

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 13, 2000

APPEARANCES:

FOR THE PLAINTIFFS:

GERALD M. SHAW
ATTORNEY AT LAW

TERRY M. MOSHENKO
ATTORNEY AT LAW

FOR THE DEFENDANTS:

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

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

HEIDI K. STEWART, CSR #6058
OFFICIAL COURT REPORTER

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1 WESTMINSTER, CALIFORNIA - TUESDAY, JUNE 13, 2000

2 MORNING SESSION

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

5 THE COURT: PROCEED, COUNSEL.

6 MR. RIVIN: THANK YOU, YOUR HONOR.

7 EDWARD MALPASS,

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

11 CROSS-EXAMINATION (CONTINUED)

12 BY MR. RIVIN: Q MR. MALPASS, WHEN WE FINISHED
13 YESTERDAY, WE WERE TALKING ABOUT THE RECEIVER'S -- RIGHT
14 BEFORE WE FINISHED YESTERDAY, WE WERE TALKING ABOUT THE
15 TRUSTEE'S APPLICATION TO REFUND THE MEMBER DUES THAT HAD
16 BEEN PAID TO THE TRUSTEE DURING THE CHAPTER 11 PROCEEDINGS;
17 DO YOU RECALL THAT?

18 A YES.

19 Q I'D LIKE TO PUT EXHIBIT 384 BACK UP ON THE
20 SCREEN, IF WE COULD. THIS IS A DOCUMENT THAT WE SHOWED
21 YESTERDAY.

22 AND, MIKE, IF YOU COULD HIGHLIGHT JUST THE
23 TITLE OF THE DOCUMENT.

24 THIS IS THE VERIFIED APPLICATION FOR ORDER
25 AUTHORIZING CHAPTER 11 TRUSTEE TO RETURN THE MEMBERSHIP
26 DUES. THIS IS FILED MY CHARLES DAFF, WHO IS -- DAFF, WHO

1 IS THE TRUSTEE.

2 I REFERRED TO A PORTION OF THIS DOCUMENT
3 YESTERDAY, MR. MALPASS, WHEN I WAS QUESTIONING YOU. BUT
4 I'D LIKE TO GO TO THE SECOND PAGE, IF WE COULD.

5 AND IF YOU COULD HIGHLIGHT PARAGRAPH 7 AND
6 THE FIRST PORTION OF PARAGRAPH 8, PLEASE.

7 YESTERDAY WE READ PARAGRAPH 7, WHICH SAYS,
8 "ON OCTOBER 27, 1997, A HEARING WAS HELD REGARDING THE
9 TRUSTEE'S MOTION TO REJECT THE MEMBERSHIP CONTRACTS. AN
10 ORDER APPROVING THE TRUSTEE'S MOTION HAS BEEN LODGED WITH
11 THE COURT."

12 BUT WE DIDN'T READ THE NEXT PARAGRAPH,
13 WHICH SAYS, "THE TRUSTEE HAS RECEIVED APPROXIMATELY 2,700
14 PAYMENTS FROM MEMBERS WHICH TOTALS \$116,954.61. AS A
15 RESULT OF THE TRUSTEE'S REJECTION OF THE MEMBERSHIP
16 CONTRACTS, THE TRUSTEE DESIRES TO REFUND IN FULL ALL
17 MEMBERSHIP MONIES PAID BY THE MEMBERS AND RECEIVED BY THE
18 TRUSTEE ON OR AFTER SEPTEMBER 1, 1997."

19 AND, AGAIN, ON NOVEMBER -- MR. MALPASS, ON
20 NOVEMBER 20TH, THE COURT APPROVED THIS APPLICATION AND
21 AUTHORIZED THE TRUSTEE TO REFUND THE MEMBERSHIP DUES AS HE
22 REQUESTED?

23 A I THINK THAT'S RIGHT, YES.

24 Q WHY DON'T WE JUST TAKE A LOOK AT EXHIBIT 385
25 TO CONFIRM THAT, PLEASE.

26 THIS IS THE ORDER, ORDER ON VERIFIED

1 APPLICATION AUTHORIZING THE TRUSTEE TO RETURN THE DUES
2 BASED ON THE TRUSTEE'S APPLICATION, WHICH SAID THAT THE
3 MEMBERSHIP CONTRACTS HAD BEEN REJECTED. AND THIS WAS
4 SIGNED BY THE JUDGE.

5 IF YOU CAN, GO DOWN TO THE BOTTOM OF THAT
6 PAGE, PLEASE.

7 SIGNED BY THE JUDGE NOVEMBER 20TH, 1997.
8 AND THEN IT WAS ENTERED -- IF WE CAN GO TO THE TOP -- ON
9 NOVEMBER 24TH; IS THAT RIGHT?

10 A YES.

11 Q YESTERDAY, MR. MALPASS, YOU MENTIONED THAT
12 YOU HAD SEEN ANOTHER ORDER IN WHICH YOU BELIEVE THE COURT
13 HAD REJECTED THE TRUSTEE'S REQUEST TO REJECT THE MEMBERSHIP
14 CONTRACTS?

15 A THE COURT DENIED IT.

16 Q THE COURT DENIED A REQUEST BY THE TRUSTEE?

17 A YES -- WELL, WHAT I SAW WAS A LINE THAT
18 JUDGE RYAN DREW THROUGH THE ORDER STRIKING OUT A PARAGRAPH
19 ABOUT REJECTION OF THE CONTRACTS, AND THEN HE INITIALED IT,
20 WHICH IS HOW HE WOULD DO IT.

21 MR. RIVIN: YOUR HONOR, MAY I GO TO THE BOARD,
22 PLEASE.

23 Q YESTERDAY WE WENT OVER THIS TIME LINE,
24 MR. MALPASS, AND WE SAW THAT THE TRUSTEE FILED HIS FORMAL
25 MOTION TO REJECT THE MEMBERSHIP CONTRACTS ON OCTOBER 9.
26 AND THAT MOTION WAS GRANTED ON NOVEMBER 24TH, AFTER YOU

1 FILED OPPOSITION ON BEHALF OF YOUR CLIENT TO THAT.

2 DO YOU REMEMBER THE DATE OF THIS OTHER ORDER
3 THAT YOU'RE TALKING ABOUT THAT -- WHERE THE JUDGE DREW A
4 LINE THROUGH A REQUEST BY THE TRUSTEE FOR REJECTION OF THE
5 CONTRACTS?

6 A I DON'T RECALL THE EXACT DATE. I FOUND THE
7 ORDER.

8 Q LET'S -- AND I WOULDN'T EXPECT YOU TO KNOW
9 THE EXACT DATE, MR. MALPASS, BUT LET'S TAKE A LOOK AT
10 EXHIBIT 379, PLEASE.

11 IS THAT THE ORDER YOU'RE REFERRING TO?

12 A YES, IT IS.

13 Q COULD WE PUT THAT UP ON THE SCREEN, PLEASE.

14 THIS IS AN ORDER APPROVING A POST PETITION
15 FINANCING AND DENYING THE TRUSTEE'S MOTION TO CONVERT THE
16 CASE.

17 NOW, YOU NOTICE THE DATES ON THIS ARE IN
18 AUGUST. THE TRUSTEE, BACK IN AUGUST, WHEN HE WAS INITIALLY
19 APPOINTED, ASKED TO CONVERT THE CASE FROM AN 11 TO A 7, A
20 CHAPTER 11 TO A CHAPTER 7; ISN'T THAT RIGHT?

21 A I DON'T KNOW WHETHER IT WAS RIGHT AFTER HIS
22 INITIAL APPOINTMENT. BUT IN THIS PROCEEDING THAT'S WHAT HE
23 WAS DOING, PART OF WHAT HE WAS DOING THERE.

24 Q HE WAS APPOINTED IN AUGUST, WASN'T HE?

25 A I THINK YOU'RE RIGHT.

26 Q AND BY AUGUST HE WAS ALREADY ASKING THE

1 COURT TO CONVERT IT TO A CHAPTER 7?

2 A YES.

3 Q ALL RIGHT. AND HE ALSO ASKED THE COURT AT
4 THAT TIME FOR AUTHORIZATION TO OBTAIN FINANCING FROM SOME
5 OF THE CREDITORS SO THAT HE COULD KEEP THE BUSINESS, THE
6 OPERATIONS, GOING FOR SOME PERIOD OF TIME?

7 A RIGHT.

8 Q ALL RIGHT. THIS IS THE ORDER ON THAT
9 APPLICATION; IS THAT RIGHT?

10 A YES, AS WELL AS A REQUEST TO REJECT THE
11 MEMBERSHIP CONTRACTS.

12 Q WHAT MR. DAFF'S ATTORNEY APPARENTLY DID IN
13 THIS ORDER IS PUT IN A PARAGRAPH ABOUT REJECTION OF THE
14 MEMBERSHIP CONTRACTS.

15 A THAT'S BECAUSE THEY ASKED FOR IT IN THE
16 MOTION.

17 Q INITIALLY BACK IN EARLY AUGUST?

18 A CORRECT.

19 Q AND THE JUDGE CROSSED IT OUT.

20 WHY DON'T WE TAKE A LOOK AT WHAT WE'RE
21 TALKING ABOUT. IT'S PAGE -- EXCUSE ME. IT'S PAGE 5, I
22 BELIEVE.

23 A YES, IT IS ON PAGE 5.

24 Q OKAY. SO IN THIS ORDER THE JUDGE --
25 MR. DAFF ASKED FOR PERMISSION TO REJECT THE CONTRACTS,
26 DEEMED REJECTED AS OF NOVEMBER 30, AND THE JUDGE CROSSED

1 THAT OUT; RIGHT?

2 A THAT'S THE X'ING AND THOSE ARE JUDGE RYAN'S
3 INITIALS DOWN THERE.

4 Q EXACTLY.

5 NOW LET'S GO BACK TO THE FIRST PAGE,
6 PLEASE. AND UP AT THE TOP.

7 THIS ORDER WAS ENTERED ON AUGUST 27, 1997;
8 IS THAT CORRECT?

9 A YES.

10 Q AND IF WE LOOK BACK AT THE BLACKBOARD AT MY
11 TIME LINE, THAT'S WAY OFF TO THE LEFT; RIGHT, MR. MALPASS?
12 THAT'S BACK IN AUGUST. THE COURT SAID YOUR MOTION -- YOUR
13 REQUEST FOR REJECTION IS PREMATURE; ISN'T THAT RIGHT?

14 A NO, I WOULDN'T SAY THAT.

15 Q THE JUDGE CROSSED IT OUT AT THAT POINT;
16 RIGHT?

17 A THAT'S CORRECT BECAUSE IT WAS OVERBROAD.

18 Q FINE.

19 AND THEN A MONTH AND A HALF LATER, A MONTH
20 AND A HALF LATER THE TRUSTEE BROUGHT A FORMAL MOTION TO
21 REJECT?

22 A THIS IS A FORMAL -- THIS ORDER IS ON A
23 FORMAL MOTION TO REJECT. THE JUDGE DENIED -- I WAS AT THE
24 HEARING. THE JUDGE DENIED THIS RELIEF. HE GRANTED SOME
25 REJECTION WITH REGARD TO THE HONEYBROOK AND WISCONSIN DELLS
26 PARK BECAUSE THEY WERE GOING TO BE TRANSFERRED IMMEDIATELY,

1 AND THEY WERE REQUESTING ALL THIS OTHER RELIEF ABOUT
2 TERMINATION OF THE CONTRACTS, AND JUDGE RYAN -- THAT WAS
3 TOO BROAD, AND HE DENIED IT.

4 Q MR. MALPASS, A MONTH AND A HALF LATER THE
5 TRUSTEE BROUGHT A FORMAL MOTION IN WRITING TO REJECT THE
6 MEMBERSHIP CONTRACTS?

7 A SOLELY FOR REJECTION, THAT'S RIGHT.

8 Q SOLELY FOR REJECTION OF THE MEMBERSHIP
9 CONTRACTS?

10 A YES.

11 Q AND THE COURT GRANTED THAT ORDER ON OCTOBER
12 27TH. GRANTED THE MOTION ON OCTOBER 27TH, AND ENTERED THE
13 ORDER ON NOVEMBER 24TH?

14 A RIGHT, SOLELY.

15 Q REJECTING THE MEMBERSHIP CONTRACTS?

16 A YES. IN THE A.S.R. CASE.

17 Q CORRECT.

18 LET ME STAY HERE FOR JUST A MOMENT.

19 AT THE END OF THE DAY YESTERDAY WE WERE
20 TALKING ABOUT YOUR APPLICATION -- APPLICATION TO ALTER
21 ORDER. ALL RIGHT. AND THE APPLICATION, THE ORDER THAT YOU
22 WERE SEEKING TO ALTER, WAS THIS ORDER HERE, APPROVING THE
23 REFUND OF THE DUES; RIGHT?

24 A YES.

25 Q OKAY. AND THAT WAS EXHIBIT NUMBER 1437. I
26 DON'T KNOW IF YOU HAVE THAT.

1 A I DON'T THINK.

2 Q DO YOU HAVE COPIES OF THAT?

3 A I DON'T THINK --

4 Q ACTUALLY THAT WAS AN EXHIBIT NOT ON OUR
5 LIST, AND IT WAS NOT SHOWN -- MR. MALPASS, I GAVE YOU A
6 COPY OF THIS DOCUMENT YESTERDAY. THIS IS THE NOTICE OF
7 HEARING FILED BY YOUR OFFICE -- FILED BY YOU -- ON MOTION
8 TO ALTER OR AMEND ORDER, TO VACATE ORDER, TO MAKE
9 ADDITIONAL FINDINGS AND RELIEF FOR STAY PENDING APPEAL.

10 IT WAS REGARDING THIS ORDER. AND I ASKED
11 YOU TO READ A PORTION OF IT YESTERDAY, AND YOU DID, ON PAGE
12 4. AND I ASKED YOU TO READ A PORTION WHERE YOU INDICATED
13 THAT THE CONTRACTS, THE MEMBERSHIP CONTRACTS, HAD BEEN
14 REJECTED, AND THAT'S THE REASON THAT THE COURT AUTHORIZED
15 THE REFUND OF THE MEMBERSHIP DUES.

16 BUT YOU TOOK THE POSITION THAT THE DUES
17 SHOULDN'T BE REFUNDED TO THE MEMBERS, BUT, RATHER, THE DUES
18 SHOULD BE REFUNDED TO THE ESTATE; THEY SHOULD ALL GO BACK
19 TO THE BANKRUPTCY ESTATE.

20 IS THAT THE POSITION THAT YOU TOOK?

21 LET ME SHOW YOU A COPY OF YOUR ORDER
22 INVOLVING YOUR MOTION. I'M ASKING FOR THE POSITION THAT
23 YOU TOOK IN THE BANKRUPTCY COURT WITH RESPECT TO THESE
24 DUES.

25 THAT'S A PORTION -- THE PORTION THAT'S
26 HIGHLIGHTED THERE, MR. MALPASS, I'M GOING TO ASK YOU TO

1 READ. BUT THAT'S NOT YOUR ENTIRE MOTION OBVIOUSLY.

2 A WELL, AND YOU'RE LINKAGE OF THE DUES REFUND
3 WITH REJECTION IS NOT WHAT MY TESTIMONY WAS, AND IT'S
4 WRONG. THE APPLICATION SHOWS THAT THE REASON THAT THE DUES
5 WERE REFUNDED, THE PRIMARY REASON, WAS THAT THE TRUSTEE HAD
6 CLOSED THE PARKS; SO THE MEMBERS WEREN'T GETTING WHAT THEY
7 PAID FOR FOR SEPTEMBER. THAT WAS WHAT THE TRUSTEE SAID TO
8 THE COURT, AND THAT WAS WHY THE DUES REFUND WAS GRANTED.
9 IT WASN'T HAVING TO DO WITH REJECTION.

10 Q COULD WE PUT EXHIBIT 384 BACK UP ON THE
11 BOARD, PLEASE. COULD WE GO TO THE SECOND PAGE.

12 LET'S LOOK AT PARAGRAPH 8 AGAIN THAT WE
13 ALREADY READ THIS MORNING ONCE.

14 READ THE SECOND SENTENCE OF THAT PARAGRAPH,
15 MR. MALPASS, OUT LOUD, PLEASE.

16 A "AS A RESULT OF THE TRUSTEE'S REJECTION OF
17 THE MEMBERSHIP CONTRACTS, THE TRUSTEE DESIRES TO REFUND IN
18 FULL ALL MEMBERSHIP MONIES PAID BY THE MEMBERS AND RECEIVED
19 BY THE TRUSTEE ON OR AFTER SEPTEMBER 1, 1997."

20 Q THANK YOU.

21 NOW, YOU FILED A MOTION ON NOVEMBER 26TH
22 ASKING THAT THOSE MONIES NOT BE REFUNDED TO THE MEMBERS;
23 CORRECT?

24 A YES.

25 Q AND THAT THEY GO BACK TO THE BANKRUPTCY
26 ESTATE, THE \$116,000 GO BACK INTO THE BANKRUPTCY ESTATE; IS

1 THAT RIGHT?

2 A YES.

3 Q AND THAT MOTION THAT YOU FILED IS IN FRONT
4 OF YOU; IS THAT RIGHT?

5 A YES.

6 Q COULD YOU READ FROM -- IF I MIGHT LOOK OVER
7 YOUR SHOULDER, PLEASE -- PAGE 7 OF YOUR POINTS AND
8 AUTHORITIES. READ FROM THE SENTENCE BEGINNING AT LINE 12
9 THROUGH LINE 15.

10 A THE ONE YOU'VE HIGHLIGHTED?

11 Q YES.

12 A "THE COURT" --

13 MR. SHAW: YOUR HONOR, I'M SORRY. I'LL JUST
14 OBJECT. THIS NOW IS NOT REFRESHING HIS RECOLLECTION, AND
15 THIS ISN'T A DOCUMENT THAT WAS ON THE WITNESS -- ON THE
16 EXHIBIT LIST. WE'RE NOW READING THAT -- PART OF SOMETHING
17 THAT'S NOT TESTIMONY, AND IT'S NOT TO REFRESH HIS
18 RECOLLECTION.

19 THE COURT: I'M GOING TO ALLOW IT, MR. SHAW.

20 BY MR. RIVIN: Q PLEASE READ THAT.

21 A "THE COURT LATER FOUND THAT THE CONTRACTS
22 WERE EXECUTORY AND AUTHORIZED THEIR REJECTION. THE
23 POST-PETITION REJECTION GIVES RISE TO AN UNSECURED CLAIM IN
24 ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(G)(1) AND
25 502(G)," AND THEN THERE'S A CITATION.

26 Q THANK YOU.

1 SO THIS IS YOUR LANGUAGE. THIS IS YOUR
2 LANGUAGE TWO DAYS AFTER THIS ORDER WAS ENTERED REJECTING
3 THE CONTRACTS; THAT THE COURT AUTHORIZED THE REJECTION, AND
4 THE POST-PETITION REJECTION GIVES RISE TO AN UNSECURED
5 CLAIM IN ACCORDANCE WITH THE BANKRUPTCY CODE SECTION THAT
6 YOU CITED?

7 A AN UNSECURED CLAIM AGAINST THE BANKRUPTCY
8 ESTATE, YES.

9 Q OKAY. NOW, LET'S TALK ABOUT THAT.
10 MR. MALPASS, I WANT TO ASK YOU ABOUT YOUR
11 REASON FOR WHY YOU THOUGHT THE MONEY SHOULD GO BACK TO THE
12 ESTATE.

13 IT'S YOUR POSITION THAT ONCE THE CONTRACTS
14 ARE REJECTED, THAT CONSTITUTES A BREACH OF THE CONTRACTS BY
15 THE DEBTOR, AND, THEREFORE, THE MEMBERS SHOULD BECOME
16 UNSECURED CREDITORS?

17 A NO. YOU'RE -- TECHNICALLY YOU'RE WRONG.
18 THE EFFECT OF A REJECTION UNDER BANKRUPTCY LAW IS NOT TO
19 TERMINATE THE CONTRACTS. IT DOESN'T CANCEL THEM. WHAT IT
20 DOES IS IT ACTS AS A LEGALLY DEEMED BREACH OF THE
21 CONTRACTS, VIS-A-VIS THE BANKRUPTCY ESTATE AND THE TRUSTEE
22 IN THIS CASE. SO THAT IT CHANGES THE CHARACTER OF THE
23 LIABILITY FROM BEING AN ADMINISTRATIVE LIABILITY THAT GETS
24 PRIORITY OVER OTHER KINDS OF CLAIMS, TO A GENERAL,
25 UNSECURED CLAIM THAT WOULD BE PAID WITH OTHER CREDITORS.
26 SINCE THEY'RE IN THIS CASE, THERE WAS UNLIKELY TO BE ANY

1 MONIES SINCE THE TRUSTEE HAD SOLD ALL THE PROPERTY WITHOUT
2 CASH COMING INTO THE ESTATE. IT REALLY CUT OFF THE
3 ESTATE'S LIABILITY, WHICH WAS WHY THE TRUSTEE WAS DOING
4 IT.

5 SO IT ISN'T A BREACH BY THE DEBTOR,
6 LEGALLY. IT'S A -- SECTION 365 IS A SPECIAL SECTION OF
7 THE BANKRUPTCY CODE THAT DEALS ONLY WITH THE RELATIONSHIP
8 OF CONTRACTS VIS-A-VIS THE BANKRUPTCY ESTATE. AND IN A
9 CASE WHERE THERE'S A TRUSTEE LIKE THERE WAS IN THIS CASE,
10 THE TRUSTEE, MR. DAFF, WAS PROTECTING THE ESTATE AND
11 HIMSELF, WHICH WAS HIS JOB.

12 Q SO THE REJECTION DOES NOT GIVE RISE TO A
13 PRE-PETITION UNSECURED CLAIM BASED ON BREACH?

14 A IT'S TREATED AS THAT IN THE BANKRUPTCY, YES.
15 THAT'S WHAT 365(G) SAYS.

16 Q THAT'S WHAT I SAID, MR. MALPASS. YOU FELT
17 THAT THE DUES SHOULD GO BACK TO THE ESTATE BECAUSE THE
18 MEMBERS BECAME UNSECURED CREDITORS; THEY WERE UNSECURED
19 CREDITORS, AND THEY SHOULD SHARE IN THE ENTIRE POOL OF A
20 NON-PRIORITY BASIS WITH THE OTHER UNSECURED CREDITORS?

