

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 29, 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.
CRAIG RUTENBERG, ESQ.

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

HEIDI K. STEWART, CSR #6058
OFFICIAL COURT REPORTER

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BY MR. SHERMAN:

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1 WESTMINSTER, CALIFORNIA - THURSDAY, JUNE 29, 2000

2 MORNING SESSION

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

5 THE COURT: I'VE DECIDED TO DO SOMETHING YOU'RE
6 PROBABLY GOING TO APPROVE OF. I'M GOING TO GIVE YOU THE
7 NEXT 10 DAYS OFF.

8 PROCEED, COUNSEL.

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

13 CROSS-EXAMINATION (CONTINUED)

14 BY MR. SHERMAN: Q GOOD MORNING, MR. NOVELLI.

15 A GOOD MORNING.

16 Q I'D LIKE TO PICK UP WHERE WE LEFT OFF
17 YESTERDAY AFTERNOON. AND IF WE COULD PUT BACK UP ON THE
18 SCREEN THE ORDER MADE BY THE UNITED STATES DISTRICT COURT
19 IN THE FINOVA CASE, AND WHY DON'T WE GO TO PARAGRAPH 19,
20 WHICH IS WHERE WE WERE.

21 THE -- AMONG THE DISTRICT COURT FINDINGS WAS
22 THAT THIS ACCOUNTING SYSTEM, THIS QUICKEN SYSTEM, HAD NO
23 INTEGRITY, AND IT WAS INCOMPLETE, AND IT WAS UNRELIABLE.

24 AND MY QUESTION TO YOU, SIR, IS, INDEED YOU
25 RECOGNIZED THAT TO BE THE CASE IN THE 1996 TIME PERIOD;
26 CORRECT?

1 A NO, I DIDN'T RECOGNIZE THAT. IN OTHER
2 WORDS, I THOUGHT IT WAS AN ACCOUNTING SYSTEM. I KNOW
3 MILLIONS OF PEOPLE USE IT, AND WE THOUGHT IT WAS OKAY. BUT
4 EVIDENTLY WE'VE COME TO FIND OUT IT'S NOT THAT GREAT.

5 Q AND, NOW, I DON'T WANT TO ENGAGE YOU IN A
6 BIG LEGAL DISCUSSION ABOUT THE SOLVENCY. BUT JUST USING
7 THE TERM AS IT'S COMMONLY USED, IN FACT, ALL SEASONS WASN'T
8 SOLVENT AS SET FORTH IN THAT FINDING, PARAGRAPH 20; RIGHT?

9 A IT DEPENDS ON WHAT YOU MEAN BY "INSOLVENT."

10 Q THAT'S EXACTLY MY POINT. BECAUSE, YOU KNOW,
11 WE COULD GET A BUNCH OF DIFFERENT BANKRUPTCY EXPERTS IN
12 HERE, I'M SURE.

13 BUT JUST FOCUSING ON THE WAY, YOU KNOW,
14 FOLKS USE IT IN THE ORDINARY, EVERYDAY PARLANCE, YOU'D
15 AGREE THAT IT WAS INSOLVENT?

16 MR. MOSHENKO: OBJECTION. CALLS FOR A LEGAL
17 CONCLUSION.

18 THE COURT: SUSTAINED.

19 BY MR. SHERMAN: Q DID YOU HAVE DISCUSSIONS WITH
20 PEOPLE IN YOUR ORGANIZATION IN THE '96 AND '97 TIME FRAME
21 THAT ALL SEASONS WAS IN FACT INSOLVENT?

22 A I DON'T BELIEVE SO.

23 Q NOW, THE -- LET'S TALK FOR A MOMENT ABOUT
24 THIS FINDING 21, THAT ALL SEASONS' CORPORATE STRUCTURE WAS
25 CHAOTIC AND UNKNOWN, EVEN TO ITS OFFICERS. AND THERE'S A
26 REFERENCE HERE IN THIS PARAGRAPH 21 TO JOHN WORKMAN?

1 A YES.

2 Q YOU KNOW JOHN WORKMAN; RIGHT?

3 A YES, I DO.

4 Q AND DID YOU DISCUSS WITH MR. WORKMAN FROM
5 TIME TO TIME THAT -- WORDS TO THE EFFECT THAT THE CORPORATE
6 STRUCTURE OF ALL SEASONS WAS CHAOTIC?

7 A NO. MR. WORKMAN WAS THE C.F.O. OF THE ALL
8 SEASONS COMPANY. BUT I NEVER DISCUSSED ANY CHAOTIC
9 SITUATION.

10 Q EXCUSE ME. YOU NEVER DID?

11 A NO, NOT THAT I RECALL.

12 Q BUT YOU'D AGREE THAT THE CORPORATE STRUCTURE
13 WAS CHAOTIC?

14 MR. MOSHENKO: OBJECTION. IT'S UNCERTAIN, THE TERM
15 "CHAOTIC," UNDEFINED.

16 THE COURT: SUSTAINED.

17 BY MR. SHERMAN: Q WELL, LET'S JUST FOCUS ON THE
18 WORDS HERE.

19 YOU'D AGREE THAT ALL SEASONS' CORPORATE
20 STRUCTURE WAS CHAOTIC?

21 MR. MOSHENKO: THE SAME OBJECTION.

22 THE COURT: SUSTAINED.

23 BY MR. SHERMAN: Q LET'S FOCUS ON THIS REFERENCE
24 TO BANK ACCOUNTS, SIR.

25 ALL SEASONS AT ONE TIME HAD A BANKING
26 RELATIONSHIP WITH BANK OF AMERICA; IS THAT RIGHT?

1 A YES.

2 Q BUT BANK OF AMERICA THREW YOU OUT; RIGHT?

3 A NOBODY THREW US OUT THAT I RECALL.

4 Q WHAT ABOUT UNION BANK, ALL SEASONS HAD A
5 BANKING RELATIONSHIP WITH UNION BANK?

6 A YES.

7 Q AND UNION BANK THREW YOU OUT AS WELL?

8 MR. MOSHENKO: OBJECTION. ASSUMES FACTS NOT IN
9 EVIDENCE, WHICH IS "AS WELL."

10 THE WITNESS: THAT'S NOT TRUE.

11 THE COURT: SUSTAINED.

12 BY MR. SHERMAN: Q DID UNION BANK THROW YOU OUT?

13 A THAT'S -- NO, THEY DID NOT THROW US OUT.

14 Q DID BANK OF AMERICA CONTACT ALL SEASONS
15 RESORTS AT SOME POINT IN THE 1995, '96 TIME FRAME AND
16 INFORM YOU THAT THEY NO LONGER WISHED TO DO BUSINESS WITH
17 YOU?

18 A BANK OF AMERICA -- WE MOVED OUR ACCOUNTS TO
19 BANK OF AMERICA IN SAN JOSE, CALIFORNIA IN SOME KIND OF
20 A -- IT WAS A SWEEP ACCOUNT THAT THEY WERE SETTING UP
21 BANK OF AMERICA.

22 WE -- WHAT HAPPENED ON THAT ACCOUNT WAS
23 THAT THEY -- IT WAS A NEW THING THAT THIS DARIO MOSCOSO SET
24 UP IN THE BAY AREA, ALL THE ACCOUNTS SWEEP INTO ONE ACCOUNT
25 OF ALL SEASONS. THE FIRST NATIONWIDE ACCOUNT SWEEP -- AND
26 WHAT WAS HAPPENING IS THAT WE WERE SENDING IN SOMEWHERE

1 AROUND A MILLION, MILLION AND A HALF DOLLARS INTO BANK OF
2 AMERICA. BANK OF AMERICA, WITHOUT NOTIFYING US, DIDN'T
3 ACCEPT THOSE CHECKS, BECAUSE SOME OF THE ENDORSEMENTS
4 WEREN'T EXACTLY PROPER.

5 AND WHAT I MEAN BY THAT, A CHECK MIGHT BE
6 MADE OUT TO THE PRESIDENT'S TRAVEL CLUB WHEN IT SHOULD HAVE
7 BEEN MADE OUT, IN FACT, TO, SAY, GRASS LAKE ACCOUNT OR ALL
8 SEASONS ACCOUNT OR SOMETHING LIKE THAT. WE'D ENDORSE THE
9 CHECKS TO WHEREVER THEY WERE SUPPOSED TO BELONG REGARDLESS
10 OF HOW THEY WERE MADE OUT.

11 BANK OF AMERICA HAD A FEW OF THESE CHECKS
12 OUT OF THOUSANDS THAT THEY DIDN'T RECOGNIZE THE
13 ENDORSEMENT. SO RATHER THAN JUST SEND BACK PARTIAL OF THE
14 DEPOSITS, THEY SENT BACK IN EXCESS OF HALF A MILLION
15 DOLLARS TO THE CORPORATE OFFICE. AND THEY SENT THIS NOT BY
16 OVERNIGHT COURIER. THEY JUST SENT IT BY REGULAR MAIL.

17 WHEN WE GET IT BACK, WE GOT A HALF A
18 MILLION DOLLARS' WORTH OF CHECKS OUTSTANDING, AND WE GET
19 OUR DEPOSIT FOR A HALF A MILLION DOLLARS BACK. THAT CAUSED
20 A COMPLETE, YOU KNOW, BREAKDOWN OF OUR SYSTEM, AND IT
21 WASN'T OUR FAULT, AT LEAST THIS IS WHAT DARIO CLAIMS. AND
22 I AGREE WITH HIM ON THAT INSTANCE. IT WAS THE BANK'S
23 FAULT. THEY SHOULD HAVE HONORED THOSE CHECKS.

24 AT LEAST WHAT THEY SHOULD HAVE DONE WAS TAKE
25 THE CHECKS THAT WERE ENDORSED PROPERLY AND DEPOSIT THOSE
26 INTO THE ACCOUNT AND NOT THE -- AND SEND BACK THE TWO OR

1 THREE, WHATEVER IT WAS, THAT DIDN'T HAVE PROPER
2 ENDORSEMENTS. THAT'S WHY WE LEFT BANK OF AMERICA. IT WAS
3 MUTUAL. WE DIDN'T WANT TO DEAL WITH THEM. THEY COST US A
4 LOT OF AGGRAVATION. AND WE QUIT DEALING WITH THEM, SAN
5 FRANCISCO.

6 Q IN 1995 OR 1996 DID BANK OF AMERICA TELL YOU
7 THAT THEY DIDN'T WANT TO DO BUSINESS WITH YOU ANYMORE?

8 A YES, THEY DID. THEY DIDN'T SAY THEY DIDN'T
9 WANT TO DO BUSINESS. THEY CLOSED THE ACCOUNTS, OR ASKED US
10 TO MOVE.

11 Q IN 1995 AND 1996, DID UNION BANK TELL YOU
12 THEY DIDN'T WANT TO DO BUSINESS WITH YOU?

13 A ABSOLUTELY NOT.

14 Q LET'S GO TO THE NEXT PARAGRAPH, 22. YOU'LL
15 RECALL THAT -- WELL, LET ME REPHRASE THAT.

16 COOPERS & LYBRAND IS A -- YOU UNDERSTOOD
17 THEM TO BE A NATIONAL ACCOUNTING FIRM?

18 A I DON'T KNOW.

19 Q HAVE YOU EVER HEARD OF COOPERS & LYBRAND?

20 A NO. WELL, I HEARD OF THEM WHEN THEY WERE IN
21 OUR OFFICE, YES. BEFORE THAT, I WASN'T SURE WHO THEY WERE.

22 Q DID YOU UNDERSTAND THAT WHEN THEY WERE IN
23 YOUR OFFICE, THIS WAS IN CONNECTION WITH THE ALL SEASONS
24 RESORTS RECEIVERSHIP?

25 A YES.

26 Q AND THEY WERE SENT IN BY THE FEDERAL COURT

1 AND THE RECEIVER?

2 A THEY WERE SENT IN BY THE -- I DON'T KNOW
3 ABOUT THE FEDERAL COURT, BUT THEY WERE SENT IN BY FINOVA, I
4 BELIEVE.

5 Q AND THEY WENT THROUGH BOOKS AND RECORDS OF
6 ALL SEASONS?

7 A YES.

8 Q AND THEY ASKED YOU FOR DOCUMENTS?

9 A YES.

10 Q AND YOU DID PROVIDE THE DOCUMENTS?

11 A THEY DIDN'T ASK ME FOR THE DOCUMENTS. THEY
12 WERE DEALING WITH JOHN WORKMAN AND DARIO MOSCOSO. THEY
13 WEREN'T DEALING WITH ME.

14 Q THAT WASN'T YOUR JOB?

15 A I'M NOT IN THE ACCOUNTING DEPARTMENT.

16 Q AND WHEN -- IF PEOPLE IN YOUR ACCOUNTING
17 DEPARTMENT ARE ASKED FOR DOCUMENTS BY A FEDERAL COURT
18 RECEIVER AND THEY DON'T PROVIDE THEM, IS IT YOUR JOB TO SEE
19 TO IT THAT THEY GET PROVIDED?

20 A I DON'T KNOW THAT THEY EVER ASKED FOR ANY
21 DOCUMENTS BY THE FEDERAL COURT RECEIVER, THAT I RECALL,
22 THAT THEY WEREN'T PROVIDED.

23 Q NOW, AS FAR AS THE USE OF REVENUE OF ALL
24 SEASONS RESORTS -- IN FACT -- WELL, LET ME BACK UP.

25 ON THE USE OF REVENUE BY ALL SEASONS
26 RESORTS, WERE THERE INSTANCES WHEN MONEY CAME INTO ALL

1 SEASONS AND WAS USED FOR PRESIDENT'S TRAVEL CLUB PURPOSES?

2 A I DON'T BELIEVE SO.

3 Q WAS THERE INSTANCES WHEN MONEY CAME IN ALL
4 SEASONS AND WAS USED FOR FIRST NATIONWIDE PURPOSES?

5 A I DON'T BELIEVE SO.

6 Q WHAT ABOUT FOR YOUR OWN PERSONAL PURPOSES?

7 A I DON'T BELIEVE THAT EITHER.

8 Q LET'S GO TO FINDING 24.

9 AS FAR AS THE SUBJECT OF DOCUMENTS HAVING
10 BEEN ORDERED BY THE COURT TO BE PRODUCED TO COOPERS &
11 LYBRAND AND NEVER PRODUCED, INCLUDING BANK STATEMENTS, DO
12 YOU RECALL ANY INSTANCE WHERE YOU CHOSE TO IGNORE COURT
13 ORDERS?

14 A NO, I DON'T.

15 Q SO IF THEY WERE IGNORED, THAT WAS
16 MR. MOSCOSO'S FAULT?

17 MR. MOSHENKO: OBJECTION. ASSUMES THEY WERE
18 IGNORED. ALL IT SAYS, DOCUMENTS WERE NEVER PRODUCED. IT
19 DOESN'T MEAN THE ORDER WAS IGNORED.

20 THE COURT: REPHRASE, COUNSEL.

21 SUSTAINED.

22 BY MR. SHERMAN: Q OKAY. DO YOU SEE THE REFERENCE
23 DOCUMENTS THAT WERE ORDERED BY THE COURT TO BE PRODUCED?
24 DO YOU SEE THAT REFERENCE?

25 A YES.

26 Q OKAY. IS IT FAIR TO SAY THAT IN CONNECTION

1 WITH THE ALL SEASONS CASE, THE UNITED STATES DISTRICT COURT
2 ORDERED ALL SEASONS TO PRODUCE DOCUMENTS?

3 A THAT'S CORRECT.

4 Q IS IT ALSO FAIR TO SAY THAT SUCH DOCUMENTS
5 WERE NOT PRODUCED?

6 A I DON'T BELIEVE SO. EVERYTHING THAT WAS IN
7 THE ALL SEASONS OFFICES WERE PRODUCED FOR THEM.

8 Q SO YOU DISAGREE -- COULD WE GO DOWN TO THE
9 SIGNATURE LINE ON THIS? LET'S JUST GO DOWN, ALL THE WAY
10 DOWN.

11 SO THE HONORABLE ROGER G. STRAND, UNITED
12 STATES DISTRICT COURT JUDGE, GOT IT WRONG; IS THAT YOUR
13 POSITION?

14 A IN MY -- AS FAR AS I KNOW, EVERYTHING THAT
15 THEY ASKED FOR, THEY GOT. HIS OPINION MIGHT HAVE BEEN
16 DIFFERENT THAN MINE. MINE WAS VERY CLEAR OF THE --
17 EVERYTHING THEY ASKED FOR WAS AVAILABLE TO THEM.

18 Q WHY DON'T WE GO BACK TO 22, I THINK IT WAS.
19 AS FAR AS THE PAYROLL WITHHOLDING ISSUE,
20 MR. NOVELLI, I THINK TOWARDS THE END OF THE DAY YESTERDAY
21 WE SPENT A LITTLE TIME ON THAT SUBJECT.

22 AND WITHOUT GOING INTO WHY PAYROLL
23 WITHHOLDING TAXES WEREN'T PAID OVER TO THE INTERNAL REVENUE
24 SERVICE, WITHOUT GOING INTO THE REASON WHY IT WASN'T DONE,
25 IS IT FAIR TO SAY THAT PAYROLL WITHHOLDING TAXES WERE NOT
26 PAID OVER TO THE INTERNAL REVENUE SERVICE?

1 A SOME.

2 Q AND SO YOU AGREE WITH MR. MOSCOSO TO THE
3 EFFECT THAT ALL SEASONS HAD FAILED TO PAY WITHHELD WAGES TO
4 THE INTERNAL REVENUE SERVICE?

5 A SOME TAXES WERE OWED INTERNAL REVENUE, YES.

6 Q NOW, YOU RECALL THE TESTIMONY YOU'VE GIVEN
7 TO THIS JURY ABOUT CERTAIN BAD ACTIONS OF FINOVA AND
8 MR. KEIM; RIGHT?

9 A WHAT WAS -- WHAT DID I SAY?

10 Q I'M JUST SORT OF TRYING TO MOVE TO ANOTHER
11 SUBJECT.

12 THE SUBJECT IS, YOU WILL RECALL THAT YOU
13 GAVE TESTIMONY TO THIS JURY ABOUT THINGS THAT YOU THOUGHT
14 WERE BAD DEEDS OR BAD ACTIONS BY FINOVA AND MR. KEIM; DO
15 YOU RECALL GIVING SUCH TESTIMONY?

16 A I BELIEVE WHAT I SAID -- I BELIEVE WHAT I
17 SAID IS THAT THERE WAS A LOT OF CHARGES. I BELIEVE I SAID
18 SOMEWHERE AROUND A MILLION DOLLARS THAT WAS BEING USED FOR
19 PROFESSIONAL FEES THAT I THOUGHT WAS A DRAIN ON ALL
20 SEASONS. I BELIEVE THAT'S WHAT I SAID. I DIDN'T SAY THAT
21 MR. KEIM WAS A BAD GUY OR A GOOD GUY, IF I REMEMBER
22 CORRECTLY.

23 Q SO YOU TAKE NO POSITION ON WHETHER MR. KEIM
24 IS A BAD GUY OR GOOD GUY; IS THAT YOUR POSITION NOW?

25 A AS FAR AS MY POSITION WITH MR. KEIM, ONE OF
26 THE RESORTS THAT WAS SHUT DOWN BY MR. KEIM WAS HIDDEN

1 VALLEY THAT WE REOPENED WHEN WE PUT IT IN CHAPTER, HIDDEN
2 VALLEY. IT WAS DESTROYED. NOW, WHY IT WAS, I HAVE NO
3 IDEA. BUT WE SPENT A LOT OF MONEY PUTTING IT BACK TOGETHER
4 AGAIN, WHICH WE DID.

5 Q IS IT YOUR POSITION NOW THAT MR. KEIM IS
6 NEITHER A BAD GUY NOR A GOOD GUY?

7 A I DON'T KNOW IF HE IS A GOOD GUY OR A BAD
8 GUY.

9 Q NOW, YOU'VE CLAIMED THAT FINOVA DEFRAUDED
10 YOU; RIGHT?

11 A THAT WHAT?

12 Q YOU HAVE CLAIMED THAT FINOVA DEFRAUDED ALL
13 SEASONS RESORTS?

14 A WHEN -- I DON'T REMEMBER SAYING THAT.

15 Q WELL, LET ME REFRESH YOUR RECOLLECTION.
16 PARAGRAPH 26, MR. NOVELLI, IDENTIFIED TWO ALLEGED GROUNDS
17 OF FRAUD BY FINOVA.

18 DOES THAT REFRESH YOUR RECOLLECTION?

19 A NO, IT DOESN'T. WHAT WERE THE TWO? I CAN'T
20 READ -- COULD YOU PUT THAT UP A LITTLE BIT? I CAN'T READ
21 IT. IN FACT, I STILL CAN'T READ THAT. MAYBE IF YOU
22 HIGHLIGHTED IT OR SOMETHING.

23 MR. SHERMAN: DO YOU HAVE ANOTHER COPY OF EXHIBIT
24 164?

25 I'M PLACING EXHIBIT 164 BEFORE THE WITNESS.
26 BUT I SHOULD NOTE THAT IT DOES HAVE IN IT THE PARAGRAPH

1 THAT THE COURT AND COUNSEL HAVE ALL AGREED WOULD BE
2 STRICKEN.

3 Q SO I WOULD ASK YOU, MR. NOVELLI, NOT TO MAKE
4 ANY REFERENCE TO PARAGRAPH 31.

5 A ALL RIGHT.

6 Q NOW, WHY DON'T YOU JUST READ PARAGRAPH 26 TO
7 YOURSELF.

8 A I BELIEVE THAT, YES.

9 Q OKAY. SO -- WELL, WITHOUT REGARD TO WHETHER
10 YOU BELIEVE IT OR NOT, DOES THIS NOW REFRESH YOUR MEMORY?

11 A YES.

12 Q THAT YOU DID CHARGE FINOVA WITH HAVING
13 DEFRAUDED ALL SEASONS?

14 A AS PART OF THIS LITIGATION, THAT'S TRUE.

15 Q AND THAT CLAIM WAS SQUARELY REJECTED BY THE
16 UNITED STATES DISTRICT COURT; RIGHT?

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

19 THE COURT: SUSTAINED.

20 BY MR. SHERMAN: Q DID THE UNITED STATES DISTRICT
21 COURT REJECT THAT ARGUMENT?

22 MR. MOSHENKO: OBJECTION. THE DOCUMENT SPEAKS FOR
23 ITSELF.

24 THE COURT: SUSTAINED.

25 BY MR. SHERMAN: Q LET'S GO TO PARAGRAPH 27.

26 ALL SEASONS HAD NO GROUNDS FOR ITS

1 ACCUSATIONS OF FRAUD AND MISCONDUCT AGAINST FINOVA.

2 WHY DON'T WE GO DOWN TO PARAGRAPH 29. SEE
3 THERE'S THIS REFERENCE HERE IN PARAGRAPH 29 THAT THE MONEY
4 LOANED BY FINOVA TO THE RECEIVER HAS -- LET ME STOP RIGHT
5 THERE.

6 DURING THE COURSE OF THE RECEIVERSHIP,
7 MR. NOVELLI -- LET ME BACK UP.

8 THE RECEIVER WAS IN PLACE IN LATE AUGUST,
9 1996; CORRECT?

10 A CORRECT.

11 Q THROUGH THE BANKRUPTCY FILING IN JULY OF '97?

12 A THAT'S CORRECT.

13 Q OKAY. AND SO THERE WAS NO RECEIVER PRIOR TO
14 LATE AUGUST, '96?

15 A NO.

16 Q CORRECT?

17 A THAT'S CORRECT.

18 Q AND SO FINOVA DIDN'T MAKE ANY LOANS TO THE
19 RECEIVER UNTIL THERE WAS A RECEIVERSHIP IN PLACE; RIGHT?
20 SO FAR AS YOU KNOW?

21 A SO FAR AS I KNOW.

22 Q SO WHEN IT SAYS HERE THE MONEY LOANED BY
23 FINOVA TO THE RECEIVER, YOU UNDERSTOOD THAT DURING THE
24 COURSE OF THE RECEIVERSHIP, FINOVA WAS MAKING LOANS TO THE
25 RECEIVER?

26 A I BELIEVE SO. I'M NOT CERTAIN, BUT I

1 BELIEVE SO.

2 Q ALL RIGHT. NOW, YOU'VE SAID ON SEVERAL
3 OCCASIONS NOW THAT, YOU KNOW, THE FEES WERE TOO HIGH AND,
4 YOU KNOW --

5 A WHAT WAS THAT? I'M SORRY.

6 Q THE FEES WERE TOO HIGH; THAT WAS ONE OF YOUR
7 COMPLAINTS?

8 A THE FEES WERE TOO HIGH?

9 Q YEAH. THE RECEIVERSHIP FEES WERE TOO HIGH,
10 MR. KEIM'S FEES?

11 A I BELIEVE MY WORDING WAS THE PROFESSIONAL
12 FEES WHICH WOULD -- INCLUDED THE ATTORNEYS ALSO -- WAS
13 CLOSE TO A MILLION DOLLARS, AND THAT IT WAS MORE THAN THE
14 MONEY GOING INTO THE RESORTS.

15 Q AND PARAGRAPH 29 SAYS, "THE MONEY LOANED BY
16 FINOVA TO THE RECEIVER HAS BEEN USED BY THE RECEIVER TO
17 BENEFIT THE ENTIRE OPERATIONS OF ALL SEASONS AND TO BENEFIT
18 ALL OF ALL SEASONS' CREDITORS."

19 AND THEN PARAGRAPH 30, "FINOVA'S RECEIPT OF
20 MONIES DURING THE RECEIVERSHIP HAS BEEN PROPER AND IN
21 ACCORDANCE WITH THE COURT'S ORDERS."

22 WHY DON'T WE GO THROUGH THE CONCLUSIONS OF
23 LAW NOW.

24 OH, YEAH, PARAGRAPH 33. I WANT TO ASK YOU
25 ABOUT PARAGRAPH 33.

26 IT SAYS HERE THAT "ALL SEASONS CONVERTED

1 MONIES RECEIVED BY IT FOR THE SALE OF TREES BELONGING TO
2 FINOVA."

3 WHAT'S THAT ALL ABOUT?

4 A ONE OF THE RESORTS -- I BELIEVE IT WAS HONEY
5 BROOK -- THE MANAGER OF THE CORPORATION SOLD SOME TREES TO
6 SOME LOGGING COMPANY. THEY WENT -- OH, I KNOW WHAT IT
7 WAS. THERE WAS SOME DEAD TREES ON THE RESORT. THEY WERE
8 EATEN UP BY BUGS AND KILLED. THE MANAGER GOT AHOLD OF SOME
9 LOGGING COMPANY, AND THEY REMOVED THE TREES. HOWEVER, THE
10 TREES HAD VALUE TO THEM EVEN THOUGH THEY WERE DEAD. AND
11 THEY PAID THE RESORT I BELIEVE SOMEWHERE AROUND \$10,000 FOR
12 THOSE TREES.

13 Q IN FACT, THE ISSUE ABOUT TREES BEING CHOPPED
14 DOWN WAS ONE OF THE FIRST ISSUES THAT FINOVA RAISED WHEN
15 THEY GOT THIS LAWSUIT STARTED AGAINST ALL SEASONS?

16 A THEY WERE LOOKING FOR SOMETHING, AND THEY
17 SEEN ABOUT THE TREES. SO THEY USED IT, YES.

18 Q AND ALL SEASONS AND FINOVA CLAIM THAT AT THE
19 HONEY BROOK RESORT IN PENNSYLVANIA, THERE WAS A GROVE OF
20 TREES THAT ALL SEASONS JUST CUT DOWN FOR THE MONEY; ISN'T
21 THAT RIGHT?

22 A NO. THESE TREES WERE DEAD TREES. REMOVED
23 THE TREES.

24 Q I'M ASKING WHAT THE ALLEGATION BY FINOVA WAS.

25 A I DON'T KNOW WHAT THEIR ALLEGATION WAS.

26 Q WELL, YOU KNEW IT AT ONE TIME?

1 BY MR. SHERMAN: Q NOW, ON THE SUBJECT OF WHAT
2 FINOVA CLAIMED ALL SEASONS HAD DONE WITH RESPECT TO THESE
3 TREES, TAKE A LOOK AT PAGE NUMBER 2 AND PAGE NUMBER 3. WHY
4 DON'T YOU JUST READ THAT TO YOURSELF, MR. NOVELLI.

5 A OKAY.

6 Q DID FINOVA CLAIM THAT ALL SEASONS HAD CUT
7 DOWN ABOUT \$300,000 WORTH OF TREES; IS THAT WHAT THEY
8 CLAIMED?

9 A THAT'S WHAT THEY CLAIMED.

10 Q LET'S GO BACK TO THE ORDER.

11 THE ONLY CUTTING OF TREES THAT YOU'RE AWARE
12 OF THAT HAD ANYTHING TO DO WITH THE RECEIVERSHIP WAS THE
13 CUTTING OF TREES AT HONEY BROOK; CORRECT?

14 A YES, THE ONLY TREES I'M FAMILIAR WITH.

15 Q WHY DON'T WE GO ON.

16 A LITTLE FURTHER DOWN, PARAGRAPH 38.

17 MR. NOVELLI, DURING THE COURSE OF THE ALL
18 SEASONS RECEIVERSHIP, YOU'RE AWARE -- ARE YOU AWARE -- ARE
19 YOU AWARE WHETHER THE U.S. DISTRICT COURT ISSUED ORDERS
20 PROHIBITING ALL SEASONS RESORTS AND YOURSELF FROM ENGAGING
21 IN CERTAIN CONDUCT?

22 A YES.

23 Q AND YOU DISOBEYED THOSE ORDERS; IS THAT
24 CORRECT?

25 A NO, WE DID NOT.

26 Q PARAGRAPH 28, "ALL SEASONS VIOLATED THIS

1 COURT'S ORDER BY DIVERTING COLLECTIONS AWAY FROM THE
2 RECEIVER, IMPROPERLY CONTINUING TO ENGAGE IN COLLECTION
3 ACTIVITIES AFTER THE RECEIVER WAS APPOINTED, AND ENGAGING
4 IN OTHER ACTIVITIES DESIGNED TO PREVENT THE RECEIVER FROM
5 COLLECTING ALL AMOUNTS OWED."

6 A THAT'S NOT TRUE. THERE WAS NO HEARING ON
7 THAT. NOTHING. I DON'T KNOW WHERE THIS VIOLATION CAME
8 FROM.

9 Q LET'S JUST MAKE SURE -- LET'S JUST MAKE SURE
10 WE'RE BEING CLEAR WITH ONE ANOTHER.

11 WHEN YOU SAY THIS IS NOT TRUE, THIS IS PART
12 OF THE ORDER; CORRECT?

13 A IT'S PART OF THE ORDER.

14 Q SO WHY DON'T WE GO BACK TO THE LAST PAGE.
15 SO JUDGE STRAND GOT IT WRONG; IS THAT YOUR
16 POSITION?

17 A I DON'T KNOW HOW IT GOT IN THERE. THERE WAS
18 NO HEARING ON -- OR ANYTHING LIKE THIS WHERE ANYBODY WAS
19 BILLING THE MEMBERS OR DOING ANYTHING TO DIVERT ANY FUNDS
20 FROM THE RECEIVER. IT'S SOMETHING THAT'S JUST NOT TRUE.
21 MAYBE IT WAS EXPLAINED TO HIM WRONG. I DON'T KNOW. BUT IT
22 CERTAINLY WASN'T IN ANY HEARING OR ANY EVIDENCE.

23 Q LET'S GO TO THE FIRST PAGE OF THIS ORDER --
24 ACTUALLY, I'M SORRY. THE SECOND PAGE.

25 IF YOU COULD JUST EXPAND 1 AND 2.

26 THE LAWSUIT WAS COMMENCED ON JUNE 7; IS THAT

1 YOUR RECOLLECTION?

2 A I'M NOT SURE WHEN IT WAS. SOMETIME --

3 Q AS YOU SIT HERE, YOU HAVE NO BASIS TO
4 DISPUTE THAT --

5 A NO, I DON'T.

6 Q -- THAT FINDING; RIGHT?

7 OKAY. AND THE MOTION FOR APPOINTMENT OF
8 RECEIVER WAS FILED SOMETIME SOON THEREAFTER; RIGHT?

9 A YES.

10 Q AND NOW IF WE CAN GO BACK TO THE FIRST PAGE,
11 YOU'LL SEE -- ABOUT LINE 17 THROUGH 21 OR SOMETHING LIKE
12 THAT.

13 SO AFTER THE MOTION WAS FILED IN JUNE OF
14 1996, THE RECEIVER WASN'T APPOINTED UNTIL AUGUST 30, 1996;
15 IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q SO THERE WAS OVER TWO-MONTH PERIOD OF TIME
18 THAT ELAPSED?

19 A YES.

20 Q AND IT WAS DURING THAT PERIOD OF TIME THAT,
21 AMONG OTHER THINGS, FINOVA MADE ARGUMENTS TO THE COURT; IS
22 THAT RIGHT?

23 A WHAT DO YOU MEAN THEY MADE ARGUMENTS?

24 Q WELL, THEY MADE ARGUMENTS GOING BEFORE
25 JUDGE SMITH, AND YOU MAKE ARGUMENTS TO ARGUE YOUR POINT.
26 THEY WENT TO A COURT, DISTRICT COURT IN ARIZONA, AND THEY

1 SAID, "HERE IS WHY WE WANT A RECEIVER."

2 YOU'RE AWARE OF THAT FACT; CORRECT?

3 A THAT'S CORRECT.

4 Q AND YOU AND YOUR LAWYERS WENT TO COURT AND
5 ARGUED WHY A RECEIVER SHOULDN'T BE APPOINTED; RIGHT?

6 A THAT'S CORRECT.

7 Q AND YOU TESTIFIED IN THIS MATTER,
8 MR. NOVELLI; CORRECT?

9 A YES, I DID.

10 Q AND THE JUDGE REJECTED YOUR TESTIMONY?

11 A I DON'T KNOW IF HE REJECTED MY TESTIMONY.

12 Q THE JUDGE ACCEPTED THE TESTIMONY OF OTHERS?

13 A YES, ACCORDING TO THE RULING, I GUESS SO.

14 Q AND THE JUDGE ACCEPTED THE TESTIMONY OF
15 OTHERS INCLUDING DARIO MOSCOSO; CORRECT?

16 A THAT'S CORRECT.

17 Q LET'S GO TO EXHIBIT 10.

18 I BELIEVE THAT EXHIBIT 10 IS IN EVIDENCE,
19 YOUR HONOR.

20 THAT'S THE NEWS AND VIEWS DECEMBER '97,
21 JANUARY '98.

22 NOW, THERE'S BEEN REFERENCE TO THIS
23 PHOTOGRAPH, BUT I HAVEN'T ASKED ANYONE WHO IS IN THE
24 PHOTOGRAPH ABOUT IT.

25 THAT'S YOU AND DAVE VOPNFORD SITTING NEXT TO
26 ONE ANOTHER SMILING; RIGHT?

1 A THAT'S CORRECT.

2 Q AND THAT PHOTOGRAPH APPEARED IN YOUR
3 DECEMBER '97, JANUARY '98 NEWS AND VIEWS?

4 A YES, IT DID.

5 Q AND THE COMPANIES THAT WERE COMING TOGETHER
6 IN THE MIDDLE OF '97 TO FORM THIS TRAVEL AMERICA COMPANY
7 WAS YOUR COMPANIES AND VOPNFORD'S; RIGHT?

8 A YES, PREVIOUS VOPNFORD COMPANIES.

9 Q AND THESE WERE COMPANIES WHICH HAD BEEN
10 LOSING, BY YOUR COUNT -- I'M TALKING NOW ABOUT ALL THESE
11 COMPANIES HAD COLLECTIVELY BEEN LOSING ABOUT \$7 MILLION A
12 YEAR IN THE YEARS PRIOR TO THIS COMING TOGETHER, IN THE
13 YEARS PRIOR TO THIS MERGER; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q BECAUSE THAT'S WHAT YOU WROTE IN THIS NEWS
16 AND VIEWS; RIGHT?

17 A YES.

18 Q AND THAT \$7-MILLION-A-YEAR LOSS THAT HAD
19 BEEN OCCURRING IN THE YEARS PRIOR TO THIS COMING TOGETHER,
20 THAT \$7-MILLION-A-YEAR LOSS DIDN'T EVEN COUNT A LOT OF THE
21 DEBT SERVICE THAT HADN'T BEEN PAID; RIGHT?

22 A A LOSS IS A LOSS. DEBT SERVICE IS NOT
23 NECESSARILY A LOSS.

24 Q WELL, LET'S JUST, IF WE CAN, EXPAND RIGHT
25 OVER THERE. A LITTLE MORE. OKAY.

26 "WITHOUT SUBSTANTIAL SALES EACH YEAR,

1 BETWEEN OUR TWO OPERATIONS, WE LOST APPROXIMATELY \$7
2 MILLION PER YEAR, NOT COUNTING DEBT SERVICE."

3 SO YOU HAD A LOT OF TRUST DEEDS ON
4 PROPERTIES; RIGHT?

5 A WE HAD MR. JOSEPH.

6 Q WELL, YOU HAD MORTGAGES ON PROPERTIES;
7 CORRECT?

8 A YES.

9 Q AND LIKE ANY OTHER MORTGAGE, YOU'RE SUPPOSED
10 TO PAY THE MORTGAGE HOLDER; RIGHT?

11 A THAT'S CORRECT.

12 Q SO A LOT OF THE MORTGAGE HOLDERS WEREN'T
13 PAID; RIGHT?

14 A THAT'S CORRECT.

15 Q SO THE \$7 MILLION DOESN'T EVEN BEGIN TO TAKE
16 ACCOUNT OF ALL THE MORTGAGE HOLDERS THAT WEREN'T PAID;
17 RIGHT?

18 A THE \$7 MILLION IS A LOSS, WE REFERRED TO AS
19 A LOSS. DEBT SERVICE WASN'T PAID BECAUSE WE HAD THE LOSS.

20 Q NOW, THESE LOSSES OF \$7 MILLION A YEAR, IN
21 THE YEARS PRIOR TO THE MERGER OF YOUR COMPANIES AND
22 MR. VOPNFORD'S COMPANIES, YOU'RE NOT BLAMING MY CLIENTS FOR
23 THOSE LOSSES NOW, ARE YOU?

24 A NO. I'M BLAMING YOUR CLIENT FOR
25 TRANSFERRING THE MEMBERS.

26 MR. SHERMAN: YOUR HONOR, I'M GOING TO MOVE TO

1 STRIKE EVERYTHING AFTER "NO."

2 THE COURT: MOTION GRANTED.

3 MR. SHAW: YOUR HONOR, JUST FOR THE RECORD,

4 MR. NOVELLI RESPONDED AS TO WHAT HE WAS BLAMING.

5 MR. SHERMAN ASKED, "WHAT ARE YOU BLAMING MY CLIENT FOR?"

6 AND MR. NOVELLI ANSWERED WHAT HE WAS BLAMING HIS CLIENT

7 FOR. I THINK THAT'S TOTALLY PROPER.

8 THE COURT: THE RECORD IS CLEAR.

9 MR. SHERMAN: I'M SORRY?

10 THE COURT: THE RECORD IS CLEAR.

11 BY MR. SHERMAN: Q AND AS FAR AS THE MORTGAGES,

12 MR. NOVELLI, THAT YOU HADN'T BEEN PAYING IN THE YEARS PRIOR

13 TO THE MERGER, MID-'97, YOU'RE NOT BLAMING MY CLIENT FOR

14 THAT, ARE YOU?

15 A NO, WE'RE NOT BLAMING YOUR CLIENTS FOR THAT.

16 Q THE REASONS FOR THOSE LOSSES, MR. NOVELLI,

17 \$7 MILLION, EVEN BEFORE THE MORTGAGES THAT WEREN'T BEING

18 PAID, THE REASON FOR THOSE LOSSES WAS AS A RESULT OF

19 DECISIONS THAT YOU MADE?

20 A NO. I THINK THE ARTICLE EXPLAINS IT.

21 Q WELL, SINCE MY CLIENT WASN'T RESPONSIBLE FOR

22 THOSE LOSSES, AND SINCE YOU WEREN'T RESPONSIBLE FOR THE

23 LOSSES, THEN WHO DO YOU THINK OUGHT TO BE RESPONSIBLE FOR

24 THE LOSSES?

25 A WE HAD TWO COMPANIES COMING TOGETHER,

26 T.A.I. AND THE SERIES OF OUR OTHER COMPANIES. BETWEEN THE

1 TWO COMPANIES, IF YOU GO THROUGH THE ARTICLE, IT CLAIMS
2 THAT WE HAD A BUSINESS EXPENSE IN THE CORPORATE OF
3 SOMEWHERE AROUND -- INSURANCE AND OTHER BUSINESS
4 EXPENSES -- ABOUT \$24 MILLION A YEAR. BY COMBINING THE TWO
5 OPERATIONS, WE'D BE ABLE TO MORE OR LESS CUT A LOT OF THAT
6 IN HALF.

7 SO THIS IS WHAT WE'RE TRYING TO ESTABLISH.
8 WE WERE SHOWING THE MEMBERS WHAT WE WERE DOING, WHY WE WERE
9 DOING IT, IS TO CUT THESE COSTS. SO WE WOULDN'T CONTINUE
10 ON HAVING THESE LOSSES. THIS WAS AN EXCELLENT OPPORTUNITY
11 FOR THESE COMPANIES TO GET TOGETHER AND FOR THE MEMBERS TO
12 STOP THE LOSSES AND MAKE A VIABLE COMPANY. BUT IT WAS
13 INTERFERED WITH, THIS PLAN.

14 Q THE QUESTION WAS A RESPONSIBILITY QUESTION.
15 IF IT'S NOT MY CLIENT'S RESPONSIBILITY FOR THE LOSSES, AND
16 IT'S NOT YOUR RESPONSIBILITY FOR THE LOSSES, WHOSE
17 RESPONSIBILITY IS IT?

18 A THE RESPONSIBILITY IS THE SALES, IN THE
19 LENDING OF THE -- ON SALES -- SALES WERE FORCED TO STOP IN
20 A WAY BECAUSE THE LENDERS, LIKE FINOVA, GOT OUT OF THE
21 INDUSTRY. THE INDUSTRY LENDERS IN THIS INDUSTRY QUIT
22 LENDING. AS A RESULT OF THAT, WE'RE UNABLE TO CONTINUE ON
23 WITH OUR SALES PROGRAM BECAUSE THERE WAS NO FINANCING
24 AVAILABLE FROM ANY SOURCE, AND WE'RE UNABLE TO CONTINUE ON
25 WITH OUR SALES AND MARKETING PROGRAM. AND THAT'S WHY WE
26 HAD THE LOSSES, NO SALES.

1 IF YOU GO INTO LOSSES -- BECAUSE YOUR
2 OPERATIONAL COST OF RUNNING THESE RESORTS, YOUR MANAGERS,
3 YOUR SWIMMING POOLS, YOUR ELECTRICITY, YOUR EVERYTHING THAT
4 GOES INTO THESE RESORTS IS VERY, VERY EXPENSIVE. AND WE
5 LOST MONEY BECAUSE WE'RE UNABLE TO CONTINUE ON WITH OUR
6 SALES EFFORTS.

