YOU WERE INVOLVED IN THE EARLY 1990'S.
23 ALL RIGHT. AND YOU INDICATED YESTERDAY THAT THE FILING OF
24 A CHAPTER 11 BANKRUPTCY PETITION OCCURRED BY ALL SEASONS
25 RESORTS; CORRECT?

26 A I DON'T RECALL WHETHER THAT WAS A VOLUNTARY

1 OR AN INVOLUNTARY.

2 Q OKAY. WELL, IN ANY EVENT, IF THIS IS -- ALL
3 SEASONS RESORTS, THIS IS WHAT WE HAVE BEEN REFERRING TO AS
4 THE DEBTOR; CORRECT?

5 A YES.

6 Q AND IF THIS IS THE EVENT OF THE FILING OF
7 THE CHAPTER 11, IN TERMS OF TIME, PRIOR TO THE FILING OF
8 THE CHAPTER 11, THE ALL SEASONS RESORTS MANAGERS MANAGED
9 THE ASSETS OF ALL SEASONS RESORTS; CORRECT?

10 A CORRECT.

11 Q OKAY. AND LET'S CALL IT RAY AND MARLIES,
12 BECAUSE I THINK THAT'S WHO YOU INDICATED WERE THE MANAGERS,
13 OR SOME OF THEM.

14 AND THOSE ASSETS WERE THE PROPERTY OF THE
15 DEBTOR; IS THAT CORRECT?

16 A YES.

17 Q AND THAT INCLUDES RESORTS AND MEMBER
18 CONTRACTS, ET CETERA, WHATEVER ASSETS; CORRECT?

19 A CORRECT.

20 Q NOW, ONCE THE CHAPTER 11 BANKRUPTCY IS
21 FILED, I THINK YOU INDICATED THERE'S A -- IN EFFECT, A NEW
22 ENTITY CREATED?

23 A UPON THE ENTRY OF AN ORDER FOR RELIEF, WHICH
24 HAPPENS WHEN THE PETITION IS FILED IN A VOLUNTARY CASE, OR
25 WHEN THE ORDER FOR RELIEF IS ENTERED IN AN INVOLUNTARY
26 CASE, AN ESTATE IS CREATED.

1 Q OKAY. AND SO WHAT WAS DEBTOR, NOW THERE'S
2 AN ESTATE?

3 A THAT'S CORRECT.

4 Q NOW, THE FIRST QUESTION I HAVE IS, WHAT
5 HAPPENS TO THE DEBTOR WHILE THE ESTATE IS IN EXISTENCE?
6 DOES IT CONTINUE TO EXIST, THE DEBTOR CORPORATION?

7 A OH, SURE.

8 Q OKAY. BUT MANAGEMENT VESTS IN SOMEONE
9 CALLED "DEBTOR IN POSSESSION"?

10 A WHEN A BANKRUPTCY CASE COMMENCES, ALL OF THE
11 ASSETS OF THE DEBTOR BECOME ASSETS OF THE ESTATE, WHICH WAS
12 A DIFFERENT ENTITY.

13 Q RESORTS, ET CETERA, MEMBER CONTRACTS,
14 ET CETERA, ARE DOWN HERE, ASSETS OF THE ESTATE?

15 A CORRECT.

16 Q AND THEY'RE NOT HERE ANYMORE; RIGHT?

17 A THAT'S CORRECT.

18 Q AND MANAGEMENT GOES WHERE?

19 A IF IT'S A DEBTOR IN POSSESSION, MANAGEMENT
20 IS VESTED IN -- THE MANAGEMENT OF THE DEBTOR BECOMES
21 MANAGEMENT OF THE ESTATE.

22 Q IS IT CORRECT IN ALL SEASONS RESORTS' CASE
23 THERE WAS A DEBTOR IN POSSESSION; MANAGEMENT WAS BASICALLY
24 WHAT IT WAS BEFORE?

25 MR. SHERMAN: OBJECTION. LEADING. LACKS
26 FOUNDATION.

1 THE COURT: OVERRULED.

2 THE WITNESS: THAT IS TRUE, UNTIL THE APPOINTMENT
3 OF THE TRUSTEE.

4 BY MR. MOSHENKO: Q ALL RIGHT. SO RAY AND MARLIES
5 CONTINUED.

6 NOW, HERE IS THE APPOINTMENT OF A TRUSTEE
7 EVENT. NOW, MANAGEMENT IS NO LONGER HERE; IT'S HERE?

8 A MANAGEMENT OF THE ESTATE NOW VESTS IN THE
9 TRUSTEE.

10 Q OKAY. AND IN YOUR CASE YOU HAVE
11 FRED BRINGMAN, YOU SAID, AND YOU ALSO USED RAY AND MARLIES,
12 I'M SURE AMONG OTHERS?

13 A AND OTHER EMPLOYEES, YES.

14 Q YES.

15 NOW, THE ASSETS REMAIN IN THE ESTATE, EVEN
16 THOUGH THE TRUSTEE IS IN CONTROL OF THE COMPANY; IS THAT
17 CORRECT?

18 A YES. THE APPOINTMENT OF A TRUSTEE DOES NOT
19 CHANGE THE FACT THAT THERE IS AN ESTATE.

20 Q OKAY. NOW, THEN I THINK YOU TESTIFIED
21 THERE -- OH, NOW, AT WHAT POINT DOES THIS AUTOMATIC STAY
22 KICK IN THAT YOU MENTIONED?

23 A THAT KICKS IN UPON THE FILING OF THE
24 PETITION.

25 Q SO RIGHT HERE IS KIND OF LIKE A PROTECTIVE
26 CLOAK COMES AROUND THE ESTATE, AND IT CONTINUES, DOESN'T

1 IT?

2 A YES. THE ESTATE PROPERTY -- PROPERTY OF THE
3 ESTATE IS PROTECTED BY THE AUTOMATIC STAY.

4 Q HOW LONG DOES IT CONTINUE?

5 A WELL, IT CONTINUES UNTIL -- IT CONTINUES
6 UNTIL A PLAN IS CONFIRMED. IT CONTINUES UNTIL THE PROPERTY
7 BECOMES -- IS NOT PROPERTY OF THE ESTATE ANY LONGER.

8 Q PROPERTY IS GONE?

9 A IF THE PROPERTY IS NOT PROPERTY OF THE
10 ESTATE ANY LONGER, YES.

11 Q OKAY. NOT IN THE ESTATE.

12 ALSO IT CAN BE LIFTED ON MOTION FOR RELIEF
13 OF STAY ON AN ASSET-BY-ASSET BASIS?

14 A YES. A PARTY CAN SEEK RELIEF FROM THE STAY.

15 Q ALL RIGHT. NOW, IN THE ALL SEASONS RESORTS
16 SITUATION, WAS THERE A PLAN?

17 A IN THE CASE I WAS TRUSTEE IN, YES.

18 Q AND IT WAS APPROVED?

19 A IT WAS CONFIRMED.

20 Q CONFIRMED, OKAY.

21 SO NOW LET'S CALL THIS "CONFIRMED PLAN."

22 OKAY. NOW, MY QUESTION IS, WHAT HAPPENS TO
23 MANAGEMENT IN CONTROL OF THE ESTATE, OR THE ASSETS IN THE
24 ESTATE?

25 A IN THE PLAN? IN THAT PARTICULAR PLAN?

26 Q AFTER CONFIRMATION OF THE PLAN IN THE ALL

1 SEASONS RESORT.

2 A IN THIS PARTICULAR CASE, THE ASSETS REVESTED
3 IN THE CORPORATION.

4 Q THIS ENTITY ENDS UP RIGHT BACK HERE IN
5 CONTROL?

6 A YES. IN THE ALL SEASONS RESORT CASE, THE
7 STOCK, THE ORIGINAL STOCK, WAS CANCELLED, WAS PART OF THE
8 PLAN. AND NEW SHARES WERE ISSUED TO SOMEONE IN EXCHANGE
9 FOR A FORGIVENESS OF SECURED DEBT. SO THERE WAS A
10 DIFFERENT SHAREHOLDER, BUT THE ASSETS REVESTED IN THE
11 DEBTOR CORPORATION.

12 Q THE SAME LEGAL ENTITY?

13 A YES.

14 Q WHAT DOES THE TERM "DISSOLVING A
15 CORPORATION" REFER TO?

16 A DISSOLUTION OF A CORPORATION IS SOMETHING
17 THAT HAPPENS UNDER STATE LAW.

18 Q DOES A BANKRUPTCY RESULT -- STRIKE THAT.

19 DOES A DISSOLUTION OF A CORPORATION RESULT
20 IN THE CORPORATION NO LONGER EXISTING AS A LEGAL ENTITY?

21 A THE DISSOLUTION WOULD HAVE THAT EFFECT, YES.

22 Q DOES A BANKRUPTCY RESULT IN A DISSOLVING OF
23 A CORPORATION SO THAT IT GOES AWAY?

24 A NO.

25 Q AND SO IN THE CASE OF ALL SEASONS, RAY AND
26 MARLIES, IN FACT, RETAINED CONTROL OF THE ASSETS AFTER THE

1 BANKRUPTCY UNDER THE PLAN?

2 A THEY WERE, I BELIEVE, OFFICERS OF THE
3 CORPORATE ENTITY.

4 Q AND THE RESORTS MEMBERSHIPS WENT WITH IT,
5 AND THE TRUSTEE GOES AWAY?

6 A YES. UPON CONFIRMATION OF A PLAN, NORMALLY
7 THE TRUSTEE IS DISCHARGED, AS I WAS.

8 Q AND THE ESTATE AS AN ENTITY DISAPPEARS?

9 A YES.

10 Q ALL RIGHT. NOW -- ONE MORE THING.

11 DURING THIS PROCESS, WHILE THE BANKRUPTCY IS
12 IN PLACE -- I'LL USE THE PHRASE -- THE STAY PROTECTS THE
13 ESTATE FROM CREDITORS -- RIGHT? -- ATTACKING AND TAKING THE
14 ASSETS?

15 A YES.

16 Q CREDITORS CANNOT ATTEMPT TO ENFORCE
17 CONTRACTS OR TAKE ASSETS OR HARM THE ESTATE, IN ESSENCE; IS
18 THAT CORRECT?

19 A IT'S A FAIR GENERAL STATEMENT, YES.

20 Q FAIR GENERAL STATEMENT.

21 NOW, WHAT IS A CREDITORS COMMITTEE?

22 A WELL, UNDER CHAPTER 11 OF THE CODE, THE
23 UNITED STATES TRUSTEE'S OFFICE IS OBLIGED TO APPOINT WHAT'S
24 CALLED A "COMMITTEE OF CREDITORS." I THINK THE TECHNICAL
25 TITLE IS COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS."
26 AND THEY DO SO.

1 AND THAT CREDITORS COMMITTEE BECOMES A PARTY
2 IN INTEREST. AND THEY HAVE THE RIGHT TO EMPLOY COUNSEL.
3 THEY HAVE THE RIGHT TO EMPLOY ACCOUNTANTS. AND GENERALLY
4 THEIR DUTIES ARE TO ASSIST IN THE FORMULATION OF A PLAN, TO
5 COMMUNICATE WITH THE DEBTOR IN POSSESSION, OR THE TRUSTEE,
6 TO -- A COMMITTEE DOES NOT REPRESENT ANY ONE PARTICULAR
7 CREDITOR. THE FUNCTION OF A COMMITTEE IS TO VOICE THE --
8 TO SORT OF VOICE OF VIEWS OF UNSECURED CREDITORS,
9 GENERALLY.

10 Q NOW, YOU MENTIONED YESTERDAY THERE WAS AN
11 OVERSIGHT THAT OCCURRED, THAT IS, THAT BANKRUPTCY COURT
12 OVERSAW THE WHOLE PROCEEDING.

13 A YES.

14 Q THE U.S. TRUSTEE'S OFFICE HAD OVERSIGHT
15 RESPONSIBILITIES; THE TRUSTEE YOURSELF HAD OVERSIGHT
16 RESPONSIBILITIES?

17 A YES.

18 Q DID THE CREDITORS COMMITTEE HAVE OVERSIGHT
19 ABILITY OR RESPONSIBILITY?

20 A YES. THE COMMITTEE IS A PARTY IN INTEREST.
21 THEY HAVE THE RIGHT TO SEEK THE APPOINTMENT OF A TRUSTEE.
22 THEY HAVE THE RIGHT TO MOVE TO CONVERT A CASE FROM AN 11 TO
23 7. THEY HAVE THE RIGHT TO BE HEARD ON EVERY ISSUE.

24 Q AS PART OF THAT OVERSIGHT FUNCTION, IS THERE
25 A REVIEW OF THE BUSINESS MATTERS, THE BUSINESS AFFAIRS, THE
26 BOOKS, THE RECORDS, THE TRANSACTIONS OF THE CORPORATION

1 THAT TAKE PLACE DURING A BANKRUPTCY?

2 A IN A CHAPTER 11?

3 Q IN A CHAPTER 11.

4 A YES.

5 Q IN A CHAPTER 7, IS THERE AN OVERSIGHT BY A
6 TRUSTEE WHERE HE REVIEWS THE TRANSACTION?

7 A YES. BUT IN A CHAPTER 11 THERE IS A
8 PROVISION OF THE BANKRUPTCY CODE THAT REQUIRES A TRUSTEE TO
9 FILE A REPORT UNDER SECTION 1104, I BELIEVE, WHICH
10 DISCUSSES THE RESULT OF ANY INVESTIGATION, DISCUSSES
11 MANAGEMENT, DISCUSSES PROSPECTS FOR A PLAN. SO THERE'S A
12 FORMAL REQUIREMENT THAT SUCH A REPORT BE FILED.

13 Q ALL RIGHT. NOW, IS THAT INVESTIGATION AND
14 REVIEW PROCESS LIMITED TO WHAT OCCURS DURING THE
15 BANKRUPTCY, OR DOES IT GO BACKWARD IN TIME BEFORE THE
16 FILING OF THE BANKRUPTCY?

17 A IT CAN GO BACKWARDS IN TIME.

18 Q HOW FAR BACKWARDS CAN IT GO?

19 A THERE'S NO SET RULE.

20 Q AND ASSUMING, HYPOTHETICALLY, THAT THE
21 TRUSTEE OR THE CREDITORS COMMITTEE DO THAT INVESTIGATION
22 AND, THEY FIND SOMETHING UNTOWARD, SOME IMPROPRIETY OR A
23 WRONGFUL TRANSFER OR WITHHOLDING OF ASSETS OR THINGS LIKE
24 THAT, WHAT CAN THE TRUSTEE DO?

25 A WELL, THE TRUSTEE HAS THE POWER TO FILE WHAT
26 ARE CALLED "AVOIDING ACTIONS" TO AVOID WHAT ARE -- AN

1 EXAMPLE WOULD BE A FRAUDULENT CONVEYANCE. IF THE DEBTOR
2 PRIOR TO BANKRUPTCY GAVE AWAY HIS PROPERTY FOR NO
3 CONSIDERATION, THE TRUSTEE CAN FILE A LAWSUIT TO GET THAT
4 PROPERTY BACK FOR THE ESTATE.

5 Q IF MANAGEMENT IMPROPERLY TOOK MONEY OR
6 PROPERTY AND PUT IT IN THEIR OWN PERSONAL ESTATE, THAT IS
7 SOMETHING THAT -- ASSUMING IT WAS WITHOUT CONSIDERATION,
8 THAT IS, IT WAS WRONGFUL -- THAT THE TRUSTEE COULD UNDO?

9 A YES, THE TRUSTEE OR DEBTOR IN POSSESSION.

10 Q WHAT'S IT MEAN TO VOID A TRANSACTION?

11 A IT MEANS TO -- IF A DEBTOR PRIOR TO THE
12 FILING OF THE BANKRUPTCY CASE TRANSFERS ITS ASSETS TO OTHER
13 PEOPLE FOR NO CONSIDERATION, LIKE A GIFT OR JUST TAKING IT.

14 Q NO MONEY?

15 A PARDON ME?

16 Q NOTHING IN EXCHANGE OF VALUE; NO MONEY IS
17 GIVEN FOR THE ASSETS?

18 A YES. NO MONEY OR NOTHING, NO CREDIT
19 OBTAINED, BUT JUST GIVES IT AWAY, THAT TRANSFER CAN BE
20 AVOIDED.

21 IN OTHER WORDS, AS A MATTER OF LAW, THE
22 TRANSFER IS DEEMED -- IF THE LAWSUIT IS SUCCESSFUL, THE
23 TRANSFER IS DEEMED NOT TO HAVE OCCURRED, AND THE PERSON WHO
24 GOT THE MONEY HAS TO GIVE IT BACK.

25 Q CAN THAT PERSON BE SUED -- DOES THE PERSON
26 HAVE TO BE SUED IN THE BANKRUPTCY TO HAVE IT GIVEN BACK?

1 A YES, UNLESS THE PERSON WOULD DO IT
2 VOLUNTARILY.

3 Q OKAY. ALL RIGHT. SO NOW IN THE ALL SEASONS
4 RESORTS BANKRUPTCY, DID YOU DO THE INVESTIGATION AND
5 ANALYSIS OF THE FINANCIAL AFFAIRS AND TRANSACTIONS RELATING
6 TO ALL SEASONS RESORTS, BOTH -- THAT OCCURRED BOTH DURING
7 THE BANKRUPTCY AND BEFORE THE BANKRUPTCY?

8 A WELL, I WAS ASSISTED BY THE ACCOUNTANTS I
9 EMPLOYED AND THE ATTORNEYS I EMPLOYED, YES.

10 Q TO YOUR KNOWLEDGE DID THE CREDITORS OF THE
11 CORPORATION -- OF THE CORPORATION HAVE THE OPPORTUNITY TO
12 DO THE SAME INVESTIGATION?

13 A YES. I MEAN, AS A GENERAL MATTER,
14 EVERYTHING I DID WAS SHARED WITH THE COMMITTEE. THEY HAD
15 ACCESS TO THE -- ALL SEASONS RESORTS AS I RECALL HAD
16 PRODUCED AUDITED FINANCIAL STATEMENTS WITH DELOITTE &
17 TOUCHE FOR SOME YEARS PRIOR TO THE FILING, AND I EMPLOYED
18 DELOITTE & TOUCHE, MY ACCOUNTANT, TO RENDER THE SAME KIND
19 OF AUDITED FINANCIALS. AND I'M CONFIDENT THAT THEY WERE
20 SHARED WITH THE COMMITTEE.

21 Q NOW, THE COMMITTEE CAN SUE TO UNDO OR VOID
22 THE TRANSACTION?

23 A NO. IF A TRUSTEE IS IN PLACE, THE TRUSTEE
24 IS THE ONLY PARTY EMPOWERED TO SUE. BUT IF THE TRUSTEE
25 REFUSES TO OR WON'T, THEN THE COMMITTEE CAN SEEK PERMISSION
26 FROM THE COURT TO BRING SUCH A LAWSUIT. BUT THERE HAS TO

1 BE A COURT ORDER.

2 THE AVOIDING POWER RIGHTS VEST IN THE
3 TRUSTEE, UNLESS THE COURT EMPOWERS SOME OTHER PERSON LIKE
4 THE COMMITTEE TO DO IT.

5 Q NOW, AFTER HAVING DONE YOUR INVESTIGATION
6 AND ANALYSIS OF THE AFFAIRS OF ALL SEASONS RESORTS, DID YOU
7 OR DID THE CREDITORS COMMITTEE, EITHER OF YOU, ACT TO SEEK
8 TO AVOID -- AVOID A TRANSACTION OR SUE SOMEBODY TO BRING
9 BACK ASSETS?

10 A NOT THAT I RECALL, NO.

11 Q NOW, LET ME JUST SHIFT FOR A SECOND TO THE
12 FIRST NATIONWIDE RESORTS MANAGEMENT -- USE THE SAME
13 GRAPH -- THAT YOU HANDLED IN 1996 OR 7 -- 6 AND 7.

14 ALL RIGHT. NOW, IN THAT CASE FIRST
15 NATIONWIDE FILED A CHAPTER 11 PROCEEDING?

16 A YES.

17 Q AND THE ESTATE WAS CREATED, AND THE DEBTOR
18 IN POSSESSION CONTROLLED THE ASSETS AND HAD THE ESTATE --
19 ASSETS WERE A PART OF THE ESTATE; RIGHT?

20 A YES.

21 Q AND THEN YOU WERE APPOINTED AS TRUSTEE, AND
22 YOU CONTROLLED THE ASSETS. AND I THINK YOU SAID IN THAT
23 CASE YOU USED FRED BRINGMAN, BUT YOU DIDN'T EMPLOY RAY AND
24 MARLIES; CORRECT?

25 A YES.

26 Q FOR REASONS YOU GAVE.

1 NOW, THAT CASE DIDN'T GO TO A PLAN, DID IT?

2 A NO.

3 Q AND I'M GOING TO DO THE DIVERSION OUT HERE.

4 WHAT HAPPENED TO THE ASSETS IN ALL SEASONS

5 RESORTS -- I MEAN IN FIRST NATIONWIDE?

6 A WHAT?

7 Q WHAT HAS HAPPENED? HAS ANYTHING HAPPENED.

8 I'M SORRY. WITHDRAWN, YOUR HONOR.

9 IN THAT CASE YOU FILED A MOTION TO CONVERT
10 IT TO A 7?

11 A YES.

12 Q WHICH WOULD RESULT IN THE ASSETS BEING

13 LIQUIDATED?

14 A IN A CHAPTER 7 CASE THE ASSETS ARE

15 LIQUIDATED, YES.

16 Q AND THAT WAS THE ORDER THAT WE JUST ADMITTED

17 INTO EVIDENCE, THE ORDER APPROVING THE CONVERSION OF

18 CHAPTER 7; RIGHT?

19 A YES.

20 Q NOW, BESIDES LIQUIDATING -- LIQUIDATING

21 MEANS SELLING; RIGHT? SELLING THE ASSETS?

22 A YES.

23 Q OKAY. BESIDES LIQUIDATING THE ASSETS,

24 OTHER -- THERE ARE OTHER WAYS ASSETS ARE TREATED IN EITHER

25 AN 11 OR A 7; IS THAT CORRECT?

26 A OH, YES.

1 Q OKAY. AND IN THE CASE OF THE FIRST
2 NATIONWIDE RESORTS MANAGEMENT BANKRUPTCY, WHAT HAPPENED TO
3 ASSETS -- TO SOME OF THE ASSETS AS AN ALTERNATIVE TO
4 LIQUIDATING THEM?

5 A WELL, IF YOU HAVE REFERENCE TO THIS ORDER,
6 THE REAL ESTATE, THE THREE CAMPGROUNDS THAT FIRST
7 NATIONWIDE DIRECTLY OWNED, I SOUGHT AUTHORITY FROM THE
8 COURT TO ABANDON THEM ON THE GROUNDS THAT I BELIEVE THEY
9 HAD NO EQUITY. IN OTHER WORDS, THEY WERE ENCUMBERED BEYOND
10 THEIR VALUE. AND I SOUGHT AUTHORITY TO ABANDON THEM OUT OF
11 THE ESTATE, AND THE COURT GRANTED THAT AUTHORITY.

12 Q SO WHERE DID THE ASSETS GO, AS OPPOSED TO
13 LIQUIDATION, ONCE THEY'RE ABANDONED?

14 A AN ABANDONMENT OF ASSETS BY THE ESTATE
15 ALWAYS REVESTS THE ASSETS IN THE DEBTOR ENTITY.

16 Q SO IT'S AS THOUGH THERE WERE NO CHAPTER 7
17 FILED OR CONVERSION FILED, AS FAR AS WHERE THE ASSETS ENDED
18 UP?

19 A NO. I THINK IT'S FAIR TO SAY THAT THE
20 ASSETS THAT WERE PART OF THE ESTATE, ONCE THEY'RE
21 ABANDONED, ARE ABANDONED BACK TO THE DEBTOR ENTITY.

22 Q RIGHT. AND SO THEY ENDED UP BACK UP UNDER
23 THE DEBTOR ENTITY AS OPPOSED TO THE LIQUIDATION PROCESS?

24 A THAT'S RIGHT.

25 Q AND NOW, LAST QUESTION.

26 THERE'S ANOTHER TERM CALLED "REJECTION OF

1 ASSETS," OR "REJECTION" OF SOMETHING IN A BANKRUPTCY.
2 COULD YOU DISTINGUISH OR COMPARE THAT TO ABANDONMENT OF
3 PROPERTY?

4 A THE ONLY TERM -- THE ONLY CONTEXT WITH WHICH
5 I AM FAMILIAR WITH "REJECTION" IS REJECTION OF AN EXECUTOR
6 CONTRACT, MEANING A CONTRACT, A PRE-BANKRUPTCY CONTRACT,
7 BETWEEN THE DEBTOR AND SOME OTHER ENTITY. ONCE A
8 BANKRUPTCY IS FILED, THE ESTATE HAS THE RIGHT TO REJECT
9 THAT CONTRACT.

10 Q OKAY.

11 A IT'S LIKE AN ABANDONMENT.

12 Q IS A CONTRACT BOTH AN ASSET AND A LIABILITY
13 IN A BANKRUPTCY ESTATE?

14 A A CONTRACT CAN BE BOTH AN ASSET AND A
15 LIABILITY, YES.

16 Q AND SO TO THE EXTENT THAT IT IS AN ASSET,
17 ONCE IT'S REJECTED, IT GOES BACK TO THE DEBTOR; IS THAT
18 CORRECT?

19 A REJECTION OF AN EXECUTOR CONTRACT AND ITS
20 CONSEQUENCES IS A COMPLEX AREA OF THE LAW.

21 BUT IT'S FAIR TO SAY THAT ONCE THE
22 BANKRUPTCY ESTATE REJECTS THE CONTRACT, IT'S BASICALLY SORT
23 OF WASHING ITS HANDS OF THE CONTRACT. THE DEBTOR IS STILL
24 A PARTY TO IT AND I THINK STILL HAS RIGHTS. BUT THE
25 BANKRUPTCY ESTATE IS SAYING, AS FAR AS THE ESTATE IS
26 CONCERNED, THE ESTATE DOES NOT INTEND TO BE BOUND BY OR

1 PERFORM THIS PRE-BANKRUPTCY CONTRACT.

2 Q OKAY. BUT YOU TESTIFIED EARLIER TODAY THAT
3 THE FILING DOES NOT DISSOLVE OR DO AWAY WITH THE
4 ENTITY.

5 A NO.

6 Q SO AFTER THE REJECTION, THE ENTITY STILL
7 EXISTS AS AN ENTITY; CORRECT?

8 A COUNSEL, IF YOU -- HEAVEN FORBID, IF YOU
9 WERE TO FILE A BANKRUPTCY CASE, IF YOU WERE TO FILE AN
10 INDIVIDUAL BANKRUPTCY, YOUR ASSETS WOULD BECOME PART OF
11 YOUR BANKRUPTCY ESTATE. BUT YOU AS A PERSON WOULD NOT
12 CEASE TO EXIST. YOU WOULD NOT BE EXECUTED.

13 IT IS THE SAME WITH A CORPORATION. IF A
14 CORPORATION FILES A BANKRUPTCY, ITS ASSETS BECOME PART OF
15 ITS BANKRUPTCY ESTATE, BUT THE CORPORATION AS AN ENTITY
16 DOES NOT CEASE TO EXIST MERELY BY VIRTUE OF HAVING FILED A
17 BANKRUPTCY.

18 JUST LIKE YOU WOULDN'T DIE IF YOU FILED A
19 VOLUNTARY OR INVOLUNTARY BANKRUPTCY CASE.

20 Q CORRECT.

21 SO THE ENTITY DOES NOT DISSOLVE OR
22 DISAPPEAR?

23 A NO.

24 Q AND THE ASSETS THAT ARE ABANDONED TO IT,
25 THEY DON'T DISSOLVE OR DISAPPEAR; THEY GO TO -- THEY REMAIN
26 IN THE ENTITY; CORRECT?

1 A IF THE ASSETS ARE ABANDONED BY THE
2 BANKRUPTCY ESTATE, THE ASSETS REVEST IN THE DEBTOR ENTITY,
3 YES.

4 Q AND CONTRACT INTERESTS THAT ARE REJECTED, TO
5 THE EXTENT THAT THEY ARE, THERE IS A RELATIONSHIP BETWEEN
6 THE DEBTOR AND THE CONTRACTING PARTY; THEY STILL -- THAT
7 RELATIONSHIP CONTINUES TO EXIST?

8 A IF YOU WERE TO FILE -- IF YOU WERE RENTING
9 AN APARTMENT AND YOU FILED A BANKRUPTCY CASE, THAT
10 APARTMENT LEASE WOULD BECOME PART OF THE BANKRUPTCY
11 ESTATE. IT WOULD BE AN EXECUTOR CONTRACT. YOUR BANKRUPTCY
12 TRUSTEE PROBABLY WOULD NOT WANT TO TAKE OVER YOUR APARTMENT
13 LEASE BECAUSE IT WOULD HAVE NO PARTICULAR VALUE TO THE
14 ESTATE. PROBABLY YOUR APARTMENT LEASE IS A FAIR MARKET
15 RENT, AND THERE WOULD BE NO BENEFIT IN THE BANKRUPTCY
16 ESTATE TRYING TO SELL YOUR LEASE TO SOMEBODY ELSE.

17 SO THE BANKRUPTCY ESTATE WOULD PROBABLY
18 REJECT YOUR APARTMENT LEASE, AS FAR AS IT WAS CONCERNED.
19 IT WOULD HAVE NO INTEREST IN IT. COULDN'T GET ANY MONEY
20 OUT OF IT. BUT AS LONG AS YOU PAID YOUR RENT, I DON'T
21 THINK YOUR LANDLORD COULD KICK YOU OUT.

22 SO TO THAT -- IN THAT WAY, I THINK, AN
23 EXECUTOR CONTRACT THAT IS REJECTED, AS FAR AS THE
24 BANKRUPTCY ESTATE IS CONCERNED, SAYING THE BANKRUPTCY
25 ESTATE REALLY HAS NO INTEREST IN IT, IT CAN'T DO ANYTHING
26 WITH IT, I THINK YOU AS THE DEBTOR WOULD STILL HAVE RIGHTS

1 TO PAY YOUR RENT AND CONTINUE TO LIVE IN YOUR APARTMENT.

2 Q VERY WELL.

3 THE COURT: MR. MOSHENKO.

4 MR. MOSHENKO: LAST POINT.

5 Q DID YOU DO THE SAME INVESTIGATION AND
6 EXAMINATION OF THE FINANCIAL AFFAIRS OF FIRST NATIONWIDE
7 RESORTS AS YOU DID IN ALL SEASONS RESORTS?

8 A IT WASN'T THE SAME BECAUSE IT WAS A
9 DIFFERENT SUBJECT, BUT THERE WAS AN INVESTIGATION DONE,
10 YES.

11 Q AND AS A RESULT OF THAT INVESTIGATION, DID
12 YOU FILE ANY ACTIONS OR TAKE ANY STEPS TO VOID ANY
13 TRANSACTIONS?

14 A NO.

15 MR. MOSHENKO: THANK YOU, YOUR HONOR. THANK YOU.

16 THE COURT: CROSS-EXAMINATION.

17 CROSS-EXAMINATION

18 BY MR. SHERMAN: Q MR. JOSEPH, GOOD MORNING.

19 A GOOD MORNING, SIR.

20 Q HOW ARE YOU?

21 A SLIGHT COLD, TAIL END OF ONE. OTHER THAN
22 THAT, I'M FINE.

23 Q MR. JOSEPH, I'D LIKE TO PICK UP WHERE
24 MR. MOSHENKO LEFT OFF.

25 ON THE STATUS OF AFFAIRS OF FIRST
26 NATIONWIDE, AS FAR AS LOOKING BACKWARDS IN TIME, THAT'S

1 WHAT MR. MOSHENKO WAS REFERRING TO AS FAR AS LOOKING
2 BACKWARDS AS FAR AS ANY FINANCIAL TRANSACTIONS THAT MAY
3 HAVE TAKEN PLACE.

4 DO YOU UNDERSTAND?

5 A I THINK SO.

6 Q NOW, AS TRUSTEE OF FIRST NATIONWIDE, YOU'VE
7 BEEN RESPONSIBLE FOR ENSURING THAT THE DEBTOR'S BUSINESS
8 TRANSACTIONS PRE-BANKRUPTCY WERE NOT SUBJECT TO BEING
9 VOIDED OR THAT THEY WERE PROPER; RIGHT?

10 A I DON'T KNOW IF I SAID THAT.

11 Q WELL, YOU HAD AS ONE OF YOUR
12 RESPONSIBILITIES TO TAKE A LOOK BACK IN TIME TO SEE IF
13 THERE WAS SOME TRANSACTIONS THAT OUGHT TO BE TAKEN -- HAVE
14 A CLOSER LOOK TAKEN AT THEM; RIGHT?

15 A THAT'S TRUE.

16 Q AND YOU REVIEWED FIRST NATIONWIDE'S
17 TRANSACTIONS IN THE PRE-SEPTEMBER 1996 TIME FRAME WHEN YOU
18 WERE APPOINTED AS TRUSTEE TO SEE THAT FIRST NATIONWIDE GOT
19 WHAT IT PAID FOR?

20 A YES. WE LOOKED AT ALL OF THE DISBURSEMENTS
21 OVER A CERTAIN AMOUNT FROM THE FIRST NATIONWIDE CASH
22 CONCENTRATION ACCOUNT.

23 Q YOU WANTED TO MAKE SURE, AMONG OTHER THINGS,
24 THAT FIRST NATIONWIDE'S ASSETS PRE-BANKRUPTCY WERE USED FOR
25 THE BENEFIT OF FIRST NATIONWIDE?

26 A YES, OR TO PAY DEBTS THAT FIRST NATIONWIDE

1 OWED.

2 Q RIGHT.

3 YOU WANTED TO MAKE SURE THAT FIRST
4 NATIONWIDE'S ASSETS PRE-BANKRUPTCY WEREN'T USED TO PAY
5 DEBTS OF OTHER NOVELLI COMPANIES?

6 A SOME NOVELLI COMPANIES HAD GUARANTEED --
7 FIRST NATIONWIDE HAD GUARANTEED OR WAS AN ACTUAL MAKER OF
8 OBLIGATIONS OF OTHER NOVELLI COMPANIES.

9 Q AND YOU'VE DISCUSSED SOME OF FIRST
10 NATIONWIDE'S PAST ACTIVITIES WITH FIRST NATION -- SOME OF
11 FIRST NATIONWIDE'S CREDITORS; RIGHT?

12 A FIRST NATIONWIDE'S ACTIVITIES WERE DISCUSSED
13 WITH THE CREDITORS COMMITTEE IN FIRST NATIONWIDE, YES.

14 Q RIGHT.

15 I MEAN, THERE WAS AN ATTORNEY IN NEW ORLEANS
16 BY THE NAME OF DOUGLAS DRAPER WHO YOU'VE SPOKEN WITH;
17 RIGHT?

18 A INDEED.

19 Q MR. DRAPER WAS AN ATTORNEY WHO REPRESENTED
20 AN INDIVIDUAL BY THE NAME OF JIM PATTON, WHO HAD SOLD A
21 PARK IN FLORIDA CALLED "SALT SPRINGS" TO FIRST NATIONWIDE;
22 RIGHT?

23 A I'M NOT SURE WHETHER HE SOLD THE PARK OR
24 WHETHER HE SOLD THE STOCK IN A SUBSIDIARY THAT OWNED THE
25 PARK TO FIRST NATIONWIDE.

26 Q ONE OR THE OTHER?

1 A PARDON ME?

2 Q IT WAS ONE OR THE OTHER?

3 A I THINK IT WAS THE LATTER.

4 Q OKAY. BUT YOU KNEW THAT THIS DRAPER FELLOW,
5 THIS DRAPER ATTORNEY, WAS INVOLVED BECAUSE OF MR. PATTON'S
6 SALE OF SOME ASSETS TO FIRST NATIONWIDE?

7 A YES. I BELIEVE MR. PATTON CLAIMED THAT
8 FIRST NATIONWIDE WAS INDEBTED TO HIM, AND THAT IS WHY I HAD
9 CONTACT WITH MR. DRAPER.

10 Q AND AMONG YOUR CONTACTS WITH MR. DRAPER, YOU
11 WROTE HIM A LETTER ABOUT FIRST NATIONWIDE'S TRANSACTIONS?

12 A I MAY WELL HAVE.

13 Q I'D LIKE TO SHOW TO THE WITNESS EXHIBIT 203,
14 PLEASE.

15 MAY I APPROACH, YOUR HONOR?

16 NOW, THIS DOCUMENT, EXHIBIT 203, IS A LETTER
17 THAT YOU WROTE TO DOUGLAS DRAPER?

18 A YES. BUT I WROTE TO HIM IN HIS CAPACITY AS
19 COUNSEL FOR THE CREDITORS COMMITTEE, NOT AS MR. PATTON'S
20 ATTORNEY.

21 Q AND THE LETTER REFERENCES A TELEPHONE
22 MEETING THAT YOU HAD WITH MR. DRAPER?

23 A YES.

24 Q AND THE LETTER ALSO ENCLOSED A LIST OF
25 DISBURSEMENTS THAT YOUR STAFF HAD PREPARED UNDER YOUR
26 DIRECTION?

1 A YES.

2 Q AND THIS LIST OF DISBURSEMENTS OF FIRST
3 NATIONWIDE THAT YOU'D HAD YOUR STAFF PREPARE UNDER YOUR
4 DIRECTION WAS PART OF WHAT MR. MOSHENKO AND YOU REFERRED TO
5 EARLIER AS THE REVIEW PROCESS?

6 A PART OF IT.

7 Q PART OF THE REVIEW PROCESS.

8 NOW, FIRST NATIONWIDE, MR. JOSEPH, THEY
9 DIDN'T OWN ANY BOATS OR YACHTS, DID THEY?

10 A NOT THAT I KNOW OF, NO.

11 Q THEY DIDN'T HAVE ANY YACHTS, DID THEY?

12 A NOT THAT I WAS AWARE OF, NO.

13 MR. SHERMAN: NOW, THIS -- I'D LIKE TO MOVE EXHIBIT
14 203 INTO EVIDENCE, YOUR HONOR.

15 MR. MOSHENKO: RELEVANCE. 352. ARE WE GOING TO
16 ANALYZE 3,000 CHECKS?

17 MR. SHERMAN: YOUR HONOR, MR. MOSHENKO AND THE
18 WITNESS JUST GOT THROUGH DISCUSSING THE ISSUE OF THE
19 PROPRIETY OF PAST TRANSACTIONS.

20 THE COURT: I'LL ALLOW IT.

21 (WHEREUPON, EXHIBIT NO. 203, LETTER FROM
22 JAMES JOSEPH TO DOUGLAS DRAPER, WAS RECEIVED IN EVIDENCE.)

23 BY MR. SHERMAN: Q SO WHAT WE HAVE UP ON THE
24 BOARD, THEN, MR. JOSEPH, IS THE LETTER THAT YOU SENT TO THE
25 ATTORNEY WHO HEADED UP THE CREDITORS COMMITTEE; IS THAT IT?

26 A YES. HE WAS ONE OF THE ATTORNEYS.

1 Q ONE OF THE ATTORNEYS.

2 AND LET'S GO TO EXHIBIT -- EXCUSE ME.

3 PAGE --

4 THE COURT: DOES THAT SAY "NEW ORLEANS,
5 CALIFORNIA"?

6 JUROR 18: IT DOES.

7 BY MR. SHERMAN: Q YEAH. THAT WAS A MISTAKE,
8 MR. JOSEPH?

9 A YES.

10 Q WE ALL MAKE MISTAKES?

11 A BUT THE ZIP CODE IS CORRECT.

12 Q OKAY. BUT LET'S GO TO -- IT'S ARABIC PAGE
13 13 ON THE COMPUTER. IT'S 203-14.

14 NOW, THIS IS ONE PAGE OF THE DISBURSEMENTS
15 THAT YOU HAD YOUR STAFF PREPARE?

16 A YES.

17 Q AND IF YOU GO DOWN, OH, YOU'LL SEE A
18 REFERENCE TO "LIDO YACHT ANCHORAGE." IT IS ABOUT 15
19 ENTRIES FROM THE BOTTOM. IF WE CAN HIGHLIGHT THAT ONCE YOU
20 FIND IT.

21 A WHAT PAGE ARE WE ON?

22 Q WE'RE ON -- IT HAS PAGE NUMBER 13 AT THE
23 BOTTOM.

24 DO YOU SEE THAT, MR. JOSEPH?

25 A YES.

26 Q OKAY. THAT WAS SOME DISBURSEMENT THAT WAS

1 MADE, IT LOOKS LIKE, MARCH 31, 1995, BY FIRST NATIONWIDE TO
2 SOME YACHT FACILITY; IS THAT CORRECT?

3 A IT APPEARS TO BE A DISBURSEMENT OF \$2579 TO
4 LIDO YACHT ANCHORAGE.

5 Q AND DURING THE COURSE OF YOUR REVIEW OF THE
6 DEBTOR'S PAST TRANSACTIONS, YOU DID BECOME AWARE OF
7 PAYMENTS BEING MADE TO THE ORANGE COAST YOUTH FACILITY, AS
8 WELL, DIDN'T YOU?

