

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

JULY 13, 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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I N D E X

EXHIBIT

IN EVIDENCE

EXHIBIT NO. 2045, PTE 07789,  
ORGANIZATIONAL CHART OF AFFINITY GROUP,  
INC.

5752

1 WESTMINSTER, CALIFORNIA - THURSDAY, JULY 13, 2000

2 MORNING SESSION

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

5 THE COURT: YOU MAY PROCEED.

6 MR. SHAW: THE PLAINTIFF WOULD CALL STEVEN ADAMS TO  
7 THE STAND, PLEASE.

8 STEPHEN ADAMS,

9 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS UNDER  
10 EVIDENCE CODE SECTION 776, HAVING BEEN FIRST DULY SWORN,  
11 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

12 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD AND  
13 SPELL YOUR LAST NAME FOR THE REPORTER IN FRONT OF YOU.

14 THE WITNESS: STEPHEN ADAMS, A-D-A-M-S.

15 THE COURT: IS THAT WITH A "P" OR "V"?

16 THE WITNESS: P-H-E-N.

17 CROSS-EXAMINATION

18 BY MR. SHAW: Q GOOD MORNING, MR. ADAMS.

19 A GOOD MORNING.

20 Q I AM -- I WANT TO TALK TO YOU ABOUT THE  
21 DEFENDANT, AFFINITY GROUP, INC., AND THE DEFENDANT, CAMP  
22 COAST TO COAST.

23 YOU ARE A DIRECTOR OF AFFINITY GROUP, INC.;

24 IS THAT CORRECT?

25 A YES.

26 Q AND THERE'S A HOLDING COMPANY, AFFINITY

1 GROUP HOLDING CORPORATION --

2 MR. SHERMAN: OBJECTION. IRRELEVANT.

3 THE COURT: OVERRULED.

4 BY MR. SHAW: Q -- THAT OWNS THE STOCK IN AFFINITY  
5 GROUP, INC.?

6 A AFFINITY GROUP HOLDING, INC., OWNS THE STOCK  
7 OF AFFINITY GROUP, INC.

8 Q OKAY. AND YOU OWN 100 PERCENT OF THE STOCK  
9 OF AFFINITY GROUP HOLDING COMPANY?

10 A HOLDING CORP, YES.

11 Q HOLDING CORP. I'M SORRY. I'M SORRY. I'M  
12 GOING BACK AND FORTH WITH THESE TERMS. LET ME TRY TO GET  
13 IT STRAIGHT.

14 YOU, MR. ADAMS, OWN 100 PERCENT OF THE STOCK  
15 OF AFFINITY GROUP HOLDING CORP?

16 A YES, SIR.

17 Q AND AFFINITY GROUP HOLDING CORP OWNS 100  
18 PERCENT OF THE STOCK OF AFFINITY GROUP, INC.?

19 A AFFINITY GROUP HOLDING, INC.

20 Q AND AFFINITY GROUP HOLDING, INC., OWNS 100  
21 PERCENT OF THE STOCK OF AFFINITY GROUP, INC.?

22 A THAT'S CORRECT.

23 Q NOW, LET'S TALK ABOUT THE BUSINESS THAT THE  
24 DEFENDANT, AFFINITY GROUP, INC., IS IN. I'D LIKE TO FOCUS  
25 ON THAT, MR. ADAMS.

26 AFFINITY GROUP, INC., PROVIDES A LINE OF

1 SERVICES INCLUDING PUBLISHING MAGAZINES AND DIRECTORIES; IS  
2 THAT CORRECT?

3 A THAT'S CORRECT.

4 Q AND IT ALSO HAS A NUMBER OF CLUBS THAT ARE  
5 INVOLVED IN MARKETING PRODUCTS TO THE R.V., RECREATIONAL  
6 VEHICLE, INDUSTRY?

7 A THAT'S CORRECT.

8 Q AND IT ALSO HAS A HOST OF ANCILLARY PRODUCTS  
9 WHICH INCLUDE INSURANCE, WARRANTIES, CREDIT CARDS, AND  
10 FINANCING THAT IT PROVIDES TO THE RECREATIONAL VEHICLE  
11 INDUSTRY; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q SO, IN ESSENCE, IT'S A SERVICE ORGANIZATION  
14 FOR R.V. OWNERS; IS THAT CORRECT?

15 A FOR THE MOST PART, YES.

16 Q NOW, LET'S TALK ABOUT THE INSURANCE  
17 PRODUCTS. THOSE ARE INSURANCE PRODUCTS FOR RECREATIONAL  
18 VEHICLES; IS THAT CORRECT?

19 A YES.

20 Q AND THE WARRANTIES, WHAT TYPE OF WARRANTIES  
21 DOES AFFINITY GROUP, INC., PROVIDE?

22 A THEY WOULD ISSUE A WARRANTY FOR AN R.V.  
23 OWNER FOR A CERTAIN PERIOD OF TIME TO WARRANT THE PRODUCTS,  
24 SERVICE GOING FORWARD.

25 Q AND IS PUBLISHING MAGAZINES AND DIRECTORIES  
26 A LARGE PART OF THE AFFINITY GROUP BUSINESS?

1           A           IT IS, YES.

2           Q           AND IF I CAN LIST SOME OF THE PUBLICATIONS  
3 THAT AFFINITY GROUP PUBLISHES.

4                       THEY PUBLISH TRAILER LIFE, MOTOR HOME, GOLF  
5 MAGAZINE, COAST TO COAST MAGAZINE, HIGHWAYS MAGAZINE, AND  
6 THEN THE EVERETT GROUP HAS 18 TITLES WHICH REVOLVE AROUND  
7 SNOWMOBILING, ALL-TERRAIN VEHICLES, PERSONAL WATERCRAFT,  
8 MOTORCYCLES; AND THERE IS ALSO A PUBLICATION OF A -- BY A  
9 GROUP CALLED "WOODALL'S," AND THOSE ARE ALL PART OF  
10 PUBLICATIONS THAT ARE INVOLVED OR THAT ARE RUN AND OPERATED  
11 BY AFFINITY GROUP, INC.?

12          A           THAT'S CORRECT.

13          Q           ARE THERE ANY OTHER -- TO MOVE US ALONG, I  
14 TRIED TO SUM IT UP FROM YOUR TESTIMONY ON FEBRUARY 7TH OF  
15 YOUR DEPOSITION.

16                      HAVE YOU READ YOUR DEPOSITION IN PREPARATION  
17 FOR TODAY?

18          A           A FEW WEEKS AGO I DID, YES.

19          Q           I TRIED TO SUM IT UP. THAT'S WHAT YOU  
20 TESTIFIED ABOUT ON FEBRUARY 7TH.

21                      ARE THERE ANY OTHER PUBLICATIONS THAT YOU --  
22 THAT I DID NOT RECITE?

23          A           I THINK YOU'VE HIT MOST OF THEM.

24          Q           NOW, AFFINITY GROUP ALSO HAS OPERATING  
25 DIVISIONS; IS THAT CORRECT?

26          A           YES.

1 Q AND THAT WOULD BE A LAYER THAT WOULD BE  
2 UNDER THE AFFINITY GROUP, INC., AND THAT IS, WE HAVE YOU  
3 OWN 100 PERCENT OF THE STOCK OF THE HOLDING CORP; THE  
4 HOLDING CORP OWNS 100 PERCENT OF THE STOCK OF HOLDING,  
5 INC.; AND HOLDING, INC., OWNS 100 PERCENT OF THE STOCK OF  
6 AFFINITY GROUP, INC. AND THEN AFFINITY GROUP, INC., OWNS  
7 100 PERCENT OF THE STOCK OF VARIOUS OPERATING DIVISIONS;  
8 CORRECT?

9 A THAT'S CORRECT.

10 Q NOW, I'D LIKE TO LOOK AT WHAT WE'VE MARKED  
11 AS EXHIBIT 1548, AND IT'S IN EVIDENCE, A PAGE FROM THE  
12 INSIDE NEWS NEWSLETTER, SEPTEMBER-OCTOBER OF 1997. IT'S 21  
13 PAGES IN 1548.

14 AND, MR. MICHAELS, WE'LL WAIT JUST A MINUTE  
15 FOR MR. SHERMAN TO GET --

16 MR. SHERMAN: THAT'S OKAY. GO AHEAD.

17 MR. SHAW: THAT'S OKAY?

18 MR. SHERMAN: YEAH.

19 BY MR. SHAW: Q CAN YOU SEE IT UP THERE,  
20 MR. ADAMS?

21 A YES.

22 Q THAT VISIBLE FOR YOU?

23 AND ONE OF THE PUBLICATIONS OF THE AFFINITY  
24 GROUP IS THE COAST TO COAST INSIDE NEWS?

25 A THAT'S CORRECT.

26 Q AND AS PART OF THE AFFINITY GROUP, INC.,

1 THERE ARE OPERATING DIVISIONS, ONE OF WHICH IS CALLED "CAMP  
2 COAST TO COAST."

3 AND WHAT KIND OF BUSINESS IS CAMP COAST TO  
4 COAST INVOLVED IN?

5 A IT'S A RECIPROCAL STAY BUSINESS IN THE  
6 CAMPGROUND INDUSTRY.

7 Q HOW ABOUT CAMPING WORLD; WHAT KIND OF A  
8 COMPANY IS CAMPING WORLD?

9 A CAMPING WORLD IS A RETAILING ORGANIZATION  
10 FOR THE AFTERMARKET PRODUCTS FOR R.V.'S.

11 Q CAN YOU DEFINE FOR ME WHAT YOU MEAN BY  
12 "AFTERMARKET"?

13 A WELL, THERE WOULD BE THINGS LIKE AWNINGS OR  
14 ELECTRIC GENERATORS OR DISHWARE OR CARPETS OR ATTACHMENTS  
15 FOR HOLDING YOUR DRINKS OR THINGS THAT ARE EITHER NOT  
16 AVAILABLE WHEN YOU BUY THE MOTOR HOME OR THAT YOU MIGHT  
17 WANT TO ADD TO IT. SO THEY'RE ADD-ONS TO THE MOTOR HOME.

18 Q AND THEN T.L. ENTERPRISES, INC., WHAT KIND  
19 OF AN OPERATING DIVISION IS THAT?

20 A WELL, T.L. ENTERPRISES, INC., HAS UNDER ITS  
21 ACTIVITIES SOME OF THE PUBLISHING, SOME OF THE CLUBS. TO  
22 BE HONEST WITH YOU, I'M NOT SURE EXACTLY WHAT ALL THE  
23 DIFFERENT OPERATIONS ARE UNDER T.L. ENTERPRISES.

24 Q AND THEN WOODALL'S, WHAT KIND OF AN  
25 OPERATING DIVISION IS WOODALL'S?

26 A WOODALL'S IS A CAMPGROUND DIRECTORY

1 PUBLISHING OPERATIONS.

2 Q AND IS IT SEPARATE FROM THE CAMP COAST TO  
3 COAST DIRECTORIES THAT WE'VE SEEN IN THIS CASE?

4 A YES, IT IS.

5 Q AND THEN THERE'S A GENTLEMAN WITH A HALO  
6 OVER HIS HEAD DOWN IN THE BOTTOM RIGHT-HAND COLUMN; WHAT  
7 DOES THAT STAND FOR?

8 A THAT'S THE LOGO FOR THE GOOD SAM CLUB.

9 Q WHAT'S THE GOOD SAM CLUB?

10 A THE GOOD SAM CLUB IS ONE OF OUR ENTITIES  
11 WHICH OFFERS MEMBERSHIP TO AN INDIVIDUAL FOR GETTING ACCESS  
12 TO VARIOUS AND SUNDRY CAMPGROUNDS AND, YOU KNOW, ALLOWS  
13 THEM TO BE PART OF THE LIFESTYLE.

14 ALSO A MEMBER WOULD RECEIVE A HIGHWAYS  
15 MAGAZINE. ALLOWS THEM TO BUY OUR INSURANCE PRODUCT. SO  
16 THE CLUB ITSELF HAS ABOUT A MILLION MEMBERS.

17 Q AND THEN IT SAYS, "WE HAVE YOU COVERED." DO  
18 YOU HAVE ANY UNDERSTANDING AS TO WHAT THAT MEANS, "WE HAVE  
19 YOU COVERED," UNDER THIS AFFINITY GROUP, INC., UMBRELLA?

20 A I THINK YOU CAN INTERPRET THAT ANY WAY YOU  
21 WANTED TO.

22 Q AND SO IF I CAN JUST KIND OF EXTRAPOLATE  
23 FROM WHAT I PUT ON THE BOARD, YOU'VE GOT AFFINITY GROUP,  
24 INC., AND ABOVE THAT IS HOLDING, INC., WHICH 100 PERCENT,  
25 AFFINITY GROUP, INC., AND ABOVE THAT IS HOLDING CORP, WHICH  
26 OWNS 100 PERCENT OF HOLDING, INC. AND ABOVE THAT AT THE

1 TOP IS YOU, SIR, WHO OWNS 100 PERCENT; CORRECT?

2 MR. SHERMAN: OBJECTION. THAT'S CUMULATIVE.

3 THE COURT: SUSTAINED.

4 BY MR. SHAW: Q YOU OWN 100 PERCENT OF ALL OF  
5 THESE COMPANIES; IS THAT CORRECT?

6 MR. SHERMAN: OBJECTION. CUMULATIVE.

7 THE COURT: I'LL ALLOW IT.

8 YOU MAY ANSWER.

9 THE WITNESS: I MAY ANSWER.

10 WOULD YOU RESTATE THE QUESTION.

11 BY MR. SHAW: Q YOU OWN 100 PERCENT OF ALL OF  
12 THESE COMPANIES?

13 A I DON'T OWN 100 PERCENT. I OWN BETTER THAN  
14 95 PERCENT.

15 Q BUT AT LEAST AT THE TOP -- AND I DON'T WANT  
16 TO BE CUMULATIVE FOR MR. SHERMAN'S BENEFIT.

17 BUT YOU OWN -- YOU OWN 100 PERCENT UP AT THE  
18 TOP; CORRECT?

19 A CORRECT.

20 Q IT MAY BE DOWN IN SOME OF THESE OPERATING  
21 DIVISIONS WHERE THERE MAY BE SOME OTHER OWNERSHIPS?

22 A NO, THAT ISN'T TRUE.

23 Q COULD YOU EXPLAIN IT TO ME, THEN?

24 A IN THE SECOND LEVEL DOWN, MY FAMILY, MY FOUR  
25 BOYS, ALSO HAVE 1 PERCENT INTEREST IN THE OPERATION.

26 Q OKAY. AND SO THAT LEAVES YOU WITH 99?

1 A ROUGHLY 96, WITH 1 PERCENT APIECE.

2 Q AND THAT'S DOWN AT THIS LEVEL OF HOLDING  
3 CORP?

4 A ONE LEVEL DOWN.

5 Q HOLDING, INC.?

6 A YES.

7 Q SO THERE'S AN ADAMS FAMILY --

8 A YES.

9 Q -- IF YOU CAN USE THAT TERM HERE? OKAY.

10 NOW, I'D LIKE TO TURN TO EXHIBIT 2045, BATES  
11 STAMP PTE 07789.

12 SECOND PAGE IN, MR. SHERMAN.

13 CAN YOU IDENTIFY THIS, SIR?

14 A YES.

15 Q CAN YOU SEE IT UP THERE --

16 A YES.

17 Q -- OR WOULD IT BE BETTER TO HAVE THAT IN  
18 FRONT OF YOU?

19 WHAT IS THAT DOCUMENT?

20 A THAT IS A DOCUMENT OF AN ORGANIZATION CHART  
21 OF AFFINITY GROUP, INC.

22 Q SO, AGAIN, WE'RE UNDER WHAT I'VE GOT ON THE  
23 BLACKBOARD, AND THIS IS AS OF 12/31/1997, AND THIS IS A  
24 DOCUMENT PRODUCED BY AFFINITY GROUP, INC.?

25 A YES, SIR.

26 MR. SHAW: YOUR HONOR, I'D LIKE TO MOVE THIS INTO

1 EVIDENCE.

2 MR. SHERMAN: NO OBJECTION.

3 THE COURT: IT WILL BE SO RECEIVED.

4 (WHEREUPON, EXHIBIT NO. 2045, PTE 07789,  
5 ORGANIZATIONAL CHART OF AFFINITY GROUP, INC., WAS RECEIVED  
6 IN EVIDENCE.)

7 BY MR. SHAW: Q NOW, UNDER THE UMBRELLA, WE SAW  
8 THE CAMPING WORLD, INC. AND IT HAS VARIOUS ENTITIES  
9 UNDERNEATH THAT; IS THAT CORRECT, SIR?

10 A YES.

11 Q BUT WE DIDN'T SEE THIS A.R.T. HOLDING CORP,  
12 AND AFFINITY GROUP THRIFT HOLDING CORP.

13 LET'S STOP WITH A.R.T. HOLDING CORP. WHAT  
14 IS THAT?

15 MR. SHERMAN: OBJECTION, YOUR HONOR. THESE ARE NOT  
16 RELEVANT LEGAL ISSUES.

17 MR. SHAW: THIS IS BACKGROUND AND FOUNDATIONAL AS  
18 TO WHAT THE COMPANY DOES.

19 MR. SHERMAN: WE'VE GONE INTO BACKGROUND AND  
20 FOUNDATIONAL, WHAT THE COMPANY DOES, FOR THE PAST 15  
21 MINUTES. THESE ARE NOT RELEVANT LEGAL ISSUES.

22 MR. SHAW: YOUR HONOR, I'VE GOT ABOUT FIVE MORE  
23 MINUTES, AND I BELIEVE I HAVE A RIGHT TO ESTABLISH WHAT THE  
24 COMPANY DOES.

25 THE COURT: I'LL ALLOW IT.

26 BY MR. SHAW: Q DO YOU HAVE THE QUESTION IN MIND,

1 SIR?

2 A NO. WOULD YOU REPEAT YOURS?

3 Q OKAY. I DIDN'T SEE UNDER THE UMBRELLA THAT  
4 WE LOOKED AT ON EXHIBIT 1548 THE A.R.T. HOLDING COMPANY AND  
5 THE ALLIED GROUP THRIFT HOLDING CORP.

6 WHAT ARE THOSE -- LET'S START WITH A.R.T.  
7 HOLDING CORP. WHAT TYPE OF AN ENTITY IS THAT?

8 A THE A.R.T. HOLDING CORP I THINK IS PRIMARILY  
9 IN THE EMERGENCY ROAD SERVICE BUSINESS. YOU KNOW, IT'S  
10 TYPICAL OF OUR BUSINESS WHERE WE PROVIDE SERVICE LIKE AAA  
11 DOES.

12 Q AND THEN HOW ABOUT THE AFFINITY THRIFT  
13 HOLDING CORP; WHAT'S THAT?

14 A THAT IS A THRIFT AND, YOU KNOW, SAVINGS BANK  
15 THAT WE SET UP IN LATE 1997.

16 Q AND THEN THERE'S OTHER WHOLLY OWNED  
17 SUBSIDIARIES, AND THERE'S 12 -- THERE ARE 12 OTHER  
18 OPERATING DIVISIONS UNDER THE AFFINITY GROUP?

19 A THAT'S CORRECT.

20 Q AND ONE OF THEM HERE, THE THIRD ONE DOWN, IS  
21 THE CAMP COAST TO COAST, INC. AND THEN WE SEE THE T.L.  
22 ENTERPRISES, WHICH WAS UNDER THE UMBRELLA. I DON'T SEE THE  
23 GOOD NEIGHBOR SAM ON THIS CHART. IS IT HERE SOMEWHERE,  
24 SIR?

25 A IT'S NOT A SEPARATE SUBSIDIARY.

26 Q AND I DON'T SEE THE WOODALL'S; IS THAT --

1           A           THAT IS THERE. IT'S RIGHT UNDER YOUR STICK  
2 THERE. THERE IT IS.

3           Q           THANK YOU, SIR.

4                        AND THEN ON THE LEFT WE HAVE GOLF CARD  
5 HOLDING CORP. WHAT IS THAT?

6           A           THAT'S A CLUB MUCH LIKE THE GOOD SAM CLUB  
7 EXCEPT IT CATERS TO THE PEOPLE IN THE GOLF INDUSTRY.

8           Q           AND WITH ALL THESE CLUBS, AFFINITY GROUP,  
9 INC., HAS 11.7 MILLION PAYING MEMBERS; IS THAT CORRECT?

10          A           THAT WOULD SOUND HIGH TO ME.

11          Q           COULD YOU TAKE A LOOK AT -- I PUT IN FRONT  
12 OF YOU YOUR NOVEMBER 5, 1999, DEPOSITION TRANSCRIPT.

13          A           YES.

14          Q           I'D LIKE YOU TO LOOK AT PAGE 173 AND SEE IF  
15 THAT REFRESHES YOUR RECOLLECTION.

16                        I'LL HELP YOU, SIR. I MISREAD. IT SAYS 1.7  
17 MILLION?

18          A           YES.

19          Q           IS THAT MORE TO YOUR -- IS THAT YOUR  
20 RECOLLECTION AS TO THE NUMBER?

21          A           YES.

22          Q           AND THAT INCLUDES CAMP COAST TO COAST?

23          A           THAT DOES, YES.

24          Q           AND CAMP COAST TO COAST PRODUCES IN DOLLAR  
25 AMOUNTS AND PERCENTAGE ABOUT 15 PERCENT OF THE AFFINITY  
26 GROUP HOLDING, INC., BUSINESS?

1 MR. SHERMAN: OBJECTION. 3295 OF THE CIVIL CODE.

2 THE COURT: SUSTAINED.

3 MR. SHAW: YOUR HONOR, MY POINT IS NOW CONNECTING  
4 AFFINITY GROUP TO CAMP COAST TO COAST AND HOW IT FITS INTO  
5 THE SCENARIO AS A DEFENDANT.

6 MR. SHERMAN: YOUR HONOR, OBJECT TO THE SPEAKING  
7 OBJECTION.

8 THE COURT: THE OBJECTION HAS BEEN SUSTAINED,  
9 COUNSEL.

10 BY MR. SHAW: Q NOW, THESE MEMBERS, THE 1.7  
11 MILLION MEMBERS THAT AFFINITY GROUP HAS, THEY ARE  
12 REGISTERED IN A DATABASE; CORRECT?

13 MR. SHERMAN: OBJECTION. AFFINITY GROUP'S 1.7  
14 MILLION MEMBERS ARE IRRELEVANT.

15 THE COURT: SUSTAINED.

16 BY MR. SHAW: Q YOU KNOW THAT AFFINITY GROUP,  
17 INC., IS A DEFENDANT IN THIS CASE?

18 A YES.

19 Q AND AFFINITY GROUP, INC., HAS A DATABASE OF  
20 ITS MEMBERS?

21 A YES.

22 Q AND THAT DATABASE INCLUDES COAST TO COAST  
23 MEMBERS?

24 A AS FAR AS I KNOW, YES.

25 Q AND WHERE IS THAT DATABASE KEPT?

26 A WELL, IT'S MOVED. IT WAS KEPT IN ST. LOUIS

1 IN THE MID-'90'S. AND THEN I THINK IT WAS MOVED TO DENVER  
2 SOMETIME IN 1997 OR '98.

3 Q AND DENVER IS WHERE THE COAST TO COAST  
4 OFFICES ARE LOCATED? IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND THAT'S AFFINITY GROUP'S BUILDING THAT  
7 THE AFFINITY GROUP OWNS?

8 MR. SHERMAN: OBJECTION. IRRELEVANT TO ANY LEGAL  
9 ISSUES IN THIS CASE.

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

11 YOU MAY ANSWER.

12 THE WITNESS: I HAVE TO LOOK AND SEE WHO OWNS THAT  
13 BUILDING. IT MAY BE AFFINITY GROUP. IT MAY BE A DIFFERENT  
14 COMPANY. I'D HAVE TO LOOK ON THIS CHART HERE TO DETERMINE  
15 THAT.

16 BY MR. SHAW: Q GO RIGHT AHEAD.

17 A A.G.I. PROPERTIES OF COLORADO IS OWNED BY  
18 AFFINITY GROUP, INC.

19 Q AND IT'S TRUE THAT THE AFFINITY GROUP  
20 DATABASE THAT HAS THE COAST TO COAST MEMBERS IS AN ASSET OF  
21 THE AFFINITY GROUP; CORRECT?

22 A YES.

23 Q NOW, I'D LIKE TO CHANGE SUBJECTS, MR. ADAMS,  
24 TO TALK ABOUT MR. RAYMOND NOVELLI.

25 YOU'VE MET MR. NOVELLI?

26 A I HAVE.

1 Q ON HOW MANY OCCASIONS?

2 A I THINK TWICE.

3 Q NOW, IN THE 1997 TIME PERIOD -- I'D LIKE YOU  
4 TO FOCUS ON THAT TIME PERIOD, IF YOU WOULD -- HOW MANY  
5 RESORTS WERE PART OF THE CAMP COAST TO COAST RECIPROCAL  
6 SYSTEM?

7 A I'D HAVE TO ASK SOMEBODY ELSE HOW MANY  
8 DURING THAT TIME PERIOD THERE WERE. I JUST DON'T KNOW.

9 Q I'D LIKE TO TRY TO REFRESH YOUR RECOLLECTION  
10 WITH, AGAIN, YOUR DEPOSITION OF NOVEMBER 5, 1999. WOULD  
11 YOU LOOK AT PAGE 104, SPECIFICALLY LINE 19 TO 21. IF YOU  
12 COULD JUST READ IT TO YOURSELF.

13 A SOMETHING AROUND 300 TO 400.

14 Q DOES THAT REFRESH YOUR RECOLLECTION?

15 A YEAH. IT'S NOT EXACT, BUT IT'S CLOSE ENOUGH  
16 FOR --

17 Q AND THE RECIPROCAL USE BUSINESS FOR CAMP  
18 COAST TO COAST REACHED ITS PEAK IN 1989; IS THAT CORRECT?

19 A IT MIGHT HAVE. I DON'T KNOW WHEN IT REACHED  
20 ITS PEAK.

21 MR. SHAW: YOUR HONOR, I'D LIKE TO READ FROM PAGE  
22 105 OF MR. ADAMS'S DEPOSITION, LINES 17 THROUGH 19.

23 ARE YOU WITH ME, COUNSEL?

24 MR. SHERMAN: ONE MOMENT, PLEASE.

25 YOUR HONOR, SO THAT THE FULL CONTEXT CAN BE  
26 APPRECIATED, I'D ASK THAT THE DEPOSITION BE READ BEGINNING

1 ON PAGE 103, LINE 16, WHICH WAS EVEN PART OF THE  
2 REFRESHMENT OF RECOLLECTION USED BEFORE, TO SHOW THE  
3 WITNESS'S KNOWLEDGE.

4 THE COURT: ALL RIGHT.

5 MR. SHAW: 103, LINE 16, COUNSEL?

6 MR. SHERMAN: YES.

7 MR. SHAW: ALL THE WAY THROUGH 105 LINE 19?

8 MR. SHERMAN: YES.

9 MR. SHAW: I DON'T HAVE ANY PROBLEM, YOUR HONOR.

10 THE COURT: PROCEED.

11 MR. SHAW:

12 "QUESTION: IF I WERE TO  
13 EXCLUDE MR. NOVELLI'S GROUP --  
14 YOU USED THE PHRASE 'NOVELLI'S  
15 GROUP OF MEMBERSHIP RESORTS' --  
16 FROM MY QUESTION, APPROXIMATELY  
17 HOW MANY OTHER MEMBER RESORTS  
18 ARE THERE AFFILIATED WITH COAST  
19 TO COAST TODAY?

20 "ANSWER: I THINK THERE'S  
21 MORE THAN 300 BUT LESS THAN 500.

22 "QUESTION: WHAT IS THE BASIS  
23 OF THAT INFORMATION?

24 "ANSWER: GENERAL KNOWLEDGE."

25 "QUESTION: REPORTED TO YOU  
26 BY PEOPLE --

1 "ANSWER: THE COMPANY.

2 "QUESTION: -- WITHIN THE  
3 COMPANY?

4 "ANSWER: YES.

5 "QUESTION: THE COMPANY BEING  
6 AFFINITY GROUP?

7 "ANSWER: YES.

8 "QUESTION: OR COAST TO  
9 COAST?

10 "ANSWER: EITHER ONE.

11 "QUESTION: BOTH?

12 "ANSWER: BOTH.

13 "QUESTION: HAS THE NUMBER  
14 TODAY CHANGED OVER THE YEARS;  
15 HAS IT BEEN MORE OR LESS IN THE  
16 PAST?

17 "ANSWER: IT'S GONE DOWN  
18 SOMEWHAT OVER TIME.

19 "QUESTION: WHEN YOU REFER TO  
20 MORE THAN 300, LESS THAN 500 --  
21 I USE THE WORD "RESORTS" IN THE  
22 QUESTION -- ARE WE TALKING ABOUT  
23 SEPARATE, INDIVIDUAL LOCATION  
24 RESORTS REGARDLESS OF WHETHER  
25 THEY ARE OWNED BY ONE DEVELOPER  
26 OR NOT?

1 "ANSWER: NOW, THAT, I DON'T  
2 HAVE AN ANSWER TO.

3 "QUESTION: IS IT YOUR  
4 EXPERIENCE -- DO YOU KNOW IF  
5 THERE ARE INSTANCES WHERE A  
6 SINGLE DEVELOPER MAY OWN  
7 MULTIPLE RESORTS?

8 "ANSWER: YES.

9 "QUESTION: SO IS YOUR 300 TO  
10 500 PERCENT -- I'M SORRY. LET  
11 ME START AGAIN.

12 SO IS YOUR 300 TO 500 A COUNT  
13 OF ALL OF THE RESORTS WITHOUT  
14 REGARD TO WHO OWNS THEM?

15 "ANSWER: YES.

16 "QUESTION: WHAT WAS THE  
17 HIGHEST NUMBER OF RESORTS THAT  
18 WERE EVER AFFILIATED WITH COAST  
19 TO COAST? AND I'M NOW  
20 INCLUDING BACK WHEN  
21 MR. NOVELLI --

22 "ANSWER: I DON'T RECALL.

23 "QUESTION: DO YOU HAVE AN  
24 ESTIMATE?

25 "ANSWER: I DON'T.

26 "QUESTION: WAS IT OVER

1 10,000 RESORTS?  
2 "ANSWER: NO.  
3 "QUESTION: WAS IT LESS THAN  
4 A THOUSAND RESORTS?  
5 "ANSWER: YES.  
6 "QUESTION: WAS IT LESS THAN  
7 500 RESORTS?  
8 "ANSWER: THAT, I'D BE  
9 SPECULATING.  
10 "QUESTION: WAS IT LESS  
11 THAN -- WELL, LET'S SEE.  
12 WAS IT MORE THAN 500 RESORTS?  
13 "ANSWER: I'D BE SPECULATING.  
14 "QUESTION: WAS IT LESS THAN  
15 EIGHT RESORTS?  
16 "ANSWER: I'D STILL BE  
17 SPECULATING.  
18 "QUESTION: SO THE CLOSEST  
19 YOU CAN GIVE ME IS LESS THAN A  
20 THOUSAND?  
21 "ANSWER: YES.  
22 "QUESTION: OKAY. WHEN WAS  
23 IT THAT IT HAD REACHED ITS PEAK  
24 OF SOME NUMBER LESS THAN A  
25 THOUSAND?  
26 "ANSWER: PROBABLY 1989."

1 BY MR. SHAW: Q AND, MR. ADAMS, TODAY THERE ARE  
2 APPROXIMATELY 225,000 MEMBERS, COAST TO COAST MEMBERS, THAT  
3 ARE AFFILIATED WITH THOSE 300 TO 400 RESORTS; IS THAT  
4 CORRECT?

5 A THAT'S CORRECT.

6 Q AND THE NUMBER OF MEMBERS IN THE COAST TO  
7 COAST SYSTEM HAVE BEEN DECREASING SINCE YOU PURCHASED THE  
8 COMPANY; CORRECT?

9 A THAT'S CORRECT.

10 Q NOW, MR. NOVELLI'S RESORTS IN 1997 WERE ONE  
11 OF THE LARGEST COAST TO COAST CUSTOMERS; CORRECT?

12 A I THINK SO.

13 Q AND THE TWO MEETINGS THAT YOU HAD WITH  
14 MR. NOVELLI, THE FIRST ONE OCCURRED IN OR ABOUT 1993; IS  
15 THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND THE PURPOSE OF THAT MEETING WAS TO TALK  
18 ABOUT THE OWNERSHIP OF THE MEMBERS; CORRECT?

19 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

20 THE COURT: OVERRULED.

21 YOU MAY ANSWER THE QUESTION.

22 THE WITNESS: THE PURPOSE OF THE MEETING WAS -- IN  
23 MY MIND WAS SORT OF A PR MEETING. I NEVER HAD ANY  
24 EXPERIENCE, FOUNDATION FOR WHAT THE DISCUSSION WAS GOING TO  
25 BE.

26 BY MR. SHAW: Q BUT YOU REMEMBER THERE WAS

1 DISCUSSION ABOUT THE FACT THAT MR. NOVELLI OWNED HIS  
2 MEMBERS; CORRECT?

3 MR. SHERMAN: OBJECTION. THAT VIOLATES THE PAROL  
4 EVIDENCE RULE.

5 THE COURT: SUSTAINED.

6 BY MR. SHAW: Q YOU DO RECALL DISCUSSIONS TAKING  
7 PLACE ABOUT THE BUSINESS OF MR. NOVELLI'S RESORTS AT THAT  
8 MEETING?

9 A I DO RECALL THE MEETING. I DON'T RECALL  
10 MUCH OF THE DETAIL OF THE MEETING.

11 Q SO IF I QUESTIONED YOU FURTHER ON WHAT  
12 MR. NOVELLI SAID AND WHAT YOU SAID AT THAT MEETING, YOU  
13 JUST DON'T HAVE ANY RECOLLECTION AS YOU SIT HERE TODAY?

14 A IT WOULD BE --

15 MR. SHERMAN: OBJECTION. THAT'S COMPOUND. AND  
16 IT'S GOING TO VIOLATE THE PAROL EVIDENCE RULE.

17 THE COURT: OVERRULED. I'LL ALLOW THE ANSWER.

18 BY MR. SHAW: Q DO YOU HAVE THE QUESTION IN MIND,  
19 SIR?

20 A NO. I WAS JUST GOING TO SAY THAT IT'S  
21 PRETTY VAGUE.

22 EIGHT YEARS AGO, AND ONE MEETING FOR TWO  
23 HOURS. YOU KNOW, I'M GETTING OLDER. THE BRAIN DOESN'T  
24 WORK QUITE AS WELL.

25 Q ALL RIGHT. AND I'LL ACCEPT THAT, AND I  
26 WON'T TEST THAT ANY FURTHER AS TO WHO SAID WHAT TO WHOM, IF

1 THAT'S YOUR PRESENT RECOLLECTION. SO I WILL MOVE ON TO A  
2 DIFFERENT SUBJECT.

3 AND I'D LIKE TO PUT BACK UP ON THE SCREEN  
4 THE EXHIBIT 2045. I'VE GIVEN YOU THAT PAGE IN FRONT OF  
5 YOU.

6 DO YOU HAVE THAT, MR. ADAMS?

7 A I DO.

8 Q NOW, IT IS A TRUE STATEMENT THAT THE  
9 AFFINITY GROUP, INC., IS A MEMBER-BASED DIRECT MARKETING  
10 ORGANIZATION PRIMARILY ENGAGED IN SELLING CLUB MEMBERSHIPS;  
11 CORRECT?

12 A I WOULD SAY THAT'S A GOOD REPRESENTATION OF  
13 WHAT OUR BUSINESS IS ALL ABOUT, YES.

14 Q AND THE CLUBS OR THE CLUB MEMBERSHIPS THAT  
15 ARE BEING SOLD ARE THOSE CLUBS THAT ARE ON -- SOME OF THE  
16 CLUBS THAT ARE ON EXHIBIT 2045?

17 A THAT'S CORRECT.

18 Q AND IT IS THE AFFINITY GROUP THAT SELLS  
19 THESE MEMBERSHIPS TO THESE OPERATING DIVISIONS AND CLUBS  
20 THROUGH ITS OWN CORPORATE STRUCTURE; CORRECT?

21 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.  
22 AND IT'S COMPOUND.

23 MR. SHAW: YOUR HONOR, IT'S THE PRESIDENT OF THE  
24 COMPANY THAT'S HERE TESTIFYING.

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

26 THE WITNESS: WELL, EACH DIVISION BASICALLY SELLS

1 ITS MEMBERS. AND ALSO IF THE GOLF CARD WAS ONE ENTITY, IT  
2 WOULD BE MARKETING ITS PRODUCT, OR THE T.L. ENTERPRISES  
3 WOULD BE MARKETING THE GOOD SAM PRODUCT CLUB MEMBERSHIP, OR  
4 IF IT'S COAST TO COAST, COAST WOULD BE WORKING ON ITS  
5 MEMBERSHIP. SO IT'S NOT ALL JUST ONE BIG BALL OF WAX.

6 BY MR. SHAW: Q WELL, LET'S LOOK AT PAGE 255 OF  
7 YOUR DEPOSITION ON FEBRUARY 7.

8 A I'M SORRY, BUT SOME OF THE PAGES WERE TORN  
9 OFF AT THE BOTTOM HERE.

10 Q LET ME SEE IF I CAN HELP YOU. THAT'S INTO  
11 THE EXHIBITS. AND I'M SORRY. THIS IS THE NOVEMBER 5TH.

12 I'VE GOT THE FEBRUARY 7 IN FRONT OF YOU.  
13 AND LET'S LOOK AT PAGE 255. AND I'D LIKE YOU TO JUST READ  
14 TO YOURSELF FROM LINE 9 THROUGH PAGE 256, LINE 1. IF YOU'D  
15 JUST TAKE A MINUTE TO READ THROUGH THAT.

16 HAVE YOU READ THAT FOR ME, SIR?

17 A YES.

18 Q SO YOU'RE TESTIFYING DIFFERENT TODAY THAN  
19 YOU TESTIFIED ON FEBRUARY 7TH, 2000; ISN'T THAT CORRECT?

20 MR. SHERMAN: OBJECTION, YOUR HONOR. IT'S  
21 ARGUMENTATIVE. ALSO IT WAS NOT GIVEN TO HIM IN CONTEXT. I  
22 WOULD ASK THAT THE REST OF THE PAGE 256 BE GIVEN, WHICH IS  
23 NOT WHAT COUNSEL DIRECTED.

24 THE COURT: THE OBJECTION IS WELL TAKEN.

25 BY MR. SHAW: Q CAN YOU CONTINUE TO READ?

26 A WOULD YOU LIKE ME TO?

1 Q WHATEVER MR. SHERMAN ASKED THE COURT TO HAVE  
2 READ.

3 MR. SHERMAN: THROUGH THE END OF PAGE 256, LINE 25,  
4 THE ANSWER THERE.

5 IS THERE A QUESTION PENDING, YOUR HONOR?

6 MR. SHAW: I'M ASKING HIM TO READ BEFORE -- I'M  
7 ACCEDING TO MR. SHERMAN'S WITNESS.

8 MR. SHERMAN: I SAW THE WITNESS COMPLETED QUITE  
9 SOME TIME AGO.

10 BY MR. SHAW: Q MR. ADAMS, I DON'T WANT TO HUSTLE  
11 YOU. I WANT TO GIVE YOU TIME.

12 HAVE YOU FINISHED READING?

13 A THE ANSWER THAT I GAVE YOU, I DON'T FEEL IT  
14 CONTRADICTS WHAT I SAID IN THE CONTEXT OF THIS. YOU  
15 KNOW --

16 Q LET ME ASK YOU THIS QUESTION THEN, SIR:  
17 ISN'T IT TRUE THAT ON FEBRUARY 7 YOU TESTIFIED AT PAGE 255,  
18 LINES 21, 22, AND I QUOTE:

19 "WELL, AFFINITY GROUP HOLDING SELLS ALL  
20 THESE MEMBERSHIPS UNDER THIS CORPORATE STRUCTURE," END OF  
21 QUOTES?

22 MR. SHERMAN: OBJECTION. IT IS OUT OF CONTEXT. IT  
23 IS ARGUMENTATIVE. THE FULL CONTEXT GOES ON AS I ASKED THE  
24 COURT.

25 THE COURT: CONTINUE TO READ.

26 MR. SHERMAN: PLEASE CONTINUE TO READ WHAT YOU'RE

1 NOT TELLING THE JURY.

2 MR. SHAW: YOUR HONOR, I OBJECT STRENUOUSLY TO ANY  
3 COMMENTS I'M ATTEMPTING --

4 THE COURT: CONTINUE.

5 MR. SHAW: -- TO NOT READ ANYTHING TO THE JURY.

6 THE COURT: COUNSEL, JUST, YOU KNOW, KEEP IT IN  
7 CONTEXT.

8 CONTINUE TO READ.

9 MR. SHAW: YOUR HONOR, THIS IS AN EVIDENCE CODE  
10 SECTION 776 WITNESS. I HAVE THE OPPORTUNITY TO  
11 CROSS-EXAMINE HIM ON HIS OWN TESTIMONY. AND I WILL READ  
12 THE REST OF THE ANSWER.

13 THE COURT: THAT'S WHAT I'M ASKING YOU TO DO.

14 MR. SHAW: THANK YOU, YOUR HONOR.

15 WELL, AFFINITY GROUP -- LET ME START WITH  
16 THE QUESTION AT LINE 9 THROUGH LINE 12, PAGE 255.

17 "SO WHAT DOES -- MY QUESTION IS,  
18 DOES AFFINITY GROUP HOLDINGS,  
19 INC. SELL CLUB MEMBERSHIPS IN  
20 SOME MANNER OTHER THAN THROUGH A  
21 DIVISION OR SUBSIDIARY CALLED  
22 'CAMP COAST TO COAST'?

23 "ANSWER: WELL, AFFINITY GROUP  
24 HOLDING SELLS ALL THESE  
25 MEMBERSHIPS UNDER THIS CORPORATE  
26 STRUCTURE. IT SELLS GOOD SAM

1 MEMBERSHIPS, GOLF CARD  
2 MEMBERSHIPS. IT SELLS  
3 PRESIDENT'S WORLD MEMBERSHIPS.  
4 IT SELLS CAMP COAST TO COAST  
5 MEMBERSHIPS, ALL UNDER DIFFERENT  
6 NAMES AND/OR INSIGNIAS, YOU  
7 MIGHT SAY."

8 END OF QUOTES.

9 MR. SHERMAN: EXCUSE ME, YOUR HONOR. OBJECTION.

10 THE COURT: APPROACH, PLEASE.

11 (DISCUSSION OFF THE RECORD.)

12 THE COURT: HAVE YOU EVER BEEN IN COURT BEFORE.

13 THE WITNESS: ONCE.

14 THE COURT: DID YOU EVER NOTICE SUCH A NOISY JURY?

15 THE WITNESS: THEY'RE LAUGHING. THAT'S GOOD.

16 THE JURY: HEY, WE'RE A NICE GROUP.

17 THE COURT: PROCEED, COUNSEL.

18 MR. SHAW: THANK YOU, YOUR HONOR.

19 Q AND A SIGNIFICANT PART OF AFFINITY GROUP'S  
20 BUSINESS IS CROSS-SELLING FROM CLUBS TO CLUBS THE ONE  
21 MILLION SEVEN MEMBERS; ISN'T THAT CORRECT?

22 A THERE WOULD BE A LOT OF CROSS-SELLING, YES.

23 Q AND THE PERSONNEL THAT IS USED TO MARKET OR  
24 SELL THE CLUB MEMBERSHIPS FOR CAMP COAST TO COAST ARE  
25 AFFINITY GROUP, INC., PERSONNEL; CORRECT?

26 MR. SHERMAN: OBJECTION. THAT IS VAGUE AS TO TIME.

1 THE COURT: RESTATE IT, COUNSEL.

2 BY MR. SHAW: Q IN 1997, 1996, 1995, 1994, ISN'T  
3 IT TRUE THAT AFFINITY GROUP, INC., PERSONNEL SOLD CAMP  
4 COAST TO COAST MEMBERSHIPS?

5 A WELL, AT THE TIME THERE MAY BE -- SOME WERE  
6 IN DENVER, AND SOME WERE IN CAMARILLO. WE MOVED OUR  
7 TELEMARKETING OPERATIONS AT SOME POINT DURING THAT TIME AND  
8 CONSOLIDATED THEM; SO THAT IF YOU WENT INTO THIS ROOM,  
9 YOU'D SEE 100 PEOPLE, AND THERE MIGHT BE 10 OVER HERE THAT  
10 WERE COAST TO COAST AND FIVE OVER HERE THAT WERE GOLF CARD  
11 AND 25 OVER HERE THAT WERE GOOD SAM. SO YOU COULDN'T TELL,  
12 YOU KNOW. IT WOULD LOOK LIKE EVERYBODY WAS IN THE SAME --  
13 WORKING FOR THE SAME COMPANY, BUT IT REALLY WOULDN'T HAPPEN  
14 THAT WAY.

