

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

4 TRAVEL AMERICA, INC., A DELAWARE )  
5 CORPORATION, ET AL., )  
6 )  
7 PLAINTIFFS, )  
8 )  
9 VS. ) CASE NO. 789743  
10 )  
11 CAMP COAST TO COAST, INC., A DELAWARE )  
12 CORPORATION, ET AL., )  
13 )  
14 DEFENDANTS. )  
15 )

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

17 REPORTER'S TRANSCRIPT

18 JUNE 12, 2000

19 APPEARANCES:

20 FOR THE PLAINTIFFS: GERALD M. SHAW  
21 ATTORNEY AT LAW  
22 TERRY M. MOSHENKO  
23 ATTORNEY AT LAW  
24 FOR THE DEFENDANTS: ALSCHULER, GROSSMAN, STEIN & KAHAN  
25 BY: MICHAEL A. SHERMAN, ESQ.  
26 CRAIG S. RUTENBERG, ESQ.  
RUTAN & TUCKER  
BY: IRA G. RIVIN, ESQ.

HEIDI K. STEWART, CSR #6058

OFFICIAL COURT REPORTER

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MORNING SESSION

(THE FOLLOWING PROCEEDINGS WERE HELD IN  
CHAMBERS:)

THE COURT: I'VE READ YOUR MOTION.

MR. SHERMAN: I HOPE IT WASN'T TOO LONG.

THE COURT: NO. THIS MAN, MR. MERRITT, WAS HE A  
RESORT OPERATOR?

MR. MOSHENKO: DESIGNATED EXPERT.

MR. SHERMAN: HE WAS THE ONE WHO WAS CHARACTERIZED  
BY MR. MOSHENKO AS THE ONE THAT CLEANS THE POOLS AND MOWS  
THE LAWN.

MR. MOSHENKO: I'M SURE HE PROBABLY --

THE COURT: HE'S THE MANAGER.

MR. MOSHENKO: I DON'T RECALL SAYING THAT. I MAY  
HAVE BEEN JOKING; AND, REGARDLESS, HE IS RESPONSIBLE FOR  
GETTING THE POOL CLEANED AND THE LAWN MOWED. HE IS THE  
MANAGER.

THE COURT: DOES HE HAVE A CAT WHO HIDES HIS  
HEARING AIDS?

MR. MOSHENKO: NO, HE DOESN'T TO MY KNOWLEDGE.

THE COURT: OKAY. WELL, I READ THE MOTION. AND IT  
SEEMS TO ME TO BE WELL TAKEN.

DO YOU WANT TO BE HEARD?

MR. MOSHENKO: WELL, YEAH. MY FIRST COMMENT, IT  
WOULD BE HELPFUL IF THERE'S GOING TO BE MOTIONS TO RESTRICT

1 TESTIMONY FROM WITNESSES THAT HAVE BEEN READY TO GO ON THE  
2 STAND FOR LITERALLY WEEKS -- BECAUSE MERRITT WAS HERE, YOU  
3 RECALL, AND DIDN'T GET PUT ON -- THAT WE RECEIVE THE MOTION  
4 MORE THAN 20 MINUTES BEFORE WE START TO COURT.

5 THE COURT: I DON'T RECALL SEEING THIS MOTION  
6 BEFORE; ALTHOUGH, I MAY HAVE SEEN IT IN THE MOTIONS IN  
7 LIMINE.

8 MR. SHERMAN: NO, IT WAS NOT FILED IN THE MOTIONS  
9 IN LIMINE. AND THE REASON FOR THAT IS YESTERDAY WHEN I  
10 KNEW THAT MR. MERRITT FINALLY WOULD BE TAKING THE STAND, I  
11 SAT DOWN AND I REREAD PORTIONS OF HIS DEPOSITION. AND,  
12 FRANKLY, THIS OCCURRED TO ME, AND IT HADN'T OCCURRED TO ME  
13 BEFORE. SO INSTEAD OF HAVING A LOT OF TIME-CONSUMING,  
14 DISRUPTIVE SIDEBARS ON WHAT I THINK IS A PERFECTLY  
15 APPROPRIATE EVIDENTIARY POINT WHEN HE IS UP THERE  
16 TESTIFYING, I FIGURE, LET'S JUST TAKE IT UP NOW.

17 THE COURT: YEAH.

18 MR. MOSHENKO: SO I GUESS I'LL REPEAT MY FIRST  
19 POINT. IT WOULD BE HELPFUL IF WE GET THESE MOTIONS SOONER  
20 THAN 20 MINUTES BEFORE WE GO TO COURT, SINCE MR. MERRITT  
21 HAS BEEN ON DECK, IN EFFECT, FOR WEEKS.

22 THE COURT: YES.

23 MR. MOSHENKO: NUMBER TWO IS, THIS IS A TWO-PART  
24 MOTION FROM MY QUICK PERUSAL OF IT. AND THE FIRST PART  
25 CONTENDS THAT HE HAS, QUOTE, NO IDEA HOW MANY LETTERS COAST  
26 SENT OUT. WELL, YOU KNOW, IF YOU ASK THE QUESTION, CAN YOU

1 TELL ME PRECISELY HOW MANY LETTERS WAS SENT OUT, I HAVE NO  
2 IDEA, BUT HE KNOWS LETTERS WERE SENT. HE KNOWS THEY WERE  
3 SENT TO MEMBERS. HE KNOWS IN GENERALITY THAT LETTERS WERE  
4 SENT TO MEMBERS OTHER THAN THE ORLANDO AND THE TRAILINN  
5 PARKS. AND HE SAYS SO IN HIS TESTIMONY THAT LETTERS WERE  
6 SENT TO THE MEMBERS FROM WHICH RESORTS -- FROM, QUOTE, ANY  
7 OF THE RESORTS THAT THE LETTERS WERE SENT TO.

8 AND THEN THEY SAY, "CAN YOU TELL ME WHICH  
9 RESORTS THE LETTER WAS MAILED TO?"

10 WELL, YOU KNOW, THERE ARE 72 RESORTS, YOUR  
11 HONOR, AND HE CAN'T TELL YOU IF 70 GOT THEM OR 68 OR 48 OR  
12 38. BUT HE KNOWS THEY WERE SENT TO THE RESORTS. SO IT'S A  
13 QUESTION OF HOW RESTRICTIVE YOU WANT TO INTERPRET WORDS OR  
14 HOW RESTRICTIVE YOUR HONOR WANTS TO INTERPRET -- HE CAN  
15 TESTIFY TO WHAT HE KNOWS. HE IS NOT GOING TO GIVE A LIST  
16 OF THE RESORTS THAT THE LETTERS WERE SENT TO. HE IS NOT  
17 GOING TO GIVE A PRECISE NUMBER OF LETTERS THAT WENT OUT.

18 THE COURT: HE CAN TESTIFY AS TO WHAT HE KNOWS  
19 PERTAINING TO THE TWO PARKS THAT HE IS FAMILIAR WITH.

20 MR. MOSHENKO: YES. AND HE IS ALSO -- BUT HE IS  
21 ALSO FAMILIAR WITH THE SYSTEM. AND THE FACT THAT LETTERS  
22 WERE SENT TO THE PLAINTIFFS' MEMBERS, YOUR HONOR, HE IS AN  
23 EXPERT. HE DOESN'T HAVE TO HAVE PERSONAL KNOWLEDGE TO TALK  
24 ABOUT THINGS BECAUSE EXPERTS RELY ON INFORMATION PROVIDED  
25 THEM OUTSIDE OF THEIR PERSONAL KNOWLEDGE ALL THE TIME.

26 THE COURT: YOU KNOW, TO CLASSIFY HIM AS AN EXPERT

1 IS KIND OF GOING A BIT FAR.

2 MR. MOSHENKO: WELL, HE IS AN EXPERT ON MEMBER  
3 CONDUCT AND MEMBER PRACTICES AND MEMBERSHIP. HE HAS BEEN  
4 WORKING IN THE INDUSTRY FOR A DECADE PLUS.

5 THE COURT: OKAY.

6 MR. MOSHENKO: AND HE KNOWS PEOPLE. THE OTHER  
7 THING IS, HIS OPINION MUST BE LIMITED TO TESTIMONY HE GAVE  
8 ON THE SUBJECT OF DAMAGES. HE KNOWS THAT DAMAGES WERE  
9 EXPERIENCED. HE SAYS THAT -- HE SAYS DAMAGES RESULTED FROM  
10 PEOPLE QUITTING PAYING THEIR DUES, AND THAT DAMAGES THE  
11 ABILITY OF THE RESORT TO FUNCTION. HE DOESN'T KNOW  
12 PRECISELY HOW MANY PEOPLE STOPPED PAYING.

13 WE AGREE, HE IS NOT GOING TO SAY WE LOST  
14 19,000 PEOPLE WHO STOPPED PAYING DUES.

15 THE COURT: ANYBODY CAN ASSUME YOU DON'T HAVE TO BE  
16 AN EXPERT TO KNOW THAT; THAT WHEN PEOPLE STOP PAYING THEIR  
17 DUES, THE INCOME IS GOING TO DROP OFF.

18 MR. MOSHENKO: SURE. SO HE CAN DO THAT. WHAT'S  
19 THE PROBLEM?

20 MR. SHERMAN: WELL, TWO PROBLEMS. MR. MOSHENKO  
21 USED A WORD ON BOTH OF THE PRONGS OF THIS, THIS ISSUE --  
22 NAMELY, THE NUMBER OF LETTERS AND THE DAMAGES -- HE USED  
23 THE WORD "PRECISELY." DO YOU KNOW PRECISELY. AND AS IS  
24 NOW BECOMING THE CASE, APPARENTLY, THAT'S A  
25 MISCHARACTERIZATION OF WHAT HE WAS ASKED IN HIS DEPOSITION  
26 AND WHAT HE TESTIFIED TO IN HIS DEPOSITION. THE TESTIMONY

1 IN HIS DEPOSITION IS WHAT IS SET FORTH IN THE PAPERS, YOUR  
2 HONOR.

3 THE COURT: LOOK, WE CAN MAKE THIS REAL SHORT, AND  
4 I CAN JUST GRANT THE MOTION. IF HE GOES BEYOND WHAT'S  
5 CALLED FOR HERE, YOU'RE GOING TO HAVE TO OBJECT. THAT'S  
6 ALL.

7 MR. SHERMAN: I PLAN TO DO THAT, AND WE DO HAVE  
8 SERIOUS ISSUE WITH THE PROSPECT OF THIS MAN BEING AN  
9 EXPERT. AN EXPERT IS SOMEONE WHO HAS INFORMATION BEYOND  
10 THE PALE OR BEYOND THE SCOPE OF A COMMON LAY PERSON, AND WE  
11 DON'T HAVE THAT SITUATION HERE.

12 SO WE'RE -- I UNDERSTAND YOUR HONOR'S  
13 POSITION AND RULING, AND WE'LL BE READY TO PROCEED.

14 THE COURT: GOOD.

15 MR. MOSHENKO: YOUR HONOR, I CAN LIVE WITH WHAT THE  
16 COURT IS SUGGESTING. I DO RECALL NOW HE HAS BEEN IN THE  
17 INDUSTRY FOR 29 YEARS. BUT I WOULD LIKE TO JUST REAFFIRM  
18 THAT THIS MOTION ASKS MR. MERRITT BE, QUOTE, INSTRUCTED TO  
19 NOT OFFER ANY TESTIMONY BEYOND THAT QUOTED ABOVE.

20 YOU SEE, THAT'S THE PROBLEM WITH A MOTION  
21 COMING IN 20 MINUTES BEFORE. THIS IS HIS DEPOSITION.  
22 IT'S, GUESSTIMATING, 400 PAGES LONG. THEY QUOTE TWO  
23 PAGES. WE HAVE NO ABILITY TO TAKE THIS AND SEE WHERE HE  
24 RETRACTED OR MODIFIED OR ADDED TO. AND IF THE COURT IS  
25 GOING TO SAY HE CAN'T SAY ANYTHING THAT WAS NOT IN THIS  
26 LIMITED PIECE OF PAPER, THE COURT'S FORCING HIM TO

1 DISREGARD WHAT MAY BE VISITING THE ISSUES FOUR OR FIVE OR  
2 10 OTHER TIMES IN HIS DEPOSITION.

3 THE COURT: LIKE I SAY, HE IS GOING TO HAVE TO  
4 OBJECT IN A TIMELY MANNER. THAT'S ALL.

5 MR. SHERMAN: THAT WILL BE DONE. WHEN A MAN SAYS,  
6 I HAVE NO IDEA, AND I ANSWERED THAT QUESTION 15 TIMES, AND  
7 I DON'T KNOW, HOLDING UP 400 PAGES OF YESTERDAY'S SPORTS  
8 SECTION, IF THAT'S WHAT THE CASE IS, IS NOT GOING TO REALLY  
9 INFLUENCE THE MATTER.

10 MR. MOSHENKO: COULD I BRING UP ANOTHER ISSUE, YOUR  
11 HONOR?

12 THE COURT: SURE.

13 MR. MOSHENKO: THERE'S BEEN A COUPLE OF WEEKS AGO  
14 AT LEAST THAT THE COURT INSTRUCTED THAT BOTH SIDES SHOULD  
15 EXCHANGE THE DISKS WHICH INCLUDE THE EXHIBITS THAT EACH  
16 SIDE HAS BROUGHT TO THE COURT. AND I'M INFORMED THAT WE  
17 STILL DO NOT HAVE THE DISKS, ALL OF THE DISKS, OR MATERIAL  
18 THAT THE DEFENDANTS HAVE ON THEIR COMPUTER CAPACITY TO  
19 BRING UP, BECAUSE WE HAVEN'T BEEN PROVIDED WITH THE  
20 MATERIAL.

21 I'M ALSO INFORMED THAT THERE IS MATERIAL  
22 THAT THE DEFENDANTS ADDED TO THEIR ORIGINAL EXHIBIT LIST.  
23 AND I'M NOT EXACTLY CERTAIN WHAT THEY ARE, BUT -- THAT  
24 THEY'RE ON THE DISKS THAT WE DON'T HAVE. SO IT'S HARD TO  
25 TELL WITHOUT LOOKING AT THE DISKS; IF WE COULD HAVE ACCESS  
26 TO THE SAME MATERIAL THAT THEY HAVE THAT THEY ARE PUTTING

1 UP ON THE SCREEN, JUST LIKE WE'VE GIVEN THEM ACCESS TO  
2 OURS.

3 MR. SHERMAN: MY UNDERSTANDING, YOUR HONOR, IS THAT  
4 BOTH PLAINTIFFS AND DEFENDANTS THROUGH THEIR COMPUTER  
5 TECHNICIAN FOLKS HAVE EXCHANGED CD'S CONSISTING OF ALL THE  
6 DOCUMENTS THAT WERE ON THE EXHIBIT LISTS THAT WERE FILED  
7 WITH THE COURT.

8 NOW, ONE MINUTE BEFORE WE WERE SET TO COME  
9 IN THIS MORNING, MR. HAHN, MICHAEL, TOLD ME THAT HE HAD  
10 GOTTEN SOME REQUEST FOR SOME ADDITIONAL INFORMATION.  
11 OBVIOUSLY, WE'RE PUTTING ALL SORTS OF INFORMATION ON OUR  
12 LAPTOP COMPUTER. WHAT I'D LIKE TO DO IS I'D LIKE TO  
13 UNDERSTAND THIS A LITTLE BIT MORE. I'M HAPPY TO DISCUSS IT  
14 WITH MR. MOSHENKO OR WHOEVER THEY WANT US TO DISCUSS IT  
15 WITH TO FIND OUT WHAT IT IS THAT THEY DON'T BELIEVE THAT  
16 THEY ARE OWED AND DON'T HAVE.

17 I DON'T INTEND TO PROVIDE THEM WITH ANY OF  
18 OUR WORK PRODUCT, AND I WOULD DEFINE "WORK PRODUCT" TO BE  
19 ANYTHING THAT WE'VE ADDED TO OUR LAPTOP THAT IS NOT A  
20 DESIGNATED TRIAL EXHIBIT. WE HAVE IMPEACHMENT MATERIAL ON  
21 THERE THAT OBVIOUSLY DOESN'T NEED TO BE DESIGNATED. WE  
22 HAVE EXCERPTS FROM COPIES OF VARIOUS TRANSCRIPTS.

23 SO I JUST NEED TO UNDERSTAND A LITTLE BIT  
24 BETTER. AND IF WE STILL CAN'T WORK IT OUT, THEN I'M SURE  
25 YOUR HONOR WILL BE HEARING FROM US.

26 THE COURT: ALL RIGHT.

1           MR. SHERMAN: OKAY. I HAD TWO QUICK MATTERS. ONE  
2 IS AT SOME POINT PERHAPS THIS AFTERNOON, PERHAPS TOMORROW  
3 MORNING --

4                           (PAUSE IN PROCEEDINGS.)

5           MR. SHERMAN: IN ANY EVENT, THERE WAS AN IN LIMINE  
6 MOTION THAT THE COURT TOOK UNDER SUBMISSION ON STATUTE OF  
7 LIMITATIONS ISSUES, AND I SUSPECT THAT WHEN MR. BUTLER  
8 COMES TO TESTIFY, THAT'S GOING TO BECOME A PARAMOUNT  
9 ISSUE. AND I DO WANT TO GIVE THE COURT AND OPPOSING  
10 COUNSEL NOTICE THAT WE DO INTEND TO REVIVE THAT ISSUE  
11 BECAUSE I THINK THAT THE ISSUES ARE NOW IN A POINT WHERE  
12 THEY CAN BE MORE SHARPLY FOCUSED FOR THE COURT.

13                           AND SO EITHER LATER TODAY OR TOMORROW  
14 MORNING, PERHAPS TOMORROW MORNING, WE CAN TAKE THAT UP.

15           MR. MOSHENKO: WHICH MOTION IS IT?

16           MR. SHERMAN: STATUTE OF LIMITATIONS ISSUES.

17           MR. MOSHENKO: OKAY. THAT MAKES ME WANT TO SPEAK  
18 TO THE COURT ABOUT SCHEDULING.

19                           THIS IS THE WEEK WHERE TOMORROW AFTERNOON  
20 WE'RE HALF DAY, AND MR. SHAW HAS SOME OUT-OF-COURT  
21 RESPONSIBILITIES HE HAS TO DO. SO AS A RESULT OF TRYING TO  
22 DEAL WITH THE BEST WAY TO USE THE TIME AVAILABLE, WE'RE  
23 GOING TO GO WITH MR. MALPASS AND MR. MERRITT TODAY. THAT  
24 WAS AS PLANNED AND AS INSTRUCTED. WE WANT TO GO WITH  
25 WILLIAM DAWSON TOMORROW, AND THEN EXPECT HE MAY POUR OVER  
26 INTO WEDNESDAY MORNING. WE HAVE A WITNESS NAMED

1 CHRIS DAVIS FOR WEDNESDAY AFTERNOON, AND THEN WE'D LIKE TO  
2 GO WITH MR. BUTLER, AS SOON AS WE COMPLETE MR. DAVIS. AND  
3 I THINK THAT TIMING OF THAT WILL ENABLE US TO GET  
4 MR. BUTLER DONE AND ON HIS WAY THIS WEEK SO THAT HE DOESN'T  
5 HAVE TO HANG AROUND IF HE DOESN'T WANT TO.

6 MR. SHERMAN: I APPRECIATE THE SCHEDULING  
7 NOTIFICATION. LET ME JUST SAY THAT I KNOW THAT MR. BUTLER  
8 IS NOT AVAILABLE NEXT WEEK, WHICH WAS ONE OF THE REASONS WE  
9 WERE TRYING TO INSURE THAT HE GOT ON THIS WEEK. HE IS  
10 GOING TO BE OUT HERE. HE IS FLYING OUT SOMETIME LATER  
11 TODAY, IS MY UNDERSTANDING.

12 SO I DOUBT THAT MR. BUTLER WILL BE AVAILABLE  
13 NEXT WEEK. MOREOVER, THIS IS A VERY AMBITIOUS SCHEDULE. I  
14 APPLAUD COUNSEL AND -- IF WE COULD GET THROUGH MERRITT,  
15 MALPASS, DAWSON AND DAVIS IN ONE THREE-AND-A-HALF-DAY WEEK,  
16 I'LL STAND UP AND APPLAUD. BUT IT'S NOT GOING TO HAPPEN.

17 THE COURT: IT SHOULD BE THE END OF THE TRIAL THEN.

18 MR. SHERMAN: EXACTLY.

19 MR. RIVIN: LET ME ALSO MENTION, TOO, THAT I SPOKE  
20 WITH MR. MOSHENKO ON FRIDAY AND SENT A LETTER TO  
21 MR. MOSHENKO TO CONFIRM OUR CONVERSATION. AND IN THAT  
22 LETTER HE INDICATED THAT -- OR IN OUR CONVERSATION  
23 MR. MOSHENKO INDICATED THAT THEY WERE GOING TO GO WITH  
24 MR. MERRITT AND MR. MALPASS TODAY AND MR. BUTLER TOMORROW,  
25 AND THEN MR. DAVIS AFTER THAT. AND MR. DAWSON OBVIOUSLY  
26 WASN'T GOING TO GO ON THIS WEEK.

1 MR. SHERMAN: THAT'S WHAT THE LETTER SAYS.

2 MR. MOSHENKO: HE IS CORRECT. BUT I CAN INFORM THE  
3 COURT THAT THE REASON FOR THE ADJUSTMENT IS BECAUSE  
4 MR. SHAW IS UNAVAILABLE LATER IN THIS WEEK, AND IF WE PUT  
5 DAWSON BEHIND BUTLER, HE CAN TAKE DAWSON. I'M TAKING  
6 BUTLER. I'M AVAILABLE TO TAKE BUTLER. HE IS UNAVAILABLE  
7 TO TAKE DAWSON LATER THIS WEEK. SO TO MEET OUR SCHEDULING  
8 DIFFICULTIES AS WELL AS WE NEED TO DO THAT.

9 THE COURT: OKAY. LET'S GET WITH IT.

10 MR. SHERMAN: I PRESUME YOU'LL ASK MR. MOSHENKO TO  
11 INSTRUCT MR. MERRITT.

12 THE COURT: SO BE IT.

13 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
14 COURT IN THE PRESENCE OF THE JURY:)

15 THE COURT: PROCEED, COUNSEL.

16 MR. MOSHENKO: THANK YOU, YOUR HONOR. CALL  
17 GARY MERRITT.

18 GARY MERRITT,  
19 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING  
20 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS  
21 FOLLOWS:

22 THE CLERK: TAKE THE SEAT IN THE WITNESS STAND,  
23 PLEASE.

24 STATE YOUR FULL NAME FOR THE RECORD AND  
25 SPELL YOUR LAST NAME FOR THE REPORTER IN FRONT OF YOU,  
26 PLEASE.

1 THE WITNESS: YES, MA'AM. GARY MERRITT,  
2 M-E-R-R-I-T-T

3 DIRECT EXAMINATION

4 BY MR. MOSHENKO: Q MR. MERRITT, WHAT IS YOUR  
5 OCCUPATION?

6 A I'M THE MANAGER OF ORLANDO R.V. RESORT IN  
7 FLORIDA.

8 Q IS THE -- ORLANDO ONE OF THE RESORTS THAT'S  
9 BEEN REFERRED TO IN THIS CASE AS A PLAINTIFFS' RESORT?

10 A YES, SIR, IT IS.

11 Q OKAY. NOW, IF YOU COULD JUST TELL US WHAT  
12 YOUR EDUCATION WAS BEFORE GOING INTO YOUR PROFESSION.

13 A WELL, I GRADUATED FROM HIGH SCHOOL AT  
14 BRANSON, MISSOURI, AND THEN I ATTENDED SOUTHERN TECHNICAL  
15 INSTITUTE, WHICH WAS A PART OF GEORGIA TECH IN ATLANTA,  
16 GEORGIA. AND I DID NOT FINISH. I DO NOT HAVE A DEGREE.

17 Q SO NOW, AFTER THAT, AFTER LEAVING SCHOOL,  
18 DID YOU GO -- WHAT INDUSTRY DID YOU GO INTO?

19 A WELL, I WENT IN TELEPHONY, THE TELEPHONE  
20 INDUSTRY, AND I SPENT 12 YEARS WITH THE TELEPHONE COMPANY  
21 IN VARIOUS OCCUPATIONS. I PROGRESSED FROM -- WELL, I  
22 STARTED WITH THE TELEPHONE COMPANY AS THEIR JANITOR, AND  
23 THEY SENT ME TO SCHOOL. AND I ENDED UP AS A COMMERCIAL  
24 MANAGER FOR A THREE-STATE AREA WHEN I LEFT THE TELEPHONE  
25 INDUSTRY.

26 Q WHAT YEARS WERE YOU WITH THE TELEPHONE

1 INDUSTRY?

2 A FROM 1957 UNTIL -- I'M TERRIBLE WITH DATES,  
3 BUT, 1969 OR '70.

4 Q ALL RIGHT. AND WHERE DID YOU GO AFTER  
5 LEAVING THE TELEPHONE INDUSTRY?

6 A I STARTED WITH A COMPANY IN ARKANSAS CALLED  
7 "COOPER COMMUNITIES." IT WAS RECREATIONAL LAND  
8 DEVELOPMENT. AND I WORKED WITH THEM FOLLOWING MY LEAVING  
9 THE TELEPHONE INDUSTRY.

10 Q WHAT DID YOU DO WITH COOPER COMMUNITIES  
11 RECREATIONAL LAND DEVELOPMENT COMPANY?

12 A WELL, I WAS A SALESMAN FOR THEM.

13 Q WHAT WERE YOU SELLING?

14 A WE WERE SELLING SECOND HOME LOTS AND  
15 RETIREMENT LOTS IN A RETIREMENT COMMUNITY IN HOT SPRINGS,  
16 ARKANSAS.

17 Q THAT'S WHERE I HEARD THAT ACCENT BEFORE.

18 A I'M FROM THAT COUNTRY.

19 Q AND HOW LONG WERE YOU WITH COOPER  
20 COMMUNITIES?

21 A OH, ROUGHLY TWO YEARS. AND THEN I WENT WITH  
22 HORSESHOE DEVELOPMENT CORPORATION, WHICH WAS ANOTHER LAND  
23 DEVELOPMENT COMPANY IN ARKANSAS THAT SOLD RECREATIONAL AND  
24 RETIREMENT HOME SITES.

25 Q AND, AGAIN --

26 A AND AT THAT TIME I WAS IN MANAGEMENT. I WAS

1 THE SALES MANAGER.

2 Q AND WHAT DO YOU MEAN WHEN YOU SAY YOU WERE  
3 IN MANAGEMENT?

4 A WELL, I WAS THE SALES MANAGER IN CHARGE OF  
5 THE SALES PROGRAM AND A LOT OF THE MARKETING PROGRAM.

6 Q TO SUM UP, DO YOU CONSIDER THOSE TWO  
7 POSITIONS TO BE A PART OF THE, OR RELATED TO THE  
8 RECREATIONAL RESORT INDUSTRY?

9 A OH, ABSOLUTELY, YES, SIR.

10 Q HOW IS THAT?

11 A WELL, SIMPLY BECAUSE OUR PROSPECTS CAME FROM  
12 THE SAME PEOPLE. OUR SALES WERE BASICALLY THE SAME TYPE OF  
13 SALES. IN THE LAND DEVELOPMENT, AS WELL AS THE -- AS IN  
14 THE R.V. BUSINESS, THE METHOD OF MARKETING WAS BASICALLY  
15 THE SAME, AS WELL AS THE SALES PROGRAM.

16 Q ALL RIGHT. SO AS A SUM UP, YOU'VE BEEN IN  
17 THE CAMPGROUND OR -- I'M SORRY -- THE MEMBERSHIP  
18 RECREATIONAL INDUSTRY FOR 30 YEARS?

19 A ALMOST 30 YEARS, YES -- WELL, THERE WAS A  
20 LITTLE SHORT TIME THAT I WAS OUT OF IT. BUT I WASN'T VERY  
21 HAPPY WHEN I WAS OUT OF IT.

22 Q WHY WAS THAT?

23 A WELL, BECAUSE I ENJOY THIS BUSINESS. IT'S A  
24 GREAT, WONDERFUL BUSINESS.

25 Q OKAY. WELL, ALL RIGHT. SO WHEN WAS IT THAT  
26 YOU WERE OUT OF IT FOR THAT SHORT PERIOD OF TIME?

1           A           IT WAS -- AGAIN, I'M TERRIBLE WITH DATES.  
2 BUT I THINK IT WAS FROM '87 TO '92, IN THAT TIME FRAME. I  
3 WAS WITH LITTON INDUSTRY.

4           Q           OKAY. HOW LONG WERE YOU WITH HORSESHOE  
5 DEVELOPMENT?

6           A           OH, I WAS PROBABLY WITH HORSESHOE  
7 APPROXIMATELY TWO YEARS. AND THEN I STARTED WITH NATIONAL  
8 AMERICAN CORPORATION, WHICH WAS AN INDUSTRY LEADER IN LAND  
9 SALES AND TIME-SHARE SALES AND IN R.V. SALES.

10          Q           WHAT DID YOU DO FOR NATIONAL DEVELOPMENT  
11 CORPORATION?

12          A           WELL, WHEN I FIRST STARTED WITH THEM, I WAS  
13 THE PROJECT MANAGER FOR SOME OF THEIR PROJECTS AND -- WHICH  
14 ENTAILED -- I WAS OVER THE SALES AND OVER THE CONSTRUCTION,  
15 AND OVER THE MEMBER ASSOCIATIONS AND THAT SORT OF THING. I  
16 THEN PROGRESSED TO THE DISTRICT MANAGER'S LEVEL WHERE I WAS  
17 OVER SEVERAL DIFFERENT RESORTS.

18                    AND, AGAIN, WE DEALT -- I DEALT A LOT WITH  
19 THE HOMEOWNERS ASSOCIATIONS, WITH THE MEMBERS A GREAT DEAL,  
20 IN THAT POSITION.

21          Q           OKAY. SO YOU'VE BEEN IN THE RESORT  
22 INDUSTRY -- STRIKE THAT.

23                    YOU'VE HEARD THE TERM "DEVELOPMENT" OR  
24 "DEVELOPERS" IN THIS CASE?

25          A           SURE, YES.

26          Q           WHAT'S IT MEAN?

1           A           WELL, IT MEANS A PERSON WHO GOES OUT AND  
2   EITHER BUYS RAW LAND AND COMMENCES A DEVELOPMENT AND BUILDS  
3   IT FROM GROUND UP, OR SOMEONE WHO COMES IN AND PURCHASES A  
4   DEVELOPMENT AND CONTINUES WITH THE MARKETING AND SALES OF  
5   IT, AND CONSTRUCTION, IF THERE'S ANY.

6           Q           SO WHEN IT COMES TO THE FIRST PART -- TYPE  
7   THAT YOU MENTION WHERE SOMEONE GOES IN AND ACQUIRES RAW  
8   LAND AND BUILDS UP A RESORT FROM SCRATCH?

9           A           RIGHT.

10          Q           WHAT EXPERIENCE HAVE YOU HAD IN THAT AREA OF  
11   THE INDUSTRY?

12          A           WELL, A BIT. I HAVE OVERSEEN A LOT OF  
13   OPERATIONS FROM GROUND FLOOR WHEN IT WAS JUST RAW LAND  
14   WHERE WE WOULD SURVEY OUT THE SITES AND BUILD THE ROADS AND  
15   BUILD THE WATERLINES, THE SEWER LINES, DO THE ENTIRE THING  
16   DOWN TO PAVING THE ROADS. WHEN I WAS WITH NACO, WE DID  
17   EVERY BIT OF THAT OURSELVES. AND EVENTUALLY I WAS THE  
18   VICE-PRESIDENT IN CHARGE OF DEVELOPMENT FOR NACO FOR ALL OF  
19   THEIR PROJECTS, FOR ALL OF THE CONSTRUCTION OF THE  
20   TIME-SHARE UNITS, AND THE DEVELOPMENT OF RAW LAND.

21          Q           ALL RIGHT. YOU JUST USED THE TERM NACO,  
22   WHAT WAS NACO?

23          A           NACO IS STANDS FOR NATIONAL AMERICAN  
24   CORPORATION.

25          Q           I GUESS THAT CAME OUT NATIONAL DEVELOPMENT  
26   CORP; IS THAT CORRECT?

1           A           NO, THAT'S -- THAT IS NATIONAL AMERICAN  
2 CORPORATION.

3           Q           OKAY.

4           A           THAT'S ONE IN THE SAME.

5           Q           ALL RIGHT. SO NATIONAL DEVELOPMENT  
6 CORPORATION AND NATIONAL AMERICAN DEVELOPMENT ARE THE SAME?

7           A           YES.

8           Q           SO WHAT YEARS WERE YOU WITH NACO?

9           A           I STARTED WITH NACO IN -- AND, AGAIN, I'M  
10 TERRIBLE ON DATES -- AROUND '75 OR '76, SOMEPLACE ALONG  
11 THERE, UNTIL '87, I BELIEVE. '87.

12          Q           I'M GOING TO CALL THAT 12 YEARS.

13                       DURING THOSE 12 YEARS YOU EVENTUALLY BECAME  
14 THE DISTRICT MANAGER OVER HOW MANY DISTRICTS -- STRIKE  
15 THAT.

16                       HOW MANY DISTRICTS WERE THERE IN NACO?

17          A           WELL, IT WENT REALLY -- THEY WEREN'T REALLY  
18 ASSIGNED AS DISTRICTS. I WAS JUST OVER A GROUP OF  
19 DEVELOPMENTS, AND I WAS THE PRESIDENT OF SEVERAL OF THOSE  
20 DEVELOPMENTS. CAROLINA LANDING, WHICH WAS A 100 PERCENT  
21 R.V. DEVELOPMENT, FOXWOOD CORPORATION, WHICH WAS A LAND  
22 DEVELOPMENT AND A TIME SHARE DEVELOPMENT AND AN R.V.  
23 DEVELOPMENT, AND VIRGINIA LANDING, WHICH WAS STRICTLY AN  
24 R.V. DEVELOPMENT, LAKEWOOD SHORES, WHICH WAS A HOUSING AND  
25 R.V. DEVELOPMENT. THERE'S A COUPLE MORE, AND I CAN'T THINK  
26 OF THEM RIGHT NOW. BUT THERE WERE SEVERAL.

1 Q AND WERE THESE ALL GROUND-UP PROJECTS WHERE  
2 THEY WERE DEVELOPED FROM THE GROUND UP?

3 A SOME OF THEM WE PURCHASED, BUT THEY HAD VERY  
4 LITTLE AMENITIES WHEN WE PURCHASED THEM. AND THEN WE BUILT  
5 THEM UM.

6 Q WHAT WAS THE BUSINESS OF NACO?

7 A WELL, DEVELOPERS OF REAL ESTATE OF -- AND OF  
8 TIME-SHARE UNITS AND OF R.V. CAMPGROUNDS.

9 Q OVERALL, HOW MANY DIFFERENT SITES, R.V.  
10 SITES, DEVELOPED SITES, CAN NACO HAVE?

11 A I THINK ABOUT 45.

12 Q AND YOUR INVOLVEMENT WAS OVER 12 YEARS --  
13 BESIDES BEING A DISTRICT MANAGER IN CHARGE OF SUPERVISING,  
14 OVERSEEING CONSTRUCTION AND DEVELOPMENT, WHAT ELSE DID YOU  
15 DO WHILE YOU WERE WORKING AT NACO?

16 A WELL, THAT WAS BASICALLY IT. OF COURSE I  
17 WAS INVOLVED IN SALES AND MARKETING, ALSO.

18 Q I HEARD YOU SAY YOU WERE A PRESIDENT.

19 A YES.

20 Q HOW DID THAT COME UP? WERE YOU THE  
21 PRESIDENT OF NACO?

22 A NO. NO.

23 Q A SUBDIVISION OF NACO?

24 A OF THE VARIOUS CORPORATIONS WHERE THESE  
25 ENTITIES WERE. LIKE FOXWOOD CORPORATION WAS A SOUTH  
26 CAROLINA ENTITY. AND I WAS THE PRESIDENT OF IT, BUT NOT OF

1 NACO.

2 Q ALL RIGHT. SO AS THE PRESIDENT OF THE  
3 CORPORATION, YOU'RE RESPONSIBLE FOR ALL ASPECTS OF THE  
4 DEVELOPMENT AND MANAGEMENT AND OPERATIONS OF THE RESORTS  
5 THAT YOU WERE IN CHARGE OF?

6 A YES, SIR.

7 Q HOW MANY YEARS DID YOU FUNCTION AS A  
8 PRESIDENT IN CHARGE OF ALL ASPECTS OF THESE RESORTS?

9 A PROBABLY FOR FOUR YEARS.

10 Q DID YOU THEN LEAVE NACO AND MOVE ON TO  
11 SOMETHING ELSE?

12 A YES. YES. YES.

13 Q I'M KIND OF WONDERING WHY YOU LEFT.

14 A WELL, IN RETROSPECT I DO, TOO. BUT NO, THE  
15 CO-FOUNDER OF NACO AND THE CO-CHAIRMAN AND MYSELF DECIDED  
16 TO BUILD A WATER PARK IN THE GULF COAST AREA OF  
17 MISSISSIPPI. AND I WOULD MAKE A RECOMMENDATION TO ANYONE  
18 HERE; DON'T GO INTO THE WATER PARK BUSINESS. IT'S JUST --  
19 IT'S NOT GOOD.

20 Q ALL RIGHT. SO YOU WENT OFF ON A  
21 DIFFERENT-DIRECTION VENTURE?

22 A YES.

23 Q WAS THAT BEFORE YOUR HIATUS?

24 A NO. THAT WAS -- THAT WAS ABOUT A TWO-YEAR  
25 DEAL. AND THEN I STARTED TO WORK FOR LITTON INDUSTRIES.

26 Q OKAY. WHAT DID YOU DO FOR LITTON INDUSTRIES?

1           A           WELL, LITTON INDUSTRY IS A GOVERNMENT  
2 CONTRACTOR. THEY BUILD SHIPS. MAYBE A LOT OF YOU HAVE  
3 HEARD OF THE PASGOULA, MISSISSIPPI SHIPYARDS. LITTON  
4 INDUSTRY OWNS THOSE SHIPYARDS. AND I WENT TO WORK IN THE  
5 WAREHOUSING SECTION OF IT AND WORKED THERE.

6           Q           WHAT DID YOU DO AFTER YOU LEFT LITTON  
7 INDUSTRIES?

8           A           I WENT TO WORK FOR THE NOVELLI OPERATIONS.

9           Q           WHERE DID YOU START WITH MR. NOVELLI'S  
10 OPERATION?

11          A           I STARTED IN SALT SPRINGS, FLORIDA AT A  
12 RESORT CALLED "ADVENTURE RESORTS OF AMERICA."

13          Q           AND WHAT WERE YOU DOING FOR A.R.A.?

14          A           I WAS THE GENERAL MANAGER.

15          Q           DID A.R.A. HAVE MORE THAN ONE RESORT?

16          A           NO. IT WAS JUST ONE RESORT INVOLVED.

17          Q           SO YOU WERE THE ON-SITE RESORT MANAGER?

18          A           THAT'S CORRECT.

19          Q           ARE YOU A CAMPER?

20          A           NO, SIR. NO, SIR, I'M NOT.

21          Q           WHAT GOT YOU INTO THE A.R.A.?

22          A           WELL, FIRST OF ALL, I WAS TERRIBLY  
23 DISSATISFIED WITH MY JOB; ALTHOUGH, IT WAS A FAIR JOB. BUT  
24 I JUST DIDN'T LIKE IT BECAUSE I HAD ALWAYS -- FOR SO MANY  
25 YEARS I HAD BEEN INVOLVED IN THIS TYPE OF INDUSTRY, AND I  
26 JUST ENJOYED IT SO MUCH AND ESPECIALLY ENJOYED THE PEOPLE

1 AND ALL OF THE THINGS THAT WERE INVOLVED IN DEVELOPING LAND  
2 AND SO FORTH.

3 SO WHEN I HAD A CHANCE THROUGH A FRIEND OF  
4 MINE -- WHO AT THAT TIME WORKED FOR THE NOVELLI  
5 OPERATION -- WANTED ME TO COME TO WORK WITH HIM. AND HE  
6 HAD MENTIONED IT FOR TWO OR THREE YEARS. AND FINALLY THE  
7 OPPORTUNITY CAME THAT I COULD DO IT, AND IT WORKED OUT.  
8 AND I WENT OVER THERE.

9 Q BY THE WAY, YOU'RE MARRIED?

10 A OH, YES.

11 Q CHILDREN?

12 A OH, YES.

13 Q HOW MANY?

14 A TWO CHILDREN. TWO GIRLS. AND A BRAND  
15 SPANKING NEW GRANDSON. BRAND NEW.

16 Q CONGRATULATIONS.

17 A THANK YOU.

18 Q ALL RIGHT. SO WITH NOVELLI CAREER STARTING  
19 IN, WHAT YEAR WAS THAT? I KNOW YOU'RE TERRIBLE WITH DATES.

20 A I'M TERRIBLE WITH DATES. IT WAS ON MARCH  
21 THE 17TH. I REMEMBER THAT. AND IT WOULD HAVE HAD TO HAVE  
22 BEEN LIKE ALMOST SIX YEARS AGO, I GUESS.

23 Q OKAY. OVER THE LAST SIX YEARS WHAT HAVE YOU  
24 BEEN DOING?

25 A WELL, I'VE WORKED FOR -- OF COURSE FOR THE  
26 NOVELLI OPERATIONS, AND I'VE MANAGED THE RESORT AT SALT

1 SPRINGS. AND THEN I -- THEN FOR A TIME THEY HAD A HOTEL IN  
2 THE OCALA AREA WHICH I WAS THE MANAGER OF THAT HOTEL, ALSO.  
3 AND THEN I WENT -- THEY ASKED ME TO MOVE TO  
4 RIVER RANCH TO OVERSEE THAT OPERATION. AND FROM RIVER  
5 RANCH I WENT TO TRAILINN. AND FROM TRAILINN THEN TO THE  
6 ORLANDO RESORT WHERE I AM NOW.

7 Q IS TRAILINN ONE OF THE PLAINTIFFS' RESORTS  
8 IN THIS CASE?

9 A YES, SIR.

10 Q AND JUST FOR INFORMATION, WHAT'S THE  
11 PROXIMITY BETWEEN TRAILINN AND THE ORLANDO RESORT?

12 A WELL, THEY'RE A LONG WAYS APART, JUST -- I  
13 CAN ALMOST THROW A ROCK AND HIT THEM -- ABOUT A MILE AND A  
14 QUARTER BETWEEN THE TWO RESORTS.

15 Q OKAY. SO MR. NOVELLI'S OPERATION INCLUDES  
16 TWO RESORTS THAT ARE ALMOST RIGHT NEXT DOOR TO EACH OTHER?

17 A RIGHT.

18 Q WHAT YEARS WERE YOU AT TRAILINN AND THEN  
19 AFTER THAT MOVED TO ORLANDO?

20 A I CAME TO TRAILINN IN '96, I BELIEVE IT WAS.

21 Q AND YOU MOVED TO ORLANDO WHEN?

22 A AND I MOVED TO ORLANDO IN '97. YEAH, IN  
23 NOVEMBER OF '97.

24 Q WHO WAS YOUR EMPLOYER DURING THE SIX YEARS  
25 THAT YOU WORKED FOR MR. NOVELLI'S OPERATIONS?

26 A WELL, I GUESS TECHNICALLY ALL SEASONS

1 RESORT -- I MEAN -- I'M SORRY. TO BEGIN WITH, ADVENTURE  
2 RESORTS OF AMERICA WAS TECHNICALLY MY EMPLOYER.

3 Q AND WHEN YOU MOVED TO SALT SPRINGS, WHO WAS  
4 YOUR EMPLOYER?

5 A WELL, THAT'S WHERE I'M TALKING ABOUT.

6 Q OKAY.

7 A YEAH.

8 Q YOU'RE RIGHT, THAT IS.

9 AND THEN WHEN YOU BECAME A HOTEL MANAGER,  
10 WHO WAS YOUR EMPLOYER?

11 A WELL, PART OF MY DUTIES AND TIME AND ALL WAS  
12 CHARGED TO THE CORPORATION THAT OWNED THE RITZ HOTEL. AND  
13 FOR THE LIFE OF ME RIGHT THIS MOMENT, I CAN'T THINK OF THE  
14 NAME OF THE CORPORATION.