21 A WELL, THE MEMBERS HAD CLAIMS, BUT THERE
22 WERE -- BECAUSE OF THE PRIORITY CLAIMS, SUCH AS TAX CLAIMS
23 AND ADMINISTRATIVE CLAIMS, THEY -- THEY MIGHT HAVE BEEN,
24 BUT IT WAS UNLIKELY.

25 Q ALL I SAID, MR. MALPASS, IS THAT IT WAS YOUR
26 POSITION THAT THE MEMBERS SHOULD SHARE WITH THE OTHER

1 UNSECURED CREDITORS IN WHATEVER WAS LEFT IN THE ESTATE;
2 RIGHT? AS UNSECURED CREDITORS?

3 A THE MEMBERS -- THE EFFECT HAD ALREADY BEEN
4 DETERMINED.

5 THE COURT: THAT COULD BE ANSWERED YES OR NO, I
6 BELIEVE.

7 THE WITNESS: WELL, I DON'T RECALL WHAT IT SAYS IN
8 THE PAPERS, MR. RIVIN, IF YOU'RE ASKING ME ABOUT THOSE.

9 BY MR. RIVIN: Q MR. MALPASS, ISN'T IT TRUE THAT
10 THE REASON THAT YOU FILED THAT MOTION TO PREVENT -- TO GET
11 THE COURT TO CHANGE ITS ORDER REFUNDING THE DUES BACK TO
12 THE MEMBERS IS SO YOU COULD GET MONEY BACK INTO THE ESTATE
13 SO THAT YOU COULD HOPEFULLY GET PAID?

14 A THE PURPOSE OF THE MOTION FILED AT THE
15 DIRECTION OF MY CLIENT, ALL SEASONS, WAS TO HAVE BANKRUPTCY
16 LAW PROPERLY APPLIED. THAT'S WHAT IT SAYS.

17 Q YOU JUST WANTED TO MAKE SURE THAT THE
18 INTEGRITY OF THE BANKRUPTCY LAW WAS MAINTAINED?

19 A WELL, THE -- WHERE THERE HAD BEEN A BREACH
20 OF BANKRUPTCY LAW BY ALLOWING SOMETHING TO HAPPEN THAT
21 SHOULDN'T BE HAPPENING, YES.

22 Q AND THE BENEFIT TO YOU PERSONALLY WOULD HAVE
23 BEEN THAT THERE WOULD HAVE BEEN MONEY IN THE ESTATE TO PAY
24 YOUR DUES -- EXCUSE ME -- YOUR FEES BECAUSE AT THAT POINT
25 YOUR FEES HADN'T BEEN REJECTED BY THE COURT; ISN'T THAT
26 TRUE?

1 A THAT WOULD HAVE CERTAINLY BEEN ONE EFFECT,
2 YES, POTENTIAL EFFECT. BUT MY FEES HAD NOT BEEN ALLOWED,
3 AND THEY WERE SUBJECT TO THE ALLOWANCE PROCESS.

4 Q AND ONLY SEVERAL MONTHS LATER WERE YOUR FEES
5 FORMALLY REJECTED BY THE BANKRUPTCY COURT?

6 A THAT'S CORRECT.

7 Q AND YOU WERE REQUIRED TO --

8 A SOME OF THEM.

9 Q ALL YOUR FEES WERE REJECTED WITH THE
10 EXCEPTION OF A PORTION OF THE RETAINER THAT YOU GOT?

11 A IT'S THE SAME. THEY WEREN'T ALL REJECTED,
12 MR. RIVIN. AND THE REJECTION REALLY HAD NO EFFECT BECAUSE
13 AS YOU'VE NOW DELINEATED, THERE WASN'T ANY MONEY IN THE
14 ESTATE ANYWAY. SO IF THE FEES HAD BEEN ALLOWED, THERE
15 WOULDN'T BE MONEY TO PAY IT.

16 Q MR. MALPASS, HAD YOUR MOTION BEEN GRANTED ON
17 THE MOTION YOU FILED NOVEMBER 26TH, THEN THE MONIES WOULD
18 HAVE BEEN BACK INTO THE ESTATE, AND YOU AS AN ATTORNEY
19 WOULD HAVE HAD WHAT'S CALLED A PRIORITY CLAIM TO THOSE
20 MONIES, WOULDN'T YOU?

21 A ONLY SUBJECT TO ALLOWANCE.

22 Q EXACTLY.

23 SUBJECT TO THE BANKRUPTCY COURT APPROVAL?

24 A BUT WHEN THE TRUSTEE DENIED -- WHEN AFTER
25 THE TRUSTEE HAD GIVEN THE MONEY BACK BECAUSE -- AND THE
26 REASON THAT JUDGE RYAN AUTHORIZED THE TRUSTEE TO DO WHAT HE

1 DID WAS BECAUSE THE PARKS HAD BEEN CLOSED, AND JUDGE RYAN
2 FELT THAT THE MEMBERS SHOULDN'T BE PAYING FOR SOMETHING
3 THAT THEY WEREN'T GETTING, WHICH WAS USE OF THE PARKS.

4 MR. RIVIN: YOUR HONOR, MOVE TO STRIKE THAT ANSWER
5 ON THE BASIS IT WASN'T RESPONSIVE TO THE QUESTION.

6 THE COURT: MOTION GRANTED.

7 BY MR. RIVIN: Q MR. MALPASS, DO YOU REMEMBER THAT
8 MR. NOVELLI ACTUALLY ACKNOWLEDGED THAT THE MEMBERSHIP
9 CONTRACTS HAD BEEN TERMINATED?

10 A NO.

11 Q HE NEVER ACKNOWLEDGED THAT IN YOUR PRESENCE?

12 A YOU ASKED ME IF I REMEMBERED. I DON'T
13 REMEMBER HIM DOING THAT.

14 MR. RIVIN: LET ME -- LET'S SEE -- I'D LIKE TO SHOW
15 THE WITNESS EXHIBIT 811. SEE IF -- THIS IS A ONE-PAGE
16 DOCUMENT SIGNED BY -- APPEARS TO BE SIGNED BY
17 RAYMOND NOVELLI, PRESIDENT OF PRESIDENT'S CLUB. DATE ON
18 THE TOP -- IT'S A FAX DATE -- IS FEBRUARY 16, 1998.

19 Q HAVE YOU SEEN THIS DOCUMENT BEFORE,
20 MR. MALPASS?

21 A I DON'T RECALL SEEING IT, NO.

22 MR. RIVIN: I WOULD LIKE TO PUT IT UP ON THE BOARD,
23 IF I COULD, YOUR HONOR.

24 Q THE FIRST THREE LINES OF THE SECOND
25 PARAGRAPH, PLEASE. THIS IS MR. NOVELLI WRITING TO THE
26 PRESIDENT'S CLUB MEMBERS, I BELIEVE.

1 "AS YOU ARE PROBABLY AWARE, CHARLES DAFF,
2 THE CHAPTER 11 BANKRUPTCY TRUSTEE, REJECTED ALL MEMBERSHIP
3 CONTRACTS. THIS LEAVES THE ALL SEASONS MEMBERS WITHOUT A
4 HOME PARK OR A RESORT SYSTEM."

5 DO YOU REMEMBER DISCUSSING THIS WITH
6 MR. NOVELLI?

7 A WELL, I HAD DISCUSSIONS ABOUT THE DIFFERENCE
8 BETWEEN REJECTION AND TERMINATION WITH MR. NOVELLI, YES.
9 YOU ASKED ME ABOUT WHETHER MR. NOVELLI SAID "TERMINATED,"
10 AND I SAID I DIDN'T RECALL THAT. I DISCUSSED REJECTION AND
11 THE EFFECT OF REJECTION WITH MR. NOVELLI AT THAT TIME. I
12 DON'T KNOW ABOUT THE TIME OF THIS LETTER, BUT AT THE TIME
13 OF THE VARIOUS PLEADINGS IN THE BANKRUPTCY COURT THAT I'VE
14 BEEN TESTIFYING ABOUT.

15 Q DID YOU EXPLAIN TO MR. NOVELLI THAT THE --
16 DID YOU TELL MR. NOVELLI THAT CHARLES DAFF HAD REJECTED ALL
17 MEMBERSHIP CONTRACTS?

18 A MR. NOVELLI KNEW THAT. I DIDN'T TELL HIM --
19 I DON'T THINK I TOLD HIM THAT IN THE SENSE THAT THIS WAS
20 THE FIRST TIME HE HEARD ABOUT IT.

21 Q AND DID YOU TELL HIM THAT THE ACTION LEFT
22 ALL SEASONS MEMBERS WITHOUT A HOME PARK OR RESORT SYSTEM?

23 A WHAT I TOLD HIM WAS THAT THE REJECTION -- I
24 DISCUSSED IT IN THE CONTEXT OF THE ALL SEASONS CASE, AND I
25 TOLD HIM THAT THE SALE PRIOR TO THE REJECTION MEANT THAT
26 THE CONTRACTS HAD BEEN SOLD; THAT WAS -- I DISCUSSED THAT

1 WITH HIM SEVERAL TIMES AT THE TIME THIS WAS OCCURRING; AND
2 THAT -- I TOLD HIM THAT THE SALES TO THE VARIOUS PARTIES
3 THAT BOUGHT THE PARTICULAR PARKS LEFT THOSE PARTIES WITH
4 THE MEMBERSHIP CONTRACTS.

5 WE DISCUSSED IT IN THAT CONTEXT. AND THAT
6 THE REJECTION LEGALLY DIDN'T HAVE ANYTHING TO DO WITH THOSE
7 CONTRACTS BECAUSE THEY HAD BEEN SOLD PRIOR TO THE ENTRY OF
8 THE REJECTION ORDER. THIS WAS ALL GONE OVER VERY CAREFULLY
9 BY ME AT THAT TIME.

10 MR. RIVIN: MOVE TO STRIKE THE ANSWER, YOUR HONOR,
11 ON THE BASIS IT WASN'T RESPONSIVE TO THE QUESTION.

12 THE COURT: GRANTED.

13 BY MR. RIVIN: Q DID YOU TELL MR. NOVELLI THAT THE
14 REJECTION OF THE MEMBERSHIP CONTRACTS BY THE TRUSTEE LEFT
15 THE ALL SEASONS MEMBERS WITHOUT A HOME PARK OR RESORT
16 SYSTEM?

17 A NO.

18 Q DO YOU KNOW WHERE MR. NOVELLI -- WHY --
19 WHERE MR. NOVELLI GOT THAT FROM?

20 A I THINK THAT MR. NOVELLI --

21 Q DO YOU KNOW?

22 A NO.

23 MR. RIVIN: I'D LIKE TO SHOW THE WITNESS EXHIBIT
24 2150, PAGE 334. I DON'T KNOW THAT -- DO WE HAVE THAT?

25 MR. SHERMAN: SURE DO.

26 MR. RIVIN: YOUR HONOR, THIS IS A DOCUMENT ALREADY

1 IN EVIDENCE.

2 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE,
3 MR. MALPASS?

4 A CERTAINLY NOT FILLED OUT WITH A PARTICULAR
5 NAME ON IT. I MAY HAVE SEEN FORMS LIKE THIS, BUT I DON'T
6 RECALL SEEING THIS DOCUMENT, NO.

7 Q DO YOU SEE THE DATE ON THE TOP RIGHT-HAND
8 CORNER -- NEAR THE TOP RIGHT-HAND CORNER, AUGUST 27 --

9 A YES.

10 Q -- 1997?
11 THAT WAS SHORTLY AFTER THE TRUSTEE TOOK OVER
12 THE OPERATION OF ALL SEASONS RESORTS?

13 A YES.

14 Q SO THE TRUSTEE WAS IN CONTROL OF THE
15 OPERATIONS OF ALL SEASONS RESORTS DURING THAT TIME?

16 A YOU'D HAVE TO BE A LITTLE BIT MORE SPECIFIC
17 ABOUT IN CONTROL OF THE OPERATIONS. THE TRUSTEE DIDN'T DO
18 MUCH IN THE WAY OF HANDS-ON MANAGEMENT. THAT WAS STILL
19 LEFT TO ALL SEASONS MANAGEMENT.

20 Q ISN'T IT TRUE THAT THE TRUSTEE HAD
21 DECISION-MAKING AUTHORITY FOR ALL SEASONS?

22 A I WOULDN'T EVEN GO THAT FAR. THE PARKS WERE
23 UNDER THE MANAGEMENT OF THE PARK MANAGERS OR WERE -- SOME
24 OF THEM WERE IN FLUX BECAUSE HE HADN'T TAKEN CONTROL.

25 Q WHO WAS RECEIVING THE DUES AS -- THE DUES
26 PAYMENTS FOR THE MEMBERS AS OF THE END OF AUGUST, 1997?

1 A THE TRUSTEE HAD SENT OUT A LETTER DIRECTING
2 THAT THEY GO TO HIM. SO I DON'T KNOW.

3 Q THE TRUSTEE HAD MANAGEMENT AUTHORITY; ISN'T
4 THAT CORRECT?

5 A WELL, UNDER THE BANKRUPTCY CODE THE TRUSTEE
6 HAS THE RIGHTS OF THE DEBTOR. SO IF -- BUT YOU ASKED ME
7 ABOUT WHO WAS MANAGING. THE FACT THAT THE TRUSTEE HAS A
8 LEGAL RIGHT TO DO SOMETHING DOESN'T NECESSARILY MEAN HE
9 DOES IT. AND IN THIS CASE I KNOW MR. DAFF DIDN'T.

10 Q MR. MALPASS, LET'S READ THE FIRST LINE OF
11 THIS DOCUMENT.

12 "WE ARE PROUD" -- THIS IS FROM A COMPANY
13 CALLED "TRAVEL AMERICA"; DID YOU REPRESENT TRAVEL AMERICA?

14 A NO.

15 Q YOU DIDN'T DO ANY WORK FOR TRAVEL AMERICA?

16 A I DON'T BELIEVE SO.

17 Q AUGUST 27, 1997, TRAVEL AMERICA IS WRITING
18 TO THESE MEMBERS SAYING, "WE ARE PROUD TO ANNOUNCE THE
19 RECIPROCAL AGREEMENT BETWEEN THOUSAND ADVENTURES, ALL
20 SEASONS, FIRST NATIONWIDE AND CUTTY'S IS NOW IN PLACE."

21 ARE YOU AWARE OF THE TRUSTEE APPROVING ANY
22 AGREEMENT INVOLVING ALL SEASONS IN AUGUST OF 1997?

23 A WHAT I WAS AWARE OF WAS THAT THERE WERE --
24 FROM THE TIME I STARTED REPRESENTING ALL SEASONS, THERE WAS
25 A BUSINESS PLAN TO PROVIDE THE MEMBERS WITH CONTINUED USE
26 OF MULTIPLE PARKS AND ACCESS TO THEM THROUGH THE VARIOUS

1 SYSTEMS. THAT WAS WHY IT WAS FILED AS A CHAPTER 11. THERE
2 WAS A REORGANIZATION OBJECTIVE TO GET THE -- GET THE ALL
3 SEASONS ENGAGED WITH THESE OTHER PARK SYSTEMS THAT
4 MR. NOVELLI -- I WAS -- WAS INVOLVED WITH.

5 SO THERE WAS DISCUSSION OF THAT, AND I THINK
6 THE TRUSTEE WAS WELL AWARE OF IT. I KNOW FROM TALKING TO
7 HIS COUNSEL, ANDY MAUTHE THAT HE WAS AWARE OF IT, BECAUSE
8 PART OF THE -- THEIR DESIRE IN PROTECTING THE BANKRUPTCY
9 ESTATE AND THE TRUSTEE WAS TO HAVE THE MEMBERS HAVE ACCESS
10 TO MULTIPLE PARKS, SO THAT THE MEMBERS WOULD CONTINUE TO
11 RECEIVE THE BENEFITS THAT THEY HAD PAID FOR. I TALKED TO
12 MAUTHE ABOUT THAT SEVERAL TIMES.

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

15 THE COURT: MOTION GRANTED.

16 BY MR. RIVIN: Q MR. MALPASS, DID THE TRUSTEE
17 APPROVE ANY RECIPROCAL AGREEMENT BETWEEN THOUSAND
18 ADVENTURES, ALL SEASONS, FIRST NATIONWIDE AND CUTTY'S, THE
19 TRUSTEE IN THE ALL SEASONS BANKRUPTCY?

20 A YOU'D HAVE TO BETTER DEFINE WHAT YOU MEAN BY
21 "APPROVE." I THINK HE LET IT HAPPEN.

22 Q DID HE SEEK A COURT ORDER?

23 A NOT TO MY KNOWLEDGE. I DON'T KNOW THAT HE
24 NEEDED ONE.

25 Q DID YOU EVER SEE AN APPLICATION FOR A COURT
26 ORDER APPROVING THIS AGREEMENT?

1 A I DON'T KNOW THAT THE TRUSTEE WOULD HAVE
2 NEEDED A COURT ORDER.

3 Q DID YOU EVER SEE ONE?

4 A NO.

5 Q AND, MR. MALPASS, IT'S YOUR TESTIMONY THAT
6 YOU SPOKE WITH CHARLES DAFF, AND HE SAID THIS AGREEMENT IS
7 FINE?

8 A NO. I SPOKE WITH MR. MAUTHE, AND MR. DAFF
9 WAS LETTING THINGS HAPPEN THAT WERE -- THAT MR. MAUTHE AND
10 I WERE DISCUSSING, WHICH WAS THAT THERE WAS GOING TO BE A
11 RECIPROCAL MEMBERSHIP SYSTEM AVAILABLE TO THESE MEMBERS
12 AFTER THE PARKS WERE SOLD AND THE AUCTION SALE. AND I
13 ASSUMED MR. MAUTHE KEPT MR. DAFF AWARE OF THAT, BUT I DON'T
14 KNOW.

15 MR. RIVIN: MOVE TO STRIKE THE ANSWER ON THE BASIS
16 IT WAS NOT RESPONSIVE TO THE QUESTION.

17 THE COURT: MOTION GRANTED.

18 BY MR. RIVIN: Q MR. MALPASS, ON THURSDAY IN
19 RESPONSE TO MR. SHAW'S QUESTIONING YOU TALKED ABOUT THE
20 AUTOMATIC STAY IN THE BANKRUPTCY COURT.

21 A YES.

22 Q THE AUTOMATIC STAY IS A DOCTRINE UNDER THE
23 BANKRUPTCY CODE; IS THAT RIGHT?

24 A IT'S A PROVISION OF THE LAW, YES.

25 Q UNDER THE BANKRUPTCY CODE?

26 A WELL, THE BANKRUPTCY CODE IS A LAW. IT'S A

1 STATUTE -- YOU USED TO HAVE TO GO INTO COURT AND GET THEM
2 AS INJUNCTIONS, BUT YOU DON'T ANYMORE.

3 Q SO THE AUTOMATIC STAY IS A BANKRUPTCY
4 CODE --

5 A YES.

6 Q IT'S A PROVISION OF THE BANKRUPTCY CODE?

7 A YES.

8 Q SECTION 362?

9 A YES. OF THE UNITED STATES CODE.

10 Q AND YOU TALKED ABOUT, IN RESPONSE TO
11 MR. SHAW'S QUESTIONS, HOW THE AUTOMATIC STAY WAS IN
12 EFFECT --

13 A YES.

14 Q -- DURING THE ALL SEASONS BANKRUPTCY?
15 AND THE REVCAN BANKRUPTCY?

16 A YES.

17 Q AND THE FIRST NATIONWIDE BANKRUPTCY; YOU
18 TALKED ABOUT THOSE THINGS?

19 A YES.

20 Q RIGHT?

21 AND YOU WERE BANKRUPTCY COUNSEL FOR ALL
22 SEASONS FROM JULY 11, 1997, UNTIL YOU WITHDREW IN 1998?

23 A YES.

24 Q AND IT WAS IN APPROXIMATELY SEPTEMBER OF
25 1998 THAT YOU WITHDREW; ISN'T THAT RIGHT?

26 A I THINK, YES.

1 Q PARDON?

2 A I THINK THAT'S ABOUT THE TIME FRAME. I'M
3 NOT EXACTLY SURE. IT WAS SOMETIME IN 1998.

4 Q LET'S TAKE A LOOK AT THIS ORDER, AND LET'S
5 MAKE SURE WE GET THE DATE DOWN.

6 LET ME FIND IT.

7 EXHIBIT 387. MR. MALPASS, DO YOU RECOGNIZE
8 THIS DOCUMENT AS THE COURT ORDER AFTER AN EVIDENTIARY
9 HEARING ON THE U.S. TRUSTEE'S MOTION TO DISQUALIFY YOU AS
10 COUNSEL AND TO DENY YOUR FEES?

11 A YES.

12 MR. RIVIN: I'D LIKE TO PUT THIS UP ON THE SCREEN,
13 PLEASE.

14 MR. SHAW: NO OBJECTION, YOUR HONOR.

15 BY MR. RIVIN: Q THIS ORDER WAS ENTERED ON
16 SEPTEMBER 3, 1998.

17 A YES.

18 Q IS THAT RIGHT?

19 A YES.

20 Q LET'S GO TO THE THIRD PAGE OF THIS ORDER,
21 THE PARAGRAPH THAT BEGINS WITH LINE 8.

22 "IT IS HEREBY ORDERED THAT THE LAW OFFICES
23 OF T. EDWARD MALPASS BE DENIED ALL FEES IN EXCESS OF
24 \$15,000 IN THIS CASE."

25 AND, MR. MALPASS, YOU HAD RECEIVED A \$20,000
26 RETAINER; ISN'T THAT RIGHT?

1 A YES.

2 Q AND THEN THE NEXT PARAGRAPH, "IT IS FURTHER
3 ORDERED THAT THE LAW OFFICES OF T. EDWARD MALPASS SHALL
4 DISGORGE 5,000 OF ITS RETAINER TO THE SCHULZ FAMILY TRUST.

5 "IT IS FURTHER ORDERED THAT THE WITHDRAWAL
6 BY THE LAW SERVICES OF T. EDWARD MALPASS FROM REPRESENTING
7 THE DEBTOR AS ITS COUNSEL IN THIS CASE IS HEREBY APPROVED."

8 DID JUDGE RYAN ALLOW YOU TO WITHDRAW AS
9 COUNSEL AS OPPOSED TO GRANTING THE U.S. TRUSTEE'S ORDER OR
10 MOTION TO DISQUALIFY YOU?

