

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

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

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

REPORTER'S TRANSCRIPT

JUNE 15, 2000

APPEARANCES:

FOR THE PLAINTIFFS:

GERALD M. SHAW  
ATTORNEY AT LAW

TERRY M. MOSHENKO  
ATTORNEY AT LAW

FOR THE DEFENDANTS:

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

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

HEIDI K. STEWART, CSR #6058  
OFFICIAL COURT REPORTER

INDEX

WITNESSES FOR THE PLAINTIFFS:

	DIRECT	CROSS	REDIRECT	RE CROSS	VOIR DIRE
THEODORE EDWARD MALPASS (CONTINUED)					
BY MR. SHAW:			3749 (CONT.)		
BY MR. RIVIN:				3771 3828	
BY MR. MOSHENKO:			3814		

I N D E X

EXHIBIT

IN EVIDENCE

EXHIBIT NO. 335, NOTICE OF  
AUCTION SALE

3773

1 WESTMINSTER, CALIFORNIA - THURSDAY, JUNE 15, 2000

2 MORNING SESSION

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

5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

6 PROCEED, COUNSEL.

7 MR. SHAW: PLAINTIFF WILL RECALL EDWARD MALPASS TO  
8 THE STAND.

9 THEODORE EDWARD MALPASS,  
10 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING  
11 BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS  
12 FOLLOWS:

13 REDIRECT EXAMINATION (CONTINUED)

14 BY MR. SHAW: Q GOOD MORNING, MR. MALPASS.

15 A GOOD MORNING.

16 Q I'D LIKE TO TURN OUR ATTENTION TO THE ALL  
17 SEASONS RESORTS BANKRUPTCY AND LOOK AT EXHIBIT 309.

18 AND, MR. DURAN, IF YOU WOULD PUT THAT UP FOR  
19 US.

20 CAN YOU SEE IT FROM THERE, MR. MALPASS?

21 A YES, I CAN.

22 Q AND WE TALKED ABOUT THIS ON MR. RIVIN'S --  
23 WE'RE GOING TO TAKE THIS PORTION OF IT OFF.

24 BUT I WOULD LIKE TO, MR. DURAN -- THIS IS A  
25 LETTER FROM CHARLES DAFF, AND I'D LIKE TO HAVE YOU BLOW UP  
26 THE FIRST TWO PARAGRAPHS. WILL YOU, PLEASE?

1                   NOW, THIS LETTER SAYS THAT -- AND I'LL LOOK  
2 AT THIS SECOND SENTENCE OF THE SECOND PARAGRAPH: "THE  
3 PURPOSE FOR THE COURT ALLOWING THE RESORTS TO CONTINUE TO  
4 OPERATE IS TO TRY TO SELL THEM WHILE THEY ARE STILL  
5 OPERATING, WHICH COULD HELP THE MEMBERS, AS WELL AS  
6 GENERATE MORE MONEY FOR THE CREDITORS."

7                   WAS THAT YOUR UNDERSTANDING AS TO WHAT WAS  
8 HAPPENING IN THE ALL SEASONS RESORTS, IS THAT THEY WERE  
9 TRYING TO SELL THE RESORTS WHILE THEY WERE OPERATING?

10                  A           YES.

11                  Q           LET'S GO TO THE LAST PARAGRAPH. AND LET'S  
12 GO TO THE LAST SENTENCE WHERE IT SAYS, "IT IS HOPE THAT  
13 ANY" -- AND BEFORE WE DO, MR. RIVIN READ TO YOU THE ENTIRE  
14 PARAGRAPH. BUT I'M GOING TO FOCUS ON THIS SENTENCE WHERE  
15 IT SAYS, "IT IS HOPE THAT ANY FUTURE BUYER WILL CONTINUE  
16 TO OPERATE THE RESORTS AND WILL BE INTERESTED IN HAVING A  
17 NEW ARRANGEMENT WITH THE FORMER MEMBERS OF ALL SEASONS  
18 UNDER WHICH THEY CAN CONTINUE TO USE THE RESORTS."

19                  AND YOU HAVE PERSONAL KNOWLEDGE OF THE FACT  
20 THAT THE PLAINTIFFS PURCHASED THE ORLANDO RESORT AND ONE OF  
21 THE OTHER RESORTS THAT WE'LL LOOK AT FOR A MINUTE, AND THEY  
22 CONTINUED TO OPERATE THE RESORTS AND THEY CONTINUED WITH  
23 THE MEMBERSHIP; CORRECT?

24                  A           YES. THAT'S WHAT THEY DID.

25                  Q           AND MR. DAFF IS STATING IN THIS LETTER THAT  
26 THAT'S HIS INTENTION WHEN HE WROTE -- COMMUNICATED WITH THE

1 MEMBERS AND WROTE THIS LETTER?

2 A YES.

3 Q LET'S LOOK AT EXHIBIT 379.

4 MR. RIVIN ASKED YOU SOME QUESTIONS ABOUT

5 379. AND LET'S LOOK AT PAGE 4, PARAGRAPH 6.

6 AND, MR. DURAN, IF YOU COULD JUST BLOW UP

7 THE PARAGRAPH FOR ME. THANK YOU.

8 AND THIS IS NOT A PARAGRAPH THAT MR. RIVIN

9 READ WITH YOU, BUT STARTING AT LINE 9 IT SAYS, "THE

10 TRUSTEE, IN COOPERATION WITH, AND WITH THE ASSISTANCE OF

11 LENDERS, SHALL CONDUCT AN AUCTION SALE OF THE DEBTOR'S

12 ASSETS" -- LET ME START AGAIN.

13 "THE TRUSTEE, IN COOPERATION WITH, AND WITH

14 THE ASSISTANCE OF LENDERS, SHALL CONDUCT AN AUCTION SALE OF

15 THE DEBTOR'S ASSETS, FREE AND CLEAR OF ANY LIENS, CLAIMS

16 AND ENCUMBRANCES OF ANY KIND OR NATURE BEFORE NOVEMBER 30,

17 1997. EACH SUCH SALE MAY INCLUDE THE MEMBER LISTS FOR SUCH

18 CAMPGROUND."

19 AND THAT'S IN FACT WHAT HAPPENED,

20 MR. MALPASS?

21 A THE SALES DID INCLUDE THE MEMBER LISTS

22 AND -- WELL, THE TRUSTEE SOLD THE CAMPGROUNDS PURSUANT TO

23 THIS AUTHORIZATION IN THE AUCTION, ALL OF THEM. AND THE --

24 ALL OF THE SALES INCLUDED THE MEMBER LISTS. THAT WAS THE

25 WAY IT OCCURRED.

26 Q AND THAT -- THAT AUCTION TOOK PLACE ON

1 THE -- A.S.R. AUCTION TOOK PLACE ON OCTOBER 27, '97?

2 A YES. ACTUALLY THAT WAS HELD IN THE  
3 COURTROOM OF THE BANKRUPTCY COURT.

4 Q LET'S TURN TO PAGE 6 -- I'M SORRY. IT'S  
5 PAGE 5, MR. DURAN. I APOLOGIZE.

6 AND DO YOU REMEMBER MR. RIVIN WAS ASKING YOU  
7 SOME QUESTIONS ABOUT WHETHER YOU'D SEEN A REJECTION BY  
8 JUDGE RYAN OF AN APPLICATION TO REJECT THE CONTRACTS?

9 A YES.

10 Q AND THIS WAS THE LANGUAGE THAT YOU WERE  
11 REFERRING TO?

12 A YES, IT WAS.

13 Q OKAY. I'D LIKE TO START YOU AT LINE 7 AND  
14 TAKE YOU THROUGH THE ORDER WHERE IT SAYS, AND I QUOTE, "IT  
15 IS FURTHER ORDERED THAT THE LEASES AND/OR TENANCIES UNDER  
16 WHICH THE DEBTOR OCCUPIES THE CAMPGROUNDS KNOWN AS HONEY  
17 BROOK, LOCATED IN CHESTER COUNTY, PENNSYLVANIA, AND  
18 WISCONSIN DELLS, LOCATED IN SAUK COUNTY, WISCONSIN, BE, AND  
19 HEREBY ARE REJECTED. THE TRUSTEE IS ORDERED TO TURN OVER  
20 SUCH PROPERTIES TO FINOVA AND CHRISTENSEN, RESPECTIVELY,  
21 THE OWNERS THEREOF, AND THE MEMBERSHIP CONTRACTS RELATED TO  
22 WISCONSIN DELLS ARE HEREBY REJECTED. THE TRUSTEE IS  
23 AUTHORIZED TO OPERATE HONEY BROOK AND WISCONSIN DELLS SO  
24 LONG AS THE OWNERS THEREOF CONSENT AND SO LONG AS SUCH  
25 OPERATION IS OTHERWISE CONSISTENT WITH THIS ORDER."

26 MY QUESTION IS, AGAIN, BASED ON YOUR

1 PERSONAL KNOWLEDGE, IF THE MEMBERSHIP CONTRACTS WERE  
2 REJECTED, AS FAR AS HONEY BROOK AND WISCONSIN DELLS WERE  
3 CONCERNED, HOW DO THE PARKS CONTINUE TO OPERATE?

4 A WELL, WHAT THIS WAS WAS TO AUTHORIZE THE  
5 TRUSTEE TO CONTINUE TO OPERATE THOSE PARKS, EVEN THOUGH THE  
6 CONTRACTS HAD BEEN REJECTED IN THE BANKRUPTCY CASE. THE  
7 CONTRACTS WERE STILL THERE. AND AS LONG AS THE OWNERS OF  
8 THE PARKS, WHICH WAS FINOVA AND CHRISTENSEN, ALLOWED THE  
9 TRUSTEE TO OPERATE THEM, THE TRUSTEE WAS GOING TO GO ON  
10 OPERATING. AND OPERATION MEANT ALLOWING MEMBERS TO USE THE  
11 PARKS.

12 Q PAY DUES AND STILL USE THE PARKS?

13 A ABSOLUTELY. AND WHY THIS ORDER WAS  
14 NECESSARY IS FOR THE TRUSTEE TO CONDUCT THAT KIND OF  
15 BUSINESS IN THESE CIRCUMSTANCES. THE TRUSTEE WANTED A  
16 SPECIFIC AUTHORIZATION TO DO THAT KIND OF BUSINESS.

17 Q SO REJECTION DOESN'T MEAN THAT THE CONTRACTS  
18 ARE TERMINATED?

19 A THEY WERE STILL GOING TO DO IT HERE.

20 MR. RIVIN: OBJECTION. LACK OF FOUNDATION, YOUR  
21 HONOR. CALLS FOR AN IMPROPER LEGAL CONCLUSION.

22 THE COURT: OVERRULED.

23 THE WITNESS: IT DOES NOT. THERE'S -- WHAT THEY  
24 WERE DOING HERE.

25 BY MR. SHAW: Q JUST SO I'M CLEAR, BEFORE I WAS  
26 INTERRUPTED, EVEN THOUGH THE CONTRACTS ARE REJECTED, THE

1 MEMBERS CONTINUE TO PAY DUES PURSUANT TO THE CONTRACTS AND  
2 USE THE PARKS; CORRECT?

3 A THAT'S CORRECT. THAT'S WHAT HAPPENED HERE.

4 Q OKAY. LET'S LOOK AT THE NEXT PARAGRAPH.

5 NOW, THIS WAS STRUCK OUT, AND YOU MENTIONED  
6 THAT THERE WAS SOME INITIALS HERE. AND YOU RECOGNIZE THOSE  
7 AS JUDGE RYAN'S INITIALS?

8 A THAT'S JUDGE RYAN'S INITIALS.

9 Q SO WHAT THIS MEANS IS HE SIGNED THE ORDER,  
10 BUT HE STRUCK THIS PORTION FROM THE ORDER?

11 A THAT'S CORRECT. SO IT WOULDN'T BE PART OF  
12 THE ORDER.

13 Q AND WHAT WAS REQUESTED WAS THIS PART THAT  
14 WAS -- THAT THE JUDGE DID NOT AGREE WITH, AND THAT SAYS,  
15 "IT'S FURTHER ORDERED THAT AS SOON AS THE TRUSTEE'S AUCTION  
16 SALE IS HELD, ALL OTHER MEMBERSHIP CONTRACTS OWNED BY THE  
17 DEBTOR SHALL BE DEEMED REJECTED AS OF NOVEMBER 30, 1997,  
18 AND ANY AND ALL CONSUMER RIGHTS THEREUNDER SHALL BE  
19 IMMEDIATELY TERMINATED IN CONJUNCTION WITH SUCH REJECTION.

20 "TO THE EXTENT, IF ANY, THAT THE TRUSTEE  
21 RECEIVES DUES FROM ANY MEMBER OR MEMBERS FOR ANY PERIOD OF  
22 TIME BEYOND THE EARLIER OF NOVEMBER 30, 1997, AND THE DATE  
23 OPERATION OF THE DEBTOR'S BUSINESS CEASES, THE TRUSTEE  
24 SHALL RESERVE THE AMOUNT ATTRIBUTABLE TO THE ADDITIONAL  
25 PERIOD SUBJECT TO FURTHER ORDER OF THE COURT."

26 NOW, WHAT WAS THE TRUSTEE ASKING FOR IN THIS

1 PARAGRAPH THAT JUDGE RYAN DID NOT AGREE TO?

2 MR. RIVIN: OBJECTION. THIS IS CUMULATIVE. THE  
3 DOCUMENT ALSO SPEAKS FOR ITSELF.

4 THE COURT: SUSTAINED.

5 BY MR. SHAW: Q BUT THE FACT IS, MR. MALPASS, THAT  
6 THE JUDGE NEVER AGREED TO THE TERMINATION OF THE CONTRACTS;  
7 HE ORDERED THE REJECTION OF THE CONTRACTS?

8 A LATER. BUT -- BUT THE REJECTION NEVER  
9 INCLUDED TERMINATION.

10 Q AT ANY POINT IN TIME IN THE ALL SEASONS  
11 RESORTS.

12 A EXPLICITLY DID NOT.

13 Q SO EVEN THOUGH THERE WAS A REJECTION,  
14 MEMBERS STILL HAD THEIR CONTRACTS, STILL USED THE PARKS,  
15 STILL PAID THEIR DUES?

16 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

17 THE COURT: SUSTAINED.

18 BY MR. SHAW: Q AND YOU REVIEWED THE FACTS AND  
19 CIRCUMSTANCES IN THIS CASE IN PREPARATION FOR YOUR EXPERT  
20 TESTIMONY?

21 A I KNOW THIS BECAUSE OF WHAT HAPPENED AT THE  
22 AUCTION. THE PARKS WERE SOLD PRIOR TO THE REJECTION. AND,  
23 IN FACT, THE LATER EFFECT OF THE REJECTION HAD NO EFFECT ON  
24 THE CONTRACTS, VIS-A-VIS THE PARTICULAR PARKS THAT WERE  
25 SOLD.

26 MR. SHAW: YOUR HONOR, HE IS TESTIFYING OF HIS OWN

1 PERCIPIENT KNOWLEDGE. MR. RIVIN'S OBJECTION IS FOUNDATION.  
2 THIS IS A WITNESS WHO IS THERE AND IS TESTIFYING ABOUT HIS  
3 OWN PERSONAL KNOWLEDGE.

4 THE COURT: WHAT WERE THE GROUNDS?

5 MR. RIVIN: HE IS TESTIFYING AS TO WHAT HAPPENED AT  
6 THE AUCTION. HE SAYS HE WAS AT THE AUCTION. THAT'S FINE.  
7 BUT HE DOESN'T KNOW WHAT THE MEMBERS DID AFTERWARDS.

8 THE COURT: CORRECT.

9 MR. RIVIN: HE HAS NO KNOWLEDGE OF THAT.

10 THE COURT: ALL RIGHT.

11 BY MR. SHAW: Q DO YOU KNOW WHAT THE MEMBERS DID  
12 AFTERWARDS?

13 A I HAD SOME DEALINGS WITH PEOPLE THAT CALLED  
14 ME UP, YES, AND ASKED ME ABOUT WHAT HAD HAPPENED AND WHY  
15 THEY WERE GETTING PARTICULAR NOTICES LIKE REJECTION  
16 NOTICES, AND I SAID THAT THEY SHOULD CONTACT THE BUYER OF  
17 THE PARTICULAR PARK THAT THEY WERE IN, BECAUSE THAT WAS WHO  
18 THEY WOULD BE DEALING WITH, BECAUSE THEY BOUGHT THE PARK  
19 AND HAD THE RELATIONSHIP NOW WITH THE MEMBERS.

20 THAT WAS BEING DISCUSSED -- I KNOW FROM  
21 DEALING WITH THE PEOPLE THAT I WAS TALKING TO AT ALL  
22 SEASONS ABOUT THIS, THAT THEY WERE DEALING WITH THE PARKS  
23 THAT -- WHERE APOLLO HAD BOUGHT SOME OF THE PARKS BECAUSE  
24 THEY WERE MAKING SURE THAT THE MEMBERS GOT NOTICED AND  
25 SERVICED AND SO ON. AND I THINK SOME OF THE OTHER MEMBERS  
26 ALSO WERE PICKED UP BECAUSE THEY WANTED THEM TO NOT BE LEFT

1 WITHOUT A PARK.

2 Q AND SO WHAT HAPPENED FROM YOUR PERSONAL  
3 KNOWLEDGE WAS, ALL SEASONS RESORTS -- AND I'LL USE THE  
4 CAPITAL LETTER "M" WITH THE MEMBER CONTRACTS -- WERE SOLD  
5 AT AUCTION AND THE PLAINTIFFS PURCHASED THE RESORTS AND THE  
6 MEMBERS; CORRECT?

7 MR. RIVIN: YOUR HONOR, THIS IS CUMULATIVE.

8 THE COURT: SUSTAINED.

9 BY MR. SHAW: Q LET'S LOOK AT EXHIBIT 384. AND  
10 MR. RIVIN ASKED YOU SOME QUESTIONS ABOUT PAGE 2. BUT LET'S  
11 LOOK AT WHAT THIS IS. THIS IS THE APPLICATION BY MR. DAFF  
12 TO RETURN MEMBERSHIP DUES.

13 DO YOU REMEMBER MR. RIVIN'S QUESTIONS ABOUT  
14 THIS DOCUMENT?

15 A I REMEMBER BEING ASKED SOME QUESTIONS ABOUT  
16 IT, YES.

17 Q IT'S A LITTLE DIFFICULT TO TELL THE DATE,  
18 BUT I BELIEVE WE ARRIVED AT THE FACT THAT THIS WAS NOVEMBER  
19 12TH, '97.

20 A THAT'S -- I CAN'T TELL FROM THAT STAMP BUT  
21 THAT WOULD BE CONSISTENT WITH MY RECOLLECTION OF THE TIME  
22 PERIOD IN WHICH MR. DAFF WAS DOING THIS, YES.

23 MR. RIVIN: WE WOULD STIPULATE TO THAT DATE.

24 BY MR. SHAW: Q I THINK MR. RIVIN LOOKED AT THE  
25 SECOND PAGE, AND I THINK THAT WILL TELL US.

26 IF WE CAN LOOK AT THE SECOND PAGE,

1 MR. DURAN.

2 AND DOWN AT THE BOTTOM IT SAYS, "NOVEMBER  
3 10, '97"; SO THAT DATE WOULD HAVE BEEN --

4 A PROBABLY SIGNED IT ON THE 10TH AND FILED IT  
5 ON THE 12TH.

6 Q MR. RIVIN ASKED YOU ABOUT PARAGRAPH 8,  
7 SPECIFICALLY WHERE IT SAID, "AS A RESULT OF THE TRUSTEE'S  
8 REJECTION OF THE MEMBERSHIP CONTRACTS, THE TRUSTEE DESIRES  
9 TO REFUND IN FULL ALL MEMBERSHIP MONIES PAID BY THE MEMBERS  
10 AND RECEIVED BY THE TRUSTEE ON OR AFTER SEPTEMBER 1, 1997."

11 BUT LET'S GO TO PARAGRAPH 6, JUST ABOVE,  
12 FROM LINES 6 THROUGH 9. AND IT ALSO STATES ANOTHER REASON  
13 FOR REFUNDING, DOESN'T IT, MR. MALPASS, WHERE IT SAYS AT  
14 LINE 6, AND I QUOTE, "ON OR ABOUT SEPTEMBER 29, 1997, THE  
15 TRUSTEE CLOSED THE CAMPGROUND FACILITIES WHICH PREVENTED  
16 THE MEMBERS FROM RECEIVING ANY BENEFITS OF USE PURSUANT TO  
17 THEIR MEMBERSHIP CONTRACTS"?

18 A YES.

19 Q SO ON CROSS-EXAMINATION YOU WERE ASKED,  
20 WASN'T IT THE REJECTION OF THE CONTRACTS THAT CALLED FOR  
21 THE REFUND? BUT IT WAS ALSO BECAUSE THE PARKS WERE CLOSED;  
22 CORRECT?

23 MR. RIVIN: YOUR HONOR, LACK OF FOUNDATION. THE  
24 DOCUMENT SPEAKS FOR ITSELF.

25 THE COURT: SUSTAINED.

26 BY MR. SHAW: Q LET'S LOOK AT EXHIBIT 383. AND

1 THIS IS THE AMENDED ORDER THAT MR. RIVIN ASKED YOU ABOUT.

2 AND LET'S LOOK AT PAGE 6.

3 AND, MR. DURAN, IF YOU WILL BLOW UP THE  
4 FIRST NINE LINES FOR ME, PLEASE.

5 AND THIS SAYS THAT THE LEGAL DESCRIPTION OF  
6 WHICH IS ATTACHED HERETO AS EXHIBIT 6, ORLANDO, AND  
7 INCORPORATED BY REFERENCE, ALONG WITH THE LIST OF MEMBERS  
8 FOR WHOM ORLANDO IS THE HOME RESORT, SHALL BE AND HEREBY IS  
9 SOLD AND TRANSFERRED TO THE APOLLO GROUP FOR \$1,700,000.

10 AND THAT'S ONE OF THE RESORTS THAT THE  
11 PLAINTIFFS PURCHASED FROM ALL SEASONS RESORTS; CORRECT?

12 A WELL, APOLLO IS ONE OF THE PLAINTIFFS, AND  
13 APOLLO IS THE BUYER. SO YES.

14 Q ALONG WITH THE MEMBERS?

15 A YES.

16 Q MR. DURAN, YOU CAN TAKE THAT DOWN.

17 I WANT TO TURN TO ONE OTHER SUBJECT  
18 REGARDING ALL SEASONS, AND THAT IS, MR. RIVIN ASKED YOU  
19 ABOUT EXHIBIT 382, WHICH WAS A LARGE EXHIBIT OF MEMBERS'  
20 NAMES AND ADDRESSES --

21 A THE SCHEDULES, YES.

22 Q -- THAT WERE FILED IN THE BANKRUPTCY COURT?

23 A YES.

24 Q AND THERE WAS SOME QUESTIONS FROM MR. RIVIN  
25 REGARDING CONFIDENTIALITY?

26 A YES.

1 Q AND WHETHER THOSE MEMBER LISTS WERE PART OF  
2 THE PUBLIC RECORD; DO YOU RECALL THAT?

3 A I RECALL THOSE QUESTIONS, YES.

4 Q NOW, DO YOU HAVE AN OPINION AS TO WHETHER OR  
5 NOT THOSE MEMBERS' NAMES AND ADDRESSES AFFECTED THE  
6 PROTECTED ASSET OF THE ESTATE JUST BECAUSE THEY WERE FILED  
7 AS A MATTER OF PUBLIC RECORD?

8 MR. RIVIN: YOUR HONOR, THIS -- OBJECTION. THAT  
9 QUESTION GOES BEYOND THE SCOPE OF THIS WITNESS'S  
10 EXPERTISE. IMPROPER LEGAL OPINION.

11 THE COURT: THE OBJECTION IS SUSTAINED.

12 MR. SHAW: YOUR HONOR, THIS WAS AN AREA COVERED BY  
13 MR. RIVIN. I'LL MOVE ON.

14 Q YOU WERE THERE WHEN THESE MEMBER LISTS WERE  
15 MADE A MATTER OF THE PUBLIC RECORD?

16 A THEY WERE SERVED ON ME. I HAD THEM IN MY  
17 OFFICE.

18 Q DID YOU HAVE ANY UNDERSTANDING AT THAT TIME  
19 AS TO WHETHER OR NOT THAT LIST BEING FILED AFFECTED A  
20 PROTECTED ASSET OF THE ESTATE?

21 MR. RIVIN: OBJECTION. THIS WITNESS'S  
22 UNDERSTANDING IS IRRELEVANT.

23 MR. SHAW: YOUR HONOR, I'M --

24 THE COURT: I'M GOING TO ALLOW THE QUESTION.

25 THE WITNESS: YES, I DID.

26 BY MR. SHAW: Q WHAT WAS YOUR UNDERSTANDING?

1           A           THAT IT DID NOT HAVE ANYTHING TO DO WITH  
2 WHETHER THE -- THE FILING OF THESE NAMES AS PART OF THE  
3 BANKRUPTCY SCHEDULES DIDN'T MEAN THEY WEREN'T PROPERTY OF  
4 THE ESTATE SUBJECT TO THE AUTOMATIC STAY, AND THE CONTRACTS  
5 RELATIONSHIPS WEREN'T -- THAT THE CONTRACT RELATIONSHIPS  
6 WEREN'T PROPERTY OF THE ESTATE WITHIN THE SCOPE OF THE  
7 STAY.

8                       AND SECONDLY, THAT THE DISCLOSURE AS PART OF  
9 THE BANKRUPTCY PROCESS DOESN'T MEAN THAT THE PROPRIETARY  
10 NATURE OF THE CONTRACTS AND CONTRACT RELATIONSHIPS ISN'T  
11 STILL PROTECTED.

12           MR. RIVIN: OBJECTION, YOUR HONOR. MOVE TO STRIKE  
13 THE WITNESS -- THE LAST PORTION OF THE WITNESS'S ANSWER IN  
14 THAT HE ANSWERED THE QUESTION THAT MR. SHAW HAD EARLIER  
15 ASKED THAT YOUR HONOR SUSTAINED AN OBJECTION TO. HE  
16 TESTIFIED AS TO HIS OPINION REGARDING CONFIDENTIALITY.

17           THE COURT: MOTION TO STRIKE IS GRANTED.

18                       MOVE ON.

19           MR. RIVIN: THANK YOU.

20           BY MR. SHAW: Q YOU RECALL, ISN'T THIS -- THE FACT  
21 THAT THIS MEMBERSHIP LIST WAS FILED IN THE THIRD ALL  
22 SEASONS BANKRUPTCY, THE MEMBERSHIP LIST, YOU KNOW OF YOUR  
23 OWN PERSONAL KNOWLEDGE, WAS ALSO FILED IN THE SECOND ALL  
24 SEASONS BANKRUPTCY?

25           A           THERE WOULD HAVE BEEN A MEMBERSHIP LIST  
26 FILED IN THE SECOND, AND THERE WAS -- THERE WERE MEMBER

1 LISTS FILED IN A LOT OF THE CASES. FOR EXAMPLE, THERE WAS  
2 IN FIRST NATIONWIDE.

3 Q LET'S STAY WITH THAT. LET'S STAY WITH  
4 EXHIBIT 1719 THAT IS IN EVIDENCE.

5 MR. RIVIN: YOUR HONOR, I BELIEVE THIS WAS COVERED  
6 BY MR. SHAW ON DIRECT. IT IS BEYOND THE SCOPE OF THE  
7 CROSS. I DID NOT CROSS HIM ON THESE DOCUMENTS.

8 THE COURT: I HAVE TO AGREE WITH YOU, COUNSEL.

9 MR. RIVIN: THANK YOU.

10 BY MR. SHAW: Q THE LIST, TO YOUR KNOWLEDGE, WAS  
11 PRESENTED TO COAST TO COAST, MR. BUTLER, IN THE SECOND ALL  
12 SEASONS RESORTS, AND MR. DIAMOND, THE LAWYER FOR  
13 MR. JOSEPH -- ALTHOUGH IT WAS GIVEN TO COAST TO COAST --  
14 INDICATED THAT IT WAS A PROTECTED ASSET, AND THEY WERE NOT  
15 TO WRITE OR CONTACT OR ATTEMPT TO TRANSFER ANY OF THE  
16 MEMBERS ON THOSE LISTS DURING THE BANKRUPTCY; CORRECT?

17 MR. RIVIN: OBJECTION. ARGUMENTATIVE. LACK OF  
18 FOUNDATION.

19 THE COURT: SUSTAINED.

20 BY MR. SHAW: Q LET'S TURN TO THE ISSUE OF THE  
21 FIRST NATIONWIDE BANKRUPTCY. IN THAT -- AND LET'S LOOK AT  
22 EXHIBIT 1691.

23 NOW, I WON'T GO BACK TO EXHIBIT 39, BUT THAT  
24 WAS THE AUGUST 27, 1997, LETTER FROM MR. NOVELLI TO COAST  
25 TO COAST SAYING WE'RE WITHDRAWING THE FIRST NATIONWIDE  
26 PARKS, AND DON'T COMMUNICATE OR ATTEMPT TO TRANSFER WITH

1 OUR MEMBERS BECAUSE IT WILL CAUSE US DAMAGE?

2 A YES.

3 Q AND THIS IS -- WELL, WHY DON'T YOU TELL US  
4 WHAT EXHIBIT 1691 IS.

5 A WELL, IT'S AN ORDER THAT WAS ENTERED IN THE  
6 FIRST NATIONWIDE CASE WHERE THE TRUSTEE HAD REQUESTED THE  
7 RIGHT TO DO VARIOUS THINGS, ONE BEING CONVERT THE CASE FROM  
8 A CHAPTER 11 REORGANIZATION TO A CHAPTER 7 CASE; AND  
9 SECONDLY, TO ABANDON CERTAIN PROPERTY OF THE BANKRUPTCY  
10 ESTATE, AND THEN PERMIT VOLUNTARY TRANSFER OF THE  
11 MEMBERSHIP INTEREST. THAT WAS THE RELIEF THAT THE TRUSTEE  
12 WAS REQUESTING, THE TRUSTEE BEING IN THIS CASE MR. JOSEPH.

13 Q LET'S TURN TO THE SECOND PAGE OF 1691.

14 AND, MR. DURAN IF YOU WOULD BLOW UP  
15 PARAGRAPH 2 FOR US, PLEASE.

16 AND THIS SAYS, STARTING AT PARAGRAPH 2, "THE  
17 TRUSTEE IS HEREBY AUTHORIZED TO ABANDON, AND THE AUTOMATIC  
18 STAY IS TERMINATED. THE FOLLOWING DESCRIBED REAL PROPERTY  
19 AND SAID ABANDONMENT SHALL BE EFFECTIVE IMMEDIATELY UPON  
20 THE ENTRY OF THIS ORDER:

21 "NUMBER 2, CYPRESS PARK" -- I'M SORRY -- "A,  
22 CYPRESS PARK; B, AMERICAN HOLIDAY PARK; C, DEER RUN PARK."

23 NOW, WHEN THIS ORDER SAYS -- AND THIS ORDER  
24 IS AS OF APRIL 9, 1998?

25 A I THINK THAT'S RIGHT. THERE'S A DATE AT THE  
26 TOP OF THE ORDER WHEN I LOOKED AT IT. I KNOW IT'S IN

1 1998. THAT WAS WHAT I WAS LOOKING FOR.

2 Q SO MR. NOVELLI'S LETTER WAS AUGUST 27, 1997;  
3 CORRECT? EXHIBIT 39?

4 A YES.

5 Q AND YOU KNOW OF YOUR OWN PERSONAL KNOWLEDGE  
6 THAT COAST TO COAST SENT OUT TRANSFER LETTERS IN LATE 1997?

7 A YES.

8 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

9 MR. SHAW: HE TESTIFIED HE KNOWS OF HIS OWN  
10 PERSONAL KNOWLEDGE.

11 THE COURT: OVERRULED.

12 MR. RIVIN: HE TESTIFIED IT WAS SHOWN TO HIM AFTER  
13 HE WAS RETAINED IN THIS CASE. THAT'S ALL HIS TESTIMONY.

14 THE COURT: ALL I CAN SAY, HE SAID OF HIS OWN  
15 PERSONAL KNOWLEDGE. I DON'T KNOW HOW HE GOT THE KNOWLEDGE,  
16 BUT --

17 BY MR. SHAW: Q AND THE AUTOMATIC STAY IS STILL IN  
18 EFFECT?

19 AND LET ME SHOW YOU THE FIRST PAGE OF THIS  
20 ORDER, MR. MALPASS.

21 AND IT SAYS APRIL 9 --

22 A YES.

23 Q -- 1998?

24 A THE STAY WOULD BE IN EFFECT UNTIL THE DATE  
25 OF THAT ORDER. THAT'S WHAT THAT MEANS.

26 Q SO WE'VE GOT FIRST NATIONWIDE RESORT

1 MANAGEMENT, THE RESORTS THAT WE'RE TALKING ABOUT, CYPRESS  
2 PARK, AMERICAN HOLIDAY PARK, DEER RUN PARK, AND IT'S GOT  
3 ITS MEMBERS.

4 AND IN APRIL OF '98 WE HAVE THIS ORDER.  
5 MR. NOVELLI'S LETTER WAS AUGUST 27, '97. AND THE MASS  
6 TRANSFER FROM COAST WAS IN LATE 1997, BUT PRIOR TO THIS  
7 TERMINATION OF THE AUTOMATIC STAY; CORRECT?

8 A YES.

9 Q DO YOU HAVE AN OPINION AS TO WHETHER THOSE  
10 LETTERS WERE A VIOLATION OF THE AUTOMATIC STAY?

11 MR. RIVIN: OBJECTION, YOUR HONOR. IMPROPER LEGAL  
12 OPINION AND IRRELEVANT FOR ALL OF THE REASONS THAT WE HAVE  
13 DISCUSSED IN CHAMBERS.

