

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

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

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

REPORTER'S TRANSCRIPT

JUNE 26, 2000

APPEARANCES:

FOR THE PLAINTIFFS: GERALD M. SHAW
ATTORNEY AT LAW

TERRY M. MOSHENKO
ATTORNEY AT LAW

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

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

HEIDI K. STEWART, CSR #6058
OFFICIAL COURT REPORTER

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VOIR
DIRECT CROSS REDIRECT RECROSS DIRE

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1 WESTMINSTER, CALIFORNIA - MONDAY, JUNE 26, 2000

2 MORNING SESSION

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

5 THE COURT: I HAVE READ YOUR MOTION, AND I WILL
6 ENTERTAIN ANY THOUGHTS YOU MIGHT HAVE, MR. MOSHENKO, AS TO
7 A RESPONSE.

8 MR. SHERMAN: YOUR HONOR, COULD I MENTION ONE THING
9 WITH RESPECT TO THE MOTION ON THE ADMISSIBILITY OF THE
10 FINOVA ORDER OF THE U.S. DISTRICT COURT?

11 THE COURT: OKAY, YEAH.

12 MR. SHERMAN: THIS POINT WAS MADE IN OUR PAPERS,
13 BUT I THINK IT DESERVES A SPECIAL EMPHASIS, AND THAT IS THE
14 FOLLOWING.

15 THE JURY HAS BEEN TREATED NOW ON SEVERAL
16 OCCASIONS TO STATEMENTS EITHER BY WITNESSES OR IN THE FORM
17 OF QUESTIONS TO THE EFFECT THAT THE RECEIVER, JEFFREY KEIM,
18 DID A HORRIBLE JOB, THE RECEIVER DIDN'T PAY THIS, THE
19 RECEIVER DIDN'T DO THAT.

20 AND I SORT OF FEEL LIKE THE
21 LLOYD BENSON AND POLITICAL THING YEARS AGO. I KNEW THE
22 RECEIVER. OKAY. I'VE MET JEFFREY KEIM, OR I'VE SPOKEN
23 WITH JEFFREY KEIM. HE DIDN'T DO THOSE THINGS.

24 AND I THINK THE BEST -- SOME OF THE BEST
25 EVIDENCE OF THAT IS THE FACT THAT MR. NOVELLI SOUGHT TO
26 REMOVE THE RECEIVER. AND THE ORDER, THE SEPTEMBER, '97,

1 ORDER OF THE U.S. DISTRICT COURT IS IN DIRECT RESPONSE TO
2 MR. NOVELLI'S REQUEST TO VACATE THE ORDER OF THE
3 APPOINTMENT OF THE RECEIVERSHIP.

4 AND SO I THINK THE RELEVANCE OF THE FACT
5 THAT THE U.S. DISTRICT COURT DID WHAT IT DID IS -- HAS
6 POWERFUL RELEVANCE IN THIS TRIAL.

7 THE COURT: WELL, MY THINKING ON THAT IS THIS: IF
8 THE PLAINTIFF ALLUDES TO THE FAILINGS OF THE RECEIVER, THEN
9 OF COURSE I'M GOING TO ALLOW THAT IN.

10 MR. SHERMAN: BUT THEY HAVE ALREADY, NUMEROUS
11 TIMES. AND I CAN SITE THE COURT TO MR. MERRITT WHO
12 TESTIFIED TO IT REPEATEDLY, AND TO OTHER WITNESSES WHO HAVE
13 TESTIFIED THAT, OH, MY PAYCHECKS WEREN'T PAID BECAUSE OF
14 WHAT THE RECEIVER DID. THE PARKS WENT INTO HORRIBLE
15 CONDITION BECAUSE OF WHAT THE RECEIVER DID. AND WE'VE
16 HEARD THAT REPEATEDLY.

17 AND WHEN PRESSED, A LOT OF THESE WITNESSES,
18 YOU KNOW, THEY BASICALLY RETREAT INTO THE FACT, WELL, I
19 DON'T REALLY KNOW EXACTLY WHAT WAS HAPPENING. WELL, THIS
20 TELLS US EXACTLY WHAT WAS HAPPENING. AND IF MR. NOVELLI
21 WANTS TO TRY TO REFUTE IT OR REBUT IT, THAT'S FINE. LET
22 HIM DO THAT.

23 BUT AFTER -- I'VE READ THE TRANSCRIPTS OF
24 THE U.S. DISTRICT COURT AFTER DAYS OF HEARINGS.
25 MR. MOSHENKO WAS EVEN PRESENT THERE AS COUNSEL. AFTER DAYS
26 OF HEARINGS, THE U.S. DISTRICT COURT MADE THESE

1 CONCLUSIONS.

2 THE COURT: WELL, LOOK, YOU'RE NOT SUGGESTING THAT
3 WE BRING THIS UP AT THIS POINT IN THE TRIAL, ARE YOU?

4 MR. SHERMAN: I'M SUGGESTING THAT TOMORROW,
5 ASSUMING TOMORROW IS WHEN I GET TO BEGIN MY
6 CROSS-EXAMINATION OF MR. NOVELLI, I DO WANT TO BRING IT UP
7 THEN, YES. SO I AM -- MAYBE I'M PUTTING THE CART BEFORE
8 THE HORSE BECAUSE THE OTHER MOTION IS MORE DIRECTED TO
9 DIRECT-EXAMINATION.

10 BUT I WANTED TO JUST SORT OF EMPHASIZE THE
11 POINT BECAUSE, AS I'M SURE YOUR HONOR RECALLS, MR. MERRITT
12 AND SO MANY OTHER WITNESSES --

13 THE COURT: AND YOU SAY YOU'VE GOT THAT TRANSCRIPT?

14 MR. SHERMAN: I HAVE VARIOUS TRANSCRIPTS, YES, I
15 DO. THEY'RE NOT ON OUR EXHIBIT LIST, BUT IF THE COURT
16 WOULD LIKE, I'LL SHOW --

17 THE COURT: I'D LIKE TO SEE THEM TO REFRESH MY
18 MEMORY.

19 LET'S TALK ABOUT THIS INTEGRATED --

20 MR. MOSHENKO: SO THE CONCLUSION, YOUR HONOR, THIS
21 IS NOT BEING HEARD AT THIS TIME.

22 THE COURT: THAT'S RIGHT.

23 MR. SHERMAN: AND WE'LL GET THE TRANSCRIPTS OF THE
24 TESTIMONY IN THIS CASE OF MR. MERRITT AND OTHERS.

25 THE COURT: INTEGRATION OF THE CONTRACT,
26 PROHIBITION OF PAROL EVIDENCE.

1 JUST LET ME SAY AT THE OUTSET, THAT FROM THE
2 WORDING OF THE CONTRACTS, IT APPEARS TO ME IT CERTAINLY IS
3 AN INTEGRATED CONTRACT.

4 MR. SHERMAN: THERE ARE OTHER DOCUMENTS THAT ARE
5 PART OF IT, BUT THAT DOESN'T CHANGE THE FACT THAT THOSE
6 BUNDLE OF DOCUMENTS TOGETHER ARE INTEGRATED, AND THEY'RE IN
7 EVIDENCE.

8 THE COURT: YEAH.

9 MR. SHERMAN: YOU KNOW, WE DIDN'T OBJECT WHEN THEY
10 WERE PUT INTO EVIDENCE. THEY ARE WHAT THEY ARE. BUT TO
11 HAVE SOMEBODY SAY THIS IS WHAT I THOUGHT, OR THIS IS WHAT
12 PAT BUTLER TOLD ME, OR THIS IS WHAT ROGER RYMAN TOLD ME,
13 THAT'S WHEN WE HAVE THESE CLAUSES.

14 MR. MOSHENKO: I GUESS FIRST I'D LIKE TO MAKE A
15 RECORD OF THE FACT THAT THE MOTION WAS HANDED TO ME AT TWO
16 MINUTES TO 9:00, AND I THANK THE COURT FOR GIVING ME TIME
17 TO READ IT. BUT IT'S NOT THE FIRST TIME THAT WE'VE BEEN
18 GREETED WITH MOTIONS AS WE COME TO COURT IN THE MORNING.
19 AND I BELIEVE THAT'S IMPROPER, SINCE THIS IS REALLY IN THE
20 NATURE OF A MOTION IN LIMINE.

21 AND MOTIONS IN LIMINE ARE SUPPOSED TO BE
22 HEARD AND MADE PRIOR TO TRIAL AND NOT IN THE MIDST OF TRIAL
23 WHEN WE'RE ABOUT TO HAVE A WITNESS TAKE THE STAND AND
24 INTERRUPT THE FLOW OF BOTH THE WITNESS AND OF COUNSEL'S
25 PREPARATION TO TAKE THE WITNESS, AND COUNSEL'S ABILITY TO
26 BE ABLE TO DEAL WITH THE MOTION.

1 SECONDLY, YOUR HONOR, THIS INTEGRATION
2 ARGUMENT IS THE FLIP SIDE OF A PAROL EVIDENCE ARGUMENT, AND
3 IT'S FLAWED IN SEVERAL RESPECTS.

4 FIRST OF ALL, IT DOES NOT IDENTIFY THE
5 SPECIFIC CONTRACT THAT IS BEING REFERRED TO. AND AS THE
6 COURT KNOWS, THERE WERE MULTIPLE VERSIONS OF AGREEMENTS
7 THAT WERE USED BETWEEN THE PARTIES DATING BACK TO THE
8 BEGINNING OF THE 1980'S AND COMING ALL THE WAY FORWARD TO
9 1996, I BELIEVE IS THE LAST TIME A CONTRACT WAS EXCHANGED
10 BETWEEN THE PARTIES.

11 SECONDLY, MANY OF THE RESORTS -- OR MAYBE
12 NOT. MAYBE "MANY" IS TOO STRONG A WORD. BUT SOME OF THE
13 RESORTS THAT ARE PLAINTIFFS' RESORTS DON'T HAVE WRITTEN
14 CONTRACTS. AND THAT IS NOT POINTED OUT TO THE COURT BY THE
15 MOTION, AND THEREIN LIES PART OF THE DANGER OF HAVING A
16 MOTION BROUGHT AT 8:58 PRIOR TO A 9:00 START WITH
17 WITNESSES; IT IS THAT THE COURT DOES NOT GET A FULL
18 OPPORTUNITY TO HEAR ALL THE FACTS AND UNDERSTAND ALL OF THE
19 THINGS THAT ARE INVOLVED IN THE MAKING AND THE
20 CONSIDERATION OF THE MOTION.

21 THIRDLY, THE -- EVEN IF I JUST FOCUS ON THE
22 LANGUAGE WHICH IS CITED IN THE MOTION, IT SAYS THIS
23 DOCUMENT AND THE MATERIALS REFERRED TO HEREIN CONTAIN THE
24 ENTIRE AGREEMENT. AND THIS RAISES A QUESTION ABOUT WHAT IS
25 THE REFERENCE TO THE MATERIAL REFERRED TO HEREIN.

26 BECAUSE AS THE COURT MAY RECALL, MANY OF

1 THE -- THIS PARTICULAR CONTRACT USING THE PHRASE "MATERIALS
2 REFERRED TO" SPECIFICALLY INCORPORATED CERTAIN SPECIFIC
3 DOCUMENTS LIKE THE INSIDE NEWS PUBLICATION THAT COAST PUTS
4 OUT, LIKE THE LICENSEE MANUAL, WHICH COAST PROVIDES TO THE
5 OWNERS. AND THEN THE LICENSEE MANUAL SPECIFICALLY
6 INCORPORATES ADDITIONAL DOCUMENTS; SO THAT WE NOW MOVE FROM
7 THIS DOCUMENT, TO USE THE WORDS IN THE MOTION, TO THE
8 MATERIALS REFERRED TO IN THE DOCUMENT, TO THE MATERIALS
9 REFERRED TO IN THE MATERIALS REFERRED TO IN THE DOCUMENT.

10 AND THEN WE'VE HAD THE TESTIMONY BY
11 MR. RYMAN AND POSSIBLY OTHERS THAT THE AGREEMENTS ARE --
12 I'M GOING TO USE THE WORD "FLUID." IT'S A CONCLUSIONARY
13 TERM, AND I DON'T THINK HE USED THAT TERM. BUT THE
14 AGREEMENTS ARE CONTINUALLY CHANGING, ARE FLUID, ARE SUBJECT
15 TO MODIFICATION BY THE MATERIALS REFERRED TO HEREIN.

16 THERE EVEN WAS A CONTRACT WHICH WAS SHOWN TO
17 THE JURY WHICH SAID THAT THE CONTRACT INCORPORATED ALL,
18 QUOTE, MATERIALS DISSEMINATED, CLOSE QUOTE, BY COAST TO
19 COAST SO AS TO -- AS A PART OF THE AGREEMENT.

20 AND SO WHAT YOU HAVE IS YOU HAVE AN
21 UNCERTAIN, SOMEWHAT FLAWED REFERENCE TO, QUOTE, THIS
22 DOCUMENT AND THE MATERIALS REFERRED TO HEREIN CONTAIN THE
23 ENTIRE AGREEMENT --

24 THE COURT: EXCUSE THE INTERRUPTION. IN THE
25 INTEREST OF TIME, I THINK THIS CAN BE HANDLED IN A VERY
26 EXPEDITIOUS WAY JUST SIMPLY BY OBJECTING.

1 MR. SHERMAN: I WILL BE.

2 THE COURT: YES, OBJECT.

3 MR. SHERMAN: I JUST WANT THE COURT TO KNOW
4 SOMETHING. WE'VE ATTEMPTED TO ADHERE TO THE PRINCIPLE THAT
5 THE TRIAL DAY WITH THE JURY BEGINS AT 9:00 A.M.

6 THE COURT: YES.

7 MR. SHERMAN: AND SO WE ARRIVE ROUTINELY -- I MEAN
8 EITHER MR. RIVIN OR MYSELF IS HERE ALMOST EVERY MORNING AT
9 8:30 A.M. I WAS HERE THIS MORNING AT 8:30 A.M. I HAD THE
10 MOTIONS. I GAVE THE MOTIONS TO MS. DOBSON AT THAT POINT IN
11 TIME. THEY SAT THERE WAITING FOR MR. MOSHENKO, WHO DID
12 ARRIVE AT TWO MINUTES BEFORE 9:00 A.M.

13 THE FACT IS, THOUGH, THAT I DON'T THINK
14 ANYONE WOULD HAVE BEEN SERVED -- THE CASE WOULD NOT HAVE
15 BEEN SERVED WITH A BUNCH OF FILING OF MORE MOTIONS BACK IN
16 EARLY MAY. IT'S KIND OF HARD --

17 THE COURT: OKAY.

18 MR. MOSHENKO: IT'S ONLY THE COURT RULES THAT
19 REQUIRES IT BE DONE THAT WAY. SO I THINK WHETHER SOMEONE
20 IS SERVED FOR NOT IS ALREADY DECIDED BY THE COURT RULES.

21 MR. SHERMAN: THERE ARE ADDITIONAL RULES ON THAT,
22 BUT HE WOULD MAKE OBJECTIONS ON TIME.

23 I WOULD SUGGEST, YOUR HONOR, THAT IT IS
24 GOING TO BE ESPECIALLY IMPORTANT, THEN, THAT MR. NOVELLI IN
25 HIS DIRECT-EXAMINATION NOT PERMITTED TO STRAY BEYOND THE
26 SPECIFIC QUESTION ASKED. BECAUSE I CAN SEE VERY

1 FACILED WAYS OF JUST SORT OF SLIPPING IN ALL THESE ORAL
2 COMMUNICATIONS, WHICH ARE BARRED BY THE PAROL EVIDENCE
3 RULES.

4 THE COURT: ALL RIGHT.

5 MR. MOSHENKO: YOUR HONOR, I HAVE SOMETHING FURTHER
6 TO SAY. I'M IN FOR SAVING TIME, TOO. AND I UNDERSTAND AND
7 FRANKLY WILL DEFER TO THE COURT'S DECISION THESE MATTERS
8 CAN BE TAKEN UP AT THE TIME OF THE OBJECTION. BUT THERE
9 ARE SIGNIFICANT ISSUES, AND I'M CONCERNED THAT, FRANKLY, IT
10 MIGHT EVEN BE PREFERABLE IF WE COULD HAVE THIS MOTION HEARD
11 AFTER -- WHEN WE HAVE -- WHEN WE DON'T HAVE A JURY WAITING.
12 BECAUSE FOR THE COURT TO MAKE A QUICK DECISION ON THIS
13 ISSUE FROM THE BENCH AS A QUESTION IS ASKED MIGHT BE EVEN
14 MORE PROBLEMATIC BECAUSE, YOU KNOW, THE COURT HAS ALREADY
15 GIVEN US AN EXPRESSION OF A VIEW THAT THIS IS AN INTEGRATED
16 DOCUMENT, AND THERE ARE A LOT OF -- THERE ARE EXCEPTIONS TO
17 THE PAROL EVIDENCE RULE THAT WE HAVE NEVER DISCUSSED, YOUR
18 HONOR.

19 THERE ARE -- THERE IS THE FACT THAT WHERE
20 YOU HAVE AN INTEGRATION CLAUSE IN ONE CONTRACT, ONE PLACE
21 IN THE CONTRACT, BUT ANOTHER PLACE IN THE CONTRACT WHERE IT
22 OPENS THE CONTRACT UP FOR THE RECEIVING OF OTHER MATERIALS
23 THAT ARE NOT INTEGRATED INTO THE CONTRACT, THAT THAT RAISES
24 THE UNCERTAIN -- THE FACT THAT THE CONTRACT IS AMBIGUOUS
25 AND UNCERTAIN AND SHOULD BE INTERPRETED AGAINST THE PARTY
26 THAT WROTE THE CONTRACT, CAMP COAST TO COAST.

1 AND I GUESS MY POINT, TO JUST BRING IT TO A
2 HEAD, IS THAT A QUICK DECISION ON AN OBJECTION RELATING TO
3 THE PAROL EVIDENCE RULE WITHOUT THE OPPORTUNITY TO HAVE THE
4 COURT REFRESHED -- JUST LIKE YOU SAID. SHOW ME THE
5 TRANSCRIPT OF WHAT THE PRIOR TESTIMONY WAS. HAVE THE
6 COURT'S RECALL REFRESHED ON THE PRIOR TESTIMONY OF
7 WITNESSES THAT THE -- JUST TO USE THE EXAMPLE, THAT THE
8 CONTRACTS ARE FLUID AND ARE CONTINUALLY CHANGING. AND
9 AFTER THEY CHANGE WE PRESENT THEM. AND WE REINFORCE THE
10 RULES. IT SAYS RIGHT IN THERE COAST RESERVES THE RIGHT TO
11 MODIFY THE MATERIALS AND CONDITIONS OF THE AGREEMENT AT ANY
12 TIME. THERE IS AN INTEGRATION CLAUSE, UNDISPUTED.

13 MR. SHERMAN: CAN I MAKE A PRACTICAL SUGGESTION?

14 MR. MOSHENKO: NO. EXCUSE ME.

15 BUT THERE ARE -- THERE'S REFERENCE AFTER
16 REFERENCE IN THE CONTRACT ITSELF THAT DESTROYS OR WAIVES OR
17 CREATES AN ESTOPPEL ARGUMENT WHY THE INTEGRATION CLAUSE
18 SHOULD NOT JUST BE IN FORCE BECAUSE IT HAPPENS TO BE STATED
19 IN THE DOCUMENT.

20 THE COURT: OKAY.

21 MR. SHERMAN: CAN I MAKE A PRACTICAL SUGGESTION,
22 YOUR HONOR?

23 THE COURT: YEAH.

24 MR. SHERMAN: I HAVE TO IMAGINE THAT MR. NOVELLI IS
25 GOING TO BE ON THE STAND IN DIRECT EXAMINATION ALL DAY
26 TODAY, AND I ASSUME -- I'M MAKING INQUIRY OF MR. MOSHENKO.

1 I ASSUME YOU'RE GOING TO HAVE HIM ON FOR
2 MOST OF TOMORROW; IS THAT A FAIR --

3 MR. MOSHENKO: I THINK THAT'S SO. MUCH DEPENDS ON
4 HOW THE COURT ALLOWS THE EVIDENCE TO GO.

5 MR. SHERMAN: HERE IS MY SUGGESTION: I DON'T HAVE
6 A PROBLEM WITH MR. MOSHENKO WANTING TO ASK YOUR HONOR, IF
7 YOUR HONOR IS SO WILLING, TO RULE ON THIS IN THE ABSENCE OF
8 SPECIFIC QUESTIONS; ALTHOUGH, I'M COMFORTABLE WITH THE
9 SPECIFIC QUESTIONS AS YOUR HONOR SUGGESTED.

10 IF MR. MOSHENKO CAN -- IF MR. NOVELLI CAN BE
11 INSTRUCTED RIGHT NOW THIS MORNING NOT TO REFERENCE ANY ORAL
12 COMMUNICATIONS, WE CAN TAKE THIS UP WITH YOU THIS
13 AFTERNOON. WE CAN TAKE IT UP AT THE END OF THE DAY. WE
14 CAN TAKE IT UP TOMORROW MORNING. BUT I HEAR, NO,
15 MR. NOVELLI WANTS TO JUST TALK.

16 MR. MOSHENKO: IS GOING TO REFERENCE ORAL
17 COMMUNICATIONS.

18 THE COURT: THEN I'M GOING TO HAVE TO RULE ON THEM
19 AT THAT TIME.

20 MR. SHERMAN: THAT'S FINE.

21 MR. RIVIN: ONE OTHER POINT, VERY QUICKLY.
22 MR. NOVELLI IS GOING TO TESTIFY AS A PERCIPIENT WITNESS,
23 AND HE HAS BEEN DESIGNATED TO TESTIFY AS AN EXPERT.

24 THE COURT: NOVELLI?

25 MR. RIVIN: YES, NOVELLI. BEFORE WE HEAR HOW HE
26 SUFFERED AND THE PLAINTIFF SUFFERED \$190 MILLION IN

1 DAMAGES, I THINK THE FOUNDATION SHOULD BE LAID FOR THAT.
2 AND I'D LIKE TO REQUEST THE COURT, UNDER 802, UNDER
3 EVIDENCE CODE SECTION 802, TO MAKE SURE THAT WE DON'T HEAR
4 ANY CONCLUSIONS REGARDING DAMAGES UNTIL THE EVIDENCE -- THE
5 FOUNDATION HAS BEEN LAID.

6 THE COURT: VERY WELL.

7 MR. MOSHENKO: FOR YOUR INFORMATION, I INTEND -- I
8 EXPECT THAT WE WON'T GET TO THAT KIND OF TESTIMONY UNTIL
9 TOMORROW.

10 THE COURT: OKAY.

11 MR. MOSHENKO: AND IF COUNSEL HAS SOME MORE
12 MOTIONS, THEN -- FOR TOMORROW'S TESTIMONY, I REQUEST THAT
13 WE GET THEM BEFORE TWO MINUTES TO 9:00.

14 MR. SHERMAN: WELL, YOU DID GET THEM AT 8:30, AND
15 WE'RE DOING THE BEST WE CAN.

16 MR. MOSHENKO: ACTUALLY, I'VE BEEN WORKING SINCE
17 7:00 THIS MORNING ON THIS, AND ONE OF THESE MOTIONS IS
18 DATED YESTERDAY. THEY COULD HAVE BEEN --

19 MR. SHERMAN: I FINISHED IT AT MIDNIGHT LAST NIGHT.

20 THE COURT: OKAY. THANK YOU.

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

23 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

24 THE JURY: GOOD MORNING, YOUR HONOR.

25 THE COURT: I APOLOGIZE FOR GETTING STARTED LATE,
26 BUT WE HAD THINGS THAT NEEDED TO BE DISCUSSED IN CHAMBERS.

1 SO WE'VE BEEN WORKING.

2 MR. MOSHENKO: SHALL I PROCEED, YOUR HONOR?

3 (DISCUSSION OFF THE RECORD.)

4 THE COURT: MR. MOSHENKO, CALL YOUR NEXT WITNESS.

5 MR. MOSHENKO: THANK YOU, YOUR HONOR. IT GIVES ME
6 GREAT PLEASURE TO CALL RAYMOND NOVELLI TO THE STAND.

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

11 THE CLERK: TAKE A SEAT IN THE WITNESS STAND,
12 PLEASE.

13 STATE YOUR FULL NAME FOR THE RECORD AND
14 SPELL YOUR LAST NAME FOR THE REPORTER, PLEASE.

15 THE WITNESS: MY NAME IS RAYMOND G. NOVELLI, AND
16 NOVELLI IS N-O-V-E-L-L-I.

17 DIRECT EXAMINATION

18 BY MR. MOSHENKO: Q MR. NOVELLI, LET'S GET IT
19 STRAIGHT OUT FRONT.

20 A WHAT IS THAT?

21 Q YOU'RE NOT HARD OF HEARING, ARE YOU?

22 A NO.

23 Q ALL RIGHT. WHAT IS YOUR AGE?

24 A SIXTY-TWO.

25 Q AND WHAT IS YOUR OCCUPATION?

26 A I'M A CAMPGROUND DEVELOPER.

1 Q YOU HAVEN'T ALWAYS BEEN A CAMPGROUND

2 DEVELOPER, HAVE YOU?

3 A NOT ALWAYS.

4 Q ALL RIGHT. LET'S FIND OUT SOME MORE ABOUT

5 YOU.

6 ARE YOU MARRIED?

7 A YES, I AM.

8 Q YOUR WIFE IS MARLIES NOVELLI?

9 A YES.

10 Q CHILDREN?

11 A FIVE.

12 Q ALL RIGHT. AND WHAT IS YOUR EDUCATION?

13 A I COMPLETED THE 10TH GRADE OF THE HIGH

14 SCHOOL.

15 Q NOTHING BEYOND THAT?

16 A WELL, I WENT TO APPRENTICE SCHOOL, CARPENTER

17 APPRENTICE SCHOOL.

18 Q ALL RIGHT. I WANT TO GO TO YOUR WORK

19 EXPERIENCE; BUT BEFORE I DO THAT, WHAT IS IT THAT YOU SPEND

20 WHEN YOU'RE NOT WORKING, SPEND YOUR TIME DOING?

21 A FISHING AND FOUR-WHEEL DRIVE. I LIKE

22 FOUR-WHEEL DRIVING, AND I LIKE ATC'S WHICH IS IN THE DESERT

23 ON THE BEACHES. AND IT'S KIND OF OFF-ROAD BIKING AND

24 DEEP-SEA FISHING.

25 Q ARE YOU A CAMPER?

26 A YES. AN AVID CAMPER, AND I HAVE BEEN FOR 30

1 YEARS, 40 YEARS.

2 Q AND DO YOU DO IT TENT STYLE OR THE R.V.

3 STYLE?

4 A BOTH. I HAVE R.V.'S AND I -- TENT STYLE,

5 ALSO.

6 Q OKAY. AND I UNDERSTAND YOU LIKE COUNTRY

7 MUSIC?

8 A YES. WE HAVE A COUNTRY MUSIC STADIUM THAT

9 WE SIT 11,000 IN, AND WE'RE IN THE SUMMER -- WHAT WE CALL

10 THE SUMMER HOME OF COUNTRY MUSIC.

11 Q YOU SPEND MUCH TIME AT YOUR COUNTRY MUSIC

12 STADIUM WHEN IT'S PRESENTING COUNTRY WESTERN STARS?

13 A YES, I SPEND QUITE A BIT OF TIME THERE AT

14 THE PONDEROSA DURING THE SEASON, TRYING TO GET THERE A

15 COUPLE TIMES A MONTH FOR A COUPLE OF THE BIG SHOWS DURING

16 THE MONTH.

17 Q AND HOW ABOUT VISITING YOUR RESORTS, IS THAT

18 SOMETHING YOU DO?

19 A YES, I VISIT THE RESORTS ON A PRETTY REGULAR

20 BASIS. NOT LATELY. I'VE BEEN TIED UP IN LITIGATION. BUT

21 BEFORE THE LITIGATION AND THINGS, I SPENT A LOT OF TIME AT

22 THE RESORTS WITH THE MEMBERS WITH COOKING AND MEMBER

23 MEETINGS AND THINGS LIKE THAT ACROSS THE COUNTRY.

24 Q YOU LIKE TO COOK?

25 A YEAH, I LIKE TO COOK HAMBURGERS, AND I HAVE

26 A TRAILER THAT I PUT TOGETHER THAT REVCON MADE FOR ME THAT

1 HAS GRILLS ON IT AND REFRIGERATORS AND THINGS WHERE I CAN
2 COOK RIGHT AT THE RESORT WITH MY OWN TRAILER FOR THE
3 MEMBERS.

4 Q LET'S GO ON TO YOUR WORK EXPERIENCE.

5 SINCE YOU WENT THROUGH THE 10TH GRADE, I
6 GUESS YOU GOT OUT EARLY TO GET TO WORK.

7 A YEAH, I LEFT.

8 Q WHEN DID YOU LEAVE SCHOOL AND GO TO WORK?

9 A I LEFT SCHOOL WHEN I WAS -- I BELIEVE I WAS
10 ABOUT 15, 16. I'M NOT SURE. ABOUT 15 YEARS OLD.

11 Q AND WHAT WAS THE FIRST JOB THAT YOU DID?

12 A THE FIRST JOB I HAD WAS MY BROTHER AND I
13 WENT TO RENO, NEVADA FROM NAPA, CALIFORNIA, AND WE WERE
14 LOOKING FOR A JOB AND COULDN'T FIND ONE BECAUSE OF OUR
15 AGE.

16 AND THEN THERE WAS TWO -- WE USED TO SIT
17 DOWN AT THE EMPLOYMENT AGENCY AND WAIT FOR SOMEBODY TO COME
18 IN AND LOOKING FOR SOME KIND OF EMPLOY. AND TWO PEOPLE
19 CAME IN. THESE TWO BIG GUYS CAME IN. MY BROTHER AND I
20 WERE SITTING THERE, AND THEY WERE LOOKING FOR A COUPLE
21 MINERS FOR HARD-ROCK GOLD-MINING. AND THE RECEPTIONIST
22 SAID, WELL, WE DON'T HAVE ANYBODY ON THE LIST, THIS
23 UNEMPLOYMENT BUREAU, STATE UNEMPLOYMENT, OF ANY MINERS. WE
24 DON'T SHOW ANYBODY LOOKING FOR WORK IN THE MINING
25 INDUSTRY.

26 SO THESE TWO GUYS WALKED OUTSIDE, AND MY

1 BROTHER AND I FOLLOWED THEM OUT. AND WE SAID, YOU KNOW,
2 WE'RE MINERS, AND WE'D LIKE TO, YOU KNOW, TAKE THAT JOB.
3 AND THEY TOLD US IT PAID \$240 A WEEK, WHICH IN THOSE DAYS
4 WAS A LOT OF MONEY, A LOT OF MONEY FOR US. WE'D NEVER SEEN
5 THAT KIND OF MONEY. AND SO WE TOOK THE JOB, AND WE WENT UP
6 THERE TO A PLACE ABOVE NEVADA CITY CALLED THE ANCHO ERIE
7 GOLD MINE AND WENT TO WORK THERE.

8 Q YOU WERE A GOLD MINER?

9 A CORRECT.

10 Q DID YOU MAKE A FORTUNE?

11 A WELL, THE PROBLEM IS WE MADE GOOD MONEY WHEN
12 WE WERE THERE, AND THEN WE'D GO DOWN TO RENO AND SPEND IT
13 ALL EVERY OTHER WEEKEND. SO WE ENDED UP -- WHEN WE LEFT
14 THERE WE HAD NO MONEY.

15 Q OKAY. NOW TRY TO MOVE IT THROUGH -- I THINK
16 AFTER THAT YOU WENT INTO TUNGSTEN MINING?

17 A YES. WENT FROM THAT MINE WHEN THEY CLOSED
18 IT DOWN -- THAT WAS A TWO-MILE TUNNEL, HARD-ROCK TUNNEL,
19 AND THEN THE ANCHO ERIE GOLD MINE WAS OVER IN NEVADA.
20 THAT'S THE ANCHO ERIE GOLD MINE. THE CLIMAX TUNGSTEN MINE
21 WAS BY LAS VEGAS, NEVADA AT THE NUCLEAR SITE OF CAMP
22 MERCURY. IT'S ABOUT 50 MILES INSIDE OF THE GATE.

23 SO WE GOT A JOB THERE MINING TUNGSTEN, AND
24 THAT TUNNEL, THERE WAS MAYBE -- AT THE TIME WE GOT THERE
25 WAS MAYBE A QUARTER OF A MILE, AND WE EXTENDED IT OUT
26 APPROXIMATELY TO A MILE, THE TUNNEL AT TUNGSTEN. AND WE

1 MINED 20 TONS OF TUNGSTEN A DAY. AND USUALLY WE HAD THAT
2 20 TONS WITHIN A HALF DAY. SO WE GOT PAID FOR A FULL DAY
3 AND HAD OUR WORK DONE BY NOON OR 1:00, SOMETHING LIKE THAT.

4 Q ALL RIGHT. WHAT DID YOU DO AFTER YOU GOT
5 OUT OF THE MINING BUSINESS?

6 A THEN MY FATHER SUGGESTED THAT -- MY FAMILY
7 HAD BEEN CARPENTERS SINCE I DON'T KNOW WHEN. BUT HE
8 SUGGESTED THAT WE GET OUT OF THIS MINING BUSINESS; THAT
9 IT'S TOO SPORADIC, AND IT'S TOO DANGEROUS, AND THAT MAYBE
10 WE SHOULD LOOK INTO SOMETHING, YOU KNOW, IN CARPENTER WORK.

11 SO I CONTACTED MY UNCLE IN RENO -- I ALWAYS
12 LIKED RENO -- AND HE GAVE ME A JOB AS AN APPRENTICE
13 CARPENTER. I WENT DOWN TO THE UNION, AND THE UNION
14 ENROLLED ME AS AN APPRENTICE INTO THE APPRENTICE PROGRAM.
15 AND THE APPRENTICE PROGRAM OF CARPENTRY, I USED TO GO TO
16 SCHOOL ON TUESDAY NIGHT AND THEN SATURDAYS TO LEARN HOW TO
17 BE A CARPENTER, AND OF COURSE ALSO LEARNED THROUGH MY
18 UNCLE, WHO WAS A GENERAL CONTRACTOR IN RENO, NEVADA TODAY.

19 Q HOW LONG WERE YOU A CARPENTER?

20 A WELL, I'M STILL A CARPENTER. BUT I STAYED
21 AS AN APPRENTICE CARPENTER PROBABLY FOR ABOUT THREE YEARS.

22 Q ALL RIGHT. WHAT DID YOU DO NEXT,
23 MR. NOVELLI?

24 A THEN I WAS IN LAS VEGAS, NEVADA. WELL, I
25 WAS SELLING INSURANCE FOR A WHILE, AND THE REASON I WAS
26 SELLING INSURANCE IS, DURING THE WINTER, THERE WASN'T TOO

1 MUCH WORK. AND BY THAT TIME I ALREADY HAD TWO CHILDREN.
2 AND THE WORK -- THE AMOUNT OF WORK AVAILABLE FOR CARPENTERS
3 DURING THE WINTER WAS KIND OF LIMITED.
4 SO THERE WAS THIS AD IN THE PAPER FOR AN
5 INSURANCE SALESMAN AND SAID, WE'LL PAY YOU \$100, YOU KNOW,
6 A WEEK FOR THIS JOB. SO I TOOK THE JOB AS AN INSURANCE
7 SALESMAN AND STARTED SELLING THIS INSURANCE FOR A COMPANY
8 CALLED "COMBINED INSURANCE COMPANY OF AMERICA." AND THEY
9 SENT ME TO SCHOOL TO LEARN INSURANCE FOR A COUPLE WEEKS AND
10 IN DALLAS. AND THAT'S WHEN I TOOK MY FIRST AIRPLANE RIDE
11 DOWN TO DALLAS FROM RENO, NEVADA. AND I CAME BACK AND
12 STARTED SELLING INSURANCE. AND INSURANCE CLASS IS -- WHAT
13 IT IS MAINLY -- WHAT THEY'RE DOING, THEY MOTIVATE YOU,
14 MOTIVATE YOU TO SELL, GIVING YOU -- YOU CAN MAKE ALL THIS
15 MONEY, YOU KNOW, BY SELLING THIS INSURANCE, AND YOU CAN
16 SELL, YOU KNOW, 20 POLICIES A DAY. I WAS A YOUNG MAN.
17 WHEN SOMEBODY TOLD ME I COULD SELL 20 POLICIES A DAY -- AND
18 WE WERE BEING TAUGHT BY PEOPLE LIKE NAPOLEON HILL AND
19 NORMAN VINCENT PEAL AND GREAT MOTIVATION PEOPLE WERE AT THE
20 CLASSES. AND WHEN I LEFT THERE, I WAS ON CLOUD NINE. AND
21 I BELIEVED THAT I COULD SELL 20 POLICIES DAY.
22 AND YET GETTING GOING, I WAS ONLY SELLING 15
23 A DAY, 16 A DAY, 10 A DAY. AND ALL OF A SUDDEN, I REALIZED
24 THAT IN THE ENTIRE NATION I WAS THE TOP SALESMAN FOR
25 COMBINED INSURANCE COMPANY; AND I WAS FEELING BAD BECAUSE I
26 WASN'T HITTING THE 20. BUT IN THE MEANTIME, THAT I WAS

1 ABLE TO ACHIEVE THE DISTINGUISHED SALES AWARD FOR THE
2 INSURANCE INDUSTRY. I SOLD AS MANY AS 71 POLICIES IN ONE
3 DAY. AND IT WAS ALL BECAUSE THAT I WAS YOUNG, AND I
4 ACCEPTED THE MOTIVATION OF THINKING AND GROW RICH IN THESE
5 DIFFERENT MOTIVATIONAL BOOKS THAT I READ AND THE TEACHING
6 THAT I GOT AT THE CLASS.

7 AND THEN THE REASON I LEFT THERE, YOU MIGHT,
8 WONDER, IS THAT I WAS DOING GOOD, AND THE WHOLE MOTIVATION
9 THING WAS THAT IF YOU'RE -- IF THE SQUEAKING WHEEL GETS THE
10 GREASE, SO-TO-SPEAK, IF YOU DO A GOOD JOB AND YOU'RE THE
11 TOP SALESMAN, AND WHEN A GOOD JOB COMES UP, THEN IF YOU DO
12 THE TOP JOB, YOU GET THE TOP JOB.

13 WELL, THE SALES MANAGER'S JOB FOR NEVADA
14 CAME UP, AND I FIGURED, WELL, I'LL BE THE NEXT SALES
15 MANAGER BECAUSE I'M THE BEST THERE IS, AT LEAST IN SALES OF
16 NEVADA AND MOST OF THE COUNTRY. BUT I WAS PASSED OVER
17 BECAUSE OF MY AGE AT THE TIME. I THINK I WAS ABOUT 19,
18 SOMETHING LIKE THAT. 18, 19. AND I WAS PASSED OVER. AND
19 THE COMPANY TOLD ME, WELL, RAY, WE KNOW YOU REALLY GOT A
20 GREAT FUTURE WITH THE INSURANCE COMPANY. AND WE'RE REALLY
21 EXCITED ABOUT YOUR FUTURE; HOWEVER, YOU'RE A DIAMOND IN THE
22 ROUGH, AND YOU CAN'T BE THE SALES MANAGER. I WAS JUST TOO
23 YOUNG THEY FIGURED. WELL, THAT WASN'T WHAT I WAS PROMISED.
24 SO I LEFT AND WENT BACK TO CONSTRUCTION WORK.

25 Q ALL RIGHT. AND SO WHERE DID THAT TAKE YOU?

26 A IN THE CONSTRUCTION BUSINESS. I WAS IN

1 LAS VEGAS, NEVADA. A COMPANY CALLED DAN NOMELLIE
2 CONSTRUCTION COMPANY WAS BUILDING IN LAS VEGAS, A
3 GOVERNMENT PROJECT. AND I WAS PRETTY GOOD IN BUILDING
4 CABINETS AND HANGING DOORS AND TRIM TYPE CONSTRUCTION. AND
5 NOVELLI CONSTRUCTION DIDN'T HAVE ANYBODY TO DO THAT PORTION
6 OF THE WORK.

7 SO I SAID, WELL, HOW WOULD YOU LIKE TO HIRE
8 ME TO DO THAT AND GIVE ME A CONTRACT NOT BY THE HOUR, BUT
9 MY BROTHER AND I, MY BROTHERS -- I HAD THREE BROTHERS IN
10 THE CONSTRUCTION BUSINESS WITH ME, OR IN THE CARPENTER
11 BUSINESS. I SAID, WHY DON'T YOU LET US DO THAT WORK, AND
12 JUST PAY US SO MUCH A FOOT TO DO ALL YOUR TRIM WORK.

13 SO DAN NOMELLIE HE AGREED TO THAT, AND THAT
14 WAS HOW I STARTED THE CONSTRUCTION COMPANY, AND MY FIRST
15 JOB WAS THERE. AND THAT WAS PROBABLY IN SOMETIME AROUND
16 1960, SOMEWHERE IN THERE. AND FROM THERE I STARTED A FIRM
17 CALLED "NOVELLI CONSTRUCTION COMPANY OF NEVADA."

18 I GOT MY LICENSE. AND THEN I WENT ON TO BE
19 A CONTRACTOR IN LAS VEGAS. I BUILT DURING THE TIME -- MY
20 TIME IN LAS VEGAS I BUILT PROBABLY 5-, 6,000 APARTMENT
21 UNITS OF WHICH I OWNED, BECAME A DEVELOPER MYSELF AND WAS
22 ABLE TO FINANCE MY OWN UNITS. SO PROBABLY 500 UNITS OF THE
23 APARTMENTS THAT I WAS ABLE TO DEVELOP ON MY OWN IN MY OWN
24 COMPANY.

25 Q OKAY. DID YOU TAKE US THROUGH TRITON
26 DEVELOPMENT COMPANY?

1 A NO. TRITON WAS A COMPANY IN HOUSTON. AND
2 NOVELLI -- IN LAS VEGAS I HAD NOVELLI CONSTRUCTION
3 COMPANY. AND THERE I BUILT APARTMENTS AND ALSO BUILT
4 THE -- WHAT THEY CALL THE GARDEN WING OF THE RIVIERA
5 HOTEL. AND THEN ALL OF A SUDDEN THE ECONOMY IN NEVADA WENT
6 REAL BAD. THIS CAMP MERCURY THAT I WAS TALKING ABOUT, THE
7 NUCLEAR BOMBING PLACE, THEY SHUT THAT DOWN. THEY SHUT
8 DOWN -- PRETTY MUCH SHUT DOWN THE AIR FORCE BASES, AND WE
9 ENDED UP WITH 15,000 VACANCIES IN LAS VEGAS, NEVADA. NOW
10 THERE'S NO VACANCIES. BUT AT THE TIME WE COULDN'T GIVE
11 AWAY AN APARTMENT.

12 SO WE WENT INTO SOME BAD TIMES, AND ONE OF
13 THE BANKS THAT I WAS WORKING WITH SUGGESTED THAT THEY
14 NEEDED SOMEBODY TO HELP THEM WITH SOME PROPERTIES DOWN IN
15 HOUSTON, TEXAS AND WANTED TO KNOW IF I WOULD BE INTERESTED;
16 THAT THEY FORECLOSED. THEY HAD SOME PROBLEMS I GUESS IN
17 HOUSTON ALSO; THAT THEY HAD A LOT OF LAND THAT WAS
18 SCHEDULED FOR DEVELOPMENT AND NEVER GOT DEVELOPED, AND THEY
19 ENDED UP OWNING IT. THAT BANK WAS FRANKLIN NATIONAL BANK
20 OUT OF NEW YORK CITY; AND ASKED IF I WOULD GO DOWN THERE
21 AND DEVELOP THESE PROPERTIES AND THAT THEY WOULD, YOU KNOW,
22 LEND ME THE MONEY AND TO DO THESE PROPERTIES IF I COULD PUT
23 TOGETHER THE PROJECTS AND GET THE CONSTRUCTION LOANS
24 FINANCED LOCALLY AND NOT OUT OF NEW YORK.

25 SO I DID GO TO HOUSTON, AND I DEVELOPED
26 PROBABLY -- IN HOUSTON WE FORMED A COMPANY CALLED "TRITON

1 DEVELOPMENT CORPORATION." WE DEVELOPED SOMEWHERE AROUND, I
2 BELIEVE, 5- TO 6-, 7,000 UNITS OF APARTMENTS. AND I ALSO
3 GOT INTO THE COMMERCIAL BUILDING WHERE I WAS BUILDING THE
4 CENTER CALLED THE TRITON CENTER, WHICH WAS A HOSPITAL AND
5 DIFFERENT OFFICE BUILDINGS, AND JUST A SERIES OF DIFFERENT
6 COMMERCIAL TYPE BUILDINGS. AND ALSO HAD ANOTHER COMPLEX
7 CALLED "FASHION SQUARE," WHICH WAS A TOP-END SHOPPING
8 CENTER.

9 SO A LOT OF DIFFERENT -- DIFFERENT TYPE OF
10 CONSTRUCTION I WAS ABLE TO DO IN HOUSTON. AND TRITON WAS
11 THE VEHICLE THAT I USED, THE CORPORATION, FOR THE
12 DEVELOPMENT OF THAT.

13 Q WHEN YOU FINALLY DECIDED TO LEAVE THE
14 BUILDING CONSTRUCTION DEVELOPMENT INDUSTRY, WHERE DID YOU
15 GO?

16 A WHEN I WAS IN THE BUILDING, ONE OF THE
17 PROBLEMS THAT I HAD IN THE PAST WAS JUST LIKE IN LAS VEGAS
18 NEVADA, AND ALSO RENO, NEVADA TODAY, IN BUILDING APARTMENTS
19 AND DOING CONSTRUCTION AND THINGS LIKE; THAT WHEN THE
20 ECONOMY WAS GOOD, IT WAS VERY EASY TO FINANCE YOUR PROJECT
21 OR FAIRLY EASY. AND THEN WHEN THE ECONOMY WOULD DRY UP
22 LIKE IT DID IN NEVADA IN A HARD WAY, ALL OF A SUDDEN OUR
23 CREDIT LINES WERE CUT OFF. OUR CREDIT NO LONGER EXISTED,
24 EVEN THOUGH WE HAD EXCELLENT CREDIT. WHEN THE ECONOMY WENT
25 DOWN, THEN THE BANKS, YOU KNOW, SHUT THEIR DOORS SO THAT
26 THE TIME THAT WE REALLY NEEDED HELP FROM OUR BANKS, WE

1 COULDN'T GET THE HELP.

2 AND SO WHEN I GOT TO HOUSTON, I THOUGHT, I'M
3 NOT GOING TO LET THAT HAPPEN TO ME AGAIN, BEING PUT IN THE
4 SQUEEZE BY THESE BANKS. SO I -- IN HOUSTON WHEN WE WERE
5 DOING WELL, WE PAID AND BOUGHT -- WE BOUGHT -- I BELIEVE IT
6 WAS FIVE BANKS AND TWO SAVINGS AND LOANS THAT WE BOUGHT IN
7 TEXAS. SO THAT I GOT INTO THE BANKING BUSINESS AT THAT
8 POINT.

9 Q OKAY. THAT WAS WESTOFF BANK, CUERRO BANK,
10 RUNGE BANK, NORDHIEM NATIONAL BANK?

11 A YES. AND ANOTHER ONE. I CAN'T REMEMBER THE
12 NAME OF THE OTHER ONE.

13 Q AND TWO SAVINGS AND LOANS?

14 A YES. INDUSTRY SAVINGS AND LOAN AND SLANTON
15 SAVINGS AND LOAN, WHICH IS NOW LUBBOCK SAVINGS AND LOAN.

16 Q NOW, YOU WERE IN THE BANKING BUSINESS, THEN,
17 FOR MANY YEARS?

18 A I WAS -- STAYED IN THE BANKING BUSINESS FOR
19 ABOUT TWO AND A HALF YEARS, YES.

20 Q AND THEN EVENTUALLY SOLD THE BANKS; IS THAT
21 CORRECT?

22 A YES, I DID.

23 Q OKAY. WHAT DID YOU NEXT DO IN YOUR WORK
24 EXPERIENCE, BUSINESS EXPERIENCE?

25 A WELL, AS YOU MIGHT RECALL, HOUSTON -- THERE
26 AGAIN, I SEEMED TO BE A LUCKY GUY WHEN IT COMES TO

1 ECONOMIES COLLAPSING. AND THE HOUSTON SITUATION GOT BAD.
2 THERE WAS A -- YOU KNOW, JUST THOUSANDS OF HOMES AND
3 APARTMENTS AVAILABLE IN HOUSTON. THEY WEREN'T RENTED. THE
4 HOMES COULDN'T SELL. WHOLE SUBDIVISIONS -- IN FACT, A LOT
5 OF CALIFORNIA PEOPLE WERE COMING OUT TO HOUSTON TO BUY
6 APARTMENT COMPLEXES BECAUSE THEY COULD PICK THEM UP FOR
7 PRACTICALLY NOTHING, IF YOU HAD SOME MONEY.