9 A IF IT'S HERE, I DID.

10 Q WELL, LET'S -- WITHOUT WITH REGARD TO
11 WHETHER IT'S ON HERE OR NOT, I'M ASKING --

12 A NO, I DON'T REMEMBER.

13 Q YOU DON'T REMEMBER?

14 A NO.

15 Q OKAY. DID YOU EVER -- DID FIRST NATIONWIDE
16 OWN ANY AIRPLANES?

17 A I DON'T BELIEVE IT DID, NO.

18 Q DID FIRST NATIONWIDE USE AIRPLANES FOR ITS
19 BUSINESS? I'M NOT TALKING ABOUT SOUTHWEST AIRLINES OR
20 SOMETHING.

21 A I THINK AT SOME TIME PRIOR TO MY
22 APPOINTMENT, FIRST NATIONWIDE DID USE AIRCRAFT FOR CERTAIN
23 BUSINESS MATTERS.

24 Q BUT THEY WEREN'T IN THE AIRLINE BUSINESS?

25 A FIRST NATIONWIDE WAS NOT; ALTHOUGH, FIRST
26 NATIONWIDE HAD GUARANTEED, AS I UNDERSTAND IT, THE DEBTS OF

1 THE NOVELLI ENTITY CALLED "PRESIDENTIAL AIR." IF IT HADN'T
2 GUARANTEED THEM, IT WAS A CO-MAKER OF THE OBLIGATIONS TO
3 CREDITORS OF PRESIDENTIAL AIR.

4 Q DID YOU EVER LEARN IF FIRST NATIONWIDE
5 LEASED AN AIRPORT HANGER?

6 A AGAIN, I DON'T KNOW WHETHER FIRST NATIONWIDE
7 DID DIRECTLY. I BELIEVE THAT FIRST NATIONWIDE HAD EITHER
8 GUARANTEED DEBTS OF PRESIDENTIAL AIR OR WAS PRIMARILY
9 OBLIGATED FOR DEBTS OF PRESIDENTIAL AIR.

10 Q NOW, THESE GUARANTEES OF DEBTS OF
11 PRESIDENTIAL AIR, MR. JOSEPH, WHAT DID THAT HAVE TO DO WITH
12 RUNNING A RESORT BUSINESS?

13 A I'M NOT SURE WHAT IT HAD TO DO WITH. BUT I
14 CAN TELL YOU THAT CREDITORS OF PRESIDENTIAL AIR SAT ON THE
15 CREDITORS COMMITTEE OF FIRST NATIONWIDE RESORT, BECAUSE
16 APPARENTLY A LOT OF THE TRANSACTIONS HAVING TO DO WITH
17 PRESIDENTIAL AIR HAD BEEN GUARANTEED BY FIRST NATIONWIDE.

18 Q OKAY. SO PRESIDENTIAL AIR WAS AN AIRLINE?

19 A I THINK IT WAS AN ATTEMPT -- AN ATTEMPT TO A
20 CHARTER AIRLINE, YES.

21 Q THIS WAS AN AIRLINE THAT MR. NOVELLI TRIED
22 TO FORM?

23 A I KNOW HE WAS INVOLVED IN IT, YES.

24 Q AND THE AIRLINE FAILED?

25 A I BELIEVE IT DID.

26 Q EXHIBIT 374 -- BEFORE I PUT THAT UP ON THE

1 SCREEN, OBVIOUSLY, COUNSEL, HERE IS 374.

2 MAY I APPROACH, YOUR HONOR?

3 MR. JOSEPH, I PLACE BEFORE YOU THE DOCUMENT
4 THAT'S BEEN MARKED AS EXHIBIT 374.

5 A IS THIS THE PETITION IN THE FIRST NATIONWIDE
6 CASE?

7 Q THAT'S WHAT I THINK IT IS. COULD YOU
8 CONFIRM THAT, PLEASE?

9 A IT'S NOT SOMETHING I EVER PREPARED. IT
10 APPEARS TO BE, THOUGH.

11 Q AND WHEN YOU SAY IT APPEARS TO BE THE
12 PETITION, THIS APPEARS TO BE THE BANKRUPTCY PETITION THAT
13 FIRST NATIONWIDE FILED WITH THE UNITED STATES BANKRUPTCY
14 COURT ON MAY 24, 1996, STARTING THIS FIRST NATIONWIDE CASE
15 THAT YOU ULTIMATELY GOT APPOINTED TRUSTEE?

16 A YES. ALTHOUGH, I WAS NOT IN OFFICE AT THE
17 TIME THIS WAS DONE.

18 Q AGREED.

19 BUT WHEN YOU BECAME TRUSTEE IN SEPTEMBER
20 1996, THIS WOULD HAVE BEEN ONE OF THE DOCUMENTS THAT YOU
21 WOULD HAVE HAD ACCESS TO?

22 A IT'S A PUBLIC DOCUMENT, SIR. EVERYONE HAS
23 ACCESS TO IT.

24 Q AND YOU AS A TRUSTEE IN PARTICULAR WOULD
25 HAVE HAD SOME INTEREST IN THIS DOCUMENT?

26 A YES.

1 Q AND YOU SEE THERE'S ON THE SECOND PAGE THE
2 SIGNATURE OF MR. HANS SCHULZ AS PRESIDENT OF FIRST
3 NATIONWIDE?

4 A I SEE.

5 MR. SHERMAN: YOUR HONOR, I'D LIKE TO MOVE EXHIBIT
6 374 INTO EVIDENCE.

7 MR. SHAW: OBJECTION, YOUR HONOR. IT LACKS
8 FOUNDATION OF THIS WITNESS. THERE MAY BE OTHER WITNESSES.
9 IT LACKS FOUNDATION OF THIS WITNESS, AND IT'S HEARSAY.

10 MR. SHERMAN: WE HAVE A CERTIFIED COPY OF THIS.
11 IT'S A SELF-AUTHENTICATING DOCUMENT.

12 MR. SHAW: YOUR HONOR, JUST BECAUSE IT'S CERTIFIED
13 DOESN'T MEAN IT'S SELF-AUTHENTICATING.

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

15 MR. SHERMAN: LET'S PUT IT UP ON THE BOARD.

16 Q AND, MR. JOSEPH, THAT'S THE FIRST PAGE OF
17 THE PETITION FILED BY FIRST NATIONWIDE; IS THAT RIGHT?

18 A YES. THAT'S WHAT IT LOOKS LIKE TO ME.

19 Q NOW, LET'S GO TO THE PAGE -- SIX PAGES IN.
20 ON THE TOP IT HAS -- THE NEXT PAGE, PLEASE.

21 YOU'VE GOT UP ON THE BOARD A PAGE THAT AT
22 THE VERY TOP -- IF YOU CAN JUST HIGHLIGHT THAT, MIKE, THE
23 VERY TOP.

24 SEE "NAME OF CREDITOR" AND "COMPLETE MAILING
25 ADDRESS," AND THEN THE NAME AND TELEPHONE NUMBER AND NATURE
26 OF THE CLAIM AND SO FORTH; DO YOU SEE THAT, MR. JOSEPH?

1 A YES. IT'S DIFFICULT FOR ME TO READ THE TOP
2 COLUMNS, BUT I SEE THEM.

3 Q YOU HAVE THAT SAME COPY IN FRONT OF YOU, SIR?

4 A YES, I DO NOW.

5 Q OKAY. AND YOU'LL SEE -- THIS IS CALLED A
6 BANKRUPTCY SCHEDULE; RIGHT?

7 A NO.

8 Q WELL, WHAT IS IT CALLED?

9 A I BELIEVE THIS IS THE LIST OF THE 10 LARGEST
10 CREDITORS.

11 Q I SEE. OKAY. SO THIS --

12 A THIS DOCUMENT IS NOT ANY PART OF A SCHEDULE.

13 Q THANK YOU.

14 THIS IS A LIST OF CREDITORS THAT THE DEBTOR
15 FILES WHEN THEY FILE THEIR BANKRUPTCY PETITION?

16 A IN A CHAPTER 11 CASE, ONE OF THE
17 REQUIREMENTS IS A LIST OF THE 10 LARGEST UNSECURED
18 CREDITORS, YES.

19 Q OKAY. AND YOU'LL SEE AT THE BOTTOM THIS
20 DOCUMENT IS SIGNED BY THE PRESIDENT, HANS SCHULZ, OF FIRST
21 NATIONWIDE UNDER PENALTY OF PERJURY?

22 A COUNSEL, I SAID 10 LARGEST. THIS INDICATES
23 IT'S THE 20 LARGEST. I THINK THAT'S A MORE ACCURATE
24 STATEMENT.

25 Q CAN YOU SEE THE SIGNATURE OF THE PRESIDENT
26 OF FIRST NATIONWIDE, HANS SCHULZ?

1 A THAT'S WHAT IT PURPORTS TO BE, YES.

2 Q NOW, JUST ABOVE THAT YOU SEE THERE ARE TWO
3 CREDITORS ITEMIZED THERE. ONE CREDITOR IS I.N.G.; DO YOU
4 SEE THAT REFERENCE?

5 A YES.

6 Q AND I.N.G. IS AN INTERNATIONAL FINANCE FIRM
7 BASED IN EUROPE THAT MAKES LOANS TO BUSINESSES; RIGHT?

8 A MY UNDERSTANDING IS IT'S BASICALLY A DUTCH
9 COMPANY INVOLVED IN FINANCE AND LEASING.

10 Q AND YOU LEARNED AT SOME POINT THAT FIRST
11 NATIONWIDE HAS OWED SUBSTANTIAL SUMS OF MONEY TO THIS
12 I.N.G. COMPANY?

13 A THAT IS WHAT WAS CLAIMED. AN ATTORNEY FOR
14 I.N.G. SAT ON THE COMMITTEE, CREDITORS COMMITTEES, ON THE
15 FIRST NATIONWIDE CASE.

16 Q BECAUSE I.N.G. HAD LOANED PRESIDENTIAL AIR
17 SUBSTANTIAL SUMS OF MONEY SO THAT PRESIDENTIAL AIR COULD GO
18 OUT AND BUY BOEING 757 AIRPLANES?

19 A I SUSPECT THEY WERE LEASED, NOT BOUGHT.

20 Q MY MISTAKE.

21 SO THAT PRESIDENTIAL AIR COULD GO OUT AND
22 LEASE BOEING 757 AIRPLANES?

23 A AGAIN, COUNSEL, AS I RECALL, THE COUNSEL FOR
24 I.N.G. BELIEVED THAT FIRST NATIONWIDE WAS A PRIMARY OBLIGOR
25 ON THOSE LEASES -- THAT IT ENTERED INTO THOSE LEASES. HERE
26 IT SAYS, "GUARANTEE." THEY MIGHT HAVE GUARANTEED THEM. I

1 THOUGHT COUNSEL FOR THIS COMPANY INDICATED THAT THEY HAD A
2 DIRECT CONTRACTUAL OBLIGATION TO FIRST NATIONWIDE.

3 Q I DON'T WANT TO DWELL ON WHETHER IT WAS
4 DIRECT OR GUARANTEE. THE FACT IS THAT I.N.G., A DUTCH
5 FINANCING COMPANY, LOANED FOR LEASING SUBSTANTIAL SUMS OF
6 MONEY TO NOVELLI COMPANIES TO ASSIST IN THE LEASING OF
7 BOEING 757 AIRCRAFT?

8 A I'M SORRY. I THINK IT LEASED AIRCRAFT. I
9 WASN'T AWARE IT HAD MADE A LOAN OF MONEY.

10 Q I.N.G. LEASED AIRCRAFT?

11 A THAT WAS MY UNDERSTANDING.

12 Q I.N.G. LEASED AIRCRAFT TO NOVELLI COMPANIES?

13 A THAT WAS MY UNDERSTANDING, YES.

14 Q I.N.G. LEASED BOEING 757 AIRCRAFT TO NOVELLI
15 COMPANIES THAT WERE IN THE CAMPGROUND BUSINESS?

16 A FIRST NATIONWIDE WAS IN THE CAMPGROUND
17 BUSINESS, YES.

18 Q AND YOU'LL SEE THE NEXT ENTRY ON THE 20
19 LARGEST CREDITORS AS WORLD FUEL IN MIAMI, FLORIDA?

20 A YES.

21 Q AND WORLD FUEL IS IN THE BUSINESS OF
22 SUPPLYING FUEL TO OPERATORS OF JET PLANES?

23 A IF YOU SAY SO, SIR, I BELIEVE YOU.

24 Q WELL, AS TRUSTEE DID YOU LEARN THAT WORLD
25 FUEL WAS IN THAT BUSINESS?

26 A I ASSUMED IT HAD SOMETHING TO DO WITH

1 AVIATION FUEL. WHETHER IT WAS PRIMARILY OR EXCLUSIVELY FOR
2 JETS, I DON'T KNOW.

3 Q WORLD FUEL IS NOT A PROPANE SUPPLIER FOR
4 CAMPGROUNDS, OBVIOUSLY.

5 A THAT I DON'T KNOW.

6 Q EXHIBIT 375, PLEASE.

7 MAY I APPROACH, YOUR HONOR?

8 A COUNSEL, MAY I PUT THE PETITION ASIDE?

9 Q YES. YES. THANK YOU, MR. JOSEPH.

10 A MAY I PUT THE CHECK REGISTER ASIDE?

11 Q I'M GOING TO WANT TO COME BACK TO THAT. I
12 WANT TO COME BACK TO THAT.

13 A IF YOU CAN GIVE ME A SECOND.

14 Q SURE.

15 YOU HAVE 375 IN FRONT OF YOU?

16 A YES.

17 Q NOW, 375 ARE -- I THINK I'LL GET IT RIGHT
18 THIS TIME. 375 ARE SCHEDULES?

19 A THEY ARE SCHEDULES AND STATEMENT OF
20 AFFAIRS. I'M SORRY. THERE ARE CERTAIN SCHEDULES. IT
21 ACTUALLY SAYS, "AMENDMENT TO CERTAIN SCHEDULES."

22 Q AND THESE ARE DOCUMENTS THAT THE DEBTOR IN A
23 BANKRUPTCY CASE FILES TO LIST CERTAIN ASSETS OR
24 LIABILITIES, THINGS LIKE THAT?

25 A NO. THIS PARTICULAR DOCUMENT SAYS,
26 "AMENDMENT TO SCHEDULES D, E, F AND G. NONE OF THOSE

1 SCHEDULES ARE ASSET SCHEDULES. THOSE ARE DEBT SCHEDULES.

2 Q OKAY. LET'S TAKE A LOOK AT SCHEDULE G,
3 WHICH IS FOUR PAGES IN -- WELL, BEFORE WE DO THAT, YOU'VE
4 SEEN THESE SCHEDULES?

5 A I'M SURE I HAVE.

6 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 375 INTO
7 EVIDENCE.

8 MR. SHAW: SAME OBJECTION. FOUNDATION.

9 THE COURT: UNDER SUBMISSION.

10 BY MR. SHERMAN: Q LET'S PUT IT UP ON THE BOARD,
11 PLEASE, THE FIRST PAGE.

12 THIS IS WHAT THE FIRST PAGE OF EXHIBIT 375
13 LOOKS LIKE, MR. JOSEPH. IT'S UP ON THE BOARD.

14 A THE FIRST PAGE, YES. I SEE THAT.

15 Q OKAY. NOW, LET'S GO TO FOUR PAGES INTO IT.
16 IT SAYS, "DEBTOR HEREBY AMENDS ITS SCHEDULE G TO INCLUDE
17 THE FOLLOWING."

18 DO YOU SEE THAT UP AT THE TOP?

19 A YES.

20 Q AND THEN IT LISTS CERTAIN PARTIES TO LEASES
21 OR CONTRACTS?

22 A YES.

23 Q AND FIVE ENTRIES DOWN THERE'S "OLEN PROPERTY
24 SERVICES CORP"; DO YOU SEE THAT ONE?

25 A YES.

26 Q BY THE WAY, THESE WERE SCHEDULES THAT WERE

1 FILED WITH THE U.S. BANKRUPTCY COURT BY FIRST NATIONWIDE;
2 RIGHT?

3 A THAT'S MY ASSUMPTION.

4 Q AND THEN THEY DESCRIBE THE CONTRACT THAT
5 THEY'RE A PARTY TO; RIGHT?

6 A SCHEDULE G IS SUPPOSED TO LIST EXECUTOR
7 CONTRACTS WHICH EXIST BETWEEN THE DEBTOR AND THIRD PARTIES.

8 Q AND ONE OF THE CONTRACTS THAT EXISTED
9 BETWEEN FIRST NATIONWIDE AND THIRD PARTIES HAD TO DO WITH
10 OLEN PROPERTY SERVICES CORPORATION?

11 A THAT'S WHAT'S INDICATED HERE, YES.

12 Q AND THE NATURE OF THE CONTRACT OR LEASE IS
13 THAT IT WAS OFFICE SPACE AND AN AIRCRAFT HANGAR LEASE WHERE
14 THE DEBTOR IS THE LESSEE?

15 A YES.

16 Q AND, AGAIN, THIS WAS FOR THE JET AIRCRAFT
17 THAT WERE LEASED?

18 A I'M SORRY?

19 Q THIS IS FOR THE JET AIRCRAFT THAT WERE
20 LEASED?

21 A THAT I DON'T KNOW. ALL I KNOW HERE IS THE
22 DEBTOR IS INDICATING THAT IT IS A PARTY TO AN AIRCRAFT
23 HANGAR LEASE IN LONG BEACH.

24 Q OKAY. BUT THIS AIRCRAFT HANGAR HAD NOTHING
25 TO DO WITH MEMBERS' USE OF CAMPGROUNDS?

26 A I DON'T THINK IT HAD TO DO WITH THE

1 CAMPGROUND OPERATION, NO.

2 Q AND THIS PRESIDENTIAL AIR, MR. JOSEPH, THEY
3 HAD RUN UP A LOT OF DEBTS BEFORE THEY FAILED?

4 A I THINK THAT'S A FAIR STATEMENT.

5 Q LET'S GO BACK TO THE CHECK REGISTER, EXHIBIT
6 203, AND, IN PARTICULAR, ON THAT CHECK REGISTER IT'S MARKED
7 AT THE BOTTOM PAGE 6. PAGE 6. THE COMPUTER, IT'S 203-7.

8 DO YOU HAVE PAGE NUMBER 6 THERE, MR. JOSEPH,
9 IN FRONT OF YOU?

10 A YES, I DO.

11 Q AND YOU SEE THERE'S A REFERENCE -- TAKE A
12 LOOK IN THE LEFT-HAND COLUMN UNDER THE RESORT THAT SAYS
13 CYPRESS, C-Y-P-R-E-S-S. IT'S ABOUT 20 ENTRIES OR SO FROM
14 THE BOTTOM.

15 DO YOU SEE THAT?

16 A WELL, THERE'S SEVERAL CYPRESS ENTRIES ON
17 THIS PAGE.

18 Q THE ONE AT THE BOTTOM.

19 A GOING UP FROM THE BOTTOM, THE FIRST CYPRESS
20 ENTRY?

21 Q YES.

22 A OKAY. YES, I SEE IT.

23 Q OKAY. AND SO THIS REPRESENTS A DISBURSEMENT
24 MADE BY FIRST NATIONWIDE; IS THAT RIGHT?

25 A WELL, IT REPRESENTS A DISBURSEMENT MADE FROM
26 A FIRST NATIONWIDE BANK ACCOUNT.

1 Q AND THE FIRST NATIONWIDE BANK ACCOUNT WAS
2 FOR CYPRESS?

3 A SORRY?

4 Q THE FIRST NATIONWIDE BANK ACCOUNT WAS FOR
5 CYPRESS?

6 A I'M NOT SURE THAT'S TRUE.

7 Q UNDER "RESORT," YOU SEE THE RESORT LISTING?

8 A I THINK THAT'S THE RESORT IT WAS ATTRIBUTED
9 TO.

10 Q OH, OKAY. AND THIS IS A PURCHASE OF FUEL;
11 IS THAT RIGHT?

12 A THAT'S WHAT IT SAYS, YES.

13 Q OF \$1800?

14 A YES.

15 Q AND DID YOU EVER MAKE INQUIRY AS TO WHY THIS
16 CYPRESS RESORT WAS PURCHASING \$1800 OF FUEL IN FEBRUARY
17 1996?

18 A \$1800 OF FUEL COULD WELL HAVE BEEN RETAINED
19 SUPPLIES OR SOME SUPPLIES LIKE THAT. IT DIDN'T SEEM LIKE
20 YOU'D FILL UP A JET AIRPLANE WITH \$1800.

21 Q DID YOU EVER MAKE INQUIRY?

22 A NO.

23 Q WHY THAT DISBURSEMENT WAS PAID?

24 A NO. I THINK I MADE AN ASSUMPTION WITH
25 RESPECT TO THAT PURCHASE.

26 Q AND LET'S GO TWO PAGES BEFORE THAT.

1 A WHAT PAGE, SIR?

2 Q IT SAYS PAGE 4 ON IT, ACTUALLY. PAGE 4.

3 IT'S 203-5 FOR YOU, MIKE.

4 AND, OH, THIS ONE -- PROBABLY THE EASIEST
5 WAY TO FIND IT IS IF I ASK YOU TO LOOK UNDER THE PAYEE FOR
6 CASH, JET FUEL.

7 A I'M SORRY, I CAN'T --

8 Q ABOUT 15 ITEMS FROM THE BOTTOM.

9 A WHAT -- DOES IT SHOW A FIRST NATIONWIDE
10 RESORT?

11 MR. SHERMAN: MAY I APPROACH?

12 THE COURT: YOU MAY APPROACH.

13 BY MR. SHERMAN: Q RIGHT HERE. OKAY. THANK YOU.

14 SO I'VE DIRECTED YOU TO THIS DISBURSEMENT
15 CASH; DO YOU SEE THAT?

16 A I SEE IT.

17 Q AND IT'S FOR JET FUEL?

18 A YES.

19 Q AND IT WAS FOR \$2,750?

20 A YES.

21 Q AND IT WAS MADE BY FIRST NATIONWIDE RESORT
22 MANAGEMENT?

23 A YES.

24 Q AND IT WAS MADE FOUR DAYS BEFORE THEY FILED
25 BANKRUPTCY?

26 A OKAY.

1 Q DID YOU INQUIRE ABOUT FIRST NATIONWIDE'S
2 PURCHASE OF \$2700 WORTH OF JET FUEL IN CASH BEFORE -- DAYS
3 BEFORE IT FILED FOR BANKRUPTCY?

4 A \$2700 DISBURSEMENT? I DON'T THINK I DID.

5 Q HOW ABOUT GOING TO PAGE NUMBER 15,
6 MR. JOSEPH, PAGE NUMBER 15 OF THAT SAME EXHIBIT 203. AND
7 THERE I WANT TO ASK YOU ABOUT ENTRIES TO THE COMPANY CALLED
8 "PHOENIX FUEL." IT'S ABOUT 10 OR 12 FROM THE BOTTOM.

9 YOU SEE THERE ARE TWO ENTRIES THERE TO
10 PHOENIX FUEL?

11 A YES.

12 Q AND YOU SEE THOSE PAYMENTS WERE MADE, ONE
13 OUT OF FIRST NATIONWIDE AND ONE OUT OF THE CYPRESS PARK
14 ACCOUNT; RIGHT?

15 A YES.

16 Q AND ONE PAYMENT WAS MADE ON FEBRUARY 16,
17 '96, AND ONE PAYMENT WAS MADE ON MARCH 7, '96?

18 A YES.

19 Q AND THOSE TWO PAYMENTS TOTALED \$52,500 FOR
20 FUEL?

21 A YES.

22 Q DID YOU MAKE INQUIRY AS TO WHAT THESE RESORT
23 CAMPGROUNDS WERE DOING PURCHASING \$52,000 WORTH OF FUEL?

24 A YES.

25 Q AND WHAT WAS -- WHAT WERE YOU TOLD?

26 A WELL, RESORT CAMPGROUNDS, THE LARGER ONE WAS

1 FIRST NATIONWIDE RESORT MANAGEMENT.

2 AM I MISUNDERSTANDING YOU?

3 Q IF THAT'S WHAT IT IS.

4 A YOU TELL ME. I THOUGHT YOU TOLD ME TO
5 DIRECT MY ATTENTION TO THE TWO PHOENIX FUEL PURCHASES. DID
6 YOU?

7 Q YES. MR. JOSEPH, LET ME ASK YOU A DIFFERENT
8 QUESTION.

9 WAS FIRST NATIONWIDE RESORT MANAGEMENT
10 BUYING JET FUEL FOR PLANES?

11 A I BELIEVE IT WAS.

12 Q AND WAS FIRST NATIONWIDE'S PURCHASE OF JET
13 FUEL FOR AIRPLANES BENEFITTING ITS CAMPGROUND MEMBERS?

14 A THAT I CAN'T SAY. MY BELIEF WAS AND I THINK
15 THE CREDITOR COMMITTEE'S UNDERSTANDING WAS THAT FIRST
16 NATIONWIDE RESORT WAS ESSENTIALLY LIKE A CO-OPERATOR OF
17 PRESIDENTIAL AIR. IT GUARANTEED ITS DEBTS FOR THE
18 EQUIPMENT LEASES, AND IT HAD GUARANTEED FUEL PURCHASES OR
19 WAS MAKING THEM DIRECTLY AND, IN FACT, HAD DIRECTLY ENTERED
20 INTO A LEASE WITH THE HANGAR IN LONG BEACH AS YOU'VE JUST
21 POINTED OUT TO ME.

22 SO IT APPEARED TO ME AND IT APPEARED TO THE
23 COMMITTEE THAT FIRST NATIONWIDE RESORT MANAGEMENT AS AN
24 ENTITY WAS IN FACT GUARANTEEING OR OBLIGATING ITSELF FOR
25 OBLIGATIONS OF THE PRESIDENTIAL AIR OPERATION.

26 Q AND ON THAT SAME PAGE, MR. JOSEPH, THERE ARE

1 MANY DISBURSEMENTS MADE WHERE THE PAYEE IS SHOWN AS
2 PRESIDENTIAL AIR?

3 A INDEED.

4 Q NOW, LET'S GO TO THE NEXT PAGE OF THE
5 DISBURSEMENT SCHEDULE.

6 CAN YOU BLOW UP THE BOTTOM, MIKE?

7 OKAY. YOU SEE THERE ARE SOME -- YOU SEE
8 THERE ARE THREE ENTRIES WHERE THE PAYEE IS ROBERT MITCHELL?

9 A YES.

10 Q AND YOU SEE THE PAYMENTS THAT FIRST
11 NATIONWIDE WAS MAKING TO ROBERT MITCHELL?

12 A YES.

13 Q AND FIRST NATIONWIDE MADE THREE DIFFERENT
14 PAYMENTS TO ROBERT MITCHELL?

15 A YES.

16 Q TOTALING OVER \$10,000?

17 A YES.

18 Q OVER A SEVEN-MONTH PERIOD OF TIME?

19 A YES.

20 Q IN 1995?

21 A YES.

22 Q DID FIRST NATIONWIDE ALSO OPERATE A
23 CEMETERY?

24 A FIRST NATIONWIDE TO MY UNDERSTANDING AT ONE
25 POINT WAS ATTEMPTING TO PURCHASE A CEMETERY.

26 Q AND FIRST NATIONWIDE MADE PAYMENTS ON

1 ACCOUNT OF THAT INTEREST?

2 A I RECALL SOME OF THE PAYMENTS BEING
3 INDICATED AS THAT, YES.

4 Q NOW, DID FIRST NATIONWIDE EVER OPERATE ANY
5 RESORTS IN MEXICO?

6 A I DON'T BELIEVE FIRST NATIONWIDE DIRECTLY
7 DID, NO.

8 Q WHAT ABOUT INDIRECTLY?

9 A I THINK IT MAY HAVE. I THINK IT HAD SOME
10 KIND OF CONNECTION TO -- WITH A CAMPGROUND IN MEXICO
11 SOMEWHERE IN BAJA, UPPER BAJA, CALIFORNIA.

12 Q NOW, LET'S TURN TO PAGE NUMBER 2 OF THE
13 DISBURSEMENT SCHEDULE.

14 AND, MIKE, IF YOU COULD JUST -- I'M SORRY.
15 MINE SAYS 203-27. YOURS SAYS 203-3. MY ERROR, I'M SURE.

16 A I CAN'T READ THAT.

17 Q NO. I UNDERSTAND. I'M JUST TRYING TO
18 SYNCHRONIZE WITH MR. HAHN OVER HERE, WHO I WOULD BE LOST
19 WITHOUT.

20 IS THAT PAGE 2, AS WELL? MAY I APPROACH TO
21 TRY TO LOCATE THAT ONE, YOUR HONOR? THANK YOU.

22 IT IS THE LAST PAGE.

23 NOW, YOU'LL SEE ON THAT PAGE 2, THESE ARE
24 ALSO DISBURSEMENTS; RIGHT?

25 A YES.

26 Q DISBURSEMENTS MADE BY FIRST NATIONWIDE?

1 A THEY WERE MADE OUT OF AN ACCOUNT WITH THE
2 FIRST NATIONWIDE NAME ON IT.

3 MR. SHERMAN: AND IF -- MIKE, IF YOU COULD BLOW UP
4 MAYBE THE FIRST -- OR ZOOM IN ON THE FIRST 10 OR 20.

5 NOW, THERE'S A REFERENCE -- CAN YOU EXPAND
6 IT ANYMORE, ZOOM IN ANYMORE PERHAPS?

7 OKAY. NO. FINE. NO.

8 Q THERE'S A REFERENCE TO A PAYMENT TO MERCEDES
9 ON SEPTEMBER 7, '95, OF \$2,178.10; DO YOU SEE THAT?

10 A YES.

11 Q AND UNDERNEATH THAT IN OCTOBER, NOVEMBER AND
12 THEN IN AUGUST THERE ARE OTHER PAYMENTS TO MERCEDES; DO YOU
13 SEE THAT?

14 A WELL, THERE ARE PAYMENTS TO A
15 MERCEDES GONSALVAS AND RIVA PALACIO?

16 Q RIGHT.

17 AND THEN UNDERNEATH THOSE PAYMENTS TO
18 MERCEDES GONSALVAS AND RIVA PALACIO, THERE'S A WIRE TO
19 MEXICO?

20 A YES.

21 Q AND THEN THERE'S A TRANSFER, MEXICO-RAY;
22 RIGHT?

23 A YES.

24 Q AND ANOTHER TRANSFER, MEXICO-RAY?

25 A YES.

26 Q DO YOU SEE THAT?

1 A I DO.

2 Q AND THEN A THIRD MEXICO-RAY; RIGHT?

3 A YES.

4 Q AND DID YOU EVER LEARN THAT -- WHETHER
5 MR. NOVELLI OWNED A MANSION IN MEXICO?

6 A I WAS TOLD HE OWNED A HOUSE IN -- SOMEWHERE
7 ON THE PACIFIC COAST. I'VE NEVER HEARD IT DESCRIBED AS A
8 MANSION.

9 Q AND DID YOU EVER LEARN WHETHER MR. NOVELLI
10 WOULD VISIT THAT HOME IN MEXICO WITH ONE OF THE JET PLANES?

11 A I BELIEVE HE DID.

12 Q AND DID YOU EVER INQUIRE AS TO WHETHER THESE
13 PAYMENTS TO MERCEDES WERE PAYMENTS ON ACCOUNT OF THAT HOME
14 IN MEXICO?

15 A MY UNDERSTANDING WAS THEY WERE.

16 Q AND THIS HOME IN MEXICO THAT YOU LEARNED
17 ABOUT, THIS WAS NOT FOR USE BY THE FIRST NATIONWIDE
18 CAMPGROUND MEMBERS, WAS IT?

19 A I DON'T THINK IT WAS FOR USE BY THE MEMBERS,
20 NO.

21 Q I'D LIKE TO TURN TO WHERE MR. MOSHENKO LEFT
22 OFF YESTERDAY, EXHIBIT 1719. CAN WE PUT THAT UP ON THE
23 BOARD.

24 A ARE WE FINISHED WITH THIS?

25 ARE WE FINISHED WITH THIS?

26 Q YES, WE ARE. EXHIBIT 1719 --

1 A DO YOU WANT ME TO GET THAT IN FRONT OF ME?

2 Q YES, THANK YOU.

3 YOU KNOW WHAT? I HAVE A COPY OF IT.

4 MAY I APPROACH, YOUR HONOR?

5 THE COURT: YOU MAY.

6 BY MR. SHERMAN: Q NOW, THIS EXHIBIT 1719 CONSISTS
7 OF YOUR LAWYER'S LETTER TO COAST TO COAST AND COAST TO
8 COAST'S RESPONSE BACK?

9 A IN THE ALL SEASONS CASE.

10 Q YES.

11 A YES.

12 Q AND FOCUSING NOW ON YOUR LAWYER'S LETTER TO
13 COAST TO COAST, MR. JOSEPH, WE CAN AGREE THAT YOUR LETTER
14 OF JANUARY 30, 1992 DID NOT ACCUSE COAST AS BEING THE ONE
15 WHO WAS ALLEGEDLY SENDING OUT ANY LIST OF ANYONE'S MEMBERS?

16 MR. MOSHENKO: OBJECTION. THE DOCUMENT SPEAKS FOR
17 ITSELF.

18 THE COURT: OVERRULED.

19 THE WITNESS: NOT BY ITS VERY TERMS, NO.

20 BY MR. SHERMAN: Q AND YOU HAVE NO PERSONAL
21 KNOWLEDGE OF COAST TO COAST HAVING SENT OUT ANY MEMBER LIST
22 INVOLVING ALL SEASONS IN 1992 TO ANYONE?

23 A PERSONAL KNOWLEDGE?

24 Q PERSONAL KNOWLEDGE.

25 A AS DISTINGUISHED FROM WHAT I WAS TOLD BY
26 PEOPLE, YOU'RE CORRECT.

1 Q YOU'VE NEVER CONFIRMED FOR A FACT THAT COAST
2 SENT OUT ANY LIST OF ANYONE'S MEMBERS IN 1992?

3 A IN MY VIEW, COUNSEL, THE COAST TO COAST
4 RESPONSE WAS CONFIRMATION.

5 Q IN 1992 ALL SEASONS PARKS WERE COAST TO
6 COAST AFFILIATED PARKS IN THE COAST SYSTEM; RIGHT?

7 A THAT I BELIEVE TO BE CORRECT.

8 Q AND AS OF 1992 YOU EVER LOOKED AT THE
9 COAST/ALL SEASONS WRITTEN AFFILIATION AGREEMENT?

10 A IT'S 10 YEARS AGO. EIGHT YEARS AGO. I
11 CAN'T AT THIS POINT TELL YOU WHETHER I SAW THAT PARTICULAR
12 AGREEMENT OR NOT.

13 Q AS OF 1992 WHEN THIS LETTER WAS SENT, YOU
14 WEREN'T KNOWLEDGEABLE ABOUT ALL THE TERMS OF THE WRITTEN
15 AFFILIATION AGREEMENT BETWEEN COAST AND ALL SEASONS, WERE
16 YOU?

17 A I HAD KNOWLEDGE OF IT.

18 Q NOW, IN -- AFTER YOUR LAWYER'S JANUARY 30,
19 1992 LETTER, YOUR LAWYER RECEIVED A PROMPT RESPONSE BACK
20 FROM COAST TO COAST; RIGHT?

21 A YES.

22 Q AND THIS WAS A RESPONSE BY MR. RYMAN?

23 A THE ONE WE LOOKED AT YESTERDAY?

24 Q YES.

25 A YES.

26 Q AND THAT RESPONSE WAS SENT ON FEBRUARY 7?

1 A THAT'S MY RECOLLECTION.

2 Q AND IF WE COULD PUT MR. RYMAN'S LETTER UP.
3 1719. THE THIRD PAGE.

4 AND MR. RYMAN'S LETTER IN THE THIRD
5 PARAGRAPH SAYS THAT THE TRANSFER POLICY FOR COAST TO COAST
6 MEMBERS REQUIRES, UNLESS UNUSUAL CIRCUMSTANCES EXIST, A
7 REQUEST FROM THE MEMBER.

8 DO YOU SEE THAT?

9 A YES.

10 Q NOW, DID YOU MAKE ANY INQUIRY OF CAMP COAST
11 TO COAST IN 1992 WHAT MR. RYMAN MEANT BY THE PHRASE "UNLESS
12 UNUSUAL CIRCUMSTANCES EXIST"?

13 A I PERSONALLY DID NOT. MY COUNSEL MAY HAVE.

14 Q DID YOU MAKE ANY INQUIRY OF MR. NOVELLI AS
15 TO WHAT "UNUSUAL CIRCUMSTANCES" MEANT?

16 A I PERSONALLY DID NOT.

17 Q SO YOU NEVER PERSONALLY FOUND OUT WHAT THE
18 PHRASE "UNLESS UNUSUAL CIRCUMSTANCES EXIST" MEANT?

19 A NO, EXCEPT I ASSUMED IT MEANT SOMETHING
20 OTHER THAN ALL SEASONS RESORTS BEING IN A CHAPTER 11 CASE.

21 Q YOU NEVER FOUND OUT?

22 A PARDON ME?

23 Q YOU NEVER FOUND OUT?

24 A WELL, I KNEW THAT MUCH.

25 Q YOU NEVER FOUND OUT IF UNUSUAL CIRCUMSTANCES
26 INCLUDED A PARK JUST PULLING OUT OF COAST?

1 A NO, I DON'T THINK I EVER FOUND THAT OUT.

2 Q YOU NEVER FOUND OUT IF UNUSUAL CIRCUMSTANCES
3 INCLUDED A PARK QUITTING COAST?

4 A NOT DIRECTLY, NO. I DON'T KNOW IF I DID.

5 Q NOW, IN MR. RYMAN'S LETTER BACK, HE
6 REFERENCES IN THE PARAGRAPH JUST ABOVE THAT, THE LAST
7 SENTENCE, "ADDITIONALLY, IN ACCORDANCE WITH
8 MR. RAY NOVELLI'S REQUEST, WE HAVE SUPPRESSED ALL COAST TO
9 COAST PRODUCT SOLICITATION MAILINGS TO A.S.R. MEMBERS"; DO
10 YOU SEE THAT?

11 A YES.

12 Q DID YOU DISCUSS WITH MR. NOVELLI THE TERMS
13 OF THAT REQUEST?

14 A THE TERMS OF WHAT REQUEST?

15 Q THE REQUEST THAT MR. RYMAN REFERENCES.

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

17 Q NOW, MR. RYMAN'S LETTER DOESN'T SAY THAT
18 COAST DOESN'T HAVE MEMBERS, DOES IT?

19 A I'M SORRY, SIR. I DON'T UNDERSTAND.

20 Q LET ME REPHRASE.

21 YOU'VE GOT MR. RYMAN'S LETTER IN FRONT OF
22 YOU; RIGHT?

23 A NO, I DON'T.

24 Q I THOUGHT I HAD HANDED IT TO YOU.

25 A NO. YOU HANDED ME MR. DIAMOND'S LETTER TO
26 MR. BUTLER.

1 Q IS IT THE THIRD PAGE, PERHAPS?

2 A OKAY. THANK YOU.

3 Q MR. RYMAN'S LETTER IS -- THERE'S NOTHING IN
4 MR. RYMAN'S LETTER ON THE SUBJECT OF COAST HAVING ITS OWN
5 MEMBERS, TOO?

6 A THE PHRASE APPEARS IN THE LETTER,
7 "ACCORDINGLY WE SEND THE SEMI-ANNUAL LIST OF COAST TO COAST
8 MEMBERS FROM EACH RESORT TO THEIR RESPECTIVE RESORTS BY
9 CERTIFIED MAIL ONLY."

10 Q SO YOU KNEW THAT COAST HAD MEMBERS?

11 A THAT SUGGESTS THAT COAST HAS SOMETHING
12 CALLED MEMBERS, YES.

13 Q AND, MR. JOSEPH, YOU DON'T KNOW WHAT AN
14 ORPHAN PROGRAM IS AS USED IN THE CAMPGROUND INDUSTRY, DO
15 YOU?

16 A SAY AGAIN?

17 Q YOU DON'T KNOW WHAT AN ORPHAN PROGRAM IS AS
18 USED IN THE RESORT CAMPGROUND INDUSTRY IS, DO YOU?

19 A I THINK I MAY KNOW SOMEWHAT WHAT IT MEANS.
20 AN ORPHAN MEMBER I PRESUME IS A MEMBER WITHOUT A HOME
21 CAMPGROUND?

22 Q LET ME GO BACK AND TRY TO MAKE IT CLEAR.
23 IN 1992 --

24 A YES.

25 Q -- YOU HAD NOT DISCUSSED ISSUES OF ORPHAN
26 PROGRAMS WITH ANYONE?

1 A I'M NOT SURE THAT'S TRUE, SIR.

2 Q WELL, WHO DID YOU DISCUSS THEM WITH IN 1992?

3 A I WAS OPERATING A MEMBERSHIP CAMPGROUND WITH
4 13 OR 14 CAMPGROUNDS. IN ORDER TO DO THAT, I PRESUME I
5 WOULD HAVE DISCUSSED INS AND OUTS OF THE CAMPGROUND
6 INDUSTRY WITH A NUMBER OF PEOPLE, INCLUDING MY EMPLOYEES
7 AND POSSIBLY OTHERS.

8 Q THE EXCHANGE OF LETTERS BETWEEN YOUR LAWYER
9 AND MR. RYMAN OF COAST SAYS NOTHING ABOUT ORPHAN PROGRAMS?

10 A I DON'T SEE THE WORD "ORPHAN PROGRAM" IN
11 THESE LETTERS, NO.

12 THE COURT: MR. SHERMAN, WE'LL TAKE OUR MORNING
13 BREAK.

14 LADIES AND GENTLEMEN, 20 MINUTES.

15 (RECESS TAKEN.)

16 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
17 COURT IN THE PRESENCE OF THE JURY:)

18 THE COURT: YOU MAY PROCEED, COUNSEL.

19 MR. SHERMAN: THANK YOU.

20 Q MR. JOSEPH, I'D LIKE TO ASK YOU SOME
21 QUESTIONS ABOUT RAYMOND AND MARLIES NOVELLI'S STATUS WITH
22 FIRST NATIONWIDE RESORT MANAGEMENT; OKAY?