15 Q WHO WAS YOUR EMPLOYER WITH RIVER RANCH?

16 A AT RIVER RANCH I THINK THE NAME OF THE  
17 CORPORATION WAS "ALL SEASONS ORLANDO CORPORATION."

18 Q AND WHO WAS YOUR EMPLOYER AT TRAILINN?

19 A NEW TRAILINN CORPORATION.

20 Q AND AT ORLANDO, WHO DID YOU WORK FOR?

21 A AND AT ORLANDO FOR JUST A SHORT TIME FOR ALL  
22 SEASONS, AND THEN FOR TRAVEL AMERICA.

23 Q NOW, YOU GAVE A DEPOSITION IN THIS CASE; DO  
24 YOU RECALL THAT?

25 A YES, SIR.

26 Q YOU WERE ASKED QUESTIONS ABOUT HOW LONG

1 YOU'VE WORKED FOR TRAVEL AMERICA; DO YOU REMEMBER THAT?

2 A YES.

3 Q DO YOU -- AS A GENERAL PRACTICE DID YOU KIND  
4 OF RUN TOGETHER ALL OF THE NOVELLI RESORTS UNDER THE NAME  
5 "TRAVEL AMERICA" --

6 A OH, YES.

7 Q -- IN YOUR MIND?  
8 WHY DID YOU DO THAT?

9 A WELL, IT'S JUST SO EASY TO DO BECAUSE THEY  
10 ALL ARE A PART OF THE FAMILY.

11 Q OKAY. ALL RIGHT. NOW, SO YOU WERE -- HOW  
12 MANY -- STRIKE THAT.

13 YOU'VE BEEN WORKING WITH RESORT MEMBERSHIP  
14 ORGANIZATIONS SINCE 1996, AND YOU HAD TO DEAL WITH RESORT  
15 MEMBERS ALL THAT TIME; RIGHT?

16 A WELL, ACTUALLY MUCH LONGER THAN THAT.

17 Q ALL RIGHT. OVER WHAT PERIOD OF TIME IN  
18 DEALING WITH MEMBERS OF RESORTS, HANDS ON, FACE-TO-FACE,  
19 TOUCHING, SHAKING HANDS, TALKING, EVERYDAY KIND OF STUFF?

20 A WELL, FROM THE TIME I STARTED, ACTUALLY, IN  
21 1969 OR '70. ALTHOUGH, I WAS IN A SALES MODE. THAT'S  
22 WHERE IT ALL STARTS. I MEAN, YOU CAN'T HAVE MEMBERS  
23 WITHOUT THE SALES. AND SO THAT'S REALLY WHERE IT STARTS.

24 AND WHEN YOU -- YOU START KNOWING THE  
25 MEMBERS FROM THAT POINT FORWARD.

26 Q YOU GOT 30 YEARS OF EXPERIENCE WITH RESORT

1 MEMBERSHIP MEMBERS?

2 A YES.

3 Q AND YOU'VE ALSO OBSERVED THE INDUSTRY IN  
4 GENERAL, NOT JUST THE RESORTS THAT YOU WORKED AT OVER THOSE  
5 THREE YEARS?

6 A OF COURSE.

7 Q DO YOU CONSIDER YOURSELF AN EXPERT ON THE  
8 INDUSTRY?

9 A NO, BUT -- I DON'T CONSIDER MYSELF AN  
10 EXPERT. BUT, YOU KNOW, I EAT AND BREATHE THIS STUFF EVERY  
11 DAY OF MY LIFE, OR I HAVE FOR THE LAST 30 YEARS. BUT I  
12 DON'T HAVE -- I'M NOT SURE I WOULD CLASSIFY MYSELF AS AN  
13 EXPERT.

14 Q HAVE YOU SEEN OVER THOSE 30 YEARS A NUMBER  
15 OF RESORTS FROM TIME TO TIME WENT INTO BANKRUPTCY?

16 MR. SHERMAN: OBJECTION. LACKS FOUNDATION. ALSO  
17 GIVEN THE WITNESS'S TESTIMONY, HE DOES NOT HAVE THE  
18 QUALIFICATIONS TO TESTIFY AS AN EXPERT WITNESS. HE DOES  
19 NOT POSSESS SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING  
20 OR EDUCATION SUFFICIENT TO FORM THOSE OPINIONS.

21 MR. MOSHENKO: I'M ASKING FOR HIS PERSONAL  
22 OBSERVATIONS THAT ARE NOT NECESSARILY THAT -- LIMITED TO  
23 THAT AS BEING AN EXPERT. BUT REGARDLESS OF HIS WORDS, YOUR  
24 HONOR, HE HAS BEEN IN THE INDUSTRY FOR 30 YEARS.

25 THE COURT: PERSONAL OBSERVATIONS AND KNOWLEDGE HE  
26 MAY TESTIFY TO.

1 MR. MOSHENKO: I COULDN'T HEAR YOU.

2 THE COURT: PERSONAL OBSERVATIONS AND KNOWLEDGE HE  
3 MAY TESTIFY TO.

4 MR. MOSHENKO: CORRECT. VERY WELL.

5 THE COURT: NOT AS AN EXPERT.

6 MR. MOSHENKO: ALL RIGHT.

7 Q SO IN YOUR PERSONAL OBSERVATIONS, HAVE YOU  
8 SEEN ANY RESORTS, ORGANIZATIONS FOLLOWING BANKRUPTCIES OVER  
9 THE LAST 30 YEARS?

10 A YES.

11 Q GIVE US SOME QUANTIFICATION ABOUT -- FROM  
12 YOUR PERSONAL KNOWLEDGE.

13 A AS TO NUMBERS?

14 Q YES.

15 A OH, THAT WOULD BE TOUGH. YOU KNOW, SOME OF  
16 THEM I DIDN'T KNOW PERSONALLY. BUT I KNEW OF THEM, AND  
17 ALL. BUT THERE HAVE BEEN A LOT OF BANKRUPTCIES IN OUR  
18 INDUSTRY.

19 Q WHAT DOES "A LOT OF" MEAN?

20 MR. SHERMAN: OBJECTION. IT LACKS FOUNDATION AND  
21 NOW CALLS FOR HEARSAY.

22 THE COURT: SUSTAINED.

23 BY MR. MOSHENKO: Q HAVE YOU MANAGED RESORTS THAT  
24 HAVE FILED BANKRUPTCY?

25 A YES.

26 Q WHICH RESORTS WERE IN BANKRUPTCIES AT ANY

1 TIME DURING YOUR MANAGEMENT?

2 A WELL, THE -- PROBABLY THE FIRST ONE WAS THE  
3 HORSESHOE DEVELOPMENT CORPORATION. AS A MATTER OF FACT, I  
4 WAS HIRED TO BE THE SALES MANAGER. I WAS HIRED BY THE  
5 COURT TO BE THE SALES MANAGER THERE DURING THE BANKRUPTCY  
6 OF THAT ORGANIZATION.

7 Q AFTER HORSESHOE?

8 A AND IT FLOURISHED DURING THE BANKRUPTCY.

9 Q HORSESHOE FLOURISHED DURING THE BANKRUPTCY?

10 A YES, SIR.

11 Q WHAT DO YOU MEAN BY THAT?

12 MR. SHERMAN: OBJECTION, YOUR HONOR. EVENTS THAT  
13 TOOK PLACE 25 PLUS YEARS AGO ON A NONRELATED COMPANY --

14 THE COURT: I'LL SUSTAIN THE OBJECTION.

15 BY MR. MOSHENKO: Q WHAT WAS THE NEXT RESORT  
16 DEVELOPMENT THAT YOU MANAGED DURING A BANKRUPTCY?

17 A THAT I MANAGED WOULD HAVE BEEN UNDER THE  
18 NOVELLI REGIME, YES.

19 Q OKAY. SO HOW ABOUT A.R.A.; DID A.R.A. SALT  
20 SPRINGS EVER HAVE A BANKRUPTCY?

21 A YES, SIR.

22 Q WAS THAT A CHAPTER 11 REORGANIZATION?

23 A YES.

24 Q OKAY. HOW DID -- WHAT EFFECT ON THE RESORT  
25 DID THE A.R.A. BANKRUPTCY HAVE DURING YOUR PERSONAL  
26 OBSERVATIONS?

1 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

2 THE COURT: OVERRULED.

3 YOU MAY ANSWER.

4 THE WITNESS: I'M SORRY?

5 BY MR. MOSHENKO: Q DESCRIBE WHAT EFFECT YOU  
6 PERSONALLY OBSERVED THE FILING OF THE BANKRUPTCY TO HAVE,  
7 IF ANY, ON A.R.A.'S SALT SPRINGS RESORT.

8 A IT REALLY DIDN'T HAVE ANY, AS FAR AS THE  
9 MEMBERS WERE CONCERNED.

10 Q OKAY.

11 A NOW SOMETIMES IT WAS AN ADVANTAGE BECAUSE IT  
12 GAVE US A STABILIZING EFFECT.

13 Q WAS THERE A WHOLESALE MEMBERSHIP EVACUATION  
14 DUE TO THE FILING OF THE BANKRUPTCY?

15 A OH, ABSOLUTELY NOT, NO, SIR.

16 Q WAS THE -- WERE THE OPERATIONS OF THE SALT  
17 SPRINGS RESORT BETTER UNDER THE BANKRUPTCY OR WORSE UNDER  
18 THE BANKRUPTCY CONDITIONS AS YOU MANAGED IT?

19 MR. SHERMAN: OBJECTION. YOUR HONOR, MAY WE  
20 APPROACH?

21 THE COURT: ALL RIGHT.

22 (DISCUSSION OFF THE RECORD.)

23 BY MR. MOSHENKO: Q ALL RIGHT. MR. MERRITT, TO  
24 RETURN TO THE SALT SPRINGS BANKRUPTCY SUBJECT.

25 A YES.

26 Q DURING WHAT YEAR OR YEARS ARE YOU REFERRING

1 TO THAT YOU MANAGED THE SALT SPRINGS RESORT WHILE IT WAS IN  
2 BANKRUPTCY?

3 MR. SHERMAN: OBJECTION. LACK OF FOUNDATION FOR  
4 THE REASONS EXPRESSED.

5 THE COURT: OVERRULED.

6 BY MR. MOSHENKO: Q YOU MAY ANSWER.

7 DURING WHAT YEAR OR YEARS DID YOU OPERATE  
8 THE SALT SPRINGS RESORT WHILE IT WAS IN BANKRUPTCY?

9 A I BELIEVE THAT WAS, LIKE, '94.

10 Q ALL RIGHT. AND WHAT DID YOU OBSERVE -- WHAT  
11 EFFECT IF ANY DID YOU OBSERVE IT HAVE -- THE BANKRUPTCY  
12 HAVE ON THE OPERATION OF THE RESORT?

13 YOU ALREADY TOLD US THE MEMBERS IT DIDN'T  
14 AFFECT.

15 A RIGHT.

16 Q OR IT MAY HAVE EVEN IMPROVED WHAT ABOUT THE  
17 RESORT OPERATION?

18 MR. SHERMAN: OBJECTION. VAGUE AS TO TIME.

19 THE COURT: SUSTAINED.

20 BY MR. MOSHENKO: Q DURING THIS BANKRUPTCY IN  
21 ABOUT 1994 WHEN YOU WERE MANAGING THE RESORT, WHAT EFFECT  
22 IF ANY DID YOU OBSERVE THE BANKRUPTCY TO HAVE ON THE  
23 RESORT?

24 A WELL, IT -- IN A SENSE IT HELPED A LITTLE,  
25 BECAUSE IT -- THERE WAS -- WE PAID THE BILLS, AND  
26 EVERYTHING WENT VERY SMOOTH DURING THE BANKRUPTCY.

1 Q ALL RIGHT. SO DID PEOPLE CONTINUE TO COME  
2 AND VISIT THE RESORT TO THE SAME EXTENT AND DEGREE AS  
3 BEFORE THE BANKRUPTCY THAN DURING THE BANKRUPTCY?

4 A OF COURSE. AND WE WERE EVEN ABLE TO SELL  
5 DURING THE BANKRUPTCY, TOO.

6 Q YOU WERE --

7 A WE NOTIFIED THE PEOPLE THAT IT WAS IN  
8 BANKRUPTCY, BUT WE CONTINUED TO MAKE SALES DURING THIS  
9 TIME.

10 Q DID -- WERE YOU SELLING MEMBERSHIPS?

11 A YES.

12 Q THROUGH THAT RESORT?

13 A YES.

14 Q DISCLOSING THE EXISTENCE OF THE BANKRUPTCY?

15 A ABSOLUTELY, OF COURSE.

16 Q DID THE DISCLOSURE OF THE BANKRUPTCY PREVENT  
17 SALES?

18 A NO.

19 Q AFTER THE BANKRUPTCY DID IT EMERGE FROM  
20 BANKRUPTCY?

21 A YES.

22 Q WITH A PLAN TO YOUR KNOWLEDGE?

23 A YES.

24 Q AFTER THE EMERGENCE FROM BANKRUPTCY, DID THE  
25 MEMBERSHIP GROW, DECLINE, STAY THE SAME, WHAT? WHAT  
26 EFFECT?

1           A           WELL, IT -- IT PRETTY WELL STAYED THE SAME  
2   AT THAT TIME.

3           Q           SO DURING BANKRUPTCY, THE NUMBER OF MEMBERS  
4   AT THAT RESORT IMPROVED, INCREASED OR DECREASED?

5           A           IT MAY HAVE INCREASED SOME.

6           Q           OKAY. LET'S GO ON.

7                        AFTER SALT -- OTHER THAN SALT SPRINGS  
8   BANKRUPTCY, DID YOU EVER OPERATE A RESORT THAT WAS IN  
9   BANKRUPTCY?

10          A           YES. RIVER RANCH.

11          Q           OKAY. WHAT YEAR WAS THAT THAT YOU OPERATED  
12   WHILE IN A BANKRUPTCY?

13          A           THAT WAS IN '95, I GUESS. '95 OR '96.

14          Q           WHAT EFFECT DID THE BANKRUPTCY HAVE ON THE  
15   MEMBERSHIP OF RIVER RANCH DURING THE BANKRUPTCY?

16          A           WELL, WE REALLY HAD NOT GOTTEN RIVER RANCH  
17   TO A POINT THAT WE HAD A MEMBERSHIP THERE. IT WAS JUST A  
18   STARTUP PROGRAM ON THAT FACILITY.

19          Q           LET'S GO ON.

20                        AFTER RIVER RANCH, DID TRAILINN EVER  
21   EXPERIENCE A BANKRUPTCY?

22          A           YES, SIR.

23          Q           WHAT YEAR OR YEARS WHILE YOU WERE THERE?

24          A           THAT WAS IN '97.

25          Q           OKAY. WHAT EFFECT DURING 1997 DID THE  
26   BANKRUPTCY -- THAT WAS AN ALL SEASONS BANKRUPTCY; RIGHT?

1           A           NO. IT WAS UNDER THE FIRST NATIONWIDE, BUT  
2 I THINK IT HAD A SEPARATE BANKRUPTCY.

3           Q           OKAY. FIRST NATIONWIDE.

4           A           YES.

5           Q           WHAT EFFECT, IF ANY, DID THE FIRST  
6 NATIONWIDE BANKRUPTCY HAVE ON THE MEMBERSHIP OF TRAILINN  
7 BASED ON YOUR PERSONAL OBSERVATIONS?

8           A           NONE.

9           Q           WHAT EFFECT IF ANY DID IT HAVE ON THE  
10 OPERATIONS OF THE RESORTS, THE MANAGEMENT OPERATION?

11          A           NONE.

12          Q           AND THEN THE ORLANDO RESORT, THAT WAS AN ALL  
13 SEASONS RESORT?

14          A           THAT'S CORRECT.

15          Q           SO WE KNOW THAT THERE WAS AN ALL SEASONS  
16 BANKRUPTCY FILED IN 1997?

17          A           RIGHT.

18          Q           YOU WERE THE MANAGER DURING --

19          A           NO. WELL, I CAME IN AT THE VERY LAST OF  
20 '97.

21          Q           ALL RIGHT. BUT TRAILINN AND ORLANDO ARE  
22 RIGHT NEXT DOOR TO EACH OTHER?

23          A           THAT'S CORRECT. THAT'S CORRECT.

24          Q           AND SO DURING THE TIME THAT YOU WERE  
25 MANAGING TRAILINN, WERE YOU EVER AT THE ORLANDO RESORT SITE?

26          A           OH, SURE.

1 Q HOW FREQUENTLY?

2 A FAIRLY OFTEN I DRIVE OVER THERE.

3 Q WHILE YOU WERE MANAGING ORLANDO, WERE YOU AT  
4 THE TRAILINN SITE?

5 A YES.

6 Q HOW FREQUENTLY?

7 A I DRIVE OVER QUITE OFTEN.

8 Q OKAY. SO WERE YOU ABLE TO OBSERVE OF YOUR  
9 OWN PERSONAL KNOWLEDGE WHAT EFFECTS, IF ANY, ORLANDO  
10 EXPERIENCED AS A RESULT OF THE BANKRUPTCY?

11 A THERE WAS NO EFFECT.

12 Q AND HOW ABOUT MEMBERS, THE TRAILINN AND  
13 ORLANDO MEMBERS, SINCE THEY WERE PART OF THE NOVELLI  
14 ORGANIZATION, WERE THOSE MEMBERS INTERCHANGING WITH THE  
15 RESORTS?

16 A YES. YES.

17 Q AS A MATTER OF FACT, DIDN'T MR. NOVELLI HAVE  
18 SOME SORT OF -- I'LL CALL IT A ROUTINE, WHERE HE INTERACTED  
19 THOSE TWO RESORTS?

20 A YES.

21 MR. SHERMAN: OBJECTION. THAT'S A LEADING  
22 QUESTION.

23 THE COURT: SUSTAINED.

24 BY MR. MOSHENKO: Q OKAY. DID MR. NOVELLI HAVE  
25 SOME KIND OF A ROUTINE WHEREIN HE INTERACTED THOSE TWO  
26 RESORTS?

1 A YES.

2 Q COULD YOU EXPLAIN WHAT IT WAS?

3 A YES. AND IN OUR SYSTEM PEOPLE CAN USE A  
4 RESORT FOR TWO WEEKS, AND THEN THEY HAVE TO BE OUT A WEEK;  
5 AND THEN THEY CAN GO BACK FOR TWO WEEKS AND BE OUT A WEEK,  
6 AND THEY CAN CONTINUE DOING THIS. BUT WHERE YOU HAVE  
7 RESORT -- SEVERAL RESORTS IN AN AREA, THEY CAN GO TWO WEEKS  
8 AT THIS RESORT AND THEN GO OVER TO THIS RESORT AND GO FOR  
9 TWO WEEKS AND TO ANOTHER RESORT FOR TWO WEEKS AND BACK TO  
10 THE FIRST ONE, AND THEY CAN JUST CONTINUE DOING THIS ALL  
11 THE TIME.

12 Q OKAY. SO UNDER THE NOVELLI MULTI-PARK  
13 SYSTEM, THERE WAS NO SEVEN-DAY LIMIT?

14 A NO.

15 Q WAS THERE A 14-DAY LIMIT?

16 A THERE WAS IN YOUR HOME PARK. BUT THEN YOU  
17 COULD GO TO ANOTHER PARK.

18 Q COULD MEMBERS ESSENTIALLY SPEND 350 -- 365  
19 DAYS A YEAR --

20 A YES, SIR.

21 Q -- IN NOVELLI'S RESORTS?

22 A YES, SIR.

23 Q OKAY. SO -- AND DID MEMBERS DO THAT?

24 A OH, ABSOLUTELY.

25 Q SO YOU -- THE MEMBER POOL THAT YOU WERE  
26 DEALING WITH AT TRAILINN, WAS IT BASICALLY -- WAS IT THE

1 SAME MEMBER POOL THAT YOU DEALT WITH AT ORLANDO?

2 A WELL, EACH RESORT HAD ITS OWN MEMBERS. I  
3 MEAN, THEY WITH THEIR HOME PARK MEMBERS, BUT THEY WENT BACK  
4 AND FORTH BETWEEN THE TWO.

5 Q NOW, MOVING AWAY FROM THE BANKRUPTCY  
6 QUESTION, YOU WERE MANAGING TRAILINN AT THE TIME THAT THE  
7 DEFENDANTS, AFFINITY AND COAST TO COAST, CONDUCTED THE  
8 CONDUCT THAT RESULTED IN THIS LAWSUIT; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND SO YOU WERE ABLE TO OBSERVE WHAT EFFECT,  
11 IF ANY, OR WHAT CHANGES, IF ANY, OCCURRED WITH RESPECT TO  
12 THE TRAILINN ORLANDO RESORTS?

13 A YES, SIR.

14 Q WHAT CHANGES DID YOU SEE?

15 A WELL, FIRST OF ALL, WE EXPERIENCED A LOT  
16 LESSER AMOUNT OF PARTICIPATION. A LOT OF PEOPLE DIDN'T  
17 COME THAT HAD BEEN COMING. THIS WAS IN THE WINTER OF '97.  
18 IN FACT, THAT WAS THE SAME YEAR THAT WE BROUGHT THE  
19 THOUSAND ADVENTURES FOLKS INTO OUR SYSTEM.

20 AND SO BASED ON OUR PAST EXPERIENCE AT  
21 TRAILINN AND ORLANDO, WE THOUGHT WITH THE INCLUSION OF THE  
22 T.A.I. MEMBERS, WE WOULD BE SWAMPED IN THE WINTERTIME. SO  
23 I WENT OUT AND MADE ARRANGEMENTS TO LEASE ADDITIONAL  
24 FACILITIES FROM THREE OTHER DEVELOPERS SO THAT WE WOULD  
25 HAVE ENOUGH ROOM FOR OUR MEMBERS FOR THAT WINTER. BUT AS  
26 IT TURNED OUT, IT WAS BAD BECAUSE THE MEMBERS DIDN'T SHOW

1 UP LIKE THEY WERE SUPPOSED TO.

2 Q WHAT KIND OF MEMBERS ARE A PART OF THE  
3 MEMBERSHIPS OF TRAILINN ORLANDO? WHAT ARE THE MEMBER  
4 CHARACTERISTICS?

5 A MOST OF OUR MEMBERS ARE JUST GOOD,  
6 HARD-WORKING FOLKS THAT HAVE ALL THEIR LIFE WANTED TO GET  
7 AWAY AND TRAVEL AND DO THIS WHEN THEY RETIRED. AND OF  
8 COURSE A LOT OF THOSE PEOPLE BOUGHT THEIR MEMBERSHIP PRIOR  
9 TO THEIR RETIREMENT SO THAT THEY COULD DO THAT WHEN THEY  
10 RETIRE. AND, OF COURSE, WHEN THEY RETIRED, THEY BOUGHT  
11 THEIR MOTOR HOMES AND STUFF, AND THEY TRAVELED ALL OVER THE  
12 UNITED STATES USING THESE RESORTS. WE'VE GOT THEM ALL OVER  
13 THE COUNTRY.

14 Q WHAT ABOUT AGE BRACKETS?

15 A WELL, OUR MEMBERSHIP RIGHT NOW IS A RATHER  
16 ELDERLY MEMBERSHIP. THEY -- I WOULD SAY OUR AVERAGE MEMBER  
17 RIGHT NOW IS PROBABLY, OH, 60 YEARS OLD.

18 Q WHAT ABOUT BACK IN 1997?

19 A WELL, IT WOULD HAVE BEEN -- THE AVERAGE THEN  
20 WOULD HAVE BEEN, WHAT, 57 YEARS OLD, PROBABLY.

21 Q PRETTY CLOSE TO THE SAME?

22 A YES.

23 THE COURT: DO YOU THINK THAT'S ELDERLY?

24 THE WITNESS: WELL, THAT'S AN AVERAGE, YOUR HONOR.

25 MR. MOSHENKO: HE CALLED ME OLD.

26 THE WITNESS: IT'S NOT NEAR AS OLD AS IT USED TO BE.

1 BY MR. MOSHENKO: Q TALK TO US ABOUT THE  
2 RELATIONSHIP BETWEEN THOSE MEMBERS AND THEIR HOME RESORTS.

3 A WELL, THEY -- WHEN THEY BUY, THEY BUY A HOME  
4 RESORT, AND IT'S A LITTLE DIFFERENT WITH OUR COMPANY  
5 BECAUSE SO MANY OF THE PEOPLE WHO BOUGHT IN THE SYSTEM  
6 WANTED TO GO TO FLORIDA AS -- AND THAT WAS THE -- THE MEANS  
7 TO AN END. IT WAS TO GET TO FLORIDA. AND SO THEIR HOME  
8 PARK WASN'T AS IMPORTANT AS GETTING TO COME TO THE ORLANDO  
9 AREA AND SPEND THE WINTER.

10 Q ALL RIGHT. NOW, TALK ABOUT THE  
11 INTERRELATIONSHIP BETWEEN THE REGULAR MEMBERS THAT COME TO  
12 YOUR RESORTS. AND BY THAT I'M NOW TALKING ABOUT TRAILINN  
13 AND ORLANDO AND HOW THEY INTERACT WITH EACH OTHER.

14 MR. SHERMAN: OBJECTION. THAT CALLS FOR HEARSAY  
15 AND LACKS FOUNDATION.

16 THE COURT: SUSTAINED.

17 BY MR. MOSHENKO: Q FROM YOUR PERSONAL  
18 OBSERVATION, WHAT DID YOU OBSERVE ABOUT THE CONTINUITY OF  
19 RELATIONSHIPS BETWEEN MEMBERS THAT FREQUENTED AND STAYED AT  
20 THE TRAILINN AND ORLANDO RESORTS?

21 A WELL, OUR MEMBERS HAVE BEEN MEMBERS FOR  
22 SEVERAL YEARS, AND THEY HAVE ABSOLUTELY BECOME A FAMILY  
23 UNIT. IT'S AMAZING IN THE FALL TO WATCH THESE FOLKS AS  
24 THEY COME INTO THE RESORT, BECAUSE THEY WILL RUN TO MEET  
25 SOMEONE THAT THEY SEE COMING IN IN AN R.V. THAT THEY  
26 HAVEN'T SEEN FOR A YEAR. AND THEY JUST -- THEY'RE TOGETHER

1 LIKE A GREAT BIG FAMILY. THEY JUST HAVE A LOT OF FUN  
2 TOGETHER.

3 AND THEY -- YOU FIND THEY WILL TRAVEL  
4 TOGETHER. ONE SAYS, WELL, I'M GOING OVER TO THIS RESORT,  
5 AND THEN A BUNCH OF THEM WILL GO OVER THERE TOGETHER. AND  
6 THESE ARE PEOPLE WHO DO NOT KNOW EACH OTHER IN ANY WAY,  
7 SHAPE OR FORM, OTHER THAN THEIR ASSOCIATION WITH THE R.V.  
8 SYSTEM.

9 Q OKAY. NOW, AS FAR AS TRAILINN AND ORLANDO  
10 ARE CONCERNED AND THE MEMBERS THAT DEALT WITH THOSE TWO  
11 RESORTS, DID MR. NOVELLI EVER TRANSFER MEMBERS BETWEEN  
12 THOSE TWO RESORTS?

13 A SURE.

14 Q OKAY. WHAT EFFECT, IF ANY, DID IT HAVE ON  
15 THE MEMBERS' MEMBERSHIPS WHEN THEY WERE TRANSFERRED BETWEEN  
16 TRAILINN -- BASED ON YOUR PERSONAL OBSERVATIONS --

17 MR. SHERMAN: OBJECTION. CALLS FOR A LEGAL  
18 CONCLUSION.

19 THE WITNESS: NONE.

20 THE COURT: SUSTAINED.

21 BY MR. MOSHENKO: Q DID YOU OBSERVE MEMBERS THAT  
22 WERE TRANSFERRED FROM ORLANDO TO TRAILINN OR THE OTHER  
23 DIRECTION TO QUIT COMING TO THOSE RESORTS?

24 A DID THEY QUIT COMING?

25 Q DID THEY QUIT COMING TO THOSE RESORTS --

26 A NO.

1 Q -- BECAUSE THEY WERE TRANSFERRED?

2 A NO, ABSOLUTELY NOT.

3 Q ALL RIGHT. HAVE YOU EVER WITNESSED THERE TO  
4 BE NEGATIVE CONSEQUENCES TO THOSE RESORTS OF HAVING  
5 MEMBERSHIPS TRANSFERRED BETWEEN THOSE TWO RESORTS?

6 A NO, SIR.

7 Q NOW, SINCE THOSE TWO RESORTS ARE SO CLOSE TO  
8 EACH OTHER, DID THEY EVER -- DID EITHER OF THEM EVER CLOSE  
9 UP WHILE THE OTHER REMAINED OPEN?

10 A YES. WE'RE PRIMARILY IN THAT REGION, IN  
11 THAT AREA OF FLORIDA. WE'RE PRIMARILY A WINTER RESORT.  
12 THE FOLKS COME FROM UP NORTH TO THE WARMER CLIMATE IN  
13 FLORIDA FOR THE WINTER. AND CONSEQUENTLY IN THE SUMMERTIME  
14 OUR RESORTS ARE NOT VERY BUSY AT ALL. AND A LOT OF TIMES  
15 WE WOULD SHUT ONE DOWN AND LET EVERYBODY USE ONE OF THE  
16 RESORTS RATHER THAN PAYING ALL THE EXPENSES.

17 NOW, WE ALWAYS -- WE HAD PERSONNEL AT BOTH  
18 RESORTS. I MEAN, THEY WEREN'T CLOSED LOCK AND KEY, BUT WE  
19 WOULD USE ONE RESORT OR THE OTHER TO HOUSE FOLKS.

20 Q HOW WAS IT DETERMINED WHEN OR WHICH RESORT  
21 WOULD SHUT -- WHICH RESORT WOULD HOST ALL OF THE MEMBERS  
22 FOR BOTH RESORTS?

23 A I DON'T KNOW HOW THAT DECISION WAS MADE.

24 Q WAS THERE EVER A TIME WHEN THE RESORT -- THE  
25 ORLANDO RESORT WAS SHUT DOWN INVOLUNTARILY?

26 A NO, NOT THAT I KNOW OF.

1 Q UNDER ANY CIRCUMSTANCE WHERE ORLANDO WAS  
2 MADE UNAVAILABLE, TRAILINN COULD HAVE HANDLED --

3 A OH, YES, SIR. YES, SIR.

4 Q COULD YOU TELL US ABOUT THE QUALITY OF THE  
5 ORLANDO RESORT IN 1996 AND 1997, WHAT FACILITIES IT HAD?  
6 WHAT WERE THE CONDITIONS THERE?

7 A WELL, THE ORLANDO RESORT HAS A NICE  
8 CLUBHOUSE. IT HAS A RATHER LARGE SWIMMING POOL. IT HAS  
9 MINIATURE GOLF, TENNIS COURTS. VOLLEYBALL HORSESHOE  
10 PITCHING, WHICH IS A BIG DEAL WITH THOSE FOLKS. ALL KINDS  
11 OF RECREATIONAL AMENITIES SUCH AS THAT, AND THEY'RE ALL IN  
12 GOOD REPAIR.

13 Q AND WHAT ABOUT THE TRAILINN FACILITIES; CAN  
14 YOU DESCRIBE THOSE?

15 A BASICALLY THE IDENTICAL FACILITIES. THEY  
16 HAD A CLUBHOUSE. THEY HAD TWO SWIMMING POOLS OVER THERE.  
17 THEY DID NOT HAVE A TENNIS COURT, BUT THEY HAD EVERYTHING  
18 ELSE. THEY HAD ALL THE OTHER AMENITIES.

19 Q AND WHAT ABOUT THE QUALITY OF THOSE  
20 FACILITIES?

21 A THEY WERE VERY GOOD. VERY GOOD.

22 Q THAT'S YOUR MANAGEMENT; RIGHT?

23 A THAT'S RIGHT.

24 Q IT WOULDN'T BE ANYTHING OTHER?

25 A I WOULDN'T SAY THEY WERE ANYTHING BUT GOOD.

26 Q NOW, BOTH OF THOSE RESORTS WERE RESORTS THAT

1 WERE AFFILIATED WITH COAST TO COAST; CORRECT?

2 A THAT'S CORRECT.

3 Q DURING WHAT PERIOD OF TIME TO YOUR KNOWLEDGE  
4 WERE THEY COAST-AFFILIATED RESORTS?

5 A WELL, THEY WERE AFFILIATED WITH COAST TO  
6 COAST ALL THE TIME THAT I WAS WITH THE COMPANY UNTIL WE --

7 Q AND YOU'RE FAMILIAR WITH THE FACT THAT COAST  
8 RETAINS INDEPENDENT PEOPLE WHO ARE NOT COAST EMPLOYEES TO  
9 RATE AND ASSIGN A RATING TO RESORTS?

10 A YES.

11 Q OKAY. AND SO WHAT WERE THE RATINGS THAT  
12 WERE ASSIGNED TO TRAILINN IN ORLANDO DURING 1995, 1996 AND  
13 1997?

14 MR. SHERMAN: OBJECTION. HEARSAY.

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

16 THE WITNESS: WELL, I DISAGREED WITH THEIR RATING  
17 BECAUSE I THOUGHT WE WERE A 5, BUT THEY GAVE US 4 STARS.

18 BY MR. MOSHENKO: Q OKAY. NOW, WERE THOSE  
19 RESORTS ALSO AFFILIATED WITH R.P.I.?

20 A YES.

21 Q DURING WHAT PERIOD OF TIME?

22 A THE SAME PERIOD OF TIME.

23 Q OKAY. AND DID R.P.I. MEMBERS ATTEND AND USE  
24 THE RESORTS --

25 A YES.

26 Q -- AT THE SAME TIME COAST TO COAST MEMBERS

1 DID?

2 HAVE YOU EVER BEEN A MEMBER OF COAST TO  
3 COAST?

4 A NO, SIR.

5 Q BUT YOU'RE FAMILIAR WITH BOTH COAST TO  
6 COAST'S PROGRAM AND R.P.I.'S PROGRAM?

7 A PRETTY MUCH SO.

8 Q HOW DID YOU GET THAT FAMILIARITY?

9 A I'M SORRY?

10 Q HOW DID YOU GET THAT FAMILIARITY?

11 A OH, WELL, FROM BEING AT THE RESORTS AND  
12 ADMINISTERING THE ON-SITE PROGRAMS.

13 Q WELL, YOU WERE AN ADMINISTRATOR OF THE COAST  
14 TO COAST PROGRAM AT YOUR RESORT; RIGHT?

15 A YES.

16 Q AND ADMINISTRATOR OF THE R.P.I. PROGRAM?

17 A YES.

18 Q SO YOU HAVE OPINIONS AS TO THE -- AS TO HOW  
19 THE TWO RECIPROCAL USE SYSTEMS COMPARE TO EACH OTHER?

20 A YES.

21 MR. SHERMAN: OBJECTION. IT'S NOT RELEVANT. CALLS  
22 FOR EXPERT TESTIMONY, WHICH THIS COURT HAS ALREADY RULED  
23 ON.

24 THE COURT: SUSTAINED.

25 BY MR. MOSHENKO: Q WELL, WHAT ARE THE BENEFITS  
26 THAT ARE AVAILABLE THROUGH THE R.P.I. SYSTEM?

1 MR. SHERMAN: OBJECTION. THE SAME OBJECTIONS.  
2 RELEVANCY. GOES BEYOND THE SCOPE.

3 MR. MOSHENKO: MAY WE APPROACH ON THIS, YOUR HONOR?

4 THE COURT: YOU MAY APPROACH.

5 (DISCUSSION OFF THE RECORD.)

6 BY MR. MOSHENKO: Q IN THE FALL OF 1997 YOU WERE  
7 MADE AWARE THAT MR. NOVELLI WAS ELECTING TO CHANGE -- TO GO  
8 WITH R.P.I. AS HIS RECIPROCAL USE PROVIDER?

9 A YES, SIR.

10 Q OKAY. AND THEN YOU WERE MADE AWARE OF THE  
11 FACT THAT COAST SENT LETTERS TO THE RESORT MEMBERS WHO WERE  
12 MEMBERS OF YOUR RESORTS?

13 A YES, SIR.

14 Q NOW, AS A RESULT OF THE DROP-OFF OF MEMBER  
15 USAGE THAT YOU PERSONALLY WITNESSED IN 1998 AS COMPARED TO  
16 1997, DID YOUR RESORT SUFFER ANY DAMAGE?

17 A OH, YES.

18 MR. SHERMAN: OBJECTION. EXCUSE ME. OBJECTION.  
19 YOUR HONOR, WE WENT OVER THIS IN CHAMBERS, AND THE COURT  
20 HAS MADE SOME VERY SPECIFIC RULINGS. IT'S BEYOND THE  
21 SCOPE --

22 THE COURT: SUSTAINED.

23 MR. SHERMAN: -- OF THE TESTIMONY.

24 MR. MOSHENKO: YOUR HONOR, MAY WE TALK ABOUT THIS?  
25 BECAUSE IT'S CONSISTENT WITH THE RULING.

26 THE COURT: WE TALKED ABOUT IT IN CHAMBERS AT

1 LENGTH, COUNSEL.

2 MR. MOSHENKO: IF I MAY, YOUR HONOR, YOUR HONOR  
3 SAID LIMIT HIS TESTIMONY TO TWO RESORTS. I TALKED ABOUT --  
4 I'M TALKING ABOUT THE TWO RESORTS. I'M NOT TALKING ABOUT  
5 THE ENTIRE SYSTEM. WHAT WERE THE EFFECTS ON YOUR RESORT.

6 THE COURT: ALL RIGHT. FOR THAT LIMITED PURPOSE  
7 I'LL ALLOW IT.

8 MR. SHERMAN: YOUR HONOR, MAY WE ASK THAT THE  
9 QUESTION BE ASKED THAT WAS ASKED THAT WE BROUGHT UP IN  
10 CHAMBERS?

11 THE COURT: ALL RIGHT.

12 MR. SHERMAN: HOW MANY PAYING DUES --

13 MR. MOSHENKO: COUNSEL MAY ASK THAT QUESTION AS HE  
14 CHOOSES.

15 MR. SHERMAN: HOW MANY MEMBERS STOPPED PAYING DUES.  
16 THAT WAS THE QUESTION.

17 BY MR. MOSHENKO: Q OKAY. AS A RESULT OF WHAT YOU  
18 WITNESSED IN YOUR RESORT -- AND I'M ONLY TALKING ABOUT YOUR  
19 TWO RESORTS THAT YOU WERE INVOLVED IN -- DID THOSE RESORTS  
20 SUFFER DAMAGE AS A RESULT OF WHAT YOU WITNESSED OCCURRED IN  
21 1998 VERSUS 1997?

22 A WELL, YES.

23 Q AND DESCRIBE WHAT KIND OF DAMAGE YOU  
24 OBSERVED AT THE TWO TO OCCUR.

25 A WELL, WE LOST A LOT OF MEMBERS. AND  
26 CONSEQUENTLY THE MEMBERS PAY AN ANNUAL MAINTENANCE FEE TO

1 BELONG TO THE SYSTEM. AND THAT ANNUAL MAINTENANCE FEE WHEN  
2 YOU DON'T GET IT -- I MEAN, THAT'S WHAT IS USED TO MAINTAIN  
3 THE SYSTEM ARE THOSE ANNUAL MAINTENANCE FEES. AND WHEN OUR  
4 INCOME DROPPED, IT ADVERSELY AFFECTED THE WHOLE OPERATION.

5 Q DID MEMBERS COME TO YOU WITH THE COAST TO  
6 COAST LETTERS?

7 A YES. I HAVE HAD SOME COME TO ME.

8 Q AND THEY PRESENTED THOSE LETTERS TO YOU  
9 INDICATING THAT THEY RECEIVED THOSE LETTERS?

10 A YES.

11 Q THEY WERE MEMBERS OF THE RESORTS THAT YOU  
12 WERE MANAGING?

13 A YES.

14 Q NOW, YOU KNOW RAY NOVELLI, MR. MERRITT,  
15 DON'T YOU?

16 A YES, I DO.

17 Q AND DID MR. NOVELLI VISIT THE RESORTS WHILE  
18 YOU WERE MANAGING THEM?

19 A YES.

20 Q SO YOU HAVE PERSONALLY OBSERVED HIM AT THE  
21 RESORTS AND MEMBER REACTIONS TO HIM?

22 A YES, SIR, I HAVE.

23 Q WHY DON'T YOU TELL US WHAT YOU PERSONALLY  
24 OBSERVED TAKE PLACE WHEN MR. NOVELLI COMES TO THE RESORTS.

25 MR. SHERMAN: OBJECTION TO THE EXTENT THAT MEMBER  
26 REACTIONS ARE INCLUDED IN THAT QUESTION. MEMBER REACTIONS

1       CONSTITUTES INADMISSIBLE HEARSAY.

2                   BY MR. MOSHENKO:   Q   DON'T TELL US ANYTHING THAT  
3   WAS SAID BY ANY MEMBER.   JUST TELL US WHAT YOU OBSERVED  
4   HAPPENING.

5                   A           WELL, WHEN RAY COMES -- WHEN MR. NOVELLI  
6   COMES TO ONE OF THE RESORTS, IT'S KIND OF LIKE THE PIED  
7   PIPER.  I MEAN, THEY JUST FLOCK AROUND HIM AND LOVE TO HEAR  
8   HIM GIVE MEETINGS AND STUFF.  SO THEY ALL LIKE TO SHAKE HIS  
9   HAND AND BE A PART OF THE FAMILY.

10                  Q           WHAT DO YOU SEE MR. NOVELLI TO DO WHEN THOSE  
11   PEOPLE ARE THERE?

12                  A           WELL, HE IS IN AND AMONG THEM.

13                  Q           WHILE YOU WORKED FOR OTHER RESORT COMPANIES,  
14   DID YOU EVER SEE ANY OF THE OWNERS COME ON DOWN?

15                  A           NO.

16                  Q           AND PRESS THE FLESH AND ALL OF THAT?

17                  A           NO.  UNFORTUNATELY THEY DIDN'T DO THAT.

18                  Q           SO, HOW ABOUT MARLIES NOVELLI; DOES SHE COME  
19   WITH HIM?

20                  A           THE SAME EXACT THING.

21                  Q           THE SAME EXPERIENCE?

22                  A           AND I HAVE MEMBERS EVEN TO THIS DAY COME  
23   INTO MY OFFICE; AND SOMETHING WILL BE SAID ABOUT THE  
24   NOVELLIS, AND THEY'RE REAL QUICK, OH, YES --

25                  MR. SHERMAN:  OBJECTION.  THAT SEEKS INADMISSIBLE  
26   HEARSAY.

1 THE COURT: SUSTAINED.

2 BY MR. MOSHENKO: Q MR. MERRITT, WE'RE NOT ALLOWED  
3 TO TALK ABOUT WHAT OTHER PEOPLE SAY --

4 A YEAH. I'M SORRY.

5 Q -- WITH THE COURT. THAT'S ALL RIGHT.

6 SO YOU HEARD THE PHRASE "THE GOOD TIMERS"?

7 A YES.

8 Q AND WHO ARE THE GOOD TIMERS?

9 A WELL, ALL THE MEMBERS ARE, REALLY. AND THE  
10 WHOLE SYSTEM IS A GOOD-TIME SYSTEM. BUT, NOW, THEY CALL  
11 RAY "GOOD TIMES RAY."

12 Q WHAT DO YOU MEAN WHEN YOU SAY THE WHOLE  
13 SYSTEM IS A GOOD-TIME SYSTEM?

14 A WELL, OUR WHOLE ATTITUDE TOWARDS THE CAMPING  
15 INDUSTRY IS FOR EVERYBODY TO HAVE A GOOD TIME. THAT'S  
16 EXACTLY WHAT WE ESPOUSE. AND WE TRY OUR BEST TO DO THAT.  
17 WHEN -- WE HAVE COMPLETE PROGRAMS LINED UP FOR PEOPLE TO DO  
18 WHEN THEY COME TO OUR RESORT AND HAVE FUN.

19 Q ARE YOU AWARE THAT THERE WAS A SALE THAT  
20 TOOK PLACE SOMETIME IN OCTOBER OF 1997 WHERE A BANKRUPTCY  
21 TRUSTEE NAMED CHARLES DAFF PUT UP SEVERAL ALL SEASONS  
22 RESORTS FOR SALE?

23 A YES.

24 Q ORLANDO WAS ONE OF THEM?

25 A YES.

26 Q DID YOU OBSERVE WHAT EFFECT, IF ANY, THE

1 SALE OF THE ORLANDO RESORT HAD ON THE OPERATION OF ORLANDO?  
2 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL  
3 CONCLUSION, AS FAR AS TYING IT TO A SPECIFIC EVENT AND TIME  
4 OF THE BANKRUPTCY AUCTION SALE.

5 THE COURT: JUST TELL US WHAT YOU SAW.

6 BY MR. MOSHENKO: Q TELL US WHAT YOU SAW HAPPEN AS  
7 A RESULT OF THE SALE HAVING TO TAKE PLACE.

8 A REALLY NOTHING. EVERYTHING CONTINUED AS  
9 NORMAL.

10 Q OKAY. WELL, YOU DO KNOW THAT AS A RESULT OF  
11 THE SALE, ALL SEASONS NO LONGER OWNED THE RESORT?

12 A THAT'S CORRECT.

13 Q BUT WHO BECAME YOUR EMPLOYER?

14 A WELL, AT THAT TIME TRAVEL AMERICA.

15 Q OKAY. AND SO YOU MANAGED THE RESORT BEFORE  
16 THE SALE?

17 A JUST A LITTLE WHILE BEFORE THE SALE.

18 Q AND YOU MANAGED THE RESORT AFTER THE SALE?

19 A YES.

20 Q AND YOU DIDN'T ACT ANY DIFFERENTLY BEFORE  
21 UNDER ALL SEASONS --

22 A NO.

23 Q -- AS YOU DID UNDER TRAVEL AMERICA?

24 A NO, SIR.

25 Q AND YOUR MEMBERS WERE PROVIDED THE SAME  
26 BENEFITS AND THINGS, EVERYTHING THAT YOU GAVE BEFORE?

1 A EVERYTHING BEFORE IS THE SAME.

2 Q AS AFTER?

3 A YES, SIR.

4 Q AND DID YOU SEE MEMBER REACTION THAT WOULD  
5 SUGGEST THAT MEMBERS LEFT BECAUSE TRAVEL AMERICA  
6 ACQUIRED --

7 MR. SHERMAN: OBJECTION. LACKS FOUNDATION AS FAR  
8 AS MEMBERS OF ALL SEASONS VERSUS THE COURT DOCUMENT AND THE  
9 TESTIMONY TO THE EFFECT THAT THERE WERE NO MEMBERS.

