

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

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

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

REPORTER'S TRANSCRIPT

JUNE 8, 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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1 WESTMINSTER, CALIFORNIA - THURSDAY, JUNE 8, 2000

2 MORNING SESSION

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

5 THE COURT: OKAY. 802 HEARING.

6 MR. SHAW: YES, YOUR HONOR. IN CHAMBERS --
7 JERRY SHAW FOR THE -- CO-COUNSEL FOR THE PLAINTIFFS.

8 YOUR HONOR, IN CHAMBERS I'VE AGREED TO
9 CONDUCT THE EXAMINATION OF OUR EXPERT, MR. MALPASS, AND GET
10 TO THE POINT TO ASK HIM WHAT OPINIONS HE HAS BEEN ASKED TO
11 GIVE; AND THEN BEFORE ASKING HIM WHAT HIS OPINIONS ARE,
12 GIVING ANY OPINIONS, THEN ASK HIM THE BASIS AND THE
13 FOUNDATION AND GO THROUGH THE FACTUAL ANALYSIS BEFORE HE
14 RENDERS ANY OPINIONS, PURSUANT TO EVIDENCE CODE SECTION
15 802.

16 MR. RIVIN: I THINK THAT'S BASICALLY CORRECT, YOUR
17 HONOR.

18 JUST AS A LITTLE BIT BACKWARDS, WHEN WE WERE
19 IN CHAMBERS, I REQUESTED THAT THE COURT IN ITS DISCRETION
20 REQUIRE THAT MR. MALPASS PROVIDE THE FOUNDATIONAL FACTS AND
21 THE BASIS FOR HIS OPINION IN ACCORDANCE WITH EVIDENCE CODE
22 SECTION 802 BEFORE HE TESTIFIES AS TO ANY OPINIONS IN THIS
23 CASE, AND THAT IS WHAT MR. SHAW WAS REFERRING TO.

24 AND SO WE DO NOT EXPECT TO HEAR ANY OPINIONS
25 FROM MR. MALPASS UNTIL THE UNDERLYING FOUNDATION FOR HIS --
26 FOR WHATEVER OPINIONS HE IS PREPARED TO GIVE HAS BEEN

1 TESTIFIED TO.

2 THE COURT: ALL RIGHT. SO YOU WANT TO CALL HIM NOW?

3 MR. SHAW: YES, YOUR HONOR.

4 THE COURT: MR. MALPASS.

5 MR. SHAW: YOUR HONOR, WE'RE GOING TO DO THIS WITH
6 THE JURY.

7 THE COURT: EYE THOUGHT WE WERE GOING TO DO IT
8 WITHOUT THE JURY.

9 MR. SHAW: NO, YOUR HONOR. WE'RE GOING TO DO THIS
10 WITH THE JURY.

11 MR. RIVIN: WELL, 802 CAN BE EITHER WITH OR
12 WITHOUT. EITHER WITH OR WITHOUT.

13 MR. SHERMAN: THE WHOLE POINT OF THIS WAS SO WE'RE
14 NOT GOING TO BE PREJUDICING THE JURY.

15 THE COURT: LET'S DO IT WITHOUT THE JURY.

16 MR. SHAW: YOUR HONOR, IT'S GOING TO BE, THEN, A
17 COUPLE OF HOURS WITHOUT THE JURY. AND I THOUGHT WE DECIDED
18 THAT WE WERE GOING TO DO THE JURY AT 9:00, AND THAT THEY
19 WERE GOING TO MAKE THEIR OBJECTIONS AND MAKE THEIR
20 OBJECTIONS AS WE WENT ALONG; AND IF THEY HAVE GOT
21 OBJECTIONS, THEN THOSE OBJECTIONS WILL BE REGISTERED. I
22 BELIEVE THAT WAS THE COURT'S RULING YESTERDAY. THAT'S WHAT
23 WE'RE PREPARED TO DO. I'M PREPARED NOT TO ASK HIM TO GIVE
24 ANY OPINIONS IN FRONT OF THE JURY UNTIL I LAY THE
25 FOUNDATION. AND THEN I WILL SIDEBAR AND ASK THE COURT
26 WHETHER OR NOT I CAN GET TO THE POINT OF -- OR WE CAN

1 DISMISS THE JURY AT THAT TIME AND TALK ABOUT THOSE ISSUES.

2 BUT, YOUR HONOR, I BELIEVE IT WILL BE --
3 GIVEN THE TIME FRAME OF THIS CASE, I BELIEVE THAT IT WOULD
4 BE A WASTE OF A MORNING TO DO IT.

5 THE COURT: ALL RIGHT. BRING THE JURY IN.

6 MR. SHAW: THANK YOU, YOUR HONOR.

7 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
8 COURT IN THE PRESENCE OF THE JURY:).

9 MR. SHAW: YOUR HONOR, AT THIS TIME THE PLAINTIFF
10 WILL CALL EDWARD MALPASS.

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

15 THE CLERK: TAKE A SEAT IN THE WITNESS STAND,
16 PLEASE.

17 STATE YOUR FULL NAME FOR THE RECORD AND
18 SPELL IT FOR THE REPORTER.

19 THE WITNESS: THEODORE EDWARD MALPASS,
20 M-A-L-P-A-S-S.

21 DIRECT EXAMINATION

22 BY MR. SHAW: Q MR. MALPASS WHAT'S YOUR
23 OCCUPATION?

24 A I'M AN ATTORNEY.

25 Q AND YOU'VE BEEN PRACTICING AS AN ATTORNEY
26 SINCE 1977; IS THAT CORRECT?

1 A YES, IT IS.

2 Q COULD YOU GIVE US YOUR EDUCATIONAL
3 BACKGROUND.

4 A I WENT TO UNDERGRADUATE SCHOOL, COLLEGE AT
5 THE UNIVERSITY OF COLORADO AT BOULDER AND RECEIVED A DEGREE
6 THERE IN 1974.

7 Q AND THEN WHERE DID YOU ATTEND LAW SCHOOL?

8 A I WENT TO LAW SCHOOL ALSO AT THE UNIVERSITY
9 OF COLORADO AT THE SCHOOL OF LAW. AND I RECEIVED A J.D., A
10 JURIS DOCTOR DEGREE, IN 1977.

11 Q NOW, AFTER YOU RECEIVED YOUR DEGREE, DID YOU
12 BECOME LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO?

13 A YES, I DID.

14 Q AND WHAT YEAR WAS THAT?

15 A THAT WAS ALSO IN 1977.

16 Q AND THEN YOU RELOCATED; IS THAT CORRECT?

17 A YES. I WENT TO WORK IN DETROIT, MICHIGAN
18 AND MOVED THERE.

19 Q AND DID YOU ALSO TAKE THE BAR EXAMINATION IN
20 THE STATE OF MICHIGAN?

21 A YES, I DID.

22 Q AND YOU'VE BECOME LICENSED IN THE STATE OF
23 MICHIGAN AFTER PASSING THE BAR EXAM?

24 A IN 1978.

25 Q IN 1978.

26 AND THEN IN 1978 WHERE WERE YOU EMPLOYED?

1 A I WORKED -- IN 1978 I BELIEVE I BEGAN WORK
2 AS A LAW CLERK FOR A BANKRUPTCY JUDGE IN DETROIT. HIS NAME
3 WAS DAVID PATTON.

4 Q AND WAS THAT THE HONORABLE DAVID PATTON,
5 U.S. BANKRUPTCY COURT JUDGE, IN DETROIT, MICHIGAN?

6 A YES. HE IS A FEDERAL BANKRUPTCY JUDGE.

7 Q AND WHAT WERE YOUR DUTIES AS -- FOR
8 JUDGE PATTON?

9 A WELL, AS A LAW CLERK MY JOB WAS TO ASSIST
10 THE JUDGE AND FOLLOW HIS INSTRUCTIONS IN HELPING HIM WITH
11 THE CASES THAT HE WAS HANDLING. WHAT HE HAD ME DO WAS TO
12 REVIEW ALL OF THE PLEADINGS THAT CAME IN, ALL THE VARIOUS
13 PAPERS THAT WERE FILED IN THE CASES, AND WRITE HIM
14 GENERALLY A MEMO ABOUT WHAT WAS GOING ON IN THE CASE SO
15 THAT HE WOULD REVIEW THAT. HE WOULD THEN ASK ME QUESTIONS
16 OR GIVE ME INSTRUCTIONS ABOUT WHAT HE WANTED DONE. I WOULD
17 PERFORM RESEARCH ON POINTS OF LAW THAT HE WANTED TO HAVE
18 ADDITIONAL INFORMATION ABOUT. SOMETIMES I WOULD LOOK UP
19 OTHER THINGS IN THE CASES, SOMETIMES TALK TO THE ATTORNEYS
20 THAT WERE INVOLVED, AND GENERALLY ASSIST HIM IN PROVIDING
21 INFORMATION.

22 THE OTHER THING THAT THE JUDGE HAD ME DO, HE
23 WANTED ME TO DEVELOP AS A LAWYER. SO HE WOULD HAVE ME GO
24 SIT IN EITHER HIS COURTROOM OR THE COURTROOMS OF THE OTHER
25 JUDGES THERE IN THE SAME BUILDING WHEN THEY WERE CONDUCTING
26 TRIALS OR HEARINGS AND TO WATCH THEM. SO I SPENT A GOOD

1 DEAL OF TIME IN HIS COURTROOM WHILE HE WAS TRYING CASES AND
2 IN THE -- SOME OF THE OTHER JUDGES', LISTENING TO TRIALS.

3 ASIDE FROM THAT, WE HANDLED A GOOD DEAL OF
4 PAPER AND UPDATED BOOKS. ESSENTIALLY EVERYTHING THAT THE
5 JUDGE NEEDED DONE TO ASSIST HIM, THAT WAS MY JOB.

6 Q NOW, THE KINDS OF CASES THAT YOU WERE
7 INVOLVED WITH WITH JUDGE PATTON, THOSE WERE WHAT WE CALLED
8 BANKRUPTCY CASES?

9 A YES.

10 Q THOSE ARE -- WE'VE HEARD SOME TERMS THROWN
11 AROUND IN THE TRIAL, CHAPTER 11 BANKRUPTCIES, CHAPTER 7
12 BANKRUPTCIES; THOSE WERE THE TYPES OF PROCEEDINGS THAT TOOK
13 PLACE IN JUDGE PATTON'S COURTROOM?

14 A YES. WELL, HE WAS -- BECAUSE HE WAS A
15 FEDERAL BANKRUPTCY JUDGE, ALL HE HANDLED WERE BANKRUPTCY
16 CASES. THAT'S EXCLUSIVELY WHAT HE HEARD. SO ALL THE CASES
17 WERE ONE FORM OR ANOTHER OF BANKRUPTCY CASES.

18 Q AND THEN YOU LEFT THE CLERKSHIP WITH
19 JUDGE PATTON, AND THEN WHERE DID YOU WORK?

20 A I SPENT ABOUT TWO YEARS WITH THE JUDGE,
21 WORKING FOR THE COURT, AND THEN I WENT TO WORK FOR A FIRM
22 IN CHICAGO THAT OFFERED ME A JOB.

23 Q AND DID YOU THEN TAKE THE BAR EXAMINATION TO
24 BECOME LICENSED IN THE STATE OF ILLINOIS?

25 A YES, I DID.

26 Q AND WHEN DID YOU BECOME LICENSED IN THAT

1 STATE?

2 A THAT WAS IN, I THINK, 1982.

3 Q AND THEN YOU LEFT CHICAGO AND RELOCATED TO
4 THE WEST COAST; IS THAT CORRECT?

5 A YES. I WAS OFFERED A JOB BY A FIRM IN LOS
6 ANGELES AND CAME OUT HERE IN 19 -- LATE 1983, AND WENT TO
7 WORK THERE.

8 Q AND THEN DID YOU TAKE THE BAR EXAMINATION
9 FOR A FOURTH TIME IN A DIFFERENT STATE, IN THE STATE OF
10 CALIFORNIA?

11 A YES.

12 Q AND YOU BECAME LICENSED IN THE STATE OF
13 CALIFORNIA AFTER PASSING THE BAR EXAMINATION?

14 A YES, I DID, IN 1984.

15 Q IN 1984?

16 AND FROM 1984, DID YOU THEN RELOCATE TO
17 ORANGE COUNTY, CALIFORNIA FROM LOS ANGELES?

18 A YES. I WORKED IN LOS ANGELES FOR A COUPLE
19 OF YEARS AND DECIDED I WANTED TO LIVE IN ORANGE COUNTY. SO
20 I MOVED DOWN HERE IN ABOUT 1986.

21 Q FROM 1986 TO THE PRESENT -- LET'S SAY FOR
22 THE LAST 14 YEARS, YOU'VE BEEN PRACTICING IN ORANGE COUNTY?

23 A YES, THAT'S CORRECT.

24 Q NOW, TELL US ABOUT YOUR PRACTICE.

25 WHAT TYPE OF PRACTICE DO YOU HAVE?

26 A WELL, MY PRACTICE -- I SPECIALIZE IN

1 BANKRUPTCY CASES. SO ALMOST ALL OF THE WORK THAT I DO IS
2 HANDLING ONE FORM OR ANOTHER OF BANKRUPTCY CASES.

3 Q AND WHEN WE SAY "BANKRUPTCY CASES," AGAIN
4 WE'RE TALKING ABOUT CHAPTER 11'S, CHAPTER 7'S, THOSE TYPES
5 OF CASES?

6 A YES, THAT'S CORRECT.

7 Q AND YOU'VE ALSO PUBLISHED ARTICLES IN YOUR
8 SPECIALTY; IS THAT CORRECT?

9 A YES, I HAVE.

10 Q WHAT ARTICLES HAVE YOU PUBLISHED?

11 A WELL, I THINK THE FIRST PUBLICATION I HAD
12 WAS IN ABOUT 1983. I WROTE AN ARTICLE FOR THE COMMERCIAL
13 LAW JOURNAL ON SEVERAL SECTIONS OF THE BANKRUPTCY CODE
14 REGARDING TURNOVER OF PROPERTY IN BANKRUPTCY CASES AND WHAT
15 CONSTITUTED PROPERTY IN THE BANKRUPTCY ESTATE.

16 Q AND THEN YOU ALSO WROTE AN ARTICLE FOR A
17 TREATISE, THAT CLARK, BOARDMAN, CALLAGHAN ANNUAL SURVEY OF
18 BANKRUPTCY LAW?

19 A WELL, I HAD AN ARTICLE PUBLISHED IN THAT,
20 THE ANNUAL SURVEY, SEVERAL YEARS AGO. AND I EDITED A
21 SECTION OF THE TREATISE THAT WILEY PUBLISHES, A TREATISE.
22 IT'S JUST A BOOK ON BANKRUPTCY.

23 Q AND YOU EDIT -- YOU'RE THE EDITOR OR EDIT
24 ARTICLES FOR THE WILEY PUBLICATION OF BANKRUPTCY CURRENTLY?

25 A YES. WELL, I'VE DONE IT -- BEEN ASKED TO DO
26 IT EVERY YEAR FOR THE LAST THREE OR FOUR YEARS, YES. AND

1 IT'S ACTUALLY NOT JUST EDITING. I ACTUALLY WRITE A SECTION
2 FOR THE BOOK EVERY YEAR.

3 Q AND THAT'S INVOLVING THE PROPERTY OF DEBTORS
4 IN BANKRUPTCY; THAT'S THE FOCUS OF THE ARTICLES YOU WRITE?

5 A THOSE ARE SOME OF THE SECTIONS THAT I COVER
6 FOR THAT TREATISE, YES.

7 Q NOW, WHO WOULD BE THE TYPE OF PEOPLE THAT
8 WOULD READ THE PUBLICATION THAT YOU EDIT AND WRITE FOR
9 WILEY? WHO WOULD BE THE TYPE OF PEOPLE?

10 A PROBABLY -- WELL, BANKRUPTCY LAWYERS AND
11 PEOPLE THAT ARE INTERESTED IN PARTICULAR POINTS OF
12 BANKRUPTCY LAW, ACADEMIC PEOPLE. BUT ALMOST ALL WOULD BE
13 SOMEONE DOING RESEARCH REGARDING BANKRUPTCY LAW.

14 Q OKAY. SO THEY WOULD READ ARTICLES THAT YOU
15 WOULD WRITE AND EDIT ABOUT YOUR PARTICULAR SPECIALTY?

16 A YES.

17 Q NOW, YOU'VE ALSO -- YOU ARE CERTIFIED AS A
18 BANKRUPTCY PRACTITIONER; IS THAT CORRECT?

19 A YES, IT IS.

20 Q AND YOU'RE CERTIFIED IN THE STATE OF
21 CALIFORNIA, AND YOU'RE CERTIFIED WITH A NATIONAL
22 ORGANIZATION?

23 A YES.

24 Q COULD YOU TELL US WHAT THAT MEANS TO BE
25 CERTIFIED FIRST IN THE STATE OF CALIFORNIA?

26 A WELL, CALIFORNIA HAS OVER THE LAST FEW YEARS

1 DEVELOPED A PROGRAM FOR CERTIFYING PARTICULAR TYPES OF
2 LAWYERS IN CERTAIN SPECIALTIES. ONE OF THE SPECIALTIES
3 WHERE THEY HAVE A CERTIFICATION IS IN BANKRUPTCY LAW.

4 SO IN ORDER TO BECOME CERTIFIED AS A
5 SPECIALIST, YOU HAVE TO SATISFY CRITERIA THAT THE STATE HAS
6 SHOWING THAT YOU'VE HAD BOTH EXPERIENCE AND KNOWLEDGE ABOUT
7 BANKRUPTCY LAW. YOU FILL OUT AN APPLICATION AND PROVIDE
8 THE CERTIFICATION BOARD WITH EVIDENCE THAT YOU'VE HANDLED
9 PARTICULAR TYPES OF CASES. YOU HAVE TO HAVE BEEN IN
10 PRACTICE FOR A CERTAIN NUMBER OF YEARS. AND THEN YOU TAKE
11 AN EXAMINATION WITH THE STATE AD- -- THAT THE STATE
12 ADMINISTERS, AND YOU HAVE TO PASS THAT.

13 AND YOU ALSO HAVE TO, OF COURSE, BE IN GOOD
14 STANDING WITH THE BAR AND BE A PRACTICING ATTORNEY.

15 Q AND THEN YOU ALSO HAVE BEEN CERTIFIED ON THE
16 NATIONAL LEVEL -- IS THAT CORRECT -- AS A BANKRUPTCY
17 SPECIALIST?

18 A YES, THAT'S ALSO CORRECT. THE -- THERE'S A
19 CERTIFICATION BODY THAT'S NOW CALLED "THE AMERICAN BOARD OF
20 CERTIFICATION" THAT ALSO HAS A PROGRAM WHERE THEY CERTIFY
21 SPECIALISTS. AND THE CERTIFICATION THAT I HAVE FOR THEM IS
22 BUSINESS BANKRUPTCY LAW. AND, AGAIN, YOU HAVE TO SUPPLY
23 THEM WITH EVIDENCE THAT YOU'VE HANDLED THE PARTICULAR TYPES
24 OF CASES, HOW MANY YOU'VE HANDLED. YOU PROVIDE THEM WITH
25 REFERENCES FROM OTHER LAWYERS AND JUDGES THAT YOU'VE
26 APPEARED IN FRONT OF. AND THEY HAVE A NATIONAL

1 CERTIFICATION EXAMINATION THAT YOU HAVE TO PASS AS WELL.

2 Q YOU'VE TOOK MORE EXAMINATIONS THAN ANY
3 LAWYER I'VE EVER KNOWN, FOUR BAR EXAMS AND TWO
4 CERTIFICATIONS EXAMS.

5 YOU ALSO DO WORK FOR THE BANKRUPTCY COURTS
6 HERE IN THE 9TH CIRCUIT FOR SOUTHERN CALIFORNIA AS A
7 MEDIATOR; IS THAT CORRECT?

8 A YES, IT IS. TECHNICALLY THE CENTRAL
9 DISTRICT IS WHERE I'M PART OF THE MEDIATION PROGRAM.

10 Q AND YOU'RE ON A PANEL OF LAWYERS THAT THE
11 JUDGES USE TO HELP MEDIATE BANKRUPTCY MATTERS?

12 A YES. WHAT THE COURTS HAVE BEEN DEVELOPING
13 IS WHAT'S USUALLY CALLED "ALTERNATIVE DISPUTE RESOLUTION
14 PROGRAMS" WHERE THEY BRING IN OUTSIDE PEOPLE TO TRY TO
15 ASSIST THE PARTIES IN SETTLING CASES. AND AS A MEDIATOR,
16 I'LL SIT DOWN WITH PARTIES IN A DIFFICULT BANKRUPTCY CASE
17 THAT THE JUDGE HAS REFERRED OUT AND TRY TO HELP THEM
18 SETTLE, TALK TO THEM ABOUT THE LAW, OR WHAT'S GOING ON IN
19 THE CASE, AND TRY TO SETTLE IT WITH THEM. THAT'S WHAT THE
20 MEDIATION PROGRAM IS.

21 Q AND HOW MANY YEARS HAVE YOU BEEN DOING THAT
22 FOR THE JUDGES IN THE CENTRAL DISTRICT?

23 A I THINK IT'S BEEN ABOUT FOUR YEARS SINCE IT
24 STARTED. I WAS INVOLVED FROM THE START. AND IT'S BEEN
25 ABOUT FOUR YEARS.

26 Q AND YOU'VE ALSO TESTIFIED AS AN EXPERT.

1 OTHER THAN JUST YOUR TESTIMONY HERE TODAY AS AN EXPERT,
2 YOU'VE TESTIFIED AS AN EXPERT IN VARIOUS MATTERS; CORRECT?

3 A YES.

4 Q AND APPROXIMATELY HOW MANY MATTERS HAVE YOU
5 TESTIFIED AS AN EXPERT?

6 A IT'S BEEN SEVERAL TIMES OVER THE LAST 10
7 YEARS THAT I'VE DONE IT IN DIFFERENT CASES.

8 Q SO OTHER LAWYERS AND OTHER FIRMS WILL RETAIN
9 YOUR SERVICES AS AN EXPERT IN A CASE SUCH AS THE ONE THAT'S
10 BEING HANDLED HERE TODAY?

11 A WELL, REGARDING BANKRUPTCY LAW.

12 Q REGARDING THE BANKRUPTCY SPECIALIZATION THAT
13 YOU HAVE?

14 A WELL, THAT -- WHEN I'M -- THE AREA THAT I
15 WOULD CONSIDER MYSELF QUALIFIED AND THAT I'VE TESTIFIED IN
16 WOULD BE REGARDING BANKRUPTCY LAW AND ITS RELATIONSHIPS TO
17 VARIOUS CASES, YES.

18 Q NOW, AND YOU'VE BEEN RETAINED TO PROVIDE
19 EXPERT TESTIMONY IN THIS CASE; CORRECT?

20 A YES, I HAVE.

21 Q AND WHO -- WHO HAS RETAINED YOU TO ACT AS AN
22 EXPERT IN THIS CASE?

23 A YOU AND YOUR CLIENTS, MR. SHAW.

24 Q AND WHAT HAVE YOU BEEN ASKED TO DO IN THIS
25 CASE?

26 A I WAS ASKED TO INVESTIGATE THE BANKRUPTCY

1 CASES OF THE PLAINTIFFS AND WITH A VIEW TO DETERMINING
2 WHETHER THE ACTIONS TAKEN BY THE DEFENDANTS IN CONTACTING
3 MEMBERS AND TRANSFERRING MEMBERS VIOLATED THE LAW AND
4 CAUSED DAMAGE TO THE PLAINTIFFS.

5 Q NOW, WITHOUT -- AND ARE YOU PREPARED TO GIVE
6 OPINIONS IN THIS CASE?

7 A YES, I AM.

8 Q WITHOUT GETTING INTO THOSE OPINIONS, I WANT
9 TO MOVE TO WHAT YOU INVESTIGATED.

10 YOU DID CONDUCT THAT INVESTIGATION OF THE
11 BANKRUPTCY CASES OF THE PLAINTIFFS?

12 A YES, I DID. I -- I WAS ACTUALLY INVOLVED IN
13 TWO OF THE CASES, MYSELF, AS AN ATTORNEY. I REPRESENTED
14 TWO OF THE COMPANIES DURING PARTS OF THEIR BANKRUPTCY CASES
15 AS AN ATTORNEY. SO I HAD KNOWLEDGE ABOUT THOSE CASES
16 COMING IN.

17 AND THEN I LOOKED AT THE OTHER CASES THAT I
18 HAD LESS -- WHEN I HAD -- I HAD SOME KNOWLEDGE ABOUT;
19 ALTHOUGH, I WASN'T DIRECTLY INVOLVED AS AN ATTORNEY. I
20 LOOKED AT THAT CASE, AND I LOOKED AT ANOTHER CASE THAT I
21 DIDN'T HAVE ANY DIRECT INVOLVEMENT WITH BY REVIEWING THE
22 FILES AND DOCUMENTS.

23 AND THEN I'VE ALSO REVIEWED DOCUMENTS AND
24 SECTIONS OF TESTIMONY THAT'S COME IN IN THIS TRIAL.

25 Q AND WHEN YOU SAY "TESTIMONY THAT'S COME IN
26 IN THIS TRIAL," YOU REVIEWED ROGER RYMAN'S TRIAL

1 TRANSCRIPTS FROM HIS TESTIMONY?

2 A YES, I HAVE, JUST PORTIONS OF THE
3 TRANSCRIPTS THAT HAVE BEEN PRINTED OUT, YES.

4 Q AND YOU ALSO READ MR. JIM JOSEPH'S, THE
5 TRUSTEE IN ONE OF THE ALL SEASONS RESORTS BANKRUPTCY; YOU
6 READ PORTIONS OF HIS TESTIMONY?

7 A YES, I DID.

8 Q AND THEN YOU READ PORTIONS OF MR. RANDALL --
9 MR. JAMES RANDALL'S TESTIMONY?

10 A YES.

11 Q AND YOU SAID YOU'VE REVIEWED ORDERS AND
12 DOCUMENTS IN THE BANKRUPTCY CASES, AND I'D LIKE TO GET A
13 LITTLE MORE SPECIFIC ABOUT WHAT BANKRUPTCY CASES YOU DID --
14 YOU LOOKED AT DOCUMENTS.

15 THE BANKRUPTCY CASES THAT YOU REVIEWED FOR
16 THE PURPOSES OF GIVING THE OPINIONS HERE TODAY, THE FIRST
17 ONE WAS THE ALL SEASONS RESORTS' THIRD BANKRUPTCY?

18 A YES. I BOTH -- I LOOKED AT ALL SEASONS, AND
19 I HAD KNOWLEDGE OF THAT CASE BECAUSE I ACTED AS AN ATTORNEY
20 FOR ALL SEASONS.

21 Q NOW, ALL SEASONS -- AND IN -- THE SECOND ONE
22 THAT YOU LOOKED AT WAS THE FIRST NATIONWIDE?

23 A YES.

24 Q AND WHAT WAS -- DID YOU HAVE PERSONAL
25 KNOWLEDGE OF THE FIRST NATIONWIDE BANKRUPTCY?

26 A YES. WHILE I WAS REPRESENTING ALL SEASONS,

1 THE FIRST NATIONWIDE BANKRUPTCY WAS GOING ON. I DIDN'T ACT
2 AS AN ATTORNEY IN THE FIRST NATIONWIDE CASE, BUT I -- I
3 LOOKED AT WHAT WAS GOING ON IN THE FIRST NATIONWIDE CASE,
4 PRIMARILY BECAUSE I WAS ASKED TO LOOK AT WHAT JIM JOSEPH,
5 THE TRUSTEE, WAS DOING. AND I TALKED TO JIM ON A NUMBER OF
6 OCCASIONS ABOUT THAT CASE.

7 Q SO THAT WAS -- JIM JOSEPH WAS INVOLVED IN
8 THAT CASE?

9 A YES. HE WAS THE CHAPTER 11 -- AND I BELIEVE
10 IT WAS CONVERTED TO CHAPTER 7, AND THEN HE BECAME A CHAPTER
11 7 TRUSTEE.

12 Q AND THEN THE OTHER BANKRUPTCY THAT YOU
13 LOOKED AT WAS THE REVCON BANKRUPTCY?

14 A YES. AGAIN, I -- DURING A PORTION OF
15 REVCON'S BANKRUPTCY, I ACTED AS AN ATTORNEY IN THAT CASE.
16 I DID NOT FILE THAT CASE, BUT I REPRESENTED REVCON FOR A
17 WHILE. SO I KNEW SOMETHING ABOUT IT.

18 Q AND THEN WHAT OTHER BANKRUPTCY CASES DID YOU
19 REVIEW FOR PURPOSES OF YOUR TESTIMONY?

20 A I ALSO LOOKED AT THE THOUSAND ADVENTURES OF
21 OHIO CASE, IN OHIO, THAT -- I LOOKED AT SOME OF THE COURT
22 PLEADINGS THAT WERE FILED IN THAT CASE. I DIDN'T HAVE ANY
23 INVOLVEMENT WITH THAT CASE. IT WAS HEARD IN OHIO.

24 Q OKAY. SO YOU HAD PERSONAL KNOWLEDGE FROM
25 YOUR OWN INVOLVEMENT IN THE CASES OF THESE THREE: THE ALL
26 SEASONS RESORTS, THE FIRST NATIONWIDE, AND THE REVCON

1 BANKRUPTCIES?

2 A YES.

3 Q AS TO THOUSAND ADVENTURES, YOU AS A
4 BANKRUPTCY EXPERT REVIEWED THE FILES IN THAT CASE TO
5 PROVIDE TESTIMONY --

6 A YES, I DID.

7 Q -- IN THIS CASE?

8 NOW, AGAIN, STAYING WITH THE BASIS FOR YOUR
9 OPINIONS --

10 MR. RIVIN: YOUR HONOR, IF I MIGHT CLEAR UP AN -- I
11 THINK SOMETHING WHICH IS UNCLEAR.

12 MR. SHAW: IS MY HANDWRITING UNCLEAR?

13 MR. RIVIN: NO. I CAN READ YOUR HANDWRITING.

14 MR. SHAW: WELL THAT'S A FIRST.

15 MR. RIVIN: THE WITNESS SAID THOUSAND ADVENTURES OF
16 OHIO. THERE WERE SEVERAL THOUSAND ADVENTURES BANKRUPTCIES,
17 AND MR. SHAW WROTE ON THE BOARD "THOUSAND ADVENTURES." IT
18 SHOULD BE -- TO BE ACCURATE, IT SHOULD BE "THOUSAND
19 ADVENTURES OF OHIO."

20 MR. SHAW: THANK YOU, MR. RIVIN. NO PROBLEM.

21 THE WITNESS: AND I SHOULD PROBABLY CLARIFY MY
22 ANSWER, THEN, BY SAYING THAT I ALSO LOOKED AT CERTAIN
23 ASPECTS OF THOUSAND ADVENTURES OF IOWA AND AT LEAST WAS
24 AWARE THAT THERE WERE OTHER THOUSAND ADVENTURES BANKRUPTCY
25 CASES THAT WERE FILED.

26 MY REVIEW WASN'T EXCLUSIVELY LIMITED TO

1 THAT. THERE WAS ONE ASPECT PARTICULARLY THAT I LOOKED AT
2 THAT CAME OUT OF ANOTHER CHAPTER 11 CASE INVOLVING ONE OF
3 THE THOUSAND ADVENTURES ORGANIZATIONS.

4 BY MR. SHAW: Q OKAY. NOW, LET'S TALK ABOUT SOME
5 TERMS, IF WE MIGHT.

6 AND WE'VE TALKED ABOUT CHAPTER 11. WE'VE
7 TALKED ABOUT CHAPTER 7.

8 COULD YOU TELL US WHAT A CHAPTER 11
9 BANKRUPTCY IS?

10 A WELL, FOR THESE CASES OR -- A CHAPTER 11
11 CASE IS WHAT'S NORMALLY REFERRED TO AS A BANKRUPTCY
12 REORGANIZATION CASE. CHAPTER 11 IS A SECTION OF THE
13 BANKRUPTCY CODE THAT PROVIDES FOR A PARTICULAR TYPE OF
14 BANKRUPTCY CASE, WHAT BANKRUPTCY LAWYERS CALL
15 REORGANIZATION. AND IT'S CALLED THAT BECAUSE IN A CHAPTER
16 11 CASE, THE PURPOSE IS TO ALLOW A BUSINESS, USUALLY A
17 BUSINESS -- ALTHOUGH, INDIVIDUALS CAN FILE -- TO REORGANIZE
18 ITSELF FINANCIALLY, DEAL WITH WHATEVER PROBLEMS IT MAY
19 HAVE, AND HOPEFULLY CONTINUE IN BUSINESS IN SOME MANNER.
20 THAT'S THE CHAPTER 11.

21 Q AND THESE -- ALL SEASONS WAS A CHAPTER 11
22 BANKRUPTCY?

23 A I THINK ALL OF THESE CASES WERE FILED
24 UNDER -- INITIALLY UNDER CHAPTER 11.

25 Q AND THAT WAS FOR THE PURPOSES -- WHAT IS
26 THE -- WHAT'S THE PURPOSE IN THE BANKRUPTCY LAW FOR HAVING

1 A REORGANIZATION?

2 A WELL, THE PURPOSE, WHY WE HAVE BANKRUPTCY
3 LAW, AND WHY PARTICULARLY YOU HAVE CHAPTER 11 IS THAT
4 CONGRESS, WHEN THEY PASSED THE LAW, THOUGHT THAT TRYING TO
5 ALLOW COMPANIES TO REORGANIZE WAS A GOOD THING. IT
6 BENEFITED THE OWNERS OF THE COMPANIES, AND IT'S INTENDED TO
7 BENEFIT THEIR CREDITORS AND PEOPLE THAT ARE INVOLVED WITH
8 THE COMPANIES.

9 IN THESE CASES, OFTEN THE PRIMARY
10 BENEFICIARIES OF THE COMPANIES ARE THE MEMBERS THAT WERE
11 PAYING DUES INTO THE VARIOUS COMPANIES THAT WERE INVOLVED.

12 SO CHAPTER 11 CONCEPTUALLY IS INTENDED TO
13 PRESERVE VALUE, KEEP PEOPLE WORKING, AND ALLOW A MECHANISM
14 TO GET DEBTS RESTRUCTURED WITHOUT JUST A BUNCH OF FIGHTING
15 AMONG VARIOUS CREDITORS AND THE DEBTOR WHEN PEOPLE SUE IT.

16 Q NOW, IS A CHAPTER 11 -- WHEN A CHAPTER 11 IS
17 FILED, DOES THAT MEAN THAT THE ALL SEASONS RESORTS OR THE
18 ORGANIZATION, WHATEVER IT MAY BE, IS DISSOLVING?

19 A ABSOLUTELY NOT, NO. A DISSOLUTION IS A
20 PARTICULAR LEGAL PROCEEDING THAT TAKES PLACE UNDER THE
21 CORPORATIONS CODE. A CHAPTER 11 REORGANIZATION IS INTENDED
22 TO KEEP THE BUSINESS FUNCTIONING. IT DOESN'T DISSOLVE
23 ANYTHING. IN FACT, QUITE THE OPPOSITE.

24 Q OKAY. AND THEN THERE'S WHAT WE CALL THE
25 CHAPTER 7?

26 A YES.

1 Q AND WHAT IS A CHAPTER 7 BANKRUPTCY?

2 A WELL, A CHAPTER 7 IS, AGAIN, ANOTHER SECTION
3 OF THE BANKRUPTCY CODE THAT PROVIDES FOR A DIFFERENT KIND
4 OF BANKRUPTCY. IT IS USUALLY CALLED A "LIQUIDATING
5 BANKRUPTCY," WHICH MEANS THAT THE INTENT IS SIMPLY TO -- A
6 TRUSTEE IS APPOINTED IN A CHAPTER 7 CASE, AND THE TRUSTEE'S
7 JOB IS TO GET AS MUCH FOR THE ASSETS AS POSSIBLE AND THEN
8 DISTRIBUTE THE MONEY TO CREDITORS. THAT'S THE THRUST
9 BEHIND IT. IT'S NOT ALWAYS POSSIBLE TO GET MUCH MONEY, BUT
10 THAT'S THE PURPOSE BEHIND A CHAPTER 7. THEY'RE DIFFERENT
11 IN THAT REGARD.

12 Q AND IT WAS YOUR PERSONAL EXPERIENCE THAT ALL
13 SEASONS WAS A CHAPTER 11 AND NOT A CHAPTER 7?

14 A WELL, I FILED THE ALL SEASONS PETITION. IT
15 WAS FILED UNDER CHAPTER 11.

16 Q SO IT WAS NOT FOR THE PURPOSES OF
17 DISSOLVING; IT WAS FOR THE PURPOSES OF PROTECTING THE PARKS
18 AND THE MEMBERS AND KEEP FUNCTIONING BUSINESSES GOING?

19 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

20 THE COURT: SUSTAINED.

21 BY MR. SHAW: Q THE PURPOSE WASN'T FOR THE
22 DISSOLUTION?

23 A NO.

24 Q IN FACT, IT WAS JUST THE OPPOSITE?

25 A YES.

26 Q FIRST NATIONWIDE WAS FILED AS A CHAPTER 11?

1 A YES.

2 Q AND THEN WAS SUBSEQUENTLY CONVERTED TO A
3 CHAPTER 7?

4 A YES.

5 Q WHAT HAPPENS IN A CONVERSION? TELL US WHAT
6 THAT IS.

7 A WELL, A CONVERSION IS UNDER THE BANKRUPTCY
8 CODE. A CASE THAT'S INITIALLY FILED UNDER CHAPTER 11 IS A
9 REORGANIZATION CASE. IF IT'S NOT SUCCEEDING -- AND YOU
10 DON'T ALWAYS KNOW AS A LAWYER, OR THE PEOPLE THAT ARE
11 MANAGING COMPANIES IN CHAPTER 11 DON'T ALWAYS KNOW.
12 THEY -- IF THE COMPANY ISN'T ABLE TO SUCCESSFULLY CONFIRM A
13 PLAN OF REORGANIZATION UNDER CHAPTER 11, THE CASE IS
14 CONVERTED.

15 I WOULD POINT OUT THAT THAT DOESN'T
16 NECESSARILY MEAN THAT THERE HASN'T BEEN SOME SUCCESSFUL
17 ACTION TAKING PLACE IN THE CASE. OFTEN ASSETS ARE SOLD OR
18 CREDITORS ARE HELD OFF FOR A PERIOD OF TIME WHICH CAN BE
19 BENEFICIAL TO THE CREDITOR BODY AS A WHOLE.

20 SO THINGS HAPPEN EVEN IN CASES THAT CONVERT
21 THAT ARE GENERALLY FOUND TO BE BENEFICIAL. THAT'S WHY THE
22 LAW PERMITS IT.

23 BUT THE ACTUAL -- TO ANSWER YOUR QUESTION,
24 MR. SHAW, THE CONVERSION, THE BANKRUPTCY COURT ENTERS AN
25 ORDER THAT SAYS THE CASE IS CONVERTED FROM CHAPTER 11 TO
26 CHAPTER 7. THAT'S WHAT TAKES PLACE.

1 Q NOW, REVCAN WAS A CHAPTER 11, AND THEN
2 REVCAN -- THERE WAS A PLAN CONFIRMED; IS THAT CORRECT?

3 A YES, IT IS.

4 Q TELL US, WHAT DOES THAT MEAN IN A CHAPTER 11
5 WHEN A PLAN IS CONFIRMED?

6 MR. RIVIN: YOUR HONOR, I'M GOING TO OBJECT. I
7 BELIEVE THIS TESTIMONY IS CUMULATIVE. WE HEARD FROM
8 MR. JOSEPH FOR WELL OVER A DAY REGARDING CHAPTER 11'S AND
9 CHAPTER 7'S AND PLANS. AND I DON'T KNOW THAT WE NEED TO
10 HEAR IT AGAIN. SO I OBJECT ON THAT BASIS.

11 MR. SHAW: YOUR HONOR, MAY I RESPOND?

12 THE COURT: YOU MAY.

13 MR. SHAW: REVCAN -- MR. JOSEPH TESTIFIED ABOUT
14 FIRST NATIONWIDE. I'M ASKING NOW ABOUT REVCAN AND WHAT
15 HAPPENED WITH REVCAN, SPECIFICALLY REGARDING CONFIRMING A
16 PLAN. SO IT IS NOT CUMULATIVE.

17 MR. RIVIN: I DON'T HAVE A PROBLEM WITH ASKING
18 ABOUT -- ASKING A WITNESS WHAT HAPPENED IN THOSE PARTICULAR
19 BANKRUPTCIES THAT HE WAS INVOLVED IN, BUT THE LAST QUESTION
20 I OBJECTED TO IS -- WAS, PLEASE TELL US WHAT A PLAN IS,
21 WHAT A CHAPTER 11 PLAN IS.

22 THE COURT: THE OBJECTION IS SUSTAINED.

23 BY MR. SHAW: Q TELL US ABOUT THE -- CONFIRMING A
24 PLAN IN REVCAN.

25 A WELL, I KNOW ABOUT THE REVCAN PLAN BECAUSE I
26 WAS BROUGHT INTO THE CASE TO HANDLE THAT ASPECT OF IT. I

1 DIDN'T FILE THE REVCON CASE, BUT I DID COME IN AND
2 REPRESENT THE COMPANY WHEN IT WENT THROUGH THE
3 REORGANIZATION -- THROUGH THE PLAN CONFIRMATION.

4 THE PLAN IS WHAT IS A SHORTHAND FOR "PLAN OF
5 REORGANIZATION." IT'S -- IT IS A DOCUMENT THAT'S PREPARED
6 AND FILED WITH THE COURT THAT SAYS -- WHERE THE COMPANY
7 SAYS, "WE INTEND TO REORGANIZE IN THIS MANNER, AND HERE IS
8 WHAT WE'RE GOING TO PAY TO OUR CREDITORS, AND HERE IS HOW
9 WE'RE GOING TO PAY THEM. THEY GET SO MUCH AT SUCH TIMES,
10 AND HERE IS HOW WE'RE GOING TO DO IT."

11 THE COURT THEN LOOKS AT THAT PLAN. THERE'S
12 A PROCESS INVOLVED WHERE NOTICE GOES OUT TO THE VARIOUS
13 INVOLVED CREDITORS AND OTHER PEOPLE. THEY VOTE ON THE
14 PLAN. IT'S A -- A PARTICULAR FORM OF CREDITOR DEMOCRACY IN
15 THESE CASES.

16 AND THEN THE COURT LOOKS AT IT, AND IF THE
17 COURT FINDS THAT THE LEGAL STANDARD IS SATISFIED, IT'S IN
18 THE BEST INTEREST OF THE CREDITORS, AND VARIOUS OTHER
19 STANDARDS THAT ARE IMPOSED UNDER THE BANKRUPTCY CODE, THEN
20 IT ENTERS AN ORDER CONFIRMING THE PLAN. THAT MEANS THAT
21 THE PLAN, THEN, IS -- IN FACT GOES INTO EFFECT, AND IT
22 BINDS BOTH THE COMPANY, IN THIS CASE REVCON, TO DO WHAT IT
23 SAID IT WAS GOING TO DO, AND ALSO BINDS THE CREDITORS TO
24 ACCEPT WHAT PLAN PROVIDES FOR. AND THAT'S WHAT HAPPENED IN
25 THE REVCON CASE.

