

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

MAY 22, 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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WITNESSES FOR THE PLAINTIFFS:

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ROBERT FRANK MITCHELL

BY MR. RIVIN:

1397 (CONT.)

1 WESTMINSTER, CALIFORNIA - MONDAY, MAY 22, 2000

2 MORNING SESSION

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

5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

6 THE JURY: GOOD MORNING.

7 THE COURT: YOU MAY PROCEED, SIR.

8 MR. RIVIN: THANK YOU, YOUR HONOR.

9 CROSS-EXAMINATION (CONTINUED)

10 BY MR. RIVIN: Q GOOD MORNING, MR. MITCHELL.

11 A GOOD MORNING. HOW ARE YOU?

12 Q I MOVED THE PODIUM BACK SO THAT ALL OF THE
13 JURORS COULD SEE THE SCREEN. IF YOU HAVE ANY TROUBLE
14 HEARING ME, LET ME KNOW.

15 A THANK YOU.

16 Q I WILL DO MY BEST TO PROJECT.

17 I WANT TO START THIS MORNING WITH WHEN --
18 WITH SOMETHING WE TALKED ABOUT ON WEDNESDAY AND THURSDAY OF
19 LAST WEEK. IT'S THE PHILIPPINE FIESTA VILLAGE. YOU TALKED
20 ABOUT THAT. THIS WAS THE RESORT IN THE TEHACHAPIS WHERE
21 YOU BROUGHT MR. NOVELLI IN TO RESCUE TRAVELERS WHEN
22 TRAVELERS HAD LOST SOME -- WAS ABOUT TO LOSE SOME MONEY.

23 DO YOU REMEMBER THAT?

24 A YEAH. THIS WAS A RESORT THAT WAS OWNED BY
25 SOME PEOPLE CALLED THE KRUPPS, AND THE CORPORATION COUNCIL
26 OF THE STATE OF CALIFORNIA HAD CLOSED THEM.

1 Q RIGHT.

2 A THAT'S CORRECT.

3 Q AND, IN FACT, YOU TESTIFIED IN YOUR
4 DEPOSITION, AND I THINK ON DIRECT EXAMINATION, THAT THE
5 PARK WAS IN TERRIBLE SHAPE.

6 THE PARK WAS IN TERRIBLE SHAPE?

7 A I DON'T RECALL MAKING A COMMENT ON THE
8 PHYSICAL PLANT, BUT --

9 Q CAN WE SHOW -- AGAIN, REMEMBER YOUR
10 DEPOSITION?

11 A YEAH. IT WAS FOUR DAYS AND 40 HOURS. I
12 DON'T REMEMBER EVERY WORD OF IT, BUT I CERTAINLY REMEMBER,
13 YES, SIR.

14 Q WELL, IT WASN'T 40 HOURS. IT WAS PARTIAL
15 DAYS; RIGHT, MR. MITCHELL, PROBABLY ABOUT 20 HOURS?

16 A TWENTY-SEVEN HOURS. I APOLOGIZE.

17 MR. RIVIN: CAN WE SHOW PAGE 77, MR. MITCHELL'S
18 DEPOSITION.

19 LET'S NOT SHOW IT YET. I'D LIKE COUNSEL TO
20 HAVE AN OPPORTUNITY TO LOOK AT IT.

21 MR. SHAW: WHAT LINES, COUNSEL?

22 MR. RIVIN: 2 THROUGH 6.

23 Q YOU KNOW, LET'S MOVE BEYOND THAT, AND LET'S
24 KEEP TALKING ABOUT THE PARK. AND LET'S NOT GO TO THE
25 DEPOSITION TESTIMONY RIGHT NOW.

26 A OKAY.

1 Q THE MEMBERS OF THAT PHILIPPINE FIESTA
2 VILLAGE WERE NOT PAYING ON THEIR CONTRACTS; IS THAT RIGHT?
3 SO THEY WERE WORTHLESS?

4 A NO.

5 Q WERE THE CONTRACTS WORTHLESS?

6 A THE CONTRACTS WOULD HAVE BEEN WORTHLESS
7 ULTIMATELY, YES. SOME OF THEM STOPPED PAYING, AND SOME OF
8 THEM WERE PAYING. I DON'T KNOW EXACTLY WHAT THE
9 DISPOSITION OF THAT WAS, BUT ULTIMATELY --

10 Q I'LL GET TO ULTIMATELY.

11 A OKAY.

12 Q TRAVELERS DIDN'T LOSE ABOUT A HALF A MILLION
13 DOLLARS?

14 A SOMETHING IN THAT AREA. I THINK THE
15 PRINCIPAL AMOUNT WAS ABOUT 350, 300, \$350,000, AND THEN
16 WHATEVER INTEREST, WHICH WOULD HAVE BROUGHT IT TO THAT
17 FIGURE.

18 Q SO TRAVELERS STOOD TO LOSE ABOUT \$500,000;
19 IS THAT RIGHT?

20 A THAT WAS THE POTENTIAL LOSS, I BELIEVE,
21 CORRECT.

22 Q AND TRAVELERS IS A LENDER THAT YOU WORKED
23 FOR FROM 1980 THROUGH ABOUT 1999; IS THAT RIGHT?

24 A APPROXIMATELY, CORRECT, YES, SIR.

25 Q TRAVELERS ASKED FOR YOUR HELP?

26 A CORRECT, SIR.

1 Q AND YOU THOUGHT OF MR. NOVELLI?

2 A NOT INSTANTLY. MY FIRST ASSIGNMENT WAS
3 TO -- I SPENT A MONTH TO A MONTH AND A HALF EVALUATING THE
4 SITUATION, GOING OVER THE RECORDS, HAVING MEETINGS WITH THE
5 ATTORNEYS REPRESENTING THE STATE OF CALIFORNIA AND THE
6 DEPARTMENT OF CORPORATIONS. I INTERVIEWED THE KRUPPS, WHO
7 WERE THE OWNERS, LOOKED THE FINANCIALS OVER, AND CAME TO
8 THE CONCLUSION THAT THIS NEEDED MONEY AND EXPERTISE; AND
9 THAT THE KRUPPS WERE NOT IN A POSITION TO PROVIDE EITHER
10 ONE; AND IN THE ABSENCE OF THAT BEING DONE, SOME ACTION
11 BEING TAKEN, THAT ULTIMATELY THE CONTRACTS WOULD HAVE TO BE
12 CONSIDERED QUESTIONABLE BECAUSE THE MEMBERS WOULD NOT HAVE
13 BEEN GETTING SERVICES.

14 Q AND YOU THOUGHT OF MR. NOVELLI?

15 A THAT'S CORRECT.

16 Q YOU KNEW THAT MR. NOVELLI LIKED TO BUY UP
17 FAILING PARKS?

18 A I KNEW THAT HE HAD BEEN INVITED IN TO THE
19 ALL SEASONS THING FROM BARCLAY'S AND THAT HE HAD SUSTAINED
20 HIMSELF AND KEPT THAT ALIVE, AND IT WASN'T BEST TO START
21 WITH. I REALLY DIDN'T KNOW THAT HE LIKED TO BUY UP PARKS.
22 I HAD NO BROADER KNOWLEDGE OF HIM OTHER THAN HIS EXPERIENCE
23 WITH ALL SEASONS.

24 Q DID YOU KNOW THAT HE LIKED TO BUY UP FAILING
25 OR DISTRESSED PROPERTIES?

26 A I KNEW THAT HE WAS A DISTRESS EXPERT; THAT'S

1 WHAT HE DEALT WITH. HE WAS THE LEMONS TO LEMONADE MAN.

2 Q YOU KNEW THAT MR. NOVELLI TOOK ON DISTRESSED
3 PROPERTIES?

4 A THAT'S CORRECT.

5 Q JUST LIKE MR. VOPNFORD?

6 A THAT'S NOT CORRECT.

7 Q MR. VOPNFORD PICKED UP FAILING PROPERTIES,
8 DIDN'T HE?

9 A THERE WAS A WORLD OF DIFFERENCE, NIGHT AND
10 DAY, IN THE WAY THEIR OPERATIONS RAN.

11 Q ALL RIGHT. LET'S TALK ABOUT WHAT INITIALLY
12 HAPPENED AT PHILIPPINE FIESTA VILLAGE.

13 A SURE.

14 Q AGAIN, THIS IS ABOUT 1974 -- 1994?

15 A I'LL GO WITH YOU. IT SOUNDS REASONABLE TO
16 ME. I'M NOT CERTAIN OF THE EXACT DATE. IT SOUNDS
17 REASONABLE.

18 Q 1994, 1995, RIGHT IN THAT AREA?

19 A SOMEWHERE IN THERE, YES, SIR.

20 Q YOU CONTACTED MR. NOVELLI?

21 A YES, SIR.

22 Q AND YOU CONVINCED HIM THAT THIS WOULD BE A
23 GOOD DEAL FOR HIM?

24 A I TOLD HIM THAT IT WOULD BE -- HAD GREAT
25 POTENTIAL; AND IF HE WAS PREPARED TO PUT THE MONEY AND
26 EFFORT INTO IT, I FELT IT WAS GOOD FOR HIM AND EVERYONE

1 WOULD WIN. LENDERS WOULD WIN. THE MEMBERS WOULD WIN. THE
2 STATE OF CALIFORNIA WOULD BE HAPPY.

3 Q AND A DEAL EVENTUALLY WAS PUT TOGETHER?

4 A THAT'S CORRECT. HE MADE A PURCHASE OF THE
5 PROPERTY.

6 EXCUSE ME. I'M SORRY. GO AHEAD, SIR.

7 Q I'LL JUST -- ANSWER MY QUESTION.

8 A I APOLOGIZE.

9 Q I'LL TAKE YOU THERE.

10 A OKAY. THANK YOU. THAT'S GOOD.

11 Q LET'S TALK ABOUT THE TERMS, THE TERMS OF THE
12 DEAL.

13 A OKAY.

14 Q YOU ARRANGED FOR MR. NOVELLI TO TAKE --
15 BASICALLY HE TOOK OVER THE PARK?

16 A HE BOUGHT IT.

17 Q HE BOUGHT IT.

18 YOU ARRANGED FOR A NEW \$30 MILLION LOAN; YOU
19 HELPED ARRANGE FOR A \$30 MILLION LOAN?

20 A YEAH. I PROVIDED WHAT INFORMATION I WAS
21 REQUESTED BY THE BANK.

22 Q AND YOU HELPED ARRANGE FOR A NEW \$30 MILLION
23 LOAN AGAINST THE PROPERTY?

24 A WHATEVER THE FIGURE WAS. I SEEM TO REMEMBER
25 A FIGURE OF \$30 MILLION. IT MAY HAVE BEEN SOMETHING
26 DIFFERENT. I DON'T RECALL.

1 Q TRAVELERS, WHICH STOOD TO LOSE POTENTIALLY A
2 HALF A MILLION DOLLARS, GOT \$500,000 OF CONTRACTS FROM
3 MR. NOVELLI?

4 A I THINK THEY ACTUALLY GOT -- I THINK WE'RE
5 SPEAKING OF \$350,000 IN PRINCIPAL, AND THE REMAINING
6 BENEFIT TO TRAVELERS WOULD HAVE BEEN INTEREST FOR THE TOTAL
7 OF 5. I THINK THEY GOT ABOUT \$350-, \$385,000 WORTH OF GOOD
8 PERFORMING CONTRACTS FOR THE FIESTA -- PHILIPPINE FIESTA
9 VILLAGE CONTRACTS WHICH WOULD HAVE ULTIMATELY BEEN
10 NONPERFORMING; ALTHOUGH, THERE WAS SOME LIMITED PERFORMANCE
11 IN THE PORTFOLIO.

12 Q AND MR. NOVELLI GOT THE CHANCE TO TURN THIS
13 PARK AROUND?

14 A YEAH. HE ALSO HAD TO PAY THE KRUPPS MONEY,
15 TOO, ABOUT 350,000.

16 Q AND HE GOT A CHANCE TO TURN THIS PARK
17 AROUND; IS THAT RIGHT?

18 A CERTAINLY THAT WAS THE OPPORTUNITY. HE GOT
19 THE HEADACHES AND THE OPPORTUNITY, CORRECT.

20 Q RIGHT. AND THAT'S ESSENTIALLY WHAT
21 HAPPENED; IS THAT RIGHT?

22 A THAT'S THE SUM AND SUBSTANCE OF IT.

23 Q BUT THAT'S NOT THE ENTIRE STORY, IS IT?

24 A WELL, I DON'T KNOW. IF THERE'S MORE, THEN
25 LET'S TALK ABOUT IT.

26 Q I THINK WE SHOULD.

1 A GOOD.

2 Q YOU DIDN'T TALK ABOUT WHAT HAPPENED TO THE
3 PARK, AND YOU DIDN'T TALK ABOUT WHAT HAPPENED TO THE
4 MEMBERS IN DIRECT EXAMINATION, AND I'M GOING TO ASK YOU
5 SOME QUESTIONS ABOUT THAT.

6 A SURE.

7 Q YOU MET WITH MR. NOVELLI MAYBE 10 TIMES OVER
8 THE COURSE OF 60 DAYS IN CONNECTION WITH THIS PROJECT TO
9 GET HIM ON BOARD AND TO WORK THINGS THROUGH?

10 A I MAY HAVE MET WITH HIM. I DON'T KNOW IF IT
11 WAS 10 TIMES. I'LL ACCEPT THAT. I KNOW I HAD MAYBE 10
12 MEETINGS IN A COUPLE OF MONTHS WITH HE AND ALL OF THE
13 PLAYERS INVOLVED.

14 Q DO YOU RECALL SAYING IN YOUR DEPOSITION THAT
15 YOU HAD APPROXIMATELY 10 MEETINGS WITH MR. NOVELLI?

16 A YES, I DO. AND, AS I SAID, THAT'S
17 APPROXIMATELY CORRECT.

18 Q AND YOU WERE VERY INVOLVED IN THE PROCESS?

19 A OH, YES, SIR.

20 Q YOU THOUGHT IT WAS A TERRIFIC OPPORTUNITY
21 FOR MR. NOVELLI TO TAKE THIS PARK AND POTENTIALLY EXPAND
22 IT; THERE WAS A HUGE, HUGE POTENTIAL SOURCE OF MEMBERS
23 THERE BECAUSE OF ITS TIES TO THE PHILIPPINE COMMUNITY?

24 A WELL, THERE WAS APPROXIMATELY 7- TO 800
25 MEMBERS; HOWEVER, IF IT WAS ACCOMPLISHED AS I SAW MY VISION
26 OF IT, CORRECT, I FELT THERE WAS AN OPPORTUNITY TO

1 ESTABLISH CREDIBILITY WITH AN AFFINITY GROUP OF PEOPLE WHO
2 HISTORICALLY WOULD RESPOND POSITIVELY.

3 Q AND AT THAT TIME, GIVEN THAT YOU WERE AN
4 EXPERT IN THE INDUSTRY, YOU WERE GETTING REPORTS PRETTY
5 MUCH ON A DAILY BASIS FROM ALL OVER THE COUNTRY OF VARIOUS
6 RESORTS; IS THAT RIGHT?

7 A AS YOU ASKED ME WEDNESDAY, I GOT REPORTS ON
8 A DAILY BASIS. THAT DIDN'T NECESSARILY MEAN THE REPORTS
9 WERE OF THE DAILY BUSINESS.

10 Q YOU EXPLAINED THAT ON THURSDAY, AND I ACCEPT
11 THAT.

12 A ULTIMATELY I WOULD KNOW ABOUT WHAT WAS GOING
13 ON.

14 Q YOU KNEW WHAT WAS GOING ON. THAT'S RIGHT.
15 AND, IN FACT, YOU WERE VISITING PARKS ALL
16 OVER THE COUNTRY; YOU VISITED PARKS ALL OVER THE COUNTRY
17 WITHOUT EVEN GETTING PAID JUST BECAUSE OF YOUR
18 RESPONSIBILITY FOR WORKING IN THE INDUSTRY AND KNOWING WHAT
19 WAS GOING ON; IS THAT RIGHT?

20 A IF THEY WERE -- I DIDN'T DO IT ON PURPOSE.
21 IF I WAS VISITING A PARK AND THERE WERE OTHER PARKS IN THE
22 AREA, I MADE IT A POINT TO GO VISIT THEM, YES.

23 Q BUT IT WAS YOUR RESPONSIBILITY, BECAUSE OF
24 YOUR WORK IN THE INDUSTRY, TO KNOW WHAT WAS GOING ON AND TO
25 GO TO THESE PARKS TO SEE WHAT WAS GOING ON?

26 A WELL, CERTAINLY. I FELT THAT I HAD A DUTY

1 TO TRY TO BE INFORMED, YES, SIR.

2 Q BUT YOU DIDN'T HAVE A CLUE WHAT HAPPENED TO
3 PHILIPPINE FIESTA?

4 A NO. I HAD NO DUTY. MY DUTY WAS TO
5 FACILITATE THE SALE FOR THE BENEFIT OF THE STATE OF
6 CALIFORNIA, DEPARTMENT OF CORPORATIONS, FOR THE BENEFIT OF
7 THE LENDER, MY CLIENT, AND FOR THE BENEFIT OF THE MEMBERS.
8 BEYOND THAT, I WAS NOT INVOLVED.

9 Q YOU KNEW WHAT WAS GOING ON AT PARKS
10 THROUGHOUT THE COUNTRY, AND YOU WERE INTIMATELY INVOLVED IN
11 THIS TRANSACTION. AND, YET, YOU DIDN'T HAVE A CLUE WHAT
12 HAPPENED AT PHILIPPINE FIESTA; IS THAT RIGHT?

13 A NO, BECAUSE WHEN WE DISCUSSED THIS ON
14 THURSDAY, YOU ASKED ME THE SAME QUESTION. AND I TOLD YOU
15 THAT AT THE TIME -- THAT I WAS INTIMATELY INVOLVED AND KNEW
16 WHAT WAS GOING ON ON A DAILY BASIS WAS WHEN I WAS WITH
17 NATIONAL RESORT MARKETING SERVICES, AND THAT WAS NOT IN
18 1995, OR '94. WE HAD THAT DISCUSSION ON THURSDAY.

19 Q WHEN DID YOU STOP -- WHEN DID YOU STOP
20 FINDING OUT WHAT WAS GOING ON IN RESORTS?

21 A ON A DAY-TO-DAY BASIS?

22 Q YES.

23 A WHEN I STOPPED BEING INVOLVED WITH NATIONAL
24 RESORTS MARKETING COMPANY.

25 Q IS THAT IN THE 1980'S?

26 A PROBABLY 1989, 1990. CERTAINLY NOT LONGER

1 THAN 1990. I DIDN'T HAVE THE NEED FOR THAT INFORMATION AT
2 THAT LEVEL. SO WHAT INFORMATION I NEEDED IN ORDER TO
3 PERFORM MY JOB FOR WHOEVER I WAS HIRED FOR, I HAD THAT
4 LEVEL OF INFORMATION.

5 Q SO YOU WERE PULLING BACK FROM YOUR WORK IN
6 THE INDUSTRY AS EARLY AS 1989 OR 1990?

7 A I DON'T KNOW IF "PULLING BACK" IS THE TERM,
8 BUT I CERTAINLY WAS NOT DOING DAILY OPERATIONS, THAT'S
9 CORRECT, SIR.

10 Q SO YOU STOPPED GETTING THESE DAILY REPORTS
11 BACK IN 1989 OR 1990?

12 A THAT'S -- I THINK THAT'S APPROXIMATELY
13 CORRECT, YES, SIR.

14 Q LET'S GO BACK TO PHILIPPINE FIESTA VILLAGE.
15 YOU WERE INVOLVED IN THE PROCESS, YOU DIDN'T HAVE A CLUE
16 WHAT HAPPENED IN PHILIPPINE FIESTA EVEN THOUGH YOU WERE
17 INVOLVED?

18 A NOT AFTER.

19 Q YOU WORKED WITH MR. NOVELLI. AFTER IT WENT
20 DOWN YOU WALKED AWAY AND YOU DIDN'T FIND OUT WHAT HAPPENED;
21 IS THAT RIGHT?

22 A NO, I WENT ON TO ANOTHER TASK. AFTER I
23 COMPLETED THE TASK THAT I WAS ASSIGNED TO, I WENT ON TO
24 OTHER THINGS.

25 Q OKAY. LET'S FIND OUT WHAT HAPPENED IN THE
26 PHILIPPINE FIESTA.

1 A OKAY.

2 Q SINCE YOU DON'T KNOW, WE'LL FIND OUT FROM
3 MR. NOVELLI'S DEPOSITION TESTIMONY.

4 A OKAY.

5 Q I'D LIKE TO SHOW RAY NOVELLI'S DEPOSITION
6 TESTIMONY STARTING AT PAGE 1703, LINE 25.

7 A MR. RIVIN, I MAY NEED A PHYSICAL COPY OF
8 THAT IN FRONT OF ME, IF I'M GOING TO HAVE TO COMMENT ON IT,
9 BECAUSE THAT SCREEN IS A LITTLE FAR OFF FOR MY EYES. THANK
10 YOU.

11 THE CLERK: WHAT VOLUME?

12 MR. RIVIN: THAT WOULD BE VOLUME 8, I BELIEVE, 8 OR
13 9, 1703, LINE 25 THROUGH 1704, 21.

14 MR. SHAW, HAVE YOU HAD A CHANCE TO READ IT?

15 MR. SHAW: NOT YET. THANKS, COUNSEL.

16 YOUR HONOR, JUST FOR THE RECORD, I'M GOING
17 TO OBJECT TO THE TESTIMONY AS BEING THIS WITNESS -- UNLESS
18 COUNSEL CAN SHOW HE HAS GOT SOME PERSONAL KNOWLEDGE OF WHAT
19 MR. NOVELLI IS TESTIFYING ABOUT, I THINK PUTTING IT ONTO
20 THE OVERHEAD PROJECTOR AND READING TESTIMONY THAT HE HAS NO
21 KNOWLEDGE OF WOULD JUST LACK FOUNDATION AND WOULD BE
22 IRRELEVANT, AS FAR AS THIS WITNESS IS CONCERNED.

23 MR. RIVIN: IT'S NOT IRRELEVANT AT ALL, YOUR
24 HONOR. WE HAVE BROAD LATITUDE IN CROSS-EXAMINING AN
25 EXPERT. IT GOES DIRECTLY TO HIS DEPOSITION TESTIMONY -- TO
26 HIS TRIAL TESTIMONY.

1 THE COURT: HE HAS GOT MY COPY. SO I HAVEN'T SEEN
2 WHAT YOU'RE TALKING ABOUT.

3 MR. RIVIN: IT'S ABOUT PHILIPPINE FIESTA.

4 THE COURT: 1702, WHAT LINE?

5 MR. RIVIN: 1703, LINE 25 THROUGH 1704.

6 THE COURT: APPROACH, PLEASE.

7 (DISCUSSION OFF THE RECORD.)

8 BY MR. RIVIN: Q THIS WAS A DEPOSITION THAT I
9 TOOK OF RAYMOND NOVELLI IN APRIL.

10 MR. MITCHELL, WILL YOU FOLLOW ALONG?

11 A YES, SIR.

12 Q "HOW LONG AFTER YOU ACQUIRED THAT PARK DID
13 YOU REALIZE" --

14 A EXCUSE ME. WHAT LINE ARE YOU ON, SIR?

15 Q I'M AT THE BOTTOM OF PAGE 1703.

16 A I GOT YOU. LINE 25.

17 Q RIGHT.

18 A OKAY.

19 Q NOW, THE PARK THAT'S BEING REFERRED TO IS
20 PHILIPPINE FIESTA.

21 "HOW LONG AFTER YOU
22 ACQUIRED THAT PARK DID YOU
23 REALIZE THAT YOU WEREN'T
24 GOING TO BE ABLE TO KEEP IT
25 OPEN?

26 "ANSWER: PROBABLY ABOUT

1 TWO OR THREE MONTHS.

2 "QUESTION: DURING THAT
3 TWO- OR THREE-MONTH PERIOD,
4 DID YOU SELL UPGRADES?

5 "ANSWER: TO THOSE
6 MEMBERS, SOMEWHAT, NOT TOO
7 MUCH.

8 "QUESTION: DID YOU TRY?

9 "ANSWER: WE TRIED. IT
10 WAS A LITTLE DIFFERENT PARK.

11 "QUESTION: BUT YOU TRIED,
12 RIGHT;

13 "ANSWER: UH-HUH.

14 "QUESTION: DID YOU
15 REALIZE THAT YOU COULDN'T BE
16 AS SUCCESSFUL AS YOU WERE IN
17 OTHER PARKS IN SELLING
18 UPGRADES?

19 "ANSWER: YEAH. WE
20 WEREN'T AS SUCCESSFUL.

21 "QUESTION: DID YOU
22 EXHAUST YOUR EFFORTS IN
23 SELLING UPGRADES TO THAT PARK
24 BEFORE YOU CLOSED IT?

25 "ANSWER: NO, I DIDN'T
26 EXHAUST OUR EFFORTS. I

1 TRANSFERRED THE MEMBERS, SO I
2 CONTINUED ON UPGRADING THEM
3 AFTER I TRANSFERRED THEM. WE
4 PROBABLY TRANSFERRED THEM OR
5 UPGRADED MORE OF THEM AFTER
6 WE SHUT THE PARK DOWN THAN
7 BEFORE."

8 LET'S CONTINUE WITH -- I HAVE JUST A LITTLE
9 MORE TESTIMONY IN THIS AREA. LET'S GO TO PAGE 1705, LINE
10 3, THROUGH LINE 11.

11 MR. SHAW: JUST THOSE EIGHT LINES, COUNSEL?

12 MR. RIVIN: YES.

13 LET'S PUT IT UP, PLEASE.

14 MR. SHAW: YOUR HONOR, I HAVE THE SAME OBJECTION,
15 FOR THE RECORD, AS BEFORE.

16 THE COURT: THANK YOU.

17 MR. SHAW: THIS WITNESS HAS NO KNOWLEDGE OF WHAT
18 MR. NOVELLI'S TESTIFIED ABOUT.

19 MR. RIVIN:

20 "QUESTION: WITHIN TWO OR
21 THREE MONTHS AFTER YOU BOUGHT
22 IT, YOU REALIZED IT WASN'T A
23 GOOD OPPORTUNITY?

24 "ANSWER: YES.

25 "QUESTION: WHAT HAPPENED
26 IN THAT TWO- OR THREE-MONTH

1 PERIOD THAT CAUSED YOU TO
2 REALIZE THAT IT HAD BEEN A
3 MISTAKE?

4 "ANSWER: THIS PARTICULAR
5 PARK WAS SOLD TO AN ETHNIC
6 GROUP, THE FILIPINOS, AND I
7 HAD NEVER DEALT WITH ANYTHING
8 LIKE THAT BEFORE."

9 AND THEN LET'S GO TO PAGE 1706, LINES 11
10 THROUGH 16.

11 MR. SHAW: I'M SORRY, COUNSEL. 1706?

12 MR. RIVIN: YES, 11 THROUGH 16.

13 MR. SHAW: THE SAME OBJECTION, YOUR HONOR. LACKS
14 FOUNDATION OF THIS PARTICULAR WITNESS.

15 THE COURT: LET'S CLARIFY THIS FOR THE JURY.

16 THIS IS TESTIMONY, DEPOSITION TESTIMONY BY
17 MR. NOVELLI; IS THAT RIGHT?

18 MR. RIVIN: IT IS. THAT'S CORRECT, YOUR, HONOR.

19 MR. NOVELLI'S DEPOSITION TESTIMONY, NOT MR. MITCHELL'S.

20 CAN YOU PUT THAT UP ON THE SCREEN, PLEASE.

21 "QUESTION: WHAT HAPPENED
22 TO THE PARK."

23 MR. NOVELLI ANSWER.

24 "ANSWER: I DON'T KNOW.

25 "QUESTION: YOU
26 TRANSFERRED MEMBERS, AND THE

1 PARK DID NOT STAY IN
2 BUSINESS?

3 "ANSWER: NO. THE PARK?
4 NO. WE SHUT THE PARK DOWN.
5 WE SHUT THE PARK DOWN."

6 Q MR. MITCHELL, DID YOU KNOW WHETHER
7 MR. NOVELLI OR HIS COMPANY CONTINUED PAYING ON THAT LOAN
8 THAT YOU HAD ARRANGED?

9 A NO. I HAD NO KNOWLEDGE OF THAT.

10 Q YOU DIDN'T FOLLOW UP TO FIND OUT WHETHER HE
11 HAD?

12 A NO. I WAS THERE FOR 30 TO 60 DAYS DURING
13 THE TRANSITION, AND TO GET ALL THE PAPERWORK DONE, GET THE
14 STATE OF CALIFORNIA TO AGREE TO IT AND SO ON AND SO FORTH.
15 AND THEN I WENT ON TO OTHER BUSINESS.

16 Q WHO WAS PAYING YOU ON THIS TRANSACTION?
17 TRAVELERS?

18 A I WAS PAID BY TRAVELERS, AND I WAS PAID BY
19 THE PEOPLE WHO OWNED THE PARK FOR SERVICES DEALING WITH THE
20 DEPARTMENT OF CORPORATIONS, AND THE STAY ORDERS AND THINGS
21 OF THAT NATURE THAT THEY WERE SUFFERABLE TO.

22 Q SO YOU WERE PAID BY TRAVELERS?

23 A YES, SIR.

24 Q AND YOU WERE PAID BY THE OWNERS?

25 A THAT'S CORRECT.

26 Q WERE YOU ALSO PAID BY MR. NOVELLI?

1 A NO.

2 Q NOW, LET'S FIND OUT WHAT HAPPENED ON THE
3 LOAN AGAINST THE PROPERTY THAT YOU HAD ARRANGED, AND I'D
4 LIKE TO GO TO, AGAIN, PAGE 1707, LINES 19 THROUGH 25, OF
5 MR. NOVELLI'S DEPOSITION.

6 MR. SHAW: I'M SORRY, COUNSEL. WHAT LINES WERE
7 THEY AGAIN?

8 MR. RIVIN: 19 THROUGH 25.

9 MR. SHAW: YOUR HONOR, I WOULD JUST REQUEST
10 MR. RIVIN TO READ, BEGINNING READING AT 13, LINE 13, RATHER
11 THAN LINE 19, BECAUSE I BELIEVE IT PUTS IT IN CONTEXT. AND
12 MY SAME OBJECTION ABOUT LACK OF FOUNDATION THAT THIS
13 WITNESS HAS NO KNOWLEDGE. BUT I WOULD REQUEST THOSE SIX
14 EXTRA LINES.

15 THE COURT: ALL RIGHT.

16 MR. RIVIN: SURE. I HAVE NO PROBLEM WITH THAT,
17 YOUR HONOR.

18 QUESTION TO MR. NOVELLI:

19 "WHAT HAPPENED TO THE
20 LENDER'S LOAN THAT YOU
21 ASSUMED?

22 "LET ME REPHRASE THAT.

23 "WHEN YOU CLOSED THE PARK,
24 WHAT HAPPENED TO THE LOAN
25 THAT FIRST NATIONWIDE HAD
26 ASSUMED?

1 "AND FIRST NATIONWIDE IS
2 ONE OF THE PLAINTIFFS IN THIS
3 CASE?

4 "ANSWER: I DON'T KNOW.
5 THE BANK WENT BROKE. I DON'T
6 KNOW WHAT THEY DID WITH IT.

7 "QUESTION: DID YOU PAY
8 ANYTHING ON THE LOAN?

9 "ANSWER: FOR A WHILE WE
10 PAID SOMETHING ON IT, YES.

11 "QUESTION: FOR A SHORT
12 PERIOD OF TIME?

13 "ANSWER: YES.

14 "QUESTION: AND THEN YOU
15 WALKED AWAY FROM IT?

16 "ANSWER: YES. WE DIDN'T
17 HAVE NO FINANCIAL OBLIGATION
18 ON IT.

19 Q MR. MITCHELL, WHEN THE MEMBERS -- YOU DIDN'T
20 KNOW THAT THE MEMBERS OF THAT -- EXCUSE ME.

21 MR. SHAW: EXCUSE ME, COUNSEL. I APOLOGIZE.

22 MR. RIVIN: THERE'S ONE MORE PASSAGE. RIGHT THERE.

23 MR. SHAW: I THOUGHT WE WERE ONLY READING ONE. I
24 APOLOGIZE, MR. RIVIN.

25 BY MR. RIVIN: Q THE PARK WAS SHUT DOWN, AND THE
26 MEMBERS WERE TRANSFERRED; YOU DIDN'T KNOW THAT HAD

1 HAPPENED?

2 A NO. MY LAST INVOLVEMENT IN IT WAS SOME
3 MEETINGS WITH THE MEMBERS OF THE PHILIPPINE COMMUNITY AND
4 AN INTRODUCTION TO THE COMMUNITY WITH MR. NOVELLI. I HAD
5 NO INVOLVEMENT AFTER THAT.

6 Q IN ADDITION, YOUR MEETINGS WITH MR. NOVELLI
7 AND THE OWNERS OF THE STATE OF CALIFORNIA, YOU ALSO MET
8 WITH SOME MEMBERS OF THE PHILIPPINE COMMUNITY?

9 A THAT'S CORRECT.

10 Q AND YOU DIDN'T MAKE ANY EFFORT TO FOLLOW-UP
11 TO FIND OUT WHAT HAPPENED TO THAT PARK?

12 A NO. THERE WAS NO REASON FOR ME TO. MY TASK
13 WAS COMPLETED.

14 Q AFTER THE MEMBERS WERE -- I TAKE IT YOU HAVE
15 NO KNOWLEDGE WHETHER THE MEMBERS WERE UNHAPPY ABOUT THE
16 TRANSFER?

17 A I WAS NOT INVOLVED. I DON'T HAVE ANY
18 KNOWLEDGE OF WHAT OCCURRED AFTER MY INVOLVEMENT, SAVE WHAT
19 I'M READING HERE.

20 Q OKAY. LET'S SHOW ONE MORE PASSAGE FROM
21 MR. NOVELLI'S DEPOSITION. IT'S AT PAGE 1708, LINES 11
22 THROUGH 15.

23 MR. SHAW: THE SAME OBJECTION, YOUR HONOR. LACKS
24 FOUNDATION. THIS WITNESS HAS NO KNOWLEDGE.

25 THE COURT: OBJECTION IS NOTED.

26 BY MR. RIVIN: Q AGAIN, THIS IS MR. NOVELLI'S

1 DEPOSITION.

2 "QUESTION: WHEN YOU
3 TRANSFERRED THE MEMBERS FROM
4 THAT PARK, DID ANY OF THEM
5 OBJECT TO THE FACT THAT YOU
6 HAD CLOSED DOWN THE PARK AND
7 TRANSFERRED THEM?

8 "ANSWER: I DON'T RECALL.
9 I DON'T KNOW. I IMAGINE SOME
10 OF THEM WOULD.

11 THE COURT: YOU FINISHED WITH THE DEPOSITION?

12 MR. RIVIN: I AM, YOUR HONOR, YES.

13 BY MR. RIVIN: Q MR. MITCHELL, LET'S TALK ABOUT
14 WHO BENEFITED FROM THE PHILIPPINE FIESTA "WORKOUT," WITH
15 QUOTES AROUND IT.

16 TRAVELERS OBVIOUSLY BENEFITED. THEY GOT NEW
17 CONTRACTS. THEY GOT GOOD CONTRACTS; IS THAT RIGHT?

18 A CORRECT. THAT'S CORRECT.

19 Q YOU BENEFITED. YOU WERE PAID BY TRAVELERS,
20 AND YOU WERE PAID BY THE OWNERS OF THE PROPERTY; IS THAT
21 RIGHT?

22 A THAT'S CORRECT.

23 Q TO THE EXTENT MR. NOVELLI WAS ABLE TO
24 UPGRADE OR RELOAD THESE PEOPLE, THESE MEMBERS, HE WOULD
25 HAVE BENEFITED, TOO, IF HE DID, IF HE SUCCEEDED?

26 A IF THAT WERE THE CASE, I WOULD SUSPECT

1 THAT'S TRUE, YES.

2 Q BUT THE MEMBERS DIDN'T BENEFIT AT ALL, DID
3 THEY?

4 A THAT'S NOT CORRECT.

5 Q THE PARK GOT CLOSED; IS THAT RIGHT?

6 A WELL, YOU --

7 Q DID THE PARK GET CLOSED?

8 A I DON'T KNOW ABOUT THAT. THE STATE OF
9 CALIFORNIA BENEFITED AND GOT ALL OF THEIR FEES AND FINES.
10 THE OWNERS, WHO WERE IN TROUBLE, WHO SOLD IT, BENEFITED.
11 THE BANK BENEFITED WHO LENT THE MONEY. AND THE MEMBERS --
12 I THINK IT WAS 6-, OR 800 FAMILY MEMBERS THERE BENEFITED TO
13 WHATEVER EXTENT THEY GOT CONTINUING SERVICES.

14 BUT I DO NOT HAVE ANY KNOWLEDGE OF THAT.
15 SO, I CAN'T SPEAK TO THAT. BUT IF THEY GOT CONTINUING
16 SERVICES, THEN OBVIOUSLY THEY BENEFITED. TO MY KNOWLEDGE,
17 THEY HAD CONTINUING SERVICES WHILE I WAS THERE.

18 AND I WILL SAY TO YOU, I WAS ONLY THERE A
19 SHORT PERIOD OF TIME. I DON'T KNOW WHAT HAPPENED AFTER
20 THAT. SO THE STATE BENEFITED, THE SELLERS BENEFITED, THE
21 BANK BENEFITED, I BENEFITED. THE MEMBERS WOULD HAVE
22 BENEFITED CONTINUING SERVICES. WHETHER ALL THE MEMBERS
23 BENEFITED OR MR. NOVELLI'S BENEFITED, I DON'T KNOW.

24 Q THE MEMBERS HAD THE PARK SHUT DOWN; IS THAT
25 RIGHT?

26 A ACCORDING TO THE TESTIMONY, IT WAS SHUT DOWN

1 SOME MONTHS LATER, AND THEY WERE TRANSFERRED TO ANOTHER
2 FACILITY.

3 Q RIGHT. AND YOU CONSIDERED THIS LITTLE
4 EXERCISE TO BE A POSITIVE EXPERIENCE; IS THAT RIGHT?

5 A I DON'T RECALL COLORING IT IN ANY WAY AT
6 ALL. I DON'T REMEMBER MAKING -- TO ME IT'S NOT THE KIND OF
7 THING YOU COLOR. WE HAD A JOB TO DO. WE WANTED TO FIX
8 THIS IN A WAY THAT THE LEAST AMOUNT OF PEOPLE WERE HARMED
9 AND, IF POSSIBLE, MAKE EVERYONE WHOLE. YOU CAN'T ALWAYS
10 MAKE EVERYONE WHOLE, BUT WE DID THE BEST WE COULD.

11 Q YOU CONSIDERED IT TO BE A POSITIVE
12 EXPERIENCE; IS THAT RIGHT?

13 THE COURT: YOU'VE ASKED THAT.

14 THE WITNESS: IT WAS FOR ME.

15 MR. RIVIN: I'D LIKE TO SHOW --

16 A AND IT WAS FOR THE PEOPLE THAT I INDICATED
17 THAT BENEFITED. CERTAINLY FOR THEM IT WAS POSITIVE.

18 Q I JUST WANT -- YOU CONSIDERED IT TO BE A
19 POSITIVE EXPERIENCE?

20 A I DIDN'T HAVE ANY NEGATIVE EXPERIENCE IN IT,
21 YES, SIR.

22 Q WHEN YOU CONSIDER IT TO BE A POSITIVE
23 EXPERIENCE, IT HAS NOTHING TO DO WITH THE MEMBERS; IS THAT
24 CORRECT?

25 A THAT'S NOT CORRECT.

26 Q IT GOT WORKED OUT FOR THE LENDERS?

1 A WELL, IN ANSWER TO YOUR QUESTION, THAT IS
2 NOT CORRECT. I INTERFACED WITH THE COMMUNITY. WHEN I
3 LEFT, THE COMMUNITY WAS HAPPY. THE CHURCH WAS HAPPY. THE
4 COMMUNITY LEADERS WERE HAPPY. THOSE PEOPLE REPRESENTING
5 THE MEMBER BASE WERE HAPPY. WHEN I LEFT, EVERYONE WAS
6 HAPPY.