11 A I DON'T THINK THAT'S A CORRECT
12 CHARACTERIZATION. WHAT THIS ORDER DOES IS AUTHORIZE THE
13 WITHDRAWAL.

14 Q AND THIS WAS WHEN YOU WITHDREW AS ALL
15 SEASONS COUNSEL?

16 A THERE WAS A SETTLEMENT.

17 Q THERE WAS A SETTLEMENT?

18 A YES.

19 Q BETWEEN YOU AND THE TRUSTEE?

20 A YES. THE U.S. TRUSTEE.

21 Q AND THE U.S. TRUSTEE?

22 A AND THE U.S. TRUSTEE, OVER THE LITIGATION,
23 WHICH I CONTESTED.

24 Q AGAIN, WE'RE TALKING ABOUT -- WE'VE TALKED
25 ABOUT THE CHAPTER 11 TRUSTEE; THAT WAS MR. DAFF. BUT
26 THERE'S ALSO THE U.S. TRUSTEE, THE UNITED STATES TRUSTEE?

1 A YES.

2 Q MR. DAFF REPORTS TO THE UNITED STATES
3 TRUSTEE?

4 A IN CERTAIN MATTERS, YES.

5 Q OKAY. BUT IT WAS THE UNITED STATES TRUSTEE
6 THAT BROUGHT THIS MOTION TO DISQUALIFY YOU AS COUNSEL AND
7 TO DENY YOUR FEES?

8 A YES.

9 Q SO YOU ENTERED INTO A SETTLEMENT WITH THE
10 U.S. TRUSTEE?

11 A YES.

12 Q THIS ORDER REFLECTS THAT SETTLEMENT?

13 A WE WORKED ONE OUT, YES.

14 Q AND IN THAT SETTLEMENT YOU AGREED TO FOREGO
15 ALL OF YOUR FEES, WHICH WERE IN EXCESS OF \$50,000; CORRECT?

16 A YES.

17 Q AND TO GIVE BACK PART OF THE RETAINER?

18 A YES.

19 Q WHY WERE YOU GIVING IT BACK TO THE SCHULZ
20 FAMILY TRUST?

21 A THAT HAD BEEN WHERE IT WAS PAID FROM.

22 Q ISN'T IT TRUE THAT ONE OF THE REASONS THE
23 U.S. TRUSTEE WANTED TO DISQUALIFY YOU IS BECAUSE YOU HAD
24 NOT DISCLOSED THE FACT THAT YOU HAD RECEIVED THE
25 RETAINER -- AT LEAST A PORTION OF THE RETAINER FROM THE
26 SCHULZ FAMILY TRUST?

1 A WELL, TECHNICALLY WHAT THE U.S. TRUSTEE WAS
2 CONCERNED ABOUT, THERE HAD BEEN A RECENT CASE THAT SAID
3 THAT WE HAD A DUTY TO INQUIRE FURTHER INTO SUCH MATTERS
4 THAN WE EVER HAD BEFORE UNDER WHAT THE 9TH CIRCUIT SAID.
5 SO THEY WERE ACTUALLY PRESSING ATTORNEYS WHO REPRESENTED
6 DEBTORS TO GO OUT AND MAKE ADDITIONAL INQUIRIES AS TO THEIR
7 CLIENTS AS TO WHERE THE MONEY TO PAY THEM WAS COMING FROM,
8 WHICH IT HAD BEEN MY PRACTICE FOR 20 YEARS TO FOLLOW THE
9 RULES AS PEOPLE HAD FOLLOWED THEM. THE 9TH CIRCUIT SAID,
10 NO, WE THINK IT SHOULD BE -- YOU SHOULD ACTUALLY HAVE TO GO
11 OUT AND MAKE INQUIRIES. THE U.S. TRUSTEE WAS PRESSING FOR
12 THAT. SO THAT WAS WHAT WE WERE LITIGATING ABOUT.

13 AND I -- RATHER THAN IN A CASE THAT DIDN'T
14 HAVE ANY MONEY IN IT, I DECIDED I DIDN'T WANT TO SPEND MORE
15 OF MY TIME LITIGATING. SO I RESOLVED THE MATTER IN THAT
16 MANNER.

17 MR. RIVIN: YOUR HONOR, I MOVE TO STRIKE THE ANSWER
18 ON THE BASIS THAT IT WAS NOT RESPONSIVE TO THE QUESTION.

19 THE COURT: MOTION GRANTED.

20 BY MR. RIVIN: Q MR. MALPASS, ISN'T IT TRUE THAT
21 THE UNITED STATES TRUSTEE'S MOTION TO DISQUALIFY YOU AS
22 COUNSEL AND TO REQUIRE YOU TO -- AND TO DENY YOU YOUR FEES
23 WAS BASED OPEN THE FACT THAT -- AT LEAST IN PART, THAT YOU
24 HAD NOT DISCLOSED WHERE YOU GOT THE RETAINER FROM?

25 A YES, THAT WAS THE BASIS FOR MOTION. THAT
26 WAS WHAT THE NEW CASE WAS ABOUT.

1 Q LET'S GO BACK TO THE AUTOMATIC STAY.

2 YOU REPRESENTED ALL SEASONS RESORTS THROUGH
3 SEPTEMBER OF 1998. YOU REPRESENTED REVCON IN ITS
4 BANKRUPTCY PROCEEDINGS; RIGHT?

5 A YES.

6 Q AND DO YOU REMEMBER THAT MR. SHAW DREW ON
7 THE BLACKBOARD A -- I THINK HE DREW REVCON ON THE
8 BLACKBOARD. HE WROTE IT ON THE BLACKBOARD, AND HE DREW A
9 TIME LINE AN AUTOMATIC STAY WAS IN EFFECT, AND YOU SAID
10 YES.

11 DO YOU RECALL THAT?

12 A YES.

13 Q YOU REPRESENTED THESE COMPANIES IN 1997 AND
14 1998; ISN'T THAT RIGHT?

15 A YES.

16 Q AND YOU NEVER FILED ANY PAPERS IN THE
17 BANKRUPTCY COURT ON BEHALF OF ANY OF THESE COMPANIES
18 ASSERTING THAT COAST VIOLATED THE AUTOMATIC STAY?

19 A THAT'S CORRECT.

20 Q YESTERDAY OR THURSDAY, I CAN'T REMEMBER
21 WHICH, I ASKED YOU ABOUT THE FACT THAT YOU FILED THE ALL
22 SEASONS RESORTS BANKRUPTCY IN SAN BERNARDINO AND NOT SANTA
23 ANA; DO YOU REMEMBER THAT?

24 A YES.

25 Q YOU HAD FILED THE ORDER DISMISSING THE
26 SECOND ALL SEASONS BANKRUPTCY WITH JUDGE RYAN IN MAY OF

1 1997, BUT THEN -- AND FILED THE THIRD ALL SEASONS
2 BANKRUPTCY TWO MONTHS LATER IN SAN BERNARDINO?

3 A YES.

4 Q BEFORE ANOTHER JUDGE?

5 A WELL, IT WAS ASSIGNED TO ANOTHER JUDGE.

6 Q IT WAS ASSIGNED TO ANOTHER JUDGE?

7 A YES. I DON'T DO THAT.

8 Q YOU DON'T ASSIGN THE CASES?

9 A CORRECT.

10 Q BUT YOU KNEW THAT IF IT HAD BEEN FILED IN
11 SANTA ANA, IT WOULD HAVE BEEN ASSIGNED TO JUDGE RYAN?

12 A YES.

13 Q AND I ASKED YOU WHETHER YOU WERE JUST TRYING
14 TO AVOID JUDGE RYAN BECAUSE HE HAD HANDLED THE LAST ALL
15 SEASONS BANKRUPTCY, AND YOU SAID NO. YOU SAID THERE WAS
16 PROPERTY OF THE ESTATE LOCATED IN SAN BERNARDINO COUNTY,
17 AND THAT'S THE REASON YOU FILED IT IN SAN BERNARDINO
18 COUNTY.

19 DO YOU REMEMBER THAT TESTIMONY?

20 A YES.

21 Q DO YOU RECALL WHAT PROPERTY OF ALL SEASONS
22 WAS IN SAN BERNARDINO COUNTY?

23 A NO, I DON'T.

24 Q LET'S TAKE A LOOK AT EXHIBIT 386, PLEASE.

25 THIS IS AN ORDER THAT WE'VE TALKED ABOUT SEVERAL TIMES.

26 IT'S THE ORDER APPROVING THE REJECTION OF THE MEMBERSHIP

1 CONTRACTS.

2 LET ME SHOW THE SECOND PAGE, PLEASE.

3 THIS ORDER LISTS THE PROPERTIES OF ALL
4 SEASONS, THE REAL PROPERTY OF ALL SEASONS, SAYING THAT THE
5 MEMBERSHIP CONTRACTS OF ALL OF THESE PROPERTIES -- THAT THE
6 MEMBERSHIP CONTRACTS OF ALL OF THE MEMBERS WHOSE HOME
7 RESORTS WERE THESE PARKS WERE BEING REJECTED. AND THESE
8 PARKS ARE IN PENNSYLVANIA, MICHIGAN, FLORIDA, OHIO,
9 WISCONSIN, ILLINOIS AND MINNESOTA.

10 DOES THIS REFRESH YOUR RECOLLECTION AS TO
11 WHETHER THERE WAS ANY PROPERTY OF THE ALL SEASONS IN SAN
12 BERNARDINO COUNTY?

13 A NO.

14 Q ISN'T IT TRUE THAT YOU FILED THE BANKRUPTCY
15 IN SAN BERNARDINO -- THE ALL SEASONS THIRD BANKRUPTCY IN
16 SAN BERNARDINO TO TRY AND STAY AWAY FROM JUDGE RYAN?

17 A NO.

18 Q DID YOU FILE IT BECAUSE THERE WAS PROPERTY
19 OF ALL SEASONS LOCATED IN SAN BERNARDINO COUNTY?

20 EXCUSE ME. LET ME WITHDRAW THE QUESTION.
21 THAT WAS POORLY WORDED.

22 IS IT STILL YOUR TESTIMONY THAT YOU FILED
23 THE CHAPTER 11 BANKRUPTCY FOR THE THIRD ALL SEASONS IN SAN
24 BERNARDINO BECAUSE ALL SEASONS HAD PROPERTY LOCATED THERE?

25 A THAT IS MY RECOLLECTION. WHETHER IT'S REAL
26 ESTATE OR WHAT IT WAS, I DON'T RECALL, MR. RIVIN.

1 Q AND, AGAIN, WE TALKED ABOUT THIS BEFORE.
2 WITHIN A MONTH THE CASE WAS KICKED BACK TO SANTA ANA?

3 A YES. I DIDN'T -- CERTAINLY FROM MY
4 STANDPOINT DIDN'T DO ANYTHING TO AVOID JUDGE RYAN. I LIKE
5 JUDGE RYAN. I'VE APPEARED IN FRONT OF HIM SINCE HE HAS
6 BEEN ON THE BENCH, FOR ABOUT 10 YEARS. HE GETS ASSIGNED A
7 NUMBER OF MY CASES, AND HE IS A VERY GOOD JUDGE.

8 Q BUT JUDGE RYAN HAD EXPERIENCE WITH ALL
9 SEASONS?

10 A HE HANDLED THE TWO PREVIOUS CASES, WHICH
11 WHEN I LOOKED AT THEM THEY -- THE SECOND ONE HAD A PLAN
12 CONFIRMED. THE ATTORNEYS THAT HANDLED IT WERE VERY
13 COMPETENT ATTORNEYS. I FELT THAT JUDGE RYAN HAD -- I MEAN,
14 HE CONFIRMED THE PLAN. WHAT BETTER RESULT COULD YOU GET --

15 Q HOW ABOUT PERFORMANCE UNDER THE PLAN?

16 A -- FROM THE BANKRUPTCY COURT STANDPOINT?

17 Q HOW ABOUT PERFORMANCE UNDER THE PLAN? IS
18 THAT EVEN A BETTER RESULT FOR A BANKRUPTCY JUDGE THAN
19 CONFIRMATION?

20 A I DON'T KNOW THAT -- I DON'T KNOW THAT THE
21 BANKRUPTCY JUDGE HAS A LOT OF -- I MEAN, IT DEPENDS. AND
22 PERFORMANCE IS A BROAD TERM.

23 Q I'D LIKE TO BRING OUT EXHIBIT 382, WHICH IS
24 A SERIES OF PAGES. IT'S A VERY THICK EXHIBIT.

25 MR. MALPASS, LET ME HAND THESE TO YOU. TAKE
26 A LOOK AT THE FIRST PAGE.

1 THE COURT: IS THAT EXHIBIT 382 DID YOU SAY?

2 MR. RIVIN: YES, IT IS, YOUR HONOR.

3 Q MR. MALPASS, IS THIS THE TRUSTEE'S
4 APPLICATION TO FILE SCHEDULES AND STATEMENT OF AFFAIRS IN
5 THE ALL SEASONS BANKRUPTCY NUMBER 3?

6 A YES, IT IS.

7 Q SO YOU DID NOT FILE THE SCHEDULES ON BEHALF
8 OF ALL SEASONS; MR. DAFF ACTUALLY DID; IS THAT RIGHT?

9 A THAT'S -- I THINK THAT'S CORRECT, YES.

10 Q THE SCHEDULES, AGAIN, ARE DOCUMENTS THAT THE
11 DEBTOR IS REQUIRED TO FILE WITH THE BANKRUPTCY COURT AS
12 PART OF A -- EITHER A CHAPTER 7 OR A CHAPTER 11; RIGHT?

13 A EITHER THE DEBTOR OR A TRUSTEE WHERE A
14 TRUSTEE IS APPOINTED AS IT WAS IN THIS CASE.

15 Q SO THE TRUSTEE FILED THE SCHEDULES?

16 A CORRECT.

17 Q AND IN THE SCHEDULES THE TRUSTEE IS
18 REQUIRED -- WHETHER THE TRUSTEE OR THE DEBTOR FILES THE
19 SCHEDULES, THEY'RE REQUIRED TO SET OUT THE NAMES OF
20 CREDITORS HOLDING UNSECURED CLAIMS; ISN'T THAT RIGHT?

21 A YES.

22 Q AND THIS DOCUMENT --

23 A NOT JUST UNSECURED CLAIMS. ALL CREDITORS.

24 Q ALL CREDITORS.

25 BUT AMONG THOSE WOULD BE THE CREDITORS
26 HOLDING POTENTIALLY UNSECURED CLAIMS?

1 A YES, THAT WOULD BE CORRECT.

2 Q I'D LIKE YOU TO LOOK -- IF YOU LOOK TOWARD
3 THE BACK OF EXHIBIT 382, WHICH IS A VERY THICK DOCUMENT --

4 A I AGREE.

5 Q -- YOU WILL SEE A LIST OF NAMES AND
6 ADDRESSES; DO YOU SEE THOSE?

7 A YES.

8 Q DO YOU SEE -- DO YOU SEE THE SHEET -- IF I
9 COULD APPROACH, YOUR HONOR.

10 THE COURT: YOU MAY.

11 BY MR. RIVIN: Q HERE IS THE COVER -- THE DIVIDER
12 PAGE THAT SAYS WHAT THIS IS. COULD YOU READ THIS?

13 A IT SAYS, "ADDENDUM TO SCHEDULE F, CREDITORS
14 HOLDING UNSECURED NONPRIORITY CLAIMS."

15 Q AND THEN IT SAYS?

16 A "PLEASE SEE ATTACHED FOR LIST OF NAMES AND
17 ADDRESSES FOR MEMBERS OF ALL SEASONS RESORTS, INC."

18 Q SO THESE PEOPLE -- SO THEN BEHIND IT ARE
19 THESE LISTS OF MEMBERS, PROBABLY 30 TO A PAGE; RIGHT?

20 A YES.

21 Q AND THEY GO INTO THE NEXT BOOK, THE NEXT
22 BINDER, AS WELL?

23 A YES. THAT'S WHAT IT LOOKS LIKE, YES.

24 Q AND ALL OF THIS -- DO YOU KNOW HOW MANY
25 NAMES ARE HERE?

26 A THE TRUSTEE'S DECLARATION, I BELIEVE, SAYS

1 18,000. I DON'T KNOW THAT.

2 Q ALL OF THIS IS FILED WITH THE BANKRUPTCY
3 COURT; IS THAT CORRECT?

4 A YES.

5 Q FILED IN THE PUBLIC RECORDS --

6 A YES.

7 Q -- FOR ALL TO SEE?

8 A YES.

9 Q SO THERE'S NOTHING -- NOTHING CONFIDENTIAL
10 ABOUT THAT LIST; ISN'T THAT RIGHT?

11 A NO. I DISAGREE. THERE WOULD BE -- THERE
12 WAS A GREAT DEAL OF DISCUSSION AND SOME -- ABOUT PROTECTING
13 THE LIST, BOTH IN THIS CASE AND IN THE FIRST NATIONWIDE
14 CASE. THEY'RE CONFIDENTIAL PROPERTY OF THE CREDITORS.

15 Q MR. MALPASS, WAS THAT LIST OF NAMES AND
16 ADDRESSES FILED UNDER SEAL?

17 A NOT TO MY KNOWLEDGE. I DIDN'T FILE IT.

18 Q IT WAS FILED IN A PUBLIC RECORD; ISN'T THAT
19 RIGHT?

20 A THAT DOESN'T MEAN THAT IT'S NOT CONFIDENTIAL
21 AS A TRADE SECRET, SIR. THE ESSENCE IS --

22 MR. RIVIN: MOVE TO STRIKE THE ANSWER ON THE BASIS,
23 NONRESPONSIVE TO THE QUESTION.

24 THE COURT: MOTION GRANTED.

25 MR. SHAW: I'LL OBJECT. HE IS RESPONDING TO THE
26 QUESTION.

1 THE COURT: WASN'T RESPONSIVE. THE MOTION IS
2 GRANTED.

3 BY MR. RIVIN: Q I COULD WALK INTO THE BANKRUPTCY
4 COURT, PULL THE FILES, AND LOOK AT THOSE NAMES?

5 A YES.

6 Q ANYONE COULD DO THAT?

7 A YES, I'D SAY THAT'S CORRECT. DURING THE
8 CLERK'S OFFICE HOURS, YES.

9 Q AND I COULD COPY ALL THOSE NAMES, COULD I
10 NOT?

11 A YES. THEY'RE AVAILABLE, YES.

12 Q I'D LIKE TO GO BACK TO SOMETHING THAT WE
13 STARTED TALKING ABOUT ON THURSDAY, MR. MALPASS, AND THAT IS
14 THE LETTERS THAT YOU RECEIVED. I THINK YOU INDICATED THAT
15 YOU RECEIVED A NUMBER OF LETTERS FROM ANGRY MEMBERS IN
16 RESPONSE TO LETTERS THAT WENT OUT TO THEM?

17 A I RECEIVED A FEW.

18 Q IT WASN'T A NUMBER?

19 A IT WAS A SMALL NUMBER. I THINK IF I SAID
20 10, I'D PROBABLY BE EXAGGERATING --

21 Q YOU THINK YOU WOULD BE EXAGGERATING?

22 A THAT WOULD BE MORE THAN I GOT, I THINK.

23 Q WHY DON'T WE TAKE A LOOK AT 15 OF THEM.

24 A OKAY.

25 Q I'D LIKE TO START WITH EXHIBIT 1001.

26 A DO I HAVE THAT UP HERE?

1 Q WE TALKED ABOUT THAT EXHIBIT. I DON'T KNOW
2 THAT YOU DO. WE TALKED ABOUT IT ON THURSDAY. I'D LIKE TO
3 PUT THIS DOCUMENT UP ON THE SCREEN, IF I COULD.

4 MR. MOSHENKO: YOUR HONOR HAS ALREADY RULED ON
5 THAT.

6 MR. RIVIN: YES, THAT'S RIGHT.

7 Q THIS IS A LETTER THAT WAS SENT TO ALL
8 SEASONS CARE OF MR. NOVELLI, COPIED TO YOU; RIGHT?

9 A YES, IT SHOWS THAT.

10 Q RIGHT.

11 AND DURING YOUR DEPOSITION -- AGAIN, WE
12 TALKED ABOUT THIS BEFORE. YOU BROUGHT A NUMBER OF
13 DOCUMENTS TO THE DEPOSITION INCLUDING LETTERS WHICH WERE IN
14 YOUR FILES?

15 A YES. THIS WAS PART OF THEM, I BELIEVE, PART
16 OF MY FILE.

17 Q OKAY. THIS IS A LETTER FROM AN ATTORNEY FOR
18 MR. AND MRS. TOMES WHO HAVE A MEMBERSHIP IN ALL SEASONS
19 RESORTS. AND IF WE LOOK AT JUST THE SECOND AND THIRD
20 PARAGRAPHS, "MY CLIENTS INFORMS ME THAT THE HIDDEN VALLEY
21 RESORT IN WHICH THEY WERE PRIMARILY INTERESTED HAS BEEN
22 CLOSED SINCE APPROXIMATELY THE BEGINNING OF 1997, AND THAT
23 THE AGREED SERVICES FOR THEIR USE OF A RESORT-OWNED CAMPER
24 HAVE NOT BEEN AVAILABLE TO THEM SINCE THAT TIME.

25 "MY CLIENTS, ACCORDINGLY, AND BY THIS
26 LETTER, GIVE NOTICE OF THEIR TERMINATION OF MEMBERSHIP IN

1 ALL SEASONS RESORTS, INC. MY CLIENTS FURTHER DISPUTE ANY
2 CLAIMS FOR ANY PAST DUE MEMBERSHIP FEES FOR THE MONTH OF
3 AUGUST YOU MAY ASSERT, AS NO SUCH FEES HAVE BEEN EARNED."

4 LET'S GO TO EXHIBIT 1002. IF WE CAN PUT
5 THIS UP ON THE SCREEN. THIS IS A DIFFICULT DOCUMENT TO
6 READ.

7 A I CAN'T READ THE COPY I HAVE.

8 Q I THINK I CAN.

9 AND WITH THE HELP OF THE COMPUTER, EXPAND IT
10 A BIT, I THINK IT WILL MAKE IT EASIER TO READ.

11 THIS IS ANOTHER LETTER THAT WE GOT FROM YOUR
12 FILES, MR. MALPASS; IS THAT RIGHT?

13 A I DON'T RECALL.

14 Q OKAY. THIS IS EXHIBIT 1002. REMEMBER THAT
15 DURING YOUR DEPOSITION WE IDENTIFIED A NUMBER OF LETTERS;
16 THAT THIS WAS ONE OF THE LETTERS WE IDENTIFIED?

17 A I DON'T RECALL THE SPECIFIC LETTERS.

18 Q YOU JUST DON'T REMEMBER?

19 A I DO NOT.

20 Q THEN I'LL REPRESENT TO YOU THAT THIS IS ONE
21 OF THE LETTERS THAT I SHOWED YOU AT YOUR DEPOSITION THAT I
22 GOT OUT OF YOUR FILES.