26 Q NOW, LET'S TALK ABOUT WHEN -- WELL, LET ME

1 WITHDRAW THAT AND START AGAIN.

2 SO THERE'S A BEGINNING OF A CASE. A CASE IS
3 FILED. THAT'S HOW IT GETS TO THE BANKRUPTCY COURT?

4 A YES. A LOT OF THIS IS TECHNICAL. IT'S
5 CALLED -- THE CASE IS COMMENCED BY THE FILING OF A PETITION
6 WITH THE CLERK OF THE BANKRUPTCY COURT.

7 Q AND THAT STARTS IT.

8 NOW, WHAT ENDS THE CASE? WHEN DOES THE CASE
9 END?

10 MR. RIVIN: YOUR HONOR, THE SAME OBJECTION. THIS
11 IS CUMULATIVE.

12 THE COURT: SUSTAINED.

13 BY MR. SHAW: Q AN END OF THE CASE WOULD HAVE A
14 CONCLUSION OF SOME SORT; IS THAT CORRECT?

15 A EACH ONE OF THESE DOES IN A PARTICULAR
16 MANNER, YES.

17 Q WELL, LET'S TALK SPECIFICALLY, THEN. AND
18 I'D LIKE TO LOOK AT DEFENDANTS' EXHIBIT 377, THE FIRST TWO
19 PAGES.

20 CAN YOU IDENTIFY THE FIRST TWO PAGES OF
21 DEFENDANTS' EXHIBIT 377?

22 A YES, I CAN.

23 Q AND WHAT IS THAT?

24 A IT'S -- THE FIRST TWO PAGES ARE THE CHAPTER
25 11 PETITION THAT WAS FILED IN THE ALL SEASONS RESORTS CASE.

26 MR. SHAW: YOUR HONOR, I'D LIKE TO MOVE THE FIRST

1 TWO PAGES OF EXHIBIT 377 INTO EVIDENCE.

2 MR. RIVIN: WE WOULD NOT OBJECT, YOUR HONOR, TO THE
3 ENTIRE DOCUMENT BEING MOVED INTO EVIDENCE. BUT WE THINK
4 IT'S INAPPROPRIATE FOR IT TO BE MOVED IN PIECEMEAL.

5 THE COURT: I'LL TAKE IT UNDER SUBMISSION.

6 MR. SHAW: OKAY. YOUR HONOR, COULD I SHOW THE
7 FIRST PAGE?

8 THE COURT: YOU MAY.

9 MR. SHAW: THANK YOU.

10 Q MR. MALPASS, THIS IS THE PETITION, THE
11 VOLUNTARY PETITION AS YOU SEE UP IN THE RIGHT-HAND -- THE
12 RIGHT-HAND PORTION OF THE DOCUMENT?

13 A YES, OTHER THAN IT DIDN'T COME OUT OF MY
14 OFFICE WITH THOSE TWO INK MARKS ON IT.

15 Q OKAY. BUT OTHER THAN THAT, IT CAME OUT?

16 A YES. IT'S THE VOLUNTARY PETITION.

17 Q AND IT'S THE VOLUNTARY PETITION FOR ALL
18 SEASONS RESORTS, INC.?

19 A YES, THAT'S CORRECT.

20 Q AND THE PRINCIPAL ASSETS ARE THE BUSINESS
21 ASSETS, THE RESORTS WITH MULTIPLE LOCATIONS. THERE'S A
22 CHECK MARK FOR CHAPTER 11. AND THEN THAT'S YOUR -- LAW
23 OFFICES OF T. EDWARD MALPASS?

24 A YES, THAT'S CORRECT.

25 Q AND IT SAYS, "BRIEFLY DESCRIBE THE NATURE OF
26 BUSINESS." IT SAYS, "DEBTOR OWNS AND/OR OPERATES A

1 MEMBERSHIP CAMPING RESORT SYSTEM CONSISTING OF 10
2 CAMPGROUNDS."

3 SO, THAT'S HOW THE CASE BEGINS?

4 A YES.

5 Q AND IN THIS PARTICULAR CASE, THE FILING DATE
6 WAS JULY 11?

7 A OF 1997.

8 Q OF 1997?

9 A YES.

10 Q NOW, TAKING US TO THE OTHER END OF THE ALL
11 SEASONS RESORTS, SOMETHING -- SOMETHING OCCURS TO END THE
12 CASE?

13 A WELL, EVERY BANKRUPTCY CASE HAS AN END --
14 THE ENDS MAY BE DIFFERENT. A CASE CAN END WHEN A PLAN IS
15 CONFIRMED. A CASE CAN END WHEN A -- A CHAPTER 7, IF A
16 CHAPTER 11 IS CONVERTED TO CHAPTER 7, THEN THE TRUSTEE
17 COULD COMPLETE THE ADMINISTRATION OF THE ASSETS IN THE CASE
18 AND CLOSE IT, THAT'S AN END, IN TERMS OF ANY ACTIVITY IN
19 THE BANKRUPTCY SYSTEM. AND CASE COULD END WHEN IT'S
20 DISMISSED.

21 MR. RIVIN: YOUR HONOR, OBJECTION. MOVE TO STRIKE
22 THE WITNESS'S TESTIMONY. THIS IS THE SAME CUMULATIVE
23 TESTIMONY.

24 THE COURT: CUMULATIVE.

25 MR. SHAW: LET'S LOOK AT EXHIBIT 1516.

26 CAN YOU PUT THE FIRST PAGE OF THAT UP.

1 MR. RIVIN: ONE MOMENT, PLEASE.

2 MR. SHAW: SURE.

3 THE WITNESS: I HAVE IT, MR. SHAW.

4 MR. SHAW: YOUR HONOR, WE WOULD LIKE TO MOVE 1516
5 INTO EVIDENCE.

6 MR. RIVIN: YOUR HONOR, WE HAVE THE SAME EXHIBIT IN
7 THE PLAINTIFFS' EXHIBIT. I JUST WANT TO MAKE SURE --

8 MR. SHERMAN: IT'S DIFFERENT.

9 MR. SHAW: YOUR HONOR, WHILE THEY'RE LOOKING, COULD
10 WE LOOK AT THE FIRST PAGE?

11 MR. SHERMAN: WE'VE LOOKED. 1516 DOES NOT CONTAIN
12 THE EXHIBITS. THE ORDER OF THE ORDER SPECIFICALLY
13 REFERENCES EXHIBITS THAT ARE ATTACHED. THE DOCUMENT THAT
14 DEFENDANTS HAVE PROFFERED IS EXHIBIT 383, IS COMPLETE AND
15 IS CERTIFIED.

16 MR. RIVIN: AND WE HAVE NO PROBLEM WITH EXHIBIT 383
17 COMING INTO EVIDENCE. THAT IS THE FULL AND COMPLETE COPY
18 OF THE AMENDED ORDER THAT MR. SHAW IS REFERRING TO.

19 MR. SHAW: CAN WE JUST TAKE IT UNDER SUBMISSION
20 UNTIL I LOOK AT 383?

21 THE COURT: SURE.

22 MR. SHAW: IF WE CAN JUST SHOW THE FIRST PAGE OF
23 THIS DOCUMENT.

24 THANK YOU, MR. RIVIN.

25 MR. RIVIN: THAT'S FINE.

26 BY MR. SHAW: Q FIRST PAGE. NOW, THIS IS THE ALL

1 SEASONS RESORTS AMENDED ORDER APPROVING SALE OF PROPERTY OF
2 THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
3 AND IT SHOWS A DATE OF OCTOBER 27, 1997. BUT UP HERE AT
4 THE TOP IT HAS SOME DATES, NOVEMBER 4, 1997, AND NOVEMBER
5 5, 1997. WHAT ARE THOSE DATES?

6 A WELL, THOSE ARE FILE STAMPS. THESE HAPPEN
7 TO BE -- I RECOGNIZE THESE BECAUSE I DEAL WITH DOCUMENTS OF
8 THIS SORT ALL THE TIME. THESE ARE BANKRUPTCY COURT FILE
9 STAMPS.

10 WHEN A DOCUMENT IS FILED IN THE CLERK'S
11 OFFICE, THEY IMMEDIATELY STAMP IT WITH A STAMP. THE TOP
12 ONE THAT SAYS "NOVEMBER 4" IS A "FILED" STAMP THAT MEANS
13 THE DOCUMENT WAS FILED ON THAT DAY AND RECEIVED IN THE
14 CLERK'S OFFICE.

15 THE SECOND ONE IS AN "ENTERED" STAMP THAT
16 MEANS IT WAS ENTERED ON THE DOCKET, AND THAT'S -- BECOMES
17 THE OFFICIAL ORDER OF THE COURT ON THAT DATE.

18 SO THAT'S WHAT THOSE MEAN.

19 Q OKAY. SO IN THE -- LET'S STAY WITH THE ALL
20 SEASONS RESORTS, INC., THE ONE THAT YOU ACTED AS A LAWYER.

21 DID THE CASE END ON NOVEMBER 5TH, 1997?

22 A NO.

23 Q AND SO THE CASE CONTINUED PAST THAT?

24 A IT DID.

25 Q OKAY. I'M JUST GOING TO MAKE THE DATE OF
26 THE ORDER, WHICH WAS NOVEMBER 5, '97. THAT WAS FOR SALE.

1 NOW, THERE'S A CONCEPT IN THE ALL SEASONS
2 RESORTS KNOWN AS THE AUTOMATIC STAY; CORRECT?

3 A YES. WELL, IT'S NOT A CONCEPT. IT'S A LAW.

4 Q IT'S A LAW?

5 TELL US IN THE ALL SEASONS RESORTS WHEN THE
6 AUTOMATIC STAY BEGAN AND OVER WHAT PERIOD OF TIME IT WAS IN
7 EFFECT.

8 MR. RIVIN: OBJECTION. I BELIEVE THIS CONSTITUTES
9 AN OPINION OF THE WITNESS. I THINK IT'S INAPPROPRIATE FOR
10 THE REASONS WE DISCUSSED IN CHAMBERS.

11 IN ADDITION, I THINK -- WELL, THAT'S MY
12 OBJECTION.

13 MR. SHAW: YOUR HONOR, HE IS THE LAWYER HANDLING
14 THE CASE. THERE'S AN AUTOMATIC STAY IN EFFECT. HE IS
15 TESTIFYING ABOUT WHAT TIME PERIOD AND WHAT THE AUTOMATIC
16 STAY IS.

17 THE COURT: I'M GOING TO ALLOW IT.

18 THE WITNESS: WELL, THE AUTOMATIC STAY SECTION OF
19 THE BANKRUPTCY COURT GOES INTO EFFECT AS SOON AS THE
20 PETITION IS FILED, WHICH IS JULY 11TH, 1997. IT'S
21 IMMEDIATE. THAT'S WHY IT'S CALLED "AUTOMATIC."

22 BY MR. SHAW: Q IN THE ALL SEASONS RESORTS
23 BANKRUPTCY WHERE YOU WERE THE LAWYER, WHAT EFFECT DID THAT
24 AUTOMATIC STAY HAVE ON THE ALL SEASONS RESORTS?

25 A WELL, IT PROTECTS THE BANKRUPTCY ESTATE AND
26 THE COMPANY THAT'S IN BANKRUPTCY FROM LAWSUITS, FROM

1 INTERFERENCE WITH ITS PROPERTY, FROM PEOPLE CONTACTING ITS
2 MEMBERS AND INTERFERING WITH THEIR CONTRACT RIGHTS. THAT'S
3 WHAT THE STAY DOES.

4 Q AND IT STOPS, BY LAW, DEALING WITH ANY OF
5 THE ALL SEASONS RESORTS PROPERTY; CORRECT?

6 A BY ANY PARTY OTHER THAN THE DEBTOR.
7 "DEALING" ISN'T THE RIGHT WORD. INTERFERENCE WITH,
8 ATTEMPTS TO COLLECT MONEY FROM, ATTEMPTS TO IMPOSE LIENS
9 ON, AND ATTEMPTS TO CONTROL OR TAKE AWAY. IT'S TO PREVENT
10 OUTSIDERS FROM TRYING TO TAKE ADVANTAGE OF THE DEBTOR WHILE
11 IT'S IN BANKRUPTCY.

12 COMPANIES IN BANKRUPTCY HAVE SOUGHT
13 PROTECTION OF THE BANKRUPTCY COURT. THEY'RE ACKNOWLEDGING
14 THAT THEY'RE IN A FINANCIALLY WEAKENED CONDITION AND THAT
15 THEY WANT TO REORGANIZE THEIR FINANCIAL AFFAIRS. AND THE
16 LAW PROVIDES VERY STRONG PROTECTION FROM THEM BEING
17 ATTACKED WHILE THEY'RE IN BANKRUPTCY. THAT'S WHAT THE STAY
18 IS FOR.

19 Q NOW, AS FAR AS ALL SEASONS RESORTS, WHAT
20 WERE THE PROPERTIES THAT WERE BEING PROTECTED BY THIS
21 AUTOMATIC STAY?

22 A WELL, THE STAY IS VERY BROAD. IT PROTECTS
23 ALL OF THE DEBTOR'S PROPERTY. THE TECHNICAL CONCEPT IS
24 CALLED "PROPERTY OF THE BANKRUPTCY ESTATE," WHICH IS
25 TRANSLATED FROM THE LEGALESE -- JUST MEANS ALL OF THE
26 DEBTOR'S PROPERTY.

1 Q AND THEN THE ALL SEASONS RESORTS -- SOME OF
2 THE PROPERTY WERE THE PARKS?

3 A YES.

4 Q CORRECT?

5 A IF IT OWNED -- THE PARKS THAT IT OWNED -- I
6 KNOW IT OWNED PARKS -- THE PARKS THAT IT OWNED WERE WITHIN
7 THE SCOPE OF THE STAY IN THAT CASE, YES. THE PARKS, ALL OF
8 THE PERSONAL PROPERTY INVOLVED IN THE PARKS, OR ANYTHING
9 ELSE THAT ALL SEASONS OWNS, ALL OF ITS CONTRACT RIGHTS,
10 RELATIONSHIPS WITH MEMBERS, GOODWILL, EVERY SINGLE ASSET
11 THAT THAT COMPANY HAS IS PROTECTED BY THE STAY.

12 Q SO ITS MEMBERS CONTRACTS?

13 A YES. AND ANY GOODWILL, ANYTHING THAT IS
14 GOING ON THERE IS PROTECTED. THAT'S PROPERTY THAT IS
15 PROTECTED.

16 Q NOW, YOU SAY THAT THE STAY BEGINS -- THE LAW
17 BEGINS JULY 11, 1997. AS FAR AS ALL SEASONS RESORTS, WHEN
18 DOES IT END?

19 A WELL, IT STAYS AS LONG AS THE CASE DOES.

20 Q SO IF THE CASE CONTINUES TO, SAY, 1998, DO
21 YOU KNOW WHEN THE CASE ENDED FOR ALL SEASONS RESORTS?

22 DID YOU KNOW?

23 A I DON'T KNOW, BECAUSE I DIDN'T REPRESENT --
24 THERE WAS A POINT IN TIME WHERE I STOPPED BEING THE LAWYER
25 FOR ALL SEASONS. SO I DON'T KNOW -- I DO NOT KNOW. IT --
26 AT THAT POINT IT HAD BEEN CONVERTED TO A CHAPTER 7. IT WAS

1 UNDER THE CONTROL OF A CHAPTER 7 TRUSTEE. AND USUALLY AS A
2 CHAPTER 11 LAWYER, I DON'T HAVE A LOT OF INVOLVEMENT AFTER
3 THAT.

4 Q IS -- LET ME GET TO THE PODIUM FOR A
5 MOMENT.

6 IS THERE -- SO AS FAR AS NOVEMBER 5TH, 1997,
7 THE STAY WAS STILL IN EFFECT?

8 A YES.

9 Q AND THAT STAY PROHIBITED ANYONE FROM
10 CONTACTING ANY OF THE -- OR DEALING WITH ANY OF THE ASSETS
11 OR PROPERTY -- EXCUSE ME -- OF THE DEBTOR?

12 A YES.

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

14 THE COURT: YOU MAY.

15 (DISCUSSION OFF THE RECORD.)

16 BY MR. SHAW: Q SO AS OF NOVEMBER 5, 1997, IT WAS
17 YOUR UNDERSTANDING AS A LAWYER FOR ALL SEASONS RESORTS THAT
18 THE AUTOMATIC STAY WAS STILL IN EFFECT?

19 A YES.

20 Q AND DO YOU KNOW HOW -- IT WENT PAST NOVEMBER
21 5, 1997. DO YOU KNOW HOW LONG PAST NOVEMBER, 1997?

22 A UNTIL THE CASE CLOSED. AND I DON'T THINK
23 THAT CASE IS CLOSED YET.

24 Q IN FACT, YOUR BELIEF IS IT'S STILL PENDING?

25 A I THINK SO. I'M NOT CERTAIN, BUT I THINK
26 SO. CERTAINLY CONTINUED FOR SOME CONSIDERABLE PERIOD AFTER

1 THAT BECAUSE I WAS GETTING NOTICES IN MY OFFICE.

2 Q SO AT LEAST INTO 1998?

3 A YES.

4 Q DO YOU FEEL RELATIVELY COMFORTABLE THAT
5 I'M -- THAT IT AT LEAST WENT INTO THE 1998 TIME PERIOD?

6 A I KNOW IT DID BECAUSE AS PART OF MY
7 INVESTIGATION, I REVIEWED THE DOCKET. AND THERE ARE
8 ENTRIES ON THE DOCKET THAT THE COURT HAS FOR 1998. SO I
9 KNOW IT'S OPEN.

10 Q WHAT'S A DOCKET?

11 A IT'S A RECORD THAT THE BANKRUPTCY COURT
12 CLERK'S OFFICE MAINTAINS, AND I DON'T THINK THEY HAVE GOT
13 IT FULLY COMPUTERIZED. THEY HAVE PEOPLE THAT WHEN A
14 PLEADING IS FILED, THEY PUT IT IN THE FILE. AND THEY WRITE
15 DOWN ON A CARD, AND I THINK NOW IT GETS PUT INTO A COMPUTER
16 EVENTUALLY. BUT A LIST OF WHATEVER IT IS.

17 SO IT'S -- THE DOCKET IS THE LIST OF THE
18 FILINGS WITH THE COURT, WHATEVER PLEADINGS ARE FILED.

19 Q SO YOUR PERSONAL KNOWLEDGE OF THE ALL
20 SEASONS RESORTS IS THE AUTOMATIC STAY, WHEN NONE OF THE
21 PROPERTY COULD BE CONTACTED BY THIRD PARTIES, EITHER THE
22 PARKS OR THE MEMBERS' CONTRACTS, WENT FROM JULY 11, '97,
23 THROUGH AT LEAST SOMETIME IN 1998?

24 A YES.

25 Q OKAY. LET'S TALK ABOUT FIRST NATIONWIDE,
26 WHEN THAT CASE WAS FILED. AND I'D LIKE TO LOOK AT

1 DEFENDANTS' EXHIBIT 374.

2 AND, MR. RIVIN, I'D JUST LIKE TO SHOW THE
3 FIRST PAGE, IF I CAN JUST TO MOVE IT ALONG.

4 MR. RIVIN: YOU JUST WANT TO SHOW IT AT THIS TIME?

5 MR. SHAW: AT THIS TIME JUST TO SHOW --

6 MR. RIVIN: FINE.

7 MR. SHAW: THANK YOU.

8 Q AND THIS IS THE FIRST NATIONWIDE RESORT
9 MANAGEMENT, INC.

10 AND THIS -- IS THERE A DATE ON WHEN THIS WAS
11 FILED?

12 A YES. YOU'LL SEE IT AT THE BOTTOM. THERE'S
13 A STAMP THAT -- IT'S A STICKER THAT GOES ON THERE AT THE
14 BOTTOM RIGHT CORNER WHERE IT SAYS "SB-96"; THAT THAT WILL
15 BE A FILING DATE RIGHT THERE.

16 Q SO THIS IS WHERE WE WOULD FIND THE FILING
17 DATE?

18 A YES. AND I JUST CAN'T READ IT.

19 Q 5/24/96 --

20 A WHATEVER THAT SAYS.

21 Q -- IT'S FILED?

22 A YEAH. THAT'S THE FILING DATE. AND THAT'S
23 THE TIME IN MILITARY TIME.

24 MR. SHAW: MR. O'CONNOR, IF YOU CAN GIVE ME THE
25 FULL DOCUMENT AGAIN. THANK YOU.

26 Q SO WE KNOW THIS CASE STARTED MAY 24, 1996.

1 AND THIS, AGAIN -- JUST MOVING DOWN THE DOCUMENT, IT SAYS
2 CHAPTER 11 AGAIN?

3 A YES. THAT'S THE BOX THAT YOU CHECK FOR
4 CHAPTER 11.

5 Q AND YOU WEREN'T -- YOU WEREN'T THE LAWYER IN
6 THIS CASE. FIRM MARSHACK AND GOE --

7 A YES.

8 Q -- WERE THE LAWYERS?

9 SO MAY 24, 1996. AND IS THAT WHEN THE LAW
10 OF THE AUTOMATIC STAY IMMEDIATELY WENT INTO EFFECT?

11 A YES. THE EXACT TIME THE PETITION IS FILED
12 IS WHEN THE STAY STARTS.

13 Q SO 5/24/96.

14 NOW, IN THIS CASE TO YOUR PERSONAL
15 KNOWLEDGE, HOW LONG DID THE AUTOMATIC STAY REMAIN IN
16 EFFECT?

17 A AGAIN, I LOOKED AT SOME PLEADINGS. FIRST
18 NATIONWIDE WENT FOR AT LEAST SEVERAL YEARS AFTER THAT.
19 AND I'M NOT CERTAIN WHETHER IT'S BEEN CLOSED. IF NOT, IT'S
20 STILL IN EFFECT.

21 Q LET'S LOOK AT EXHIBIT 1691.

22 AND, AGAIN, MR. RIVIN, IF YOU DON'T MIND ME
23 PUTTING UP THE FIRST PAGE, JUST TO MOVE THE EXAMINATION
24 ALONG.

25 MR. RIVIN: I HAVE NO PROBLEM WITH THE FIRST PAGE.

26 MR. SHAW: THANK YOU.

1 Q NOW, THIS IS A CHAPTER 11 ORDER IN THE FIRST
2 NATIONWIDE RESORT MANAGEMENT CASE?

3 A YES.

4 Q ORDER GRANTING MOTION TO CONVERT CASE TO
5 CHAPTER 11 -- I'M SORRY -- CHAPTER 7 -- THANK YOU,
6 MR. SHERMAN -- ABANDON PROPERTY OF THE ESTATE AND PERMIT
7 VOLUNTARY TRANSFER OF MEMBERSHIP INTERESTS. IT'S GOT A
8 DATE ON IT OF APRIL 9, 1998, AND THEN A FILED STAMP OF
9 APRIL 9, 1998. AND IT REFERS TO PERMITTING THE VOLUNTARY
10 TRANSFER OF MEMBERSHIP INTERESTS FILED ON BEHALF OF
11 JAMES J. JOSEPH, CHAPTER 11 TRUSTEE.

12 THAT'S THE MR. JOSEPH THAT YOU READ HIS
13 TRIAL TESTIMONY HERE, AND HE CAME TO THIS COURTROOM?

14 A YES. I'VE KNOWN MR. JOSEPH FOR YEARS FROM
15 OTHER -- I'VE BEEN INVOLVED IN OTHER CASES WITH HIM AND
16 THAT SORT OF THING.

17 Q NOW, AS FAR AS THE FIRST NATIONWIDE
18 BANKRUPTCY, THE AUTOMATIC STAY WAS STILL IN EFFECT THROUGH
19 THIS APRIL 9, 1998, TIME PERIOD?

20 MR. RIVIN: OBJECTION, YOUR HONOR. THIS IS ONCE
21 AGAIN AN OPINION. IT'S INCONSISTENT. THE OPINION
22 TESTIMONY IS INCONSISTENT --

23 THE COURT: SUSTAINED.

24 MR. RIVIN: -- WITH SECTION 802.

25 BY MR. SHAW: Q WHAT WAS YOUR PERSONAL
26 UNDERSTANDING IN DEALING WITH THE FIRST NATIONWIDE

1 BANKRUPTCY AS TO HOW LONG THE AUTOMATIC STAY WAS IN EFFECT?

2 MR. RIVIN: THE SAME OBJECTION.

3 THE COURT: I'LL ALLOW IT.

4 YOU CAN ANSWER.

5 THE WITNESS: THE STAY WAS IN EFFECT CERTAINLY AT
6 THE TIME THIS ORDER WAS ENTERED AS LONG AS THE CASE IS
7 OPEN. I MEAN, THIS PARTICULAR CASE, AND CERTAINLY AT THIS
8 TIME.

9 BY MR. SHAW: Q OKAY. NOW, LET'S TALK ABOUT THE
10 REVCON -- WELL, BEFORE I MOVE TO THAT, WHAT WAS THE
11 PROPERTY OF THE FIRST NATIONWIDE BANKRUPTCY THAT WAS
12 PROTECTED BY THE AUTOMATIC STAY?

13 A AGAIN, EVERYTHING THAT THE COMPANY OWNED.

14 Q AND IT OWNED PARKS?

15 A YES, IT DID.

16 Q AND IT OWNED MEMBERSHIP CONTRACTS?

17 A YES. WELL, IT IS A PARTY TO MEMBERSHIP
18 CONTRACTS, AND IT HAS RIGHTS AND RELATIONSHIPS OF ITS
19 MEMBERS. AND EVERY BIT OF THAT IS PROPERTY OF THE
20 BANKRUPTCY ESTATE AND, THEREFORE, WITHIN THE SCOPE OF THE
21 STAY.

22 Q AND THE AUTOMATIC STAY PROTECTS ANYONE FROM
23 WRITING THE MEMBERSHIP, THE MEMBERS, TO TRANSFER OR CHANGE
24 CONTRACTS?

25 A YES.

26 Q AND THAT WAS IN EFFECT IN FIRST NATIONWIDE

1 FROM MAY 24, 1996, THROUGH AT LEAST APRIL 9, 1998?

2 A YES.

3 MR. RIVIN: SAME OBJECTION, YOUR HONOR. MOVE TO
4 STRIKE. VIOLATIVE OF SECTION 802.

5 THE COURT: MOTION IS GRANTED.

6 BY MR. SHAW: Q LET'S TALK ABOUT REVCON'S CHAPTER
7 11, THE ONE -- AND YOU WERE THE LAWYER IN THAT CASE?

8 A I WAS THE LAWYER DURING AT LEAST PART OF
9 THAT CASE, YES, A LARGE PART OF IT.

10 Q AND A PLAN WAS CONFIRMED IN THAT CASE.

11 AND, MR. RIVIN, I'D LIKE TO SHOW OR LOOK AT
12 EXHIBIT 1687.

13 MR. RIVIN: MR. SHAW, ONCE AGAIN, THE DOCUMENT
14 APPEARS TO BE INCOMPLETE.

15 MR. SHAW: I BELIEVE I CAN RECTIFY THAT WITH YOUR
16 HELP. IF I CAN JUST SHOW THE FIRST PAGE NOW TO MOVE THE
17 EXAMINATION ALONG, YOU DON'T HAVE ANY PROBLEM WITH THAT?

18 MR. RIVIN: THAT'S FINE.

19 MR. SHAW: CAN YOU PUT UP 1687.

20 Q AND THIS DOCUMENT HAS YOUR LETTERHEAD,
21 T. EDWARD MALPASS. THE ORDER CONFIRMING THE CHAPTER 11
22 PLAN IN REVCON MOTORCOACH AS OF -- AND THEN THE FILING
23 DATE -- IT LOOKS LIKE APRIL 17, 1998?

24 A YES. I CAN'T READ IT ON THE COPY I HAVE IN
25 FRONT OF ME WHAT THE FILING DATE IS. THE DATE IT WAS
26 ENTERED, AGAIN, ON THE DOCKET IS APRIL 17, 1998, YES.

1 Q DO YOU HAVE ANY INDEPENDENT RECOLLECTION AS
2 YOU SIT HERE TODAY AS TO WHEN THE REVCON BANKRUPTCY WAS
3 FILED?

4 A I DO NOT. I CAN TELL YOU THAT IT WAS FILED
5 IN 1996.

6 Q SO YOU KNOW IT WAS SOMETIME IN '96?

7 A YES. I KNOW THAT, AND IT'S CONFIRMED BY THE
8 FILE NUMBER THERE ON THE PLEADING. WHEN IT SAYS, "SB-96,"
9 THAT MEANS IT'S FILED IN SAN BERNARDINO IN 1996.

10 Q SO WHAT MR. O'CONNOR HAS JUST YELLOWED, THAT
11 SHOWS AT LEAST IT WAS 1996?

12 A THAT'S CORRECT.

13 Q AND SO THE AUTOMATIC STAY IN THIS CASE WAS
14 IN EFFECT FROM 1996 THROUGH AT LEAST THE DATE OF
15 CONFIRMATION?

16 A YES.

17 Q WHICH WAS APRIL 17, 1998?

18 A THAT'S CORRECT.

19 Q AND WHAT WERE THE ASSETS OF REVCON IN THE
20 BANKRUPTCY?

21 A WELL, ALL OF THE ASSETS OF REVCON WOULD HAVE
22 BEEN IN THE BANKRUPTCY ESTATE.

23 Q AND WHAT WERE THOSE ASSETS?

24 A REVCON HAD PARKS AND RELATED PROPERTY AND
25 CONTRACTS.

26 Q MEMBER CONTRACTS?

1 A AGAIN, YES. SINCE THESE WERE MEMBERSHIP
2 PARKS, THEY ALL HAD CONTRACTS THAT WENT WITH THEM.

3 Q LET'S TALK ABOUT THOUSAND ADVENTURES OF
4 OHIO.

5 YOU'VE -- THAT WAS NOT A CASE THAT YOU WERE
6 A LAWYER FOR OR INVOLVED IN?

7 A NO.

8 Q BUT YOU HAVE LOOKED AT THOSE FILES?

9 A I LOOKED AT A NUMBER OF PLEADINGS, YES, FROM
10 THAT CASE.

11 Q AND DO YOU KNOW WHEN THAT BANKRUPTCY WAS
12 FILED?

13 A I DO NOT. I'D BE ABLE TO TELL FROM THE
14 PLEADINGS.

15 Q I'D LIKE TO SHOW YOU 1714, PLAINTIFFS' 1714.
16 MR. RIVIN, I'D LIKE TO MOVE THIS INTO
17 EVIDENCE AT THIS TIME, 1714.

18 MR. RIVIN: NO OBJECTION.

19 THE COURT: IT WILL BE SO RECEIVED.

20 (WHEREUPON, EXHIBIT NO. 1714, BANKRUPTCY
21 ORDER CONFIRMING REORGANIZATION, WAS RECEIVED IN EVIDENCE.)

22 MR. SHAW: COULD WE SHOW THE FIRST PAGE,
23 MR. O'CONNOR.

24 Q WHAT IS THIS DOCUMENT, MR. MALPASS?

25 A IT'S AN ORDER THAT WAS ENTERED IN THE
26 THOUSAND ADVENTURES OF OHIO CASE WHERE THE COURT CONFIRMED

1 THE CHAPTER 11 PLAN REORGANIZATION.

2 Q AND THE FILING DATE ON THIS DOCUMENT IS
3 SEPTEMBER 17, '98?

4 A YES, THAT'S CORRECT.

5 Q AND CAN YOU TELL WHEN THIS CASE WAS FILED?

6 A 1997.

7 Q SO THAT'S WHEN THE AUTOMATIC STAY WOULD HAVE
8 GONE IN EFFECT?

9 MR. RIVIN: OBJECTION. IMPROPER OPINION. AGAIN,
10 VIOLATION OF SECTION 802.

11 THE COURT: SUSTAINED.

12 BY MR. SHAW: Q THE CASE WOULD HAVE BEEN FILED
13 SOMETIME IN 1997?

14 A YES.

15 Q DID YOU DETERMINE WHAT THE ASSETS WERE OF
16 THE THOUSAND ADVENTURES BANKRUPTCY -- THOUSAND ADVENTURES
17 OF OHIO BANKRUPTCY?

18 A PARKS AND RELATED PROPERTY, INCLUDING
19 CONTRACTS.

20 Q SO PRETTY MUCH THE SAME ASSETS AS THE REVCON
21 BANKRUPTCY AND THE FIRST NATIONWIDE BANKRUPTCY AND THE ALL
22 SEASONS BANKRUPTCY?

23 A THE SAME TYPE OF ASSETS, YES. THEY WERE ALL
24 MULTIPLE-SITE PARK CASES.

25 Q ALL RIGHT. LET'S LOOK AT -- WELL, BEFORE I
26 LEAVE THESE BANKRUPTCIES AND MOVE ON TO ANOTHER SUBJECT,

1 I'D LIKE TO TALK ABOUT ATTORNEY'S FEES, MR. MALPASS.

2 YOU ARE BEING PAID FOR YOUR SERVICES IN THIS
3 CASE?

4 A YES, I AM.

5 Q AND HOW MUCH HAVE YOU BEEN PAID FOR YOUR
6 SERVICES IN THIS CASE?

7 A APPROXIMATELY \$10,000.

8 Q AND IS THAT -- ARE YOU PAID CURRENTLY
9 THROUGH THE END OF TODAY?

10 A I'VE ACTUALLY RECEIVED A RETAINER. THAT IS
11 TO COVER TIME THAT -- THAT I PROJECT THAT I WOULD SPEND
12 TESTIFYING HERE IN THE CASE AND PREPARING FOR MY TESTIMONY.

13 Q SO YOU'RE PAID IN FULL AS OF TODAY?

14 A YES.

15 Q AND ARE YOU BEING PAID TO EXPRESS ANY
16 OPINIONS IN THIS CASE?

17 A NO.

18 Q WHAT ARE YOU BEING PAID FOR?

19 A WELL, I WAS PAID TO INVESTIGATE AND FORM AN
20 OPINION, BUT NOT PAID FOR THE -- NOT PAID FOR -- I HIGHER
21 EXPERT WITNESSES IN MY PRACTICE. YOU DON'T PAY THEM TO
22 FORM AN OPINION. YOU PAY THEM TO BE AN EXPERT. YOU PAY
23 THEM TO FORM AN OPINION, BUT NOT FOR THE OPINION, I GUESS
24 IS THE RIGHT WAY TO PUT IT.

25 Q SO YOU'RE NOT -- NO ONE HAS PRECONDITIONED
26 YOU AS TO ANY OPINION TO GIVE; YOU'RE JUST TESTIFYING FROM

1 YOUR OWN BACKGROUND AND EXPERTISE IN THIS CASE?

2 A WELL, I'M A LITTLE BIT DIFFERENT FROM SOME
3 EXPERT WITNESSES BECAUSE I ACTUALLY WORKED IN THE CASES AND
4 HAVE SOME FAMILIARITY WITH THREE OF THEM. BUT THE -- MY
5 EXPERT OPINION IS JUST FORMED FROM THE INVESTIGATION AND MY
6 EXPERIENCE IN MY PRACTICE, AND WITH THE LAW.

7 Q NOW, LET'S TAKE -- LET'S -- I WANT TO TALK
8 ABOUT HOW YOU AS A LAWYER GET PAID IN A BANKRUPTCY CASE. I
9 WANT TO TURN TO THAT SUBJECT. AND LET'S TALK ABOUT THE ALL
10 SEASONS RESORTS BANKRUPTCY.

11 DID YOU GET PAID FOR THE WORK YOU DID IN
12 THAT CASE?

13 A SOME OF IT.

14 Q SOME OF IT?

15 A YES.

16 Q HOW DO YOU GO ABOUT GETTING PAID BY THE
17 BANKRUPTCY COURT?

18 A YOU GET PAID -- INITIALLY YOU HAVE TO BE
19 EMPLOYED WITH THE PERMISSION OF THE COURT. WHEN YOU COME
20 INTO A CHAPTER 11 CASE, TO REPRESENT A COMPANY IN
21 BANKRUPTCY, YOU HAVE TO FILE AN APPLICATION WITH THE
22 BANKRUPTCY COURT. AND THE COURT REVIEWS IT. OTHER PARTIES
23 HAVE AN OPPORTUNITY TO REVIEW IT. THE OFFICE OF THE UNITED
24 STATES TRUSTEE REVIEWS IT. AND IF IT'S APPROVED, THEN AN
25 ORDER IS ENTERED IN THE BANKRUPTCY CASE SAYING THAT YOU CAN
26 WORK AND BE EMPLOYED. THAT HAPPENED IN THE ALL SEASONS

1 CASE.

2 Q SO JUST BECAUSE ALL SEASONS MAY WANT TO
3 HIGHER YOU, IT DOESN'T STOP THERE. YOU HAVE TO FILE AN
4 APPLICATION, AND THE COURT HAS TO REVIEW IT, AND PARTIES
5 CAN OBJECT OR --

6 A YES.

7 Q -- OR CRITICIZE WHATEVER YOUR ARRANGEMENT IS?

8 A YES.

9 Q AND THEN THE JUDGE DECIDES?

10 A YES. IT'S A PROCESS THAT'S VERY DIFFERENT
11 FROM WHAT ATTORNEYS DO IN OTHER CASES WHERE THEY DEAL WITH
12 THEIR CLIENT. AND IF THEIR CLIENT PAYS THEM OR DOESN'T PAY
13 THEM, IT'S A PRIVATE MATTER WITH THE ATTORNEY. WE'RE
14 SUBJECT TO VERY PUBLIC SCRUTINY AND REVIEW AND OBJECTION BY
15 PARTIES THAT ARE INTERESTED IN THE CASE, TO OUR FEES, AND
16 EVERYTHING WE DO AS BANKRUPTCY LAWYERS.

17 SO THAT PROCESS TOOK PLACE INITIALLY WHEN I
18 WAS EMPLOYED IN THE CASE. THEN AFTER YOU'VE WORKED IN THE
19 CASE, AT VARIOUS TIMES YOU'RE PERMITTED TO FILE AN
20 APPLICATION TO GET PAID FOR YOUR WORK. AND THAT'S -- I DID
21 THAT IN THE ALL SEASONS CASE.

22 Q AND THAT, AGAIN, COMES UNDER THE SCRUTINY OF
23 ANY OF THE PARTIES IN THE CASE, THE CREDITORS, THE PEOPLE
24 WHO ARE OWED MONEY, THE U.S. TRUSTEE'S OFFICE; ANYBODY CAN
25 OBJECT AND SAY, "THAT'S TOO MUCH" OR "THAT'S NOT ENOUGH"?

26 A YES.

1 Q ALTHOUGH, I DOUBT IF THAT EVER HAPPENS?

2 A WELL, THEY DO.

3 Q THEY DO. THAT'S TOO MUCH?

4 A WELL, THEY SAY TOO MUCH.

5 Q YEAH. SO THEY HAVE AN OPPORTUNITY TO LOOK
6 AT YOUR INVOICES TO -- WHOEVER HAS BEEN APPROVED AS YOUR
7 PARTY -- AND SAY WHETHER YOU SHOULD GET PAID THAT AMOUNT OR
8 NOT?

9 A YES, THEY DO. AND THEY CAN, AND THEY DO.
10 AND THEY OBJECT ON VARIOUS GROUNDS.

11 Q AND IN THE ALL SEASONS RESORTS, WERE THERE
12 OBJECTIONS TO YOUR FEES?

13 A THERE WAS AN OBJECTION BY A CREDITOR THAT
14 WAS SUBSEQUENTLY WITHDRAWN, AND THEN THE UNITED STATES
15 TRUSTEE'S OFFICE MADE AN OBJECTION.

16 Q AND THEN THE JUDGE DEALT WITH THE
17 OBJECTIONS; CORRECT?

18 A YES, HE DID. HE RULED ON THEM. WELL, HE
19 DEALT, YEAH.

20 Q AND YOU DIDN'T GET PAID ALL THE ATTORNEY'S
21 FEES THAT YOU WERE ASKING FOR IN THAT CASE?

22 A YOU ALMOST NEVER DO. I DIDN'T IN THAT CASE,
23 NO.

24 Q YOU DIDN'T.

25 A BUT -- USUALLY THE COURT IN RULING ON THE
26 FEES DOESN'T AWARD EVERYTHING THAT YOU -- THAT THE

1 ATTORNEYS WORKING IN THE CASE APPLIES FOR. THE JUDGE
2 USUALLY TAKES IT ON HIM OR HERSELF TO SAY THAT SOMETHING
3 SHOULD NOT BE PAID.

4 Q THAT SOME WORK MAY NOT HAVE BEEN WARRANTED
5 OR SOMETHING, HOW DOES IT USUALLY -- OR DOES IT COVER A LOT
6 OF DIFFERENT SUBJECTS?

7 A IT VARIES FROM CASE TO CASE, AND IT COVERS
8 ALL KINDS OF THINGS. IT'S A STRATEGIC MATTER IN MANY OF
9 THESE CASES.

10 Q AND THEN THE COURT ORDERS, AND THEN IT GOES
11 FROM THERE?

12 MR. RIVIN: YOUR HONOR, I OBJECT TO THIS ON THE
13 BASIS THAT IT GOES BEYOND THE 802 HEARING.

14 THE COURT: SUSTAINED.

15 MR. SHAW: I'LL MOVE ONTO ANOTHER SUBJECT, YOUR
16 HONOR.

17 Q LET'S LOOK AT DEFENDANTS' EXHIBIT 7.

18 MR. RIVIN: YOUR HONOR I THINK WE MAY NEED A
19 SIDEBAR ON THIS.

20 THE COURT: SIDEBAR, PLEASE.

21 (DISCUSSION OFF THE RECORD.)

22 MR. SHAW: MR. O'CONNOR, CAN YOU PUT EXHIBIT 7 UP
23 FOR ME.

24 Q. THIS IS THE LETTER FROM ROGER RYMAN DATED
25 SEPTEMBER 12, 1997, AND IT SAYS, "BECAUSE YOU ARE A
26 VALUABLE PART OF COAST TO COAST'S FAMILY OF MEMBERS, WE

1 REGRET ANY TURMOIL YOU MAY BE EXPERIENCING AS A RESULT OF
2 THE DISSOLUTION OF THOUSAND ADVENTURES RESORTS."

3 THAT'S THE THOUSAND ADVENTURES THAT WAS
4 REFERRED TO THE CHAPTER 11 IN 1997?

5 MR. RIVIN: OBJECTION. OBJECTION. LACK OF
6 FOUNDATION.

7 THE COURT: SUSTAINED.

8 BY MR. SHAW: Q LET'S GO TO PAGE -- LET'S GO TO
9 MR. RYMAN'S TESTIMONY ON JUNE 1, 2000, PAGE 2470, LINES 3
10 THROUGH 16.

11 THE COURT: TELL YOU WHAT. LET'S TAKE OUR BREAK,
12 AND WE'LL COME BACK.

13 (RECESS TAKEN.)

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

16 MR. SHERMAN: YOUR HONOR, IRA ASKED ME TO TAKE THIS
17 ONE. SO LET ME TRY.

18 THE TESTIMONY OF MR. RYMAN'S THAT MR. SHAW
19 JUST ASKED BE PUT UP ON THE BOARD -- I'LL PARAPHRASE
20 BECAUSE I DIDN'T MEMORIZE -- WAS TESTIMONY BY MR. RYMAN
21 DIRECTED TO THE LETTER OF EARLY SEPTEMBER, 1997, WHERE I
22 ASKED MR. RYMAN IF HE THOUGHT THAT WHAT HE WAS DOING WAS
23 PROPER, WORDS TO THAT EFFECT. YOU KNOW, DID YOU THINK YOU
24 WERE DOING THE RIGHT THING? YEAH, I THOUGHT I WAS DOING
25 THE RIGHT THING. I THOUGHT IT WAS APPROPRIATE.