7 AND IF YOU ASK ME, WHEN I LEFT, DID I
8 CONSIDER IT A POSITIVE EXPERIENCE, AND THE ANSWER TO THAT
9 IS YES. IT IS NOT A POSITIVE EXPERIENCE IF JUST THE
10 LENDERS GET THEIR MONIES OR JUST THE STATE OR JUST THE
11 ATTORNEYS GET THEIR MONEY. ONE WOULD HAVE TO TRY TO HOPE
12 THAT EVERYONE WINS.

13 Q LET'S TALK ABOUT BANKRUPTCIES A BIT. WE
14 TALKED EARLIER ABOUT A NUMBER OF BANKRUPTCIES. WE TALKED
15 ABOUT BANKRUPTCIES OF THE THOUSAND ADVENTURES PARK.

16 DO YOU RECALL THAT, A NUMBER OF BANKRUPTCIES
17 WITH THE THOUSAND ADVENTURE PARKS?

18 A YOU -- YES, WE HAD DIALOGUE, WORDS TO THAT.

19 Q YOU TALKED WITH MR. SHAW ABOUT THAT, AND YOU
20 WENT THROUGH A TIME LINE ON THE CHART THERE; RIGHT?

21 A OH, RIGHT, YEAH. THERE WAS -- MR. -- YOU OR
22 SOMEONE HAD AN ARTICULATION OF BANKRUPTCY ON THE BACK -- UP
23 ON THE BLACKBOARD. MR. SHERMAN HAD, YEAH. AND WE TALKED
24 ABOUT IT, CORRECT.

25 Q YOU BELIEVE, DO YOU NOT, THAT EVERYONE OF
26 MR. NOVELLI'S COMPANIES -- THEY ARE OR HAVE BEEN IN

1 BANKRUPTCY?

2 A DID YOU SAY DO I BELIEVE THAT?

3 Q YES.

4 A I DON'T KNOW. I HAVE NO BELIEF OF THAT.
5 THEY MAY HAVE BEEN. THEY MAY NOT HAVE BEEN. I DON'T HAVE
6 ANY, YOU KNOW, ABSOLUTE KNOWLEDGE OF IT.

7 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS HIS
8 DEPOSITION TESTIMONY, PAGE 62, LINE 5 THROUGH 9.

9 THE COURT: WHAT VOLUME?

10 MR. RIVIN: VOLUME I.

11 MR. SHAW: WHICH LINES AGAIN?

12 MR. RIVIN: LINES 5 THROUGH 9.

13 THE COURT: WHAT PAGE?

14 MR. RIVIN: PAGE 62, YOUR HONOR.

15 MR. SHAW: YOUR HONOR, MAY I MAKE A COMMENT?

16 I BELIEVE IF IT'S ONLY READ 5 THROUGH 9, IT
17 WILL BE MISLEADING. IT WILL LEAVE THE WRONG IMPRESSION TO
18 THE JURY JUST TO READ THAT PARAGRAPH. IF THE COURT WOULD
19 ALLOW MR. RIVIN TO READ 10, LINES 10 THROUGH 20, THAT WOULD
20 COMPLETE THE SERIES OF QUESTIONS AND ANSWERS, AND IT WOULD
21 ALLOW THEN THE JURY TO KNOW THE WHOLE RESPONSE.

22 THE COURT: LINES 5 THROUGH 20.

23 MR. RIVIN: THAT'S FINE.

24 "QUESTION: HOW MANY
25 BANKRUPTCIES ARE YOU AWARE OF
26 INVOLVING MR. NOVELLI'S

1 COMPANIES?

2 "ANSWER: NONSPECIFICALLY.

3 BUT IN A GENERAL SENSE I'M
4 CONFIDENT THAT EVERY ONE OF
5 THEM IS IN BANKRUPTCY OR HAS
6 BEEN OR A LOT OF THEM.

7 "I KNOW THAT ALL SEASONS
8 WAS IN BANKRUPTCY. I KNOW
9 THAT FIRST NATIONWIDE, WHICH
10 I THINK IS A MANAGEMENT
11 COMPANY -- I DON'T KNOW IF IT
12 HOLDS ANY COMPANIES -- WAS OR
13 IS IN BANKRUPTCY. I KNOW
14 THAT THERE ARE NUMEROUS
15 COMPANIES THAT HE BOUGHT OR
16 ATTEMPTED TO BUY THAT WERE
17 INVOLVED IN BANKRUPTCY.

18 "QUESTION: DO YOU KNOW
19 HOW MANY COMPANIES
20 MR. NOVELLI OWNED THAT WERE
21 PLACED INTO BANKRUPTCY DURING
22 THE PERIOD OF HIS OWNERSHIP?

23 "ANSWER: NOT
24 SPECIFICALLY, NO."

25 LET'S -- I'D LIKE TO PUT --

26 A IS THAT WHAT I JUST ANSWERED YOU? IS THAT A

1 QUESTION?

2 THE COURT: THERE'S NO QUESTION PENDING.

3 THE WITNESS: OH, OKAY. EXCUSE ME.

4 BY MR. RIVIN: Q I'D LIKE TO PUT EXHIBIT 901 BACK
5 UP ON THE SCREEN, IF I COULD.

6 MR. SHAW: YOUR HONOR, IF THIS IS THE EXHIBIT I
7 KNOW WE TALKED ABOUT IT IN CHAMBERS, I STILL HAVE AN
8 OBJECTION TO THE FOUNDATION. I KNOW THEY'RE SHOWING IT,
9 BUT AS FAR AS ADMITTING IT INTO EVIDENCE, THERE'S NO
10 FOUNDATION AND ASSUMES FACTS NOT IN EVIDENCE.

11 MR. RIVIN: I'M NOT OFFERING IT TO BE ADMITTED AT
12 THIS TIME.

13 THE COURT: ALL RIGHT.

14 BY MR. RIVIN: Q THIS IS THE COLOR CHART WE SAW
15 YESTERDAY. AND I WENT -- EXCUSE ME -- THURSDAY, AND I WENT
16 THROUGH SOME OF THIS WITH YOU. BUT I WANTED TO MAKE SURE
17 THAT WE'RE CLEAR.

18 THE BANKRUPTCIES, THERE'S -- ON THE BOTTOM,
19 THERE'S THOUSAND ADVENTURES OF ALABAMA, THOUSAND ADVENTURES
20 OF OHIO. THOSE ARE TWO OF THE PLAINTIFFS IN THIS CASE; IS
21 THAT RIGHT?

22 A THEY'RE PLAINTIFFS, YES.

23 Q RIGHT. THEY'RE PLAINTIFFS.

24 THERE'S PONDEROSA PARK. THAT'S APRIL 1997.
25 THAT'S A PLAINTIFF IN THE CASE; IS THAT RIGHT?

26 A YES. I BELIEVE THAT'S CORRECT, YES.

1 Q AND THAT'S A NOVELLI COMPANY; RIGHT?

2 A YEAH. THE OTHER TWO BANKRUPTCIES OF COURSE
3 WEREN'T MR. NOVELLI'S. THEY WERE MR. VOPNFORD'S, YES.

4 Q WE'LL TALK ABOUT THAT A LITTLE BIT LATER.

5 A OKAY.

6 Q PONDEROSA PARK WAS A NOVELLI COMPANY?

7 A YES, I BELIEVE THAT'S CORRECT, SIR.

8 Q AS FAR AS YOU KNOW, IT WAS ALWAYS A NOVELLI
9 COMPANY NOT A VOPNFORD COMPANY?

10 A I DON'T BELIEVE IT WAS EVER A VOPNFORD
11 COMPANY.

12 Q ALL RIGHT. LET'S GO UP TO THE TOP ABOVE THE
13 LINE.

14 ALL SEASONS RESORTS BANKRUPTCY. THAT'S A
15 NOVELLI COMPANY; RIGHT?

16 A YEAH, THAT WAS THE ORIGINAL COMPANY THAT HE
17 GOT INVOLVED IN THE INDUSTRY, GOT \$50 MILLION IN DEBT, AND
18 IT HAS BEEN IN BANKRUPTCY I THINK SINCE ALMOST THAT HE
19 BOUGHT IT.

20 Q SO YOU KNOW IF IT HAD BEEN IN BANKRUPTCY
21 ALMOST SINCE HE BOUGHT IT?

22 A I THINK WITHIN A COUPLE OF YEARS. THAT WAS
23 A TOUGH WORKOUT.

24 Q HOW MANY TIMES DID MR. NOVELLI PUT ALL
25 SEASONS INTO BANKRUPTCY?

26 A BOY, I'M NOT AN EXPERT OF TIME ON THIS. I'M

1 GOING TO GIVE YOU MY GENERAL BEST RECOLLECTION, KNOWLEDGE.
2 I THINK TWO OR THREE TIMES. ALL OF THAT FLOWED FROM THE
3 ORIGINAL ACQUISITION, WHICH HAD A LOT OF DEBT.

4 Q WHEN WAS THE ORIGINAL ACQUISITION?

5 A DON'T FEET MY FEET IN CEMENT ON, THIS BUT
6 I'M GOING TO SAY SOMETIME IN '85, 1985.

7 Q SO YOU'RE SAYING THAT WHEN MR. NOVELLI PUT
8 ALL SEASONS INTO BANKRUPTCY IN 1997, THAT WAS AS A RESULT
9 OF A BAD DEAL HE MADE IN 1985?

10 A OH, I DON'T THINK --

11 Q TWELVE YEARS EARLIER?

12 A I DON'T THINK HE MADE A BAD DEAL IN 1985.

13 Q BUT IT WAS ALL BECAUSE OF THAT; IS THAT YOUR
14 TESTIMONY?

15 A WELL, FRUIT OF THE POISON TREE. THIS THING
16 FLOWED FROM THE ORIGINAL COMPLICATIONS. I THINK
17 DOCUMENTATION WOULD SHOW THAT. NOT UNLIKE CONTINENTAL
18 AIRLINES OR TWA BEING IN BANKRUPTCY TWO OR THREE TIMES IN
19 ITS 10-YEAR PERIOD.

20 Q YOU THINK THAT -- LET'S MOVE ON.

21 LET'S LOOK AT EXHIBIT 901 AGAIN. REVCON,
22 SEPTEMBER OF 1996, REVCON BANKRUPTCY, THAT'S A NOVELLI
23 COMPANY, RIGHT?

24 A I BELIEVE THAT'S A COMPANY THAT MANUFACTURES
25 R.V. HOMES, YES.

26 Q IS THAT A NOVELLI COMPANY?

1 A OH, YES. I BELIEVE SO, YES.

2 Q IT IS A PLAINTIFF IN THIS CASE?

3 A LISTED AS A PLAINTIFF, YES.

4 Q DELTA ISLE, 1996, IS THAT A NOVELLI COMPANY?

5 A TO THE BEST OF MY KNOWLEDGE, YES.

6 Q HOW ABOUT ADVENTURE RESORTS OF AMERICA,

7 A.R.A., ANOTHER NOVELLI COMPANY?

8 A I BELIEVE THAT'S CORRECT, YES.

9 Q ANOTHER PLAINTIFF IN THIS CASE?

10 A I BELIEVE, CORRECT, YES.

11 Q LET'S GO UP TO THE TOP LEFT, BANKRUPTCY

12 5/96. FIRST NATIONWIDE, THAT'S ANOTHER NOVELLI COMPANY; IS

13 THAT RIGHT?

14 A THAT'S CORRECT.

15 Q MR. MITCHELL, ISN'T IT TRUE THAT YOU'VE TOLD

16 PEOPLE THAT IF MR. NOVELLI DIDN'T BUY A PARK IN BANKRUPTCY,

17 IT WOULD BE IN BANKRUPTCY SHORTLY AFTERWARDS?

18 A I DON'T THINK I SAID "PARK." IN

19 CONVERSATIONS AT COAST TO COAST CONVENTIONS, I MADE THE

20 COMEDIC REMARK, "IF NOVELLI WAS AN EXPERT IN BANKRUPTCY,

21 AND IF IT WASN'T IN BANKRUPTCY, IT COULD GET THERE," YES.

22 Q DID YOU TELL PEOPLE THAT IF MR. NOVELLI DID

23 NOT BUY A PARK IN BANKRUPTCY, IT WOULD BE IN BANKRUPTCY

24 SHORTLY AFTERWARDS?

25 A I DON'T KNOW IF I LIMITED IT TO "PARK," AND

26 I DON'T KNOW IF I USED THE WORD "PARK." BUT I CERTAINLY --

1 THAT WAS IMPLIED BECAUSE I MEANT BUSINESS, WHETHER IT WAS A
2 PARK OR WHAT IT WAS.

3 Q LET'S TAKE A LOOK AT YOUR DEPOSITION
4 TESTIMONY AND SEE EXACTLY WHAT YOU DID SAY.

5 A OKAY.

6 Q PAGE 152, LINES 9 THROUGH 13.

7 A I PROBABLY WANT TO USE THE WORD "RESORT." I
8 DON'T KNOW IF I USED THE WORD "PARK." BUT I HAVE NO
9 PROBLEM WITH AGREEING TO THE STATEMENT.

10 MR. RIVIN: MR. SHAW?

11 MR. SHAW: WHAT LINES, COUNSEL?

12 MR. RIVIN: 9 THROUGH 13. BUT I WILL GO THROUGH
13 15, IF THAT'S WHAT YOU'D LIKE.

14 MR. SHAW: COUNSEL, I DO THINK WE NEED TO FINISH --

15 MR. RIVIN: WE'LL DO THAT.

16 MR. SHAW: -- THE ANSWER.

17 MR. RIVIN: THAT'S FINE.

18 MR. SHAW: AND I WOULD LIKE TO REQUEST THAT THE
19 QUESTIONING GO THROUGH LINE 18, JUST TO BE COMPLETE, 9
20 THROUGH 18.

21 MR. RIVIN: SURE. THAT'S FINE.

22 THE COURT: I SUGGEST YOU GO THROUGH LINE 1 ON
23 PAGE 153.

24 MR. RIVIN: I AGREE. THAT'S FINE.

25 "QUESTION: HAVE YOU

26 EVER -- THIS IS MY QUESTION

1 TO YOU, MR. MITCHELL: HAVE
2 YOU EVER SAID ANYTHING
3 NEGATIVE TO ANYONE ABOUT
4 MR. NOVELLI?

5 "ANSWER: I ONCE SAID THAT
6 IF MR. NOVELLI DIDN'T BUY IT
7 IN BANKRUPTCY, IT WOULD BE IN
8 BANKRUPTCY SHORTLY
9 THEREAFTER. NOW, I DIDN'T
10 CONSIDER IT NEGATIVE, BUT
11 OTHER PEOPLE AT THE TIME I
12 SAID IT THOUGHT I WAS
13 SPEAKING NEGATIVELY.

14 "QUESTION: HAVE YOU MADE
15 ANY OTHER NEGATIVE COMMENTS
16 ABOUT MR. NOVELLI?

17 "ANSWER: I DON'T KNOW THE
18 MAN. NO.

19 "QUESTION: MY QUESTION
20 IS: BESIDES THE ONE NEGATIVE
21 COMMENT YOU JUST MADE --

22 "ANSWER: I MAY HAVE MADE
23 THAT COMMENT MORE THAN ONCE.

24 "QUESTION: I SEE. I
25 SEE.

26 "ANSWER: I LIKED IT. SO

1 IT WAS KIND OF STANDARD WHEN
2 WE WOULD HAVE DIALOGUE
3 REGARDING THE ALL SEASONS
4 OPERATION."

5 THE WITNESS: SO IN ANSWER --

6 THE COURT: THERE'S NO QUESTION.

7 BY MR. RIVIN: Q THERE WAS NO QUESTION PENDING.

8 A I DIDN'T USE THE WORD "PARK."

9 Q MR. MITCHELL, YOU HAVE A -- SOMETHING YOU
10 CALL A CONSUMER SENSITIVITY INDEX; IS THAT RIGHT?

11 A I'M HIGHLY SENSITIVE TO CONSUMERS, YES.

12 CORRECT.

13 Q DO YOU HAVE -- YOU TALKED IN YOUR DEPOSITION
14 ABOUT A CONSUMER SENSITIVITY INDEX THAT YOU HAVE; IS THAT
15 RIGHT? DO YOU REMEMBER THAT?

16 A YES, SIR.

17 Q IS THERE SOME NUMBER OF BANKRUPTCIES OF A
18 COMPANY THAT WOULD VIOLATE YOUR CONSUMER SENSITIVITY INDEX?

19 A NO, UNLESS THEY WERE 7'S. IF THEY'RE
20 CLOSING THE PLACE OUT, I WOULD BE HIGHLY SENSITIVE.

21 Q IN OTHER WORDS, IF THEY'RE SHUTTING DOWN
22 PARKS?

23 A YEAH. IF THEY'RE ATTEMPTING TO REORGANIZE
24 IN THEIR -- YOU KNOW, IF THEY'RE DOING BANKRUPTCY WRONG,
25 THE COURT IS NOT GOING TO LET THEM DO IT. THERE'S LAWS
26 AGAINST IT. YOU CAN'T JUST GO AND USE BANKRUPTCY FOR YOUR

1 OWN PURPOSES. IT'S CONTROLLED BY THE COURT, APPROPRIATELY
2 SO. BUT I WOULD BE SENSITIVE IF THEY WERE 7'S, YES.

3 Q HOW ABOUT IF IT'S A CHAPTER 11 BANKRUPTCY,
4 BUT THE DEBTOR DOESN'T REALLY HAVE THE ABILITY TO
5 REORGANIZE?

6 A WELL, I'D HAVE TO GET MORE FACTS AND LOOK AT
7 THE CASE. BUT I THINK THE COURT -- IF THEY DON'T HAVE THE
8 ABILITY TO REORGANIZE, THE COURT THEN MAKES AN ACTION ON
9 THAT. IF THEY'RE NOT COMPETENT, IF IT'S A FRIVOLOUS
10 OFFERING, THE COURT WILL EITHER NOT ALLOW THEM TO DO IT, OR
11 THEY WILL IN SOME FASHION ALONG THE WAY SANCTION THEM, I
12 BELIEVE.

13 YOU'RE AN ATTORNEY. I'M NOT. YOU CAN SPEAK
14 TO THAT BETTER THAN I.

15 Q MR. MITCHELL, I'M GOING TO ASK YOU SOME
16 QUESTIONS ABOUT THE OPINIONS YOU GAVE ON TURNAROUND.
17 TURNAROUND, WORKOUTS IN THE CAMPGROUND INDUSTRY.

18 A YES, SIR.

19 Q IN A TURNAROUND SITUATION, TO USE YOUR
20 WORDS, YOUR JOB WOULD BE TO GO INTO THE PARK, LOOK AT THE
21 SITUATION, AND FIX IT; TAKE SOMETHING THAT WASN'T HEALTHY
22 AND MAKE IT HEALTHY; IS THAT YOUR BELIEF?

23 A THAT WAS MY JOB WHEN I DID THAT, THAT'S
24 CORRECT, SIR.

25 Q OKAY. THAT'S WHAT YOU WOULD DO IN A
26 TURNAROUND SITUATION?

1 A THAT'S WHAT I WOULD HOPE TO DO. I WASN'T
2 ALWAYS SUCCESSFUL, BUT I WAS CERTAINLY -- THAT'S WHAT I
3 OUGHT TO BE DOING.

4 Q AND IN TURNAROUND SITUATIONS, DIFFERENT
5 PROBLEMS WOULD NEED TO BE ADDRESSED; IS THAT RIGHT?

6 A EVERY SITUATION IS UNIQUE, YES, SIR.

7 Q THERE COULD BE SMALL PROBLEMS THAT REQUIRED
8 TURNAROUND; IS THAT RIGHT?

9 A YES, SIR.

10 Q AND THERE COULD BE LARGE PROBLEMS THAT
11 REQUIRED TURNAROUND?

12 A YES, SIR.

13 Q AND BASICALLY THERE'S A RISING LEVEL OF
14 SERIOUSNESS TO THE PROBLEMS; IS THAT RIGHT? FROM THE SMALL
15 ONES TO THE BIG ONES?

16 A I'M NOT CERTAIN I UNDERSTAND THAT OFFERING.
17 A LITTLE ONE COULD BE A BIG PROBLEM, AND A BIG ONE COULD BE
18 NOT SO BIG A PROBLEM. I MEAN BIG, LITTLE. I'M NOT
19 QUITE -- I DON'T UNDERSTAND YOUR QUESTION.

20 Q LET'S TALK ABOUT IN TERMS OF GRAVITY.

21 ON THURSDAY YOU USED THE TERM -- WEDNESDAY
22 OR THURSDAY YOU USED THE TERM "GRAVITY"?

23 A YES, SIR.

24 Q YOU TALKED ABOUT SOMETHING RISING TO A
25 LEVEL, A CERTAIN LEVEL OF GRAVITY; DO YOU REMEMBER THAT?

26 A I -- CERTAINLY SOMETHING THAT I WOULD SAY.

1 IT SOUNDS FAMILIAR TO ME, YES, SIR.

2 Q ONCE THE LEVEL OF GRAVITY RISES TO A CERTAIN
3 LEVEL AND IT BECOMES -- IT CREATES SERIOUS PROBLEMS; IS
4 THAT RIGHT?

5 A GIRTH, YES, SIZE, DEFINITELY.

6 Q AND THAT INCLUDES LAWSUITS?

7 A PARDON?

8 Q THAT INCLUDES LAWSUITS?

9 A IT MAY.

10 Q AND TAX LIENS?

11 A IT MAY.

12 Q AND BANKRUPTCIES?

13 A IT MAY. ALL OF THOSE THINGS AND OTHERS
14 COULD BE INCLUDED.

15 Q AND TO USE YOUR PHRASE AND THE DEFINITIONS,
16 THESE ARE THE BIG TYPE OF PROBLEMS; IS THAT RIGHT? AS
17 OPPOSED TO THE LITTLE ONES?

18 A YOU BET. THEY'RE MORE TAXING THAN, LET'S
19 SAY, IF THE TOILET WASN'T CLEANED.

20 Q AND THOSE ARE THE PROBLEMS THAT REQUIRE
21 INTERVENTION; IS THAT RIGHT?

22 A WELL --

23 Q THEY NEED INTERVENTION?

24 A THEY MAY. THE OPERATORS MAY BE FULLY
25 CAPABLE OF HANDLING IT ON THEIR OWN. AND I'VE SEEN
26 OPERATORS THAT PROBABLY DO THAT TURNAROUND BUSINESS BETTER

1 THAN I CAN.

2 Q BUT THESE ARE THE TYPES OF PROBLEMS THAT
3 CAUSE PARKS TO FAIL?

4 A THESE ARE -- CORRECT. THESE WERE WHERE I
5 WOULD BE INVITED IN MANY CASES, CORRECT, SIR.

6 Q WE TALKED ABOUT THE NOVELLI PARK
7 BANKRUPTCIES, THE NOVELLI COMPANY BANKRUPTCIES, AND AS FAR
8 AS YOU KNOW, THE REASON FOR ALL THESE BANKRUPTCIES IS THAT
9 THE COMPANIES WERE IN FINANCIAL DIFFICULTY; THEY NEEDED THE
10 PROTECTION OF THE BANKRUPTCY COURT; IS THAT RIGHT?

11 MR. SHAW: I'LL OBJECT, YOUR HONOR. LACKS
12 FOUNDATION.

13 THE COURT: SUSTAINED.

14 BY MR. RIVIN: Q I'D LIKE TO SHOW THE WITNESS --
15 I'D LIKE TO PUT UP THE WITNESS'S TESTIMONY FROM HIS
16 DEPOSITION, PAGE 63, LINES 12 THROUGH 21.

17 MR. SHAW: YOUR HONOR, MAY I?

18 YOUR HONOR, OBJECTIONS ARE PRESERVED FOR THE
19 TIME OF TRIAL. I BELIEVE MR. MOSHENKO'S OBJECTION HERE OF
20 BEING UNCERTAIN AND OVERBROAD AND WHICH COMPANIES -- AND I
21 ALSO BELIEVE IT LACKS FOUNDATION.

22 MR. RIVIN: YOUR HONOR, THIS WITNESS HAS TESTIFIED
23 AS TO HIS KNOWLEDGE ABOUT THE INDUSTRY, HIS KNOWLEDGE ABOUT
24 MR. NOVELLI'S COMPANIES, ABOUT THE PLAINTIFFS IN THIS CASE,
25 ABOUT DAMAGES.

26 THE COURT: I'LL ALLOW IT, COUNSEL. PROCEED.

1 MR. RIVIN: THANK YOU.

2 "QUESTION: DO YOU HAVE
3 AN UNDERSTANDING OF WHY
4 MR. NOVELLI PLACED THESE
5 COMPANIES INTO BANKRUPTCY?

6 "THE WITNESS: WELL IT
7 WOULD BE MY BELIEF THAT HE
8 WAS IN FINANCIAL
9 DIFFICULTY -- OR THE
10 COMPANIES WERE, NOT HE. THE
11 COMPANIES WERE IN FINANCIAL
12 DIFFICULTY, AND THEY NEEDED
13 THE PROTECTION OF
14 BANKRUPTCY."

15 MR. SHAW: YOUR HONOR. I'M SORRY. COUNSEL AGAIN
16 HAS CUT-OFF THE ANSWER, HASN'T LET THE ENTIRE ANSWER BE
17 COMPLETED. I'D LIKE TO ASK THAT 22 THROUGH 24 ALSO BE
18 PLAYED SO IT WOULD BE A COMPLETE ANSWER.

19 THE COURT: GRANTED. PROCEED.

20 MR. RIVIN: BANKRUPTCY IS A TOOL OF BUSINESS.

21 PROBABLY THE SAME REASONS
22 THAT LEE IACOCA COULD PUT
23 CHRYSLER INTO BANKRUPTCY."

24 Q WAS CHRYSLER IN BANKRUPTCY?

25 A YES.

26 Q HOW MANY TIMES?

1 A I DON'T KNOW.

2 Q WHEN A COMPANY IS IN BANKRUPTCY,
3 MR. MITCHELL, THERE'S NO MONEY FOR THE RESORTS BECAUSE ALL
4 THE MONEY GOES TO THE TRUSTEE; IS THAT RIGHT?

5 A WELL, THE REVENUE IS SUPPOSED TO GO THROUGH
6 THE COURT MANAGED BY THE TRUSTEE. AND IF THE TRUSTEE IS
7 DOING HIS JOB PROPERLY, INSTEAD OF FILLING HIS OWN POCKETS,
8 YEAH, HE OUGHT TO BE TAKING THE MONEY TO OPERATE THE
9 RESORTS.

10 BUT THE TRUSTEE HAS THE AUTHORITY TO SPEND
11 THE MONEY WHERE HE WANTS. THAT'S MY UNDERSTANDING. AGAIN,
12 I'M NOT AN EXPERT ON THIS. I'M NOT BROUGHT HERE AS AN
13 EXPERT ON THE FIELD.

14 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS DEPOSITION
15 TESTIMONY FROM PAGE 370 -- 373.

16 THE COURT: WHAT VOLUME IS THAT?

17 MR. RIVIN: IT IS VOLUME II, YOUR HONOR.

18 THE COURT: PAGE -- WHAT WAS THAT?

19 MR. RIVIN: 373, LINE 20 THROUGH 374, LINE 16.

20 MR. SHAW: YOUR HONOR, AGAIN, OBJECTION. I THINK
21 PAGE 373 -- I INVITE THE COURT'S ATTENTION TO LINES 23 AND
22 24. I THINK SPECIFICALLY SAY -- THERE'S NO FOUNDATION.
23 PAGE 373 BEGINNING AT -- WELL, LINE 22 THROUGH 24.

24 THE COURT: I SEE WHERE YOU'RE REFERRING TO.

25 MR. SHAW: AND THEN ON PAGE 374, LINES 6 AND 7, I
26 BELIEVE MR. MOSHENKO'S OBJECTION IS CORRECT. IT'S NOT

1 CERTAIN AS TO TIME, WHICH RESORTS, FOUNDATION. AND
2 EVIDENCE CODE SECTION 352 AS TO LINES 13 THROUGH 16. I
3 DON'T BELIEVE THERE'S ANY PROBATIVE -- PROBATIVE VALUE. I
4 GUESS 8 THROUGH 16 THERE'S NO PROBATIVE VALUE AND COULD BE
5 UNDULY PREJUDICIAL.

6 THANK YOU, YOUR HONOR.

7 MR. RIVIN: THE WITNESS WAS TESTIFYING, YOUR HONOR,
8 BASED UPON HIS EXPERIENCE AND HIS OBSERVATIONS. AND THAT'S
9 WHAT HE SAID.

10 THE COURT: I'M GOING TO SUSTAIN THIS OBJECTION.

11 BY MR. RIVIN: Q LET ME ASK YOU SOME QUESTIONS
12 ABOUT ANOTHER ONE OF THE PLAINTIFFS IN THIS CASE,
13 HANS SCHULZ OR HIS TRUST.

14 ARE YOU AWARE THAT HE IS ONE OF THE
15 PLAINTIFFS OR THAT HIS TRUST IS ONE OF THE PLAINTIFFS IN
16 THIS CASE?

17 A YES, SIR.

18 Q YOU'RE FAMILIAR WITH THE RESORT DEVELOPERS
19 IN THE MEMBERSHIP CAMPGROUND INDUSTRY CERTAINLY OVER THE
20 '90'S; RIGHT?

21 A REASONABLY. I DON'T KNOW THEM ALL, BUT MOST
22 OF THE OLD GUYS LIKE ME I KNOW.

23 Q BUT YOU KNOW EVERY MAJOR RESORT DEVELOPER
24 OVER THE PAST 10 YEARS?

25 A PROBABLY I'VE MET THEM AND KNOW THEM, YEAH.

26 Q AND YOU'RE FAMILIAR WITH ALMOST ALL OF THE

1 MINOR PLAYERS AS WELL; IS THAT RIGHT?

2 A MOST OF THEM. CERTAINLY NOT ALL, BUT MOST,
3 YES.

4 Q YOU'VE NEVER HEARD OF HANS SCHULZ BEING A
5 RESORT DEVELOPER; IS THAT RIGHT?

6 A NO. I BELIEVE HE IS AN OWNER, NOT -- WE'RE
7 GETTING THE TERM OF DEVELOPER, OPERATOR, OWNER, AND I THINK
8 WE NEED TO BE A LITTLE BIT CAREFUL, BECAUSE THEY'RE NOT ALL
9 THE SAME ANIMAL.

10 Q ISN'T IT TRUE, AS FAR AS YOU KNOW,
11 MR. SCHULZ IS A COMPUTER -- IS A COMPUTER GUY WHO WORKS FOR
12 THE NOVELLI ORGANIZATION?

13 A THE ONLY EXPERIENCE I'VE EVER HAD WITH
14 MR. SCHULZ WAS WITH REGARD TO HIS COMPUTER EXPERTISE. THAT
15 DOESN'T MEAN HE DOESN'T DO OTHER THINGS THAT I DON'T KNOW
16 ABOUT, THAT'S CORRECT.

17 Q LET ME ASK YOU SOME QUESTIONS ABOUT
18 MR. NOVELLI'S REPUTATION IN THE INDUSTRY.

19 WE'VE TALKED ABOUT MR. VOPNFORD'S
20 REPUTATION. YOU'VE TESTIFIED A BIT ABOUT THAT AND ABOUT
21 ALL THE THINGS THAT HE HAD DONE. BUT I WANT TO ASK YOU
22 ABOUT THE REPUTATION OF MR. NOVELLI AND HIS COMPANIES.

23 HIS REPUTATION IS CHECKERED, IS IT NOT?

24 MR. SHAW: JUST OBJECT AS VAGUE AND AMBIGUOUS, YOUR
25 HONOR.

26 THE COURT: SUSTAINED.

1 BY MR. RIVIN: Q I'D LIKE TO SHOW THE WITNESS HIS
2 TESTIMONY, LINES -- PAGE 146, LINE 3 THROUGH 10. THAT'S
3 VOLUME I.

4 MR. SHAW: YOUR HONOR, I'LL OBJECT TO THIS LINE OF
5 QUESTIONING AS BEING -- BASED ON HEARSAY. IT IS ALSO 352,
6 I BELIEVE, AND FINALLY IRRELEVANT. AND I DON'T WANT TO
7 MAKE A SPEECH IN FRONT OF THE JURY.

8 MR. RIVIN: YOUR HONOR, MAY WE APPROACH?

9 THE COURT: YOU MAY.

10 (DISCUSSION OFF THE RECORD.)

11 THE COURT: YOU'VE BEEN SO GOOD, I THINK WE'LL GIVE
12 YOU 20 MINUTES.

13 (RECESS TAKEN.)

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN
15 CHAMBERS:)

16 THE COURT: GOOD MORNING.

17 JUROR 13: GOOD MORNING. THANK YOU FOR SEEING ME.

18 THE COURT: WHAT HAVE YOU GOT TODAY?

19 JUROR 13: I JUST HAD A REQUEST. I HAVE AN
20 APPOINTMENT TOMORROW AT 4:00. IS IT POSSIBLE, COULD I LIKE
21 GO HOME AT 3:30 TOMORROW?

22 THE COURT: ANY PROBLEM WITH THAT, ANYBODY?

23 MR. SHAW: NOT A PROBLEM.

24 MR. SHERMAN: NO. I ASSUME WE'LL BE JUST ENDING
25 THE DAY'S PROCEDURE.

26 THE COURT: OKAY. WE'LL BREAK AT 3:30 TOMORROW.

1 JUROR 13: GREAT. THANK YOU. I APPRECIATE IT.

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

4 MR. SHAW: YOUR HONOR, IT HAS TO DO WITH WHAT
5 MR. RIVIN AND I WERE TALKING ABOUT AT SIDEBAR BEFORE WE
6 BROKE ON THIS DEFAMATION CAUSE OF ACTION AND THE ISSUE OF
7 REPUTATION.

8 TERRY, DO YOU WANT TO TAKE IT FROM HERE?

9 MR. MOSHENKO: YOUR HONOR, I ATTENDED THE
10 DEPOSITION OF MR. MITCHELL, AND THEY PROPERLY EXPLORED HIS
11 VIEWS ABOUT, OR KNOWLEDGE ABOUT MR. NOVELLI AND HIS
12 BACKGROUND, AND YOU HEARD THE WORD "CHECKERED," MAYBE EVEN
13 READ IT.

14 THE COURT: YEAH.

15 MR. MOSHENKO: BASICALLY MITCHELL SAYS SOME GOOD,
16 SOME BAD. BUT THEN THEY GO ON AND ASK HIM WHAT HE THINKS
17 OTHER PEOPLE THINK. AND THERE'S SOME SPECIFIC LANGUAGE
18 WHERE HE SAYS HE THINKS SOME PEOPLE WOULD THINK THAT RAY IS
19 A CROOK. AND MY VIEW OF THIS IS, THE COURT HAS ORDERED
20 THAT NOBODY CAN SAY HE IS A CONVICTED CRIMINAL. YET, NOW I
21 THINK THAT WHERE WE'RE GOING IS WE'RE GOING TO HAVE THE
22 COURT BE ASKED TO ALLOW THEM TO READ TESTIMONY THAT SAYS HE
23 IS A CROOK.

24 MR. SHERMAN: NO.

25 MR. MOSHENKO: AND THERE'S NO SUBSTANTIAL
26 DIFFERENCE BETWEEN A CONVICTED CRIMINAL AND A CROOK, IN THE

1 EYES OF A JURY. AND I THINK IT BASICALLY VIOLATES THE
2 THRUST OF THE COURT'S PRIOR RULING. OR IT PUTS THE
3 PLAINTIFF IN THE UNTENABLE POSITION WHERE WE HAVE TO SIT
4 AND LISTEN TO THAT KIND OF TESTIMONY, AND THEN WE CAN'T
5 RESPOND TO IT BECAUSE AS SOON AS WE SAY, WELL, HE IS NOT A
6 CROOK, THEN THEY'RE GOING --

7 THE COURT: IT OPENS THE DOOR.

8 MR. SHERMAN: YOUR HONOR, WE WERE NOT PLANNING ON
9 USING IT.

10 THE COURT: YOU'RE NOT PLANNING ON USING IT.

11 MR. SHERMAN: THIS IS OUR POSITION: IT'S VERY
12 RELEVANT TO MANY OF THE ISSUES IN THIS CASE; HOWEVER, WE
13 ARE MOST SENSITIVE AND RESPECTFUL OF YOUR HONOR'S DECISION
14 WITH RESPECT TO THE TENTATIVE -- WELL, THE RULING WITH
15 RESPECT TO THE DOOR OPENING. LET ME JUST CALL IT THAT.

16 WE WOULD LIKE TO RESERVE THE RIGHT TO BRING
17 MR. MITCHELL BACK, IF AS AND WHEN THE DOOR IS OPENED. BUT
18 YOU KNOW WHAT, WE ARE NOT GOING TO BE THE ONES IN THIS
19 TRIAL OPENING THE DOOR.

20 THE COURT: ALL RIGHT. WE'VE ALREADY TALKED ABOUT
21 THAT.

22 MR. SHERMAN: THAT'S RIGHT.

23 THE COURT: YOU'RE NOT GOING TO USE THIS TESTIMONY.

24 MR. SHERMAN: AT PRESENT WE'RE NOT GOING TO USE IT.

25 THE COURT: FINE.

26 MR. SHERMAN: WE RESERVE THE RIGHT, AND WE'D LIKE

1 EVERYONE TO UNDERSTAND WE RESERVE THE RIGHT TO BRING
2 MR. MITCHELL BACK FOR THAT ISSUE.

3 THE COURT: YOU HAVE AN ABSOLUTE RIGHT FOR
4 IMPEACHMENT PURPOSES.

5 MR. SHERMAN: ONE OTHER HOUSEKEEPING DETAIL, YOUR
6 HONOR. THERE ARE MANY WITNESSES IN THE COURTROOM TODAY,
7 PLAINTIFFS' WITNESSES. WE HAVE NO PROBLEM WITH THAT.

8 THE COURT: OKAY.

9 MR. SHERMAN: AND THEY HAVE NO PROBLEM WITH OUR
10 WITNESSES BEING IN THE COURTROOM. SO IT GOES BOTH WAYS.
11 IT'S A TWO-WAY STREET.

12 THE COURT: I HAVEN'T HEARD A MOTION TO EXCLUDE
13 WITNESSES.

14 MR. SHAW: NO.

15 MR. SHERMAN: AND I GUESS THERE WILL NOT BE ANY IN
16 THIS CASE. NO, NONE.

17 THE COURT: OKAY.

18 MR. MOSHENKO: WHILE YOU HAVE THE TIME, I'D STILL
19 LIKE TO GO OVER THE DOCUMENT THAT I GAVE YOU THIS MORNING,
20 THE ONE THAT TALKS ABOUT WHAT THE WITNESSES CAN BE TOLD AND
21 SHOULD BE TOLD.

22 MR. SHERMAN: CAN WE DO THAT TOMORROW MORNING?

23 THE COURT: SO WE CAN DO THAT TOMORROW.

24 MR. SHERMAN: SO WE CAN HAVE SOME TIME TO PREPARE
25 FOR WITNESSES THIS AFTERNOON.

26 THE COURT: YEAH. OKAY. LET'S HIT IT.

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

3 THE COURT: BEFORE WE RECONVENE, WE'RE GOING TO
4 RECESS THIS CASE TOMORROW AT 3:30. DON'T WORRY. YOU'LL
5 STILL GET PAID FOR THE FULL DAY.

6 JUROR 20: ALL \$5?

7 THE COURT: ALL \$5.

8 PROCEED, COUNSEL.

9 MR. RIVIN: THANK YOU, YOUR HONOR.

10 Q MR. MITCHELL, BEFORE WE MOVE INTO ANOTHER
11 AREA, I WANT TO CLEAR ONE THING UP.

12 I ASKED YOU THIS MORNING ABOUT WHETHER YOU
13 HAD BEEN -- EVER BEEN PAID BY MR. NOVELLI OR ANY OF HIS
14 COMPANIES OTHER THAN FOR THE WORK THAT YOU'VE DONE IN THIS
15 CASE. AND I JUST WANT TO MAKE SURE WE'RE CLEAR ON THIS.

16 YOU TESTIFIED ON THURSDAY THAT YOU'VE
17 RECEIVED -- THAT YOU'VE BEEN PAID FOR THE EXPERT WITNESS
18 WORK YOU'VE DONE IN THIS CASE; CORRECT?