15 Q BUT THEY WERE ALL AFFINITY GROUP, INC.,  
16 PERSONNEL; CORRECT?

17 A THAT'S CORRECT.

18 Q AND IN THIS BIG ROOM WHERE ALL THE AFFINITY  
19 GROUP PERSONNEL WERE, THEY SOLD INSURANCE AND MAGAZINES AND  
20 WARRANTIES AND DIRECTORIES AND MAILING SERVICES AND  
21 TELEPHONE SERVICES, SPECIAL SERVICES, TOWING SERVICES;  
22 AFFINITY GROUP, INC., WOULD SELL ALL THESE SERVICES IN THIS  
23 BIG ROOM TO ITS 1.7 MILLION MEMBERS; CORRECT?

24 A THAT'S CORRECT.

25 Q NOW, I WANT TO JUST CLEAR UP ONE AREA,  
26 MR. ADAMS, AND THAT IS, IN THE PREVIOUS DEPOSITION

1 TRANSCRIPT WE LOOKED AT WHERE IT SAID 1.7 MILLION, THAT  
2 NUMBER IS LOW, ISN'T IT?

3 A RELATIVE TO WHAT?

4 Q RELATIVE TO THE NUMBER OF -- THE  
5 CONSOLIDATED NUMBER OF MEMBERS OWNED BY AFFINITY GROUP IN  
6 ALL OF ITS CLUBS?

7 A YOU KNOW, IT COULD BE HIGH OR LOW. I GAVE  
8 YOU MY BEST GUESS AT THE TIME, AND I HAVEN'T GONE BACK AND  
9 RESEARCHED WHETHER IT'S 2 MILLION OR A MILLION FIVE OR  
10 WHATEVER. SO --

11 Q WELL, YOU DID GO BACK AND RESEARCH BETWEEN  
12 NOVEMBER 5TH, 1999, WHEN YOUR DEPOSITION WAS TAKEN?

13 A I DIDN'T GO BACK AND COUNT OUR MEMBERS, NO.  
14 I'M SORRY.

15 Q LET ME JUST FINISH MY QUESTION, AND I HOPE  
16 I'LL GIVE YOU THE COURTESY OF LETTING YOU FINISH, TOO.

17 A EXCUSE ME.

18 Q IF I DON'T, REMIND ME.

19 BUT THE QUESTION IS, FROM NOVEMBER 5, 1999,  
20 TO FEBRUARY 7, WHEN YOUR DEPOSITION WAS TAKEN AGAIN, YOU  
21 WENT BACK AND RESEARCHED THE NUMBER OF MEMBERS THAT ALL THE  
22 CLUBS SOLD; CORRECT?

23 A I DON'T THINK THAT'S CORRECT. I DIDN'T GO  
24 COUNT THE NUMBERS FROM THAT TIME TILL FEBRUARY.

25 Q BUT IT'S ALL IN YOUR DATABASE IN ONE  
26 LOCATION AT AFFINITY GROUP?

1 A IT PROBABLY IS, YES.

2 Q LET'S LOOK AT PAGE 261 OF YOUR FEBRUARY 7  
3 DEPOSITION. DO YOU HAVE THAT IN FRONT OF YOU, SIR?

4 A WHAT WAS THE PAGE AGAIN?

5 MR. SHAW: 261, LINE 15 THROUGH 17, COUNSEL.

6 "QUESTION: IS 11.7 MILLION  
7 PAYING MEMBERS A CONSOLIDATED  
8 NUMBER FOR ALL THE CLUBS  
9 COMBINED?"

10 THE WITNESS: I THINK THAT'S A MISPRINT.

11 MR. SHAW: "ANSWER: YES."

12 THE WITNESS: I THINK IT'S A MISPRINT. IT SHOULD  
13 BE 1.7. NOT 11.7.

14 BY MR. SHAW: Q YOU HAD A CHANCE TO REVIEW THIS  
15 DEPOSITION AFTER IT WAS TAKEN?

16 A I DID. AND I MISSED THE NUMBER. I'M SORRY  
17 ABOUT THAT.

18 Q YOU DIDN'T MAKE ANY CHANGE IN THIS?

19 A NO. BUT I'M SORRY THAT I MISSED IT.

20 Q BUT YOU SIGNED THIS UNDER THE PENALTY OF  
21 PERJURY?

22 A I DID.

23 Q AND YOU MISSED THIS NUMBER?

24 A I MISSED THIS NUMBER, YEAH.

25 Q ISN'T IT TRUE THAT THE ACTUAL NUMBER OF  
26 MEMBERS IS 11.7 MILLION?

1 A NO, IT ISN'T.

2 Q NOW, IN THE AFFINITY GROUP STRUCTURE, THERE  
3 IS A COMPANY CALLED "THE PRESIDENT'S CLUB"?

4 A YES.

5 Q AND YOU KNOW --

6 A YES.

7 Q AND YOU KNOW MR. NOVELLI HAS A COMPANY  
8 CALLED "THE PRESIDENT'S CLUB"?

9 A IF HE DOES, THAT'S NEW TO ME.

10 Q ISN'T IT TRUE THAT THE AFFINITY GROUP TOOK  
11 MR. NOVELLI'S -- THE NAME OF HIS COMPANY AND USED IT AS ITS  
12 OWN?

13 A IN REFERENCE TO THE CAMPING WORLD  
14 PRESIDENT'S CLUB? WHEN WE BOUGHT CAMPING WORLD, IT ALREADY  
15 HAD THE PRESIDENT'S CLUB IN PLACE. SO THERE WAS NO TAKING  
16 FROM ANYBODY. IT WAS ALREADY THERE.

17 Q IT WAS TAKEN FROM THE CAMPING WORLD;  
18 CORRECT?

19 A THAT'S RIGHT.

20 Q NOW, LET'S FOCUS ON COAST TO COAST FOR A  
21 MINUTE, MR. ADAMS.

22 IT FROM TIME TO TIME ENHANCES ITS PRODUCTS  
23 AND SERVICES THAT IT OFFERS TO ITS MEMBERS; CORRECT?

24 A YES.

25 Q AND IT'S THE GENERAL BUSINESS STRATEGY OF  
26 AFFINITY GROUP TO CONTINUALLY SEEK TO ENHANCE CAMP COAST TO

1 COAST'S MEMBERSHIP PRODUCTS AND SERVICES; CORRECT?

2 A YES.

3 Q NOW, YOU REFERRED TO THIS TELEMARKETING  
4 DEPARTMENT IN DENVER, THE AFFINITY GROUP TELEMARKETING  
5 DEPARTMENT. I WANT TO FOCUS ON THAT FOR A MINUTE.

6 DID I STATE IT CORRECTLY?

7 A DID YOU STATE WHAT CORRECTLY?

8 Q THE FACT THAT THERE'S AFFINITY GROUP  
9 TELEMARKETING DEPARTMENT WITH THIS BIG ROOM THAT SELLS ALL  
10 THESE SERVICES TO THE MILLION OR SO MEMBERS?

11 A YOU DID.

12 Q AND THAT'S A DIRECT MARKETING SECTION OF  
13 AFFINITY GROUP HOLDINGS; CORRECT?

14 A OF AFFINITY GROUP, INC.

15 THE COURT: COUNSEL, APPROACH AGAIN, PLEASE.

16 (DISCUSSION OFF THE RECORD.)

17 BY MR. SHAW: Q MR. ADAMS, I'D LIKE TO STAY WITH  
18 THE CAMP COAST TO COAST SUBJECT.

19 THE LAST TIME YOU LOOKED AT ANY CORPORATE  
20 RECORDS OF CAMP COAST TO COAST WAS ABOUT 10 YEARS AGO; IS  
21 THAT CORRECT?

22 A PROBABLY.

23 Q AND YOU HAVE NEVER ATTENDED A BOARD MEETING  
24 OF CAMP COAST TO COAST; CORRECT?

25 A THAT'S CORRECT.

26 Q YOU DON'T RECALL EVER ATTENDING ANY

1 SHAREHOLDER MEETING OF CAMP COAST TO COAST; CORRECT?

2 A THAT'S CORRECT.

3 Q THERE WERE NONE?

4 A THAT IS CORRECT.

5 Q AND YOU DON'T KNOW WHAT STATE CAMP COAST TO  
6 COAST IS INCORPORATED IN, DO YOU, SIR?

7 MR. SHERMAN: OBJECTION. THIS IS NOT RELEVANT TO  
8 ANY LEGAL ISSUES IN THIS CASE.

9 THE COURT: I'LL ALLOW IT.

10 THE WITNESS: I'M NOT SURE WHAT STATE IT'S  
11 INCORPORATED IN.

12 BY MR. SHAW: Q AND YOU DON'T KNOW WHO THE  
13 OFFICERS OF CAMP COAST TO COAST ARE, DO YOU, SIR?

14 A AS OF TODAY OR AS OF THREE YEARS AGO OR AS  
15 OF SEVEN YEARS AGO?

16 Q WELL, AS OF FEBRUARY 7TH -- WHAT'S THAT?  
17 FIVE MONTHS, SIX MONTHS AGO -- YOU DIDN'T KNOW WHO THE  
18 OFFICERS WERE OF CAMP COAST TO COAST?

19 A FRANKLY, I DID NOT, NO.

20 Q AND YOU DON'T KNOW WHO APPOINTED MR. EVERETT  
21 AS AN OFFICER OF CAMP COAST TO COAST, DO YOU, SIR?

22 A WELL, IT'S -- SOMEBODY IN THE ORGANIZATION  
23 DID. I DON'T KNOW SPECIFICALLY WHETHER IT WAS JOE MC ADAMS  
24 OR WHETHER IT WAS SOMEBODY ELSE.

25 Q AND YOU DON'T KNOW WHO THE CURRENT DIRECTORS  
26 OF AFFINITY GROUP HOLDING COMPANY ARE EITHER, DO YOU, SIR?

1           MR. SHERMAN: OBJECTION. THIS IS NOT RELEVANT TO  
2 ANY LEGAL ISSUES IN THIS CASE.

3           THE COURT: THE OBJECTION IS SUSTAINED.

4           BY MR. SHAW: Q YOU DON'T KNOW WHO THE CURRENT  
5 OFFICERS OF THE DEFENDANT, AFFINITY GROUP, ARE, DO YOU,  
6 SIR?

7           MR. SHERMAN: THE SAME OBJECTION.

8           THE COURT: SUSTAINED.

9           BY MR. SHAW: Q I WANT TO BE VERY LIMITING IN THE  
10 NEXT QUESTION THAT I ASK BECAUSE I DON'T WANT TO ASK ABOUT  
11 HOW MUCH MONEY YOU MAKE. I'M NOT ASKING THAT QUESTION. SO  
12 I DON'T EVEN WANT TO ADDRESS IT.

13                         BUT YOU DON'T RECEIVE A CHECK AS AN EMPLOYEE  
14 OF AFFINITY GROUP, DO YOU, SIR?

15           MR. SHERMAN: OBJECTION. IT'S NOT RELEVANT TO ANY  
16 OF THE LEGAL ISSUES.

17           MR. SHAW: YOUR HONOR, HE IS A DEFENDANT IN THE  
18 LAWSUIT. I'M ASKING THE QUESTION ABOUT HIS RELATIONSHIP  
19 WITH THE ENTITIES.

20           MR. SHERMAN: OBJECTION.

21           THE COURT: I'M GOING TO SUSTAIN THE OBJECTION,  
22 COUNSEL.

23           BY MR. SHAW: Q YOU DON'T KNOW WHAT BANK AFFINITY  
24 GROUP, INC., USES TO PAY ITS EMPLOYEES?

25           MR. SHERMAN: OBJECTION.

26           THE COURT: SUSTAINED.

1 BY MR. SHAW: Q LET'S LOOK AT EXHIBIT 2045, PAGE  
2 2.

3 MR. ADAMS, IT'S TRUE YOU DON'T KNOW WHO THE  
4 OFFICERS ARE OF THESE OPERATING DIVISIONS, DO YOU, SIR?

5 MR. SHERMAN: OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MR. SHAW: Q AND YOU DON'T KNOW WHO THE  
8 DIRECTORS ARE OF THESE OPERATING DIVISIONS, DO YOU?

9 MR. SHERMAN: OBJECTION. RELEVANCE.

10 THE COURT: SUSTAINED.

11 BY MR. SHAW: Q NOW, WHEN AFFINITY GROUP, INC. --  
12 LET ME WITHDRAW THAT AND START AGAIN.

13 AFFINITY GROUP, INC., PURCHASED THE COMPANY  
14 FROM ANOTHER ENTITY; CORRECT?

15 MR. SHERMAN: OBJECTION. VAGUE AND AMBIGUOUS AS TO  
16 "THE COMPANY."

17 THE COURT: WHICH COMPANY?

18 BY MR. SHAW: Q LET ME TRY TO BE A LITTLE MORE  
19 SPECIFIC FOR YOU.

20 AFFINITY GROUP, INC., CAME INTO EXISTENCE BY  
21 PURCHASING ANOTHER COMPANY; CORRECT?

22 A THAT'S CORRECT.

23 Q AND WHEN WAS THAT?

24 A THAT WAS IN 1989.

25 Q AND THE PURCHASE WAS OVER A HUNDRED MILLION  
26 DOLLARS; IS THAT CORRECT?

1 MR. SHERMAN: OBJECTION. RELEVANCE.

2 THE COURT: SUSTAINED.

3 BY MR. SHAW: Q AND THAT -- THERE IS PRESENTLY A  
4 CREDIT LINE WITH THE AFFINITY GROUP, INC., OF \$300 MILLION;  
5 IS THAT CORRECT?

6 MR. SHERMAN: OBJECTION. RELEVANCE.

7 THE COURT: SUSTAINED.

8 MR. SHAW: YOUR HONOR, THIS GOES TO THE ISSUE WE  
9 DISCUSSED AT THE SIDEBAR.

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 BY MR. SHAW: Q AND CAMP COAST TO COAST IS A  
12 GUARANTOR ON THAT CREDIT LINE; ISN'T THAT CORRECT?

13 MR. SHERMAN: OBJECTION. RELEVANCE.

14 THE COURT: SUSTAINED.

15 MR. SHAW: YOUR HONOR, I WOULD JUST LIKE TO RESERVE  
16 THE RIGHT TO ASK THOSE QUESTIONS WITH YOUR HONOR ON THE  
17 ALTER EGO ISSUE THAT WE TALKED ABOUT EARLIER. THANK YOU.

18 WITH THAT, MR. ADAMS, I HAVE NOTHING  
19 FURTHER.

20 THE COURT: HOW MUCH CROSS WILL YOU HAVE?

21 MR. SHERMAN: I'M GOING TO HAVE ABOUT 15 MINUTES.

22 THE COURT: WE'LL TAKE OUR BREAK.

23 MR. SHERMAN: I WILL ASK TO TAKE THE BREAK.

24 THE COURT: TAKE 20.

25 (RECESS TAKEN.)

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN

1 COURT IN THE PRESENCE OF THE JURY:)

2 THE COURT: PROCEED, COUNSEL.

3 MR. SHERMAN: WHILE WE WERE ON OUR BREAK,  
4 DEFENDANTS HAVE AGREED THAT TWO 10-K FILINGS OF AFFINITY  
5 GROUP MAY -- FOR OTHER ISSUES IN THE CASE TO BE TRIED TO  
6 THE COURT MAY COME INTO EVIDENCE FOR THOSE PURPOSES. I  
7 DON'T KNOW THE EXHIBIT NUMBERS, BUT IT'S ON THE RECORD.

8 THE COURT: DO YOU HAVE THE EXHIBIT NUMBERS,  
9 MR. SHAW?

10 MR. SHAW: YES, YOUR HONOR. I BELIEVE IT'S 425,  
11 426 AND 2160. AND WE WOULD JUST LIKE TO RESERVE THE RIGHT  
12 TO ARGUE FOR WHAT PURPOSE THEY MIGHT COME IN.

13 MR. SHERMAN: I DON'T KNOW THAT THOSE ARE THE  
14 NUMBERS, YOUR HONOR. BUT, YOU KNOW WHAT? WE'LL REACH  
15 AGREEMENTS.

16 THE COURT: WE HAVE IDENTIFIED THOSE DOCUMENTS.

17 MR. SHAW: THANK YOU, MR. SHERMAN. I APPRECIATE  
18 THAT.

19 REDIRECT-EXAMINATION

20 BY MR. SHERMAN: Q GOOD MORNING, MR. ADAMS.

21 MR. ADAMS, HOW DID YOU GET INVOLVED IN THE  
22 OUTDOOR RECREATION BUSINESS?

23 A WELL, THAT GOES BACK TO THE EARLY 1980'S  
24 WHEN AFTER HAVING SPENT 15 OR 17 YEARS IN THE BANKING  
25 BUSINESS I DECIDED THAT I WANT A CHANGE OF CAREER AND WENT  
26 INTO THE MEDIA BUSINESS. AND THAT INCLUDED OWNING SOME

1 TELEVISION AND RADIO AND -- RADIO STATIONS AND SOME  
2 PUBLISHING ENTERPRISES, INCLUDING NEWSPAPERS, AND  
3 MAGAZINES, AS WELL AS OUTDOOR ADVERTISING.

4 AND WHEN THE OPPORTUNITY CAME UP IN LATE '89  
5 OR EARLY THAT YEAR, AFFINITY GROUP LOOKED LIKE IT WAS  
6 SIMILAR TO THE BUSINESSES THAT I'D BEEN IN. SO I OPTED TO  
7 BUY THE COMPANY THEN.

8 Q AND YOU MENTIONED THAT YOU'D BEEN INVOLVED  
9 IN SOME MEDIA BUSINESSES. WHERE WERE THOSE MEDIA  
10 BUSINESSES LOCATED?

11 A ACTUALLY THEY WERE LOCATED AROUND THE  
12 COUNTRY IN SEVERAL DIFFERENT CITIES AND SEVERAL DIFFERENT  
13 TOWNS, ALL ACROSS THE UNITED STATES.

14 Q NOW, YOU ALSO TESTIFIED A MOMENT AGO THAT  
15 YOU'VE BEEN IN THE BANKING BUSINESS. DID YOU OWN BANKS?

16 A I OWNED BANKS. I DID.

17 Q AND WHERE WERE THOSE BANKS LOCATED?

18 A WELL, GIVEN THE FACT MY HOMETOWN WAS IN  
19 MINNEAPOLIS, THAT WAS SORT OF A HOME BASE. SO A GOOD  
20 AMOUNT OF THEM WERE IN MINNESOTA, SOUTH AND NORTH DAKOTA,  
21 IOWA, MONTANA, NEBRASKA, WYOMING AND COLORADO.

22 Q DID YOU PARTICIPATE AT SOME LEVEL IN THE  
23 OPERATION OF THOSE BANKS?

24 A I DID. I WAS ACTIVE IN SERVING AS A  
25 DIRECTOR OF EACH OF THOSE BANKS AND REVIEWING, YOU KNOW,  
26 THE VARIOUS AND SUNDRY LOANS THAT WERE MADE. IT WAS

1     PRIMARILY A COUNTRY BANKING ORGANIZATION.  SO, YOU KNOW,  
2     MOST OF THE LOANS WERE TO THE FARMING COMMUNITIES AND THE  
3     FARMERS.

4             Q           NOW, BUT AT SOME POINT YOU SOLD YOUR  
5     INTEREST IN THE BANKS; IS THAT RIGHT?

6             A           I DID IN THE EARLY '80'S, YES.

7             Q           AND WHY DID YOU SELL YOUR INTEREST IN THE  
8     BANKS?

9             A           WELL --

10            MR. SHAW:  OBJECTION, YOUR HONOR.  IRRELEVANT.

11            THE COURT:  I'LL ALLOW IT.

12            THE WITNESS:  THE -- IT WAS JUST TIME TO MOVE ON TO  
13     A DIFFERENT CAREER AND TAKE A PROFIT, WHICH I DID.

14            BY MR. SHERMAN:  Q  NOW, YOU'VE BEEN ASKED A LOT OF  
15     QUESTIONS BY COUNSEL ABOUT A.G.I.'S DIFFERENT BUSINESSES,  
16     AND YOU IDENTIFIED A LOT OF THEM.  DO YOU CONSIDER THEM TO  
17     BE IN COMPETITIVE INDUSTRIES?

18            A           I WOULD CERTAINLY SAY THAT THERE'S A LOT OF  
19     COMPETITION IN THE -- IN EACH ONE OF THOSE BUSINESSES, YES.

20            Q           AND WHAT DO YOU MEAN BY THAT?

21            A           WELL, YOU KNOW, IN TERMS OF MEASURING  
22     COMPETITION, YOU MEASURE BASICALLY WHAT YOUR MARKET SHARE  
23     MIGHT BE IN A GIVEN SEGMENT OF AN INDUSTRY.  AND SO IF YOU  
24     SAID, WELL, YOU KNOW, THERE'S 10 MILLION R.V. OWNERS OUT  
25     THERE, OR 10 MILLION PEOPLE THAT ARE IN THE LIFESTYLE, AND  
26     WE HAVE 200,000 OF THEM THAT OWN INSURANCE, THAT MEANS

1 THERE'S ANOTHER 8 MILLION OR 9 MILLION OR 10 MILLION WHO  
2 ALSO OWN INSURANCE. WELL, THAT'S COMPETITIVE. IT MEANS WE  
3 HAVE TO COMPETE WITH ALLSTATE AND PROGRESSIVE AND THE REST  
4 OF THE COMPANIES IN THE BUSINESS.

5 AND THE SAME WOULD BE TRUE FOR THE OTHER  
6 ANCILLARY PRODUCTS THAT WE SELL. THE MAGAZINES, OF COURSE  
7 WE COMPETE WITH TIME/LIFE AND, YOU KNOW, ALL THE BIG ONES.  
8 WE HAVE TO FIND A PLACE ON THE SHELF THAT WE CAN SELL OUR  
9 MAGAZINES, AND THAT'S ALWAYS VERY COMPETITIVE.

10 Q SO WHERE DO YOU SEE YOURSELF STANDING  
11 VIS-A-VIS TIME/LIFE?

12 A BOY, IT'S MINIATURE, YOU KNOW. IT'S JUST  
13 VERY COMPETITIVE OUT THERE.

14 Q NOW, YOU WERE ASKED SOME QUESTIONS ABOUT  
15 THIS CLUB, PRESIDENT'S CLUB.

16 IS PRESIDENT'S CLUB SOMETHING THAT HAS  
17 SOMETHING TO DO WITH ONE OF THE COMPANIES, CAMPING WORLD?

18 A YES.

19 Q AND WHAT'S PRESIDENT'S CLUB SO FAR AS YOU  
20 KNOW WITH CAMPING WORLD?

21 A WELL, IF YOU'RE A MEMBER OF THE CAMPING  
22 WORLD'S PRESIDENT'S CLUB, YOU PAY A \$15 FEE TO BELONG; AND  
23 FOR THAT \$15, WHENEVER YOU BUY A PRODUCT OR WHENEVER YOU GO  
24 INTO A CAMPING WORLD STORE, YOU RECEIVE A 10-PERCENT  
25 DISCOUNT ON MOST OF THE PRODUCTS THAT ARE OFFERED.

26 Q AND I'M GOING TO COME BACK TO PRESIDENT'S

1 CLUB IN A MOMENT.

2 BUT LET ME JUST ASK A QUESTION FROM THE  
3 STANDPOINT OF YOUR INVOLVEMENT IN THE DAY-TO-DAY MANAGEMENT  
4 AND BUSINESS OF THE AFFINITY GROUP AND THE SUBSIDIARY  
5 COMPANIES. IS THAT SOMETHING THAT YOU'RE INVOLVED WITH?

6 A THE DAY-TO-DAY?

7 Q YEAH.

8 A NO. I'M NOT REALLY IN THE DAY-TO-DAY.

9 Q OKAY. LET ME GO BACK, THEN, TO THIS CAMPING  
10 WORLD PRESIDENT'S CLUB.

11 RECOGNIZING THAT YOU'RE NOT INVOLVED IN THE  
12 DAY-TO-DAY, DO YOU HAVE ANY IDEA HOW LONG CAMPING WORLD HAD  
13 THIS PRESIDENT'S CLUB?

14 A I THINK IT GOES BACK TO THE EARLY '80'S.  
15 I'M NOT POSITIVE, BUT I THINK IT'S BEEN AROUND FOR QUITE A  
16 NUMBER OF YEARS.

17 Q AND, THEN, NOW LET ME GO BACK TO THE OTHER  
18 ISSUE WHICH WE HAD WHICH WAS YOUR INVOLVEMENT IN THE  
19 DAY-TO-DAY AFFINITY GROUP BUSINESSES.

20 HOW LONG HAS IT BEEN THE CASE THAT YOU HAVE  
21 NOT BEEN INVOLVED IN DAY-TO-DAY WITH AFFINITY GROUP?

22 A I WOULD SAY FIVE YEARS, MICHAEL. I'VE  
23 REALLY BEEN MORE OF A CHAIRMAN-OF-THE-BOARD-TYPE OF PERSON  
24 THAT DOESN'T REALLY GET INTO THE DAY-TO-DAY. THE THINGS  
25 THAT I DO ARE TRYING TO PICK THE RIGHT PEOPLE AND THEN  
26 EMPOWER THEM TO GO OUT AND DO THEIR JOBS.

1 Q WHAT DO YOU MEAN BY THAT, "EMPOWER THE  
2 PEOPLE"?

3 A WELL, DELEGATE THE AUTHORITY TO DO WHATEVER  
4 THEY HAVE TO DO TO MAKE THEIR OWN OPERATION BE SUCCESSFUL  
5 AND WORK PROPERLY AND RUN AN HONEST BUSINESS.

6 Q DO YOU CONSIDER YOURSELF TO HAVE BEEN A  
7 SUCCESS IN BUSINESS?

8 A I DO.

9 Q DO YOU THINK AS A SUCCESSFUL BUSINESS PERSON  
10 YOU HAVE A PARTICULAR BUSINESS PHILOSOPHY OR OUTLOOK THAT  
11 YOU TRY TO PASS ON TO YOUR COMPANY PEOPLE?

12 A WELL, I THINK, YEAH. I'VE BEEN BLESSED WITH  
13 A GOOD PHILOSOPHY OF HARD WORK AND, YOU KNOW, JUST GENERAL  
14 GOOD PRINCIPLES IN BUSINESS THAT I STARTED WITH AND  
15 CONTINUE TODAY.

16 Q YOU'VE MADE ACQUISITIONS OVER THE YEARS,  
17 HAVEN'T YOU?

18 A I HAVE, YES.

19 Q AND, I GUESS, IN YOUR BUSINESS WORLD, AN  
20 ACQUISITION MEANS ONE OF THOSE DIFFERENT COMPANIES THAT  
21 MR. SHAW HAD UP ON THE BOARD; IS THAT RIGHT?

22 A THAT'S CORRECT.

23 Q AND WHEN YOU ACQUIRE COMPANIES, DO YOU SIGN  
24 DOCUMENTS AND COMMITMENTS?

25 A ALWAYS SIGN DOCUMENTS. IN THE EARLY DAYS IT  
26 WAS BORROWING MONEY AND MAKING SURE THAT THE OBLIGATIONS

1 WERE PAID ON TIME AND WORKING WITH THE LENDERS WHO, YOU  
2 KNOW, PROVIDED THE FUNDING FOR IT.

3 Q DO YOU PAY YOUR BILLS ON TIME?

4 A ALWAYS HAVE.

5 Q DO YOUR COMPANIES?

6 A THEY ALWAYS DO.

7 Q DO YOU MAKE ACQUISITIONS AND THEN TURN  
8 AROUND AND BACK OUT OF THEM?

9 A I CAN'T REMEMBER HAVING EVER DONE THAT.

10 MR. SHERMAN: I DON'T KNOW IF WE GOT THIS UP,  
11 AVAILABLE TO GO. IF WE DON'T, THAT'S OKAY, MIKE.

12 Q BUT YOU RECALL MR. SHAW READ SOME OF YOUR  
13 DEPOSITION TESTIMONY?

14 A I DO RECALL THAT, YES.

15 Q I WANT TO READ THE PORTION THAT WAS NOT  
16 READ. AND SO THAT WE CAN HAVE THE WHOLE THING IN CONTEXT,  
17 I'LL BEGIN WITH THE READING THAT MR. SHAW MADE.

18 MR. SHAW: WHAT PAGE AND LINE?

19 MR. SHERMAN: PAGE 255, LINE 9. I'LL BEGIN WITH  
20 WHAT MR. SHAW READ, AND THEN I'LL CONTINUE ON WITH WHAT I'D  
21 LIKE TO HAVE READ IN CONTEXT.

22 "QUESTION: SO WHAT DOES -- MY  
23 QUESTION IS, DOES AFFINITY GROUP  
24 HOLDINGS, INC., SELL CLUB  
25 MEMBERSHIPS IN SOME MANNER OTHER  
26 THAN THROUGH A DIVISION OR

1 SUBSIDIARY CALLED 'CAMP COAST TO  
2 COAST'?

3 "ANSWER: WELL, AFFINITY GROUP  
4 HOLDING SELLS ALL THESE  
5 MEMBERSHIPS UNDER THIS CORPORATE  
6 STRUCTURE. IT SELLS GOOD SAM  
7 MEMBERSHIPS, GOLF CARD  
8 MEMBERSHIPS. IT SELLS  
9 PRESIDENT'S WORLD MEMBERSHIPS,  
10 AND IT SELLS CAMP COAST TO COAST  
11 MEMBERSHIPS ALL UNDER DIFFERENT  
12 NAMES AND/OR INSIGNIAS, YOU  
13 MIGHT SAY.

14 "QUESTION: AND SIMILARLY,  
15 AFFINITY GROUP, INC., DOES THE  
16 SAME THING; CORRECT?

17 "ANSWER: AFFINITY GROUP, INC.,  
18 AS A PART OF THE AFFINITY GROUP  
19 HOLDING BEING CONSOLIDATED IS IN  
20 THE SAME BUSINESS THAT YOU'RE  
21 REFERRING TO.

22 "QUESTION: AND NOW I WANT TO  
23 FOCUS SPECIFICALLY ON  
24 MEMBERSHIPS IN CAMP COAST TO  
25 COAST.

26 HOW DOES AFFINITY GROUP

1 HOLDINGS, INC., SELL CLUB  
2 MEMBERSHIPS TO THE CLUB KNOWN AS  
3 'CAMP COAST TO COAST'?"

4 THE QUESTION WAS REPEATED.

5 "ANSWER: I SUGGEST YOU ASK THAT  
6 QUESTION TO THE PRESIDENT OF  
7 CAMP COAST TO COAST."

8 Q IS THE PRESIDENT GENE EVERETT?

9 A YES.

10 Q NOW, YOU REFERRED -- AT SOME POINT IN YOUR  
11 TESTIMONY YOU WERE ASKED SOME QUESTIONS ABOUT OPERATING  
12 DIVISIONS; DO YOU RECALL THAT?

13 A YES.

14 Q IN YOUR MIND IS THERE A DIFFERENCE BETWEEN  
15 AN OPERATING DIVISION AND A SUBSIDIARY CORPORATION?

16 A IN MY MIND THEY'RE PRETTY MUCH THE SAME.

17 Q AND WHY DO YOU SAY THAT?

18 A WELL, SUBSIDIARY, FOR INSTANCE, WOULD HAVE A  
19 BUDGET. IT WOULD HAVE A PROFIT AND LOSS STATEMENT. IT  
20 WOULD HAVE A FINANCIAL STATEMENT THAT SHOWS THAT YOU HAVE  
21 REVENUES AND EXPENSES. AND AT THE END OF THE YEAR YOU'D  
22 HAVE INCOME, HOPEFULLY.

23 AND AN OPERATING DIVISION WOULD HAVE THE  
24 SAME KIND OF, YOU KNOW, INFORMATION. YOU'D WANT TO KNOW IN  
25 AN OPERATING DIVISION WHETHER THAT DIVISION HAD A PROFIT  
26 AND LOSS SO YOU COULD BASICALLY EMPOWER THE PEOPLE THAT ARE

1 RUNNING THE PLACE TO BE RESPONSIBLE FOR THEIR ACTIVITIES.

2 Q SO I WANT TO MOVE TO ANOTHER TOPIC NOW,  
3 MR. ADAMS.

4 THE ISSUE OF -- YOU'VE GIVEN SOME TESTIMONY  
5 ABOUT YOUR INVOLVEMENT WITH AFFINITY GROUP AND YOUR GENERAL  
6 LACK OF INVOLVEMENT IN THE BUSINESS AFFAIRS OF THE SPECIFIC  
7 MANAGEMENT ISSUES THAT COME UP.

8 ABOUT HOW MUCH TIME WOULD YOU SAY YOU SPEND  
9 SPECIFICALLY INVOLVED IN THE AFFAIRS OF AFFINITY GROUP,  
10 INC.?

11 A I WOULD GUESS THAT THAT MIGHT BE NOT -- NO  
12 MORE THAN HALF OF MY TIME.

13 Q HOW DO YOU SPEND THE REST OF YOUR TIME?

14 A WELL, I HAVE OTHER BUSINESSES THAT I SPEND  
15 TIME IN. I ALSO HAVE A SIGNIFICANT INVOLVEMENT IN WHAT WE  
16 CALL OUR ADAMS FAMILY FOUNDATION, WHICH IS BASICALLY SET UP  
17 TO PROVIDE FUNDING FOR THINGS LIKE WORLD VISION. I DON'T  
18 KNOW IF ANYBODY KNOWS ABOUT WORLD VISION, BUT IT'S AN  
19 ORGANIZATION THAT HELPS MOTHERS AND CHILDREN AND PEOPLE  
20 THAT ARE BASICALLY DESTITUTE. SO I SPEND A GOOD SHARE OF  
21 MY TIME SEARCHING OUT THOSE PLACES THAT NEED HELP.

22 Q YOU KNOW YOUR NAME IS NAMED AS A PERSONAL,  
23 INDIVIDUAL DEFENDANT IN THIS CASE, MR. ADAMS; DO YOU KNOW  
24 THAT?

25 A I KNOW THAT.

26 Q DO YOU KNOW WHY YOU'RE NAMED AS A DEFENDANT?

1           A           I DON'T KNOW THAT, NO. I DON'T KNOW WHY I'M  
2 BEING ATTACKED.

3           MR. SHERMAN: I HAVE NO FURTHER QUESTIONS.

4           THE COURT: THANK YOU.

5                        ANY REDIRECT?

6           MR. SHAW: YES, YOUR HONOR.

7                        REXCROSS EXAMINATION

8           BY MR. SHAW: Q MR. ADAMS, YOU SAID THAT YOU  
9 ALWAYS PAID YOUR BILLS ON TIME?

10          A           YES.

11          Q           ISN'T IT TRUE THAT THAT'S FALSE?

12          A           NO, IT'S NOT.

13          Q           IN 1992 WERE YOU INVOLVED IN THE RADIO GROUP  
14 CORPORATIONS AND THE ADAMS RADIO OF CHARLOTTE, INC.?

15          A           YES.

16          Q           AND ISN'T IT TRUE THAT YOU WERE THE CHAIRMAN  
17 AND CONTROLLING SHAREHOLDER OF THOSE ENTITIES?

18          A           YES.

19          Q           AND ISN'T IT TRUE THAT YOU CONSENTED TO THE  
20 APPOINTMENT OF RECEIVERS TO EFFECT TRANSFERS OF THE  
21 CONTROLS OF THOSE CORPORATIONS, INCLUDING A FORECLOSURE  
22 AGREEMENT, WITH THE LENDERS?

23          A           YES.

24          Q           YOU MADE A LEVERAGE BUY-OUT OF THOSE  
25 COMPANIES, DIDN'T YOU, SIR?

26          A           I DID.

1 Q AND THEN WHEN THE COMPANIES COULDN'T MAKE IT  
2 AND THE BILLS WEREN'T PAID, YOU TRANSFERRED IT BACK TO THE  
3 SECURED LENDER; CORRECT?

4 A THAT'S CORRECT.

5 Q AND THEN AN INVOLUNTARY BANKRUPTCY PETITION  
6 WAS FILED AGAINST YOU ON THAT CASE; CORRECT?

7 A NOT AGAINST ME. IT WAS AGAINST THE COMPANY.

8 Q THE COMPANIES THAT YOU WERE THE CONTROLLING  
9 SHAREHOLDER; IN FACT, YOU OWNED 100 PERCENT, DIDN'T YOU,  
10 SIR?

11 A YES.

12 Q THIS ALL HAPPENED IN 1992 AND 1993?

13 A YES.

14 Q SO WHAT YOU'VE STATED TO THIS COURT AND THIS  
15 JURY IS FALSE?

16 MR. SHERMAN: OBJECTION. ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 MR. SHAW: I HAVE NOTHING FURTHER.

19 MR. SHERMAN: ONE QUESTION.

20 THE COURT: THANK YOU.

21 FURTHER REDIRECT EXAMINATION

22 Q MR. ADAMS, THAT RADIO STATION, WHAT BECAME  
23 OF THE INVOLUNTARY BANKRUPTCY?

24 A IT WAS DISMISSED. AND THE LENDER TOOK OVER  
25 THE COMPANY AND SOLD THE ASSETS.

26 Q AND WHEN YOU SAY IT WAS DISMISSED, HOW

1 QUICKLY WAS IT DISMISSED?

2 A YOU KNOW, I DON'T RECALL. I MEAN, IT WAS  
3 PRETTY SWIFT.

4 Q DID THE LENDER TAKE THE PROPERTY BACK?

5 A YES.

6 Q DID YOU GIVE IT TO THE LENDER?

7 A YES.

8 Q AND WAS THAT SOMETHING THAT YOU AND THE  
9 LENDER CONSENTED TO?

10 A YES.

11 MR. SHERMAN: NO FURTHER QUESTIONS.

12 THE COURT: THANK YOU.

13 MAY THE WITNESS BE EXCUSED?

14 MR. SHAW: YES, YOUR HONOR.

15 MR. SHERMAN: YES.

16 THE COURT: THANK YOU, SIR.

17 CALL YOUR NEXT WITNESS FOR THE PLAINTIFF,  
18 PLEASE.

19 MR. MOSHENKO: YOUR HONOR, I ASKED LEO NOVELLI TO  
20 COME IN. ACTUALLY I EXPECTED TO START WITH HIM AT 1:30  
21 THIS AFTERNOON. BUT I ASKED HIM TO COME IN EARLIER. I SEE  
22 HE HAS NOT ARRIVED YET. I TOLD HIM I EXPECTED HIM AROUND  
23 11:00.

24 THE COURT: WE CAN WAIT A FEW MINUTES.

25 MR. MOSHENKO: MAY I BE EXCUSED AND MAKE A PHONE  
26 CALL?

1 THE COURT: YES. SEE IF HE IS ON HIS WAY.

2 MR. SHERMAN: MAY I BE EXCUSED --

3 THE COURT: YES.

4 MR. SHERMAN: -- TO MAKE A PHONE CALL?

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: WE'RE GOING TO TAKE CARE OF SOME  
7 BUSINESS THAT WE DON'T NEED YOU FOLKS FOR, AND SO WE'RE  
8 GOING TO EXCUSE YOU UNTIL 1:30. AND THEN WE EXPECT WE'LL  
9 HAVE ANOTHER LIVE WITNESS AT 1:30.

10 IS THAT RIGHT?

11 IN THE MEANTIME YOU CAN --

12 JUROR 18: PREFERABLY LIVE. OKAY? WE LIKE THEM  
13 ALIVE.

14 THE COURT: SEE YOU ALL AT 1:30. WE'LL TAKE CARE  
15 OF OUR BUSINESS OUT HERE INSTEAD OF GOING INTO CHAMBERS  
16 THEN.

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

19 THE COURT: LET'S DISCUSS THIS SUBJECT THAT WE'RE  
20 GOING TO BE GETTING INTO THIS AFTERNOON.

21 MR. RIVIN: YOUR HONOR, DEFENDANTS ARE CONCERNED  
22 THAT LEO NOVELLI IS GOING TO TESTIFY TO OR ATTEMPT TO  
23 TESTIFY TO SOME COMPUTER INFORMATION THAT IS INAPPROPRIATE  
24 FOR AT LEAST TWO REASONS.

25 ONE IS BECAUSE IT WOULD BE VIOLATIVE OF THE  
26 COURT ORDER ISSUED BY THIS COURT IN RESPONSE TO DEFENDANTS'

1 MOTION FOR EVIDENTIARY SANCTIONS. AND SECONDLY, BECAUSE IT  
2 IS A REGARD THAT -- OR IT IS DATA THAT IS UNRELIABLE AND,  
3 THEREFORE, SHOULD NOT COME INTO EVIDENCE BECAUSE PLAINTIFFS  
4 CANNOT LAY THE APPROPRIATE FOUNDATION FOR THE MATERIAL.

5 THE DATA -- WE DISCUSSED THIS IN CHAMBERS --  
6 THAT PLAINTIFFS ARE GOING TO ATTEMPT TO INTRODUCE, I  
7 BELIEVE THROUGH MR. NOVELLI, IS A COMPUTER DISK OF SOME  
8 SORT SUPPOSEDLY CONTAINING DUES PAYMENT HISTORIES OF  
9 PLAINTIFFS' MEMBERS.

10 THIS WAS AN ISSUE SUBJECT TO A NUMBER OF  
11 DISCOVERY MOTIONS. AND PLAINTIFFS SPECIFICALLY THROUGH  
12 MR. NOVELLI AND OTHERS ACKNOWLEDGED, DURING THE COURSE OF  
13 DEPOSITIONS, DURING THE COURSE OF THIS LITIGATION, THAT  
14 THEY WERE UNABLE TO PRODUCE DUES PAYMENT HISTORIES FOR  
15 THEIR MEMBERS, WHICH INCLUDES, OF COURSE, NOT JUST THE OLD  
16 ALL SEASONS RESORT MEMBERS BUT ALSO THE THOUSAND ADVENTURES  
17 MEMBERS WHICH PLAINTIFFS ATTEMPTED TO ACQUIRE IN 1997.

18 AND, IN FACT, THE PLAINTIFFS' DAMAGES  
19 EXPERT, CALVIN BIERLY, SOUGHT THAT DUES PAYMENT HISTORY  
20 FROM PLAINTIFFS SO HE COULD PERFORM A CORRELATION BETWEEN  
21 THE COAST DATA AND THE PLAINTIFFS' DATA. AND HE TESTIFIED  
22 IN HIS DEPOSITION AT THE TIME WE TOOK HIS EXPERT DEPOSITION  
23 THAT THE PLAINTIFFS WERE UNABLE TO PROVIDE HIM WITH THAT  
24 INFORMATION. HE DIDN'T EXACTLY UNDERSTAND WHY, BUT HE WAS  
25 TOLD IT HAD SOMETHING TO DO WITH PROBLEMS WITH THE  
26 PLAINTIFFS' COMPUTERS. THEY PARTLY HAD A WANG COMPUTER,

1 AND THEN THEY CONVERTED TO PC'S.

2 BUT THROUGHOUT THE COURSE OF THIS  
3 LITIGATION, THE PLAINTIFFS HAVE BEEN UNABLE TO PROVIDE  
4 EITHER THEIR OWN EXPERTS OR THE DEFENDANTS WITH DUES  
5 PAYMENT HISTORIES.

6 MR. MOSHENKO: EXCUSE ME. WOULD YOUR HONOR  
7 CONSIDER STEPPING -- ALLOWING US TO GO ONE STEP AT A TIME  
8 AND LET ME RESPOND TO EACH POINT AS HE MAKES IT? OR DID  
9 YOU WANT TO HAVE HIM SAY THE WHOLE THING?

10 THE COURT: I LIKE TO HEAR THE WHOLE THING, AND  
11 THEN YOU CAN RESPOND.

12 MR. MOSHENKO: VERY WELL.

13 MR. RIVIN: THANK YOU.

14 ON MARCH 27, JUDGE JAMES SMITH ISSUED AN  
15 ORDER REQUIRING SOME ADDITIONAL MATERIAL TO BE PROVIDED BY  
16 THE PLAINTIFFS, ADDITIONAL DATA, ELECTRONIC DATA THAT THEY  
17 HAD. AND ON APRIL 11 OR 12TH, IN RESPONSE TO THAT ORDER,  
18 PLAINTIFFS PRODUCED A COMPACT DISK, CD, THAT THEY CLAIM  
19 CONTAINED DUES PAYMENT HISTORIES.

20 I SAY "CLAIM" BECAUSE WE HAVE NEVER BEEN  
21 ABLE TO OPEN THAT. OUR EXPERTS HAVE NEVER BEEN ABLE TO  
22 OPEN THAT. WE SENT THAT CD UP TO OUR EXPERTS AT THE  
23 STANFORD CONSULTING GROUP. THEY'RE OUR DESIGNATED EXPERTS.  
24 AND THEY ADVISED US THAT THEY WERE UNABLE TO OPEN THE FILES  
25 ON THE DISK WHICH SUPPOSEDLY CONTAIN CERTAIN FINANCIAL  
26 INFORMATION, I GUESS, INCLUDING DUES PAYMENT HISTORIES, ON

1 THAT DISK. THERE WAS OTHER INFORMATION ON THE DISK  
2 PERTAINING TO A SAMPLE DONE BY CALVIN BIERLY THEY WERE ABLE  
3 TO OPEN. BUT THEY COULD NOT OPEN THE REMAINDER OF THE CD.