26 MR. RIVIN: WHO WAS QUESTIONING HIM?

1 MR. SHAW: MR. SHERMAN.

2 MR. SHERMAN: YEAH, I WAS QUESTIONING HIM.

3 MR. RIVIN: OKAY.

4 MR. SHERMAN: AND NOW WE SEE IT BEING PRESENTED TO
5 THE BANKRUPTCY EXPERT, MR. MALPASS. AND I'VE GOT TO HAND
6 IT TO MR. SHAW. I THINK THAT'S A PRETTY GOOD MOVE.
7 BECAUSE IF I WERE IN MR. SHAW'S SHOES -- I HOPE I'M NOT
8 GIVING ANYTHING AWAY HERE. WHAT I'D DO, I'D SHOW IT TO
9 MALPASS; YOU READ THIS, YEAH, YEAH. WHAT DO YOU THINK?
10 OH, WELL, RYMAN DOESN'T KNOW WHAT HE IS TALKING ABOUT. LET
11 ME TELL YOU WHAT -- YOU KNOW, HE WAS DOING SOMETHING
12 TOTALLY IMPROPER.

13 NOW, MALPASS MAY NOT SAY IT EXACTLY THAT
14 WAY, BUT ESSENTIALLY THAT'S WHAT THE JURY IS GOING TO HEAR
15 WHEN ALL THE DUST SETTLES AFTER THE OBJECTIONS AND THE
16 SIDEBARS AND THE BACKS AND FORTH.

17 AND WHAT'S KIND OF INTERESTING IS I WAS
18 TAKING VERY CAREFUL NOTES THIS MORNING. MR. MALPASS HAS
19 TOLD THE JURY THAT HE IS PREPARED TO TESTIFY TO TWO
20 ISSUES. NUMBER ONE: DID THE DEFENDANTS' CONDUCT VIOLATE
21 THE LAW. SECOND, DID DEFENDANTS' CONDUCT CAUSE DAMAGE TO
22 THE PLAINTIFFS.

23 FOR OUR PURPOSES RIGHT NOW LET'S JUST FOCUS
24 ON THE FIRST OPINION THAT THE MAN IS PREPARED TO GIVE AS
25 SOON AS THE COURT GIVES ITS BLESSING, WHICH IS OBVIOUSLY
26 THE ISSUE HERE; THAT THE DEFENDANTS' CONDUCT VIOLATED THE

1 LAW. AND LET'S LOOK AT IT IN THE CONTEXT OF MR. RYMAN'S
2 TESTIMONY, IF WE CAN.

3 TO DETERMINE WHETHER DEFENDANTS' CONDUCT
4 VIOLATED THE LAW -- AND I APOLOGIZE IN ADVANCE IF THIS IS
5 BASIC, BUT IT OBVIOUSLY IS BASIC -- WE AS LAWYERS AND A
6 JUDGE NEED TO KNOW THREE THINGS: FIRST, WHAT ARE THE
7 FACTS. SECOND, WHAT IS THE LAW. AND THIRD, HOW DO YOU
8 APPLY THE FACTS TO THE LAW. AND YOU CAN'T APPLY THE FACTS
9 TO THE LAW UNLESS YOU KNOW THE FACTS AND THE LAW.

10 AND SO STRIPPED OF ALL PRETENSE, THIS IS AS
11 PERFECT AN EXAMPLE AS ANYTHING ELSE I'D SAY. MR. RYMAN'S
12 TESTIMONY -- MR. MALPASS IS GOING TO SORT OF SHOEHORN IN
13 HERE THE FACT THAT, WELL, YOU KNOW, AS A BANKRUPTCY EXPERT,
14 YOU KNOW, THE CALLAGHAN AND COLLIER AND CERTIFIED AND THIS
15 AND THAT, RYMAN DOESN'T KNOW WHAT HE IS TALKING ABOUT.

16 NOW, LAST TIME I CHECKED, THAT WAS YOUR
17 HONOR'S JOB, AND THE JURY INSTRUCTIONS. AND IF THEY HAVE
18 GOT LAW, THEY GOT LAW ON JURY INSTRUCTIONS.

19 LET'S TALK ABOUT IT. IF THEY WANT
20 MR. NOVELLI TO GET UP THERE AND SAY, "IT HURT ME, IT HURT
21 ME," I'M SURE MR. NOVELLI IS GOING TO GET UP THERE AND SAY
22 "IT HURT ME, IT HURT ME." BUT FOR THIS GUY TO GET UP HERE
23 AND SAY THAT "I KNOW THE FACTS. I READ RYMAN'S LETTER, AND
24 I READ RYMAN'S TESTIMONY, AND I READ THE LAW, AND I'M KIND
25 OF PREPARED TO APPLY THE FACTS TO THE LAW," THIS IS AGAINST
26 CALIFORNIA LAW. THAT'S NOT WHAT WE'RE HERE TO DO. THAT'S

1 WHAT YOUR HONOR IS HERE TO DO. THAT'S WHAT THE JURY
2 INSTRUCTIONS ARE HERE TO DO.

3 AND PLAINTIFF HAS GOT A PROBLEM. AND THAT'S
4 WHY WE HAVEN'T SEEN MR. NOVELLI IN A MONTH OF TRIAL. THEY
5 DON'T WANT TO PUT MR. NOVELLI UP HERE. THEY WANT TO GET
6 ALL SORTS OF GUYS TO MASQUERADE AND TALK ABOUT WHAT
7 HAPPENED, WHO EITHER WEREN'T THERE OR WHO WERE ONLY THERE
8 FOR CAMEO APPEARANCES, AND THEN THEY'RE GOING TO GET THIS
9 GUY DRESSED UP LIKE AN EXPERT AND HAVE HIM TELL THE JURY
10 WHAT HAPPENED.

11 AND ONE OTHER THING, YOUR HONOR, IN CLOSING,
12 AS FAR AN ALL THIS BANKRUPTCY AUTOMATIC STAY BUSINESS IS
13 CONCERNED -- AND, YOUR HONOR, YOU MAY WANT TO TELL ME WE
14 CAN SAVE IT FOR CROSS-EXAMINATION, BUT THAT'S NOT GOING TO
15 UNRING THE HARM, THE PREJUDICE IN THIS CASE. LET'S TALK
16 ABOUT A BANKRUPTCY AUTOMATIC STAY.

17 BANKRUPTCY LAWYERS -- I'M GIVING AWAY SOME
18 OF THE CROSS, BUT THAT'S OKAY. BANKRUPTCY LAWYERS ARE
19 TRAINED TO SPOT VIOLATIONS OF THE AUTOMATIC STAY. I KNOW
20 BECAUSE I WAS A BANKRUPTCY LAWYER FOR FIVE YEARS BEFORE I
21 JUST WAS TIRED OF IT. PREFER THIS STUFF. OKAY.

22 BANKRUPTCY LAWYERS ARE TRAINED TO SPOT
23 VIOLATIONS OF THE AUTOMATIC STAY. SECOND, BANKRUPTCY
24 LAWYERS ARE TRAINED TO COMMUNICATE WITH THEIR CLIENTS SO
25 THAT THEIR CLIENTS KNOW TO TELL THEM WHEN THERE'S GOING TO
26 BE AN AUTOMATIC STAY ISSUE SO THAT THEIR CLIENTS ARE

1 FAMILIAR TO SAY, HEY, THIS IS WHAT'S HAPPENING, SORT OF
2 LIKE THE DOCTOR/PATIENT RELATIONSHIP.

3 NOW, BANKRUPTCY LAWYERS WHO FAIL TO DO
4 EITHER OF THOSE TWO THINGS AREN'T PROPERLY DOING THEIR
5 JOB.

6 NOW, I KNOW YOUR HONOR COULD SAY, YEAH, WE
7 CAN BRING THAT UP IN CROSS, BUT THE BELL IS UNRUNG AT THAT
8 POINT. SO FAILURE TO EITHER SPOT THE AUTOMATIC STAY, IF
9 YOU'RE THE BANKRUPTCY LAWYER, THE DEBTOR -- FOR ALL SEASONS
10 LIKE MALPASS WAS -- FAILURE TO SPOT THE AUTOMATIC STAY IN
11 THE FALL OF '97, WHICH OBVIOUSLY HE FAILED TO SPOT THE
12 AUTOMATIC STAY --

13 MR. RIVIN: HE WAS THE ATTORNEY.

14 MR. SHERMAN: HE WAS THE ATTORNEY.

15 FAILURE TO EITHER SPOT THE AUTOMATIC STAY OR
16 COMMUNICATE WITH YOUR CLIENT, RAY NOVELLI, TO SAY, HEY, LET
17 ME KNOW, RAY, IF SOMEBODY IS DOING TO AFFECT PROPERTY OF
18 THE STATE MEANS ONE OF TWO THINGS: IT EITHER MEANS
19 MR. MALPASS WAS ASLEEP, OR IT MEANS THERE WAS NO VIOLATION
20 OF THE AUTOMATIC STAY. BECAUSE IF HE IS A COMPETENT
21 BANKRUPTCY LAWYER AND HE HAS DONE HIS JOB, THEN, YOU KNOW,
22 NOT EVERY MOVEMENT, NOT EVERY MOTION, NOT EVERY BREATH ONE
23 TAKES IS A VIOLATION OF THE AUTOMATIC STAY. THIS DOES NOT
24 EXIST IN THE ABSTRACT.

25 SO I ASK BEFORE PREJUDICE OCCURS -- WHICH NO
26 ONE IS GOING TO BE ABLE TO ERASE -- THAT THE COURT APPROACH

1 THIS CAUTIOUSLY AND ASK THIS MR. MALPASS, HEY, IN FORMING
2 YOUR OPINION ABOUT VIOLATIONS OF LAW, DID YOU HAVE TO APPLY
3 THE LAW? DID YOU HAVE TO KNOW THE LAW?

4 AND IF SO, YOUR HONOR, YOU KNOW WHAT THE
5 CALIFORNIA CASES SAY ABOUT ATTORNEYS TESTIFYING AS TO
6 LAW -- AND AS MR. RIVIN SAID EARLIER, THIS IS NOT A
7 MALPRACTICE CASE. THIS IS NOT A LEGAL MALPRACTICE ISSUE.
8 WE DON'T NEED THIS STANDARD OF CARE BUSINESS. THAT'S OUR
9 POSITION. PLEASE ACT SO THAT THE PREJUDICE DOESN'T OCCUR
10 NOW, BECAUSE WE'RE GOING TO HAVE -- WE'RE NOT GOING TO BE
11 ABLE TO UNRING THAT BELL.

12 MR. SHAW: I DON'T KNOW WHERE TO BEGIN WITH
13 MR. SHERMAN'S MONOLOGUE, BUT I THINK I CAN START WITH, THIS
14 CASE IS ABOUT UNFAIR -- I'M READING FROM THE COMPLAINT.
15 UNFAIR COMPETITION, INTERFERENCE WITH CONTRACT,
16 MISAPPROPRIATION OF TRADE SECRETS, ET CETERA, ET CETERA.

17 THE ULTIMATE ISSUE IN THIS CASE IS NOT THE
18 BANKRUPTCY CODE. THE ULTIMATE ISSUE IN THIS CASE IS
19 WRONGFUL CONDUCT, CAUSATION AND DAMAGES. THEY EVEN ARGUE
20 IN THEIR BRIEF YESTERDAY THAT WHERE THE BANKRUPTCY ISSUES
21 ARE IN THE BANKRUPTCY COURT.

22 THIS WITNESS NOT TESTIFYING ABOUT THE
23 ULTIMATE ISSUES IN THIS CASE. HE IS TESTIFYING AS A
24 PERCIPIENT WITNESS WHAT HAPPENED IN THE BANKRUPTCY CASE.
25 AND THEN WE ARGUE TO THE JURY, LIKE MR. SHERMAN SAYS, JURY
26 INSTRUCTIONS, THESE WERE THE FACTS; DOES IT APPLY TO THE

1 UNFAIR COMPETITION, THE INTERFERENCE? IS IT WRONGFUL
2 CONDUCT FOR THAT ASPECT OF IT. SO THIS IS NOT THE ULTIMATE
3 ISSUE.

4 HOWEVER, EVEN IF IT WERE, IF THE COURT IS
5 PERSUADED THAT IT'S THE ULTIMATE ISSUE, THERE IS REAMS OF
6 CASE LAW THAT SAY A BREACH OF CONTRACT ACTION CONCERNING
7 PAYMENT FOR EXTRA WORK, THAT CAN TAKE EXPERT TESTIMONY
8 REGARDING THE PERFORMANCE OF THE CONTRACT. INSURANCE BAD
9 FAITH EXPERTS CAN STATE WHETHER THEY BELIEVE THE CARRIER'S
10 CONDUCT WAS BAD FAITH. THAT'S ALLOWED IN THE STATE OF
11 CALIFORNIA. NEGLIGENCE, AN EXPERT CAN STATE WHETHER A
12 GIVEN PROCEDURE WAS SAFE OR NOT SAFE. I COULD GO ON, YOUR
13 HONOR. THERE'S A WHOLE LIST OF CASES THAT SAY THAT IT'S
14 APPROPRIATE TO TALK ABOUT THAT.

15 NOW, THAT'S -- I THINK THE COURT IS ON VERY
16 SOLID GROUND IN THAT REGARD.

17 SECOND IS THEY HAVE OPENED THE DOOR. YOU
18 READ MR. RYMAN'S TESTIMONY OVER MY OBJECTIONS. AND HE
19 SAYS -- AND I'LL JUST QUOTE FROM PAGE 2470, LINE 7 THROUGH
20 16. MR. SHERMAN ASKED, "WHY DO YOU CHOOSE THE WORD
21 'DISSOLUTION'?"

22 "ANSWER: WE USED IT A COUPLE TIMES, AND
23 IT'S BEEN QUESTIONED. TO ME THEY SOMETHING -- WHEN
24 SOMETHING IS DISSOLVED, IT'S JUST GONE. AND IF THE KINDS
25 OF THINGS THAT WE WERE SEEING WITH THE FORECLOSURES, THE
26 BANKRUPTCIES, THE -- NOT ABLE TO GET AHOLD OF OWNERS,

1 ORIGINAL LENDERS AND OWNERS OF THE RESORTS, TAKING THEM
2 BACK LEGALLY" -- HE SAYS "LEGALLY" -- "THINGS OF THAT, THE
3 SYSTEM HAD JUST FALLEN APART. IT JUST WASN'T THERE ANY
4 LONGER, HAD BEEN DISSOLVED."

5 THEY OPENED THE DOOR. THAT'S NUMBER ONE.

6 NUMBER TWO, ON PAGE 2529, MR. MOSHENKO ON
7 CROSS-EXAMINATION ASKED HIM -- I'M SORRY. IT STARTS AT
8 2528 LINE 26:

9 "OKAY. AND HE -- THE ANSWER WAS, YOU FELT
10 YOU DID HAVE A LEGAL UNDERSTANDING?

11 "ANSWER: DID I?

12 "QUESTION: FOR THE BASIS FOR WHAT YOU AND
13 COAST TO COAST DID?

14 "ANSWER: THAT I UNDERSTOOD THE LEGALITY,
15 YES, THAT'S CORRECT.

16 "QUESTION: OKAY. YOU I THINK TESTIFIED
17 THAT YOU BELIEVE THAT YOU WERE -- WHAT YOU DID WAS LEGALLY
18 APPROPRIATE, OR WORDS TO THAT EFFECT?

19 "ANSWER: YES.

20 NOW, I'VE GOT A WITNESS THAT IS A PERCIPIENT
21 WITNESS. LET'S TAKE THE EXPERT MANTEL AWAY. I'VE GOT A
22 PERCIPIENT WITNESS WHO WAS THERE WHEN THIS HAPPENED. AS
23 THE COURT MAY RECALL, I OBJECTED TO THAT NOTICE OF
24 REJECTION GOING UP ON -- BECAUSE I FELT THAT IT WAS GETTING
25 INTO A LEGAL ANALYSIS. AND THE COURT ALLOWED IT IN.

26 NOW I'VE GOT THE PERCIPIENT WITNESS WHO WAS

1 THERE ABOUT WHAT THAT NOTICE OF REJECTION MEANT. THEY CAN
2 CROSS-EXAMINE HIM, AND IT CAN GO TO THE WEIGHT AND
3 SUFFICIENCY. BUT IT'S IN THROUGH ROGER RYMAN. IT'S IN
4 THROUGH -- HE SAYS "LEGALLY." HE WENT ON FOR PAGES ABOUT
5 WHAT HE DID REGARDING DISSOLUTIONS AND WHAT HE DID LEGALLY
6 OR WHAT HE DIDN'T DO.

7 I'VE GOT A REBUTTAL WITNESS WHO CAN TESTIFY
8 ABOUT THE FACTS UNDERLYING HIS CONCLUSIONS. THESE ARE
9 CONCLUSIONS THAT HE IS STATING, WHY HE USED "DISSOLUTION."

10 SO AS FAR AS REBUTTAL TESTIMONY, THAT'S MY
11 SECOND POINT. HE IS NOT TESTIFYING ABOUT THE ULTIMATE
12 ISSUE. SO HE CAN TESTIFY AS AN EXPERT ON HIS OPINIONS
13 REGARDING THE BANKRUPTCY LAW AND THINGS OF THAT NATURE.

14 AS A REBUTTAL WITNESS HE CAN TESTIFY ABOUT
15 WHAT MR. RYMAN SAID.

16 AND THEN THIRD -- AND I THINK THERE IS A
17 LEGAL BASIS FOR THIS -- THEY HAVE BEEN -- THEY HAVE BEEN
18 TAKING TESTIMONY AND PUTTING IT UP AND ASKING WITNESSES "IS
19 WHAT MR. JOSEPH SAID TRUE? IS WHAT MR. SOMEBODY ELSE SAID
20 TRUE?" THEY HAVE DONE THAT SEVERAL TIMES.

21 ALL I'M DOING IS FOLLOWING THAT FORMAT
22 THAT'S BEEN ESTABLISHED IN THIS TRIAL, AND I'M DOING THE
23 SAME THING WITH THIS WITNESS.

24 SO I'VE GOT THREE GROUNDS FOR THE BASIS OF
25 THIS WITNESS. AND FINALLY, THE CUMULATIVE, I'M REALLY
26 HAVING --

1 MR. SHERMAN: I DIDN'T RAISE THAT.

2 MR. SHAW: OKAY. I WON'T RAISE IT.

3 MR. SHERMAN: IT'S AN APPROPRIATE OBJECTION. I
4 DIDN'T EVEN RAISE THAT.

5 MAY I RESPOND, YOUR HONOR, BRIEFLY?

6 THE COURT: YEAH.

7 MR. SHERMAN: VERY BRIEFLY.

8 LET ME JUST TAKE EACH OF THE FOUR POINTS
9 FIRST.

10 ON THE SUBJECT OF THE FACT THAT THERE ARE
11 CASES WHERE YOU CAN HAVE EXPERTS COME IN AND TALK ABOUT
12 INSURANCE COMPANY'S BAD FAITH, OKAY, THERE ARE CASES THAT
13 TALK ABOUT THAT. THIS IS NOT AN INSURANCE COMPANY. THIS
14 IS NOT A BAD FAITH CASE. I MEAN, THE EXAMPLE THAT MR. SHAW
15 GAVE, WHETHER EXTRA WORK WAS APPROPRIATE UNDER A CONTRACT
16 OR NOT, THAT DOESN'T PASS THE STRAIGHT-FACE TEST.

17 SO LET ME GO ON TO THE SECOND POINT, THE
18 OPENING OF THE DOOR WITH MR. RYMAN.

19 MR. RYMAN WAS BASICALLY ASKED A WHY
20 QUESTION. WHY? WHY DID YOU DO SOMETHING? PERFECTLY
21 APPROPRIATE QUESTION. NOW WHAT I HEAR SLICED THROUGH IT
22 ALL, MR. MALPASS -- WHO I THINK WE CAN ESTABLISH HAS NEVER,
23 EVER SPOKEN WITH ROGER RYMAN. I THINK THAT'S THE CASE,
24 ISN'T IT? OKAY. MR. RYMAN IS GOING TO MIND-READ. HE IS
25 GOING TO SAY, WELL, LET ME TELL YOU WHAT ROGER RYMAN REALLY
26 SHOULD HAVE SAID, OR LET ME TELL YOU WHAT HE SHOULD HAVE

1 BEEN THINKING. HE IS GOING TO DO A CARNAC IMPRESSION.
2 BECAUSE PERCIPIENT-WISE, IF HE WASN'T THERE IN RYMAN'S HEAD
3 OR TALKING WITH RYMAN, THEN TO ME THERE'S ONLY ONE WAY IT
4 COMES IN FROM A RELEVANCE STANDPOINT, NAMELY, IF THE GUY'S
5 PROPERLY AN EXPERT WITNESS.

6 THEN THE THIRD POINT, AS FAR AS THIS NOTICE
7 OF REJECTION, THERE WAS ONLY ONE REASON WHY YOUR HONOR
8 PERMITTED THOSE UP ON THE BOARD: BECAUSE THIS IS WHAT WAS
9 BEING SENT TO THE MEMBERS. AND THIS IS WHAT THE MEMBERS
10 WERE SENDING TO COAST TO COAST.

11 AND IF MR. MALPASS IS GOING TO SUGGEST THAT
12 HE KNOWS WHAT MEMBERS WERE THINKING, YOU KNOW, CARNAC, I
13 KNOW -- I MEAN, THAT'S AN INSULT TO ALL OF OUR INTELLIGENCE
14 AND AN AFFRONT TO THE LAW.

15 SO THE LAST POINT IS ON ULTIMATE ISSUES. I
16 DON'T UNDERSTAND WHAT MR. SHAW MEANS ON ULTIMATE ISSUE.
17 THE GUY IS GETTING UP THERE AND TRYING TO USURP THE
18 JUDICIAL ROLE, BUT HE IS GOING TO DO IT IN A VERY
19 DIABOLICAL, PREJUDICIAL WAY. HE HAS WORKED WITH NOVELLI
20 FOR YEARS. HE HAS GOTTEN PAID THOUSANDS OF DOLLARS FROM
21 THE MAN, AND I DON'T THINK IT'S FAIR TO HAVE A MASQUERADE
22 AS AN EXPERT HERE. WHETHER HE IS QUALIFIED TO DO
23 BANKRUPTCY LAW OR NOT, THAT'S NOT THE ISSUE.

24 AND I'D ASK YOUR HONOR THAT WE TAKE IT A LOT
25 SLOWER. AND I'M SORRY. WE'VE GOT A JURY HERE. WE'VE GOT
26 SCHEDULES. AND, YOU KNOW, MY VIEW AS FAR AS TRYING TO MOVE

1 THIS ALONG, WE'VE TRIED TO DO THAT. WE'VE DONE IT WITH OUR
2 ADMISSION OF EXHIBITS. WE'VE DONE IT WITH OUR EFFICIENCY,
3 BUT THIS IS NOT RIGHT. CAN'T DO THIS BECAUSE WE'RE NOT
4 GOING TO BE ABLE TO UNRING THAT BELL WHEN HE SAYS ABOUT
5 ROGER RYMAN, WELL, LET ME TELL YOU WHAT RYMAN SHOULD HAVE
6 SAID OR THOUGHT. WHAT BUSINESS DOES HE HAVE TALKING ABOUT
7 THE LAW?

8 THE COURT: IF HE SAYS THAT.

9 MR. SHERMAN: BUT THAT'S WHERE HE IS GOING TO GO
10 BECAUSE, YOUR HONOR, I PARAPHRASED THE TESTIMONY. MR. SHAW
11 READ THE TESTIMONY. WHAT OTHER POTENTIALLY RELEVANT --
12 RELEVANT QUESTION COULD BE ASKED? I COULD THINK OF ONE --
13 AND MR. SHAW IS NOT GOING TO ASK THAT QUESTION -- WHICH IS,
14 HOW MANY TIMES DID YOU SPEAK WITH ROGER RYMAN IN THE FALL
15 OF '97? OKAY.

16 THE COURT: TAKE THAT ON CROSS.

17 MR. SHERMAN: YOUR HONOR, YOU KNOW, WE CAN'T SOLVE
18 EVERYTHING WITH CROSS. WE JUST CAN'T. BECAUSE THIS JURY
19 IS GOING TO HAVE THIS MAN USURP YOUR HONOR'S ROLE AND TALK
20 ABOUT LEGALITY, AND THAT'S NOT RIGHT.

21 THE COURT: HE HASN'T DONE THAT YET, AND I WON'T
22 LET HIM DO IT.

23 MR. SHERMAN: FINE. IF YOU'RE NOT GOING TO LET HIM
24 DO IT, THEN PLEASE PERMIT US THE OPPORTUNITY ON EACH STEP
25 OF THE WAY. MR. RIVIN IS GOING TO BE UP THERE LIKE A
26 JACK-IN-THE-BOX, AND I DON'T INTEND ANY DISRESPECT BY THAT,

1 BECAUSE --

2 THE COURT: I'M THE JACK-IN-THE-BOX.

3 MR. SHERMAN: BUT, I MEAN, THIS IS NOT RIGHT. HE
4 IS GOING TO DO HIS BEST CARNAC IMPRESSION, AND THAT'S NOT
5 RIGHT. A LAWYER OUGHT TO -- HERE IS ANOTHER WITKIN -- I
6 BET YOU IT'S THERE, SOMETHING IN WITKIN. LAWYERS SHOULDN'T
7 DO CARNAC IMPRESSIONS ON THE WITNESS STAND PRETENDING THAT
8 THEY KNOW SOMETHING; THAT THE ONLY REASON THEY KNOW IT IS
9 BECAUSE THEY'RE DOING -- TAKING THE FACTS AND THE LAW AND
10 APPLYING IT. YOU CAN'T DO THAT, NOT IN THIS CASE.

11 MR. RIVIN: I'D LIKE TO MAKE ONE STATEMENT ALSO
12 SPECIFICALLY ABOUT THIS TESTIMONY ON THE AUTOMATIC STAY AND
13 VIOLATION OF THE AUTOMATIC STAY.

14 I'M VERY CONCERNED ABOUT THE PREJUDICIAL
15 EFFECT THIS IS GOING TO HAVE. MR. SHAW HAS GONE THROUGH
16 ALL OF THESE BANKRUPTCIES TALKING ABOUT HE HAS PUT UP ON
17 THE BOARD THE FIRST NATIONWIDE BANKRUPTCY, THE ALL SEASONS
18 BANKRUPTCY, AND THE REVCON BANKRUPTCY. AND NOW -- THEN HE
19 IS TALKING ABOUT THE AUTOMATIC STAY AND HOW IT APPLIES AND
20 WHEN IT APPLIES, ET CETERA. IN NOT ONE OF THESE
21 BANKRUPTCIES HAS THE DEBTOR RAISED THE ISSUE OF VIOLATION
22 OF THE AUTOMATIC STAY, WHICH IS WHERE IT BELONGS.

23 MR. SHERMAN: AND NOW THEY'RE GOING TO DO IT WITH
24 THE STATE COURT JUDGE AND JURY.

25 MR. RIVIN: NOW THEY'RE COMING IN WITH AN EXPERT,
26 WHO IS ATTORNEY FOR TWO OF THESE ENTITIES, WHO DIDN'T RAISE

1 THE ISSUE OF AUTOMATIC STAY AT THAT TIME, AND IN A STATE
2 COURT PROCEEDING SUDDENLY SAYS -- PREPARED TO SAY COAST
3 VIOLATED THE STAY. THAT'S TOTALLY INAPPROPRIATE.

4 MR. SHERMAN: THAT'S NOT CROSS-EXAMINATION, BECAUSE
5 THE JURY IS NOT GOING TO FOLLOW THAT ONE.

6 THE COURT: IF YOU FOLLOW THROUGH WITH THAT KIND OF
7 THINKING, YOU'RE GOING TO DISCREDIT HIM SO BADLY THAT --

8 MR. SHERMAN: DON'T MAKE US DO THAT, BECAUSE THAT'S
9 GOING TO PREJUDICE THE JURY.

10 THE COURT: WHY? THAT'S YOUR CASE TO TRY.

11 MR. SHERMAN: NO, THAT'S NOT OUR CASE TO TRY.
12 THAT'S YOUR HONOR'S CASE TO INSTRUCT THE JURY ON.

13 THE COURT: INSTRUCT THE JURY, DEPENDING UPON WHAT
14 INSTRUCTIONS ARE SUBMITTED TO ME AT THE END OF THIS TRIAL.

15 MR. SHERMAN: ABSOLUTELY.

16 THE COURT: AND I'M NOT GOING TO PRE-INSTRUCT THE
17 JURY.

18 MR. SHERMAN: OF COURSE NOT.

19 THE COURT: I'LL NOT ALLOW HIM TO ADVISE THE JURY
20 AS TO THE LAW.

21 MR. SHERMAN: AND I HOPE THAT MR. MALPASS DOESN'T
22 PRE-INSTRUCT THE JURY.

23 THE COURT: HE ISN'T GOING TO DO THAT.

24 MR. RIVIN: HE IS STARTING TO DO THAT. THAT'S PART
25 OF WHAT WE HEARD THIS MORNING.

26 THE COURT: THEN YOU'RE GOING TO HAVE TO RAISE YOUR

1 OBJECTIONS.

2 MR. SHERMAN: OKAY. FINE.

3 THE COURT: OKAY.

4 MR. SHERMAN: WE WANTED TO MAKE SURE THAT YOUR
5 HONOR SAW THIS BECAUSE EITHER THE MAN WAS ASLEEP AT THE
6 SWITCH, OR THERE WAS NO AUTOMATIC STAY VIOLATION.

7 MR. SHAW: YOUR HONOR, I JUST WANT TO PUT ONE LAST
8 THING ON THE RECORD ON THE AUTOMATIC STAY BECAUSE WE'RE
9 GOING TO HAVE A RECORD, AND I DON'T WANT THE RECORD TO
10 REFLECT THAT I SAT SILENT. SO I'LL BE VERY BRIEF.

11 THEY OPENED THE DOOR TO THE PREJUDICE.

12 MR. SHERMAN ASKED AT PAGE 2504, LINES 4 THROUGH 16:

13 "NOW, IT GOES ON TO SAY THAT THE COURT
14 ORDERED THE TRUSTEE TO NOTIFY THE MEMBERS THAT THEIR
15 CONTRACTS WOULD BE TERMINATED."

16 THAT WAS THIS NOTICE OF REJECTION THAT HE
17 HAS GOT UP ON THE BOARD.

18 "IS THAT SOMETHING YOU UNDERSTOOD IN THE
19 FALL OF '97 THAT THAT WAS GOING ON?"

20 "ANSWER: VERY CLEAR.

21 "QUESTION: WAS THAT CONFUSING TO YOU?"

22 "ANSWER: NO, IT WASN'T. AND, AGAIN, I
23 MENTIONED IT YESTERDAY. I WAS TALKING ABOUT THE" --

24 THE COURT: SLOWER.

25 MR. SHAW: "CONTRACTS BEING VOIDED.

26 "QUESTION: AND THE CONTRACTS THAT WERE

1 BEING VOIDED WERE WHAT CONTRACTS?

2 "ANSWER: THE HOME RESORT MEMBERSHIP
3 CONTRACTS OF ALL SEASONS."

4 THAT IS HIS UNDERSTANDING OF THE LEGALITY.
5 AND I WON'T READ AGAIN FROM PAGE 2528 THAT SAYS HE
6 UNDERSTOOD THE LEGALITY OF THIS.

7 NOW WE HAVE A PERCIPIENT WITNESS TO REBUT
8 THAT. THAT'S ONE.

9 NUMBER TWO, THIS AUTOMATIC STAY, MR. RIVIN
10 CITED ME A CASE THAT MR. DURAN HAS POINTED OUT. IT'S THE
11 GLOBE -- IN RE GLOBE INVESTMENT AND LOAN COMPANY, INC.,
12 VERSUS MAGNONI, M-A-G-N-O-N-I, CASE, UNITED STATES COURT OF
13 APPEALS, 867 F.2D 556, 9TH CIRCUIT, 1989. AND IT SAYS
14 EXACTLY THE OPPOSITE OF WHAT MR. SHERMAN JUST SAID; THAT
15 THEY HAD A DUTY TO RAISE IT IN THE BANKRUPTCY COURT.

16 THEIR CASE SAYS THAT THE AUTOMATIC STAY
17 OPERATES IN FAVOR OF THE DEBTOR AND ESTATE. IT THEN SAYS
18 THAT THE AUTOMATIC SAY IS FOR THE BENEFIT OF THE DEBTOR,
19 AND IF IT CHOOSES TO IGNORE STAY VIOLATIONS, OTHER PARTIES
20 CANNOT USE SUCH VIOLATIONS TO THEIR ADVANTAGE, END OF
21 QUOTES.

22 THERE'S NO DUTY. MR. SHERMAN LED THIS COURT
23 TO BELIEVE, BASED ON THEIR OWN CASE, THAT THEY HAD A --
24 THAT MR. MALPASS IS GOING TO GET EXCORIATED ON
25 CROSS-EXAMINATION BECAUSE HE DIDN'T RAISE THE AUTOMATIC
26 STAY, AND HE HAD A DUTY TO RAISE THE AUTOMATIC STAY IN THE

1 BANKRUPTCY COURT. THAT IS JUST NOT THE LAW. AND I'M SORRY
2 TO GO INTO IT, YOUR HONOR, BUT I DIDN'T WANT THE RECORD TO
3 REFLECT THAT I SAT SILENT WHEN MR. SHERMAN MADE HIS
4 STATEMENT.

5 MR. SHERMAN: AND I'M SURE MR. MALPASS WILL THEN
6 EXPLAIN ALL OF THAT TO THE JURY WITH THE PROPER CITATION.

7 MR. SHAW: IT SHOULD BE ON CROSS-EXAMINATION.

8 THE COURT: OKAY.

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
10 COURT IN THE PRESENCE OF THE JURY:)

11 THE COURT: YOU MAY PROCEED, COUNSEL.

12 MR. SHAW: THANK YOU, YOUR HONOR.

13 Q LET'S -- MR. MALPASS, DO YOU REMEMBER WE
14 TALKED ABOUT THE EXHIBIT 7, THE THOUSAND ADVENTURES
15 DISSOLUTION LETTER?

16 A YES.

17 Q NOW I'D LIKE TO SHOW YOU MR. ROGER RYMAN'S
18 TESTIMONY FROM JUNE 1, 2000, PAGE 2470, LINES 3 THROUGH
19 16.

20 AND THE QUESTION WAS BY MR. SHERMAN:

21 "NOW, LET'S GO BACK UP TO THE TOP.

22 "HERE'S THE REFERENCE TO" -- IN QUOTES --

23 "'TURMOIL YOU MAY BE EXPERIENCING AS A RESULT OF THE
24 DISSOLUTION OF THOUSAND ADVENTURES RESORTS.'

25 "WHY DID YOU CHOOSE TO USE THE WORD

26 'DISSOLUTION'?

1 "ANSWER: WE USED IT A COUPLE OF TIMES, AND
2 IT'S BEEN QUESTIONED. TO ME WHEN SOMETHING IS DISSOLVED,
3 IT'S JUST GONE. AND IF THE KINDS OF THINGS THAT WE WERE
4 SEEING WITH THE FORECLOSURES, THE BANKRUPTCIES, THE -- NOT
5 ABLE TO GET AHOLD OF OWNERS, ORIGINAL LENDERS AND OWNERS OF
6 THE RESORTS, TAKING THEM BACK LEGALLY, THINGS OF THAT, THE
7 SYSTEM HAD JUST FALLEN APART. IT JUST WASN'T THERE ANY
8 LONGER, HAD BEEN DISSOLVED," END OF QUOTES.

9 NOW, AS A WITNESS WITH YOUR OWN PERSONAL
10 KNOWLEDGE OF THE BANKRUPTCIES THAT OCCURRED IN THIS CASE,
11 HAD THE SYSTEM JUST FALLEN APART?

12 MR. RIVIN: OBJECTION.

13 THE WITNESS: NO.

14 MR. RIVIN: LACK OF FOUNDATION.

15 THE COURT: SUSTAINED.

16 BY MR. SHAW: Q WAS THERE A DISSOLUTION --

17 A NO.

18 Q -- IN THE BANKRUPTCY?

19 A NO.

20 Q IS WHAT MR. RYMAN SAID TRUE?

21 MR. RIVIN: THE SAME OBJECTION. LACK OF
22 FOUNDATION. ALSO IRRELEVANT.

23 THE COURT: SUSTAINED.

24 BY MR. SHAW: Q WAS THERE A DISSOLUTION IN THE
25 BANKRUPTCY?

26 MR. RIVIN: SAME OBJECTION, YOUR HONOR.

1 THE COURT: SUSTAINED.

2 BY MR. SHAW: Q THESE BANKRUPTCIES WERE IN A
3 CHAPTER 11, WEREN'T THEY?

4 A YES, THEY WERE.

5 Q THE RESORTS WERE STILL THERE?

6 A YES, THEY WERE.

7 Q THE MEMBERSHIP CONTRACTS WITH THE RESORTS
8 WERE STILL THERE?

9 A YES.

10 Q NOTHING HAD FALLEN APART AS FAR AS YOU KNOW?

11 A NO.

12 Q IS THAT CORRECT?

13 A NO.

14 Q DO YOU HAVE ANY UNDERSTANDING OR ANY
15 KNOWLEDGE AS TO WHY MR. RYMAN WOULD WRITE A LETTER TO
16 34,000 OF PLAINTIFFS' MEMBERS AND TELL THEM THAT ALL OF THE
17 RESORTS HAD DISSOLVED AND FALLEN APART?

18 A YES.

19 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

20 THE COURT: SUSTAINED.

21 BY MR. SHAW: Q IN FACT, THE PURPOSE FOR CHAPTER
22 11 IS JUST THE OPPOSITE OF WHAT MR. RYMAN WAS WRITING
23 ABOUT; ISN'T IT?

24 MR. RIVIN: OBJECTION. CALLS FOR IMPROPER LEGAL
25 CONCLUSION. LACK OF FOUNDATION.

26 THE COURT: OVERRULED ON THAT.

1 THE WITNESS: YES. THE PURPOSE OF CHAPTER 11 IS TO
2 KEEP THINGS FUNCTIONING SO THEY DON'T DISSOLVE, AND
3 DISSOLUTION IS NOT GOING ON IN ANY WAY, SHAPE OR FORM
4 REGARDLESS OF WHAT HAPPENS IN THESE BANKRUPTCY PROCEEDINGS.

5 BY MR. SHAW: Q AND IT DIDN'T GO ON IN ANY OF
6 THESE BANKRUPTCIES THAT MR. RYMAN WROTE ABOUT, DID IT?

7 A NO. QUITE THE OPPOSITE. CERTAINLY IN
8 THOUSAND ADVENTURES THERE WAS A PLAN CONFIRMED. REVCOR
9 THERE WAS A PLAN CONFIRMED. THEY CONTINUED IN BUSINESS.

10 MR. RIVIN: OBJECTION. THIS IS THE IMPROPER
11 TESTIMONY THAT THE COURT HAD REFUSED TO PERMIT --

12 THE COURT: SUSTAINED.

13 MR. RIVIN: -- PERMIT BEFORE. MOVE TO STRIKE THE
14 TESTIMONY.

15 THE COURT: MOTION GRANTED. THE JURY WILL
16 DISREGARD THE LAST ANSWER.

17 MR. RIVIN: THANK YOU, YOUR HONOR.

18 BY MR. SHAW: Q WELL, TO YOUR OWN PERSONAL
19 KNOWLEDGE, THE RESORTS WERE STILL THERE FUNCTIONING, DOING
20 BUSINESS?

21 A YES.

22 Q THE MEMBERSHIP CONTRACTS WERE STILL THERE IN
23 PLACE WITH THE RESORTS?

24 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. ALSO
25 ASKED AND ANSWERED.

26 THE COURT: SUSTAINED.

1 BY MR. SHAW: Q NOW, THESE LETTERS -- THE LETTER
2 THAT WE LOOKED AT WAS WRITTEN IN THE -- I'M SORRY. THE
3 EXHIBIT 7 LETTER WAS WRITTEN -- I'M TRYING TO FIND THE
4 DATE.

5 CAN YOU GO BACK TO IT? JUST GO BACK TO
6 EXHIBIT 7 FOR ME.

7 THAT LETTER WAS WRITTEN SEPTEMBER 12TH,
8 1997; IS THAT CORRECT?

9 A YES. THAT'S WHAT IT SAYS AT THE TOP.

10 MR. RIVIN: YOUR HONOR, OBJECTION. LACK OF
11 FOUNDATION. THIS WITNESS HAS NOT TESTIFIED THAT HE HAS ANY
12 KNOWLEDGE OF THAT LETTER. LACK OF FOUNDATION, AND --

13 THE COURT: SUSTAINED.

14 MR. RIVIN: -- AND I THINK ANY QUESTIONS REGARDING
15 THIS LETTER ARE UNFOUNDED FOR THAT REASON.

16 THE COURT: PERHAPS YOU CAN LAY SOME FOUNDATION.

17 BY MR. SHAW: Q THIS IS THE LETTER THAT MR. RYMAN
18 WAS TALKING ABOUT?

19 A YES.

20 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

21 THE COURT: SUSTAINED.

22 BY MR. SHAW: Q LET'S MOVE ON TO DEFENDANTS'
23 EXHIBIT 949-077.

24 THE COURT: WHAT'S THE BATES NUMBER ON THAT?

25 MR. SHAW: 077. I APOLOGIZE. WE'LL FIND IT.

26 MADAME CLERK, I HAVE A BATES STAMP NUMBER OF

1 8426.

2 THE CLERK: THANK YOU.

3 BY MR. SHAW: Q MR. MALPASS, I'D LIKE YOU TO JUST
4 FOCUS ON ME JUST FOR A SECOND. I KNOW MR. DURAN HAS PUT IN
5 FRONT OF YOU THE EXHIBIT, BUT I WANT TO LAY SOME FOUNDATION
6 FOR THE EXHIBIT, IF I CAN, AND TALK ABOUT MR. RYMAN'S
7 TESTIMONY ON JUNE 1ST, 2000, FROM LINE -- BEGINNING AT LINE
8 17, PAGE 2470, THROUGH LINE 23 ON PAGE 2471.

9 AND MR. RYMAN, IN HIS TESTIMONY, SAID AT --
10 BEGINNING AT LINE 17 IN RESPONSE TO MR. SHERMAN --
11 MR. SHERMAN SAYS, "LIKE TO SHOW YOU EXHIBIT 949-077, AND
12 79. JUST ONE PAGE. AND BATES NUMBERS 08409."

13 IS THAT THE DOCUMENT THAT YOU HAVE IN FRONT
14 OF YOU?

15 A NO. I DON'T BELIEVE SO, NO.

16 Q LET'S GO ON AND WE'LL GET THE RIGHT ONE FOR
17 YOU.

18 IT SAYS: "SWITCHING GEARS JUST A LITTLE
19 BIT, MR. RYMAN, AND MOVING AHEAD TO THE OCTOBER LETTER THAT
20 YOU'VE NOW BEEN ASKED ABOUT A LOT OF TIMES, AND THE JURY
21 HAS SEEN, WERE THERE COAST MEMBERS WHO WROTE TO COAST IN
22 RESPONSE TO THE OCTOBER LETTER?

23 "ANSWER: CERTAINLY."

24 AND THEN IF WE'LL CONTINUE ON THE NEXT PAGE,
25 IT SAYS:

26 "ANSWER: GOOD NUMBER.

1 "QUESTION: AND IS THIS ONE OF THOSE
2 RESPONSES?