19 A YES, SIR.

20 Q HAVE YOU EVER BEEN PAID -- PRIOR TO THAT,
21 PRIOR TO THIS CASE, HAVE YOU EVER BEEN PAID ANYTHING BY
22 MR. NOVELLI OR ANY OF HIS COMPANIES?

23 A NOT DIRECTLY. I THINK THAT HE MAY HAVE MADE
24 SOME PAYMENTS TO ME DURING THE PHILIPPINE FIESTA
25 TRANSACTION, WHICH THEN WERE SUBSEQUENTLY DEDUCTED FROM THE
26 PAYMENTS THAT HE MADE TO THE SELLERS OF THE PROPERTY.

1 BECAUSE -- IN OTHER WORDS, HE HAD MADE AN AGREEMENT IN
2 ESCROW TO BUY THE PROPERTY FOR SEVERAL HUNDRED THOUSAND
3 DOLLARS, OR PAY THE SELLERS. OF THAT HE MAY HAVE PAID SOME
4 OF MY FEES THAT THEY WERE SUPPOSED TO PAY FOR, AND THEY
5 SUBSEQUENTLY DEDUCTED THAT. BUT I DIDN'T ACTUALLY WORK FOR
6 HIM, AND HE DIDN'T PAY ME.

7 Q DO YOU BELIEVE THAT CHECKS WERE ACTUALLY
8 MADE -- CUT TO YOU?

9 A THERE MAY HAVE BEEN. AND, AS I SAY, I DON'T
10 RECALL SPECIFICALLY. BUT I DO RECALL EITHER AN EXPENSE
11 CHECK OR SOME CHECK THAT MAY HAVE BEEN CUT TO ME, BECAUSE
12 THE KRUPPS DIDN'T HAVE THE MONEY. AND IN THE PROCESS, HE
13 MAY HAVE PAID IT, AND THEN IT WAS TAKEN OUT OF THE AMOUNT
14 OF MONEY HE HAD TO PAY THEM. THE MONEY WAS DUE FROM THEM,
15 NOT FROM HIM.

16 Q I SEE.
17 WHY IS IT YOU COULDN'T WAIT FOR THE OWNERS
18 TO GET THE MONEY TO PAY YOU?

19 A I BEG YOUR PARDON?

20 Q I THOUGHT YOU SAID THEY COULDN'T PAY.

21 A BECAUSE THE MONEY THEY WERE GOING TO PAY WAS
22 COMING FROM THE MONEY THAT MR. NOVELLI WOULD HAVE PAID
23 THEM, AND IT WOULD HAVE COME AS PROCEEDS OF ESCROW. AND I
24 THINK I HAD SOME EXPENSES, AND I ASKED TO BE PAID. SO I
25 BELIEVE THAT HE AGREED TO PAY IT AND THEN JUST TAKE IT OUT
26 OF THE MONEY THAT HE PAID FOR THE PROPERTY.

1 BUT, AGAIN, I'M NOT 100-PERCENT CERTAIN, BUT
2 THAT'S -- THAT MAY HAVE OCCURRED.

3 Q NORMALLY IF THERE'S AN ESCROW AND PAYMENTS
4 ARE MADE TO YOU BY THE OWNER OF THE PROPERTY WHEN THE
5 PROPERTY CLOSES, WHEN THE SALE CLOSES, YOU GET PAID OUT OF
6 ESCROW; RIGHT?

7 A THAT'S WHAT I SAID, YES, SIR.

8 Q ALL RIGHT. SO -- BUT YOU'RE SAYING
9 MR. NOVELLI MAY HAVE PAID YOU OUTSIDE OF ESCROW?

10 A HE MAY HAVE MADE AN ADVANCE PAYMENT TO ME
11 THAT THEN SUBSEQUENTLY REDUCED THE PRICE HE PAID FOR THE
12 PROPERTY. CORRECT, SIR.

13 Q DO YOU REMEMBER THE AMOUNTS, ANY OF THE
14 AMOUNTS?

15 A I REALLY DON'T RECALL. I DON'T HAVE AN
16 IDEA.

17 Q WAS IT MORE THAN \$20,000?

18 A I HAVE NO IDEA WHAT IT WAS. I JUST WANTED
19 TO OFFER YOU THAT RECOLLECTION OF SOMETHING THAT MAY HAVE
20 OCCURRED. BECAUSE YOU ASKED ME IF I'D EVER BEEN PAID BY
21 HIM, WHICH IS OF COURSE DIFFERENT THAN BEING -- WORKING FOR
22 HIM.

23 Q I WANT TO ASK YOU SOME QUESTIONS ABOUT COAST
24 TO COAST --

25 A YES, SIR.

26 Q -- AND YOUR KNOWLEDGE OF COAST TO COAST'S

1 PRACTICES.

2 ON WEDNESDAY AND THURSDAY YOU TESTIFIED --
3 YOU TESTIFIED QUITE A BIT ABOUT COAST AND ITS CONTRACTS AND
4 ITS POLICIES AND ITS RULES AND A NUMBER OF THINGS. I JUST
5 WANT TO ASK YOU SOME FOLLOW-UP QUESTIONS ON ALL OF THAT.

6 YOU'VE NEVER BEEN EMPLOYED BY COAST TO
7 COAST; IS THAT RIGHT?

8 A I DON'T THINK SO. I THINK THEY PAID ME TO
9 WRITE AN ARTICLE FOR THEM. MR. EVERETT ASKED ME TO REVIEW
10 SOME OF THEIR MARKETING MATERIALS ONCE, BUT I DON'T THINK
11 I'VE REQUESTED PAYMENT FROM THEM. THEY WERE VERY GRACIOUS
12 TO ME, AND SO THAT WAS NEVER AN ISSUE.

13 Q MR. MITCHELL, YOU'VE NEVER BEEN EMPLOYED BY
14 COAST?

15 A TO THE BEST OF MY KNOWLEDGE, PERHAPS --
16 AFFINITY. I MIGHT HAVE BEEN EMPLOYED BY AFFINITY WHEN I
17 WROTE THE ARTICLES, NOT COAST TO COAST.

18 Q SO YOU THINK YOU MAY HAVE BEEN EMPLOYED --

19 A WELL, I'M -- I WANT TO BE CAUTIOUS NOT TO --
20 NOT TO ANSWER YOUR QUESTION IMPROPERLY. TO THE BEST OF MY
21 KNOWLEDGE, THE ONLY TIME I WOULD HAVE EVER BEEN EMPLOYED BY
22 THEM -- WHICH WOULD HAVE BEEN THEY PAID FOR HOTEL ROOMS FOR
23 ME ON OCCASION, THAT TYPE OF THING. BUT ACTUAL MONEY
24 RECEIVED, THE ONLY TIME THAT I COULD THINK OF WOULD HAVE
25 BEEN WHEN I WAS ASKED TO WRITE AN ARTICLE ON THE INDUSTRY
26 FOR THEM AND THEN SUBSEQUENTLY PUBLISHED IT IN THEIR

1 "HIGHWAYS" MAGAZINE. IF I WERE EVER PAID BY THEM, THAT
2 WOULD HAVE BEEN THE CASE.

3 Q WERE YOU EVER A COAST EMPLOYEE?

4 A NEVER.

5 Q YOU'VE NEVER SEEN COAST ACCOUNTING RECORDS?

6 A I'VE NEVER VIEWED -- NO. THE ONLY RECORDS
7 I'VE EVER SEEN AT COAST ARE THOSE ONES PRODUCED FOR THIS
8 TRIAL, SIR.

9 Q YOU'VE NEVER ATTENDED COAST'S INTERNAL STAFF
10 MEETINGS; IS THAT RIGHT?

11 A NO. ROUND-TABLE MEETINGS AND SUCH. BUT,
12 NO, THAT'S CORRECT.

13 Q YOU'VE NEVER ATTENDED COAST'S INTERNAL STAFF
14 MEETINGS?

15 A OH, NO, DEFINITELY NOT.

16 Q YOU'VE NEVER ATTENDED COAST MANAGEMENT
17 MEETINGS?

18 A NO. AS I SAY, ONLY THEIR ROUND-TABLE
19 MEETINGS, WHICH THEIR MANAGEMENT PEOPLE ARE ALWAYS THERE,
20 MR. EVERETT AND OTHERS.

21 Q BUT YOU'VE NEVER ATTENDED COAST'S MANAGEMENT
22 MEETINGS?

23 A NOT INTERNAL MEETINGS, NO, SIR.

24 Q YOU'VE NEVER SEEN COAST MEMBERSHIP RECORDS
25 REGARDING THE LENGTH OF TIME, FOR EXAMPLE, THE PEOPLE HAVE
26 BEEN MEMBERS AT COAST; YOU'VE NEVER SEEN THOSE TYPES OF

1 RECORDS?

2 A YES, I HAVE, SIR.

3 Q IN THIS CASE, OR SOMETHING ELSE?

4 A I'VE SEEN IT IN THIS CASE, AND I'VE SEEN IT
5 IN PREVIOUS OFFERINGS FROM COAST WHERE DISCUSSIONS WERE
6 REGARDING THAT SUBJECT.

7 Q YOU'VE SEEN THOSE RECORDS?

8 A YES, SIR.

9 Q WHEN WAS THE LAST TIME YOU SAW THOSE RECORDS?

10 A OH, I DON'T KNOW. YEARS AGO. WHENEVER --
11 IF -- IN OTHER WORDS, IF THERE WAS DISCUSSION OF WHICH
12 RESORTS WERE DOING BETTER OR COAST -- WHAT WAS COAST DOING
13 OVERALL, WHAT WAS THE INDUSTRY DOING OVERALL, THEN COAST
14 WOULD HAVE FIGURES AVAILABLE TO BOTH MYSELF AND ANYONE ELSE
15 AT THOSE MEETINGS FOR PURPOSES OF DISCUSSION.

16 Q HAVE YOU SEEN COAST'S INDIVIDUAL MEMBER
17 RECORDS?

18 A I'M NOT CERTAIN I UNDERSTAND YOUR QUESTION.
19 COULD YOU BE MORE SPECIFIC?

20 Q INDIVIDUAL MEMBER RECORDS, SHOWING THE
21 RECORDS, THE RECORDS OF COAST INDIVIDUAL MEMBERS.

22 A YOU MEAN RECORDS OF AN INDIVIDUAL PERSON --

23 Q YES.

24 A -- WHO BOUGHT COAST SERVICES, THEIR FILE?

25 Q YES.

26 A NO, I DON'T THINK SO. I DON'T THINK I'VE

1 EVER SEEN SUCH RECORDS.

2 Q MR. SHAW ASKED YOU ON THURSDAY IF YOU'VE
3 PERSONALLY BEEN AN OWNER OF A RESORT, AND YOU SAID YES.
4 HAVE YOU EVER PERSONALLY OWNED A RESORT?

5 A WELL, I'M SORRY THE ANSWER WAS YES, AND IT'S
6 STILL YES. YES.

7 Q YOU HAVE PERSONALLY OWNED A RESORT IN YOUR
8 OWN NAME?

9 A IT WAS A CORPORATION NAME, AND I WAS ONE OF
10 THE PRINCIPALS IN THE CORPORATION, YES.

11 Q AND WHEN WAS THAT?

12 A THAT IN THE EARLY '80'S.

13 Q IS THAT THE LAST TIME --

14 A PARDON?

15 Q IS THAT THE LAST TIME YOU OR A CORPORATION
16 YOU'VE BEEN INVOLVED IN OWNED A RESORT?

17 A YES.

18 Q YOU HAVEN'T NEGOTIATED A SINGLE CONTRACT
19 WITH COAST, HAVE YOU?

20 A WHAT KIND OF CONTRACT?

21 Q LICENSE AGREEMENT, AFFILIATION AGREEMENT?

22 A I'M SORRY. WAS YOUR QUESTION A POSITIVE OR
23 A NEGATIVE? DID YOU SAY "YOU HAVEN'T" OR "YOU HAVE"?

24 Q YOU HAVE NEVER NEGOTIATED A LICENSE
25 AGREEMENT OR AN AFFILIATION AGREEMENT WITH COAST; IS THAT
26 RIGHT?

1 A NO, THAT'S NOT CORRECT.

2 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS HIS
3 DEPOSITION TESTIMONY, PAGE 929, LINE 16 THROUGH 19.

4 THE COURT: WHAT VOLUME IS THAT?

5 MR. RIVIN: THAT'S VOLUME V, YOUR HONOR.

6 MR. SHAW: YOUR HONOR, I WOULD JUST REQUEST THAT
7 THE BEGINNING AND END OF THE QUESTION AND ANSWERS BE
8 EXPANDED SO THAT THE RESPONSE IS MORE COMPLETE. AND I
9 WOULD SUGGEST BEGINNING AT PAGE 928, LINE 13, THROUGH 929,
10 LINE 23.

11 MR. RIVIN: YOUR HONOR, I WOULD OBJECT TO THAT. IN
12 THAT DEPOSITION I WORKED HARD TO GET A CLEAN, CLEAR ANSWER
13 FROM MR. MITCHELL, AND I GOT IT. AND I'D LIKE TO SHOW THAT
14 CLEAN, CLEAR ANSWER.

15 MR. SHAW: YOUR HONOR, I BELIEVE IT'S OUT OF
16 CONTEXT.

17 THE COURT: WELL, I SEE NOTHING WRONG IN GRANTING
18 THE REQUEST THAT MR. SHAW HAS MADE. READ FROM LINE 13.

19 MR. RIVIN: ON PAGE 928?

20 THE COURT: 928.

21 MR. RIVIN:

22 "QUESTION: MR. MITCHELL,
23 THE REASON I ASKED YOU THAT
24 QUESTION IS YOU CLARIFIED MY
25 LAST QUESTION WITH THE WORD
26 'PERSONALLY.' I WANT TO MAKE

1 SURE THAT YOU ARE
2 UNDERSTANDING MY QUESTION AND
3 YOU'RE ANSWERING THE QUESTION
4 THAT I WANT YOU TO ANSWER.

5 "ANSWER: OKAY. TO THE
6 BEST OF MY KNOWLEDGE, I DO
7 NOT RECALL SIGNING A LICENSE
8 AGREEMENT WITH COAST TO
9 COAST; ALTHOUGH, I HAVE
10 CAUSED RESORTS TO BE LICENSED
11 WITH COAST TO COAST.

12 "QUESTION: I UNDERSTAND
13 THAT. YOU TESTIFIED TO THAT
14 PREVIOUSLY.

15 "ANSWER: OKAY.

16 "QUESTION: HAVE YOU EVER
17 NEGOTIATED A LICENSE
18 AGREEMENT WITH COAST ON
19 BEHALF OF AN AFFILIATED
20 RESORT?

21 "ANSWER: YES.

22 "QUESTION: ON BEHALF OF
23 WHICH RESORTS?

24 "ANSWER: OH, BEECHWOOD
25 RESORT.

26 "QUESTION: YOU NEGOTIATED

1 THE BUSINESS AGREEMENT?

2 "ANSWER: YEAH. THEY WERE
3 NOT A COAST TO COAST
4 LICENSEE. I PUT THEM IN THE
5 SYSTEM. EITHER I DID OR IT
6 WAS DONE AT MY DIRECTION.

7 "QUESTION: DID YOU
8 ACTUALLY NEGOTIATE THE TERMS
9 OF THE AGREEMENT?

10 "ANSWER: EITHER I DID AND
11 DIRECTED SOMEONE ELSE TO
12 FACILITATE THE MECHANICS OF
13 IT, OR DID IT MYSELF. BUT I
14 DON'T RECALL ANY NEGOTIATION
15 REQUIRED OF ANY SIGNIFICANCE,
16 TO MY KNOWLEDGE.

17 "QUESTION: DO YOU
18 REMEMBER EVER PARTICIPATING
19 IN ANY NEGOTIATION WITH COAST
20 REGARDING A LICENSE
21 AGREEMENT?

22 "ANSWER: I DON'T RECALL
23 THAT ACTIVITY.

24 "QUESTION: DO YOU RECALL
25 EVER PARTICIPATING IN ANY
26 NEGOTIATIONS WITH COAST

1 REGARDING ANY MODIFICATION

2 OR A LICENSE AGREEMENT?

3 "ANSWER: OH, YEAH."

4 Q MR. MITCHELL, YOU HAVEN'T SIGNED PERSONALLY
5 A SINGLE CONTRACT WITH COAST EITHER FOR YOURSELF PERSONALLY
6 OR ON BEHALF OF ANOTHER COMPANY; IS THAT RIGHT?

7 A I DON'T THINK SO. I'M PRETTY CERTAIN I
8 NEVER HAVE. I MAY HAVE, BUT -- I'D GO NO.

9 Q AND YOU'RE NOT FAMILIAR WITH COAST'S CURRENT
10 CONTRACTS; IS THAT RIGHT?

11 A NO, THAT'S NOT CORRECT.

12 MR. RIVIN: I'D LIKE TO READ FROM THE WITNESS'S
13 DEPOSITION, PAGE 343, LINE 15, THROUGH 343, LINE 21.

14 THE COURT: VOLUME?

15 MR. RIVIN: VOLUME II, YOUR HONOR, PAGE 343, LINE
16 15, THROUGH LINE 21.

17 MR. SHAW: YOUR HONOR, I WOULD JUST ASK TO HAVE A
18 COMPLETE READING; IT GO THROUGH 344, LINE 4.

19 THE COURT: I THOUGHT HE SAID 323.

20 MR. RIVIN: 343, YOUR HONOR.

21 THE COURT: OH, 343. YOU WANTED TO GO THROUGH WHAT
22 LINE?

23 MR. SHAW: YOUR HONOR, JUST ON TO 343, LINE 4.

24 MR. RIVIN: THAT COVERS ANOTHER AREA, YOUR HONOR.

25 MR. SHAW: YOUR HONOR, I BELIEVE IT'S THE SAME AREA.

26 THE COURT: I THINK IT IS, TOO.

1 MR. RIVIN: THAT'S FINE.

2 MR. SHAW: LITERALLY AND FIGURATIVELY.

3 THE COURT: ALL RIGHT. PROCEED.

4 MR. RIVIN:

5 "QUESTION: IS IT YOUR
6 UNDERSTANDING THAT THE
7 125-MILE RULE IS IN THE COAST
8 AFFILIATION AGREEMENT?

9 "ANSWER: WELL, I THINK
10 IT'S 250 NOW.

11 "QUESTION: IS THAT IN THE
12 AFFILIATION AGREEMENT?

13 "ANSWER: I'M NOT FAMILIAR
14 WITH THEIR CURRENT AGREEMENT.

15 "QUESTION: BUT YOU HAVE
16 SEEN THAT RULE IN THEIR
17 AFFILIATION AGREEMENTS?

18 "ANSWER: YES. THE
19 125-MILE RULE SUBSEQUENTLY
20 WAS EXTENDED TO 250, HAS
21 OCCURRED IN AGREEMENTS, HAS
22 OCCURRED IN ADDENDUMS TO
23 AGREEMENTS, HAS OCCURRED IN
24 MEMORANDUMS AND ALL KINDS OF
25 PUBLICATIONS THAT COAST TO
26 COAST HAS PRESENTED OVER THE

1 YEARS."

2 Q MR. MITCHELL, HAVE EVER PARTICIPATED IN
3 NEGOTIATING ANY OF THE LICENSE OR AFFILIATION AGREEMENTS
4 BETWEEN ANY OF THE PLAINTIFFS IN THIS CASE AND COAST TO
5 COAST?

6 A NO.

7 Q I'M GOING TO MOVE TO ANOTHER SUBJECT. I
8 WANT TO ASK YOU ABOUT THE ISSUE OF CONFIDENTIALITY.

9 YOU TESTIFIED THAT THE LIST OF MEMBERS,
10 RESORT MEMBERS, IS CONFIDENTIAL. AND YOU TALKED ABOUT THAT
11 SOME WAYS HERE BEFORE. AND YOU SAID THE LIST OF MEMBERS IS
12 PROPRIETARY TO THE RESORT; IS THAT YOUR TESTIMONY?

13 A THAT'S CORRECT.

14 Q LET ME SHOW YOU -- LET ME SHOW YOU EXHIBIT
15 5. IT'S A 1996 LICENSED -- COPY OF THE LICENSE AGREEMENT.

16 MAY I APPROACH, YOUR HONOR?

17 I'D LIKE TO PUT THIS UP ON THE SCREEN, IF I
18 MIGHT.

19 MR. SHAW: YOUR HONOR, MAY I CONFER WITH MR. RIVIN
20 JUST FOR A MOMENT?

21 (PAUSE IN PROCEEDINGS.)

22 BY MR. RIVIN: Q EXHIBIT 5 IS AN AFFILIATION
23 AGREEMENT; IS THAT CORRECT, MR. MITCHELL?

24 A THAT'S CORRECT. IT'S THE CONTRACT. IT'S
25 NOT THE WHOLE AGREEMENT. THE AGREEMENT ALSO CONTAINS OTHER
26 THINGS. THE WHOLE AGREEMENT CONTAINS, AS YOU KNOW, MANUALS

1 AND OTHER MEMORANDUMS AND THINGS OF THIS NATURE.

2 Q THIS IS THE AFFILIATION AGREEMENT, HOWEVER?

3 A NOT AN ENTIRE AGREEMENT, BUT, YES.

4 Q YOU'RE SAYING THAT THERE ARE OTHER THINGS
5 THAT ARE REFERENCED IN THE AGREEMENT THAT ARE PART OF THE
6 AGREEMENT?

7 A YES.

8 Q ALL RIGHT. THIS IS THE PORTION THAT'S
9 SIGNED, HOWEVER; IS THAT RIGHT?

10 A YES.

11 Q ALL RIGHT. CAN WE TURN TO PAGE 10 OF THIS
12 AGREEMENT, AND GO DOWN TO THE SIGNATURE LINE, PLEASE.

13 THIS IS AN AFFILIATION AGREEMENT IN 1996;
14 CORRECT?

15 A CORRECT. WELL, THERE ARE TWO DATES ON IT;
16 8/6/96 BY COAST, AND 7/10/96 BY --

17 Q DO YOU RECOGNIZE THAT SIGNATURE? IS IT
18 MR. NOVELLI'S SIGNATURE?

19 A NO PROBLEM. I ACCEPT THAT. I COULDN'T BE
20 CERTAIN. I'M NOT A HANDWRITING PERSON.

21 Q CAN WE GO TO THE NEXT PAGE AND LOOK AT THE
22 TOP OF THE NEXT PAGE.

23 A OH, YEAH. HIS REFERENCE IS HERE. IT'S
24 NOVELLI'S SIGNATURE.

25 Q SO THIS IS AN AFFILIATION AGREEMENT BETWEEN
26 FIRST NATIONWIDE RESORTS -- WHICH IS ONE OF THE PLAINTIFFS

1 IN THIS CASE; RIGHT?

2 A THAT'S WHAT'S INDICATED, YES.

3 Q AND RAY NOVELLI IS LISTED AS THE PRESIDENT
4 OF FIRST NATIONWIDE RESORTS; RIGHT?

5 A CORRECT.

6 Q AND MR. NOVELLI SIGNED THIS AGREEMENT?

7 A CORRECT.

8 Q AND IT'S SIGNED BY GENE EVERETT?

9 A HIS SIGNATURE I RECOGNIZE, YES, DEFINITELY.

10 Q SO IT'S SIGNED BY GENE EVERETT AS THE
11 VICE-PRESIDENT AT THAT TIME OF COAST TO COAST?

12 A THAT'S CORRECT.

13 Q I'D LIKE TO -- I'D LIKE YOU TO TAKE A LOOK
14 AT THE FOURTH PAGE OF EXHIBIT 5. AND I WILL STATE FOR THE
15 RECORD THAT THAT HIGHLIGHTING OR THE CIRCLE AROUND IT AND
16 THE UNDERLINING WAS NOT PART OF THE ORIGINAL AGREEMENT.
17 THAT WAS DONE ONLY FOR PURPOSES OF THIS CASE, JUST TO
18 HIGHLIGHT THAT LANGUAGE. AND I'D LIKE TO GO THROUGH THIS.

19 MR. MITCHELL, MR. SHAW SHOWED YOU COPIES OF
20 AFFILIATION -- ONE OR TWO AFFILIATION AGREEMENTS ON DIRECT;
21 DO YOU REMEMBER THAT?

22 A HE MAY HAVE. I DON'T RECALL SPECIFICALLY,
23 BUT, YES, SIR.

24 Q DO YOU REMEMBER TALKING ABOUT AFFILIATION OR
25 LICENSING AGREEMENTS ON DIRECT?

26 A I REMEMBER TALKING ABOUT THE AGREEMENTS, YES.

1 Q YOU REMEMBER YOU TALKED ABOUT PORTIONS OR
2 LANGUAGE OF ONE OR TWO AFFILIATION AGREEMENTS?

3 A YES, DEFINITELY.

4 Q ALL RIGHT. LET'S TALK ABOUT -- LET'S LOOK
5 AT THIS PROVISION OF THE 1996 AFFILIATION AGREEMENT BETWEEN
6 COAST AND FIRST NATIONWIDE. IT READS, "OWNER SHALL
7 PROVIDE" -- "OWNER" MEANING FIRST NATIONWIDE; RIGHT? IS
8 THAT RIGHT?

9 A CORRECT.

10 Q "FIRST NATIONWIDE SMALL PROVIDE TO EACH
11 PURCHASER OF A MEMBERSHIP" -- NOW, THAT WOULD BE AN
12 INDIVIDUAL, RIGHT, AN INDIVIDUAL CAMPER?

13 A THAT WOULD BE CORRECT. THAT WOULD BE THE
14 RESORT'S MEMBER WHO PURCHASES COAST'S PROGRAM, YES.

15 Q THE RESORT MEMBER WHO PURCHASES COAST'S
16 PROGRAM?

17 A THE COAST PROGRAM, CORRECT.

18 Q WE'LL GET TO THAT A LITTLE BIT LATER.

19 A OKAY.

20 Q ALL RIGHT. SO EACH PERSON -- THE OWNER,
21 FIRST NATIONWIDE, WAS OBLIGATED TO PROVIDE EACH PURCHASER
22 OF A MEMBERSHIP -- THAT'S EACH INDIVIDUAL CAMPER -- THE
23 COAST MEMBERSHIP APPLICATION.

24 WE SAW THAT. WE SAW THE COAST MEMBERSHIP
25 APPLICATION ON THURSDAY. DO YOU RECALL THAT?

26 A OH, YES.

1 Q ALL RIGHT. SO COAST -- THIS IS COAST TO
2 COAST'S MEMBERSHIP APPLICATION; RIGHT?

3 A DEFINITELY.

4 Q AND IT'S CALLED "MEMBERSHIP APPLICATION"?

5 A I BELIEVE THAT'S CORRECT, YES.

6 Q ALL RIGHT. IN THE FORM PROVIDED BY COAST TO
7 OWNER, OWNER SHALL PROMPTLY FORWARD TO COAST THE EXECUTED
8 APPLICATION, THE SIGNED APPLICATION; RIGHT? AND APPLICABLE
9 ENROLLMENT FEE; CORRECT?

10 AND THEN IT READS, "THE LISTS OF MEMBERS OF
11 COAST COMPILED BY COAST FROM SUCH APPLICATIONS ARE THE
12 PROPERTY OF COAST FOR ALL PURPOSES AND MAY BE USED BY COAST
13 IN ITS DISCRETION FOR ENHANCEMENT OF THE COAST MEMBERSHIP."

14 WERE YOU FAMILIAR WITH THAT LANGUAGE?

15 ARE YOU FAMILIAR WITH THAT LANGUAGE?

16 A YES.

17 Q SO THE LIST COMPILED BY COAST ARE LISTS OF
18 COAST MEMBERS?

19 MR. SHAW: YOUR HONOR, JUST OBJECT. THE DOCUMENT
20 SPEAKS FOR ITSELF.

21 THE COURT: SUSTAINED.

22 BY MR. RIVIN: Q RAY NOVELLI SIGNED THAT
23 AGREEMENT; IS THAT RIGHT?

24 A YOU SAID HE DID. I HAVE NO REASON TO
25 DISBELIEVE YOU. YES. I DON'T RECOGNIZE HIS SIGNATURE
26 BECAUSE IT'S KIND OF SCRATCHED, BUT I ASSUME THAT'S

1 CORRECT.

2 Q I WANT TO GO TO ONE OF THE RULES THAT YOU
3 TALKED ABOUT AT SOME LENGTH ON WEDNESDAY AND THURSDAY, AND
4 THAT'S THE 125-MILE RULE. I DON'T WANT TO SPEND A LOT OF
5 TIME ON IT, BUT I WANT TO ASK YOU A FEW QUESTIONS ABOUT IT
6 BECAUSE YOU TESTIFIED AS TO WHAT THE 125-MILE RULE WAS.
7 AND YOU CRITICIZED COAST, I BELIEVE, FOR VIOLATING THE
8 RULE.

9 YOU TESTIFIED IN YOUR DEPOSITION THAT THIS
10 125-MILE RULE WAS A RULE THAT WENT INTO EFFECT TO LIMIT THE
11 MARKETING AREA OF INDIVIDUAL LICENSEES; DO YOU RECALL THAT?

12 A CORRECT.

13 Q ALL RIGHT. SO IT WAS A RULE OF -- 125-MILE
14 RULE WAS THERE TO LIMIT THE MARKETING AREA SO INDIVIDUAL
15 RESORTS COULDN'T MARKET BEYOND THAT 125 MILES; THAT WAS THE
16 THE INITIAL INTENT?

17 A THAT WASN'T THE ONLY THING IT IMPACTED UPON,
18 MARKETING, BUT THAT WAS PART OF THAT PROCESS.

19 Q IT WAS A MARKETING RULE?

20 YOU ALSO SAID THAT THE 125-MILE RULE
21 REQUIRED THE HOME RESORT TO BE WITHIN 125 MILES OF THE HOME
22 OF THE PURCHASER; DO YOU RECALL THAT TESTIMONY?

23 A YEAH. THERE WERE VARYING ELEMENTS. THIS
24 CAME OUT OF -- THIS RULE CHANGED. THEY COULD CHANGE ON A
25 DAILY BASIS. AT ONE TIME, FOR EXAMPLE, IT WAS JUST THE
26 HOME RESORT. ANOTHER TIME IT WAS THE HOME RESORT AS WELL

1 AS THEIR HOME RESIDENCE. SO THEY HAD TO BE -- THEIR
2 RESIDENCE HAD TO BE WITHIN A CERTAIN THING, TOO. SO IT
3 WOULD CHANGE ACCORDING TO DIFFERENT CIRCUMSTANCES.

4 BUT FOR THE MOST PART, YOUR OFFERING IS
5 ACCURATE, YES, SIR, OR MY UNDERSTANDING OF YOUR OFFERING.

6 Q WAS IT YOUR UNDERSTANDING THAT THE 125-MILE
7 RULE PREVENTED A MEMBER FROM BEING -- PREVENTED A PERSON
8 FROM BEING A MEMBER OF A RESORT MORE THAN 125 MILES AWAY
9 FROM THE PERSON'S RESIDENCE?

10 A IS YOUR QUESTION IS IT MY UNDERSTANDING THAT
11 THE 125-MILE RULE PREVENTED SOMEONE FROM BEING A MEMBER?

12 Q RIGHT.

13 A MY UNDERSTANDING OF IT WAS -- IS THAT THE
14 OPERATORS WERE -- OUGHT NOT TO BE SOLICITING PEOPLE WHO
15 LIVED FURTHER OUT. I DON'T KNOW IF IT -- ACTUALLY THERE
16 WAS SOME HARD RULE THAT PREVENTED THEM BECAUSE I KNOW THAT
17 THERE WERE MEMBERS THAT LIVED BEYOND 125 MILES. SO
18 OBVIOUSLY SOME DIDN'T PREVENT THEM.

19 Q BUT THAT WAS PART OF THE 125-MILE RULE THAT
20 YOU UNDERSTOOD; THAT GENERALLY MEMBERS HAD TO BE -- HAD TO
21 LIVE WITHIN 125 MILES OF THEIR HOME RESORT?

22 A YEAH. IT DEPENDS ON WHEN YOU'RE ASKING ME,
23 WHAT TIME FRAME, TOO.

24 Q WELL --

25 A BECAUSE THE RULE CHANGED AS I TOLD YOU.

26 Q IF A MEMBER -- IF SOMEONE LIVED UP IN

1 MICHIGAN AND WANTED TO GO TO THE SUNBELT STATES -- FOR
2 EXAMPLE, THE SNOWBIRDS.

3 A YES.

4 Q AND THEY LIVED DOWN IN FLORIDA, AND THE
5 RESORT WAS DOWN IN FLORIDA THEY WANTED TO JOIN, THAT WAS
6 OBVIOUSLY WAY BEYOND 125 MILES.

7 A RIGHT. THE OPERATOR OUGHT NOT TO BE
8 SOLICITING THEM WHERE -- DID YOU SAY MICHIGAN WERE THEY AT?
9 IS THAT WHERE THEY WERE?

10 THE GUY IN FLORIDA OUGHT NOT BE SOLICITING
11 PEOPLE IN MICHIGAN. ESSENTIALLY THAT'S WHAT THE ARGUMENT
12 WAS, YES. THAT IS TO SAY, THE LICENSEE, THE COAST
13 LICENSEE, OUGHT NOT TO BE SOLICITING THE POTENTIAL USER OF
14 SERVICES IN MICHIGAN.

15 Q WHERE IS THE 125-MILE RULE SET OUT?

16 A AT THE MOMENT I HAVEN'T THE FOGGIEST. IT'S
17 BEEN OFFERED IN VARYING FORMS FROM THE MANUAL TO MEMOS TO
18 INSIDER NEWSLETTERS. OVER 20 YEARS I IMAGINE IT'S APPEARED
19 IN ONE OR ALL OF THOSE OFFERINGS.

20 Q BUT ISN'T THE RULE GENERALLY SET OUT IN THE
21 LICENSING MANUAL?

22 A IT MAY VERY WELL BE IN THERE, ALSO. THE
23 MANUAL, WHICH IS PART OF THE AFFILIATION AGREEMENT,
24 MODIFICATIONS OF IT USUALLY WOULD COME FROM COAST IN THE
25 FORM OF EITHER MEMOS OR SOME NOTICE IN THE INSIDERS
26 NEWSLETTER, SOMETHING OF THAT NATURE.

1 SO IT COULD APPEAR IN A LOT OF PLACES. I
2 WOULDN'T LIMIT MYSELF TO JUST THE MANUAL.

3 MR. RIVIN: I'D LIKE TO GO TO EXHIBIT 570, WHICH IS
4 THE COAST LICENSING MANUAL. THIS IS THE DOCUMENT THAT WE
5 TALKED ABOUT YESTERDAY, MR. SHAW, THAT PLAINTIFFS HAD AN
6 INCOMPLETE COPY OF IT.

7 MR. SHAW: IF YOU CAN JUST GIVE ME A MINUTE.

8 THANK YOU.

9 MR. RIVIN: COULD WE PUT UP PAGE 27 AT THE BOTTOM.
10 THIS IS THE 1996 COAST TO COAST LICENSING MANUAL.

11 MAY I APPROACH, YOUR HONOR?

12 THE COURT: YOU MAY.

13 THE WITNESS: THANK YOU. DO YOU NEED YOUR OTHER
14 ONE BACK HERE?

15 MR. RIVIN: GO TO THE TOP OF THAT. HIGHLIGHT THE
16 TOP.

17 Q NOW, THIS STATEMENT OF THE 125-MILE RULE WAS
18 A LITTLE BIT DIFFERENT THAN WHAT YOU WERE TALKING ABOUT,
19 MR. MITCHELL. ARE YOU THERE WITH ME, PAGE 27?

20 A I'M ON PAGE 2. I'M SORRY. PAGE --

21 Q TWENTY-SEVEN.

22 A PAGE 27? TWENTY-SEVEN, YES, TOP OF PAGE 5.

23 Q YOU SEE THE REFERENCE OF 125-MILE RULE?

24 A YES.

25 Q THERE'S NO REFERENCE IN THERE TO MARKETING?

26 A WELL, THEN YOU HAVE TO GO BACK OVER TO PAGE

1 2, AND THEN YOU HAVE TO GO OVER HERE TO PAGE -- YOU WANT TO
2 LOOK UNDER PAGE 2, PARAGRAPH -- THE TOP OF PAGE 5,
3 SUBPARAGRAPH E, AND YOU'LL FIND REFERENCES TO THAT.

4 AND THEN IF YOU GO OVER HERE -- LET'S SEE.
5 WHERE ELSE IS IT?

6 YOU WANT TO GO TO THE MARKETING AREA ON PAGE
7 1, PARAGRAPH 3. MARKETING AREA. AND THERE OF COURSE IT
8 REFERS TO IT AS A 500-MILE RULE. AS I SAID, THERE WERE
9 VARIOUS OFFERINGS OF THIS.

10 Q MR. MITCHELL, THE 125-MILE RULE HAD NOTHING
11 TO DO WITH MARKETING; ISN'T THAT CORRECT?

12 A WELL, NOT MY READING AND UNDERSTANDING OF
13 IT. BUT TWO PEOPLE CAN READ ONE THING AND SEE DIFFERENT
14 THINGS.

15 Q DO YOU SEE ANY REFERENCE TO MARKETING IN THE
16 LANGUAGE OF THE 125-MILE RULE?

17 A NOT IN THAT PARAGRAPH.

18 Q DO YOU SEE ANY REFERENCE IN THE LICENSING
19 MANUAL TO THE 125-MILE RULE BEING A MARKETING RULE?

20 A "ALL PURCHASERS OF MEMBERSHIPS AT OFF-SITE
21 SALES LOCATIONS WILL BE SUBJECT TO A DUAL 125-MILE USAGE
22 RESTRICTION. SUCH MEMBERS WILL HAVE RECIPROCAL USE
23 PRIVILEGES ONLY AT RESORTS MORE THAN 125 MILES FROM BOTH
24 THEIR HOME AND RESORT AND HOME OF RECORD, ADDRESS ON
25 DRIVER'S LICENSE, AND WILL HAVE A "DR," DUAL RADIUS,
26 NOTATION ON THEIR MEMBERSHIP CARD TO ALLOW FOR

1 ADMINISTRATION OF THE DUAL RADIUS."

2 THIS IS THE ISSUE WITH REGARD TO MARKETING
3 AND DEALT WITH OFF-SITE MARKETING LOCATIONS AND THE
4 RESTRICTION THAT WAS PUT ON PEOPLE WHO PURCHASED FROM THOSE
5 LOCATIONS. THAT'S MARKETING. THAT'S MY UNDERSTANDING OF
6 IT. AS I SAID, YOU MIGHT BE ABLE TO READ SOMETHING
7 DIFFERENT THERE. I DON'T KNOW.

8 Q THERE'S NOTHING IN THE 125-MILE RULE THAT
9 PROHIBITS A MEMBER FROM JOINING A RESORT THAT IS MORE THAN
10 125 MILES AWAY FROM THE HOME?

11 A NO, NOT ON THE MEMBER. IT'S ON WHO IS DOING
12 THE SOLICITING, THE LICENSEE. AND THE RESTRICTION DEALS
13 WITH HOW THE MEMBER CAN ULTIMATELY USE THE SERVICES,
14 DEPENDING UPON WHERE HE MAY HAVE PURCHASED THEM, OR THE
15 CONDITIONS UNDER WHICH.

16 Q WHEN IS THE LAST TIME YOU LOOKED AT THE
17 LICENSEE MANUAL BEFORE YOU WERE RETAINED TO WORK ON THIS
18 CASE?

19 A OH, I'M NOT CERTAIN. PROBABLY SEVERAL YEARS.

20 Q YOU TALKED ABOUT COAST MODIFYING ITS RULES
21 FROM TIME TO TIME, AND INDEED IT DID MODIFY ITS RULES FROM
22 TIME TO TIME; IS THAT CORRECT?

23 A YES, SIR.

24 Q AND THERE WAS NOTHING WRONG WITH COAST
25 MODIFYING ITS RULES FROM TIME TO TIME, WAS THERE?

26 A ABSOLUTELY NOT. THAT'S THEIR RIGHT. AND AS

1 A MATTER OF FACT, THE CONTRACT THAT YOU ENGAGE SAYS RIGHT
2 IN IT THAT THEY CAN DO ANYTHING THEY WANT PERIODICALLY.

3 Q AND THE LICENSEE AND THE LICENSEE MANUAL
4 SAYS COAST HAS THE RIGHT TO CHANGE ITS RULES?

5 A OF COURSE.

6 Q ISN'T THAT RIGHT, FROM TIME TO TIME?

7 LET ME ASK YOU, LET ME GET BACK TO THE
8 SUBJECT THAT WE STARTED TO TALK ABOUT. WE DIDN'T REALLY
9 GET TO TALK ABOUT IT.