23 MR. NOVELLI WAS NOT AN EMPLOYEE OF THE
24 ESTATE OF FIRST NATIONWIDE RESORT MANAGEMENT?

25 A THAT'S CORRECT.

26 Q MARLIES NOVELLI WAS NOT AN EMPLOYEE OF THE

1 ESTATE OF FIRST NATIONWIDE RESORT MANAGEMENT?

2 A CORRECT.

3 Q HANS SCHULZ WAS NOT AN EMPLOYEE OF THE
4 ESTATE OF FIRST NATIONWIDE RESORT MANAGEMENT?

5 A THAT I'M NOT SURE ABOUT.

6 Q YOU HIRED SOME OF THE FORMER MANAGEMENT?

7 A I THINK MR. SCHULZ MAY HAVE BEEN AN
8 EMPLOYEE, OR AT LEAST PART OF HIS SALARY MAY HAVE BEEN
9 REIMBURSED BY FIRST NATION -- BY THE ESTATE OF FIRST
10 NATIONWIDE.

11 Q OKAY. NOW, WHEN YOU SAY "PART OF HIS SALARY
12 MAY HAVE BEEN REIMBURSED," HIS SALARY THAT HE WAS BEING
13 PAID FROM OTHER NOVELLI COMPANIES?

14 A YES. I CAN'T -- FRANKLY, SIR, I CAN'T
15 RECALL WHETHER HE WAS ON DIRECT PAYROLL OR WHETHER HE WAS
16 NOT.

17 Q BUT MR. AND MRS. NOVELLI WERE NOT AGENTS OF
18 YOURS AS RESPECTS FIRST NATIONWIDE?

19 A NO. THAT IS CORRECT. THEY WERE NOT.

20 Q AND HANS SCHULZ WAS NOT YOUR AGENT AS
21 RESPECTS FIRST NATIONWIDE?

22 A I SUPPOSE ANY EMPLOYEE, IF HE WAS AN
23 EMPLOYEE, IS TO SOME DEGREE AN AGENT OF THE EMPLOYER. BUT
24 IN THE SENSE OF AN AGENT BEING ABLE TO BIND ME, NO.

25 Q OKAY. SO THE NOVELLIS COULDN'T BIND YOU?

26 A BIND ME, CORRECT.

1 Q AND SCHULZ COULDN'T BIND YOU?

2 A IF MR. SCHULZ WAS IN WHOLE OR IN PART AN
3 EMPLOYEE OF MINE, AND IF HE IN THE COURSE OF HIS EMPLOYMENT
4 WENT OUT AND ORDERED A PART FOR THE COMPUTER OR SOFTWARE OR
5 SOMETHING OF THAT KIND, THEN IN A SENSE HE HAS BOUND THE
6 ESTATE AND BOUND ME.

7 Q AS YOU SIT HERE, YOU CAN'T THINK OF ANY
8 MATERIAL TRANSACTION AFFECTING THE ESTATE OF FIRST
9 NATIONWIDE RESORT MANAGEMENT WHERE HANS SCHULZ ACTED AS
10 YOUR AGENT?

11 I'M NOT TALKING ABOUT NOW BUYING A COMPUTER
12 OR SOMETHING LIKE THAT.

13 A NOT MATERIAL, NO.

14 Q OKAY. AND SO IF -- IF RAYMOND NOVELLI ACTED
15 ON BEHALF OF THE FIRST NATIONWIDE ESTATE DURING THE TIME
16 THAT YOU WERE THE TRUSTEE, HE DID SO WITHOUT YOUR APPROVAL?

17 A I THINK THAT'S A FAIR GENERAL STATEMENT.

18 Q AND IF HANS SCHULZ ACTED ON BEHALF OF THE
19 FIRST NATIONWIDE ESTATE DURING THE TIME OF YOUR TENURE AS
20 TRUSTEE, HE DID SO WITHOUT YOUR APPROVAL?

21 I'M NOT TALKING ABOUT A COMPUTER PURCHASE
22 NOW.

23 A AS A GENERAL MATTER, WITH RESPECT TO
24 MATERIAL TRANSACTIONS, WITH RESPECT TO WHICH THEY HAD NOT
25 CONSULTED ME AND DID NOT HAVE MY APPROVAL, I THINK THAT
26 WOULD BE A TRUE STATEMENT.

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

2 THE COURT: YOU MAY.

3 BY MR. SHERMAN: Q I'VE PLACED BEFORE YOU,
4 MR. JOSEPH, EXHIBIT 39, WHICH WAS PREVIOUSLY PUT UP ON THE
5 SCREEN. THIS IS THE LETTER BY WHICH THERE WAS A PULL-OUT
6 OF CAMP COAST TO COAST.

7 I TAKE IT THAT YOU HAD NOT SEEN THIS LETTER
8 UNTIL ABOUT THE LAST YEAR OR SO?

9 A I'M NOT SURE THAT'S CORRECT.

10 Q WHEN DID YOU FIRST SEE THIS LETTER?

11 A I'M NOT SURE I EVER SAW THE LETTER.

12 Q NOW, I'D LIKE TO ASK YOU SOME QUESTIONS
13 ABOUT ALL SEASONS RESORTS --

14 THE COURT: EXCUSE ME. ARE YOU FINISHED WITH THAT?

15 MR. SHERMAN: YES.

16 THE COURT: YOU PUT IT UP THERE, BUT NOBODY COULD
17 READ IT --

18 MR. SHERMAN: I'M SORRY. WHY DON'T WE PUT IT UP.

19 THE COURT: -- WHAT THE LETTER IS REFERRING TO.

20 BY MR. SHERMAN: Q WHY DON'T WE PUT UP THE WHOLE
21 LETTER.

22 THIS IS THE LETTER OF AUGUST 27, 1997 ON
23 FIRST NATIONWIDE STATIONERY FROM RAYMOND NOVELLI AND
24 HANS SCHULZ TO CAMP COAST TO COAST.

25 NOW, MR. JOSEPH, I'D LIKE TO MOVE TO ANOTHER
26 TOPIC. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE FIRST

1 BANKRUPTCY OF ALL SEASONS RESORTS. THIS WAS THE BANKRUPTCY
2 BEFORE YOU'RE APPOINTED AS THE COURT-APPOINTED TRUSTEE; IS
3 THAT RIGHT?

4 A YES.

5 Q AND I'D LIKE TO SHOW YOU SOME OF YOUR
6 TESTIMONY FROM YESTERDAY, IF I MIGHT PUT IT UP ON THE
7 SCREEN, FROM PAGE 1863, LINES 16 THROUGH 22.

8 YOU WERE ASKED -- OKAY. YOU WERE ASKED A
9 QUESTION BY MR. MOSHENKO, LINE 16.

10 "OKAY. AND WHAT PROVISIONS WERE MADE IN THE
11 PLAN FOR THE" -- HE IS REFERRING TO THE ALL SEASONS RESORT
12 PLAN -- "FOR THE CREDITORS?"

13 RIGHT?

14 A IN THE CASE I WAS PRESENT AT.

15 Q RIGHT.

16 SO HIS QUESTION WAS, "OKAY. WHAT PROVISIONS
17 WERE MADE IN THE PLAN FOR THE CREDITORS?"

18 AND THEN YOU STARTED TO ANSWER THE
19 QUESTION.

20 YOU SAID, "WELL, THERE WERE SEVERAL. WITH
21 RESPECT TO THE UNSECURED CREDITOR BODY, OTHER THAN THE
22 BONDHOLDERS" --

23 AND THEN MR. MOSHENKO CUT YOU OFF; RIGHT?

24 A CUT OFF IS A LITTLE PEJORATIVE.

25 Q STOPPED?

26 A HE ASKED ME ANOTHER QUESTION.

1 Q AND HE WANTED YOU TO EXPLAIN THE DIFFERENCE
2 BETWEEN A SECURED AND AN UNSECURED CREDITOR.

3 A YES.

4 Q WELL, I'D LIKE TO ASK YOU ABOUT THE
5 BONDHOLDERS THAT YOU WERE ABOUT TO TESTIFY TO BEFORE
6 MR. MOSHENKO STOPPED YOU.

7 ALL SEASONS RESORTS DID HAVE BONDHOLDERS;
8 RIGHT?

9 MR. MOSHENKO: OBJECTION. THE PREFATORY LANGUAGE
10 IN THE QUESTION IS ARGUMENTATIVE, AND ASSUMES FACTS NOT IN
11 EVIDENCE.

12 THE COURT: OVERRULED.

13 THE WITNESS: YES.

14 BY MR. SHERMAN: Q AND ALL SEASONS RESORTS, PRIOR
15 TO THE TIME, SIR, THAT YOU BECAME THE TRUSTEE, HAD ASKED
16 ITS MEMBERS, ITS CAMPGROUND RESORT MEMBERS, TO LOAN IT
17 MONEY?

18 A AMONG OTHERS, YES.

19 Q AND SO CAMPGROUND R.V. MEMBERS OF ALL
20 SEASONS RESORTS WERE ASKED BY ALL SEASONS TO LOAN IT MONEY
21 SO THAT IT COULD EMERGE FROM ITS FIRST BANKRUPTCY?

22 A TO THE EXTENT THAT BUYING A BOND IS A LOAN
23 OF MONEY, YOU'RE CORRECT.

24 Q AND ALL SEASONS RESORTS RAISED NEARLY \$3
25 MILLION FROM THE SALE OF THESE BONDS?

26 A I DON'T RECALL THE PRECISE NUMBER, BUT IT

1 WAS MORE THAN A MILLION, YES.

2 Q AND THIS MONEY WAS RAISED FROM, AMONG
3 OTHERS, MEMBERS?

4 A YES.

5 Q AND THOSE WERE THE BONDHOLDERS THAT YOU WERE
6 ABOUT TO TESTIFY TO YESTERDAY?

7 A THOSE WERE THE BONDHOLDERS TO WHICH I
8 REFERENCED, YES.

9 Q AND YOU LEARNED THAT THE MONEY WAS RAISED
10 THROUGH THE EFFORTS OF RAYMOND NOVELLI?

11 A HE WAS CERTAINLY PART OF THE EFFORT, TO MY
12 UNDERSTANDING.

13 Q TO RAISE MONEY FROM MEMBERS?

14 A TO SELL BONDS TO MEMBERS, YES, AMONG OTHERS.

15 Q AND THEN AFTER ALL SEASONS RESORTS TOOK THE
16 MEMBERS' MONEY, ALL SEASONS WAS PUT INTO ITS SECOND
17 BANKRUPTCY?

18 A YES.

19 MR. SHERMAN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
20 865, PLEASE.

21 Q NOW, I REALIZE 865 IS A BIG, THICK DOCUMENT.
22 I'M NOT GOING TO ASK YOU QUESTIONS ABOUT THE WHOLE THING.

23 BUT THAT IS THE WAY IN WHICH THE SECOND ALL
24 SEASONS RESORTS BANKRUPTCY GOT STARTED; RIGHT?

25 A AGAIN, I WAS NOT IN OFFICE AT THE TIME, BUT
26 THAT'S MY UNDERSTANDING.

1 Q BECAUSE THIS DOCUMENT IS A COURT PLEA- --

2 A THIS IS WHAT?

3 Q THIS IS A COURT PLEADING?

4 A IT IS A COURT PLEADING, BUT IT WAS ALSO
5 FILED BEFORE I HAD ANY CONNECTION WITH THE CASE.

6 Q I UNDERSTAND.

7 THIS IS WHAT'S CALLED A CREDITOR'S PETITION?

8 A YES.

9 Q A CREDITOR'S PETITION TO PUT ALL SEASONS
10 RESORTS INTO BANKRUPTCY?

11 A INTO A CHAPTER 11, YES.

12 MR. SHERMAN: I'D LIKE TO SHOW THE FIRST PAGE.

13 AND, YOUR HONOR, I'D LIKE TO MOVE THE
14 INVOLUNTARY CHAPTER 11 PETITION INTO EVIDENCE.

15 MR. MOSHENKO: THE SAME OBJECTION. FOUNDATION,
16 YOUR HONOR, AS TO THIS PARTICULAR WITNESS.

17 THE COURT: I'LL TAKE IT UNDER SUBMISSION. LAY A
18 LITTLE FOUNDATION.

19 BY MR. SHERMAN: Q OKAY. WHEN YOU BECAME THE
20 CHAPTER 11 TRUSTEE, YOU DID LEARN THAT THERE HAD BEEN AN
21 ACTION BROUGHT AGAINST ALL SEASONS BY ITS CREDITORS TO PUT
22 IT INTO BANKRUPTCY?

23 A YES. THERE WAS A BANKRUPTCY CASE PENDING,
24 AND THIS COMMENCED IT.

25 Q THIS EXHIBIT 865 COMMENCED IT?

26 A YES.

1 MR. SHERMAN: I'D LIKE TO MOVE IT INTO EVIDENCE.

2 THE COURT: IT WILL BE RECEIVED.

3 (WHEREUPON, EXHIBIT NO. 865, CHAPTER 11
4 PETITION, WAS RECEIVED IN EVIDENCE.)

5 BY MR. SHERMAN: Q SO IN MARCH OF 1990 THE
6 INVOLUNTARY CASE WAS FILED AGAINST ALL SEASONS RESORTS?

7 A FROM WHAT I'M LOOKING AT HERE, YES.

8 Q AND THIS WAS FILED AGAINST ALL SEASONS BY
9 ITS CREDITORS?

10 A BY SOME OF THEM.

11 Q BECAUSE CREDITORS CLAIMED THAT ALL SEASONS
12 WAS NOT PAYING ITS DEBTS ON TIME?

13 A THAT IS THE STATUTORY ALLEGATION.

14 Q AND THE DEBTS THAT ALL SEASONS RESORTS
15 WASN'T MEETING ON TIME WERE DEBTS THAT HAD ARISEN, IN PART,
16 OUT OF THAT FIRST PLAN OF REORGANIZATION?

17 A THAT MAY WELL BE TRUE, YES.

18 Q BECAUSE IN THE FIRST ALL SEASONS RESORTS
19 BANKRUPTCY, THE BANKRUPTCY COURT APPROVED A PLAN OF
20 REORGANIZATION FOR ALL SEASONS RESORTS TO OPERATE UNDER;
21 THEY CONFIRMED IT?

22 A I'M SORRY?

23 Q AS A RESULT OF THE FIRST ALL SEASONS
24 BANKRUPTCY, THE BANKRUPTCY COURT CONFIRMED A PLAN OF
25 REORGANIZATION?

26 A THAT IS TRUE.

1 Q AND NOT TO REPHRASE ALL THE QUESTIONS THAT
2 MR. MOSHENKO WENT INTO ABOUT BANKRUPTCY ISSUES, IN EFFECT,
3 THIS DOCUMENT, THIS PLAN OF REORGANIZATION, CONSTITUTED ALL
4 SEASONS RESORTS' PROMISE TO PAY ITS CREDITORS IN A CERTAIN
5 FASHION?

6 A I THINK THAT'S A FAIR STATEMENT.

7 Q AND THESE PROMISES WERE MADE BY THE HEAD OF
8 ALL SEASONS RESORTS THROUGH ITS C.E.O., RAYMOND NOVELLI?

9 A THEY WERE MADE BY THE CORPORATION.

10 Q ACTING THROUGH MR. NOVELLI?

11 A IF HE WAS THE C.E.O., THEN THAT WOULD BE THE
12 CASE.

13 Q AND SO THE UNITED STATES BANKRUPTCY COURT,
14 AFTER THE FIRST BANKRUPTCY, CONFIRMED THAT PLAN?

15 A THAT'S MY UNDERSTANDING. AGAIN, I WAS NOT
16 AROUND.

17 Q AND THEN ALL SEASONS RESORTS DIDN'T MEET ITS
18 OBLIGATIONS UNDER THE PLAN?

19 A THE DEBT THAT WAS RESTRUCTURED UNDER THE
20 PLAN WAS APPARENTLY NOT BEING PAID TIMELY.

21 Q ALL SEASONS RESORTS' PROMISE TO ITS
22 CREDITORS WAS BROKEN?

23 A SORRY?

24 Q ALL SEASONS RESORTS' PROMISE TO ITS
25 CREDITORS WAS BROKEN?

26 MR. MOSHENKO: OBJECTION. ARGUMENTATIVE.

1 THE COURT: SUSTAINED.

2 BY MR. SHERMAN: Q SO, THEN, AFTER THIS
3 INVOLUNTARY BANKRUPTCY WAS FILED, MR. JOSEPH, YOU WERE
4 APPOINTED TO SERVE AS THE TRUSTEE?

5 A NO. THERE WAS, I BELIEVE, AN ORDER FOR
6 RELIEF. I BELIEVE THAT THE DEBTOR DID NOT DEFEND THE
7 INVOLUNTARY PETITION AND CONSENTED TO AN ORDER FOR RELIEF,
8 OR DID NOT DEFEND AND PERMITTED AN ORDER FOR RELIEF TO BE
9 ENTERED, WHICH -- AND IT WAS AFTER THE ORDER FOR RELIEF, I
10 BELIEVE, THAT I WAS ASKED TO BECOME TRUSTEE.

11 Q YOU WERE IN CHARGE?

12 A EXCUSE ME?

13 Q YOU WERE IN CHARGE?

14 A YES, OF THE ASSETS OF THIS ESTATE.

15 Q AND AN APPOINTMENT OF THE TRUSTEE, TO USE
16 YOUR WORDS FROM YESTERDAY, IS NOT THE NORM?

17 A THAT'S TRUE.

18 Q AN APPOINTMENT OF A TRUSTEE ONLY OCCURS IF
19 THERE'S INCOMPETENCE OF THE DEBTOR'S MANAGEMENT, THERE'S
20 IMPROPER ACTS BY THE DEBTOR'S MANAGEMENT, OR IF APPOINTMENT
21 OF A TRUSTEE WOULD BE IN THE BEST INTEREST OF ALL
22 CONCERNED?

23 A YES. THAT'S A FAIR PARAPHRASE OF THE
24 STATUTE.

25 Q AND THE REASON YOU WERE APPOINTED THE
26 TRUSTEE IS BECAUSE THE UNITED STATES BANKRUPTCY COURT JUDGE

1 FOUND THAT THOSE STANDARDS HAD BEEN MET?

2 A OR ONE OF THEM.

3 Q I'D LIKE TO ASK YOU SOME QUESTIONS NOW ABOUT
4 WHAT HAPPENED TO THESE MEMBER BONDHOLDERS THAT HAD LOANED
5 ALL SEASONS RESORTS MONEY IN THAT FIRST PLAN OF
6 REORGANIZATION; OKAY?

7 THE PLAN OF REORGANIZATION IN THE SECOND ALL
8 SEASONS RESORTS BANKRUPTCY THAT YOU WERE THE TRUSTEE OF
9 GAVE THE MEMBER BONDHOLDERS LESS THAN WHAT MR. NOVELLI HAD
10 ORIGINALLY PROMISED THEM?

11 MR. MOSHENKO: OBJECTION. ASSUMES A FACT NOT IN
12 EVIDENCE. ORIGINAL BOND PROMISES.

13 THE COURT: REPHRASE, PLEASE. SUSTAINED.

14 BY MR. SHERMAN: Q OKAY. THERE WERE BONDS ISSUED
15 AS A RESULT OF THE FIRST BANKRUPTCY?

16 A THAT I BELIEVE TO BE TRUE.

17 Q THE BONDS HAD TERMS?

18 A I BELIEVE THAT TO BE TRUE.

19 Q WE'RE GOING TO PAY INTEREST ON SUCH AND SUCH
20 A TERM?

21 A EXCUSE ME?

22 Q WE'RE GOING TO PAY INTEREST ON CERTAIN TERMS?

23 A I THINK THAT'S RIGHT.

24 Q WE'RE GOING TO PAY PRINCIPAL BACK ON CERTAIN
25 TERMS?

26 A YES.

1 Q WE'RE GOING TO GIVE YOU A CERTAIN RATE OF
2 INTEREST?

3 A YES.

4 Q AND IN THE SECOND ALL SEASONS RESORTS
5 BANKRUPTCY, THE MEMBER BONDHOLDERS THAT LOANED ALL SEASONS
6 RESORTS MONEY GOT LESS FAVORABLE TERMS THAN THEY HAD HAD
7 ORIGINALLY?

8 A I'M NOT SURE THAT'S TRUE.

9 Q WELL, THE BONDHOLDERS, THE MEMBER
10 BONDHOLDERS, HAD LOANED MONEY TO ALL SEASONS INTENDING TO
11 RECEIVE SECURITY?

12 A IN WHICH CASE?

13 Q FIRST.

14 A I DON'T KNOW THAT TO BE TRUE.

15 Q DO YOU REMEMBER IF IN -- LET ME REPHRASE.
16 DO YOU REMEMBER IF, AS A RESULT OF THE FIRST
17 BANKRUPTCY, MEMBER BONDHOLDERS RECEIVED A SECURITY INTEREST
18 IN EXCHANGE FOR THE BONDS?

19 A COUNSEL, I HAD NOTHING TO DO WITH THE FIRST
20 ALL SEASONS CHAPTER 11 CASE.

21 Q SO YOU DON'T REMEMBER?

22 A IT'S NOT A QUESTION OF REMEMBERING. I WAS
23 NOT INVOLVED IN THE FIRST ALL SEASONS BANKRUPTCY CASE
24 WHATSOEVER.

25 Q IN THE SECOND ALL SEASONS BANKRUPTCY CASE,
26 MR. JOSEPH, YOU NEEDED TO UNDERSTAND AND KNOW WHAT THE

1 TERMS WERE OF THE ORIGINAL BONDS?

2 A I HAD TO HAVE SOME SENSE OF THE DEBT
3 STRUCTURE, YES.

4 Q OKAY. AND IN ASKING YOU NOW, DO YOU TODAY
5 REMEMBER WHAT THE TERMS WERE?

6 A NOT PRECISELY, NO.

7 Q I'D LIKE TO REFRESH YOUR RECOLLECTION.
8 EXHIBIT 408, PLEASE.

9 I'D LIKE YOU TO TURN ON THAT DOCUMENT TO
10 PAGE 20. PAGE NUMBER 20. AND I'D LIKE YOU TO READ TO
11 YOURSELF -- JUST READ TO YOURSELF THE FIRST FULL PARAGRAPH
12 BEGINNING WITH "IN AN ATTEMPT."

13 A OKAY.

14 Q OKAY. THE MEMBER BONDHOLDERS THAT HAD
15 LOANED ALL SEASONS RESORTS MONEY IN THE FIRST BANKRUPTCY
16 HAD EXPECTED TO RECEIVE A SECURITY INTEREST FROM ALL
17 SEASONS RESORTS.

18 A I THINK IT'S FAIR TO SAY THAT ACCORDING TO
19 WHAT I SEE HERE, THAT THERE WAS SUPPOSED TO HAVE BEEN OR AN
20 INTENTION THAT THERE BE A DEBENTURE TRUSTEE FOR THE BENEFIT
21 OF THE BONDHOLDERS AS A GROUP TO HOLD SOME KIND OF
22 COLLATERAL TO SECURE THE PAYMENT; AND THAT THAT SECURITY
23 MECHANISM, FROM WHAT I COULD SEE SOME YEARS LATER, DID NOT
24 COME INTO EFFECT.

25 Q OKAY. LET ME SEE IF I CAN'T TRY TO
26 UNDERSTAND THIS.

1 WHEN YOU BECAME APPOINTED AS CHAPTER 11
2 TRUSTEE, YOU TRIED TO DO INVESTIGATION TO FIND OUT WHAT HAD
3 HAPPENED BEFORE THAT WAS MATERIAL TO THE BANKRUPTCY?

4 A OKAY.

5 Q AND PART OF YOUR INVESTIGATION HAD TO DO
6 WITH THE LOAN OF SEVERAL MILLION DOLLARS BY MEMBER
7 BONDHOLDERS TO ALL SEASONS RESORTS, WHAT THE TERMS WERE?

8 A THE PURCHASE OF BONDS, YES.

9 Q AND YOU LEARNED AT THAT TIME THAT THERE MAY
10 HAVE BEEN AN EXPECTATION BY THE MEMBER BONDHOLDERS THAT
11 THEY'D GET SOME, TO USE YOUR WORDS, COLLATERAL.

12 A I'M NOT SURE IF YOU LOOK AT THE -- IF YOU
13 LOOK AT THOSE FIRST DEBENTURES YOU WOULD SEE A PROVISION IN
14 THE DEBENTURE ITSELF THAT THERE BE COLLATERAL FOR THE
15 DEBENTURE. I'M NOT SURE THEY RECITED THAT. I'M NOT SURE
16 REALLY WHAT THIS LANGUAGE HERE WILL I SAY -- OR WHERE THIS
17 DISCLOSURE STATEMENT SAYS IN THE PRIOR CASE THE DEBTORS
18 SOUGHT AND OBTAINED BANKRUPTCY AUTHORIZATION TO SELL
19 DEBENTURES WHICH WERE INTENDED TO HAVE BEEN SECURED. I
20 DON'T KNOW WHETHER THAT WAS THE DEBTOR'S INTENTION OR THE
21 MEMBERS' INTENTION.

22 Q IT WAS SOMEBODY'S INTENTION?

23 A MY LOOKING AT THE DOCUMENTS, I THINK MY
24 COUNSEL CONCLUDED THAT THERE WAS A SUGGESTION THAT THERE
25 SHOULD HAVE BEEN SOME KIND OF COLLATERAL HELD BY DEBENTURE
26 BOND TRUSTEE OR DEBENTURE TRUSTEE OVER THESE BONDS.

1 Q AND ANOTHER WAY OF SAYING THAT IS THAT THERE
2 WAS A SUGGESTION THAT MAYBE THESE BONDHOLDERS HAD SECURITY,
3 MAYBE?

4 A WELL, THE BONDHOLDERS AS BONDHOLDER WOULD
5 NOT HAVE SOME PIECE OF SECURITY.

6 Q THEIR TRUSTEE WOULD?

7 A AGAIN, ALL I CAN TELL YOU IS THAT THERE WAS
8 A SUGGESTION THAT THERE SHOULD -- MIGHT HAVE BEEN OR SHOULD
9 HAVE BEEN SOME COLLATERAL. AND AS FAR AS I CAN SEE, THERE
10 WAS NOT.

11 Q OKAY. SO TO USE YOUR PHRASE, THE SUGGESTION
12 WAS THAT THEY MAY HAVE HAD SECURED DEBT?

13 A SOMEBODY I THINK INTENDED THAT THERE BE
14 COLLATERAL.

15 Q AND THEN AS A RESULT OF THIS SECOND PLAN OF
16 REORGANIZATION, THE BONDHOLDERS WOUND UP HAVING UNSECURED
17 DEBT?

18 A AS A RESULT OF THE SECOND PLAN?

19 Q YES. THE ONE THAT YOU WERE INVOLVED IN.

20 A NOT AS A RESULT OF THAT, NO.

21 Q WHEN THE PLAN OF REORGANIZATION WAS
22 CONFIRMED --

23 A YES.

24 Q -- THE MEMBER BONDHOLDERS' OBLIGATIONS THAT
25 WERE OWED TO THEM WERE NOT SECURED?

26 A NO. IN THE SECOND CASE?

1 Q YES.

2 A NO. AS I RECALL, THE PLAN OF REORGANIZATION
3 IN THE SECOND CASE, THEY WERE ACCORDED COLLATERAL.

4 Q AND THE MEMBER BONDHOLDERS HAD THEIR RATE OF
5 INTEREST CHANGED IN THE SECOND CASE?

6 A I WOULD HAVE TO LOOK AT IT, SIR. IT'S A
7 COMPLEX PLAN. BUT I BELIEVE I WOULD BE GUESSING. I WOULD
8 FEEL MORE COMFORTABLE IF I COULD SEE THE SECOND PLAN OF
9 REORGANIZATION.

10 I REALLY DON'T RECALL SPECIFICALLY THE TERMS
11 OF THE BONDHOLDER TREATMENT, EXCEPT I DO BELIEVE THAT THE
12 PLAN CALLED FOR A BOND TRUSTEE TO BE APPOINTED IN THE
13 SECOND CASE, AND FOR THAT BOND TRUSTEE TO HOLD COLLATERAL
14 FOR THE BONDHOLDERS.

15 Q NOW, AS A RESULT OF THE FILING OF THE
16 INVOLUNTARY PETITION, THESE MEMBER BONDHOLDERS WERE NOT
17 BEING PAID ON THEIR BONDS FOR SOME PERIOD OF TIME; RIGHT?

18 A AS A RESULT OF THE FILING?

19 Q AS A CONSEQUENCE OF THE FILING --

20 A YES, IT IS TRUE ONCE A CHAPTER 11 IS FILED,
21 YOU DO NOT PAY PRE-BANKRUPTCY UNSECURED DEBT DURING THE
22 PENDENCY OF THE CASE. YES.

23 Q AND AMONG THESE BONDHOLDERS INCLUDED MEMBERS
24 WHO HAD GIVEN VERY SUBSTANTIAL SUMS OF MONEY TO ALL SEASONS
25 RESORTS?

26 A AGAIN, MY RECOLLECTION IS THAT THE LARGEST

1 BONDHOLDERS WERE NOT MEMBERS. BUT CERTAINLY MEMBERS HAD
2 INVESTED -- LOTS OF MEMBERS HAD INVESTED MORE THAN, SAY,
3 \$5- TO \$10,000, YES.

4 Q AND WE'RE TALKING NOW JUST ABOUT ORDINARY
5 PEOPLE WHO HAD GIVEN MR. NOVELLI'S COMPANY \$5- TO \$10,000?

6 A WHO HAD PURCHASED BONDS IN THAT SUM, YES.

7 Q AND WHO WEREN'T GETTING PAID BACK AS THEY
8 HAD BEEN PROMISED?

9 A THAT'S TRUE.

10 Q AND SOME OF THESE PEOPLE GOT HURT?

11 A EXCUSE ME?

12 Q SOME OF THESE PEOPLE GOT HURT?

13 A THERE IS NO QUESTION THAT WHEN AN ENTITY
14 DOES NOT PAY ITS DEBTS AS IT IS OBLIGED TO DO, THAT
15 EVERYBODY GETS HURT.

16 Q AND THESE MEMBERS THAT HAD GIVEN SUBSTANTIAL
17 SUMS OF MONEY TO MR. NOVELLI'S COMPANY, WHO WEREN'T BEING
18 PAID, WERE DISTRESSED?

19 A I WOULD BE DISTRESSED.

20 Q AND YOU DIDN'T BELIEVE THAT THAT FACT OF THE
21 NONPAYMENT OF MEMBER BONDHOLDERS WAS GOOD FOR ALL SEASONS
22 RESORTS' RELATIONSHIP WITH ITS MEMBER BASE, DID YOU?

23 A DURING THE SECOND CHAPTER 11 CASE OF ALL
24 SEASONS RESORTS, THERE WAS A MEMBERS COMMITTEE FORMED BY
25 THE U.S. TRUSTEE. AND THE MEMBERS COMMITTEE WAS EXTREMELY
26 SUPPORTIVE OF ALL SEASONS RESORTS AND OF MR. NOVELLI'S

1 MEMBERSHIP -- MR. NOVELLI'S INVOLVEMENT IN THE CASE AND WAS
2 INDEED SUPPORTIVE OF THE PLAN.

3 BUT IF YOU'RE TRYING TO ASK ME WHETHER A
4 PERSON WHO IS OWED MONEY AND DOESN'T GET PAID THAT MONEY IS
5 DISTRESSED AND UNHAPPY, YES, THEY WOULD HAVE TO BE.

6 Q NOW, UNDER THE SECOND PLAN OF
7 REORGANIZATION, ALL SEASONS RESORTS DID NOT FULFILL ALL OF
8 ITS OBLIGATIONS AFTER THE PLAN WAS CONFIRMED?

9 A SIR, YOU ASKED ME A QUESTION. YOU SAID
10 DURING THE REORGANIZATION AND THEN AFTER.

11 Q I'LL REPHRASE, MR. JOSEPH.

12 I WANT TO FOCUS YOU NOW ON THE TIME AFTER
13 THE SECOND ALL SEASONS RESORTS PLAN OF REORGANIZATION WAS
14 APPROVED, CONFIRMED BY THE BANKRUPTCY COURT. AND I REALIZE
15 THAT YOU WERE NOT OPERATING ALL SEASONS RESORTS AT THE TIME
16 AS THE TRUSTEE; CORRECT?

17 A YOU MEAN POST-CONFIRMATION?

18 Q POST-CONFIRMATION.

19 A NO, NOT AT ALL. I WAS DISCHARGED.

20 Q NONETHELESS, YOU DID LEARN, WHETHER IT WAS
21 IN '94 OR '95 OR '96, THAT ALL SEASONS RESORTS DIDN'T MEET
22 ITS OBLIGATIONS UNDER THE SECOND PLAN OF REORGANIZATION?

23 A I CAN'T GIVE YOU A TIME FRAME. I LEARNED AT
24 SOME POINT THAT ALL SEASONS RESORTS WAS IN A THIRD CASE.

25 Q A THIRD BANKRUPTCY?

26 A YES.

1 Q AND THE MEMBER BONDHOLDERS WERE NOT BEING
2 PAID?

3 A AFTER THE FILING OF THAT THIRD CASE, I WOULD
4 PRESUME NOT.

5 Q AND SO IN ADDITION TO ALL SEASONS HAVING
6 BROKEN ITS PROMISE IN THE FIRST ALL SEASONS BANKRUPTCY TO
7 MEMBER BONDHOLDERS TO PAY THEM, IT BROKE ITS PROMISE A
8 SECOND TIME?

9 MR. MOSHENKO: ARGUMENTATIVE, YOUR HONOR.

10 THE COURT: YEAH. WHY DON'T YOU SAY "FAILED TO
11 PERFORM."

12 BY MR. SHERMAN: Q FAILED TO PERFORM?

13 A IN PART I BELIEVE IT DID. I BELIEVE IT
14 PERFORMED IN PART BUT THEN CEASED PERFORMING.

15 Q AND SOME OF THOSE MEMBER BONDHOLDERS GOT TO
16 THE POINT WHERE THEY EVEN FILED A CLASS-ACTION LAWSUIT
17 AGAINST MR. NOVELLI?

18 A I HEARD THAT.

19 Q AND YOU HEARD THAT THAT LAWSUIT WAS FILED
20 BECAUSE THOSE PLAINTIFF -- THOSE BONDHOLDERS WHO WERE
21 MEMBERS CLAIMED THAT THEY HAD BEEN CHEATED?

22 A I DO NOT KNOW THE TERMS OF THE ACTIONS,
23 SIR. I NEVER SAW THE COMPLAINT. I DO KNOW THE OUTCOME.

24 Q NOW, DID YOU EVER LEARN THAT -- LET ME
25 WITHDRAW THAT.

26 YOU HAD TALKED ABOUT SOME OF MR. NOVELLI'S

1 SKILLS AS BEING A GOOD SALESMAN IN THE TESTIMONY THAT
2 MR. MOSHENKO ASKED OF YOU?

3 A I DID SAY THAT.

4 Q YEAH.

5 YOU HAD ALSO COME TO LEARN DURING YOUR
6 TENURE AS TRUSTEE IN THE SECOND ALL SEASONS CASE THAT THE
7 PRINCIPALS OF ALL SEASONS WERE FINANCIALLY IRRESPONSIBLE?

8 A DO YOU MEAN AS INDIVIDUALS?

9 Q NO. IN RUNNING A CASE, FINANCIALLY
10 IRRESPONSIBLE.

11 MR. MOSHENKO: OBJECTION. UNCERTAIN, YOUR HONOR.

12 THE COURT: SUSTAINED.

13 BY MR. SHERMAN: Q OKAY. MR. JOSEPH, IN
14 CONNECTION WITH THE PERFORMANCE OF YOUR DUTIES AS CHAPTER
15 11 TRUSTEE, THE SECOND ALL SEASONS CASE, DID YOU EVER FORM
16 THE OPINION THAT THE PRINCIPALS OF ALL SEASONS,
17 MR. NOVELLI, WAS NOT FINANCIALLY RESPONSIBLE IN HIS RUNNING
18 OF THE COMPANY?

19 MR. MOSHENKO: THE SAME OBJECTION. UNCERTAIN.

20 THE COURT: YOU CAN ANSWER THE QUESTION, IF YOU
21 UNDERSTAND IT.

22 THE WITNESS: I'M NOT SURE I DO, COUNSEL.

23 BY MR. SHERMAN: Q YOU KNOW WHAT THE PHRASE
24 "FINANCIALLY RESPONSIBLE OR IRRESPONSIBLE" MEANS, DON'T
25 YOU?

26 A I CAN TELL YOU WHAT I THINK IT MEANS.

1 Q OKAY.

2 A TO ME, FINANCIALLY IRRESPONSIBLE MEANS
3 OBLIGATING YOURSELF TO SPEND MONEY YOU DON'T HAVE, AND
4 DON'T ANTICIPATE HAVING, WHERE IT'S NOT A CALCULATED RISK.
5 IT'S NOT A SITUATION WHERE YOU THINK A BUSINESS IS GOING TO
6 PERFORM AND IT DOESN'T. IT'S WHERE YOU BEGIN SOMETHING
7 KNOWING THAT IT'S HOPELESS; AND NOTWITHSTANDING THAT IT'S
8 HOPELESS AND YOU KNOW IT'S HOPELESS, YOU SPEND MONEY AND DO
9 THINGS AS THOUGH IT'S GOING TO SUCCEED WHEN YOU KNOW AT THE
10 TIME THAT IT WON'T.

11 Q AND WHEN YOU BECAME THE TRUSTEE IN THE
12 SECOND ALL SEASONS CASE, YOU DID LEARN THAT ALL SEASONS HAD
13 HAD A HISTORY OF NOT PAYING THE INTERNAL REVENUE SERVICE
14 ITS WITHHOLDING TAXES?

15 A I BELIEVE THAT'S TRUE.

16 Q AND WHEN YOU BECAME TRUSTEE, YOU LEARNED
17 THAT ALL SEASONS RESORTS HAD HAD A HISTORY OF OVERDRAWING
18 ON ITS BANK ACCOUNTS?

19 A I DON'T RECALL SUBSTANTIAL OVERDRAFTS.

20 Q AND YOU HAD LEARNED WHEN YOU BECAME CHAPTER
21 11 TRUSTEE THAT ALL SEASONS WROTE CHECKS THAT BOUNCED?

22 A I SUSPECT THAT MAY HAVE HAPPENED, YES.

23 Q AND YOU ALSO LEARNED WHEN YOU BECAME CHAPTER
24 11 TRUSTEE OF THE SECOND ALL SEASONS BANKRUPTCY THAT
25 MR. NOVELLI DROVE A ROLLS ROYCE?

26 A I SAW IT. IT WAS SOME YEARS OLD AT THE

1 TIME. I CERTAINLY SAW IT.

2 Q AND THE FACT THAT MR. NOVELLI DROVE A ROLLS
3 ROYCE ANGERED CREDITORS?

4 MR. MOSHENKO: CALLS FOR SPECULATION.

5 THE COURT: SUSTAINED.

6 BY MR. SHERMAN: Q CREDITORS TOLD YOU THAT THEY
7 WERE UPSET WITH THAT?

8 MR. MOSHENKO: CALLS FOR HEARSAY.

9 THE COURT: SUSTAINED.

10 MR. SHERMAN: NOW, MAYBE WE CAN GO TO THAT BOARD
11 THAT MR. MOSHENKO WAS DRAWING ON.

12 YOUR HONOR, MAY I GO UP TO THAT BOARD
13 THERE?

14 THE COURT: YOU MAY.

15 BY MR. SHERMAN: Q SEE ON THE BOARD, MR. MOSHENKO
16 HAD DRAWN UP A LINE I THINK WITH ALL SEASONS RESORTS
17 TALKING ABOUT HOW THE ENTITY WOUND UP BACK THERE.

18 DO YOU REMEMBER THAT QUESTION, THE ANSWER
19 YOU GAVE? THE ENTITY WOUND UP RIGHT BACK HERE, AND
20 MR. NOVELLI RETAINED CONTROL?

21 A ARE YOU TALKING ABOUT A.S.R.?

22 Q A.S.R., YES.

23 A I THINK THE ANSWER I GAVE WAS THAT THE STOCK
24 OF ALL SEASONS RESORTS WAS CANCELLED IN THE SECOND PLAN AND
25 THAT ANOTHER INDIVIDUAL, NOT MR. NOVELLI, IN EXCHANGE FOR A
26 WAIVER OF A SECURED CLAIM OBTAINED 100 PERCENT OF THE

1 REISSUED STOCK OF ALL SEASONS RESORTS, AND THAT I BELIEVE
2 MR. NOVELLI TO BE AN OFFICER OF THAT RESTRUCTURED COMPANY.

3 Q MR. NOVELLI AND MEL TARI --

4 A YES.

5 Q -- WOUND UP AS THE SOLE SHAREHOLDERS?

6 A AS I RECALL THE PLAN, THE STOCK WAS ONLY --

7 ALL OF THE STOCK WAS ISSUED TO DR. TARI.

8 Q AND BEFORE THE BANKRUPTCY, ALL SEASONS WAS A
9 PUBLICLY TRADED COMPANY?

10 A I THINK IT WAS.

11 Q WITH ABOUT 3,000 SHAREHOLDERS?

12 A I THINK THAT'S TRUE.

13 Q AND AFTER THE BANKRUPTCY, THE SOLE OWNER WAS
14 DR. TARI?

15 A THAT'S MY RECOLLECTION OF THE PLAN.

16 Q WHO WAS SOME BUSINESS COLLEAGUE OR ASSOCIATE
17 OF MR. NOVELLI'S?

18 A I BELIEVE THEY HAD A BUSINESS CONNECTION,
19 YES.

20 Q THAT'S MEL TARI, THE EVANGELIC PREACHER?

21 A AGAIN, WHAT HE DOES EXACTLY, I'M NOT SURE.
22 BUT I DON'T THINK HE IS A MEDICAL DOCTOR, IF THAT'S THE
23 QUESTION.

24 THE COURT: YOU SAY HE WAS A MEDICAL DOCTOR?

25 THE WITNESS: WAS NOT.

26 THE COURT: WAS NOT.

1 BY MR. SHERMAN: Q SO THIS SECOND ALL SEASONS
2 RESORT BANKRUPTCY WIPE OUT THE INTEREST OF ABOUT 3,000
3 SHAREHOLDERS?

4 A YES. THE SHAREHOLDERS' INTEREST WERE
5 CANCELLED IN THAT PLAN.

6 Q AND MR. TARI WOUND UP OWNING EVERYTHING?

7 A FOR CONTRIBUTION OF SECURED DEBT, HE OWNED
8 THE STOCK.

9 Q NOW, I'D LIKE TO ASK YOU SOME QUESTIONS
10 ABOUT THE BOOKKEEPING AT ALL SEASONS RESORTS WHILE YOU WERE
11 THE CHAPTER 11 TRUSTEE. OKAY?