3 "ANSWER: YES, IT IS.

4 "MR. SHERMAN: I'D LIKE TO PUT THAT EXHIBIT
5 UP ON THE BOARD AND MOVE IT INTO EVIDENCE, YOUR HONOR."

6 AND I'M GOING TO SKIP, IF I CAN.

7 "THIS IS A LETTER DATED OCTOBER 28, 1997,
8 REGARDING COAST TO COAST MEMBERSHIP, TO JIM RANDALL."

9 IN QUOTES, "'PLEASE BE ADVISED THAT WE ARE
10 IN RECEIPT OF YOUR LETTER DATED OCTOBER 1997 REGARDING OUR
11 COAST TO COAST HOME RESORT. APPROXIMATELY TWO MONTHS AGO,
12 WE SENT A LETTER TO THOUSAND ADVENTURES, NOW TRAVEL
13 AMERICA, CHANGING OUR HOME PARK TO COAST TO COAST RESORT
14 AFFILIATED PARK, BRECKINRIDGE LAKE RESORT. TO DATE, WE
15 HAVE NOT HAD A RESPONSE. WE ARE ATTEMPTING TO CONTACT
16 TRAVEL AMERICA AGAIN BY CERTIFIED LETTER.

17 "'IN ANY EVENT, PLEASE BE ADVISED THAT WE
18 ARE IN THE PROCESS OF CHANGING OUR HOME PARK.

19 "'ONCE WE HAVE CONFIRMATION, YOU WILL BE
20 NOTIFIED IMMEDIATELY.' FROM THE SINGERS."

21 NOW, THIS IS THE THOUSAND ADVENTURES
22 BANKRUPTCY THAT YOU HAVE PERSONAL EXPERIENCE WITH?

23 MR. RIVIN: OBJECTION. COMPLETE LACK OF FOUNDATION
24 FOR THIS WITNESS TO TESTIFY TO THIS.

25 THE COURT: SUSTAINED.

26 BY MR. SHAW: Q WELL, THE -- MR. RYMAN IS TALKING

1 ABOUT LETTERS THAT WERE SENT IN OCTOBER OF 1997; IS THAT
2 CORRECT?

3 MR. RIVIN: THE SAME OBJECTION, YOUR HONOR. LACK
4 OF FOUNDATION.

5 THE COURT: SUSTAINED.

6 MR. SHAW: WE'LL COME BACK TO THE LETTER WHEN WE
7 FIND IT.

8 LET'S LOOK AT 949-016 AND 018.

9 MR. SHERMAN: COULD WE GET THE BATES NUMBER, PLEASE.

10 MR. SHAW: COUNSEL, I THINK YOU PUT IT ON THE
11 RECORD WHEN YOU INTRODUCED IT INTO EVIDENCE.

12 MR. RIVIN: WE'D LIKE TO TAKE A LOOK AT THE PAGE
13 BEFORE IT GOES UP ON THE SCREEN.

14 THE COURT: ALL RIGHT. SHOW IT TO COUNSEL BEFORE
15 YOU PUT IT UP.

16 MR. SHAW: 2501, LINE 26, THROUGH 2504, LINE 16,
17 THE TRIAL TESTIMONY.

18 MR. RIVIN: OH, OKAY. SORRY. GO AHEAD. THAT'S
19 FINE.

20 BY MR. SHAW: Q OKAY. MR. MALPASS, LET'S START AT
21 THE BOTTOM OF PAGE 2501, AND MR. SHERMAN -- "WHEREUPON
22 EXHIBIT 949-016 THROUGH 019 WAS RECEIVED IN EVIDENCE.

23 "BY MR. SHERMAN: LET'S PUT UP ON THE SCREEN
24 THE FIRST PAGE OF WHAT YOU RECEIVED, MR. RYMAN. LIEUTENANT
25 COLONEL F. DELEMOSE, JR., IN DAVENPORT, FLORIDA; IS THAT
26 RIGHT?

1 "ANSWER: CORRECT.

2 "QUESTION: AND HE IS WRITING TO COAST TO
3 COAST, AND THE FIRST -- FIRST PARAGRAPH, 'ENCLOSED IS A
4 LETTER FROM ALL SEASONS STATING THAT ALL MEMBERSHIP
5 CONTRACTS ARE TERMINATED.'

6 "NOW, IS THAT WHAT YOU WERE LED TO
7 BELIEVE" -- HEARING. I'M SORRY -- "THAT YOU WERE HEARING
8 ABOUT IN THE FALL OF 1997?

9 "ANSWER: YES, WE WERE.

10 "QUESTION: LIKE TO GO TO THE THIRD AND
11 FOURTH PAGES OF THIS DOCUMENT.

12 DURING THE FALL OF 1997, WERE YOU RECEIVING
13 COMMUNICATIONS FROM MEMBERS IN WHICH THEY WERE REFERENCING
14 THE FACT THAT MEMBERSHIP CONTRACTS WERE BEING CANCELLED?

15 "ANSWER: THAT'S CORRECT.

16 "QUESTION: AND IS THIS ONE OF THE KINDS OF
17 DOCUMENTS THAT YOU WERE RECEIVING FROM MEMBERS?

18 "ANSWER: EXACTLY. AND THIS IS HOW WE FIND
19 OUT. THEY WOULD SEND A DOCUMENT LIKE THIS THAT THEY HAD
20 RECEIVED.

21 "QUESTION: OKAY. SO LET'S -- LET'S LOOK AT
22 THIS DOCUMENT. THIS SAYS, 'THE UNITED STATES BANKRUPTCY
23 COURT, CENTRAL DISTRICT OF CALIFORNIA, IN RE ALL SEASONS
24 RESORTS, INC.'

25 "IT'S ADDRESSED TO ALL MEMBERS OF ALL
26 SEASONS. (SIC)

1 "NOW, DID YOU UNDERSTAND BACK IN 1997 THAT
2 PEOPLE LIKE LIEUTENANT COLONEL DELEMOSE WHO WERE WRITING IN
3 EITHER WERE MEMBERS OR FORMER MEMBERS OF ALL SEASONS?

4 "ANSWER: YES.

5 "QUESTION: AND SO THIS -- THIS IS ADDRESSED
6 TO ALL MEMBERS OF ALL SEASONS RESORTS, AND LET'S GO THROUGH
7 THIS.

8 "SAYS HERE, THE LAST PARAGRAPH, 'ON AUGUST
9 4, 1997, THERE WAS A TRUSTEE APPOINTED.'

10 "HAD YOU BEEN AWARE BY THE FALL OF 1997 THAT
11 ALL SEASONS HAD A TRUSTEE APPOINTED OVER IT?

12 "ANSWER: YES.

13 "QUESTION: AND THEN IT GOES ON TO SAY THAT
14 THERE WAS SOME EFFORT MADE TO BORROW MONEY BY THIS
15 BANKRUPTCY TRUSTEE.

16 "WERE YOU AWARE OF THAT GENERALLY IN THE
17 FALL OF 1997?

18 "ANSWER: GENERALLY. I UNDERSTOOD THE
19 PROCESS AND WHAT WAS GOING ON.

20 "QUESTION: AND THEN IT SAYS, 'WHILE THE
21 TRUSTEE WAS ATTEMPTING TO SELL THE DEBTOR'S CAMPGROUNDS
22 WHILE THEY WERE STILL IN OPERATION.

23 "DO YOU SEE THAT?

24 "ANSWER: YES.

25 "QUESTION: WERE YOU MADE AWARE THAT THERE
26 WAS SOME EFFORT BEING UNDERTAKEN IN THE FALL OF 1997 TO

1 SELL ALL OF -- (SIC)

2 "ANSWER: YES, I DID. I THINK I REFERRED TO
3 IT A NUMBER OF TIMES YESTERDAY. THEY WERE PUT ON THE
4 AUCTION BLOCK.

5 "NOW, IT GOES ON TO SAY THAT THE COURT
6 ORDERED THE TRUSTEE TO NOTIFY THE MEMBERS THAT THEIR
7 CONTRACTS WOULD BE TERMINATED.

8 "IS THAT SOMETHING YOU UNDERSTOOD IN THE
9 FALL OF 1997 THAT WAS GOING ON?

10 "ANSWER: VERY CLEAR.

11 "QUESTION: WAS THAT CONFUSING TO YOU?

12 "ANSWER: NO, IT WASN'T. AND, AGAIN, I
13 MENTIONED IT YESTERDAY. I WAS TALKING ABOUT CONTRACTS
14 BEING VOIDED.

15 "QUESTION: AND THE CONTRACTS THAT WERE
16 BEING VOIDED WERE WHAT CONTRACTS?

17 "ANSWER: THE HOME RESORT MEMBERSHIP
18 CONTRACTS OF ALL SEASONS.

19 NOW, YOU WERE THE ALL SEASONS LAWYER IN THE
20 FALL OF 1997; IS THAT CORRECT?

21 A YES, I WAS.

22 Q AND YOU DEALT WITH THE NOTICE OF REJECTION
23 OF CONTRACTS THAT MR. RYMAN IS TALKING ABOUT IN HIS
24 TESTIMONY?

25 A YES, I RECEIVED IT. I WAS AWARE OF IT, AND
26 I'VE REVIEWED IT SINCE THEN, YES.

1 Q NOW, THAT NOTICE OF REJECTION, WHAT -- AS
2 THE LAWYER FOR ALL SEASONS RESORT, IN DEALING WITH THAT,
3 YOU HAD TO DEAL WITH THAT NOTICE OF REJECTION?

4 MR. RIVIN: OBJECTION, IRRELEVANT. IMPROPER LEGAL
5 OPINION.

6 THE COURT: HE HASN'T EXPRESSED AN OPINION.

7 MR. RIVIN: HE IS NOT. I WITHDRAW THAT OBJECTION.

8 THE WITNESS: YES, MR. SHAW, I DEALT WITH IT.

9 BY MR. SHAW: Q AND IS MR. RYMAN CORRECT IN WHAT
10 HE SAYS IN HIS TESTIMONY, THAT THE CONTRACTS WERE VOIDED?

11 A NO.

12 MR. RIVIN: OBJECTION. IMPROPER LEGAL OPINION.

13 THE COURT: SUSTAINED.

14 MR. RIVIN: ASK THAT THE WITNESS'S ANSWER BE
15 STRICKEN.

16 THE COURT: MOTION GRANTED.

17 BY MR. SHAW: Q MR. RYMAN SAYS, AND I QUOTE, LINES
18 13 THROUGH 16:

19 "AND THE CONTRACTS THAT WERE BEING VOIDED
20 WERE WHAT CONTRACTS?

21 "ANSWER: THE HOME RESORT MEMBERSHIP
22 CONTRACTS OF ALL SEASONS," END OF QUOTES.

23 TO YOUR UNDERSTANDING, TO YOUR KNOWLEDGE, AS
24 THE LAWYER AT THAT TIME, IS THAT STATEMENT BY MR. RYMAN
25 TRUE?

26 A NO.

1 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.
2 IMPROPER LEGAL OPINION.

3 THE COURT: SUSTAINED.

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

5 THE COURT: YOU MAY.

6 (DISCUSSION OFF THE RECORD.)

7 BY MR. SHAW: Q MR. MALPASS, I'D LIKE TO GO TO
8 MR. RYMAN'S LETTER OF NOVEMBER 5, 1997, THAT'S IN EVIDENCE
9 AS EXHIBIT 1563, PAGE 153. AND THE BATES STAMP NUMBER IS
10 00365.

11 A YES, I HAVE THAT.

12 MR. SHAW: MR. O'CONNOR, CAN YOU PUT THAT ON THE
13 BOARD.

14 Q NOW, THIS IS THE NOVEMBER 5TH, 1997, LETTER
15 FROM MR. RYMAN WHERE HE SAYS, "WE REJECT ANY TURMOIL YOU
16 MAY BE EXPERIENCING AS A RESULT OF THE DISSOLUTION OF ALL
17 SEASONS RESORTS."

18 THAT'S THE ALL SEASONS RESORTS THAT YOU WERE
19 THE LAWYER, AND THAT CASE IS STILL PENDING?

20 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. THIS
21 WITNESS HAS NOT INDICATED THAT HE HAS ANY KNOWLEDGE
22 WHATSOEVER OF THIS LETTER.

23 THE COURT: SEE IF YOU CAN LAY SOME FOUNDATION,
24 MR. SHAW.

25 MR. SHAW: THANK YOU, YOUR HONOR.

26 Q WE KNOW THAT THE ALL SEASONS RESORTS THAT

1 YOU WERE INVOLVED IN, AND YOU TESTIFIED THAT THE AUTOMATIC
2 STAY WAS IN EFFECT PAST NOVEMBER 5, 1997?

3 A YES.

4 Q AND SO ANY -- AND THIS LETTER THAT'S ON THE
5 OVERHEAD IS DATED NOVEMBER 5, 1997?

6 A YES, IT IS.

7 Q ALL RIGHT. LET'S LOOK AT MR. RYMAN'S
8 TESTIMONY ON PAGE 2513 THROUGH 2514. AND WE WILL GO TO
9 PAGE -- WE'LL END AT PAGE 2515, LINE 7.

10 NOW, AT THE TOP OF THE PAGE, MR. SHERMAN IS
11 TALKING ABOUT EXHIBIT 1563-153, THE LETTER DATED NOVEMBER
12 5, 1997, FROM ROGER RYMAN AS BEING RECEIVED.

13 THAT'S THE LETTER YOU HAVE IN FRONT OF YOU?

14 A YES.

15 Q AND THAT'S THE LETTER WE JUST LOOKED AT ON
16 THE OVERHEAD?

17 A YES.

18 Q "MR. SHERMAN: OKAY. SO THIS IS A LETTER
19 THAT YOU SENT TO COAST TO COAST MEMBERS; RIGHT?

20 "ANSWER: THAT'S CORRECT.

21 "QUESTION: DID YOU SEND THIS TO ALL SEASONS
22 MEMBERS?

23 "ANSWER: YES, WE DID.

24 "QUESTION: LET ME REPHRASE THAT.

25 "DID YOU SEND THIS LETTER TO ALL MEMBERS OF
26 ALL SEASONS RESORTS WHO ALSO HAD A CAMP COAST TO COAST

1 MEMBERSHIP?

2 "ANSWER: YES, WE DID.

3 "QUESTION: SO YOU WERE SENDING IT TO COAST
4 MEMBERS?

5 "ANSWER: THAT'S CORRECT.

6 "QUESTION: OKAY. BEGINS, 'BECAUSE YOU ARE
7 A VALUABLE PART OF THE COAST FAMILY OF MEMBERS, WE REGRET
8 ANY TURMOIL YOU MAY BE EXPERIENCING AS A RESULT OF THE
9 DISSOLUTION OF THE ALL SEASONS RESORTS.'

10 "SEE THAT?

11 "ANSWER: YES, I DO.

12 "QUESTION: I WANT TO STOP YOU RIGHT THERE.

13 "MR. RYMAN, ARE YOU A BANKRUPTCY EXPERT?
14 YOU KNOW THE DIFFERENCE BETWEEN A CHAPTER 7 AND A CHAPTER
15 11?

16 "ANSWER: I DO KNOW THAT, GENERALLY.

17 "QUESTION: DO YOU KNOW THE DIFFERENCE
18 BETWEEN A LIQUIDATING CHAPTER 11 AND AN ASSUMPTION OF
19 CONTRACTS OR REJECTION OF CONTRACTS?

20 "ANSWER: CERTAINLY NOT.

21 "QUESTION: OKAY. WELL, DID YOU BELIEVE
22 THAT ALL SEASONS WAS BEING DISSOLVED AS OF THAT POINT IN
23 TIME?

24 "ANSWER: THERE'S NO QUESTION ABOUT IT. WE
25 HAD SEEN ALL OF THE BANKRUPT -- THEY WERE SELLING ON THE
26 27TH OF OCTOBER, AND THE MEMBER CONTRACTS WERE BEING

1 VOIDED, OR THEY WERE SCHEDULED -- THE MEMBER CONTRACTS WERE
2 BEING VOIDED.

3 "QUESTION: AND WHY DID YOU SEND THIS LETTER
4 TO COAST MEMBERS?

5 "ANSWER: LIKE A NUMBER OF OTHER LETTERS,
6 I'VE SAID BEFORE, TO KIND OF GIVE THEM A WARM AND FUZZY,
7 THE -- HEY, SOMEBODY'S THERE. WE'RE TAKING CARE OF YOU.
8 WE'RE MONITORING THE SYSTEM. DON'T WORRY. YOU, KNOW,
9 WE'LL HELP YOU WHEN THE TIME COMES.

10 "QUESTION: LET'S --

11 "ANSWER: IF WE DON'T SEND SOMETHING LIKE
12 THIS, I CAN SAY -- TELL YOU, IT MINIMIZE -- BY SENDING
13 SOMETHING LIKE THIS, NOT ONLY DID IT HAVE THEM FEEL GOOD,
14 IT MINIMIZES A -- ARE SEEING ALL OF THIS THING" --

15 MR. RIVIN: WE'RE MISSING SOME LINES HERE.

16 MR. SHAW: COUNSEL, IT'S THE SAME IN MY
17 TRANSCRIPT.

18 "ALL OF THIS THING FALLING APART.

19 "QUESTION: WHEN YOU SAY 'SEEING THIS THING
20 FALLING APART,' YOU'RE REFERRING TO ALL SEASONS?

21 "ANSWER: CORRECT.

22 "QUESTION: DID YOU BELIEVE THAT ALL SEASONS
23 WAS FALLING APART?

24 "ANSWER: IT HAD FALLEN APART BY THIS TIME,"
25 END OF QUOTES.

26 NOW, WAS IT YOUR UNDERSTANDING THAT THE ALL

1 SEASONS RESORTS WERE FALLING APART?

2 MR. RIVIN: OBJECTION. ASKED AND ANSWERED.

3 THE COURT: SUSTAINED.

4 BY MR. SHAW: Q ALL SEASONS RESORTS WAS STILL IN
5 BANKRUPTCY AS OF -- CHAPTER 11 BANKRUPTCY AS OF NOVEMBER
6 5TH, 1997?

7 A IT WAS STILL IN BANKRUPTCY, YES.

8 Q AUTOMATIC STAY WAS STILL IN EFFECT?

9 A YES.

10 MR. RIVIN: OBJECTION. IMPROPER LEGAL OPINION.

11 THE COURT: SUSTAINED.

12 MR. SHAW: YOUR HONOR, I'M ASKING --

13 THE COURT: AS TO THE STAY, YES, THAT'S CORRECT.

14 YOU MAY ANSWER THAT.

15 BY MR. SHAW: Q WAS THE -- THE AUTOMATIC STAY WAS
16 STILL IN EFFECT WHEN MR. RYMAN WROTE HIS NOVEMBER 5TH,
17 1997, LETTER?

18 A YES, DEFINITELY.

19 Q AND IT'S YOUR UNDERSTANDING THAT MR. RYMAN'S
20 19 -- NOVEMBER 5TH, 1997, LETTER WAS A LETTER TO THE
21 MEMBERS WHO HAD CONTRACTS WITH ALL SEASONS RESORTS?

22 MR. RIVIN: OBJECTION. AGAIN, LACK OF FOUNDATION
23 AS TO THIS WITNESS, THIS WITNESS'S ABILITY TO TESTIFY.

24 THE COURT: SUSTAINED ON THAT.

25 BY MR. SHAW: Q YOU READ -- YOU SAW MR. RYMAN'S
26 TESTIMONY; YOU READ IT?

1 THINK TESTIFIED THAT -- THAT YOU BELIEVE THAT YOU WERE --
2 WHAT YOU DID WAS LEGALLY APPROPRIATE, OR WORDS TO THAT
3 EFFECT?

4 "ANSWER: YES.

5 "QUESTION: OKAY. AND DID YOU ALSO BACK
6 THEN CONSIDER THE LEGAL IMPLICATIONS OF WHAT YOU WERE
7 DOING -- GOING TO DO BEFORE YOU CAME TO THE CONCLUSIONS
8 THAT WHAT YOU DID WAS LEGALLY APPROPRIATE?

9 "ANSWER: THE LEGAL IMPLICATIONS. COULD YOU
10 CLARIFY ON THAT, PLEASE?

11 "QUESTION: WELL, THE POTENTIAL THAT IF WHAT
12 YOU WERE GOING TO DO WAS ILLEGAL, THAT YOU AND THE REST OF
13 THE ADAMS COMPANIES COULD BE SUED, THE LEGAL IMPLICATIONS?

14 "ANSWER: I UNDERSTOOD WHAT WE WERE DOING,
15 AND I UNDERSTOOD THAT -- I GUESS, YES. IF WE WERE WRONG,
16 THEN -- THEN WE'D BE GUILTY OF SOMETHING."

17 NOW, IS MR. RYMAN CORRECT THAT IF HE WAS
18 WRONG IN WHAT HE DID WITH THOSE 35,000 LETTERS, THAT HE
19 WOULD BE GUILTY OF SOMETHING?

20 MR. RIVIN: OBJECTION.

21 THE COURT: SUSTAINED.

22 BY MR. SHAW: Q MR. RYMAN SENT THESE LETTERS, AND
23 THESE LETTERS WERE ALL SENT DURING THE AUTOMATIC STAY THAT
24 WAS IN EFFECT?

25 A YES.

26 Q ISN'T THAT TRUE?

1 A YES.

2 Q AND YOU WERE AWARE AND YOU'VE SEEN
3 MR. DIAMOND'S LETTER TO PAT BUTLER, EXHIBIT 1719 -- AND I'D
4 LIKE THAT TO BE BROUGHT UP.

5 AND YOU SAW MR. RYMAN'S RESPONSE TO
6 MR. DIAMOND'S LETTER; THAT WAS IN THE 1992 TIME PERIOD?

7 A YES. I'VE SEEN THOSE DOCUMENTS, YES.

8 Q I'D LIKE TO TAKE A LOOK AT IN EVIDENCE
9 EXHIBIT 1719.

10 MR. RIVIN: YOUR HONOR, ALL OF THIS IS, AGAIN,
11 IMPROPER EXPERT TESTIMONY, NOT PERCIPIENT TESTIMONY.

12 PLAINTIFFS HAVE INDICATED --

13 THE COURT: WELL, WE'VE DISCUSSED THIS IN CHAMBERS,
14 AND I'M GOING TO ALLOW THE QUESTIONS TO BE ASKED SUBJECT TO
15 YOUR OBJECTIONS.

16 MR. SHAW: THIS IS THE FOUNDATION FOR THIS
17 WITNESS'S TESTIMONY.

18 THE COURT: LET'S GO.

19 MR. RIVIN: BUT IT'S THE FOUNDATION FOR HIS
20 TESTIMONY AS AN EXPERT. I WOULD HOPE WE'D SEE SOME
21 FOUNDATION FOR HIS TESTIMONY AS A PERCIPIENT WITNESS, WHICH
22 IS WHAT THIS IS ON, BASICALLY WHAT HE IS GOING TO TESTIFY
23 ABOUT AT THIS TIME.

24 BY MR. SHAW: Q LET'S -- MR. O'CONNOR, WOULD YOU
25 BLOW UP -- THIS IS THE LETTER, JANUARY 30, 1992, TO
26 MR. J. PATRICK BUTLER, PRESIDENT OF COAST TO COAST, IN THE

1 ALL SEASONS RESORTS, INC.

2 THERE WAS A PREVIOUS 1990 BANKRUPTCY?

3 A YES, THERE WAS.

4 Q AND YOU WERE AWARE OF THAT?

5 A OH, YES.

6 Q AND THAT WAS -- MR. JOSEPH WAS INVOLVED?

7 A YES. HE WAS THE TRUSTEE.

8 Q HE WAS THE TRUSTEE?

9 A YES.

10 Q I'M GOING TO SKIP DOWN TO THE BOTTOM OF THE
11 PAGE BECAUSE WE'VE SEEN THIS LETTER BEFORE.

12 "THE TRUSTEE HAS INSTRUCTED THAT A LIST OF
13 THE ALL SEASON RESORTS MEMBERS IN QUESTION BE ATTACHED FOR
14 YOUR REFERENCE. MR. JOSEPH REQUESTS YOUR ASSISTANCE IN
15 ENSURING THAT NO MEMBERS FROM THE LIST BE ALLOWED TO CHANGE
16 THEIR COAST TO COAST MEMBERSHIP FROM ALL SEASONS RESORTS TO
17 ANY OTHER CAMP CLUB WITHOUT WRITTEN AUTHORIZATION FROM THE
18 TRUSTEE.

19 "IN ORDER TO FACILITATE OUR INVESTIGATION OF
20 THE MATTER, IT IS FURTHER REQUESTED THAT WE BE NOTIFIED OF
21 ANY ATTEMPTS MADE TO TRANSFER ANY ALL SEASONS RESORTS
22 MEMBERS TO ANY OTHER CAMP CLUB. THE TRUSTEE'S
23 INVESTIGATION INTO THIS MATTER IS CONTINUING. HOWEVER, YOU
24 SHOULD BE ADVISED THAT HE WILL SEEK APPROPRIATE INJUNCTIVE
25 AND PROTECTIVE ORDERS FROM THE UNITED STATES BANKRUPTCY
26 COURT WITH JURISDICTION OVER THE ASSETS OF ALL SEASONS

1 RESORTS, INC., TO PREVENT THE UNAUTHORIZED USE OF CUSTOMER
2 LISTS OR THE UNAUTHORIZED TRANSFER OF ANY ALL SEASONS
3 RESORTS MEMBERS.

4 "BE FURTHER ADVISED THAT THE TRUSTEE
5 RESERVES ANY AND ALL RIGHTS, INCLUDING THE RIGHT TO SEEK
6 DAMAGES, BOTH COMPENSATORY AND PUNITIVE, IN CONNECTION WITH
7 ANY UNAUTHORIZED USE OF THE PROPRIETARY INFORMATION."

8 NOW, YOU KNOW THAT MR. RYMAN, ROGER RYMAN,
9 WHOSE TESTIMONY WE WERE JUST LOOKING AT, WROTE BACK A
10 LETTER, AND YOU'VE LOOKED AT THAT AS THE BASIS FOR YOUR
11 OPINION IN THIS CASE; CORRECT?

12 A YES, I HAVE.

13 Q MR. O'CONNOR WOULD YOU TURN TO THAT NEXT
14 PAGE.

15 MR. RIVIN: YOUR HONOR, THERE IS NO PROPER QUESTION
16 BASED UPON THESE DOCUMENTS. AND WHAT WE'RE SIMPLY SEEING
17 IS A RECITATION OF THESE LETTERS AGAIN.

18 THE COURT: I HAVEN'T HEARD A QUESTION YET.

19 MR. SHAW: YOUR HONOR, 802. I HAVE TO LAY A
20 FOUNDATION FOR HIS OPINION. I'M LAYING THE FOUNDATION FOR
21 THE DOCUMENTS THAT HE REVIEWED IN PREPARATION FOR HIS --
22 THAT'S WHAT I WAS INSTRUCTED TO DO IN CHAMBERS.

23 THE COURT: ALL RIGHT.

24 MR. SHAW: AND THAT'S WHAT I'M FOLLOWING THROUGH ON.

25 THE COURT: OKAY.

26 BY MR. SHAW: Q THIS IS MR. RYMAN'S LETTER IN

1 RESPONSE TO MR. DIAMOND'S LETTER THAT WE JUST LOOKED AT.

2 "I AM WRITING IN RESPONSE TO YOUR LETTER TO
3 PAT BUTLER OF JANUARY 30, 1992. AS HE IS OUT OF TOWN, I
4 THOUGHT I SHOULD RESPOND IMMEDIATELY AND ACKNOWLEDGE
5 RECEIPT."

6 AND THEN IF YOU WOULD GO TO THE LAST PAGE,
7 MR. RYMAN SAYS, "IN LIGHT OF YOUR LETTER, ALL FUTURE
8 TRANSFER REQUESTS FROM MEMBERS OF ALL SEASONS RESORTS,
9 OTHER THAN INTERNAL ONES, WILL BE FORWARDED TO THE TRUSTEE
10 FOR APPROVAL, RATHER THAN ALL SEASONS RESORTS
11 HEADQUARTERS. APPROPRIATELY I WOULD APPRECIATE A POINT OF
12 CONTACT AND ADDRESS FOR THE TRUSTEE'S OFFICE TO FACILITATE
13 FUTURE COMMUNICATIONS."

14 DID YOU EVER -- LET ME WITHDRAW AND START
15 AGAIN.

16 YOU NEVER HAD ANY CONVERSATIONS WITH
17 MR. RYMAN WHERE HE TOLD YOU THAT BECAUSE OF THESE TWO
18 LETTERS, HE UNDERSTOOD THAT WHEN A MEMBERSHIP WERE IN
19 BANKRUPTCY, LIKE ALL SEASONS RESORTS, THAT HE COULDN'T
20 WRITE ANY LETTERS BECAUSE OF THE AUTOMATIC STAY BECAUSE HE
21 HAD BEEN TOLD IN JANUARY AND FEBRUARY OF 1992 THAT ANY
22 CONTACT HAD TO BE DONE THROUGH THE BANKRUPTCY COURT?

23 MR. RIVIN: OBJECTION. THE QUESTION IS COMPOUND,
24 AND IT'S ARGUMENTATIVE.

25 THE COURT: SUSTAINED.

26 MR. RIVIN: AND LACK OF FOUNDATION. THIS WITNESS

1 HAS NOT TESTIFIED --

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 MR. RIVIN: THANK YOU.

4 BY MR. SHAW: Q DO YOU HAVE ANY -- LET HE WITHDRAW
5 THAT, AND I'LL START AGAIN.

6 LET'S LOOK AT EXHIBIT 39.

7 IN ARRIVING AT YOUR OPINIONS IN THIS CASE,
8 YOU REVIEWED THIS EXHIBIT 39; IS THAT CORRECT?

9 A YES. IT'S HARD TO READ ON THE BOARD, BUT
10 I'VE SEEN THAT LETTER.

11 Q YOU REVIEWED THE LANGUAGE THE LAST -- THIS
12 IS IN THE FIRST NATIONWIDE RESORTS -- WELL, LET'S GO TO
13 THAT LAST PARAGRAPH.

14 I'M SORRY, MR. O'CONNOR.

15 "FIRST NATIONWIDE RESORTS MANAGEMENT, INC.,
16 CONSIDERS THOSE MEMBERS ENROLLED IN THE COAST TO COAST
17 RECIPROCAL PROGRAM TO BE PROPRIETARY; AS SUCH, COAST TO
18 COAST IS PUT ON NOTICE THAT ANY ATTEMPT TO TRANSFER FIRST
19 NATIONWIDE RESORTS MANAGEMENT'S MEMBERS, DISTRIBUTE THE
20 LIST OF FIRST NATIONWIDE RESORTS MANAGEMENT'S MEMBERS TO
21 ANY OTHER CAMP RESORT OR BUSINESS OR OTHERWISE VIOLATE THE
22 CONFIDENTIALITY OF THE FIRST NATIONWIDE RESORTS
23 MANAGEMENT'S MEMBERSHIP LIST WILL BE CONSIDERED BY FIRST
24 NATIONWIDE RESORTS MANAGEMENT TO BE A SERIOUS INTERFERENCE
25 WITH FIRST NATIONWIDE RESORTS MANAGEMENT, INC.'S, ABILITY
26 TO CONDUCT ITS BUSINESS."

1 NOW, -- AND MR. O'CONNOR, WOULD YOU GO BACK
2 TO THE FULL PAGE, PLEASE.

3 THIS IS A LETTER THAT MR. NOVELLI WAS
4 WRITING TO MR. RYMAN ON AUGUST 27, 1997.

5 AND YOU REVIEWED THIS LETTER --

6 A YES, I DID.

7 Q -- IN ARRIVING AT YOUR OPINION?

8 A YES, THAT'S CORRECT.

9 Q AND THEN I WOULD LIKE TO LOOK AT EXHIBIT
10 2149.

11 (PAUSE IN PROCEEDINGS.)

12 MR. RIVIN: WE HAVE EXHIBIT 2149, BUT I'D LIKE TO
13 KNOW WHICH PAGE.

14 MR. SHAW: MR. RIVIN, IT'S 0805. AND IT HAS A
15 BATES STAMP, AN AFFINITY GROUP BATES STAMP, 1282.

16 MR. RIVIN: THEY'RE NOT IN ORDER. IS THAT DOCUMENT
17 IN EVIDENCE?

18 MR. MOSHENKO: IT'S THE MARY URIOSTE LETTER.

19 MR. RIVIN: THAT'S FINE. I DIDN'T REALIZE THAT.

20 BY MR. SHAW: Q SO AFTER -- MR. MALPASS, AFTER
21 MR. NOVELLI'S LETTER THAT WE LOOKED AT, EXHIBIT 39, FIRST
22 NATIONWIDE SAYING "DON'T TRANSFER OUR MEMBERS," AND AFTER
23 MR. JOSEPH'S AND MR. DIAMOND'S LETTER AND MR. RYMAN'S
24 RESPONSE, IS THIS A DOCUMENT THAT YOU REVIEWED AS PART OF
25 ARRIVING AT YOUR OPINION IN THIS CASE?

26 A I'VE SEEN THAT LETTER, YES.

1 Q AND THIS SAYS, "I DO APOLOGIZE THAT YOU WERE
2 NOT NOTIFIED; HOWEVER, FOR THE LAST MONTH AND A HALF I HAVE
3 BEEN TRANSFERRING OVER THAN 35,000 THOUSAND ADVENTURES AND
4 ALL SEASON MEMBERS TO VARIOUS PARKS."

5 AND THIS DATE IS DECEMBER 18, 1997.

6 IS IT YOUR UNDERSTANDING THAT THE CHAPTER 11
7 BANKRUPTCIES WERE STILL PENDING AS OF DECEMBER OF 1997?

8 A YES.

9 Q AND NOWHERE IN THIS LETTER DOES IT SAY THAT
10 THEY'RE TRANSFERRING ANY COAST TO COAST MEMBERS; IN FACT,
11 IT SAYS THEY'RE TRANSFERRING 35,000 THOUSAND ADVENTURES AND
12 ALL SEASONS?

13 A THAT'S WHAT THE LETTER SAYS.

14 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. THE
15 DOCUMENT ALSO SPEAKS FOR ITSELF.

16 AND I WOULD APPRECIATE, YOUR HONOR, IF THE
17 WITNESS WOULD REFRAIN FROM ANSWERING THE QUESTION --

18 THE COURT: HOLD BACK A SECOND.

19 MR. RIVIN: -- WHILE I'M OBJECTING.

20 THE WITNESS: CERTAINLY.

21 MR. RIVIN: THANK YOU.

22 BY MR. SHAW: Q LET'S LOOK AT MR. RANDALL'S
23 TESTIMONY OF JUNE 5TH, 2000, PAGE 2699, SPECIFICALLY LINES
24 3 THROUGH LINE 8. THIS IS PART OF THE TRIAL TRANSCRIPT
25 THAT YOU REVIEWED AND -- IN ARRIVING -- LAYING THE
26 FOUNDATION FOR YOUR OPINION IN THIS CASE?

1 A YES. I'VE SEEN THAT TRANSCRIPT.

2 Q AND AT LINE 3.

3 "BY MR. MOSHENKO: QUESTION: OKAY, YOU
4 UNDERSTOOD THAT IF 34,000 MEMBERS WENT AWAY, THAT COULD
5 RESULT IN SIGNIFICANT DAMAGE TO THE PLAINTIFFS' RESORTS;
6 RIGHT?

7 "ANSWER: TO WHOSE RESORTS?

8 "QUESTION: THE PLAINTIFFS' RESORTS.

9 "ANSWER: THE POTENTIAL IS THERE FOR THAT TO
10 HAPPEN, YES."

11 ALL RIGHT. MR. MALPASS, YOU -- NOW, THE
12 BASIS FOR YOUR OPINION IN THIS CASE -- YOU WERE ASKED TO
13 GIVE AN OPINION AND INVESTIGATE THE BANKRUPTCY CASES IN
14 THIS CASE, AND YOU WERE ASKED TO GIVE AN OPINION AS TO THE
15 CONDUCT AND THE CONTACT AND THE TRANSFERS BY THE DEFENDANTS
16 IN THIS CASE; CORRECT?

17 A YES.

18 Q AND YOU'VE LOOKED AT AND RELIED ON YOUR
19 EXPERIENCE HANDLING ALL OF THE BANKRUPTCIES THAT WE'VE
20 TALKED ABOUT, THE ALL SEASONS RESORTS, THE FIRST
21 NATIONWIDE, THE REVCON, THE THOUSAND ADVENTURES; AND YOU'VE
22 TESTIFIED THAT THOSE BANKRUPTCIES WERE STILL PENDING WITH
23 AUTOMATIC STAYS IN PLACE WELL INTO 1998 IN ALL FOUR OF
24 THOSE BANKRUPTCIES; CORRECT?

25 A YES.

26 Q AND THEN WE LOOKED AT THE CONTACTS BY THE

1 DEFENDANTS IN THIS CASE IN SEPTEMBER, '97, OCTOBER, '97,
2 CONTACTS WITH THE MEMBERS' CONTRACTS.

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

4 THE COURT: YOU MAY.

5 TELL YOU WHAT. WHY DON'T WE HOLD OFF.

6 LET'S GO TO LUNCH. SEE YOU AT 1:30.

7 (THE FOLLOWING PROCEEDINGS WERE HELD IN
8 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

9 THE COURT: ALL JURORS ARE OUT. OKAY.

10 MR. SHAW: YOUR HONOR, I'M NOT AT THE POINT WHERE I
11 LAID THE FOUNDATION. HE HAS TALKED ABOUT ALL THE
12 DOCUMENTS, HIS PERCIPIENT KNOWLEDGE.

13 THE COURT: WHERE WAS YOUR NEXT QUESTION GOING?

14 MR. SHAW: THE NEXT QUESTION IS WHAT -- CAN HE GIVE
15 US THE OPINION THAT -- THAT BASED ON THE DOCUMENTS AND
16 EVERYTHING THAT HE HAS REVIEWED IN THIS CASE, TO GIVE THE
17 OPINION.

18 THE COURT: THE OPINION OF WHAT?

19 MR. SHAW: IS GOING TO BE THAT -- AND I'M
20 PARAPHRASING -- THAT THE CONTACTS BY THE COAST TO COAST
21 DEFENDANTS AND THE TRANSFERS OF THE MEMBERSHIPS WAS
22 WRONGFUL CONDUCT IN THE BANKRUPTCY COURT CAUSING DAMAGE TO
23 THE PLAINTIFFS IN THIS CASE. THAT'S GOING TO BE HIS
24 TESTIMONY.

25 MR. RIVIN: YOUR HONOR, THIS IS THE FUNDAMENTAL
26 ISSUE THAT WE HAVE BEEN TALKING ABOUT. I DO NOT BELIEVE

1 THAT AN APPROPRIATE FOUNDATION HAS BEEN LAID FOR THIS
2 WITNESS TO BE ABLE TO PROVIDE THAT TESTIMONY.

3 WE STILL HAVE -- THIS IS NOT A WITNESS WHO
4 WAS DESIGNATED TO TESTIFY AS TO DAMAGES. THE WITNESS IS
5 TESTIFYING BASED UPON THE -- HIS CONCLUSION REGARDING THE
6 AUTOMATIC STAY -- LET ME STEP BACK A MOMENT.

7 I WANTED TO CONGRATULATE MR. SHAW FOR
8 BASICALLY GETTING THE WITNESS TO SAY THOSE THINGS THAT
9 WOULD LEAD THE JURY TO THE WITNESS'S CONCLUSION WITHOUT THE
10 WITNESS SAYING HIS CONCLUSION. I DON'T THINK MR. SHAW -- I
11 THINK MR. SHAW WAS ARGUING. I THINK IN READING THROUGH ALL
12 OF THESE DOCUMENTS, IT WAS MERE ARGUMENT. IT WAS NOT --
13 THAT WAS NOT AN APPROPRIATE WAY TO LAY A FOUNDATION FOR
14 WHAT THIS WITNESS LOOKED AT OR WHETHER HE HAD KNOWLEDGE OF
15 ANY OF THESE DOCUMENTS.

16 AND SO I THINK -- I THINK AT THIS POINT
17 THERE IS A CERTAIN DEGREE OF PREJUDICE WHICH HAS OCCURRED.
18 BUT WE STILL HAVE THIS FUNDAMENTAL ISSUE AS TO WHETHER OR
19 NOT IT'S APPROPRIATE FOR THIS WITNESS TO TESTIFY THAT --
20 THAT COAST VIOLATED THE AUTOMATIC STAY. AND THAT IS GOING
21 TO BE THE BASIS FOR HIS OPINION. WE'VE DISCUSSED THIS.
22 WE'VE TALKED ABOUT IT. WE BROUGHT A MOTION YESTERDAY ON
23 THIS VERY ISSUE, THE ISSUE OF VIOLATION OF THE AUTOMATIC
24 STAY, WHICH WAS NEVER BROUGHT UP BY MR. MALPASS WHEN HE
25 REPRESENTED -- WHEN HE REPRESENTED ALL SEASONS, WHEN HE
26 REPRESENTED REVCON, WHEN -- OR DURING THE FIRST NATIONWIDE

1 BANKRUPTCY OR DURING THE THOUSAND ADVENTURES OF OHIO
2 BANKRUPTCY. THERE IS NO SUGGESTION OF A VIOLATION OF THE
3 AUTOMATIC STAY, WHICH IS SOMETHING FOR THE BANKRUPTCY COURT
4 TO DECIDE. IT'S A BANKRUPTCY COURT ISSUE.

5 NOT ONLY THAT, IT IS SOMETHING -- IT IS A
6 RIGHT OF THE BANKRUPTCY ESTATE, OF THE DEBTOR'S ESTATE, AND
7 THE DEBTOR. IT IS NOT SOMETHING WHICH IS TO BE ADJUDICATED
8 IN A STATE COURT, PARTICULARLY BASED UPON THE TESTIMONY OF
9 A WITNESS WHO HAS NEVER ASSERTED THE VIOLATION OF THE
10 AUTOMATIC STAY AT A TIME WHEN HE HAD THE OPPORTUNITY TO DO
11 SO, AND SHOULD HAVE DONE SO, IF HE FELT THERE WAS A
12 VIOLATION OF THE AUTOMATIC STAY.

13 THE PLAINTIFFS ARE TRYING TO GET THIS
14 TESTIMONY IN THROUGH THE BACK DOOR, AND IT'S APPROPRIATE --
15 IT IS INAPPROPRIATE. WE OBJECT TO IT.

16 AND I GUESS WE ARE NOW AT THAT POINT IN TIME
17 WHERE A DECISION HAS TO BE MADE WITH RESPECT TO THE
18 APPROPRIATENESS OF THIS WITNESS'S TESTIMONY.

19 MR. SHERMAN: YOUR HONOR, CAN I JUST ADD ONE
20 THING?

21 LET'S ASSUME FOR SAKE OF DISCUSSION THAT
22 MR. SHAW HAS LAID THE PROPER FOUNDATION. FOUNDATION FOR
23 WHAT? FOUNDATION FOR A LEGAL OPINION. WE'LL SEND YOUR
24 HONOR IN WITH THE BOOKS, AND YOUR HONOR CAN COME AND MAKE
25 THAT DETERMINATION, OR JUDGE RYAN CAN.

26 THE COURT: I THINK I CAN CURE THE WHOLE THING BY

1 SIMPLY INSTRUCTING THE JURY AT THE END OF THE TRIAL. AND
2 AS FAR AS I'M CONCERNED, YOU'RE FINISHED WITH THIS WITNESS,
3 AREN'T YOU?