7 Q BECAUSE YOUR SALES HAD STOPPED?

8 A BECAUSE WE'RE UNABLE TO FINANCE THEM. WE
9 STOPPED THE SALES FOR THAT REASON.

10 Q I'D LIKE TO ASK YOU SOME QUESTIONS NOW ABOUT
11 THE PEOPLE WHO AT ONE POINT HAVE BEEN MEMBERS OF FIRST
12 NATIONWIDE.

13 YOUR POSITION IS THAT THE MEMBERSHIP
14 CONTRACTS OF FIRST NATIONWIDE MEMBERS WERE AUTOMATICALLY
15 TRANSFERRED AND ASSUMED BY TRAVEL AMERICA; CORRECT?

16 A MY POSITION IS THAT WHATEVER THE COURT
17 ORDERS THAT WERE FORMULATED THROUGH THE BANKRUPTCY COURT AT
18 THE DIRECTION OF MR. JOSEPH WHO IS THE TRUSTEE, THAT'S WHAT
19 HAPPENED.

20 Q ARE YOU SUING MY CLIENT SEEKING DAMAGES FOR
21 EACH PERSON WHO HAD A MEMBERSHIP CONTRACT IN FIRST
22 NATIONWIDE AND WHO THEN STOPPED PAYING ON THAT MEMBERSHIP
23 CONTRACT IN LATE '97 OR '98?

24 A THE LAWSUIT IS CLEAR. I DON'T WANT TO MAKE
25 THE LEGAL OPINION ON WHICH PLAINTIFF IS SUING FOR WHAT
26 DAMAGES. FIRST NATIONWIDE IS A PLAINTIFF IN THE CASE.

1 Q TALKING NOW ABOUT THE FIRST NATIONWIDE
2 MEMBERS. ARE YOU SUING MY CLIENT SEEKING DAMAGES FOR EACH
3 PERSON WHO HAD HAD A MEMBERSHIP CONTRACT IN FIRST
4 NATIONWIDE?

5 A THAT WAS TRANSFERRED. IN FIRST NATIONWIDE
6 THAT WAS TRANSFERRED, NOT EACH PERSON. AND THAT'S
7 CUMULATIVE BECAUSE FIRST NATIONWIDE OWNS A LOT OF DIFFERENT
8 CORPORATIONS AND RESORTS.

9 Q NOW, YOU'D AGREE, WOULDN'T YOU, THAT A
10 FORMER FIRST NATIONWIDE MEMBER'S EXPERIENCES WITH HIS OR
11 HER HOME PARK, AND WITH FIRST NATIONWIDE ITSELF IN THE '96
12 AND '97 TIME FRAME, WOULD AFFECT THAT PERSON; WOULD AFFECT
13 THAT MEMBER'S FEELINGS ABOUT THE PARK IN FIRST NATIONWIDE
14 WHEN THEY LEARNED ABOUT YOUR NEW BUSINESS, TRAVEL AMERICA?

15 A LEARNED WHAT?

16 Q LET ME REPHRASE THE QUESTION.

17 I WANT TO ASK YOU QUESTIONS ABOUT WHETHER
18 THE EXPERIENCES OF PEOPLE, MEMBERS, IN THE '96 AND '97 TIME
19 FRAME, FIRST NATIONWIDE MEMBERS, WOULD HAVE AFFECTED THEIR
20 VIEWS ABOUT YOUR NEW COMPANY, TRAVEL AMERICA.

21 MR. SHAW: OBJECTION. CALLS FOR SPECULATION.

22 THE COURT: SUSTAINED.

23 BY MR. SHERMAN: Q I TAKE IT, MR. NOVELLI, THAT
24 YOU REALLY HAVE NO RELIABLE WAY OF KNOWING WHAT ANY
25 SPECIFIC FIRST NATIONWIDE MEMBER FELT OR BELIEVED AT ANY
26 PARTICULAR POINT IN TIME; CORRECT?

1 A WELL, NO PARTICULAR MEMBER. WE GOT
2 THOUSANDS OF MEMBERS. SO IT WOULD BE A LITTLE DIFFICULT.

3 Q SO YOU'D AGREE --

4 A WE SPOKE TO SOME MEMBERS. I'VE SPOKE TO
5 SOME MEMBERS, YES. NOT 40,000 OF THEM.

6 Q SO JUST TO CLARIFY, YOU WOULD AGREE THAT YOU
7 DON'T HAVE ANY PERSONAL KNOWLEDGE OVER HOW ANY PARTICULAR
8 FIRST NATIONWIDE MEMBER FELT ABOUT FIRST NATIONWIDE IN '96
9 OR '97; CORRECT?

10 A THE OLD MEMBER WAS VERY HAPPY WITH THEIR
11 MEMBERSHIP AND THEIR CAMPING EXPERIENCE.

12 Q I'M TALKING ABOUT PARTICULAR MEMBERS.
13 YOU HAVE NO SPECIFIC PERSONAL KNOWLEDGE
14 ABOUT ANY ONE PARTICULAR FIRST NATIONWIDE MEMBER'S
15 EXPERIENCES; CORRECT?

16 A YES, I DO.

17 Q AND YOU HAVE NO PERSONAL KNOWLEDGE ABOUT THE
18 BELIEFS AND FEELINGS AND EXPERIENCES OF THOSE SAME PEOPLE
19 WHEN THEY GOT INTO TRAVEL AMERICA; CORRECT?

20 A I DO HAVE PERSONAL KNOWLEDGE OF THAT. WE
21 HAVE LETTERS TO THAT EFFECT.

22 Q I SHOWED YOU SOME OF THOSE YESTERDAY?

23 A NO, NOT THE LETTERS YOU SHOWED. YOU SHOWED
24 THE LETTERS THAT YOU WANTED TO SHOW. THERE'S OTHER LETTERS
25 FROM MEMBERS SAYING WHAT A TERRIBLE THING THAT COAST DID,
26 TRIED TO CHANGE THEIR PARK SYSTEM.

1 Q SO, MR. NOVELLI, IS IT YOUR POSITION THAT IF
2 MEMBERS HAD BEEN MISTREATED BY THEIR RESORT PARK AND THAT
3 MEMBERS DON'T CARE?

4 A THE MEMBERS WERE NOT -- YOU'RE INSINUATING
5 WE MISTREATED OUR MEMBERS. THAT'S NOT TRUE.

6 Q IS IT YOUR POSITION THAT IF A MEMBER'S
7 RESORT PARK IS CLOSED, THAT THE MEMBER DOESN'T CARE?

8 A IF THE PARK IS CLOSED, SOMETIMES -- YEAH --
9 THEY'LL BE TRANSFERRED TO ANOTHER PARK.

10 Q AND IS IT YOUR POSITION THAT IF A MEMBER IS
11 NOT GETTING WHAT HE OR SHE BELIEVED THEY WERE PAYING FOR,
12 THEN THAT PERSON WOULDN'T CARE?

13 A OF COURSE THEY WOULD, IF THEY THOUGHT THEY
14 WEREN'T GETTING WHAT THEY PAID FOR.

15 Q IS IT YOUR POSITION THAT MEMBERS WILL
16 CONTINUE TO PAY THEIR HOME PARK DUES AND THEIR PURCHASE
17 CONTRACT EVEN IF THEY'RE NOT GETTING WHAT THEY BARGAINED
18 FOR?

19 A I DON'T KNOW WHAT YOU'RE REFERRING TO AS NOT
20 WHAT THEY BARGAINED FOR.

21 Q IT'S FAIR TO SAY THAT IF A MEMBER IS NOT
22 GETTING WHAT THEY BELIEVED THEY'RE PAYING FOR, THEN THEY
23 MAY WANT TO LEAVE YOUR SYSTEM; RIGHT?

24 A THAT'S FAIR TO SAY, YES.

25 Q I'M GOING TO ASK YOU SOME QUESTIONS ABOUT
26 YOUR BUSINESS DEALINGS WITH BOB MITCHELL AND CHRIS DAVIS.

1 YOU HEARD BOB MITCHELL TESTIFY HERE; RIGHT?

2 A YES, I DID.

3 Q HE IS ONE OF YOUR EXPERT WITNESSES IN THIS
4 CASE, RIGHT?

5 A YES.

6 Q AND CHRIS DAVIS. CHRIS DAVIS RUNS A COMPANY
7 THAT COLLECTS BILLS?

8 A CHRIS DAVIS IS A LENDER, AND ALSO HE HAS AN
9 AGENCY THAT DOES BILLING.

10 Q HE COLLECTS BILLS?

11 A WHAT'S THAT?

12 Q HE COLLECTS BILLS?

13 A HE SENDS OUT INVOICES, YES. HE IS A -- HE
14 HAS A FIRM THAT DOES THAT.

15 Q AND YOU MET WITH MITCHELL AND DAVIS AND
16 OTHERS AT THE RANCH OF TOMMY CLOUD IN TEXAS SOMETIME IN THE
17 SPRING OF '97; RIGHT?

18 A THAT'S CORRECT.

19 Q AND THAT'S WHERE THAT TRAVEL AMERICA CONCEPT
20 IS BORN; RIGHT?

21 A THE CONCEPT OF PUTTING THE TWO COMPANIES
22 TOGETHER, THE BASIS OF THE TWO COMPANIES, YES, THAT WAS
23 DISCUSSED THERE.

24 Q AND THESE MEN, MITCHELL AND DAVIS, WERE MEN
25 THAT YOU HAD DONE SOME BUSINESS WITH OVER THE YEARS; RIGHT?

26 A YES.

1 Q YOU AND BOB MITCHELL AND CHRIS DAVIS GO BACK
2 TO THIS PHILIPPINE FIESTA DEAL IN THE EARLY '90'S?

3 A THAT'S CORRECT.

4 Q YOU HAD MET THEM BECAUSE THEY WERE BOTH AT
5 THAT TIME INVOLVED WITH THE TRAVELERS DATA, TRAVELERS
6 ACCEPTANCE CORPORATIONS; CORRECT?

7 A YES, I BELIEVE THAT'S THE NAME OF THE
8 ORGANIZATION.

9 Q BECAUSE TRAVELERS AT THAT TIME IN THE EARLY
10 '90'S HELD A SUBSTANTIAL AMOUNT OF MEMBER CONTRACTS IN A
11 PARK CALLED THE PHILIPPINE FIESTA VILLAGE PARK; RIGHT?

12 A THAT'S TRUE.

13 Q THAT WAS AN R.V. PARK HERE IN SOUTHERN
14 CALIFORNIA?

15 A YES.

16 Q AND ON THAT DEAL MITCHELL AND DAVIS
17 CONTACTED YOU?

18 A YES, THEY DID.

19 Q AND ULTIMATELY YOU AND TRAVELERS WORK OUT AN
20 EXCHANGE OF MEMBER CONTRACTS?

21 A YES.

22 Q YOU TOOK THE PHILIPPINE FIESTA MEMBER
23 CONTRACTS?

24 A THAT'S CORRECT.

25 Q AND THEY TOOK SOME PRESIDENT'S TRAVEL CLUB
26 CONTRACTS?

1 A YES.

2 Q AND ONE OF YOUR REASONS FOR DOING THAT WAS
3 TO SEE IF YOU COULD TURN THE PARK AROUND?

4 A THAT'S TRUE.

5 Q BECAUSE IF YOU COULD TURN THE PARK AROUND,
6 THEN YOU'D NOT ONLY HAVE THE PARK, YOU'D HAVE GOOD MEMBER
7 CONTRACTS; RIGHT?

8 A YES.

9 Q AND IF YOU COULD TURN THE PARK AROUND, YOU'D
10 HAVE THE PARK, MEMBER CONTRACTS, AND UPGRADES; RIGHT?

11 A THAT'S TRUE.

12 Q BECAUSE THAT'S WHAT YOU REALLY WANTED WITH
13 THAT DEAL; RIGHT?

14 A NO.

15 Q YOU WERE SELLING PRESIDENT'S TRAVEL CLUB
16 UPGRADES IN '93; RIGHT?

17 A THE REASON I WAS INTERESTED IN THAT
18 PHILIPPINE VILLAGE -- EVERYBODY WAS TRYING TO GET ME NOT TO
19 TAKE THAT PARK -- WAS THAT IT HAD SOMETHING LIKE 10,000
20 ACRES OF PROPERTY WITH IT. AND I THOUGHT THAT WE COULD
21 TAKE THE PROPERTY, SPIN OFF THE PROPERTY, KEEP THE RESORT,
22 AND GET RID OF THE PROPERTY AND MAKE A PROFIT ON THE
23 PROPERTY. THEY DIDN'T HAVE A MEMBER BASE BIG ENOUGH
24 THAT -- WE WEREN'T REALLY CONCERNED THAT MUCH ABOUT THEIR
25 MEMBER BASE AS FAR AS UPGRADES. IT'S A VERY SMALL MEMBER
26 BASE.

1 Q BUT CERTAINLY UPGRADES ENTERED INTO THE
2 PICTURE?

3 A VERY FEW. THIS WAS A DIFFERENT TYPE OF
4 RESORT THAN WE WERE USED TO GETTING INVOLVED WITH, A LITTLE
5 DIFFERENT THAN OUR REGULAR MEMBERSHIP BASE.

6 Q RIGHT.

7 IT WAS DIFFERENT BECAUSE IT WAS THE
8 MEMBERSHIP BASE LARGELY COMPRISED OF FILIPINOS?

9 A YOU HAD TWO MEMBERSHIPS BASE; YOU HAD THE
10 ORIGINAL PARK WAS CALLED SPRING CREEK. THAT BASE, THERE
11 WAS JUST REGULAR CAMPERS AND RETIRED PEOPLE, REGULAR OLDER
12 MEMBERS. AND THEN THEY HAD A CLUB THERE FOR WHAT THEY
13 CALLED PHILIPPINE VILLAGE. THE FILIPINO PEOPLE -- AND I
14 MET WITH LOTS OF THEM, AND INCLUDING THEIR LEADERS OF THAT
15 ORGANIZATION, AND THEY WENT OUT THERE FOR AN -- ETHNIC
16 GROUP MEETINGS FOR PICNICS AND STUFF.

17 THEY DIDN'T BUY PHILIPPINE VILLAGE TO JOIN
18 THE PRESIDENT'S CLUB OR JOIN COAST TO COAST. I DOUBT IF
19 ANY OF THE MEMBERS IN THE PHILIPPINE VILLAGE, OTHER THAN
20 THE SPRING CREEK MEMBERS, WERE MEMBERS OF COAST. AND THEY
21 WEREN'T MEMBERS OF P.T.C. THEIR REASON FOR JOINING WAS TO
22 GET TOGETHER WITH THEIR FRIENDS AT A RESORT AND GO CAMPING
23 AND HAVE BARBECUES.

24 Q AND YOU EVEN HELD A BIG EVENT AT THE QUEEN
25 MARY; RIGHT?

26 A I BELIEVE SO.

1 Q HAD MEL TARI PRESENT?

2 A I DON'T KNOW IF I HAD MEL TARI PRESENT.

3 Q DID YOU INVITE MEMBERS OF THE PHILIPPINE
4 COMMUNITY TO THE EVENT?

5 A YES, WE DID.

6 Q AND THE PURPOSE OF THIS EVENT AT THE QUEEN
7 MARY WITH MEMBERS OF THE FILIPINO COMMUNITY PRESS WAS TO
8 ANNOUNCE YOUR PLANS FOR THIS PARK; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q YOU WEREN'T TALKING ABOUT YOUR DEVELOPMENT
11 PLANS. YOU WERE TALKING ABOUT GIVING THE FILIPINO
12 COMMUNITY MEMBERSHIP IN AN R.V. RESORT?

13 A THAT'S CORRECT.

14 Q THE MEMBER BASE WAS NOT INTERESTED IN
15 TRAVELING AROUND FROM PARK TO PARK?

16 A NO.

17 Q CORRECT?

18 A THAT'S CORRECT.

19 Q THEY ONLY WENT TO THAT PARK?

20 A THEY WANTED A PARK REASONABLE DISTANCE AWAY
21 FROM THEIR HOMES THAT THEY COULD GO AND ENJOY THE PICNICS
22 AND CAMPING OUT. YES, THAT'S WHAT THEY WANTED. THEY
23 DIDN'T WANT A SYSTEM.

24 Q THEY WENT TO THAT PARK?

25 A WHAT'S THAT?

26 Q THEY WENT TO THAT PARK?

1 A THAT WAS THE PARK THAT THEY JOINED AT, YES.

2 Q PHILIPPINE FIESTA.

3 AND WHEN YOU BOUGHT THE PARK, THERE WAS A
4 FORECLOSURE PENDING; CORRECT?

5 A YES, THERE WAS.

6 Q AND THE PARK WAS SHUT DOWN?

7 A YES.

8 Q AND YOU NEVER REOPENED IT?

9 A YES, I REOPENED IT. I REOPENED IT. THAT'S
10 WHY THEY WANTED -- THEY ASKED ME TO COME INTO THE THING IN
11 ORDER TO REOPEN THE PARK. THE BANK WANTED ME TO OPEN IT
12 UP. AND THE LENDERS WANTED -- THE PEOPLE THAT HELD THE
13 PAPER WANTED ME TO OPEN IT UP. AND WE OPENED IT UP.

14 Q FOR HOW MANY MONTHS WAS IT OPEN?

15 A I BELIEVE ABOUT EIGHT MONTHS.

16 Q AND THEN YOU DECIDED TO SHUT IT DOWN?

17 A THE BANK WENT INTO A RECEIVERSHIP. THE BANK
18 THAT HAD 6, \$7 MILLION LOAN AGAINST THE PROPERTY WAS TAKEN
19 OVER BY THE F.D.I.C. THEY COULD NO LONGER WORK WITH THE
20 PARK. THE F.D.I.C. WANTED TO LIQUIDATE THE PARK. WE
21 WEREN'T MAKING ANY MONEY ON THE THING. SO I TRANSFERRED
22 THE MEMBERS TO ANOTHER PARK CLOSER TO THE PHILIPPINE
23 COMMUNITY THAN WHERE THEY'RE AT, WHICH WAS FIESTA CYPRESS.

24 Q YOU SHUT THE PARK DOWN?

25 A I SHUT IT DOWN, YES.

26 Q YOU TRIED TO TRANSFER THE MEMBERS?

1 A I TRANSFERRED THE MEMBERS.

2 Q AND THEY SAID, "NO THANKS"?

3 A NO. REMEMBER, YOU HAD TWO DIFFERENT TYPES
4 OF MEMBERS THERE.

5 Q I'M TALKING ABOUT THE FILIPINOS.

6 A THE PHILIPPINE'S MEMBERS AS A WHOLE DIDN'T
7 WANT TO GO TO CYPRESS, THAT'S CORRECT.

8 Q NOW, LET ME -- I BELIEVE EXHIBIT 342 IS IN
9 EVIDENCE; IS THAT RIGHT?

10 NO?

11 IF YOU CAN GIVE ME 342. YEAH, IT IS. I'M
12 TOLD THAT IT IS.

13 IF YOU COULD JUST EXPAND THE FIRST FULL
14 PARAGRAPH, MIKE. SEE, MR. NOVELLI, THIS IS THE LEAD
15 ARTICLE FROM THE SPRING 1998 NEWS AND VIEWS?

16 A YES.

17 Q AND I KNOW WE TALKED A LITTLE BIT ABOUT SOME
18 PARTS OF THIS ARTICLE YESTERDAY. IT SAYS HERE IN THE FIRST
19 PARAGRAPH, "FOR OVER A YEAR, REPRESENTATIVES FROM VARIOUS
20 RESORTS AND RESORT COMPANIES HAVE WORKED TO DEVELOP A NEW
21 RESORT SYSTEM, WHICH IS NAMED 'TRAVEL AMERICA.'"

22 THAT'S A REFERENCE TO THE MEETING THAT TOOK
23 PLACE IN MARCH, 1997, AT THE RANCH; RIGHT?

24 A LET ME READ THAT.

25 DO YOU HAVE A COPY OF THAT? I HAVE A TOUGH
26 TIME --

1 Q SURE. IF I HAD MY CONTACTS IN, I'D GIVE YOU
2 MY GLASSES.

3 A OKAY. I SEE THAT.

4 Q OKAY. THAT REFERENCE TO THE MEETINGS TO
5 DEVELOP THIS NEW RESORT SYSTEM --

6 A NO.

7 Q MR. NOVELLI, LET ME WITHDRAW THIS. I'LL
8 START AGAIN.

9 THE REFERENCE IN THAT SENTENCE, "FOR OVER A
10 YEAR REPRESENTATIVES FROM VARIOUS RESORTS AND RESORT
11 COMPANIES HAVE WORKED TO DEVELOP A NEW RESORT SYSTEM, WHICH
12 IS NAMED, 'TRAVEL AMERICA,'" THAT'S A REFERENCE TO THE
13 MEETING THAT TOOK PLACE IN MARCH '97 AT TOMMY CLOUD'S
14 RANCH; RIGHT?

15 A NO. WE WERE -- DURING THE COURSE WITH THE
16 FIRST NATIONWIDE COMPANIES, THE ALL SEASONS COMPANIES, AND
17 OTHER COMPANIES, WE WERE LOOKING TO MERGE TOGETHER QUITE A
18 FEW COMPANIES IN ORDER TO COLLAPSE OUR COST, IN OTHER
19 WORDS, TO GET THE COST DOWN. WHAT CAUSED, THEN, THIS --
20 ALL THIS NEGOTIATION TO COME TRUE IS WHEN WE DID HAVE THE
21 MEETING AT THE CLOUD RANCH, THEN IT MADE THIS THING
22 POSSIBLE.

23 Q IN THE SPRING OF '97?

24 A YES. BECAUSE THE NAME "TRAVEL AMERICA,"
25 THAT WAS THE NAME WE WERE USING FOR THE C.D.A. THAT TRAVEL
26 AMERICA THING WAS FOR THE CAMPGROUND DEVELOPERS

1 ASSOCIATION.

2 Q AND YOU WERE THE ONE WHO INITIATED
3 DISCUSSIONS THAT RESULTED IN THAT MEETING AT TOMMY CLOUD'S
4 RANCH BY CONTACTING CHRIS DAVIS OF TRAVELERS DATA;
5 CORRECT?

6 A MITCHELL CONTACTED ME. ROBERT MITCHELL, I
7 BELIEVE, IS THE ONE THAT CONTACTED ME. THEN IN TURN I GOT
8 TOGETHER -- I DON'T RECALL THE CIRCUMSTANCES. I GOT
9 TOGETHER WITH CHRIS DAVIS.

10 Q OKAY. SO THE SEQUENCE IS BOB MITCHELL
11 CONTACTED YOU ABOUT THE OPPORTUNITY?

12 A YES.

13 Q YOU'RE SURE OF THAT?

14 A WELL, I'M NOT THAT -- YOU KNOW, THIS
15 HAPPENED SEVERAL YEARS AGO. I BELIEVE SO.

16 Q BUT YOU HEARD BOB MITCHELL SAY THAT WHILE HE
17 WAS HERE; RIGHT?

18 A I DON'T RECALL HIM SAYING IT, BUT IN THE
19 MEANTIME, I BELIEVE THAT WAS THE SITUATION, THAT MITCHELL
20 INFORMED ME OF IT.

21 Q NOT THE OTHER WAY AROUND?

22 A NO, I DIDN'T -- I DIDN'T CALL
23 ROBERT MITCHELL UP AND ASK HIM IF HE HAD ANY COMPANIES FOR
24 SALE.

25 Q SO YOU WEREN'T THE ONE WHO GOT MITCHELL
26 INVOLVED?

1 A NO.

2 Q HE GOT YOU INVOLVED; CORRECT?

3 A CORRECT.

4 Q I'D LIKE TO PLAY THE VIDEO OF YOUR
5 DEPOSITION TAKEN ON APRIL 20, 2000, PAGE 1700, LINE 5 TO
6 PAGE 1701, LINE 6.

7 MR. MOSHENKO: I'M SORRY, REPEAT THAT, PLEASE.

8 MR. SHERMAN: YES. APRIL 20, 2000, PAGE 1700, LINE
9 5, TO PAGE 1701, LINE 6.

10 THE COURT: NO OBJECTION?

11 MR. SHAW: YOUR HONOR, I JUST REQUEST TO GIVE THE
12 FULL CONTEXT READING, BEGIN ON 1699, LINE 16, AND THEN
13 CONTINUE THROUGH 1701, LINE 6.

14 MR. SHERMAN: 1699. AND WHAT'S THE BACK END,
15 MR. SHAW?

16 MR. SHAW: YOU SAID LINE 6, MR. SHERMAN. BUT LINE
17 6 SEEMS TO END IN A QUESTION. DID YOU MEAN LINE 5, OR IS
18 IT LINE 6?

19 MR. RIVIN: LINE 16.

20 MR. SHAW: ALL RIGHT. I MISHEARD YOU.

21 MR. SHERMAN: YES. LINE 16.

22 THE COURT: PROCEED.

23 BY MR. SHERMAN: Q OKAY. BEFORE I DO THAT,
24 THOUGH, I REALIZED I HAD TAKEN SOMETHING OUT OF ORDER. I
25 WANT TO ASK YOU ABOUT MR. MITCHELL, MR. NOVELLI. YOU
26 RECALL -- MR. NOVELLI --

1 A YES.

2 Q -- YOU RECALL SITTING HERE WHEN MR. MITCHELL
3 TESTIFIED AND TOLD THE JURY THAT IT TOOK MR. MITCHELL ABOUT
4 A MONTH TO GET THROUGH TO YOU?

5 A I DON'T RECALL EXACTLY WHAT HE SAID. I
6 REMEMBER HE WAS TESTIFYING --

7 Q LET ME REFRESH YOUR RECOLLECTION WITH THAT
8 TESTIMONY FROM MR. MITCHELL GIVEN IN THIS COURT ON MAY 17,
9 2000, LINE -- 1206, 18 THROUGH 21.

10 "QUESTION: BUT SOMETIME AROUND 1997; IS
11 THAT CORRECT?

12 "ANSWER: WELL, IT WAS IN -- YEAH, I THINK I
13 STARTED CONTACTING HIM IN MAYBE MIDDLE OR -- OF JUNE, FIRST
14 OF JULY. IT TOOK ME ABOUT A MONTH TO GET THROUGH TO HIM."

15 NOW I'D LIKE TO GO TO THE DEPOSITION
16 TESTIMONY.

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

19 MR. SHERMAN: YOUR HONOR, DURING A BREAK I WILL
20 SEE WHAT WE CAN DO ABOUT THE VOLUME ON THAT.

21 Q NOW, MR. MITCHELL WAS WRONG; HE DIDN'T
22 CONTACT YOU. YOU CONTACTED HIM; CORRECT?

23 A YOU KNOW, I DON'T REALLY RECALL. I DEALT
24 WITH MR. MITCHELL AND MR. DAVIS. IT COULD HAVE BEEN ONE OR
25 THE OTHER. BUT I BELIEVE THAT MR. MITCHELL CONTACTED ME
26 FIRST.

1 I ALSO DEALT WITH MR. DAVIS. DAVIS WAS
2 HANDLING CONTRACTS. BUT IN THE MEANTIME, MY RECOLLECTION
3 IS THAT EITHER MITCHELL OR DAVIS, BUT JUST RIGHT NOW I FEEL
4 IT WAS MITCHELL THAT FIRST MADE CONTACT.

5 Q SO THE PURPOSE OF THE MEETING WAS TO COME UP
6 WITH A PLAN TO PROTECT THE LENDERS' INTEREST IN THOUSAND
7 ADVENTURES; RIGHT?

8 A FIRST OF ALL, THE MEETING WAS SET UP MAYBE A
9 MONTH AFTER -- THE DISCUSSIONS WERE GOING ON BEFORE A
10 MEETING WAS SET UP, MAYBE A MONTH OR -- I'M NOT SURE. IT
11 WAS A LITTLE TIME BEFORE A MEETING WAS SET UP. THEN A
12 MEETING WAS SET UP, AND IT WAS TO DISCUSS THE LENDERS'
13 PROBLEMS.

14 Q THE PURPOSE OF THE MEETING WAS TO SET UP A
15 PLAN TO PROTECT THE LENDERS' INTEREST IN THOUSAND
16 ADVENTURES; RIGHT?

17 A THAT WAS ONE OF THE PURPOSES.

18 Q AND EVERYONE AGREED AT THE MEETING THAT
19 THOUSAND ADVENTURES WOULD BE REPACKAGED AS TRAVEL AMERICA;
20 RIGHT?

21 A NO, THEY DIDN'T. THE NAME TRAVEL AMERICA AT
22 THAT TIME DIDN'T COME UP AT THAT TIME.

23 Q AND MR. MITCHELL WAS INSTRUMENTAL IN THE
24 FORMATION OF TRAVEL AMERICA; CORRECT?

25 A NO. HE WAS THERE AT THE MEETING.

26 Q WHEN TRAVEL AMERICA WAS FORMED?

1 A TRAVEL AMERICA WASN'T FORMED. TRAVEL -- IN
2 OTHER WORDS, WE WENT TO A MEETING. MY INTEREST WAS IN THE
3 PARKS AND IN THE MEMBERSHIP. THE LENDERS' INTEREST WAS IN
4 THE CONTRACTS, THEIR CONTRACTS, TO COLLECT ON THEM. WE
5 DISCUSSED WHERE IT WOULD BENEFIT BOTH PARTIES. I EXPLAINED
6 HOW BY MERGING THE TWO MEMBERSHIPS TOGETHER, THAT THIS
7 COULD CREATE A FAIRLY STRONG COMPANY. AND THEY AGREED WITH
8 THAT.

9 THE FORMATION THEN TOOK PLACE LATER IN MY
10 OFFICES. I THINK WE ALREADY -- SOMEBODY TESTIFIED TO THAT.

11 Q LET'S GO TO EXHIBIT 10 AGAIN, THE WORKING
12 TOGETHER THROUGH TRAVEL AMERICA, PLEASE.

13 YOU WRITE HERE, MR. NOVELLI, DECEMBER '97,
14 JANUARY '98, "AFTER ALL THE MEETINGS WE HAVE ATTENDED OVER
15 THE PAST MONTHS WITH MEMBERS: LENDERS: FINANCIAL
16 CONSULTANTS: AND INDUSTRY PROFESSIONALS, REVIEWING THE
17 COMPETITIVE YEARS, WE CAME TO THE CONCLUSION THAT THE ONLY
18 WAY" -- THAT'S IN BOLD -- "WE COULD SURVIVE WAS BY
19 COMBINING OUR EFFORTS AND RESORT SYSTEMS INTO ONE SYSTEM:
20 THAT NEW SYSTEM IS TRAVEL AMERICA."

21 AND THOSE INDUSTRY PROFESSIONALS INCLUDED
22 ROBERT MITCHELL?

23 A YES. HE WAS AT THE MEETING.

24 Q NOW, EVERYONE AT THIS MEETING AT THE CLOUD
25 RANCH KNEW THAT DAVID VOPNFORD WOULD ACT AS A FRONT FOR A
26 TIME FOR THIS NEW ORGANIZATION; RIGHT?

1 A NO. I'M -- IT WAS MY REQUEST. THE LENDERS
2 ALREADY HAD THE PARKS BACK FROM MR. VOPNFORD, AS FAR AS I
3 KNEW. AND THE MEMBERS. VOPNFORD GAVE THE LENDERS BACK THE
4 COLLATERAL THAT WAS THEIR COLLATERAL IN LIEU OF
5 FORECLOSURES. AND THEY INVITED ME OVER THERE TO THE RANCH.

6 WHEN I CAME OVER, ONE OF MY CONCERNS WAS
7 THAT MR. VOPNFORD WAS A VERY KEY PLAYER, BECAUSE HE HAD
8 CONTACT WITH HIS MEMBERS OVER THE YEARS. SO I FELT IT
9 ABSOLUTELY NECESSARY THAT MR. VOPNFORD HELP ORGANIZE THIS
10 ORGANIZATION.

11 Q AND IN ADDITION TO THE ABSOLUTE NECESSITY OF
12 DAVE VOPNFORD BEING A KEY PLAYER IN THIS NEW ORGANIZATION,
13 THE LENDERS WANTED TO HAVE SOMEONE INVOLVED IN THIS NEW
14 ORGANIZATION, TOO; CORRECT?

15 MR. MOSHENKO: THAT MISSTATES THE TESTIMONY. HE
16 DIDN'T SAY HE WOULD BE KEY. HE THOUGHT HE WAS A KEY
17 INDIVIDUAL TO BE INVOLVED, BUT NOT TO BE IN THE NEW
18 ORGANIZATION.

19 THE COURT: IT'S BEFORE THE JURY. PROCEED.

20 THE WITNESS: YES. THERE'S SOMEBODY ELSE THAT --
21 THEY HAD AN INPUT, ALSO.

22 BY MR. SHERMAN: Q AND TOMMY CLOUD WAS GOING TO BE
23 THE LENDER REPRESENTATIVE, IF YOU WILL?

24 A YES.

25 Q NOW, TRAVEL AMERICA'S FORMATION OCCURRED
26 JUST FOLLOWING THIS MEETING AT THE RANCH; RIGHT?

1 A TRAVEL AMERICA I BELIEVE WAS INCORPORATED
2 IN -- SOMETIME IN THE -- LATTER JUNE SOMETHING. I'M NOT --
3 EXACTLY WHEN. I BELIEVE SOMETIME IN JUNE.

4 Q AND EVERYONE FLEW OUT TO YOUR OFFICE IN
5 IRVINE JUST FOLLOWING THIS MEETING IN TEXAS AT MR. CLOUD'S
6 RANCH; RIGHT?

7 A I BELIEVE MAYBE A WEEK AFTER THE FIRST
8 MEETING AT THE RANCH THE PEOPLE THAT CAME OUT, IF I RECALL,
9 WAS ALLSTATE FINANCIAL, PRINCAP, CLOUD, AMERICAN WESTERN --
10 WESTERN AMERICAN BANK, SEVERAL PEOPLE.

11 Q YOU LEFT OUT DAVE VOPNFORD. HE CAME OUT
12 TOO; RIGHT?

13 A AND DAVE VOPNFORD WAS THERE.

14 Q AND SO THERE WAS AN ORGANIZATIONAL MEETING
15 HELD AT YOUR OFFICES ON MAY 14, 1997; RIGHT?

16 A IT WOULD BE ABOUT RIGHT BECAUSE I BELIEVE WE
17 MET AT THE RANCH SOMETIME IN APRIL.

18 Q LET ME PLACE BEFORE YOU EXHIBIT 2070.

19 MR. NOVELLI THESE, ARE DOCUMENTS THAT
20 APPEARED ON PLAINTIFFS' LIST OF TRIAL EXHIBITS.

21 AND MY FIRST QUESTION TO YOU IS, ARE THESE
22 VARIOUS EITHER MINUTES OR DRAFTS OF MINUTES CONCERNING THE
23 FORMATION OF TRAVEL AMERICA?

24 A LET ME REVIEW THEM.

25 MR. MOSHENKO: YOUR HONOR, THIS IS ABOUT 10 OR 15
26 PAGES, AND I WOULD REQUEST THAT THE WITNESS BE GIVEN AMPLE

1 TIME TO REVIEW THEM.

2 PERHAPS IF THE COURT IS INCLINED, WE CAN
3 TAKE A BREAK AT THIS TIME. WE CAN DO IT DURING THE BREAK.

4 MR. SHERMAN: THAT'S FINE. WE CAN TAKE A BREAK
5 NOW. ALSO, YOUR HONOR WILL RECALL THAT WE'VE GONE OVER
6 THESE MINUTES IN CHAMBERS.

7 MR. MOSHENKO: BUT THE WITNESS HASN'T, AND HE IS
8 THE ONE THAT'S ANSWERING THE QUESTIONS.

9 THE COURT: WAKE UP. IT'S TIME FOR A BREAK. SEE
10 YOU IN 20 MINUTES.

11 (RECESS TAKEN.)

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

14 THE COURT: PROCEED, COUNSEL.

15 BY MR. SHERMAN: Q OKAY. MR. NOVELLI, BEFORE WE
16 BROKE, I HAD PLACED BEFORE YOU EXHIBIT 2070. AND, IN
17 PARTICULAR, I'D LIKE TO DIRECT YOUR ATTENTION TO THE PAGE
18 THAT IS MARKED "PTE" AS A PLAINTIFFS TRIAL EXHIBIT, 06749.
19 DO YOU HAVE THAT IN FRONT OF YOU?

20 A YES, I DO.

21 Q THAT'S YOUR SIGNATURE; RIGHT?

22 A YES.

23 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 2070 INTO
24 EVIDENCE.

25 MR. MOSHENKO: YOUR HONOR, THE PROBLEM IS, THAT
26 THIS APPEARS TO BE MULTIPLE DIFFERENT DATED DOCUMENTS. AND

1 THE FOUNDATION FOR THE ONE DOCUMENT --

2 THE COURT: I'LL TAKE IT UNDER SUBMISSION. WE CAN
3 DISCUSS IT LATER.

4 MR. SHERMAN: OKAY. LET'S PUT UP THAT PAGE, 0101.

5 THESE ARE THE MINUTES OF THE FIRST
6 ORGANIZATIONAL MEETING OF TRAVEL AMERICA; IS THAT RIGHT?

7 A YES, THEY ARE.

8 Q AND ON THE BOTTOM -- IF WE CAN JUST GO DOWN
9 TO THE BOTTOM.

10 THE FOUR FOUNDING DIRECTORS OF TRAVEL
11 AMERICA SIGNED; CORRECT?

12 A CORRECT.

13 Q YOU, TOMMY CLOUD, ROBERT THOMPSON, AND
14 DAVID VOPNFORD?

15 A YES.

16 Q YOU RECOGNIZE THOSE SIGNATURES?

17 A YES.

18 Q NOW, THERE WERE A THOUSAND SHARES OF STOCK
19 OF TRAVEL AMERICA THAT WERE AVAILABLE FOR ISSUANCE; RIGHT?

20 A YES.

21 Q AND, BASICALLY, IF WE CAN GO TO THE LAST
22 "WHEREAS."

23 SO THERE'S A THOUSAND SHARES OF STOCK, AND
24 THE WAY IT WAS SPLIT UP IS YOUR COMPANY, WHITE MOUNTAIN
25 APACHE, GOT ABOUT A THIRD. CLOUD GOT A THIRD, AND THEN
26 THERE WAS ABOUT A THIRD LEFT OVER; RIGHT?

1 A IN THE TREASURY, YES. A LITTLE MORE THAN A
2 THIRD, YEAH.

3 Q AND SO TO JUST SORT OF LOOK AT IT AS TO
4 WHAT'S GOING ON, SINCE YOU'RE GETTING INVOLVED, YOU'RE
5 GOING TO GET A THIRD; RIGHT?

6 A THE DIFFERENT COMPANIES, YES.

7 Q WELL, THAT'S YOUR COMPANY, WHITE MOUNTAIN;
8 RIGHT?

9 A WHITE MOUNT CORPORATION, YES.

10 Q AND THE LENDERS THROUGH TOMMY CLOUD GET A
11 THIRD?

12 A THEY WERE HOLDING THOSE SHARES, THE
13 LENDERS. NOT TO BE PART OF IT. THEY JUST WANTED -- THEY
14 WANTED THE STOCK DIVIDED BY OUR CORPORATION, APACHE, AND
15 THEY WANTED CLOUD TO CONTROL HALF THE CORPORATION. SO
16 THERE'S -- WHAT IT WAS, IT WAS 50 PERCENT FOR OUR
17 ORGANIZATION, THE APACHE CORPORATION, AND 50 PERCENT FOR
18 THE BANKERS. AND THIS WAS ONLY A TEMPORARY ARRANGEMENT
19 UNTIL WE HAD SOME SOLID FOOTING.

20 Q AND THEN THE REMAINING THIRD, IF VOPNFORD
21 DID A GOOD JOB, HE WOULD GET SOME OF THAT; RIGHT?

22 A OF COURSE -- NO. WE DID NOT WANT VOPNFORD
23 IN. HE DIDN'T WANT IN, AND HE NEVER GOT ANY OR -- NOR WAS
24 HE EVER PROMISED ANY OR THOUGHT OF GETTING ANY.

25 Q SINCE YOU BELIEVED HE WAS A KEY PLAYER AND
26 ABSOLUTELY NECESSARY TO THE SUCCESS OF TRAVEL AMERICA, YOU

1 REALIZED BACK IN MAY 1997 YOU WOULD NEED TO "INCENTIVIZE"
2 HIM?

3 A WHAT WE NEEDED HIM FOR IS, DURING THE
4 TRANSITION PERIOD AFTER TRAVEL AMERICA WAS FORMED, HE
5 REPRESENTED WE THOUGHT SOMEWHERE AROUND 60,000 MEMBERS. WE
6 NEEDED HIS HELP. WE NEEDED TO KNOW HIS ORGANIZATIONAL
7 STRUCTURE. YOU JUST CAN'T WALK INTO SOMETHING LIKE THAT
8 WITHOUT HIS HELP. WE CERTAINLY WEREN'T GOING TO GIVE HIM
9 HALF THE COMPANY FOR IT OR A THIRD OF IT.

10 Q I'M NOT SUGGESTING YOU'RE GOING TO GIVE HIM
11 HALF THE COMPANY.

12 I AM SUGGESTING THAT IF VOPNFORD DID WHAT HE
13 WAS SUPPOSED TO DO, OR WHAT YOU WANTED HIM TO DO, HE COULD
14 GET SOME OF THAT STOCK?

15 A NO. NO.

16 Q NOW, IF WE COULD GO TO 2070-0019, AND THAT
17 BATES NUMBER IS -- WHAT'S THE BATES NUMBER THERE? 6758.

18 DO YOU HAVE THAT IN FRONT OF YOU,
19 MR. NOVELLI?

20 A YES, I DO.

21 Q OKAY. THOSE ARE SOME NOTES TAKEN IN
22 CONNECTION WITH SOME OF YOUR ORGANIZATIONAL MEETINGS?

23 A THEY APPEAR TO BE.

24 Q AND YOU'LL NOTICE THERE'S A REFERENCE TO
25 SETTING UP SOME BANK ACCOUNTS AND SIGNORS; DO YOU SEE THAT?

26 A YES.

1 Q AND THESE ARE BANK ACCOUNTS AND SIGNORS FOR
2 TRAVEL AMERICA; RIGHT?

3 A CORRECT.

4 Q ACTUALLY, IT'S A BANK ACCOUNT FOR TRAVEL
5 AMERICA DOING BUSINESS AS THOUSAND ADVENTURES, INC.; RIGHT?

6 A YES.

7 Q SO THERE WAS GOING TO BE THIS REPACKAGING OF
8 TRAVEL AMERICA -- OR EXCUSE ME.

9 THERE'S GOING TO BE THIS REPACKAGING OF
10 THOUSAND ADVENTURES LIKE TRAVEL AMERICA; RIGHT?

11 A I DON'T KNOW ABOUT REPACKAGING.

12 MR. MOSHENKO: OBJECTION. ARGUMENTATIVE. THE
13 DOCUMENT SPEAKS FOR ITSELF.

14 THE COURT: SUSTAINED.

15 BY MR. SHERMAN: Q I WANT TO ASK YOU SOME
16 QUESTIONS NOW ABOUT FIRST NATIONWIDE. THAT WAS A COMPANY
17 THAT YOU FORMED IN 1988; RIGHT?