14 THE COURT: SUSTAINED.

15 BY MR. SHAW: Q ANY LETTERS DURING THAT TIME  
16 PERIOD, THE AUTOMATIC STAY WAS STILL IN EFFECT; CORRECT?

17 MR. RIVIN: SAME OBJECTIONS, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 BY MR. SHAW: Q LOOKING AT THE ORDER, EXHIBIT  
20 1691, AS OF APRIL 9, 1998, THE AUTOMATIC STAY WAS IN EFFECT  
21 UNTIL IT WAS TERMINATED BY THIS ORDER; CORRECT?

22 MR. RIVIN: OBJECTION. THE DOCUMENT SPEAKS FOR  
23 ITSELF. LACK OF FOUNDATION.

24 THE COURT: SUSTAINED.

25 BY MR. SHAW: Q DO YOU KNOW WHETHER THE AUTOMATIC  
26 STAY WAS TERMINATED PRIOR TO THIS ORDER THAT SPEAKS FOR

1 ITSELF ON APRIL 9, 1998?

2 A I DO.

3 Q WAS IT?

4 A NO.

5 Q SO IT STAYED IN EFFECT UNTIL THIS ORDER THAT  
6 SPEAKS FOR ITSELF; CORRECT?

7 A YES.

8 Q ALL RIGHT. LET'S TURN TO THE THIRD PAGE OF  
9 THE ORDER.

10 THE COURT: THAT'S CALLED LAWYERING.

11 THE WITNESS: I'M IMPRESSED.

12 MR. SHAW: I TAKE THAT AS A COMPLIMENT, YOUR HONOR.

13 Q EXHIBIT -- I'M SORRY -- LINES 1 THROUGH 5,  
14 CAN YOU BLOW THAT UP FOR ME, MR. DURAN.

15 "THE TRUSTEE IS HEREBY AUTHORIZED TO PERMIT  
16 TRAVEL AMERICA, INC., TO CONTACT THE DEBTOR'S MEMBERS FOR  
17 THE PURPOSE OF ADVISING THE MEMBERS THAT TRAVEL AMERICA HAS  
18 AGREED TO HONOR THE FIRST NATIONWIDE RESORT MANAGEMENT,  
19 INC., MEMBERSHIP CONTRACTS WITHOUT ANY ADDITIONAL  
20 OBLIGATION TO MEMBERS."

21 DO YOU HAVE ANY -- FIRST OF ALL, TRAVEL  
22 AMERICA IS A PLAINTIFF IN THIS CASE?

23 A YES.

24 Q AND DO YOU HAVE ANY PERSONAL KNOWLEDGE AS TO  
25 WHETHER TRAVEL AMERICA DID IN FACT HONOR THE MEMBERSHIP  
26 CONTRACTS OF FIRST NATIONWIDE?

1 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

2 MR. SHAW: I JUST ASKED HIM WHETHER HE HAS PERSONAL  
3 KNOWLEDGE.

4 THE COURT: OVERRULED.

5 MR. RIVIN: COULD WE FIND OUT WHETHER HE HAS  
6 PERSONAL KNOWLEDGE BASED UPON WHAT HAPPENED IN 1997 OR  
7 1998, OR WHETHER IT'S BASED UPON WHAT WAS TOLD TO HIM  
8 AFTER HE WAS RETAINED IN THIS CASE?

9 THE COURT: I'LL LET HIM DEVELOP THAT.

10 MR. RIVIN: THANK YOU, YOUR HONOR.

11 BY MR. SHAW: Q WHEN DID YOU GET PERSONAL  
12 KNOWLEDGE?

13 A BACK AT THE TIME I WAS REPRESENTING ALL  
14 SEASONS WITH REGARD TO THE ALL SEASONS CASE, I WAS ASKED TO  
15 LOOK AT WHAT MR. JOSEPH HAD BEEN DOING IN THE FIRST  
16 NATIONWIDE CASE, AS FAR AS BOTH PROTECTING THE CONTRACTS  
17 AND LATER TRANSFERRING THEM SEVERAL TIMES BECAUSE OF THE --  
18 BECAUSE TRAVEL AMERICA WAS INTERESTED IN PICKING UP THE  
19 CONTRACTS.

20 Q SO AS OF APRIL 9, 1998, YOU WERE AWARE THAT  
21 TRAVEL AMERICA DID IN FACT TAKE ALL RIGHT, TITLE AND  
22 INTEREST TO THE MEMBERSHIP CONTRACTS OF FIRST NATIONWIDE  
23 RESORT?

24 MR. RIVIN: OBJECTION. THAT'S NOT WHAT THAT  
25 DOCUMENT SAID. IF THIS -- WELL, I'LL WITHDRAW MY  
26 OBJECTION. IF THIS WITNESS WANTS TO SAY THAT'S WHAT

1 HAPPENED, THAT'S FINE.

2 THE WITNESS: NO. THAT ISN'T -- I WAS AWARE THAT  
3 TRAVEL AMERICA WAS ACTING PURSUANT TO THIS ORDER AFTER THE  
4 STAY WAS LIFTED IN PICKING UP THE MEMBERS.

5 BY MR. SHAW: Q OKAY. THANK YOU, MR. MALPASS.

6 A I DON'T THINK THERE WAS A CONTRACT TRANSFER  
7 IN THAT SENSE.

8 Q THANK YOU FOR CLARIFYING THAT.

9 LET'S TURN TO EXHIBIT 1687. AND,  
10 MR. MALPASS, WE'RE GOING TO BE LOOKING AT THE REVCON  
11 BANKRUPTCY THAT MR. RIVIN ASKED YOU ABOUT.

12 AND I NOW HAVE EXHIBIT 1687 ON THE BOARD,  
13 AND IT'S GOT A DATE ENTERED OF APRIL 17, 1998; DO YOU SEE  
14 THAT?

15 A YES.

16 Q NOW, THAT ORDER IS ON YOUR LETTERHEAD;  
17 CORRECT?

18 A YES, IT IS -- OH, TECHNICALLY IT'S NOT A  
19 LETTERHEAD. IT'S A PLEADING THAT WAS PREPARED IN MY  
20 OFFICE. THAT'S WHY MY NAME IS AT THE TOP.

21 Q UP AT THE TOP LEFT-HAND PORTION?

22 A THAT'S CORRECT. I WOULDN'T CALL IT  
23 LETTERHEAD.

24 Q BUT YOU'VE GOT -- YOU WERE THE LAWYER FOR  
25 REVCON. AND WHAT IS THIS ORDER?

26 A I THINK THAT'S THE PLAN CONFIRMATION ORDER.

1 Q AND WHAT IS A CHAPTER 11 PLAN FOR  
2 CONFIRMATION?

3 MR. RIVIN: OBJECTION. CUMULATIVE.

4 THE COURT: WE'VE BEEN OVER THIS, COUNSEL.

5 THE WITNESS: THE CHAPTER --

6 BY MR. SHAW: Q I'M SORRY, MR. MALPASS. HOLD ON.

7 TO YOUR KNOWLEDGE REVCON'S PLAN WAS  
8 CONFIRMED BY THIS ORDER; IS THAT CORRECT?

9 A YES. THAT'S THE LEGAL EFFECT OF THAT ORDER,  
10 IS TO PUT THE PLAN INTO EFFECT, YES.

11 Q AND REVCON IS A PLAINTIFF IN THIS CASE?

12 A YES.

13 Q AND WAS THE AUTOMATIC STAY IN EFFECT THROUGH  
14 LATE 1997 THROUGH APRIL 17, 1998?

15 A YES.

16 Q SO ANY CONTACT WITH THE REVCON MEMBERS  
17 DURING THAT TIME PERIOD WOULD HAVE BEEN A VIOLATION OF THE  
18 AUTOMATIC STAY?

19 MR. RIVIN: OBJECTION. IMPROPER LEGAL CONCLUSION  
20 FOR THE REASONS WE DISCUSSED.

21 THE COURT: SUSTAINED.

22 BY MR. SHAW: Q THE -- REVCON IS A PLAINTIFF IN  
23 THIS CASE?

24 A YES.

25 Q LET'S GO TO ONE LAST EXHIBIT, 1714.

26 AND WHAT IS 1714?

1           A           IT'S THE ORDER CONFIRMING THE CHAPTER 11  
2 PLAN IN THE THOUSAND ADVENTURES OF OHIO CASE.

3           Q           AND THERE'S A DATE ON THIS OF -- WELL, FIRST  
4 OF ALL, THOUSAND ADVENTURES IS A PLAINTIFF IN THIS CASE?

5           A           YES.

6           Q           AND THIS DATE IS SEPTEMBER 17, '98?

7           A           CORRECT.

8           Q           AND THE AUTOMATIC STAY TERMINATES OR ENDS  
9 WHEN THE PLAN IS CONFIRMED?

10          A           YES.

11          Q           SO THE AUTOMATIC STAY IN THIS CASE WAS IN  
12 EFFECT THROUGH -- LATE 1997 THROUGH AT LEAST SEPTEMBER OF  
13 1998?

14          A           YES.

15          Q           AND IF YOU WILL LOOK AT THE LAST PARAGRAPH  
16 OF THE FIRST PAGE.

17                       MR. DURAN, CAN YOU BLOW THAT UP FOR US.

18                       IT SAYS, "ALL PROPERTY OF THE DEBTOR SHALL  
19 BE TRANSFERRED TO AND VESTED IN TRAVEL AMERICA OR SPECIAL  
20 PURPOSE VEHICLE UPON THE EFFECTIVE DATE OF THE PLAN."

21                       TRAVEL AMERICA IS ONE OF THE PLAINTIFFS IN  
22 THIS CASE?

23          A           YES. "SPECIAL PURPOSE VEHICLE" DOESN'T MEAN  
24 CAR.

25                       MR. SHAW: MR. MALPASS, I DON'T HAVE ANY FURTHER  
26 QUESTIONS.

1 MR. RIVIN: YES, I HAVE SOME QUESTIONS, YOUR  
2 HONOR.

3 RE-CROSS-EXAMINATION

4 BY MR. RIVIN: Q MR. MALPASS, ON TUESDAY AFTERNOON  
5 WHEN MR. SHAW WAS STARTING HIS REDIRECT EXAMINATION OF YOU,  
6 YOU -- IN FACT, YOU RECONFIRMED AGAIN TODAY THAT IN YOUR  
7 OPINION THE ALL SEASONS MEMBER CONTRACTS WERE SOLD AT THE  
8 AUCTION SALE; DO YOU RECALL THAT TESTIMONY?

9 A IT'S SUBSTANTIALLY CORRECT, YES.

10 Q YOU ATTENDED THE AUCTION SALE; IS THAT RIGHT?

11 A YES.

12 Q AND YOU SAID THIS MORNING THAT THE AUCTION  
13 SALE WAS IN A COURTROOM, THE COURTHOUSE?

14 A YES.

15 Q ARE YOU SURE?

16 A I -- CERTAINLY THAT'S MY RECOLLECTION.

17 Q LET ME SHOW THE WITNESS DOCUMENT NUMBER --  
18 TRIAL EXHIBIT NUMBER 335.

19 DO YOU RECOGNIZE THIS DOCUMENT, MR. MALPASS,  
20 AS THE NOTICE OF BANKRUPTCY AUCTION?

21 A YES.

22 Q IS THIS SOMETHING YOU WOULD HAVE RECEIVED?

23 A I RECALL SEEING IT.

24 Q THIS IS A NOTICE OF THE BANKRUPTCY AUCTION  
25 OF THE CAMP RESORTS AND REAL ESTATE, PERSONAL PROPERTY OF  
26 THE ALL SEASONS PARKS; ISN'T THAT RIGHT?

1           MR. MOSHENKO: YOUR HONOR, TO SAVE TIME WE'LL  
2 STIPULATE THE AUCTION SALE WAS HELD AT THE DOUBLETREE HOTEL  
3 ON BRISTOL STREET IN COSTA MESA.

4           THE WITNESS: I'M SORRY, MR. RIVIN. IF YOU WANT TO  
5 ASK ME A QUESTION, I'LL TRY TO ANSWER IT.

6           BY MR. RIVIN: Q I THINK MR. MOSHENKO JUST  
7 STIPULATED THAT YOUR PRIOR TESTIMONY WAS WRONG.

8           A I THINK -- ACTUALLY, I THINK THAT THIS SALE  
9 WAS WHAT WAS CONTEMPLATED. BUT, IN FACT, WHEN IT TURNED  
10 OUT THAT THERE WEREN'T GOING TO BE ANY BIDDERS OTHER THAN  
11 CREDIT BIDDERS, THEY HAD IT IN THE -- EITHER THEY HAD IT  
12 HERE AND CONFIRMED IT IN THE BANKRUPTCY COURT. THE ONE I  
13 WAS AT MAY SIMPLY HAVE BEEN SIMPLY THE BANKRUPTCY COURT'S  
14 CONFIRMATION OF THE SALE. BUT WHATEVER IT WAS, THAT WAS  
15 WHERE IT TOOK PLACE.

16          Q WELL, WAIT.

17                   WE TALKED ABOUT THE BANKRUPTCY COURT  
18 CONFIRMATION OF THE SALE. THAT HAPPENED IN THE AFTERNOON  
19 ON OCTOBER 27; THAT WAS IN THE BANKRUPTCY COURT; RIGHT?

20          A THERE WAS SOMETHING THAT TOOK PLACE IN THE  
21 BANKRUPTCY COURT THAT WAS VIDEOTAPED THAT I --

22          Q BUT YOU STILL REMEMBER THE AUCTION SALE THAT  
23 YOU ATTENDED WAS IN THE BANKRUPTCY COURT?

24          A THE ONE -- WHATEVER I ATTENDED WAS IN THE  
25 BANKRUPTCY COURT. MY RECOLLECTION IS THAT IT WAS THE SAME.

26          Q SO IF THE AUCTION SALE THAT YOU'VE TALKED

1 ABOUT REPEATEDLY IN YOUR TESTIMONY WAS HELD AT THE  
2 DOUBLETREE INSTEAD OF THE BANKRUPTCY COURT, ARE YOU SAYING  
3 THAT YOU WEREN'T THERE?

4 A I WASN'T AT THE DOUBLETREE. I KNOW THAT.

5 Q LET'S TAKE A LOOK AT THIS AUCTION NOTICE, IF  
6 WE COULD.

7 MIKE, IF YOU COULD PUT IT UP.

8 IN FACT, I'D LIKE TO MOVE THIS INTO  
9 EVIDENCE, IF WE COULD, YOUR HONOR, EXHIBIT 335.

10 THE COURT: 335, NOTICE OF AUCTION SALE.

11 MR. SHAW: NO OBJECTION, YOUR HONOR.

12 THE COURT: IT WILL BE RECEIVED IN EVIDENCE.

13 (WHEREUPON, EXHIBIT NO. 335, NOTICE OF  
14 AUCTION SALE, WAS RECEIVED IN EVIDENCE.)

15 BY MR. RIVIN: Q TAKE A LOOK AT THE FIRST PAGE, IF  
16 WE COULD.

17 THIS IS THE NOTICE THAT WAS SENT OUT BEFORE  
18 THE AUCTION SALE. WE ALREADY TALKED ABOUT THAT THE  
19 AUCTIONEERS WERE OSTRIN AND OSTRIN; IS THAT RIGHT?

20 A YES.

21 Q THE SALE THAT TOOK PLACE AT 10:00 IN THE  
22 MORNING ON OCTOBER 27TH?

23 A THE SALE TOOK PLACE. WHETHER IT WAS  
24 TECHNICALLY THIS SALE, I'M NOT CERTAIN, BECAUSE IT WAS --  
25 THE PROBLEM WITH THIS WAS OSTRIN AND OSTRIN WAS  
26 CONTEMPLATING THAT THERE WOULD BE BIDDERS AT THE SALES.

1 Q I'M NOT ASKING WHAT OSTRIN CONTEMPLATED,  
2 MR. MALPASS. IF YOU WOULD JUST ANSWER.

3 A IT DIDN'T HAPPEN THE WAY THEY NOTICED IT.

4 Q IT HAPPENED THE WAY YOU REMEMBER IT; RIGHT?

5 A NO. I THINK IT HAPPENED THE WAY IT  
6 HAPPENED, MR. RIVIN.

7 Q WELL, YOU'VE TESTIFIED THE WAY IT HAPPENED.  
8 YOU TESTIFIED THAT YOU WERE THERE, AND YOU REMEMBER THE WAY  
9 IT HAPPENED?

10 A I REMEMBER BEING AT THE BANKRUPTCY COURT  
11 WHEN THERE WERE PROCEEDINGS REGARDING THE AUCTION, YES.

12 Q YOU TESTIFIED EARLIER IN YOUR DEPOSITION  
13 THAT YOU WERE AT THE SALE.

14 A THAT'S MY RECOLLECTION.

15 Q AND AT THE SALE, THE MEMBER CONTRACTS WERE  
16 SOLD BECAUSE YOU WERE THERE; ISN'T THAT RIGHT? THAT'S WHAT  
17 YOU TESTIFIED YOU?

18 A THEY WEREN'T SOLD BECAUSE I WAS THERE. THEY  
19 WERE SOLD BECAUSE THAT WAS WHAT WAS SOLD. MY BEING HERE  
20 DIDN'T MAKE A DIFFERENCE.

21 Q MY -- YOU'RE RIGHT. MY QUESTION IS  
22 INARTFUL.

23 YOU REMEMBER BECAUSE YOU WERE AT THE AUCTION  
24 SALE THAT THE MEMBER CONTRACTS WERE SOLD?

25 A NO. I KNOW THEY WERE SOLD BECAUSE OF THE  
26 WORDING OF THE ORDERS AND WHAT WAS GOING ON.

1           Q           LET'S TAKE A LOOK AT THE -- LET'S GO THROUGH  
2 THIS PAGE-BY-PAGE.

3                       MIKE, IF YOU COULD PULL BACK ON THIS,  
4 PLEASE, ON THE FIRST PAGE. LET'S TAKE A LOOK AT IT.

5                       IT'S ANOTHER NOTICE IN THE BOTTOM LEFT-HAND  
6 CORNER. LET'S GO TO THE SECOND PAGE, IF WE COULD.

7                       THESE ARE THE -- IT'S A LITTLE DIFFICULT TO  
8 READ, BUT THESE ARE THE TERMS AND CONDITIONS OF THE SALE.

9                       AND I DON'T WANT -- I DON'T NEED TO GO  
10 THROUGH THESE. THIS LAYS OUT ALL THE TERMS AND  
11 CONDITIONS. LET'S GO TO THE THIRD PAGE WHICH IDENTIFIES  
12 THE PROPERTY THAT'S BEING SOLD AT THE SALE.

13                      THE FIRST -- FIRST THREE QUARTERS OF THE  
14 PAGE LISTS THE REAL PROPERTY THAT IS BEING SOLD. ONE, TWO,  
15 THREE, FOUR, FIVE, SIX. AND THEN I THINK THERE ARE TWO  
16 MORE.

17                      AND THEN TAKE A LOOK -- WOULD YOU HIGHLIGHT  
18 THE WORDS THAT SAY "PERSONAL" -- BEGINNING WITH "PERSONAL  
19 PROPERTY."

20                      WOULD YOU READ THAT, MR. MALPASS?

21           A           THE HIGHLIGHTED PART?

22                      "PERSONAL PROPERTY AT VARIOUS LOCATIONS  
23 CONSISTS OF: VEHICLES, PICKUP TRUCKS, TRACTORS, TRAILER,  
24 TOOLS, STORE FIXTURES, OFFICE FURNISHINGS, PLAYGROUND  
25 EQUIPMENT, SPORTING EQUIPMENT, ET CETERA. THESE ITEMS TO  
26 BE OFFERED SEPARATELY IN GROUPS IN THE AGGREGATE AND WITH

1 THE REAL PROPERTY."

2 Q THAT DOESN'T SAY ANYTHING ABOUT MEMBER  
3 CONTRACTS, DOES IT?

4 A NO.

5 Q BUT IT'S YOUR OPINION THAT THE MEMBER  
6 CONTRACTS WERE SOLD?

7 A YES. THAT TALKS ABOUT WHAT'S AT THE  
8 LOCATIONS, MR. RIVIN. AND THAT'S NOT -- IT'S DIFFERENT  
9 FROM WHAT THE SALE ORDER ACTUALLY SAID.

10 MR. RIVIN: MOVE TO STRIKE THE WITNESS'S ANSWER ON  
11 THE BASIS THAT IT WAS NONRESPONSIVE, YOUR HONOR.

12 THE COURT: MOTION GRANTED.

13 BY MR. RIVIN: Q AND THE -- AGAIN, IN YOUR  
14 OPINION, THE MEMBER CONTRACTS WERE NOT REJECTED; THEY WERE  
15 SOLD?

16 A THEY WERE SOLD. AND THEN WHATEVER  
17 OBLIGATION THE ALL SEASONS ESTATE HAD UNDER THEM WAS  
18 SUBSEQUENTLY REJECTED. SO BOTH TOOK PLACE, ACTUALLY.

19 Q THE CONTRACTS, THE MEMBER CONTRACTS, WERE  
20 REJECTED; WE LOOKED AT THE ORDERS THAT SAID THE MEMBERS  
21 CONTRACTS WERE REJECTED?

22 A I DON'T THINK IT WAS THE MEMBER CONTRACTS.  
23 I THINK IT WAS ALL SEASONS' OBLIGATIONS UNDER CONTRACTS.  
24 THERE IS A DIFFERENCE.

25 Q OH, OKAY. LET'S TAKE A LOOK AT EXHIBIT 386  
26 ONE MORE TIME.

1 DO YOU SEE THAT? IT'S AN ORDER APPROVING  
2 REJECTION OF MEMBERSHIP CONTRACTS?

3 A YES.

4 Q BUT DESPITE FACT THAT, IT SAYS THE MEMBER  
5 CONTRACTS ARE REJECTED. THAT'S NOT IN YOUR OPINION WHAT  
6 HAPPENED; IS THAT RIGHT?

7 A WHATEVER THAT ORDER SAYS IS THE LEGAL EFFECT  
8 OF -- IT MEANS WHAT IT SAYS.

9 Q WHY DON'T --

10 A IT SPEAKS FOR ITSELF.

11 Q LET'S GO TO THE SECOND PAGE.

12 WE WENT OVER THIS BEFORE, BUT LET'S DO IT  
13 ONE MORE TIME, MR. MALPASS, BECAUSE I DON'T THINK YOU  
14 REMEMBER THE LANGUAGE.

15 "IT IS HEREBY ORDERED THAT ANY AND ALL  
16 CONTRACTS, TO WHICH THE DEBTOR IS A PARTY, UNDER WHICH  
17 MEMBERS OF ALL SEASONS RESORTS OR MEMBERS OF ANY OTHER  
18 ENTITY ARE PERMITTED TO USE" -- "ARE PERMITTED THE USE OF  
19 EACH OR ALL OR ANY COMBINATION OF THE CAMPGROUNDS LISTED  
20 HEREINBELOW, BE, AND HEREBY ARE REJECTED."

21 AND THAT SPEAKS FOR ITSELF?

22 A THAT'S THE LEGAL CLICHE, YES.

23 Q PARDON?

24 A THAT'S THE LEGAL CLICHE, YES.

25 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT  
26 383 AGAIN, PLEASE.

1 Q MR. SHAW SHOWED YOU THIS DOCUMENT AGAIN THIS  
2 MORNING. AND HE TOOK YOU TO -- I BELIEVE IT WAS THE FIFTH  
3 PAGE.

4 WOULD YOU GO TO THE NEXT PAGE, PLEASE.  
5 THANK YOU. THAT'S IT.

6 AND MR. SHAW TALKED TO YOU ABOUT SALES TO  
7 APOLLO, WHICH IS ONE OF THE PLAINTIFFS IN THIS CASE;  
8 RIGHT?

9 A YES.

10 Q AND IT'S YOUR OPINION, ONCE AGAIN, THAT  
11 WHEREVER IT SAYS "PERSONAL PROPERTY" HERE, THAT PERSONAL  
12 PROPERTY INCLUDED THE MEMBER CONTRACTS; RIGHT?

13 A THE WORDS "PERSONAL PROPERTY" ALONG WITH A  
14 LIST OF MEMBERS FOR WHOM ORLANDO IS THE HOME RESORT, AND  
15 THE WAY IT'S WORDED IN THE ORDER, PLUS THE CONTEXT THAT  
16 TOOK PLACE.

17 Q YOU TESTIFIED BEFORE THAT YOU KNOW THAT THE  
18 CONTRACTS WERE SOLD BECAUSE OF YOUR PERSONAL EXPERIENCE,  
19 NOT JUST READING THE ORDER?

20 A WELL, I KNOW THAT THEY -- AFTER THE --  
21 APOLLO BOUGHT THE PARKS AND THAT THE PARKS WERE SOLD, THAT  
22 THE MEMBERS WERE PICKED UP.

23 Q I'M TALKING ABOUT THE MEMBERSHIP CONTRACTS.  
24 YOU SAID THAT THEY WERE SOLD. AND YOU SAID THAT THIS ORDER  
25 IS CONSISTENT WITH YOUR RECOLLECTION OF WHAT HAPPENED?

26 A THAT THIS IS THE EFFECT OF WHAT HAPPENED,

1 YES. THE ISSUE WAS WHETHER THEY HAD BEEN REJECTED PRIOR TO  
2 THE SALE AND THEY GOT SOLD BEFORE THE REJECTION TOOK  
3 PLACE. THAT WAS THE ISSUES I WAS LOOKING AT.

4 Q IT'S YOUR RECOLLECTION THAT THOSE CONTRACTS  
5 WERE SOLD; ISN'T THAT RIGHT?

6 A IT'S MY -- IT'S MY UNDERSTANDING THAT THEY  
7 WERE SOLD, YES. THEY GOT SOLD.

8 Q AND THAT'S BASED ON YOUR BEING AT THE SALE  
9 AND YOUR BEING AT THE HEARING?

10 A THE VARIOUS HEARINGS, YES. YES.

11 Q AND -- RIGHT.

12 AND THERE WAS DISCUSSION ABOUT THE CONTRACTS  
13 BEING SOLD?

14 A NO.

15 Q OH, NOBODY SAID ANYTHING ABOUT THE CONTRACTS  
16 BEING SOLD?

17 A THE WORDING SPOKE AS IT WAS, AND IT -- THERE  
18 WAS DISCUSSION ABOUT THE MEMBERSHIP LISTS AND THE WAY  
19 THAT -- BECAUSE THE TRUSTEE HADN'T CUT OFF THE MEMBERSHIP  
20 CONTRACTS. TRUSTEE STARTED OUT SAYING, "I'M GOING TO GIVE  
21 BUYERS AN OPTION, AND THEY CAN EITHER HAVE THE PARKS WITH  
22 THE CONTRACTS OR WITHOUT, WITH THE MEMBERS OR WITHOUT.  
23 I'LL SELL THEM CLEAN OF THE MEMBERS, OR I'LL SELL THEM WITH  
24 THE MEMBERS THERE."

25 BY THE TIME THIS SALE CAME, IT HAD BECOME  
26 CLEAR THAT THE BUYERS WERE ALL GOING TO GET -- SOME OF THE

1 BUYERS WANTED A -- ALL THEY CARED ABOUT WAS A REJECTION  
2 ORDER. SOME OF THE BUYERS CARED THAT THEY WANTED THE  
3 MEMBERS. THE LANGUAGE IN THERE WENT THE LIST OF MEMBERS SO  
4 THEY WEREN'T BEING -- THEY WERE BEING PRESERVED IN THIS  
5 CONTEXT. IT WAS -- THE REASON FOR THAT WAS THAT UNDER THE  
6 SECURITY DOCUMENTATION, IT HAD BEEN VERY CLEAR THAT THE  
7 LIENS HAD EXTENDED TO THESE RELATIONSHIPS. SO SINCE THEY  
8 WERE FORECLOSURE SALES, THEY SET IT UP THIS WAY.

9 MR. RIVIN: MOVE TO STRIKE THE ANSWER ON THE BASIS  
10 IT WAS NOT RESPONSIVE TO THE QUESTION.

11 THE COURT: MOTION GRANTED.

12 BY MR. RIVIN: Q LET'S LOOK AT PARAGRAPH 7,  
13 PLEASE. PARAGRAPH 7 IS A SLIGHTLY DIFFERENT PARAGRAPH THAN  
14 THE OTHER ONES WE'VE BEEN TALKING ABOUT BECAUSE THAT JUST  
15 TALKS ABOUT THE PERSONAL PROPERTY. AND.

16 THAT PARAGRAPH SAYS THAT THE PERSONAL  
17 PROPERTY, OTHER THAN THE HOUSE TRAILERS AT ORLANDO, SHALL  
18 BE AND HEREBY IS SOLD AND TRANSFERRED TO HANS SCHULZ IN  
19 TRUST FOR THE SECURITY CAPITAL NOTEHOLDERS FOR \$35,000.

20 SO IS IT YOUR TESTIMONY THAT HANS SCHULZ  
21 BOUGHT THE -- ALL OF THE PERSONAL PROPERTY THAT WAS  
22 DESCRIBED IN THE AUCTION NOTICE AT ORLANDO AND THE  
23 THOUSANDS OF MEMBERSHIP CONTRACTS AT ORLANDO FOR \$35,000?  
24 IS THAT YOUR TESTIMONY?

25 A THE CONTRACTS AND MEMBER RELATIONS TRACKED  
26 WITH THE MEMBER LISTS -- I THINK ORLANDO SAID "MEMBER

1 LISTS." THAT'S MY BEST RECOLLECTION.

2 Q I'M SORRY. I DIDN'T HEAR THAT ANSWER.

3 COULD I HAVE IT READ BACK.

4 (THE FOLLOWING TESTIMONY WAS READ BACK:

5 "THE CONTRACTS AND MEMBER RELATIONS TRACKED WITH THE MEMBER  
6 LISTS -- I THINK ORLANDO SAID 'MEMBER LISTS.' THAT'S MY  
7 BEST RECOLLECTION."

8 THE WITNESS: THERE'S ANOTHER PARAGRAPH IN THIS  
9 ORDER TALKING ABOUT SALE OF ORLANDO, AND I BELIEVE IT  
10 TALKED ABOUT THE MEMBER LISTS, MR. RIVIN.

11 BY MR. RIVIN: Q WELL, IS IT YOUR TESTIMONY THAT  
12 ORLANDO -- IT WAS THE MEMBER LISTS THAT WERE SOLD, BUT NOT  
13 THE MEMBER CONTRACTS?

14 A NO. THEY WERE ALL GOING TO GO -- THEY WERE  
15 GOING TO END UP TOGETHER. DIFFERENT PEOPLE HAD DIFFERENT  
16 LIENS ON DIFFERENT THINGS. THEY WERE ALL GOING TO END UP  
17 TOGETHER.

18 Q THEY WERE?

19 A YES.

20 Q AND HOW DO YOU KNOW THAT? TALKING WITH  
21 MR. NOVELLI?

22 A BECAUSE OF THE -- BECAUSE THEY WEREN'T ANY  
23 GOOD -- THE BUILDINGS WEREN'T ANY GOOD WITHOUT THE PARK IN  
24 THE FIRST PLACE. THESE SALES WERE FORECLOSURE SALES.  
25 DIFFERENT CREDITORS WERE FORECLOSING ON THEIR COLLATERAL.  
26 AND THE FACT THAT ONE CREDITOR GOT -- THE WORDING OF THIS

1 JUST MEANS THAT THEY WERE GOING TO END UP BEING OWNED BY  
2 SOMEONE ELSE, AND THE SECURED CREDITORS GOT -- THAT GOT  
3 THIS, GOT IT WITH THE MEMBER LISTS, WHICH WAS THE RIGHT TO  
4 CONTACT THE MEMBERS. THAT WAS WHY IT WAS SO IMPORTANT.

5 Q IS IT YOUR TESTIMONY NOW THAT ALL THE BUYERS  
6 GOT WERE THE MEMBER LISTS AND THE RIGHT TO CONTACT PEOPLE,  
7 BUT NOT THE MEMBER CONTRACTS THEMSELVES?

8 A WELL, YOU HAVE TO TALK ABOUT WHAT  
9 CONSTITUTES A CONTRACT.

10 Q WHY DON'T WE MOVE ON, MR. MALPASS. WE'VE  
11 TALKED ABOUT THAT ENOUGH, I THINK.

12 NO. LET ME GO BACK TO IT.

13 WE TALKED ABOUT CONTRACTS BEFORE, AND YOU'VE  
14 TALKED ABOUT CONTRACTS. AND YOU SAID THE CONTRACTS WERE  
15 SOLD. AND WHEN I ASKED YOU WHETHER THE CONTRACTS WERE  
16 SOLD, YOU DIDN'T TELL ME THAT WE HAVE TO TALK ABOUT WHAT IS  
17 A CONTRACT. YOU SAID THE CONTRACTS WERE SOLD.

18 ARE YOU NOW SAYING THAT YOU'RE BACKING OFF  
19 YOUR TESTIMONY BECAUSE WE HAVE TO UNDERSTAND THE MEANING OF  
20 THE TERM "CONTRACT"?