4 I TOOK RAYMOND NOVELLI'S DEPOSITION ON APRIL  
5 26TH, FIVE DAYS BEFORE WE STARTED TRIAL. IT WAS THE LAST  
6 SESSION THAT I TOOK OF RAYMOND NOVELLI'S DEPOSITION.  
7 PLAINTIFFS DESIGNATED MR. NOVELLI AS AN EXPERT AS WELL.  
8 AND MR. NOVELLI TESTIFIED TO DAMAGES THAT WERE MANY  
9 MULTIPLES OF WHAT CALVIN BIERLY TESTIFIED TO, CONSISTENT  
10 WITH -- SOMEWHAT CONSISTENT WITH WHAT MR. NOVELLI TESTIFIED  
11 TO ON THE STAND HERE.

12 MR. NOVELLI ALSO ANSWERED SOME QUESTIONS AT  
13 HIS DEPOSITION ON APRIL 26TH ABOUT THAT COMPACT DISK, AND I  
14 ASKED -- WE HAD HAD A PROBLEM READING THE COMPACT DISK. WE  
15 COULDN'T READ THE COMPACT DISK. AND MR. NOVELLI SAID, "I  
16 ORDERED A MAGNETIC TAPE FOR THE DEFENDANTS BECAUSE I'VE  
17 LEARNED -- I'VE DISCOVERED THAT THE COMPACT DISK DID NOT  
18 HAVE THE SOFTWARE AND COULD NOT BE READ. SO I'M NOW  
19 PROVIDING YOU WITH A MAGNETIC TAPE." THIS IS APRIL 26TH,  
20 AGAIN, FIVE DAYS BEFORE TRIAL.

21 I BELIEVE THAT WAS A WEDNESDAY. WE  
22 OVER-NIGHTED THAT MAGNETIC TAPE TO OUR EXPERTS AT STANFORD  
23 CONSULTING GROUP. WE WERE TOLD ON FRIDAY, APRIL --

24 THE COURT: 28TH.

25 MR. RIVIN: -- APRIL 28TH THAT IT COULD NOT BE  
26 READ. THEY SENT US A DETAILED LETTER WHICH I HAVE STATING

1 WHY IT COULDN'T BE READ. THE MATERIAL THAT WAS MISSING --  
2 THEY COULD NOT READ THE MAGNETIC TAPE. WE HAD A HEARING IN  
3 THIS COURT ON MAY 4TH IN WHICH WE DISCUSSED AND ARGUED THE  
4 DEFENDANTS' EVIDENTIARY SANCTIONS MOTION. THIS MAGNETIC  
5 TAPE AND THE CD CAME UP. AND I SPECIFICALLY TOLD THE COURT  
6 WHAT I'VE STATED JUST NOW; THAT THAT MATERIAL WAS USELESS  
7 TO THE DEFENDANTS. WE COULD NOT ACCESS IT. WE'VE NEVER  
8 BEEN ABLE TO ACCESS THAT INFORMATION.

9 I ADVISED THE PLAINTIFFS' ATTORNEYS OF  
10 THAT. WE HAVE NEVER BEEN GIVEN ANYMORE -- ANY ADDITIONAL  
11 INFORMATION, ANY ADDITIONAL DATA. AND THIS INFORMATION,  
12 WHICH WE SHOULD HAVE HAD A YEAR AGO, IS SIMPLY  
13 INAPPROPRIATE NOW FOR THE PLAINTIFFS TO BE ABLE TO SUDDENLY  
14 USE TO SUPPORT A DAMAGES CLAIM WHICH, AS FAR AS WE'RE  
15 CONCERNED, MR. NOVELLI HAS CONCOCTED; AND IT SHOULD NOT  
16 COME IN IN PART BECAUSE IT'S VIOLATIVE OF THE COURT ORDER  
17 WHICH STATES THAT THE PLAINTIFF -- THE PLAINTIFFS SHALL NOT  
18 BE PERMITTED TO OFFER INTO EVIDENCE ANY DUES PAYMENT -- ANY  
19 EVIDENCE, ANY EVIDENCE OR TESTIMONY OF DUES PAYMENT  
20 HISTORIES OTHER THAN THOSE THAT WERE PRODUCED DURING  
21 DISCOVERY.

22 AND IT'S OUR POSITION, YOUR HONOR, THAT  
23 THESE DUES PAYMENT HISTORIES THAT WE THINK MR. NOVELLI IS  
24 GOING TO ATTEMPT TO INTRODUCE, OR THE PLAINTIFFS ARE GOING  
25 TO ATTEMPT TO INTRODUCE THROUGH LEO NOVELLI, ARE VIOLATIVE  
26 OF THAT COURT ORDER.

1                   IN ADDITION TO THAT, WE HAVE NEVER HEARD ANY  
2 EVIDENCE IN THIS CASE ABOUT HOW INFORMATION IS ENTERED BY  
3 ALL SEASONS RESORTS. WE DON'T HAVE THE FOUNDATIONAL  
4 INFORMATION FOR THEIR ACCOUNTING, HOW THEIR ACCOUNTING  
5 SYSTEM IS MAINTAINED, HOW THEIR ACCOUNTING DATA IS INPUT  
6 INTO THE COMPUTER. WE DON'T HAVE THAT FUNDAMENTAL  
7 FOUNDATIONAL INFORMATION WHICH THE PLAINTIFFS MUST PROVIDE  
8 TO THE COURT BEFORE THEY CAN INTRODUCE COMPUTER DATA.

9                   BECAUSE COMPUTER DATA, THE VALIDITY OF  
10 COMPUTER DATA, IS ONLY AS GOOD AS THE RELIABILITY OF THE  
11 MANNER IN WHICH IT'S INPUT. IF IT'S NOT INPUT WELL, IF THE  
12 UNDERLYING INFORMATION IS NOT RELIABLE, THEN THE COMPUTER  
13 INFORMATION OR THE COMPUTER DATA OBVIOUSLY IS NOT  
14 RELIABLE.

15                   SOME OF THE INFORMATION ON THE COMPUTER DISK  
16 THE PLAINTIFFS WISH TO INTRODUCE IS ALL SEASONS RESORTS.  
17 WE CERTAINLY -- WE HAVEN'T HEARD ANY FOUNDATIONAL FACTS  
18 ABOUT HOW THAT INFORMATION WAS MAINTAINED. AND MUCH OF IT,  
19 MORE THAN HALF OF THE DATA, FROM WHAT WE UNDERSTAND, IS  
20 THOUSAND ADVENTURES DATA.

21                   THOUSAND ADVENTURES, OF COURSE, AS THE COURT  
22 KNOWS, IS A COMPANY THAT PLAINTIFFS THAT DIDN'T COME INTO  
23 CONTROL OF RAYMOND NOVELLI UNTIL SOMETIME IN 1997. AND THE  
24 INFORMATION THAT'S PRESUMABLY ON THE COMPUTER DISKS, THE  
25 PLAINTIFFS WANT TO INTRODUCE, IS INFORMATION THAT WAS  
26 ENTERED BY THOUSAND ADVENTURES PEOPLE, PERHAPS GOING BACK

1 TO THE EARLY '90'S OR THE LATE 1980'S. AND WE CERTAINLY  
2 HAVE NO INFORMATION ABOUT HOW THAT DATA WAS MAINTAINED, HOW  
3 THE ACCOUNTING RECORDS WERE KEPT FOR THOUSAND ADVENTURES.

4 IN FACT, WHAT WE KNOW FROM TESTIMONY IN THIS  
5 CASE IS THAT THOUSAND ADVENTURES WAS COLLAPSING IN 1997.  
6 THAT COMPANY WAS A MESS.

7 SO I DOUBT IF PLAINTIFFS ARE AT ALL CAPABLE  
8 OF ESTABLISHING THE FOUNDATION THAT'S NECESSARY IN ORDER TO  
9 ADMIT A -- THIS COMPUTER INFORMATION INTO EVIDENCE. AND,  
10 YOUR HONOR, FOR BOTH OF THOSE REASONS, OUR POSITION IS THAT  
11 LEO NOVELLI SHOULD NOT BE PERMITTED TO TESTIFY TO THIS DATA  
12 THAT HE SUPPOSEDLY GATHERED AND MANIPULATED IN SOME  
13 FASHION.

14 AND I THINK IF YOUR HONOR IS OTHERWISE  
15 INCLINED TO LET HIM TESTIFY TO THIS OR LET THE DATA IN, I  
16 WOULD REQUEST THAT WE HAVE A FOUNDATIONAL HEARING UNDER  
17 EVIDENCE CODE SECTION 402 BEFORE THAT OCCURS.

18 MR. SHERMAN: YOUR HONOR, THERE IS ONE POINT THAT I  
19 WOULD JUST LIKE TO AMPLIFY ON MR. RIVIN'S REMARKS.

20 THE TIME IS DRAWING NEAR WHERE UNLESS THIS  
21 CASE IS TERMINATED BY NONSUIT OR DIRECTED VERDICT AT THE  
22 CLOSE OF PLAINTIFFS' CASE, DEFENDANTS WOULD PUT ON THEIR  
23 CASE IN CHIEF. AND AS AN OFFER OF PROOF -- THIS IS NOT  
24 OBVIOUSLY BEING MADE IN FRONT OF THE JURY. THIS IS BEING  
25 MADE TO THE COURT.

26 AS AN OFFER OF PROOF, DEFENDANTS EXPECT IN

1 THEIR CASE IN CHIEF -- ASSUMING WE HAVE TO GET THERE, AND  
2 THAT'S WHERE I THINK THE ISSUE OF BIFURCATION OF LIABILITY  
3 AND DAMAGES BECOMES ALL IMPORTANT TO YOUR HONOR'S DECISION  
4 HERE AS WELL.

5 BUT ASSUMING THAT WE DO HAVE TO PUT ON OUR  
6 CASE IN CHIEF, DEFENDANTS WILL PRESENT, THROUGH ADMISSIBLE  
7 EVIDENCE OF WITNESSES WHO HAVE PERSONAL KNOWLEDGE OF THE  
8 CHAOS AND THE RECORD-KEEPING OF THE ORGANIZATION DURING THE  
9 TIME PERIODS IN QUESTION, THAT IS, PRIOR TO THE TIME THAT  
10 COAST SENT ITS LETTERS TO ITS MEMBERS -- DEFENDANTS WILL BE  
11 PRESENTING LIVE WITNESSES WHO WE BELIEVE WILL BE ABLE TO  
12 TESTIFY THAT THESE RECORDS ARE GARBAGE.

13 MR. RIVIN: ONE OTHER POINT, YOUR HONOR.

14 I BELIEVE THAT LEO NOVELLI'S TESTIMONY DOES  
15 NOT GO TO -- WILL NOT GO TO LIABILITY, WILL NOT GO TO  
16 CAUSATION ISSUES. IT WILL ONLY GO TO DAMAGES ISSUES. AND  
17 I WOULD ASK THAT PLAINTIFFS PRESENT AN OFFER OF PROOF AS TO  
18 WHAT MR. NOVELLI MIGHT BE ABLE TO TESTIFY TO RELATING TO  
19 THE ISSUES THAT ARE GOING TO BE ADJUDICATED BY THE --  
20 DETERMINED BY THE JURY.

21 THE COURT: MR. MOSHENKO?

22 MR. MOSHENKO: THANK YOU, YOUR HONOR.

23 IF I COULD APPROACH THE BOARD OVER HERE,  
24 YOUR HONOR.

25 YOUR HONOR, THIS IS A QUESTION OF LEGAL USE  
26 OF EVIDENCE. BUT COUNSEL HAS PRESENTED ARGUMENTS OF FACT

1 AS A FOUNDATION OR A PREFACE TO THEIR ARGUMENTS REGARDING  
2 USE OF THE EVIDENCE. AND I WOULD LIKE TO TALK ABOUT THE  
3 FACTS FIRST, IF I COULD.

4 I'VE HEARD COUNSEL SAY THAT THEY HAVE BEEN  
5 ASKING FOR A YEAR AND A HALF OR MORE FOR THE EVIDENCE THAT  
6 WE'RE PROPOSING TO OFFER INTO YOU -- OFFER THROUGH  
7 LEO NOVELLI. AND THIS MORNING IN CHAMBERS I SAID THAT'S  
8 FALSE. AND THE REASON WHY IT'S FALSE IS BECAUSE THE  
9 EVIDENCE WE'RE PROPOSING TO USE WAS EVIDENCE THAT WAS  
10 PRESENTED IN APRIL OF 2000, AND IT WAS COMPLETELY DIFFERENT  
11 FROM THE EVIDENCE THAT WAS BEING ASKED FOR BY COUNSEL IN  
12 1999. THE DIFFERENCE CAN BE EXEMPLIFIED THIS WAY.

13 ALL SEASONS RESORTS -- AND I'M GOING TO USE  
14 THAT TERM BROADLY TO INCLUDE ALL THE PLAINTIFFS' RESORTS --  
15 HAD A DATABASE SIMILAR TO THE -- REFERENCES THE DATABASE  
16 THAT AFFINITY HAD. AND IT INCLUDED CALL IT 100 PERCENT OF  
17 THE MEMBERS. AND THAT CONSTITUTED THAT BOX.

18 WHAT COUNSEL FOR THE DEFENDANTS ASKED FOR IN  
19 1998 AND 1999 WAS A LISTING OF THE PLAINTIFFS' MEMBERS WHO  
20 WERE COAST TO COAST MEMBERS, AND THEY ASKED FOR FINANCIAL  
21 DATA RELATING TO PLAINTIFFS' MEMBERS WHO WERE COAST TO  
22 COAST MEMBERS. AND THE PLAINTIFFS CONSISTENTLY TOOK THE  
23 POSITION THEY COULDN'T PROVIDE THAT BECAUSE ALTHOUGH WE HAD  
24 THIS ENTIRE DATABASE, WE COULDN'T SEGREGATE OUT THE COAST  
25 TO COAST MEMBERS FROM THE OTHER MEMBERS. WHY? BECAUSE,  
26 QUITE FRANKLY, OUR DATABASE WAS NOT SET UP TO SEGREGATE OR

1 ALLOW EASY SEGREGATION OF COAST TO COAST MEMBERS. WE'RE  
2 TALKING ABOUT 160,000 PERSONS OR MORE.

3 AND WHEN ASKED, TELL US THE NAMES OF THE  
4 PLAINTIFFS' MEMBERS WHO WERE COAST TO COAST MEMBERS, WE  
5 SAID, "WE GOT A PROBLEM. WE CAN'T DO THAT."

6 SO THIS IS WHAT WE EVENTUALLY GAVE THEM IN  
7 APRIL, WITHOUT THIS. THIS IS WHAT THEY ASKED FOR IN 1998  
8 AND 1999, AND WE LACKED THE ABILITY TO SEGREGATE IT.

9 SO HOW DO WE GET TO THE APRIL PRODUCTION?  
10 WELL, BEFORE WE GOT TO THIS, WE WENT IN FRONT OF  
11 JUDGE SMITH. AND THERE WERE CROSS-MOTIONS. THIS WASN'T  
12 JUST JUDGE SMITH ORDERING -- MAKING ORDERS. THERE WERE  
13 CROSS-MOTIONS BACK AND FORTH. WE MADE MOTIONS TO COMPEL  
14 THEM TO GIVE THEM THE NAMES OF THE PLAINTIFFS' MEMBERS WHO  
15 WERE COAST MEMBERS OVER AND OVER AGAIN. AND THAT FINALLY  
16 CAME UP. I BELIEVE IT'S EXHIBIT 1808. AND WE ENDED UP  
17 WITH 35,000 NAMES. OKAY. AND THAT CAME TO US IN DECEMBER  
18 OF 1999. BUT IT CAME TO US ON A DISK AND IN A HARD --  
19 PERHAPS A HARD COPY, OR PERHAPS WE PRINTED A HARD COPY OF  
20 WHAT WAS ON THE DISK.

21 AND BY REVIEWING THE DATA ON THE -- IT WAS  
22 DATA THIS WAY, WITH NAMES AND COLUMNS. WE WERE STILL  
23 UNABLE TO UNDERSTAND WHAT THE COLUMNS MEANT.

24 AND SO FOR APPROXIMATELY A THREE-MONTH  
25 PERIOD, I SOUGHT TO OBTAIN FROM THE DEFENDANTS AN  
26 INTERPRETATION OF WHAT THE DATA -- WHAT THE SIGNIFICANCE OF

1 THE DATA WAS SO WE COULD USE IT.

2 IN ADDITION, THE DATA THAT WAS ON THERE THAT  
3 LISTED THE COAST TO COAST MEMBERS WAS STILL IN A FORM THAT  
4 WE WERE UNABLE TO -- WITHOUT SPECIFICALLY SPECIALLY WRITTEN  
5 SOFTWARE, WE WERE UNABLE TO DO THAT CONNECTION OF SORTING  
6 FROM THIS GROUP INTO THIS GROUP AND THEN PULLING OUT FROM  
7 THIS GROUP THE DATA.

8 SO, THEREFORE, WHEN SOMEONE SAYS WE WERE  
9 ASKING FOR PAYMENT HISTORIES AND A PAYMENT HISTORY COULDN'T  
10 BE GIVEN, WHAT COUNSEL IS REFERRING TO IS A REQUEST FOR  
11 35,000 -- ROUNDED NUMBER -- NAMES AND THEIR PAYMENT  
12 HISTORIES OUT OF THE 160,000 PLUS NAMES. AND WE COULDN'T  
13 GIVE IT TO THEM. IT'S TRUE WE COULDN'T GIVE IT TO THEM  
14 BECAUSE WE HAD LACKED THE ABILITY TO SORT BACK AND FORTH.

15 NOW, WHAT HAPPENED AFTER THAT IS,  
16 PLAINTIFFS' EXPERT, CALVIN BIERLY -- DR. BIERLY WAS CALLED  
17 UPON TO TRY TO DO SOME CAUSATION AND DAMAGE ANALYSIS. HE  
18 IS A STATISTICIAN. YOU'LL HEAR WHAT IT IS WHEN HE COMES.  
19 AND HE SAID THE SAME THING THAT THE DEFENDANT SAID WHEN HE  
20 ARRIVED ON THE SCENE. HE SAID, "GIVE ME THE 35,000 NAMES  
21 UNDER THIS GROUP, AND I'LL DO MY ANALYSIS." AND WE SAID  
22 THE SAME THING TO HIM AS WE SAID TO THE DEFENDANTS, "WE  
23 CAN'T DO THAT. WE DON'T HAVE THE CAPACITY TO DO THAT  
24 WITH WHAT WE'RE WORKING WITH. AND WE'RE GOING -- WE'RE  
25 CONTINUING TO WORK ON IT."

26 IT WAS AN ONGOING PROCESS OF TRYING TO

1 DECIPHER THIS INFORMATION, CREATE THE SOFTWARE THAT WOULD  
2 ENABLE US TO DO THE SEGREGATION.

3                   SO WHEN I HEAR MR. RIVIN SAY DR. BIERLY SAID  
4 I ASKED FOR THE SAME THING AND DIDN'T GET IT, HE IS  
5 CORRECT. IT'S NOT WHAT MR. RIVIN SAID PRECISELY.  
6 MR. RIVIN SAID DR. BIERLY ASKED FOR PAYMENT HISTORIES AND  
7 WAS TOLD, "WE DON'T HAVE THEM" OR WORDS TO THAT EFFECT. WE  
8 HAVE PAYMENT HISTORIES. THE PAYMENT HISTORIES WERE THERE  
9 FOR 160,000. WE COULDN'T GIVE HIM THE SEGREGATED 35,000  
10 PAYMENT HISTORIES WITHOUT MORE MATERIAL AND MORE SOFTWARE  
11 AND MORE EXPENSE. OKAY.

12                   SO WHAT DID HE DO? HE SAID, "WHAT'S YOUR  
13 PROBLEM?" THE PROBLEM IS WE CAN'T SEGREGATE THIS. HE  
14 SAID, "I'LL TELL YOU WHAT. WE HAVE TO FIND AN  
15 ALTERNATIVE." SO HE WENT TO THE 35,000 -- AND THIS WAS  
16 DEALING WITH 35,000 NAMES. THERE'S ONLY ONE REASONABLE WAY  
17 TO DO IT, IS THROUGH A COMPUTER ANALYSIS OR A COMPUTER  
18 SEGREGATION PROCESS. SINCE WE COULDN'T DO THAT, HE SAID,  
19 "I'M GOING TO TAKE A SAMPLING. I'M GOING TO TAKE THIS  
20 MUCH," WHICH IS WHAT -- I THINK HE USED THE PHRASE  
21 "MANAGEABLE SAMPLING," JUST AS THE EXPERT FOR THE  
22 DEFENDANTS ATTEMPTED TO DETERMINE A MANAGEABLE SAMPLE  
23 AND -- FROM THEIR APPROACH TO ANALYZE THE PAYMENT HISTORIES  
24 OR FROM OTHER RECORDS THAT WERE PROVIDED TO THE  
25 DEFENDANTS.

26                   AND INSTEAD OF HAVING THE COMPUTER DO THIS,

1 WE'RE GOING TO GO IN, LITERALLY ONE NAME AT A TIME, AND  
2 LOOK AND SEARCH FOR JOHN W. SMITH. AND --

3 THE COURT: JOHN H.

4 MR. MOSHENKO: I SPECIFICALLY STAYED AWAY FROM YOUR  
5 NAME. JOHN H. OKAY, JOHN H. IF IT'S A HIT, IT'S A HIT.  
6 NOW, TERRY MOSHENKO. IF THERE WERE TWO TERRY MOSHENKOS, WE  
7 EXCLUDED IT.

8 SO USING THIS TECHNIQUE, HE STARTED OUT WITH  
9 A 1500-NAME HAND-SEARCH, AND HE ENDED UP WITH ABOUT 1340  
10 THAT HE WAS ABLE TO DO THE HAND MATCH.

11 OKAY. SO NOW WHEN COUNSEL SAYS DR. BIERLY  
12 COULDN'T GET A HISTORY, IT'S ONLY HALF SO. HE COULDN'T GET  
13 A 35,000 HISTORY, BUT HE COULD GET THE MATCH THAT -- THE  
14 HISTORY THAT HE GOT USING THE MANUAL TECHNIQUES THAT HE  
15 USED.

16 DR. BIERLY WAS DEPOSED, AND HE SAID, "THIS  
17 IS MY SAMPLING, AND THIS IS WHAT I BASE MY OPINIONS ON."  
18 OKAY. AND THEY SAID, "WELL, COULDN'T YOU GET A PAYMENT  
19 HISTORY FOR 35,000 NAMES?"

20 "NO, I COULDN'T."

21 MEANWHILE, LAW AND MOTION IS STILL GOING  
22 ON. WE HAD AN OMNIBUS DISCOVERY HEARING, WHICH I BELIEVE  
23 CONSUMED ABOUT A HALF A DAY, AND THE COURT CONSIDERED EIGHT  
24 OR NINE OR 10 MOTIONS, AND THEY WERE GOING BACK AND FORTH.  
25 AND JUDGE JOHN SMITH -- JIM SMITH CONSIDERED THE PROBLEM  
26 THAT PLAINTIFFS STILL COULDN'T SEGREGATE 35,000 NAMES OUT

1 OF HERE.

2 "WHY CAN'T YOU DO IT, TERRY?"

3 "YOUR HONOR, WE DON'T HAVE" -- WE STILL  
4 HADN'T BEEN ABLE TO COMPLETE THE DEPOSITION OF JIM RANDALL  
5 TO GET FURTHER INFORMATION TO DECIPHER THE 35,000 DISK THAT  
6 WE GOT FROM THEM.

7 "WHY CAN'T YOU DO IT, TERRY?"

8 "BECAUSE WE LACK THE ABILITY -- WE DON'T  
9 HAVE ENOUGH DATA ON THIS TO DO THE SEARCH IN THIS TO  
10 SEGREGATE IT."

11 AND JUDGE SMITH WITH THE WISDOM OF SOLOMAN  
12 SAID, "I'LL TELL YOU WHAT. I'M GOING TO ORDER YOU,  
13 PLAINTIFFS, TO GIVE 100 PERCENT OF YOUR DATABASE TO THE  
14 DEFENDANTS BECAUSE THEY HAVE THE ABILITY TO SEGREGATE THE  
15 35,000 NAMES. AND THEY CAN MAKE THAT SEGREGATION."

16 AND I SAID, "FINE, YOUR HONOR. BUT WE CAN'T  
17 DO IT BECAUSE THEY HAVEN'T GIVEN US INFORMATION. NOW  
18 YOU'RE GIVING THEM THE ABILITY TO DO IT. I WANT YOU TO  
19 ORDER THAT BOTH SIDES HAVE WILL THE SAME INFORMATION."

20 AND I KNOW YOU WON'T REMEMBER THIS, BUT DAY  
21 ONE WHEN WE WERE IN THIS COURTROOM AND YOUR HONOR MADE THE  
22 COMMENT THIS IS A SEARCH FOR TRUTH AND JUSTICE, AND I SAID,  
23 "FINE, YOU KNOW, GIVE THEM" -- "WE'LL GIVE THEM WHATEVER  
24 INFORMATION WE HAVE AND HAVE THEM DO THE SAME."

25 AND YOUR HONOR NEVER GOT TO AGREE WITH ME ON  
26 THAT POINT.

1                   SO NOW WHEN THEY SAY WE ASKED FOR A YEAR AND  
2 A HALF TO GET DATA, AND WE FINALLY GOT IT ON APRIL 12,  
3 WHAT THEY GOT ON APRIL 12 WAS THE BIG BOX. AND WHEN THEY  
4 SAY, "WE TRIED TO GO INTO THE DISK," IT WAS THE BIG BOX  
5 THAT THEY TRIED TO GO INTO.

6                   AND AS I INDICATED TO YOU THIS MORNING,  
7 LEO NOVELLI HAS TOLD -- IS THE PERSON THAT MADE THE DISK  
8 FROM THE ENTIRE DATABASE AND IS PREPARED, IF THE COURT  
9 WISHES, TO BRING COMPUTER EQUIPMENT IN AND TAKE THEIR DISK,  
10 THE ONE WE GAVE TO THEM AND OPEN IT UP AND SHOW THE COURT  
11 HOW IT'S ACCESSIBLE. OKAY.

12                   THE PLAINTIFFS PRODUCED 100 PERCENT OF THE  
13 DATABASE IN EARLY APRIL. WHAT THEY DID WITH IT -- I'VE  
14 JUST HEARD VERBALLY THEY SAY THAT THEY HAVE A LETTER  
15 TELLING THEM THAT IT'S INACCESSIBLE. I OBJECT TO THE  
16 LETTER. IT'S HEARSAY. BRING IN MR. NYE AND HAVE HIM  
17 TESTIFY WHAT HE DID AND DIDN'T DO.

18                   OTHERWISE, THE COURT SHOULD NOT CONSIDER THE  
19 ARGUMENT OF COUNSEL AS -- WHICH IS MERELY A CONTENTION THAT  
20 SOMEHOW THE DATA WAS NOT THERE OR WAS INACCESSIBLE.

21                   NOW, AS TO THE POINT THAT RAYMOND NOVELLI  
22 ALLEGEDLY CAME IN WITH AN ADDITIONAL OFFERING, IF YOU WILL,  
23 I WASN'T THERE, YOUR HONOR. BUT I'VE TALKED TO MR. SHAW  
24 ABOUT THIS. AND MR. SHAW CAN ADD TO THIS. AND HE TELLS ME  
25 THAT HE HAD A CONVERSATION WITH MR. RIVIN ABOUT THAT TIME  
26 AND SAID, "LOOK, IF YOU GOT A PROBLEM, TELL US. WE'LL

1 ASSIST YOU. WE'LL ENABLE YOU TO WORK WITH THIS DATA."

2                   THEN I JUST HEARD MR. RIVIN SAY THAT  
3 MR. NOVELLI SAID, QUOTE, "YOU COULDN'T GET" -- THIS IS NOT  
4 EXACTLY A QUOTE, BUT "YOU COULDN'T GET INTO THE DISK  
5 BECAUSE THE SOFTWARE WAS NOT THERE," OR "THE SOFTWARE WAS  
6 NOT INCLUDED."

7                   OKAY. WELL, JUDGE JIM SMITH ORDERED -- HE  
8 WAS VERY SPECIFIC IN HIS ORDER. PRODUCE A DISK. TELL THE  
9 OTHER SIDE HOW THE DISK WAS CREATED. TELL THE OTHER SIDE  
10 WHAT SOFTWARE WAS USED. IF IT IS NOT -- AND THIS IS MY  
11 MEMORY-- IF IT'S PROPRIETARY, PROVIDE THEM WITH A COPY OF  
12 THE SOFTWARE SO THEY CAN USE THE SAME. IF IT'S YOUR OWN  
13 PERSONAL SOFTWARE, PROVIDE THEM WITH IT. MY WORD -- IF  
14 IT'S COMMERCIALY AVAILABLE, THEN JUST TELL THEM WHAT  
15 SOFTWARE THEY CAN OBTAIN TO USE IT.

16                   WE DID THAT. WE HAVE A DECLARATION SIGNED  
17 BY LEO NOVELLI THAT SAYS, "I'VE INCLUDED" -- WHAT'S  
18 INCLUDED IN THE DISK, WHAT HE DID TO PREPARE IT, WHAT  
19 SOFTWARE CAN BE USED TO ACCESS IT, EVEN WHERE TO GO GET THE  
20 SOFTWARE.

21                   AND AS A MATTER OF FACT, IT'S FREE SOFTWARE  
22 AVAILABLE ON THE INTERNET. AND WE DELIVERED ALL THAT TO  
23 THE DEFENDANTS.

24                   MR. DURAN IS HERE. HE WILL TESTIFY, IF  
25 NECESSARY, THAT HE TOOK THE DISK AND HANDED IT TO MR. ARKO  
26 AND MR. -- IN RUTAN & TUCKER'S OFFICES. HE THEN FOLLOWED

1 UP WITH A LETTER SAYING, "HERE IS WHAT I'M DELIVERING TO  
2 YOU, AND IT INCLUDES WHAT IT INCLUDES. AND IF THERE IS A  
3 PROBLEM, LET US KNOW." OKAY. WE NEVER HEARD THERE WAS A  
4 PROBLEM UNTIL THE DAY THAT THEY ARGUED THE MOTIONS IN  
5 LIMINE.

6 AND, YES, I THINK MR. RIVIN DID BRING UP THE  
7 SUBJECT IN MOTIONS IN LIMINE IN THIS COURTROOM. AND YOUR  
8 HONOR WAS BEING TUGGED BACK AND FORTH BY BOTH SIDES AS THE  
9 CASE YOU HAVE DONE FOR MONTHS. AND FINALLY YOU SAID -- MY  
10 INTERPRETATION -- "ENOUGH. NO MORE DISCOVERY ISSUES WILL  
11 BE HAPPENING IN THIS" -- "WILL BE COMING BEFORE ME OR WILL  
12 BE HAPPENING IN THIS CASE."

13 AND YOU HEARD THE ARGUMENT ABOUT THE MOTION  
14 THAT MR. RIVIN TALKS ABOUT THAT SAYS NO TESTIMONY SHOULD BE  
15 OFFERED BASED ON HISTORIES THAT HAVE NOT BEEN PROVIDED IN  
16 DISCOVERY. AND WHEN YOU SAID THAT, I SAID, "NO PROBLEM."  
17 OUR TESTIMONY IS ONLY ABOUT HISTORIES THAT WERE PROVIDED  
18 DURING DISCOVERY. AND THAT INCLUDES THE -- THE TOTAL  
19 DATABASE, THE 35,000 NAMES THAT THEY GAVE US, AND THE  
20 HISTORIES THAT DR. BIERLY USED AND PROVIDED TO THEM, WHICH  
21 YES, WASN'T A 35,000 HISTORY, BUT WAS A SMALLER ONE.

22 AND THEN MR. NOVELLI TESTIFIED IN HERE  
23 SEVERAL DAYS AGO TO THE FACT THAT WITH -- INCIDENTALLY, IN  
24 MARCH OR -- IN MARCH COAST PROVIDED US WITH ANOTHER DISK  
25 WHICH PROVIDED ADDITIONAL INFORMATION TO THIS ONE. AND I'M  
26 INFORMED THAT WITH THE COMBINATION OF THIS DISK, THIS DISK,

1 THIS DATA AND SOFTWARE THAT HAD TO BE SPECIALLY  
2 MANUFACTURED OR WRITTEN -- AND I'M NOT A GENIUS IN  
3 COMPUTERS. THEY WERE THEN ABLE TO GO INTO THIS 35,000 AND  
4 ACHIEVE 19 APPROXIMATELY HITS. AND THAT'S WHAT MR. NOVELLI  
5 WAS REFERRING TO WHEN HE SAID WE DID THE COMPARISON OF THIS  
6 DATA AND THIS DATA A FEW DAYS AGO WHEN YOUR HONOR ASKED  
7 HIM.

8 NOW, THOSE ARE THE FACTS AS I RECALL THEM  
9 AND AS I STATE THEM.

10 MR. SHAW: COULD I ADD SOMETHING?

11 MR. MOSHENKO: GO AHEAD. IF YOU HAVE SOME FACTS,  
12 BE MY GUEST.

13 MR. SHAW: NOW KIND OF THE SCENE SHIFTS OVER TO ME  
14 BECAUSE I WAS WITH MR. RIVIN, AND I JUST WANT TO RELATE --  
15 AND I'LL TRY TO BE VERY BRIEF.

16 YOU KNOW, I REALLY BELIEVE WE'RE BEING  
17 SANDBAGGED BECAUSE THE ISSUE IS NOT WHAT THEY TRY TO  
18 PORTRAY IT AS, COULD THE STANFORD GROUP READ IT. THE ISSUE  
19 IS, DID WE COMPLY WITH JUDGE SMITH'S ORDER. JUDGE SMITH'S  
20 ORDER SAYS, "PLAINTIFFS SHALL DELIVER TO DEFENDANTS IN  
21 STANDARD ELECTRONIC MEDIA FORMAT THE ENTIRE DATABASE  
22 CONTAINING INFORMATION. PLAINTIFFS SHALL ALSO IDENTIFY THE  
23 SOFTWARE USED TO CREATE AND ACCESS THIS DATABASE,"  
24 LEO NOVELLI, DECLARATION, APRIL 11TH. IT STATES FOR THREE  
25 PAGES HOW THEY GET INTO THAT CD.

26 WE COMPLIED WITH JUDGE SMITH'S ORDER. THEY

1 DIDN'T GO BACK TO JUDGE SMITH AND SAY, "WAIT A MINUTE. ON  
2 APRIL 11TH WHEN WE GOT THIS, THIS ISN'T GOOD ENOUGH."

3                   NOW -- NOW, LET'S FAST-FORWARD. SO WE  
4 COMPLIED. I DON'T KNOW WHAT THE STANFORD GROUP DID. I  
5 DON'T KNOW HOW THEY DID IT. THEY'RE NOT HERE BEFORE YOUR  
6 HONOR. THEY'RE NOT AN ISSUE HERE BEFORE YOUR HONOR. WE  
7 COMPLIED.

8                   THEN I'M SITTING WITH MR. RIVIN ON THE TOP  
9 FLOOR OF HIS OFFICES ON APRIL 26TH WITH MR. NOVELLI. AND  
10 MR. NOVELLI SAYS AT PAGE 1773 OF HIS DEPOSITION, "I DID ASK  
11 MR. SCHULZ FOR THE GENERAL LEDGER TO DO A BACKUP OFF THE  
12 WANG COMPUTER OF ALL THE COMPANIES, WHICH WOULD BE FIRST  
13 NATIONWIDE. THIS IS THE ONE THAT I TOLD YOU THAT WAS IN  
14 THAT LITTLE TAPE. THAT LITTLE PC" -- HE IS NOW TALKING  
15 ABOUT MR. LEO NOVELLI -- "THE LAST TIME.

16                   "YEAH, THE CD THAT WE GAVE WITH ALL OF OUR  
17 INFORMATION ON IT."

18                   THIS INFORMATION IS ON THIS TAPE ALSO. HE  
19 BROUGHT -- HE BROUGHT NOT THE PC CD ROM THAT JUDGE SMITH  
20 WAS TALKING ABOUT. WE HAD ALREADY TURNED THAT OVER TO  
21 HIM. BUT HE BROUGHT WHAT I THINK IS CALLED A FLOPPY DISK  
22 ON THE WANG, ANOTHER PIECE, WHICH WAS THE SAME THING THAT  
23 HAD ALREADY BEEN GIVEN ON APRIL 11TH.

24                   AND THEN MR. NOVELLI FINISHES. AND I SAID,  
25 THE LAST TIME IT WAS ALL ON THE CD. I THEN DID -- AND I  
26 WANT TO BE CAREFUL ABOUT THIS BECAUSE I CONSIDER MR. RIVIN

1 A FRIEND, AND I GET SELECTIVE MEMORY SOMETIMES. BUT I  
2 REMEMBER SAYING TO MR. RIVIN, IF YOU'VE GOT A PROBLEM --  
3 BECAUSE MR. RIVIN IS RIGHT. HE WAS TELLING US WE CAN'T GET  
4 ON IT. WE CAN'T WORK IT. WE CAN'T GET ON IT. I SAID,  
5 "WHATEVER YOU NEED, JUST TELL ME."

6 I'M NOT A COMPUTER-LITERATE PERSON OR I  
7 DON'T CONSIDER MYSELF. I CAN USE A LAPTOP.

8 "IF YOU NEED SOMETHING, JUST LET US KNOW AND  
9 WE'LL DEAL WITH IT." I DIDN'T HEAR ANYTHING. I PERSONALLY  
10 DIDN'T. MAYBE MR. DURAN OR MR. MOSHENKO. BUT THEY CAN  
11 TALK ABOUT IT. I'M JUST TALKING ABOUT MY OWN PERSONAL  
12 KNOWLEDGE. I DIDN'T HEAR ANYTHING ELSE ABOUT IT.

13 SO I LEFT APRIL 26TH. WE'D COMPLIED. WE'D  
14 GIVEN -- AND WE EVEN GAVE MORE. WE WENT TO -- BECAUSE, AS  
15 I UNDERSTAND IT, THE FLOPPY DISK DOES HAVE THE SOFTWARE ON  
16 IT. SO WE COMPLIED AGAIN.

17 SO AS FAR AS JUDGE SMITH IS CONCERNED, WHICH  
18 I THINK IS WHAT THEY'RE ASKING FOR, AN EVIDENCE PRECLUSION,  
19 AS FAR AS JUDGE SMITH IS CONCERNED, IN THIS ORDER, WE HAVE  
20 COMPLIED.

21 I REPEAT MYSELF. I CAN'T BE RESPONSIBLE FOR  
22 WHAT HAPPENED WITH STANFORD CONSULTING GROUP. I DON'T KNOW  
23 WHAT'S HAPPENING OUT THERE. MR. NOVELLI IS GOING TO COME  
24 IN HERE TO TESTIFY -- AND I THINK MAYBE A 402 HEARING IS  
25 WARRANTED. MR. NOVELLI WILL TESTIFY HOW EASY IT IS TO GET  
26 ONTO THAT CD. AND WHAT HE GAVE THEM IN COMPLIANCE WITH

1 JUDGE SMITH'S ORDER WAS HOW TO GET ONTO THAT CD, AND THAT  
2 ISN'T THAT DIFFICULT TO GET ONTO THAT CD.

3 SO THOSE ARE THE FACTS. THOSE ARE THE FACTS  
4 AS I KNOW THEM. THIS IS AN ISSUE ABOUT JUDGE SMITH'S  
5 ORDER. AND IF WE'RE GOING TO HAVE EVIDENCE PRECLUSION, WE  
6 HAVE TO GO BACK TO THE COURT'S ORDER, NOT WHAT SOMETHING  
7 HAPPENED AT STANFORD CONSULTING GROUP THAT IS NOT EVIDENCE  
8 IN FRONT OF THIS COURT.

9 AND WE'RE PREPARED TO BACK UP WHAT WE DID TO  
10 COMPLY WITH JUDGE SMITH'S ORDER WITH LIVE TESTIMONY FROM  
11 LEO NOVELLI THAT DOES GO TO CAUSATION. AND I KNOW THE  
12 COURT IS TIRED OF HEARING ME TALK ABOUT THIS. THIS IS  
13 CAUSATION AS OPPOSED TO DAMAGES. DR. BIERLY IS CAUSATION  
14 AND DAMAGES, BUT CAUSATION WHICH IS AN IMPORTANT PART OF  
15 OUR CASE.

16 AND NOW I'LL HAND IT BACK OVER TO  
17 MR. MOSHENKO.

18 THE COURT: BEFORE YOU DO, I'VE GOT A QUESTION.

19 MR. MOSHENKO: YES, SIR.

20 THE COURT: IF YOU WERE ABLE TO BREAK THE CODE,  
21 SO-TO-SPEAK, WHY DIDN'T YOU BREAK IT AND GIVE HIM ALL THE  
22 INFORMATION THAT YOU APPARENTLY HAVE NOW?

23 MR. SHAW: ONE OF THE REASONS IS -- THIS IS  
24 PROBABLY -- WE COMPILED IT, TRIED TO COMPUTE IT YESTERDAY.  
25 IT'S OVER 500,000 PAGES OF DOCUMENTATION. WHAT THEY WANTED  
26 WAS NOT THE 500,000 PAGES. WHAT THEY WANTED WAS THE LITTLE

1 BOX, THE 35,000. THEY HAD THE ABILITY TO DO THAT. WE  
2 DIDN'T.

3 MR. MOSHENKO MADE MOTIONS TO COMPEL AND I  
4 THINK WERE GRANTED. AND WE GOT IT. BUT IT WAS AFTER -- IT  
5 WAS AFTER ALL THIS --

6 THE COURT: MAYBE I'M A LITTLE DENSE HERE.

7 YOU'RE TELLING ME THAT YOU GAVE THEM ALL THE  
8 OPPORTUNITIES AND ALL THE NECESSARY INFORMATION TO BREAK  
9 THIS CODE?

10 MR. SHAW: YES.

11 MR. MOSHENKO: EXACTLY.

12 MR. SHAW: IT'S HERE.

13 THE COURT: BUT WHY DIDN'T YOU BREAK THE CODE?

14 MR. SHAW: WE DID.

15 MR. MOSHENKO: IT'S BACK TO THE CHART, YOUR HONOR.  
16 EXCUSE ME.

17 THIS DATA DID NOT GIVE US ENOUGH INFORMATION  
18 TO DO IT WITHOUT -- I'M NOT AN EXPERT -- WITHOUT MORE --  
19 OKAY -- THAN WHAT WE HAD.

20 I'M TOLD THAT THESE DATA -- THIS CAME IN IN  
21 MARCH OF 1999. AND I'M TOLD THAT IT WAS AFTER -- AFTER  
22 CALVIN BEER -- IF WE COULD HAVE DONE IT, WE WOULD HAVE DONE  
23 IT FOR CALVIN BIERLY.

24 DO YOU THINK WE WANT HIM TO COME IN AND SAY  
25 HE WORKED WITH 1500 NAMES WHEN HE COULD HAVE WORKED WITH  
26 35,000 NAMES? I MEAN, WE COULDN'T DO IT. WHEN WE DID IT,

1 WE DID IT DURING THIS TRIAL WHILE THIS TRIAL WAS UNDERWAY,  
2 NOT LAST WEEK OR TWO WEEKS AGO. I DON'T KNOW EXACTLY WHEN  
3 IT HAPPENED BECAUSE I HADN'T SPOKEN TO LEO NOVELLI.

4 THE COURT: IT DIDN'T HAPPEN BEFORE WE STARTED THE  
5 TRIAL.

6 MR. MOSHENKO: IT DIDN'T HAPPEN BEFORE WE STARTED  
7 THE TRIAL.

8 THE COURT: IT'S HAPPENED SINCE THEN.

9 MR. MOSHENKO: IT HAS. AND THAT'S -- AND YOUR  
10 HONOR SPECIFICALLY SAID IN OPENING DAY OF MOTIONS IN  
11 LIMINE -- OR MAYBE IT WAS THE SECOND DAY -- DISCOVERY IS  
12 OVER. I'M NOT -- NOBODY IS DOING ANYMORE DISCOVERY.

13 EVEN AT THAT, YOUR HONOR, IF THEY WOULD HAVE  
14 COME TO US AND SAID, "LOOK, THIS IS OUR PROBLEM," AS  
15 MR. SHAW SUGGESTED, "WILL YOU HELP US?" WE WOULD. WE  
16 WOULD HAVE, FRANKLY.

17 I KNOW THIS SOUNDS AWFULLY SELF-SERVING, BUT  
18 IT'S NOT IN OUR INTEREST TO HAVE TO COME IN AND FIGHT THIS  
19 FIGHT WHEN WE -- FRANKLY, MY PERSONAL BELIEF WAS THAT THEY  
20 MUST HAVE GOTTEN THROUGH IT.

21 NOW, I KNOW THAT THEY STOPPED. I BELIEVE  
22 THEY STOPPED. THEY QUIT, AND THEY DID IT HOPING -- BECAUSE  
23 THE CHOICE OF TRYING TO EXCLUDE THE EVIDENCE WAS BETTER  
24 THAN GETTING THE EVIDENCE. THEY DIDN'T WANT TO KNOW IT.