10 BUT THIS ISSUE OF COAST -- WHETHER COAST HAD
11 MEMBERS. AND IN YOUR DEPOSITION, REMEMBER STATING THAT
12 COAST DOESN'T HAVE ANY MEMBERS?

13 A THAT'S MY VIEW OF IT, YES, SIR.

14 Q AND IN YOUR TESTIMONY IN THIS TRIAL YOU
15 REFRAINED -- YOU'VE TRIED TO REFRAIN FROM SAYING THAT COAST
16 HAS MEMBERS.

17 A NO, I HAVEN'T TRIED TO REFRAIN FROM IT. I
18 THINK I'VE MENTIONED IT A COUPLE OF TIMES BECAUSE THE
19 LANGUAGE GETS KIND OF CROSSED OVER OVER THE YEARS. IT'S A
20 TECHNICAL POINT.

21 Q BUT IT'S YOUR POSITION THAT COAST HAS NO
22 MEMBERS; IS THAT RIGHT?

23 A MY POSITION IS THAT COAST SELLS PRODUCTS
24 THROUGH OTHER PEOPLE.

25 Q AND COAST HAS NO MEMBERS?

26 A IN THAT CLASSIC SENSE OF WHO ESTABLISHES A

1 MEMBER, YES. OBVIOUSLY THEY HAVE MEMBERS. THEY PUT A NAME
2 ON IT. THEY SAY, "YOU'RE A MEMBER" AND LABEL IT THERE.
3 AND IN THEIR VIEW THEY HAVE IT. THEY'RE ENTITLED TO THAT.
4 THAT'S THEIR VIEW. YOU ASKED ME WHAT MY VIEW WAS.

5 Q WHEN A PERSON JOINS COAST, HE OR SHE FILLS
6 OUT AN APPLICATION?

7 A CORRECT.

8 Q IT'S A MEMBERSHIP APPLICATION?

9 A CORRECT.

10 Q COAST CHARGES ANNUAL DUES?

11 A CORRECT.

12 Q COAST PUBLISHES A TRAVEL DIRECTORY SIMILAR
13 TO AAA?

14 A CORRECT.

15 Q AAA HAS MEMBERS?

16 A CORRECT.

17 Q AFTER AN APPLICATION IS SUBMITTED, DO PEOPLE
18 GET COAST MEMBERSHIP CARDS?

19 A CORRECT. ACTUALLY THEY GET A TEMPORARY CARD
20 AT THE TIME THEY MAKE THE PURCHASE.

21 Q RIGHT. AND THEN THEY GET A PERMANENT?

22 A AND THEN THEY'LL GET A PERMANENT CARD.

23 Q IT'S A MEMBERSHIP CARD?

24 A CORRECT.

25 Q COAST HAD ANNUAL RALLIES FOR ITS MEMBERS?

26 A YEAH. THAT'S A PROFITABLE DEAL. ABOUT

1 3,000 PEOPLE WILL SHOW UP OR MAYBE MORE SOMETIMES. I'VE
2 ATTENDED THEM. VERY FINE EVENT.

3 Q ISN'T IT TRUE THAT COAST HAS MEMBERS?

4 A MR. RIVIN, I HAVE NO PROBLEM WITH YOUR
5 OFFERING THERE. YOU ASKED ME WHAT MY VIEW OF IT WAS. MY
6 VIEW, THEY ARE A SELLER OF PRODUCTS. CERTAINLY EVERYTHING
7 YOU SAID WOULD MAKE THEM SAY THEY'RE MEMBERS, AND I TAKE NO
8 UMBRAGE TO THAT.

9 Q AND COAST BELIEVES THAT THEY'RE MEMBERS?

10 A I BELIEVE THAT'S CORRECT.

11 Q AND THE MEMBERS BELIEVE THAT THEY'RE MEMBERS?

12 A I CAN'T SPEAK TO THAT. BUT --

13 Q WHY CAN'T YOU SPEAK TO THAT?

14 A WELL, BECAUSE I DON'T KNOW WHAT EVERY COAST
15 MEMBER BELIEVES. I KNOW WHAT COAST BELIEVES, AND I
16 CERTAINLY CAN CONFIRM THEY BELIEVE THEY'RE MEMBERS, YES.

17 Q WERE YOU A MEMBER OF COAST?

18 A PARDON ME?

19 Q YOU WERE A MEMBER OF COAST?

20 A ABSOLUTELY.

21 Q AND YOU CALLED YOURSELF A COAST MEMBER?

22 A I DON'T RECALL EVER SPEAKING OF MYSELF, BUT
23 I THINK IF I WERE ASKED, I MIGHT HAVE MADE THAT STATEMENT.
24 THAT WOULD NOT BE UNREASONABLE.

25 Q YET DURING YOUR DEPOSITION YOU SAID COAST
26 HAS NO MEMBERS?

1 A YOU ASKED ME FOR MY EXPERT OPINION, AND MY
2 VIEW OF THE THING. AND WE WERE SPEAKING OF HOW THESE
3 PEOPLE BECAME PART OF COAST TO COAST, HOW THEY WERE
4 ESTABLISHED. AND IN THAT REFERENCE, THAT'S MY OPINION,
5 YES, SIR.

6 Q LET ME ASK YOU SOME QUESTIONS ABOUT THE
7 COAST ORPHAN PROGRAM.

8 A YES, SIR.

9 Q THE ORPHAN PROGRAM THAT WE TALKED ABOUT IS
10 WHEN A -- WHEN A RESORT -- THIS IS THE WAY YOU DEFINED IT.
11 WHEN A RESORT CLOSES DOWN, THE MEMBERS OF THAT RESORT NO
12 LONGER HAVE A HOME PARK FOR PURPOSES OF COAST?

13 A UNLESS THEY'RE PART OF THE SYSTEM.

14 Q UNLESS THEY'RE PART OF THE SYSTEM?

15 A RIGHT.

16 Q SO THEY BECOME --

17 A A SINGLE-UNIT OPERATOR WHO WOULD CLOSE HIS
18 FACILITIES AND NO LONGER PROVIDE THOSE MEMBERS ACCESS TO
19 THOSE FACILITIES OR ANY ALTERNATIVE WOULD BE DESCRIBED AS
20 AN ORPHAN BY COAST.

21 Q EXACTLY.

22 YOU SAW NOTHING WRONG WITH COAST TELLING ITS
23 LICENSEES, ITS OTHER RESORTS TO CONTACT THESE ORPHAN
24 MEMBERS; RIGHT?

25 A I'M SORRY. WHAT -- WOULD YOU REPEAT THAT?

26 Q YOU SEE NOTHING WRONG WITH COAST TELLING ITS

1 OTHER PARKS, ITS OTHER AFFILIATED PARKS, GO AHEAD AND
2 CONTACT THESE ORPHAN MEMBERS TO GET THEM TO COME TO THEIR
3 PARKS TO JOIN THEIR PARKS?

4 A IS YOUR QUESTION DO I SEE NOTHING WRONG WITH
5 THAT?

6 Q YES.

7 A I DON'T KNOW. I'D HAVE TO HAVE MORE FACTS
8 AS TO HOW THAT WERE FACILITATED; IN OTHER WORDS, WHAT DID
9 COAST DO? WHAT DID THE RESORT DO? YOU'VE GIVEN ME AN
10 INCOMPLETE HYPOTHETICAL. IF YOU COULD BE MORE PRECISE, I'M
11 HAPPY TO RESPOND.

12 Q LET ME COME BACK TO THAT IN JUST A MOMENT.
13 AND --

14 A OKAY.

15 Q -- LET'S GO BACK AND TALK ABOUT -- LET'S GO
16 BACK AND TALK ABOUT THE BASICS OF THE ORPHAN PROGRAM AGAIN.

17 A OKAY.

18 Q YOU SAID IN YOUR TESTIMONY THAT WHEN A PARK
19 CLOSES DOWN, THE MEMBERS ARE ORPHANS. BUT WHEN A PARK
20 PULLS OUT OF THE SYSTEM, OF THE COAST SYSTEM, THEY'RE NOT
21 ORPHANS; DO YOU REMEMBER THAT TESTIMONY?

22 A YES. NOT -- NOT SPECIFIC TO THE WORDS
23 YOU'VE GIVEN, BUT IN GENERAL I WOULD ACCEPT THAT. THAT IS
24 TO SAY THAT IF -- THAT IF A PARK DISAFFILIATES WITH COAST
25 AND THE PARK IS STILL THERE, AND/OR THERE'S ANOTHER PARK
26 WITHIN THAT SYSTEM AND IT'S STILL THERE AND THE MEMBERS

1 STILL HAVE ACCESS TO SERVICES, THEN I -- THEY WOULD NOT BE
2 ORPHANS.

3 Q THEY WOULD NOT BE ORPHANS?

4 A BECAUSE OBVIOUSLY THEIR PARK IS STILL THERE.

5 Q RIGHT.

6 A AND THEIR SERVICES ARE STILL THERE. AND
7 THEY MAY HAVE BEEN PROVIDED SOME ALTERNATIVE FOR THE --
8 WHATEVER THEY HAD THAT THEY LOST. I DON'T KNOW. YOU
9 DIDN'T STATE THAT.

10 BUT FROM COAST'S VIEW -- I DON'T VIEW THAT
11 AS AN ORPHAN. I WOULD NOT VIEW IT AS AN ORPHAN, NO, SIR.

12 Q YOU DON'T VIEW IT AS AN ORPHAN?

13 A NOT IN MY OPINION, NO, SIR.

14 Q NOW, AGAIN, WE'RE TALKING ABOUT -- WE'RE
15 TALKING ABOUT A PARK, AND THE FACT IT'S VERY RELEVANT TO
16 THIS CASE. BECAUSE, AS WE KNOW, WHAT MR. VOPNFORD AND
17 MR. NOVELLI DID IN AUGUST OF 1997 IS THEY PULLED THEIR
18 PARKS OUT OF THE COAST SYSTEM; RIGHT? THEY PULLED THEIR
19 PARKS OUT OF THE COAST SYSTEM?

20 A WELL, I KNOW THAT MR. NOVELLI SENT
21 LETTERS -- I'VE NEVER SEEN ANY. I DON'T KNOW WHAT
22 MR. VOPNFORD DID. I WASN'T INVOLVED WITH MR. VOPNFORD AS
23 AN INDIVIDUAL. I UNDERSTAND THAT HE SENT A LETTER TO
24 COAST, FROM THE TESTIMONY HERE, AND BECAUSE OF THAT, THAT
25 WOULD BE THAT THEY DISAFFILIATED, YES.

26 Q SO THEY DID DISAFFILIATE?

1 A THAT -- FROM WHAT I'VE SEEN, YES.

2 Q ALL THE THOUSAND ADVENTURES PARKS AND ALL OF
3 THE NOVELLI PARKS?

4 A I UNDERSTAND THAT MR. NOVELLI WANTED TO KEEP
5 A PARK IN THE SYSTEM.

6 Q BUT INITIALLY HE PULLED EVERYTHING OUT?

7 A I BELIEVE THAT'S CORRECT, YES, SIR.

8 Q ALL RIGHT. AND, IN YOUR OPINION, THOSE
9 PEOPLE, THOSE MEMBERS OF THE PLAINTIFF PARKS, THE THOUSAND
10 ADVENTURES PARKS, WHO WERE ALSO MEMBERS OF COAST, WERE NOT
11 TREATED AS ORPHANS BY COAST; RIGHT?

12 A NO, MY OPINION IS FROM THE ACTIONS OF COAST,
13 AND THE REASON WE'RE IN THIS TRIAL TODAY, IS BECAUSE THEY
14 WERE TREATED AS ORPHANS; OTHERWISE, WE WOULDN'T BE SITTING
15 HERE. THAT'S THE WHOLE POINT.

16 Q IS IT YOUR TESTIMONY THAT BECAUSE THESE
17 PEOPLE STILL HAD PARKS OPEN, THAT COAST COULD NOT TREAT
18 THEM AS ORPHANS?

19 A I CAN'T SIT HERE AND SAY WHAT COAST COULD OR
20 COULD NOT DO. MY TESTIMONY IS IN THE 20 YEARS OF MY
21 EXPERIENCE WITH COAST, THEY HAD NOT DONE THAT. THAT WAS
22 NOT THEIR NORMAL CONDUCT. IT WAS NOT THEIR PROCEDURE. AND
23 IT WAS NOT MY UNDERSTANDING OF WHAT, QUOTE UNQUOTE, COAST
24 CALLED AN ORPHAN.

25 Q LET'S GO BACK -- LET ME ASK YOU THE
26 QUESTIONS. I STARTED TO ASK YOU THOSE QUESTIONS ON

1 THURSDAY, AND I DIDN'T HAVE YOUR DEPOSITION TESTIMONY AT
2 THE TIME. BUT NOW I HAVE YOUR DEPOSITION TESTIMONY, AND
3 LET ME ASK YOU THESE QUESTIONS AGAIN.

4 A OKAY.

5 Q A COAST MEMBER CAN BECOME AN ORPHAN FOR MANY
6 REASONS; ISN'T THAT RIGHT?

7 A I WOULD IMAGINE. THEY MAKE THE DEFINITION.
8 THEY COULD HAVE ANY REASON THEY WANT.

9 Q WELL, I'M TALKING ABOUT HISTORICALLY, WHAT
10 YOU UNDERSTAND HISTORICALLY.

11 A UH-HUH.

12 Q RIGHT. ONE REASON IS IF THE PARK CLOSES
13 DOWN?

14 A THE OFFERING THAT I HAVE MADE HERE, PARK
15 CLOSES, THE MEMBERS ARE NOT AVAILABLE TO THAT PARK OR AN
16 ALTERNATIVE WITHIN THE SYSTEM; THEY DON'T HAVE THE
17 SERVICES. THAT'S MY CLASSIC UNDERSTANDING OF AN ORPHAN,
18 YES, SIR.

19 Q ONE REASON IS IF THE PARK CLOSES DOWN?

20 A YES, SIR.

21 Q ANOTHER REASON IS IF THE HOME PARK
22 DISAFFILIATES WITH COAST?

23 A WELL, THAT -- THAT WOULD BE -- YEAH. YES,
24 OF COURSE. DISAFFILIATES. IN EITHER CASE THEY WERE
25 DISAFFILIATED WITH COAST. BUT, YES.

26 Q WELL, WAIT --

1 A I MEAN, A PARK THAT CLOSED DOWN IS NOT
2 AFFILIATED WITH COAST ANYMORE BECAUSE IT DOESN'T EXIST.

3 Q IF A CAMPGROUND -- IF A MEMBERSHIP
4 CAMPGROUND DECIDES NO LONGER TO BE PART OF COAST, THEY PULL
5 OUT OF COAST --

6 A RIGHT, SIR.

7 Q -- THAT'S DISAFFILIATION?

8 A THAT'S CORRECT.

9 Q THAT'S DISAFFILIATION?

10 A WE'RE ON THE SAME PAGE, YES, SIR.

11 Q AND, HISTORICALLY, IF A PARK DISAFFILIATES
12 WITH COAST, THE MEMBERS OF THAT PARK WHO ARE ALSO MEMBERS
13 OF COAST BECOME COAST ORPHANS?

14 A THAT'S CORRECT. MY UNDERSTANDING.

15 Q EVEN IF THE PARK IS OPEN?

16 A THAT COULD BE. I'M NOT FAMILIAR WITH EVERY
17 INSTANCE THAT COAST HAS APPLIED THEIR ORPHAN OFFERING. BUT
18 WHAT YOU'VE SAID TO ME DOESN'T SOUND LIKE SOMETHING
19 UNREASONABLE. IT SOUNDS LIKE SOMETHING THEY MAY VERY WELL
20 HAVE DONE. THEY MAY VERY WELL HAVE SAID THAT'S AN ORPHAN,
21 YES.

22 Q YOU SAID IN 20 YEARS YOU HAVE NEVER EVER
23 SEEN COAST TREAT AS AN ORPHAN A MEMBER OF A PARK THAT PULLS
24 OUT OF COAST AS OPPOSED TO ONE THAT HAD THE PARK CLOSED?

25 A WHAT I SAID TO YOU WAS, IS THAT IN MY
26 EXPERIENCE IN 20 YEARS, I HAD NEVER SEEN THIS KIND OF

1 BEHAVIOR FROM COAST. IF THEY -- AND I WAS VERY SPECIFIC.
2 WE HAD TWO LETTERS UP THERE, IF YOU'LL RECALL, UP ON THE
3 SCREEN. ONE LETTER WAS FROM COAST FROM A PARK THAT
4 DISAFFILIATED. AND IT SAID TO THE MEMBERS, "YOU CAN GO
5 CHECK OUT TWO OR THREE OTHER PARKS. YOU HAVE UNTIL THE END
6 OF THE CALENDAR YEAR TILL YOUR MEMBERSHIP RUNS OUT, AND
7 IT'S YOUR DUTY TO GO FIGURE THIS OUT."

8 THE OTHER LETTER WAS THE LETTER SENT BY
9 COAST TO THE NOVELLI GROUP THAT SAID, "HI, YOU'RE
10 TRANSFERRED."

11 SO THE PROCEDURE WHICH I WAS SPEAKING ABOUT
12 WHEN I MADE MY COMMENTS, IN MY EXPERIENCE I'VE NEVER SEEN
13 COAST DO THAT. THAT'S CORRECT.

14 Q AND THAT WASN'T MY QUESTION.

15 A OH, OKAY. I'M SORRY. WHAT'S -- IT SOUNDED
16 LIKE YOUR QUESTION. EXCUSE ME.

17 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS'S
18 TESTIMONY FROM THURSDAY, PAGE 1304, LINE 18 THROUGH 1305,
19 LINE 6.

20 MR. SHAW: I'M SORRY. THROUGH LINE 6?

21 MR. RIVIN: 1305, LINE 6.

22 MR. SHAW: NO OBJECTION, YOUR HONOR.

23 MR. RIVIN:

24 "QUESTION" -- MR. SHAW HAS GIVEN YOU A
25 HYPOTHETICAL, MR. MITCHELL.

26 AND HE SAID, "LET'S TAKE R.P.I. FOR" --

1 WHICH IS ANOTHER RECIPROCAL PROGRAM.

2 AND HE SAID, "SO
3 PLAINTIFFS DECIDE TO
4 TERMINATE THEIR RELATIONSHIP
5 WITH COAST AND TAKE THEIR
6 MEMBERS TO ANOTHER RECIPROCAL
7 USE, BUT THIS TIME R.P.I.

8 "UNDER THAT SITUATION, ARE
9 THE MEMBERS ORPHANS?"

10 YOUR ANSWER IS NO.

11 "ANSWER: NO.

12 "QUESTION: AND WHY NOT?

13 "ANSWER: BECAUSE THEIR
14 RESORT STILL EXISTS. FOR
15 THEM TO BE ORPHANS, THE
16 RESORT WOULD HAVE HAD TO HAVE
17 GONE OUT OF BUSINESS OR
18 BURNED DOWN OR IN SOME WAY
19 DISAPPEARED AND NOT BE
20 AVAILABLE FOR THEIR USE.

21 "QUESTION: SO ORPHAN ONLY
22 HAPPENS WHEN THE DEVELOPER
23 AND THE RESORT GO OUT OF
24 BUSINESS?

25 "ANSWER: THAT'S CORRECT."

26 SO THAT WAS YOUR TESTIMONY ON THURSDAY.

1 NOW, WHAT IS YOUR TESTIMONY TODAY?

2 A THE SAME. THE SAME AS IT WAS THURSDAY.

3 Q YOU JUST TESTIFIED THAT WHEN A RESORT
4 DECIDES TO DISAFFILIATE, TO PULL OUT OF COAST, ITS MEMBERS,
5 WHO ARE ALSO MEMBERS OF COAST, BECOME ORPHANS?

6 A I APOLOGIZE IF I SAID THAT. I MISSPOKE.
7 I'M CONFUSED BY YOUR QUESTION. MY TESTIMONY TODAY IS NOT
8 DIFFERENT THAN IT WAS BEFORE --

9 Q YOUR TESTIMONY IS CONSISTENT WITH WHAT YOU
10 SAID ON THURSDAY?

11 A THAT'S WHAT I CHOOSE TO SAY. THAT'S MY
12 UNDERSTANDING OF THE ORPHAN POLICY. WHEN A RESORT PULLS
13 OUT OF COAST AND DISAFFILIATES AND THE RESORT IS STILL
14 THERE, IT'S STILL IN EXISTENCE, THAT'S NOT AN ORPHAN. THAT
15 DOESN'T MEAN THAT COAST WON'T ATTEMPT EVERYTHING THEY CAN
16 TO MARKET THOSE MEMBERS OF THAT RESORT. IT DOESN'T MEAN
17 COAST WON'T SEND LISTS OUT TO THEIR OTHER AFFILIATES.

18 Q THAT'S NOT AN ORPHAN?

19 A THAT'S NOT MY UNDERSTANDING OF AN ORPHAN,
20 THAT'S CORRECT.

21 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS DEPOSITION
22 TESTIMONY, PAGE 352, LINE 3, THROUGH 352, 21, VOLUME II.

23 MR. SHAW: I HAVE NO OBJECTION, YOUR HONOR.

24 BY MR. RIVIN: Q JUST BY THE WAY OF BACKGROUND,
25 MR. MITCHELL, DO YOU REMEMBER THAT YOU PRESENTED A LIST OF
26 43 ITEMS THAT YOU WERE PREPARED TO OFFER OPINIONS ON DURING

1 YOUR DEPOSITION?

2 A YES.

3 Q ALL RIGHT. AND SO THIS IS WHAT -- REMEMBER?
4 THIS IS WHAT I WAS REFERRING TO. WHY DON'T WE TAKE THE
5 FIRST QUESTION.

6 A I'M SORRY. GO AHEAD.

7 Q CAN YOU READ THAT?

8 A NO. I'VE TOLD YOU BEFORE, I CAN'T READ IT.
9 I'M SORRY. BUT THAT'S NO PROBLEM. I HAVE NO QUESTION WITH
10 WHAT YOU SAY.

11 Q THAT'S FINE.

12 A I TRUST YOU.

13 MR. RIVIN: "WHY DON'T WE TAKE THE
14 FIRST QUESTION AND TELL ME
15 WHAT OPINIONS YOU HAVE IN
16 THAT REGARD. BY THE WAY, LET
17 ME READ THIS.

18 "THE FIRST QUESTION
19 STATES, 'WHAT ARE THE
20 HISTORICAL POLICIES,
21 PRACTICES AND PROCEDURES OF
22 COAST TO COAST WITH REGARD TO
23 ORPHANED MEMBERS'?

24 "ANSWER: COAST TO COAST,
25 WHEN A MEMBER HAS BEEN
26 STATUSED ORPHANED BY COAST TO

1 COAST -- WHICH THAT STATUS
2 CAN OCCUR FOR ONE OR MANY
3 REASONS. BUT LET'S SAY THE
4 RESORT NO LONGER EXISTS THAT
5 THE MEMBERS WERE AFFILIATED
6 WITH FOR WHATEVER REASON,
7 SOLD, NOT A MEMBER OF COAST
8 TO COAST ANYMORE, BANKRUPT.
9 IT DOESN'T MATTER.

10 "QUESTION:
11 DISAFFILIATION?

12 "ANSWER: DISAFFILIATION,
13 EITHER VOLUNTARY OR
14 OTHERWISE. ALTHOUGH, I DON'T
15 THINK IN THE TOTAL EXISTENCE
16 OF COAST TO COAST THEY HAVE
17 EVER DISAFFILIATED HALF A
18 DOZEN RESORTS OF THEIR OWN
19 ACTIONS.

20 "QUESTION: AS OPPOSED TO
21 RESORTS DISAFFILIATING FROM
22 THEM?"

23 "ANSWER: RIGHT. SO
24 DISAFFILIATION."

25 THE WITNESS: THE PROBLEM WE'RE HAVING HERE IS
26 DISCUSSING WHAT YOU CALL THE ORPHANED POLICY, AND THAT

1 LABEL, VERSUS ACTIONS THAT COAST MAY TAKE WITH REGARD TO
2 HOW THEY BEHAVE WITH AN AFFILIATE RESORT THAT
3 DISAFFILIATES.

4 BY MR. RIVIN: Q MR. MITCHELL, YOU TESTIFIED ON
5 THURSDAY THAT A MEMBER OF -- A COAST MEMBER ONLY BECOMES AN
6 ORPHAN WHEN THE PARK CLOSES DOWN. IN YOUR DEPOSITION YOU
7 TESTIFIED THAT A COAST MEMBER CAN BECOME AN ORPHAN WHEN THE
8 PARK PULLS OUT, DISAFFILIATES WITH COAST.

9 WHICH IS IT?

10 A BOTH. I'S A QUESTION OF THE DIFFERENCE
11 BETWEEN LABELING AND BEHAVIOR. IF YOU WANT TO ASK ME ABOUT
12 HOW THE ACTIONS OCCUR IN BOTH DIFFERENT INSTANCES AND WHAT
13 THE DIFFERENCES ARE, I'D BE HAPPY TO SPEAK TO IT. BUT I
14 THINK THAT'S WHAT I WAS TRYING TO EXPLAIN TO YOU. THERE'S
15 A NOMENCLATURE PROBLEM.

16 Q WHAT THE PLAINTIFFS -- STRIKE THAT.

17 YOU BENEFITED FROM THE COAST ORPHAN PROGRAM,
18 DIDN'T YOU, IN THE PAST?

19 A I'M NOT CERTAIN I UNDERSTAND YOUR QUESTION.

20 Q WELL, HAVE YOU WORKED FOR RESORTS THAT HAVE
21 ACCEPTED LISTS OF ORPHANED MEMBERS FROM COAST?

22 A I DON'T RECALL THAT PERSONALLY. ALTHOUGH,
23 IT'S HIGHLY POSSIBLE THAT COAST MAY HAVE SENT US NAMES OF
24 PEOPLE THAT WERE IN SOME FORM OR ANOTHER DISAFFILIATED
25 AND/OR ORPHANED.

26 Q DO YOU REMEMBER TALKING WITH COAST ABOUT

1 THOSE ISSUES?

2 A I MAY HAVE. I DON'T RECALL ANY SPECIFIC
3 CONVERSATION WITH A SPECIFIC PERSON. BUT IF WE GOT A NAME
4 FROM COAST AT ONE OF THE RESORTS I WAS OPERATING AND WE
5 WERE ABLE TO INTEREST THE PEOPLE IN A MEMBERSHIP -- THAT
6 MEANS THEY HAD TO PAY AN INITIATION FEE AND DUES -- THEN WE
7 WOULD HAVE BENEFITED, YES, SIR.

8 Q SO YOU WOULD HAVE CONTACTED --

9 A WE WOULD HAVE BENEFITED.

10 Q TRIED TO BRING THEM INTO THE PARK TO THE
11 EXTENT YOU COULD?

12 A PARDON ME?

13 Q TRIED TO BRING THEM INTO THE PARK THAT YOU
14 WERE WORKING FOR, TO THE EXTENT POSSIBLE?

15 A I WOULD HOPE SO. I WOULD HOPE THAT WOULD BE
16 ATTEMPTED, YES, SIR. I DIDN'T PERSONALLY DO THAT, BUT THAT
17 WOULD HAVE BEEN A STANDING ORDER.

18 Q LET ME ASK YOU SOME -- LET ME ASK YOU A FEW
19 QUESTIONS ABOUT THE PORTION OF COAST -- TO MEMBERS OF
20 MEMBERSHIP CAMPGROUNDS.

21 YOU TALKED IN THE FIRST SESSION OF YOUR
22 DEPOSITION ABOUT A SURVEY THAT WAS DONE BY SOMEONE BY THE
23 NAME OF RAGATZ; DO YOU REMEMBER THAT?

24 A THE RAGATZ STUDIES HAVE BEEN DONE OVER A
25 PERIOD OF A DECADE PERIODICALLY, YES, SIR.

26 Q RIGHT.

1 AND YOU RELIED ON THE RAGATZ STUDY IN
2 FORMING YOUR OPINIONS?

3 A THAT WAS ONE PIECE OF INFORMATION. I DON'T
4 THINK I RELIED UPON IT. IT WAS MORE OF A REFERENCE TO A
5 REINFORCEMENT. THE RAGATZ STUDY PREDOMINANTLY ADDRESSED
6 THE R.V. USER SEGMENT OF THE INDUSTRY. SO ITS SCIENCE
7 OUTSIDE OF THAT AREA WAS -- ALWAYS HAD TO BE VIEWED WITH
8 OVERSIGHT, IF YOU WILL.

9 Q LET'S TAKE A LOOK AT THE -- ONE OF THE
10 RAGATZ SURVEYS THAT THEY HAVE. THAT WOULD BE EXHIBIT 1798,
11 WHICH IS ONE OF THE PLAINTIFFS' EXHIBITS.

12 MR. MITCHELL, DO YOU RECOGNIZE THIS
13 DOCUMENT --

14 MR. MOSHENKO: LET ME GET THE WITNESS'S VERSION,
15 THE SAME DOCUMENT.

16 MR. SHERMAN: YOUR HONOR, WOULD YOUR HONOR LIKE --
17 THE WITNESS: THIS LOOKS LIKE A PHOTOCOPY OF ONE OF
18 THE RICHARD RAGATZ STUDIES, A 1991 VERSION, ACCORDING TO
19 THE DATE ON TOP.

20 BY MR. RIVIN: Q RIGHT. DURING YOUR DEPOSITION
21 YOU BROUGHT SOME OF THE RAGATZ STUDIES WITH YOU; DO YOU
22 REMEMBER THAT?

23 A I MAY HAVE HAD SOME WITH ME, YES, SIR.

24 Q THIS IS ONE OF THE ONES YOU BROUGHT WITH
25 YOU; DID YOU KNOW THAT?

26 A I DON'T KNOW. MAYBE.

1 Q YOU JUST DON'T REMEMBER?

2 A I BROUGHT A WHOLE BUNCH OF THEM. I'M SURE
3 THIS MAY HAVE BEEN ONE OF THEM. I HAVE NO PROBLEM WITH
4 THAT.

5 Q LET ME ASK YOU TO TAKE A LOOK AT PAGE 21 OF
6 THIS DOCUMENT. AND THE QUESTION THAT I'M ASKING,
7 MR. MITCHELL, IS, HOW IMPORTANT TO CAMPGROUND MEMBERS IS
8 THE COAST TO COAST MEMBERSHIP? HOW SIGNIFICANT IS -- HOW
9 IMPORTANT IS THAT?

10 HOW SIGNIFICANT IS THE COAST TO COAST
11 MEMBERSHIP, AND WHY DO PEOPLE BUY INTO INDIVIDUAL RESORTS,
12 AND THE RAGATZ STUDY SPEAKS TO THAT, DOESN'T IT?

13 A WELL, AS I -- YES, WITH THE FOLLOWING
14 LIMITATION, WHICH RAGATZ STUDY IS A PROFILE ON A CERTAIN
15 GROUP OF RESORT MEMBERSHIP PURCHASERS, NOT ALL OF THEM. SO
16 WITHIN THE REFERENCE OF THE GROUP THEY'RE SPEAKING TO, THE
17 RAGATZ STUDY SPEAKS TO THAT. THAT'S CORRECT.

18 Q WHAT GROUP IS THAT?

19 A THAT WOULD BE WHAT WOULD COMMONLY REFER
20 TO -- MORE LIKELY THE PROFILE WOULD BE EMPTY-NESTERS AND
21 PEOPLE WHO ARE USING THE RECIPROCAL PRODUCT, PEOPLE WHO
22 WANT TO TRAVEL THROUGH DIFFERENT PROPERTIES. MOST OF THE
23 INFORMATION USED IN RAGATZ STUDIES WAS PROFILING THAT TYPE
24 OF PURCHASER, AS OPPOSED TO, QUOTE UNQUOTE, THE RESORT
25 USAGE PURCHASER.

26 AND IN ALL FAIRNESS, THE MAJORITY OF PEOPLE

1 PROBABLY IN 1991 OR A SIGNIFICANT FRACTION WERE PROFILED
2 ACCORDING TO THIS STUDY.

3 Q ALL RIGHT. SO THIS STUDY IS -- REFLECTS THE
4 MAJORITY OF COAST MEMBERS; IS THAT RIGHT? REFLECTS THE
5 LIKES, DISLIKES OF THE MAJORITY OF COAST MEMBERS?

6 A I WOULD SAY THIS REFLECTS THE MAJORITY OF
7 THE PEOPLE WHO ARE USING COAST SERVICES. IT DOESN'T
8 REFLECT A MAJORITY OF THE PEOPLE WHO ARE MEMBERS OF THE
9 RESORTS.

10 Q WELL, WE'RE ONLY TALKING ABOUT PEOPLE WHO
11 ARE MEMBERS OF COAST?

12 A USING COAST SERVICES, THE RECIPROCAL
13 SERVICES.

14 Q RIGHT. THAT'S WHAT WE'RE TALKING ABOUT
15 HERE?

16 A YES. THIS WOULD BE AN ACCURATE
17 REPRESENTATION, I THINK, IN THE PROFILE FOR PEOPLE WHO
18 WOULD BE PREDOMINANTLY INCLINED TO USE THE RECIPROCAL
19 SERVICE.

20 Q LET ME GO BACK.
21 THE TRANSFER LETTERS THAT YOU TALKED ABOUT
22 ON THURSDAY, THE LETTERS THAT YOU -- THAT COAST SENT OUT --

23 A IT IS 34,000 LETTERS.

24 Q YES, OCTOBER OF 1997.

25 A YES, SIR.

26 Q THOSE WERE SENT OUT TO COAST MEMBERS. THEY

1 WEREN'T SENT OUT TO ALL OF THE PLAINTIFFS' MEMBERS, ONLY
2 THOSE MEMBERS WHO WERE ALSO MEMBERS OF COAST?

3 A THAT'S MY UNDERSTANDING, YES, SIR.
4 ABSOLUTELY.

5 Q NOW, LET'S TALK ABOUT -- LET'S GO TO PAGE 21.

6 A OKAY.

7 Q CAN YOU READ THE -- READ THE LANGUAGE UNDER
8 THE HEADING "IMPORTANCE OF BENEFITS IN ORIGINAL PURCHASE
9 DECISION"?

10 A YES.

11 "RESPONDENTS" -- AND, AGAIN, THAT'S WHAT I
12 PREFACED MY REMARKS BY. WE NEED TO KNOW, SCIENCE IS ONLY
13 GOOD IF WE KNOW WHAT WE'RE TALKING ABOUT.

14 Q PLEASE PROCEED.

15 A "RESPONDENTS WERE ASKED TO EVALUATE THE
16 IMPORTANCE OF NINE POTENTIAL MOTIVATIONS FOR PURCHASING AT
17 THEIR COAST TO COAST AFFILIATED RESORT. THE RESULTS ARE
18 SHOWN IN TABLE 1-M. AND THEY ARE SUMMARIZED BELOW, RANKED
19 BY THE PROPORTION WHO CHECKED 'VERY IMPORTANT.'" OR A
20 HIGH --

21 Q AND WHAT'S THE FIRST ITEM ON THAT LIST?

22 A THE VERY FIRST ITEM ON IT IS "CHANCE TO USE
23 OTHER AFFILIATED COAST TO COAST RESORTS FOR VACATIONS."

24 Q ALL RIGHT. NOW, I'D LIKE YOU TO GO DOWN
25 BELOW THAT LITTLE TABLE AND READ THE FIRST SENTENCE.

26 A "AS EVIDENCED DURING BOTH THE 1985, 1987

1 SURVEYS, THE FLEXIBILITY OF LOCATION PROVIDED BY COAST
2 TO" -- "AFFILIATION RANKS AS THE MOST IMPORTANT SINGLE
3 PURCHASE MOTIVATION."

4 Q LET ME READ THAT. I THINK YOU LEFT OUT A
5 WORD OR TWO.

6 A I DID. I'LL READ IT AGAIN.

7 Q I'LL READ IT.

8 A OKAY.

9 Q I'LL READ IT.

10 "AS EVIDENCED DURING BOTH THE 1985 AND 1987
11 SURVEYS, THE FLEXIBILITY OF LOCATION PROVIDED BY COAST TO
12 COAST AFFILIATION RANKS AS THE SINGLE MOST" -- "AS THE MOST
13 IMPORTANT SINGLE PURCHASE MOTIVATION."

14 NOW, WE'RE TALKING ABOUT PURCHASE IN A HOME
15 RESORT. NOT PURCHASE IN COAST, BUT MOTIVATION FOR PURCHASE
16 IN A HOME RESORT; ISN'T THAT RIGHT?

17 A WELL, I DON'T KNOW -- I DON'T KNOW IF THAT'S
18 THE SCIENCE OF THIS. BUT --

19 Q LET'S GO BACK UP TO THE WORDS THAT YOU READ
20 BEFORE.

21 A SURE. BUT I DON'T HAVE A PROBLEM WITH THAT.

22 Q ALL RIGHT. DO YOU HAVE -- I THINK WHAT THIS
23 REPORT SAYS --

24 A I THINK THAT THIS REPORT SAYS IF SOMEONE
25 BUYS THE COAST TO COAST PROGRAM, THE MOST IMPORTANT REASON
26 THEY'RE BUYING THE COAST TO COAST PROGRAM IS BECAUSE IT

1 JUST STATES RIGHT HERE, THEY LIKE THE IDEA THAT THEY CAN
2 USE ALL OF THE RESORTS THAT ARE AFFILIATED.

3 Q RIGHT. WHAT --

4 A WHY ELSE WOULD THEY BUY IT?

5 Q LET ME GO OVER THIS ONE MORE TIME.

6 A OKAY.

7 Q WHAT THIS SAYS IS THAT THE NINE POTENTIAL
8 MOTIVATIONS FOR PURCHASING AT THEIR COAST TO COAST
9 AFFILIATED RESORT --

10 A I'M SORRY. I LOST MY SPACE. WHERE ARE YOU
11 UP 9?

12 Q UP ABOVE THE TABLE. SEE THAT?

13 A OH, YEAH. NINE POTENTIAL MOTIVATIONS. I'M
14 SORRY. GO AHEAD.

15 Q OF THE NINE POTENTIAL MOTIVATIONS FOR
16 PURCHASING AT THEIR COAST TO COAST AFFILIATED RESORT, THE
17 HOME RESORT?

18 A RIGHT.

19 Q THE NUMBER ONE FACTOR WAS THE CHANCE TO USE
20 OTHER AFFILIATED COAST TO COAST RESORTS FOR VACATIONS.

21 A YES.

22 Q DO YOU DISAGREE WITH THIS?

23 A OH, NO, OF COURSE NOT. IT'S ABSOLUTELY
24 CORRECT FOR THOSE PEOPLE WHO USE THE RECIPROCAL SYSTEM.
25 NOT FOR ALL THE RESORT PURCHASERS.

26 Q FOR THOSE PEOPLE WHO BUY WHO BECOME MEMBERS

1 OF COAST TO COAST?

2 A YES, OF COURSE.

3 Q EXACTLY?

4 A 100 PERCENT.

5 THE COURT: LET'S PICK UP WHERE WE LEFT OFF AT

6 1:30. SEE YOU ALL AT 1:30.

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1 WESTMINSTER, CALIFORNIA - MONDAY, MAY 22, 2000

2 AFTERNOON SESSION

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

5 THE COURT: PROCEED, COUNSEL.

6 MR. RIVIN: THANK YOU, YOUR HONOR.

7 CROSS-EXAMINATION (CONTINUED)

8 BY MR. RIVIN: Q MR. MITCHELL, I'D LIKE TO SWITCH
9 TO A DIFFERENT TOPIC.

10 WE TALKED ON THURSDAY ABOUT DAN HOPPER. YOU
11 REMEMBER I SHOWED A LETTER THAT YOU HAD WRITTEN TO
12 MR. HOPPER?

13 A YES.

14 Q MR. HOPPER -- JUST TO REFRESH EVERYBODY'S
15 RECOLLECTION, MR. HOPPER IS BASED IN OHIO, IN THE MIDWEST.
16 I GUESS OHIO IS IN THE MIDWEST. THAT'S WHERE HE IS BASED;
17 RIGHT? DO YOU KNOW THAT?