12 A ALL RIGHT.

13 Q AS TRUSTEE, ONE OF YOUR JOBS WAS TO REVIEW
14 THE BOOKS AND RECORDS OF ALL SEASONS RESORTS?

15 A YES.

16 Q AND YOU NEEDED TO REVIEW THE BOOKS AND
17 RECORDS IN ORDER TO DETERMINE THE FINANCIAL STATUS AND
18 AFFAIRS OF THE COMPANY?

19 A YES.

20 Q YOU EMPLOYED FRED BRINGMAN TO ASSIST YOU IN
21 THAT TASK?

22 A MR. BRINGMAN, IN THE ALL SEASONS RESORTS
23 CASE WAS MORE OF AN OPERATING -- HIS RESPONSIBILITIES WERE
24 MORE OPERATING. AS I RECALL, IN THE ALL SEASONS -- IF I
25 SAID ALL SEASONS ONE, I MISSTATED. IN ALL SEASONS TWO I
26 BELIEVE I EMPLOYED DELOITTE & TOUCHE AS MY ACCOUNTANTS IN

1 THE CASE. AND AS A -- AT THAT TIME ONE OF THE BIG FIVE OR
2 SIX NATIONAL ACCOUNTING FIRMS, I WOULD THINK THEY WOULD BE
3 MORE INVOLVED WITH BOOKS AND RECORDS THAN MR. BRINGMAN.

4 Q BUT YOU ALSO -- YOU RELIED ON MR. BRINGMAN
5 FOR OPERATIONAL ISSUES?

6 A YES.

7 Q HE WAS THERE --

8 A YES.

9 Q -- DAY-TO-DAY?

10 A I DON'T THINK HE WAS THERE FULL TIME, BUT HE
11 WAS THERE A LOT.

12 Q BUT YOU TRUSTED MR. BRINGMAN?

13 A YES.

14 Q AND YOU RELIED ON HIM?

15 A YES.

16 Q AND HE REPORTED TO YOU?

17 A YES.

18 Q AND ONE OF THE THINGS THAT YOU DISCUSSED

19 WITH MR. BRINGMAN WAS THE STATE OF THE ORGANIZATION OF

20 DEBTORS' RECORDS AND RECORD-KEEPING?

21 A I WELL MAY HAVE, SIR.

22 Q YOU DON'T REMEMBER?

23 A I DON'T REMEMBER A SPECIFIC CONVERSATION.

24 IT IS A TOPIC I WOULD LIKELY HAVE DISCUSSED WITH HIM. I DO

25 NOT RECALL A SPECIFIC CONVERSATION.

26 Q LET ME SEE IF I CAN REFRESH YOUR

1 RECOLLECTION WITH EXHIBIT 1037.

2 A COUNSEL, ARE WE THROUGH WITH THIS DISCLOSURE
3 STATEMENT OR SHOULD I KEEP IT OUT?

4 Q YOU SHOULD KEEP IT OUT. I WILL BE COMING
5 BACK TO IT.

6 AND, MR. JOSEPH, TO ASSIST YOU IN REFRESHING
7 YOUR RECOLLECTION, I'D LIKE YOU TO READ TO YOURSELF,
8 PLEASE, FROM THIS DECLARATION, PARAGRAPH 10 AND 12 AND 13
9 ON PAGES 5 AND 6 AND 7.

10 A I'M SORRY. PARAGRAPH 10?

11 Q TEN. YOU CAN ALSO READ 11. THERE'S NO
12 REASON TO SKIP IT. 10, 11, 12 AND 13.

13 A OKAY.

14 Q OKAY. AS PART OF YOUR -- DOING YOUR DUTIES
15 AS CHAPTER 11 TRUSTEE, YOU WERE MADE AWARE THAT
16 MR. BRINGMAN AND OTHERS WOULD LOOK AT DEBTOR'S BOOKS AND
17 RECORDS FROM TIME TO TIME?

18 A DEFINE "BOOKS AND RECORDS."

19 Q FINANCIAL RECORDS, RECORDS SHOWING PAYMENTS,
20 RECORDS SHOWING RECEIPTS, RECORDS SHOWING CONTRACTS?

21 A YES. OKAY. THAT'S TRUE.

22 Q AND YOU LEARNED THAT BOOKS AND RECORDS
23 CONSISTED OF APPROXIMATELY 600 FILE BOXES?

24 A SOME OF THE BOOKS AND RECORDS CONSISTED OF
25 THAT, YES.

26 Q AND THOSE 600 FILE BOXES WERE NOT CATALOGED

1 OR INDEXED?

2 A THOSE PARTICULAR BOXES, MR. BRINGMAN SAYS
3 THEY WERE NOT CATALOGED OR INDEXED, THAT'S CORRECT.

4 Q AND IN YOUR -- DOING YOUR JOB AS CHAPTER 11
5 TRUSTEE, YOU LEARNED THAT WITH RESPECT TO HUNDREDS OF BOXES
6 OF FINANCIAL RECORDS, BOOKS AND RECORDS, THAT ALL SEASONS
7 DIDN'T UTILIZE ANY RECORD-KEEPING OR RETRIEVAL SYSTEM?

8 A WITH RESPECT TO THESE PARTICULAR RECORDS
9 WHICH I THINK PERTAIN ONLY, IF I UNDERSTAND THE
10 DECLARATION, TO BACKUP FOR CLAIMS.

11 Q SUPPORT?

12 A SUPPORT FOR CLAIMS MADE AGAINST THE COMPANY.

13 Q AND YOU LEARNED FROM YOUR SUBORDINATES THERE
14 AT ALL SEASONS THAT IF SOMEONE HAD TRIED TO GO INTO THOSE
15 BOXES, IT WOULD HAVE TAKEN THEM HUNDREDS OF HOURS TO FIGURE
16 OUT WHAT WAS WHAT?

17 A IT WOULD HAVE TAKEN HUNDREDS OF HOURS TO
18 TAKE THESE DOCUMENTS, WHICH WERE BASICALLY BILLS TO THE
19 COMPANY FROM THE LAST 10 OR 15 YEARS, AND TO INDEX THEM BY
20 CREDITOR, THAT'S RIGHT.

21 Q AND YOUR STAFF REPORTED TO YOU THAT THE
22 PROBLEMS WITH THE DEBTOR'S BOOKS AND RECORDS WERE MANY AND
23 COMPLEX?

24 A THE PROBLEMS WITH RESPECT TO THE BACKUP FOR
25 THE CLAIMS WERE.

26 Q WERE MANY AND COMPLEX?

1 A I THINK THAT'S PROB- -- WELL, THEY WERE --
2 YES, TO INDEX THE -- TO INDEX THE BILLS, THE OLD BILLS, BY
3 VENDOR AND TYPE WOULD HAVE BEEN A COMPLEX PROBLEM.

4 Q SO, MR. BRINGMAN, YOUR CHIEF OF OPERATIONS
5 THERE, COULD NOT PROPERLY REVIEW ALL SEASONS' RECORDS?

6 A WITH RESPECT TO THE CLAIMS INFORMATION, I
7 THINK THAT'S PROBABLY RIGHT.

8 Q THE RECORDS WERE A MESS?

9 MR. MOSHENKO: OBJECTION. ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 BY MR. SHERMAN: Q YOU HAD SERIOUS QUESTION ABOUT
12 THE INTEGRITY OF THOSE BOOKS AND RECORDS?

13 A I HAD QUESTIONS ABOUT THE INTEGRITY?

14 Q YOU HAD SERIOUS QUESTIONS ABOUT THE
15 INTEGRITY OF THOSE BOOKS AND RECORDS?

16 MR. MOSHENKO: OBJECTION. UNCERTAIN.

17 ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 THE WITNESS: EACH YEAR THAT I WAS CHAPTER 11
20 TRUSTEE IN THIS CASE, WE HAD AN AUDITED FINANCIAL STATEMENT
21 FROM DELOITTE & TOUCHE. SO AS FAR AS THE FINANCIAL
22 CONDITION OF THE ENTITY BEING PROPERLY REFLECTED, I HAD NO
23 PROBLEM WITH THAT.

24 IN TERMS OF THE WAY THEY KEPT THEIR UNPAID
25 BILLS FILES, THERE WAS NOT -- IT WAS NOT INDEXED AS IT
26 COULD HAVE BEEN, YES.

1 Q YOU HAD SERIOUS QUESTIONS ABOUT THE
2 RELIABILITY OF THOSE FILES?

3 MR. MOSHENKO: OBJECTION. UNCERTAIN AND
4 OVERBROAD. 600 FILES.

5 THE WITNESS: I HAD SERIOUS QUESTIONS.

6 THE COURT: OVERRULED.

7 THE WITNESS: I HAD SERIOUS QUESTIONS ABOUT THE
8 ABILITY OF MR. BRINGMAN FOR A REASONABLE COST TO COME UP
9 WITH WHETHER A CREDITOR OF ALL SEASONS FIVE YEARS BEFORE
10 THE BANKRUPTCY WAS OWED \$100 OR A THOUSAND DOLLARS.

11 BY MR. SHERMAN: Q NOW, AS TRUSTEE IN THE SECOND
12 ALL SEASONS BANKRUPTCY, YOU CAUSED A DISCLOSURE STATEMENT
13 TO BE FILED WITH THE COURT?

14 A I DID.

15 Q AND THE DISCLOSURE STATEMENT, AMONG OTHER
16 THINGS, DISCUSSED THE STATE OF AFFAIRS OF ALL SEASONS
17 RESORTS WHILE IT WAS UNDER YOUR CONTROL?

18 A I PRESUME IT DID.

19 Q AND THE DISCLOSURE STATEMENT MADE SOME
20 PROJECTIONS OR PREDICTIONS ABOUT ALL SEASONS' ABILITY TO
21 REORGANIZE AFTER BANKRUPTCY?

22 A I'M SURE IT DID.

23 Q THAT'S ONE OF THE REQUIREMENTS?

24 A YES.

25 Q IT MADE PROJECTIONS ABOUT ALL SEASONS'
26 ANTICIPATED FINANCIAL STABILITY?

1 A YES.

2 Q NOW, YOU PUT THE DISCLOSURE STATEMENT
3 TOGETHER WITH YOUR STAFF?

4 A I, MY ACCOUNTANTS, MY ATTORNEYS, YES.

5 Q AND IN PUTTING TOGETHER THE DISCLOSURE
6 STATEMENT, YOU KNEW THAT AS OF SEPTEMBER 1991, ALL SEASONS
7 RESORTS HAD TERMINATED THE MARKETING OF ANY NEW
8 MEMBERSHIPS?

9 MR. MOSHENKO: OBJECTION. ASSUMES FACTS NOT IN
10 EVIDENCE.

11 THE COURT: OVERRULED.

12 THE WITNESS: I RECALL TERMINATING NEW MEMBERSHIPS
13 FOR PERIOD OF TIME.

14 BY MR. SHERMAN: Q YOU DON'T REMEMBER WHEN?

15 A NO. BUT IT WAS SHORTLY AFTER MY APPOINTMENT
16 THAT I BELIEVE WE HALTED NEW MEMBERSHIP SALES FOR A PERIOD
17 OF TIME.

18 Q BUT ULTIMATELY DURING YOUR WATCH AS TRUSTEE,
19 THE MARKETING OF PRIMARY MEMBERSHIPS WAS TERMINATED IN
20 SEPTEMBER 1991?

21 A AT SOME POINT DURING MY TENURE, I BELIEVE WE
22 TERMINATED THAT KIND OF MEMBERSHIP SALE.

23 Q AND YOU TERMINATED THE SALE OF PRIMARY
24 MEMBERSHIPS BECAUSE YOU DETERMINED THAT THE COSTS OF
25 MARKETING AND SELLING THE MEMBERSHIP WERE GREATER THAN THE
26 CASH RECEIVED AT THE TIME OF SALE?

1 A THE WAY IT WAS BEING DONE AT THE TIME, THIS
2 WAS MY CONCERN.

3 Q AND SALES WERE TERMINATED BECAUSE YOUR
4 CONCERN WAS THAT ALL SEASONS WAS SPENDING TOO MUCH IN THEIR
5 SELLING EFFORTS?

6 A IT WASN'T -- I'M GOING BACK SOME YEARS NOW.
7 BUT WHEN YOU SELL A MEMBERSHIP, TYPICALLY IT'S SOLD ON
8 TIME. IN OTHER WORDS, IF YOU WERE TO SELL A \$5,000
9 MEMBERSHIP, PERHAPS YOU'D GET A THOUSAND DOLLARS DOWN. AND
10 A LARGE PART OF THAT CASH DOWN PAYMENT GOES TO YOUR SALES
11 STAFF SO THAT YOU HAVE A RECEIVABLE.

12 BUT IN TERMS OF CASH, I THINK OFTENTIMES YOU
13 GENERATE LITTLE CASH FROM THE IMMEDIATE SALE OF THE
14 CAMPGROUND MEMBERSHIP. YET, THE MARKETING EXPENSE, THE
15 SOLICITATIONS TO THE MEMBERS, OR THE ADVERTISING OR WHAT
16 HAVE YOU, CAN BE QUITE EXPENSIVE. SO I'M NOT SAYING
17 THAT -- I'M NOT SAYING THAT IT'S AN UNECONOMIC ENTERPRISE.
18 BUT I AM SAYING IF YOU DON'T HAVE SUFFICIENT CASH RESERVES
19 TO DO IT SO THAT YOU CAN WAIT FOR THE INCOME STREAM DOWN
20 THE ROAD, YOU CAN END UP WITH EXPENSE YOU CAN'T PAY.

21 Q TO USE YOUR WORDS, IT WAS AN UNECONOMIC
22 ENTERPRISE FOR THIS ENTERPRISE?

23 A AT SOME POINT I MADE A DETERMINATION THAT
24 GIVEN THE CASH RESOURCES WE HAD, IT WAS NOT PRUDENT AT THAT
25 TIME TO DO THAT.

26 Q AND AFTER YOU TERMINATED THE SALE OF PRIMARY

1 MEMBERSHIPS --

2 A I SUSPENDED. I'M NOT SURE I TERMINATED.

3 Q WELL --

4 A COULD YOU SHOW ME WHERE YOU'RE READING
5 FROM? I'M SORRY.

6 Q YES.

7 A ALL RIGHT.

8 Q MAYBE YOU'D LIKE TO -- MAYBE YOU'D LIKE TO
9 CLARIFY YOUR REMARKS. WHY DON'T YOU TURN TO PAGE 26 OF THE
10 DOCUMENT THAT I'VE PLACED BEFORE YOU.

11 A MY DISCLOSURE STATEMENT?

12 Q YOUR DISCLOSURE STATEMENT.

13 READ FROM YOUR DISCLOSURE STATEMENT TO
14 YOURSELF.

15 WHY DON'T YOU READ IT OUT LOUD, LINES 17
16 THROUGH 20. PLEASE READ IT OUT LOUD.

17 A PAGE 27?

18 Q PAGE 26, SIR.

19 A OH.

20 Q I'M SORRY IF I MISSPOKE.

21 MR. MOSHENKO: YOUR HONOR, I'LL OBJECT.

22 MR. SHAW: YOUR HONOR, I'LL OBJECT. IT IS HEARSAY.

23 AND IF IT'S BEING OFFERED TO REFRESH HIS RECOLLECTION, I
24 DON'T THINK IT SHOULD BE READ OUT LOUD.

25 MR. SHERMAN: IT'S BEING OFFERED AS IMPEACHMENT,

26 YOUR HONOR.

1 THE COURT: THE OBJECTION IS OVERRULED.

2 THE WITNESS: IN THIS DOCUMENT I USED THE TERMS --
3 BY MR. SHERMAN: Q MR. JOSEPH, COULD YOU PLEASE
4 READ THE SENTENCE.

5 A "IN AUGUST OF 1990 THE TRUSTEE AUTHORIZED
6 THE RESUMPTION OF SALES FOR PRIMARY MEMBERSHIP."

7 Q THAT WASN'T THE SENTENCE. PAGE 26, LINES 17
8 THROUGH 20, PLEASE.

9 MR. MOSHENKO: OBJECTION. IF HE IS GOING TO READ
10 THE DOCUMENT, HE SHOULD INCLUDE THE CONTEXT OF THE
11 SENTENCE. IN FACT, LINE 17 INCLUDES A PORTION OF THE
12 SENTENCE HE STARTED TO READ. HE WANTS HIM TO BEGIN THE
13 READING IN THE MIDDLE OF THE SENTENCE.

14 MR. SHERMAN: I DON'T HAVE A PROBLEM. I DIDN'T
15 KNOW THAT IT WAS THE SENTENCE BEFORE. I JUST NOTICED THAT
16 HE WASN'T READING THE SENTENCE I ASKED.

17 Q SO IF YOU'D JUST READ THE WHOLE PARAGRAPH
18 OUT LOUD, THAT WOULD BE FINE.

19 A "IN AUGUST OF 1990 THE TRUSTEE AUTHORIZED
20 THE RESUMPTION OF SALES FOR PRIMARY MEMBERSHIPS AND
21 INSTITUTED SALES OF THE PRESIDENT'S CLUB UPGRADES. IN
22 SEPTEMBER OF 1991 THE MARKETING OF THE PRIMARY MEMBERSHIP
23 WAS TERMINATED BECAUSE THE COST OF MARKETING AND SELLING
24 THE MEMBERSHIP WERE DETERMINED TO BE GREATER THAN THE CASH
25 RECEIVED AT THE TIME OF SALE."

26 Q THANK YOU.

1 MR. SHAW: AND I BELIEVE WE SHOULD READ TO THE NEXT
2 PARAGRAPH BECAUSE IT DOES PROVIDE --

3 MR. SHERMAN: I WAS ACTUALLY GOING TO GET TO THAT.

4 THE COURT: GO AHEAD.

5 THE WITNESS: "THE SALE OF PRIMARY MEMBERSHIPS
6 SINCE 1991 HAS BEEN LIMITED TO MEMBER REFERRALS WHICH
7 CONSISTENTLY PRODUCE SIX TO NINE SALES EACH MONTH. THE
8 MAJOR SALES MARKETING EFFORT WAS REDIRECTED TO THE SALE OF
9 PRESIDENT'S CLUB UPGRADES TO EXISTING MEMBERS AND TOWARD A
10 NEW PROGRAM CALLED THE 'IN-HOME' PRESIDENT'S CLUB SALES."

11 MR. SHAW: CONTINUE. ONE MORE SENTENCE.

12 THE WITNESS: "ADDITIONAL SALES REPRESENTATIVES
13 WERE RECRUITED AND A FULLY TRAINED" -- "AND FULLY TRAINED
14 WITH RESPECT TO THE COMPANY, ITS GOALS AND ITS PRODUCT.
15 THE GEOGRAPHIC LOCATIONS REPRESENTING 95 PERCENT OF THE
16 MEMBERSHIP BASE HAS BEEN DIVIDED INTO THREE REGIONS, EACH
17 WITH A REGIONAL SALES MANAGER, A STABLE SALES STAFF.

18 "AS OF THIS DATE THE COMPANY HAS
19 APPROXIMATELY 90 FULLY-TRAINED SALES PERSONNEL."

20 MR. SHAW: THANK YOU, MR. JOSEPH.

21 BY MR. SHERMAN: Q MR. JOSEPH, GOING BACK TO WHAT
22 YOU JUST READ IN THE NEXT PARAGRAPH, I WANTED TO ASK YOU
23 SOME QUESTIONS ABOUT THAT.

24 A I'M SORRY. WHERE ARE WE?

25 Q THE NEXT PARAGRAPH, "THE SALE OF PRIMARY
26 MEMBERSHIPS SINCE SEPTEMBER 1991 HAS BEEN LIMITED TO MEMBER

1 REFERRALS WHICH CONSISTENTLY PRODUCE SIX TO NINE SALES EACH
2 MONTH"; DO YOU SEE THAT?

3 A YES.

4 Q SO AT 11 CAMPGROUND RESORTS AS OF THE
5 DISCLOSURE STATEMENT, THERE WERE ABOUT SIX TO NINE SALES A
6 MONTH?

7 A THAT'S WHAT THIS INDICATES.

8 Q OR ABOUT 70 TO 75 A YEAR?

9 A THAT'S THE INDICATION.

10 Q AND YOU CONSIDERED THOSE NUMBERS TO, IN
11 EFFECT, BE A TERMINATION OF SALES?

12 A NO.

13 Q YOU CONSIDERED 75 SALES --

14 A PARDON ME?

15 Q YOU CONSIDERED THERE TO BE 75 SALES A YEAR
16 BEING MADE?

17 A I'M SORRY. I DON'T UNDERSTAND WHAT YOU'RE
18 ASKING.

19 MR. MOSHENKO: YOU'RE DROPPING YOUR VOICE AT THE
20 END.

21 THE WITNESS: I DON'T UNDERSTAND WHAT YOU'RE
22 ASKING.

23 BY MR. SHERMAN: Q THE ISSUE IS, AS OF SEPTEMBER
24 OF 1991, THE MARKETING OF THE PRIMARY MEMBERSHIPS HAD
25 TERMINATED?

26 A IT HAD CEASED AS THAT FOCUS OF THE SALES

1 EFFORT.

2 Q AND THAT'S BECAUSE GIVEN THE ECONOMICS AS
3 OF 1991, ALL SEASONS COULD NOT MAKE MONEY SELLING NEW
4 MEMBERSHIPS?

5 A AS I TESTIFIED, IT'S NOT A QUESTION OF
6 MAKING MONEY. IT IS A QUESTION OF CASH FLOW.

7 Q THEY DIDN'T HAVE THE CASH?

8 MR. MOSHENKO: OBJECTION. UNCERTAIN.

9 THE COURT: OVERRULED.

10 THE WITNESS: THE -- IT WAS MY DETERMINATION THAT
11 THE SALES EFFORT TO SELL NEW MEMBERSHIPS PUT A CASH -- A
12 CASH STRAIN ON THE OPERATION, WHICH WAS NOT PRUDENT AT THE
13 TIME.

14 BY MR. SHERMAN: Q OKAY. NOW I WANT TO ASK YOU A
15 FEW QUESTIONS ABOUT THE FINANCIAL PROJECTIONS.

16 THOSE PROJECTIONS WERE IMPORTANT TO BE MADE
17 IN ORDER TO DETERMINE IF ALL SEASONS COULD MAKE IT?

18 A I'M SORRY?

19 Q THOSE PROJECTIONS WERE NEEDED -- THEY WERE
20 IMPORTANT TO DETERMINE IF ALL SEASONS COULD MAKE IT OR NOT?

21 A FAIR STATEMENT, YES.

22 Q AND THE PROJECTIONS THAT YOU USED FOR THIS
23 PLAN OF REORGANIZATION ALLOCATED NO MONEY FOR THE MARKETING
24 OF PRIMARY MEMBERSHIPS?

25 A ARE YOU ASKING ME OR TELLING ME?

26 Q ISN'T THAT RIGHT?

1 A I WOULD HAVE TO LOOK, SIR.

2 Q YOU DON'T REMEMBER?

3 A NO, I DON'T REMEMBER EACH PAGE OF THIS.

4 Q THAT'S FINE. WHY DON'T YOU TURN TO PAGE 35,
5 AND READ IT TO YOURSELF, UNDER "MARKETING EXPENSE" TO SEE
6 IF IT REFRESHES YOUR RECOLLECTION.

7 A COUNSEL, TO FULLY UNDERSTAND WHAT I'M
8 LOOKING AT HERE, I'M GOING TO HAVE TO TAKE SOME TIME AND
9 READ THE PAGES IN CONTEXT. I DON'T KNOW QUITE HOW TO SAY
10 THAT.

11 Q MR. JOSEPH, LET ME, SEE IF I CAN'T DO IT
12 DIFFERENTLY.

13 AS PART OF THE PLAN OF REORGANIZATION, YOU
14 DID NOT ANTICIPATE THAT ALL SEASONS RESORTS WOULD BE
15 SPENDING MORE MONEY MARKETING OF PRIMARY MEMBERSHIPS?

16 A NO. I THINK IT'S A FAIR STATEMENT TO SAY
17 THAT THE FINANCIAL PROJECTIONS DID NOT DEPEND ON REVENUE
18 FROM THAT SOURCE FOR WHAT WAS SET FORTH.

19 Q BECAUSE THE PROJECTIONS FOR THE CONFIRMED
20 COMPANY, THE NEW ALL SEASONS AFTER IT WOULD BE CONFIRMED,
21 WOULD BE THAT ALL SEASONS WAS NOT GOING TO BE IN THE
22 BUSINESS OF SELLING NEW HOME RESORT MEMBERSHIPS?

23 A NOT AT ALL. WHEN ONE DOES A FINANCIAL
24 PROJECTION, ONE MAKES CERTAIN ASSUMPTIONS AND INDICATES
25 WHAT THOSE ASSUMPTIONS ARE.

26 THE ASSUMPTION HERE IS THAT WITH RESPECT TO

1 MARKETING EXPENSE, AS PART OF THE PROJECTION, WE WERE NOT
2 PROJECTING EXPENSE FOR THAT CATEGORY. THAT DOES NOT MEAN
3 THAT THERE WAS SOME LAW THAT IT COULDN'T HAPPEN. IT ONLY
4 MEANS THAT FOR PURPOSES OF SOMEONE LOOKING AT THIS
5 PROJECTION, THEY SHOULD BE AWARE THAT IN THE EXPENSE
6 CATEGORY, WE DID NOT INCLUDE EXPENSE FOR THAT CATEGORY. IT
7 IS NOT A PREDICTION OF WHAT -- IT'S A PROJECTION OF FUTURE
8 OPERATIONS. IT IS NOT A PROMISE THAT THAT IS EXACTLY WHAT
9 WILL OCCUR.

10 Q YOUR PRESUMPTIONS ASSUMED THAT THE NUMBER OF
11 MEMBERS WOULD REMAIN CONSTANT?

12 A AGAIN, YOU'RE TELLING ME THAT. IF IT'S
13 THERE, I BELIEVE YOU. I DON'T SEE IT HERE. I NEED TO LOOK
14 AT IT.

15 Q I'D LIKE YOU TO READ OUT LOUD PARAGRAPH
16 NUMBER 8 ON PAGE --

17 A "THE PROJECTION ASSUMES THAT THE NUMBER OF
18 MEMBERS REMAINED CONSTANT."

19 Q SO IF ALL SEASONS RESORTS MEMBERS DIED
20 AFTER THE PLAN OF REORGANIZATION, THERE WAS NO MECHANISM IN
21 PLACE TO MARKET NEW MEMBERSHIPS?

22 A YOU ARE -- THE ONLY WAY I CAN ANSWER THAT IS
23 TO INDICATE THIS PROJECTION IS AN INDICATION OF HOW THE
24 COMPANY AT THAT TIME INTENDED TO GO FORWARD. IT IS NOT A
25 PREDICTION OF THE FUTURE.

26 Q IF MEMBERS QUIT, THERE WAS NO BUDGET TO GET

1 NEW MEMBERS?

2 A THIS PROJECTION DID NOT ASSUME MARKETING
3 EXPENSE -- READ IT EXACTLY. THIS BUDGET DID NOT ASSUME
4 MARKETING EXPENSE FOR PRIMARY SALES, MEMBER REFERRAL SALES,
5 FOR SEASONAL SALES, THAT IS TRUE.

6 Q ALL SEASONS NEW BUSINESS MODEL --

7 A I'M SORRY?

8 Q ALL SEASONS NEW BUSINESS MODEL THROUGH THIS
9 SECOND BANKRUPTCY THAT YOU WERE TRUSTEE WAS GOING TO COME
10 FROM THE SALES OF A PRODUCT CALLED "THE PRESIDENT'S CLUB"?

11 A THAT WAS THE PROJECTION.

12 Q AND THAT WAS A RELOAD PRODUCT BEING SOLD TO
13 EXISTING MEMBERS?

14 MR. MOSHENKO: YOUR HONOR, MAY WE APPROACH?

15 THE COURT: YOU MAY.

16 (DISCUSSION OFF THE RECORD.)

17 MR. SHERMAN: MAY I ASK THE COURT REPORTER TO READ
18 THE QUESTION BACK.

19 THE COURT: YOU MAY.

20 (THE FOLLOWING TESTIMONY WAS READ BACK:

21 "AND THAT WAS A RELOAD PRODUCT BEING SOLD TO EXISTING
22 MEMBERS?"

23 MR. MOSHENKO: OBJECTION. UNCERTAIN AS THE
24 MEANING OF THE TERM "RELOAD PRODUCT."

25 THE COURT: CLARIFY IT, PLEASE.

26 BY MR. SHERMAN: Q YOU KNEW WHAT A RELOAD PRODUCT

1 WAS; RIGHT?

2 A NEVER HEARD THAT TERM.

3 Q NOW, THE HOPE WAS THAT SALES OF THIS
4 PRESIDENT'S TRAVEL CLUB WOULD PENETRATE 65 PERCENT OF ALL
5 SEASON RESORTS' EXISTING MEMBERSHIP BASE; ISN'T THAT RIGHT?

6 A IF THAT IS WHAT WAS STATED IN THIS 227-PAGE
7 DOCUMENT THAT I SIGNED ABOUT SEVEN YEARS AGO, I ACCEPT IT.

8 Q LET ME REFRESH -- ASK YOU TO REFRESH YOUR
9 RECOLLECTION.

10 READ TO YOURSELF PAGE 31, LINES 14 THROUGH
11 17. JUST READ IT TO YOURSELF, PLEASE.

12 A PAGE 31, LINE --

13 Q PAGE 31, LINES 14 THROUGH -- I SAID 17. I
14 SHOULD HAVE SAID 18 TO MAKE IT A COMPLETE SENTENCE. 14
15 THROUGH 18.

16 A ALL RIGHT.

17 Q NOW, THE PROJECTION WAS THAT SALES OF
18 PRESIDENT'S TRAVEL CLUB WERE ESTIMATED TO PENETRATE 65
19 PERCENT OF ITS EXISTING MEMBERSHIP BASE?

20 A THAT IS THE STATEMENT HERE, YES.

21 Q AND ALL SEASONS WAS GOING TO SELL THIS
22 PRESIDENT'S CLUB UPGRADE TO THEIR EXISTING MEMBERS FOR
23 NEARLY \$3,000?

24 A I DON'T RECALL WHAT THE PRICE WAS.

25 Q WHY DON'T YOU READ IT TO YOURSELF ON PAGE
26 16, THE FIRST FULL PARAGRAPH.

1 A SORRY?

2 Q FIRST FULL PARAGRAPH ON PAGE 16.

3 A YEAH. IT SAYS, "THE PRESIDENT'S CLUB
4 UPGRADE CAN BE PURCHASED IN FULL FOR \$2995 OR THROUGH AN
5 INSTALLMENT PLAN NOT TO EXCEED 24 MONTHS."

6 Q NOW, THE PROJECTIONS FOR ALL SEASONS IN THIS
7 DISCLOSURE STATEMENT ASSUMED THAT ALL SEASONS WOULD NEED TO
8 SELL TO 65 PERCENT OF ITS EXISTING MEMBERSHIP BASE -- THEY
9 NEED TO PENETRATE IN ORDER TO MEET THEIR PROJECTIONS?

10 A I THINK IT'S A FAIR STATEMENT THAT THE
11 PROJECTIONS WERE BASED ON THAT KIND OF PENETRATION.

12 Q SO ALL SEASONS WAS GOING TO SELL THEIR
13 EXISTING MEMBERS ANOTHER \$3,000 PRODUCT?

14 A THE TERM "UPGRADE" IS WHAT I UNDERSTAND IT
15 TO BE.

16 Q THEY WERE GOING TO SELL THIS \$3,000 PRODUCT
17 TO MEMBERS THAT HAD ALREADY PAID ABOUT \$5,000 OR MORE FOR
18 HOME RESORT MEMBERSHIPS?

19 A I DON'T RECALL THE PRICE OF THE HOME RESORT
20 MEMBERSHIP.

21 Q YOU RECALL THAT IT WAS AT LEAST \$4-, \$5-,
22 \$6-, \$7,000?

23 A AS I SIT HERE TODAY, I SIMPLY DON'T.

24 Q NOW, BY -- AND YOU PROJECTED THAT ALL
25 SEASONS WOULD SELL OVER 1600 PRESIDENT'S CLUB MEMBERSHIPS
26 IN 1993; IS THAT RIGHT?

1 A COUNSEL, IF IT IS IN HERE, I AGREE.

2 MR. SHERMAN: MAY I APPROACH AND JUST SHOW THE
3 WITNESS SO WE CAN --

4 THE COURT: YOU MAY.

5 MR. SHERMAN: I'M MINDFUL OF THE LUNCH HOUR. I
6 JUST WANT TO TRY TO FINISH THIS PART.

7 IT'S BATES NUMBER 187, COUNSEL, THAT I'M
8 SHOWING TO THE WITNESS.

9 Q YOU'LL SEE THESE ARE SOME PROJECTIONS;
10 RIGHT, MR. JOSEPH?

11 A YES.

12 Q AND YOU'LL SEE THERE'S A REFERENCE 1, 2, 3,
13 4, 5 LINES FROM THE BOTTOM.

14 DO YOU SEE THAT REFERENCE, PRESIDENT'S CLUB
15 MEMBERSHIPS, NUMBERS SOLD?

16 A YES.

17 MR. SHAW: COUNSEL, I APOLOGIZE TO INTERRUPT. BUT
18 IT'S BATES STAMP 186 AT THE BOTTOM?

19 MR. SHERMAN: 187.

20 MR. SHAW: OH, I'M SORRY. THANK YOU.

21 MR. SHERMAN: SURE.

22 Q SO IT WAS PROJECTED THAT ALL SEASONS WOULD
23 SELL OVER 1600 PRESIDENT'S CLUB MEMBERSHIPS IN 1993?

24 A COUNSEL, MY CONCERN IS THERE'S AN INDICATION
25 HERE SAYING "PLAN 15-B."

26 Q THAT WAS ONE OF THE PLANS.

1 A SORRY?

2 Q THAT WAS ONE OF THE PLANS.

3 A OKAY. BUT THE QUESTION IS WHETHER THERE
4 WERE ANY ALTERNATIVE PROJECTIONS, AND I CAN'T TELL FROM
5 LOOKING AT WHAT YOU'VE SHOWED ME.

6 Q. NO. ONE OF THE PLANS WAS THAT PRESIDENT'S
7 TRAVEL CLUB WOULD PROJECT SELLING OVER 1600 --

8 A WERE THERE OTHER PROJECTIONS?

9 Q I INVITE YOU. YOU CAN LOOK THROUGH THEM.
10 THESE WERE ONE OF THE PROJECTIONS; CORRECT?

11 A I THINK IT'S FAIR TO SAY THAT THIS WAS A
12 PROJECTION. IT MAY NOT BE THE ONLY PROJECTION. AND I
13 CAN'T TESTIFY WHETHER IT'S THE ONLY PROJECTION UNLESS I
14 READ THIS.

15 Q FAIR ENOUGH.

16 I'M NOT ASKING ABOUT OTHER PROJECTIONS.

17 YOUR HONOR, IF I COULD JUST HAVE ONE MINUTE
18 TO FINISH THIS UP.

19 THE COURT: ALL RIGHT.

20 BY MR. SHERMAN: Q ONE OF THE PROJECTIONS WAS 1600
21 IN FISCAL YEAR '93?

22 A THAT APPEARS TO BE CORRECT.

23 Q IF YOU TURN TO THE NEXT PAGE, FOR FISCAL
24 YEAR '94 YOU PROJECTED 1600?

25 A THAT APPEARS TO BE CORRECT.

26 Q AND IF YOU TURN TO THE NEXT PAGE, YOU

1 PROJECTED 1600 FOR FISCAL YEAR '95? IT'S 189 AT THE
2 BOTTOM.

3 A THAT APPEARS TO BE CORRECT.

4 Q AND IF YOU TURN TO THE NEXT PAGE, 190, YOU
5 PROJECTED SALES OF PRESIDENT'S CLUB MEMBERSHIPS IN '96,
6 '97, '98 AND '99 -- FISCAL YEAR-ENDS 96, '97, '98, '99 OF
7 1600 FOR EACH OF THOSE YEARS?

8 A THAT'S WHAT THIS PARTICULAR DOCUMENT SEEMS
9 TO SUGGEST.

10 Q AND THAT'S WHAT THAT PARTICULAR SET OF
11 PROJECTIONS WAS BASED ON FOR THAT SET OF BANKRUPTCY
12 ASSUMPTIONS?

13 A BANKRUPTCY ASSUMPTIONS?

14 Q ASSUMPTIONS IN THE PLAN OF REORGANIZATION.

15 A I THINK ALL I CAN SAY IS THAT THIS
16 PARTICULAR PROJECTION IN THIS DOCUMENT SAYS WHAT YOU SAY IT
17 SAYS.

18 THE COURT: GOOD. LET'S GO TO LUNCH.

19 (WHEREUPON THE COURT WAS IN RECESS UNTIL
20 1:30 P.M. OF THE SAME DAY.)

21

22

23

24

25

26

1 WESTMINSTER, CALIFORNIA - THURSDAY, MAY 25, 2000

2 AFTERNOON SESSION

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

5 MR. SHERMAN: YOUR HONOR, I ASKED TO HAVE AN
6 IN-CHAMBERS CONFERENCE WITH THE REPORTER. I WANTED TO
7 BRING SOMETHING TO THE COURT'S ATTENTION.

8 I ASKED MR. JOSEPH IN DIRECT -- IN CROSS --
9 EXCUSE ME -- ABOUT A LAWSUIT THAT HAD BEEN FILED BY THE
10 MEMBER BONDHOLDERS, AND MR. JOSEPH GAVE SOME TESTIMONY
11 ABOUT IT. AND THEN HE WAS ABOUT TO GO ON AND TALK MORE
12 ABOUT IT. AND I ACKNOWLEDGE CUTTING HIM OFF AT SOME
13 LEVEL. AND THERE WAS A REASON FOR THAT BECAUSE -- AND BY
14 THE WAY, MR. MOSHENKO KNOWS ALL ABOUT THE LAWSUIT BECAUSE
15 HE ACTUALLY TRIED THE LAWSUIT.

16 MR. MOSHENKO: DEFENDED IT SUCCESSFULLY.

17 MR. SHERMAN: CAN I FINISH, PLEASE?

18 HE TRIED THE LAWSUIT ON BEHALF OF
19 MR. NOVELLI AND ALL SEASONS AND A FEW OF THE OTHER
20 COMPANIES. THE ISSUE IN THE LAWSUIT -- AND, AGAIN,
21 MR. MOSHENKO IS GOING TO SAY HE KNOWS ALL ABOUT IT BECAUSE
22 HE DEFENDED IT SUCCESSFULLY. BECAUSE I READ THE PLEADINGS
23 IN THE LAWSUIT, I KNOW SOMETHING ABOUT IT, TOO.

24 ONE OF THE MAIN ISSUES IN THE LAWSUIT HAD TO
25 DO WITH THE FACT THAT MEMBER BONDHOLDERS WERE COMPLAINING
26 THAT THEY HAD BEEN TRICKED AND DEFRAUDED BY MR. NOVELLI

1 BECAUSE THEY HAD NOT BEEN TOLD ABOUT MR. NOVELLI'S CRIMINAL
2 BACKGROUND AND HIS CRIMINAL PAST WHEN THEY BOUGHT THE
3 BONDS; THAT IT WAS NOT DISCLOSED. THAT LAWSUIT WAS TRIED
4 BY THE COURT. I BELIEVE BEFORE -- IT WAS JUDGE SMITH.
5 PERHAPS IT WAS. I DON'T REMEMBER WHO IT WAS.

6 THE COURT: WHO WAS THE JUDGE? DO YOU REMEMBER?

7 MR. MOSHENKO: I THINK IT WAS BOB KNOX.

8 MR. SHERMAN: THAT SOUNDS ABOUT RIGHT.

9 SO -- BUT THE POINT IS THAT ONE OF THE
10 ISSUES -- PROBABLY NOT THE ONLY ISSUE AND, I'M SURE
11 MR. MOSHENKO IS GOING TO TELL YOU ALL SORTS OF OTHER THINGS
12 ABOUT THE CASE.

13 ONE OF THE ISSUES IN THE CASE HAD TO DO WITH
14 THE COMPLAINT OF MEMBER BONDHOLDERS THAT MR. NOVELLI SHOULD
15 HAVE DISCLOSED HIS CRIMINAL BACKGROUND TO THEM BUT DIDN'T.

16 NOW, I DIDN'T WANT MR. JOSEPH TO START
17 TALKING ABOUT THAT, THE FACT THAT MR. MOSHENKO SUCCESSFULLY
18 DEFENDED THE CASE. BECAUSE MY FEELING IS THAT IF
19 MR. JOSEPH WANTS -- IF ANY WITNESS, QUOTE UNQUOTE, WANTS TO
20 GET INTO IT, WELL, WE'LL GET INTO IT, IF YOU KNOW WHAT I
21 MEAN.