8 BUT IT WAS A VERY BAD SITUATION. WE HAD
9 KIND OF A SITUATION LIKE THAT HERE IN ORANGE COUNTY MAYBE
10 SIX YEARS AGO, BUT NOTHING LIKE WE HAD IN HOUSTON.

11 SO I WENT -- I DEVELOPED OTHER THINGS IN --
12 THE LAST DEVELOPMENT I GOT INVOLVED IN WAS ONE IN MONTEREY,
13 CALIFORNIA WHERE I DEVELOPED A 24-ACRE PARCEL OF GROUND ON
14 THE BEACH IN MONTEREY. AND WHAT HAPPENED, THERE WAS --
15 THERE WAS A DUMP, AN OLD DUMP SITE THERE WHERE THE TRASH
16 AND EVERYTHING WAS FALLING INTO THE OCEAN. AND I LOOKED AT
17 THAT AND I SAID, YOU KNOW, THIS IS ONE PLACE THAT I THINK
18 THAT WE CAN GET THE COASTAL COMMISSION TO GIVE UP THE
19 RIGHTS THAT IT HAS TO STOP DEVELOPMENT ON THE OCEAN IF I
20 TAKE THAT DUMP OUT OF THERE. BECAUSE WHAT WAS HAPPENING
21 WAS THIS TRASH WAS FALLING INTO THE OCEAN. AND, YOU KNOW,
22 AS -- THE WAVES WOULD COME UP AGAINST THIS BIG THING OF
23 TRASH, AND IT WOULD FALL INTO THE OCEAN. SO WE WERE ABLE
24 TO IN A TWO-YEAR PERIOD OR SO BE ABLE -- WE WERE ABLE TO
25 GET THE COASTAL COMMISSION TO PERMIT THE BUILDING OF THIS
26 PROJECT IN MONTEREY.

1 Q AND YOU BUILT 203 BEACHFRONT HOMES?

2 A IT WAS 203.

3 I WAS THEN INVOLVED WITH ALL SEASONS
4 RESORTS, AND TWO OF MY PARTNERS TOOK OVER THE PROJECT. AND
5 I WENT WITH ALL SEASONS RESORTS.

6 Q OKAY. SO NOW WE'VE COME TO THE POINT WHERE
7 YOU GOT INVOLVED IN THE RESORT INDUSTRY; IS THAT RIGHT?

8 A YES.

9 Q NOW, WHAT YEAR WAS THAT?

10 A THAT WAS IN 1986.

11 Q OKAY. AND WHAT WAS IT THAT MOVED YOU TO
12 BECOME INVOLVED IN THE RESORT INDUSTRY?

13 A A FRIEND OF MINE BY THE NAME OF HERB HERST,
14 HE WAS THE BANKER THAT I MET IN NEW YORK CITY YEARS AGO
15 WITH FRANKLIN NATIONAL BANK, AND HERB HERST BECAME THE
16 PRESIDENT OF BARCLAY'S AMERICAN BANK, BARCLAY'S AMERICAN IN
17 CONNECTICUT. AND THEY ALSO HAD BARCLAY'S BANK HERE, BUT HE
18 WAS THE PRESIDENT OF THE BARCLAY'S AMERICAN DIVISION, AND
19 IT WAS BARCLAY'S BANK LONDON.

20 HE CONTACTED ME AND TOLD ME -- HE SAID, YOU
21 KNOW, RAY, I GOT THIS DEAL OF THIS COMPANY CALLED ALL
22 SEASONS RESORTS WHERE THEY OWN 11, 12 CAMPGROUNDS AND
23 PRETTY SOLID LITTLE PUBLIC CORPORATION, TRADED ON THE
24 NASDAQ. AND HE SAID THESE LITTLE COMPANIES, THESE
25 CAMPGROUND COMPANIES, HAVE BEEN DOING VERY WELL UP UNTIL
26 ABOUT A YEAR AGO. HE SAID THEY WERE DOING REAL GOOD. THAT

1 WAS THOUSAND TRAILS, AMERICAN ADVENTURE AND ALL SEASONS.

2 HE SAID THESE COMPANIES WERE THE

3 SWEETHEARTS OF WALL STREET AND GIVE ME SOME OF THE STOCK

4 THINGS WHERE THE STOCK WENT FROM 2 AND 3 A SHARE TO AS MUCH

5 AS 18, \$19 A SHARE. SO THEY HAD SOME TREMENDOUS GROWTH.

6 BUT THEY HIT THE WALL, AND HITTING THE WALL MEANS THEY

7 COULDN'T CONTINUE ON THE SALES BASIS THAT THEY WERE

8 SELLING.

9 AND SO THE BANKS, BARCLAY'S AMERICAN BANK,

10 GREYHOUND FINANCIAL, AND BENJAMIN FRANKLIN SAVINGS AND LOAN

11 WERE FACED WITH A \$40 MILLION LOSS ON FINANCING THESE

12 RESORTS AND THE PAPER, THE MEMBERSHIP PAPER. SO I LOOKED

13 IT OVER. I WASN'T THAT MUCH INVOLVED OTHER THAN THE

14 PROJECT IN MONTEREY, WHICH WAS TAKING TIME AND EFFORT AND

15 ACCOMPLISHING VERY LITTLE. AND I LOOKED AT THAT PROJECT,

16 AND I LOOKED AT ALL SEASONS. AND I MET THE PRESIDENT, WHO

17 I MET FORMERLY, A GENTLEMAN BY THE NAME OF BILL PAER. I

18 WAS VERY IMPRESSED WITH BILL PAER, WHO WAS THE PAST

19 PRESIDENT OF ALL SEASONS. I WAS IMPRESSED WITH THEIR

20 COMPANY, EVEN THOUGH THEY HAD TREMENDOUS PROBLEMS.

21 Q ALL RIGHT. YOU KNEW GOING IN THAT THERE

22 WERE TREMENDOUS FINANCIAL PROBLEMS?

23 A RIGHT. WHAT THEY HAD -- I TALKED TO ALL

24 THREE LENDERS, AND THE LENDERS WERE VERY OPEN WITH ME,

25 MR. PAER WAS VERY OPEN. ALL THE EMPLOYEES WERE VERY OPEN.

26 AND THE PROBLEMS SEEMED INSURMOUNTABLE. THEY HAD A

1 THOUSAND LAWSUITS, 1,000 -- OR OVER A THOUSAND LAWSUITS.
2 THEY HAD SOMEWHERE AROUND 100 JUDGMENTS AGAINST THE
3 COMPANY. THEY HAD THE DEBT OF \$40 MILLION AGAINST THEM.
4 THEY HAD A LOT OF PROBLEMS. BUT IN THE MEANTIME, I COULD
5 SEE A LOT OF PROBLEMS WERE CAUSED BY AN OVER-SELL
6 SITUATION. AND WHERE THEY JUST COULDN'T SELL ANYMORE.

7 BUT IN THE MEANTIME, THE COMPANY AND ITS
8 HISTORY PREVIOUSLY TO ME LOOKED GOOD. IT LOOKED LIKE A
9 FANTASTIC ORGANIZATION OR AN OPPORTUNITY THAT I'VE NEVER
10 SEEN BEFORE. AND THAT'S WHERE YOU COULD GO OUT AND YOU
11 COULD DEVELOP A -- DEVELOP A PRODUCT, SO-TO-SPEAK, IN OTHER
12 WORDS, WHERE YOU SOLD MEMBERSHIPS IN A CAMPGROUND
13 SITUATION, WHERE YOUR MEMBERS WOULD PAY \$6,000 TO BECOME A
14 MEMBER, AND THAT REALLY YOU DIDN'T GIVE THEM A DEED TO THE
15 PROPERTY OR EVERYTHING. YOU GIVE THEM A RIGHT TO USE IT.

16 KIND OF LIKE IF YOU GO TO A HEALTH STUDIO,
17 YOU DON'T BUY THE EQUIPMENT, BUT YOU HAVE THE RIGHT TO
18 USE. I THOUGHT THIS IS A PRETTY GOOD IDEA. I JUST THOUGHT
19 THE WORLD OF THIS INDUSTRY WHEN I LOOK AT IT.

20 Q WE'VE HEARD THE TERM "WORKOUT SPECIALIST."
21 WHAT DOES THAT MEAN?

22 A WELL, THE REASON HERB HERST CALLED ME -- HE
23 REMEMBERS THE DAYS IN TEXAS AND STUFF WHERE THE BANKS HAD
24 ALL THOSE BAD LOANS OVER THERE, AND I WAS ABLE TO GO OVER
25 THERE AND PUT TOGETHER THE PROJECTS AND BUILD-OUT THOSE
26 PROJECTS FOR THE BANKS, AND THE BANKS GOT PAID IN FULL ON

1 ALL THESE PROJECTS.

2 THIS THING WITH ALL SEASONS, THOUGH, WAS A
3 LITTLE BIT DIFFERENT THAN ANYTHING I HAD WORKED ON BEFORE.
4 SO IT'S A LITTLE EASIER AS A WORKOUT SPECIALIST ON A PIECE
5 OF REAL ESTATE WHERE I CAN BUILD SOME PROJECTS AND THEN
6 WHEN THEY'RE BUILT, SELL THEM, THAN IT IS WITH THIS KIND OF
7 PROBLEM. THIS ALL SEASONS THING WAS KIND OF LIKE A TAR
8 BABY. YOU PUT OUT ONE PROBLEM, YOU GOT ANOTHER ONE.

9 SO IT'S JUST CONSTANT PROBLEMS WHERE WE
10 DIDN'T HAVE THESE TYPE OF PROBLEMS IN -- NUMEROUS PROBLEMS
11 IN THE DEVELOPMENT BUSINESS, AS I EXPERIENCED IN ALL
12 SEASONS. BUT THAT'S THE REASON THEY CALL ME. HERB HERST
13 CALLED ME. AND HE ALSO KNEW AT THE TIME THAT I WAS
14 INVOLVED AND GETTING INVOLVED IN REVCON MOTORCOACH AND ALSO
15 APOLLO, AS FAR AS TRYING TO PURCHASE THOSE TWO COMPANIES IN
16 ORDER TO MANUFACTURE MOTOR HOMES.

17 Q OKAY. AT ABOUT THE TIME YOU LEARNED ABOUT
18 ALL SEASONS RESORTS, YOU BECAME ACQUAINTED WITH REVCON AND
19 APOLLO MOTORCOACH?

20 A THAT'S CORRECT.

21 Q WHY DON'T YOU TELL US WHAT THOSE COMPANIES
22 ARE.

23 MR. SHERMAN: OBJECTION. IT CALLS FOR A
24 NARRATIVE.

25 THE COURT: SUSTAINED.

26 BY MR. MOSHENKO: Q OKAY. WHAT IS THE BUSINESS OF

1 APOLLO AND REVCON MOTORCOACH?

2 ARE THOSE TWO DIFFERENT COMPANIES?

3 A YES. APOLLO --

4 Q WHAT IS THE BUSINESS?

5 A APOLLO MANUFACTURES MOTOR HOMES THAT ARE
6 CALLED -- WITH STEEL FRAMES. SO THE APOLLO FRAME THAT GOES
7 AROUND THE MOTOR HOME IS MADE OUT OF STEEL, AND THE CHASSIS
8 ARE BUILT ON A GM CHASSIS OR SOME PREMANUFACTURED CHASSIS.

9 THE REVCON ON THE OTHER HAND IS ALSO A MOTOR
10 HOME MANUFACTURING COMPANY, AND THEIR SYSTEM IS A LITTLE
11 BIT DIFFERENT. THEY DEVELOPED THE FRONT-WHEEL DRIVE SYSTEM
12 THAT WAS MUCH SUPERIOR IN MY OPINION, ANYHOW, TO GMC AND
13 DEVELOPED THEIR OWN CHASSIS. AND THEY USED ALUMINUM FRAME
14 AND ALUMINUM SKIN WITH A FIBERGLASS CAP ON THE FRONT AND
15 THE REAR AND DEVELOPED A NICE LOW SLUNG BEAUTIFUL MOTOR
16 HOME.

17 Q AND WHAT IS IT THAT THESE TWO COMPANIES THEN
18 OFFERED TO THE INDUSTRY THAT -- IF ANYTHING, THAT YOU
19 THOUGHT WOULD MAKE THEM AN APPEALING BUSINESS TO BE IN?

20 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE.

21 THE COURT: SUSTAINED.

22 BY MR. MOSHENKO: Q WHAT SPECIFIC PRODUCT OR
23 FEATURES DID APOLLO MOTORCOACH -- LIST THEM FOR ME. DON'T
24 JUST GENERALLY DISCUSS THEM -- OFFER TO THE PUBLIC THAT
25 MADE YOU BELIEVE THAT IT WAS AN IDEAL BUSINESS TO GET
26 INVOLVED IN?

1 A APOLLO -- THE REASON I THOUGHT IT WAS AN
2 IDEAL BUSINESS, AT ONE TIME APOLLO WAS OWNED BY ALLIED
3 STUDIOS, THE MOVIE PEOPLE. AND AT ONE TIME THEY WERE THE
4 TOP MANUFACTURER OF MOTOR HOMES IN THE COUNTRY.
5 NOW, WHEN ALLIED INDUSTRIES AND THE MOVIE
6 PEOPLE WENT INTO BANKRUPTCY, THEY BROUGHT -- YOU KNOW,
7 TOOK, SIPHONED THE PROFITS OUT OF APOLLO AND CAUSED APOLLO
8 TO FAIL. BUT IN THE MEANTIME, I HAD SEEN THAT IT WAS A
9 VERY WELL LIKED, VERY WELL KNOWN NAME IN THE INDUSTRY, AS
10 FAR AS MOTOR HOME MANUFACTURING. AND I THOUGHT, WELL, THAT
11 NAME "APOLLO." IT WOULD BE A GREAT NAME, YOU KNOW, TO GO
12 FURTHER IN THE BUSINESS.

13 Q ALL RIGHT.

14 MR. SHERMAN: OBJECTION, MOVE TO STRIKE. THE
15 QUESTION WAS WHAT SPECIFIC PRODUCT OR FEATURES DID THEY
16 OFFER, JUST LIST THEM.

17 THE COURT: SUSTAINED.

18 BY MR. MOSHENKO: Q ALL RIGHT. MR. NOVELLI, THE
19 QUESTION IS, WHAT SPECIFIC PRODUCT OR FEATURE WAS IT THAT
20 MADE YOU BELIEVE IT WAS A GOOD BUSINESS?

21 A THE APOLLO WAS THE RING OF STEEL. IT WAS
22 A -- I REALLY LIKED THE WAY THE APOLLO WAS BUILT. WAS
23 BUILT VERY STRONG.

24 IF YOU KNOW ANYTHING ABOUT MOTOR HOMES, MOST
25 OF YOUR FRAMES IN MOTOR HOMES ARE BUILT OUT OF WOOD. AND
26 THESE FRAMES WERE BUILT OUT OF STEEL. AND SO MUCH

1 STRONGER, MUCH SAFER UNIT THAN THE AVERAGE UNIT, BUT A MORE
2 EXPENSIVE TYPE UNIT ALSO.

3 Q WHAT SPECIFIC PRODUCT OR FEATURES MADE YOU
4 BELIEVE REVCON MOTORCOACH WAS A GOOD BUSINESS?

5 A WELL, BEFORE, TO GO BACK A LITTLE BIT, I HAD
6 A MOTOR HOME EVER SINCE 1972. I ALWAYS TRAVELED THE
7 COUNTRY, IN MEXICO AND CANADA, MY WIFE AND FAMILY, AND I
8 WANTED -- WE LOVED MOTOR HOMES. BUT ONE OF THE PROBLEMS WE
9 HAD -- WE BOUGHT A BRAND NEW G.M.C. IN 1972 WHEN G.M.C.
10 FIRST CAME OUT. AND THEY WERE ALSO LOW SLUNG LOOKING MOTOR
11 HOMES.

12 AND ONE OF THE PROBLEMS THAT WE HAD WITH THE
13 G.M.C., WHEN I WOULD GO INTO A CAMPGROUND, THAT I WOULD GET
14 STUCK IN THE GRASS. IN OTHER WORDS, THERE WAS -- JUST IT
15 SEEMED TO BE NO TRACTION ONCE YOU GOT OFF THE ROAD, AND I
16 LOOK AT THAT REVCON FRONT WHEEL DRIVE SYSTEM THAT THEY HAD,
17 AND THE ALUMINUM BODY, THE LIGHT BODY, AND THAT THEY BUILT
18 THEIR OWN CHASSIS, AND I ENVISIONED THAT WE COULD TAKE THAT
19 UNIT AND GO TO FOUR-WHEEL DRIVE.

20 MR. SHERMAN: OKAY. MOVE TO STRIKE TWO 1972
21 EXPERIENCES. IT'S NOT RESPONSIVE.

22 THE COURT: OVERRULED.

23 BY MR. MOSHENKO: Q ALL RIGHT. AND SO WAS
24 THERE -- WHAT WERE THE FINANCIAL CONDITIONS OF APOLLO AT
25 THE TIME YOU CONSIDERED GOING INTO THE APOLLO MOTOR HOME
26 BUSINESS?

1 A THEY WERE PRETTY MUCH CLOSED DOWN. THEY
2 WERE BUILDING A COUPLE UNITS BUT PRETTY MUCH CLOSED DOWN.

3 Q AND THE REVCON MOTORCOACH?

4 A THE SAME WITH REVCON. BOTH COMPANIES WERE
5 OWNED BY THE SAME INDIVIDUAL.

6 Q ALL RIGHT. AND SO WHEN WAS IT THAT YOU
7 CONSIDERED GOING INTO THE MOTOR HOME CONSTRUCTION BUSINESS?

8 A BACK IN 1985 AND IN '86.

9 Q ALL RIGHT. AND SO THE ALL SEASONS RESORTS,
10 APOLLO AND REVCON OPPORTUNITIES CAME ALONG ALL ABOUT THE
11 SAME TIME?

12 A CORRECT.

13 Q OKAY. LET'S JUST ISOLATE ALL SEASONS
14 RESORTS NOW.

15 YOU'D MADE THE AGREEMENT TO GET INVOLVED IN
16 ALL SEASONS RESORTS?

17 A YES, I DID.

18 Q DESCRIBE GENERALLY THE MATERIALS AND
19 CONDITIONS OF YOUR INVOLVEMENT.

20 A WELL, IN DEALING WITH THE LENDERS -- AND
21 THERE WAS THREE PRINCIPAL LENDERS OF ALL SEASONS SECURED
22 LENDERS -- I COULD SEE A WHOLE LOT OF PROBLEMS. IN FACT,
23 THERE WAS A WHOLE LOT OF PROBLEMS I DIDN'T SEE. BUT THE
24 PROBLEMS I DID SEE, THE IMMEDIATE PROBLEMS NEEDED IMMEDIATE
25 CASH.

26 SO I TOLD THE LENDERS, I SAID, IF WE -- IF I

1 HAVE MY GROUP, THE APOLLO GROUP -- WHICH BECAUSE WE WERE
2 INVOLVED ALREADY IN APOLLO. AND WE HAD THE APOLLO GROUP
3 FORMED. I SAID, IF WE HAVE THE APOLLO GROUP LEND ALL
4 SEASONS A MILLION AND A HALF DOLLARS, AND THEN IF THE
5 LENDERS WOULD ALSO ADVANCE 150 PERCENT OF THAT, OR
6 \$2,250,000, I SAID I THINK WITH THAT THAT WE CAN, YOU KNOW,
7 GET THIS THING GOING AND HOPEFULLY, YOU KNOW, PUT ALL
8 SEASONS BACK ON TRACK AGAIN.

9 SO WE -- THE LENDERS AGREED TO DO THAT;
10 THAT THEY WOULD ADVANCE FUNDS AT WHATEVER WE ADVANCED --
11 "WE" BEING THE APOLLO GROUP. WHATEVER WE ADVANCED, THEY
12 WOULD ADVANCE ON, YOU KNOW, ONE AND A HALF TO ONE. SO IF
13 WE PUT UP A DOLLAR, THEY'D PUT UP A DOLLAR AND A HALF. SO
14 THAT WAS PRETTY FAIR.

15 AND THEN THE CREDIT LINES WERE USED UP, BUT
16 I SAID, YOU KNOW, INTO THE FUTURE, THOUGH, DON'T CLOSE THE
17 CREDIT LINES AS WE PAY THE CREDIT LINES OFF. I WANT THOSE
18 CREDIT LINES BACK OPEN AGAIN. DON'T CUT ME OFF AS WE START
19 SELLING AGAIN, WHICH THEY ALSO AGREED TO.

20 Q AND HOW LARGE WERE THE CREDIT LINES?

21 A \$30 MILLION.

22 Q NOW, THE "THEY," AGAIN, SPECIFY WHO IT IS
23 THAT YOU MADE THIS AGREEMENT WITH.

24 A GREYHOUND FINANCIAL, WHO WAS OWNED BY THE
25 BUS COMPANY. ALSO BARCLAY'S AMERICAN BUSINESS CREDIT,
26 WHICH WAS BARCLAY'S LONDON. AND ALSO SECURITY CAPITAL,

1 WHICH WAS BENJAMIN FRANKLIN SAVINGS AND LOAN OUT OF
2 HOUSTON, TEXAS.

3 Q OKAY. WHAT WAS THE -- GIVE US THE
4 STATISTICS THAT A.S.R. HAD WITH RESPECT TO THE NUMBER OF
5 RESORTS AND NUMBER OF MEMBERS THAT IT HAD IN 1986, '87.

6 A THEY HAD SOMEWHERE AROUND 13,000 MEMBERS.
7 AND AT THE TIME THERE WAS -- I BELIEVE THERE WAS 12
8 CAMPGROUNDS OPEN.

9 Q WHERE WAS IT LOCATED?

10 A AND IT WAS LOCATED IN SEATTLE. AND THEY HAD
11 SOMEWHERE AROUND -- IN SALES THEY HAD SOMEWHERE AROUND A
12 HUNDRED MILLION, A LITTLE BIT MORE THAN A HUNDRED MILLION
13 DOLLARS' WORTH OF SALES THAT THEY WERE ABLE TO DO.

14 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. THE
15 QUESTION WAS WHERE IT WAS LOCATED.

16 THE COURT: OVERRULED. IT'S IN.

17 BY MR. MOSHENKO: Q SO DID YOU THEN PUT UP YOUR
18 \$1.5 MILLION?

19 A YES. NOT ME PERSONALLY, BUT THE INVESTORS I
20 WAS ABLE TO PUT TOGETHER.

21 Q YOU BECAME THE PRESIDENT OF ALL SEASONS
22 RESORTS?

23 A YES.

24 Q IT WAS A -- AT THE TIME A NATIONALLY TRADED
25 CORPORATION ON THE NASDAQ EXCHANGE; RIGHT?

26 A CORRECT.

1 Q ALL RIGHT. NOW, THEN WHEN YOU BECAME
2 INVOLVED IN ALL SEASONS RESORTS -- AND WHY DON'T YOU JUST
3 RESTRICT YOUR TESTIMONY TO MAYBE THE FIRST YEAR OR SO --
4 WHAT WAS YOUR EXPERIENCE IN TRYING TO OPERATE AND RUN THE
5 COMPANY?

6 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE.

7 THE COURT: SUSTAINED.

8 BY MR. MOSHENKO: Q OKAY. ALL RIGHT.

9 MR. NOVELLI, YOU TOOK -- AFTER YOU TOOK OVER ALL SEASONS
10 RESORTS, WHAT OCCURRED WITH RESPECT TO THE THOUSAND
11 LAWSUITS?

12 A WELL, THE THOUSAND LAWSUITS WERE STARTING TO
13 GET -- THIS WAS IN SEATTLE. I WAS UP IN SEATTLE. WE HAD A
14 LOT OF LAWSUITS AND A LOT OF PUBLICITY, AND IT WAS A VERY
15 NEGATIVE IMPACT AS FAR AS EMPLOYEES WERE CONCERNED AND ALL
16 THIS LITIGATION. SO ONE OF THE FIRST THINGS, I THOUGHT,
17 WELL, I'M GOING TO MOVE THE COMPANY OUT OF SEATTLE, DOWN TO
18 ORANGE COUNTY, AND TO CALIFORNIA WHERE APOLLO AND REVCON
19 ARE.

20 YOU KNOW, IN OTHER WORDS, LET'S GET OUT OF
21 THIS ATMOSPHERE WHERE IT SEEMS LIKE ALL SEASONS, YOU KNOW,
22 AS FAR AS THE CREDITS ARE CONCERNED, ARE THE ENEMY. SO THE
23 EXPERIENCE I HAD WITH ALL THESE LAWSUITS WAS THAT ALL OF A
24 SUDDEN WHEN I BECAME PRESIDENT, NEXT THING I KNOW, I'M
25 GETTING SERVED WITH ALL THESE LAWSUITS AS THE PRESIDENT,
26 AND, WANTING ME TO BE AT DEPOSITIONS, WANTING ME IN

1 COURTS. AND I HAD ALL THESE DEMANDS ON ME BECAUSE OF THIS
2 LITIGATION BECAUSE I WAS THE PRESIDENT.

3 AND WE ALSO HAD 100 JUDGMENTS. THERE WAS
4 100 JUDGMENTS AGAINST THE COMPANY. I BLAME THE COMPANY FOR
5 THAT BECAUSE A LOT OF THOSE WERE UNCALLED FOR. THEY
6 WEREN'T CALLED FOR AT ALL.

7 Q WHY DO YOU SAY IT WAS UNCALLED FOR?

8 A WELL, THEY WEREN'T -- THEY DIDN'T OWE THE
9 MONEY. WHAT THEY WOULD DO IS THE COMPANY HAD A POLICY THAT
10 IF YOU WERE AN EMPLOYEE OR A COMPANY AND YOU SUED THEM FOR
11 \$10,000 OR LESS, THEY'D JUST SEND YOU THE MONEY BECAUSE
12 THEY FELT THAT THE COST OF LITIGATION EXCEEDED \$10,000.
13 NOW, WHAT HAPPENED THERE, THE REASON SO MANY JUDGMENTS, IS
14 A LOT OF THE FORMER SALESPEOPLE OF ALL SEASONS -- WHO WERE
15 THEN DISMISSED BECAUSE THEY WEREN'T OPERATING WHEN I CAME
16 IN, THEY WERE OUT OF OPERATIONS, AT LEAST THE SALES
17 DEPARTMENT WAS -- THEY STARTED SUING THE COMPANY. AND WHEN
18 THEY FOUND OUT THAT THEY COULD DO THAT AND GET AN AUTOMATIC
19 CHECK, THE WORD GOT AROUND. AND ALL OF A SUDDEN ALL
20 SEASONS WAS HANDING OUT ALL THESE JUDGMENTS WITHOUT
21 DEFENDING THEM.

22 Q SO WHAT CHANGES DID YOU MAKE IN DEALING WITH
23 LITIGATION AND JUDGMENTS AS PRESIDENT OF ALL SEASONS
24 RESORTS?

25 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE.

26 THE COURT: SUSTAINED.

1 BY MR. MOSHENKO: Q DID YOU MAKE ANY SPECIFIC
2 CHANGES IN THE WAY ALL SEASONS RESORTS DEALT WITH
3 LITIGATION AND JUDGMENTS?

4 A YES.

5 Q YES OR NO?

6 A YES.

7 Q OKAY. WHAT SPECIFIC CHANGES DID YOU MAKE?

8 A FIRST OF ALL, I DEFENDED ALL ACTIONS. IN
9 OTHER WORDS, IF I GOT SUED -- I DON'T CARE IF IT WAS
10 \$2,000, THE COMPANY'S POSTURE WAS WE'RE GOING TO DEFEND THE
11 COMPANY AGAINST THESE CLAIMS. AND WE WERE FAIRLY
12 SUCCESSFUL IN DEFENDING THE COMPANY. I ALSO WORKED OUT
13 AGREEMENTS WITH A LOT OF THE CREDITORS OF THE COMPANY, YOU
14 KNOW, GIVING THEM LESS MONEY OVER A PERIOD OF TIME, WHICH
15 WAS VERY, YOU KNOW, SATISFYING TO ME AND SATISFYING TO A
16 LOT OF OUR CREDITORS; THAT WE WERE ABLE TO START PAYING
17 THEM ON A LIMITED BASIS.

18 IN FACT, THE AGREEMENT THAT I WORKED ON, IT
19 SAID, IF YOU GUYS DON'T SUE US, WE'LL GIVE YOU 2 PERCENT A
20 MONTH OF WHAT WE OWE YOU. JUST DON'T SUE US, AND THAT
21 PROGRAM WORKED FOR A LONG TIME. BUT ALL OF A SUDDEN WE GET
22 MORE PRESSURE ON EXISTING LAWSUITS WHERE -- IN FACT, ONE
23 TIME I WAS UP FOR CONTEMPT OF COURT BECAUSE I WAS SUPPOSED
24 TO BE IN COURT IN SEATTLE AND ALSO IN ORANGE COUNTY.
25 BEINGS I WAS IN ORANGE COUNTY, I ELECTED TO GO TO THE ONE
26 IN ORANGE COUNTY, THE COURT. AND I GOT A -- ALMOST GOT A

1 CONTEMPT OF COURT UP IN SEATTLE. MY ATTORNEY GOT ME OUT OF
2 IT, BUT THAT WAS --

3 Q MR. NOVELLI, WE HAD RANDOLF TUCKER HERE, AND
4 HE TESTIFIED HE APPROACHED YOU WITH A -- I'LL CALL IT LEGAL
5 DISPUTE, AND YOU ENDED UP GIVING HIM A DEED TO SOME LAND AS
6 A RESULT OF THE DISPUTE; DO YOU RECALL THAT?

7 A YES. THAT WAS A PARK. IN FACT, IT'S A PARK
8 THAT WE EVENTUALLY ENDED UP OWNING AGAIN, A.R.A. SALT
9 SPRINGS MOTOR HOME PARK.

10 Q SO YOU USED, LET'S CALL IT, NEGOTIATIONS AND
11 DEAL-MAKING TO DEAL WITH LITIGATION PROBLEMS THAT
12 PREEXISTED YOUR ARRIVAL?

13 MR. SHERMAN: OBJECTION. IT'S A LEADING QUESTION.

14 THE COURT: SUSTAINED.

15 BY MR. MOSHENKO: Q DID YOU USE DEAL-MAKING AND
16 NEGOTIATIONS TO DEAL WITH PROBLEMS THAT PRECEDED YOUR
17 ARRIVAL?

18 A YES, I DID, WHATEVER I COULD TO STOP THE
19 LITIGATION.

20 Q OKAY. BUT, MR. NOVELLI, EVENTUALLY ALL
21 SEASONS FILED A BANKRUPTCY FOR ALL SEASONS RESORTS.

22 A CORRECT.

23 Q WHEN DID YOU DO THAT?

24 A I DID THAT IN FEBRUARY OF 1987.

25 Q AND WHY DID YOU DO THAT?

26 A BECAUSE WE WERE -- I WAS GETTING BOMBARDED

1 WITH THESE LAWSUITS ANYWHERE FROM FLORIDA TO CONNECTICUT.
2 THE COMPANY WAS GETTING SUED FROM 15, 20 DIFFERENT
3 LOCATIONS IN DIFFERENT STATES. AND IN ORDER TO GET THE
4 LITIGATION ALL IN ONE AREA, HERE IN ORANGE COUNTY, I
5 DECIDED THAT WE GOT TO GET THESE PEOPLE SOMEHOW TO COME TO
6 US RATHER THAN WE'RE FORCED TO GO TO FLORIDA OR NEW YORK OR
7 WHEREVER THEY'RE HAVING THAT LITIGATION AT. SO THIS SHUT
8 THEM ALL DOWN. I PUT IT IN BANKRUPTCY, AND ALL THE
9 CREDITORS, THEN, IF THEY HAD A PROBLEM WITH THE COMPANY,
10 THEY'D HAVE TO COME TO ORANGE COUNTY WITH THEIR PROBLEMS.
11 AND THEY COULD FILE WHATEVER THEY WANTED IN THE BANKRUPTCY
12 COURT.

13 Q WHAT KIND OF AN ACTION -- BANKRUPTCY ACTION
14 DID YOU FILE?

15 A I FILED A CHAPTER 11, FOR REORGANIZATION. I
16 FELT THE COMPANY COULD REORGANIZE SUCCESSFULLY, AND THAT'S
17 WHEN I -- WHAT I FILED.

18 Q DID YOU DISCUSS THE FILING OF THE CHAPTER 11
19 REORGANIZATION WITH MAIN LENDERS THAT YOU MENTIONED TO US
20 BEFORE?

21 A YES. WHAT I DID --

22 Q WHAT DID YOU TELL THEM AND WHAT DID THEY
23 TELL YOU?

24 A I HAD LENDERS ALL COME IN, HAD THE MAJOR
25 CREDITORS COME IN. BESIDES THE MAJOR LENDERS, I ALSO HAD
26 THE MAJOR UNSECURED LENDERS COME IN IN THE LAWSUITS, THE

1 MAJOR ONES. AND THE WHOLE ROOM WAS FILLED WITH CREDITORS
2 AND LENDERS AND ALL OF THIS, AND WE HAD THE MEETING. AND I
3 DISCUSSED WHAT I WANTED TO DO WAS PUT IT IN CHAPTER 11.
4 WELL, AT FIRST, NATURALLY, THE LENDERS THAT WERE DUE \$40
5 MILLION OR WHATEVER, THEY WEREN'T TOO -- OR SOMEWHERE --
6 \$30 MILLION -- I BELIEVE IT WAS THE MAJOR LENDERS. THEY
7 WEREN'T TOO THRILLED ABOUT THAT BECAUSE SOMEHOW THEY FELT
8 THAT THEY WOULDN'T GET THEIR MONEY. I SAID, LOOK, NOBODY
9 IS TRYING TO, YOU KNOW, REDUCE THE DEBT OF ANYBODY HERE.
10 WE'RE JUST TRYING TO GET IT ORGANIZED WHERE WE CAN PAY THE
11 DEBT ON AN ORGANIZED BASIS. BUT I NEED THE SUPPORT OF THE
12 MAJOR LENDERS, IN OTHER WORDS, TO GO FORWARD WITH THIS
13 PLAN.

14 SO WE'RE -- THE COMPANY AND THE STAFF THAT
15 WE HAVE NOW DIDN'T CAUSE ALL THESE PROBLEMS. WE'RE TRYING
16 TO SOLVE THEM FOR YOU. SO DON'T GET MAD AT US. BECAUSE
17 THERE WAS A LOT OF FRICTION GOING ON BETWEEN ME AND THE
18 OTHER CREDITORS BECAUSE THEY PERCEIVED ME AS THE BAD GUY
19 BECAUSE I WAS THE PRESIDENT. AND NOT BECAUSE I CAUSED ALL
20 THAT DEBT. I HAD NOTHING TO DO WITH THE DEBT.

21 SO THEY -- I FINALLY RELUCTANTLY GOT THEM
22 ALL TO AGREE THAT THE BEST THING FOR THE COMPANY -- SO I
23 DIDN'T WALK INTO A HORNETS' NEST, WE PUT THE THING IN
24 CHAPTER 11, WHICH WE DID.

25 Q DID YOU TAKE UP THE ISSUE OF GOING INTO A
26 CHAPTER 11 -- YOU SAID THERE WERE 13,000 MEMBERS OF ALL

1 SEASONS RESORTS?

2 A YES.

3 Q DID YOU BRING THE ISSUE OF CHAPTER 11 UP
4 WITH THE MEMBERS BEFORE YOU FILED IT?

5 A NO.

6 Q DID YOU BRING IT UP AFTER YOU FILED IT AND
7 MEET WITH THE MEMBERS?

8 A YES. AND THE REASON WAS, THE LENDERS WERE
9 CONCERNED. THEY SAID, RAY -- AND THE OTHER CREDITORS, THE
10 CREDITORS SAID, IF YOU DO THAT, THESE PEOPLE AREN'T GOING
11 TO PAY US. YOU KNOW, IF YOU PUT IT IN BANKRUPTCY, THEY'RE
12 GOING TO PERCEIVE THAT YOU'RE GOING OUT OF BUSINESS, AND
13 WE'RE GOING TO NOT GET PAID.

14 I SAID, I DON'T BELIEVE THAT. I SAID, I'VE
15 HAD ENOUGH CONTACT WITH THOSE MEMBERS THAT THE MEMBERS WANT
16 THE SYSTEM. THIS IS KIND OF A FAMILY THING, AND I BELIEVE
17 THEY WILL GET PAID OR WILL PAY.

18 Q SO THAT'S WHY YOU SPOKE TO THE MEMBERS.

19 WHAT HAPPENED WHEN YOU WENT TO DEAL WITH THE
20 MEMBERS?

21 MR. SHERMAN: OBJECTION. EXCUSE ME. OBJECTION.
22 CALLS FOR A NARRATIVE. IT ALSO CALLS FOR INADMISSIBLE
23 HEARSAY.

24 THE COURT: SUSTAINED.

25 BY MR. MOSHENKO: Q DID YOU DISCUSS THE PLAN OR
26 THE FACT OF THE CHAPTER 11 BANKRUPTCY WITH MEMBERS?

1 A YES, I DID.

2 Q AND DESCRIBE THE RESPONSE. DON'T TELL ME
3 WHAT SOMEBODY SAID. DESCRIBE THE RESPONSE THAT YOU
4 RECEIVED.

5 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.
6 AND IT'S STILL CALLS FOR INADMISSIBLE HEARSAY.

7 THE COURT: SUSTAINED.

8 BY MR. MOSHENKO: Q DID THE MEMBERS SUPPORT YOU IN
9 YOUR DECISION TO FILE A CHAPTER 11?

10 MR. SHERMAN: OBJECTION. LACKS FOUNDATION. CALLS
11 FOR INADMISSIBLE HEARSAY. THE DOCUMENTS SPEAKS FOR
12 THEMSELVES IN THE BANKRUPTCY COURT.

13 THE COURT: SUSTAINED.

14 BY MR. MOSHENKO: Q ALL RIGHT. SO WHEN WAS IT
15 THAT YOU -- THAT YOU MET WITH THE MEMBERS REGARDING THE
16 BANKRUPTCY, THE ALL SEASONS RESORTS BANKRUPTCY?

17 A DURING FEBRUARY OF '97 -- I MEAN '87 WHEN I
18 FILED THE BANKRUPTCY, I WENT OUT TO ORLANDO.

19 Q OKAY. AND AFTER THE MEETING THAT YOU HAD IN
20 ORLANDO, YOU WENT AHEAD WITH THE BANKRUPTCY?

21 A NO. I'VE HAD THE BANKRUPTCY FIRST.

22 Q CORRECT.

23 BUT YOU CONTINUED TO GO FORWARD WITH IT
24 AFTER THE MEETING WITH REGARD -- REGARDLESS OF WHATEVER
25 MIGHT HAVE HAPPENED AT THE MEETING WITH THE MEMBERS?

26 A CORRECT.

1 Q OKAY. NOW, AS A CHAPTER 11, AS WE HAVE ALL
2 LEARNED, REQUIRES THAT THE DEBTOR PRESENT A PLAN OF
3 REORGANIZATION TO THE COURT FOR ACCEPTANCE OR REJECTION BY
4 A MAJORITY OF THE CREDITORS?

5 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL
6 CONCLUSION WITH RESPECT TO THE TERMS OF ACCEPTANCE OF A
7 PLAN OF REORGANIZATION.

8 THE COURT: SUSTAINED.

9 BY MR. MOSHENKO: Q DID YOU PRESENT A PLAN OF
10 REORGANIZATION TO THE BANKRUPTCY COURT IN THE ALL SEASONS
11 RESORT BANKRUPTCY?

12 A YES, I DID.

13 Q AND WAS THE PLAN APPROVED BY THE COURT?

14 A YES.

15 Q WAS IT ADOPTED BY A VOTE OF THE CREDITORS?

16 A YES.

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

19 THE COURT: SUSTAINED.

20 MR. SHERMAN: I MOVE TO -- EXCUSE ME. I MOVE TO
21 STRIKE THE ANSWER AS NONRESPONSIVE.

22 THE COURT: MOTION GRANTED.

23 BY MR. MOSHENKO: Q DID THE CREDITORS VOTE FOR THE
24 PLAN OR AGAINST THE PLAN?

25 DID THEY HAVE THE OPPORTUNITY TO VOTE?

26 A 90 PERCENT OF THE CREDITORS VOTED FOR THE

1 PLAN.

2 Q ALL RIGHT. WHAT WERE THE TERMS OF THE PLAN?

3 A THE TERMS OF THE PLAN, THE UNSECURED
4 CREDITORS WOULD GET PAID A MILLION AND A HALF DOLLARS IN
5 CASH. AND THAT WOULD SETTLE THEIR CLAIM.

6 Q YOU SAID UNSECURED CREDITORS --

7 A CORRECT.

8 Q -- AS DISTINGUISHED FROM SECURED CREDITORS.

9 TELL THE JURY THE DIFFERENCE BETWEEN THE TWO.

10 A WELL, A SECURED -- I'M SURE THE JURY KNOWS A
11 SECURED CREDITOR IS IF SOMEBODY HAS A MORTGAGE ON THEIR
12 HOME, THAT'S SECURED. AND IF YOU OWE YOUR FRIEND \$100,
13 THAT'S UNSECURED, UNLESS HE GAVE YOU SOME KIND OF
14 COLLATERAL.

15 SO THE UNSECURED CREDITORS ARE TRADE --
16 CREDITORS PRIMARILY WHO SOLD ADVERTISING, PAPERWORK, AND
17 THESE SORT OF THINGS; IN OTHER WORDS, THEY'RE LEASES AND
18 THINGS LIKE THAT.

19 Q OKAY. YOU SAID THE UNSECURED CREDITORS
20 WOULD GET A MILLION AND A HALF?

21 MR. SHERMAN: OBJECTION. IT CALLS FOR HEARSAY.
22 THE DOCUMENT -- THE CERTIFIED RECORDS OF THE DOCUMENTS
23 CONSTITUTE THE EVIDENCE OF WHAT THE TERMS OF THE PLAN
24 WERE. LACKS FOUNDATION.

25 THIS WITNESS OUGHT NOT BE TESTIFYING TO
26 OUT-OF-COURT STATEMENTS WITH REGARD TO TERMS. THE

1 DOCUMENTS SPEAK FOR THEMSELVES.

2 THE COURT: SUSTAINED.

3 BY MR. MOSHENKO: Q AS A CONSEQUENCE OF THE
4 ADOPTED PLAN, MR. NOVELLI, DID THE UNSECURED CREDITORS HAVE
5 ASSURANCES UNDER THE PLAN THAT THEY WOULD BE PAID?

6 MR. SHERMAN: THE SAME OBJECTION, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 MR. MOSHENKO: WELL, THEN, YOUR HONOR, I HAVE TO
9 TAKE A MOMENT AND LOCATE THE PLAN.

10 THE COURT: ALL RIGHT. WE'LL TAKE OUR BREAK NOW.

11 (RECESS TAKEN.)

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

14 THE COURT: PROCEED, MR. MOSHENKO.

15 MR. MOSHENKO: THANK YOU, YOUR HONOR.

16 Q MR. NOVELLI, DURING THE BREAK DID I ASK YOU
17 TO SCAN THROUGH THE NEARLY 200 PAGES OF EXHIBIT 481 -- 482?

18 A YES.

19 Q DO YOU HAVE THEM IN FRONT OF YOU?

20 A YES.

21 Q I KNOW YOU HAVEN'T HAD A CHANCE TO READ THIS
22 DOCUMENT CAREFULLY, BUT DOES IT APPEAR TO BE THE THIRD
23 AMENDED DISCLOSURE STATEMENT TO A COMPANY DEBTOR'S FOURTH
24 AMENDED CHAPTER 11 PLAN AS MODIFIED, ALL SEASONS RESORTS
25 BANKRUPTCY FILED WITH THE COURT ON SEPTEMBER 8, 1988?

26 A YES, IT DOES.

1 MR. MOSHENKO: OFFER IT INTO EVIDENCE, YOUR HONOR.

2 THE COURT: NO OBJECTION.

3 MR. SHERMAN: NO OBJECTION.

4 THE COURT: SO RECEIVED.

5 (WHEREUPON, EXHIBIT NO. 482, MODIFIED
6 BACKRUPTCY PLAN, WAS RECEIVED IN EVIDENCE.)

7 BY MR. MOSHENKO: Q WOULD YOU LOOK AT 481, THE ONE
8 PRECEDING THAT. I ASKED YOU TO SCAN THROUGH THIS 70-PAGE
9 DOCUMENT.

10 DID YOU HAVE A CHANCE TO DO THAT DURING THE
11 BREAK?

12 A VERY QUICKLY.

13 Q VERY QUICKLY.

14 DOES IT APPEAR TO BE THE DEBTORS' FOURTH
15 AMENDED CHAPTER 11 PLAN AS MODIFIED FOR THE ALL SEASONS
16 RESORT BANKRUPTCY FILED SEPTEMBER 8, 1988?

17 A YES, IT DOES.

18 Q NOW, I ASKED YOU SOME QUESTIONS BEFORE THE
19 BREAK ABOUT A PLAN BEFORE THE COURT.

20 COULD YOU SUMMARIZE FOR US THE TREATMENT OF
21 THE SECURED -- UNSECURED CREDITORS THAT THE DEBTOR AGREED
22 TO AS A PART OF THE PLAN?

23 MR. SHERMAN: OBJECTION. THIS EXHIBIT 481 IS NOT
24 SIGNED, IS NOT -- DOES NOT SHOW IN ANY WAY RELIABLY TO BE
25 THE PLAN THAT WAS CONFIRMED BY THE UNITED STATES BANKRUPTCY
26 COURT. THEREFORE, THE QUESTION IS NOT RELEVANT AND IT

1 LACKS FOUNDATION.

2 MR. MOSHENKO: YOUR HONOR, IT BEARS THE FILE STAMP
3 OF THE COURT. IF THE COURT ACCEPTED THE DOCUMENT WITHOUT A
4 SIGNATURE, THERE'S -- IN 1988, THERE'S NOTHING WE CAN DO
5 ABOUT IT NOW. THE FILE STAMP OF THE COURT IS THE THING
6 THAT GIVES IT THE RELIABILITY THAT COUNSEL IS -- SUGGESTS
7 IS LACKING.

8 MR. SHERMAN: MY POINT, YOUR HONOR, IS THAT THERE
9 IS NO ORDER OF THE UNITED STATES COURT SHOWING THAT THIS
10 DOCUMENT, THIS PLAN -- AND WE CAN ALL READ WHAT IT IS. IT
11 SAYS IT'S A PLAN -- WAS EVER CONFIRMED BY THE COURT. IF IT
12 WAS, THEN THE QUESTION IS IRRELEVANT, I WOULD SUBMIT. IF
13 IT WASN'T, THEN THE QUESTIONS ARE NOT RELEVANT, AND THEY'RE
14 LACKING IN FOUNDATION. IT'S NOT AN ISSUE AS TO THAT
15 DOCUMENT. IT'S AN ISSUE TO THE FOUNDATION.

16 MR. MOSHENKO: THE WITNESS CAN SUPPLY THE FACT THAT
17 THE PLAN WAS CONFIRMED BY THE COURT AND, IN FACT, HAS
18 ALREADY SO TESTIFIED TO WITHOUT OBJECTION.

19 THE COURT: DO YOU HAVE THE ORDER?

20 MR. MOSHENKO: I DON'T HAVE THE ORDER RIGHT HERE,
21 YOUR HONOR. WE CAN CHASE OFF AND GET IT IF THE COURT
22 WISHES US TO.

23 MR. SHERMAN: HE'D LIKE -- WE'D LIKE TO MAKE SURE
24 THIS IS RELIABLE AND NOT SIMPLY MANY OF -- ONE OF MANY
25 PLANS.

26 THE COURT: I'LL TAKE IT UNDER SUBMISSION PENDING

1 THE RECEIPT OF THE ORDER.

2 MR. MOSHENKO: THE COURT HAS ALREADY ORDERED THE
3 DOCUMENT ADMITTED. DO YOU WANT TO UNDO THE PRIOR? VERY
4 WELL.

5 NOW, I WOULD STILL LIKE TO QUESTION THE
6 WITNESS ABOUT THE TERMS OF HIS AGREEMENT, "HIS" MEANING THE
7 DEBTOR'S AGREEMENT, OUT OF THE BANKRUPTCY PLAN.

8 THE COURT: I'LL ALLOW THAT.

9 MR. MOSHENKO: THANK YOU, YOUR HONOR.

10 Q ALL RIGHT. SO CAN YOU DESCRIBE THE TERMS OF
11 WHAT THE DEBTOR AGREED TO DO AS PART OF THE PLAN IN THE
12 BANKRUPTCY, 1988, ALL SEASONS RESORTS?

13 MR. SHERMAN: OBJECTION. THAT CALLS FOR A
14 NARRATIVE.

15 THE COURT: SUSTAINED.

16 BY MR. MOSHENKO: Q CAN YOU LIST -- DON'T DISCUSS
17 IN GENERALITIES -- LIST THE POINTS THAT THE DEBTOR AGREED
18 TO AS A PART OF THE BANKRUPTCY?