18 A YOU TOLD ME. I KNOW IT.

19 Q ALL RIGHT. HE STARTED AN ADVOCACY GROUP ON
20 BEHALF OF THOUSAND ADVENTURES MEMBERS?

21 A YES.

22 Q CORRECT?

23 HE STARTED WHAT REALLY AMOUNTED TO KIND OF A
24 GRASS-ROOTS UPRISING, GRASS-ROOTS MOVEMENT -- LET'S NOT SAY
25 "UPRISING," BUT A MOVEMENT?

26 A YEAH. IT WAS PRETTY WELL OVER, AND HE

1 STARTED A SEMBLANCE OF THE MEMBERS, YES.

2 Q HE CONTACTED YOU, AND HE WANTS QUOTES,
3 QUOTES AND OPINIONS FOR HIS NEWSLETTER?

4 A CORRECT. WELL, WHEN HE FIRST CONTACTED ME,
5 I DON'T THINK THAT WAS THE REASON. BUT THAT WAS PART AND
6 PARCEL.

7 Q HE ASKED YOU TO ENDORSE HIS ORGANIZATION?

8 A AT SOME TIME. NOT IN THE FIRST CONTACT.

9 Q HE WAS ATTACKING -- HE WAS GOING AFTER
10 THOUSAND ADVENTURES OBVIOUSLY?

11 A MR. VOPNFORD, YES, SIR.

12 Q RIGHT. AND YOU INVESTIGATED HIM?

13 A I -- ACTUALLY I HAD SOMEONE ELSE DO IT. I
14 MEAN, PERSONALLY I DIDN'T DO IT. I ASKED SOMEONE TO CHECK
15 HIM OUT, AND THEN I TALKED TO HIM AGAIN. AND I COUNSELED
16 HIM -- I RESPECTED HIS EFFORTS AND -- BUT HIS HISTORY HAD
17 SHOWN THAT THIS WOULD NOT PRODUCE ANY RESULTS; AND THAT I
18 WAS ALSO PERSONALLY PRIVY TO THE FACT THAT MR. VOPNFORD
19 DIDN'T HAVE ANY MONEY. SO EVEN IF HE WAS ABLE TO PREVAIL
20 IN SOME SENSE, THERE WAS NOTHING TO WIN, AND THIS WAS JUST
21 GOING TO HAVE TO BE FINANCED BY MEMBERS.

22 I ASKED HIM HOW HE WAS GOING TO FINANCE HIS
23 LITTLE EXPEDITION, AND HE TOLD ME HE WAS GOING TO GET MONEY
24 OUT OF MEMBERS. AND SO I TOLD HIM MY EXPERIENCE WITH THIS;
25 THIS WOULD JUST BE MORE MONEY DOWN THE DRAIN THAT MEMBERS
26 HAD TO PAY AND THAT HE OUGHT TO RELY UPON THE BANKRUPTCY

1 COURTS TO PROTECT THEIR INTERESTS.

2 Q MR. MITCHELL, I ASKED YOU WHETHER YOU
3 INVESTIGATED HIM.

4 A NO, PERSONALLY I DIDN'T. AS I SAID, I HAD
5 SOMEONE ELSE GET ME SOME INFORMATION ABOUT HIM. THEY
6 INDICATED THAT HE WAS --

7 Q YOU HAD HIM INVESTIGATED?

8 A SOMEONE, YES, SIR.

9 Q AND YOU FOUND OUT FROM THAT INVESTIGATION
10 THAT MR. HOPPER APPEARED TO BE DOING EXACTLY WHAT HE SAID
11 HE WAS DOING, AND THAT IS HELPING THE MEMBERS?

12 A WELL, HE WASN'T DOING ANYTHING AT THE TIME.
13 THAT'S WHAT HE WANTED TO DO. AND HE SEEMED LEGITIMATE TO
14 ME. AND I APPLAUDED HIS EFFORTS. BUT I DIDN'T THINK THAT
15 HIS TECHNIQUES WERE GOING TO BE BENEFICIAL, AND IT WOULD
16 ONLY COST MEMBERS MONEY.

17 BUT I AGREED TO HELP HIM. AND I OFFERED TO
18 TALK TO ANY RESORT OWNERS THAT I KNEW TO SEE IF THEY WOULD
19 TAKE HIS MEMBERS IN. HE TOLD ME THAT MR. VOPNFORD HAD
20 REPACKAGED UP HIS OLD SHOW AND CALLED IT "TRAVEL AMERICA."
21 AND I TOLD HIM THAT THAT WAS OBJECTIONABLE AS NOTHING OTHER
22 THAN A TRICK. AND I SUBSEQUENTLY WROTE HIM LANGUAGE WITH
23 REGARD TO THAT.

24 Q MR. MITCHELL, YOU FOUND OUT THAT MR. HOPPER
25 APPEARED TO BE DOING EXACTLY WHAT HE SAID HE WAS DOING?

26 A I FELT HIS INTENTIONS WERE GOOD, THAT IS

1 CORRECT, SIR.

2 Q NOW, AT THE SAME TIME, AROUND THE SAME TIME
3 YOU WERE CHECKING -- YOU WERE CHECKING OUT MR. HOPPER AND
4 TALKING TO HIM, YOU WERE WORKING FOR A COMPANY CALLED
5 "ELITE RESORTS"; IS THAT RIGHT?

6 A WHAT YEAR WAS THAT LETTER I WROTE
7 MR. HOPPER? DO YOU REMEMBER? I THINK IT WAS --

8 Q WHY DON'T YOU TELL ME WHEN YOU WERE WORKING
9 FOR ELITE RESORTS.

10 A WELL, I DIDN'T START WORKING FOR ELITE -- I
11 WROTE THE LETTER TO HIM IN DECEMBER, AND I STARTED WORKING
12 FOR ELITE RESORTS IN JANUARY. BUT I RECOMMENDED ELITE
13 RESORTS. AND ALTHOUGH I WASN'T CONTRACTED, I CERTAINLY WAS
14 PROVIDING HIM COUNSEL, YES, SIR.

15 Q YOU DIDN'T START WORKING FOR ELITE RESORTS
16 UNTIL JANUARY OF 1998?

17 A THAT'S WHY I ASKED YOU FOR THE LETTER. I
18 BELIEVE THAT'S CORRECT, YES. I THINK MY ENGAGEMENT WAS
19 JANUARY IN '98, BUT I COULD BE OFF.

20 Q YOU WERE WORKING FOR ELITE RESORTS WHEN YOU
21 SENT MR. HOPPER THAT LETTER, WEREN'T YOU?

22 A I JUST TOLD YOU, I DON'T KNOW. BUT IF WE
23 CAN GET THE DATES, I'LL BE HAPPY TO -- IF I WAS, IT'S
24 FINE. IF I WASN'T, THAT'S -- WHATEVER THE FACT ARE IS JUST
25 FINE WITH ME.

26 Q LET'S TAKE A LOOK AT EXHIBIT 1400 AGAIN,

1 PLEASE.

2 A IT CERTAINLY WOULD HAVE BEEN WITHIN A COUPLE
3 OF WEEKS OF MY ACTUAL ENGAGEMENT IN ANY CASE.

4 Q THIS WAS THE LETTER WE TALKED ABOUT ON
5 THURSDAY WHERE YOU STATED IN HERE THAT TRAVEL AMERICA WAS
6 NOTHING MORE THAN THOUSAND ADVENTURES IN NEW PACKAGING?

7 A I WAS RESPONDING TO HIS STATEMENT TO ME THAT
8 MR. VOPNFORD HAD INVENTED TRAVEL AMERICA.

9 Q YOU HAD NO OPINION?

10 A PARDON ME?

11 Q YOU HAD NO OPINION ABOUT THAT; IS THAT
12 RIGHT?

13 A ABOUT WHAT?

14 Q ABOUT WHETHER -- ABOUT WHETHER TRAVEL
15 AMERICA WAS SIMPLY NEW PACKAGING FOR THOUSAND ADVENTURES;
16 YOU WERE JUST BASICALLY SPINNING OUT TO MR. HOPPER WHAT HE
17 HAD TOLD YOU?

18 A MR. HOPPER TOLD ME THAT MR. VOPNFORD HAD
19 REPACKAGED HIS PROGRAM INTO SOMETHING CALLED TRAVEL
20 AMERICA; AND I TOLD HIM IF THAT WAS THE CASE, THAT THAT WAS
21 TERRIBLE. AND I FURTHER TOLD HIM THAT IT WAS MY BELIEF
22 THAT IF THAT WAS THE CASE, MEMBERS -- AND IF THEY DIDN'T
23 GET SERVICES AND SO ON, THEY DIDN'T GET WHAT THEY
24 CONTRACTED FOR, THEY OUGHT NOT TO PAY.

25 Q MR. MITCHELL, LET'S TAKE ANOTHER LOOK AT THE
26 FIRST SENTENCE OF THE SECOND TO THE LAST PARAGRAPH OF THIS

1 LETTER.

2 A OKAY.

3 Q THIS LETTER IS ONE THAT YOU WROTE TO
4 MR. HOPPER?

5 A ABSOLUTELY.

6 Q AND YOU WROTE IT. IT'S ON THE LETTERHEAD OF
7 C.P.A.A., CONSUMER PROTECTION ASSOCIATION OF AMERICA; IS
8 THAT CORRECT?

9 A THAT'S CORRECT. I THINK THAT'S HOW HE CAME
10 REFERENCED TO ME.

11 Q AND WHAT IS THE FIRST -- READ THE FIRST
12 THREE WORDS.

13 A WHY -- YOU CAN READ THEM, AND I'LL BELIEVE
14 YOU.

15 Q YOU KNOW WHAT? LET ME HAND YOU A COPY OF
16 THE LETTER.

17 A OKAY.

18 Q I FORGOT THAT YOU COULDN'T SEE THE SCREEN.
19 MIGHT I APPROACH?

20 A I'M SURE YOU'LL SAY THE RIGHT THING. THIS
21 MAY BE MORE DIFFICULT. I APPRECIATE THE EFFORTS --

22 Q NO. THE FIRST THREE WORDS OF THE SECOND TO
23 THE LAST PHOTOGRAPH.

24 A THE SECOND TO THE LAST PARAGRAPH, THE FIRST
25 THREE WORDS? ELITE RESORTS WILL PROVIDE.

26 Q NO. THE SECOND TO THE LAST PARAGRAPH.

1 A ASSUME, WE ARE AWARE THAT --

2 Q STOP THERE. WE ARE AWARE. OKAY.

3 A UH-HUH.

4 Q WHO IS "WE"?

5 A THIS WOULD BE C.P.A. I'M SPEAKING.

6 Q YOUR COMPANY?

7 A WELL, IT WASN'T MY COMPANY. I CONCEIVED THE
8 IDEA, YES.

9 Q YOU WERE -- YOU WERE DIRECTOR OF THE
10 COMPANY?

11 A YES. I'M A DIRECTOR OF MANY COMPANIES THAT
12 ARE NOT MY COMPANY.

13 Q HOW MANY?

14 A AS YOU KNOW, DIRECTOR IS NOT NECESSARILY
15 EITHER A STOCKHOLDER OR PRINCIPAL OR ANYTHING.

16 Q DIRECTORS ALSO DON'T GENERALLY WRITE LETTERS
17 ON BEHALF OF THE COMPANY EITHER.

18 A I DON'T KNOW. IT DEPENDS ON THE
19 CIRCUMSTANCES. NO PROBLEM. I ACCEPT FULL RESPONSIBILITY
20 FOR THIS LETTER. IT'S NOT AN ISSUE.

21 Q WHEN YOU SAY "WE ARE AWARE," YOU'RE TALKING
22 ABOUT C.P.A.A., THE COMPANY YOU WERE WORKING WITH?

23 A THAT'S CORRECT, SIR.

24 Q YOU WERE AWARE THAT T.A.I. MEMBERS WERE
25 BEING AGGRESSIVELY SOLICITED TO PAY DUES AND/OR CONTRACTS
26 RELATING TO THEIR T.A.I. MEMBERSHIPS OR SOME NEW PACKAGING

1 THEREOF CALLED TRAVEL AMERICA?

2 A RIGHT. MR. HOPPER TOLD ME THAT. THAT'S HOW
3 I BECAME AWARE OF IT.

4 Q YOU WEREN'T AWARE OF IT?

5 A NOT UNTIL MR. HOPPER TOLD ME. WHEN HE TOLD
6 ME, I WAS AWARE OF IT. THAT'S HOW I BECAME AWARE OF IT.

7 Q HOW MANY CONVERSATIONS DID YOU HAVE WITH
8 MR. HOPPER BEFORE YOU SENT HIM THIS LETTER? AND PLEASE
9 DON'T TELL ME THE CONTENT, JUST THE NUMBER.

10 A I'M CERTAIN IT WAS NO MORE THAN TWO. I
11 DON'T RECALL ANYMORE THAN TWO. AND HE ALSO MAY HAVE HAD A
12 CONVERSATION. I KNOW HE HAD A CONVERSATION I THINK WITH
13 MR. BRUCE. BUT TWO, I THINK.

14 Q AND IN THAT CONVERSATION MR. HOPPER TOLD YOU
15 WHAT WAS GOING ON WITH THOUSAND ADVENTURES AND MR. VOPNFORD
16 AND TRAVEL AMERICA; IS THAT RIGHT?

17 A YEAH. HIS FOCUS WAS ON MR. VOPNFORD,
18 APPROPRIATELY SO.

19 Q BUT HE TOLD YOU -- THE ANSWER IS YES, HE
20 TOLD YOU ABOUT THAT; RIGHT?

21 A YES. HE TOLD ME THAT HE AND HIS MEMBERS
22 WERE BEING SOLICITED TO PAY DUES TO MR. VOPNFORD, PAY THEIR
23 CONTRACTS, AND THAT MR. VOPNFORD WAS BANKRUPT; AND THAT HIS
24 OPINION, MR. VOPNFORD HAD REORGANIZED HIS COMPANY INTO
25 SOMETHING ELSE CALLED TRAVEL AMERICA. AND HE ASKED MY
26 OPINION ABOUT IT REGARDING THOSE FACTS. I STATED MY

1 OPINION, AND MY OPINION WOULD BE THE SAME TODAY UNDER THOSE
2 FACTS.

3 Q MR. MITCHELL, WHEN MR. HOPPER COMES TO THIS
4 CASE, TO THIS TRIAL, AND TESTIFIES, AND WHEN HE TESTIFIES
5 THAT HE NEVER SAID TO YOU THAT TRAVEL AMERICA CONSTITUTED
6 NEW PACKAGING OF THOUSAND ADVENTURES, THAT THAT WASN'T HIS
7 LANGUAGE, THAT YOU CAME UP WITH THAT LANGUAGE, WOULD HE BE
8 LYING?

9 A NO.

10 MR. SHAW: YOUR HONOR, I'LL OBJECT. ASSUMES FACTS
11 NOT IN EVIDENCE. AND LACKS FOUNDATION. AND IT'S AN
12 INCOMPLETE HYPOTHETICAL.

13 THE COURT: OVERRULED.

14 THE WITNESS: NO. THAT WAS MY LANGUAGE DESCRIBING
15 IN A SHORT VERSION OF WHAT HE TOOK 10 MINUTES TO DESCRIBE
16 TO ME. BUT THE TERM "PACKAGING" WAS ANY LANGUAGE, YES,
17 SIR.

18 BY MR. RIVIN: Q OH, THE TERM "PACKAGING" WAS
19 YOUR LANGUAGE?

20 A YES, SIR. IN OTHER WORDS, HE DESCRIBED THE
21 COMPANIES. HE SAYS, THE SAME GUY STARTING THE SAME COMPANY
22 UP AGAIN. AND I WENT, "OH, MY GOD." AND SO THE TERM
23 "PACKAGING" WAS MY TERM.

24 Q MR. MITCHELL, YOU SENT THIS LETTER IN
25 DECEMBER 1997; CORRECT?

26 A DECEMBER 3RD, 1997, THAT'S CORRECT.

1 Q RIGHT. AND TRAVEL AMERICA WAS THE COMPANY
2 THAT CAME OUT OF THE MEETING AT THE RANCH?

3 A THE APRIL '97 MEETING?

4 Q THAT YOU WERE SO INVOLVED WITH?

5 A WELL, YOU'LL RECALL WHEN YOU QUESTIONED ME
6 ABOUT THIS, I TOLD YOU POINT-BLANK NOTHING CAME OUT OF THAT
7 MEETING. THERE WAS NOTHING THAT CAME OUT OF THAT MEETING
8 AT ALL. AND THE ONLY THING THAT I WAS CERTAIN OF THAT CAME
9 OUT OF THAT MEETING IS THAT THE CREDITORS WERE NOT GOING TO
10 ALLOW MR. VOPNFORD TO BE IN THE CAMPGROUND BUSINESS
11 ANYMORE.

12 Q YOU TESTIFIED, SIR, THAT MR. CLOUD TOOK
13 MR. VOPNFORD --

14 A OUT THE BACK 40.

15 THE COURT: EXCUSE ME. WAIT UNTIL HE FINISHES.

16 THE WITNESS: OH, EXCUSE ME.

17 MR. RIVIN: THANK YOU, YOUR HONOR.

18 THE WITNESS: PLEASE, GO AHEAD.

19 BY MR. RIVIN: Q I GET INTO IT, TOO.

20 THAT MR. CLOUD TOOK MR. VOPNFORD AND
21 MR. NOVELLI OUT INTO THE BACK 40, AND THEY CAME BACK AND
22 SAID, "WE'RE GOING TO DO A DEAL"?

23 A I DON'T KNOW IF I SAID THAT, BUT I MAY
24 HAVE -- I THINK WHAT I RECALL SAYING WAS HE TOOK THEM OUT
25 BACK BEHIND THE BACK 40; AND BEFORE HE LEFT HE SAID HE WAS
26 GOING TO MAKE SURE MR. VOPNFORD WAS COOPERATIVE TO THE

1 CREDITORS. AND WHEN HE CAME BACK HE SAID THAT HE HAD A
2 DEAL. I DON'T KNOW WHAT THE DEAL WAS.

3 AND I MAY -- I DON'T KNOW IF I USED THE WORD
4 "DEAL," BUT THERE WAS NO DEAL IN THE SENSE OF ANYONE THERE
5 OR AT LEAST NOT IN MY PRESENCE.

6 AND IT WAS MY UNDERSTANDING WHEN I GOT ON
7 THE PLANE AND LEFT, THAT THE ONLY DEAL THAT WAS MADE IS
8 MR. VOPNFORD WAS NOT GOING TO BE IN THE BUSINESS ANYMORE.

9 Q AND WITH ALL OF YOUR EXPERTISE AND
10 INVOLVEMENT IN THIS INDUSTRY --

11 A RIGHT.

12 Q -- FROM THE TIME YOU LEFT THAT MEETING IN
13 APRIL OF 1997 UNTIL YOU SPOKE WITH MR. HOPPER IN NOVEMBER,
14 APPROXIMATELY NOVEMBER OF 1997 --

15 A LATE NOVEMBER, CORRECT, SIR.

16 Q YOU HAD NO IDEA THAT MR. VOPNFORD AND
17 MR. NOVELLI HAD GOTTEN TOGETHER, AND THAT TRAVEL AMERICA
18 WAS JUST THOUSAND ADVENTURES IN NEW PACKAGING?

19 A WELL, FIRST OF ALL, TRAVEL AMERICA IS NOT
20 THOUSAND ADVENTURES IN NEW PACKAGING. THAT'S YOUR
21 CHARACTERIZATION OF IT.

22 Q THAT WAS YOUR CHARACTERIZATION, SIR.

23 A NO. WE JUST WENT THROUGH THAT.

24 BUT IN ANY CASE, YOU'RE CORRECT. I DID NOT
25 HAVE ANY IDEA BECAUSE I WAS WORKING AN ENTIRELY DIFFERENT
26 AREA. I COMPLETED MY RESPONSIBILITIES. I WAS DONE WITH

1 THAT. AND I PAID NO ATTENTION TO IT, YOU'RE CORRECT.

2 Q YOU WERE WORKING IN THE MEMBERSHIP
3 CAMPGROUND INDUSTRY, WEREN'T YOU?

4 A NO. AT THE TIME IN NOVEMBER OF -- DECEMBER
5 OF THAT AREA I WAS GIVING COUNSEL TO MR. EDWARD MAYER FROM
6 CANADA, AND HE WAS WORKING ON A ROLL-UP WITH SANDY
7 ROBERTSON FROM ROBERTSON STEVENS, THE BANK OF AMERICA OF
8 THE CAMPGROUND INDUSTRY. THEY WERE LOOKING TO BUY A BUNCH
9 OF CAMPGROUNDS.

10 Q WEREN'T YOU TALKING TO -- DIDN'T YOU TESTIFY
11 THAT DURING THE FALL OF 1997, YOU WERE TALKING TO RESORT
12 OWNERS WHO WERE TELLING YOU ALL ABOUT THESE LETTERS THAT
13 COAST TO COAST HAD SENT OUT TO TRAVEL AMERICA'S MEMBERS?

14 A NO -- WELL, MY BEST RECOLLECTION OF MY
15 TESTIMONY WAS THAT I TALKED TO RESORT OWNERS. AND
16 SPECIFICALLY I TALKED TO THE OPERATOR OF AVILIA BEACH IN
17 NORTHERN CALIFORNIA WAY AFTER THAT WHO TOLD ME, YEAH, I GOT
18 ONE OF THOSE LETTERS, AND I TOLD COAST THAT I WOULDN'T TAKE
19 THE MEMBERS BECAUSE I COULDN'T AFFORD TO. AND I BELIEVE
20 THAT WAS MY TESTIMONY. BUT I COULD BE WRONG. THAT'S MY
21 RECOLLECTION OF IT, SIR.

22 Q YOU KNOW WHAT, MR. MITCHELL? IT'S NOT --
23 WHAT I'M TRYING TO ARRIVE AT IS THE TRUTH.

24 A ME, TOO. I HAVE NO PROBLEM WITH THAT. JUST
25 ASK ME A QUESTION. I'LL ANSWER YOU.

26 Q YOU SAID YOU WERE WORKING FOR ED MAYER?

1 A YES, SIR.

2 Q IN -- WHEN? IN 1997?

3 A AGAIN, I'D HAVE TO PULL MY RECORDS TO GET
4 THE DATE. MY RECOLLECTION OF WORKING WITH MR. MAYER WAS MY
5 CONTRACT WAS ENGAGED SOMETIME IN JANUARY. I DON'T REALLY
6 REMEMBER WHETHER IT WAS '97 OR '98.

7 Q YOU SAID THAT DURING THE PERIOD OF TIME FROM
8 APRIL 1997 THROUGH NOVEMBER 1997 YOU WERE DOING OTHER
9 THINGS?

10 A THAT'S CORRECT.

11 Q AMONG THOSE OTHER THINGS YOU WERE DOING WAS
12 WORKING FOR MR. MAYER?

13 A ONE OF THOSE THINGS.

14 Q WAS WORKING FOR MR. MAYER?

15 A THAT'S CORRECT.

16 Q AND MR. MAYER WAS ELITE RESORTS; HE WAS ONE
17 OF THE OWNERS OF ELITE; RIGHT?

18 A HE MAY OR MAY NOT HAVE BEEN AT THAT TIME.
19 HE ULTIMATELY WAS, YES, SIR.

20 Q SO YOU WERE GETTING INVOLVED WITH ELITE
21 RESORTS, WITH THIS COMPANY CALLED ELITE RESORTS?

22 A WELL, NO. I MEAN, ELITE RESORTS WAS A
23 COMPANY THAT ULTIMATELY OWNED FOUR PROPERTIES IN FLORIDA.

24 Q CORRECT.

25 A MR. MAYER WAS THE PRINCIPAL IN THAT, BUT HE
26 WAS ALSO UP DOING AN INDUSTRY ROLL-UP WITH ANOTHER GROUP.

1 THAT'S THE GROUP THAT I WAS WORKING FOR. AND I CONTACTED
2 MR. YOUNG ON BEHALF OF MR. HOPPER AND ASKED MR. YOUNG IF HE
3 WOULD TAKE SOME MEMBERS AT THE ACALLA PARK IF THEY HAD ANY
4 PEOPLE LIVING IN THE FLORIDA AREA.

5 Q LET'S TAKE LOOK AT THE THIRD PARAGRAPH OF
6 EXHIBIT 1400.

7 A THAT'S THE SAME ONE WE'RE TALKING ABOUT.

8 Q THE SAME ONE.

9 A YEAH.

10 Q YOU'RE WRITING TO MR. HOPPER SAYING, "I CAN
11 ADVISE YOU THAT C.P.A.," YOUR COMPANY, "AFTER A THREE-MONTH
12 REVIEW HAS APPROVED ELITE RESORTS OF AMERICA AS A C.P.A.
13 BUSINESS MEMBER."

14 A YES, SIR.

15 Q YOU WERE WORKING FOR ELITE RESORTS, WERE YOU
16 NOT?

17 A NO. I WAS WORKING FOR MR. MAYER.

18 Q AND MR. MAYER WAS ELITE -- WAS TIED INTO
19 ELITE RESORTS?

20 A HE WAS ONE OF THE PRINCIPALS. THERE WERE
21 FOUR PRINCIPALS.

22 Q OF ELITE RESORTS?

23 A THAT'S CORRECT.

24 Q SO YOU'RE TELLING MR. HOPPER THAT C.P.A.,
25 YOUR COMPANY, DID A THREE-MONTH INVESTIGATION OF
26 MR. MAYER'S COMPANY, AND YOU'RE BEING PAID BY MR. MAYER AT

1 THE SAME TIME; IS THAT CORRECT?

2 A WELL, I'M TELLING HIM EXACTLY WHAT THE
3 LETTER SAYS; THAT C.P.A. INVESTIGATED ELITE RESORTS.
4 MR. MAYER WAS ONE OF THE FINANCIAL PARTNERS IN ELITE
5 RESORTS. BUT MR. MAYER THAT I WORKED FOR WAS A DIFFERENT
6 COMPANY. HE IS THE SAME PERSON. HE IS THE SAME PERSON,
7 YES, SIR.

8 Q YOU WERE TRYING TO CONVINCING MR. HOPPER TO
9 SEND THOUSAND ADVENTURES MEMBERS YOUR WAY TOWARDS ELITE
10 RESORTS, THE COMPANY YOU WERE WORKING FOR, AND SO YOU TOLD
11 MR. HOPPER THAT C.P.A. HAD CONDUCTED A THREE-MONTH
12 INVESTIGATION OF ELITE RESORTS TO TRY TO CONVINCING HIM THAT
13 ELITE RESORTS WAS AN HONORABLE, GOOD, ORGANIZATION, AND IT
14 SHOULD BE -- IT WAS APPROPRIATE FOR HIM TO RECOMMEND TO
15 THOUSAND ADVENTURES MEMBERS THAT THEY JOIN ELITE; IS THAT
16 RIGHT?

17 A NO. BUT IT'S ALMOST RIGHT. MY GOAL WAS --
18 C.P.A. DID AN INVESTIGATION AS PART OF THEIR PROTOCOLS OF
19 ELITE RESORT, AND THEY WERE A GOOD COMPANY, WELL-FUNDED.
20 AND I SUGGESTED TO MR. HOPPER THAT IF HE NEEDED -- HIS
21 MEMBERS NEEDED A PLACE IN FLORIDA TO GO SOMEWHERE, THAT
22 THEY WOULD DO IT. AND THEY WOULD DO IT INEXPENSIVELY
23 WITHOUT ADDITIONAL FEES AND COSTS.

24 Q ELITE WAS WELL-FUNDED ENOUGH TO BE ABLE TO
25 PAY YOUR FEES; IS THAT RIGHT?

26 A ELITE DID NOT PAY ANY OF MY FEES. I WAS

1 PAID BY MR. MAYER. AND MR. MAYER IS WORTH SEVERAL HUNDRED
2 MILLION DOLLARS. AND HE CERTAINLY CAN AFFORD IT, YES.

3 Q LET'S GO BACK TO APRIL OF 1997 --

4 A SURE.

5 Q -- MR. MITCHELL.

6 I WANT TO GO BACK TO THAT MEETING AT THE
7 RANCH, AND YOU'VE TESTIFIED TO THAT. I'M GOING TO GO
8 THROUGH IT AS QUICKLY AS I CAN.

9 A OKAY.

10 Q BUT I WANT TO REFRESH YOUR RECOLLECTION ON
11 THAT.

12 YOU WERE CONTACTED BY CHRIS DAVIS; IS THAT
13 RIGHT?

14 A YES, SIR.

15 Q CHRIS DAVIS WAS YOUR CONTACT AT TRAVELERS?

16 A THAT'S CORRECT.

17 Q CHRIS DAVIS ASKED YOU TO PARTICIPATE IN THIS
18 MEETING. HE SAID TRAVELERS AND THE OTHER LENDERS HAVE A
19 PROBLEM; IS THAT RIGHT?

20 A THAT'S CORRECT.

21 Q A PROBLEM BECAUSE OF THOUSAND ADVENTURES?

22 A THAT'S CORRECT.

23 Q ALL RIGHT. THESE WERE VOPNFORD COMPANIES?

24 A THAT'S CORRECT, SIR.

25 Q THOUSAND ADVENTURES WAS IN TROUBLE; THERE
26 WERE SEVERAL BANKRUPTCIES AT THAT TIME; IS THAT RIGHT?

1 A I DON'T RECALL SPECIFICALLY, BUT I'LL GUESS
2 THAT THERE WERE. I'M SURE THAT WAS AN ELEMENT OF THE
3 TRIAL, YES.

4 Q ATTORNEYS GENERAL OF SEVERAL STATES WERE
5 AFTER THEM?

6 A WELL, THAT HAD BEEN GOING ON FOR YEARS.
7 THEY HAD SANCTIONS FROM ATTORNEY GENERALS FOR PROBABLY --

8 Q BUT IT WAS PART OF THE PROBLEM?

9 A OH, YES, DEFINITELY.

10 Q AND PARKS WERE BEING CLOSED?

11 A YES.

12 Q LENDERS WERE EXPERIENCING DEFAULT ON
13 CONTRACTS OF THOUSAND ADVENTURES MEMBERS?

14 A I DON'T KNOW. THEY WERE CERTAINLY
15 EXPERIENCING IT CONCERNING DEFAULT OVERALL BECAUSE OF THE
16 HUNDRED MILLION DOLLARS. I DON'T KNOW THAT THE INDIVIDUAL
17 CONTRACTS WERE.

18 Q THERE WERE A HUNDRED MILLION DOLLARS IN
19 LOANS, AND THE LENDERS WERE SCARED?

20 A ABSOLUTELY.

21 Q ALL RIGHT.

22 A YOU BET.

23 Q AND THEY WERE CONCERNED THAT EVEN MORE
24 MEMBERS WOULD STOP PAYING ON THEIR CONTRACTS?

25 A THEY'RE VERY CONCERNED ABOUT THE MEMBERS
26 CONTINUING SERVICES, YES.

1 Q AND THEY WERE CONCERNED ABOUT THE -- THEY
2 WERE CONCERNED THAT THE MEMBERS WOULD CONTINUE PAYING ON
3 THEIR CONTRACT BECAUSE THESE LENDERS HAD THOSE CONTRACTS?

4 A AS SECURITY.

5 Q BY REASONING OF FINANCING THAT THEY HAD
6 GIVEN TO MR. VOPNFORD; IS THAT CORRECT?

7 A OH, THAT'S CORRECT, SIR, YES.

8 Q ALL RIGHT. SOMEONE OBVIOUSLY NEEDED TO COME
9 IN AND TAKE CONTROL OVER THIS SITUATION; RIGHT?

10 A WELL, WE NEEDED TO LOOK AT THE SITUATION AND
11 FIGURE OUT A PLAN. WHETHER SOMEBODY NEEDED TO TAKE CONTROL
12 OR NOT WAS A DIFFERENT ISSUE. FIGURE OUT A WAY TO WORK IT
13 OUT, YES.

14 Q THE LENDERS WANTED VOPNFORD OUT?

15 A WELL, I'M SURE IF MR. VOPNFORD GAVE THEM A
16 HUNDRED MILLION DOLLARS, THEY MIGHT HAVE BEEN HAPPY WITH
17 HIM. BUT, YES.

18 Q THEY WANTED HIM OUT?

19 A I BELIEVE THAT'S A FAIR CHARACTERIZATION OF
20 THEIR POSTURE.

21 Q AND THE LENDERS TOLD VOPNFORD, MR. VOPNFORD,
22 HE BETTER DO WHAT THEY WANTED?

23 A I THINK IT'S FAIR THAT THEY INFLUENCED HIS
24 DECISION.

25 Q AND, OTHERWISE, THE LENDERS TOLD HIM HE
26 MIGHT SPEND SOME TIME IN JAIL?

1 A THERE WAS A COMMENT ABOUT THAT, YES, SIR.

2 Q ALL RIGHT. LET'S TALK ABOUT WHO WAS AT THAT

3 MEETING.

4 IT WAS ATTENDED BY RAYMOND NOVELLI?

5 A YES, SIR.

6 Q IT WAS ATTENDED BY DAVID VOPNFORD?

7 A I THINK HE WAS THERE A VERY BRIEF PERIOD OF

8 TIME.

9 Q IT WAS ATTENDED BY MR. VOPNFORD?

10 A YEAH. HE ARRIVED ON SATURDAY. THAT'S

11 CORRECT.

12 Q MR. VOPNFORD WAS THERE WHILE YOU WERE THERE?

13 A YES, SIR, HE WAS.

14 Q BOB THOMPSON WAS THERE?

15 A YES.

16 Q WHO DOES BOB THOMPSON WORK WITH?

17 A PARDON ME?

18 Q WHO DOES MR. THOMPSON WORK WITH?

19 A AT THAT TIME HE WORKED FOR MR. NOVELLI.

20 Q DO YOU KNOW WHO HE WORKS FOR NOW?

21 A NO.

22 Q HOW MANY TIMES HAVE YOU MET WITH

23 MR. THOMPSON IN THE COURSE OF THE EXPERT WITNESS WORK

24 YOU'VE DONE IN THIS CASE?

25 A ONCE, MAYBE TWICE, MAYBE.

26 Q WHERE DID YOU MEET WITH MR. THOMPSON?

1 A I NEVER MET WITH HIM. HE WAS PRESENT AT
2 MEETINGS. I'VE NEVER MET WITH MR. THOMPSON AS SUCH.

3 Q WHERE DID THE MEETINGS TAKE PLACE?

4 A THE INITIAL MEETING WHEN I AGREED TO PROVIDE
5 TESTIMONY WAS AT MR. NOVELLI'S OFFICES, AND THE NEXT TIME I
6 SAW MR. THOMPSON WAS AT MR. NOVELLI'S OFFICE ALSO.

7 Q AND THIS IS WITHIN THE LAST TWO OR THREE
8 MONTHS?

9 A YES, SIR.

10 Q BUT YOU DON'T KNOW WHO MR. THOMPSON WORKS
11 FOR?

12 A NO.

13 Q REPRESENTATIVES OF SEVERAL LENDERS WERE AT
14 THE MEETING?

15 A YES, SIR.

16 Q THESE WERE LENDERS WHO HAD LOANED
17 MR. VOPNFORD A HUNDRED MILLION DOLLARS?

18 A WELL, I THINK HE WAS PERSONALLY GUARANTEED
19 ON THEM ALL, BUT THEY LOANED IT TO THE COMPANIES, YES, SIR.

20 Q THESE LOANS WERE ALL RELATED TO BANKRUPTCIES
21 AND ATTORNEY GENERALS MATTERS AND LAWSUITS AND JUDGMENTS?

22 A IS THAT A QUESTION?

23 Q YES.

24 A RELATED TO. I DON'T UNDERSTAND WHAT YOU
25 MEAN, "RELATED TO."

26 Q WELL, I'M TAKING -- I'M TAKING YOUR

1 TESTIMONY. LET'S GO --

2 A THAT'S RIGHT.

3 Q DO YOU DISAGREE WITH THAT?

4 A OH, NO. I DON'T KNOW WHAT "RELATED" MEANS.

5 I MEAN, HE LOANED -- THE BANKERS LENT MR. VOPNFORD THE

6 MONEY. MR. VOPNFORD HAD ATTORNEY GENERAL PROBLEMS.

7 MR. VOPNFORD HAD BANKRUPTCY PROBLEMS. SO IN THAT INSTANCE,

8 YES, SIR, THEY'RE DEFINITELY RELATED.

9 Q AND RAYMOND NOVELLI, AT THE SAME TIME OF THE
10 BANKRUPTCY PROBLEMS HAD LAWSUITS; IS THAT RIGHT?

11 A WELL, I DON'T KNOW WHAT LAWSUITS HE HAD.

12 Q YOU DON'T KNOW?

13 A I KNOW THAT HE HAD THE ALL SEASONS

14 BANKRUPTCY. I DON'T KNOW IF ANY OF THE OTHER BANKRUPTCIES

15 WERE IN EXISTENCE AT THAT TIME. THEY MAY HAVE BEEN.

16 Q THERE WERE NO MEMBERS, CONSUMERS AT THIS
17 MEETING, WERE THERE?

18 A NO, SIR.

19 Q YOU'RE THE ONE WHO CONTACTED MR. NOVELLI TO
20 ATTEND; IS THAT CORRECT?

21 A YES, SIR.

22 Q YOU SUGGESTED TO MR. NOVELLI THAT HE ATTEND?

23 A YES, SIR.

24 Q YOU REMEMBER HIS WORKOUT AT PHILIPPINE
25 FIESTA?

26 A AND ALL SEASONS, YES, SIR.

1 Q YOU THOUGHT THAT PHILIPPINE FIESTA WAS A
2 SUCCESS; IT WAS A POSITIVE EXPERIENCE?

3 A MY EXPERIENCE WITH IT WAS, YES, SIR.

4 Q EVEN THOUGH YOU KNEW NOTHING ABOUT WHAT
5 HAPPENED TO THE PARK, WHAT HAPPENED TO THE MEMBERS, WHAT
6 HAPPENED TO THE LOANS, YOU KNEW NOTHING ABOUT IT,
7 NEVERTHELESS, YOU THOUGHT IT WAS A POSITIVE EXPERIENCE; IS
8 THAT RIGHT?

9 A THE AREA THAT I WORKED IN, EVERYTHING WAS
10 MET ACCORDING TO AGREEMENT, YES, SIR.

11 Q BECAUSE THE LENDER YOU WORKED FOR GOT PAID,
12 AND YOU GOT PAID?

13 A AND THE BANK GOT A NEW LOAN WRITTEN, AND
14 THAT WAS GOOD. AND THE STATE OF CALIFORNIA GOT THEIR FEES
15 PAID.

16 Q THE BANK -- I'M SORRY. WERE YOU FINISHED?

17 A AND THE PEOPLE WHO SOLD IT GOT PAID, YES,
18 SIR.

19 Q I ASKED YOU A MOMENT AGO WHAT HAPPENED WHEN
20 MR. CLOUD -- BY THE WAY, WHO IS MR. CLOUD -- LET ME ASK THE
21 QUESTION DIFFERENTLY.

22 A OKAY.

23 Q MR. CLOUD'S FIRST NAME IS TOMMY; IS THAT
24 RIGHT?

25 A THAT'S CORRECT.

26 Q TOMMY CLOUD WAS ONE OF THE LENDERS; IS THAT

1 CORRECT?

2 A THAT'S CORRECT. YOU BET.

3 Q AND HE WAS OBVIOUSLY AN IMPORTANT LENDER?

4 A WELL, HE WASN'T BY ANY MEANS THE BIGGEST
5 LENDER, BUT I THINK HE CERTAINLY IS A SIGNIFICANT LENDER,
6 YES.

7 Q I ASKED YOU ABOUT WHAT HAPPENED AT THE
8 MEETING. AND I ASKED YOU IF MR. CLOUD ANNOUNCED TO
9 EVERYBODY WHEN HE CAME BACK FROM THE BACK 40 WITH
10 MR. NOVELLI AND MR. VOPNFORD IF THERE WAS AN AGREEMENT.
11 AND YOU SAID YOU COULDN'T REMEMBER WHETHER HE SAID THAT.
12 LET'S TAKE A LOOK AT YOUR TESTIMONY FROM THURSDAY.

13 A OKAY.

14 Q PAGE 1218, 20 THROUGH 25.

15 MR. SHAW: COUNSEL, CAN YOU JUST BEAR WITH ME FOR A
16 MOMENT? MY NUMBERING --

17 (PAUSE IN PROCEEDINGS.)