22 THE FACT ALSO IS, YOUR HONOR, THAT THE
23 BLECHER AND COLLINS FIRM, A VERY PROMINENT LOS ANGELES
24 FIRM, HAS FILED A CLASS-ACTION LAWSUIT. NOW, THIS WAS
25 FILED IN APRIL OF LAST YEAR, AND IT'S FILED HERE IN ORANGE
26 COUNTY. AND IT'S BEEN CERTIFIED NOW AS A CLASS-ACTION ON

1 BEHALF OF ALL MEMBER BONDHOLDERS, ALL BONDHOLDERS WHO
2 BOUGHT BONDS. BECAUSE BOTTOM-LINE, THE LAWYER THAT FILED
3 THAT LAW -- THAT FIRST LAWSUIT THAT MR. MOSHENKO
4 SUCCESSFULLY DEFENDED, IN MY HUMBLE OPINION, HE DIDN'T DO A
5 VERY GOOD JOB. AND BLECHER AND COLLINS IS IN THERE.

6 MR. MOSHENKO FILED A DEMURRER. THE COURT
7 DENIED THE DEMURRER IN THE SECOND LAWSUIT AND HAS NOW
8 ISSUED AN ORDER CERTIFYING THE CLASS.

9 NOW, I'M WILLING, WITH MR. JOSEPH, TO STAY
10 AWAY FROM THAT. I'M WILLING TO STAY AWAY FROM IT. BUT IF
11 MR. MOSHENKO WANTS TO GO THERE IN REDIRECT EXAMINATION AND
12 SAY, OH, MR. SHERMAN CUT YOU OFF ABOUT THIS LAWSUIT AND ALL
13 THIS OTHER JAZZ, YOU KNOW, LET'S GET INTO IT. LET'S GET
14 INTO THE FACT THAT THE MEMBERS COMPLAINED IN THAT FIRST
15 LAWSUIT THAT MR. NOVELLI HAD FAILED TO DISCLOSE HIS
16 CRIMINAL CONVICTIONS. THAT WAS THE CENTRAL ISSUE. BLECHER
17 & COLLINS -- AND I'VE SPOKEN WITH RALPH HOFER. HE IS ONE
18 OF THE LAWYERS. HE WILL BE TESTIFYING. HE IS A WITNESS.
19 HE IS ON THE -- H-O-F-E-R -- ON THE WITNESS LIST. HE IS
20 GOING TO BE TESTIFYING AS A WITNESS IN THIS CASE, AND I'LL
21 ADMONISH HIM NOT TO SAY CERTAIN THINGS, ABSOLUTELY.

22 BUT THIS IS A DOOR-OPENING ISSUE THAT I JUST
23 WANT TO ANTICIPATE. I'M NOT GOING -- COMING IN RUNNING TO
24 YOUR HONOR SAYING THE DOOR IS OPEN, THE DOOR IS OPEN,
25 BECAUSE -- IT'S MORE OPEN AS I SEE IT. BUT I DON'T WANT
26 MR. MOSHENKO TO START ASKING MR. JOSEPH THOSE QUESTIONS.

1 BECAUSE IF HE DOES, HE DOES IT AT HIS PERIL, AS I SEE IT.

2 MR. MOSHENKO: I THINK THAT THIS -- RAISES A MUCH
3 BROADER QUESTION THAN THE VERY NARROW THING THAT COUNSEL
4 MENTIONS. THIS IS A QUESTION WE ARGUED IN MOTIONS IN
5 LIMINE RELATING TO OPENING STATEMENTS WHEN THE COURT WAS
6 PRESENTED WITH A QUESTION OF HOW MUCH EXTRANEOUS BACKGROUND
7 LITIGATION IS GOING TO BE DEALT WITH IN THIS CASE, AND ARE
8 WE GOING TO RETRY THOSE OTHER CASES.

9 AND YOUR HONOR, BASICALLY SAID OPENING
10 STATEMENT IS OPEN, AND I'LL DEAL WITH THE ISSUES WHEN THEY
11 COME UP IN THE TRIAL. SO NOW THE ISSUES ARE STARTING TO
12 COME UP IN THE TRIAL.

13 AND COUNSEL ASKED MR. JOSEPH IF HE KNEW THAT
14 MEMBERS COMPLAINED THAT THEY WERE DEFRAUDED OR
15 MISREPRESENTED TO REGARDING THE BONDS. AND, YOU KNOW, THE
16 QUESTION IS NOT EVIDENCE, BUT THE QUESTION CERTAINLY DOES
17 RAISE SOMETHING IN THE JURORS' MINDS.

18 MR. JOSEPH SAYS, "I DON'T KNOW ANYTHING
19 ABOUT THAT. I WASN'T AROUND THEN." WELL --

20 MR. SHERMAN: THAT'S NOT WHAT HE SAID.

21 MR. MOSHENKO: WELL, AND THEN HE MOVED ONTO THE
22 LAWSUIT. AND HE SAID YOU'RE AWARE OF A LAWSUIT THAT WAS
23 FILED BY THAT -- HE CALLS THEM MEMBERS OR -- THE MEMBERS
24 WHO WERE BONDHOLDERS. AND OBVIOUSLY THE IDEA IS TO FOCUS
25 IT OFF OF BONDHOLDERS ONTO MEMBERS. I DON'T KNOW WHETHER
26 THE BONDHOLDERS WERE 10 PERCENT MEMBERS OR 60 PERCENT

1 MEMBERS. BUT THAT, TOO, IS SORT OF MISDIRECTION IF
2 RALPH HOFER WILL COME IN AND TALK ABOUT THAT.

3 OKAY. THEN HE SAYS, "SO YOU'RE AWARE OF THE
4 LAWSUIT?"

5 AND MR. JOSEPH SAYS, "YES. AND I KNOW THE
6 OUTCOME, TOO."

7 AND THEN MR. SHERMAN DROPS IT.

8 WELL, YOU KNOW, SHOULD THE JURY BE ALLOWED
9 TO KNOW THAT THE LAWSUIT THAT MR. JOSEPH ACKNOWLEDGED AN
10 AWARENESS OF WAS LITIGATED IN FAVOR OF MR. NOVELLI? IT
11 SEEMS REASONABLE THAT IF HE WANTS TO BRING UP THE ISSUE,
12 THAT THEY SHOULD BE ALLOWED TO KNOW THAT.

13 DOES THAT MEAN IF THAT LAWSUIT HAS BEEN
14 LITIGATED FAVORABLY IN FAVOR OF MR. NOVELLI WE NOW HAVE TO
15 GO IN AND RETRY THE -- IT'S BAD ENOUGH WE'RE GOING TO HAVE
16 TO RETRY THE LAWSUITS WE LOSE. WE HAVE TO RETRY LAWSUITS
17 WE WIN IN FRONT OF THIS JURY?

18 IF I HAVE MR. JOSEPH SAY, "YES, MY
19 UNDERSTANDING IS THAT LAWSUIT WAS RESOLVED SUCCESSFULLY IN
20 FAVOR OF MR. NOVELLI" --

21 THE COURT: PERIOD.

22 MR. MOSHENKO: PERIOD.

23 MR. SHERMAN: THEN I'M GOING TO ASK ABOUT THE NEXT
24 LAWSUIT.

25 MR. MOSHENKO: YES, OKAY. AND THAT'S WHAT I
26 EXPECTED. AND THEN THE NEXT ONE AND THE NEXT ONE AND THE

1 NEXT ONE. AND WE'RE NOW TALKING ABOUT THE 200 LAWSUITS
2 THAT WERE TALKED ABOUT IN MOTIONS IN LIMINE. THE NEXT ONE
3 IS A LAWSUIT WHICH WAS REFILED BY THE SAME PEOPLE IN PART,
4 THIS TIME ALLEGED AS A CLASS.

5 MR. SHERMAN: R.I.C.O. VIOLATIONS.

6 MR. MOSHENKO: OKAY. AND THEY LOST THE FIRST TIME,
7 AND NOW -- AND NOW THEY HAVE ADDED SOME NEW CAUSES OF
8 ACTION.

9 MR. SHERMAN: AND THEY HAVE A TRIAL DATE LATER THIS
10 YEAR.

11 MR. MOSHENKO: AND IT'S JUST -- AT THIS POINT IT'S
12 JUST AN ACCUSATION. IT'S A CLAIM. ARE WE GOING TO -- AND
13 IF THE CLAIM, THE NEXT ONE COMES IN -- AS HE SAID, I'M NOW
14 GOING TO TALK ABOUT THE NEXT ONE. OKAY. THEN THE NEXT ONE
15 COMES IN. I'M GOING TO TALK ABOUT THE DEFENSES TO THE NEXT
16 ONE. AND THEN WE'RE GOING TO BE RETRYING THOSE CASES.

17 THE COURT: WE'RE NOT GOING TO DO IT.

18 MR. SHERMAN: I'M HAPPY NOT TO ASK THE QUESTION.
19 I'M HAPPY NOT TO GO ANY FURTHER WITH THAT. BUT I DON'T
20 WANT MR. MOSHENKO TO MAKE ME LOOK BAD LIKE I'M TRYING TO
21 HIDE SOMETHING WHICH I'M NOT TRYING TO DO. BECAUSE IF YOUR
22 HONOR SAYS --

23 THE COURT: I'M GOING TO DO THIS: I'M GOING TO
24 ALLOW MR. MOSHENKO TO ASK THE QUESTION, "YOU WERE AWARE OF
25 THE LAWSUIT; ARE YOU ALSO AWARE OF THE RESULTS?"

26 MR. MOSHENKO: I HEARD HIM SAY --

1 MR. SHERMAN: OKAY. "ARE YOU ALSO AWARE THAT
2 ANOTHER ONE HAS BEEN FILED"?

3 THE COURT: NO. NO. NO.

4 MR. SHERMAN: THAT'S ALSO BY MEMBERS.

5 THE COURT: IT'S OPEN TO ONE -- WE'VE OPENED THE
6 DOOR TO ONE LAWSUIT. WE'RE NOT GOING TO OPEN THE DOOR TO
7 ANYMORE OF THEM. PERIOD.

8 MR. SHERMAN: YOU MEAN AS TO THIS ISSUE.

9 THE COURT: RIGHT.

10 MR. SHERMAN: AS TO THIS ISSUE.

11 MR. MOSHENKO: THANK YOU.

12 THE COURT: RIGHT.

13 MR. SHERMAN: THIS IS A LAWSUIT BROUGHT BY
14 MEMBERS. AND IT'S A --

15 MR. MOSHENKO: BONDHOLDERS.

16 MR. SHERMAN: EXCUSE ME. IT IS A LAWSUIT BROUGHT
17 BY MEMBERS WHO WERE BONDHOLDERS.

18 THE COURT: MAY OR MAY NOT HAVE BEEN BONDHOLDERS.

19 MR. SHERMAN: YOUR HONOR, I'LL BRING MR. HOFER IN
20 CHAMBERS TO DEMONSTRATE THAT FACT TO THE COURT. IT'S A
21 LAWSUIT BROUGHT BY MEMBERS WHO WERE BONDHOLDERS, AND IT IS
22 A LAWSUIT THAT SHOWS THE FACT THAT THIS MAN IS NOT "GOOD
23 TIMES" RAY. I MEAN, THESE MEMBERS WHO WERE BONDHOLDERS --
24 EXCUSE ME, MR. MOSHENKO.

25 THESE MEMBERS WHO ARE BONDHOLDERS WHO ARE
26 SUING HIM NOW BEFORE THE ORANGE COUNTY SUPERIOR COURT WITH

1 A CERTIFIED ORDER OF A CLASS-ACTION, THAT IT SHOULD
2 PROCEED, EVEN THOUGH COUNSEL HAS TRIED TO QUASH THE LAWSUIT
3 WITH A TRIAL DATE; THESE MEMBERS ARE NOT MEMBERS OF THE
4 "GOOD TIMES" RAY NOVELLI FAMILY.

5 AND I THINK, YOUR HONOR, IN ALL FAIRNESS,
6 THAT, FINE, I WON'T GET INTO THE SUBSTANCE OF THE
7 ALLEGATIONS. I OUGHT TO BE ABLE TO ASK MR. JOSEPH IF HE IS
8 AWARE JUST OF THAT FACT THAT ANOTHER LAWSUIT ASSERTING
9 THESE CLAIMS HAS BEEN FILED. PERIOD.

10 THE COURT: YOU KNOW, THAT'S GUILT BY ASSOCIATION,
11 ALMOST. THE LAWSUIT HASN'T BEEN ADJUDICATED YET. SO, YOU
12 KNOW, IT'S JUST -- NO, I'M NOT GOING TO ALLOW IT.

13 MR. SHERMAN: OKAY. WELL I AM GOING TO ASK
14 MR. JOSEPH, THEN, IF HE KNOWS THAT IN THAT LAWSUIT
15 MR. NOVELLI OBTAINED A FAVORABLE RESULT, THE FIRST ONE
16 THAT WE'VE JUST BEEN TALKING ABOUT. I DON'T NEED -- I
17 DON'T NEED MR. MOSHENKO TO MAKE ME LOOK BAD.

18 THE COURT: OKAY.

19 MR. SHERMAN: VERY WELL.

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

22 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.
23 PROCEED, COUNSEL.

24 CROSS-EXAMINATION (CONTINUED)

25 BY MR. SHERMAN: Q MR. JOSEPH, I'D LIKE TO ASK YOU
26 A FEW QUESTIONS ON SOME OF THE SUBJECTS THAT WE TOUCHED ON

1 THIS MORNING.

2 I HAD ASKED YOU SOME QUESTIONS ABOUT WHETHER
3 THE BONDHOLDERS WHO BOUGHT BONDS AND -- AT FIRST ALL
4 SEASONS RESORT BANKRUPTCY, HAD COLLATERAL OR -- EXCUSE ME.
5 I'LL WITHDRAW THAT.

6 I ASKED YOU SOME QUESTIONS ABOUT WHETHER IN
7 THE SECOND ALL SEASONS RESORTS BANKRUPTCY THE MEMBER
8 BONDHOLDERS HAD COLLATERAL OR DIDN'T HAVE COLLATERAL,
9 WHETHER THE BONDS WERE SECURED OR UNSECURED; DO YOU
10 REMEMBER THAT, MY ASKING YOU THOSE QUESTIONS?

11 A I REMEMBER THE SEQUENCE OF QUESTIONS, YES.

12 Q OKAY. AND WHY DON'T YOU TURN TO EXHIBIT
13 408, THE DISCLOSURE STATEMENT DOCUMENT. TURN TO PAGE
14 408 -- PAGE 38.

15 MR. MOSHENKO: DID YOU SAY 38?

16 MR. SHERMAN: 38 OF EXHIBIT 408.

17 MR. MOSHENKO: THERE'S MORE THAN ONE PERSON THAT
18 NEEDS A HEARING AID, YOUR HONOR.

19 BY MR. SHERMAN: Q OKAY. NOW, MR. JOSEPH, I KNOW
20 WHEN I ASKED YOU QUESTIONS EARLIER ABOUT THE TERMS OF THESE
21 NEW BONDS IN THE SECOND ALL SEASONS BANKRUPTCY, YOU DIDN'T
22 RECALL ALL THE TERMS; RIGHT?

23 A YES.

24 Q OKAY. WHY DON'T YOU READ TO YOURSELF THE
25 FIRST PARAGRAPH ON PAGE 38. READ IT TO YOURSELF, PLEASE.

26 A YES.

1 Q OKAY. NOW, THE BONDS THAT WERE ISSUED TO
2 THE MEMBER BONDHOLDERS IN THE SECOND ALL SEASONS RESORTS
3 BANKRUPTCY WERE UNSECURED BONDS?

4 A THAT'S NOT MY UNDERSTANDING. YOU MAY HAVE A
5 FIRST DISCLOSURE STATEMENT HERE. I THINK THE DISCLOSURE
6 STATEMENT THAT WAS OPERATIVE WAS A FIRST AMENDED DISCLOSURE
7 STATEMENT AND A FIRST AMENDED PLAN.

8 Q WOULD YOU PLEASE READ THE LAST SENTENCE OF
9 THIS DISCLOSURE STATEMENT ON THIS PARAGRAPH.

10 MR. MOSHENKO: OBJECTION. IT'S IRRELEVANT. AND
11 IT'S HEARSAY. LACKS FOUNDATION TO SHOW THAT THIS
12 DISCLOSURE STATEMENT WAS IN FACT RELATING TO THE PLAN --

13 THE COURT: LET ME SEE IT. WILL YOU, PLEASE?

14 MR. SHERMAN: YES, YOUR HONOR.

15 THE COURT: THE OBJECTION IS OVERRULED.

16 YOU CAN READ IT.

17 BY MR. SHERMAN: Q MR. JOSEPH, THIS WAS YOUR
18 DISCLOSURE STATEMENT?

19 A YES.

20 Q AND YOUR DISCLOSURE STATEMENT SAYS ON PAGE
21 38, LINES 10 AND 11, THAT THE NEW BONDS WILL BE UNSECURED?

22 A UNDER THE PLAN, THE FIRST PLAN, THAT WAS THE
23 CASE. BUT THAT WAS NOT THE PLAN THAT WAS CONFIRMED, AND I
24 DON'T BELIEVE THIS WAS THE DISCLOSURE STATEMENT THAT WAS
25 APPROVED.

26 Q BUT YOU DON'T KNOW?

1 A PARDON ME?

2 Q BUT YOU DON'T KNOW?

3 A I AM PRETTY CERTAIN, ALMOST TO A CERTAINTY,
4 THAT THE DISCLOSURE STATEMENT THAT IS OPERATIVE WAS A
5 FIRST-AMENDED DISCLOSURE STATEMENT, AND THAT THE PLAN THAT
6 WAS APPROVED WAS THE FIRST-AMENDED PLAN. AND I SAY THAT
7 BECAUSE I HAVE A PRETTY FIRM RECOLLECTION THAT CONFIRMATION
8 OF THE PLAN OCCURRED IN SEPTEMBER OF THIS YEAR, AND THAT
9 THIS DOCUMENT --

10 Q 408. THE DISCLOSURE STATEMENT, 408?

11 A THIS DOCUMENT, 408, BEARS MY SIGNATURE
12 SOMETIME IN THE EARLY SPRING OF '93, OR PERHAPS IT WAS
13 SEPTEMBER OF '93 THAT IT WAS CONFIRMED. BUT I HAVE A FIRM
14 RECOLLECTION THAT THE BONDHOLDERS UNDER THE PLAN THAT WAS
15 CONFIRMED DID RECEIVE COLLATERAL FOR THEIR BONDED
16 INDEBTEDNESS.

17 MR. SHERMAN: I'D LIKE TO MOVE THIS DOCUMENT, THE
18 DISCLOSURE STATEMENT, 408, INTO EVIDENCE.

19 MR. MOSHENKO: OBJECTION. IRRELEVANT. LACKS
20 FOUNDATION TO SHOW IT WAS THE OPERATIVE DISCLOSURE
21 STATEMENT. IT'S MERELY A HEARSAY PLEADING.

22 THE COURT: OBJECTION SUSTAINED.

23 BY MR. SHERMAN: Q NOW, MR. JOSEPH, I WANTED TO
24 ASK YOU SOME QUESTIONS ABOUT THE NEW OWNERSHIP OF ALL
25 SEASONS RESORTS WHEN IT EMERGED FROM THAT PLAN OF
26 REORGANIZATION, CONFIRMED PLAN.

1 I HAD ASKED YOU SOME QUESTIONS ABOUT WHO THE
2 STOCKHOLDER OR STOCKHOLDERS WERE GOING TO BE AFTER A
3 DEMURRER. AND WAS THE SOLE STOCKHOLDER UNDER THIS SECOND
4 ALL SEASONS PLAN OF REORGANIZATION SUPPOSED TO BE THE
5 MEL TARI EVANGELISTIC ASSOCIATION?

6 A THAT'S MY RECOLLECTION, YES.

7 Q AND THIS WAS SOME EVANGELISTIC ASSOCIATION
8 THAT MR. NOVELLI HAD SOME BUSINESS DEALINGS WITH?

9 MR. MOSHENKO: OBJECTION. UNCERTAIN AS PHRASED.

10 THE COURT: SUSTAINED.

11 BY MR. SHERMAN: Q DID MR. NOVELLI TO YOUR
12 KNOWLEDGE HAVE ANY BUSINESS DEALINGS WITH THIS ASSOCIATION
13 WHEREBY HE WAS GOING TO SHARE IN THE STOCK?

14 A THAT I DON'T KNOW.

15 Q DID MR. NOVELLI HAVE ANY DEALINGS WITH THIS
16 ASSOCIATION TO YOUR KNOWLEDGE?

17 A I KNOW HE HAD DEALINGS WITH DR. TARI BECAUSE
18 I HAVE SEEN HIM SPEAKING TO DR. TARI. AND I THINK DR. TARI
19 AT SOME POINT MAINTAINED AN OFFICE ON THE PREMISES OF ONE
20 OF THE TWO CASES, WHICH I CAN'T REMEMBER.

21 SO I THINK THEY WERE ACQUAINTED. BEYOND
22 THAT, I REALLY DON'T KNOW.

23 Q NOW, FOCUSING ON THE TIME FRAME WHEN YOU
24 WERE THE TRUSTEE OF THE ALL SEASONS RESORTS BANKRUPTCY --

25 A YES.

26 Q -- HAD YOU READ ANY WRITTEN AFFILIATION

1 AGREEMENTS BETWEEN ALL SEASONS RESORTS AND CAMP COAST TO
2 COAST?

3 A DURING THAT THREE-YEAR PERIOD?

4 Q YES, SIR.

5 A YOU KNOW, COUNSEL, I CAN'T TELL YOU THAT I
6 DID OR DID NOT.

7 Q YOU DON'T REMEMBER?

8 A I DON'T REMEMBER.

9 Q AND IF YOU DID, CERTAINLY NONE OF THEM HAVE
10 STUCK IN YOUR MIND FROM THAT TIME UNTIL TODAY?

11 A I'M NOT SURE THAT'S A FAIR STATEMENT.

12 Q WELL, I'M NOT TRYING TO -- I'M TRYING TO
13 DISTINGUISH BETWEEN ANY AFFILIATION AGREEMENTS YOU MAY HAVE
14 READ IN THE LAST YEAR OR TWO OR THREE OR FOUR, SINCE FIRST
15 NATIONWIDE, AND WHAT YOU READ, IF ANYTHING, IN THE TIME
16 PERIOD WHEN YOU WERE THE TRUSTEE FOR ALL SEASONS.

17 A I UNDERSTAND WHAT YOU'RE TRYING TO DO, BUT
18 TO SAY THAT I CAN'T REMEMBER READING -- I DON'T HAVE A
19 SPECIFIC RECOLLECTION OF READING THE AFFILIATION AGREEMENT.
20 TO GO FROM THERE TO THE FACT THAT OF COURSE THAT I HAVE NO
21 NOTION OF WHAT IT MAY OR MAY NOT HAVE SAID IS NOT A FAIR
22 CHARACTERIZATION.

23 Q DID YOU HAVE COMMUNICATIONS DURING THE TIME
24 YOU WERE TRUSTEE WITH MR. NOVELLI ABOUT THE SPECIFIC TERMS
25 OF COAST'S WRITTEN AFFILIATION AGREEMENTS?

26 A OH, I'M SURE I DID.

1 Q WHAT DID YOU AND MR. NOVELLI DISCUSS IN THAT
2 REGARD?

3 A I'M SURE -- I'M SURE I INQUIRED OF
4 MR. NOVELLI WHAT CAMP COAST TO COAST WAS, HOW IT
5 FUNCTIONED, WHAT WAS OUR RELATIONSHIP WITH IT, HOW DID IT
6 OPERATE, HOW DID WE RELATE TO IT.

7 Q DO YOU RECALL ANYTHING BEYOND THAT, SIR?

8 A NO. BUT I THINK I HAD A GENERAL SENSE AT
9 THE TIME OF WHAT CAMP COAST TO COAST WAS, HOW IT OPERATED,
10 AND HOW WE RELATED TO IT.

11 Q HAVE YOU NOW RELATED EVERYTHING THAT YOU CAN
12 RECALL FROM THOSE CONVERSATIONS WITH MR. NOVELLI BACK THEN?

13 A MY CONVERSATIONS EIGHT YEARS AGO?

14 Q YES, SIR.

15 A THAT'S THE GENERAL SUBSTANCE OF WHAT I
16 RECALL.

17 Q AND I TAKE IT YOU NEVER -- YOU NEVER, AS A
18 BANKRUPTCY TRUSTEE, ENTERED INTO ANY WRITTEN AFFILIATION
19 AGREEMENTS WITH CAMP COAST TO COAST?

20 A MY UNDERSTANDING WAS -- YOU MEAN IN A.S.R.?

21 Q FOR A.S.R., FOR FIRST NATIONWIDE.

22 A MY UNDERSTANDING WAS THERE WERE EXISTING
23 CONTRACTUAL RELATIONSHIPS BETWEEN THE ENTITIES.

24 Q BUT YOU NEVER ACTUALLY SIGNED ONE ON BEHALF
25 OF AN ESTATE?

26 A NOT THAT I RECALL.

1 Q YOU NEVER NEGOTIATED ONE WITH CAMP COAST TO
2 COAST IN YOUR CAPACITY AS A TRUSTEE?

3 A NOT THAT I RECALL.

4 Q YOU NEVER SPOKE WITH ANYONE FROM COAST TO
5 COAST ABOUT THE WRITTEN AFFILIATION AGREEMENTS IN YOUR
6 CAPACITY AS A TRUSTEE?

7 A AS I SIT HERE TODAY, I DO NOT RECALL SUCH A
8 CONVERSATION.

9 Q NOW, ALSO THE LAST POINT FROM THIS MORNING,
10 I HAD ASKED YOU SOME QUESTIONS ABOUT SOME MEMBER
11 BONDHOLDERS THAT HAD FILED A LAWSUIT AGAINST ALL SEASONS
12 AND MR. NOVELLI; DO YOU RECALL THAT?

13 A I DON'T RECALL ALL SEASONS BEING A
14 DEFENDANT. I RECALL MR. NOVELLI OR HEARING MR. NOVELLI WAS
15 A DEFENDANT.

16 Q OKAY. DID YOU HAVE PERSONAL INVOLVEMENT IN
17 THAT LAWSUIT?

18 A NO.

19 Q DO YOU KNOW WHAT HAPPENED IN THAT LAWSUIT?

20 A OF MY PERSONAL KNOWLEDGE?

21 Q OF YOUR PERSONAL KNOWLEDGE.

22 A NO. I ONLY KNOW WHAT I WAS TOLD HAPPENED.

23 Q OKAY. AND WHO -- THIS IS A WHO QUESTION.

24 WHO TOLD YOU WHAT HAPPENED?

25 A IT MIGHT HAVE BEEN MR. BRINGMAN.

26 Q MIGHT IT ALSO HAVE BEEN MR. RAYMOND NOVELLI?

1 A NO. I THINK I HEARD IT FROM MR. BRINGMAN.

2 Q AND YOU HEARD THAT MR. NOVELLI WON THAT CASE?

3 A YES.

4 Q I'D LIKE TO ASK YOU SOME QUESTIONS NOW ABOUT
5 FIRST NATIONWIDE RESORT MANAGEMENT, YOUR DUTIES AS THE
6 TRUSTEE THERE.

7 THAT WAS A BANKRUPTCY CASE. I THINK I
8 SHOWED YOU A DOCUMENT EARLIER. IT'S FILED AS A CHAPTER 11
9 ON MAY 24, 1996?

10 A DO I NEED THAT DOCUMENT IN FRONT OF ME?

11 Q I BELIEVE IT'S 376. IF IT'S NOT THERE --

12 A WOULD YOU LIKE ME TO LOOK FOR IT?

13 Q THANK YOU VERY MUCH, SIR.

14 A YOU WANT ME TO LOOK AT THE PETITION AND THE
15 PORTION OF THE SCHEDULES?

16 Q NO. RIGHT NOW LET'S JUST --

17 A LET'S JUST --

18 Q ACTUALLY, YOU KNOW, WHY DON'T I JUST MOVE
19 ON. I BELIEVE -- HAD THE COURT CONDITIONALLY RECEIVED THAT
20 INTO EVIDENCE?

21 THE CLERK: 375 WAS UNDER SUBMISSION.

22 BY MR. SHERMAN: Q DO YOU HAVE THE VOLUNTARY
23 PETITION IN FRONT OF YOU, SIR?

24 A YES.

25 MR. SHERMAN: AND THEN I'D LIKE TO MOVE THE
26 VOLUNTARY PETITION, EXHIBIT 376, INTO EVIDENCE.

1 MR. MOSHENKO: THE SAME OBJECTION AS BEFORE. THE
2 COURT WAS GOING TO TAKE IT UNDER SUBMISSION. I PRESUME WE
3 WILL TALK ABOUT IT FURTHER, AND WE HAVEN'T DONE SO.
4 THERE'S NO DIFFERENCE FROM WHEN THE COURT PREVIOUSLY
5 CONSIDERED IT.

6 THE COURT: IT'S STILL UNDER SUBMISSION.

7 MR. SHERMAN: OKAY.

8 Q NOW, FIRST NATIONWIDE WAS A COMPANY THAT --
9 WHEN YOU TOOK OVER AS TRUSTEE, IT WAS OWNED BY THE SCHULZ
10 FAMILY TRUST; IS THAT RIGHT?

11 A I THINK I'D HAVE TO LOOK AT THE PETITION.
12 IF IT INDICATES THAT, I HAVE NO REASON TO DOUBT IT.

13 Q WHY DON'T YOU LOOK AT IT TO SEE IF YOU COULD
14 REFRESH YOUR MEMORY.

15 MR. MOSHENKO: YOU CHARACTERIZED IT AS A VOLUNTARY
16 PETITION. I HAD IT AS A NOTICE --

17 MR. SHERMAN: EXCUSE ME. I'M TOLD 865, THE
18 VOLUNTARY PETITION, WAS ADMITTED THIS MORNING.

19 CAN WE PUT 865 UP ON THE SCREEN?

20 OKAY, LET'S MOVE ON.

21 Q FIRST NATIONWIDE RESORT MANAGEMENT,
22 MR. JOSEPH, THAT COMPANY DOESN'T DO BUSINESS ANY LONGER,
23 DOES IT?

24 A I CAN'T SAY THAT.

25 Q WELL, TO YOUR KNOWLEDGE IS FIRST NATIONWIDE
26 RESORT MANAGEMENT TODAY DOING BUSINESS?

1 A I DON'T KNOW.

2 MR. MOSHENKO: I COULDN'T HEAR YOU.

3 THE WITNESS: I SAID I DON'T KNOW.

4 COUNSEL, DO YOU WANT ME TO KEEP HOLDING THE
5 PETITION?

6 BY MR. SHERMAN: Q DO YOU HAVE 376 THERE?

7 MAY I APPROACH, YOUR HONOR?

8 THE COURT: YOU MAY.

9 MR. SHERMAN: THANK YOU.

10 MR. MOSHENKO: ARE YOU NOW MOVING BACK TO 376?

11 MR. SHERMAN: YEAH, I AM, MOVING BACK TO 376.

12 MR. MOSHENKO: OKAY.

13 BY MR. SHERMAN: Q NOW, 376 IS A PLEADING THAT YOU
14 CAUSED TO BE FILED IN THE UNITED STATES BANKRUPTCY COURT;
15 IS THAT RIGHT?

16 A THAT'S RIGHT.

17 Q AND THIS IS A MOTION THAT YOU FILED TO
18 CHANGE THE STATUS OF FIRST NATIONWIDE RESORT MANAGEMENT
19 FROM A CHAPTER 11 TO A CHAPTER 7?

20 A THAT'S TRUE.

21 Q AND IN CONNECTION WITH THAT MOTION YOU
22 FILED -- YOU SUBMITTED A DECLARATION TO THE COURT?

23 A YES. THERE IS A SUPPORTING DECLARATION
24 HERE.

25 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 376 INTO
26 EVIDENCE.

1 MR. MOSHENKO: CAN YOUR HONOR TAKE IT UNDER
2 SUBMISSION? BECAUSE IT'S A LARGE DOCUMENT, AND IT'S COME
3 UP 30 SECONDS AGO.

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

5 BY MR. SHERMAN: Q BUT, MR. JOSEPH, YOU SIGNED
6 THIS DOCUMENT?

7 A THE WHOLE -- WELL, I SIGNED THE DECLARATION.

8 Q RIGHT. AND YOU SUPPORTED THE MOTION?

9 A IT WAS MY MOTION, YES.

10 Q OKAY. AND LET'S TURN TO YOUR DECLARATION.

11 YOUR HONOR, I'D LIKE TO PUT THE FIRST PAGE
12 OF THE DECLARATION UP ON THE SCREEN.

13 THE COURT: ALL RIGHT.

14 BY MR. SHERMAN: Q PAGE 18, I BELIEVE, 37618.

15 IS THAT THE FIRST PAGE OF YOUR DECLARATION,
16 SIR?

17 A PAGE 18?

18 Q YES.

19 A YES.

20 Q AND LET'S ACTUALLY GO ON -- THE FIRST
21 PARAGRAPH TALKS ABOUT YOUR BEING AN ATTORNEY, AND THEN THE
22 NEXT PARAGRAPH TALKED ABOUT THE CASE COMMENCEMENT. AND
23 THEN THE NEXT PARAGRAPH 3 TALKS ABOUT AGREEMENT WITH THE
24 CREDITORS COMMITTEE; IS THAT RIGHT?

25 A I'M SORRY, SIR. THE SECOND PARAGRAPH TALKS
26 ABOUT WHAT?

1 Q THE SECOND PARAGRAPH TALKS ABOUT SOME OF THE
2 BACKGROUND LEADING UP TO THE CASE, THE CASE FILING ON MAY
3 24.

4 A YES. ALL RIGHT.

5 Q OKAY. BY THE WAY, IN THE SECOND PARAGRAPH
6 YOU SAY IN YOUR DECLARATION THAT THE DEBTOR OPERATED A
7 NATIONWIDE SERIES OF MEMBERSHIP BASED R.V. PARKS, BOTH WITH
8 FACILITIES AND SO ON; DO YOU SEE THAT?

9 A YES. WITH FACILITIES DIRECTLY OWNED BY THE
10 DEBTOR AND THROUGH FACILITIES OWNED OR WHOLLY OWNED BY
11 SUBSIDIARIES.

12 Q RIGHT. YOU DIDN'T SEE ANYTHING IN THERE
13 ABOUT THE OPERATION OF AN AIRLINE?

14 A THAT'S TRUE. I DID NOT.

15 Q AND THAT'S BECAUSE AS FAR AS YOU WERE
16 CONCERNED, THE DEBTOR DID NOT OPERATE AN AIRLINE?

17 A NO, THE DEBTOR DID NOT OPERATE AN AIRLINE AT
18 THE TIME THE CASE WAS FILED.

19 Q AND ON THE NEXT PAGE, PARAGRAPH 4 --

20 A I'M SORRY. ARE WE NOW ON 19, PAGE 19?

21 Q YES, PAGE 19. THANK YOU, SIR.

22 YOU SAY HERE IN PARAGRAPH 4 "FOLLOWING MY
23 APPOINTMENT"; DO YOU SEE THAT?

24 A I SEE IT.

25 Q OKAY. YOU WERE APPOINTED THE CHAPTER 11
26 TRUSTEE ON SEPTEMBER 24TH, 1996 -- EXCUSE ME -- SEPTEMBER

1 27TH, 1996; IS THAT ABOUT RIGHT?

2 A IT SOUNDS RIGHT.

3 Q AND SO FOLLOWING YOUR APPOINTMENT, THAT'S
4 FOLLOWING YOUR APPOINTMENT, SEPTEMBER 1996 -- RIGHT SO FAR?

5 A THAT'S WHAT IT SAYS HERE, SIR.

6 Q OKAY. YOU INVESTIGATED THE DEBTOR'S ASSETS
7 AND BUSINESS OPERATIONS; IS THAT WHAT YOU DID?

8 A YES.

9 Q OKAY. AND THEN IN THE NEXT PARAGRAPH YOU GO
10 ON TO TALK ABOUT THE INVESTIGATION THAT FOLLOWED YOUR
11 APPOINTMENT IN SEPTEMBER 1996. RIGHT?

12 A THE SUBJECT OF THE NEXT PARAGRAPH I TALK
13 ABOUT MY INVESTIGATION, YES.

14 Q AND YOUR INVESTIGATION WAS AN INVESTIGATION
15 THAT YOU UNDERTOOK SHORTLY AFTER YOUR APPOINTMENT?

16 A YES.

17 Q I MEAN, YOU DIDN'T DELAY IT FOR MONTHS OR
18 ANYTHING LIKE THAT; RIGHT?

19 A EXCUSE ME?

20 Q YOU DIDN'T DELAY YOUR INVESTIGATION FOR
21 MONTHS OR ANYTHING LIKE THAT; RIGHT?

22 A NO.

23 Q BECAUSE AS A FIDUCIARY AND AS A TRUSTEE,
24 WHEN YOU HAVE A COURT APPOINT YOU AS TRUSTEE, YOU GET IN
25 THERE AND YOU START LOOKING AT THINGS?

26 A YES.

1 Q YOU START INVESTIGATING?

2 A YES.

3 Q OKAY. AND YOUR INVESTIGATION DISCLOSED THAT
4 THE DEBTOR'S BUSINESS OPERATIONS WERE MARGINAL AT BEST, AND
5 THOSE OPERATIONS HAD CONTINUED TO LOSE MONEY; IS THAT WHAT
6 YOUR INVESTIGATION DISCLOSED?

7 A WITH RESPECT TO THOSE PARTICULAR PARTS, YES,
8 THE ONES THAT THE DEBTOR OWNED.

9 Q AND THE KIND OF INVESTIGATION THAT YOU'RE
10 TALKING ABOUT IS PART OF YOUR FIDUCIARY RESPONSIBILITIES?

11 A IT'S CERTAINLY PART OF WHAT A TRUSTEE DOES,
12 YES.

13 Q IT'S NOT SOMETHING YOU TAKE LIGHTLY?

14 A NO.

15 Q IT'S ONE OF YOUR MOST IMPORTANT FUNCTIONS AS
16 A BANKRUPTCY TRUSTEE, TO INVESTIGATE THE DEBTOR'S BUSINESS
17 AFFAIRS?

18 A I THINK THAT'S TRUE.

19 Q MR. JOSEPH, IN RESPONSE TO QUESTIONS BY
20 MR. MOSHENKO, I GLEANED THAT YOU'VE BEEN INVOLVED IN
21 THOUSANDS OF BANKRUPTCIES?

22 A IF YOU INCLUDE CHAPTER 7 CASES, THAT'S TRUE.

23 Q AND YOU'VE SEEN HUNDREDS OF TURN-AROUND
24 SITUATIONS?

25 A PROBABLY.

26 Q YOU'VE BEEN AROUND ALL OF THE INDUSTRY

1 TURN-AROUND EXPERTS ON THE WEST COAST, THE FIGURE PLAYERS?

2 A I THINK THAT MIGHT BE AN OVERSTATEMENT.

3 Q BUT YOU KNOW WHO THEY ARE?

4 A I KNOW THEM, YES.

5 Q YOU INVESTIGATED FIRST NATIONWIDE'S BUSINESS
6 AFFAIRS AND SOON REALIZED THAT FIRST NATIONWIDE HAD LITTLE
7 HOPE AS A TURN-AROUND?

8 A IT WAS MY VIEW THAT THE OPERATIONS OF THESE
9 PARTICULAR PARKS WERE NOT ECONOMICAL, AND THAT THE BEST WAY
10 TO PROCEED WOULD BE TO ATTEMPT TO SELL THE PARKS.

11 Q AND THIS WASN'T A CONCLUSION THAT TOOK YOU
12 MONTHS OR YEARS TO ARRIVE AT? YOU WERE ABLE TO FIGURE THAT
13 OUT PRETTY QUICKLY?

14 A WELL, I FIGURED OUT MY COURSE OF ACTION AS
15 I'VE SAID, AS I SAY IN THE PREVIOUS PARAGRAPH, MEETING WITH
16 THE CREDITORS COMMITTEE AND CREDITORS COMMITTEE COUNSEL WHO
17 LIVED WITH THE CASE LONGER THAN I HAD.

18 Q RIGHT.

19 MY POINT IS THAT YOUR CONCLUSION THAT YOUR
20 INVESTIGATION DISCLOSED MARGINAL BUSINESS OPERATIONS THAT
21 CONTINUED TO LOSE MONEY WAS SOMETHING THAT YOU WERE ABLE TO
22 FIGURE OUT BECAUSE OF YOUR EXPERIENCE AND ABILITY TO MEET
23 WITH PEOPLE; YOU FIGURED THAT OUT PRETTY QUICKLY?

24 A FOR THESE PARTICULAR PARKS, THAT WAS MY
25 CONCLUSION. I THOUGHT THE BEST WAY OUT FOR CREDITORS WOULD
26 BE TO SELL THE PARKS, RATHER THAN TO TRY TO REORGANIZE

1 THROUGH OPERATING PROFIT.

2 Q BECAUSE FOR THOSE PROPERTIES -- AND WE'LL
3 GET TO THOSE PROPERTIES IN A BIT.

4 FOR THOSE PROPERTIES, YOU DIDN'T SEE ANY
5 EQUITY IN THEM REMAINING FOR FIRST NATIONWIDE?

6 A I DIDN'T SAY THAT. AT WHAT POINT? ARE WE
7 TALKING ABOUT THE BEGINNING OF MY INVESTIGATION OR MY
8 CONCLUSIONS AT THIS POINT?