19 A YES.

20 Q LIST THEM FOR ME, PLEASE.

21 A POINT NUMBER ONE, THE UNSECURED CREDITORS
22 WOULD GET PAID A MILLION AND A HALF DOLLARS UPON
23 CONFIRMATION OR 90 DAYS AFTER CONFIRMATION.

24 Q ALL RIGHT. POINT NUMBER TWO?

25 A POINT NUMBER TWO, THE SECURED CREDITORS
26 WOULD RECEIVE THEIR PAYMENTS ALSO IN FULL AND RETAIN THEIR

1 COLLATERAL.

2 Q YOU SAID ALSO "IN FULL." WAS 1.5 MILLION

3 BASICALLY PAYMENT IN FULL?

4 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.

5 THE WITNESS: NO, IT WASN'T PAYMENT IN FULL.

6 THE COURT: SUSTAINED.

7 MR. MOSHENKO: I'M SORRY. THE WITNESS WAS

8 SPEAKING.

9 THE OBJECTION WAS?

10 THE COURT: SUSTAINED.

11 MR. MOSHENKO: WHAT WAS THE OBJECTION? I COULDN'T

12 HEAR.

13 THE COURT: LACK OF FOUNDATION.

14 MR. MOSHENKO: OKAY.

15 Q YOU HAVE PERSONAL KNOWLEDGE OF THE AMOUNT OF

16 THE DEBTS OF ALL SEASONS RESORTS AS OF 1988?

17 MR. SHERMAN: OBJECTION. THE DOCUMENTS ARE THE

18 BEST EVIDENCE OF THAT. THE DOCUMENTS HAVE NOT BEEN

19 ADMITTED INTO EVIDENCE. IT LACKS FOUNDATION, AND IT CALLS

20 FOR HEARSAY.

21 THE COURT: YOU'RE ASKING FOR HIS PERSONAL

22 KNOWLEDGE. I'LL ALLOW IT.

23 BY MR. MOSHENKO: Q DO YOU HAVE PERSONAL KNOWLEDGE

24 OF THE APPROXIMATE AMOUNT OF DEBT OF ALL SEASONS RESORTS'

25 UNSECURED CREDITORS?

26 A YES.

1 Q AS OF THE BANKRUPTCY?

2 A CORRECT.

3 Q WHAT WAS THAT AMOUNT?

4 A I BELIEVE IT WAS SOMEWHERE AROUND 2.2
5 MILLION.

6 Q ALL RIGHT. SO THIS FIGURE WAS ADOPTED EVEN
7 THOUGH IT WAS NOT 100 PERCENT?

8 A YES.

9 Q DID THE DEBTOR DISPUTE SOME OF THE UNSECURED
10 CREDITORS' CLAIMS IN THE BANKRUPTCY?

11 A YES, WE DID.

12 Q WERE THERE MORE POINTS THAN POINTS ONE AND
13 TWO?

14 A YES. THAT WE WOULD -- WE'D HONOR ALL THE
15 CONTRACTS, THE MEMBER CONTRACTS, AND ACCEPT THOSE. THEY
16 WERE EXECUTORY CONTRACTS, AND WE ACCEPTED ALL THE EXECUTORY
17 CONTRACTS IN THEIR ENTIRETY.

18 Q DID THOSE CONTRACTS REPRESENT AN ASSET OR
19 LIABILITY OF ALL SEASONS RESORTS?

20 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL
21 CONCLUSION OF THE WITNESS.

22 THE COURT: SUSTAINED.

23 MR. MOSHENKO: YOUR HONOR, HE IS DESIGNATED AS AN
24 EXPERT, AND HE IS FAMILIAR WITH THIS AREA OF BOTH THE LAW
25 AND OF THE FACTS AND IS QUALIFIED, I SUSPECT, TO TALK ABOUT
26 THE TREATMENT OF MEMBER CONTRACTS IN A BANKRUPTCY SETTING.

1 THE COURT: WELL, IF HE IS QUALIFIED -- I DON'T
2 THINK HE IS QUALIFIED AS AN EXPERT, COUNSEL.

3 MR. MOSHENKO: VERY WELL. I'LL LAY THE FOUNDATION
4 FOR THAT LATER, YOUR HONOR.

5 BY MR. MOSHENKO: Q NEXT, WERE THERE ANY OTHER
6 POINTS, THEN? PAY UNSECURED CREDITORS 1.5 MILLION, PAY THE
7 SECURED CREDITORS IN FULL, AND HONOR ALL CONTRACTS?

8 A YES. WE ALSO HAD PRIORITY CLAIMS.

9 Q WHO IS "WE" IN THIS?

10 A THE ALL SEASONS RESORTS, INC.

11 Q WHAT HAPPENED TO THE PRIORITY CLAIMS?

12 A THEY WERE ALSO PAID TO BE PAID UPON
13 CONFIRMATION.

14 Q ALL RIGHT. NOW, HOW DID ALL SEASONS PROPOSE
15 TO FINANCE THE PAYMENTS THAT WERE OBLIGATED TO IT UNDER THE
16 PLAN?

17 A UNDER THE PLAN, THE UNSECURED CREDITORS
18 WOULD BE PAID BY THE LENDERS. THE SECURED LENDERS WOULD
19 EACH DONATE -- NOT DONATE -- LEND HALF A MILLION DOLLARS.

20 Q HOW MANY SECURED CREDITORS WERE LENDING
21 1. -- A HALF A MILLION DOLLARS?

22 A THREE.

23 Q THREE TIMES ONE-HALF MILLION. OKAY.
24 THE NAMES OF THOSE CREDITORS WERE?

25 A BARCLAY'S, SECURITY CAPITAL, WHICH IS
26 BENJAMIN FRANKLIN, AND GREYHOUND FINANCIAL.

1 Q AND ALL SEASONS EMERGED FROM THAT CHAPTER 11
2 BANKRUPTCY WITH A PLAN IN PLACE?

3 A YES.

4 Q WHAT HAPPENED TO THE CREDIT LINE THAT THE
5 THREE SECURED LENDERS HAD COMMITTED TO, TO YOU, WHEN YOU
6 AGREED TO TAKE OVER ALL SEASONS RESORTS?

7 A THEY AGREED TO CONTINUE THE CREDIT LINE FOR
8 AN ADDITIONAL \$6 MILLION, AND THAT'S THE FINANCE CONTRACTS.

9 Q ALL RIGHT. THAT WAS A TERM OF THE PLAN AS
10 WELL?

11 A CORRECT.

12 Q ONCE ALL SEASONS RESORTS EMERGED FROM
13 BANKRUPTCY, WHAT DID YOU DO TO CARRY OUT PERFORMANCE -- TO
14 HAVE ALL SEASONS CARRY OUT PERFORMANCE OF THE TERMS OF THE
15 PLANS?

16 MR. SHERMAN: OBJECTION. THAT CALLS FOR A
17 NARRATIVE.

18 THE COURT: SUSTAINED.

19 BY MR. MOSHENKO: Q WELL, LIST THE STEPS THAT YOU
20 TOOK TO HAVE ALL SEASONS RESORTS COMPLY WITH THE TERMS AND
21 CONDITIONS OF THE PLAN.

22 A ONE OF THE STEPS THAT I TOOK WAS THAT THE
23 PRIORITY CLAIMS WERE TO BE PAID BY AN ISSUANCE OF A BOND,
24 WHICH WAS APPROVED BY THE COURT. WE RAISED -- "WE" BEING
25 ALL SEASONS RESORTS, RAISED APPROXIMATELY \$3 MILLION FROM
26 PRIVATE INVESTORS AND FROM ITS MEMBERS TO PAY THE PRIORITY

1 CLAIMS OF ALL SEASONS RESORTS, WHICH WE DID.

2 Q ALL RIGHT. WHAT IS ANOTHER THING THAT ALL
3 SEASONS RESORTS DID TO CARRY OUT THE TERMS OF THE PLAN?

4 A WELL, WE CONTINUED ON WITH OUR BUSINESS AS
5 WE DID THROUGH THE BANKRUPTCY. WE CONTINUED ON WITH OUR
6 SALES PROGRAM AS WE DID WITH THE BANKRUPTCY, DURING THE
7 BANKRUPTCY. SO BUSINESS WAS -- JUST CONTINUED STRAIGHT
8 THROUGH. AND THEN WE WERE WAITING FOR THE FUNDING BY THE
9 LENDERS.

10 Q YOU WENT TO THE LENDERS TO HAVE THEM PERFORM
11 THAT WHICH THEY AGREED TO UNDER THE PLAN?

12 A CORRECT.

13 Q AND WHAT OCCURRED THEN?

14 A THIS WAS THE TIME THAT THE SAVINGS AND LOAN
15 INDUSTRY WAS GOING THROUGH A LOT OF PROBLEMS DEALING WITH
16 JUNK BONDS AND THINGS LIKE THAT. BENJAMIN FRANKLIN SAVINGS
17 AND LOAN, WHICH WAS A SEVERAL-BILLION-DOLLAR INSTITUTION,
18 WAS SHUT DOWN BY THE RESOLUTION TRUST. SO THEY CEASED
19 OPERATIONS AS A SAVINGS AND LOAN. AND THE GOVERNMENT
20 REFUSED TO FUND THEIR PORTION OF THE \$6 MILLION, OR THE
21 HALF A MILLION DOLLARS, THAT WAS TO GO TO THE UNSECURED
22 CREDITORS.

23 Q THAT PREVENTED ALL SEASONS FROM BEING ABLE
24 TO GO FORWARD AND PAY THE DEBTS THAT THOSE THREE SECURED
25 CREDITORS' FINANCING WERE SUPPOSED TO SECURE; CORRECT?

26 A YES.

1 Q WHAT OCCURRED NEXT IN THE ALL SEASONS

2 RESORTS --

3 A WELL, I TRIED TO STILL PUT IT TOGETHER

4 WITHOUT BENJAMIN FRANKLIN, BUT THE OTHER LENDERS REFUSED TO

5 FUND THEIR PORTION WHEN THE BENJAMIN FRANKLIN SAVINGS AND

6 LOAN WENT UNDER. SO THEY REFUSED -- THE UNSECURED

7 CREDITORS WERE NOT VERY PLEASED, AND THEY FILED A

8 BANKRUPTCY AGAINST ALL SEASONS, PUT US BACK INTO

9 BANKRUPTCY.

10 Q THAT'S WHAT'S CALLED AN INVOLUNTARY

11 BANKRUPTCY?

12 A YES, INVOLUNTARY BANKRUPTCY.

13 Q WAS IT A CHAPTER 11?

14 A CHAPTER 11.

15 Q AND IS THAT WHEN JAMES JOSEPH BECAME

16 APPOINTED AS TRUSTEE?

17 A YES.

18 Q MR. JOSEPH HAS ALREADY GIVEN US SOME

19 TESTIMONY REGARDING THE CIRCUMSTANCES OF THAT BANKRUPTCY.

20 DID -- AND WAS THERE A PLAN OF

21 REORGANIZATION SUBMITTED BY ALL SEASONS RESORTS TO ENABLE

22 IT TO EMERGE FROM THE SECOND BANKRUPTCY?

23 A YES, THERE WAS.

24 Q WAS THE PLAN APPROVED BY THE CREDITORS?

25 A YES, IT WAS.

26 Q WAS IT APPROVED BY THE COURT?

1 A YES.

2 Q WHAT DID YOU -- MEANING ALL SEASONS -- AGREE
3 TO DO AS A PART OF THE PLAN OF REORGANIZATION APPROVED
4 IN -- WHAT IS IT? 1993?

5 A I BELIEVE SO. IN THE EARLY '90'S, YES.

6 Q OKAY. WHAT IS IT THAT YOU AS ALL SEASONS
7 RESORTS AGREED TO DO AS A PART OF THAT PLAN?

8 A IT WAS A LONG PROCESS. THE GROUP, THE
9 APOLLO GROUP, AND ALL SEASONS, RAISED MONEY IN ORDER TO PAY
10 OFF TWO OF THE MAJOR LENDERS. BARCLAY'S AMERICAN'S NOTE
11 WAS BOUGHT, PAID OFF -- NOT PAID OFF, BUT WAS ACQUIRED BY
12 THE APOLLO GROUP. I CALL IT THE GUARDIAN GROUP IN THAT
13 CASE. THE GUARDIAN GROUP PURCHASED THE NOTES OF BARCLAY'S
14 AMERICAN AND ALSO PURCHASED THE NOTES OF -- FROM THE
15 RESOLUTION TRUST OF BENJAMIN FRANKLIN SAVINGS AND LOAN.

16 Q WHAT ABOUT THE THIRD CREDITOR, MAJOR
17 CREDITOR, I BELIEVE GRAYHOUND?

18 A THE THIRD MAJOR CREDITOR AT THAT TIME WAS
19 DUE SOMEWHERE AROUND A MILLION EIGHT, TWO MILLION,
20 SOMEWHERE IN THAT NEIGHBORHOOD. WE TRIED TO BUY THEIR
21 POSITION, AND THEY DIDN'T FEEL THAT THEY WANTED TO SELL
22 THEIR POSITION AT THAT TIME, AND THEY KEPT IT.

23 Q OKAY. AND SO DID ALL SEASONS CONTINUE TO
24 MAKE PAYMENTS TO GREYHOUND?

25 A YES, THEY DID.

26 Q ALL RIGHT. WHAT ABOUT THE UNSECURED

1 CREDITORS; WHAT DID YOU AS ALL SEASONS AGREE TO DO TO
2 PROTECT THE UNSECURED CREDITORS?

3 A THE UNSECURED CREDITORS AND THE
4 BONDHOLDER -- THE BONDHOLDERS WERE UNSECURED AS WELL AS THE
5 UNSECURED CREDITORS. SO I CONVINCED THE APOLLO GROUP AND
6 THE GROUP -- THE GUARDIAN CREDIT GROUP, WHICH IS WITH OUR
7 INVESTOR, OR MY INVESTOR, TO SUBORDINATE THEIR INTEREST IN
8 ORDER THAT WE COULD SECURE OUR BONDHOLDERS. AND THE REASON
9 WE WANTED TO DO THAT, A LOT OF THE BONDHOLDERS WERE
10 MEMBERS, AND ABOUT HALF OF THEM WERE INVESTORS.

11 SO WE SUBORDINATED THE LOANS THAT WE
12 PURCHASED. THE LOAN FROM BARCLAY'S AMERICAN AND THE LOAN
13 FROM BENJAMIN FRANKLIN, WE SUBORDINATED THOSE FIRST
14 MORTGAGES TO THE UNSECURED CREDITORS. AND WE GIVE THEM A
15 FIRST DEED OF TRUST ON, I BELIEVE, FOUR OF OUR PARKS SO
16 THAT THE UNSECURED CREDITORS BECAME SECURED.

17 Q YOU JUST USED THE WORD "SUBORDINATE." WHAT
18 DOES THAT MEAN?

19 A WELL, WE HAD -- THE GUARDIAN GROUP HAD A
20 FIRST POSITION ON ALL THE RESORTS THAT WERE FINANCED BY
21 BARCLAY'S AMERICAN AND BY BENJAMIN FRANKLIN SAVINGS AND
22 LOAN.

23 Q AND GUARDIAN WAS IN FIRST POSITION?

24 A FIRST POSITION.

25 Q MEANS WHAT?

26 A THAT WE HAD THE FIRST DEED OF TRUST, OR THE

1 GROUP DID, ON THOSE PARTICULAR RESORTS.

2 Q WHICH MEANT THEY HAD A RIGHT TO THE PROPERTY
3 BEFORE ANYBODY ELSE IN THE EVENT OF A DEFAULT; RIGHT?

4 A CORRECT.

5 Q OKAY. WHO WAS BEHIND GUARDIAN IN PRIORITY?

6 A THEN THE APOLLO GROUP HAD THE SECOND
7 MORTGAGE ON ALL THE PARKS, AND THAT INCLUDED REAL AND
8 PERSONAL PROPERTIES.

9 Q AND THEN WHO WAS BEHIND THE APOLLO GROUP?

10 A I DON'T BELIEVE THERE WAS ANYBODY BEHIND THE
11 APOLLO GROUP AT THAT TIME.

12 Q WELL, OTHER CREDITORS WOULD HAVE POTENTIAL
13 CLAIMS THAT WOULD BE BEHIND --

14 A POTENTIALLY, YES.

15 Q OKAY. SO ALL OTHERS, IF ANY OTHERS EXISTED;
16 RIGHT?

17 A CORRECT.

18 Q SO AS A RESULT OF YOUR AGREEMENT TO
19 SUBORDINATE, WHAT OCCURRED?

20 A WELL, WHAT HAPPENED ONE STEP BEFORE, A LOT
21 OF THE INVESTORS THOUGHT THAT MAYBE THEY OUGHT TO MAYBE GO
22 AHEAD AND FORCE THE FORECLOSURE OF THE PROPERTIES, AND I
23 WOULDN'T ALLOW THAT BECAUSE IT WAS JUST HURTING THOSE
24 UNSECURED CREDITORS.

25 MR. SHERMAN: EXCUSE ME. I'M GOING TO MOVE TO
26 STRIKE THE ANSWER AS NOT RESPONSIVE. THE QUESTION IS, AS A

1 RESULT OF YOUR AGREEMENT TO SUBORDINATE, WHAT OCCURRED.

2 MR. MOSHENKO: OKAY.

3 THE COURT: MOTION GRANTED.

4 MR. MOSHENKO: I'LL REASK.

5 Q WERE YOU -- YOU WERE CONNECTED WITH GUARDIAN
6 AND APOLLO; IN FACT, YOU WERE CONTROLLING MANAGEMENT;
7 CORRECT?

8 A CORRECT.

9 Q WERE YOU BEING PRESSURED TO FORECLOSE ON THE
10 PROPERTIES AND TAKE THEM AWAY FROM ALL SEASONS RESORTS?

11 A YES.

12 Q AND HAD YOU DONE THAT, WHAT WOULD THE EFFECT
13 HAVE BEEN ON THE OTHER CREDITORS?

14 A IT WOULD HAVE ELIMINATED ALL THE OTHER
15 CREDITORS; FIRST THE GUARDIAN GROUP AND APOLLO WOULD HAVE
16 OWNED ALL THE PROPERTIES FREE AND CLEAR OF ALL LIENS.

17 Q WHAT WOULD THAT HAVE DONE TO THE MEMBERS?

18 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL
19 CONCLUSION AND CALLS FOR SPECULATION.

20 THE COURT: SUSTAINED.

21 MR. MOSHENKO: IT'S A FACTUAL ISSUE, YOUR HONOR.

22 MR. SHERMAN: AND IT LACKS FOUNDATION.

23 BY MR. MOSHENKO: Q HAD GUARDIAN AND APOLLO
24 FORECLOSED ON THE PROPERTIES, WHAT WOULD YOU HAVE DONE WITH
25 RESPECT TO THE INTEREST OF THE MEMBERS?

26 MR. SHERMAN: OBJECTION. THAT IS NOT RELEVANT. IT

1 CALLS FOR SPECULATION. LACKS FOUNDATION.

2 THE COURT: I'M GOING TO SUSTAIN THAT.

3 BY MR. MOSHENKO: Q ALL RIGHT. SO NOW DID YOU

4 AGREE TO FORECLOSE ON THE PROPERTIES AND TAKE THEM AWAY?

5 A NO. ABSOLUTELY NOT.

6 Q WHY NOT?

7 A THE MEMBERS HAD A STAKE IN HERE DURING THE

8 TIME OF THE BANKRUPTCIES, PRIOR ONE, AND THIS ONE THEY

9 CONTINUED PAYING THEIR DUES. THEY GAVE US GREAT SUPPORT.

10 THE BONDHOLDERS GAVE US GREAT SUPPORT, AND I DIDN'T FEEL IT

11 WOULD BE FAIR FROM A STANDPOINT FOR THEN THE GUARDIAN GROUP

12 AND THE APOLLO GROUP ACQUIRING THE ASSETS THROUGH ANY KIND

13 OF FORECLOSURE.

14 Q SO WHAT DID YOU AGREE TO DO AS OPPOSED TO

15 THE FORECLOSURE?

16 A WE SUBORDINATED OUR FIRST AND SECOND

17 POSITION, THE FIRST AND THE SECOND POSITION TO THE

18 UNSECURED CREDITORS. AND WE ALSO SUBORDINATED THE

19 RECEIPT -- OUR RECEIVABLES, OUR RECEIVABLES BEING THE

20 GENERAL -- I MEAN, GUARDIAN AND APOLLO CONTRACT RECEIVABLES

21 IT HAD PURCHASED FROM THE LENDERS, WE SUBORDINATED THOSE TO

22 THE BONDHOLDERS.

23 Q ALL RIGHT. AS A RESULT OF THE

24 SUBORDINATION, THE PRIORITY OF GUARDIAN AND APOLLO CHANGED?

25 A YES.

26 Q WHERE DID IT END UP?

1 A GUARDIAN THEN WAS IN THE SECOND POSITION,
2 BEHIND THE UNSECURED CREDITORS; AND APOLLO, A THIRD
3 POSITION BEHIND THE UNSECURED CREDITORS, WHO ARE NOW
4 SECURED.

5 Q SO THESE ENDED UP DOWN HERE?

6 A CORRECT.

7 Q WHERE DID IT END UP RELEVANT TO THE
8 BONDHOLDERS?

9 A THE BONDHOLDERS, THE PAPER -- THEY HAD THE
10 ASSIGNMENT OF \$3 MILLION OF PAPER. AND SO THE APOLLO
11 GROUP, OR THE LENDERS, THE GUARDIAN GROUP ENDED UP BEHIND
12 THE BONDHOLDERS ON THE RECEIVABLES.

13 Q NOW, WE'VE HEARD THE NAME "PRESIDENT'S
14 TRAVEL CLUB" REFERRED TO IN THIS CASE. CAN YOU TELL US
15 WHAT THAT IS?

16 A YES. PRESIDENT'S TRAVEL CLUB WAS AN UPGRADE
17 PROGRAM THAT I DEVELOPED I BELIEVE BACK IN 1990.

18 Q OKAY. AND YOU SAY "UPGRADE PROGRAM." WHAT
19 DO YOU MEAN BY THAT?

20 A DURING THE SECOND -- WELL, AN UPGRADE
21 PROGRAM IS WHERE WE GIVE MORE USAGE TO WHAT THE MEMBERS
22 HAD.

23 THE MEMBERS HAD A MEMBERSHIP -- TO BEGIN
24 WITH, AN 11-PARK SYSTEM. AND WE UPGRADED THAT SYSTEM TO
25 APPROXIMATELY 50 RESORTS. AND THE USAGE PRIOR WAS THAT ANY
26 MEMBER COULD SPEND -- IN THOSE 11 RESORTS THEY CAN SPEND

1 TWO WEEKS IN. IN OTHER WORDS, GO TO THE PARK, CAMP THERE
2 FOR TWO WEEKS, AND THEN THEY HAD TO LEAVE FOR ONE WEEK.
3 AND THEN THEY WERE ABLE TO COME BACK FOR ANOTHER TWO WEEKS,
4 LEAVE FOR A WEEK, IN OTHER WORDS, CONTINUOUSLY STAY IN THE
5 SYSTEM, HOWEVER, OUT ONE WEEK EVERY TWO WEEKS.

6 THE PRESIDENT'S CLUB ALLOWED THESE MEMBERS
7 TO STAY AT A RESORT FOR TWO WEEKS. ON THEIR WEEK OUT THEY
8 COULD GO DIRECTLY TO ANOTHER RESORT, AND THEN ANOTHER
9 RESORT, AND COME BACK TO THE FIRST RESORT AND STAY TWO
10 WEEKS. THE REASON THAT WAS IMPORTANT TO THE MEMBERS WAS IT
11 GAVE THE MEMBERS THE OPPORTUNITY TO WINTER, SO-TO-SPEAK --
12 THE SNOWBIRDS WE CALL THEM -- IN FLORIDA. SO THEY COULD
13 STAY AT THE NEW TRAILINN RESORT FOR TWO WEEKS, GO OVER TO
14 ALL SEASONS, SPEND A WEEK OVER THERE BECAUSE THEY WERE
15 PRESIDENT'S CLUB MEMBERS.

16 SO THE DIFFERENT RESORTS THAT WERE --
17 PRESIDENT'S CLUB MEMBERS, THEN, THESE MEMBERS COULD STAY
18 CONTINUOUSLY IN THE SYSTEM IN FLORIDA, WITHOUT HAVING TO
19 HAVE THEIR OUT WEEK.

20 Q WAS THAT SOMETHING THAT COULD BE DONE
21 THROUGH THE COAST TO COAST SYSTEM --

22 A NO.

23 Q -- IF MEMBERS WERE MEMBERS OF COAST?

24 WHY NOT?

25 A COAST TO COAST ONLY ALLOWS ONE WEEK EVERY
26 SIX MONTHS. SO IF YOU GO -- LET'S SAY YOU GO TO THE ALL

1 SEASONS RESORT ORLANDO, AND YOU STAY ONE WEEK, AND WHICH WE
2 WOULD ALLOW YOU TO AS A COAST MEMBER. THEN YOU'D HAVE TO
3 GET OUT FOR SIX MONTHS. WELL, YOU CAN HARDLY SPEND THE
4 WINTER ON A PROGRAM LIKE THAT.

5 SO THE PROGRAM THAT WE PUT TOGETHER FOR THE
6 MEMBERS ON THE PRESIDENT'S CLUB SOLVE THEIR PROBLEMS, AND
7 IT ALSO RAISED MONEY FOR US, OR FOR THE RESORT SYSTEM.

8 Q ALL RIGHT. AND, NOW, YOU SAY YOU RAISED
9 MONEY.

10 HOW MUCH DID IT COST TO BECOME A MEMBER OF
11 THE PRESIDENT'S CLUB?

12 A IT WAS APPROXIMATELY \$3,000.

13 Q AND WAS ALL SEASONS RESORT SELLING
14 PRESIDENT'S CLUB MEMBERSHIPS AT ABOUT THE TIME OF THE
15 SECOND ALL SEASONS BANKRUPTCY?

16 A YES. MR. JOSEPH WAS THE TRUSTEE. HE WAS
17 CONCERNED ABOUT THE CASH FLOW. AND THAT'S WHEN I WAS ABLE
18 TO DEVELOP THE UPGRADE PROGRAM AND SELL THE PRESIDENT'S
19 CLUB, WHICH BROUGHT IN SUBSTANTIAL INCOME TO ALL SEASONS
20 AND ALLOWED THEM TO COME OUT OF THE CHAPTER.

21 Q WHILE WE'RE TALKING ABOUT PRESIDENT'S TRAVEL
22 CLUB, YOU'RE FAMILIAR WITH THE ENHANCED MEMBERSHIP IN COAST
23 TO COAST CALLED "COAST DELUXE"?

24 A YES.

25 Q WHAT'S -- WHAT ARE THE DIFFERENCES BETWEEN
26 PRESIDENT'S TRAVEL CLUB AND COAST DELUXE?

1 A I THINK THAT I HAVE TO EXPLAIN WHAT COAST TO
2 COAST IS FIRST, IF I MAY.

3 MR. SHERMAN: YOUR HONOR, I OBJECT. IT GOES BEYOND
4 THE SCOPE OF THE QUESTION.

5 THE COURT: SUSTAINED.

6 BY MR. MOSHENKO: Q WE'LL COME BACK TO THIS,
7 MR. NOVELLI.

8 A OKAY.

9 Q I THINK I TOOK YOU OFF OF OUR DIRECTION
10 HERE.

11 DID THE INCOME FROM PRESIDENT'S TRAVEL CLUB
12 GET INVOLVED IN THE PLAN OF REORGANIZATION FROM THE SECOND
13 ALL SEASONS RESORTS INVOLUNTARY BANKRUPTCY?

14 A YES. IT SUPPORTED THE OPERATIONS OF ALL
15 SEASONS DURING THE BANKRUPTCY AND THE TRUSTEE'S OPERATIONS,
16 THE LEGAL FEES, WHICH WERE SOMEWHERE AROUND A MILLION
17 DOLLARS IN LEGAL FEES THAT THE UPGRADES WERE ABLE TO DO,
18 PAY FOR.

19 Q PRESIDENT'S TRAVEL CLUB WAS A SEPARATE AND
20 DISTINCT COMPANY; CORRECT?

21 A CORRECT.

22 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.
23 CALLS FOR A LEGAL CONCLUSION.

24 THE COURT: SUSTAINED.

25 MR. SHERMAN: I MOVE TO STRIKE THE ANSWER.

26 THE COURT: GRANTED.

1 BY MR. MOSHENKO: Q WHAT WAS THE FORM OF
2 PRESIDENT'S TRAVEL CLUB AS A BUSINESS ENTITY?

3 A WHEN THE PRESIDENT'S TRAVEL CLUB FIRST
4 STARTED, IT WAS A PRETTY MUCH A DIVISION OF ALL SEASONS.
5 THEN AS MORE RESORTS CAME IN, WE INCORPORATED IT INTO THE
6 PRESIDENT'S TRAVEL CLUB, INC. --

7 Q ALL RIGHT. AS OF THE TIME --

8 A -- AS A SEPARATE CORPORATION.

9 Q AS OF THE TIME OF THE EMERGING FROM
10 BANKRUPTCY, THE SECOND BANKRUPTCY, WAS P.T.C. ALREADY
11 INCORPORATED?

12 A YES.

13 Q DID P.T.C. HAVE ANY LEGAL OBLIGATION TO
14 CONTRIBUTE ITS INCOME TO SUPPORT THE PLAN?

15 MR. SHERMAN: OBJECTION. THAT CALLS FOR A LEGAL
16 CONCLUSION.

17 THE COURT: SUSTAINED.

18 BY MR. MOSHENKO: Q WHY DID P.T.C. CONTRIBUTE ITS
19 INCOME TO SUPPORT THE CLAIM?

20 A WELL, WE WERE OBLIGATED. I TALKED TO THE
21 TRUSTEE. THE TRUSTEE AGREED THAT FOR EVERY SALE THAT WE
22 MADE, THAT THEY WOULD GET APPROXIMATELY A THOUSAND DOLLARS
23 TO GO TOWARDS THE ESTATE, WHICH WE GAVE THEM.

24 THE PLAN -- THE OPERATION ALSO CALLED FOR
25 THE SALES DEPARTMENT TO GET PAID, WHICH WAS -- IT WAS LESS
26 OF A COST AND SOMEWHERE AROUND 33 PERCENT TO THE SALES

1 DEPARTMENT.

2 Q ALL RIGHT. SOMETHING THAT IT DIDN'T HAVE TO
3 DO, BUT YOU AGREED TO HAVE IT DO THAT?

4 A WELL, IN ORDER TO MAINTAIN THE CORPORATION
5 AND KEEP IT ALIVE, I HAD TO DO IT.

6 Q THE CORPORATION IS ALL SEASONS RESORTS?

7 A ALL SEASONS RESORT, RIGHT.

8 Q DURING THE TIME OF THE FIRST AND SECOND ALL
9 SEASONS RESORTS BANKRUPTCIES, WHAT OCCURRED -- WHAT
10 HAPPENED WITH RESPECT TO ALL SEASONS WITH RESPECT TO THE
11 NUMBER OF RESORTS?

12 I THINK YOU TOLD US EARLIER THERE WERE 11
13 RESORTS WHEN YOU GOT INVOLVED. HOW MANY RESORTS DID IT
14 CHANGE TO, ASSUMING IT CHANGED, DURING THAT TIME PERIOD?

15 A IT WAS 12 RESORTS, AND I GAVE UP ONE OF
16 THEM, WHICH WAS THE ONE THAT WENT TO RANDOLF TUCKER.

17 Q OKAY. NOW, WHAT HAPPENED DURING THE NEXT
18 SEVERAL YEARS WHILE YOU'RE GOING THROUGH THE TWO
19 BANKRUPTCIES TO THE NUMBER OF RESORTS?

20 A WE DIDN'T LOSE ANY. WE KEPT THE RESORTS.

21 Q DID YOU GAIN ANY?

22 A ALL SEASONS DIDN'T GAIN ANY. DURING THAT
23 TIME FRAME --

24 Q OKAY. DID YOU, AS PRESIDENT OF ALL SEASONS
25 RESORTS, AFFILIATE OR ASSOCIATE YOUR ALL SEASONS RESORTS
26 COMPANY WITH OTHER COMPANIES THAT WERE IN SIMILAR BUSINESS,

1 RESORT BUSINESS?

2 A WE ACQUIRED OTHER COMPANIES, "WE" BEING THE
3 APOLLO GROUP AND MY INVESTORS.

4 Q NAME THOSE COMPANIES THAT WERE ACQUIRED
5 DURING THAT TIME PERIOD.

6 A I DON'T KNOW IF I CAN RECALL THEM ALL. WE
7 ACQUIRED THE PONDEROSA IN SALEM, OHIO, AND THE LANDING, IN
8 OHIO ALSO. WE ALSO ACQUIRED DELTA ISLE IN THE SACRAMENTO
9 AREA. WE ACQUIRED THE A.R.A. PARK IN OCALA, FLORIDA. WE
10 ACQUIRED NATURES RESORT IN FLORIDA. WE ACQUIRED NEW
11 TRAILINN IN FLORIDA.

12 Q ALL RIGHT, THAT'S ENOUGH.

13 SO DID ALL SEASONS RESORTS IN SOME MANNER
14 COLLABORATE WITH THOSE OTHER RESORT COMPANIES THAT YOU
15 ACQUIRED TO ENABLE ALL SEASONS RESORTS MEMBERS TO HAVE
16 BETTER BENEFITS THAN IT HAD WHEN YOU FIRST TOOK OVER ALL
17 SEASONS RESORTS?

18 A RIGHT. WHAT IT DID, IT GAVE ACCESS TO THE
19 ALL SEASONS MEMBERS THROUGH THE PRESIDENT'S CLUB TO ALL THE
20 RESORTS; NOT JUST THE 11 RESORTS OF ALL SEASONS, BUT ABOUT
21 50 RESORTS OF THE COMBINED COMPANIES.

22 Q WHAT HAPPENED TO THE NUMBER OF ALL SEASONS
23 MEMBERS DURING THE YEARS 1988, '89, '90, '91?

24 A DURING THE BANKRUPTCY --

25 MR. SHERMAN: EXCUSE ME. OBJECTION. LACKS
26 FOUNDATION. BEST EVIDENCE OF THOSE -- OF THAT INFORMATION

1 WOULD BE THE MEMBERSHIP RECORDS THEMSELVES.

2 MR. MOSHENKO: YOUR HONOR, MAY I APPROACH ON THIS?

3 THE COURT: YOU MAY.

4 (DISCUSSION OFF THE RECORD.)

5 BY MR. MOSHENKO: Q MR. NOVELLI --

6 A YES.

7 Q -- DURING THE YEARS '88, '89, '90, '91, '92

8 WHILE YOU WERE PRESIDENT OF ALL SEASONS RESORTS, DID ALL

9 SEASONS RESORTS HOLD -- CONDUCT SALES OF MEMBERSHIPS --

10 A YES.

11 Q -- IN ALL SEASONS RESORTS?

12 A YES, WE DID.

13 Q DID THE NUMBER OF MEMBERS THAT YOU -- WERE

14 YOU SUCCESSFUL IN SELLING ANY MEMBERSHIPS?

15 A YES, WE WERE.

16 Q OKAY. AND DID ALL SEASONS RESORTS MEMBERS

17 JUMP OFF OF THE ALL SEASONS SHIP BECAUSE OF THE EXISTING

18 BANKRUPTCY?

19 A NO.

20 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION,

21 YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MR. MOSHENKO: Q WELL, DID YOU --

24 MR. SHERMAN: AND -- EXCUSE ME. I WOULD MOVE TO

25 STRIKE THE ANSWER BEFORE -- IT WAS MADE BEFORE THE

26 OBJECTION.

1 THE COURT: MOTION GRANTED.

2 BY MR. MOSHENKO: Q FROM YOUR PERSONAL KNOWLEDGE,
3 DID YOU WITNESS THE SALES ACTIVITIES THAT WERE TAKING PLACE
4 AT YOUR MANY RESORTS BY YOUR EMPLOYEES?

5 A I WAS IN CHARGE OF ALL THE SALES, THE SALES
6 DEPARTMENT.

7 Q ALL RIGHT. AND DID ALL SEASONS RESORTS AS A
8 PART AND PROCESS OF ITS SALES PRESENTATION TALK ABOUT AND
9 DISCLOSE THE EXISTENCE OF THE BANKRUPTCIES?

10 A YES. THAT WAS REQUIRED BY THE COURT; THAT
11 WE DISCLOSE THAT ON THE CONTRACT ITSELF. IT WAS DISCLOSED
12 THAT WE WERE IN CHAPTER 11 BANKRUPTCY, AND THERE WAS NO
13 GUARANTEE THAT WE'D COME OUT. SO IT WAS -- MADE IT VERY
14 DIFFICULT. BUT IN THE MEANTIME, WE SOLD RIGHT THROUGH
15 THAT.

16 Q ALL RIGHT. AND DID YOU WITNESS THE REACTION
17 OF THE PUBLIC TO THE FACT OF THE BANKRUPTCIES WITH YOUR OWN
18 EYES AND EARS?

19 MR. SHERMAN: OBJECTION.

20 THE WITNESS: YES, I DID.

21 MR. MOSHENKO: HE CAN'T TALK ABOUT WHAT HE SAW? HE
22 CAN'T TALK ABOUT WHAT HE SAW? ALL RIGHT.

23 Q AND DID PEOPLE REFUSE TO JOIN ALL SEASONS
24 RESORTS IN YOUR PRESENCE WHEN THEY WERE TOLD ABOUT THE
25 EXISTENCE OF THE BANKRUPTCY?

26 MR. SHERMAN: OBJECTION. IT CALLS FOR INADMISSIBLE

1 HEARSAY.

2 THE COURT: SUSTAINED ON HEARSAY.

3 MR. MOSHENKO: CALLS FOR CONDUCT OF PEOPLE, DID
4 THEY REFUSE TO DO SOMETHING.

5 MR. SHERMAN: IT'S ALSO IRRELEVANT AND CALLS FOR
6 SPECULATION AS TO CAUSE AND EFFECT.

7 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION,
8 COUNSEL.

9 MR. MOSHENKO: OKAY.

10 Q DID ALL SEASONS RESORTS GROW IN SUCCESS AND
11 STATURE DURING THAT TIME PERIOD BASED ON YOUR OWN PERSONAL
12 OBSERVATIONS?

13 A YES.

14 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.
15 VAGUE AND AMBIGUOUS.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES. WE HAD --

18 THE COURT: YOU'VE ANSWERED THE QUESTION "YES."

19 BY MR. MOSHENKO: Q "YES" ANSWERS THE QUESTION.

20 A YES.

21 Q AND DID IT HAVE MORE MEMBERS IN 1994 THAN IT
22 HAD IN 1988?

23 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.

24 MR. MOSHENKO: PERSONAL KNOWLEDGE.

25 MR. SHERMAN: WHAT WE DISCUSSED.

26 THE COURT: PERSONAL KNOWLEDGE YOU CAN ANSWER.

1 THE WITNESS: YES. WE WENT FROM 11,000 ACTIVE
2 MEMBERS TO 18,000 ACTIVE MEMBERS.

3 BY MR. MOSHENKO: Q ALL RIGHT. AND, NOW,
4 CONTINUING WITH THE ALL SEASONS SITUATION, DID ALL -- DID
5 YOU CONTINUE TO OPERATE ALL SEASONS RESORTS AND ITS -- HOW
6 MANY RESORTS DID IT HAVE IN THE MID-'90'S?

7 A ELEVEN.

8 Q ELEVEN RESORTS IN CONJUNCTION WITH THE OTHER
9 RESORTS THAT YOU TESTIFIED THAT YOU ACQUIRED OR YOUR
10 COMPANIES ACQUIRED THROUGH 1996, WHEN ALL SEASONS RESORTS
11 WAS AGAIN PLACED IN ANOTHER BANKRUPTCY?

12 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION
13 THAT IT WAS BANKRUPTCY IN '96. ASSUMES FACTS NOT IN
14 EVIDENCE.

15 MR. MOSHENKO: '97, YOUR HONOR. I MISSTATED.

16 THE COURT: OKAY.

17 MR. SHERMAN: SOMETHING ELSE.

18 BY MR. MOSHENKO: Q STILL 1997 WHEN IT WAS AGAIN
19 PLACED IN ANOTHER BANKRUPTCY?

20 A I OPERATED ALL THE RESORTS, BUT I DID HAVE A
21 RECEIVER IN ON ALL SEASONS.

22 Q WE'VE HEARD SOME TESTIMONY ABOUT THAT.
23 YOU'RE REFERRING TO KENNETH KEIM?

24 A YES, I AM.

25 Q AND MR. KEIM WAS APPOINTED AS A RECEIVER ON
26 AUGUST 30, 1996?

1 A CORRECT.

2 Q NOW, DID YOU THEN CONTROL -- "YOU" MEANS ALL
3 SEASONS RESORTS MANAGEMENT -- CONTROL ALL SEASONS RESORTS
4 AS OF AUGUST 30 -- I GUESS SEPTEMBER 1, 1996?

5 A ACTUALLY, I FILED A REORGANIZATION --
6 ANOTHER CHAPTER TO GET RID OF MR. KEIM IN JULY -- JULY 10TH
7 OF 1997.

8 Q '97.

9 A YES.

10 Q SO BETWEEN AUGUST 30, 1996, AND JULY OF
11 1997, YOU DIDN'T CONTROL ALL SEASONS RESORTS?

12 A CORRECT.

13 Q ALL RIGHT. WHY DID YOU FILE THE BANKRUPTCY
14 TO GET RID OF MR. KEIM?

15 A MR. KEIM'S LEGAL FEES AND PROFESSIONAL FEES
16 EXCEEDED THE BUDGET OF THE RESORTS. THEIR FEES WERE
17 PUSHING IN THE MILLION DOLLARS, AND INCOME THAT WENT TO THE
18 RESORTS WAS ABOUT PAR. AND I FELT THAT THE BLEEDING HAD TO
19 STOP, AND I STOPPED IT, WITH FILING A CHAPTER.

20 Q WHAT OCCURRED TO THE MEMBERSHIP -- STRIKE
21 THAT.

22 UP UNTIL THE TIME MR. KEIM BECAME THE
23 RECEIVER IN AUGUST OF 1996 AS COMPARED TO 1993, 4, 5, DID
24 ALL SEASONS RESORTS HAVE MORE MEMBERS OR LESS MEMBERS?

25 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION FOR
26 THE SPECIFIC --

1 MR. MOSHENKO: PERSONAL KNOWLEDGE, YOUR HONOR. WE
2 ASKED FOR PERSONAL KNOWLEDGE.

3 THE COURT: I'LL ALLOW IT.

4 PERSONAL KNOWLEDGE, IF YOU HAVE IT.

5 THE WITNESS: WE CONTINUED TO GROW EVERY YEAR THAT
6 I WAS INVOLVED WITH ALL SEASONS. THE MEMBERSHIP COUNT
7 CONTINUED TO GROW.

8 BY MR. MOSHENKO: Q WHAT ABOUT THE NUMBER OF
9 RESORTS; DID THE NUMBER OF RESORTS EVER CHANGE FROM 11 TO
10 SOMETHING OTHER THAN 11?

11 A IT WENT TO 10 RESORTS, AND I BELIEVE THAT
12 WAS IN 1996. IT WENT TO 10 RESORTS.

13 Q ALL RIGHT. NOW, AS OF THE TIME YOU TOOK
14 OVER ALL SEASONS RESORTS, YOU TESTIFIED IT HAD DEBTS OF
15 OVER \$40 MILLION?

16 A CORRECT.

17 Q BETWEEN THE TIME PERIOD OF YOUR FIRST
18 INVOLVEMENT WITH ALL SEASONS IN '86 AND THE TIME OF THE
19 SECOND -- THE THIRD BANKRUPTCY THAT YOU FILED, WHAT
20 OCCURRED WITH RESPECT TO THE AMOUNT OF DEBT?

21 A THE TOTAL DEBT ON THE THIRD BANKRUPTCY -- I
22 BELIEVE WAS SOMEWHERE AROUND \$20 MILLION VERSUS \$40
23 MILLION.

24 Q WE'VE HAD SOME TESTIMONY OR EVIDENCE
25 SUGGESTED BY SOME OTHER WITNESSES THAT AT THE TIME THAT
26 MR. -- I THINK DAFF, WHO WAS THE TRUSTEE IN THE THIRD

1 BANKRUPTCY, INDICATED THERE WERE OVER \$90 MILLION OF DEBTS
2 IN ALL SEASONS?

3 A YES.

4 Q ARE YOU FAMILIAR WITH THAT?

5 A YES.

6 Q THAT'S FINE.

7 OKAY. DO YOU -- HAVE YOU REVIEWED THE
8 RECORDS OF ALL SEASONS RESORTS AS OF 1997 TO IDENTIFY ITS
9 DEBT?

10 A YES, I DID.

11 Q AND WHAT WAS THE ACTUAL DEBT OF ALL SEASONS
12 RESORTS?

13 A THE ACTUAL DEBT OF ALL SEASONS WAS --

14 MR. SHERMAN: OBJECTION.

15 THE COURT: EXCUSE ME. THERE'S AN OBJECTION

16 PENDING.

17 MR. SHERMAN: THE DEBT OF ALL SEASONS IS REFLECTED
18 IN THE SCHEDULES OF ALL SEASONS.

19 MR. MOSHENKO: THIS --

20 MR. SHERMAN: EXCUSE ME. THOSE DOCUMENTS SPEAK FOR
21 THEMSELVES, AND THIS WITNESS DOES NOT HAVE THE REQUISITE
22 FOUNDATION TO TESTIFY TO THE TRUSTEE'S DETERMINATION OF THE
23 DEBT AT THE TIME OF THE THIRD FILING.

24 MR. MOSHENKO: THIS WITNESS HAS PERSONAL KNOWLEDGE
25 THAT IS HIS KNOWLEDGE. MR. DAFF HAS HIS KNOWLEDGE.

26 MR. DAFF CAN COME AND TESTIFY. ANY WITNESS CAN TESTIFY TO

1 WHAT THEIR KNOWLEDGE IS. AND IF IT DIFFERS WITH
2 MR. DAFF'S, SO BE IT. THAT'S A QUESTION OF FACT FOR THE
3 JUDGE OR THE JURY TO DECIDE.

4 JUST BECAUSE A DOCUMENT STATES SOMETHING
5 DOES NOT MEAN SOMEBODY CAN HAVE TESTIMONY -- CANNOT HAVE
6 TESTIMONY THAT CONTRADICTS THE DOCUMENT, ESPECIALLY SINCE
7 HE IS NOT REINFORCING THE DOCUMENT. HE HAS CONTRADICTED
8 THE DOCUMENT.

9 MR. SHERMAN: YOUR HONOR, IT JUST EMPHASIZES THE
10 LACK OF FOUNDATION. WHAT MR. MOSHENKO WANTS TO DO IS TO
11 SHOW MR. DAFF'S SCHEDULES THAT SHOW \$93 MILLION OF DEBT AND
12 HAVE THIS WITNESS EXPLAIN ITEM-BY-ITEM WHY HE DISAGREES
13 WITH THIS ONE OR DISAGREES WITH THAT ONE.

14 THE COURT: I'LL SUSTAIN THE OBJECTION, COUNSEL.

15 BY MR. MOSHENKO: Q HOW MUCH WAS -- WELL, HOLD
16 ON.

17 UP UNTIL THE TIME WHEN MR. DAFF TOOK OVER
18 ALL SEASONS RESORTS, DID YOU MAINTAIN THE RESORTS AND
19 SERVICE THE MEMBERS OF ALL SEASONS RESORTS THROUGH THE
20 RESORTS MAINTAINED?

21 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION AND
22 ASSUMES FACTS NOT IN EVIDENCE.

23 THE COURT: I'LL ALLOW THAT.

24 THE WITNESS: YES, I DID, EXCEPT FOR THE PERIOD
25 WHEN MR. KEIM WAS THERE.

26 BY MR. MOSHENKO: Q ALL RIGHT. AND THEN AFTER

1 MR. KEIM WAS THERE, YOU FILED A BANKRUPTCY YOU TESTIFIED
2 TO; DID YOU TAKE OVER THE OPERATION AND MAINTENANCE OF THE
3 RESORTS?

4 A YES, WE TOOK BACK OVER AGAIN IN JULY -- JULY
5 11TH OF '97.

6 Q NOW, YOU CONTINUED TO OPERATE ALL SEASONS
7 RESORTS UNTIL MR. DAFF GOT INVOLVED; IS THAT CORRECT?

8 A CORRECT. MR. DAFF WAS APPOINTED TRUSTEE, I
9 BELIEVE, IN AUGUST, SOMETIME EARLY AUGUST.

10 Q ALL RIGHT. AND SO YOU HAD THEM IN -- LET'S
11 CALL IT JULY, AUGUST. MR. DAFF HAD THEM FROM WHEN ON --
12 THEN ON; RIGHT?