21 A NO.

22 Q IN DISCUSSING EXHIBIT 383, YOU MENTIONED  
23 SALES TO APOLLO, AND I MENTIONED THAT EARLIER.

24 APOLLO WAS A CREDITOR OF YOUR CLIENT; RIGHT?

25 A I'M SORRY. APOLLO WAS A CREDITOR OF ALL  
26 SEASONS?

1 Q YES.

2 A WHICH WAS THEN MY CLIENT, YES.

3 Q APOLLO WAS A CREDITOR OF YOUR CLIENT?

4 A YES.

5 Q AND APOLLO IS A NOVELLI COMPANY?

6 A HAD SOMETHING TO DO WITH RAY NOVELLI, YES.

7 Q AND A.S.R., ALL SEASONS, WAS A NOVELLI  
8 COMPANY?

9 A YES.

10 Q WHO REPRESENTED APOLLO BACK AT THE TIME OF  
11 THIS BANKRUPTCY PROCEEDING?

12 A I DON'T RECALL.

13 Q IT WAS MR. MOSHENKO, WASN'T IT?

14 A IT'S POSSIBLE, BUT I DON'T RECALL.

15 Q AND YOU WERE KEEPING MR. MOSHENKO POSTED ON  
16 WHAT WAS GOING ON IN CONNECTION WITH ALL SEASONS; YOU  
17 TESTIFIED TO THAT EARLIER?

18 A YES. I THINK MR. MOSHENKO KEPT HIMSELF  
19 POSTED. HE WAS AT SOME OF THE HEARINGS.

20 Q AND MR. MOSHENKO ATTENDED THE HEARING ON THE  
21 ORDER APPROVING THE BANKRUPTCY COURT SALES; ISN'T THAT  
22 RIGHT?

23 A I BELIEVE SO, YES. I'D HAVE TO SEE THE  
24 ORDER TO BE CERTAIN.

25 Q MR. MALPASS, ISN'T IT TRUE THAT THE ONLY  
26 REASON THAT YOU NOW CLAIM THAT THE MEMBER CONTRACTS WERE

1 SOLD THROUGH THE AUCTION SALE IS THAT THE NOVELLI  
2 COMPANIES, THE PLAINTIFFS IN THIS CASE, COULD CLAIM THEY  
3 OWNED THE MEMBER CONTRACTS?

4 A NO.

5 Q BECAUSE IF THE NOVELLI COMPANIES, THE  
6 PLAINTIFFS IN THIS CASE, DO NOT OWN THE MEMBERSHIP  
7 CONTRACTS, THEY WOULD HAVE NO RIGHT TO ASSERT ANY CLAIMS  
8 THAT COAST INTERFERED?

9 MR. SHAW: YOUR HONOR, I'LL OBJECT. THAT'S  
10 COMPOUND.

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

12 THE WITNESS: NO, I DISAGREE WITH THAT. I THINK  
13 THEY WOULD STILL HAVE RIGHTS, IN MY OPINION, BECAUSE OF THE  
14 STAY VIOLATION AND THE INTERFERENCE WITH THE PROPRIETARY  
15 INFORMATION.

16 BY MR. RIVIN: Q MR. MALPASS, ISN'T IT TRUE --  
17 WE'VE SEEN NO DOCUMENTS THAT YOU FILED -- OF ALL THE  
18 DOCUMENTS THAT YOU FILED IN THE ALL SEASONS BANKRUPTCY,  
19 WE'VE NEVER SEEN A SINGLE DOCUMENT WHERE YOU TOOK THE  
20 POSITION THAT THE MEMBERSHIP CONTRACTS WERE SOLD; AND,  
21 INDEED, THE DOCUMENTS WE'VE SEEN THAT YOU FILED ALL  
22 INDICATED THE MEMBERSHIP CONTRACTS WERE REJECTED.

23 ISN'T IT TRUE THAT YOU, MR. MOSHENKO, OR  
24 MR. NOVELLI CAME UP WITH THIS THEORY ABOUT THE SALE OF THE  
25 MEMBER CONTRACTS IN THE LAST THREE MONTHS SINCE YOU WERE  
26 HIRED TO TESTIFY ON THE PLAINTIFFS' BEHALF IN THIS CASE?

1 A NO.

2 Q LET ME GO BACK TO EXHIBIT 383 FOR A  
3 MOMENT -- WELL, BEFORE I DO GO BACK TO THAT, LET ME ASK YOU  
4 A COUPLE OF QUESTIONS ABOUT FINOVA.

5 WE TALKED ABOUT FINOVA BEFORE. THAT WAS AN  
6 ALL SEASONS CREDITOR; RIGHT?

7 A YES.

8 Q AND FINOVA IS THE COMPANY THAT ENTERTAINED  
9 THE FEDERAL COURT RECEIVER, JEFFREY KEIM?

10 A YES, I BELIEVE. THEY WERE THE PLAINTIFF IN  
11 THAT ACTION.

12 Q THEY WERE THE MAJOR CREDITOR -- ONE OF THE  
13 TWO MAJOR CREDITORS IN THE ALL SEASONS BANKRUPTCY?

14 A THEY WERE A VERY SUBSTANTIAL CREDITOR.

15 Q THEY -- AS FAR AS YOU WERE CONCERNED, THEY  
16 WERE -- THERE WAS NO LOVE LOST BETWEEN FINOVA AND ALL  
17 SEASONS; IS THAT RIGHT?

18 A YES, THAT'S CORRECT.

19 Q THAT'S CORRECT.

20 THERE WERE NO CONTRACTS BETWEEN FINOVA AND  
21 ALL SEASONS, NO AGREEMENTS -- WELL, THAT'S TOO BROAD.

22 ARE YOU AWARE OF ANY AGREEMENTS BETWEEN  
23 FINOVA AND ALL SEASONS AFTER ALL SEASONS FILED THE  
24 BANKRUPTCY AT ANY TIME?

25 A YOU'D HAVE TO BETTER DEFINE WHAT YOU MEANT  
26 BY "AGREEMENT."

1 Q WELL, ANY TYPE OF AGREEMENT, ANY TYPE OF  
2 VOLUNTARY AGREEMENT BETWEEN ALL SEASONS OR ANY OF THE  
3 PLAINTIFFS IN THIS CASE AND FINOVA.

4 A NO.

5 Q YOU'RE NOT AWARE OF ANY; IS THAT RIGHT?

6 A NO.

7 Q IS THAT RIGHT?

8 A NO. THERE WAS -- BECAUSE THE AUCTION --  
9 FINOVA WANTED THE AUCTION SALE TO OCCUR IN VARIOUS WAYS,  
10 AND THE PLAINTIFF -- AT LEAST ONE OF THE PLAINTIFFS IN THIS  
11 CASE, APOLLO, DID. I DON'T THINK I'D CALL IT AN AGREEMENT  
12 IN MY OPINION, BUT YOU MIGHT.

13 Q I'M JUST ASKING, DO YOU KNOW OF ANY  
14 AGREEMENTS --

15 A NO.

16 Q -- BETWEEN THEM?

17 ALL RIGHT. THANK YOU.

18 A YOU'RE ASKING A LAWYER A LEGAL TERM,  
19 MR. RIVIN. IF YOU JUST WANT -- I MEAN, DID I KNOW OF  
20 NEGOTIATIONS GOING ON AND WRITTEN AGREEMENTS OR ORAL  
21 AGREEMENTS OR SOMETHING LIKE THAT? NO, NONE WHATSOEVER.

22 Q NO ORAL AGREEMENTS, NO WRITTEN AGREEMENTS;  
23 YOU DON'T KNOW OF ANY?

24 A NO. DIDN'T KNOW OF ANY.

25 Q LET'S GO BACK TO 383, PLEASE.

26 MR. SHAW SHOWED YOU A NUMBER OF SALES TO

1 APOLLO, SALES OF THE PROPERTIES AND MEMBER LISTS TO APOLLO,  
2 BUT HE DIDN'T SHOW YOU PARAGRAPHS 1 AND 2. AND PARAGRAPHS  
3 1 AND 2, LET'S TAKE A LOOK AT THEM.

4 THESE ARE -- THE FIRST PROPERTY IS EAGLE  
5 LAKE IN MINNESOTA. LET'S GO TO THE TOP OF THE SECOND  
6 PAGE. "SHALL BE AND HEREBY IS SOLD TO FINOVA CAPITAL  
7 CORPORATION FOR \$805,000."

8 AND LET'S LOOK AT PARAGRAPH 2. THAT'S FOX  
9 RIVER IN ILLINOIS, ANOTHER ONE OF THE EIGHT PROPERTIES.  
10 THAT'S ALSO SOLD TO FINOVA; IF WE TAKE A LOOK AT LINE 13,  
11 SOLD AND TRANSFERRED TO FINOVA.

12 UNDER YOUR THEORY -- UNDER YOUR THEORY,  
13 FINOVA PURCHASED THE MEMBER CONTRACTS; IS THAT RIGHT?

14 A IT GOT WHATEVER THE DEBTOR HAD.

15 Q IS IT YOUR OPINION THAT FINOVA PURCHASED THE  
16 MEMBER CONTRACTS?

17 YOU TESTIFIED THAT APOLLO PURCHASED THE  
18 MEMBER CONTRACTS?

19 A YES.

20 Q THAT'S YOUR OPINION?

21 A IT'S THE SAME WORDING.

22 Q AND SO DID FINOVA PURCHASE THE MEMBER  
23 CONTRACTS?

24 A THEY GOT WHATEVER THE DEBTOR HAD.

25 Q YOU CAN'T TELL ME WHETHER THEY PURCHASED THE  
26 MEMBER CONTRACTS; YOU HAVE NO OPINION ON THAT?

1           A           YES, I DO.

2           Q           DID THEY PURCHASE THE MEMBER CONTRACTS?

3           A           YES, THEY DID.

4           Q           HOW DID THE PLAINTIFFS GET THEM BACK FROM  
5 FINOVA? HOW DID THEY GET THE MEMBER CONTRACTS BACK FROM  
6 FINOVA?

7           A           THE RELATIONSHIPS THAT WERE WITH MEMBERS, MY  
8 UNDERSTANDING IS THAT FINOVA DIDN'T WANT TO HAVE PARKS AND  
9 DIDN'T WANT TO TAKE CARE OF THE MEMBERS AND THAT THE  
10 PLAINTIFFS IN THIS CASE DID. SO I THINK THE PLAINTIFFS  
11 WENT TO THE MEMBERS AND SAID -- OR THE MEMBERS WENT TO THE  
12 PLAINTIFFS AND SAID, "WE WANT TO CONTINUE TO HAVE THESE  
13 MULTI-PARK RELATIONSHIPS" AND SO ON, AND THAT THE  
14 PLAINTIFFS HELPED THEM.

15          Q           SO IT'S YOUR TESTIMONY THAT THE -- THAT  
16 FINOVA HAD THE CONTRACTS, BUT THE PLAINTIFFS, IGNORING  
17 THOSE CONTRACTS, JUST WENT TO THE MEMBERS AND SAID, "WE'RE  
18 GOING TO TAKE CARE OF YOU"?

19          A           I THINK FINOVA CLOSED THE PARKS THAT IT  
20 BOUGHT AND ABANDONED THE MEMBERS AND SO THAT THERE WEREN'T  
21 ANY -- AT THAT POINT THE CONTRACTUAL -- IF THERE'S A  
22 CONTRACTUAL RELATIONSHIP, IT'S REALLY NOT AT ISSUE.

23          Q           WHO TOLD YOU THAT FINOVA CLOSED ITS PARKS  
24 AND ABANDONED THE MEMBERS?

25          A           I THINK IT WAS EITHER -- I THINK RAY NOVELLI  
26 DID. EITHER RAY NOVELLI OR TERRY MOSHENKO.

1 Q MR. MALPASS, I'D LIKE TO GO ON TO ANOTHER  
2 SUBJECT, ASK YOU A COUPLE QUICK QUESTIONS ABOUT  
3 REPRESENTATION OF THE CLIENT.

4 WHEN A CLIENT RETAINS YOU AS AN ATTORNEY TO  
5 REPRESENT THE CLIENT IN THE MATTER, AND YOU WRITE A LETTER,  
6 LET'S SAY, TO THE OTHER SIDE'S ATTORNEY -- ARE YOU WITH ME?  
7 THE CLIENT COMES IN, RETAINS YOU; YOU WRITE A LETTER TO THE  
8 OTHER SIDE'S ATTORNEY?

9 A YOU MEAN AFTER I'VE BEEN RETAINED?

10 Q YES, AFTER YOU'VE BEEN RETAINED. I'M NOT  
11 TRYING -- I'M NOT TRYING TO BE CUTE.

12 A OKAY.

13 Q WHEN YOU WRITE THAT LETTER, YOU WRITE THE  
14 LETTER BEHALF OF THE CLIENT; RIGHT? ON BEHALF OF YOUR  
15 CLIENT?

16 A GENERALLY, YES.

17 Q AND IF MEMBERS OF ALL SEASONS RESORTS WERE  
18 SO FRUSTRATED, THEY NEEDED TO HIRE ATTORNEYS TO WRITE  
19 LETTERS OF COMPLAINTS TO YOU OR A.S.R. MANAGEMENT, THOSE  
20 LETTERS WOULD BE CONSIDERED TO BE A COMPLAINT OF THE  
21 MEMBERS EVEN THOUGH THEY CAME FROM ATTORNEYS?

22 A NO. I THINK IT'S USUALLY ATTORNEY LANGUAGE.  
23 IF YOU'RE TALKING ABOUT SPECIFICALLY THE ONES I SAW? I  
24 TOOK IT AS ATTORNEYS CHARACTERIZING ARGUMENTS IN THEIR OWN  
25 WORDS THAT MAY OR MAY NOT HAVE BEEN THE FEELINGS OF THE  
26 ACTUAL MEMBERS.

1                   AND I KNOW FROM TALKING WITH SOME OF THE  
2 MEMBERS THAT WHAT THEY -- BECAUSE THEY CALL ME UP, AND  
3 THEY'D SAY, "WELL, I GOT DUES ISSUES," OR "I HAVE  
4 COMPLAINTS ABOUT A SWIMMING POOL AT THE PARK WHERE I'M A  
5 HOME MEMBER" OR SOMETHING LIKE THAT. IT'S -- THEY WERE  
6 SUPPOSED TO DO SOMETHING WITH THE SWIMMING POOL. AND I'D  
7 SAY, "WELL, YOU CAN CONTACT THE MANAGEMENT GROUP OVER HERE  
8 THAT MANAGES THESE PARKS. I'M JUST A LAWYER," AND SO ON.

9                   BUT NO. AND I GET -- SUBSEQUENTLY I WOULD  
10 GET A LETTER FROM A LAWYER SAYING THIS -- YOU KNOW, SAYING  
11 SOMETHING.

12                   BUT IF YOU'RE ASKING ME, DOES THAT MEAN THAT  
13 THAT'S THE WAY THE MEMBERS FEEL, MY ANSWER WOULD BE NO.  
14 IT'S OFTEN A LAWYER'S CHARACTERIZATION OF WHAT THE LAWYER  
15 THINKS HE SHOULD BE SAYING, HE OR SHE.

16                   Q           SO YOU JUST IGNORE -- YOU JUST DON'T TREAT A  
17 LETTER THAT YOU RECEIVE FROM AN ATTORNEY FOR A PARTY AS  
18 BEING A STATEMENT OF THAT PARTY'S POSITION?

19                   A           NO. I WOULD TREAT THEM AS BEING A STATEMENT  
20 OF THE LAWYER'S POSITION, AS FAR AS HOW I WOULD BE HANDLING  
21 VARIOUS MATTERS. IF IT'S MANAGEMENT LIKE A DUES ISSUE, IT  
22 GETS PASSED ON TO THE PEOPLE THAT ARE ADMINISTERING DUES.

23                   Q           MR. MALPASS, ON TUESDAY -- I BELIEVE IT WAS  
24 TUESDAY WE TALKED ABOUT THE FACT THAT YOU RECEIVED -- YOU  
25 THOUGHT YOU RECEIVED MAYBE 10 LETTERS FROM MEMBERS AT  
26 MAXIMUM; YOU SAID THAT WAS EXAGGERATED?

1           A           I ESTIMATED TEN.

2           Q           AND THEN YOU TALKED ABOUT HOW FEW -- IN  
3 RESPONSE TO MR. SHAW'S QUESTIONS, HOW FEW RESPONDED, HOW  
4 FEW LETTERS YOU GOT?

5           A           YES.

6           Q           YOU WERE VERY SURPRISED?

7           A           YES, THAT'S TRUE.

8           Q           AND THIS MORNING WHEN MR. SHAW WAS TRYING TO  
9 LAY A FOUNDATION FOR YOUR KNOWLEDGE OF WHAT THE MEMBERS DID  
10 AFTER THE -- DURING THE ALL SEASONS BANKRUPTCY, YOU STARTED  
11 TALKING ABOUT MANY, MANY CALLS -- I DON'T KNOW IF YOU SAID  
12 "MANY, MANY," BUT CALLS THAT YOU GOT FROM PEOPLE?

13          A           YES.

14          Q           FROM MEMBERS?

15          A           YES.

16          Q           HOW MANY CALLS DID YOU GET FROM MEMBERS ON  
17 TOP OF THE LETTERS THAT YOU GOT?

18          A           IN WHAT TIME PERIOD?

19          Q           DURING THE TIME ALL SEASONS WAS IN  
20 BANKRUPTCY.

21          A           YOU WANT ME TO -- IT WOULD BE THREE, FOUR  
22 YEARS LATER. IT WOULD BE GUESSING ON MY PART. I CAN GIVE  
23 YOU AN EDUCATED GUESS.

24          Q           WHY DON'T YOU GIVE ME AN EDUCATED GUESS.

25          A           ONE HUNDRED OVER THE SEVERAL YEARS.

26          Q           OVER THE SEVERAL YEARS?

1           A           TWO YEARS, WHATEVER -- HOWEVER LONG, I WOULD  
2 GET CALLS -- I WON'T SAY I'VE GOTTEN A CALL THIS YEAR, BUT  
3 I'D GET CALLS -- I GOT CALLS IN 1999. I GOT CALLS IN 1998  
4 AFTER I WAS DONE REPRESENTING ALL SEASONS, FROM PEOPLE,  
5 FROM MEMBERS, FROM ATTORNEYS, FROM VARIOUS PEOPLE ABOUT THE  
6 CASE.

7           Q           AND MAYBE EVEN OVER 100; RIGHT?

8           A           IT'S POSSIBLE.

9           Q           LET ME ASK YOU SOME QUESTIONS ABOUT YOUR  
10 TESTIMONY ON TUESDAY IN RESPONSE TO MR. SHAW'S QUESTION  
11 ABOUT VIOLATION OF THE AUTOMATIC STAY AND THE ALL SEASONS  
12 BANKRUPTCY.

13                       YOU TESTIFIED AS TO YOUR OPINION REGARDING  
14 THE VIOLATION OF THE AUTOMATIC STAY AND THE ALL SEASONS  
15 BANKRUPTCY. AND I'D LIKE TO ASK YOU A COUPLE OF QUESTIONS  
16 ABOUT THE AUTOMATIC STAY.

17                       THE AUTOMATIC STAY APPLIES TO PROPERTY OF  
18 THE ESTATE; RIGHT?

19           A           NO. NOT EXCLUSIVELY. IT CERTAINLY -- IT  
20 DOESN'T APPLY ONLY TO PROPERTY OF THE ESTATE. IT DOES  
21 APPLY TO PROPERTY OF THE ESTATE.

22           Q           BUT WHEN YOU'RE TALKING ABOUT A CREDITOR  
23 TAKING SOME ACTION WHICH AFFECTS PROPERTY, IF THAT'S BARRED  
24 BY THE AUTOMATIC STAY, THAT PROPERTY HAS TO BE PART OF THE  
25 ESTATE, DOESN'T IT?

26           A           IF YOU'RE TALKING ABOUT THE PARTS OF THE

1 STAY THAT PROTECT PROPERTY, YES, THAT'S TRUE.

2 Q RIGHT.

3 A BUT I'LL TRY TO ANSWER YOUR QUESTION.

4 Q OKAY. AS TO PROPERTY THAT'S NO LONGER A  
5 PART -- THE PROPERTY THAT'S NO LONGER PROPERTY OF THE  
6 ESTATE, THE AUTOMATIC STAY DOESN'T APPLY ANY LONGER;  
7 RIGHT?

8 A THE PROVISIONS OF THE STAY THAT APPLY TO  
9 PROPERTY OF THE ESTATE WOULD NO LONGER APPLY TO PROPERTY  
10 THAT IS NO LONGER PROPERTY OF THE ESTATE.

11 Q LET'S TALK ABOUT THE MEMBER CONTRACTS FOR A  
12 MOMENT.

13 YOU SAID THAT THE MEMBER CONTRACTS WERE SOLD  
14 TO APOLLO?

15 A RIGHT.

16 Q AND SO ONCE THOSE MEMBER CONTRACTS WERE SOLD  
17 TO APOLLO, THE AUTOMATIC STAY DIDN'T APPLY ANY LONGER TO  
18 THOSE MEMBER CONTRACTS?

19 A YES, THAT'S RIGHT.

20 Q ALL RIGHT.

21 A IT STILL APPLIED TO THE DEBTOR'S RIGHTS --  
22 THE DEBTOR'S -- ACTIONS AGAINST THE DEBTOR RELATED TO THE  
23 MEMBER CONTRACTS EVEN IF IT SOLD THE CONTRACTS.

24 Q I'M TALKING ABOUT THE PROPERTY ITSELF;  
25 RIGHT? THE AUTOMATIC STAY APPLIES -- WHEN THE PROPERTY IS  
26 GONE FROM THE ESTATE, THE AUTOMATIC STAY DOESN'T APPLY TO

1 THE PROPERTY ANY LONGER?

2 A NOT TO THE PROPERTY.

3 Q RIGHT.

4 MR. SHAW WENT TO THE BOARD ON TUESDAY,  
5 THAT -- WHAT HE HAS UP ON THERE NOW. AND HE ASKED YOU  
6 ABOUT A NUMBER OF LETTERS THAT WERE SHOWN TO YOU -- A  
7 NUMBER OF LETTERS THAT WERE SENT BY COAST TO ALL SEASONS  
8 MEMBERS, AND HE MENTIONED 18,000 LETTERS SENT BY COAST TO  
9 THE ALL SEASONS MEMBERS.

10 DO YOU REMEMBER MR. SHAW ASKING YOU ABOUT  
11 THAT?

12 A YES.

13 Q DO YOU REMEMBER MR. SHAW TELLING YOU ABOUT  
14 THE 18,000 LETTERS SENT BY COAST TO ALL SEASONS MEMBERS IN  
15 OCTOBER OF 1997?

16 A I DON'T RECALL 18,000. I RECALL HE --  
17 IDENTIFYING A DATE WHERE COAST CONTACTED THE MEMBERS, YES,  
18 IN OCTOBER.

19 Q WHEN MR. SHAW ASKED YOU FOR YOUR  
20 UNDERSTANDING, YOU SAID IT WAS YOUR UNDERSTANDING THAT  
21 18,000 LETTERS WERE SENT -- THAT 18,000 OCTOBER LETTERS  
22 WERE SENT BY COAST TO COAST TO A.S.R. MEMBERS?

23 A I DON'T RECALL SAYING 18,000. IT'S MY  
24 UNDERSTANDING THAT THEY SENT LETTERS.

25 Q LET'S PUT UP SOME TESTIMONY FROM TUESDAY. I  
26 THINK IT'S PAGE 3562. 3561. DO WE HAVE THAT? AT THE VERY

1 BOTTOM OF THE PRIOR PAGE, I THINK.

2 "MR. SHAW: QUESTION: AND THOSE LETTERS --  
3 AS YOU RECALL, WE'VE LOOKED AT THE EXHIBITS REGARDING THE  
4 OCTOBER LETTERS. THERE WERE -- AS FAR AS ALL SEASONS  
5 RESORTS WAS CONCERNED, THERE WERE 18,000 OF THOSE LETTERS;  
6 CORRECT?

7 "ANSWER: THAT'S MY UNDERSTANDING, YES."

8 SO YOU AGREED WITH MR. SHAW; THAT WAS YOUR  
9 UNDERSTANDING; YES?

10 A YES.

11 Q AND THAT IS YOUR UNDERSTANDING?

12 A YES. MY UNDERSTANDING IS THAT LETTERS WERE  
13 SENT OUT TO THE MEMBERS.

14 Q WELL, BUT MR. SHAW ASKED YOU ABOUT THE  
15 OCTOBER LETTERS, AND YOU SAID THAT'S YOUR UNDERSTANDING,  
16 18,000 OCTOBER LETTERS; RIGHT?

17 A THAT'S -- I DON'T HAVE ANY UNDERSTANDING AS  
18 TO HOW MANY, MR. RIVIN.

19 Q MR. SHAW HAD ASKED --

20 A I HAD SEEN THE LIST, THE SCHEDULED LIST OF  
21 18,000 MEMBERS. SO I ASSUMED IF THEY WERE SENDING LETTERS  
22 TO THE MEMBERS, IT WAS 18,000.

23 Q SO THAT'S THE REASON YOU SAID IN RESPONSE TO  
24 MR. SHAW'S QUESTION THAT THAT WAS YOUR UNDERSTANDING;  
25 RIGHT?

26 A I'D SAY THAT'S FAIR. I WAS AGREEING WITH

1 MR. SHAW, BECAUSE I UNDERSTOOD THAT THEY WERE SENDING OUT  
2 LETTERS TO THE MEMBERS.

3 Q MR. MALPASS, YOU THEN TESTIFIED THAT THOSE  
4 OCTOBER LETTERS WERE IN VIOLATION OF THE AUTOMATIC STAY; DO  
5 YOU REMEMBER THAT?

6 A LETTERS SENT TO THE MEMBERS IN OCTOBER WOULD  
7 HAVE VIOLATED THE STAY, YES.

8 Q BUT YOUR UNDERSTANDING IS WRONG,  
9 MR. MALPASS, BECAUSE YOU'RE UNAWARE OF ANY COAST TRANSFER  
10 LETTERS SENT TO ALL SEASONS MEMBERS IN OCTOBER, AREN'T YOU?

11 A I'M AWARE OF WHAT HAS BEEN REPRESENTED BY  
12 THE PLAINTIFFS IN THIS CASE AS BEING -- THAT THEY WERE  
13 SENDING OUT LETTERS.

14 Q SO YOU WERE RELYING UPON WHAT YOU WERE BEING  
15 TOLD BY MR. NOVELLI OR MR. SHAW OR MR. MOSHENKO; IS THAT  
16 WHAT YOU'RE SAYING?

17 A BY MR. SHAW AT THAT TIME, YES. HE PUT IT ON  
18 THE BOARD.

19 Q HE DIDN'T PUT ON AN OCTOBER LETTER TO AN ALL  
20 SEASONS RESORTS MEMBER?

21 A HE PUT A TIME LINE ON THE BOARD THAT HAD  
22 OCTOBER LETTERS ON IT.

23 Q SO YOU WERE JUST ASSUMING THAT?

24 A THAT'S WHAT I WAS RELYING ON.

25 Q AND MR. SHAW FAILED TO MENTION THAT NOT A  
26 SINGLE ONE OF THOSE TRANSFER LETTERS WERE SENT BY COAST TO

1 THE A.S.R. MEMBERS UNTIL DECEMBER, AFTER THE SALE, THE  
2 AUCTION SALE, AND AFTER THE REJECTION OF THE MEMBER  
3 CONTRACTS?

4 A YOU'RE NOW TELLING ME SOMETHING, MR. RIVIN,  
5 THAT I -- SINCE I DON'T KNOW THAT, I'M NOT GOING TO AGREE  
6 WITH YOU.

7 Q BUT YOUR TESTIMONY WAS BASED ON THE  
8 ASSUMPTION THAT THOSE LETTERS WERE SENT IN OCTOBER?

9 A IF IT WERE FOUND THAT THERE WAS A CONTACT  
10 WITH THE MEMBERS IN OCTOBER, THEN THE STAY WOULD BE  
11 VIOLATED, YES. IF THERE WAS CONTACT WITH A.S.R. WHILE THE  
12 STAY WAS IN FORCE, THE STAY WOULD BE VIOLATED.

13 Q YOUR TESTIMONY WAS BASED ON THOSE LETTERS  
14 THAT WERE SENT IN OCTOBER, THOSE COAST LETTERS IN OCTOBER?

15 A WELL, MY OPINION IS THAT THE STAY GOT  
16 VIOLATED IF THERE WAS CONTACT IN DECEMBER, AS WELL.

17 THE COURT: BREAK TIME. 20 MINUTES, LADIES AND  
18 GENTLEMEN.

19 (THE FOLLOWING PROCEEDING WERE HELD IN OPEN  
20 COURT OUT OF THE PRESENCE OF THE JURY:)

21 THE COURT: GENTLEMEN, IT'S MY UNDERSTANDING THAT  
22 WHEN YOU FINISH WITH MR. MALPASS TODAY THERE WILL BE NO  
23 FURTHER WITNESSES?

24 MR. MOSHENKO: CORRECT, YOUR HONOR.

25 THE COURT: WHY COULDN'T YOU TAKE MR. NOVELLI  
26 TODAY, GET HIM STARTED?

1           MR. MOSHENKO: YOUR HONOR, WE CONTEMPLATED PUTTING  
2 ON MR. NOVELLI NEXT WEEK, AND WE CONTEMPLATED PUTTING ON  
3 OTHER WITNESSES TODAY. AND THEN AFTER OUR CONVERSATION  
4 YESTERDAY IN CHAMBERS --

5           THE COURT: BUT YOU DON'T HAVE ANY OTHER WITNESSES  
6 TODAY.

7           MR. MOSHENKO: CORRECT. WITH OUR CONVERSATION IN  
8 CHAMBERS YESTERDAY ABOUT WHAT WE'D BE DOING TODAY, WE  
9 INFORMED THE COURT THAT WE DIDN'T HAVE WITNESSES. COUNSEL  
10 INDICATED, WELL, WE CAN DO EVIDENTIARY MATERIAL AND  
11 POSSIBLY DEPOSITION MATERIAL.

12          THE COURT: I WAS TRYING TO GET THE MOST WE CAN OUT  
13 OF THE JURORS TODAY.

14          MR. MOSHENKO: IT'S TRUE, YOUR HONOR. I PRESUME  
15 FROM WHAT I WAS TOLD, YOUR HONOR WAS INFORMED MR. NOVELLI  
16 HAS TO BE IN THE FEDERAL COURT NEXT WEEK. AND YOUR HONOR  
17 DOES NOT WANT HIS TESTIMONY BROKEN UP.

18          THE COURT: OKAY.

19          MR. MOSHENKO: SO STARTING HIM TODAY WOULD MANDATE  
20 HIM BEING BROKEN UP.

21          THE COURT: ALL RIGHT.

22          MR. SHERMAN: IT'S A GOOD SUGGESTION, BUT --

23                         (RECESS TAKEN.)

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

26          THE COURT: I'M TOLD WE'RE RUNNING OUT OF

1 WITNESSES FOR THE DAY.

2 PROCEED, COUNSEL.

3 MR. RIVIN: LET'S GET THROUGH THIS. ALL RIGHT.

4 YOUR HONOR, THANK YOU.

5 Q MR. MALPASS, ON TUESDAY MR. SHAW SHOWED YOU  
6 SOME TESTIMONY OF ROGER RYMAN ON THE SCREEN; DO YOU  
7 REMEMBER THAT?

8 A YES.

9 Q AND HE ALSO SHOWED YOU, WHEN HE WAS TAKING  
10 YOU THROUGH YOUR DIRECT EXAMINATION, SOME COAST LETTERS.  
11 AND I BELIEVE YOU INDICATED THAT YOU BASED YOUR OPINION  
12 REGARDING THE VIOLATION OF THE AUTOMATIC STAY HAVING  
13 REVIEWED THOSE LETTERS AND THE TESTIMONY; DO YOU RECALL  
14 THAT TESTIMONY?

15 A NO, THAT'S NOT WHAT I BASED MY OPINION ON.  
16 I FORMED AN OPINION, AND THEN AFTER I HAD -- AFTER -- I  
17 FORMED THE OPINION WELL BEFORE THAT TIME. THE LETTERS AND  
18 TESTIMONY BUTTRESS MY OPINION. THEY'RE CONSISTENT WITH IT  
19 THAT THE STAY WAS VIOLATED.

20 Q DO YOU RECALL STATING IN -- ON DIRECT THAT  
21 COAST MAY HAVE HAD A RIGHT TO HAVE CERTAIN KINDS OF  
22 DISCUSSIONS WITH MEMBERS EVEN DURING THE BANKRUPTCY, IF  
23 THEY WERE COAST TO COAST MEMBERS?

24 A YES. I DON'T -- EXCEPT I DON'T KNOW WHAT  
25 COAST -- AT MOST THEY WOULD BE PERMITTED TO HAVE SOME  
26 DISCUSSIONS.

1 Q ALL I'M ASKING YOU IS --

2 A I TESTIFIED TO THAT.

3 Q -- YOU INDICATED COAST TO COAST WAS  
4 PERMITTED TO CONTACT ITS MEMBERS DURING THE BANKRUPTCY,  
5 NOTWITHSTANDING THE AUTOMATIC STAY?

6 A IF I SAID THAT, COAST MAY HAVE BEEN.  
7 BECAUSE I DON'T KNOW WHAT COAST'S CONTRACTS SAY, MR. RIVIN.

8 Q SO THERE MIGHT HAVE BEEN A RIGHT OF COAST TO  
9 HAVE CERTAIN KINDS OF DISCUSSIONS?

10 A DEPENDING, AGAIN, ON WHAT ITS CONTRACTS SAY.

11 Q BUT YOU WOULD NEED TO SEE THE CONTRACT TO  
12 DETERMINE WHETHER OR NOT CERTAIN TYPES OF DISCUSSIONS WERE  
13 PERMITTED OR NOT PERMITTED?

14 A YES.

15 Q THE DETERMINATION OF WHETHER COAST VIOLATED  
16 THE AUTOMATIC STAY DEPENDS ON WHAT COAST IS SAYING TO ITS  
17 MEMBERS IN THE LETTERS; ISN'T THAT RIGHT?