9 Q WELL, WHY DON'T WE TURN TO PAGE NUMBER 12,
10 PAGE NUMBER 12 OF THIS DECLARATION, PLEASE, SIR.

11 A PAGE 12?

12 Q YES. IT'S ACTUALLY NOT IN THE DECLARATION.
13 IT'S IN THE MEMORANDUM OF LAW THAT'S AT THE BEGINNING OF
14 THE MOTION. PAGE 12. IT'S 376013.

15 A OKAY.

16 Q THAT'S A PAGE THAT'S PART OF THE MOVING
17 PAPERS?

18 A YES. IT IS NOT PART OF MY DECLARATION.

19 Q RIGHT. BUT IT'S MOVING PAPERS THAT YOU
20 AGREED WITH?

21 A YES.

22 Q AND IF YOU COULD HIGHLIGHT THE LAST
23 PARAGRAPH BEGINNING WITH "IN SUMMARY."

24 YOU AGREED WITH THE ASSERTION THAT THE
25 ESTATE HAS BEEN IN A LIQUIDATION MODE SINCE THE TRUSTEE'S
26 APPOINTMENT; RIGHT?

1 A IN THE SENSE THAT IT WAS MY INTENTION, UPON
2 MY APPOINTMENT AND MY INVESTIGATION, TO SELL THE ASSETS,
3 SELL THE PARKS, RATHER THAN TRY TO BASE A PLAN UPON
4 OPERATIONS.

5 Q BECAUSE YOU DIDN'T THINK YOU COULD BASE A
6 PLAN UPON OPERATIONS?

7 A WITH THESE THREE PARKS, THAT WAS MY
8 CONCLUSION, YES.

9 Q BECAUSE YOU BELIEVED UPON APPOINTMENT, THAT
10 EVEN THOUGH THIS WAS A CHAPTER 11, YOU OUGHT TO JUST
11 LIQUIDATE THOSE PARKS?

12 A LIQUIDATE THEM AS GOING-CONCERN MEMBERSHIP
13 PARKS, WHICH I SAY HERE.

14 Q NOW, IN THAT SAME SENTENCE YOU SAY, "IT IS
15 NOW EVIDENT THAT THE REALISTIC VALUES OF THE DEBTOR'S
16 ASSETS ARE SUBSTANTIALLY LOWER THAN WAS BELIEVED AT THE
17 TIME OF THE TRUSTEE'S APPOINTMENT."

18 A YES, THAT'S CERTAINLY TRUE.

19 Q AND ALMOST IMMEDIATELY AFTER YOUR
20 APPOINTMENT YOU BEGAN TO TRY TO SELL CERTAIN ASSETS OF
21 FIRST NATIONWIDE RESORTS MANAGEMENT?

22 A TRUE.

23 Q BUT YOU HAD DIFFICULTIES SELLING THE ASSETS
24 OF THIS DEBTOR, DIDN'T YOU?

25 A I HAD DIFFICULTIES SELLING THE ASSETS OF
26 THIS DEBTOR FOR A PRICE THAT WOULD YIELD MONEY OR VALUE

1 BEYOND THE ENCUMBRANCES, YES.

2 Q AND OF COURSE WHEN YOU TOOK OVER AS TRUSTEE
3 IN SEPTEMBER 1996, YOU DIDN'T KNOW WHAT THE VALUES OF THE
4 PROPERTIES WERE; RIGHT?

5 A NO, I DID NOT KNOW. I FORMED OPINIONS AS TO
6 THE VALUES, BASED UPON PRIMARILY WHAT THE CREDITORS
7 COMMITTEE ADVISED ME.

8 Q BUT YOU ALSO HAD OPINIONS OF VALUATION BY
9 THE DEBTOR?

10 A I BELIEVE THE DEBTOR DID HAVE APPRAISALS OF
11 CERTAIN OF THE PARKS, YES.

12 Q AND SO YOU HAD TO FORM JUDGMENTS AS A
13 BANKRUPTCY TRUSTEE, BASED UPON WHAT YOU BELIEVED THE ASSETS
14 WERE WORTH?

15 A CERTAINLY MY BELIEF AS TO THE VALUE OF THE
16 ASSETS INFORMED MY ACTIONS.

17 Q AND I'D LIKE TO TURN TO PAGE -- AND THIS IS
18 ON THE COMPUTER. WE'LL GET YOU A PAGE IN A MOMENT. PAGE
19 376008. WHY DON'T WE GO TO THE TOP, LINES 10 THROUGH 14.
20 THIS IS PAGE 7, MR. JOSEPH.

21 NOW, YOU WRITE HERE IN THIS MOTION THAT
22 DURING THE COURSE OF THE TRUSTEE'S ATTEMPTS TO SELL THE
23 DEBTOR'S ASSET --

24 A COULD YOU DIRECT ME TO THE VERBIAGE?

25 Q YES. LINES 10 THROUGH 14.

26 A THANK YOU.

1 Q YOU WRITE THERE, "DURING THE COURSE OF THE
2 TRUSTEE'S ATTEMPTS TO SELL THE DEBTOR'S ASSETS, IT BECAME
3 CLEAR, BOTH TO THE TRUSTEE AND THE COMMITTEE" -- THAT'S
4 REFERRING TO THE CREDITORS COMMITTEE; RIGHT?

5 A YES.

6 Q "THAT THE DEBTOR'S VALUATION OF ITS
7 CAMPGROUNDS WAS WILDLY OVEROPTIMISTIC AND THAT THE TRUE
8 MARKET VALUES WERE LESS THAN HALF WHAT THE DEBTOR
9 REPRESENTED."

10 THAT'S WHAT YOU CONCLUDED?

11 A YES. AND I WOULD ALSO ADD THAT THE
12 COMMITTEE'S INITIAL VALUATIONS WERE IN LINE WITH THE
13 DEBTOR'S.

14 Q AND YOU BEGAN TO TRY TO SELL THE ASSETS
15 ALMOST IMMEDIATELY?

16 A YES. I BEGAN TO TRY TO MARKET THESE ASSETS
17 ALMOST IMMEDIATELY, IN PART BECAUSE APPARENTLY THE DEBTOR
18 HAD REACHED AGREEMENT WITH THE COMMITTEE IN THIS CASE THAT
19 THAT WAS WHAT WAS TO BE DONE.

20 Q AND IN YOUR YEARS OF EXPERIENCE, MR. JOSEPH,
21 YOU'VE SEEN OPTIMISTIC VALUATIONS?

22 A YES.

23 Q YOU'VE EVEN SEEN OVEROPTIMISTIC VALUATIONS?

24 A YES.

25 Q BUT IN THIS CASE YOU SAW WILDLY

26 OVEROPTIMISTIC VALUATIONS?

1 A BASED ON MY EXPERIENCE, I BELIEVE THE
2 COMMITTEE AND THE DEBTOR WERE BOTH UNREALISTIC TO AN
3 EXTREME DEGREE, IN TERMS OF WHAT THEY THOUGHT THESE PARKS
4 WERE WORTH.

5 Q AND MR. -- THE VALUATIONS WERE VALUATIONS
6 SUPPLIED TO YOU BY MR. NOVELLI ON BEHALF OF THE DEBTOR,
7 FIRST NATIONWIDE?

8 A AS I SAY, I BELIEVE I SAW ONE APPRAISAL OF
9 ONE OF THE PARKS, BUT I THINK IT'S FAIR TO SAY THAT
10 MR. NOVELLI AND THE COMMITTEE CONCURRED IN THEIR ESTIMATE
11 OF THE VALUE OF THESE PARKS.

12 Q WE'LL GET TO THE COMMITTEE. I'M FOCUSING
13 NOW ON MR. NOVELLI.

14 MR. NOVELLI'S VALUATIONS WERE WILDLY
15 OVEROPTIMISTIC?

16 A IN MY OPINION HIS VALUATION OF THE WORTH OF
17 THESE PARKS WAS WILDLY OVEROPTIMISTIC.

18 Q THERE WAS NO BASIS IN FACT TO THOSE NUMBERS?

19 A I CAN'T SAY THAT.

20 Q THEY WERE GROSSLY INFLATED?

21 A I CAN'T SAY THAT.

22 Q MY CLIENT, CAMP COAST TO COAST, HAD NOTHING
23 TO DO WITH THOSE WILDLY OVEROPTIMISTIC VALUATIONS BY
24 MR. NOVELLI?

25 A I HAVE NO IDEA.

26 Q YOU NEVER HEARD THAT THEY DID; CORRECT?

1 A I NEVER HEARD THAT THEY DID, NO.

2 Q NOW, I WANT TO GO BACK TO PAGE 12 THAT YOU
3 WERE ON BEFORE. PAGE 12. AND I REALIZE THAT THE JURY
4 CAN'T SEE THIS RIGHT NOW BECAUSE OF THE PROJECTOR ISSUE,
5 BUT LET ME WITH EVERYONE'S CONSENSUS JUST TRY TO PLOD ON.

6 THAT PAGE 12, MR. JOSEPH -- AND I'LL READ IT
7 OUT LOUD. THAT PAGE 12 ON --

8 A COULD YOU GIVE ME A LINE REFERENCE?

9 Q YES. ON -- LINES 23 AND 24 REFERENCE THE
10 FACT THAT THE ESTATE HAS BEEN IN A LIQUIDATION MODE SINCE
11 THE TRUSTEE'S APPOINTMENT; DO YOU SEE THAT?

12 A YES, I DO.

13 Q OKAY. AND THAT LIQUIDATION MODE THAT YOU
14 ARE REFERRING TO, MR. JOSEPH, THAT HAD NOTHING TO DO WITH
15 ANYTHING THAT MY CLIENT, CAMP COAST TO COAST, DID?

16 A NO. NO. AS I TESTIFIED, MY DECISION TO
17 SELL THESE PARKS WAS BASED UPON TWO THINGS: ONE, THAT
18 THESE PARKS, THREE PARKS, STANDING ALONE WERE NOT
19 OPERATIONALLY -- THEY WERE NOT PRODUCING THE KIND OF
20 REVENUE UPON WHICH I THOUGHT A PLAN COULD BE BASED.

21 AND SECONDLY, AS THIS DOCUMENT INDICATES,
22 THERE HAD BEEN A PRE-MY-APPOINTMENT AGREEMENT BETWEEN THE
23 COMMITTEE AND THE DEBTOR THAT IT WOULD BE IN EVERYONE'S
24 BEST INTEREST OR AT LEAST IN THE COMMITTEE'S VIEW TO
25 LIQUIDATE THE PARKS.

26 Q AND THE CONCLUSION THAT YOU REACHED, THAT

1 THE PARKS WERE NOT PRODUCING THE VALUES OR THE REVENUES,
2 THAT WAS A CONCLUSION THAT YOU REACHED SOMETIME IN 1996,
3 AFTER YOUR APPOINTMENT?

4 A I REACHED THE VIEW THAT GIVEN THE DEBT OF
5 THIS ENTITY, FIRST NATIONWIDE -- GIVEN THE DEBT IT HAD
6 TAKEN ON THROUGH GUARANTEES AND THE LIKE, THAT THESE PARKS
7 WERE NOT GOING TO BE ABLE TO PRODUCE SUFFICIENT REVENUES
8 NOW OR IN THE FUTURE TO SERVICE THAT DEBT IN AN EFFECTIVE,
9 MEANINGFUL WAY AND THAT, ACCORDINGLY, A SALE OF THE ASSETS
10 WOULD BE THE MOST PRUDENT WAY TO PROCEED.

11 Q AND THOSE GUARANTEES THAT YOU WERE REFERRING
12 TO THAT HAD BEEN TAKEN ON WERE GUARANTEES FOR, AMONG OTHER
13 THINGS, PRESIDENTIAL AIRLINES?

14 A AS I TOLD YOU, UNITED STATES TRUSTEE'S
15 OFFICE APPOINTED TO THE CREDITORS COMMITTEE IN THIS CASE
16 TWO CREDITORS -- TWO REPRESENTATIVES OF TWO CREDITORS WHO
17 HAD EITHER GUARANTEES OR DIRECT OBLIGATIONS FROM FIRST
18 NATIONWIDE, AND THOSE OBLIGATIONS WERE OBVIOUSLY INCURRED
19 IN CONNECTION WITH PRESIDENTIAL AIR. SO THEY WERE
20 CERTAINLY A REPRESENTED CREDITOR BODY IN THIS CASE.

21 Q THE POINT IS, THOUGH, MR. JOSEPH, THAT GIVEN
22 THE BILLS THAT FIRST NATIONWIDE HAD TO PAY --

23 A YES.

24 Q -- AND GIVEN THE MONEY THAT WAS COMING IN --

25 A YES.

26 Q -- IN PARK REVENUE, THERE WASN'T ENOUGH?

1 A IN MY VIEW THERE WAS NOT GOING TO BE ENOUGH
2 MONEY FROM OPERATIONAL REVENUES TO SATISFY THESE CREDITORS.
3 AND, ACCORDINGLY, I THOUGHT THE BEST WAY TO DO IT WOULD BE
4 TO SELL THE PARKS AS GOING CONCERNS.

5 Q AND YOU KNEW THAT IN 1996?

6 A THAT WAS MY OPINION IN 1996.

7 Q AND THAT WAS YOUR OPINION IN 1997?

8 A YES. MY SALES EFFORT CONTINUED UNTIL REALLY
9 THE CONVERSION.

10 Q AND THAT WAS YOUR OPINION IN 1998?

11 A AS MY VIEW AS TO HOW THIS CASE OUGHT TO BE
12 RESOLVED?

13 Q YES.

14 A YES.

15 Q AND YOUR OPINION THAT THE PARK REVENUES
16 WEREN'T ENOUGH TO PAY THE DEBTS WAS AN OPINION THAT WAS
17 FORMED A YEAR BEFORE CAMP COAST TO COAST SENT LETTERS TO
18 ITS MEMBERS IN SEPTEMBER 1997?

19 A I DON'T KNOW WHEN CAMP COAST TO COAST SENT
20 LETTERS TO ITS MEMBERS.

21 Q I'D LIKE TO GO THROUGH SOME OF THE NAMES OF
22 THE RESORT PARKS OR COMPANIES THAT MADE UP FIRST NATIONWIDE
23 RESORT MANAGEMENT. CAN WE DO THAT?

24 A THAT MADE IT UP?

25 Q YES. SOME OF THE COMPANIES THAT WERE PART
26 OF FIRST NATIONWIDE, THE PARKS.

1 A SOME OF THE PARKS?

2 WOULD YOU RESTATE THAT, SIR?

3 Q SURE.

4 I WANT TO ASK YOU SOME QUESTIONS ABOUT FIRST
5 NATIONWIDE'S ASSETS. DO YOU UNDERSTAND?

6 A THAT I UNDERSTAND.

7 Q CYPRESS PARK WAS A PARK THAT WAS OWNED BY
8 FIRST NATIONWIDE RESORT MANAGEMENT; IS THAT RIGHT?

9 A I BELIEVE THAT'S CORRECT.

10 Q AND AFTER YOU WERE APPOINTED TRUSTEE, YOU
11 WANTED TO FIND OUT WHAT THE VALUE OF CYPRESS PARK WAS?

12 A THAT WOULD BE SOMETHING USEFUL FOR ME TO
13 KNOW, YES.

14 Q NOW, WHEN MR. NOVELLI WAS RUNNING FIRST
15 NATIONWIDE, WHEN HE WAS PUT INTO THIS DEBTOR-IN-POSSESSION
16 BANKRUPTCY, HE HAD REPRESENTED THE VALUE OF CYPRESS PARK IN
17 JUNE OF '96 TO BE \$1,750,000; DO YOU RECALL THAT?

18 A DO I RECALL HIM REPRESENTING THAT?

19 Q DO YOU RECALL THAT WHEN YOU BECAME TRUSTEE
20 IN SEPTEMBER, YOU HAD LEARNED THAT JUST A FEW MONTHS
21 EARLIER MR. NOVELLI HAD REPRESENTED TO THE BANKRUPTCY COURT
22 THAT THE VALUE OF CYPRESS PARK WAS \$1,750,000?

23 A IF HE SAID THAT IN THE SCHEDULES THAT ARE
24 FILED, THEN I WOULD HAVE BEEN AWARE OF IT BECAUSE I WOULD
25 HAVE REVIEWED THE SCHEDULES. I DON'T HAVE A PRESENT
26 RECOLLECTION OF THE NUMBER NOW.

1 Q LET ME PLACE BEFORE YOU THE SCHEDULES TO SEE
2 IF I CAN REFRESH YOUR RECOLLECTION.

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

4 THE COURT: YOU MAY.

5 MR. MOSHENKO: IT'S NOT AN EXHIBIT?

6 MR. SHERMAN: NO. I'M USING IT TO REFRESH HIS
7 RECOLLECTION, AS I JUST INDICATED.

8 YOUR HONOR, MAY I -- IN ORDER TO EXPEDITE
9 THIS -- SHOW THIS TO COUNSEL AND THEN SHOW IT TO THE
10 WITNESS?

11 Q MR. JOSEPH, I HAVE PLACED BEFORE YOU A
12 DOCUMENT ENTITLED "SCHEDULES AND STATEMENT OF AFFAIRS."
13 COULD YOU TAKE A LOOK AT THE THIRD PAGE OF THAT DOCUMENT.
14 AND I ASK YOU BY LOOKING AT THAT THIRD PAGE WHETHER YOUR
15 MEMORY HAS NOW BEEN REFRESHED THAT THE DEBTOR HAD
16 REPRESENTED THE VALUE OF CYPRESS PARK AS OF JUNE 1996 TO BE
17 \$1,750,000.

18 A YES, THESE SCHEDULES SO REFLECT.

19 Q AND YOU CONCLUDED THAT THAT VALUATION WAS
20 WILDLY OVEROPTIMISTIC?

21 A I DID.

22 Q BECAUSE YOU CONCLUDED THAT THE VALUATION OF
23 CYPRESS PARK WAS NOT \$1,750,000, BUT RATHER ONLY \$790,000?

24 A IS THAT A STATEMENT OR --

25 Q ISN'T THAT RIGHT?

26 A I BELIEVE THAT TO BE CORRECT. DO I NOT SAY

1 THAT IN THE NOTICE OF MOTION?

2 Q IF I COULD PUT IT UP ON THE -- OH, GREAT.

3 OKAY. YOU SEE IN THE MOTION YOU SAY THAT

4 "THE ESTATE CONTINUES TO OPERATE THIS PARK. THE TRUSTEE

5 HAS OBTAINED AN APPRAISAL OF THE PARK WHICH DETERMINES ITS

6 VALUE TO BE \$790,000."

7 THAT WAS THE VALUATION THAT YOU HAD

8 OBTAINED?

9 A THAT'S CORRECT.

10 Q AND THAT VALUATION WAS OBTAINED BY YOU

11 SHORTLY AFTER YOU BECAME THE TRUSTEE?

12 A YOU KNOW, I DON'T RECALL WHEN EXACTLY I

13 OBTAINED THAT VALUATION.

14 Q LATE '96 OR EARLY '97?

15 A I'M SORRY, SIR. I CAN'T RECALL. BUT I

16 CERTAINLY DID OBTAIN IT.

17 Q BUT YOU DIDN'T WAIT A YEAR BEFORE YOU

18 OBTAINED AN APPRAISAL?

19 A I DON'T RECALL WHEN I OBTAINED THE FORMAL

20 APPRAISAL ON THAT PARK.

21 Q BUT EVEN BEFORE YOU OBTAINED THE FORMAL

22 APPRAISAL, MR. JOSEPH, ONE OF YOUR JOBS EARLY ON WAS TO TRY

23 TO GET A SENSE FOR THE VALUE; RIGHT?

24 A YES.

25 Q AND THE SENSE THAT YOU STARTED TO GET ON

26 CYPRESS PARK PRETTY EARLY ON WAS THAT IT WASN'T WORTH

1 ANYWHERE NEAR \$1,750,000?

2 A THE MARKETING EFFORTS THAT WERE MADE WITH
3 RESPECT TO THE PARK AND THE MARKETING INVESTIGATION
4 INDICATED THAT THAT -- THAT THE DEBTOR'S VALUATION WAS OFF,
5 IN MY VIEW.

6 Q IT WAS --

7 A OFF.

8 Q OFF.

9 AND THIS PROPERTY THAT WAS WORTH \$790,000
10 WAS ENCUMBERED; IT HAD A TRUST DEED AGAINST IT FOR \$1.2
11 MILLION?

12 A THE FIGURE HERE IS \$837,000. IT MAY HAVE
13 INCREASED TO THAT DURING THE PERIOD OF TIME. DO I USE THE
14 FIGURE A MILLION TWO?

15 THE CURRENT BALANCE -- I SAY IN MY
16 DECLARATION THAT THE CURRENT BALANCE OF THE TRUST DEED IS A
17 \$1,201,000.

18 Q AND THE PARK WAS OPERATING AT AN ANNUAL LOSS
19 OF \$90,000?

20 A AFTER AN ALLOCATION OF GENERAL
21 ADMINISTRATIVE EXPENSES, THAT'S TRUE.

22 Q AND YOU KNEW THE PARK WAS OPERATING AT A
23 LOSS SOON AFTER YOU BECAME TRUSTEE?

24 A I'M NOT SURE HOW SOON.

25 Q WELL, THIS WASN'T A SURPRISE TO YOU AT SOME
26 POINT A YEAR OR SO INTO THIS, WAS IT?

1 A NO. I THINK THE PARKS -- THE PARKS WERE
2 STRUGGLING, AND THEY STRUGGLED MORE INTO THE CASE. AND
3 IT'S MY VIEW THAT TOWARD THE END OF THE CASE, IN FACT, THEY
4 WERE LOSING THAT KIND OF MONEY, IF YOU ALLOCATED ALL OF THE
5 EXPENSES THAT ONE WOULD ALLOCATE.

6 Q THIS WILDLY OVEROPTIMISTIC VALUATION HAD
7 NOTHING TO DO WITH WHAT MY CLIENT DID?

8 A I DON'T THINK -- THERE'S NOTHING -- I HAVE
9 NO INFORMATION THAT YOUR CLIENT WENT TO WHOEVER PUT DOWN
10 THIS 1,750,000 AND TOLD THEM TO DO IT.

11 Q YOU DON'T HOLD MY CLIENT RESPONSIBLE FOR THE
12 FACT THAT WHEN YOU CAME ABOARD AS TRUSTEE, CYPRESS PARK WAS
13 STRUGGLING?

14 A NO.

15 Q NOW, AMERICAN HOLIDAYS WAS ANOTHER RESORT
16 PARK THAT WAS BEING OPERATED BY FIRST NATIONWIDE RESORT
17 MANAGEMENT; IS THAT RIGHT?

18 A YES.

19 Q AND WHEN MR. NOVELLI WAS RUNNING FIRST
20 NATIONWIDE RESORT MANAGEMENT AS THE DEBTOR IN POSSESSION IN
21 BANKRUPTCY, MR. NOVELLI REPRESENTED TO THE COURT THAT THE
22 VALUE OF THAT PARK WAS \$7.3 MILLION; IS THAT RIGHT?

23 A SCHEDULES ARE NORMALLY FILED, SIR, TO
24 COMMENCE A CASE. THEY'RE FILED BY THE DEBTOR, NOT THE
25 DEBTOR IN POSSESSION.

26 Q I'M SORRY. I'M JUST NOT A BANKRUPTCY

1 EXPERT.

2 BUT WHEN MR. NOVELLI WAS RUNNING THE SHOW,
3 BEFORE YOU STARTED RUNNING THE SHOW, HE REPRESENTED IT WAS
4 \$7.3 MILLION; IS THAT RIGHT?

5 A I DON'T KNOW WHO WAS RUNNING THE SHOW. BUT
6 WHOEVER VERIFIED THESE SCHEDULES ON BEHALF OF THE DEBTOR IS
7 EXPRESSING THAT OPINION. I DON'T KNOW WHO VERIFIED THEM.
8 I DON'T KNOW WHETHER YOU'VE GIVEN ME THAT PART OF IT.

9 Q OKAY. BUT WHOEVER WAS IN CHARGE IN JUNE '96
10 REPRESENTED TO THE U.S. BANKRUPTCY COURT THAT THE VALUATION
11 WAS \$7.3 MILLION?

12 A THE OPINION OF VALUE STATED IN THESE PAPERS
13 IS THAT.

14 Q AND YOU HAD A PROFESSIONAL APPRAISER COME
15 IN; CORRECT?

16 A I DON'T KNOW WHETHER I HAD THAT
17 PROFESSIONALLY APPRAISED OR WHETHER IT WAS SIMPLY THE
18 RESULT OF TALKING TO REAL ESTATE BROKERS IN THE AREA.

19 Q YOUR VALUATION WAS LESS THAN \$7.3 MILLION?

20 A YES, THAT'S CERTAINLY TRUE.

21 Q IT WAS SIGNIFICANTLY LESS?

22 A INDEED IT WAS.

23 Q YOUR VALUATION WAS FIVE TIMES LESS AT 1.5
24 MILLION?

25 A YES, AND I CAN EXPLAIN WHY, IN PART.

26 Q IT WAS LESS BECAUSE THE REVENUES DIDN'T

1 JUSTIFY THE VALUATION, DID THEY?

2 A NO. IN MY VIEW IT WAS LESS BECAUSE OF THE
3 FOLLOWING: AMERICAN HOLIDAY OWNED A LARGE TRACT OF LAND IN
4 THE LAKE OF THE OZARKS REGION OF THE STATE OF MISSOURI.
5 ONLY A VERY SMALL PORTION OF THAT LAND WAS REALLY UTILIZED
6 AS A PARK. AND THE BALANCE OF THE LAND, I THINK IT WAS THE
7 DEBTOR'S INTENTION TO SUBDIVIDE IT INTO LOTS AND SELL THE
8 LOTS.

9 AND IT WAS MY VIEW THAT THE DEBTOR SIMPLY
10 UNDERESTIMATED THE COST AND THE DIFFICULTY OF THAT -- OF
11 MOUNTING THAT SUBDIVISION. I BELIEVE THAT WHAT THE DEBTOR
12 HAS INDICATED HERE IS THE VALUE OF THE PROPERTY AS
13 SUBDIVIDED INTO LOTS FOR SALE. AND IN MY VIEW -- AND I
14 WENT TO THE AREA. I WENT TO THE LAKE OF THE OZARKS AND
15 VIEWED THE AREA AND TALKED TO BROKERS. THAT SUBDIVISION
16 WAS NOT AS FEASIBLE AS THE DEBTOR BELIEVED.

17 Q WELL, THIS FIVE TIMES DIFFERENCE IN
18 VALUATION, BASED ON THE LACK OF FEASIBILITY THAT YOU'VE
19 JUST TESTIFIED TO, MY CLIENT ISN'T RESPONSIBLE FOR THAT, IS
20 IT?

21 A I HAVE NO INFORMATION THAT CAMP COAST TO
22 COAST, IN DISCUSSIONS WITH THE DEBTOR'S REPRESENTATIVES,
23 EVER OPINED THAT THIS PARK WAS WORTH \$7.3 MILLION.

24 Q NOW, ONE OF THE OTHER PARKS THAT WAS WITHIN
25 FIRST NATIONWIDE WAS CALLED "DEER RUN"; IS THAT RIGHT?

26 A YES.

1 Q AND I'M GOING TO DO THE SAME THING ON DEER
2 RUN AS WE'VE DONE ON THE TWO OTHERS.

3 DEBTOR'S VALUATION IS AT \$750,000; RIGHT?

4 A THE SCHEDULES IN FRONT OF ME SO INDICATE,
5 YES.

6 Q TRUSTEE'S VALUATION IS ONE-THIRD -- ACTUALLY
7 IT'S \$100,000. I'M NOT REAL GOOD IN DOING THOSE.

8 A I'M SORRY.

9 Q IT'S \$200,000?

10 A THAT WAS MY VALUATION, YES.

11 Q AND MY CLIENT, CAMP COAST TO COAST, THERE'S
12 NOTHING YOU KNOW THAT HOLDS US RESPONSIBLE FOR THE
13 DIVERGENCE IN VALUES?

14 A I HAVE NO INFORMATION THAT ANYONE FROM CAMP
15 COAST TO COAST OPINED TO MR. NOVELLI AS TO WHAT THE VALUE
16 OF THAT PARK WAS, AND I HAVE NO INFORMATION AS TO WHETHER
17 THEY EVER OPINED OR DIDN'T.

18 Q NOW, CATHEDRAL PALMS WAS ANOTHER CAMPGROUND
19 THAT FIRST NATIONWIDE OPERATED; IS THAT RIGHT?

20 A WE DID OPERATE IT, YES.

21 Q AND MAYBE WE CAN PUT 376-011 UP ON THE
22 BOARD.

23 THIS IS WHAT YOU HAD TO SAY ABOUT CATHEDRAL
24 PALMS. YOU WROTE THAT "THE ESTATE HOLDS A LONG-TERM LEASE
25 OF THIS PROPERTY, WHICH IS CURRENTLY OPERATED AS A
26 NONMEMBERSHIP OR PUBLIC RECREATIONAL VEHICLE PARK. THIS

1 PARK, LOCATED IN THE PALM SPRINGS AREA, EXPERIENCES
2 SEASONAL OPERATIONS AND WILL SOON APPROACH THE END OF ITS
3 HIGH SEASON. IT CURRENTLY GENERATES OPERATING REVENUES OF
4 \$11,000 ANNUALLY, INCLUDING CURRENT REAL ESTATE TAXES, BUT
5 NOT INCLUDING PAYMENTS DUE UNDER THE LEASE."

6 I WANT TO SKIP DOWN A LITTLE BIT.

7 "AFTER AN ALLOCATION OF GENERAL AND AD" --
8 "AFTER AN ALLOCATION OF GENERAL AND ADMINISTRATIVE
9 EXPENSES, THE PARK OPERATES AT A LOSS OF \$49,000 ANNUALLY."

10 NOW, MR. JOSEPH, WHEN YOU CAME IN AS TRUSTEE
11 AND BEGAN YOUR INVESTIGATION, YOU REALIZED IN RELATIVELY
12 SHORT ORDER THAT CATHEDRAL PALMS WAS LOSING MONEY, YEAR IN
13 AND YEAR OUT?

14 A I THINK THAT'S FAIR. BUT I'M NOT SURE --
15 \$11,000 ANNUALLY DOESN'T SOUND CORRECT TO ME, AS I SIT HERE
16 NOW.

17 Q I'D LIKE TO GO OVER SOME TESTIMONY THAT YOU
18 GAVE YESTERDAY.

19 AND I'D LIKE TO PUT IT UP ON THE BOARD, YOUR
20 HONOR. IT'S PAGE 1849, LINES 6 THROUGH 13.

21 THERE'S A QUESTION THAT WAS ASKED OF YOU BY
22 MR. MOSHENKO.

23 "IN YOUR EXPERIENCE -- AND I'M NOW TRYING TO
24 FOCUS YOU IN ON MEMBERSHIP CAMPGROUND RESORT-TYPE
25 BANKRUPTCY.

26 "ARE THE MEMBERS' CONTRACTS -- THE CONTRACTS

1 WITH MEMBERS GENERALLY CARRIED IN THE SCHEDULES AS ASSETS
2 OR LIABILITIES, OR BOTH?"

3 AND YOUR ANSWER WAS?

4 "ANSWER: THEY'RE ACTUALLY CARRIED IN A
5 SEPARATE SCHEDULE CALLED SCHEDULE OF EXECUTORY CONTRACTS."

6 MR. JOSEPH, I WANT TO ASK YOU SOME QUESTIONS
7 ABOUT THIS SCHEDULE OF EXECUTOR CONTRACTS THAT LISTS THE
8 CONTRACTS WITH THE MEMBERS. OKAY?

9 THESE LISTS ARE SOMETIMES REFERRED TO AS
10 SCHEDULE G'S?

11 A I BELIEVE SCHEDULE G IS WHERE A DEBTOR IS
12 SUPPOSED TO LIST EXECUTOR CONTRACTS.

13 Q AND I KNOW MR. MOSHENKO WENT OVER EXECUTOR
14 CONTRACTS WITH YOU A LOT. LET ME SEE IF I CAN'T CUT TO THE
15 CHASE ON THIS.

16 MEMBERSHIP CONTRACTS BETWEEN MEMBERS AND
17 FIRST NATIONWIDE OR ANY OF THE PARKS COULD BE CONSIDERED
18 EXECUTOR CONTRACTS; IS THAT RIGHT?

19 A YES.

20 Q AND THESE MEMBERSHIP CONTRACTS, THEN, YOU
21 WIND UP LISTING -- NOT YOU, BUT THE DEBTOR IN BANKRUPTCY
22 WINDS UP PUTTING THE NAME AND ADDRESS OF THE PARTIES TO THE
23 EXECUTOR CONTRACTS ON A PIECE OF PAPER; RIGHT?

24 A SOMETIMES THEY DO, AND SOMETIMES THEY DON'T.

25 Q AND LET'S FOCUS ON THE TIMES WHERE THEY DO.

26 THEY PUT THE NAMES OF THE MEMBER AND THEIR

1 ADDRESS ON A PIECE OF PAPER, AND THEY FILE IT WITH THE
2 BANKRUPTCY COURT; IS THAT RIGHT?

3 A IF A MEMBERSHIP CONTRACT IS AN EXECUTOR
4 CONTRACT, THAT WOULD BE A PERMISSIBLE WAY TO DO IT.

5 Q NOW, IN THE CASE OF FIRST NATIONWIDE RESORT
6 MANAGEMENT, THERE WERE LISTS OF ALL OF FIRST NATIONWIDE'S
7 MEMBERS THAT WERE PUBLICLY FILED WITH THE UNITED STATES
8 BANKRUPTCY COURT; RIGHT?

9 A WITHOUT THOSE SCHEDULES IN FRONT OF ME, SIR,
10 I COULDN'T TELL YOU.

11 Q DO WE HAVE 375?

12 LET ME PLACE BEFORE YOU, MR. JOSEPH, EXHIBIT
13 375. 375 IS ENTITLED, "AMENDMENT TO SCHEDULES D, E, F AND
14 G, AND STATEMENT OF AFFAIRS"; IS THAT RIGHT?

15 A THAT'S WHAT IT SAYS HERE, YES.

16 Q AND THIS SHOWS AS BEING DATED SEPTEMBER 6TH,
17 1996; IS THAT RIGHT?

18 A YES. IT APPEARS TO BE SIGNED ON THAT DATE.

19 MR. SHERMAN: YOUR HONOR, I'D LIKE TO MOVE EXHIBIT
20 375 INTO EVIDENCE.

21 MR. MOSHENKO: COULD THE COURT TAKE IT UNDER
22 SUBMISSION?

23 THE COURT: UNDER SUBMISSION.

24 MR. SHERMAN: THANK YOU. I CAN PUT IT UP?

25 LET'S PUT IT UP ON THE BOARD.

26 Q MR. JOSEPH, WHAT I HAVE UP ON THE BOARD IS

1 THE FIRST PAGE OF THE DOCUMENT THAT YOU HAVE IN YOUR HANDS,
2 EXHIBIT 375; RIGHT?

3 A YES.

4 Q AND IT'S A PRETTY THICK DOCUMENT, ISN'T IT,
5 THE ONE I HANDED TO YOU JUST NOW? WHY DON'T YOU HOLD IT
6 UP. SO IT'S GOT -- I DON'T KNOW -- ABOUT 100 PAGES IN IT
7 OR SO, PLUS OR MINUS?

8 A THE PAGES AREN'T NUMBERED. I REALLY
9 CAN'T --

10 Q OKAY. WELL, LET'S GO THROUGH THIS REAL
11 QUICKLY.

12 YOU GOT SCHEDULE G'S IN THIS DOCUMENT; IS
13 THAT RIGHT?

14 A WELL THE TITLE PAGE INDICATES THAT SCHEDULE
15 G IS THERE.

16 Q AND SO LET'S GO A FEW PAGES INTO THIS
17 DOCUMENT. MAYBE THERE --

18 A IT DOES STATE, "THE DEBTOR HEREBY AMENDS ITS
19 SCHEDULE G TO INCLUDE THE FOLLOWING," AND THEN IT HAS A
20 LIST OF WHAT APPEAR TO BE COMMERCIAL-TYPE OF CONTRACTS.

21 Q RIGHT. IN FACT, WE LOOKED AT THAT EARLIER
22 WHEN WE WERE TALKING ABOUT THE AIRCRAFT HANGAR LEASE FOR
23 THE JET PLANES?

24 A YES. AND THEN THERE'S THE NEXT --

25 Q THE NEXT ENTRY DOWN SAYS, "IN THE COURSE OF
26 ITS BUSINESS OPERATIONS, DEBTOR HAS ENTERED INTO CONTRACTS

1 WITH MEMBERS ASSOCIATED WITH THE FOLLOWING RESORTS"; RIGHT?

2 A YES. YOU'RE READING THE SAME THING I AM.

3 Q OKAY. AND I'D LIKE YOU TO GO BACK TO THAT.
4 IT'S, I THINK, FOUR PAGES IN.

5 OKAY. AND YOU SEE "IN THE COURSE OF ITS
6 BUSINESS OPERATIONS, DEBTOR HAS ENTERED INTO CONTRACTS WITH
7 MEMBERS ASSOCIATED WITH THE FOLLOWING RESORTS." AND THEN
8 TO THE RIGHT IT SAYS, "SEE THE ATTACHED LIST OF MEMBERS."

9 DO YOU SEE THAT, MR. JOSEPH?

10 A YES.

11 Q OKAY. SO -- AND THEN LET'S GO THROUGH THE
12 LIST OF MEMBERS. CAN WE GO TO THE FIRST SCHEDULE G.

13 NOW, YOU'LL SEE ONE OF THE PAGES IN THIS
14 DOCUMENT, EXHIBIT 375, SCHEDULE G, THE MEMBER LIST FOR DEER
15 RUN PARK; IS THAT IN THERE?

16 A YES. I'M LOOKING AT THE SAME PAGE THAT'S
17 BEING PROJECTED.

18 Q LET'S GO TO THE NEXT PAGE, THEN. JUST STAY
19 WITH ME.

20 AND THESE ARE JUST THE NAMES AND ADDRESSES
21 OF ALL THE DEBTOR'S MEMBERS; RIGHT?

22 A THAT'S WHAT THEY APPEAR TO BE, YES.

23 Q ALL IN THE PUBLIC FILES OF THE UNITED STATES
24 BANKRUPTCY COURT?

25 A YES. APPEAR TO BE.

26 Q AVAILABLE TO YOU; RIGHT?

1 A PARDON ME?

2 Q AVAILABLE TO YOU?

3 A YES.

4 Q AVAILABLE TO ME?

5 A IF IT'S A MATTER OF PUBLIC RECORD, CERTAINLY.

6 Q AVAILABLE TO ANY RESORT DEVELOPER IN THE
7 COUNTRY; RIGHT?

8 A IT'S A MATTER OF PUBLIC RECORD.

9 Q IT'S AVAILABLE TO ANY RESORT DEVELOPER IN
10 THE COUNTRY WHO WANTS TO GO AND GET IT; RIGHT?

11 A WHO WANTS TO LOOK AT THESE, YES.

12 Q AND THERE'S ALSO -- WHY DON'T WE JUST GO
13 THROUGH A FEW PAGES.

14 THESE ARE ALL THE DEBTOR'S MEMBERS RIGHT
15 THERE; CORRECT?

16 A NOT ALL ON ONE PAGE.

17 Q NO. BUT I'D LIKE TO GET OUT OF HERE BEFORE
18 MEMORIAL DAY WEEKEND.

19 ALL THE MEMBERS ARE LISTED?

20 A THAT I DON'T KNOW, SIR. ALL I KNOW, THE
21 DEBTOR HAS PURPORTED BY WHAT IT SAYS HERE TO LIST ITS
22 MEMBERS.

23 Q ALL OF ITS MEMBERS?

24 A IT SAYS SCHEDULE G, MEMBER LIST, DEER RUN
25 PARK. I PRESUME THAT IS INTENDED TO LIST ITS MEMBERS IN
26 THAT PARK.

1 Q WELL, LET'S GO TO THE MEMBER LIST FOR
2 AMERICAN HOLIDAYS PARK.

3 MAY I APPROACH, YOUR HONOR?

4 THE COURT: YOU MAY.

5 BY MR. SHERMAN: Q AND I'VE PLACED BEFORE YOU IN
6 ONE OF THE PAGE BREAKS WHERE IT SAYS, "SCHEDULE G," MEMBER
7 LIST FOR AMERICAN HOLIDAYS; RIGHT?

8 A THAT IS WHAT I'M LOOKING AT, YES.

9 Q OKAY. AND THEN THE PAGES THAT FOLLOW YOU
10 UNDERSTAND TO BE THE DEBTOR'S REPRESENTATION OF ALL OF
11 THEIR MEMBERS WITH ALL THE ADDRESSES?

12 A THAT'S WHAT I WOULD TAKE IT TO BE, YES.

13 Q AND DEBTOR DID THE SAME THING WITH CYPRESS
14 PARK AS WELL; IS THAT RIGHT?

15 A HOW AM I TO TELL THAT?

16 Q RIGHT THERE.

17 A DO YOU WANT ME TO FIND THAT IN THIS PACKET?

18 MR. SHERMAN: YOUR HONOR, I'LL REPRESENT IT'S THE
19 SAME DOCUMENT.

20 THE WITNESS: I ACCEPT THE REPRESENTATION.

21 BY MR. SHERMAN: Q FAIR ENOUGH.

22 AND LET'S LOOK AT SOME OF THE ADDRESSES AND
23 NAMES.

24 THOSE ARE JUST ADDRESSES AND NAMES OF
25 MEMBERS OF CYPRESS PARK? THAT'S WHAT YOU UNDERSTAND IT TO
26 BE?

1 A YES, ASSUMING THAT PAGE BREAK YOU SHOWED ME
2 IS IN HERE, THAT'S WHAT I PRESUME THE DEBTOR IS DOING.

3 Q SO, MR. JOSEPH, AS OF SEPTEMBER 1996, WHEN
4 THE DEBTOR FILES THESE SCHEDULE G'S IN THE PUBLIC FILING OF
5 THE UNITED STATES BANKRUPTCY COURT, THERE CEASED BEING ANY
6 SO-CALLED CONFIDENTIALITY OF THOSE NAMES; CORRECT?