13 A YES, UP UNTIL --

14 Q UNTIL WHEN?

15 A MR. DAFF CAME IN IN AUGUST, AND THE RESORTS
16 WERE SOLD IN OCTOBER. SO HE WAS THERE FOR A COUPLE OF
17 MONTHS.

18 Q KIND OF LIKE TWO ON AND TWO OFF?

19 A CORRECT.

20 Q ALL RIGHT. LET'S TALK ABOUT THE OTHER
21 RESORTS THAT YOU ACQUIRED. YOU MENTIONED SOME OF THEM.

22 THE PONDEROSA WAS ONE. WHEN DID YOU ACQUIRE
23 THE PONDEROSA?

24 A I DON'T RECALL THE ACTUAL DATE, BUT I
25 BELIEVE IT WAS SOMETIME IN THE EARLY '90'S, MAYBE '90, '91.

26 Q NOW, WHAT WAS THE FINANCIAL CONDITION OF THE

1 PONDEROSA WHEN YOU ACQUIRED IT?

2 A THEY WERE IN CHAPTER 11 BANKRUPTCY, AND THEY
3 WERE BEING OPERATED BY A TRUSTEE.

4 Q WHAT WAS THE -- YOU MENTIONED THE LANDING AS
5 ANOTHER RESORT THAT YOU ACQUIRED.

6 A YES, THE LANDING.

7 Q WHEN DID YOU GET THAT?

8 A OPERATED BY THE SAME TRUSTEE UNDER A CHAPTER
9 11 FILING.

10 Q WHEN YOU ACQUIRED -- AS OF THE TIME YOU
11 ACQUIRED IT, IT WAS ALREADY IN BANKRUPTCY?

12 A YES, IT WAS.

13 Q YOU MENTIONED DELTA ISLE. WHEN DID YOU
14 ACQUIRE THAT?

15 A I ACQUIRED DELTA ISLE -- OR WE. I SAY I.
16 THE INVESTORS.

17 DELTA ISLE WAS ACQUIRED I BELIEVE IN '92.

18 Q AND WHAT --

19 A '93.

20 Q WHAT WAS ITS FINANCIAL CONDITION AT THE TIME
21 YOU ACQUIRED IT?

22 A DELTA ISLE HAD EXCESSIVE DEBT WAY BEYOND ANY
23 MEANS POSSIBLE THAT THEY COULD EVER PAY THAT DEBT. THEIR
24 DEBT FAR EXCEEDED THE ASSETS OF DELTA ISLE.

25 Q YOU MENTIONED NEW TRAILINN. IS THAT THE
26 SAME AS TRAILINN?

1 A YES. THAT'S TRAILINN AND NEW TRAILINN.

2 Q WHAT WAS ITS FINANCIAL CONDITION WHEN YOU
3 ACQUIRED IT?

4 A THAT WAS ALSO IN BANKRUPTCY WHEN I ACQUIRED
5 NEW TRAILINN OR TRAILINN.

6 Q AND THEN YOU MENTIONED -- I DON'T KNOW. DID
7 YOU MENTION HERMITAGE LANDING?

8 A YES. HERMITAGE LANDING. THAT'S IN
9 NASHVILLE. THAT WAS ALSO IN CHAPTER WITH A TRUSTEE
10 APPOINTED.

11 Q WHAT ABOUT RIVER RANCH?

12 A RIVER RANCH, THAT WAS ALSO A CHAPTER 11 -- A
13 CHAPTER 11 BANKRUPTCY. I WAS THERE WHEN I GOT INVOLVED.

14 Q WHAT ABOUT PHILIPPINE FIESTA?

15 A PHILIPPINE FIESTA VILLAGE WAS IN SOME KIND
16 OF FORECLOSURE. I'M NOT SURE IF THAT ONE WAS IN CHAPTER OR
17 NOT AT THAT TIME, BUT IT WAS IN A FORECLOSURE ACTION. I
18 KNOW THE PARK WAS SHUT DOWN.

19 Q FINANCIAL PROBLEMS WHEN YOU ACQUIRED IT?

20 A YES. THEY HAD LAND DEBT THERE, AGAIN, THAT
21 FAR EXCEEDED ANY REASONABLE METHOD OF PAYING IT. THERE WAS
22 NOTHING -- NO WAY TO PAY THE DEBT. IT WAS JUST WAY
23 EXCESSIVE WITH THE MEMBER BASE.

24 Q MR. NOVELLI, WHY DID YOU DO THAT? WHY DID
25 YOU BUY OR TAKE OVER THESE COMPANIES THAT ARE IN SUCH
26 FINANCIAL DIFFICULTIES?

1 A WELL, I SEE THEM AS AN OPPORTUNITY. THE
2 OPERATIONAL COST OF AN ORGANIZATION WHETHER WE'RE RUNNING
3 ONE RESORT OR 10 RESORTS OR 50 RESORTS IS PRETTY MUCH THE
4 SAME.

5 AND WHAT I MEAN BY THAT IS THAT IF ALL
6 SEASONS' G.N.A., GENERAL ADMINISTRATION COST, WHEN I CAME
7 IN WAS SOMETHING LIKE \$6 MILLION A YEAR TO RUN THE
8 CORPORATE HEADQUARTERS, AND TO RUN THE CORPORATE
9 HEADQUARTERS OF 40 RESORTS IS STILL ABOUT \$6 MILLION A
10 YEAR, SO WHAT HAPPENS, WE'RE ABLE -- BY COMING IN AND
11 ADDING MEMBERS TO OUR BASE, WE SHARE THE COST OF THE
12 OPERATION; RATHER THAN OVER 11-PARK SYSTEM, OVER A 40-PARK
13 SYSTEM. GREATLY REDUCES THE OPERATIONAL COST.

14 SO THAT IF A RESORT HAD ONE RESORT LIKE
15 DELTA ISLE, THEIR G.N.A. COSTS WOULD BE SOMEWHERE AROUND \$3
16 MILLION A YEAR. BY ABSORBING THEM INTO OUR ORGANIZATION,
17 WE CAN CUT OUR G.N.A. COST DOWN TO PRACTICALLY NOTHING AS
18 WE SPREAD IT OUT OVER THE -- IN THE ENTIRE MEMBER BASE.

19 SO THE LESS WOULD GO TO CORPORATE OVERHEAD
20 AND MORE TO THE RESORT, INTO THE MEMBERSHIP.

21 Q AND WHAT ABOUT THE OPERATIONS OF THE RESORTS
22 THEMSELVES; WHAT ABOUT THE COST OF THOSE OPERATIONS, HOW
23 YOU COVER THAT?

24 A THE OPERATIONS OF THE RESORTS ARE THE SAME.
25 YOU KNOW, THEY DON'T VARY MUCH. WE ACQUIRE A RESORT.
26 USUALLY THE PEOPLE THAT OWNED THEM DID AS GOOD AS JOB AS WE

1 DID AS FAR AS MANAGEMENT OF A RESORT. SO WE COULDN'T CUT
2 MUCH COST THERE. BUT THAT'S ONE OF YOUR LARGEST COSTS, OR
3 YOUR BIGGEST COST BY FAR IS YOUR OVERHEAD OF RESORT SYSTEM,
4 OF EACH RESORT, MANAGING THAT.

5 Q NOW, WHEN YOU ACQUIRE RESORTS, WERE THESE --
6 THESE RESORTS THAT YOU MENTIONED AND TESTIFIED ABOUT ALL
7 MEMBERSHIP RESORTS?

8 A YES, THEY'RE ALL MEMBERSHIP.

9 Q ALL RIGHT. AND SO YOU ACQUIRED THEM IN
10 THE -- APPEARS TO BE A LOT OF THEM IN THE EARLY 1990'S.

11 DID YOU SEEK TO MARKET MEMBERSHIP -- SOME
12 NEW PEOPLE TO COME TO THOSE MEMBERSHIP RESORTS?

13 A YES, WE DID.

14 Q AND DID THE FACT THAT THERE WERE
15 BANKRUPTCIES AROUND PREVENT YOU FROM SELLING MEMBERSHIPS?

16 A NO.

17 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION AND
18 CALLS FOR SPECULATION.

19 THE COURT: SUSTAINED.

20 MR. SHERMAN: AND I MOVE TO STRIKE THE ANSWER.

21 THE COURT: GRANTED.

22 BY MR. MOSHENKO: Q DID YOU SELL MEMBERSHIPS
23 DURING THE BANKRUPTCIES TO EACH AND ALL OF THESE RESORTS?

24 MR. SHERMAN: OBJECTION. THAT IS A COMPOUND
25 QUESTION. WE'VE GOT ABOUT EIGHT OR NINE DIFFERENT.

26 THE COURT: SUSTAINED.

1 BY MR. MOSHENKO: Q DID YOU SELL MEMBERSHIPS TO
2 THE PONDEROSA WHILE IT WAS IN BANKRUPTCY?

3 A YES, WE DID.

4 MR. SHERMAN: OBJECTION. VAGUE AS TO WHICH
5 BANKRUPTCY.

6 MR. MOSHENKO: WHO CARES?

7 MR. SHERMAN: WELL, I THINK IT'S IMPORTANT.

8 THE COURT: SUSTAINED.

9 MR. MOSHENKO: THE QUESTION APPLIES TO BOTH.

10 MR. SHERMAN: WELL, THERE WERE THREE, YOUR HONOR.

11 MR. MOSHENKO: THE QUESTION APPLIES TO THREE, YOUR
12 HONOR.

13 Q DID YOU SELL MEMBERSHIPS TO THE PONDEROSA
14 WHILE IT WAS IN ANY OF THE THREE BANKRUPTCIES?

15 A YES.

16 Q DID YOU SELL MEMBERSHIPS WHILE IT WAS --
17 DURING ALL OF THE THREE BANKRUPTCIES?

18 A YES. I DON'T BELIEVE THERE'S THREE. I
19 DON'T KNOW WHERE THE THREE CAME FROM.

20 Q OKAY. ASSUMING THERE WERE THREE.

21 A TWO.

22 Q OKAY. LET'S TALK ABOUT THAT.

23 DID THE PONDEROSA HAVE MORE THAN ONE
24 BANKRUPTCY?

25 A YES. THE PONDEROSA HAD TWO BANKRUPTCIES.

26 Q WHICH -- NAME THEM OR LIST THEM.

1 A THE FIRST BANKRUPTCY WAS WHEN WE TOOK OVER
2 MANAGEMENT, AND THAT WAS BACK IN THE EARLY '90'S.

3 Q OKAY. WHEN WAS THE SECOND ONE?

4 A AND THE SECOND BANKRUPTCY WAS WHEN THERE WAS
5 A LAWSUIT INVOLVED WITH ONE OF THE MAJOR LENDERS, AND THAT
6 RESULTED -- FORCED ME OR THE COMPANY TO PLACE IT BACK INTO
7 THE BANKRUPTCY FOR PROTECTION AGAINST THE MAJOR CREDITOR.

8 Q OKAY. AND WHEN DID YOU DO THAT?

9 A AND I BELIEVE THAT WAS AROUND '94, '93. I
10 DON'T RECALL. COUPLE YEARS LATER.

11 Q SO YOU SAID TO PROTECT THE RESORT AGAINST
12 THE LENDER?

13 A CORRECT.

14 Q OKAY. AND LET'S HAVE SOME MORE INFORMATION
15 ABOUT THAT.

16 WHY DID YOU CONSIDER IT NECESSARY TO PROTECT
17 THE RESORT AGAINST THIS LENDER?

18 A THE LENDER -- ONE OF THE -- WANTED TO
19 FORECLOSE ON THE PROPERTY. THIS PARTICULAR PROPERTY WAS
20 OWNED IN MY OPINION BECAUSE IT WAS A U.D.I., UNDIVIDED
21 INTEREST, BY THE MEMBERS. IT WASN'T NORM- -- THE NORMAL
22 TYPE SITUATION WHERE THERE WAS A MEMBERSHIP SOLD. THEY
23 WERE SOLD A DEED IN INTEREST.

24 Q ALL RIGHT. SO WHAT WAS THE LENDER SEEKING
25 TO DO THAT HURT THE MEMBERS' DEEDED INTERESTS?

26 A THE LENDER WAS SEEKING TO FORECLOSE ON THE

1 PROPERTY, WHICH WOULD HAVE TOOK THE DEEDED INTEREST AWAY
2 FROM THE MEMBERS.

3 Q WELL, WASN'T THE CREDITOR FORECLOSING
4 BECAUSE HE WAS OWED MONEY?

5 MR. SHERMAN: OBJECTION. THAT CALLS FOR
6 SPECULATION. LACKS FOUNDATION. CALLS FOR HEARSAY.

7 THE COURT: OVERRULED.

8 THE WITNESS: YES, THE CREDITOR WAS DUE MONEY.

9 BY MR. MOSHENKO: Q OKAY. AND WHY WASN'T THE
10 CREDITOR BEING PAID THE MONEY, OR WAS THE CREDITOR BEING
11 PAID THE MONEY?

12 A THERE WAS PAYMENTS MADE TO THE CREDITOR, NOT
13 THE -- IN ITS ENTIRETY, BUT THERE WAS PAYMENTS BEING MADE
14 TO THE CREDITORS. THE RESORT DIDN'T HAVE SUBSTANTIAL
15 ENOUGH INCOME TO PAY 100 PERCENT OF ALL THE SECURED DEBT.

16 Q WHY WAS THAT?

17 A THE INCOME WAS JUST LACKING. THERE WAS A --
18 WHAT HAPPENED WAS THE MEMBERS SUED THE BANK, THE SAME BANK
19 THAT WAS FORECLOSING, PRIOR TO THE BANK TRYING TO
20 FORECLOSE. THEY WERE BEING SUED BY THE MEMBERS, WHICH
21 RESULTED IN A JUDGMENT AGAINST THE BANK FOR \$3.8 MILLION.
22 THE MEMBERS WERE SUING THE BANK, BUT WHEN THEY SUED, THEN
23 THEY QUIT PAYING THE PONDEROSA THEIR MAINTENANCE FEES.

24 SO WHAT HAD HAPPENED WAS THAT WE HAD A
25 THOUSAND OR 1500 MEMBERS THAT QUIT PAYING THE PONDEROSA'S
26 MAINTENANCE FEES BECAUSE THEY WERE INVOLVED IN THIS

1 LITIGATION TO RECOUP THEIR MONEY WITH THE BANK.

2 Q ALL RIGHT. SO YOU FILED A BANKRUPTCY IN '93

3 OR '94. WAS IT A REORGANIZATION?

4 A YES.

5 Q AND DID IT REORGANIZE?

6 A YES.

7 Q BUT YOU DID -- YOU FILED THAT BANKRUPTCY

8 SPECIFICALLY TO STOP A CREDITOR; RIGHT?

9 A CORRECT.

10 Q WHAT OTHER BANKRUPTCY DID YOU FILE TO STOP

11 OR PREVENT CREDITORS FROM TAKING RESORTS AWAY?

12 A THE NEW TRAILINN BANKRUPTCY WAS FILED TO

13 STOP THE RESORT FROM BEING TAKEN AWAY FROM -- BY ONE OF THE

14 CREDITORS WHOSE NOTE BECAME DUE.

15 Q LET ME STOP YOU THERE.

16 WAS THERE MORE THAN ONE NEW TRAILINN RESORT

17 BANKRUPTCY? BECAUSE YOU SAID ONE WAS THERE WHEN YOU TOOK

18 OVER.

19 A RIGHT. IT WAS IN BANKRUPTCY WHEN WE TOOK

20 OVER. ONE OF THE CREDITORS HAD A NOTE THAT CAME DUE AFTER

21 THE PLAN WAS FILED, I BELIEVE A YEAR, TWO YEARS LATER. A

22 NOTE BECAME DUE IN ITS ENTIRETY, AND THE COMPANY DIDN'T

23 HAVE MONEY TO DO IT. I WAS NOT ABLE TO WORK OUT ANY KIND

24 OF A PAYMENT SCHEDULE OR DO ANYTHING WITH THE CREDITOR,

25 OTHER THAN PAYING IN ITS ENTIRETY. AND WHEN THAT DIDN'T

26 HAPPEN, THEN I PLACED IT BACK INTO CHAPTER 11.

1 Q AND WHEN DID YOU DO THAT?

2 A I DON'T REMEMBER THE EXACT YEAR. IT SEEMS
3 LIKE IT WAS AROUND 1996.

4 Q SO WE KNOW YOU FILED ONE FOR PONDEROSA AND
5 ONE FOR TRAILINN. YOU ALSO FILED ONE FOR ALL SEASONS
6 RESORTS. YOU USE BANKRUPTCY AS A BUSINESS TOOL?

7 A WELL, I DO --

8 MR. SHERMAN: EXCUSE ME. OBJECTION. THAT
9 MISSTATES THE EVIDENCE. THE WITNESS FILED TWO BANKRUPTCY
10 FOR ALL SEASONS RESORTS.

11 THE COURT: SUSTAINED.

12 THE WITNESS: FILED THREE.

13 BY MR. MOSHENKO: Q THE QUESTION WAS, DO YOU USE
14 BANKRUPTCIES AS A BUSINESS TOOL?

15 A YES.

16 Q WHY DO YOU DO THAT?

17 A IT'S SOMETHING THAT YOU KNOW IS PROVIDED BY
18 THE LAW. IT GIVES US THE OPPORTUNITY TO WORK OUT OUR
19 PROBLEMS, TO WORK OUT THE DEBT. AND THERE'S THOUSANDS OF
20 PEOPLE INVOLVED. SO IT'S NOT LIKE WE'RE GOING IN TO
21 PROTECT THE INTEREST OF THE INVESTOR OR MYSELF. THERE'S
22 THOUSANDS OF PEOPLE OUT THERE INVOLVED WITH THESE
23 PROJECTS. AND THEY NEED TO BE PROTECTED. AND THEY'RE
24 LOOKING TO ME FOR PROTECTION OF THEIR LIFESTYLE AND THEIR
25 RESORTS.

26 Q LET'S TALK ABOUT THE PLUS SIDE.

1 WHAT IMPROVEMENTS DID YOU MAKE IN THE
2 PONDEROSA AFTER YOU ACQUIRED IT IN THE EARLY '90'S?

3 A WE CONNECTED UP -- THEY HAD A SEWER PLANT
4 THAT WASN'T CONNECTED UP, AND WE CONNECTED UP THE SEWER
5 PLANT. IT MIGHT NOT SEEM LIKE A BIG DEAL, BUT IN THE
6 MEANTIME, RATHER THAN HAVE THE HONEY WAGON, MOST OF OUR
7 SITES THEN HAD SEWER TO THEM, AND CONNECTED TO THAT.

8 THE -- WE REBUILT THE STADIUM, THE MUSIC
9 STADIUM, TO SIT 11,000 PEOPLE. I REOPENED -- THE CEILINGS
10 WERE FALLING OFF OF SOME OF THE BUILDINGS, THE CEILINGS IN
11 THE SWIMMING POOL AREA.

12 EXAMPLE, WE HAD A HUGE GUITAR. THE SWIMMING
13 POOL WAS SHAPED LIKE A HUGE GUITAR, AND IT WAS ENCLOSED SO
14 THE PEOPLE COULD SWIM THERE DURING THE WINTER IN THE COLD
15 MONTHS. BUT IT WAS CAUSING THE HUMIDITY TO COME UP IN THE
16 CEILING, THE DRYWALL TO FALL OFF, THE CEILING DOWN INTO THE
17 POOL. AND WHEN WE CAME IN THERE, THE POOL WAS SHUT DOWN.
18 AND WE REBUILT THAT BUILDING AND OPENED UP THAT SWIMMING
19 POOL AREA AGAIN AND PUT A HUMIDIFIER IN THERE TO STOP THAT
20 PROBLEM AND A DIFFERENT KIND OF DRYWALL, SO THAT THE
21 PROBLEM WAS NOT EXISTENT.

22 Q WHERE DID YOU GET THE MONEY TO DO ALL THESE
23 IMPROVEMENTS AT THE PONDEROSA?

24 A MOST OF THE PEOPLE THAT CAME FROM THE
25 PONDEROSA THAT WENT INTO THE PONDEROSA CAME OUT OF OUR
26 OPERATIONS. AND WE INVESTED -- "WE" BEING THE INVESTORS OF

1 THE GROUP -- INTO THE PONDEROSA.

2 Q OKAY. WHAT OTHER RESORTS DID YOU TAKE OVER
3 THE FINANCIAL DIFFICULTY OR IN BANKRUPTCY AND THEN SPEND
4 MONEY ON?

5 A HERMITAGE LANDING. WE CAME INTO HERMITAGE
6 LANDING WHEN IT WAS CLOSED TO THE MEMBERS. IT WAS IN A
7 DISARRAY. THE SITES WERE IN A DISARRAY. THERE WAS NO
8 MAINTENANCE AT ALL IN IT BECAUSE IT WAS CLOSED DOWN AND
9 THERE WAS NO FUNDS, AND ENOUGH MEMBERS TO PAY THE FUNDS,
10 AND NOBODY WAS PAYING. SO WE CAME IN AND SPENT \$780,000 TO
11 PAY THE CREDITORS OF THE HERMITAGE LANDING AND ALSO TO --
12 ANOTHER HUNDRED OR SO THOUSAND DOLLARS TO IMPROVE THE
13 CONDITION AND REOPEN THE PARK TO THE MEMBERS.

14 Q AND YOU ACCOMPLISHED THAT?

15 A YES.

16 Q HOW LONG DID YOU OPERATE HERMITAGE LANDING
17 REOPENED?

18 A WE OPERATED HERMITAGE LANDING UP UNTIL
19 SOMETIME IN '97, I BELIEVE.

20 Q OKAY. WHAT HAPPENED TO IT?

21 A WE HAD A COUPLE CREDITORS, A -- I BELIEVE IT
22 WAS A TAX AUTHORITY AND ALSO A LAW FIRM AND SOMEBODY THAT
23 HIRED A STAGE FROM THE HERMITAGE LANDING TO DO A SHOW, AND
24 THE SHOW NEVER TOOK PLACE. AND THEY WANTED THEIR MONEY
25 BACK BECAUSE THEY DIDN'T PUT THE SHOW ON. SO THEY CLAIM
26 THAT THERE WAS A DEBT DUE OF \$2500. THERE WAS \$30,000 OR

1 \$50,000 WORTH OF TAXES DUE ON IT.

2 AND THEN THERE WAS SOME OTHER SMALL CLAIM.

3 I FORGET WHAT IT WAS. AND THEY FILED INVOLUNTARY -- THE

4 ATTORNEY -- INVOLUNTARY BANKRUPTCY ON THE PARK.

5 Q OKAY. WAIT.

6 YOU HAVE AN ATTORNEY THAT DID LEGAL WORK FOR

7 HERMITAGE LANDING?

8 A YES.

9 Q AND WHAT WAS HIS BILL?

10 A HIS BILL WAS -- HIS BILL WAS \$21,000.

11 Q OKAY. AND YOU HAD A \$2500 STAGE HIRE DEAL?

12 A RIGHT.

13 Q AND YOU HAD SOME TAXES?

14 A CORRECT.

15 Q AND AS WITH THOSE THREE ENTITIES -- OR

16 PERSONS AND ENTITIES, GOT TOGETHER AND FILED AN

17 INVOLUNTARY?

18 A CORRECT.

19 Q ALL RIGHT. SO WHAT DID YOU DO TO DEAL WITH

20 THAT INVOLUNTARY?

21 A I SENT -- THAT WAS THE ONLY DEBT WE HAD. WE

22 PAID OFF ALL THE UNSECURED CREDITORS. WE PAID OFF ALL THE

23 LAND. THERE WAS NO DEBT ON THE PARK. THIS WAS A FREE AND

24 CLEAR OPERATION. AND WE WERE STUNNED AT WHAT THEY DID. SO

25 I SENT BOB THOMPSON TO NASHVILLE TO TRY TO FIND OUT, YOU

26 KNOW, WHAT THE PROBLEM -- YOU KNOW, WHAT WE COULD DO TO

1 SOLVE THE PROBLEM.

2 SO, THERE WAS A COURT HEARING. HE HIRED AN
3 ATTORNEY. I SUGGESTED TO THOMPSON TO HAVE THE ATTORNEY GO
4 AHEAD AND JUST PAY OFF WHATEVER THEY CLAIM IT WAS, JUST PAY
5 IT OFF.

6 Q MR. NOVELLI, I WANT TO STOP YOU FOR A SECOND
7 BECAUSE I DON'T WANT TO GET INTO HEARSAY DESCRIPTION OF
8 WHAT PEOPLE SAID.

9 LET ME JUST ASK YOU THE CONCLUSION. WAS
10 MR. THOMPSON SUCCESSFUL IN DEALING WITH THE BANKRUPTCY?
11 AND WHERE WAS THIS BANKRUPTCY?

12 A NASHVILLE, TENNESSEE.

13 Q IN NASHVILLE, TENNESSEE?

14 A I KNOW I WENT THERE TO THE HEARING, AND THE
15 JUDGE APPOINTED -- IMMEDIATELY APPOINTED A TRUSTEE.

16 Q ALL RIGHT. SO WHAT DID YOU DO TO DEAL WITH
17 THE APPOINTMENT OF A TRUSTEE IN NASHVILLE, TENNESSEE,
18 BANKRUPTCY FILED INVOLUNTARY BY THREE PEOPLE?

19 A THEN I REFILED A VOLUNTARY BANKRUPTCY WHEN
20 THEY APPOINTED THE TRUSTEE. I COULD SEE THE HANDWRITING ON
21 THE WALL.

22 Q WHY DID YOU THINK THAT YOU NEEDED TO FILE A
23 VOLUNTARY?

24 A BECAUSE THEY -- THEY WERE A -- APPOINTED A
25 TRUSTEE. THERE WAS NO UNSECURED DEBT. IN MY OPINION THE
26 CLOSEST WOULD HAVE BEEN THAT STAGE DEAL. AND THERE WAS NO

1 UNSECURED DEBT THERE. AND I BELIEVED IT WAS A WRONGFUL
2 INVOLUNTARY, REGARDLESS OF THE RULING, AND THEY PUT A
3 TRUSTEE IN THERE.

4 SO I THOUGHT, WELL, TO STOP THIS, I'M GOING
5 TO GO TO CALIFORNIA, BACK TO WHERE THE CORPORATE
6 HEADQUARTERS ARE, AND FILE A VOLUNTARY HERE IN CALIFORNIA.

7 Q ALL RIGHT. AND SO YOU DID THAT?

8 A YES.

9 Q IN WHAT COURT IN CALIFORNIA?

10 A THERE WAS A PENDING CASE IN SAN BERNARDINO
11 WITH MR. -- WITH JUDGE GOLDBERG, AND I FILED IT THERE.

12 Q OKAY. AND AS A RESULT OF FILING IN
13 CALIFORNIA, WHAT HAPPENED TO THE TENNESSEE BANKRUPTCY?

14 A THERE WAS TWO BANKRUPTCIES THE SAME PEOPLE
15 FILED, ONE AGAINST FIRST NATIONWIDE AND AGAINST HERMITAGE
16 LANDING. AND BOTH OF THEM WE BROUGHT TO CALIFORNIA AS
17 VOLUNTARY.

18 Q THE SAME THREE PEOPLE GOT FIRST NATIONWIDE
19 INTO A BANKRUPTCY?

20 A THE SAME GROUP.

21 Q OKAY. AND BOTH GOT MOVED TO CALIFORNIA;
22 CORRECT?

23 A BOTH OF THEM. I FILED BOTH OF THEM IN
24 CALIFORNIA.

25 Q SO NOW WE'VE HEARD THAT YOU FILED A FIRST
26 NATIONWIDE BANKRUPTCY IN CALIFORNIA IN ADDITION TO THE

1 HERMITAGE ONE?

2 A RIGHT. THEY WERE FILED TOGETHER AS -- AS
3 INVOLUNTARY IN NASHVILLE AND GIVEN CONTROL TO TRUSTEES IN
4 NASHVILLE OF A CORPORATION HEADQUARTERS -- FIRST
5 NATIONWIDE, WHO WAS HEADQUARTERED IN CALIFORNIA, RUNNING
6 SOMEWHERE AROUND 20 RESORTS.

7 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. IT WAS
8 NOT RESPONSIVE TO THE QUESTION.

9 THE COURT: SUSTAINED. MOTION GRANTED.

10 MR. MOSHENKO: OKAY.

11 Q THE QUESTION IS, WHAT HAPPENED TO -- GEE, I
12 FORGET WHAT THE QUESTION IS. SO I'LL ASK A DIFFERENT ONE.

13 SO THE TWO BANKRUPTCY -- I REMEMBER, I WAS
14 SAYING, SO YOU FILED A FIRST NATIONWIDE BANKRUPTCY IN
15 CALIFORNIA TO STOP THE TENNESSEE BANKRUPTCY?

16 A RIGHT. AN IN VOL- -- A VOLUNTARY, YES.

17 Q AND THE REASON -- WHAT WAS THE SITUATION OF
18 FIRST NATIONWIDE AS FAR AS HOW MANY RESORTS AND MEMBERS IT
19 HAD AT THE TIME YOU WERE TRYING -- THAT YOU FILED THE
20 BANKRUPTCY?

21 A AT THE TIME I BELIEVE FIRST NATIONWIDE HAD
22 SOMEWHERE CLOSE TO 20 RESORTS. I'M NOT REALLY SURE OF THE
23 NUMBER, BUT IT WAS SUBSTANTIAL NUMBER OF RESORTS.

24 Q AND DID YOU WANT THE TRUSTEE IN TENNESSEE TO
25 TAKE OVER THE OPERATIONS OF THE RESORTS OF FIRST NATIONWIDE?

26 A ABSOLUTELY NOT.

1 Q DID YOU WANT THE TRUSTEE TO TAKE OVER THE
2 OPERATIONS OF THE RESORTS OF HERMITAGE AND TENNESSEE?

3 A NO.

4 Q SO AS A RESULT, NOW, WHO THEN DID -- DID YOU
5 THEN RECOVER, LET'S CALL IT, MANAGEMENT CONTROL OVER
6 HERMITAGE?

7 A NO.

8 Q WHY NOT?

9 A THE -- WE HAD A HEARING BEFORE
10 JUDGE GOLDBERG IN THE SOUTHERN CALIFORNIA DISTRICT IN THE
11 BANKRUPTCY COURT, AND JUDGE GOLDBERG MADE A DECISION --
12 BECAUSE HE HAD A LOT OF OPPOSITION FROM THE PEOPLE OF
13 NASHVILLE, INCLUDING THE TRUSTEE -- THAT FIRST NATIONWIDE
14 SHOULD -- THEIR VENUE SHOULD REMAIN IN NASHVILLE.

15 SO JUDGE GOLDBERG, HE SAID, YOU KNOW,
16 WHAT -- I BELIEVE THAT FIRST NATIONWIDE IS LIKE A WHEEL,
17 AND, YOU KNOW, LIKE A WAGON WHEEL. AND THE HUB OF IT IS
18 SITTING HERE IN CALIFORNIA. AND THEN IT HAS SPOKES THAT GO
19 ALL OVER THE UNITED STATES, INCLUDING NASHVILLE AND
20 FLORIDA. I BELIEVE THAT THE CORPORATE HEADQUARTERS OF
21 FIRST NATIONWIDE AND THE VENUE BELONGS IN CALIFORNIA, NOT
22 IN NASHVILLE. THAT NASHVILLE HAS THE HERMITAGE LANDING
23 RESORT LOCATED IN NASHVILLE. AND I'M GOING TO ALLOW THAT
24 RESORT TO STAY THERE, BECAUSE THAT'S THE REAL HEADQUARTERS.
25 THAT'S WHERE THE OPERATION IS, IS THERE. BUT I'M NOT GOING
26 TO ALLOW THE TRANSFER BACK, THE VENUE BACK TO NASHVILLE ON

1 FIRST NATIONWIDE.

2 MR. SHERMAN: YOUR HONOR, MAY WE APPROACH?

3 THE WITNESS: AND IT STAYED HERE.

4 THE COURT: YOU MAY APPROACH.

5 (DISCUSSION OFF THE RECORD.)

6 BY MR. MOSHENKO: Q SO CONTINUING, MR. NOVELLI,

7 YOU NOW HAVE THE FIRST NATIONWIDE BANKRUPTCY IN CALIFORNIA,

8 AND THE HERMITAGE LANDING BANKRUPTCY REMAINED IN

9 TENNESSEE. HOW DID THAT ONE TURN OUT?

10 A THE TRUSTEE IMMEDIATELY LIQUIDATED THE
11 ASSETS. FIRST NATIONWIDE -- WE RECEIVED A LITTLE OVER A
12 MILLION DOLLARS IN CASH FROM A RESULT OF THAT.

13 Q YOU GOT A MILLION DOLLARS?

14 A YES.

15 Q AFTER BEING IN A BANKRUPTCY?

16 A YES.

17 Q THE ESTATE WAS WORTH MORE -- A MILLION MORE
18 THAN THE DEBTS?

19 A YES.

20 Q AND YOU LOST THE RESORT?

21 A YES.

22 Q WHAT HAPPENED TO THE MEMBERS OF HERMITAGE
23 LANDING?

24 A THE MEMBERS OF THE HERMITAGE LANDING WERE
25 REJECTED BY THE BANKRUPTCY TRUSTEE. HE LOCKED THEM OUT.
26 AND WE TOLD THE TRUSTEE, AND OUR TRUSTEE WITH FIRST

1 NATIONWIDE ALLOWED US TO TRANSFER THOSE MEMBERS TO DEER RUN
2 PARK IN ARKANSAS.

3 Q THEN RETURNING TO THE SUBJECT OF THE FIRST
4 NATIONWIDE BANKRUPTCY, WE'VE ALREADY MENTIONED THAT IT WAS
5 FILED HERE IN ORANGE COUNTY.

6 MR. JOSEPH WAS APPOINTED AS TRUSTEE?

7 A YES.

8 Q AND FIRST NATIONWIDE IS A PLAINTIFF IN THIS
9 ACTION WITH THE BANKRUPTCY PENDING; CORRECT?

10 A CORRECT.

11 MR. MOSHENKO: YOUR HONOR, THIS WOULD BE A GOOD
12 STOPPING PLACE. IT'S SHIFTING OVER, GIVEN THE FIVE MINUTES
13 TO NOON.

14 THE COURT: SEE YOU ALL AT 1:30.

15 (WHEREUPON THE COURT WAS IN RECESS UNTIL
16 1:30 P.M. OF THE SAME DAY)

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1 WESTMINSTER, CALIFORNIA - MONDAY, JUNE 26, 2000

2 AFTERNOON SESSION

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

5 THE COURT: PROCEED.

6 MR. MOSHENKO: THE REASON I REQUESTED THIS MEETING
7 WAS TO TRY TO DEAL WITH SOME LISTS THAT I EXPECT COME UP IN
8 THE AFTERNOON, AND PERHAPS WE CAN GET A FULLER RECORD ON
9 IT.

10 THERE IS CURRENTLY A LIST IN EVIDENCE THAT'S
11 EXHIBIT 1808, AND IT'S DESIGNATED "A" AND "B." AND 1808-A
12 AND B ARE TWO LISTS THAT WERE GIVEN TO US BY CAMP COAST TO
13 COAST DURING DISCOVERY TO INDICATE THE NAMES OF MEMBERS IN
14 COAST TO COAST THAT WERE TRANSFERRED BY THE COAST TO COAST
15 LETTERS IN THE FALL OF 1997.

16 AND THE REASON THERE'S AN "A" AND "B"
17 DESIGNATION IS BECAUSE WHEN COAST GAVE US THE LIST, THEY
18 HAD SUBDIVIDED THE LIST INTO TWO SUBSECTIONS, ONE WHICH
19 THEY CALLED THE CURRENT MEMBERS AND THE OTHER WHICH THEY
20 CALLED CANCELLED MEMBERS.

21 NOW, THOSE TWO LISTS ARE IN EVIDENCE. WHAT
22 WE HAVE DONE IS WE HAVE PREPARED -- OR ACTUALLY THE
23 COMPUTER PREPARED, TOOK THE SAME DATA OFF THE SAME DISK --
24 THE SAME LIST, AND DID A RECONFIGURATION ON THE BASIS OF
25 RESORTS NAMED AS HAVING BEEN TRANSFERRED FROM. SO THIS
26 PARTICULAR LIST SHOWS THE NAME OF THE MEMBER, AND IT SHOWS

1 WHAT'S CALLED THE PRIOR PARK AND THE CURRENT PARK, "PRIOR
2 PARK" MEANING THE RESORT THAT WAS THE PLAINTIFF'S RESORT
3 BEFORE THE TRANSFER, PRIOR TO THE TRANSFER, AND "CURRENT
4 PARK" IS THE NEW PARK TO WHICH THE MEMBER WAS ASSIGNED
5 AFTER THE TRANSFER.

6 SO WHAT WE DID IS WE HAD THE COMPUTER
7 CONFIGURE THE NAMES BASED ON PARK TRANSFERRED FROM, PRIOR
8 PARK, AND WE GAVE COUNSEL AN EXHIBIT WHICH SHOWS THE NAMES
9 IN THAT RECONFIGURED FORMAT WITH A SUMMARY ON THE FRONT
10 PAGE OF -- MORE LIKE AN INDEX OF WHAT PAGES OF THE NEW
11 EXHIBIT YOU CAN GO. IF YOU WANT TO, SAY, FIND THE
12 DELTA ISLE TRANSFERS, YOU CAN GO TO PAGE WHATEVER IT SAYS
13 ON THE DOCUMENT.

14 WE BELIEVE THAT THIS EXHIBIT SHOULD GO IN
15 WITHOUT ANY PROBLEM, BECAUSE THE UNDERLYING DOCUMENT IS
16 ALREADY IN EVIDENCE. AND ALL THIS IS IS THE SAME DOCUMENT
17 RECONFIGURED.

18 THE COURT: ALL RIGHT.

19 MR. SHERMAN: YOUR HONOR, LET ME NOT DEAL WITH THIS
20 1808-A AND B ISSUE. THAT IS WHAT IT IS. EXCEPT I WILL
21 POINT OUT THAT THE TESTIMONY BEFORE THIS COURT AS TO THE
22 COAST MEMBERSHIP LISTS, THE ONLY TESTIMONY THIS COURT HAS
23 HEARD, THE JURY HAS HEARD, ON THAT SUBJECT IS THAT YOU
24 CAN'T TELL -- YOU CAN'T TELL FROM THE COAST MEMBERSHIP
25 LISTS WHETHER A PARTICULAR PERSON HAD BEEN A MEMBER IN GOOD
26 STANDING OF ANY OF PLAINTIFFS' PARKS. YOU CAN'T TELL FROM

1 THE COAST'S LISTS WHETHER A PERSON WHO THEY CLAIM WAS A
2 MEMBER OF PLAINTIFFS' PARKS WAS CURRENT ON THEIR DUES OR
3 NOT. YOU CAN'T TELL FROM THE COAST'S LISTS WHETHER THE
4 PERSON WAS NEVER A MEMBER OF ONE OF THE PLAINTIFF PARKS OR
5 NOT.

6 FOR EXAMPLE, JUST USING THOUSAND ADVENTURES,
7 INC., AS AN EXAMPLE, THOUSAND ADVENTURES, INC., THE
8 CORPORATE ENTITY, IS NOT A PLAINTIFF HERE. AND YOUR HONOR
9 HAS ALREADY HEARD SOME OF THE EXPLANATION AS TO WHY THESE
10 CONTRACTS WERE ASSUMED OR AUTOMATICALLY ASSUMED. YOU HEARD
11 MR. JOSEPH SAY THE CONSENT OF THE MEMBER WAS NECESSARY.

12 AND SO AS WE SIZE IT UP -- AND, MR. RIVIN,
13 IF YOU DISAGREE, PLEASE AMPLIFY. AS WE SIZE IT UP, THERE'S
14 ONLY ONE REASON WHY ANY OF PLAINTIFFS' WITNESSES WOULD WANT
15 TO OFFER THIS SO-CALLED SUMMARY INTO EVIDENCE,
16 PARTICULARLY IN THE WAY IN WHICH IT'S POSITIONED FROM THE
17 PLAINTIFFS' PARK TO THIS OTHER PARK. AND THAT IS TO SHOW
18 DAMAGES, DAMAGES RESULTING FROM THAT. BUT THERE'S A --
19 MAYBE -- SHOULD I WAIT?

20 MR. MOSHENKO: GO AHEAD.

21 MR. SHERMAN: THERE'S A FUNDAMENTAL PROBLEM WITH
22 THIS WHICH PLAINTIFFS APPEAR TO BE OBLIVIOUS TO, AND THAT
23 IS WHETHER COAST SHOWS A PERSON AS HAVING BEEN A COAST
24 MEMBER IN 1999 OR 1998 OR 2000 MEANS ABSOLUTELY NOTHING.
25 THEY KEEP ON REFERRING TO THEIR DAMAGES IN PART AS 22,000
26 MEMBERS. BUT WHAT'S MISSING HERE IS ANY COMPETENT

1 EVIDENCE, ANY FOUNDATION BEING LAID THAT THESE 22,000
2 PEOPLE LEFT PLAINTIFFS' PARKS, OR THAT THESE 22,000 PEOPLE
3 WERE EVER MEMBERS OF PLAINTIFFS' PARKS. THOSE ARE ALL
4 ASSUMPTIONS THAT THEY'RE MAKING IN TRYING TO MOVE THIS
5 BEFORE THE JURY.

6 AND SO THERE IS A HUGE PROBLEM WITH A
7 LACKING IN FOUNDATION. AND THAT GOES IN LARGE MEASURE,
8 YOUR HONOR, TO THE POINT THAT MR. RIVIN MADE DURING OUR
9 CHAMBERS CONFERENCE THIS MORNING ABOUT THE DESIRABILITY OF
10 AN 802 EXAMINATION OF MR. NOVELLI BEFORE HE STARTS
11 TESTIFYING AS AN EXPERT. WE DISCUSSED THIS OVER LUNCH,

12 AND, YOUR HONOR, I DON'T KNOW THAT THIS JURY
13 REALLY NEEDS TO SPEND A LOT OF TIME SITTING ON THEIR HANDS
14 WHILE WE GO THROUGH AN 802 EXAMINATION OF MR. NOVELLI; BUT
15 AS THE COURT SAW WITH MR. MITCHELL, A SO-CALLED EXPERT, AND
16 MR. MALPASS, A SO-CALLED EXPERT, WE SAW HUGE CHUNKS OF WHAT
17 WE FELT WERE PREJUDICIAL TESTIMONY THAT CAME OUT OF THE
18 LIPS OF THOSE TWO PURPORTED EXPERTS. AND WE OUGHT NOT BE
19 TREATED TO A THIRD GO-AROUND OF SO-CALLED EXPERTS, SAYING
20 ALL THESE THINGS THAT THEY DON'T HAVE ANY FOUNDATION
21 TALKING ABOUT.

22 SO HERE IS THE SUGGESTION THAT WE'D LIKE TO
23 PROPOSE: MR. NOVELLI IS ON THE WITNESS STAND. WE'RE GOING
24 TO HAVE AN OPPORTUNITY, ONE OF THESE DAYS, TO CROSS-EXAMINE
25 HIM. WE'D LIKE TO CROSS-EXAMINE HIM ON THESE VERY ISSUES,
26 MAYBE NOT USE THIS DOCUMENT, BUT GO TO THIS CONCEPT.

1 I SUBMIT TO YOUR HONOR THAT WE CAN ESTABLISH
2 THAT PLAINTIFFS -- THEY DON'T OWN THESE MEMBERS. THEY
3 DON'T OWN MEMBERS. THAT'S WHAT MR. JOSEPH SAID. THEY
4 DIDN'T OWN THESE CONTRACTS. THOUSAND ADVENTURES MAY HAVE
5 HAD SOME. SOME OF THE CONTRACTS MAY HAVE BEEN CURRENT.
6 SOME OF THE CONTRACTS WEREN'T CURRENT. SOME PEOPLE HAD
7 STOPPED PAYING YEARS AGO.

8 THERE'S A HUGE ISSUE OF RELIABILITY HERE.
9 AND LET'S JUST ASSUME FOR SAKE OF DISCUSSION THAT THIS
10 COURT BELIEVES MR. NOVELLI IS AN EXPERT; ALTHOUGH, I FIND
11 THAT A RATHER DISTURBING PROPOSITION. LET'S SAY
12 MR. NOVELLI IS AN EXPERT. HE STILL NEEDS TO HAVE A
13 FOUNDATION FOR WHAT HE IS TALKING ABOUT.

14 SO MY SUGGESTION IS BEFORE WE JUST WILLIE
15 NILLIE PUT THIS IN, THIS MISLEADING, PREJUDICIAL DOCUMENT
16 THAT'S NOT RELEVANT BECAUSE NO FOUNDATION HAS BEEN LAID NOR
17 COULD IT BE LAID TO DRAW THE CONNECTION THAT PLAINTIFFS
18 WANT TO DRAW, BEFORE THAT DECISION IS MADE, GIVE US THE
19 OPPORTUNITY IN CROSS-EXAMINATION TO CONDUCT OUR EXAMINATION
20 WITH RESPECT TO THE LACK OF RELIABILITY AND THE LACK OF
21 FOUNDATION, THE FACT THAT THERE AREN'T DAMAGES. AND THEN
22 ON REDIRECT, IF YOUR HONOR HAS NOT BEEN CONVINCED THAT WE
23 HAVE DONE THE APPROPRIATE, IF YOU WILL, 802 EXAMINATION --
24 THE JURY DOESN'T NEED TO KNOW IT'S AN 802 EXAMINATION, OF
25 COURSE. BUT IF YOUR HONOR BELIEVES THAT WE HAVEN'T LAID
26 THE APPROPRIATE FACTS TO KEEP IT OUT ON LACKING IN

1 FOUNDATION AND IRRELEVANCY, THEN IT CAN COME IN.

2 BUT RIGHT NOW THE CONNECTIONS THAT COUNSEL
3 IS TRYING TO DRAW ARE SO SCATTERED, ARE SO AMBIGUOUS, AND
4 AMORPHOUS, AND SO WRONG. BECAUSE FOR PLAINTIFFS TO SAY
5 THAT IF COAST HAS MEMBERS, THEN BY DEFINITION WE DON'T HAVE
6 MEMBERS, WELL, YOU'VE HEARD PARK MANAGER AND MEMBER AFTER
7 MEMBER TESTIFY, PEOPLE HAVE MULTIPLE MEMBERSHIPS. THE FACT
8 THAT SOMEBODY MAY HAVE ELECTED OR DECIDED TO GO WITH THE
9 COAST PARK DOESN'T MEAN THAT THEY NECESSARILY LEFT A
10 NOVELLI PARK. AND I SUBMIT MR. NOVELLI CAN'T PROVE THAT,
11 WON'T PROVE THAT. HE WON'T BE ABLE TO GIVE CREDIBLE,
12 HONEST TESTIMONY ON THAT POINT, IF THAT'S HIS POSITION.
13 AND WE OUGHT TO KEEP THIS OUT.

14 AND LET'S JUST TAKE IT IN STAGES INSTEAD OF
15 OPENING THE DOOR NOW FOR SOMETHING THAT WE SUBMIT WOULD BE
16 PREJUDICIAL.

17 MR. MOSHENKO: I LISTENED FOR AN EVIDENTIARY
18 ARGUMENT, REASON WHY IT SHOULD NOT COME IN UNDER THE
19 EVIDENCE CODE, AND I DIDN'T HEAR IT.

20 THE COURT: THAT'S BECAUSE YOU WERE TALKING TO HIM.

21 MR. MOSHENKO: PERHAPS IT OCCURRED, YOUR HONOR,
22 WHEN I WAS TALKING TO MR. DURAN. BUT THIS EXHIBIT IS
23 ALREADY IN EVIDENCE. AND IF COUNSEL -- AS COUNSEL SAYS,
24 IT'S SOMEHOW MISLEADING, THEN IT'S ALREADY IN EVIDENCE,
25 ALREADY MISLEADING. AND IT'S NOT MISLEADING. IT IS A
26 DOCUMENT THAT CAME FROM COAST'S RECORDS. IF IT'S

1 MISLEADING, COAST IS MISLEADING THE WORLD, IS MISLEADING
2 US, MISLED US WHEN WE ASKED THEM TO GIVE US INFORMATION IN
3 DISCOVERY. AND THEY PRODUCED THIS DOCUMENT IN RESPONSE TO
4 THE DISCOVERY REQUEST TO TALK ABOUT OUR MEMBERS THAT THEY
5 TRANSFERRED.

6 THE CODE -- MR. SHAW HAS -- I ASKED MR. SHAW
7 TO BRING THE LAW ON IT. WE CAN'T MODIFY THAT -- THE
8 CONTENT OF THE DOCUMENT THAT'S ALREADY IN EVIDENCE, IN
9 TERMS OF THE SUBSTANTIVE CONTENT. WE CAN REORGANIZE THE
10 DATA SO IT'S IN A DIFFERENT, UNDERSTANDABLE ORIENTATION.
11 AFTER ALL, ALL COAST -- IT SO HAPPENS THAT COAST ELECTED TO
12 RESPOND TO THE DISCOVERY REQUEST IN AN ALPHABETICAL BY NAME
13 BASIS, EVEN THOUGH THEY WERE ASKED TO RESPOND BY RESORT
14 BASIS. WE HAD THE ABILITY TO ELECTRONICALLY REORGANIZE THE
15 SAME INFORMATION THAT'S ALREADY IN EVIDENCE ON A
16 RESORT-BY-RESORT BASIS.