23 AND IT SAYS, "DEAR MR. NOVELLI, ON OCTOBER
24 21, 1995, WE MADE A DECISION WHICH WE HOPED WOULD MAKE OUR
25 RETIREMENT YEARS MORE ENJOYABLE. WE JOINED ALL SEASONS
26 RESORTS, GRASS LAKE, MICHIGAN. UNFORTUNATELY WE MADE A FEW

1 MAJOR MISTAKES THAT DAY.

2 "ONE, WE SIGNED UP BEFORE CHECKING OUT THE
3 RESORT'S REPUTATION AND CREDITWORTHINESS.

4 "TWO, WE JOINED THE PRESIDENT'S CLUB, WHICH
5 HAS SINCE DWINDLED TO ONLY ABOUT 70 PERCENT OF THE NUMBER
6 OF PARTICIPATING RESORTS AS WHEN WE FIRST SIGNED UP AND NOW
7 IS OF NO ADVANTAGE AT ALL DUE TO YOUR 'SURCHARGE."

8 "AND NUMBER THREE, WE FOOLISHLY PAID OUR
9 MEMBERSHIP IN FULL.

10 "WE CONSIDERED THOSE TO BE MISTAKES BECAUSE,
11 ALTHOUGH GRASS LAKE AND THE PEOPLE WHO RUN IT ARE
12 WONDERFUL, THERE IS CONSTANT TENSION THERE BECAUSE OF THE
13 WAY YOU HAVE SEEN IT TO MISUSE THE MEMBERSHIP DUES AND
14 ANNUAL DUES OF THE MEMBERS.

15 "WHILE YOUR LATEST LETTER -- LATEST ATTEMPT
16 IS INTENDED TO CONVINCING ALL WHO READ IT THAT ALL THE BAD
17 PRESS ABOUT YOU AND YOUR STAFF IS SIMPLY RUMOR AND
18 INNUENDO, I HAVE FOUND THROUGH EXTENSIVE RESEARCH INTO THE
19 PUBLIC RECORDS OF BOTH A.S.R. AND YOU PERSONALLY THAT MOST
20 OF THE SO-CALLED RUMORS ARE INDEED BASED UPON FACT.

21 "DUE TO OUR KNOWLEDGE OF YOUR PAST
22 MANAGEMENT PRACTICES AND THE UNREST AT THE A.S.R.'S WE HAVE
23 VISITED, WE HAVE QUESTIONED THE WISDOM OF OUR DECISION TO
24 JOIN A.S.R. WE CAME TO RELAX, NOT TO DISCUSS THE
25 MANAGEMENT OF OUR MEMBERSHIP AND DUES MONEY.

26 "BUT OUR VISIT TO GRASS LAKE ON JULY 31 WAS

1 THE LAST STRAW. WE WERE REQUIRED TO PAY \$100 PER NIGHT TO
2 CAMP. OUR MEMBERSHIP PURCHASE AGREEMENT CLEARLY STATES THE
3 RESORT AGREES THAT THE MEMBER WILL ALWAYS HAVE FREE USE OF
4 CAMPSITES, RECREATION BUILDINGS, SWIMMING POOLS AND DUMP
5 STATIONS. WE QUESTION NOT ONLY YOUR LEGAL RIGHT TO IMPOSE
6 A FEE UPON MEMBERS OR A.S.R., BUT YOUR MORAL RIGHT, AS
7 WELL.

8 "WHAT AUDACITY TO SEND A LETTER JULY 11,
9 1997, SAYING WE HAVE ALWAYS CONSIDERED YOU MORE THAN
10 MEMBERS, BUT AS FRIENDS WITH WHOM WE SHARE OUR LOVE OF THE
11 GREAT OUTDOORS. THEN ONLY DAYS LATER TELL YOUR FRIENDS
12 THAT THEY ARE NO LONGER WELCOME TO SHARE THE GREAT OUTDOORS
13 WITH YOU UNLESS THEY FORK OVER SOME MONEY."

14 LET'S GO TO THE NEXT TO THE LAST PARAGRAPH.

15 "WE WILL BE VISITING GRASS LAKE AGAIN BEFORE
16 THE SEASON ENDS, AND YOU CAN BE ASSURED THAT WE WILL PAY
17 NOTHING. WELL RETAIN OUR RIGHT TO THE FREE USE OF
18 CAMPSITES, RECREATION BUILDING, SWIMMING POOLS AND DUMP
19 STATIONS. THE" -- I CAN'T READ THE REST OF IT. I'M TIRED
20 OF READING IT.

21 MR. MALPASS, THE JULY 11 LETTER THAT THIS
22 MEMBER WAS REFERRING TO WAS THAT LETTER THAT MR. NOVELLI
23 SENT OUT AT THE SAME TIME AS YOU SENT OUT A LETTER SAYING
24 PAY DUES TO ALL SEASONS NOW, NOT THE RECEIVER; IS THAT
25 RIGHT?

26 A I DON'T KNOW. I ASSUME SO.

1 Q AND THIS WAS FROM A MEMBER BY THE NAME OF
2 MARGARET L. MILLER.

3 I'D LIKE TO GO TO EXHIBIT 1003.
4 MR. MALPASS, THIS IS A LETTER DIRECTED TO YOU DATED AUGUST
5 27, 1997?

6 A YES.

7 Q AGAIN, THIS LETTER WAS SENT BEFORE THE --
8 MR. DAFF, THE TRUSTEE, SENT OUT HIS LETTER SAYING "PAY DUES
9 TO ME"; RIGHT?

10 A I THINK THAT'S RIGHT, YES.

11 Q AND IT WAS BEFORE MR. DAFF REJECTED THE
12 MEMBERSHIP CONTRACTS?

13 A YES.

14 Q AND A PRIOR LETTER WE LOOKED AT WAS DATED
15 AUGUST 21, 1997; DO YOU REMEMBER THAT?

16 A YEAH. THAT'S WHAT -- YES, THAT'S WHAT IT
17 SAYS AT THE TOP.

18 Q ALL RIGHT. THIS LETTER IS FROM A MEMBER OF
19 ALL SEASONS BY THE NAME OF JOY JAMIESON FROM ROSALIND,
20 PENNSYLVANIA DIRECTED TO YOU, REGARDING ALL SEASONS.

21 DO YOU SEE THIS?

22 A UH-HUH.

23 Q AND SHE RESPONDED NOT TO MR. NOVELLI'S
24 LETTER, BUT SHE RESPONDED TO YOUR LETTER; CORRECT?

25 "I'M IN RECEIPT OF YOUR LETTER DATED JULY
26 11, 1997, REGARDING PAYMENT OF MY DUES BEING SENT TO

1 CALIFORNIA AGAIN, AND NOT FLORIDA AS I HAVE DONE FOR THE
2 PAST YEAR.

3 "I AM THOROUGHLY CONFUSED, AND I AM SURE
4 THOUSANDS OF OTHER ALL SEASONS MEMBERS ARE THE SAME. WHO
5 CAN WE TRUST OR BELIEVE AT THIS POINT? I HAVE PAID MY DUES
6 IN GOOD FAITH FOR MANY YEARS, AND NOW THAT I AM FINALLY
7 RETIRED AND CAN BENEFIT FROM THIS RESORT OWNERSHIP, IT
8 LOOKS LIKE IT'S ALL GOING DOWN THE TUBE. I WANT THIS
9 RESORT MEMBERSHIP TO CONTINUE, BUT AT THIS POINT IN MY LIFE
10 I CANNOT JUSTIFY THROWING MONEY AWAY OR PAY FOR OUTLANDISH
11 ATTORNEY FEES THROUGH THE COURT SYSTEM FOREVER AND GET
12 NOTHING IN RETURN AT THE END."

13 MISS JAMIESON IN THE LAST PARAGRAPH REQUESTS
14 AN ANSWER PRIOR TO OCTOBER 1. YOU DIDN'T ANSWER THIS
15 LETTER, DID YOU?

16 A NOT TO MY KNOWLEDGE, NO.

17 Q LET'S GO TO EXHIBIT 1004.

18 MR. SHAW: YOUR HONOR, MAY WE BE SEEN AT SIDE BAR
19 ON THIS LETTER?

20 THE COURT: YOU MAY.

21 (DISCUSSION OFF THE RECORD.)

22 THE COURT: WE'LL SEE YOU IN 20 MINUTES.

23 (THE FOLLOWING PROCEEDINGS WERE HELD IN
24 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

25 THE COURT: YES. EVERYBODY IS OUT.

26 MR. SHAW: THANK YOU, YOUR HONOR.

1 JUST FOR THE RECORD, ON THESE LETTERS, 1001,
2 1002, 1003 AND 1004, THE OBJECTION REGARDING 1001 HAS
3 ALREADY BEEN MADE FOR THE RECORD.

4 AS TO 1002, IT'S ILLEGIBLE. IT LACKS
5 TRUSTWORTHINESS BECAUSE IT TALKS ABOUT THEM DOING --
6 MRS. MILLER DOING SOME SORT OF AN INVESTIGATION. IT'S
7 HEARSAY UPON HEARSAY. IT'S BEING OFFERED FOR THE TRUTH OF
8 THE MATTER ASSERTED. SHE IS AN OUT-OF-COURT INDIVIDUAL.
9 THIS LETTER NOW IS BEING OFFERED, IT LACKS THE
10 TRUSTWORTHINESS BECAUSE IT WAS SENT TO MR. NOVELLI, NOT TO
11 THIS PARTICULAR WITNESS. SO IT COULDN'T POSSIBLY HAVE ANY
12 RELEVANCE TO THIS PARTICULAR WITNESS.

13 MR. RIVIN AT SIDEBAR SAID THAT THIS WAS
14 SOMEHOW SUPPOSED TO SHOW HOW THESE MEMBERS FELT ABOUT ALL
15 SEASONS RESORT, AND THIS LETTER DOES NOTHING -- DOES
16 NOTHING OF THE KIND. THAT'S DEFINITELY TRUTH OF THE MATTER
17 ASSERTED.

18 THAT'S NOT -- HE IS NOT TALKING ABOUT THEIR
19 STATE OF MIND. HE IS TALKING ABOUT WHY THIS PERSON SENT
20 THIS LETTER AS TO WHAT -- AND FOR WHAT PURPOSE. SO IT'S
21 HEARSAY UPON HEARSAY. AND THERE'S NO EXCEPTION TO THE
22 HEARSAY RULE THAT'S BEEN OFFERED WITH THIS PARTICULAR
23 LETTER.

24 1003 IS A LETTER FROM A LAWYER. IT'S ONCE
25 REMOVED FROM THE MEMBER. I APOLOGIZE, YOUR HONOR. 1003 IS
26 NOT FROM THE LAWYER. IT'S FROM A JOY JAMIESON,

1 J-A-M-I-E-S-O-N. AGAIN, FOR THE TRUTH OF THE MATTER
2 ASSERTED, TALKING ABOUT LETTERS THAT HAVE COME TO HER AND
3 SOMETHING ABOUT MR. -- A RECEIVER, A MR. KEIM, AND THE
4 MANAGEMENT, AND BEING ADVISED BY THE COURT. HEARSAY UPON
5 HEARSAY, AGAIN, NOT BEING OFFERED FOR THE -- IT IS BEING
6 OFFERED FOR THE TRUTH OF THE MATTER ASSERTED AND NOT JUST
7 STATE OF MIND, AS MR. RIVIN INDICATED AT THE SIDEBAR.

8 THESE ARE SUPPOSED TO COME IN TO SHOW HOW
9 THE MEMBERS FELT ABOUT ALL SEASONS RESORT. THAT'S THE
10 TRUTH OF THE MATTER ASSERTED, AND THERE'S NO HEARSAY
11 EXCEPTION TO THAT LETTER.

12 1004 IS THE SAME AS 1001. IT'S A LETTER
13 FROM A LAWYER REGARDING A DUES DISPUTE. IT'S NOT RELEVANT
14 TO ANY OF THE ISSUES IN THIS CASE. IT'S DOUBLE HEARSAY
15 BECAUSE IT'S FROM A LAWYER. WE DON'T EVEN HAVE THE
16 ELEANOR -- THE ESTATE OF ELEANOR KNOX, WHO THIS LAWYER IS
17 WRITING ABOUT, TO BE ABLE TO CROSS-EXAMINE OR BE ABLE TO
18 PROBE THE TRUSTWORTHINESS OF THIS PARTICULAR LETTER. IT IS
19 BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED.

20 NOW, I'VE GOT FOUR LETTERS IN, AND I
21 UNDERSTAND FROM MR. RIVIN WE'RE GOING TO GO THROUGH 15.
22 THEY'RE CUMULATIVE. THEY'RE -- UNDER EVIDENCE CODE SECTION
23 352 THEY'RE NOW BEING BROUGHT FOR SURPRISE, PREJUDICE.
24 THEIR PROBATIVE VALUE IS CERTAINLY OUTWEIGHED BY THE
25 PREJUDICE AND SURPRISE. BECAUSE NOW I'VE GOT A LAWYER IN
26 SPRING CITY, PENNSYLVANIA THAT I DON'T KNOW WHO HE IS OR

1 WHERE HE IS OR WHAT HE IS. I CAN'T CROSS-EXAMINE HIM. IT
2 VIOLATES DUE PROCESS.

3 THE SAME WITH JOY JAMIESON, IN -- HER LETTER
4 IN 1003. I CAN'T EVEN READ MRS. MILLER'S TO BE ABLE TO
5 CROSS-EXAMINE HER ON HER LETTER OF 1002. AND 1001 I'VE GOT
6 A LAWYER FROM RACINE, WISCONSIN. IT'S A LETTER.

7 AND I'LL JUST MAKE ONE LAST COMMENT FOR THE
8 RECORD. IF I'M GOING TO SEE 11 MORE LETTERS LIKE THIS THAT
9 COME IN FROM LAWYERS ON DUES ISSUES AND COME IN FROM
10 MEMBERS REGARDING INVESTIGATIONS AND OTHER ISSUES THAT THEY
11 HAVE DONE, THEY NOT ONLY VIOLATE 352 BECAUSE THEIR
12 PROBATIVE VALUE -- THE ONLY WAY THEY CAN HAVE A PROBATIVE
13 VALUE IS IF THEY'RE BEING OFFERED FOR THE TRUTH OF THE
14 MATTER ASSERTED.

15 IF IT IS BEING OFFERED FOR THE TRUTH OF THE
16 MATTER ASSERTED, IT'S VERY CLEARLY HEARSAY, DOUBLE HEARSAY
17 WHEN YOU GET LAWYERS INVOLVED. AND WE OBJECT TO THESE
18 LETTERS BEING INTRODUCED INTO EVIDENCE, SHOWN ON THE
19 OVERHEAD PROJECTOR, READ TO THE JURY, EVEN IF THESE LETTERS
20 NOW AT SOME LATER DATE ARE -- MY MOTION IS GRANTED THAT
21 THEY BE PRECLUDED FROM COMING INTO EVIDENCE, THE BELL
22 CANNOT BE UNRUNG. THE JURY IS READING THESE LETTERS. AND
23 I HAVE ABSOLUTELY NO WAY OF CROSS-EXAMINING ANY OF THESE
24 ISSUES WITH THIS PARTICULAR WITNESS OR MR. NOVELLI OR ANY
25 OTHER WITNESS, UNLESS I WANT TO BRING IN SOMEBODY FROM
26 RACINE, WISCONSIN.

1 AND IT'S NOT MY JOB. THEY HAVE THE DUTY TO
2 AUTHENTICATE THESE LETTERS. THEY HAVE NOT AUTHENTICATED
3 THEM. SO THEY HAVE GOT FOUNDATIONAL ISSUES AND PROBLEMS
4 WITH THESE LETTERS.

5 THANK YOU, YOUR HONOR.

6 THE COURT: MR. RIVIN.

7 MR. RIVIN: YOUR HONOR, MY UNDERSTANDING IS THAT
8 WHAT MR. SHAW WAS DOING IS BASICALLY TO STATE HIS
9 OBJECTIONS ON THE RECORD. HE STATED I THINK EVERY
10 OBJECTION HE COULD POSSIBLY THINK OF, AND THAT MAY BE IN
11 THE EVIDENCE CODE.

12 AS I INDICATED AT THE SIDEBAR, AS I
13 UNDERSTAND YOUR HONOR HAS -- AGREES, THESE LETTERS JUST
14 LIKE THE OTHER LETTERS THAT WE'VE TALKED ABOUT, THE OTHER
15 LETTERS THAT WE'VE SHOWN, GO TO THE STATE OF THE MIND OF
16 THE MEMBERS.

17 AS WE HAVE SAID BEFORE, THE PLAINTIFFS' CASE
18 IS BASED UPON THEIR CONTENTION THAT THESE PEOPLE LEFT THE
19 PLAINTIFFS' PARK; THAT THEY LOST THESE MEMBERS BECAUSE OF
20 COAST. THEIR CASE IS BASED ON CONJECTURE AND SOME
21 ASSUMPTIONS THAT THEY'RE MAKING.

22 WHAT WE ARE OFFERING IS HARD EVIDENCE OF THE
23 STATE OF MIND OF THESE MEMBERS AS TO WHY THEY DID WHAT THEY
24 DID AND WHY PLAINTIFFS LOST THESE MEMBERS. THIS EVIDENCE
25 IS EXCEEDINGLY RELEVANT. IT SHOWS THE STATE OF MIND OF
26 THESE MEMBERS AND, THEREFORE, IS ADMISSIBLE AND NOT --

1 ADMISSIBLE NOT ONLY AS AN EXCEPTION TO THE HEARSAY RULE,
2 BUT THEY'RE NOT HEARSAY.

3 SO IT IS RELEVANT. IT IS NOT HEARSAY. AND
4 THESE LETTERS, JUST LIKE ALL THE LETTERS BEFORE THEM,
5 SHOULD BE -- ARE APPROPRIATE AND SHOULD BE ADMITTED INTO
6 EVIDENCE.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. SHAW: WHAT'S MOST TELLING -- I'M SORRY TO
9 INTERRUPT THE COURT.

10 WHAT'S MOST TELLING IS WHO THE WITNESS IS
11 THEY'RE TRYING TO PUT THIS IN. I TRIED TO TAKE THIS
12 WITNESS, AN EXPERT, AND TALK ABOUT HIS OPINION REGARDING
13 THE AUTOMATIC STAY. IT'S ALREADY BEEN OPENED NOW, AND NOW
14 I CAN TALK ABOUT THE AUTOMATIC STAY.

15 BUT THEY HAVE GOT -- THEY'RE TRYING TO SHOW
16 MEMBERS' STATE OF MIND THROUGH AN ATTORNEY, AN ATTORNEY FOR
17 ALL SEASONS RESORTS. AND, YOUR HONOR, I BELIEVE THAT'S
18 VERY TELLING, BECAUSE YOU DON'T EVEN HAVE A FOUNDATION
19 THROUGH THIS LAWYER AS TO THESE -- ANY ISSUES. THEY'RE NOT
20 ASKING HIM ANY QUESTIONS. ALL THEY'RE DOING IS ASKING HIM
21 IF HE RECEIVED THIS AND READ THEM ON. HE SAID THEY WERE IN
22 HIS FILES. HE DIDN'T DO ANYTHING WITH THEM. HE DIDN'T
23 DEAL WITH THEM. THERE'S NO ENGAGEMENT, NO DIALOGUE WITH
24 ANY OF THESE PEOPLE.

25 NOW, IF HE WAS ASKING MR. NOVELLI THESE
26 QUESTIONS, THAT MIGHT BE A DIFFERENT ISSUE BECAUSE

1 MR. NOVELLI MAY HAVE RECEIVED SOME OF THESE. BUT HERE YOU
2 HAVE LETTERS THAT WENT TO MR. NOVELLI TELEFAXED -- I'LL
3 EVEN SHOW 1002 FOR THE RECORD -- TELEFAXED TO MR. NOVELLI,
4 NOT TO MR. MALPASS.

5 IF A QUESTION IS ASKED OF MR. NOVELLI, DID
6 HE RECEIVE THIS LETTER, DOES HE KNOW MRS. MILLER, HAS HE
7 TALKED TO MRS. MILLER, THOSE ARE THE FAIR RULES OF THE
8 EVIDENTIARY GAME BECAUSE NOW WE HAVE GOT A WITNESS WHERE
9 SOME FOUNDATION CAN BE LAID AND SOME QUESTIONS CAN BE
10 ASKED.

11 ALL THEY'RE DOING NOW IS USING THIS WITNESS
12 TO PUT UP SOME STUFF ON THE BOARD THAT IS -- THAT VIOLATES
13 THE HEARSAY RULE, AND IT HAS NO EVIDENTIARY FOUNDATION TO
14 JUST READ THEM ONTO THE RECORD.

15 THIS WITNESS HAS NEVER SEEN THEM NOR HAD AN
16 ENGAGEMENT, NEVER TALKED ABOUT THEM. THEY ENDED UP IN HIS
17 FILES.

18 MR. RIVIN: YOUR HONOR, MR. SHAW HAS HIS EARS
19 CLOSED. THERE IS A FOUNDATION LAID FOR THESE DOCUMENTS,
20 AND REASON I'M SHOWING HIM THESE LETTERS IS BECAUSE HE
21 RECEIVED THEM. THAT'S THE FOUNDATION. HE RECEIVED THESE
22 LETTERS.

23 THE COURT: MY RULING WILL STAND AS I MADE IT AT
24 THE BENCH.

25 MR. RIVIN: THANK YOU.

26 THE COURT: THIS WILL BE ADMISSIBLE.

1 MR. RIVIN: THAT IS, THE OBJECTIONS ARE OVERRULED.

2 MR. MOSHENKO: YOUR HONOR, ON TIMING, ARE WE GOING
3 TO GO THROUGH 11 MORE? WE'RE NOT GOING TO BE FINISHED
4 UNTIL TOMORROW.

5 MR. RIVIN: THEY'LL BE DONE. IT WILL TAKE ME 20
6 MINUTES.

7 MR. SHERMAN: OR MALPASS SAID HE WOULD BE
8 EXAGGERATING IF HE RECEIVED 10.

9 MR. RIVIN: ALSO ON THE AUTOMATIC STAY ISSUE, BUT
10 WE DID NOT OPEN THE DOOR ON THE AUTOMATIC STAY. AND THAT'S
11 SOMETHING WE'RE GOING TO HAVE TO DEAL WITH ON REDIRECT.

12 MR. SHAW: THAT'S JUST NOT TRUE, MR. RIVIN.

13 THE COURT: ALL RIGHT, GENTLEMEN. LET'S TAKE A
14 BREAK.

15 (RECESS TAKEN.)