18 A IT DEPENDS ON WHAT THE PURPOSE OF IT WAS.  
19 NOT JUST WHAT WAS SAID, BUT WHAT WAS -- WHAT THE EFFECT  
20 WAS.

21 Q ALL RIGHT. SO YOU NEED THE LETTERS, SEE  
22 WHAT'S IN THE LETTERS AND, YOU KNOW, THE PURPOSE OF THE  
23 LETTERS IN ORDER TO MAKE A DETERMINATION AS TO WHETHER OR  
24 NOT THERE'S BEEN A VIOLATION OF THE AUTOMATIC STAY; IS THAT  
25 RIGHT?

26 A AS SOON AS YOU TELL ME THAT THEY HAD LETTERS

1 GOING ABOUT SWITCHING HOME PARK MEMBERSHIP, THAT'S A STAY  
2 VIOLATION. I DON'T NEED TO KNOW ANYTHING ELSE ABOUT WHAT  
3 WAS SAID.

4 Q BUT YOU NEED TO SEE; YOU NEED TO KNOW WHAT'S  
5 IN THE LETTERS?

6 A AS SOON AS THERE'S CONTACT ABOUT ANYTHING  
7 HAVING TO DO WITH CHANGING THOSE CONTRACTS --

8 Q RIGHT.

9 A -- I DON'T NEED TO KNOW WHAT'S IN THE  
10 LETTERS.

11 Q YOU HAD TO KNOW SOME OF THE LANGUAGE IN THE  
12 LETTERS, DIDN'T YOU, WHAT WAS IN THE LETTERS?

13 A I WOULD HAVE TO EITHER KNOW THAT OR HAVE  
14 BEEN SUPPLIED WITH THE HYPOTHETICAL FACT SITUATION AS AN  
15 EXPERT.

16 MR. RIVIN: WELL, LET'S TAKE A LOOK AT SOME  
17 DEPOSITION TESTIMONY, IF WE COULD, STARTING AT PAGE 480,  
18 LINE 21, THROUGH 481, LINE 8, MR. MOSHENKO. IT WOULD BE IN  
19 VOLUME V.

20 MR. MOSHENKO: WHICH VOLUME?

21 MR. RIVIN: V.

22 MR. MOSHENKO: I DON'T HAVE VOLUME V, PAGE 481.

23 MR. RIVIN: 480.

24 MR. MOSHENKO: 483?

25 MR. RIVIN: 480, LINE 21, THROUGH 481, LINE 8. IF  
26 YOU'D LIKE TO LOOK AT IT IN MY BINDER.

1 MR. MOSHENKO: SURE.

2 NO OBJECTION.

3 MR. RIVIN: THANK YOU.

4 "QUESTION: MR. MALPASS, TELL ME ANY OF THE  
5 STATEMENTS CONTAINED IN THE COAST LETTERS TO ITS MEMBERS  
6 AND TO ALL SEASONS' MEMBERS THAT YOU FIND OBJECTIONABLE.

7 "ANSWER: I PREVIOUSLY TESTIFIED I HAVEN'T  
8 SEEN THE LETTERS, MR. RIVIN. UNLESS YOU ARE TRYING TO BE  
9 MISLEADING OR ARGUMENTATIVE IN SOME WAY, I CAN'T ANSWER  
10 THAT QUESTION.

11 "QUESTION: BUT YOU FORMED AN OPINION THAT  
12 THE LETTERS SENT BY COAST VIOLATED THE AUTOMATIC STAY; IS  
13 THAT CORRECT?

14 "ANSWER: YES."

15 SO YOU REACHED THE CONCLUSION THAT -- THAT  
16 THE COAST LETTERS VIOLATED THE AUTOMATIC STAY WITHOUT  
17 SEEING THE LETTERS; IS THAT RIGHT?

18 A AT THE TIME THAT I WAS TESTIFYING IN MY  
19 DEPOSITION, THAT'S CORRECT.

20 Q AND YOU HAD JUST BEEN HIRED SHORTLY BEFORE  
21 THE DEPOSITION, A COUPLE WEEKS BEFORE THE DEPOSITION; IS  
22 THAT RIGHT?

23 A YES.

24 Q ISN'T IT TRUE THAT YOU FORMED YOUR OPINION  
25 ON VIOLATION OF THE AUTOMATIC STAY AS SOON AS MR. MOSHENKO  
26 HIRED YOU FOR YOUR NEXT ASSIGNMENT FOR MR. NOVELLI?

1 A NO.

2 Q ISN'T IT TRUE THAT MR. NOVELLI AND  
3 MR. MOSHENKO WANTED YOU TO TESTIFY THAT THERE WAS A  
4 VIOLATION OF THE AUTOMATIC STAY, AND YOU WERE THEIR MAN?

5 A NO.

6 Q I'D LIKE TO GO TO EXHIBIT 1691, PLEASE.  
7 MR. SHAW ASKED YOU SOME QUESTIONS ABOUT THIS  
8 DOCUMENT WHICH IS FILED IN THE FIRST NATIONWIDE RESORT  
9 MANAGEMENT BANKRUPTCY, VOLUNTARY TRANSFER OF MEMBER  
10 INTEREST.

11 AND THERE WAS SOME LANGUAGE IN HERE. AND I  
12 DIDN'T WRITE DOWN EXACTLY WHERE IT IS, BUT IT AUTHORIZES  
13 TRAVEL AMERICA TO CONTACT THE MEMBERS OF FIRST NATIONWIDE.

14 DO YOU REMEMBER SEEING THAT?

15 A IT'S AT THE END OF THE ORDER.

16 Q LET'S LOOK AT THE END OF THE ORDER.

17 TAKE A LOOK AT PARAGRAPH 4. THERE IT IS.

18 "THE TRUSTEE IS HEREBY AUTHORIZED TO PERMIT TRAVEL AMERICA  
19 TO CONTACT THE DEBTOR'S MEMBERS FOR THE PURPOSE OF ADVISING  
20 THE MEMBERS THAT TRAVEL AMERICA HAS AGREED TO HONOR THE  
21 FIRST NATIONWIDE RESORT MANAGEMENT MEMBERSHIP CONTRACTS  
22 WITHOUT ANY ADDITIONAL OBLIGATION TO MEMBERS."

23 NOW, THIS AUTHORIZED THE TRUSTEE TO PERMIT  
24 TRAVEL AMERICA TO CONTACT THE MEMBERS.

25 YOU HAVE NO KNOWLEDGE WHETHER THE TRUSTEE  
26 ACTUALLY DID AUTHORIZE TRAVEL AMERICA TO CONTACT THE

1 MEMBERS; IS THAT RIGHT?

2 MR. MOSHENKO: OBJECTION. THE DOCUMENT SPEAKS FOR  
3 ITSELF.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES, I DO. I TALKED TO JIM JOSEPH  
6 ABOUT IT.

7 BY MR. RIVIN: Q AND JIM JOSEPH TOLD YOU THAT HE  
8 AUTHORIZED -- AFTER THIS ORDER WAS ENTERED, HE AUTHORIZED  
9 TRAVEL AMERICA TO CONTACT THE DEBTOR'S MEMBERS?

10 A WELL, THIS ORDER HAS THE EFFECT OF DOING SO.

11 Q AUTHORIZING THE TRUSTEE --

12 A AUTHORIZED TO PERMIT. THIS WAS THE ORDER.

13 I MEAN, THIS WAS CLEAR THAT THAT WAS GOING TO HAPPEN. I  
14 TALKED TO JIM JOSEPH ABOUT WHETHER THAT HAD ACTUALLY  
15 OCCURRED.

16 Q AT THIS TIME?

17 A PROBABLY AT SOME POINT DURING THE ALL  
18 SEASONS CASE.

19 Q IN APRIL OF 1998, I MEAN, THIS WAS AN ORDER  
20 THAT AUTHORIZED THE TRUSTEE TO PERMIT TRAVEL AMERICA TO  
21 CONTACT THE MEMBERS --

22 A RIGHT.

23 Q -- RIGHT?

24 AND I THINK YOU TESTIFIED IN RESPONSE TO  
25 MR. SHAW'S QUESTIONS THAT IN FIRST NATIONWIDE, THE  
26 AUTOMATIC STAY WAS IN EFFECT AT LEAST THROUGH THIS DATE;

1 RIGHT?

2 A YES.

3 Q LET'S PUT UP EXHIBIT 2150, PAGE 334. THIS  
4 IS THE DOCUMENT THAT I SHOWED YOU THE OTHER DAY.

5 THIS IS THE TRAVEL AMERICA LETTER OF AUGUST  
6 27, 1997, SENT TO MEMBERS OF THOUSAND ADVENTURES AND ALL  
7 SEASONS AND FIRST NATIONWIDE AND CUTTY'S TELLING THE PEOPLE  
8 THAT THEY WERE PROUD TO ANNOUNCE THAT -- THE NEW RECIPROCAL  
9 AGREEMENT BETWEEN THEM. AND THEY WERE TELLING THESE  
10 MEMBERS THEY ARE NOW PART OF A NEW RECIPROCAL NETWORK,  
11 WEREN'T THEY?

12 A I MEAN, IT SAYS THERE'S A RECIPROCAL  
13 AGREEMENT IN PLACE.

14 Q WELL, YOU TESTIFIED THE OTHER DAY,  
15 MR. MALPASS, THAT YOU KNEW WHAT WAS GOING ON; YOU KNEW THAT  
16 THERE WAS SOMETHING IN PLACE TO HELP THE MEMBERS?

17 A I KNEW THAT -- I HAD DISCUSSIONS THAT THERE  
18 WERE NEGOTIATIONS GOING ON WITH THAT PURPOSE IN MIND, YES.

19 Q AND YOU HAD THOSE DISCUSSIONS WITH  
20 MR. NOVELLI?

21 A YES.

22 Q AND YOU HAD THOSE DISCUSSIONS WITH  
23 MR. MOSHENKO, TOO?

24 A I'M NOT CERTAIN OF THAT.

25 Q THESE ALL SEASONS MEMBERS WHO RECEIVED THIS  
26 LETTER, THEY WERE STILL MEMBERS OF ALL SEASONS, WEREN'T

1 THEY?

2 A I DON'T KNOW THAT. I ASSUME SO. I DON'T  
3 SEE WHO YOU'RE SENDING IT TO HERE.

4 Q IF THESE LETTERS WENT TO THE MEMBERS OF ALL  
5 SEASONS IN AUGUST, IN EARLY SEPTEMBER OF 1997, THOSE  
6 MEMBERS -- THOSE PEOPLE WERE STILL MEMBERS OF ALL SEASONS  
7 AT THAT TIME; RIGHT?

8 A YOU'RE ASKING ME -- YEAH. IF THAT'S TRUE,  
9 YES, HYPOTHETICALLY. IF YOU'RE ASKING ME MY OWN KNOWLEDGE,  
10 I DON'T KNOW.

11 Q AND THESE MEMBERS ARE BEING TOLD THAT ALL  
12 SEASONS ENTERED INTO A NEW RECIPROCAL AGREEMENT TO FORM A  
13 NEW COMPANY CALLED "TRAVEL AMERICA"?

14 A YES.

15 Q AND THESE MEMBERS OF ALL SEASONS -- WOULD  
16 YOU HIGHLIGHT THE LAST SENTENCE OF THE FIRST PARAGRAPH.  
17 THESE ALL SEASONS MEMBERS ARE AUTOMATICALLY  
18 ENROLLED AS A MEMBER IN TRAVEL AMERICA WITH NO PURCHASE  
19 REQUIREMENTS AND NO ADDITIONAL DUES. AND THESE MEMBERS NO  
20 LONGER NEEDED ALL SEASONS BECAUSE THEY NOW HAD TRAVEL  
21 AMERICA PURSUANT TO THIS RECIPROCAL AGREEMENT; ISN'T THAT  
22 RIGHT?

23 A I DON'T THINK THAT'S TRUE. WE'RE NOT  
24 TALKING ABOUT INTERFERING WITH THE HOME PARK RELATIONSHIP,  
25 MR. RIVIN.

26 Q THE ALL SEASONS MEMBERS, WASN'T THAT AN

1 ASSET? WASN'T -- THE MEMBERSHIP RELATIONSHIP, WASN'T THAT  
2 AN ASSET OF ALL SEASONS?

3 A YES, IT WAS.

4 Q AND THIS LETTER FROM TRAVEL AMERICA TO THE  
5 MEMBERS TELLING THESE PEOPLE THAT YOU'RE AUTOMATICALLY  
6 ENROLLED IN A NEW SYSTEM, DID THAT HAVE SOME EFFECT  
7 POSSIBLY ON THAT RELATIONSHIP?

8 A I THINK YOU MADE IT MORE VALUABLE. IT  
9 ENHANCED IT. I'M NOT AN EXPERT IN RECIPROCAL PARK  
10 MANAGEMENT AND MARKETING, MR. RIVIN. IT APPEARED TO ME  
11 THEY'RE GIVING THEM SOMETHING MORE THAN THEY HAD BEFORE AS  
12 OPPOSED TO TRYING TO CHANGE HOME PARK RELATIONSHIPS, WHICH  
13 INTERFERES WITH WHOEVER HAS THE HOME PARK RELATIONSHIP  
14 CONTRACTS.

15 Q AND THIS IS A VIOLATION OF THE AUTOMATIC  
16 STAY, ISN'T IT?

17 A NO.

18 Q ALL SEASONS IS TELLING -- EXCUSE ME.  
19 TRAVEL AMERICA IS TELLING FIRST NATIONWIDE  
20 MEMBERS AND ALL SEASONS MEMBERS THAT THEY'RE AUTOMATICALLY  
21 ENROLLED IN A BRAND NEW ORGANIZATION, IN A RECIPROCAL  
22 ORGANIZATION, IN A BRAND NEW RECIPROCAL RESORT SYSTEM;  
23 THEY'RE ENROLLED AS A MEMBER WITH NO PURCHASE REQUIREMENTS  
24 AND NO ADDITIONAL DUES --

25 A MR. RIVIN --

26 Q -- AND THEY DON'T NEED ALL SEASONS ANYMORE,

1 AND THEY DON'T NEED FIRST NATIONWIDE ANYMORE; ISN'T THAT  
2 RIGHT?

3 A THIS TALKS ABOUT AN AGREEMENT WITH ALL  
4 SEASONS. SO IF ALL SEASONS IS PART OF THAT, THEY HAVE  
5 AGREED VOLUNTARILY. DEBTORS CAN AGREE VOLUNTARILY TO DO  
6 THINGS, AND IT DOESN'T VIOLATE THE AUTOMATIC STAY. IT'S  
7 ONLY WHEN -- THE STAY DOESN'T EXTEND TO THAT.

8 Q ALL SEASONS HAD NO RIGHT. THE DEBTOR, ALL  
9 SEASONS, HAD NO RIGHT TO ENTER INTO THIS AGREEMENT. IF  
10 THAT TYPE OF AGREEMENT WAS GOING TO BE ENTERED INTO, IT WAS  
11 THE TRUSTEE, MR. DAFF, WHO HAD THE RIGHT TO ENTER INTO THAT  
12 AGREEMENT?

13 MR. MOSHENKO: YOUR HONOR, OBJECTION. IT LACKS  
14 FOUNDATION BECAUSE WE DON'T KNOW WHEN THE AGREEMENT WAS  
15 ENTERED INTO, WHETHER IT WAS AT THE TIME OF MR. DAFF OR  
16 WHEN THE DEBTOR WAS IN POSSESSION OR EVEN BEFORE THE  
17 BANKRUPTCY.

18 THE COURT: SUSTAINED.

19 BY MR. RIVIN: Q ARE YOU AWARE OF WHEN THIS  
20 RECIPROCAL AGREEMENT WAS ENTERED INTO?

21 A NO.

22 Q IF THE RECIPROCAL AGREEMENT WERE ENTERED  
23 INTO DURING THE TIME THAT MR. DAFF WAS THE TRUSTEE,  
24 WOULDN'T IT HAVE BEEN UP TO MR. DAFF TO APPROVE THAT  
25 AGREEMENT?

26 A I DON'T KNOW THAT HE DIDN'T, NUMBER ONE.

1 NUMBER TWO, IT'S -- TRUSTEES FREQUENTLY DELEGATE TO DEBTORS  
2 MANAGEMENT IN THE WAY THE COMPANIES ARE RUN.

3 Q MR. DAFF DIDN'T DELEGATE TO RAY NOVELLI, DID  
4 HE?

5 A YEAH, HE DID.

6 Q WHAT DID HE DELEGATE TO RAY NOVELLI?

7 A THERE WERE THINGS THAT MR. NOVELLI WAS  
8 INVOLVED IN AS FAR AS MARKETING AND DEALING WITH THE  
9 MEMBERS THAT MR. DAFF -- I MEAN, WHEN I DEALT WITH HIM, HE  
10 WASN'T TRYING TO RUN THE PARKS IN A HANDS-ON BASIS. THEY  
11 WERE -- THE ORGANIZATION THAT WAS THERE, THE PEOPLE THAT  
12 DID MANAGEMENT, STILL CONTINUED TO DO MANAGEMENT. MR. DAFF  
13 DIDN'T COME IN AND DO ANYTHING.

14 Q WHO DID THEY REPORT TO, SIR?

15 A ULTIMATELY THEY REPORTED TO MR. DAFF. BUT  
16 MY EXPERIENCE WAS THAT MR. NOVELLI STILL HAD INPUT INTO  
17 THE PROCESS, AND MR. DAFF WOULD CONSULT WITH HIM ABOUT  
18 VARIOUS MATTERS.

19 Q DID MR. DAFF EVER DELEGATE TO MR. NOVELLI  
20 THE RIGHT TO ENTER INTO A RECIPROCAL AGREEMENT --

21 A I DON'T KNOW.

22 Q -- BETWEEN ALL SEASONS AND FIRST NATIONWIDE  
23 AND CUTTY'S?

24 A I DON'T KNOW. BUT EVEN IF, AS YOU'RE  
25 SUGGESTING, THE AGREEMENT WERE NOT AUTHORIZED, THAT STILL  
26 WOULDN'T BE A STAY VIOLATION. THERE'S A DIFFERENCE. SO

1 IT'S NOT.

2 MR. RIVIN: MOVE TO STRIKE THE LAST PORTION OF THAT  
3 ANSWER ON THE BASIS IT WAS NONRESPONSIVE.

4 THE COURT: MOTION TO STRIKE IS GRANTED.

5 BY MR. RIVIN: Q MR. MALPASS, YOU KNEW THIS WAS  
6 GOING ON; YOU KNEW THAT TRAVEL AMERICA WAS CONTACTING ALL  
7 OF THESE PEOPLE DURING THE BANKRUPTCY, DIDN'T YOU?

8 A TRAVEL AMERICA? AND ALL THESE PEOPLE? YOU  
9 HAVE TO BE -- DEFINE YOUR TERMS BETTER.

10 Q YOU KNEW THAT TRAVEL AMERICA WAS CONTACTING  
11 ALL SEASONS MEMBERS, ALL SEASONS RESORTS MEMBERS, DURING  
12 THE BANKRUPTCY?

13 A NO.

14 Q YOU KNEW THAT MR. NOVELLI WAS CONTACTING  
15 THESE PEOPLE TO TELL THEM THERE WAS A NEW RECIPROCAL  
16 ARRANGEMENT?

17 A NO.

18 Q YES OR NO?

19 A NO.

20 Q MR. MALPASS, THE TRUSTEE, BANKRUPTCY  
21 TRUSTEE, MR. DAFF, HAS A FIDUCIARY RESPONSIBILITY TO THE  
22 ESTATE; ISN'T THAT RIGHT? BASIC BANKRUPTCY LAW,  
23 MR. MALPASS?

24 A AND YOU'RE ASKING -- TECHNICALLY THE  
25 FIDUCIARY RESPONSIBILITY RUNS TO CREDITORS AND PARTIES IN  
26 INTEREST, AND HE HAS A JOB TO DO VIS-A-VIS THE ESTATE. I

1 MEAN, WE CAN QUIBBLE ABOUT -- IF YOU WANT TO SAY YES, HE IS  
2 SUPPOSED TO PROTECT THE ESTATE, MY ANSWER WOULD BE YES.

3 Q HE HAS A FIDUCIARY RESPONSIBILITY?

4 A THE ESTATE ISN'T A SEPARATE ENTITY IN  
5 BANKRUPTCY.

6 Q HE HAS A FIDUCIARY RESPONSIBILITY, DOES HE  
7 NOT?

8 A HE IS A FIDUCIARY IN THE BANKRUPTCY CONTEXT,  
9 YES.

10 Q AND HE MUST SERVE AND PROTECT THE FINANCIAL  
11 INTEREST OF ALL GROUPS WHO HAVE SOME CLAIM ON THE ESTATE?

12 A YES.

13 Q AND THAT WOULD APPLY TO MR. DAFF, AND IT  
14 WOULD APPLY TO MR. JOSEPH?

15 A BOTH OF THEM ARE -- WERE TRUSTEES IN TWO OF  
16 THESE CASES, YES.

17 Q AND MR. JOSEPH NEVER ASSERTED A CLAIM  
18 AGAINST COAST FOR VIOLATION OF THE AUTOMATIC STAY?

19 MR. MOSHENKO: ASSUMES A FACT NOT IN EVIDENCE, YOUR  
20 HONOR. LACKS FOUNDATION OF THIS WITNESS.

21 THE COURT: I'M GOING TO ALLOW THE QUESTION.

22 MR. RIVIN: THANK YOU, YOUR HONOR.

23 THE WITNESS: ACTUALLY HE DID. HE HAD MR. DIAMOND  
24 SEND THEM A LETTER SAYING, "STAY AWAY FROM THE MEMBERS OR  
25 I'LL SUE YOU."

26 BY MR. RIVIN: Q ARE YOU REFERRING TO THE LETTER

1 THAT MR. SHAW SHOWED YOU?

2 A THAT'S THE ONE I -- YES.

3 Q WHAT WAS THE DATE OF THAT LETTER?

4 A I DON'T RECALL.

5 Q YOU HAVE PERSONAL KNOWLEDGE THAT JIM JOSEPH  
6 HAD MR. DIAMOND SEND A LETTER TO COAST TO COAST TELLING --  
7 IN -- DURING THE FIRST NATIONWIDE BANKRUPTCY?

8 A I'VE SEEN THE LETTER, YES. THAT'S WHAT I  
9 RECALL.

10 Q EVERYBODY HAS SEEN THE LETTER, MR. MALPASS.  
11 IT'S A LETTER FROM 1992. IS THAT WHAT YOU'RE REFERRING TO?

12 A THAT'S THE ONE, YES. IT'S IN THE ALL  
13 SEASONS, FIRST ALL SEASONS.

14 Q SO NOW LET'S GO TO FIRST NATIONWIDE, THE  
15 QUESTION I ASKED YOU BEFORE.

16 MR. JOSEPH AS THE TRUSTEE OF FIRST  
17 NATIONWIDE FROM 1996 THROUGH THE PRESENT TIME HAS NEVER  
18 ASSERTED THAT COAST VIOLATED THE AUTOMATIC STAY?

19 A NOT TO MY KNOWLEDGE.

20 MR. MOSHENKO: OBJECTION. LACKS FOUNDATION.

21 THE COURT: EXCUSE ME JUST A MINUTE. WHAT WAS THE  
22 ANSWER?

23 THE WITNESS: I SAID NOT TO MY KNOWLEDGE, YOUR  
24 HONOR.

25 THE COURT: OKAY. OVERRULED.

26 BY MR. RIVIN: Q AND CHARLES DAFF NEVER CLAIMED

1 THAT COAST VIOLATED THE AUTOMATIC STAY?

2 A NOT TO MY KNOWLEDGE.

3 Q AND THE DEBTOR IN POSSESSION IN THE REVCON  
4 CASE, ONE OF THE PLAINTIFFS IN THIS CASE, NEVER ASSERTED IN  
5 THE BANKRUPTCY COURT THAT COAST VIOLATED THE AUTOMATIC  
6 STAY?

7 A NO.

8 Q IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q AND YOU NEVER ASSERTED IT IN ANY OF THE  
11 CASES WHERE YOU REPRESENTED THE DEBTOR, WHERE YOU  
12 REPRESENTED MR. NOVELLI'S COMPANIES IN THE BANKRUPTCY  
13 COURT; YOU NEVER ASSERTED THAT COAST VIOLATED THE AUTOMATIC  
14 STAY?

15 A THAT'S CORRECT. MR. RIVIN, I DON'T WANT  
16 TO -- I DON'T WANT TO HAVE YOU PICKING UP THAT ANY OF THESE  
17 DEBTORS WERE MR. NOVELLI'S COMPANIES.

18 Q AND NO BANKRUPTCY COURT EVER CONCLUDED THAT  
19 COAST VIOLATED THE AUTOMATIC STAY?

20 A NOT TO MY KNOWLEDGE.

21 MR. RIVIN: I HAVE NO FURTHER QUESTIONS.

22 THE COURT: THANK YOU.

23 MR. RIVIN: COULD I HAVE ONE MOMENT, PLEASE? I  
24 HAVE ONE FURTHER THING TO COMMENT ON. I DON'T HAVE A  
25 QUESTION OF THE WITNESS, BUT IF MR. MOSHENKO HAS ANY  
26 FOLLOW-UP QUESTIONS, I WANTED TO TALK ABOUT EXCUSING OR NOT

1 EXCUSING THE WITNESS. WE WANTED TO MAKE SURE THAT THE  
2 WITNESS IS NOT EXCUSED. WE MAY WANT TO CALL HIM IN OUR  
3 CASE.

4 MR. MOSHENKO: YOUR HONOR, AS YOU KNOW, MR. SHAW  
5 HAD TO GO TO ANOTHER PROCEEDING, AND SO I'VE BEEN ASKED TO  
6 STEP IN AND DO THE REDIRECT, WITH THE COURT'S PERMISSION.

7 REDIRECT EXAMINATION

8 BY MR. MOSHENKO: Q MR. MALPASS, YOU'RE AWARE THAT  
9 FIRST NATIONWIDE IS A PLAINTIFF IN THIS ACTION; CORRECT?

10 A YES.

11 Q SO IN THIS ACTION YOU'RE ASSERTING THE  
12 CONDUCT -- WHICH WAS THE VIOLATION OF THE STAY AGAINST  
13 COAST TO COAST; CORRECT?

14 A YES.

15 Q YOU'RE ALSO AWARE MR. JOSEPH WAS HERE AS A  
16 WITNESS IN THIS CASE?

17 A YES.

18 Q YOU WERE JUST SHOWN THE DOCUMENT THAT TALKED  
19 ABOUT A NEW RECIPROCAL AGREEMENT WHICH RESULTED IN  
20 TENDERING THE OFFERING OF A FREE MEMBERSHIP, A NEW  
21 RECIPROCAL RELATIONSHIP; DO YOU RECALL WHICH DOCUMENT I'M  
22 TALKING ABOUT?

23 A YES, I DO.

24 Q OKAY. AND YOU, WHEN QUESTIONED BY  
25 MR. RIVIN, OFFERED THE OPINION THAT THAT -- THE EFFECT OF  
26 THAT LETTER MADE MEMBERSHIPS MORE VALUABLE.

1                   WHY DO YOU SAY THAT?

2           A        WELL, THE VALUE -- PART OF THE VALUE OF THE  
3 MEMBERSHIPS IS THE RIGHT TO USE MULTIPLE PARKS. THAT  
4 WAS -- IN THE COURSE OF REPRESENTING THESE COMPANIES, I  
5 LEARNED ENOUGH ABOUT THE BUSINESS TO UNDERSTAND THAT NOT  
6 MANY OF THE R.V. PEOPLE WANTED TO USE JUST ONE PARK. THEY  
7 WANTED TO TRAVEL AROUND AND HAVE ACCESS TO MULTIPLE PARKS.  
8 AND THE VARIOUS SYSTEMS THAT THEY COULD JOIN GAVE THEM  
9 ACCESS TO MULTIPLE PARKS IN THE AREAS THAT THEY WANTED TO.  
10 MADE THEIR MEMBERSHIPS MORE VALUABLE.

11                   IN FACT, THAT WAS OFTEN WHY THEY WOULD  
12 MAINTAIN THEM. YOU'D HAVE PEOPLE THAT WOULD BELONG TO A  
13 PARK IN OHIO, AND THEY USE IT IN THE SUMMER; AND THEN THEY  
14 WANTED TO GO TO ORLANDO IN THE WINTER. AND IF THEY COULD  
15 DO THAT THROUGH THEIR MEMBERSHIP, THAT MADE IT MORE  
16 VALUABLE TO THEM.

17           Q        YOU ALSO OFFERED THE OPINION IN RESPONSE TO  
18 MR. RIVIN'S QUESTION THAT YOU FELT IT DID NOT CHANGE THE  
19 RELATIONSHIP THAT THE MEMBERS HAD WITH A.S.R. BEFORE THE  
20 SENDING OF THAT LETTER. WHY DID YOU SAY THAT?

21           A        WELL, BECAUSE IT'S NOT -- IF YOU HAD A  
22 CONTRACT WITH A.S.R. AND YOU GOT OFFERED A RECIPROCAL  
23 MEMBERSHIP, YOU STILL HAD YOUR RELATIONSHIP WITH A.S.R.  
24 THEY WEREN'T SAYING, "DON'T BE A.S.R. MEMBERS." IN FACT,  
25 IT SAID THAT A.S.R. HAD JOINED INTO THE RECIPROCAL  
26 ARRANGEMENT.

1           Q           YOU ALSO OFFERED THE OPINION IN RESPONSE TO  
2 MR. RIVIN'S QUESTION THAT YOU DID NOT BELIEVE THAT THAT  
3 LETTER WOULD HAVE CONSTITUTED A VIOLATION OF THE STAY.

4                       WHY DID YOU SAY THAT?

5           A           WELL, IT'S NOT AN ATTEMPT TO TAKE PROPERTY  
6 FROM THE DEBTOR OR INTERFERE WITH PROPERTY OF THE DEBTOR.  
7 IT'S ADDING SOMETHING ON, UNLIKE TRYING TO GET THEM TO  
8 SHIFT HOME PARKS.

9           Q           YOU SAW A LOT OF EXHIBITS THIS MORNING PUT  
10 UP ON THE SCREEN, MANY OF WHICH EXHIBITS SHOW THE COURT  
11 MAKING ORDERS IN 1998 DIRECTING WHAT COULD AND COULD NOT OR  
12 SHOULD AND SHOULD NOT HAPPEN WITH MEMBER CONTRACTS.

13                      DO YOU RECALL THAT?

14           A           YES.

15           Q           NOW, WHY WOULD THE -- OKAY. WERE THOSE --  
16 THE ORDERS I'M REFERRING TO ARE FIRST NATIONWIDE ORDERS,  
17 BANKRUPTCY ORDERS?

18           MR. RIVIN: OBJECTION. LACK OF FOUNDATION. I'D  
19 LIKE TO KNOW -- I THINK WE SHOULD KNOW WHAT ORDERS WE'RE  
20 TALKING ABOUT.

21           THE COURT: OVERRULED.

22           BY MR. MOSHENKO: Q THE EXHIBIT 1691, THE FIRST  
23 NATIONWIDE BANKRUPTCY ORDER. NOW YOU KNOW WHICH ONE.  
24 THAT'S THE ORDER I'M REFERRING TO.

25           A           I RECALL THAT ORDER.

26           Q           NOW, THERE WAS NEVER A REJECTION OF THE

1 FIRST NATIONWIDE CONTRACTS PER SE; CORRECT?

2 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

3 THE COURT: OVERRULED.

4 IF YOU KNOW THE ANSWER, YOU CAN ANSWER IT.

5 THE WITNESS: I'M WELL AWARE OF THE CIRCUMSTANCES.

6 THE -- THAT ORDER DOES NOT PROVIDE FOR REJECTION. AND, IN

7 FACT, THEY SPECIFICALLY PROVIDE THAT THEY WERE NEVER

8 REJECTED IN THE FIRST NATIONWIDE.

9 BY MR. MOSHENKO: Q THERE WAS NEVER AN ORDER  
10 TERMINATING THE CONTRACTS?

11 A NO. THERE WAS --

12 Q THERE WAS NEVER AN ORDER TERMINATING THE  
13 CONTRACTS IN THE ALL SEASONS RESORTS BANKRUPTCY, WAS THERE?

14 A NO, THERE WASN'T.

15 Q THERE WAS NEVER AN ORDER TERMINATING THE  
16 CONTRACTS IN THE REVCON BANKRUPTCY?

17 A NO.

18 MR. RIVIN: OBJECTION. THIS IS CUMULATIVE. BEYOND  
19 THE SCOPE.

20 THE COURT: SUSTAINED.

21 BY MR. MOSHENKO: Q THE COURT WOULDN'T BE MAKING  
22 ORDERS AFFECTING WHAT HAPPENED TO THE MEMBERS IN 1998 IF  
23 THE MEMBERSHIP CONTRACTS WERE NOT A PART OF THE BANKRUPTCY  
24 ESTATE, WOULD IT?

25 MR. RIVIN: OBJECTION. CALLS FOR SPECULATION.

26 THE COURT: SUSTAINED.

1 BY MR. MOSHENKO: Q YOU OFFERED THE OPINION WHEN  
2 MR. RIVIN QUESTIONED YOU THAT THE LISTS OF MEMBERS ALONG  
3 WITH THE REFERENCE TO PERSONAL PROPERTY WOULD HAVE  
4 NECESSARILY INCLUDED AN UNDERSTANDING THAT THE MEMBERSHIP  
5 CONTRACTS WERE BEING SOLD OR TRANSFERRED IN OCTOBER OF  
6 1997.