18 A I BELIEVE SO.

19 Q YOU DIDN'T BUY THAT COMPANY; RIGHT?

20 A NO.

21 Q IT WAS NOT A DISTRESSED COMPANY WHEN YOU
22 FORMED IT, WAS IT?

23 A IT WAS -- THE PURPOSE WAS FOR A MANAGEMENT
24 COMPANY. IT WASN'T A MEMBERSHIP COMPANY.

25 Q IT WAS NOT A DISTRESSED COMPANY WHEN YOU
26 FORMED IT?

1 A OF COURSE NOT. IT WASN'T EVEN FORMED.

2 Q YOU WERE NOT CALLED IN AS A WORKOUT
3 SPECIALIST TO FIX THE COMPANY IN 1988, WERE YOU?

4 A NO. WE FORMED THE COMPANY AS A MANAGEMENT
5 COMPANY.

6 Q FIRST NATIONWIDE IS NOT ENGAGED IN ANY
7 BUSINESS TODAY; CORRECT?

8 A YES.

9 Q IS IT YOUR POSITION THAT FIRST NATIONWIDE IS
10 TODAY ENGAGED IN BUSINESS?

11 A YES, IT IS.

12 Q I'D LIKE TO PLAY VOLUME I FROM YOUR
13 DEPOSITION TAKEN ON AUGUST 30, 1999, LINES 118-7 THROUGH
14 15. PAGE 118, LINE 7. I MISSPOKE. PAGE 118, LINE 7
15 THROUGH LINE 15 OF VOLUME I. AND ACTUALLY ALSO CONTIGUOUS,
16 I WISH TO PLAY PAGE 132, LINES 4 THROUGH 17?

17 A WHAT PAGE? I'M SORRY. 116; RIGHT? TO
18 START WITH?

19 Q 118.

20 A 118.

21 MR. MOSHENKO: YOUR HONOR, NO OBJECTION AS TO 118.
22 BUT AS TO 132, THE TESTIMONY IS INCOMPLETE UNLESS IT GOES
23 TO LINE 23, BECAUSE LINE 23 FURTHER EXPLAINS THE RESPONSE
24 ON LINE 15 -- 16 AND 17.

25 MR. SHERMAN: I'M SORRY. LINE 23 OF PAGE 133?

26 MR. MOSHENKO: 132. I'M SUGGESTING YOU PICK UP SIX

1 LINES.

2 MR. SHERMAN: THAT'S FINE. NO OBJECTION. BUT WHAT
3 WE NEED TO DO IS WE'LL NEED TO READ THAT PORTION THAT
4 MR. MOSHENKO ASKED.

5 THE COURT: ALL RIGHT.

6 MR. MOSHENKO: NO PROBLEM. THANK YOU.

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

9 MR. SHERMAN: OKAY. NOW, "ANSWER: I DON'T KNOW
10 WHAT THEY OWN RIGHT NOW. I REALLY DON'T.

11 "QUESTION: THEY DON'T DO ANY BUSINESS RIGHT
12 NOW, RIGHT?

13 "ANSWER: THEY DON'T DO ANY BUSINESS. WELL,
14 I CAN THINK OF ONE THING, NOW THAT I THINK OF IT. THEY
15 ACQUIRED CATHEDRAL PALMS AS A RESORT WE ARE ACQUIRING.
16 THEY OWNED THAT ONE."

17 BY MR. SHERMAN: Q NOW, FIRST NATIONWIDE FILED A
18 CHAPTER 11 BANKRUPTCY IN CALIFORNIA IN MAY, 1996; CORRECT?

19 A THAT'S CORRECT.

20 Q AND --

21 A IN '96, YES.

22 Q LET ME PLACE BEFORE YOU EXHIBIT 374.

23 THAT EXHIBIT 374 IS SIGNED BY YOU -- EXCUSE
24 ME -- IS SIGNED BY MR. SCHULZ ON THE SECOND PAGE; CORRECT?

25 A YES.

26 Q AND THAT EXHIBIT 374 COMPRISES THE VOLUNTARY

1 PETITION OF FIRST NATIONWIDE RESORTS; CORRECT?

2 A YES.

3 MR. SHERMAN: I WILL MOVE EXHIBIT 374 INTO
4 EVIDENCE, YOUR HONOR.

5 THE CLERK: IT'S ALREADY IN.

6 MR. MOSHENKO: IT MAY GO IN -- IT'S ALREADY IN.

7 BY MR. SHERMAN: Q AND IF WE CAN GO TO THE SECOND
8 PAGE.

9 YOU'LL SEE MR. SCHULZ AT THAT TIME IS
10 SIGNING AS PRESIDENT; IS THAT RIGHT?

11 A YES.

12 Q NOW, FIRST NATIONWIDE IS IN THE CAMPGROUND
13 BUSINESS; RIGHT?

14 A THEY OWN RESORTS, AND THEY OWNED -- THEY HAD
15 THREE RESORTS THAT THEY OWNED OUTRIGHT, AND THEY CONTROLLED
16 SEVERAL CORPORATIONS THAT WERE IN THE CAMPGROUND BUSINESS.

17 Q FIRST NATIONWIDE ALSO GUARANTEED DEBTS OF
18 YOUR PRESIDENTIAL AIR?

19 A THAT'S CORRECT.

20 Q PRESIDENTIAL AIR WAS AN AIRLINE YOU STARTED
21 IN THE '94 TIME FRAME?

22 A '94, '95, YES.

23 Q AND IT OPERATED FROM '94 TO MAY, 1996;
24 RIGHT?

25 A YES.

26 Q AND IT CEASED OPERATING AT THE SAME TIME

1 THAT FIRST NATIONWIDE FILED BANKRUPTCY?

2 A NO. IT CEASED OPERATING IN -- WE LOST OUR
3 AIRPLANES IN FEBRUARY OF '96. AND WE THEN WE WENT INTO A
4 727 AIRCRAFT THAT WE LEASED, AND WE CEASED OPERATION ON
5 THAT ONE I BELIEVE IN APRIL. BECAUSE IT JUST WASN'T BIG
6 ENOUGH TO HANDLE OUR BUSINESS.

7 Q OF '96?

8 A I BELIEVE IT WAS '96.

9 Q SO WHEN YOU STARTED PRESIDENTIAL AIR, IT WAS
10 NOT FINANCIALLY DISTRESSED; CORRECT?

11 A NO.

12 Q WHEN YOU LEFT IT WAS?

13 A WHEN I LEFT IT WAS, YES.

14 Q NOW, WHILE IT DID NOT FILE ITS OWN
15 BANKRUPTCY, IT DID CEASE OPERATING?

16 A YES, IT DID.

17 Q AND YOUR CAMP RESORT COMPANY, FIRST
18 NATIONWIDE, RAN UP AND PAID A LOT OF BILLS FOR PRESIDENTIAL
19 AIR; RIGHT?

20 A NO.

21 Q WELL, THEY RAN UP BILLS; CORRECT?

22 A PRESIDENTIAL AIR HAD BILLS. IT HAD BILLS TO
23 THE LEASING COMPANY, WHICH I THINK WE DISCUSSED, AND ALSO
24 WORLD FUEL.

25 Q AND FIRST NATIONWIDE STOOD BEHIND THOSE,
26 GUARANTEED THOSE BILLS?

1 A GUARANTEED THEM, YES.

2 Q AND DIDN'T PAY ON THE GUARANTEE; RIGHT?

3 A NO.

4 Q IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q NOW, THERE WERE PAYMENTS, THOUGH, THAT FIRST
7 NATIONWIDE MADE FOR THE CREDITORS OF PRESIDENTIAL AIR;
8 ISN'T THAT RIGHT?

9 A I DON'T BELIEVE ANY OF THE CREDITORS EVER
10 GOT ANY MONEY DISBURSEMENTS TO MY KNOWLEDGE.

11 Q SO FIRST NATIONWIDE DIDN'T PAY ON ANY OF THE
12 GUARANTEES; CORRECT?

13 A I DON'T KNOW IF IT'S BEEN DISBURSED. I KNOW
14 THEY HAD OVER A MILLION DOLLARS IN CASH, AND WHETHER THEY
15 DISBURSED THAT, I DON'T KNOW.

16 Q LET'S GO TO PAGE 6 OF 374. I'M SORRY. I
17 MEANT LET'S GO TO -- NOW, DID FIRST NATIONWIDE BORROW
18 MONIES TO PURCHASE JET FUEL?

19 A NO.

20 Q DID FIRST NATIONWIDE ENTER INTO AN AIRCRAFT
21 HANGAR LEASE?

22 A YES.

23 Q THIS WAS FOR PRESIDENTIAL AIR?

24 A YES.

25 Q AND LET'S GO BACK TO THE JET FUEL.

26 IF WE CAN GO TO EXHIBIT 203, WHICH WAS

1 ADMITTED WHEN MR. JOSEPH WAS HERE TESTIFYING.

2 203 -- ACTUALLY PAGE 007.

3 A IS THAT IN THIS --

4 Q NO IT'S NOT.

5 MIKE, IF YOU COULD EXPAND ON THE COLUMN ON

6 THE PAYEE -- I'M SORRY. I MEANT TO SAY, "THE PURPOSE."

7 HERE WE GO. "2-2-96. CASHIER'S CHECK,

8 FUEL."

9 DO YOU SEE THAT, MR. NOVELLI?

10 IF YOU CAN EXPAND THAT, MIKE, OVER THERE.

11 FEBRUARY 2, '96?

12 A I DON'T SEE -- WHAT IS THE AMOUNT OF THAT?

13 I'M HAVING A TOUGH TIME SEEING THAT.

14 Q THAT'S 1,805?

15 A YES, I SEE THAT.

16 Q OKAY. SO YOU'LL RECALL MR. JOSEPH WAS HERE

17 AND IDENTIFIED THIS DOCUMENT AS ONE OF THE LEDGERS?

18 A YES.

19 Q AND YOU SEE THIS PAYMENT OF ABOUT \$1800,

20 FEBRUARY, '96, FOR FUEL?

21 A YES.

22 Q AND, IN FACT, FIRST NATIONWIDE WAS MAKING

23 PAYMENTS ON ACCOUNT OF JET FUEL; CORRECT?

24 A WELL, IT APPEARS IT WAS FUEL, JET FUEL, YES.

25 Q AND YOU SAT HERE WHEN MR. JOSEPH TESTIFIED;

26 RIGHT?

1 A YES.

2 Q AND YOU RECALL MY SHOWING MR. JOSEPH OTHER
3 DISBURSEMENTS FOR JET FUEL?

4 A I RECALL SAYING -- THAT HE SAID THAT THAT
5 1600 WOULDN'T FILL UP AN AIRBUS.

6 Q AND THEN YOU RECALL THE OTHER -- THE OTHER
7 ENTRIES THAT I DID SHOW MR. JOSEPH FOR JET FUEL?

8 A YES.

9 Q AND, IN FACT, FIRST NATIONWIDE BOUGHT JET
10 FUEL FOR PRESIDENTIAL AIR?

11 A THEY COULD HAVE.

12 Q YOU JUST DON'T KNOW?

13 A I DON'T REALLY KNOW.

14 Q AND LET'S GO TO THE AIRCRAFT HANGAR, EXHIBIT
15 375 -- 375 IS UNDER SUBMISSION.

16 MR. MOSHENKO: HE CAN GO TO IT, YOUR HONOR.

17 BY MR. SHERMAN: Q OKAY. YOU RECOGNIZE
18 MR. SCHULZ'S SIGNATURE ON THE BANKRUPTCY SCHEDULES FOR
19 FIRST NATIONWIDE?

20 A YES.

21 Q AND IF WE CAN GO BACK TO THE WHOLE DOCUMENT,
22 PLEASE.

23 THESE WERE BANKRUPTCY SCHEDULES THAT WERE
24 FILED IN THE FIRST NATIONWIDE CASE IN ORDER TO LIST ALL THE
25 ASSETS AND PROPERTY AND LIABILITIES OF FIRST NATIONWIDE;
26 CORRECT?

1 A YES. DO I HAVE A COPY OF THAT HERE?

2 Q IT IS HUGE, I UNDERSTAND. WHY DON'T WE GET
3 IT.

4 WHILE WE'RE DOING THAT --

5 THE COURT: THIS IS IN EVIDENCE, BY THE WAY.

6 MR. SHERMAN: OKAY. VERY WELL.

7 IF WE CAN GO TO -- IT'S PAGE 375-004. AND
8 IF YOU COULD EXPAND THE REFERENCE TO OLEN PROPERTY
9 SERVICES, CORP.

10 Q THAT'S WHO FIRST NATIONWIDE PAID FOR THE
11 AIRCRAFT HANGAR; IS THAT RIGHT?

12 A YES.

13 Q AND THAT WAS FOR THE FIRST NATIONWIDE
14 JETS -- EXCUSE ME -- FOR THE PRESIDENTIAL AIR JETS;
15 CORRECT?

16 A YES. THOSE ARE CORPORATE HEADQUARTERS.

17 Q AND THESE JETS OF PRESIDENTIAL AIR, THAT
18 DIDN'T HAVE ANYTHING TO DO WITH THE MEMBERS' USE OF
19 CAMPGROUNDS IN FIRST NATIONWIDE; RIGHT?

20 A NO.

21 Q IS THAT CORRECT?

22 A THAT'S CORRECT -- WELL, WAIT. THEY DID GET
23 A DISCOUNT FOR FLYING. WE GIVE THEM A DISCOUNT. BUT IN
24 THE MEANTIME, THAT WASN'T THE PURPOSE OF THE AIRLINE AT
25 THAT TIME.

26 Q NOW, YOU EVEN HAD SOME OF THE RESORTS

1 THEMSELVES BILLED FOR SOME OF PRESIDENTIAL AIR'S EXPENSE;

2 IS THAT RIGHT?

3 A COULD HAVE.

4 Q BUT UNLESS I SHOW YOU A DOCUMENT, YOU WON'T

5 COMMIT; IS THAT RIGHT?

6 A WELL, I DON'T RECALL ANY.

7 Q WELL, LET'S SEE IF I CAN REFRESH YOUR

8 RECOLLECTION.

9 EXHIBIT 203 ON SANCTION, IT'S 007. AND

10 YOU'LL SEE A REFERENCE, CYPRESS. THAT'S ONE OF YOUR PARKS;

11 RIGHT?

12 A YES.

13 Q IN FACT, THAT WAS A PARK THAT MR. BERAN HAD

14 SOLD TO YOU; IS THAT RIGHT?

15 A YES.

16 Q JIMMY BERAN?

17 A WELL, THERE'S THREE DIFFERENT PEOPLE THAT

18 SOLD IT TO US. JIMMY --

19 Q AND JERRY BERAN SOLD YOU THE PARK?

20 A JERRY BERAN. AND THEN I BELIEVE THEIR

21 MOTHER-IN-LAW.

22 Q AND YOU SEE THERE'S A CHECK OUT OF CYPRESS

23 FOR FUEL FOR \$1800; DO YOU SEE THAT?

24 A YES, BUT THAT'S NOT FUEL FOR AN AIRLINER.

25 THAT'S FUEL FOR THE PRIVATE PLANE. IT WOULD HAVE TO BE.

26 Q OH, YOU HAD A PRIVATE PLANE, TOO?

1 A THAT'S CORRECT.

2 Q AND SO YOU RAN THOSE EXPENSES THROUGH
3 CYPRESS?

4 A IF CYPRESS IS ONE OF THE ORGANIZATIONS THAT
5 HAD TO PAY EXPENSES.

6 Q FOR YOUR PRIVATE PLANE?

7 A FOR THE COMPANY'S PRIVATE PLANE. IN OTHER
8 WORDS, WE HAD MANY COMPANIES LOCATED ALL OVER THE UNITED
9 STATES, AND THEY HAD A PRIVATE PLANE, YES.

10 Q NOW, THERE'S A -- MIKE, CAN YOU GO TO THAT
11 PAYROLL ITEM.

12 DO YOU SEE THAT PAYROLL ITEM -- NO? WE'LL
13 COME BACK TO THAT.

14 A CASHIER'S CHECK, PRESIDENTIAL AIR
15 PAYROLL. AND WHO IS THAT FROM? LET'S SEE WHAT COMPANY
16 THAT WAS TAKEN OUT OF.

17 THAT LOOKS LIKE FIRST NATIONWIDE?

18 A YES.

19 Q SO YOU WERE PAYING FOR THE EMPLOYEES OF
20 PRESIDENTIAL AIR OUT OF FIRST NATIONWIDE?

21 A PRESIDENTIAL AIR LENT FIRST NATIONWIDE AND
22 ALL SEASONS A HALF A MILLION DOLLARS FOR THEIR PAYROLL AND
23 DIFFERENT THINGS. THIS WOULD HAVE JUST BEEN A REPAYMENT OF
24 SOME OF THAT FUNDS THAT WAS ADVANCED TO FIRST NATIONWIDE.

25 Q BUT YOU DON'T HAVE ANY RECORDS TO SUPPORT
26 THAT STATEMENT, DO YOU?

1 A I BELIEVE SO, YES, WE DO.

2 Q AND YOU HAVEN'T PRODUCED ANY OF THEM IN THIS
3 CASE?

4 A WELL, I BEG TO DIFFER WITH YOU. WE PRODUCED
5 ALL OF THEM. WE GAVE YOU OUR ENTIRE DATABASE SO YOU'D BE
6 SURE TO HAVE ALL THE INFORMATION IN OUR ENTIRE DATABASE.
7 SO WE DID PRODUCE EVERYTHING TO YOU.

8 Q NOW, FIRST NATIONWIDE -- EXCUSE ME.
9 PRESIDENTIAL AIR STOPPED FLYING, YOU SAY, IN
10 APRIL; IS THAT RIGHT?

11 A I BELIEVE SO, YES.

12 Q AND SO IF WE CAN GO TO EXHIBIT 203, PAGE 5
13 ON SANCTION. AND IF YOU COULD GO TO THE CHECK DRAWN TO
14 CASH FOR \$2,750 ON MAY 22. IT'S ABOUT, OH, 15 LINES FROM
15 THE BOTTOM.

16 YOU SEE THERE'S A CHECK DRAWN FOR CASH. DO
17 YOU SEE THAT, MR. NOVELLI?

18 A YES.

19 Q AND THAT CHECK IS DRAWN TO CASH ON MAY 22,
20 1996; RIGHT?

21 A I BELIEVE SO.

22 Q FOUR DAYS BEFORE FIRST NATIONWIDE FILED
23 BANKRUPTCY?

24 A YES.

25 Q ONE MONTH AFTER THE PLANES HAD STOPPED
26 FLYING?

1 A THAT'S THE PRIVATE PLANE.

2 Q AND THAT'S OUT OF FIRST NATIONWIDE'S
3 ACCOUNT; RIGHT?

4 A YES.

5 Q NOW, ULTIMATELY FIRST NATIONWIDE WAS UNABLE
6 TO PAY ALL OF ITS DEBTS; CORRECT?

7 A THAT'S CORRECT.

8 Q AND IF FIRST NATIONWIDE NEEDED TO SPEND MORE
9 MONEY ON RESORT PARK UPKEEP, IT -- JUST WASN'T ANY MONEY
10 LEFT?

11 A THEY MAINTAINED THEIR PARKS IN A VERY NICE
12 POSITION, ALL OF THEM.

13 Q AND THERE WASN'T ANY MONEY LEFT BECAUSE THE
14 MONEY WENT TO PRESIDENTIAL AIR; CORRECT?

15 A I'M SORRY, SIR. THEY WERE MAINTAINED WELL.

16 Q YOU WITHDREW MONEY, MR. NOVELLI, FROM FIRST
17 NATIONWIDE IN ORDER TO BENEFIT YOU PERSONALLY; CORRECT?

18 A I DON'T BELIEVE SO. MAYBE MY WAGES OR
19 SOMETHING.

20 Q LET'S TALK ABOUT -- YOU DIDN'T GET WAGES
21 FROM FIRST NATIONWIDE, DID YOU?

22 A I DON'T BELIEVE SO.

23 Q YOU WEREN'T --

24 A I GOT SOME PARKS.

25 Q YOU AREN'T EVEN ON THE BOOKS OF FIRST
26 NATIONWIDE AS A PAID EMPLOYEE; CORRECT?

1 A I DON'T BELIEVE SO.

2 Q YOU'RE AGREEING WITH ME?

3 A YES. I DON'T BELIEVE SO. I'M NOT -- I
4 MIGHT HAVE BEEN AT ONE TIME.

5 Q WERE YOU NOT ON THE BOOKS OF FIRST
6 NATIONWIDE AS AN EMPLOYEE SO THAT CREDITORS COULDN'T
7 GARNISH YOUR WAGES?

8 A NO.

9 Q NOW, FIRST NATIONWIDE BOUGHT YOU A HOME IN
10 MEXICO; IS THAT RIGHT?

11 A FIRST NATIONWIDE DID WHAT?

12 Q THEY BOUGHT YOU A HOME IN MEXICO?

13 A NO, THEY DID NOT.

14 Q YOU HAVE USE OF A HOME IN MEXICO TODAY?

15 A THAT'S CORRECT.

16 Q IN ZIHUATANEJO?

17 A THAT'S CORRECT.

18 Q AND FOR ALL PRACTICAL PURPOSES, YOU HAVE
19 EXCLUSIVE USE OF THAT HOME FOR YOURSELF AND YOUR INVITED
20 GUESTS?

21 A PRETTY MUCH SO.

22 Q FIRST NATIONWIDE HAS MADE PAYMENTS ON
23 ACCOUNT OF THAT HOME; CORRECT?

24 A I BELIEVE SO.

25 Q WHO OWNS THAT HOME?

26 A IT BELONGS TO THE BANK OF SOFENE, AND WE

1 HAVE IT ON A 10-YEAR LEASE.

2 Q WHO IS "WE"?

3 A THE TRUST. THE SCHULZ FAMILY TRUST, MYSELF,
4 MY WIFE, AND MEL TARI.

5 Q SO THE SCHULZ TRUST, YOURSELF, YOUR WIFE,
6 AND MEL TARI ARE THE LESSEES?

7 A ARE THE LESSEES, YES.

8 Q BUT FIRST NATIONWIDE MADE THE PAYMENTS?

9 A WE -- THE HOME IS USED FOR BUSINESS PURPOSES
10 ALSO. FOR EXAMPLE, WE BRING DIFFERENT PEOPLE TO THE HOUSE
11 OR INVITE THEM TO THE HOUSE TO ENJOY MEXICO. AND WE USE IT
12 FOR PERSONAL VACATIONS. AND WE ALSO USE IT FOR BUSINESS,
13 INVITING PEOPLE THERE. FOR EXAMPLE, THE HOME WAS -- WHEN
14 WE MADE THE AGREEMENT WITH I.N.G., THE PEOPLE FROM HOLLAND
15 FLEW OVER THERE, AND THEY STAYED FOR SEVERAL WEEKS IN
16 MEXICO.

17 Q YOU NEVER HAD ANY MEMBER RALLIES AT THE HOME
18 IN MEXICO; RIGHT?

19 A NO. A LITTLE TOO FAR FOR THAT.

20 Q LET'S GO TO EXHIBIT 205-006.

21 IS THAT IN EVIDENCE? NO. OKAY.

22 AND IF YOU COULD GO TO THE PAGE,

23 MR. NOVELLI, MARKED D.M. 0021.

24 MR. MOSHENKO, COULD I LOOK OFF OF YOUR COPY

25 FOR A MOMENT TO CONFIRM WE'RE DOING THE SAME THING. D.M.

26 0021. IT'S ABOUT FIVE PAGES IN.

1 MR. MOSHENKO: FROM THE BACK?

2 MR. SHERMAN: NO. I THINK IT'S FROM THE FRONT.

3 Q DO YOU HAVE THAT THERE?

4 A YES.

5 Q OKAY. AND THAT'S -- YOU SEE YOUR SIGNATURE
6 AND MR. SCHULZ'S SIGNATURE ON THAT CHECK; CORRECT?

7 A YES, I DO.

8 Q OKAY. I'D LIKE TO MOVE THAT PAGE INTO
9 EVIDENCE.

10 THE COURT: NO OBJECTION?

11 MR. MOSHENKO: RELEVANCE.

12 THE COURT: SO RECEIVED.

13 WHAT WAS THE EXHIBIT NUMBER?

14 MR. SHERMAN: IT'S 205, EXHIBIT 205, BATES NUMBER
15 D.M. 0021.

16 (WHEREUPON, EXHIBIT NO. 205, D.M. 0021,
17 CHECK DRAWN ON FIRST NATIONWIDE ACCOUNT FEBRUARY 24, 1994,
18 \$35,000, WAS RECEIVED IN EVIDENCE.)

19 BY MR. SHERMAN: Q THIS IS A CHECK DRAWN ON THE
20 FIRST NATIONWIDE ACCOUNT FEBRUARY 24, 1994, THAT YOU AND
21 MR. SCHULZ SIGNED IN THE SUM OF \$35,000; RIGHT?

22 A THAT'S CORRECT.

23 Q PAID TO THE ORDER OF ELIZABETH WILLIAMS.

24 "I.T.F.," THAT MEANS "IN TRUST FOR"; CORRECT?

25 A YES.

26 Q RAYMOND G. NOVELLI; RIGHT?

1 A CORRECT.

2 Q AND THIS WAS IN CONNECTION WITH THE PURCHASE
3 OF THIS HOME IN ZIHUATANEJO?

4 A IT'S THE PURCHASE OF A LEASE IS WHAT IT IS.
5 LEASEHOLD.

6 Q AND SO THAT YOU CAN GO DOWN AND VISIT MEXICO
7 AND STAY IN THIS HOME?

8 A THIS HOME WAS FOR MY BENEFIT. I WORK HARD
9 ALSO, AND I HAVE FOR MANY YEARS WITH THESE COMPANIES, FOR
10 MY WIFE'S BENEFIT, MR. SCHULZ, OUR CUSTOMERS, OUR BANKERS.

11 Q AND FIRST NATIONWIDE ALSO MADE THE LEASE
12 PAYMENTS ON THE HOME AFTER THIS INITIAL ESCROW DEPOSIT;
13 CORRECT?

14 A YES, SOMETIMES. SOME OF THEM.

15 Q LET ME SHOW YOU ONE OF THOSE, EXHIBIT 204.
16 WOULD YOU RECOGNIZE YOUR SIGNATURE AND
17 MR. SCHULZ'S SIGNATURE ON THAT CHECK?

18 A YES.

19 Q DRAWN ON THE FIRST NATIONWIDE ACCOUNT?

20 A CORRECT.

21 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 204, BATES
22 NUMBER D.M. 0001231, INTO EVIDENCE.

23 MR. MOSHENKO: THE OBJECTION IS RELEVANCE. IT'S A
24 1994 CHECK RELATING TO WHO KNOWS WHAT. IT HAS NOTHING TO
25 DO WITH THE TRANSFER OF MEMBERS.

26 THE COURT: LET ME SEE IT.

1 MR. SHERMAN: YOUR HONOR, IT'S A CHECK THAT HAS TO
2 DO WITH THE HOME.

3 THE COURT: ALL RIGHT. RECEIVED OVER OBJECTION.

4 (WHEREUPON, EXHIBIT NO. 204, D.M. 0001231,
5 CHECK DRAWN ON FIRST NATIONWIDE ACCOUNT, WAS RECEIVED IN
6 EVIDENCE.)

7 BY MR. SHERMAN: Q MERCEDES GONZALEZ RIVA PALACIO
8 WAS THE SELLER OF THE HOME OR INVOLVED IN THE SALE -- THE
9 LEASE OF THE HOME?

10 A RIGHT.

11 Q AND THAT'S WHY FIRST NATIONWIDE WROTE HER
12 THIS CHECK; RIGHT?

13 A THAT'S CORRECT.

14 Q AND THESE CHECKS WENT REGULARLY TO
15 MISS PALACIO; RIGHT?

16 A YES. SHE HAD A BALANCE DUE, AND THIS IS ONE
17 OF THE PAYMENTS. THIS -- TO HER. IT'S NOT A LEASE
18 PAYMENT. BANK OF SOFENE IS WHO THE LEASE IS WITH. AND
19 THIS WAS TO PURCHASE THE LEASEHOLD INTEREST IN THE HOUSE.

20 Q BUT EVEN THOUGH FIRST NATIONWIDE MADE THE
21 PAYMENTS, FIRST NATIONWIDE WASN'T ON THE LEASE; CORRECT?

22 A WHAT DO YOU MEAN ON THE LIST?

23 Q ON THE LEASE.

24 A NO.

25 Q IS THAT CORRECT?

26 A THAT'S CORRECT.

1 Q NOW, FIRST NATIONWIDE ALSO PURCHASED A
2 FISHING BOAT; CORRECT?

3 A NO.

4 Q YOU'RE FAMILIAR WITH ORANGE COAST YACHT;
5 CORRECT?

6 A I'M NOT REAL SURE.

7 Q IS ORANGE COAST YACHT A BOAT BROKER?

8 A IT SOUNDS LIKE IT.

9 Q WELL, I DON'T WANT YOU TO GUESS.

10 HAVE YOU DONE BUSINESS WITH ORANGE COAST
11 YACHT, A BOAT BROKER?

12 A I MIGHT HAVE. I JUST DON'T RECALL.

13 Q WELL, LET'S SEE IF THIS DOCUMENT WILL
14 REFRESH YOUR RECOLLECTION. EXHIBIT 207.

15 MR. MOSHENKO: YOUR HONOR, I THINK 207 IS A
16 DOCUMENT -- OH -- THE PRECEDING DOCUMENT THAT HE OFFERED
17 INTO EVIDENCE, IT'S UNCLEAR TO ME WHETHER THE RECORD IS
18 CLEAR AS TO WHETHER JUST ONE PAGE WAS ADMITTED INTO
19 EVIDENCE, THAT IS, 205, PAGE 6, OR WHETHER THE WHOLE
20 DOCUMENT. MY UNDERSTANDING, IT WAS JUST ONE PAGE.

21 THE COURT: I THINK IT WAS JUST THE ONE PAGE,
22 WASN'T IT?

23 MR. SHERMAN: I BELIEVE I WAS JUST THE ONE PAGE,
24 YES.

25 MR. MOSHENKO: FINE. THANK YOU. THE RECORD IS
26 CLEAR.

1 BY MR. SHERMAN: Q LET ME COME BACK TO 207.

2 MR. NOVELLI, VARIOUS OF YOUR COMPANIES AT
3 VARIOUS TIMES HAVE PURCHASED BOATS; CORRECT?

4 A YES. I'M NOT SURE WHICH -- I BELIEVE SO.

5 Q AND AT ONE POINT ONE OF YOUR COMPANIES
6 PURCHASED A 40-FOOT BOAT; RIGHT?

7 A I BELIEVE IT WAS 45 FEET.

8 Q AND WAS THAT -- WHICH COMPANY PURCHASED THAT
9 45-FOOT BOAT?

10 A ARIZONA. I BELIEVE IT WAS THE ARIZONA RANCH
11 DEVELOPMENT. I'M NOT REAL SURE. NO. I'M SORRY. I DO
12 REMEMBER IT WAS BOGUE CHITTO RIVER RESORT CORPORATION.

13 Q SO BOGUE CHITTO PURCHASED THE 45 --

14 A I BELIEVE AND -- I'M NOT SURE. IT WAS MANY
15 YEARS AGO, BACK IN 1991. I'M NOT SURE WHICH COMPANY.

16 Q NOW, AS FAR AS HIDDEN SPRINGS IS CONCERNED,
17 THEY'RE A PLAINTIFF IF THIS CASE; RIGHT?

18 A YES.

19 Q AND THEY ARE OWNED BY THE BOGUE CHITTO RIVER
20 CORPORATION; CORRECT?

21 A THAT'S CORRECT.

22 Q AND, IN TURN, BOGUE CHITTO IS OWNED BY THE
23 SCHULZ FAMILY TRUST?

24 A THAT'S CORRECT.

25 Q AND SOMETIMES YOU SIGN DOCUMENTS FOR THE
26 BOGUE CHITTO RIVER CORPORATION?

1 A YES.

2 Q EVEN SAW ONE A COUPLE DAYS AGO; RIGHT?

3 A WHAT'S THAT?

4 Q YOU SAW ONE A COUPLE DAYS AGO, THE
5 ASSIGNMENT?

6 A I BELIEVE SO.

7 Q AND THIS -- EVEN THOUGH HANS SCHULZ IS THE
8 TRUSTEE OF THE SCHULZ FAMILY TRUST, FROM TIME TO TIME YOU
9 GET TO MAKE DECISIONS FOR THE TRUST; CORRECT?

10 A WELL, I REFER WITH -- CONFER WITH MR. SCHULZ.

11 Q YOU GET TO MAKE DECISIONS FOR THE TRUST?

12 A I DON'T MAKE DECISIONS --

13 MR. MOSHENKO: OBJECTION. ASKED AND ANSWERED.

14 THE WITNESS: -- DECISIONS FOR MR. SCHULZ --

15 THE COURT: OVERRULED.

16 THE WITNESS: -- HE HAS TO MAKE THEM HIMSELF. I
17 CONFER WITH HIM.

18 BY MR. SHERMAN: Q MR. NOVELLI, YOU GET TO MAKE
19 DECISIONS FOR THE TRUST?

20 A I CONFER WITH MR. SCHULZ. HE GIVES ME
21 AUTHORITY TO DO THINGS. I DON'T KNOW WHAT YOU MEAN BY
22 MAKING DECISIONS. AS FAR AS DECISIONS FOR THE TRUST,
23 MR. SCHULZ MAKES THOSE.

24 Q NOW, DID BOGUE CHITTO PURCHASE AN 82-FOOT
25 FISHING BOAT FOR YOU IN 1994?

26 A NO.

1 Q LET ME SHOW YOU EXHIBIT 206.

2 YOU SEE THAT THIS IS A CHECK IN THE AMOUNT
3 OF \$425,000, MR. NOVELLI?

4 A YES, I DO.

5 Q PAYABLE TO THE ORDER OF OCEAN AIR CHARTERS,
6 INC.?

7 A OCEAN AIR CHARTERS IS NOT ME.

8 Q RIGHT.

9 A YOU SAID MY OCEAN AIR CHARTERS.

10 Q OCEAN AIR CHARTERS IS A COMPANY THAT SELLS
11 BOATS; IS THAT RIGHT?

12 A NO.

13 Q WELL, WHAT IS OCEAN AIR CHARTERS?

14 A OCEAN AIR CHARTERS IS A COMPANY THAT OWNED A
15 BOAT AND WAS CHARTERING IT.

16 Q OCEAN AIR CHARTERS OWNED A BOAT THAT ONE OF
17 YOUR COMPANIES ACQUIRED; CORRECT?

18 A THAT'S CORRECT. ONE OF THE COMPANIES
19 ACQUIRED.

20 Q AND YOU DON'T KNOW WHICH COMPANY ACQUIRED
21 IT; CORRECT?

22 A I THINK IT WAS BOGUE CHITTO. HIDDEN SPRINGS
23 OR BOGUE CHITTO.

24 Q AND SO THIS IS A CHECK DRAWN ON A BANK OF
25 AMERICA ACCOUNT THAT WAS PAID OVER TO BOGUE CHITTO --
26 EXCUSE ME -- PAID OVER TO OCEAN CHARTERS ON ACCOUNT OF THE

1 PURCHASE OF THE BOAT?

2 A CORRECT.

3 MR. SHERMAN: I'M GOING TO MOVE IT INTO EVIDENCE.

4 MR. MOSHENKO: OBJECTION. RELEVANCE.

5 THE COURT: I'M GOING TO TAKE IT UNDER SUBMISSION.

6 WOULD YOU APPROACH, PLEASE.

7 (DISCUSSION OFF THE RECORD.)

8 MR. SHERMAN: OKAY. SO LET'S PUT THAT EXHIBIT 206

9 UP ON THE BOARD.

10 THE COURT: I'LL DEEM THAT ADMITTED IN EVIDENCE.

11 MR. SHERMAN: EXCUSE ME?

12 THE COURT: THAT'S DEEMED ADMITTED IN EVIDENCE.

13 (WHEREUPON, EXHIBIT NO. 206, CHECK IN THE

14 AMOUNT OF \$425,000 PAYABLE TO OCEAN AIR CHARTERS, INC., WAS

15 RECEIVED IN EVIDENCE.)

16 BY MR. SHERMAN: Q THIS IS THE CHECK FOR \$425,000?

17 A YES.

18 Q THAT YOU HAD THE PLAINTIFF IN THIS CASE,

19 HIDDEN SPRINGS, WHICH OWNED THE BOGUE CHITTO CORPORATION,

20 PAY OVER IN ORDER TO ACQUIRE THIS BOAT?

21 A I BELIEVE IT WAS BOGUE CHITTO, YES.

22 Q AND IS THIS THE 45-FOOT BOAT?

23 A NO.

24 Q OR IS THIS A BIGGER --

25 A A LOT OF THIS MONEY CAME FROM THE SALE OF

26 THE 45'ER, IS WHAT THIS IS.

1 Q SO BOGUE CHITTO HAD A 45-FOOTER, AND THEN IT
2 BOUGHT A BIGGER BOAT?

3 A YES.

4 Q AND THIS BIGGER BOAT -- ACTUALLY THIS WAS
5 ONLY A PORTION OF THE PURCHASE PRICE; CORRECT?

6 A I BELIEVE IT WAS -- \$525,000 WAS THE TOTAL
7 PRICE.

8 Q AND BOGUE CHITTO HAD NO USE FOR THIS BOAT;
9 RIGHT?

10 A NO. BOGUE CHITTO, THE CORPORATION, HAD NO
11 USE FOR IT.

12 Q HIDDEN SPRINGS HAD NO USE FOR IT EITHER?

13 A YES. THE BOGUE CHITTO -- FIRST OF ALL, THE
14 BOGUE CHITTO AND HIDDEN SPRINGS, WHEN THEY PURCHASED THAT,
15 THEY HAD A LARGE -- PURCHASED A LARGE RECEIVABLE FROM
16 BARCLAY'S AMERICAN BANK. SO THEY PURCHASED IT, AND THIS
17 WAS A TAX THING THAT THEY WERE USING FOR TAXES, A CHARTER
18 COMPANY.

19 BUT THAT'S WHY IT WAS PURCHASED THROUGH
20 BOGUE CHITTO BECAUSE THEY HAD ALL THAT INCOME FROM
21 RECEIVABLES.

22 Q NOW, A COUPLE DAYS AGO WHEN MR. MOSHENKO
23 SHOWED YOU THAT LIST OF AMENITIES FOR THE VARIOUS RESORT
24 PARKS, I DIDN'T SEE A LIST OF AMENITIES FOR A YACHT.

25 A NO. WE DON'T -- THIS IS A FISHING BOAT, NOT
26 A YACHT.

1 Q I DIDN'T SEE A LIST OF AMENITIES FOR FISHING
2 BOATS.

3 A NO, MEMBERS DON'T USE THIS BOAT.

4 Q YOU USE THE BOAT?

5 A I AND CUSTOMERS OF OURS, LENDERS, BUSINESS
6 PEOPLE. IT'S USED IN THE BUSINESS. AND IT'S ALSO
7 CHARTERED.

8 Q AND WHERE IS THIS BOAT KEPT TODAY?

9 A IT'S KEPT DOWN IN ZIHUATANEJO.

10 THE COURT: WHERE?

11 THE WITNESS: ZIHUATANEJO. THAT'S IXTAPA, MEXICO.

12 BY MR. SHERMAN: Q NOW, HAS THE BOGUE CHITTO
13 CORPORATION ALSO SUPPORTED THIS HOME THAT YOU USE IN MEXICO?

14 A I DON'T KNOW. I CAN'T RECALL.

15 Q LET'S TAKE A LOOK AT EXHIBIT 205-001.

16 I PLACE BEFORE YOU EXHIBIT 205.

17 TAKE A LOOK AT THE FIRST PAGE, MR. NOVELLI.

18 THAT FIRST PAGE, THAT'S A CHECK PAYABLE TO

19 MERCEDES GONZALEZ PALACIO; RIGHT?

20 A YES. THIS IS ON THE HOME.

21 Q RIGHT.

22 AND YOU'LL SEE THIS BANK OF AMERICA --

23 IT'S -- THEY ARE A CASHIER'S CHECK -- THIS IS A CASHIER'S

24 CHECK; RIGHT?

25 A YES.

26 Q AND THIS WAS GIVEN BY BANK OF AMERICA AS A

1 RESULT OF BOGUE CHITTO RIVER RESORT PURCHASING IT; DO YOU
2 SEE THAT?

3 A CORRECT.

4 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 205-001 INTO
5 EVIDENCE.

6 THE COURT: IT WILL BE SO RECEIVED.

7 (WHEREUPON, EXHIBIT NO. 205-001, CASHIER'S
8 CHECK, WAS RECEIVED IN EVIDENCE.)

9 MR. SHERMAN: LET'S PUT THAT UP ON THE BOARD. AND
10 IT'S BATES NUMBER D.M. 0016.

11 Q SEE, THIS IS A CHECK FOR \$70,000; CORRECT?

12 A THAT'S CORRECT.

13 Q AND THIS CHECK WAS GIVEN BY BANK OF AMERICA
14 BECAUSE THIS RESORT IN MISSISSIPPI HAD PURCHASED IT;
15 CORRECT?

16 A THAT'S CORRECT.

17 Q THIS RESORT IN MISSISSIPPI HAD PURCHASED A
18 CASHIER'S CHECK SO THAT YOU COULD GO AND VISIT MEXICO;
19 CORRECT?

20 A FOR THE PURPOSES STATED ALREADY. I'VE
21 ALREADY ANSWERED THAT QUESTION ABOUT THE HOUSE. SO --
22 UNLESS YOU'D LIKE ME TO LIST THE PEOPLE AGAIN AND THE
23 REASONS FOR THE HOUSE.

24 Q THIS CHECK WAS GIVEN SO THAT YOU COULD USE
25 THE HOUSE IN MEXICO; CORRECT?

26 A AMONG OTHERS.

1 Q NOW, I'D LIKE TO ASK YOU SOME QUESTIONS NOW
2 ABOUT SOME OF THE OTHER RESORTS, PARKS AND COMPANIES IN
3 ADDITION TO HIDDEN SPRINGS, BOGUE CHITTO, THAT HAVE MADE UP
4 THE FIRST NATIONWIDE UMBRELLA OVER THE YEARS.

5 YOU SEE, MR. NOVELLI, I PUT SOME NAMES UP ON
6 THE BLACKBOARD THERE. ACTUALLY I HAD MR. RUTENBERG DO
7 THAT.

8 DO YOU SEE THOSE VARIOUS NAMES?

9 A YES, I DO.

10 Q THOSE ARE NAMES OF VARIOUS EITHER RESORT
11 PARKS OR COMPANIES THAT CONDUCTED RESORT PARK OPERATION
12 UNDER THE FIRST NATIONWIDE UMBRELLA; CORRECT?