25 NOW, BREAK THE CODE? WHAT DOES IT TAKE TO  
26 BREAK THE CODE? IT TOOK DATA THAT THEY HAD AND DATA THAT

1 WE GAVE THEM. WE DIDN'T HAVE ALL THE DATA THAT THEY HAD.

2 THEY HAD ALL THE DATA THAT WE GAVE THEM.

3 AND WHEN MR. NOVELLI MADE THE COMMENT, WHEN  
4 THAT DISK WAS GIVEN TO YOU, YOU DIDN'T HAVE THE SOFTWARE,  
5 IF HE DID, I HAVEN'T SEEN IT IN THE DEPOSITION. AND I NOTE  
6 THAT MR. RIVIN HASN'T GIVEN US THE PAGE AND LINE WHERE  
7 MR. NOVELLI ALLEGEDLY SAYS, "WELL, WE FOUND OUT YOU  
8 COULDN'T GET INTO THAT DISK."

9 BUT IF MR. NOVELLI MADE THE STATEMENT, IT  
10 CAME OUT -- THE SOFTWARE, WE WEREN'T -- WE WERE ORDERED TO  
11 GIVE SOFTWARE IF IT WAS PROPRIETARY ONLY. AND WE WERE  
12 ORDERED TO TELL THEM WHAT SOFTWARE WAS USED, AND WE DID  
13 THOSE TWO THINGS. WE HAD NO DUTY TO GIVE THEM SOFTWARE,  
14 BECAUSE IT WAS NOT PROPRIETARY. IT WAS AVAILABLE  
15 COMMERCIALY, AND I WAS OUT THERE, AND THEY CAN GO GET IT  
16 AS WELL.

17 MR. SHAW: CAN I MAKE ONE LAST POINT BEFORE  
18 MR. SHERMAN STARTS?

19 BOTH OF THESE, THE BIG BOX AND THE LITTLE  
20 BOX, ARE IN EVIDENCE. AND THAT IS WHAT --

21 MR. MOSHENKO: ACTUALLY THE BIG BOX ISN'T.

22 MR. SHERMAN: THAT'S WHAT WE'RE FIGHTING OVER.

23 MR. SHAW: WELL, IT'S AN EXHIBIT.

24 MR. SHERMAN: IT'S NOT IN EVIDENCE.

25 MR. RIVIN: THERE'S A DIFFERENCE.

26 MR. SHAW: THANK YOU. THERE IS A DIFFERENCE.

1                   BUT I THINK THE COURT'S ORDER WAS THAT IF IT  
2 WAS HERE IN THIS COURT READY TO GO TO BE ADMITTED INTO  
3 EVIDENCE, THEN THAT'S WHAT WE'D BE DEALING WITH. AND IT'S  
4 HERE.

5                   AND I JUST UNDERScore WHAT MR. MOSHENKO JUST  
6 SAID; IF THEY THINK WE'RE SANDBAGGING SOMEONE, WE'RE  
7 SANDBAGGING TO HURT OURSELVES BECAUSE WE WANTED THAT  
8 INFORMATION. AND WE FOUGHT FOR THAT INFORMATION, AND WE  
9 GOT IT. AND THIS WHOLE ISSUE IS ONLY BECAUSE OF WHAT THE  
10 STANFORD CONSULTING GROUP IS DOING. AND WE'VE COMPLIED  
11 WITH THE ORDER, AND I DON'T KNOW WHAT THE STANFORD  
12 CONSULTING GROUP IS DOING.

13                  MR. SHERMAN: YOUR HONOR, LET'S TALK ABOUT A COUPLE  
14 OF DATES.

15                   THE FIRST DATE, JANUARY, '98. COMPLAINT. I  
16 WAS LOOKING FOR THE COMPLAINT, THE PRAYER AND THE ORIGINAL  
17 COMPLAINT. I COULDN'T FIND IT. I BELIEVE THE PRAYER WAS  
18 \$14 MILLION IN DAMAGES AGAINST MY CLIENTS.

19                   LET'S GO TO THE NEXT DATE. THE NEXT DATE IS  
20 JULY, 1998. WHAT'S JULY, 1998? JULY, 1998, IS THE DATE OF  
21 DEFENDANT CAMP COAST TO COAST, INC.'S, FIRST SET OF  
22 REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS.  
23 DOCUMENT PRODUCTION. DOCUMENT REQUEST. LET'S TALK ABOUT  
24 THAT DOCUMENT REQUEST.

25                   DOCUMENT REQUEST ASKED IN REQUEST NUMBER 33,  
26 ALL DOCUMENTS THAT EVIDENCE, REFLECT OR REFER TO ANY AND

1 ALL DAMAGES SUFFERED BY ANY OF THE PLAINTIFFS AS A RESULT  
2 OF DEFENDANTS' ALLEGED WRONGFUL CONDUCT AS ALLEGED IN THE  
3 COMPLAINT. JULY, '98.

4 LET'S GO TO A THIRD DATE. THE THIRD DATE IS  
5 A JUDGE JOHN -- A JUDGE JAMES L. SMITH ORDER, NOT THE ORDER  
6 THAT COUNSEL HAS BEEN TALKING ABOUT SO MUCH IN THE PAST 10,  
7 15 MINUTES, BUT YET ANOTHER ORDER. BECAUSE AS THE COURT  
8 HAS HEARD, JUDGE JAMES SMITH MADE SEVERAL ORDERS, AND  
9 PLAINTIFFS WERE SANCTIONED ON SEVERAL TIMES FOR DISCOVERY  
10 ABUSE IN THIS CASE.

11 SO LET'S GO TO THE ORDER OF  
12 JUDGE JAMES L. SMITH -- AND I HAVE A COPY WITH ME -- FILED  
13 ON MAY 25, 1999. MAY, '99, ORDER.

14 THE ORDER WAS WITH REFERENCE TO THE  
15 DISCOVERY REQUEST WHERE WE ASKED FOR THE DAMAGES  
16 INFORMATION. THIS IS WHAT JUDGE JAMES SMITH FOUND: "THE  
17 REQUESTS WERE PROPOUNDED BY DEFENDANTS IN JULY OR AUGUST OF  
18 1998. THERE WERE OTHER DISCOVERY REQUESTS THAT WERE THE  
19 SUBJECT OF THIS. ALTHOUGH THERE WERE EARLIER RESPONSES  
20 CONSISTING OF LITTLE MORE THAN OBJECTIONS, SUBSTANTIVE  
21 RESPONSES BY PLAINTIFFS WERE, WITH FEW EXCEPTIONS, NOT  
22 FORTHCOMING UNTIL MARCH 25, 1999, ONE DAY PRIOR TO THE  
23 MARCH 26TH, 1999, HEARING ON DEFENDANTS' VARIOUS MOTIONS TO  
24 COMPEL.

25 "THE COMMUNICATIONS BETWEEN THE PARTIES  
26 DURING THE PERIOD OF AUGUST, '98, THROUGH MARCH 26TH, 1999,



1           MR. SHERMAN: FEBRUARY 24. COULD YOU PLEASE GO TO  
2 FEBRUARY 24 AND SEARCH FOR THE WORD "PRIORITY."

3                         QUESTION ON FEBRUARY 24.

4           MR. SHAW: WHAT PAGE AND LINE?

5           MR. SHERMAN: THIS IS ON PAGE 1146.

6                         "QUESTION BY MR. SHERMAN:  
7                                 YOU RECALL THE TESTIMONY YOU HAD  
8                                 GIVEN IN PRIOR DEPOSITION  
9                                 SESSIONS ABOUT PAYMENT HISTORY?

10                        "ANSWER: YES.

11                        "QUESTION: THOSE PAYMENT  
12                                 HISTORIES CANNOT BE ACCESSED BY  
13                                 YOU; IS THAT RIGHT?

14                        "ANSWER: THAT'S CORRECT.

15                        "QUESTION: AND THEY CANNOT  
16                                 BE ACCESSED BY YOU BECAUSE OF  
17                                 SOME COMPUTER GLITCHES?

18                        "ANSWER: NOT COMPUTER  
19                                 GLITCHES. WE WENT ON TO A  
20                                 COMPLETELY NEW SYSTEM. WE ARE  
21                                 PROGRAMING OUR NEW SYSTEM. AND  
22                                 PRIORITIES ON OUR NEW SYSTEM IS  
23                                 CONTRACT SALES AND THIS SORT OF  
24                                 THING. OLDEST AND THINGS LIKE  
25                                 THAT ARE NOT PRIORITIES.

26                        "WE HAVE THE COMPUTER PEOPLE

1 WORKING ON OUR SYSTEM FOR OVER A  
2 YEAR, AND THEY HAVE NOT GOTTEN  
3 US TO THE POINT WHERE WE ARE  
4 SATISFIED WITH WHAT WE'VE GOT.

5 "QUESTION: SO WHEN YOU SAY  
6 THEY'RE NOT PRIORITIES, ANOTHER  
7 WAY OF SAYING IT IS IT'S NOT  
8 IMPORTANT ENOUGH IN THE SCHEME  
9 OF THINGS IN YOUR ORGANIZATION;  
10 IS THAT CORRECT?

11 "ANSWER: EVERYTHING IS  
12 IMPORTANT IN OUR ORGANIZATION  
13 INCLUDING THAT. BECAUSE IF WE  
14 CAN GET THOSE HISTORIES, WE CAN  
15 AGAIN START COLLECTING ON THEM.  
16 I DON'T HAVE ALL THE HISTORIES.

17 "QUESTION: I'M JUST GOING  
18 BACK TO YOUR TESTIMONY. YOU  
19 SAID YOU HAD PRIORITIES. THAT'S  
20 NOT ONE OF YOUR TOP PRIORITIES?

21 "ANSWER: THERE ARE OTHER  
22 PRIORITIES THAT ARE A DAILY  
23 PROBLEM.

24 "QUESTION: I'M NOT TRYING TO  
25 BE ARGUMENTATIVE ABOUT IT. BUT  
26 WHEN YOU SAY PRIORITIES, YOU'VE

1 GOT A LIST, AND YOU START AT THE  
2 TOP; AND PAYMENT HISTORIES ARE  
3 NOT AT THE TOP; RIGHT?

4 "ANSWER: CORRECT.

5 "QUESTION: AND THEY ARE NOT  
6 SECOND OR THIRD OR FOURTH?

7 "ANSWER: CORRECT.

8 "QUESTION: AND BECAUSE THEY  
9 ARE NOT ONE OF THE TOP  
10 PRIORITIES TODAY, EVEN THOUGH  
11 YOU'VE GOT SOME RAW DATA  
12 SOMEWHERE, SOMEHOW YOU CAN  
13 ACCESS IT; CORRECT?

14 "ANSWER: THAT'S CORRECT."

15 SO THE ISSUE IS -- AND, YOU KNOW, THE  
16 QUESTION OF, YOU KNOW, WAS MR. ARKO GIVEN A DISK ON APRIL  
17 26TH, AND DID MR. SHAW LIKE MR. RIVIN, AND DOES HE  
18 UNDERSTAND HOW TO USE A LAPTOP, I MEAN, WHO CARES?

19 WE GOT A DOCUMENT REQUEST. WE GOT AN ORDER  
20 ON THE DOCUMENT REQUEST. WE GOT A MAN WHO TESTIFIED, THE  
21 HEAD OF THE ORGANIZATION, SAYING IT'S NOT IMPORTANT ENOUGH  
22 FOR ME.

23 AND THEN LET'S ASSUME THAT THESE ARE PAYMENT  
24 HISTORIES. LET'S JUST ASSUME THEY ARE PAYMENT HISTORIES --  
25 BY THE WAY, THEY HAVEN'T ADDRESSED ANY OF THE FOUNDATIONAL  
26 ISSUES AT ALL. AND MR. RIVIN WILL ADDRESS THAT IN A

1 MOMENT.

2 BUT LET'S ASSUME THEY ARE PAYMENT  
3 HISTORIES. WE'RE BEING SUED FOR \$200 MILLION AND A WEEK,  
4 CALL IT A MONTH. GIVE THEM A MONTH. AND A MONTH BEFORE  
5 TRIAL THEY DROP THIS STUFF ON US? WHO IS SANDBAGGING WHO?

6 MR. SHAW: YOUR HONOR, WHAT MR. SHERMAN DOESN'T SAY  
7 IS THAT WE COMPLIED WITH THE COURT'S ORDER. THIS  
8 DEPOSITION WAS THREE MONTHS BEFORE THE JUDGE'S COURT ORDER,  
9 AND THE COURT ORDER WAS COMPLIED WITH.

10 IF YOUR HONOR WANTS TO HAVE MR. NOVELLI  
11 TESTIFY, WE'RE GOING TO HAVE HIM TESTIFY, LEO NOVELLI. BUT  
12 I WOULD ASK BEFORE THE COURT RULES THAT THEY HAVE STANFORD  
13 CONSULTING -- I'M SORRY FOR MY FINGER -- SHOULD HAVE  
14 STANFORD CONSULTING GROUP DOWN HERE. TO ME THAT'S THE  
15 EMPTY CHAIR.

16 WE COMPLIED WITH THE ORDER. I THINK WE CAN  
17 SHOW WE COMPLIED WITH THE ORDER. THEIR WHOLE ARGUMENT IS  
18 STANFORD CONSULTING GROUP COULDN'T OPEN UP THE  
19 INFORMATION. THAT'S ALL HEARSAY. WE DON'T KNOW THAT. WE  
20 DON'T KNOW IF THAT'S OUR RESPONSIBILITY.

21 THE COURT: THE POINT IS, MR. SHAW, YOU SAY THEY  
22 COULDN'T OPEN UP THE INFORMATION, STANFORD.

23 MR. MOSHENKO: WE DON'T KNOW --

24 THE COURT: APPARENTLY WOULD -- YOU COULDN'T SEE --

25 MR. SHAW: WE CAN'T --

26 THE COURT: WHY DIDN'T YOU --

1 MR. MOSHENKO: WAIT.

2 THE COURT: NOT IN TIME.

3 MR. MOSHENKO: THERE'S CONFUSION HERE, YOUR HONOR.  
4 I'M SORRY FOR INTERRUPTING.

5 WE COULDN'T GIVE THEM THE -- WHEN  
6 MR. SHERMAN READS WHAT MR. NOVELLI SAID, THOSE HISTORIES,  
7 HE IS TALKING ABOUT 35,000 NAMES. WE COULDN'T. WE  
8 COULDN'T. WE COULDN'T. I DON'T KNOW HOW EASIER TO SAY IT.  
9 WE COULDN'T DO IT UNTIL AFTER THIS TRIAL STARTED.

10 THE COURT: THAT'S THE POINT.

11 MR. MOSHENKO: ALL RIGHT. AND THE REASON WE  
12 COULDN'T DO IT IS BECAUSE WE COULDN'T GET FROM THEM WHAT WE  
13 NEEDED TO ENABLE US TO DO IT.

14 JUDGE SMITH, JIM SMITH, HEARD ALL OF THESE  
15 THINGS THAT YOU'RE HEARING ABOUT THE 1998, 1999 MOTIONS.  
16 HE MADE HIS LEARNED DECISION, WHICH INHERENT IN THAT  
17 DECISION WAS A CONFIRMATION THAT IT WAS SOMETHING THAT  
18 PLAINTIFFS COULDN'T DO, THEREFORE, COULD NOT BE SANCTIONED  
19 FOR NOT DOING IT.

20 AND HIS SOLUTION WAS HE CHANGED THE REQUEST  
21 FROM GIVE US 35,000 TO GIVE THEM THE WHOLE DATABASE. HE  
22 ORDERED A SPECIAL CONFIDENTIALITY ORDER AND RULING,  
23 INCLUDED IN HIS ORDER LIMITING WHAT COULD HAPPEN TO THAT.  
24 WE WERE DEPRIVED NOT THROUGH ANY CHOICE. IT WAS THROUGH  
25 OUR INABILITY TO MARRY THEIR DATA WITH OUR DATA. AND IF  
26 THEY WANT TO SAY THEY COULDN'T GET OUR DATA UNTIL LATE, WE

1 COULDN'T GET THEIRS UNTIL LATE.

2 WHO IS -- AT FACT IT TOOK A AND B TOGETHER,  
3 AND A AND B WEREN'T NEVER TOGETHER UNTIL SHORTLY BEFORE  
4 THIS TRIAL.

5 THE COURT: YOU'RE THE PLAINTIFFS, AND THE BURDEN  
6 IS UPON YOU.

7 MR. MOSHENKO: THE BURDEN IS ON US TO PROVE, WITH  
8 EVIDENCE, WHAT THE FACTS ARE. AND YOUR HONOR HAS SAID NO  
9 NEW PAYMENT HISTORIES THAT WEREN'T PRODUCED IN DISCOVERY.  
10 THAT'S THE ISSUE. THIS PAYMENT HISTORY WAS PRODUCED IN  
11 DISCOVERY. WE HAVE THEIR HEARSAY, UN-FOUNDATIONAL  
12 ACCUSATION THAT SOMEHOW THE PAYMENT HISTORY THAT WE  
13 PRODUCED -- WHICH BY YOUR OWN ORDER IT WAS OKAY IF IT WAS  
14 PRODUCED DURING DISCOVERY -- COULDN'T BE ACCESSED. THAT'S  
15 AN ISSUE -- I THINK THAT'S A FAIR ISSUE. IF WE GAVE THEM  
16 JUNK OR SOMETHING INACCESSIBLE, THAT'S AN ISSUE. THEN THE  
17 QUESTION IS WHOSE FAULT IS THAT; AND IF THERE SHOULD OR  
18 COULD HAVE BEEN A CORRECTION, WHOSE FAULT IS THAT, AND IF  
19 IT DIDN'T HAPPEN.

20 YOUR HONOR SEEMS TO BE SUGGESTING THAT WE  
21 HAD THE ABILITY BEFORE THE TRIAL STARTED AND DIDN'T  
22 COMPLY. WE COMPLIED WITH EVERYTHING JUDGE SMITH ORDERED US  
23 TO DO. AND WE BELIEVE WE COMPLIED IN GOOD FAITH. AND WE  
24 BELIEVE THAT THEY ARE -- THEY'RE MANIPULATING BY CLAIMING  
25 THEY COULDN'T GET IN THERE. THEY CHOSE THAT ROUTE RATHER  
26 THAN HAVING TO DEAL WITH THE EVIDENCE.

1                   YOUR HONOR SHOULD NOT MAKE A DECISION THAT  
2 WE DIDN'T GIVE THEM THAT PAYMENT HISTORY ABSENT EVIDENCE  
3 THAT CONTRADICTS THE CLEAR EVIDENCE THAT WE DID GIVE IT TO  
4 THEM.

5                   AND I CAN GO ON, YOUR HONOR, AND TALK ABOUT  
6 THE FOUNDATIONAL THINGS THAT MR. SHERMAN WANTS -- SAID WE  
7 DIDN'T TALK ABOUT, IF YOU'D LIKE ME TO.

8                   THE COURT: NO. THAT'S ALL RIGHT. LET'S COME BACK  
9 AT 1:30.

10                  MR. SHAW: THANK YOU, YOUR HONOR.

11                  MR. RIVIN: SHOULD WE COME BACK A LITTLE BIT EARLY?

12                  THE COURT: 1:15.

13                  MR. SHERMAN: WITH THE JURY OR WITHOUT?

14                  THE COURT: WITHOUT THE JURY.

15                                 (WHEREUPON THE COURT WAS IN RECESS UNTIL  
16 1:15 P.M. OF THE SAME DAY.)

17                                 WESTMINSTER, CALIFORNIA - THURSDAY, JULY 13, 2000

18   AFTERNOON SESSION

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

21                  MR. SHERMAN: I HAD SHARED A LITTLE HISTORY WITH  
22 THE COURT, BUT, YOU KNOW, SOMETIMES IN A LITIGATION LIKE  
23 THIS THERE ARE A LOT OF THINGS GOING ON. AND  
24 MR. RUTENBERG, WHO HAD ACTUALLY STARTED WITH OUR FIRM IN  
25 THE SEPTEMBER TIME FRAME, WAS IMMEDIATELY ASSIGNED TO THIS  
26 CASE. AND HIS FIRST JOB FROM BEING ASSIGNED TO THIS CASE

1 WAS TO DEAL WITH SOME OF THESE ISSUES.

2 I ASK THE COURT IF I COULD HAVE  
3 MR. RUTENBERG ADDRESS SOME OF THESE VERY BRIEFLY.

4 THE COURT: SURE.

5 MR. MOSHENKO: YOUR HONOR, I WOULD OBJECT, IF WHAT  
6 WE'RE TALKING ABOUT IS 1998 AND 1999.

7 MR. SHERMAN: NO, WE'RE NOT.

8 MR. MOSHENKO: BECAUSE THIS MATTER WAS ALREADY  
9 BEFORE JUDGE SMITH. JUDGE SMITH HEARD THE WHOLE HISTORY.  
10 HE SAW THE DECLARATION. HE SAW THE POINTS AND AUTHORITIES.  
11 AND HE MADE HIS RULINGS TAKING INTO ACCOUNT EVERYTHING.  
12 AND AS YOUR HONOR UNDERSTANDS, WE CONTEND WE COMPLIED WITH  
13 HIS RULINGS.

14 MR. RUTENBERG: I'M ONLY GOING TO START WITH WHAT I  
15 KNOW. I'M GOING TO START WITH THE FALL OF 1999.

16 BY DECEMBER OF 1999 DEFENDANTS HAD  
17 RECOGNIZED THAT -- IN THE CASE WHERE WE ARE BEING SUED  
18 OVER, THE FACT THAT CERTAIN MEMBERS OF PLAINTIFFS'  
19 ORGANIZATIONS ALLEGEDLY STOPPED PAYING PLAINTIFFS BECAUSE  
20 OF A LETTER THEY RECEIVED IN OCTOBER, 1997; THAT WHAT WE  
21 NEEDED TO DO TO PROVE OUR CAUSATION DEFENSE WAS FIND OUT  
22 WHEN IN FACT THE LAST PAYMENT OF THESE ALLEGED MEMBERS WAS  
23 MADE TO PLAINTIFFS' ORGANIZATIONS.

24 AND ON DECEMBER 15, 1999, MR. NOVELLI,  
25 RAY NOVELLI, SHOWED UP FOR A DEPOSITION. AND WITH HIM HE  
26 BROUGHT HIS LIST OF 164,000 NAMES WITH THOSE REVERSALS

1 DATES LIKE WE SAW JUST THE OTHER DAY, THAT NOVEMBER 10,  
2 1998, DATE.

3 AND HE WAS ASKED, "DOES THIS LIST OF 164,000  
4 NAMES WITH REVERSALS DATES SHOW WHY THESE MEMBERS STOPPED  
5 PAYING?"

6 AND HE SAID, "NO. WHAT YOU'D NEED TO DO IS  
7 LOOK AT THE INDIVIDUAL FILES."

8 AND HE SAID -- YOU KNOW, WE ASKED, "HAVE YOU  
9 PRODUCED THOSE?"

10 HE SAID, "NO. THAT WOULD BE IMPOSSIBLE.  
11 THERE'S 165,000 FILES. BUT YOU CAN COME AND LOOK AT THEM  
12 IF YOU'D LIKE."

13 SO, BEGINNING ON DECEMBER 16TH AND FOR THREE  
14 OTHER DAYS -- SO A TOTAL OF FOUR DAYS -- MYSELF AND  
15 RICHARD ARKO, WHO YOU'VE MET -- HE IS AN ATTORNEY AT RUTAN  
16 & TUCKER -- WENT AND SPENT FOUR DAYS IN THEIR WAREHOUSE OF  
17 TRAVEL AMERICA PULLING FILES ACCORDING TO A RANDOM SAMPLE  
18 GENERATED BY OUR EXPERTS. AND WE PULLED ABOUT A THOUSAND  
19 FILES AND GOT THEM COPIED INTO ABOUT EIGHT BOXES. AND WE  
20 SENT THEM UP TO THE EXPERTS, AND WHAT THEY DETERMINED IS  
21 THAT THERE WAS, I THINK, A SINGLE LETTER DATED 1997 OR  
22 LATER; THAT THERE WAS NO EVIDENCE WHATSOEVER WHY ANY OF  
23 THESE PEOPLE STOPPED PAYING. THERE WAS NO PAYMENT HISTORY  
24 IN THE FILES.

25 AND WHAT WE DID LEARN IS WE SAW THINGS LIKE  
26 MR. HOLLIFIELD WHO HAD DIED IN 1988 AND WAS REVERSED IN

1 1998, AND PEOPLE THAT HAD FILED LAWSUITS AGAINST  
2 MR. NOVELLI OR HAD ATTORNEYS WRITE LETTERS SAYING, "MY  
3 CLIENT WAS DEFRAUDED WHEN HE PURCHASED A MEMBERSHIP IN YOUR  
4 ORGANIZATION, AND WE SEEK TO HAVE THAT RESCINDED  
5 IMMEDIATELY." AND THOSE WERE SENT FIVE, SIX YEARS PRIOR TO  
6 THE REVERSAL DATE.

7 SO ON JANUARY 5TH, 2000, WHEN MR. NOVELLI  
8 ARRIVED FOR ANOTHER SESSION OF HIS DEPOSITION, HE WAS  
9 CONFRONTED WITH THE FACT THAT, YOU KNOW, YOU SENT US TO THE  
10 WAREHOUSE TO LOOK FOR THESE FILES, AND THERE'S NO PAYMENT  
11 HISTORY THERE. THERE'S NO INFORMATION WHY THESE PEOPLE  
12 STOPPED PAYING.

13 HE SAID, "OF COURSE NOT. YOU CAN'T TELL  
14 THAT INFORMATION FROM THE FILES. YOU NEED THE PAYMENT  
15 HISTORY."

16 OH, REALLY, BECAUSE YOU JUST SENT US THE  
17 FILES. WE SAID, "OKAY. DO YOU HAVE THE PAYMENT HISTORY?"

18 "YES, I HAVE THE PAYMENT HISTORY."

19 WHAT WOULD I ASK FOR IF I WANTED THE PAYMENT  
20 HISTORY? ASK FOR THE PAYMENT HISTORY.

21 SO WITHIN A WEEK OR SO OF MR. NOVELLI'S  
22 JANUARY DEPOSITION, WE SENT OUT DISCOVERY REQUESTS. SEND  
23 US THE PAYMENT HISTORIES. PLAINTIFFS WAITED 30 DAYS LIKE  
24 THEY'RE ALLOWED BY THE CODE. AND ON THE LAST DATE THAT  
25 THEY WERE ALLOWED TO SERVE RESPONSES, THEY SERVED PURE  
26 OBJECTIONS. OBJECTIONS, VAGUE AND AMBIGUOUS AS TO THE TERM

1 "DUES PAYMENT HISTORY." THEY DIDN'T SAY, "WE'VE GOT A BIG  
2 BOX. WE'VE GOT 165,000. WE CAN'T GIVE YOU 35,000."

3 WE DIDN'T ASK FOR 35,000. WE ASKED FOR THE  
4 PAYMENT HISTORY OF THE PLAINTIFFS' MEMBERS. THEY DIDN'T  
5 GIVE THEM TO US.

6 AT HIS DEPOSITION, THEN, IN FEBRUARY, THAT'S  
7 WHEN HE GAVE THE ANSWER THAT IT WASN'T A PRIORITY TO GIVE  
8 IT TO US. MR. THOMPSON TESTIFIED THAT THEY COULDN'T  
9 PRODUCE PAYMENT HISTORIES. NOT -- AGAIN, NOT TALKING ABOUT  
10 35,000. THEY COULDN'T PRODUCE ANY. THEY DIDN'T HAVE  
11 THEM.

12 MISS ARCHIBALD TESTIFIED THEY COULDN'T  
13 PRODUCE THEM. AGAIN, THESE COMPUTER PROBLEMS.

14 SO HERE WE WERE IN FEBRUARY AND MARCH. AND  
15 MR. BIERLY SAT FOR A DEPOSITION. MR. BIERLY TESTIFIED THAT  
16 HE ASKED FOR PAYMENT HISTORIES, AND LO AND BEHOLD, THEY  
17 CAME UP WITH 1500 FOR HIM TO GENERATE THE RANDOM SAMPLE.

18 WE'D BEEN ASKING FOR THESE PAYMENT HISTORIES  
19 FOR MONTHS AT THAT POINT AND NOT GOTTEN THEM, DATING ALL  
20 THE WAY BACK TO JULY OF '98. AND HERE HE WAS TESTIFYING  
21 THAT HE WAS ABLE TO CREATE A SAMPLE OUT OF PAYMENT  
22 HISTORIES THAT THE PLAINTIFFS MANAGED TO PRODUCE TO HIM AND  
23 NOT TO US.

24 SO THE REAL ISSUE WITH THIS DISK THAT WE'RE  
25 TALKING ABOUT THAT WAS SUPPOSEDLY PRODUCED IN APRIL AND MAY  
26 AND STILL CONTAIN NO RELEVANT INFORMATION, IS THAT IT IS

1 INFORMATION WE'VE BEEN SEEKING FOR MONTHS. IT'S  
2 INFORMATION WE'VE BEEN TOLD COULD NOT BE PRODUCED, DID NOT  
3 EXIST. IT'S INFORMATION WE STILL HAVEN'T SEEN. AND IT'S  
4 JUST KIND OF MORE OF THE SAME SORT OF, LOOK ONE WAY, SEND  
5 US THE OTHER WHILE WE SEEK INFORMATION THAT IS SUPPOSED TO  
6 SUPPORT THEIR CLAIMS OR INFORMATION THAT IS SUPPOSED TO  
7 SUPPORT OUR DEFENSE. IT JUST DOESN'T EXIST.

8 MR. RIVIN: AND IF I MIGHT PICK IT UP FROM THERE,  
9 YOUR HONOR, WE ALLUDED TO THE MAY 4 HEARING AND THE  
10 TRANSCRIPT BUT DID NOT READ FROM IT WHEN WE WERE DISCUSSING  
11 THIS ISSUE THIS MORNING.

12 IN TALKING ABOUT AND DISCUSSING DEFENDANTS'  
13 EVIDENTIARY SANCTION MOTION, I WENT THROUGH AND RECITED A  
14 HISTORY OF WHAT HAD HAPPENED OF -- NOT AS DETAILED A  
15 HISTORY AS WHAT MR. RUTENBERG JUST TALKED ABOUT, BUT THEN I  
16 TALKED ABOUT THE FACT THAT WE HAD RECEIVED A CD, AND WE  
17 COULDN'T ACCESS THE INFORMATION.

18 AND THEN ON APRIL 26TH, SUDDENLY MR. NOVELLI  
19 GAVE US THIS MAGNETIC DISK -- MAGNETIC TAPE, NOT A DISK.  
20 AND WE SEND IT UP TO OUR EXPERTS. AND AT THE TOP OF  
21 PAGE -- HERE IT IS. THE BOTTOM OF PAGE 85, LINE 22.

22 MR. MOSHENKO: WHICH DEPOSITION DATE?

23 MR. RIVIN: IT'S NOT A DEPOSITION. IT'S THE  
24 TRANSCRIPT OF PROCEEDING ON MAY 4, 2000.

25 MR. MOSHENKO: OH, OKAY.

26 MR. RIVIN: YOU CAN LOOK AT MINE IF YOU'D LIKE,

1 MR. MOSHENKO.

2 THIS IS WHAT I TOLD THE COURT.

3 "MR. NOVELLI CAME TO HIS LAST SESSION OF HIS  
4 DEPOSITION WITH AN 11-INCH MAGNETIC TAPE, HANDED IT TO ME  
5 AND SAID, 'HERE IS THE DATA AGAIN. I JUST FOUND OUT  
6 TODAY'" -- THIS IS WHAT MR. NOVELLI SAID -- "'THAT THE  
7 SOFTWARE WASN'T ON THE CD THAT WE GAVE YOU, AND SO YOU  
8 COULDN'T ACCESS A LOT OF THE INFORMATION. HERE IT IS.  
9 IT'S ALL HERE.'"

10 AGAIN, I WAS DESCRIBING WHAT MR. NOVELLI  
11 SAID.

12 AND THEN I SAID, "WE SEND IT UP TO OUR  
13 EXPERTS AGAIN. THEY SPENT HOURS AND HOURS TRYING TO ACCESS  
14 THAT INFORMATION. I SENT MR. MOSHENKO A DETAILED LETTER  
15 THAT WE GOT FROM OUR EXPERT TALKING ABOUT WHAT WE NEED TO  
16 ACCESS THAT INFORMATION. IT'S USELESS TO US. IT'S  
17 USELESS. THAT'S THE INFORMATION THAT WE GOT FROM THEM."

18 MR. SHERMAN: YOUR HONOR, IF I MAY. MR. RIVIN?

19 MR. RIVIN: YES.

20 MR. SHERMAN: IF THE COURT BELIEVES THAT IT HAS  
21 HEARD ENOUGH ON THIS SUBJECT, WE BELIEVE THAT PAYMENT  
22 HISTORIES, THESE PAYMENT HISTORIES, SHOULD BE EXCLUDED.  
23 AND --

24 THE COURT: I CAN TELL YOU RIGHT NOW, I'VE HEARD  
25 ENOUGH ON THE SUBJECT.

26 MR. SHERMAN: I'LL SUBMIT.

1 MR. MOSHENKO: CAN I RESPOND, YOUR HONOR?

2 THE COURT: SURE.

3 MR. MOSHENKO: OKAY. MR. RUTENBERG -- I MEAN, IT'S  
4 NOW THREE ON ONE, BUT I'LL DO MY BEST.

5 MR. RUTENBERG'S COMMENTARY ABOUT WHAT  
6 HAPPENED IN THE LAST 30 DAYS BEFORE DISCOVERY, JUDGE SMITH  
7 RULED THAT DISCOVERY REQUEST WAS UNTIMELY, AND THAT ISSUE  
8 WAS DISPOSED OF BY JUDGE SMITH.

9 AS REGARDS MR. RUTENBERG'S SUGGESTION THAT  
10 MR. NOVELLI SAID IT WASN'T OUR PRIORITY TO GIVE IT TO YOU,  
11 THAT'S FALSE. HE NEVER STATED A PRIORITY TO GIVE OR NOT  
12 GIVE DATA. REFERENCE TO PRIORITY WAS THE ABILITY TO SPEND  
13 THE RESOURCES WHICH I'VE BEEN INFORMED WAS -- COULD BE AS  
14 MUCH AS \$50-, \$60,000, WHERE DO YOU SPEND YOUR MONEY TO BE  
15 ABLE TO GET TO THE POINT THAT HAS BEEN REFERRED TO.

16 MR. RIVIN'S LAST REFERENCE, I THOUGHT HE HAD  
17 SAID THIS MORNING THAT MR. NOVELLI SAID THESE THINGS IN A  
18 DEPOSITION. AND NOW WHAT I'M HEARING MR. RIVIN SAY IS HE  
19 SAID THESE THINGS TO YOUR HONOR IN A COURT HEARING.

20 AM I WRONG ON THAT?

21 MR. RIVIN: YES, YOU ARE. WHAT I WAS READING FROM  
22 WAS THE COURT TRANSCRIPT OF THE PROCEEDINGS ON MAY 4TH.  
23 WHAT I WAS DOING IN THAT --

24 THE COURT: DON'T YOU HAVE A COPY OF THAT,  
25 MR. MOSHENKO?

26 MR. MOSHENKO: THE TRANSCRIPT -- OF THE COURT. BUT

1 I THOUGHT HE SAID MR. NOVELLI CAME TO HIS DEPOSITION AND  
2 TOLD US THESE THINGS.

3 MR. RIVIN: I DID. MR. NOVELLI INDEED DID.

4 MR. MOSHENKO: I SAID HE DIDN'T GIVE US THE PAGE  
5 AND LINE OF THE DEPOSITION WHERE IT WAS FOUND. AND IT'S  
6 NOT THERE, UNLESS HE CAN TELL ME.

7 MR. RIVIN: LET'S MAKE SURE WE'RE CLEAR ON THIS.

8 I TOLD THE COURT ON MAY 4TH THAT MR. NOVELLI  
9 CAME TO THE DEPOSITION AND HANDED ME AN 11-INCH OR  
10 11-AND-A-HALF-INCH MAGNETIC TAPE. AND AT THE SAME TIME ON  
11 APRIL 26TH HE TOLD ME THAT HE FOUND OUT JUST THAT DAY THAT  
12 PORTIONS OF THE CD COULD NOT BE ACCESSED BECAUSE HE  
13 REALIZED HE DIDN'T HAVE THE SOFTWARE. AND IF I COULD, IT'S  
14 PAGE 1802.

15 MR. MOSHENKO: IN THE DEPOSITION?

16 MR. RIVIN: IN THE DEPOSITION. IT STARTS -- I'LL  
17 GIVE THE COURT SOME BACKGROUND.

18 IN THE MIDDLE OF THE DEPOSITION A COURIER  
19 WALKED IN AND BROUGHT MR. NOVELLI THE TAPE. AND IT STARTS  
20 AT PAGE 1798, LINE 4, AND IT GOES FOR ABOUT TWO OR THREE  
21 PAGES. LET ME READ IT BECAUSE I THINK IT SETS IT OUT  
22 PRETTY CLEARLY.

23 THE COURT: ALL RIGHT.

24 MR. RIVIN:

25 "QUESTION: WHAT DID YOUR  
26 COURIER JUST BRING YOU,

1 MR. NOVELLI?"

2 AGAIN, THIS IS APRIL 26TH.

3 MR. MOSHENKO: WHAT PAGE AGAIN?

4 MR. RIVIN: 1798, LINE 4.

5 THE CLERK: OF THIS YEAR?

6 MR. RIVIN: YES. VOLUME IX OF MR. NOVELLI'S  
7 DEPOSITION.

8 "ANSWER: HE BROUGHT ME THE  
9 BACKUP TAPE FROM THE WANG  
10 COMPUTER THAT I HAD MR. SCHULZ  
11 BACK UP FOR ME YESTERDAY. AND  
12 IT IS THE GENERAL LEDGER OF ALL  
13 SEASONS RESORTS, FIRST  
14 NATIONWIDE RESORTS AND ALL THE  
15 PRESIDENT'S TRAVEL CLUB ALSO.  
16 SO ALL THE GENERAL LEDGERS ARE  
17 ON THIS COMPUTER TAPE.

18 "BUT YOU ALREADY PRODUCED  
19 THAT INFORMATION; RIGHT?

20 "ANSWER: YES.

21 "QUESTION: THAT WAS PRODUCED  
22 A WEEK AGO?

23 "ANSWER: YES.

24 "QUESTION: THIS IS TAPE  
25 BACKUP OF THE INFORMATION THAT  
26 WAS ALREADY PRODUCED ON THE CD?

1                   "ANSWER:  RIGHT.  THIS MIGHT  
2                   BE A LITTLE EASIER FOR YOU TO  
3                   READ BECAUSE IT'S IN A FORMAT  
4                   WITH THE SOFTWARE ON IT.  THAT  
5                   WOULD BE EASIER TO READ.  I  
6                   DON'T BELIEVE THAT THE SOFTWARE  
7                   FOR THE NEW COMPUTERS TAKES THE  
8                   GENERAL LEDGER AND MAKES IT  
9                   LEGIBLE, BECAUSE WE HAVEN'T  
10                  DEVELOPED IT.  THIS HAS THE  
11                  SOFTWARE ON IT, SPEED TWO, THAT  
12                  MAKES IT READABLE.

13                 "QUESTION:  WHEN DID MR.  --  
14                 WHEN DID YOU ASK MR.  THOMPSON TO  
15                 GENERATE THAT TAPE?

16                 "ANSWER:  NOT MR.  THOMPSON.  
17                 HANS SCHULZ.

18                 "QUESTION:  WHEN DID YOU ASK  
19                 HANS SCHULZ TO GENERATE IT?

20                 "ANSWER:  LAST TIME I HAD A  
21                 DEPOSITION HERE I ASKED HIM WHAT  
22                 WAS ON THE OTHER TAPE AND IF IT  
23                 WAS READABLE.  HE SAID, 'WELL,  
24                 IT MIGHT NOT BE READABLE BECAUSE  
25                 WE HAVEN'T DEVELOPED THE  
26                 SOFTWARE.'

1 "I SAID, 'GIVE THEM SOMETHING  
2 THEY CAN READ. PRODUCE THE  
3 TAPE.'

4 "QUESTION: SO THAT'S THE  
5 TAPE THAT MR. SCHULZ PRODUCED?

6 "ANSWER: RIGHT.

7 "QUESTION: THIS IS OFF YOUR  
8 WANG COMPUTER?

9 "ANSWER: THIS IS OFF THE  
10 WANG.

11 "QUESTION: DO YOU STILL USE  
12 THE WANG?

13 "ANSWER: WE CAN'T USE IT.  
14 WE CAN RUN THINGS LIKE THIS. WE  
15 CAN RUN BACKUPS, SOMETHING LIKE  
16 THAT. WE CAN'T USE IT GOING  
17 INTO THE FUTURE BECAUSE WE'RE  
18 AFRAID IT WILL BLOW UP ON US.

19 "QUESTION: WHEN COULD YOU  
20 HAVE GENERATED THAT TAPE?

21 "MR. SHAW: I OBJECT AS BEING  
22 VAGUE AND AMBIGUOUS.

23 "MR. RIVIN: I'LL WITHDRAW  
24 THAT QUESTION.

25 "COULD YOU HAVE GENERATED THAT  
26 TAPE A YEAR AGO?

1                   "ANSWER: IF THE COMPUTER WAS  
2                   RUNNING, YES.

3                   "QUESTION: YOU MEAN IF IT  
4                   WAS TURNED ON?

5                   "ANSWER: NO, NOT TURNED ON.  
6                   IN OTHER WORDS, WE HAD TO REDO A  
7                   LOT OF THE BOARDS IN THE  
8                   COMPUTER. THE COMPUTER DID  
9                   BREAK DOWN. WE HAD TO REDO SOME  
10                  OF THE COMPUTER BOARDS IN ORDER  
11                  TO GET IT BACK UP AGAIN. A LOT  
12                  OF THE DRIVES WENT DOWN. I  
13                  THINK WE HAD SIX DRIVES. OUT OF  
14                  THE SIX DRIVES, THREE DRIVES  
15                  WENT DOWN. SO IT DEPENDS ON THE  
16                  TIME. THE DRIVES WERE JUST  
17                  RECENTLY FIXED SO THAT YOU CAN  
18                  PRODUCE THIS."

19                  LET ME KEEP GOING.

20                  "QUESTION: WHO FIXED THE  
21                  DRIVES?

22                  "ANSWER: A FELLOW BY THE  
23                  NAME OF GILBERT FINN.

24                  "QUESTION: WHEN DID HE DO  
25                  THAT WORK?

26                  "ANSWER: I BELIEVE SOMETIME

1 IN JANUARY OR FEBRUARY.

2 "QUESTION: WHEN WAS THIS  
3 WORK COMPLETED?

4 "ANSWER: ACTUALLY IT'S STILL  
5 NOT COMPLETED BECAUSE HE WAS  
6 SUPPOSED TO MAKE IT SO I COULD  
7 RUN REPORTS, AND HE HASN'T  
8 GOTTEN IT COMPLETED YET. WHAT I  
9 MEAN BY REPORTS, I CAN RUN HARD  
10 COPIES. I CAN'T RUN HARD COPIES  
11 AT THIS TIME.

12 "QUESTION: HARD COPIES OF  
13 WHAT?

14 "ANSWER: WHATEVER IS ON THIS  
15 TAPE.

16 "QUESTION: WHAT IS ON THAT  
17 TAPE?

18 "ANSWER: THE GENERAL LEDGER  
19 OF ALL THE COMPANIES.

20 "QUESTION: DO YOU KNOW THAT  
21 THE TRIAL STARTS MONDAY?

22 "ANSWER: YES.

23 "QUESTION: YOU'RE PRODUCING  
24 THIS TAPE THAT'S SUPPOSEDLY  
25 READABLE TAPE FIVE DAYS BEFORE  
26 THE START OF TRIAL?"

1                   AND MR. SHAW OBJECTED AND INSTRUCTED HIM NOT  
2 TO ANSWER.

3                   "QUESTION: HAS THAT TAPE  
4 EVER BEEN PRODUCED BEFORE?

5                   MR. SHAW: I'M SORRY,  
6 COUNSEL, THERE'S AN OBJECTION."

7                   MR. SHAW AND I DISAGREE ON SOMETHING. AND  
8 THEN THE NEXT QUESTION AT PAGE 1801, LINE 21.

9                   "QUESTION: DO YOU KNOW  
10 WHETHER THE INFORMATION YOU  
11 BELIEVE IS CONTAINED ON THE CD  
12 PRODUCED BY THE PLAINTIFFS A  
13 WEEK AGO IS READABLE?

14                  "ANSWER: AS FAR AS READABLE,  
15 IN A LOT OF INSTANCES -- AS FAR  
16 AS MEMBER BASE AND THINGS LIKE  
17 THAT. MY UNDERSTANDING IS THAT  
18 WE DIDN'T PRODUCE THE SOFTWARE  
19 TO MAKE IT READABLE, AS FAR AS  
20 THE GENERAL LEDGER. AND I JUST  
21 FOUND THAT OUT. I THOUGHT -- I  
22 DIDN'T KNOW THAT THE GENERAL  
23 LEDGER WAS ON THE PROGRAM YET.  
24 I MEAN THE PROGRAMING BEHIND THE  
25 GENERAL LEDGER."