4 MR. SHAW: WELL, YOUR HONOR, I JUST WANT TO BE
5 HEARD JUST FOR A BRIEF MOMENT.

6 THE -- MR. -- WHAT MR. RIVIN IS TALKING
7 ABOUT IS CROSS-EXAMINATION. HE SAID NOTHING LEGALLY THAT
8 WOULD ALLOW -- WOULD KEEP THIS WITNESS FROM OFFERING THIS
9 OPINION.

10 IT IS NOT THE ULTIMATE ISSUE IN THIS CASE.
11 THE ULTIMATE ISSUE IS INTERFERENCE, UNFAIR COMPETITION.
12 THIS IS A TOTALLY DIFFERENT ISSUE. THEY EVEN ARGUED IT IN
13 THEIR PAPERS. THERE'S NO LEGAL BASIS FOR THEM TO KEEP THIS
14 WITNESS FROM GIVING AN OPINION. I'VE LAID PERCIPIENT
15 WITNESS FOUNDATION, DOCUMENT FOUNDATION. THIS WITNESS --
16 THERE'S NO REASON -- THEY CAN CROSS-EXAMINATION TO THEIR
17 HEART'S DESIRE, AND THAT GOES TO THE WEIGHT AND
18 SUFFICIENCY.

19 BUT IN THIS CASE, THIS IS AN ISSUE WHERE HE
20 CAN TESTIFY, YOUR HONOR. AND THIS IS EXTREMELY IMPORTANT
21 TO OUR CASE. THEY TALK ABOUT PREJUDICIAL --

22 THE COURT: HEAR ME OUT NOW. NO ONE HAS SAID --
23 AND WHEN I SAY "NO ONE," I MEAN NO ONE IN AUTHORITY, SUCH
24 AS THE BANKRUPTCY JUDGE -- HAS SAID THAT THEY DID ANYTHING
25 WRONG. AND FOR YOUR WITNESS TO COME IN AND VENTURE AN
26 OPINION I DON'T THINK IS PROPER. I REALLY DON'T.

1 MR. SHAW: BUT, YOUR HONOR, ON THAT POINT, THE
2 GLOBE CASE THAT I CITED IN CHAMBERS, THE DEBTOR IS NOT
3 OBLIGATED TO BRING TO THE COURT'S ATTENTION VIOLATIONS OF
4 THE AUTOMATIC STAY. THAT'S NOT THE PURPOSE FOR IT. I READ
5 FROM THE CASE.

6 SO THE COURT'S REASONING, I WOULD ARGUE,
7 DOESN'T TAKE US TO WHERE THIS WITNESS -- THIS IS THIS
8 CASE. WE HAVE TO PROVE WRONGFUL CONDUCT. THAT'S OUR
9 DUTY. WE HAVE A BURDEN OF PROOF. WE HAVE -- WE BUILT
10 BUILDING BLOCKS OF EVIDENCE TO BE ABLE TO -- TO PROVE
11 THAT.

12 IT NOW HAS -- NOW IS COMING TO ROOST WITH
13 THIS WITNESS. TO ALLOW RYMAN TO TESTIFY LIKE HE DID THAT
14 THESE THINGS FELL APART, THERE WERE DISSOLUTIONS, THERE
15 WERE -- AND HE WENT ON FOR HOURS ABOUT WHAT HAPPENED WITH
16 THOSE RESORTS. AND FOR US NOW NOT TO HAVE ANY CHANCE TO
17 JUST RESPOND THAT THOSE WERE WRONGFUL IS -- LEAVES US WITH
18 OUR HANDS TIED.

19 THE COURT: MR. SHAW, YOUR RECORD IS GOOD. I'M
20 GOING TO RULE THAT HE CANNOT GIVE THAT EXPERT OPINION. THE
21 JURY HAS ENOUGH FACTS BEFORE THEM TO DETERMINE WHETHER OR
22 NOT, I THINK, THERE HAS BEEN ANY WRONGDOING BY THE
23 DEFENSE -- BY THE DEFENDANTS.

24 AND SO I THINK YOU BETTER STOP SHORT OF
25 HERE; OTHERWISE, WE'RE LIABLE TO GET INTO EVEN MORE
26 PROBLEMS.

1 MR. SHAW: THE ONLY THING I WOULD ASK IS I WOULD
2 LIKE TO HAVE THAT JURY INSTRUCTION, THEN, ON THE AUTOMATIC
3 STAY AND WHAT HAPPENS WITH THE AUTOMATIC STAY.

4 THE COURT: WE'LL DEAL WITH THE INSTRUCTIONS.

5 MR. SHAW: I KNOW THAT'S DOWN THE ROAD. BUT IT'S
6 IMPORTANT TO ME NOW TO KNOW WHERE I NEED TO GO WITH MY
7 CASE.

8 THE COURT: OKAY.

9 MR. SHAW: AND HAVING THAT JURY INSTRUCTION SO THAT
10 ON ORAL -- ON ARGUMENT -- ON CLOSING ARGUMENT, WE CAN TIE
11 UP THOSE FACTS.

12 THE COURT: YEAH.

13 MR. RIVIN: WE'LL CERTAINLY TALK ABOUT THAT.

14 MR. MOSHENKO: YOUR HONOR, IF I MAY, THERE ARE SOME
15 INTERIM OPINIONS THAT ARE -- OR INTERIM AREAS THAT ARE
16 SIGNIFICANT AND RELATE TO WHETHER OR NOT THE JURY HAS ALL
17 OF THE INFORMATION THEY NEED TO MAKE THE ULTIMATE
18 CONCLUSION, IF THAT'S WHERE THE COURT IS SAYING LET THE
19 JURY MAKE THE ULTIMATE CONCLUSION.

20 FOR EXAMPLE, WE'VE HAD MR. RYMAN, IN EFFECT,
21 ACTING AS AN EXPERT WITNESS AND SAYING THE CONTRACTS WERE
22 VOIDED. MR. SHAW, BY MY UNDERSTANDING, RESTRICTED HIS
23 EXAMINATION TO FOUNDATIONAL QUESTIONS ALONE, AND NEVER WENT
24 TO ANY OF THE OPINIONS. I'VE HEARD AN ARGUMENT SAYING,
25 WELL, THIS ONE OPINION THAT HE VIOLATED A STAY, YOUR HONOR,
26 I BELIEVE SHOULD NOT BE GIVEN BY THE WITNESS. BUT THERE

1 ARE OTHER, WHAT I CALL, SUB-SUPPORTING DATA; LIKE THE JURY
2 SHOULD BE ALLOWED TO BE SHOWN THE ORDER RELATING TO THE
3 ALLEGED VOIDING OF THE CONTRACTS, AND HE SHOULD BE ABLE TO
4 TALK ABOUT.

5 THE COURT: ALL RIGHT.

6 MR. SHERMAN: THAT'S FINE. THE COURT PLEADINGS
7 OUGHT TO COME IN. COURT PLEADINGS -- I WAS AGREEING. THE
8 COURT PLEADINGS OUGHT TO COME IN, BUT WE HAVE
9 LIEUTENANT COLONEL DELEMOSE WRITING TO MR. RYMAN SAYING, "I
10 THINK I HAD MY MEMBERSHIP TERMINATED." THAT'S WHAT RYMAN
11 IS TALKING ABOUT.

12 MR. MOSHENKO: YOUR HONOR SAYS HE IS DONE. WE ARE
13 NOT DONE. WE'VE ONLY GIVEN FOUNDATION.

14 THE COURT: HOW MUCH MORE TIME ARE YOU GOING TO
15 SPEND?

16 MR. SHAW: WITH THOSE OPINIONS, WERE THE CONTRACTS
17 VOIDED, WAS THERE A DISSOLUTION, THOSE KINDS OF
18 SUB-OPINIONS THAT DON'T GET TO THE VIOLATION OF THE
19 AUTOMATIC STAY, I'D SAY HALF AN HOUR.

20 MR. SHERMAN: BUT MR. SHAW JUST GOT FINISHED
21 TELLING THE COURT THAT HE HAD LAID HIS FOUNDATION. THE
22 FACT IS, FOR MR. MALPASS TO COME IN NOW AND SAY, WELL, EVEN
23 THOUGH JUDGE RYAN DIDN'T FIND THAT THE CONTRACTS WERE IN
24 PLACE, EVEN THOUGH JUDGE RYAN CONCLUDED THAT THEY WERE
25 TERMINATED BECAUSE THAT'S WHAT THE ORDERS SAYS --

26 MR. MOSHENKO: THAT'S NOT WHAT THE ORDER SAYS.

1 MR. SHERMAN: THE DOCUMENTS SPEAKS FOR THEMSELVES.

2 MR. MOSHENKO: THERE'S NOTHING IN THE EVIDENCE THAT
3 JUDGE RYAN DID THAT.

4 MR. SHERMAN: THE BANKRUPTCY DOCUMENTS CAN COME
5 IN. THE DOCUMENTS SPEAKS FOR THEMSELVES. WE DON'T NEED
6 THIS MAN TO INTERPRET THEM.

7 THE COURT: IT'S LUNCHTIME.

8 MR. SHERMAN: HAVE A GOOD LUNCH.

9 THE COURT: YOU, TOO.

10 (WHEREUPON THE COURT WAS IN RECESS UNTIL
11 1:30 P.M. OF THE SAME DAY.)

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1 WESTMINSTER, CALIFORNIA - THURSDAY, JUNE 8, 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. SHAW: THANK YOU, YOUR HONOR.

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. SHAW: Q MR. MALPASS, BEFORE WE BROKE FOR
9 LUNCH, I WAS ASKING YOU ABOUT THE AREAS OF OPINIONS, AND
10 I'D LIKE TO CONTINUE WITH THAT LINE OF DISCUSSION.

11 WE SAW THIS MORNING, AND YOU'VE ALREADY
12 TESTIFIED, THAT THE ALL SEASONS RESORTS, FIRST NATIONWIDE,
13 REVCON, THOUSAND ADVENTURES OF OHIO WERE NOT DISSOLVED;
14 THAT'S YOUR OPINION; CORRECT?

15 A THAT'S CORRECT.

16 Q AND IT'S YOUR OPINION BECAUSE THE
17 BANKRUPTCIES WERE ALL STILL PENDING?

18 A AND THERE WAS NOTHING THAT HAPPENED IN THE
19 BANKRUPTCY CASES THAT WOULD HAVE DISSOLVED THOSE
20 CORPORATIONS.

21 Q OKAY. SO IF -- HYPOTHETICALLY, IF COAST TO
22 COAST SENT LETTERS TO ITS MEMBERS THAT ALL THE RESORTS
23 DISSOLVED AND ALL THE RESORTS HAD FALLEN APART AND THERE
24 WERE NO PARKS, THAT WOULDN'T BE TRUE, WOULD IT?

25 MR. RIVIN: THIS IS IMPROPER.

26 THE WITNESS: IT DIDN'T HAPPEN.

1 MR. RIVIN: YOUR HONOR, OBJECTION. IMPROPER
2 OPINION. LACK OF FOUNDATION. IMPROPER HYPOTHETICAL.

3 THE COURT: AGREED. SUSTAINED.

4 MR. SHAW: YOUR HONOR, HYPOTHETICAL CAN BE BASED ON
5 FACTS -- I'LL WITHDRAW.

6 Q I DON'T WANT TO BASE IT ON A HYPOTHETICAL.

7 WE LOOKED AT THE EVIDENCE. WE SAW THE
8 SAYING THAT IT WAS DISSOLVED. THAT WASN'T TRUE, WAS IT?

9 MR. RIVIN: OBJECTION. LACKS FOUNDATION.

10 THE COURT: I'LL ALLOW THE ANSWER.

11 THE WITNESS: NO, IT WASN'T TRUE.

12 THE COURT: ALL RIGHT. THAT'S THE ANSWER.

13 BY MR. SHAW: Q LET'S TALK ABOUT -- WE ALSO SAW IN
14 SOME OF THE TESTIMONY -- WE'LL STAY IN THE OPINION AREA --
15 ABOUT THE FACT THAT THE CONTRACTS WERE VOID.

16 DO YOU REMEMBER MR. RYMAN'S TESTIMONY? AND
17 I DON'T WANT TO TAKE THE TIME TO PUT IT UP.

18 A YES. I SAW IT THIS MORNING, AND I REVIEWED
19 IT PREVIOUSLY IN THE TRANSCRIPTS YOU SHOWED ME.

20 Q IN YOUR OPINION --

21 THE COURT: APPROACH.

22 (DISCUSSION OFF THE RECORD.)

23 BY MR. SHAW: Q I WANT TO SHOW YOU -- LET'S TALK
24 ABOUT FIRST NATIONWIDE.

25 LET'S GET SPECIFIC ABOUT THESE ISSUES OF
26 WHETHER THE CONTRACTS WERE VOID. I WANT TO SHOW YOU WHAT

1 DEFENDANTS HAVE MARKED AS EXHIBIT 376.

2 MR. RIVIN, COULD I PUT UP THE FIRST PAGE?

3 MR. RIVIN: YES. ISN'T THIS THE SAME DOCUMENT YOU
4 PUT UP EARLIER?

5 MR. SHAW: YES.

6 Q ALL RIGHT. THIS IS THE FIRST NATIONWIDE
7 CASE, MR. MALPASS, AND WE'RE TALKING ABOUT ABANDONED
8 PROPERTY OF THE ESTATE.

9 IN TERMS OF THE FIRST NATIONWIDE RESORT
10 CASE, WHAT DOES THE TERM "ABANDON THE PROPERTY" MEAN?

11 MR. RIVIN: OBJECTION. THIS IS CUMULATIVE.

12 THE COURT: SUSTAINED.

13 BY MR. SHAW: Q AND TO PERMIT THE VOLUNTARY
14 TRANSFER OF MEMBERSHIP INTERESTS.

15 AS OF APRIL 9, 1998, IT'S TRUE THAT THE
16 MEMBERSHIPS OF THE FIRST NATIONWIDE RESORTS WEREN'T VOIDED;
17 THEY WERE STILL IN EXISTENCE, WEREN'T THEY?

18 A YES, THEY WERE.

19 Q BECAUSE IF MR. JOSEPH MADE A MOTION TO
20 PERMIT VOLUNTARY TRANSFER OF MEMBERSHIP INTERESTS, IT JUST
21 LOGICALLY MEANS SOMETHING WAS IN EFFECT TO TRANSFER?

22 MR. RIVIN: OBJECTION. ARGUMENTATIVE.

23 THE COURT: OVERRULED.

24 THE WITNESS: THAT'S CLEARLY WHAT THE TRUSTEE WAS
25 DOING. THAT'S WHAT HE INTENDED TO DO WITH THIS MOTION, AND
26 THAT'S -- YES, THERE WERE MEMBERSHIPS THERE. THAT'S WHY HE

1 WAS FILING A MOTION DEALING WITH THEM.

2 BY MR. SHAW: Q SO ANY STATEMENT BY COAST TO COAST
3 THAT THE MEMBERSHIP CONTRACTS WERE VOID OR DIDN'T EXIST OR
4 WERE DISSOLVED OR THE SYSTEM WAS FALLING APART WAS JUST
5 FALSE; ISN'T THAT TRUE, MR. MALPASS?

6 MR. RIVIN: YOUR HONOR, THIS IS ARGUMENTATIVE,
7 IMPROPER LEGAL CONCLUSION. WE DISCUSSED THIS SEVERAL
8 TIMES.

9 THE COURT: WE DISCUSSED THIS AT THE BENCH.
10 SUSTAINED.

11 BY MR. SHAW: Q LET'S TALK ABOUT THE CONCEPT OF
12 REJECTION. THAT'S A TERM IN THE BANKRUPTCY CODE?

13 A YES, IT IS. SECTION 365.

14 Q AND WE LOOKED AT MR. DELEMOSE'S OR
15 LIEUTENANT COLONEL DELEMOSE'S LETTER ABOUT -- AND THAT
16 NOTICE OF REJECTION. WE'LL HAVE IT FOR YOU IN A MINUTE.

17 BUT WHAT DOES THE TERM "REJECTION" MEAN IN
18 THE BANKRUPTCY CODE?

19 MR. RIVIN: AGAIN, OBJECTION. CUMULATIVE. THERE'S
20 ALSO NO --

21 THE COURT: I THINK WE COVERED THIS.

22 MR. MOSHENKO: YOUR HONOR, I SPECIFICALLY WITHHELD
23 TALKING TO MR. JOSEPH ABOUT THE TERM "REJECTION." I CHOSE
24 TO LEAVE IT FOR MR. MALPASS TO BE -- AND IF YOUR HONOR IS
25 BELIEVING THAT IT CAME UP WITH MR. JOSEPH, I WOULD DISAGREE
26 RESPECTFULLY.

1 MR. RIVIN: YOUR HONOR, MY RECOLLECTION IS WITH
2 MR. JOSEPH THERE WAS DISCUSSION OF EXECUTOR CONTRACTS. I
3 SPECIFICALLY RECALL THAT. AND THE CONCEPT OF REJECTION AND
4 ASSUMPTION RELATES TO EXECUTOR CONTRACTS, AND THAT WAS
5 DISCUSSED WITH MR. JOSEPH.

6 THE COURT: I THOUGHT WE COVERED IT.

7 BY MR. SHAW: Q THE NEXT AREA, MR. MALPASS, WOULD
8 BE THE ALL SEASONS RESORTS' ORDER FOR SALE. WE LOOKED AT
9 IT THIS MORNING.

10 THERE WAS AN ORDER FOR SALE DATED NOVEMBER
11 5TH, 1997; DO YOU RECALL THAT?

12 A I'M FAMILIAR WITH THE DOCUMENT, YES.

13 Q NOW, I WANT TO BE SPECIFIC ABOUT A COUPLE OF
14 DATES.

15 THE ORDER FOR SALE -- AND I'M PLACING IN
16 FRONT OF YOU -- AND THE ORDER FOR SALE HAPPENED NOVEMBER
17 5TH, 1997.

18 A THE ORDER WAS ENTERED ON NOVEMBER 5TH,
19 1997. THIS IS THE ORDER CONFIRMING THE SALES THAT HAD
20 TAKEN PLACE IN THE BANKRUPTCY. I WAS AT THE AUCTION.

21 Q WHAT HAPPENED AT THE AUCTION?

22 A THE -- WHAT HAPPENED AT THE AUCTION WAS THAT
23 THE TRUSTEE SOLD ALL SEASONS RESORTS' PROPERTIES,
24 EVERYTHING THAT -- ESSENTIALLY EVERYTHING THAT IT OWNED,
25 ALL THE PARKS, ALL THE PARK PROPERTY AND THE CONTRACTS.

26 MR. RIVIN: YOUR HONOR, I'M GOING TO OBJECT AND

1 MOVE TO STRIKE THE ANSWER ON THE BASIS OF LACK OF
2 FOUNDATION. THERE IS A DOCUMENT. THERE IS A COURT ORDER
3 THAT MR. SHAW IS REFERRING TO THAT SAYS SOMETHING
4 COMPLETELY INCONSISTENT WITH WHAT MR. MALPASS JUST SAID.

5 I DIDN'T OBJECT EARLIER. I SHOULD HAVE.
6 THERE'S A LACK OF FOUNDATION. WE ARE WILLING TO ADMIT
7 THESE DOCUMENTS INTO EVIDENCE, AND THE DOCUMENTS SPEAKS FOR
8 THEMSELVES AS TO WHAT HAPPENED, WHAT WAS TRANSFERRED, AND
9 WHAT WAS NOT TRANSFERRED.

10 MR. SHAW: YOUR HONOR, WE HAVE A PERCIPIENT WITNESS
11 THERE AT AUCTION WHO IS TESTIFYING. MR. RIVIN CAN
12 CROSS-EXAMINE OR USE WHATEVER.

13 THE COURT: I'LL ALLOW THAT.

14 MR. SHAW: THANK YOU, YOUR HONOR.

15 MR. RIVIN: ONE MORE COMMENT.

16 THE ULTIMATE ANSWER AS TO WHAT HAPPENED IN
17 THOSE BANKRUPTCY COURT TRANSACTIONS IS REFLECTED IN THE
18 ORDERS, THE BANKRUPTCY COURT ORDERS. AND IT'S NOT
19 INAPPROPRIATE AS THE DOCUMENT SPEAKS FOR THEMSELVES. THOSE
20 ARE THE BEST EVIDENCE OF WHAT HAPPENED.

21 THE COURT: IF HE IS JUST REITERATING WHAT HE SAW
22 AT THE AUCTION, THAT'S PERMISSIBLE.

23 MR. RIVIN: IT WILL OPEN UP ADDITIONAL
24 CROSS-EXAMINATION.

25 THE COURT: WE'LL SEE.

26 BY MR. SHAW: Q LET'S LOOK AT SPECIFICALLY

1 EXHIBIT -- DEFENDANT'S EXHIBIT 383.

2 IS THAT THE ORDER OF SALE THAT MR. RIVIN WAS
3 ALLUDING TO?

4 A YES. IT'S THE ONE I WAS TESTIFYING ABOUT,
5 YES. IT'S THE CONFIRMING ORDER.

6 MR. RIVIN: ONE MOMENT, PLEASE, YOUR HONOR.

7 THE WITNESS: I'M NOT ENTIRELY SURE WHAT MR. RIVIN
8 WAS ALLUDING TO.

9 MR. RIVIN: WE'VE GOT IT.

10 THE COURT: PROCEED.

11 THE WITNESS: THAT'S THE SALE ORDER.

12 BY MR. SHAW: Q AND IN THE DOCUMENT IT INDICATES
13 THE SALE OF NOT ONLY THE RESORTS, BUT THE MEMBERSHIP
14 CONTRACTS?

15 MR. RIVIN: YOUR HONOR, THE DOCUMENT SPEAKS FOR
16 ITSELF. I'D LIKE -- INSTEAD OF MR. SHAW TRYING TO QUOTE
17 THE DOCUMENT, PERHAPS THE WITNESS CAN -- PERHAPS WE CAN
18 EVEN PUT IT IN. WE'RE WILLING TO STIPULATE IT COMES INTO
19 EVIDENCE. IT SHOULD BE IN EVIDENCE.

20 MR. SHAW: YOUR HONOR, I THINK I CAN CONDUCT MY OWN
21 DIRECT EXAMINATION WITHOUT MR. RIVIN MAKING SUGGESTIONS ON
22 HOW I DO IT, WITH ALL DUE RESPECT TO MR. RIVIN.

23 THE COURT: ALL RIGHT, GENTLEMEN.

24 PROCEED.

25 THE WITNESS: WHAT WAS SOLD AT THE AUCTION WAS A
26 PACKAGE OF RIGHTS WITH REGARD TO EACH PARK THAT INCLUDED

1 THE REAL ESTATE THAT THE PARK WAS ON, THE FIXTURES, ALL OF
2 THE BUILDINGS AND EQUIPMENT, WHATEVER WAS AT THAT PARK, AND
3 THE RELATIONS WITH THE MEMBERS. THERE'S A MEMBERSHIP LIST
4 AND SO ON. THAT HAD BEEN MADE CLEAR IN WHAT LED UP TO
5 THAT, AND THAT WAS CLEARLY WHAT WAS GOING ON AT THAT
6 AUCTION.

7 MR. RIVIN: YOUR HONOR, MAY WE APPROACH, PLEASE?

8 THE COURT: YOU MAY.

9 (DISCUSSION OFF THE RECORD.)

10 BY MR. SHAW: Q ALL RIGHT. MR. MALPASS, ONE LAST
11 AREA.

12 AND, MR. RIVIN, DO YOU HAVE THE EXHIBIT
13 NUMBER FOR THE ORDER APPROVING REJECTION OF THE MEMBERSHIP
14 CONTRACTS?

15 MR. RIVIN: 386.

16 MR. SHAW: 386? THANK YOU.

17 MR. O'CONNOR, CAN YOU BRING UP DEFENDANT'S
18 EXHIBIT 386 FOR ME.

19 Q NOW, THIS HAS A DATE ON IT OF NOVEMBER 24TH,
20 1997?

21 A YES. THE ENTERED DATE.

22 Q UP AT THE TOP.

23 A YES.

24 Q SO WE HAD THE SALE OF THE RESORTS AND THE
25 MEMBERS CONTRACTS OR THE LISTS.

26 IS THERE A DIFFERENCE IN BANKRUPTCY LAW

1 BETWEEN -- WELL, DEFINE FOR ME WHAT "PERSONAL PROPERTY"
2 MEANS.

3 A WELL, THE PERSONAL PROPERTY IS A TYPE OF
4 PROPERTY THAT IS PROBABLY BEST UNDERSTOOD AS NOT BEING REAL
5 ESTATE. IT'S -- IT CAN BE ANYTHING FROM A CAR TO A
6 CONTRACT.

7 Q SO THE MEMBERSHIP CONTRACTS WOULD BE
8 PERSONAL PROPERTY?

9 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. VAGUE
10 AND AMBIGUOUS.

11 THE COURT: OVERRULED.

12 THE WITNESS: I'LL ANSWER IT AGAIN.

13 THE COURT: YOU'VE ANSWERED THE QUESTION. THE NEXT
14 QUESTION.

15 BY MR. SHAW: Q SO THE -- WHEN THE ORDER FOR SALE
16 ON NOVEMBER 5TH, 1997, SAID THE SALE OF ALL PERSONAL
17 PROPERTY THAT WENT ALONG WITH THE PARK, THAT INCLUDED THE
18 MEMBERSHIP CONTRACTS; IS THAT YOUR UNDERSTANDING, AND YOU
19 WERE THERE THAT DAY FOR THE SALE?

20 A YES.

21 MR. RIVIN: OBJECTION. IMPROPER LEGAL CONCLUSION.
22 DOCUMENT SPEAKS FOR ITSELF.

23 THE COURT: OVERRULED, COUNSEL.

24 THE WITNESS: YES. MR. -- YES, IT WAS, MR. SHAW.
25 THE TERM "PERSONAL PROPERTY" PICKED UP ALL OF THE CONTRACT
26 RIGHTS THAT THE DEBTOR HAD. THAT WAS WHAT WAS BEING SOLD.

1 AND IT WAS DELINEATED BY PARK IN FORECLOSURE DOCUMENTS.

2 BY MR. SHAW: Q IN THE ORDER?

3 A YES.

4 Q AND IT ALSO SAID THE LISTS OF THE MEMBERS?

5 A IT ALSO RELATED TO THE UNDERLYING SECURITY
6 DOCUMENTATION THAT HAD TO DO WITH WHAT THE SECURED
7 CREDITORS WHO WERE THE BUYERS AT THIS -- AT THESE PARKS GOT.

8 Q SO YOU GOT THE MEMBERSHIP CONTRACTS BEING
9 SOLD NOVEMBER 5TH, AND THEN YOU HAVE THIS ORDER REJECTING
10 THE MEMBERSHIP CONTRACTS ON NOVEMBER 24TH. HOW DID THAT
11 HAPPEN?

12 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: I GOT THE NOTICES AND SAW THE
15 PLEADINGS AND SO ON. THERE WAS -- FIRST OF ALL, THERE'S A
16 COINCIDENCE OF DATES. THE HEARING -- THE AUCTION, I
17 BELIEVE, OCCURRED ON THE 27TH.

18 BY MR. SHAW: Q OF OCTOBER. WHICH IS THE SAME
19 DATE ON EXHIBIT 368?

20 A MY RECOLLECTION, WE HAD A HEARING IN THE
21 BANKRUPTCY COURT IN THE MORNING AT WHICH THE COURT APPROVED
22 THE AUCTION SALE AND ALSO APPROVED REJECTION OF THE
23 EXECUTOR -- TO THE CONTRACTS TO THE EXTENT THAT THEY WERE
24 EXECUTORY. THERE WAS AN ISSUE ABOUT WHETHER THEY WERE.
25 BUT THAT HEARING TOOK PLACE IN THE MORNING.

26 AND THEN IN THE AFTERNOON WE CAME BACK, AND

1 THE TRUSTEE CONDUCTED THE AUCTION. THERE WAS A VIDEOTAPE
2 CAMERA THERE, AND THE AUCTION ACTUALLY TOOK PLACE.

3 BUT THE ORDER MAKING THE REJECTION
4 EFFECTIVE, THE CONTRACTS HAD BEEN SOLD. SO THE TRUSTEE
5 DIDN'T SUBMIT AN ORDER. AND IT WASN'T ENTERED UNTIL
6 NOVEMBER 24. AND THAT'S WHEN IT BECAME EFFECTIVE WITH
7 REGARD TO REJECTION, AFTER THE CONTRACTS WERE SOLD.

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

10 THE COURT: OVERRULED.

11 BY MR. SHAW: Q SO THERE WAS -- IN OTHER WORDS,
12 THERE WAS NOTHING TO REJECT, BECAUSE THE ESTATE HAD ALREADY
13 SOLD THE MEMBERSHIP CONTRACTS TO THE NEW OWNER; CORRECT?

14 A YES.

15 MR. RIVIN: OBJECTION, YOUR HONOR. THIS IS AN
16 IMPROPER LEGAL OPINION. LACK OF FOUNDATION.

17 THE COURT: I'LL SUSTAIN THAT.

18 BY MR. SHAW: Q WHAT WAS YOUR UNDERSTANDING OF THE
19 EFFECT -- WHAT THE STATUS OF THE MEMBERSHIP CONTRACTS WERE
20 FOR ALL SEASONS RESORTS AFTER THE AUCTION?

21 THE COURT: THE SAME QUESTION, MR. SHAW.

22 MR. RIVIN: OBJECTION. IT'S ALSO IRRELEVANT.

23 MR. SHAW: YOUR HONOR, I HAVE NOTHING FURTHER FOR
24 MR. MALPASS ON DIRECT EXAMINATION.

25 THE COURT: THANK YOU.

26 COUNSEL?

1 MR. RIVIN: IF I COULD HAVE JUST A MOMENT, YOUR
2 HONOR.

3 CROSS-EXAMINATION

4 BY MR. RIVIN: Q MR. MALPASS, ON DIRECT
5 EXAMINATION MR. SHAW MENTIONED A COUPLE OF ALL SEASONS --
6 COUPLE OF COMPANIES AFFILIATED WITH RAYMOND NOVELLI THAT
7 YOU REPRESENTED. ONE WAS ALL SEASONS RESORTS. ANOTHER ONE
8 WAS REVCON.

9 YOU REPRESENTED A NUMBER OF OTHER COMPANIES
10 AFFILIATED WITH MR. NOVELLI, DID YOU NOT?

11 A I'D ASK -- I'D HAVE TO ASK YOU TO REPHRASE
12 THAT, BECAUSE THE WORD "AFFILIATED."

13 Q PARDON?

14 A THE WORD "AFFILIATED" IS A DEFINED TERM IN
15 THE BANKRUPTCY CODE, MR. RIVIN. AND IF YOU WANT ME TO
16 ANSWER IT IN THAT CONCLUSIONARY WAY, I GUESS I CAN TRY.

17 Q WHY DON'T YOU TRY.

18 A I DON'T KNOW.

19 Q YOU DON'T KNOW IF YOU REPRESENTED ANY OTHER
20 COMPANIES THAT WERE AFFILIATED WITH MR. NOVELLI; IS THAT
21 CORRECT?

22 A WITH MR. NOVELLI, THAT'S CORRECT.

23 Q DID YOU REPRESENT OTHER COMPANIES THAT WERE
24 RELATED TO -- EXCUSE ME.

25 DID YOU REPRESENT OTHER COMPANIES THAT WERE
26 AFFILIATED WITH ALL SEASONS RESORTS BESIDES REVCON?

1 A YES, I DID.

2 Q HOW MANY?

3 A I DON'T RECALL THE EXACT NUMBER. SEVERAL.

4 Q LET'S TALK ABOUT ALL SEASONS FIRST. YOU
5 TALKED ABOUT THAT WITH MR. SHAW.

6 AS MR. SHAW POINTED OUT, YOU FILED THE
7 VOLUNTARY BANKRUPTCY PETITION ON JULY 11, 1997; CORRECT?

8 A YES.

9 Q AND THAT WAS ITS THIRD BANKRUPTCY?

10 A THE CORPORATION, YES.

11 Q YOU ALSO PREPARED A FINAL ORDER FOR ALL
12 SEASONS CLOSING ITS SECOND BANKRUPTCY, DIDN'T YOU?

13 A I'M NOT CERTAIN OF THAT.

14 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
15 467, PLEASE.

16 MAY WE SHOW THAT UP ON THE SCREEN?

17 THE COURT: YOU MAY.

18 BY MR. RIVIN: Q DO YOU SEE UP IN THE TOP
19 LEFT-HAND CORNER OF THE FIRST PAGE, MR. MALPASS, YOUR NAME
20 AND YOUR STATE BAR NUMBER?

21 A YES, MR. RIVIN. THIS IS A DOCUMENT THAT WAS
22 PREPARED IN MY OFFICE.

23 Q ALL RIGHT. AND THAT DOCUMENT WAS ENTERED ON
24 MAY 14, 1997?

25 A YES.

26 Q THAT'S WHEN THE ORDER WAS ENTERED?

1 A IN THE BANKRUPTCY COURT, YES.

2 Q SO, IN OTHER WORDS, THE -- THE SECOND ALL
3 SEASONS BANKRUPTCY CLOSED ON MAY 14, 1997, AND THE THIRD
4 ONE WAS FILED LESS THAN TWO MONTHS LATER; IS THAT RIGHT?

5 A YES.

6 Q WHEN WERE YOU HIRED TO REPRESENT ALL
7 SEASONS; DO YOU RECALL?

8 A I DON'T RECALL.

9 Q YOU DID NOT REPRESENT ALL SEASONS AS A
10 DEBTOR IN THE BANKRUPTCY WHEN THE SECOND ALL SEASONS
11 BANKRUPTCY WAS FILED, DID YOU?

12 A NO.

13 Q WHEN WERE YOU RETAINED TO REPRESENT ALL
14 SEASONS IN ITS SECOND BANKRUPTCY?

15 A I'M NOT CERTAIN THAT I WAS. I PROBABLY
16 WASN'T. I WOULD HAVE PREPARED THIS ORDER AS PART OF THE
17 WORK DONE FOR ALL SEASONS, JUST AS THE -- IN THE
18 REPRESENTATION THAT I UNDERTOOK LATER.

19 Q WHAT HAPPENED WITH ALL SEASONS' PRIOR
20 COUNSEL; DO YOU KNOW?

21 A ERITH SMITH, WHO WAS ONE OF THE LAWYERS, IS
22 NOW A BANKRUPTCY JUDGE IN LOS ANGELES. MARK WINTHROP IS
23 PRACTICING IN A FIRM IN ORANGE COUNTY. THOSE ARE THE TWO
24 THAT I WAS FAMILIAR WITH.

25 Q ANOTHER ONE OF THE COMPANIES AFFILIATED WITH
26 ALL SEASONS THAT YOU REPRESENTED WAS NEW TRAILINN?

1 INDICATED EARLIER THAT YOU DID SOME WORK FOR FIRST
2 NATIONWIDE; ALTHOUGH, YOU DIDN'T REPRESENT THE COMPANY AS
3 DEBTOR IN THE BANKRUPTCY; IS THAT RIGHT?

4 A NO, THAT'S NOT CORRECT.

5 Q YOU HAD SOME FAMILIARITY WITH THE FIRST
6 NATIONWIDE BANKRUPTCY?

7 A THAT'S WHAT I TESTIFIED, YES.

8 Q ALL RIGHT. HOW DID YOU HAVE FAMILIARITY
9 WITH IT?

10 A I LOOKED AT THE PLEADINGS, I TALKED TO
11 JIM JOSEPH ON A NUMBER OF OCCASIONS.

12 Q DID YOU TALK TO RAY NOVELLI ABOUT THE FIRST
13 NATIONWIDE BANKRUPTCY, TOO?

14 A YES.

15 Q IS THAT ONE OF THE WAYS YOU BECAME FAMILIAR
16 WITH IT?

17 A TO SOME EXTENT.

18 Q REVCON MOTORCOACH IS THE NEXT AFFILIATE THAT
19 WAS IN BANKRUPTCY, A COMPANY AFFILIATED WITH ALL SEASONS?

20 A YES.

21 Q AND YOU ALREADY TESTIFIED THAT YOU
22 REPRESENTED REVCON; YOU WERE ITS BANKRUPTCY COUNSEL, NOT AT
23 THE BEGINNING; BUT LATER ON YOU ASSUMED THEIR
24 REPRESENTATION; IS THAT RIGHT?

25 A YES, THAT'S RIGHT.

26 Q AND NEXT ONE IS GUARDIAN HOME LOAN, ANOTHER

1 AFFILIATED COMPANY.

2 DID YOU DO ANY WORK FOR GUARDIAN HOME LOAN?

3 A I DON'T THINK SO.

4 Q YOU JUST DON'T RECALL ONE WAY OR THE OTHER?

5 A I'VE HAD PROBABLY 70 OR 80 CHAPTER 11 CASES
6 THAT I HAD INVOLVEMENT IN SINCE THIS TIME, AND I DON'T
7 RECALL. I DON'T THINK SO, THOUGH.

8 Q BUT, AGAIN, ALL OF THESE COMPANIES ARE
9 AFFILIATED WITH ALL SEASONS; RIGHT?

10 A WELL, IT SAYS -- THAT'S WHAT WAS DISCLOSED
11 IN THE FILING. AND IT SAYS WHY THERE ON THE LINE. THAT
12 SAYS RELATIONSHIP, COMMON DIRECTORS, OFFICERS, SHAREHOLDERS
13 AND SO ON. IT'S DELINEATED THERE.

14 Q DO YOU KNOW WHO OWNED ALL SEASONS RESORTS AT
15 THE TIME THAT THE VOLUNTARY BANKRUPTCY PETITION WAS FILED?

16 A TODAY?

17 Q YES.

18 A NO.

19 Q DID YOU KNOW IT AT THE TIME?

20 A I DON'T RECALL. THERE ARE SOME DISCLOSURES
21 THAT ARE MADE ON THE FORMS, AND WE RECEIVED INFORMATION
22 THAT WOULD HAVE BEEN PUT IN THOSE FORMS. BUT I DON'T HAVE
23 ANY CURRENT RECOLLECTION OF WHAT WAS IN THOSE.

24 Q AND YOU DIDN'T HAVE A RECOLLECTION BACK AT
25 THE TIME?

26 A WELL, I DON'T KNOW.

1 Q YOU'RE JUST NOT SURE?

2 A I'M NOT SURE WHAT -- I MEAN, I WOULD HAVE
3 KNOWN THINGS AT THE TIME -- I WOULD HAVE RECEIVED
4 INFORMATION. NORMALLY I HAVE A PARALEGAL THAT GETS
5 INFORMATION FROM THE CLIENT WHEN THEY COME IN TO HAVE A
6 FILING DONE, AND THE CLIENT GIVES US INFORMATION AND SO ON.

7 Q DID YOU KNOW THAT RAY NOVELLI WAS INVOLVED
8 WITH ALL SEASONS AT THE TIME YOU FILED THE CHAPTER 11
9 PETITION?

10 A YES.

11 Q DID YOU KNOW HIS ROLE IN THE COMPANY?

12 A YOU'RE ASKING ME WHAT I KNEW AT THE TIME; I
13 DON'T REMEMBER.

14 Q DO YOU RECALL WHETHER HE WAS THE PRESIDENT
15 OF THE COMPANY?

16 A MR. RIVIN, WHEN YOU TOOK MY DEPOSITION I
17 WAS SHOWN DOCUMENTS THAT INDICATED THAT MR. NOVELLI SIGNED
18 THE PETITION AS PRESIDENT. THAT DID NOT REFRESH MY
19 RECOLLECTION AS TO WHAT I REMEMBERED AT THE TIME. I MEAN,
20 I ASSUME THAT WAS THE CASE.

21 Q LET'S GO BACK TO THE FIRST PAGE OF
22 EXHIBIT -- THE SAME EXHIBIT, 377.

23 I DON'T THINK THAT'S IT. I'M SORRY.

24 LET'S GO TO THE SECOND PAGE, IF WE COULD.
25 THERE IT IS.

26 THAT'S THE SECOND PAGE OF THE VOLUNTARY

1 PETITION FOR ALL SEASONS, AND THAT'S YOUR SIGNATURE ON THAT
2 PAGE?

3 A YES.

4 Q AND YOU SIGNED IT JULY 10, 1997, WHICH IS A
5 DAY BEFORE IT WAS FILED; RIGHT?

6 A THAT'S WHAT THE DATE BLANK SAYS, YES.

7 Q AND MR. NOVELLI SIGNED IT, AND HE SIGNED IT
8 AS PRESIDENT OF THE COMPANY?

9 A YES.

10 Q BUT AS YOU SIT HERE TODAY, YOU JUST DON'T
11 HAVE ANY RECOLLECTION OF MR. NOVELLI BEING THE PRESIDENT OF
12 THE COMPANY?

13 A OTHER THAN HAVING SEEN THESE DOCUMENTS. I
14 MEAN, I ASSUME HE WAS. MR. RIVIN, I DON'T CONDUCT AN
15 INVESTIGATION INTO CORPORATE BOOKS AND RECORDS OR ANYTHING
16 ELSE. IN A CHAPTER 11 PROCEEDING, NORMALLY WE RECEIVE
17 INFORMATION FROM THE CLIENT AND THE CLIENT'S MANAGEMENT,
18 AND THAT'S WHAT WE PUT INTO THE PLEADINGS. THEY'RE SIGNING
19 THESE PLEADINGS UNDER PENALTY OF PERJURY. THEY'RE
20 PRESUMABLY CORRECT.

21 Q DID YOU UNDERSTAND THAT MR. NOVELLI WAS PART
22 OF MANAGEMENT OF ALL SEASONS?

23 A YES.

24 Q LET'S GO BACK TO THE THIRD PAGE, EXHIBIT
25 377, PLEASE. CONTINUING DOWN THE LIST OF AFFILIATED
26 COMPANIES, WE TALKED ABOUT -- WE TALKED ABOUT REVCON AND

1 FIRST NATIONWIDE AND GUARDIAN LOAN. NOW THERE'S GUARDIAN
2 CREDIT CORPORATION, AS WELL.

3 DID YOU REPRESENT GUARDIAN CREDIT?

4 A I DON'T THINK SO.

5 Q DO YOU KNOW WHO DID?

6 A NO.

7 Q WERE YOU INVOLVED IN THAT BANKRUPTCY?

8 A I WOULD HAVE REVIEWED SOME THINGS HAVING TO
9 DO WITH GUARDIAN DURING THE ALL SEASONS CASE IS WHAT I
10 RECALL. I THINK THEY WERE.

11 THERE WERE CLAIMS IN THE CASE THAT GUARDIAN
12 HAD, BUT IT'S A VAGUE RECOLLECTION AT THIS POINT. I
13 REMEMBER VERY LITTLE ABOUT THE CASE THEN WHEN I REVIEWED A
14 LOT OF THE PLEADINGS TO PREPARE FOR THIS TRIAL. I PICKED
15 UP SOME THINGS.

16 BUT TO ANSWER YOUR QUESTION, I DON'T THINK
17 EXACTLY.

18 Q MR. NOVELLI WAS IN MANAGEMENT OF GUARDIAN
19 CREDIT, WAS HE NOT?

20 A I DON'T KNOW THAT. I DON'T KNOW THAT.

21 Q WHO DID YOU DEAL WITH FROM MANAGEMENT OF
22 GUARDIAN CREDIT IN THE WORK THAT YOU DID?

23 A I DON'T RECALL DEALING WITH ANYONE. I THINK
24 I LOOKED AT DOCUMENTS, AND -- FROM THEIR BANKRUPTCY CASE
25 AND POSSIBLY SOME SECURITY DOCUMENTS THAT TURNED UP WHEN WE
26 REVIEWED THINGS THAT WERE FILED -- SOME OF THESE ENTITIES

1 HAD RECORDED TRUST DEEDS ON SOME OF THE ALL SEASONS PARTS.
2 THAT'S HOW I LOOK AT THEM. SO THEY WERE CREDITORS IN THE
3 CASE, AND WE REVIEWED DOCUMENTATION RELATING TO CREDITORS.