18 MR. RIVIN: YOUR HONOR, MAY WE APPROACH?

19 THE COURT: YOU MAY.

20 (DISCUSSION OFF THE RECORD.)

21 BY MR. RIVIN: Q MR. MITCHELL, THIS IS YOUR
22 TESTIMONY FROM THURSDAY.

23 A OKAY.

24 Q "AND MR. CLOUD TOOK MR. NOVELLI, AND THEN
25 MR. VOPNFORD DID NOT COME IN
26 FRIDAY NIGHT. I THINK HE

1 CAME IN ON SATURDAY MORNING.

2 AND HE" -- MEANING MR. CLOUD

3 -- "TOOK MR. NOVELLI AND

4 MR. VOPNFORD FOR WHAT HE

5 CALLED A LITTLE WALK OUT

6 BEHIND THE BARN TO THE BACK

7 40 AND INDICATED WHEN HE CAME

8 BACK THAT EVERYONE WAS GOING

9 TO AGREE."

10 "EVERYONE" MEANING MR. NOVELLI,

11 MR. VOPNFORD; IS THAT RIGHT?

12 A YEAH. SO I GUESS I DIDN'T SAY A DEAL.

13 Q BUT YOU HAD NO IDEA THAT TRAVEL AMERICA --

14 THAT THE RESULTING COMPANY WAS GOING TO INVOLVE

15 MR. VOPNFORD?

16 A THERE WASN'T ANY COMPANY. AND AS WHAT I'VE

17 STATED THERE SAYS, THAT THEY WERE GOING TO AGREE. MY

18 UNDERSTANDING OF THE AGREEMENT AT THAT POINT WAS THAT

19 MR. VOPNFORD WASN'T GOING TO BE IN THE BUSINESS ANYMORE.

20 AND I WAS CERTAINLY SATISFIED WITH MY MISSION.

21 MR. SHAW: YOUR HONOR, MAY I ASK SINCE WE'RE ON

22 THIS NEW PROGRAM, THAT MR. RIVIN READ THE NEXT QUESTION AND

23 ANSWER THROUGH LINE 26, THROUGH LINE 7.

24 MR. RIVIN: I DON'T HAVE IT IN OF ME, YOUR HONOR.

25 I WOULD SUGGEST THAT -- I CAN GET IT.

26 MR. SHAW: YOUR HONOR, THAT WAS THE ONLY REASON I

1 WANTED IT READ BEFOREHAND; SO THAT IF I COULD OFFER
2 SOMETHING IN CONTEXT, THAT WOULD BE HELPFUL TO THE JURY.

3 MR. RIVIN: I THINK THE WITNESS WAS SPEAKING ABOUT
4 SOMETHING DIFFERENT, ABOUT THERE BEING NO AGREEMENT LATER.

5 MR. SHAW: I DISAGREE, COUNSEL. I THINK THIS IS
6 EXACTLY --

7 THE COURT: LET'S READ IT.

8 MR. RIVIN: WHY DON'T WE READ IT. THAT'S FINE.

9 MR. SHAW: YOUR HONOR, AND I WOULD JUST -- YOUR
10 HONOR, I'D LIKE TO ASK IT THROUGH LINE 15 ON PAGE 1219. I
11 THINK IT GIVES THE FULL CONTEXT OF --

12 THE COURT: PROCEED.

13 MR. RIVIN: FINE.

14 MR. SHAW: THANK YOU, YOUR HONOR.

15 BY MR. RIVIN: Q LET'S CONTINUE.

16 "AND DID IN FACT

17 MR. NOVELLI GET INVOLVED TO
18 YOUR KNOWLEDGE?

19 "ANSWER: NOT AT THAT

20 POINT IN TIME, BUT HE DID, I

21 GUESS, SOMETIME SHORTLY

22 THEREAFTER. THERE WAS NO

23 AGREEMENT AS SUCH TO MY

24 KNOWLEDGE, SAVE THE FACT THAT

25 MR. VOPNFORD WAS ESSENTIALLY

26 INSTRUCTED BY HIS LENDERS HE

1 BETTER DO ANYTHING THEY WANT;
2 OTHERWISE, HE MIGHT BE
3 ENJOYING SOME TIME IN THE
4 JAIL.

5 "QUESTION: WHAT WAS --
6 AND SO YOU FOLLOWED -- THEN,
7 AFTER MR. NOVELLI'S
8 INVOLVEMENT, YOU FOLLOWED HIS
9 INVOLVEMENT IN THE THOUSAND
10 ADVENTURES AND THE MEMBERS
11 THAT WERE THERE WITH THOUSAND
12 ADVENTURES?

13 "ANSWER: NO, I DIDN'T.
14 MY JOB WAS TO BRING THESE
15 PEOPLE TOGETHER AND TRY TO
16 GET SOMETHING THAT WOULD MAKE
17 THIS THING WORK. ONCE
18 THAT -- MY JOB WAS DONE, I
19 DID NOT FOLLOW IT. I REALLY
20 DIDN'T HAVE ANY CONTINUATION
21 WITH IT."
22 WHICH IS WHAT YOU'VE TESTIFIED TO ON THE
23 WITNESS STAND.

24 A YES, SIR.

25 Q DID YOU EVER START FOLLOWING WHAT HAPPENED
26 TO TRAVEL AMERICA AGAIN?

1 A NO, SIR.

2 Q MR. NOVELLI DID NOT AGREE TO THIS
3 ARRANGEMENT AT THE RANCH BECAUSE HE IS WONDERFUL GUY, OR
4 BECAUSE HE WAS TRYING TO SAVE MEMBERS; ISN'T THAT CORRECT?

5 A I DON'T KNOW WHY HE AGREED. I DON'T THINK
6 HE AGREED TO ANYTHING AT THE RANCH. AS I ALREADY SAID, THE
7 ONLY AGREEMENT I UNDERSTOOD AT THE RANCH IS MR. VOPNFORD
8 WAS OUT OF BUSINESS. AND WHEN I HEARD THAT, I WAS A HAPPY
9 PERSON.

10 Q MR. CLOUD CAME BACK AND SAID, "WE HAD AN
11 AGREEMENT"?

12 A YES. I HAVE NO KNOWLEDGE OF WHAT THE
13 AGREEMENT WAS. AS I SAID, MY UNDERSTANDING, THE ONLY
14 AGREEMENT THAT OCCURRED IS THAT THEY WERE ALL GOING TO
15 COOPERATE AND THAT MR. VOPNFORD WAS OUT. WHAT ANY
16 AGREEMENT WAS, I HAVE NO KNOWLEDGE.

17 Q YOU HAVE NO IDEA WHAT THE AGREEMENT WAS; YOU
18 HAVE NO IDEA WHAT TRAVEL AMERICA WAS COMPRISED OF?

19 A THERE WAS NO TRAVEL AMERICA AT THAT TIME.
20 THERE WAS NO AGREEMENT. THERE WAS NO COMPANY. THERE
21 WASN'T A CLUE. THE ONLY AGREEMENT THAT I UNDERSTOOD AFTER
22 I LEFT THERE, THE ONLY THING I DID KNOW WAS THAT
23 MR. VOPNFORD TO THE BEST OF MY KNOWLEDGE WASN'T GOING TO BE
24 IN THE BUSINESS. THAT'S WHY I WAS VERY SHOCKED WHEN
25 MR. HOPPER CALLED ME AND TOLD ME THAT HE WAS.

26 Q DID YOU KNOW WHAT WAS GOING TO HAPPEN TO THE

1 THOUSAND ADVENTURES MEMBERS AFTER THIS MEETING?

2 A NO, SIR.

3 Q YOU HAD NO IDEA WHAT WAS GOING TO HAPPEN TO
4 THEM?

5 A NO. IT WAS MY EXPECTATION IN SOME MANNER
6 THEY WOULD BE ABLE TO CONTINUE WHAT THEY PAID FOR. THEY
7 WOULD GET THEIR SERVICES. THAT WAS WHAT I WAS LOOKING
8 FOR. HOW THAT WOULD OCCUR, I HAVEN'T GOT A CLUE. I WAS
9 NOT INVOLVED. AND I HAD NO KNOWLEDGE OF TRAVEL AMERICA
10 UNTIL MR. HOPPER USED THE NAME, AND I AT THAT POINT DIDN'T
11 KNOW WHO WAS INVOLVED. HE TOLD ME IT WAS VOPNFORD. LATER
12 I HAVE COME TO REALIZE THAT WASN'T TRUE.

13 Q DO YOU HAVE ANY KNOWLEDGE OF WHERE TRAVEL
14 AMERICA GOT ITS MEMBERS?

15 A FROM READING OF THE MATERIALS, WHICH I
16 REVIEWED IN ORDER TO BE ABLE TO ANSWER QUESTIONS FOR YOU
17 AND FOR THEM, IT INDICATES THAT THE BULK OF THE MEMBERS I
18 BELIEVE CAME FROM MR. NOVELLI'S ORGANIZATIONS, AND ANOTHER
19 GROUP OF THE MEMBERS CAME FROM PARKS THAT MR. NOVELLI
20 BOUGHT FROM THE BANKERS. AND THOSE MEMBERS CAME WITH THE
21 PARKS.

22 Q WEREN'T SOME OF THE MEMBERS, MANY OF THE
23 MEMBERS OF TRAVEL AMERICA FORMER THOUSAND ADVENTURES
24 MEMBERS?

25 A YEAH. THOSE WERE THE PARKS THAT MR. NOVELLI
26 BOUGHT FROM THE BANKERS.

1 Q I SEE.

2 SO IT WAS THOUSAND ADVENTURES MEMBERS AND
3 NOVELLI MEMBERS WHO FORMED -- WHO BECAME TRAVEL AMERICA; IS
4 THAT RIGHT?

5 A YES. AS I SAID, THE MAJORITY OF THEM WERE
6 ORIGINALLY NOVELLI MEMBERS. THEN WHEN HE BOUGHT A PARK
7 FROM THE BANKERS, THERE WERE -- WHATEVER MEMBERS WERE PART
8 OF THAT PARK. I BELIEVE THOSE ALSO JOINED, AND HE PUT
9 THOSE ALL TOGETHER, AND THEY BECAME TRAVEL AMERICA.

10 Q WHAT DO YOU KNOW ABOUT MR. NOVELLI
11 PURCHASING PARKS FROM THE BANKERS, IF YOU KNEW NOTHING
12 ABOUT THE DEAL?

13 A ONLY WHAT I SAW IN THE PAPERS THAT I
14 REVIEWED WHEN I WAS RETAINED TO GIVE OPINIONS.

15 Q I SEE.

16 SO DID YOU SEE DOCUMENTS THAT SHOWED THAT
17 MR. NOVELLI OR HIS COMPANIES BOUGHT THE THOUSAND ADVENTURES
18 PARKS?

19 A I DON'T RECALL SEEING SPECIFIC DOCUMENTS,
20 BUT I BELIEVE THAT HE MUST HAVE ACQUIRED THEM IN SOME
21 FASHION; OTHERWISE, YOU WOULDN'T KEEP CALLING HIM
22 MR. NOVELLI'S PARKS AND THEY WOULDN'T BE A PLAINTIFF IN
23 THIS MATTER.

24 Q BUT YOU'RE SPECULATING ON THAT?

25 A IN ALL FAIRNESS I AM, YES. I HAVE NO DIRECT
26 KNOWLEDGE THAT HE BOUGHT THEM. I'M MAKING A LITTLE BIT OF

1 A LEAP THERE, AND THAT'S NOT A GOOD SCIENCE. I APOLOGIZE.

2 MR. RIVIN: YOUR HONOR, CAN I APPROACH THE
3 BLACKBOARD?

4 THE COURT: YOU MAY.

5 BY MR. RIVIN: Q LET ME SHOW YOU JUST A VERY
6 SIMPLE GRAPH AND SEE IF THIS IS CONSISTENT WITH WHAT YOU
7 UNDERSTAND HAPPENED.

8 A OKAY.

9 Q WE'VE GOT THOUSAND ADVENTURES MEMBERS OVER
10 HERE. OKAY. WE'VE GOT NOVELLI -- NOVELLI MEMBERS OVER
11 HERE, FIRST NATIONWIDE, ALL SEASONS, ALL THE OTHER MEMBERS
12 OVER HERE.

13 A YEAH.

14 Q WE HAVE TRAVEL AMERICA.

15 A WHAT'S THE TIME FRAME OF THIS LITTLE GRAPH?

16 Q WHEN WAS TRAVEL AMERICA FORMED?

17 A I DON'T KNOW.

18 Q YOU HAVE NO IDEA?

19 A I HAVEN'T GOT A CLUE. I HAVE NO KNOWLEDGE
20 OF IT. DO YOU?

21 Q AS A MATTER OF FACT, MR. MITCHELL, I DO.

22 A OH, GOOD.

23 Q THE REASON I ASKED YOU AND THE REASON I
24 SOUNDED INCREDULOUS, SIR, PERHAPS YOU'VE COME HERE
25 TESTIFYING ABOUT ALL THE DAMAGES THAT HAVE BEEN SUSTAINED
26 BY TRAVEL AMERICA AND THE OTHER PLAINTIFFS IN THIS CASE,

1 AND YOU DON'T KNOW WHEN TRAVEL AMERICA WAS FORMED. THAT
2 SURPRISES ME.

3 MR. SHAW: YOUR HONOR, I'LL OBJECT. ARGUMENTATIVE.

4 MR. RIVIN: I WITHDRAW THE QUESTION, OR STATEMENT.

5 Q THIS IS THOUSAND ADVENTURES MEMBERS. AS
6 PART OF THIS THESE ABUSED MEMBERS OF THOUSAND ADVENTURES
7 WERE POURED IN INTO TRAVEL AMERICA?

8 A FROM MY READING OF THE INFORMATION PROVIDED
9 ME, I DO NOT BELIEVE ALL OF THE MEMBERS OF THOUSAND
10 ADVENTURES WERE INVOLVED IN IT. THEY COULD BE, BUT I DON'T
11 KNOW.

12 Q ISN'T IT TRUE THAT THOUSANDS OF MEMBERS,
13 THOUSANDS AND THOUSANDS OF MEMBERS OF THOUSAND ADVENTURES
14 WERE SIMPLY POURED INTO TRAVEL AMERICA AS PART OF THE
15 AGREEMENT?

16 A I THINK THERE WERE THOUSANDS. I DON'T KNOW
17 HOW MANY. I DON'T KNOW WHICH PARKS WERE ACQUIRED. I DON'T
18 KNOW IF I ACCEPT YOUR CHARACTERIZATION, BUT I THINK IN
19 ESSENCE YOU'RE NOT GETTING ACCURATE -- HOW MANY MEMBERS
20 WERE?

21 Q MR. MITCHELL, DO YOU KNOW HOW MANY MEMBERS
22 THERE WERE?

23 A NO.

24 Q FINE. YOU'RE THE EXPERT.

25 A I WASN'T ASKED TO BE AN EXPERT ON THAT.

26 BUT, OKAY.

1 Q AND THEN HERE IS THE ALL SEASONS -- ALL
2 SEASONS AND FIRST NATIONWIDE AND THESE MEMBERS WERE POURED
3 INTO TRAVEL AMERICA; RIGHT?

4 A OKAY.

5 Q AND THIS IS TRAVEL AMERICA?

6 A OKAY.

7 Q ALL RIGHT?

8 ALL THE ABUSED MEMBERS OF THOUSAND
9 ADVENTURES, WHO WERE PUT INTO TRAVEL AMERICA, DO YOU KNOW
10 WHETHER THEY WERE ASKED WHETHER THEY WANTED TO GO INTO
11 TRAVEL AMERICA?

12 A I DON'T KNOW, SIR.

13 Q HOW ABOUT THE PLAINTIFF, THE NOVELLI
14 MEMBERS, DO YOU KNOW IF THEY WERE ASKED WHETHER THEY WANTED
15 TO BE SWITCHED TO TRAVEL AMERICA?

16 A I DO NOT KNOW, SIR.

17 Q DO YOU HAVE ANY KNOWLEDGE OF HOW TRAVEL
18 AMERICA LEGALLY ACQUIRED ALL OF THESE MEMBERS?

19 A WELL --

20 Q PERSONAL KNOWLEDGE?

21 A -- FROM SOME, FROM THE PAPERS I READ, I
22 BELIEVE THERE WERE AGREEMENTS OF PURCHASE FROM SOME OF THE
23 NOVELLI PROPERTIES. I BELIEVE THE -- TRAVEL AMERICA BOUGHT
24 SOME PROPERTIES IN BANKRUPTCY COURT. I BELIEVE THAT
25 THOSE -- SOME -- I JUST DIDN'T ACQUIRE THEM OUT OF THE SKY.
26 THOSE PARKS BELONGED TO SOMEBODY. THERE WERE MORTGAGE

1 HOLDERS. SO SOME LEGAL INSTRUMENTS OR SOME TRANSACTIONS
2 MUST HAVE BEEN ENGAGED TO ACCOMPLISH THAT.

3 Q ONE WOULD THINK SO. BUT DO YOU HAVE ANY
4 KNOWLEDGE OF THAT?

5 A I HAVE NO DIRECT KNOWLEDGE OF THAT, SIR,
6 THAT'S CORRECT.

7 Q LET ME STAY AT THE BOARD FOR JUST A FEW
8 MOMENTS, IF I MIGHT.

9 A SURE.

10 Q YESTERDAY -- ON THURSDAY, MR. SHAW
11 DESCRIBED -- HE CAME UP WITH A MODEL, WHICH I'M NOT GOING
12 TO TRY AND RECREATE, EXCEPT I'M GOING TO USE A PART OF
13 THIS.

14 A OKAY.

15 Q MR. SHAW TALKED ABOUT MARKETING COSTS. HE
16 SAID YOU ASSUMED AN AVERAGE COST OF A NEW CONTRACT, OF A
17 NEW MEMBERSHIP WAS \$5,000. DO YOU REMEMBER THAT? DO YOU
18 RECALL THAT?

19 A YEAH. THERE WAS A HYPO CREATED.

20 Q THERE WAS A HYPOTHETICAL, AND YOU ASSUMED?

21 A I ASSUMED I THOUGHT THE HYPOTHETICAL.

22 Q YOU ASSUMED IT WAS \$5,000?

23 A WAS TOLD \$5,000 MARKETING COST, 50, 70
24 PERCENT, YES, SIR.

25 Q RIGHT. AND YOU WERE TALKING ABOUT
26 MARKETING -- SO THE MARKETING COSTS 50 TO 70 PERCENT -- I

1 THINK YOU SAID 2500 TO 3,000, BUT ACTUALLY 50 TO 70 PERCENT
2 WOULD BE 2500 TO 3500, NOT PARTICULARLY SIGNIFICANT?

3 A I SAID 3500, BUT THE ATTORNEY WROTE 2,000
4 DOWN.

5 Q FINE. FINE. AND THEN YOU TALKED ABOUT THE
6 COST OF BUYING A PARK, A MILLION DOLLARS PUT INTO THE PARK
7 AS A HYPOTHETICAL?

8 A YES, SIR.

9 Q AND THIS WAS YOUR EXAMPLE OF A TYPE OF
10 RESORT OWNER DEVELOPER WHO WOULD PUT MONEY INTO THE PARK,
11 AND HE WOULD PAY FOR MARKETING AND WOULD HAVE A SUBSTANTIAL
12 INVESTMENT; IS THAT CORRECT?

13 A THAT WAS THE HYPO GIVEN.

14 Q THAT WAS THE HYPO?

15 A AND I WAS ASKED WHAT THE COSTS WOULD BE
16 UNDER THOSE CONDITIONS, YES, SIR. IT WASN'T MY HYPO.

17 Q TRAVEL AMERICA DIDN'T PAY ANYTHING WHEN IT
18 ACQUIRED PARKS FROM THOUSAND ADVENTURES, DID IT?

19 A I DON'T KNOW WHAT THEY PAID. I HAVE NO
20 KNOWLEDGE OF THAT.

21 Q TRAVEL AMERICA DIDN'T PAY ANYTHING WHEN THEY
22 ACQUIRED PARKS FROM ALL SEASONS AND FROM FIRST NATIONWIDE;
23 DO YOU HAVE ANY KNOWLEDGE OF WHAT THEY PAID?

24 A NO, I DON'T KNOW, SIR, WHAT THEY PAID.

25 Q AND AS FAR AS COST OF MARKETING TO GET THESE
26 NEW MEMBERS WHO WERE POURED IN, TRAVEL AMERICA DIDN'T PAY

1 \$3,000 PER PERSON; YOU HAVE NO KNOWLEDGE OF ANY AMOUNT THAT
2 THEY PAID TO GET THOSE MEMBERS; ISN'T THAT TRUE?

3 A THAT'S CORRECT, THEY COULD HAVE PAID \$5,000.

4 Q THEY COULD HAVE PAID FIVE?

5 A YES.

6 Q THEY COULD HAVE PAID NOTHING?

7 A YES, SIR.

8 Q THEY COULD HAVE PAID NOTHING?

9 A I HAVE NO KNOWLEDGE OF THAT.

10 Q SO THIS SCENARIO, THIS WHOLE THING DOESN'T
11 APPLY TO THE PLAINTIFFS IN THIS CASE; THESE ARE THE
12 PLAINTIFFS?

13 A WELL, I DON'T KNOW. IT MAY VERY WELL APPLY
14 EXACTLY. MAYBE COULD BE, AND MAYBE HAVE NO APPLICATION AT
15 ALL BECAUSE I DON'T HAVE THE FACTS. IF YOU GIVE ME SOME
16 FACTS, I'D BE HAPPY TO GIVE YOU AN OPINION.

17 Q YOUR KNOWLEDGE OF MR. VOPNFORD AND
18 MR. NOVELLI WORKING TOGETHER WAS BASED ON WHAT DAN HOPPER
19 TOLD YOU IN DECEMBER OF 199 -- LATE NOVEMBER OF 1997; IS
20 THAT RIGHT?

21 A I DON'T RECALL MR. HOPPER MENTIONING
22 MR. NOVELLI. HIS FOCUS WAS ON MR. VOPNFORD, WHAT
23 MR. VOPNFORD WAS DOING, AND MY COMMENTS TO HIM WERE WITH
24 REGARD TO WHAT HE SAID TO ME, AND THAT INVOLVED
25 MR. VOPNFORD.

26 Q IN DECEMBER 1997 WHEN YOU WROTE THAT LETTER

1 THAT WE LOOKED AT TO MR. HOPPER, DID YOU KNOW THAT
2 MR. NOVELLI WAS PART OF TRAVEL AMERICA?

3 A I DIDN'T EVEN KNOW WHAT TRAVEL AMERICA WAS.
4 MR. HOPPER TOLD ME.

5 Q SO IN THE SIX-MONTH PERIOD WHEN EVERYTHING
6 IS HAPPENING IN THIS CASE, THE COAST LETTERS WERE SENT,
7 MR. VOPNFORD AND MR. NOVELLI PULLED THEIR PARKS OUT OF
8 COAST, ALL THOSE THINGS WERE HAPPENING, YOU WERE COMPLETELY
9 OUT OF THE LOOP?

10 A YES. I WAS COMPLETELY.

11 Q COMPLETELY OUT OF THE PICTURE?

12 A YES, SIR, ABSOLUTELY. I HAD COMPLETED MY
13 JOB I WAS SATISFIED THAT MR. VOPNFORD WAS OUT OF THE
14 BUSINESS, AND I WAS ON TO NEW THINGS, YES, SIR.

15 Q AND YOU'RE HERE TO TELL US THAT THE
16 PLAINTIFFS SUFFERED DAMAGES AS A RESULT OF COAST'S IMPROPER
17 CONDUCT?

18 A OH, YES, SIR.

19 Q LET'S -- I'D LIKE TO SHOW THE WITNESS AN
20 EXHIBIT 10, WHICH IS A PAGE FROM NEWS AND VIEWS.

21 AND BEFORE WE SHOW THAT, MR. MITCHELL, ARE
22 YOU FAMILIAR WITH A MAGAZINE CALLED "NEWS AND VIEWS"?

23 A YES. IT'S A PUBLICATION THAT IS PRODUCED
24 IN-HOUSE BY AFFINITY GROUP COAST TO COAST AND CIRCULATED.

25 Q I DON'T THINK SO.

26 A NEWS AND VIEWS. I'M SORRY. I THOUGHT YOU

1 SAID "INSIDER NEWS." NEWS AND VIEWS I BELIEVE IS
2 MR. NOVELLI'S HOUSE ORGAN FOR HIS RESORT OPERATIONS WHICH
3 SPEAKS TO -- I'VE SEEN IT IN THE PAST. TALKS ABOUT HIS
4 RESORTS, WHERE THEY ARE, WHAT'S GOING ON.

5 Q I WANT TO SHOW YOU ONE OF THOSE NEWS AND
6 VIEWS.

7 A OKAY.

8 Q THERE IS A NEWS AND VIEWS THAT ARE PUBLISHED
9 IN DECEMBER 1997, AND JANUARY. IT'S DECEMBER 1997, JANUARY
10 1998.

11 A OKAY.

12 Q AND WE DO NOT HAVE THE ENTIRE NEWS AND
13 VIEWS.

14 I HAVE THE ENTIRE NEWS AND VIEWS HERE. IT'S
15 A MAGAZINE. IT'S NOT LIKE THIS. I JUST HAVE A COPY OF IT.

16 A OKAY.

17 Q AND I DON'T BELIEVE WE HAVE THE ENTIRE NEWS
18 AND VIEWS IDENTIFIED AS AN EXHIBIT. BUT I'D LIKE TO SHOW
19 YOU A PAGE FROM THE --

20 A SURE.

21 Q -- DECEMBER 1997, JANUARY 1998 NEWS AND
22 VIEWS. THIS IS EXHIBIT 10. WOULD YOU LIKE TO TAKE --

23 MR. SHAW: A COMPLETE?

24 MR. RIVIN: I HAVE A COMPLETE ONE YOU CAN TAKE A
25 LOOK AT.

26 MR. RIVIN: MAY I APPROACH THE WITNESS?

1 THE COURT: YOU MAY.

2 MR. SHAW?

3 MR. SHAW: YES, YOUR HONOR.

4 JUST HAVE AN OBJECTION. THIS IS NOT A
5 DOCUMENT THAT HE HAS REVIEWED FOR THE PURPOSES OF HIS
6 EXPERT TESTIMONY. AND IT'S OUTSIDE THE SCOPE OF DIRECT
7 EXAMINATION. SO IT LACKS FOUNDATION.

8 MR. RIVIN: I HAVE WIDE LATITUDE, YOUR HONOR, IN
9 CROSS-EXAMINING THE WITNESS, TO HIS KNOWLEDGE.

10 THE COURT: PROCEED.

11 MR. RIVIN: THANK YOU.

12 I'D LIKE TO PUT THE THIRD PAGE UP, IF YOU
13 COULD, MIKE.

14 CAN YOU SHOW THE DATE IN THE LOWER
15 RIGHT-HAND CORNER, PLEASE. DECEMBER 1997, JANUARY 1998,
16 PAGE 3.

17 ALL RIGHT. LET'S GO BACK TO PAGE 2, PLEASE.

18 THE WITNESS: MR. RIVIN, IS THAT PAGE NUMBER 3, OR
19 ARE THERE THREE PAGES? I ONLY HAVE TWO.

20 BY MR. RIVIN: Q YOU SHOULD HAVE TWO PAGES. YOU
21 SHOULD HAVE PAGE 2 AND PAGE 3. THOSE ARE THE ONLY ONES
22 WE'RE GOING TO TALK ABOUT.

23 A OKAY. SO WE'RE DEALING WITH PAGE NUMBER 3.

24 Q RIGHT.

25 SO THIS IS THE TRAVEL AMERICA, MR. NOVELLI'S
26 MAGAZINE; RIGHT?

1 A SURE. WELL, THIS IS, YEAH, I GUESS. I
2 MEAN, WAIT A SECOND, NEWS AND VIEWS. THAT WOULD BE
3 CORRECT, I GUESS, UH-HUH.

4 Q WHO IS THE GENTLEMAN ON THE LEFT IN THAT
5 PICTURE ON PAGE 2?

6 A I DON'T HAVE ANY IDEA. BUT UNDERNEATH THE
7 PICTURE IT SAYS "DAVE VOPNFORD," AND I'M GOING TO ASSUME --
8 I DON'T LIKE TO DO THAT, BUT I'LL ASSUME IT'S
9 DAVE VOPNFORD.

10 Q YOU MET HIM IN 1997. YOU JUST DON'T
11 REMEMBER WHAT HE LOOKS LIKE?

12 A I MET HIM FOR TWO MINUTES, AND THE PICTURE
13 IS VERY BAD. BUT I HAVE NO REASON TO BELIEVE IT'S NOT
14 HIM. HIS NAME IS HERE. I MEAN --

15 Q AND THE GENTLEMAN ON THE RIGHT?

16 A NO DISPUTE.

17 Q THE GENTLEMAN ON THE RIGHT IS MR. NOVELLI?

18 A I RECOGNIZE HE IS SITTING RIGHT THERE.
19 THAT'S THE EASY ONE.

20 Q AND THIS IS A MESSAGE FROM DAVE,
21 DAVE VOPNFORD, AND GOOD TIMES RAY AND MARLIES. AND
22 MARLIES -- YOU KNOW WHO MARLIES IS?

23 A I'M GOING TO ASSUME THAT'S MR. NOVELLI'S
24 WIFE MARLIES NOVELLI.

25 Q AND I'M NOT GOING TO ASK YOU TO READ THROUGH
26 THE ENTIRE MATTER, BUT -- YOU SEE THE ENTIRE PAGE, BUT YOU

1 SEE THERE'S A NOTE. THERE'S A SPECIAL NOTE FROM RAY AND
2 MARLIES, GOOD TIMES, RAY AND MARLIES; DO YOU SEE THAT IN
3 THE LEFT COLUMN?

4 A OH, YEAH. SPECIAL NOTE. YES, I SEE THAT.

5 Q THEN IF YOU GO DOWN THE -- FURTHER ON THE
6 FIRST COLUMN, LEFT COLUMN, YOU'LL SEE THOUGHTS FROM
7 DAVE VOPNFORD?

8 A YES.

9 Q SO YOU'VE GOT SOME COMMENTS FROM THE
10 NOVELLIS AND THEN COMMENTS FROM DAVE VOPNFORD?

11 A YES.

12 Q AND THEN OVER ON THE RIGHT COLUMN, THE RIGHT
13 COLUMN, THERE'S ANOTHER HEADING UP ABOVE. IT SAYS, "RAY
14 AND DAVE REVIEW THE COMPETITIVE YEARS"?

15 A YES.

16 Q LET'S READ THIS. AND I'M GOING TO ASK YOU
17 WHETHER YOU TOOK THIS INTO CONSIDERATION, MR. MITCHELL, IN
18 ANY OF THE CONCLUSIONS THAT YOU'VE REACHED AND EXPRESSED IN
19 THIS CASE.

20 A I'VE NEVER SEEN THIS BEFORE THIS MOMENT. SO
21 I TOOK NONE OF WHAT'S IN HERE --

22 Q WELL, THEN, I'LL ASK YOU. FINE. I'LL ASK
23 YOU QUESTIONS ABOUT THIS.

24 A OKAY.

25 Q THIS SAYS THAT BETWEEN -- PARTWAY DOWN THE
26 RIGHT SIDE. IT SAYS, "BETWEEN OUR TWO OPERATIONS, WE LOST

1 APPROXIMATELY \$7 MILLION PER YEAR NOT COUNTING DEBT
2 SERVICE"; DO YOU SEE THAT?

3 A YES, I DO.

4 Q IN COMING TO YOUR CONCLUSIONS IN THIS CASE,
5 ARE YOU AWARE OF WHAT LOSSES WERE SUFFERED BY ANY OF THE
6 PLAINTIFFS, THE ALL SEASONS COMPANIES, AND THE THOUSAND
7 ADVENTURES COMPANIES, BEFORE THE COAST LETTERS WERE SENT
8 OUT?

9 A I DID NOT REVIEW EITHER THE VOPNFORD
10 OPERATING FINANCIALS OR THE NOVELLI -- I HAVE NO KNOWLEDGE
11 OF WHAT THEIR PROFITS OR LOSSES MIGHT HAVE BEEN.

12 I WILL TAKE THE UGLY THING AND ASSUME THAT
13 MR. VOPNFORD CERTAINLY HAD TO BE LOSING MONEY. AND I
14 BELIEVE THAT IF MR. NOVELLI SAYS HE LOST MONEY, THEN I
15 GUESS THAT'S DOCUMENTABLE.

16 Q AND YOU DIDN'T TAKE THAT INTO CONSIDERATION
17 IN DETERMINING THAT THE PLAINTIFF SUFFERED DAMAGES AS A
18 RESULT OF COAST'S CONDUCT?

19 A WELL, NO, BECAUSE IT WASN'T RELEVANT. THE
20 ISSUE THAT I WAS ASKED --

21 Q I JUST ASKED YOU IF YOU TOOK IT INTO
22 CONSIDERATION.

23 A OKAY.

24 Q AND YOU SAID, NO, IT WASN'T RELEVANT. AND
25 LET'S GO DOWN TO THE NEXT PARAGRAPH. THE HEADING IS
26 "WORKING TOGETHER THROUGH TRAVEL AMERICA."

1 A YES.

2 Q LET ME READ THAT OUT LOUD.

3 A OKAY.

4 Q "AFTER ALL OF THE MEETINGS WE HAVE ATTENDED
5 OVER THE PAST MONTHS WITH MEMBERS, LENDERS, FINANCIAL
6 CONSULTANTS AND INDUSTRY PROFESSIONALS REVIEWING THE
7 COMPETITIVE YEARS, WE CAME TO THE CONCLUSION THAT THE ONLY
8 WAY WE COULD SURVIVE WAS BY COMBINING OUR EFFORTS AND
9 RESORT SYSTEMS INTO ONE SYSTEM. THAT NEW SYSTEM IS TRAVEL
10 AMERICA."

11 BY THE WAY -- WELL, YOU HAVE NO IDEA WHETHER
12 YOU WERE ONE OF THE FINANCIAL CONSULTANTS OR INDUSTRY
13 PROFESSIONALS WHOM THEY CONSULTED OVER THE PAST SEVERAL
14 MONTHS?

15 A OH, YES, I DO.

16 Q WERE YOU ONE?

17 A I HAVE A VERY DEFINITE IDEA. I KNOW I
18 WASN'T. I WAS NOT ONE OF THE PERSONS CONSULTED. AS I
19 PREVIOUSLY INDICATED TO YOU, I HAD NO KNOWLEDGE OF TRAVEL
20 AMERICA. I NEVER MET WITH THESE PEOPLE, NEVER HAD ANY
21 KNOWLEDGE OF THIS. SO I DO KNOW I WASN'T. I DON'T KNOW
22 WHO WAS.

23 Q SO OF ALL THE FINANCIAL CONSULTANTS AND
24 INDUSTRY PROFESSIONALS THAT THEY CONSULTED IN TRYING TO
25 MAKE THIS THING HAPPEN, YOU WEREN'T ONE OF THEM?

26 A THAT'S THE ONLY THING I DO KNOW. I WASN'T?

1 ONE OF THEM.

2 Q AND YOU HAD NO IDEA ANY OF THIS WAS GOING ON?

3 A NONE WHATSOEVER. AS I TOLD YOU, MY
4 INVOLVEMENT IN THIS WAS LIMITED TO ONE DAY IN APRIL, IN
5 1997.

6 MR. RIVIN: YOUR HONOR, I'D LIKE TO OFFER EXHIBIT
7 10 INTO EVIDENCE.

8 MR. SHAW: FOUNDATION MAY BE ABLE TO BE LAID AT A
9 FUTURE POINT IN TIME.

10 THE COURT: I'LL TAKE IT UNDER SUBMISSION.

11 MR. RIVIN: THAT'S FINE.

12 Q MR. MITCHELL, YOU'VE SAID -- EVERY TIME I
13 ASKED YOU ABOUT THOUSAND ADVENTURES BANKRUPTCIES --
14 REMEMBER I SHOWED YOU EXHIBIT 906 WHICH WAS THAT LINE
15 GRAPH, THE TIME LINE THAT HAD THE BANKRUPTCIES BELOW AND
16 THE BANKRUPTCY ABOVE? REMEMBER THAT?

17 A YES.

18 Q AND EVERY TIME I POINTED OUT THOUSAND
19 ADVENTURES, I SHOWED YOU THE THOUSAND ADVENTURES
20 BANKRUPTCY -- IN FACT, LET'S SEE IT AGAIN, 901.

21 A I WON'T BE ABLE TO SEE IT. SO IF YOU'RE
22 GETTING IT FOR ME.

23 Q I'LL DESCRIBE IT TO YOU.

24 A OKAY. THANK YOU.

25 Q IT WILL HELP ME SEE THE DATES.

26 A THANK YOU.

1 Q I POINTED OUT TO YOU THE THOUSAND ADVENTURES
2 OF OHIO BANKRUPTCY IN MAY OF 1997, THOUSAND ADVENTURES IN
3 AUGUST OF 1997, AND YOU WERE QUICK TO POINT OUT THAT THOSE
4 WEREN'T NOVELLI. THOSE WERE VOPNFORD; IS THAT -- DO YOU
5 KNOW THAT?

6 A PARDON ME?

7 Q YOU SAID THOSE WERE VOPNFORD. HOW DID YOU
8 KNOW THAT THOSE WERE THE VOPNFORD THOUSAND ADVENTURES
9 BANKRUPTCY WHEN YOU WERE OUT OF THE PICTURE FROM APRIL OF
10 1997 TO DECEMBER OF 1997?

11 A I'M RELYING UPON MATERIALS I RECEIVED FROM
12 THE ATTORNEYS AS PART OF THE HUNDREDS, THOUSANDS OF PAGES
13 OF MATERIALS I WAS ASKED TO REVIEW IN RELYING UPON THE
14 DATES IN QUESTION. SO THAT'S WHERE MY ANSWER CAME FROM,
15 FROM THE MATERIAL THAT I STUDIED FOR THIS CASE.

16 Q WHAT PIECE OF PAPER OR PAPERS DO YOU
17 REMEMBER THAT MADE YOU CONCLUDE THAT WHEN THOUSAND
18 ADVENTURES FILED -- THOUSAND ADVENTURES OF OHIO FILED
19 BANKRUPTCY IN MAY OF 1997 IT WAS STILL A VOPNFORD COMPANY?

20 A ONLY THE INFORMATION THAT I REVIEWED. THEY
21 SAID THERE WERE THOUSANDS OF PAGES OF MATERIAL. I HAVE NO
22 IDEA WHICH PAGE.

23 Q I'M NOT ASKING YOU TO TELL ME A PAGE NUMBER.

24 A SIR, I DO NOT KNOW THE ANSWER TO YOUR
25 QUESTION. I'D BE HAPPY TO GO BACK THROUGH THE MATERIALS
26 AND FIND OUT WHAT REFERENCE SOURCE SPOKE TO THAT.

1 Q SO YOU HAVE NO PERSONAL KNOWLEDGE?

2 A OH, NO, SIR. I HAVE NO PERSONAL KNOWLEDGE.

3 Q AND YOU HAVE NO PERSONAL KNOWLEDGE OF
4 ANYTHING THAT TRANSPIRED RELATING TO ANY OF THE PLAINTIFFS
5 IN THIS CASE BETWEEN APRIL OF 1997 AND DECEMBER OF 1997; IS
6 THAT RIGHT?

7 A I HAVE NO PERSONAL KNOWLEDGE OF ANYTHING
8 THAT TRANSPIRED UNTIL I WAS TAKEN ON AS A WITNESS HERE.
9 SO --

10 Q A COUPLE MONTHS AGO.

11 A YEAH. SO FROM APRIL OF '97 UNTIL, LET'S
12 SAY, MARCH OF 2000 I HAVE NO PERSONAL KNOWLEDGE.

13 MR. RIVIN: I'D LIKE TO SHOW EXHIBIT -- THE WITNESS
14 EXHIBIT 352.

15 MAY I APPROACH?

16 THE COURT: YOU MAY.

17 MR. SHAW: YOUR HONOR, COULD WE HAVE A BRIEF
18 SIDEBAR?

19 THE COURT: YOU MAY.

20 (DISCUSSION OFF THE RECORD.)

21 BY MR. RIVIN: Q I BELIEVE YOU TESTIFIED ON DIRECT
22 THAT MR. NOVELLI PULLED OUT OF COAST TO COAST; YOU KNOW
23 THAT; RIGHT?

