

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

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

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

REPORTER'S TRANSCRIPT

JULY 11, 2000

APPEARANCES:

FOR THE PLAINTIFFS:

GERALD M. SHAW
ATTORNEY AT LAW

TERRY M. MOSHENKO
ATTORNEY AT LAW

FOR THE DEFENDANTS:

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

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

HEIDI K. STEWART, CSR #6058
OFFICIAL COURT REPORTER

INDEX

WITNESSES FOR THE PLAINTIFFS:

	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
RAYMOND NOVELLI (CONTINUED)					
BY MR. SHAW:			5507		
BY MR. SHERMAN:				5566	

I N D E X

EXHIBIT	IN EVIDENCE
EXHIBIT NO. 1471, OBJECTION TO PROPOSED ORDER	5576

1 WESTMINSTER, CALIFORNIA - TUESDAY, JULY 11, 2000

2 MORNING SESSION

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

5 THE COURT: PROCEED.

6 MR. SHAW: THANK YOU, YOUR HONOR.

7 RAYMOND NOVELLI,

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

11 REDIRECT EXAMINATION

12 BY MR. SHAW: Q GOOD MORNING, MR. NOVELLI.

13 A GOOD MORNING, .

14 Q I'D LIKE TO TAKE US TO A POINT IN TIME WHEN
15 YOU SENT THE LETTER, AUGUST 27, 1997, TO WITHDRAW THE FIRST
16 NATIONWIDE RESORTS. I'D LIKE TO START IN THAT TIME
17 PERIOD.

18 AND ON CROSS-EXAMINATION MR. SHERMAN ASKED A
19 LOT OF QUESTIONS ABOUT THINGS THAT HAPPENED PRIOR TO THIS
20 POINT IN TIME. ONE OF THE THINGS THAT HE ASKED ABOUT WAS
21 THE 35,000 LETTERS THAT WENT OUT AFTER THE NOTICE OF
22 WITHDRAWAL. AND THE OTHER THING THAT HE ASKED ABOUT WAS
23 YOUR FELONY CONVICTION IN 1973.

24 DO YOU REMEMBER THAT TESTIMONY?

25 A YES.

26 Q AND THAT FELONY CONVICTION WAS FOR ACTIONS

1 THAT TOOK PLACE PRIOR TO 1973; CORRECT?

2 A YES.

3 Q SO WE'RE, BY MY MATH, 24 -- ABOUT 24 YEARS
4 PRIOR TO YOUR WITHDRAWAL OF THE FIRST NATIONWIDE RESORTS ON
5 AUGUST 27, 1997.

6 WAS THERE ANYTHING TO YOUR KNOWLEDGE ABOUT
7 THIS FELONY CONVICTION 24 YEARS PRIOR TO YOUR WITHDRAWAL
8 THAT CAUSED THE DEFENDANTS IN THIS CASE, COAST TO COAST, TO
9 SEND OUT --

10 MR. SHERMAN: OBJECTION.

11 BY MR. SHAW: Q -- 35,000 LETTERS TO STEAL YOUR
12 MEMBERS?

13 MR. SHERMAN: OBJECTION. THAT CALLS FOR
14 SPECULATION BY THIS WITNESS.

15 THE COURT: SUSTAINED.

16 MR. SHERMAN: CALLS FOR A LEGAL CONCLUSION.

17 THE COURT: SUSTAINED.

18 BY MR. SHAW: Q WAS THERE ANYTHING, TO YOUR
19 KNOWLEDGE, INVOLVED ABOUT YOUR FELONY CONVICTION 24 YEARS
20 AHEAD OF TIME THAT CAME INTO PLAY AT ALL ABOUT -- THAT YOU
21 WERE AWARE OF THAT COAST TO COAST BROUGHT UP WHEN THEY SENT
22 OUT THEIR 35,000 LETTERS?

23 A ABSOLUTELY NOTHING.

24 MR. SHERMAN: SAME OBJECTIONS.

25 THE COURT: SUSTAINED.

26 MR. SHERMAN: MOVE TO STRIKE.

1 BY MR. SHAW: Q DID COAST TO COAST IN AUGUST OF
2 1997 AND THEREAFTER MENTION IN ANY LETTER THAT THEY WERE
3 TRANSFERRING YOUR MEMBERS BECAUSE OF A CONVICTION THAT
4 HAPPENED 24 YEARS EARLIER?