7 DO YOU RECALL THAT?

8 A YES.

9 Q WERE YOU PRESENT AND PARTICIPATING IN THE  
10 DRAFTING OF THE PROCEDURE WHICH RESULTED IN THE DRAFTING OF  
11 THE WORDING OF THE ORDER?

12 A I SAW IT AND WAS AWARE OF IT, YES.

13 Q AND, IN FACT, YOU WERE REPRESENTING ALL  
14 SEASONS RESORTS AT THE TIME THAT THE ORDER WAS BEING  
15 DRAFTED, THE ONE THAT REFERRED TO PERSONAL PROPERTY AND  
16 MEMBER LISTS?

17 A YES.

18 Q OKAY. AND WAS THE SUBJECT OF REFERENCING  
19 THE MEMBER RIGHTS BY REFERRING TO THE MEMBER LISTS  
20 SOMETHING THAT WAS TAKEN UP BETWEEN YOU AND OTHER COUNSEL  
21 WHEN THE ORDER WAS BEING DRAFTED?

22 A YES.

23 Q AND BASED ON THAT EXPERIENCE, YOUR PERSONAL  
24 KNOWLEDGE, IT'S YOUR UNDERSTANDING THAT THE REFERENCE TO  
25 PERSONAL PROPERTY AND MEMBER LISTS INCLUDED A REFERENCE TO  
26 MEMBER CONTRACTS?

1           A           DEFINITELY.

2           MR. MOSHENKO:  COULD WE HAVE EXHIBIT 335 BROUGHT  
3 UP, PLEASE, MR. DURAN.  THE SECOND PAGE, PLEASE.  MAYBE  
4 IT'S THE THIRD PAGE.  ONE MORE.  THIRD PAGE.  HIGHLIGHT THE  
5 BOTTOM ABOVE THE BLOCK THERE, THE PERSONAL PROPERTY  
6 REFERENCE.

7           Q           ALL RIGHT.  MR. RIVIN ASKED YOU QUESTIONS  
8 ABOUT THIS LANGUAGE IN HIS DOCUMENT WHERE IT STATES,  
9 "PERSONAL PROPERTY AT VARIOUS LOCATIONS CONSISTS OF" AND  
10 THEN IT LISTS A BUNCH OF PERSONAL PROPERTY.

11                       NOW, THAT SPEAKS FOR ITSELF.  WE'RE TALKING  
12 ABOUT PERSONAL PROPERTY THAT IS LOCATED AT THE LOCATIONS;  
13 IS THAT CORRECT?

14           A           YES.  IT'S RELATIVELY STANDARD AUCTIONEER  
15 LANGUAGE.

16           Q           AND DO YOU HAVE ANY UNDERSTANDING BACK THEN  
17 WHERE THE MEMBERSHIP -- WHETHER THE MEMBERSHIP CONTRACTS  
18 WERE STORED AT THE VARIOUS LOCATIONS?

19           A           NOT TO MY KNOWLEDGE.

20           Q           YOU WERE ASKED SOME QUESTIONS BY MR. RIVIN  
21 REGARDING WHETHER ONCE THE PROPERTIES -- WE'RE DONE WITH  
22 THAT, MR. DURAN.

23                       ONCE THE PROPERTIES WERE SOLD AT THE AUCTION  
24 AND THE ASSETS OF THE ESTATE WERE SOLD, WERE TRANSFERRED TO  
25 THE NEW OWNERS, COULD THE STAY APPLY TO THE PROPERTY, THE  
26 ASSETS THAT WERE TRANSFERRED.

1 DO YOU RECALL THOSE QUESTIONS?

2 A YES.

3 Q ALL RIGHT. AND SO CAN THE STAY APPLY TO THE  
4 ACTUAL PROPERTIES THAT HAVE BEEN SOLD AND TRANSFERRED?

5 MR. RIVIN: OBJECTION. BEYOND THE SCOPE OF CROSS.

6 MR. MOSHENKO: THAT'S SPECIFICALLY WHAT HE ASKED  
7 HIM ABOUT.

8 THE COURT: OVERRULED.

9 THE WITNESS: THE STAY WOULDN'T APPLY TO PROPERTY  
10 THAT WAS TRANSFERRED OUT OF THE ESTATE, BUT IT WOULD STILL  
11 APPLY TO THE DEBTOR.

12 BY MR. MOSHENKO: Q OKAY. IN WHAT SENSE,  
13 ASSUMING -- THIS IS A HYPOTHETICAL QUESTION.

14 ASSUMING THAT ALL SEASONS RESORTS'  
15 PROPERTIES WERE SOLD AND THE MEMBERSHIP CONTRACTS WERE  
16 TRANSFERRED TO A NEW OWNER IN OCTOBER OF 1997, AND ASSUMING  
17 THAT COAST TO COAST SENT LETTERS IN NOVEMBER OR DECEMBER  
18 REFERRING TO THE MEMBERS OF THE RESORTS THAT HAD BEEN SOLD  
19 ENTITLED "DEAR ALL SEASONS RESORTS MEMBERS," AND THEN WENT  
20 ON AND TALKED ABOUT TO THE MEMBERS ABOUT THOSE  
21 PROPERTIES -- THOSE MEMBERSHIPS, IN WHAT SENSE COULD THAT  
22 STILL BE A VIOLATION OF A STAY?

23 YOU TESTIFIED WITH MR. RIVIN YOU THOUGHT IT  
24 WOULD STILL BE A VIOLATION OF THE STAY.

25 A AND I'LL ANSWER IT HYPOTHETICALLY BASED ON  
26 WHAT YOU'VE TOLD ME.

1                   IF THOSE FACTS WERE IN FACT WHAT HAD  
2 HAPPENED, MY OPINION WOULD BE THAT THERE WOULD STILL BE A  
3 STAY VIOLATION BECAUSE WHAT THE STAY DOES IS IT PROTECTS  
4 PEOPLE FROM -- PROTECTS THE DEBTOR FROM HAVING PEOPLE  
5 DIRECT LETTERS TO ITS PEOPLE THAT IT'S DONE BUSINESS WITH.  
6 THERE'S GOODWILL IN THE CORPORATION. IT HAS A NAME. THE  
7 TRUSTEE COULD STILL SELL IT. AND IF YOU HAVE PEOPLE THAT  
8 COME IN AND START DIRECTING LETTERS TO ITS CUSTOMER -- THIS  
9 IS ANALOGOUS TO A CUSTOMER LIST OR A CLIENT LIST IN MOST  
10 BUSINESSES, WHICH IS CONSIDERED TO BE PROPRIETARY. IF  
11 SOMEONE CONTACTS THOSE CUSTOMERS AND USES IT, IT  
12 POTENTIALLY -- WELL, IT'S DAMAGING THE ESTATE.

13                   THE EFFECT OF THE STAY IN THOSE  
14 CIRCUMSTANCES IS TO SAY, "DON'T DO IT. DON'T INTERFERE  
15 WITH THIS PROPERTY." AND, THEREFORE, THERE'S STILL A STAY  
16 VIOLATION. WHAT THE DAMAGE IS IS ANOTHER ISSUE. BUT  
17 THERE'S STILL A STAY VIOLATION, MR. MOSHENKO.

18           Q           WHAT IF HYPOTHETICALLY IN NOVEMBER OF 1997  
19 COAST TO COAST SENT A LETTER TO MR. NOVELLI TERMINATING THE  
20 ALL SEASONS RESORTS AFFILIATION WITH CAMP COAST TO COAST;  
21 WOULD THAT TYPE OF LETTER SENT CONSTITUTE A VIOLATION OF  
22 THE STAY?

23           MR. RIVIN: OBJECTION. BEYOND THE SCOPE.

24           THE COURT: SUSTAINED.

25           BY MR. MOSHENKO: Q THE STAY PREVENTS -- ALL  
26 RIGHT. MR. RIVIN ASKED YOU TO TALK ABOUT WHAT IF COAST TO

1 COAST HAD A CONTRACT, WOULD THEY HAVE THE RIGHT TO DO  
2 CERTAIN KINDS OF THINGS RELATING TO THEIR CONTRACT LIKE  
3 HAVE DISCUSSIONS WITH MEMBERS.

4 IF A THIRD PARTY HAD A CONTRACT WITH A  
5 DEBTOR IN A BANKRUPTCY, AND THERE WAS A STAY IN EFFECT, AND  
6 THE THIRD PARTY ASSERTED TO CHANGE OR MODIFIED THE CONTRACT  
7 THAT THE THIRD PARTY HAD, AS MR. RIVIN ASKED YOU, WOULD  
8 THAT CONSTITUTE A VIOLATION OF THE STAY?

9 I'LL STOP THERE.

10 MR. RIVIN: THIS IS BEYOND THE SCOPE OF THE CROSS,  
11 YOUR HONOR.

12 THE COURT: I THINK SO. SUSTAINED.

13 BY MR. MOSHENKO: Q MR. RIVIN ASKED YOU ON HIS  
14 RE CROSS COULD COAST HAVE HAD CONVERSATIONS, CERTAIN KINDS  
15 OF DISCUSSIONS, WITH THE MEMBERS. YOUR RESPONSE WAS YOU  
16 WOULD WANT TO CONSIDER THE CONTRACT THAT COAST HAD.

17 DOES THE CONTRACT THAT COAST HAD INFLUENCE  
18 THE CONTINUATION OF THE EFFECT OF THE STAY ORDER IN ANY  
19 WAY?

20 A NO.

21 Q IF A CONTRACT EXISTS DURING THE STAY, CAN A  
22 THIRD PARTY SEEK TO ENFORCE THE CONTRACT IF THE EFFECT OF  
23 THE ENFORCEMENT OF THE CONTRACT IS AN INTERFERENCE WITH THE  
24 ASSETS OF THE ESTATE?

25 MR. RIVIN: THAT'S BEYOND THE SCOPE, YOUR HONOR.

26 THE COURT: OVERRULED.

1                   YOU MAY ANSWER.

2                   THE WITNESS: NO, YOU CAN'T ENFORCE THE CONTRACT  
3 AND INTERFERE WITH THE PROPERTY WITHOUT VIOLATING THE  
4 AUTOMATIC STAY, REGARDLESS OF WHAT THE CONTRACT SAYS.

5                   BY MR. MOSHENKO: Q CAN YOU MODIFY THE CONTRACT OR  
6 CANCEL THE CONTRACT?

7                   A           THE SAME ANSWER. THE STAY IS BROAD ENOUGH  
8 TO PICK UP -- I DON'T CARE WHAT LEGAL LABEL YOU PUT ON IT.  
9 IF IT'S ASSERTING CONTROL OVER PROPERTY OF THE ESTATE,  
10 INTERFERING WITH IT, IT'S A VIOLATION OF THE STAY.

11                  Q           YOU CANNOT CANCEL YOUR CONTRACT?

12                  A           NO, YOU CANNOT WITHOUT VIOLATING THE STAY.  
13 AND CERTAINLY MODIFICATION WOULD BE THE SAME THING. IT'S  
14 JUST A PIECE OF CANCELLATION.

15                  Q           NOW, YOU WERE ASKED SOME QUESTIONS ABOUT  
16 WHETHER YOU HAD SEEN CERTAIN LETTERS AS OF THE TIME OF YOUR  
17 DEPOSITION; DO YOU RECALL THAT?

18                  A           YES.

19                  Q           AND, IN FACT, WE SAW SOME DEPOSITION  
20 TESTIMONY INDICATING THAT YOU HAD NOT SEEN CERTAIN  
21 REFERENCE LETTERS; DO YOU RECALL THAT?

22                  A           YES.

23                  Q           AS AN EXPERT WITNESS, DO YOU UNDERSTAND THAT  
24 EXPERTS ARE GIVEN ACCESS TO INFORMATION AND ASKED IF THEY  
25 CAN FORM OPINIONS ON THAT INFORMATION, EVEN THOUGH THEY MAY  
26 NOT HAVE PERSONALLY BEEN PRESENT DURING THAT INFORMATION,

1 EVENT?

2 A YES. THAT'S WHAT I WAS ASKED TO DO.

3 Q AND AS YOU, I THINK, TESTIFIED, SOME  
4 INFORMATION WAS PROVIDED YOU BY MR. SHAW, AND YOU  
5 CONSIDERED THAT INFORMATION IN FORMING YOUR OPINIONS?

6 A YES, THAT'S CORRECT.

7 Q NOW, YOU ASSUMED THE ACCURACY OF THE  
8 INFORMATION YOU WERE TOLD; IS THAT CORRECT?

9 A I DID. AND -- YES, BOTH -- I WANT TO  
10 DIFFERENTIATE, THOUGH. THERE WAS INFORMATION I WAS GIVEN  
11 WHEN I INITIALLY FORMED MY OPINIONS, AND THERE WAS LATER  
12 INFORMATION DURING THIS TRIAL.

13 Q RIGHT.

14 FOR EXAMPLE, THE SPECIFIC ITEM THAT YOU  
15 TESTIFIED TO ABOUT 18,000 LETTERS BEING SENT TO ALL SEASONS  
16 RESORTS MEMBERS, YOU TESTIFIED THAT YOU WERE AGREEING WITH  
17 MR. SHAW?

18 A YES, THAT'S CORRECT.

19 Q YOU ASSUMED, FROM WHAT MR. SHAW SAID, THAT  
20 TO BE ACCURATE?

21 A I TRUST MR. SHAW TO BE ACCURATE. PLUS I HAD  
22 SEEN THE 18,000 NUMBER LIST. SO IT WAS CONSISTENT.

23 Q ALSO AS AN EXPERT, IF IT TURNS OUT THAT  
24 CERTAIN EVIDENCE OR INFORMATION THAT YOU'RE PROVIDED, THAT  
25 YOU ASSUMED TO BE CORRECT, BECAUSE YOU'RE INSTRUCTED AS AN  
26 EXPERT TO DO THAT, TURNS OUT TO BE INCORRECT, WOULD THAT

1 INFLUENCE YOUR OPINION?

2 A IT WOULD.

3 Q IT COULD IN WHAT SENSE?

4 A IT COULD. IF THE INFORMATION WERE  
5 INACCURATE, IT WOULD MAKE MY OPINION EITHER -- IT COULD  
6 MAKE IT DIFFERENT, OR IT COULD MAKE IT INACCURATE.

7 Q ALSO THERE WAS SPECIFIC REFERENCE TO LETTERS  
8 SENT IN OCTOBER OF 1997.

9 NOW, YOU WERE INSTRUCTED BY MR. SHAW THAT  
10 COAST SENT LETTERS TO CERTAIN MEMBERS IN OCTOBER OF 1997;  
11 IS THAT CORRECT?

12 A YES.

13 Q AND YOU UNDERSTOOD THOSE LETTERS TO BE  
14 LETTERS TO ALL SEASONS RESORTS MEMBERS?

15 A THAT WAS THE WAY I TOOK IT, YES.

16 Q IF THOSE LETTERS WERE TO FIRST NATIONWIDE  
17 MEMBERS, THE OCTOBER LETTERS, NOT ALL SEASONS RESORTS  
18 MEMBERS, THE FACT THAT THE LETTERS WERE TO FIRST NATIONWIDE  
19 AND NOT ALL SEASONS WOULDN'T CHANGE ANY OF YOUR OPINIONS  
20 RELATING TO FIRST NATIONWIDE?

21 A NO, THEY WOULDN'T. IT WOULDN'T.

22 Q IT COULD HAVE CHANGED YOUR OPINIONS RELATING  
23 TO MEMBERS OF ALL SEASONS RESORTS?

24 A YES, IT COULD.

25 Q BUT THEN YOU'VE ALREADY TESTIFIED,  
26 REGARDLESS OF THE TRANSFER OF THE PROPERTY IN OCTOBER,

1 LETTERS SENT IN DECEMBER WOULD HAVE BEEN A VIOLATION IN  
2 YOUR OPINION OF THE STAY?

3 A YES.

4 Q MR. RIVIN MADE A REFERENCE TO THE FIRST  
5 NATIONWIDE ORDER APPROVING SOME ACTION THE TRUSTEE WANTED  
6 TO TAKE.

7 AND I'M SORRY, MR. RIVIN, I CAN'T GIVE YOU  
8 THE NUMBER BECAUSE YOU DIDN'T GIVE ME THE NUMBER WHEN YOU  
9 REFERENCED IT IN YOUR CROSS.

10 BUT THAT WAS THE ORDER OF APRIL OF 1998; DO  
11 YOU RECALL THAT?

12 MR. RIVIN: 1691.

13 BY MR. MOSHENKO: Q OKAY. 1691, ORDER OF APRIL OF  
14 1998, WHICH INCLUDED THE LANGUAGE IT AUTHORIZED TRAVEL  
15 AMERICA TO CONTACT THE MEMBERS OF THE ALL SEASONS -- OF  
16 FIRST NATIONWIDE.

17 A YES.

18 Q NOW, THERE WAS A SPECIFIC AUTHORIZATION  
19 GIVEN BY THE BANKRUPTCY COURT TO TRAVEL AMERICA TO DO THAT;  
20 CORRECT?

21 MR. RIVIN: THAT'S INCORRECT, YOUR HONOR. THAT  
22 MISCHARACTERIZES THE ORDER. I'M MORE THAN HAPPY TO HAVE IT  
23 PUT UP ON THE SCREEN.

24 MR. MOSHENKO: LET'S PUT IT UP.

25 THE COURT: OKAY.

26 MR. MOSHENKO: NOW, IT'S NEAR THE END, MR. DURAN.

1 MR. RIVIN: PARAGRAPH 4.

2 BY MR. MOSHENKO: Q OKAY. THAT PARAGRAPH SAYS,  
3 "THE TRUSTEE IS HEREBY AUTHORIZED TO PERMIT TRAVEL AMERICA,  
4 INC., TO CONTACT THE DEBTOR'S MEMBERS FOR THE PURPOSE OF  
5 ADVISING THE MEMBERS THAT TRAVEL AMERICA HAS AGREED TO  
6 HONOR THE FIRST NATIONWIDE RESORT MANAGEMENT, INC.,  
7 MEMBERSHIP CONTRACTS WITHOUT ANY ADDITIONAL OBLIGATION TO  
8 MEMBERS."

9 NOW, GIVEN THAT ORDER, IF TRAVEL AMERICA  
10 WERE TO CONTACT THE MEMBERS, THAT COULD NOT BE A VIOLATION  
11 OF THE STAY, COULD IT?

12 A THAT'S CORRECT. WELL, TWO THINGS ARE GOING  
13 ON HERE. THE TRUSTEE IS BEING AUTHORIZED SPECIFICALLY TO  
14 PERMIT THEM TO GO ON, AND THEN ANOTHER PROVISION OF THE  
15 ORDER, THE STAY WAS TERMINATED EXPLICITLY BY THE BANKRUPTCY  
16 COURT. SO THOSE TWO THINGS TOGETHER WOULD MEAN THAT THE  
17 STAY WAS NOT VIOLATED BY THE SUBSEQUENT CONTACT.

18 THIS SAYS THE TRUSTEE CAN DO IT, AND THEN  
19 THE COURT ALSO TERMINATED THE STAY EXPLICITLY IN A COURT  
20 ORDER, WHICH MEANS THAT THE STAY WOULDN'T BLOCK THEM FROM  
21 DOING IT.

22 Q ARE YOU REFERRING TO -- WHEN YOU SAY THAT  
23 THE COURT ORDERED THE TERMINATION OF THE STAY, WHAT ARE YOU  
24 REFERRING TO?

25 A THERE'S LANGUAGE THAT WAS INTERLINEATED INTO  
26 THIS ORDER.

1 Q IN THIS VERY ORDER?

2 A IN THIS ORDER, CORRECT.

3 MR. RIVIN: THAT'S BEYOND THE SCOPE OF THE CROSS,  
4 YOUR HONOR.

5 BY MR. MOSHENKO: Q MY QUESTION TO YOU IS, HERE IS  
6 AN EXAMPLE OF A SPECIFIC COURT ORDER AUTHORIZING CONTACT TO  
7 MEMBERS RELATING TO MEMBERSHIP CONTRACTS.

8 IN ALL OF YOUR RESEARCH AS AN EXPERT AND ALL  
9 OF YOUR EXPERIENCE, PERSONAL EXPERIENCE, AS THE ATTORNEY ON  
10 THE SCENE DEALING WITH THE BANKRUPTCIES THAT YOU'VE  
11 TESTIFIED THAT YOU DEALT WITH, DID YOU EVER SEE ANY SIMILAR  
12 PROVISION TO THIS ONE AUTHORIZING COAST TO COAST TO SEND  
13 LETTERS TO MEMBERS TRANSFERRING THEIR HOME PARK  
14 MEMBERSHIPS?

15 A NO.

16 MR. MOSHENKO: NO FURTHER QUESTIONS.

17 MR. RIVIN: I HAVE A COUPLE FOLLOW-UP QUESTIONS,  
18 YOUR HONOR, IF I MAY.

19 RECROSS-EXAMINATION

20 BY MR. RIVIN: Q MR. MALPASS YOU TESTIFIED DURING  
21 THE FIRST DAY OR SO OF YOUR TESTIMONY HERE THAT THE MEMBER  
22 CONTRACTS WERE SOLD AS PART OF THE PERSONAL PROPERTY.

23 DO YOU REMEMBER THAT TESTIMONY?

24 A I SAID THEY WERE SOLD.

25 Q YOU SAID THEY WERE SOLD AS PART OF THE  
26 PERSONAL PROPERTY. THEY WERE INCLUDED WITHIN THE PERSONAL

1 PROPERTY.

2 DO YOU RECALL THAT?

3 A THAT'S AN INCORRECT CHARACTERIZATION OF MY  
4 TESTIMONY.

5 Q I DON'T HAVE IT HERE. WE'LL HAVE TO SHOW IT  
6 LATER.

7 YOU'RE NOW SAYING THAT THE REASON THE MEMBER  
8 CONTRACTS WERE SOLD IS THEY WERE INCLUDED IN THE MEMBERSHIP  
9 LISTS; IS THAT RIGHT? WHAT YOU'RE SAYING?

10 A NO.

11 Q SO WHERE ARE THE MEMBERSHIP CONTRACTS?  
12 THEY'RE NOT REAL PROPERTY, ARE THEY?

13 A NO, THEY'RE NOT.

14 Q THEY'RE NOT PART OF THE PERSONAL PROPERTY?

15 A YES. THEY'RE -- THERE ARE CERTAIN  
16 ATTRIBUTES THAT WOULD BE. THE EFFECT TOGETHER OF THE  
17 WORDING OF THIS PARTICULAR COURT ORDER WAS TO TRANSFER ALL  
18 OF THE RIGHTS TO MEMBERSHIP LISTS, MEMBER CONTRACTS, THE  
19 RIGHT TO DEAL WITH THE MEMBERS, THE RIGHT TO DO BUSINESS  
20 WITH THEM, TO THE BUYERS. AND IN ALL SEASONS' CASE, THAT  
21 SPECIFIC ORDER IS WHAT I WAS TESTIFYING ABOUT.

22 Q MR. MALPASS, WOULD YOU NAME FOR ME THE OTHER  
23 ATTORNEYS THAT YOU SPOKE WITH REGARDING THE PREPARATION OF  
24 EXHIBIT 363 UPON WHICH YOU BASE YOUR CONCLUSION THAT THE  
25 INTENT OF THAT ORDER WAS TO TRANSFER THE MEMBER CONTRACTS?

26 A JEFF HOWARD WAS WHO I TALKED TO.

1 Q WHO ELSE?

2 A I MIGHT HAVE -- HE IS THE ONE I RECALL  
3 TALKING WITH. AND I TALKED WITH SEVERAL OTHER PEOPLE THAT  
4 WEREN'T ATTORNEYS.

5 Q RAY NOVELLI BEING ONE OF THEM?

6 A RAY NOVELLI WAS ONE OF THEM.

7 Q TERRY MOSHENKO, ANOTHER ONE?

8 A I DON'T BELIEVE SO. I DON'T RECALL. I MAY  
9 ALSO HAVE SPOKEN WITH JOHN ALWITZ, WHO WAS WORKING WITH  
10 JEFF HOWARD. BUT I DON'T RECALL THE SPECIFIC CONVERSATION.

11 Q WHO IS IT THAT AGREED WITH YOU THAT THE  
12 MEMBER CONTRACTS WERE BEING SOLD?

13 A I THINK EVERYONE DID.

14 Q MR. HOWARD?

15 A I THINK SO.

16 Q MR. DAFF?

17 A I DON'T KNOW ABOUT MR. DAFF.

18 Q HOW ABOUT MR. DAFF'S ATTORNEY?

19 A I DON'T KNOW.

20 Q HOW ABOUT MR. OSTRIN, THE AUCTIONEER?

21 A I DON'T THINK HE WOULD HAVE HAD ANYTHING TO  
22 DO WITH IT. AND TO TELL YOU THE TRUTH, MR. RIVIN, I DON'T  
23 THINK THERE'S -- I DON'T THINK -- THERE ARE PEOPLE NAMED  
24 OSTRIN, BUT OSTRIN AND OSTRIN IS A BIG COMPANY. SO I DON'T  
25 THINK IT WOULD HAVE BEEN SOMEONE NAMED OSTRIN INVOLVED IN  
26 THIS.

1 Q WELL, YOU WERE AT THE SALE. DO YOU REMEMBER  
2 WHO CONDUCTED THE SALE?

3 A NO.

4 Q YOU DON'T REMEMBER THAT IT WAS MR. OSTRIN,  
5 ONE OF THE OSTRINS, WHO CONDUCTED THE SALE?

6 A I DON'T. I DON'T.

7 Q MR. MOSHENKO ASKED YOU ABOUT THE BASIS FOR  
8 YOUR OPINIONS AND ASKED YOU ABOUT EXPERTS RELYING UPON WHAT  
9 THEY'RE TOLD AND -- NOT JUST WHAT THEY READ, BUT WHAT  
10 THEY'RE TOLD?

11 A YES.

12 Q AND YOU INDICATED -- MR. MOSHENKO SAID YOU  
13 WERE TOLD CERTAIN THINGS BY MR. SHAW IN THIS CASE, AND YOU  
14 RELIED ON WHAT MR. SHAW TOLD YOU; IS THAT RIGHT?

15 A I'VE BEEN TOLD -- SOME OF THE THINGS I'VE  
16 BEEN TOLD BY MR. SHAW, YES.

17 Q AND DID YOU FORM YOUR OPINIONS IN THIS CASE  
18 BASED IN PART ON WHAT YOU WERE TOLD BY MR. SHAW?

19 MR. MOSHENKO: OBJECTION. UNCERTAIN AS TO WHICH  
20 OPINIONS HE REFERS TO.

21 THE COURT: SOME OPINION OR ANY OF THEM.

22 BY MR. RIVIN: Q ANY OF THEM?

23 A I'M NOT CERTAIN. I THINK MOST OF THE  
24 INFORMATION CAME FROM MR. MOSHENKO.

25 Q YOU TESTIFIED IN RESPONSE TO MR. MOSHENKO'S  
26 QUESTION YOU DID RELY ON MR. SHAW --

1           A       YES.

2           Q       -- FOR SOME OF THE INFORMATION IN FORMING  
3 YOUR OPINION?

4           A       YES, FACT.

5           Q       THAT'S NOT TRUE, IS IT?

6           A       NO. IT IS CORRECT.

7           Q       WHEN YOU FIRST EXPRESSED YOUR OPINIONS IN  
8 THIS CASE AT YOUR DEPOSITION ON MARCH 9, YOU HADN'T MET  
9 MR. SHAW, HAD YOU?

10          A       THAT'S CORRECT. WHEN I TALKED --

11          Q       AND YOU HADN'T TALKED TO MR. SHAW?

12          A       I THINK THAT'S PROBABLY CORRECT.

13          Q       AND YOU TESTIFIED IN THAT DEPOSITION AS TO  
14 OPINIONS, A NUMBER OF OPINIONS, INCLUDING THE VIOLATION OF  
15 THE AUTOMATIC STAY; ISN'T THAT CORRECT?

16          A       IF YOU WANT TO DRAW A DISTINCTION BETWEEN  
17 THE OPINIONS AT MY DEPOSITIONS AND THE OPINIONS AT THE  
18 TRIAL HERE, SINCE I HAD MY DEPOSITION TAKEN I'VE SPOKEN  
19 WITH MR. SHAW. AND HE SHOWED ME THE LETTERS AND THE  
20 EXCERPTS OF THE TRIAL TESTIMONY, AND WE'VE TALKED ABOUT IT,  
21 WHICH IS THE BASIS OF MY OPINIONS HERE AT TRIAL.

22          Q       MR. MALPASS, YOU SAID THAT YOU FORMED ALL OF  
23 YOUR OPINIONS BEFORE LOOKING AT ALL THESE EXHIBITS, BEFORE  
24 THE TRIAL TESTIMONY; ALL THAT DID WAS CONFIRM YOUR  
25 OPINIONS.

26          A       THAT'S CORRECT. IT HASN'T CHANGE -- WHAT'S

1 HAPPENED AT TRIAL HASN'T CHANGED MY OPINIONS.

2 Q SO YOU FORMED YOUR OPINIONS ON WHAT YOU WERE  
3 TOLD BY MR. NOVELLI AND WHAT YOU WERE TOLD BY MR. MOSHENKO?

4 A NO, I DON'T THINK SO. I FORMED THEM BASED  
5 ON REVIEWING THE DOCUMENTS AND CERTAIN HYPOTHETICAL FACTS  
6 THAT I WAS GIVEN.

7 Q LET'S GO BACK TO EXHIBIT 1691 FOR JUST ONE  
8 MOMENT, PARAGRAPH NUMBER 4.

9 THIS IS THE AUTHORIZATION PARAGRAPH. AND  
10 YOU SAID THAT TRAVEL AMERICA -- YOU KNEW THAT TRAVEL  
11 AMERICA ACTED PURSUANT TO THIS PARAGRAPH TO CONTACT THE  
12 MEMBERS OF FIRST NATIONWIDE.

13 DO YOU REMEMBER THAT TESTIMONY?

14 MR. MOSHENKO: OBJECTION. BEYOND THE SCOPE OF MY  
15 REDIRECT. I DIDN'T TALK ABOUT THAT.

16 THE COURT: OVERRULED.

17 THE WITNESS: YOU'RE PARAPHRASING MY TESTIMONY.  
18 I'M NOT SURE IF THAT'S EXACTLY WHAT IT WAS. BUT THAT'S  
19 WHAT -- I MEAN, DIDN'T TRAVEL AMERICA TRY TO DEAL WITH THE  
20 MEMBERS, YES.

21 Q TRAVEL AMERICA YOU SAID ACTED PURSUANT TO  
22 THAT PARAGRAPH, PURSUANT TO THIS ORDER, TO CONTACT THE  
23 MEMBERS?

24 A OH, YES.

25 Q THAT WAS YOUR TESTIMONY?

26 A YES. THEY WOULD BE ACTING IN ACCORDANCE

1 WITH THIS ORDER.

2 Q IN ACCORDANCE WITH THIS ORDER?

3 A YES.

4 Q AND LET'S GO BACK TO EXHIBIT 16 -- 2150,  
5 0334.

6 THIS IS NINE MONTHS OR SO BEFORE -- EIGHT --  
7 I THINK IT'S EIGHT MONTHS BEFORE THAT ORDER.

8 A THAT'S THE DATE SHOWN AT THE TOP.

9 Q THAT TRAVEL AMERICA IS CONTACTING FIRST  
10 NATIONWIDE MEMBERS?

11 A YOU WANT TO SHOW ME THE PARAGRAPH 4 AGAIN,  
12 AND I'LL DRAW THE DISTINCTION FOR YOU?

13 Q DO YOU WANT TO SEE PARAGRAPH 4?

14 A PLEASE. IF YOU WANT TO DO IT THAT WAY, I'LL  
15 DRAW THE DISTINCTION FOR YOU.

16 THE FIRST NATIONWIDE MEMBERSHIP CONTRACTS  
17 WITHOUT ANY ADDITIONAL MEMBERSHIP.

18 NOW, THE FIRST ONE'S RECIPROCAL AGREEMENT  
19 REGARDING MULTIPLE PARK USE. THE SECOND ONE IS MEMBERSHIP  
20 CONTRACTS WITH THE MEMBERS TO TRANSFER THEM OVER. THAT'S  
21 THE DISTINCTION.

22 Q WITHOUT ANY ADDITIONAL OBLIGATION TO MEMBERS?

23 A THAT'S THE DISTINCTION. YEAH, THEY WERE  
24 GOING TO TRANSFER THEM OVER WITHOUT CHARGING THE MEMBERS;  
25 THAT MR. JOSEPH WAS TRYING TO PROTECT THE MEMBERS. I  
26 TALKED TO HIM ABOUT IT.

1 Q SO FIRST NATIONWIDE -- EXCUSE ME.

2 TRAVEL AMERICA WAS AUTHORIZED TO TRANSFER  
3 THE MEMBERS OVER WHEN?

4 A CERTAINLY AS OF THE DATE OF THIS ORDER.  
5 WHETHER THERE WERE OTHER THINGS WORKED OUT WITH JIM JOSEPH  
6 PRIOR TO THAT, I DON'T KNOW.

7 Q YOU KNOW OF NO ORDER THAT AUTHORIZED TRAVEL  
8 AMERICA TO BE MAKING ANY OFFERS OR TO CONTACT THE FIRST  
9 NATIONWIDE MEMBERS PRIOR TO THE DATE OF THIS ORDER?