24 A YES. I SAW THE LETTER.

25 Q I DON'T REMEMBER IF MR. SHAW SHOWED YOU THE
26 LETTER, BUT YOU'VE SEEN THAT LETTER?

1 A YES. I'VE SEEN THE LETTER, YES, SIR, TWO
2 LETTERS.

3 Q TWO LETTERS.

4 LET ME SHOW YOU A LETTER FROM MR. NOVELLI
5 AND A LETTER FROM MR. VOPNFORD. THAT WOULD BE EXHIBITS 39
6 AND 40.

7 A DO YOU NEED THIS BACK?

8 Q YES. I'LL PICK THAT UP.

9 MAY I APPROACH, YOUR HONOR?

10 THE COURT: YOU MAY.

11 BY MR. RIVIN: Q MR. MITCHELL, HAVE YOU SEEN BOTH
12 OF THESE LETTERS BEFORE OR JUST ONE OF THEM?

13 A I DON'T THINK I'VE SEEN THE -- I MAY HAVE.
14 AS I SAID, THOUSANDS AND THOUSANDS OF PIECES OF PAPER. BUT
15 IT DOESN'T POP INTO MY MIND, THIS FIRST NATIONWIDE. I
16 THINK I MAY HAVE SEEN THIS IN THE PAPERS OF THIS OTHER
17 ONE. IN ANY CASE, PLEASE.

18 Q LET'S LOOK AT THE SIGNATURES ON THE ONE ON
19 THE LEFT.

20 IN FACT, BEFORE YOU DO THAT, LET'S SHOW THE
21 DATES. THEY'RE DATED THE SAME DATE.

22 A THEY'RE BOTH DATED AUGUST 27TH, CORRECT.

23 Q 1997?

24 A CORRECT, SIR.

25 Q LET'S -- IF WE COULD, LET'S LOOK AT THE
26 SIGNATURES. THE ONE ON THE LEFT IS SIGNED BY

1 RAYMOND NOVELLI, PRESIDENT OF FIRST NATIONWIDE AND ALSO
2 BY -- DO YOU RECOGNIZE THE OTHER SIGNATURE?

3 A I DON'T RECOGNIZE IT, BUT IT SAYS
4 "HANS SCHULZ," I THINK.

5 Q AND THE ONE ON THE RIGHT IS SIGNED BY
6 DAVE VOPNFORD?

7 A DAVID VOPNFORD, CORRECT.

8 Q AND THESE ARE THE LETTERS BY WHICH
9 DAVE VOPNFORD PULLED OUT THE THOUSAND ADVENTURES PARKS, AND
10 RAYMOND NOVELLI PULLED OUT THE -- THIS IS THE FIRST
11 NATIONWIDE. LATER THERE WAS ANOTHER LETTER FOR ALL SEASONS
12 AND FOR OTHER NOVELLI COMPANIES.

13 IS IT YOUR UNDERSTANDING THAT
14 RAYMOND NOVELLI PULLED OUT ALL OF HIS PARKS -- WELL, STRIKE
15 THAT.

16 HAVE YOU SEEN A LETTER LIKE THIS, LIKE THE
17 ONE ON THE LEFT FOR ALL SEASONS, AS WELL AS FIRST
18 NATIONWIDE?

19 A I DON'T THINK SO. I SAW -- FIRST
20 NATIONWIDE -- I DON'T KNOW IF I SAW -- I MAY HAVE SEEN ONE,
21 BUT I DON'T RECALL IF I SAW ONE OF ALL SEASONS. THAT
22 DOESN'T POP INTO MY MIND IMMEDIATELY. I MAY HAVE.

23 Q THE BOTTOM LINE IS ON THE SAME DAY
24 MR. NOVELLI AND MR. VOPNFORD PULLED THEIR PARKS OUT OF THE
25 COAST SYSTEM, ON THE SAME DAY WITH VERY SIMILAR LETTERS?

26 A YEAH.

1 MR. RIVIN: CAN YOU HIGHLIGHT JUST THE FIRST
2 SENTENCE OF EACH.

3 Q IT LOOKS LIKE BOTH OF THEM READ, "PLEASE
4 ALLOW THIS TO SERVE AS FORMAL NOTE" -- "PLEASE ALLOW THIS
5 TO SERVE AS FORMAL NOTIFICATION THAT FIRST NATIONWIDE
6 RESORT MANAGEMENT, INC., WILL NO LONGER ENROLL ITS RESORTS
7 IN COAST TO COAST."

8 AND THAT'S THE LETTER FROM MR. NOVELLI. AND
9 THE ONE FROM MR. VOPNFORD SAYS THE SAME THING, EXCEPT IT
10 SAYS, "THOUSAND ADVENTURES," REFERS TO THOUSAND ADVENTURES
11 AS OPPOSED TO FIRST NATIONWIDE.

12 AND THEN THE NEXT SENTENCE IN MR. NOVELLI'S
13 LETTER SAYS, "IN ORDER TO AVOID ANY CONFUSION CONCERNING
14 THE RESORTS INVOLVED IN THIS NOTIFICATION, THE FOLLOWING IS
15 A LIST OF RESORTS THAT ARE TO BE REMOVED FROM COAST TO
16 COAST AFFILIATION ROLLS."

17 MR. VOPNFORD DIDN'T INCLUDE THAT SENTENCE.
18 HE INCLUDED ONLY THE FIRST ONE. BUT THESE BOTH HAPPENED ON
19 THE SAME DAY. THEY BOTH GAVE NOTIFICATION TO COAST TO
20 COAST ON THE SAME DAY.

21 NOW, YOU DIDN'T KNOW THIS WAS HAPPENING;
22 RIGHT?

23 A THAT'S CORRECT. I HAD NO KNOWLEDGE OF THIS
24 AT THE TIME IT OCCURRED.

25 Q WHEN MR. VOPNFORD GAVE NOTICE TO COAST AND
26 WHEN MR. NOVELLI GAVE NOTICE TO COAST -- LET'S FOCUS ON

1 VOPNFORD FIRST.

2 WHEN MR. VOPNFORD GAVE NOTICE TO COAST THAT
3 THE THOUSAND ADVENTURES WERE BEING PULLED OUT OF COAST TO
4 COAST, THAT MEANT THAT THE COAST MEMBERS OF THOSE PARKS
5 BECAME ORPHANS, COAST ORPHANS; THOSE PARKS BECAME
6 DISAFFILIATED WITH COAST, AND THEY BECAME COAST ORPHANS; IS
7 THAT RIGHT?

8 A IS THAT A QUESTION?

9 Q IT IS.

10 A OH, OKAY.

11 THE COURT: THAT CAN BE ANSWERED YES OR NO, I THINK.

12 THE WITNESS: OKAY. THEY BECAME ORPHANS -- NOT BY
13 MY UNDERSTANDING OF COAST'S POLICY, BUT COAST MAY HAVE
14 CONSIDERED THEM THAT.

15 BY MR. RIVIN: Q I DON'T WANT TO HAVE TO GO BACK
16 TO YOUR TESTIMONY FROM EARLIER TODAY.

17 A OKAY.

18 Q I DON'T WANT TO REHASH IT. BUT WE WENT
19 THROUGH THIS. YOU SAID --

20 A LET'S SAY YES FOR WHATEVER YOU WANT TO TALK
21 ABOUT.

22 Q I WANT YOU TO TESTIFY TRUTHFULLY.

23 A THAT'S WHAT I INTEND TO DO. I'M TRYING TO.

24 Q ALL RIGHT. THOSE MEMBERS BECAME ORPHANS;
25 ISN'T THAT RIGHT?

26 A NOT -- WE GET INTO THIS ORPHAN POLICY AND

1 STUFF, WHICH IS VERY CONFUSING, AND MY UNDERSTANDING,
2 ORPHAN POLICY IS WHEN THE RESORT IS NO LONGER THERE. THESE
3 WERE RESORTS THAT WERE THERE. THEY STILL EXISTED, AND SO I
4 HAVE TROUBLE WITH YOUR QUESTION. IF YOU CAN COUCH IT
5 DIFFERENTLY OR HELP ME WITH IT, I'LL BE HAPPY TO RESPOND.

6 Q MR. MITCHELL, YOU DON'T REMEMBER WHEN I
7 SHOWED YOU YOUR DEPOSITION TESTIMONY EARLIER TODAY, WHEN I
8 SHOWED YOU YOUR DEPOSITION THIS MORNING?

9 A YES, I DO REMEMBER.

10 Q WHEN YOU SAID THAT A MEMBER BECOMES AN
11 ORPHAN WHEN THE MEMBER'S PARK DISAFFILIATES WITH COAST.
12 THESE PARKS DISAFFILIATED WITH COAST?

13 A CORRECT. OKAY. WE'LL SAY THEY'RE ORPHANS,
14 YES, SIR. THERE'S NO USE GOING DOWN THIS ROAD. SO THEY'RE
15 ORPHANS, YES, SIR.

16 Q AND COAST HAD THE RIGHT TO TREAT THEM AS
17 ORPHANS, AS THEY TREATED COAST ORPHANS?

18 A IS THAT A QUESTION?

19 Q YES.

20 A I DON'T UNDERSTAND ENTIRELY. WHAT DO YOU
21 MEAN HAD THE RIGHT TO TREAT THEM AS ORPHANS? WHAT HAPPENS
22 WHEN THEY DO THAT?

23 Q DO YOU HAVE ANY OPINION ON THAT ONE WAY OR
24 THE OTHER?

25 A THAT THEY HAD THE RIGHT TO TREAT THEM AS
26 ORPHANS?

1 Q AS COAST ORPHANS, THE WAY THEY TREATED COAST
2 ORPHANS.

3 A YES, I HAVE OPINIONS ON THAT.

4 Q WHEN MR. VOPNFORD SENT THIS LETTER TO COAST,
5 WHEN MR. NOVELLI SENT HIS LETTER TO COAST, NEITHER ONE OF
6 THEM CONTACTED THE MEMBERS TO FIND OUT WHETHER OR NOT THEY
7 WERE WILLING TO HAVE THEIR COAST TO COAST MEMBERSHIP
8 STRIPPED AWAY FROM THEM, DID THEY?

9 A I HAVE NO KNOWLEDGE OF THAT.

10 Q AND, IN FACT, IN ORDER TO BE A COAST MEMBER,
11 A PERSON HAS TO HAVE A HOME PARK THAT'S AFFILIATED WITH
12 COAST, THAT'S IN THE COAST SYSTEM; RIGHT?

13 A NO. THE POLICY ALLOWS FOR THE USER OF COAST
14 PRODUCT TO BE AFFILIATED WITH COAST FOR THE END OF THE
15 CALENDAR YEAR, AND THEN, ACCORDING TO THE INFORMATION YOU
16 PROVIDED ME, FOR ANOTHER YEAR THEREAFTER WITHOUT A HOME
17 PARK.

18 Q THEN THEY HAVE TO JOIN A HOME PARK?

19 A YEAH.

20 Q THEY HAVE EVENTUALLY TO -- HAVE TO HAVE A
21 NEW HOME PARK?

22 A YEAH. SOMETIMES THERE MAY BE MEMBERS OF
23 COAST THAT HAVE BEEN THERE FIVE YEARS WITHOUT A HOME PARK.
24 GENERALLY, THE POLICY -- AS I UNDERSTAND IT, THE POLICY
25 THEY HAVE UNTIL THE END OF THE CALENDAR YEAR. AND THEN
26 THEY MAY BE GIVEN ONE MORE YEAR. BUT THEY OUGHT TO BE

1 JOINING SOME TIME, YES.

2 Q YOU USED THE PHRASE THE PERSON ENJOYING THE
3 COAST SERVICES. YOU MEAN THE COAST MEMBER?

4 A COAST PROGRAM, RIGHT.

5 Q I'M REFERRING TO THE PERSON. THE COAST
6 MEMBER.

7 A THE MEMBER OF THE RESORT WHAT WAS USING
8 COAST SERVICES, THAT'S CORRECT.

9 Q IS A COAST MEMBER?

10 A I'LL GO FOR THAT. NO PROBLEM. I'LL CALL IT
11 WHAT YOU LIKE.

12 MR. RIVIN: THIS MIGHT BE A GOOD TIME. I'M MOVING
13 TO ANOTHER SUBJECT, YOUR HONOR. IT MIGHT BE --

14 THE COURT: ALL RIGHT. TAKE 20.

15 (RECESS TAKEN.)

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

18 THE COURT: IT'S BEEN BROUGHT TO MY ATTENTION THAT
19 ONE OF YOU WANTED TO SUBMIT SOME QUESTIONS OR SOMETHING,
20 AND UNFORTUNATELY WE CAN'T ALLOW YOU TO DO THAT. WE HAVE
21 TO LET THE ATTORNEYS TRY THEIR CASE.

22 YOU MAY HAVE A LOT OF QUESTIONS YOU'D LIKE
23 TO ASK, AND THEY MAY NEVER COME FORTH. BUT THOSE ARE THE
24 RULES OF EVIDENCE.

25 SO PROCEED, COUNSEL.

26 MR. RIVIN: THANK YOU, YOUR HONOR.

1 THE COURT: A LOT OF QUESTIONS I'D LIKE TO ASK, TOO.

2 MR. RIVIN: MAYBE IF WE CAN TALK, YOUR HONOR, I
3 COULD GET SOME MORE QUESTIONS TO ASK.

4 Q BEFORE THE BREAK, MR. MITCHELL, I THINK YOU
5 EXPRESSED SOME UNCERTAINTY ABOUT SOME QUESTION ABOUT THE
6 NUMBER OF PARKS THAT THE PLAINTIFFS PULLED OUT FOR THOUSAND
7 ADVENTURES AND THE NOVELLI PARKS PULLED OUT OF COAST TO
8 COAST.

9 IS THERE SOME DOUBT IN YOUR MIND ABOUT THAT,
10 ABOUT HOW MANY PARKS WERE ACTUALLY PULLED OUT OF THE
11 SYSTEM?

12 A I DON'T KNOW EXACTLY HOW MANY.

13 Q LET ME SEE IF WE CAN ESTABLISH THIS.

14 THERE IS A -- ARE YOU FAMILIAR WITH
15 INTERROGATORIES? DO YOU KNOW WHAT THOSE ARE?

16 A IS THAT WHERE YOU SEND WRITTEN QUESTIONS TO
17 SOMEONE?

18 Q EXACTLY.

19 A LIKE A DEPOSITION, ONLY IN WRITING?

20 Q YES. THAT'S RIGHT. INTERROGATORIES ARE
21 QUESTIONS THAT ARE ASKED AS PART OF THE DISCOVERY PROCESS,
22 JUST LIKE DEPOSITIONS. SOMETIMES YOU ASK QUESTIONS IN
23 WRITING, AND THOSE ARE CALLED INTERROGATORIES.

24 A YES, SIR.

25 Q AND THE DEFENDANTS IN THIS CASE, COAST TO
26 COAST, SENT SOME INTERROGATORIES TO THE PLAINTIFFS IN THIS

1 CASE. AND AMONG THE INTERROGATORIES, COAST ASKED
2 PLAINTIFFS TO IDENTIFY THE PARKS THAT HAD SUFFERED DAMAGES
3 SUBSEQUENT TO THE PARKS THAT HAD BEEN PULLED OUT OF THE
4 SYSTEM. AND I'D LIKE TO SHOW -- LET ME ASK. I WANT TO GO
5 TO EXHIBIT 62, WHICH I DO NOT HAVE A COPY OF. THAT IS AN
6 INTERROGATORY RESPONSE.

7 IF WE MAY, YOUR HONOR, IF I COULD APPROACH
8 THE WITNESS.

9 THIS IS A CHART THAT WAS PROVIDED BY THE
10 PLAINTIFFS IN RESPONSE TO INTERROGATORY NUMBER 54, WHICH
11 REQUESTED A LIST OF THE RESORTS THAT WERE OWNED BY THE
12 PLAINTIFFS, AND THAT'S WHAT THAT IS.

13 NOW, YOU'VE SEEN THAT BEFORE, HAVEN'T YOU?

14 A THE MATERIALS I'VE REVIEWED. I DON'T RECALL
15 SPECIFICALLY, BUT --

16 MR. SHAW: YOUR HONOR, JUST FOR THE RECORD -- I'M
17 SORRY TO INTERRUPT, MR. RIVIN. BUT WE DON'T HAVE THE
18 QUESTION. WE DON'T HAVE THE INTERROGATORY QUESTION. WE
19 HAVE THE RESPONSE. SO JUST FOR THE PURPOSES OF THE RECORD,
20 I'M OBJECTING THAT WE DON'T HAVE THE INTERROGATORY
21 QUESTION, BUT WE ONLY HAVE THE RESPONSE. AND THAT'S WHAT
22 HE IS QUESTIONING THIS WITNESS ABOUT.

23 THANK YOU, YOUR HONOR.

24 MR. RIVIN: THIS IS A DOCUMENT PREPARED BY THE
25 PLAINTIFFS ATTACHED TO THEIR INTERROGATORY RESPONSES. IT
26 IS A LIST OF THEIR RESORTS, IDENTIFIED AS THEIR RESORTS.

1 THE COURT: THAT'S ALL IT IS IT JUST IDENTIFIES
2 THEIR RESORTS?

3 MR. SHAW: BETWEEN 1987 AND --

4 MR. MOSHENKO: AND 1999.

5 MR. SHAW: AND 1999.

6 THE COURT: PROCEED.

7 MR. SHAW: THANK YOU, YOUR HONOR.

8 BY MR. RIVIN: Q CAN YOU NOW -- I WAS MISTAKEN
9 EARLIER WHEN I SAID THAT THE INTERROGATORY REQUESTED THAT
10 THE PLAINTIFFS ANSWER WHICH RESORTS DID YOU PULL OUT OF THE
11 SYSTEM. THE INTERROGATORY BASICALLY ASKED WHICH --
12 IDENTIFY YOUR PARKS, YOUR HOME PARKS, ALL THE PLAINTIFFS'
13 HOME PARKS. AND THAT'S WHAT THIS IS.

14 IF YOU CAN TAKE A LOOK AT THIS, YOU CAN SEE
15 THAT THERE PROBABLY ARE AROUND 70, RIGHT AROUND 70 PARKS.

16 MR. SHAW: COUNSEL, I'M SORRY TO DO THIS ONE MORE
17 TIME. YOUR HONOR, I MISSPOKE. THIS EXHIBIT IS ONLY 1987
18 THROUGH 1990. ENCLOSURE ONE IS THOSE YEARS. ENCLOSURE TWO
19 IS 1991 THROUGH 1994. AND WE'RE ONLY LOOKING AT ENCLOSURE
20 ONE.

21 MR. RIVIN: NO. BUT ALL OF THE LEFT COLUMN. THE
22 LEFT COLUMN IS A LIST OF ALL THE PARKS. AND THE FIRST PAGE
23 THAT WE'RE LOOKING AT STARTS WITH 19 -- CAN YOU SHOW THE
24 TOP? JUST RIGHT BELOW THAT. RIGHT THERE. 1987, 1988.
25 BUT THE LEFT COLUMN IS EXACTLY THE SAME ON EVERY PAGE. THE
26 LEFT COLUMN IS THE SAME ON EVERY PAGE.

1 ALL RIGHT. DO YOU SEE THAT, MR. SHAW?

2 MR. SHAW: I DON'T KNOW WHERE YOU'RE GOING, BUT I
3 THINK I UNDERSTAND.

4 MR. RIVIN: WHAT I WOULD LIKE TO DO IS SHOW TO THE
5 EXTENT THERE IS ANY ISSUE ABOUT THE NUMBER OF PARKS THAT
6 THE PLAINTIFFS INTENDED TO PULL OUT OF THE
7 PLAINTIFFS' -- OF COAST TO COAST, I WOULD LIKE TO SHOW
8 MR. MOSHENKO -- A PORTION OF MR. MOSHENKO'S OPENING
9 STATEMENT, YOUR HONOR, IF I MIGHT, AT PAGE 1148, LINE 22.

10 MR. SHAW: YOUR HONOR, I'LL OBJECT TO THAT.
11 OPENING STATEMENT IS NOT EVIDENCE AND NOT TO BE USED AT ANY
12 TIME DURING THE TRIAL.

13 THE COURT: THE OBJECTION IS SUSTAINED ON THAT
14 GROUND.

15 MR. RIVIN: I SOUGHT TO --

16 THE COURT: I'VE SUSTAINED.

17 MR. RIVIN: AND I'M DONE ARGUING.

18 Q DO YOU KNOW, MR. MITCHELL, HOW MANY PARKS
19 THE PLAINTIFFS PULLED OUT OF THE COAST SYSTEM?

20 A NO, SIR.

21 Q WHY DON'T WE LEAVE THAT TOPIC AND GO TO
22 SOMETHING ELSE.

23 YOU TESTIFIED EARLIER THIS AFTERNOON THAT
24 WHEN A COAST MEMBER'S PARK WITHDREW FROM THE SYSTEM, THE
25 COAST MEMBER WHO BECAME AN ORPHAN WOULD HAVE MAYBE -- WOULD
26 HAVE AT LEAST A YEAR, YEAR AND A HALF, I THINK YOU SAID, TO

1 FIND ANOTHER HOME PARK?

2 A YES. BUT I DIDN'T SAY THEY WERE AN ORPHAN.
3 IN OTHER WORDS, JUST BECAUSE THEY'RE AN ORPHAN -- YOU CAN'T
4 BE AN ORPHAN UNLESS YOUR PARENTS ARE DEAD. IF YOUR PARENTS
5 MOVE TO A NEW LOCATION, YOU'RE NOT AN ORPHAN. YOU JUST
6 MOVED.

7 Q MR. MITCHELL, YOU TESTIFIED TWO OR THREE
8 TIMES NOW THAT WHEN A HOME PARK DISAFFILIATES, WHEN A HOME
9 PARK PULLS OUT, THAT THE COAST MEMBER THEN NO LONGER HAS A
10 HOME PARK IN THE SYSTEM, AND THE MEMBER BECOMES AN ORPHAN.
11 I'M SORRY TO KEEP GOING OVER THIS.

12 A THAT'S QUITE ALL RIGHT.

13 Q YOU KEEP TRYING TO GO BACK TO A DEFINITION
14 YOU GAVE IN RESPONSE TO MR. SHAW'S QUESTION.

15 A I UNDERSTAND -- I'VE ANSWERED THIS QUESTION
16 IN COURT PROBABLY A DOZEN TIMES IN THREE TAKES AND ANOTHER
17 25 TIMES IN DEPOS. AND MY UNDERSTANDING IS THAT AN ORPHAN
18 REFERENCES A PARK THAT NO LONGER EXISTS.

19 NOW, COAST -- AS I'VE PREVIOUSLY SAID THIS
20 AFTERNOON A FEW MINUTES AGO, COAST CAN CALL IT WHATEVER IT
21 WANTS, BUT MY UNDERSTANDING OF THEIR POLICY IS THAT'S WHAT
22 AN ORPHAN IS. AND WHEN -- WHEN SOMEONE LEAVES COAST TO
23 COAST, THE PARK LEAVES, AND THEY'RE ORPHANS. IF THEY LEFT
24 BECAUSE OF DISAFFILIATION, THEY'RE DISAFFILIATED. AND I
25 APOLOGIZE IF I GOT CONFUSED IN YOUR QUESTIONING. IT WAS
26 ASKED A LOT OF TIMES IN KIND OF LITTLE DIFFERENT WORDS EACH

1 TIME. AND SO I'VE TRIED TO BE CONSISTENT WITH WHAT I
2 UNDERSTAND THE POLICY TO BE.

3 Q I'M GOING TO SHOW YOUR DEPOSITION TESTIMONY
4 ONE MORE TIME.

5 A OKAY.

6 Q PAGE 351, LINE 25, TO 352, LINE 21.

7 MR. SHAW: YOUR HONOR, I OBJECT AS CUMULATIVE. THE
8 RECORD WILL SPEAK FOR ITSELF.

9 THE COURT: I'M GOING TO ALLOW IT, COUNSEL.

10 MR. SHAW: 351, COUNSEL?

11 MR. RIVIN: THE SAME LINES. 351, LINE 25, TO 352,
12 LINE 21.

13 Q WHY DON'T WE TAKE THE FIRST QUESTION, AND
14 TELL ME WHAT OPINIONS YOU HAVE IN THAT REGARD.

15 AGAIN, GO BACK AND REHASH IT ONE MORE TIME,
16 MR. MITCHELL. YOU PREPARED A LIST OF 43 QUESTIONS THAT YOU
17 WERE PREPARED TO ANSWER AND TESTIFY TO; RIGHT?

18 A YES, SIR.

19 Q AND I WAS ASKING YOU ABOUT YOUR FIRST ONE;
20 IS THAT RIGHT?

21 A I DON'T KNOW IF IT WAS THE FIRST ONE, BUT
22 WHATEVER.

23 Q THE FIRST QUESTION STATES: "WHAT ARE THE
24 HISTORICAL POLICIES,
25 PRACTICES AND PROCEDURES OF
26 COAST TO COAST WITH REGARD TO

1 ORPHANED MEMBERS?

2 "ANSWER: COAST TO COAST,
3 WHEN A MEMBER HAS BEEN
4 STATUSED ORPHANED BY COAST TO
5 COAST -- WHICH THAT STATUS
6 CAN OCCUR FOR ONE OR MANY
7 REASONS. BUT LET'S SAY THE
8 RESORT NO LONGER EXISTS, THAT
9 THE MEMBERS WERE AFFILIATED
10 WITH FOR WHATEVER REASON,
11 SOLD, NOT A MEMBER OF COAST
12 TO COAST ANYMORE, BANKRUPT,
13 IT DOESN'T MATTER.

14 "QUESTION:
15 DISAFFILIATION?

16 "ANSWER: DISAFFILIATION,
17 EITHER VOLUNTARY OR
18 OTHERWISE. ALTHOUGH, I DON'T
19 THINK IN THE TOTAL EXISTENCE
20 OF COAST TO COAST THEY HAVE
21 EVER DISAFFILIATED HALF A
22 DOZEN RESORTS OF THEIR OWN
23 ACTIONS.

24 "QUESTION: AS OPPOSED TO
25 RESORTS DISAFFILIATING FROM
26 THEM?

1 "ANSWER: RIGHT. SO

2 DISAFFILIATION."

3 NOW, WHEN A COAST MEMBER'S PARK
4 DISAFFILIATED SO THAT THAT MEMBER BECAME AN ORPHAN, ISN'T
5 IT CORRECT THAT THAT ORPHAN ONLY HAD -- THAT PERSON WHO WAS
6 DEEMED AN ORPHAN ONLY HAD THROUGH THE END OF THE CALENDAR
7 YEAR TO GET A NEW HOME PARK?

8 A NO.

9 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
10 72. THIS IS A COAST MEMBERSHIP APPLICATION.

11 Q YOU'RE FAMILIAR WITH THIS DOCUMENT?

12 A YES.

13 Q CAN WE LOOK AT -- I BELIEVE IT'S PAGE 2.
14 THIS IS A DOCUMENT.

15 THIS IS THE MEMBERSHIP APPLICATION THAT'S
16 SIGNED BY A COAST MEMBER WHEN HE OR SHE APPLIES FOR
17 MEMBERSHIP AT COAST; ISN'T THAT RIGHT?

18 A OKAY.

19 Q LET'S LOOK AT PARAGRAPH 2 OF THE SECOND
20 PAGE. IT READS, "IF YOUR HOME RESORT CEASES TO BE A COAST
21 TO COAST AFFILIATED RESORT FOR ANY REASON, YOUR COAST TO
22 COAST MEMBERSHIP WILL REMAIN IN EFFECT FOR THE REMAINDER OF
23 THAT CALENDAR YEAR, THEREBY ALLOWING YOU A REASONABLE
24 PERIOD OF TIME TO BECOME A MEMBER OF ANOTHER COAST TO COAST
25 AFFILIATED RESORT WITHOUT INTERRUPTING YOUR BENEFITS."

26 I'D LIKE TO GO TO THE --

1 A IS THIS A QUESTION?

2 Q I DIDN'T ASK A QUESTION.

3 A OKAY.

4 Q I'D LIKE TO GO TO THE COAST LETTERS THAT
5 WERE SENT TO THE MEMBERS IN OCTOBER OF 1997.

6 MR. SHAW SHOWED YOU A COPY OF THIS LETTER;
7 DO YOU RECALL THAT?

8 A I'M SORRY, SIR. THE COAST LETTERS -- OH,
9 YES.

10 Q THE COAST LETTERS.

11 A IN 1967.

12 Q 1997?

13 A 1997 I SAW TWO LETTERS. I DON'T RECALL THE
14 DATES, BUT THEY WERE TWO LETTERS, ONE OF WHICH WAS SENT ON
15 A RESORT PROPERTY THAT WAS NOT A PARTY TO THIS CASE, AND
16 ONE OF WHICH WAS SENT ON A PROPERTY THAT WAS A PARTY TO
17 THIS CASE. ARE THOSE THE LETTERS?

18 Q I'M GOING TO ASK YOU ABOUT THE LETTER THAT'S
19 RELEVANT IN THIS CASE, AND THAT'S THE COAST LETTER TO THE
20 PLAINTIFFS' FORMER MEMBERS.

21 A YES, SIR.

22 Q AND THE COAST MEMBERS WHO WERE AFFILIATED
23 WITH THE PLAINTIFFS' PARKS.

24 A YES, SIR.

25 Q BY THE WAY, YOU DIDN'T SEE THAT LETTER UNTIL
26 YOU WERE HIRED AS AN EXPERT IN THIS CASE; IS THAT RIGHT?

1 A THAT'S CORRECT.

2 MR. RIVIN: CAN WE SEE EXHIBIT -- IT'S 1563 -- OR
3 8. THE ONE THAT MR. SHAW SHOWED WAS 1563. THAT WOULD BE
4 ONE OF THE PLAINTIFFS' EXHIBITS.

5 Q MR. SHAW SHOWED YOU THIS LETTER, AND HE
6 ASKED YOU SOME QUESTIONS ABOUT IT.

7 ARE YOU AWARE THAT THE SAME LETTER FROM
8 COAST WENT TO THE COAST MEMBERS WHO USED TO BE WITH THE
9 THOUSAND ADVENTURES PARKS BEFORE THOUSAND ADVENTURES PULLED
10 OUT?

11 A I SAW MANY, MANY OF THESE LETTERS, AND THE
12 LANGUAGE, TO MY RECOLLECTION, WAS CONSISTENT IN ALL OF
13 THEM.

14 Q WEREN'T THERE SOME THAT WENT TO THE FORMER
15 MEMBERS OF FORMER COAST -- THE COAST MEMBERS OF
16 MR. NOVELLI'S PARKS, AND SOME WENT TO THE COAST MEMBERS OF
17 MR. VOPNFORD'S PARKS?

18 A THAT'S CORRECT. LETTERS WERE SENT TO
19 MR. VOPNFORD'S MEMBERS AND MR. NOVELLI'S MEMBERS, CORRECT.

20 Q TO THE COAST MEMBERS -- THE COAST MEMBERS
21 WHO WERE MEMBERS OF THOSE PARKS?

22 A YEAH.

23 Q MR. SHAW SHOWED YOU SOME LANGUAGE IN THIS
24 LETTER AND ASKED YOU ABOUT -- ASKED YOU ABOUT THAT
25 LANGUAGE. AND I WANT TO SHOW YOU SOME OTHER LANGUAGE IN
26 THE LETTER.

1 A OKAY.

2 Q LET'S LOOK AT -- LET'S TALK ABOUT THE SECOND
3 PARAGRAPH. IT SAYS, "WHILE WE CANNOT UNDO THE ACTION OF
4 OTHERS, WE'RE PREPARED TO TAKE ACTION TO RESERVE AND
5 PROTECT THE MEMBERS OF THE COAST TO COAST FAMILY. SINCE WE
6 REALIZE THAT FINDING ANOTHER RESORT MAY CREATE AN
7 INCONVENIENCE FOR YOU, WE HAVE MADE ARRANGEMENTS TO HAVE
8 YOUR COAST TO COAST HOME RESORT MEMBERSHIP TRANSFERRED TO
9 COLORADO HEIGHTS."

10 DO YOU SEE THAT SENTENCE REFERS TO "YOUR
11 COAST TO COAST HOME RESORT MEMBERSHIP"?

12 A I DON'T SEE IT, BUT I BELIEVE YOU.

13 Q I'M SORRY?

14 A THAT'S QUITE ALL RIGHT. IT'S NOT A
15 PROBLEM. I TRUST WHAT YOU SAID. YES, SIR. IT'S OKAY.

16 MR. RIVIN: MAY I APPROACH?

17 THE COURT: YES.

18 BY MR. RIVIN: Q LET ME GIVE YOU A COPY HERE,
19 SIR.

20 A THANK YOU.

21 Q I'M LOOKING AT A LETTER WHICH IS ON THE
22 SECOND PAGE OF THAT DOCUMENT.

23 A THIS IS A LETTER, "DEAR COAST MEMBER," DATED
24 OCTOBER -- JUST THE MONTH OF OCTOBER, SIGNED BY --

25 Q EXACTLY.

26 A SIGNED BY JIM RANDALL.

1 Q YES.

2 A DIRECTOR OF OPERATIONS. THAT'S RIGHT. I'M
3 SORRY. IT'S SOMETHING ABOUT ABBEY RESORT. OKAY.

4 Q DIFFERENT RESORT, THE SAME LETTER.

5 A YEAH.

6 Q THE SECOND SENTENCE SAYS, "YOUR COAST TO
7 COAST HOME RESORT MEMBERSHIP"; DO YOU SEE THAT?

8 A THE SECOND SENTENCE OF WHICH PARAGRAPH?

9 Q THE SECOND PARAGRAPH.

10 A OH, OKAY. EXCUSE ME. "SINCE WE REALIZE
11 THAT FINDING" -- YES. WAIT. WAIT. WAIT. MINE SAYS,
12 "SINCE WE REALIZED THAT FINDING ANOTHER RESORT MAY CREATE
13 AN INCONVENIENCE FOR YOU, WE HAVE MADE ARRANGEMENTS TO HAVE
14 YOUR COAST TO COAST HOME RESORT MEMBERSHIP TRANSFERRED TO
15 MINING CAMP RESORT, CREEDE, COLORADO"; IS THAT THE
16 SENTENCE?

17 Q IT IS. THE LETTER I GAVE YOU -- AND I'M
18 SORRY. I DON'T HAVE ANOTHER COPY OF THIS EXACT LETTER, BUT
19 IT'S -- THE LANGUAGE IS THE SAME?

20 A OKAY. YES. THAT'S THE SENTENCE WE'RE
21 SPEAKING TO.

22 Q OKAY. THE WORDS YOU JUST READ, "COAST TO
23 COAST HOME RESORT MEMBERSHIP"?

24 A YES.

25 Q DO YOU SEE THAT?

26 A YES.

1 Q SO WHAT COAST DID FOR ITS MEMBERS IS
2 TRANSFERRED THE COAST TO COAST HOME RESORT MEMBERSHIP; IN
3 OTHER WORDS, THE COAST TO COAST MEMBERS NEEDED TO HAVE A
4 HOME RESORT WITHIN THE COAST TO COAST SYSTEM; SO THERE WAS
5 A TRANSFER OF THE COAST TO COAST HOME RESORT MEMBERSHIP; DO
6 YOU SEE THAT?

7 A I SEE WHAT'S WRITTEN THERE, YES.

8 Q ALL RIGHT. LET ME GO DOWN TO -- LET ME GO
9 DOWN TWO SENTENCES BELOW THAT, AND IT READS, "WHILE WE
10 BELIEVE THIS IS AN EXCELLENT OPTION FOR YOU TO CONTINUE
11 YOUR COAST BENEFITS, YOU ARE NOT OBLIGATED TO ACCEPT THIS
12 TRANSFER NOR DOES THIS TRANSFER RELIEVE YOU OF ANY OTHER
13 CONTRACTUAL OBLIGATIONS YOU MAY HAVE."

14 NOW, MR. SHAW I DON'T THINK POINTED THAT OUT
15 TO YOU. DO YOU SEE THAT LANGUAGE?

16 A YES, I DO.

17 Q LET ME ASK YOU SOME OTHER QUESTIONS ABOUT
18 THE TRANSFER OF THE COAST TO COAST HOME RESORT MEMBERSHIP.

19 MR. SHAW ASKED YOU ABOUT THE LICENSEE
20 MANUAL, AND HE POINTED OUT SOME LANGUAGE TO YOU IN THE
21 LICENSEE MANUAL?

22 A YES, SIR.

23 Q PARDON?

24 A YES.

25 Q ABOUT A MEMBER TRANSFERRING FROM ONE HOME
26 RESORT TO ANOTHER HOME RESORT; DO YOU RECALL THAT?

1 A I DO.

2 Q I'D LIKE TO -- I'D LIKE TO SHOW THE WITNESS
3 EXHIBIT 570, WHICH IS THE LICENSEE MANUAL.

4 A I HAVE THAT HERE, SIR.

5 Q OH, GOOD.

6 AND I'LL ASK THAT WE GO TO PAGE 21. IT'S
7 THE 1996 COAST TO COAST LICENSEE MANUAL. CAN WE GO TO PAGE
8 21, PLEASE.

9 AND, MR. O'SHEA, IF WE COULD HIGHLIGHT --
10 LET ME, WITHOUT HIGHLIGHTING THAT, THIS LANGUAGE -- WELL,
11 I'M SORRY. COULD YOU HIGHLIGHT THAT?

12 MR. SHAW: COUNSEL, DID YOU SAY PAGE 21? I THINK
13 THAT'S 18.

14 MR. RIVIN: YOU KNOW WHAT? THAT IS PAGE 21 IN THE
15 HARD COPY -- NO. IT'S PAGE 21 ON -- ON THE COMPUTER. IT'S
16 PAGE 18 IN THE LICENSEE MANUAL.

17 THE WITNESS: WELL, I'M ON THE SHIPPING DEPARTMENT,
18 AND I DON'T KNOW A THING ABOUT THAT. THIS SAYS "SHIPPING
19 DEPARTMENT."

20 MR. RIVIN: MAY I APPROACH, YOUR HONOR?

21 THE COURT: YOU MAY.

22 THE WITNESS: OKAY.

23 BY MR. RIVIN: Q MR. MITCHELL, THIS IS THE
24 LANGUAGE THAT YOU DISCUSSED WITH MR. SHAW, THAT THE
25 PROCEDURE FOR TRANSFERRING, FOR A MEMBER, A COAST MEMBER TO
26 TRANSFER HIS OR HER HOME RESORT?

1 A YES, SIR.

2 Q DO YOU REMEMBER MR. SHAW GOING THROUGH THIS
3 WITH YOU?

4 A YES, SIR.

5 Q AND HE SAID THAT THE TRANSFERRING MEMBER
6 MUST ALSO PROVIDE COAST TO COAST WITH A LETTER FROM THE
7 MEMBER STATING HIS OR HER DESIRE TO TRANSFER, AND THE
8 LETTER FROM THE FORMER HOME RESORT LICENSEE APPROVING THE
9 TRANSFER, AND A LETTER FROM THE NEW HOME RESORT LICENSEE
10 ACCEPTING THE MEMBER; DO YOU SEE THAT?

11 A THAT'S WHAT IT SAYS IN THE COAST LICENSE
12 MANUAL, WHICH IS PART OF THEIR CONTRACT, YES, SIR.

13 Q RIGHT.

14 AND WHAT MR. SHAW DIDN'T SHOW YOU WAS THE
15 TOP OF THE NEXT PAGE. WHY DON'T WE GO TO THE TOP OF THE
16 NEXT PAGE, WHICH IS STILL PART OF SECTION 7.

17 A YES, SIR.

18 Q AND LET ME READ THAT.

19 "AT THE MEMBER'S REQUEST, COAST TO COAST
20 RESERVES THE RIGHT TO TRANSFER THE HOME RESORT OF ANY
21 MEMBER DUE TO UNUSUAL OR EXTENUATING CIRCUMSTANCES WITHOUT
22 THE APPROVAL OF THE ORIGINAL HOME RESORT."