4 Q LET'S GO DOWN TO NEW TRAILINN.
5 YOU INDICATED A MOMENT AGO THAT THIS WAS
6 ANOTHER ONE OF THE AFFILIATED COMPANIES THAT YOU
7 REPRESENTED?

8 A YES.

9 Q WHO DID YOU TAKE INSTRUCTION FROM AT NEW
10 TRAILINN?

11 A IT'S SEVERAL PEOPLE, IS MY BEST RECOLLECTION.

12 Q INCLUDING MR. NOVELLI?

13 A I THINK I WOULD HAVE TALKED TO MR. NOVELLI
14 ON A NUMBER OF OCCASIONS ABOUT NEW TRAILINN.

15 Q ABOUT NEW TRAIL INN?

16 A I'M NOT POSITIVE OF THAT. I HAD CONTACTS --
17 I DEALT WITH AN ATTORNEY NAMED JIM BAUMGARTNER REGARDING
18 MOST OF THESE CASES, MOST OF THE TIME.

19 Q WAS IT YOUR UNDERSTANDING THAT
20 MR. BAUMGARTNER WORKED IN-HOUSE, BASICALLY, FOR
21 MR. NOVELLI'S COMPANIES?

22 A HE WAS EMPLOYED. I DON'T KNOW THAT I'D
23 CHARACTERIZE IT AS IN-HOUSE. HE WAS MORE OF AN INDEPENDENT
24 CONTRACTOR.

25 AND WHEN YOU SAY "MR. NOVELLI'S COMPANIES,"
26 THE COMPANIES THAT MR. NOVELLI WAS INVOLVED WITH, I DON'T

1 KNOW THAT THEY'RE HIS COMPANIES. I STILL DON'T KNOW.

2 Q DID YOU BILL NEW TRAILINN FOR YOUR SERVICES?

3 A I CERTAINLY WOULD EXPECT SO IF I DID WORK
4 FOR THEM. I'M CERTAIN I DID.

5 Q I WANT TO SHOW YOU, IF I COULD, A BINDER
6 THAT I PUT TOGETHER CONTAINING BILLING RECORDS.

7 MR. MALPASS, LET ME LAY SOME FOUNDATION FOR
8 THIS.

9 MR. MALPASS, THAT DURING -- DO YOU REMEMBER
10 THAT DURING YOUR DEPOSITION YOU WERE ASKED TO BRING CERTAIN
11 BILLING RECORDS WITH YOU SO WE COULD EXAMINE THEM?

12 A YES.

13 Q YOU DID THAT IN YOUR DEPOSITION?

14 A YES.

15 Q YOU BROUGHT THEM TO THE DEPOSITION.

16 DO YOU RECOGNIZE THE DOCUMENTS IN FRONT OF
17 YOU AS YOUR BILLING RECORDS?

18 MR. SHAW: IS THERE AN EXHIBIT NUMBER, COUNSEL?

19 MR. RIVIN: THESE ARE NOT ON OUR EXHIBIT LIST, AND
20 WE'RE GOING TO USE THEM ONLY FOR THE PURPOSE OF REFRESHING
21 THE WITNESS'S RECOLLECTION. WE WILL NOT OFFER THEM INTO
22 EVIDENCE.

23 THE WITNESS: THEY APPEAR TO BE, YES, PART OF MY
24 BILLING RECORDS. YES.

25 BY MR. RIVIN: Q DO YOU HAVE A SPECIFIC
26 RECOLLECTION OF HOW MUCH YOU CHARGED EACH OF THESE

1 AFFILIATED CLIENTS, WITHOUT LOOKING AT YOUR BILLING RECORDS?

2 A NO.

3 Q SO I'M SHOWING YOUR BILLING RECORDS TO YOU
4 FOR THAT PURPOSE.

5 WHY DON'T YOU TAKE A LOOK AT NEW TRAILINN.

6 A DO YOU WANT TO TELL ME WHICH TAB IT IS?

7 Q YES, I WILL.

8 A PLEASE.

9 Q THERE IS AN INDEX ON THIS, AND IT'S TAB 8
10 AND TAB 9.

11 A YES.

12 Q CAN YOU TELL BY YOUR BILLING RECORDS WHEN
13 YOU WORKED FOR NEW TRAILINN?

14 A PRIMARILY IN 1996.

15 Q NOW, TURN TO TAB 9.

16 A AND CONTINUING, THIS IS THE 1997 PORTION, SO
17 IT CONTINUED INTO 1997.

18 Q AND IT APPEARS YOU BILLED APPROXIMATELY 6-
19 TO \$7,000 FOR NEW TRAILINN?

20 A I DON'T KNOW QUITE WHERE YOU'RE GETTING THAT
21 FROM, BUT THERE'S -- I SEE A BALANCE OF 4014.93. ARE YOU
22 TALKING CUMULATIVELY?

23 Q I'M LOOKING AT THE TOTAL AMOUNT THAT YOU
24 BILLED. I'M ADDING UP THE TOTAL THAT YOU BILLED, NOT THE
25 BALANCE

26 THE BALANCE SHOWS THE AMOUNT THAT YOU WERE

1 OWED; RIGHT?

2 A YES. AT A PARTICULAR POINT IN TIME, YES.

3 Q THAT'S RIGHT. AND THERE'S A TOTAL COLUMN AS
4 WELL, AND IT'S THE TOTAL COLUMN THAT SHOWS HOW MUCH YOU
5 BILLED?

6 A SO YOU'VE DONE THE MATH.

7 Q I'M DOING IT NOW.

8 A I BELIEVE YOU.

9 Q ALL RIGHT. IT'S AROUND \$7,000. IS THAT
10 RIGHT?

11 A IT APPEARS TO BE CORRECT, YES.

12 Q ALL RIGHT.

13 A YOU'RE QUICKER THAN I AM.

14 Q THE NEXT AFFILIATED DEBTOR BANKRUPTCY DEBTOR
15 IS RITZ TRAVEL CLUB. I DON'T BELIEVE YOU MENTIONED THAT
16 COMPANY WHEN MR. SHAW WAS QUESTIONING YOU THIS MORNING.
17 THAT WAS ANOTHER AFFILIATED COMPANY THAT YOU
18 REPRESENTED?

19 A YES. I DID SOME -- I DID WORK FOR RITZ
20 TRAVEL CLUB.

21 Q YOU DID SOME BANKRUPTCY WORK FOR RITZ TRAVEL
22 CLUB?

23 A YES.

24 Q WHEN DID YOU REPRESENT RITZ TRAVEL CLUB?

25 A I DON'T RECALL EXACTLY. I THINK IT WOULD
26 HAVE ALL HAVE BEEN IN THE 1996, '97 PERIOD. POSSIBLY INTO

1 '98.

2 Q CAN I ASK YOU TO LOOK AT YOUR TIME RECORDS
3 AGAIN, TABS 12 AND 13.

4 A YES. THERE'S A 1996 BILLING AND A 1997
5 BILLING. SO THAT WAS WHEN THE WORK WAS DONE.

6 Q IT LOOKS LIKE YOU BILLED SEVERAL THOUSAND
7 DOLLARS, LESS THAN \$10,000, TO THIS CLIENT; IS THAT RIGHT?

8 A I THINK THAT'S -- YES.

9 Q AND WHAT WORK DID YOU DO FOR RITZ TRAVEL
10 CLUB?

11 A THE RITZ TRAVEL CLUB OWNED A HOTEL IN
12 FLORIDA, IS MY RECOLLECTION, AND I WAS INVOLVED IN -- THERE
13 WAS AN ATTEMPT BEING MADE TO SELL THAT HOTEL AND TO KEEP
14 BOOKINGS. IT WAS -- APPARENTLY IT WAS QUITE A NICE OR A
15 ROMANTIC STYLE HOTEL, AND PEOPLE BOOKED WEDDING RECEPTIONS
16 AND THINGS LIKE THAT. AND THERE WAS A BACKLOG OF ORDERS,
17 AND WE TRIED TO HOLD THAT IN PLACE SO THAT IT COULD BE SOLD
18 WITH THE BOOKINGS, VALUABLE BOOKINGS.

19 Q IS THAT ANOTHER COMPANY MR. NOVELLI WAS
20 INVOLVED IN?

21 A WELL, THE BILLING SAYS JIM BAUMGARTNER AT
22 THE TOP.

23 Q IS THAT ANOTHER COMPANY MR. NOVELLI WAS
24 INVOLVED IN, AS FAR AS YOU KNEW?

25 A YES, HE WAS INVOLVED. YES.

26 Q DID YOU FILE THE BANKRUPTCY FOR RITZ TRAVEL

1 CLUB?

2 A I DON'T BELIEVE SO, NO.

3 Q DID YOU SUBMIT A FEE APPLICATION TO THE
4 COURT ON RITZ TRAVEL CLUB?

5 A I HAVE.

6 Q WHEN IS THE LAST TIME YOU DID WORK FOR RITZ
7 TRAVEL CLUB?

8 A I DON'T KNOW.

9 Q AT THE TIME OF YOUR DEPOSITION TWO MONTHS
10 AGO, YOU STILL HAD A FEE APPLICATION PENDING --

11 A YES.

12 Q -- WITH THE BANKRUPTCY COURT?

13 A YES.

14 Q IN RITZ TRAVEL CLUB?

15 A RIGHT. THE CHAPTER 7 TRUSTEE HASN'T CLOSED
16 THE CASE YET. AT LEAST I THINK THAT'S THE ONE WHERE THAT
17 SITUATION IS THERE.

18 Q LET'S LOOK AT -- LET ME ASK YOU TO TURN TO
19 TABS 10 AND 11 FOR REVCON, AGAIN, ONE OF THE COMPANIES THAT
20 WAS LISTED ON EXHIBIT 377, ANOTHER COMPANY YOU REPRESENTED,
21 ANOTHER MR. NOVELLI RELATED COMPANY THAT YOU REPRESENTED IN
22 BANKRUPTCY.

23 CAN YOU TELL US WHAT YEARS YOU REPRESENTED
24 REVCON?

25 A 1996 AND 1997, BASED ON THESE RECORDS, AT
26 LEAST PORTIONS OF THOSE.

1 Q DID YOUR OFFICE HAVE OTHER BILLING RECORDS
2 FOR REVCON FOR 1998 AND BEYOND THEY JUST COULDN'T LOCATE?

3 A IT'S POSSIBLE, BUT I DON'T KNOW THAT. I
4 THINK REVCON WAS PRETTY WELL -- LET'S SEE, WE KNOW -- THE
5 PLAN WAS CONFIRMED, WELL, 4/17/98. SO THERE WAS PROBABLY
6 WORK DONE IN '98.

7 Q AND WITH REVCON, IT LOOKS LIKE YOU'VE GOT
8 ABOUT \$50,000 THAT YOU BILLED ON REVCON?

9 A THAT SOUNDS -- FOR CHAPTER 11, YES.

10 Q SO \$50,000 TO THAT NOVELLI-RELATED COMPANY;
11 RIGHT?

12 A I'M NOT DOING THE MATH, BUT I THINK THAT'S
13 FAIR.

14 Q HAVE YOU -- I NOTICED THAT AT THE END OF
15 DECEMBER, 1997, YOU HAD A BALANCE DUE OF \$40,389.13. YOU
16 SHOW THAT. DO YOU SEE THAT?

17 A THAT'S THE ENTRY ON THE SHEET. I'M NOT
18 CERTAIN THAT THAT'S CORRECT.

19 Q DO YOU KNOW WHETHER IT WAS CORRECT AS OF
20 DECEMBER, 1997?

21 A NO, I DON'T KNOW.

22 Q WHO PUT TOGETHER THIS SUMMARY?

23 A THIS IS -- HANDWRITING IS A WOMAN NAMED
24 KANDIE PHAM, WHO WAS MY BOOKKEEPER AT THAT TIME.

25 Q DO YOU KNOW HOW MUCH MONEY REVCON OWES YOU
26 CURRENTLY?

1 A NO.

2 Q IS IT MORE THAN \$40,000?

3 A I DON'T BELIEVE SO.

4 Q YOU JUST DON'T KNOW WHAT IT IS, DON'T KNOW
5 THE AMOUNT?

6 A I'M NOT SURE REVCON OWES ME ANY MONEY AT
7 THIS TIME BECAUSE I DON'T THINK THAT -- I MEAN, MY POSITION
8 IS IT DOESN'T OWE ME ANY MONEY AT THIS TIME.

9 Q AND IS THAT BECAUSE YOU SUBMITTED BILLINGS
10 TO THE BANKRUPTCY -- TO THE FEE APPLICATION OF THE
11 BANKRUPTCY COURT?

12 A WHATEVER HAPPENED WITH REGARD TO THAT CASE
13 AND THE FEE SITUATION WAS FINALIZED A LONG TIME AGO, AND
14 THERE ISN'T ANYTHING OWING.

15 Q WAS EVERYTHING PAID, EVERYTHING YOU BILLED
16 PAID?

17 A I DON'T KNOW.

18 Q DO YOU THINK THAT IT WASN'T ALL PAID?

19 A PROBABLY NOT.

20 Q LET'S GO TO ANOTHER, A COUPLE MORE
21 NOVELLI-RELATED COMPANIES.

22 WE TALKED ABOUT RITZ TRAVEL CLUB.

23 IS HERITAGE LANDING -- DO YOU REMEMBER
24 WHETHER YOU DID ANY WORK FOR HERITAGE LANDING?

25 A I DON'T THINK SO. I'M NOT POSITIVE. I
26 DON'T THINK SO.

1 Q IN YOUR DEPOSITION YOU INDICATED YOU MIGHT
2 HAVE; IS THAT YOUR RECOLLECTION TODAY?

3 A I DON'T THINK SO.

4 Q YOU JUST DON'T REMEMBER.

5 LET'S GO TO THE NEXT PAGE, IF WE COULD.

6 AND THEN SYCAMORE PARK IS ANOTHER AFFILIATED
7 COMPANY THAT WAS IN BANKRUPTCY AT THE TIME.

8 DID YOU REPRESENT SYCAMORE PARK? DID YOU DO
9 ANY WORK FOR SYCAMORE PARK?

10 A NO.

11 Q HOW ABOUT TRAVEL TIMES; DID YOU DO ANY WORK
12 FOR A NOVELLI-RELATED COMPANY CALLED "TRAVEL TIMES"?

13 A NOT THAT I RECALL. THERE WERE -- THERE
14 WERE -- I DID A LOT OF WORK WHICH -- SOME OF WHICH FELL
15 ALMOST INTO THE CONSULTING REALM WHERE IT WASN'T
16 REPRESENTATION BY BECOMING AN ATTORNEY OF RECORD IN COURT.
17 AND THE WORK GOT BILLED TO DIFFERENT ENTITIES. AND I
18 DIDN'T DIRECTLY CONTROL THE BILLINGS IN TERMS OF WHAT NAME
19 GOT PUT ON THE TOP OF THE BILL SOMETIMES. SO I DON'T KNOW.

20 I MEAN, I WOULD RECALL IT, AND I DIRECTED
21 IT. BUT THE ACTUAL PERSON MAKING OUT THE STATEMENT SENDING
22 THEM OUT WAS USUALLY ONE OF MY SECRETARIES.

23 Q DID YOUR SECRETARY ACT UNDER YOUR DIRECTION?

24 A SHE WOULD HAVE. BUT IT'S NOT SOMETHING THAT
25 I RECALL.

26 Q ALL RIGHT. SO YOU DON'T REMEMBER WHETHER

1 YOU WORKED FOR TRAVEL TIMES; AS YOU SIT HERE TODAY, DO YOU
2 HAVE ANY RECOLLECTION YOU WORKED FOR TRAVEL TIMES?

3 A I DON'T KNOW WHAT TRAVEL TIMES IS, MR. RIVIN.

4 Q I'D LIKE TO SHOW THE WITNESS EXHIBIT 459, 4
5 THROUGH 8.

6 I'M SORRY FOR THE DELAY. I THOUGHT WE HAD
7 COPIES OF THAT DOCUMENT, AND WE APPARENTLY DO NOT. AND
8 PERHAPS IT WOULD -- WELL, LET'S LET MR. SHAW TAKE A LOOK AT
9 THE DOCUMENT. IT'S FIVE PAGES.

10 DOES THE WITNESS HAVE IT?

11 A IS IT A TAB IN THIS BOOK?

12 MR. RIVIN: IT IS NOT.

13 MAY I APPROACH, YOUR HONOR? MAY WE PUT
14 THIS UP ON THE SCREEN?

15 THE COURT: VERY WELL.

16 MR. RIVIN: BY THE WAY, WHILE WE'RE DOING THIS, I'D
17 LIKE TO MOVE EXHIBIT 377, WHICH IS THE VOLUNTARY PETITION,
18 INTO EVIDENCE.

19 MR. SHAW: I'D LIKE TO TAKE IT UNDER SUBMISSION WE
20 HAVE SOME OBJECTION.

21 THE COURT: UNDER SUBMISSION.

22 MR. RIVIN: CAN WE TAKE A LOOK AT THE NEXT FIVE --
23 ALL FIVE CHECKS. YOU KNOW -- WELL, KEEP GOING, PLEASE.

24 Q MR. MALPASS, DO YOU SEE THAT THIS IS A CHECK
25 MADE PAYABLE TO YOU FOR -- I'M LOOKING AT THE SECOND
26 CHECK -- MADE PAYABLE TO YOU FOR \$1,046.36 ON THE ACCOUNT

1 OF TRAVEL TIMES, INC. --

2 A YES.

3 Q -- ON A BANK ACCOUNT IN LAS VEGAS, NEVADA?
4 DOES THIS REFRESH YOUR RECOLLECTION AT ALL
5 AS TO WHETHER YOU DID ANY WORK FOR TRAVEL TIMES?

6 A NO.

7 Q DOES IT -- DO YOU RECALL THAT ON WORK THAT
8 YOU DID FOR MR. NOVELLI'S COMPANIES, THAT YOU SOMETIMES
9 WERE PAID BY A DIFFERENT COMPANY?

10 A WHEN YOU SAY "WORK FOR MR. NOVELLI'S
11 COMPANIES," MR. RIVIN, I HAVEN'T TESTIFIED I DID WORK FOR
12 MR. NOVELLI'S COMPANIES. I SPECIFICALLY TOLD YOU I WASN'T
13 SURE WHO OWNED THEM. SO YOU'RE CALLING MR. NOVELLI'S
14 COMPANIES AS YOU'RE SAYING THAT. THE MEMO AT THE TOP SAYS
15 "HOOKER - ALL SEASONS." SO, THAT DOESN'T APPEAR TO BE
16 TRAVEL TIME. THE PAGE YOU'VE GIVEN ME, YOU DON'T HAVE IT
17 ON THE SCREEN.

18 Q THE FIRST PAGE?

19 A THE CHECK I'M LOOKING AT, THE ONE YOU
20 REFERRED TO, IF YOU GOT THESE OUT OF MY BILLINGS RECORDS,
21 THEY HAVE A NOTATION AS TO WHAT THEY'RE FOR.

22 Q WHY DON'T WE TALK ABOUT -- THE FIRST ONE IS
23 FOR A THOUSAND DOLLARS.

24 MR. SHAW: YOUR HONOR -- MAY WE APPROACH, YOUR
25 HONOR?

26 THE COURT: YOU MAY.

1 (DISCUSSION OFF THE RECORD.)

2 MR. MOSHENKO: YOUR HONOR, CAN WE REQUEST THAT
3 THE EXHIBIT BE BROUGHT DOWN FOR A MOMENT WHILE THE COUNSEL
4 DISCUSS IT?

5 THE COURT: VERY WELL.

6 (DISCUSSION OFF THE RECORD.)

7 BY MR. RIVIN: Q LET'S GO BACK TO EXHIBIT 459,
8 PAGE 4.

9 NOW, I WANT TO MAKE SURE YOU'VE GOT THAT.
10 THAT'S THE CHECK YOU HAVE IN FRONT OF YOU, MR. MALPASS?

11 A YES.

12 Q ALL RIGHT. SO THAT'S A THOUSAND DOLLAR
13 CHECK THAT WAS MADE PAYABLE TO YOU, TRAVEL TIMES -- ON THE
14 ACCOUNT OF TRAVEL TIMES, INC. AND IT WAS FOR A RETAINER,
15 A.S.R. RETAINER; IS THAT ALL SEASONS RESORTS?

16 A I DON'T KNOW. YOU'RE SHOWING ME -- THIS IS,
17 I ASSUME, PRESUMABLY A CHECK MEMO.

18 Q IT IS A CHECK OUT OF YOUR RECORDS, I BELIEVE.

19 A NO. IT MAY HAVE COME OUT OF MY RECORDS, BUT
20 THE CHECK MEMO WASN'T SOMETHING THAT I PREPARED. SO
21 WHATEVER SOMETHING SAYS ON THE CHECK MEMO DOESN'T MEAN THAT
22 THAT'S THE ACTUAL SITUATION.

23 Q CAN YOU EXPLAIN WHY YOU WERE BEING PAID BY
24 TRAVEL TIMES FOR A RETAINER?

25 A NO. I MEAN, I DON'T KNOW AT THIS POINT.

26 Q THERE'S A REFERENCE HERE TO FINOVA VERSUS

1 A.S.R. DOES THAT HELP YOU RECALL WHAT THE A.S.R. STANDS
2 FOR?

3 A WELL --

4 MR. SHAW: I'M SORRY, YOUR HONOR. JUST FOR THE
5 RECORD, I WANT TO MAKE AN OBJECTION FOR WHAT WE DISCUSSED
6 AT SIDEBAR. IRRELEVANT.

7 THE COURT: OVERRULED.

8 THE WITNESS: I ASSUME -- I MEAN, WHEN I REFER TO
9 A.S.R., IT MEANS ALL SEASONS RESORTS. BUT THIS MEANS -- --
10 WHAT THIS MEANS, I DON'T REMEMBER.

11 BY MR. RIVIN: Q DO YOU REMEMBER A LAWSUIT BY
12 FINOVA AGAINST ALL SEASONS RESORTS IN WHICH YOU DID SOME
13 WORK FOR ALL SEASONS?

14 A NO. FINOVA WAS INVOLVED IN THE ALL SEASONS
15 CASE.

16 Q DO YOU REMEMBER A LAWSUIT IN WHICH YOU DID
17 ANY LEGAL WORK IN WHICH FINOVA WAS INVOLVED, OTHER THAN THE
18 ALL SEASONS BANKRUPTCY?

19 A THERE MAY WELL HAVE BEEN PENDING AT THE TIME
20 THE CASE WAS FILED, THAT'S TRUE.

21 Q AT THE TIME THE BANKRUPTCY CASE WAS FILED?

22 A YES.

23 Q WE'LL COME BACK TO THAT LAWSUIT A LITTLE BIT
24 LATER.

25 YOU MENTIONED EARLIER, I BELIEVE, THAT YOU
26 DID SOME CONSULTING WORK?

1 A NO. I SAID IN THE NATURE OF CONSULTING.

2 Q IN THE NATURE OF CONSULTING.

3 WHAT TYPE OF WORK WERE YOU DOING IN THE
4 NATURE OF CONSULTING?

5 A I WAS DRAWING A DIFFERENTIATION BECOMING
6 COMING OF RECORD IN A PARTICULAR MATTER, MR. RIVIN, AS
7 OPPOSED TO BEING HIRED AS A LITIGATOR TO APPEAR IN A
8 PARTICULAR CASE. PEOPLE WILL SOMETIMES HIGHLY ME AS A
9 LAWYER TO JUST ASK ME QUESTIONS ABOUT PARTICULAR MATTERS.

10 Q BUT YOU'RE BEING HIRED AS A LAWYER EITHER
11 WAY; RIGHT?

12 A YES. YES.

13 Q YOU CONSIDER ONE TO BE CONSULTING WORK AND
14 THE OTHER TO BE LEGAL WORK?

15 A I SAID IN THE NATURE -- NO, IT'S STILL ALL
16 LEGAL WORK.

17 Q I SEE IN THE NATURE OF CONSULTING FOR YOUR
18 LEGAL KNOWLEDGE; IS THAT RIGHT?

19 A AGAIN, AS OPPOSED TO BEING -- BECOMING A
20 PARTICULAR LAWYER IN A PARTICULAR CASE.

21 Q LET'S GO THROUGH THE NEXT FOUR CHECKS HERE.

22 THERE IS -- THE NEXT CHECK IS -- WHICH I
23 SHOWED A LITTLE BIT EARLIER, AGAIN, IT'S A TRAVEL TIMES
24 CHECK FOR \$1,046. IT SAYS, "ON ACCOUNT OF LEGAL FEES."
25 AND UP AT THE TOP IT SAYS, "HOOKER-ALL SEASON."

26 DOES THAT RING A BELL, THE "HOOKER"?

1 A YES.

2 Q WAS THAT A LAWSUIT BROUGHT BY SOMEONE BY THE
3 NAME OF HOOKER AGAINST ALL SEASONS AND MR. NOVELLI?

4 A YES.

5 Q DID YOU DO SOME WORK FOR MR. NOVELLI AND ALL
6 SEASONS IN CONNECTION WITH THAT LAWSUIT?

7 A YES.

8 Q DO YOU KNOW WHY YOU WERE BEING PAID BY
9 TRAVEL TIMES FOR THE WORK YOU WERE DOING FOR MR. NOVELLI
10 AND ALL SEASONS --

11 A NO.

12 Q -- IN CONNECTION WITH THE HOOKER LAWSUIT?

13 A NO. I MEAN, I WAS BEING PAID BECAUSE I WAS
14 DOING LEGAL WORK.

15 Q I WAS ASKING YOU WHY IF YOU KNEW WHY YOU
16 WERE BEING PAID BY TRAVEL TIMES.

17 A NO.

18 Q AND THE NEXT CHECK?

19 A AGAIN, NOT AS I SIT HERE TODAY. THERE MAY
20 WELL HAVE BEEN SOME EXPLANATION MADE. I HAD DISCUSSIONS AT
21 VARIOUS TIMES WITH PEOPLE. I RECOGNIZED THE PERSON WHO
22 SIGNED THE CHECK.

23 Q THE NEXT TWO CHECKS ARE ALSO TRAVEL TIMES
24 CHECKS PAYABLE TO YOU.

25 A YES.

26 Q REGARDING WORK THAT YOU DID FOR ALL SEASONS

1 RESORTS?

2 A I CAN'T -- THAT'S NOT NECESSARILY TRUE.
3 THAT'S HOW IT GOT BOOKED INTERNALLY IN OUR OFFICES.

4 Q BUT YOU STILL -- DO YOU HAVE ANY
5 RECOLLECTION NOW OF TRAVEL TIMES DOING ANY WORK FOR TRAVEL
6 TIMES?

7 A WELL, THIS MAY WELL HAVE BEEN WORK FOR
8 TRAVEL TIMES. I'M NOT CERTAIN.

9 Q DOES THE NAME "TRAVEL TIMES" NOW MEAN
10 SOMETHING TO YOU?

11 A NO.

12 Q IT DOESN'T REFRESH YOUR RECOLLECTION?

13 A NO.

14 Q DO YOU REMEMBER DOING ANY WORK FOR A COMPANY
15 RELATED TO ALL SEASONS THAT WAS LOCATED IN LAS VEGAS?

16 A NO.

17 Q DO YOU REMEMBER MR. MARTINEZ WHO APPEARED TO
18 HAVE SIGNED SOME OF THOSE CHECKS?

19 A I KNOW -- I BECAME FAMILIAR WITH
20 MR. MARTINEZ, YES.

21 Q DID MR. MARTINEZ HAVE AN OFFICE IN NEVADA?

22 A I DON'T KNOW.

23 Q DID HE WORK WITH MR. NOVELLI?

24 A YES.

25 Q YOU ALSO SENT BILLS TO CHARTER MANAGEMENT --

26 A I SHOULD -- PHIL MARTINEZ IN MY EXPERIENCE

1 WORKED WITH JIM BAUMGARTNER WHO WAS THE ATTORNEY THAT I WAS
2 DEALING WITH AND DISCUSSING THESE CASES WITH. THAT WAS THE
3 PRIMARY POINT OF CONTACT.

4 Q DO YOU HAVE ANY KNOWLEDGE OF WHO
5 MR. BAUMGARTNER REPORTED TO?

6 A NO. HE HAD -- NO, I DON'T.

7 Q DID HE REPORT TO MR. NOVELLI, AS FAR AS YOU
8 KNOW?

9 A WHEN YOU SAY "REPORT TO," THAT'S KIND OF --
10 THAT HAS THE CONNOTATION THAT I'M NOT SURE -- I'M SURE HE
11 HAD DISCUSSIONS WITH MR. NOVELLI AND OTHER PEOPLE AT
12 VARIOUS TIMES. I WAS THERE SOMETIMES.

13 Q YOU ALSO -- YOU ALSO SENT BILLS TO A COMPANY
14 CALLED "CHARTER MANAGEMENT" THAT WAS AFFILIATED --

15 A THAT RINGS A BELL, BUT I'M NOT -- IF YOU
16 SHOW THEM TO ME, I MAY HAVE MORE OF A RECOLLECTION.

17 Q IF YOU'D TAKE A LOOK AT TABS -- TAKE A LOOK
18 AT THE BILLS UNDER TAB 1. CHARTER MANAGEMENT.

19 TAKE A LOOK AT THE BILLS UNDER TAB 2.
20 YOU'LL SEE THEY WERE BILLED "CHARTER MANAGEMENT." DO YOU
21 HAVE ANY RECOLLECTION OF WHO CHARTER MANAGEMENT WAS?

22 A IT SEEMS TO ME THAT THAT WAS -- THERE WAS A
23 MANAGEMENT COMPANY THAT MANAGED PARKS. THAT'S WHAT I
24 RECALL.

25 MR. SHAW: COUNSEL, I'M SORRY. IT'S UNDER THE TAB
26 THAT SAYS "ALL SEASONS RESORTS"?

1 MR. RIVIN: YES. IT'S UNDER -- IN THE BILLS.
2 UNDER TABS 2 AND 3.

3 MR. SHAW: OH.

4 BY MR. RIVIN: Q MR. MALPASS, IN YOUR DIRECT
5 EXAMINATION MR. SHAW ASKED YOU SOME QUESTIONS ABOUT YOUR
6 FEE APPLICATION IN CONNECTION WITH ALL SEASONS.

7 YOU WERE THE BANKRUPTCY ATTORNEY FOR ALL
8 SEASONS; IS THAT CORRECT?

9 A YES.

10 Q AND YOU SUBMITTED A FEE APPLICATION TO THE
11 COURT IN CONNECTION WITH THE WORK THAT YOU DID FOR ALL
12 SEASONS; IS THAT RIGHT?

13 A YES.

14 Q YOU WERE INVOLVED IN SOME VERY UNPLEASANT
15 LITIGATION OVER YOUR FEES IN CONNECTION WITH THAT CASE,
16 WERE YOU NOT?

17 A THERE WAS LITIGATION OVER THE FEES. A FEE
18 LITIGATION IS USUALLY NOT PLEASANT. I DON'T REALLY
19 CONSIDER LITIGATION PLEASANT.

20 Q YOU MADE A POINT IN YOUR DEPOSITION OF
21 SAYING IT WAS QUITE UNPLEASANT; DO YOU RECALL THAT?

22 A NO, I DON'T RECALL THAT. BUT, I MEAN,
23 THAT'S THE WAY I VIEWED IT, CERTAINLY.

24 Q FINOVA, IN PARTICULAR, WHICH WAS A CREDITOR
25 OF ALL SEASONS, CONTESTED YOUR FEES?

26 A WELL, FINOVA WAS THE ONLY CREDITOR THAT

1 CONTESTED MY FEES.

2 Q AND THEN THE TRUSTEE CONTESTED YOUR FEES, AS
3 WELL?

4 A YES. FINOVA WITHDREW ITS OBJECTION.

5 Q AT THE TIME OF YOUR DEPOSITION, YOU COULD
6 NOT RECALL EXACTLY WHAT THE DISPUTE WAS ABOUT; DO YOU
7 RECALL THAT?

8 A NO. I RECALL THAT I COULD RECALL SOMETHING
9 ABOUT IT. I MEAN, YOU'RE CHARACTERIZING MY TESTIMONY.

10 Q WELL LET'S TALK ABOUT -- LET'S TALK ABOUT
11 IT.

12 YOU RECEIVED A RETAINER FROM ALL SEASONS OF
13 APPROXIMATELY \$20,000 TO REPRESENT A.S.R. IN ITS THIRD
14 BANKRUPTCY; DO YOU RECALL THAT?

15 A YES.

16 Q AND IN YOUR APPLICATION FOR EMPLOYMENT, DO
17 YOU RECALL THE APPLICATION FOR EMPLOYMENT THAT YOU FILED?

18 A I RECALL FILING ONE. YES.

19 Q DO YOU HAVE ANY IDEA WHO PAID YOU THAT
20 RETAINER, THE \$20,000 RETAINER?

21 A "ANY IDEA" IS A VERY BROAD STATEMENT.

22 Q WAS IT PAID BY ALL SEASONS OR SOMEONE ELSE?

23 A WELL, IT GOT FURTHER CLARIFIED IN THE
24 PROCEEDINGS. WE GOT ADDITIONAL INFORMATION AND GAVE IT TO
25 THE COURT, AND I THINK THAT WAS EVENTUALLY WHAT
26 STRAIGHTENED THE MATTER OUT.

1 Q ISN'T IT TRUE THAT FINOVA AND -- AT LEAST
2 FINOVA ATTEMPTED TO GET YOU DISQUALIFIED FROM REPRESENTING
3 ALL SEASONS AND TO DENY YOUR FEES IN THAT BANKRUPTCY
4 BECAUSE OF INADEQUATE DISCLOSURE AS TO THE SOURCE OF YOUR
5 RETAINER?

6 A THAT WAS THE WITHDRAWN OBJECTION, YES.

7 Q THAT WAS A MOTION, THE MOTION THAT WAS FILED?

8 A THAT WAS THE MOTION THEY FILED AND
9 SUBSEQUENTLY WITHDREW.

10 Q YOU MENTIONED IN RESPONSE TO MR. SHAW'S
11 QUESTIONING THAT YOU DIDN'T RECEIVE ALL OF THE FEES YOU
12 SOUGHT; THAT'S CORRECT, RIGHT?

13 A THAT'S CORRECT.

14 Q AND YOU INDICATED THAT IT WASN'T UNCOMMON TO
15 NOT RECEIVE EVERYTHING THAT YOU SOUGHT; THAT'S WHAT YOU
16 SAID EARLIER TODAY?

17 A UNFORTUNATELY IN MY EXPERIENCE, THAT'S TRUE.

18 Q YOU SUBMITTED A FEE APPLICATION TO THE
19 COURT; DO YOU REMEMBER THE AMOUNT OF THE FEE APPLICATION?

20 A NO.

21 Q IT WAS IN EXCESS OF \$50,000?

22 A THAT'S -- THAT'S APPROPRIATE WITH THE AMOUNT
23 OF WORK I DID, YES.

24 Q ALL RIGHT. AND, IN FACT, YOU DIDN'T JUST
25 RECEIVE -- YOU DIDN'T JUST GET REDUCED -- YOUR FEES GET
26 REDUCED JUST A BIT, YOU DIDN'T RECEIVE ANYTHING IN EXCESS

1 OF THE RETAINER, DID YOU?

2 A NO.

3 Q IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND, IN FACT, YOU WERE REQUIRED TO PAY SOME
6 OF THE MONEY BACK, SOME OF YOUR RETAINER BACK, BY THE
7 BANKRUPTCY JUDGE; ISN'T THAT CORRECT?

8 A YES.

9 Q AND YOU HAD TO PAY IT BACK TO THE SCHULZ
10 FAMILY TRUST; ISN'T THAT CORRECT?

11 A I THINK THAT'S WHAT JUDGE RYAN EVENTUALLY
12 FOUND; THAT HE FOUND THAT THAT'S WHERE THE MONEY HAD COME
13 FROM, AND THAT'S WHERE THE ORDER SAID TO PAY IT BACK, YES.

14 Q SO JUDGE RYAN IN THAT BANKRUPTCY DENIED ALL
15 OF YOUR FEES WITH THE EXCEPTION OF 75 PERCENT OF THE
16 RETAINER THAT YOU RECEIVED; IS THAT RIGHT?

17 A MY FEE APPLICATION, YES.

18 Q AT THE COMPLETION OF YOUR WORK FOR ALL
19 SEASONS RESORTS, THE ACCOUNT RECEIVABLE BALANCE ON YOUR
20 BOOKS WAS BETWEEN, WHAT, \$5,000 AND \$200,000?

21 A I DON'T KNOW THAT. I THINK THAT'S PROBABLY
22 FAIR, YES.

23 Q ALL RIGHT. THAT'S SOMETHING I'M QUOTING
24 FROM YOUR DEPOSITION. REMEMBER I ASKED YOU THAT IN YOUR
25 DEPOSITION, AND YOU INDICATED THAT YOU WERE OWED SOMEWHERE
26 BETWEEN \$5,000 AND \$200,000 BY ALL SEASONS?

1 A I THINK THAT'S A FAIR RANGE, I DON'T THINK
2 EXACTLY WHAT IT WAS ON MY BOOKS.

3 Q BUT IT WAS SOMEWHERE BETWEEN THOSE TWO
4 NUMBERS?

5 A I IMAGINE IT WAS.

6 Q AND WAS THAT JUST ALL SEASONS OR ALL OF THE
7 AFFILIATED COMPANIES?

8 A I THINK IT'S JUST ALL SEASONS.

9 Q SO YOU --

10 A WHATEVER THE BALANCE ON THE ALL SEASONS
11 ROSTER WAS WAS AN ALL SEASONS NUMBER.

12 Q AND THEN THERE WAS ADDITIONAL MONEY OWED TO
13 YOU BY OTHER -- BY THE OTHER AFFILIATED COMPANIES; ISN'T
14 THAT CORRECT?

15 A YES.

16 Q AND THAT MONEY -- A LOT OF THAT MONEY HASN'T
17 BEEN PAID; ISN'T THAT RIGHT?

18 A YEAH. THAT'S CORRECT.

19 Q EVEN TO THIS DAY?

20 A NO.

21 Q TENS OF THOUSANDS OF DOLLARS?

22 A I THINK THAT'S FAIR. IT'S NOT OWING.

23 Q YOU CONSIDER THE PAYMENT UNCOLLECTIBLE?

24 A IT'S BEEN WRITTEN OFF LONG AGO.

25 Q IN RESPONSE TO MR. SHAW'S QUESTIONS, YOU
26 MENTIONED -- MR. SHAW ASKED YOU HOW MUCH MONEY YOU'VE

1 RECEIVED TO TESTIFY IN THIS CASE, AND YOU MADE THAT
2 DISTINCTION BETWEEN PAID FOR YOUR OPINIONS VERSUS BEING
3 PAID AS AN EXPERT. I UNDERSTAND THAT.

4 BUT YOU SAID THAT YOU'VE BILLED -- I THINK
5 YOU SAID YOU BILLED ABOUT \$10,000 SO FAR; IS THAT RIGHT?

6 A I'VE BEEN PAID ABOUT \$10,000.

7 Q YOU'VE BEEN PAID ABOUT \$10,000.

8 AND YOU SAID THAT YOU RECEIVED A RETAINER
9 FOR ALL OF THE WORK THAT YOU ANTICIPATED DOING?

10 A THAT'S NOT WHAT I SAID.

11 Q THAT'S WHAT I HEARD.

12 DID YOU -- HAVE YOU RECEIVED MORE THAN
13 \$10,000?

14 A NO. SOME OF THE PAYMENT CAME FROM YOUR FIRM.

15 Q WE WERE OBLIGATED TO PAY BECAUSE THE PARTY
16 WHO IS TAKING AN EXPERT DEPOSITION IS REQUIRED BY STATUTE
17 TO PAY THE EXPERT; ISN'T THAT RIGHT?

18 A YES. BUT THAT -- YES.

19 Q AND DO YOU REMEMBER THAT WE HAD A JUDGE
20 DECIDE THAT YOU WEREN'T ENTITLED TO THE FEES THAT YOU WERE
21 ASKING FOR?

22 A THAT WASN'T MY -- I WASN'T AT THAT HEARING.

23 Q HAVE YOU BEEN PAID ANYTHING IN EXCESS OF
24 \$10,000 FROM ANY OF THE PLAINTIFFS IN THE RELATED COMPANIES
25 OVER THE LAST TWO MONTHS?

26 A NO.

1 Q DO YOU KNOW WHO PAID YOU THE RETAINER THAT
2 YOU RECEIVED IN CONNECTION WITH YOUR WORK IN THIS CASE?

3 A NO. I MEAN, I'D HAVE TO LOOK AT THE CHECK.
4 MY SECRETARY GETS THEM, AND SHE HAS INSTRUCTIONS TO TAKE
5 THEM AND DEPOSIT THEM AND GIVE ME A MEMO ON WHAT CAME IN.

6 Q DO YOU KNOW WHO YOU BILLED?

7 A I BILLED THE PLAINTIFFS' COUNSEL.

8 Q I WANT TO TALK ABOUT YOUR INTERPRETATION OF
9 WHAT THE BANKRUPTCY COURT DID IN THE ALL SEASONS BANKRUPTCY
10 WITH THE SALE OF THE ASSETS OF ALL SEASONS. I THINK WHAT
11 YOU WERE IN ESSENCE SAYING -- MR. SHAW SHOWED YOU TWO
12 ORDERS, TWO BANKRUPTCY COURT ORDERS, BOTH IN NOVEMBER OF
13 1997; DO YOU RECALL THAT?

14 A YES.

15 Q ALL SEASONS RESORTS WAS IN A LIQUIDATING
16 MODE; ISN'T THAT RIGHT?

17 A IT WAS IN CHAPTER 7.

18 Q ALL SEASONS WAS A CHAPTER 7?

19 A I BELIEVE IT HAD BEEN -- I MAY BE WRONG.
20 I'M NOT CERTAIN. AT THAT POINT I THINK IT WAS CONVERTED --
21 MAYBE NOT. I'M NOT CERTAIN.

22 Q SO DO YOU KNOW -- YOU DON'T KNOW WHETHER IT
23 WAS CONVERTED?

24 A I THINK THE TRUSTEE SUBSEQUENTLY JUST FILED
25 A MOTION TO DISMISS IT. I THINK THAT'S WHAT HAPPENED.

26 Q SO IT WASN'T CONVERTED TO A CHAPTER 7?

1 A IT MAY NOT HAVE BEEN IN A 7.

2 Q BUT IT WAS LIQUIDATED; THE COMPANY WAS
3 LIQUIDATED?

4 A WELL, ITS ASSETS WERE SOLD AT AN AUCTION,
5 YES.

6 Q RIGHT.

7 ISN'T THERE SUCH A THING -- WE'VE HEARD A
8 LOT OF TESTIMONY IN THIS CASE ABOUT A CHAPTER 7 VERSUS A
9 CHAPTER 11. AND ISN'T THERE SUCH A THING AS A LIQUIDATING
10 CHAPTER 11, WHERE ESSENTIALLY ALL THE ASSETS ARE SOLD JUST
11 LIKE WHAT HAPPENED IN -- IN ALL SEASONS?