10 MR. MOSHENKO: OH, THAT'S ARGUMENTATIVE, YOUR HONOR.

11 MR. SHERMAN: LACKS FOUNDATION.

12 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION,  
13 COUNSEL.

14 BY MR. MOSHENKO: Q DID YOU SEE A CHANGE IN  
15 MEMBERSHIP ATTENDANCE -- WHATEVER SOURCE, ANY SOURCE --  
16 BEFORE THE SALE AS AFTER THE SALE?

17 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: I'M SORRY NOW?

20 BY MR. MOSHENKO: Q DID YOU SEE A CHANGE IN  
21 MEMBERSHIP ATTENDANCE, FROM WHATEVER SOURCE, BEFORE THE  
22 SALE VERSUS AFTER THE SALE? AND I'M TALKING ABOUT A VERY  
23 NARROW WINDOW OF TIME.

24 A YEAH. THAT WAS JUST A FEW DAYS PRIMARILY.  
25 NO.

26 MR. MOSHENKO: YOUR HONOR, I HAVE NO FURTHER

1 QUESTIONS.

2 THE COURT: THANK YOU.

3 MR. MOSHENKO: THANK YOU.

4 THE COURT: CROSS.

5 MR. SHERMAN: YES.

6 CROSS-EXAMINATION

7 BY MR. SHERMAN: Q MR. MERRITT, GOOD MORNING.

8 A GOOD MORNING.

9 Q MR. MERRITT, YOU HAD YOUR DEPOSITION TAKEN  
10 IN THIS CASE; IS THAT RIGHT?

11 A YES. YES.

12 Q AND THAT WAS BECAUSE YOU WERE DESIGNATED BY  
13 THE PLAINTIFFS AS AN EXPERT WITNESS; IS THAT RIGHT?

14 A YES, SIR.

15 Q OKAY. AND YOU HELD YOURSELF OUT IN THE  
16 COURT PROCESS AS AN EXPERT WITNESS?

17 A IN THAT SENSE, YES.

18 Q AND AS AN EXPERT WITNESS, YOU HELD YOURSELF  
19 OUT AS SOMEONE WHO IS PREPARED TO TESTIFY -- IN FACT, LET  
20 ME PUT THIS ON THE BOARD, IF I MAY.

21 OKAY. SO, MR. MERRITT, YOU HELD YOURSELF  
22 OUT AS SOMEONE WHO WAS PREPARED TO TESTIFY TO THE HISTORY  
23 OF THE INDUSTRY; RIGHT?

24 A AS I KNOW IT, YES.

25 Q RIGHT.

26 AND YOU HELD YOURSELF OUT AS SOMEONE WHO IS

1 PREPARED TO TESTIFY TO THE HISTORY OF PLAINTIFFS'  
2 RELATIONSHIPS WITH COAST TO COAST; IS THAT RIGHT?

3 A AS I KNOW IT.

4 Q OKAY. AND YOU HELD YOURSELF OUT AS SOMEONE  
5 WHO IS PREPARED TO TESTIFY AS TO THE HISTORY OF THE RESORT  
6 DEVELOPERS' RELATIONSHIPS WITH COAST TO COAST; RIGHT?

7 A AS I KNOW IT.

8 Q AND ALSO THE HISTORY OF OTHER RECIPROCAL USE  
9 PROGRAMS' RELATIONSHIPS WITH COAST TO COAST RESORTS IN THE  
10 UNITED STATES; IS THAT RIGHT?

11 A YES, AS I KNOW IT.

12 Q AND THE CONFIDENTIALITY OF MEMBERSHIP  
13 INFORMATION IN THE INDUSTRY; IS THAT RIGHT?

14 A AS I KNOW IT, YES.

15 Q AND COMPETITION AND COMPETITIVE PRACTICES IN  
16 THE INDUSTRY; IS THAT RIGHT?

17 A AS I KNOW IT.

18 Q NOW, I'M RUNNING OUT OF THE SPACE ON THE  
19 BOARD. MAYBE WE CAN JUST GO THROUGH SOME OF THESE OTHERS.  
20 MEMBERSHIP IN RESORTS?

21 A AS I KNOW IT, YES.

22 Q MEMBERSHIP IN RECIPROCAL USE PROGRAMS?

23 A YES.

24 Q MARKETING AND SALES OF MEMBERSHIPS?

25 A AS I KNOW IT, YES.

26 Q FINANCIAL MATTERS RELATING TO RESORTS AND

1 RECIPROCAL USE PROGRAMS?

2 A YES.

3 Q RESORT OPERATIONS?

4 A AS I KNOW IT.

5 Q YOU'RE ALSO PREPARED TO TESTIFY AS AN EXPERT  
6 ON RESORT MEMBERS' PSYCHOLOGY AND CONDUCT?

7 A AS I KNOW IT, YES.

8 Q YOU'RE ALSO PREPARED TO TESTIFY AS AN EXPERT  
9 ON RESORT DEVELOPERS' PSYCHOLOGY AND CONDUCT?

10 A AS I KNOW IT.

11 Q YOU'RE ALSO PREPARED TO TESTIFY TO THE  
12 RESORT USE INDUSTRY PSYCHOLOGY AND CONDUCT?

13 A AS I KNOW IT.

14 Q YOU'RE ALSO PREPARED TO TESTIFY TO TRENDS  
15 AND FORECASTS IN THE INDUSTRY?

16 A AS I KNOW IT.

17 Q YOU'RE ALSO PREPARED TO TESTIFY AS AN EXPERT  
18 ON MOTIVES FOR AND CONSEQUENCES OF DEFENDANTS' CONDUCT?

19 A I DON'T REMEMBER THAT, BUT I SUPPOSE, YES.

20 Q WELL, LET ME REFRESH YOUR RECOLLECTION WITH  
21 THE EXPERT WITNESS DESIGNATION.

22 MR. SHAW: WHAT PAGE AND LINE, COUNSEL?

23 MR. SHERMAN: IT IS THE EXPERT WITNESS DESIGNATION  
24 OF MR. MERRITT. THAT'S ITEM D IN THE EXPERT WITNESS  
25 DESIGNATION ON THE SECOND PAGE. IT WAS LINE 8, MOTIVES FOR  
26 AND CONSEQUENCES OF DEFENDANTS' CONDUCT.

1 THE WITNESS: ALL RIGHT. YES. I'M PREPARED TO SAY  
2 WHAT I KNOW OF IT.

3 BY MR. SHERMAN: Q YOU WERE ALSO PREPARED TO  
4 TESTIFY AS AN EXPERT WITNESS REGARDING DAMAGES RESULTING  
5 FROM AND CONSEQUENCES OF DEFENDANTS' CONDUCT ON PLAINTIFFS,  
6 PLAINTIFFS' RESORTS, PLAINTIFFS' RESORT MEMBERS AND MEMBER  
7 BASES; IS THAT RIGHT?

8 A YES, AS I KNOW IT.

9 Q AND YOU LEARNED THAT YOU'D BE AN EXPERT  
10 WITNESS BECAUSE MR. NOVELLI CALLED YOU UP?

11 A BASICALLY, YES.

12 Q AND HE TOLD YOU WORDS TO THE EFFECT THAT,  
13 GARY, YOU'RE GOING TO BE MY EXPERT?

14 A HE WOULD LIKE FOR ME TO SERVE AS AN EXPERT  
15 WITNESS BECAUSE OF MY TENURE IN THE INDUSTRY.

16 Q AND YOU SAID?

17 A I SAID OKAY.

18 Q OKAY. NOW, ARE YOU AWARE OF WHAT  
19 MR. MOSHENKO HAS SAID ON THE SUBJECT OF USER QUALIFICATIONS  
20 TO TESTIFY AS AN EXPERT?

21 A NO, I'M NOT AWARE.

22 Q LET ME SHOW IT TO YOU. FROM MAY 16, 2000.

23 MR. MOSHENKO: COULD YOU GIVE US THE CITE TO THE  
24 PAGE --

25 MR. SHERMAN: SURE.

26 MR. MOSHENKO: -- BEFORE YOU PUT IT UP.

1 MR. SHERMAN: PAGE 932 OF MAY 16.

2 MR. MOSHENKO: ARE YOU TALKING ABOUT THE DEPOSITION  
3 TRANSCRIPT?

4 MR. SHERMAN: NO. I'M TALKING ABOUT THE STATEMENT  
5 THAT YOU MADE IN OPEN COURT TO JUDGE SMITH.

6 MR. MOSHENKO: IN OPENING STATEMENT?

7 MR. SHERMAN: NO. I'M TALKING ABOUT A STATEMENT  
8 MADE ON MAY 16, 2000, TO JUDGE SMITH.

9 MR. MOSHENKO: FOR STARTERS, YOUR HONOR, IT SOUNDS  
10 LIKE IT'S ARGUMENT DURING SOMETHING OUT OF THE PRESENCE OF  
11 THE JURY. BUT LET ME LOOK IT UP.

12 MR. SHERMAN: IT'S AN ADMISSION BY PLAINTIFFS IS  
13 WHAT IT IS.

14 MR. MOSHENKO: PAGE, AGAIN, PLEASE?

15 MR. SHERMAN: 932, 22 THROUGH 24.

16 THE COURT: MR. SHERMAN, WHY DON'T YOU BRING THAT  
17 AND APPROACH THE BENCH.

18 MR. SHERMAN: SURE.

19 (DISCUSSION OFF THE RECORD.)

20 BY MR. SHERMAN: Q NOW, YOU'RE FAMILIAR WITH A  
21 COMPANY CALLED "ADVENTURE RESORTS OF AMERICA"; IS THAT  
22 RIGHT?

23 A YES.

24 Q AND ADVENTURE RESORTS OF AMERICA IS A  
25 PLAINTIFF IN THIS CASE; IS THAT RIGHT?

26 A I UNDERSTAND THAT IT IS.

1 Q IT WAS A COMPANY THAT WAS OPERATED BY  
2 RAYMOND NOVELLI --

3 A RIGHT.

4 Q -- THAT USED TO OWN A CAMPGROUND --

5 A YES.

6 Q -- NEAR LAKE GEORGE IN FLORIDA?

7 A NO -- YES, LAKE GEORGE.

8 Q AND THAT WAS IN THE OCALA NATIONAL FOREST?

9 A YES.

10 Q NINETY MILES NORTH OF ORLANDO?

11 A YES.

12 Q IT WAS A REAL PRETTY CAMPGROUND?

13 A YES.

14 Q IT'S CALLED "SALT SPRINGS"; IS THAT RIGHT?

15 A YES, SIR.

16 Q AND MR. NOVELLI'S COMPANY BOUGHT IT FROM A  
17 GROUP OF CAMPGROUND DEVELOPERS KNOWN AS MR. PATTON AND  
18 MR. LOUIS?

19 A I'VE HEARD THAT. I'M NOT -- I'M NOT CERTAIN  
20 WHO THEY BOUGHT IT FROM.

21 Q BUT, NONETHELESS, YOU KNEW THAT WHEN  
22 MR. NOVELLI BOUGHT THE SALT SPRINGS CAMPGROUND, HE PROMISED  
23 TO PAY THOSE GENTLEMEN SEVERAL MILLION DOLLARS ON ACCOUNT  
24 OF THAT PURCHASE?

25 MR. MOSHENKO: CALLS FOR HEARSAY. LACKS  
26 FOUNDATION.

1 THE WITNESS: I HAVE NO IDEA.

2 MR. MOSHENKO: ARGUMENTATIVE.

3 THE COURT: OBJECTION IS SUSTAINED.

4 BY MR. SHERMAN: Q DO YOU KNOW IF WHEN MR. NOVELLI  
5 PURCHASED THE CAMPGROUND HE AGREED TO PAY THOSE GENTLEMEN  
6 SEVERAL MILLION DOLLARS?

7 A NO, I DO NOT. I WAS NOT THERE WHEN THEY  
8 PURCHASED IT.

9 Q OKAY. NOW, YOU WERE THE GENERAL MANAGER;  
10 RIGHT?

11 A YES.

12 Q FROM APPROXIMATELY 1994 THROUGH JULY 1996?

13 A YES.

14 Q AND WHILE YOU WERE THERE, DID YOU -- YOU  
15 COLLECTED MONEY FROM MEMBERS TO BUILD A MINIATURE GOLF  
16 COURSE; IS THAT RIGHT?

17 A YES.

18 Q AND THESE WERE LIKE VOLUNTARY DONATIONS?

19 A YES.

20 Q BUT THE GOLF COURSE WAS NOT BUILT?

21 A THE GOLF COURSE HAS BEEN BUILT. IT WAS NOT  
22 BUILT WHILE I WAS THERE, NO.

23 Q RIGHT. AND WHEN YOU SAY IT HAS BEEN BUILT,  
24 SALT SPRINGS IS NOW NOT OWNED BY --

25 A THAT'S CORRECT.

26 Q -- THE NOVELLI GROUP?

1 A THAT'S CORRECT.

2 Q OKAY. SO YOU COLLECTED MONEY FROM MEMBERS  
3 TO BUILD THE GOLF COURSE; RIGHT?

4 A UH-HUH, THAT'S RIGHT.

5 Q AND YOU COLLECTED THE MONEY, AND THE GOLF  
6 COURSE WAS NOT BUILT WHILE YOU WERE THERE?

7 A THAT'S CORRECT.

8 Q ADVENTURE RESORTS FILED A BANKRUPTCY IN  
9 TENNESSEE IN 1993; IS THAT RIGHT?

10 A NO. I DON'T KNOW WHERE IT WAS FILED.

11 Q LET ME SHOW YOU EXHIBIT 929.

12 THE COURT: COULD I SEE YOU BRIEFLY AT THE BENCH  
13 HERE, GENTLEMEN.

14 (DISCUSSION OFF THE RECORD.)

15 BY MR. SHERMAN: Q LET ME GO ON, IF I MAY.

16 YOU MENTIONED A BANKRUPTCY IN YOUR DIRECT  
17 TESTIMONY FILED IN CONNECTION WITH THE SALT SPRINGS  
18 PROPERTY IN 1994; DO YOU RECALL THAT TESTIMONY?

19 A I THINK THAT'S WHEN IT WAS.

20 Q OKAY. BUT IT COULD HAVE BEEN '93?

21 A IT COULD HAVE BEEN.

22 Q NOW, AFTER THAT BANKRUPTCY IN EITHER '93 OR  
23 '94, DIDN'T SALT SPRINGS FILE YET A SECOND BANKRUPTCY, THIS  
24 TIME IN FLORIDA IN 1996?

25 A I BELIEVE THAT'S RIGHT.

26 Q OKAY. SO TWO SALT SPRINGS BANKRUPTCIES;

1 RIGHT?

2 A THAT'S RIGHT.

3 Q FILED WHILE MR. NOVELLI WAS AT THE HELM?

4 A THAT'S RIGHT.

5 Q AND THEN DO YOU RECALL A THIRD SALT SPRINGS  
6 BANKRUPTCY FILED IN CALIFORNIA?

7 A NO, I DO NOT.

8 Q NOW, WERE THE BANKRUPTCIES FILED BECAUSE  
9 MR. PATTON AND MR. LOUIS, THE FELLOWS THAT SOLD THE RESORT  
10 TO MR. NOVELLI, WEREN'T GETTING PAID?

11 A I DO NOT KNOW.

12 Q DID YOU EVER DISCUSS IT WITH EITHER  
13 MR. PATTON, MR. LOUIS OR MR. NOVELLI?

14 A NO, I DID NOT.

15 Q NOW, YOU ARE NO LONGER THE GENERAL MANAGER  
16 OF SALT SPRINGS; CORRECT?

17 A NO.

18 Q IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q AND THAT'S BECAUSE IT DOES NOT CONDUCT ANY  
21 BUSINESS TODAY?

22 A THAT'S CORRECT.

23 Q ADVENTURE RESORTS OF AMERICA CEASED  
24 CONDUCTING BUSINESS?

25 A THAT'S CORRECT.

26 Q IT CEASED CONDUCTING BUSINESS WHEN THE PARK

1 WAS FORECLOSED ON BY THE SECURED LENDERS?

2 A THAT'S CORRECT.

3 Q AND WHEN THE PARK WAS FORECLOSED ON,  
4 MR. PATTON AND MR. LOUIS TOOK THE PARK BACK?

5 A I DON'T KNOW.

6 Q NOW, WHEN THE PARK WAS FORECLOSED ON, THAT'S  
7 WHEN THE MEMBERS OF SALT SPRINGS GOT TRANSFERRED TO  
8 TRAILINN AND TO ORLANDO; RIGHT?

9 A THAT'S CORRECT.

10 Q YOU PARTICIPATED IN THAT; RIGHT?

11 A I DON'T KNOW HOW YOU MEAN I PARTICIPATED.

12 Q WELL, YOU WERE -- LET'S BREAK IT DOWN,  
13 MR. MERRITT.

14 DURING ITS HEYDAY, THE SALT SPRINGS PARK HAD  
15 THOUSANDS OF MEMBERS; RIGHT?

16 A IT HAD SEVERAL MEMBERS, YES.

17 Q SEVERAL THOUSAND?

18 A SEVERAL MEMBERS. I DON'T KNOW HOW MANY  
19 THOUSANDS.

20 Q BUT IT HAD -- IT DID HAVE THOUSANDS?

21 A I'M SURE.

22 Q OKAY. AND WHEN MR. NOVELLI PURCHASED THE  
23 PARK, IT HAD THOUSANDS OF MEMBERS?

24 A THAT, I DON'T KNOW.

25 Q WHEN MR. PATTON AND MR. LOUIS FINALLY WERE  
26 ABLE TO FORECLOSE ON THE PARK AND TAKE IT BACK, THAT'S WHEN

1 ALL THOSE MEMBERS WERE TRANSFERRED TO TRAILINN AND TO  
2 ORLANDO?

3 MR. SHAW: YOUR HONOR, OBJECTION. ASSUMES FACTS  
4 NOT IN EVIDENCE THAT THAT'S EXACTLY WHAT OCCURRED, AND  
5 MISCHARACTERIZED.

6 THE COURT: I THINK IT'S A QUESTION.

7 MR. SHERMAN: IT WAS A QUESTION.

8 MR. SHAW: YOUR HONOR, IT WAS A QUESTION ASSUMING  
9 FACTS THAT ARE -- HAVE NOT BEEN ESTABLISHED.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T KNOW, SIR. I WAS NOT THERE  
12 AT THAT TIME. I WAS IN RIVER RANCH.

13 BY MR. SHERMAN: Q OKAY. WELL, LET'S JUST GO BACK  
14 TO THE TESTIMONY YOU GAVE A MOMENT AGO.

15 THE COURT: LET'S DO IT AFTER OUR BREAK. WE'LL  
16 TAKE 20 MINUTES, LADIES AND GENTLEMEN.

17 (RECESS TAKEN.)

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

20 MR. SHERMAN: YOUR HONOR, COULD WE HAVE ONE MOMENT  
21 WITH THE COURT?

22 THE COURT: YES.

23 MR. SHERMAN: WHILE YOUR HONOR HASN'T SAID IT IN  
24 QUITE THESE WORDS, I THINK I'VE HEARD YOUR HONOR PRETTY  
25 CLEARLY. YOU'D LIKE THIS EXAMINATION TO GO AS QUICKLY AS  
26 POSSIBLE. I'VE HEARD IT.

1 I DO NEED TO SHARE WITH THE COURT TWO  
2 POINTS. NUMBER ONE, WHILE MR. MERRITT'S SO-CALLED EXPERT  
3 TESTIMONY, OR WHATEVER WE WANT TO CALL IT, WAS  
4 SIGNIFICANTLY LIMITED TO THOSE ISSUES THAT IT WAS PROPERLY  
5 LIMITED TO, HE DID TESTIFY ABOUT A NUMBER OF OTHER POINTS  
6 IN HIS DIRECT THAT I DO PLAN ON TAKING SOME TIME TO COVER  
7 SO THAT IT'S CLEAR TO THE JURY IN THE CROSS. AND THAT WILL  
8 TAKE A LITTLE TIME, YOUR HONOR.

9 BUT THE OTHER THING IS THIS: THERE MAY BE A  
10 COUPLE OF AREAS WHERE I'LL CONCEDE RIGHT NOW THEY MAY --  
11 I'M NOT SAYING THEY ARE. THEY MAY BE BEYOND THE SCOPE OF  
12 THE DIRECT-EXAMINATION. WE CAN DO ONE OF TWO THINGS. THIS  
13 WITNESS HAS BEEN FLOWN OUT HERE TWICE. WE CAN HAVE HIM  
14 FLOWN OUT HERE A THIRD TIME BECAUSE WE'RE OBVIOUSLY  
15 ENTITLED TO CALL HIM AS ONE OF OUR WITNESSES, AND HE WAS ON  
16 OUR WITNESS LIST.

17 OR -- AND I WILL REPRESENT TO THE COURT I  
18 DON'T BELIEVE IT'S SIGNIFICANT, EITHER IN AMOUNT OF TIME OR  
19 SUBJECT MATTER. WE COULD GO THROUGH THOSE AREAS. AND IF  
20 COUNSEL WOULD LIKE, I'D BE PLEASED TO SHARE THOSE AREAS  
21 THAT MAY FALL IN THE GRAY AREA WITH THEM. I DON'T THINK  
22 ANYONE, INCLUDING PLAINTIFFS' COUNSEL, MR. NOVELLI, OR  
23 MR. MERRITT HAS AN INTEREST IN SEEING THIS MAN FLOWN OUT  
24 HERE A THIRD TIME.

25 THE COURT: TALK IT OVER WITH MR. MOSHENKO AND  
26 MR. SHAW.

1           MR. SHERMAN: THAT'S FINE. I JUST WANTED TO CONFER  
2 WITH THE COURT.

3           THE COURT: ALL RIGHT.

4                         (RECESS TAKEN.)

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

7           THE COURT: PROCEED, COUNSEL.

8           BY MR. SHERMAN: Q OKAY. MR. MERRITT, LET ME TAKE  
9 YOU BACK TO SOMETHING YOU SAID IN THE DIRECT EXAMINATION TO  
10 MR. MOSHENKO.

11                         YOU REFERENCED WORDS TO THE EFFECT OF THE  
12 EFFECT OF THE BANKRUPTCY WAS THAT THEY PAID THE BILLS AND  
13 EVERYTHING RAN SMOOTHLY. THAT WAS WITH REFERENCE TO THE  
14 SALT SPRINGS BANKRUPTCY; RIGHT?

15           A           YES.

16           Q           NOW, I ASSUME THAT THAT REFERENCE TO THE  
17 SALT SPRINGS BANKRUPTCY, THAT APPLIED TO BOTH THE '93 AND  
18 '94 BANKRUPTCY FILING AS WELL AS THE 1996 BANKRUPTCY FILING  
19 THAT THE BILLS GOT PAID AND EVERYTHING RAN SMOOTHLY; IS  
20 THAT RIGHT?

21           A           I DON'T KNOW. I WASN'T THERE FOR THE  
22 EARLIER ONE. I WASN'T THERE DURING THE '93 BANKRUPTCY.

23           Q           RIGHT.

24                         BUT I THOUGHT YOU TESTIFIED THAT IT WAS  
25 EITHER '93 OR '94. BUT YOU WERE AWARE OF THE FIRST  
26 BANKRUPTCY?

1           A           I WAS AWARE OF IT, YEAH.

2           Q           AND DURING THAT FIRST BANKRUPTCY WHEN YOU  
3 WERE ASKED SOME QUESTIONS ABOUT THE EFFECT OF IT, I BELIEVE  
4 YOUR TESTIMONY WAS THAT THEY PAID THE BILLS AND EVERYTHING  
5 RAN SMOOTHLY?

6           MR. MOSHENKO: MISSTATES PRIOR TESTIMONY AND LACKS  
7 FOUNDATION. HE WASN'T THERE. HE WAS TALKING ABOUT 1994.

8           THE COURT: SUSTAINED.

9           BY MR. SHERMAN: Q OKAY. WELL, IN 1994, TO USE  
10 MR. MOSHENKO'S WORDS, WAS THE EFFECT OF THE BANKRUPTCY THAT  
11 EVERYTHING RAN SMOOTHLY AND THE BILLS WERE PAID?

12          A           WELL, I'M NOT REAL SURE WHEN THE BANKRUPTCY  
13 YOU'RE TALKING ABOUT WAS OVER. BUT DURING THE SECOND  
14 BANKRUPTCY THAT I KNOW ABOUT, THINGS RAN SMOOTH.

15          Q           OKAY. BUT THE SECOND BANKRUPTCY DID END  
16 WITH THE PARK BEING FORECLOSED ON?

17          A           THAT'S MY UNDERSTANDING, YES.

18          Q           OKAY. AND SO BEFORE THE SECOND BANKRUPTCY,  
19 I TAKE IT THAT THE BILLS WERE NOT BEING PAID?

20          A           NO. THE BILLS WERE BEING PAID, BUT NOT --  
21 MAYBE NOT AS QUICKLY AND AS SOON AS WE'D LIKE FOR THEM TO  
22 BE PAID.

23          Q           AND BEFORE THE SECOND BANKRUPTCY, I TAKE IT  
24 THAT THERE WERE THINGS THAT DIDN'T RUN THAT SMOOTHLY?

25          A           WELL, ONLY THAT, ONLY THAT, BECAUSE IT HAD  
26 NO EFFECT WHATSOEVER ON THE MEMBERS BECAUSE WE CONTINUED --

1 THE MEMBERS CONTINUED TO ENJOY THE PARK JUST COMPLETELY  
2 WITHOUT ANY KNOWLEDGE WHATSOEVER OF WHETHER ANYTHING WAS  
3 PAID OR NOT PAID. IT DIDN'T HAVE ANY BEARING WHATSOEVER ON  
4 THE MEMBERS.

5 Q WHEN YOU SAY IT DIDN'T HAVE ANY BEARING ON  
6 THE MEMBERS, WHEN THE LENDER WASN'T PAID, AND THEY TOOK THE  
7 PARK BACK FOR FORECLOSURE, THEN THE MEMBERS WERE AFFECTED;  
8 RIGHT?

9 A WELL, NOT REALLY, BECAUSE THEY WERE -- THEY  
10 WERE GIVEN ANOTHER RESORT. AND, IN FACT, THAT RESORT --  
11 WHEN THEY WERE GIVEN ANOTHER RESORT, IT WAS AN ADVANTAGE TO  
12 THEM.

13 Q WELL, LET ME NOT TRY TO SPECULATE MYSELF,  
14 FOR YOU TO SPECULATE WHETHER IT WAS OR WAS NOT AN  
15 ADVANTAGE. THE FACT IS THAT THE MEMBERS LOST USE OF THE  
16 SALT SPRINGS PARK?

17 A OF THAT RESORT, YES, THEY DID.

18 Q AND IF THEY WANTED TO USE AN ALL SEASONS  
19 PARK, THEY HAD TO TRAVEL ANOTHER 90 MILES SOUTH TO ORLANDO?

20 A ALMOST 90, YES.

21 Q AND AS FAR AS THE LOSS OF THIS PARK, THE  
22 LENDERS FOR -- LET'S NOT TALK ABOUT FORECLOSURE. LET'S  
23 JUST TALK ABOUT THE PARK WAS LOST DURING THE SECOND  
24 BANKRUPTCY, SALT SPRINGS PARK.

25 MR. MOSHENKO: OBJECTION. ASSUMES FACTS NOT IN  
26 EVIDENCE. HE JUST INDICATED IT WAS FORECLOSED ON, NOT LOST

1 TO THE BANKRUPTCY.

2 THE COURT: OVERRULED.

3 YOU MAY CONTINUE.

4 THE WITNESS: I'M SORRY. WHAT WAS THE QUESTION?

5 BY MR. SHERMAN: Q THE NOVELLI ORGANIZATION LOST  
6 THE PARK?

7 A YES.

8 Q IT WAS FORECLOSED ON?

9 A YES.

10 Q AND THE EFFECT OF THAT WAS THAT -- EXCUSE  
11 ME. NOT THE EFFECT.

12 THIS HAPPENED SOMETIME IN THE '96 OR '97  
13 TIME FRAME; RIGHT?

14 A YES.

15 Q AND AS FAR AS THE LOSS OF SALT SPRINGS PARK  
16 FORECLOSURE, YOU'RE NOT AWARE PERSONALLY, MR. MERRITT, OF  
17 COAST TO COAST HAVING ANYTHING TO DO WITH MR. NOVELLI NOT  
18 PAYING THOSE LENDERS, ARE YOU?

19 A NO.

20 Q IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q YOU'RE NOT AWARE OF ANYTHING THAT CAMP COAST  
23 TO COAST, MY CLIENT, DID THAT LED UP TO THE LOSS OF THE  
24 PARK BY MR. NOVELLI?

25 A NO. NOT AT THAT TIME, NO.

26 Q WELL, THEY DIDN'T LOSE IT A SECOND TIME, DID

1     THEY?

2             A           NO .

3             Q           AND WHEN THE MEMBERS GOT TRANSFERRED OVER  
4 FROM SALT SPRINGS TO TRAILINN IN ORLANDO, THAT HAPPENED  
5 WHEN THE PARK WAS LOST THROUGH THE FORECLOSURE?

6             A           THAT'S CORRECT.

7             Q           AND COAST HAD NOTHING TO DO WITH THAT?

8             A           NO .

9             Q           THAT'S CORRECT?

10            A           THAT'S CORRECT.

11            Q           NOW, I BELIEVE WE'VE ESTABLISHED THAT  
12 ADVENTURE RESORTS OF AMERICA NO LONGER CONDUCTS BUSINESS;  
13 RIGHT?

14            A           THAT'S CORRECT.

15            Q           AND THEY CEASED DOING ANY BUSINESS WHEN THEY  
16 GOT RID OF THE PARK THROUGH THE FORECLOSURE OF '96 OR EARLY  
17 '97?

18            A           THAT'S CORRECT.

19            Q           IS THAT "YES"?

20            A           THAT'S CORRECT.

21            Q           BUT LATE LAST YEAR, DID YOU GET A PHONE CALL  
22 FROM MR. NOVELLI ABOUT THE ADVENTURE RESORTS OF AMERICA  
23 COMPANY?

24            A           NOT THAT I'M AWARE OF.

25            Q           WELL, WEREN'T YOU NEEDED LAST YEAR TO GO TO  
26 THE FLORIDA SECRETARY OF STATE'S OFFICE TO SIGN SOME

1 DOCUMENTS WITH RESPECT TO ADVENTURE RESORTS OF AMERICA?

2 A NO, SIR.

3 Q YOU DID SIGN DOCUMENTS JUST LATE LAST YEAR  
4 WITH RESPECT TO THAT PARK; ISN'T THAT CORRECT?

5 A NO, SIR.

6 Q YOU DID SIGN DOCUMENTS LATE LAST YEAR WITH  
7 RESPECT TO ADVENTURE RESORTS OF AMERICA?

8 A NOT THAT I'M AWARE OF.

9 MR. SHERMAN: I'M GOING TO USE AS IMPEACHMENT, YOUR  
10 HONOR, THE FOLLOWING DOCUMENT, EXHIBIT 1026. I'D LIKE TO  
11 SHOW IT FIRST TO COUNSEL.

12 MAY I APPROACH?

13 THE COURT: YOU MAY.

14 BY MR. SHERMAN: Q MR. MERRITT, IF YOU WOULD,  
15 PLEASE TAKE A LOOK AT THE THIRD PAGE OF EXHIBIT 1026.

16 THAT IS YOUR SIGNATURE; RIGHT?

17 A NO, SIR.

18 Q YOU SEE THE SPACE FOR YOUR NAME --

19 A YES.

20 Q -- GARY MERRITT? AND THEN THERE'S A  
21 SIGNATURE RIGHT ABOVE IT; RIGHT?

22 A YES, I SEE THAT.

23 Q OKAY. IS THAT YOUR SIGNATURE?

24 A NO, SIR.

25 Q DO YOU KNOW WHOSE SIGNATURE IT IS?

26 A NO, SIR.

1 Q DID YOU AUTHORIZE THAT SIGNATURE TO BE MADE?

2 A I MAY HAVE. I DON'T RECALL RIGHT NOW.

3 Q WELL, DOES THIS, THEN, REFRESH YOUR  
4 RECOLLECTION THAT INDEED YOU DID AUTHORIZE THE SIGNING OF  
5 DOCUMENTS LATE LAST YEAR --

6 A NO. I DO NOT REMEMBER.

7 MR. SHERMAN: I'D LIKE TO PUT 1026 UP ON THE BOARD.

8 MR. MOSHENKO: IT'S IRRELEVANT, YOUR HONOR.

9 THE COURT: MAY I SEE IT, PLEASE.

10 MR. MOSHENKO: NOT RELATING TO ANY ISSUE.

11 THE COURT: APPROACH THE BENCH, PLEASE.

12 (DISCUSSION OFF THE RECORD.)

13 THE COURT: FOR THE RECORD THE OBJECTION IS  
14 WITHDRAWN.

15 BY MR. SHERMAN: Q OKAY. THIS IS AN APPLICATION  
16 FOR REINSTATEMENT. DO YOU SEE THOSE WORDS THERE,  
17 MR. MERRITT?

18 A YES.

19 Q AND IT'S AN APPLICATION FOR REINSTATEMENT  
20 WITH THE FLORIDA DEPARTMENT OF STATE, THE CORPORATION,  
21 ADVENTURE RESORTS OF AMERICA. AND THEN YOU'LL SEE A FILING  
22 STAMP ON THE RIGHT-HAND SIDE, DECEMBER 23, 1999.

23 DO YOU SEE THAT?

24 A YES, SIR.

25 Q OKAY. AND THEN WHY DON'T WE GET TO THE  
26 DESCRIPTION WHO THE OFFICERS OF THIS ADVENTURE RESORTS OF

1 AMERICA, INC., ARE.

2 DO YOU SEE THE NAMES HANS SCHULZ,  
3 MARLIES NOVELLI, ROBERT THOMPSON, BUT IT'S BEEN CROSSED  
4 OUT, AND RAYMOND NOVELLI? DO YOU SEE THAT?

5 A YES, SIR.

6 Q AND THEN YOU SEE THAT THERE WAS SOMEONE --  
7 WELL, YOUR NAME IS ACTUALLY THERE. YOU SEE WHERE YOUR NAME  
8 IS, GARY MERRITT?

9 A YES, SIR.

10 Q WITH AN ADDRESS IN CLAREMONT, FLORIDA?

11 A YES, SIR.

12 Q OKAY. AND THEN THERE'S SOMEBODY'S  
13 SIGNATURE, REGISTERED AGENT, DECEMBER 21, 1999. IS THAT  
14 RIGHT?

15 A YES, SIR, I SEE THAT.

16 Q OKAY. AND THEN IF WE CAN GO TO THE FIRST  
17 TWO PAGES OF THIS EXHIBIT 1026.

18 NO. I'M SORRY. PLEASE TAKE THAT ONE OFF.

19 YES. DECEMBER 23, 1999, ACKNOWLEDGING  
20 REINSTATEMENT OF ADVENTURE RESORTS OF AMERICA, FILED ON  
21 DECEMBER 23, 1999.

22 AND THEN THE NEXT DOCUMENT, THE NEXT PAGE,  
23 STATE OF FLORIDA DEPARTMENT OF STATE, CERTIFYING THAT THE  
24 CORPORATION HAS PAID ALL FEES DUE THIS OFFICE THROUGH  
25 DECEMBER 31, 1999. AND ITS STATUS IS ACTIVE.

26 JUST A FEW MOMENTS AGO, MR. MERRITT, YOU

1 TESTIFIED THAT SEVERAL YEARS AGO ADVENTURE RESORTS OF  
2 AMERICA STOPPED DOING BUSINESS; DO YOU RECALL THAT?

3 A YES.

4 Q AND, IN FACT, IT DID STOP DOING BUSINESS?

5 A AS FAR AS OPERATING THE CAMPGROUND, YES.

6 Q AND IT'S NEVER HAD ANY OTHER BUSINESS OTHER  
7 THAN OPERATING THE SALT SPRINGS CAMPGROUND; CORRECT?

8 A I DON'T KNOW.

9 Q YOU'RE NOT AWARE OF ANY?

10 A THAT I'M AWARE OF, NO.

11 Q OKAY. AND SO FOR ALL INTENT AND PURPOSES,  
12 AS FAR AS GARY MERRITT KNOWS, BEGINNING SOMETIME WHEN THEY  
13 LOST THE PARK, IN EITHER '96 OR EARLY '97, THE CORPORATION  
14 CEASED DOING BUSINESS?

15 A FOR ALL INTENTS AND PURPOSES, YES.

16 Q UNTIL IT WAS BROUGHT BACK TO LIFE?

17 A YES.

18 Q AND IT WAS BROUGHT BACK TO LIFE JUST LATE  
19 LAST JUNE?

20 A EVIDENTLY.

21 Q AND YOU DON'T KNOW WHY?

22 A NO, SIR.

23 Q LET ME SUBMIT, MR. MERRITT, THAT THE REASON  
24 IT WAS BROUGHT BACK TO LIFE WAS ONLY FOR THE PURPOSES OF  
25 THIS LAWSUIT; DO YOU AGREE WITH THAT?

26 MR. MOSHENKO: OBJECTION, LACK OF FOUNDATION.

1       ASSUMES FACTS NOT IN EVIDENCE.

2               THE WITNESS:  I DON'T HAVE ANY IDEA.

3               THE COURT:  OBJECTION IS SUSTAINED.

4               BY MR. SHERMAN:  Q  NOW, AFTER YOU LEFT SALT  
5       SPRINGS, YOU WENT TO A PARK CALLED "RED RIVER RANCH"?

6               A           RIVER RANCH.

7               Q           MR. NOVELLI SAID, "HEY, WE NEED YOU TO COME  
8       OVER AND WORK AT RIVER RANCH"; IS THAT RIGHT?

9               A           THAT IS CORRECT.

10              Q           AND YOU WORKED THERE FOR ABOUT A YEAR?

11              A           I DON'T REMEMBER EXACTLY HOW LONG.  BUT  
12       ABOUT -- ABOUT THAT.

13              Q           BUT YOU DON'T WORK THERE ANYMORE; IS THAT  
14       RIGHT?

15              A           NO, I DO NOT.

16              Q           THE REASON YOU DON'T WORK THERE ANYMORE IS  
17       BECAUSE THE PARK FILED BANKRUPTCY?

18              A           YES.

19              Q           AND MR. NOVELLI LOST THE PARK IN BANKRUPTCY?

20              A           YES.

21              Q           AND THAT -- THAT LOSS OF THE PARK IN  
22       BANKRUPTCY OCCURRED SOMETIME IN THE '96 TIME FRAME?

23              A           THAT'S CORRECT.

24              Q           AND COAST TO COAST HAD NOTHING TO DO WITH  
25       RIVER RANCH FILING BANKRUPTCY?

26              A           NO.

1 Q AND COAST TO COAST HAD NOTHING TO DO WITH  
2 MR. NOVELLI LOSING RIVER RANCH IN BANKRUPTCY?

3 A THAT'S CORRECT. THAT WAS BEFORE THEY TOOK  
4 OUR MEMBERS.

5 Q AND THE MEMBERS LOST THE ABILITY TO USE  
6 RIVER RANCH; IS THAT RIGHT?

7 A THE MEMBERS WERE NOT ABLE TO USE RIVER  
8 RANCH.

9 Q SO THEY LOST THE ABILITY TO USE RIVER RANCH?

10 A NO. THEY NEVER HAD HAD THE ABILITY TO USE  
11 IT.

12 Q BECAUSE IT WAS NEVER OPERATED?

13 A IT WAS NEVER OPERATED -- WE BOUGHT IT TO  
14 BUILD AN R.V. PARK.

15 Q WHICH NEVER GOT BUILT?

16 A WHICH NEVER GOT BUILT.

17 Q NOW, SO AFTER RIVER RANCH WAS LOST IN  
18 BANKRUPTCY, I TAKE IT THAT MR. NOVELLI THEN ASKED YOU TO GO  
19 OVER AND WORK AT TRAILINN RESORT?

20 A THAT'S CORRECT.

21 Q AND THAT WAS IN ABOUT THE EARLY TO MID-'97  
22 TIME FRAME?

23 A THAT'S CORRECT.

24 Q AND TRAILINN FILED ITS OWN BANKRUPTCY; IS  
25 THAT RIGHT?

26 A I UNDERSTAND THAT. IT HAPPENED, YES.

1 Q YES?

2 AND TRAILINN YOU UNDERSTOOD WAS ALSO OWNED  
3 BY FIRST NATIONWIDE RESORT MANAGEMENT?

4 A THAT'S CORRECT.

5 Q AND FIRST NATIONWIDE DOESN'T OWN IT ANYMORE;  
6 IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q AND TRAILINN DOESN'T OWN THE PARK ANYMORE?

9 A THAT'S CORRECT.

10 Q AND THE REASON YOU STOPPED WORKING AT  
11 TRAILINN -- LET ME BACK UP.

12 YOU'RE ONLY THERE FOR A FEW MONTHS; IS THAT  
13 RIGHT?

14 A THAT'S RIGHT.

15 Q AND THE REASON YOUR WORK TIME THERE WAS SO  
16 SHORT WAS BECAUSE THAT PARK WAS ALSO LOST IN BANKRUPTCY?

17 A THAT'S CORRECT.

18 Q AND THAT WAS BEFORE YOU STARTED WORK AT  
19 ORLANDO?

20 A THAT'S CORRECT.

21 Q AND -- OR MY CLIENT, CAMP COAST TO COAST,  
22 HAD NOTHING TO DO WITH THE TRAILINN BANKRUPTCY?

23 A NO.

24 Q AND THEY HAD NOTHING TO DO WITH THE FACT  
25 THAT TRAILINN WAS LOST IN BANKRUPTCY?

26 A NO. THAT WAS BEFORE THEY TOOK OUR MEMBERS.

1 Q AND SO TRAILINN DID HAVE MEMBERS?

2 A TRAILINN DID HAVE MEMBERS.

3 Q THERE WERE PEOPLE WHO, FOR WHATEVER THE  
4 REASON, LIKED GOING TO TRAILINN?

5 A I SUPPOSE. THEY USED THE OTHER PARK AS  
6 EQUALLY AS MUCH AS THEY USED TRAILINN, THE OTHER PARK BEING  
7 ORLANDO.

8 Q THERE WERE PEOPLE WHO LIKED, FOR WHATEVER  
9 REASON, GOING TO TRAILINN?

10 A OH, YES.

11 Q AND THERE WERE PEOPLE WHO CONSIDERED  
12 TRAILINN TO BE THEIR HOME PARK?

13 A SURE.

14 Q AND THOSE PEOPLE WHO JOINED TRAILINN,  
15 CONSIDERED IT THEIR HOME PARK AND LIKED GOING TO TRAILINN,  
16 LOST THE ABILITY TO GO TO TRAILINN?

17 A YES.

18 Q AND COAST TO COAST HAD NOTHING TO DO WITH  
19 THAT?

20 A NOT THEN, NO.

21 Q NOT EVER?

22 A NOT EVER FOR THAT REASON, YES.

23 Q NOW, YOUR -- ONE OF YOUR JOBS AS THE PARK  
24 MANAGER IS TO TELL ALL SEASONS MEMBERS IF A PARK IS CLOSED;  
25 ISN'T THAT RIGHT?

26 A IF A PARK IS CLOSED? YES.

1 Q OKAY. AND THERE WERE PROBLEMS ENCOUNTERED  
2 WHEN TRAILINN WAS CLOSED DOWN BECAUSE NOT ALL THE MEMBERS  
3 WERE TOLD; ISN'T THAT RIGHT?

4 MR. MOSHENKO: ASSUMES A FACT NOT IN EVIDENCE.  
5 LACKS FOUNDATION.

6 THE COURT: OVERRULED.

7 YOU MAY ANSWER, IF YOU KNOW.

8 THE WITNESS: I REALLY DON'T KNOW BECAUSE THAT WAS  
9 GENERALLY HANDLED FROM THE HOME OFFICE.

10 BY MR. SHERMAN: Q LET ME SHOW YOU SOME -- WHAT  
11 MAY BE SOME EVIDENCE ON THE SUBJECT, EXHIBIT 949-754  
12 THROUGH 756 -- 753. EXCUSE ME.

13 YOUR HONOR, I'M GOING TO ASK THAT 949-753,  
14 WHICH IS A COAST DOCUMENT, WHICH COAST WITNESSES WILL BE  
15 PREPARED TO AUTHENTICATE AT THE APPROPRIATE TIME, BE  
16 ADMITTED AT THIS POINT, CONDITIONING GOING INTO EVIDENCE.