13 A YES.

14 Q LET'S GO THROUGH SOME OF THOSE NAMES OF
15 THOSE RESORT PARKS AND THE OTHER COMPANIES.

16 AND WHAT I'D LIKE TO START WITH IS THE
17 CYPRESS PARK -- ACTUALLY THE CYPRESS PARK TODAY BELONGS TO
18 THE TRAVEL AMERICA GROUP OF R.V. PARKS; CORRECT?

19 A IT'S A LEASE PARK, YES.

20 Q AND IT'S BEEN KNOWN AS FIESTA CYPRESS;
21 CORRECT?

22 A CORRECT.

23 Q PREVIOUSLY THE FIESTA CYPRESS RESORT PARK
24 HAD BEEN OWNED BY A COMPANY BY THE NAME OF "FIESTA
25 RESORTS," ANOTHER COMPANY?

26 A I DON'T BELIEVE SO. I BELIEVE FIRST

1 NATIONWIDE PURCHASED THAT PARK.

2 Q FIRST NATIONWIDE ACQUIRED A COMPANY CALLED
3 "FIESTA RESORTS"; CORRECT?

4 A FIRST NATIONWIDE ACQUIRED A COMPANY CALLED
5 FIESTA RESORTS, BUT NOT -- AT THAT TIME CYPRESS WASN'T PART
6 OF IT.

7 Q AND FIRST NATIONWIDE ACQUIRED THE CYPRESS
8 PARK IN APPROXIMATELY 1993; CORRECT?

9 A THAT'S APPROXIMATELY RIGHT THEN.

10 Q THEY WEREN'T LEASING IT THEN; RIGHT?

11 A NO.

12 Q THEY BOUGHT IT?

13 A CORRECT.

14 Q FROM JIMMY AND JERRY BARON?

15 A AND THERE'S THREE PEOPLE.

16 Q AND THE MOTHER-IN-LAW?

17 A AND THE MOTHER-IN-LAW, YES.

18 Q SO THEY WERE THE OWNERS THAT SOLD IT TO YOU;
19 CORRECT?

20 A THAT'S CORRECT.

21 Q AND CYPRESS AT THAT TIME WAS BANKRUPT, SOLD
22 TO YOU AS A PARK, BECAUSE THERE WERE NO MEMBERS INCLUDED?

23 A THAT'S CORRECT.

24 Q IT WAS OPERATED AT THE TIME AS A COMMERCIAL
25 CAMPGROUND; CORRECT?

26 A I BELIEVE SO.

1 Q AND WHEN FIRST NATIONWIDE BOUGHT THE PARK,
2 THE BARONS RECEIVED A NOTE SECURED BY A TRUST DEED ON THE
3 PROPERTY; CORRECT?

4 A NO. THEY RECEIVED 4-, 500,000 IN CASH AND
5 THEN ON NOTE ALSO FOR -- I'M NOT SURE OF THE AMOUNT OF IT.
6 BUT THERE WAS A NOTE INVOLVED ALSO IN THE PURCHASE.

7 Q IT WAS A SIGNIFICANT PURCHASE PRICE
8 REPRESENTED BY THE NOTE AS WELL; CORRECT?

9 A YES.

10 Q NOW, AT ALL TIMES FOLLOWING FIRST
11 NATIONWIDE'S ACQUISITION OF THE CYPRESS PARK IN '93, YOUR
12 POSITION HAS BEEN THAT THAT PARK WAS OVER-ENCUMBERED;
13 CORRECT?

14 A NO. I DIDN'T REALLY BELIEVE THE TRUSTEE
15 BELIEVED IT WAS OVER-ENCUMBERED, NO. I HAVE DIFFERENT
16 PERIODS.

17 Q I'M NOT EVEN IN THE 1996, '97 TIME PERIOD.
18 I'M BACK IN '93 AND '94 AND '95.

19 A THAT I THOUGHT IT WAS OVER-ENCUMBERED?

20 Q YES, SIR.

21 A IT COULD HAVE BEEN. I DON'T RECALL WHAT MY
22 THOUGHTS WERE.

23 Q IN FACT, IN THE '93, 4, 5 TIME PERIOD, EVEN
24 BEFORE THE TRUSTEE, MR. JOSEPH, WAS APPOINTED, YOU BELIEVED
25 THAT THE DEBT THAT WAS AGAINST THE PROPERTY, THE CYPRESS
26 PROPERTY, EXCEEDED ITS VALUE, DIDN'T IT?

1 A IN WHAT TIME FRAME?

2 Q JUST AFTER YOU BOUGHT IT, SIR.

3 A I DON'T BELIEVE SO. NOT AFTER I JUST GET MY
4 HALF A MILLION DOLLARS DID I THINK IT WAS OVER-ENCUMBERED.

5 MR. SHERMAN: I'M GOING TO ASK TO SHOW THE
6 DEPOSITION TESTIMONY OF MR. NOVELLI. I BELIEVE THAT THIS
7 IS VOLUME II -- VOLUME II, PAGE 338, LINE 12, TO 339, LINE
8 11.

9 MR. MOSHENKO: OKAY, YOUR HONOR.

10 THE COURT: PROCEED.

11 MR. SHERMAN: "QUESTION: NOW, WHY DID FIRST
12 NATIONWIDE CHOOSE TO LET THE FIESTA CYPRESS GO INTO
13 FORECLOSURE?"

14 SKIP THE OBJECTIONS.

15 "THE WITNESS: THE AMOUNT OF THE LOAN
16 EXCEEDED THE VALUE OF THE PROPERTY."

17 MR. MOSHENKO: OBJECT TO THE SKIPPING BECAUSE IT'S
18 NOT REALLY AN OBJECTION. AND IT CHANGES THE QUESTION.

19 MR. SHERMAN: OKAY. FAIR ENOUGH. I READ THROUGH
20 TOO QUICKLY.

21 "QUESTION: WHY DID FIRST NATIONWIDE CHOOSE
22 TO LET THE FIESTA CYPRESS GO INTO FORECLOSURE?"

23 "MR. MOSHENKO: DID YOU SAY 'CHOOSE'?"

24 "MR. SHERMAN: ELECT, DECIDE.

25 "THE WITNESS: THE AMOUNT OF THE LOAN
26 EXCEEDED THE VALUE OF THE PROPERTY.

1 "QUESTION: SO THE PROPERTY WAS
2 OVER-ENCUMBERED?

3 "ANSWER: YES.

4 "QUESTION: FOR WHAT PERIOD OF TIME,
5 APPROXIMATELY, HAD THAT CONDITION EXISTED?

6 "ANSWER: PROBABLY THREE YEARS PRIOR.

7 "QUESTION: SO '96, '97, '98?

8 "ANSWER: NO. WELL, LET'S SEE. I THINK
9 THEY PURCHASED IT IN '92 OR '93. SO, '93. '93, '95, '96.
10 SAY, FOUR YEARS, FIVE YEARS.

11 "QUESTION: SO BASICALLY AT ALL TIMES
12 FOLLOWING ITS ACQUISITION IN '93 BY FIRST NATIONWIDE, IT
13 CAME TO PASS THAT THE PROPERTY WAS OVER-ENCUMBERED?

14 "ANSWER: YES.

15 "QUESTION: AND BANKRUPTCY WAS JUST AS GOOD
16 A TIME AS ANY TO LET IT GO?

17 "ANSWER: CORRECT."

18 THE WITNESS: WE FILED -- I ASKED YOU THE DATE, AND
19 WE FOUND THAT OUT --

20 MR. SHERMAN: YOUR HONOR, THERE'S NO QUESTION
21 PENDING.

22 THE COURT: SUSTAINED.

23 BY MR. SHERMAN: Q THE DEBT ON THE PROPERTY WAS
24 GREATER THAN ITS VALUE IN '93 AFTER YOU ACQUIRED IT?

25 A WE FOUND THAT OUT LATER, THAT THERE WAS A
26 THIRD OF THE PROPERTY THAT WAS MISSING FROM WHAT THEY SOLD

1 US. THEY SOLD US SOME PROPERTY THAT THEY DIDN'T OWN. AND
2 YOU'LL SEE THAT IN THE PAPERS, ALSO. WE PROBABLY WERE
3 MISLED WHEN WE BOUGHT THE PROPERTY. WE DIDN'T DISCOVER
4 THAT, THOUGH, UNTIL LATER, THAT IT CAME UP.

5 WHEN WE BOUGHT THE PROPERTY -- BECAUSE I
6 ANSWERED YOUR QUESTION FOR 1993. WHEN WE BOUGHT THE
7 PROPERTY AND WE GAVE MR. BERAN A HALF A MILLION DOLLARS OR
8 400,000, WHATEVER IT WAS, WE WERE SATISFIED THAT IT WAS A
9 GOOD BUY. WE DIDN'T THINK IT WAS OVER-ENCUMBERED AT THAT
10 TIME.

11 NOW, NATURALLY WHEN YOU CAN LOOK BACK FROM A
12 TIME AND FIND OUT THAT A THIRD OF YOUR PROPERTY IS MISSING
13 AND OTHER THINGS ARE HAPPENING, THEN YOU CAN LOOK DOWN, AND
14 YOU GET SOME HINDSIGHT THAT WE DEVELOPED LATER.

15 Q YOU FIGURED THAT OUT IN '96, CORRECT?

16 A I DON'T KNOW IF IT WAS '96, '94, '95. I'M
17 NOT SURE WHAT THE TIME FRAME WAS. BUT I DO KNOW IT WAS
18 SEVERAL YEARS AFTER THE PURCHASE, OR AT LEAST TWO YEARS
19 AFTER THE PURCHASE.

20 Q BUT YOU FILED A LAWSUIT AGAINST MR. BERAN
21 AND HIS SON, JUST SIX TO EIGHT WEEKS AGO; RIGHT?

22 A YES.

23 Q A LAWSUIT FOR FRAUD?

24 A YES.

25 Q IN MARCH, 2000?

26 A YES.

1 Q SO IT'S NOT YOUR FAULT. IT'S THE BERAN'S
2 FAULT; RIGHT?

3 A WE'RE IN LITIGATION ON THE -- OVER THE VALUE
4 OF THE PROPERTY. WE'RE IN LITIGATION OVER THE LEASE. WE
5 SUED OVER THE LEASE. THE BERANS TRIED TO CHANGE THE TERMS
6 OF THE LEASE, AND WE SUED ON IT.

7 Q SO AFTER YOU ACQUIRE THE PROPERTY IN '93,
8 MR. NOVELLI, FIESTA CYPRESS JUST WASN'T PROFITABLE; RIGHT?

9 A IT WAS PROFITABLE.

10 Q IT WAS ALWAYS BEHIND ON ITS PAYMENTS;
11 CORRECT?

12 A OCCASIONALLY.

13 Q WAS FIESTA CYPRESS HAVING FINANCIAL PROBLEMS
14 AT THE TIME FIRST NATIONWIDE FILED BANKRUPTCY?

15 A I DON'T REALLY RECALL IF THEY WERE OR NOT.

16 MR. SHERMAN: WELL, LET ME PLAY YOUR DEPOSITION
17 TESTIMONY ON THE SUBJECT, APRIL 26TH, 2000, PAGE 1889,
18 LINES 5 THROUGH 8.

19 MR. MOSHENKO: WHAT LINE?

20 MR. SHERMAN: 5 THROUGH 8.

21 MR. MOSHENKO: BY 1889. 5 STARTS OUT IN THE MIDDLE
22 OF AN ANSWER.

23 WHAT ARE THE FIRST WORDS?

24 MR. SHERMAN: "WAS FIESTA CYPRESS."

25 MR. RIVIN: 1890.

26 MR. SHERMAN: PAGE 1890.

1 MR. MOSHENKO: LINE 3. THROUGH WHERE? I'M SORRY.

2 NOT 3. LINE 7.

3 MR. SHERMAN: BLAME IT ON THE SOFTWARE.

4 MR. MOSHENKO: YOU'RE TALKING ABOUT HOW MANY LINES,
5 APPROXIMATELY?

6 MR. SHERMAN: FOUR LINES.

7 MR. MOSHENKO: NO OBJECTION.

8 MR. SHERMAN: "QUESTION: WAS FIESTA CYPRESS HAVING
9 SOME FINANCIAL PROBLEMS AT THE TIME FIRST NATIONWIDE FILED
10 BANKRUPTCY?

11 "ANSWER: NO. IT'S ALWAYS BEEN A SUCCESSFUL
12 PARK."

13 Q MR. NOVELLI, LET'S GET IT STRAIGHT.

14 WAS FIESTA CYPRESS A SUCCESSFUL PARK OR NOT?

15 A I BELIEVE SO.

16 Q FIRST NATIONWIDE FILED BANKRUPTCY IN '96;
17 RIGHT?

18 A THAT'S CORRECT.

19 Q AND JUST BEFORE THAT TIME OF THE BANKRUPTCY
20 FILING, YOU STARTED BOUNCING CHECKS TO THE SELLERS OF THE
21 CYPRESS PROPERTY; CORRECT?

22 A THERE MIGHT HAVE BEEN SOME RETURNED CHECKS,
23 YES.

24 Q IT WAS AT THAT TIME WHEN THE CHECKS STARTED
25 TO BOUNCE THAT YOU DECIDED YOU JUST WEREN'T GOING TO MAKE
26 PAYMENTS; CORRECT?

1 A NO, I DIDN'T DECIDE THAT.

2 Q BUT ULTIMATELY WHAT HAPPENED WAS THAT THE
3 BERANS WENT IN THE FIRST NATIONWIDE BANKRUPTCY, AND THEY
4 GOT THE BANKRUPTCY COURT TO PERMIT THEM TO FORECLOSE ON THE
5 PROPERTY; CORRECT?

6 A I BELIEVE THAT MR. JOSEPH ALLOWED THEM TO.
7 I BELIEVE THAT HE -- I'M NOT SURE HOW IT HAPPENED. YES,
8 THEY WERE ALLOWED TO FORECLOSE.

9 Q BECAUSE THE PAYMENTS WEREN'T BEING MADE?

10 A YES.

11 Q AND BECAUSE THE CHECKS HAD BEEN BOUNCING?

12 A I DON'T KNOW ABOUT THE CHECKS BOUNCING, BUT
13 THE -- THEY WERE BEHIND ON PAYMENTS.

14 Q WELL, LET'S SEE IF I CAN REFRESH YOUR
15 RECOLLECTION ABOUT BOUNCED CHECKS.

16 I'M GOING TO SHOW THIS DOCUMENT TO THE
17 WITNESS TO REFRESH HIS RECOLLECTION.

18 (PAUSE IN PROCEEDINGS.)

19 MR. MOSHENKO: REFRESH HIS RECOLLECTION?

20 BY MR. SHERMAN: Q I'M GOING TO PLACE THIS
21 DOCUMENT BEFORE YOU.

22 DOES THIS DOCUMENT REFRESH YOUR RECOLLECTION
23 THAT IN 1996 YOU WERE BOUNCING CHECKS TO THE BERANS ON
24 ACCOUNT OF THE CYPRESS PROPERTY?

25 A I BELIEVE EARLIER I JUST SAID THAT
26 OCCASIONALLY THEY MIGHT HAVE GOT A BOUNCED CHECK. I JUST

1 DON'T RECALL ON THIS FORECLOSURE ABOUT BOUNCED CHECKS.
2 THIS WAS DATED IN '96.

3 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

4 THE COURT: DENIED.

5 BY MR. SHERMAN: Q NOW, AFTER FIRST NATIONWIDE
6 LOST THE CYPRESS PARK IN FORECLOSURE, THE BERANS DIDN'T
7 HAVE A BUYER OR OPERATOR OF THE PROPERTY; CORRECT?

8 A THEY WERE OPERATORS THEMSELVES.

9 Q WELL, BUT THEY THEN DECIDED TO LEASE THE
10 PARK BACK TO YOU SO THAT YOU'D MAKE SOME MONTHLY PAYMENTS
11 AT LEAST?

12 A CORRECT.

13 Q AND SO THEY ENTERED INTO A ONE-YEAR LEASE
14 WITH YOU; CORRECT?

15 A THEY ENTERED INTO A FOUR-YEAR LEASE -- WELL,
16 ONE YEAR AND THEN FOUR RENEWABLE TERMS FOR A TOTAL OF FOUR
17 YEARS, YES.

18 Q THEY GAVE YOU A SECOND CHANCE EVEN THOUGH
19 YOU FAILED TO UPHOLD YOUR PART OF THE BARGAIN BEFORE?

20 MR. MOSHENKO: OBJECTION. ARGUMENTATIVE.

21 THE COURT: SUSTAINED.

22 BY MR. SHERMAN: Q NOW, AFTER THIS LEASE EXPIRED,
23 YOU BECAME A HOLDOVER; RIGHT?

24 A THE LEASE IS STILL ACTIVE. IT NEVER
25 EXPIRED. THAT'S WHAT OUR LITIGATION IS ABOUT. THE LEASE
26 HAS NOT EXPIRED.

1 Q IN FACT, AFTER YOU BEGAN LEASING THE
2 PROPERTY BACK FROM THE BERANS, THE PAYMENT WAS SPORADIC
3 DURING THIS LEASE PERIOD; RIGHT?

4 A SOMETIMES BECAUSE OF THE LOSS OF MEMBERS.

5 Q SOMETIMES IT WAS LATE?

6 A UH-HUH.

7 Q SOMETIMES THE CHECKS BOUNCED?

8 A THAT'S CORRECT.

9 Q SOMETIMES THE PAYMENTS WEREN'T MADE AT ALL?

10 A THEY WERE ALWAYS MADE. PAYMENTS ARE
11 UP-TO-DATE, ALWAYS MADE.

12 Q BUT NOT ALWAYS WITH SUFFICIENT FUNDS;
13 CORRECT?

14 A ALL -- IF IT WASN'T SUFFICIENT AT THE TIME,
15 THEY WERE MADE SUFFICIENT.

16 Q DID YOU BOUNCE CHECKS AFTER THE LEASE BEGAN?

17 A THERE WAS I BELIEVE SOME CHECKS RETURNED,
18 YES.

19 Q SO IN JANUARY, 2000, THE BERANS FINALLY
20 FOUND A BUYER FOR THAT PARK; RIGHT?

21 A NO. THEY FOUND A BUYER, BUT THEY FORGOT
22 ABOUT THE LEASE.

23 Q AND THEY FOUND A BUYER SO THAT THEY COULD
24 AVOID HAVING TO GET LATE PAYMENTS AND BOUNCED CHECKS;
25 RIGHT?

26 MR. MOSHENKO: OBJECTION. CALLS FOR SPECULATION.

1 THE COURT: SUSTAINED.

2 THE WITNESS: THEY WERE LOOKING FOR A BUYER.

3 THE COURT: THE OBJECTION HAS BEEN SUSTAINED.

4 BY MR. SHERMAN: Q YOU MET WITH THE BERANS;

5 CORRECT?

6 A YES.

7 Q THE BARONS TOLD YOU THAT YOU'D HAVE TO LEAVE

8 THE PARK; CORRECT?

9 MR. MOSHENKO: OBJECTION. HEARSAY.

10 THE WITNESS: YES, THEY DID.

11 THE COURT: OVERRULED.

12 BY MR. SHERMAN: Q AND YOU MET TWICE WITH

13 JERRY BERAN TO DISCUSS THE SITUATION; RIGHT?

14 A THEY WERE TRYING TO TERMINATE A LEASE

15 BECAUSE THEY SOLD THE PROPERTY, AND WE DISCUSSED IT. THEY

16 OFFERED US ANOTHER PARK NEXT DOOR IN EXCHANGE FOR IT. AND

17 I DIDN'T WANT IT. IT WAS TOO RUN DOWN.

18 Q YOU MET ONCE IN LATE FEBRUARY WITH THE

19 BERANS AND THEN AGAIN IN MARCH; MARCH 21, 2000, THIS YEAR;

20 CORRECT?

21 A I MET MORE THAN THAT WITH HIM. I MET MANY

22 TIMES WITH THEM.

23 Q DID YOU MEET WITH THEM ON THOSE TWO

24 OCCASIONS?

25 A I DON'T RECALL THE OCCASIONS, THE EXACT

26 DATES, THAT I MET WITH HIM. MANY TIMES OVER THE PAST FIX

1 MONTHS -- SIX MONTHS.

2 Q YOU MET WITH THEM IN FEBRUARY, MARCH?

3 A I BELIEVE SO.

4 Q YOU TOLD THE BARONS THAT YOU WANTED TO STAY
5 IN THE PARK?

6 A YES.

7 Q YOU TOLD THEM YOU WANTED ANOTHER CHANCE?

8 A THEY WANTED TO LEASE THE PARK. WE LEASED
9 THE PARK FOR 7500 A MONTH. IT WAS A BUSINESS THING. THEY
10 DIDN'T -- IN OTHER WORDS, WE DIDN'T GO OVER THERE AND SAY,
11 "PLEASE GIVE US THE RESORT." THEY WANTED TO LEASE THE PARK.

12 Q AT THIS MEETING IN MARCH YOU TOLD THE BERANS
13 THAT YOU WANTED MORE TIME, AND THAT COAST HAD DAMAGED YOUR
14 COMPANIES TO THE TUNE OF \$80 MILLION; RIGHT?

15 A I DON'T KNOW ABOUT \$80 MILLION. I THINK IT
16 WAS MORE THAN THAT. I DON'T KNOW IF I STATED 80 MILLION.
17 SOME SUM I STATED.

18 Q YOU TOLD THE BERANS THAT JUST A FEW MONTHS
19 AGO WHEN YOU MET WITH THEM; RIGHT?

20 A I MIGHT HAVE. I DON'T RECALL MENTIONING
21 THAT, BUT I COULD HAVE.

22 Q AND YOU SAID TO THE BERANS, IF YOU BACK ME
23 UP IN TESTIMONY BEFORE THIS COURT ON YOUR STORY ABOUT
24 COAST'S DAMAGING YOU, YOU'LL HELP THEM OUT?

25 A THAT IS AN ABSOLUTE LIE. I'VE NEVER SAID
26 THAT. AND IF MR. BERAN SAID I SAID THAT, IT'S A LIE.

1 Q DID YOU ASK THE BERANS TO COME INTO COURT
2 AND LIE FOR YOU?

3 A I DID NOT. THAT'S RIDICULOUS. HERE I'M IN
4 A LAWSUIT, AND I'M GOING TO ASK THEM TO COME IN AND TESTIFY
5 FOR ME, AND I'M SUING THEM? IT DOESN'T MAKE MUCH SENSE,
6 DOES IT? MAYBE YOU BETTER ASK MR. BERAN ON THAT ONE. I
7 SUED MR. BERAN, AND NOW IF HE WANTS TO COME IN HERE AND SAY
8 THAT I ASKED HIM TO COME IN AND LIE FOR ME? THAT'S AN
9 OUTRIGHT LIE. AND IT WOULDN'T MAKE ANY SENSE, WOULD IT,
10 SIR, IF I WAS SUING THIS GENTLEMAN FOR DEFAULTING ON HIS
11 LEASE OR TRYING TO CANCEL HIS LEASE BECAUSE HE SOLD THE
12 PROPERTY, WELL NATURALLY HE WILL COME IN HERE AND LIE LIKE
13 THAT.

14 Q YOU SUED MR. BERAN IN APRIL OF 2000?

15 A I GOT IN AN ARGUMENT WITH MR. BERAN WAY
16 BEFORE APRIL WHEN HE TRIED TO SELL THE PROPERTY AND FORGET
17 ABOUT THE LEASE.

18 Q YOU TOLD MR. BERAN THAT YOU WANTED HIM TO
19 COME INTO COURT AND TELL THE JURY THAT YOUR PAYMENT HISTORY
20 ON THIS PARK HAD BEEN SPOTLESS UNTIL AFTER COAST LETTERS
21 WERE SENT?

22 A I DID NOT. ABSOLUTELY DID NOT.

23 Q YOU TOLD MR. BERAN THAT YOU WANT HIM TO SAY
24 THAT SO IT WOULD COINCIDE WITH COAST'S LETTERS BEING SENT?

25 A THAT IS AN OUTRIGHT LIE. I DIDN'T ASK HIM
26 TO. I DIDN'T TALK TO MR. BERAN ABOUT ANYTHING LIKE THAT.

1 AND I'M ASHAMED OF HIM IF HE TOLD YOU THAT.

2 Q SO THAT YOU COULD BLAME COAST?

3 A SIR, I HAVE JUST TOLD YOU THAT THAT IS A
4 LIE, AND THIS IS UNBELIEVABLE.

5 Q AND MR. BERAN TOLD YOU THAT AS FAR AS HE WAS
6 CONCERNED, LETTERS IN 1997 HAD NOTHING TO DO WITH BOUNCED
7 CHECKS IN 1996?

8 A THIS IS A COMPLETE LIE. YOU KNOW, IF
9 MR. BERAN WOULD LIKE TO GO UNDER OATH AND STATE THIS, THEN
10 I THINK MAYBE YOU OUGHT TO PUT HIM UNDER OATH. IF YOU'RE
11 GOING TO ACCUSE ME OF DOING SOMETHING WITH THIS GENTLEMAN
12 AND ASKING HIM TO DO SOMETHING, I'M UNDER OATH. I THINK
13 THAT IT IS YOUR DUTY TO PUT HIM UNDER OATH IF HE IS GOING
14 TO MAKE AN ACCUSATION.

15 Q AND MR. MOSHENKO ACCOMPANIED YOU TO THIS
16 MEETING; CORRECT?

17 A OH, YES, I BROUGHT MY ATTORNEY THERE TO TALK
18 ABOUT CHANGING THE -- THIS IS SO RIDICULOUS. IT'S
19 UNBELIEVABLE TO TALK ABOUT. OH, COME TELL THE JURY THAT,
20 YOU KNOW, THAT I'VE BEEN SUCH A WONDERFUL TENANT AND LIE
21 FOR ME. THAT IS ABSOLUTELY NOT TRUE.

22 Q LET'S GO ON TO CUTTY'S.

23 YOU WERE SHOWN SOME COMPUTER PRINTOUTS FROM
24 COAST THAT MR. MOSHENKO ASKED YOU QUESTIONS ABOUT, THESE
25 BATCH REPORTS; DO YOU RECALL THAT?

26 A YES.

1 Q AND EXHIBIT 2172, DO WE HAVE THAT? YEAH.
2 THESE HAVE ALREADY BEEN ADMITTED INTO EVIDENCE.

3 MR. MOSHENKO: WHICH PAGE?

4 MR. SHERMAN: PAGE 46. THE BATES NUMBER IS 07979.

5 Q YOU WERE SHOWN THESE DOCUMENTS DURING YOUR
6 TESTIMONY; RIGHT, MR. NOVELLI?

7 A YES.

8 Q AND IT'S YOUR POSITION THAT YOU RELIED ON
9 THESE REPORTS; CORRECT?

10 A YES.

11 Q IN FORMULATING YOUR TESTIMONY?

12 A YES. COULD I HAVE -- I CAN'T SEE THAT. IF
13 YOU'RE GOING TO ASK ME QUESTIONS ABOUT IT, I'D LIKE TO SEE
14 IT. OKAY.

15 Q THAT'S THE PAGE THAT'S UP ON THE SCREEN,
16 MR. NOVELLI. YOU SEE THIS IS WITH REFERENCE TO THE CUTTY'S
17 IN COALDALE, COLORADO; CORRECT?

18 A YES.

19 Q AND IT SHOWS BOB THOMPSON IS THE PRESIDENT;
20 RIGHT?

21 A YES.

22 Q AND IT SHOWS THAT CORPORATE OFFICES -- I
23 THINK IS THE CORPORATE OFFICE ON THE NEXT PAGE? GO TWO
24 PAGES IN. IT SHOWS THE CORPORATE OFFICE ON VON KARMAN IN
25 NEWPORT BEACH?

26 A YES.

1 Q YOUR OFFICES; RIGHT?

2 A YES.

3 MR. MOSHENKO: OBJECTION, UNCERTAIN AS TO TIME.

4 THE COURT: OVERRULED.

5 BY MR. SHERMAN: Q NOW, YOU ALSO LOOKED AT CUTTY'S

6 DES MOINES; CORRECT?

7 A I DIDN'T LOOK IT. DO YOU WANT ME TO LOOK AT
8 IT?

9 Q WELL, YOU WERE TESTIFYING A FEW DAYS AGO.
10 MR. MOSHENKO ASKED YOU QUESTIONS ABOUT CUTTY'S DES MOINES?

11 A I DON'T BELIEVE HE BROUGHT UP CUTTY'S DES
12 MOINES. MAYBE HE DID. HE BROUGHT UP CUTTY'S. SO I ASSUME
13 HE GOT THAT ONE, ALSO.

14 Q NOW, THE SCHULZ FAMILY TRUST, ACCORDING TO
15 YOU, OWNS AND OPERATES CUTTY'S DES MOINES; IS THAT YOUR
16 POSITION?

17 A CUTTY'S, INC., OPERATES CUTTY'S DES MOINES.
18 THE SCHULZ FAMILY TRUST OWNS CUTTY'S, INC.

19 Q AND CUTTY'S, INC., THE OWNER OF CUTTY'S
20 DES MOINES, YOU DECIDED TO KEEP THAT PROPERTY IN THE COAST
21 SYSTEM; THAT'S YOUR POSITION; CORRECT?

22 A YES. WE DIDN'T WITHDRAW THAT ONE.

23 Q WHERE IS THE BATCH REPORT ON CUTTY'S
24 DES MOINES?

25 OH, THAT'S IT. OKAY. BATES NUMBER 7979.

26 AND IF YOU COULD GO TO 7979, PLEASE.

1 DO YOU HAVE IT THERE, MR. NOVELLI?

2 A YES.

3 Q OKAY. 7979. THIS IS THE COMPUTER REPORT
4 FOR THE CUTTY'S DES MOINES PROPERTY, CORRECT?

5 A YES.

6 Q AND IT SHOWS THE LOCATION IN GRIMES, IOWA?

7 A YES.

8 Q NOT ON VON KARMAN; RIGHT?

9 A THAT'S THE PARK. IF YOU'LL LOOK AT
10 COALDALE, IT ALSO SHOWS COALDALE, COLORADO FOR THE COALDALE
11 PARK.

12 Q AND IT SHOWS THE FORMER NAME AS CUTTY'S
13 DES MOINES; DO YOU SEE THAT?

14 A CUTTY'S RESORT. THEY COULD HAVE BEEN CALLED
15 "CUTTY'S DES MOINES" AT ONE TIME. LOOK IN THE BOOK. I'M
16 NOT SURE.

17 Q AND THEN YOU SEE THE CORPORATE OFFICES. GO
18 TWO PAGES IN. CORPORATE OFFICE, CUTTY'S RESORT IN GRIMES,
19 IOWA?

20 MR. MOSHENKO: OBJECTION. UNCERTAIN AS TO TIME.
21 WHAT TIME IS HE REFERRING TO?

22 THE COURT: WHAT TIME ARE YOU TALKING ABOUT?

23 THE WITNESS: I SEE THAT. THAT'S THE --

24 THE COURT: WHAT TIME ARE YOU TALKING ABOUT?

25 MR. SHERMAN: WELL, I MEAN, THESE WERE PRINTED OUT
26 BY CAMP COAST TO COAST, AND THEY'RE THE DATE THAT THEY WERE

1 PRINTED OUT.

2 THE COURT: ALL RIGHT.

3 MR. MOSHENKO: THE DATE SAYS, "MARCH 24, 2000"; IS
4 THAT WHEN YOU'RE TALKING ABOUT?

5 BY MR. SHERMAN: Q WE HAVE CUTTY'S RESORTS IN
6 GRIMES, IOWA HAVING THEIR CORPORATE OFFICES THERE?

7 A CUTTY RESORTS, INC., WHICH OWNS CUTTY'S
8 RESORT DES MOINES CORPORATE OFFICES ARE IN IRVINE. THIS IS
9 THE ADDRESS OF THE RESORT.

10 Q NOW, THE ADDRESS OF THE RESORT SHOWS AS A
11 CORPORATE ADDRESS OF 10500 NORTHWEST 54TH STREET?

12 A YES. IT'S THE SAME AS ON YOUR FIRST PAGE.

13 Q NOW, CUTTY'S DES MOINES IS A U.D.I.;
14 CORRECT?

15 A THAT'S CORRECT.

16 Q AND AN U.D.I. MEANS "UNDIVIDED INTEREST";
17 RIGHT?

18 A CORRECT.

19 Q SO U.D.I. MEANS THAT MEMBERSHIPS AREN'T
20 REALLY SOLD; RIGHT?

21 A THIS IS ONE OF THOSE WE DISCUSSED
22 YESTERDAY. THESE ARE RESORTS WHERE YOU HAVE AN UNDIVIDED
23 INTEREST. SO THE MEMBERSHIPS -- YOU GET A DEED FOR AN
24 UNDIVIDED INTEREST, AND SPECIFICS, IN AN AREA. AND YOU
25 JOIN CUTTY'S.

26 Q U.D.I. MEANS MEMBERSHIPS AREN'T SOLD?

1 A UNDIVIDED. THAT'S WHY THAT PARK WASN'T
2 TAKEN OUT.

3 Q OWNERSHIP IS DEEDED?

4 A THAT'S CORRECT.

5 Q AND THAT'S BEEN THE CASE SINCE DICK CUTLER
6 WHO FOUNDED CUTTY'S BACK IN THE '80'S; RIGHT?

7 A HE IS THE ONE THAT STARTED IT, YES. BUT IT
8 HASN'T BEEN CONTINUOUSLY LIKE THAT.

9 Q SO THERE'S MORE THAN ONE CUTTY'S PARK;
10 RIGHT?

11 A YES, THERE IS.

12 Q AND YOU'VE SEEN COAST RECORDS WHICH YOU'VE
13 BEEN RELYING ON WHICH DISTINGUISHED BETWEEN WHO THE OWNERS
14 AND OPERATORS ARE OF THE VARIOUS CUTTY'S PARKS; RIGHT?

15 A RIGHT.

16 Q SO CUTTY'S COALDALE IS OWNED AND OPERATED BY
17 YOUR ORGANIZATION AS REFLECTED BY COAST'S OWN RECORDS;
18 CORRECT?

19 A IT'S ALSO OWNED BY CUTTY'S, INC.

20 Q BUT CUTTY'S DES MOINES IS NOT OWNED BY YOU,
21 ACCORDING TO COAST'S RECORDS?

22 A IT SAYS RIGHT UP ON TOP, "CUTTY'S RESORT."
23 IT'S OWNED BY CUTTY'S, INC. I DON'T KNOW HOW I CAN MAKE IT
24 ANY CLEARER TO YOU. I DON'T KNOW WHAT YOU'RE READING INTO
25 IT.

26 Q CUTTY'S DES MOINES IS OWNED BY THE

1 DES MOINES CAMPING CLUB; RIGHT?

2 A NO, IT'S NOT.

3 Q THE DES MOINES CAMPING CLUB IS AN
4 ORGANIZATION OF OWNERS OF UNDIVIDED INTEREST; IS THAT RIGHT?

5 A THAT'S CORRECT. IT'S A NONPROFIT
6 ORGANIZATION.

7 Q AND THAT DES MOINES CAMPING CLUB
8 ORGANIZATION OPERATES CUTTY'S DES MOINES; CORRECT?

9 A THEY OPERATE IT UNDER THE DIRECTION OF THE
10 DIRECTORS WHICH IS MYSELF, MR. THOMPSON, MR. HOWELL AND
11 MEL TARI. WE OPERATE IT. THE CORPORATION IS OPERATED AND
12 CONTROLLED BY CUTTY'S, INC., AND ITS DIRECTORS. AND WE
13 HAVE ONE DIRECTOR THAT'S A MEMBER OF THE CAMPING CLUB.

14 Q IN FACT, CUTTY'S HAS BEEN IN BANKRUPTCY IN
15 THE PAST; RIGHT?

16 A THAT'S CORRECT.

17 Q AND THEY FILED DISCLOSURE STATEMENTS IN THE
18 BANKRUPTCY; RIGHT?

19 A YES.

20 Q AND, IN FACT, THE DISCLOSURE STATEMENTS IN
21 THEIR BANKRUPTCY REFERENCE THE FACT THAT YOU DON'T OWN
22 CUTTY'S DES MOINES; RIGHT?

23 A I DON'T BELIEVE SO. CUTTY'S, INC., OWNS IT.

24 Q CUTTY'S DES MOINES CAMPING CLUB OWNS CUTTY'S
25 DES MOINES; CORRECT?

26 A THE TITLE IS IN -- OF ALL OF THE THING --

1 IT'S CONTROLLED BY CUTTY'S, INC. I'M NOT SURE EXACTLY HOW
2 THE TITLE LAYS. BUT IT STILL DOESN'T TAKE AWAY THE
3 OWNERSHIP FROM CUTTY,'S INC. I'M NOT EXACTLY SURE ON THE
4 LAY OF THE OWNERSHIP. BUT THE OWNERSHIP, DEFINITELY
5 CUTTY'S, INC.

6 Q CUTTY'S DES MOINES CAMPING CLUB OPERATES THE
7 RESORT?

8 A CUTTY'S --

9 MR. MOSHENKO: OBJECTION. ASKED AND ANSWERED.

10 THE WITNESS: I'M NOT SURE IF IT DOES OR NOT. I
11 DON'T THINK SO.

12 THE COURT: OBJECTION SUSTAINED.

13 BY MR. SHERMAN: Q YOU DON'T KNOW WHO OPERATES THE
14 RESORT?

15 A YES, I DO. I AM A DIRECTOR. MR. SCHULZ IS
16 A DIRECTOR. MR. THOMPSON IS A DIRECTOR, AND
17 MR. BRUCE HOWELL IS A DIRECTOR. AND THE DIRECTORS RUN
18 CUTTY'S DES MOINES.

19 Q THE OWNERS OF THE OTHER UNDIVIDED INTERESTS
20 IN CUTTY'S DES MOINES DID NOT WANT YOU TO OPERATE CUTTY'S
21 DES MOINES ANY LONGER?

22 A THAT IS NOT TRUE. THAT IS NOT TRUE. IN
23 FACT, WE'RE HAVING ANOTHER BOARD MEETING HERE NEXT MONTH,
24 IN JULY.

25 Q LET'S DISCUSS THE RESORT YOU CALL CUTTY'S
26 ALPINE. IT'S ALSO CALLED ABBEY'S ALPINE LAKES; CORRECT?

1 A YES. THAT'S THE ONE THAT YOU TRANSFERRED
2 THE MEMBERS FROM.

3 Q AND YOU CLAIM YOU OWNED IT AND OPERATED IT
4 ACCORDING TO A COAST WRITTEN AFFILIATION AGREEMENT IN 1994;
5 RIGHT?

6 A YES.

7 Q ALL THE WAY THROUGH 1996?

8 A I DON'T RECALL WHEN WE DROPPED CUTTY'S
9 ALPINE, BUT IT WAS TAKEN OUT OF THE SYSTEM.

10 Q WELL, LET ME REFRESH YOUR RECOLLECTION WITH
11 THE TESTIMONY THAT YOU GAVE ON JUNE 27, PAGE 4868, LINES 20
12 THROUGH 4869, LINE 7.

13 "QUESTION: WHILE YOU WERE IN CHARGE OF
14 ALPINE LAKES RESORT, DID IT ENTER INTO A LICENSE AGREEMENT
15 ON OR ABOUT JANUARY -- I'M SORRY -- NOVEMBER 1, 1994?

16 "ANSWER: YES.

17 "QUESTION: COULD WE BLOW UP THE RIGHT HAND
18 COLUMN ON THAT PAGE.

19 "DID YOU DO A SEARCH FOR A COPY OF THE
20 CONTRACT?

21 "ANSWER: YES.

22 "QUESTION: HAVE YOU BEEN ABLE TO LOCATE IT?

23 "ANSWER: I BELIEVE SO.

24 "QUESTION: WELL, WE'LL HAVE TO FIND IT
25 DURING THE BREAK BECAUSE I CAN'T LOCATE IT.

26 "ANSWER: OKAY."

1 Q NOW, YOU STILL HAVEN'T LOCATED THE
2 AGREEMENT; RIGHT?

3 A I DON'T KNOW.

4 Q THAT'S BECAUSE YOU NEVER HAD ONE?

5 A CUTTY'S WOULD HAVE THE AGREEMENT. YES, THEY
6 ALWAYS HAD ONE.

7 Q BECAUSE BY 1994, YOU HAD NOTHING TO DO WITH
8 ABBEY'S ALPINE LAKE; CORRECT?

9 A I'M NOT SURE WHEN IT WAS SHUT DOWN, I JUST
10 SAID THAT. I'M NOT SURE WHAT DATE IT WAS SHUT DOWN.

11 Q BY 1993 WEREN'T YOU \$300,000 BEHIND IN
12 PAYMENTS TO WANDA BURGESS, THE PERSON WHO HAD OWNED ABBEY'S
13 ALPINE?

14 A \$300,000 PAYMENTS, THAT PROBABLY WAS THE
15 MORTGAGE, \$300,000.

16 Q AND THEN BOB ABBEY BOUGHT THE PARK FROM
17 WANDA BURGESS, FROM HER, WHEN YOU GOT BEHIND?

18 A EVIDENTLY THAT'S WHAT YOUR RECORDS SAY.

19 Q YOU DIDN'T SIGN ANY AFFILIATION AGREEMENTS
20 FOR ALPINE IN 1994, MR. NOVELLI; CORRECT?

21 A I DON'T KNOW. I JUST SAID THAT.

22 Q BECAUSE BOB ABBEY SIGNED THAT AGREEMENT, NOT
23 YOU; CORRECT?

24 A IF WE DIDN'T HAVE IT THEN, I WOULDN'T HAVE
25 SIGNED THE AGREEMENT, THAT'S CORRECT.

26 Q SO WHEN YOU TOLD THE JURY THAT YOU HAD A

1 SIGNED AFFILIATION AGREEMENT IN 1994, THAT WASN'T TRUE?

2 A WHEN DID I TELL THE JURY THAT?

3 Q YOU TOLD THE JURY THAT ON JUNE 27. WE CAN
4 GO BACK TO THE TESTIMONY.

5 "QUESTION: WHILE YOU WERE IN CHARGE OF
6 ALPINE LAKES RESORT, DID IT ENTER TO A LICENSE AGREEMENT ON
7 OR ABOUT JANUARY -- I'M SORRY -- NOVEMBER 1, 1994?

8 "ANSWER: YES.