10 A NO.

11 Q IS THAT CORRECT?

12 A NO.

13 Q THAT'S CORRECT?

14 A I DON'T KNOW OF ANY SUCH ORDER.

15 Q BUT YOU KNEW THAT TRAVEL AMERICA WAS  
16 CONTACTING THE FIRST NATIONWIDE MEMBERS, DIDN'T YOU?

17 A AT WHAT POINT?

18 Q IN THE SUMMER AND FALL OF 1997.

19 A YOU'RE ASKING ME ABOUT WHEN, OTHER THAN  
20 SEEING THE RECIPROCAL AGREEMENT DOCUMENT THAT YOU SHOWED  
21 ME?

22 Q DID YOU KNOW THAT TRAVEL AMERICA WAS  
23 CONTACTING FIRST NATIONWIDE MEMBERS?

24 A NO.

25 Q AND THE ALL SEASONS MEMBERS?

26 A AT WHAT POINT IN TIME?

1 Q THE SUMMER AND FALL OF 1997.

2 A NO. NO.

3 Q YOU KNEW THAT MR. NOVELLI WAS CONTACTING  
4 THEM?

5 A I KNEW -- I TALKED TO MR. NOVELLI ABOUT HIS  
6 DESIRE TO SET UP A NETWORK TO CONTINUE TO SERVICE THE  
7 MEMBERS THAT WERE GETTING SQUEEZED OUT OF THE PARKS BY WHAT  
8 WAS GOING ON.

9 Q TO CONTINUE TO TRY TO COLLECT MONEY FROM THE  
10 FIRST NATIONWIDE MEMBERS AND THE ALL SEASONS MEMBERS AND  
11 NOT TO LOSE THEM SO HE COULD CONTINUE TO COLLECT MONEY  
12 NOTWITHSTANDING THE BANKRUPTCIES?

13 A DID WE TALK ABOUT THAT? IS THAT YOUR  
14 QUESTION TO ME?

15 Q YES.

16 A WE TALKED ABOUT THAT.

17 MR. RIVIN: I HAVE NO FURTHER QUESTIONS.

18 MR. MOSHENKO: YOUR HONOR, I HAVE NO QUESTIONS.

19 THE COURT: THANK YOU. YOU'RE EXCUSED,  
20 MR. MALPASS.

21 MR. RIVIN: YOUR HONOR, MAY WE -- THE POINT WE  
22 RAISED A MOMENT AGO, WE MIGHT WANT TO RECALL MR. MALPASS.

23 THE COURT: SUBJECT TO RECALL.

24 WELL, LADIES AND GENTLEMEN, HAVE A NICE  
25 FATHER'S DAY. DON'T FORGET, WE'LL SEE YOU MONDAY MORNING  
26 AT 9:00.

1                    (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
2 COURT OUT OF THE PRESENCE OF THE JURY:)

3            THE COURT:    HOW MUCH TIME DO YOU THINK YOU'RE GOING  
4 TO NEED FOR WHAT WE HAVE TO DO THIS AFTERNOON?

5            MR. SHERMAN:    I HAVE PROBABLY 20 DIFFERENT EXHIBITS  
6 THAT I'M TOLD ARE UNDER SUBMISSION.    I HAD ONE OF OUR  
7 PARALEGALS PREPARE A BINDER OF THOSE.

8            THE COURT:    THE CLERK HAS A LIST OF THEM HERE.

9            THE CLERK:    IT COINCIDES.

10           MR. RIVIN:    ONE OTHER THING WE PROBABLY SHOULD TAKE  
11 UP IS THE DAWSON MOTION WHICH WE FILED WITH THE COURT A  
12 COUPLE DAYS AGO AND SERVED AT THE SAME TIME.    AND SINCE  
13 MR. DAWSON IS GOING TO BE TESTIFYING ON MONDAY, I THINK WE  
14 SHOULD TALK ABOUT IT TODAY.

15           MR. MOSHENKO:    I DON'T HAVE IT, YOUR HONOR.    IF I  
16 COULD ASK COUNSEL TO GIVE ME A COPY OF IT SO I COULD LOOK  
17 AT IT OVER THE BREAK.    APPARENTLY THEY GAVE IT TO MR. SHAW,  
18 AND MR. SHAW IS GONE AND HAS TAKEN IT.

19           MR. RIVIN:    IF WE HAVE A COPY, WE'LL GIVE IT TO  
20 MR. MOSHENKO.

21           THE COURT:    WE'LL SEE YOU ALL.

22           MR. MOSHENKO:    COULD I GET ACCESS TO THE LIST OF  
23 EXHIBITS THEY WANT TO CONSIDER SO THAT I COULD REFER TO  
24 THEM OVER THE LUNCH BREAK AND BE PREPARED TO MOVE MORE  
25 QUICKLY THIS AFTERNOON?

26           MR. SHERMAN:    WE HAVE A LIST OF THE EXHIBITS UNDER

1 SUBMISSION AND -- WE'LL GIVE MR. MOSHENKO.

2 MR. MOSHENKO: THERE ARE A FEW OTHER  
3 EXHIBIT-RELATED MATTERS RELATING TO EXHIBITS IN THE BINDERS  
4 THAT WE WANT TO TAKE UP. I EXPECT IT WILL TAKE 10 OR 15  
5 MINUTES.

6 THE COURT: SEE YOU AT 1:30.

7 (WHEREUPON THE COURT WAS IN RECESS UNTIL  
8 1:30 P.M. OF THE SAME DAY.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 WESTMINSTER, CALIFORNIA - THURSDAY, JUNE 15, 2000

2 AFTERNOON SESSION

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

5 THE COURT: IN THE MATTER OF THE MOTION REGARDING  
6 DEFENDANTS' OBJECTIONS TO PROPOSED STATEMENT -- PROPOSED  
7 TESTIMONY OF PURPORTED EXPERT, WILLIAM DAWSON.

8 DO YOU WANT TO BE HEARD FIRST?

9 MR. RIVIN: I'M MORE THAN HAPPY TO ARGUE IT, YOUR  
10 HONOR.

11 THE COURT: ALL RIGHT.

12 MR. RIVIN: MR. DAWSON IS THE -- IS ONE OF THE  
13 PRINCIPALS OF R.P.I. YOU'VE HEARD ABOUT R.P.I. IN THE  
14 LITIGATION. R.P.I. IS COAST'S PRIMARY COMPETITOR. AND  
15 PLAINTIFFS HAVE DESIGNATED MR. DAWSON AS ONE OF THEIR  
16 EXPERTS IN THE CASE, AND WE ARE CONCERNED THAT HE IS GOING  
17 TO OFFER EXPERT -- SO-CALLED EXPERT OPINIONS THAT ARE  
18 SIMILAR TO THE TYPES OF EXPERT OPINIONS THAT WE'VE HEARD  
19 FROM MR. MITCHELL, MR. MALPASS, AND WE WOULD LIKE TO  
20 PREVENT ANY -- PREVENT MR. DAWSON FROM EXPRESSING ANY  
21 OPINIONS THAT ARE INAPPROPRIATE. AND WE WANTED TO DISCUSS  
22 THAT BEFORE MR. DAWSON TAKES THE STAND, AND THAT'S THE  
23 PURPOSE OF OUR MOTION.

24 THERE ARE TWO BASIC AREAS OF TESTIMONY WE  
25 BELIEVE MR. DAWSON IS PREPARED TO GIVE THAT WE WOULD LIKE  
26 TO ADDRESS.

1                   NUMBER ONE IS TESTIMONY THAT HE GAVE IN HIS  
2 DEPOSITION REGARDING A LAWSUIT IN THE EARLY 1980'S BETWEEN  
3 R.P.I. AND COAST, AND HE HAS HIS TAKE ON THAT LAWSUIT. I  
4 DON'T KNOW IF THAT ISSUE HAS ALREADY BEEN DISCUSSED IN  
5 CHAMBERS. IT MAY HAVE. I KNOW THAT MR. SHERMAN ADVISED ME  
6 THAT WHEN I WAS NOT IN CHAMBERS THERE WAS A DISCUSSION OF  
7 THE NACO/COAST LITIGATION, AND I THINK THIS R.P.I./COAST  
8 LITIGATION IS SOMEHOW RELATED TO THAT. IT GOES BACK TO THE  
9 EARLY TO MID-1980'S. IT'S NOT RELEVANT IN THIS CASE.

10                   AND WE WANT TO MAKE SURE THAT WE DON'T HAVE  
11 TO HEAR ABOUT THAT FROM MR. DAWSON. SO THAT'S NUMBER ONE.

12                   MR. SHERMAN: COULD I SAY SOMETHING ON THAT,  
13 PLEASE? BECAUSE -- GIVEN THAT I WAS IN CHAMBERS. IF  
14 THERE'S A PLEADING, A COMPLAINT THAT SHOWS THAT COAST WAS  
15 SUED OVER CONFIDENTIALITY OF MEMBER LISTS, THEN I DON'T  
16 THINK EITHER OF US WOULD BE PREPARED TO SAY THAT IT'S --  
17 UNDER NO CIRCUMSTANCE IT COULD BE RELEVANT.

18                   BUT THE ISSUE, EVEN BEFORE WE GET TO  
19 RECIPROCAL, AS I'VE EXPRESSED TO YOUR HONOR ON SEVERAL  
20 OCCASIONS, IS ONE OF FOUNDATION, BEST EVIDENCE, AND, YOU  
21 KNOW, JUST WITNESSES SHOOTING OFF FROM THE HIP TALKING  
22 ABOUT A LAWSUIT AND LITIGATION WHICH MAY OR MAY NOT HAVE  
23 HAPPENED, AND IF IT DID HAPPEN, MAY NOT HAVE HAPPENED THE  
24 WAY THE WITNESS SAYS IT HAPPENED. BECAUSE, AFTER ALL, THE  
25 BEST EVIDENCE OF THE ALLEGATIONS ARE THE CAUSES OF ACTION,  
26 THE COMPLAINT ITSELF.

1                   AND SO -- AND THIS WOULD APPLY NOT ONLY TO  
2 MR. DAWSON BUT MR. NOVELLI, MR. THOMPSON, ANY WITNESSES TO  
3 NOT REFERENCE THIS LITIGATION, THAT LITIGATION, WHETHER  
4 IT'S NACO, R.P.I., WHATEVER, WITHOUT FURTHER SEEING TO IT  
5 THAT A FOUNDATION HAS BEEN LAID OUTSIDE OF THE PRESENCE OF  
6 THE JURY, PRESUMABLY IN A CHAMBERS CONFERENCE WITH YOUR  
7 HONOR. HERE IS THE COMPLAINT. HERE IS WHY IT'S RELEVANT,  
8 AND SO FORTH. THAT WAS -- I JUST FELT I OUGHT TO CLARIFY  
9 IT.

10                   MR. RIVIN: THAT'S FINE. THANK YOU.

11                   WHAT WE DON'T WANT TO HAVE HAPPEN IS FOR  
12 MR. DAWSON OR ANY OTHER WITNESS TO TALK ABOUT LITIGATION  
13 OFF THE TOP OF THEIR HEAD, SIMILAR TO THE WAY MR. MALPASS  
14 DID.

15                   WE NOW ARE IN A POSITION WITH RESPECT TO  
16 MR. MALPASS THAT WE WILL PROBABLY NEED TO BRING IN SOME  
17 WITNESSES TO REFUTE HIS RECOLLECTION OF THINGS THAT ARE  
18 INCONSISTENT WITH ALL OF THE PLEADINGS THAT WERE FILED IN  
19 THE COURT, THE COURT ORDERS, ET CETERA. BUT HE RECALLS  
20 THINGS THAT ARE DIFFERENT THAN THAT.

21                   IF WE'RE GOING TO TALK ABOUT LITIGATION,  
22 WE'RE GOING TO TALK ABOUT COURT ORDERS, WE'RE GOING TO TALK  
23 ABOUT THINGS THAT HAPPENED IN COURT, IT SHOULD BE BASED  
24 UPON THE DOCUMENTS, THE PLEADINGS THAT ARE FILED IN THE  
25 COURT. ANYWAY, THAT'S NUMBER ONE.

26                   NUMBER TWO RELATES TO MR. DAWSON'S OPINIONS

1 EXPRESSED DURING HIS DEPOSITION REGARDING THE COAST  
2 LETTERS. I MIGHT -- I MIGHT SAY THAT MR. DAWSON OBVIOUSLY  
3 IS NOT AN IMPARTIAL OBSERVER, NOT AN IMPARTIAL EXPERT,  
4 SINCE HE IS COAST'S COMPETITOR.

5 BUT IN ADDITION TO THAT, HE HAS ENTERED INTO  
6 ONE OR MORE AGREEMENTS WITH THE PLAINTIFFS IN THIS CASE.  
7 R.P.I. HAS. HE WAS INVOLVED WITH MR. NOVELLI AND THE  
8 PULL-OUT FROM COAST. AND FOR HIM TO COME IN AND TESTIFY AS  
9 HE DID IN HIS DEPOSITION AS TO THE SIGNIFICANCE OF THE  
10 COAST LETTERS, IN TERMS OF WHETHER THEY WERE MISLEADING,  
11 WHETHER THEY BREACHED ANY CONTRACT, WHETHER THE COAST  
12 CONTRACTS, THE COAST AFFILIATION AGREEMENTS WITH THE  
13 DEVELOPERS PREVENTED COAST FROM SENDING OUT THOSE LETTERS,  
14 THOSE TYPES OF OPINIONS ARE INAPPROPRIATE FOR THIS  
15 WITNESS. MANY OF THEM ARE WITHIN THE PROVINCE OF THE JURY.  
16 OTHERS ARE WITHIN THE PROVINCE OF THE COURT. AND IT'S JUST  
17 NOT APPROPRIATE FOR MR. DAWSON TO COME IN AND TESTIFY,  
18 GIVE -- TESTIFY ABOUT THE IMPACT OF THE LETTERS TO HIM,  
19 UNLESS HE HAS GOT PERCIPIENT KNOWLEDGE. THAT'S A DIFFERENT  
20 STORY.

21 BUT TO OPINE AS TO HOW THEY'RE MISLEADING OR  
22 HOW THEY'RE VIOLATIVE COAST AGREEMENTS, THAT'S NOT  
23 SOMETHING FOR HIM TO TESTIFY TO. AND WE WOULD LIKE TO KEEP  
24 THAT TYPE OF TESTIMONY, THAT TYPE OF OPINION TESTIMONY  
25 OUT. THAT'S THE ESSENCE OF OUR MOTION.

26 THE COURT: ALL RIGHT. RESPONSE?

1 MR. MOSHENKO: YES, YOUR HONOR. THANK YOU.

2 WELL, I'VE JUST HEARD THAT MR. DAWSON,  
3 ALTHOUGH DESIGNATED AS AN EXPERT, THE INFERENCE THAT HE  
4 LACKS IMPARTIALITY BECAUSE HE IS A COMPETITOR. HE IS  
5 DEFINITELY A COMPETITOR. I'VE NEVER HEARD IT SAID THAT THE  
6 LACK OF IMPARTIALITY IS A BASIS FOR PREVENTING AN EXPERT  
7 FROM TESTIFYING.

8 AS A MATTER OF FACT, IT MIGHT BE A GREAT WAY  
9 TO CROSS-EXAMINE AN EXPERT, TO PROVE THAT LACK OF  
10 IMPARTIALITY, IF IT EXISTED. BUT THAT IS AN ARGUMENT OF A  
11 GROUND THAT SHOULD HOLD NO WATER.

12 HE ENTERED INTO AGREEMENTS WITH MR. NOVELLI.  
13 SO WHAT? THAT IS A GROUND THAT SHOULD NOT PREVENT HIM FROM  
14 TESTIFYING TO ANYTHING THAT IS RELEVANT AND MATERIAL AND  
15 APPROPRIATE FOR HIM TO TESTIFY TO.

16 NOW, YOUR HONOR, THE MOTION IS A MOTION TO  
17 RESTRICT MR. DAWSON'S TESTIMONY, AS MR. RIVIN HAS  
18 INDICATED, IN TWO SPECIFIC AREAS. AND ONE IS RELATING TO  
19 THE R.P.I. LAWSUIT.

20 YOUR HONOR, YOU AND MR. SHERMAN AND I SPOKE  
21 ABOUT THE R.P.I. LAWSUIT YESTERDAY IN CHAMBERS, AND I HAD  
22 INDICATED -- AND AT THE SIDEBAR -- AND I HAD INDICATED TO  
23 YOU WITH THE WITNESS THAT WAS ON THE STAND, I DID NOT  
24 INTEND TO GO INTO THE R.P.I. LAWSUIT. I EVEN WENT SO FAR  
25 AS TO COMPLAIN IN CHAMBERS THAT I THOUGHT THEY WERE PUSHING  
26 US INTO THE R.P.I. LAWSUIT, AND THAT THEY SHOULD NOT BE

1 ALLOWED TO DO THAT, NOT BECAUSE IT'S IRRELEVANT, BECAUSE IT  
2 IS RELEVANT. IT SHOWS A HISTORY OF CONDUCT OR MISCONDUCT,  
3 DEPENDING ON YOUR PERSPECTIVE, BY THE DEFENDANTS, WHICH  
4 CONDUCT IS SIMILAR TO THE CONDUCT THAT WE'RE COMPLAINING  
5 ABOUT IN THIS CASE.

6 AND IT ALSO SHOWS THE HISTORY OF THE  
7 INDUSTRY. IT ALSO SHOWS INDUSTRY PRACTICES. IT'S RELEVANT  
8 TO SHOW CREDIBILITY, KNOWLEDGE. A LOT OF THINGS IT'S  
9 RELEVANT TO SHOW. BUT IT IS A LAWSUIT THAT TAKES US AWAY  
10 FROM THE LAWSUIT THAT WE'RE PROSECUTING, BASED ON THE  
11 CONDUCT OF COAST IN 1997. AND JUST AS WE HAVE COMPLAINED  
12 TO YOUR HONOR WHEN THEY WANTED TO GO INTO DISTANT  
13 LITIGATION, AND YOUR HONOR AGREED THAT THE DOOR SHOULD BE  
14 SHUT ON ALL OF THAT, THE 200 LAWSUITS THEY BROUGHT TO US IN  
15 MOTIONS IN LIMINE, WE AGREE THAT THE R.P.I. LAWSUIT SHOULD  
16 NOT BE LITIGATED HERE, AND THAT MR. DAWSON WILL NOT BE  
17 ASKED BY US TO TELL US ABOUT THE R.P.I. LAWSUIT.

18 I DO WANT TO SAY, IF THE DEFENDANTS DO  
19 SOMETHING SIMILAR TO WHAT THEY DID YESTERDAY -- AND YOU'LL  
20 RECALL THERE WAS TESTIMONY FROM MR. BUTLER ABOUT ALL THE  
21 DEVELOPERS KNEW WHAT WE DID IN NACO, AND SO ALL THE  
22 DEVELOPERS KNEW ABOUT COAST'S ORPHAN POLICY. AND SO NOBODY  
23 COULD BE SURPRISED THAT COAST WAS CARRYING OUT THIS ORPHAN  
24 POLICY OR COMPLAIN ABOUT THE SO-CALLED ORPHAN POLICY. IF  
25 THEY SHOULD GO IN THAT DIRECTION, IT'S OUR POSITION THAT  
26 THE CONDUCT OF THE DEFENDANTS WITH RESPECT TO NACO, WHICH

1 IS THE -- WHICH WAS INVOLVED IN THE R.P.I. LAWSUIT BECAUSE  
2 NACO WAS AN OWNER OF R.P.I., MY UNDERSTANDING -- IF THEY  
3 WANT TO GO INTO THE CONDUCT OF THE DEFENDANTS IN THE '80'S  
4 RELATING TO NACO/R.P.I. AS A JUSTIFICATION FOR WHAT THEY  
5 DID, THEN WE RESERVE THE RIGHT TO COME BACK AND SAY, YOUR  
6 HONOR, WHAT THEY DID THEN -- WHAT THEY DID TODAY IS WRONG;  
7 WHAT THEY DID THEN IS WRONG, AND THEY GOT SUED FOR IT. AND  
8 THEY QUIT IT, AND THAT'S WHAT THE DEVELOPERS SAW. AND  
9 THAT'S WHAT THE DEVELOPERS KNEW, AND THAT'S WHAT THE  
10 DEVELOPERS UNDERSTOOD.

11 AND SO I GUESS I'M SAYING WE AGREE;  
12 MR. DAWSON IS NOT GOING TO DESCRIBE THE R.P.I. LAWSUIT,  
13 JUST LIKE WE DON'T WANT THEM TO DESCRIBE SOME OTHER DISTANT  
14 LAWSUIT ON THEIR SIDE, AND JUST LIKE YOUR HONOR HAS ORDERED  
15 THAT NEITHER SIDE SHOULD DO.

16 BUT IF THEY OPEN THE DOOR, THEN WE CAN  
17 REVISIT IT.

18 THE COURT: I SEE NO PROBLEM, THEN, GRANTING THIS  
19 MOTION.

20 MR. MOSHENKO: THAT'S HALF THE MOTION. OKAY. NOW,  
21 THE OTHER HALF OF THE MOTION IS TO TALK -- WHETHER  
22 MR. DAWSON CAN OFFER OPINIONS THAT LETTERS ARE MISLEADING.

23 WELL, THE FIRST THING I WANT TO SAY ABOUT  
24 THE MOTION IS IT DOESN'T SPECIFY WHICH LETTERS ARE BEING  
25 TALKED ABOUT. FORGIVE ME. I DON'T HAVE A COPY. I HAVE  
26 GIVEN IT BACK TO MR. RIVIN.

1                   BUT THE TOP OF PAGE 2, I BELIEVE, OF THE  
2 MOTION SAYS, EXPECTED OFFER OPINIONS ABOUT, QUOTE, THE  
3 LETTERS SENT BY COAST TO COAST IN THE FALL OF 1997.

4                   IT SEEMS TO ME THAT BEFORE THE COURT GRANTS  
5 A MOTION THAT SAYS MR. DAWSON CAN'T TALK ABOUT ANY LETTERS  
6 SENT IN THE FALL OF 1997, THAT THE MOVING PARTY HAS A  
7 BURDEN OF BEING MORE SPECIFIC ABOUT IT. OTHERWISE, THEY'RE  
8 COMING IN AND ASKING THE COURT TO KIND OF DO THIS, AND  
9 BLINDLY NOT KNOWING WHAT THE MOTION -- WHAT LETTERS THE  
10 MOTION REFERS TO, MAKE AN ORDER THAT'S MUCH BROADER THAN IS  
11 APPROPRIATE.

12                   BEYOND THAT, THOUGH, THIS IS WHERE THEY  
13 INDICATED THAT THEY THOUGHT THE LETTERS WERE MISLEADING --  
14 THAT MR. DAWSON WAS GOING TO SAY THE LETTERS WERE  
15 MISLEADING BECAUSE OF, THEY STATED, QUOTE, "RAY NOVELLI  
16 PULLED HIS MEMBERS OUT OF COAST TO COAST."

17                   WELL, YOU KNOW, FIRST THING I WANT TO SAY  
18 IS, MR. -- IF THAT'S -- IF WE'RE TALKING ABOUT THE LETTER  
19 STATING RAY NOVELLI PULLED MEMBERS OUT OF COAST SENT IN  
20 OCTOBER -- THAT'S THE RANDALL LETTER -- THAT IS NOT  
21 MISLEADING. BECAUSE MR. NOVELLI -- AND IF WE'RE TALKING  
22 ABOUT FIRST NATIONWIDE RESORTS, THAT IS NOT MISLEADING  
23 BECAUSE MR. NOVELLI DID PULL 14 OR 16 RESORTS OUT WITH A  
24 LETTER DATED AUGUST 27.

25                   IF YOU'RE TALKING ABOUT THE LETTERS THAT  
26 WERE SENT IN NOVEMBER AND DECEMBER STATING -- RELATING TO

1 ALL SEASONS RESORTS MEMBERS SAYING MR. NOVELLI PULLED ITS  
2 MEMBERS OUT OF THE RESORT, YOU KNOW, WHETHER MR. DAWSON  
3 SAYS IT OR NOT, IT'S OBVIOUS TO EVERYBODY -- AND, IN FACT,  
4 MR. RYMAN HIMSELF ADMITTED ON THE STAND, THAT THAT  
5 STATEMENT WAS MISLEADING BECAUSE -- AND MY RECALL OF HIS  
6 WORDS WERE, "WELL, THAT WAS JUST ONE THAT SLIPPED THROUGH  
7 THE CRACKS." BECAUSE WE ALL KNOW THAT COAST PULLED ALL  
8 SEASONS RESORTS OUT OF THE COAST SYSTEM WHEN THEY SENT THE  
9 LETTER ON NOVEMBER 5 SAYING, "BY THE WAY, ALL SEASONS IS  
10 OUT." NOT MR. NOVELLI.

11 AND THAT LETTER IS MISLEADING BECAUSE THE  
12 NOVELLI DECEMBER LETTER SENT TO ALL SEASONS RESORTS, SAYS  
13 MR. NOVELLI PULLED THEM OUT, IS NOT ONLY MISLEADING, IT'S  
14 FALLS.

15 OKAY. AND I WOULD SUGGEST THAT YOUR HONOR  
16 SHOULD NOT BE ORDERING A WITNESS NOT TO TESTIFY ABOUT  
17 SOMETHING THAT IS TRUTHFUL AND OBVIOUS TO ALL OF US. IT  
18 WOULD BE INAPPROPRIATE.

19 AND THE SECOND GROUND FOR COMPLAINING THAT  
20 MR. DAWSON SHOULD NOT BE ABLE TO TESTIFY THAT THE LETTERS  
21 WERE MISLEADING IS BECAUSE THERE'S A REFERENCE TO, QUOTE,  
22 SOMETHING ABOUT A BANKRUPTCY, IN HIS DEPOSITION. AND, YOU  
23 KNOW, QUITE FRANKLY, I DON'T KNOW WHAT MR. DAWSON IS GOING  
24 TO SAY ABOUT A BANKRUPTCY. I DON'T THINK THAT HE IS COMING  
25 HERE TO ACT AS A BANKRUPTCY EXPERT, OR OFFER TESTIMONY  
26 SIMILAR TO THAT OF MR. MALPASS.

1                   AND SO I HAVE TO SAY THAT FROM WHAT WE'RE  
2 GIVEN IN THE MOTION, WE'RE NOT GIVEN ENOUGH TO EVEN KNOW  
3 WHAT IT IS THAT THE DEFENDANTS ARE ASKING THE COURT TO  
4 ORDER.

5                   THE COURT: WELL, FOR MY BENEFIT, LET ME ASK THIS:  
6 WHAT IS MR. DAWSON'S FIELD OF EXPERTISE?

7                   MR. MOSHENKO: OKAY. MR. DAWSON HAS BEEN IN THE  
8 RECIPROCAL USE INDUSTRY FOR 20 YEARS. HE IS AN EXPERT ON  
9 THE INDUSTRY. HE IS OBVIOUSLY AN EXPERT ON -- WITH THE  
10 RECIPROCAL USE SYSTEM AND THE PROGRAMS IN THE INDUSTRY. HE  
11 IS AN EXPERT ON THE INDUSTRY STANDARDS AND CONDITIONS. HE  
12 IS AN EXPERT ON RELATIONS BETWEEN DEVELOPERS AND RECIPROCAL  
13 USE ORGANIZATIONS AND DEVELOPERS AND THEMSELVES.

14                   HE HAS BEEN BOTH A DEVELOPER, I BELIEVE, AS  
15 WELL AS THE OWNER AND MANAGER AND OPERATOR OF -- AS THEY  
16 POINTED OUT -- THE MAJOR COMPETITION TO COAST TO COAST  
17 RECIPROCAL SYSTEM IN THE COUNTRY. HE PROBABLY BETTER THAN  
18 ANYBODY THAT WE WILL BRING, IS QUALIFIED TO TALK ABOUT THE  
19 BENEFITS THAT R.P.I. BRINGS TO THE MEMBERS, AS COMPARED TO  
20 THE BENEFITS THAT THE MEMBERS MIGHT HAVE HAD WITH COAST.

21                   THIS IS THE STUFF THAT WE'VE HEARD RANDALL  
22 AND RYMAN SAY THE MEMBERS WERE BETTER OFF WITH COAST THAN  
23 R.P.I. AND WHEN I ATTEMPTED TO ASK AN ADMINISTRATOR, A  
24 MANAGER WHO HAD ADMINISTERED BOTH PROGRAMS, YOUR HONOR, I  
25 HEARD MR. SHERMAN SAY, "BRING ON MR. DAWSON. HE IS THE MAN  
26 THAT'S QUALIFIED TO TALK ABOUT THAT BECAUSE HE RUNS R.P.I."

1                   SO WHAT IS HE AN EXPERT IN? HE IS AN EXPERT  
2 IN RECIPROCAL, IN THE INDUSTRY, IN THE INDUSTRY PRACTICES  
3 AND STANDARDS AND RELATIONS BETWEEN DEVELOPERS AND EACH  
4 OTHER, RELATIONSHIP BETWEEN DEVELOPERS AND RECIPROCAL,  
5 RELATIONSHIPS BETWEEN MEMBERS AND RECIPROCAL AND  
6 DEVELOPERS. AND HE IS ALSO A PERCIPIENT WITNESS TO THE  
7 1997 EVENTS, BECAUSE HE WAS WITH MR. NOVELLI WHEN THE  
8 DECISION WAS BEING MADE TO CHANGE RECIPROCAL.

9                   AND HE REVIEWED THE CONTRACT WITH  
10 MR. NOVELLI. HE IS PROBABLY AN EXPERT ON RECIPROCAL USE  
11 AGREEMENTS. HE REVIEWED THE CONTRACTS. I BELIEVE HE EVEN  
12 ASSISTED IN DRAFTING THE WITHDRAWAL LETTERS. AND I THINK  
13 HE COULD OFFER EXPERT TESTIMONY ON ALL THOSE THINGS, BUT  
14 PRIMARILY THE BENEFITS THAT THE MEMBERS WOULD GET IN ONE  
15 RECIPROCAL VERSUS ANOTHER.

16                  THE COURT: ALL RIGHT. HERE I FEEL THAT I'M BEING  
17 PLACED IN A POSITION OF HAVING TO JUDGE THIS CASE BEFORE I  
18 HEAR THE EVIDENCE, BEFORE THE JURY HEARS THE EVIDENCE.

19                  I THINK THE ONLY THING YOU CAN DO, WE'VE  
20 ALREADY AGREED UPON THERE WILL BE NO MENTION OF THE  
21 CONTRACTS.

22                  MR. RIVIN: YOU MEAN THE LAWSUIT.

23                  MR. MOSHENKO: R.P.I.

24                  THE COURT: YEAH, THE LAWSUITS. BEG YOUR PARDON.  
25 THE ONLY THING YOU CAN DO IS RAISE YOUR OBJECTIONS IN A  
26 TIMELY MANNER, AND LET ME FIGURE THEM OUT AS THEY ARISE. I

1 DON'T KNOW WHAT THIS GUY IS GOING TO TESTIFY TO. YOU DON'T  
2 EITHER, APPARENTLY.

3 MR. RIVIN: YES, I DO, BASED ON HIS DEPOSITION  
4 TESTIMONY, AND MR. MOSHENKO JUST DID A PRETTY GOOD JOB OF  
5 GENERALLY DESCRIBING MR. DAWSON'S BACKGROUND AND HIS  
6 OPINIONS, THE TYPES OF OPINIONS HE IS GOING TO EXPRESS.

7 ONE THING WE DON'T NEED TO HEAR ABOUT IS  
8 MR. DAWSON OPINING AS TO COAST'S CONTRACTS. HE IS NOT AN  
9 EXPERT IN THAT. WE DON'T NEED MR. DAWSON TO OPINE ON  
10 SOMETHING THAT THE JURY CAN MAKE A DECISION -- THE JURY  
11 SHOULD BE MAKING THE DECISION ON.

12 ARE COAST'S LETTERS MISLEADING? ARE THEY A  
13 BREACH OF A CONTRACT? THAT'S FOR A JURY TO DECIDE OR THE  
14 JUDGE TO DECIDE, NOT FOR THIS MAN TO COME IN HERE AND TELL  
15 THE JURY WHETHER SOMETHING IS MISLEADING OR NOT.

16 AND I'LL SAY SOMETHING ELSE, YOUR HONOR.  
17 AND THIS IS A PRECURSOR TO WHAT I SEE HAPPENING ON MONDAY.  
18 MR. DAWSON'S TESTIMONY IS GOING TO BE CUMULATIVE,  
19 COMPLETELY CUMULATIVE, OF MR. MITCHELL'S TESTIMONY. THE  
20 DESCRIPTION OF MR. DAWSON AND WHAT HE IS ABOUT TO SAY, WHAT  
21 HE IS GOING TO TESTIFY TO, IS EXACTLY WHO MR. MITCHELL IS  
22 AND WHAT HE TESTIFIED TO. MR. MITCHELL IS AN EXPERT IN THE  
23 INDUSTRY. HE HAS 20 YEARS OF EXPERIENCE IN THE INDUSTRY,  
24 THE SAME AS MR. DAWSON. HE WAS A DEVELOPER JUST LIKE  
25 MR. DAWSON. HE KNOWS RECIPROCAL ARRANGEMENTS JUST LIKE  
26 MR. DAWSON. AND MR. MITCHELL TESTIFIED FOR TWO OR THREE

1 DAYS ABOUT THE INDUSTRY, HOW IT WORKS, WHAT RECIPROCAL  
2 ARRANGEMENTS MEAN. AND HE WENT ON AND ON TALKING ABOUT THE  
3 INDUSTRY. THIS IS COMPLETELY DUPLICATIVE.

4 THE COURT: I DON'T THINK ANY OF THESE PEOPLE ARE  
5 EXPERT WITNESSES. I THINK THEY CAN TESTIFY AS TO CUSTOM  
6 AND PRACTICE IN THE INDUSTRY, BUT THAT DOESN'T MAKE THEM AN  
7 EXPERT, YOU KNOW.