17 MR. MOSHENKO: YOU'RE TALKING ABOUT ALL FOUR PAGES  
18 OR JUST THE TOP PAGE?

19 MR. SHERMAN: I'M TALKING SPECIFICALLY ABOUT THE  
20 LETTER TO COAST TO COAST FROM MRS. ELIZABETH ANN SMITH.

21 MR. MOSHENKO: AND NOW, AGAIN, ARE YOU TALKING  
22 ABOUT ALL FOUR OR JUST THAT THIRD PAGE, THE LETTER?

23 MR. SHERMAN: I'M TALKING ABOUT BATES NUMBER CCC  
24 09165 AND 09166.

25 MR. MOSHENKO: MAY I LOOK AT IT, YOUR HONOR?

26 (PAUSE IN PROCEEDINGS.)

1 MR. MOSHENKO: NO OBJECTION, YOUR HONOR.

2 THE COURT: THANK YOU.

3 MR. SHERMAN: I'D LIKE TO PUT IT UP ON THE BOARD,  
4 PLEASE.

5 THE COURT: IT WILL BE RECEIVED IN EVIDENCE.

6 (WHEREUPON EXHIBIT NO. 949-753, LETTER TO  
7 COAST TO COAST FROM ELIZABETH ANN SMITH, WAS RECEIVED IN  
8 EVIDENCE.)

9 MR. SHERMAN: ACTUALLY LET'S GO TWO PAGES BEFORE  
10 THAT JUST SO WE CAN GET A DATE IN CONTEXT.

11 MR. MOSHENKO: IN FACT, JUST A COMMENT ON THAT,  
12 THERE'S NO DATE ON THE LETTER. AND THE PRECEDING TWO PAGES  
13 SHOULD GO IN TO PROVIDE THE TIME.

14 THE COURT: ALL RIGHT.

15 MR. SHERMAN: RIGHT.

16 Q AND SO YOU SEE THE DATE. GO DOWN A LITTLE  
17 BIT. SEE THE DATE, FEBRUARY '98 AND MARCH '98. SEE THAT?  
18 THE MEMBER REQUEST, MARCH 31, '98, PARK ACCEPTANCE 2 --  
19 ENTERED, 2/25. I CAN'T MAKE OUT THAT OTHER HANDWRITING.  
20 IT LOOKS LIKE '95. IT'S PROBABLY '98.

21 DO YOU SEE THAT, MR. MERRITT?

22 A YES, I SEE THOSE DATES.

23 Q SO THAT GIVES US A DATE CONTEXT. LET ME  
24 SKIP TWO PAGES NOW.

25 AND THIS IS A LETTER TO COAST TO COAST FROM  
26 MRS. ELIZABETH ANN SMITH.



1 SMITHS' LETTER THAT AT NO TIME PRIOR TO THEIR VISITING IT  
2 HAD THEY BEEN NOTIFIED BY ANYONE THAT THIS PARK WAS NO  
3 LONGER IN OPERATION AS AN A.S.R. MEMBERSHIP OR FIRST  
4 NATIONWIDE MEMBERSHIP CAMPGROUND RESORT, DO YOU -- CAN YOU  
5 EXPLAIN HOW THAT HAPPENED?

6 A WELL, TO MY KNOWLEDGE THEY WERE INFORMED.  
7 AND HERE ON THE FRONT OF THIS IT SAYS THE PARK RELEASE. SO  
8 THEY HAD TO HAVE COME TO OUR PARK AND ASKED FOR A RELEASE  
9 TO BE TRANSFERRED OVER TO -- THERE'S THREE THINGS IN ORDER  
10 TO MOVE SOMEONE WITH CAMP COAST TO COAST FROM ONE PARK TO  
11 ANOTHER. FIRST YOU HAVE TO GET THE RELEASE FROM THE  
12 EXISTING PARK, AND YOU HAVE TO GET THE CONCURRENCE OF THE  
13 PARK THEY WANT TO GO TO, AND THEN CAMP COAST TO COAST MAKES  
14 THE TRANSFER.

15 BUT THIS PARK RELEASE UP HERE, THEY WOULD  
16 HAVE KNOWN AT THAT TIME, BUT I DON'T RECOGNIZE THAT NAME AS  
17 ANYONE IN OUR ORGANIZATION THAT SIGNED THAT PARK RELEASE.

18 Q YOU DON'T BELIEVE THEY'RE AN IMPOSTOR, DO  
19 YOU?

20 A WELL, I DON'T KNOW.

21 MR. MOSHENKO: YOUR HONOR, I ALSO HAVE A FURTHER  
22 OBJECTION. THIS DOCUMENT STATES IN THE VERY FIRST SENTENCE  
23 THAT THERE'S AN ENCLOSURE ATTACHED AND THE ENCLOSURE IS NOT  
24 ATTACHED. SO THE DOCUMENT IS INCOMPLETE. AND WE REQUEST  
25 THAT COUNSEL BE INSTRUCTED TO BRING THE ENTIRE DOCUMENT.

26 MR. SHERMAN: CAN I DO THAT DURING ANOTHER TIME SO

1 WE DON'T HAVE TO TAKE TIME AWAY?

2 THE COURT: YEAH.

3 BY MR. SHERMAN: Q OKAY. SO JUST TO SUM UP SALT  
4 SPRINGS, RIVER RANCH, TRAILINN, YOUR EXPERIENCE AT THOSE  
5 THREE PARKS, THOSE ARE THREE PARKS YOU WORKED AT?

6 A YES.

7 Q THREE FORECLOSURES?

8 A YES.

9 Q THREE LOSSES OF THE PARKS?

10 A YES.

11 Q WITH COAST NOT HAVING ANYTHING TO DO WITH IT?

12 A THAT'S CORRECT.

13 Q OKAY. NOW, YOU WERE ALSO AT THE RITZ HOTEL?

14 A YES.

15 Q THAT WAS A NOVELLI PROPERTY?

16 A YES.

17 Q ASSOCIATED WITH, WHAT, TRAILINN? OR WAS IT  
18 SALT SPRINGS?

19 A I DON'T KNOW WHAT HOLDING COMPANY WAS THAT  
20 HAD THAT. I DON'T KNOW.

21 Q BUT THAT WAS ALSO USED BY MEMBERS?

22 A YES. IT WAS AVAILABLE TO MEMBERS, AS THE  
23 GENERAL PUBLIC.

24 Q BUT THE RITZ WAS PUT INTO THE ALL SEASONS  
25 SYSTEM?

26 A WELL, THAT IT COULD BE USED AT A REDUCED

1 RATE.

2 Q AND THE RITZ WAS A PROPERTY THAT YOU HAD  
3 SOME MANAGEMENT RESPONSIBILITY ON?

4 A YES. YES.

5 Q AND THAT PARK WAS PUT INTO BANKRUPTCY IN MAY  
6 OF '96?

7 A THAT'S RIGHT.

8 Q AND COAST HAD NOTHING TO DO WITH THAT?

9 A NO.

10 Q IT WAS FORECLOSED ON BY THE STATE OF  
11 FLORIDA, PROPERTY ITSELF?

12 A I DON'T KNOW WHO IT WAS FORECLOSED ON BY.

13 Q YOU DON'T KNOW THAT IT WAS LOST?

14 A I KNOW IT WAS LOST, YES.

15 Q AND IT WAS LOST BECAUSE OF BACK TAXES?

16 A NOW, THAT I DON'T KNOW.

17 Q DO YOU KNOW IF THERE'S NOW A DRUG REHAB  
18 CLINIC OPERATING THERE?

19 A I DO NOT.

20 Q AND YOU ALSO WORKED AT THE SUWANEE R.V.  
21 PARK; IS THAT RIGHT?

22 A NO, SIR, I DID NOT.

23 Q ARE YOU FAMILIAR WITH THE SUWANEE PARK?

24 A NO, I AM NOT.

25 Q WHAT ABOUT HOMOSOSA SPRINGS; DID YOU WORK  
26 THERE?

1           A           NO, SIR, I DIDN'T.

2           Q           ARE YOU FAMILIAR WITH IT?

3           A           I'M FAINTLY FAMILIAR, BUT NOT VERY MUCH.

4           Q           THAT WAS A PARKED OWNED BY THE NOVELLI

5   GROUP?

6           A           YES.

7           Q           AND IT WAS CLOSED?

8           A           YES.

9           Q           LOST IN A BANKRUPTCY FORECLOSURE?

10          A           YES.

11          Q           AND COAST HAD NOTHING TO DO WITH IT?

12          A           NO.

13          Q           IS THAT CORRECT?

14          A           THAT'S CORRECT. BUT WHEN YOU'RE SAYING

15   THESE THINGS ARE LOST, THE MEMBERS WERE TAKEN CARE OF.

16          MR. SHERMAN: I'M GOING TO MOVE TO STRIKE.

17          THE COURT: MOTION GRANTED.

18          BY MR. SHERMAN: Q NOW, YOU WORK AT ORLANDO; IS

19   THAT RIGHT?

20          A           THAT'S CORRECT.

21          Q           AND WHO ACTUALLY, MR. MERRITT, OWNS THE PARK

22   THAT YOU'RE THE MANAGER OF? DO YOU KNOW FOR SURE?

23          A           I DO NOT.

24          Q           OKAY. SO YOU DON'T KNOW IF THE HANS SCHULZ

25   TRUST OWNS THE PARK; IS THAT RIGHT?

26          A           NO, I DO NOT.

1 Q YOU DON'T KNOW IF APOLLO OWNS THE PARK?

2 A I DO NOT.

3 Q YOU DON'T KNOW IF TRAVEL AMERICA OWNS THE  
4 PARK?

5 A I DO NOT.

6 Q BUT YOU DO BELIEVE THAT AT SOME POINT IN THE  
7 PAST IT WAS OWNED BY ALL SEASONS RESORTS?

8 A YES.

9 Q AND MR. NOVELLI OWNED ALL SEASONS RESORTS?

10 A TO MY KNOWLEDGE.

11 Q AND MR. NOVELLI ALSO OWNS TRAVEL AMERICA?

12 A YES, TO MY KNOWLEDGE.

13 Q AND MR. NOVELLI HIRED YOU TO WORK AT THE  
14 ORLANDO PARK?

15 A THAT'S CORRECT.

16 Q AND YOU WORKED AT THE ORLANDO PARK BEGINNING  
17 SOMETIME IN THE FALL OF 1997; RIGHT?

18 A CORRECT.

19 Q LET'S GO TO SOME OF THE TESTIMONY YOU GAVE  
20 EARLIER.

21 THE ORLANDO PARK HAD FOR QUITE SOME TIME  
22 BEEN AFFILIATED WITH BOTH COAST TO COAST AND R.P.I.; IS  
23 THAT RIGHT?

24 A THAT'S MY UNDERSTANDING, YES.

25 Q THIS WAS FOR SOME YEARS PRIOR?

26 A YES.

1 Q SO MEMBERS OF THE ORLANDO PARK COULD, IF  
2 THEY WISHED, JOIN BOTH CAMP COAST TO COAST AND ORLANDO;  
3 RIGHT?

4 A THAT'S CORRECT.

5 Q AND BY DOING THAT, MR. MERRITT, THE MEMBERS  
6 GET TWICE THE BENEFITS?

7 A NO, NOT NECESSARILY.

8 Q WELL, LET ME SUGGEST THE FOLLOWING: IF A  
9 PERSON JOINED THE ORLANDO -- THE A.S.R. ORLANDO HOME RESORT  
10 AND CHOSE TO BECOME A MEMBER OF BOTH CAMP COAST TO COAST  
11 AND R.P.I., THEY WOULD HAVE BENEFITS WITH CAMP COAST TO  
12 COAST --

13 A YES.

14 Q -- AND WITH R.P.I.?

15 A THAT'S CORRECT.

16 Q AND SO ONCE THEY USED THEIR CAMP COAST TO  
17 COAST USAGE BENEFITS, IF YOU WILL, THEY COULD THEN, IN  
18 ADDITION TO THAT, USE THEIR R.P.I. USAGE BENEFITS?

19 A OH, YES, THEY COULD.

20 Q AND WITHOUT GETTING INTO THE SPECIFIC  
21 NUMBERS, IF COAST OFFERED A ONE-WEEK STAY AND R.P.I.  
22 OFFERED ANOTHER ONE-WEEK STAY, THE NET EFFECT TO THE MEMBER  
23 WHO HAS DUAL MEMBERSHIP IS THEY COULD HAVE A TWO-WEEK STAY  
24 AT A PARTICIPATING COAST AND R.P.I. RESORT?

25 A YES.

26 Q INCLUDING RESORTS IN FLORIDA?

1 A YES.

2 Q IS THAT RIGHT?

3 A YES.

4 Q OKAY. BUT THEN --

5 A NOT BACK TO BACK. I MEAN --

6 Q BUT THEN PLAINTIFFS, YOU WERE TOLD,  
7 INCLUDING THE ORLANDO PARK, PULLED OUT OF MY CLIENT, CAMP  
8 COAST TO COAST; IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q AND THE MEMBERS, ACCORDING TO YOU, WERE TOLD  
11 THAT THIS WAS FOR THEIR OWN BENEFIT?

12 A WELL --

13 Q IS THAT CORRECT?

14 A THERE WERE SO MANY FOLKS THAT HAD HAD  
15 PROBLEMS WITH CAMP COAST TO COAST.

16 Q COULD YOU ANSWER MY QUESTION?

17 A I'M SORRY. WHAT IS YOUR QUESTION?

18 Q THE MEMBERS WERE TOLD THAT THE PULL-OUT WAS  
19 FOR THE MEMBERS' BENEFIT?

20 A I'M NOT SURE THAT THAT'S WHAT THEY WERE TOLD.

21 Q BY PULLING OUT OF COAST TO COAST, AS FAR AS  
22 THE ORLANDO MEMBERS WERE CONCERNED, WHO HAD THESE DUAL  
23 MEMBERSHIPS, THOSE PEOPLE, IF THEY CHOSE TO STAY WITH ALL  
24 SEASONS' RESORT, ORLANDO, AND KEEP R.P.I., AND LEAVE COAST,  
25 THAT MEANT THAT WHEREAS IN THE PAST THEY GOT THE R.P.I.  
26 BENEFIT, AND THE COAST BENEFIT, THEY NOW ONLY HAD THE ONE

1 BENEFIT, THE R.P.I. BENEFIT; ISN'T THAT CORRECT?

2 A THAT'S CORRECT. BUT --

3 Q AND, MR. MERRITT --

4 A -- IT WAS OF NO VALUE TO THEM THERE.

5 THE COURT: MR. MERRITT. DON'T VOLUNTEER ANY  
6 INFORMATION.

7 THE WITNESS: OKAY. I'M SORRY.

8 THE COURT: JUST ANSWER THE QUESTIONS.

9 THE WITNESS: YES. I'M SORRY.

10 BY MR. SHERMAN: Q NOW, ORLANDO HAS THOUSANDS OF  
11 MEMBERS; ISN'T THAT RIGHT?

12 A YES. I DON'T KNOW HOW MANY, BUT --

13 Q YOU GOT AT LEAST 5- OR 6,000?

14 A I DON'T KNOW.

15 Q AND YOU'VE SPOKEN WITH MANY, MANY MEMBERS AT  
16 THE ORLANDO RESORT ABOUT COAST'S LETTERS TO COAST'S  
17 MEMBERS; IS THAT RIGHT?

18 A I HAVE SPOKEN TO SEVERAL, YES.

19 Q YOU'VE SPOKEN TO MANY?

20 A YES.

21 Q AND OF ALL THE MEMBERS YOU SPOKE TO, ONLY 10  
22 OR 12 EVER EXPRESSED TO YOU ANY CONFUSION; CORRECT?

23 A I DON'T KNOW HOW MANY. I THINK THAT'S  
24 PROBABLY FROM MY DEPOSITION, MAYBE, THAT YOU'RE GETTING  
25 THAT FIGURE. BUT I DON'T KNOW HOW MANY, BUT I SPOKE TO  
26 SEVERAL MEMBERS, YES.

1 Q I DID GET IT FROM YOUR DEPOSITION. I'D LIKE  
2 TO PLAY FROM YOUR DEPOSITION -- YOU RECALL YOUR DEPOSITION  
3 WAS TAKEN IN THIS CASE?

4 A YES.

5 Q AND YOU WERE SWORN TO TELL THE TRUTH THERE?

6 A YES.

7 Q AND YOU DID TELL THE TRUTH?

8 A YES, SO FAR AS I KNOW I DID.

9 Q I'D LIKE TO PLAY FROM YOUR DEPOSITION, PAGE  
10 75, LINE 18, THROUGH PAGE 76, LINE 13.

11 MR. MOSHENKO: WHAT WAS THE LINE ON 76?

12 MR. SHERMAN: PAGE 75, LINE 18, THROUGH PAGE 76  
13 LINE 13.

14 MR. MOSHENKO: NO OBJECTION, YOUR HONOR.

15 THE COURT: THANK YOU.

16 (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
17 IN OPEN COURT:)

18 BY MR. SHERMAN: Q NOW, MR. MERRITT, EARLIER  
19 MR. MOSHENKO ASKED YOU ABOUT THE AFFECT OF THE LETTERS ON  
20 THE OPERATION OF THE ORLANDO RESORT. DO YOU RECALL THAT?

21 A YES.

22 Q AND YOU RECALL TESTIFYING THAT -- WORDS TO  
23 THE EFFECT, "WE LOST A LOT OF MEMBERS AND ANNUAL  
24 MAINTENANCE FEES"; DO YOU RECALL THAT TESTIMONY, GENERALLY,  
25 SIR?

26 A YES.

1           MR. SHERMAN: I'D LIKE TO PLAY TO THE WITNESS FROM  
2 HIS DEPOSITION, PAGE 180, LINE 26, THROUGH PAGE 182, LINE  
3 4.

4           MR. MOSHENKO: MAY I LOOK AT THAT, YOUR HONOR?  
5                    I DON'T HAVE A LINE 26, MR. SHERMAN. DO  
6 YOU MEAN LINE 25, SINCE THERE'S NO LINE 26 ON THE PAGE?

7           MR. SHERMAN: OKAY. IT'S ON PAGE 180, LINE 25,  
8 THROUGH PAGE 182, LINE 4.

9           MR. MOSHENKO: NO OBJECTION.

10          MR. SHERMAN: OKAY. UNFORTUNATELY WE DON'T HAVE  
11 VIDEO ON THIS. SO WE'LL HAVE TO DO IT THE OLD FASHION WAY.

12                   "QUESTION: NOW, YOU MENTIONED THAT YOU'VE  
13 GOT AN OPINION REGARDING WHETHER THE ORLANDO RESORT  
14 EXPERIENCED DAMAGES AFTER GETTING THESE COAST LETTERS;  
15 CORRECT?

16                   "ANSWER: I'M SORRY?

17                   "QUESTION: YOU MENTIONED YOU HAD AN OPINION  
18 REGARDING WHAT -- WHETHER THE ORLANDO RESORT --

19                   "ANSWER: OH.

20                   "QUESTION: -- EXPERIENCED DAMAGE AFTER  
21 RECEIVING --

22                   "ANSWER: UH-HUH.

23                   "QUESTION: -- THESE LETTERS --

24                   "ANSWER: UH-HUH.

25                   "QUESTION: -- FROM COAST; RIGHT?

26                   "ANSWER: UH-HUH.

1                   "QUESTION:  AND WHAT'S YOUR OPINION ON  
2  THAT?

3                   "ANSWER:  WELL, MY OPINION IS THAT THE FUNDS  
4  TO OPERATE OUR RESORTS COME FROM THE DUES PAID BY THE  
5  MEMBERS.

6                   "QUESTION:  OKAY.

7                   "ANSWER:  AND IF, IF THERE ARE A LOT OF  
8  PEOPLE QUIT PAYING THOSE DUES, THEN THAT DIRECTLY AFFECTS  
9  THE RESORT'S ABILITY TO --

10                  "QUESTION:  SURE.

11                  "ANSWER:  -- OPERATE.

12                  "QUESTION:  DID THIS LETTER CAUSE A LOT OF  
13  PEOPLE TO STOP PAYING DUES?

14                  "ANSWER:  WELL, IN MY OPINION IT DID.

15                  "QUESTION:  AND HOW MANY PEOPLE STOPPED  
16  PAYING DUES BECAUSE OF THE LETTER?

17                  "ANSWER:  I'VE ANSWERED THAT 15 TIMES.

18                  "QUESTION:  AND YOU DON'T KNOW?

19                  "ANSWER:  I DON'T KNOW."

20                  NOW, BEFORE YOU TOOK OVER AT THE ORLANDO  
21  RESORT, YOU ARE AWARE, AREN'T YOU, THAT THE INTERNAL  
22  REVENUE SERVICE CEASED THE PARK?

23                  MR. MOSHENKO:  OBJECTION.  ASSUMES FACTS NOT IN  
24  EVIDENCE.  LACKS FOUNDATION.

25                  THE WITNESS:  NO, I'M NOT AWARE OF IT.

26                  THE COURT:  THE ANSWER IS IN.  HE SAID HE WAS NOT

1 AWARE OF IT.

2 MR. MOSHENKO: ARE YOU STILL BEATING YOUR WIFE? IT  
3 ASSUMES THAT IT HAPPENED AND HE IS NOT AWARE OF IT. THAT'S  
4 MY OBJECTION. IT HASN'T BEEN ESTABLISHED.

5 THE COURT: SUSTAINED.

6 BY MR. SHERMAN: Q HAVEN'T YOU HEARD THAT THE  
7 INTERNAL REVENUE SERVICE PADLOCKED THE FRONT GATE AND PUT  
8 I.R.S. TAPE ALL OVER THE FACILITY?

9 A NO, SIR, I'VE NEVER HEARD THAT.

10 Q LET ME PLAY YOUR DEPOSITION, PAGE -- LET ME  
11 PLAY YOUR DEPOSITION, PAGE 77, LINE 10, THROUGH PAGE 78,  
12 LINE 15.

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

14 THE COURT: YOU MAY.

15 (DISCUSSION OFF THE RECORD.)

16 (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
17 IN OPEN COURT:)

18 BY MR. SHERMAN: Q NOW, MR. MERRITT, YOU WERE  
19 AWARE THAT THERE WAS A RECEIVER APPOINTED IN THE SUMMER OF  
20 1996 TO TAKE CONTROL OVER ALL OF ALL SEASONS' BUSINESS  
21 OPERATION?

22 A YES.

23 Q THAT WAS JEFFREY KEIM?

24 A YES.

25 Q AND YOU UNDERSTOOD THAT A RECEIVER IS A  
26 COURT-APPOINTED OFFICER?

1 A YES.

2 Q A COURT-APPOINTED OFFICER THAT REPORTS TO  
3 THE COURT AND TAKES CONTROL OVER A FAILING COMPANY?

4 A YES.

5 Q AND THAT'S THE KIND OF PERSON THAT WAS  
6 APPOINTED IN THE SUMMER OF '96 TO YOUR KNOWLEDGE OVER ALL  
7 OF THE ALL SEASONS RESORTS BUSINESS OPERATIONS?

8 A THAT'S CORRECT.

9 Q AND SO YOU KNEW IN THE SUMMER OF 1996 THAT  
10 MR. KEIM, JEFFREY KEIM, COURT-APPOINTED RECEIVER, WAS IN  
11 CHARGE?

12 A YES.

13 Q YOU REPORTED TO HIM?

14 A I DIDN'T WORK FOR HIM.

15 Q ALL OF THE EMPLOYEES OF ALL SEASONS  
16 RESORTS --

17 A BUT AT THAT TIME I DIDN'T WORK FOR ALL  
18 SEASONS.

19 Q OH, OKAY. YOU WERE AT --

20 A NEW TRAILINN.

21 Q TRAILINN.

22 BUT YOU WERE AWARE GENERALLY THAT ALL THE  
23 OTHER -- ALL OF THE ALL SEASONS COUNTERPARTS REPORTED TO  
24 MR. KEIM?

25 A I ASSUMED THEY DID.

26 Q NOW, YOU KNOW WHAT A CONSUMPTIVE USE PERMIT

1 IS IN FLORIDA?

2 A AN ALCOHOLIC BEVERAGE CONSUMPTIVE USE  
3 PERMIT? WHAT DO YOU MEAN?

4 Q I'M TALKING ABOUT A CONSUMPTIVE USE PERMIT  
5 WHERE YOU WANT TO USE WATER IN THE STATE.

6 A OKAY. I'M NOT ACQUAINTED WITH IT. BUT --

7 Q BEFORE YOU TOOK OVER AT ORLANDO, DID YOU  
8 LEARN WHETHER THE UTILITY COMPANY HAD SHUT OFF ALL THE  
9 ELECTRICITY AT THE PARK?

10 A WHEN?

11 Q RIGHT BEFORE YOU TOOK OVER, AT ORLANDO.

12 A I DO NOT RECALL.

13 Q WELL, REGARDLESS OF WHETHER YOU RECALL, DID  
14 YOU LEARN OR DID YOU HEAR IN SOME FASHION THAT THE  
15 ELECTRICITY HAD BEEN SHUT OFF?

16 A I DON'T KNOW. I JUST DON'T KNOW WHETHER IT  
17 WAS OR NOT.

18 Q NOW, AT SOME POINT THE ORLANDO RESORT WAS  
19 CLOSED IN 1997; IS THAT RIGHT?

20 A WHEN -- YES, FOR ABOUT A WEEK OR WEEK AND A  
21 HALF, SOMETHING LIKE THAT.

22 Q AND IT WAS CLOSED IN THE FALL OF 1997  
23 BECAUSE OF THE ALL SEASONS BANKRUPTCY?

24 A YES. MR. DAFF CLOSED IT.

25 Q AND THAT CLOSURE OF THE ORLANDO PARK  
26 OCCURRED AT THE BEGINNING OF YOUR HEAVY SEASON WHEN THE

1 SNOWBIRDS COME DOWN?

2 A YES.

3 Q AND THE PARK WAS CLOSED BECAUSE THE BILLS  
4 WEREN'T BEING PAID?

5 MR. MOSHENKO: LACKS FOUNDATION. CALLS FOR  
6 SPECULATION.

7 THE WITNESS: BUT THAT WAS THE BANKRUPTCY COURT.

8 THE COURT: THE OBJECTION IS SUSTAINED.

9 BY MR. SHERMAN: Q WAS THE PARK CLOSED, TO YOUR  
10 KNOWLEDGE, BECAUSE OF THE BILLS WEREN'T BEING PAID?

11 A BY THE TRUSTEE.

12 Q BY ANYONE. I DON'T REALLY CARE WHO.

13 A YEAH, OKAY.

14 MR. MOSHENKO: LACKS FOUNDATION. ASSUMES FACTS NOT  
15 IN EVIDENCE.

16 THE COURT: HE MAY ANSWER, IF HE KNOWS.

17 THE WITNESS: NO, I SUPPOSE.

18 BY MR. SHERMAN: Q YOU SUPPOSE WHAT?

19 A IT HAD TO BE THE TRUSTEE BECAUSE WE DIDN'T  
20 HAVE IT AT THAT TIME.

21 Q THIS IS NOT A "WHO" QUESTION. IT'S A "WHAT"  
22 QUESTION.

23 A YEAH.

24 Q WAS THE PARK CLOSED, TO YOUR KNOWLEDGE,  
25 BECAUSE THE BILLS WEREN'T BEING PAID?

26 A OH, NO, I DON'T THINK IT WAS BEING -- IT WAS

1 CLOSED FOR THAT REASON.

2 Q BUT THE BILLS WEREN'T BEING PAID; CORRECT?  
3 TO YOUR KNOWLEDGE?

4 A WELL, AT THAT TIME THEY WEREN'T.

5 Q NOW, AT THE TIME THE ORLANDO PARK WAS  
6 CLOSED, YOU WERE ALSO AWARE OF THE MERGER BETWEEN  
7 MR. NOVELLI'S COMPANIES AND THOUSAND ADVENTURES; IS THAT  
8 RIGHT?

9 A SOMEWHAT.

10 Q AND I BELIEVE YOU TESTIFIED EARLIER THAT IT  
11 WAS DURING THE SAME TIME PERIOD, THE FALL OF '97, THAT YOU  
12 THOUGHT THAT YOU'D BE SWAMPED?

13 A THAT'S CORRECT.

14 Q YOU THOUGHT YOU'D BE SWAMPED BECAUSE OF THE  
15 MERGER WITH THOUSAND ADVENTURES AND ALL THEIR FOLKS; RIGHT?

16 A UH-HUH.

17 Q AND THIS TIME FRAME IS RIGHT AT THE SAME  
18 TIME THAT THE ORLANDO PARK WAS CLOSED; CORRECT?

19 A YES.

20 Q AND LET'S JUST FOCUS ON YOUR KNOWLEDGE ABOUT  
21 THE THOUSAND ADVENTURES SITUATION, SINCE YOU THOUGHT THAT  
22 YOU'D BE SWAMPED BECAUSE OF THOUSAND ADVENTURES' MERGER.

23 YOU WERE AWARE, WEREN'T YOU, THAT EARLIER IN  
24 '97 AND LATE '96 ALL OF THE THOUSAND ADVENTURES FLORIDA  
25 PARKS HAD BEEN SHUT, CLOSED?

26 A YES. THAT WAS -- I HAD HEARD THAT, YES.

1 Q IN THE HEIGHT OF THE SEASON?

2 A I DON'T KNOW WHEN THEY WERE DONE.

3 Q BUT ALL THE FOLKS WHO WERE THOUSAND  
4 ADVENTURES MEMBERS WHO HAD HOME RESORTS IN FLORIDA HAD BEEN  
5 SHUT OUT OF THEIR PARKS?

6 A THEY HAD BEEN TRANSFERRED TO OTHER PARKS.

7 Q WELL, LET'S NOT FOCUS ON THE TRANSFER  
8 PROCESS. I JUST WANT YOU TO STAY WITH ME.

9 THERE CAME A POINT IN TIME IN LATE '96,  
10 EARLY '97, WHEN THE THOUSAND ADVENTURES FLORIDA MEMBERS  
11 WERE PAID MONEY SO THAT THEY COULD GO TO PARKS IN FLORIDA  
12 OWNED AND OPERATED BY THOUSAND ADVENTURES, WERE SHUT OUT OF  
13 THOSE PARKS; RIGHT?

14 A YES, UH-HUH.

15 Q AND KNOWING WHAT YOU KNOW ABOUT THE  
16 CAMPGROUND INDUSTRY AND MEMBERS, MEMBERS CAN PUT UP WITH A  
17 LOT; RIGHT?

18 A YES.

19 Q BUT THEY'RE NOT REAL HAPPY WHEN THEIR PARK  
20 GETS SHUT?

21 A THAT A FAIR ASSUMPTION, YES.

22 Q AND YOU KNEW IN THE FALL OF '97 THAT THE  
23 THOUSAND ADVENTURES FOLKS WHO WERE MEMBERS OF THOUSAND  
24 ADVENTURES FLORIDA WERE NOT REAL HAPPY ABOUT THE FACT THAT  
25 LAST SEASON THOUSANDS OF THEM WERE UNABLE TO USE THE  
26 THOUSAND ADVENTURES FLORIDA PARKS?

1 MR. MOSHENKO: OBJECTION. ASSUMES FACTS NOT IN  
2 EVIDENCE AS TO THOUSANDS OF THEM.

3 THE COURT: OVERRULED.

4 THE WITNESS: WELL, I REALLY DIDN'T KNOW HOW THEY  
5 FELT. I MEAN, I JUST COULD GUESS LIKE YOU.

6 BY MR. SHERMAN: Q WELL, BUT EARLIER WHEN YOU  
7 TESTIFIED THAT YOU THOUGHT THAT YOU'D BE SWAMPED --

8 A RIGHT.

9 Q -- YOU ALSO DID GIVE DUE CONSIDERATION TO  
10 YOUR KNOWLEDGE THAT JUST EIGHT, NINE, TEN MONTHS EARLIER  
11 THESE THOUSANDS OF PEOPLE HAD BEEN SHUT OUT OF THEIR PARK?  
12 YOU KNEW THAT?

13 A WELL, THE TWO DON'T GO TOGETHER.

14 Q DID YOU KNOW THAT?

15 A I KNEW THAT THEY HAD BEEN -- THAT THEY HAD  
16 LOST THEIR PARKS, YES.

17 Q AND YOU KNEW -- YOU KNEW IN THE FALL OF '97  
18 THAT MEMBERS, WHERE -- ALL SEASONS MEMBERS, THOUSAND  
19 ADVENTURES MEMBERS OR, YOU KNOW, JACK-IN-THE-BOX MEMBERS,  
20 WHEN THEY GET SHUT OUT OF THEIR PARK, THEY'RE NOT HAPPY?

21 A THAT'S RIGHT.

22 Q OKAY. AND THIS CLOSURE OF THE ORLANDO PARK,  
23 THIS WAS NOT A CLOSURE OF THE ORLANDO PARK THAT MY CLIENT  
24 PRECIPITATED; RIGHT?

25 A NO.

26 Q IS THAT CORRECT?

1 A NOT THAT CLOSURE. THAT'S CORRECT.

2 Q OKAY. AND THE CLOSURE OF THOUSAND  
3 ADVENTURES FLORIDA THAT YOU HAD LEARNED ABOUT, YOU NEVER  
4 HEARD THAT MY CLIENT HAD ANYTHING TO DO WITH THAT?

5 A NO.

6 Q IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q AND THE BANKRUPTCY OF ALL SEASONS, THAT  
9 THIRD AND LAST BANKRUPTCY WITH MR. DAFF, MY CLIENT HAD  
10 NOTHING TO DO WITH THAT SO FAR AS YOU KNEW; RIGHT?

11 A THAT'S CORRECT.

12 Q NOW, I'D LIKE TO ASK YOU SOME QUESTIONS NOW  
13 ABOUT SOME OF MR. NOVELLI'S OTHER BANKRUPTCY FILINGS;  
14 OKAY?

15 THE BANKRUPTCY ROUTINE HAS BECOME -- YOU  
16 WOULD AGREE THAT THE BANKRUPTCY ROUTINE WITH MR. NOVELLI  
17 HAS BECOME PRETTY ROUTINE?

18 MR. MOSHENKO: OBJECTION. IT'S ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 BY MR. SHERMAN: Q WELL, HAS THE PROCESS OF FILING  
21 BANKRUPTCIES BECOME OLD-HAT?

22 MR. MOSHENKO: ARGUMENTATIVE.

23 THE WITNESS: THAT I DON'T KNOW.

24 BY MR. SHERMAN: Q LET ME PLAY FROM YOUR  
25 DEPOSITION, TO REFRESH YOUR RECOLLECTION, PAGE 81, LINE 25,  
26 THROUGH PAGE 82, LINE 16.

1 MR. MOSHENKO: I'M SORRY. COULD YOU PLEASE REPEAT?

2 MR. SHERMAN: YES. PAGE 81, LINE 25, THROUGH PAGE  
3 82, LINE 16.

4 MR. MOSHENKO: YOUR HONOR, I THINK IN FAIRNESS IT  
5 SHOULD GO ON TO LINE 23, SINCE THE ANSWER STOPS AT 16 AND  
6 THEN PICKS UP AGAIN AT 18.

7 MR. SHERMAN: OKAY. I CAN PLAY THE VIDEO UP TO 16,  
8 AND THEN WE CAN READ THE TRANSCRIPT UP TO THAT POINT.

9 THE COURT: ALL RIGHT.

10 MR. MOSHENKO: VERY WELL.

11 (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
12 IN OPEN COURT.)

13 MR. MOSHENKO: IF YOU'D LIKE -- THERE. OKAY.

14 BY MR. SHERMAN: Q LET ME ASK YOU SOME QUESTIONS,  
15 MR. MERRITT, ABOUT THE RULES AND THE REGULATIONS THAT YOU  
16 BECAME FAMILIAR WITH AS A PARK MANAGER, AS FAR AS WHEN  
17 MEMBERS COULD OR COULDN'T USE THE RECIPROCAL SYSTEM, COAST  
18 MEMBERS, R.P.I. MEMBERS.

19 YOU'RE AWARE GENERALLY THAT -- AND  
20 SPECIFICALLY ON THE SUBJECT OF MEMBER LISTS --

21 A OF MEMBER WHAT?

22 Q MEMBER LISTS.

23 A MEMBER LISTS, OKAY.

24 Q OKAY. WOULD YOU AGREE THAT YOU'VE NEVER  
25 HEARD ANYONE FROM CAMP COAST TO COAST TELL MR. NOVELLI THAT  
26 PLAINTIFFS' MEMBER LISTS ARE CONFIDENTIAL?

1           A           NO, I'VE NEVER HEARD THEM SAY THAT.

2           Q           AND IN -- SIMILARLY, YOU'VE NEVER HEARD A  
3 DEVELOPER COMPLAIN ABOUT COAST NOT ENFORCING ITS RULES?

4           A           I DON'T SUPPOSE SO.

5           Q           HAVE YOU EVER HEARD OF A RESORT DEVELOPER  
6 TAKING COAST TO COAST TO TASK ON THE SUBJECT OF COAST'S  
7 ALLEGED FAILURE TO ENFORCE ITS OWN RULES?

8           A           NO.

9           Q           LET'S TALK ABOUT SOME OF THE RULES.  
10                       SPECIFICALLY WHEN A COAST MEMBER COMES TO  
11 VISIT A COAST-AFFILIATED RESORT, LIKE SOME OF YOUR RESORTS  
12 WERE BEFORE THE PULL-OUT, YOU WOULD AGREE THAT IT IS THE  
13 RESORT MANAGER'S RESPONSIBILITY TO ASK THEIR GUESTS FOR  
14 THEIR CURRENT HOME PARK CARD WHEN THEY VISIT THE RESORT?

15          A           THAT'S CORRECT, YES.

16          Q           THAT'S NOT COAST'S RESPONSIBILITY?

17          A           NO.

18          Q           SO IN YOUR EXPERIENCE AS A RESORT MANAGER,  
19 WHEN A PERSON PULLS UP IN THEIR R.V. AND SAYS, "I'M A COAST  
20 MEMBER" -- THIS IS BEFORE THE PULL-OUT, OF COURSE -- "I'M A  
21 COAST MEMBER. I WANT TO USE YOUR RESORT," YOU ASK TO SEE  
22 THEIR CURRENT COAST MEMBERSHIP CARD; CORRECT?

23          A           THAT'S CORRECT.

24          Q           BUT YOU ALSO ASK TO SEE THEIR HOME PARK  
25 RESORT CARD?

26          A           THAT'S CORRECT.

1 Q AND YOU WANT TO MAKE SURE THAT BOTH ARE  
2 CURRENT; RIGHT?

3 A THAT'S CORRECT.

4 Q BECAUSE IF THAT PERSON DOES NOT PRESENT A  
5 CURRENT HOME PARK CARD AND A CURRENT COAST CARD, YOU DON'T  
6 CONSIDER THAT PERSON TO BE A COAST MEMBER IN GOOD STANDING;  
7 ISN'T THAT RIGHT?

8 A WELL, COAST CHANGED THAT A LITTLE BIT IN  
9 THAT THEY GIVE -- IF A SYSTEM GOES -- IF A RESORT GOES OUT  
10 OF THE SYSTEM, THEN COAST GIVES THOSE PEOPLE EXTRA TIME,  
11 USUALLY THE LENGTH OF WHAT THEIR CARD SAYS.

12 IN OTHER WORDS, IF THEIR CARD IS DUE TO  
13 EXPIRE WITHIN A YEAR, THEN THEY GIVE THEM THAT MUCH TIME,  
14 IN WHICH CASE THEY WOULDN'T HAVE A COAST -- A HOME PARK  
15 CARD.

16 Q EXCEPT FOR THAT ONE SITUATION, YOU'D AGREE  
17 THAT AS A PARK MANAGER, IF SOMEONE SHOWS UP WITH TELLING  
18 YOU THAT THEY'RE A COAST MEMBER, AND THEY WANT TO STAY WITH  
19 YOU AT THE REDUCED RATE FOR COAST MEMBERS AT YOUR PARK, YOU  
20 CHECK FOR CURRENT COAST MEMBERSHIP AND CURRENT HOME RESORT  
21 MEMBERSHIP?

22 A YES. USUALLY, YES.

23 Q AND IF THEY DON'T HAVE THOSE DOCUMENTS TO  
24 PRESENT, THEY CANNOT GET IN UNDER THE COAST-PREFERRED;  
25 RIGHT? CORRECT?

26 A I DON'T KNOW THAT WE EVER TURNED ANYONE AWAY

1 WHETHER THEY HAD AN UP-TO-DATE CARD OR NOT.

2 Q WELL, BUT NONETHELESS, WHETHER YOU TURNED  
3 THEM AWAY OR NOT, THAT'S AN ISSUE OF REVENUE FOR YOUR PARK?

4 A THAT'S RIGHT.

5 Q LET'S MOVE AWAY FROM THE ISSUE OF REVENUE.  
6 I'M TALKING NOW ABOUT AT WHAT PRICE YOU  
7 CHARGED THEM. IF THEY DIDN'T PRESENT A CURRENT HOME RESORT  
8 CARD, THEY WOULDN'T GET THE SPECIAL RATE?

9 A THAT'S RIGHT.

10 Q AND IT'S NOT COAST'S JOB TO CHECK THOSE  
11 CARDS?

12 A NO.

13 Q THAT'S YOUR JOB -- THAT'S ALL THE PARK  
14 MANAGER'S JOB?

15 A RIGHT.

16 Q THROUGHOUT THE RECIPROCAL SYSTEM?

17 A THAT'S CORRECT.

18 Q NOW, WE'VE TALKED ABOUT A LOT OF  
19 BANKRUPTCIES TODAY.

20 YOU'RE AWARE THAT A.R.A. FILED FOR  
21 BANKRUPTCY PROTECTION AT LEAST TWO TIMES; RIGHT?

22 A YES.

23 Q YOU'RE AWARE THAT WHEN ALL SEASONS FILED FOR  
24 BANKRUPTCY PROTECTION IN 1997, THAT WAS THE THIRD TIME THAT  
25 IT FILED; RIGHT?

26 A I ASSUME SO. I WASN'T HERE PREVIOUSLY.

1 Q NO. I UNDERSTAND YOU WEREN'T THERE  
2 PREVIOUSLY. BUT WHAT I'M TALKING ABOUT HERE --

3 A I'VE HEARD IT IN THE COURTROOM HERE.

4 Q WHAT YOU SAW OR HEARD YOU'VE BEEN GENERALLY  
5 AWARE FOR SOME PERIOD OF TIME, MR. MERRITT; A.R.A. FILED  
6 TWO BANKRUPTCIES?

7 A OKAY.

8 Q ALL SEASONS RESORTS FILED TWO OR THREE?

9 A YES. TWO, DEFINITELY.

10 Q YOU KNEW THAT TRAILINN HAD FILED FOR  
11 BANKRUPTCY PROTECTION?

12 A YES.

13 Q YOU KNEW THAT FIRST NATIONWIDE HAD FILED FOR  
14 BANKRUPTCY PROTECTION?

15 A UH-HUH.

16 Q YOU KNEW THAT RIVER RANCH HAD FILED FOR  
17 BANKRUPTCY PROTECTION; RIGHT?

18 A CORRECT.

19 Q LET ME PLAY YOUR DEPOSITION TESTIMONY, PAGE  
20 182, LINES 9 THROUGH 13.

21 MR. MOSHENKO: WELL, YOUR HONOR, I JUST BELIEVE  
22 THAT THE SUBJECT OPENS AT LINE 5 INSTEAD OF LINE 9.

23 MR. SHERMAN: I CAN READ THE FIRST FEW, AND THEN  
24 WE'LL CUT TO THE --

25 THE COURT: ALL RIGHT.

26 MR. SHERMAN: "QUESTION: OKAY. DO YOU HAVE AN

1 OPINION REGARDING THE EFFECT OF NOVELLI'S BANKRUPTCIES ON  
2 THE MEMBERS?

3 "ANSWER: YEAH, I'VE STATED THAT EARLIER  
4 THAT I DON'T THINK THAT IT HAD A GREAT DEAL OF EFFECT."

5 MR. SHERMAN: LET'S GO TO THE VIDEOTAPED TESTIMONY.

6 (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
7 IN OPEN COURT:)

8 BY MR. SHERMAN: Q WOULD YOU LIKE TO REVISE THAT  
9 ESTIMATE?

10 A FOUR OR FIVE -- MAYBE SIX. I DON'T KNOW.

11 Q NOW, YOU ARE AWARE THAT MY CLIENT, CAMP  
12 COAST TO COAST, ONLY SENT LETTERS IN THE FALL OF 1997 TO  
13 ITS OWN MEMBERS; RIGHT?

14 A THEY WERE OUR MEMBERS.

15 Q THEY DIDN'T SEND LETTERS TO ANYONE WHO  
16 WASN'T ALREADY A MEMBER OF COAST TO COAST; YOU WERE AWARE  
17 OF THAT?

18 A YES.

19 Q AND YOU'VE SEEN THE LETTERS ALREADY; RIGHT?

20 A YES. YES.

21 Q AND YOU ARE AWARE THAT MR. RANDALL WROTE IN  
22 ONE OF THE LETTERS TO THE ALL SEASONS MEMBERS, "REGARDLESS  
23 OF THE UNCERTAINTY OF THE STATUS OF YOUR HOME RESORT" --  
24 YOU'RE AWARE THAT THAT WAS IN THE LETTER?