17 I COULD CONCEIVABLY -- I CAN'T EVEN CONCEIVE
18 OF IT -- ASK MR. NOVELLI JUST TO GO DOWN THESE 500 PAGES
19 AND NAME OFF EVERY DELTA ISLE MEMBER THAT GOT TRANSFERRED,
20 AND IT WOULD TAKE MONTHS. OR WE CAN ASK THE COMPUTER TO
21 SORT -- RE-SORT THE DATA THAT'S ALREADY IN, AND DESIGNATE
22 THE TRANSFERS BY -- ON A RESORT-BY-RESORT BASIS. WE DID DO
23 THAT. THE COURT -- THE COMPUTER DID. IT TOOK SEVERAL
24 HOURS, AND THE COMPUTER DID IT.

25 THE AUTHORITY ON ADMISSIBILITY OF THIS KIND
26 OF EVIDENCE IS THAT IT'S PRESUMED CORRECT, JUST THE

1 CONTRA, TO SAY IT'S MISLEADING, IT'S PRESUMED ACCURATE AND
2 CORRECT. AND IF THERE IS SOMETHING MISLEADING OR
3 INACCURATE ABOUT IT, IT IS THE DEFENDANTS' BURDEN OF
4 PROVING THAT. AND IF THEY DON'T CARRY THE BURDEN OF PROOF,
5 THE DOCUMENT SHOULD BE ADMITTED INTO EVIDENCE.

6 SO, AGAIN, I HAVEN'T HEARD AN EVIDENTIARY
7 OBJECTION. I HEARD THE MISLEADING ARGUMENT.

8 HOW CAN WE -- IF COAST'S OWN EVIDENCE IS
9 MISLEADING, THEN THAT'S TO THEM TO DEAL WITH ON
10 CROSS-EXAMINATION. I DO AGREE WITH THE PORTION OF
11 MR. SHERMAN'S STATEMENT THAT THIS CAN BE LOOKED AT ON
12 CROSS-EXAMINATION. AND IF IT'S PROVEN TO BE FAULTY IN SOME
13 MANNER, THEN COAST HAS PROVEN THEIR OWN RECORDS TO BE
14 FAULTY IN SOME MANNER. SO BE IT. THAT'S WHAT HAPPENS.

15 BUT IT DOESN'T PREVENT US IN THE INCEPTION
16 FROM TAKING ADVANTAGE OF THE EVIDENCE CODE SECTION THAT
17 SAYS ELECTRONIC EXHIBITS ARE PRESUMED ACCURATE AND SHOULD
18 BE ADMITTED UNLESS THE OPPOSITION CAN AFFIRMATIVELY SHOW IN
19 SOME MANNER IT IS NOT ACCURATE.

20 MR. SHERMAN: YOUR HONOR, THEY HAVE IT BACKWARDS.
21 THIS CHART SAYS, THE SUMMARY THAT THEY PREPARED,
22 "PLAINTIFFS' MEMBERS TRANSFERRED BY COAST." AND THAT'S
23 WHERE THEY HAVE GOT IT BACKWARDS. THEY HAVE GOT TO FIRST
24 PROVE THAT THEY HAD CONTRACTUAL RELATIONSHIPS WITH THESE --
25 WHATEVER IT IS -- 160,000 PEOPLE, 100,000 PEOPLE, WHATEVER
26 THE CLAIM IS TODAY. I KNOW IT'S VARIED. THEY HAVE GOT TO

1 PROVE THAT THEY HAD CONTRACTUAL RELATIONSHIPS WITH THESE
2 PEOPLE. NOT THEY -- IN SOME VAGUE, AMORPHUS WAY, BUT THAT
3 THERE WERE PEOPLE WHO WERE MEMBERS OF THOUSAND ADVENTURES,
4 INC., OF OHIO WHO THERE WAS AN EXPECTANCY THAT THEY WOULD
5 REMAIN MEMBERS OF THOUSAND ADVENTURES, INC., OF OHIO; THAT
6 THEY HAD A RIGHT TO -- THAT WE SOMEHOW INTERFERED WITH.
7 THE SAME WITH ALL THE OTHERS.

8 AND THEY HAVE GOT A LIST HERE OF ABOUT 71
9 DIFFERENT RESORTS, AND WE'VE HEARD NO TESTIMONY -- IN FACT,
10 THE ONLY TESTIMONY WE'VE HEARD IS TO THE CONTRARY; THAT
11 THERE WAS THIS SO-CALLED ASSUMPTION -- AND YOUR HONOR WILL
12 RECALL MR. JOSEPH MADE IT VERY CLEAR AS BANKRUPTCY TRUSTEE,
13 AS AN EXPERT, YOU DON'T BUY AND SELL MEMBERS. YOU NEED THE
14 MEMBERS' CONSENT. YOU NEED THE PERSON'S CONSENT.

15 AND SO THEY HAVE GOT IT BACKWARDS. IT IS
16 TOTALLY LACKING IN FOUNDATION. IF THEY WANT TO MAKE THE
17 FOUNDATION AND SHOW THIS IN AN APPROPRIATE WAY, STARTING
18 FROM THE BOTTOM AND MOVING TO THE TOP, THEN WE'VE GOT
19 NOTHING TO COMPLAIN ABOUT. BUT FOR THEM TO COME IN AND
20 SAY PLAINTIFFS' MEMBERS -- THIS IS THE ISSUE WE DISCUSSED
21 LAST THURSDAY WHEN THERE IS THE REFERENCE -- YOU KNOW, THIS
22 QUICK REFERENCE TO TRAVEL AMERICA'S MEMBERS. I MEAN,
23 EXCUSE ME, BUT TRAVEL AMERICA DIDN'T HAVE CONTRACTS WITH
24 ANY OF THOSE PEOPLE. THEY DIDN'T HAVE CONTRACTS WITH CAMP
25 COAST TO COAST. FOR SOMEBODY TO COME IN HERE WITH THIS
26 BROAD BRUSH OR WAND AND SAY PLAINTIFFS' MEMBERS TRANSFERRED

1 BY COAST, WELL, I THINK SOMETHING IS MISSING. THAT WAS THE
2 EVIDENTIARY OBJECTION THAT REMAINS OUR EVIDENTIARY
3 OBJECTION. I MEAN, THE COAST LISTS, 1808-A AND B, ARE WHAT
4 THEY ARE.

5 THE OTHER ISSUE IS, HOW MR. NOVELLI IS GOING
6 TO DO THIS IS STILL A BIT OF A MYSTERY TO ME. AND I GIVE
7 THE COURT OUR ASSURANCE WE'LL COVER THIS TOPIC IN THE
8 CROSS-EXAMINATION. AND IF WE HAVEN'T SUSTAINED THAT, IF WE
9 HAVEN'T CONVINCED THE COURT WHAT I'M PROFFERING RIGHT NOW,
10 WELL, THEN WE'LL HAVE TO REVISIT IT ON REDIRECT.

11 BUT, YOU KNOW, TO CALL SOMEONE AN EXPERT
12 WITNESS AND THEN HAVE HIM COME IN AND SAY I THINK THIS AND
13 I THINK THAT AND I RELIED ON THIS, I MEAN, WE SHOULDN'T BE
14 DOING THAT. AND WE SHOULDN'T BE DOING THIS UNDER THE GUISE
15 OF SOME SUMMARY THAT SAYS PLAINTIFFS' MEMBERS TRANSFERRED
16 BY COAST.

17 THE COURT: ALL RIGHT.

18 MR. SHERMAN: IT DIDN'T HAPPEN.

19 MR. MOSHENKO: YOUR HONOR, THE EXPERT/NONEXPERT HAS
20 NOTHING TO DO WITH THIS. THIS HAS TO DO WITH COAST GAVE US
21 A DOCUMENT. AND THE DOCUMENT THEY GAVE US WAS RESPONSIVE
22 TO A REQUEST THAT SAID GIVE US THE NAMES OF THE PLAINTIFFS'
23 MEMBERS WHO WERE TRANSFERRED.

24 NOW, THE TITLE OF THE INDEX IS THE PHRASE
25 "PLAINTIFFS' MEMBERS." THE DOCUMENT ITSELF DOESN'T USE THE
26 PHRASE "PLAINTIFFS' MEMBERS." IT DOESN'T REFERENCE THEM AS

1 PLAINTIFFS OR NOT.

2 IN ANY EVENT, THE PHRASE "PLAINTIFFS'
3 MEMBERS" OR "COAST TO COAST MEMBERS," WE KNOW THAT THE
4 MEMBERS OF COAST TO COAST HAD TO BE MEMBERS OF A RESORT IN
5 ORDER TO BE MEMBERS OF COAST TO COAST. AND SO WE'RE JUST
6 TALKING SEMANTICS HERE. WE'RE TALKING TITLES.

7 IF THE COURT SAYS -- IS INCLINED TO SAY, I'M
8 NOT -- I'M GOING TO EXCLUDE THE ELECTRONIC RECONFIGURATION
9 BECAUSE WE LABELED THE TOP OF THE PAGE "PLAINTIFFS'
10 MEMBERS," TAKE THE LABEL OFF. THE LABEL ISN'T THE POINT.

11 THE POINT IS THAT COAST RESPONDED TO
12 DISCOVERY AND TOLD US THAT THESE WERE THE MEMBERS OF THE
13 RESORTS NAMED THAT WERE TRANSFERRED. AND THEN WHEN WE
14 SHOW -- WE HAVE THE RIGHT TO SHOW THE NAMES AND THE NUMBERS
15 OF THE MEMBERS THAT THEIR OWN RECORDS SHOW THEY
16 TRANSFERRED.

17 THE NEXT STEP IS TO PROVE, AS MR. SHERMAN
18 WANTS TO ARGUE, THAT THEY WERE PLAINTIFFS' MEMBERS OR THAT
19 THEY WERE CURRENT OR WHATEVER. THAT'S A DIFFERENT ISSUE
20 THAN THE ADMISSIBILITY OF THEIR OWN LISTS OF THE NAMES OF
21 THE PEOPLE THAT THEY TRANSFERRED, AND THE RESORTS THAT THEY
22 TRANSFERRED THEM FROM. BUT IT'S CROSS-EXAMINATION. IT'S
23 MAYBE A SUBSTANTIVE WITNESS, THOSE ISSUES RELATED TO THAT.

24 ALL WE'RE TALKING ABOUT IS A DOCUMENT YOUR
25 HONOR HAS ALREADY RULED IS RELEVANT AND ADMISSIBLE IN A
26 RECONFIGURED FASHION.

1 THE COURT: SUBMITTED?

2 MR. SHERMAN: SUBMITTED.

3 THE COURT: WELL, I THINK I HAVE TO GO ALONG WITH
4 THE DEFENSE ON THIS ONE. I THINK IT CAN BE HANDLED ON
5 REDIRECT IF IT'S GOING TO COME UP.

6 MR. MOSHENKO: CAN YOU EXPLAIN TO ME SO I CAN
7 UNDERSTAND HOW WE GO ABOUT THAT; THAT IT COMES UP ON CROSS
8 WITHOUT COMING UP ON DIRECT, AND THEN WE COME BACK ON
9 REDIRECT? IS THAT HOW WE'RE GOING TO DO IT? I DON'T
10 UNDERSTAND.

11 THE COURT: I'M GOING TO JUST HAVE TO LET IT PLAY
12 OUT. THAT'S ALL. I CAN'T FORESEE THE FUTURE, SO-TO-SPEAK.

13 MR. MOSHENKO: ALL RIGHT. WELL, WE WILL --

14 THE COURT: LET'S JUST GO AHEAD AND TRY THE CASE
15 SUBJECT TO YOUR OBJECTIONS AND TAKE IT FROM THERE.

16 MR. SHERMAN: YOUR HONOR, I JUST -- ONE
17 HOUSEKEEPING ITEM, AND I KNOW WE'VE GOT A JURY WAITING. SO
18 I'LL BE VERY BRIEF.

19 I'VE CALCULATED -- I THINK IT WAS EITHER
20 FIVE HOURS AND 10 MINUTES OR 5 HOURS AND 20 MINUTES OF DAY
21 OF WHAT WE OUGHT TO HAVE AS TESTIMONY TIME. I'VE GIVEN
22 YOUR HONOR ESTIMATES WITH RESPECT TO THE TIME I'M GOING TO
23 NEED WITH MR. NOVELLI. I WOULD HOPE I'M GOING TO GET THE
24 FIVE HOURS 20 MINUTES TO DO THESE THINGS WHILE THE JURY IS
25 WAITING AS WE'VE DONE IT TODAY. I NEED MY FIVE HOURS AND
26 20 MINUTES WITH MR. NOVELLI FOR FOUR DAYS TO DO WHAT I'VE

1 REPRESENTED TO THE COURT THAT I CAN DO.

2 THE COURT: ALL RIGHT.

3 MR. SHERMAN: AND, YOU KNOW, WE'VE GOT MORNINGS.

4 WE'VE GOT AFTER COURT, THINGS LIKE THAT. AND IT GOES FOR
5 THIS AS WELL.

6 THE COURT: FROM NOW ON I WANT EVERYBODY HERE AT
7 8:30.

8 MR. SHERMAN: WILL DO.

9 MR. MOSHENKO: VERY WELL.

10 YOUR HONOR, I HAVE ANOTHER ISSUE, IF I
11 COULD. I HATE TO TAKE IT UP DURING THE JURY, BUT IT'S A
12 DIFFERENT EXHIBIT.

13 THIS IS AN EXHIBIT THAT IS EXHIBIT 1849.
14 AND IT RELATES TO THIS MORNING'S TESTIMONY REGARDING THE
15 NUMBER OF MEMBERS THE PLAINTIFFS HAVE. THIS EXHIBIT IS A
16 LIST OF THE PLAINTIFFS' MEMBERS THAT WAS COMPILED FROM THE
17 BUSINESS RECORDS OF ALL SEASONS RESORTS AND THE OTHER
18 RESORTS, AGAIN, COMPUTER RECORDS. IT IS A PRINTOUT OF THE
19 NAMES AND MEMBER NUMBERS AND OTHER INFORMATION RELATING TO
20 PLAINTIFFS' MEMBERS. IT IS A FOUNDATIONAL DOCUMENT THAT
21 ENABLES MR. NOVELLI TO TESTIFY AS TO PLAINTIFF MEMBERS, THE
22 NUMBERS OF PLAINTIFFS' MEMBERS, THE NUMBERS OF NEW MEMBERS
23 IN PLAINTIFFS' RESORTS ON A YEAR-BY-YEAR BASIS.

24 AS I INDICATED, THIS IS A MARKED EXHIBIT.
25 IT HAS BEEN PROVIDED TO THE DEFENDANTS SOMETIME AGO. AND
26 WE WANT TO -- INTEND TO OFFER TO USE THAT EXHIBIT IN

1 MR. NOVELLI'S EXAMINATION. IF THE COURT NEEDS OTHER
2 FOUNDATION THROUGH MR. NOVELLI, WE BRING IT UP NOW SO THAT
3 FOUNDATION CAN BE ADDRESSED, IF NECESSARY.

4 MR. SHAW: YOUR HONOR, MAY I MAKE A POINT ON THAT?
5 BECAUSE MR. MOSHENKO ASKED ME TO LOOK AT THE LAW IN THIS
6 AREA.

7 COMPUTER -- AND I JUST CITE THE COURT TO
8 EVIDENCE CODE SECTION 1552. THIS IS NOT A RECONFIGURATION,
9 AS MR. SHERMAN WAS TALKING ABOUT ON THE OTHER EXHIBIT. BUT
10 COMPUTER -- I'M CITING FROM THE CASE, FROM THE CODE.
11 COMPUTER PRINTOUTS ARE PRESUMED TO BE ACCURATE
12 REPRESENTATIONS OF THE INFORMATION. THIS IS A REBUTTABLE
13 PRESUMPTION AFFECTING THE BURDEN OF PRODUCING EVIDENCE.
14 THE OPPOSING PARTY HAS A CHANCE TO REBUT THE PRESUMPTION
15 THAT THIS BUSINESS RECORD COMPUTER PRINTOUT IS NOT AN
16 ACCURATE REFLECTION.

17 SO UNDER 1552, THE EVIDENCE COMES IN THROUGH
18 THIS WITNESS, THE PRESIDENT OF THE COMPANY. AND THEN IF
19 DEFENSE HAS A PROBLEM WITH THE EXHIBIT, 1552 SAYS THEY HAVE
20 A CHANCE TO REBUT THE PRESUMPTION.

21 AND THEN IF YOU LOOK AT THE REBUTTABLE
22 PRESUMPTION AFFECTING THE BURDEN OF PROOF, THE PRESUMPTIONS
23 ARE DESIGNED TO FACILITATE TRIALS, AND THEY HAVE THE RIGHT
24 TO CONTRADICT ANY EVIDENCE.

25 AND THEN THE CODE SECTION FINISHES BY
26 SAYING, "UNLESS AND UNTIL THE EVIDENCE INTRODUCED IS SHOWN

1 BY THE DEFENSE TO BE SOMEHOW UNTRUSTWORTHY OR NONEXISTENT,
2 THEN THE EVIDENCE IS DEALT WITH AT THAT TIME."

3 BUT I THINK THIS IS AN EXHIBIT THAT IF WE
4 COULD MAKE THE INTRODUCTION AND DEAL WITH IT TODAY AND THEN
5 LET DEFENDANTS ON CROSS-EXAMINATION -- IF THEY WANT TO
6 RAISE -- IF THEY OBJECT TO IT, RAISE A REBUTTABLE
7 PRESUMPTION, WE HAVE THE REBUTTABLE PRESUMPTION, BUT
8 SOMEHOW THE BURDEN OF PROOF SHIFTS TO THEM, AND THEY WANT
9 TO SHOW IT'S OTHERWISE, THEN WE WOULD REQUEST THAT THAT'S
10 THE WAY IT'S HANDLED.

11 MR. SHERMAN: YOUR HONOR, THERE ARE GOING TO BE
12 MAJOR ISSUES WITH THIS DOCUMENT. THIS IS NOT THE FIRST
13 TIME WE'VE SEEN IT. IT IS INACCURATE AND IN VERY MATERIAL
14 WAYS.

15 BUT IF WHAT THEY PLAN TO DO IS TO SHOW THEIR
16 DOCUMENT TO THEIR WITNESS AND HAVE HIM GO ON ABOUT IT,
17 THAT'S FINE. I SUSPECT THAT WHEN THEY SEEK TO MOVE IT INTO
18 EVIDENCE WE'RE GOING TO OBJECT AS LACKING IN FOUNDATION,
19 AND ON OTHER GROUNDS. AND I'M SURE THE COURT -- WELL, I
20 WOULD HOPE THAT THE COURT WOULD AT THAT POINT ONLY RECEIVE
21 IT CONDITIONALLY OR SPECIALLY, AND WE CAN THRASH IT OUT
22 AFTER THE FACTS ARE KNOWN.

23 THE COURT: OKAY. LET'S GET ON WITH THE JURY.

24 MR. MOSHENKO: YOUR HONOR, I HAVE EXHIBIT 2002
25 WHICH IS A SUMMARY OF THAT EXHIBIT, AND I'M ALSO GOING TO
26 DEAL WITH THAT.

1 MR. SHERMAN: WHICH WE'VE NEVER SEEN BEFORE.

2 MR. MOSHENKO: YES. IT'S MARKED AS EXHIBIT 2002.

3 IT'S IN YOUR BOOK.

4 AND IN ADDITION TO THAT, YOUR HONOR, I'M
5 LETTING THE COURT KNOW IN ADVANCE, A WEEK AGO WE DEALT WITH
6 THE ADMISSIBILITY OF ALL THE COAST TO COAST MAGAZINES. WE
7 WANT TO MOVE INTO -- PLAN TO TRY TO MOVE INTO EVIDENCE ALL
8 OF THE NEWS AND VIEWS MAGAZINES. AND I GUESS IT WOULD BE
9 THE REVERSE OF THE SAME ARGUMENTS THE COURT HEARD TO ALLOW
10 THE COAST TO COAST MAGAZINES.

11 THE COURT: ALL RIGHT. LET'S BRING IN THE JURY.

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

14 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

15 THE JURY: GOOD AFTERNOON.

16 THE COURT: PROCEED, COUNSEL.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MR. MOSHENKO: Q MR. NOVELLI, DID YOUR
19 ORGANIZATION PUBLISH A MAGAZINE CALLED "NEWS AND VIEWS"?

20 A YES.

21 Q ON A REPEATED AND CONSISTENT BASIS OVER THE
22 YEAR THAT YOU'VE BEEN INVOLVED WITH IT?

23 A YES.

24 MR. SHERMAN: I OBJECT TO THE QUESTION. VAGUE AND
25 AMBIGUOUS AS TO WHEN IT WAS DONE.

26 MR. MOSHENKO: THAT'S FOUNDATIONAL. AND THEN I'LL

1 GO --

2 THE COURT: OVERRULED.

3 PROCEED.

4 MR. MOSHENKO: OKAY.

5 Q NOW, HOW FREQUENTLY WAS THE NEWS AND VIEWS
6 VOLUME PRINTED AND SENT TO YOUR MEMBERS?

7 A UP UNTIL THE YEAR 1996, WE SENT IT OUT
8 MONTHLY. AND THEN WE STARTED SENDING IT OUT -- OR 12
9 ISSUES A YEAR. AND THEN WE STARTED SENDING IT OUT
10 SOMEWHERE AROUND, I BELIEVE, SIX OR SEVEN ISSUES A YEAR.
11 AND THAT WAS TO SAVE COSTS OF SENDING IT OUT LESS.

12 Q ALL RIGHT. I'VE ASKED YOU THIS MORNING
13 TO -- THIS IS EXHIBIT 2134, YOUR HONOR.

14 AND I'M NOT GOING TO GIVE YOU THE ENTIRE
15 EXHIBIT. IT CONSISTS OF FOUR BOXES. BUT I ASKED YOU, FOR
16 EXAMPLE, TO GO OVER THE BINDERS VOLUMES WHICH INCLUDED THE
17 NEWS AND VIEWS MAGAZINES.

18 AND DID YOU ASSEMBLE FOUR BOXES OF BINDERS
19 FOR ME WHICH INCLUDED THE NEWS AND VIEWS THAT WERE
20 PUBLISHED BY YOUR ORGANIZATION DURING THE TIME PERIOD YOU
21 TESTIFIED TO?

22 A YES, I DID.

23 Q AND DOES THIS PORTION OR DOES THIS LOOK TO
24 BE A TRUE AND ACCURATE COPY OF NEWS AND VIEWS THAT YOU
25 PUBLISHED, WHICH MAKE UP EXHIBIT 2134?

26 A YES. AND THEY ALL HAD THE TITLE ON THEM,

1 "NEWS AND VIEWS."

2 MR. MOSHENKO: YOUR HONOR, I OFFER 2134 IN EVIDENCE.

3 MR. SHERMAN: YOUR HONOR, WE HAVE NOT SEEN THOSE
4 FOUR BOXES.

5 THE COURT: UNDER SUBMISSION.

6 MR. SHERMAN: THANK YOU.

7 BY MR. MOSHENKO: Q THIS MORNING THE COURT
8 INDICATED THAT THE COURT WAS SEARCHING FOR AN ORDER, OR AT
9 LEAST MR. SHERMAN OBJECTED LOOKING FOR AN ORDER CONFIRMING
10 THE PLAN IN 1998 REGARDING THE ALL SEASONS FIRST
11 BANKRUPTCY. AND WE HAVE IDENTIFIED THAT DOCUMENT. I'LL
12 PROVIDE A COPY TO COUNSEL SO COUNSEL CAN REVIEW IT.

13 MR. SHERMAN: OBJECTION.

14 MR. MOSHENKO: AND THEN I'LL COME BACK TO IT AT A
15 LATER TIME.

16 MR. SHERMAN: THAT MISSTATES THE TESTIMONY. IT WAS
17 IN 1993 PURPORTEDLY, NOT 1998.

18 MR. MOSHENKO: '88.

19 481 WAS UNDER SUBMISSION. AND IT MERELY
20 REFERRED TO THE 1988 PLAN, CHAPTER 11 PLAN, AS MODIFIED.
21 AND THIS IS THE ORDER RELATING TO THE 1988 PLAN AS
22 MODIFIED. AS I SAID, I'LL RETURN TO IT LATER.

23 Q WHAT WAS THE DEBT TO FINOVA WHEN YOU FIRST
24 TOOK OVER THE ORGANIZATION?

25 A AT THIS TIME FINOVA WAS CALLED "GREYHOUND
26 FINANCIAL." THAT WAS WHEN IT WAS PART OF THE BUS COMPANY.

1 Q RIGHT.

2 A ALL SEASONS OWED THEM APPROXIMATELY \$11
3 MILLION.

4 Q WHAT WAS THE DEBT TO FINOVA AS OF THE 1997
5 BANKRUPTCY?

6 A APPROXIMATELY \$2 MILLION.

7 Q OKAY. BUT AS WE BROKE THIS MORNING, I WAS
8 ASKING YOU QUESTIONS ABOUT IMPROVEMENTS THAT YOUR
9 ORGANIZATION MADE TO THE VARIOUS RESORTS THAT YOU ACQUIRED
10 THAT WERE IN DEEP FINANCIAL TROUBLE. WE TALKED ABOUT
11 PONDEROSA AND HERMITAGE.

12 ARE THERE ANY OTHER RESORTS THAT YOUR
13 INVESTORS AND ORGANIZATION MADE SIGNIFICANT CASH CAPITAL
14 CONTRIBUTIONS TO FOR THE PURPOSE OF IMPROVING THE RESORTS?

15 A YES. EVERY PARK THAT WE'VE GOT INVOLVED
16 WITH, INCLUDING LIKE DELTA ISLE -- DELTA ISLE, I THINK
17 THERE'S TESTIMONY THAT THE DOCKS WERE RUN DOWN. THERE WAS
18 CERTAIN THINGS IN THE DELTA ISLE SYSTEM OR DELTA ISLE PARK
19 WHEN WE ACQUIRED IT THAT WE HAD TO REDO, THE DOCKS BEING
20 ONE OF THOSE ITEMS, THE -- SOME OF THE SEWER CONDITIONS
21 THAT WE TOOK CARE OF ON DELTA ISLE. THAT WOULD BE JUST ONE
22 OF THE RESORTS.

23 ALMOST EVERY RESORT THAT WE EVER ACQUIRED,
24 WE HAD TO DO SUBSTANTIAL IMPROVEMENTS TO.

25 Q WHAT ABOUT INFLUX OF CAPITAL FOR THE PURPOSE
26 OF PAYING CREDITORS OF THE COMPANY?

1 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE.

2 THE COURT: SUSTAINED.

3 BY MR. MOSHENKO: Q WERE THERE ANY RESORTS THAT
4 YOU, IN YOUR INVESTOR -- AS AN ORGANIZATION, MADE
5 CONTRIBUTIONS OF CAPITAL WHICH WERE USED TO PAY CREDITORS?

6 A YES.

7 MR. SHERMAN: OBJECTION. VAGUE AND AMBIGUOUS AS TO
8 YOUR INVESTORS.

9 THE COURT: REPHRASE, PLEASE.

10 BY MR. MOSHENKO: Q DID YOU ARRANGE FOR CAPITAL
11 INVESTMENTS TO BE MADE AT ANY OF THE RESORTS THAT YOU
12 ACQUIRED TO PAY CREDITORS?

13 A YES.

14 Q AND WHAT METHOD OR METHODS DID YOU USE TO
15 OBTAIN THE CASH FLOW TO MAKE THE PAYMENTS TO THE CREDITORS?

16 A I HAD -- I WAS ABLE TO GET -- HAVE INVESTORS
17 INVEST IN BONDS, STOCK, AND JUST DIFFERENT INSTRUMENTS OF
18 BORROWING.

19 Q SO BORROWING WAS ONE TECHNIQUE; CORRECT?

20 A CORRECT.

21 Q SALES OF PRESIDENT'S TRAVEL CLUB, WAS THAT
22 ANOTHER METHOD OF RAISING MONEY TO PAY CREDITORS AT THE
23 RESORTS THAT YOU TOOK OVER?

24 A YES. WE WITH PRESIDENT'S TRAVEL CLUB, AND
25 IN THE ALL SEASONS CASE -- I BELIEVE THAT THE PRESIDENT'S
26 TRAVEL CLUB CONTRIBUTED SOMEWHERE AROUND \$20 MILLION IN

1 THAT CASE.

2 Q WHAT OTHER METHODS DID YOU USE TO RAISE
3 MONEY THAT -- TO PAY CREDITORS OF ONE RESORT AS OPPOSED TO
4 ANOTHER?

5 A PRIMARILY THAT WAS OUR SALES ORGANIZATION
6 AND OUR INVESTOR FRIENDS. THAT WAS PRETTY MUCH WHAT WE
7 DID.

8 Q YOU HAD SALES OF MEMBERSHIPS, TOO, DIDN'T
9 YOU?

10 A CORRECT.

11 Q DID YOU KEEP COMPUTER RECORDS OF MEMBERSHIP
12 SALES ON AN ANNUALIZED BASIS?

13 A YES, WE DID. WE HAVE A -- OUR COMPUTER HAS
14 EVERY MEMBER THAT'S EVER BEEN A MEMBER IN OUR ORGANIZATION,
15 IS IN OUR COMPUTER.

16 Q I REFERENCE EXHIBIT 1849. I'LL PUT IT IN
17 FRONT OF YOU, MR. NOVELLI. TAKE A LOOK AT EXHIBIT 1849.
18 TELL ME IF YOU RECOGNIZE IT.

19 A YES, I DO.

20 Q WHAT IS 1849?

21 A THIS IS THE MEMBER LIST, OUR MEMBER BASE.
22 IT GOES BACK FROM 1982 THROUGH NOVEMBER 1999 OF ALL OF OUR
23 RESORTS.

24 Q ALL RIGHT.

25 A INCLUDING THE T.A.I. RESORTS, THE TRAVEL --
26 THOUSAND ADVENTURES RESORTS.

1 Q ARE THE NAMES OF THE MEMBERS WHO WERE NEW
2 MEMBERS SHOWN ON THE MEMBER BASE LIST?

3 A YES, EVERY MEMBERS' NAME IS ON THE LIST.

4 Q OKAY. AND WHAT OTHER DATA IS SHOWN RELATING
5 TO THAT NEW MEMBER?

6 MR. SHERMAN: OBJECTION. ASSUMES FACTS NOT IN
7 EVIDENCE THAT THIS SHOWS NEW MEMBERS.

8 THE WITNESS: THIS --

9 MR. MOSHENKO: LET ME ASK HIM THAT QUESTION.

10 THE COURT: ALL RIGHT.

11 BY MR. MOSHENKO: Q IS THIS A LIST OF -- THAT
12 SHOWS ON AN ANNUALIZED BASIS NEW MEMBERS THAT COME INTO THE
13 ORGANIZATION?

14 A YES, IT IS. IT'S A YEAR-BY-YEAR BASIS THAT
15 MEMBERS BECAME MEMBERS OF OUR ORGANIZATION.

16 Q SO IN A GIVEN YEAR, LET'S SAY, IN 1991, A
17 MEMBER'S NAME APPEARS THERE FOR THE FIRST TIME, THAT IS A
18 NEW MEMBER FOR THAT YEAR?

19 A YES.

20 Q OKAY. SO NOW WHAT ELSE IS SHOWN ON THE
21 EXHIBIT?

22 A IT ALSO SHOWS THE AMOUNT OF THEIR DUES,
23 THEIR DUES PAYMENT. IT SHOWS WHEN THEY BECAME A MEMBER.
24 IT SHOWS THEIR DUES PAYMENT. IT GIVES THEIR ADDRESS. IT
25 GIVES THE -- USUALLY WHEN YOU HAVE A MEMBER, IT'S REALLY
26 TWO MEMBERS, A MAN AND A WIFE. SO IT SHOWS THE FIRST NAME

1 OF THE MEMBERS ALONG WITH THEIR LAST NAME.

2 Q OKAY. SO FROM THAT YOU CAN DETERMINE ON AN
3 ANNUALIZED BASIS HOW MANY NEW MEMBERS JOIN THE ORGANIZATION
4 EACH AND EVERY YEAR; RIGHT?

5 A YES, I CAN.

6 Q WERE THE NAMES ON THAT IN THE COMPUTER PUT
7 INTO THE COMPUTER AT OR ABOUT THE TIME THAT THE MEMBER
8 JOINED?

9 MR. SHERMAN: OBJECTION.

10 THE WITNESS: THE SAME TIME.

11 MR. SHERMAN: EXCUSE ME. LACK OF FOUNDATION AS TO
12 THE COMPUTER. I'D LIKE COUNSEL TO ESTABLISH WHICH COMPUTER
13 THIS WAS GENERATED BY.

14 THE COURT: OVERRULED.

15 BY MR. MOSHENKO: Q OKAY. SO YOU KEPT RECORDS ON
16 A MEMBER-BY-MEMBER BASIS WITH THE NEW MEMBER BEING ADDED AT
17 OR ABOUT THE TIME THE MEMBER JOINED?

18 A CORRECT.

19 Q AND WAS THE INFORMATION KEPT IN A COMPUTER
20 IN A REASONABLY PERMANENT AND -- REASONABLY PERMANENT
21 MANNER SO THAT THE DATA WAS THERE ON A PERMANENT BASIS?

22 A YES.

23 Q WAS IT MADE BY PERSONNEL UNDER YOUR
24 DIRECTION AND CONTROL IN THE ORDINARY COURSE OF BUSINESS?

25 A YES, IT WAS.

26 Q AND DOES THAT EXHIBIT ACCURATELY REFLECT THE

1 BUSINESS RECORDS OF YOUR ORGANIZATION WITH RESPECT TO NEW
2 MEMBERSHIPS ON A YEAR-BY-YEAR BASIS?

3 A IT DOES.

4 Q OKAY. NOW, EXHIBIT 2002. LET ME SHOW YOU
5 EXHIBIT 2002.

6 YOUR HONOR, EXHIBIT 2002 CONSISTS OF A COVER
7 PAGE, A SUMMARY PAGE, AND 12 OTHER PAGES.

8 LET'S LOOK AT THE FIRST -- FIRST LOOK AT THE
9 12 PAGES, MR. NOVELLI.

10 DO YOU RECOGNIZE THOSE TO BE 12 EXEMPLAR
11 PAGES, COPIES OF DOCUMENTS THAT ARE FOUND IN EXHIBIT 1849,
12 THE DOCUMENT THAT YOU JUST REFERENCED?

13 A YES, THEY ARE.

14 MR. MOSHENKO: INCIDENTALLY, YOUR HONOR, OFFER 1849
15 INTO EVIDENCE, BUSINESS RECORD OF THE PLAINTIFFS.

16 MR. SHERMAN: YOUR HONOR, I OBJECT. THE DOCUMENTS
17 LACK FOUNDATION. AND MR. MOSHENKO'S QUESTION MISSTATED THE
18 TERMS OF THE DOCUMENTS.

19 MR. MOSHENKO: MY OFFER IS INTO EVIDENCE. IT'S NOT
20 A QUESTION PENDING. I DON'T KNOW WHAT QUESTION HE IS
21 REFERRING TO.

22 MR. SHERMAN: I'M REFERRING TO THE FACT THAT THE
23 EXEMPLARS TRACK 1849. THEY DO NOT APPEAR TO TRACK 1849.
24 THERE ARE DIFFERENT COLUMNS THERE.

25 MR. MOSHENKO: THAT'S A DIFFERENT QUESTION, YOUR
26 HONOR. I'M OFFERING 1849, WHICH HE LAID THE BUSINESS

1 RECORDS FOUNDATION FOR. I THINK EVERY ELEMENT CALLED FOR
2 BY THE EVIDENCE CODE HAS BEEN TESTIFIED TO. OFFER IT IN
3 EVIDENCE.

4 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

5 THE COURT: OVERRULED. IT'S RECEIVED IN EVIDENCE.

6 (WHEREUPON, EXHIBIT NO. 1849, MEMBER LIST,
7 WAS RECEIVED IN EVIDENCE.)

8 BY MR. MOSHENKO: Q NOW, MR. NOVELLI, DID YOU
9 DIRECT MEMBERS OF YOUR STAFF TO THEN CREATE A SUMMARY OF
10 THE DATA WHICH IS FOUND IN EXHIBIT 1849?

11 A YES, I DID.

12 Q AND REFERRING TO EXHIBIT 2002, SPECIFICALLY
13 THE SECOND PAGE, BATES STAMP PTE 08480, IS THAT A TRUE AND
14 CORRECT COPY SUMMARIZING ELECTRONICALLY THE DATA THAT'S
15 FOUND IN 1849?

16 A YES, IT IS.

17 MR. MOSHENKO: OFFER 2002 IN EVIDENCE, YOUR HONOR.

18 MR. SHERMAN: OBJECTION. IT LACKS FOUNDATION.

19 THE COURT: OVERRULED. IT'S RECEIVED.

20 (WHEREUPON, EXHIBIT NO. 2002, SUMMARY OF
21 EXHIBIT 1849, WAS RECEIVED IN EVIDENCE.)

22 BY MR. MOSHENKO: Q NOW, MR. NOVELLI, WHY DON'T
23 YOU TAKE LOOK AT THAT PAGE 2 OF 2002.

24 I ASKED YOU SOME QUESTIONS THIS MORNING
25 ABOUT MEMBERSHIPS -- SALES OF NEW MEMBERSHIPS DURING THE
26 BANKRUPTCIES THAT ALL SEASONS RESORTS EXPERIENCED IN THE

1 LATE '80'S AND THE EARLY 1990'S.

2 CAN YOU TELL BY LOOKING AT EXHIBIT 2002 HOW
3 MANY MEMBERS -- CAN WE PUT 2002 UP ON THE SCREEN -- HOW
4 MANY MEMBERS OF ALL SEASONS RESORTS WERE SOLD NEW
5 MEMBERSHIPS IN GIVEN YEARS? AND LET'S BLOW IT UP.

6 A THESE REFLECT THE NEW MEMBERS IN ALL THE
7 RESORTS BY YEAR, NOT JUST ALL SEASONS.

8 Q OKAY. SURE.

9 SO NOW -- BUT YOU HAD BANKRUPTCIES PENDING
10 IN ALMOST ALL OF YOUR RESORTS DURING THE '88 THROUGH '93,
11 '94 YEARS; CORRECT?

12 A CORRECT.

13 Q ALL RIGHT. SO NOW THAT WE CAN UNDERSTAND
14 THIS, THE FIRST ENTRY, SALES TOTAL NEW THROUGH 1987,
15 43,548; CORRECT?

16 A YES. THAT'S THE MEMBERSHIP BASE AT THE END
17 OF 1987.

18 Q ALL RIGHT. AND NOW HERE IS 1987, AND THAT
19 SAME 43,000 NUMBER IS CARRIED FOR EACH AND EVERY YEAR INTO
20 1999; CORRECT?

21 A RIGHT. THAT'S THE NUMBER OF SALES THROUGH
22 THE YEAR 1987. NATURALLY IT GOES -- IT'S -- ALWAYS REMAINS
23 THE SAME.

24 Q THIS DOESN'T MEAN THAT YOU SOLD 43,000 IN
25 1996?

26 A NO.

1 Q OKAY. THEN IN 1998 AND 1999 WHILE THE ALL
2 SEASONS BANKRUPTCY WAS PENDING, YOU HAD SALES OF IT LOOKS
3 LIKE 13,000 ADDITIONAL NEW MEMBERSHIPS; RIGHT?

4 A YES. AND THIS IS NOT ONLY ALL SEASONS.
5 I'VE GOT TO REMIND YOU THAT. IT'S OTHER PARKS.

6 Q WELL, IN 1998 AND 1999, WHAT OTHER PARKS DID
7 YOU HAVE?

8 A WE HAD THE CUTTY RESORT SYSTEM.

9 Q OKAY. AND THEN IN 1990, 15,000 NEW MEMBERS
10 WERE SOLD?

11 A CORRECT.

12 Q 1991, 16,476?

13 A YES.

14 Q 1992 -- THIS IS DURING THE PENDENCY OF
15 MULTIPLE BANKRUPTCIES -- ANOTHER ALMOST 16,000 NEW
16 MEMBERS --

17 A YES.

18 Q -- JOINED YOUR ORGANIZATION?

19 A THAT'S CORRECT.

20 Q '93, 16,001 NEW MEMBERS JOINED YOUR
21 ORGANIZATIONS?

22 A THAT'S CORRECT.

23 Q AND THEN '94, 16,841.

24 AND WE'VE GOT A RUNNING CUMULATIVE TOTAL ON
25 THE BOTTOM LINE SO THAT BY 1994 THE TOTAL OF NEW MEMBERSHIP
26 SALES DURING THE 1, 2, 3, 4, 5, 6, 7, 8 -- AND THEN I'M

1 GOING TO SUBTRACT 43,000, BECAUSE THIS '87 IS REALLY NOT
2 JUST '87. IT'S 87 BACK; ISN'T IT?

3 A THAT'S CORRECT.

4 Q OKAY. SO IF MY MATH IS CORRECT, I GET
5 95,000 NEW MEMBERS IN THE SEVEN YEARS THAT YOU RAN YOUR
6 ORGANIZATION WITH MANY, MANY OF THE COMPANIES IN BANKRUPTCY?

7 A ACTUALLY IT'S OVER 100,000. YOU DEDUCT
8 42,000 FROM 164. SO, YOU'D END UP WITH OVER A HUNDRED
9 THOUSAND. ROUGHLY 118,000.

10 Q THAT'S THROUGH 1999?

11 A RIGHT. THROUGH '99.

12 Q OKAY. AND -- ALL RIGHT. SO DID THE FACT OF
13 THE BANKRUPTCIES INHIBIT YOUR ABILITY TO SELL MEMBERSHIPS?

14 A NO, IT DID NOT.

15 Q NOW, THE LIST HERE IS SHOWING NEW MEMBERS
16 ONLY; CORRECT?

17 A YES.

18 Q IT DOESN'T SHOW ANY WHAT WE'LL CALL
19 ATTRITION OF MEMBERSHIPS?

20 A NO.

21 Q WHAT IS ATTRITION OF MEMBERSHIPS?

22 A ATTRITION OF MEMBERSHIP, YOU HAVE PEOPLE
23 THAT LEAVE THE ORGANIZATION FOR ONE REASON OR ANOTHER. YOU
24 HAVE PEOPLE THAT -- REVERSE SALES WHERE YOU'LL SELL A
25 MEMBER, AND THEN FOR SOME REASON OR ANOTHER THEY WILL
26 REVERSE THE SALE. WE GIVE THEM A COOLING OFF PERIOD OF

1 SOMEWHERE BETWEEN THREE TO 10 DAYS, DEPENDING ON THE AREA
2 THAT WE'RE SELLING IN.

3 SO THERE'S MANY REASONS THAT YOU WOULD HAVE
4 ATTRITION TO THESE NUMBERS.

5 Q OKAY. SO ASSUMING HYPOTHETICALLY A MEMBER
6 DIED SOMEWHERE BETWEEN '87 AND '99, AND THAT WAS THE ONLY
7 ATTRITION, THEN THE ACTUAL NUMBER OF MEMBERS AS OF 1999
8 WOULD BE 164,340, NOT 41; CORRECT?

9 A CORRECT.

10 Q NOW, LET'S MAKE ANOTHER THING CLEAR; AND
11 THAT IS, THESE MEMBERS THAT CAME INTO YOUR ORGANIZATION
12 WERE -- THEY ALL ARE A RESULT OF MARKETING AND SALES
13 ACTIVITIES, OR WERE THERE OTHER REASONS FOR THEM COMING IN?

14 A ORIGINALLY THEY'RE ALL FROM MARKETING AND
15 SALES. OTHER REASONS FOR THEM COMING IN IS THAT WE
16 ACQUIRED PARKS, AND THEY WOULD COME IN AS WE ACQUIRED
17 COMPANIES.

18 BUT THIS 43,000 -- FOR EXAMPLE, OF THE
19 43,000, 13,000 OF THOSE MEMBERS WERE ALL SEASONS AT THAT
20 TIME IN 1987. THE OTHER 30,000 THEN WOULD BE OTHER RESORTS
21 THAT WE ACQUIRED, LIKE CUTTY'S RESORT, THE PONDEROSA, AND
22 DIFFERENT RESORT SYSTEMS.

23 Q VERY WELL.

24 A SO IT WOULD INCLUDE THEIR SALES, ALSO.

25 Q MAYBE YOU CAN -- IN REVIEWING THIS I SEE

26 A -- THE FACT THAT IN '98 AND '99 THERE APPEAR TO BE LESS

1 SALES AS COMPARED TO EARLIER YEARS.

2 AND, IN FACT, THERE'S AN APPARENT TURN DOWN

3 STARTING IN 1995, '96, '97, THE NUMBER OF NEW MEMBERS.

4 WHAT'S THE REASON FOR THAT?

5 A THE SALES -- IN THE LATTER YEARS, SALES

6 BECAME MORE AND MORE DIFFICULT TO SELL PRODUCT. AND THE

7 REASON FOR THAT WAS THE HIGH COST OF SALES; THAT RATHER

8 THAN OUR COST OF SALES GOING DOWN OVER THE YEARS, COST OF

9 SALES WENT UP, BECAUSE OUR METHOD OF SALES USING MAIL AND

10 BOX PROGRAMS, SHOWS AND FAIRS AND THINGS LIKE THIS, WERE

11 BEING USED BY A LOT OF OTHER PEOPLE BESIDES THE CAMPGROUND

12 INDUSTRY. AND AS A RESULT OF THAT, WE KIND OF, WHAT WE

13 CALL, WENT THROUGH OUR UNIVERSE.

14 AND SO SALES BECAME MORE AND MORE DIFFICULT

15 AS THE YEARS PROGRESSED. THEN YOU'LL NOTICE IN 1998 AND

16 '99 WE ONLY HAD 457 AND 314. AND THAT WAS A DIRECT RESULT

17 OF WHAT HAPPENED BETWEEN US AND COAST TO COAST.

18 IN OTHER WORDS, IT'S WHERE WE JUST -- WE

19 WERE DEVASTATED BY THIS ACTION.

20 Q NOW, WHEN YOU TALK ABOUT MARKETING AND

21 SALES, YOU WERE THE HEAD RESPONSIBLE PERSON FOR MARKETING

22 AND SALES FOR ALL OF THE PLAINTIFFS' RESORTS; CORRECT?

23 A YES, I WAS.

24 Q THROUGH THE YEARS SHOWN?

25 NOW, AT -- WHAT METHODS DID YOU USE TO

26 MARKET AND SELL MEMBERS?

1 A PRIMARILY WE USED THE MAIL; IN OTHER WORDS,
2 I'M SURE EVERYBODY ON THE JURY HAS GOT SOME MAIL THAT LOOKS
3 LIKE OUR MAIL. WE'LL USE SWEEPSTAKES WHERE YOU'VE WON A TV
4 SET OR SLEEPING BAGS OR SMALL ITEMS. AND THE REASON WE HAD
5 TO DO THAT IS OUR RESORTS ARE LOCATED OUT OF METROPOLITAN
6 AREAS. AND IN ORDER TO ENTICE A CUSTOMER, A PROSPECTIVE
7 CUSTOMER, TO THE RESORT, WE WOULD GIVE AWAY TELEVISION SETS
8 SO THAT IF YOU CAME TO THE RESORT -- AND THE FIRST THING
9 WE'D TO IS PRESENT YOU WITH YOUR GIFT. AND THE GIFT COULD
10 BE A TV SET, STEAKS, BARBECUE, SLEEPING BAGS AND THAT SORT
11 OF THING.

12 Q OKAY. NOW, WHEN -- YOU TRAINED THE SALESMEN
13 YOURSELF AS WELL AS HAD OTHERS DO TRAINING; RIGHT?

14 A YES, I HAVE.

15 Q AND YOU OVERSAW THE SALES PRESENTATIONS; IS
16 THAT CORRECT?

17 A YES.

18 Q ALL RIGHT. SO FIRST MY QUESTION IS, WHAT
19 WERE THE MEMBERSHIPS SELLING FOR IN VARIOUS YEARS?

20 A WHEN I STARTED WITH ALL SEASONS RESORTS,
21 THEY WERE SELLING THEIR MEMBERSHIP FOR \$5995, OR ROUGHLY
22 \$6,000. THAT WAS IN 1986.