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

18 THE COURT: PROCEED, COUNSEL.

19 MR. RIVIN: THANK YOU, YOUR HONOR.

20 BEFORE WE START I'D LIKE TO MOVE EXHIBITS
21 1001 THROUGH 1004 INTO EVIDENCE.

22 MR. SHAW: AND WE MADE OUR RECORD. YES.

23 THE COURT: RECEIVED.

24 (WHEREUPON, EXHIBIT NOS. 1001 THROUGH 1004
25 WERE RECEIVED IN EVIDENCE.)

26 MR. RIVIN: COULD WE SHOW EXHIBIT 1004 ON THE

1 SCREEN, PLEASE.

2 Q MR. MALPASS, THIS IS ANOTHER MEMBER -- THIS
3 IS A LETTER FROM A MEMBER THAT YOU RECEIVED FROM AN
4 ATTORNEY FOR ONE OF THE MEMBERS.

5 COULD YOU GO BACK TO THE OLD DOCUMENT.

6 MR. MALPASS, ISN'T THAT YOUR STAMP -- YOUR
7 RECEIVED STAMP ON THE TOP RIGHT-HAND CORNER?

8 A YES, IT IS.

9 Q AND ON THE VERY BOTTOM OF THE LETTER IT
10 SHOWS A COPY TO YOU; DO YOU SEE THAT?

11 A YES.

12 Q THIS IS A LETTER THAT YOU RECEIVED. AND LET
13 ME READ JUST THE FIRST -- THE PORTION OF IT.

14 "AS THE ATTORNEY FOR THE ESTATE OF
15 ELEANOR KNOX, I HAVE BEEN ASKED TO RESPOND TO YOUR LETTER
16 OF JULY 11, 1997, AND TO REQUEST CANCELLATION OF THE ABOVE
17 MEMBERSHIP WITHOUT FURTHER PAYMENT."

18 LET'S GO DOWN TO THE THIRD.

19 "I HEREBY REQUEST THAT THE MEMBERSHIP BE
20 CANCELLED FOR THE REASONS SET FORTH IN MY EARLIER LETTER."

21 NOW, WE DON'T HAVE THE EARLIER LETTER.

22 THIS LETTER IS DIRECTED TO RAYMOND NOVELLI;
23 DO YOU SEE THAT?

24 A YES.

25 Q AND LET'S GO DOWN TO THE LAST -- SECOND TO
26 THE LAST PARAGRAPH.

1 "FINALLY, MY REVIEW OF THE DOCUMENTS AND
2 MR. KNOX'S STATEMENTS TO ME CONCERNING HOW THEY BECAME
3 MEMBERS, BOTH OF THE ORIGINAL PLAN AND THEN IN THE
4 PRESIDENT'S CLUB, GIVES ME PAUSE, PARTICULARLY IN VIEW OF
5 YOUR EFFUSIVE LETTERS. IN ANY EVENT, COPIES OF THIS LETTER
6 ARE BEING SENT TO THE ARIZONA ADDRESS ON THE PAYMENT BOOK
7 AND TO MR. MALPASS.

8 "I AWAIT WORD FROM THE APPROPRIATE
9 REPRESENTATIVE."

10 DID YOU RESPOND TO THIS LETTER?

11 A I DON'T BELIEVE SO.

12 Q DO YOU HAVE ANY KNOWLEDGE OF WHETHER
13 MR. NOVELLI DID?

14 A NO.

15 Q LET'S GO TO EXHIBIT 1005.

16 MR. MALPASS, THIS IS ANOTHER LETTER THAT WAS
17 FROM YOUR FILES.

18 DO YOU SEE YOUR RECEIVED STAMP IN THE TOP
19 RIGHT-HAND CORNER?

20 A YES.

21 MR. RIVIN: YOUR HONOR, COULD WE PUT THIS UP ON THE
22 SCREEN, PLEASE?

23 Q THIS IS ANOTHER LETTER FROM AN ATTORNEY FOR
24 MEMBERS OF ALL SEASONS SENT TO RAYMOND NOVELLI DATED
25 SEPTEMBER 3RD, 1997. AND THIS ATTORNEY IS RESPONDING ON
26 BEHALF OF HIS CLIENTS TO MR. NOVELLI'S LETTER OF JULY 11,

1 1997, INSTEAD OF YOUR LETTER, MR. MALPASS, OF THIS SAME
2 DATE.

3 AND IT READS, "CONTRARY TO THE INFERENCE OF
4 YOUR LETTER OF JULY 11, 1997, MY CLIENTS, WILLARD AND
5 ARLYN HARLOW, ARE NOT MEMBERS AND DO NOT INTEND TO EVER BE
6 MEMBERS OF ANYTHING YOU OR ALL SEASONS RESORTS HAVE TO
7 OFFER.

8 "REMOVE THEM FROM ANY MAILING LIST YOU HAVE
9 AND STOP BOTHERING THEM."

10 DO YOU KNOW IF MR. NOVELLI RESPONDED TO THIS
11 LETTER?

12 A NO.

13 Q YOU DIDN'T RESPOND TO IT, DID YOU?

14 A NOT TO MY KNOWLEDGE, NO.

15 MR. RIVIN: YOUR HONOR, I'D LIKE TO MOVE EXHIBIT
16 1005 INTO EVIDENCE.

17 MR. SHAW: THE SAME OBJECTIONS, YOUR HONOR.

18 THE COURT: IT WILL BE RECEIVED OVER OBJECTION.

19 (WHEREUPON, EXHIBIT NO. 1005, LETTER TO
20 RAYMOND NOVELLI DATED SEPTEMBER 3RD, 1997, WAS RECEIVED IN
21 EVIDENCE.)

22 BY MR. RIVIN: Q I'D LIKE TO MOVE TO EXHIBIT
23 1006.

24 MR. MALPASS, THIS IS A BIT DIFFERENT. THIS
25 ACTUALLY IS A LETTER -- APPEARS TO BE A FORM LETTER SIGNED
26 BY THE RESORT SERVICES DIRECTOR FOR ALL SEASONS.

1 THE REASON I'M SHOWING THIS TO YOU IS
2 BECAUSE IT WAS A LETTER FROM YOUR FILES.

3 DO YOU SEE THE RECEIVED STAMP ON THE TOP
4 RIGHT-HAND CORNER?

5 A YES.

6 Q THAT'S YOUR RECEIVED STAMP?

7 A YES, IT IS. IT APPEARS TO BE.

8 MR. RIVIN: I'D LIKE TO PUT THIS DOCUMENT UP ON THE
9 SCREEN, PLEASE.

10 Q AND LET'S JUST LOOK AT THE SECOND PARAGRAPH
11 OF THIS LETTER. THIS APPARENTLY IS A -- LET'S LOOK AT THE
12 FIRST TWO PARAGRAPHS.

13 THIS IS APPARENTLY A FORM LETTER SENT BY
14 A.S.R., ALL SEASONS RESORTS. THIS ONE APPARENTLY WAS SENT
15 TO YOU, MR. MALPASS, ON AUGUST 11, 1997, OR THAT'S WHEN YOU
16 RECEIVED IT.

17 AND IT SAYS, DEAR A.S.R. MEMBER, WE HAVE
18 RECEIVED YOUR CORRESPONDENCE INDICATING YOUR DESIRE TO
19 CANCEL YOUR MEMBERSHIP WITH ALL SEASONS RESORTS.

20 "YOUR FRUSTRATION AND CONFUSION, ANGER EVEN,
21 ARE EASILY UNDERSTOOD IN LIGHT OF ALL THE THINGS THAT HAVE
22 HAPPENED WITH ALL SEASONS. HOWEVER, IN ORDER FOR ALL
23 SEASONS TO SURVIVE AND TO PROTECT YOUR INITIAL INVESTMENT,
24 WE BE WOULD LIKE TO URGE YOU TO SUPPORT US AS WE WORK TO
25 TURN THIS COMPANY AROUND.

26 "ALREADY AS YOU'VE READ IN THE MOST CURRENT

1 NEWSLETTER, WE HAVE BEEN MAKING REPAIRS AND UPGRADING
2 CAMPGROUNDS."

3 AND THE SECOND TO THE LAST PARAGRAPH SAYS,
4 "YOU STILL HAVE THE OPTION OF SELLING YOUR MEMBERSHIP TO A
5 PRIVATE PARTY. AND EVEN IF YOU MUST DO THIS FOR A MODEST
6 FEE, IT IS BETTER THAN JUST WALKING AWAY. YOUR OTHER
7 OPTION IS TO GIVE YOUR MEMBERSHIP TO SOMEONE WHO MIGHT
8 ENJOY THE FACILITIES."

9 DO YOU REMEMBER TALKING WITH MR. NOVELLI
10 ABOUT THIS LETTER?

11 A NO.

12 Q LET'S GO TO EXHIBIT 1007.

13 MR. MALPASS, AGAIN, THIS IS A LETTER FROM
14 YOUR FILES; IT WAS COPIED TO YOU; DO YOU SEE THAT?

15 A YES.

16 MR. RIVIN: I'D LIKE TO PUT 1007 ON THE BOARD SO --
17 THE SCREEN, PLEASE.

18 Q THIS IS A LETTER FROM AN ATTORNEY TO ALL
19 SEASONS RESORTS WITH A COPY TO YOU. IT'S DATED AUGUST 13,
20 1997.

21 THIS ATTORNEY WRITES THAT "THIS OFFICE
22 REPRESENTS MR. AND MRS. HAKEMOLLER AS REGARDS AN ONGOING
23 PROBLEM THEY HAVE HAD WITH ALL SEASONS RESORTS,
24 SPECIFICALLY, THE PRESIDENT'S CLUB MEMBERSHIP CARD THAT HAS
25 NOT BEEN RECEIVED BY MY CLIENTS."

26 LET'S GO DOWN TO THE SECOND PARAGRAPH. WHAT

1 I WANT TO DO IS TRY AND GO THROUGH THESE AS QUICKLY AS
2 POSSIBLE. THAT'S THE REASON I'M NOT READING EVERYTHING.

3 LET'S GO TO THE SECOND PARAGRAPH.

4 "APPARENTLY, RECENTLY THE CLUB BEGAN ISSUING
5 A SEPARATE CARD EACH YEAR WHICH ALLOWED THE MEMBERS
6 ENTRANCE INTO THE VARIOUS FACILITIES. MY CLIENTS HAVE NOT
7 RECEIVED THIS CARD AND CONTINUE TO BE BILLED (COPY OF
8 11/22/92 BILL ENCLOSED FOR YOUR REFERENCE). MY CLIENTS
9 HAVE MADE NUMEROUS ATTEMPTS TO CONTACT YOUR COMPANY TO
10 DISCUSS THIS ISSUE; HOWEVER, NONE OF THEIR CORRESPONDENCE
11 OR PHONE CALLS HAVE BEEN RECOGNIZED."

12 THIRD PARAGRAPH, "I REALIZE THAT ALL SEASONS
13 RESORTS HAS BEEN INVOLVED IN A VERY DIFFICULT FINANCIAL
14 TRANSITION WHICH APPARENTLY HAS CULMINATED WITH THE COMPANY
15 ENTERING INTO CHAPTER 11 BANKRUPTCY. HOWEVER, I WOULD
16 SUGGEST THAT IF THIS COMPANY WISHES TO CONTINUE AFTER THE
17 REORGANIZATION, THEY MAY WISH TO PAY A LITTLE BETTER CARE
18 TO THEIR LONGTIME CUSTOMERS AND DEAL WITH MY CLIENTS' ISSUE
19 PROMPTLY."

20 DO YOU HAVE ANY KNOWLEDGE, MR. MALPASS, AS
21 TO WHETHER OR NOT ALL SEASONS RESPONDED TO THIS LETTER? DO
22 YOU HAVE ANY PERSONAL KNOWLEDGE OF WHETHER THEY DID?

23 A I'M TRYING TO THINK ABOUT THIS ONE. I KNOW
24 THERE WERE SOME THAT WERE EITHER PASSED ALONG BY ME OR
25 DISCUSSED BY ME WITH PEOPLE AT ALL SEASONS ABOUT HOW THESE
26 WERE GOING TO BE HANDLED. I'M NOT SURE WHETHER THIS IS ONE

1 OR NOT.

2 Q DID YOU RESPOND TO THIS LETTER?

3 A I DON'T THINK SO.

4 MR. RIVIN: I'D LIKE TO OFFER 1006 AND 1007 INTO
5 EVIDENCE.

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

7 THE COURT: THEY WILL BE RECEIVED OVER OBJECTION.

8 (WHEREUPON EXHIBIT NOS. 1006 AND 1007,
9 LETTERS, WERE RECEIVED IN EVIDENCE.)

10 BY MR. RIVIN: Q LET'S MOVE TO EXHIBIT 1008.

11 MR. MALPASS, THIS IS ACTUALLY A LETTER TO MR. DAFF FROM A
12 MEMBER, CAROL HUTCHESON, DATED SEPTEMBER 14, 1997. AND I'D
13 LIKE TO PUT THIS UP ON THE SCREEN, IF WE COULD.

14 THE COURT: ALL RIGHT.

15 BY MR. RIVIN: Q THERE'S A STAMP OVER ON THE RIGHT
16 SIDE. I THINK THAT'S YOUR RECEIVED STAMP DATED SEPTEMBER
17 23, 1997. IT'S HARD TO TELL.

18 A IT'S HARD TO TELL.

19 Q ALL RIGHT. THE HUTCHESONS ARE WRITING TO
20 CHARLES DAFF IN RESPONSE OBVIOUSLY TO THE LETTERS THEY HAVE
21 BEEN RECEIVING, AND THEY'RE WRITING THE RESPONSE TO
22 MR. DAFF'S LETTER BECAUSE NOW THEY HAVE HEARD FROM
23 MR. DAFF. SO, IN OTHER WORDS, THEY GOT -- PRESUMABLY THESE
24 PEOPLE RECEIVED YOUR LETTER AND ALL SEASONS' LETTER, AND
25 NOW THEY RECEIVED A LETTER IN SEPTEMBER FROM MR. DAFF.

26 AND I'D LIKE TO GO DOWN TO THE PARAGRAPH

1 BELOW PARAGRAPH 6.

2 SAYS -- THE HUTCHESONS SAY -- MRS. HUTCHESON
3 SAYS, "YOUR LETTER INDICATES YOU ARE THE TRUSTEE. WE,
4 HOWEVER, ARE QUITE CONFUSED. AND IT APPEARS THAT THE
5 RECORDS YOU HAVE ARE NOT ACCURATE. AND MR. NOVELLI ADVISED
6 ALL FUTURE PAYMENTS ARE TO BE SENT TO HIM.

7 "WE WOULD APPRECIATE A CORRECT ACCOUNTING,
8 ALONG WITH SOME EXPLANATION, AS TO WHO IS THE PROPER
9 CONTACT PERSON FOR A.S.R. WE WOULD ALSO APPRECIATE KNOWING
10 WHAT RESORTS ARE AFFECTED.

11 "THANK YOU FOR YOUR ATTENTION TO THIS
12 MATTER."

13 DID YOU RESPOND TO THIS LETTER? I
14 UNDERSTAND -- I REALIZE IT WASN'T SENT TO YOU, BUT DID YOU
15 DO ANYTHING TO RESPOND TO THIS LETTER?

16 A I DON'T RECALL. THERE'S SOME REFERENCE DOWN
17 BELOW DIRECTING IT TO RAY NOVELLI.

18 Q THERE IS. IT SAYS -- DOWN BELOW AT THE VERY
19 BOTTOM IT SAYS, "WE WOULD APPRECIATE YOUR REPLY PER THE
20 ABOVE LETTER. WE HAVE BEEN LOYAL A.S.R. MEMBERS AND FEEL
21 WE DESERVE A RESPONSE. ALSO, WE WOULD LIKE TO KNOW HOW
22 THIS AFFECTS CUTTY'S MEMBERSHIP, TRAILINN MEMBERSHIP AND
23 PRESIDENT'S CLUB AND PRESIDENT'S TRAVEL CLUB FOR VOUCHERS
24 WE STILL ARE IN POSSESSION OF.

25 "THANKS FOR ALL YOU ARE ATTEMPTING TO DO TO
26 KEEP OUR GREAT SYSTEM GOING."

1 A AND JUST, MR. RIVIN, NORMALLY IF I GOT A
2 LETTER OF THIS SORT, I WOULD -- BECAUSE IT'S ADDRESSED TO
3 MR. NOVELLI, CARE OF MY OFFICE, I WOULD HAVE SENT IT ON TO
4 MR. NOVELLI, JUST SO -- THAT WOULD BE MY OFFICE PRACTICE.

5 Q THANK YOU.

6 LET'S GO TO EXHIBIT 1009.

7 MR. MALPASS, THIS IS A LETTER FROM MEMBERS
8 DICK AND CAROL RAPEL, DIRECTED TO ALL SEASONS, TO YOU,
9 ATTORNEY GENERAL'S OFFICE IN ST. PAUL, EAGLE LAKE RESORT,
10 JEFFREY KEIM, WHO IS THE FEDERAL COURT RECEIVER, AND
11 ATTORNEY GENERAL'S OFFICE IN CARSON CITY, NEVADA.

12 IS THAT YOUR RECEIVED STAMP IN THE TOP
13 RIGHT-HAND CORNER?

14 A YES.

15 MR. RIVIN: I'D LIKE TO SHOW THIS ON THE BOARD,
16 PLEASE.

17 Q NOW, THIS IS A PERSON WHO PARTLY WANTED TO
18 CONTINUE MEMBERSHIP, ASSUMING -- LET'S READ IT INSTEAD OF
19 MY PARAPHRASING IT.

20 "PLEASE BE ADVISED THAT IT IS MY INTENTION
21 TO CONTINUE MY MEMBERSHIP OF ALL SEASONS RESORT ASSUMING
22 THAT IT IS STILL A VIABLE ENTITY.

23 "I HAVE RECEIVED DOCUMENTATION FROM
24 RAY NOVELLI, A.S.R. PRESIDENT, AND EDWARD MALPASS, A.S.R.
25 LEGAL REPRESENTATIVE, INDICATING THAT FUTURE PAYMENTS OF MY
26 MEMBERSHIP FEE SHOULD BE SENT TO IRVINE, CALIFORNIA RATHER

1 THAN THE COURT-APPOINTED RECEIVER IN FLORIDA.

2 "AT THIS TIME I HAVE RECEIVED NO INVOICE OF
3 PAYMENT DUE FROM EITHER SOURCE, AND I AM RELUCTANT TO
4 SUBMIT MY DUES TO EITHER UNTIL I DO.

5 "I HAVE TRIED TO CONTACT A.S.R. IN IRVINE,
6 CALIFORNIA ONLY TO FIND OUT THAT THEY ARE NO LONGER AT THAT
7 NUMBER. I HAVE TRIED TO CONTACT EDWARD MALPASS, BUT HE WAS
8 UNWILLING TO TALK. I HAVE TRIED TO CONTACT MY HOME RESORT,
9 EAGLE LAKE IN BIG LAKE, MINNESOTA, BUT THE NUMBER HAS BEEN
10 DISCONNECTED. THIS DOES NOT SOUND GOOD.

11 "I AM WITHHOLDING MY PAYMENT UNTIL I RECEIVE
12 SOME DIRECTION FROM A LEGALLY AUTHORIZED PERSON AS TO WHERE
13 THE PAYMENT SHOULD BE SENT."

14 MR. MALPASS, DID YOU MAKE ANY EFFORT TO
15 COMMUNICATE WITH THIS PERSON TO LET -- OR TO THESE PEOPLE
16 TO LET THEM KNOW WHERE THEIR DUES SHOULD BE SENT?

17 A IF YOU EXPAND IT OUT TO PEOPLE, YES.

18 Q DID YOU RESPOND TO THEM?

19 A THIS WAS THE PERIOD IN WHICH MR. DAFF WAS
20 APPOINTED AS A TRUSTEE AND SENT A LETTER TO THAT -- THIS
21 WAS ADDRESSED -- THIS KIND OF INQUIRY ABOUT DUES --

22 Q YES.

23 A -- AND WHERE DUES SHOULD BE DIRECTED WAS
24 ADDRESSED BY THE TRUSTEE'S LETTER.

25 Q MR. DAFF'S LETTER?

26 A CORRECT. SINCE I DIDN'T REPRESENT MR. DAFF,

1 I WOULDN'T -- I MEAN, HE DID IT AS TRUSTEE, WHICH WAS HIS
2 JOB.

3 Q DID YOU MAKE ANY EFFORT TO FIND OUT WHAT
4 THIS PERSON WAS TALKING ABOUT, WHY THIS PERSON COULDN'T GET
5 THROUGH TO ALL SEASONS?

6 A THEY SAID IN THE -- THAT THEY TALKED TO ME.

7 Q NO. IT SAID, "I TRIED TO CONTACT
8 EDWARD MALPASS, BUT HE WAS UNWILLING TO TALK."

9 A THAT MEANS THEY TALKED TO ME. I HAD
10 CONVERSATIONS WITH A NUMBER OF MEMBERS ABOUT VARIOUS
11 ASPECTS.

12 Q LET'S GO TO EXHIBIT 1010. THIS IS A
13 HANDWRITTEN LETTER, TWO PAGES, DIRECTED TO PRESIDENT,
14 RAY NOVELLI.

15 MR. MALPASS, DO YOU SEE YOUR RECEIVED STAMP
16 ON THE FIRST PAGE OF THIS LETTER?

17 A YES, I DO.

18 MR. RIVIN: I'D LIKE TO SHOW THIS ON THE SCREEN.

19 Q LET ME READ THE FIRST PARAGRAPH.

20 "AM IN CONCERN ABOUT THIS SITUATION. I HAVE
21 RECEIVED A STATEMENT TO PAY DUES, \$78.51, PLUS \$20 FINANCE
22 CHARGE. FOR WHAT IS THE FINANCE CHARGE? WE HAVE NOT USED
23 OUR MEMBERSHIP FOR THE LAST SEVEN YEARS."

24 LET ME GO DOWN TO THE THIRD -- LAST
25 PARAGRAPH ON THE FIRST PAGE BEGINNING WITH THE WORD "AND."

26 "AND AS FOR MEMBERSHIP DUES, WHY SHOULD WE

1 BE PAYING WHERE WE DO NOT GET USE OF IT ANYMORE?"

2 LET ME GO OVER TO PAGE 2, AND LET ME READ
3 THIS.

4 "I HAVE SENT THE DUES TO FLORIDA IN JULY.
5 BUT AS SUCH, I DID RECEIVE A LETTER FROM CALIFORNIA. SO I
6 DID CANCEL THE CHECK I SENT TO FLORIDA, AND IT DID COST ME
7 \$15 TO CANCEL.