25 A YES.

26 Q AND, IN FACT, THERE WAS SOME UNCERTAINTY IN

1 FALL OF '97 WITH RESPECT TO THE ORLANDO RESORT, WASN'T  
2 THERE?

3 A WELL, NOT IN MY MIND THERE WASN'T.

4 Q OKAY. WELL, LET'S GO TO YOUR DEPOSITION  
5 TESTIMONY, PAGE 196, LINES 8 THROUGH 19.

6 MR. MOSHENKO: AGAIN, THE LINE AND PAGE?

7 MR. SHERMAN: YEAH. 196, LINES 8 THROUGH 19. --  
8 PAGE 197. EXCUSE ME, COUNSEL. 197, LINES 8 THROUGH 19.

9 MR. MOSHENKO: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
12 IN OPEN COURT:)

13 BY MR. SHERMAN: Q YOU DON'T KNOW HOW MANY  
14 MEMBERS WHO HAD AS THEIR HOME PARK ORLANDO BEFORE, A COAST  
15 LETTER WAS SENT, DO YOU?

16 A NO, I DO NOT.

17 Q YOU DON'T KNOW HOW MANY PEOPLE THE LETTER  
18 WAS SENT TO?

19 A NO, I DON'T.

20 Q YOU DON'T KNOW HOW MANY MEMBERS ORLANDO HAD  
21 AFTER THE LETTER WAS SENT; CORRECT?

22 A NO.

23 Q IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND YOU DON'T KNOW OF ANY SPECIFIC MEMBER  
26 WHO QUIT THE NOVELLI SYSTEM BECAUSE HE OR SHE RECEIVED THE

1 LETTER FROM CAMP COAST TO COAST?

2 A I DON'T KNOW OF THEM BY NAME. I'VE HAD SOME  
3 FOLKS TELL ME THAT THEY --

4 Q YOU CANNOT GIVE AN INDIVIDUAL NAME?

5 A NO.

6 Q YOU DON'T KNOW MUCH ABOUT PLAINTIFFS'  
7 MEMBERSHIP BASE AT ALL; IS THAT RIGHT?

8 A I KNOW ABOUT THE PEOPLE THAT USE THE PARK  
9 THERE. I DON'T KNOW ABOUT THE LIST, NO.

10 Q YOU DON'T KNOW WHAT COMPANIES, IF ANY, LOST  
11 MEMBERS?

12 A NO.

13 Q YOU DON'T KNOW WHAT COMPANIES, IF ANY, HAD  
14 MEMBERS?

15 A NO.

16 THE COURT: LET'S PICK UP AT THIS POINT AT 1:30.  
17 SEE YOU ALL AFTER LUNCH.

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

20 MR. RIVIN: YOUR HONOR, THIS RELATES TO  
21 MR. MOSHENKO'S COMMENT IN CHAMBERS THIS MORNING THAT  
22 MR. DAWSON IS SCHEDULED TO GO ON TOMORROW MORNING.

23 MR. MOSHENKO AND I SPOKE ON FRIDAY REGARDING  
24 THE WITNESS SCHEDULING, AND I SENT MR. MOSHENKO A LETTER TO  
25 CONFIRM IT WITH A LETTER. SAYS THAT GARY MERRITT WOULD BE  
26 ON THE STAND THIS MORNING, AND ED MALPASS WOULD FOLLOW

1 MR. MERRITT THIS AFTERNOON. PAT BUTLER WILL BEGIN  
2 TESTIFYING TOMORROW MORNING, AND CHRIS DAVIS WILL FOLLOW  
3 PAT BUTLER PRESUMABLY WEDNESDAY AFTERNOON.

4 I DON'T KNOW WHEN MR. MOSHENKO MADE THE  
5 DECISION TO SUBSTITUTE MR. DAWSON, BUT I THINK IT'S  
6 INAPPROPRIATE. I DID -- MY WEEKEND SCHEDULE WAS AFFECTED  
7 BY WHAT I WAS TOLD BY MR. MOSHENKO, AND I RELIED ON IT.  
8 AND IT SEEMS TO ME THAT IT'S UNFAIR FOR THEM TO COME IN  
9 THIS MORNING AND ALMOST AS AN AFTERTHOUGHT SAY BILL DAWSON  
10 IS GOING UP TOMORROW MORNING. THAT'S NOT RIGHT.

11 THE COURT: WHEN IS BILL DAWSON GOING TO BE HERE?

12 MR. MOSHENKO: THIS WEEK.

13 THE COURT: NOT TOMORROW MORNING?

14 MR. MOSHENKO: YOUR HONOR, MY -- I GAVE MR. RIVIN  
15 THE BEST INFORMATION I HAD. I ALSO TOLD HIM I HAD NOT  
16 SPOKEN TO MR. SHAW --

17 THE COURT: OKAY.

18 MR. MOSHENKO: -- ABOUT THE SITUATION, AND THAT  
19 WHAT HAPPENED WOULD BE SUBJECT TO MR. SHAW. AND OUR  
20 PROBLEM IS, THAT IF WE START WITH PAT BUTLER TOMORROW -- WE  
21 MAY WELL DO THAT. BUT WE WILL THEN HAVE TO INTERRUPT  
22 PAT BUTLER TO GO TO A DIFFERENT WITNESS BECAUSE MR. SHAW IS  
23 UNAVAILABLE TO TAKE MR. DAWSON LATER IN THE WEEK. AND  
24 THAT'S WHY -- I'LL BE GLAD TO START MR. BUTLER IN THE  
25 MORNING AND FINISH HIM ON THURSDAY. WE CAN DO IT THAT WAY.

26 THE COURT: WE CAN DO THAT.

1 MR. SHAW: THANK YOU, YOUR HONOR.

2 MR. MOSHENKO: ASSUMING WE'RE FINISHING MR. MALPASS  
3 TODAY.

4 MR. RIVIN: SO MR. DAWSON WILL NOT GO ON THE STAND  
5 TILL WEDNESDAY?

6 THE COURT: THAT'S WHAT HE SAID.

7 MR. RIVIN: I THOUGHT SO. BUT I'M NOT SURE.

8 MR. MOSHENKO: WE WERE GOING -- I TOLD THE COURT  
9 THIS MORNING WHAT WE WANTED TO DO. IF THEY WANT TO MOVE  
10 MR. DAWSON FROM TUESDAY AND PUT IN MR. BUTLER, I'LL TRY TO  
11 ACCOMMODATE THEM. BUT I CAN'T FINISH MR. BUTLER BECAUSE OF  
12 THE TIMING OF WHEN MR. DAWSON IS AVAILABLE AND MR. SHAW IS  
13 AVAILABLE AND NOT.

14 MR. RIVIN: THIS IS NOT TO ACCOMMODATE US, YOUR  
15 HONOR. THIS IS THE SCHEDULE THAT MR. MOSHENKO GAVE ME ON  
16 FRIDAY. ALL WE WOULD LIKE THE PLAINTIFFS TO DO IS TO  
17 FOLLOW THE SCHEDULE.

18 THE COURT: I'VE ORDERED THEM TO GIVE 24 HOURS'  
19 NOTICE ON ANY WITNESS. THAT'S ALL I'M GOING TO ABIDE BY.

20 MR. MOSHENKO: THEN THAT'S FINE. IT'S DAWSON. YOU  
21 HAD YOUR 24 HOURS.

22 MR. SHERMAN: AND MR. BUTLER WILL BE ON TOMORROW  
23 MORNING.

24 MR. SHAW: NO.

25 MR. MOSHENKO: NO. MR. DAWSON.

26 MR. RIVIN: MR. BUTLER FLEW IN HERE SO THAT HE

1 WOULD BE AVAILABLE TOMORROW MORNING. THAT'S EXACTLY WHAT  
2 WE WERE TOLD.

3 MR. MOSHENKO: I TOLD THEM THERE WERE FOUR PEOPLE  
4 ON DECK FOR THIS WEEK, YOUR HONOR. I NAMED ALL FOUR.

5 THE COURT: WE CAN'T CONTINUE THIS ON EVERY  
6 WITNESS. I TOLD YOU ALL, 24 HOURS' NOTICE ON WITNESSES,  
7 AND THAT WILL BE IT.

8 MR. SHERMAN: EVEN IF THEY GIVE US MISINFORMATION?

9 MR. MOSHENKO: I DIDN'T GIVE MISINFORMATION.

10 THE COURT: YOU'VE HAD 24 HOURS' NOTICE NOW ABOUT  
11 BUTLER.

12 MR. SHERMAN: THE ISSUE IS A FRIDAY TELEPHONE  
13 CONVERSATION CONFIRMED IN WRITING MEANS NOTHING, THEN, AS  
14 FAR AS TUESDAY MORNING IS CONCERNED WHEN THEY COME INTO  
15 COURT AND CHANGE IT LIKE THAT.

16 MR. MOSHENKO: THE TELEPHONE -- THE WRITING ONLY  
17 CONFIRMS HALF OF THE TELEPHONE CONVERSATION. I GAVE THEM  
18 FOUR ON-DECKS. I GAVE THEM MY BEST --

19 MR. RIVIN: THAT IS NOT CORRECT, AND I'D LIKE  
20 MR. --

21 MR. SHERMAN: THERE IS NO NEED -- HE NEVER  
22 RESPONDED TO THIS. WE PLANNED OUR SCHEDULE.

23 MR. RIVIN: THE LETTER SETS FORTH AN ORDER; IT SETS  
24 FORTH THE NEXT FOUR WITNESSES AND AN ORDER FOR THEM, AND  
25 IT'S VERY CLEAR. AND MR. MOSHENKO NEVER RESPONDED EITHER  
26 IN WRITING OR BY TELEPHONE.

1           MR. MOSHENKO: I NEVER SAW THAT LETTER UNTIL THIS  
2 MORNING, YOUR HONOR.

3           THE COURT: WHO SENT THE LETTER?

4           MR. SHERMAN: MR. RIVIN SENT THE LETTER BY FAX, AND  
5 IT WAS SENT AT 3:22 P.M.

6           MR. MOSHENKO: YOUR HONOR, I'M COMPLYING WITH THE  
7 COURT'S INSTRUCTIONS. I GAVE THEM THE BEST INFORMATION I  
8 HAD. IT FIRMED UP OVER THE WEEKEND. I GAVE THEM THE FIRM  
9 INFORMATION THAT I HAD WHEN IT BECAME FIRM. IT'S 24 HOURS'  
10 NOTICE, AND THAT'S WHAT I GAVE THEM.

11          THE COURT: TWENTY-FOUR HOURS.

12          MR. SHAW: THANK YOU, YOUR HONOR.

13                   (WHEREUPON THE COURT WAS IN RECESS UNTIL  
14 1:30 P.M. OF THE SAME DAY.)

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1 WESTMINSTER, CALIFORNIA - MONDAY, JUNE 12, 2000

2 AFTERNOON SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN

4 OPEN COURT IN THE PRESENCE OF THE JURY:)

5 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

6 PROCEED, COUNSEL.

7 BY MR. SHERMAN: Q I'D LIKE TO PUT EXHIBIT 1026

8 BACK ON THE BOARD. WE HAD IT UP THIS MORNING.

9 MR. MERRITT, YOU'LL RECALL MY ASKING YOU  
10 SOME QUESTIONS ABOUT THE STATE OF FLORIDA FILING --

11 A YES.

12 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 1026 INTO  
13 EVIDENCE.

14 THE COURT: NO OBJECTION?

15 MR. MOSHENKO: NO OBJECTION, YOUR HONOR.

16 THE COURT: IT WILL BE SO RECEIVED.

17 (WHEREUPON, EXHIBIT NO. 1026,  
18 APPLICATION FOR REINSTATEMENT WITH THE FLORIDA DEPARTMENT  
19 OF STATE, FILING STAMP DATED DECEMBER 23, 1999,  
20 WAS RECEIVED IN EVIDENCE.)

21 BY MR. SHERMAN: Q NOW, MR. MERRITT, YOU SHOULD  
22 HAVE A BLANK PIECE OF PAPER AND A PEN.

23 A YES.

24 Q WHAT I'D LIKE YOU TO DO RIGHT NOW, PLEASE,  
25 IS SIGN YOUR NAME ON THAT PIECE OF PAPER.

26 A JUST MY REGULAR SIGNATURE?

1 Q THE WAY YOU WOULD TYPICALLY DO IT, YES.  
2 MAY I APPROACH?

3 THE COURT: YOU MAY.

4 BY MR. SHERMAN: Q AND I'D LIKE TO MOVE THIS  
5 DOCUMENT CONTAINING MR. MERRITT'S SIGNATURE INTO EVIDENCE  
6 AS 1026-A.

7 MR. MOSHENKO: RELEVANCE, YOUR HONOR.

8 THE COURT: IT'S RELEVANT.

9 MR. MOSHENKO: OKAY. NO OBJECTION.

10 THE COURT: I'LL ALLOW IT.

11 MR. SHERMAN: I'LL JUST LEAVE IT RIGHT THEN, YOUR  
12 HONOR.

13 THE COURT: 1026-A.

14 MR. SHERMAN: 1026-A IS THE BLANK PIECE OF PAPER  
15 CONTAINING MR. MERRITT'S SIGNATURE.

16 THE COURT: THE EXEMPLAR.

17 (WHEREUPON, EXHIBIT NO. 1026-A, PAPER WITH  
18 MR. MERRITT'S SIGNATURE, WAS RECEIVED IN EVIDENCE.)

19 BY MR. SHERMAN: Q NOW, ON THE SUBJECT OF WHEN  
20 THE ORLANDO PARK WAS ACTUALLY CLOSED, MR. MERRITT, I TAKE  
21 IT WHEN YOU STARTED THE PARK SOMETIME IN THE FALL OF '97,  
22 IT WAS IN FACT CLOSED WHEN YOU STARTED IT; IS THAT RIGHT?

23 A YES. EARLIER I SAID -- DID I SAY WHEN IT  
24 WAS CLOSED?

25 Q WHEN YOU STARTED AT THE PARK IT WAS IN FACT  
26 CLOSED; CORRECT?

1 A YES. YES.

2 Q AND IT CONTINUED TO BE CLOSED THROUGH THE  
3 OCTOBER AND NOVEMBER '97 TIME PERIOD?

4 A NO. NO. IT WAS ONLY CLOSED FOR ABOUT A  
5 WEEK.

6 Q AND IT WAS CLOSED AT OR ABOUT THE TIME OF  
7 THE BANKRUPTCY AUCTION SALE?

8 A NO. I BELIEVE IT WAS CLOSED IN OCTOBER.

9 Q AND IT WAS CLOSED IN SEPTEMBER, AS WELL,  
10 WHEN YOU ARRIVED?

11 A I DON'T THINK SO.

12 Q AND IT WAS CLOSED IN AUGUST, AS WELL?

13 A I DON'T THINK SO.

14 Q LET ME SHOW YOU A DOCUMENT THAT'S BEEN  
15 MARKED AS 949-043.

16 YOUR HONOR, THIS DOCUMENT COMES OUT OF  
17 COAST'S FILES. I'D ASK THAT THE COURT CONDITIONALLY ADMIT  
18 IT INTO EVIDENCE AS WE WILL HAVE A COAST MEMBER -- A COAST  
19 REPRESENTATIVE SUPPLY THE NECESSARY AUTHENTICATION THAT  
20 COMES FROM THE TRANSFER FILES. AND THAT'S 949-043 AND  
21 042. BATES NUMBER 8453 AND 8452.

22 I'D MOVE THAT INTO EVIDENCE.

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

24 THE COURT: YOU MAY.

25 (DISCUSSION HELD OFF THE RECORD.)

26 MR. SHERMAN: LET'S PUT 949-043 UP ON THE BOARD,

1 AND IF YOU COULD ZOOM IN ON THAT, PLEASE. THAT'S A LETTER  
2 DATED SEPTEMBER 18, 1997, FROM CHARLES CAPP REGARDING  
3 TRANSFER OF COAST TO COAST NUMBER 62402.

4 "GENTLEMEN: I WOULD LIKE TO TRANSFER MY  
5 COAST TO COAST MEMBERSHIP FROM ALL SEASONS ORLANDO TO KING  
6 GEORGE R.V. RESORT BECAUSE ALL SEASONS HAS CLOSED MY PARK.

7 Q NOW, LET ME MOVE, AT THIS POINT,  
8 MR. MERRITT, TO THE SUBJECT OF WHETHER YOU EVER RECEIVED OR  
9 BECAME AWARE OF COMPLAINTS BY MEMBERS OF THE A.R.A. SALT  
10 SPRINGS RESORT COMPLAINING ABOUT THE FACT THAT THEY WERE  
11 DISAPPOINTED, UPSET BECAUSE THEY HAD PAID DUES TO A.R.A.  
12 AND DIDN'T WANT TO BE TRANSFERRED.

13 DID YOU EVER HEAR ANYTHING TO THAT EFFECT?

14 A I'M SURE I DID.

15 Q AND THERE WERE MEMBERS OF SALT SPRINGS WHO  
16 REALLY LIKED THE SALT SPRINGS PARK?

17 A OH, I'M SURE THERE WERE.

18 Q AND THEY DIDN'T WANT TO GO ANYWHERE? THEY  
19 WANTED TO STAY RIGHT WHERE THEY BOUGHT; RIGHT?

20 A WELL, I'M SURE THERE WERE SOME LIKE THAT.

21 Q LET ME SHOW YOU A DOCUMENT -- AGAIN, YOUR  
22 HONOR, WE WOULD SEEK TO HAVE THIS ADMITTED CONDITIONALLY  
23 BECAUSE THERE WILL BE A COAST REPRESENTATIVE AUTHENTICATING  
24 IT. IT COMES FROM THE SAME BATCH OF FILES. THIS IS  
25 949-839.

26 I WOULD MOVE 949-839, BATES NUMBER 9251,

1 INTO EVIDENCE.

2 MR. MOSHENKO: NO OBJECTION.

3 THE COURT: NO OBJECTION?

4 MR. MOSHENKO: NO OBJECTION.

5 THE COURT: RECEIVED.

6 (WHEREUPON, EXHIBIT NO. 949-839, LETTER FROM  
7 THE RAMSEYS TO MARY URIOSTE WAS RECEIVED IN EVIDENCE.)

8 BY MR. SHERMAN: Q THIS IS A LETTER FROM THE  
9 RAMSEYS, FRANCES AND EUGENE RAMSEY. IT HAS A DATE OF  
10 OCTOBER 21, 1997, TO MARY URIOSTE OF COAST TO COAST,  
11 COORDINATOR.

12 "DEAR MARY, THE REASON WE SWITCHED HOME  
13 PARKS IS BECAUSE A.R.A. IS NO LONGER IN BUSINESS. WE  
14 WANTED TO STAY IN CAMP COAST TO COAST. WE HAD ALREADY PAID  
15 OUR DUES TO A.R.A. SO WE LOST THAT. SO WE DIDN'T HAVE A  
16 HOME PARK ANYMORE. SO WE JOINED SOUTHERN TRAILS. HELP US  
17 IF YOU CAN. THANKS."

18 NOW, YOU HAD TALKED EARLIER THIS MORNING  
19 ABOUT YOUR BELIEF OR YOUR AWARENESS THAT THERE WAS SOME  
20 REDUCTION IN DUES AT ORLANDO SOMETIME IN THE LATE FALL OF  
21 1997 AND 1998; DO YOU RECALL THAT GENERALLY?

22 A YES.

23 Q AND THERE WERE PEOPLE WHO WERE MEMBERS OF  
24 ORLANDO AND WHO WERE ALSO MEMBERS OF COAST WHO WANTED TO  
25 STAY WITH COAST; WOULDN'T YOU AGREE WITH THAT?

26 A I'M SURE THERE WERE SOME.

1 Q AND THOSE PEOPLE WHO WERE MEMBERS OF  
2 ORLANDO, A.S.R. ORLANDO, AND MEMBERS OF CAMP COAST TO COAST  
3 HAD A CHOICE, IF THEY WANTED TO MAKE A CHOICE, TO SEEK OUT  
4 ANOTHER COAST TO COAST AFFILIATED HOME RESORT.

5 YOU'RE AWARE OF THAT, AREN'T YOU?

6 A I SUPPOSE EVERYONE HAS A CHOICE.

7 Q EVERYONE HAS A CHOICE?

8 A I SUPPOSE.

9 Q EVEN THOSE ORLANDO COAST MEMBERS; CORRECT?

10 A I MEAN, THAT -- HOWEVER, IN THE CONTRACT IT  
11 DOESN'T SAY THAT, BUT --

12 Q WELL, YOU'RE NOT HERE TO INTERPRET  
13 CONTRACTS?

14 A NO.

15 Q SO EVERYONE HAD A CHOICE INCLUDING THE  
16 ORLANDO COAST MEMBERS; RIGHT?

17 A YES.

18 Q AND THOSE ORLANDO COAST MEMBERS WHO SOUGHT  
19 TO EXERCISE THEIR CHOICE HAD THE CHOICE, IF THEY WANTED TO,  
20 TO BECOME MEMBERS OF ANOTHER HOME PARK TO KEEP THEIR COAST  
21 AFFILIATION?

22 A BUT IT SEEMS FUNNY THAT THEY ONLY MADE THAT  
23 CHOICE AFTER THEY RECEIVED A LETTER STATING THAT IT LOOKED  
24 LIKE THEIR HOME PARK WAS GONE.

25 Q THOSE PEOPLE HAD THE CHOICE TO JOIN ANOTHER  
26 COAST-AFFILIATED HOME PARK?

1 A SURE, AFTER THEY RECEIVED THAT LETTER.

2 Q THEY HAD THE CHOICE?

3 A UH-HUH.

4 Q IS THAT A "YES"?

5 A YES.

6 Q AND SO WHEN THEY EXERCISED THAT CHOICE  
7 BECAUSE THEY WANTED TO STAY WITH CAMP COAST TO COAST, THAT  
8 WOULD IN PART EXPLAIN WHY YOU HAD FEWER PEOPLE VISITING  
9 ORLANDO?

10 A SURE.

11 Q CORRECT?

12 A ABSOLUTELY.

13 Q AND, IN FACT, BY LATE '97 AND CERTAINLY BY  
14 1998, THE ORLANDO ALL SEASONS PROPERTY -- ACTUALLY IT  
15 WASN'T ALL SEASONS THEN; RIGHT?

16 A NO, NOT IN '98.

17 Q WHAT WAS IT CALLED IN '98?

18 A TRAVEL AMERICA.

19 Q OKAY. SO BY '98 THE ORLANDO TRAVEL AMERICA  
20 PROPERTY WAS NO LONGER A MEMBER OF THE COAST RECIPROCAL  
21 NETWORK EXCHANGE; ISN'T THAT RIGHT?

22 A IN '98, THAT'S CORRECT.

23 Q AND SO THE LOGIC IS THAT IF IT'S NO LONGER A  
24 MEMBER OF THE COAST NETWORK, A COAST MEMBER VISITING THAT  
25 PARK WOULD NOT BE ABLE TO AVAIL HIMSELF OR HERSELF OF THE  
26 SPECIAL RATES; RIGHT?

1           A           THAT'S RIGHT.

2           Q           AND THAT WOULD BE YET ANOTHER REASON  
3   EXPLAINING THE DROP-OFF IN VISITS AFTER MR. NOVELLI CHOSE  
4   TO PULL ORLANDO OUT OF CAMP COAST TO COAST?

5           A           WE DIDN'T GET VERY MUCH FROM THE CAMP COAST  
6   TO COAST MEMBERS IN THE FIRST PLACE.

7           Q           THAT WOULD BE ANOTHER REASON EXPLAINING THE  
8   DROP-OFF; CORRECT?

9           A           A SLIGHT ONE.

10          Q           NOW, LET'S TALK ABOUT CHARLES DAFF.  
11                      YOU KNOW WHO MR. DAFF IS; RIGHT?

12          A           I'VE NEVER MET HIM. I KNOW WHO YOU'RE  
13   TALKING ABOUT.

14          Q           YOU'VE COMMUNICATED WITH HIM, THOUGH?

15          A           YES, I HAVE.

16          Q           YOU KNEW HE WAS A TRUSTEE --

17          A           YES.

18          Q           -- APPOINTED BY THE UNITED STATES BANKRUPTCY  
19   COURT?

20          A           YES.

21          Q           OVER ALL OF THE OPERATIONS OF ALL SEASONS  
22   RESORTS; RIGHT?

23          A           YES.

24          Q           AND MR. DAFF, TO YOUR KNOWLEDGE, SENT OUT A  
25   LETTER TO ALL MEMBERS OF ALL SEASONS RESORTS AFTER HE WAS  
26   APPOINTED.



1 CHARLES DAFF TO MEMBERS OF ALL SEASONS RESORTS, WAS  
2 RECEIVED IN EVIDENCE.)

3 BY MR. SHERMAN: Q OKAY. SO THIS IS THE PORTION  
4 OF THE LETTER THAT YOU SENT IN THE FALL OF '97, SIR?

5 A YES.

6 Q A LETTER FROM CHARLES W. DAFF, CHAPTER 11  
7 TRUSTEE, SANTA ANA, CALIFORNIA.

8 "AS MANY OF YOU KNOW, ALL SEASONS IS IN  
9 CHAPTER 11 BANKRUPTCY. SOME OF YOU MAY REMEMBER THAT ALL  
10 SEASONS HAS BEEN IN BANKRUPTCY BEFORE. AS BEFORE, THE  
11 COURT AND OTHER INTERESTED PARTIES ARE CONCERNED ABOUT THE  
12 EFFECT OF THE BANKRUPTCY ON YOU, THE MEMBERS.

13 "I HAVE BEEN APPOINTED AS THE TRUSTEE FOR  
14 ALL SEASONS. UNDER AN AGREEMENT WITH TWO OF THE LARGEST  
15 SECURED CREDITORS, THE COURT HAS AUTHORIZED ME TO OPERATE  
16 THE RESORTS NORMALLY UNTIL NOVEMBER 30, 1997, IF FUNDS ARE  
17 AVAILABLE. THE PURPOSE FOR THE COURT ALLOWING THE RESORTS  
18 TO CONTINUE TO OPERATE IS TO TRY TO SELL THEM WHILE THEY  
19 ARE STILL OPERATING, WHICH COULD HELP THE MEMBERS, AS WELL  
20 AS GENERATE MORE MONEY FOR CREDITORS.

21 "OPERATIONS WILL BE FUNDED FROM DUES INCOME,  
22 AND, IF NECESSARY, FUNDS BORROWED FROM THOSE CREDITORS.  
23 THE AMOUNT OF MONEY AVAILABLE TO BORROW IS LIMITED. IT IS  
24 IMPORTANT FOR YOU TO KNOW THAT IF THE AMOUNT OF DUES  
25 RECEIVED FROM THIS BILLING IS TOO LOW, THE RESORTS WILL  
26 HAVE TO BE CLOSED MUCH SOONER THAN NOVEMBER 30, 1997. IF

1 YOU DO NOT PAY YOUR DUES, YOU COULD BE DENIED ACCESS TO THE  
2 RESORTS.

3 "IT IS ALSO IMPORTANT FOR YOU TO KNOW THAT  
4 BECAUSE THE RESORTS ARE TO BE SOLD, AND BECAUSE IT APPEARS  
5 AS IF THE ONLY WAY THAT A BUYER WOULD BE INTERESTED WOULD  
6 BE IF ALL SEASONS' MEMBERSHIP CONTRACTS DID NOT ENCUMBER  
7 THE PROPERTIES, ALL MEMBERSHIP CONTRACTS WILL BE TERMINATED  
8 AS OF NOVEMBER 30, 1997. IT IS HOPED THAT ANY FUTURE BUYER  
9 WILL CONTINUE TO OPERATE THE RESORTS AND WILL BE INTERESTED  
10 IN HAVING A NEW ARRANGEMENT WITH THE FORMER MEMBERS OF ALL  
11 SEASONS UNDER WHICH THEY CAN CONTINUE TO USE THE RESORTS.

12 "ALL DUES PAYMENTS SHOULD BE SENT TO" --  
13 GIVE HIS NAME AND ADDRESS. "THANK YOU, CHARLES W. DAFF."

14 NOW, WHEN YOU SAW THIS LETTER IN THE FALL OF  
15 1997, YOU READ IT; RIGHT?

16 A YES.

17 Q AND YOU THOUGHT YOU UNDERSTOOD IT; RIGHT?

18 A WELL, I READ WHAT IT SAID.

19 Q OKAY. AND YOU THOUGHT YOU UNDERSTOOD IT?

20 A I DIDN'T THINK THIS WAS GOING TO HAPPEN, BUT  
21 I READ WHAT IT SAID.

22 Q WELL, YOU DIDN'T THINK THAT MR. DAFF WAS  
23 PLAYING GAMES WITH YOU, DID YOU?

24 A NO. NO, NOT AT ALL.

25 Q AND WHEN MR. DAFF WROTE THAT ALL MEMBERSHIP  
26 CONTRACTS WILL BE TERMINATED AS OF NOVEMBER 30, 1997 --

1           A           YES, SIR. THAT PART, UH-HUH.

2           Q           -- YOU DID NOT HAVE ANY CONTRARY FACTS OR  
3 INFORMATION TO SUGGEST THAT MR. DAFF DIDN'T KNOW WHAT HE  
4 WAS TALKING ABOUT; RIGHT?

5           A           NO. NOT REALLY, NO.

6           Q           AND YOU DID DISCUSS THIS SUBJECT WITH PEOPLE  
7 VISITING THE PROPERTY, NAMELY, ALL MEMBERSHIP CONTRACTS  
8 WILL BE TERMINATED AS OF NOVEMBER 30, 1997?

9           A           I REALLY DON'T REMEMBER DISCUSSING THIS  
10 LETTER WITH ANYONE.

11          Q           BUT YOU KNOW THE MEMBERS RECEIVED THIS  
12 LETTER?

13          A           I ASSUME THEY DID.

14          Q           YOU ASSUMED AT THE TIME THAT ALL 18,000 ALL  
15 SEASONS MEMBERS RECEIVED THIS LETTER; RIGHT?

16          A           I ASSUME.

17          MR. MOSHENKO: OBJECTION. THE ASSUMPTION IS  
18 IRRELEVANT.

19          THE COURT: SUSTAINED.

20          BY MR. SHERMAN: Q SO AS FAR AS YOU UNDERSTOOD,  
21 THE FALL OF 1997, YOU AS THE PARK MANAGER OF ALL SEASONS  
22 ORLANDO, YOU BELIEVED IN THE FALL OF '97 THAT THE  
23 MEMBERSHIP CONTRACTS WERE TO BE TERMINATED?

24          A           FOR A SHORT PERIOD OF TIME, YES.

25          Q           YOU AS THE PARK MANAGER OF ALL SEASONS KNEW  
26 THAT THE MEMBERSHIP CONTRACTS WERE TO BE GONE; THEY WERE

1 OVER?

2 A FOR -- YES, FOR A SHORT PERIOD OF TIME.

3 Q WHERE DOES IT SAY "FOR A SHORT PERIOD OF  
4 TIME" IN THIS LETTER?

5 A WELL, I JUST KNEW THAT THERE WERE OTHER  
6 PLANS INVOLVED OTHER THAN WHAT THIS LETTER SAID.

7 Q DOES IT SAY "FOR A SHORT PERIOD OF TIME" --

8 A NO.

9 Q -- IN THIS LETTER?

10 A YOU ASKED ME, THOUGH, AND YOU DIDN'T ASK THE  
11 MEMBER. YOU ASKED ME WHAT I THOUGHT. AND THAT'S WHAT I  
12 THOUGHT, FOR A SHORT PERIOD OF TIME.

13 Q MR. DAFF NEVER TOLD YOU --

14 A NO.

15 Q -- THAT IT WOULD BE FOR A SHORT PERIOD OF  
16 TIME, DID HE?

17 A NO.

18 Q ALL THE INFORMATION THAT YOU GOT FROM EITHER  
19 MR. DAFF OR OFFICIALLY FROM THE U.S. BANKRUPTCY COURT --

20 A WAS THIS.

21 Q -- WAS TO THE EFFECT --

22 A THAT'S CORRECT.

23 Q -- IT'S OVER; CORRECT?

24 A THAT'S CORRECT.

25 Q AND YOU KNOW THAT WHEN ALL SEASONS' MEMBERS  
26 RECEIVED WORD THAT THE MEMBERSHIP CONTRACTS WERE GOING TO

1 BE OVER, THEY STOPPED PAYING?

2 A NO, THAT'S NOT TRUE.

3 Q DO YOU KNOW WHAT THE PAYMENT RECORDS ARE OF  
4 THE ALL SEASONS MEMBERS?

5 A WELL, I JUST KNOW THAT WHEN THEY GOT THIS  
6 LETTER, IT SAID FOR THEM TO CONTINUE PAYING DUES, AND THEY  
7 SAID -- I MEAN, AND IT WOULD SAY IN HERE THAT IT WAS GOING  
8 TO BE CLOSED; SO THAT SOME OF THEM STILL PAID DUES.

9 Q DO YOU KNOW WHAT THE PAYMENT RECORDS SHOW  
10 FOR THE ALL SEASONS MEMBERS?

11 A NO. I JUST -- I'M AWARE OF THE FACT THAT HE  
12 HAD TO REFUND SOME DUES.

13 Q WELL, OKAY. I'M NOT TALKING ABOUT REFUNDS  
14 YET. I'M TALKING ABOUT WHETHER YOU KNOW --

15 A NO, I DO NOT.

16 Q -- THE PAYMENT RECORDS.

17 A NO.

18 Q YOU DON'T KNOW THE PAYMENT INFORMATION?

19 A NO.

20 Q WHAT YOU KNOW YOU KNOW EITHER ANTIDOTALLY OR  
21 SECONDHAND?

22 A YES.

23 Q NOW, YOU MENTIONED A REFUND JUST A MOMENT  
24 AGO. YOU DID BECOME AWARE THAT IN FACT SOME -- SOME ALL  
25 SEASONS MEMBERS THAT HAD PAID DUES TO ALL SEASONS EVEN GOT  
26 THEIR MONEY BACK?

1 A UH-HUH.

2 Q IS THAT RIGHT?

3 A YES.

4 Q AND THEY GOT THEIR MONEY BACK BECAUSE, AS  
5 YOU CAME TO LEARN AS THE PARK MANAGER, ALL SEASONS WAS OUT  
6 OF BUSINESS; RIGHT?

7 A YES.

8 Q AND THAT'S WHY THEY GOT THEIR MONEY BACK;  
9 RIGHT?

10 A YES.

11 Q NOW, AS FAR AS THE REFUND OF THE DUES -- WHY  
12 DON'T WE PUT THAT LETTER BACK UP, MIKE. CAN WE DO THAT?

13 AS FAR AS THIS LETTER FROM MR. DAFF, YOU  
14 HAVE NO KNOWLEDGE OF ANY FACTS THAT COAST TO COAST PUT  
15 MR. DAFF UP TO SEND THIS, DID YOU?

16 A OF COURSE NOT.

17 Q OKAY. YOU HAVE NO KNOWLEDGE THAT COAST TO  
18 COAST HAD ANYTHING TO DO WITH THIS LETTER WHATSOEVER;  
19 RIGHT?

20 A NO. BY THE SAME TOKEN, IT DIDN'T GIVE COAST  
21 TO COAST THE AUTHORITY TO DO THAT, EITHER.

22 MR. SHERMAN: I'LL MOVE TO STRIKE THE ANSWER AFTER  
23 "NO" AS NONRESPONSIVE.

24 THE COURT: MOTION GRANTED.

25 BY MR. SHERMAN: Q AND AS FAR AS THIS REFUND BY  
26 THE BANKRUPTCY TRUSTEE TO MEMBERS, YOU NEVER LEARNED ANY

1       FACTS TO SUGGEST THAT MY CLIENT HAD ANYTHING TO DO WITH  
2       MR. --

3               A           NO.

4               Q           -- DAFF'S DECISION TO REFUND DUES?

5               A           NO.

6               Q           NOW, I'D LIKE TO ASK YOU SOME QUESTIONS  
7       ABOUT THE NOVELLI PARKS' PRACTICES OF TRANSFERRING MEMBERS  
8       FROM ONE RESORT TO ANOTHER. YOU TALKED ABOUT THAT A LITTLE  
9       BIT IN YOUR DIRECT TESTIMONY.

10                           DO YOU RECALL?

11               A           A LITTLE, YES.

12               Q           AND SOME MEMBERS OF NOVELLI RESORTS WERE  
13       TRANSFERRED 5-, 6-, 700 MILES; ISN'T THAT RIGHT?

14               A           YES, PROBABLY.

15               Q           WELL, LET ME PLAY FROM YOUR DEPOSITION, PAGE  
16       107, LINES 8 THROUGH 24, ON THE SUBJECT OF THE TRANSFERRED  
17       MEMBERS.

18               MR. MOSHENKO: CAN YOU GIVE THE PAGE NUMBER?

19               MR. SHERMAN: YES. PAGE 107, LINES 8 THROUGH 24.  
20       107, LINES 8 THROUGH 24.

21               MR. MOSHENKO: NO OBJECTION.

22                           (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
23       IN OPEN COURT:)

24               BY MR. SHERMAN: Q AND MEMBERS OF SUWANEE WERE  
25       TRANSFERRED TO ORLANDO; RIGHT?

26               A           I ASSUME SO. I DON'T KNOW. THAT WAS BEFORE

1 MY TIME.

2 Q AND MEMBERS OF NATURES RESORT WERE  
3 TRANSFERRED TO ORLANDO?

4 A YES.

5 Q AND MEMBERS OF SALT SPRINGS WERE TRANSFERRED  
6 TO ORLANDO?

7 A YES.

8 Q AND YOU HAVE NO IDEA HOW MANY MEMBERS LEFT  
9 THE NOVELLI COMPANIES OR TRAVEL AMERICA BECAUSE OF CLOSURE  
10 OF SALT SPRINGS; RIGHT?

11 A NO.

12 MR. MOSHENKO: OBJECTION. ASSUMES FACTS NOT IN  
13 EVIDENCE THAT MEMBERS DID LEAVE.

14 THE COURT: SUSTAINED.

15 MR. SHERMAN: LET ME PLAY MR. MERRITT'S DEPOSITION,  
16 PAGE 113, LINE 22, TO PAGE 114, LINE 23.

17 MR. MOSHENKO: YOUR HONOR, I JUST WOULD INDICATE TO  
18 THE COURT THAT LINE 22 NEEDS THE CONTEXT STARTING AT LINE  
19 13 FOR THE QUESTION TO MAKE ANY SENSE.

20 THE COURT: ALL RIGHT.

21 MR. SHERMAN: THAT'S FINE.

22 THE COURT: YOU'RE SUGGESTING IT BE READ FROM LINE  
23 13?

24 MR. MOSHENKO: YES.

25 MR. SHERMAN: WHY DON'T WE READ FROM LINE 13, AND  
26 THEN WE'LL PLAY THE --

1                   LINE 13 BEGINS WITH, "OKAY. WELL, THE  
2 PEOPLE THAT TOLD YOU THEY WERE UPSET THAT SALT SPRINGS  
3 RESORT CLOSED --

4                   "ANSWER: UH-HUH.

5                   "QUESTION: THE NUMBER OF PEOPLE THAT TOLD  
6 YOU THAT, WERE THERE MORE OR LESS THAN THE NUMBER OF PEOPLE  
7 THAT TOLD YOU THEY WERE CONFUSED BY THE COAST TO COAST  
8 LETTER?

9                   "ANSWER: I WOULD GUESS IT TO BE CLOSE TO  
10 THE SAME.

11                   "QUESTION: ABOUT THE SAME?

12                   "ANSWER: YEAH.

13                   (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED  
14 IN OPEN COURT:)

15                   BY MR. SHERMAN: Q YOU ARE AWARE THAT MEMBERS DID  
16 COMPLAIN ABOUT HAVING THEIR HOME RESORTS TRANSFERRED BY  
17 MR. NOVELLI; RIGHT?

18                   A I ASSUME THAT THERE WERE SOME, YES.

19                   Q YOU WERE AWARE AS THE PARK MANAGER THAT  
20 THERE WERE MEMBERS WHO COMPLAINED ABOUT BEING TRANSFERRED  
21 LONG DISTANCES, AND THEY DIDN'T WANT TO?

22                   A I'M SURE THERE WERE.

23                   Q YOU WERE AWARE THAT THERE WERE MEMBERS WHO  
24 COMPLAINED THAT THEY DIDN'T WANT TO BUY IN A PARTICULAR  
25 HOME RESORT TO WHICH THEY WERE TRANSFERRED; THEY WANTED TO  
26 BUY IN THE HOME RESORT THAT THEY PURCHASED ORIGINALLY?

1 A I'M SURE THERE WERE SOME.

2 Q BUT YOU HAVE NO -- NO INFORMATION,  
3 MR. MERRITT, ON THE SPECIFICS OF NUMBERS ON ANY OF THESE  
4 ISSUES; RIGHT?

5 A NO.

6 Q IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q NOW, LET ME SWITCH GEARS AND ASK YOU IF --  
9 QUESTIONS ABOUT THE NAME "THOUSAND ADVENTURES, INC."  
10 OKAY?

11 THAT NAME, THOUSAND ADVENTURES, INC., BEGINS  
12 WITH THE INITIALS "T.A.I."; RIGHT?

13 A UH-HUH.

14 Q AND LET'S NOW TALK ABOUT THE NAME "TRAVEL  
15 AMERICA, INC."

16 THAT NAME BEGINS WITH THE NAME INITIALS,  
17 "T.A.I."; RIGHT?

18 A YES.

19 Q AND THAT WAS CONFUSING TO MEMBERS, WASN'T  
20 IT?

21 MR. MOSHENKO: OBJECTION. CALLS FOR SPECULATION.  
22 ASSUMES FACTS NOT IN EVIDENCE.

23 THE COURT: SUSTAINED.

24 MR. SHERMAN: LET ME PLAY FROM YOUR DEPOSITION,  
25 PAGE 184, LINE 5, THROUGH LINE 24.

26 MR. MOSHENKO: THE SAME OBJECTION. CALLS FOR

1 SPECULATION.

2 THE COURT: MAY I SEE IT?

3 MR. SHERMAN: SURE.

4 MAY WE APPROACH, YOUR HONOR?

5 THE COURT: YOU MAY.

6 (DISCUSSION OFF THE RECORD.)

7 BY MR. SHERMAN: Q MR. MERRITT, YOU'VE BEEN ASKED  
8 SOME QUESTIONS TODAY ON THE OPERATIONS OF PARKS, WHETHER  
9 THEY WERE IMPACTED OR NOT IMPACTED BY VARIOUS FACTORS;  
10 RIGHT?

11 A YES, SIR.

12 Q LET ME ASK YOU ABOUT SOME OF THE IMPACT AS  
13 IT MAY HAVE IMPACTED ON YOU AND OTHER EMPLOYEES.

14 YOUR OWN PAYCHECKS HAVE BOUNCED FROM TIME TO  
15 TIME; IS THAT RIGHT?

16 A IT HAS HAPPENED, YES.

17 Q AND YOUR EMPLOYEES' PAYCHECKS HAVE BOUNCED  
18 AS WELL; RIGHT?

19 A YES, BUT THEY WERE COVERED IMMEDIATELY. I  
20 MEAN, THE INSTANT THAT THEY RECEIVED IT BACK, THEY WERE  
21 COVERED INSTANTLY.

22 Q WELL, LET'S TALK ABOUT MINDY COUCH.

23 A WHO?

24 Q MINDY COUCH.

25 YOU KNOW WHO MINDY COUCH IS, DON'T YOU?

26 A NO.

1 Q MINDY COUCH WORKED AS ASSISTANT AT TRAILINN  
2 IN ORLANDO?

3 A I THINK THAT WAS BEFORE MY TIME.

4 Q WEREN'T THERE EMPLOYEES -- I'M NOT TALKING  
5 ABOUT YOU NOW. I'M TALKING ABOUT OTHER EMPLOYEES.

6 WEREN'T THERE EMPLOYEES WHO WORKED AT THE  
7 PARKS WHOSE PAYCHECKS BOUNCED WITH SUCH FREQUENCY THAT THEY  
8 HAD TO QUIT?

9 A NEVER WHEN I WAS AT TRAILINN, AND AT ALL  
10 SEASONS I COVERED EVERY SINGLE CHECK THE INSTANT THAT IT  
11 CAME BACK, IF IT CAME BACK.

12 Q AND YOU HAD TO COVER IT OUT OF YOUR OWN  
13 POCKET; IS THAT RIGHT?

14 A YES.

15 Q BUT THE ISSUE GOT TO A LEVEL OF SEVERITY  
16 WHERE --

17 A NOT WHILE I WAS THERE.

18 Q PLEASE LET ME FINISH.

19 A I'M SORRY.

20 Q THE ISSUE GOT TO A LEVEL OF SEVERITY WHERE  
21 YOU HAD SOME EMPLOYEES WHO COULDN'T EVEN BUY GROCERIES?

22 A NO.

23 Q THE ISSUE GOT TO THE POINT WHERE TWO  
24 EMPLOYEES HAD ALREADY QUIT?

25 A NOT AFTER I WAS THERE.

26 Q AND THE ISSUE GOT TO A POINT WHERE MEMBERS

1 WERE BLAMING THE COMPANY FOR THAT?

2 A MR. SHERMAN, I DON'T KNOW HOW ELSE TO SAY  
3 IT. WHEN I CAME THERE, THOSE THINGS DIDN'T HAPPEN BECAUSE  
4 I IMMEDIATELY -- I IMMEDIATELY MADE THEIR CHECKS GOOD, AND  
5 SO THEY WEREN'T DEPRIVED OF ANYTHING.