12 A WELL, YOU CAN --

13 Q THEY'RE -- THE ASSETS ARE EITHER SOLD OR
14 REJECTED OR ABANDONED?

15 A WELL, YOU CAN CONFIRM A LIQUIDATING CHAPTER
16 11 PLAN. THAT'S NOT WHAT HAPPENED.

17 Q THIS COMPANY -- THIS COMPANY, ALL SEASONS,
18 WAS A CHAPTER 11, AND THE COMPANY WAS LIQUIDATED; ISN'T
19 THAT --

20 A THE TRUSTEE SOLD THE ASSETS. VERY OFTEN
21 TRUSTEES SELL ASSETS. THAT'S A COMMON OCCURRENCE IN
22 CHAPTER 11 CASES AND IN 7'S.

23 Q WAS THERE A PLAN OF REORGANIZATION PROPOSED
24 IN ALL SEASONS?

25 A NO.

26 Q ALL SEASONS FILED BANKRUPTCY BECAUSE AT THE

1 TIME ALL SEASONS WAS BEING CONTROLLED BY A FEDERAL COURT
2 RECEIVER; ISN'T THAT CORRECT?

3 A NO. I WOULDN'T CHARACTERIZE THAT AS
4 CORRECT. THERE WAS A RECEIVER IN PLACE.

5 Q AND IT WAS A RECEIVER WHO WAS APPOINTED BY
6 THE FEDERAL COURT?

7 A THE -- IT WAS A FEDERAL COURT SUIT, YES.

8 Q BY A CREDITOR OF ALL SEASONS?

9 A YES.

10 Q THAT CREDITOR WAS NAMED "FINOVA"?

11 A I'M NOT CERTAIN. I THINK SO.

12 Q AND THAT CREDITOR OBTAINED -- THAT CREDITOR
13 OBTAINED A RECEIVER TO OPERATE ALL SEASONS; ISN'T THAT
14 CORRECT?

15 A THERE WAS A RECEIVER, JEFFREY KEIM, WHO WAS
16 IN CONTROL OF THE OPERATION AT THAT POINT, YES.

17 Q THAT WAS JEFFREY KEIM?

18 A I BELIEVE THAT'S HIS NAME.

19 Q JEFFREY KEIM AS THE RECEIVER FILED SOME
20 PAPERS IN THE BANKRUPTCY COURT; DO YOU RECALL THAT?

21 A I THINK HE FILED A NUMBER OF PLEADINGS, OR
22 HIS COUNSEL DID.

23 Q DO YOU REMEMBER JEFFREY KEIM TALKING ABOUT
24 HOW THE ALL SEASONS CHAPTER 11 FILING WENT DOWN, HOW IT
25 TOOK PLACE?

26 A NO.

1 Q I'D LIKE TO SHOW THE WITNESS EXHIBIT 478.

2 MR. SHAW: YOUR HONOR, WE HAVE AN OBJECTION TO THIS
3 BEING HEARSAY FROM -- IT'S AN OUT-OF-COURT STATEMENT MADE
4 BY MR. KEIM TO PROVE THE TRUTH OF THE MATTER ASSERTED.

5 THE COURT: WHY DON'T YOU APPROACH.

6 (DISCUSSION OFF THE RECORD.)

7 THE COURT: 20 MINUTES.

8 (RECESS TAKEN.)

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
10 COURT IN THE PRESENCE OF THE JURY:)

11 THE COURT: PROCEED.

12 MR. RIVIN: THANK YOU.

13 Q LET'S GO BACK TO THE ALL SEASONS BANKRUPTCY,
14 MR. MALPASS.

15 ALL SEASONS BANKRUPTCY NUMBER 1 WAS FILED IN
16 SANTA ANA; DO YOU RECALL THAT?

17 A I BELIEVE SO, YES.

18 Q AND ALL SEASONS NUMBER 2 WAS FILED IN SANTA
19 ANA?

20 A YES.

21 Q THE DOCUMENT THAT WE SHOWED EARLIER, THE
22 ORDER CLOSING THE ALL SEASONS 2 BANKRUPTCY, THE ONE FROM
23 MAY, 1997, YOU FILED THAT IN SANTA ANA?

24 A YES.

25 Q AND THEN THE ALL SEASONS 3 YOU DECIDED TO
26 FILE IN SAN BERNARDINO?

1 A I DIDN'T DECIDE TO FILE. THAT WAS --
2 DECISION WAS MADE BY ALL SEASONS.

3 Q SO THE COMPANY --

4 A YES.

5 Q -- MADE THAT DECISION TO DO THAT?

6 A YES.

7 Q DO YOU RECALL WHO MADE THAT DECISION?

8 A NO.

9 Q DO YOU REMEMBER WHO YOU TALKED TO ABOUT THAT
10 DECISION?

11 A JIM BAUMGARTNER.

12 Q DO YOU RECALL WHY THE DECISION WAS MADE --

13 A BECAUSE THE PARKS --

14 Q -- SAN BERNARDINO?

15 A WELL, THERE WAS A VENUE ISSUE, AND MY
16 FEELING WAS, WAS THAT IT WAS MORE APPROPRIATE TO FILE WHERE
17 THERE WERE PARKS, WHERE THE BUSINESS ASSETS WERE, WHEN I
18 WAS ASKED FOR INPUT ON IT.

19 Q EVEN THOUGH ALL SEASONS WAS LOCATED IN
20 ORANGE COUNTY?

21 A WELL, LOCATED -- UNDER THE BANKRUPTCY VENUE
22 STATUTE, YOU FILE WHERE ASSETS ARE LOCATED OR WHERE THE
23 BUSINESS IS HEADQUARTERED. AND SO IT'S ACTUALLY MORE
24 APPROPRIATE IN MY VIEW TO FILE WHERE THE ASSETS ARE.

25 Q BUT THE ALL SEASONS PARKS WERE LOCATED ALL
26 OVER THE COUNTRY, WEREN'T THEY?

1 A THERE WERE SOME IN -- AGAIN, THERE WAS MORE
2 CONNECTION WITH SAN BERNARDINO DIVISION.

3 Q THE CASE GOT TRANSFERRED BACK FROM SAN
4 BERNARDINO TO SANTA ANA VERY QUICKLY, WITHIN A MONTH OR SO?

5 A YES, IT DID.

6 Q AND IT WENT BACK TO JUDGE RYAN IN SANTA ANA?

7 A YES.

8 Q IS ONE OF THE REASONS THAT THE DECISION WAS
9 MADE TO FILE THE CASE IN SAN BERNARDINO BECAUSE ALL SEASONS
10 WANTED TO AVOID JUDGE RYAN BECAUSE HE HAD HANDLED THE
11 SECOND ALL SEASONS?

12 A NO.

13 Q WAS ONE OF THE REASONS BECAUSE ALL SEASONS
14 KNEW THAT IT HAD NOT COMPLIED WITH ITS PLAN OF
15 REORGANIZATION AND DIDN'T WANT TO BE BACK BEFORE JUDGE RYAN
16 AGAIN?

17 A NO.

18 Q WASN'T THE REASON ALL SEASONS -- WELL, THERE
19 WERE A COUPLE OF REASONS ALL SEASONS FILED ITS THIRD
20 BANKRUPTCY; ONE IS BECAUSE IT WAS IN -- IT HAD FINANCIAL
21 PROBLEMS; RIGHT?

22 A THAT'S A FAIR STATEMENT. IT NEEDED COURT
23 PROTECTION.

24 Q AND IN ADDITION, TOO, THAT THERE WAS A
25 RECEIVER THAT WAS IN CONTROL OF ITS ASSETS, AND ALL SEASONS
26 WANTED TO TRY AND REGAIN CONTROL OVER ITS ASSETS; AND BY

1 FILING THE BANKRUPTCY, THEY WOULD TAKE THE CONTROL AWAY
2 FROM THE RECEIVER; IS THAT RIGHT?

3 A THAT WASN'T THE REASON. THE RECEIVER WAS
4 EFFECTIVELY LOOTING THE COMPANY BY RUNNING UP SUCH HIGH
5 EXPENSES FOR HIM AND HIS COUNSEL. IT WAS KILLING --

6 Q WELL, SO THAT WHAT ALL SEASONS WANTED TO DO
7 IS TAKE CONTROL BACK FROM THE RECEIVER?

8 A SUBJECT TO THE CONTROL OF THE BANKRUPTCY
9 COURT. THAT WOULD PROTECT THE ASSETS, YES.

10 Q DID THE FEDERAL COURT THAT APPOINTED THE
11 RECEIVER EVER FIND THAT THE RECEIVER LOOTED THE COMPANY?

12 A THE COURT LOOKED AT EXPENSES, CERTAINLY, AND
13 AT THAT POINT THE PROCESS -- THE CONTROL PROCESS WAS THERE.

14 Q DID THE FEDERAL COURT THAT APPOINTED THE
15 RECEIVER EVER FIND THAT HE LOOTED THE COMPANY?

16 A I DON'T KNOW.

17 Q SO ALL SEASONS WANTED TO REGAIN CONTROL OF
18 THE COMPANY; RIGHT?

19 A THE -- I MEAN, THAT'S THE EFFECT OF A
20 FILING, YES.

21 Q AND AS WE HEARD FROM MR. JOSEPH, YOU CAN
22 EITHER HAVE A DEBTOR IN POSSESSION OR YOU CAN HAVE A
23 TRUSTEE. WHEN YOU FILE -- WHEN A DEBTOR FILES, WHEN A
24 COMPANY FILES A CHAPTER 11, ORDINARILY YOU HAVE A DEBTOR IN
25 POSSESSION; THEY'RE IN POSSESSION. BUT THEY'RE NOW A
26 DEBTOR IN POSSESSION AS OPPOSED TO THE DEBTOR; RIGHT?

1 A THAT'S WHAT OCCURS IN A CHAPTER 11 CASE, YES.

2 Q AND THAT'S WHAT ALL SEASONS WAS HOPING THAT
3 IT WOULD BE, A DEBTOR IN POSSESSION, AND SO IT WOULD BE
4 ABLE TO REGAIN CONTROL OF ITS COMPANY; RIGHT?

5 A WELL, THAT'S WHAT HAPPENS.

6 Q RIGHT.

7 AND, IN FACT, WHAT HAPPENED IS THAT A
8 TRUSTEE WAS APPOINTED IMMEDIATELY?

9 A RELATIVELY SOON.

10 Q THE COURT APPOINTED A TRUSTEE --

11 A YES.

12 Q -- TO TAKE OVER CONTROL OF THE COMPANY?

13 A YES. FROM THE RECEIVER.

14 Q TO TAKE OVER CONTROL FROM ALL SEASONS, WHICH
15 WAS A DEBTOR IN POSSESSION?

16 A YES. BUT IT HAD NOT -- THERE WERE ISSUES AS
17 FAR AS WHO WAS IN CONTROL, AND THE COURT APPOINTED THE
18 TRUSTEE TO DEAL WITH THOSE.

19 Q BUT THE COURT WOULD NOT LET ALL SEASONS
20 REMAIN IN CONTROL OF THE COMPANY?

21 A I DON'T KNOW. IF IT HAD BEEN A CLEAR CASE
22 OF THAT, THERE MIGHT HAVE BEEN A BETTER ISSUE. BUT THERE
23 WERE ISSUES AS FAR AS THE RECEIVER WENT, AND WHO WAS IN
24 CONTROL OF WHAT, AND I THINK THAT'S WHY THE TRUSTEE -- THE
25 COURT PUT A TRUSTEE IN.

26 Q WELL, WE HEARD FROM MR. JOSEPH THERE ARE

1 BASICALLY THREE REASONS WHY TRUSTEES ARE APPOINTED IN A
2 CHAPTER 11: INCOMPETENCE OF MANAGEMENT, FAIRNESS TO
3 EVERYBODY CONCERNED, AND THERE WAS A THIRD STANDARD THAT I
4 DON'T HAVE DOWN.

5 BUT ONE OF THOSE STANDARDS, I TAKE IT, WERE
6 MET?

7 A WELL, THE COURT HAS -- THE JUDGE CAN DO IT
8 IN HIS DISCRETION, BUT THE -- WHAT THE JUDGE LOOKS AT IS
9 WHAT'S IN THE BEST INTEREST OF ALL OF THE INVOLVED
10 PARTIES. AND SO, I MEAN, THAT'S WHERE TRUSTEES COME IN.
11 AGAIN, WHERE ASSET PROTECTION IS AN IMPORTANT FUNCTION,
12 WHERE THAT'S ONE OF THE THINGS GOING ON IN THE CASE, AS IT
13 WAS IN THE ALL SEASONS CASE, THAT'S WHERE IT'S APPROPRIATE
14 TO HAVE A TRUSTEE TAKE CONTROL OF THINGS.

15 Q I'D LIKE TO TAKE YOU THROUGH THE ALL SEASONS
16 CHAPTER 11.

17 AND I'D LIKE TO SHOW THE WITNESS EXHIBIT
18 379, WHICH IS ANOTHER BANKRUPTCY COURT ORDER.

19 COULD WE SHOW THIS UP ON THE SCREEN, YOUR
20 HONOR?

21 THE COURT: NO PROBLEM.

22 MR. MOSHENKO: YOUR HONOR, FOR THE RECORD, THE
23 OBJECTIONS THAT WERE MADE IN CHAMBERS.

24 BY MR. RIVIN: Q THIS IS -- DO YOU RECOGNIZE THIS
25 DOCUMENT, MR. MALPASS?

26 A YES. I MEAN, I'M READING -- I RECOGNIZE --

1 IT'S A PLEADING FILED IN THE CASE, YES.

2 Q. IT'S NOT JUST A PLEADING. IT'S AN ORDER OF
3 THE -- IT'S AN ORDER OF THE COURT?

4 A WELL, THAT IS A PLEADING. I MEAN, A --
5 ORDERS ARE PLEADINGS.

6 Q I'LL TAKE IT AS THAT.
7 IT'S NOT ONLY A; PLEADING IT'S AN ORDER; IS
8 THAT RIGHT?

9 A YES.

10 Q AND IT'S SIGNED BY JUDGE RYAN.
11 TAKE A LOOK AT PAGE 7.

12 A YES.

13 Q SIGNED BY JUDGE RYAN AN AUGUST 27, 1997.

14 AND YOU FILED A CHAPTER 11 ON JULY 11,
15 AND -- BUT YOU FILED IT IN SAN BERNARDINO. AND BETWEEN
16 JULY 11 AND AUGUST 27, THE CASE WAS MOVED BACK TO SANTA
17 ANA, A TRUSTEE WAS APPOINTED, AND THE JUDGE ENTERED THIS
18 ORDER APPROVING POST-PETITION FINANCING DENYING THE
19 TRUSTEE'S MOTION TO CONVERT.

20 AND LET ME TAKE YOU TO PAGE 2. I'D LIKE TO
21 LOOK -- I'D LIKE YOU TO LOOK AT THE FIRST FULL PARAGRAPH ON
22 THAT PAGE, BEGINNING AT LINE 5. AND LET ME READ IT.

23 "THE COURT, HAVING CONSIDERED THE TRUSTEE'S
24 MOTION, THE REPRESENTATIONS OF COUNSEL, AND THE FINANCING
25 ARRANGEMENT PROPOSED TO THE TRUSTEE BY FINOVA AND
26 CHRISTIANSON" -- CHRISTIANSON WAS ANOTHER CREDITOR OR A

1 REPRESENTATIVE OF ANOTHER CREDITOR?

2 A I THINK THAT'S CORRECT.

3 Q OF THE BONDHOLDERS?

4 A OH --

5 Q I DON'T THINK -- WAS IT THE UNSECURED
6 CREDITORS COMMITTEE FROM THE FIRST ALL SEASONS BANKRUPTCY;
7 IS THAT WHO MR. CHRISTIANSON WAS?

8 A YOU'VE DONE A LOT MORE WORK LOOKING AT THESE
9 PLEADINGS THAN I DID IN THAT PARTICULAR AREA.

10 Q YOU DON'T REBUT -- DOES THAT SOUND
11 PLAUSIBLE?

12 A HE WAS DEFINITELY INVOLVED IN THE CASE.

13 Q ALL RIGHT. SO WE'RE -- AND GOING BACK TO
14 LINE 8, "ACCEPTED BY THE TRUSTEE; AND FINDING THAT AN
15 ORDERLY LIQUIDATION OF THE ASSETS OF THIS DEBTOR IS IN THE
16 BEST INTERESTS OF THE ESTATE; AND FINDING THAT AN ORDERLY
17 LIQUIDATION CAN BEST BE ACHIEVED BY THE CONTINUED OPERATION
18 OF THE DEBTOR'S BUSINESS BY THE TRUSTEE FOR A LIMITED TIME;
19 AND FINDING THAT THE FINANCING IS NECESSARY FOR THE TRUSTEE
20 TO OPERATE THE DEBTOR'S BUSINESS; AND FINDING NOTICE TO BE
21 SUFFICIENT, AND GOOD CAUSE APPEARING."

22 AND THEN THE COURT AUTHORIZED THE BORROWING
23 OF FUNDS BY THE TRUSTEE IN ORDER TO OPERATE THE COMPANY FOR
24 A LIMITED PERIOD OF TIME.

25 DO YOU RECALL THIS HAPPENING IN THE CASE?

26 A YES.

1 Q AND SO ON AUGUST 27, THE COURT FOUND THAT
2 LIQUIDATION -- ORDERED THE LIQUIDATION IS IN THE BEST
3 INTEREST OF THE ESTATE.

4 SO EVEN THOUGH THIS CASE WAS FILED AS A
5 CHAPTER 11 BY YOUR OFFICE, THE COURT DECIDED WITHIN TWO
6 MONTHS THAT THE COMPANY SHOULD BE LIQUIDATED; IS THAT
7 CORRECT?

8 A NO.

9 Q DID THE COURT -- WAS IT FILED AS A CHAPTER
10 11?

11 A YES.

12 Q AND YOU'RE SAYING THE COURT DID NOT DECIDE
13 THAT THE COMPANY SHOULD BE LIQUIDATED?

14 A NO. YOU SAID THE COMPANY WOULD BE
15 LIQUIDATED.

16 Q THE DEBTOR?

17 A THAT WAS NOT WHAT THE COURT DECIDED. THE
18 ASSETS OF THE COMPANY WERE WHAT WERE TO BE SOLD OFF.
19 THAT'S NOT THE SAME AS LIQUIDATING THE COMPANY. THE
20 COMPANY DOESN'T DISSOLVE. IT DOESN'T LIQUIDATE. IT'S
21 STILL THERE.

22 Q THE COMPANY -- THE COMPANY IS STILL THERE,
23 BUT ALL THE ASSETS ARE GONE?

24 A THAT'S -- SUBSTANTIALLY ALL THE ASSETS OTHER
25 THAN CERTAIN RIGHTS.

26 Q LET'S TAKE A LOOK AT PAGE 4 OF EXHIBIT 379,

1 PLEASE, LINES 6 THROUGH 13, MR. MALPASS. COULD YOU PLEASE
2 TURN TO THAT PAGE. PAGE 4.

3 ON AUGUST 27 AGAIN THE COURT IS ORDERING
4 THAT THE TRUSTEE, WITH THE ASSISTANCE OF THE LENDERS, SHALL
5 CONDUCT AN AUCTION SALE OF THE DEBTOR'S ASSETS, FREE AND
6 CLEAR OF ANY LIENS, CLAIMS AND ENCUMBRANCES OF ANY KIND OR
7 NATURE BEFORE NOVEMBER 30, 1997.

8 IS THAT CONSISTENT WITH YOUR RECOLLECTION OF
9 WHAT THE COURT DID?

10 A WELL, I MEAN, WHAT THE COURT DID WAS TO
11 ENTER THIS ORDER. I MEAN, I RECALL THE COURT ENTERING THIS
12 ORDER.

13 Q AND WHAT HAPPENED IN THE BANKRUPTCY IS
14 CONSISTENT; ON AUGUST 27 THIS ORDER WAS ENTERED; CORRECT?
15 ON AUGUST 27?

16 A WAS THE ORDER ENTERED? YES, THE ORDER WAS
17 ENTERED.

18 Q ON AUGUST 27, THE COURT ORDERED AN AUCTION
19 SALE OF THE DEBTOR'S ASSETS; RIGHT?

20 A YES, INCLUDING MEMBERS AND SO ON, YES.

21 Q LET'S TURN TO PAGE 5, LINES 6 THROUGH 9.
22 THAT IS NOT THE PARAGRAPH THAT I'M LOOKING FOR.

23 DO YOU RECALL, MR. MALPASS, THE COURT
24 ORDERING MR. AND MRS. NOVELLI TO TURN OVER ALL OF ALL
25 SEASONS' ASSETS TO THE TRUSTEE?

26 A WELL, THAT'S WHAT -- THAT'S WHAT THIS ORDER

1 SAYS.

2 Q AND THAT INCLUDES MEMBER LISTS --

3 A YES.

4 Q -- TO BE TURNED OVER TO THE TRUSTEE?

5 A THAT'S REFERRED SPECIFICALLY TO IN ORDER,
6 YES.

7 Q THAT'S WHAT THE COURT ORDERED ON AUGUST 27.

8 A WELL, WHAT IT SAYS IS, IN THEIR POSSESSION
9 OR CONTROL. IN FACT, ALL OR SUBSTANTIALLY ALL THE ASSETS
10 WERE IN THE RECEIVER'S CONTROL AT THAT POINT.

11 Q TO THE EXTENT MR. AND MRS. NOVELLI HAD
12 POSSESSION OF ANY OF THOSE MEMBER LISTS, THEY WERE TO TURN
13 THEM OVER TO THE TRUSTEE?

14 A THAT'S WHAT THE ORDER SAYS, YES.

15 Q ALL RIGHT.

16 THEN THE COURT -- LET'S GO TO EXHIBIT 381,
17 PLEASE.

18 BY THE WAY, I'D LIKE TO MOVE EXHIBIT 379
19 INTO EVIDENCE.

20 THE COURT: 379 HAS BEEN MOVED INTO EVIDENCE.

21 MR. MOSHENKO: THE OBJECTION WAS ALREADY ON THE
22 RECORD, YOUR HONOR, THAT WE INDICATED WHEN HE FIRST BROUGHT
23 IT UP.

24 THE COURT: IT WILL BE RECEIVED.

25 (WHEREUPON, EXHIBIT NO. 379, BANKRUPTCY
26 COURT ORDER, WAS RECEIVED IN EVIDENCE.)

1 BY MR. RIVIN: Q MR. MALPASS, DO YOU RECOGNIZE
2 THIS AMENDMENT?

3 EXCUSE ME.

4 THIS IS AN AMENDMENT TO THE AUGUST 27 ORDER,
5 IS IT NOT?

6 A YES. YES.

7 MR. RIVIN: CAN WE PUT THIS UP, FIRST PAGE, ON THE
8 SCREEN, PLEASE.

9 AND CAN YOU BLOW UP THE LAST PARAGRAPH.

10 Q SAW A DATE ON THIS DOCUMENT OF AUGUST 28TH.
11 SO IT'S THE NEXT DAY THAT THE COURT IS ORDERING -- THIS IS
12 A FURTHER COURT ORDER SIGNED BY JUDGE RYAN AUGUST 28TH.
13 AND IT READS, "THE TRUSTEE IS HEREBY INSTRUCTED TO NOTIFY
14 THE MEMBERS OF ALL SEASONS THAT THE ALL SEASONS CAMPGROUNDS
15 WILL BE CLOSED BY NOVEMBER 30TH, 1997, AND THAT THE TRUSTEE
16 ANTICIPATES SELLING THE CAMPGROUNDS FREE AND CLEAR OF ALL
17 LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO BANKRUPTCY CODE
18 SECTION 363; AND THAT THE TRUSTEE WILL FORTHWITH SEEK AN
19 ORDER APPROVING THE REJECTION OF MEMBERSHIP CONTRACTS
20 ASSOCIATED WITH EACH SUCH CAMPGROUND PURSUANT TO BANKRUPTCY
21 CODE SECTION 365(A). THE TRUSTEE ACKNOWLEDGES THAT HE WILL
22 NOT BE ABLE TO PERFORM UNDER THE TERMS OF THE MEMBERSHIP
23 CONTRACTS BECAUSE ALL SEASONS' OPERATIONS WILL CEASE BY
24 NOVEMBER 30, 1997, AND THAT ANY SALE OF THE CAMPGROUNDS
25 WILL BE FREE AND CLEAR OF ALL MEMBERSHIP CONTRACTS."

26 SO, MR. MALPASS, THAT ORDER SAYS THAT THE

1 MEMBERSHIP CONTRACTS ARE GOING TO BE REJECTED, NOT SOLD;
2 ISN'T THAT WHAT THAT ORDER SAYS?

3 A NO, IT DOESN'T, MR. RIVIN. LET ME TELL YOU
4 WHAT WAS GOING HERE AND WHY THIS ORDER --

5 Q WHY DON'T YOU TELL ME FIRST.

6 A LET ME EXPLAIN IT TO YOU.

7 THE WAY THIS WAS DONE WAS TO PROTECT
8 MR. DAFF. THE REASON THEY AMENDED THIS ORDER WAS SO THAT
9 THEY COULD GIVE NOTICE SAYING THE CAMPGROUNDS ARE GOING TO
10 BE CLOSED. IN FACT, WHAT THEY INTENDED TO DO WAS TO SELL
11 THEM, OPERATE. THEY DIDN'T INTEND TO CLOSE THEM.

12 Q WHO?

13 A THE TRUSTEE. HE INTENDED TO SELL THEM AS AN
14 OPERATING OPERATION WITH MEMBERS.

15 Q YOU'RE TESTIFYING THAT THE TRUSTEE'S INTENT
16 WAS INCONSISTENT WITH WHAT WAS IN THE ORDER?

17 A IT'S -- YES. IT'S NOT -- THIS ORDER SAYS HE
18 CAN GIVE NOTICE, AND HE NEEDED AN ORDER IN ORDER TO
19 AUTHORIZE HIM TO GIVE THE NOTICE.

20 WHAT I'M TELLING YOU IS HE DIDN'T INTEND TO
21 DO THAT. AND, IN FACT, WHAT HE DID WAS CONSISTENT WITH NOT
22 DOING IT. HE SOLD THEM WITHOUT CLOSING THEM. AND HE SOLD
23 MEMBERS.

24 Q WAS JUDGE RYAN, IN YOUR OPINION, IN
25 COLLUSION WITH MR. DAFF?

26 A NO. HE WAS DOING WHAT MR. DAFF -- HE WAS

1 ALLOWING THE TRUSTEE TO PROTECT HIMSELF FROM POTENTIAL
2 LIABILITY. THIS WAS A LITTLE AWKWARD. DONE AFTER THE
3 FACT. IT SHOULDN'T HAVE BEEN DONE THIS WAY, BUT THAT WAS
4 THE REASON WHY IT WAS BEING DONE.

5 THEY NEVER INTENDED TO CLOSE THE
6 CAMPGROUNDS. THEY INTENDED TO SELL THEM, WHICH IS WHAT IN
7 FACT THEY DID. AND THEY DIDN'T INTEND TO TERMINATE THE
8 MEMBER CONTRACTS. THEY INTENDED TO HAVE THE OPTION OF
9 SELLING THEM. THE ONES CERTAIN OF THE CREDITORS GOT, THEY
10 WANTED TO TAKE WITHOUT THE CONTRACTS. THE OTHER ONES THEY
11 SOLD WITH THE CONTRACTS, WHICH IS WHAT THE SALE ORDER SAYS.

12 Q WE'LL GET TO THE SALE ORDER IN JUST A
13 MOMENT, MR. MALPASS, AND WE'LL SEE IF YOU'RE RIGHT.

14 A WELL, THAT WAS WHAT HAPPENED.

15 Q BUT THIS ORDER SAYS -- THIS ORDER SAYS THAT
16 THE CONTRACTS ARE TO BE REJECTED. THE MEMBERSHIP CONTRACTS
17 ARE BEING REJECTED, AND THE PROPERTIES ARE GOING TO BE SOLD
18 FREE AND CLEAR OF THE MEMBERSHIP CONTRACTS?

19 A WHAT -- IT SAYS IT CAN BE REJECTED. BUT
20 THEY'RE STILL IN FORCE UNTIL THEY'RE REJECTED. AND IF THE
21 PROPERTIES ARE SOLD BEFORE THEY'RE REJECTED, WHICH IS WHAT
22 HAPPENED IN THIS CASE, THEN THEY'RE STILL THERE. AND
23 THAT'S WHAT -- THE TRUSTEE WANTED THE OPTION OF SELLING THE
24 PROPERTIES WITH OR WITHOUT THE CONTRACTS. AND HE WANTED --
25 MOST IMPORTANTLY, HE WANTED TO BE PROTECTED FROM LIABILITY
26 IN THE EVENT THAT THE CONTRACTS WERE -- WERE TERMINATED OR

1 SOMEONE WANTED TO SUE HIM FOR THE WAY HE CONDUCTED THE
2 SALE. SO HE WAS ALLOWED TO PROTECT HIMSELF.

3 Q THE TRUSTEE WAS JUST LOOKING OUT FOR HIMSELF?

4 A THE TRUSTEES ARE SUPPOSED TO LOOK OUT FOR
5 THEMSELVES. AND IT'S NOT JUST LOOKING OUT FOR HIMSELF. HE
6 WAS DOING HIS JOB IN A WAY, AND JUDGE RYAN WAS ALLOWING HIM
7 AND HIS COUNSEL TO DO THINGS THAT WERE DIRECTED PRIMARILY
8 IN THIS AMENDMENT TO PROTECTING THEMSELVES FROM LIABILITY
9 BY GETTING THE NOTICE OUT THERE.

10 THAT WAS WHY -- THIS WAS INCONSISTENT WITH
11 WHAT THEY DID. THEY DIDN'T -- THEY DIDN'T CLOSE THE PARKS,
12 AND THEY DIDN'T TERMINATE THE CONTRACTS BEFORE THEY SOLD
13 THEM. AND SO SOMEBODY THAT THOUGHT THAT WAS WHAT HAD
14 HAPPENED WOULD HAVE BEEN WRONG.

15 Q MR. MALPASS, ISN'T IT TRUE THAT MR. DAFF IN
16 SEPTEMBER OF 1997 ADVISED THE ALL SEASONS MEMBERS THAT
17 THEIR CONTRACTS WERE GOING TO BE TERMINATED AS OF NOVEMBER
18 30, 1997?

19 A THAT WAS THE SAME THING. HE WAS GOING TO
20 CONDUCT A SALE. AND IF THERE WAS -- HE WANTED -- HE WANTED
21 TO CUT OFF ANY LIABILITY AFTER HE CONDUCTED THE SALE, AS
22 FAR AS THE ESTATE AND HIMSELF AS TRUSTEE WENT. BUT HE
23 WANTED TO BE ABLE TO SELL THE PARKS AND THE CONTRACTS AS
24 PART OF A PACKAGE. AND THAT WAS SO HE COULD SAY, "I'M
25 SELLING ALL THE ASSETS AT THE BEST AVAILABLE PRICE." AND
26 BECAUSE THAT WAS WHAT SOME OF THE SECURED CREDITORS WANTED.

1 MR. RIVIN: YOUR HONOR, I'LL MOVE TO STRIKE THAT
2 ANSWER ON THE BASIS THAT IT'S NOT RESPONSIVE, AND IT'S ALSO
3 BASED ON HEARSAY.

4 THE COURT: MOTION IS GRANTED.

5 BY MR. RIVIN: Q MR. MALPASS, ISN'T IT TRUE THAT
6 IN SEPTEMBER, 1997, THE TRUSTEE, CHARLES DAFF, ADVISED THE
7 ALL SEASONS MEMBERS THAT THEIR CONTRACTS WOULD BE
8 TERMINATED AS OF NOVEMBER 30, 1997?

9 A YEAH. HE SENT OUT A LETTER TO THAT EFFECT,
10 THAT THEY WOULD BE TERMINATED, IN THE FUTURE.

11 Q AS OF NOVEMBER 30, 1997?

12 A YES.

13 Q LET'S TAKE A LOOK AT THAT LETTER, EXHIBIT
14 847, PLEASE.

15 MR. SHAW: YOUR HONOR, WE OBJECT TO THE LETTER AS
16 BEING HEARSAY.

17 THE COURT: OVERRULED.

18 MR. RIVIN: AND WE WILL OFFER IT IN EVIDENCE.

19 MAY IT COME IN, YOUR HONOR?

20 THE COURT: 847 IS RECEIVED IN EVIDENCE.

21 (WHEREUPON, EXHIBIT NO. 847, LETTER FROM
22 CHARLES DAFF TO ALL SEASONS MEMBERS, WAS RECEIVED IN
23 EVIDENCE.).

24 BY MR. RIVIN: Q DO YOU RECOGNIZE THIS DOCUMENT
25 AS BEING THE LETTER FROM MR. DAFF?

26 A IT'S A LETTER SIGNED BY MR. DAFF, YES.

1 Q RIGHT.

2 AND THIS IS THE LETTER THAT WE WERE JUST
3 TALKING ABOUT, ISN'T IT?

4 A YES. IT'S THE ONE I WAS REFERRING TO, YES.

5 Q THIS IS THE LETTER THAT WENT OUT TO ALL OF
6 THE ALL SEASONS MEMBERS?

7 A I DON'T KNOW WHO HE SENT IT TO.

8 Q TO YOUR KNOWLEDGE HE SENT IT TO ALL THE
9 MEMBERS?

10 A I DON'T KNOW THAT.

11 Q DID YOU EVER HEAR THAT HE SENT IT TO FEWER
12 THAN ALL THE MEMBERS?

13 A NO.

14 Q OKAY. LET'S LOOK AT THAT WHOLE LETTER.
15 START WITH THE FIRST PARAGRAPH. LET'S READ IT.

16 "AS MANY OF YOU KNOW, ALL SEASONS IS IN
17 CHAPTER 11 BANKRUPTCY. SOME OF YOU MAY REMEMBER THAT ALL
18 SEASONS HAS BEEN IN BANKRUPTCY BEFORE. AS BEFORE, THE
19 COURT AND OTHER INTERESTED PARTIES ARE CONCERNED ABOUT THE
20 AFFECT OF THE BANKRUPTCY ON YOU, THE MEMBERS.

21 "I HAVE BEEN APPOINTED AS THE TRUSTEE FOR
22 ALL SEASONS. UNDER AN AGREEMENT WITH TWO OF THE LARGEST
23 SECURED CREDITORS, THE COURT HAS AUTHORIZED ME TO OPERATE
24 THE RESORTS NORMALLY UNTIL NOVEMBER 30, 1997, IF FUNDS ARE
25 AVAILABLE.

26 "THE PURPOSE FOR THE COURT ALLOWING THE

1 RESORTS TO CONTINUE TO OPERATE IS TO TRY TO SELL THEM WHILE
2 THEY ARE STILL OPERATING, WHICH COULD HELP THE MEMBERS, AS
3 WELL AS GENERATE MORE MONEY FOR CREDITORS.

4 "OPERATIONS WILL BE FUNDED FROM DUES INCOME,
5 AND, IF NECESSARY, FUNDS BORROWED FROM THOSE CREDITORS.
6 THE AMOUNT OF MONEY AVAILABLE TO BORROW IS LIMITED. IT IS
7 IMPORTANT FOR YOU TO KNOW THAT IF THE AMOUNT OF DUES
8 RECEIVED FROM THIS BILLING IS TOO LOW, THE RESORTS WILL
9 HAVE TO BE CLOSED MUCH SOONER THAN NOVEMBER 30, 1997. IF
10 YOU DO NOT PAY YOUR DUES, YOU COULD BE DENIED ACCESS TO THE
11 RESORTS.

12 "IT IS ALSO IMPORTANT FOR YOU TO KNOW THAT
13 BECAUSE THE RESORTS ARE TO BE SOLD, AND BECAUSE IT APPEARS
14 AS IF THE ONLY WAY THAT A BUYER WOULD BE INTERESTED WOULD
15 BE IF ALL SEASONS' MEMBERSHIP CONTRACTS DID NOT ENCUMBER
16 THE PROPERTIES, ALL MEMBERSHIP CONTRACTS WILL BE TERMINATED
17 AS OF NOVEMBER 30, 1997. IT IS HOPED THAT ANY FUTURE BUYER
18 WILL CONTINUE TO OPERATE THE RESORTS AND WILL BE INTERESTED
19 IN HAVING A NEW ARRANGEMENT WITH THE FORMER MEMBERS OF ALL
20 SEASONS UNDER WHICH THEY CAN CONTINUE TO USE THE RESORTS."

21 AND THEN MR. DAFF GIVES THE MEMBERS THE
22 ADDRESS TO WHICH THE DUES PAYMENTS SHOULD BE SENT.

23 WITHIN A FEW WEEKS AFTER THIS LETTER WAS
24 SENT OUT, MR. DAFF BROUGHT A MOTION FOR AN ORDER
25 TERMINATING -- OR EXCUSE ME -- REJECTING THE MEMBERSHIP
26 CONTRACTS; DO YOU RECALL THAT?

1 ORDER AUTHORIZING REJECTION OF MEMBERSHIP CONTRACTS, WAS
2 RECEIVED IN EVIDENCE.)

3 BY MR. RIVIN: Q THERE IS A DATE UNDERNEATH THE --
4 THE TITLE OF THE DOCUMENT. DO YOU SEE IT? SAYS,
5 "DATE,"AND IT SAYS, "TO BE SET." AND THEN THE DATE IS --
6 IT'S HANDWRITTEN "OCTOBER 27, 1997."

7 DO YOU SEE THAT?

8 A YES.

9 Q 3:00 P.M.

10 A YES.

11 Q THAT'S THE -- THAT IS THE HEARING DATE ON
12 THE MOTION?

13 A THAT'S WHAT'S WRITTEN ON THERE. MY
14 RECOLLECTION IS THAT'S WHEN IT WAS HEARD.

15 Q ON OCTOBER 27TH?

16 A YES.

17 Q AND THE PURPOSE OF THIS MOTION WAS, AT LEAST
18 IN PART, FOR THE TRUSTEE TO OBTAIN AN ORDER FROM THE
19 BANKRUPTCY COURT AUTHORIZING HIM TO REJECT APPROXIMATELY
20 18,000 MEMBERSHIP CONTRACTS.

21 COULD WE GO TO THE SECOND PAGE, PLEASE.

22 IN FACT, MIKE COULD YOU GO BACK TO THE FIRST
23 PAGE, AND LET'S LOOK AT LINES 20 THROUGH 24.

24 THIS SAYS, "CHARLES DAFF, DULY APPOINTED
25 CHAPTER 11 TRUSTEE HEREIN, CHAPTER 11 TRUSTEE, HEREBY MOVES
26 THIS COURT FOR AN ORDER AUTHORIZING HIM TO REJECT ANY OR

1 ALL MEMBERSHIP CONTRACTS BETWEEN ALL SEASONS RESORTS, INC.,
2 THE DEBTOR HEREIN, AND EACH OF THE MEMBERS OF THE ALL
3 SEASONS RESORTS CAMPGROUND SYSTEM."

4 AND THEN THE -- AND THEN MR. DAFF LISTS --
5 OR THE ATTORNEY FOR MR. DAFF LISTS THE REASONS. AND I'D
6 LIKE YOU TO NOW GO TO PAGE 2, IF YOU WOULD, TO PARAGRAPH
7 4.

8 AND THE REASON IS BECAUSE -- ONE OF THE FOUR
9 REASONS IS BECAUSE THE REJECTION OF THE APPROXIMATELY
10 18,000 MEMBERSHIP CONTRACTS IS IN THE BEST INTERESTS OF THE
11 ESTATE UNDER THE CIRCUMSTANCES.

12 DO YOU SEE THAT?

13 A YES.

14 Q SO ON OCTOBER 9, MR. DAFF SOUGHT PERMISSION
15 FROM THE COURT TO -- FOR AN ORDER TO REJECT ALL THE
16 MEMBERSHIP CONTRACTS; IS THAT CORRECT?

17 A YES. THAT'S WHEN HE FILED THE MOTION.

18 Q PARDON?

19 A THAT'S WHEN HE FILED THE MOTION.

20 Q LET'S TAKE A LOOK AT -- LET'S SEE IF WE CAN
21 FIND IT.

22 AND LET'S TAKE A LOOK AT PAGE 4, LINES 22
23 THROUGH 24, PLEASE.

24 THIS IS THE ARGUMENT IN FAVOR OF THE MOTION
25 WHERE MR. DAFF SAYS, "IT IS CRITICAL THAT THE MEMBERSHIP
26 CONTRACTS BE REJECTED SO THAT THE AUCTION CAN SUCCESSFULLY

1 PROCEED."

2 AND, IN FACT, COULD YOU GO TO -- LET'S GO
3 TO -- BACK TO PAGE 2, LINES 13 THROUGH 18, PLEASE.

4 IT WOULD BE PAGE 2, BACK AT THE SECOND PAGE
5 OF THIS DOCUMENT.

6 THIS IS PART OF MR. DAFF'S MOTION WHERE HE
7 IS ARGUING TO THE COURT THAT THE MEMBERSHIP CONTRACTS WHICH
8 ALLOW THE MEMBERS TO USE ALL OF THE CAMPGROUNDS --

9 THE COURT: SLOWER.

10 MR. RIVIN: -- WITHIN THE SYSTEM MUST BE REJECTED
11 BECAUSE THE CONTRACTS NO LONGER PROVIDE ANY BENEFIT TO THE
12 ESTATE, AND REJECTION OF THE CONTRACTS WILL FACILITATE A
13 SALE OF THE CAMPGROUNDS ON AN INDIVIDUAL BASIS AT THE
14 PUBLIC AUCTION SALE SCHEDULED FOR OCTOBER 27, 1997.

15 THANK YOU.

16 THE TRUSTEE DID NOT WITHDRAW THAT MOTION,
17 DID HE? THAT MOTION WENT FORWARD AND WAS HEARD; IS THAT
18 CORRECT?

19 A YES.

20 Q ALL RIGHT. AND THERE WAS A -- DO YOU RECALL
21 THAT THERE WAS -- THERE WAS AN AUCTION SALE?

22 A YES.

23 Q AND THEN THE COURT APPROVED THE AUCTION SALE
24 THAT HAD TAKEN PLACE ON OCTOBER 27; IS THAT CORRECT?

25 A IT DIDN'T APPROVE IT. THE SALE WAS
26 CONDUCTED ON THE 27TH OF OCTOBER, AND THE ORDER WAS ENTERED

1 ON NOVEMBER 5.

2 Q CORRECT.

3 LET'S TAKE A LOOK AT THE ORDER. IT'S

4 EXHIBIT 383.

5 MR. MALPASS THIS DOCUMENT IS THE ORDER THAT

6 I BELIEVE MR. SHAW WAS HOLDING UP WHEN HE ASKED YOU WHAT

7 HAPPENED AT THE HEARING AND WHAT THE COURT DID WHEN YOU

8 SAID THAT THE COURT ORDERED SALE OF THE MEMBERSHIP

9 CONTRACTS.

10 LET ME ASK YOU. DO YOU RECOGNIZE --

11 A THAT'S NOT WHAT I SAID. AT WHICH HEARING?

12 Q WAS IT YOUR TESTIMONY THIS MORNING THAT --

13 OR EARLIER THIS AFTERNOON THAT THE COURT ORDERED THE SALE

14 OF THE MEMBERSHIP CONTRACTS; THAT THE MEMBERSHIP CONTRACTS

15 WERE SOLD?

16 A THE COURT AUTHORIZED THEIR SALE BY THE

17 TRUSTEE. THAT'S ALL. IT DIDN'T SAY THEY HAD TO BE.

18 Q WERE THE CONTRACTS IN YOUR OPINION --

19 A YES.

20 Q IN YOUR OPINION WERE THE CONTRACTS SOLD?

21 A YES.

22 Q THAT'S WHAT YOU TESTIFIED TO; RIGHT?

23 A YES.

24 Q AND IS THIS THE ORDER APPROVING THAT SALE?

25 A YES.

26 MR. RIVIN: I'D LIKE TO MOVE THIS ORDER INTO

1 EVIDENCE.

2 MR. SHAW: YOUR HONOR, WE'D LIKE -- WE HAVE SOME
3 PROBLEMS WITH THE -- CERTAIN PORTIONS OF IT THAT WE'D LIKE
4 REDACTED HAVING TO DO WITH THE ONE COMPANY THAT WE TALKED
5 ABOUT IN CHAMBERS.