23 Q OKAY. NOW, HOW DID THAT NUMBER CHANGE, IF
24 IT DID, OVER THE YEARS?

25 A I UPPED IT TO 6995, OR ROUGHLY \$7,000. AND
26 I DID THAT ALMOST IMMEDIATELY IN 1987.

1 Q OKAY. AND THEN DID IT CHANGE AFTER THAT?

2 A NO.

3 Q AND IT REMAINED THAT AMOUNT THROUGH 1998 AND
4 '99?

5 A YES.

6 Q OKAY. NOW --

7 A THAT'S FOR OUR BASIC MEMBERSHIP. THAT WOULD
8 INCLUDE THE WHOLE RESORT SYSTEM.

9 Q AND THE RESORT SYSTEM STARTED OUT WITH 10 OR
10 11 OR 12 RESORTS.

11 AND WHAT DID IT REACH AT ITS APEX IN TERMS
12 OF NUMBER RESORTS PARTICIPATING IN YOUR SYSTEM?

13 A IN ITS APEX, APPROXIMATELY 44, I BELIEVE.

14 Q AND IS THIS BEFORE THE THOUSAND ADVENTURES
15 INVOLVEMENT?

16 A YES.

17 Q AND WITH THOUSAND ADVENTURES, WHAT WOULD THE
18 TOTAL NUMBER OF RESORTS HAVE BECOME?

19 A I BELIEVE SOMEWHERE AROUND 73 RESORTS. 75.

20 Q YOUR MEMBERS WOULD HAVE HAD ACCESS TO ALL 73
21 OR 75 RESORTS?

22 A NO. AT THAT TIME WHEN WE MADE OUR AGREEMENT
23 WITH THE T.A.I. SYSTEM, WE DIDN'T HAVE 44 PARKS. WE HAD
24 APPROXIMATELY 25 PARKS. AND I THINK THEY CONTRIBUTED
25 ANOTHER 25 PARKS TO BRING THE SYSTEM TO APPROXIMATELY 50
26 PARKS.

1 Q ALL RIGHT. AND I'LL COME BACK TO THAT.

2 NOW, BUT BACK TO SALES.

3 TO ENABLE YOU TO SELL MEMBERSHIPS FOR

4 \$6,000, I'LL CALL IT, WHAT KIND OF PERSONNEL DID YOU HAVE

5 TO HIRE?

6 A WE HAD THE CORPORATE SALES DEPARTMENT, WHICH

7 WOULD BE YOUR DIRECTOR OF SALES AND MARKETING. WE HAD A

8 MARKETING DIRECTOR, A SALES DIRECTOR. EACH RESORT THEN

9 WOULD HAVE A SALES MANAGER, ASSISTANT SALES MANAGERS, AND

10 SALESPeOPLE.

11 Q AND YOU HAD TO PAY EACH AND ALL OF THOSE

12 PEOPLE FOR THEIR WAGES OR COMMISSIONS?

13 A YES, BOTH. WE HAD -- THE SALES MANAGERS

14 WERE PRIMARILY ON SALARIES PLUS A COMMISSION. THE

15 SALESPeOPLE WERE ON A DRAW AGAINST COMMISSIONS, IN OTHER

16 WORDS, WHERE THEY GOT A WEEKLY CHECK. WHETHER THEY WERE

17 ABLE TO SELL OR NOT AT A PARTICULAR TIME, THEY WERE GIVEN

18 DRAWS AGAINST THEIR FUTURE COMMISSIONS.

19 Q OKAY. WHAT OTHER EXPENSES DID YOU INCUR?

20 I KNOW YOU MENTIONED THE TELEVISION SETS AND

21 THE ADVERTISING. WHAT OTHER EXPENSES?

22 A WELL, YOUR BIGGEST EXPENSE IS YOUR MAIL. IN

23 OTHER WORDS, WE WOULD SEND OUT, LET'S SAY, 100,000 PIECES

24 OF MAIL. AND THAT 100,000 PIECES OF MAIL WOULD COST US

25 SOMEWHERE AROUND 50 CENTS APIECE. THAT WOULD INCLUDE YOUR

26 POSTAGE, YOUR ENVELOPE, AND YOUR MAILING BROCHURE INSIDE

1 THE ENVELOPE.

2 SO IT WAS AROUND 50 CENTS APIECE. IF WE
3 MAILED OUT A HUNDRED THOUSAND PIECES THAT WOULD COST US
4 \$50,000.

5 Q DID YOU EVER DO A CALCULATION ON A
6 MEMBERSHIP-BY-MEMBERSHIP BASIS WHAT THE NET OR TOTAL COST
7 FOR EACH \$6,000 MEMBERSHIP SOLD WAS TO YOUR ORGANIZATION?

8 A YES. OUR ORGANIZATION HAD AN OVERALL COST
9 ON A YEARLY BASIS OF APPROXIMATELY 55 PERCENT.

10 Q AND HAVE YOU CALCULATED OUT IN DOLLARS ON A
11 PER MEMBERSHIP --

12 A YES. IT AVERAGED OUT ON THE -- OUR COST TO
13 ACQUIRE A MEMBER -- THAT INCLUDES MARKETING AND SALES --
14 WOULD BE SOMEWHERE IN THE NEIGHBORHOOD OF \$3,300 FOR EACH
15 MEMBER.

16 Q OKAY. NOW, WHERE DID YOU GET THE MONEY TO
17 INCUR THAT KIND OF COST?

18 A THIS IS MONEY -- INVESTOR MONEY. IT WOULD
19 ALSO INCLUDE THE DOWN PAYMENTS. THE DOWN PAYMENTS WOULD
20 RUN AN AVERAGE -- I THINK IT WAS ALREADY TESTIFIED HERE --
21 APPROXIMATELY 20 PERCENT. SO IF WE SOLD SOMETHING FOR
22 \$6,000, WE'D BE ABLE TO GET A DOWN PAYMENT OF APPROXIMATELY
23 \$1200. THEN WE WOULD TAKE THE CONTRACTS AND FINANCE THOSE
24 CONTRACTS FOR APPROXIMATELY 60 PERCENT. SO IF I HAD A
25 MEMBER COME IN AND BUY A CONTRACT FOR \$6,000, I GOT \$1200
26 DOWN, I'D HAVE A CONTRACT FOR 4800. THEN I COULD BORROW ON

1 THAT 4800 CONTRACT. THAT'S WHERE THESE LENDERS CAME FROM.
2 I COULD BORROW 60 PERCENT OF THAT, OR ANOTHER \$24-, \$2500.
3 AND THAT WOULD BE -- HOPEFULLY BE ABLE TO COVER THE COST OF
4 THE SALE.

5 Q I GOT \$1200 PLUS \$2500 IS \$3700. YOU HAVE
6 ABOUT 4- OR 500 LEFT OVER?

7 A YES.

8 Q ALL RIGHT. AND THEN WHO COLLECTS ON THOSE
9 CONTRACTS?

10 A THEN WE COLLECT ON THEM THROUGH OUR
11 COLLECTION DEPARTMENT.

12 Q AND YOU THEN MAKE PAYMENTS TO LENDERS?

13 A WHAT WE DO IS WE HAVE -- THE MONEY GOES INTO
14 WHAT WE CALL LOCK BOXES. AND WE SET UP ACCOUNTS AT THE
15 BANK. AND IF WE HAVE A LENDER -- FOR EXAMPLE, OUR LENDER
16 IS BARCLAY'S AMERICAN. THEN WE'LL OPEN UP AN ACCOUNT UNDER
17 ALL SEASONS, AND THE MONEY THAT COMES IN ON CONTRACTS
18 ASSIGNED TO A PARTICULAR LENDER THEN GOES INTO THAT
19 PARTICULAR ACCOUNT. AND THEN AT THE END OF THE MONTH
20 WE'LL -- FROM THAT ACCOUNT, WE'LL ISSUE CHECKS TO THAT
21 PARTICULAR LENDER, FOR WHATEVER IS IN THE ACCOUNT.

22 Q OKAY. NOW, LET'S TALK ABOUT THE SALES
23 PROCESS ITSELF.

24 WAS COAST TO COAST SOMETHING THAT CAME UP
25 DURING THE SALES PRESENTATION?

26 A NOT ALWAYS. COAST TO COAST -- WE USE IT --

1 AND I CAN'T SPEAK FOR EVERY DEVELOPER. BUT AS FAR AS OUR
2 SYSTEM WAS CONCERNED, WE SOLD OUR OWN PRODUCT. WE WERE A
3 MULTIPLE-PARK SYSTEM. WE WEREN'T A ONE -- YOU KNOW,
4 ONE-PARK SYSTEM THAT WOULD NEED COAST TO COAST AS A SELLING
5 TOOL IN ORDER TO OFFER TRAVEL.

6 OUR SYSTEM WAS NATIONWIDE. THE ALL
7 SEASONS/FIRST NATIONWIDE SYSTEM WAS NATIONWIDE.

8 AT THE END OF THE SALES PRESENTATION, WE
9 WOULD USE IT AS A BUTTON-UP. AND WHAT I MEAN BY THAT IS
10 JUST TO THROW THAT IN TO GIVE YOU SOMETHING EXTRA THAT
11 WASN'T PART OF YOUR SALES PROGRAM.

12 Q AND WHAT?

13 A THAT FELT GOOD.

14 Q WHO PAID?

15 A WE PAID FOR IT. IT WAS \$29. AND WE'D TAKE
16 THE \$29 AND SEND IT OVER TO COAST TO COAST.

17 Q YOU HEARD OF THE PRIMARY PRODUCT RULE?

18 A YES.

19 Q OKAY. WE DON'T HAVE TO GO OVER WHAT IT IS.
20 I THINK WE'RE ALL AWARE.

21 DID YOU COMPLY WITH THE PRIMARY PRODUCT RULE
22 IN YOUR SALES PRESENTATION?

23 A ALWAYS.

24 Q AND DID YOU CALL UPON NEW MEMBERS TO SIGN AN
25 APPLICATION FOR COAST MEMBERSHIP WHEN YOU WERE THROWING IT
26 IN?

1 A YES.

2 Q OKAY. AND YOU WERE AWARE THAT THE
3 APPLICATION REQUIRES THE MEMBER TO STATE IN THE APPLICATION
4 THAT HE HAD BOUGHT THE HOME PARK MEMBERSHIP AS ITS PRIMARY
5 PRODUCT AND NOT RELYING ON COAST, OR WHATEVER WORDS TO THAT
6 EFFECT IT STATES?

7 A THAT'S CORRECT.

8 Q AND SO EVERY ONE OF YOUR MEMBERS WHO BECAME
9 COAST MEMBERS GAVE YOU A WRITTEN STATEMENT TO THE EFFECT
10 THAT THEY WERE BUYING FOR HOME PARK MEMBERSHIP?

11 A THAT'S CORRECT.

12 Q PRIMARY REASON?

13 A THAT'S CORRECT.

14 Q NOW, IT SOUNDS LIKE IF YOU IN A GIVEN YEAR
15 SOLD 16,001 NEW MEMBERSHIPS -- SOLD -- THAT YOU GAVE AWAY
16 16,001 COAST MEMBERSHIPS; IS THAT CORRECT?

17 A NO. BECAUSE THE COAST TO COAST -- OUR
18 MEMBERSHIP IS APPROXIMATELY 30 PERCENT COAST TO COAST.
19 MOST OF OUR MEMBERS AREN'T -- ARE NOT THAT INTERESTED, OR
20 WE DIDN'T PUT IT IN THEIR PACKAGE. SO YOU'LL FIND IN, I
21 THINK, MOST DEVELOPERS' PACKAGES THAT MAYBE 35 PERCENT OF
22 THEM WILL JOIN COAST TO COAST. SO IT'S NOT SOMETHING
23 THAT'S AUTOMATIC, AT LEAST IN OUR SYSTEM.

24 Q ALL RIGHT.

25 MR. SHERMAN: YOUR HONOR, I'M GOING TO MOVE TO
26 STRIKE. THE QUESTION WAS WITH RESPECT TO MR. NOVELLI'S

1 CONDUCT, AND HE WOUND UP TALKING ABOUT OTHER DEVELOPERS'
2 CONDUCT.

3 MR. MOSHENKO: THE REFERENCE TO OTHER DEVELOPERS
4 CAN BE STRICKEN AS FAR AS WE'RE CONCERNED, YOUR HONOR.

5 THE COURT: SO STRICKEN.

6 BY MR. MOSHENKO: Q YOUR TESTIMONY ABOUT YOUR
7 MEMBERS IS ABOUT 30 PERCENT OF YOUR MEMBERS --

8 A YES. 30, 35 PERCENT, DEPENDING ON THE
9 RESORT THEY WERE SOLD AT.

10 Q NOW, LET ME ASK YOU, HAVE YOU IN YOUR 15
11 YEARS IN THE INDUSTRY BEEN EXPOSED TO STATISTICS RELATING
12 TO OTHER RESORTS' MEMBERSHIPS AS TO WHAT PERCENTAGE OF THEM
13 JOIN COAST?

14 A YES.

15 Q OKAY. AND THE FOUNDATIONAL BASIS FOR THAT
16 EXPOSURE, HOW MANY -- WELL, YOU YOURSELF DEALT WITH, WHAT,
17 50, 70, 80 RESORTS?

18 A YES. I'VE PURCHASED SINGLE RESORTS THAT WE
19 ACQUIRED OVER THE YEARS, AND BASICALLY THEIR MEMBERSHIP IN
20 COAST TO COAST WAS ALWAYS IN THE SAME 30 TO 35 PERCENT.
21 SOMETIMES YOU MIGHT SEE AS HIGH AS 40 PERCENT.

22 MR. SHERMAN: OBJECTION. MOVE TO STRIKE THE
23 QUESTION WAS THE FOUNDATIONAL EXPOSURE WHETHER YOU DEALT
24 WITH 50, 60, 70 RESORTS.

25 THE COURT: OVERRULED. THE ANSWER WILL STAND.

26 BY MR. MOSHENKO: Q MR. NOVELLI, I WANT TO TAKE A

1 LITTLE AIRPLANE RIDE.

2 YOU STARTED UP AN AIRPLANE -- AIRLINE

3 SYSTEM?

4 A YES, I DID.

5 Q WHEN DID YOU DO THAT?

6 A I STARTED THAT AIRLINE IN -- I BELIEVE WE

7 FIRST STARTED IN EITHER '94 OR '95.

8 Q AND WHAT WAS THE NAME OF THAT?

9 A PRESIDENTIAL AIR.

10 Q WHY DID YOU DO THAT?

11 A I -- WE WERE DIVERSIFYING OUR OPERATIONS NOT

12 ONLY IN -- INTO RESORTS, CAMPING CLUBS. WE DECIDED TO GO

13 INTO TIME SHARE ALSO WHERE WE'D SELL A UNIT OUT 50 TIMES.

14 AND THE PROJECTS THAT WE WERE ACQUIRING WAS THE GRAND BAJA

15 HOTEL IN LA PAZ, MEXICO, WHICH WAS 240 UNITS, AND VARIOUS

16 OTHER HOTELS IN THE MEXICO AREA, IN MEXICO.

17 SO THE IDEA WAS THAT WE NEEDED TO GET OUR

18 PEOPLE DOWN THERE AT EFFICIENT COST, AND WE DECIDED -- AND

19 "WE" BEING THE OUR GROUP OF INVESTORS AND MYSELF -- THAT

20 MAYBE A CHARTER AIRLINE MIGHT BE THE WAY TO GO. AND SO WE

21 PURCHASED A 737 AIRCRAFT, WHICH IS APPROXIMATELY

22 120-PASSENGER AIRCRAFT. AND WE WERE -- AFTER ABOUT A YEAR

23 OF HARD WORK, WE WERE FINALLY APPROVED BY THE DEPARTMENT OF

24 TRANSPORTATION TO FLY A CHARTER AIRLINE, AND THAT'S HOW WE

25 GOT STARTED.

26 Q ALL RIGHT. HAVE YOU EVER HEARD THE TERM

1 "SYNERGISM" OR "SYNERGISTIC" MEANING IT ADDS TO, INCREASES
2 THE POWER OR STRENGTH OF?

3 A NO, I NEVER HEARD THAT.

4 Q NEVER HEARD OF THAT. OKAY.

5 SO DID THE USE -- DID THE OWNERSHIP OF THE
6 AIRLINE IN ANY WAY INTERACT WITH THE OWNERSHIP OF RESORTS
7 BUSINESS?

8 A NOT WITH THE RESORTS. THE MEMBERS -- THE
9 MEMBERS LIKED THE IDEA, IN MY OPINION, OF THE AIRLINES.
10 THE MEMBERS WERE PROUD OF WHATEVER WE DID. IT WAS IN THE
11 MAGAZINE. WE PUT, YOU KNOW, WE WERE PROUD OF WHAT WE WERE
12 DOING, AND WE THOUGHT THE MEMBERS WERE PROUD OF WHAT WE
13 WERE DOING. AND THESE AIRCRAFT, WHEN WE GOT INTO THE
14 BUSINESS, WAS TO CHARTER AIRCRAFT FOR THE MEMBERS.

15 MR. SHERMAN: MOVE TO STRIKE THE ANSWER ON THE
16 BASIS OF MEMBERS' STATEMENTS AS INADMISSIBLE HEARSAY.

17 MR. MOSHENKO: HE DIDN'T QUOTE ANY MEMBERS, YOUR
18 HONOR. HE JUST --

19 THE COURT: MOTION IS DENIED.

20 PROCEED.

21 BY MR. MOSHENKO: Q ALL RIGHT. NOW, MR. NOVELLI,
22 DID THE AIRLINE EXPERIENCE -- THE AIRLINE DIDN'T MAKE IT;
23 RIGHT?

24 A YES.

25 Q WHEN WAS IT THAT IT FAILED?

26 A WELL, THE CHARTER OPERATION ITSELF CHANGED;

1 IN OTHER WORDS, THE --

2 Q GIVE ME A "WHEN" ANSWER.

3 A OKAY. THIS WAS BACK IN 1995. I BELIEVE IN

4 1995 THAT WE --

5 Q WHAT HAPPENED IN 1995?

6 A WE WERE APPROACHED BY THE INTERNATIONAL

7 NETHERLANDS GROUP, WHICH IS THE 30TH LARGEST COMPANY IN THE

8 WORLD. AND THEY'RE THE MAJOR FINANCING OF AIRCRAFT FOR

9 EVERY MAJOR AIRLINE IN THE UNITED STATES AND ALSO

10 WORLDWIDE. THEY SEEN US ACQUIRE THIS LICENSE TO FLY AS A

11 NEW AIRLINE. AND THEY SENT A REPRESENTATIVE ALONG WITH A

12 REPRESENTATIVE OF CONTINENTAL AIRLINES TO OUR OFFICE.

13 CONTINENTAL WAS JUST COMING OUT OF

14 BANKRUPTCY, AND CONTINENTAL WANTED TO GET RID OF THEIR

15 AIRBUS A300'S, AND THEY HAD 10 OF THEM. AND THESE AIRBUSES

16 ARE JUMBO AIRPLANES, DOUBLE AISLES AND 258 SEATS. THE

17 AIRCRAFT'S ARE THE SIZE OF A DC-10, IF YOU'RE FAMILIAR WITH

18 DC-10, ONLY IT'S MADE BY THE EUROPEANS.

19 SO THEY CAME TO US AND TALKED TO ME AND

20 SAID, LOOK, WE GOT THESE AIRPLANES. CONTINENTAL, BECAUSE

21 OF NEW REGULATIONS AND BECAUSE OF THEIR FINANCIAL

22 CONDITION, WOULD LIKE TO GET RID OF THEM. IF WE PARK THESE

23 AIRCRAFT TO -- IN OTHER WORDS, IF YOU GO OFF SOMEBODY'S

24 LICENSE AND THERE'S NOBODY ELSE TO LICENSE THEM AND YOU

25 PARK THE AIRCRAFT BECAUSE -- THIS IS THE EXPLANATION: THAT

26 IT WOULD COST THEM 2 OR \$3 MILLION PER AIRCRAFT TO PUT THEM

1 BACK IN THE AIR, TO GET THEM RECERTIFIED BY THE FAA. SO
2 THEY SAID IF YOU WOULD TAKE THEM AND PUT THEM ON YOUR
3 LICENSE, THEY WOULD -- WOULDN'T LOSE THEIR CERTIFICATION.
4 AND WE'D MAKE YOU A SPECIAL DEAL ON TAKING THESE AIRCRAFT.
5 AND THESE WERE VERY EXPENSIVE AIRCRAFT. THEY WERE \$90
6 MILLION APIECE.

7 Q IS THIS ONE OF THE WAYS THAT YOU FINANCED
8 THE FORMATION OF THE AIRLINE?

9 A WHAT'S THAT?

10 Q IS THIS ONE OF THE ING PROPOSALS; WAS IT ONE
11 OF THE WAYS THAT YOU WERE ABLE TO FINANCE THE STARTUP OF
12 THE AIRLINE?

13 A YES, ING. WHAT THEY DID, THEY SAID, LOOK,
14 IF YOU WILL DO THIS FOR US AND FOR YOURSELF, WE WILL LEND
15 YOU \$10 MILLION. EVERY TIME YOU TAKE AN AIRPLANE -- IN
16 OTHER WORDS, WE DIDN'T PUT ANY DOWN PAYMENT DOWN. THE DEAL
17 WAS, EVERY TIME YOU TAKE AN AIRCRAFT, WE'LL GIVE YOU A
18 MILLION DOLLARS. AND OF COURSE THE EXPLANATION FOR THAT
19 WAS IF WE GIVE YOU A MILLION, WE SAVE \$2 MILLION BECAUSE WE
20 DON'T HAVE TO GROUND THE AIRCRAFT.

21 SO IT LOOKED LIKE A PRETTY GOOD DEAL TO ME
22 BECAUSE THEY WERE FINANCING -- THE PEOPLE THAT OWNED THE
23 AIRCRAFT WERE FINANCING IT, AND WE WERE ALSO GETTING
24 SUPPORT FROM CONTINENTAL AIRLINES BECAUSE THEY WANTED TO
25 GET RID OF THESE AIRCRAFTS.

26 Q SO WHAT OCCURRED AS A RESULT IN THE AIRLINE

1 NOT SUCCEEDING?

2 A THIS IS WHERE I KIND OF MISFIGURED WHAT I
3 WAS DOING. AND THE PROGRAM -- WE HAD TO CHARTER FLIGHTS TO
4 MEXICO -- NO LONGER WAS VIABLE WHEN WE WERE FLYING AIRBUS
5 A300 JUMBO JETS. SO I GOT TOGETHER WITH ING AND SAID, WE
6 CAN'T FLY -- CHARTER THESE BIG BUSES AS A CHARTER AIRCRAFT.
7 WE GOT TO GO INTO -- I MEAN, INTO DAILY SERVICE IN THE
8 UNITED STATES. WE GOT TO FLY FROM ONE CITY TO ANOTHER CITY
9 THAT CAN HANDLE 258 PASSENGERS ON EACH PLANE LOAD. SO I
10 SUGGESTED, AND THEY AGREED, THAT WE COULD FLY THESE
11 AIRBUSES FROM LOS ANGELES OUT OF LONG BEACH, OVER TO
12 HOUSTON. AND THE REASON WE DECIDED ON THAT IS HOUSTON HAD
13 30 FLIGHTS A DAY TO HOUSTON FROM LOS ANGELES, AND BACK. SO
14 I THOUGHT THAT WAS A GOOD MARKET. AND THE ONLY ONE
15 TOUCHING THAT MARKET WAS CONTINENTAL AIRLINES.

16 AND THESE PARTICULAR AIRBUSES, THAT WAS
17 THEIR FLIGHT ANYHOW, WAS GOING FROM LOS ANGELES TO HOUSTON.
18 SO WE ELECTED TO GO AHEAD AND PUT TWO FLIGHTS A DAY NONSTOP
19 TO HOUSTON.

20 AND ANOTHER CITY WAS -- BEING SERVED BY
21 DELTA AIRLINES WAS ATLANTA, AND ATLANTA ALSO HAD 27, 28
22 FLIGHTS A DAY GOING TO ATLANTA WITH NO OTHER AIRLINE GOING
23 TO ATLANTA NONSTOP OUT OF THE L.A. AREA. SO WE TOOK THE
24 AIRBUSES, AND WE WENT FROM THE L.A. AREA TO HOUSTON, AND WE
25 CHARGED \$99 FAIR EACH WAY.

26 AND YOU -- YOU DIDN'T HAVE TO BUY A

1 ROUND-TRIP TICKET. IF YOU WANTED TO GO ONE WAY, IT WAS
2 STILL \$99. AND IT WAS \$149 IF YOU WANTED TO GO FIRST
3 CLASS.

4 SO OUR AIRFARES WERE QUITE A BIT LOWER THAN
5 CONTINENTAL FARES, IN FACT, MAYBE 25 PERCENT OF THAT, OF
6 THEIR AIR FARES. AND TO ATLANTA WE WENT FOR \$149 AND THEN
7 \$198 FIRST CLASS BACK AND FORTH TO ATLANTA.

8 Q YOU'RE TELLING US HOW AND WHY THE AIRLINE
9 FAILED TO SUCCEED?

10 A YEAH. THE REASON THAT HAPPENED WAS THAT WE
11 BECAME SUCCESSFUL IMMEDIATELY WITH THE AIRBUSES. AND, IN
12 OTHER WORDS, WE WERE RUNNING PRETTY FULL AIRPLANES BY
13 NOVEMBER. WE STARTED FLYING IN AUGUST, AND BY NOVEMBER OUR
14 AIRCRAFT WERE FULL. GOING BACK AND FORTH TO HOUSTON AND TO
15 ATLANTA. THEN ING, I-N-G, SAID, MR. NOVELLI, WE DON'T WANT
16 YOU FLYING NONSTOP TO HOUSTON, AND WE DON'T WANT YOU FLYING
17 TO ATLANTA. YOU GOT TO GO TO VEGAS FIRST AND THEN OVER
18 THERE.

19 AND MY DECISION WAS THAT I DIDN'T WANT TO GO
20 TO VEGAS FIRST BECAUSE HAWAIIAN AIR WAS CHARGING \$25 TO GO
21 TO LAS VEGAS ON JUMBOS COMING OUT OF HAWAII. AND MY
22 DECISION WAS THAT WE CAN'T LOAD THESE AIRPLANES FOR \$25 TO
23 COMPETE WITH HAWAIIAN AIR.

24 THE REASON THAT THEY WANTED ME TO FLY FROM
25 LOS ANGELES TO LAS VEGAS IS BECAUSE LAS VEGAS IN THE
26 AIRLINE INDUSTRY IS WHAT THEY CALL AN OPEN CITY THAT NOBODY

1 CAN FLY THERE. ANY AIRLINE CAN FLY THERE. HOUSTON AND
2 ATLANTA ARE NOT OPEN CITIES. THEY'RE NOT SUPPOSED TO HAVE
3 A FRANCHISE OR A LOCKUP SITUATION ON THESE CITIES, BUT
4 SOMEHOW THEY DO.

5 SO FOR US TO GO TO HOUSTON, THEY WANTED US
6 TO BE KIND OF LIKE SOUTHWEST AIRLINE WHERE YOU'D STOP
7 SOMEWHERE IN BETWEEN AND THEN GO ON INTO HOUSTON. AND FOR
8 THE FARES WE'RE CHARGING, WE COULDN'T DO IT. IT WOULD JUST
9 COST US TOO MUCH MONEY TO LAND THAT AIRCRAFT AND TAKE OFF
10 AGAIN, AND IT WOULD BE AN INCONVENIENCE TO THE PASSENGERS
11 ALSO.

12 SO AT THAT TIME THE -- ING SAID, YOU KNOW
13 WHAT, RAY, WE DON'T LIKE YOUR OPERATION, AND THEY SENT PAN
14 AMERICAN -- PAN AM WAS GETTING BACK IN BUSINESS. SO MARTY
15 SHARUE, WHO WAS THE PRESIDENT OF PAN AM, CAME TO ME AND
16 HE -- WITH THE PERMISSION OF ING -- AND SAID, WE WANT TO
17 TAKE OVER YOUR AIRLINE. AND WE GOT THE PERMISSION OF
18 INTERNATIONAL NETHERLAND GROUP -- THEY'RE THEIR
19 AIRPLANES -- AND WHAT WE'LL DO IS WE'LL TAKE OVER
20 PRESIDENTIAL AIR. AND PRESIDENTIAL AIR WILL BECOME PAN AM.
21 AND PAN AM THEN WILL FLY FROM LOS ANGELES TO NEW YORK, NEW
22 YORK, MIAMI AND THESE SORT OF ROUTES.

23 AND EVEN THOUGH I WAS A NOVICE IN THE
24 AIRLINE BUSINESS, I KNEW THAT THOSE ROUTES WERE NOT
25 PROFITABLE BECAUSE I LOOKED AT THEM. AND I TOLD MARTY
26 SHARUE THIS. AND I SAID, BESIDES THAT, IF WE TURN OVER THE

1 AIRLINE TO YOU, WHAT DO WE GET OUT OF IT? YOU KNOW, IF WE
2 TURN IT OVER TO PAN AM -- BECAUSE PAN AM LOST THEIR
3 LICENSE -- THEY SHOULD DO -- YOU KNOW, IF YOU REMEMBER,
4 AND THEN REOPENED AGAIN AS PAN AMERICAN WORLD AIRWAYS.

5 SO PAN AM SAID, HERE IS WHAT WE'LL DO.
6 WE'LL TAKE PRESIDENT AIR, TAKE THE AIRBUS A300 BECAUSE
7 YOU'RE ALWAYS LICENSED TO FLY THEM, AND YOU ALREADY HAVE
8 THE MAINTENANCE PROGRAM APPROVED TO FLY THESE AIRCRAFT.

9 AND I SAID, WELL, WHAT DO WE GET?
10 AND HE SAYS, WE'LL GIVE YOU 10 PERCENT OF
11 PAN AM.

12 AND I SAID, I DON'T LIKE THE SOUND OF THAT.
13 I SAID, IT'S KIND OF LIKE ME GOING TO THE GROCERY STORE AND
14 I BUY A DOZEN EGGS, AND I GET UP THERE TO THE CHECKOUT
15 COUNTER, AND I GIVE THEM TWO, IS THE COST OF THE DOZEN
16 EGGS. AND I SAID, THAT'S WHAT YOU'RE OFFERING ME. I
17 DIDN'T TAKE THE OFFER. MAYBE I SHOULD HAVE. PAN AM, I
18 MIGHT ADD, DID GO BROKE FOR \$380 MILLION.

19 BUT IN THE MEANTIME, I LOST MY AIRLINE
20 BECAUSE ING TOOK THE AIRPLANES BACK.

21 Q ALL RIGHT. DID THE AIRLINE ADD TO OR TAKE
22 AWAY FROM THE CAPITAL THAT YOU WERE USING TO RUN THE RESORT
23 BUSINESS?

24 A NO. IN FACT, I ADDED SOME REVENUE. I WAS
25 ABLE TO BORROW MONEY FROM ING, \$2 MILLION. ALSO, MY
26 FUEL -- BECAUSE MY PARTNER -- **ING WAS NOT ONLY JUST A**

1 FINANCIER. THEY WERE ALWAYS OUR PARTNERS. THEY HAD 25
2 PERCENT OR AN OPTION TO PURCHASE 25 PERCENT OF THE AIRLINE
3 ALONG WITH AN ADDITIONAL OPTION TO PURCHASE ANOTHER 25
4 PERCENT.

5 SO THE MONEY THAT SUPPORTED THAT AIRLINE
6 CAME FROM ING AND WORLD FUEL. AND WORLD FUEL GIVE US \$2
7 MILLION WORTH OF CREDIT. AND AT THE TIME --

8 Q HOW DID THAT AFFECT THE RESORT BUSINESS?

9 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE OF
10 THE WITNESS.

11 THE WITNESS: I DON'T BELIEVE --

12 THE COURT: OBJECTION. THERE'S AN OBJECTION
13 PENDING.

14 MR. MOSHENKO: THAT'S THE OBJECTION?

15 THE COURT: CALLED FOR A NARRATIVE. SUSTAINED.

16 BY MR. MOSHENKO: Q DID THE AIRLINE CAUSE YOU TO
17 TAKE CAPITAL FROM THE RESORTS, OR DID IT RESULT IN THE
18 OPPOSITE; THAT YOU PUT CAPITAL INTO THE RESORT BUSINESS?

19 MR. SHERMAN: OBJECTION. THAT QUESTION HAS ALREADY
20 BEEN ASKED AND ANSWERED.

21 THE WITNESS: I PUT CAPITAL IN THE RESORT.

22 THE COURT: SUSTAINED.

23 MR. MOSHENKO: I THINK I INTERRUPTED HIS RESPONSE,
24 YOUR HONOR, AND --

25 THE COURT: IT CAN BE ANSWERED YES OR NO.

26 MR. MOSHENKO: BEG YOUR PARDON?

1 THE COURT: IT CAN BE ANSWERED YES OR NO.

2 BY MR. MOSHENKO: Q OKAY. YES OR NO, DID YOU PUT
3 MONEY INTO THE RESORTS FROM THE AIRLINE?

4 A YES.

5 Q YES, YOU DID?

6 A YES, I DID.

7 Q HOW MUCH MONEY DID YOU MOVE FROM THE AIRLINE
8 BUSINESS TO THE RESORT BUSINESS?

9 A OH, PROBABLY A LITTLE OVER HALF A MILLION
10 DOLLARS.

11 Q LET'S TALK ABOUT FIRST NATIONWIDE RESORT
12 MANAGEMENT. WHAT WAS THAT ORGANIZATION?

13 A FIRST NATIONWIDE WAS A COMPANY THAT WE
14 DEvised, THAT WE PUT TOGETHER -- AND "WE" BEING, YOU KNOW,
15 HANS SCHULZ, MYSELF AND DIFFERENT INVESTORS -- DURING THE
16 TIME THAT ALL SEASONS WAS IN CHAPTER. AND FIRST NATIONWIDE
17 ACQUIRED DIFFERENT RESORTS, AND WE PUT THEM IN A COMPANY
18 CALLED "FIRST NATIONWIDE RESORTS MANAGEMENT, INC."

19 Q WAS IT STRICTLY A MANAGEMENT OF RESORTS
20 COMPANY?

21 A YES. IT OWNED RESORTS AND IT MANAGED THOSE
22 RESORTS.

23 Q DID IT MANAGE RESORTS THAT DIDN'T BELONG TO
24 IT, THAT IT DIDN'T OWN?

25 A NO. NO.

26 Q ALL RIGHT. WHAT WAS THE RELATIONSHIP

1 BETWEEN FIRST NATIONWIDE RESORTS' MANAGEMENT RESORTS AND
2 YOUR OTHER RESORTS?

3 A IN THE INDIVIDUAL RESORTS, ARE YOU TALKING
4 ABOUT ALL SEASONS?

5 Q WELL, ALL SEASONS. LET'S START THERE, AND
6 THEN I'M GOING TO THE OTHERS.

7 A WITH THE FIRST NATIONWIDE RESORT SYSTEM, THE
8 ALL SEASONS SYSTEM, CUTTY'S SYSTEM, THE DIFFERENT SYSTEMS,
9 WE WERE ABLE TO PUT TOGETHER MORE PARKS FOR THE MEMBERS TO
10 VISIT AND PUT TOGETHER, OF COURSE, THE UPGRADE PROGRAM OF
11 THE PRESIDENT'S TRAVEL CLUB.

12 Q OKAY. WHEN SOMEONE BOUGHT A MEMBERSHIP IN
13 FIRST NATIONWIDE, THAT OCCURRED; RIGHT?

14 A YES. WELL IN ONE OF THE RESORTS. NOT THE
15 COMPANY. FIRST NATIONWIDE ITSELF.

16 Q IN THE RESORTS?

17 A RIGHT. THE CUTTY'S RESORT OR ONE OF THOSE.

18 Q PEOPLE COULD BUY MEMBERSHIPS TO A RESORT
19 WHICH ENTITLED THEM TO A MEMBERSHIP IN FIRST NATIONWIDE?

20 A YES.

21 Q OKAY. AND VICE VERSA. ALL THE RESORTS HAD,
22 IN EFFECT, MEMBERSHIPS IN ALL THE OTHER RESORTS?

23 A NO. ALL SEASONS HAD ITS 11 CAMPGROUNDS.
24 AND IF YOU JOINED ALL SEASONS, YOU GOT THE 11 CAMPGROUNDS.
25 IF YOU JOINED FIRST NATIONWIDE, YOU GOT 24, 25
26 CAMPGROUNDS. THEN IF YOU JOINED THE PRESIDENT'S CLUB, YOU

1 GOT THEM ALL, INCLUDING SOME RESORTS THAT WEREN'T OWNED BY
2 OUR GROUPS.

3 Q AND YOU'VE ALREADY TOLD US WHAT PUT FIRST
4 NATIONWIDE INTO BANKRUPTCY. ALL RIGHT. THAT IS THE THREE
5 CREDITORS IN TENNESSEE?

6 A CORRECT.

7 Q OKAY. NOW, MR. JOSEPH BECAME A TRUSTEE IN
8 THE FIRST NATIONWIDE BANKRUPTCY; RIGHT?

9 A YES, HE DID.

10 Q AND EVEN THOUGH ONLY THREE CREDITORS FORCED
11 YOU TO FILE THE CALIFORNIA BANKRUPTCY -- WE'VE HAD
12 MR. JOSEPH HERE BEFORE YOU, AND THE THRUST OF HIS TESTIMONY
13 WAS HE AGREED THAT FIRST NATIONWIDE WAS A CANDIDATE FOR A
14 CHAPTER 7 BANKRUPTCY?

15 A YES.

16 Q ALL RIGHT. WHAT IS YOUR RESPONSE TO THE
17 CONTENTION THAT FIRST NATIONWIDE WAS BANKRUPT?

18 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE.

19 THE COURT: SUSTAINED.

20 BY MR. MOSHENKO: Q DO YOU AGREE THAT -- DID YOU
21 AGREE WITH MR. JOSEPH WHEN HE SUGGESTED TO YOU THAT FIRST
22 NATIONWIDE'S 11 SHOULD BE CONVERTED TO A 7?

23 A YES, I DID.

24 Q WHY?

25 A THIS DID TIE BACK TO THE AIRLINE. THE
26 AIRLINE WAS GUARANTEED BY FIRST NATIONWIDE.

1 IN OTHER WORDS, WHEN WE DID THE LEASE
2 PROGRAM AND WE GUARANTEED THESE LOANS FROM ING AND ALSO
3 FROM WORLD FUEL, WE GUARANTEED THOSE LOANS -- OR FIRST
4 NATIONWIDE GUARANTEED THE LOANS. THEY'RE THE ENTITY THAT
5 GUARANTEED THEM, ALONG WITH THE PRESIDENT'S TRAVEL CLUB.
6 SO YOUR LOANS WERE GUARANTEED BY THE P.T.C., AS WELL AS THE
7 FIRST NATIONWIDE RESORTS.

8 Q ALL RIGHT. AND SO FIRST NATIONWIDE'S
9 RESORTS WERE THEN LIQUIDATED; IS THAT RIGHT?

10 A I DON'T KNOW IF YOU'D SAY LIQUIDATED.

11 Q OH, I'M SORRY. YOU'RE RIGHT. I RECALL WHAT
12 HAPPENED THERE.

13 LET'S MOVE ON AND TALK ABOUT THOUSAND
14 ADVENTURES' INVOLVEMENT WITH RAYMOND NOVELLI, ALL SEASONS
15 RESORTS, ET CETERA.

16 LET'S FIRST BRING UP THE NAME
17 DAVID VOPNFORD. DO YOU KNOW MR. VOPNFORD?

18 A YES, I DO.

19 Q WHEN DID YOU FIRST MEET HIM?

20 A ACTUALLY I'VE HEARD OF MR. VOPNFORD, BUT THE
21 FIRST TIME I MET MR. VOPNFORD OR EVER TALKED TO HIM WAS, I
22 BELIEVE, APRIL OF 1997.

23 THE COURT: NINETEEN NINETY WHAT?

24 THE WITNESS: '97.

25 BY MR. MOSHENKO: Q WHAT WAS THE EVENT THAT
26 OCCURRED IN APRIL OF 1997 THAT CAUSED YOU TO MEET THIS MAN

1 FOR THE FIRST TIME?

2 A I WAS HEARING RUMORS. AND I RECEIVED A CALL
3 FROM MR. MITCHELL. AND HE TOLD ME THAT THE --
4 DAVE VOPNFORD WAS EXPERIENCING A LOT OF PROBLEMS, A LOT OF
5 TROUBLE, INCLUDING BANKRUPTCIES IN FLORIDA, AND THAT THE
6 LENDERS WERE EXTREMELY CONCERNED ABOUT HIS OPERATION, AND
7 FOR THE SAME REASON THAT THE LENDERS WERE CONCERNED ABOUT
8 THE ALL SEASONS OPERATION.

9 MR. VOPNFORD ACCUMULATED A DEBT TO THESE
10 LENDERS OF APPROXIMATELY \$90 MILLION OUTSTANDING ON HIS
11 LOANS. AND THE BANKRUPTCY IN FLORIDA WAS TAKEN OVER BY A
12 TRUSTEE. AND OTHER PROBLEMS HAD THE T.A.I. -- THE THOUSAND
13 ADVENTURES LENDERS FEELING THAT THEY WERE GOING TO LOSE
14 THEIR COLLATERAL AND THAT THE MEMBERS WOULD BE LOCKED OUT,
15 AND WHICH THEY WERE IN FLORIDA, AND WOULD NOT PAY ON THEIR
16 CONTRACTS, WHICH WERE THE COLLATERAL FOR THEIR LOANS.

17 AND SO THAT'S WHY THEY CALLED ME, TO SEE IF
18 THERE'S SOMETHING WE CAN WORK OUT.

19 Q ALL RIGHT. AND DID YOU AGREE TO MEET WITH
20 SOMEBODY?

21 A YES, I DID.

22 Q WHO DID YOU FIRST MEET WITH REGARDING
23 WHETHER YOU SHOULD BECOME INVOLVED WITH THOUSAND
24 ADVENTURES?

25 A I MET WITH A FELLOW BY THE NAME OF
26 RICHARD WHEELER FROM DALLAS, TEXAS WHO WAS WITH THE

1 AMERICAN NATIONAL BANK AND CONSUMER LOAN PORTFOLIO, AND
2 CHRIS DAVIS, WHO WAS THE OPERATOR AND OWNER OF THE
3 TRAVELERS ACCEPTANCE CORPORATION, WHO WAS ALSO A LENDER
4 AND A PROVIDER OF SERVICES TO COLLECT ON THESE RECEIVABLES.

5 Q AND WHO DID YOU UNDERSTAND MR. WHEELER WAS
6 IN THIS?

7 A MR. WHEELER WAS THE PRESIDENT OF CONSUMER
8 FINANCE AND THE CONTROLLING STOCKHOLDER OF THE AMERICAN --
9 I BELIEVE IT WAS THE AMERICAN WESTERN BANK THEY CALLED THAT
10 BANK.

11 Q SO THESE GENTLEMEN WERE BOTH ACTUALLY
12 LENDERS OR REPRESENTED LENDERS' INTERESTS?

13 A CORRECT.

14 Q ALL RIGHT. AND TO MOVE FORWARD THROUGH THIS
15 QUICKLY, IF WE CAN, DID YOU HAVE A MEETING AT TOMMY CLOUD'S
16 RANCH -- IS IT TEXAS?

17 A YES.

18 Q IN TEXAS?

19 A YES. THEY PROPOSED --

20 Q WHEN WAS THE MEETING?

21 A THAT MEETING WAS SOMETIME IN THE EARLY PART
22 OF 1997. I'M GOING TO SAY APRIL OR MAY, SOMEWHERE IN THAT.

23 Q AND WHY DID YOU GO TO THAT MEETING?

24 A THEY, BEING THE LENDERS TO T.A.I., AND
25 MR. WHEELER -- FIRST OF ALL, THE REASON I WENT THERE, I MET
26 WITH MR. WHEELER. AND I TOLD HIM THAT IF WE'RE GOING TO DO

1 SOMETHING, I'D LIKE TO BE ABLE TO SPEAK TO THE LENDERS AS A
2 GROUP RATHER THAN LENDERS INDIVIDUALLY. AND I SAID, IT'S
3 CRUCIAL THAT MR. VOPNFORD BE THERE. BECAUSE IF WE'RE ABLE
4 TO WORK SOMETHING OUT, IF WE DON'T HAVE HIS SUPPORT, WE'RE
5 NOT GOING TO BE ABLE TO DO MUCH BECAUSE THERE'S A LOYALTY
6 TO THOSE COMPANIES THAT I'M FAMILIAR WITH. AND I SAID,
7 IT'S CRUCIAL THAT YOU NOT ONLY HAVE THE LENDERS BUT
8 MR. VOPNFORD AT THAT MEETING.

9 Q WHY DID YOU THINK IT WAS CRUCIAL TO HAVE
10 MR. VOPNFORD?

11 A IN THE CAMPGROUND INDUSTRY MOST OF YOUR
12 MEMBERS ARE COUPLES, BUT ARE ALSO EITHER RETIRED OR GETTING
13 READY TO RETIRE. AND SO A LOT OF WHAT THEY THINK ABOUT AND
14 WHAT THEY DO RELATES AROUND THE CAMP -- THEIR HOME PARK
15 ACTIVITIES. AND THE OWNERS OF THESE PARKS CARRY A LOT
16 OF -- YOU KNOW, JUST A LOT OF WEIGHT WITH THESE MEMBERS.
17 GOOD, BAD OR INDIFFERENT, THE MEMBERS LOOK UP TO THE OWNERS
18 OF THESE RESORTS AS A RULE, AND WHAT THEY DO.

19 SO I FELT I WAS VERY NECESSARY THAT DAVE
20 GAVE THE SUPPORT TO ME IF I WAS TO BE ABLE TO ACQUIRE THAT
21 COMPANY.

22 Q "THEY" IS THE MEMBERS?

23 A THE MEMBERS, YES.

24 Q AND YOU FELT IT WAS IMPORTANT TO MEET
25 MR. VOPNFORD BECAUSE YOU FELT THROUGH HIM YOU COULD GAIN
26 THE SUPPORT OF MEMBERS?

1 A RIGHT.

2 Q ALL RIGHT. SO NOW THIS MR. VOPNFORD --

3 WE'VE HAD SOME TESTIMONY ON THIS THAT INDICATED THAT YOU
4 ARRIVED ON DAY ONE, WHENEVER IT WAS. MR. VOPNFORD CAME IN
5 ON DAY TWO. DO YOU RECALL THAT?

6 MR. SHERMAN: OBJECTION. THAT'S VAGUE AND
7 AMBIGUOUS.

8 THE COURT: SUSTAINED.

9 REPHRASE THAT, PLEASE.

10 MR. MOSHENKO: THANK YOU, YOUR HONOR.

11 Q DID MR. VOPNFORD COME THERE THE FIRST DAY
12 THAT YOU WERE THERE?

13 A I GOT THERE AT NIGHT, AND I BELIEVE HE GOT
14 THERE THE NEXT MORNING.

15 Q OKAY. AND DID YOU GUYS DO BUSINESS OR JUST
16 PLEASURE THE FIRST NIGHT THAT YOU WERE THERE?

17 A THE FIRST NIGHT WE DIDN'T TALK ANY BUSINESS.
18 IT WAS JUST SAYING HELLO, INTRODUCING PEOPLE TO MYSELF
19 AND --

20 Q ALL RIGHT. NOW, LET'S KIND OF FAST-FORWARD
21 BECAUSE I DON'T WANT TO GO THROUGH THE HEARSAY
22 CONVERSATIONS THAT OCCURRED DURING THE MEETINGS.

23 JUST TAKE ME TO THE END. WHAT WAS THE END
24 RESULT OF THE MEETING AT TOMMY CLOUD'S RANCH?

25 A THE END RESULT WAS THAT THE LENDERS WANTED
26 TO KEEP THEIR ORGANIZATION OR -- ORGANIZATION TOGETHER TO

1 SERVE THE MEMBERS. MY INTEREST IN THE THING NATURALLY WAS
2 FINANCIAL. I WANTED TO BE TO -- I SOLD 70 MILLION OF
3 PRESIDENT'S CLUB MEMBERSHIPS TO OUR MEMBERS, \$42,000 OF
4 THEM, AND I FELT THAT THIS GAVE ME AN OPPORTUNITY TO
5 UPGRADE THE T.A.I. MEMBERS, OF WHICH HE HAD AT THE TIME I
6 BELIEVE SOMEWHERE IN THE NEIGHBORHOOD OF 100,000 SUPPOSED
7 MEMBERS. AND I THOUGHT IT WOULD JUST -- WAS JUST A GREAT
8 OPPORTUNITY FOR OUR COMPANIES AND HIS COMPANY TO BECOME A
9 STRONGER COMPANY. BECAUSE NEITHER ONE OF THE COMPANIES
10 WERE IN GREAT SHAPE.

11 BUT I FELT BY TAKING THESE TWO COMPANIES AND
12 PUTTING THEM TOGETHER, THE TWO LARGEST COMPANIES IN THE
13 RESORT BUSINESS, IN THE CAMPGROUND RESORT BUSINESS, THAT IF
14 WE COULD PUT THESE TWO TOGETHER, COLLAPSE OUR RESORTS INTO
15 EACH OTHER, AND THE MEMBERSHIP BASE INTO ONE OPERATION --
16 REMEMBER I TOLD YOU EARLIER ABOUT THE COST OF G.N.A. AND
17 THINGS LIKE THAT WHERE YOU SAVE. THAT WE CAN CUT COSTS BY
18 \$5-, \$6 MILLION A YEAR, JUST INCORPORATE.