8 MR. RIVIN: YEAH. AND CUSTOM AND PRACTICE WE DON'T  
9 THINK REALLY IS RELEVANT WHEN YOU'RE DEALING WITH  
10 CONTRACTS.

11 THE COURT: PROBABLY NOT.

12 MR. RIVIN: AND ALSO, I THINK THAT'S -- I AGREE  
13 WITH YOUR HONOR. I DO NOT THINK THAT THEY'RE EXPERTS. I  
14 THINK IF MR. DAWSON WANTS TO TESTIFY -- PLAINTIFFS WANT TO  
15 PUT MR. DAWSON ON TO TESTIFY BASED ON HIS PERCIPIENT  
16 KNOWLEDGE, THAT'S NOT -- I DON'T HAVE A PROBLEM WITH THAT.  
17 WE DON'T HAVE A PROBLEM WITH THAT, TO THE EXTENT IT'S  
18 RELEVANT.

19 THE COURT: YEAH.

20 MR. RIVIN: BUT YOU OFFER MORE EXPERT OPINIONS --

21 THE COURT: YEAH.

22 MR. RIVIN: -- IT'S JUST INAPPROPRIATE. IT'S  
23 CUMULATIVE, AND IT INVADES THE PROVINCE OF THE JURY AND THE  
24 COURT.

25 MR. MOSHENKO: YOUR HONOR, MR. MITCHELL AND  
26 MR. DAWSON ARE SIGNIFICANTLY DIFFERENT, AND THE DIFFERENCE

1 IS THAT MR. MITCHELL WAS FAIRLY CLOSE TO BEING AN INSIDER  
2 AT COAST TO COAST. HE TESTIFIED HOW HE WORKS WITH THE  
3 OFFICERS AND PERSONNEL AT COAST TO COAST OVER A YEAR; AFTER  
4 A YEAR HOW THEY HAD HIRED HIM TO DO CERTAIN THINGS FROM  
5 TIME TO TIME, HOW HE ATTENDED THEIR PRESENTATIONS TO THE  
6 PUBLIC AND SPOKE FOR THEM AND ON THEIR BEHALF. MR. DAWSON  
7 COMES FROM THE PERSPECTIVE, AS COUNSEL POINTED OUT, A  
8 COMPETITOR WHO HAS PARTICIPATED IN THE INDUSTRY NOT AS --  
9 IN A COMPLETELY DIFFERENT MANNER THAN MR. MITCHELL HAS.  
10 AND HE HAS SOME KNOWLEDGE THAT MR. MITCHELL, A, DIDN'T TALK  
11 ABOUT; AND, B, WASN'T ALLOWED TO TALK ABOUT BECAUSE OF HIS  
12 POSITION.

13                   WHEN WE HAVE TRIED TO TALK ABOUT THE  
14 COMPARISONS BETWEEN COAST AND R.P.I., WE HAVE BEEN SHUT  
15 DOWN FAIRLY ROUTINELY ON QUALIFICATIONS THAT IN ESSENCE  
16 THIS PERSON DOESN'T KNOW, ANOTHER WAY OF SAYING HE IS NOT  
17 AN EXPERT ON THAT.

18                   AND SO NOW HERE COMES OUR EXPERT ON THAT,  
19 AND I GUESS MAYBE WE'RE HEARING HE SHOULDN'T TALK ABOUT THE  
20 THINGS THAT HE -- YOU KNOW, I UNDERSTAND YOUR HONOR SAYS HE  
21 IS NOT AN EXPERT. BUT I GUESS IT DEPENDS ON WHAT YOU  
22 MEAN. IF YOU MEAN DOES HE KNOW NUCLEAR SCIENCE, OR IS HE A  
23 PROFESSOR, WE ALL KNOW THAT YOU GAIN EXPERTISE BY  
24 EXPERIENCE AND BACKGROUND.

25                   THE COURT: YEAH. BUT AN EXPERT IS SOMEBODY WHO IS  
26 SUPPOSED TO BE ABLE TO AID THE TRIERS OF FACT IN THE FIELD

1 THAT THEY'RE UNFAMILIAR WITH.

2 MR. MOSHENKO: SURE.

3 THE COURT: AND HE HAS TO HAVE, OBVIOUSLY, A  
4 BACKGROUND IN THAT FIELD. NOW, A LOT OF THIS IS SOMETHING  
5 THAT THE JURY CAN FIGURE OUT FOR THEMSELVES --

6 MR. MOSHENKO: I AGREE WITH YOUR HONOR.

7 THE COURT: -- WITHOUT HIM GIVING AN EXPERT --  
8 QUOTE, EXPERT OPINION. SO I'M NO FURTHER AHEAD THAN I WAS  
9 BEFORE YOU GUYS GOT UP AND STARTED ARGUING THIS MOTION.  
10 I'M GOING TO HAVE TO HEAR HIM, SUBJECT TO YOUR OBJECTIONS.

11 MR. RIVIN: THAT'S FINE.

12 THE COURT: THERE WILL BE NO MENTION OF THE OLD  
13 LAWSUITS.

14 MR. RIVIN: RIGHT.

15 MR. SHERMAN: AND THAT APPLIES TO ALL WITNESSES  
16 UNTIL THE FOUNDATION HAS BEEN LAID.

17 THE COURT: YES. IT APPLIES TO ALL WITNESSES.

18 TELL ME SOMETHING. HOW LONG DO YOU EXPECT  
19 TO BE WITH THIS GUY?

20 MR. MOSHENKO: YOUR HONOR, WE EXPECTED ONE DAY,  
21 BOTH SIDES, BUT I CAN'T PREDICT WHAT THEY'RE GOING TO DO.

22 MR. RIVIN: I EXPECT WITH MR. DAWSON IT'S GOING TO  
23 BE AN HOUR AND A HALF TO TWO HOURS. AND THIS PREDICTION  
24 HOPEFULLY WILL BE ACCURATE.

25 MR. MOSHENKO: OKAY. AND EVERY DAY --

26 MR. SHERMAN: IT SOUNDS LIKE TWO DAYS.

1           MR. MOSHENKO: EVERY DAY WE COME TO COURT, OUR  
2 SCHEDULED WITNESS PLAN, THE RUG IS PULLED OUT FROM UNDER  
3 ME.

4           THE COURT: IT SEEMS TO ME LIKE YOU COULD PUT HIM  
5 ON AND OFF IN AN HOUR MONDAY MORNING. HE SHOULD BE  
6 FINISHED BY NOON MONDAY. AND WITH THAT IN MIND, LET'S HAVE  
7 SOMEBODY LINED UP TO FOLLOW HIM.

8           MR. MOSHENKO: WE'RE WORKING ON THAT BECAUSE OUR  
9 NEXT WITNESS WAS PULLED OUT FROM UNDER US THIS MORNING.

10          THE COURT: WHO WAS THAT?

11          MR. MOSHENKO: THAT WAS RAYMOND NOVELLI BECAUSE  
12 YOUR HONOR HAD INDICATED -- I'M INFORMED -- I WASN'T HERE.  
13 I'VE BEEN INFORMED YOUR HONOR INDICATED THAT MR. NOVELLI'S  
14 REQUIRED PRESENCE IN ANOTHER COURT ON THURSDAY WOULD NOT  
15 EXCUSE --

16          THE COURT: NOBODY SAID HE WAS GOING TO BE IN  
17 ANOTHER COURT UNTIL I HEARD THAT LATER ON IN THE DAY. WHAT  
18 COURT IS HE GOING TO BE IN? SOMEBODY SAID FEDERAL COURT.

19          MR. MOSHENKO: YOUR HONOR, I'M INFORMED THAT HE HAS  
20 TO BE IN A BANKRUPTCY COURT IN ANOTHER STATE, AND I DON'T  
21 KNOW. I'M SORRY. I DIDN'T GET THE EXACT IDENTITY OF THE  
22 COURT.

23          THE COURT: WHAT DAY IS HE SUPPOSED TO BE THERE?

24          MR. MOSHENKO: THURSDAY.

25          MR. SHERMAN: IS IT ON PONDEROSA?

26          MR. MOSHENKO: IT MAY BE.

1 MR. SHERMAN: THAT'S THE LATEST ONE.

2 MR. MOSHENKO: I DON'T KNOW WHICH COURT HE IS  
3 OBLIGATED TO BE IN. BUT OUR PLAN -- AND YOUR HONOR, IF  
4 YOUR HONOR COULD -- SINCE I WASN'T HERE, I DON'T KNOW WHAT  
5 WAS PRESENTED -- COULD RECONSIDER. I KNOW WE COMPLAINED  
6 ABOUT EVERYBODY IS RECONSIDERING -- RECONSIDER WITH THE  
7 INFORMATION HE HAS TO BE IN COURT I'M INFORMED ON THURSDAY,  
8 AND THAT WOULD SOLVE A LOT OF PROBLEMS ON TIMING FOR THE  
9 PLAINTIFFS. BECAUSE WHEN MR. NOVELLI GOT PULLED OUT FROM  
10 US THIS MORNING, WE HAD TO START SCATTERING AROUND TO  
11 TRY -- JUST LIKE MR. CHRIS DAVIS WAS PULLED OUT FROM US ON  
12 WEDNESDAY BECAUSE THE HANDLING OF MR. BUTLER.

13 AND THEN I DON'T WANT TO SOUND LIKE I'M  
14 COMPLAINING. I'D LIKE TO PUT MR. NOVELLI ON RIGHT AFTER  
15 MR. DAWSON, 10 SECONDS AFTER MR. DAWSON LEAVES SO WE CAN  
16 HAVE THIS GO THE WAY WE PLANNED IT TO GO, BUT WITH THE  
17 UNDERSTANDING HE HAS TO BE EXCUSED.

18 THE COURT: I'D GO ALONG WITH THAT ON THE CONDITION  
19 THAT YOU COULD FINISH WITH HIM NO LATER THAN TUESDAY, AND  
20 THEY COULD HAVE HIM FOR WEDNESDAY, AND HE CAN BE OUT OF  
21 HERE WEDNESDAY NIGHT.

22 MR. MOSHENKO: IT DOES DEPEND ON WHETHER MR. -- I  
23 DON'T KNOW WHO IS GOING TO CROSS-EXAMINE --

24 MR. SHERMAN: I WILL.

25 MR. MOSHENKO: -- MR. DAWSON.

26 MR. SHERMAN: NO. NOT DAWSON.

1 MR. MOSHENKO: IT DOES DEPEND ON WHETHER MR. DAWSON  
2 IS FINISHED AT 4:00 OR 2:00 OR 1:30 OR WHAT.

3 THE COURT: WELL, I'M GOING TO MAKE THIS -- I WANT  
4 YOU TO MAKE THIS -- I'M GOING TO MAKE THIS A FIRM, FIRM  
5 DECISION. THERE WILL BE NO MORE SPLITTING THE WITNESSES,  
6 PERIOD. YOU HAVE TO CALL A WITNESS. HE HAS TO COME ON; HE  
7 HAS TO STAY ON UNTIL BOTH SIDES ARE FINISHED WITH HIM.  
8 BECAUSE IT'S BECOMING TOO DISJOINTED FOR THIS JURY TO TRY  
9 TO FOLLOW THIS TRIAL. AND I'D LIKE TO MAKE EVERYTHING  
10 CONVENIENT FOR EVERYBODY, BUT IT'S SOMETHING THAT I'VE GOT  
11 TO DO TO RUN THIS TRIAL AND MOVE IT ALONG.

12 SO NEITHER SIDE, DON'T EVER ASK AGAIN FOR  
13 SPLITTING TIME WITH WITNESSES.

14 MR. SHERMAN: THAT INCLUDES MR. NOVELLI.

15 THE COURT: THAT'S EVERYBODY.

16 MR. SHERMAN: YEAH, OKAY.

17 THE COURT: BOTH SIDES.

18 MR. SHERMAN: LOOK, I THINK THIS IS SOMETHING WE  
19 ALL LEARNED AS YOUNGSTERS. YOU FINISH WHAT YOU START.

20 THE COURT: OKAY. NOW, THEN, I THINK, IRA, YOU'RE  
21 FINISHED FOR THE DAY.

22 MR. RIVIN: I AM. CAN I GO HOME AND TAKE CARE OF  
23 THIS COLD?

24 THE COURT: GO HOME AND HAVE SOME CHICKEN SOUP.

25 MR. RIVIN: THANK YOU.

26 MR. SHERMAN: ONE ITEM ON MR. DAWSON. THIS NEVER

1 GOT INTO THE IN-LIMINE MOTION. IF COUNSEL DOESN'T HAVE  
2 ENOUGH TIME TO CONSIDER IT, I'M SURE WE CAN DO THIS ON ALL  
3 SORTS OF PAPERS.

4 MR. DAWSON'S PARTNER -- TO USE THAT WORD  
5 LOOSELY -- IS DICK KEMP. AND I HAVEN'T DISCUSSED THIS WITH  
6 MR. MOSHENKO, BUT I'VE SPENT SO MUCH TIME WITH MR. MOSHENKO  
7 I SOMETIMES FEEL LIKE I KNOW -- BILL?  
8 BILL KEMP. WHATEVER.

9 MR. MOSHENKO: BILL KEMP.

10 MR. SHERMAN: JACK KEMP BECOMES THE ISSUE,  
11 QUARTERBACK, PRESIDENTIAL CANDIDATE. I DON'T WANT TO HEAR  
12 ABOUT JACK KEMP. I DON'T WANT TO HEAR A VOLUNTEER ABOUT  
13 HIS BUSINESS PARTNER WHOSE BROTHER IS JACK KEMP.

14 THE COURT: IS HIS BROTHER JACK?

15 MR. SHERMAN: YEAH. IT'S VERY INTERESTING. BUT  
16 YOU KNOW WHAT? IT'S NOT RELEVANT.

17 THE COURT: NO.

18 MR. SHERMAN: AND I DON'T WANT TO HEAR ABOUT IT.

19 THE COURT: THAT'S NAME DROPPING.

20 MR. MOSHENKO: IF YOU WANT TO ORDER THAT JACK KEMP  
21 SHALL NOT BE MENTIONED, I'LL INSTRUCT MR. SHAW OF THAT. HE  
22 IS HANDLING MR. DAWSON.

23 THE COURT: YEAH.

24 MR. SHERMAN: OTHERWISE, I'M GOING TO MENTION  
25 BILL CLINTON.

26 MR. MOSHENKO: ON THIS TIMING OF MR. NOVELLI,

1 AGAIN, I THINK MR. NOVELLI -- I THOUGHT MR. NOVELLI WOULD  
2 TAKE TWO DAYS BECAUSE HE TIES EVERYTHING TOGETHER, AND  
3 AFTER ALL, YOU'VE HEARD HIS NAME HALF A MILLION TIMES IN  
4 THIS CASE.

5 THE COURT: HE OUGHT TO BE YOUR LAST WITNESS.

6 MR. MOSHENKO: WELL, ACTUALLY, NO. WE HAVE A  
7 DAMAGES EXPERT THAT FOLLOWS, A PH.D. STATISTICIAN.

8 THE COURT: I'M THINKING WE OUGHT TO CUT THIS SHORT  
9 A LITTLE BIT. WE'RE GOING TO BIFURCATE THIS CASE. LET THE  
10 JURY DETERMINE, FIRST OF ALL, IF THERE WAS ANY DAMAGES. IT  
11 WILL SAVE A LOT OF TIME.

12 MR. MOSHENKO: YOU SAY IF THERE WAS ANY DAMAGES.

13 THE COURT: YEAH. IF THE JURY DETERMINES THERE  
14 WERE DAMAGES, THEN YOU CAN BRING BACK -- BRING IN YOUR  
15 DAMAGE EXPERTS.

16 MR. MOSHENKO: WELL, HOW CAN YOU HAVE THEM  
17 DETERMINE IF THERE WERE DAMAGES WITHOUT THE DAMAGES  
18 EXPERT? THESE ARE CAUSATION --

19 MR. SHERMAN: I UNDERSTOOD, YOUR HONOR, THE  
20 LIABILITY --

21 MR. RIVIN: LIABILITY AND CAUSATION.

22 MR. MOSHENKO: YOU MEAN DETERMINE CAUSATION, YOUR  
23 HONOR.

24 COULD I JUST ASK THAT WE NOT -- I WANT TO  
25 TALK ABOUT WHAT WE WERE -- AND I'D LIKE TO TALK ABOUT THAT  
26 WITH YOUR HONOR IN A SECOND.

1                   BUT REGARDING MR. NOVELLI, THE TIMING, I'VE  
2 HAD THE EXPERIENCE WHERE -- WHERE THE COURT SAYS, "CLOSE IT  
3 OFF AT THIS TIME." I TAKE AN HOUR, AND COUNSEL RUNS ME  
4 RIGHT OUT OF ANY REDIRECT. WE THOUGHT THAT MR. NOVELLI  
5 COULD TAKE TWO DAYS. IF YOUR HONOR WANTS TO, SAY, START --  
6 IF HE CAN START MONDAY AFTERNOON, SAY, ANY TIME BEFORE OR  
7 AT THE TIME OF THE BREAK, THE AFTERNOON BREAK, WE WILL  
8 ABBREVIATE HIS EXAMINATION, ASSUMING NOT TOO MANY SIDEBARS,  
9 AND THINK LIKE THAT, AND WE'LL FINISH HIM BY TUESDAY  
10 AFTERNOON. AND THEN IF YOUR HONOR WANTS TO GIVE US A DAY  
11 AND A HALF, THEN I WOULD ASK THAT THE COURT SPECIFY THE  
12 DEFENDANT'S CROSS, AS YOU SPECIFIED THE PLAINTIFFS' DIRECT,  
13 SO THAT WE DON'T END UP -- WE TAKE TILL TUESDAY, AND THEN  
14 THE DEFENDANTS TAKE UNTIL THURSDAY AT 4:00. AND THEN --  
15 I'M SORRY -- WEDNESDAY. I GUESS THAT IS WEDNESDAY. AND  
16 THAT'S THE END OF MR. NOVELLI, IF THAT'S WHAT YOU'RE GOING  
17 TO SAY.

18                   MR. SHERMAN: YOUR HONOR, MR. MOSHENKO HAS ONLY  
19 KNOWN FOR ABOUT TWO MONTHS THAT WE'VE BUILT OUR CASE AROUND  
20 MR. NOVELLI. AND ONE OF THE THINGS I LOVE ABOUT TRIAL WORK  
21 AND COURTROOM WORK IS TO BE EFFICIENT ABOUT IT.

22                   I'M GOING TO CROSS-EXAMINE HIM IN FOUR DAYS,  
23 NOT IN FIVE DAYS, NOT IN FOUR DAYS AND ONE MINUTE.

24                   THE COURT: YOU'RE GOING TO TAKE FOUR DAYS?

25                   MR. SHERMAN: I'M GOING TO TAKE FOUR DAYS, AND  
26 AFTER THAT, WE'LL SEE WHAT REMAINS OF THEIR CASE. I WANT

1 FOUR DAYS.

2 MR. MOSHENKO: THEN WE RUN INTO THE PROBLEM THAT HE  
3 HAS TO BE IN ANOTHER COURT.

4 MR. SHERMAN: THAT'S NOT A PROBLEM BECAUSE WE  
5 FINISH WHAT WE START.

6 THE COURT: WE WON'T START HIM UNTIL HE COMES  
7 BACK. THAT'S IT.

8 MR. MOSHENKO: OKAY. THEN WE ARE WORKING ON  
9 FILLING WITNESSES, YOUR HONOR, AND WE'LL DO THAT. WE'LL  
10 HAVE ANOTHER WITNESS FOR, I GUESS, TUESDAY, WEDNESDAY,  
11 THURSDAY. WE'LL DO OUR BEST.

12 MR. SHERMAN: WELL, ON THE SUBJECT OF TUESDAY,  
13 WEDNESDAY, THURSDAY, WHAT I HEARD IS THAT WITH THE  
14 ANTICIPATED DIRECT AND THE ANTICIPATED CROSS OF MR. DAWSON  
15 BY 1:30 MONDAY AFTERNOON, WE'RE READY TO START ANOTHER  
16 WITNESS. AND WHILE THESE LEISURELY THURSDAYS -- THURSDAY  
17 AFTERNOONS ARE KIND OF NICE IN A UNEXPECTED WAY, YOU KNOW,  
18 WE'VE GOT 17 PEOPLE HANGING AROUND OVER THE SUMMER. I  
19 EXPECT THERE WILL BE A WITNESS ON MONDAY, AT LEAST THAT'S  
20 WHAT -- I HOPE YOUR HONOR'S EXPECTATION.

21 THE COURT: I AM.

22 MR. SHERMAN: AND I WILL GO ONE STEP FURTHER, AND  
23 YOUR HONOR HAS SEEN SOME OF THE TENSION IN CHAMBERS.

24 MR. SHAW AND I SORT OF MADE OUR PEACE WITH ONE ANOTHER.

25 MR. RIVIN: DON'T SAY BURY THE HATCHET.

26 MR. SHERMAN: NO, WE HAVEN'T BURIED THE HATCHET.

1 BUT WE'RE COMMUNICATING. YOU KNOW, THE ISSUE IS I HAVE  
2 ABSOLUTELY NO IDEA WHO THE WITNESS IS GOING TO BE AFTER  
3 MR. DAWSON. IT SOUNDS LIKE MR. MOSHENKO DOESN'T KNOW  
4 EITHER. BUT IF FOR NO OTHER REASON THAN THIS IS CIVIL  
5 LITIGATION, I THINK IT WOULD BE CIVIL.

6 IF WE COULD FIND OUT MAYBE LATER TODAY WHO  
7 THEIR NEXT WITNESS IS GOING TO BE, IT WOULD AID IN OUR  
8 EFFICIENCY OF CROSS-EXAMINING. AS YOUR HONOR KNOWS, WE  
9 COME IN WITH THE EXHIBITS READY.

10 THE COURT: YOU KNOW WHO THE WITNESSES ARE GOING TO  
11 BE THROUGHOUT THE CASE.

12 MR. SHERMAN: THEY HAVE GIVEN US 125 WITNESSES.  
13 125. AND IT SOUNDS LIKE WHEN ALL IS SAID AND DONE, THEY  
14 WILL HAVE CALLED MAYBE 25. AND SO YES, WE DO KNOW 125. I  
15 HAVEN'T PREPARED WITNESS OUTLINES FOR 125. THERE'S NOT  
16 TIME ENOUGH.

17 THE COURT: I DON'T THINK IT'S ALL THAT COMPLICATED.

18 MR. SHERMAN: I DON'T THINK SO EITHER. BUT IT  
19 WOULD -- IT IS COMPLICATED TO TRY TO FIGURE OUT WHO THEIR  
20 NEXT PERSON IS. AND SO --

21 THE COURT: YOU KNOW, WE SPENT ABOUT THREE TIMES AS  
22 MUCH TIME WE NEEDED TO SPEND WITH THIS GUY.

23 MR. RIVIN: MALPASS.

24 THE COURT: MALPASS. RIDICULOUSLY LONG. AND IT  
25 WAS SO CUMULATIVE. WE'RE LOSING THE JURY WHEN YOU DO THAT,  
26 YOU KNOW? LET'S KEEP THESE WITNESSES CONCISE AND TO THE

1 POINT AND GET THEM ON AND GET THEM OFF.

2 MR. MOSHENKO: YOUR HONOR, I HAD MY WHOLE NEXT WEEK  
3 MAPPED OUT, AND IT GOT CHANGED THREE HOURS AGO. AND  
4 MR. SHERMAN IS CORRECT. I DID NOT -- I DO NOT KNOW WHO I'M  
5 FILLING IN BECAUSE I NEED TO TAKE PEOPLE FROM THE FOLLOWING  
6 WEEK AND PULL THEM FORWARD. AND I CAN'T TELL HIM. I  
7 HAVEN'T BEEN BACK TO MY OFFICE TO START WORKING ON WITNESS  
8 ALIGNMENT.

9 THE COURT: TOMORROW IS FRIDAY. YOU WILL LET HIM  
10 KNOW BY TOMORROW.

11 MR. MOSHENKO: OF COURSE WE WILL LET HIM KNOW AS  
12 SOON AS WE KNOW. WE'LL LET HIM KNOW FRIDAY.

13 MR. SHERMAN: FRIDAY IS FINE.

14 WHAT I WAS HOPING TO DO, WHAT I WAS HOPING  
15 TO DO WITH MR. MOSHENKO IS TO SPEND 10, 15 MINUTES TO GO  
16 OVER SOME DOCUMENTS.

17 MR. MOSHENKO: I THINK WE CAN RESOLVE MOST OF THOSE.

18 THE COURT: SEE WHAT YOU CAN RESOLVE.

19 MR. RIVIN: AND NOW I WILL TAKE HEED OF THE COURT'S  
20 ADMONITION, AND I'M OUT OF HERE.

21 (RECESS TAKEN.)

22 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
23 COURT OUTSIDE THE PRESENCE OF THE JURY:)

24 THE COURT: TRIAL EXHIBIT 8262.

25 MR. MOSHENKO: ARE YOU GOING IN A GIVEN ORDER, YOUR  
26 HONOR?

1 THE COURT: YES.

2 MR. SHERMAN: YOUR HONOR, BEFORE WE GET TO 862, I  
3 WAS GOING TO SAY ABOUT 496 --

4 THE CLERK: I MISSED 496, YOUR HONOR.

5 THE COURT: WELL, YOU SHOULDN'T HAVE DONE THAT.

6 THE CLERK: I KNOW.

7 MR. MOSHENKO: YOUR HONOR, WHAT WE'LL DO, WE'LL PUT  
8 THEM UP ON THE SCREEN. WE CAN TAKE A LOOK AT THEM.

9 THE COURT: THE FOLLOWING EXHIBITS ARE DEEMED  
10 ADMITTED:

11 10, 333, 374, 375, 376, 377, 543, 570, 863,  
12 949-8579, 1516, THAT'S THE SAME AS 383. 1022 IS RECEIVED.  
13 1548.

14 MR. MOSHENKO: EXCUSE ME, YOUR HONOR. YOU SAID  
15 1516, THE SAME AS, BUT WE'RE GOING TO ADMIT 838, NOT 1516.

16 THE CLERK: NO. WE'RE GOING TO ADMIT 383, NOT  
17 1516.

18 MR. MOSHENKO: THANK YOU.

19 THE COURT: OKAY. 1548, KNOWN ALSO AS 13-20.

20 THE CLERK: 0013 THROUGH 0020.

21 MR. MOSHENKO: CORRECT.

22 THE COURT: AND THEN 1810 THROUGH 1823.

23 THE CLERK: NO.

24 THE COURT: I'M GOING TO GO UP TO THE NEXT PAGE.

25 1824 THROUGH 1848.

26 MR. SHERMAN: YOUR HONOR, ON THOSE, THOSE EXHIBITS,

1 1810 THROUGH 1848, WERE LISTS OF VARIOUS COAST MEMBERS THAT  
2 MR. MOSHENKO REFERRED TO IN THE EXAMINATION OF MR. RANDALL.  
3 THEY WERE, I THINK, AS DENOTED BY THE NUMBERS PROBABLY  
4 ABOUT 30 DIFFERENT LISTS. AND I'M LOOKING AT THEM, AND I  
5 REALIZE THAT FOUNDATION WASN'T LAID FOR ANY OF THEM, EXCEPT  
6 THE FIRST ONE. AND THIS IS MORE A GOOSE AND GANDER TYPE OF  
7 ISSUE.

8 WE'RE GOING TO HAVE SIMILAR DOCUMENTS  
9 PRODUCED BY PLAINTIFFS SHOWING WHAT THEY CONTEND THEIR  
10 MEMBER BASE IS AT VARIOUS TIMES, AND THIS IS MORE THE  
11 NATURE OF JUST A PROTECTIVE STATE OF MAKING SURE THAT NOT  
12 ONLY DOES THE COURT REALIZE THIS, BUT COUNSEL REALIZES  
13 THIS, BY OUR SPEEDING THIS PROCESS UP -- I TALKED ABOUT  
14 EFFICIENCY BACK THEN WHEN THEY REFERENCED THE 1810 THROUGH  
15 1848 SERIES. I WOULD EXPECT THE SAME TYPE OF TREATMENT  
16 WITH RESPECT TO THOSE KINDS OF LISTS. THERE'S GOING TO BE  
17 A LOT OF LISTS THAT ARE GOING TO START COMING IN.

18 THE COURT: YOU WANT RECIPROCITY.

19 MR. SHERMAN: I WANT RECIPROCITY.

20 THE COURT: YOU GOT IT.

21 MR. MOSHENKO: I'M NOT SURE WHAT HE MEANS BY THAT.  
22 I WANT TO SEE WHAT HE OFFERS WHEN HE OFFERS IT.

23 MR. SHERMAN: I'M TALKING ABOUT THE LISTS THAT COME  
24 FROM PLAINTIFFS. THERE AREN'T ANY OTHER LISTS.

25 THE COURT: OKAY. WHAT DO YOU HAVE UP ON THE  
26 SCREEN THERE, 496?

1 MR. MOSHENKO: 496.

2 MR. SHERMAN: YOUR HONOR, 496 WAS A DOCUMENT THAT I  
3 SHOWED TO MR. RANDALL, AND THE ISSUE WAS WHAT COAST WAS  
4 HEARING ABOUT AND LEARNING FROM THE R.V. COMMUNITY IN THE  
5 SUMMER OF 1997 ABOUT THE IMPLOSION OF THOUSAND ADVENTURES,  
6 INC. THIS ONE IN PARTICULAR, 496, WAS SENT TO COAST TO  
7 COAST. YOU'LL NOTICE ON THE LAST PAGE, YOUR HONOR, IF YOU  
8 WILL GO TO THE LAST PAGE, IT WAS SENT TO COAST TO COAST  
9 FROM A DEVELOPER. THAT'S WHAT THE FAX TRANSMITTAL  
10 REFLECTS.

11 SO THIS IS THE INFORMATION THAT WAS OUT  
12 THERE. SO IT'S OBVIOUSLY RELEVANT. IT GOES TO A WHOLE  
13 HOST OF ISSUES, INCLUDING REPUTATION, INCLUDING WHAT --  
14 WITHOUT REGARD TO THE TRUTH OF THE MATTER ASSERTED, WHAT  
15 PEOPLE BELIEVED WAS HAPPENING.

16 AND IF YOU CAN GO BACK TO THE FIRST PAGE,  
17 PLEASE, THE FIRST PAGE, YOU'LL NOTICE IT SHOWS THAT IT IS  
18 PRINTED OUT FROM AN INTERNET DOWNLOAD, REFERENCING ATTORNEY  
19 GENERAL DENNIS VACCO OF NEW YORK STATE. I'M NOT SURE THAT  
20 THERE COULD BE A REAL DISPUTE AS TO THE RELIABILITY OR THE  
21 AUTHENTICITY. AND, AGAIN, IT'S NOT BEING OFFERED FOR THIS  
22 IS WHAT HE FOUND, BUT RATHER THIS IS WHAT WAS OUT THERE.

23 THE COURT: THIS IS THE DEFENSE EXHIBIT?

24 MR. SHERMAN: YES.

25 MR. MOSHENKO: YOUR HONOR, I JUST HEARD MR. SHERMAN  
26 SAY THAT THIS DOCUMENT IS BEING OFFERED TO PROVE WHAT

1 MR. -- I THINK RANDALL HE SAID, WAS RECEIVING AND  
2 UNDERSTANDING AND HEARING IN SUMMER -- SPRING AND SUMMER OF  
3 1997. THE PROBLEM WITH USING THIS DOCUMENT TO PROVE WHAT  
4 MR. RANDALL HEARD IN THE SUMMER OF 1997 IS IF YOU GO TO  
5 PAGE 3, MR. DURAN, AND HIGHLIGHT THE DATE THERE, YOU CAN  
6 SEE THAT HE DIDN'T GET IT UNTIL JANUARY OF 1998.

7 SO IT IS A HEARSAY DOCUMENT RECEIVED FROM  
8 SOMEBODY WE DON'T REALLY KNOW -- WELL, AND THERE'S EVEN A  
9 DATE ON THE RIGHT-HAND SIDE RIGHT THERE. IT CERTAINLY  
10 CAN'T BE PROBATIVE TO PROVE WHAT MR. SHERMAN SUGGESTS IT  
11 PROVES.

12 AND THE FOUNDATION THAT IS THERE PROVES IT  
13 IS INADMISSIBLE TO PROVE WHAT HE IS OFFERING IT TO PROVE,  
14 BECAUSE THE FAX NUMBERS, THE FAX DATES AND THE DATE OF THE  
15 TRANSMISSION FAX SHOWS THAT COAST TO COAST DIDN'T GET IT  
16 UNTIL JANUARY OF 1998. THAT ALONE SHOULD KILL IT.

17 OTHER THAN THAT, IT IS HEARSAY. IT  
18 APPARENTLY IS SOMEBODY'S INTERPRETATION OF WHAT SOMEBODY  
19 ELSE SAID. AND THE SOMEBODY ELSE IS DENNIS VACCO. IT  
20 APPEARS TO BE LIKE A NEWS ARTICLE OR A WRITING BY SOMEBODY  
21 THAT'S SUMMARIZING SOME POSITIONS IN SOME OF THE DOCUMENTS.  
22 AND AS A MATTER OF FACT, THERE IS ANOTHER DOCUMENT THAT IS  
23 IN EVIDENCE, IF MY RECALL IS CORRECT, AND IS THE ACTUAL  
24 DOCUMENT CREATED BY MR. VACCO.

25 ALL THIS DOES IS PURPORTS TO REINTERPRET AND  
26 RESTATE WHAT THE OTHER DOCUMENT SAYS. IT'S CUMULATIVE.

1 THE COURT: IT'S OUT.

2 862.