8 "SO I DO NOT WANT TO GET THIS" -- "I DO WANT
9 TO GET THIS STRAIGHT FROM YOU AS TO WHERE TO SEND THESE
10 DUES AND WHY THE EXTRA \$20. I AM NOT GOING TO SEND THESE
11 DUES UNTIL I HEAR FROM YOU. YOU CAN DO THAT MUCH AT LEAST
12 FOR US. I HAVE BEEN TRYING TO SELL THIS MEMBERSHIP, BUT
13 WITHOUT SUCCESS. ALL WAYS MONEY TAKEN AWAY FROM US AS A
14 FRAUD.

15 "AS EVER, JOSEPH" -- IT LOOKS LIKE KRUZEL.
16 DO YOU REMEMBER TALKING TO THIS PERSON?

17 A NO.

18 Q DID YOU RESPOND TO THIS LETTER?

19 A NO.

20 MR. RIVIN: I'D LIKE TO MOVE EXHIBITS 1008 THROUGH
21 1010 INTO EVIDENCE.

22 MR. SHAW: THE SAME OBJECTION, YOUR HONOR.

23 THE COURT: RECEIVED OVER OBJECTION.

24 (WHEREUPON, EXHIBIT NOS. 1008 THROUGH 1010
25 WERE RECEIVED IN EVIDENCE.)

26 BY MR. RIVIN: Q I'D LIKE TO MOVE TO EXHIBIT 1011.

1 MR. MALPASS, AGAIN, THIS IS A LETTER FROM
2 YOUR FILES. DO YOU SEE THAT YOU WERE COPIED ON THIS
3 LETTER?

4 A YES.

5 MR. RIVIN: I'D LIKE TO PUT THIS UP ON THE SCREEN,
6 PLEASE.

7 Q THIS IS A LETTER DATED OCTOBER 31ST, 1997,
8 TO RAY NOVELLI, PRESIDENT OF ALL SEASONS RESORTS, FROM
9 ETHEL MARTIN AND RICARDO AVILA, AND THEY LIST THEIR
10 MEMBERSHIP NUMBER IN ALL SEASONS RESORTS.

11 AND LET ME JUST READ A PORTION OF THE FIRST
12 PARAGRAPH.

13 MRS. MARTIN IS THE ONE WHO SIGNS THIS
14 LETTER. MISS MARTIN SIGNS AND SAYS, "I TRIED TO CALL MY
15 RESORT, FOX RIVER IN MARSEILLAS, ILLINOIS AND WAS TOLD BY
16 THE MECHANICAL OPERATOR THAT THE NUMBER HAD BEEN
17 DISCONNECTED OR WAS NO LONGER IN SERVICE. I AM WRITING
18 BECAUSE I NEED TO KNOW WHAT IS GOING ON IN REGARD TO THIS
19 REORGANIZATION, THE TERMINATION OF ALL MEMBERSHIP
20 CONTRACTS AS OF NOVEMBER 30, 1997, AND THE REQUEST FOR DUES
21 IN SPITE OF THE FACT THAT THE RESORT IS GOING TO CLOSE
22 ANYWAY.

23 "WHERE DOES THIS LEAVE US, THE MEMBERS, AT
24 THIS JUNCTURE? IT SEEMS THAT WE ARE BEING LEFT WITH
25 NOTHING BUT A LICK AND A PROMISE."

26 MR. MALPASS, DO YOU REMEMBER SPEAKING WITH

1 ETHEL MARTIN OR RICARDO AVILA?

2 A NO.

3 Q DID YOU RESPOND TO THIS LETTER?

4 A I DON'T BELIEVE SO.

5 Q DO YOU KNOW WHETHER MR. NOVELLI OR ANYONE
6 ELSE AT ALL SEASONS RESORTS DID SO?

7 A I THINK THEY WOULD HAVE, YES.

8 Q DO YOU HAVE PERSONAL KNOWLEDGE OF WHETHER
9 THEY RESPONDED TO THIS LETTER?

10 A NO.

11 MR. RIVIN: I'D LIKE TO MOVE EXHIBIT 1011 INTO
12 EVIDENCE.

13 THE COURT: RECEIVED OVER OBJECTION.

14 (WHEREUPON, EXHIBIT NO. 1011, LETTER, WAS
15 RECEIVED IN EVIDENCE.).

16 MR. RIVIN: EXHIBIT 1012. I HAVE FOUR MORE, YOUR
17 HONOR.

18 Q MR. MALPASS, THIS IS A FACSIMILE COVER PAGE
19 TO -- SENT TO MR. RAY NOVELLI FROM RON HOLTROP,
20 RONALD W. HOLTROP, AND THIS WAS FROM YOUR FILES; ALTHOUGH,
21 I DO NOT SEE THE RECEIVED STAMP, YOUR RECEIVED STAMP ON
22 HERE.

23 DO YOU RECALL PRODUCING THIS DOCUMENT AT THE
24 TIME OF YOUR DEPOSITION?

25 A NO.

26 Q DO YOU HAVE ANY REASON TO BELIEVE YOU DID

1 NOT DO SO?

2 A NO.

3 MR. RIVIN: ALL RIGHT. I'D LIKE TO SHOW THIS
4 DOCUMENT ON THE SCREEN, PLEASE.

5 MIKE, COULD YOU HIGHLIGHT THE TOP RIGHT-HAND
6 CORNER, SHOW THE DATE.

7 Q IT LOOKS LIKE AUGUST 5. I DON'T THINK IT'S
8 2017. SO I'M GOING TO GUESS IT'S AUGUST 5, 1997.

9 A IN EARLY R2K.

10 Q IN FACT, THERE'S -- THE TOP, THERE'S A FAX
11 DATE RIGHT AT THE VERY TOP, AND I THINK IT DOES SAY '97.
12 8/5/97. THIS IS A LETTER TO MR. NOVELLI, AND I'LL READ A
13 PORTION OF THE FIRST PARAGRAPH.

14 "AS ALL SEASONS MEMBERS SINCE 1992, WE WERE
15 VERY SURPRISED AND DISTURBED LAST WEEKEND TO ARRIVE AT THE
16 GRASS LAKE RESORT AND LEARN THAT WE HAD TO PAY \$4 SURCHARGE
17 PER NIGHT IN ADDITION TO PAYING OUR ANNUAL MAINTENANCE
18 FEES."

19 AND THEN DOWN TO THE THIRD PARAGRAPH.

20 "FINALLY, WHEN WE JOINED ALL SEASONS IN
21 JULY, 1992, WE WERE GIVEN A LIST OF PROPOSED IMPROVEMENTS
22 FOR EACH OF THE PARKS ALONG WITH THE TIMETABLE FOR
23 COMPLETION OF THESE IMPROVEMENTS. AMONG THEM WAS A
24 SWIMMING POOL FOR LAKE ROGERS. TO MY KNOWLEDGE THAT POOL
25 STILL DOES NOT EXIST. THIS TOO, WHILE PERHAPS NOT AN
26 OUTRIGHT BREACH OF CONTRACT, WAS CERTAINLY A

1 MISREPRESENTATION OF WHAT WE WERE GETTING FOR OUR MONEY
2 WHEN WE JOINED.

3 "I STRONGLY SUGGEST THAT YOU GET YOUR HOUSE
4 IN ORDER. THE OPINIONS EXPRESSED IN THIS LETTER ARE NOT
5 MINE ALONE BUT ARE SHARED BY MANY OTHER ALL SEASONS MEMBERS
6 WHO ARE ANGERED BY THE SURCHARGE AND THE FAILURE TO RECEIVE
7 PRESIDENT'S CLUB MATERIALS.

8 "I EXPECT TWO THINGS TO HAPPEN. FIRST, THE
9 SURCHARGE MUST BE DROPPED IMMEDIATELY. THE ONLY THING YOU
10 ACCOMPLISHED WITH IT WAS TO UPSET YOUR MEMBERSHIP. SECOND,
11 I EXPECT TO RECEIVE MY PRESIDENT'S CLUB MEMBERSHIP
12 MATERIALS INCLUDING THE DIRECTORY LISTING ALL OF THE
13 HOTELS, RESTAURANTS, GOLF COURSES WHICH HONOR THE
14 PRESIDENT'S CLUB CARD. THIS SHOULD BE RECEIVED BY ME NO
15 LATER THAN AUGUST 20, 1997.

16 "SINCERELY, RONALD W. HOLTROP."

17 DO YOU KNOW WHETHER MR. NOVELLI RESPONDED TO
18 THIS LETTER?

19 A NO.

20 Q DO YOU KNOW WHETHER ANYONE AT ALL SEASONS
21 RESPONDED TO THIS LETTER?

22 A NO.

23 Q DID YOU RESPOND?

24 A NO.

25 Q DID YOU SPEAK WITH MR. HOLTROP?

26 A I DON'T KNOW.

1 Q LET'S GO TO EXHIBIT 1013.

2 BEFORE WE DO, I'D LIKE TO MOVE EXHIBIT 1012
3 INTO EVIDENCE.

4 THE COURT: RECEIVED OVER OBJECTION.

5 MR. RIVIN: THANK YOU.

6 (WHEREUPON, EXHIBIT NO. 1012, LETTER, WAS
7 RECEIVED IN EVIDENCE.)

8 BY MR. RIVIN: Q THIS IS A LETTER DATED JULY 25,
9 1997. IT HAS YOUR RECEIVED STAMP ON IT, DOES IT NOT,
10 MR. MALPASS?

11 A YES.

12 Q SO YOU RECEIVED IT ON JULY 28, 1997?

13 A YES.

14 MR. RIVIN: I WOULD LIKE TO PUT THIS LETTER ON THE
15 SCREEN, PLEASE.

16 Q AND THIS IS A LETTER DIRECTED TO YOU?

17 A YES, IT IS.

18 Q FROM MEMBERS LORETTA RAETZEL, JOHN RAETZEL.

19 DO YOU REMEMBER EVER SPEAKING WITH THESE
20 PEOPLE?

21 A NO.

22 Q LET ME JUST READ THIS SHORT LETTER.

23 "I AM WRITING IN REGARD TO MEMBERSHIP NUMBER
24 05-002926 OF ALL SEASONS RESORTS, INC.

25 "WE ARE VERY DISSATISFIED WITH OUR
26 MEMBERSHIP, AND I HAVE TRIED TO SELL IT THROUGH SEVERAL

1 COMPANIES. I DO NOT WANT THIS MEMBERSHIP AND WOULD LIKE TO
2 CANCEL THE CONTRACT.

3 "PLEASE LET ME HEAR FROM YOU."

4 DID YOU RESPOND TO THIS LETTER?

5 A YES.

6 Q DID YOU WRITE THEM?

7 A NO. ANYTHING OF THIS SORT IN MY OFFICE
8 WOULD HAVE BEEN DISCUSSED AND PASSED ON TO ALL SEASONS
9 MANAGEMENT.

10 Q YOU WOULD HAVE PASSED THIS ON TO ALL SEASONS?

11 A YES.

12 Q AND YOU WOULD -- ACTUALLY DISCUSSED THIS
13 WITH THEM?

14 A AS FAR AS WHAT YOU ASKED ME WAS WHETHER
15 THERE WAS A RESPONSE MADE. MY UNDERSTANDING WAS THAT THEY
16 WERE RESPONDING TO THE MEMBERS.

17 Q DO YOU HAVE ANY PERSONAL KNOWLEDGE OF
18 WHETHER ALL SEASONS RESPONDED TO THIS LETTER?

19 A NO.

20 Q DID YOU WRITE BACK TO THE RAETZELS?

21 A NO.

22 Q THEY WROTE TO YOU, BUT YOU DIDN'T WRITE BACK
23 TO THEM?

24 A NO.

25 Q YOU GENERALLY DIDN'T RESPOND TO THESE TYPES
26 OF LETTERS, DID YOU?

1 A NO, I DID NOT.

2 Q IS THAT CORRECT?

3 A I DON'T THINK I EVER DID.

4 MR. RIVIN: I'D LIKE TO MOVE 1013 INTO EVIDENCE.

5 THE COURT: RECEIVED OVER OBJECTION.

6 (WHEREUPON, EXHIBIT NO. 1013, LETTER, WAS
7 RECEIVED IN EVIDENCE.)

8 BY MR. RIVIN: Q I'D LIKE TO MOVE TO EXHIBIT
9 1014.

10 DOES YOUR RECEIVED STAMP APPEAR ON THIS
11 DOCUMENT, MR. MALPASS?

12 A YES.

13 Q I'D LIKE TO PUT IT UP ON THE SCREEN,
14 PLEASE.

15 YOU RECEIVED THIS LETTER ON JULY 31, 1997?

16 A THAT'S -- YES.

17 Q AND THIS IS A LETTER DIRECTED TO YOUR OFFICE?

18 A YES.

19 Q DATED JULY 25, 1997, FROM
20 MRS. VINCENT MILLARD; IS THAT CORRECT?

21 A YES, IT IS.

22 Q LET ME READ THIS SHORT LETTER.

23 "IN REGARD TO YOUR LETTER DATED JULY 11, I
24 SHALL NOT BE ABLE TO SEND YOU ANY MONEY, AS WHEN I TALKED
25 TO FLORIDA, THEY TOLD ME THEY TOOK AWAY FIVE CAMPSITES, AND
26 I FEEL THEY HAVE BROKEN OUR CONTRACT.

1 "ALSO WE ARE NO LONGER CAMPING DUE TO BAD
2 HEALTH, AND WE NO LONGER HAVE CAMPING EQUIPMENT. I HAVE
3 NOT PAID RENTAL UPKEEP SINCE THE FALL OF '96. I TOLD THEM
4 THAT I HAVE ADVERTISED IT, OFFERED IT FREE TO A FRIEND, BUT
5 NO LUCK. ALSO, IT IS ALL SUCH A MESS. WE NO LONGER WANT
6 ANYTHING TO DO WITH IT.

7 "I HAVE TALKED TO OUR LAWYER, AND HE SAYS TO
8 JUST LET IT GO BACK. IT WAS A GOOD DEAL ONCE, BUT NOT ANY
9 MORE FOR OUR SITUATION. JUST WRITE US OFF."

10 AND I'D LIKE TO SHOW EXHIBIT 1015. THIS IS
11 A HANDWRITTEN LETTER.

12 DO YOU SEE YOUR RECEIVED STAMP ON IT?

13 A YES.

14 Q I'D LIKE TO SHOW THIS ON THE SCREEN, PLEASE.

15 THIS IS A LETTER FROM ROGER AND

16 DONNA BARNES. I BELIEVE IT'S DONNA BARNES.

17 AND A COPY OF THIS COPY WAS SENT TO YOU; IS
18 THAT CORRECT?

19 A YES.

20 Q LET ME READ THIS.

21 "WE RECEIVED YOUR LETTER INFORMING US OF
22 YOUR ACTION, CHAPTER 11, ON BEHALF OF OUR MEMBERS AND
23 ORGANIZATION. YOU INDICATED THAT ALL DUES BE SENT TO YOU,
24 ALL SEASONS RESORTS, FROM NOW ON.

25 "OUR CONCERN AT THIS TIME IS THE THREE
26 PAYROLL CHECKS FROM OUR EMPLOYMENT AT A.S.R., ALL SEASONS

1 RESORTS, LAST YEAR THAT HAVE NOT BEEN MADE GOOD. TWO OF
2 THESE CHECKS ARE TO DONNA BARNES. ONE TO ROGER BARNES.
3 TOTAL APPROXIMATELY \$1200.

4 "DO YOU INTEND TO PAY THESE CHECKS OR SHOULD
5 WE USE THEM TO PAY OUR DUES TO A.S.R.? PLEASE LET US
6 KNOW."

7 AND THEN SIGNED BY THE BARNES.

8 YOU DIDN'T RESPOND TO THIS LETTER; YOU
9 DIDN'T RESPOND TO THE BARNES?

10 A I THINK IT GOT PASSED ON TO A.S.R.
11 MANAGEMENT. THIS WAS A RECEIVER MATTER.

12 Q WELL, THIS LETTER WAS SENT DIRECTLY TO
13 A.S.R., AND YOU WOULD HAVE BEEN COPIED ON IT?

14 A YES.

15 Q AND YOU WERE COPIED ON IT?

16 A WELL, YEAH. I HAD DISCUSSIONS ABOUT THIS
17 KIND OF THING. THIS IS DIFFERENT FROM THE OTHERS. THESE
18 WERE PEOPLE THAT WEREN'T PAID, I THINK, DURING THE
19 RECEIVERSHIP.

20 MR. RIVIN: I'D LIKE TO MOVE EXHIBITS 1014 AND 1015
21 INTO EVIDENCE.

22 THE COURT: RECEIVED OVER OBJECTIONS.

23 (WHEREUPON EXHIBIT NOS. 1014 AND 1015,
24 LETTERS, WERE RECEIVED IN EVIDENCE.)

25 MR. RIVIN: AND I HAVE NO FURTHER QUESTIONS.

26 THE COURT: THANK YOU.

1 REDIRECT EXAMINATION

2 BY MR. SHAW: Q MR. MALPASS, I'D LIKE TO STAY
3 WITH THE LETTERS. MR. RIVIN ASKED YOU IF YOU'D RECEIVED
4 ANY LETTERS FROM THE MEMBERS EXPRESSING THEIR -- I'M
5 PARAPHRASING HIS LANGUAGE -- BUT EXPRESSING ANY DISCONTENT
6 WITH THE RESORTS.

7 DO YOU REMEMBER THAT QUESTION?

8 A YES.

9 Q AND YOU SAID YOU RECEIVED ABOUT 10 FROM THE
10 MEMBERS?

11 A THAT WAS MY ESTIMATE.

12 Q AND THEN HE SAID WE'LL SHOW YOU 15?

13 A RIGHT.

14 Q WILL YOU LOOK AT THOSE 15 LETTERS AND TELL
15 ME HOW MANY OF THEM ARE FROM MEMBERS?

16 AND LET ME TRY TO WALK THROUGH WITH YOU, IF
17 I CAN.

18 DO YOU MIND TAKING A MINUTE AND PUTTING THEM
19 IN ORDER?

20 A NO. DO YOU WANT THEM IN THE ORDER --

21 Q 1001 THROUGH 1015, IF YOU WOULD.

22 OKAY. LET'S LOOK AT 1001. THAT'S NOT FROM
23 A MEMBER, IS IT? THAT'S FROM A LAWYER?

24 A THAT'S CORRECT.

25 Q AND THIS TALKS ABOUT DUES; CORRECT?

26 A YES.

1 Q IT DOESN'T TALK ABOUT DISCONTENT WITH THE
2 RESORTS; IT TALKS ABOUT THE DUES?

3 A THAT'S CORRECT.

4 Q AND THAT WAS AN ISSUE BECAUSE THERE HAD BEEN
5 SOME NOTICE SENT OUT FROM MR. DAFF AND -- ABOUT WHERE TO
6 SEND THE DUES; CORRECT?

7 A YES.

8 Q NOW, THAT'S NUMBER -- SO ONE OF THE 15
9 LETTERS IS NOT FROM A MEMBER; IT'S FROM A LAWYER; RIGHT?

10 A RIGHT.

11 Q ALL RIGHT. NUMBER 2 IS FROM A MEMBER;
12 CORRECT? THAT'S THE ONE THAT -- AND I'M SORRY. I GUESS IT
13 MUST BE MY AGE, BUT I'M HAVING TROUBLE READING IT,
14 MR. MALPASS. THIS ONE --

15 A I'M YOUNGER THAN YOU ARE, I THINK, MR. SHAW,
16 AND I CAN'T READ IT EITHER.

17 Q YEAH, I'LL GIVE YOU THAT MUCH.

18 BUT, AT ANY RATE, THAT IS FROM A MEMBER?

19 A YES.

20 Q AND THIS IS ALSO -- WELL, LET ME THEN GO TO
21 1003.

22 AND 1003 IS FROM A MEMBER; CORRECT?

23 A YES.

24 Q AND THIS ALSO IS -- HAS TO DO WITH THE DUES?

25 A YES.

26 Q NOT THE DISCONTENT OF THE RESORTS, JUST

1 WHERE TO SEND THE DUES?

2 A WHERE TO SEND THE DUES.

3 Q 1004 IS NOT FROM A MEMBER; IT'S FROM ANOTHER
4 LAWYER; CORRECT?

5 A THAT'S RIGHT.

6 Q IS THAT THE LAW FIRM MAC ELREE AND HARVEY?

7 A YES.

8 Q NOW, MR. RIVIN SHOWED YOU THE FIRST PAGE OF
9 1004, BUT HE DIDN'T SHOW YOU THE FOURTH PAGE.

10 A NO, HE DIDN'T.

11 Q THE FOURTH PAGE IS A RESPONSE, ISN'T IT, SIR?

12 A IT IS.

13 Q IT'S A RESPONSE FROM ALL SEASONS RESORTS?

14 A YES.

15 Q AND IT TALKS ABOUT -- YOUR HONOR, WE'D LIKE
16 TO PUT THE FOURTH PAGE OF 1004 ON THE SCREEN.

17 MR. RIVIN: YOUR HONOR, I MIGHT POINT OUT THAT THIS
18 LETTER IS DATED -- I'D LIKE TO GO BACK TO THE LETTER. IT'S
19 DATED JULY 24, 1997. AND THE LETTER FROM THE MEMBER'S
20 ATTORNEY IS DATED AUGUST 8, 1997.

21 MR. SHAW: YOUR HONOR, THIS ISN'T MY EXHIBIT. IT'S
22 MR. RIVIN'S EXHIBIT.

23 THE COURT: PROCEED.

24 BY MR. SHAW: Q IT SAYS, "PLEASE ACCEPT THIS
25 LETTER AS ACKNOWLEDGEMENT THAT THE NAME OF YOUR CLIENTS
26 HAVE BEEN DELETED FROM OUR MEMBERSHIP FILES.

1 "OUR MR. JEFFREY KIM" -- I BELIEVE THAT'S
2 KEIM, ISN'T IT? IS THAT --

3 A KEIM IS THE WAY I'VE ALWAYS PRONOUNCED IT,
4 YES.

5 Q -- "WAS APPOINTED RECEIVER FOR ALL SEASONS
6 IN LATE AUGUST OF LAST YEAR."

7 SO FROM AUGUST OF 1996 THROUGH THIS JULY, AS
8 MR. RIVIN POINTS OUT FOR US, JULY 24, 1997, MR. KEIM WAS
9 THE ONE THAT WAS INVOLVED WITH SURCHARGES AND DUES AND
10 DEALING WITH THE MEMBERS; CORRECT?