19 Q AND COME OUT STRONGER?

20 A AND COME OUT STRONGER. VERY MUCH.

21 Q MR. NOVELLI, THAT'S SYNERGISM?

22 A RIGHT.

23 Q OKAY. TWO PLUS TWO EQUALS SIX?

24 A RIGHT.

25 Q ALL RIGHT. SO THAT WAS YOUR PLAN.

26 AND DID MR. VOPNFORD GO ALONG WITH THE PLAN?

1 A MR. VOPNFORD WAS VERY, VERY CONCERNED. HE
2 WANTED OUT OF THE BUSINESS. HE WAS TIRED. I MEAN, I
3 DIDN'T THINK THE MAN WOULD MAKE IT DURING THE WEEKEND THAT
4 I WAS THERE. I MEAN, HE LOOKED LIKE HE WAS GOING TO HAVE A
5 MAJOR HEART ATTACK TO ME. I MEAN, HE JUST DIDN'T LOOK
6 GOOD. AND HE WAS -- I'VE BEEN THROUGH A LOT OF
7 BANKRUPTCIES AND THINGS LIKE THAT, AND THIS MAN HADN'T
8 BEEN. AND SO ALL OF A SUDDEN AFTER YEARS OF OPERATION,
9 THIS THING COMES CRUSHING DOWN ON HIM. HE WAS A
10 PHYSICAL -- I BELIEVE AND A MENTAL WRECK.

11 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. THE
12 QUESTION WAS WHETHER MR. VOPNFORD WENT ALONG WITH THE PLAN,
13 NOT HIS PHYSICAL CONDITION.

14 THE COURT: MOTION GRANTED.

15 BY MR. MOSHENKO: Q FOCUS ON THE QUESTION,
16 MR. NOVELLI.

17 DID HE GO ALONG WITH THE PLAN?

18 A YES, HE DID, VERY MUCH SO.

19 Q DID THE LENDERS GO ALONG WITH THE PLAN?

20 A YES. THEY PROPOSED IT.

21 Q AND DID YOU AT THAT TIME -- WELL, MAYBE I
22 SHOULD CLARIFY THIS.

23 WAS THE PLAN CLEARLY LAID OUT AS OF THE TIME
24 OF THE MEETING?

25 A NO. IT WAS CONCEPTIONAL. WE HAD A
26 CONCEPTIONAL PLAN THAT WE WOULD MERGE -- SOMEHOW MERGE

1 THESE COMPANIES.

2 Q ALL RIGHT. WHEN DID THE -- WHEN DID THE
3 CONCEPT GET TURNED INTO MORE FINITE DETAIL?

4 A THEY, BEING THE LENDERS, SEVERAL OF THE
5 LENDERS, INCLUDING THE BIGGEST LENDER, PRINCAP, WAS OUT OF
6 ANOTHER EUROPEAN COMPANY, OUT OF HOLLAND. THEY WERE
7 INVOLVED. THEY CAME TO CALIFORNIA. ALLSTATE FINANCIAL
8 CAME TO CALIFORNIA. TOMMY CLOUD CAME TO CALIFORNIA. A LOT
9 OF THESE LENDERS MET ME AT MY OFFICE, KIND OF LIKE THEY
10 WANT TO KICK THE TIRES TO FIND OUT WHAT WE WERE ALL ABOUT.

11 SO THEY CAME INTO OUR OFFICES. THEY WANTED
12 TO TAKE A LOOK AT OUR COMPUTER SYSTEM, OUR INFORMATION
13 SYSTEM, OUR MAGAZINES. IN OTHER WORDS, THEY WANTED TO LOOK
14 AT OUR OPERATION TO SEE IF OUR OPERATION IS WHAT THEY
15 NEEDED IN ORDER TO SAVE THIS MEMBERSHIP BASE.

16 Q WAS IT AFTER THAT THAT THE PLAN BEGAN TO
17 BECOME MORE FINITE IN TERMS AND DETAILS?

18 A YES.

19 Q SO WHEN WAS IT THAT THESE PEOPLE CAME TO
20 YOUR OFFICE AND KICKED THE TIRES?

21 A I BELIEVE THAT WAS SOMETIME IN JUNE. I'M
22 NOT SURE. MAY, JUNE.

23 Q ALL RIGHT. SO AFTER THAT, WHEN WAS IT THAT
24 YOU FINALLY GOT THE CLEAR UNDERSTANDING OF WHAT WAS GOING
25 TO BE EXPECTED OF YOURSELF, MR. CLOUD, THE LENDERS AND
26 MR. VOPNFORD?

1 MR. SHERMAN: OBJECTION. THAT CALLS FOR A
2 NARRATIVE.

3 THE COURT: SUSTAINED.

4 MR. MOSHENKO: IT'S A "WHEN" QUESTION. IT CALLS
5 FOR A DATE.

6 THE COURT: ALL RIGHT.

7 THE WITNESS: WHEN IT WAS, MAY OR JUNE, I'M NOT
8 SURE OF THE EXACT DATES. I'VE GOT TO GIVE YOU TWO MONTHS.
9 IT WAS MAY OR JUNE.

10 BY MR. MOSHENKO: Q ALL RIGHT. JUNE WAS WHEN THE
11 LENDERS CAME TO YOUR OFFICE?

12 A MAY OR JUNE. I'M NOT REALLY SURE.

13 Q MAY OR JUNE.

14 AND AFTER THAT YOU BEGAN TO CRYSTALLIZE A
15 PLAN; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q HOW LONG AFTER THE MAY OR JUNE VISIT WAS IT
18 THAT IT FINALLY CAME TO A PLAN?

19 A IT WAS RIGHT AT THAT TIME.

20 Q OKAY. NOW, TELL ME THE TERMS OF THE PLAN.

21 A THE LENDERS INVOLVED IN THE THING WERE
22 SOMEWHAT SKEPTICAL OF MY ORGANIZATION. AND THE REASON
23 WAS -- IS BECAUSE WE -- A MAJOR PART OF OUR COMPANY WAS IN
24 BANKRUPTCY AND CHAPTER 11. HOWEVER, THEY SEEN THAT WE
25 MANAGED THIS PARTICULAR ADVERSITY, CHAPTER 11, VERY WELL.
26 THEY MET WITH OUR STAFF, THE TRUSTEE'S STAFF, AND THEY FELT

1 THAT WE WERE PRETTY KNOWLEDGEABLE, AS FAR AS CHAPTERS WHERE
2 THEY WEREN'T, AND NEITHER WAS MR. VOPNFORD.

3 AND THEY ALSO -- THEN WE REVIEWED THE ALL
4 SEASONS CASE WITH THEM. THEY WERE FAMILIAR WITH THAT.
5 THEY REALIZED THAT THERE WAS A RECEIVER IN THERE THAT WAS
6 APPOINTED BY THE FEDERAL COURT. THEY ALSO REALIZED, YOU
7 KNOW, THESE DIFFERENT SITUATIONS.

8 BUT IN THE MEANTIME, THEY KNEW THAT THERE
9 WAS SOME CLOUDS ABOVE OUR ORGANIZATION. SO THEY FORMULATED
10 A PLAN THAT WOULD EVENTUALLY END UP IN THE CONTROL OF
11 T.A.I. BY MYSELF AND MR. SCHULZ, OUR INVESTOR GROUP.

12 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. THE
13 QUESTION IS, TELL ME THE TERMS OF THE PLAN.

14 THE COURT: SUSTAINED.

15 BY MR. MOSHENKO: Q FOCUS.

16 A I'M SORRY.

17 Q WHAT WERE THE TERMS OF THE PLAN?

18 A THE TERMS OF THE PLAN WAS TO FORM AN
19 ORGANIZATION, CORPORATION. AND AT FIRST I WOULD BE A
20 DIRECTOR. MR. SCHULZ -- NO. MR. CLOUD WOULD BE A
21 DIRECTOR. MR. VOPNFORD WOULD BE A DIRECTOR. AND I BELIEVE
22 MR. SCHULZ WOULD BE A DIRECTOR. SO THERE'S FOUR DIRECTORS.

23 Q ALL RIGHT. WHO WERE THE OFFICERS?

24 A AND THE OFFICERS WAS -- TOMMY CLOUD WAS THE
25 PRESIDENT. HANS SCHULZ WAS THE SECRETARY/TREASURER. AND I
26 BELIEVE MR. THOMPSON WAS THE VICE PRESIDENT.

1 Q WHY DID MR. CLOUD STAY IN THE DRIVER'S SEAT
2 AS A DIRECTOR AND PRESIDENT?

3 A BECAUSE OF THE -- BECAUSE OF SOME OF THE
4 PROBLEMS THAT -- YOU KNOW, THAT WE HAD THAT I JUST
5 EXPLAINED WITH FIRST NATIONWIDE, ALL SEASONS. HE FELT IT
6 PRUDENT FOR THE LENDERS BECAUSE THE LENDERS WERE GETTING
7 READY TO TURN OVER A LOT OF ASSETS THAT THEY ACQUIRED FROM
8 MR. VOPNFORD TO THIS NEW COMPANY. SO THEY WANTED TO HAVE
9 SOME CONTROL OVER THIS COMPANY UNTIL IT GOT ON ITS FEET.
10 THAT IF SOMETHING DIDN'T GO RIGHT, THEY JUST DIDN'T HAND
11 OVER 20 RESORTS OR 25 RESORTS TO MR. NOVELLI.

12 Q OKAY. NOW, WHEN YOU JUST SAID HAND OVER
13 RESORTS, WHAT WAS THE MECHANISM WHEREBY SOMEONE WAS
14 CONTEMPLATING HANDING OVER OR TRANSFERRING TITLE TO
15 RESORTS?

16 A THE MECHANISM WAS THAT THEY'RE GETTING BACK
17 TO THEIR MAIN CONCERN FOR ACQUIRING -- DOING THE MECHANISM,
18 WAS THE MEMBERS. THEIR MAIN CONCERN OF THESE LENDERS WAS
19 TO GET THEIR MONEY FROM THE MEMBERS. SO THEY WANTED TO --
20 THIS NEW COMPANY, WHICH WE CALLED TRAVEL AMERICA -- TO
21 ACQUIRE THE MEMBERSHIP BASE AND TO PROVIDE THE SERVICES
22 THAT WERE PROVIDED PRIOR BY T.A.I., THOUSAND ADVENTURES.
23 THAT THEY WOULD TRANSFER THE MEMBERSHIP BASE OVER TO TRAVEL
24 AMERICA, ALONG WITH 25 -- I BELIEVE SOMEWHERE AROUND 25 OF
25 THE RESORTS THAT THEY STILL HAD LEFT. AND THEN WE WOULD
26 COMBINE THE TWO RESORT SYSTEMS INTO ONE SYSTEM, RECIPROCAL

1 SYSTEM, CALLED TRAVEL AMERICA.

2 Q NOW, THE TWO YOU'RE REFERRING TO ARE

3 THOUSAND ADVENTURES AND --

4 A WHAT WE'VE BEEN CALLING HERE IN THE

5 COURTROOM THE NOVELLI COMPANIES.

6 Q OKAY.

7 A THEY'RE REALLY --

8 Q MORE THAN TWO; RIGHT?

9 A YES.

10 Q INCLUDED NOVELLI COMPANY RESORT CALLED

11 HIDDEN SPRINGS, A SEPARATE ORGANIZATION?

12 A CORRECT.

13 Q IT INCLUDED PONDEROSA PARK, ALSO A PLAINTIFF

14 ORGANIZATION?

15 A YES.

16 Q IT INCLUDED TWO SPRINGS -- I'M SORRY --

17 REVCON MOTORCOACH RESORTS?

18 A RIGHT.

19 Q CONSISTING OF TWO SPRINGS; RIGHT?

20 A YES.

21 Q INCLUDED RESORTS THAT WERE OWNED AND

22 OPERATED BY FIRST NATIONWIDE RESORTS MANAGEMENT?

23 A YES.

24 Q DID IT INCLUDE RESORTS THAT WERE OWNED AND

25 OPERATED BY THE SCHULZ FAMILY TRUST?

26 A YES, INCLUDED THE SCHULZ RESORTS.

1 Q DID IT INCLUDE THE APOLLO GROUP'S RESORTS?

2 A YES.

3 Q HOW MANY OF THOSE WERE THERE?

4 A OKAY. AT THE TIME THE APOLLO GROUP DIDN'T
5 HAVE ANY RESORTS. THEY HAD THE MORTGAGES ON THE ALL
6 SEASONS RESORTS THAT WE TALKED ABOUT EARLIER.

7 Q AND THEN IT ACQUIRED RESORTS AS RESULT OF
8 THE ALL SEASONS RESORTS BANKRUPTCY SALE?

9 A RIGHT, ALONG WITH THE GUARDIAN CREDIT GROUP.

10 Q OKAY. ALL RIGHT. SO NOW YOU MENTIONED YOU
11 SELECTED THE NAME "TRAVEL AMERICA." WHERE DID THAT NAME
12 COME FROM?

13 A THIS GOES BACK. THE NAME TRAVEL AMERICA
14 CAME UP, I BELIEVE, IN 1992. I WAS CONCERNED ABOUT COAST
15 TO COAST, AND I FELT THAT WE NEEDED A DEVELOPERS'
16 ASSOCIATION TO DEAL WITH COAST TO COAST.

17 Q IN '92?

18 A IN '92. AND I WAS AT A MEETING WITH A LOT
19 OF THE DEVELOPERS, INCLUDING MYSELF, CALLED "THE CAMPGROUND
20 DEVELOPERS ASSOCIATION," C.D.A. AND THE C.D.A. WAS FORMED
21 IN A -- FORMING A GROUP OF PEOPLE THAT OWNED THIS
22 RECIPROCAL SYSTEM, NOT COAST TO COAST, BUT THE ACTUAL
23 PEOPLE THAT TOOK CARE OF THE LAWNS AND THE SWIMMING POOLS
24 AND THE EMPLOYEES AND, YOU KNOW, OWNED AND RUN THE
25 PARTICULAR RESORTS THAT ARE IN THE RECIPROCAL SYSTEM.

26 Q YOU'RE TELLING US WHERE THE NAME TRAVEL

1 AMERICA CAME FROM.

2 MR. SHERMAN: OBJECTION.

3 THE WITNESS: YEAH.

4 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. THE
5 QUESTION WAS WHERE DID THE NAME COME FROM.

6 MR. MOSHENKO: HE IS TELLING US. CONFIRMED IT.

7 THE COURT: HE JUST ASKED.

8 THE WITNESS: AND IF SO, THE C.D.A. WANTED, IF
9 COAST TO COAST DID NOT, YOU KNOW, DO -- QUIT DOING SOME OF
10 THE THINGS THEY THOUGHT THE C.D.A. WAS CONCERNED ABOUT, AND
11 COME TO DIFFERENT KIND OF AGREEMENTS, THAT THEY WOULD HAVE
12 THEIR OWN RECIPROCAL ORGANIZATION. AND THAT RECIPROCAL
13 ORGANIZATION -- AND THE NAME CAME OUT IN 1992, AND IT WAS
14 CALLED "TRAVEL AMERICA."

15 BY MR. MOSHENKO: Q OKAY.

16 A AND THAT'S WHERE THE NAME CAME FROM.

17 Q YOU'RE TALKING ABOUT A PROPOSED NEW
18 RECIPROCAL THAT WAS BEING DISCUSSED AT THE C.D.A. IN
19 1992 --

20 A THAT'S CORRECT.

21 Q -- WOULD BE NAMED "TRAVEL AMERICA"?

22 A RIGHT.

23 Q SO HOW DID THAT GET FORWARD --
24 FAST-FORWARDED TO 1997, AND THOUSAND ADVENTURES?

25 A WELL, I'M THE ONE THAT CAME UP WITH THE NAME
26 BACK IN 1992, AND I THOUGHT IT WAS A GOOD TIME. IN OTHER

1 WORDS, YOU HAD NAMES LIKE "RESORT PARKS," "COAST TO COAST."
2 AND I THOUGHT TRAVEL AMERICA, THAT WAS A GOOD NAME. AND
3 WHEN THE OPPORTUNITY CAME AND WE WERE LOOKING FOR A NAME
4 FOR THIS NEW CORPORATION, THEN THE NAME CAME BACK TO
5 MEMORY, THIS TRAVEL AMERICA, AND THE CORPORATION WAS
6 FORMED.

7 Q WHO FORMED -- ACTUALLY FORMED THE
8 CORPORATION?

9 MR. SHERMAN: OBJECTION. THAT CALLS FOR A LEGAL
10 CONCLUSION. LACKS FOUNDATION. THE DOCUMENTS SPEAK FOR
11 THEMSELVES.

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

13 THE WITNESS: THE CORPORATION WAS FORMED BY THE
14 LENDERS, AND PARTICULARLY MR. CLOUD. CONSUMER LOAN
15 PORTFOLIO.

16 BY MR. MOSHENKO: Q AND WHY DO YOU SAY THAT? DID
17 HE PRESENT YOU WITH THE CORPORATE DOCUMENTS?

18 A YES. HE HAD HIS STAFF INCORPORATE THE
19 CORPORATION.

20 Q OKAY. AND THEN WHO WERE THE SHAREHOLDERS OF
21 THE TRAVEL AMERICA CORPORATION WHEN IT WAS FIRST FORMED?

22 A MYSELF AND TOMMY CLOUD.

23 Q OKAY. NOW, WHAT ABOUT MR. VOPNFORD?

24 A NO.

25 Q WASN'T HE A SHAREHOLDER?

26 A NO.

1 Q WHAT WAS HIS ROLE? YOU HAVEN'T TOLD US WHAT
2 HIS ROLE --

3 A I SAID MYSELF IT WAS A CORPORATION.

4 Q WHAT CORPORATION?

5 A IT WAS THE WHITE MOUNTAIN APACHE
6 CORPORATION.

7 Q AND THAT WAS YOUR CORPORATION?

8 A RIGHT.

9 Q NOW, MR. VOPNFORD, WHAT WAS HIS ROLE IN
10 TRAVEL AMERICA?

11 A HE WAS GOING TO TEMPORARILY BE ONE OF THE
12 DIRECTORS AND WORK WITH US TO DO THE TRANSFORMATION OF
13 T.A.I. INTO THE TRAVEL AMERICA SYSTEM.

14 Q AND THEN WHAT WAS HE GOING TO DO?

15 A THEN HE WAS JUST GOING TO RETIRE. HE WAS
16 JUST GETTING OUT OF THE BUSINESS.

17 Q OKAY. SO MR. VOPNFORD NEVER OWNED A
18 SHARE --

19 A NO.

20 Q -- IN TRAVEL AMERICA?

21 A NO.

22 Q WHAT ABOUT MR. CLOUD; DID HE CONTINUE TO OWN
23 HIS STOCK IN TRAVEL AMERICA?

24 A NO. WE HAD AN AGREEMENT WITH MR. CLOUD THAT
25 HE WOULD HOLD ON TO THIS STOCK; THAT HALF THE COMPANY,
26 SO-TO-SPEAK, WAS BEING PROVIDED BY THE NOVELLI SIDE, AND

1 HALF THE COMPANY WAS BEING PROVIDED BY THE BANKS OR THE
2 LENDERS, THE R B. HOLDING SIDE.

3 AND SO THEY MAINTAINED HALF THE STOCK, AND
4 WE MAINTAINED HALF THE STOCK. AND I SAID NOVELLI, BUT
5 THAT'S THE SCHULZ GROUP, THE DIFFERENT INVESTORS.

6 BUT IN THE MEANTIME, THERE WAS TWO GROUPS OF
7 STOCK, OUR GROUP AND THEIR GROUP, THEIR BEING THE T A.I.
8 LENDER GROUP. THE AGREEMENT WAS THAT THEY WOULD SURRENDER
9 THAT STOCK ONCE TRAVEL AMERICA GOT ON ITS FEET. IF TRAVEL
10 AMERICA WAS ABLE TO HANDLE AND DO THIS MERGER PROPERLY AND
11 THE RECEIVABLES WERE BEING COLLECTED PROPERLY, THAT THEY
12 WOULD SURRENDER THE STOCK HOPEFULLY BY THE END OF THE YEAR.

13 Q AND SO WHAT HAPPENED AT THE END OF THE YEAR
14 WITH THE STOCK?

15 A THEY SURRENDERED THE STOCK. MR. CLOUD
16 RESIGNED. HE -- EITHER AT THE END OF THE YEAR OR THE FIRST
17 PART OF THE 1998 MR. CLOUD RESIGNED AND SURRENDERED HIS
18 STOCK AND ALSO RESIGNED AS AN OFFICER AND DIRECTOR.

19 Q AND THEN IT WAS ALL WHITE MOUNTAIN APACHE
20 OWNERSHIP?

21 A CORRECT.

22 Q AND HAS IT REMAINED THAT WAY SINCE?

23 A YES.

24 Q NOW, MR. NOVELLI, ARE YOU IN A POSITION TO
25 RECALL AND RECITE FOR US EACH AND EVERY ONE OF THE TRAVEL
26 AMERICA RESORTS THAT WERE GOING TO BE IN THE NEW -- LET ME

1 ASK THIS QUESTION.

2 WAS TRAVEL AMERICA A RECIPROCAL USE SYSTEM?

3 A IT STARTED OUT AS A RECIPROCAL.

4 Q ALL RIGHT. WELL, WE KNOW THAT CAMP COAST TO
5 COAST IS A RECIPROCAL USE ORGANIZATION.

6 WHEN YOU SAY TRAVEL AMERICA STARTED OUT, DO
7 YOU MEAN IN THE SAME SENSE AS WHAT COAST TO COAST IS?

8 A NO.

9 MR. SHERMAN: OBJECTION. CALLS FOR A NARRATIVE.

10 MR. MOSHENKO: IT CALLS FOR A YES OR NO, AND HE
11 GAVE US A NO.

12 THE COURT: ALL RIGHT. NO.

13 BY MR. MOSHENKO: Q SO -- ALL RIGHT. IN WHAT WAY
14 ARE YOU USING THE TERM "RECIPROCAL" WHEN YOU REFER TO
15 TRAVEL AMERICA; DIFFERENTLY THAN WHEN YOU USE THE TERM
16 "RECIPROCAL" WHEN YOU REFER TO COAST TO COAST?

17 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION.
18 IT IS VAGUE AS TO TIME. AND IT CALLS FOR A NARRATIVE.

19 THE COURT: OVERRULED.

20 THE WITNESS: THE REASON WE CALL IT RECIPROCAL WAS
21 BECAUSE OF THE -- SOME OF THE PROBLEMS THAT EXISTED BETWEEN
22 THE TWO ORGANIZATIONS. FIRST NATIONWIDE WAS IN BANKRUPTCY
23 UNDER A CHAPTER 11 AND WITH A TRUSTEE. THE -- SOME OF THE
24 RESORTS IN THE T.A.I. SYSTEM WERE IN BANKRUPTCY, INCLUDING
25 T.A.I. OF OHIO. THERE WAS DIFFERENT REASONS. SO WE MADE
26 AGREEMENTS TO RECIPROCATATE THE PARKS WITH EACH OTHER WITHOUT

1 THE OWNERSHIP POOLED INTO TRAVEL AMERICA AT THAT TIME;
2 THAT A LOT OF THAT -- THESE ASSETS STILL REMAINED IN A
3 BANKRUPTCY, FOR EXAMPLE, WITH FIRST NATIONWIDE, OR IN A
4 CHAPTER 11 WITH T.A.I. OF OHIO, OR INTO THE RECEIVERSHIP OF
5 ALL SEASONS.

6 SO IT WASN'T REALLY CONDUCIVE TO FORM -- YOU
7 COULDN'T CALL IT A NEW COMPANY THAT OWNED ALL OF THE
8 RESORTS. IT WAS A COMPANY THAT RECIPROCATED BETWEEN ALL
9 THESE RESORT SYSTEMS, INCLUDING THE PRESIDENT'S CLUB.

10 Q WELL, ALL RIGHT. HOW WAS THAT -- HOW DOES
11 THAT DIFFER FROM COAST TO COAST AS A RECIPROCAL?

12 A COAST TO COAST AS RECIPROCAL OWNED NO PARKS,
13 AND THEIR SYSTEM, OR THE PEOPLE THAT ARE PART OF THEIR
14 RECIPROCAL SYSTEM, THE RESORTS THEMSELVES, ONLY HONOR A
15 MEMBER FROM ANOTHER RESORT ONE WEEK EVERY SIX MONTHS,
16 WHERE THE TRAVEL AMERICA SYSTEM, ALL THE PARKS BECOME HOME
17 PARKS TO THE MEMBERS. SO THAT THEY CAN SPEND AT ANY ONE OF
18 THE PARKS THEY WISH TO AS MANY TIMES AS THEY WANT, SPEND
19 TWO WEEKS ON AND ONE WEEK OUT.

20 SO IT WAS A TREMENDOUS DIFFERENCE THAN COAST
21 TO COAST. ALL OF OUR PARKS IN OUR ORGANIZATION HAVE A LOT
22 OF USAGE BECAUSE THEY ALL PAID DUES TO OUR ORGANIZATION.

23 THE COURT: LET'S TAKE A BREAK.

24 MR. MOSHENKO: VERY WELL. THANK YOU.

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. MOSHENKO: THANK YOU.

4 YOUR HONOR, I'D LIKE TO REFER TO EXHIBIT
5 1888.

6 Q DO YOU HAVE IT UP THERE, MR. NOVELLI?

7 A YES, I DO. 1888.

8 MR. MOSHENKO: YOUR HONOR, 1888 IS A FIVE --
9 SIX-PAGE BROCHURE, AND THUS FAR PAGES 5 AND 6 FROM THE
10 EXHIBIT HAVE BEEN ADMITTED INTO EVIDENCE.

11 Q WHAT IS EXHIBIT 1888? WHAT IS IT?

12 A IT IS A FLYER THAT WE PREPARED TO SEND OUT
13 TO THE MEMBERS WHEN WE FORMED TRAVEL AMERICA.

14 Q WHEN DID YOU PREPARE IT?

15 A I BELIEVE THAT IT WAS PREPARED SOMETIME IN
16 LATE JUNE OR JULY OF 1997.

17 Q AND WE'VE HAD SOME TESTIMONY REGARDING PAGES
18 5 AND 6 ALREADY.

19 BUT THIS IS THE ENTIRE FLYER, 1888?

20 A YES, IT IS.

21 Q AND IT'S A TRUE AND CORRECT COPY OF THE
22 INITIAL DOCUMENT; CORRECT?

23 A CORRECT.

24 Q PRODUCED BY YOUR ORGANIZATION, TRAVEL
25 AMERICA?

26 A YES, IT IS.

1 MR. MOSHENKO: OFFER IT INTO EVIDENCE, YOUR HONOR.

2 MR. SHERMAN: OBJECTION. IT LACKS FOUNDATION WITH
3 RESPECT TO THE FIRST FOUR PAGES.

4 MR. MOSHENKO: THE FOUNDATION IS THAT IT IS A TRUE
5 AND CORRECT COPY OF THE ORIGINAL FLYER THAT HE PREPARED FOR
6 MAILING TO THE MEMBERS IN 1997, JUNE OR JULY.

7 THE COURT: I'LL ALLOW IT. IT'S DEEMED ADMITTED.

8 (WHEREUPON, EXHIBIT NO. 1888, TRAVEL AMERICA
9 FLYER, WAS RECEIVED IN EVIDENCE.)

10 BY MR. MOSHENKO: Q OKAY. NOW, DOES 1888 DESCRIBE
11 THE TRAVEL AMERICA PROGRAM THAT YOU WERE PREPARED TO OFFER
12 TO TRAVEL AMERICA MEMBERS?

13 A YES.

14 MR. SHERMAN: OBJECTION. OBJECTION. EXHIBIT 1888
15 APPEARS TO BE TWO DIFFERENT DOCUMENTS. THE QUESTION IS
16 COMPOUND AND AMBIGUOUS.

17 THE COURT: TWO DIFFERENT DOCUMENTS?

18 MR. SHERMAN: YES, YOUR HONOR. IT APPEARS THAT THE
19 LAST TWO PAGES OF EXHIBIT 1888 ARE THE LETTER THAT WE'VE
20 ALREADY SHOWN THAT WAS SENT TO DIFFERENT INDIVIDUALS
21 ANNOUNCING THE FORMATION OF TRAVEL AMERICA COMING OUT OF
22 SEVERAL DIFFERENT COMPANIES.

23 AND THEN THE FIRST FOUR PAGES OF THIS,
24 THERE'S BEEN NO FOUNDATION LAID THIS WAS EVER SENT TO
25 ANYONE. THEY NEVER RECEIVED THIS OR ANYTHING OF THE
26 COURT. AND, THEREFORE, IT IS COMPOUND, AND IT IS

1 AMBIGUOUS.

2 BY MR. MOSHENKO: Q THE QUESTION IS, DOES 1888
3 DESCRIBE THE -- I'M NOT SURE IT'S AN EXACT QUOTE -- THE
4 BENEFITS THAT YOU WERE PREPARED TO OFFER YOUR MEMBERS
5 THROUGH THE TRAVEL AMERICA ORGANIZATION?

6 MR. SHERMAN: OBJECTION. LACKS FOUNDATION. IT'S
7 COMPOUND. AND IT'S NOT RELEVANT IF IT WASN'T SENT TO
8 ANYONE.

9 MR. MOSHENKO: WELL, IT IS RELEVANT --

10 THE COURT: WAS IT SENT TO ANYONE?

11 THE WITNESS: YES. IT WENT OUT TO OVER A HUNDRED
12 THOUSAND MEMBERS.

13 THE COURT: AND YOU PREPARED IT?

14 THE WITNESS: YES.

15 THE COURT: THAT'S FOUNDATION.

16 BY MR. MOSHENKO: Q COULD WE PUT IT UP ON THE
17 SCREEN, PLEASE.

18 NOW, I'D LIKE YOU TO USING THIS EXHIBIT --
19 WELL, LET'S START WITH PAGE 3, WHICH IS ON THE SCREEN.

20 WOULD YOU BLOW UP THE TOP HALF OF THE
21 SCREEN.

22 ALL RIGHT. NOW, LOOKING AT WHAT'S ON THE
23 SCREEN, MR. NOVELLI -- I'M GOING TO QUICK COUNT. THERE'S
24 ABOUT 40 PLUS RESORTS REFERENCED ON THERE.

25 ARE THOSE EACH AND ALL OF THE RESORTS THAT
26 WERE A PART OF TRAVEL AMERICA AS OF THE FALL OF 1998?

1 A YES, THEY ARE.

2 Q OKAY. NOW, YOU SAID THAT THIS DOCUMENT WAS
3 SENT TO OVER 100,000 PEOPLE. WHEN DID YOU DO THAT?

4 A WHEN WE SENT OUT THE BILLINGS AND THE NEW
5 MEMBERSHIP CARDS FOR TRAVEL AMERICA TO OUR MEMBERS, WE SENT
6 THESE ALONG IN THE SAME ENVELOPE THAT WE SENT THE
7 MEMBERSHIP CARDS AND THE BILLING STATEMENTS.

8 Q OKAY. AND CAN YOU GIVE ME A TIME?

9 A IT WAS SPREAD OUT OVER MONTHS. IN OTHER
10 WORDS, THE -- WHEN A MEMBER QUARTERLY PAYMENT BECAME DUE,
11 THEN THEY WOULD GET A BILLING STATEMENT, A MEMBERSHIP CARD,
12 AND THIS THING ALL AT THE SAME TIME. SO IT WAS SPREAD OUT
13 SO THAT 100,000 DIDN'T GO OUT IN ONE DAY. IT WENT OUT
14 OVER, SAY, A PERIOD OF AT LEAST A MONTH, MAYBE SIX WEEKS.

15 Q AND WHICH MONTH, SIX WEEKS, APPROXIMATE?

16 A I BELIEVE THEY WENT OUT SOMETIME IN JULY.
17 JULY, AUGUST.

18 Q OKAY. AND THAT WAS AT A TIME WHEN YOU AND
19 YOUR ORGANIZATION WERE IN A BANKRUPTCY, BUT YOU WERE
20 MANAGING, CONTROLLING THE COMPANY AFFAIRS; CORRECT?

21 MR. SHERMAN: OBJECTION. IT'S UNCLEAR WHICH
22 BANKRUPTCY. IT'S A LEADING QUESTION.

23 THE COURT: REPHRASE.

24 BY MR. MOSHENKO: Q WAS IT AT A TIME WHEN THE ALL
25 SEASONS RESORTS WAS IN ITS THIRD BANKRUPTCY FILED BY YOU IN
26 ABOUT JULY OF 1997?

1 A YES.

2 Q AND IT WAS BEFORE MR. DAFF WAS APPOINTED AS
3 A TRUSTEE?

4 A YES.

5 MR. SHERMAN: OBJECTION. THAT IS CONTRARY TO THE
6 EVIDENCE THAT IT WAS JULY OR AUGUST. MISSTATES THE
7 EVIDENCE.

8 THE COURT: OVERRULED.

9 BY MR. MOSHENKO: Q BEFORE MR. DAFF WAS APPOINTED
10 TRUSTEE?

11 A YES.

12 Q OKAY. AND THIS DOCUMENT WAS PREPARED
13 SHORTLY BEFORE IT WENT OUT?

14 A YES, IT WAS.

15 Q BY WHOM?

16 A BY MY STAFF.

17 Q OKAY. NOW, THESE RESORTS THAT ARE SHOWN ON
18 THE SCREEN, THEY INCLUDE RESORTS FROM WHICH ORGANIZATIONS?

19 A T.A.I., WHICH IS THOUSAND ADVENTURES, ALSO
20 FROM THE CUTTY'S ORGANIZATION, FIRST NATIONWIDE. BASICALLY
21 THE ALL SEASONS, FIRST NATIONWIDE AND T.A.I. SYSTEMS.

22 Q OKAY. AND THE -- THAT INCLUDES THE -- I
23 THINK YOU SAID 20 TO 25 PROPERTIES THAT WERE DEEDED YOU
24 FROM THE T.A.I. ORGANIZATION?

25 A CORRECT.

26 Q MY THINKING HERE IS IT ALSO INCLUDES SOME

1 RESORTS THAT WERE -- THAT EVENTUALLY CAME UNDER THE CONTROL
2 OF MR. DAFF; IS THAT TRUE?

3 A YES. MR. DAFF WAS APPOINTED AS THE TRUSTEE
4 IN THE ALL SEASONS CASE IN AUGUST, MID-AUGUST.

5 Q OKAY. AND SO AS OF THE TIME MR. DAFF WAS
6 TRUSTEE, SOME OF THE NAMED RESORTS ON THE LIST WERE UNDER
7 HIS CONTROL; IS THAT CORRECT?

8 A CORRECT.

9 Q OKAY. NOW, SOME OF THE NAMED RESORTS WERE
10 LATER ACQUIRED BY APOLLO AS A RESULT OF THE SALE THAT
11 OCCURRED ON OCTOBER 27, 1997; CORRECT?

12 A THAT'S CORRECT.

13 Q CAN YOU NAME THE ONES ON THE SCREEN THAT
14 WERE -- THAT FIT THAT CRITERIA?

15 A GRASS LAKE, MICHIGAN. I'LL START WITH THE
16 FIRST COLUMN. THE FIRST COLUMN. ORLANDO.

17 Q WHY DON'T YOU GO DOWN THE COLUMN AND TELL US
18 WHICH RESORTS CAME FROM WHICH ORGANIZATION.

19 A IN THE FIRST COLUMN -- YOU WANT ME TO GO
20 DOWN THE WHOLE THING?

21 Q YEAH. JUST LIST OFF FOR US WHICH RESORTS
22 CAME FROM WHICH ORGANIZATION.

23 A ALABAMA QUEEN CAME FROM T.A.I.

24 DEER RUN WAS A FIRST NATIONWIDE.

25 CYPRESS, FIRST NATIONWIDE.

26 DELTA, FIRST NATIONWIDE.

- 1 TWO SPRINGS, FIRST NATIONWIDE.
- 2 HAYDEN CREEK, CUTTY'S HAYDEN CREEK, FIRST
- 3 NATIONWIDE.
- 4 ORLANDO, ALL SEASONS.
- 5 NEW TRAILINN, FIRST NATIONWIDE.
- 6 CRABTREE, T.A.I.
- 7 HICKORY RIDGE, T.A.I.
- 8 RATHBUN RETREAT, T.A.I.
- 9 R AND R RANCH, T.A.I.
- 10 FOX RIVER, ALL SEASONS.
- 11 SPARKLING SPRINGS, T.A.I.
- 12 COUNTRY MEADOWS, T.A.I.
- 13 CRESCENT LAKE, T.A.I.
- 14 SYCAMORE SPRINGS, T.A.I.
- 15 TRAVEL INN, T.A.I.
- 16 GRASS LAKE, ALL SEASONS.
- 17 BLOSSOM RUN, T.A.I.
- 18 EAGLE LAKE, ALL SEASONS.
- 19 AMERICAN HOLIDAYS, FIRST NATIONWIDE.
- 20 COUNTRY CREEK, T.A.I.
- 21 HIDDEN SPRINGS, FIRST NATIONWIDE.
- 22 OKATOMA RIVER, THAT WAS A T.A.I. PARK.
- 23 MISSISSIPPI PINES, T.A.I.
- 24 SCENIC TRAILS, T.A.I.
- 25 THORENHAVEN, WAS A T.A.I. PARK.
- 26 ALUM COVE WAS A T.A.I. PARK.

1 BIG TURTLE, T.A.I

2 INDIAN MILLS, T.A.I.

3 LAKE FRANCE, ALL SEASONS PARK.

4 OHIO COUNTRY MUSIC, THAT WAS A T.A.I. PARK.

5 PONDEROSA PARK OHIO, THAT WAS A FIRST

6 NATIONWIDE PARK.

7 SWIFT HOLLOW, T.A.I.,

8 TOMORROW'S STARS, T.A.I.

9 RED RIVER RANCH WAS A T.A.I.

10 AND HONEYBROOK WAS AN ALL SEASONS RESORT.

11 Q ALL RIGHT. AND THE T.A.I. RESORTS YOU

12 ALREADY TESTIFIED CAME TO YOU AS A RESULT OF THE MEETING

13 AND AGREEMENT THAT WAS REACHED IN THE SUMMER OF 1997 WITH

14 THE LENDERS AND MR. VOPNFORD?

15 A YES.

16 Q THE OTHERS WERE -- THE FIRST NATIONWIDE CAME

17 TO YOU AS A RESULT OF THE DEALINGS WITH JAMES JOSEPH; IS

18 THAT CORRECT?

19 A CORRECT.

20 Q AND ALL SEASONS RESORTS -- NOW WE CAN FOCUS

21 ON ALL SEASONS RESORTS.

22 DID ALL OF THESE ALL SEASONS RESORTS ON THIS

23 LIST END UP OWNED BY APOLLO GROUP OR ANOTHER ONE OF YOUR

24 ORGANIZATIONS AFTER THE SALE IN OCTOBER 1997?

25 A NO.

26 Q WHICH ONES DID NOT?

1 A THE ONES THAT DID NOT WAS HONEY BROOK IN THE
2 LAST COLUMN, EAGLE LAKE IN THE NEXT COLUMN, FOX RIVER IN
3 THE THIRD COLUMN.

4 Q YOU'RE MOVING FROM RIGHT TO LEFT WHEN YOU
5 SAY THIRD?

6 A I WENT BACK THE OTHER WAY. BUT, ANYHOW,
7 THAT WAS -- THOSE ARE THE THREE THAT DID NOT END UP --
8 THOSE ARE THE ONLY THREE OF ALL SEASONS PARKS THAT DIDN'T
9 END UP OVER THERE.

10 Q I HEARD YOU MENTION MEMBER BASE IN EARLIER
11 TESTIMONY, THE MEMBER BASES RELATED TO EACH, THAT YOU
12 REFERRED TO RELATE TO EACH OF THESE RESORTS?

13 A YES.

14 MR. SHERMAN: OBJECTION. THAT CALLS FOR A LEGAL
15 CONCLUSION.

16 THE COURT: SUSTAINED.

17 MR. SHERMAN: I'M GOING TO MOVE TO STRIKE THE
18 ANSWER.

19 THE COURT: MOTION GRANTED.

20 BY MR. MOSHENKO: Q WHAT DO YOU MEAN WHEN YOU
21 REFER TO MEMBER BASES?

22 A MEMBER BASES ARE THE MEMBERS OF A PARTICULAR
23 SYSTEM OR PARTICULAR PARK, HOME PARK.

24 Q OKAY. ALL RIGHT. IN THIS CASE YOU WERE
25 MAKING THE CONTENTION THAT COAST TO COAST TRANSFERRED
26 CERTAIN MEMBERS OF YOUR PARKS OR ORGANIZATIONS THAT WERE

1 ALSO MEMBERS OF COAST TO COAST?

2 A THAT'S CORRECT.

3 Q OKAY. AND THE MEMBERS THAT YOU CONTEND WERE
4 TRANSFERRED, THEY RELATE TO THE PARKS THAT ARE ON THIS
5 LIST?

6 A YES.

7 MR. SHERMAN: OBJECTION. THAT CALLS FOR A LEGAL
8 CONCLUSION.

9 THE COURT: OVERRULED.

10 BY MR. MOSHENKO: Q IT CALLS -- THE ANSWER IS YES?

11 A YES.

12 Q NOW, COULD WE GO TO THE BOTTOM HALF OF THE
13 PAGE, PLEASE.

14 AND BLOW THAT UP, PLEASE.

15 OKAY. DOES THIS DESCRIBE THE MEMBER USAGE
16 BENEFITS THAT YOU PLANNED TO PROVIDE TO THE MEMBERS OF
17 TRAVEL AMERICA?

18 A YES, IT IS.

19 Q NO CHARGE FOR 21 MAXIMUM DAYS CONTINUOUS.

20 I HEARD YOU SAY A MOMENT AGO TWO WEEKS ON,
21 ONE WEEK OFF. DO YOU WANT TO EXPLAIN THE DISTINCTION?

22 A WE FELT THAT WE WOULD ADD SOMETHING TO THE
23 TRAVEL AMERICA SYSTEM TO ADD MORE BENEFITS, AND SO WE COME
24 UP WITH 21 DAYS CONTINUOUS STAY.

25 AND T.A.I. HAD SOME PARKS LIKE THAT ALREADY.

26 SO THIS WAS SOMETHING THAT T.A.I. HAD IN THEIR SYSTEM. AND

1 WE THOUGHT WE'D DO IT FOR A WHILE OURSELVES WITH THE REST
2 OF THE RESORT SYSTEM.

3 Q OKAY. SO WERE ALL OF YOUR MEMBERS ENTITLED
4 TO 21 DAY -- ALL OF THE COAST -- I'M SORRY -- THE TRAVEL
5 AMERICA MEMBERS ENTITLED TO 21 DAYS MAXIMUM CONTINUOUS
6 STAY?

7 MR. SHERMAN: OBJECTION. LACKS FOUNDATION THAT
8 TRAVEL AMERICA HAS MEMBERS.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 BY MR. MOSHENKO: Q AND NOW THAT 21 DAYS IS IN A
12 SINGLE RESORT; CORRECT?

13 A THAT'S CORRECT.

14 Q AND IF THE MEMBER LEFT THAT RESORT OR WENT
15 TO ANOTHER TRAVEL AMERICA RESORT, 21 DAYS WOULD START OVER
16 AGAIN, OR HAS IT BEEN USED UP?

17 A THEY HAD TO STAY OUT OF THE RESORT FOR SEVEN
18 DAYS, OUT OF THE SYSTEM.

19 Q OKAY. THE ENTIRE SYSTEM FOR SEVEN DAYS.

20 A RIGHT.

21 Q SO HOW DOES THIS SOLVE THE SNOWBIRD PROBLEM
22 WHEN THEY WANT TO COME TO FLORIDA AND JUST STAY THERE?

23 A WELL, IN THE FLORIDA PARK, IN THE FLORIDA
24 PARK SYSTEM, WE HAD THE ORLANDO PARK, AND THEN WE ALSO
25 LEASED FOUR ADDITIONAL PARKS IN ORDER TO ACCOMMODATE NOT
26 ONLY THE ORIGINAL FIRST NATIONWIDE ALL SEASONS MEMBERS, BUT

1 THE T.A.I. MEMBERS.

2 Q ALL RIGHT. SO TRAVEL AMERICA MEMBERS COULD
3 COME AND BASICALLY SPEND THE ENTIRE SUMMER OR THE ENTIRE
4 YEAR?

5 A YES.

6 Q COULD WE GO TO THE SECOND TO THE LAST PAGE,
7 PAGE 5. AND THAT'S IT. COULD YOU PLEASE BLOW UP THE BODY
8 IN THE CENTER.

9 "WE ARE PROUD TO ANNOUNCE THAT A RECIPROCAL
10 AGREEMENT BETWEEN THOUSAND ADVENTURES, ALL SEASONS, FIRST
11 NATIONWIDE AND CUTTY'S IS NOW IN PLACE. THIS WILL RESULT
12 IN A NEW RECIPROCAL RESORT SYSTEM NAMED "TRAVEL AMERICA."

13 IS THAT WHAT YOU WERE REFERRING TO WHEN YOU
14 SAID THAT IT STARTED OUT AS A RECIPROCAL?

15 A YES.

16 Q DID THIS RECIPROCAL, AS YOU ENVISIONED IT
17 AND DESCRIBED IT HERE, INCLUDE RECIPROCAL USAGE OF THIRD
18 PARTIES' RESORTS OUTSIDE OF YOUR SYSTEM?

19 A NO.

20 Q SO IF SOME MEMBER OF TRAVEL AMERICA WANTED
21 TO MAKE USE OF MR. RANDOLF TUCKER'S RESORT IN FLORIDA, HOW
22 COULD HE DO THAT?

23 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

24 THE COURT: OVERRULED.

25 THE WITNESS: UNDER THIS SYSTEM THEY COULDN'T DO
26 THAT. IN OTHER WORDS, THIS IS RECIPROCAL WITHIN THE PARKS

1 THAT WERE LISTED ON PAGE 2.

2 BY MR. MOSHENKO: Q OKAY. SO IF HE WANTED TO DO
3 THAT, HE WOULD HAVE TO GO OUTSIDE THE SYSTEM; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q AND HOW -- WHAT PROVISION DID YOU MAKE FOR
7 YOUR THOUSAND ADVENTURES -- I'M SORRY -- TRAVEL AMERICA
8 MEMBERS FOR THEM TO BE ABLE TO HAVE ACCESS TO A RECIPROCAL?

9 MR. SHERMAN: OBJECTION. LACKS FOUNDATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: I CONTACTED RESORT PARKS
12 INTERNATIONAL AND ALSO TALKED TO THE LENDERS OF T.A.I. AND
13 MY TRUSTEE, AND THE PEOPLE THAT WERE MAKING DECISIONS
14 BESIDES MYSELF. AND I CONTACTED RESORT PARKS
15 INTERNATIONAL, WHO I CONSIDERED SUPERIOR TO COAST TO COAST,
16 TO BE OUR EXCLUSIVE RECIPROCAL PARK SYSTEM.

17 BY MR. MOSHENKO: Q WHY DID YOU CONSIDER RESORT
18 PARKS INTERNATIONAL TO BE A SUPERIOR RECIPROCAL PROGRAM TO
19 THAT OF COAST TO COAST?

20 A SEVERAL REASONS. I BELIEVE THAT OVER THE
21 YEARS THAT COAST TO COAST NO LONGER CONSIDERED ME AS THEIR
22 CUSTOMER, WHICH I WAS. THEY CONSIDERED ME AND MY
23 ORGANIZATIONS AS THEIR COMPETITORS. WE WEREN'T
24 COMPETITORS, BUT THAT'S WHAT THEY CONSIDERED US.

25 Q WHEN DID YOU COME TO THAT BELIEF OR
26 CONCLUSION?

1 A I CAME TO THAT BELIEF WHEN COAST TO COAST
2 INTERFERED WITH A PURCHASE OF OURS. I PURCHASED THE STOCK
3 OF AMERICAN ADVENTURE. THE NEXT THING I KNOW AT A COURT
4 HEARING, COAST TO COAST IS DOWN THERE WITH THEIR ATTORNEYS
5 VOTING AGAINST MY PROPOSED PLAN FOR AMERICAN ADVENTURE,
6 WHICH JUST DIDN'T MAKE SENSE.

7 IN OTHER WORDS, HERE IS SOMEBODY. I'M THEIR
8 CUSTOMER, AND THEY'RE VOTING ME OUT OF CONTROL OF AMERICAN
9 ADVENTURE.

10 MR. SHERMAN: YOUR HONOR, MAY WE APPROACH?

11 THE COURT: YOU MAY.

12 (DISCUSSION OFF THE RECORD.)

13 THE COURT: PROCEED.

14 MR. SHERMAN: YOUR HONOR, WE MOVE TO STRIKE THE
15 ANSWER AS NOT RESPONSIVE. THE QUESTION WAS: WHEN DID YOU
16 COME TO THAT BELIEF OR CONCLUSION. THE ANSWER WAS NOT
17 RESPONSIVE TO THAT QUESTION.

18 AND FOR THE REASONS THAT HAVE BEEN COVERED
19 IN PAPERS THAT WE FILED WITH THE COURT AND HAVE HEARD IN
20 CHAMBERS AS WELL, WE ASK THAT THE ANSWER BE STRICKEN.

21 MR. MOSHENKO: ALL RIGHT. YOUR HONOR, I BELIEVE
22 THE QUESTION WAS WHEN DID YOU COME TO THAT CONCLUSION, AND
23 I BELIEVE A RESPONSE DESCRIBED WHEN THIS EVENT TOOK PLACE.
24 AND, THEREFORE, I BELIEVE THAT THE RESPONSE WAS RESPONSIVE
25 TO THE QUESTION.