26                  MR. MOSHENKO: OBJECTION, YOUR HONOR. IT'S ALL

1 IRRELEVANT. IT'S GENERAL LEDGER. HE HAS REFERRED TO THE  
2 GENERAL LEDGER A HALF A DOZEN TIMES IN HIS READING. IT'S A  
3 SOFTWARE RELATING TO THE GENERAL LEDGER. THAT'S APPLES AND  
4 ORANGES.

5 THE THING THAT WE'RE TALKING ABOUT WAS NOT  
6 PRODUCED A WEEK BEFORE THE 26TH OF APRIL DEPOSITION. IT  
7 WAS PRODUCED TWO WEEKS BEFORE IN THE DISK THAT LEO NOVELLI  
8 CREATED. THIS IS COMPLETELY IRRELEVANT AND MISLEADING  
9 BECAUSE THEY'RE TAKING A GENERAL LEDGER PRODUCTION AND  
10 THEY'RE MISAPPLYING IT TO THE MEMBERSHIP TOTAL DATABASE.

11 MR. RIVIN: YOUR HONOR, AS I INDICATED, OUR EXPERTS  
12 COULD NOT ACCESS THE INFORMATION ABOUT ANY MEMBER BASE THAT  
13 WAS ON THE CD OR THE MAGNETIC TAPE. AND WHAT MR. NOVELLI  
14 SAID, AND WHAT I JUST READ IS, AS FAR AS READABLE IN A LOT  
15 OF INSTANCES, AS FAR AS MEMBER BASE AND THINGS LIKE THAT,  
16 MY UNDERSTANDING IS THAT WE DIDN'T PRODUCE THE SOFTWARE TO  
17 MAKE IT READABLE.

18 MR. MOSHENKO: AND READ THE REST.

19 MR. RIVIN: AS FAR AS THE GENERAL LEDGER. HIS --  
20 HIS STATEMENT IS HE TALKED ABOUT MEMBER BASE. HE TALKS  
21 ABOUT GENERAL LEDGER.

22 THE BOTTOM LINE IS, ON MAY 4TH AT THE VERY  
23 LATEST I TOLD THIS COURT THAT WE COULD NOT ACCESS ANY OF  
24 THAT INFORMATION WE HAD RECEIVED. NONE OF IT. AND  
25 PLAINTIFFS TOOK NO STEPS TO PROVIDE US WITH ANY FURTHER  
26 INFORMATION TO ALLOW US TO ACCESS THE INFORMATION. AND TO

1 THIS DATE WE CAN'T ACCESS THE INFORMATION.

2 AND ONE OTHER ISSUE, YOUR HONOR, AND ONE OF  
3 THE REASONS WHY THIS WOULD BE SO PREJUDICIAL IF THIS COMES  
4 IN NOW.

5 BASED ON MR. NOVELLI'S TESTIMONY AND A  
6 STATEMENT MADE BY MR. MOSHENKO, I BELIEVE TODAY, I SUDDENLY  
7 REALIZE THAT MR. NOVELLI APPARENTLY HAS COME UP WITH A NEW  
8 DAMAGES NUMBER BASED UPON SOME CORRELATION MADE BETWEEN  
9 THIS BIG BOX AND THE SMALL BOX TO WHICH MR. MOSHENKO WAS  
10 REFERRING TO THIS MORNING.

11 AND WHEN MR. NOVELLI TESTIFIED, I BELIEVE  
12 EARLIER THIS WEEK, THAT THE NUMBER THAT WAS CALCULATED OF  
13 MEMBERS WHO LEFT -- WHO WERE STILL WITH COAST AND STOPPED  
14 PAYING PLAINTIFFS -- AND HE THOUGHT IT WAS IN THE RANGE OF  
15 \$19,000 BECAUSE THERE WAS -- MEMBERS BECAUSE THERE WAS SOME  
16 SAMPLING DONE. THE SAMPLING THAT WAS DONE THAT WE KNOW  
17 ABOUT GOES BACK TO MARCH OF 19 -- OF 2000. AND SHOWED A  
18 LIST OF ABOUT 4,000 PEOPLE.

19 SO, WHAT MR. NOVELLI APPEARS TO BE TALKING  
20 ABOUT IS SOMETHING NEW THAT WAS DONE WITH -- PRESUMABLY BY  
21 LEO NOVELLI OR SOMEBODY ELSE THAT WE KNOW NOTHING ABOUT.

22 AND SO NOT ONLY SHOULD THIS DISK AND THIS  
23 INFORMATION BE KEPT OUT FOR -- BECAUSE IT VIOLATES A COURT  
24 ORDER AND BECAUSE WE STILL DON'T HAVE THE FOUNDATION LAID  
25 FOR THE INFORMATION CONTAINED ON THAT DISK, MOREOVER, TO  
26 THE EXTENT THEY INTEND TO USE ANY OF THAT INFORMATION TO

1 PRODUCE TESTIMONY -- AND, IN FACT, THEY ALREADY HAVE TRIED  
2 TO OFFER SOME TESTIMONY REGARDING DAMAGES BASED ON THESE  
3 LISTS -- IT'S HIGHLY PREJUDICIAL AND UNFAIR TO THE  
4 DEFENDANTS.

5 MR. MOSHENKO: YOUR HONOR, WE HAVEN'T EVEN GOTTEN  
6 TO THE POINT OF PRODUCING THE FOUNDATION THAT COUNSEL  
7 REFERS TO, BECAUSE WE'RE STILL BACK AT THE ISSUE WHEN YOU  
8 READ THE COURT'S ORDER, IT REFERS TO DISCOVERY; THAT IT WAS  
9 NOT PRODUCED BEFORE THE START OF THE TRIAL. AND WE  
10 PRODUCED THIS DISCOVERY FOR THE START OF THE TRIAL. AND  
11 THAT'S THE STATE OF THE ADMISSIBLE EVIDENCE ON THE ISSUE.

12 I STILL OBJECT TO COUNSEL'S TESTIFYING OR  
13 STATING WHAT THEIR EXPERT DID OR DIDN'T DO, WITHOUT THE  
14 EXPERT HERE TO TELL US WHAT THEY DID OR DIDN'T DO. BY  
15 COMPARISON WE HAVE OUR WITNESS HERE READY TO GO.

16 THE COURT CAN'T -- THE COURT CAN DO ANYTHING  
17 IT WANTS. BUT THE COURT SHOULDN'T EXCLUDE AT LEAST HEARING  
18 FROM THE WITNESS WHAT HE DID, AND WHY -- WHY THE  
19 CONTENTIONS THAT THAT DATA WAS INACCESSIBLE, EVEN THOUGH  
20 UNPROVEN, UNSUBSTANTIATED BY ANY ADMISSIBLE EVIDENCE, ONLY  
21 A CONTENTION, SHOULDN'T BE ACCEPTED AND, IN FACT -- I  
22 REPEAT -- IF YOUR HONOR WANTS, WE'LL BRING A COMPUTER IN  
23 HERE. GIVE US THE DISK THEY SAY THEY COULDN'T OPEN. WE'LL  
24 OPEN IT, AND WE'LL ACCESS IT. IT'S NO MAGIC.

25 IF MR. NOVELLI SAYS I DIDN'T GIVE YOU -- YOU  
26 COULDN'T READ MY GENERAL LEDGER BECAUSE YOU DIDN'T HAVE

1 SOFTWARE, WHERE IS THE DUTY TO GIVE SOFTWARE? WHAT MR. --  
2 WHEN JUDGE SMITH -- HIS ORDER IS VERY SPECIFIC. YOU SHOULD  
3 READ HIS ORDER. YOU SHOULD READ THE DECLARATION OF  
4 LEO NOVELLI. AND I BELIEVE IF YOU DID, YOU WOULD SEE  
5 PRECISE COMPLIANCE WITH HIS ORDER. WE DID WHAT THE  
6 DISCOVERY REFEREE ORDERED US TO DO. WE COMPLIED. THAT'S  
7 THE ISSUE.

8 IF THERE WAS NO COMPLIANCE, THEN YOUR  
9 HONOR'S ORDER THAT WE SHOULD NOT BE ABLE TO PRODUCE STUFF  
10 THAT WASN'T GIVEN IN DISCOVERY IN COMPLIANCE WITH THE PRIOR  
11 ORDERS COULD FLY -- COULD STAND UP. BUT WE COMPLIED.  
12 THAT'S THE TEST. AND THEY HAVEN'T PROVEN THE FAILURE TO  
13 COMPLY.

14 AND I STILL HAVEN'T TALKED ABOUT THE  
15 FOUNDATIONAL MATTERS. BUT BECAUSE THOSE WILL COME IN WHEN  
16 A WITNESS TESTIFIES AS TO THE FOUNDATIONAL MATTERS. JUST A  
17 SHORT ALLUSION TO ONE OF THEM; FOR EXAMPLE, SAY WE CAN'T  
18 SHOW THE HISTORY OF THE INPUT. LEO NOVELLI STARTED IN 1986  
19 WORKING FOR HIS FATHER AS A DATA-ENTRY PERSON. HE WAS  
20 DOING MEMBER DATA INPUT. HE THEN -- AND WHILE HE WAS IN  
21 SCHOOL, I BELIEVE. HE THEN GRADUATED TO THE -- FROM THAT  
22 JOB TO WHERE HE SUPERVISED PERSONNEL THAT DID IT. HE SPENT  
23 ALL OF THESE YEARS EITHER DOING OR SUPERVISING THE DATA  
24 INPUT. WE HAVE THE FOUNDATION EVIDENCE.

25 BUT IF THE WITNESS ISN'T ALLOWED TO TESTIFY,  
26 HOW IS THE COURT SUPPOSED TO UNDERSTAND IT'S THERE? ALL WE

1 HAVE IS THE ARGUMENTS, AND WE CAN'T PROVE IT. THEY ARE  
2 JUST ARGUMENTS WITHOUT ANY EVIDENCE.

3 THE COURT: THANK YOU.

4 I HAVE ONE QUESTION. SEE HOW I CAN PHRASE  
5 THIS. I THINK I ASKED YOU THE SAME QUESTION THIS MORNING.

6 IF YOU WERE ABLE TO PRODUCE THIS INFORMATION  
7 PRIOR TO THE DATE OF TRIAL AND YOU DIDN'T, WHY SHOULD I  
8 ALLOW IT IN NOW AFTER YOU'VE ALLEGEDLY COME UP WITH IT?

9 MR. MOSHENKO: OF COURSE THE QUESTION REQUIRES ME  
10 TO UNDERSTAND WHAT INFORMATION YOUR HONOR IS REFERRING TO.  
11 WE DID PRODUCE THE DISCOVERY INFORMATION.

12 THE COURT: THE FINISHED.

13 MR. MOSHENKO: WE DIDN'T HAVE IT PRIOR TO THE START  
14 OF THE TRIAL.

15 THE COURT: THERE IS MY ANSWER.

16 MR. MOSHENKO: THEN HOW -- WE CAN -- QUESTION, IF  
17 YOU'RE ABLE TO, WHY DIDN'T YOU DO IT? WE COULDN'T DO IT.  
18 WE WEREN'T ABLE TO.

19 NOW, WHAT IS THE POINT? I'M SORRY, YOUR  
20 HONOR. I MUST BE MISSING SOMETHING.

21 THE COURT: THE POINT IS THAT YOU MISSED THE  
22 DEADLINE.

23 MR. MOSHENKO: THE -- WHICH DEADLINE, THE COURT  
24 ORDER BY JIM SMITH TO PRODUCE THE DATABASE?

25 THE COURT: YES.

26 MR. MOSHENKO: WE DID HAVE THE ABILITY TO PRODUCE

1 THAT.

2 THE COURT: BUT YOU DIDN'T.

3 MR. MOSHENKO: WE DID PRODUCE IT.

4 THE COURT: NOT THE FINISHED PROJECT.

5 MR. MOSHENKO: NO. THE FINISHED PROJECT -- JUDGE  
6 SMITH ORDERED US TO GIVE THE RAW DATA, THE ENTIRE  
7 DATABASE. HE DIDN'T ORDER US TO CALCULATE HOW MANY COAST  
8 MEMBERS WERE HERE AND LEFT OR ANYTHING LIKE THAT. HE ONLY  
9 ORDERED US TO GIVE THE RAW DATA.

10 THE COURT: BUT THE BURDEN WAS UPON YOU AS THE  
11 PLAINTIFFS, NOT UPON THE DEFENDANTS.

12 MR. MOSHENKO: TO COMPLY WITH THE COURT'S ORDER.

13 THE COURT: NOT ONLY TO COMPLY, BUT TO COMPLY IN A  
14 SUBSTANTIAL MANNER.

15 MR. MOSHENKO: IN THE EXACT MANNER. PRECISELY,  
16 EXACTLY WHAT HE DID -- HE TOLD US TO DO, WE DID. EXACTLY.  
17 YOU SHOULD READ IT, YOUR HONOR. READ THE DECLARATION OF  
18 LEO NOVELLI DOWN TO THE WORDS. HE TOLD THEM WHERE TO GO TO  
19 GET THE SOFTWARE. IF MR. NOVELLI WANTS TO SAY WE DIDN'T  
20 GIVE YOU THE SOFTWARE, THAT'S A VOLUNTEERED -- ADDITIONAL  
21 VOLUNTEERED THING. WE WEREN'T ORDERED TO GIVE THAT  
22 SOFTWARE.

23 MR. NOVELLI WAS APPARENTLY, BASED ON MY  
24 READING, CONCERNED ABOUT THE GENERAL LEDGER. AND THAT'S A  
25 COMPLETELY DIFFERENT THING THAN THE MEMBERSHIP DATABASE.  
26 IT'S APPLES AND ORANGES. WE DID EXACTLY PRECISELY -- YOUR

1 HONOR, I DRAFTED THE DECLARATION THAT COMPLIED WITH  
2 JUDGE SMITH'S ORDER.

3 THE COURT: MAYBE WE'RE PUTTING THE CART BEFORE THE  
4 HORSE HERE.

5 TO MY WAY OF THINKING, THIS GOES TO THE  
6 QUESTION OF DAMAGES. AND WE'VE BIFURCATED THIS CASE. SO  
7 MAYBE WE CAN SIT ON THIS A LITTLE BIT AND GO AHEAD AND  
8 PROCEED WITH THE TRIAL ON THE BASIS OF CAUSATION AND  
9 LIABILITY AND COME BACK TO THIS. MAYBE WE'RE SPINNING OUR  
10 WHEELS HERE.

11 MR. MOSHENKO: YOUR HONOR, I AGREE IN PART WITH  
12 WHAT YOU SAY. BUT THERE'S A MISSING WORD IN YOUR STATEMENT.

13 THE COURT: WHAT'S THAT?

14 MR. MOSHENKO: IF YOUR HONOR'S POSITION IS THIS  
15 GOES EXCLUSIVELY TO THE ISSUE OF DAMAGES, I DISAGREE.  
16 BECAUSE IT IS BOTH RELEVANT TO PROVING CAUSATION, AS IT IS  
17 TO PROVING DAMAGE. AND THE DISTINCTIONS ARE SUBTLE, I  
18 AGREE.

19 THE COURT: YES.

20 MR. MOSHENKO: BUT, YOU KNOW, WE'RE TALKING ABOUT  
21 EVIDENCE THAT WAS USED TO DETERMINE THE FACT THAT MEMBERS  
22 LEFT, REFUSED TO MAKE PAYMENTS. THAT'S CAUSATION. AND  
23 MR. SHERMAN -- I'M SORRY -- MR. RIVIN ASKED MR. --  
24 DR. BIERLY -- I'M PARAPHRASING -- "CAN YOU TELL US WHAT  
25 CAUSED PEOPLE TO LEAVE?

26 AND HE SAYS, "YES." AND THEN HE TALKS ABOUT

1 THE 1500 STUDY, NAMES THAT HE STUDIED. THAT'S A PAYMENT  
2 HISTORY. SO THAT PAYMENT HISTORY TOLD HIM THE CAUSATION --  
3 ANSWER TO THE CAUSATION QUESTION.

4 MR. NOVELLI WAS ASKED BY YOUR HONOR SOME  
5 QUESTIONS, AND HE TALKED ABOUT HOW LOOKING AT SUCH DATA AS  
6 THAT WHICH WE ARE TALKING ABOUT SHOWED HIM THAT MEMBERS  
7 LEFT, THEREFORE, CAUSING DAMAGE.

8 THE COURT: YOU SEE, I HAVEN'T HEARD DR. BIERLY  
9 YET.

10 MR. MOSHENKO: IT'S TRUE.

11 THE COURT: BUT BY YOUR OWN ADMISSION HERE TODAY  
12 BEFORE THIS COURT, YOU STATE THAT HE COULDN'T COME UP WITH  
13 THE INFORMATION EITHER. HE HAD TO TAKE A SAMPLING.

14 MR. MOSHENKO: AGAIN, WE'RE BACK TO WHAT  
15 INFORMATION. 35,000 NAMES? 35,000 PAYMENT HISTORIES?  
16 EXACTLY CORRECT.

17 BUT DR. BIERLY IS AN EXPERT, AND HE IS  
18 PREPARED TO TESTIFY A SAMPLE IS APPROPRIATE. THEIR EXPERT  
19 IS PREPARED TO TESTIFY BASED ON A SAMPLE, WHICH APPARENTLY  
20 THEIR EXPERT FOUND THOUGHT WOULD BE APPROPRIATE. A  
21 NON-EXPERT -- I THINK IT WAS EITHER RYMAN OR EVERETT WAS  
22 ASKED IN THIS TRIAL, "HOW WOULD YOU DETERMINE HOW THE  
23 PEOPLE LEFT?" I WOULD TAKE A SURVEY, ANOTHER WORD FOR A  
24 SAMPLE.

25 CONCLUSIONS CAN BE DRAWN FROM SAMPLES. I  
26 DON'T HAVE A PROBLEM WITH YOUR HONOR'S COMMENT THAT

1 DR. BIERLY COULDN'T COME UP WITH THE 35,000 NAMES  
2 MATCHING. BUT I DON'T THINK HE NEEDS TO. THAT'S NOT --  
3 THAT'S A PROOF TO AN ABSOLUTE PERFECTION, NOT A PROBABILITY  
4 OF THE EVIDENCE. AND IT GOES TO THE ISSUES --

5 THE COURT: BUT YOU'RE TELLING ME THAT YOU CAN DO  
6 IT.

7 MR. MOSHENKO: NO. AS A MATTER OF FACT, TODAY --  
8 EVEN TODAY WE CANNOT PRINT A PAYMENT HISTORY FOR THE 35,000  
9 MEMBERS, EVEN TODAY. WE LACK THE ABILITY TO DO THAT.

10 WE WERE -- MAYBE YOU HAVE TO GET MORE  
11 INFORMATION FROM MR. NOVELLI, BUT MR. NOVELLI WAS ABLE TO  
12 LOOK AT SOME DATA RELATING TO ANNUAL PAYMENT, AND BY  
13 COMPARING WHO MADE A PAYMENT SOMETIME IN '96 TO WHO DIDN'T  
14 MAKE A PAYMENT SOMETIME IN '97 OR '98, HE DREW HIS  
15 CONCLUSIONS.

16 WE STILL TO THIS DAY CANNOT DO WHAT YOUR  
17 HONOR SAID WE'RE ABLE TO DO. WE CAN'T DO IT. WE COULDN'T  
18 DO IT.

19 THE COURT: YOU REALLY GOT ME CONFUSED NOW BECAUSE  
20 I'M UNDER THE OPINION YOU TOLD THESE PEOPLE THAT YOU GAVE  
21 THEM EVERYTHING THEY NEEDED TO DO IT, AND THEY COULD DO IT.

22 MR. MOSHENKO: THAT'S MY UNDERSTANDING.

23 THE COURT: WELL, IF THEY COULD DO IT, WHY CAN'T  
24 YOU DO IT?

25 MR. MOSHENKO: BECAUSE AS I STARTED THIS  
26 CONVERSATION TODAY AND BACK ON THE FIRST DAY OF TRIAL, YOUR

1 HONOR, WE STILL DON'T HAVE CERTAIN DATA THAT WE WANTED TO  
2 GET FROM THEM THAT WOULD ENABLE TO GO ALL THE WAY ON THIS  
3 THING. AND WE STILL DON'T HAVE ALL THE DATA TODAY THAT WE  
4 NEED. BUT COAST HAS ALL OF THEIR DATA. THEY HAVE ALL OF  
5 OUR DATA. IF THOSE TWO -- AND I'M NOT A COMPUTER EXPERT.  
6 IF THOSE TWO DATAS CAN GET US THERE, THEY'RE THE ONLY ONES  
7 WITH -- WE DON'T HAVE ALL OF THEIR DATA. WE ONLY HAVE THE  
8 LIMITED MATERIAL THAT THEY GAVE TO US THAT IT TOOK ME  
9 MONTHS TO TRY TO INTERPRET.

10 MR. SHERMAN: YOUR HONOR, THE LAST QUESTION I ASKED  
11 OF MR. NOVELLI ON RE-CROSS WENT AS FOLLOWS. YOUR HONOR MAY  
12 RECALL.

13 MR. NOVELLI, I'M NOT INTERESTED IN YOUR  
14 TELLING ME WHAT INFORMATION YOU'VE GIVEN TO US. I'M  
15 INTERESTED IN HEARING FROM YOU WHAT INFORMATION THAT COAST  
16 HAS.

17 FROM YOUR PERSPECTIVE, MR. NOVELLI, DOES  
18 COAST TO COAST HAVE THE ABILITY TO KNOW WHEN YOUR MEMBERS  
19 STOPPED PAYING YOU DUES? FORGET ABOUT STUFF YOU GAVE TO  
20 US, MR. NOVELLI. OKAY? OKAY.

21 NO.

22 SO YOU KNOW THIS MARRIAGE OF DATA THAT  
23 MR. MOSHENKO HAS TOLD THE COURT ABOUT NOW BEFORE LUNCH AND  
24 HE IS ALLUDING TO NOW, THAT MARRIAGE NEVER OCCURRED.  
25 THAT'S NOT A MARRIAGE. YOU KNOW, EITHER PLAINTIFFS CAN  
26 PROVE THEIR DAMAGES OR THEY CAN'T PROVE THEIR DAMAGES.

1 COAST TO COAST HAS MEMBERS. I'M BACK TO  
2 ROGER RYMAN'S HOUSE OR THE MANNY, MOW AND JACK WE DREW FOR  
3 MR. NOVELLI.

4 COAST HAS MEMBERS. NOVELLI HAS MEMBERS.  
5 AND IF MR. NOVELLI AND HIS ORGANIZATION CAN'T COME INTO  
6 COURT AND SHOW WHAT MEMBERS THEY HAD, THAT THEY STOPPED  
7 HAVING, AND WHY THEY STOPPED HAVING THOSE MEMBERS, WHY  
8 THOSE MEMBERS STOPPED PAYING DUES, THEN I DON'T UNDERSTAND  
9 THIS CONCEPT OF MARRIAGE.

10 WE'RE ALL CONFUSED HERE IT APPEARS. AND AT  
11 BEST THIS GOES, IF ANYTHING, TO DAMAGES, IF AS AND WHEN A  
12 LIABILITY FINDING IS MADE AND IF AND WHEN A PROPER  
13 FOUNDATION IS MADE.

14 BUT WHAT WE'VE BEEN TREATED TO, IT SEEMS  
15 CUTTING THROUGH IT ALL IS, THIS IS CONFUSING. THERE'S NO  
16 FOUNDATION. AND IF YOUR HONOR IS EVEN WILLING TO ENTERTAIN  
17 THIS INFORMATION, THIS IS NOT THE TIME TO DO IT. IT'S  
18 DAMAGES, AND THAT'S ALL IT IS.

19 MR. MOSHENKO: WHY PREJUDGE OUR ABILITY TO PROVE  
20 CAUSATION, OR FOUNDATION?

21 THE COURT: LET ME ASK YOU THIS: WHAT DO YOU  
22 PROPOSE TO PROVE THROUGH THE TESTIMONY OF THE YOUNGER  
23 MR. VOLETTI -- NOVELLI?

24 MR. MOSHENKO: GREAT.

25 THE COURT: I KEEP SAYING VOLETTI BECAUSE I HAVE  
26 SOME FRIENDS. NOVELLI.

1           MR. MOSHENKO: YES, YOUR HONOR. IF MY RECALL IS  
2 COMPLETE, FOUR AREAS. NUMBER ONE, WHAT THEY HAVE BEEN  
3 SAYING IS LACKS FOUNDATION. THE FACT THAT MR. NOVELLI AS  
4 THE ADMINISTRATOR OF WHAT I'LL NOW REFER TO THE TRAVEL  
5 AMERICA DATABASE --

6           THE COURT: WHICH MR. NOVELLI?

7           MR. MOSHENKO: I'M ONLY TALKING ABOUT LEO NOVELLI.

8           THE COURT: ALL RIGHT.

9           MR. MOSHENKO: THAT LEO NOVELLI IS THE  
10 ADMINISTRATOR -- I CALL HIM THE ADMINISTRATOR OF THE TRAVEL  
11 AMERICA DATABASE, STARTING BACK IN 1986 WITH DATA ENTRY AND  
12 THEN WITH SUPERVISING DATA ENTRY AND WAS MAINTAINING THE  
13 BOOKS. HE IS THE EQUIVALENT OF THE CUSTODIAN OF RECORDS  
14 THAT COULD COME IN HERE AND TESTIFY AS TO THE MODE OF  
15 PREPARATION AND THE ACCURACY OF THE DATA. OKAY. THAT'S  
16 AREA NUMBER ONE.

17                         AREA NUMBER TWO IS, OF COURSE, THIS ISSUE  
18 WE'VE BEEN TALKING ABOUT. HE, PURSUANT TO JUDGE SMITH'S  
19 ORDER, WENT TO THE DATABASE, PREPARED THE DISK, MADE  
20 CERTAIN THAT ALL THE DATA THAT WAS ORDERED BY THE COURT WAS  
21 ON THE DISK AND, I'M INFORMED, RAN A TEST OF THE DISK TO  
22 DETERMINE THAT IT WAS READABLE. IT WAS ACCESSIBLE.

23                         THEN IN WORKING WITH ME AND MY STAFF --  
24 BECAUSE WE HAD A VERY SPECIFIC ORDER FROM JUDGE SMITH  
25 LITERALLY. YOU MUST DO A, B, C AND D. WE WENT DOWN THAT  
26 ORDER AND MADE SURE THAT HE DID A, B, C AND D ATTACHED IN A

1 DECLARATION FORM, ATTACHED TO THE DISK.

2                   AND THEN SO -- YOU ASKED ME WHAT DID HE --  
3 WHAT IS HE GOING TO TESTIFY TO. HE IS GOING TO TESTIFY  
4 THAT HE CREATED THE COMPLIANCE WITH JUDGE SMITH'S ORDER,  
5 WHICH CONSTITUTES THE PAYMENT HISTORY THAT WE INTEND TO  
6 USE, THAT COUNSEL CONTENDS THAT THEY NEVER GOT, AND WHAT  
7 WAS THERE, AND HOW I TESTED IT. THAT'S NUMBER TWO.

8                   NUMBER THREE, LEO NOVELLI IS THE PERSON WHO  
9 WENT TO NEBRASKA -- ONCE WHAT'S BEEN REFERRED TO AS THE  
10 MERGER OF THOUSAND ADVENTURES AND THE OTHER RESORTS  
11 OCCURRED -- AND PERSONALLY ACCEPTS, TOOK CHARGE OF THE  
12 RECORDS OF THOUSAND ADVENTURES AND THE DATA INFORMATION  
13 RELATING TO THE PAYMENT HISTORIES OF THE THOUSAND  
14 ADVENTURES MEMBERS, AND RETURNED TO CALIFORNIA WITH THEM  
15 AND LOADED THEM INTO THE TRAVEL AMERICA DATABASE.

16                   SO THERE IS THAT -- LET'S SEE --

17                   MR. SHERMAN: YOUR HONOR, ON ONE POINT, PLEASE.

18                   JULY 10, 2000, MR. NOVELLI TESTIFIED UNDER  
19 OATH THAT MARK MOLVAR HAS BEEN THE HEAD OF THE ACCOUNTS  
20 RECEIVABLE DEPARTMENT IN HIS ORGANIZATION FOR MANY YEARS.  
21 WHERE IS MR. MOLVAR? WHY HASN'T A SUBPOENA BEEN ISSUED TO  
22 MR. MOLVAR TO BRING MR. MOLVAR IN?

23                   INSTEAD, MR. LEO NOVELLI, WHO TOOK  
24 INSTRUCTION FROM MR. MOLVAR WITH RESPECT TO ACCOUNTS  
25 RECEIVABLE ISSUES? WHY ISN'T MR. MOLVAR HERE? MR. NOVELLI  
26 IS NOT GOING TO BE A CUSTODIAN OF RECORDS.

1           MR. MOSHENKO: THE LAST TIME I READ THE EVIDENCE  
2 CODE, YOUR HONOR, IT DIDN'T SPEAK ABOUT MR. MOLVAR, AND IT  
3 DIDN'T SPECIFY A PARTICULAR TITLE OR A PARTICULAR PERSON  
4 THAT THE DEFENDANTS WOULD RATHER SEE THAN THE PLAINTIFF.  
5 IF THE PERSON COMPLIES WITH THE EVIDENCE CODE, THAT'S  
6 SUFFICIENT, AND YOUR HONOR SHOULDN'T PREJUDGE HIS  
7 QUALIFICATIONS TO COMPLY.

8           AND THEN LASTLY, MR. LEO NOVELLI WILL  
9 TESTIFY TO HOW HE RECEIVED COAST DATA AND DID WORK THAT  
10 RESULTED IN SOME RAW DATA IN LATE APRIL, WHICH RAW DATA HE  
11 TURNED OVER TO MR. THOMPSON OR MR. NOVELLI, WHICH I'M  
12 INFORMED MR. NOVELLI THEN WORKED WITH FOR A PERIOD OF TIME  
13 TO COME UP WITH WHATEVER IT WAS HE TESTIFIED TO AFTER THE  
14 START OF THE TRIAL WHEN YOUR HONOR ASKED HIM THE QUESTION  
15 THE OTHER DAY. SO IT'S FOUR AREAS.

16           MR. SHERMAN: YOUR HONOR, MOREOVER, IN DISCOVERY IN  
17 THIS CASE, WE ASKED FOR THE CUSTODIAN OF RECORDS OF ALL THE  
18 PLAINTIFFS TO SHOW UP ON A WHOLE VARIETY OF TOPICS. NEVER  
19 SAW LEO NOVELLI. WE SAW RAYMOND NOVELLI. IN FACT, WE HAVE  
20 A COURT ORDER FROM THE REFEREE ON THIS VERY SUBJECT. TO  
21 HEAR THAT LEO NOVELLI, SOMEONE WHO WAS MENTIONED MAYBE FIVE  
22 TIMES IN DISCOVERY IN THIS CASE IF YOU SEARCHED THE  
23 DEPOSITION TRANSCRIPTS, ALL OF A SUDDEN IS -- LEO NOVELLI,  
24 THE PERSON WHO OWNS -- RUNS THE COMPANY ATLANTIS  
25 INTERNATIONAL -- NOT NOVELLI ORGANIZATION COMPANY. NOT A  
26 PLAINTIFF. HE DOES HIS OWN WEBSITE DESIGN.

1 TO HEAR THAT LEO NOVELLI ALL OF A SUDDEN IS  
2 THE CUSTODIAN OF RECORDS WHEN RAYMOND NOVELLI SHOWED UP  
3 REPEATEDLY AS THE CUSTODIAN OF RECORDS WHEN THERE WAS A  
4 RULING BY THE COURT ON THAT VERY ISSUE BY THE REFEREE, AND  
5 WHEN RAYMOND NOVELLI TESTIFIED ON MONDAY OF THIS WEEK THAT  
6 MARK MOLVAR WAS THE HEAD OF ACCOUNTS RECEIVABLE, SOMETHING  
7 IS ROTTEN IN DENMARK.

8 MR. MOSHENKO: IF YOUR HONOR RECALLS WHAT I SAID, I  
9 SAID I CALL HIM THE DATA ADMINISTRATOR FOR THE THOUSAND  
10 ADVENTURES DATA, WHICH IS THE EQUIVALENT OF --

11 THE COURT: WELL, WE'RE NITPICKING HERE NOW. WE'RE  
12 WASTING TIME WITH THE JURY OUT.

13 I'LL TELL YOU WHAT. I WILL NOT PRECLUDE YOU  
14 FROM ALLOWING MR. NOVELLI TO TESTIFY, BUT ONLY AS TO  
15 LIABILITY AND CAUSATION. AND IF I HEAR ANYTHING ABOUT  
16 DAMAGES, THE OBJECTIONS WILL BE WELL TAKEN.

17 MR. RIVIN: LET ME SUGGEST, YOUR HONOR, THAT ALL OF  
18 THE -- ALL FOUR AREAS MR. MOSHENKO REFERRED TO DEAL WITH  
19 DATA. THOSE ARE DAMAGES. THOSE ARE DAMAGES ISSUES. THEY  
20 ARE NOT LIABILITY.

21 THE COURT: THAT'S THE WAY I SEE IT.

22 MR. RIVIN: ALL FOUR AREAS DEAL WITH DATA. THEY  
23 DON'T GO TO --

24 THE COURT: CAUSE.

25 MR. RIVIN: -- WHY DID PEOPLE LEAVE. WHY DID  
26 PEOPLE LEAVE FOR A MURIAD OF REASONS. IF PEOPLE -- IF

1 PEOPLE STOPPED PAYING, WHICH IS WHAT I GUESS MR. NOVELLI'S  
2 DATA MAY SHOW, IT DOESN'T INDICATE WHY. THE DATA DOESN'T  
3 INDICATE WHY THEY STOPPED PAYING. ALL IT IS IS NUMBERS  
4 AND DATES AND NOTHING MORE THAN THAT. AND THOSE ARE  
5 DAMAGES. THEY ARE NOT CAUSATION ISSUES, AND THEY'RE  
6 CERTAINLY NOT LIABILITY.

7 THE COURT: THE JURY CAN'T COME TO A CONCLUSION  
8 FROM THAT.

9 MR. RIVIN: AND, MOREOVER, ON THE FOUNDATIONAL  
10 ISSUE, ON THIS STATEMENT MADE BY MR. MOSHENKO THAT  
11 LEO NOVELLI WENT TO NEBRASKA AND TOOK CHARGE OF RECORDS OF  
12 THOUSAND ADVENTURES, MR. MOSHENKO -- IT SOUNDED LIKE HE  
13 ADDED THE WORD "CHARGE." BECAUSE WHAT HE DID IS HE WENT  
14 AND TOOK THE RECORDS. HE WAS ACCUSED BY A BANKRUPTCY  
15 TRUSTEE OF HAVING CONVERTED THE RECORDS OF THOUSAND  
16 ADVENTURES.

17 MR. MOSHENKO: THIS IS FALSE.

18 MR. RIVIN: HE WAS ACCUSED OF HAVING DONE THAT.

19 BUT MORE TO THE POINT, HE WENT TO A  
20 COMPUTER AND PULLED RECORDS OFF A COMPUTER OF A COMPANY  
21 THAT PLAINTIFFS KNEW NOTHING ABOUT, THAT PLAINTIFFS DIDN'T  
22 CONTROL, PLAINTIFFS DIDN'T RUN. MR. NOVELLI'S ORGANIZATION  
23 HAD NOTHING TO DO WITH THOUSAND ADVENTURES PRIOR TO 1997.

24 SO ALL THEY COULD TALK ABOUT IS THAT THEY  
25 PULLED SOME COMPUTER INFORMATION OFF A COMPUTER.

26 THE COURT: I CAN'T PREVENT HIM FROM CALLING HIM AS

1 A WITNESS, BUT I SURE AS HECK CAN CONTROL IT TO THE POINT  
2 WHERE HE IS NOT GOING TO TALK ABOUT DAMAGES.

3 MR. RIVIN: I AGREE. BUT I ALSO THINK THAT PERHAPS  
4 THIS TESTIMONY -- I STILL THINK THERE'S A FOUNDATIONAL  
5 ISSUE. AND I REQUEST THAT UNDER EVIDENCE CODE SECTION 402  
6 THIS BE DONE OUTSIDE THE PRESENCE OF THE JURY.

7 THE COURT: LET'S HEAR IT. LET'S HAVE A 402  
8 HEARING.

9 MR. RIVIN: OKAY.

10 MR. MOSHENKO: I CAN LIVE WITH THAT, YOUR HONOR.

11 BUT ON THIS POINT OF CAUSATION VERSUS  
12 DAMAGES, SO THAT YOUR HONOR KNOWS WHERE WE'RE COMING FROM  
13 AND WHERE WE'RE GOING, IT'S THE PLAINTIFFS' CONTENTION THAT  
14 CAUSATION CAN BE SHOWN BY TIMING OF MEMBERS LEAVING.

15 JUST TO GIVE YOU ONE EXAMPLE, IF A MEMBER  
16 WAS WITH THE PLAINTIFFS' ORGANIZATION FOR 12 YEARS, AND  
17 THEN THE LETTER GOES OUT, AND THEY LEAVE ON THE 13TH YEAR,  
18 WE THINK THERE'S A REASONABLE INFERENCE OR A RATIONAL  
19 CONNECTION THAT CAN BE DRAWN THAT THE LETTER CAUSED THE  
20 MEMBER TO LEAVE.

21 NOW, IS THAT FACT OF THE LEAVING ALSO  
22 RELEVANT TO DAMAGES? IT IS RELEVANT TO DAMAGES, BUT IT'S  
23 NOT THE PURPOSE AT THIS STAGE OF THE TRIAL FOR WHICH I WILL  
24 OFFER THIS EVIDENCE.

25 THE COURT: YOU'RE TALKING ABOUT A MEMBER OF THE  
26 PLAINTIFFS' ORGANIZATION AND COAST TO COAST?

1           MR. MOSHENKO: CORRECT, WHO HAS BEEN A MEMBER OF  
2 THE PLAINTIFFS' ORGANIZATION AND COAST TO COAST. AND AS  
3 THE COURT WELL KNOWS --

4           THE COURT: THEN THE PLAINTIFF WITHDREW FROM COAST  
5 TO COAST.

6           MR. MOSHENKO: YES.

7           THE COURT: THAT DOESN'T PROVE ANYTHING. I MEAN,  
8 IT COULD VERY WELL BE JUST THE OTHER SIDE OF THE COIN WHERE  
9 THE MEMBER LEFT BECAUSE THEY WANTED TO REMAIN A MEMBER OF  
10 COAST TO COAST.

11          MR. MOSHENKO: IT COULD BE.

12          MR. SHERMAN: IT COULD BE THEY DIED.

13          MR. MOSHENKO: THAT'S A DECISION FOR THE JURY TO  
14 DECIDE. IT'S NOT A DECISION FOR THE COURT TO PREJUDGE THE  
15 REASONS FOR THE LEAVING WITHOUT HEARING THE EVIDENCE OR  
16 ALLOWING THE EVIDENCE TO BE HEARD, BECAUSE CAUSATION IS A  
17 JURY ISSUE.

18          MR. RIVIN: THIS, YOUR HONOR, IS GOING TO BE THE  
19 SUBJECT OF ONE OF OUR DIRECTED VERDICT MOTIONS. THE  
20 PLAINTIFFS HAVEN'T SUSTAINED THEIR BURDEN OF PROOF TO SHOW  
21 WHY PEOPLE MAY HAVE STOPPED PAYING, EVEN IF THEY DID STOP  
22 PAYING. AND IT COULD BE FOR A MURIAD OF REASONS THAT WE'VE  
23 HEARD ABOUT THROUGHOUT THE COURSE OF THIS TRIAL;  
24 BANKRUPTCIES, TERMINATION OF MEMBER CONTRACTS,  
25 RECEIVERSHIPS, ATTORNEY GENERAL COMPLAINTS.

26                           THERE ARE -- I THINK MR. SHERMAN USED THE

1 WORDS -- ZILLIONS OF REASONS WHY PEOPLE MIGHT HAVE STOPPED  
2 PAYING. AND FOR PLAINTIFFS TO ASK THE JURY TO INFER THAT  
3 THE REASON SOMEBODY STOPPED PAYING BETWEEN 1996 AND 1997  
4 WAS BECAUSE OF A COAST LETTER IN OCTOBER OF 1997, WITH ALL  
5 OF THESE OTHER THINGS HAPPENING, IS ABSURD AND COMPLETELY  
6 UNFOUNDED.

7 MR. SHERMAN: WE'D LIKE TO PROCEED WITH THE 402  
8 HEARING, AND WE'D LIKE TO ASK THE JURY BE SENT HOME FOR THE  
9 DAY SO THAT THEY DON'T HAVE TO SIT AROUND HERE.

10 THE COURT: LET'S DO THAT.

11 BRING THE JURY IN.

12 MR. SHERMAN: CAN WE TAKE A FEW MINUTES TO JUST USE  
13 THE REST ROOM BEFORE PROCEEDING WITH THE 402?

14 THE COURT: SURE. THANK YOU.

15 MR. SHERMAN: THANK YOU.

16 THE COURT: LET'S TAKE 10. TELL THE JURY THAT WE  
17 WILL BE BACK IN SESSION IN 10 MINUTES, AND THEN I'LL SEND  
18 THEM HOME.

19 MR. SHERMAN: SHOULD WE BRING THEM IN NOW?

20 THE COURT: BRING THEM IN NOW.

21 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
22 COURT IN THE PRESENCE OF THE JURY:)

23 THE COURT: YOU'RE GOING TO HATE ME, BUT I'M GOING  
24 TO EXCUSE YOU FOR THE DAY. I'LL TELL YOU WHAT WE GOT.

25 I SAID YOU'RE GOING TO HATE ME, BUT I'M  
26 GOING TO EXCUSE YOU FOR THE DAY. WE HAVE A LOT OF LEGAL

1 AND EVIDENTIARY THINGS WE HAVE TO COVER WITHOUT YOUR BEING  
2 HERE. SO WE DON'T WANT TO WASTE YOUR TIME. IT'S -- THIS  
3 CASE IS COMPLICATED. THERE'S NO QUESTION ABOUT IT. THAT'S  
4 WHY IT'S TAKING SO LONG. AND WE WANT TO DO RIGHT BY  
5 EVERYBODY. SO WE'LL GET TO THE BOTTOM OF THINGS  
6 EVENTUALLY, BUT IT'S GOING TO TAKE SOME TIME.

7 SO I HOPE YOU UNDERSTAND THAT.

8 JUROR 18: I DON'T HAVE A PROBLEM WITH THAT AT ALL.

9 THE COURT: WE'LL EXCUSE YOU FOR THE DAY. BUNCH OF  
10 WISE GUYS. WE'LL SEE YOU ALL BACK HERE MONDAY MORNING AT  
11 9:00.

12 (RECESS TAKEN.)

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

15 THE COURT: OKAY. LET'S PROCEED.

16 MR. MOSHENKO: LEO NOVELLI, PLEASE, YOUR HONOR.

17 AND, YOUR HONOR, PRELIMINARY TO HIS  
18 ACTUALLY TESTIFYING, I'M GOING YOU ASK THE COURT TO TAKE  
19 JUDICIAL NOTICE OF THE REPORT AND RECOMMENDATION OF  
20 REFEREE, THE HONORABLE JAMES L. SMITH, DATED MARCH 27,  
21 2000.

22 AND SO THAT YOU DON'T HAVE TO SEARCH FOR IT  
23 IN THE COURT FILE, IF THE COURT WOULD LIKE, I WILL PROVIDE  
24 YOU WITH A COPY.

25 THE COURT: PASS IT TO THE BAILIFF.

26 MR. RIVIN: IT'S AN EXHIBIT. IT WAS NOT ADMITTED

1 INTO EVIDENCE, BUT IT'S EXHIBIT --

2 THE CLERK: WHAT EXHIBIT NUMBER?

3 MR. RIVIN: YOU'RE TALKING ABOUT THE ORDER?

4 MR. MOSHENKO: THE SAME JAMES SMITH ORDER.

5 LEO ANTON NOVELLI,

6 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, HAVING

7 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

8 FOLLOWS:

9 THE CLERK: TAKE A SEAT IN THE WITNESS STAND,

10 PLEASE.

11 STATE YOUR FULL NAME FOR THE RECORD, PLEASE.

12 THE WITNESS: MY NAME IS LEO ANTON NOVELLI.

13 THE CLERK: WOULD YOU SPELL THAT "ANTON."

14 THE WITNESS: A-N-T-O-N.

15 THE CLERK: THANK YOU.

16 DIRECT EXAMINATION (402)

17 BY MR. MOSHENKO: Q MR. NOVELLI, WHAT IS YOUR

18 AGE?

19 A I'M 30 YEARS OLD.

20 Q AND COULD YOU PLEASE DESCRIBE YOUR

21 EDUCATION -- HOLD ON A SECOND.

22 THE COURT: WHAT IS THE NUMBER OF THAT --

23 MR. DURAN: IT MAY BE 452, YOUR HONOR.

24 MR. RIVIN: IT'S 452.

25 MR. MOSHENKO: THE COURT WILL TAKE JUDICIAL NOTICE

26 OF 452?

1 THE COURT: AS SOON AS I SEE IT.

2 MR. MOSHENKO: YES, SIR. LET'S GET IT FOR HIM.

3 BY MR. MOSHENKO: Q YOU HAVE A COLLEGE DEGREE?

4 A THAT IS CORRECT.

5 Q WHERE DID YOU -- TELL US WHERE YOU WENT TO  
6 COLLEGE.

7 A I WENT TO COLLEGE AT CAL STATE UNIVERSITY  
8 FULLERTON.

9 Q AND WHEN DID YOU ENTER CAL STATE FULLERTON?

10 A I ENTERED CAL STATE FULLERTON IN 1986.

11 Q WHAT WAS YOUR MAJOR?

12 A BUSINESS ADMINISTRATION WITH EMPHASIS IN  
13 INFORMATION SERVICES.

14 Q DOES THAT INVOLVE -- CAUSE YOU TO BECOME  
15 INVOLVED WITH COMPUTER SCIENCE?

16 A YES.

17 Q COMPLAIN HOW AND TO WHAT EXTENT COMPUTER  
18 SCIENCE WAS PART OF THE CURRICULUM?

19 A WELL, IN BUSINESS ADMINISTRATION WITH THE  
20 EMPHASIS IN INFORMATION SERVICES, YOU ARE REQUIRED TO TAKE  
21 COURSES IN PROGRAMING AND DATABASE ADMINISTRATION AND  
22 BASICALLY INTERNET OR INFORMATION SERVICES MANAGEMENT, THE  
23 ENDING RESULT TO BECOME A SYSTEMS ANALYST.