6 MR. SHERMAN: I'D LIKE TO SHOW THE WITNESS FOR  
7 IMPEACHMENT PURPOSES, YOUR HONOR, EXHIBIT 1022.

8 Q MR. MERRITT, THIS IS A LETTER THAT YOU  
9 PREPARED; RIGHT?

10 A RIGHT.

11 Q IT'S A LETTER YOU CAUSED TO BE SENT TO  
12 CHARLES DAFF, THE BANKRUPTCY TRUSTEE; RIGHT?

13 A RIGHT.

14 Q AND WHEN YOU PREPARED THIS LETTER AND CAUSED  
15 IT TO BE SENT TO CHARLES DAFF, YOU WANTED TO BE ACCURATE  
16 AND TRUTHFUL; RIGHT?

17 A YES.

18 Q IT WAS IMPORTANT FOR YOU TO GIVE MR. DAFF  
19 THE TRUTH AND NOTHING BUT THE TRUTH; RIGHT?

20 A YES.

21 MR. SHERMAN: I'D LIKE TO PUT THIS EXHIBIT UP ON  
22 THE BOARD.

23 MR. MOSHENKO: OBJECTION. IT'S NOT IMPEACHMENT,  
24 AND IT'S NOT AN EXHIBIT THAT HAS BEEN DISCLOSED OR MADE A  
25 PART OF THE EXHIBIT LIST.

26 THE COURT: I'M AT A LOSS SINCE I DON'T HAVE A COPY.

1 MR. SHERMAN: MAY I SHOW IT TO THE COURT?

2 THE COURT: PASS IT TO THE BAILIFF.

3 MR. MOSHENKO: MAY I SAY, YOUR HONOR, THE SECOND  
4 PARAGRAPH IS CONSISTENT WITH THE TESTIMONY OF THE WITNESS.  
5 IT IS NOT IMPEACHING IN ANY WAY. AND THIS IS A DOCUMENT  
6 THAT WAS NOT, AS THE COURT ORDERED, A PART OF ANY EXHIBIT  
7 LIST OR PREVIOUSLY DISCLOSED.

8 MR. SHERMAN: YOUR HONOR, IT WAS NOT PART OF ANY  
9 EXHIBIT LIST, AND THAT IS BECAUSE IT IS BEING USED UNDER  
10 CALIFORNIA LAW FOR IMPEACHMENT. AND IT GOES DIRECTLY TO  
11 THE TESTIMONY THAT THE WITNESS JUST PROFFERED.

12 THE COURT: I'LL ALLOW IT.

13 MR. SHERMAN: OKAY. PLEASE PUT IT UP ON THE  
14 BOARD.

15 Q SO THIS LETTER IS WRITTEN SEPTEMBER 4,  
16 1997; CORRECT?

17 A YES.

18 Q TO CHARLES DAFF; RIGHT?

19 A YES, SIR.

20 Q FROM YOU?

21 A YES, SIR.

22 Q YOU BEGIN WITH, "DEAR MR. DAFF, IT IS WITH  
23 CONCERN THAT I WRITE THIS NOTE ABOUT THE ORLANDO  
24 OPERATION."

25 AND THEN YOU GO ON TO LIST SOME OF YOUR  
26 ITEMS OF CONCERN; RIGHT?

1 A RIGHT.

2 Q NOW, LET'S GO TO THE NEXT PAGE.

3 SECOND PARAGRAPH, PLEASE.

4 "MR. DAFF, WE HAVE NOT BEEN PAID ANY SALARY  
5 SINCE JULY 19, 1997. I HAVE PERSONALLY GIVEN OUT OF MY  
6 POCKET \$1200 SO \$6-AN-HOUR EMPLOYEES MIGHT AT LEAST BUY  
7 GROCERIES. I HAVE ALSO PAID OUT OF MY POCKET FOR GASOLINE,  
8 FOR THE EQUIPMENT TO MOW, FOR POSTAGE TO SEND YOUR REPORTS,  
9 ET CETERA.

10 "WE WOULD, COLLECTIVELY, GREATLY APPRECIATE  
11 YOUR IMMEDIATE ATTENTION TO PROVIDING PAYCHECKS  
12 UP-TO-DATE. PLEASE NOTE THAT TWO OF THE EMPLOYEES THAT I  
13 PERSONALLY ADVANCED MONEY TO HAVE SOUGHT EMPLOYMENT  
14 ELSEWHERE. IT IS FOR THAT REASON THAT I BESEECH YOU TO  
15 MAIL ALL OF THE PAYCHECKS TO THE RESORT FOR DISBURSEMENT AS  
16 THE TWO THAT HAVE OUR EMPLOYMENT HAVE A LESS THAN SAVORY  
17 TASTE FOR MYSELF AND THE COMPANY BECAUSE THEY HAVE NOT  
18 RECEIVED PAYMENT FOR SERVICES RENDERED. I WILL BE IN A  
19 POSITION TO CASH THEIR CHECKS WHEN THEY PICK THEM UP,  
20 HOPEFULLY RETRIEVING MY FUNDS."

21 YOU BELIEVE THIS LETTER TO BE TRUTHFUL WHEN  
22 YOU WROTE IT?

23 A YES, SIR. HOWEVER --

24 MR. SHERMAN: THERE'S NO QUESTION PENDING NOW, YOUR  
25 HONOR.

26 Q THERE'S A GROCERY STORE IN CLAREMONT,

1 FLORIDA NEAR WHERE THE ORLANDO PARK IS LOCATED; IS THAT  
2 RIGHT?

3 A THERE'S GROCERY STORES IN CLAREMONT, YES,  
4 SIR.

5 Q IT'S A PUBLIX, P-U-B-L-I-X?

6 A THERE IS A PUBLIX, YES.

7 Q AND, IN FACT, THAT PUBLIX STORE HAS A SIGN  
8 OR HAD A SIGN POSTED ABOUT WHETHER THEY WOULD CASH CHECKS  
9 DRAWN ON ALL SEASONS BANK ACCOUNT, DIDN'T IT?

10 A I HAVE NEVER SEEN SUCH A SIGN.

11 Q WAS THERE A SIGN AT THE PUBLIX STORE THAT  
12 SAID, "WE DON'T CASH CHECKS FROM ALL SEASONS RESORTS OR  
13 PRESIDENT'S CLUB OR FIRST NATIONWIDE OR GUARDIAN CREDIT"?

14 A I HAVE NEVER SEEN SUCH A SIGN.

15 Q AND YOU PERSONALLY HAVE HAD A FEW CHECKS  
16 BOUNCE FROM THE NOVELLI COMPANIES; RIGHT?

17 A YES.

18 Q AND YOU HAVE HEARD OF PAYCHECKS TO OTHER  
19 EMPLOYEES IN THE NOVELLI COMPANIES BOUNCING; RIGHT?

20 A YES.

21 Q AND EMPLOYEES THAT DON'T GET PAID DON'T LIKE  
22 TO WORK; RIGHT?

23 A MR. SHERMAN, WHILE I WAS THERE, AND WHEN I  
24 WAS WORKING FOR MR. NOVELLI, NOT FOR THE COURT -- FOR  
25 MR. DAFF, NOT ONE SOUL DIDN'T GET THEIR MONEY THE INSTANT  
26 THAT THEY SHOWED ME THEIR CHECK. I REIMBURSED THEM

1 IMMEDIATELY.

2 Q AND EMPLOYEES WHO HAD THEIR PAYCHECKS BOUNCE  
3 DON'T LIKE TO WORK FOR THAT COMPANY; RIGHT?

4 A NO, I'VE NOT EXPERIENCED THAT THERE.

5 Q THEY LIKE TO WORK FOR COMPANIES WHOSE  
6 PAYCHECKS BOUNCE?

7 A THEY WEREN'T LOSING ANYTHING.

8 Q NOW, YOU'VE SPOKEN WITH MEMBERS ABOUT THE  
9 NOVELLI BUSINESS CALLED "PRESIDENTIAL AIR"; CORRECT?

10 A I'M SORRY?

11 Q YOU HAVE SPOKEN WITH NOVELLI -- STRIKE THAT.  
12 YOU HAVE SPOKEN WITH MEMBERS IN THE NOVELLI  
13 PARKS ABOUT MR. NOVELLI'S BUSINESS CALLED "PRESIDENTIAL  
14 AIRLINES"?

15 A I SUPPOSE. I DIDN'T KNOW MUCH ABOUT IT, BUT  
16 I PROBABLY HAVE.

17 Q BUT YOU LEARNED SOMETHING ABOUT IT FROM THE  
18 MEMBERS, DIDN'T YOU?

19 A I DON'T KNOW WHAT YOU MEAN.

20 Q WELL, MEMBERS, IN FACT, TOLD YOU THAT  
21 MONEY --

22 MR. MOSHENKO: OBJECTION. HEARSAY, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 MR. SHERMAN: YOUR HONOR, IT'S AN ADMISSION --

25 MR. MOSHENKO: FROM A MEMBER.

26 MR. SHERMAN: -- IF HE IS LEARNING IT FROM MEMBERS.

1 THE COURT: SUSTAINED.

2 BY MR. SHERMAN: Q DID YOU EVER LEARN FROM ANY  
3 SOURCE THAT MONIES WERE BEING DIVERTED FROM NOVELLI  
4 CAMPGROUND BUSINESSES TO PRESIDENTIAL AIR?

5 MR. MOSHENKO: OBJECTION. CALLS FOR HEARSAY.

6 THE COURT: OVERRULED.

7 YOU CAN TELL US WHETHER YOU LEARNED THAT OR  
8 NOT.

9 THE WITNESS: I'VE HEARD THAT, YES.

10 BY MR. SHERMAN: Q WHO HAVE YOU HEARD IT FROM?

11 MR. MOSHENKO: OBJECTION. CALLS FOR HEARSAY.

12 LACKS FOUNDATION TO SHOW THAT IT'S NOT HEARSAY.

13 THE COURT: OVERRULED.

14 THE WITNESS: I'VE HEARD IT FROM A MEMBER.

15 BY MR. SHERMAN: Q SO MEMBERS HAVE TOLD YOU THAT  
16 MONIES WERE DIVERTED FROM NOVELLI CAMPGROUND BUSINESSES TO  
17 PRESIDENTIAL AIR?

18 A HOW WOULD THE MEMBERS KNOW?

19 MR. SHERMAN: I'M GOING TO MOVE TO STRIKE THE  
20 ANSWER AS NOT RESPONSIVE.

21 THE COURT: THAT WAS MY NEXT QUESTION.

22 MR. MOSHENKO: YEAH, THAT WAS MY QUESTION, TOO.

23 THE COURT: OVERRULED.

24 BY MR. SHERMAN: Q DID MEMBERS TELL YOU WHETHER  
25 THEY KNEW IT OR NOT?

26 A MEMBERS TOLD ME THAT.

1 MR. SHERMAN: I'VE GOT NO FURTHER QUESTIONS.

2 THE COURT: THANK YOU.

3 ANYTHING FURTHER OF THIS WITNESS?

4 MR. MOSHENKO: YES, I DO, YOUR HONOR

5 REDIRECT EXAMINATION

6 BY MR. MOSHENKO: Q MR. MERRITT, WE'VE HAD THIS  
7 SEPTEMBER 4 LETTER THAT YOU WROTE TO CHARLES DAFF PUT UP ON  
8 THE SCREEN?

9 A YES, SIR.

10 Q AND IT REFERS TO THE FACT THAT YOU HAVE PAID  
11 OUT OF YOUR OWN POCKET MONEY SO EMPLOYEES -- TO \$6-PER-HOUR  
12 EMPLOYEES.

13 DID YOU CONSISTENTLY DO THAT DURING THE TIME  
14 PERIOD THAT MR. NOVELLI HAD YOU THERE AS MANAGER OF  
15 ORLANDO, WHENEVER IT OCCURRED, IF A CHECK WAS RETURNED?

16 A NO, MR. NOVELLI NEVER ASKED ME TO DO THAT.  
17 IS THAT WHAT YOU'RE ASKING?

18 Q NO. I'M SAYING, DURING THAT TIME PERIOD  
19 THAT MR. NOVELLI -- -- STRIKE THAT.

20 DID MR. NOVELLI CONTROL AND MANAGE THE  
21 ORLANDO RESORT THROUGHOUT THE YEAR 1997?

22 A NO.

23 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION AS  
24 TO CONTROL.

25 THE COURT: OVERRULED.

26 THE WITNESS: NO.

1 BY MR. MOSHENKO: Q WASN'T THERE A PERIOD OF TIME  
2 WHEN JEFFREY KEIM WAS IN CHARGE OF RUNNING THE ORLANDO  
3 RESORT?

4 A YES.

5 Q AND SO ANY EVENTS THAT OCCURRED DURING THAT  
6 PERIOD OF TIME WERE NOT MR. NOVELLI'S FAULT?

7 A THAT'S EXACTLY RIGHT.

8 Q OKAY. NOW, THEN WHEN MR. NOVELLI WAS ABLE  
9 TO REESTABLISH CONTROL OVER THE ORLANDO RESORT, HE PUT YOU  
10 IN AS GENERAL MANAGER?

11 A THAT'S CORRECT.

12 Q AND DURING THAT PERIOD OF TIME, IF THERE  
13 WERE INSTANCES OF CHECKS RETURNED, YOU COVERED THEM?

14 A THAT'S RIGHT.

15 Q NOW, WE ALSO HAD UP ON THE SCREEN THE LETTER  
16 FROM CHARLES DAFF WHERE HE INDICATED THAT, QUOTE, ALL  
17 MEMBERSHIP CONTRACTS WILL BE TERMINATED AS OF NOVEMBER 30,  
18 1997.

19 A YES, SIR.

20 Q AND MR. SHERMAN ASKED YOU WHERE IN THAT  
21 LETTER IT SAID IT WASN'T GOING TO HAPPEN, OR WORDS TO THAT  
22 EFFECT; DO YOU RECALL THAT?

23 A YES.

24 Q ALL RIGHT. WHAT WAS THE REASON WHY YOU  
25 BELIEVED THAT THE FACT OF A TERMINATION WHICH WASN'T  
26 SUPPOSED TO BE EFFECTIVE UNTIL NOVEMBER 30 WASN'T GOING TO

1 HAPPEN?

2 A WELL, FOR ONE THING, IT SAID THAT THEY WERE  
3 LOOKING FOR A BUYER TO PUT -- TO TRANSFER THESE TO IN, I  
4 THINK, THE LAST PARAGRAPH.

5 Q WHEN --

6 A I'M SORRY.

7 Q GO AHEAD. I INTERRUPTED YOU.

8 A THAT'S ALL RIGHT. I JUST KNEW THAT THERE  
9 WERE PLANS AFOOT FOR MR. NOVELLI TO BUY SOME OF THE  
10 PROJECTS BACK.

11 Q WHERE IN THIS LETTER DOES IT SAY THAT AT ANY  
12 TIME IN THE FALL OF 1997 COAST TO COAST IS AUTHORIZED TO  
13 TRANSFER THE MEMBERS FROM THE ORLANDO RESORT TO OTHER  
14 RESORTS?

15 A IT DOESN'T SAY THAT.

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

18 THE COURT: SUSTAINED.

19 BY MR. MOSHENKO: Q ARE YOU AWARE OF ANY  
20 CORRESPONDENCE FROM MR. DAFF AUTHORIZING COAST TO COAST TO  
21 TRANSFER THE MEMBERS FROM THE ORLANDO RESORT?

22 A NO, SIR, I'VE NEVER SEEN THAT.

23 Q YOU ARE AWARE THAT ALL SEASONS' RESORTS HAD  
24 SALES WHICH RESULTED IN THE TRANSFERS OF OWNERSHIPS OF  
25 MULTIPLE OF THE ALL SEASONS RESORTS TO OTHER MR. NOVELLI  
26 COMPANIES?

1 A YES.

2 Q AND THAT OCCURRED ON OCTOBER 27, 1997;  
3 CORRECT?

4 A YES.

5 MR. SHERMAN: OBJECTION. THAT'S LEADING.

6 THE COURT: OVERRULED.

7 BY MR. MOSHENKO: Q NOW, IF MEMBERSHIP CONTRACTS,  
8 QUOTE, WILL BE TERMINATED AS OF NOVEMBER 30, 1997, YOU CAME  
9 INTO CONTROL OF THE ALL SEASONS RESORTS UNDER A DIFFERENT  
10 OWNER THAN CHARLES DAFF, CHAPTER 11 TRUSTEE; CORRECT?

11 A THAT'S CORRECT.

12 Q AND THAT OCCURRED BEFORE NOVEMBER 30, 1997;  
13 CORRECT?

14 A BEFORE, YES.

15 Q LET'S GO BACK TO SOME OF THE EARLIER  
16 QUESTIONS THAT WERE ASKED.

17 THIS IS AN EXHIBIT MR. SHERMAN ADMITTED INTO  
18 EVIDENCE AND PUT UP ON THE SCREEN, EXHIBIT 949-753-6.  
19 WE'LL PUT IT UP.

20 DO YOU REMEMBER THIS IS THE LETTER?

21 A YES.

22 Q THE THIRD PAGE AND FOURTH PAGE WERE FROM THE  
23 ELIZABETH ANN SMITH LETTER. AND LET'S GO TO THE THIRD AND  
24 FOURTH PAGE -- THE THIRD PAGE, PAGE 3.

25 AND I WOULD LIKE YOU TO BLOW UP THAT LITTLE  
26 BLIP IN THE LEFT-HAND MARGIN, PLEASE, ALONG WITH THE

1 SENTENCE NEXT TO IT.

2 ALL RIGHT. IT SAYS, "I CALLED IN RESPONSE  
3 TO YOUR LETTER REGARDING OUR REQUEST FOR CHANGE OF OUR  
4 COAST TO COAST MEMBERSHIP." AND THEN THE LEFT-HAND MARGIN,  
5 IT SAYS, "COPY ENCLOSED."

6 DO YOU SEE THAT?

7 A YES, SIR.

8 Q ALL RIGHT. NOW, MR. SHERMAN HASN'T SHOWN US  
9 THE COPY, BUT THIS IS A LETTER TO -- GO UP ABOVE THAT.  
10 DEAR MARY. ATTENTION MARY URIOSTE.

11 DO YOU KNOW WHO MARY URIOSTE IS?

12 A NO, SIR.

13 Q NOW, DROPPING DOWN BELOW RIGHT THERE, THAT'S  
14 FINE. "I WAS ADVISED TO SEND YOU A LETTER OF EXPLANATION  
15 AND AM DOING SO."

16 SO ACCORDING TO THIS MRS. SMITH, THIS IS  
17 WRITING MARY URIOSTE BECAUSE SHE WAS ADVISED BY  
18 MARY URIOSTE TO SEND THIS LETTER, AND IT'S IN RESPONSE TO  
19 AN UNKNOWN LETTER FROM MARY TO THIS WOMAN.

20 YOU DON'T KNOW WHAT THE LETTERS FROM MARY  
21 SAID, DO YOU?

22 A NO, I DON'T.

23 Q OKAY. NOW, THIS LETTER GOES ON TO TALK  
24 ABOUT EXPERIENCES AT TRAILINN.

25 BUT COULD WE GO TO THE FIRST PAGE NOW, AND I  
26 WOULD LIKE YOU TO BLOW UP THE -- FROM -- JUST THE WHOLE TOP

1 HALF.

2 ALL RIGHT. FROM, MEMBER NAME, SMITH,  
3 WILLIAM AND ELIZABETH. DATE RECEIVED, FEBRUARY OF 1998.  
4 FEBRUARY. CC NUMBER. AND THEN IT SAYS, "FROM PARK 554,  
5 THREE FLAGS, TO PARK 546, B'S."

6 THIS IS NOT A DOCUMENT TRANSFERRING ANYBODY  
7 FROM TRAILINN?

8 A NO, SIR.

9 Q TRANSFERRING FROM THREE FLAGS?

10 A YES, SIR.

11 Q WAS THREE FLAGS A NOVELLI RESORT?

12 A NO, SIR.

13 Q SO THESE PEOPLE ARE RESPONDING TO A  
14 MEMBERSHIP IN THREE FLAGS.

15 DO YOU KNOW HOW THEY GOT THERE?

16 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.  
17 THE COURT: OVERRULED.

18 BY MR. MOSHENKO: Q DO YOU KNOW HOW THEY GOT TO  
19 THREE FLAGS, BEING TRANSFERRED FROM THREE FLAGS?

20 A I WOULD ASSUME THE FOLKS GOT A LETTER FROM  
21 CAMP COAST TO COAST TRANSFERRING THEM TO THREE FLAGS.

22 Q WHERE THEY APPARENTLY --

23 A AND THEY PREFERRED TO HAVE THE OTHER PARK.

24 Q WE GO DOWN UNDER "PARK RELEASE." OKAY.  
25 RIGHT THERE CAN YOU MAKE OUT WHAT THAT SAYS IN THE  
26 PARENTHESIS THERE?

1 A I BELIEVE IT SAYS MASS TRANSFER.

2 Q MASS TRANS.

3 A YES. MASS TRANS, YES.

4 Q YOU'RE AWARE OF COAST DID A MASS TRANSFER OF  
5 34,000 --

6 A YES, SIR.

7 Q -- OF THE PLAINTIFFS' MEMBERS IN THE FALL OF  
8 1997?

9 A YES, SIR.

10 Q MR. SHERMAN ASKED YOU SOME QUESTIONS ABOUT A  
11 SALT SPRINGS BANKRUPTCY IN 1993.

12 MR. MERRITT, DID THE SALT SPRINGS BANKRUPTCY  
13 IN 1993 HAVE ANYTHING TO DO WITH THE TRANSFER OF 34,000  
14 MEMBERS IN THE FALL OF 1997?

15 A ABSOLUTELY NOT.

16 Q HE ASKED SOME QUESTIONS ABOUT A 1996  
17 BANKRUPTCY.

18 DID THAT HAVE ANYTHING TO DO WITH, IN ANY  
19 WAY, AUTHORIZING COAST TO COAST TO TRANSFER 34,000?

20 A NO, SIR, IT DID NOT.

21 Q IT DIDN'T?

22 A IT DID NOT.

23 Q MR. SHERMAN ASKED YOU SOME QUESTIONS ABOUT  
24 THE MEMBERS OF SALT SPRINGS HAVING BEEN TRANSFERRED FROM  
25 SALT SPRINGS TO ANOTHER RESORT WHICH WAS ORLANDO, I GUESS;  
26 CORRECT?

1           A           THEY WAS TRANSFERRED TO TRAILINN.

2           Q           TRAILINN 90 MILES SOUTH?

3           A           YES.

4           Q           YOUR RESPONSE WAS THAT ACTUALLY THE TRANSFER  
5 WAS TO ANOTHER RESORT, AND IT WAS AN ADVANTAGE --

6           A           UH-HUH.

7           Q           -- FOR THE MEMBERS?

8                       WHY DO YOU BELIEVE IT WAS ADVANTAGEOUS FOR  
9 THE MEMBERS?

10           A           WELL, SIMPLY BECAUSE A.R.A. WAS CONSIDERED A  
11 ONE-PARK SYSTEM. THEY ONLY HAD THE ONE PARK, AND MEMBERS  
12 WHO OWNED JUST THAT PARK COULD ONLY GO TO THAT PARK.

13                       WHEN WE TRANSFERRED THEM TO TRAILINN, THAT  
14 GAVE THEM A 35-PARK SYSTEM OR SOMETHING THAT THEY COULD USE  
15 THEN TO GO TO OTHER PARKS IN THE -- WITHIN OUR SYSTEM  
16 THEN. NOW, THIS IS IF THEY DID NOT HAVE CAMP COAST TO  
17 COAST OR R.P.I.

18           Q           ALL RIGHT. SO THE MEMBERS OF A.R.A., WHEN  
19 MR. --

20           A           BENEFITED GREATLY.

21           Q           ALL RIGHT. WHEN MR. NOVELLI ACQUIRED  
22 A.R.A., IT WAS A ONE-PARK SYSTEM?

23           A           THAT'S CORRECT.

24           Q           THE TRANSFER WAS, IN EFFECT, AN UPGRADE OF  
25 THEIR MEMBERSHIP?

26           A           YES.

1           Q           NOW, DID TRAILINN HAVE AVAILABLE TO IT COAST  
2 TO COAST AND R.P.I. BENEFITS?

3           A           YES.

4           Q           SO THE MEMBERS NOT ONLY WENT FROM A ONE-PARK  
5 AREA; THEY WENT TO A 30- OR 40-PARK SYSTEM WITH COAST AND  
6 R.P.I.?

7           A           THAT'S CORRECT.

8           Q           DID YOU GET ANY COMPLAINTS FROM ANY MEMBERS  
9 ABOUT THEIR TRANSFERS TO TRAILINN?

10          A           NO. AND, HERE AGAIN, WE HAD A FEW THAT  
11 DIDN'T LIKE IT.

12          Q           WHAT KIND OF RESPONSE DID THE MEMBERS GIVE  
13 TO THEIR TRANSFER TO THE 30- TO 40-PARK SYSTEM?

14          MR. SHERMAN. OBJECTION. HEARSAY.

15          THE COURT: SUSTAINED.

16          BY MR. MOSHENKO: Q WHAT ABOUT THE QUALITY OF THE  
17 RESORTS THAT WERE MADE AVAILABLE THROUGH THE MULTI-PARK  
18 SYSTEM AS COMPARED TO THE A.R.A. PARK?

19          A           THE A.R.A. WAS A NICE PARK, BUT THEN SO WAS  
20 TRAILINN AND SO WAS ORLANDO RESORT. AND THERE WAS A LOT OF  
21 BENEFITS IN THAT THE A.R.A. PARK WAS OUT IN THE OCALA  
22 NATIONAL FOREST, WHICH WAS PROBABLY 25 MILES FROM TOWN,  
23 WHEREAS THE ORLANDO AND THE TRAILINN PARK ARE -- WELL, THE  
24 FURTHEST, ORLANDO, IS SIX MILES FROM DISNEYLAND,  
25 DISNEYWORLD. AND ALL OF THE OTHER AMUSEMENT PARKS AND  
26 EVERYTHING ARE AROUND THERE. SO THERE WAS A TREMENDOUS

1 AMOUNT OF BENEFIT FROM THAT STANDPOINT.

2 Q SO TRANSFERS TO ORLANDO -- DO YOU KNOW WHERE  
3 COAST TO COAST TRANSFERRED COAST TO COAST ORLANDO MEMBERS  
4 FROM ORLANDO?

5 A WELL, TO SEVERAL DIFFERENT PROPERTIES.

6 Q WHERE?

7 A SOME IN FLORIDA, SOME IN MICHIGAN, SOME IN  
8 NEW JERSEY, SOME IN NEW YORK. THEY TRANSFERRED THEM ALL  
9 OVER THE UNITED STATES. AND I'M SURE THAT A LOT OF THEM  
10 WENT TO ONE-PARK SYSTEMS, WHICH WAS NOT TO THE ADVANTAGE OF  
11 THE MEMBER TO GO TO A ONE-PARK SYSTEM.

12 Q WHEN MR. NOVELLI'S ORGANIZATION ACQUIRED THE  
13 A.R.A. RESORT, DO YOU KNOW WHETHER OR NOT IT HAD A LOT OF  
14 OUTSTANDING DEBT?

15 A I'M SORRY. SAY THAT AGAIN.

16 Q WHEN MR. NOVELLI'S ORGANIZATION ACQUIRED THE  
17 A.R.A. RESORTS, DO YOU KNOW WHETHER OR NOT IT HAD ALREADY  
18 FILED A BANKRUPTCY?

19 MR. SHERMAN: OBJECTION. LACKS FOUNDATION. THE  
20 WITNESS HAS ALREADY TESTIFIED TO HIS LACK OF KNOWLEDGE,  
21 GENERALLY THE FINANCES, AT THE TIME OF THE ACQUISITION.

22 THE COURT: WE'LL SEE IF HE KNOWS THE ANSWER TO  
23 THIS QUESTION. OVERRULED.

24 THE WITNESS: I REALLY AM NOT -- I KNOW THERE WAS  
25 SOME DEBT, BUT I DON'T KNOW ABOUT THE BANKRUPTCY AT THAT  
26 TIME.

1 BY MR. MOSHENKO: Q IF THE A.R.A. RESORT WAS IN  
2 FINANCIAL DIFFICULTY AND, AS A MATTER OF FACT, SUBJECT TO  
3 FORECLOSURE AND CLOSURE, WAS IT ADVANTAGEOUS TO THE MEMBERS  
4 TO HAVE THEIR MEMBERSHIP TRANSFERRED?

5 A YES.

6 MR. SHERMAN: OBJECTION.

7 THE COURT: SUSTAINED.

8 BY MR. MOSHENKO: Q WHAT WOULD HAVE BEEN THE  
9 CONDITION OF THE MEMBERS' MEMBERSHIPS IN A RESORT THAT WAS  
10 CLOSED AS OF THE TIME THAT YOU WERE THERE?

11 A THEY WOULDN'T HAVE HAD A MEMBERSHIP.

12 Q YOU WERE ASKED A QUESTION BY MR. SHERMAN  
13 ABOUT THE RIVER RANCH RESORT.

14 A YES, SIR.

15 Q YOU INDICATED IN YOUR ANSWERS THAT MEMBERS  
16 NEVER GOT TO USE RIVER RANCH.

17 THE FIRST QUESTION IS, ARE YOU TALKING ABOUT  
18 RIVER RANCH MEMBERS NEVER GOT TO USE RIVER RANCH, OR SOME  
19 OTHER MEMBERS?

20 A THERE WERE NO MEMBERS AT RIVER RANCH. AND  
21 OUR OTHER MEMBERS HAD NOT GOT TO USE IT YET BECAUSE IT WAS  
22 BEING PURCHASED FOR THE -- FOR A FUTURE DEVELOPMENT, TO  
23 BUILD AN R.V. SITE THERE. AND THEN, OF COURSE, ALL OF OUR  
24 MEMBERS COULD USE IT WHEN IT WAS BUILT.

25 Q YOU WERE ASKED SOME QUESTIONS ABOUT THE RITZ  
26 HOTEL. DID THE RITZ HOTEL HAVE MEMBERS?

1           A           NO, SIR.  THEY DID NOT.

2           Q           SO WHAT EFFECT IF ANY -- THEREFORE, NO RITZ  
3 HOTEL MEMBERS COULD HAVE BEEN AFFECTED BY ANY RITZ HOTEL  
4 BANKRUPTCY?

5           A           NO, SIR.

6           Q           AND WAS THERE ANYTHING ABOUT A RITZ HOTEL  
7 BANKRUPTCY THAT SOMEHOW PERMITTED CAMP COAST TO COAST TO  
8 SEND OUT 34,000 LETTERS IN THE FALL OF 1997?

9           A           NO, SIR, NOT AT ALL.

10          Q           YOU WERE ASKED SOME QUESTIONS ABOUT WHETHER  
11 A WITHDRAWAL OF ORLANDO FROM THE COAST TO COAST SYSTEM  
12 WOULD IN EFFECT NEGATIVELY IMPACT THE MEMBERS.

13                       DID THE WITHDRAWAL NEGATIVELY IMPACT THE  
14 MEMBERS OF THE ORLANDO RESORT?

15          MR. SHERMAN:  OBJECTION.  SEEKS IMPERMISSIBLE  
16 HEARSAY.  GOES BEYOND THE SCOPE OF THIS PERCIPIENT  
17 WITNESS'S EXAMINATION.

18          THE COURT:  SUSTAINED.

19          BY MR. MOSHENKO:  Q  MR. SHERMAN PLAYED A PORTION  
20 OF YOUR DEPOSITION TESTIMONY TO THIS JURY IN WHICH YOU WERE  
21 QUOTED AS SAYING THAT AS A RESULT OF THE RECEIPT OF THE  
22 LETTERS THAT COAST TO COAST SENT OUT IN THE FALL OF 1997,  
23 SEVERAL MEMBERS EXPRESSED CONFUSION AND THOUGHT THAT THE  
24 RESORT WAS CLOSED.

25                       WHAT WAS IT THAT YOU SAW AND HEARD THAT  
26 CAUSED YOU TO CONCLUDE THAT SEVERAL MEMBERS EXPRESSED

1 CONFUSION AND THOUGHT THE RESORT WAS CLOSED?

2 A WELL, BASICALLY IT'S JUST THAT THE GENERAL  
3 ATTITUDE OF THE MEMBERS AND THEIR UNDERSTANDING OF THE HOME  
4 PARKS AND COAST TO COAST -- AND IT'S KIND OF LIKE THE TAIL  
5 WAGGING THE DOG.

6 WHEN A MEMBER BOUGHT A HOME PARK MEMBERSHIP,  
7 THEN THAT QUALIFIED THEM TO BUY A MEMBERSHIP IN COAST TO  
8 COAST.

9 MR. SHERMAN: YOUR HONOR, THIS GOES BEYOND THE  
10 SCOPE OF THE QUESTION. IT'S NOT RESPONSIVE.

11 THE COURT: I BELIEVE IT DOES. SUSTAINED.

12 BY MR. MOSHENKO: Q WELL, YOU HAD A LETTER FROM  
13 CHARLES CAPP THAT SAYS, I WOULD LIKE TO TRANSFER MY COAST  
14 TO COAST MEMBERSHIP FROM ALL SEASONS, ORLANDO, TO KING  
15 GEORGE R.V. BECAUSE ALL SEASONS HAS CLOSED MY PARK.

16 AND WE HEARD -- I THINK THIS IS THE LETTER  
17 WHERE THE JUDGE SAID -- NO, NO. THAT'S WHERE HE SAID, "HOW  
18 WOULD THEY KNOW?"

19 THE QUESTION MR. SHERMAN ASKED YOU WAS, ALL  
20 SEASONS CLOSED IN SEPTEMBER WHICH IS THE DATE THAT THIS  
21 CAPP LETTER HAS A DATE ON IT.

22 SO LET ME ASK YOU, YOU WERE THERE AT  
23 TRAILINN OR AT ALL SEASONS THROUGHOUT 1997; CORRECT?

24 A YES.

25 Q AND YOU WERE BACK AND FORTH BETWEEN THOSE  
26 RESORTS --

1 A WELL, NOT THROUGHOUT '97.

2 Q WHAT PERIOD OF TIME?

3 A FOR THE MOST OF '97.

4 Q OKAY. WHAT PERIOD OF TIME IN 1997 WERE YOU  
5 THERE FROM WHERE YOU WERE GOING BACK AND FORTH TO ORLANDO?

6 A THE LATTER PART OF JANUARY. I MISSED THE  
7 FIRST PART OF JANUARY.

8 Q SUBSTANTIALLY ALL?

9 A YEAH, NEARLY ALL.

10 Q ALL RIGHT. AND WAS THE ORLANDO PARK CLOSED  
11 IN AUGUST OF 1997?

12 A NO, SIR.

13 Q WAS IT CLOSED IN SEPTEMBER OF 1997?

14 A NO, SIR.

15 Q DO YOU KNOW WHETHER MR. CAPP WAS EVER TOLD  
16 BY COAST TO COAST THAT HIS ALL SEASONS PARK HAD BEEN  
17 CLOSED?

18 A I DON'T KNOW THAT. BUT I DO KNOW MR. CAPP.  
19 AND HE IS A MEMBER AND WAS IN THE PARK WHEN I LEFT,  
20 MR. CHARLES CAPP.

21 Q WHAT DO YOU MEAN "WHEN YOU LEFT"?

22 A WHEN I LEFT TO COME OUT HERE.

23 Q HE IS STILL THERE?

24 A YES. HE MAY HAVE JUST MOVED HIS COAST TO  
25 COAST MEMBERSHIP. I DON'T KNOW. BUT HE'S STILL A  
26 MEMBER --

1 Q DO WE HAVE ANY EXPLANATION WHY MR. CAPP  
2 WOULD MISTAKENLY BELIEVE ALL SEASONS CLOSED HIS PARK AS OF  
3 SEPTEMBER OF 1997?

4 MR. SHERMAN: OBJECTION. THAT'S ARGUMENTATIVE.

5 THE COURT: SUSTAINED.

6 BY MR. MOSHENKO: Q DO YOU HAVE AN EXPLANATION WHY  
7 MR. CAPP WOULD BELIEVE THAT ALL SEASONS HAD CLOSED HIS PARK  
8 AS OF SEPTEMBER OF 1997?

9 MR. SHERMAN: IT ALSO CALLS FOR SPECULATION.

10 THE COURT: SUSTAINED.

11 BY MR. MOSHENKO: Q YOU DID TESTIFY THAT ORLANDO  
12 WAS CLOSED SOMETIME, YOU BELIEVE, IN OCTOBER, FOR ABOUT A  
13 WEEK AND A HALF?

14 A I THINK THAT'S RIGHT, YES.

15 Q OKAY. NOW, THE EVIDENCE HAS SHOWN THAT THE  
16 SALE OCCURRED ON OCTOBER 27, 1997.  
17 AFTER THAT YOU MANAGED THE ORLANDO PARK?

18 A YES.

19 Q OKAY. WAS IT CLOSED AS OF THE TIME YOU CAME  
20 INTO ITS MANAGEMENT/CONTROL?

21 A NO.

22 Q OKAY. AND HAS IT BEEN -- WHEN DID YOU COME  
23 INTO MANAGEMENT AND CONTROL OF ORLANDO?

24 A I GUESS PROBABLY JANUARY OF THAT YEAR.

25 Q WHICH YEAR?

26 A OF '97 -- NO. NO. WHEN R.D.I. LEFT,

1       WHENEVER THAT WAS.   WHEN MR. KEIM LEFT.

2               Q           MR. KEIM?

3               A           WHEN MR. KEIM LEFT.

4               Q           AND SUMMER -- LATE SUMMER 1997 RING A BELL?

5               A           YEAH.   YEAH.

6               Q           AND FROM THAT TIME ON YOU WERE CONTINUALLY  
7   IN CONTROL OF THE MANAGEMENT OF THAT ORLANDO PARK?

8               A           YES, SIR.

9               Q           AND ASIDE FROM A WEEK AND A HALF, YOU  
10 BELIEVE, IN OCTOBER --

11              A           THAT'S CORRECT.

12              Q           -- THE PARK WAS AT ALL TIMES OPEN?

13              A           THAT'S RIGHT.

14              Q           AND WHO CLOSED THE PARK DURING THAT SHORT  
15 PERIOD OF TIME?

16              A           WELL, MR. DAFF CLOSED IT.

17              Q           OKAY.   MR. NOVELLI WASN'T RESPONSIBLE FOR  
18 ITS CLOSURE?

19              A           NO.

20              Q           WAS HE?

21              A           NO, ABSOLUTELY.

22              Q           COAST TO COAST DIDN'T CLOSE IT?

23              A           COAST DIDN'T CLOSE IT EITHER.

24              Q           WAS THERE ANYTHING ABOUT CLOSING THE PARK BY  
25 MR. DAFF THAT GAVE COAST TO COAST AUTHORITY TO TRANSFER  
26 34,000 MEMBERS FROM PLAINTIFFS' RESORTS?

1           A           ABSOLUTELY NOT.

2           Q           NOW, SINCE YOU'RE THE MANAGER OF THAT RESORT  
3 DURING THAT TIME PERIOD, DO YOU HAVE AN ESTIMATE OF HOW  
4 MANY MEMBERS MIGHT HAVE COME TO THE RESORT FOR USE DURING  
5 THAT APPROXIMATELY WEEK AND A HALF PERIOD?

6           A           OH, DURING THAT WEEK AND A HALF? WELL, THAT  
7 PERIOD OF TIME IS OUR SLOW TIME.

8           Q           I THOUGHT YOU SAID EARLIER IN RESPONSE TO  
9 MR. SHERMAN'S QUESTION THAT WAS THE BEGINNING OF A SEASON.

10          A           WELL, I GUESS YOU'D CALL IT MAYBE THE  
11 BEGINNING, BUT IT'S CERTAINLY NOT A BUSY TIME AT ALL. OUR  
12 SEASON REALLY IS THE WINTERTIME, FROM THANKSGIVING TO THE  
13 FIRST -- THE MIDDLE OF APRIL. THAT'S OUR SEASON. THE  
14 FOLKS FROM UP NORTH COME DOWN TO USE THE PARK, AND THEY  
15 COME FROM THANKSGIVING ON.

16          Q           OKAY. SO BACK TO MY QUESTION.  
17 DO YOU HAVE AN ESTIMATE OF HOW MANY  
18 MEMBERS --

19          A           WELL, THERE WAS SOMEONE AT THE PARK TO PUT  
20 THEM OVER TO TRAILINN. THERE WAS NO ONE LEFT NOT USING THE  
21 PARK, BECAUSE WE HAD SOMEONE STATIONED THERE THAT WOULD  
22 TELL THEM JUST TO COME OVER AND USE TRAILINN WHICH WAS A  
23 MILE AND A QUARTER AWAY.

24          MR. SHERMAN: MOVE TO STRIKE THE ANSWER. THE  
25 QUESTION HAS BEEN ASKED TWICE, AND THE WITNESS HASN'T  
26 RESPONDED.

1 THE WITNESS: I'M SORRY.

2 THE COURT: OVERRULED.

3 YOU ANSWERED IT.

4 MR. MOSHENKO: THANK YOU, YOUR HONOR.

5 Q SO ANY MEMBER THAT CAME DURING THAT WINDOW  
6 OF TIME --

7 A WAS ACCOMMODATED.

8 Q WAS AT A RESORT ABOUT A MILE AND A HALF AWAY  
9 TO GO TO?

10 A RIGHT.

11 Q YOU WERE ASKED SOME QUESTIONS AND, IN FACT,  
12 SOME TESTIMONY WAS READ FROM YOUR DEPOSITION REGARDING  
13 WHETHER YOU EVER HEARD THAT THE ORLANDO RESORT -- THAT THE  
14 I.R.S. HAD GONE INTO THE ORLANDO RESORT -- STRIKE THAT.

15 I'M GOING TO BACK UP AND GET THE EXACT  
16 WORDS.

17 HAVE YOU EVER HEARD THAT I.R.S. CLOSED THE  
18 ORLANDO RESORT?

19 WHAT'S THE ANSWER TO THAT QUESTION?

20 A I HAD HEARD THAT.

21 Q THAT THEY CLOSED THE RESORT?

22 A YES. BUT THEY HAD NOT, TO MY KNOWLEDGE.

23 Q OKAY. DID -- WHERE DID YOU HEAR IT?

24 A I DON'T HAVE ANY IDEA.

25 Q WHAT DID YOU HEAR?

26 A I HEARD THAT THEY -- THAT THEY HAD GONE IN

1 AND PUT SOME SEALS OR SOMETHING UP, PUT SOME PAPERWORK ON  
2 SOME OF THE CHATTEL THERE AND --

3 Q CHATTEL IS PROPERTY?

4 A PROPERTY, YES.

5 Q LIKE BUILDINGS OR SOMETHING?

6 A LIKE SOME RENTAL UNITS AND THINGS OF THAT  
7 NATURE.

8 Q OKAY.

9 A BUT THEY NEVER DID TAKE ANYTHING OUT OF  
10 THERE, NEVER, EVER.

11 Q SO BESIDES PUTTING NOTICES ON A BUILDING,  
12 WHAT DID YOU HEAR?

13 A WELL, AND I HAD HEARD THAT THEY CLOSED IT,  
14 BUT IT HAD NEVER -- IT HAD NOT BEEN CLOSED.

15 Q YOU WERE THERE?

16 A YES.

17 Q WERE YOU THERE?

18 A YES.

19 Q AND IT WAS NEVER CLOSED WHILE YOU WERE THERE?

20 A NO, IT WAS NEVER CLOSED.

21 Q YET, YOU HEARD FROM SOMEBODY THAT SOMETHING  
22 HAD HAPPENED WHEN YOU WERE THERE?

23 A RIGHT.

24 Q THAT NEVER HAPPENED?

25 A THAT'S RIGHT.

26 Q DID I.R.S. EVER PADLOCK THE RESORT?

1 A NO, SIR.

2 Q MR. SHERMAN ASKED YOU QUESTIONS ABOUT  
3 WHETHER THE THOUSAND ADVENTURES FLORIDA RESORTS WERE CLOSED  
4 IN 1996.

5 WAS MR. NOVELLI OR ANYBODY CONTROLLING --  
6 FROM HIS ORGANIZATION CONTROLLING THE THOUSAND ADVENTURES  
7 RESORTS IN '96?

8 A NO, SIR.

9 Q THAT'S BACK IN -- BEFORE HIS TIME?

10 A ABSOLUTELY, YES.

11 Q OKAY. SO MR. NOVELLI WAS NOT RESPONSIBLE  
12 FOR THE CLOSING OF THOSE PARKS?

13 A NO, SIR.

14 Q WHAT DID MR. NOVELLI DO IN 1997 TO TRY TO  
15 MAKE SURE THOSE PARKS DID NOT -- WERE AVAILABLE TO THE  
16 MEMBERS?

17 MR. SHERMAN: OBJECTION. LACKS FOUNDATION WITH  
18 RESPECT TO HIS KNOWLEDGE, THIS WITNESS'S KNOWLEDGE, OF  
19 THOSE EVENTS.