6 THE COURT: ALL RIGHT. WE CAN DO THAT. IT'S UNDER
7 SUBMISSION.

8 MR. RIVIN: THANK YOU, YOUR HONOR.

9 CAN WE PUT THE FIRST PAGE OF THIS ORDER ON
10 THE BOARD, PLEASE.

11 Q THIS ORDER WAS ENTERED NOVEMBER 5, 1997; IS
12 THAT CORRECT?

13 A YES.

14 Q AND I'D LIKE TO GO TO -- LET'S GO THROUGH
15 THIS ORDER.

16 PAGE 2 -- AND I'M NOT GOING TO READ THE
17 PAGE. IT'S LONG.

18 BUT WHAT PAGE 2 DOES -- DOES IT START OUT
19 WITH THE HEARING? IT DOES. OKAY.

20 THIS IS THE STANDARD LANGUAGE IN COURT
21 ORDERS. IT SAYS THERE WAS A HEARING BEFORE JUDGE RYAN, AND
22 IT IDENTIFIES ALL OF THE PEOPLE WHO WERE THERE, INCLUDING
23 THE ATTORNEY FOR THE TRUSTEE, MR. DAFF, ATTORNEY FOR FINOVA
24 CAPITAL CORPORATION, MR. CHRISTIANSON, TRUSTEE, AND A
25 NUMBER OF OTHER PARTIES.

26 THERE WERE A LOT OF PEOPLE AT THAT HEARING;

1 IS THAT RIGHT?

2 A YES.

3 Q AND THEN THE REST OF THE ORDER SETS OUT WHAT
4 THE COURT DID IF WE COULD GO TO PAGE 3, LINES 20 THROUGH
5 22. "HEREBY ORDERED THAT THE TRUSTEE'S MOTION BE, AND
6 HEREBY IS GRANTED, AND THAT THE SALE OF THE ESTATE'S RIGHT,
7 TITLE AND INTEREST IN THE ASSETS OF THE ESTATE AS DESCRIBED
8 IN THE MOTION BE, AND HEREBY, IS APPROVED AS FOLLOWS."

9 AND THEN IT GOES THROUGH AND IDENTIFIES --
10 THE NEXT SEVERAL PARAGRAPHS -- IDENTIFIES 9 PARCELS OF
11 PROPERTY THAT WERE OWNED BY ALL SEASONS, ALL OF WHICH WERE
12 BEING SOLD AT THIS AUCTION SALE.

13 IN FACT, THAT'S WHAT HAPPENED; IS THAT
14 RIGHT? THE PROPERTIES WERE ALL SOLD AT THIS AUCTION SALE;
15 IS THAT CORRECT?

16 A THE REAL ESTATE AND OTHER PROPERTY, CORRECT.

17 Q CORRECT. CORRECT. THE REAL ESTATE.

18 AND LET'S LOOK AT THE FIRST PARAGRAPH.

19 PARAGRAPH NUMBER 1, THE BOTTOM OF LINE 3?

20 A I'M SORRY. PARAGRAPH 1. YOU'RE SAYING AT
21 THE BOTTOM OF PAGE 3.

22 Q CORRECT.

23 A ALL RIGHT.

24 Q SO THIS IS EAGLE LAKE. THE PROPERTY IS
25 SOLD. AND IN LINE 26 -- SO THE REAL PROPERTY IS SOLD ALONG
26 WITH ALL FIXTURES AND PERSONAL PROPERTY RELATED THERETO AND

1 LOCATED THEREON AND THEREIN AND ALONG WITH THE LIST OF
2 MEMBERS FOR WHOM EAGLE LAKE IS THE HOME RESORT. AND THAT
3 IT SHALL BE AND HEREBY IS SOLD AND TRANSFERRED TO FINOVA
4 CAPITAL.

5 AND DO YOU SEE THAT EACH OF THOSE NINE
6 PARAGRAPHS CONTAINS THE SAME LANGUAGE, THE REAL PROPERTY
7 AND THE MEMBER LISTS AND THE PERSONAL PROPERTY THAT ARE
8 BEING SOLD?

9 A I MEAN, I'VE LOOKED AT THIS ORDER BEFORE,
10 AND, YEAH, I THINK YOU'RE RIGHT.

11 Q AND THAT'S CORRECT.

12 AND IT DOESN'T SAY ANYTHING ABOUT MEMBERSHIP
13 CONTRACTS?

14 A YES, IT DOES.

15 Q DOES IT MENTION MEMBERSHIP CONTRACTS?

16 A THE MEMBERSHIP CONTRACTS ARE INCLUDED IN THE
17 PERSONAL PROPERTY.

18 Q ISN'T IT TRUE, MR. --

19 A ALL THE RIGHTS THAT THEY HAD WERE THERE.

20 Q MR. MALPASS, ON THE SAME DAY THAT THIS
21 MOTION WAS HEARD BY THE COURT, A MOTION THAT YOU ATTENDED,
22 THE COURT ALSO GRANTED THE TRUSTEE'S MOTION TO REJECT THE
23 MEMBERSHIP CONTRACTS; ISN'T THAT CORRECT?

24 A WELL, THE MOTION WAS HEARD THAT DAY, BUT IT
25 DIDN'T BECOME EFFECTIVE UNTIL NOVEMBER WHEN THE ORDER WAS
26 ENTERED. AND THEY CONDUCTED THE SALE RIGHT AWAY BECAUSE

1 THE TRUSTEE FOUND OUT THAT THERE WEREN'T GOING TO BE ANY
2 CASH BIDS. SO THERE WASN'T ANY BENEFIT TO THE BANKRUPTCY
3 ESTATE. AND IT WAS ALL GOING TO GO TO SECURED CREDITORS.
4 SO HE SOLD THEM WITH THE MEMBERSHIP CONTRACTS, AND THAT'S
5 WHAT HAPPENED.

6 Q IS IT YOUR TESTIMONY, MR. MALPASS, THAT EVEN
7 THOUGH THERE'S NO REFERENCE TO THE MEMBERSHIP CONTRACTS --
8 WELL, LET'S TAKE A LOOK AT EXHIBIT --

9 A THE LEGAL EFFECT, THE MEMBERSHIP -- THE
10 DEBTOR'S RIGHTS, THE GOODWILL, RELATIONSHIPS AND THE
11 RIGHTS, AS WELL AS THE LISTS. THE LISTS WERE SPECIFIED
12 BECAUSE THERE HAD BEEN QUESTIONS ABOUT WHO OWNED THE LISTS
13 AND WHO GOT THE LISTS, AND BECAUSE THE LISTS WERE
14 CONSIDERED TO BE HIGHLY PROPRIETARY AND SUBJECT TO
15 PROTECTION IN THE BANKRUPTCY.

16 SO IT WAS VERY CLEAR WHO WOULD BE GETTING
17 THE MEMBERSHIP LISTS FOR PARTICULAR PARKS, AND THE
18 CREDITORS WANTED THEM. THAT'S WHY THAT WAS IN THERE LIKE
19 THAT.

20 MR. RIVIN: MOVE TO STRIKE THE ANSWER, YOUR HONOR,
21 ON THE BASIS IT WAS NONRESPONSIVE TO MY QUESTION.

22 THE COURT: MOTION GRANTED.

23 BY MR. RIVIN: Q LET'S GO TO EXHIBIT 386, PLEASE.

24 THIS IS AN ORDER OF THE BANKRUPTCY COURT
25 ENTERED NOVEMBER 24, 1997, IN THE ALL SEASONS BANKRUPTCY.

26 MR. MALPASS, THIS IS AN ORDER THAT YOU'VE

1 SEEN BEFORE?

2 A YES.

3 MR. RIVIN: YOUR HONOR, I'D LIKE TO MOVE EXHIBIT
4 386 INTO EVIDENCE.

5 MR. SHAW: NO OBJECTION, YOUR HONOR.

6 THE COURT: 386 IS RECEIVED.

7 (WHEREUPON, EXHIBIT NO. 386, ORDER OF THE
8 BANKRUPTCY COURT ENTERED 11-24-97, WAS RECEIVED IN
9 EVIDENCE.)

10 BY MR. RIVIN: Q ALL RIGHT. LET'S LOOK AT THE
11 TITLE OF THIS ORDER. IT'S A BANKRUPTCY COURT ORDER
12 APPROVING REJECTION OF MEMBERSHIP CONTRACTS.

13 AND, MIKE, IF YOU COULD GO TO THE BOTTOM OF
14 PAGE 2.

15 AND, IN FACT -- HANG ON ONE SECOND. LET'S
16 READ THE WHOLE -- IT'S ONLY A PAGE. IF YOU COULD GO
17 BACK -- PAGE AND A HALF.

18 "THE HEARING ON THE TRUSTEE'S MOTION FOR
19 REJECTION OF ALL OF THE MEMBERSHIP CONTRACTS TO WHICH THE
20 DEBTOR IS A PARTY CAME" -- DEBTOR IS ALL SEASONS; RIGHT?
21 IS THAT RIGHT? THE DEBTOR IS ALL SEASONS?

22 A YES. YES.

23 Q -- "IS A PARTY CAME ON FOR HEARING AT THE
24 DATE, TIME, AND PLACE NOTED ABOVE. THE HONORABLE JOHN E.
25 RYAN, UNITED STATES BANKRUPTCY JUDGE, PRESIDING."

26 CAN YOU GO UP TO SHOW THE DATE, PLEASE.

1 THE DATE IS OCTOBER 27, 1997, THE SAME DATE
2 AND, IN FACT, THE SAME TIME AS THE HEARING ON THE MOTION TO
3 APPROVE THE SALE OF THE REAL PROPERTY AND RELATED PROPERTY;
4 RIGHT? AND THE MEMBER LISTS?

5 A I THINK YOU'RE RIGHT. THEY DIDN'T OBVIOUSLY
6 TAKE PLACE AT THE SAME TIME, BUT THAT'S --

7 Q THEY DIDN'T TAKE PLACE AT THE SAME MOMENT IN
8 TIME, BUT AT THE SAME HEARING. AND YOU WERE THERE AT THE
9 HEARING?

10 A YES.

11 Q ON BOTH MOTIONS?

12 A I WAS AT THE AUCTION. AND, YES, I WAS
13 THERE.

14 Q ALL RIGHT. LET'S CONTINUE, IF WE COULD.

15 "THE COURT HAVING CONSIDERED THE MOTION, ANY
16 RESPONSES FILED BY CREDITORS AND PARTIES IN INTEREST, THE
17 RESPONSE FILED BY THE DEBTOR" -- THAT WAS A RESPONSE FILED
18 BY YOU, MR. MALPASS, ON BEHALF OF ALL SEASONS?

19 A YES.

20 Q "AND HAVING HEARD REPRESENTATIONS OF
21 COUNSEL, AND BEING" -- I ASSUME THAT WOULD INCLUDE YOU, ANY
22 STATEMENTS THAT YOU MIGHT HAVE MADE AT THE HEARING?

23 A IT WOULD INCLUDE THOSE, YES.

24 Q ALL RIGHT. "AND BEING FULLY ADVISED IN THE
25 PREMISES, AND FINDING NOTICE TO THE MEMBERS AND OTHER
26 PARTIES IN INTEREST TO BE SUFFICIENT, AND GOOD CAUSE

1 APPEARING, IT IS HEREBY ORDERED THAT ANY AND ALL CONTRACTS,
2 TO WHICH THE DEBTOR IS A PARTY, UNDER WHICH MEMBERS OF ALL
3 SEASONS RESORTS, INC., OR MEMBERS OF ANY OTHER ENTITY, ARE
4 PERMITTED THE USE" -- EXCUSE ME -- "ANY AND ALL CONTRACTS
5 TO WHICH THE DEBTOR IS A PARTY, UNDER WHICH MEMBERS OF ALL
6 SEASONS RESORTS, INC., OR MEMBERS OF ANY OTHER ENTITY, ARE
7 PERMITTED THE USE OF EACH OR ALL OR ANY COMBINATION OF THE
8 CAMPGROUNDS LISTED HEREINBELOW, BE, AND HEREBY ARE
9 REJECTED."

10 AND THEN IT LISTS THE ONE, TWO, THREE, FOUR,
11 FIVE, SIX, EIGHT PARKS. ALL REJECTED.

12 AND IT'S YOUR TESTIMONY, MR. MALPASS, THAT
13 NOTWITHSTANDING THE FACT THAT THE COURT GRANTED THIS
14 MOTION, REJECTING THE CONTRACTS, THAT THIS ORDER IS, IN
15 EFFECT, A NULLITY?

16 A NO, THAT'S NOT WHAT I SAID. WHAT IT DID, IT
17 DOESN'T CUT OFF THE RIGHTS OF MEMBERS WITH REGARD TO THEIR
18 HOME PARKS. THAT HAD ALREADY BEEN SOLD BY THE TRUSTEE.

19 Q YOU SAID THAT THE CONTRACTS WERE SOLD BY THE
20 AUCTION SALE.

21 A AND THE DEBTOR'S RIGHTS, VIS-A-VIS THE
22 PARTICULAR PARKS, THE HOME PARK SIDE OF IT. THIS WAS
23 DESIGNED TO PROTECT THE ESTATE. FIRST OF ALL, YOU HAVE TO
24 UNDERSTAND HOW REJECTION WORKS IN BANKRUPTCY. REJECTION
25 DOESN'T NECESSARILY TERMINATE A CONTRACT. THE CONTRACT IS
26 STILL THERE. WHAT IT DOES IS IT MEANS THAT THE BANKRUPTCY

1 ESTATE -- AND WHAT THE TRUSTEE WAS CONCERNED ABOUT WAS THE
2 BANKRUPTCY ESTATE -- ISN'T LIABLE FOR USE OF THE PARKS OR
3 ALL THE VARIOUS OTHER THINGS THAT WERE TALKED ABOUT HERE.
4 HE WANTED TO CUT OFF ANY RESPONSIBILITY OF ALL SEASONS.
5 THAT'S WHAT IT DID.

6 AS FAR AS THE PARKS THAT HAD BEEN SOLD, IT
7 DIDN'T HAVE ANY IMPACT. THEY WERE GONE. AND THE COURT
8 ASKED THROUGH ITS ORDER AND SAYS, IT IS HEREBY ORDERED.
9 THIS IS THE ORDER. IT BECOMES EFFECTIVE WHEN IT'S ENTERED.
10 THE FACT THAT THE HEARING TOOK PLACE ON THE 27TH DOESN'T
11 MEAN THERE'S A REJECTION THAT DAY. THE REJECTION TOOK
12 PLACE ON THE 24TH, AND THAT'S WHEN IT BECAME EFFECTIVE.
13 AND THE SALE HAD LONG SINCE OCCURRED, AND THE SALE ORDER
14 HAD BEEN ENTERED WHICH IS WHEN THE TRANSFER TOOK PLACE.
15 AND SO THAT'S WHAT GOT TRANSFERRED.

16 MR. RIVIN: MOVE TO STRIKE THE ANSWER, YOUR HONOR,
17 ON THE BASIS IT WAS NOT RESPONSIVE.

18 MR. SHAW: YOUR HONOR, I OBJECT. I BELIEVE IT WAS
19 RESPONSIVE.

20 THE COURT: THE MOTION IS DENIED.

21 PROCEED.

22 BY MR. RIVIN: Q SO IT'S YOUR BELIEF, MR. MALPASS,
23 THAT EVEN THOUGH THE ORDER APPROVING THE AUCTION SALE
24 REFERS TO MEMBER LISTS AND ONLY MEMBER LISTS AND DOESN'T
25 MENTION CONTRACTS, AND THE ORDER REJECTING THE CONTRACTS
26 SPECIFICALLY SAYS THAT THE CONTRACTS ARE BEING REJECTED,

1 THAT IT'S YOUR OPINION THAT THE CONTRACTS WERE SOLD?

2 A WELL, THERE'S AN INTERESTING ISSUE -- THERE
3 WAS AN INTERESTING ISSUE --

4 THE COURT: YOU CAN ANSWER THAT YES OR NO.

5 THE WITNESS: MY OPINION IS THAT THE CONTRACTS WERE
6 SOLD.

7 BY MR. RIVIN: Q YOU NEVER EXPRESSED THAT OPINION
8 AS ALL SEASONS COUNSEL IN 1997, DID YOU?

9 A HOW DO YOU MEAN "EXPRESSED"? I HELD IT
10 THEN. THIS IS NOT SOMETHING THAT -- THE OPINION THAT I
11 JUST EXPRESSED WAS NOT DEVELOPED IN THIS CONTEXT. IT WAS
12 DEVELOPED AT THAT TIME. I WAS VERY AWARE OF WHAT WAS GOING
13 ON, AND THIS ISSUE AND SO ON. AND WHEN THE SALES WERE
14 CONDUCTED IN THIS MANNER, I LOOKED AT THE WORDING AND WAS
15 AWARE OF THIS. SO THAT'S WHAT -- THAT'S WHAT HAPPENED.

16 Q BUT AS OF THIS DATE, AS OF NOVEMBER 24,
17 1997, BASED ON MR. DAFF'S LETTER AND OTHER INFORMATION FROM
18 THE BANKRUPTCY COURT, THE 18,000 MEMBERS OF ALL SEASONS
19 RESORTS BELIEVED THAT THEIR CONTRACTS HAD BEEN TERMINATED?

20 MR. SHAW: OBJECTION.

21 THE WITNESS: I DON'T THINK SO. I THINK THAT THEY
22 GOT -- I THINK VIS-A-VIS THE HOME PARKS, THEY WERE -- FIRST
23 OF ALL, HE HAD BEEN THROUGH TWO PRIOR BANKRUPTCIES WHERE
24 THE SYSTEM CONTINUED TO OPERATE. SO -- BUT YOU'RE ASKING
25 ME WHAT THEY BELIEVE. I DON'T KNOW. I THINK THEY --
26 WELL, I WASN'T A MEMBER.

1 BY MR. RIVIN: Q LET'S GO OVER WHAT WAS HAPPENING
2 WITH THE MEMBERS OF ALL SEASONS.

3 THEY WERE TOLD WHEN THE RECEIVER TOOK
4 OVER -- THE FEDERAL COURT RECEIVER TOOK OVER IN 1996. THEY
5 WERE TOLD TO PAY DUES TO THE RECEIVER; ISN'T THAT RIGHT?
6 THAT THE RECEIVER WAS COLLECTING FROM THEM?

7 A I DON'T KNOW THAT -- I'M NOT CERTAIN I CAN
8 ANSWER THAT. I WAS --

9 Q DIDN'T YOU SEND OUT A LETTER -- DIDN'T --
10 DID YOU SEND OUT A LETTER TO ALL OF THE ALL SEASONS MEMBERS
11 ON JULY 11, 1997, WHEN YOU FILED THE ALL SEASONS BANKRUPTCY
12 TO TELL THEM TO STOP PAYING DUES TO THE RECEIVER, TO MAKE
13 ALL FURTHER PAYMENTS TO ALL SEASONS?

14 A WELL, THAT WAS CERTAINLY WHAT -- THAT'S
15 THE -- YES, I DID SEND OUT SUCH A LETTER.

16 Q LET'S TAKE A LOOK AT -- IF WE COULD, AT
17 EXHIBIT 444, PAGE 3.

18 MR. MALPASS, DO YOU RECOGNIZE THIS AS A
19 LETTER THAT YOU SENT OUT TO ALL MEMBERS OF ALL SEASONS?

20 A NO.

21 Q WHO SENT IT OUT?

22 A I DON'T KNOW THAT IT WAS SENT.

23 MR. RIVIN: CAN WE PUT THE LETTER UP ON THE SCREEN.

24 MR. SHAW: YOUR HONOR, I'LL OBJECT. NO FOUNDATION
25 HAS BEEN LAID FROM THIS WITNESS. MAYBE THERE IS OTHER
26 FOUNDATION FROM ANOTHER WITNESS, BUT I WOULD OBJECT --

1 THE WITNESS: I CAN'T READ THE COPY THAT I HAVE,
2 AMONG OTHER THINGS.

3 BY MR. RIVIN: Q THE THIRD PAGE.

4 A I WAS LOOKING -- YOU'RE SAYING THE LETTER ON
5 THE THIRD PAGE?

6 Q I AM. THAT'S RIGHT. THAT'S RIGHT. THAT'S
7 THE REASON.

8 MR. SHAW: IS THAT THE ONE YOU'RE ASKING ABOUT?

9 MR. RIVIN: IT IS.

10 MR. SHAW: I'M SORRY, YOUR HONOR. I THOUGHT HE WAS
11 TALKING ABOUT THE FIRST PAGE.

12 BY MR. RIVIN: Q LET ME ASK THE QUESTION AGAIN,
13 MR. MALPASS.

14 DO YOU RECALL THIS IS A LETTER THAT YOU SENT
15 OUT TO ALL SEASONS MEMBERS?

16 A IF YOU WILL LET ME BE A LAWYER JUST A
17 MINUTE, I DON'T HAVE ANY CURRENT RECOLLECTION OF THIS
18 LETTER. IT'S GOT MY LETTERHEAD ON IT. I'M CERTAIN IT WAS
19 SENT OUT. I DO RECALL THAT THERE WAS SOMETHING OF THIS
20 SORT DONE AT THE BEGINNING. I JUST DON'T HAVE ANY CURRENT
21 RECOLLECTION. IT'S SIGNED ACTUALLY BY THE SECRETARY IN MY
22 OFFICE AS INDICATED BY THE INITIALS AT THE BOTTOM.

23 Q DO SECRETARIES EVER SIGN YOUR NAME TO
24 LETTERS -- YOUR NAME TO LETTERS WITHOUT YOUR AUTHORIZATION?

25 A NO, ABSOLUTELY NOT. AND THAT, WITH PRIOR
26 APPROVAL OF THE TEXT. I'M NOT SUGGESTING FOR A MOMENT THAT

1 THIS WASN'T FULLY AUTHORIZED FROM ME. I WOULD HAVE DRAFTED
2 IT AND READ IT AND APPROVED IT. JUST SOMETIMES WHEN THINGS
3 HAVE TO GO OUT QUICKLY, I AUTHORIZE THEM TO DO THAT.

4 Q SO THE SAME DAY -- THE SAME DAY THAT YOU
5 FILED THE CHAPTER 11 BANKRUPTCY PETITION FOR ALL SEASONS,
6 YOU SENT OUT A LETTER TO ALL THE MEMBERS SAYING, "ALL
7 SEASONS HAS FILED A VOLUNTARY PETITION FOR REORGANIZATION."

8 LET'S READ THROUGH THIS.

9 "FILED A VOLUNTARY PETITION FOR
10 REORGANIZATION UNDER CHAPTER 11 OF THE FEDERAL BANKRUPTCY
11 CODE. THE FILING WAS AUTHORIZED BY A.S.R.'S MANAGEMENT TO
12 ALLOW A.S.R.'S FACILITIES AND MEMBERS TO COME UNDER THE
13 PROTECTION OF THE FEDERAL BANKRUPTCY COURT. ALL SEASONS
14 RESORTS' PRESIDENT, RAY NOVELLI," END PAREN, "AND
15 MANAGEMENT INTEND TO MAINTAIN ALL BUSINESS OPERATIONS AS IS
16 PERMITTED BY PROVISIONS OF THE BANKRUPTCY CODE RELATING TO
17 REORGANIZATION UNDER CHAPTER 11.

18 "A.S.R. IS ATTEMPTING TO CARRY OUT A SWIFT
19 TRANSITION FROM CONTROL OF THE RESORTS BY THE
20 COURT-APPOINTED RECEIVER, JEFFREY KEIM, TO A.S.R.'S
21 EXISTING MANAGEMENT. THE TRANSITION SHOULD NOT AFFECT
22 RESORT SERVICES OR THE CONTINUATION OF BUSINESS
23 OPERATIONS.

24 "PURSUANT TO SECTIONS 542 AND 543 OF THE
25 BANKRUPTCY CODE, PAYMENTS SHOULD BE SENT DIRECTLY TO ALL
26 SEASONS RESORTS, INC., AT THE FOLLOWING ADDRESS."

1 AND THEN THIS IS THE ADDRESS OF ALL SEASONS;

2 CORRECT?

3 A YES. WELL, IT'S A P.O. BOX. SO IT'S
4 TECHNICALLY NOT THE ADDRESS. BUT, YEAH, THERE WAS A
5 DESIGNATED P.O. BOX.

6 Q AND THEN THE NEXT PARAGRAPH, TWO-LINE
7 PARAGRAPH THAT YOU UNDERSIGNED SAYS, "DO NOT SEND ANY
8 FURTHER PAYMENTS TO THE RECEIVER, JEFFREY KEIM, IN
9 FLORIDA."

10 NOW, AT THE SAME TIME YOU SENT OUT THIS
11 LETTER, ALL SEASONS SENT OUT ITS OWN LETTER TO THE MEMBERS,
12 SAYING ESSENTIALLY THE SAME THING?

13 A I DON'T KNOW THAT.

14 Q WERE YOU AWARE AT THE TIME THAT ALL SEASONS
15 WAS SENDING OUT A LETTER?

16 COULD YOU LOOK AT -- PLEASE LOOK AT THE
17 FIRST PAGE OF EXHIBIT 444.

18 A THE COPY I HAVE IS ILLEGIBLE, AND I DON'T
19 HAVE ANY RECOLLECTION OF SUCH A LETTER GOING OUT. I'M NOT
20 SAYING IT DIDN'T. I JUST DON'T HAVE ANY RECOLLECTION.

21 Q LET'S LOOK AT THE SECOND -- WELL, THE FIRST
22 PAGE. CAN YOU PUT PAGE 1 UP, PLEASE.

23 A IT'S NOT ANY BETTER ON THE SCREEN.

24 Q BUT TAKE A LOOK AT THE DATE. THE HEADING IS
25 "ALL SEASONS RESORTS." THE DATE IS JULY 11, 1997. AND
26 IT'S A LETTER TELLING THE MEMBERS -- TELLING THE MEMBERS

1 WHAT'S HAPPENING.

2 AND THEN I'D LIKE TO GO TO THE SECOND PAGE,
3 PLEASE.

4 AND THE SECOND PAGE IS LEGIBLE. AND IN THE
5 MIDDLE OF THE PAGE IT SAYS, "DO NOT SEND ANY PAYMENTS TO
6 THE RECEIVER IN FLORIDA. ALL PAYMENTS MUST BE SENT TO ALL
7 SEASONS RESORTS," ET CETERA, AT THE SAME ADDRESS. AND THEN
8 IT HAS A PLACE FOR THE SIGNATURE OF GOOD TIMES RAY AND
9 MARLIES.

10 SO BOTH OF THESE LETTERS APPARENTLY WENT OUT
11 THE SAME DAY; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q AS FAR AS YOU KNOW?

14 A AGAIN, I CAN'T TESTIFY THAT THIS LETTER WAS
15 EVER SENT TO ANYONE, THE ALL SEASONS LETTER. MINE WAS.

16 Q SO SOMETIME IN THE -- LATE 1996, THE ALL
17 SEASONS RESORT MEMBERS WERE TOLD BY THE RECEIVER TO MAKE
18 PAYMENTS TO HIM, TO THE RECEIVER, THE FEDERAL COURT
19 RECEIVER, MR. KEIM. AND THEN ON JULY 11, 1997, YOU AND
20 MR. NOVELLI WERE TELLING THE PEOPLE, "DON'T PAY THE
21 RECEIVER. PAY ALL SEASONS." AND THEN A MONTH AND A HALF
22 LATER, CHARLES DAFF WAS TELLING THESE SAME MEMBERS, "WE'RE
23 TERMINATING YOUR CONTRACTS. WE'RE CLOSING THE PARKS." AND
24 ALL OF THAT HAPPENED WITHIN A STRETCH OF ABOUT, WHAT, NINE
25 MONTHS?

26 A WELL, MY LETTER WAS BASED ON WHAT THE

1 BANKRUPTCY LAW REQUIRES.

2 Q I UNDERSTAND THAT.

3 A THAT'S A NOTIFICATION LETTER THAT YOU
4 NORMALLY SEND OUT ON A CASE LIKE THIS BECAUSE THAT'S WHAT
5 THE LAW REQUIRES.

6 Q BUT A MONTH LATER THERE WAS A TRUSTEE IN
7 PLACE; SO ALL SEASONS WAS NO LONGER ENTITLED TO THE MONEY;
8 RIGHT?

9 A NO. THE TRUSTEE IS ALL SEASONS.

10 Q I SEE.

11 BUT YOU TOLD THE MEMBERS TO PAY TO THE P.O.
12 BOX IN IRVINE, AND CHARLES DAFF A MONTH AND A HALF LATER
13 TOLD THE MEMBERS, "DON'T PAY TO IRVINE; YOU CAN'T PAY TO
14 IRVINE; NOW YOU HAVE TO PAY TO ME BECAUSE I'M THE TRUSTEE";
15 ISN'T THAT RIGHT? AND THAT --

16 A I DON'T KNOW WHAT.

17 Q -- WE'RE TERMINATING YOUR CONTRACTS?

18 A I DON'T KNOW WHETHER HE REDIRECTED THE
19 PAYMENT STREAM OR NOT.

20 Q LET'S GO BACK TO 847 QUICKLY, IF WE COULD.

21 DOES THAT SAY 847 THAT WE LOOKED AT BEFORE?
22 THAT'S MR. DAFF'S LETTER. ALL DUES PAYMENTS SHOULD BE SENT
23 TO CHARLES DAFF. THAT WAS IN SEPTEMBER.

24 I'LL TRY AND FINISH IF I CAN, YOUR HONOR,
25 WITHIN THE NEXT 15 MINUTES.

26 YOU HAVE THESE MEMBERS WHO ARE BEING HIT

1 WITH ALL OF THESE LETTERS. AND ISN'T IT TRUE THAT YOU
2 RECEIVED A SIGNIFICANT NUMBER OF LETTERS FROM MEMBERS
3 SAYING A NUMBER OF THINGS, INCLUDING "WHAT'S GOING ON
4 HERE"?

5 A I'M NOT CERTAIN THAT IT'S FAIR TO SAY A
6 SIGNIFICANT NUMBER. I RECEIVED SOME.

7 Q WHY DON'T WE TAKE A LOOK AT SOME OF THESE
8 LETTERS THAT WERE SENT -- EITHER SENT TO YOU DIRECTLY OR
9 COPIED TO YOU.

10 A I'D SAY THIS: IN TERMS OF THE THOUSANDS OF
11 MEMBERS THAT WERE OUT THERE, I THOUGHT THAT THE AMOUNT OF
12 MAIL WAS REMARKABLY SMALL IN TERMS OF MY EXPERIENCE IN
13 OTHER CASES. THE NUMBER OF LETTERS AND PHONE CALLS I GOT
14 FROM MEMBERS WAS VERY, VERY SMALL, AND PARTICULARLY FROM
15 UNHAPPY MEMBERS. I GOT --

16 Q DID YOU GET ANY LETTERS FROM PEOPLE WHO WERE
17 PLEASED WITH WHAT WAS GOING ON?

18 A I DON'T RECALL. I GOT A NUMBER OF PHONE
19 CALLS BECAUSE I TALKED TO THEM, AND THEY DIDN'T LIKE --
20 THEY HADN'T LIKED WHAT THE RECEIVER WAS DOING.

21 Q MR. KEIM?

22 A YEAH. AND THEY CALLED ME UP. AND THEN THEY
23 CALLED ME UP TO COMPLAIN ABOUT SOME THINGS THAT THE TRUSTEE
24 DID AS WELL.

25 Q SO IN ADDITION TO LETTERS, YOU WERE GETTING
26 COMPLAINTS FROM MEMBERS OVER THE TELEPHONE ABOUT WHAT THE

1 TRUSTEE WAS DOING, ABOUT WHAT THE RECEIVER IS DOING; IS
2 THAT RIGHT?

3 A AND THEY WERE ASKING -- SOME OF THESE PEOPLE
4 HAD BEEN THROUGH THE PRIOR BANKRUPTCY, AND THEY SAID, CAN'T
5 YOU GET CONTROL OF THIS THING AND STRAIGHTEN IT OUT?
6 LIKE -- AND GET THIS THING BACK ON COURSE? WE WANT OUR
7 PARKS PROTECTED.

8 Q LET'S TAKE A LOOK AT SOME OF THESE LETTERS.
9 EXHIBIT -- I'D LIKE TO START WITH EXHIBIT 1001.

10 MR. SHAW: I'LL OBJECT TO LETTERS TO COUNSEL AS
11 BEING HEARSAY. IT'S DIFFERENT THAN HAVING LETTERS TO A
12 PARTY OR LETTERS TO COAST TO COAST. I THINK THIS IS
13 OUTSIDE THE REALM OF WHETHER THERE WOULD BE ANY EXCEPTION
14 TO THE HEARSAY.

15 THE COURT: TELL YOU WHAT. WE'RE NOT GOING TO
16 FINISH WITH HIM TODAY. THEY'RE NOT -- THEY HAVE REDIRECT.
17 LET'S LET THESE POOR FOLKS GO HOME. YOU'VE WORKED HARD
18 THIS WEEK. WE THANK YOU.

19 HAVE A GOOD THREE DAYS, AND WE'LL SEE YOU
20 MONDAY MORNING AT 9:00.

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

23 MR. RIVIN: YOUR HONOR, WE'VE ADDRESSED THIS ISSUE
24 MULTIPLE TIMES BEFORE. THIS IS NO DIFFERENT THAN ALL THE
25 LETTERS THAT WERE IN EXHIBIT 949. AND MANY OF THE OTHER
26 LETTERS --

1 MR. SHAW: THOSE LETTERS WERE SIGNED.

2 MR. RIVIN: ANY OF THE OTHER LETTERS, THE -- THIS
3 IS A LETTER THAT WAS PRODUCED BY MR. MALPASS FROM HIS
4 FILES. IT IS NOT HEARSAY BECAUSE IT IS NOT OFFERED TO
5 PROVE THE TRUTH OF THE MATTER STATED. IT IS OFFERED TO
6 PROVE STATE OF MIND OF THE MEMBERS, WHICH IS AN ISSUE IN
7 THIS CASE. AND WE HAVE TALKED ABOUT THAT. WE HAVE TALKED
8 ABOUT THAT REPEATEDLY, AND THAT SHOULD NOT BE AN ISSUE ANY
9 LONGER.

10 MR. SHAW: YOUR HONOR, THIS ISN'T A MEMBER. THIS
11 IS A LAWYER FOR A MEMBER. IT'S DOUBLE HEARSAY. I MEAN,
12 IT'S NOT --

13 MR. RIVIN: IT'S AN AGENT. IT'S AN AGENT.

14 MR. SHAW: IT'S A LAWYER WHO IS TRYING TO PROTECT
15 HIS CLIENT FROM PAST DUES. THAT'S WHAT IT SAYS. PAST --
16 ANY CLAIMS FOR PAST DUES. I DON'T THINK THIS CASE -- THIS
17 LETTER -- MAYBE HE HAS GOT SOME OTHERS. BUT THIS LETTER
18 ITSELF I DON'T BELIEVE SHOWS A STATE OF MIND OF ANY
19 MEMBER. IT SHOWS SOMEBODY NOT WANTING TO GET ASSESSED FOR
20 PAST DUES. THAT'S THE WAY I READ THIS.

21 MR. MOSHENKO: AND IT'S NOT SIGNED.

22 MR. RIVIN: IT IS NOT ONLY NOT HEARSAY, I MEAN,
23 IT'S A STATEMENT MADE BY AN AGENT OF A MEMBER, AND IT GOES
24 DIRECTLY TO THE ISSUE OF CAUSATION IN THIS CASE.

25 THE PLAINTIFFS ARE CLAIMING THAT THE MEMBERS
26 WERE TRANSFERRED, AND THAT'S WHY THEY LOST MEMBERS. THE

1 REASON MEMBERS LEFT IS BECAUSE THEY TERMINATED BECAUSE OF
2 EVERYTHING THAT WAS GOING ON WITH ALL SEASONS AND WITH THE
3 OTHER PLAINTIFFS IN THIS CASE AND THE PLAINTIFFS'
4 PREDECESSORS.

5 THE STATE OF MIND AND THE REASON WHY MEMBERS
6 DID WHAT THEY DID IS VERY RELEVANT IN THIS CASE. AND IT
7 DEFINITELY IS NOT HEARSAY. AND IT'S COMPLETELY
8 APPROPRIATE. AND IT'S ALSO RELIABLE IN THAT IT'S A LETTER
9 FROM MR. MALPASS'S FILES.

10 MR. MOSHENKO: WHAT DO YOU DO WITH THE FACT THAT
11 IT'S UNSIGNED, YOUR HONOR? AND IT OBVIOUSLY IS A STATEMENT
12 MADE BY A LAWYER BASED ON A STATEMENT MADE TO THE LAWYER BY
13 A CLIENT. AND HE IS ADVOCATING THE POSITION. IT'S A
14 CONTENTION.

15 MR. SHAW: YOUR HONOR -- AND I GUESS THE OTHER ITEM
16 IS, MR. RIVIN JUST SAID IT WASN'T BEING OFFERED FOR THE
17 TRUTH OF THE MATTER ASSERTED; IT WAS ONLY STATE OF MIND.
18 AND THEN HE WENT ON TO SAY THAT IT PROVES CAUSATION.
19 THAT'S THE TRUTH OF THE MATTER ASSERTED. I MEAN, THAT'S
20 NOT JUST FOR STATE OF MIND. AND WHY IS THIS STATE OF MIND
21 RELEVANT? THE STATE OF MIND ABOUT PAST DUES? THE STATE OF
22 MIND -- IT'S NOT RELEVANT. IT'S NOT TRUSTWORTHY. IT IS
23 BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED.

24 THIS IS NOT A LETTER THAT HAS GONE TO COAST
25 TO COAST THAT WE'VE LOOKED AT BEFORE. I MEAN, THIS IS A
26 LETTER THAT I BELIEVE SHOULDN'T BE ADMITTED.

1 MR. RIVIN: THIS IS ACTUALLY EVEN BETTER AND MORE
2 AUTHENTIC AND MORE -- OF GREATER IMPORT THAN LETTERS TO
3 COAST TO COAST OR IMPORT FOR A DIFFERENT REASON. THIS IS A
4 LETTER THAT'S GOING TO ALL SEASONS. AND, IN FACT, IT'S A
5 LETTER FROM A LAWYER STATING MY CLIENT IS TERMINATING,
6 TERMINATING HIS MEMBERSHIP. THERE IS NO ISSUE ABOUT ITS
7 AUTHENTICITY. THERE'S A POSTMARK ON IT, AND IT WAS IN
8 MR. MALPASS' FILES.

9 MR. SHERMAN: THE SECOND PAGE HAS A POSTMARK, YOUR
10 HONOR. IF THIS IS A FORGERY, THEN I DON'T KNOW WHO FORGED
11 IT.

12 MR. RIVIN: IT REALLY SHOULDN'T BE AN ISSUE.

13 THE COURT: I'M GOING TO ALLOW IT.

14 MR. RIVIN: THANK YOU, YOUR HONOR.

15 THE COURT: HOW MUCH MORE TIME ARE YOU GOING TO BE?

16 MR. RIVIN: I WILL PROMISE YOU. I WILL BE LESS
17 THAN A HALF AN HOUR.

18 THE COURT: WHAT ABOUT YOU FELLOWS?

19 MR. MOSHENKO: A LOT OF DOORS HAVE BEEN OPENED,
20 YOUR HONOR, I'D SAY. AND I THINK SEVERAL HOURS, THREE
21 HOURS. WE'RE GOING TO -- NOW GOING TO HAVE TO LITIGATE THE
22 INTERRELATIONSHIP WITH FINOVA, DAFF TO THE -- TO KEIM.

23 THE COURT: YOU KNOW YOU'RE LOOKING AT A MISTRIAL
24 IF YOU GO BEYOND A CERTAIN DATE, BUT IT'S UP TO YOU.

25 MR. SHERMAN: AS FAR AS DOOR OPENINGS, THE FACT
26 THAT A WITNESS IS SITTING UP ON THE WITNESS STAND GIVING

1 THE KINDS OF NONRESPONSIVE ANSWERS THAT MR. MALPASS GAVE ON
2 CROSS-EXAMINATION CAN HARDLY BE CONSIDERED DOOR-OPENING.

3 MR. RIVIN: AND AS A MATTER OF FACT, YOUR HONOR, WE
4 WERE VERY CAREFUL NOT TO OPEN ANY DOORS. WE THOUGHT ABOUT
5 THAT. I THOUGHT ABOUT THAT.

6 THE COURT: MR. BAILIFF, RETURN THAT TO COUNSEL,
7 PLEASE.

8 ALL RIGHT. SEE YOU MONDAY MORNING AT 9:00.

9 MR. MOSHENKO: ONE MORE ISSUE.

10 MR. MALPASS HAS A COURT HEARING IN THE
11 MORNING. WE DO HAVE OTHER WITNESSES. COULD WE HAVE HIM --
12 ORDER HIM BACK AT 1:30 AFTER HIS COURT HEARING, AND WE'LL
13 HAVE EITHER MR. MERRITT OR MR. DAWSON MONDAY MORNING?

14 MR. RIVIN: CAN YOU TELL US WHICH ONE?

15 MR. MOSHENKO: MR. MERRITT.

16 MR. SHERMAN: THANK YOU. WE'LL BE PREPARED.

17 MR. MOSHENKO: AND ALSO THE FACT OF WHAT JUST
18 HAPPENED TODAY BUMPS MR. BUTLER FROM TUESDAY PROBABLY TO
19 WEDNESDAY OR POTENTIALLY THURSDAY.

20 MR. SHERMAN: MR. BUTLER IS TRAVELLING IN FROM
21 DENVER, YOUR HONOR, AND I WOULD SPEAK WITH HIM. IT IS A
22 LITTLE MORE PROBLEMATIC THAN THE WITNESSES WHO ARE, IF YOU
23 WILL, PLAINTIFFS' WITNESSES. AND WE WILL SPEAK WITH
24 MR. BUTLER. BUT WE MAY NEED SOME GUIDANCE FROM THE COURT
25 ON THIS ISSUE.

26 MR. MOSHENKO: MR. MERRITT IS HERE FROM FLORIDA.

1 WE HAVE A WITNESS COMING FROM LAS VEGAS.

2 MR. SHERMAN: IT MAY BE, THOUGH, MR. BUTLER DOES
3 NOT WIND UP BEING AVAILABLE. FOR THAT REASON WE'LL HAVE TO
4 GO WITH SOMEONE ELSE.

5 THE COURT: ALL RIGHT. SEE YOU MONDAY.

6 MR. SHERMAN: HAVE A GOOD WEEKEND, YOUR HONOR.

7 THE COURT: YOU ALL, TOO.

8 (WHEREUPON THE COURT WAS THIS RECESS UNTIL
9 MONDAY, JUNE 12, 2000, 9:00 A.M.)

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