24 Q AS IN A COMPUTER SYSTEMS ANALYST?

25 A CORRECT.

26 Q YOU SAID PROGRAMING. YOU MEAN THE WRITING

1 AND CREATING OF COMPUTER PROGRAMS?

2 A THAT'S CORRECT.

3 Q FROM LIKE ZERO, SCRATCH?

4 A YES.

5 Q AND HAVE YOU IN YOUR CAREER DONE COMPUTER  
6 PROGRAMING?

7 A YES.

8 Q CAN YOU GIVE US AN ESTIMATE OF HOW MANY  
9 COMPUTER PROGRAMS YOU HAVE, I GUESS, CREATED?

10 A IT WOULD BE IN THE THOUSANDS.

11 Q ALL RIGHT. THOUSANDS.

12 THEN THE SECOND THING YOU SAID WAS

13 DATABASE --

14 A ADMINISTRATION.

15 Q ADMINISTRATION.

16 WHAT DOES THAT MEAN?

17 A HOW TO CREATE A DATABASE, HOW TO MAINTAIN A  
18 DATABASE, HOW THE DIFFERENT DATABASE STRUCTURES ARE,  
19 CREATED. HOW RELATIONSHIPS ARE CREATED BETWEEN DATA, AND  
20 DATA INTEGRITY, DATA BACKUPS, ANYTHING RELATING TO THE  
21 STORAGE OF DATA INSIDE OF THE DATABASE.

22 Q AND THEN THE THIRD ITEM THAT YOU MENTIONED,  
23 AS TO RECORDS, HOW COMPUTER SCIENCE IS INVOLVED IN YOUR  
24 MAJOR.

25 A BASICALLY HOW -- YOU KNOW, OPERATING  
26 SYSTEMS, HOW EVERYTHING TIES TOGETHER, CPU'S OR

1 TELECOMMUNICATIONS, LIKE ON A LAN, LOCAL AREA NETWORK, OR  
2 WIDE AREA NETWORK, HARDWARE, YOU KNOW, ALL THAT  
3 INFORMATION.

4 Q ALL RELATING TO COMPUTER HARDWARE AND  
5 SOFTWARE; CORRECT?

6 A CORRECT.

7 Q AND DID YOU GET YOUR DEGREE?

8 A YES, I DID.

9 Q WHEN DID YOU DO THAT?

10 A I RECEIVED -- MY LAST DAY OF CLASSES WAS IN  
11 LATE '98. AND I BELIEVE THAT I'M A GRADUATE OF EARLY '99.

12 Q AND THE DEGREE THAT YOU HOLD IS WHAT?

13 A IS BUSINESS ADMINISTRATION WITH EMPHASIS IN  
14 INFORMATION SERVICES.

15 Q WHAT DOES IT MEAN TO SAY INFORMATION  
16 SERVICES, IF DIFFERENT FROM THE COMPUTER EMPHASIS YOU  
17 REFERRED TO?

18 A THAT'S EXACTLY WHAT IT MEANS, FOR THE  
19 COMPUTER.

20 Q OKAY.

21 A IT'S DIFFERENT THAN A FINANCE DEGREE OR  
22 ACCOUNTING DEGREE OR MARKETING DEGREE, IN THE SAME FIELD.

23 Q SO IT'S A B.A. DEGREE --

24 A CORRECT.

25 Q -- IN BUSINESS ADMINISTRATION WITH EMPHASIS  
26 IN COMPUTER-RELATED INFORMATION SERVICES?

1 A CORRECT.

2 Q ALL RIGHT. AND NOW IN 19 -- YOU'RE THE SON  
3 OF RAYMOND NOVELLI; RIGHT?

4 A CORRECT.

5 Q AND NOW --

6 THE COURT: YOU CAN'T DENY IT. TELL YOU THAT.  
7 YOU'RE A SPITTIN' IMAGE OF HIM.

8 BY MR. MOSHENKO: Q HAVE YOU EVER WORKED FOR YOUR  
9 FATHER?

10 A YES.

11 Q IN ONE OF HIS RESORT-RELATED BUSINESSES?

12 A YES.

13 Q WHEN DID YOU START DOING THAT?

14 A I STARTED WORKING FOR HIM IN SEPTEMBER 22ND  
15 OF 1986.

16 Q WHILE YOU WERE A STUDENT?

17 A CORRECT.

18 Q OKAY. AND WHAT WAS YOUR JOB?

19 A WHEN I WAS FIRST HIRED, I WAS HIRED TO DO  
20 DATA ENTRY.

21 Q AND WHAT WAS THE SUBJECT MATTER OF THE DATA  
22 THAT YOU WERE ENGAGED IN ENTERING?

23 A CONTRACTS INFORMATION, MEMBERSHIP  
24 INFORMATION, AND ACCOUNTING INFORMATION AS WELL.

25 Q AND ACCOUNTING.

26 NOW, YOUR TITLE WAS A DATA ENTRY CLERK?

1 A THAT'S CORRECT.

2 Q AND HOW LONG DID YOU FUNCTION AS A DATA  
3 ENTRY CLERK?

4 A IN REALITY I FUNCTION AT THAT -- THE WHOLE  
5 TIME. HOWEVER, OVER, YOU KNOW, THE YEARS, I BECAME MORE  
6 AND MORE AS A PROGRAMMER THAN DOING JUST DATA ENTRY.

7 Q OKAY. NOW, YOU SPECIFICALLY REFERENCED THAT  
8 YOU WERE INVOLVED IN DATA ENTRY OF INFORMATION RELATING TO  
9 MEMBERS' --

10 A CORRECT.

11 Q -- CONTRACTS?

12 A YES.

13 Q MEMBER PAYMENTS?

14 A YES.

15 Q BOTH DUES AND CONTRACT PAYMENTS?

16 A CORRECT.

17 Q OKAY. WERE YOU INVOLVED IN BILLING?

18 A YES.

19 Q AND RECEIPTS?

20 A YES.

21 Q AND AS YOU -- DID THERE COME A TIME WHEN  
22 OTHER PEOPLE DID THE SAME THING THAT YOU WERE DOING, IN  
23 DATA ENTRY?

24 A YES.

25 Q AND SO WAS THAT BECAUSE YOU WERE PROMOTED?

26 A PROBABLY BOTH PROMOTION AND ALSO JUST

1 EMPLOYEE TURNOVER.

2 Q OKAY. AND SO WERE THESE OTHER PEOPLE  
3 TRAINED BY YOU TO DO THEIR JOBS?

4 A YES.

5 Q AND WERE THEY PEOPLE THAT REMAINED SUBJECT  
6 TO YOUR DIRECTION AND CONTROL --

7 A YES.

8 Q -- RELATING TO THE DATA ENTRY?

9 A CORRECT.

10 Q WHILE YOU WERE EMPLOYED -- AND I'M GOING TO  
11 USE THE PHRASE "DIRECTING PERSONNEL" RELATING TO THIS DATA  
12 ENTRY -- YOU ALSO GOT INVOLVED IN PROGRAMING; IS THAT  
13 CORRECT?

14 A CORRECT.

15 Q GIVE US SOME EXAMPLES OF PROGRAMING  
16 RESPONSIBILITIES THAT YOU HAVE.

17 A PROGRAM RESPONSIBILITIES WOULD INCLUDE  
18 ANYTHING FROM NEW FORMS THAT PEOPLE WOULD USE TO INPUT DATA  
19 INTO THE COMPUTER. IT COULD BE REPORTS THAT, YOU KNOW,  
20 WERE NEEDED BY MANAGEMENT TO PRODUCE. AND ALSO, YOU KNOW,  
21 THE MAINTAINING OF THE DATA, AS FAR AS IF NEW RECORDS  
22 NEEDED TO BE ADDED ELECTRONICALLY.

23 Q NOW, YOU ARE AWARE THAT A LOT OF THIS  
24 HEARING RELATES TO HANDLING A DATABASE THAT I'M -- REFERRED  
25 TO AS THE TRAVEL AMERICA DATABASE.

26 DO YOU KNOW WHAT I'M REFERRING TO?

1           A       YES.

2           Q       IT HAS HAD DIFFERENT NAMES OVER DIFFERENT  
3 YEARS; IS THAT CORRECT?

4           A       CORRECT.

5           Q       WHAT NAMES HAVE APPLIED TO THAT DATABASE?

6           A       WE'VE ALWAYS APPLIED TO IT A NUMBER OF  
7 DIFFERENT WAYS, CALLED -- FROM THE DIFFERENT COMPANIES'  
8 NAMES, LIKE ALL SEASONS DATABASE OR FIRST NATIONWIDE  
9 DATABASE. AND WE'VE ALSO NAMED IT BY THE TYPE OF HARDWARE  
10 IT WAS RUNNING ON OR THE SOFTWARE, EITHER WANG DATABASE OR  
11 A SPEED TWO DATABASE OR A SQL DATABASE.

12          Q       BUT IS IT TRUE THAT REGARDLESS OF WHAT  
13 YOU'RE CALLING IT, WE'RE TALKING ABOUT THE SAME DATABASE  
14 THAT HAS BEEN IN EXISTENCE THROUGH THE '80'S AND THE '90'S?

15          A       ABSOLUTELY.

16          Q       AND SO I'LL REFER TO THAT AS THE TRAVEL  
17 AMERICA DATABASE. AND THAT'S WHAT I'M TALKING ABOUT.

18                    OKAY. NOW, WERE YOU ASKED BY EITHER MY  
19 OFFICE OR SOMEBODY IN YOUR EMPLOYMENT AROUND APRIL OF 2000  
20 TO CREATE A DISK WHICH INCLUDED THE DATA FROM THE DATABASE  
21 RELATING TO MEMBERS?

22          A       YES, I WAS ASKED.

23          Q       AND WHY DON'T YOU JUST TELL THE COURT WHAT  
24 IT WAS -- STRIKE THAT.

25                    ALL RIGHT. MR. DURAN INFORMS ME THAT 452  
26 IS NOT THE COURT ORDER. BUT I DO HAVE A COPY OF IT. DO

1 YOU HAVE IT THERE?

2 THE CLERK: NO. I WAS LOOKING AT 452. AND IT'S  
3 NOT A COURT ORDER.

4 MR. RIVIN: I DON'T SEE IT EITHER.

5 MR. MOSHENKO: THEN I HAVE OUR FILE COPY, YOUR  
6 HONOR.

7 I'D LIKE TO SHOW IT TO THE WITNESS. AND  
8 PERHAPS WE BETTER ASSIGN A NUMBER TO IT.

9 THE CLERK: IS THAT CALLED A REPORT AND  
10 RECOMMENDATION?

11 MR. MOSHENKO: OF REFEREE. IT IS CALLED THAT.

12 THE CLERK: COULD I SEE IT? DOES IT HAVE A DATE?

13 MR. MOSHENKO: THE LAST PAGE HAS A DATE OF MARCH  
14 27, 2000.

15 (DISCUSSION HELD OFF THE RECORD.)

16 MR. SHERMAN: MR. MOSHENKO, COULD WE HAVE A COPY  
17 AS WELL, WHAT YOU'RE SHOWING THE WITNESS?

18 MR. MOSHENKO: I CAN SHOW IT TO YOU, BUT I DON'T  
19 HAVE A COPY.

20 MR. SHERMAN: IT'S A MULTIPLE-PAGE DOCUMENT. WHAT  
21 DO YOU PROPOSE WE DO?

22 MR. MOSHENKO: I DON'T KNOW WHAT YOU SHOULD DO.  
23 YOU SHOULD LOOK AT IT, I GUESS.

24 THE COURT: IT'S A COPY OF THE COURT ORDER. WHY  
25 ISN'T IT IN THE FILE?

26 THE CLERK: IT'S NOT A COPY OF THE COURT ORDER.

1 IT'S A REPORT OF THE REFEREE.

2 MR. MOSHENKO: IT'S THE REPORT AND RECOMMENDATION  
3 OF JUDGE SMITH.

4 THE COURT: IT'S NOT AN ORDER?

5 MR. MOSHENKO: WELL, IT SHOWS A SPACE FOR THE  
6 SIGNATURE BY JUDGE THOMAS.

7 MR. SHERMAN: I GUESS REALLY THE POINT IS, YOUR  
8 HONOR, SINCE IT'S 11 PAGES, IS THERE SOMETHING IN  
9 PARTICULAR YOU'D LIKE US TO LOOK AT SO WE CAN AT LEAST --

10 MR. MOSHENKO: YES. I INTEND TO FOCUS THE WITNESS  
11 ON THE PAGE YOU'RE LOOKING AT, WHICH IS PAGE -- WHAT?

12 MR. RIVIN: PAGE 9.

13 MR. MOSHENKO: PAGE 9. BUT I ALSO WANT HIM TO LOOK  
14 AT THE DOCUMENT TO DETERMINE IF HE HAS RECEIVED IT.

15 AND I'M NOT CONCERNED WITH PAGES OTHER THAN  
16 PERHAPS THE FRONT PAGE AND THE PAGE 9 AND THE SIGNATURE  
17 PAGE.

18 THE CLERK: YOUR HONOR, THERE IS AN ORDER SIGNED IN  
19 THE FILE. DO YOU WANT TO USE IT?

20 MR. MOSHENKO: MAY I SEE IT, PLEASE?

21 THIS WAS FAX'D TO US BY JAMS, YOUR HONOR.  
22 JUDGE SMITH WAS AT JAMS. AND THERE IS NO PROOF OF SERVICE.

23 MR. MOSHENKO: MAY I SHOW THIS TO THE WITNESS, YOUR  
24 HONOR?

25 THE COURT: YES.

26 BY MR. MOSHENKO: Q IT HAS MY HANDWRITING ON THE

1 FRONT PAGE, BUT DISREGARD THE HANDWRITING.

2 A OKAY.

3 Q I WANT YOU TO LOOK AT THAT AND TELL ME IF  
4 YOU RECALL BEING PROVIDED A COPY OF EITHER THAT DOCUMENT IN  
5 ITS ENTIRETY OR PAGE 9 AND 10.

6 A YES. PAGE 9 AND 10 LOOKS EXTREMELY FAMILIAR  
7 TO WHAT I REMEMBER SEEING.

8 Q ALL RIGHT. NOW, THEN SOMETIME IN EARLY  
9 APRIL, DID I CALL UPON YOU TO PREPARE COMPLIANCE WITH THE  
10 PROVISIONS ORDERED ON PAGE 9, WHICH SPECIFICALLY STATES  
11 THAT -- OKAY -- WHICH STATES AT PAGE 10, "PLAINTIFFS SHALL  
12 ALSO PRODUCE IN A STANDARD ELECTRONIC MEDIA FORMAT, AS  
13 DESCRIBED ABOVE, THE INFORMATION RETRIEVED FROM PLAINTIFFS'  
14 DATABASE RELATING TO THE RANDOM SELECTION SAMPLE CREATED BY  
15 PLAINTIFFS' EXPERT"?

16 AND ALSO STATES ON PAGE 9, LINE 12, LINE 13,  
17 "PLAINTIFFS SHALL DELIVER TO DEFENDANTS IN A STANDARD  
18 ELECTRONIC MEDIA FORMAT, PAREN, PC-CD ROM, ZIP OR FLOPPY  
19 DISK, PAREN, THE ENTIRE DATABASE CONCERNING INFORMATION  
20 RESPONSIVE TO THESE REQUESTS."

21 DID YOU PREPARE ANYTHING TO RESPOND TO THE  
22 INSTRUCTION BY JUDGE SMITH THAT THAT -- THOSE TWO THINGS BE  
23 PROVIDED?

24 A YES, I DID.

25 Q WHY DON'T YOU JUST TELL US WHAT IT WAS THAT  
26 YOU HAD TO DO TO PREPARE THE COMPLIANCE?

1           A           BASICALLY WHAT I HAD TO DO WAS GENERATE A CD  
2 OF THE RANDOM SAMPLING INFORMATION THAT WE OBTAINED, AS  
3 WELL AS THE ENTIRE DATABASE OF THE TRAVEL AMERICA SYSTEM.

4           Q           WHEN YOU SAY "ENTIRE DATABASE," WHAT WAS  
5 INCLUDED IN THE DATA PROVIDED?

6           A           ALL THE MEMBERSHIP INFORMATION AS IT  
7 PERTAINS TO THE MEMBERS.

8           Q           AND THAT'S EVERY MEMBER?

9           A           THAT IS CORRECT.

10          Q           THROUGH EVERY YEAR?

11          A           THAT IS CORRECT.

12          Q           REFLECTING EVERY ENTRY AND EVERY ITEM THAT  
13 WAS EVER PUT ON THE DATABASE RELATING TO THOSE MEMBERS?

14          A           WELL, THERE WAS A CONVERSION PROCESS THAT  
15 TOOK PLACE BETWEEN THE WANG MAINFRAME AND THE PC.

16          Q           YES.

17          A           ALL RELEVANT -- YOU KNOW, MOST OF THE  
18 INFORMATION WAS TRANSFERRED TO THE PC, WHICH IN TURN IS ON  
19 THE CD. HOWEVER, THERE MAY BE STILL SOME SALES AND  
20 MARKETING INFORMATION THAT MAY BE NOT ON THAT CD.

21          Q           WELL, HOW ABOUT IF I REFERENCE PAYMENT  
22 RELATED?

23          A           YES.

24          Q           OR PAYMENT HISTORY RELATED INFORMATION?

25          A           ABSOLUTELY.

26          Q           ANYTHING FROM THE DATABASE OF THE TRAVEL

1 AMERICA DATABASE LEFT OFF RELATING TO THAT SUBJECT?

2 A NO.

3 Q WAS THERE ANYTHING LEFT OFF?

4 A NO.

5 Q SO WHAT IS THE PHYSICAL PROCESS BY WHICH YOU  
6 CREATED THIS -- WHAT DID YOU CREATE, A DISK?

7 A A CD ROM.

8 Q A CD ROM. WHAT'S THE PHYSICAL PROCESS THAT  
9 YOU USED TO DO THAT?

10 A WELL, IN DETAIL -- YOU WANT A DETAILED  
11 EXPLANATION?

12 Q OKAY.

13 A BASICALLY WHAT I DID IS THEIR CURRENT  
14 DATABASE IS A MICROSCOPE SQL SERVER SYSTEM. THAT DATABASE  
15 WAS BACKED UP USING MICROSOFT'S SQL 6.5 BACKUP UTILITY  
16 INCLUDED WITH THE DATABASE SOFTWARE. AFTER THAT BACKUP WAS  
17 CREATED, IT WAS NOTICED THAT THAT BACKUP IS HUGE. IT WOULD  
18 NOT FIT ON ONE CD ROM.

19 SO WHAT I DID IS I COMPRESSED THE DATA UNDER  
20 AN INDUSTRY STANDARD COMPRESSION PROGRAM CALLED WIN ZIP.  
21 AT THAT POINT THAT DATABASE NOW WOULD FIT ON A CD ROM, AND  
22 I BASICALLY TOOK THAT DATA.

23 I ALSO TOOK THE RANDOM SAMPLING INFORMATION  
24 THAT YOU REFERRED TO EARLIER, AND I ALSO TOOK THE PROGRAM  
25 THAT I CREATED TO ACCESS THE DATA AND BURNT IT ONTO A CD  
26 ROM IN THREE SEPARATE FOLDERS AND FULLY DOCUMENTED WHAT WAS

1 ON THE CD ROM AND HOW TO USE IT.

2 Q NOW, THIS PHRASE, "BURNT IT ON A CD ROM"?

3 A CORRECT.

4 Q WHAT DOES THAT MEAN?

5 A ACTUALLY A LASER PROCESS THAT BURNS THE DATA  
6 ONTO IT, VERSUS A MAGNETIC PROCESS OF LIKE A TAPE OR A  
7 DISK.

8 Q OKAY. WOULD IT BE ROUGHLY EQUIVALENT TO  
9 CREATING A RECORDING OF THE DATA?

10 A YES. ABSOLUTELY.

11 Q OKAY. AND SO -- ALL RIGHT. HOW MANY --  
12 WELL, YOU CREATED A SINGLE DISK; RIGHT?

13 A I CREATED THREE DISKS.

14 Q THREE IDENTICAL DISKS?

15 A YES.

16 Q ALL RIGHT. AND THEN WHAT, IF ANYTHING, DID  
17 YOU DO TO DETERMINE IF THE DISK CREATION WAS SUCCESSFUL?

18 A AFTER EACH DISK WAS BURNT, I BASICALLY  
19 OPENED THEM UP TO MAKE SURE THEY WERE COMPLETELY LEGIBLE  
20 AND MADE SURE THAT THE ARCHIVE OF THE COMPRESSED VERSION OF  
21 THE DATABASE CHECKED OUT. THERE'S -- I GUESS THEY CALL IT  
22 A CRC CHECK THAT YOU CAN MAKE SURE THAT IT'S VALID. AND  
23 EVERYTHING PASSED.

24 Q ALL RIGHT. SO JUDGE SMITH ORDERED THE  
25 PLAINTIFFS TO DELIVER IN A STANDARD ELECTRONIC MEDIA FORMAT  
26 THE ENTIRE DATABASE CONTAINING INFORMATION.

1 DID YOU IN FACT CREATE A STANDARD ELECTRONIC  
2 MEDIA FORMAT?

3 A YES.

4 Q THAT IS THE CD ROM; RIGHT?

5 A CORRECT.

6 Q JUDGE SMITH THEN SAID, "PLAINTIFFS SHALL  
7 ALSO IDENTIFY THE SOFTWARE USED TO CREATE AND ACCESS THIS  
8 DATA."

9 WITH RESPECT TO THAT, I'VE GIVEN COUNSEL A  
10 COPY OF PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS  
11 CAMP COAST TO COAST, INC.'S, AND AFFINITY GROUP, INC.'S,  
12 FIRST THROUGH FIFTH SET OF REQUEST FOR PRODUCTION OF  
13 DOCUMENTS. AND I'D LIKE TO HAND THAT UP TO THE WITNESS.

14 WITHIN THIS DOCUMENT, MR. NOVELLI, IS A  
15 DECLARATION OF LEO NOVELLI WHICH APPEARS AT PAGES 10, 11  
16 AND 12. LET'S TAKE IT STEP-BY-STEP.

17 THE COURT ORDER SAYS, "PLAINTIFF SHALL ALSO  
18 IDENTIFY THE SOFTWARE USED TO CREATE AND ACCESS THIS DISK."

19 DID YOU DO THAT IN THE DECLARATION?

20 A YES, I DID.

21 Q WHAT DOES IT SAY IN THE DECLARATION THAT  
22 CONSTITUTES COMPLIANCE WITH THIS ORDER?

23 A IT SAYS -- LINE ITEM 2 STARTS WITH, "THIS IS  
24 A MICROSOFT SQL SERVER 6.5 SERVICE PACK 5A DATABASE BACKUP  
25 OF TRAVEL AMERICA INC.'S COMPLETE DATABASE. THE SOFTWARE  
26 USED TO CREATE AND ACCESS EVERYTHING IN THE TRAVEL AMERICA

1 COMPUTER THAT IS MEMBER-RELATED."

2 THE BACKUP DAT FILE WAS COMPRESSED USING WIN  
3 ZIP 6.2."

4 AND THEN I FURTHER WENT ON TO EXPLAIN WHERE  
5 THEY COULD OBTAIN THAT SOFTWARE.

6 Q IT SAYS "WIN ZIP CAN BE OBTAINED AT  
7 HTTP://WWW.WINZIP.COM\." WHAT'S THAT MEAN?

8 A THAT'S THE INTERNET ADDRESS AND -- OF THE  
9 MANUFACTURER OF THAT SOFTWARE.

10 Q OKAY. NOW, COULD THE SOFTWARE BE OBTAINED  
11 OVER THE INTERNET?

12 A YES.

13 Q WOULD YOU HAVE TO GO OUT AND BUY IT?

14 A YOU COULD DOWNLOAD IT OFF THE INTERNET, OR  
15 YOU COULD GO TO A COMPUTER STORE AND PURCHASE IT.

16 Q IT COULD BE OBTAINED FREE BY ANYONE WHO WENT  
17 ONTO THE INTERNET?

18 A THAT'S CORRECT.

19 Q ALL RIGHT. NOW, THE ORDER SAYS, "IF THE  
20 SOFTWARE" -- "IF SAID SOFTWARE IS PROPRIETARY, PLAINTIFFS  
21 SHALL PROVIDE WORKING COPIES OF SAID SOFTWARE TO  
22 PLAINTIFFS."

23 FIRST QUESTION, IS THE SOFTWARE THAT IS  
24 REFERRED TO IN YOUR DECLARATION PROPRIETARY?

25 A WHICH SOFTWARE?

26 Q THE MICROSOFT SQL SERVER 6.5?

1           A           IT'S NOT PROPRIETARY TO TRAVEL AMERICA, BUT  
2 IT IS TO MICROSOFT.

3           Q           IT'S MICROSOFT SOFTWARE; CAN BE ACQUIRED  
4 THROUGH MICROSOFT?

5           A           CORRECT.

6           Q           THEN IT SAYS THE BACKUP DAT FILES COMPRESSED  
7 WITH THE WIN ZIP 6.2. AND YOU'VE ALREADY TOLD US THAT IS  
8 AVAILABLE FOR FREE. IT'S NOT PROPRIETARY?

9           A           CORRECT.

10          Q           SO NEITHER OF THESE SOFTWARES WERE  
11 PROPRIETARY?

12          A           CORRECT.

13          Q           SO IF SAID SOFTWARE IS PROPRIETARY,  
14 PLAINTIFF SHALL PROVIDE WORKING COPIES OF SAID SOFTWARE TO  
15 DEFENDANTS.

16                    YOU DIDN'T PROVIDE WORKING COPIES OF THESE  
17 SOFTWARES, DID YOU?

18          A           NO, I DID NOT.

19          Q           THE REASON YOU HAD THE MICROSOFT SQL SERVER  
20 6.5 IS IT WAS PURCHASED; RIGHT?

21          A           CORRECT.

22          Q           AND IT'S PROTECTED FROM COPYING AND GIVING  
23 IT AWAY TO SOMEONE ELSE?

24          A           ABSOLUTELY.

25          Q           SO YOUR UNDERSTANDING IS IT WOULD HAVE BEEN  
26 ILLEGAL FOR YOU TO PROVIDE THAT SOFTWARE?

1 A CORRECT.

2 Q BUT, YET, THEY COULD HAVE GONE AND BOUGHT  
3 IT?

4 A ABSOLUTELY, WITHOUT QUESTION.

5 Q NEXT THE COURT SAYS AT LINE 18, "IT IS  
6 ANTICIPATED THAT THE PRODUCTION REQUIRED WILL INCLUDE DATA  
7 RELATING TO PLAINTIFFS' MEMBERSHIP AND PLAINTIFFS'" -- I  
8 MISREAD THAT, YOUR HONOR. I'LL READ IT AGAIN.

9 "IT IS ANTICIPATED THAT THE PRODUCTION  
10 REQUIRED WILL INCLUDE DATA RELATING TO MEMBERSHIP IN  
11 PLAINTIFFS THAT WOULD NOT NORMALLY BE DISCOVERABLE IN THIS  
12 ACTION. THEREFORE, PRODUCTION IS, AS ORDERED HEREIN, SHALL  
13 BE SUBJECT TO STANDARD CONFIDENTIALITY AND PRIVACY  
14 PROTECTIONS. AND THE DEFENDANTS ARE ORDERED TO REFRAIN  
15 FROM USING THE DATA AND/OR SOFTWARE PRODUCED FOR ANY  
16 PURPOSES OTHER THAN DEFENSE OF THIS ACTION."

17 OKAY. YOU DID SAY, THOUGH, THAT YOU  
18 PROVIDED SOME SOFTWARE?

19 A THAT IS CORRECT.

20 Q EVEN THOUGH YOU WEREN'T ORDERED TO DO SO?

21 A CORRECT.

22 Q WHAT SOFTWARE DID YOU PROVIDE?

23 A I PROVIDED THE TRAVEL AMERICA PROPRIETARY  
24 SOFTWARE THAT WAS CREATED FOR THEM BY MYSELF AND IS WHAT  
25 THEIR COMPANY USES ON A DAY-TO-DAY BASIS IN ORDER TO ACCESS  
26 THE DATA ON THEIR COMPUTER SCREENS.

1 Q "THEM" IS WHO?

2 A TRAVEL AMERICA.

3 Q OKAY. SO WITHOUT UNDERSTANDING -- YOU  
4 CREATED SOME SOFTWARE THAT YOU CREATED FOR TRAVEL AMERICA?

5 A CORRECT.

6 Q AND YOU PROVIDED THAT TO THEM?

7 A YES, I DID.

8 Q WAS THAT NECESSARY FOR THE READING OF THE  
9 MATERIAL?

10 A NO, IT WAS NOT NECESSARY.

11 Q WHY DID YOU PROVIDE IT?

12 A BECAUSE IT WAS HELPFUL.

13 Q ALL RIGHT. YOUR DECLARATION GOES ON TO SAY  
14 THE DATABASE CONSISTS OF TWO DEVICES, 2.0 GB LOG DEVICE  
15 NAMED MEMBERSHIP LOG.DAT AND 4.5 GB DATA DEVICE NAMED  
16 MEMBERSHIP.DAT.

17 WHAT DOES THAT MEAN?

18 A BASICALLY A MICROSOFT 6.5 DATABASE, THE  
19 FIRST THING YOU HAVE TO DO IS CREATE WHAT'S CALLED  
20 "DEVICES" IN ORDER TO STORE THE DATABASE.

21 IN THIS CASE, THERE WAS TWO DEVICES CREATED,  
22 ONE FOR WHAT'S CALLED THE TRANSACTION LOGS AND ONE FOR THE  
23 ACTUAL DATA. THE SIZES THAT YOU TALKED ABOUT IS 2.1  
24 GIGABYTES FOR THE LOG DEVICE AND 4.5 GIGABYTES FOR THE DATA  
25 DEVICE IS HOW MUCH SPACE THOSE DEVICES TAKE.

26 ONCE YOU HAVE THE DEVICES CREATED, NOW YOU

1 CAN PLACE THE DATABASES INSIDE OF THE DEVICES.

2 Q WHY DID YOU PUT THAT INFORMATION IN THERE?

3 A JUST TO BE HELPFUL AND TO COMPLY WITH THE  
4 COURT ORDER.

5 Q ON PAGE 10 OF THE COURT ORDER WHERE IT  
6 REFERENCES "PLAINTIFF SHALL ALSO PRODUCE IN A STANDARD  
7 ELECTRONIC MEDIA FORMAT AS DESCRIBED ABOVE THE INFORMATION  
8 RETRIEVED FROM PLAINTIFFS' DATABASE RELATING TO THE RANDOM  
9 SELECTION SAMPLE GIVEN BY PLAINTIFFS EXPERT" -- LET ME STOP  
10 RIGHT THERE.

11 THAT'S THE 1500 NAMES THAT YOU ARE AWARE OF  
12 THAT CALVIN -- DR. CALVIN BIERLY USED?

13 A THAT'S CORRECT.

14 Q AND THEN THAT SENTENCE GOES ON AND SAYS,  
15 "AND SHALL DESCRIBE IN DETAIL THE PROCESS BY WHICH SAID  
16 INFORMATION WAS EXTRACTED FROM THE DATABASE"?

17 A CORRECT.

18 Q SO WHERE IN YOUR DECLARATION DO YOU DESCRIBE  
19 IN DETAIL THE MEANS BY WHICH THE INFORMATION WAS EXTRACTED  
20 FROM THE DATABASE?

21 A THAT WAS ON PAGE -- STARTING WITH PAGE 11  
22 AND ALSO ON THE CD ITSELF.

23 Q ALL RIGHT. WELL, WE HAVEN'T GOTTEN THERE  
24 YET. SO I'M BACK ON PAGE 10. LINE 5 SAYS, "THE DATABASE  
25 IS NAMED MEMBERSHIP. ACTUAL SPACE USED 1.928 MB/DATA";  
26 WHAT DOES THAT MEAN?

1           A           AFTER YOU HAVE THE DEVICE, YOU HAVE TO  
2 ACTUALLY CREATE THE DATABASE THAT GOES INTO THE DEVICE.  
3 THE DEVICE ARE THE DATABASE WE ACTUALLY CALLED  
4 "MEMBERSHIP." THE SPACE USED WAS A TYPO ON MY MISTAKE. IT  
5 WAS NOT 1.92 MEGABITS. IT SHOULD HAVE BEEN 1.928  
6 GIGABYTES.

7           Q           IS THERE ANYTHING ABOUT THAT TYPO THAT WOULD  
8 RENDER THAT DATA ON THE DISK INACCESSIBLE?

9           A           ABSOLUTELY NOT.

10          Q           IS THERE ANYTHING THAT WOULD DISTORT THE  
11 INFORMATION ON THE DATA, THE FACT THAT YOU MISSTATED THE  
12 ACTUAL SPACE USED?

13          A           NO. IN ACTUALITY, THAT NUMBER THERE IS  
14 COMPLETELY MEANINGLESS BECAUSE IN NUMBER 4 THE NUMBERS THAT  
15 ARE LISTED THERE AS A 2.0 GIGABYTE AND THE 4.5 GIGABYTE IS  
16 ACTUALLY THE NUMBERS THAT ARE NECESSARY IN ORDER TO CREATE  
17 THE DEVICE. THIS WAS JUST FOR INFORMATIONAL PURPOSES.

18          Q           ALL RIGHT. PARAGRAPH 6 IN YOUR DECLARATION  
19 SAYS, "THE DATABASE BACKUP WAS CREATED BY ENTERPRISE  
20 MANAGER USING SQL SERVERS STANDARD DISK BACKUP DEVICE NAMED  
21 MEMBERSHIP BK.DAT"?

22          A           CORRECT.

23          Q           WHAT DOES THAT MEAN?

24          A           BASICALLY WHAT THAT MEANS IS THAT I USED  
25 MICROSOFT'S OWN SOFTWARE THAT CAME WITH MICROSOFT SQL  
26 SERVER TO BACK UP THE DATABASE. AND WHEN YOU DO IT, A

1 BACKUP AGAIN, LIKE WHEN YOU CREATE THE DATABASE, YOU HAVE  
2 TO HAVE A DEVICE, AND YOU HAVE TO NAME IT. AND THAT IS THE  
3 NAME I USED.

4 Q WHAT SIGNIFICANCE IS IT TO SOMEONE WHO SEEKS  
5 TO OPEN THE DISK OR TO READ THE DISK?

6 A THE DATABASE ADMINISTRATOR WHO WOULD TRY TO  
7 RESTORE IT WOULD HAVE TO USE THE SAME BACKUP DEVICE NAME  
8 THAT I WROTE DOWN HERE.

9 Q OKAY. SO THAT'S HOW THEY WOULD REFER TO IT  
10 TO BRING IT UP?

11 A CORRECT.

12 Q ALL RIGHT. PARAGRAPH 7 SAYS, "MORE  
13 INFORMATION ABOUT MICROSOFT SQL SERVER CAN BE OBTAINED FROM  
14 MICROSOFT," AND THEN YOU GAVE AN INTERNET ADDRESS?

15 A CORRECT.

16 Q WHY DID YOU DO THAT?

17 A HELP THEM OUT.

18 Q OKAY. PARAGRAPH 8, "SQL SERVER 6.5 SERVICE  
19 PACK 5A CAN BE OBTAINED AT" -- AND THEN THERE IS ANOTHER  
20 INTERNET ADDRESS?

21 A CORRECT.

22 Q WHY DID YOU DO THAT?

23 A I GUESS -- LET ME TAKE A STEP BACK, IF  
24 THAT'S OKAY. MICROSOFT SQL 6.5, WHENEVER MICROSOFT REFERS  
25 TO A SERVICE PACK, IT'S BASICALLY BUG FIXES. 5. -- OR 5A  
26 WAS THE LATEST SERVICE PACK THAT MICROSOFT RELEASED FOR THE

1 LATEST BUG RELEASE FOR SQL SERVER 6.5.

2                   WHENEVER YOU WORK THE DATABASE AND YOU'RE  
3 TRANSFERRING BETWEEN PEOPLE, YOU NEED TO INFORM THEM WHAT  
4 HAPPENED EXACTLY, THE RIGHT VERSIONS THAT YOU WERE  
5 RUNNING. AND I PUT THIS IN HERE SO THAT THEY UNDERSTOOD  
6 THAT I WAS RUNNING THE LATEST VERSION, THE LATEST BUG FIX  
7 FOR MICROSOFT.

8                   AND I INCLUDED THE ADDRESS WHERE THEY COULD  
9 OBTAIN THAT SERVICE PACK JUST IN CASE THEY WERE RUNNING A  
10 PREVIOUS RELEASE.

11           Q        AGAIN, COULD BE OBTAINED FOR FREE?

12           A        ABSOLUTELY.

13           Q        AND IF SOMEONE ATTEMPTED TO ACCESS THIS, FOR  
14 EXAMPLE, GOING TO THE BUG FIX THAT YOU REFERRED TO, WHAT  
15 SIGNIFICANCE WOULD THAT HAVE TO THE ACCESSING?

16           A        TO BE HONEST, I DON'T KNOW IF IT WOULD CAUSE  
17 ANY PROBLEMS AT ALL. BUT, AGAIN, YOU SHOULD -- ANY TIME  
18 YOU DEAL WITH SOFTWARE, YOU SHOULD ALWAYS USE THE SAME  
19 VERSIONS, YOU KNOW, THAT THE DATA WAS CREATED WITH.

20           Q        IS THERE ANY INFORMATION OR INSTRUCTIONS  
21 RELEVANT TO THE SOFTWARE USED OR THE SOFTWARE OR  
22 INFORMATION THAT SHOULD BE USED TO OPEN AND ACCESS THE  
23 DATABASE OF TRAVEL AMERICA'S COMPLETE DATABASE THAT YOU  
24 LEFT OFF OF THIS DOCUMENT?

25           A        NO.

26           Q        CAN YOU THINK OF ANYTHING THAT WOULD -- YOU

1 COULD HAVE DONE TO FURTHER ASSIST THE OTHER SIDE SHORT OF  
2 GOING THERE AND DOING IT FOR THEM?

3 A SHORT OF GOING THERE AND DOING IT FOR THEM,  
4 NO. THIS IS SOMETHING THAT ANY PERSON WHO IS EDUCATED OR  
5 HAVE USED MICROSOFT SQL SERVER WOULD BE ABLE TO FOLLOW  
6 WITHOUT ANY PROBLEMS.

7 Q NEXT PAGE, PAGE 11 SAYS, "ALSO INCLUDED IS A  
8 500" -- "1500 RANDOM SAMPLE CCC REPORT.XLS FILE CREATED BY  
9 PLAINTIFFS' EXPERT."

10 THAT'S THE 1500 NAMES; RIGHT?

11 A CORRECT.

12 Q NOW, ALL RIGHT. YOU DO POINT OUT THAT IT  
13 CONTAINS 1372 RECORDS?

14 A CORRECT.

15 Q NOT 1500?

16 A THAT'S CORRECT.

17 Q WHY IS THAT?

18 A WHAT HAPPENED WAS THE EXPERT CAME UP WITH  
19 1500 RANDOM SAMPLES. AT THAT POINT TRAVEL AMERICA STAFF  
20 WAS GOING TO MANUALLY MATCH THOSE MEMBERS THAT THE EXPERT  
21 CAME UP WITH WITH THE MEMBERSHIP INFORMATION IN THE TRAVEL  
22 AMERICA DATABASE.

23 OUT OF THE 1500, THEY WERE ABLE TO  
24 SUCCESSFULLY MATCH 1372, AND NOT BE ABLE TO MATCH THE  
25 DIFFERENCE.

26 Q SO THE FACT THAT IT CONTAINED 1372 RECORDS

1 DOES NOT INDICATE THAT YOU LEFT ANYTHING OFF?

2 A THAT'S CORRECT.

3 Q IT GOES ON TO SAY, "THE INITIAL 1500 RECORDS  
4 WERE A RANDOM SAMPLE FROM THE 34,000 RECORDS APPROXIMATE  
5 SUPPLIED TO TRAVEL AMERICA FROM CAMP COAST TO COAST."

6 WERE YOU A PART OF THE PROCESS OF -- THE  
7 PHYSICALLY MATCHING OF THE 1372 RECORDS?

8 A I DEVELOPED THE SOFTWARE TO HELP THEIR STAFF  
9 DO IT MANUALLY. I DID NOT DO THE MANUAL PROCESS MYSELF.

10 Q WHAT DOES IT MEAN TO SAY THAT IT'S DONE  
11 MANUALLY? AS COMPARED TO WHAT?

12 A SURE. ABSOLUTELY. BASICALLY WHAT THEY DID  
13 IS THEY WOULD GO DOWN THE LINE OF THESE 1500. THEY WOULD  
14 PULL UP THE RECORD. THEY WOULD SEE THE NAME, ADDRESS,  
15 CITY, STATE, WHATEVER INFORMATION WAS IN THAT REGARD. AND  
16 THEN THEY WOULD TURN TO TRAVEL AMERICA'S DATABASE AND DO A  
17 SEARCH AND TRY TO FIND A MATCH, THE SAME LAST NAME, THE  
18 SAME FIRST NAME, YOU KNOW, THE SAME INFORMATION. IF THEY  
19 FOUND A MATCH AND THEY WERE, YOU KNOW, THEY THOUGHT THAT IT  
20 WAS A GOOD MATCH AND THAT IT MATCHED UP CORRECTLY, THEN  
21 THEY WOULD ASSIGN IT A TRAVEL AMERICA MEMBERSHIP NUMBER,  
22 IN WHICH CASE NOW THOSE 1500 RECORDS OR WHAT CAME OUT TO BE  
23 1372 WERE NOW -- LIKE I HEARD EARLIER IN COURT -- MARRIED  
24 BETWEEN THE TRAVEL AMERICA DATABASE AND PART OF THE COAST  
25 TO COAST DATABASE.

26 MR. RIVIN: YOUR HONOR, IF I MAY, I THINK THIS AREA

1 OF QUESTIONING DOES NOT ADDRESS THE FUNDAMENTAL 402 ISSUE,  
2 WHICH IS THE FOUNDATIONAL ISSUES AS TO WHETHER OR NOT THE  
3 UNDERLYING DATA IS RELIABLE AND SOMETHING THAT IS -- THAT  
4 THE UNDERLYING DATA IS RELIABLE IN ORDER FOR ANY OF THE  
5 COMPUTER RECORDS TO BE RELEVANT.

6 BECAUSE IF THE UNDERLYING INFORMATION IN THE  
7 UNDERLYING DATA IS NOT RELIABLE, THEY HAVEN'T ESTABLISHED  
8 THAT, THEN THE COMPUTER WORK PERFORMED BY LEO NOVELLI IS  
9 COMPLETELY IRRELEVANT BECAUSE IT'S BEEN PERFORMED ON DATA  
10 THAT HASN'T BEEN PROVEN TO BE RELIABLE.

11 MR. MOSHENKO: I UNDERSTOOD THAT COUNSEL FOR THE  
12 DEFENDANTS WAS MAKING AN ISSUE ABOUT WHETHER OR NOT WE  
13 PRODUCED THE DATA IN THE FIRST PLACE. AND IF COUNSEL BY  
14 THAT OBJECTION IS PREPARED TO SAY THAT WE DON'T HAVE TO  
15 PROVE TO YOUR HONOR THAT WE COMPLIED PRECISELY WITH  
16 JUDGE SMITH'S AND JUDGE THOMAS'S ORDER BY WHAT THIS  
17 GENTLEMAN DID, IF THAT'S A GIVEN, I'LL MOVE ON TO THE ISSUE  
18 THAT HE IS TALKING ABOUT.

19 BUT IF IT'S NOT A GIVEN, I WANT TO SHOW THIS  
20 COURT NOT JUST SUBSTANTIAL COMPLIANCE, BUT PRECISE, EXACT  
21 OVER-COMPLIANCE.

22 MR. RIVIN: WE CERTAINLY DID MAKE THAT AN ISSUE. I  
23 THINK IT'S A DAMAGES ISSUE, AS MUCH AS ANYTHING ELSE. IT'S  
24 REALLY NOT ONE FOR LIABILITY AND CAUSATION.