3 MR. SHERMAN: YOUR HONOR, 862 CONSISTS OF, AMONG  
4 OTHER -- 862 CONSISTS OF SEVERAL YEARS WORTH OF COAST TO  
5 COAST MAGAZINES. ONE OF THEM IN PARTICULAR WAS REFERENCED  
6 WITH MR. RYMAN SHOWING PARK CLOSURES. MR. RANDALL  
7 REFERENCED THE COAST MAGAZINES. MR. BUTLER REFERENCED THE  
8 COAST MAGAZINES. MR. EVERETT WILL REFERENCE THE COAST  
9 MAGAZINES. THERE ARE A LOT OF COAST MAGAZINES. BUT I'VE  
10 HEARD MANY TIMES IN THIS TRIAL THAT COAST DOESN'T HAVE  
11 MEMBERS, AND THAT COAST DOESN'T OFFER BENEFITS TO ITS  
12 MEMBERS. AND I THINK THAT THE JURY OUGHT TO HAVE THE  
13 OPPORTUNITY, IF THEY WISH, TO GO THROUGH THE COAST  
14 MAGAZINES TO SEE WHAT COAST OFFERS TO ITS MEMBERS EIGHT  
15 TIMES A YEAR.

16 THE COURT: OKAY. WHAT'S THE OPPOSITION?

17 MR. MOSHENKO: WELL, THE OPPOSITION IS THAT, NUMBER  
18 ONE, EVERYTHING AFTER THE FALL OF 1997 IS IRRELEVANT  
19 AND/OR SELF-SERVING.

20 NUMBER TWO, THINGS DURING THE FALL OF 1997  
21 MAY BE RELEVANT, BUT THESE MAGAZINES MAY INCLUDE -- I'M  
22 SURE DO INCLUDE THINGS THAT ARE COMPLETELY IRRELEVANT,  
23 IMMATERIAL, BECAUSE THEY'RE NOT RESTRICTED TO ANYTHING  
24 RELATING TO OUR CASE.

25 NUMBER THREE, WE'RE GOING TO HAND THE JURY,  
26 I THINK FROM WHAT I SAW, YEARS AND YEARS AND YEARS OF COAST

1 MAGAZINES, MAYBE 20, 30, 40 COAST MAGAZINES. IT'S A 352  
2 OBJECTION. WHY LOAD THIS JURY UP WITH ALL THE JUNK THAT  
3 MIGHT BE THERE? IF COUNSEL WANTS TO SHOW THE COURT IN  
4 SEPTEMBER, OCTOBER, NOVEMBER, DECEMBER OF 1997 WHEN THE  
5 LETTERS WERE GOING OUT SPECIFIC THINGS RELATING TO -- OR  
6 EVEN JULY, AUGUST, I WOULD BE WILLING TO GO ALONG WITH  
7 THAT.

8 BUT WE DON'T HAVE THAT. WE HAVE JUST HERE,  
9 TAKE YEARS AND YEARS OF COAST MAGAZINES. AND IT'S  
10 BURDENSOME.

11 MR. SHERMAN: THE THING THAT COUNSEL OBVIOUSLY  
12 WANTS TO IGNORE IS THAT EVERY ISSUE OF THE COAST MAGAZINE  
13 CONTAINS A SECTION ON RESORT UPDATES. AND THIS LAWSUIT TO  
14 A LARGE EXTENT IS ABOUT COMMUNICATION AND CLARITY IN  
15 COMMUNICATION. AND COAST TRIES EIGHT TIMES A YEAR TO  
16 CLEARLY COMMUNICATE WITH ITS MEMBERS.

17 THE COURT: HOW MANY VOLUMES DO YOU HAVE THERE?

18 MR. SHERMAN: I NOTICED I HAD FROM 1994 THROUGH THE  
19 PRESENT. AND YOU KNOW WHAT? I JUST HAPPEN TO GIVE THE  
20 JURY A LITTLE MORE CREDIT, I GUESS, THAN COUNSEL BECAUSE IF  
21 THEY WANT TO LOOK AT THEM, THEY WILL LOOK AT THEM. IF THEY  
22 DON'T WANT TO, THEY WON'T LOOK AT THEM. AND THERE ARE  
23 PRETTY PICTURES, AND IT'S A LOT MORE THAN CAN BE SAID ABOUT  
24 NEWS AND VIEWS. I MEAN, JUST TALKING ABOUT A PROFESSIONAL  
25 ORGANIZATION.

26 THE COURT: ALL RIGHT. I'LL ALLOW THEM. 862 IS

1 IN.

2 THE CLERK: ALL OF 862?

3 THE COURT: ALL OF 862.

4 945.

5 MR. SHERMAN: 945 IS THE RAND-MC NALLY MAP OF THE  
6 UNITED STATES THAT WITNESSES HAVE TESTIFIED TO, THE  
7 WITNESSES HAVE TESTIFIED, ARE SHOWN -- YEAH, THAT'S THE  
8 YEAR 2000 COAST TO COAST MAP. THE FACT IS THAT A MAP DARN  
9 SIMILAR TO THAT WAS OUT IN 1997 AND 1994.

10 THE COURT: WELL, WHICH ONE IS THIS, 945?

11 MR. SHERMAN: IT'S THE ONE RIGHT BEFORE YOUR HONOR.

12 THE COURT: 2000?

13 MR. SHERMAN: YES. BUT, I MEAN, THE FACT IS --

14 THE COURT: DON'T YOU HAVE ONE FOR 1997?

15 MR. SHERMAN: YOU KNOW, I DON'T KNOW THAT WE HAVE  
16 ONE.

17 MR. MOSHENKO: I'VE SEEN IT. IT'S ON THE WALL IN  
18 DENVER, COLORADO.

19 MR. SHERMAN: WELL, THAT'S THE PROBLEM. IT IS ON  
20 THE WALL. THE POINT IS, NO ONE IS GOING TO BE MISLED ABOUT  
21 THE FACT THAT IT SAYS YEAR 2000. IF THE COURT THINKS IT'S  
22 IMPORTANT, WE'LL TELL THE JURY. I'LL HAVE MR. EVERETT TELL  
23 THE JURY THAT, YOU KNOW, WE HAD ONE FOR 1994 AND 3 AND IT  
24 WAS THE SAME. YOU HAD A FEW DIFFERENT GREEN DOTS OR THEY  
25 WERE DIFFERENT PLACES, BUT THEY'RE THE SAME THING. THE  
26 FACT IS, AND THIS GOES -- ALL THIS PRIMARY PRODUCT

1 INFORMATION THAT PLAINTIFFS ARE TRYING TO DRILL IN THE  
2 JURY'S HEAD, EVERY PERSON THAT WENT INTO ONE OF  
3 NOVELLI'S RESORTS SAW THAT MAP IN THE YEAR THAT THEY WENT  
4 IN WHEN THEY MADE THEIR PURCHASE DECISION. AND THAT  
5 INFLUENCED PURCHASE DECISIONS.

6 MR. MOSHENKO: YOUR HONOR, THEY DIDN'T SEE THAT  
7 MAP. THAT MAP DIDN'T EXIST UNTIL 2000.

8 MR. SHERMAN: I SAID FOR THAT YEAR.

9 MR. MOSHENKO: THAT MAP IS CREATED FOR THIS  
10 LITIGATION. THEY ARE MANUFACTURING EVIDENCE.

11 THE COURT: LET'S SEE THE ONE FOR 1997. IF YOU GOT  
12 ONE, I'LL ALLOW IT.

13 MR. SHERMAN: I HAVE THAT MAP IN A SMALLER VERSION.

14 THE COURT: THAT'S GOOD.

15 MR. SHERMAN: I WANT THEM TO HAVE THE BIG ONE.

16 THE COURT: THEN BLOW IT UP.

17 MR. SHERMAN: I'LL DO THAT.

18 THE COURT: OKAY. THE 1997 MAP BE ALSO ADMITTED,  
19 AND THAT WILL BE EXHIBIT 945-A.

20 MR. SHERMAN: OKAY. NOW, IF I HAVE TO GO TO DENVER  
21 TO GET THE ONE THAT'S HANGING ON THE WALL, CAN I GET IT  
22 BACK THE END OF THIS CASE?

23 THE COURT: SURE. 949-A, THE 1997 MAP.

24 MR. MOSHENKO: JUST ONE LAST COMMENT, I'D LIKE TO  
25 LOOK AT THE '97 AND ASK THE COURT TO LOOK AT IT. I DON'T  
26 KNOW WHAT IT SAYS ON IT THAT MIGHT BE MISLEADING.

1 THE COURT: ALL RIGHT. 949-9235.

2 MR. MOSHENKO: YOUR HONOR, MAY I JUST SUGGEST THE  
3 9235, 8452 AND 8453, THOSE THREE IN ORDER. THESE ARE ALL  
4 LETTERS FROM MEMBERS, AND WE'VE HAD A LOT OF SIDEBARS  
5 RAISING OUR OBJECTIONS. MR. SHAW I THINK DID A VERY -- ON  
6 THE RECORD COMPLETE ARGUMENT, AND YOUR HONOR HAS ROUTINELY  
7 DISAGREED. AND WE RESPECT THAT. BUT I WANT THE RECORD TO  
8 REFLECT OUR OBJECTIONS TO THESE THREE LETTERS ARE THE SAME  
9 THAT MR. SHAW PREVIOUSLY MADE. AND YOUR HONOR CAN GO AHEAD  
10 AND GO.

11 THE COURT: OKAY. I ALREADY RULED ON THEM. YEAH.  
12 I ADMITTED THEM, DIDN'T I?

13 MR. MOSHENKO: NOT THESE PARTICULAR ONES.

14 MR. SHERMAN: NOT THOSE PARTICULAR ONES, BUT YOU  
15 RULED ON THE CONCEPT.

16 MR. MOSHENKO: THESE ARE LIKE OTHER RULINGS.

17 THE COURT: OKAY. THEY'RE ADMITTED.

18 NOW, WE GO DOWN TO 1602.

19 MR. SHERMAN: 1602 IS -- I DON'T KNOW WHAT IT IS,  
20 BUT IT'S NOT FROM MY CLIENT. IT'S NOT TO THEIR CLIENT.

21 THE COURT: WHAT IS IT?

22 MR. MOSHENKO: 1602, YOUR HONOR, 1608, 1609, 1610  
23 AND 1636 ARE SORT OF THE FLIP SIDE OF THE ONES THAT YOU'VE  
24 BEEN ADMITTING UNDER 949. THEY ARE LETTERS SENT TO MEMBERS  
25 FROM DEVELOPERS WHO RECEIVED THE TRANSFER LISTS FROM CAMP  
26 COAST TO COAST AND WERE ENCOURAGED, I THINK THE EVIDENCE

1 SHOWS, TO COMMUNICATE WITH THESE MEMBERS TO TELL THEM WHAT  
2 WAS HAPPENING.

3 AND SO WE BELIEVE THAT THEY ARE RELEVANT AND  
4 MATERIAL. AND, FURTHERMORE, I THINK THE EVIDENCE IS CLEAR  
5 THAT THESE DEVELOPERS WERE IDENTIFIED BY AT LEAST TWO COAST  
6 EXPERTS AS AGENTS OF CAMP COAST TO COAST IN THE CONDUCT  
7 THAT THEY WERE CARRYING OUT OR TRANSFERRING THESE MEMBERS.  
8 SO WE BELIEVE THAT THESE DEVELOPER LETTERS --

9 THE COURT: 1602 THROUGH 1636.

10 MR. MOSHENKO: CORRECT.

11 MR. SHERMAN: YOUR HONOR, THE CHALLENGE WE HAVE  
12 WITH THIS, UNLIKE THE 949 SERIES WHICH I'VE GOT A WITNESS,  
13 WITNESSES, IF NEED BE, GET UP ON THE WITNESS STAND AND  
14 SWEAR UNDER OATH THAT COAST RECEIVED THESE, HOW THEY  
15 RECEIVED THEM, THEIR AUTHENTICITY AND RELIABILITY, UNLIKE  
16 THOSE, THERE IS NO FOUNDATION FOR THIS. I INVITE  
17 PLAINTIFFS' COUNSEL TO SUPPLY FOUNDATION FOR ONE OF THE  
18 LETTERS. AND UNTIL THEY SUPPLY FOUNDATION FOR THESE  
19 LETTERS, I DON'T KNOW WHETHER, YOU KNOW, SOMEBODY JUST  
20 CREATED THEM IN THE BACK ROOM SOMEWHERE. I WANT TO KNOW  
21 THAT THESE THINGS ARE REAL.

22 THE COURT: THAT SOUNDS FAIR TO ME.

23 MR. MOSHENKO: WELL, YOUR HONOR, THESE LETTERS CAME  
24 FROM THE RECORDS OF COAST TO COAST AND/OR MY CLIENT, AND  
25 THEY WERE RECEIVED -- THE SAME MANNER THAT THE LETTERS FROM  
26 MEMBERS WERE RECEIVED BY CAMP COAST TO COAST. MR. RANDALL,

1 I BELIEVE -- BUT IT COULD HAVE BEEN RYMAN -- SAT THERE AND  
2 LOOKED AT THE FIRST ONE AND IDENTIFIED WHAT IT WAS. AND  
3 THE FOUNDATION WAS LAID THROUGH MR. SHAW QUESTIONING THAT  
4 THE LETTERS FROM DEVELOPERS -- THAT THE DEVELOPERS WERE  
5 SENDING LETTERS, QUOTE, AS AGENTS FOR CAMP COAST TO COAST.

6 SO THE FOUNDATION HAS BEEN ALREADY LAID  
7 THROUGH THE IDENTIFICATION BY COAST TO COAST OFFICER AS TO  
8 WHAT THESE LETTERS APPEAR TO BE, AND I THINK THAT WE'VE  
9 ALREADY COMPLIED.

10 MR. SHERMAN: YOUR HONOR, I HEARD WHAT YOU JUST  
11 HEARD, AND/OR. WHAT IS IT? IS IT "AND" OR IS IT "OR"?  
12 IT DIDN'T COME FROM COAST TO COAST. AND IF IT CAME FROM  
13 NOVELLI, I'D LIKE SOMEBODY WHO CAN GET UP ON THE WITNESS  
14 STAND AND SWEAR TO TELL THE TRUTH, TELL THE TRUTH.

15 MR. MOSHENKO: IF YOUR HONOR WOULD LOOK AT THEM,  
16 THEY'RE OBVIOUSLY -- COULD YOU PUT UP, EXAMPLE, 1609.

17 YOU CAN SEE AT THE BOTTOM THE TRAVEL AMERICA  
18 IS UPSIDE DOWN. ALL THESE THINGS COME INTO COAST'S  
19 RECORDS, AND THEY GET ADMITTED BASED ON THE FACT THEY WERE  
20 RECEIVED BY COAST. THAT'S THE FOUNDATION. THESE THINGS  
21 CAME INTO TRAVEL AMERICA.

22 MR. SHERMAN: HAVE SOMEBODY TESTIFY TO THAT. I  
23 MEAN, YOUR HONOR IS GOING TO HEAR -- THE JURY IS GOING TO  
24 HEAR THROUGH THE WITNESSES SOME AMAZING STORIES ABOUT  
25 RECORD-KEEPING AND TRAVEL AMERICA AND SEE SOME AMAZING  
26 VIDEOTAPE FOOTAGE OF THE --

1 THE COURT: LET'S LAY SOME FOUNDATION FOR THEM.

2 MR. MOSHENKO: OKAY. FURTHER FOUNDATION.

3 THE COURT: SO FOR THE TIME BEING, 1602 THROUGH  
4 1636 REMAIN UNDER SUBMISSION.

5 MR. MOSHENKO: VERY WELL, YOUR HONOR.

6 THE CLERK: DON'T WE HAVE MORE THAN THAT?

7 THE COURT: I SAID 1602 THROUGH 1636. 1602, 08,  
8 09, 10, 36.

9 THE CLERK: THERE'S A BUNCH OF THEM.

10 THE COURT: THANK YOU.

11 NOW, WE GO TO 1687.

12 MR. SHERMAN: 1687, THE FIRST PAGE IS A COURT  
13 PLEADING. THAT'S NOT A COMPLETE DOCUMENT. IT GOES PAGE 1,  
14 PAGE 2, PAGE 3, PAGE 5 AND -- I DON'T KNOW. MAYBE PAGE 4  
15 HAS ALL THE GOOD STUFF ON IT. I DON'T KNOW. BUT IF WE'RE  
16 GOING TO OFFER DOCUMENTS --

17 THE COURT: IT SHOULD BE COMPLETE.

18 MR. MOSHENKO: I AGREE.

19 MR. SHERMAN: EITHER IT SHOULD BE COMPLETE OR WE  
20 SHOULD AGREE IT NEED NOT BE COMPLETE.

21 MR. MOSHENKO: I AGREE. I WOULD SUGGEST THIS IS A  
22 DOCUMENT THAT'S BEEN SHOWN TO THE JURY. AND IF THERE WAS A  
23 PAGE MISSING, I DON'T KNOW ANYBODY THAT INTENTIONALLY  
24 DELETED A PAGE ON PURPOSE. WE'LL COMPLETE THE DOCUMENT AND  
25 THEN IT MAY GO IN.

26 MR. SHERMAN: WHY DON'T THEY JUST SHOW IT TO US,

1 AND WE CAN TAKE IT UP AGAIN.

2 THE COURT: YOU CAN SEE IT.

3 MR. SHERMAN: NO PAGE 4.

4 THE COURT: ALL RIGHT. THAT WILL REMAIN UNDER  
5 SUBMISSION. THAT'S 1687.

6 NOW, WE GO TO 1808-A, FILE 1.

7 MR. SHERMAN: OKAY. THE COURT IS GOING TO HEAR MY  
8 PROTECTIVE STATEMENT AGAIN. GOOD FOR GOOSE, GOOD FOR  
9 GANDER, WANT RECIPROCITY, AND, MR. MOSHENKO, I ADDRESS THIS  
10 OBVIOUSLY TO THE COURT. WHAT I'M REFERRING TO, YOUR HONOR,  
11 AS FAR AS RECIPROCITY, GOOSE AND GANDER, IS THEY HAVE GOT  
12 LOTS OF FILES, BIG THICK STACKS OF MEMBERS, AND ALL THIS  
13 STUFF THAT MR. NOVELLI TESTIFIED TO AT GREAT LENGTH IN HIS  
14 DEPOSITION I DON'T ANTICIPATE HAVING PROBLEMS MOVING INTO  
15 EVIDENCE.

16 MR. MOSHENKO: IS THAT AGREEMENT THAT IT GO INTO  
17 EVIDENCE, YOUR HONOR?

18 THE COURT: I GUESS IT IS.

19 MR. SHERMAN: THAT'S MY STATEMENT. I THINK I'M  
20 PRETTY CLEAR.

21 THE COURT: ALL RIGHT. SO 1808-A AND 1808-B ARE  
22 IN, RECEIVED.

23 THAT LEAVES US ONE MORE, 2171.

24 MR. SHERMAN: YEAH. 2171 -- I'M NOT REALLY SURE  
25 WHAT IT IS. I ACTUALLY ASKED THE CLERK TO SHOW ME THE REAL  
26 EVIDENCE THAT WOULD GO TO THE JURY AND ACTUALLY BETTER THAN

1 MY. COPY, IF I MAY APPROACH AND SHARE THIS WITH THE COURT.

2 THE COURT: YEAH.

3 MR. SHERMAN: THIS IS WHAT PLAINTIFFS THINK OUGHT  
4 TO GO BEFORE THE JURY.

5 MR. MOSHENKO: THAT MISSTATES OUR POSITION, YOUR  
6 HONOR.

7 MR. SHERMAN: WELL, I'VE PROVIDED TO THE COURT  
8 THROUGH THE CLERK THE OFFICIAL EVIDENCE BOOK THAT THE  
9 JURORS ARE GOING TO LOOK AT WHEN THEY'RE IN THEIR JURY ROOM  
10 DELIBERATING.

11 MR. MOSHENKO: THAT MISSTATES OUR POSITION, YOUR  
12 HONOR.

13 THE COURT: WHAT IS YOUR POSITION?

14 MR. MOSHENKO: YOUR HONOR, THIS IS ANOTHER DOCUMENT  
15 THAT'S LIKE THE ONE THAT COUNSEL JUST AGREED THAT IS LIKE  
16 1808 AND 1808-B. IT IS A COMPANION TO 1808 AND 1808-B, AND  
17 THE COURT WILL RECALL WE RECEIVED 1808 AND B IN A ZIP DRIVE  
18 THAT LOOKED LIKE THIS. WE THEN PRINTED OUT THE COPY AND  
19 BROUGHT IT IN. TO NOT BURDEN THE BOOKS WITH THIS MUCH  
20 PAPER, WE ATTACHED THE ZIP DRIVE. AND IT IS OUR POSITION  
21 THAT WE WILL PRINT OUT, MAKE THE ELECTRONIC DOCUMENT, AND  
22 OFFER THE PRINTOUT TO THE JURY. WE DON'T WANT THE JURY TO  
23 LOOK AT THIS PLASTIC ZIP DRIVE.

24 THE CLERK: I HAVE A PIECE OF PAPER. I DON'T HAVE  
25 A ZIP DRIVE.

26 MR. SHERMAN: THAT'S MY ISSUE. THIS PIECE OF PAPER

1 IS NOT RELEVANT. THIS PIECE OF PAPER IS NOTHING.

2 THE COURT: IT'S A COVER.

3 MR. MOSHENKO: ALL THIS IS IS A VISUALIZATION OF AN  
4 EXHIBIT THAT WE HAD ASKED TO OFFER TO THE JURY. WE LAID  
5 THE FOUNDATION FOR IT THROUGH MR. RANDALL. HE TESTIFIED  
6 THAT HE PROVIDED US WITH A ZIP DRIVE IN FEBRUARY, APRIL OF  
7 2000, AND WE SHOWED HIM THE -- AS I SAID, THE COMPANION ONE  
8 THAT HE PROVIDED US EARLIER. AND IN HARD COPY, HE  
9 TESTIFIED THAT THIS WAS AN UPDATE FROM THE FORMER ONE, AND  
10 WE PROPOSED -- I WENT AHEAD, AND I SAID, SO I DON'T HAVE TO  
11 BRING YOU BACK ON THE STAND TO LAY THE FOUNDATION, DID YOU  
12 ALSO PROVIDE US A ZIP DRIVE WHICH UPDATED THIS FIRST LIST?

13 AND HE SAID, YES, HE DID. AND THEN, YOUR  
14 HONOR, WE WANT TO PRINT IT OUT. THE CODE SAYS A PRINTOUT  
15 OF ELECTRONIC DOCUMENT IS PRESUMED TO BE AN ACCURATE  
16 INCLUSION OF ITS CONTENTS. WE WANT TO PRINT IT OUT AND  
17 OFFER IT. THE SUGGESTION THAT WE WANT TO SEND THIS PIECE  
18 OF PAPER TO THE JURY IS RIDICULOUS. THE SUGGESTION THAT WE  
19 WANT TO SEND THE PLASTIC CARTRIDGE TO THE JURY IS  
20 RIDICULOUS.

21 THE COURT: LET'S SEE WHAT YOU WANT TO SEND TO THE  
22 JURY.

23 MR. MOSHENKO: WE WILL PRINT IT OUT AND BRING IT  
24 IN, YOUR HONOR.

25 THE COURT: WE'LL TALK ABOUT THAT WHEN YOU HAVE IT  
26 PRINTED OUT.

1                   STILL UNDER SUBMISSION.   REMAINS UNDER  
2 SUBMISSION.

3                   CAN WE GO HOME?

4           MR. SHERMAN:   YES.

5           MR. MOSHENKO:   COUPLE THINGS.   I'M SORRY TO TAKE  
6 THE COURT'S TIME ON IT.   BUT WE HAVE -- THE COURT MAY  
7 RECALL ONE EXHIBIT WAS PUT UP ON THE BOARD, AND IT SAID  
8 "ATTACHMENT."   AND I BROUGHT IT TO THE COURT'S ATTENTION  
9 DURING MR. SHERMAN'S EXAMINATION.   HE SAID HE WOULD PROVIDE  
10 US WITH THE ATTACHMENT, AND WE HAVEN'T SEEN IT.   AND WE  
11 REQUEST HE PROVIDE IT.

12          MR. SHERMAN:   I'M SORRY.   I WAS DISTRACTED.

13          MR. MOSHENKO:   THERE WAS A MEMBER LETTER THAT WENT  
14 UP ON THE BOARD AND IT SAID THERE WAS AN ATTACHMENT TO IT  
15 AND I OBJECTED THE ATTACHMENT WAS NOT ATTACHED.   AND  
16 MR. SHERMAN SAID, YOUR HONOR, I'LL GIVE THAT TO HIM LATER.  
17 LET ME JUST COMPLETE MY FLOW.

18                   I'D LIKE TO HAVE IT.   THAT'S NUMBER ONE.

19          MR. SHERMAN:   EXCUSE ME.   WITH RESPECT TO NUMBER  
20 ONE, IF I CAN JUST BE REMINDED AS TO WHAT THE ATTACHMENT  
21 IS, WE'LL TAKE CARE OF IT.

22          MR. MOSHENKO:   I'LL DO THAT.   NUMBER TWO --

23          MR. SHERMAN:   AND WE'LL DO IT.

24          MR. MOSHENKO:   -- IN THE COURSE OF EXAMINING THE  
25 WITNESS, WE PULLED ONE OF THE DEFENDANTS' DOCUMENTS.   IT  
26 WAS AN AGREEMENT, EXHIBIT 245, AND IT HAS ALTERNATING PAGES

1 MISSING. AND I INDICATED TO THE COURT I THINK IN OPEN  
2 COURT THAT IT APPEARS AS THOUGH OUR COPY THAT WAS PROVIDED  
3 TO US BY THE DEFENDANTS HAD BEEN PUT IN WITHOUT FLIPPING  
4 BOTH SIDES. WE FOUND THAT TO BE A CASE IN DIFFERENT  
5 DOCUMENTS, BOTH PLAINTIFFS' AND DEFENDANTS' DOCUMENTS. I'M  
6 NOT POINTING FINGERS OR ACCUSING ANYBODY OF ANYTHING.

7 BUT I THINK THAT BECAUSE OF THAT KIND OF  
8 EXPERIENCE, SOME OF THE EXHIBITS IN THE EXHIBIT BOOKS ARE  
9 INCOMPLETE. AND WE ARE ASKING THE COURT'S PERMISSION --  
10 YOUR CLERK CORRECTLY SAYS, YOU CAN'T ADD ANYTHING TO  
11 COMPLETE.

12 I'M ASKING THE COURT'S PERMISSION THAT THESE  
13 DOCUMENTS THAT ARE INCOMPLETE BE COMPLETED, BOTH ON THE  
14 PLAINTIFFS' SIDE AND THE DEFENDANTS' SIDE SO THAT THE  
15 COMPLETE EXHIBIT IS THERE. AND THEN IT MAY BE OR MAY NOT  
16 BE USED AS EVIDENCE.

17 MR. SHERMAN: YOU KNOW, IF THERE IS A DOCUMENT  
18 THAT'S SO OBVIOUSLY NOT PROPERLY COPIED, AND I KNOW THAT  
19 OUR COPY IS CORRECT, AND THE COURT'S COPY HAS COMPLETE  
20 PAGES FOR 245 -- ALTHOUGH, AS I UNDERSTAND, IT'S NOT FRONT  
21 AND BACK COPY. IF THAT'S WHAT WE'RE DEALING WITH, THEN  
22 OBVIOUSLY WE DON'T HAVE AN OBJECTION TO THIS.

23 MR. MOSHENKO: SO BOTH SIDES MAY COMPLETE THEIR  
24 EXHIBITS WHERE THAT HAS OCCURRED.

25 MR. SHERMAN: BUT I WOULDN'T WANT THAT COMPLETING  
26 OF EXHIBITS TO RESULT IN NEW INFORMATION BEING BROUGHT IN.

1 THE COURT: NO.

2 MR. SHERMAN: IT'S NOT A SURROGATE FOR THAT.

3 MR. MOSHENKO: I THINK BOTH OF US UNDERSTAND THAT  
4 IF A DOCUMENT COMES IN LIKE THAT, WHAT THE DOCUMENT WAS.

5 THE CLERK: IT IS COMPLETED. ARE YOU TALKING ABOUT  
6 245?

7 MR. MOSHENKO: YES. DOES IT HAVE PAGE 2 AND 4?

8 THE CLERK: YES, IT DOES.

9 MR. MOSHENKO: WELL, THIS COPY I CAN ASSURE YOU WE  
10 DIDN'T MAKE.

11 MR. SHERMAN: THERE WE GO. WE HAVE ANOTHER  
12 CONSPIRACY.

13 MR. MOSHENKO: WE DIDN'T MAKE THIS, YOUR HONOR. IT  
14 WAS HANDED TO US. BUT, AGAIN, I'M NOT ACCUSING ANYBODY OF  
15 ANYTHING. IT'S JUST AN OVERSIGHT, AND THESE OVERSIGHTS  
16 SHOULD BE CORRECTED.

17 THE COURT: ALL RIGHT.

18 MR. MOSHENKO: NUMBER THREE, I'M TOLD THAT SOME  
19 OTHER DOCUMENTS THAT WERE OFFERED INTO EVIDENCE IN SOME  
20 INSTANCES -- I DON'T HAVE PERSONAL KNOWLEDGE OF THIS, BUT  
21 IN SOME INSTANCES DEFENDANTS HAVE SOME DOCUMENTS, AND UNDER  
22 THAT PARTICULAR EXHIBIT IN THEIR BOOK, THAT THE PLAINTIFFS  
23 DON'T HAVE. AND I'M TOLD THAT THE PLAINTIFFS MAY HAVE SOME  
24 DOCUMENTS IN THEIR BOOK THAT APPARENTLY WERE LEFT OUT OF  
25 THE DEFENDANTS' BOOK.

26 AND, AGAIN, YOUR CLERK CORRECTLY DID NOT

1 ALLOW US TO CHANGE ANY OF THE BOOKS, AND WE WANT THE  
2 COURT'S PERMISSION TO -- WHERE THOSE THINGS OCCUR, TO MAKE  
3 THEM THE SAME.

4 THE COURT: YOU HAVE MY PERMISSION.

5 MR. SHERMAN: I SAY THAT WHEN WE COME UP WITH THESE  
6 ISSUES INSTEAD OF DISCUSSING IT IN THE ABSTRACT, WE'LL  
7 HAVE --

8 THE COURT: WHEN IT BECOMES SPECIFIC.

9 MR. SHERMAN: -- REASONABLE PEOPLE TRY TO AGREE  
10 REASONABLY.

11 MR. MOSHENKO: MR. DURAN IS ABLE TO BE SPECIFIC  
12 I'VE JUST BEEN TOLD.

13 THE CLERK: ON THE ONES WE ADMITTED?

14 MR. MOSHENKO: AGAIN, I DON'T HAVE PERSONAL  
15 KNOWLEDGE.

16 THE COURT: THAT'S SCRAMBLED. GO AHEAD AND TELL  
17 HIM ABOUT THE SCRAMBLE.

18 MR. DURAN: IT IS A SCRAMBLE, SPECIFICALLY 2149  
19 THROUGH 2151. EACH EXHIBIT CONTAINS SEVERAL HUNDRED  
20 PAGES. WE SENT OUR EXHIBITS OFF BEFORE TRIAL TO A COMPANY  
21 CALLED UNISCRIBE TO BIND THEM AND MAKE COPIES FOR YOUR  
22 HONOR AND FOR DEFENDANTS AND FOR THE WITNESSES. UPON  
23 COMING BACK, THERE WERE DIFFERENCES. THERE'S SECTIONS  
24 WHERE THERE ARE 20 PAGES IN ONE COPY THAT IS NOT IN ANOTHER  
25 COPY. THERE IS ONE PLACE WHERE ONE PAGE IS MISSING AND  
26 ANOTHER PAGE IS MISSING FROM EACH DOCUMENT. IT'S JUST A

1 MATTER OF COPYING THOSE TWO PAGES AND PUTTING THEM IN EACH  
2 OTHER'S.

3 THE COURT: ALL RIGHT.

4 MR. DURAN: THOSE ARE THE PROBLEMS. THINGS WERE  
5 NOT INTENTIONALLY LEFT OUT OF OR ADDED TO, BUT FOR THOSE  
6 THREE PARTICULAR EXHIBITS, THEY JUST CAME BACK FROM THE  
7 COPY SERVICE OUT OF ORDER.

8 THE COURT: THAT CAN BE DONE.

9 MR. SHERMAN: MY ONLY CONCERN ABOUT THIS, WE FIND  
10 THE SAME RIGOROUS AUDITING PROCEDURES WE FOLLOWED IN THE  
11 PAST. I WOULDN'T WANT THIS AS A SUBSTITUTE FOR NEW  
12 INFORMATION.

13 THE COURT: YOU GOT THEM.

14 MR. MOSHENKO: OKAY. THANK YOU.

15 THE COURT: SO BE IT?

16 MR. MOSHENKO: SO BE IT.

17 THE CLERK: WE HAVE TO SCHEDULE IT NEXT FRIDAY  
18 BECAUSE I CAN'T BE HERE TOMORROW.

19 MR. SHERMAN: THE LAST GO-AROUND WE HAD ON 1563  
20 APPARENTLY WAS A CHORE FOR ALL INVOLVED. AND, YOU KNOW, I  
21 WOULD JUST SAY IS THAT CLERICAL ISSUE IS -- WE'LL ALL  
22 DEVOTE THE RESOURCES TO IT. IF THIS IS NOT A CLERICAL  
23 ISSUE, THEN WE WON'T.

24 (WHEREUPON THE COURT WAS IN RECESS UNTIL  
25 MONDAY, JUNE 19, 2000 9:00 A.M.)

26