11 A THAT'S CORRECT.

12 Q AND IT WASN'T MR. NOVELLI, WAS IT?

13 A NO, IT WASN'T.

14 Q THEN IT SAYS, "THE PRESIDENT CLUB
15 OPERATES" -- ALL RIGHT. LET'S GO ON.

16 THIS LETTER -- THIS ISN'T A LETTER FROM A
17 MEMBER?

18 A NO.

19 Q WE'VE LOOKED AT TWO OUT OF FOUR THAT ARE
20 FROM MEMBERS.

21 EXHIBIT 1005, THAT'S NOT FROM A MEMBER
22 EITHER; THAT'S FROM ANOTHER LAWYER?

23 A THAT'S CORRECT.

24 Q AND THEN NUMBER 1006, THAT'S NOT FROM A
25 MEMBER EITHER; IN FACT, THAT'S FROM ALL SEASONS RESORTS,
26 ISN'T IT?

1 A THAT'S CORRECT.

2 Q SO OUT OF THESE SIX LETTERS, WE LOOKED AT
3 TWO FROM MEMBERS?

4 A THAT'S RIGHT.

5 Q NOW, 1007, THAT'S NOT FROM A MEMBER EITHER;
6 THAT'S FROM ANOTHER LAWYER; CORRECT?

7 A THAT'S RIGHT.

8 Q AND THIS LETTER HAS TO DO AGAIN WITH THE
9 DUES AND WHERE TO PAY THEM?

10 A YES.

11 Q ALL RIGHT. OUT OF THE SEVEN THAT WE'VE
12 LOOKED AT, THEN WE HAVE TWO FROM MEMBERS AND FIVE FROM
13 LAWYERS.

14 1008.

15 A AT LEAST ONE WAS FROM ALL SEASONS, PLUS THE
16 RESPONSE.

17 Q THANK YOU. I APPRECIATE THE CLARIFICATION.
18 1008. NOW, THIS IS ONE FROM MAYBE -- AND IF
19 YOU COULD PUT 1008 UP FOR ME. BLOW UP THE VERY BOTTOM.
20 DEAR RAY. THE VERY BOTTOM OF THE PAGE.

21 YOU SEE THE "CAROL," THE -- HANDWRITTEN OVER
22 TO THE RIGHT?

23 A YES.

24 Q AND THIS IS A LETTER FROM CAROL HUTCHESON?

25 A THAT'S WHAT -- YES, THAT'S WHAT IT SAYS.

26 Q AND IT SAYS, "DEAR RAY, WE WOULD APPRECIATE

1 YOUR REPLY PER THE ABOVE LETTER. WE HAVE BEEN LOYAL A.S.R.
2 MEMBERS AND FEEL WE DESERVE A RESPONSE. ALSO, WE WOULD
3 LIKE TO KNOW HOW THIS AFFECTS, NUMBER ONE, CUTTY'S
4 MEMBERSHIP, NUMBER TWO, TRAILINN MEMBERSHIP, AND NUMBER
5 THREE, PRESIDENT'S CLUB AND PRESIDENT'S TRAVEL CLUB FOR
6 VOUCHERS WE ARE STILL IN POSSESSION OF.

7 "THANKS FOR ALL YOU ARE ATTEMPTING TO DO TO
8 KEEP OUR GREAT SYSTEM GOING."

9 THIS ISN'T A LETTER OF DISCONTENT OR
10 SOMEBODY COMPLAINING, IS IT?

11 MR. RIVIN: OBJECTION. THE DOCUMENT SPEAKS FOR
12 ITSELF.

13 MR. SHAW: IT DOES. THANK YOU, MR. RIVIN.

14 THE COURT: SUSTAINED.

15 BY MR. SHAW: Q LET'S GO ON TO 1009.

16 SO WE'VE NOW LOOKED -- THAT WAS FROM
17 CAROL HUTCHESON. THAT WAS THE THIRD OF THE LETTERS THAT
18 WAS FROM A MEMBER. SO WE'VE SEEN THREE. THIS ONE IS FROM
19 A MEMBER; CORRECT?

20 A 1009, YES, IT IS FROM A MEMBER.

21 Q AND THIS ONE SAYS -- I'LL JUST PICK OUT THE
22 THIRD PARAGRAPH. MR. RIVIN READ FROM IT.

23 IT SAYS, "AT THIS TIME I'VE RECEIVED NO
24 INVOICE OF PAYMENT DUE FROM EITHER SOURCE, AND I AM
25 RELUCTANT TO SUBMIT MY DUES TO EITHER UNTIL I DO."

26 THIS LETTER WAS ABOUT THE SUBJECT OF WHERE

1 TO SEND THE DUES?

2 A THAT'S RIGHT.

3 Q ALL RIGHT. LET'S GO TO 1010. SO WE'VE NOW
4 LOOKED, IF I'M KEEPING COUNT, AT FOUR LETTERS FROM
5 MEMBERS. THIS IS THE FIFTH ONE, I BELIEVE, 1010.

6 A I'M NOT SURE YOUR COUNT IS RIGHT.

7 Q IS IT THREE?

8 A I THINK SO.

9 Q ALL RIGHT.

10 MR. MOSHENKO: FIVE MEMBERS.

11 BY MR. SHAW: Q LET'S LOOK AT 1010. I'LL COUNT
12 THEM UP AT THE END, MR. MALPASS. SO BEAR WITH ME.

13 EXHIBIT 1010 -- AND, AGAIN, THIS IS A LITTLE
14 DIFFICULT TO READ. BUT MR. RIVIN READ IT FOR US, AND IT
15 SAYS, "I'VE RECEIVED A STATEMENT AS TO WHERE TO PAY MY
16 DUES."

17 A THAT'S CORRECT.

18 Q SO THIS LETTER WAS REGARDING WHERE TO PAY
19 THE DUES?

20 A YES. THAT'S WHAT IT IS ABOUT.

21 Q ALL RIGHT. I'VE COUNTED THROUGH THE LETTERS
22 WE'VE GONE THROUGH SO FAR, THROUGH 1010, AND WE'VE SEEN
23 LETTERS FROM LAWYERS AND LETTERS FROM -- THERE WAS AN ALL
24 SEASONS RESORTS LETTER, AND I'VE COUNTED FOUR LETTERS FROM
25 MEMBERS. LET'S GO TO --

26 A YEAH. FOUR, FIVE FROM MEMBERS.

1 Q LET'S GO TO. 1011, THIS IS A LETTER FROM A
2 MEMBER?

3 A YES.

4 Q AND THIS ONE IS ASKING FOR A REPLY REGARDING
5 THEIR MEMBERSHIP?

6 A MEMBERSHIP AND DUES -- AND REQUEST FOR DUES.

7 Q OKAY. AND THEN 1012?

8 A YES.

9 Q NOW, THIS ONE TALKS ABOUT A SURCHARGE;
10 RIGHT?

11 A YES.

12 Q NOW, THIS -- ANY SURCHARGE WAS DONE BY
13 MR. KEIM; ISN'T THAT CORRECT?

14 MR. RIVIN: OBJECTION. LACK OF FOUNDATION, YOUR
15 HONOR.

16 THE COURT: OVERRULED.

17 YOU MAY ANSWER, IF YOU KNOW.

18 THE WITNESS: I THINK SO, YES.

19 BY MR. SHAW: Q THEN WE LOOK --

20 A JUST FROM THE TIMING.

21 Q THEN WE LOOK ALL THE 1013, AND THIS IS
22 ANOTHER LETTER FROM A MEMBER?

23 A YES.

24 Q AND THIS IS ABOUT CANCELLING THE CONTRACT?

25 A YES.

26 Q AND THAT WAS IN JULY OF 1997?

1 A YES.

2 Q NOW, DURING THIS, FROM AUGUST OF 1996
3 THROUGH JULY OF 1997, IT WAS MR. KEIM, THE RECEIVER, THAT
4 WAS IN CHARGE OF THE ALL SEASONS RESORTS; CORRECT?

5 A YES.

6 Q AND LET'S LOOK AT 1014. THAT'S ANOTHER
7 MEMBER. AND THIS ONE SAYS -- AND MR. RIVIN READ IT, BUT IT
8 SAYS, "WE'RE NO LONGER CAMPING DUE TO OUR BAD HEALTH; WE
9 NO LONGER HAVE CAMPING EQUIPMENT. AND I'VE NOT PAID A
10 RENTAL UPKEEP SINCE THE FALL OF 1996."

11 AND THEY'RE ASKING JUST TO BE CANCELLED.

12 MR. RIVIN: YOUR HONOR, THE DOCUMENT SPEAKS FOR
13 ITSELF. AND IF MR. SHAW WANTS TO READ THE DOCUMENT, LET
14 HIM READ THE WHOLE THING OR PUT IT UP.

15 THE COURT: WELL, I THINK WE'VE GONE OVER IT WITH
16 YOU.

17 MR. RIVIN: I THINK WE HAVE. I AGREE.

18 MR. SHAW: THANK YOU, YOUR HONOR.

19 Q 1015 IS THE FINAL ONE. AND ON THIS ONE,
20 THIS TALKS ABOUT THE FAILURE TO PAY \$1200 OF EMPLOYMENT
21 CHECKS FROM A.S.R.; DO YOU SEE THAT?

22 A YES.

23 Q AGAIN, THAT WAS MR. KEIM THAT WAS INVOLVED
24 WITH THAT; CORRECT?

25 A YES.

26 Q NOT MR. NOVELLI?

1 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

2 THE COURT: YOU MAY ANSWER, IF YOU KNOW THE ANSWER.

3 WAS IT MR. KEIM?

4 THE WITNESS: YES, YOUR HONOR, JUST FROM THE
5 TIMING. THE 11 HADN'T BEEN FILED.

6 BY MR. SHAW: Q OKAY. I JUST COUNTED THROUGH THE
7 LETTERS FROM MEMBERS. OF THESE 15 -- AND I COUNT 10,
8 MR. MALPASS. THAT'S WHAT YOU TESTIFIED ABOUT IS YOU
9 REMEMBER ABOUT 10 LETTERS FROM MEMBERS?

10 A YES.

11 Q AND THEN MR. RIVIN SAID, NO, IT WAS 15. AND
12 WE LOOKED AT FOUR LETTERS FROM LAWYERS, ONE LETTER FROM ALL
13 SEASONS RESORTS, AND 10 LETTERS FROM MEMBERS ABOUT DUES AND
14 THINGS OF THAT NATURE; CORRECT?

15 MR. SHAW: YES.

16 Q AND, IN FACT, FROM CAROL HUTCHESON WE
17 RECEIVED -- AND THE DOCUMENT SPEAKS FOR ITSELF AS MR. RIVIN
18 POINTS OUT -- "THANKS FOR ALL YOU'RE ATTEMPTING TO DO TO
19 KEEP OUR GREAT SYSTEM GOING"; RIGHT?

20 A YES.

21 Q OKAY. NOW, LET'S SAY 15 LETTERS. THERE
22 WERE 18,000 MEMBERS; CORRECT?

23 A YES.

24 Q IN ALL SEASONS RESORTS?

25 A THAT'S -- YES.

26 Q AND YOU RECEIVED 15 LETTERS?

1 A YES.

2 Q. AND LET'S NOT BREAK IT DOWN AS TO WHETHER 10
3 FROM MEMBERS, AS YOU TESTIFIED, OR 15 THAT MR. RIVIN
4 TESTIFIED ABOUT -- OR EXCUSE ME -- ASKED YOU A QUESTION
5 ABOUT.

6 IN YOUR EXPERIENCE, BACKGROUND AND THE YEARS
7 THAT YOU'VE BEEN PRACTICING IN THE INSOLVENCY AREA, IS 15
8 LETTERS OUT OF 18,000 MEMBERS WHERE LETTERS ARE GOING OUT
9 TO CHANGE AS TO WHERE THEY WERE GOING TO SEND THE DUES, IS
10 THAT A LOT OF LETTERS?

11 A IT'S A VERY SMALL NUMBER. I WAS VERY
12 SURPRISED. AFTER WE FILED THE CASE WITH THAT MANY
13 CREDITORS AND THE KINDS OF NOTICES THAT WENT OUT THAT WE
14 SENT, WE DID BIG MAILINGS AT THE VERY BEGINNING OF THE
15 CASE. AND TO HAVE THAT KIND OF LOW RESPONSE WAS SOMETHING
16 THAT I TALKED ABOUT SEVERAL TIMES. I WOULD NORMALLY EXPECT
17 TO BE COMPLETELY BURIED WITH INQUIRIES, PEOPLE REQUESTING
18 INFORMATION, PEOPLE -- SOME PROTESTING, SOME CANCELING,
19 VARIOUS THINGS. IT WAS VIRTUALLY NONE.

20 Q LET'S GO TO THE BOARD. I WANT TO CHANGE
21 SUBJECTS NOW BECAUSE WE TALKED A LOT ABOUT REJECTIONS AND
22 TERMINATIONS AND YOUR FEES AND ISSUES.

23 AND I'M NOT GOING TO TAKE US BACK THROUGH
24 ALL OF THESE ISSUES, BUT DID ANYTHING THAT MR. RIVIN ASKED
25 YOU ABOUT GIVE COAST TO COAST THE RIGHT TO SEND LETTERS
26 TRANSFERRING 18,000 MEMBERS FROM ALL SEASONS RESORTS?

1 A NO.

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

4 MR. SHAW: YOUR HONOR, THEY HAVE OPENED UP THIS
5 AREA.

6 THE COURT: THE OBJECTION IS OVERRULED.

7 MR. RIVIN: MAY WE HAVE A SIDE BAR, YOUR HONOR?

8 THE COURT: YOU MAY.

9 (DISCUSSION OFF THE RECORD.)

10 BY MR. SHAW: Q MR. MALPASS, LET'S STAY WITH THE
11 BOARD.

12 AND YOU TESTIFIED BEFORE WE HAD OUR SIDEBAR
13 THAT NOTHING THAT HAPPENED WITH THE MOTIONS FOR REJECTIONS
14 AND THE ORDERS OF SALES GAVE THE PLAINTIFFS OR THE
15 DEFENDANTS, COAST TO COAST, THE RIGHT TO SEND OUT THEIR
16 OCTOBER 1997 LETTERS, THEIR NOVEMBER 5TH, 1997, LETTER, AND
17 THEIR NOVEMBER 12TH, 1997, LETTER; CORRECT?

18 A THAT'S CORRECT.

19 MR. RIVIN: OBJECTION. IMPROPER LEGAL OPINION.
20 LACK OF FOUNDATION.

21 THE COURT: OVERRULED.

22 BY MR. SHAW: Q AND THOSE LETTERS -- AS YOU
23 RECALL, WE'VE LOOKED AT THE EXHIBITS REGARDING THE OCTOBER
24 LETTERS. THERE WERE -- AS FAR AS ALL SEASONS RESORTS WAS
25 CONCERNED, THERE WERE 18,000 OF THOSE LETTERS; CORRECT?

26 A THAT'S MY UNDERSTANDING, YES.

1 Q DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
2 THOSE LETTERS WERE ILLEGAL AND VIOLATED THE AUTOMATIC STAY?

3 A I DO.

4 MR. RIVIN: YOUR HONOR, THIS IS IMPROPER LEGAL
5 OPINION. THIS GOES BACK TO WHAT WE TALKED ABOUT ON
6 THURSDAY. IT IS IMPERMISSIBLE. LACK OF FOUNDATION.
7 IMPROPER LEGAL OPINION.

8 THE COURT: OVERRULED.

9 THE WITNESS: I DO HAVE AN OPINION.

10 BY MR. SHAW: Q WHAT'S YOUR OPINION?

11 A MY OPINION IS THAT IT'S ILLEGAL, AND IT
12 VIOLATED THE STAY.

13 Q AND WHY IS IT ILLEGAL, AND WHY DID IT
14 VIOLATE THE AUTOMATIC STAY FOR COAST TO COAST TO SEND OUT
15 18,000 LETTERS TRANSFERRING THE PLAINTIFFS' MEMBERS?

16 MR. RIVIN: THE SAME OBJECTIONS, YOUR HONOR.

17 THE COURT: NOTED. AND OVERRULED.

18 THE WITNESS: THE STAY IS A LAW. IT'S PART OF THE
19 BANKRUPTCY CODE. IT'S DESIGNED TO PROTECT THE PROPERTY
20 FROM BEING INTERFERED WITH BY OTHER PARTIES WITHOUT THE
21 PERMISSION OF THE BANKRUPTCY COURT.

22 COAST TO COAST HAD NOT SOUGHT THE PERMISSION
23 OF THE BANKRUPTCY COURT TO DO THIS, DIDN'T HAVE AN ORDER
24 LIFTING OR MODIFYING THE STAY. AND IT WENT IN AND SENT
25 THESE LETTERS WHICH INTERFERED WITH THE DEBTOR'S PROPERTY.
26 THAT'S A CLEAR STAY VIOLATION. IT'S A VIOLATION OF THE

1 LAW.

2 BY MR. SHAW: Q NOW, WE TALKED ABOUT ALL THESE
3 REJECTIONS AND THESE HEARINGS UP HERE. THIS IS PRETTY
4 SOPHISTICATED, DELICATE BANKRUPTCY PROCEDURES, ISN'T IT?

5 A YES.

6 Q AND IS THAT ONE OF THE REASONS WHY THERE IS
7 AN AUTOMATIC STAY IN PLACE, THAT IS, NOT TO INTERFERE WITH
8 WHAT'S GOING ON IN THE BANKRUPTCY COURT?

9 A DEFINITELY.

10 Q AND WHY IS THAT?

11 A WELL, BECAUSE THE -- I THINK ONE OF THE MOST
12 IMPORTANT REASONS IS COMPANIES THAT ARE IN BANKRUPTCY ARE
13 BY THEIR OWN ADMISSION FINANCIALLY WEAKENED. THEY NEED
14 PROTECTION FROM THE COURT. THEY FILED ASKING FOR IT.
15 VOLUNTARILY IN ALL SEASONS CASE.

16 SO IF SOMEONE COMES IN AND INTERFERES WITH
17 THEM WHEN THEY'RE IN THAT CONDITION, IT CAN DO A WHOLE LOT
18 OF DAMAGE VERY QUICKLY. AND SO THE PROCESS IS SUPPOSED TO
19 FUNCTION. THE JUDGE HAS A ROLE, AND THE PROCESS HAS A
20 ROLE. AND IT'S SUPPOSED TO PROTECT THE ASSETS AND PROTECT
21 THE VARIOUS INTERESTED PARTIES, CREDITORS IN THESE CASES.

22 THE MEMBERS WERE VERY IMPORTANT PARTIES
23 WHOSE RIGHTS DESERVE TO BE PROTECTED UNDER THE LAW. THAT'S
24 WHAT IT'S THERE FOR, AND THE STAY IS SUPPOSED TO KEEP
25 OUTSIDE PARTIES THAT MIGHT WANT TO COME IN AND TAKE THE
26 DEBTOR'S ASSETS AND INTERFERE WITH THEM FROM DOING THAT,

1 UNLESS THEY COME TO THE BANKRUPTCY COURT AND GET PERMISSION
2 FIRST, WHICH DID NOT HAPPEN HERE WITH COAST TO COAST.

3 Q AND DO YOU HAVE AN OPINION AS TO WHETHER OR
4 NOT COAST TO COAST WAS AWARE -- WELL, FIRST OF ALL, LET ME
5 ASK YOU THIS: IS THERE IN THE BANKRUPTCY CODE -- LET'S
6 ASSUME FOR A MOMENT THAT COAST TO COAST WAS IGNORANT, AND
7 I'M USING THAT TERM ADVISEDLY. NO DISRESPECT. BUT LET'S
8 SAY THEY WERE IGNORANT IN OCTOBER OF 1997 ABOUT THEIR
9 LETTER VIOLATING THE AUTOMATIC STAY.

10 IS THAT AN EXCUSE?

11 A NO.

12 Q WHY NOT?

13 A THE STAY IS IN EFFECT AND PREVENTS
14 INTERFERENCE, EVEN IF YOU'RE NOT AWARE OF THE STAY OR NOT
15 AWARE THAT WHAT YOU DO VIOLATES THE STAY OR NOT EVEN AWARE
16 OF THE CASE. THAT'S WHY IT'S SO STRONG. IT IS IN EFFECT.
17 AND IF YOU DO SOMETHING, EVEN UNKNOWINGLY, YOU'RE STILL
18 SUBJECT TO THE STAY, AND YOU STILL VIOLATED IT.

19 Q NOW, SO JUST TO SUM UP THAT POINT, IF COAST
20 TO COAST SAYS, "WELL, WE WEREN'T AWARE OF THE AUTOMATIC,
21 STAY," THAT'S NO EXCUSE; THAT'S STILL A VIOLATION OF THE
22 LAW?

23 MR. RIVIN: I'M GOING TO CONTINUE TO OBJECT TO
24 THIS, YOUR HONOR. I THINK IT'S AN IMPROPER LEGAL
25 CONCLUSION.

26 THE COURT: IT'S BEEN COVERED ALREADY. CUMULATIVE.

1 MR. SHAW: CAN I AT LEAST HAVE HIM ANSWER THE LAST
2 QUESTION THAT'S PENDING?

3 THE COURT: ALL RIGHT.

4 THE WITNESS: IT WOULD STILL BE A VIOLATION OF THE
5 STAY.

6 BY MR. SHAW: Q NOW -- AND WE'VE TESTIFIED -- AND
7 YOU TESTIFIED I BELIEVE IT WAS -- AND I DON'T WANT TO TRY
8 TO RECITE THE DATE, BUT YOU TESTIFIED ON DIRECT EXAMINATION
9 THAT MR. RYMAN HAD RESPONDED TO MR. JOSEPH AND
10 MR. DIAMOND'S LETTERS BACK IN 1992 ABOUT THIS VERY ISSUE OF
11 CONTACTING THE PLAINTIFFS' MEMBERS; CORRECT?

12 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. THIS
13 WITNESS HAS NO PERSONAL KNOWLEDGE OF THIS.

14 THE COURT: SUSTAINED.

15 MR. SHAW: YOUR HONOR --

16 Q IN PREPARATION FOR YOUR OPINION HERE TODAY,
17 DID YOU READ ANY LETTERS FROM MR. JOSEPH'S -- JIM JOSEPH'S
18 LAWYER, MR. DIAMOND, TO PAT BUTLER?