7 MR. MOSHENKO: CALLS FOR A LEGAL CONCLUSION.

8 MR. SHERMAN: HE IS A LAWYER. HE IS AN EXPERT.

9 THE COURT: THEY'RE A MEMBER OF PUBLIC RECORD? ARE
10 THEY?

11 THE WITNESS: THEY'RE A MATTER OF PUBLIC RECORD.

12 THE COURT: THAT'S FAIR.

13 BY MR. SHERMAN: Q SO ANYONE HAD ACCESS TO THEM?

14 A ANYONE COULD LOOK AT THE INFORMATION THAT'S
15 HERE, YES.

16 Q NOW, MR. JOSEPH, LET ME MOVE TO ANOTHER
17 TOPIC.

18 AS BANKRUPTCY TRUSTEE YOU NEEDED TO
19 DETERMINE IF THE CONTRACTS BETWEEN FIRST NATIONWIDE AND ITS
20 MEMBERS PROVIDED ANY VALUE TO THE BANKRUPTCY ESTATE; ISN'T
21 THAT RIGHT?

22 A AT SOME POINT IN TIME I NEEDED TO MAKE THAT
23 DETERMINATION, YES.

24 Q YOU NEEDED TO DETERMINE WOULD THEY PRODUCE
25 REVENUE?

26 A WOULD THEY PRODUCE REVENUE AND WOULD THE

1 CORRESPONDING BURDENS BE -- WOULD THE REVENUE BE
2 COMMENSURATE WITH THE OBLIGATIONS THE BANKRUPTCY ESTATE
3 WOULD HAVE, IF IT ACTUALLY UNDERTOOK TO ASSUME THOSE
4 CONTRACTS.

5 Q BECAUSE IT'S NOT JUST AN ISSUE OF BRINGING
6 IN MONEY; YOU'VE GOT TO PROVIDE A SERVICE?

7 A IF A CONTRACT IS ASSUMED, THEN THE ESTATE
8 BECOMES BOUND TO PERFORM.

9 Q AND YOU CAME TO THE CONCLUSION THAT THE
10 MEMBERSHIP CONTRACTS OF FIRST NATIONWIDE WERE LIABILITIES
11 RATHER THAN ASSETS, DIDN'T YOU?

12 A AT THE END OF THE CASE I DID.

13 Q WELL, DID IT TAKE YOU THAT LONG TO COME TO
14 THAT CONCLUSION?

15 A YES, BECAUSE JUST AS I TESTIFIED, COUNSEL,
16 MY EFFORT TO SELL THE PARKS WAS TO SELL THEM AS GOING
17 CONCERNS. AND IT IS PERFECTLY APPROPRIATE FOR THOSE
18 MEMBERSHIP CONTRACTS THAT ARE ASSOCIATED WITH THE PARKS TO
19 BE PICKED UP OR ASSUMED BY THE BUYER OF THE PARK; SO THAT A
20 PURCHASER OF AN OPERATING CAMPGROUND PARK MIGHT BE VERY
21 INTERESTED IN INDEED ASSUMING THOSE EXECUTOR CONTRACTS.

22 Q AND YOU NEVER WERE SUCCESSFUL IN SELLING THE
23 CAMPGROUNDS AS GOING CONCERNS?

24 A AT THE END OF THE CASE, THAT IS A TRUE
25 STATEMENT, YES, I WAS NOT SUCCESSFUL.

26 Q LET'S FOCUS ON THE ENTIRE LENGTH OF THE

1 CASE.

2 A YES.

3 Q AT NO TIME DURING THE LENGTH OF THE CASE
4 WERE YOU ABLE TO SUCCESSFULLY SELL THE PARKS AS GOING
5 CONCERNS?

6 A PARKS UNDER DISCUSSION, THAT'S CORRECT.

7 Q SO AS OF MARCH 1998, YOU WERE SEEKING
8 PERMISSION OF THE UNITED STATES BANKRUPTCY COURT TO PERMIT
9 A NEW COMPANY, TRAVEL AMERICA, TO CONTACT FIRST
10 NATIONWIDE'S MEMBERS; IS THAT RIGHT?

11 A YES. THAT'S PART OF THE MOTION.

12 Q LET'S SHOW THE PART OF THE MOTION WHERE YOU
13 SAY THAT. IT'S ON THE COMPUTER, 376-018. IT'S PAGE 17 OF
14 THE MOTION, EXHIBIT 376.

15 IT SAYS HERE IN THAT PARAGRAPH, ON LINE 6,
16 "IN ORDER TO MITIGATE OR POTENTIALLY ELIMINATE THE DAMAGE
17 CLAIMS, IF ANY, THAT MIGHT OTHERWISE ARISE FROM THE
18 CESSATION OF THE ESTATE'S BUSINESS ACTIVITIES AND THE
19 ABANDONMENT OF CERTAIN R.V. PARK REAL ESTATE, THE TRUSTEE
20 INTENDS TO" -- "THE TRUSTEE INTENDS TO PERMIT TRAVEL
21 AMERICA, INC., A COMPANY ASSOCIATED WITH RAYMOND NOVELLI,
22 TO CONTACT THE MEMBERS FOR THE PURPOSE OF ADVISING THE
23 MEMBERS THAT TRAVEL AMERICA, INC., HAS AGREED TO HONOR THE
24 FIRST NATIONWIDE RESORT MANAGEMENT, INC., MEMBERSHIP
25 CONTRACTS WITHOUT ANY ADDITIONAL OBLIGATION TO MEMBERS."

26 THAT'S WHAT YOU WROTE TO THE COURT?

1 A YES.

2 Q AND SO YOU HADN'T MADE THAT DETERMINATION ON
3 YOUR OWN; AS OF MARCH 1998, YOU WANTED THE COURT, THE
4 BANKRUPTCY COURT, TO AGREE TO IT?

5 A I WANTED THE BANKRUPTCY COURT TO AUTHORIZE
6 IT.

7 Q RIGHT.
8 BECAUSE AS OF MARCH 1998, IT WAS
9 UNAUTHORIZED?

10 A WHAT WAS UNAUTHORIZED?

11 Q TRAVEL AMERICA CONTACTING MEMBERS FOR THE
12 PURPOSE OF ADVISING MEMBERS THAT THEY WERE GOING TO HONOR
13 FIRST NATIONWIDE MEMBERSHIP CONTRACTS.

14 A NO, I DON'T THINK I CAN GO BEYOND THIS
15 PARAGRAPH. IN OTHER WORDS, WHAT WE WANTED WAS PERMISSION
16 TO PERMIT TRAVEL AMERICA TO DO THIS AT THIS TIME.

17 Q RIGHT.
18 AT THIS TIME MEANING WHEN YOU FILED THIS
19 MOTION IN MARCH 1998; CORRECT?

20 A YES.

21 Q BECAUSE YOU HADN'T SOUGHT SUCH AUTHORIZATION
22 PRIOR TO MARCH 1998; ISN'T THAT RIGHT?

23 A NO.

24 Q YOU DIDN'T SEEK AUTHORIZATION PRIOR TO MARCH
25 '98; IS THAT CORRECT?

26 A TO HAVE WHAT? TO HAVE TRAVEL AMERICA

1 BASICALLY ATTEMPT TO CONTACT THESE MEMBERS?

2 Q YES.

3 A NO, I HAD NOT.

4 Q AND YOU THOUGHT YOU NEEDED THE COURT TO
5 AUTHORIZE IT?

6 A AT THIS POINT IN TIME WE WERE CONVERTING TO
7 A CHAPTER 7 CASE AND WOULD NOT BE ABLE TO OPERATE THE PARKS
8 AS WE WERE, IN THIS CONTEXT, YES.

9 Q I'D LIKE TO GO TO 376003 IN THE SAME
10 DOCUMENT. THAT'S PAGE 2 OF THE MOTION. AND LET'S GO TO
11 ITEM 3. IT STARTS ON LINE 11.

12 A YES.

13 Q OKAY. YOU WERE SEEKING AUTHORIZATION TO --
14 MAYBE YOU CAN READ ALONG WITH ME. WELL, JUST FOLLOW ALONG
15 WITH ME HERE -- TO PERMIT TRAVEL AMERICA, INC., TO SEEK TO
16 TRANSFER THE DEBTOR'S MEMBERS PROVIDING THE INDIVIDUAL
17 MEMBER INVOLVED CONSENTS TO SUCH TRANSFER"; RIGHT?

18 A THAT'S WHAT IT SAYS, YES.

19 Q AND IT WAS IMPORTANT TO YOU THAT THE MEMBER
20 JUST NOT BE TREATED AS CHATTEL; THE MEMBERS HAD TO CONSENT
21 TO THE TRANSFER; RIGHT?

22 A I DON'T BELIEVE YOU CAN BUY AND SELL PEOPLE.

23 Q WELL, IN FACT, YOU ANTICIPATED WHERE I WAS
24 GOING TO GO, BECAUSE MR. MOSHENKO ASKED YOU ABOUT THAT
25 SUBJECT YESTERDAY. AND YOU -- YOU WERE OF THE VIEW
26 YESTERDAY, AS WELL AS TODAY, THAT YOU CAN'T BUY AND SELL

1 THESE MEMBERSHIP CONTRACTS. IT'S UP TO THE MEMBER?

2 A NO, I DIDN'T SAY THAT.

3 Q IT'S UP TO THE MEMBER TO CONSENT; RIGHT?

4 A THE CONTRACT IS NOT A PERSON. YOU CAN'T
5 FORCE A MEMBER TO GO STAY AT ONE PARK OR ANOTHER PARK OR A
6 THIRD PARK. YOU CAN'T FORCE THEM TO GO ANYWHERE IN
7 PARTICULAR.

8 Q YOU NEED TO HAVE THE INDIVIDUAL MEMBER
9 CONSENT TO GO WITH TRAVEL AMERICA?

10 A YES. I WOULD THINK IF THE INDIVIDUAL MEMBER
11 DID NOT CONSENT TO BECOME A MEMBER OF A DIFFERENT PARK,
12 THEN HE WOULDN'T BE A MEMBER OF THAT PARK.

13 Q SO YOU WOULD THINK THAT IF AN INDIVIDUAL
14 MEMBER DID NOT CONSENT TO GO WITH TRAVEL AMERICA, THEN
15 THEY'RE NOT WITH TRAVEL AMERICA; CORRECT?

16 A I THINK YOU WOULD NEED SOME KIND OF CONSENT
17 TO BECOME A MEMBER OF A DIFFERENT PARK.

18 Q WELL, LET'S FOCUS -- LET'S NOT FOCUS IN THE
19 ABSTRACT.

20 THEY WERE MEMBERS OF FIRST NATIONWIDE;
21 RIGHT?

22 A NO. THEY WERE MEMBERS OF PARTICULAR
23 CAMPGROUNDS AS I UNDERSTAND IT.

24 Q OKAY. SO THEY WERE INDIVIDUAL MEMBERS OF
25 PARTICULAR CAMPGROUNDS THAT WERE MANAGED BY THIS
26 ORGANIZATION, FIRST NATIONWIDE?

1 A YES. THAT'S MY UNDERSTANDING.

2 Q OKAY. AND MR. NOVELLI CAME TO YOU AND SAID,
3 "HEY, I'D LIKE TO HAVE TRAVEL AMERICA OFFER THESE PEOPLE
4 MEMBERSHIPS"; RIGHT? WORDS TO THAT EFFECT?

5 A I THINK THAT'S RIGHT.

6 Q YOUR POSITION WAS, "SOUNDS OKAY, PROVIDED
7 THE INDIVIDUAL MEMBER INVOLVED CONSENTS TO SUCH TRANSFER"?

8 A YES. I DO NOT BELIEVE THAT YOU HAVE AN
9 EFFECTIVE MEMBERSHIP UNLESS THE INDIVIDUAL, BY SOME TOKEN,
10 CONSENTS. IT CAN BE, I SUPPOSE, IF THE INDIVIDUAL DOES NOT
11 OBJECT. BUT YOU NEED SOME TOKEN OF CONSENT FROM THE
12 MEMBER.

13 Q WELL, PRIOR TO MARCH 1998, MR. JOSEPH, HAD
14 YOU BEEN AWARE THAT MR. NOVELLI'S COMPANY, TRAVEL AMERICA,
15 WAS ALREADY SENDING OUT DUES BILLING STATEMENTS TO MEMBERS
16 OF THOSE FIRST NATIONWIDE PARKS UNDER THE TRAVEL AMERICA
17 NAME, BILLING THAT?

18 A FOR THEIR MEMBERSHIP IN THIS PARTICULAR
19 PARK? OR FOR SOME OTHER ITEM?

20 Q FOR TRAVEL AMERICA.

21 A PARDON ME?

22 Q FOR TRAVEL AMERICA. THAT THEIR MEMBERSHIPS
23 HAD BEEN TRANSFERRED. WERE YOU AWARE OF THAT?

24 A I'M NOT EVEN SURE I UNDERSTAND THE QUESTION.

25 Q WERE YOU AWARE THAT -- PRIOR TO MARCH 1998,
26 MR. NOVELLI HAD MOVED THE MEMBERS FROM DEER RUN, AMERICAN

1 HOLIDAYS, CYPRESS PARK, MOVED THEM INTO TRAVEL AMERICA AND
2 STARTED SENDING THEM BILLS FROM TRAVEL AMERICA?

3 A YOU'D HAVE TO GIVE ME A TIME FRAME.

4 Q PRIOR TO MARCH 1998, WHEN YOU FILED THIS
5 MOTION WITH THE COURT ASKING PERMISSION TO DO IT.

6 A NO, I WAS NOT AWARE THAT HE WOULD DO THAT
7 PRIOR TO THE GRANTING OF THE MOTION.

8 Q BECAUSE YOU WANTED THE COURT TO AUTHORIZE IT
9 BEFORE HE DID IT?

10 A I THINK THAT WOULD BE THE PROPER WAY TO
11 PROCEED, YES.

12 Q BECAUSE YOU CAN'T BUY AND SELL PEOPLE?

13 A YOU CANNOT BUY AND SELL PEOPLE. THAT'S
14 OBVIOUS.

15 Q BECAUSE IN THE FINAL ANALYSIS, THE MEMBER
16 GETS TO CHOOSE?

17 A YES. IF -- IF SOMEONE -- I DON'T MEAN TO BE
18 FLIP, BUT OFTENTIMES YOU GET A SOLICITATION IN THE MAIL.
19 AND IT SAYS, YOU'RE GOING TO GET FREE ISSUES OF THIS
20 MAGAZINE FOR THREE MONTHS. AND THEN WE'RE GOING TO BILL
21 YOU. AND YOU TAKE THE THREE MONTHS, AND THEN THEY SEND YOU
22 A BILL. AND YOU DON'T PAY IT. AND THEY STOP SENDING YOU
23 THE MAGAZINE. THERE IS OTHERWISE A MANIFEST CONSENT OTHER
24 THAN FORMAL DOCUMENT. BUT OBVIOUSLY A MEMBER IF HE GETS A
25 DUES NOTICE AND HE PAYS THE DUES IS PROBABLY INDICATING
26 CONSENT.

1 Q NOW, MR. MOSHENKO HAD ASKED YOU SOME
2 QUESTIONS ABOUT DECLINES IN DUES --

3 A YES.

4 Q -- TO FIRST NATIONWIDE; DO YOU RECALL THAT?

5 A YES.

6 Q AND I WENT THROUGH THE TRANSCRIPT LAST NIGHT
7 TO SEE YOUR WORDS, AND YOU SAID, AMONG OTHER THINGS, THAT
8 YOU SEEMED TO RECALL A DROP-OFF IN DUES; DO YOU RECALL
9 SAYING THAT?

10 A YES. I THINK I SAID I RECALL -- I RECALL A
11 DROP-OFF IN DUES, AND THEN I SAID THAT I RECALLED A
12 DROP-OFF IN REVENUE. THERE WAS A DROP-OFF IN MONEY THAT I
13 RECALL TOWARD THE LAST PART OF THE PENDENCY OF THIS CASE AS
14 A CHAPTER 11 CASE.

15 Q AND LET'S GO TO EXHIBIT 376 AGAIN.

16 A THIS IS THE MOTION?

17 Q YES. I BELIEVE IT IS YOUR MOTION, SIR,
18 YES. PAGES 19 AND 20.

19 OKAY. COULD YOU HIGHLIGHT PARAGRAPH 6 ON
20 THE BOTTOM OF PAGE 19. IT CONTINUES ONTO PAGE 20. WE'LL
21 GUILTY TO THAT IN A MOMENT. AND THAT'S MUCH BETTER. I
22 DIDN'T KNOW YOU COULD DO THAT.

23 OKAY. MR. JOSEPH, THIS IS PART OF YOUR
24 DECLARATION TO THE COURT; IS THAT RIGHT?

25 A YES.

26 Q AND YOU WROTE THAT YOU'VE NOW DETERMINED

1 THAT FURTHER BUSINESS OPERATIONS ARE NOT BENEFICIAL?

2 A YES.

3 Q "REVENUES HAVE DECREASED AS PARKS AND
4 OPERATIONS HAVE BEEN LOST TO FORECLOSURE"?

5 A YES.

6 Q "OR THE REVENUES OTHERWISE BECAME -- BECOME
7 UNAVAILABLE TO THE ESTATE AS A RESULT OF SUCH MATTERS AS
8 COURT ORDERS IN SUBSIDIARY CASES WHICH RESTRICT THE USE OF
9 FUNDS PREVIOUSLY AVAILABLE FROM MANAGEMENT FEES TO THIS
10 ESTATE. IN ADDITION, THE COSTS OF OPERATING THE PARKS ARE
11 LIKELY TO INCREASE AS PARKS THAT ARE CLOSED FOR THE WINTER
12 ARE REOPENED."

13 MR. JOSEPH, AS OF MARCH 1998, YOU BELIEVED
14 THAT YOU HAD HAD SOME UNDERSTANDING AS TO THE REASONS FOR
15 DECREASES IN REVENUE; RIGHT?

16 A YES, I DID.

17 Q AND YOU DON'T ATTRIBUTE, NOT IN THIS
18 PARAGRAPH, AT LEAST, ANY DECREASE IN REVENUE TO ANYTHING
19 THAT MY CLIENT, CAMP COAST TO COAST, DID, DO YOU?

20 A IN THIS PARAGRAPH I DO NOT.

21 Q YOU HAD THE OPPORTUNITY TO TELL THE UNITED
22 STATES BANKRUPTCY COURT EVERYTHING YOU KNEW ABOUT ANYTHING
23 MY CLIENT DID THAT MIGHT HAVE CONTRIBUTED TO A DROP-OFF IN
24 REVENUE, DIDN'T YOU?

25 A YOU'RE ASSUMING, COUNSEL -- I DON'T MEAN TO
26 ARGUE WITH YOU -- THAT I HAD SOME KNOWLEDGE OF WHAT YOUR

1 CLIENT DID AT THIS TIME.

2 Q YOU HAD NO KNOWLEDGE?

3 A I'M NOT SURE THAT I DID.

4 Q NO ONE HAD SAID ANYTHING TO YOU ABOUT
5 ANYTHING THAT CAMP COAST TO COAST HAD DONE; CORRECT?

6 A IN MARCH OF '98?

7 Q MARCH OF '98.

8 A I DO NOT RECALL ACTUALLY WHETHER ANYONE HAD
9 OR HAD NOT SAID THAT COAST TO COAST HAD DONE ANYTHING.

10 Q YOU'VE NEVER DETERMINED FOR YOURSELF,
11 MR. JOSEPH, WHETHER MY CLIENT, CAMP COAST TO COAST, EVER
12 CAUSED ANY DECREASE IN REVENUES OF FIRST NATIONWIDE; ISN'T
13 THAT RIGHT?

14 A AS OF THIS TIME OR AS OF NOW?

15 Q AS OF THIS TIME.

16 A PRESENTLY?

17 Q AS OF MARCH 1998.

18 A I DON'T -- I CAN'T STATE THAT I HAVE AS OF
19 MARCH OF '98, NO.

20 Q NOW, AS OF MARCH 1998, MR. JOSEPH, HAD YOU
21 EVEN DISCUSSED WITH MR. NOVELLI WHETHER A LAWSUIT OUGHT TO
22 BE FILED AGAINST CAMP COAST TO COAST?

23 A NOT THAT I RECOLLECT.

24 Q CAN I ASK ONE MORE QUESTION?

25 MR. JOSEPH, YOU DID NOT KNOW, ON JANUARY
26 28TH, 1998, THAT FIRST NATIONWIDE RESORT MANAGEMENT HAD

1 EVEN FILED A LAWSUIT AGAINST MY CLIENT; ISN'T THAT RIGHT?

2 A I THINK THAT'S TRUE.

3 THE COURT: WE'LL TAKE OUR BREAK. 20 MINUTES,
4 PLEASE.

5 (RECESS TAKEN.)

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

8 THE COURT: PROCEED, COUNSEL.

9 BY MR. SHERMAN: Q OKAY. MR. JOSEPH, AT SOME
10 POINT IN TIME YOU SOUGHT THE APPROVAL OF THE UNITED STATES
11 BANKRUPTCY COURT TO SELL FIRST NATIONWIDE'S MEMBERSHIP
12 LIST; ISN'T THAT RIGHT?

13 A IT'S POSSIBLE. I DON'T RECALL.

14 Q LET ME REFRESH YOUR RECOLLECTION WITH
15 EXHIBIT 1029.

16 IF I MAY APPROACH, YOUR HONOR.

17 THE COURT: YOU MAY.

18 BY MR. SHERMAN: Q MR. JOSEPH, HAVING LOOKED AT
19 THIS DOCUMENT, IS YOUR MEMORY REFRESHED, AT SOME POINT IN
20 TIME YOU SOUGHT THE APPROVAL OF THE U.S. BANKRUPTCY COURT
21 TO SELL THE MEMBERSHIP LIST OF FIRST NATIONWIDE RESORT
22 MANAGEMENT?

23 A REFRESHING MY RECOLLECTION, THAT I SOUGHT TO
24 SELL THE NAMES OF THE MEMBERS OF CYPRESS, ARKANSAS WHICH I
25 BELIEVE TO BE DEER RUN AND AMERICAN ADVENTURE, WHICH WAS IN
26 MISSOURI.

1 Q AND YOU HAD TOLD THE BANKRUPTCY COURT WHEN
2 YOU SOUGHT TO SELL THE MEMBERSHIP LISTS THAT THERE WERE
3 10,000 NAMES?

4 A THE ORDER INDICATES APPROXIMATELY 10,000
5 NAMES, OF WHICH ABOUT 2500 WERE CURRENT.

6 Q THAT'S RIGHT.

7 AND OF THE 10,000 NAMES THAT YOU SOUGHT
8 APPROVAL TO SELL, ONLY ABOUT A QUARTER OF THOSE WERE
9 CURRENT, TO YOUR KNOWLEDGE, AS OF THE TIME YOU SOUGHT TO
10 SELL?

11 A I JUST SAID, THAT'S WHAT THE ORDER SO
12 RECITES.

13 Q AND AS FAR AS THE OTHER 7500, YOU HAVE
14 NO IDEA WHY THEY BECAME NONCURRENT, WHY THEY STOPPED
15 PAYING?

16 A OR STARTED PAYING LATE. NO. I'M SURE THE
17 REASONS WERE -- VARIED FROM MEMBER TO MEMBER.

18 Q AND FIRST NATIONWIDE, TO YOUR KNOWLEDGE,
19 NEVER HAD A MEMBERSHIP BASE OF 25,000 MEMBERS, DID THEY,
20 DURING YOUR TENURE?

21 A I DON'T RECALL WHAT THE MEMBERSHIP BASE WAS.

22 Q WELL, I'LL REPRESENT TO YOU THAT MR. NOVELLI
23 IS OF THE VIEW THAT THERE WERE APPROXIMATELY 25,000 MEMBERS
24 IN THE MEMBERSHIP BASE AT FIRST NATIONWIDE.

25 DO YOU AGREE WITH THAT?

26 MR. SHAW: YOUR HONOR, I'LL JUST OBJECT. ASSUMES

1 FACTS NOT IN EVIDENCE. LACKS FOUNDATION.

2 THE COURT: SUSTAINED.

3 BY MR. SHERMAN: Q MR. JOSEPH, WE PRACTICE IN THE
4 SAME PART OF TOWN IN WEST LOS ANGELES, DON'T WE?

5 A WE OFFICE IN THE SAME PART OF TOWN.

6 Q IN FACT, OUR OFFICES ARE IN THE SAME
7 BUILDING?

8 A IS THAT RIGHT?

9 Q 2049 CENTURY PARK EAST?

10 A I'M IN 2029.

11 Q 2029, CONNECTED BY THE UNDERGROUND PARKING
12 GARAGE; RIGHT?

13 A YES, BUT NOT THE SAME BUILDING.

14 Q AND WE'VE HAD A COUPLE OF -- NOT MANY CASES,
15 BUT OVER THE YEARS ONE OR TWO CASES WHERE WE CHATTED WITH
16 ONE ANOTHER BEFORE?

17 MR. MOSHENKO: OBJECTION. IRRELEVANT, YOUR HONOR.

18 THE COURT: YEAH.

19 WHERE ARE WE GOING, COUNSEL?

20 MR. SHERMAN: GIVE ME A QUESTION OR TWO, AND IT
21 WILL BE CLEAR, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 THE WITNESS: YES. WE ARE -- WE KNOW EACH OTHER,
24 MR. SHERMAN.

25 BY MR. SHERMAN: Q AND ABOUT A MONTH AGO I SENT
26 YOU A LETTER?

1 A YES.

2 Q AND IN THE LETTER I ASKED YOU IF YOU WOULD
3 MEET WITH ME AND DISCUSS YOUR ANTICIPATED TESTIMONY IN THIS
4 CASE; RIGHT?

5 A OH, I DON'T THINK YOU ASKED TO DISCUSS MY
6 ANTICIPATED TESTIMONY, DID YOU?

7 Q I ASKED TO MEET WITH YOU?

8 A I THINK YOU DID ASK TO MEET WITH ME, YES.

9 Q AND I TOLD YOU IN THE LETTER THAT ONE OF THE
10 THINGS WE'D LIKE TO SPEAK WITH YOU ABOUT ARE THE BACKGROUND
11 FACTS?

12 A YOU HAVE THE LETTER IN FRONT OF YOU, SIR. I
13 TAKE YOUR WORD FOR IT.

14 Q LET ME USE IT TO REFRESH YOUR RECOLLECTION.
15 IF I MAY SHOW IT TO COUNSEL AND THEN TO THE
16 WITNESS.

17 MR. MOSHENKO: COULD WE APPROACH?

18 THE COURT: YOU MAY.

19 (DISCUSSION OFF THE RECORD.)

20 BY MR. SHERMAN: Q MR. JOSEPH, THE -- YOU'RE STILL
21 THE TRUSTEE OF THE ESTATE OF FIRST NATIONWIDE RESORT
22 MANAGEMENT?

23 A YES.

24 Q AND THE ESTATE OF FIRST NATIONWIDE RESORT
25 MANAGEMENT HAS AN INTEREST IN THE OUTCOME OF THIS LAWSUIT;
26 RIGHT?

1 A YES.

2 Q AND FIRST NATIONWIDE -- THE ESTATE OF FIRST
3 NATIONWIDE RESORT MANAGEMENT WOULD GET, WHAT, 10 PERCENT OF
4 ANY RECOVERIES IN THIS LAWSUIT IF PLAINTIFFS CAN PROVE ANY
5 ENTITLEMENT TO RECOVERIES?

6 A THAT IS THE ARRANGEMENT OR AGREEMENT BETWEEN
7 FIRST NATIONWIDE AS A PLAINTIFF, OR THE ESTATE OF FIRST
8 NATIONWIDE, AND THE NINE OR TEN OTHER PLAINTIFFS IN THIS
9 LAWSUIT.

10 Q AND ARE YOU AT PRESENT, SIR, OWED ANY MONEY
11 FROM THE ESTATE OF FIRST NATIONWIDE?

12 A A BANKRUPTCY TRUSTEE IS PAID ONLY ON ORDER
13 OF COURT. AND, IN MY VIEW, UNTIL SUCH AN ORDER IS ENTERED
14 AWARDING FEES, HE IS NOT OWED ANYTHING. AND THERE HAS BEEN
15 NO SUCH ORDER IN THIS CASE.

16 Q OKAY. MR. JOSEPH, YOU'RE NOT A PARTNER WITH
17 THE DANNING GILL FIRM TODAY; IS THAT RIGHT?

18 A THAT'S TRUE.

19 Q OVER THE YEARS YOU'VE HAD AN INTEREST IN
20 THAT FIRM?

21 A WELL, I STARTED OUT AS AN ASSOCIATE. I
22 BECAME A PARTNER, AND THEN I BECAME OF COUNSEL.

23 Q AND THEY HAVE REPRESENTED YOU IN CONNECTION
24 WITH YOUR DUTIES AS CHAPTER 11 AND CHAPTER 7 TRUSTEE IN
25 FIRST NATIONWIDE?

26 A YES.

1 Q AND RECOGNIZING THAT THERE'S NO AMOUNT DUE
2 UNTIL THE BANKRUPTCY COURT ORDERS IT, THERE'S BEEN TIME
3 VALUE THAT YOU ACCRUED AND THE DANNING GILL LAW FIRM HAS
4 ACCRUED?

5 A TIME VALUE.

6 Q YOU PUT TIME INTO A CASE, AND YOU HOPE TO
7 GET PAID FOR IT?

8 A THAT MUCH IS TRUE, YES.

9 Q AND YOU STILL HAVE AMOUNTS FOR WHICH YOU
10 WISH TO BE PAID; IS THAT RIGHT?

11 A YES. WHEN WE FILE A FEE APPLICATION WE WILL
12 SEEK COMPENSATION.

13 Q LET ME END ON THIS ISSUE.

14 IN JULY OF 1997, ALL SEASONS RESORTS FILED
15 ITS THIRD BANKRUPTCY. ARE YOU AWARE OF THAT?

16 A I DON'T KNOW WHEN. I KNOW THERE WAS A THIRD
17 BANKRUPTCY CASE.

18 Q AND AT THE TIME OF THIS THIRD BANKRUPTCY
19 CASE, MR. NOVELLI CONTACTED YOU; ISN'T THAT RIGHT?

20 A NOT THAT I RECALL, NO.

21 Q MR. NOVELLI CONTACTED YOU IN WRITING;
22 CORRECT?

23 A NOT THAT I RECALL.

24 Q DID MR. NOVELLI SEND YOU A LETTER IN JULY
25 1997 ASKING YOU IF YOU WOULD AGREE TO SERVE AS THE TRUSTEE
26 IN THE THIRD ALL SEASONS RESORTS BANKRUPTCY CASE?

1 A NOT THAT I RECALL.

2 Q MR. JOSEPH, IN ALL THE OTHER THOUSANDS OF
3 BANKRUPTCIES THAT YOU'VE BEEN INVOLVED WITH, I TAKE IT THAT
4 YOU HAVE NEVER SOUGHT OUT MR. NOVELLI TO TRY TO HIRE HIM
5 FOR HIS TURNAROUND EXPERTISE?

6 A NO.

7 MR. SHERMAN: I HAVE NO FURTHER QUESTIONS.

8 THE COURT: THANK YOU.

9 ANYTHING FURTHER OF THIS WITNESS?

10 MR. MOSHENKO: DID YOU SAY ANYTHING FURTHER? I
11 HAVE A FEW QUESTIONS, YOUR HONOR. I'LL BE -- I EXPECT TO
12 BE FINISHED BY 4:00.

13 THE COURT: GOOD.

14 REDIRECT EXAMINATION

15 BY MR. MOSHENKO: Q LAWYERS LIKE TO START AT THE
16 END AND WORK FORWARD, MR. JOSEPH. SO LET ME ASK YOU SOME
17 QUESTIONS ABOUT SOME OF THE LATTER THINGS THAT WERE COVERED
18 BY MR. SHERMAN.

19 YOU WERE ASKED SOME QUESTIONS ABOUT -- TO
20 THE EFFECT OF DID YOU KNOW THAT TRAVEL AMERICA BEGAN
21 BILLING MEMBERS OF FIRST NATIONWIDE RESORTS BEFORE MARCH OF
22 1998.

23 DO YOU RECALL THOSE QUESTIONS?

24 A YES.

25 Q NOW, IS IT A FACT TO YOUR KNOWLEDGE THAT
26 TRAVEL AMERICA, IN FACT, DID THAT?

1 A NO.

2 Q AND ISN'T IT A FACT THAT TRAVEL AMERICA DID
3 NOT COMMENCE BILLING THOSE PEOPLE UNTIL AFTER THE MARCH
4 FILING?

5 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

6 THE COURT: OVERRULED. HE CAN ANSWER, IF HE KNOWS.

7 BY MR. MOSHENKO: Q TO YOUR KNOWLEDGE.

8 A I DO NOT KNOW.

9 Q OKAY. ALL RIGHT. NEXT YOU WERE SHOWN --
10 THE JURY SAW LISTS OF MEMBERS THAT YOU WERE ASKED, ARE
11 THOSE LISTS PUBLIC RECORDS, AVAILABLE TO THE PUBLIC; DO YOU
12 RECALL THAT?

13 A YES.

14 Q CAN YOU PLEASE TELL THIS JURY WHAT THE
15 PHRASE "IN CAMERA" REFERS TO WITH RESPECT TO FILINGS OF
16 DOCUMENTS WITH COURTS?

17 A "IN CAMERA" OR "UNDER SEAL" MEANS THE
18 DOCUMENTS WHICH ARE OTHERWISE PUBLIC RECORD ARE FILED IN
19 SUCH A WAY THAT THEY ARE NOT ACCESSIBLE TO THE PUBLIC.

20 Q AND DO YOU KNOW WHETHER OR NOT THE LISTS
21 THAT WERE SHOWN WERE FILED IN CAMERA UNDER SEAL?

22 MR. SHERMAN: EXCUSE ME, YOUR HONOR. MAY WE HAVE A
23 SIDE BAR?

24 THE COURT: YOU MAY.

25 (DISCUSSION OFF THE RECORD.)

26 BY MR. MOSHENKO: Q MR. JOSEPH, BACK TO THE

1 QUESTION.

2 DO YOU KNOW WHETHER OR NOT THE DOCUMENTS,
3 THE LISTS WERE FILED IN CAMERA, THAT IS, NOT A PUBLIC
4 RECORD OR NOT -- WHETHER OR NOT IT HAPPENED?

5 A I HAVE NO KNOWLEDGE, MR. MOSHENKO. THE
6 FILING OF SCHEDULES IS THE PROVINCE OF THE DEBTOR, NOT THE
7 TRUSTEE. AND I WOULD HAVE NO WAY OF KNOWING WHETHER THEY
8 WERE FILED UNDER SEAL OR NOT.

9 Q ALL RIGHT. THANK YOU.

10 NOW, WHEN YOU WERE FIRST QUESTIONED BY
11 MR. SHERMAN TODAY, HE PROVIDED YOU WITH A LETTER WHICH WAS
12 SENT TO A MR. DRAPER, EXHIBIT 203, WITH SEVERAL CHECK
13 SCHEDULES ATTACHED; DO YOU RECALL THAT? SCHEDULE OF CHECKS
14 WRITTEN ATTACHED?

15 A THIS DOCUMENT, SIR?

16 Q YES.

17 AND THEN THERE WERE --

18 A YES.

19 Q AND THEN THERE WERE REFERENCE TO CERTAIN
20 CHECKS ON THE PAGES THAT FOLLOWED?

21 A YES.

22 Q THE FIRST QUESTION IS, WHAT WAS YOUR PURPOSE
23 IN WRITING MR. DRAPER?

24 A AS I'VE TESTIFIED, MR. DRAPER WAS CO-COUNSEL
25 TO THE OFFICIAL CREDITORS COMMITTEE IN THIS CASE, APPOINTED
26 TO THAT POSITION BY THE COURT. AND THE PURPOSE OF THIS

1 LETTER -- MR. DRAPER AND I HAD HAD DISCUSSION WHERE HE
2 INDICATED AN INTEREST IN REPRESENTING ME AS SPECIAL COUNSEL
3 FOR THE PURPOSE OF FILING LAWSUITS TO AVOID ANY AVOIDABLE
4 TRANSFERS OR TRANSACTIONS. AND THE PURPOSE OF THIS LETTER
5 WAS TO SCHEDULE OUT FOR HIM THE DISBURSEMENTS FROM THE
6 FIRST NATIONWIDE RESORT MANAGEMENT ACCOUNT BEFORE THE
7 BANKRUPTCY CASE OCCURRED.

8 Q THIS MORNING YOU ANSWERED SOME QUESTIONS
9 THAT I ASKED RELATING TO HOW A TRUSTEE OR CREDITORS
10 COMMITTEE COULD ACT OR WHAT THEY COULD DO IF THEY FOUND
11 THERE WERE IMPROPRIETIES OR MISAPPROPRIATIONS, ET CETERA.
12 YOU SAID THEY COULD FILE A LAWSUIT TO AVOID A TRANSACTION?

13 A YES.

14 Q OKAY. NOW, MR. DRAPER SPECIFICALLY WAS
15 CONCERNED ABOUT OR INTERESTED IN WHETHER THAT COULD OCCUR,
16 TO YOUR KNOWLEDGE?

17 A YES. THE PURPOSE OF THIS LETTER WAS TO LET
18 HIM HAVE THIS INFORMATION SO HE COULD EXAMINE IT.

19 Q AND NOW, HE WAS REPRESENTING WHAT INTEREST
20 OR PARTY IN INTEREST IN THE BANKRUPTCY AT THE TIME?

21 A HE WAS CO-COUNSEL TO THE OFFICIAL COMMITTEE
22 OF CREDITORS REPRESENTING UNSECURED -- HE WAS CO-COUNSEL TO
23 THE OFFICIAL COMMITTEE OF CREDITORS HOLDING UNSECURED
24 CLAIMS.

25 Q AND TO YOUR KNOWLEDGE -- I THINK MR. SHERMAN
26 ALSO SUGGESTED THAT HE WAS MAYBE A PRIVATE ATTORNEY

1 REPRESENTING A PERSONAL INDIVIDUAL?

2 A YES. IT IS NOT FORBIDDEN, AND IT'S INDEED
3 PERMITTED, FOR AN ATTORNEY FOR A CREDITOR OF THE DEBTOR TO
4 MAINTAIN THAT REPRESENTATION AND ALSO REPRESENT THE
5 UNSECURED CREDITORS COMMITTEE.

6 Q ALL RIGHT. AND OBVIOUSLY THE PURPOSE OF HIS
7 ACTION WOULD HAVE BEEN TO TRY TO VERIFY WHETHER OR NOT
8 THERE WAS IMPROPRIETY AND, IF SO, TO RETURN ASSETS TO THE
9 ESTATE?

10 MR. SHERMAN: OBJECTION. LEADING.

11 THE COURT: OVERRULED.

12 THE WITNESS: MY PURPOSE IN SENDING HIM THIS LETTER
13 WAS SO THAT HE COULD EXAMINE THESE TRANSACTIONS TO SEE
14 WHETHER HE WANTED TO SERVE AS MY SPECIAL COUNSEL FOR THE
15 PURPOSE OF BRINGING AVOIDING ACTIONS.

16 BY MR. MOSHENKO: Q DID YOU INITIATE THE PROCESS,
17 OR DID HE COME TO YOU AND EXPRESS AN INTEREST?

18 A OH, IT WAS -- WE WERE IN CONSTANT TOUCH
19 THROUGHOUT THIS CASE. AND I CAN'T RECALL WHETHER HE RAISED
20 IT OR I RAISED IT, BUT WE CERTAINLY DISCUSSED IT.

21 Q ALL RIGHT. NOW, THIS MORNING YOU TOLD US
22 THAT YOU AS A TRUSTEE DID THE INVESTIGATION AND ANALYSIS
23 THAT YOU DO, AND THEN YOU DID NOT AS A RESULT OF THAT
24 INVESTIGATION TAKE ANY STEPS TO SEEK TO VOID ANY
25 TRANSACTIONS?

26 A YES.

1 Q DID MR. DRAPER -- AS A RESULT OF THE
2 INFORMATION YOU PROVIDED HIM AND YOUR CONSTANT TOUCH WITH
3 HIM TO DISCUSS THESE KINDS OF ISSUES, DID HE TAKE ANY STEPS
4 TO TRY TO VOID ANY TRANSACTIONS?

5 A WELL, HIS STEPS -- I WOULD BE THE ONE -- IN
6 MY NAME IT WOULD BE DONE. BUT MR. DRAPER LOOKED AT THIS
7 AND DETERMINED THAT HE DID NOT WISH TO REPRESENT ME AS
8 SPECIAL COUNSEL FOR THE PURPOSE OF PURSUING THESE, AND HE
9 DID NOT INSIST OR DEMAND THAT ACTIONS BE BROUGHT.

10 Q THANK YOU.
11 YOU WERE ASKED SOME QUESTIONS ABOUT --
12 RELATING TO PRESIDENTIAL AIRLINES. I THINK YOU USED THE
13 PHRASE THAT FIRST NATIONWIDE WAS A CO- -- WHAT PHRASE DID
14 YOU USE, A CO-PARTICIPANT?

15 A IT WAS MY UNDERSTANDING THAT FIRST
16 NATIONWIDE CERTAINLY GUARANTEED AND I THOUGHT WAS THE
17 CO-MAKER OF -- CO -- WAS CO-LIABLE WITH PRESIDENTIAL AIR ON
18 A NUMBER OF OBLIGATIONS.