25 MR. MOSHENKO: IT'S A FOUNDATION TO SHOW  
26 COMPLIANCE.

1           MR. SHERMAN:  MOREOVER, AS MR. MOSHENKO HIMSELF --  
2 AND A FEW HOURS AGO NOW, THE ISSUE IS COULD MR. BLAINE NYE  
3 OPEN IT UP OR NOT?  AND MR. BLAINE NYE, WHO IS -- AND HIS  
4 ORGANIZATION WHO ARE -- HAVE ENORMOUS EXPERTISE IN COMPUTER  
5 MATTERS, COULDN'T.

6           WE WILL STIPULATE THAT THIS WITNESS IS GOING  
7 TO TESTIFY THAT HE DID WHAT HE NEEDED TO DO TO COMPLY WITH  
8 IT.  AND MR. BLAINE NYE IN HIS -- AND HIS PEOPLE WE  
9 ANTICIPATE WILL COME IN AND SAY, NO, HE DIDN'T.  AND THEN  
10 YOUR HONOR CAN MAKE THAT DECISION.

11           BUT THE REAL ISSUE IS, YOU KNOW, DOES  
12 MR. LEO NOVELLI PERSONALLY VOUCH FOR THE RELIABILITY AND  
13 ACCURACY OF THE UNDERLYING DATA.

14           MR. MOSHENKO:  WELL, YOUR HONOR, I THINK THAT THE  
15 STIPULATION OFFERED FALLS SHORT OF STIPULATING THAT THERE  
16 WAS COMPLIANCE.  IF THEY'RE GOING TO BRING IN A WITNESS TO  
17 TESTIFY THERE WAS NO COMPLIANCE, I WANT TO PUT ON MY  
18 COMPLIANCE EVIDENCE.

19           MR. SHERMAN:  IT'S JUST A WASTE OF A GOOD  
20 AFTERNOON.  BUT, YOU KNOW, IT'S THEIR 402.

21           BY MR. MOSHENKO:  Q  PARAGRAPH 9 ON PAGE 11 SAYS,  
22 "THIS FILE," REFERRING TO THE 1500 RANDOM SAMPLE FILE, "WAS  
23 CREATED USING MICROSOFT EXCEL 2000"?

24           A           CORRECT.

25           Q           IS THAT PART OF WHAT WAS ORDERED BY  
26 JUDGE SMITH AND JUDGE THOMAS?

1 A YES.

2 Q IS THAT WHERE THE COURT SAYS -- OKAY. ON  
3 PAGE 7 OF JUDGE THOMAS' ORDER, PAGE 10, SAYS -- AFTER IT  
4 SAYS, "SHALL DESCRIBE IN DETAIL THE PROCESS BY WHICH THE  
5 INFORMATION WAS ABSTRACTED FROM THE DATABASE," WHERE DO YOU  
6 DO THAT? IN PARAGRAPH 11 -- IN PAGE 11 OF YOUR  
7 DECLARATION?

8 A STARTING AT THE ITEM NUMBER 10.

9 Q OKAY. THAT DESCRIBES THE FACT THAT 1700 --  
10 1372 RECORDS WERE CROSS-MATCHED?

11 A CORRECT.

12 Q OKAY. AND THEN IT SAYS, "THE DESCRIPTION  
13 SHALL INCLUDE BUT NOT NECESSARILY BE LIMITED TO THE  
14 SOFTWARE USED IN ABSTRACTING SAID DATA."

15 A CORRECT.

16 Q IS THAT IN THERE, IN YOUR DECLARATION?

17 A YES, IT IS.

18 Q WHERE?

19 A WELL, THE FIRST ITEM, NUMBER 9, TALKS ABOUT  
20 THAT IT WAS USING MICROSOFT EXCEL. AND THEN THE REST IS  
21 THE SQL STATEMENTS THAT WERE WRITTEN TO ACCESS THAT  
22 INFORMATION FROM THE SQL DATABASE OR THE TRAVEL AMERICA  
23 DATABASE.

24 Q OKAY. WHERE IT SAYS, "DESCRIBE, THE  
25 DESCRIPTION SHALL INCLUDE BUT NOT NECESSARILY BE LIMITED TO  
26 THE SOFTWARE USED IN ABSTRACTING SUCH DATA AND THE SEARCH

1 COMMANDS AND/OR PROTOCOLS USED IN RETRIEVING SAID  
2 INFORMATION."

3 WHERE DO YOU DO THAT?

4 A I DO THAT STARTING AT ITEM NUMBER 13-A, OR  
5 13.

6 Q OKAY. SO -- BUT BEFORE WE GET THERE,  
7 PARAGRAPH 11 SAYS, "THE CCC34K TABLE CONTAINS THE ORIGINAL  
8 34,000 RECORDS, APPROXIMATE, SUPPLIED BY" -- "TO TRAVEL  
9 AMERICA FROM CAMP COAST TO COAST"?

10 A CORRECT.

11 Q WHAT IS THAT A REFERENCE TO?

12 MR. RIVIN: YOUR HONOR, I THINK WE CAN  
13 SHORT-CIRCUIT THIS A BIT. THERE IS NO ISSUE ABOUT THE FILE  
14 CONTAINING THE RANDOM SAMPLE, THE 1500 RANDOM SAMPLE.  
15 WE'VE NEVER INDICATED THAT WE COULDN'T OPEN THAT, AND  
16 INDEED OUR EXPERTS WERE ABLE TO OPEN THAT ON THE CD.

17 THE ISSUE WAS THE BIG BOX THAT MR. MOSHENKO  
18 TALKED ABOUT THIS MORNING, THE 164,000 NAMES. THAT'S WHAT  
19 WE COULDN'T OPEN.

20 MR. MOSHENKO: OKAY.

21 MR. RIVIN: SO ALL OF THIS TESTIMONY REGARDING PAGE  
22 11, OR AT LEAST EVERYTHING I CAN SEE ON PAGE 11, SEEMS TO  
23 RELATE TO THE 1500 RANDOM SAMPLE. AND THAT'S NOT AN ISSUE.

24 MR. MOSHENKO: LET ME ASK THE WITNESS THAT.

25 Q MR. NOVELLI, DOES PARAGRAPH 13 RELATE TO THE  
26 1500 RANDOM SAMPLING COMPLIANCE?

1 A YES.

2 Q DOES PARAGRAPH 14 RELATE TO THE 1500 RANDOM  
3 SAMPLE COMPLIANCE?

4 A NO.

5 Q OKAY. 14 SAYS, "MEMBERTRAK WILL RUN ON A  
6 MICROSOFT WINDOWS 95/98/NT MACHINE. IT HAS NOT BEEN TESTED  
7 ON A WINDOWS 2000 MACHINE."

8 WHAT DOES THAT MEAN?

9 A THAT'S THE SOFTWARE THAT WE DEVELOPED FOR  
10 TRAVEL AMERICA TO ACCESS TO SQL DATABASE IN AN EASY-TO-USE  
11 MANNER.

12 Q YOU PREPARED THAT SOFTWARE?

13 A THAT IS CORRECT.

14 Q WHY DID YOU PUT THAT PARAGRAPH 14  
15 INFORMATION IN?

16 A PER THE COURT ORDER THAT WE WERE SUPPOSED TO  
17 SUPPLY ALL PROPRIETARY SOFTWARE.

18 Q OKAY. SO YOU PROVIDED PROPRIETARY SOFTWARE  
19 TO ASSIST THEM IN ACCESSING THE BIG BOX DATABASE?

20 A CORRECT, THIS IS THE SOFTWARE THEY USED ON A  
21 DAY-TO-DAY BASIS THAT WOULD MAKE IT EASY FOR THEM TO  
22 ACCESS. IT WAS UNNECESSARY FOR THEM TO REALLY USE TO  
23 ACCESS THE DATABASE. AS LONG AS THEY HAD A MICROSOFT SQL  
24 6.5 SERVER, THEY COULD ACCESS THIS.

25 Q SO THERE WERE TWO WAYS FOR THEM TO ACCESS  
26 IT; ONE YOU GAVE THEM AND ONE THEY COULD BUY?

1           A           CORRECT -- WELL, THEY HAD TO BUY MICROSOFT  
2 SQL SERVER OR ALREADY HAVE IT. THERE'S NO QUESTION ABOUT  
3 THAT. THIS OTHER MEMBER TRACK SOFTWARE THEY COULDN'T BUY,  
4 BECAUSE WE PRODUCED IT AND SUPPLIED TO THEM IN ORDER TO  
5 HELP THEM ACCESS AND USE THE DATA IN AN EASY METHOD INSTEAD  
6 OF JUST SEEING RAW RECORDS.

7           Q           OKAY. NOW, PARAGRAPH 15 SAYS, "TO INSTALL,  
8 1, INSTALL DCOM95 1.3 PER WINDOWS 95 OR DCOM98 1.3 FOR  
9 WINDOWS 98."

10                           WHAT IS THAT?

11           A           THAT IS A MICROSOFT DATA COMPONENT THAT IS  
12 NECESSARY TO RUN THE SOFTWARE THAT WE CREATED. THAT IS  
13 FREELY AVAILABLE FROM MICROSOFT.

14           Q           AND THEN IT SAYS, 2, INSTALL MDAC  
15 2.1.2.4202.3 GA." WHAT'S THAT?

16           A           THAT IS AGAIN A PART OF THE MICROSOFT DATA  
17 COMPONENTS THAT ARE REQUIRED TO ACCESS THE DATABASE  
18 SUCCESSFULLY, USING THIS PROPRIETARY SOFTWARE THAT WE  
19 CREATED FOR TRAVEL AMERICA.

20           Q           AND THEN IT SAYS -- MY QUESTION IS, WHY DID  
21 YOU PROVIDE THAT ADDITIONAL INFORMATION THAT'S IN  
22 EXHIBIT -- PARAGRAPH 15?

23           A           I WANTED TO BE AS THOROUGH AS POSSIBLE AS TO  
24 WHAT THE REQUIREMENTS WERE TO RUN THE PROPRIETARY SOFTWARE  
25 IN CASE THEY WANTED TO DO SO, SO THAT THERE WAS NOT AN  
26 ISSUE OF THAT THEY COULDN'T DO IT.

1 Q OKAY. BUT THAT RELATES TO THE PROPRIETARY  
2 SOFTWARE, NOT THE SOFTWARE THEY COULD HAVE GONE OUT AND  
3 BOUGHT?

4 A CORRECT.

5 Q AND THEY COULD HAVE DONE THIS WITHOUT THE  
6 PROPRIETARY SOFTWARE?

7 A THEY COULD HAVE ACCESSED THE RAW DATA  
8 WITHOUT THIS, ABSOLUTELY.

9 Q PARAGRAPH 16 SAYS, "TO GET DCOM95," AND THEN  
10 THERE'S AN INTERNET ADDRESS?

11 A CORRECT.

12 Q TELLING THEM HOW TO GO OUT AND GET THIS FOR  
13 FREE?

14 A CORRECT.

15 Q PHOTOGRAPH 17 AND 18 BOTH DO THE SAME THING,  
16 APPARENTLY, WITH OTHER SUB-SOFTWARES?

17 A RIGHT. 16 AND 17 DEPENDED ON THE OPERATING  
18 SYSTEM THAT THEY WERE USING. 18 THEY WOULD HAVE TO GET  
19 REGARDLESS OF THE OPERATING SYSTEM. SOME COMPUTERS THAT  
20 THEY MAY HAVE ALREADY HAD MAY ALREADY HAVE THE SOFTWARE ON  
21 THEM. SO THIS IS JUST AS A COURTESY.

22 Q IS EVERYTHING THAT YOU SAID IN YOUR  
23 DECLARATION TRUE?

24 A YES.

25 Q YOU SAID YOU MADE THREE COPIES OF THE SAME  
26 SOFTWARE?

1 A THAT IS CORRECT.

2 Q THE SAME DISK, I MEAN.

3 A YES.

4 Q IDENTICAL?

5 A CORRECT.

6 Q AT THE SAME TIME?

7 A YES.

8 Q TESTED ALL THREE?

9 A YES.

10 Q AT THE TIME YOU MADE THEM?

11 A YES, I DID.

12 Q HAVE YOU SINCE MAKING THEM AND TESTING THEM  
13 GONE BACK AND TESTED ANY OF THE COPIES THAT YOU RETAINED?

14 A I DID TEST A SECOND COPY AGAIN THIS MORNING.

15 Q AND WAS IT ACCESSIBLE?

16 A ABSOLUTELY, 100 PERCENT.

17 Q CAN YOU THINK OF ANY REASON WHY ANYTHING --  
18 SOMEBODY WHO HAD THE CORRECT COMPUTER EQUIPMENT, SOFTWARE  
19 THAT YOU LISTED IN HERE, AND REASONABLE COMPUTER KNOW-HOW  
20 WOULD HAVE BEEN UNABLE TO OPEN AND ACCESS THE DISK YOU  
21 PROVIDED,

22 A AS LONG AS THEY UNDERSTOOD MICROSOFT SQL  
23 6.5, THERE IS ABSOLUTELY NO REASON WHY THEY COULD NOT HAVE  
24 OPENED THE INFORMATION AND ACCESSED THE INFORMATION ON THE  
25 CD ROM.

26 Q NOW, MR. NOVELLI, THE DATA THAT WAS ON THE

1 DISK, WE REFERRED TO IT IN A GENERAL SENSE AS THE ENTIRE  
2 DATABASE. BUT CAN YOU BE MORE SPECIFIC ABOUT WHAT KIND OF  
3 SPECIFIC DATA IS INCLUDED THERE?

4 A ABSOLUTELY.

5 IN A NUTSHELL, IT CONTAINED ALL THE  
6 MEMBERSHIP INFORMATION THAT TRAVEL AMERICA HAD IN THE  
7 DATABASE. THAT INFORMATION INCLUDES SUCH THINGS AS NAME,  
8 ADDRESS, MEMBERSHIP TYPE, YOU KNOW, TYPE OF MEMBERSHIPS  
9 THEY PURCHASED, DATES OF CONTRACTS, DUES PAYMENT  
10 INFORMATION, AS FAR AS HOW MUCH THEY PAY ANNUALLY, WHEN  
11 THEY'RE DUE, HOW OFTEN THEY PAY, ALL THE PAYMENTS THAT WERE  
12 RECEIVED AND ALL THE BILLINGS THAT WERE RECEIVED PERTAINING  
13 TO THE DUES, ALL THE CONTRACT PAYMENT INFORMATION,  
14 INCLUDING THE CONTRACT FINANCIAL INFORMATION, HOW MUCH THEY  
15 PAID FOR IT, HOW MUCH WAS FINANCED, INTEREST RATES, MONTHLY  
16 PAYMENT AMOUNTS.

17 ALONG WITH THAT WAS A HISTORY, ALL THE  
18 PAYMENTS THAT WERE RECEIVED, ALL THE ADJUSTMENTS THAT WERE  
19 MADE, IF ANY, TO THE BALANCES.

20 INCLUDED ALSO WOULD BE SUCH RELEVANT  
21 INFORMATION AS TRANSFERS, IF THE MEMBER TRANSFERRED FROM  
22 ONE MEMBER TO ANOTHER MEMBER, THAT INFORMATION WAS IN  
23 THERE.

24 COLLECTOR NOTES, AS FAR AS THE ACCOUNTS  
25 RECEIVABLE DEPARTMENT, WHENEVER THEY TALKED TO A MEMBER,  
26 THEY WOULD COMPUTERIZE AND ENTER THEIR NOTES INTO THE

1 COMPUTER. THAT 100 PERCENT WAS ON THERE.

2 THE ABILITY TO -- WELL, THE ABILITY TO VIEW  
3 ANY OF THAT INFORMATION WAS PART OF THAT PROPRIETARY  
4 SOFTWARE AS WELL.

5 Q OKAY. IN ADDITION TO THE DATABASE AND IN  
6 ADDITION TO THE 1500 NAMES, YOU PUT SOMETHING ELSE ON  
7 THERE. IN ADDITION TO THE SOFTWARE THAT YOU PROVIDED THEM,  
8 WHAT ELSE DID YOU PUT ON THERE?

9 A THE DOCUMENTATION THAT WE JUST WENT THROUGH  
10 RIGHT NOW ON HOW TO ACCESS THE DATA AND WHO TO CALL IF THEY  
11 HAD ANY PROBLEMS.

12 Q INSTRUCTIONS ON HOW TO DO IT?

13 A YES. AND STANDARD TEXT FORM.

14 Q WHAT'S THAT MEAN?

15 A EVERY COMPUTER WOULD BE ABLE TO OPEN IT AND  
16 BE ABLE TO VIEW THE DOCUMENT WITHOUT ANY ISSUE, WITHOUT ANY  
17 NEED OF ANY SPECIAL SOFTWARE.

18 Q SO THE INFORMATION IN YOUR DECLARATION WAS  
19 ON THE COMPUTER?

20 A YES.

21 Q I MEAN ON THE DISK.

22 A YES.

23 Q OKAY. WAS THE INFORMATION THAT YOU LISTED  
24 AS BEING THERE INFORMATION RELATING TO THE MEMBERS WHO WERE  
25 KNOWN TO YOU TO BE MEMBERS OF FIRST NATIONWIDE RESORTS'  
26 MANAGEMENT DBA DEER RUN PARK?

1 A I'M SORRY. REPEAT THE QUESTION.

2 Q THE INFORMATION REGARDING MEMBERS, DID IT  
3 INCLUDE MEMBERS OF FIRST NATIONWIDE RESORTS' MANAGEMENT  
4 RESORTS?

5 A YES.

6 Q CYPRESS PARKS RESORTS?

7 A YES.

8 Q AMERICAN HOLIDAY RESORTS?

9 A YES.

10 Q REVCON MOTORCOACH RESORTS?

11 A WHICH?

12 Q DBA TWO SPRINGS?

13 A YES.

14 Q THE RESORTS THAT WERE OWNED AND CONTROLLED  
15 BY HANS SCHULZ AS THE TRUSTEE FOR THE SCHULZ FAMILY TRUST?

16 A AND THOSE RESORTS?

17 Q DELTA ISLE RESORTS?

18 A YES.

19 Q HIDDEN SPRINGS CORPORATION MEMBERS?

20 A YES.

21 Q PONDEROSA PARK RESORTS, INC., MEMBERS?

22 A YES.

23 Q ADVENTURE RESORTS OF AMERICA, INCORPORATED,  
24 MEMBERS?

25 A YES.

26 Q APOLLO GROUP RESORTS' MEMBERS?

1 A AND WHICH RESORTS WERE THOSE?

2 Q THOSE WERE THE ONES THAT WERE ACQUIRED BY  
3 APOLLO GROUP AFTER THE AUCTION OF RESORTS HELD -- WELL, LET  
4 ME BACK UP.

5 ALL SEASONS RESORTS?

6 A ALL SEASONS, YES.

7 Q WHICH INCLUDED THE APOLLO GROUP RESORTS?

8 A YES.

9 Q THE INFORMATION THAT YOU HAD RELATING TO  
10 THOUSAND ADVENTURES RESORTS?

11 A YES.

12 Q AND COULD YOU, IF YOU WERE ALLOWED TO, AS  
13 FAR AS -- IN YOUR OPINION, IF YOU WERE ALLOWED TO RECEIVE  
14 THE DISK THAT YOU PROVIDED THEM, COME HERE WITH A COMPUTER,  
15 OPEN AND ACCESS THE DATA HERE IN COURT?

16 A YES.

17 Q NOW, LET ME GO BACK TO THIS INFORMATION  
18 RELATING TO THE DATA THAT WAS BEING ENTERED OVER THE YEARS  
19 BY ALL SEASONS RESORTS THAT BECAME A PART OF THE TRAVEL  
20 AMERICA DATABASE.

21 YOU ALREADY TOLD US THAT YOU BEGIN BY  
22 ENTERING YOUR CAREER BY ENTERING DATA?

23 A CORRECT.

24 Q AND THAT YOU WENT ON TO THE POINT WHERE YOU  
25 WERE DIRECTING AND CONTROLLING THOSE PERSONS, TRAINED,  
26 DIRECTED AND CONTROLLED PERSONS WHO DID DO THE ENTRIES?

1 A YES.

2 Q WERE THE ENTRIES BEING MADE IN THE ORDINARY  
3 COURSE OF BUSINESS?

4 A YES.

5 Q WERE THEY BEING MADE BY PERSONS WHO WERE  
6 SUBJECT TO YOUR DIRECTION AND CONTROL?

7 A YES.

8 MR. RIVIN: OBJECTION. LACK OF FOUNDATION AS TO  
9 TIME.

10 THE COURT: SUSTAINED.

11 BY MR. MOSHENKO: Q THROUGHOUT THE TIME PERIOD.

12 MR. RIVIN: WHAT TIME PERIOD?

13 BY MR. MOSHENKO: Q GIVE US THE TIME FRAME. WHEN  
14 DID YOU START?

15 A I STARTED SEPTEMBER 22ND OF 1986.

16 Q OKAY. AND WHAT -- DID THERE COME A TIME  
17 WHEN YOU STOPPED?

18 A YES.

19 Q WHEN?

20 A THAT WOULD BE JUNE OF 1998.

21 Q OKAY. DURING THAT TIME PERIOD, WERE THESE  
22 ENTRIES BEING MADE IN THE ORDINARY COURSE OF BUSINESS?

23 A YES.

24 Q WERE THEY BEING MADE AT A TIME REASONABLY  
25 RELATED TO THE DATE SHOWN IN THE ENTRY?

26 A ABSOLUTELY.

1 Q THESE THINGS WEREN'T CREATED FOR LITIGATION  
2 PURPOSES, WERE THEY?

3 A NO.

4 Q OKAY. WERE THEY KEPT IN A -- IN THE  
5 COMPUTER IN A REASONABLY PERMANENT AND SAFE PLACE AND  
6 MANNER SO AS TO PREVENT CORRUPTION AND DISTORTION OF THE  
7 DATA?

8 A YES.

9 Q DID YOU REVIEW THE DATA FROM TIME TO TIME  
10 OVER THE YEARS TO DETERMINE WHETHER OR NOT THE DATA  
11 RETAINED ITS ACCURACY AND VALIDITY?

12 A ABSOLUTELY. WE RAN PROGRAMS TO MAKE SURE  
13 THAT THE DATA WAS CORRECT AND VALID PROBABLY ON A MONTHLY  
14 IF NOT MORE EXTENSIVE BASIS.

15 Q AS OF THE TIME THAT YOU MADE THE DISK, DID  
16 YOU REVIEW THE DATA --

17 A YES.

18 Q -- TO DETERMINE IF IT APPEARED TO BE  
19 ACCURATE AND CORRECT AND NOT DISTORTED?

20 A THAT IS CORRECT.

21 Q AND WHAT DID YOU FIND OUT?

22 A THAT FROM WHAT I COULD TELL, THE DATA WAS  
23 PERFECT, AS FAR AS BEING ABLE TO MEET ALL VALIDITY  
24 CONSTRAINTS.

25 Q NOW, WHAT -- LET ME GO ON TO THE SUBJECT OF  
26 THE THOUSAND ADVENTURES RESORTS --

1 A OKAY.

2 Q -- DATA.

3 DID YOU HAVE SOME INVOLVEMENT IN THE EVENTS  
4 THAT RESULTED IN THE OBTAINING OF THE THOUSAND ADVENTURES  
5 RESORTS DATA?

6 A YES, I DID.

7 Q WHAT WAS THAT INVOLVEMENT?

8 A I WAS INSTRUCTED TO FLY OUT TO BLAIR,  
9 NEBRASKA, MEET WITH THE PEOPLE THERE. I WAS TOLD TO BRING  
10 BACK WITH ME A BACKUP OF THEIR MEMBERSHIP DATABASE  
11 INFORMATION.

12 Q DID YOU CONFER WITH PEOPLE AT THOUSAND  
13 ADVENTURES BEFORE YOU WENT OUT THERE?

14 A YES, I DID.

15 Q WHY?

16 A SO THAT I KNEW WHAT TYPE OF DATABASE THEY  
17 WERE RUNNING, WHAT TYPE OF SOFTWARE THEY WERE RUNNING, HOW  
18 MUCH STORAGE CAPACITY THEY HAD SO I KNEW WHAT TO BRING WITH  
19 ME IN ORDER TO RETRIEVE THIS AND BACK UP THIS DATA.

20 Q ALL RIGHT. AND SO WHEN YOU WENT THERE, YOU  
21 TOOK THE COMPUTER HARDWARE AND SOFTWARE YOU NEEDED TO DO  
22 THIS?

23 A THAT IS CORRECT.

24 Q ALL RIGHT. AND WHAT DID YOU DO WITH THAT  
25 COMPUTER HARDWARE AND SOFTWARE?

26 A I BROUGHT IT BACK TO CALIFORNIA.

1 Q BEFORE YOU CAME BACK, DID YOU DOWNLOAD THE  
2 INFORMATION FROM THE THOUSAND ADVENTURES COMPUTER BANKS?

3 A YES, I DID.

4 Q WHAT INFORMATION DID YOU DOWNLOAD?

5 A ALL THEIR MEMBERSHIP DATABASE INFORMATION.

6 Q DID YOU REVIEW THE DATA BEFORE YOU  
7 DOWNLOADED IT? IN PART. I DON'T MEAN 100 PERCENT.

8 A I REVIEWED IT WITH THEIR STAFF, YES.

9 Q AND WHAT DID YOU SEE INCLUDED -- WHAT KIND  
10 OF INFORMATION WAS INCLUDED IN WHAT YOU REVIEWED?

11 A THE SAME TYPE OF INFORMATION THAT I  
12 DISCUSSED EARLIER THAT'S IN TRAVEL AMERICA'S DATABASE;  
13 NAME, ADDRESS, PAYMENT INFORMATION, CONTRACT INFORMATION.

14 Q CONTRACT DATES?

15 A YES.

16 Q PAYMENT DATES?

17 A YES.

18 Q BALANCES DUE?

19 A YES.

20 Q BILLING AMOUNTS?

21 A YES.

22 Q AMOUNTS DUE?

23 A YES.

24 Q AMOUNTS PAID?

25 A YES.

26 Q ALL RIGHT. AND NOW, WHEN I USED THE PHRASE

1 "DOWNLOADED THE INFORMATION," WHAT DID YOU DO?

2 A BASICALLY ARCHIVED IT ON TO A COMPUTER TAPE.

3 Q OKAY. DOES THIS MEAN THAT YOU TOOK THE

4 COMPUTER DATA AWAY FROM THOUSAND ADVENTURES?

5 A NO. JUST MADE A COPY OF IT.

6 Q AND WHEN YOU LEFT, WAS THERE -- WAS THE

7 ORIGINAL DATA INTACT?

8 A OH, ABSOLUTELY.

9 Q NOW, YOU BROUGHT THIS DATA BACK TO

10 CALIFORNIA?

11 A CORRECT.

12 Q WHAT DID YOU DO WITH IT?

13 A WE STARTED TO WRITE THE PROGRAMS IN ORDER TO

14 CONVERT THAT DATA INTO AT THAT TIME THEIR WANG

15 MINI-COMPUTER.

16 Q NOW, GIVE US A DATE; WHEN DID YOU DO THIS,

17 THAT IS, THE TRIP TO NEBRASKA?

18 A TO BE HONEST, I DON'T REMEMBER.

19 Q WELL, YOU DON'T HAVE TO GIVE US AN EXACT

20 DATE. CAN YOU GIVE US A SEASON, A YEAR?

21 A I BELIEVE IT WAS IN THE SUMMER, SPRING OF

22 '97.

23 Q ALL RIGHT. AND YOU SAID YOU WROTE SOME

24 SOFTWARE TO BE ABLE TO DOWNLOAD IT. I FORGET WHAT YOU

25 SAID.

26 A TO CONVERT IT FROM THEIR TYPE OF DATABASE

1 INTO TRAVEL AMERICA'S DATABASE.

2 Q AND DID YOU ACCOMPLISH THAT?

3 A IN PART.

4 Q OKAY. SO DID YOU CONVERT -- WHAT  
5 INFORMATION DID YOU CONVERT AND LOAD INTO THE TRAVEL  
6 AMERICA DATABASE?

7 A WE CONVERTED ALL THE NAMES, ADDRESSES,  
8 CONTRACT FINANCIAL INFORMATION AS FAR AS CONTRACT DATES,  
9 SALES PRICES, AS WELL AS ALL THEIR BALANCES, THEIR CURRENT  
10 BALANCES, THAT THEY HAD AT THE TIME THAT I BACKED UP THEIR  
11 SOFTWARE.

12 Q ALL RIGHT. AND DID YOU GO IN -- AFTER YOU  
13 CONVERTED, DID YOU THEN MERGE IT IN WITH THE DATA, TO THE  
14 TRAVEL AMERICA DATABASE?

15 A YES, I DID.

16 Q SO THAT DATA WAS ALSO INCLUDED IN THE  
17 MATERIAL PUT ON THE DISK IN APRIL OF 2000?

18 A CORRECT.

19 Q AND DID YOU REVIEW THE DATA AFTER YOU  
20 CONVERTED IT AND MERGED IT TO DETERMINE IF IT HAD  
21 SUCCESSFULLY BEEN MERGED INTO IT?

22 A ABSOLUTELY.

23 Q AND WAS -- APPROXIMATELY WHEN DID YOU  
24 ACCOMPLISH THE MERGER?

25 A IT PROBABLY WAS ABOUT TWO OR THREE MONTHS  
26 AFTER MY TRIP.

1 Q AND AFTER THAT TRIP DID YOU AND OTHERS, IN  
2 THE TRAVEL -- I'LL CALL IT TRAVEL AMERICA STAFF -- USE THAT  
3 DATA TO CREATE AND SUBMIT BILLS TO MEMBERS?

4 A ABSOLUTELY.

5 Q THE THOUSAND ADVENTURES MEMBERS?

6 A CORRECT.

7 Q AND DID THE BILLS -- DID THE MEMBERS RESPOND  
8 BY PAYING BILLS?

9 A CORRECT.

10 Q ARE YOU AWARE OF ANY DIFFICULTIES OR PROBLEM  
11 OR RESPONSES ALONG THE LINES OF SOMEONE SUGGESTING, HEY,  
12 THIS BILL HAS DISTORTED OR INCORRECT INFORMATION ON IT?

13 MR. RIVIN: OBJECTION. HEARSAY, YOUR HONOR.

14 THE COURT: SUSTAINED.

15 MR. MOSHENKO: ACTUALLY, I DON'T THINK HE IS GOING  
16 TO SAY ANYTHING. I THINK HE IS GOING TO SAY HE DIDN'T HEAR  
17 ANYTHING. SO THE NON-UTTERANCE CANNOT BE HEARSAY, YOUR  
18 HONOR.

19 THE COURT: HE IS ASKING FOR SOMETHING SOMEBODY  
20 TOLD HIM.

21 MR. MOSHENKO: I'M ASKING IF HE IS AWARE OF  
22 ANYTHING. I EXPECT THE RESPONSE TO BE A NEGATIVE, YOUR  
23 HONOR.

24 SUBMITTED.

25 THE COURT: WELL, GO AHEAD.

26 BY MR. MOSHENKO: Q OKAY. GO AHEAD.

1 ARE YOU AWARE OF ANY RESPONSES ALONG THE  
2 LINES OF NEGATIVE, THE DATA IS DISTORTED OR WRONG?

3 A NOT -- THERE MIGHT HAVE BEEN A COUPLE, YOU  
4 KNOW, A FEW, YOU KNOW, HANDFUL OF PEOPLE THAT MAY HAVE HAD  
5 ISSUES OR PROBLEMS. BUT ALL IN ALL, NO, THERE WAS NO  
6 PROBLEMS WITH THE DATA.

7 Q GIVE US AN ESTIMATE OF HOW MANY THOUSAND  
8 ADVENTURES BILLS WERE GENERATED DURING THE TIME PERIOD YOU  
9 REMAINED, APPROXIMATELY A YEAR PERIOD, THAT YOU REMAINED  
10 THERE AFTER YOU PICKED UP THE THOUSAND ADVENTURES DATA.

11 MR. RIVIN: COULD WE ESTABLISH -- HAVE A FOUNDATION  
12 ESTABLISHED FOR THIS WITNESS'S KNOWLEDGE?

13 MR. MOSHENKO: SURE.

14 Q DO YOU HAVE SOME BASIS FOR PERSONAL  
15 KNOWLEDGE THAT -- AS TO APPROXIMATE NUMBER OF HOW MANY  
16 BILLS WERE SENT OUT TO MEMBERS?

17 A IT WAS IN THE TENS OF THOUSANDS. BUT I  
18 CANNOT REMEMBER EXACTLY HOW MANY MEMBERS AT WORK I  
19 CONVERTED OVER INTO A NEW SYSTEM NOR HOW MANY BILLINGS WERE  
20 ON -- YOU KNOW, SENT OUT. I DO KNOW THAT THERE WAS, YOU  
21 KNOW, RECORDS, BILLING STATEMENTS AND LISTS PRINTED WITH  
22 THAT INFORMATION ON IT THAT I DO NOT HAVE IN MY  
23 POSSESSION. I DO NOT MEMORIZE.

24 MR. RIVIN: SO IT --

25 BY MR. MOSHENKO: Q HOW DO YOU KNOW --

26 MR. RIVIN: IT SOUNDS AS THOUGH THIS WITNESS DOES

1 NOT HAVE PERSONAL KNOWLEDGE. HE HAS KNOWLEDGE ON WHAT  
2 SOMEBODY MAY HAVE TOLD HIM.

3 MR. MOSHENKO: DISAGREE.

4 Q TELL US HOW YOU KNOW THAT TENS OF THOUSANDS  
5 OF BILLS WERE SENT.

6 A NOT ONLY DID I SUPERVISE THE CONVERSION OF  
7 THE DATA FROM THEIR DATABASE INTO TRAVEL AMERICA'S, BUT I  
8 PERSONALLY PRINTED, STACKED AND BROUGHT TO, YOU KNOW,  
9 DOWNSTAIRS TO THEIR MAILING ROOM THE INVOICES. I WAS -- I  
10 HELPED WITH THE RESPONSIBILITY OF ORDERING SUPPLIES,  
11 ENVELOPES, BILLING STATEMENTS AND OF THAT NATURE.

12 I WAS THE ONE WHO PHYSICALLY RAN THE BILLING  
13 IN THE COMPUTER. I WAS THE ONE WHO ALSO RAN THE BILLING  
14 LIST THAT SAID IN DETAIL HOW MANY WERE PRINTED AND WHO THEY  
15 WENT TO.

16 Q DID YOU FROM TIME TO TIME HAVE  
17 COMMUNICATIONS WITH PERSONNEL FROM THOUSAND ADVENTURES  
18 RELATING TO THE DATA THAT YOU BROUGHT BACK?

19 A ABSOLUTELY.

20 Q WHAT WAS THE PURPOSE OF THOSE COMMUNICATIONS?

21 A TO VERIFY THAT THE INFORMATION THAT I WAS  
22 LOOKING AT IS CORRECT. IN OTHER WORDS -- I GUESS I'LL HAVE  
23 TO USE IT AS AN ANALOGY -- TO MAKE SURE THAT IF THEY  
24 SAID -- IF I ASSUME THAT A CERTAIN DATA FIELD WAS A DUES  
25 BALANCE OR THE AMOUNT THAT THEY CURRENTLY OWED, THAT THAT  
26 WAS CORRECT, THAT MY UNDERSTANDING OF THEIR DATA WAS

1 CORRECT, MY UNDERSTANDING OF THEIR BILLING SYSTEM WAS  
2 CORRECT.

3 Q AND WERE YOU ABLE TO VERIFY THOSE THINGS?

4 A YES.

5 Q LET ME GO ON TO A DIFFERENT SUBJECT. WELL,  
6 I GUESS I HAVE ONE MORE LOOSE STRING, IF I MIGHT.

7 HAVE -- THE TIME THAT YOU ENTERED THE  
8 DATA -- I'LL BACK UP -- DOWNLOADED THE DATA, CARRIED IT  
9 BACK TO CALIFORNIA, DID THE CONVERSION, ENTERED THE DATA  
10 AND WORKED WITH THE DATA, DID ALL THAT OCCUR BY YOU  
11 PERSONALLY, OR BY PERSONS THAT WERE SUBJECT TO YOUR  
12 DIRECTION AND CONTROL?

13 A YES.

14 Q AND DID YOU DO THOSE THINGS IN THE ORDINARY  
15 COURSE OF THE BUSINESS, BUSINESS ASSIGNMENTS, THAT YOU WERE  
16 ASSIGNED TO DO?

17 A YES.

18 Q AND WAS THE INFORMATION KEPT IN THE COMPUTER  
19 IN A REASONABLE PERMANENT MANNER TO PREVENT DISTORTION AND  
20 CORRUPTION?

21 A YES.

22 Q AND DID YOU EVER SEE ANY EVIDENCE OF THAT,  
23 THAT THAT DATA WAS DISTORTED OR CORRUPTED?

24 A NO.

25 Q AND WERE THE -- THAT DATA WAS USED  
26 THEREAFTER AND HAD DATA ADDED TO IT RELATING TO THOSE

1 ACCOUNTS; CORRECT?

2 A CORRECT.

3 Q AND WERE THOSE ENTRIES MADE IN THE ORDINARY  
4 COURSE OF BUSINESS BY PERSONS SUBJECT TO YOUR DIRECTION OR  
5 CONTROL AT OR ABOUT THE TIME OF THE EVENTS THAT WERE  
6 RECORDED AND KEPT IN A REASONABLY PERMANENT PLACE AND  
7 MANNER SO AS TO PREVENT CORRUPTION?

8 MR. RIVIN: OBJECTION. THE QUESTION IS VAGUE AND  
9 AMBIGUOUS AS TO TIME. I'M NOT SURE IF WE'RE TALKING  
10 ABOUT -- ARE WE TALKING ABOUT THE PERIOD OF TIME WHEN  
11 LEO NOVELLI REMAINED WITH HIS FATHER'S COMPANIES?

12 MR. MOSHENKO: CORRECT. FROM THE TIME THAT HE  
13 DOWNLOADED IT AND WORKED WITH IT UP UNTIL THE TIME HE LEFT.

14 THE WITNESS: YES.

15 MR. MOSHENKO: SO WE HAVE THE ANSWER YES. OKAY.

16 Q SOMETIME IN APRIL OF THE YEAR 2000, DID YOU  
17 ATTEND A HEARING IN FRONT OF JUDGE JIM SMITH RELATING TO  
18 THE VERY SUBJECT OF THE COURT ORDER THAT YOU TESTIFIED  
19 ABOUT?

20 A YES.

21 Q OKAY. AND AS OF THE DATE OF THAT HEARING,  
22 DID YOU HAVE THE ABILITY TO PRINT LISTS FROM THE TRAVEL  
23 AMERICA'S DATABASE, PAYMENT HISTORIES OF THE PERSONS WHO  
24 WERE THERE WHO WERE COAST TO COAST MEMBERS?

25 A NOT AT THAT TIME, NO.

26 Q OKAY. TODAY DO YOU HAVE THE ABILITY TO

1 PRINT A LIST, THAT LIST TODAY?

2 A NO, THERE IS NO PROGRAM THAT GIVES US THAT  
3 ABILITY TODAY.

4 Q DID YOU HAVE THE ABILITY TO IDENTIFY --  
5 FORGET PRINT A LIST -- IDENTIFY THE NAMES OF THE PERSONS  
6 WHO ARE COAST TO COAST MEMBERS IN THE TRAVEL AMERICA  
7 DATABASE AS OF THE TIME OF THAT HEARING?

8 A NO, NOT AT THE TIME OF THE HEARING.

9 Q OKAY.

10 A OTHER THAN THE RANDOM SAMPLING. I BELIEVE  
11 THAT WAS BEFORE THE HEARING.

12 Q YOU COULD HAVE IDENTIFIED THEM BY MANUALLY  
13 SELECTING 35,000 PEOPLE?

14 A THAT IS CORRECT.

15 Q DO YOU HAVE A TIME ESTIMATE HOW LONG THAT  
16 WOULD HAVE TAKEN AND HOW MANY PERSONS WOULD HAVE HAD TO DO  
17 THAT?

18 A I CAN'T EVEN IMAGINE. I WOULD IMAGINE THAT  
19 ONE RECORD WOULD PROBABLY TAKE THE AVERAGE PERSON AT LEAST  
20 TWO MINUTES TO VERIFY THAT IT'S A CORRECT MEMBER. SO  
21 MULTIPLY TWO MINUTES BY 35,000.

22 Q 35,000. I WON'T TRY TO DO THE MATH.

23 ALL RIGHT. SOMETIME IN LATE APRIL, AS A  
24 RESULT OF RECEIPT OF INFORMATION THAT YOU WERE PROVIDED  
25 WHICH YOU WERE TOLD CAME FROM COAST TO COAST AND AS A  
26 RESULT OF SOME CHANGES THAT HAD OCCURRED IN THE TRAVEL

1 AMERICA COMPUTER SYSTEM, DURING THE FEW MONTHS PRECEDING  
2 THAT, WERE YOU INVOLVED IN PREPARING SOFTWARE WHICH WOULD  
3 ENABLE YOU TO AT LEAST ATTEMPT TO IDENTIFY OR MATCH UP THE  
4 35,000 NAMES?

5 A YES, I DID ATTEMPT TO DO SO.

6 Q OKAY. NOW, HOW LONG -- OVER WHAT TIME  
7 PERIOD HAVE YOU BEEN PREPARING SOFTWARE -- STRIKE THAT. I  
8 NEED TO BACK UP.

9 WAS THERE ONE VERSION OF THE SOFTWARE AND  
10 HARDWARE DATABASE FROM A WANG COMPUTER TO A PERSONAL -- A  
11 PC SYSTEM, A DIFFERENT KIND OF SYSTEM?

12 A YES, THERE WAS.

13 Q OKAY. AND WHEN DID THAT OCCUR, BEGIN TO  
14 OCCUR?

15 A THAT BEGAN TO OCCUR IN JANUARY OF '99. AND  
16 IT'S STILL CONTINUING TO THIS DAY.

17 Q AND IT'S STILL NOT DONE?

18 A NOT 100 PERCENT, NO.

19 Q AND SO YOU STARTED WRITING SOFTWARE BACK  
20 THEN, AND YOU'VE CONTINUED TO WRITE SOFTWARE SINCE THEN?

21 A AND STILL CONTINUE TO DO SO.

22 Q OKAY. AND THE FACT THAT YOU CANNOT STILL DO  
23 THE RECOGNITION AND PRINTOUT OF THE 35,000 RELATES TO THE  
24 FACT THAT YOU STILL DON'T HAVE THE SOFTWARE TO DO THAT;  
25 RIGHT?

26 A THAT IS CORRECT. IT HAS NOT BEEN CREATED AS

1 OF TODAY.

2 Q NEVERTHELESS, SOMETHING HAPPENED IN LATE  
3 APRIL OF 2000 THAT ENABLED YOU TO TRY TO DO SOME MATCHING.  
4 WHAT HAPPENED?

5 A BASICALLY AS A RESULT OF THAT HEARING AND IN  
6 A BRAIN-STORMING SESSION, WE WERE ABLE TO COME UP WITH WHAT  
7 WE FEEL WAS A GOOD ATTEMPT TO TRY TO MATCH THE DATA IN THE  
8 COAST TO COAST LIST WITH THE TRAVEL AMERICA DATABASE USING  
9 THE COMPUTER AND RUNNING AN ALGORITHM THAT I CREATED.

10 Q I THINK YOU'RE SAYING YOU WROTE SOME  
11 SOFTWARE?

12 A YES. THAT'S EXACTLY.

13 MR. RIVIN: FOR THE RECORD, I'M GOING TO OBJECT TO  
14 THIS. THIS IS ALL WORK APPARENTLY THAT WAS DONE FOLLOWING  
15 THE COMMENCEMENT OF THIS TRIAL THAT WE KNEW NOTHING ABOUT.

16 MR. MOSHENKO: THE TRIAL STARTED IN MAY. THIS IS  
17 LATE APRIL, YOUR HONOR.

18 MR. RIVIN: IT SOUNDS LIKE THE WORK MAY HAVE  
19 STARTED A FEW DAYS BEFORE THE TRIAL STARTED. AND AS I  
20 INDICATED OR SUGGESTED IN CHAMBERS THIS MORNING, IT  
21 APPARENTLY CONTINUED DURING THE COURSE OF THE TRIAL. WE'VE  
22 NEVER BEEN ADVISED OF THIS.

23 I REALIZE THIS IS NOT GOING TO GO BEFORE THE  
24 JURY. IT SHOULD NEVER GO BEFORE THE JURY. I THINK FOR THE  
25 REASONS I'VE INDICATED, THIS TESTIMONY IS COMPLETELY  
26 IRRELEVANT. THIS TESTIMONY CANNOT COME IN.