23 NOW, WHEN MR. VOPNFORD AND MR. NOVELLI
24 PULLED THEIR PARKS OUT OF COAST TO COAST, THERE WAS NO WAY
25 COAST COULD GO TO THE PARKS, TO THOSE PARKS, TO GET THE
26 APPROVAL TO TRANSFER THE MEMBERS TO OTHER HOME PARKS; ISN'T

1 THAT CORRECT?

2 A LET ME MAKE SURE I UNDERSTAND YOUR QUESTION.
3 ARE YOU SAYING THERE'S NO WAY THEY COULD GO TO THE
4 INDIVIDUAL PARKS AND CONFIRM MR. NOVELLI'S? OR THERE WAS
5 NO WAY THEY COULD GO TO THOSE INDIVIDUAL PARKS AND TALK TO
6 HIS MEMBERS AND GET PERMISSION? WE'RE TALKING ABOUT THE
7 PERMISSION FROM THE MEMBERS; IS THAT THE LETTER IN
8 QUESTION?

9 Q MR. MITCHELL, WHEN MR. VOPNFORD AND
10 MR. NOVELLI PULLED THEIR PARKS OUT OF COAST --

11 A YES, SIR.

12 Q THE COAST MEMBERS WHO WERE ORPHANS, THE
13 COAST MEMBERS WHO RECEIVED THE LETTERS FROM COAST TO COAST,
14 NO LONGER HAD HOME PARKS IN THE SYSTEM; ISN'T THAT RIGHT?

15 A CORRECT. THEY JUST HAD THEIR HOME ADDRESSES
16 AND THE COMPUTER LICENSING THAT COAST GAVE US.

17 Q THEY DIDN'T ANY LONGER HAVE HOME PARKS IN
18 THE SYSTEM TO GIVE APPROVAL TO THE TRANSFER; ISN'T THAT
19 RIGHT?

20 A YES. I DON'T KNOW WHAT THE DATES WERE,
21 THERE MAY BE ISSUES OF DATES, BUT THAT WOULD SEEM
22 REASONABLE WHAT YOU'RE OFFERING. AND IT WOULD DEPEND UPON
23 WHAT THE NOTICES WERE REQUIRED OF EACH OF THE PARTIES TO
24 THE AGREEMENT, BUT --

25 Q MR. MITCHELL, YOU TESTIFIED ON DIRECT THAT
26 THE PLAINTIFF SUFFERED DAMAGES DUE TO COAST'S ALLEGEDLY

1 IMPROPER CONDUCT.

2 A THAT'S CORRECT.

3 Q CAN YOU IDENTIFY A SINGLE EXISTING CURRENT
4 MEMBER OF THE PLAINTIFFS WHO STOPPED PAYING BECAUSE THE
5 MEMBER FELT HE OR SHE WAS TRANSFERRED IMPROPERLY AND SIMPLY
6 ACCEPTED IT?

7 A I KNOW OF NO INDIVIDUALS, NO, SIR.

8 Q THE NATURE OF THE DAMAGES THAT YOU WERE
9 TALKING ABOUT WERE THE PLAINTIFFS' MEMBERS STOPPED PAYING
10 PLAINTIFFS ON THE CONTRACTS OR ON WHATEVER IT WAS, DUES; IS
11 THAT THE NATURE OF THE DAMAGES?

12 A OH, NO. THAT'S JUST THE TIP OF THE ICEBERG.

13 Q I SEE.

14 WELL, LET'S TALK ABOUT -- LET'S TALK ABOUT
15 THE DAMAGES AND WHY PEOPLE STOPPED PAYING. OKAY?

16 A SURE.

17 Q THERE ARE MANY REASONS WHY MEMBERS STOPPED
18 PAYING DUES OR STOPPED PAYING ON CONTRACTS; ISN'T THAT TRUE?

19 A THERE MAY BE. I'M CERTAIN.

20 Q BUT, FOR EXAMPLE, PEOPLE WHO NO LONGER HAVE
21 TIME TO USE PARKS --

22 A OF COURSE.

23 Q -- THEY MIGHT STOP PAYING?

24 A MAY BE DEAD.

25 Q PEOPLE WHO PASS AWAY, PEOPLE WHO DECIDE TO
26 JOIN ANOTHER PARK ON THEIR OWN BECAUSE THEY MOVE OR DECIDE

1 TO RELOCATE TO ANOTHER HOME PARK?

2 A IF SUCH CONDITION EXISTED, I SUPPOSE THAT
3 COULD OCCUR, YES.

4 Q SURE.

5 AND THEN THERE ARE MANY REASONS WHY
6 PLAINTIFFS' MEMBERS MIGHT HAVE STOPPED PAYING HERE. FOR
7 EXAMPLE, THERE WERE THOUSAND ADVENTURES MEMBERS I'M SURE
8 WHO QUIT BECAUSE THEY WERE TIRED OF THE WAY THEY WERE
9 TREATED. SOME? YOU THINK THERE'S SOME?

10 A IS THAT A QUESTION?

11 Q YES. DO YOU AGREE WITH ME?

12 A MEMBERS DON'T QUIT UNTIL THE PARK IS GONE.
13 AND WE LOOK AT THE WHOLE HISTORY OF THE INDUSTRY. THE
14 PERCENTAGE OF MEMBERS WHO LEAVE A PARK BECAUSE THEY'RE
15 ANGRY, UPSET, IS VERY, VERY SMALL. IF THAT PARK IS THERE,
16 THEY'RE THERE. BUT I COULD IMAGINE, AND IT WOULD BE
17 REASONABLE TO OFFER, THAT CERTAINLY ONE OR SOME SMALL
18 PERCENTAGE OF MEMBERS WOULD QUIT FOR THAT REASON AND/OR ANY
19 OTHER REASONS. BUT I WOULDN'T CONSIDER IT TO BE A
20 SIGNIFICANT EVENT.

21 Q DO YOU CONSIDER MEMBERS JUST TO BE BASICALLY
22 FOLLOWERS?

23 A I DON'T THINK THAT'S A FAIR WAY TO
24 CHARACTERIZE THEM. THESE ARE HARD-WORKING PEOPLE. THEY
25 WANT TO GET SOME RECREATION. THEY DIDN'T WANT TO GET
26 INVOLVED IN A LOT OF BALONEY. AS LONG AS THE PARK IS

1 THERE, THEY'RE GOING TO CONTINUE. THERE'S, GENERALLY
2 SPEAKING, SOMEWHERE BETWEEN 3 AND 5 PERCENT OF ANY MEMBER
3 BASE THAT ARE GOING TO BE VERY ACTIVE. THE REST OF THEM
4 WILL PRETTY MUCH GO ALONG WITH WHAT'S GOING ON.

5 SO I GUESS YOU COULD USE THE TERM
6 "FOLLOWERS." I MAY HAVE EVEN USED IT AT SOMETIME IN MY
7 LIFE. IN THAT PARTICULAR CONDITION, THEY MAY BE A
8 FOLLOWER. THAT DOESN'T NECESSARILY MAKE THEM A FOLLOWER IN
9 LIFE AS PEOPLE.

10 Q ARE THESE OPINIONS THAT -- CONCLUSIONS YOU
11 FORMED WHEN YOU WERE ACTIVE IN THE INDUSTRY BACK IN THE
12 1980'S?

13 A YES. AND OPINIONS THAT I STILL HOLD FROM MY
14 CONSULTING EXPERIENCE; ALTHOUGH, I WASN'T ACTIVE ON A DAILY
15 BASIS. I DID CONSULT UP UNTIL TWO OR THREE YEARS AGO,
16 COUPLE YEARS AGO.

17 Q THOUSAND ADVENTURES MEMBERS STOPPED PAYING
18 BECAUSE THEY WERE NOT GETTING SERVICES; ISN'T THAT CORRECT?

19 A I GUESS. I MEAN, THOSE WHO STOPPED PAYING
20 BECAUSE THEY WERE NOT GETTING SERVICE STOPPED FOR THAT
21 REASON. THOSE WHO SUFFERED OTHER CONSEQUENCES, THEY
22 WEREN'T WITH US ANY LONGER, STOPPED PAYING FOR THAT
23 REASON. THOSE WHO MOVED STOPPED PAYING FOR THAT REASON.
24 SO THERE'S ALL KINDS OF REASONS, AND CERTAINLY WHAT YOU
25 OFFER THEM WOULD BE ONE OF THEM.

26 Q THEY STOPPED PAYING TO ATTORNEY GENERALS

1 ACTIONS DUE TO CLASS ACTIONS; RIGHT?

2 A WELL, THERE WEREN'T ANY CLASS-ACTIONS THAT I
3 RECALL UNTIL THE END OF THE PARTY, AND THERE WERE ATTORNEY
4 GENERALS ACTIONS ALONG FOR A 10-YEAR PERIOD OF TIME, AND
5 THEY DIDN'T STOP PAYING. SO I DON'T THINK THE ATTORNEY
6 GENERALS ACTIONS STOPPED ANYONE FROM PAYING. BUT CERTAINLY
7 CLASS-ACTIONS. I WOULD IMAGINE ANYONE IN A CLASS THAT WAS
8 SUING SOMEONE ELSE CERTAINLY WOULD HAVE STOPPED PAYING.

9 Q AND THERE WERE PROBABLY PEOPLE WHO QUIT OR
10 STOPPED PAYING ON THEIR CONTRACTS OR DUES BECAUSE THEY WERE
11 TIRED OF BEING TRANSFERRED FROM PARK TO PARK WITHIN
12 MR. NOVELLI'S ORGANIZATION?

13 A NOT IF THEY WERE OF THE PROFILE OF THE
14 RAGATZ STUDY GROUP WHERE THEY'RE INTERESTED IN THE
15 RECIPROCAL SO -- AS LONG AS THEY HAD EITHER R.P.I. OR COAST
16 TO COAST, THEY PROBABLY DIDN'T STOP PAYING BECAUSE THEY
17 DIDN'T CARE ABOUT HOME PARKS.

18 Q WERE THERE PEOPLE WHO QUIT BECAUSE OF
19 DETERIORATION OF THE PARKS?

20 A I IMAGINE. THERE WOULD HAVE TO BE SOMEBODY
21 WHO DID. BUT AS A GENERAL OBSERVATION OF WHY THE PEOPLE DO
22 THIS, THAT WOULDN'T BE THE CASE. THEY MORE LIKELY WRITE
23 NASTY LETTERS, APPROPRIATELY SO, AND COMPLAIN TO THE
24 MANAGEMENT.

25 Q BUT THERE WERE PEOPLE WHO STOPPED PAYING
26 BECAUSE THEY WEREN'T GETTING THEIR SERVICES; CORRECT?

1 A I KNOW NO ONE PERSONALLY. I'VE SEEN NO
2 DOCUMENTATION OF THAT. BUT MY EXPERT OPINION WOULD BE THAT
3 SOMEBODY STOPPED PAYING BECAUSE THEY WEREN'T GETTING
4 SERVICES, YES.

5 Q AND YOU ENCOURAGED PEOPLE TO STOP PAYING IF
6 THEY WEREN'T GETTING SERVICES?

7 A I WOULD ENCOURAGE ANYONE WHO IS NOT GETTING
8 WHAT THEY PAID FOR TO GET IT FIXED AND STOP PAYING AND DO
9 WHATEVER IS NECESSARY TO GET IT FIXED.

10 Q AND THERE WERE PEOPLE WHO STOPPED PAYING THE
11 PLAINTIFFS WHEN THE PLAINTIFFS MADE THE DECISION TO PULL
12 OUT OF COAST TO COAST; AND PEOPLE WHO WANTED TO KEEP COAST
13 TO COAST, AND THEY DECIDED THAT THEY WOULDN'T CONTINUE
14 PAYING, THEY WOULD LEAVE THE PLAINTIFFS' NETWORK, THE
15 PLAINTIFFS' PARKS, BECAUSE THEY WANTED TO KEEP COAST TO
16 COAST, AND THEY COULDN'T GET COAST TO COAST WITH THE
17 PLAINTIFFS; ISN'T THAT TRUE?

18 A I HAVE NO DIRECT KNOWLEDGE OF THAT. AND
19 THAT WOULD FLY IN THE FACE OF WHAT GENERALLY HAPPENS IN THE
20 INDUSTRY. AND WHAT YOU'VE ALREADY SAID, IN THAT YOU STATED
21 THEY HAVE TILL THE END OF THE YEAR, AND MR. RANDALL, THEIR
22 OPERATIONS OFFICER IN HIS DEPOSITION, STATED THAT THEY GIVE
23 THEM ANOTHER YEAR BEYOND THAT, AND THEY KNOW THAT.

24 SO THEY GOT AT LEAST A YEAR FROM THIS
25 PARTICULAR CASE. IF HE STOPPED HIS PARKS IN AUGUST,
26 HYPOTHETICALLY, AUGUST 27TH, THEY WOULD HAVE A YEAR AND

1 THREE MONTHS BEFORE THEY WOULD LOSE THEIR COAST SERVICES.
2 SO I DON'T THINK IT CREATED ANY SENSE OF URGENCY THAT WOULD
3 CAUSE THEM TO DO ANYTHING.

4 Q MR. MITCHELL, ISN'T IT TRUE THAT PEOPLE --
5 SOME PEOPLE STOPPED PAYING THE PLAINTIFFS BECAUSE THE
6 PLAINTIFFS MADE A DECISION TO PULL OUT OF COAST TO COAST?

7 A I HAVE NO DIRECT KNOWLEDGE OF THAT. BUT MY
8 EXPERT OPINION IS, IS THAT CERTAINLY SOMEBODY MAY HAVE,
9 YES. A NUMBER OF PEOPLE -- THE NUMBER OF PEOPLE WOULD BE
10 INSIGNIFICANT.

11 Q IN ALL THE THOUSANDS OF PIECES OF PAPER THAT
12 YOU REVIEWED OR -- DID YOU SEE NOTES, "WE'RE PULLING OUT OF
13 PLAINTIFFS AND STOPPING PAYING BECAUSE YOU PULLED OUT OF
14 COAST TO COAST"?

15 A NOW THAT YOU MENTION IT, I THINK I DID SEE
16 ONE LETTER, SOMETHING LIKE THAT, OF THE MANY LETTERS I
17 LOOKED AT. I DO RECALL PERHAPS SEEING A LETTER LIKE THAT.

18 Q YOU RECALL ONE?

19 A YEAH. BUT OUT OF, WHAT, NEARLY A HUNDRED
20 THOUSAND MEMBERS, I WOULDN'T CALL IT PARTICULARLY
21 SIGNIFICANT.

22 Q DID YOU ASK THE PLAINTIFFS IF THEY COULD
23 SHOW YOU LETTERS THAT THEY GOT FROM PEOPLE WHO STOPPED
24 PAYING BECAUSE THE PLAINTIFFS DECIDED TO PULL OUT OF COAST
25 TO COAST?

26 A NO. I HAD NO NEED OF THAT. SINCE I -- I'VE

1 EXPERIENCED ENOUGH TO KNOW -- I'VE BEEN THROUGH THIS
2 BEFORE. I'VE BEEN INVOLVED IN OTHER RESORTS THAT HAVE LEFT
3 COAST TO COAST. AND SO I'M AWARE OF WHAT THE REALITY IS.
4 SO I DIDN'T NEED TO SEE LETTERS. I KNOW A GIVEN GROUP OF A
5 MEMBER BASE, "X" PERCENTAGE WILL DO THIS. THEY'RE GOING TO
6 DO THAT.

7 AS I STATED TO YOU, I'M CERTAIN SOMEONE
8 PULLED OUT BECAUSE THEY WERE OUT OF COAST TO COAST. BUT IT
9 IS NO MAJOR SIGNIFICANT FACTOR. IT WOULDN'T HAVE BEEN A
10 MOTIVATOR, THEY GOT COAST TO COAST FOR ANOTHER YEAR AND
11 THREE MONTHS. THEY HAVE NO SENSITIVE ISSUE OR URGENCY WITH
12 IT.

13 Q I'D LIKE TO SHOW THE WITNESS -- AND I DON'T
14 UNDERSTAND WHY YOU DIDN'T SEE THESE LETTERS, MR. MITCHELL.
15 BUT --

16 A THAT'S OKAY.

17 Q BUT THE DOCUMENTS THAT WERE PRODUCED I
18 BELIEVE BY THE PLAINTIFFS, IN THIS CASE. LET'S GO TO
19 EXHIBIT 69.

20 MR. SHAW: YOUR HONOR, I'D LIKE TO BE HEARD AT THE
21 SIDEBAR BEFORE ANYTHING IS PUT UP. I HAVEN'T SEEN THE
22 EXHIBIT 69. I WOULD LIKE TO BE HEARD AT THE SIDEBAR.

23 THE COURT: ALL RIGHT.

24 (DISCUSSION OFF THE RECORD.)

25 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
26 69, NUMBER 37. EXHIBIT 69 IS A SERIES OF LETTERS THAT WERE

1 LETTERS, NOTES, AND BILLS THAT WERE SUBMITTED BY THE
2 PLAINTIFFS IN THIS CASE. I'D LIKE TO SHOW PAGE 37, OR 37
3 IS HOW WE HAVE IT. 157 FOR THE HARD COPIES.

4 MR. MOSHENKO: OKAY.

5 MR. RIVIN: DON'T LOOK AT THE -- THE BOTTOM STAMP,
6 YOUR HONOR, IS A STAMP THAT WAS PLACED ON THE DOCUMENT BY
7 THE PLAINTIFFS BEFORE THEY PRODUCED THIS. AND FOR PURPOSES
8 OF THE TRIAL AND FOR PURPOSES OF THE TRIAL EXHIBITS, THIS
9 IS EXHIBIT 69, 037. I'M SORRY FOR THE CONFUSION. WE
10 DON'T -- WE HIGHLIGHT THE TOP PORTION.

11 THIS IS A BILL THAT WENT OUT FROM TRAVEL
12 AMERICA AND CAME BACK. "DEAR TRAVEL AMERICA, CANCEL" --
13 "WE'RE CANCELLING WITH YOU. COAST TO COAST MEANS TOO MUCH
14 TO US, AND WE CANNOT AFFORD DUES FOR BOTH. THANKS FOR
15 CONSIDERING US. CANCEL."

16 HAVE YOU SEEN THIS LETTER?

17 A THAT MAY BE THE ONE I SPOKE TO WHERE THEY
18 SAY THEY CAN'T AFFORD TO PAY DUES IN TWO PLACES; IS THAT --
19 I CAN'T SEE THAT, I'M SORRY.

20 Q DID YOU HEAR THE REST OF IT THAT I READ? I
21 SAID COAST TO COAST.

22 A I CAN'T EVEN SEE IT, SIR. BUT PLEASE GO
23 AHEAD.

24 MR. SHAW: I'M SORRY, I'LL PUT IT UP IN FRONT OF
25 HIM.

26 MR. RIVIN: THANK YOU, MR. SHAW.

1 THE WITNESS: YEAH. I CAN SEE THIS, YES.

2 BY MR. RIVIN: Q IS THAT THE LETTER YOU SAW?

3 A YES, I THINK THIS MAY BE IT. I MENTIONED I
4 SAW A LETTER THAT PEOPLE WERE CANCELLING BECAUSE OF COAST,
5 YES.

6 Q LET'S GO TO EXHIBIT 69, PAGE 39.

7 MR. MOSHENKO: HARD COPY PAGE NUMBER?

8 MR. RIVIN: 173.

9 Q THIS IS A LETTER WRITTEN BY A PLAINTIFF
10 MEMBER.

11 A I'M SORRY. DO I HAVE A COPY IN THIS BOOK OF
12 WHAT YOU'RE TALKING ABOUT?

13 Q YOU SHOULD. IT SHOULD SHOW 173 ON THE
14 BOTTOM.

15 A OKAY. YES, SIR.

16 Q THIS LETTER -- IN THIS LETTER THE PLAINTIFF
17 MEMBER SAYS, "WE WILL NO LONGER BE PAYING DUES BECAUSE YOU
18 CANNOT FURNISH US WITH A COAST TO COAST MEMBERSHIP. WE
19 WISH TO STAY IN THIS SYSTEM AND ARE TRANSFERRING TO A COAST
20 TO COAST HOME PARK."

21 DID YOU SEE THAT LETTER WHEN YOU WERE
22 PREPARING FOR THIS CASE?

23 A YES, I DID. YES, I DID SEE THIS LETTER.

24 Q LET'S GO TO LETTER NUMBER 7, EXHIBIT -- PAGE
25 7 OF THE EXHIBIT. AND THAT HAS A PAGE NUMBER 54 ON THE
26 BOTTOM.

1 A FIFTY-FOUR, YES.

2 Q THIS SAYS -- IN THIS LETTER THE MEMBER SAYS,
3 "WE ARE NOT RENEWING OUR MEMBERSHIP. WE WANTED TO STAY
4 WITH COAST TO COAST SO WE HAVE A MEMBERSHIP WITH A PARK
5 THAT OFFERED COAST TO COAST."

6 DID YOU SEE THIS NOTE?

7 A I DON'T RECALL IT SPECIFICALLY. BUT I
8 LIKELY DID. THEY GAVE ME A GROUP OF LETTERS, A PACKAGE OF
9 THEM.

10 Q LET'S GO TO PAGE 11 OF THIS EXHIBIT, HARD
11 COPY 61.

12 THIS LETTER SAYS -- IN THIS LETTER THE
13 MEMBER SAID, "I TRANSFERRED MY MEMBERSHIP TO SYCAMORE RANCH
14 NOT TO LOSE COAST TO COAST"?

15 A YES.

16 Q HAVE YOU SEEN THIS LETTER?

17 A I DON'T RECALL IT SPECIFICALLY, BUT AS I
18 SAID, I SAW A GROUP OF THEM. THE ONE I RECALL WAS THE ONE
19 I MENTIONED TO YOU. BUT, YES. THAT'S THREE, YES.

20 Q PARDON?

21 A THREE LETTERS WHICH YOU'VE REFERENCED, YES.

22 Q FOUR SO FAR.

23 A OH, EXCUSE ME. FOUR, YES.

24 Q YOU SAW ONLY ONE, RIGHT?

25 A I RECALL SEEING ONE AND IT DREW -- IT DREW
26 IT TO MY ATTENTION. I DON'T RECALL SPECIFICALLY SEEING THE

1 OTHERS, BUT I'M CERTAIN THAT I DID.

2 Q YOU SAID THESE DOCUMENTS WERE PROVIDED TO
3 YOU, AND YOU JUST DIDN'T READ THROUGH THEM?

4 A I WAS PROVIDED 50,000 PAGES OF DOCUMENTS. I
5 DON'T KNOW. YOU SAW -- I TOOK 25,000 PAGES INTO YOUR
6 OFFICE, BOXES OF STUFF. SO, I MEAN, LOTS OF STUFF TO GO
7 THROUGH.

8 Q MR. MITCHELL, YOU BROUGHT ONE BOX OF
9 DOCUMENTS IN MY -- INTO MY OFFICE.

10 A RIGHT, ONE BOX OF DOCUMENTS THAT WAS THIS
11 BIG. RIGHT?

12 Q WHAT'S THE DATE OF THIS? CAN YOU READ THE
13 DATE OF THIS -- NO. THIS IS --

14 A I WAS GOING TO ASK ABOUT THAT. THERE'S NO
15 DATE THAT'S LEGIBLE ON THAT ITEM. SO I DON'T KNOW. I WAS
16 CURIOUS ABOUT THE DATE OF THAT.

17 Q I CAN'T SEE THE DATE ON THAT. LET'S GO TO
18 THE NEXT ONE.

19 A THERE SHOULD BE LOTS OF THEM HERE WITH
20 DATES.

21 Q PAGE 13?

22 A CAN YOU GIVE ME ANOTHER NUMBER BESIDES? DO
23 YOU HAVE A HARD NUMBER?

24 Q SEVENTY-SEVEN.

25 A OKAY. UH-HUH.

26 Q ON THIS ONE THE DATE IS EASY TO READ. SEE

1 THE DATE?

2 A WELL, I SEE A BILLING DATE ON THERE, BUT
3 THAT DOESN'T NECESSARILY -- THAT'S NOT THE DATE OF THIS
4 COMMUNICATION.

5 Q I UNDERSTAND THAT.

6 A OH, OKAY.

7 Q THIS IS A BILLING STATEMENT; IS THAT RIGHT?

8 A YES. THAT COULD HAVE BEEN SENT OUT IN THE
9 MONTH BEFORE THAT. BUT THERE'S A BILLING DATE ON THERE,
10 BUT NOT RELEVANT TO THIS STATEMENT, NO.

11 Q AND THE MEMBER WROTE BACK TO THE PLAINTIFF
12 SAYING, "DUE TO YOUR CHANGE FROM COAST, WE HAVE TRANSFERRED
13 TO ANOTHER R.V. PARK"?

14 A OH, YES, ABSOLUTELY. DEFINITELY. AND I
15 THINK THERE'S ANOTHER ONE RIGHT BEYOND THAT WITH NO DATE.

16 Q DO YOU KNOW HOW MANY OF THESE LETTERS, THESE
17 TYPES OF DOCUMENTS THE PLAINTIFFS THROUGH OUT BEFORE THEY
18 FILED THIS LAWSUIT?

19 MR. SHAW: YOUR HONOR, I'LL OBJECT AS BEING
20 ARGUMENTATIVE.

21 THE COURT: SUSTAINED.

22 MR. SHAW: ASSUMES FACTS NOT IN EVIDENCE.

23 BY MR. RIVIN: Q WHY DON'T WE GO TO THE NEXT ONE.

24 MR. SHAW: YOUR HONOR MAY WE BE SEEN AT SIDEBAR
25 BRIEFLY?

26 THE COURT: I HAD ONIONS FOR LUNCH. IT STILL

1 DOESN'T BOTHER THEM.

2 (DISCUSSION OFF THE RECORD.)

3 BY MR. RIVIN: Q IS THIS ANOTHER -- THIS IS
4 ANOTHER NOTE ON A BILL, ON A BILL FROM TRAVEL AMERICA?

5 A THAT I CAN SEE, YEAH. AND THERE SHOULD BE
6 LOTS OF THEM. I WOULD BE SURPRISED IF THEY THREW ANY OUT
7 BECAUSE THAT'S EVIDENCE OF THEIR CLAIM.

8 Q THAT'S THE LAST ONE I'M GOING TO SHOW YOU.
9 LET ME READ THIS. "BECAUSE OF YOUR DROPPING OUT OF COAST
10 TO, COAST WE HAVE TRANSFERRED TO A DIFFERENT R.V. PARK."

11 DID -- MR. MITCHELL, DID MEMBERS HAVE A
12 RIGHT IF THEY WANTED TO TO DROP OUT OF THE PLAINTIFFS'
13 PARKS ONCE THE PLAINTIFFS DECIDED TO LEAVE COAST TO COAST?

14 A MY RECOLLECTION OF THE CONTRACTS I REVIEWED,
15 THE ANSWER TO THAT IS NO, UNLESS OF COURSE THEIR DUES WERE
16 PAID AND THEIR CONTRACTUAL OBLIGATIONS WERE PAID, AND THEN
17 THEY GOT A RIGHT TO DO WHATEVER THEY WANT.

18 Q MR. MITCHELL, YOU HAVE NO IDEA WHETHER THE
19 DAMAGES, ANY DAMAGES SUSTAINED BY THE PLAINTIFFS, WERE
20 CAUSED BY COAST RATHER THAN BY PLAINTIFFS' OWN ACTIONS OR
21 DECISIONS; ISN'T THAT TRUE?

22 A THAT'S NOT TRUE.

23 Q WHEN THOSE PEOPLE WHO WROTE TO PLAINTIFFS
24 AND SAID THAT THEY WERE TRANSFERRING TO A DIFFERENT HOME
25 PARK BECAUSE THE PLAINTIFFS DECIDED TO PULL OUT OF COAST TO
26 COAST, IT'S YOUR OPINION THAT COAST TO COAST WAS

1 RESPONSIBLE FOR THAT?

2 A OH, ABSOLUTELY. I MEAN, THESE PEOPLE WROTE
3 THESE LETTERS, AND THEY STATE SPECIFICALLY THAT THEY'RE
4 LEAVING BECAUSE THEY HAVE BEEN -- AS A MATTER OF FACT, ONE
5 LETTER SAYS, "I HAVE BEEN TRANSFERRED." THE LETTER SAYS,
6 "I CAN'T AFFORD TO PAY DUES AT TWO DIFFERENT LOCATIONS."
7 AND THESE LETTERS ALL HAPPEN ABOUT THE TIME THAT COAST SENT
8 ITS MASS TRANSFER LETTER.

9 SO IT DOESN'T TAKE A ROCKET SCIENTIST TO
10 FIGURE OUT THEY WERE MOTIVATED BY SOMETHING.

11 Q MR. MITCHELL, YOU READ THOSE ALONG WITH ME.
12 IN EVERY ONE OF THOSE LETTERS THE PEOPLE SAID, "WE PULLED
13 OUT OF YOUR PARK. WE WENT TO A DIFFERENT PARK BECAUSE WE
14 WANT TO RETAIN COAST TO COAST, AND YOU CAN'T OFFER US COAST
15 TO COAST ANY LONGER."

16 A WELL, YEAH, EXACTLY. AND AS A MATTER OF
17 FACT, ONE OF THEM SAID, "WE WERE TRANSFERRED."

18 Q WHICH ONE SAID THAT, MR. MITCHELL?

19 A I FORGET WHETHER THAT WAS THE FIRST ONE.
20 ONE MENTIONED THE WORD "TRANSFER." A COUPLE OF THEM
21 MENTIONED THE WORD "TRANSFERRED." IT DOESN'T MATTER
22 WHETHER THEY MENTIONED IT OR NOT. OBVIOUSLY WHAT HAPPENED
23 IS COAST SENT THEM LETTERS SAYING, "YOU'RE TRANSFERRED."
24 MR. NOVELLI SENT THEM A BILL. THE PEOPLE SENT A BILL BACK,
25 "HI, I'M TRANSFERRED. I DON'T HAVE TO DO THAT ANYMORE."

26 Q THESE SIX PEOPLE DIDN'T SAY THAT; THESE

1 PEOPLE SAID --

2 A THAT'S PERFECTLY REASONABLE.

3 Q MR. MITCHELL, WE'VE ALL SEEN THE EVIDENCE,
4 AND WE KNOW WHAT THOSE PEOPLE SAY.

5 A I TRANSFERRED MY MEMBERSHIP TO SYCAMORE
6 SPRINGS NOT TO LOSE COAST.

7 Q DO ME A FAVOR. READ THAT AGAIN.

8 A SURE. ABSOLUTELY.

9 "I TRANSFERRED MY MEMBERSHIP TO SYCAMORE" --
10 PARDON ME -- "SYCAMORE RANCH NOT TO LOSE COAST TO COAST."

11 Q DOES IT SAY "I WAS TRANSFERRED"?

12 DOES IT SAY "I WAS TRANSFERRED"?

13 A THAT ONE DOES NOT SAY THAT. THIS ONE SAYS,
14 "WE HAVE TRANSFERRED."

15 NO, IT DOESN'T SAY -- IT JUST SAYS
16 "TRANSFERRED," WHICH IS KIND OF INTERESTING LANGUAGE. AND
17 SINCE IT'S THE SAME LANGUAGE IN THE FIRST PARAGRAPH OF THE
18 COAST LETTER, I'M GOING TO TAKE THE REASONABLE LEAP AS AN
19 EXPERT THAT THE PEOPLE WHO WROTE THOSE LETTERS MUST HAVE
20 GOT THAT LANGUAGE FROM SOMEWHERE.

21 Q THEY WOULDN'T HAVE COME UP WITH THAT
22 LANGUAGE ON THEIR OWN?

23 A YOU BET THEY WOULDN'T HAVE. WE KNOW THAT.
24 OF COURSE. TRANSFERRED? I THINK MOVED, LEFT, A LOT OF
25 WORDS, BUT NOT TRANSFERRED.

26 Q LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT

1 SOMETHING THAT HAPPENED AT THE START OF YOUR -- THE START
2 OF YOUR TESTIMONY ON WEDNESDAY.

3 A YES, SIR.

4 Q ONE OF THE FIRST QUESTIONS THAT MR. SHAW
5 ASKED YOU WHEN YOU GOT ON THE WITNESS STAND ON WEDNESDAY
6 AFTERNOON WAS ABOUT WHAT MR. SHERMAN HAD SAID ABOUT YOU IN
7 DEFENDANTS' -- IN HIS OPENING STATEMENT EARLIER IN THE
8 DAY. AND I WANT TO ASK YOU SOME QUESTIONS ABOUT THAT.

9 A OKAY.

10 Q MR. SHAW ASKED YOU WHEN YOU WERE ON THE
11 STAND WHETHER YOU WERE HERE FOR THE OPENING STATEMENTS; DO
12 YOU RECALL THAT?

13 A I DON'T RECALL THAT QUESTION, BUT I WAS
14 HERE.

15 Q DO YOU REMEMBER MR. SHAW -- DO YOU REMEMBER
16 ANYTHING -- DO YOU REMEMBER THIS LINE OF QUESTIONING;
17 MR. SHAW ASKED YOU WHAT MR. SHERMAN SAID ABOUT YOU IN THE
18 OPENING STATEMENT?

19 A MR. SHERMAN ATTEMPTED TO CHARACTERIZE ME TO
20 THE JURY AS A DEBT COLLECTOR WHO HAD DONE PEOPLE ON THE
21 PHONE AND WAS A SO-CALLED EXPERT, QUOTE UNQUOTE.

22 Q DO YOU REMEMBER THAT MR. SHERMAN -- EXCUSE
23 ME.

24 DO YOU REMEMBER THAT MR. SHAW ASKED YOU --
25 HE TOLD YOU THAT HE -- STRIKE THAT.

26 MR. SHAW SAID THAT MR. SHERMAN SAID IN

1 OPENING THAT YOU WERE AN EMPLOYEE OF RAY NOVELLI; DO YOU
2 REMEMBER MR. SHAW ASKING YOU IF THAT'S WHAT YOU HEARD
3 MR. SHERMAN SAY?

4 A HE MAY HAVE SAID THAT, TOO, YES. I RECALL
5 THE OTHER TWO ITEMS, AS WELL.

6 Q I'D LIKE TO SHOW PAGES 11 -- I BELIEVE IT'S
7 1130 AND 1131 OF THE DAILY TRANSCRIPT.

8 MR. SHAW: IS THIS THE OPENING STATEMENT?

9 MR. RIVIN: IT IS NOT. IT IS YOUR QUESTION,
10 MR. SHAW.

11 MR. SHAW: THANK YOU.

12 MR. RIVIN: THERE IT IS. LET'S GO TO LINE 21.

13 MR. SHAW ASKED YOU, "BUT
14 FIRST, YOU WERE HERE THIS
15 MORNING FOR MR. SHERMAN AND
16 MR. MOSHENKO'S OPENING
17 STATEMENTS?

18 "ANSWER: YES, SIR.

19 "QUESTION: DID YOU HEAR
20 MR. SHERMAN SAY THAT YOU HAVE
21 WORKED -- BEEN EMPLOYED BY
22 RAY NOVELLI?"

23 AND YOUR ANSWER TO THAT
24 QUESTION WAS?

25 "ANSWER: YES, SIR."

26 Q AND THEN MR. SHAW ASKED YOU, JUST THE NEXT

1 COUPLE OF LINES; "IS THAT TRUE?"

2 AND YOU SAID, "NO, SIR."

3 YOU TESTIFIED THAT YOU HEARD MR. SHERMAN SAY
4 THAT YOU WERE EMPLOYED, WERE AN EMPLOYEE OF RAYMOND NOVELLI?

5 A PARDON ME. THAT I HEARD MR. SHERMAN SAY
6 THAT?

7 Q DO YOU WANT ME TO SHOW THIS AGAIN?

8 A NO. THAT'S FINE. JUST --

9 Q THE QUESTION THAT MR. SHAW SAID TO YOU, "DID
10 YOU HEAR MR. SHERMAN SAY THAT YOU HAVE WORKED, BEEN
11 EMPLOYED BY RAY NOVELLI?" AND YOU SAID, "YES, SIR. I
12 HEARD HIM SAY THAT. WHY DON'T WE LOOK AT WHAT MR. SHERMAN
13 SAID ABOUT" --

14 A I DON'T KNOW IF HE SAID THAT. I RECALL THE
15 DEBT COLLECTOR THING AND THE SO-CALLED EXPERT.

16 Q SO NOW YOU DON'T RECALL MR. SHERMAN SAYING
17 ANYTHING ABOUT YOU BEING AN EMPLOYEE?

18 A I DON'T REMEMBER. HE MAY HAVE. YOU ASKED
19 ME. I KNOW YOU'VE ASKED ME A DOZEN TIMES, AND I'VE TOLD
20 YOU NO A DOZEN TIMES.

21 Q MR. SHAW ASKED YOU IF YOU HEARD MR. SHERMAN
22 SAY -- ACCUSE YOU OR SUGGEST THAT YOU WERE AN EMPLOYEE OF
23 RAY NOVELLI'S, AND YOU SAID, YES, I HEAR HIM SAY THAT;
24 RIGHT?

25 A OKAY.

26 Q AS YOU SIT HERE TODAY, YOU DON'T REMEMBER --

1 A I DON'T. BUT I'LL ACCEPT IT. IT'S NOT A
2 PROBLEM. GO AHEAD.

3 Q LET'S GO TO PAGE --

4 A THE ANSWER IS STILL NO.

5 Q PAGE 1086, LINE 19, THROUGH 1087, LINE 10.

6 THIS IS WHAT MR. SHERMAN SAID.

7 "YOU'LL EVEN BE HEARING
8 FROM A SO-CALLED EXPERT FOR
9 THE PLAINTIFFS,
10 ROBERT MITCHELL, WHO WILL
11 TELL YOU ABOUT LOTS OF RULES
12 THAT HAVE NOTHING TO DO WITH
13 COAST'S RIGHTS TO CONTACT
14 COAST'S OWN MEMBERS.

15 "THE EVIDENCE WILL SHOW
16 THAT MR. MITCHELL WILL HAVE
17 SOMETHING TO SAY ABOUT MANY
18 ASPECTS OF COAST'S DEALINGS
19 WITH THE NOVELLI PARKS, EVEN
20 THOUGH MR. MITCHELL HAS NEVER
21 WORKED A DAY IN HIS LIFE FOR
22 THE COAST ORGANIZATION.

23 "AND ANOTHER THING ABOUT
24 MR. MITCHELL. THE EVIDENCE
25 WILL SHOW THAT HE IS NOT WHO
26 HE PURPORTS TO BE. HE WILL

1 CLAIM TO BE AN OBJECTIVE
2 PROTECTOR OF THE CAMPGROUND
3 INDUSTRY AND A CONSUMER
4 ADVOCATE. BUT THE REALITY
5 IS, AS YOU WILL ULTIMATELY
6 LEARN, THAT OVER THE YEARS,
7 SOME OF MR. MITCHELL'S MOST
8 SIGNIFICANT ACTIVITIES HAVE
9 BEEN AS A MIDDLEMAN,
10 BROKERING LUCRATIVE DEALS
11 BETWEEN MR. NOVELLI AND
12 FINANCE COMPANIES, AND
13 CHASING DOWN CAMPGROUND
14 MEMBERS' DEBTS AS A BILL
15 COLLECTOR."
16 MR. SHERMAN --

17 A YES, I DID NOT SAY THAT I WAS AN EMPLOYEE.
18 HE IMPLIED IT.

19 Q DID MR. SHAW ASK YOU WHETHER MR. SHERMAN
20 IMPLIED IT?

21 A NO, SIR.

22 Q OR WHETHER HE SAID IT?

23 A NO, SIR, HE DID NOT. AND IF THAT WAS MY
24 ANSWER, I MISSPOKE. HE DID NOT SAY THAT I WAS AN
25 EMPLOYEE. AND I'M NOT. AND ALSO DIDN'T BROKER ANY DEALS.

26 THE COURT: THERE'S NO QUESTION PENDING.

1 THE WITNESS: OH, OKAY. I THOUGHT YOU STILL WANTED
2 MORE.

3 MR. RIVIN: YOUR HONOR, AT THIS TIME I HAVE NO
4 FURTHER QUESTIONS.

5 THE COURT: THANK YOU.

6 HOW MUCH TIME ARE YOU GOING TO NEED FOR
7 REDIRECT?

8 MR. SHAW: YOUR HONOR, IT'S GOING TO TAKE PROBABLY
9 INTO TOMORROW MORNING.

10 THE COURT: LET'S QUIT TODAY AND DO IT ALL AT ONCE.

11 MR. SHAW: OKAY.

12 THE WITNESS: THANK YOU, SIR.

13 (WHEREUPON THE COURT WAS IN RECESS UNTIL
14 TUESDAY, MAY 23, 2000, 9:00 A.M.)

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