19 Q IS THERE ANYTHING IMPROPER ABOUT A
20 CORPORATION GUARANTEEING DEBTS OF ANOTHER ENTITY RELATED OR
21 UNRELATED?

22 MR. SHERMAN: OBJECTION. INCOMPLETE HYPOTHETICAL.

23 THE COURT: DO YOU UNDERSTAND THE QUESTION?

24 THE WITNESS: YES.

25 THE COURT: YOU MAY ANSWER.

26 THE WITNESS: IT'S COMMON THAT PARENTS GUARANTEE

1 THE DEBTS OF SUBSIDIARIES. SUBSIDIARIES GUARANTEE THE
2 DEBTS OF PARENTS, MEANING PARENT AND SUBSIDIARY
3 CORPORATIONS, PARENT CORPORATION OWNING THE STOCK OF A
4 SUBSIDIARY, AND THAT AFFILIATE CORPORATIONS, WHICH HAVE THE
5 SAME PARENT, GUARANTEE EACH OTHER'S DEBTS. IT'S COMMON TO
6 SEE CROSS-GUARANTEES OF THAT KIND.

7 BY MR. MOSHENKO: Q IS THERE ANYTHING IMPROPER
8 ABOUT A CAMPGROUND BUSINESS GETTING INVOLVED IN AN AIRLINE
9 BUSINESS?

10 A NOT THAT I KNOW OF.

11 Q ANYTHING IMPROPER ABOUT A CAMPGROUND
12 BUSINESS GETTING INVOLVED IN THE CEMETERY BUSINESS?

13 A THERE'S NO PROHIBITION THAT I KNOW OF.

14 Q IS THERE ANYTHING IMPROPER ABOUT A BUSINESS
15 REIMBURSING ITS OFFICERS FOR EXPENSES RELATING TO -- WHERE
16 THE OFFICER INDICATES THE EXPENSES ARE RELATING TO THE
17 BUSINESS AFFAIRS OF THE BUSINESS?

18 A IF IT'S ACTUAL REASONABLE REIMBURSEMENT, NO.

19 Q YOU INDICATED THAT IN THE FIRST NATIONWIDE
20 BANKRUPTCY YOU BELIEVE THAT PART OF THE SALARY FOR
21 HANS SCHULZ MAY HAVE BEEN REIMBURSED BY FIRST NATIONWIDE;
22 DO YOU RECALL THAT?

23 A I THINK THAT MAY HAVE BEEN THE CASE, YES.

24 Q OKAY. DID THAT -- WHY DID THAT OCCUR? WHAT
25 IS IT THAT OCCURRED BETWEEN MR. SCHULZ AND FIRST NATIONWIDE
26 THAT CAUSED THAT TO HAPPEN?

1 A COULD I HAVE THAT BACK?

2 Q WHAT WAS IT THAT LED TO FIRST NATIONWIDE
3 AGREEING TO AND ACTUALLY REIMBURSING A PORTION OF THE
4 HANS SCHULZ SALARY THAT WAS BEING PAID TO HIM BY SOMEONE
5 ELSE?

6 A CERTAIN OF -- IN THE FIRST NATIONWIDE CASE,
7 THERE WAS FIRST NATIONWIDE AND A NUMBER OF OTHER ENTITIES
8 OPERATING OUT OF THE SAME BUSINESS PREMISES. MR. SCHULZ
9 PERFORMED FUNCTIONS TO A DEGREE, IF MY MEMORY IS CORRECT,
10 FOR FIRST NATIONWIDE AND FOR OTHER RELATED CAMPGROUND
11 COMPANIES THAT WERE NOT DIRECTLY FIRST NATIONWIDE. AND IT
12 SEEMED FAIR TO PRORATE THE SALARY SO THAT FIRST NATIONWIDE
13 BORE A PORTION OF WHAT HE DID, BECAUSE A PORTION OF WHAT HE
14 DID RELATED TO FIRST NATIONWIDE ACTIVITIES.

15 Q DID FIRST NATIONWIDE HIRE A RESORT SERVICES
16 MANAGER TO MANAGE ITS RESORTS?

17 A FIRST NATIONWIDE CERTAINLY HAD ON-SITE
18 MANAGERS FOR EACH RESORT.

19 Q WELL, I'M REFERRING TO THE FACT THAT
20 MRS. NOVELLI WAS RESORTS SERVICES MANAGER PRIOR TO THE
21 BANKRUPTCY. WAS SHE REPLACED WITH SOMEBODY BY YOU?

22 A I THINK TO A DEGREE MR. BRINGMAN TOOK OVER A
23 FAIR AMOUNT OF THAT FUNCTION IN THE FIRST NATIONWIDE CASE.

24 Q TO A DEGREE DID MRS. NOVELLI PROVIDE ANY OF
25 THOSE SERVICES?

26 A SHE MAY HAVE, BUT AS I RECALL, SHE WAS NOT

1 COMPENSATED.

2 Q DID MR. NOVELLI PROVIDE ANY SERVICES
3 RELATING TO THE MANAGEMENT OF THE FIRST NATIONWIDE RESORTS
4 THAT HE WAS NOT COMPENSATED FOR?

5 MR. SHERMAN: I OBJECT. IT LACKS FOUNDATION THAT
6 HE WAS PROVIDING SERVICES IN THE FIRST INSTANCE.

7 THE COURT: OVERRULED.

8 THE WITNESS: IT'S POSSIBLE THAT HE MAY HAVE HAD
9 ACTIVITIES THAT RELATED TO FIRST NATIONWIDE.

10 BY MR. MOSHENKO: Q NEITHER OF THE NOVELLIS ASKED
11 YOU TO AGREE TO PAY THEM ANY MONEY TO PROVIDE SERVICES
12 WHERE NEEDED TO ASSIST IN THE OPERATION OF FIRST NATIONWIDE
13 RESORTS; CORRECT?

14 A I CAN'T RECALL WHETHER THEY EVER ASKED. I
15 DON'T THINK SO. BUT IF THEY DID, THE REQUEST WAS DENIED.

16 Q ALL RIGHT. MR. SHERMAN ASKED YOU SOME
17 QUESTIONS ABOUT ALL SEASONS RESORTS' BANKRUPTCIES, AND
18 WE'VE BEEN TOLD THAT THERE WERE THREE. AND YOU WERE
19 INVOLVED IN THE SECOND; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q NOW, AS REGARDS TO THE SECOND, ALL SEASONS
22 RESORTS DIDN'T FILE FOR BANKRUPTCY, DID IT?

23 A SECOND CASE?

24 Q YES.

25 A IN THE SECOND CASE IT WAS AN INVOLUNTARY
26 WHERE CREDITORS ASKED THAT ALL SEASONS RESORTS BECOME THE

1 SUBJECT OF A BANKRUPTCY CASE.

2 Q AND THEN DO YOU HAVE AS -- IN YOUR ROLE OF A
3 TRUSTEE, WERE YOU OBLIGATED TO INVESTIGATE AND LEARN THE
4 CIRCUMSTANCES THAT LED TO THE CREDITORS FILING THE
5 INVOLUNTARY BANKRUPTCY THAT PUT ALL SEASONS INTO BANKRUPTCY
6 A SECOND TIME?

7 A IT WAS SOMETHING THAT I DID.

8 Q AND WHAT WERE THE CIRCUMSTANCES AS YOU
9 LEARNED THEM THAT LED TO THE SECOND BANKRUPTCY?

10 A WELL, I KNOW THE DEBTOR'S VERSION, AND I
11 KNOW THE CREDITOR'S VERSION.

12 Q WELL, LET'S HEAR WHAT THE VERSIONS ARE SO WE
13 CAN UNDERSTAND.

14 A THE DEBTOR'S VERSION IS THAT AFTER THE FIRST
15 ALL SEASONS RESORTS PLAN WAS CONFIRMED, THAT THE DEBTOR HAD
16 COMMITMENTS FOR FINANCING FROM ONE OF ITS SECURED LENDERS,
17 AND THAT THAT LENDER WAS TAKEN OVER BY ANOTHER FINANCIAL
18 INSTITUTION THAT RENEGED ON THE FINANCING PROMISE; AND THAT
19 AS A RESULT OF THAT RENEGING, THE OTHER LENDERS WHO WERE
20 ALSO GOING TO FINANCE RENEGED, AND THAT THAT CREATED THE
21 INABILITY TO OPERATE NORMALLY.

22 Q DO YOU HAVE SOME RECALL AS TO THE AMOUNT OF
23 SHORTFALL THAT RESULTED AS A RESULT OF THEIR RENEGING?

24 A NO, I DON'T.

25 Q CAN YOU -- I'M NOT ASKING YOU FOR AN EXACT
26 NUMBER.

1 ARE YOU ABLE TO TELL US IF IT WAS MORE THAN
2 A HALF A MILLION, MORE THAN A MILLION?

3 A IT WAS IN THAT RANGE. I MEAN, MY
4 RECOLLECTION IS THAT THE FINANCING WAS TO BE SEVEN -- IN
5 THE SEVEN-FIGURE RANGE.

6 Q OKAY. AND AS A RESULT OF THAT, YOU LEARNED
7 ALL SEASONS WAS UNABLE TO MEET THE COMMITMENT IN THE FIRST
8 PLAN; IS THAT CORRECT?

9 A THAT WAS THE DEBTOR'S VIEW OF WHAT HAD
10 HAPPENED.

11 Q ALL RIGHT. AND THEN BECAUSE OF THE FAILURE
12 TO MEET THOSE EVENTS, THE CREDITORS PLACED THEM IN A
13 INVOLUNTARY SECOND BANKRUPTCY, WHICH LED TO THE PLAN THAT
14 YOU PROPOSED?

15 A YES.

16 Q ALL RIGHT. WHY DON'T YOU GIVE US THE
17 CREDITOR'S VIEW.

18 AND, BY THE WAY, WHO DO YOU MEAN? WHO ARE
19 THE CREDITORS; WHO ARE YOU TALKING ABOUT?

20 A THE CREDITORS I CONSULTED WITH DURING THE --
21 YOU KNOW, THE EARLIER PART OF THE SECOND ALL SEASONS
22 RESORTS CASE WERE THE ATTORNEYS FOR THE MAJOR SECURED
23 CREDITORS, GREYHOUND, WHICH IS NOW FINOVA, BARCLAY'S
24 BUSINESS CREDIT, AND ONE OTHER, WHICH I CAN'T REMEMBER.

25 BUT THE PERSON I REMEMBER TALKING TO MOST
26 WAS AN ATTORNEY NAMED TED ALBERT, WHO AT THAT TIME WAS WITH

1 BUCHALDER, NEMER, FIELDS AND YOUNGER. SO, I SPOKE --
2 CERTAINLY SPOKE TO HIM.

3 Q OKAY. ALL RIGHT. WELL, TELL US WHAT
4 MR. ALBERT'S VIEW WAS.

5 A MR. ALBERT'S VIEW WAS THAT THE PROBLEM WITH
6 THE DEBT WASN'T CAUSED BY THE FAILURE TO FINANCE. IT WAS
7 SIMPLY THE RESULT OF SPENDING TOO MUCH MONEY,
8 OVER-EXPANSION, NOT CONTROLLING EXPENSES, AND THE LIKE.

9 Q AND YOU DID YOUR INVESTIGATION TO DETERMINE
10 IF THERE WAS IMPROPER EXPENDITURES HAVING BEEN MADE?

11 A WELL, YES. AS PART OF THE TRUSTEE'S
12 OBLIGATION, ONE LOOKS TO SEE WHETHER THERE HAD BEEN
13 IMPROPER TRANSFERS.

14 Q NOW, SO THEN ALL SEASONS EMERGED FROM ITS
15 SECOND BANKRUPTCY WITH THE APPROVED PLAN THAT YOU
16 PROPOSED.

17 WITH RESPECT TO THAT PLAN, WAS THE PLAN
18 APPROVED BY A MAJORITY OF THE CREDITORS?

19 A YES.

20 Q WAS IT APPROVED BY A MAJORITY OF THE
21 CREDITORS REPRESENTING MORE THAN 2/3RDS OF DEBTS OF THE
22 ESTATE?

23 A IT HAD TO BE.

24 Q WAS -- YOU MENTIONED WAS IT APPROVED BY THE
25 CREDITORS COMMITTEE?

26 A YES. THE COMMITTEE RECOMMENDED THE PLAN AS

1 DID THE MEMBERS COMMITTEE.

2 Q THERE WAS A MEMBERS COMMITTEE; CORRECT?

3 A YES.

4 Q MEANING THE MEMBERS OF THE RESORT HAD THEIR
5 OWN COMMITTEE REPRESENTING THEIR INTEREST; CORRECT?

6 A YES.

7 Q AND WHAT WAS THEIR RESPONSE TO THE PLAN
8 PROPOSED?

9 A AS I SAY, THE CREDITORS COMMITTEE AND THE
10 MEMBERS COMMITTEE SUPPORTED CONFIRMATION OF THE PLAN.

11 Q AND DID THAT SUPPORT INCLUDE AN
12 UNDERSTANDING THAT RAYMOND NOVELLI WOULD RETURN TO THE
13 MANAGEMENT RESPONSIBILITY FOR ALL SEASONS RESORTS?

14 A I PRESUME THAT THE DISCLOSURE STATEMENT MUST
15 IDENTIFY POST-CONFIRMATION OFFICERS, AND I PRESUME IT DID
16 SO AND DID IDENTIFY MR. NOVELLI. I HAVE THE DISCLOSURE
17 STATEMENT HERE. IT IS NOT THE ONE THAT WAS APPROVED, BUT I
18 THINK THAT BOTH ARE THE SAME IN THAT RESPECT.

19 Q I THINK I HEARD YOU THIS MORNING SAY THAT A
20 MEMBERS COMMITTEE STRONGLY SUPPORTED --

21 A THE MEMBERS COMMITTEE THROUGHOUT THE CASE
22 WAS SUPPORTIVE OF MR. NOVELLI.

23 Q NEXT THERE WAS A BONDHOLDERS COMMITTEE;
24 CORRECT?

25 A THAT I DO NOT RECALL.

26 Q NEVERTHELESS, THE BONDHOLDERS WERE ALL A

1 PART OF THE GROUP OF CREDITORS THAT HAD TO ARRIVE AT A VOTE
2 IN FAVOR OF OR OPPOSE THE PLAN?

3 A YES.

4 Q YOU MENTIONED THAT THE SHAREHOLDERS OF ALL
5 SEASONS RESORTS, THE PUBLICLY HELD COMPANY THAT PRECEDED
6 THE EMERGENCE FROM BANKRUPTCY, LOST THEIR SHARES?

7 A THEIR SHARES WERE CANCELLED, YES.

8 Q WHAT WERE THE VALUE OF THE SHARES?

9 MR. SHERMAN: OBJECTION. VAGUE AS TO TIME.

10 BY MR. MOSHENKO: Q AT THE TIME THEY GOT
11 CANCELLED.

12 A IN MY ESTIMATION, THE VALUE OF THE DEBT
13 EXCEEDED THE ASSET VALUE OF THE COMPANY AND, ACCORDINGLY,
14 THE SHARES, THE EQUITY, THE OLD EQUITY, AS WE SAY, WAS
15 WITHOUT VALUE.

16 Q THERE WAS SOME QUESTIONS RELATING TO
17 DIFFERENCE OF OPINIONS RELATING TO THE VALUES OF CERTAIN
18 RESORTS.

19 DO YOU RECALL ONE, THE CYPRESS RESORT, WAS
20 BY THE CREDITORS COMMITTEE AND MR. NOVELLI TO HAVE A VALUE
21 OF \$1.75 MILLION, AND IN YOUR OPINION IT WAS WORTH
22 \$790,000?

23 MR. SHERMAN: OBJECTION, YOUR HONOR. THE 1,750,000
24 WAS NOT BY THE CREDITORS. THAT MISSTATES THE EVIDENCE.

25 MR. MOSHENKO: THE TESTIMONY WAS THAT THE CREDITORS
26 COMMITTEE AND MR. NOVELLI HAD AGREED.

1 Q AM I CORRECT?

2 THE COURT: GO AHEAD.

3 THE WITNESS: I CONFIRMED THAT. I DEALT WITH
4 CREDITORS COMMITTEE DIRECTLY, NOT WITH JUDGE -- NOT JUST
5 WITH THEIR COUNSEL. AND I THINK IT WAS MR. SHERMAN WHO
6 MENTIONED MR. PATTON'S NAME, WHO WAS THE GENTLEMAN THAT
7 MR. DRAPER ORIGINALLY REPRESENTED AND BROUGHT MR. DRAPER
8 INTO THE CASE. AND TIME AND TIME AGAIN MR. DRAPER WAS OF
9 THE SAME OPINION REGARDING VALUATION AS MR. NOVELLI. HE
10 HAD THE SAME GENERAL BELIEF THAT THESE PROPERTIES WERE
11 WORTH MORE THAN THEY TURNED OUT TO BE WORTH, IN MY VIEW.

12 BY MR. MOSHENKO: Q OKAY. NOW, WITH RESPECT TO
13 YOUR VALUATION -- THE LOWER VALUATIONS; CORRECT?

14 DID YOU, IN VALUING THOSE ASSETS, THOSE
15 RESORTS, PUT ANY VALUE ON THE FACT OF THE MEMBERSHIP -- THE
16 FACT THAT THERE WERE MEMBERS?

17 A YES. I MEAN, I ATTEMPTED TO SELL THESE
18 RESORTS AS GOING CONCERNS WHERE THE OPERATOR WOULD OF
19 COURSE RECEIVE THE OPPORTUNITY TO SOLICIT THE MEMBERS TO
20 JOIN -- TO STAY WITH THE PARK. AND EVEN AS SUCH, THE
21 PRICES -- THE PRICES I THOUGHT I COULD GET WERE MUCH LESS
22 THAN WHAT WERE SCHEDULED.

23 Q WELL, WHAT DOLLAR VALUE DID YOU ASSIGN TO A
24 MEMBER, FOR EXAMPLE?

25 A I'M NOT SURE I EVER IN MY HEAD ASSIGNED A
26 DOLLAR VALUE TO A MEMBER.

1 Q OKAY. THERE WAS THE EXCHANGE REGARDING YOU
2 CAN'T OWN A PERSON OR TRANSFER A PERSON; DO YOU RECALL THAT?

3 A RIGHT.

4 Q YOU CAN TRANSFER CONTRACTUAL RIGHTS, CAN YOU
5 NOT, ASSIGN AND DELEGATE RIGHTS AND DUTIES?

6 A YES. YES, YOU CAN ASSIGN CONTRACTS.

7 Q AND YOU MENTIONED -- THERE WAS SOME
8 TESTIMONY ABOUT A FORM OF CONSENT YOU FELT SHOULD BE
9 OBTAINED FOR A MEMBER TO BE TRANSFERRED TO ANOTHER OWNER, A
10 MEMBER'S CONTRACT TO BE TRANSFERRED TO ANOTHER RESORT; DO
11 YOU RECALL THAT?

12 A I DO.

13 Q OKAY. MY QUESTION IS, THE FORM -- CAN YOU
14 GIVE US THE FORM OR FORMS OF CONSENT THAT YOU WOULD
15 CONSIDER SATISFACTORY?

16 A WHAT I WAS TRYING TO AVOID IN MY MOTION WAS
17 SOMEONE TAKING THE ORDER OF THE BANKRUPTCY COURT, WHICH
18 PROVIDED I COULD GIVE THE RIGHT TO SOLICIT MEMBERS OR
19 PERMIT TRAVEL AMERICA TO SOLICIT MEMBERS. I DIDN'T WANT
20 TRAVEL AMERICA OR ANYONE ELSE GOING TO THE MEMBER AND
21 SAYING, "LOOK, HERE IS A BANKRUPTCY COURT ORDER. YOU'RE
22 MINE NOW. THE BANKRUPTCY JUDGE SAYS YOU HAVE TO STAY WITH
23 TRAVEL AMERICA." THAT'S WHAT I DID NOT WANT TO HAPPEN.

24 BECAUSE SOMETIMES BANKRUPTCY COURT ORDERS
25 GET MISUSED. SO THAT'S WHY THE MOTION SPECIFICALLY SAID
26 THAT THE MEMBER -- THAT OBVIOUSLY THE CONSENT OF THE MEMBER

1 TO BECOME A MEMBER OF A DIFFERENT ORGANIZATION WOULD BE
2 REQUIRED.

3 Q OKAY. THIS CONSENT OR ASSENT --

4 A YES.

5 Q -- COULD BE COMMUNICATED OR COULD BE
6 RECEIVED IN WHAT FORM OR IN WHAT MANNER, IN YOUR VIEW?

7 A I THINK IF A PERSON WROTE A LETTER AND
8 SAID -- TO ME THE MEMBER CAN ASSENT TO BEING A MEMBER OF A
9 DIFFERENT ORGANIZATION BY PAYING DUES. BUT IF THE MEMBER
10 DOES NOT PAY DUES, THEN THE MEMBER IS NOT A MEMBER.

11 Q MEMBER COULD ASSENT BY VISITING THE RESORT?

12 A YES.

13 Q BY TAKING ADVANTAGE OF THE MEMBERSHIP
14 BENEFITS?

15 A YES.

16 Q BY NOT RESPONDING NEGATIVELY TO A
17 NOTIFICATION THAT THE BANKRUPTCY COURT HAS AUTHORIZED OR
18 CHANGED?

19 A YES. THERE ARE MANY FORMATION OF CONSENT.

20 Q OKAY. ALL RIGHT. NOW, THERE WAS SOME
21 TESTIMONY RELATING TO MR. NOVELLI'S CAR.

22 MR. JOSEPH, IF IT IS A FACT THAT
23 MR. NOVELLI -- MR. AND MRS. NOVELLI BOUGHT A -- I THINK YOU
24 SAID AN OLDER MODEL ROLLS ROYCE, BACK IN 1990, WOULD THAT
25 IN YOUR VIEW HAVE ANYTHING TO DO WITH CAMP COAST TO COAST
26 TRANSFERRING \$34,000 OF THE PLAINTIFFS' RESORTS' MEMBERS IN

1 1997?

2 A I'M SORRY?

3 Q IF IT BE A FACT THAT MR. AND MRS. NOVELLI
4 BOUGHT WHAT YOU REFERRED TO AS AN OLDER MODEL ROLLS ROYCE
5 BACK IN 1990, WOULD THAT HAVE ANYTHING TO DO WITH COAST TO
6 COAST'S RIGHT TO TRANSFER 34,000 OF THE PLAINTIFFS'
7 RESORTS' MEMBERS IN 1997?

8 A NO.

9 Q WHAT DOES THE FACT, IF IT BE A FACT, THAT
10 FIRST NATIONWIDE TRIED TO GO INTO THE CEMETERY BUSINESS
11 HAVE TO DO WITH COAST TO COAST TRANSFERRING 34,000 MEMBERS
12 IN 1997?

13 MR. SHERMAN: YOUR HONOR, THIS LACKS FOUNDATION
14 WITH RESPECT TO THIS WITNESS'S KNOWLEDGE OF CAMP COAST TO
15 COAST'S RIGHTS. THE WITNESS HAS TESTIFIED TO HIS LACK OF
16 KNOWLEDGE OF THE TERMS OF THE AFFILIATION AGREEMENTS
17 GENERALLY.

18 THE COURT: THIS IS CROSS-EXAMINATION, AND YOU
19 BROUGHT IT UP -- I MEAN THIS IS REDIRECT. YOU BROUGHT IT
20 UP ON CROSS.

21 MR. MOSHENKO: THANK YOU, YOUR HONOR.

22 Q DOES IT HAVE ANYTHING TO DO WITH THAT?

23 A I WOULDN'T THINK SO, NO.

24 Q THE SAME QUESTION ABOUT PAYING FOR A BOAT
25 SLIP. DOES THAT HAVE ANYTHING TO DO WITH TRANSFERS OF
26 MEMBERS SEVEN YEARS LATER OR SIX YEARS LATER?

1 A IN THE SENSE PAYING FOR A BOAT SLIP COULD
2 JUSTIFY SUCH CONDUCT?

3 Q YES.

4 A I DON'T SEE WHAT IT WOULD HAVE TO DO WITH IT.

5 Q THERE WERE SOME TESTIMONY -- WAS SOME
6 TESTIMONY RELATING -- I'LL CALL IT CRITICISMS OF
7 BOOKKEEPING DURING ALL SEASONS RESORTS' FIRST BANKRUPTCY.

8 DO YOU REMEMBER THE QUESTION? THOSE BOOKS
9 WERE NOT RELIABLE. THOSE BOOKS WERE NOT TRUSTWORTHY. DOES
10 THAT HAVE ANYTHING TO DO WITH CAMP COAST TO COAST
11 TRANSFERRING 34,000 MEMBERS OF THE PLAINTIFFS' MEMBERS IN
12 1997?

13 A I WOULD NOT THINK SO. BUT IT WASN'T THE
14 BOOKS. IT WAS THE RECORDS OF THE PAID AND UNPAID INVOICES,
15 WHICH ARE A LITTLE DIFFERENT THAN GENERAL LEDGERS AND BOOKS
16 OF ACCOUNT.

17 Q DO THE DIFFERENCES IN VALUATIONS OF
18 CAMPGROUNDS HAVE ANYTHING TO DO WITH THE RIGHT OR LACK OF
19 RIGHT OF COAST TO COAST TO MISUSE MEMBERSHIP LISTS AND
20 TRANSFER 34,000 MEMBERS IN 1997?

21 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: COUNSEL, THE RIGHT OF COAST TO COAST
24 TO DO THIS TRANSFER DEPENDS ON THE CONTRACTUAL RELATIONSHIP
25 BETWEEN THESE ENTITIES.

26 BY MR. MOSHENKO: Q YOU MEAN MR. NOVELLI'S HOME IN

1 MEXICO DOESN'T HAVE ANYTHING TO DO WITH IT, EITHER?

2 A IN MY OPINION THE RIGHT OF SOMEONE WHO IS A
3 PARTY TO A CONTRACT TO DO SOMETHING OR NOT DO SOMETHING
4 SHOULD BE GOVERNED BY THE CONTRACT AS INTERPRETED BY THE
5 COURT, AND ANY OTHER ADMISSIBLE EVIDENCE PERTAINING TO HOW
6 YOU INTERPRET THAT CONTRACT.

7 MR. MOSHENKO: YOUR HONOR, IT'S 4:00. THANK YOU.

8 MR. SHERMAN: I'LL BE VERY BRIEF.

9 RE-CROSS-EXAMINATION

10 BY MR. SHERMAN: Q AS FAR AS THE STATUS OF A
11 DOCUMENT AS BEING AN OFFICIAL PUBLIC COURT RECORD,
12 MR. JOSEPH, I'M GOING TO, WITH THE PERMISSION OF THE COURT,
13 APPROACH AND PLACE BEFORE YOU THE CERTIFIED COPY OF EXHIBIT
14 375 OBTAINED FROM THE UNITED STATES BANKRUPTCY COURT, WHICH
15 HAS ALREADY BEEN PROVISIONALLY ACCEPTED INTO EVIDENCE.

16 MR. JOSEPH, IF YOU COULD JUST HOLD THAT UP,
17 PLEASE. THAT'S A -- COULD YOU HOLD IT TOWARDS THE JURY SO
18 THEY CAN SEE IT ALSO?

19 OKAY. THAT'S A -- THAT'S WHAT YOU GET WHEN
20 YOU GO TO THE COURT AND YOU ASK FOR A CERTIFIED COPY OF A
21 DOCUMENT; RIGHT?

22 A YES.

23 Q AND THAT'S WHAT YOU GET WHEN YOU GO TO THE
24 COURT AND YOU ASK FOR A CERTIFIED COPY OF THE DOCUMENTS
25 THAT ARE IN THE PUBLIC FILES; RIGHT?

26 A I DON'T KNOW THAT THAT'S TRUE.

1 Q THAT SHOWS IT CAME OUT OF PUBLIC FILES;
2 RIGHT?

3 A I DON'T KNOW.

4 MR. MOSHENKO: THE DOCUMENT SPEAKS FOR ITSELF, YOUR
5 HONOR.

6 THE WITNESS: I DON'T KNOW THAT TO BE TRUE, COUNSEL.

7 BY MR. SHERMAN: Q NOW, MR. MOSHENKO WAS ASKING
8 YOU SOME QUESTIONS ABOUT DIFFERENT VERSIONS OF EVENTS THAT
9 PRECIPITATED THE INVOLUNTARY BANKRUPTCY OF ALL SEASONS
10 RESORTS.

11 DO YOU RECALL THAT?

12 A AS RELATED TO ME BY VARIOUS PEOPLE I TALKED
13 TO AFTER THE FACT, YES.

14 Q RIGHT.

15 AND YOU HAD MENTIONED -- IN ADDITION TO THE
16 DEBTOR'S VIEW, YOU MENTIONED MR. ALBERT'S VIEW, AND YOU HAD
17 ALSO MENTIONED YOU HAD SPOKEN WITH -- YOU KNEW SOMETHING
18 ABOUT GREYHOUND AND BARCLAY'S VIEW?

19 A YES.

20 Q WHAT WAS --

21 A I'M SORRY. MR. ALBERT REPRESENTED
22 BARCLAY'S.

23 Q WHAT WAS THE VIEW OF GREYHOUND AND BARCLAY'S
24 AS RELATED TO YOU?

25 A I THINK GENERALLY THE VIEW OF THE SECURED
26 CREDITORS, WHO HAD APPARENTLY BROUGHT MR. NOVELLI IN TO

1 OPERATE ALL SEASONS SOMETIME IN THE EARLY 80'S, WAS THAT
2 THE COMPANY'S PROBLEMS WERE DUE TO EXCESSIVE EXPENSES, NOT
3 CONTROLLING COSTS, AND FACTORS OTHER THAN FAILURE OF THIS
4 PROMISED FINANCING TERMS.

5 Q AND LAST, COUNSEL ASKED YOU A SERIES OF
6 QUESTIONS ABOUT WHETHER THERE WAS ANYTHING IMPROPER ABOUT
7 CERTAIN TYPES OF BUSINESS REIMBURSEMENTS; DO YOU RECALL
8 THAT?

9 A YES.

10 Q AND ON THE SUBJECT OF MR. NOVELLI'S HOME IN
11 MEXICO WHERE PAYMENTS WERE BEING MADE FROM FIRST
12 NATIONWIDE, DID YOU EVER INVESTIGATE WHETHER THIS HOME IN
13 MEXICO WAS BEING USED IN THE BUSINESS AFFAIRS OF FIRST
14 NATIONWIDE RESORT MANAGEMENT?

15 MR. MOSHENKO: OBJECTION. ASSUMES A FACT NOT IN
16 EVIDENCE.

17 THE COURT: OVERRULED.

18 THE WITNESS: AGAIN, I -- MR. NOVELLI I BELIEVE
19 TOLD ME AT SOME POINT THAT THE MORTGAGE PAYMENT OR THE RENT
20 ON THIS HOUSE OF ABOUT \$2400 A MONTH WAS FOR SOME PERIOD OF
21 TIME PAID BY FIRST NATIONWIDE BECAUSE IT WAS USED TO
22 ENTERTAIN BUSINESS ASSOCIATES OR PEOPLE THAT FIRST
23 NATIONWIDE WAS DOING BUSINESS WITH. AND FOR -- I THINK YOU
24 REFERRED ME TO THREE SUCH \$2,000 PAYMENTS.

25 BY MR. SHERMAN: Q MAY I INTERRUPT?

26 MR. JOSEPH, IS IT YOUR VIEW THAT THERE WERE

1 ONLY THREE PAYMENTS?

2 A NO. THAT'S WHY I'M LOOKING AT THIS DOCUMENT.

3 Q WELL, WITHOUT REGARD TO THE DOCUMENT,
4 MR. JOSEPH, JUST FROM RECOLLECTION, WERE THERE ONLY THREE
5 PAYMENTS?

6 A WITHOUT LOOKING AT THE DOCUMENT, I CAN'T
7 CONFIRM THAT. I RECALL SEEING THREE EARLIER TODAY.

8 Q AND SO DID YOU JUST ACCEPT MR. NOVELLI'S
9 VERSION OF EVENTS AS FAR AS HIS USE OF THE HOME IN MEXICO?

10 A NO. THERE CAME A TIME COMING UP UPON TWO
11 YEARS AFTER THE CHAPTER 11 CASE WAS FILED WHEN IT WAS
12 PRUDENT FOR COUNSEL FOR THE CREDITORS COMMITTEE TO TAKE A
13 LOOK AT THESE DISBURSEMENTS AND MAKE A DETERMINATION AS TO
14 WHAT ACTIONS TO AVOID TRANSFERS SHOULD BE BROUGHT.

15 AND LOOKING AT THEM ALL, IT WAS MR. DRAPER'S
16 VIEW THAT HE DID NOT WANT TO BE SPECIAL COUNSEL. AND HE
17 WAS NOT PARTICULARLY INTERESTED IN THE BANKRUPTCY ESTATE
18 SUING TO RECOVER THE PAYMENTS YOU POINTED OUT TO ME.

19 THERE MAY BE MORE. I DON'T KNOW. I'D HAVE
20 TO LOOK THROUGH THIS WHOLE THING. BUT AT LEAST IN THE
21 DOCUMENTS WE EXAMINED, THAT WAS A DETERMINATION.

22 MR. SHERMAN: NO FURTHER QUESTIONS.

23 MR. MOSHENKO: YOUR HONOR, IN MY RUSH TO FINISH BY
24 4:00 I OMITTED WHAT I THINK IS AN IMPORTANT POINT.

25 MAY I REOPEN FOR TWO QUESTIONS?

26 THANK YOU.

1 REDIRECT EXAMINATION

2 BY MR. MOSHENKO: Q MR. JOSEPH, MR. SHERMAN ASKED
3 YOU SOME QUESTIONS THIS AFTERNOON ABOUT EXHIBIT 39.

4 COULD WE PUT IT UP, PLEASE.

5 EXHIBIT 39 WAS THE LETTER SENT TO CAMP COAST
6 TO COAST AND INSTRUCTING THEM OR ADVISING THEM THAT CERTAIN
7 RESORTS WERE WITHDRAWING FROM THE CAMP COAST TO COAST
8 SYSTEM; DO YOU RECALL THAT?

9 A YES. I RECALL THAT.

10 Q AND YOU INDICATED IN RESPONSE TO
11 MR. SHERMAN'S QUESTION THAT YOU WEREN'T SURE YOU SAW THE
12 LETTER BACK -- AT ANY TIME?

13 A THAT'S TRUE.

14 Q OKAY. MY QUESTION IS, WERE YOU AWARE, PRIOR
15 TO THE MAILING OF THE LETTER, THAT MR. NOVELLI WAS GOING TO
16 ACT FOR FIRST NATIONWIDE AND WITHDRAW THE MEMBERSHIP FROM
17 COAST? AND DID YOU GIVE YOUR CONSENT?

18 A YES, IN THIS RESPECT: IF YOU LOOK AT THE
19 LETTER, OF THE 15 OR 16 CAMPGROUNDS REFERENCED IN THAT
20 LETTER, FIRST NATIONWIDE HAD THREE. AND MR. NOVELLI AND I
21 DISCUSSED HIS DESIRE TO GO WITH A DIFFERENT RECIPROCAL
22 COMPANY WHICH HE EXPLAINED HE THOUGHT WOULD BE BETTER IN
23 VARIOUS WAYS. AND I, WITH MY THREE RESORTS, AND HIS 12 OR
24 13 OR 14, I TOLD HIM IT WAS ALL RIGHT WITH ME IF HE WANTED
25 TO DO IT. AND THE REASON HE EXPLAINED FOR SHIFTING FROM
26 CAMP COAST TO COAST TO A DIFFERENT RECIPROCAL -- NOT A

1 RECIPROCAL, A DIFFERENT --

2 Q R.P.I. RESORTS PARK INTERNATIONAL. R.P.I.?

3 A YES, RESORTS PARK INTERNATIONAL, WHICH DID
4 THE SAME SORT OF THING, AS I UNDERSTOOD IT, THAT CAMP COAST
5 TO COAST DID, YOU KNOW, SEEMED REASONABLE AT THE TIME.

6 MR. MOSHENKO: THANK YOU, YOUR HONOR.

7 MR. SHERMAN: YOUR HONOR, I'D LIKE TO ADDRESS THIS
8 ONE LAST POINT, SINCE IT WAS JUST RAISED

9 MR. SHERMAN: I'M GOING TO PROBABLY HAVE TO
10 HAND THE WITNESS SOMETHING.

11 RE-CROSS-EXAMINATION

12 BY MR. SHERMAN: Q MR. JOSEPH, THE BANKRUPTCY
13 TRUSTEES KEEP ALL THEIR TIME LOGGED, DON'T THEY; THAT'S
14 WHAT YOU DO?

15 A THEY'RE SUPPOSED TO. IT'S A RULE PERHAPS
16 MORE HONORED IN THE BREACH THAN IN ACTUALITY. YES, ONE IS
17 SUPPOSED TO KEEP ONE'S TIME RECORDED, YES.

18 Q AND THEN YOU'RE SUPPOSED TO REPORT YOUR TIME
19 TO THE COURT IN TENTH-HOUR INCREMENTS?

20 A WHEN ONE APPLIES FOR COMPENSATION, ONE IS
21 SUPPOSED TO REFLECT TO THE COURT THE TIME THAT ONE HAS
22 SPENT.

23 Q AND SO IN A SENSE, ONE OF THE TOUGH THINGS
24 ABOUT BEING A BANKRUPTCY TRUSTEE IS YOU HAVE TO KEEP
25 CONTROL OVER YOUR TIME, AND IN SIX-MINUTE INCREMENTS?

26 A WELL, YES. THAT'S A LITTLE MISLEADING. IF

1 I SPEND 12 MINUTES AT SOMETHING, I WOULD REPORT .2 HOUR. I
2 WOULDN'T RECORD .1, .1.

3 Q RIGHT.

4 AND IF YOU HAD DISCUSSED THESE MATTERS WITH
5 MR. NOVELLI ABOUT PULLING OUT OF CAMP COAST TO COAST IN THE
6 SUMMER OF 1997, YOU WOULD HAVE MADE ENTRIES IN YOUR TIME
7 RECORDS AS A BANKRUPTCY TRUSTEE SHOWING THAT YOU SPOKE WITH
8 MR. NOVELLI; RIGHT?

9 A NO. IT'S QUITE POSSIBLE THAT THE RECORD
10 WOULD REFLECT "AT PREMISES TO OBSERVE BUSINESS OPERATIONS,
11 DISCUSSIONS WITH STAFF, .2 HOURS."

12 Q MR. JOSEPH, YOU DID NOT RECORD ANY TIME IN
13 THE SUMMER OF 1997 AS FAR AS DISCUSSING ANY MATTERS
14 INVOLVING CAMP COAST TO COAST WITH RAYMOND NOVELLI, DID
15 YOU?

16 A I WOULD HAVE TO LOOK AT MY TIME RECORDS.
17 BUT WHAT I'M TRYING TO TELL YOU, COUNSEL, IS THAT "VISIT TO
18 PREMISES, DISCUSS BUSINESS OPERATIONS" IN MY VIEW WOULD
19 COVER SUCH AN EVENT; AND I SUSPECT IF YOU'VE GONE THROUGH
20 THEM, THAT YOU HAVE PLENTY OF ENTRIES THERE THAT SAY "AT
21 BUSINESS PREMISES, DISCUSS OPERATIONS," OR "FOR BUSINESS
22 OPERATIONS."

23 Q BUT YOU HAVE NO ENTRY -- YOU HAVE NO
24 RECOLLECTION OF ANY ENTRIES REFERENCING "DISCUSSION, PULL
25 OUT FROM CAMP COAST TO COAST WITH RAYMOND NOVELLI";
26 CORRECT?

1 MR. MOSHENKO: ASKED AND ANSWERED.

2 THE COURT: THAT'S BEEN ASKED AND ANSWERED,
3 COUNSEL.

4 BY MR. SHERMAN: Q DID YOU MAKE ANY SUCH ENTRIES?

5 A I DON'T RECALL WITHOUT SEEING MY TIME
6 RECORDS, WHICH I DO NOT HAVE WITH ME, SIR.

7 Q I'D LIKE TO SHOW HIM THE TIME RECORDS TO SEE
8 IF IT REFRESHES HIS RECOLLECTION, IF HE MADE ANY TIME
9 ENTRIES REFERENCING "PULL-OUT FROM CAMP COAST TO COAST."

10 THE COURT: I FAIL TO SEE THE RELEVANCY OF THIS.

11 MR. MOSHENKO: OBJECTION. 352, YOUR HONOR. WASTE
12 OF TIME.

13 THE COURT: SUSTAINED.

14 MR. SHERMAN: NO FURTHER QUESTIONS.

15 THE COURT: THANK YOU.

16 MR. MOSHENKO: NOTHING, YOUR HONOR.

17 THE COURT: THANK YOU.

18 LADIES AND GENTLEMEN, AS YOU MAY KNOW, DO
19 KNOW, MONDAY IS A COURT HOLIDAY. SO YOU'VE GOT A FOUR-DAY
20 WEEKEND, FRIDAY, SATURDAY, SUNDAY, MONDAY.

21 JUROR 5: YOU, TOO.

22 THE COURT: AND I WANT YOU ALL BACK HERE TUESDAY
23 MORNING, TUESDAY MORNING, PROMPTLY AT 9:00.

24 NOW, BEFORE YOU LEAVE, THE FIRST ROW OF THE
25 JURY BOX, PLEASE STAND AND LEAVE. I'M TIRED OF SEEING
26 MRS. KING THE LAST ONE OUT. THE REST OF YOU CAN FIGHT FOR

1 IT.

2 (WHEREUPON THE COURT WAS IN RECESS UNTIL

3 TUESDAY, MAY 30, 2000, 9:00 A.M.)

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