1 TO THE EXTENT THAT THERE IS SOMEBODY WHO IS  
2 PREPARED TO TESTIFY TO THIS, IT WILL BE AN EXPERT  
3 CONCLUSION. WE DEPOSED THEIR EXPERTS. WE NEVER HEARD  
4 THESE CONCLUSIONS. OBVIOUSLY, WE DIDN'T HEAR THESE  
5 CONCLUSIONS BECAUSE -- WHATEVER THEY ARE -- BECAUSE THEY  
6 DIDN'T REACH THEM UNTIL AFTER THIS TRIAL STARTED. WE DID  
7 NOT HAVE AN OPPORTUNITY TO DEPOSE THEIR EXPERTS ON THESE  
8 ISSUES IN PART FOR THE REASONS THAT MR. NOVELLI IS  
9 TESTIFYING TO; THEY JUST DIDN'T GET AROUND TO WRITING THE  
10 SOFTWARE AND DOING WHAT THEY NEEDED TO DO IN ORDER TO COME  
11 UP WITH THESE COMPUTATIONS UNTIL AFTER THE TRIAL STARTED.

12 FOR THE REASONS I'VE INDICATED, YOUR HONOR,  
13 I THINK THIS IS ALL IRRELEVANT.

14 MR. MOSHENKO: YOUR HONOR, MR. NOVELLI HAS NEVER  
15 TESTIFIED ABOUT THIS, AT LEAST NOT IN THIS COURTROOM, THAT  
16 I'M AWARE OF. THE WORK THAT LEO NOVELLI -- I SAID  
17 MR. NOVELLI. I MEANT RAYMOND NOVELLI.

18 IS THAT WHO YOU MEANT? RAYMOND OR  
19 LEO NOVELLI, WHEN YOU SAID HAS TESTIFIED TO?

20 MR. RIVIN: THE TESTIMONY I WAS JUST REFERRING TO  
21 WAS LEO, WAS OF LEO NOVELLI.

22 MR. MOSHENKO: I MISUNDERSTOOD.

23 I THINK THE TESTIMONY INDICATES THAT THE  
24 WORK STARTED IN 1999, WHEN THE CONVERSION -- AT LEAST THE  
25 WORK WAS IN PLACE IN 1999 AND ONGOING, AND IT CONTINUES TO  
26 GO FORWARD TODAY. AND THE LAST TIME I CHECKED THE EVIDENCE

1 CODE, I DIDN'T SEE ANYTHING THAT SAYS THE TIMELINESS OF THE  
2 EVENT SHOULD IN SOME MANNER PREVENT IT FROM BEING TESTIFIED  
3 TO.

4 THE QUESTION MIGHT RAISE INFERENCES OR  
5 ARGUMENTS, BUT CERTAINLY IT'S NOT AN EXCLUSION OF THE  
6 EVIDENCE, BASIS FOR EXCLUDING EVIDENCE.

7 THE COURT: YOU KNOW, AS I SAID BEFORE, WE'RE  
8 PUTTING THE CART BEFORE THE HORSE HERE. I CAN'T SEE ANY --  
9 WHERE ANY OF THIS IS GOING TOWARD CAUSATION OR LIABILITY.

10 MR. MOSHENKO: YOUR HONOR, I THINK THAT THE  
11 REFERENCE TO THE -- THAT WE'RE TALKING ABOUT RIGHT NOW,  
12 WHICH THE COURT HASN'T FORESEEN IT -- I KNOW MR. RIVIN HAS.  
13 WE'RE NOW GOING TO TALK -- I WAS NOW LEADING -- WE'RE GOING  
14 IN THE DIRECTION OF THE VERY ITEM THAT MR. NOVELLI  
15 TESTIFIED -- RAYMOND NOVELLI TESTIFIED TO WHEN HE SAID --  
16 WHEN YOUR HONOR ASKED HIM, "HOW ARE YOU ABLE TO DETERMINE  
17 WHAT CAUSED THE MEMBERS" -- OR "HOW MANY MEMBERS LEFT?"  
18 AND HE TESTIFIED AS YOU HEARD HIM TESTIFY.

19 I WOULD SUGGEST, YOUR HONOR, IF THAT WAS A  
20 DAMAGES QUESTION, YOUR HONOR WOULDN'T ASK IT. YOU ASKED  
21 HIM THE QUESTION THAT RELATED TO YOUR HONOR'S PERCEPTION.  
22 I'M TRYING TO READ YOUR MIND OF HOW CAN YOU DETERMINE CAUSE  
23 OR WHAT THE CAUSE/EFFECT WAS. AND WE'RE TALKING ABOUT THE  
24 EFFECT, I THINK. MEMBERS LEAVING. AND I THINK IT'S  
25 RELEVANT TO CAUSATION. IT'S ALSO RELEVANT TO DAMAGES.

26 IF YOUR HONOR WANTS ME TO STOP AT THIS POINT

1 ON THIS, I THINK THAT I HAVE THE FOUNDATION I NEED FOR THE  
2 ADMISSIBILITY OF THE DATA, WHICH IS RELEVANT BOTH TO  
3 CAUSATION AND DAMAGES.

4 THE COURT: I DON'T THINK YOU HAVE TO GO ANY  
5 FURTHER.

6 MR. MOSHENKO: ALL RIGHT.

7 MR. RIVIN: I DON'T SEE HOW ANY OF THIS IS RELEVANT  
8 TO CAUSATION ISSUES. I MIGHT ALSO NOTE THAT THE QUESTION  
9 YOUR HONOR ASKED OF RAYMOND NOVELLI WHEN HE WAS ON THE  
10 STAND IS WHAT WAS -- DO YOU HAVE PERSONAL KNOWLEDGE OF WHAT  
11 YOU'RE TESTIFYING TO?

12 THE COURT: YES. YES.

13 MR. RIVIN: IT WAS -- AND THEN MR. NOVELLI WENT OFF  
14 AND TALKED ABOUT THIS SAMPLING THAT WAS DONE AND THE WORK  
15 THAT I GUESS WAS DONE BY LEO NOVELLI.

16 YOUR HONOR, COULD WE HAVE FIVE MINUTES AND  
17 TAKE A LOOK AT WHATEVER CROSS-EXAMINATION WE MAY WANT TO  
18 DO?

19 THE COURT: SURE.

20 MR. RIVIN: HOPEFULLY WE CAN SHORTEN IT.

21 THE COURT: LET'S TAKE 10.

22 MR. RIVIN: THANKS.

23 (RECESS TAKEN.)

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

26 CROSS-EXAMINATION (402 HEARING)

1 MR. RIVIN: MR. NOVELLI, GOOD AFTERNOON.

2 A GOOD AFTERNOON.

3 Q WHERE ARE YOU PRESENTLY EMPLOYED?

4 A I AM SELF-EMPLOYED RIGHT NOW AT ATLANTIS  
5 INTERNATIONAL.

6 Q IS THAT YOUR COMPANY?

7 A YES, IT IS.

8 Q WHERE IS IT LOCATED?

9 A IT'S LOCATED IN THE CITY OF SANTA ANA.

10 Q AND HOW LONG HAVE YOU HAD ATLANTIS  
11 INTERNATIONAL?

12 A SINCE APRIL OF 1989.

13 Q 1989?

14 A THAT IS CORRECT. IT WAS A PART-TIME  
15 BUSINESS.

16 Q DID YOU START THAT BUSINESS WHILE YOU WERE  
17 STILL IN SCHOOL?

18 A YES, I DID.

19 Q IS IT A COMPUTER BUSINESS?

20 A IT STARTED WITH COMPUTER HARDWARE AND  
21 SOFTWARE RESALES AND HAS NOW ESCALATED TO MAINLY INTERNET  
22 WEBSITE DEVELOPMENT AND HOSTING, AS WELL AS CUSTOM  
23 APPLICATION DEVELOPMENT, CUSTOM PROGRAMING.

24 THE COURT: HOW MANY EMPLOYEES DO YOU HAVE?

25 THE WITNESS: ONE.

26 THE COURT: YOU'RE IT?

1 THE WITNESS: NO. ONE NOT INCLUDING ME.

2 THE COURT: OKAY.

3 BY MR. RIVIN: Q DO YOU ACTUALLY HAVE AN OFFICE  
4 SPACE?

5 A YES, I DO.

6 Q IN SANTA ANA?

7 A THAT IS CORRECT.

8 Q WERE THERE PERIODS OF TIME FROM 1986 THROUGH  
9 1998 WHEN YOU DID NOT WORK FOR RAYMOND NOVELLI'S COMPANIES?

10 A NO.

11 Q DID YOU WORK FOR HIS COMPANIES ON A  
12 PART-TIME BASIS FROM 1986 THROUGH 1998?

13 A NO. I WORKED AS A FULL-TIME BASIS, AND I  
14 WENT TO SCHOOL PART TIME.

15 Q SO YOU WORKED FULL TIME AT THE ALL SEASONS  
16 RESORTS -- WHO WAS YOUR EMPLOYER?

17 A MY ORIGINAL EMPLOYER WAS ALL SEASONS RESORTS.

18 Q AND WHO WAS AFTER ALL SEASONS?

19 A IT CHANGED A COUPLE OF TIMES. IT WENT TO  
20 FIRST NATIONWIDE -- I'M NOT SURE OF THE ORDER. SO I'M  
21 SORRY.

22 BUT I KNOW I WORKED FOR FIRST NATIONWIDE  
23 RESORT MANAGEMENT. I WORKED FOR CHARTER MANAGEMENT. AND I  
24 BELIEVE THAT WAS IT. I COULD LOOK AT -- OF COURSE AT MY  
25 TAX RECORDS TO VERIFY THAT, IF YOU'D LIKE.

26 Q WHAT WAS THE NAME OF THE COMPANY YOU WERE

1 WORKING FOR WHEN YOU LEFT THE EMPLOY OF THESE COMPANIES?

2 A I BELIEVE IT WAS CHARTER MANAGEMENT.

3 Q DID YOU HAVE ANY PROBLEM WITH BOUNCED CHECKS  
4 DURING THE TIME YOU WORKED FOR THESE COMPANIES?

5 MR. MOSHENKO: OBJECTION. RELEVANCE.

6 THE COURT: I'LL ALLOW IT. THE JURY'S NOT HERE.

7 THE WITNESS: YES.

8 BY MR. RIVIN: Q WITH ALL OF THE COMPANIES OR JUST  
9 ONE OF THEM?

10 A I REALLY DON'T REMEMBER. I KNOW THAT THERE  
11 WAS A FEW OCCASIONS THAT THAT HAPPENED.

12 Q OVER THE COURSE OF THE YEARS THAT YOU WORKED  
13 FOR YOUR FATHER'S COMPANIES?

14 A CORRECT.

15 Q A FEW MEANING, WHAT, 10 OR SO?

16 A PROBABLY 10 OR LESS.

17 Q DID YOU HAVE ATLANTIS INTERNATIONAL IN  
18 OPERATION FROM 1989 THROUGH THE PRESENT TIME?

19 A SURE, AS A PART-TIME BUSINESS, YES.

20 Q SO YOU HAD -- THAT WAS A PART-TIME BUSINESS;  
21 YOU WERE GOING TO SCHOOL PART TIME?

22 A RIGHT.

23 Q AND THEN YOU WERE WORKING FOR YOUR FATHER'S  
24 COMPANIES ON A FULL-TIME BASIS?

25 A THAT IS CORRECT.

26 Q WHAT WAS YOUR TITLE IN 1997?

1 A OH, '97?

2 Q YES.

3 A WOULD HAVE BEEN SYSTEMS ADMINISTRATOR.

4 Q FOR CHARTER MANAGEMENT?

5 A YES.

6 Q WHO DID YOU REPORT TO?

7 A HANS SCHULZ.

8 Q WHO REPORTED TO YOU?

9 A AT THAT TIME?

10 Q YES.

11 A THERE WAS A GENTLEMAN BY THE NAME OF  
12 KENDRICK JOHN GONEAL. THERE WAS ALSO ANOTHER GENTLEMAN BY  
13 THE NAME OF DERRICK LANDRUM. THOSE WERE THE TWO EMPLOYEES  
14 THAT REPORTED DIRECTLY TO ME.

15 Q I WANT TO GO OVER THE PROCESS OF YOUR TAKING  
16 THE DATA AND INPUTTING IT.

17 THAT'S BASICALLY WHAT YOU WERE DOING IS  
18 INPUTTING DATA DEALING WITH THE COMPANY SYSTEMS; RIGHT?

19 A RIGHT, YEAH. THERE'S TWO DIFFERENT METHODS,  
20 I GUESS, OF INPUTTING DATA. ONE IS, OF COURSE, A MANUAL  
21 READING OFF OF A PIECE OF PAPER; AND THE OTHER ONE IS  
22 ELECTRONIC WHEN WE DID THE CONVERSION FROM WHEN OTHER  
23 COMPANIES OR RESORTS WERE BOUGHT OUT.

24 Q WERE YOU USING THE WANG COMPUTER UP UNTIL  
25 1997?

26 A YES.

1 Q THAT WAS A MINI-COMPUTER?

2 A THAT IS CORRECT. WE WOULD USE A PC TO HELP  
3 FACILITATE DATA TRANSFERS, NOT FOR DATA ENTRY, BUT TO HELP  
4 FACILITATE DATA TRANSFER TO GET ONE FORMAT TO ANOTHER.  
5 BUT, YES, THE WANG WAS USED EXCLUSIVELY.

6 Q HOW MANY TIMES OVER THE YEARS DID YOU HAVE  
7 PROBLEMS WITH INTEGRITY OF THE DATA THAT YOU WERE  
8 RECEIVING?

9 A THERE WAS ALWAYS QUESTIONS ABOUT, YOU KNOW,  
10 AM I READING THE DATA CORRECTLY, AND I WOULD ALWAYS VERIFY  
11 WITH WHOEVER WAS RESPONSIBLE AT THAT TIME TO MAKE SURE THAT  
12 I UNDERSTOOD THEIR DATA BEFORE WE TRANSFERRED IT INTO OUR  
13 DATABASE. AND THEN USUALLY WE WOULD RUN MATCHING REPORTS  
14 TO MAKE SURE THAT DATA WAS VALID.

15 Q WERE THERE CONCERNS EXPRESSED AT YOUR  
16 COMPANIES -- AND I'M REFERRING TO ALL SEASONS AND FIRST  
17 NATIONWIDE -- ABOUT THE INTEGRITY OF THE DATA?

18 MR. MOSHENKO: OBJECTION. THE QUESTION IS  
19 UNCERTAIN. "CONCERNS" IS UNDEFINED AND TIME -- UNCERTAIN  
20 AS TO TIME.

21 THE COURT: CAN YOU ANSWER THAT QUESTION?

22 THE WITNESS: SURE. I THINK THERE'S ALWAYS  
23 CONCERNS ABOUT DATA INTEGRITY ON A DAILY BASIS. I THINK  
24 IT'S VERY IMPORTANT.

25 BY MR. RIVIN: Q LET'S SAY FROM THE YEARS 1990  
26 THROUGH 1997, DID PEOPLE OR COMPANIES COMPLAIN ABOUT THE

1 INTEGRITY OF THE DATA?

2 A NOT MORE SO THAN, YOU KNOW, A COUPLE  
3 PROBLEMS WITH CERTAIN MEMBERS AT A TIME. I MEAN, NOT IN  
4 ANY KIND OF BULK NUMBER, NO.

5 Q WHEN YOU RECEIVED THE DATA OR YOUR PEOPLE  
6 WORKED FOR YOU RECEIVED THE DATA, YOU TOOK IT AND THEN  
7 ENTERED IT INTO THE COMPUTER; RIGHT?

8 A THAT IS CORRECT.

9 Q AND THIS WAS -- THIS DATA INCLUDED  
10 INFORMATION REGARDING MEMBERSHIP PAYMENTS AND CONTRACT  
11 PAYMENTS AND THE LIKE?

12 A RIGHT. WHATEVER -- WHATEVER WE COULD OBTAIN  
13 FROM THE PRIOR OWNERS WHEN WE WOULD TAKE OVER THE RESORTS.

14 Q HOW ABOUT THE ALL SEASONS INFORMATION?

15 A WELL, PRIOR TO ME ARRIVING IN '86, THERE WAS  
16 A LOT OF INFORMATION ALREADY IN THE SYSTEMS.

17 Q IN A WANG SYSTEM?

18 A YES. THE WANG WAS THERE WHEN I ARRIVED.

19 Q WHEN YOU RECEIVED THE DATA -- LET'S GO TO  
20 1996 JUST TO PICK A YEAR.

21 WHEN YOU RECEIVED THE DATA, THE INFORMATION  
22 FROM THAT -- FOR THAT YEAR, YOU RECEIVED INFORMATION THAT  
23 YOU WERE TO LOAD INTO THE COMPUTER. DID YOU TEST THE  
24 VALIDITY OF THAT INFORMATION TO MAKE SURE IT WAS ACCURATE,  
25 OR YOU SIMPLY TOOK IT AND UNLOADED IT INTO THE COMPUTER?

26 A I GUESS THAT DEPENDS ON YOUR DEFINITION OF

1 "TEST." WE DEFINITELY LOADED IT IN THE COMPUTER AND  
2 VERIFIED TO EVERY EXTENT POSSIBLE THAT THAT DATA WAS  
3 CORRECT, WITH THE HELP OF WHOEVER GAVE US THAT DATA. AND  
4 THEN WITH DIFFERENT TYPES OF WAYS, WE WERE ABLE TO VERIFY  
5 THAT, SUCH AS THE BILLINGS THAT WERE SENT. YOU KNOW,  
6 NOBODY WOULD COMPLAIN, YOU KNOW, IF WE SENT THEM A BILL FOR  
7 A THOUSAND THEY ONLY OWED 10. BELIEVE ME. THEY WOULD  
8 PROBABLY CALL UP ON THE PHONE, AND THEN IT WOULD GET BACK  
9 TO ME, AND I'D BE IN TROUBLE.

10 Q WELL, PEOPLE DIDN'T DIRECTLY COMPLAIN TO  
11 YOU; MEMBERS DIDN'T COMPLAIN TO YOU?

12 A NO, THEY DID NOT DIRECTLY COMPLAIN TO ME.

13 Q SO YOU HEARD -- YOU ONLY HEARD FROM OTHER  
14 EMPLOYEES AT ALL SEASONS OR FIRST NATIONWIDE?

15 A THAT'S CORRECT.

16 Q SO IF THE DATA WAS INACCURATE, YOU WOULD NOT  
17 HAVE KNOWN IT FROM MEMBERS; ISN'T THAT CORRECT?

18 A EXCEPT FOR EXTREMELY RARE CIRCUMSTANCES. I  
19 THINK FROM '96 FORWARD I WAS THE ONLY ONE ANSWERING THE  
20 CORPORATE INTERNET E-MAIL. AND SO I WOULD DEAL WITH A  
21 VERY -- HANDFUL OF MEMBERS AT THAT TIME.

22 Q ARE YOU SAYING THERE WERE A HANDFUL OF  
23 MEMBERS WHO COMMUNICATED BY E-MAIL?

24 A YES.

25 Q HOW MANY?

26 A BACK IN '96 -- I MEAN, IT GREW

1 EXPONENTIALLY, BUT PROBABLY IT STARTED WITH, YOU KNOW, A  
2 COUPLE A WEEK. AND BY THE TIME I LEFT, IT WAS PROBABLY  
3 ESCALATED TO MAYBE 25, 30 A WEEK.

4 Q WHAT PERCENTAGE OF THOSE E-MAILS THAT YOU  
5 RECEIVED REGISTERED COMPLAINTS ABOUT OVERBILLING OR  
6 IMPROPER BILLING OR QUESTIONS ABOUT WHO WAS TRAVEL AMERICA  
7 OR JUST GENERALLY COMPLAINTS?

8 MR. MOSHENKO: OBJECTION. COMPOUND.

9 THE COURT: OVERRULED.

10 THE WITNESS: DOES THAT MEAN I ANSWER?

11 THE COURT: YES.

12 THE WITNESS: I'M SORRY.

13 TO BE HONEST, I REALLY DON'T REMEMBER. I  
14 MEAN, SURE, THERE WAS DEFINITELY SOME THAT WERE COMPLAINTS.  
15 AND THERE WERE SOME THAT WERE LOVE LETTERS, AND SOME THAT  
16 WERE JUST GENERAL QUESTIONS.

17 BY MR. RIVIN: Q WHAT DID YOU DO WITH THOSE  
18 E-MAILS AFTER YOU REPLIED TO THEM?

19 A THEY WOULD PROBABLY STILL BE ARCHIVED IN THE  
20 SYSTEM SOMEPLACE.

21 Q YOU DID NOT RECEIVE CHECKS; THAT WAS NOT  
22 YOUR RESPONSIBILITY; ISN'T THAT RIGHT?

23 A THAT IS CORRECT. I PERSONALLY DID NOT TOUCH  
24 THE CHECKS.

25 Q AND YOU PERSONALLY DID NOT PREPARE ANY  
26 LISTINGS OF MONIES RECEIVED?

1 A I HAVE PREPARED THAT, ABSOLUTELY.

2 Q ON OCCASION?

3 A YES. YES. BUT THAT WASN'T MY PRIMARY  
4 DUTIES, NO.

5 Q AND IN 1995 THROUGH 1998, YOU WEREN'T DOING  
6 THAT TYPE OF WORK; IS THAT RIGHT?

7 A NO. I WAS JUST BASICALLY OVERSEEING IT.

8 Q BUT YOU WEREN'T DOING THAT TYPE OF WORK?

9 A NO.

10 Q YOU MENTIONED IN RESPONSE TO MR. MOSHENKO'S  
11 QUESTIONS THAT YOU WENT OUT TO NEBRASKA IN 1997 TO DOWNLOAD  
12 THE THOUSAND ADVENTURES DATABASE?

13 A CORRECT.

14 Q DID YOU TALK WITH THOUSAND ADVENTURES -- LET  
15 ME WITHDRAW THAT.

16 YOU HAD NOTHING TO DO WITH THE INPUTTING OF  
17 DATA INTO THE THOUSAND ADVENTURES DATABASE; ISN'T THAT  
18 RIGHT?

19 A BEFORE --

20 MR. MOSHENKO: OBJECTION. UNCERTAIN AS TO TIME.  
21 THERE WAS A TIME BEFORE AND AFTER.

22 THE WITNESS: BEFORE WE TOOK IT OVER; CORRECT?

23 BY MR. RIVIN: Q YES.

24 A NO, I HAD NO INVOLVEMENT.

25 Q AND YOU PERSONALLY HAVE NO KNOWLEDGE  
26 WHATSOEVER ABOUT THE ACCURACY OF THE THOUSAND ADVENTURES

1 DATA THAT YOU DOWNLOADED OFF THEIR COMPUTER OR COMPUTERS IN  
2 NEBRASKA IN 1997?

3 MR. MOSHENKO: OBJECTION. UNCERTAIN AS TO TIME  
4 AGAIN.

5 THE COURT: I THOUGHT HE JUST SAID 1997.

6 MR. MOSHENKO: NO. THE DATA THAT HE DOWNLOADED.  
7 BUT THE QUESTION IS, DO YOU HAVE KNOWLEDGE OF THE ACCURACY  
8 OF THE DATA. DOES HE MEAN TODAY DO YOU HAVE ANY KNOWLEDGE?  
9 OR BACK IN 1996 DOES HE HAVE KNOWLEDGE?

10 THE COURT: OKAY.

11 DO YOU WANT TO REPHRASE THAT?

12 MR. RIVIN: SURE.

13 Q WHEN YOU DOWNLOADED THAT INFORMATION AND  
14 BROUGHT IT BACK TO ALL SEASONS RESORTS OR WHATEVER COMPANY  
15 YOU BROUGHT IT BACK TO --

16 A UH--HUH.

17 Q -- YOU DID NOT KNOW ANYTHING ABOUT THE  
18 ACCURACY OF THAT INFORMATION; ISN'T THAT CORRECT?

19 A AT THE TIME I RETRIEVED IT, NO. BUT BY THE  
20 TIME WE DID OUR FIRST BILLING, I WOULD SAY THAT I WAS VERY  
21 CONFIDENT THAT THE DATA WAS CORRECT.

22 Q THERE WERE -- YOU'RE SAYING THAT BILLING WAS  
23 DONE WHEN, IN 1997?

24 A IT WOULD HAVE BEEN DONE PROBABLY TWO TO  
25 THREE MONTHS AFTER I CAME BACK, THE FIRST BILLING.

26 Q SO IT WOULD HAVE BEEN SOMETIME IN 1997?

1 A YES.

2 Q AND DID THAT BILLING GO OUT UNDER TRAVEL  
3 AMERICA OR UNDER THOUSAND ADVENTURES?

4 A I BELIEVE IT WOULD HAVE WENT OUT UNDER  
5 THOUSAND ADVENTURES.

6 Q DO YOU KNOW ONE WAY OR THE OTHER?

7 A YEAH. I'M ALMOST POSITIVE -- WELL, THERE  
8 WAS DIFFERENT COMPANIES THAN THOUSAND ADVENTURES. I THINK,  
9 IF I REMEMBER CORRECTLY, SOME OF THEM WERE IN BANKRUPTCY.  
10 SO SOME OF THEM WERE SENT BY A COMPANY CALLED T.A.I. OF  
11 OHIO VERSUS SOME THAT WERE SENT BY THOUSAND ADVENTURES.

12 SO DEPENDING ON WHICH RESORT THE MEMBER  
13 BELONGED TO AND WHAT THE CURRENT LEGAL STATUS WAS, THE  
14 BILLS WOULD HAVE WENT OUT BY -- FROM MAYBE TWO OR THREE  
15 DIFFERENT COMPANIES. BUT THEY ALL WOULD HAVE BEEN T.A.I.  
16 SOMEWHAT RELATED. I DON'T THINK ANY OF THEM WERE SENT OUT  
17 UNDER THE NAME TRAVEL AMERICA THAT I CAN REMEMBER.

18 Q WHO WAS IN CHARGE OF MAKING THE DECISION AS  
19 TO WHAT ENTITY SHOULD BE BILLING PEOPLE?

20 A SAY THAT ONE MORE TIME.

21 Q SURE.

22 WHO AT THE COMPANY, AT YOUR COMPANIES, WAS  
23 IN CHARGE OF DECIDING HOW PEOPLE SHOULD BE BILLED? IN  
24 OTHER WORDS, UNDER WHAT NAMES, THOUSAND ADVENTURES OF OHIO  
25 OR THOUSAND ADVENTURES NEBRASKA?

26 A WELL, ULTIMATELY IT WOULD BE MY FATHER,

1 RAY. BUT I WOULD HAVE BEEN INSTRUCTED BY PROBABLY, YOU  
2 KNOW, A COUPLE OTHER PEOPLE AS TO THAT PROCESS AS WELL.  
3 AND HE WOULD BASICALLY APPROVE IT.

4 Q WHEN DID THE BILLINGS START GOING OUT UNDER  
5 THE NAME "TRAVEL AMERICA"?

6 A TO BE HONEST, I DON'T REMEMBER.

7 Q WAS IT DURING THE TIME YOU WERE STILL AT THE  
8 COMPANY?

9 A I BELIEVE SO.

10 Q WERE YOU WORKING WITH DAVE VOPNFORD IN  
11 PREPARING THE BILLINGS TO THOUSAND ADVENTURES MEMBERS?

12 A YES -- WELL, HIS -- OR HIM OR HIS STAFF. I  
13 DON'T THINK I WAS WORKING -- TALKING A LOT DIRECTLY TO  
14 HIM. I THINK I WAS TALKING MORE TO THE COUNTERPART OF ME  
15 THERE.

16 Q WERE BOTH MR. VOPNFORD AND HIS STAFF  
17 PHYSICALLY LOCATED AT THE ALL SEASONS OFFICES IN IRVINE?

18 A I THINK FOR A SHORT TIME THEY WERE. I  
19 REMEMBER SEEING THEM ON A VERY CONSISTENT BASIS.

20 Q IN IRVINE?

21 A I DON'T REMEMBER IF IT WAS IRVINE OR NEWPORT  
22 BEACH AT THE TIME AT THE OFFICE, AT THE CORPORATE OFFICE.

23 Q DO YOU REMEMBER DISCUSSIONS ABOUT WHETHER  
24 YOUR FATHER'S COMPANIES HAD THE RIGHT TO BILL PEOPLE WHO  
25 SUPPOSEDLY WERE MEMBERS OF THOUSAND ADVENTURES COMPANIES IN  
26 BANKRUPTCY?

1           MR. MOSHENKO: OBJECTION. IRRELEVANT. BEYOND THE  
2 SCOPE OF THE TESTIMONY. HE IS TAKING DISCOVERY, YOUR  
3 HONOR.

4           THE COURT: I'LL SUSTAIN THAT. I DON'T BELIEVE WE  
5 NEED ANYMORE TESTIMONY.

6           MR. RIVIN: GIVE ME TWO MORE MINUTES, YOUR HONOR.

7           THE COURT: SURE.

8           MR. RIVIN: LET ME ASK A FEW QUESTIONS ABOUT THE  
9 WORK THAT MR. NOVELLI HAS BEEN DOING RECENTLY.

10          THE COURT: YOUR TEAM PASSED YOU A NOTE. THEY WANT  
11 TO KNOW WHAT YOU'RE GOING TO DO ABOUT IT.

12          MR. RIVIN: I BETTER TAKE A LOOK AT IT BEFORE I  
13 LAUNCH INTO MY QUESTIONS.

14                                 (PAUSE IN PROCEEDINGS.)

15          BY MR. RIVIN: Q MR. NOVELLI, YOU TESTIFIED AT  
16 SOME LENGTH IN RESPONSE TO MR. MOSHENKO'S QUESTIONS ABOUT  
17 THE WORK THAT YOU DID IN APRIL OF 19 -- OF 2000 TO PREPARE  
18 THE CD CONTAINING ALL OF THIS MEMBER INFORMATION WHICH YOU  
19 DESCRIBED.

20           A            THAT IS CORRECT.

21           Q            WHEN WERE YOU FIRST ASKED TO UNDERTAKE THAT  
22 TASK?

23           A            I WOULD SAY IT WOULD HAVE BEEN IN EARLY  
24 2000. WE WERE DISCUSSING HOW WE WOULD MARRY THE CAMP COAST  
25 TO COAST 34,000 LIST WITH OUR DATABASE.

26           Q            I'M NOT EVEN TALKING ABOUT THE WORK THAT YOU

1 DID TO MARRY THE TWO DATABASES.

2 A OKAY.

3 Q I'M REFERRING --

4 A TO THE CREATION.

5 Q TO THE CREATION OF WHAT MR. MOSHENKO

6 REFERRED TO AS THE BIG BOX ON THE BLACKBOARD.

7 IS THAT SOMETHING THAT YOU DID -- THAT'S

8 SOMETHING YOU DID IN APRIL?

9 A RIGHT. THAT WAS -- I REMEMBER GOING TO A  
10 COURT HEARING WITH ONE OF THE JUDGES THAT REQUESTED THAT  
11 INFORMATION. AND THEN WE -- I STARTED WORKING ON IT  
12 IMMEDIATELY.

13 Q SO YOU STARTED WORKING ON IT SOMETIME IN --  
14 WAS IT IN LATE MARCH; RIGHT?

15 A YES.

16 Q AND YOU HAD IT PUT TOGETHER IN TIME TO  
17 CREATE THE CD'S AND PRODUCE IT TO MY OFFICE BY APRIL 11?

18 A I PHYSICALLY FINISHED WITH THE CD ON MARCH  
19 29TH OF 2000.

20 Q SO IT TOOK YOU, WHAT, ABOUT FOUR, FIVE DAYS  
21 TO PUT IT TOGETHER?

22 A THAT IS CORRECT.

23 Q AND IS THERE ANY REASON YOU COULDN'T HAVE  
24 DONE THAT SIX MONTHS EARLIER; YOU COULDN'T HAVE CREATED  
25 THAT CD SIX MONTHS EARLIER?

26 A SURE, I GUESS I COULD HAVE CREATED THAT CD

1 AT THAT TIME, IF I WAS ASKED. I KNOW THAT IT CONTAINED ALL  
2 THEIR MEMBERSHIP INFORMATION VERSUS JUST WHAT WAS RELEVANT  
3 AGAINST THAT 34,000.

4 Q ARE YOU CONTINUING TO DO WORK IN CONNECTION  
5 WITH THIS CASE, OTHER THAN JUST TESTIFYING?

6 A NOT RIGHT NOW, NO.

7 Q WHEN IS THE LAST TIME YOU DID SOME WORK ON  
8 MARRYING THOSE TWO DATABASES THAT YOU REFERRED TO?

9 A THE LAST WORK THAT I DID WAS -- I BELIEVE  
10 THIS CREATION OF THE CD -- WELL, NO. IT WOULD HAVE  
11 PROBABLY BEEN AFTER MARRY THE DATABASES, WOULD HAVE BEEN --  
12 IT PROBABLY WAS THE MARRY OF THE DATABASES.

13 Q THAT WOULD HAVE BEEN AFTER YOU CREATED THE  
14 CD'S?

15 A THAT IS CORRECT.

16 Q WHEN WAS IT, AGAIN, THAT YOU WERE FIRST  
17 ASKED TO PUT TOGETHER THE CD CONTAINING ALL OF THE  
18 MEMBERSHIP INFORMATION?

19 A IT WAS EITHER ON THE DAY OF OR THE DAY AFTER  
20 THAT COURT HEARING.

21 Q IN LATE MARCH?

22 A YEAH. I DON'T REMEMBER THE EXACT DATE. I  
23 APOLOGIZE.

24 Q LATE MARCH OF 2000?

25 A YES.

26 Q AND YOU WERE ASKED TO DO THAT EITHER BY

1 MR. MOSHENKO OR YOUR FATHER?

2 A PLUS THE JUDGE. BECAUSE I WAS THERE. I  
3 HEARD THE ORDER.

4 Q BY THE WAY, YOU TALKED ABOUT SQL 6.5, WHICH  
5 IS THE SOFTWARE YOU USED --

6 A THAT IS CORRECT.

7 Q -- IN CONNECTION WITH THAT MEMBERSHIP LIST?

8 A YES.

9 Q IS SQL 6.5 A CURRENT VERSION OF THAT  
10 SOFTWARE?

11 A NO. THE CURRENT VERSION IS 7.0.

12 Q AND IS 6.5 CONSIDERED TO BE AN OBSOLETE  
13 VERSION OF THE SOFTWARE?

14 A NO, IT IS NOT. I BELIEVE MICROSOFT  
15 REFERENCES ANYTHING THAT'S TWO VERSIONS AND PRIOR OBSOLETE.

16 Q WHEN YOU TESTED THE DATA ON THE CD'S --  
17 AGAIN, I'M REFERRING TO THE CD'S THAT WERE PRODUCED THAT  
18 YOU PREPARED IN LATE 19 -- LATE APRIL OF 2000 --

19 A RIGHT.

20 Q -- DID YOU TEST IT ON THE SAME COMPUTER EACH  
21 TIME?

22 A YES, I DID.

23 Q IS IT POSSIBLE THAT IF IT'S ATTEMPTED TO BE  
24 ACCESSED IN ANOTHER COMPUTER, THAT IT WOULDN'T OPEN?

25 A IT'S POSSIBLE BUT EXTREMELY HIGHLY  
26 UNLIKELY -- WELL, ACTUALLY I TAKE THAT BACK. IF IT'S --

1 REPHRASE IT. I WOULD HAVE TESTED ON TWO MACHINES, THE  
2 MACHINE THAT WAS USED TO CREATE THE CD PLUS MY PERSONAL  
3 WORK STATION.

4 MR. RIVIN: YOUR HONOR, I DON'T HAVE ANYTHING  
5 FURTHER.

6 THE COURT: VERY GOOD.

7 MR. MOSHENKO: COULD I ASK ABOUT THREE QUESTIONS,  
8 YOUR HONOR?

9 REDIRECT EXAMINATION

10 BY MR. MOSHENKO: Q WHEN YOU TESTED -- AFTER  
11 CREATING THE CD'S AND TESTING THEM, CAN YOU TELL US WHETHER  
12 THE OUTPUT WAS READABLE BY SIGHT?

13 A I DON'T UNDERSTAND.

14 Q MAKE IT COME UP SO YOU COULD READ IT BY  
15 LOOKING AT IT?

16 A I COULD READ THE FILES. I COULDN'T READ THE  
17 DATA WITHOUT HAVING A SQL, YOU KNOW, REINSTALLING SQL  
18 SERVER.

19 Q WITH ALL OF THAT THERE; YOU HAD ALL OF THAT  
20 THERE?

21 A YES.

22 Q WHEN YOU LOOKED AT IT, COULD YOU READ IT BY  
23 SIGHT?

24 A I COULDN'T READ THE INDIVIDUAL DATA RECORDS  
25 BECAUSE I'D HAVE TO LOAD SQL SERVER IN ORDER TO DO THAT.  
26 BUT I COULD SEE THE FILES. THAT WOULD GIVE ME THE ABILITY

1 TO READ THE INDIVIDUAL RECORDS, IF NECESSARY.

2 Q SO WITH THE SQL SERVER, COULD YOU READ IT BY  
3 SIGHT?

4 A ABSOLUTELY.

5 Q AND THE NEXT QUESTION IS, WAS THE COMPUTER  
6 OR THE TWO COMPUTERS THAT YOU TESTED IT ON OF STANDARD,  
7 ACCEPTABLE COMPUTER TYPES?

8 A YES, THEY WERE BOTH COMPAQ DESK PROS.

9 Q THE NEXT QUESTION IS, WAS THE DATA AND THE  
10 COMPUTERS THAT WERE USED -- I'M NOW TALKING ABOUT TRAVEL  
11 AMERICA COMPUTERS IN WHICH THE DATA WAS STORED; WERE BOTH  
12 OF THOSE THINGS THINGS THAT THE COMPANY RELIED ON IN ITS  
13 BUSINESS OPERATIONS?

14 A ABSOLUTELY.

15 Q AND DID IT RELY ON THE ACCURACY OF THE DATA  
16 AND THE COMPUTERS?

17 A ABSOLUTELY.

18 MR. RIVIN: OBJECTION. VAGUE AND AMBIGUOUS.

19 THE COURT: OVERRULED.

20 MR. MOSHENKO: AND THAT IS ALL I NEED.

21 THE COURT: THANK YOU.

22 MR. MOSHENKO: PER MR. JEFFERSON, YOUR HONOR.

23 THANK YOU.

24 THE COURT: ANYTHING FURTHER?

25 MR. RIVIN: NO, YOUR HONOR.

26 THE COURT: THANK YOU.

1                   YOU MAY STEP DOWN.

2           MR. RIVIN: I THINK WE HAVE SOME SCHEDULING AND  
3 HOUSEKEEPING MATTERS, YOUR HONOR.

4           MR. MOSHENKO: WE'D LIKE TO HEAR WHAT YOUR HONOR IS  
5 GOING TO SAY OR DO ON THIS.

6           MR. RIVIN: AND I DON'T THINK ANY OF THIS TESTIMONY  
7 IS RELEVANT AT THIS POINT FOR THE JURY.

8           THE COURT: I'M GOING TO --

9           MR. MOSHENKO: DO YOU WANT TO TALK ABOUT IF IT'S  
10 CAUSATION OR NOT? I'D LIKE TO BE HEARD.

11          THE COURT: I'M GOING TO EXCLUDE THIS TESTIMONY  
12 UNTIL SUCH TIME AS IT APPEARS THAT IT MIGHT BE RELEVANT.

13          MR. MOSHENKO: TO CAUSATION OR DAMAGES?

14          THE COURT: YES, BOTH.

15          MR. MOSHENKO: OKAY.

16          MR. RIVIN: WELL, AS SUCH TIME AS IT MAY BE  
17 RELEVANT FOR PURPOSES OF A DAMAGE DETERMINATION.

18          THE COURT: RIGHT.

19          MR. MOSHENKO: WELL, YOUR HONOR --

20          THE COURT: IT HAD NOTHING TO DO WITH CAUSATION.

21          MR. MOSHENKO: IF THE EXPERT COMES IN AND SAYS THIS  
22 IS THE SOURCE OF THE DATA THAT I USED FOR CAUSATION, THEN  
23 IT MAY BECOME RELEVANT FOR CAUSATION.

24          THE COURT: MAYBE IT WILL BE LATER ON.

25          MR. MOSHENKO: THERE'S NO DOUBT THAT THIS IS  
26 FOUNDATIONAL.

1 THE COURT: RIGHT.

2 MR. MOSHENKO: AND I GUESS IF THE COURT DOESN'T SEE  
3 OR DOESN'T AGREE THAT IT'S FOUNDATIONAL FOR CAUSATION,  
4 THAT'S OKAY, BECAUSE WE'LL GET THERE.

5 THE COURT: ALL RIGHT. HOUSEKEEPING. WHAT ABOUT  
6 MONDAY?

7 MR. MOSHENKO: WELL, I WANTED -- ALL RIGHT. YOUR  
8 HONOR, MONDAY WILL BE ROBERT THOMPSON, FOLLOWED BY  
9 CALVIN BIERLY AFTER ROBERT THOMPSON. AND I EXPECT THOSE  
10 WILL BE OUR LAST TWO WITNESSES.

11 ALTHOUGH, I GUESS I SHOULD SAY ONE MORE  
12 THING. AND THAT IS, WITH RELATION TO WHAT YOUR HONOR JUST  
13 HEARD, IT'S APPARENT TO ALL OF US THAT THERE'S A LITTLE  
14 WINDOW FOLLOWING JUNE OF '98 TO -- OF A TIME PERIOD THAT WE  
15 WOULD NEED AN ADDITIONAL FOUNDATIONAL WITNESS. AND I WOULD  
16 OFFER THAT ADDITIONAL FOUNDATIONAL WITNESS AS TO THE  
17 FOUNDATION FOR THE BUSINESS RECORD.

18 MR. RIVIN: COULD I ASK WHO THAT WOULD BE?

19 MR. MOSHENKO: I THINK HANS SCHULZ WAS THE PARTY  
20 WHO -- AFTER LEO NOVELLI TOOK OVER HIS RESPONSIBILITY OF  
21 DIRECTING AND SUPERVISING THE DATA ENTRY PEOPLE, AND THAT'S  
22 WHO IT WOULD BE.

23 MR. RIVIN: I THINK WE -- WHAT I WOULD LIKE TO  
24 AVOID, YOUR HONOR, IS THE SAME PROBLEM WE HAD TODAY WITH  
25 HAVING THE JURY COME IN AND THEN HAVE TO EXCUSE THEM. I AM  
26 CONCERNED AGAIN ABOUT CALVIN BIERLY IN PARTICULAR, ALSO

1 ABOUT ROBERT THOMPSON TO SOME EXTENT, TO THE EXTENT  
2 MR. THOMPSON IS GOING TO TESTIFY TO MATTERS RELATING TO  
3 DAMAGES.

4                   BUT CALVIN BIERLY, AGAIN, IS SOMEONE WHO  
5 ASSUMED CAUSATION. AND I THINK I MENTIONED THIS TO THE  
6 COURT BEFORE, THAT WHAT MR. BIERLY DID IS, USING A SAMPLE,  
7 COMPARED WHO PAID IN 1996 TO WHO PAID IN 1997, AND MADE THE  
8 ILLOGICAL LEAP THAT IF A PERSON DIDN'T PAY IN 1997 BUT DID  
9 PAY IN 1996, THEY LEFT -- THEY NO LONGER WERE MEMBERS FOR  
10 ONE REASON ONLY; BECAUSE OF THE LETTERS, THE COAST LETTERS.  
11 AND THAT JUST DOESN'T MAKE ANY SENSE. AND HE TOOK INTO  
12 CONSIDERATION NONE OF THE CAUSATION FACTORS WE'VE HEARD  
13 THROUGHOUT THE COURSE OF THIS TRIAL.

14               THE COURT: WELL, YOU'RE GIVING US YOUR CLOSING  
15 ARGUMENT THERE?

16               MR. RIVIN: I AM. BUT MY CONCERN IS, YOUR HONOR,  
17 THAT CALVIN BIERLY'S TESTIMONY, WHICH IS ABOUT NUMBERS --  
18 HE WILL TALK ABOUT SAMPLING THAT HE DID. HE WILL TALK  
19 ABOUT THE CONCLUSIONS HE REACHED. I HAVE HIS REPORT, NOT A  
20 FORMAL REPORT, BUT IT'S 9 OR 10 PAGES, WHICH SHOWS HIS  
21 NUMBERS AND HIS CALCULATIONS.

22               THE COURT: HE IS NOT GOING TO BE HERE MONDAY  
23 ANYWAY.

24               MR. MOSHENKO: HE IS GOING TO BE HERE ON TUESDAY.  
25 I EXPECT -- WELL, OKAY. I DON'T KNOW HOW LONG MR. THOMPSON  
26 IS GOING TO TAKE, YOUR HONOR. I EXPECT THAT HE WILL TAKE A

1 DAY. BUT I'LL WORK ON GETTING MR. BIERLY HERE, IF NEEDED  
2 FOR MONDAY AFTERNOON.

3 THE COURT: WE CAN ALL DISCUSS THIS ON MONDAY.

4 MR. MOSHENKO: OKAY.

5 MR. RIVIN: I THINK THAT WORKS OUT.

6 MR. MOSHENKO: MY SILENCE DOES NOT CONSTITUTE  
7 AGREEMENT WHAT MY ABLE COLLEAGUE JUST ARGUED TO YOU.

8 THE COURT: SEE YOU MONDAY MORNING AT 9:00.

9 (WHEREUPON THE COURT WAS IN RECESS UNTIL  
10 MONDAY, JULY 17, 2000, 9:00 A.M.)

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