20 MR. MOSHENKO: I'LL ASK SOME FOUNDATION.

21 Q DO YOU HAVE ANY PERSONAL KNOWLEDGE OF  
22 EFFORTS THAT MR. NOVELLI MADE IN 1997 TO TRY TO PROVIDE  
23 SERVICES TO THE MEMBERS OF THOUSAND ADVENTURES FLORIDA  
24 PARKS THAT HAD EXPERIENCED CLOSURES IN 1996?

25 A I JUST KNOW THAT THEY WERE -- SOME  
26 ARRANGEMENT OF SOME KIND TO GIVE THOSE FOLKS MEMBERSHIP IN

1 SOME PARKS THAT THEY WERE ABOUT TO LOSE.

2 Q YOU PARTICIPATED IN AT ARRANGEMENTS TO  
3 PROVIDE PARK ACCESS FOR THOSE PEOPLE IN 1997, 1998, DIDN'T  
4 YOU?

5 A THAT'S CORRECT.

6 MR. SHERMAN: OBJECTION. THAT'S LEADING.

7 THE COURT: OVERRULED.

8 BY MR. MOSHENKO: Q AND THAT'S THE THING WHERE YOU  
9 SAID THEY MADE SPECIAL ARRANGEMENTS?

10 A THAT'S RIGHT.

11 Q AND FOR THE -- WHAT PHRASE DID YOU USE?  
12 YOU'RE EXPECTING A --

13 A A BUNCH. I DON'T KNOW.

14 Q A WHOLE BUNCH OF PEOPLE?

15 A YEAH.

16 Q OKAY. BUT THOSE PEOPLE NEVER  
17 MATERIALIZED --

18 A THAT'S CORRECT.

19 Q -- IN 1998?

20 A THAT'S CORRECT. IT COST US A LOT OF MONEY.

21 Q YOU WERE ASKED SOME QUESTIONS BY MR. SHERMAN  
22 RELATING TO THE RESPONSIBILITY OF THE MANAGER IN THE RESORT  
23 TO ASK A PERSON WHO COMES AND WANTS TO STAY THERE IF THEY  
24 HAVE A HOME PARK MEMBERSHIP; RIGHT?

25 A YES, SIR.

26 Q AND A COAST TO COAST MEMBERSHIP?

1 A YES, SIR.

2 Q OKAY. NOW, YOU'VE ADMINISTERED FOR COAST TO  
3 COAST, THE COAST TO COAST SYSTEM, OVER THE YEARS?

4 A THAT'S CORRECT, UH-HUH.

5 Q IS IT THE RESPONSIBILITY OF COAST TO ASK  
6 MEMBERS IF THEY HAVE A HOME PARK MEMBERSHIP BEFORE THEY GET  
7 A COAST TO COAST MEMBERSHIP?

8 A OH, YES.

9 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.  
10 THE COURT: OVERRULED.

11 BY MR. MOSHENKO: Q AND SO IS IT YOUR EXPERIENCE  
12 THAT MANAGERS WHO SEE A COAST TO COAST MEMBERSHIP  
13 FREQUENTLY FROM THAT FACT ALONE CONCLUDE THEY HAVE A HOME  
14 PARK MEMBERSHIP?

15 A ABSOLUTELY.

16 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION.

17 THE COURT: I'LL ALLOW IT. IT'S PART OF THE  
18 PRACTICE. OVERRULED.

19 THE WITNESS: ONLY OCCASIONALLY IF WE THINK THEY  
20 MIGHT NOT HAVE THE HOME PARK SOMEPLACE WOULD WE ACTUALLY  
21 REALLY CHECK THEIR HOME PARK CLUB.

22 BY MR. MOSHENKO: Q WHOSE RESPONSIBILITY IS IT TO  
23 MAKE SURE THAT THERE'S A HOME PARK BEFORE THERE CAN BE A  
24 COAST TO COAST MEMBERSHIP?

25 MR. SHERMAN: OBJECTION. THAT CALLS FOR A LEGAL  
26 CONCLUSION. IT LACKS FOUNDATION.

1 THE COURT: OVERRULED.

2 BY MR. MOSHENKO: Q YOU MAY ANSWER.

3 A OKAY. I'M SORRY. ASK IT AGAIN.

4 Q WHOSE RESPONSIBILITY IS IT TO MAKE SURE THAT  
5 THERE'S A VALID HOME PARK MEMBERSHIP BEFORE THERE CAN BE A  
6 COAST TO COAST MEMBERSHIP?

7 A COAST TO COAST.

8 Q MR. SHERMAN ASKED YOU SOME QUESTIONS ABOUT  
9 MEMBERS HAVING A CHOICE TO CHOOSE TO LEAVE THE PLAINTIFFS'  
10 RESORT AND GO TO ANOTHER RESORT TO KEEP THEIR COAST TO  
11 COAST MEMBERSHIP. YOU ACKNOWLEDGED THEY HAVE THE RIGHT TO  
12 MAKE THAT CHOICE; DO YOU RECALL THAT?

13 A YES, BUT THEY DON'T ALWAYS GET TO EXERCISE  
14 THAT CHOICE.

15 Q WELL, FIRST OF ALL, AS REGARDS THE CONTRACT  
16 THAT YOU AND YOUR RESORTS USED WITH THOSE MEMBERS, WHAT  
17 DOES -- STRIKE THAT.

18 ARE THEY GIVEN THE RIGHT TO EXERCISE THAT  
19 CHOICE?

20 A NO, THEY'RE NOT.

21 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL  
22 CONCLUSION OF THE WITNESS, AND LACKS FOUNDATION. THE  
23 CONTRACTS ARE THE BEST EVIDENCE.

24 THE COURT: SUSTAINED.

25 MR. MOSHENKO: I AGREE, YOUR HONOR. WE'LL BRING IN  
26 THE CONTRACTS.

1 Q DO THE PEOPLE MAKING THE CHOICE ABOUT  
2 STAYING WITH COAST TO COAST OR LEAVING COAST TO COAST HAVE  
3 THE RIGHT TO MAKE THAT CHOICE BASED ON TRUTHFUL INFORMATION  
4 PROVIDED TO THEM BY COAST TO COAST AND THE RESORT MANAGERS?

5 A WELL, THEY ONLY HAVE THAT CHOICE IF THEY --  
6 IF THE -- THEIR EXISTING RESORT AGREES TO LET THEM TRANSFER.

7 Q OKAY. BUT THE FOCUS OF MY QUESTION IS THAT  
8 CHOICE SHOULD BE MADE WITH TRUTHFUL INFORMATION PROVIDED BY  
9 BOTH SIDES?

10 A OH, YES.

11 Q AGREED?

12 A OF COURSE.

13 Q AND YOU'VE INDICATED THAT A LOT OF THE  
14 MEMBERS COMPLAINED THEY WERE CONFUSED BY THE COAST TO COAST  
15 LETTER?

16 A YES.

17 MR. SHERMAN: OBJECTION. THAT MISSTATES THE  
18 WITNESS'S TESTIMONY. THERE WAS 10 OR 12.

19 MR. MOSHENKO: I CONSIDER THAT A LOT.

20 THE COURT: SUSTAINED.

21 MR. MOSHENKO: I DON'T KNOW IF YOU DO.

22 MR. SHERMAN: I OBJECT TO COUNSEL'S ARGUMENT.

23 THE COURT: SUSTAINED.

24 BY MR. MOSHENKO: Q SO QUESTIONS WERE ASKED ABOUT  
25 MR. DAFF REFUNDING MONEY TO MEMBERS?

26 A YES.

1 Q ALL RIGHT. MR. DAFF SOLD RESORTS AT THE  
2 AUCTION; INCLUDING RESORTS WERE SOLD TO MR. NOVELLI'S  
3 ORGANIZATION; CORRECT?

4 A THAT'S CORRECT.

5 Q OKAY. AND ORLANDO WAS ONE OF THOSE THAT WAS  
6 SOLD TO MR. NOVELLI'S ORGANIZATION; RIGHT?

7 A YES.

8 Q MR. DAFF WAS REQUIRED TO REFUND DUES BECAUSE  
9 THE RESORTS WERE NOT OWNED BY HIM; IS THAT CORRECT?

10 A THAT'S CORRECT.

11 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL  
12 CONCLUSION OF THIS WITNESS.

13 THE COURT: SUSTAINED.

14 MR. MOSHENKO: I HAVE NO FURTHER QUESTIONS.

15 THE COURT: THANK YOU.

16 MR. SHERMAN: YOUR HONOR, I HAVE TWO SHORT AREAS.

17 THE COURT: OKAY, IF THEY'RE SHORT.

18 MR. MOSHENKO: THANK YOU, YOUR HONOR.

19 RE-CROSS-EXAMINATION

20 BY MR. SHERMAN: Q OKAY. MR. MERRITT, ON THE  
21 SUBJECT OF THE I.R.S. PADLOCKING THE ORLANDO RESORT, YOU  
22 WERE NOT AT THE ORLANDO RESORT WHEN THE FEDERAL  
23 COURT-APPOINTED RECEIVER, MR. JEFFREY KEIM, HAD MANAGEMENT  
24 AND CONTROL OVER THAT RESORT; CORRECT?

25 A NO. THAT'S CORRECT.

26 Q AND SO ON THE SUBJECT OF WHETHER IT WAS

1 PADLOCKED, STICKERED BY THE I.R.S. OR NOT, DURING THE TIME  
2 THAT MR. KEIM WAS IN CHARGE, YOU DO NOT KNOW ONE WAY OR THE  
3 OTHER; RIGHT?

4 A I SUPPOSE THAT'S CORRECT, YEAH.

5 Q NOW, MR. MOSHENKO JUST A MOMENT AGO ASKED  
6 YOU SOME QUESTIONS -- ACTUALLY HE LED OFF, AS FAR AS THE  
7 BENEFIT TO THE SALT SPRINGS MEMBERS, THE A.R.A. MEMBERS AT  
8 SALT SPRINGS, WHEN THEY WERE TRANSFERRED TO TRAILINN; DO  
9 YOU RECALL THOSE QUESTIONS AND YOUR ANSWERS?

10 A YES.

11 Q NOW, THE FACT THAT PROMPTED THE TRANSFER WAS  
12 THE FACT THAT MR. NOVELLI LOST THE PARK AT FORECLOSURE?

13 A YES.

14 Q AND SO BEFORE WE GET TO THE ISSUE OF BENEFIT  
15 OR DETRIMENT TO THE MEMBERS, MEMBERS WHO HAD BOUGHT INTO A  
16 HOME RESORT THEY THOUGHT WAS SALT SPRINGS NO LONGER HAD  
17 THAT PARK; CORRECT?

18 A THAT'S CORRECT.

19 MR. SHERMAN: NO FURTHER QUESTIONS.

20 THE COURT: THANK YOU.

21 MR. MOSHENKO: NO QUESTIONS, YOUR HONOR.

22 THE COURT: THANK YOU. YOU MAY STEP DOWN.

23 MR. MOSHENKO: THANK YOU, MR. MERRITT.

24 MAY HE BE EXCUSED, YOUR HONOR, SINCE HE HAS  
25 COME ALL THE WAY FROM FLORIDA?

26 THE COURT: YES.

1 I UNDERSTAND IT'S PRETTY DRY DOWN THERE.

2 THE WITNESS: TERRIBLE. TERRIBLE. HOT AND DRY.

3 (DISCUSSION OFF THE RECORD.)

4 THE COURT: I'VE BEEN ASKED TO EXPLAIN TO YOU FOLKS  
5 FROM TIME TO TIME WE'LL BE CALLING WITNESSES AND THEN GOING  
6 BACK TO THEM, AND THAT'S FOR THE CONVENIENCE OF THE  
7 WITNESSES WHO ARE COMING FROM OUT OF STATE. SO BEAR WITH  
8 US ON THAT.

9 WE'LL TAKE OUR AFTERNOON BREAK AT THIS TIME,  
10 LADIES AND GENTLEMEN. 20 MINUTES.

11 (RECESS TAKEN.)

12 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
13 COURT IN THE PRESENCE OF THE JURY:)

14 THE COURT: COUNSEL, I BELIEVE YOU'RE GOING TO  
15 FINISH UP WITH MR. MALPASS.

16 MR. SHAW: YES, YOUR HONOR. THANK YOU.

17 THE COURT: COME FORWARD, PLEASE, MR. MALPASS.  
18 YOU'RE STILL UNDER OATH.

19 THEODORE EDWARD MALPASS,  
20 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING  
21 BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS  
22 FOLLOWS:

23 CROSS-EXAMINATION (CONTINUED)

24 BY MR. RIVIN: Q MR. MALPASS, GOOD AFTERNOON.

25 A GOOD AFTERNOON, MR. RIVIN.

26 Q WE TALKED ON THURSDAY ABOUT YOUR PRIOR

1 REPRESENTATION OF A NUMBER OF THE COMPANIES WITH WHICH  
2 MR. NOVELLI WAS INVOLVED, INCLUDING ALL SEASONS RESORTS,  
3 NEW TRAILINN, REVCON, RITZ TRAVEL CLUB. AND WE ALSO TALKED  
4 ABOUT THE FACT THAT YOU WERE PAID BY ANOTHER  
5 NOVELLI-RELATED COMPANY OR COMPANY THAT MR. NOVELLI WAS  
6 INVOLVED WITH, ALL TRAVEL TIMES.

7 I SHOWED YOU AN ORDER IN THE SECOND ALL  
8 SEASONS BANKRUPTCY WHEREBY -- THAT YOU PREPARED CLOSING THE  
9 SECOND ALL SEASONS BANKRUPTCY IN MAY OF 1997; DO YOU  
10 REMEMBER THAT?

11 A THE ORDER, YES.

12 Q IN MAY OF 1997, THE SECOND ALL SEASONS --

13 A IF YOU'RE ASKING ME TO AFFIRM YOUR  
14 CHARACTERIZATION OF THE REST OF MY PRIOR TESTIMONY, IT WAS  
15 NOT VERY ACCURATE.

16 Q MY STATEMENT WASN'T ACCURATE?

17 A THE OTHER -- UP UNTIL THE POINT -- YES. THE  
18 PART ABOUT THE ORDER, YES.

19 Q DID YOU WORK FOR ALL SEASONS RESORTS?

20 A I WAS AN ATTORNEY FOR ALL SEASONS RESORTS.  
21 THAT'S NOT --

22 Q YOU WORKED FOR CLIENTS?

23 A I'M EMPLOYED BY CLIENTS AS AN ATTORNEY.

24 Q I UNDERSTAND THAT. I'M NOT SUGGESTING YOU  
25 WERE IN-HOUSE WITH MR. NOVELLI.

26 YOU WERE EMPLOYED AS AN ATTORNEY?

1           A           I DIDN'T THINK YOU WERE.

2           Q           YOU WORKED FOR ALL SEASONS; YOU DID LEGAL

3 WORK FOR ALL SEASONS RESORTS?

4           A           YES.  YEAH, IN THAT PARTICULAR CASE.

5           Q           YOU DID LEGAL WORK FOR NEW TRAILINN?

6           A           AGAIN, YES.

7           Q           ANOTHER COMPANY THAT MR. NOVELLI IS INVOLVED

8 WITH?

9           A           YES.

10          Q           YOU DID LEGAL WORK FOR REVCON?

11          A           YES.

12          Q           ANOTHER COMPANY MR. NOVELLI IS INVOLVED IN?

13          A           I BELIEVE SO.

14          Q           YOU DID LEGAL WORK FOR RITZ TRAVEL CLUB?

15          A           YES.

16          Q           ANOTHER COMPANY MR. NOVELLI IS INVOLVED IN?

17          A           YES.

18          Q           I SHOWED YOU CHECKS ON THE CHECKING ACCOUNT

19 OF TRAVEL TIMES?

20          A           I THINK YOU SAID SOMETHING OTHER THAN TRAVEL

21 TIMES.

22          Q           DO YOU REMEMBER THE NAME "TRAVEL TIMES"?

23          A           YES.  THE CORRECT NAME WAS TRAVEL TIMES,

24 INC.

25          Q           NOT TRAVEL TIMES, BUT TRAVEL TIMES, INC.?

26          A           THAT WAS THE NAME THAT WAS ON THE CHECKS YOU

1       SHOWED ME, YES.

2               Q           I SEE.

3                       SO TRAVEL TIMES, INC.

4                       AND YOU WERE PAID BY TRAVEL TIMES, INC., FOR  
5       SOME WORK THAT YOU DID FOR COMPANIES --

6               A           AT LEAST SOME OF THE WORK THAT WAS WHERE THE  
7       CHECKS CAME FROM, YES.  AT LEAST SOME OF THE WORK THAT WAS  
8       WHERE THE CHECKS CAME FROM, YES.  AND YOU SAID THAT THAT  
9       WAS A NOVELLI-AFFILIATED COMPANY, AND I DON'T BELIEVE  
10      THAT -- THAT THAT WAS MY TESTIMONY.

11              Q           DO YOU BELIEVE THAT MR. NOVELLI HAD ANY  
12      INVOLVEMENT IN TRAVEL TIMES?

13              A           I DON'T KNOW.

14              Q           IF MR. NOVELLI HAD NO INVOLVEMENT IN THAT  
15      COMPANY, DID YOU HAVE ANY UNDERSTANDING WHY YOU WERE BEING  
16      PAID BY TRAVEL TIMES?

17              A           I WASN'T WORKING FOR MR. NOVELLI, AS I THINK  
18      I MADE CLEAR.

19              Q           BUT YOU DID WORK FOR MR. NOVELLI, DIDN'T YOU?

20              A           I DID A VERY SMALL AMOUNT OF WORK IN A CASE  
21      WHERE MR. NOVELLI WAS ONE OF THE CO-DEFENDANTS, YES.

22              Q           MR. NOVELLI HIRED YOU TO REPRESENT HIM  
23      PERSONALLY IN THE SECOND ALL SEASONS RESORTS BANKRUPTCY;  
24      ISN'T THAT CORRECT?

25              A           I DON'T BELIEVE THAT'S CORRECT, NO.

26              MR. RIVIN:  I'D LIKE TO SHOW THE WITNESS HIS

1 DEPOSITION TESTIMONY BEGINNING AT PAGE 212, LINE 6, AND  
2 CONTINUING THROUGH 213, LINE 6.

3 MR. RIVIN: MR. SHAW, IF YOU WANT TO TAKE A LOOK AT  
4 MY CONDENSED TRANSCRIPT, YOU CAN.

5 MR. SHAW: NO OBJECTION, YOUR HONOR.

6 THANK YOU. THANK YOU, MR. RIVIN.

7 BY MR. RIVIN: Q AGAIN, MR. MALPASS, DO YOU  
8 REMEMBER HAVING YOUR DEPOSITION TAKEN --

9 A YES.

10 Q -- IN THIS CASE?

11 A YES.

12 Q AND YOU TESTIFIED UNDER OATH?

13 A YES.

14 Q "QUESTION: DID YOU REPRESENT RAY NOVELLI  
15 PERSONALLY IN CONNECTION WITH ANY PROCEEDINGS IN THE ALL  
16 SEASONS BANKRUPTCY?

17 "ANSWER: I BELIEVE I DID.

18 "QUESTION: DID YOU REPRESENT RAY NOVELLI IN  
19 CONNECTION WITH ANY OTHER MATTER AT ANY TIME?

20 "ANSWER: I CAN'T ANSWER THAT QUESTION. I  
21 HAD SOME -- I MADE SPECIAL APPEARANCES ON BEHALF OF  
22 RAY NOVELLI IN ONE OR TWO MATTERS. IT WAS VERY LIMITED.

23 "QUESTION: WHEN YOU SAY "SPECIAL  
24 APPEARANCES," WHAT DO YOU MEAN BY THAT?

25 "ANSWER: MR. NOVELLI HAD BEEN REPRESENTED  
26 BY OTHER COUNSEL AND/OR NEEDED A PARTICULAR MATTER

1       UNDERTAKEN IN A PARTICULAR CASE, AND I ON SEVERAL OCCASIONS  
2       AGREED TO DO CERTAIN DEFINED AND SPECIFIC WORK FOR HIM.

3                       "QUESTION:   HOW MANY OCCASIONS?

4                       "ANSWER:    I THINK TWO OR THREE.

5                       "QUESTION:   OVER WHAT PERIOD OF TIME?

6                       "ANSWER:    I DON'T RECALL.   MY BEST  
7       RECOLLECTION WOULD BE SOMEWHERE BETWEEN FOUR TO SIX  
8       MONTHS.

9                       "QUESTION:   IN WHAT YEAR?

10                      "ANSWER:    EARLY ON IN THE ALL SEASONS CASE.  
11       I THINK THAT WOULD HAVE BEEN '96.

12                      YOU REPRESENTED MR. NOVELLI, MR. MALPASS, IN  
13       THE SECOND ALL SEASONS BANKRUPTCY?

14                      A           NO.   I APPEARED ON BEHALF OF MR. NOVELLI IN  
15       CONNECTION WITH THE CASE, MR. RIVIN.   THERE WAS LITIGATION  
16       THAT WAS INVOLVED WHERE I APPEARED FOR MR. NOVELLI.   WAS I  
17       PAID BY MR. NOVELLI?   NO.   THERE WAS -- THERE WERE  
18       DISTINCTIONS THAT WERE MAINTAINED.   I DON'T KNOW WHETHER  
19       THEY MAKE ANY DIFFERENCE TO YOU.   BUT IN TERMS OF MY JOB AS  
20       A BANKRUPTCY LAWYER, THEY MAKE A DIFFERENCE TO ME.   SO I  
21       WANT MY TESTIMONY TO BE PRECISE.

22                      MR. MOSHENKO:   YOUR HONOR, MAY I BE EXCUSED TO GO  
23       TO MY CAR TO GO GET A DOCUMENT?

24                      THE COURT:   SURE.

25                      MR. RIVIN:   MIKE, CAN WE PUT ON 212, LINE 6 THROUGH  
26       LINE 9 AGAIN, THE SAME TESTIMONY.   JUST THE FIRST -- JUST

1 FOUR LINES.

2 "QUESTION: DID YOU REPRESENT RAY NOVELLI  
3 PERSONALLY IN CONNECTION WITH ANY PROCEEDINGS IN THE ALL  
4 SEASONS BANKRUPTCY?

5 "ANSWER: I BELIEVE I DID.

6 Q MR. MALPASS, ONE OF THE PROCEEDINGS IN WHICH  
7 YOU REPRESENTED MR. NOVELLI PERSONALLY WAS A CONTEMPT  
8 PROCEEDING AGAINST HIM IN THE BANKRUPTCY COURT; ISN'T THAT  
9 CORRECT?

10 A I WOULDN'T CHARACTERIZE IT AS A -- THAT --  
11 WITH THAT KIND OF CONNOTATION. I THINK THAT WAS ONE OF THE  
12 SANCTIONS THAT WAS SOUGHT.

13 Q YOU WOULDN'T CHARACTERIZE IT AS A CONTEMPT  
14 PROCEEDING?

15 A NOT IN THE -- I DON'T RECALL EXACTLY WHAT I  
16 DID IN THOSE SEVERAL MATTERS ALMOST FOUR YEARS AGO.

17 Q DID YOU REPRESENT MR. NOVELLI IN CONNECTION  
18 WITH CONTEMPT PROCEEDINGS BROUGHT AGAINST HIM IN THE  
19 BANKRUPTCY COURT?

20 A I DON'T RECALL, MR. RIVIN. YOU'VE BEEN  
21 THROUGH MY PROCEEDINGS.

22 MR. RIVIN: I'D LIKE TO SHOW EXHIBIT 1406, PLEASE.  
23 THIS IS AN IMPEACHMENT DOCUMENT OR DOCUMENT USED FOR THE  
24 PURPOSE OF REFRESHING THE WITNESS'S RECOLLECTION.

25 MR. SHAW: YOUR HONOR, I'D LIKE TO SEE THE  
26 DOCUMENT.

1 MR. RIVIN: ABSOLUTELY, MR. SHAW.

2 MR. SHAW: YOUR HONOR, I UNDERSTAND THAT AT THE  
3 PRESENT TIME IT'S JUST BEING SHOWN TO REFRESH HIS  
4 RECOLLECTION.

5 BUT BEFORE IT'S PUT UP ON THE BOARD OR  
6 OFFERED INTO EVIDENCE, I WOULD LIKE TO BE SEEN AT THE  
7 SIDEBAR.

8 MR. RIVIN: LET ME ASK SOME FOUNDATIONAL QUESTIONS  
9 FIRST.

10 Q MR. MALPASS, DO YOU RECOGNIZE THIS LETTER  
11 WHICH IS A TWO-PAGE LETTER ON THE LETTERHEAD OF THE LAW  
12 OFFICES OF T. EDWARD MALPASS AND APPARENTLY SIGNED BY YOU  
13 ON THE SECOND PAGE?

14 A YES, I RECOGNIZE IT.

15 Q THIS IS A LETTER FROM YOU TO  
16 RAYMOND NOVELLI, PRESIDENT OF ALL SEASONS RESORT, AND  
17 RAYMOND -- AND ALSO TO RAYMOND NOVELLI INDIVIDUALLY; IS  
18 THAT RIGHT?

19 A YES, THAT'S CORRECT.

20 Q AND THIS DOCUMENT IS SIGNED BY  
21 RAYMOND NOVELLI AS PRESIDENT OF ALL SEASONS RESORTS, INC.,  
22 AND ALSO SIGNED BY RAYMOND NOVELLI, INDIVIDUALLY?

23 A YES.

24 Q AND ISN'T THIS A RETAINER AGREEMENT BY WHICH  
25 YOU AGREED TO APPEAR FOR MR. NOVELLI IN THE BANKRUPTCY  
26 COURT, THE ALL SEASONS BANKRUPTCY COURT?

1           A           I DON'T KNOW IF I CALL IT A RETAINER. IT'S  
2 AN AGREEMENT UNDER WHICH I AGREED TO APPEAR FOR HIM, YES.  
3 AND I, AS FAR AS -- I'M NOT SURE WHERE THIS O.S.C. WAS.  
4 THAT WAS THE CONFUSION. IT WAS IN MY RECOLLECTION THAT  
5 THIS TOOK PLACE IN RELATION TO SOME OF THE HOOKER  
6 LITIGATION, BUT I'M NOT CERTAIN OF THAT AS I SEE THIS.

7                        BUT WHAT THIS SAYS IS REGARDING CONTEMPT AND  
8 SANCTIONS. WHAT MY RECOLLECTION WAS THE SANCTIONS.

9           Q           AND THIS DOCUMENT TALKS ABOUT AN ORDER TO  
10 SHOW CAUSE RE CONTEMPT AND SANCTIONS ENTERED IN THE ALL  
11 SEASONS BANKRUPTCY CASE, DOES IT NOT?

12           A           YES. IT WAS AN O.S.C., ORDER TO SHOW CAUSE.

13           Q           RE CONTEMPT?

14           A           YES.

15           Q           AGAINST MR. NOVELLI AND ALL SEASONS; IS THAT  
16 RIGHT?

17           A           THAT'S WHAT THIS WOULD INDICATE.

18           Q           AND BY THIS DOCUMENT YOU AGREED TO REPRESENT  
19 ALL SEASONS RESORTS AND MR. NOVELLI IN CONNECTION WITH THAT  
20 PROCEEDING?

21           A           YES.

22           Q           IN THE ALL SEASONS RESORTS SECOND  
23 BANKRUPTCY?

24           A           NO. IT'S ACTUALLY -- MR. RIVIN, I DON'T  
25 WANT TO BE HYPERTECHNICAL HERE. IT WAS IN THE THIRD CASE.

26           Q           I DON'T THINK SO, MR. MALPASS.

1           A           THEN I'M WRONG.  YEAH, YOU'RE RIGHT.  YOU'RE  
2 ABSOLUTELY RIGHT.  IT'S IN THE SECOND CASE.  AGAIN, THAT'S  
3 WHERE MUCH OF THIS IS A LONG TIME AGO.

4           Q           SO YOU REPRESENTED MR. NOVELLI AND ALL  
5 SEASONS IN THE SECOND BANKRUPTCY, AND THEN YOU TOOK ON THE  
6 REPRESENTATION OF ALL SEASONS AS A DEBTOR IN THE THIRD  
7 BANKRUPTCY?

8           A           I'M NOT CERTAIN OF THE TIMING.  IT MAY --  
9 YOU MAY BE CORRECT.  I JUST DON'T RECALL.

10          Q           YOU JUST MENTIONED THE HOOKER LAWSUIT.  THAT  
11 WAS ANOTHER LAWSUIT THAT WE TOUCHED ON LAST THURSDAY.  THIS  
12 WAS A LAWSUIT THAT WAS BROUGHT AGAINST MR. NOVELLI IN  
13 CONNECTION WITH SOME BONDS THAT WERE ISSUED OUT OF THE  
14 FIRST ALL SEASONS BANKRUPTCY; IS THAT RIGHT?

15          MR. SHAW:  YOUR HONOR, I'LL OBJECT.  AND I'D LIKE  
16 TO BE SEEN AT THE SIDEBAR RATHER THAN MAKE A SPEECH.

17          THE COURT:  APPROACH.

18                       (DISCUSSION OFF THE RECORD.)

19          BY MR. RIVIN:  Q  MR. MALPASS, LET'S GO BACK TO THE  
20 HOOKER LAWSUIT.

21                       YOU REMEMBER TALKING ABOUT THAT ON THURSDAY;  
22 YOU INDICATED THAT YOU REPRESENTED ALL SEASONS AND  
23 MR. NOVELLI IN THE HOOKER LAWSUIT?

24          A           AGAIN, I'M NOT CERTAIN THAT IT WAS ALL  
25 SEASONS.  AND I WANT TO -- THIS -- YOU CONFUSED ME WITH  
26 REGARD TO THIS REPRESENTATION OF ALL SEASONS AND NOVELLI.

1 YOU ASKED ME A QUESTION ABOUT ALL SEASONS. I ASSUMED THAT  
2 YOU WERE TALKING ABOUT THE THIRD ALL SEASONS BANKRUPTCY.  
3 AND I WAS QUITE CERTAIN THAT I DID NOT REPRESENT  
4 MR. NOVELLI IN CONNECTION WITH THAT BANKRUPTCY. AND THAT  
5 WAS THE BASIS FOR MY TESTIMONY.

6 THIS LETTER YOU'RE SHOWING ME AND THE  
7 QUESTION YOU WERE APPARENTLY ASKING ME WAS ABOUT THE SECOND  
8 ALL SEASONS CASE WHERE IT WAS SOME MINIMAL REPRESENTATION  
9 AND YOU CONFUSED ME. SO IF THAT --

10 Q PLEASE DO ME A FAVOR AND LISTEN VERY  
11 CAREFULLY TO MY QUESTIONS BECAUSE THE QUESTION I ASKED YOU  
12 WAS WHETHER YOU REPRESENTED MR. NOVELLI IN THE SECOND ALL  
13 SEASONS BANKRUPTCY, AND YOU SAID NO.

14 A AND, AGAIN, YOU --

15 Q I DON'T WANT TO ARGUE. LET'S MOVE ON.

16 A OKAY.

17 Q IN THE HOOKER LAWSUIT YOU ASSISTED  
18 MR. NOVELLI; IS THAT RIGHT?

19 A I DON'T KNOW WHAT YOU MEAN BY "ASSISTED,"  
20 MR. RIVIN. I APPEARED SPECIALLY FOR HIM IN AT LEAST ONE  
21 MATTER IS MY RECOLLECTION HAVING TO DO WITH THAT LAWSUIT.

22 Q IN AT LEAST ONE MATTER. YOU MEAN ONE  
23 HEARING --

24 A AT LEAST ONCE, YES.

25 Q -- IN THAT LAWSUIT?

26 A IN CONNECTION WITH THAT CASE. IT WAS -- I

1 CAN'T RECALL WHERE THE HEARING WAS OR WHAT IT WAS IN  
2 CONNECTION WITH.

3 Q WAS THAT A BANKRUPTCY CASE?

4 A THE HOOKER CASE?

5 Q YES.

6 A I WOULDN'T -- IT'S NOT A BANKRUPTCY CASE IN  
7 THE SENSE THAT I REPRESENT BAD COMPANIES IN BANKRUPTCY,  
8 NO. IT WAS LITIGATION GOING ON. BUT I DON'T RECALL MUCH  
9 OF THE SUBSTANCE OF IT.

10 Q SO YOU WORKED -- SO YOU ASSISTED -- YOU  
11 WORKED FOR MR. NOVELLI; YOU APPEARED FOR HIM IN A HEARING  
12 IN THAT CASE?

13 A IN ONE MATTER, YES.

14 Q DO YOU REMEMBER ANYTHING ELSE YOU DID FOR  
15 MR. NOVELLI OR TO ASSIST HIM IN CONNECTION WITH THE HOOKER  
16 LITIGATION?

17 A NO.

18 Q YOU ACTUALLY -- WHO REPRESENTED MR. NOVELLI  
19 IN THAT, IN THE HOOKER LITIGATION?

20 A I DON'T RECALL.

21 Q WASN'T IT MR. MOSHENKO?

22 A IT MAY WELL HAVE BEEN. I DON'T RECALL.

23 Q COULD WE TAKE A LOOK AT EXHIBIT 480.

24 MR. MALPASS, IS THIS A ONE-PAGE FAX COVER  
25 SHEET?

26 A IT APPEARS TO BE, YES.

1 Q IT'S ON THE LETTERHEAD OF MOSHENKO, DE PAUL  
2 AND WINCHELL?

3 A YES.

4 Q IT'S DATED JUNE 24, 1997?

5 A YES.

6 Q IT'S DIRECTED TO YOU FROM TERRY MOSHENKO?

7 A YES.

8 Q REGARDING HOOKER VERSUS NOVELLI?

9 A YES, THAT'S WHAT THE REFERENCE SAYS.

10 Q AND THE NUMBER OF PAGES SUBMITTED LOOKS LIKE  
11 56 PAGES PLUS ANOTHER 27 PAGES. SO 83 PAGES BEING  
12 SUBMITTED TO YOU?

13 A I WOULDN'T BE SURE OF THAT. IT'S EITHER  
14 THAT OR PAGE 56 AND 27. I'M NOT CERTAIN.

15 Q WHY DON'T YOU READ THE FOUR LINES BELOW  
16 THE -- NEXT TO THE WORD "INSTRUCTION."

17 A "PLEASE FIND ENCLOSED BRIEF AND GLOSSARY FOR  
18 YOUR REVIEW, COMMENTS AND REVISIONS. THESE DOCUMENTS MUST  
19 BE FILED BY 4:00 ON WEDNESDAY. THANK YOU, SANDY."

20 Q DO YOU REMEMBER MR. MOSHENKO SENDING YOU  
21 DOCUMENTS, PLEADINGS FOR YOU TO REVIEW IN CONNECTION WITH  
22 THE HOOKER LAWSUIT --

23 A NO.

24 Q -- PROVIDING HIM WITH INPUT?

25 A NO.

26 Q YOU DON'T REMEMBER THAT?

1 A NO. THERE HAVE BEEN HUNDREDS OF DOCUMENTS.

2 Q STRIKE THAT.

3 A THERE HAVE BEEN HUNDREDS AND HUNDREDS OF  
4 DOCUMENTS THAT I LOOKED AT IN CONNECTION WITH THIS CASE  
5 WHEN I REVIEWED IT FOR THIS -- IN CONNECTION WITH THAT CASE  
6 WHEN I REVIEWED IT FOR THIS CASE, AND I'VE HANDLED  
7 LITERALLY HUNDREDS OF MATTERS SINCE THEN. I JUST DON'T  
8 HAVE ANY CURRENT RECOLLECTION.

9 Q DID YOU LOOK AT HUNDREDS OF DOCUMENTS IN  
10 CONNECTION WITH THE HOOKER LITIGATION WHEN YOU WERE  
11 PREPARING FOR YOUR EXPERT TESTIMONY HERE?

12 A OH, NO. I'M JUST TALKING ABOUT THE -- TO  
13 PREPARE FOR THE TESTIMONY IN THIS CASE, THE OTHER  
14 BANKRUPTCIES. I'M NOT CERTAIN I LOOKED AT ANYTHING TO DO  
15 WITH HOOKER.

16 Q DO YOU REMEMBER SENDING MR. MOSHENKO  
17 DETAILED LEGAL ANALYSES --

18 A NO.

19 Q -- TO ASSIST MR. NOVELLI IN THE HOOKER  
20 LITIGATION?

21 A NO. I MAY WELL HAVE.

22 MR. RIVIN: I'D LIKE TO REFRESH THE WITNESS'S  
23 RECOLLECTION WITH EXHIBIT 1428, PLEASE.

24 Q MR. MALPASS, DO YOU RECOGNIZE THE THREE  
25 LETTERS THAT COMPRISE EXHIBIT 1428?

26 A THEY'RE LETTERS FROM MY OFFICE, YES.

1 Q FROM YOUR OFFICE OR FROM YOU?

2 A THEY'RE FROM ME. THEY'RE SIGNED BY MY LEGAL  
3 ASSISTANTS.

4 Q WHOSE NAME IS SIGNED TO EACH OF THOSE  
5 LETTERS?

6 A MY NAME.

7 Q AND EACH OF THESE LETTERS IS DIRECTED TO  
8 TERRY MOSHENKO?

9 A YES.

10 Q WHAT ARE THE DATES OF THESE LETTERS?

11 A MAY 16, A SECOND LATER MAY 16, AND A THIRD  
12 LETTER MAY 19, 1997.

13 Q ALL THREE RELATE TO THE HOOKER VERSUS  
14 NOVELLI LAWSUIT?

15 A THAT'S THE REFERENCE. I HAVEN'T HAD TIME TO  
16 READ IT THROUGH, ALL THREE OF THEM.

17 Q DO ALL OF THESE LETTERS CONTAIN LEGAL  
18 ANALYSES OF YOURS THAT YOU PROVIDED TO MR. MOSHENKO TO  
19 ASSIST MR. NOVELLI IN THE HOOKER LITIGATION?

20 A THEY APPEAR TO, YES.

21 Q DO YOU RECALL HOW MUCH YOU CHARGED IN FEES  
22 FOR THE HOOKER LITIGATION -- FOR ASSISTING MR. NOVELLI IN  
23 THE HOOKER LITIGATION?

24 A NO.

25 Q I'D LIKE YOU TO TAKE A LOOK, IF YOU WOULD,  
26 AT THE BINDER THAT I PUT TOGETHER THAT WE TALKED ABOUT AT

1 THE LAST SESSION OF YOUR -- LAST THURSDAY. THERE ARE --  
2 THIS IS THE BINDER THAT CONTAINS YOUR BILLING STATEMENTS.

3 DO YOU HAVE THAT IN FRONT OF YOU,  
4 MR. MALPASS?

5 A YES.

6 Q WHY DON'T YOU TAKE A LOOK AT SECTIONS 3 AND  
7 4.

8 AND, MR. SHAW, DO YOU HAVE A COPY OF THAT  
9 BINDER, I BELIEVE, AT YOUR DESK?

10 YOUR HONOR, COULD I PUT TWO PAGES FROM THIS  
11 DOCUMENT UP? I'M NOT GOING TO ASK THAT IT BE MOVED INTO  
12 EVIDENCE, BUT I'D LIKE THE JURY JUST TO SEE WHAT WE'RE  
13 TALKING ABOUT. JUST TWO SUMMARY PAGES. IT'S VERY SIMPLE.

14 MR. SHAW: WHICH PAGES ARE THEY, MR. RIVIN?

15 MR. RIVIN: THEY ARE THE FIRST PAGE OF TAB 3 AND  
16 THE FIRST PAGE OF TAB 4.

17 MR. SHAW: YOUR HONOR, I HAVE OBJECTIONS BECAUSE  
18 THE ISSUES THAT I CITED AT SIDEBAR, NOT A PLAINTIFF IN THIS  
19 CASE. THERE'S ISSUES REGARDING WORK PRODUCT HERE THAT --  
20 AND ATTORNEY-CLIENT PRIVILEGE, ISSUES THAT ARE SEPARATE  
21 FROM THE ISSUES IN THIS CASE.

22 THE COURT: WE'VE ARGUED THAT, MR. SHAW.

23 MR. SHAW: YES, YOUR HONOR. I JUST WANT TO MAKE  
24 SURE I BRING IT TO THE COURT'S ATTENTION.

25 THE COURT: THANK YOU. OVERRULED.

26 MR. RIVIN: THANK YOU, YOUR HONOR.

1                   THIS WOULD BE, THE FIRST PAGE IS PAGE -- WE  
2 HAVE IT LISTED AS EXHIBIT 1436, PAGE 27 ON THE COMPUTER.

3           Q           THIS IS SIMILAR TO THE PAGES WE WERE TALKING  
4 ABOUT AT THE LAST -- ON THURSDAY, MR. MALPASS.

5                   DO YOU REMEMBER THAT?

6           A           IT'S A SUMMARY PAGE OUT OF MY SUMMARY, BUT  
7 IT'S NOT A NOVELLI BILLING. YOU WERE TALKING ABOUT NOVELLI  
8 BILLINGS.

9           Q           I WASN'T TALKING ABOUT NOVELLI BILLINGS,  
10 MR. MALPASS. I WAS TALKING ABOUT YOUR REPRESENTATION OF  
11 MR. NOVELLI.

12          A           THERE'S NO INDICATION HERE THAT THAT'S WHAT  
13 THIS IS FOR.

14          Q           MR. MALPASS, WHAT DOES THIS SAY AT THE VERY  
15 TOP?

16          A           IT SAYS, "ALL SEASONS RESORT, RE HOOKER."

17          Q           "RE" MEANING RE HOOKER?

18          A           IN REFERENCE TO, IS WHY THAT WOULD BE USED  
19 IN MY BILLINGS, YES.

20          Q           YOU REPRESENTED MR. NOVELLI IN THE HOOKER  
21 CASE?

22          A           THAT'S NOT NECESSARILY WHAT THIS BILLING IS  
23 FOR. AS I SAID, I DID SOME SPECIAL APPEARANCE WORK. THIS  
24 IS NOT -- THE CAPTION ON THE CASE -- MR. NOVELLI, AS I  
25 RECALL, WAS ONE OF THE DEFENDANTS, NOT THE ONLY DEFENDANT.  
26 AND I THINK ALL SEASONS WAS, WHICH IS WHY IT'S SET OUT THAT

1 WAY.

2 AND THE REST OF THE BILLS INDICATE IT'S NOT  
3 GOING TO RAY NOVELLI IN ANY WAY, SHAPE OR FORM. AND THAT'S  
4 MY RECOLLECTION.

5 Q ISN'T THAT BECAUSE YOU DIDN'T BILL  
6 MR. NOVELLI; YOU BILLED HIS COMPANIES INSTEAD?

7 A THAT'S BECAUSE I DIDN'T WORK FOR  
8 MR. NOVELLI. I HAD SPECIFIC CLIENTS THAT I REPRESENTED IN  
9 PARTICULAR MATTERS. AND WHERE I DID LIMITED WORK FOR  
10 MR. NOVELLI, IT WAS MADE VERY CLEAR -- AND I DON'T THINK  
11 THAT IT WAS SET UP FOR MR. NOVELLI -- THAT I WAS -- THAT I  
12 MIGHT REPRESENT MR. NOVELLI IN CERTAIN LIMITED MATTERS  
13 WHERE I WAS REPRESENTING ANOTHER CLIENT.

14 AS I SAID, I TAKE THAT VERY SERIOUSLY  
15 BECAUSE OF MY ROLE AS A BANKRUPTCY LAWYER, AND I DON'T WANT  
16 IT TO GET MISCHARACTERIZED HERE OR ANYWHERE ELSE.

17 Q YOU REMEMBER ANY WORK THAT YOU DID IN THE  
18 HOOKER CASE FOR ALL SEASONS?

19 A I DON'T RECALL.

20 Q YOU DO RECALL THAT YOU DID WORK FOR  
21 MR. NOVELLI IN THE HOOKER CASE, BUT YOU DON'T RECALL ANY  
22 WORK THAT YOU DID FOR ALL SEASONS; IS THAT RIGHT?

23 A I RECALL APPEARING IN MATTERS WHERE THERE  
24 WERE -- WHERE MR. NOVELLI WAS ONE OF THE DEFENDANTS, AND I  
25 PICKED UP MR. NOVELLI SPECIALLY IN ADDITION I THINK TO  
26 OTHER DEFENDANTS. I DON'T THINK THAT I -- I DID WORK FOR

1 MR. NOVELLI, JUST MR. NOVELLI. IT WAS VERY LIMITED, VERY,  
2 VERY LIMITED.

3 Q AND YOU DON'T REMEMBER ANY WORK THAT YOU DID  
4 FOR ALL SEASONS IN CONNECTION WITH THE HOOKER LITIGATION?

5 A I DON'T -- I THINK THERE WAS.

6 Q LET'S SEE HOW MUCH YOU BILLED ALL SEASONS  
7 FOR THE WORK YOU DID FOR MR. NOVELLI IN THE HOOKER  
8 LITIGATION. THIS IS 1996.