9 Q IN FACT, YOU DID NOT ENTER INTO A LICENSE
10 AGREEMENT FOR ABBEY'S ALPINE IN 1994; CORRECT?

11 A I DON'T KNOW. IN OTHER WORDS, I THOUGHT --
12 YOU KNOW, WE MENTIONED CUTTY'S. WE OWNED A LOT OF
13 RESORTS. SOMETIMES THESE DATES ARE CONFUSING. IF WE
14 DIDN'T OWN IT IN '94 AND I SAID THAT WE SIGNED AN
15 AGREEMENT, IS -- EVIDENTLY WE DIDN'T IN '94. I RECALL
16 SIGNING AGREEMENTS IN '94 THAT MR. SCHULZ SIGNED IN '94. I
17 THINK YOU CAN GIVE ME SOME EVIDENCE. I'M NOT SURE --

18 Q BUT NOT FOR CUTTY'S ALPINE, SIR?

19 A OKAY. MY BELIEF WAS WE DID.

20 Q WELL, LET ME REFRESH YOUR RECOLLECTION WITH
21 EXHIBIT 1470.

22 MR. NOVELLI, YOUR SIGNATURE APPEARS NOWHERE
23 ON THIS DOCUMENT; CORRECT?

24 A THAT'S CORRECT.

25 Q BOB ABBEY'S SIGNATURE APPEARS ON THIS
26 WRITTEN AFFILIATION AGREEMENT; CORRECT?

1 A CORRECT.

2 MR. SHERMAN: I'D LIKE TO MOVE IT INTO EVIDENCE,
3 YOUR HONOR.

4 THE WITNESS: I MIGHT ADD, THAT'S NOVEMBER OF '94.

5 MR. MOSHENKO: IT LACKS FOUNDATION, YOUR HONOR, AS
6 TO AUTHENTICATION BY MR. ABBEY.

7 THE COURT: WHAT'S THE EXHIBIT NUMBER?

8 MR. SHERMAN: IT WAS AN IMPEACHMENT EXHIBIT. 1470.
9 AND WE'LL HAVE MR. EVERETT COME UP AND AUTHENTICATE THIS
10 DOCUMENT IF NEED BE.

11 MR. MOSHENKO: MR. ABBEY OR EVERETT? OH, EVERETT.

12 MR. SHERMAN: EVERETT. COAST'S RECORDS.

13 THE COURT: WE'LL TAKE IT UNDER SUBMISSION.

14 LET'S TAKE LUNCH. SEE YOU ALL AT 1:30.

15 (WHEREUPON THE COURT WAS IN RECESS UNTIL
16 1:30 P.M. OF THE SAME DAY.)

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1 WESTMINSTER, CALIFORNIA - THURSDAY, JUNE 29, 2000

2 AFTERNOON SESSION

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

5 MR. SHAW: YOUR HONOR, I WANT TO PUT ON OBJECTION
6 ON THE RECORD REGARDING THE QUESTIONS AND ANSWERS AT THE
7 END OF THIS MORNING'S SESSION.

8 I WASN'T HERE WHEN MR. MOSHENKO CAME INTO
9 THE CHAMBERS, I BELIEVE, AND ASKED FOR MR. BERAN -- I
10 BELIEVE HIS NAME IS -- I DON'T KNOW HOW YOU SPELL IT -- BE
11 SUBPOENAED.

12 YOU KNOW, I COME FROM THE OLD SCHOOL. I
13 UNDERSTAND RULINGS, AND I TAKE MY MEDICINE. A RULING GOES
14 AGAINST ME, AND I TAKE MY MEDICINE. WE HAD RULINGS ON
15 MOTIONS IN LIMINE THAT WE PLANNED OUR CASE AROUND, FOR
16 EXAMPLE, THE FELONY AND THE FINOVA.

17 I KNOW THINGS CHANGE IN A TRIAL. WE LOST
18 YESTERDAY, AND THOSE MOTIONS -- THOSE TWO THINGS CAME IN.
19 THE COURT KNOWS I DON'T LIKE IT. I MEAN, BUT AS A
20 PROFESSIONAL -- AND I BELIEVE THIS IS A NOBLE PROFESSION --
21 I'M TRYING TO KEEP MY PROFESSIONALISM AND DEAL WITH IT.
22 BUT WE SAW A WHOLE ORDER THAT CAME IN FROM A COURT IN 1996
23 THAT WE HAVE NO WAY -- WE HAVE ABSOLUTELY NO WAY OF DEALING
24 WITH. BECAUSE IT'S A JUDGE'S RULING THAT 1300 EVIDENCE
25 CODE SAYS IS HEARSAY. BUT NOW THAT'S IN.

26 AND SO WE HAVE -- AS I TOLD THE COURT AT THE

1 SIDEBAR, I HAVE TO SWALLOW A BITTER PILL; AND AS A
2 PROFESSIONAL, I'M PREPARED FOR IT.

3 BUT WHAT HAPPENED THE LAST 30 MINUTES I
4 THINK GOES BEYOND THE BOUNDS OF PROFESSIONAL DECORUM.
5 MR. SHERMAN BRINGS IN MR. BERAN AND SITS HIM IN NEXT TO OUR
6 GROUP OF CLIENTS, AND WHERE HE CAN TURN AROUND AND POINT AT
7 HIM, AND THEN HE ACCUSES MR. NOVELLI OF A FELONY ON THE
8 STAND.

9 DID YOU -- AND HE DIDN'T ASK HIM, "DID YOU
10 HAVE A CONVERSATION WITH MR. BERAN," WHICH I THINK MAY HAVE
11 BORDERED ON BEING PROPER. "DID YOU BUY HIS TESTIMONY?"

12 NOW, I OBJECTED BECAUSE OF HEARSAY ABOUT ANY
13 CONVERSATIONS ABOUT THAT. BUT, OVERRULED, AND IT GOES ON.

14 THEN HE ASKS -- BUT WHEN IT REALLY WENT OVER
15 THE BOUND -- SO I'M -- AGAIN, I'M ANGRY, AND I'M VENTING A
16 BIT. AND I WOULD APPRECIATE THE COURT GIVING ME SOME
17 LEEWAY IN VENTING.

18 BUT HE THEN PUTS CREDENCE TO IT BY TURNING
19 AROUND AND POINTING TO THE MAN WHO IS SITTING THERE IN THE
20 COURTROOM. IT'S HEARSAY WHERE WE CAN'T CROSS-EXAMINE. WE
21 NOW HAVE TO SEND OUT A SUBPOENA TO BRING THIS MAN IN.

22 BUT HE TURNS AROUND. BUT WHAT REALLY PUT IT
23 OVER THE EDGE FOR ME IS WHEN HE IMPLICATES MY FRIEND, MY
24 COLLEAGUE, MR. MOSHENKO, IN THE FELONY BY SAYING
25 MR. MOSHENKO WAS THERE WITH YOU -- OR ACCOMPANIED, I THINK
26 WAS THE PHRASE THAT WAS USED.

1 NOW, WHAT DOES "ACCOMPANY" MEAN? IN THE
2 CONTEXT OF THE QUESTIONING, IT WAS THAT MR. MOSHENKO WAS
3 PART OF THE FELONY OF TRYING TO BRIBE A WITNESS.

4 NOW, NOT ONLY DOES THAT ANGER ME BECAUSE
5 I'VE KNOWN MR. MOSHENKO FOR A LONG TIME, AND I HAVE THE
6 GREATEST RESPECT FOR HIS ETHICS AND THE WAY HE CONDUCTS
7 HIMSELF --

8 THE COURT: I KNEW HIM WHEN HE WAS YOUNG AND
9 HANDSOME.

10 MR. SHAW: BUT -- THANK YOU FOR BREAKING UP A BIT
11 OF MY ANGER BECAUSE I FEEL LIKE I'M GETTING ANGRY AGAIN.

12 BUT THOSE QUESTIONS GO INTO THIS JURY. SO
13 NOW I'VE GOT -- NOT ONLY AM I ANGRY FOR MY FRIEND, BUT NOW
14 I'VE GOT A JURY THAT THINKS THAT MR. MOSHENKO WAS A PART OF
15 THAT MEETING.

16 NOW, I BELIEVE MR. SHERMAN AS AN OFFICER OF
17 THE COURT SHOULD LET THIS COURT KNOW IN AN OFFER OF PROOF
18 THAT HE HAS THE EVIDENCE TO BACK UP THOSE QUESTIONS.
19 BECAUSE WHAT WE HAVE NOW IS -- THE ONLY METAPHOR I CAN
20 THINK OF IS THE GUNFIGHT THE O.K. CORRAL. WE HAVE A
21 JUDGE'S MOTION FROM A HEARING WHERE -- NOT EVEN A PARTY,
22 ALL SEASONS RESORTS, THAT I CAN'T EVEN BEGIN TO DEAL
23 WITH -- CAME IN REGARDING BANK ACCOUNTS DARIO MOSCOSO AND
24 ALL KINDS OF THINGS. BUT NOW I'VE GOT A CONVERSATION WHERE
25 MY CLIENT SUPPOSEDLY IS A FELON TRYING TO BUY SOMEBODY'S
26 TESTIMONY. AND THE LAWYER THAT I'M SITTING NEXT TO, MY

1 FRIEND, IS PART OF THE FELONY.

2 I BELIEVE, YOUR HONOR, THAT THIS -- THIS
3 EVIDENCE ISSUE HAS GONE WAY, WAY OFF THE MARK ON A HEARSAY
4 STATEMENT, AND MR. SHERMAN'S QUESTIONING, POINTING TO THE
5 WITNESS. AND WE ARE -- WE ARE GOING TO SUBPOENA HIM. WE
6 ARE GOING TO BRING HIM IN. AND IF -- IF -- I WANT TO BE
7 CAREFUL THAT I COUCH THESE WORDS IN A MEASURED WAY.

8 IF MR. SHERMAN'S QUESTIONS HAD NO BASIS IN
9 FACT, I'M GOING TO BE COMING TO THIS COURT FOR RELIEF. AND
10 I HAVEN'T EVEN THOUGHT WHAT THAT RELIEF IS. WE DO NOT WANT
11 A MISTRIAL. ABSOLUTELY NO WAY AFTER 25 DAYS OF TRIAL DO WE
12 WANT A MISTRIAL. BUT I THINK WHEN YOU DO THAT TO ONE OF
13 YOUR OWN COLLEAGUES, IT GETS TO BE -- IT GETS TO BE PAST
14 THE ROUGH AND TUMBLE.

15 BECAUSE I UNDERSTAND THE ROUGH AND TUMBLE AS
16 I KNOW MR. SHERMAN DOES. YOUR HONOR HAS A PHRASE THAT YOU
17 USE THAT'S, "COME OUT" -- "COME OUT BOXING" OR "COME OUT
18 SWINGING." I UNDERSTAND THAT GIVE AND --

19 THE COURT: TOUCH GLOVES.

20 MR. SHAW: THANK YOU.

21 BUT THE POINT IS, THIS GOES BEYOND THE
22 BOUNDS OF TOUCHING GLOVES. WHEN YOU START TO IMPLICATE
23 COUNSEL IN FRONT OF THE JURY AS BEING PART OF A FELONY --
24 AND I DON'T EVEN KNOW WHAT TO SAY TO THE COURT NOW THAT
25 I'VE VENTED MY ANGER. YOU KNOW, A LIMITING INSTRUCTION
26 DOES IT NO GOOD. A REQUEST THAT THE COURT STRIKE THE

1 TESTIMONY DOES US NO GOOD BECAUSE YOU CAN'T UNRING THE
2 BELL.

3 BUT I NOW AM LEFT WITH A SITUATION WHERE I
4 HAVE TO DEFEND MY OWN COUNSEL, MY OWN CO-COUNSEL IN THIS
5 CASE. IT'S GONE BEYOND MR. NOVELLI, AND IT'S SOMETHING
6 THAT I'M PRETTY -- I'M 100 PERCENT -- I'M 200 PERCENT SURE
7 THAT MR. MOSHENKO DIDN'T SIT IN ON ANY MEETING WHERE
8 MR. NOVELLI TRIED TO BUY SOMEBODY'S TESTIMONY.

9 BUT THAT'S THE WAY IT'S LEFT WITH THE JURY
10 NOW. AND THE ONLY WAY I CAN DEAL WITH IT IS BY BRINGING
11 THIS MAN, MR. BERAN, BACK.

12 SO, YOUR HONOR, I DON'T KNOW WHERE THE
13 EVIDENCE -- I KNOW -- AND I'M USED TO TAKING EVIDENCE
14 RULINGS THAT I DON'T LIKE, AND I'M NOT BACK IN HERE. BUT I
15 FOUND MYSELF IN THIS POSITION BECAUSE EVERY MORNING WE GET
16 ANOTHER MOTION THAT IS ASKING A RECONSIDERATION OF YOUR
17 HONOR'S PREVIOUS RULINGS. WE HAD SOMETHING, A MOTION IN
18 LIMINE. WE PLANNED OUR CASE NOT TO DEAL WITH THE FELONY.
19 WE'VE HAD TO DEAL WITH IT. IT DOESN'T HELP OUR CASE. I'D
20 BE FOOLISH IF I SAID IT DIDN'T HURT US A LOT.

21 THE FINOVA THING CAME IN. AND NOW I'VE GOT
22 THIS THING ABOUT A MAN SITTING IN THE COURTROOM,
23 MR. BERAN. THE GUNFIGHT AT THE O.K. CORRAL HAS TO STOP.

24 I'M GOING TO -- I NEED TO MAKE MY RECORD. I
25 NEED TO DO MY JOB, AND MY JOB IS MAKING THE RECORD.

26 BUT I WOULD ASK MR. SHERMAN IF CAN HE MAKE

1 AN OFFER OF PROOF THAT HE'S GOT THE EVIDENCE THAT BACKS UP
2 AND BASES ON THOSE QUESTIONS THAT MR. MOSHENKO WAS A PART
3 OF A MEETING WHERE SOMEBODY TRIED TO BUY SOMEBODY'S
4 TESTIMONY, BECAUSE I'M GOING TO COME WITH THE EVIDENCE.
5 AND IF I'VE GOT IT -- I'M NOT MAKING ANY THREATS. I'M JUST
6 TELLING YOU WHAT I PLAN TO DO.

7 I'M GOING TO BRING THAT EVIDENCE TO THIS
8 COURT AND ANY OTHER AGENCY THAT IT NEEDS TO BE BROUGHT TO,
9 THAT THAT WAS TOTALLY IMPROPER. AND I'M TRYING TO USE
10 MEASURED TERMS. THAT'S WORSE THAN IMPROPER, BUT THAT WAS
11 NOT APPROPRIATE.

12 THE COURT: WELL, YOU KNOW, THINGS APPEAR
13 DIFFERENTLY TO SOME PEOPLE. AND I HAVE TO DISAGREE WITH
14 YOU AS FAR AS MY INTERPRETATION OF WHAT HAPPENED THERE. I
15 DON'T THINK THERE WAS ANY ATTEMPT TO IMPLICATE
16 MR. MOSHENKO. I THINK THE QUESTION WAS DID HE GO TO A
17 MEETING WITH HIM, AND AT THAT TIME DID MR. NOVELLI MAKE
18 THESE STATEMENTS. THAT DOESN'T IMPLICATE MR. MOSHENKO. I
19 DON'T THINK THE JURY GOT THAT IMPRESSION.

20 MR. SHERMAN: YOUR HONOR, MAY I BE HEARD?

21 THE COURT: YES.

22 MR. SHAW: COULD I JUST HAVE ONE LAST POINT, AND
23 THEN I'M DONE, MICHAEL, AND I'M OVER WITH.

24 WE WOULD LIKE THE RIGHT TO DEPOSE MR. BERAN
25 AND GET TO THE BOTTOM OF THIS. AND I'M MAKING A FORMAL
26 REQUEST OF THIS COURT THAT WE'D BE ALLOWED TO TAKE HIS

1 DEPOSITION TO DETERMINE WHAT HE IS GOING TO SAY. BECAUSE I
2 WANT TO GET TO THE BOTTOM OF THIS.

3 YOUR HONOR, I HOPE WITH ALL MY HEART THAT
4 YOU'RE RIGHT. I HOPE -- I'M AFRAID -- I'M AFRAID OF WHAT
5 THE IMPRESSION WAS. BUT I HOPE YOU'RE RIGHT.

6 MR. SHERMAN: YOUR HONOR, I'D LIKE ANYBODY TO PUT
7 THEMSELVES IN MY POSITION RIGHT NOW FOR A MOMENT, HAVING TO
8 HEAR WHAT MR. SHAW SAID ABOUT ME. IT'S NOT VERY NICE. THE
9 FACT IS THAT APPROXIMATELY THREE TO FOUR WEEKS AGO ON A
10 SATURDAY AFTERNOON WHEN I WAS WORKING IN MY OFFICE I GOT AN
11 UNSOLICITED TELEPHONE CALL FROM -- I KEEP ON CONFUSING
12 JIMMY AND JERRY. OKAY. THE YOUNG MR. BERAN. MR. BERAN
13 CALLED ME. MR. BERAN SAID TO ME, "I'VE HEARD THAT YOU'RE
14 IN A LAWSUIT WITH RAYMOND NOVELLI."

15 I SAID, "YES."

16 HE SAID, "YOU KNOW, THIS MAN HAS RUINED MY
17 BUSINESS CAREER WITH PROPERTIES. HE HAS CAUSED ME
18 UNMITIGATED HARM."

19 I SAID, "TELL ME ABOUT IT." AND HE
20 PROCEEDED TO TELL ME ABOUT THIS CYPRESS PROPERTY AND THE
21 HISTORY. AND THEN WE SPOKE SOME MORE. AND I WENT BACK AND
22 I LOOKED AT DEPOSITION TESTIMONY TO SEE WHAT MR. NOVELLI
23 HAD SAID ABOUT IT. AND IT WAS OF COURSE 180 DEGREES
24 DIFFERENT THAN -- WHAT MR. NOVELLI HAD SAID, WHAT MR. BERAN
25 TOLD ME AS EVIDENCED BY THE BOUNCED CHECKS THIS MORNING.

26 AND WE'VE -- I SPOKE WITH MR. BERAN ON AT

1 LEAST ONE MORE OCCASION. AND BECAUSE THIS WAS OF SUCH AN
2 IMPORTANT MATTER AND I DIDN'T HAVE THE TIME TO INTERVIEW
3 EVERY WITNESS, I HAD MR. ARKO SPEAK WITH HIM FURTHER. AND
4 ALL I CAN SAY IS THE QUESTIONS THAT WERE ASKED OF
5 MR. NOVELLI HAVE A FACTUAL BASIS. THEY HAVE A BASIS IN
6 FACT.

7 YOU MAY NOT LIKE HEARING IT, JERRY. THAT'S
8 WHAT THE WITNESS TOLD ME. AND I'M SAYING, THIS AS A MAN
9 WHO HAS COME TO LIKE YOU, EVEN THOUGH WE HAVE -- WE'RE IN,
10 YOU KNOW, A VERY SIGNIFICANT PIECE OF LITIGATION RIGHT NOW
11 AND TEMPERS HAVE FLARED. HE OUGHT TO JUST COME TO ME AND
12 ASK ME, BECAUSE I WOULD HAVE TOLD YOU WHAT I JUST TOLD THE
13 JUDGE RIGHT NOW.

14 AND THE FACT IS THAT -- AND I SAY THIS WITH
15 ALL DUE RESPECT. SOMETIMES WHEN THAT PHRASE IS USED, IT
16 REALLY ISN'T MEANT.

17 WITH ALL DUE RESPECT TO THE COURT, TO
18 MR. SHAW, THAT IS, MR. NOVELLI, IN MY OPINION, HAS SHOWN
19 HIMSELF TIME AND TIME AGAIN TO BE A MAN FOR WHOM THE TRUTH
20 DOES NOT MEAN ANYTHING. AND SO THOSE ARE THE FACTS. THIS
21 IS NOT RAMBO. YOU DON'T NEED TO HAVE THAT LOOK TOWARDS
22 ME. YOU DON'T NEED TO HAVE THAT ATTITUDE TOWARDS ME. I
23 HAVE A CLIENT TO REPRESENT.

24 YOUR HONOR, MY CLIENT IS BEING SUED FOR \$200
25 MILLION. WE'VE GOT A LOT OF LAWYERS HERE HELPING OUT.
26 THEY HAVE HAD A LOT OF LAWYERS, TOO. BUT WE HAVE A LOT OF

1 LAWYERS HERE, A LOT OF -- MY CLIENT HAS SPENT A LOT OF
2 MONEY ON THIS. BECAUSE IF WE LOSE THIS CASE, WE HAVE A BIG
3 PROBLEM. AND MY CLIENT DOESN'T LIKE BEING HELD UP.

4 AND SO I KNOW -- I MEAN, YOUR HONOR, WE'VE
5 SPENT A LONG TIME TOGETHER NOW OVER THE PAST FEW WEEKS, AND
6 I THINK I KNOW SOME OF YOUR PREDISPOSITION AND HOW TO
7 APPROACH THINGS. AND I SEE YOUR HONOR AS A VERY, VERY
8 PRACTICAL MAN. MY CLIENT DIDN'T START THIS. MY CLIENT
9 WOULD LIKE TO FINISH THIS. AND THOSE ARE THE FACTS.

10 THE COURT: I'M ALL IN FAVOR OF FINISHING IT.

11 MR. MOSHENKO: YOUR HONOR, I JUST HEARD YOU SAY
12 THAT YOU UNDERSTOOD, AND I'M NOT TRYING TO PUT WORDS IN
13 YOUR MOUTH. BUT MY UNDERSTANDING OF WHAT I THINK YOU SAID
14 IS YOU UNDERSTOOD THAT THE EVIDENCE SUGGESTED THAT
15 MR. NOVELLI HAD A MEETING WITH MR. BERAN AND SAID SOME
16 THINGS, AND I WAS THERE WHEN THAT WAS SAID. IN MY MIND
17 THAT IMPLICATES ME IN -- I'M OBSERVING OR PARTICIPATING IN
18 THE COMMISSION OF A CRIME. AND I DIDN'T DO ANYTHING LIKE
19 THAT.

20 BUT I'M -- I'VE BEEN IMPLICATED IN IT. AND
21 I THINK THAT THAT -- I DON'T WANT TO BE THE ONE THAT ARGUES
22 MY OWN REPUTATION, BUT I DO THINK THAT THERE'S SOME BASIS
23 FOR OUR EXCITEMENT ABOUT THIS. BECAUSE IT -- IT DID IN MY
24 VIEW IMPLICATE ME, AND WE'RE NOT -- LAWYERS ARE NOT, MUCH
25 LESS COMMIT CRIMES, DON'T EVEN GET INVOLVED IN UNETHICAL OR
26 IMPROPER CIRCUMSTANCES. AND THIS GOES SO FAR PAST WHAT ANY

1 REASONABLE LAWYER WOULD CONSIDER ALLOWING HIMSELF TO BE
2 INVOLVED IN OR DO. AND I'M USING YOUR INTERPRETATION OF
3 WHAT HAPPENED. I SEE IT THAT WAY.

4 THE COURT: IF A GUY IS IN A MEETING AND HE DOESN'T
5 PARTICIPATE IN ANYTHING THAT'S ILLEGAL, UNLAWFUL, HOW CAN
6 YOU BE CULPABLE?

7 MR. MOSHENKO: I'M WITH MY CLIENT. ASSUME THE
8 WORST. I'M WITH MY CLIENT, AND MY CLIENT IS SITTING THERE.

9 THE COURT: HE IS NOT A DIAMOND IN YOUR LAP.

10 MR. MOSHENKO: I WANT TO BUY YOU AS A WITNESS. I
11 WANT YOU TO GO AND LIE TO A JUDGE AND JURY, AND I'M
12 STANDING THERE HEARING THIS AND THAT DOESN'T CAST
13 ASPERSIONS ON ME?

14 MR. SHERMAN: YOUR HONOR, THE FACT IS, I'VE HAD A
15 NUMBER OF WITNESSES TELL ME -- AND THERE ARE A LOT OF
16 DOCUMENTS OUT THERE -- ON THE SUBJECT OF THE LONG
17 ASSOCIATION THAT COUNSEL HAS HAD WITH MR. NOVELLI. THE
18 FACTS ARE THE FACTS. AND, YOU KNOW, DARIO MOSCOSO'S NAME
19 HAS COME UP A LOT, YOUR HONOR. AND --

20 THE COURT: IS HE GOING TO BE CALLED AS A WITNESS?

21 MR. SHERMAN: HE HAS HAD HIS DEPOSITION TAKEN. HE
22 IS ON OUR WITNESS LIST.

23 THE COURT: OKAY.

24 MR. SHERMAN: AND WE MAY CALL HIM AS A WITNESS.
25 BUT THE FACT IS, YOUR HONOR, THAT MR. MOSCOSO WENT TO
26 FEDERAL COURT, AND HE TOLD THE TRUTH. AND YOU KNOW WHO WAS

1 REPRESENTING HIM AT THAT TIME? TERRY MOSHENKO.

2 MR. MOSHENKO: I DON'T DENY I'M AN ADVOCATE, BUT I
3 DENY I'M A CRIMINAL. THAT'S WHAT'S BEEN SUGGESTED IN THIS
4 COURT.

5 THE COURT: LADIES AND GENTLEMEN, LET'S GET TO WORK.

6 MR. SHERMAN: TOUCH GLOVES.

7 THE COURT: AND COME OUT FIGHTING.

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
9 COURT IN THE PRESENCE OF THE JURY:)

10 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

11 THE JURY: GOOD AFTERNOON, YOUR HONOR.

12 THE COURT: BEFORE WE GET STARTED AND BEFORE I
13 FORGET IT, BEFORE YOU FORGET IT, WEDNESDAY IS THE 4TH OF
14 JULY -- TUESDAY IS THE 4TH OF JULY, AND THIS WAS HANDED TO
15 ME THIS MORNING BY MY CLERK WHO RECEIVED IT BY FAX.

16 THE CLERK: E-MAIL.

17 (DISCUSSION OFF THE RECORD.)

18 THE COURT: PROCEED, COUNSEL.

19 CROSS-EXAMINATION (CONTINUED)

20 BY MR. SHERMAN: Q MR. NOVELLI, RIGHT BEFORE OUR
21 LUNCH BREAK I HAD PLACED BEFORE YOU EXHIBIT 1470. AND YOU
22 NOTICE THAT THAT IS AN AFFILIATION AGREEMENT FOR ABBEY'S
23 ALPINE; RIGHT?

24 A I BELIEVE SO.

25 Q AND IT IS AN AFFILIATION AGREEMENT FOR
26 ABBEY'S ALPINE SIGNED NOT BY YOU; CORRECT?

1 A CORRECT.

2 MR. SHERMAN: AND I'D LIKE TO PUT -- MOVE 1470 INTO
3 EVIDENCE AND PUT IT UP ON THE BOARD.

4 MR. MOSHENKO: AND I OBJECT. LACKS FOUNDATION,
5 YOUR HONOR.

6 THE COURT: I'LL TAKE IT UNDER SUBMISSION, BUT YOU
7 CAN PUT IT UP ON THE BOARD.

8 MR. SHERMAN: VERY WELL. AND IF YOU CAN GO TO THE
9 SIGNATURE PAGE, MIKE, PAGE NUMBER 10.

10 Q AND UNDER THE TITLE "OWNER," THAT'S NOT YOU?

11 A NO.

12 Q AND, IN FACT, YOU NEVER SIGNED ANY
13 AFFILIATION AGREEMENT IN 1994 FOR CUTTY'S ALPINE?

14 A I DON'T KNOW, SIR. THAT'S LATE '94. FOR
15 ALL -- WE HAD AN AGREEMENT ON ALPINE, CUTTY ALPINE.
16 WHETHER I SIGNED IT OR HANS SIGNED IT OR SOME OTHER OFFICER
17 SIGNED IT, THERE IS AN AGREEMENT, AFFILIATION AGREEMENT,
18 WITH CUTTY'S.

19 Q BOB ABBEY IS NOT PART OF YOUR ORGANIZATION?

20 A BOB ABBEY -- THAT WAS IN 11/94. UP UNTIL
21 THAT TIME HE WAS ONE OF THE CUTTY'S, INC., PROPERTIES AND
22 AFFILIATED WITH COAST.

23 Q LET'S TURN OUR FOCUS NOW ON THE WITHDRAWAL
24 FROM CUTTY'S -- EXCUSE ME -- THE WITHDRAWAL OF CUTTY'S
25 ALPINE FROM COAST.

26 THAT EXHIBIT 1470, MR. NOVELLI, IS NOT YOUR

1 AFFILIATION AGREEMENT; RIGHT?

2 A NO.

3 Q CORRECT?

4 A CORRECT.

5 Q AND SO OBVIOUSLY YOU DIDN'T DISAFFILIATE
6 FROM COAST IN 1996; CORRECT?

7 A WE TOLD YOU THAT ALPINE -- THAT YOU -- YOUR
8 CLIENT DISAFFILIATED THEM AND TRANSFERRED THEIR MEMBERS.

9 Q YOU DIDN'T DISAFFILIATE --

10 A NO.

11 Q -- CUTTY'S ALPINE IN 1996; CORRECT?

12 A NO.

13 Q IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q AND SO WHEN YOU TESTIFIED BEFORE THIS JURY
16 JUNE 27 THAT YOU WITHDREW CUTTY'S ALPINE FROM COAST TO
17 COAST IN 1996, THAT WAS FALSE?

18 A WHATEVER WAS ON THAT LIST. WAS THAT ON THE
19 LIST THAT WE WITHDREW FROM FIRST NATIONWIDE?

20 Q LET'S PUT THE TESTIMONY UP, JUNE 27, PAGE
21 4869, LINES 16, 17 AND 18.

22 "QUESTION: WHEN DID YOU WITHDRAW CUTTY'S
23 ALPINE FROM CAMP COAST TO COAST?

24 "ANSWER: IT WAS IN 1996."

25 NOW, AS FAR AS TRANSFERS FROM CUTTY'S ALPINE
26 ARE CONCERNED, DO YOU RECALL YOUR TESTIMONY THAT COAST

1 TRANSFERRED 546 OF YOUR MEMBERS IN CUTTY'S ALPINE; DO YOU
2 RECALL THAT TESTIMONY?

3 A YOU MUST HAVE THOUGHT THERE THEY'RE OUR
4 MEMBERS BECAUSE YOU TRANSFERRED THEM. I RECALL THAT.

5 MR. SHERMAN: I'D LIKE TO PUT UP THE TESTIMONY FROM
6 JUNE 27, PAGE 4856, LINES 1 THROUGH 10.

7 "QUESTION: DID COAST TRANSFER ANY CUTTY'S
8 HAYDEN CREEK -- I'M SORRY -- CUTTY'S ALPINE MEMBERS?

9 "ANSWER: YES."

10 THEN I OBJECTED BECAUSE IT LACKED
11 FOUNDATION.

12 "THE WITNESS: YES, I KNOW. THEY
13 TRANSFERRED OVER 500 OF THEM.

14 "MR. MOSHENKO: ALL RIGHT. OVER 500?

15 "ANSWER: YES, 546.

16 "QUESTION: OKAY."

17 THE WITNESS: YES, THOSE ARE MEMBERS OF CUTTY'S
18 YOU DID TRANSFER. IN FACT, THE TESTIMONY SAID THERE WAS
19 TWO MEMBERS TRANSFERRED FROM CUTTY'S WITH ABBEY. THESE
20 OTHER 576 MEMBERS WERE MEMBERS OF CUTTY'S, INC. AND THAT'S
21 WHY YOU HAVE IT IN THE BOOK.

22 BY MR. SHERMAN: Q SO YOU KNOW WHY COAST HAS
23 THINGS IN ITS BOOK?

24 A IT SAYS RIGHT HERE FIVE HUNDRED SOME MEMBERS
25 WERE TRANSFERRED, MASS-TRANSFERRED. IT CAME UP EARLIER
26 THERE WAS ONLY TWO MEMBERS OF ABBEY'S TRANSFERRED.

1 Q 546 MEMBERS OF CUTTY'S ALPINE THAT WERE
2 TRANSFERRED WERE NOT YOUR MEMBERS; CORRECT?

3 A THEY WERE OUR MEMBERS, SIR. AND I THINK I
4 CAN PROVE IT TO YOU. I GOT THE LIST OF THE FIVE HUNDRED
5 SOME MEMBERS, AND MAYBE WE OUGHT TO PUT IT ON THE BOARD AND
6 SEE WHOSE MEMBERS THOSE ARE.

7 Q LET'S PUT 1468 ON THE BOARD INSTEAD.

8 YOUR HONOR, I'M GOING TO MAKE A CONDITIONAL
9 OFFER OF PROOF. THIS IS A LETTER TO MR. RYMAN DATED JULY
10 7, 1996. AND MR. RYMAN, AS THE COURT KNOWS, WILL BE BACK
11 HERE AND WILL BE PREPARED TO AUTHENTICATE THIS DOCUMENT.

12 THE COURT: IT'S TO MR. RYMAN FROM WHOM?

13 MR. SHERMAN: FROM BOB ABBEY.

14 MR. SHAW: YOUR HONOR, I DON'T KNOW POSSIBLY HOW
15 THIS WITNESS COULD HAVE ANY INFORMATION REGARDING A LETTER
16 THAT WASN'T SENT TO HIM. OBJECTION. LACKS FOUNDATION.

17 MR. SHERMAN: PRECISELY. IT DID LACK FOUNDATION
18 WHEN HE TESTIFIED. AND IT'S IMPEACHMENT NOW.

19 THE COURT: I'LL ALLOW IT.

20 MR. MOSHENKO: THIS LETTER LACKS FOUNDATION.

21 THE COURT: I'LL ALLOW IT.

22 BY MR. SHERMAN: Q 1468, PLEASE. THIS IS A LETTER
23 DATED JULY 7, 1996, ATTENTION ROGER RYMAN, FROM ABBEY'S
24 JELLYSTONE PARK.

25 THE NEXT PAGE, PLEASE.

26 LETTER IS FROM BOB ABBEY.

1 "DEAR ROGER: AFTER MUCH CONSTERNATION, I AM
2 MAKING THE DECISION TO REMOVE ALPINE LAKES RESORT IN DIVIDE
3 OUT OF THE COAST TO COAST SYSTEM. I BELIEVE THAT WE HAVE
4 ONLY ABOUT 13 ACTIVE MEMBERS IN THE COAST SYSTEM THROUGH
5 THIS RESORT."

6 A THANK YOU.

7 Q "WE ARE NOT ACTIVELY MARKETING AT THIS
8 RESORT, AND WE DO EXPERIENCE QUITE A BIT OF TRAFFIC BECAUSE
9 OF OUR LOCATION AND DESIRABILITY OF THE RESORT. I KNOW IN
10 THE PAST COAST HAS GIVEN PARTICULAR RESORTS "ORPHAN"
11 MEMBERS TO KEEP THEM ALIVE. WE HAVE NEVER RECEIVED AN
12 OFFER OF ANY MEMBERS AND HAVE NEVER HAVE ASKED FOR ANY.

13 "I AM SIMULTANEOUSLY NOTIFYING MY MEMBERS AT
14 THIS RESORT AND AM OFFERING THEM THE OPPORTUNITY TO
15 TRANSFER TO CREEDE OR EL VADO.

16 "IF YOU HAVE ANY SUGGESTIONS OR IF I COULD
17 RECEIVE OR ADOPT A SUBSTANTIAL NUMBER OF MEMBERS, I WOULD
18 RECONSIDER MY DECISION. IF I DON'T HEAR FROM YOU, I WILL
19 ASSUME THAT COAST HAS NO MEMBERS AVAILABLE FOR ADOPTION,
20 AND I WILL GO AHEAD WITH MY DECISION.

21 "I AM SORRY FOR THE REMOVAL OF THIS RESORT
22 FROM COAST, BUT SINCE MY AFFILIATION WITH JELLYSTONE, THE
23 AMOUNT OF OUR PAY TRAFFIC FROM DENVER AND COLORADO SPRINGS
24 HAS BEEN INCREDIBLE."

25 LET ME SKIP TO THE BOTTOM.

26 "SINCERELY, BOB ABBEY."

1 MR. NOVELLI, I'D NOW LIKE TO MOVE TO --

2 A YOU DIDN'T WANT TO POINT OUT THE 13
3 AMERICA --

4 Q I'D LIKE TO ASK YOU SOME QUESTIONS NOW ABOUT
5 ADVENTURE RESORTS OF AMERICA. DO YOU UNDERSTAND?

6 ADVENTURE RESORTS OF AMERICA HAD BEEN ONE
7 OF THE MOST SUCCESSFUL PARKS IN THE NATION IN THE EARLY
8 '90'S; CORRECT?

9 A I DON'T KNOW.

10 Q AND ADVENTURE RESORTS OF AMERICA OWNED AND
11 OPERATED THE SALT SPRINGS R.V. PARK IN FLORIDA?

12 A THAT'S CORRECT.

13 Q THE PARK HAD BEEN DEVELOPED AND OPERATED BY
14 JIM PATTON AND ED PATTON AND ED LEWIS; RIGHT?

15 A I BELIEVE SO.

16 Q FIRST NATIONWIDE ARRANGED TO BUY THE PARK
17 FROM THAT GROUP; CORRECT?

18 A THAT'S CORRECT.

19 Q AND ACQUIRED A.R.A. AS A RESULT?

20 A THAT'S CORRECT.

21 Q AND AT THE TIME OF ACQUISITION, ADVENTURE
22 RESORTS OF AMERICA HAD BETWEEN 4- TO 5,000 MEMBERS?

23 A THAT'S NOT CORRECT.

24 Q AND MOST OF THOSE MEMBERS WERE COAST MEMBERS?

25 MR. MOSHENKO: OBJECTION. ASSUMES FACTS NOT IN
26 EVIDENCE. HE HAS TESTIFIED THAT'S NOT CORRECT. AND SO NOW

1 HE GOES ON AND SAYS MOST OF THEM WERE. IT ASSUMES
2 SOMETHING.

3 THE WITNESS: COAST HAD ON THEIR LIST -- IT'S 358.

4 MR. MOSHENKO: ASSUMES A FACT AND ARGUMENTATIVE.

5 THE COURT: OBJECTION SUSTAINED.

6 BY MR. SHERMAN: Q THE PARK HAD MEMBERS AT THE
7 TIME YOU BOUGHT IT; RIGHT?

8 A THAT'S CORRECT.

9 Q AND WITHOUT TRYING TO QUANTIFY THE NUMBER OF
10 MEMBERS, THERE WERE A LOT OF MEMBERS; RIGHT?

11 A 358 IS WHAT YOU HAD ON YOUR REPORT.

12 Q OH, WE HAVE A REPORT THAT SHOWS HOW MANY
13 MEMBERS THERE WERE OF A.R.A. SALT SPRINGS IN 1992 OR 1993
14 WHEN YOU BOUGHT IT?

15 A COAST MEMBERS. YOU SAID IN YOUR PAPERS YOU
16 GAVE US, COAST DID, THAT THEY TRANSFERRED 356 MEMBERS FROM
17 A.R.A., NOT 4,000.

18 Q NOW, AT THE TIME YOU BOUGHT THIS PARK -- BY
19 THE WAY, YOU BOUGHT THE PARK IN JUNE '92; RIGHT?

20 A I DON'T RECALL. SOMEWHERE IN THE EARLY
21 '90'S.

22 Q AND AT THE TIME YOU BOUGHT THE PARK --
23 ACTUALLY YOU PAID A LITTLE OVER 4 AND A HALF MILLION
24 DOLLARS FOR THE PARK; CORRECT?

25 A I BELIEVE IT WAS MORE LIKE \$6 MILLION. I'M
26 NOT REALLY SURE. MAYBE IT WAS FOUR AND A HALF MILLION.

1 PLUS WE ASSUMED SOME DEBT.

2 Q OKAY. FOUR AND A HALF MILLION PLUS
3 ASSUMPTION OF DEBT.

4 AND YOU WOUND UP GIVING PATTON, PATTON AND
5 LEWIS, THAT GROUP, \$25,000 IN CASH; RIGHT?

6 A I DON'T RECALL HOW MUCH WE GAVE THEM.

7 Q BUT AT THE TIME YOU BOUGHT SALT SPRINGS, THE
8 DEBT THAT THE PARK OWED TO ITS CREDITORS, IT WAS CURRENT
9 DEBT. THEY WERE PAYING THEIR DEBTS AS THEY CAME DUE;
10 CORRECT?

11 A I DON'T KNOW. BUT I IMAGINE THEY DID.

12 Q AND YOU TALKED A MOMENT AGO ABOUT ASSUMPTION
13 OF DEBT THAT -- YOU KNOW, DEBT THAT THE PARK OWED; RIGHT?

14 A THAT'S CORRECT.

15 Q AND SOME OF THE DEBT THAT THE PARK OWED WAS
16 OWED TO VARIOUS BANKRUPTCY ESTATES; THAT'S RIGHT?

17 A BANKRUPTCY ESTATES?

18 Q YEAH. THERE WERE SOME CREDITORS WHO HAD
19 FILED FOR BANKRUPTCY; DO YOU RECALL THAT?

20 A I DON'T RECALL. COULD HAVE BEEN.

21 Q WELL, SOME OF THE DEBT THAT YOU ASSUMED WHEN
22 YOU BOUGHT THE PARK WAS DEBT THAT A.R.A. SALT SPRINGS OWED
23 TO RANDOLF TUCKER; RIGHT?

24 A I DON'T KNOW. I DON'T RECALL THAT.

25 Q SOME OF THE DEBT WAS OWED TO CHIP YONGE;
26 RIGHT?

1 A IT'S POSSIBLE.

2 Q AND DO YOU KNOW WHETHER EITHER OF THOSE
3 INDIVIDUALS WERE THEMSELVES IN BANKRUPTCY AND, THEREFORE,
4 THE MONIES WERE OWED TO THEIR BANKRUPTCY ESTATES AT THAT
5 TIME?

6 A THERE AGAIN, I DON'T KNOW. IT COULDN'T HAVE
7 BEEN A VERY SIGNIFICANT AMOUNT. I WOULD HAVE REMEMBERED
8 IT.

9 Q NOW, WHEN YOU BOUGHT THE PARK, WHEN YOU
10 ACQUIRED THE COMPANY, THE PARK HAD MEMBER CONTRACTS; RIGHT?

11 A THAT'S CORRECT.

12 Q AND, AGAIN, NOT TO GET INTO A BIG DISCUSSION
13 WITH YOU ABOUT HOW MUCH THESE MEMBER CONTRACTS WERE, THERE
14 WAS A SUBSTANTIAL AMOUNT OF MEMBER CONTRACTS OUT THERE,
15 PAPER AS FAR AS WHAT WAS OWED TO THE PARK ON THESE MEMBER
16 CONTRACTS; RIGHT?

17 A SEVERAL MILLION, IF I RECALL.

18 Q IF NOT MORE?

19 A MAYBE MORE.

20 Q AND OF COURSE WITH -- YOU KNOW, THERE WAS A
21 FAIRLY SIGNIFICANT PROMISSORY NOTE THAT YOU GAVE IN
22 CONNECTION WITH THE ACQUISITION OF THE PARK?

23 A YES.

24 Q SO YOU PROMISED TO JIM PATTON, ED PATTON AND
25 ED LEWIS THAT YOU'D PAY THEM A SUBSTANTIAL AMOUNT OF MONEY
26 ON ACCOUNT OF THIS PURCHASE?

1 A YES.

2 Q AND OF COURSE THESE GENTLEMEN WERE NOT
3 UNSOPHISTICATED BUSINESS PEOPLE FROM YOUR PERSPECTIVE, WERE
4 THEY?

5 A VERY SOPHISTICATED.

6 Q RIGHT.

7 AND AS SOPHISTICATED BUSINESS PEOPLE, THEY
8 TOOK COLLATERAL; THEY TOOK A SECURITY INTEREST; RIGHT?

9 A I BELIEVE SO.

10 Q THEY TOOK A SECURITY INTEREST IN THE
11 MEMBERSHIP CONTRACTS; RIGHT?

12 A I BELIEVE SO.

13 Q BECAUSE IN CASE YOU DIDN'T PAY FOR WHAT YOU
14 SAID YOU WERE GOING TO BE PAYING FOR, THEY WANTED TO BE
15 ABLE TO COLLECT ON THE MEMBERSHIP CONTRACTS; RIGHT?