19 A I READ THE LETTERS IN PREPARATION FOR THE
20 TESTIMONY HERE. I ALSO READ CORRESPONDENCE ABOUT THE FIRST
21 NATIONWIDE CASE AND HOW THE CONTRACTS WERE HANDLED WHEN I
22 WAS REPRESENTING ALL SEASONS.

23 Q AS FAR AS COAST TO COAST HAVING KNOWLEDGE OF
24 THE AUTOMATIC STAY?

25 A AS FAR AS THE CONTRACTS NOT BEING INTERFERED
26 WITH AND THE WAY MR. JOSEPH WAS HANDLING IT IN THE FIRST

1 NATIONWIDE CASE, YES.

2 Q AND WE LOOKED AT MR. RYMAN'S LETTER ON
3 THURSDAY?

4 A YES.

5 Q WENT UP ON THE SCREEN AND LOOKED AT HIS
6 LETTER SAYING THAT HE WOULD NOT MAKE ANY CONTACT WITH ANY
7 OF THE MEMBERS UNTIL HE CONTACTED THE TRUSTEE OR THE
8 BANKRUPTCY COURT?

9 A THAT'S CORRECT.

10 MR. RIVIN: YOUR HONOR, I OBJECT TO THIS ON THE
11 BASIS IT'S ARGUMENT. IT ALSO GOES BEYOND THE SCOPE OF THE
12 CROSS-EXAMINATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES, I READ THE LETTERS.

15 BY MR. SHAW: Q AND I'M NOT GOING TO TAKE THE
16 TIME BECAUSE OF THE LATE HOUR TO PUT THEM UP, BUT YOU
17 REMEMBER THOSE LETTERS?

18 A I DO.

19 Q IN YOUR OPINION DID COAST TO COAST HAVE
20 KNOWLEDGE THAT THEY WERE VIOLATING THE AUTOMATIC STAY WHEN
21 THEY WROTE THOSE 18,000 LETTERS TRANSFERRING THE
22 PLAINTIFFS' MEMBERS IN OCTOBER OF 1997?

23 A CLEARLY.

24 MR. RIVIN: OBJECTION. IMPROPER -- COULD THE
25 WITNESS WAIT? COULD YOUR HONOR ASK THE WITNESS TO WAIT
26 UNTIL I FINISH MY OBJECTION BEFORE HE OFFERS HIS

1 TESTIMONY?

2 OBJECTION. LACK OF FOUNDATION. IMPROPER
3 LEGAL OPINION. CALLS FOR SPECULATION.

4 THE COURT: ON THAT GROUNDS I'LL SUSTAIN IT.

5 BY MR. SHAW: Q BUT YOU KNOW MR. RYMAN GOT A
6 LETTER TELLING HIM NOT TO TRANSFER MEMBERS THAT WERE IN
7 BANKRUPTCY; CORRECT? BECAUSE WE SAW THAT LETTER?

8 A YES.

9 MR. RIVIN: OBJECTION.

10 BY MR. SHAW: Q NOW, WOULD IT BE AN EXCUSE FOR
11 COAST TO COAST TO SAY, "WELL, IN OCTOBER OF 1997 WE WERE
12 SENDING" -- "WE WERE SENDING THE LETTERS TO COAST TO COAST
13 MEMBERS, NOT PLAINTIFFS" -- LET ME WITHDRAW THAT AND START
14 AGAIN.

15 WOULD IT BE, UNDER THE BANKRUPTCY CODE, A
16 VALID EXCUSE FOR COAST TO COAST TO -- SAY TO COME HERE TO
17 THIS COURT AND SAY, "WE SENT THESE 18,000 LETTERS TO COAST
18 TO COAST MEMBERS WHO WERE ALSO PLAINTIFFS' MEMBERS"?

19 A NO.

20 MR. RIVIN: THE SAME OBJECTIONS, YOUR HONOR. LACK
21 OF FOUNDATION. IMPROPER LEGAL OPINION.

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

23 BY MR. SHAW: Q WELL, YOU SAW -- YOU SAW
24 MR. RYMAN'S TESTIMONY HERE IN THIS CASE; CORRECT?

25 A YES.

26 Q AND YOU READ HIS TRANSCRIPT?

1 A YES.

2 Q WE PUT IT UP ON THE SCREEN?

3 A YES, I DID.

4 Q AND HE SAID -- AND I'LL -- IF MR. RIVIN
5 WANTS, I'LL FIND THE TESTIMONY. BUT HE SAID THAT, NO, WE
6 WEREN'T SENDING LETTERS TO PLAINTIFFS' MEMBERS. WE WERE
7 SENDING LETTERS TO COAST TO COAST MEMBERS WHO WERE ALSO
8 PLAINTIFFS' MEMBERS; DO YOU REMEMBER THAT TESTIMONY?

9 A YES.

10 Q IS THAT AN EXCUSE FOR A VIOLATION THE
11 AUTOMATIC STAY?

12 MR. RIVIN: THE SAME OBJECTIONS, YOUR HONOR.

13 MR. SHAW: YOUR HONOR, I'VE LAID THE FOUNDATION.

14 THAT'S THE TESTIMONY.

15 THE COURT: I'LL ALLOW IT.

16 BY MR. SHAW: Q IS THAT AN EXCUSE FOR A VIOLATION
17 OF THE AUTOMATIC STAY?

18 A NO.

19 Q WHY NOT?

20 A BECAUSE THE STAY PREVENTS PEOPLE FROM DOING
21 THINGS THAT THEY WOULD OTHERWISE BE LEGALLY ENTITLED TO
22 DO.

23 FOR EXAMPLE, FORECLOSING ON PROPERTY.

24 YOU'RE LEGALLY ENTITLED TO DO IT. BUT ONCE A BANKRUPTCY IS
25 FILED, THE STAY BLOCKS YOU FROM DOING IT.

26 IN THIS CASE, THERE MIGHT HAVE BEEN A RIGHT

1 TO HAVE CERTAIN KINDS OF DISCUSSIONS WITH MEMBERS IF THEY
2 WERE COAST TO COAST MEMBERS. BUT AS SOON AS COAST TO COAST
3 GOES IN AND SAYS -- SENDS A LETTER THAT SAYS, "WE WANT YOU
4 TO COME OVER SOMEWHERE ELSE NOW," THEY'RE INTERFERING WITH
5 THE DEBTOR'S PROPERTY RIGHTS. THAT VIOLATES THE STAY.

6 Q NOW, WE'VE TALKED -- WE TALKED A LOT ABOUT
7 WHAT WAS IN THIS PIPELINE IN OCTOBER AND NOVEMBER REGARDING
8 ALL SEASONS RESORTS MEMBERS, AND MR. RIVIN HAS WALKED US
9 THROUGH EACH ONE.

10 BUT WHAT I WANT TO DO FOR A MINUTE,
11 MR. MALPASS, IS FOCUS ON THIS END OVER HERE. AND IF YOU
12 CAN JUST -- BECAUSE YOU WERE THERE AT THE AUCTION, RIGHT?

13 A YES, I WAS.

14 Q AND THE AUCTION OCCURRED OCTOBER 27?

15 A YES.

16 Q AND THEN THE ORDER WAS ENTERED LIKE NOVEMBER
17 5TH, I BELIEVE?

18 A THE SALE ORDER WAS NOVEMBER 5.

19 Q NOVEMBER 5. AND THESE 18,000 MEMBERS WERE
20 SOLD TO SOMEBODY, WEREN'T THEY?

21 MR. RIVIN: OBJECTION. LACK OF FOUNDATION. THIS
22 IS HEARSAY. AND IT'S CUMULATIVE.

23 THE COURT: SUSTAINED.

24 BY MR. SHAW: Q TO YOUR KNOWLEDGE DID SOMEBODY BUY
25 THE 18,000 MEMBERS?

26 MR. RIVIN: THE SAME OBJECTION.

1 THE COURT: TO HIS KNOWLEDGE CLARIFIES IT.

2 DO YOU HAVE ANY KNOWLEDGE OF THAT?

3 THE WITNESS: YES, I DO, YOUR HONOR.

4 THE COURT: WHO BOUGHT IT?

5 THE WITNESS: THE BUYERS OF EACH OF THE PARKS AT
6 AUCTION.

7 BY MR. SHAW: Q AND WHO WERE THEY?

8 A IT'S LISTED IN THE ORDER. EACH PARK HAD A
9 BUYER. SOME BUYERS BOUGHT MORE THAN ONE PARK, BUT THERE
10 WAS A PARTICULAR BUYER FOR EACH PARK AS LISTED IN THE
11 ORDER.

12 Q ALL RIGHT. LET'S LOOK AT EXHIBIT 383, WHICH
13 IS THE ORDER FOR SALE.

14 AND WHILE THAT'S GETTING IN ORDER FOR US TO
15 MOVE THROUGH SOME TIME, MR. MALPASS, THE PLAINTIFFS IN THIS
16 CASE PURCHASED SOME OF THESE MEMBERS; CORRECT?

17 A YES.

18 Q AND SO THEY NOW HAVE, AS FAR AS YOUR OPINION
19 IS CONCERNED, LEGAL RIGHT TO THOSE MEMBERS; CORRECT?

20 MR. RIVIN: OBJECTION. THIS IS HEARSAY. LACK OF
21 FOUNDATION. IMPROPER LEGAL OPINION. MR. MALPASS IS
22 TESTIFYING DIRECTLY INCONSISTENTLY WITH THE DOCUMENTS THAT
23 WERE SHOWN TO HIM EARLIER.

24 THE COURT: WELL, THAT'S FOR THE JURY TO DETERMINE,
25 HIS CREDIBILITY. HE SAID HE WAS AT THE AUCTION. HE HEARD
26 THEM.

1 THE WITNESS: YES. THE BUYERS -- THE PLAINTIFFS --
2 THERE'S A PLAINTIFF IN THIS ACTION THAT WAS A BUYER AT THE
3 AUCTION. AND, THEREFORE, THEY GOT THE MEMBERS OF THE PARKS
4 THAT THEY BOUGHT.

5 BY MR. SHAW: Q AND ONE OF THOSE PLAINTIFFS WAS
6 APOLLO; CORRECT?

7 A YES. THAT'S WHAT I'M TALKING ABOUT.

8 Q AND THEY BOUGHT --

9 A THEY BOUGHT AT LEAST ONE PARK, AND I THINK
10 THEY ENDED UP WITH SEVERAL OTHERS. IT WILL BE SHOWN IN THE
11 ORDER.

12 Q CAN YOU SEE IT FROM THERE, MR. MALPASS?

13 A YES, I CAN.

14 Q ARE YOU OKAY WITH THAT?

15 A THAT'S FINE.

16 Q LET'S LOOK AT PAGE 2. YOU HAVE IDENTIFIED
17 THIS AS BEING THE ORDER?

18 A YES, THAT'S THE ORDER.

19 Q OKAY. LET'S LOOK AT PAGE 2, LINE 22. I'M
20 SORRY. THAT'S NOT THE RIGHT PAGE 2. RIGHT. WE'RE HERE.
21 THANK YOU.

22 SO LET'S JUST LOOK AT ONE OF THE -- THE
23 PROPERTY KNOWN AS EAGLE LAKE. "ALONG WITH ALL THE
24 FIXTURES, PERSONAL PROPERTY RELATED THERETO, THEREON AND
25 THEREIN" -- SOME GREAT LAWYER LANGUAGE -- "AND ALONG WITH
26 THE LIST OF MEMBERS FOR WHOM EAGLE LAKE IS THE HOME

1 RESORT."

2 NOW, I KNOW YOU AND MR. RIVIN HAVE AN
3 AGREEMENT AS TO WHAT THAT LANGUAGE MEANS, BUT IT'S YOUR
4 UNDERSTANDING THAT PERSONAL PROPERTY MEANS THE MEMBERSHIP
5 CONTRACTS; CORRECT?

6 A THAT'S MY OPINION, YES. AND THAT'S WHAT
7 ALSO WAS SHAPED BY WHAT HAPPENED IN THE BANKRUPTCY
8 PROCEEDINGS IN THIS PARTICULAR CASE.

9 Q SO THIS PROPERTY WAS SOLD. AND LET'S LOOK
10 AT PAGE 4, LINE 2, PLEASE. AND LET'S GO DOWN TO -- I'M
11 SORRY. LINE 19 THROUGH 22. AND THIS SAYS, "THE REAL
12 PROPERTY KNOWN AS GRASS LAKE" -- AND I'LL SKIP -- "ALONG
13 WITH ALL FIXTURES AND PERSONAL PROPERTY RELATED THERETO."

14 AND IN YOUR OPINION AND YOUR PERCIPIENT
15 KNOWLEDGE OF BEING THERE, THAT MEANS THE MEMBERSHIP
16 CONTRACTS; CORRECT?

17 A YEAH. RELATED THERETO, YES.

18 Q WAS TRANSFERRED TO THE APOLLO GROUP, ONE OF
19 THE PLAINTIFFS IN THIS CASE; CORRECT?

20 A THAT'S CORRECT.

21 Q FOR \$170,000, WHICH AMOUNT SHALL BE OFFSET
22 AGAINST THE APOLLO GROUP'S SECURED CLAIM.

23 DID THE APOLLO GROUP HAVE A SECURED CLAIM ON
24 THAT RESORT?

25 A YES.

26 Q WHAT'S A SECURED CLAIM?

1 A IT'S A CLAIM THAT'S SECURED BY A LIEN ON THE
2 PROPERTY. THEY HAD A TRUST DEED ON THE -- WELL, I'M --
3 SINCE THE PARKS WERE IN DIFFERENT STATES, SOME OF THEM WERE
4 TRUST DEEDS. SOME OF THEM WERE MORTGAGES, RECORDED
5 ENCUMBRANCE.

6 Q LET'S GO TO PAGE 6, LINES 11 THROUGH 19.

7 A IF YOU GO TO PARAGRAPH 6, IT WILL TALK ABOUT
8 ORLANDO.

9 Q I'M SORRY. CAN YOU GO UP TO THE TOP OF THE
10 PAGE, MR. O'CONNOR, AND BLOW UP ALL THE WAY DOWN TO 7.
11 THANK YOU.

12 NOW, IS THE ORLANDO RESORT -- WERE YOU
13 PRESENT WHEN MR. GARY MERRITT TESTIFIED?

14 A YES. AT LEAST FOR A WHILE I SAW HIM TESTIFY
15 YESTERDAY.

16 Q AND IT SAYS, "ALONG WITH THE LIST OF MEMBERS
17 FOR WHOM ORLANDO IS THE HOME RESORT, SHALL BE AND HEREBY IS
18 TRANSFERRED TO THE APOLLO GROUP FOR A MILLION SEVEN, WHICH
19 AMOUNT SHALL BE OFFSET AGAINST THE APOLLO GROUP'S SECURED
20 CLAIM."

21 SO IT'S YOUR OPINION, SIR, THAT THE APOLLO
22 GROUP PURCHASED THE ORLANDO PROPERTY AND THE MEMBERSHIP'S
23 CONTRACTS FOR THAT MILLION SEVEN?

24 A YES.

25 Q NOW, LET'S GO DOWN TO PARAGRAPH 7 THAT WE
26 LOOKED AT.

1 IT SAYS, "THE PERSONAL PROPERTY OTHER THAN
2 THE HOUSE TRAILERS LOCATED AT ORLANDO SHALL BE AND HEREBY
3 IS SOLD AND TRANSFERRED TO HANS SCHULZ."

4 WHO IS HANS SCHULZ?

5 A HE IS ONE OF THE PEOPLE THAT I DEALT WITH
6 DURING THE A.S.R. CASE.

7 Q AND HE IS BEING IN TRUST FOR THE SECURITY
8 CAPITAL NOTEHOLDERS FOR \$35,000.

9 WHO IS THE SECURITY CAPITAL NOTEHOLDERS?

10 A MY RECOLLECTION IS THAT THEY WERE A SECURED
11 CREDITOR. THAT SECURITY CAPITAL -- THERE WAS A NOTE AND
12 THEY -- IT WAS SECURED BY A TRUST DEED ON THIS PROPERTY.
13 BUT I'M STRAINING A LITTLE.

14 Q AND WHAT DOES IT MEAN FOR MR. SCHULZ TO BE
15 TRANSFERRED TO MR. SCHULZ IN TRUST?

16 A WELL, THAT WOULD MEAN THAT HE WOULD HOLD
17 THAT PIECE OF PROPERTY FOR THE BENEFIT OF THE NOTEHOLDERS.
18 IT'S NOT HIS PROPERTY. HE IS ACTING AS A TRUSTEE.

19 Q NOW, I'M NOT GOING TO GO THROUGH THE REST OF
20 THE ORDER BECAUSE OF THE HOUR. BUT THE ORDER TALKS ABOUT
21 WHO BOUGHT THE PROPERTIES AND THE MEMBERSHIP CONTRACTS;
22 CORRECT?

23 A FOR EACH ONE.

24 MR. RIVIN: OBJECTION. THE DOCUMENT SPEAKS FOR
25 ITSELF.

26 BY MR. SHAW: Q NOW, LET'S TALK ABOUT THE FIRST

1 -- LET'S TAKE THAT OFF AND TALK ABOUT THE FIRST
2 NATIONWIDE. LET'S LOOK AT EXHIBIT 39. AND LET'S BLOW UP
3 THAT LAST PARAGRAPH.

4 YOUR PREVIOUS TESTIMONY, YOU WERE FAMILIAR
5 WITH THIS LETTER, THIS EXHIBIT 39?

6 A YES.

7 MR. RIVIN: YOUR HONOR, THIS IS CUMULATIVE. GOES
8 BEYOND THE SCOPE OF THE CROSS.

9 THE COURT: IT IS. SUSTAINED.

10 BY MR. SHAW: Q YOU WERE AWARE -- LET'S TAKE IT
11 DOWN MR. O'CONNOR.

12 YOU WERE AWARE THAT MR. NOVELLI WROTE TO
13 COAST TO COAST AND ASKED THEM NOT TO INTERFERE WITH THEIR
14 MEMBERS BECAUSE IF HE DID SO, IT WAS GOING TO CAUSE THEM
15 DAMAGE?

16 MR. RIVIN: THE SAME OBJECTIONS, YOUR HONOR.

17 THE COURT: SUSTAINED.

18 BY MR. SHAW: Q AND YOU WERE AWARE THAT LETTERS --
19 WELL, LET'S LOOK AT EXHIBIT 1691, IF YOU CAN PUT THAT UP,
20 MR. O'CONNOR.

21 WHAT IS EXHIBIT 1691?

22 MR. RIVIN: MAY WE HAVE A CHANCE TO TAKE A LOOK AT
23 IT, PLEASE? I THINK IT'S THE SAME AS ONE OF THE
24 PLAINTIFFS' -- ONE OF THE DEFENDANTS' EXHIBITS, BUT I'D
25 LIKE TO MAKE SURE.

26 YOUR HONOR, I BELIEVE THIS GOES BEYOND THE

1 SCOPE OF THE CROSS. I BELIEVE IT'S DEFENDANTS' EXHIBIT
2 376, BUT I DID NOT RAISE THIS ISSUE WITH THE WITNESS.

3 MR. SHAW: YOUR HONOR, HE TALKED ABOUT THE FIRST
4 NATIONWIDE -- I'M JUST GOING TO ASK HIM A COUPLE OF
5 QUESTIONS. HE TALKED ABOUT THE REVCON. HE TALKED ABOUT
6 THE THOUSAND ADVENTURES, ALL HAVING TO DO WITH THE
7 BANKRUPTCY ISSUES, WHEN HE WAS GETTING INTO THE AUTOMATIC
8 STAY QUESTION THAT HE ASKED.

9 MR. RIVIN: I DON'T BELIEVE I ASKED ABOUT FIRST
10 NATIONWIDE. I ASKED ABOUT ALL SEASONS AND REVCON. THAT'S
11 MY RECOLLECTION.

12 THE COURT: ALL RIGHT. LET'S MOVE ON WITH IT.
13 I'LL OVERRULE THE OBJECTION.

14 BY MR. SHAW: Q LET'S LOOK AT THE FIRST PAGE OF
15 1691.

16 MR. MALPASS, I'M GOING TO PUT THIS IN FRONT
17 OF YOU BECAUSE I KNOW IT'S NOT A REAL CLEAN COPY.

18 A THANK YOU.

19 Q NOW, THIS IS AN ORDER GRANTING THE MOTION TO
20 CONVERT THE CASE TO CHAPTER 7, AND IT'S DATED -- THE FILING
21 STAMP IS DATED APRIL 9, 1998.

22 A YES.

23 Q AND WE TALKED ABOUT THIS IN YOUR DIRECT
24 EXAMINATION; THAT THE AUTOMATIC STAY IN THIS CASE WAS IN
25 EFFECT UNTIL AT LEAST THROUGH THIS APRIL 9, 1998, PERIOD?

26 A THAT'S CORRECT.

1 Q AND SO THAT ANY LETTERS SENT BY COAST TO
2 COAST IN OCTOBER OF 1997 WOULD HAVE BEEN A VIOLATION OF THE
3 AUTOMATIC STAY, AS FAR AS FIRST NATIONWIDE WAS CONCERNED?

4 A YES.

5 MR. RIVIN: OBJECTION. IMPROPER LEGAL OPINION.
6 LACK OF FOUNDATION.

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

8 BY MR. SHAW: Q ALL RIGHT. CONVERT THE CASE. IT
9 SAYS, "ABANDON PROPERTY OF THE ESTATE."

10 NOW, I'M MOVING YOU FROM THE SUBJECT OF
11 REJECTION THAT WE TALKED ABOUT WITH ALL SEASONS RESORTS,
12 AND I'D LIKE TO ASK YOU ABOUT, WHAT DOES "ABANDON THE
13 PROPERTY OF THE ESTATE" MEAN?

14 THE COURT: MR. SHAW, HOW MUCH LONGER ARE YOU GOING
15 TO BE.

16 MR. SHAW: IT'S GOING TO BE PROBABLY ANOTHER HOUR,
17 YOUR HONOR.

18 THE COURT: WE'LL DO THAT TOMORROW.

19 MR. RIVIN: LET ME -- FOR THE RECORD LET ME OBJECT
20 TO THIS QUESTION. GOES BEYOND THE SCOPE OF THE CROSS.

21 THE COURT: SUSTAINED.

22 LADIES AND GENTLEMEN, REMEMBER. TOMORROW IS
23 FLAG DAY. FLY YOUR FLAGS TOMORROW. 9:00 TOMORROW MORNING.

24 (WHEREUPON THE COURT WAS IN RECESS UNTIL
25 WEDNESDAY, JUNE 14, 2000, 9:00 A.M.)

26