9 A WELL, AGAIN, MR. RIVIN, THAT WOULD BE A  
10 MISCHARACTERIZATION. THEY HAD JUST TAKEN FROM -- BECAUSE  
11 THIS DOESN'T SHOW A BILL TO ALL SEASONS. IF YOU LOOK AT  
12 THE BILLING STATEMENTS UNDERNEATH THIS THAT ARE IN THIS  
13 BOOK, THEY'RE NOT DIRECTED TO ALL SEASONS.

14 Q THEY'RE DIRECTED TO ANOTHER COMPANY  
15 AFFILIATED WITH MR. NOVELLI?

16 A I DON'T KNOW WHO IT WAS AFFILIATED WITH, BUT  
17 IT'S NOT DIRECTED TO ALL SEASONS.

18 Q SO, IN OTHER WORDS, YOU DIDN'T EVEN CHARGE  
19 ALL SEASONS; YOU CHARGED A COMPANY BY THE NAME OF "CHARTER  
20 MANAGEMENT"?

21 A THERE WERE -- HOW THE BILLING ENTRIES WERE  
22 SET UP IS SOMETHING THAT I -- I MEAN THAT THEY ARE WHAT  
23 THEY SHOW, YES.

24 Q THE SUMMARY PAGE THAT WE HAVE ON THE SCREEN  
25 SHOWS "ALL SEASONS RESORTS RE HOOKER."

26 A YES.

1 Q CORRECT?

2 A YES.

3 Q AND YOUR CLIENT -- THE CLIENT THAT YOU  
4 CHARGED -- WELL, LET'S JUST -- LET'S MOVE ON.

5 LET'S LOOK AT THE TOTAL AMOUNT THAT YOU  
6 CHARGED.

7 FOR 1996 DO YOU SEE THE THIRD -- IT'S THE  
8 FIFTH COLUMN THAT SAYS "TOTAL." THAT'S THE TOTAL AMOUNT  
9 BILLED, ISN'T IT?

10 A UNDERNEATH "TOTAL."

11 Q YES.

12 A YES, THAT WOULD BE A NONCUMULATIVE TOTAL.

13 Q EXACTLY.

14 AND SO IF YOU TOTALED THOSE UP, IT PROBABLY  
15 COMES TO AROUND -- IT'S UNDER \$6,000. ABOUT \$5500 TO  
16 \$6,000; RIGHT?

17 A THAT'S FAIR.

18 Q LET'S GO TO 1997. THAT WOULD BE PAGE 42.

19 ONCE AGAIN AT THE TOP, "ALL SEASONS RESORTS,  
20 HOOKER." AND UNDER THE TOTAL COLUMN WE'VE GOT -- FIRST  
21 MONTH IS JANUARY. WOULD BE ALMOST \$12,000?

22 A A LITTLE OVER 10.

23 Q PARDON?

24 A A LITTLE OVER \$10,000.

25 Q I THINK IT'S ACTUALLY A LITTLE MORE THAN  
26 THAT.

1 A MAYBE MORE.

2 Q YEAH. I THINK IT'S ABOUT \$12,000. CLOSE TO  
3 \$12,000?

4 A AGAIN, THAT'S FAIR.

5 Q \$12,500?

6 A YES.

7 Q SO AT LEAST THROUGH 1997, YOU BILLED  
8 SOMEBODY APPROXIMATELY \$18,000 FOR WORK THAT YOU DID FOR  
9 MR. NOVELLI IN THE HOOKER LITIGATION; ISN'T THAT RIGHT?

10 A NO.

11 Q DID YOU DO \$18,000 WORTH OF WORK IN  
12 CONNECTION WITH THE HOOKER LITIGATION?

13 A I ASSUME THAT I DID BASED ON THIS, YES.

14 Q DO YOU RECALL ANYONE YOU REPRESENTED IN THE  
15 HOOKER LITIGATION OTHER THAN MR. NOVELLI?

16 A I BELIEVE THERE WERE OTHER DEFENDANTS, AND  
17 I'M NOT CERTAIN THAT I WAS -- I KNOW THAT VIRTUALLY ALL  
18 THIS WORK WAS NOT REPRESENTING MR. NOVELLI OR ANYONE ELSE.

19 THE COURT: MR. MALPASS, WHO DID YOU BILL?

20 THE WITNESS: JUDGE, THAT DEPENDS ON HOW THE  
21 STATEMENTS WENT OUT. I DIDN'T -- I HAVE A BOOKKEEPER. THE  
22 CAPTION AT THE TOP IS NOT WHO THE BILLING WENT TO.

23 THE COURT: WELL, WHO DID YOU BILL?

24 THE WITNESS: THE BILLS -- IT SAYS, "INVOICE  
25 SUBMITTED TO HOOKER CHARTER MANAGEMENT, CARE OF  
26 JIM BAUMGARTNER." THAT'S THE ONES I'VE LOOKED AT.

1 THE COURT: YOU BILLED HIM THE WHOLE TOTAL FEES,  
2 HUH?

3 THE WITNESS: THAT'S FOR THIS PORTION OF THE  
4 REPRESENTATION. BUT THE HEADING AT THE TOP IS NOT WHO THE  
5 BILL WENT TO.

6 THE COURT: SO THE HEADING AT THE TOP DOES INDICATE  
7 WHO THE WORK WAS DONE FOR?

8 THE WITNESS: NO.

9 THE COURT: WHY IS IT THERE?

10 THE WITNESS: IT IS THERE AS A MATTER OF  
11 INTERNAL -- IN OUR FILING SYSTEM -- IN OUR BILLING SYSTEM  
12 WE HAVE SORT OF BROAD GENERAL CATEGORIES THAT ARE SET OUT  
13 MORE BY MY BOOKKEEPER THAN AS A PRECISE THING. IF IT'S A  
14 CLIENT OR A GROUP OF MATTERS, THAT'S HOW -- THAT'S WHAT  
15 THAT MEANS. WE CALL THIS ALL -- A LOT OF THIS ALL SEASONS.

16 THE COURT: I'M TRYING TO SHORTEN THIS UP A LITTLE  
17 BIT.

18 NOW, YOU BILLED BAUMGARTNER FOR THE WORK?

19 THE WITNESS: CORRECT.

20 THE COURT: WHO DID YOU DO THE WORK FOR?

21 THE WITNESS: IT WOULD HAVE BEEN -- BEING PRECISE,  
22 IT'S HARD TO SAY. I REPRESENTED THE PEOPLE IN COURT, AND I  
23 DID RESEARCH AND CONSULTING-TYPE WORK. AND IT MAY HAVE  
24 BEEN FOR DIFFERENT PEOPLE. AND MY RECOLLECTION IS THAT  
25 THERE WAS MORE THAN ONE DEFENDANT IN THE HOOKER  
26 LITIGATION.

1                   BUT AS I SIT HERE TODAY, I CAN'T RECALL WHO  
2 THE DEFENDANTS WERE. SO I THINK I REPRESENTED -- AND  
3 COUNSEL, HE HAD MORE THAN ONE.

4                   THE COURT: APPROACH THE BENCH, WILL YOU,  
5 GENTLEMEN.

6                   (DISCUSSION OFF THE RECORD.)

7                   MR. SHAW: YOUR HONOR, COULD I TAKE THE BILLING  
8 BOOK WITH ME OUT IN THE HALL AND GO THROUGH THE BILLING  
9 BOOK?

10                  THE COURT: YES.

11                  MR. SHAW: MR. MALPASS, I WANT TO TAKE YOU OUT WITH  
12 THE BILLING BOOK.

13                  (RECESS TAKEN.)

14                  MR. MOSHENKO: YOUR HONOR, MR. MALPASS HAS NOW HAD  
15 A CHANCE TO LOOK THROUGH THE BILLING.

16                  THE COURT: THANK YOU.

17                  MR. SHAW: YOU'RE WELCOME. THANK YOU FOR THE  
18 TIME.

19                  THE COURT: PROCEED, COUNSEL.

20                  MR. RIVIN: THANK YOU.

21                  Q           YOU DIDN'T BILL JIM BAUMGARTNER; YOU JUST  
22 SENT THE BILLS TO HIM?

23                  A           YES.

24                  Q           CARE OF CHARTER MANAGEMENT?

25                  A           I THINK I BILLED CHARTER MANAGEMENT.

26                  Q           YOU BILLED CHARTER MANAGEMENT?

1 A RIGHT.

2 Q THAT WAS A COMPANY AFFILIATED WITH IN SOME  
3 WAY MR. NOVELLI?

4 A YES.

5 Q DO YOU KNOW IF MR. NOVELLI EVER PAID YOU FOR  
6 ANY PORTION OF THE WORK THAT YOU DID ON HIS BEHALF  
7 PERSONALLY?

8 A NO.

9 Q YOU HAVE NO IDEA WHETHER HE PAID YOU OR NOT;  
10 IS THAT RIGHT?

11 A WELL, I THINK -- I DON'T KNOW WHETHER  
12 MR. NOVELLI PAID ME. I GOT PAID.

13 Q DO YOU KNOW FROM WHOM?

14 A FROM SEVERAL DIFFERENT SOURCES IS MY  
15 RECOLLECTION, TRAVEL TIMES BEING ONE.

16 Q PARDON ME?

17 A TRAVEL TIMES BEING ONE. YOU SHOWED ME THE  
18 CHECKS.

19 Q SO YOU GOT PAID BY TRAVEL TIMES FOR SOME OF  
20 THE WORK THAT YOU DID FOR MR. NOVELLI PERSONALLY?

21 A I'M NOT CERTAIN OF THAT. I HAVE TO SEE THE  
22 RELATION.

23 Q YOU JUST DON'T KNOW?

24 A WELL, NO. THERE WERE -- WOULD BE MEMOS  
25 RELATING PARTICULAR CHECKS TO PARTICULAR BILLS AND, THEN  
26 IT'S PICKED UP IN THE BILLING STATEMENTS.

1 Q DURING THE COURSE OF THE ALL SEASONS RESORTS  
2 BANKRUPTCY, WERE YOU REPRESENTED -- YOU REPRESENTED ALL  
3 SEASONS RESORT AS A DEBTOR. YOU KEPT MR. MOSHENKO POSTED  
4 FROM TIME TO TIME, DID YOU NOT, AS TO WHAT WAS GOING ON IN  
5 THOSE PROCEEDINGS?

6 A I THINK I DID.

7 Q THIS IS IN 1997?

8 A I DON'T RECALL EXACT DATES. I MEAN --

9 Q I'M NOT LOOKING FOR EXACT DATES. IT WAS  
10 1997?

11 A I DON'T EVEN RECALL THAT. I KNOW I HAD  
12 PERIODIC DEALINGS WITH MR. MOSHENKO ABOUT -- AND I'M SURE I  
13 KEPT HIM UP TO DATE. I MAY WELL HAVE WRITTEN HIM LETTERS.

14 Q BUT THAT WAS LONG BEFORE YOU WERE RETAINED  
15 AS THE PLAINTIFFS' EXPERT IN THIS CASE?

16 A YES.

17 Q AND NOW YOU'VE BEEN RETAINED TO ASSIST --  
18 YOU WERE RETAINED BY MR. MOSHENKO AND MR. NOVELLI TO BE AN  
19 EXPERT ON BEHALF OF THE PLAINTIFFS IN THIS CASE?

20 A I WAS RETAINED BY -- I MEAN, I DEALT WITH  
21 MR. MOSHENKO ABOUT IT.

22 Q AND WITH MR. NOVELLI?

23 A I MET WITH MR. NOVELLI AFTER I HAD AGREED TO  
24 SERVE AS AN EXPERT WITNESS.

25 Q SO MR. MOSHENKO IS THE ONE THAT CONTACTED  
26 YOU FIRST?

1 A CORRECT.

2 Q AND THEN YOU MET WITH MR. NOVELLI AGAIN  
3 ABOUT YOUR TESTIMONY; IS THAT RIGHT?

4 A NO, NOT REALLY.

5 Q MR. MALPASS, DURING YOUR DEPOSITION I ASKED  
6 YOU IF THERE WERE ANY LAWSUITS IN WHICH YOU HAD BEEN NAMED  
7 PERSONALLY AS A DEFENDANT, AND YOU SAID THAT YOU CAN'T  
8 RECALL.

9 HAVE YOU EVER BEEN NAMED AS A DEFENDANT IN A  
10 LAWSUIT?

11 A YES.

12 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS PAGES 93,  
13 LINE 24, TO 94, LINE 2, FROM HIS DEPOSITION.

14 MR. SHAW: WHERE DOES IT END, COUNSEL? I'M SORRY.

15 MR. RIVIN: VOLUME I OF MR. MALPASS'S DEPOSITION.  
16 IT IS PAGE 93, LINE 24, THROUGH PAGE 94, LINE 2.

17 MR. SHAW: NO OBJECTION, YOUR HONOR.

18 BY MR. RIVIN: Q YOUR DEPOSITION.

19 "HAVE YOU EVER BEEN A DEFENDANT IN A CASE?

20 "ANSWER: I DON'T RECALL BEING A DEFENDANT  
21 IN A CASE, NO."

22 MR. MALPASS, ON THURSDAY WE WENT SOME TIME  
23 TALKING ABOUT YOUR CONCLUSION ON DIRECT EXAMINATION WHERE  
24 YOU SAID THAT THE ALL SEASONS RESORTS MEMBERSHIP CONTRACTS  
25 HAD BEEN SOLD PRIOR TO THE REJECTION, AND, THEREFORE, THEY  
26 WEREN'T REJECTED; THEY WERE SOLD.

1 DO YOU REMEMBER THAT TESTIMONY?

2 A YES.

3 Q I WANT TO TAKE YOU THROUGH -- I WANT TO TAKE  
4 YOU THROUGH THAT AGAIN.

5 AND, IN FACT, I COULD, YOUR HONOR, USE THE  
6 BLACKBOARD?

7 THE COURT: SURE.

8 MR. RIVIN: THANK YOU.

9 Q WE'RE TALKING ABOUT THE 18,000 ALL SEASONS  
10 MEMBERSHIP CONTRACTS WHICH WERE -- AND WE SAW AN ORDER  
11 REJECTING THOSE CONTRACTS; DO YOU RECALL THAT?

12 A YOU'RE SAYING 18,000.

13 Q DO YOU HAVE ANY INDEPENDENT RECOLLECTION OF  
14 THAT?

15 A I THINK THAT THERE WERE A SUBSTANTIAL  
16 NUMBER. I DON'T HAVE ANY INDEPENDENT RECOLLECTION OF HOW  
17 MANY. I KNOW THERE WERE A LOT OF THEM.

18 Q OKAY. I'M NOT GOING TO ASK YOU TO AGREE  
19 WITH SOMETHING THAT YOU HAVE NO RECOLLECTION OF.

20 I'D LIKE TO SHOW -- WHAT I WANT TO DO HERE  
21 IS CREATE A CHRONOLOGY AND GO THROUGH THIS -- CREATE A TIME  
22 LINE.

23 CAN WE SHOW EXHIBIT 380, PLEASE.

24 THIS IS THE MOTION -- TAKE A LOOK AT THAT,  
25 MR. MALPASS, MOTION FOR AN ORDER AUTHORIZING REJECTION OF  
26 THE MEMBERSHIP CONTRACTS. AND THAT WAS FILED -- NO.

1 THAT'S THE HEARING DATE. MIKE, IF YOU COULD GO UP TO THE  
2 TOP, OCTOBER 9TH.

3 IS THAT RIGHT, MR. MALPASS?

4 A THAT'S -- YES. THAT'S WHAT IT LOOKS LIKE,  
5 YES.

6 Q OKAY. SO EXHIBIT NUMBER 380 IS A MOTION  
7 TO REJECT, AND THAT'S 10/9.

8 ALL THIS IS IN 1997; RIGHT?

9 A YES.

10 Q ALL RIGHT. YOU FILED OPPOSITION TO THIS  
11 MOTION, DIDN'T YOU, ON BEHALF OF ALL SEASONS?

12 A I BELIEVE SO.

13 Q CAN WE TAKE A LOOK AT EXHIBIT 1438, WHICH IS  
14 NOT ON THE EXHIBIT LIST. I'M USING THIS -- WELL, LET ME  
15 WITHDRAW THAT.

16 DO YOU REMEMBER THE DATE THAT YOU FILED THE  
17 OPPOSITION?

18 A NO.

19 MR. RIVIN: I'D LIKE TO SHOW THIS DOCUMENT TO THE  
20 WITNESS SOLELY FOR THE PURPOSE OF REFRESHING HIS  
21 RECOLLECTION AT THIS POINT -- ACTUALLY, I DON'T THINK WE  
22 HAVE IT ON THE SYSTEM.

23 LET ME KNOW WHEN YOU'VE HAD A CHANCE TO READ  
24 THROUGH THAT, MR. MALPASS.

25 I DON'T NEED YOU TO READ EVERY LINE. I'D  
26 LIKE YOU TO CONFIRM THAT IT'S A PLEADING THAT YOU FILED IN

1 THE BANKRUPTCY COURT.

2 A YES.

3 Q AND WHAT WAS THE DATE OF THAT PLEADING?

4 A THIS COPY DOESN'T HAVE A DATE ON IT.

5 Q IT HAS A DATE THAT YOU SIGNED IT; RIGHT?

6 A YES, THAT'S CORRECT.

7 Q WHAT DATE DID YOU SIGN IT?

8 A OCTOBER 17, 1997.

9 Q AND YOU WOULD HAVE FILED IT OCTOBER 17 OR  
10 OCTOBER 18; RIGHT?

11 A I DON'T KNOW THAT.

12 Q YOU WOULD HAVE FILED IT AROUND THAT DATE?

13 A IF IT WAS FILED.

14 Q DO YOU KNOW ONE WAY OR THE OTHER WHETHER IT  
15 WAS FILED?

16 A I ASSUME IT WAS.

17 Q ALL RIGHT. SO THIS IS A DEBTOR'S -- THE  
18 DEBTOR'S OPPOSITION; RIGHT?

19 A YES.

20 Q OKAY.

21 A THIS COPY DOESN'T HAVE A FILE STAMP.

22 Q I UNDERSTAND THAT. I NOTICED THAT.

23 THE DEBTOR OPPOSED THE MOTION TO REJECT THE  
24 CONTRACTS FOR A VARIETY OF REASONS. BUT YOU STATED IN HERE  
25 THAT "WHILE IT MAY BE BENEFICIAL TO FINOVA AND CHRISTIANSON  
26 TO HAVE THE CONTRACTS REJECTED, THE BANKRUPTCY PROCESS

1 SHOULD NOT BE MANIPULATED TO BENEFIT SENIOR SECURED  
2 CREDITORS AT THE EXPENSE OF THE MEMBERS AND OTHER CREDITORS  
3 WHO MAY BENEFIT IF THE CONTRACTS ARE NOT REJECTED."

4 SO -- THAT'S FROM PARAGRAPH 5 OF THAT  
5 DOCUMENT.

6 SO YOU WERE OPPOSING IT SAYING THE COURT  
7 SHOULD NOT REJECT THE CONTRACTS; RIGHT?

8 A THAT THERE SHOULD BE SOME SHOWING OF BENEFIT.

9 Q EXACTLY.

10 BUT YOU WERE SAYING -- YOU WERE ARGUING TO  
11 THE COURT THAT THE COURT SHOULD NOT GRANT THIS MOTION FILED  
12 BY THE TRUSTEE; CORRECT?

13 A YES.

14 Q ALL RIGHT. AND THEN THERE'S A HEARING, AND  
15 WE'VE SEEN THIS BEFORE A COUPLE OF TIMES.

16 THE HEARING TOOK PLACE WHERE THERE'S THE  
17 AUCTION ON 10/27 IN THE MORNING; RIGHT?

18 A RIGHT.

19 Q AND THAT WAS THE AUCTION OF THE REAL  
20 PROPERTY, RELATED PERSONAL PROPERTY, AND MEMBER LISTS; IS  
21 THAT RIGHT?

22 A OF EVERYTHING.

23 Q LET'S TAKE A LOOK AT EXHIBIT 383, PLEASE.  
24 THIS IS THE DOCUMENT WE TALKED ABOUT LAST TIME. THAT'S A  
25 COURT ORDER DATED NOVEMBER 5, 1997. IT'S AN ORDER --  
26 AMENDED ORDER APPROVING SALE OF PROPERTY OF THE ESTATE FREE

1 AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS.  
2 AND, MIKE, IF WE CAN GO TO THE ABOUT THE  
3 FOURTH PAGE. AT THE -- WE CAN USE PARAGRAPH 2, PLEASE.  
4 RIGHT.

5 IF WE RECALL FROM LAST TIME -- IF YOU RECALL  
6 FROM LAST TIME, MR. MALPASS, THIS ORDER WENT THROUGH AND  
7 IDENTIFIED EACH OF THE PROPERTIES BEING SOLD; ISN'T THAT  
8 RIGHT? DO YOU REMEMBER THAT?

9 A YES.

10 Q ALL RIGHT. SO THIS PARAGRAPH 2 APPLIES TO  
11 THE PROPERTY KNOWN AS FOX RIVER, AND IT SAYS, "THE REAL  
12 PROPERTY KNOWN AS FOX RIVER," IDENTIFIES THE LEGAL  
13 DESCRIPTION, "ALONG WITH ALL FIXTURES AND PERSONAL PROPERTY  
14 RELATED THERETO AND LOCATED THEREON AND THEREIN, AND ALONG  
15 WITH THE LIST OF MEMBERS FOR WHOM FOX RIVER IS THE HOME  
16 RESORT, SMALL BE, AND HEREBY IS SOLD AND TRANSFERRED TO  
17 FINOVA FOR \$560,000." OKAY?

18 SO WHAT IT SAYS IN EACH OF THESE PARAGRAPHS  
19 IS THAT THE REAL PROPERTY, ALONG WITH ALL FIXTURES AND  
20 PERSONAL PROPERTY RELATED THERETO AND LOCATED THEREON,  
21 ALONG WITH THE LIST OF MEMBERS, ARE BEING SOLD; THAT'S WHAT  
22 IT SAYS?

23 A YES, THAT'S CORRECT.

24 Q THANK YOU.

25 ALL RIGHT. SO WE HAVE AN AUCTION SALE OF  
26 THE REAL PROPERTY, RELATED PERSONAL PROPERTY, PROPERTY AND

1 MEMBER LISTS -- THIS IS ALMOST ILLEGIBLE, I THINK -- AND  
2 MEMBER LISTS. ALL RIGHT.

3 THAT'S WHAT IT SAYS; FOR EACH ONE OF THOSE  
4 PROPERTIES IT SAYS THE SAME THING.

5 NOW, IT'S YOUR CONTENTION THAT THE RELATED  
6 PERSONAL PROPERTY INCLUDED THE CONTRACTS?

7 EVEN THOUGH IT DOESN'T SAY THAT IN THE  
8 ORDER, IT'S YOUR CONTENTION THAT THIS INCLUDED THE  
9 CONTRACTS; CORRECT?

10 A NO. THE DESCRIPTION THAT'S IN THE ORDERS AS  
11 ESTABLISHED BY THE MOTION AND WHAT HAPPENED IN THE  
12 BANKRUPTCY COURT AND THE CONTEXT IN WHICH IT OCCURRED  
13 EFFECTIVELY TRANSFERRED ALL THE RIGHTS THAT THERE WERE, THE  
14 GOODWILL, AND THE REST OF THE PROPERTY TO THE BUYERS.

15 Q YOUR CONTENTION?

16 A THAT'S MY PROFESSIONAL OPINION.

17 Q AT THE AUCTION -- THAT'S YOUR PROFESSIONAL  
18 OPINION?

19 A YES.

20 Q AT THE AUCTION THE CONTRACTS WERE SOLD; IS  
21 THAT YOUR CONTENTION?

22 A WELL --

23 Q THAT'S WHAT YOU SAID LAST TIME; THAT'S WHAT  
24 YOU SAID ON THURSDAY.

25 A MR. RIVIN, FOR THE JURY'S BENEFIT, WHEN YOU  
26 TALK ABOUT CONTRACTS, THERE'S TWO CONTRACTS. I'M SURE YOU

1 KNOW THAT. THERE IS THE RIGHTS OF ONE PARTY AND THE RIGHTS  
2 OF THE OTHER PARTIES. WHAT I'M TALKING ABOUT IS THE RIGHTS  
3 THAT THE DEBTOR IN BANKRUPTCY, A.S.R., HAD, AND THE  
4 GOODWILL THAT WENT ALONG WITH THEM; AND ALL THE REST OF THE  
5 THINGS THAT WOULD BE DESCRIBED AS PROPERTY GOT TRANSFERRED  
6 TO THE BUYERS.

7 Q THOSE WERE SOLD AT THE AUCTION?

8 A THEY WERE SOLD.

9 Q AT THE AUCTION; RIGHT? ACCORDING TO YOU  
10 THEY WERE SOLD?

11 A THEY WERE SOLD.

12 Q EVEN THOUGH THE ORDER DOESN'T SAY IT, THEY  
13 WERE SOLD?

14 A THE ORDER SAYS IT.

15 Q I'M NOT GOING TO ARGUE WITH YOU OVER THAT,  
16 MR. MALPASS.

17 A THANK YOU.

18 Q WE KNOW WHAT THE ORDER SAYS.

19 NOW, THE RECEIVER HAD A MOTION TO REJECT THE  
20 CONTRACTS. AND WE SAW LAST TIME, LAST THURSDAY, THAT THE  
21 RECEIVER ACTUALLY -- EXCUSE ME. IT WASN'T THE RECEIVER.  
22 YOU'RE RIGHT. IT WAS THE BANKRUPTCY TRUSTEE. IT WAS  
23 MR. DAFF.

24 MR. DAFF BROUGHT A MOTION TO REJECT THE  
25 CONTRACTS; CORRECT?

26 A YES.

1 Q AND MR. DAFF SENT A LETTER TO ALL OF THE ALL  
2 SEASONS MEMBERS SAYING, "WE'RE TERMINATING YOUR CONTRACTS  
3 EFFECTIVE NOVEMBER 30." WE SAW THAT LAST TIME?

4 A HE SENT THE LETTER, AND THEN HE FILED THE  
5 MOTION. AND I THINK THERE MAY HAVE BEEN MORE THAN ONE  
6 MOTION THAT SOUGHT THAT RELIEF, AND IT WAS DENIED IN THE  
7 FIRST INSTANCE.

8 Q THE MOTION TO REJECT WAS DENIED INITIALLY?

9 A YES. YES.

10 Q YOU'VE SEEN A MOTION -- AN ORDER DENYING A  
11 MOTION TO REJECT?

12 A YES.

13 Q DO YOU HAVE IT WITH YOU?

14 A NO. I DIDN'T BRING ANY PLEADINGS WITH ME TO  
15 THE COURT. I JUST REVIEWED IT THIS AFTERNOON.

16 Q IT'S AN ORDER REJECTING -- IT'S AN ORDER  
17 DENYING THE TRUSTEE'S MOTION TO REJECT THE CONTRACTS?

18 A YES.

19 Q I'D LIKE YOU TO BRING THAT. IF WE DON'T  
20 FINISH YOUR TESTIMONY HERE TODAY, MR. MALPASS, I'D LIKE YOU  
21 TO BRING THAT WITH YOU NEXT TIME.

22 A YES. IT WAS PRODUCED TO YOU I THINK WHEN  
23 YOU TOOK MY DEPOSITION.

24 Q ON OCTOBER 27TH, THE SAME DAY AS THE  
25 AUCTION, IN THE AFTERNOON THERE WAS A COURT HEARING;  
26 CORRECT?

1           A           EXCUSE ME JUST A MINUTE.  OKAY.  I WILL  
2 BRING YOU THAT ORDER, THE ONE I'M TALKING ABOUT.  OKAY.  
3 EXCUSE ME.

4           Q           ON OCTOBER 27, THE AUCTION WAS IN THE  
5 MORNING; THE COURT HEARING WAS IN THE AFTERNOON AT 3:00; IS  
6 THAT RIGHT?

7           A           THERE WAS -- THE AUCTION SALE WAS IN THE  
8 MORNING.  THE COURT HEARING ON VARIOUS OTHER MATTERS WAS IN  
9 THE AFTERNOON, YES.

10          Q           THE COURT HEARING ON THE MOTION, THE  
11 TRUSTEE'S MOTION TO REJECT THE MEMBER CONTRACTS, WAS HEARD  
12 IN THE AFTERNOON ON THE 27TH?

13          A           YES, THAT'S CORRECT.

14          Q           AND THE ORDER -- THE MOTION TO APPROVE THE  
15 SALE OF ALL OF THIS PROPERTY WAS ALSO HEARD AT 3:00 ON THE  
16 27TH; RIGHT?  WE WENT OVER THIS LAST TIME?

17          A           I THINK, YES, YOU'RE RIGHT.

18          Q           THEY WERE BOTH HEARD AT THE SAME TIME?

19          A           I'M SORRY.  THERE ARE THINGS THAT I DON'T  
20 HAVE SPECIFIC RECOLLECTION OF AS I'VE GONE THROUGH THESE  
21 PROCEEDINGS.  BUT THAT'S CERTAINLY --

22          Q           BOTH MOTIONS, THE MOTION TO REJECT THE  
23 MEMBER CONTRACTS, AND THE MOTION TO AUTHORIZE, APPROVE THE  
24 SALE OF ALL THIS PROPERTY, WERE APPROVED BY THE BANKRUPTCY  
25 COURT IN THE AFTERNOON ON OCTOBER 27TH?

26          A           NO.  NO.  AND THIS IS ALL TECHNICAL STUFF.

1 THE SALE WAS ALREADY APPROVED. IT HAD BEEN APPROVED BY A  
2 PRIOR MOTION. THE HEARING IN THE AFTERNOON WITH REGARD TO  
3 THE SALE WAS TO AFFIRM THE SALE. IT'S A TECHNICAL THING;  
4 THAT THE TRUSTEE HAD ALREADY BEEN AUTHORIZED TO SELL ALL OF  
5 THE PROPERTY, AND HE CONDUCTED THE SALE. AND THEN HE CAME  
6 TO THE COURT AND SAID, "HERE IS WHO I SOLD IT TO. I WANT  
7 AN ORDER AFFIRMING THAT." THE JUDGE SAID, "YES."

8 Q FINE.

9 THE TRUSTEE'S MOTION TO REJECT THE CONTRACTS  
10 WAS APPROVED AT THE SAME TIME?

11 A YES. IT WAS RULED ON AT THE SAME TIME.

12 Q BY THE JUDGE?

13 A YES, FAVORABLY.

14 Q AND HE SAID, "I APPROVE IT"?

15 A YES.

16 Q NOTWITHSTANDING YOUR OBJECTION, YOUR  
17 OPPOSITION, HE GRANTED THAT MOTION?

18 A YES. MY CLIENT'S OPPOSITION.

19 Q YOU FILED IT ON BEHALF OF YOUR CLIENT?

20 A YES.

21 Q YOUR CLIENT BEING ALL SEASONS?

22 A YES.

23 Q THIS MOTION WAS GRANTED BY THE JUDGE ON  
24 OCTOBER 27. AND ON NOVEMBER 10TH, 11/10, MR. DAFF, THE  
25 TRUSTEE FILED A MOTION, AN APPLICATION TO RETURN DUES. AND  
26 LET'S GIVE A LITTLE BACKGROUND TO THIS. WE TALKED ABOUT

1 THIS LAST TIME.

2 MR. DAFF WHEN HE SENT HIS LETTER OUT TO ALL  
3 THE MEMBERS IN SEPTEMBER SAYING "DON'T PAY DUES TO ALL  
4 SEASONS, PAY DUES TO ME" -- DO YOU RECALL THAT?

5 A THAT'S WHAT THE LETTER SAYS.

6 Q SO FROM SEPTEMBER -- SOMETIME IN  
7 SEPTEMBER THROUGH NOVEMBER, AT LEAST, MR. DAFF WAS  
8 RECEIVING DUES FROM MEMBERS; RIGHT?

9 A I -- I WASN'T PRIVY TO MR. DAFF'S BANK  
10 ACCOUNTS, BUT I CERTAINLY THINK AND I WOULD INFER FROM THAT  
11 MOTION THAT HE DID, YES. YEAH.

12 Q AND MR. DAFF FILED AN APPLICATION; DO YOU  
13 RECALL THIS? HE FILED AN APPLICATION FOR COURT APPROVAL TO  
14 ALLOW HIM TO RETURN THE DUES THAT WERE PAID TO HIM BACK TO  
15 THESE MEMBERS; DO YOU REMEMBER THAT?

16 A YEAH. I DON'T KNOW WHETHER IT WAS AN  
17 APPLICATION OR A MOTION, BUT THERE WAS SOMETHING OF THAT  
18 SORT FILED.

19 Q WHY DON'T WE TAKE A LOOK, IF WE COULD, AT  
20 EXHIBIT 384, PLEASE.

21 MAY WE SHOW THIS ON THE SCREEN, PLEASE?

22 MR. SHAW: NO OBJECTION, YOUR HONOR.

23 BY MR. RIVIN: Q. THIS IS A VERIFIED APPLICATION  
24 FOR ORDER AUTHORIZING CHAPTER 11 TRUSTEE TO RETURN  
25 MEMBERSHIP DUES.

26 AND, MIKE, IF YOU COULD GO UP TO THE TOP.

1 LET'S SEE THE DATE IT WAS FILED.

2 ACTUALLY IT'S THE 12TH OF SOMETHING, 1997.  
3 AND I SAID THE 10TH.

4 LET'S TAKE A LOOK AT THE THIRD PAGE, IF WE  
5 COULD. I THINK WE'LL FIND A DATE THERE.

6 THE SECOND PAGE. THAT'S THE DATE -- THAT'S  
7 THE PROOF OF SERVICE.

8 MR. MALPASS, ISN'T THAT A PROOF OF SERVICE?

9 A ACTUALLY, NO. I DON'T THINK SO. IT'S A  
10 VERIFICATION UNDER CCP. IT'S NOT A BANKRUPTCY FORM.

11 Q YOU'RE RIGHT. YOU'RE RIGHT.

12 A THERE'S NO PLACE -- IT REALLY HAS NO PLACE  
13 IN THIS THING, SO --

14 Q ALL RIGHT. LET'S GO BACK, MIKE. CAN YOU GO  
15 BACK ONE PAGE, PLEASE. CAN YOU HIGHLIGHT THE DATE AT THE  
16 VERY BOTTOM, NOVEMBER 10, 1997.

17 SO THAT'S A DATE THAT MR. DAFF FILED HIS  
18 APPLICATION TO RETURN THE DUES.

19 AND I'D LIKE YOU TO GO UP, IF YOU WOULD, TO  
20 PARAGRAPH 7, PLEASE.

21 AND MR. DAFF SAID, "OCTOBER 27, 1997, A  
22 HEARING WAS HELD REGARDING THE TRUSTEE'S MOTION TO REJECT  
23 THE MEMBERSHIP CONTRACTS. AN ORDER APPROVING THE TRUSTEE'S  
24 MOTION HAS BEEN LODGED WITH THE COURT."

25 WHAT DOES THE WORD "LODGE" MEAN IN THAT  
26 CONTEXT, MR. MALPASS?

1           A           IT MEANS IT'S BEEN SENT IN TO THE JUDGE FOR  
2 HIS REVIEW TO SEE IF HE IS GOING TO SIGN IT AND MAKE IT  
3 EFFECTIVE.

4           Q           SO, IN OTHER WORDS, THE JUDGE RULED ON THE  
5 MOTION ON THE 27TH, AND HE SAID IT'S GOING -- HE GRANTED  
6 THE MOTION TO REJECT THE CONTRACTS. AND THEN MR. DAFF  
7 SAID, BY NOVEMBER 10, THAT HE HAD SENT AN ORDER INTO THE  
8 COURT TO SHOW THAT THE CONTRACTS -- TO SHOW THAT THAT ORDER  
9 WAS GRANTED; RIGHT?

10          A           WELL, IT WAS AN ORDER ACTUALLY ENTERED ON  
11 ABOUT THE 27TH OR SOMETHING.

12          Q           EXACTLY. AND WE'LL GET TO THAT.  
13                      COULD WE GO TO 386, PLEASE.

14                      THIS IS A DOCUMENT THAT I BELIEVE IS IN  
15 EVIDENCE.

16                      MR. MALPASS, I THINK THIS IS THE ORDER THAT  
17 YOU WERE JUST REFERRING TO; IS THAT RIGHT?

18          A           YES.

19          Q           NOVEMBER 24, THE JUDGE ENTERS THE ORDER  
20 APPROVING THE REJECTION OF THE MEMBERSHIP CONTRACTS;  
21 CORRECT?

22          A           YES. THAT'S THE DATE OF ENTRY.

23          Q           AGAIN, ACCORDING TO YOU, THE MEMBERSHIP  
24 CONTRACTS HAD ALREADY BEEN SOLD; THEY DIDN'T NEED TO BE  
25 REJECTED; THEY WERE SOLD?

26          A           THAT'S CORRECT.

1 Q AND I'D LIKE TO SHOW --

2 A WELL, MR. RIVIN, LET ME CLARIFY MY TESTIMONY  
3 BECAUSE THIS IS WHAT I DID LOOK AT.

4 FROM THE STANDPOINT OF MR. DAFF, THE  
5 BANKRUPTCY TRUSTEE, HE WANTED THE CONTRACTS REJECTED  
6 BECAUSE IT PROTECTED THE BANKRUPTCY ESTATE FROM CLAIMS.

7 IN TERMS OF WHAT HAPPENED AND WHERE THE  
8 PROPERTY WENT, THEY WERE SOLD. THE TRANSFER HAD ALREADY  
9 TAKEN PLACE. THE BUYERS HAD THEM. THE PEOPLE THAT BOUGHT  
10 THEM -- THERE WAS AN ORDER ENTERED IN THE BANKRUPTCY COURT,  
11 AND THE TRUSTEE WENT AHEAD AND LODGED THE ORDER, AND THE  
12 COURT SIGNED IT. AND IT WAS ENTERED IN THE BANKRUPTCY  
13 CASE, WHICH AGAIN HAS MEANING FOR THE TRUSTEE AS FAR AS HIS  
14 ADMINISTRATION. BUT IT DIDN'T AFFECT THE CONTRACTS.

15 MR. RIVIN: MOVE TO STRIKE THE ANSWER, YOUR HONOR,  
16 ON THE BASIS IT WAS NOT RESPONSIVE TO ANY QUESTION I ASKED.

17 THE COURT: MOTION GRANTED.

18 BY MR. RIVIN: Q LET'S LOOK AT EXHIBIT 385,  
19 PLEASE.

20 SO WE ALREADY LOOKED AT THE ORDER REJECTING  
21 THE CONTRACTS ON NOVEMBER 24. AND EXHIBIT 385 -- AND I'D  
22 LIKE TO IF WE COULD SHOW IT, PLEASE, 385.

23 THIS IS AN ORDER ON A VERIFIED APPLICATION  
24 FOR ORDER AUTHORIZING CHAPTER 11 TRUSTEE TO RETURN THE  
25 MEMBERSHIP DUES.

26 OKAY. SO THE COURT GRANTED THAT ORDER THE

1 SAME DAY AS IT GRANTED THE ORDER REJECTING THE CONTRACTS;  
2 IS THAT RIGHT?

3 A NO.

4 Q WELL, IT -- THE ORDER WAS ENTERED?

5 A YES.

6 Q THE ORDERS WERE ENTERED THE SAME DAY?

7 A YES. THEY WEREN'T GRANTED ON THE SAME DAY.

8 Q THE MOTION REJECTING THE CONTRACTS WAS  
9 GRANTED ON OCTOBER 27TH, AND THE MOTION FOR THE ORDER  
10 APPROVING THE RETURN OF THE DUES TO THE MEMBERS WAS GRANTED  
11 SOMETIME LATER. BUT THE ORDER WAS ONLY ENTERED ON NOVEMBER  
12 24TH; IS THAT RIGHT?

13 A THAT'S SUBSTANTIALLY CORRECT.

14 Q ALL RIGHT.

15 THE COURT: MR. RIVIN, YOU'RE NOT GOING TO FINISH  
16 WITH THIS WITNESS TODAY.

17 MR. RIVIN: COULD I HAVE FIVE MINUTES?

18 THE COURT: SURE. I WILL HOLD YOU TO IT.

19 MR. RIVIN: OKAY. THAT'S FINE.

20 Q MR. MALPASS, ON NOVEMBER 26TH YOU FILED A  
21 MOTION ATTACKING THE RECEIVER'S -- ATTACKING THIS ORDER  
22 AUTHORIZING THE TRUSTEE TO RETURN THE DUES; IS THAT  
23 CORRECT?

24 A I RECALL FILING A MOTION OR -- I'M NOT EVEN  
25 SURE IT WAS A MOTION. I RECALL DOING IT. AT LEAST THE  
26 PART I RECALL WAS BECAUSE HE FILED SOMETHING SAYING HE WAS

1 GOING TO RETURN \$16,000, AND IT WAS ACTUALLY \$116,000.

2 Q SO YOU FILED -- TWO DAYS LATER AFTER THAT  
3 ORDER WAS ENTERED YOU FILED -- YOU FILED A MOTION ASKING  
4 THE COURT BASICALLY TO RECONSIDER THAT ORDER ON THE REFUND  
5 OF THE DUES; ISN'T THAT RIGHT?

6 A I THINK THE TRUSTEE GOT A BUNCH OF ORDERS  
7 ENTERED WITHOUT PROPER NOTICES; WOULD BE INDICATED BY THIS  
8 WEIRD FORM.

9 Q YOU FILED A MOTION?

10 A RIGHT. I FILED A MOTION.

11 Q TO ALTER OR AMEND THIS ORDER?

12 A I DID FILE A MOTION REGARDING THAT ORDER.

13 MR. RIVIN: AND I'D LIKE TO SHOW THE WITNESS A  
14 DOCUMENT FOR THE -- TO REFRESH HIS RECOLLECTION, YOUR  
15 HONOR. IT'S 1437. THIS IS ACTUALLY A DOCUMENT THAT WE  
16 JUST FOUND.

17 Q. THIS DOCUMENT IS DATED NOVEMBER 26TH, 1997;  
18 IS THAT RIGHT, MR. MALPASS?

19 A IT DOESN'T HAVE A FILE STAMP. IT'S SIGNED  
20 ON THE 26TH.

21 Q BY YOU?

22 A YES, BY ME.

23 Q AND YOU WERE TAKING THE POSITION THAT THE  
24 DUES REFUND, WHICH THE COURT HAD AUTHORIZED, WAS IMPROPER?

25 A YEAH, BECAUSE IT HADN'T BEEN NOTICED.

26 Q TAKE A LOOK AT PARAGRAPH 8 ON PAGE 4.

1 MR. MALPASS, I'D LIKE YOU TO READ THAT, IF YOU WOULD.

2 THIS IS YOUR -- THESE ARE YOUR PAPERS; IS  
3 THAT CORRECT?

4 A YES.

5 Q I'D LIKE YOU TO READ IT OUT LOUD, PLEASE.

6 A PARAGRAPH 8?

7 Q YES.

8 A "ANY DUES REFUND IS LEGALLY BARRED BY THE  
9 BANKRUPTCY CODE. THE COURT HAS AUTHORIZED REJECTION OF THE  
10 MEMBERSHIP CONTRACTS" -- CITATION TO THE APPLICATION. "THE  
11 REJECTION GIVES RISE TO A PRE-PETITION UNSECURED CLAIM  
12 BASED ON BREACH. THE DUES ARE PROPERTY OF THE ESTATE AND  
13 CANNOT BE DISTRIBUTED TO ONE GROUP OF UNSECURED  
14 CREDITORS (MEMBERS WHO PAID DUES BEFORE HAVING THEIR  
15 CONTRACTS REJECTED) IN PREFERENCE OF THE CLAIMS OF OTHER  
16 CREDITORS WITH EQUAL OR HIGHER PRIORITY. NOTHING IN THE  
17 BANKRUPTCY CODE PERMITS THE TRUSTEE TO TAKE THE ACTION THAT  
18 HE HAS REQUESTED -- THAT HE IS REQUESTED THAT THE COURT  
19 AUTHORIZED HIM TO TAKE."

20 Q SO TWO DAYS AFTER THE COURT ENTERS THIS  
21 ORDER REJECTING THE CONTRACTS, YOU'RE SAYING TO THE COURT,  
22 "YOUR HONOR, BECAUSE THE CONTRACTS HAD BEEN REJECTED, THE  
23 DUES CAN'T GO BACK TO THE MEMBERS; THEY SHOULD GO BACK TO  
24 THE BANKRUPTCY ESTATE"?

25 A THAT'S WHAT THE MOTION SAYS.

26 Q BECAUSE THE CONTRACTS WERE REJECTED, AND

1 THAT WAS YOUR POSITION?

2 A NO. MY POSITION WAS THAT --

3 Q I'M USING THE DOCUMENT THAT YOU FILED.

4 DID YOU HAVE A POSITION -- STRIKE THAT.

5 THE COURT: LET'S GET ON THE FREEWAY BEFORE THE

6 REST OF THE NUTS DO.

7 MR. RIVIN: THAT'S FINE. THANK YOU, YOUR HONOR.

8 THE COURT: SEE YOU AT 9:00, LADIES AND GENTLEMEN.

9 (WHEREUPON THE COURT WAS IN RECESS UNTIL

10 TUESDAY, JUNE 13, 2000, 9:00 A.M.)

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