16 A RIGHT. I THINK THEY TOOK A SECOND,
17 ALTHOUGH. I BELIEVE THE FIRST WAS MURPH, THE FIRST
18 MORTGAGE, HAD THE FIRST ON THEM.

19 Q AS FAR AS THE SEVERAL THOUSAND MEMBERS WHO
20 WERE IN PLACE AT THE TIME YOU ACQUIRED THE PARK -- AND I
21 DON'T WANT TO FIGHT YOU ON WHETHER IT WAS 1,000, 2,000,
22 3,000, 4,000, 5,000, BUT AT THE TIME YOU BOUGHT THIS PARK
23 WITH SOME SUBSTANTIAL NUMBER OF MEMBERS, YOU AND YOUR
24 COMPANY HADN'T PAID ANYTHING TO MARKET THOSE MEMBERS WHO
25 YOU WERE BUYING AS PART OF THE PARK; RIGHT?

26 A FIRST OF ALL, WE DIDN'T BUY THE PARK. WE

1 BOUGHT THE CORPORATION A.R.A. A.R.A. HAD A SUBSTANTIAL
2 INVESTMENT IN ITS MEMBERSHIP BASE.

3 Q RIGHT.

4 A WE BOUGHT THE STOCK, NOT PARKS, NOT
5 MEMBERS.

6 Q FIRST NATIONWIDE, THOUGH, HADN'T SPENT ONE
7 NICKEL TO MARKET THOSE INDIVIDUALS. IT WAS A.R.A. THAT HAD
8 SPENT THE MONEY AS OF THE TIME OF THE ACQUISITION?

9 A YES. THEY'RE A PLAINTIFF IN THIS ACTION.
10 A.R.A. SPENT THE MONEY FOR THE MEMBERS, MILLIONS AND
11 MILLIONS OF DOLLARS.

12 Q BEFORE YOU CAME ON BOARD?

13 A BEFORE I CAME ON BOARD THEY SPENT THAT MONEY.

14 Q OKAY. I JUST WANTED TO ESTABLISH THAT.
15 PRIOR TO JUNE OF 1992 YOU DIDN'T OWN A.R.A.;
16 RIGHT?

17 A THAT'S CORRECT. HOLD ON. I TAKE THAT
18 BACK. WE DID OWN IT ONE SHORT TIME. THAT'S THE ONE WE
19 TRANSFERRED OVER TO RANDOLF TUCKER.

20 Q AT SO ALL THE MILLIONS OF DOLLARS THAT HAD
21 BEEN SPENT IN MARKETING PRIOR TO JUNE OF '92 DIDN'T COME
22 OUT OF YOUR POCKET?

23 A THAT'S CORRECT.

24 Q RATHER, WHAT YOU WERE DOING WAS PROMISING TO
25 PAY THE SELLERS FOR ALL THE MARKETING THAT THEY HAD DONE IN
26 BUILDING UP A SUCCESSFUL PARK; RIGHT?

1 A WE AGREED TO PAY THEM FOR THEIR PARK AND THE
2 MEMBERSHIP BASE.

3 Q FOR THE MARKETING THEY HAD DONE, AMONG OTHER
4 THINGS?

5 A YES.

6 Q BECAUSE IT WAS THE MONEY THAT A.R.A. HAD
7 SPENT BEFORE YOU CAME ON BOARD; RIGHT?

8 A YES.

9 Q NOW, LET'S SEE IF WE CAN'T DO THIS
10 RELATIVELY QUICKLY.

11 EXHIBIT 1709. IF WE CAN DO THIS QUICKLY
12 MAYBE WE DON'T EVEN NEED IT.

13 DO YOU RECALL THAT YOU BOUGHT THE PARK IN
14 JUNE OF 1992?

15 A I DON'T RECALL WHAT THE TIME WAS.

16 Q LET'S SEE IF I CAN REFRESH YOUR RECOLLECTION.
17 1709 INCLUDES SECURITY AGREEMENT AND

18 PROMISSORY NOTE; CORRECT?

19 A YES.

20 Q AND THOSE DOCUMENTS WERE DATED IN JUNE OF
21 1992; RIGHT?

22 A CORRECT.

23 Q SO THAT'S WHEN YOU BOUGHT THE PARK?

24 A AROUND THAT TIME.

25 Q AND THAT'S WHEN YOU AGREED TO PAY -- THAT'S
26 WHEN YOU AGREED TO PAY -- I BELIEVE IT WAS FOUR AND A HALF

1 MILLION DOLLARS TO A.R.A.; RIGHT?

2 A THAT'S FOR THE STOCK OF A.R.A.

3 Q RIGHT.

4 A NOT THE --

5 Q RIGHT?

6 A THERE'S A LOT MORE DEBT BESIDES THAT.

7 Q BUT THAT'S AN AGREEMENT FOR YOU TO PAY IN
8 THE FUTURE FOUR AND A HALF MILLION DOLLARS?

9 A RIGHT, FOR THE STOCK.

10 Q OKAY. AND SO IN LATE 1992, YOU STOPPED
11 MAKING PAYMENTS ON THAT PROMISSORY NOTE; RIGHT?

12 A I DON'T KNOW.

13 Q WELL, DO YOU KNOW THAT -- WHETHER IN MARCH
14 1993, A.R.A. FILED A BANKRUPTCY?

15 A YES, I DO.

16 Q OKAY. SO WE'VE ESTABLISHED THAT A
17 BANKRUPTCY WAS FILED IN MARCH OF 1993.

18 AND SO IT WOULD HAVE BEEN THE CASE WITH YOU
19 THAT YOU WOULD HAVE STOPPED PAYING BEFORE THE BANKRUPTCY;
20 RIGHT?

21 A NO. THIS BANKRUPTCY WAS FILED BECAUSE
22 MURPH, THE FIRST LENDER, DID NOT AGREE TO THE TRANSFER OF
23 THE PROPERTY, THE TRANSFER OF THE STOCK. MURPH WAS THE ONE
24 THAT PRECEDED THE BANKRUPTCY. I BELIEVE THEY SUED PATTON,
25 PATTON AND LEWIS.

26 Q MR. NOVELLI, I'M NOT ASKING WHAT

1 PRECIPITATED THE BANKRUPTCY. I'M ASKING YOU WHETHER ON
2 THAT FOUR AND A HALF MILLION DOLLAR PROMISSORY NOTE WHETHER
3 IT ISN'T THE CASE THAT SEVERAL MONTHS LATER IN LATE '92 YOU
4 STOPPED MAKING PAYMENTS.

5 A I DON'T RECALL. WHEN IT WENT INTO
6 BANKRUPTCY, I IMAGINE I DID.

7 Q EXCUSE ME?

8 A WHEN IT WENT INTO BANKRUPTCY, THEY PROBABLY
9 DIDN'T.

10 Q THEY PROBABLY DIDN'T MAKE THE PAYMENTS?

11 A THAT'S CORRECT.

12 Q AND LET ME SHOW YOU THE BANKRUPTCY PETITION,
13 EXHIBIT 929.

14 THAT'S YOUR SIGNATURE ON THE SECOND PAGE;
15 RIGHT, SIR?

16 A YES.

17 MR. SHERMAN: I'M GOING TO MOVE EXHIBIT 929 INTO
18 EVIDENCE.

19 MR. MOSHENKO: YOUR HONOR, IT'S MULTIPLE DOCUMENTS,
20 AND WE HAVE NO OBJECTION TO THE PETITION GOING IN. BUT THE
21 ADD-ON THERE'S NO FOUNDATION FOR. IT'S HEARSAY.

22 MR. SHERMAN: I AGREE. WHEN WE GOT THE CERTIFIED
23 COPY FROM THE COURT, FOR SOME REASON THEY GAVE US WITH -- A
24 BONUS WITH SOME OTHER CASE I NEVER HEARD OF.

25 MR. MOSHENKO: SO OBJECTION. IT'S IRRELEVANT, HAS
26 NOTHING TO DO WITH THIS CASE.

1 MR. SHERMAN: NO. THE LAST TWO PAGES, THAT MIGHT
2 BE AN INTERESTING CASE, BUT IT'S NOT OURS. I'D LIKE TO --

3 THE COURT: RECEIVED IN EVIDENCE.

4 MR. MOSHENKO: ABSENT THE LAST TWO PAGES.

5 THE COURT: YEAH.

6 MR. MOSHENKO: VERY WELL.

7 (WHEREUPON, EXHIBIT NO. 929, PETITION, WAS
8 RECEIVED IN EVIDENCE.)

9 BY MR. SHERMAN: Q BY THE WAY, A.R.A.'S BUSINESS
10 OPERATIONS WERE IN OCALA, FLORIDA?

11 A NO. THEY'RE IN SALT SPRINGS.

12 Q WHICH IS SOMEWHERE IN THE MIDDLE OF FLORIDA?

13 A YES. IT'S TOWARDS THE -- NORTHERN FLORIDA.

14 Q NOWHERE NEAR NASHVILLE, TENNESSEE; CORRECT?

15 A THAT'S CORRECT.

16 Q YET, THE BANKRUPTCY THAT YOU FILED WAS IN
17 NASHVILLE, TENNESSEE; RIGHT?

18 A WE HAD A PENDING CASE THERE THAT WAS GOING,
19 WHY WE FILED IT IN TENNESSEE.

20 Q THE BANKRUPTCY WAS FILED IN TENNESSEE?

21 A IN TENNESSEE.

22 Q AND THEN THE BANKRUPTCY CASE -- THIS
23 BANKRUPTCY CASE, SIR, WAS MOVED OVER YOUR OBJECTION TO
24 JACKSONVILLE, FLORIDA; RIGHT?

25 A YES.

26 Q BECAUSE MR. PATTON AND HIS BROTHER AND

1 MR. LEWIS TOOK THE POSITION THAT THE PROPER PLACE FOR THIS
2 CASE TO BE FILED WAS WHERE THE PARK WAS IN THE JACKSONVILLE
3 DISTRICT?

4 A YES.

5 Q AND THE COURT AGREED?

6 A YES.

7 Q NOW, AT SOME POINT THIS PARK, THE A.R.A.
8 COMPANY, GOT OUT OF THIS BANKRUPTCY; IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q DO YOU KNOW WHEN THAT HAPPENED?

11 A '96 OR '97, I'M NOT SURE.

12 Q LET ME SUGGEST THAT IT MAY HAVE BEEN A LOT
13 EARLIER THAN THAT. IT MAY HAVE BEEN IN THE '94 TIME FRAME.

14 A POSSIBLE.

15 Q AND AFTER A.R.A. GOT OUT OF BANKRUPTCY
16 SOMETIME, IN WHATEVER TIME FRAME IT WAS, WHETHER IT WAS
17 '94, '96, YOU STARTED MAKING PAYMENTS AGAIN FOR A WHILE TO
18 THE SELLERS, THE PATTON GROUP; RIGHT?

19 A YES.

20 Q BUT THEN YOU STOPPED AGAIN; IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q YOU STARTED BOUNCING CHECKS?

23 A I DON'T KNOW.

24 Q AND THEN IN 1995 MR. PATTON AND HIS BROTHER
25 AND ED LEWIS FILED A LAWSUIT AGAINST YOU IN FLORIDA STATE
26 COURT?

1 A ARE YOU ASKING ME?

2 Q CORRECT.

3 A I BELIEVE SO. I'M NOT SURE, BUT I BELIEVE
4 SO.

5 Q TO COLLECT ON THEIR PROMISSORY NOTE; RIGHT?

6 A I BELIEVE SO.

7 Q AND THEY MOVED FOR THE APPOINTMENT OF A
8 RECEIVER?

9 A I DON'T KNOW.

10 Q WELL, YOU KNOW THE NAME **GEORGE MC KAY?**

11 A I DON'T KNOW. I THINK WE STIPULATED TO A
12 RECEIVER IN THAT CASE BECAUSE WE'RE THE ONES THAT ASKED
13 GEORGE MC KAY TO BE THE RECEIVER.

14 Q BUT YOU DIDN'T WANT A RECEIVER IN THE
15 ABSTRACT, DID YOU?

16 A NO. I BELIEVE WE WANTED A RECEIVER. **GEORGE**
17 **MC KAY WAS A FRIEND OF MINE AND A BUSINESS ASSOCIATE,** AND
18 WE FELT IT NECESSARY THAT HE -- AND HE ALSO KNEW THE
19 PATTONS. **IT WAS AN AGREEMENT BETWEEN MYSELF AND MR. PATTON**
20 **TO PUT GEORGE MC KAY IN --**

21 Q OKAY.

22 A -- AS A RECEIVER.

23 Q SO AFTER THE LAWSUIT WAS FILED, THE PATTON
24 GROUP ASKED FOR A RECEIVER, AND YOU THEN AGREED?

25 A THAT I -- HUH?

26 Q AND YOU THEN AGREED?

1 MR. MOSHENKO: OBJECTION. THE QUESTION IS
2 COMPOUND. HE HAS TWO PARTS IN IT, AND HE REPEATS THE LAST
3 PART BUT NOT THE FIRST PART.

4 WHICH QUESTION IS HE GOING TO BE
5 ANSWERING --

6 THE COURT: OVERRULED.

7 MR. MOSHENKO: -- WITH A YES OR NO?

8 MR. SHERMAN: WE ALREADY LAID THE FOUNDATION.

9 THE WITNESS: I DON'T BELIEVE THEY ASKED FOR THE
10 RECEIVER.

11 THE COURT: EXCUSE ME. WAIT UNTIL HE ASKS THE
12 QUESTION.

13 BY MR. SHERMAN: Q THERE WAS A LAWSUIT?

14 A CORRECT.

15 Q THEN THERE WAS A RECEIVERSHIP APPLICATION OR
16 MOTION FILED?

17 A YES.

18 Q THEN YOU AGREED TO IT?

19 A I DON'T KNOW IF THERE'S A MOTION FILED.
20 MAYBE THERE WAS. IT WAS MY IDEA TO PUT MR. MC KAY IN
21 THERE, AND MR. PATTON AGREED TO IT.

22 Q AND THAT RECEIVER WAS PUT IN PLACE TO
23 PROTECT THE INTERESTS OF THE PATTON GROUP, WHAT THEY HAD IN
24 THE PROPERTY, WHAT WAS OWED TO THEM?

25 A IT WAS A WAY OF; THE TWO PARTIES IN THE
26 LAWSUIT AGREEING AS A NEUTRAL THIRD PERSON TO RUN THE

1 OPERATION.

2 Q BUT THIS RECEIVERSHIP CAME ABOUT ONLY AFTER
3 THESE DEVELOPERS OF A.R.A. HAD SUED YOU?

4 A THAT'S CORRECT.

5 Q NOW, DO YOU RECALL WHETHER IN YOUR
6 DEPOSITION I ASKED YOU WHETHER YOU'D EVER BEEN SUED BEFORE
7 BY A RESORT DEVELOPER?

8 A ME?

9 Q DO YOU RECALL?

10 A I DON'T THINK THEY SUED ME.

11 MR. SHERMAN: LET ME PLAY FROM MR. NOVELLI'S
12 DEPOSITION PAGE 580, LINES 4 THROUGH 16.

13 MR. MOSHENKO: OBJECTION. IT'S NOT CONTRADICTORY
14 OR IMPEACHING.

15 MR. SHERMAN: THE DEPOSITION MAY BE USED FOR ANY
16 PURPOSE.

17 THE COURT: OVERRULED.

18 MR. SHERMAN: "QUESTION: HAVE YOU EVER BEEN --
19 WHEN I SAY 'YOU,' I MEAN EITHER OF YOU OR ANY OF THE
20 COMPANIES THAT YOU OPERATE.

21 "HAVE YOU EVER BEEN SUED BY ANY RESORT
22 DEVELOPERS?

23 "ANSWER: I DON'T RECALL. I DON'T RECALL
24 THAT ANY DEVELOPERS SUED ALL SEASONS OR ANY OF THESE
25 COMPANIES, NO.

26 "QUESTION: WELL, DOES THAT MEAN, NO, YOU

1 HAVEN'T BEEN?

2 "ANSWER: I DON'T RECALL. I DON'T KNOW.

3 "QUESTION: ONE WAY OR THE OTHER?

4 "ANSWER: YES."

5 Q NOW, IN THE FALL OF 1996, MR. NOVELLI,
6 A.R.A. FILED ANOTHER BANKRUPTCY; CORRECT?

7 A I BELIEVE SO.

8 Q THIS TIME THE BANKRUPTCY WAS FILED BY YOU IN
9 THE STATE OF FLORIDA?

10 A CORRECT.

11 Q BUT NOT IN JACKSONVILLE?

12 A I DON'T RECALL WHERE -- MAYBE TALLAHASSEE.

13 Q TRY TAMPA?

14 A TAMPA, OKAY.

15 Q YOU FILED IT IN TAMPA; RIGHT?

16 A YES.

17 Q BUT A.R.A. DIDN'T HAVE ANY BUSINESS
18 OPERATION IN TAMPA EITHER; RIGHT?

19 A IN THE CODE THERE IS A SECTION THAT CALLS
20 FOR BANKRUPTCY IF YOU HAVE ANOTHER CASE, RELATED CASE, THAT
21 YOU FILE IT WHERE THE RELATED CASE IS FILED. AND THAT'S
22 WHY IT WAS FILED OVER THERE IN TAMPA. IT SAVES ON COST
23 BECAUSE IT WAS ALREADY IN THAT -- ANOTHER BANKRUPTCY WAS IN
24 THAT COURT.

25 Q WHERE DID YOU LEARN THAT LAW?

26 A I'VE LEARNED THAT LAW. THAT'S WHY THE COURT

1 TOOK THE ONE FROM FIRST NATIONWIDE. REMEMBER BEFORE WE
2 WERE ASKING ABOUT SAN BERNARDINO? THROUGH MY INVOLVEMENTS
3 IN BANKRUPTCY, I LEARNED THAT LAW.

4 Q BUT THE BANKRUPTCY COURT IN TAMPA MOVED THE
5 CASE TO JACKSONVILLE; RIGHT?

6 A THAT'S CORRECT.

7 Q OVER YOUR OBJECTION?

8 A I BELIEVE SO.

9 Q AND THIS TIME YOU WERE NOT ABLE TO CONFIRM
10 ANY PLAN OF REORGANIZATION FOR A.R.A.; CORRECT?

11 A CORRECT.

12 Q AND INSTEAD THE BANKRUPTCY COURT PERMITTED
13 ED PATTON, JIM PATTON, AND ED LEWIS TO PROCEED WITH THEIR
14 STATE COURT LAWSUIT AND FORECLOSE ON THE PROPERTY?

15 A THAT'S CORRECT.

16 Q NOW, LET'S MOVE TO THE EARLY 1997 TIME
17 PERIOD.

18 YOU'D BEEN DEALING AT THAT TIME WITH
19 JIM PATTON FOR A NUMBER OF YEARS; RIGHT?

20 A THAT'S RIGHT.

21 Q IN AND OUT OF BANKRUPTCY COURT?

22 A CORRECT.

23 Q IN AND OUT OF LAWSUITS?

24 A CORRECT.

25 Q NONPAYMENTS?

26 A PARTIAL PAYMENT.

1 Q BOUNCED CHECKS?

2 A MAYBE.

3 Q BY EARLY '97, BECAUSE OF ALL THAT HAD BEEN
4 GOING ON, THERE WASN'T EVEN ENOUGH SUFFICIENT OPERATING
5 REVENUE AT A.R.A. TO PAY THE ELECTRIC, WATER OR SEWER
6 BILLS; RIGHT?

7 A THEY HAD SOME VERY HIGH BILLS. I'M NOT SURE
8 WHAT WAS BEING PAID AND WHAT WAS NOT. I KNOW THAT THEY HAD
9 \$50,000-A-MONTH ELECTRIC BILLS AND ALSO \$50,000 WATER
10 BILLS.

11 Q WELL, THE WATER AND THE SEWER SERVICE WAS
12 SHUT OFF; DO YOU RECALL?

13 A I DON'T KNOW THAT. YOU MEAN WHEN THE
14 RECEIVER WAS IN OR WHAT?

15 Q SO IT WAS THE RECEIVER THAT SHUT IT OFF?

16 A I DON'T KNOW. I'M ASKING YOU. YOU'RE
17 GIVING ME -- TELLING ME IT WAS SHUT OFF. YOU SAID 1997,
18 AND WE HAD -- THAT'S WHEN THE RECEIVER WAS IN THERE.

19 Q ARE YOU HOLDING MR. MC KAY FOR SHUTTING IT
20 OFF, TOO?

21 A SIR, I DIDN'T SAY THAT. YOU'RE GIVING ME A
22 TIME FRAME WHEN WE HAD A RECEIVER IN THERE.

23 Q NOW, YOU MET WITH JIM PATTON A COUPLE OF
24 TIMES IN JANUARY AND FEBRUARY, 1997; CORRECT?

25 A JANUARY OF '97?

26 Q JANUARY AND FEBRUARY OF '97?

1 A I DON'T REALLY RECALL. MIGHT HAVE.

2 Q WELL, YOU KNOW MR. PATTON LIVED AND STILL
3 LIVES UP IN OREGON; RIGHT?

4 A THAT'S CORRECT.

5 Q AND HE WANTED TO GET PAID ON THE PROMISSORY
6 NOTE YOU HAD GIVEN HIM YEARS EARLIER; RIGHT?

7 A I DON'T KNOW IF HE MET WITH ME. I DON'T
8 KNOW -- NOT SURE EXACTLY FOR THE MEETING, BUT --

9 Q LET'S GO INTO THE REASON FOR THE MEETING.
10 DID YOU MEET WITH MR. PATTON IN EARLY 1997
11 AND TELL MR. PATTON THAT YOU WANTED TO ENLIST HIS SUPPORT
12 IN CONNECTION WITH WHAT YOU HAD JUST LEARNED ABOUT WAS THE
13 CLOSURE OF ALL THE FLORIDA PARKS IN THE THOUSAND ADVENTURES
14 SYSTEM?

15 A NO, I DID NOT.

16 Q DID YOU MEET IN THE JANUARY-FEBRUARY, 1997,
17 TIME FRAME WITH JIM PATTON TO SOLICIT HIS INVOLVEMENT IN
18 HELPING YOU ACQUIRE THE MEMBERSHIP BASE OF THOUSAND
19 ADVENTURES FLORIDA?

20 A I DID NOT. ABSOLUTELY NO.

21 Q SO IF JIM PATTON WERE TO COME INTO COURT AND
22 SWEAR TO TESTIFY IN THIS CASE AND SAID THOSE THINGS, THAT
23 WOULDN'T BE TRUE?

24 A HE WOULD BE A LIAR. AND IT WOULD NOT BE
25 TRUE. AND I'D LIKE TO WATCH THAT, JUST LIKE THAT LAST GUY
26 YOU BROUGHT IN HERE.

1 Q AND IN JANUARY, FEBRUARY, 1997, DID YOU SAY
2 TO MR. PATTON, JIM PATTON, FROM OREGON, THAT YOU WANTED TO
3 GET YOUR HANDS ON THE LITTLE ITTY-BITTY CHECKS FROM THE
4 THOUSAND ADVENTURES MEMBERS?

5 A THAT IS AN ABSOLUTE LIE. I DID NOT SAY THAT.

6 Q AND IF MR. PATTON WERE TO COME INTO COURT
7 AND TESTIFY THAT THAT HAPPENED, THAT WOULD BE THE TRUTH?

8 A HE WOULD BE A LIAR.

9 Q DID MR. PATTON TELL YOU, IN JANUARY OR
10 FEBRUARY, 1997, THAT HE DIDN'T WANT ANYTHING TO DO WITH
11 ANYTHING HAVING TO DO WITH YOU AND THOUSAND ADVENTURES?

12 A SIR, I ALREADY TOLD YOU THIS WHOLE THING IS
13 A LIE. THERE WAS NO DISCUSSION BETWEEN ME AND MR. PATTON.
14 NONE.

15 Q AND IF MR. PATTON SAID TO THE CONTRARY, THEN
16 WHAT?

17 A HE SAYS TO THE CONTRARY, HE IS GOING TO BE
18 LYING TO THIS JURY. AND I'M NOT. IT'S KIND OF LIKE THAT
19 THING THIS MORNING WHERE YOU ACCUSED ME OF HAVING THIS GUY
20 LIE TO THE JURY.

21 THE COURT: PLEASE. PLEASE.

22 BY MR. SHERMAN: Q NOW, BY THE SUMMER OF 1997,
23 JUDGMENT FROM A FLORIDA STATE COURT HAD BEEN ENTERED
24 AGAINST YOU ON ACCOUNT OF THE LAWSUIT THAT PATTON, PATTON,
25 AND LEWIS HAD BROUGHT; IS THAT CORRECT?

26 A THERE WAS A JUDGMENT I BELIEVE, YES, AND

1 FORECLOSURE.

2 Q YOU DIDN'T LET THAT JUDGMENT GO BY DEFAULT
3 NOW, DID YOU?

4 A WHAT'S THAT?

5 Q YOU FOUGHT THAT LAWSUIT?

6 A I DON'T RECALL. THAT WAS WHEN MR. JOSEPH
7 WAS IN CHARGE OF THE DIFFERENT COMPANIES. I'M NOT
8 REALLY SURE WHEN IT WAS IN CHAPTER WHO OWNED THE STOCK.
9 I'M NOT SURE WHAT THE POSITION WAS OF A.R.A., AS FAR AS
10 THAT JUDGMENT. I RECALL A JUDGMENT.

11 Q LET ME SHOW YOU THE JUDGMENT, EXHIBIT 337.
12 MR. NOVELLI, THAT IS A COPY OF THE JUDGMENT,
13 ISN'T IT?

14 A YES.

15 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 337 INTO
16 EVIDENCE.

17 MR. MOSHENKO: YOUR HONOR, COULD YOU TAKE IT UNDER
18 SUBMISSION SO WE'D HAVE A CHANCE TO LOOK AT IT?

19 THE COURT: UNDER SUBMISSION.

20 MR. SHERMAN: PUT IT UP ON THE BOARD?

21 THE COURT: YES.

22 BY MR. SHERMAN: Q SO THIS JUDGMENT REFERENCES THE
23 FACT IN THE VERY FIRST PARAGRAPH THAT THERE IS A JUDGMENT
24 AGAINST -- AND I'M LOOKING AT THE -- TOWARDS THE BOTTOM OF
25 THAT FIRST PARAGRAPH -- DEFENDANT RAYMOND G. NOVELLI'S
26 GUARANTEE OF PAYMENT.

1 THAT WAS A JUDGMENT AGAINST YOU PERSONALLY,
2 SIR; CORRECT?

3 A IT APPEARS TO BE.

4 Q AND LET'S GO TO PARAGRAPH NUMBER 23 -- WELL,
5 ACTUALLY, LET'S FIRST GO TO PARAGRAPH 2, NUMBER 2. I'M
6 SORRY. LET'S GO TO 10 INSTEAD.

7 YOU KNOW WHAT? I DON'T WANT TO SPEND A LOT
8 OF TIME ON THIS DOCUMENT RIGHT NOW. LET'S GO TO 16.

9 IT'S -- THE JUDGMENT IS A MONEY JUDGMENT;
10 RIGHT? PARAGRAPH 16.

11 A IT'S PART OF A FORECLOSURE ON A MORTGAGE,
12 AND THAT'S THE BALANCE OF THE LOAN, OR THE PRINCIPAL
13 BALANCE, YES.

14 Q SO THERE'S DUE \$4.685 MILLION; RIGHT?

15 A THIS APPEARS TO BE.

16 Q LET'S GO TO PARAGRAPH 23. SEE, HERE IT
17 SAYS, SECURITY AGREEMENT ON MEMBERSHIP RECEIVABLES GIVEN BY
18 DEFENDANT, ADVENTURE RESORTS OF AMERICA, IN FAVOR OF --
19 I'LL PARAPHRASE -- THE PATTONS, CREATED A VALID SECURITY
20 INTEREST AND LIEN UPON THAT PROPERTY.

21 SO THE PATTONS HAD A SECURITY INTEREST IN
22 THE MEMBER CONTRACTS; RIGHT?

23 A YES.

24 Q AND THEN PARAGRAPH 24 GOES ON TO SAY THAT
25 "THE DEBT SECURED BY SUCH SECURITY INTEREST HAS BEEN IN
26 DEFAULT SINCE DECEMBER 7, 1995"; RIGHT?

1 MR. SHERMAN: THANK YOU.

2 Q PAGE 15. DATED JULY 9, 1997.

3 YOU WERE ORDERED NOT TO DO CERTAIN THINGS;

4 RIGHT, SIR?

5 A YES, THAT'S WHAT IT SAYS IN WRITING THERE.

6 Q NOW, I WANT TO SHOW YOU EXHIBIT 2095.

7 THIS LETTER CONTAINS YOUR SIGNATURE; RIGHT?

8 A YES, IT DOES.

9 Q THIS LETTER IS DATED JULY 16, 1997; RIGHT?

10 A CORRECT.

11 Q AND SO A WEEK AFTER THE FLORIDA COURT

12 ENJOINED, YOU WERE DOING CERTAIN THINGS; YOU FIGURED YOU'D

13 BETTER ACT QUICK; RIGHT?

14 A OKAY. WHAT DOES IT SAY?

15 MR. MOSHENKO: OBJECTION. MISSTATES THE EVIDENCE.

16 THE "YOU" IS MR. NOVELLI. THE INJUNCTION IS -- REFERS TO A

17 PLAINTIFF, WHO IS A PLAINTIFF IN THIS CASE, AND LACKS

18 FOUNDATION THAT MR. NOVELLI WAS ENJOINED FROM DOING

19 ANYTHING. OR THE QUESTION IS UNCERTAIN. DEFINE WHO THE

20 "YOU" IS.

21 THE COURT: REPHRASE IT.

22 MR. SHERMAN: WHY DON'T WE JUST -- I'D LIKE TO MOVE

23 2095 INTO EVIDENCE.

24 THE COURT: ALL RIGHT.

25 MR. SHAW: YOUR HONOR, THERE'S HANDWRITING ON

26 THE -- ARE YOU GOING TO LAY THE FOUNDATION FOR THE

1 HANDWRITING?

2 MR. SHERMAN: WHY DON'T WE DO THIS, JERRY. I DON'T
3 KNOW WHOSE HANDWRITING IT IS. WHY DON'T WE JUST HAVE THE
4 DOCUMENT SHOWN WITHOUT THE HANDWRITING ON THE BOTTOM. WE
5 CAN DEAL WITH THAT LATER.

6 MR. SHAW: NO OBJECTION WITH THAT PROVISIO.

7 THE COURT: THANK YOU.

8 (WHEREUPON, EXHIBIT NO. 2095, LETTER DATED
9 JULY 16, 1997, WAS RECEIVED IN EVIDENCE.)

10 MR. SHERMAN: I'M GOING TO ASK YOU -- CAN YOU BLOW
11 THAT UP, MIKE.

12 Q OKAY. SO JULY 9 ORDER, JULY 16 LETTER;
13 CORRECT?

14 A YES.

15 Q YOU WROTE TO CAMP COAST TO COAST, "DEAR
16 ROGER, ALLOW THIS TO SERVE AS MY REQUEST FOR THE STANDARD
17 LISTING OF ADVENTURE RESORTS OF AMERICA MEMBERS WHO ARE
18 PARTICIPATING AS CAMP COAST TO COAST MEMBERS. WE NEED THIS
19 AS QUICKLY AS POSSIBLE. PLEASE SEND A REQUESTED LIST TO:
20 ADVENTURE RESORTS OF AMERICA IN IRVINE. AND SHOULD THERE
21 BE ANY DIFFICULTY, PLEASE GIVE ME A CALL."

22 SO YOU FIGURED AFTER THIS JULY 9 ORDER WAS
23 ENTERED, YOU WERE GOING TO LOSE THE PROPERTY AND COULDN'T
24 TOUCH THE MEMBERS; YOU BETTER ACT QUICK; RIGHT?

25 A THIS IS A LETTER FROM A.R.A. ASKING COAST
26 FOR A LIST OF THE MEMBERS OF A.R.A. THAT THEY HAD, THAT

1 COAST TO COAST LIST.

2 Q AND THE REASON YOU ASKED FOR IT IS BECAUSE
3 YOU WANTED TO ACT QUICK AND SEND OUT A LETTER TO ALL THE
4 MEMBERS OF A.R.A. TRANSFERRING THEM; RIGHT?

5 A WHAT HAPPENED WAS MR. PATTON WAS GOING TO
6 LOCK OUT THE MEMBERS, WHICH HE DID, WHEN HE FORECLOSED. HE
7 DIDN'T WANT THE MEMBERS. HE WAS GOING TO LOCK THEM OUT. I
8 ASKED THE TRUSTEE THAT WE COULD ACCOMMODATE THEM, I
9 BELIEVE, AT NEW TRAILINN, ACCOMMODATE THESE MEMBERS IF
10 THEY'RE LOCKED OUT. WE HAVE THE LIST OF MEMBERS. THIS IS
11 JUST THE ONE LOOKING FOR COAST TO COAST MEMBERS.

12 Q PROPERTY WAS SOLD IN LATE JULY, '97;
13 CORRECT?

14 A I DON'T KNOW. SOMETIME IN JULY, I BELIEVE,
15 YES.

16 Q WITHIN A FEW WEEKS THEREAFTER, YOU HAD SENT
17 LETTERS TO ALL OF A.R.A.'S MEMBERS MOVING THEM ELSEWHERE;
18 RIGHT?

19 A THE POSITION THAT WE TOOK, WITH THE
20 PERMISSION OF THE TRUSTEE, WAS TO TAKE THOSE MEMBERS.
21 A.R.A. WAS STILL IN EXISTENCE. THEY'RE STILL A.R.A.
22 MEMBERS. AND GIVE THEM A HOME. PATTON LOCKED OUT THE
23 MEMBERS. TO SELL THEM A NEW MEMBERSHIP.

24 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

25 THE COURT: GRANTED.

26 BY MR. SHERMAN: Q AND A FEW WEEKS AFTER THE

1 FORECLOSURE, YOU WROTE TO ALL OF A.R.A. MEMBERS AND
2 TRANSFERRED THEM; CORRECT?

3 A I GAVE THEM A PLACE IN TRAILINN.

4 Q IS THE ANSWER YES?

5 A YES.

6 Q AND IF MR. PATTON WERE TO COME INTO THIS
7 COURT AND RAISE HIS HAND AND SWEAR TO TELL THE TRUTH, GET
8 ON THE WITNESS STAND AND SAY THAT YOU STOLE HIS MEMBERS AND
9 YOU HAD NO RIGHT DOING IT, YOU WERE ENJOINED BY THE COURT,
10 YOUR POSITION IS HE WOULD BE LYING?

11 A I WOULD SHOW YOU A LETTER --

12 MR. MOSHENKO: I OBJECT.

13 MR. SHAW: I OBJECT. THAT CALLS FOR HEARSAY, AND
14 THERE'S NO EVIDENCE IF THAT SHOULD HAPPEN AT SOME POINT IN
15 TIME. AND IT'S ARGUMENTATIVE.

16 THE COURT: I'M GOING TO ALLOW IT. OVERRULED.

17 THE WITNESS: YOU PUT HIM ON THE STAND. WE'LL SHOW
18 YOU A LETTER WHERE HE LOCKED OUT THE MEMBERS. MADE IT VERY
19 CLEAR THAT THESE MEMBERS OF A.R.A., OUR COMPANY, WHO SUED
20 COAST, THAT THESE MEMBERS WERE NOT MEMBERS OF SALT SPRINGS,
21 PERIOD.

22 AND IF YOU WANT TO PUT MR. PATTON ON THE
23 STAND, AND YOU WANT TO HAVE HIM UNDER OATH SAY THAT, THEN
24 WE'LL PRODUCE YOU THE LETTER. I'M SURE YOU ALREADY HAVE
25 IT, OR YOU SHOULD HAVE IT. WE GAVE IT TO YOU.

26 A.R.A. TOOK ITS MEMBERS BECAUSE SALT

1 SPRINGS LOCKED THEM OUT. AND JIM PATTON NOTIFIED THESE
2 MEMBERS THAT YOU ARE NOT MEMBERS OF SALT SPRINGS, OR THIS
3 OCALA PACIFIC COMPANY. YOU'RE MEMBERS OF A.R.A. WELL,
4 GUESS WHO OWNS A.R.A., SIR?

5 BY MR. SHERMAN: Q DO YOU RECALL THAT IN YOUR
6 DEPOSITION TAKEN IN THIS CASE I ASKED YOU A LOT OF
7 QUESTIONS ABOUT A.R.A.?

8 A LOTS OF QUESTIONS.

9 Q I'D LIKE TO PLAY THOSE QUESTIONS AND ANSWERS
10 FROM YOUR DEPOSITION TAKEN ON AUGUST 30, 1999, PAGE 91,
11 LINE 21, TO PAGE 93, LINE 5.

12 A WHAT WAS THAT VOLUME?

13 Q VOLUME I.

14 A PAGE 93?

15 Q PAGE 91, LINE 21, TO PAGE 93, LINE 5.

16 MR. SHAW: YOUR HONOR, WE WOULD JUST ASK THAT IT BE
17 READ ON PAGE 93 TO GIVE IT CONTEXT THROUGH LINE 22.

18 THE COURT: LINE 5 THROUGH LINE 22?

19 MR. MOSHENKO: ADDED.

20 MR. SHAW: ADDED, YES.

21 MR. SHERMAN: WE CAN READ IT. WE CAN'T PLAY THAT.

22 THE COURT: ALL RIGHT.

23 (WHEREUPON THE VIDEO DEPOSITION WAS PLAYED
24 IN OPEN COURT:)

25 MR. SHERMAN: "QUESTION: SO YOU HAVE THE STOCK
26 CERTIFICATE SOMEWHERE?

1 "ANSWER: YES.

2 "QUESTION: YOU CAN PAPER YOUR WALL WITH IT;
3 RIGHT?

4 "ANSWER: IT'S NOT IN BUSINESS RIGHT NOW.
5 IN OTHER WORDS, THE RESORT -- THE MEMBERS, WE STILL HAVE
6 THE MEMBERS.

7 "QUESTION: NO. THE CAMPGROUND IN ORLANDO
8 HAS THE MEMBERS; RIGHT?

9 "ANSWER: THE MEMBER BUYS MORE THAN JUST A
10 CAMPGROUND WHEN WE SELL MEMBERSHIPS. WE SELL A MEMBERSHIP
11 TO 25 CAMPGROUNDS. SO IT'S NOT SOMETHING THAT A MEMBER
12 SAYS, WELL, I'M GOING TO BUY USAGE IN ONE CAMPGROUND. IN
13 OTHER WORDS, THEY BUY OUR SYSTEM. THAT'S WHY THE LENDERS
14 HAD US, YOU KNOW, TAKE OVER THE T.A. THING."

15 Q NOW, MR. NOVELLI, WHEN I ASKED YOU THOSE
16 QUESTIONS IN YOUR DEPOSITION, YOU DIDN'T EVEN COME CLOSE TO
17 GIVING THE REAL REASON WHY YOU GAVE UP SALT SYRINGES, DID
18 YOU?

19 A IT WAS TOO MUCH DEBT. I MEAN, THAT'S A
20 PRETTY GOOD REASON.

21 Q COAST LETTERS TO COAST MEMBERS IN 1997
22 DIDN'T CAUSE YOU TO FILE A.R.A.'S 1993 BANKRUPTCY, NOW, DID
23 IT?

24 A WHAT'S THAT?

25 Q COAST LETTERS TO ITS MEMBERS IN '97 HAD
26 NOTHING TO DO WITH YOUR FILING A.R.A.'S 1993 BANKRUPTCY;

1 RIGHT?

2 A NO, IT DIDN'T.

3 Q IT HAD NOTHING TO DO WITH YOUR FILING
4 A.R.A.'S 1996 BANKRUPTCY?

5 A NO, IT DIDN'T.

6 Q HAD NOTHING TO DO WITH THE APPOINTMENT OF A
7 RECEIVER OVER A.R.A.; RIGHT?

8 A THAT'S CORRECT.

9 Q HAD NOTHING TO DO WITH THE JULY 9, 1997,
10 JUDGMENT AGAINST YOU FOR \$4.6 MILLION?

11 A THAT'S CORRECT.

12 Q HAD NOTHING TO DO WITH THE FLORIDA COURT
13 AUTHORIZING FORECLOSURE AGAINST PROPERTY?

14 A THAT'S CORRECT.

15 Q YOU CAUSED ALL THOSE THINGS TO HAPPEN, SIR;
16 CORRECT?

17 A THEY HAPPENED. A LOT OF THINGS CAUSE
18 PROBLEMS. IT'S JUST NOT ONE INDIVIDUAL OR ONE THING. MANY
19 THINGS OCCURRED.

20 Q NOT YOUR FAULT, HUH?

21 A THE RESPONSIBILITY OF THE THING, THE AMOUNT
22 OF MEMBERS, AND THE AMOUNT OF RECEIVABLES THAT WERE
23 SUPPOSED TO HAVE BEEN IN THAT PARK WHEN WE BOUGHT IT, WERE
24 NOT IN THE PARK. WE WERE TOLD THERE WERE \$6 MILLION WORTH
25 OF RECEIVABLES. WE WERE TOLD THERE WERE 7,000 OR 6,000
26 EMPLOYEES.

1 AND AFTER ABOUT THREE MONTHS OF OPERATING,
2 WE FOUND THOSE STATEMENTS TO BE FALSE. SO WE HAD A TOUGH
3 BATTLE, AS FAR AS TRYING TO DO -- IN OTHER WORDS, WHAT HE
4 WAS DOING WAS HAD CONTRACTS ON THE BOOKS THAT WEREN'T BEING
5 PAID FOR SEVERAL YEARS. AND WHEN WE TOOK THAT PAPER, WE
6 WERE TOLD THERE WAS CURRENT PAPER. LATER ON WE FOUND OUT
7 THAT IT WASN'T CURRENT. ABOUT \$2 MILLION OF IT WAS IN
8 DEFAULT.

9 Q SO YOUR --

10 A SO THAT WAS ONE OF THE FAULTS. I'M JUST
11 SAYING, THERE'S MORE THAN ONE PERSON RESPONSIBLE WHEN
12 SOMETHING GOES WRONG.

13 Q SO YOUR POSITION TODAY IS THAT PATTONS GAVE
14 YOU SOME BAD INFORMATION?

15 A HE GAVE ME SOME BAD INFORMATION. I'M NOT
16 SAYING IT WAS HIS FAULT THAT THE WHOLE THING DIDN'T MAKE
17 IT. BUT BY THE SAME TOKEN, THAT WAS PART OF THE REASON.