26 THE COURT: ALL RIGHT. I'M GOING TO OVERRULE THE

1 OBJECTION.

2 PROCEED.

3 MR. MOSHENKO: THANK YOU.

4 Q COULD YOU TRANSLATE THAT "WHEN" RESPONSE TO
5 A DATE?

6 A I'M SORRY. WOULD YOU REPEAT THE QUESTION
7 AGAIN.

8 Q THE QUESTION WAS RELATING TO YOUR TESTIMONY
9 THAT YOU CAME TO THE BELIEF OR CONCLUSION THAT COAST
10 CONSIDERED YOU TO BE A COMPETITOR OR BEGIN TO DEAL WITH YOU
11 AS THOUGH YOU'RE A COMPETITOR. AND I ASKED YOU WHEN DID
12 YOU COME TO THAT CONCLUSION OR BELIEF. AND YOU MADE A
13 REFERENCE TO SOMETHING HAVING TO DO WITH AN EVENT?

14 A I BELIEVE THAT WAS IN 1992.

15 Q OKAY. WERE THERE ANY OTHER EVENTS THAT
16 OCCURRED IN THE EARLY '90'S THAT CAUSED YOU TO COME TO THE
17 CONCLUSION THAT COAST BELIEVED YOU TO BE A COMPETITOR THERE?

18 MR. SHERMAN: OBJECTION. THAT CALLS FOR
19 SPECULATION OF THIS WITNESS --

20 THE COURT: SUSTAINED.

21 MR. SHERMAN: -- AS TO WHAT THE WITNESS BELIEVED,
22 AND IT'S INADMISSIBLE HEARSAY.

23 BY MR. MOSHENKO: Q WE'VE HAD SOME TESTIMONY
24 BEFORE THE COURT RELATING TO -- IS IT R.D.A., RESORT
25 DEVELOPERS ASSOCIATION?

26 A YES.

1 Q WHAT WAS THE R.D.A.?

2 A THE R.D.A. WAS RESORT DEVELOPERS
3 ASSOCIATION, ALSO REFERRED TO AS THE CAMPGROUND DEVELOPERS
4 ASSOCIATION. IT HAD TWO NAMES.

5 Q ALL RIGHT. C.D.A.

6 A C.D.A. AND R.D.A.

7 Q AND WHEN WAS C.D.A. FORMED?

8 A THAT WAS BACK IN 1992.

9 Q THE SAME TIME AS THE PREVIOUS THING YOU
10 TESTIFIED ABOUT?

11 A IT WAS A RESULT -- ONE OF THE RESULTS OF
12 THAT AMERICAN ADVENTURE TAKEOVER BY COAST WAS THAT WE
13 FORMED THE R.D.A.

14 Q OKAY. AND SO WHAT OCCURRED RELATIVE TO THE
15 R.D.A. THAT CAUSED YOU TO CONCLUDE OR BELIEVE THAT COAST
16 WAS VIEWING YOU AS A COMPETITOR, IF ANYTHING?

17 MR. SHERMAN: OBJECTION. THAT CALLS FOR
18 SPECULATION FROM THE WITNESS, AND IT SEEKS --

19 MR. MOSHENKO: CALLS FOR HIS PERSONAL EXPERIENCE
20 AND KNOWLEDGE OF WHAT OCCURRED, AND HIS PRESENT AWARENESS.

21 THE COURT: OVERRULED.

22 THE WITNESS: COAST TO COAST FILED A PLAN OF
23 REORGANIZATION --

24 BY MR. MOSHENKO: Q EXCUSE ME. IS THIS TALKING
25 ABOUT THE C.D.A.?

26 A YES.

1 Q OKAY.

2 A WHY THE C.D.A. WAS FORMED.

3 COAST TO COAST GOT INTO THE BUSINESS OF NOT
4 BEING RECIPROCAL. THEY GOT INVOLVED WHEN MR. PAT BUTLER TO
5 FORM -- OR TO TAKE OVER AMERICAN -- AMERICAN ADVENTURE, I'M
6 SORRY. SO MANY NAMES I FORGET SOME OF THEM.

7 Q ALL RIGHT.

8 A AND FILED A PLAN TO DO THAT. AND THAT'S
9 WHAT RECIPROCATED IN THE FORMATION.

10 Q SO --

11 MR. SHERMAN: MOVE TO STRIKE THE ANSWER FOR THE
12 GROUNDS PREVIOUSLY STATED IN OUR PAPERS.

13 THE COURT: MOTION GRANTED. THE ANSWER IS STRICKEN.

14 BY MR. MOSHENKO: Q AT THE TIME OF THE C.D.A., DID
15 YOU COMMUNICATE TO ANYBODY YOUR PLAN OR INTENT TO LEAVE
16 CAMP COAST TO COAST?

17 A YES.

18 Q AND DID YOU RECEIVE A RESPONSE IF AT ALL
19 FROM SOMEONE AT COAST TO COAST?

20 A I HAD MY ATTORNEY, WHO WAS MR. MENDOZA, SEND
21 A LETTER TO COAST TO COAST OUTLINING OUR GRIEVANCES WITH
22 COAST TO COAST, TELLING THEM OF OUR DISGUST OF WHAT THEY
23 WERE DOING WITH AMERICAN ADVENTURE AND INTERFERENCE WITH
24 THE DEVELOPERS AND THE RECIPROCAL DEVELOPERS' PROGRAMS.
25 AND THIS WAS DONE, I BELIEVE, TO STOP ME FROM GAINING
26 23,000 MEMBERS OF AMERICAN ADVENTURE IN MY ORGANIZATION.

1 MR. SHERMAN: OBJECTION. MOVE TO STRIKE AS NOT
2 RESPONSIVE.

3 THE COURT: MOTION GRANTED. THE ANSWER IS STRICKEN.

4 BY MR. MOSHENKO: Q LET ME JUST ASK YOU STRAIGHT
5 OUT.

6 WHY, MR. NOVELLI, DID YOU MAKE THE DECISION
7 IN ABOUT AUGUST OF 1997 TO CAUSE THE RESORTS THAT YOU HAD
8 CONTROL OVER TO LEAVE THE COAST TO COAST SYSTEM?

9 A THERE WAS MANY REASONS. I BELIEVE I LISTED
10 ONE OF THE REASONS.

11 Q REFERRING TO THE COMPETITION?

12 A RIGHT. REFERRING TO THE COMPETITION. ALSO,
13 ONE OF THE REASONS WAS THAT THE SAME PERSON, RANDY KEIM, OF
14 THE KEIM FAMILY -- THAT WAS THE RECEIVER, BECAME THE
15 RECEIVER OF ALL SEASONS -- WAS ALSO THE PARTNER OF COAST TO
16 COAST IN THE AMERICAN ADVENTURE DEAL. SO ALL OF A SUDDEN,
17 COAST TO COAST WRITES OUR MEMBERS, ALL SEASONS MEMBERS,
18 SAYING WHAT A WONDERFUL PERSON MR. KEIM WAS, THE NEW
19 RECEIVER OF ALL SEASONS, BECAUSE ALL SEASONS DIDN'T LIVE UP
20 TO THEIR PLAN OF REORGANIZATION.

21 IN OTHER WORDS, THEY WERE PLACING MR. KEIM,
22 WHO WAS THEIR PARTNER IN AMERICAN ADVENTURE, WHO THEY
23 FORMED A PLAN TO BE -- BREAK AWAY.

24 Q WHEN DID THEY DO THAT?

25 MR. SHERMAN: MOVE TO STRIKE.

26 THE WITNESS: THAT WAS FORMED IN '92.

1 MR. SHERMAN: MOVE TO STRIKE THAT WAS BASED ON
2 NOTHING OTHER THAN SPECULATION.

3 MR. MOSHENKO: IT WAS NOT. I HAVE A LETTER. I CAN
4 OFFER IT INTO EVIDENCE.

5 THE COURT: THE MOTION IS DENIED.

6 PROCEED.

7 BY MR. MOSHENKO: Q AND WHEN DID COAST WRITE THIS
8 LETTER?

9 A COAST WROTE THAT LETTER WHEN MR. KEIM BECAME
10 THE RECEIVER IN AUGUST. I BELIEVE IT WAS AUGUST OR
11 SEPTEMBER OF 1996.

12 Q ALL RIGHT. AND SO OTHER THAN THE
13 COMPETITION PERCEPTION THAT YOU HAD, AND THE FACT THAT
14 COAST WROTE LETTERS TO YOUR MEMBERS REFERRING TO MR. KEIM
15 THAT WERE CRITICAL OF YOU AND YOUR ORGANIZATION, WHAT OTHER
16 REASONS DID YOU USE TO COME TO THE CONCLUSION THAT YOU
17 NEEDED TO DISAFFILIATE AND CHANGE RECIPROCAL?

18 MR. SHERMAN: OBJECTION. THAT LACKS FOUNDATION AND
19 MISSTATES THE TESTIMONY.

20 THE COURT: OVERRULED.

21 THE WITNESS: I WAS A PERSON THAT -- I THINK IT
22 CAME UP -- THAT THE MEMBERS AND I SPENT A LOT OF TIME
23 TOGETHER. I SPENT A LOT OF TIME AT THE RESORTS IN ORDER TO
24 KNOW WHERE THE MEMBERS ARE COMING FROM AND TO KEEP THE
25 MEMBER BASE STRONG AND SATISFIED AND USING OUR SYSTEM AND
26 BEING PART OF OUR SYSTEM. I SPENT A LOT OF TIME AT

1 MEETINGS OUT AT THE RESORT. EACH OF THE RESORTS I'D GO, WE
2 WOULD HAVE MEETINGS WITH THE MEMBERS. AND THE MEMBERS
3 WOULD GIVE ME THEIR CONCERNS DEALING WITH ALL CONCERNS
4 DEALING WITH THE CAMPGROUNDS. AND THEIR MAJOR CONCERN WAS
5 THE COAST TO COAST RECIPROCAL SYSTEM.

6 MR. SHERMAN: MOVE TO STRIKE AS BASED ON
7 INADMISSIBLE HEARSAY.

8 THE COURT: MOTION GRANTED.

9 BY MR. MOSHENKO: Q THE FACT THAT YOU VISITED YOUR
10 RESORTS AND SPOKE TO YOUR MEMBERS, THAT'S NOT HEARSAY.

11 A NO.

12 MR. SHERMAN: EXCUSE ME. OBJECTION. THAT'S A
13 LEGAL CONCLUSION.

14 MR. MOSHENKO: IS THE FACT THAT YOU WENT TO A
15 RESORT AN OUT-OF-COURT STATEMENT, YOUR HONOR?

16 MR. SHERMAN: THAT'S ARGUMENTATIVE.

17 THE COURT: THE OBJECTION IS OVERRULED. SO FAR
18 IT'S NOT HEARSAY.

19 MR. MOSHENKO: VERY WELL.

20 THE COURT: I DON'T WANT TO HEAR WHAT THEY SAY.

21 BY MR. MOSHENKO: Q YEAH. DON'T TELL ME WHAT THEY
22 SAID.

23 OKAY. AND WHILE AT YOUR RESORTS YOU SPOKE
24 TO MEMBERS?

25 A CORRECT.

26 Q NOW, DON'T TELL ME WHAT THEY SAID. I WANT

1 TO KNOW WHAT YOUR CONCLUSION, YOUR PERCEPTION WAS WITH
2 RESPECT TO IT -- WHETHER OR NOT IT CONTRIBUTED TO YOUR
3 DECISION TO CHANGE RECIPROCAL.

4 A YES.

5 Q OKAY. AND WHAT WERE THE CONCERNS THAT YOU
6 CAME BACK WITH THAT CAUSED YOU TO BELIEVE THAT -- CAME BACK
7 WITH FROM THE MEETINGS THAT YOU WERE HOLDING AROUND THE
8 COUNTRY THAT CAUSED YOU TO BELIEVE THAT YOU NEEDED TO
9 CHANGE RECIPROCAL?

10 MR. SHERMAN: OBJECTION. THAT CALLS FOR A
11 NARRATIVE.

12 THE COURT: SUSTAINED.

13 BY MR. MOSHENKO: Q LIST THE CONCERNS THAT YOU
14 CAME BACK WITH FROM YOUR MEETINGS THAT CAUSED YOU TO
15 CONCLUDE THAT YOU NEEDED TO CHANGE RECIPROCAL.

16 A DEVELOPERS INSIDE THE COAST TO COAST SYSTEM
17 WERE NOT HONORING THEIR COMMITMENT TO RECIPROCATE WITH OUR
18 MEMBERS.

19 Q OKAY. THAT'S ONE. ANY OTHERS?

20 A THIS WAS ESPECIALLY SO IN FLORIDA. THE
21 MEMBERS DIDN'T LIKE THE BLUE CARD SITUATION.

22 Q HOW DID YOU FEEL ABOUT?

23 A AND I DIDN'T LIKE IT.

24 MR. SHERMAN: OBJECTION. MOVE TO STRIKE AS BASED
25 ON INADMISSIBLE HEARSAY.

26 THE COURT: OVERRULED.

1 MR. SHERMAN: MAY WE APPROACH?

2 THE COURT: NOT NECESSARY AT THIS TIME.

3 BY MR. MOSHENKO: Q TELL ME ABOUT THE BLUE CARD,
4 AND TELL ME HOW IT CONCLUDED TO YOUR POSITION.

5 MR. SHERMAN: OBJECTION. CALLS FOR INADMISSIBLE
6 OPINION.

7 THE COURT: WHEN YOU TELL HIM WHAT THE BLUE CARD
8 SYSTEM MEANT, JUST CONFINE YOUR ANSWER TO THAT.

9 BY MR. MOSHENKO: Q DESCRIBE THE BLUE CARD
10 SYSTEM.

11 A THE BLUE CARD SYSTEM WAS A SYSTEM THAT WAS
12 DEvised BY COAST TO COAST IN ORDER TO MAKE MORE MONEY.
13 WHAT THEY WOULD DO IS THAT A MEMBER, IF HE WANTED TO STAY
14 AT A RECIPROCAL RESORT, WOULD BUY A BLUE CARD. OR THEY HAD
15 DIFFERENT COLORED CARDS FROM COAST TO COAST. AND THAT --
16 PAY CASH FOR IT, AND THAT CARD WOULD BE USED WHEN HE WENT
17 INTO A RECIPROCATING CARD. THEY WOULD GIVE THEM THIS CARD
18 THAT THEY PAID A DOLLAR FOR TO BEGIN WITH, AND THE NEXT
19 THING I KNOW THEY COST \$6.

20 BUT, ANYHOW, THESE CARDS THEN WERE GIVEN TO
21 THE RESORT. AND WHEN THEY BECAME WORTH \$5 AND \$6, THEN
22 COAST TO COAST WOULD GIVE A PORTION OF THAT MONEY BACK TO
23 THE DEVELOPER. THE MEMBERS DIDN'T LIKE THAT BECAUSE THE
24 MEMBERS HAD TO BUY CARDS FROM OUR RESORTS OR OTHER RESORTS
25 THAT WOULD HAVE AN INVENTORY OF THESE CARDS THAT THEY COULD
26 USE AT RECIPROCAL RESORTS.

1 Q HOW DID THEY GET THE INVENTORY?

2 MR. SHERMAN: MOVE TO STRIKE ON THE BASIS OF
3 INADMISSIBLE HEARSAY WITH RESPECT TO WHAT THE MEMBERS LIKED
4 OR DISLIKED.

5 THE COURT: SUSTAINED. THE MOTION IS GRANTED.

6 BY MR. MOSHENKO: Q HOW DID THE RESORTS GET THE
7 CARDS TO SELL TO MEMBERS?

8 A WE PURCHASED THE CARDS FROM COAST TO COAST.
9 SO IF --

10 Q RESOLD THEM TO MEMBERS?

11 A AND RESOLD THEM TO MEMBERS.

12 Q OKAY. GO ON.

13 A THEN THE MEMBERS COULD USE THOSE CARDS.

14 MR. SHERMAN: OBJECTION. THAT SEEKS FOR A
15 NARRATIVE. THE QUESTION WAS "GO ON."

16 THE COURT: OVERRULED.

17 BY MR. MOSHENKO: Q WHAT NEXT WAS IN YOUR
18 DESCRIPTION OF THE BLUE CARD SYSTEM WAS IT THAT CONCERNED
19 YOU?

20 A THE CONCERN WAS SEVERAL; THAT WE HAD TO KEEP
21 INVENTORY OF THESE BLUE CARDS FOR THE MEMBERS, SELL THEM TO
22 THE MEMBERS, AND THEN WE HAD TO COLLECT THEM BACK FOR US TO
23 RECEIVE OUR PORTION. WE'D GET THESE CARDS AND HAVE TO SEND
24 THEM BACK TO COAST TO COAST.

25 AND HALF THE TIME A LOT OF OUR RESORT
26 MANAGERS, FOR WHATEVER REASON, WOULD LOSE THESE CARDS. AND

1 THERE'S OCCASIONS WHERE THE MANAGERS COULDN'T GET THE MONEY
2 AWAY FROM COAST TO COAST. THEY'D KEEP THE CARDS AND SEND
3 THEM INTO COAST TO COAST AND WOULDN'T GET THE MONEY BACK.
4 AND THEY WERE SUPPOSED TO FOR THESE CARDS.

5 THE MEMBERS DIDN'T LIKE IT BECAUSE IT MADE
6 THEM FEEL BAD. THEY KNEW THAT A LOT OF MONEY WAS GOING TO
7 THE DEVELOPER. SO ONE OF THE REASONS THAT I PULLED OUT OF
8 COAST TO COAST, I MADE A DEAL WITH R.P.I. LET'S FORGET
9 THESE CARDS. WHEN A RECIPROCAL MEMBER COMES UP TO THE
10 RESORT, JUST GIVE THE RESORT \$5. THAT MAKES IT VERY
11 SIMPLE. YOU DON'T HAVE TO DEAL WITH THESE CARDS.

12 WELL, THE REASON THEY WANTED TO DEAL WITH
13 CARDS IS WHAT THEY CALL BREAKAGE. IF THEY SELL A MILLION
14 DOLLARS' WORTH, \$200,000 MIGHT GET LOST IN THIS BREAKAGE
15 SYSTEM, MEMBERS NOT CASHING THEM IN, NOT USING THEM,
16 MANAGERS OR WHATEVER LOSING THESE CARDS. AND THAT'S WHY
17 THE CARDS WERE THERE. IT CREATED A NIGHTMARE ACCOUNTING
18 SYSTEM. AND IT WAS JUST UNCALLED FOR.

19 SO THIS SYSTEM I DIDN'T LIKE. I MADE IT
20 WELL KNOWN TO COAST TO COAST I NEVER LIKED THIS SYSTEM
21 BECAUSE OF THE BREAKAGE AND BECAUSE OF WHAT IT PUT US
22 THROUGH AND THE MEMBERS TO BUY THESE CARDS. IT WASN'T
23 NECESSARY. WE'RE THE RECIPROCAL PARKS, NOT COAST.

24 Q WHEN DID YOU COMMUNICATE THAT TO COAST TO
25 COAST, THOSE SENTIMENTS?

26 A THE LAST TIME I COMMUNICATED THAT TO COAST

1 IS WHEN I WAS WITH COAST. I BELIEVE IT WAS IN 1995 OR '96

2 WHEN I SIGNED THAT CONTRACT.

3 Q THE '96 AGREEMENT?

4 A YES.

5 Q AND WHO WERE YOU SPEAKING TO?

6 A I SPOKE WITH GENE EVERETT. I SPOKE WITH --

7 I BELIEVE IT WAS ROGER RYMAN. I BELIEVE THAT WAS ALL.

8 Q AND WHAT RESPONSE DID YOU GET FROM

9 MR. EVERETT AND MR. RYMAN REGARDING THE BLUE CARDS?

10 A THEY SAID THAT THIS WAS THEIR METHOD OF

11 BEING ABLE TO TELL THE USAGE, WHAT MEMBERS STAYED AT WHAT

12 PARKS, YOU KNOW, FOR WHAT PERIOD OF TIME.

13 Q ALL RIGHT. AND SO THE CARDS CONTINUED?

14 A SO THE CARDS CONTINUED.

15 Q NOW, YOU HEARD MR. GUIRE, THE MANAGER OF

16 DELTA ISLE, COME HERE AND TESTIFY THAT HE COULDN'T GET HIS

17 MONEY OUT OF COAST TO COAST REFERRING -- IS THAT REFERRING

18 TO THE SAME CARDS?

19 A YEAH. THAT'S THE SAME CARDS. THEY OWED HIM

20 \$8,000.

21 Q DID YOU HAVE AN EXPERIENCE THAT YOU AND YOUR

22 ORGANIZATION HAD OVER THE YEARS WITH COAST TO COAST

23 REPEATEDLY?

24 A REPEATEDLY, YES.

25 Q OKAY. BESIDES THE COMPETITION ISSUE,

26 BESIDES THE KEIM -- THE LETTER THAT THEY SENT CRITICIZING

1 YOU TO YOUR MEMBERS AND THE BLUE CARDS, WHAT OTHER REASONS
2 DID YOU HAVE -- CONTRIBUTED TO YOUR DECISION TO CHANGE
3 RECIPROCAL?

4 MR. SHERMAN: OBJECTION. MISSTATES THE EVIDENCE
5 AND LACKS FOUNDATION.

6 THE COURT: OVERRULED.

7 THE WITNESS: COAST TO COAST WAS GETTING INTO A
8 SYSTEM WHERE YOU WOULD -- YOU'D HAVE SO MANY SITES
9 AVAILABLE. IN OTHER WORDS, WHEN THEY PUT IT TOGETHER, THEY
10 ALLOWED CAMPGROUNDS TO ALLOT SITES TO RECIPROCAL MEMBERS.
11 SO IF THE ALL SEASONS MEMBERS WENT TO SOME PARK AND THE
12 PARK WAS 100 SITES IN THERE, AND THEY HAD 20 MEMBERS IN
13 THERE, THE WAY THE CONTRACT WITH COAST WOULD READ, THAT ANY
14 MEMBER CAME IN COULD USE THOSE VACANT SITES.

15 WELL, THE DEVELOPERS GOT TO THE POINT WHERE
16 THEY SAID, NO, WE ONLY HAD 10 SITES OR TWO SITES ALLOWED
17 FOR COAST TO COAST MEMBERS. AND OUR MEMBERS WOULD SAY,
18 WELL, YOU'VE GOT 80 EMPTY SITES. BUT THEY WOULD HAVE AN
19 ALLOTMENT OF SO MANY SITES, WHICH WAS AGAINST THE RULES,
20 FOR RECIPROCATING MEMBERS. I DIDN'T LIKE THAT.

21 BY MR. MOSHENKO: Q YOU MEAN YOUR MEMBERS WOULD
22 GO TO COAST TO COAST HOSTING RESORTS AND COULDN'T GET
23 PLACES EVEN THOUGH THEY WERE EMPTY?

24 A THEY WERE REFUSED ENTRY.

25 MR. SHERMAN: OBJECTION. CALLS FOR INADMISSIBLE
26 HEARSAY.

1 THE COURT: OVERRULED.

2 BY MR. MOSHENKO: Q THE ANSWER?

3 A THEY WERE REFUSED ENTRY.

4 Q WERE THERE ANY OTHER REASONS WHY YOU MADE
5 THE DECISION THAT YOU HAD TO CHANGE RECIPROCAL?

6 A YES.

7 Q WHAT ELSE?

8 A COAST IN THE PAST HAD A RESERVATION SYSTEM
9 THAT I DIDN'T LIKE. AND THAT'S BECAUSE IT WAS LIMITING
10 USAGE OF THE RECIPROCAL PARKS. VERY LIMITED. I DIDN'T
11 WANT IT, AND THEY DID STOP THAT. I MET WITH MR. ADAMS, AND
12 THEY STOPPED THAT PARTICULAR RESERVATION SYSTEM.

13 Q YOU MET WITH STEVE ADAMS?

14 A YES.

15 Q OKAY.

16 A NOW, THE SYSTEM WAS STOPPED, THEIR
17 RESERVATION SYSTEM. THAT DIDN'T MEAN I DIDN'T WANT A
18 RESERVATION SYSTEM. I WANTED ONE THAT WAS FAIR; THAT WHEN
19 A MEMBER CALLED FOR A RESERVATION AND THE SITES WEREN'T
20 FULL, THAT IF THEY HAD 80 VACANT SITES AND 80 MEMBERS FROM
21 ALL SEASONS CALLED UP, THEY GOT THE NEXT 80. THAT'S THE
22 WAY THE SYSTEM WAS SUPPOSED TO WORK. BUT IT DIDN'T WORK
23 LIKE THAT.

24 NOW, THE THING THAT I MADE WITH RESORT PARKS
25 INTERNATIONAL WAS THAT THEY WOULD HAVE A RESERVATION SYSTEM
26 SO OUR MEMBERS THAT -- COMING DOWN FROM OHIO OR COMING FROM

1 WASHINGTON STATE OR CANADA TO SPEND THEIR WINTERS DOWN HERE
2 IN PALM SPRINGS OR THE WINTERS IN FLORIDA COULD HAVE THE
3 SATISFACTION OF HAVING A RESERVATION. SO WHEN THEY GOT
4 DOWN THERE, THEY CHECKED INTO ALL SEASONS RESORTS. AND,
5 YES, WE HAVE YOUR NAME HERE, AND YOU CAN STAY TWO WEEKS.
6 THAT WAS THE WAY THE SYSTEM WAS SUPPOSED TO WORK, AND
7 THAT'S THE WAY THE RESERVATION SYSTEM WORKED.

8 THAT WAS ANOTHER REASON THAT I LEFT COAST,
9 IS THAT THE MEMBERS WERE COMING DOWN FOR THE WINTER MONTHS,
10 WERE ONLY ALLOWED UNDER THE COAST SYSTEM ONE WEEK EVERY SIX
11 MONTHS. SO DURING THE SEASON YOU GOT ONE WEEK.

12 WHERE WITH THE R.P.I. SYSTEM, IT WAS A
13 BACK-TO-BACK WEEK. IN OTHER WORDS, TWO WEEKS OUT OF THE
14 YEAR, THE SAME AS COAST TO COAST, BUT YOU COULD USE THOSE
15 TWO WEEKS BACK TO BACK. SO A MEMBER TRAVELING WOULD SPEND
16 TWO WEEKS AT A RESORT RATHER THAN JUST ONE WEEK.

17 Q COULD A MEMBER GET A RESERVATION THROUGH THE
18 COAST SYSTEM?

19 A NO -- OH, YEAH. I'M SORRY. IF YOU WANTED
20 TO PAY \$1900 YOU CAN GET ONE. THAT WAS A RELOAD PROGRAM
21 THAT COAST HAD, IS TO SELL AN ADDITIONAL MEMBERSHIP WHICH
22 WAS EXACTLY THE SAME MEMBERSHIP THAT WAS SOLD IN THE FIRST
23 PLACE, ONLY IT ALLOWED THEM TWO. PHYSICALLY WHAT IT REALLY
24 DID IS GIVE THEM TWO COAST TO COAST MEMBERSHIPS, BACK TO
25 BACK.

26 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. THE

1 QUESTION WAS COULD A MEMBER GET A RESERVATION SYSTEM
2 THROUGH THE COAST SYSTEM.

3 MR. MOSHENKO: WELL, I WOULD ASK HIM --

4 THE COURT: THE MOTION IS GRANTED.

5 BY MR. MOSHENKO: Q OKAY. AND HOW COULD A MEMBER
6 OF COAST TO COAST GET A RESERVATION SYSTEM?

7 A IF THE MEMBER BECAME PART OF THE COAST
8 DELUXE PROGRAM, THEN THE MEMBER COULD USE COAST RESERVATION
9 SYSTEM TO GET A RESERVATION.

10 Q NOW, YOU AND YOUR STAFF SOLD COAST DELUXE
11 MEMBERSHIPS?

12 A THAT'S CORRECT.

13 Q AND HOW MUCH DID THEY COST?

14 A \$1995.

15 Q WHAT IS THE DIFFERENCE BETWEEN A -- WHAT IS
16 A RELOAD?

17 A A RELOAD IS WHERE YOU SELL THE SAME THING.
18 IN OTHER WORDS, YOU RELOAD THE -- RELOAD THE MEMBER WITH
19 SOMETHING HE HAS ALREADY GOT.

20 Q OKAY. AND WAS COAST DELUXE A RELOAD?

21 A IT WAS A RELOAD.

22 Q WHY?

23 A COAST DELUXE DIDN'T ADD ANY PARKS. IN OTHER
24 WORDS, IF YOU WERE A MEMBER RELOADED ON THE COAST DELUXE,
25 YOU DIDN'T GET MORE PARKS. YOU GOT LESS PARKS. AND, IN
26 OTHER WORDS, THE COAST DELUXE YOU HAD TO BE -- SELLING

1 COAST DELUXE TO BE IN THAT PROGRAM. SO LET'S ASSUME THAT
2 COAST TO COAST HAD 300 PARKS. MAYBE THERE WAS ONLY 100
3 PARKS IN COAST DELUXE. SO IF YOU BOUGHT THIS RELOAD, WHICH
4 WAS NOTHING MORE THAN AN ADDITIONAL COAST TO COAST
5 MEMBERSHIP, RECIPROCAL MEMBERSHIP, THAT THEY COULD GO BACK
6 TO BACK THEN.

7 IN OTHER WORDS, WHAT IT DID IS IT ALLOWED
8 YOU RATHER THAN TO HAVE TWO WEEKS A YEAR AT A RECIPROCAL
9 RESORT, YOU'D HAVE FOUR WEEKS. SO YOU RELOADED WHAT YOU
10 ALREADY HAD.

11 Q THE FIRST TWO WEEKS FROM THE REGULAR
12 MEMBERSHIP AND THE SECOND TWO WEEKS FROM THE SECOND?

13 A FROM THEIR DELUXE MEMBERSHIP.

14 Q WELL, WHY DID YOU SELL COAST DELUXE?

15 A AT THE TIME I WAS -- YOU KNOW, HAVING
16 MEETINGS. I WAS TRYING TO GET ALONG WITH COAST TO COAST.
17 I REALLY DIDN'T NEED THAT PROGRAM. WHEN I WAS TRYING TO
18 GET ALONG WITH COAST TO COAST AND TRYING -- AND MANY TIMES
19 OVER THE YEARS I MET WITH COAST TO COAST, THEIR DIRECTOR,
20 THEIR PEOPLE AND TRYING TO WORK OUT PROBLEMS, YOU KNOW, AS
21 THEIR CUSTOMER. AND THIS WAS ONE OF THE THINGS THAT I CAME
22 TO THEM.

23 AND, YOU KNOW, WHEN THEY WERE TRYING TO GET
24 DEVELOPERS IN THERE, I FELT THAT IF I BROUGHT SOME OF OUR
25 PARKS INTO THE DELUXE SYSTEM, INTO THE COAST DELUXE SYSTEM,
26 THIS WOULD HELP US WITH -- HELP THEM WITH THE COAST DELUXE

1 SYSTEM, TO HAVE OUR ORGANIZATION PART OF THAT. AND I
2 STARTED SELLING. I DIDN'T SELL THAT MANY OF THEM, I THINK
3 A COUPLE HUNDRED.

4 Q WHEN DID YOU DO THAT?

5 A THAT WAS BACK IN '96, I BELIEVE.

6 Q OKAY. IS THE PRESIDENT'S TRAVEL CLUB
7 MEMBERSHIP A RELOAD?

8 A NO.

9 Q WHY NOT?

10 A THE PRESIDENT'S TRAVEL CLUB INCREASES YOUR
11 PARK SYSTEM. FOR EXAMPLE, IF I'M A MEMBER OF ALL SEASONS,
12 I HAVE 11 PARKS THAT I CAN GO TO. AND THESE 11 PARKS ARE
13 ALL MY HOME PARK BECAUSE MULTIPLE PARK SYSTEMS SELL LIKE
14 THAT. YOU HAVE YOUR ACTUAL HOME PARK IN ALL SEASONS, BUT
15 YOU'RE ABLE TO USE THE ENTIRE ALL SEASONS SYSTEM, ALL
16 ELEVEN PARKS.

17 WHEN YOU BECOME A PRESIDENT'S CLUB MEMBER,
18 THEN YOU'RE ABLE TO USE OVER 50 RESORTS AS YOUR HOME PARK.
19 SO THAT'S NOT A RELOAD. THE BENEFITS ARE MUCH, MUCH
20 GREATER THAN WHAT YOU HAD BEFORE.

21 SO YOU CAN GO FROM A ONE-PARK SYSTEM TO 50
22 PARKS AND HAVE 50 HOME PARKS, WHICH IF YOU WENT AND JOINED
23 AT EACH HOME PARK, IT WOULD COST YOU \$6,000 TIMES 50.

24 Q MR. NOVELLI, DO YOU KNOW WHAT "LOW COST
25 MEMBERSHIPS" IS A REFERENCE TO?

26 A YES.

1 Q DID LOW COST MEMBERSHIPS IN ANY WAY
2 CONTRIBUTE TO YOUR DECISION TO LEAVE COAST AND GO WITH
3 R.P.I.?

4 A YES.

5 Q IN WHAT SENSE DID IT CONTRIBUTE?

6 A IT WAS ANOTHER FACTOR THAT I COMPLAINED TO
7 COAST ABOUT, WHERE THEY WOULD SELL MEMBERSHIPS IN
8 OUT-OF-THE-WAY PLACES WITH VERY LITTLE IMPROVEMENTS. KIND
9 OF LIKE THE GOLDEN POND, IF I REMEMBER THAT ONE CAME UP IN
10 THIS HEARING, TRIAL. AND GOLDEN POND, FOR EXAMPLE, WOULD
11 HAVE 19 SITES, NO SWIMMING POOL, NO CLUBHOUSE, NOTHING,
12 AND LOCATED 100 MILES FROM NOWHERE.

13 THEY WOULD SELL MEMBERSHIPS IN PARKS LIKE
14 THIS FOR \$50, \$200, WHATEVER, KNOWING THAT NOBODY WOULD
15 EVER VISIT THEIR PARK. THE MEMBERS WOULD BE JOINING -- IN
16 THIS CASE THE ONLY THING THEY WERE JOINING WAS COAST TO
17 COAST TO BE ABLE TO USE THE DEVELOPERS PARKS, THE
18 RECIPROCAL PARKS, AT A VERY LOW COST.

19 SO THEY'D BUY A MEMBERSHIP IN AN
20 OUT-OF-THE-WAY PARK FOR \$50, \$100, \$500. AND THEY WOULD
21 PAY THIS PARK MAYBE \$100 IN DUES, \$200 IN DUES, WHATEVER
22 THE PARK THOUGHT IT COULD GET, BECAUSE IT WAS FREE MONEY.
23 AND THEN THEY WOULD COME DOWN TO FLORIDA OR TO PALM
24 SPRINGS, AND THEY'D PRESENT US WITH THEIR MEMBERSHIP CARD
25 FROM PODUNK PARK, AND WE WOULD HAVE TO HOST THEM.

26 AND WE WERE A GREAT HOSTER. WE NEVER TURNED

1 AWAY THOSE KIND OF MEMBERS. WHEN THESE MEMBERS BOUGHT
2 THOSE PARKS, WE KNEW WHO THEY WERE. AND WHEN THE MEMBERS
3 CAME, WE PARKED THEM. WE DIDN'T DISCRIMINATE AT ALL
4 BECAUSE THAT WASN'T OUR POSITION, TO DISCRIMINATE AGAINST
5 THOSE MEMBERS.

6 Q DID YOU COMPLAIN TO COAST FROM TIME TO TIME
7 ABOUT PODUNK RESORT FLOODING THE SYSTEM WITH MEMBERS?

8 MR. SHERMAN: OBJECTION. RELEVANCE.

9 MR. MOSHENKO: RELEVANCY HAS TO DO WITH HIS
10 DECISION TO DISAFFILIATE.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES, I COMPLAINED TO COAST TO COAST.
13 BUT I'M NOT SAYING THAT COAST TO COAST IS ALONE IN THAT.

14 BY MR. MOSHENKO: Q OKAY. WHEN DID YOU COMPLAIN
15 TO COAST?

16 A THIS WAS -- ANY TIME THAT I MET WITH COAST
17 TO COAST, THIS WAS ALWAYS A TOPIC OF DISCUSSION. SO IF I
18 MET WITH THEM 10 TIMES IN A YEAR, THEY HEARD THAT 10 TIMES
19 IN A YEAR.

20 Q NAME THE NAMES OF THE COAST REPRESENTATIVES
21 THAT YOU SPOKE TO CONCERNING THIS LOW COST MEMBERSHIP
22 PROBLEM THAT YOU PERCEIVED.

23 A I SPOKE TO MR. ADAMS ABOUT THAT PROBLEM. I
24 SPOKE TO GENE EVERETT ABOUT THAT PROBLEM. I SPOKE TO
25 PAT BUTLER ABOUT THAT PROBLEM. I SPOKE TO ROGER RYMAN
26 ABOUT THAT PROBLEM. BASICALLY THAT'S IT.

1 Q OKAY. DID MEMBER -- COAST TO COAST

2 MARKETING OF PRODUCTS CONTRIBUTE TO YOUR DECISION TO LEAVE

3 COAST AND GO WITH R.P.I.?

4 A THE OFF AND ON --

5 Q IS THAT A YES?

6 A YES.

7 Q NOW, WHAT IS IT ABOUT COAST TO COAST

8 MARKETING OF PRODUCTS THAT CAUSED YOU TO CONCLUDE THAT YOU

9 NEEDED TO DISAFFILIATE WITH COAST AND AFFILIATE WITH

10 R.P.I.?

11 MR. SHERMAN: OBJECTION. THE REASONS STATED IN THE

12 PAPERS THAT WE FILED THIS MORNING THAT WERE HEARD IN

13 CHAMBERS. WE OBJECT TO THE QUESTION ON THE GROUNDS THAT IT

14 SEEKS INFORMATION THAT IS BARRED UNDER THE PAROL EVIDENCE

15 RULE.

16 MR. MOSHENKO: I'D LIKE TO BE HEARD ON THAT, YOUR

17 HONOR.

18 THE COURT: APPROACH.

19 (DISCUSSION OFF THE RECORD.)

20 BY MR. MOSHENKO: Q MR. NOVELLI, WHAT WAS

21 HAPPENING WITH YOUR RESORT MANAGERS RELATING TO MARKETING

22 THAT CAUSED YOU TO BELIEVE YOU HAD TO WITHDRAW FROM THE

23 COAST TO COAST SYSTEM?

24 MR. SHERMAN: OBJECTION. THIS CALLS FOR

25 INADMISSIBLE HEARSAY TESTIMONY. IT ALSO INDIRECTLY

26 SEEKS --

1 THE COURT: HE SAYS WHAT'S HAPPENING TO THE
2 MANAGERS.

3 MR. SHERMAN: THAT'S TRUE. BUT, YOUR HONOR, THIS
4 ALSO SEEKS INDIRECTLY TO GET AT THAT WHICH YOUR HONOR HAS
5 RULED --

6 THE COURT: LET ME HEAR THE ANSWER, AND WE'LL
7 ENTERTAIN A MOTION TO STRIKE.

8 THE WITNESS: WOULD YOU REPEAT THE QUESTION?

9 BY MR. MOSHENKO: Q WHAT WAS HAPPENING TO YOUR
10 RESORT MANAGERS RELATING TO MARKETING OF COAST TO COAST
11 PRODUCTS THAT CONTRIBUTED TO YOUR DECISION TO SWITCH
12 RECIPROCAL?

13 A I HAD MANAGERS, SEVERAL OF THEM, FAX ME
14 LETTERS THAT THEY RECEIVED FROM COAST TO COAST. THESE
15 LETTERS FROM COAST TO COAST TOLD THE MANAGER THAT THEY HAD
16 THIS PRODUCT THAT THEY'D LIKE THE MANAGERS TO SELL IN OUR
17 STORES ON THE RESORT. WE HAVE COUNTRY STORES FOR SUPPLIES
18 AND GROCERIES AND THINGS LIKE THAT. AND THAT THEY DIDN'T
19 HAVE TO WORRY; THAT THE COMMISSION WOULD BE PAID DIRECTLY
20 TO THE RESORT MANAGER. THIS -- THEY WERE TRYING TO GET OUR
21 MANAGERS TO BE STEALING.

22 IN OTHER WORDS, IN ORDER FOR THEM TO SELL
23 THE COAST PRODUCT, OUR MANAGERS WOULD GET THE COMMISSION
24 PAYABLE DIRECTLY TO THEM, NOT TO THE RESORT. AND WHEN I
25 SEEN THAT, I WAS JUST FURIOUS OVER THAT; THAT THEY WOULD
26 TRY TO INVOLVE OUR MANAGERS AND MAKE OUR MANAGERS

1 DISHONEST. LUCKILY OUR MANAGERS REPORTED THIS LITTLE DEAL
2 TO MYSELF.

3 Q ALL RIGHT. NOW, ALSO, MR. NOVELLI, I FORGOT
4 TO ASK YOU, YOU WERE TALKING ABOUT THE BENEFITS THAT R.P.I.
5 WAS GOING TO PROVIDE TO YOUR MEMBERS AFTER YOU LEFT COAST.
6 WE'VE HAD SOME TESTIMONY TO THE EFFECT THAT THOSE MEMBERS
7 ALREADY HAD R.P.I. BENEFITS BEFORE YOU DISAFFILIATED FROM
8 CAMP COAST TO COAST.

9 A NO.

10 Q DID ALL OF YOUR MEMBERS HAVE R.P.I. BENEFITS?

11 A NO. BELIEVE IT OR NOT I WAS PRETTY LOYAL TO
12 COAST TO COAST. ALMOST EVERY OTHER DEVELOPER WAS COAST TO
13 COAST AND R.P.I. PRETTY MUCH ALL MY RESORTS OR OUR RESORTS
14 WERE IN COAST TO COAST ONLY. I PUT FIVE OR SIX OF OUR
15 PARKS INTO R.P.I. NOT MY MAJOR PARKS. OUR ORLANDO PARK,
16 ANY OF OUR SNOWBIRD PARKS, WERE NOT PART OF R.P.I. THEY
17 WERE COAST TO COAST EXCLUSIVE, YOU KNOW. WE DIDN'T WANT TO
18 FILL UP OUR PARKS WITH TOO MANY MEMBERS.

19 THAT WAS ANOTHER REASON THAT I DIDN'T LIKE
20 THE COAST, GOT RID OF COAST SYSTEM, IS THAT THE COAST
21 SYSTEM HAD 3-, 400,000 MEMBERS IN THE COAST NUMBER, AND
22 ONLY MAYBE THREE OR FOUR PARKS INCLUDING OUR PARKS DOWN IN
23 FLORIDA. THERE WAS TOO MUCH USAGE. WHERE R.P.I. HAD
24 PROBABLY THE SAME, 75, 80 PERCENT AS MANY PARKS WITH HALF
25 THE MEMBERS.

26 SO IT CUT THE USAGE DOWN; THAT OUR MEMBERS

1 WERE MORE WELCOME AS R.P.I. MEMBERS THAN THEY WERE COAST
2 MEMBERS BECAUSE THE R.P.I. SYSTEM USAGE IS NOT AS GREAT IN
3 THE SNOWBELT, THE SUNBELT RESORTS, AS THE COAST TO COAST
4 USAGE.

5 Q ALL RIGHT.

6 A SO IT WAS A GREAT BENEFIT TO OUR MEMBERS TO
7 DO THAT.

8 BUT AS FAR AS OUR MEMBERS LOSING R.P.I. --
9 OR COAST TO COAST, AND THEN HAVE R.P.I. ALSO, THAT'S JUST
10 NOT TRUE. IN OTHER WORDS, IT'S JUST NOT TRUE. WE HAD VERY
11 FEW PARKS IN R.P.I. SO WHEN WE LEFT R.P.I. -- I MEAN COAST
12 TO COAST, WE DIDN'T -- YOU KNOW, THEY DIDN'T LOSE A
13 SYSTEM. THEY GAINED ONE.

14 Q NOW, ARE YOU FAMILIAR WITH THE GOOD NEIGHBOR
15 PARK SYSTEM?

16 A YES.

17 Q DID COAST TO COAST GOOD NEIGHBOR PARK SYSTEM
18 CONTRIBUTE TO YOUR DECISION TO CHANGE RECIPROCAL SYSTEMS?

19 A NOT REALLY.

20 Q NOW -- ALL RIGHT. MR. NOVELLI, I WANT TO GO
21 BACK AND TALK ABOUT YOUR DEALINGS WITH CAMP COAST TO COAST,
22 STARTING BACK WHEN YOU FIRST GOT A.S.R. --

23 THE COURT: LET'S TAKE UP AT THIS POINT TOMORROW
24 MORNING. I WANT TO TALK TO YOU FELLOWS BEFORE YOU LEAVE.

25 MR. MOSHENKO: VERY WELL, YOUR HONOR.

26 THE COURT: SEE YOU ALL IN THE MORNING. GOOD

1 NIGHT.

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

4 THE COURT: ALL I WANT TO SAY IS THIS: I DON'T
5 WANT TO ENTERTAIN ANY MOTIONS TOMORROW MORNING THAT HAVEN'T
6 ALREADY BEEN DISCUSSED AMONGST YOU GUYS TONIGHT. IF THERE
7 ARE GOING TO BE ANY MOTIONS, GIVE EACH OTHER PLENTY OF TIME
8 TO DIGEST THEM.

9 AND IF YOU HAVE ANYTHING THAT'S GOING TO
10 TAKE SOME TIME BEFORE THE JURY GETS HERE IN THE MORNING,
11 GET HERE BY 8:30.

12 MR. MOSHENKO: AND LET THE OTHER SIDE KNOW SO THE
13 OTHER SIDE KNOWS TO GET HERE BY 8:30.

14 MR. SHERMAN: YOUR HONOR, PART OF THE ISSUE WITH
15 RESPECT TO THE MOTIONS THAT WE HAVE FILED OVER THE PAST
16 WEEK AND A HALF OR SO HAS BEEN EVERY BIT AS MUCH A
17 CONSEQUENCE OF OUR LEARNING A DAY BEFORE -- NOT IN THE CASE
18 OF THESE MOTIONS TODAY. I WILL GRANT THE COURT THAT. BUT
19 WHEN WE GET NOTICE A DAY BEFORE THAT THE WITNESS IS GOING
20 ON, IT IS KIND OF DIFFICULT.

21 THE COURT: ALL RIGHT. MR. NOVELLI WILL BE ON
22 TOMORROW MORNING. SO YOU'RE PREPARED FOR THAT.

23 YOU'RE GOING TO FINISH WITH HIM BY NOONTIME,
24 MR. MOSHENKO?

25 MR. MOSHENKO: YOUR HONOR, IT DEPENDS ON WHETHER I
26 CAN GO THROUGH SOME EXHIBITS IN A RATHER QUICK FASHION OR

1 WHETHER I'M GOING TO HAVE TO DO AS WE DID TODAY, GO BACK
2 AND FIND THE ORIGINAL LIST.

3 THE COURT: WHO IS YOUR NEXT WITNESS TO BE LINED UP?

4 MR. MOSHENKO: WELL, I UNDERSTOOD THAT THEY WERE
5 GOING TO BE TAKING FOUR DAYS, AND I THINK AFTER THAT WE'RE
6 GOING TO BE LOOKING AT ROBERT THOMPSON AND THEN
7 DR. CALVIN BIERLY.

8 THE COURT: OKAY. SEE YOU IN THE MORNING.

9 MR. SHERMAN: THANK YOU, YOUR HONOR.

10 YOUR HONOR, CAN I JUST BRING ONE OTHER ITEM
11 TO YOUR ATTENTION?

12 THE COURT: WHAT'S THAT?

13 MR. SHERMAN: ON THE SUBJECT OF THE IN-LIMINE
14 MOTIONS, WE WILL ADVISE THE COURT SPECIFICALLY AS TO THE
15 WHY'S AND WHEREFORE'S AND TO WHY IT IS APPROPRIATE -- TO
16 USE YOUR HONOR'S TERM EARLIER -- OPEN THE DOOR WITH RESPECT
17 TO MR. NOVELLI'S CRIMINAL CONVICTIONS. THERE IS AMPLE,
18 AMPLE FACTUAL AND PRACTICAL AND COMMON-SENSE SUPPORT FOR
19 THAT PROPOSITION AT THIS POINT.

20 THE COURT: WE CAN TALK ABOUT THAT LATER.

21 MR. SHERMAN: THANK YOU.

22 MR. MOSHENKO: DOES THAT MEAN WE'RE HERE AT 8:30 IN
23 THE MORNING?

24 THE COURT: WE'RE NOT GOING TO TALK ABOUT IT
25 TOMORROW MORNING.

26 MR. SHERMAN: NO. BUT I DIDN'T WANT THERE TO BE

1 ANY MISUNDERSTANDING AS TO OUR POSITION.

2 THE COURT: ALL RIGHT.

3 (WHEREUPON THE COURT WAS IN RECESS UNTIL

4 TUESDAY, JUNE 27, 2000, 9:00 A.M.)

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