18 Q SO YOU BLAME THE PATTONS?

19 A I BLAME THE PATTONS FOR PART OF THE REASON.

20 Q NOW, TRAILINN, THAT WAS A PARK YOU OWNED AND
21 OPERATED; RIGHT?

22 A YES.

23 Q PUT IT IN BANKRUPTCY IN '95; CORRECT?

24 A WE TOOK IT OUT OF BANKRUPTCY, I BELIEVE.

25 Q EXCUSE ME?

26 A WE TOOK IT OUT OF BANKRUPTCY, I BELIEVE, IN

1 '93.

2 Q WELL, I'M NOT CONCERNED ABOUT '93. I'M
3 TALKING ABOUT '95.

4 YOU FILED A BANKRUPTCY PETITION IN DECEMBER
5 1985 WITH NEW TRAILINN?

6 A '95?

7 Q YES.

8 A YES.

9 Q AND AT SOME POINT AFTER THE BANKRUPTCY
10 FILING, THE PARK WAS LOST IN A FORECLOSURE?

11 A THAT'S CORRECT.

12 Q COAST LETTERS HAD NOTHING TO DO WITH IT?

13 A YES. THE -- IF WE COULD HAVE PUT TOGETHER
14 WHAT WE AGREED TO PUT TOGETHER WITH T.A.I. AND HAD THAT
15 STRONG MEMBERSHIP BASE IN JULY, WE MIGHT HAVE BEEN ABLE TO
16 SAVE THAT PARK.

17 Q THE FORECLOSURE OCCURRED IN THE FALL OF '97?

18 A YES. I BELIEVE IN NOVEMBER.

19 Q NOW, LET'S MOVE ON TO REVCON.

20 YOU STARTED YOUR INVOLVEMENT WITH REVCON IN
21 1986; CORRECT?

22 A YES.

23 Q AND THAT'S WHEN YOU BECAME A SHAREHOLDER IN
24 REVCON; RIGHT?

25 A YES.

26 Q IN 1986.

1 AND -- THERE ARE ACTUALLY TWO REVCONS;
2 THAT'S RIGHT?
3 A YES.
4 Q THERE'S ONE NEVADA COMPANY AND ONE
5 CALIFORNIA COMPANY?
6 A YES.
7 Q WITH THE SAME EXACT NAME, ONLY ONE SAYS
8 NEVADA AND ONE THAT IS CALIFORNIA?
9 A THAT'S CORRECT.
10 Q IS THAT SO YOU CAN MOVE MONEY FROM ONE TO
11 THE OTHER?
12 A NO. THAT'S TO PROTECT THE NAME REVCON IN
13 BOTH STATES.
14 Q BUT ONLY ONE IS A PLAINTIFF IN THIS CASE;
15 RIGHT?
16 A THE NEVADA CORPORATION.
17 Q YOU'RE SURE IT'S NEVADA?
18 A YES, I'M SURE.
19 Q AND HAVING TWO COMPANIES WITH THE SAME NAME
20 IS A CONVENIENCE FOR YOU; CORRECT?
21 A NO.
22 Q YOU'VE HAD GUARDIAN HOME AND GUARDIAN
23 CREDIT; RIGHT?
24 A THAT'S CORRECT.
25 Q BOTH OF THOSE FILED BANKRUPTCY?
26 A THAT'S CORRECT.

1 Q AND YOU MOVED MONEY BETWEEN THEM; RIGHT?

2 A THAT'S CORRECT. BOTH COMPANIES WORK
3 TOGETHER, THE FUNDING COMPANY AND THE HOME LOAN.

4 Q NOW, REVCON FILED ONE OF ITS BANKRUPTCIES --
5 ONE OF ITS BANKRUPTCIES IN 1996; RIGHT?

6 A IN THE TWO SPRINGS, YES.

7 Q AND BECAUSE SEVERAL YEARS PRIOR ONE OF THE
8 REVCONS HAD FILED A BANKRUPTCY AS WELL; CORRECT?

9 A I DON'T BELIEVE SO.

10 Q LET ME SHOW YOU EXHIBIT 365.

11 IS EXHIBIT 365 A COPY OF THE BANKRUPTCY
12 PETITION THAT REVCON MOTORCOACH, INC., FILED WITH THE U.S.
13 BANKRUPTCY COURT?

14 A IN 1996, YES.

15 Q AND WAS THIS PREPARED BY REVCON LAWYER
16 MR. MOSHENKO?

17 A YES.

18 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 365 INTO
19 EVIDENCE.

20 MR. MOSHENKO: NO OBJECTION.

21 THE COURT: IT WILL BE SO RECEIVED.

22 (WHEREUPON, EXHIBIT NO. 365, BANKRUPTCY
23 PETITION, WAS RECEIVED IN EVIDENCE.)

24 BY MR. SHERMAN: Q NOW, WHEN -- WHY DON'T WE GO TO
25 THE SECOND PAGE.

26 AND SO WHEN REVCON FILED IN SEPTEMBER '96

1 ITS BANKRUPTCY, MR. SCHULZ SHOWED UP AS THE PRESIDENT;
2 RIGHT?

3 A THAT'S CORRECT.

4 Q AND LET'S GO FORWARD TO AUGUST 18, 1997,
5 JUST ABOUT A YEAR LATER, EXHIBIT 367.

6 DO YOU RECOGNIZE EXHIBIT 367 TO BE DEBTOR'S
7 PROPOSED THIRD AMENDED DISCLOSURE STATEMENT?

8 A YES.

9 Q AND YOU'LL SEE IF YOU GO ALL THE WAY TO THE
10 LAST PAGE, IT SHOWS A DATE OF AUGUST 18, 1997; DO YOU SEE
11 THAT?

12 A YES.

13 Q AND --

14 THE COURT: THAT'S '96, ISN'T IT?

15 MR. SHERMAN: WELL, YES, THAT'S THE BANKRUPTCY
16 PETITION IN 1996, SEPTEMBER 18, 1996, HANS SCHULZ IS
17 PRESIDENT. I WAS ASKING THE WITNESS RIGHT NOW ABOUT A NEW
18 EXHIBIT, EXHIBIT 367, AUGUST 18, 1997.

19 AND WHAT I'D LIKE -- I'D LIKE TO ACTUALLY
20 MOVE EXHIBIT 367 INTO EVIDENCE AT THIS POINT, YOUR HONOR.

21 MR. MOSHENKO: IT MAY GO IN.

22 THE COURT: SO RECEIVED.

23 (WHEREUPON, EXHIBIT NO. 367, DOCUMENT DATED
24 AUGUST 18, 1997, WAS RECEIVED IN EVIDENCE.)

25 BY MR. SHERMAN: Q WHY DON'T WE GO TO 367-023.

26 A YEAR LATER YOU'RE THE PRESIDENT?

1 A THAT'S CORRECT.

2 Q LET'S GO TO 368. KEEP THAT UP ON THE BOARD,
3 PLEASE.

4 NOW, 368 IS A DECLARATION THAT MR. SCHULZ
5 FILED IN THE BANKRUPTCY COURT IN REVCON; RIGHT?

6 A YES.

7 Q AND THAT DECLARATION HAS A FILE STAMP JUST
8 THREE DAYS LATER, AUGUST 21; RIGHT?

9 A YES.

10 Q AUGUST 21, 1997; RIGHT?

11 A CORRECT.

12 MR. SHERMAN: MOVE EXHIBIT 368 INTO EVIDENCE.

13 MR. MOSHENKO: IT MAY GO IN, YOUR HONOR.

14 THE COURT: RECEIVED.

15 (WHEREUPON, EXHIBIT NO. 368, DECLARATION OF
16 HANS SCHULTZ, WAS RECEIVED IN EVIDENCE.).

17 BY MR. SHERMAN: Q SO THREE DAYS LATER, I,
18 HANS SCHULZ, DECLARE I AM THE PRESIDENT OF REVCON.

19 LET'S GO TO 369.

20 A SIR, THIS WAS MADE UP IN APRIL OF '97. I
21 THINK IF YOU GO BACK TO THE BACK PAGE, IT MIGHT HAVE GOT
22 FILED IN AUGUST. BUT YOU SHOULD READ THE WHOLE THING
23 BEFORE YOU PRESENT IT.

24 Q DO YOU HAVE 369 IN FRONT OF YOU?

25 A I GOT THIS LAST ONE THAT YOU WANTED TO SHOW
26 THE JURY.

1 Q DO YOU HAVE 369?

2 THE COURT: DO YOU HAVE 369?

3 THE WITNESS: WHICH ONE IS THAT?

4 BY MR. SHERMAN: Q THE DECLARATION OF

5 RAYMOND NOVELLI.

6 A OKAY.

7 Q IS THAT YOUR DECLARATION, SIR?

8 A YES.

9 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 369 INTO

10 EVIDENCE.

11 MR. MOSHENKO: IT MAY GO IN.

12 THE COURT: RECEIVED.

13 (WHEREUPON, EXHIBIT NO. 369, DECLARATION OF

14 RAYMOND NOVELLI, WAS RECEIVED IN EVIDENCE.)

15 BY MR. SHERMAN: Q I, RAYMOND G. NOVELLI, DECLARE

16 MARCH 12, 1998, I AM THE PRESIDENT OF REVCON.

17 WHO IS THE PRESIDENT OF REVCON TODAY?

18 A IF YOU'D PUT THESE IN THEIR PROPER DATES,

19 MAYBE YOU COULD BE MORE CLEAR. YOU DON'T HAVE THEM IN

20 THEIR PROPER DATES.

21 THE COURT: THERE'S NO QUESTION PENDING,

22 MR. NOVELLI.

23 BY MR. SHERMAN: Q WHO IS THE PRESIDENT OF REVCON

24 TODAY?

25 A I BELIEVE RIGHT NOW -- I'M NOT REALLY SURE.

26 I BELIEVE IT IS MR. SCHULZ.

1 Q BUT YOU DON'T KNOW?

2 A I'M NOT SURE WHO IS PRESIDENT AT THIS TIME.
3 I WAS THE PRESIDENT DURING THE PENDENCY OF THE BANKRUPTCY.

4 Q NOW, LET'S GO BACK TO EXHIBIT 367, PLEASE.

5 IF YOU CAN PUT THAT BACK UP ON THE BOARD.

6 AND LET'S GO TO PAGES 8 AND 9 OF THIS
7 DISCLOSURE STATEMENT THAT REVCON FILED WITH THE UNITED
8 STATES BANKRUPTCY COURT IN AUGUST, 1997.

9 IT GIVES THE BACKGROUND AND HISTORY. THE
10 STOCK OF REVCON IS OWNED BY FIRST NATIONWIDE -- BANKRUPTCY,
11 DEBTOR'S BUSINESS, OWNERSHIP AND OPERATION OF TWO SPRINGS.
12 LET'S GO DOWN TO THE BOTTOM.

13 "WHILE UTILIZATION OF RESORT REMAINED
14 RELATIVELY STABLE, A NUMBER OF FACTORS CAUSED REVCON TO
15 BEGIN EXPERIENCING DIFFICULTIES IN PAYING ITS CREDITORS.
16 THE PRINCIPAL FACTOR WAS AN INCREASE IN UTILITY COSTS BASED
17 ON THE EXPANDED ELECTRICAL AND OTHER CAPACITIES OF MODERN
18 R.V.'S WHICH UTILIZE HIGHER AMPERAGE POWER SYSTEM AND OTHER
19 DESIGN IMPROVEMENTS TO POWER MULTIPLE AIR-CONDITIONING
20 UNITS AND OTHER APPLIANCES.

21 "AS A RESULT, REVCON SUFFERED CASH FLOW
22 PROBLEMS AND BEGAN TO EXPERIENCE INCREASING DIFFICULTIES IN
23 PAYING ITS CREDITORS. ADDITIONALLY, DURING THIS PERIOD,
24 FIRST NATIONWIDE WAS ALSO EXPERIENCING FINANCIAL
25 DIFFICULTIES WHICH ULTIMATELY FORCED IT TO FILE A PETITION
26 FOR REORGANIZATION. THESE FACTORS FORCED THE FILING BY

1 REVCON TO PROTECT THE PARK FROM FORECLOSURE WHILE IT
2 OPERATED UNDER CHAPTER 11."

3 COULD WE GO DOWN THEN.

4 AND THEN IN OCTOBER, '96, REVCON STARTED
5 CHARGING MEMBERS MORE TO USE THE PARK; RIGHT?

6 A A DOLLAR A NIGHT.

7 Q AND IF WE CAN GO TO THE NEXT, I THINK IT'S
8 THE NEXT PAGE. NO. PLEASE GO -- PLEASE GO TO PAGE 20.
9 NUMBER 20.

10 SEE, REFERENCES THE FACT THAT MEMBERSHIPS
11 WERE NOT SOLD DURING 1996 AS A RESULT OF THE FINANCIAL
12 PROBLEMS REVCON WAS EXPERIENCING.

13 SO THIS AUGUST 1997 DISCLOSURE STATEMENT,
14 MR. NOVELLI, FOR THIS COMPANY EITHER YOU OR MR. SCHULZ WAS
15 THE PRESIDENT OF, REFERENCES ALL SORTS OF PROBLEMS THAT
16 REVCON HAS BEEN HAVING; CORRECT?

17 A WHAT YOU STATE --

18 Q AND NOWHERE YOU SAY ANYTHING ABOUT REVCON'S
19 PROBLEMS AS OF THIS TIME BEING CAUSED BY ANY LETTERS OF
20 CAMP COAST TO COAST; CORRECT?

21 A I DON'T BELIEVE COAST TO COAST SENT ANY
22 LETTERS AT THAT TIME.

23 THE COURT: THIS IS THE LAST BREAK YOU'RE GOING TO
24 HAVE FOR 10 DAYS. 20 MINUTES.

25 (RECESS TAKEN.)

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN

1 COURT IN THE PRESENCE OF THE JURY:)

2 THE COURT: PROCEED.

3 BY MR. SHERMAN: Q MR. NOVELLI, LET'S TURN TO THE
4 FIESTA PARKS; CAN WE DO THAT?

5 A GO AHEAD.

6 Q BY THE WAY, I'M NOT GOING TO GO THROUGH
7 EVERY ONE OF THESE NECESSARILY WITH YOU, BUT I -- THAT
8 LIST, AS WE SAID EARLIER, THOSE ARE FIRST NATIONWIDE
9 AFFILIATED PARKS; RIGHT?

10 A YES.

11 Q OKAY. JUST IN THE INTEREST OF TIME, I DON'T
12 WANT TO GO THROUGH ALL OF THESE, NECESSARILY. BUT LET'S
13 TURN OUR ATTENTION NOW TO THE FIESTA PARKS.

14 THE FIESTA PARKS WERE PARKS THAT HAD BEEN
15 OWNED AND OPERATED IN THE 1980'S BY A MAN WHOSE NAME WAS
16 DAVE LARSEN; CORRECT?

17 A DAVE LARSON, AND HE HAD A COUPLE OF
18 PARTNERS, YES.

19 Q ONE OF HIS OTHER PARTNER'S NAMES WAS
20 IRA ROBB?

21 A THAT'S CORRECT.

22 Q SO YOU'LL UNDERSTAND -- IF I REFER TO THIS
23 GROUP AS "THE LARSEN GROUP," YOU'LL UNDERSTAND THAT I'M
24 REFERRING TO LARSEN, ROBB AND ANYBODY ELSE, OKAY?

25 A YES.

26 Q LARSEN AND HIS GROUP BUILT AND OPERATED

1 TRAVEL VILLAGE; CORRECT?

2 A YES.

3 Q AND TRAVEL VILLAGE WAS R.V. PARK NEAR THE
4 VALENCIA AREA; RIGHT?

5 A RIGHT NEXT TO MAGIC MOUNTAIN, YES.

6 Q TOOK THE WORDS OUT OF MY MOUTH. RIGHT NEXT
7 TO MAGIC MOUNTAIN.

8 AND THE LARSEN GROUP ALSO BUILT AND OPERATED
9 THE FIESTA INDIO PARK IN THE DESERT; RIGHT?

10 A THAT'S CORRECT -- NO, JUST DAVE LARSEN.

11 Q THOSE TWO PARKS WERE TWO OF THE MOST
12 SUCCESSFUL PARKS IN THE WESTERN UNITED STATES AT THE TIME;
13 RIGHT?

14 A NO. NO, THEY WERE NOT.

15 Q PARKS HAD THOUSANDS OF MEMBERS?

16 A I BELIEVE INDIO HAD AROUND A THOUSAND,
17 MAYBE 1200. I BELIEVE THAT FIESTA VALENCIA HAD MAYBE 2800,
18 SOMETHING LIKE THAT. OTHER PARKS IN THAT AREA HAVE AS MANY
19 AS 15,000 MEMBERS.

20 Q THEY WERE BEAUTIFUL PARKS?

21 A WHICH ONE?

22 Q MAGIC MOUNTAIN, VALENCIA, BEAUTIFUL PARK?

23 A IT WAS A NICE PARK, YES.

24 Q AND MR. LARSON AND HIS GROUP HAD OWNED AND
25 OPERATED THESE PARKS THROUGHOUT THE 1980'S; RIGHT?

26 A THAT'S CORRECT.

1 Q AND SO WHEN THIS NICE LADY, RUTH PARKER,
2 CAME TO COURT LAST WEEK AND TESTIFIED ABOUT BUYING A
3 MEMBERSHIP IN THE VALENCIA PARK IN THE 1980'S, SHE DIDN'T
4 BUY IT FROM YOU?

5 A NOT IN THE '80'S, NO.

6 Q AND WHEN THE LARSEN GROUP SOLD MEMBERSHIPS,
7 MANY OF THOSE MEMBERS ALSO JOINED CAMP COAST TO COAST;
8 CORRECT?

9 A YES. THEY JOINED THE RECIPROCAL.

10 Q NOW, THEN YOU CAME ALONG IN 1990 AND REACHED
11 AGREEMENT WITH MR. LARSON TO BUY HIS PARKS AND OPERATIONS;
12 RIGHT?

13 A EITHER THE PARKS OR THE STOCK. I'M NOT
14 REALLY SURE WHAT WE -- WHAT THE PURCHASE WAS, AGREEMENT WAS
15 FOR.

16 Q AND YOU ACQUIRED THEM, WHATEVER THE TERMS
17 WERE, AT THE SAME TIME IN ONE DEAL; CORRECT?

18 A IT WAS TWO DEALS. ONE DEAL WAS WITH
19 MR. LARSON AND IRA ROBB. THE OTHER DEAL WAS WITH JUST
20 MR. LARSON. ONE WASN'T REALLY CONTINGENT ON THE OTHER.

21 Q BUT YOU ACQUIRED THEM AT THE SAME TIME?

22 A CORRECT.

23 Q AND A COMPANY THAT YOU HAD NAMED GUARDIAN,
24 THIS ONE GUARDIAN HOME LOAN, BOUGHT THE INDIO PARK; RIGHT?

25 A I DON'T RECALL. BUT ONE OF THE GUARDIANS.

26 Q AND THE OTHER GUARDIAN -- BUT YOU DON'T

1 RECALL -- LEASED THE PROPERTY AT THE VALENCIA, THE TRAVEL
2 VILLAGE PARK; RIGHT?

3 A YES, IT WAS A LEASE.

4 Q IT WAS A LEASE WITH AN OPTION TO BUY?

5 A WE DIDN'T HAVE AN OPTION TO BUY.

6 Q TWO PARKS?

7 A TWO PARKS.

8 Q TWO GUARDIAN COMPANIES?

9 A YES.

10 Q AND YOU DON'T KNOW WHICH GUARDIAN COMPANY
11 WAS WITH WHICH PARK; RIGHT?

12 A I DON'T RECALL.

13 Q YOU ACQUIRED THESE PARKS ALONG WITH THEIR
14 MEMBERSHIPS; RIGHT?

15 A YES.

16 Q AND OTHER THAN THE EXISTING BANK DEBT THAT
17 WAS ON THE PROPERTIES WHEN YOU ACQUIRED THEM, AT THE TIME
18 YOU ACQUIRED THE PARKS, THEY WERE PAYING ALL THEIR DEBTS AS
19 THEY CAME DUE; RIGHT?

20 A I DON'T KNOW IF THEY WERE OR NOT. I WASN'T
21 THERE.

22 Q WELL, IF YOU WEREN'T THERE, WHO WAS?

23 A WHEN I ACQUIRED THEM -- I DON'T KNOW WHAT
24 THESE PEOPLE WERE DOING BEFORE I CAME. THEY WERE AWFUL
25 ANXIOUS TO SELL THEM.

26 Q AT THE TIME YOU BOUGHT THE PARKS, THE DEBT

1 WAS CURRENT?

2 A I DON'T KNOW.

3 Q NOW, WHEN THE LARSEN GROUP SOLD YOU THE TWO
4 PARKS, THESE TRANSACTIONS YOU'VE TALKED ABOUT, THOSE PARKS
5 WERE NOT IN WORKOUT SITUATIONS NOW, WERE THEY?

6 A THEY WERE VERY ANXIOUS TO SELL THEM. THEY
7 WERE VERY ANXIOUS TO GET RID OF VALENCIA. THEY WANTED TO
8 DEVELOP THE PROPERTY, AND THAT WAS THE WHOLE REASON FOR THE
9 SALE, IS THEY WANTED TO GET RID OF THOSE MEMBERS OFF THAT
10 PROPERTY. AND THEY GAVE ME THREE YEARS IN WHICH TO GET
11 THEM OFF OF THERE.

12 MR. SHERMAN: MOVE TO STRIKE.

13 THE COURT: GRANTED.

14 BY MR. SHERMAN: Q WHEN YOU ACQUIRED THOSE PARKS,
15 THEY WERE NOT IN WORKOUT SITUATIONS; CORRECT?

16 A YOU'RE GOING TO HAVE TO ASK THEM. I DON'T
17 KNOW. THEY WERE ANXIOUS TO SELL THEM, VERY ANXIOUS.

18 Q WELL, AS THE SO-CALLED WORKOUT ARTIST THAT
19 YOU'VE BEEN REFERRED TO AS, YOU DIDN'T BELIEVE THESE WERE
20 WORKOUT SITUATIONS WHEN YOU BOUGHT THEM; RIGHT?

21 MR. MOSHENKO: MISSTATES THE TESTIMONY. HE WAS
22 CALLED A WORKOUT SPECIALIST. IT MIGHT BE A DIFFERENCE, BUT
23 I THINK "ARTIST" IS KIND OF ARGUMENTATIVE.

24 THE COURT: ALL RIGHT.

25 THE WITNESS: THERE WAS SEVERE LOSSES ON INDIO. I
26 REMEMBER THAT. INDIO WAS WAY OVER-ENCUMBERED. IT WAS

1 OVER-ENCUMBERED FOR THE AMOUNT OF MONEY THEY OWED ON THE
2 PARK AND THE AMOUNT OF MEMBERSHIP. THE MEMBERSHIP WAS LESS
3 THAN A THOUSAND OR A THOUSAND, AND THE VALENCIA PARK WAS A
4 VERY VALUABLE PARK, AND THAT'S WHY THEY WANTED IT -- OUT OF
5 THE CAMPGROUND BUSINESS AND OUT OF THE MEMBERSHIP BUSINESS,
6 SO THEY COULD SELL IT AS A DEVELOPMENT.

7 BY MR. SHERMAN: Q YOU WEREN'T BEING ASKED TO
8 TURN ANYTHING AROUND FOR LARSEN AND ROBB WHEN THEY SOLD YOU
9 THESE PARKS?

10 A JUST BAIL THEM OUT.

11 Q NOW, YOU PROMISED THEM THAT YOU WOULD PAY
12 FOR WHAT YOU WERE PURCHASING; RIGHT?

13 A WE SIGNED NOTES, I GUESS, YES.

14 Q LET ME PLACE BEFORE YOU EXHIBIT 456
15 IS THIS A COPY OF THE -- ONE OF THE
16 BANKRUPTCY PETITIONS THAT YOU THEN HAD FILED?

17 A YES, IT IS.

18 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 456 INTO
19 EVIDENCE.

20 MR. MOSHENKO: IT MAY GO IN, YOUR HONOR.

21 THE COURT: IT WILL BE RECEIVED.

22 (WHEREUPON, EXHIBIT NO. 456, BANKRUPTCY
23 PETITION, WAS RECEIVED IN EVIDENCE.)

24 BY MR. SHERMAN: Q AND THIS IS THE BANKRUPTCY FOR
25 THE INDIO PARK; CORRECT?

26 A I GOT TO TAKE A LOOK. YES.

1 Q AND IN THAT BANKRUPTCY, IF WE GO TO -- I
2 WANT TO SAY 456-009. THAT'S THE SCHEDULE D, CREDITORS
3 HOLDING SECURED CLAIMS.

4 YOU SHOW DAVID LARSEN, PROMISSORY NOTE,
5 \$500,000. THAT'S HOW MUCH YOU PROMISED TO PAY HIM;
6 CORRECT?

7 A I SHOW \$495,000. YES, TO TRAVEL VILLAGE
8 GENERAL PARTNERSHIP.

9 Q THAT'S WHAT YOU PROMISED TO PAY DAVID LARSEN
10 ON ACCOUNT OF THE INDIO PROPERTY; CORRECT?

11 A YES.

12 Q AND AFTER -- AND IT SHOWS THAT THE
13 PROMISSORY NOTE IS DATED DECEMBER 18, 1990; RIGHT?

14 A I'M NOT SURE WHERE YOU'RE LOOKING.

15 Q WELL, WHY DON'T YOU JUST LOOK UP ON THE
16 BOARD THERE, MR. NOVELLI. SEE THE SCHEDULE D SHOWS THE
17 DECEMBER 18, 1990, PROMISSORY NOTE. DOES THAT REFRESH YOUR
18 MEMORY?

19 A YES.

20 Q THAT THAT'S WHAT IT WAS?

21 A I JUST SAID I WASN'T SURE WHAT YOU'RE
22 LOOKING AT. I DON'T HAVE THE SAME EXHIBIT.

23 Q AND IF YOU CAN STAY WITH THIS DOCUMENT, GO
24 TO THE THIRD PAGE, THERE'S A LIST OF CREDITORS. THERE'S
25 ANOTHER DEBT SHOWING AS 496,000. IT'S A LITTLE CUT OFF ON
26 THE LEFT-HAND SIDE. TRAVEL VILLAGE GENERAL PARTNERSHIP; DO

1 YOU SEE THAT?

2 A YEAH. THAT WAS THE ONE I WAS LOOKING AT.

3 Q THAT WAS ON ACCOUNT OF THE VALENCIA
4 PROPERTY; CORRECT?

5 A I BELIEVE SO, YES.

6 Q BECAUSE VALENCIA WAS OWNED BY TRAVEL
7 VILLAGE, THE PARTNERSHIP; RIGHT?

8 A YES.

9 Q SO THAT WAS ROBB AND LARSEN'S GROUP; RIGHT?

10 A YES.

11 Q SO YOU HAD TWO OBLIGATIONS; ONE FOR \$496,000
12 AND ONE FOR \$500,000; CORRECT?

13 A THE ONE FOR 496 WAS A CONTINGENT BECAUSE OF
14 THE TWO PARKS BEING BOUGHT AT THE SAME TIME. DIFFERENT
15 COMPANIES. AND WE LISTED THAT ONE AS DISPUTED CONTINGENT
16 CLAIM, JUST IN CASE THEY CAME IN AND MADE A CLAIM AGAINST
17 THE ESTATE.

18 Q OKAY. BUT GOING BACK NOW --

19 A SO THE COMPANY DIDN'T OWE THAT, NO.

20 Q GOING BACK TO THE TRANSACTIONS, TWO
21 TRANSACTIONS; CORRECT?

22 A CORRECT.

23 Q SO OBLIGATIONS --

24 A IN TWO COMPANIES, YES.

25 Q EACH FOR ABOUT A HALF MILLION?

26 A CORRECT.

1 Q AND THEN IF WE CAN GO TO THE THIRD PAGE --
2 ACTUALLY, I THINK WE'RE ON THAT PAGE -- ACTUALLY -- EXCUSE
3 ME. PAGE NUMBER 9, I BELIEVE IT IS, SCHEDULE D, CREDITORS
4 HOLDING SECURED CLAIMS. LET'S GO BACK THERE.

5 YOU SEE AS OF THE TIME THAT THIS GUARDIAN
6 HOME LOAN BANKRUPTCY WAS FILED IN DECEMBER -- EXCUSE ME --
7 OCTOBER, 1993, IT SHOWED \$130,000 OWED ON ACCOUNT OF THE
8 INDIO PROPERTY IN BACK TAXES; RIGHT?

9 A I BELIEVE SO, YES.

10 Q AND WHEN YOU BOUGHT THE PARK FROM
11 MR. LARSON, IT DIDN'T HAVE \$130,000 IN BACK TAXES OWED,
12 NOW, DID IT?

13 A I DON'T KNOW.

14 Q AND GOING AHEAD NOW TO APRIL, 1994, YOU PUT
15 THE TRAVEL VILLAGE PARK INTO BANKRUPTCY; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q THAT WAS A FEW MONTHS AFTER YOU PUT THE
18 INDIO PARK INTO BANKRUPTCY; CORRECT?

19 A YES.

20 Q LET ME SHOW YOU EXHIBIT 869.

21 EXHIBIT 869 IS THE VOLUNTARY PETITION FOR
22 GUARDIAN CREDIT CORPORATION WHICH WAS FORMERLY DOING
23 BUSINESS AS TRAVEL VILLAGE RESORTS. THAT'S THE VALENCIA
24 PROJECT; RIGHT?

25 A YES.

26 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 869 INTO

1 EVIDENCE, YOUR HONOR.

2 THE COURT: NO OBJECTION?

3 MR. MOSHENKO: ONE MOMENT. I WANT TO MAKE SURE WE
4 DON'T HAVE ANY EXTRANEIOUS ATTACHMENTS.

5 IT MAY GO IN, YOUR HONOR.

6 THE COURT: IT WILL BE RECEIVED.

7 (WHEREUPON, EXHIBIT NO. 869, VOLUNTARY
8 PETITION FOR GUARDIAN CREDIT CORPORATION, WAS RECEIVED IN
9 EVIDENCE.)

10 BY MR. SHERMAN: Q AND IF YOU WILL LOOK AT THE
11 SECOND PAGE, YOU SIGNED THAT BANKRUPTCY PETITION; RIGHT?

12 A THAT'S CORRECT.

13 Q YOU SIGNED THAT BANKRUPTCY PETITION JUST
14 LIKE YOU HAD SIGNED THE BANKRUPTCY PETITION A FEW MONTHS
15 EARLIER FOR THE OTHER LARSEN PROPERTY; RIGHT?

16 A YES.

17 Q AND WHY DON'T WE GO TO -- A FEW PAGES IN,
18 FIVE PAGES IN, MIKE.

19 HERE YOU LISTED THE CREDITORS OF VALENCIA
20 PARK, AND YOU LISTED TRAVEL VILLAGE; DO YOU SEE THAT?

21 A YES.

22 Q \$6868 -- \$668,267?

23 A YES.

24 Q THAT'S WHAT YOU OWED TO THE TRAVEL VILLAGE
25 GROUP; CORRECT?

26 A WELL, IT WAS DISPUTED, SOME OF THAT. I

1 CAN'T SAY. I'M NOT SURE WHAT THE AMOUNT WAS.

2 Q RIGHT.

3 YOU DIDN'T WANT TO PAY THEM; RIGHT?

4 A I'M NOT SURE WHAT THE PROBLEM WAS. THEY --
5 WE FILED THIS ONE. WE HAD TO GET OFF THE PARK. THE LEASE
6 WAS UP.

7 Q YOU HAD TO LEAVE THE VALENCIA PARK,
8 MR. NOVELLI?

9 A YES. THE LEASE WAS UP. WE HAD A THREE-YEAR
10 LEASE. THEY WANTED THE MEMBERS OUT OF THE PARK. WE
11 WEREN'T READY TO MOVE YET. IT TOOK US TIME. THAT'S WHY WE
12 GOT CYPRESS. AND WE MOVED THE MEMBERS FROM THERE OVER TO
13 CYPRESS.

14 Q SO THE LEASE WAS UP, AND YOU HADN'T MADE THE
15 LEASE PAYMENTS; CORRECT?

16 A I'M SAYING IT'S DISPUTED. I'M NOT SURE
17 WHAT THE SITUATION WAS.

18 Q WELL, YOU DIDN'T WANT TO PAY?

19 MR. MOSHENKO: ASKED AND ANSWERED.

20 THE COURT: SUSTAINED.

21 BY MR. SHERMAN: Q THE LEASE EXPIRED SOMETIME IN
22 THE '93, '94 TIME PERIOD; CORRECT?

23 A YES.

24 Q AND BECAUSE THE LEASE EXPIRED, YOU HAD TO
25 LEAVE THE PARK?

26 MR. MOSHENKO: CUMULATIVE, YOUR HONOR.

1 THE WITNESS: THAT'S CORRECT.

2 THE COURT: PARDON?

3 MR. MOSHENKO: CUMULATIVE.

4 THE COURT: OVERRULED. THE ANSWER IS IN.

5 BY MR. SHERMAN: Q AND THE REASON THAT YOU HAD TO
6 LEAVE THE PARK WAS BECAUSE AND ONLY BECAUSE THE LEASE WAS
7 UP; CORRECT?

8 A WELL, THERE WAS AN EARTHQUAKE, TOO. THERE
9 WAS AN EARTHQUAKE. MY MEMORY SERVES ME RIGHT, THAT WAS
10 WHEN THEY HAD THAT BIG EARTHQUAKE. THE BRIDGE LEADING INTO
11 THE PARK KIND OF MADE US RUSH A LITTLE FASTER. IT WAS
12 COLLAPSED, AND IT WAS AROUND -- I DON'T KNOW THE EXACT
13 DATES, BUT IT SEEMS TO ME THAT WE HAD THE EARTHQUAKE. THE
14 MEMBERS COULDN'T GET IN. WE WEREN'T READY TO OPEN UP
15 CYPRESS, BUT WE DID IT ANYHOW BECAUSE WE DIDN'T HAVE ANY
16 CHOICE. AND THEY WANTED -- THE LARSEN GROUP WANTED THE
17 PARK BACK.

18 Q AND YOU AGREED TO GIVE IT BACK TO THEM?

19 A AT THE TIME WE WEREN'T READY. WHEN WE FIRST
20 HAD THE ACTION, WE WEREN'T READY TO MOVE. WE HAD TO FIND
21 ANOTHER PARK. THAT'S WHY WE ENDED UP WITH THE CYPRESS --
22 MAYBE PAYING TOO MUCH FOR IT.

23 Q SO YOU CLOSED THE VALENCIA PARK?

24 A CORRECT. WELL, THE EARTHQUAKE CLOSED IT.
25 WE DIDN'T CLOSE IT.

26 Q WELL, THE FACT THAT THE LEASE WAS UP COUPLED

1 WITH THE EARTHQUAKE?

2 A CORRECT.

3 Q OKAY. SO THE REASONS FOR CLOSURE OF THE
4 PARK, JUST SO WE'RE CLEAR, LEASE EXPIRATION AND EARTHQUAKE?

5 MR. MOSHENKO: OBJECTION. ASKED AND ANSWERED THREE
6 TIMES.

7 MR. SHERMAN: I'VE BEEN GETTING DIFFERENT ANSWERS.

8 THE COURT: OVERRULED.

9 THE WITNESS: IT'S THE SAME ANSWER. I DON'T KNOW
10 WHAT ANSWER I CAN GIVE YOU. I TOLD YOU THERE WAS AN
11 EARTHQUAKE, AND I TOLD YOU THE LEASE WAS UP. I DIDN'T --
12 ANYMORE THAN THAT, YOU MUST HAVE FORGOT WHAT I SAID.

13 BY MR. SHERMAN: Q AND WHEN RUTH PARKER CAME INTO
14 THIS COURT AND TESTIFIED THAT THE REASON SHE WAS MOVED WAS
15 BECAUSE OF A FLOOD, SHE WAS MISTAKEN?

16 A SIR, YOU'VE BEEN -- THE PAPER. THERE WAS AN
17 EARTHQUAKE. THAT WAS THE NORTHRIDGE EARTHQUAKE OR WHATEVER
18 IT WAS. THE BRIDGE COLLAPSED GOING INTO THE PARK, PART OF
19 THE FREEWAY ENTRANCE. AND IT MIGHT HAVE CAUSED A FLOOD AT
20 THE SAME TIME. I DON'T KNOW. THE PARK WAS IN A FLOOD
21 AREA, I REMEMBER THAT. BUT I DON'T REMEMBER THE FLOOD.

22 Q NOW, IN FACT -- IF WE CAN GO BACK TO THE
23 FIRST PAGE OF THIS BANKRUPTCY PETITION, YOU'LL SEE THIS IS
24 IN RE GUARDIAN CREDIT CORPORATION; DO YOU SEE THAT?

25 A YES.

26 Q AND THEN LET'S GO TO THE BANKRUPTCY COURT

1 NUMBER DOWN BELOW.

2 A YES.

3 Q SB 94-15392 MG; RIGHT?

4 A YES.

5 Q AND, NOW, LET'S FAST-FORWARD FROM APRIL,
6 1994, TO JULY, 1995.

7 IN JULY, 1995, THIS BANKRUPTCY CASE WAS
8 CONVERTED TO A CHAPTER 7 LIQUIDATION; CORRECT?

9 A I'M NOT SURE.

10 Q LET ME SEE IF I CAN'T REFRESH YOUR
11 RECOLLECTION. EXHIBIT 1445.

12 MR. MOSHENKO: IT MAY GO IN, AND WE'LL STIPULATE
13 THAT IT WAS CONVERTED AS OF JULY 25, 1995.

14 THE COURT: THANK YOU.

15 (WHEREUPON, EXHIBIT NO. 1445, BANKRUPTCY
16 DOCUMENT, WAS RECEIVED IN EVIDENCE.)

17 BY MR. SHERMAN: Q LET'S PUT IT UP ON THE BOARD,
18 PLEASE.

19 Q SO THE GUARDIAN CREDIT CORPORATION, THERE
20 WAS AN ORDER ON THE TRUSTEE'S MOTION TO DISMISS OR CONVERT
21 THE CASE. AND WHY DON'T WE GO DOWN TO SECTION 2, MIKE.

22 IT SAYS RIGHT THERE, 2-B, IF WE COULD
23 HIGHLIGHT THAT. "MOTION GRANTED. THIS CASE IS HEREBY
24 CONVERTED TO ONE UNDER CHAPTER 7."

25 SO IN JULY, 1995, THE RESORT PARK THAT
26 RUTH PARKER BOUGHT HER MEMBERSHIP INTO IN THE 1980'S, WHICH

1 THE BEEN PUT IN BANKRUPTCY IN 1993, '94, WAS CONVERTED TO A
2 BANKRUPTCY, A LIQUIDATING BANKRUPTCY; CORRECT?

3 MR. MOSHENKO: OBJECTION, CUMULATIVE. WE'VE
4 STIPULATED TO IT. WE DON'T HAVE TO SPEND ANYMORE TIME WITH
5 IT.

6 THE COURT: SUSTAINED.

7 BY MR. SHERMAN: Q MR. NOVELLI, YOU DID NOT TELL
8 RUTH PARKER AND OTHERS LIKE HER THAT THE PARK THAT SHE HAD
9 BOUGHT INTO WAS CONVERTED IN A CHAPTER 7 LIQUIDATING
10 BANKRUPTCY; CORRECT?

11 A SIR, YOU'RE MISSTATING THE FACTS. LET ME
12 MAKE IT CLEAR AGAIN.

13 VALENCIA WAS A LEASE. THE PEOPLE THAT OWNED
14 THE LEASE WANTED THE PROPERTY BACK. THEY GOT IT BACK.
15 VALENCIA, THE PARK, WAS NOT SHUT DOWN BY THIS ORDER, BY THE
16 CHAPTER 7. THE PARK WAS GONE. THE OWNERS HAD IT BACK. IT
17 DOESN'T SAY THAT VALENCIA WAS PART OF SOME BANKRUPTCY AND
18 GOT CONVERTED. THE MEMBERS WENT OVER TO ANOTHER PARK.
19 YOU'RE GETTING CORPORATIONS MIXED UP WITH REAL PROPERTY.

20 Q THE EARTHQUAKE DIDN'T AFFECT THE OPERATIONS
21 OF THE VALENCIA PARK; YOUR FAILURE TO MAKE PAYMENTS
22 AFFECTED THE OPERATIONS; CORRECT?

23 A THE EARTHQUAKE SHUT IT DOWN. WHAT FINALLY
24 SHUT IT DOWN WAS THE EARTHQUAKES.

25 Q AND IF MR. LARSON WAS TO COME INTO COURT AND
26 SAY UNDER OATH THAT THEY HAD TO TAKE THE PARK BACK BECAUSE

1 YOU WEREN'T MAKING THE PAYMENTS, WOULD HE BE TELLING THE
2 TRUTH?

3 A HE HAD MONEY DUE, BUT THE LEASE WAS UP
4 ALSO. IN OTHER WORDS, THEY WANTED THE PARK BACK.
5 MR. ROBB, HE WAS THE ONE TO PUSH IT, NOT LARSEN. THE ONE
6 THAT PUSHED THAT THING WAS -- RON ROBB WANTED THE PARK
7 BACK. HE WANTED TO DEVELOP IT. HE DIDN'T CARE WHETHER
8 LEASE MONEY WAS DUE OR NOT DUE. HE WASN'T EVEN CONCERNED
9 ABOUT THE LEASE. HE JUST WANTED THE PARK BACK SO HE COULD
10 DEVELOP IT.

11 Q AND WHEN YOU SHUT THE PARK DOWN, YOU
12 TRANSFERRED THE MEMBERS TO ACTON?

13 A LIKE WE AGREED WITH MR. LARSON AND WITH
14 MR. ROBB.

15 Q AND YOU DID THAT OVER THEIR OBJECTION?

16 A ABSOLUTELY NOT. THEY DIDN'T WANT THE
17 MEMBERS. THE WHOLE AGREEMENT WAS BASED ON US ACCEPTING
18 THOSE MEMBERS AND GETTING THEM AWAY FROM THAT PARK. AND I
19 THINK I STATED THAT BEFORE. THERE WAS NOTHING -- MR. ROBB
20 DIDN'T WANT THE MEMBERS. MR. LARSON DIDN'T WANT THE
21 MEMBERS.

22 AND IF YOU'D LIKE TO, PUT HIM ON THE STAND,
23 AND HE'LL SAY THAT. PUT HIM ON THE STAND.

24 Q AND IF MR. LARSON WAS TO COME INTO COURT AND
25 WAS TO TESTIFY UNDER OATH THAT YOU TOOK THE MEMBERS FROM
26 HIM AND FROM MR. ROBB, HE WOULD BE TELLING THE TRUTH?

1 A HE WOULD BE LYING.

2 MR. SHAW: YOUR HONOR, I JUST OBJECT. THIS CALLS
3 FOR SPECULATION. NOBODY HAS COME IN AND TESTIFIED ABOUT
4 IT. FOR HIM TO RECITE TESTIMONY THAT'S NEVER OCCURRED IS
5 IMPROPER.

6 THE COURT: SUSTAINED.

7 BY MR. SHERMAN: Q DO YOU KNOW IF IRA ROBB NOW
8 OPERATES TODAY A MEMBERSHIP CAMPGROUND RESORT AT THE VERY
9 SAME LOCATION IN VALENCIA, CALIFORNIA?

10 A I DON'T KNOW. WHEN HE GOT IT BACK, HE
11 WANTED A COMMERCIAL CAMPGROUND. SO IF HE WENT MEMBERSHIP,
12 IT WAS AFTER THAT TIME FRAME.

13 Q SO, MR. NOVELLI, WHEN YOU BUY OR LEASE A
14 PARK LIKE SALT SPRINGS, MR. PATTON, OR FROM VALENCIA,
15 MR. LARSON, THERE HAVE BEEN INSTANCES WHERE YOU DIDN'T PAY
16 ON YOUR PROMISES; CORRECT?

17 A THAT'S CORRECT.

18 Q YOU DON'T PAY THE DEBT; RIGHT?

19 A SOMETIMES THE PARKS -- REMEMBER, ALL THESE
20 CAMPGROUND PARKS AS WE ACQUIRED THEM WERE IN TROUBLE. AND
21 THE -- LATER YOU SAID, WELL, IT WASN'T IN TROUBLE. THEY
22 WERE ANXIOUS TO SELL THE PARK. THEY WERE ANXIOUS TO GET
23 RID OF THE MEMBERS. AND THEY CALLED US IN. WE DIDN'T CALL
24 THEM. THEY CALLED US IN TO TRY TO SOLVE SOME SORT OF
25 PROBLEM THEY HAD.

26 Q AND SO WHEN YOU'RE ABOUT TO LOSE THE PARK,

1 YOU, QUICK, MOVE THE MEMBERS; RIGHT?

2 A PART OF THE AGREEMENT CALLED FOR US TO MOVE
3 THE MEMBERS. I THINK YOU NEED TO PUT THE AGREEMENT UP.

4 Q IN ORDER TO KEEP THOSE LITTLE ITTY-BITTY
5 CHECKS COMING IN TO YOU; CORRECT?

6 A THIS IS YOUR PHRASE. I DON'T KNOW WHERE YOU
7 GOT THE PHRASE. IT'S CERTAINLY -- DON'T PUT IT ON ME.
8 IT'S NOT MY PHRASE. I NEVER USED THAT PHRASE, THAT I CAN
9 RECALL.

10 Q YOU NEVER USED THAT PHRASE IN THE PRESENCE
11 OF JIM PATTON; IS THAT YOUR TESTIMONY?

12 A I DON'T RECALL EVER SAYING THAT IN THE
13 PRESENCE OF JIM PATTON, NO.

14 Q IS THAT YOUR M.O.?

15 MR. MOSHENKO: OBJECTION. ARGUMENTATIVE.

16 THE COURT: SUSTAINED.

17 THE WITNESS: THE LITTLE BITTY CHECKS -- I DON'T
18 EVEN KNOW THE QUESTION.

19 BY MR. SHERMAN: Q LET'S TALK ABOUT PONDEROSA.
20 THEY'RE A PLAINTIFF IN THIS CASE; RIGHT?

21 A YES, THEY ARE.

22 Q NOW, YOU'LL RECALL OUR EXCHANGE ON MONDAY
23 WHEN MR. MOSHENKO WAS ASKING YOU QUESTIONS. I SAID THAT
24 PONDEROSA WAS INVOLVED IN THREE BANKRUPTCIES, AND YOU
25 CORRECTED ME AND SAID TWO.

26 A I BELIEVE TWO.

1 Q WHEN DID THE PARK FIRST FILE ITS BANKRUPTCY?

2 A I'M NOT SURE. WHEN WE WERE ASKED TO COME IN
3 TO MANAGE THE PARK. THEY WERE IN BANKRUPTCY. I'M NOT SURE
4 WHEN THEY FILED THAT BANKRUPTCY.

5 Q WHAT DECADE?

6 A I DON'T KNOW. I GUESS SOMETIME IN THE '80'S
7 IT WAS FILED.

8 Q AFTER YOU BOUGHT THE PARK OUT OF BANKRUPTCY,
9 HOW MANY BANKRUPTCIES DID YOU THEN FILE CONCERNING THAT
10 PROPERTY?

11 A THERE MIGHT HAVE BEEN TWO. I DON'T KNOW. I
12 BELIEVE THERE WAS TWO.

13 Q PONDEROSA HAD FILED A BANKRUPTCY IN THE LATE
14 '80'S, CORRECT?

15 A I DIDN'T FILE IT.

16 Q AND YOU BOUGHT IT OUT OF BANKRUPTCY?

17 A THAT'S CORRECT.

18 Q AND THEN -- LET ME SHOW YOU EXHIBIT 951.

19 THAT'S YOUR SIGNATURE ON THE SECOND PAGE?

20 A YES.

21 Q AND THAT'S A BANKRUPTCY FILING MADE FOR THE
22 PONDEROSA PARK ON APRIL 23, 1997; CORRECT?

23 A APRIL 17TH IT LOOKS LIKE.

24 Q APRIL 17?

25 THAT'S WHEN YOU SIGNED IT; RIGHT?

26 A YES.

1 Q APRIL 17, 1997?

2 A CORRECT.

3 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 951 INTO
4 EVIDENCE.

5 MR. MOSHENKO: CAN YOU TAKE IT UNDER SUBMISSION,
6 YOUR HONOR? IT'S ABOUT THIS THICK (INDICATING).

7 THE COURT: UNDER SUBMISSION.

8 MR. SHERMAN: OKAY.

9 Q THAT'S THE VOLUNTARY PETITION FOR THE
10 PONDEROSA PARK.

11 AND ON THE SECOND PAGE YOU'VE SIGNED AS THE
12 PRESIDENT OF PONDEROSA PARK; RIGHT?

13 A YES.

14 Q NOW, I WANT TO GO BACK TO YOUR TESTIMONY
15 GIVEN ON JUNE 26, PAGE 4675, LINE 22, TO PAGE 4676, LINE
16 10.

17 "QUESTION: DID THE PONDEROSA HAVE MORE THAN
18 ONE BANKRUPTCY?

19 "ANSWER: YES. THE PONDEROSA HAD TWO
20 BANKRUPTCIES.

21 "QUESTION: WHICH -- NAME THEM OR LIST THEM.

22 "ANSWER: THE FIRST BANKRUPTCY WAS WHEN WE
23 TOOK OVER MANAGEMENT, AND THAT WAS BACK IN THE EARLY '90'S.

24 "QUESTION: OKAY. WHEN WAS THE SECOND ONE?

25 "ANSWER: AND THE SECOND BANKRUPTCY WAS WHEN
26 THERE WAS A LAWSUIT INVOLVED WITH ONE OF THE MAJOR LENDERS,

1 AND THAT RESULTED -- FORCED ME OR THE COMPANY TO PLACE IT
2 BACK INTO THE BANKRUPTCY FOR PROTECTION AGAINST THE MAJOR
3 CREDITOR.

4 "QUESTION: OKAY. AND WHEN DID YOU DO THAT?

5 "ANSWER: AND I BELIEVE THAT WAS AROUND '94,
6 '93. I DON'T RECALL. COUPLE YEARS LATER."

7 SO NOW THE REFERENCE TO THE TWO BANKRUPTCIES
8 THERE, THAT'S THE EARLY '90'S BANKRUPTCY, OR MAY HAVE BEEN
9 '88; RIGHT?

10 A WHENEVER IT WAS, YES.

11 Q OKAY. AND THEN YOU'VE GOT THIS '93 OR '94
12 BANKRUPTCY; CORRECT? THAT'S WHAT YOU TESTIFIED?

13 A I TOLD YOU I COULDN'T RECALL THE TIME OF
14 THESE THINGS. BUT IN THE MEANTIME, THAT'S WHAT IT SAYS,
15 YES.

16 Q WELL. NOW, IS THIS 1997 BANKRUPTCY THE
17 THIRD?

18 A EVIDENTLY.

19 Q NOW, THAT BEING THE CASE, I THINK I WAS
20 WRONG. I THINK THAT THERE WAS A FOURTH BANKRUPTCY THAT YOU
21 WERE INVOLVED WITH WITH THE PONDEROSA, MR. NOVELLI, FILED
22 MARCH 17, 2000, OF THIS YEAR.

23 A WAS THERE ANOTHER ONE FILED IN '94, IN OTHER
24 WORDS?

25 THE COURT: YOU HAVE A QUESTION PENDING.

26 WAS THERE ONE FILED THIS YEAR, 2000?

1 THE WITNESS: NO. THERE WAS AN INVOLUNTARY THAT
2 WAS DISMISSED.

3 BY MR. SHERMAN: Q WAS IT DISMISSED YESTERDAY OR
4 THE DAY BEFORE?

5 A YES. IT WAS DISMISSED I THOUGHT ABOUT A
6 WEEK AGO.

7 Q IT WAS FILED ON MARCH 17, 2000, BY THE SAME
8 LENDERS THAT YOU HAD IN APRIL, 1997; CORRECT?

9 A CORRECT.

10 Q AND, IN FACT, YOU DO NOT KNOW WHETHER THAT
11 CASE HAS BEEN DISMISSED; CORRECT?

12 A I WAS TOLD IT WAS DISMISSED BY THE LAW
13 FIRM. THESE PEOPLE BROUGHT AN ACTION THAT WASN'T ACCORDING
14 TO CODE, AND MY UNDERSTANDING WAS IT WAS DISMISSED.

15 Q YOU DO NOT KNOW FOR A FACT; CORRECT?

16 A I DON'T KNOW FOR A FACT, BUT I WAS TOLD
17 THAT.

18 Q AND LET ME GO TO THE TESTIMONY THAT YOU GAVE
19 ON -- ALSO ON MONDAY OF THIS WEEK, JUNE 26, PAGE 4675-23 TO
20 4678, LINE 6.

21 "QUESTION: DID THE PONDEROSA HAVE MORE THAN
22 ONE BANKRUPTCY?

23 "ANSWER: YES. THE PONDEROSA HAD TWO
24 BANKRUPTCIES.

25 "QUESTION: WHICH -- NAME THEM OR LIST THEM.

26 "ANSWER: THE FIRST BANKRUPTCY WAS WHEN WE

1 TOOK OVER MANAGEMENT, AND THAT WAS BACK IN THE EARLY '90'S.

2 "QUESTION: OKAY. WHEN WAS THE SECOND ONE?

3 "ANSWER: AND THE SECOND BANKRUPTCY WAS WHEN
4 THERE WAS A LAWSUIT INVOLVED WITH ONE OF THE MAJOR LENDERS,
5 AND THAT RESULTED -- FORCED ME OR THE COMPANY TO PLACE IT
6 BACK INTO THE BANKRUPTCY FOR PROTECTION AGAINST THE MAJOR
7 CREDITOR.

8 "QUESTION: OKAY. AND WHEN DID YOU DO THAT?

9 "ANSWER: AND I BELIEVE THAT WAS AROUND '94,
10 '93. I DON'T RECALL. COUPLE YEARS LATER.

11 "QUESTION: SO YOU SAID TO PROTECT THE
12 RESORT AGAINST THE LENDER?

13 "ANSWER: CORRECT.

14 "QUESTION: OKAY. LET'S HAVE SOME MORE
15 INFORMATION ABOUT THAT.

16 "WHY DID YOU CONSIDER IT NECESSARY TO
17 PROTECT THE RESORT AGAINST THIS LENDER?

18 "ANSWER: THE LENDER -- ONE OF THE -- WANTED
19 TO FORECLOSE ON THE PROPERTY. THIS PARTICULAR PROPERTY WAS
20 OWNED IN MY OPINION BECAUSE IT WAS A U.D.I., UNDIVIDED
21 INTEREST, BY THE MEMBERS. IT WASN'T NORM-- THE NORMAL
22 TYPE SITUATION WHERE THERE WAS A MEMBERSHIP SOLD. THEY
23 WERE SOLD A DEED IN INTEREST.

24 "QUESTION: ALL RIGHT. SO WHAT WAS THE
25 LENDER SEEKING TO DO THAT HURT THE MEMBERS' DEEDED
26 INTERESTS?"

1 IN THE INTEREST OF SAVING TIME, I'D LIKE TO
2 SKIP DOWN, IF I MIGHT, YOUR HONOR, TO PAGE 4678, LINE 2.

3 "QUESTION: ALL RIGHT. SO YOU FILED A
4 BANKRUPTCY IN '93 OR '94. WAS IT A REORGANIZATION?

5 "ANSWER: YES.

6 "QUESTION: AND DID IT REORGANIZE?

7 "ANSWER: YES."

8 OKAY. SO WE'VE GOT THE LATE '80
9 BANKRUPTCY, THE '93-'94 BANKRUPTCY, THE '97 BANKRUPTCY;
10 CORRECT?

11 A I'M NOT SURE THERE WAS A BANKRUPTCY IN '94.
12 I'M JUST TRYING TO RECALL.

13 Q IN FACT --

14 A I MIGHT HAVE BEEN MISTAKEN ABOUT THAT ONE.
15 I JUST DON'T RECALL HAVING THEM -- YOU KNOW, TWO
16 BANKRUPTCIES OVER THERE AFTER I GOT OUT.

17 INCIDENTALLY, THE INVOLUNTARY WAS NEVER --
18 IS NOT IN BANKRUPTCY. PONDEROSA WASN'T IN BANKRUPTCY. THE
19 INVOLUNTARY DIDN'T PLACE IT IN. IT WASN'T ADJUDICATED OR
20 ADJUDGED IN THE BANKRUPTCY, AND IT ISN'T UNTIL THIS DAY.
21 SO THERE'S REALLY NOTHING TO DISMISS BECAUSE IT NEVER WENT
22 IN.

23 Q NOW, THE '97 BANKRUPTCY, THOUGH, WAS
24 DISMISSED BY THE BANKRUPTCY COURT; CORRECT?

25 A RIGHT. I JUST MISUNDERSTOOD ON THAT '94.

26 Q THERE WAS NO PLAN CONFIRMED --

1 THE COURT: WAIT A MINUTE. THE REPORTER CAN ONLY
2 TAKE ONE OF YOU AT A TIME.

3 MR. SHERMAN: THANK YOU, YOUR HONOR.

4 Q AND THERE WAS NO PLAN OF REORGANIZATION
5 CONFIRMED IN THE 1997 BANKRUPTCY CASE; CORRECT?

6 A THAT'S CORRECT.

7 Q THERE WAS NO REORGANIZATION?

8 MR. MOSHENKO: ASKED AND ANSWERED.

9 THE COURT: OVERRULED.

10 THE WITNESS: IT WAS DISMISSED, THE '97.

11 BY MR. SHERMAN: Q NOW, THE APRIL 1997 BANKRUPTCY
12 OF PONDEROSA, MY CLIENT HAD ABSOLUTELY NOTHING TO DO WITH
13 THAT APRIL 1997 FILING; CORRECT?

14 A THAT'S CORRECT.

15 Q MR. NOVELLI, I'D LIKE TO SWITCH GEARS RIGHT
16 NOW. I'D LIKE TO TALK TO YOU ABOUT WHO WAS GETTING PAID IN
17 1996, AND WHO WASN'T GETTING PAID IN 1996.

18 MR. LARSEN WAS NOT GETTING PAID IN 1996;
19 CORRECT?

20 MR. MOSHENKO: CUMULATIVE, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 BY MR. SHERMAN: Q EMPLOYEES WEREN'T GETTING PAID
23 IN 1996?

24 MR. MOSHENKO: CUMULATIVE, YOUR HONOR.

25 THE COURT: SUSTAINED.

26 BY MR. SHERMAN: Q THE GOVERNMENT WASN'T GETTING

1 PAID IN 1996?

2 MR. MOSHENKO: 352, YOUR HONOR. I REQUEST THAT
3 COUNSEL BE INSTRUCTED TO MOVE ON TO A DIFFERENT ISSUE.

4 THE COURT: SUSTAINED.

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

6 THE COURT: I THINK I RULED. I KNOW I RULED.

7 BY MR. SHERMAN: Q I'D LIKE TO SHOW YOU EXHIBIT
8 166.

9 MR. NOVELLI, YOU'RE AWARE THAT IN THE A.S.R.
10 RECEIVERSHIP, THE RECEIVER FILED REPORTS WITH THE COURT?

11 A YES.

12 Q THAT YOU WERE COPIED WITH; CORRECT?

13 A YES.

14 Q I'M GOING TO PLACE BEFORE YOU A REPORT BY
15 THE RECEIVER, 166.

16 THIS IS A REPORT FOR THE PERIOD ENDED
17 DECEMBER 31, 1996; CORRECT?

18 A YES.

19 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 166 INTO
20 EVIDENCE, YOUR HONOR.

21 MR. SHAW: YOUR HONOR, WE OBJECT TO THIS DOCUMENT.
22 IT IS NOT A DOCUMENT THAT'S SIGNED BY MR. NOVELLI. IT'S
23 SEPARATE THAN THESE OTHER COURT DOCUMENTS. IT FALLS UNDER
24 EVIDENCE CODE SECTION 1300. IT IS HEARSAY.

25 MR. SHERMAN: THE WITNESS HAS ACKNOWLEDGED THE
26 RECEIPT OF THIS DOCUMENT, YOUR HONOR.

1 MR. SHAW: THAT DOESN'T MAKE IT NOT HEARSAY. IT'S
2 AN OUT-OF-COURT STATEMENT BY SOMEONE BEING OFFERED FOR THE
3 TRUTH OF THE MATTER ASSERTED. AND IT'S HEARSAY.

4 MR. SHERMAN: AND THE RECEIVER, MR. KEIM, HAS
5 AUTHENTICATED THIS DOCUMENT. WE WILL CONDITIONALLY MOVE IT
6 INTO EVIDENCE, GIVEN THE FACT THAT THE RECEIVER PREPARED
7 THIS DOCUMENT, SIGNED THIS DOCUMENT, AND HAS SO TESTIFIED
8 TO THAT EFFECT.

9 THE COURT: IS KEIM GOING TO TESTIFY?

10 MR. SHERMAN: BY VIDEO DEPOSITION, YES, YOUR HONOR.

11 MR. MOSHENKO: YOUR HONOR, WE TALKED ABOUT VIDEO
12 DEPOSITIONS REGARDING MR. ROBINSON AND OTHER PARTIES THAT
13 WE NOW HAVE TO -- THEY HAVE BEEN ORDERED TO BRING HERE.
14 THEY WANT TO BRING MR. KEIM HERE TO THIS COURT AND
15 AUTHENTICATE THIS DOCUMENT SO I CAN CROSS-EXAMINE HIM,
16 THAT'S FINE.

17 MR. SHERMAN: MR. MOSHENKO HAD THE RIGHT TO
18 CROSS-EXAMINE AND WAS ON THE TELEPHONE WHEN THAT DEPOSITION
19 WAS TAKEN.

20 THE COURT: I'M GOING TO ALLOW IT.

21 (WHEREUPON, EXHIBIT NO. 166, RECEIVER
22 REPORT, WAS RECEIVED IN EVIDENCE.)

23 BY MR. SHERMAN: Q LET'S GO TO PAGE 13.

24 MR. NOVELLI, YOU'RE FAMILIAR WITH THIS PROOF
25 OF CLAIM FOR UNPAID TAX OF \$5.8 MILLION; IS THAT CORRECT?

26 A I'M FAMILIAR WITH SOME OF THE TAXES, BUT

1 I'M NOT EXACTLY REALLY FAMILIAR WITH THIS PARTICULAR PROOF
2 OF CLAIM.

3 Q IN 1996 ALL SEASONS RESORTS OWED
4 \$5,796,506.06 TO THE FEDERAL GOVERNMENT; CORRECT?

5 A I'M NOT SURE IF THEY DID OR THEY DIDN'T. I
6 KNOW THEY OWED MONEY TO THE GOVERNMENT, YES.

7 Q YOU WERE AWARE AS OF 1996, LATE 1996, THAT
8 PAYROLL WITHHOLDING TAXES FOR MANY YEARS HAD BEEN OWED BY
9 ALL SEASONS RESORTS TO THE FEDERAL GOVERNMENT, TO THE
10 INTERNAL REVENUE SERVICE; CORRECT?

11 A YES.

12 Q AND, MR. NOVELLI, YOU TOLD EMPLOYEES WHEN
13 YOU PAID THEM WITH PAYCHECKS THAT MONEY WAS BEING WITHHELD
14 FROM THEIR PAYCHECKS; CORRECT?

15 A I DIDN'T TELL THEM THAT.

16 Q YOU GAVE THEM PAYMENT SLIPS --

17 A YES.

18 Q -- THAT SHOWED THAT?

19 A CORRECT.

20 Q IT WAS BEING WITHHELD ON ACCOUNT OF PAYROLL
21 WITHHOLDING; CORRECT?

22 A YES.

23 Q BUT YOU DIDN'T WITHHOLD IT ON ACCOUNT OF
24 PAYROLL WITHHOLDING; YOU JUST KEPT IT; CORRECT?

25 A WE PAID WHENEVER WE WERE ABLE TO. THIS IS
26 NOT ALL THE TAXES, OF COURSE. WE PAID MILLIONS IN TAXES.

1 WE PAID AS WE'RE ABLE TO PAY. THERE WAS CERTAIN
2 PRIORITIES. YOU PAY OR YOU DON'T PAY. AND DEPENDENT ON
3 THE CASH FLOW. MOST OF THESE TAXES WERE PUT IN DURING THE
4 BANKRUPTCY.

5 Q YOU COLLECTED DUES FROM MEMBERS FOR PARK
6 EXPENSES, BUT YOU DID NOT BOTHER TO PAY TAXES; CORRECT?

7 A SIR, WE ONLY USE THE MONEY THAT WE HAD.

8 Q CAMP COAST TO COAST WAS NOT RESPONSIBLE FOR
9 YOUR DECISION TO NOT PAY PAYROLL WITHHOLDING TAXES TO THE
10 INTERNAL REVENUE SERVICE; CORRECT?

11 A OF COURSE NOT.

12 Q AND THE INTERNAL REVENUE SERVICE IS NOT
13 AFTER YOU PERSONALLY ON ACCOUNT OF THESE TAXES; CORRECT?

14 A THAT'S CORRECT.

15 Q AND YOU DON'T EVEN OWN ANY PROPERTY IN YOUR
16 OWN NAME; CORRECT?

17 A CORRECT.

18 Q BUT ALL THE WHILE NEARLY \$5.8 MILLION
19 PAYROLL WITHHOLDING TAXES IS NOT BEING PAID, YOU USED FIRST
20 NATIONWIDE MONEY TO START AN AIRLINE; CORRECT?

21 A MOST OF THAT WASN'T TAXES. MOST OF THAT IS
22 PENALTY AND INTEREST ON THOSE TAXES. THE LIEN IS ONE
23 THING, AND IT'S SOMETHING ELSE. I BELIEVE THERE WAS
24 SOMEWHERE AROUND MAYBE 2 AND A HALF MILLION, NOT THAT
25 THAT'S INSIGNIFICANT, BUT IT CERTAINLY WASN'T 5 MILLION.

26 MR. SHAW: YOUR HONOR, I'LL JUST OBJECT. THIS IS

1 ALL SEASONS RESORTS, NOT EVEN A PLAINTIFF IN THIS CASE, NOT
2 EVEN A PARTY IN THIS CASE. NOW HE IS ASKING QUESTIONS
3 ABOUT ALL THE WHILE, ALL SEASONS RESORTS, SOMETHING TO DO
4 WITH FIRST NATIONWIDE RESORTS, WHICH IS A PARTY TO THIS
5 CASE.

6 THERE'S NO RELATIONSHIP. MISCHARACTERIZES
7 THE EVIDENCE. LACKS FOUNDATION THAT ANYTHING HAVING TO DO
8 WITH ALL SEASONS WHO IS NOT A PARTY TO THIS LAWSUIT HAS
9 ANYTHING TO DO WITH FIRST NATIONWIDE TAXES. TWO SEPARATE
10 ENTITIES. TAXES DON'T RELATE TO EACH OTHER.

11 MR. SHERMAN: YOUR HONOR, ALL SEASONS RESORTS HAS
12 EVERYTHING TO DO WITH THIS CASE.

13 THE COURT: THEY'RE NOT A PARTY, THOUGH, ARE THEY?

14 MR. SHAW: THEY'RE NOT A PARTY.

15 THE COURT: THEY'RE NOT A PARTY.

16 MR. SHERMAN: THEY ARE ONE OF THE COMPANIES THAT
17 CAME TOGETHER TO FORM TRAVEL AMERICA AS WE SAW IN EXHIBIT
18 10001. TRAVEL AMERICA WAS FORMED FROM ALL SEASONS RESORTS.

19 MR. SHAW: YOUR HONOR, THEY'RE NOT A PARTY TO THIS
20 LAWSUIT. THERE'S NO CLAIM BEING MADE ON THEIR BEHALF.

21 YOUR HONOR, I'D RATHER NOT MAKE A SPEECH IN
22 FRONT OF THE JURY, BUT I DO HAVE A POINT THAT NEEDS TO BE
23 MADE.

24 THE COURT: TELL YOU WHAT LET'S DO.

25 THE JURY: THE JURY KNOWS.

26 THE COURT: AS YOU LEAVE, BRIAN WILL GIVE YOU EACH

1 A COPY OF THAT. AND YOU ALL HAVE A VERY SAFE AND SANE
2 FOURTH. FLY YOUR FLAGS.

3 THE BAILIFF: THE JURY IS COMING BACK JULY 10TH.

4 THE COURT: WE'LL SEE YOU BACK JULY 10TH AT 9:00
5 A.M.

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

8 MR. SHAW: YOUR HONOR, I WAS MAKING THE OBJECTION,
9 AND I WOULD JUST LIKE TO FINISH.

10 MR. SHERMAN: I HAD MADE THE OBJECTION, AND THE
11 COURT ASKED THAT WE ADJOURN FOR THE WEEKEND.

12 THE POINT IS THAT 18,000 MEMBERS OF ALL
13 SEASONS WERE EJECTED. THE COURT HAS HEARD LABORIOUS
14 TESTIMONY ON THAT POINT, AT THIS POINT FROM MR. MALPASS.
15 THE PLAINTIFFS ARE SEEKING DAMAGES ON ACCOUNT OF MANY OF
16 THOSE MEMBERS, YOUR HONOR.

17 THE NOTION THAT ALL SEASONS RESORTS
18 ACTIVITIES AND MR. NOVELLI'S ACTIVITIES IN CONNECTION WITH
19 ALL SEASONS RESORTS AND FINOVA AND JEFFREY KEIM ARE NOT
20 RELEVANT TO THIS PROCEEDING, IT IS BEYOND THE PALE AT THIS
21 POINT. ALL SEASONS RESORTS HAS EVERYTHING TO DO WITH THIS.

22 MR. SHAW: AS IS TYPICAL, THIS ISN'T EVEN WHAT I'M
23 TALKING ABOUT HERE HAVING TO DO WITH ALL SEASONS RESORTS.
24 IT'S A GIVEN THEY'RE NOT A PARTY TO THIS LAWSUIT.

25 MR. SHERMAN WANTS TO GO ON AND MAKE A SPEECH ABOUT ALL
26 SEASONS RESORTS' TAXES BEING RELATED TO FIRST NATIONWIDE,

1 PAYING SOME PRESIDENTIAL AIR. THAT WAS THE QUESTION.

2 ALL I'M ASKING IS THE COURT LISTEN TO THE
3 QUESTION THAT MR. SHERMAN ASKED THAT I WAS OBJECTING TO.

4 THE COURT: ALL RIGHT.

5 MR. SHAW: DO YOU MIND READING IT BACK?

6 (THE FOLLOWING TESTIMONY WAS READ BACK:

7 "BUT ALL THE WHILE NEARLY \$5.8 MILLION PAYROLL WITHHOLDING
8 TAXES IS NOT BEING PAID, YOU USED FIRST NATIONWIDE MONEY TO
9 START AN AIRLINE; CORRECT?"

10 MR. SHAW: SO, WHAT IN THE HECK -- AND I'LL TONE
11 DOWN MY LANGUAGE. WHAT IN THE HECK DOES \$5 MILLION FOR ALL
12 SEASONS RESORTS HAVE TO DO WITH FIRST NATIONWIDE -- TOTALLY
13 SEPARATE COMPANY, TOTALLY SEPARATE ISSUE -- PAYING FOR
14 PRESIDENTIAL AIR? THAT'S THE ISSUE THAT I BROUGHT TO THE
15 COURT.

16 THE COURT: THAT IS THE ONLY QUESTION.

17 MR. SHAW: THAT WAS THE ONLY QUESTION.

18 THE COURT: NO PROBLEM.

19 MR. SHERMAN: TOTALLY SEPARATE COMPANY, ALLEGEDLY
20 OPERATED OUT OF THE SAME COMPANY WITH NO FINANCIAL RECORDS,
21 WHERE WE SAW THE FINDING EARLIER TODAY ABOUT A CHAOTIC
22 CORPORATE STRUCTURE, WHERE MR. NOVELLI DOESN'T EVEN KNOW
23 WHO IS THE PRESIDENT AT VARIOUS TIMES WITH NO RECORDS, WITH
24 NO BACKUP; WITH AN INSTANCE WHERE PRESIDENTIAL AIR,
25 ACCORDING TO MR. NOVELLI'S OWN TESTIMONY, HAS HAD
26 TRANSACTIONS WITH BOTH FIRST NATIONWIDE AND ALL SEASONS

1 RESORTS.

2 YOUR HONOR, MR. NOVELLI, IT'S PRETTY CLEAR
3 AT THIS POINT HE HAS BEEN USING THESE COMPANIES FOR YEARS
4 AS HIS PERSONAL PIGGIE BANK, AND THAT GOES DIRECTLY TO THE
5 ISSUES OF CAUSATION IN THIS CASE.

6 THE FACT THAT THE INTERNAL REVENUE SERVICE
7 SAW FIT TO LEVY NEARLY \$5.8 MILLION IN BACK TAXES AND
8 PENALTIES HAS EVERYTHING TO DO WITH RECEIVERSHIP
9 PROCEEDINGS, HAS EVERYTHING TO DO WITH BUSINESS FAILURES.
10 THE ORDER ITSELF FROM THE U.S. DISTRICT COURT SAID THAT
11 A.S.R. TRANSFERRED MONIES TO AFFILIATED COMPANIES. I MEAN,
12 WE'VE BEEN IN THE SAME COURTROOM TODAY. I DON'T BELIEVE
13 THAT THERE CAN BE A SERIOUS DISPUTE THAT THERE'S A LOT OF
14 EVIDENCE GOING TO MANIPULATION OF FINANCIAL RECORDS AND THE
15 SENDING OF MONIES EVERY WHICH WAY, INCLUDING TO MR. NOVELLI
16 PERSONALLY.

17 AND RESPECTFULLY DIRECTED TO COUNSEL, THIS
18 HAS EVERYTHING TO DO WITH CAUSATION.

19 MR. SHAW: YOU KNOW, YOUR HONOR, I DON'T GIVE A
20 DARN ABOUT WHAT MR. SHERMAN --

21 THE COURT: WHAT THE HELL, SAY DAMN.

22 MR. SHAW: ALL RIGHT. I DON'T GIVE A DAMN WHAT
23 MR. SHERMAN THINKS. THE FACT IS THERE'S AN EVIDENCE CODE,
24 AND THERE'S A WAY THAT YOU HAVE TO CONDUCT THESE HEARINGS.

25 MR. NOVELLI IS NOT A PARTY. ALL SEASONS
26 RESORTS IS NOT A PARTY. OVER MY VOCIFEROUS OBJECTION THAT

1 FINOVA DOCUMENT CAME IN. IT SAID ALL SEASONS RESORTS MAY
2 HAVE BEEN CHAOTIC. BUT, AGAIN, I COME BACK TO THIS ONE
3 QUESTION: FOR HIM TO STAND HERE AND ASK A QUESTION, DOES
4 THE TAXES ON ALL SEASONS RESORT HAVE ANYTHING TO DO WITH
5 FIRST NATIONWIDE PAYING -- PAYING PRESIDENTIAL AIR, THERE'S
6 NO FOUNDATION. THERE'S MR. SHERMAN'S RANTING AND RAVINGS,
7 BUT THERE'S NO EVIDENCE OF THAT.

8 THAT WAS THE QUESTION THAT WAS ASKED. THAT
9 WAS THE OBJECTION THAT I MADE. MR. SHERMAN GOES OFF ON
10 SOME TANGENTS ABOUT WHAT HE THINKS IS HAPPENING ABOUT
11 MR. NOVELLI, WHO IS NOT A PARTY, ALL SEASONS RESORTS, WHO
12 IS NOT A PARTY.

13 THE FACT IS, WE JUST HEARD TWO DAYS OF
14 NOTHING TO DO WITH THE TRANSFERS THAT WERE MADE IN LATE
15 1997. WE'RE BACK IN '88, '89, '93, '94. IT DOESN'T EVEN
16 HAVE TO DO WITH THE DAMAGE ISSUES IN THIS CASE, YOUR
17 HONOR. IT'S NOTHING BUT A SMEAR TACTIC. IT'S A SMEAR
18 TACTIC THAT -- AGAIN, I TOOK -- I HAD TO TAKE THE BITTER
19 PILL ON THE FELONY. I HAD TO TAKE THE BITTER PILL ON THE
20 FINOVA. I BELIEVE THE EVIDENCE CODE IS CLEAR. WE'RE BACK
21 IN '88, '89 FOR ONE REASON ONLY: TO DRUDGE UP AS MUCH DIRT
22 AND THROW UP AS MUCH DIRT -- AND I WON'T USE THE OTHER
23 METAPHOR THAT I HAVE IN MIND -- THROW UP AS MUCH DIRT
24 AGAINST THE WALL AS MR. SHERMAN CAN POSSIBLY DO TO
25 PREJUDICE THIS JURY AGAINST ONE INDIVIDUAL WHO IS NOT A
26 PARTY.

1 I BELIEVE, YOUR HONOR, IT HAS TO STOP. IT
2 HAS TO STOP SOMEWHERE. AND HE TRIES TO BRING MR. MOSHENKO
3 INTO THIS THING. IT'S GOT TO STOP. THESE QUESTIONS ARE
4 NOT -- THERE'S NO FOUNDATION. BUT BY THE WAY MR. SHERMAN
5 CHARACTERIZES THESE QUESTIONS, HE MAKES THEM THINK THAT
6 THEY'RE TRUE. HE MAKES THEM THINK THAT THE COURT HAS
7 SUSTAINED MY OBJECTIONS REGARDING HIM SAYING MR. PATTON --
8 IF MR. PATTON COMES IN HERE AND SAYS SUCH AND SUCH, THAT'S
9 IMPROPER. MR. PATTON HASN'T COME IN YET. HE MAY TRY TO
10 COME IN, BUT THEN I'LL HAVE A CHANCE TO CROSS-EXAMINE HIM.
11 AND HE HAS TO SEE THE LIGHT OF DAY.

12 BUT NOT MR. SHERMAN TELLING US WHAT
13 WITNESSES ARE GOING TO SAY AND HOW THEY'RE GOING TO SAY
14 IT. YOUR HONOR, IT'S JUST TOTALLY, TOTALLY IMPROPER. WE
15 SHOULD NOT BE HAVING THE GUNFIGHT AT THE O.K. CORRAL. WE
16 SHOULD BE FOCUSING ON A BUSINESS CASE THAT HAS TO DO WITH
17 35,000 TRANSFER LETTERS THAT ARE BEING SENT.

18 THESE ISSUES THAT HE IS TALKING ABOUT,
19 BANKRUPTCIES AND FINOVA, DON'T HAVE ANYTHING TO DO WITH
20 EVEN THE DAMAGES IN THIS CASE. THE DAMAGES ARE THE DUES
21 THAT WERE LOST AND THE COST OF GENERATING THOSE PARTICULAR
22 MEMBERS. THEY DON'T HAVE ANYTHING TO DO WITH THESE
23 ISSUES. AND WITH THAT, I -- I'LL SUBMIT.

24 THE COURT: ALL RIGHT. SUBMIT.

25 AS I SEE IT, THE EVIDENCE HERE SEEMS TO BE
26 COMING FORTH TO SHOW A SCHEME, PERHAPS.

1 NOW, YOU'VE ALLEGED DAMAGES AS A RESULT OF A
2 LOSS OF MEMBERS. AND I THINK THE DEFENSE HAS THE RIGHT TO
3 REFUTE THAT BY SHOWING THAT PERHAPS THESE LOSSES ARE NOT
4 ATTRIBUTABLE TO THIS LETTER THAT WENT OUT; THAT THERE MAY
5 HAVE BEEN A SERIES OF PROBLEMS THAT ERUPTED PRIOR TO THAT
6 LETTER GOING OUT. AND I THINK HE HAS A RIGHT TO SHOW
7 THAT. **THERE'S A PATTERN HERE.**

8 SO WITHOUT GETTING TOO PERSONAL WITH THE
9 WITNESSES, I THINK IT'S PERMISSIBLE. HOW ELSE CAN YOU
10 REFUTE THESE ALLEGED DAMAGES? I MEAN, HE IS GOING TO HAVE
11 TO SHOW -- HE HAS TO SHOW THAT -- ACTUALLY, HE DOESN'T HAVE
12 TO SHOW ANYTHING. **YOU'VE GOT TO SHOW THE DAMAGES, AND WE**
13 **HAVEN'T SEEN THAT YET.**

14 MR. MOSHENKO: BUT, YOUR HONOR, IF HE WANTS TO SAY
15 FIRST NATIONWIDE WAS A PLAINTIFF, DIDN'T PAY ITS TAXES, OR
16 IT GAVE MONEY TO PRESIDENTIAL AIR, THAT'S CONSISTENT WITH
17 WHAT YOU JUST SAID.

18 THE COURT: YEAH.

19 MR. MOSHENKO: BUT IF HE WANTS TO SAY FIRST
20 NATIONWIDE DIDN'T PAY ALL SEASONS' TAXES, WHICH IS WHAT THE
21 QUESTION IS, AND CAST ASPERSIONS ON FIRST NATIONWIDE, IT'S
22 LIKE SAYING, AND FIRST NATIONWIDE DIDN'T PAY GENERAL
23 MOTORS' TAXES. WHAT'S THE DIFFERENCE HERE?

24 THE DIFFERENCE IS HE CAN GO AFTER -- DO WHAT
25 YOUR HONOR SUGGESTS WITH FIRST NATIONWIDE, AND FIRST
26 NATIONWIDE'S LEGITIMATE DEBT. THERE'S NO FOUNDATION

1 THERE'S ANY DUTY BY FIRST NATIONWIDE TO PAY ALL SEASONS'
2 TAXES, AND THAT'S WHY THE QUESTION IS IMPROPER.

3 THE COURT: OKAY.

4 MR. SHERMAN: YOUR HONOR, CAN I JUST SAY SOMETHING
5 VERY SIMPLY AND QUICKLY, HOPEFULLY?

6 THE OUTRAGE EXPRESSED, DIRECTED TO ME
7 PERSONALLY, TO MY CLIENTS, IS COMPLETELY UNFOUNDED.
8 FOUNDATION HAS BEEN LAID. THIS IS A BUSINESS CASE
9 INVOLVING A MAN WHO HAS NO BUSINESS RECORDS, WHERE A
10 FOUNDATION HAS BEEN LAID FOR TAXES THAT ARE OWED, WHERE
11 FOUNDATION HAS BEEN LAID TO TRANSFERS AROUND AND AROUND TOO
12 NUMEROUS FOR ME TO COUNT OFF RIGHT NOW.

13 AND WE HAVE A RIGHT, AS I THINK YOUR HONOR
14 HAS RECOGNIZED, TO DEFEND OURSELVES, AND WE INTEND TO DO
15 THAT.

16 HAVE A GOOD WEEKEND.

17 MR. SHAW: YOUR HONOR, I CAN'T LET THIS RECORD GO
18 WITHOUT RESPONDING BECAUSE SOME DAY, SOMEONE IS GOING TO BE
19 READING THIS RECORD AND SAY MR. SHAW REMAINED SILENT WHEN
20 MR. SHERMAN JUST MADE THAT SPEECH.

21 WE LOOKED AT THIS PROOF OF CLAIM. THAT
22 PROOF OF CLAIM WENT THROUGH THE YEARS THAT MR. JOSEPH WAS
23 THE -- AND I KNOW I HAVE CROSS-EXAMINATION, AND THIS IS
24 GOING TO BE A FUN CROSS-EXAMINATION -- REDIRECT. EXCUSE
25 ME.

26 THAT PROOF OF CLAIM SHOWED YEARS THAT

1 MR. JOSEPH WAS THE TRUSTEE, THAT MR. KEIM WAS THE
2 RECEIVER. THOSE ARE ALL -- THAT'S WHEN THE TAXES WEREN'T
3 PAID, IS WHEN THEY -- BUT, YET, HE IS ASKING THESE
4 QUESTIONS OF THIS INDIVIDUAL, AND THE RECORD IS TO REFLECT
5 THE TAXES THAT WEREN'T PAID, THERE WERE OTHER REASONS FOR
6 THAT, AND NOT WHAT JUST MR. SHERMAN JUST ARTICULATED.

7 THE COURT: OKAY. THAT'S THE END OF IT.

8 MR. SHAW: THANK YOU.

9 THE COURT: BEFORE YOU GO --

10 MR. MOSHENKO: THE OBJECTION IS OVERRULED OR
11 SUSTAINED?

12 MR. SHERMAN: BUT THE FACTS ARE WRONG. THE FACTS
13 ARE WRONG.

14 THE COURT: THE OBJECTION IS SUSTAINED.

15 MR. MOSHENKO: THANK YOU, YOUR HONOR.

16 THE COURT: BEFORE YOU LEAVE, QUESTION. SO THAT
17 YOU CAN PLAN ACCORDINGLY ON JULY THE 11TH, WHICH IS
18 TUESDAY, MRS. STENNER, JUROR NUMBER 17, SHE HAS A DOCTOR'S
19 APPOINTMENT THAT WAS CHANGED FROM 3:45 TO 2:30. AND SHE
20 HAS APPARENTLY GOT SOME KIND OF --

21 THE BAILIFF: SHE HAS A NECK PROBLEM THAT SHE GOING
22 TO SEE A SPECIALIST FOR.

23 THE COURT: AND SHE HAS BEEN TRYING TO GET TO SEE
24 THIS GUY FOR OVER A MONTH OR SO. SO PERHAPS WE CAN DO
25 THIS: ON THAT DATE, TUESDAY, WE CAN WORK THROUGH UNTIL --
26 SAY, SKIP THE LUNCH AND WORK UNTIL 1:00. AND THEN WE'LL

1 ADJOURN AT 1:00 SO THAT SHE CAN'T MISS THE APPOINTMENT.

2 MR. MOSHENKO: WE CAN ALWAYS CONSIDER BY THAT TIME
3 WE'LL HAVE A FEW UNDER-SUBMISSIONS TO TALK ABOUT, PERHAPS,
4 IF THE COURT IS SO INCLINED.

5 THE COURT: YES, OKAY. ALL RIGHT. FELLOWS,
6 LADIES, GENTLEMEN.

7 (WHEREUPON THE COURT WAS IN RECESS UNTIL
8 MONDAY, JULY 10, 2000 9:00 A.M.)

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