5 A NO.

6 Q NEVER MENTIONED IT IN ANY OF THEIR CONTACTS
7 OR LETTERS OR CONVERSATIONS WITH YOU AFTER AUGUST 27, 1997?

8 A NEVER MENTIONED IT. THEY WERE ALWAYS AWARE
9 OF IT.

10 Q NOW --

11 MR. SHERMAN: MOVE TO STRIKE "THEY WERE ALWAYS
12 AWARE OF IT."

13 THE COURT: MOTION GRANTED.

14 MR. SHERMAN: NOT RESPONSIVE TO THE QUESTION.
15 BASED ON SPECULATION AND HEARSAY.

16 THE COURT: MOTION GRANTED.

17 BY MR. SHAW: Q LET'S TALK ABOUT YOUR
18 UNDERSTANDING OF WHEN THEY WERE AWARE OF IT.

19 IN -- AND, AGAIN, WE TALKED ABOUT A LOT OF
20 OTHER THINGS THAT HAPPENED DURING THIS 24-YEAR TIME PERIOD
21 THAT DIDN'T HAVE ANYTHING TO DO WITH THEM TRANSFERRING YOUR
22 MEMBERS. AND ONE OF THEM WAS THIS ALL SEASONS RESORTS.

23 NOW, YOU CAME INTO THE ALL SEASONS RESORTS
24 AND GOT INVOLVED IN THAT IN ABOUT 198- --

25 MR. SHERMAN: OBJECTION.

26 THE WITNESS: 1986.

1 MR. SHERMAN: THAT IS IMPROPER ARGUMENT ABOUT --
2 NOT HAVING ANYTHING TO DO WITH THE TRANSFER OF THE MEMBERS
3 FOR THE REASONS THE COURT ALREADY RULED ON.

4 THE COURT: SUSTAINED.

5 BY MR. SHAW: Q THE ALL SEASONS RESORTS IN 1986
6 WAS A PUBLIC COMPANY; CORRECT?

7 A YES, IT WAS.

8 Q NOW, A PUBLIC COMPANY MEANS THEY'RE TRADED
9 ON THE STOCK EXCHANGE?

10 A AND TRADED ON THE NASDAQ.

11 Q AND THE NASDAQ YOU HAD CERTAIN -- FOR YOUR
12 INDIVIDUAL BACKGROUND YOU HAD CERTAIN REPORTING
13 REQUIREMENTS; CORRECT?

14 A YES.

15 Q AND DID YOU HAVE TO IDENTIFY ANY AGENCIES
16 THAT YOU HAD BEEN CONVICTED OF A FELONY?

17 A NO. AS A -- S.E.C. CALLS FOR FIVE YEARS
18 PRIOR, AND AFTER THAT YOU DON'T HAVE TO REPORT IT ANY
19 LONGER.

20 Q IN ANY PUBLIC FORUM OVER THIS 24-YEAR TIME
21 PERIOD, FROM 1973 TO AUGUST 27, 1997, DID YOU HAVE TO
22 REPORT YOUR FELONY SUCH THAT COAST TO COAST WOULD KNOW
23 ABOUT IT AS A MATTER OF PUBLIC RECORD?

24 MR. SHERMAN: OBJECTION, YOUR HONOR. THIS GOES
25 BEYOND THE SCOPE OF THE CROSS-EXAMINATION.

26 THE COURT: THE OBJECTION IS WELL TAKEN.

1 SUSTAINED.

2 BY MR. SHAW: Q HOW DID YOU KNOW THAT COAST KNEW
3 ABOUT YOUR FELONY?

4 MR. SHERMAN: OBJECTION. THIS GOES BEYOND THE
5 SCOPE OF CROSS-EXAMINATION.

6 THE COURT: SUSTAINED.

7 BY MR. SHAW: Q NOW, LET'S TALK ABOUT THAT
8 24-YEAR TIME PERIOD.

9 DID COAST TO COAST EVER TELL YOU DURING THAT
10 TIME PERIOD THAT THEY DIDN'T WANT YOUR MEMBERS TO MAKE
11 APPLICATION FOR COAST TO COAST BECAUSE OF YOUR FELONY?

12 A ABSOLUTELY NOT.

13 Q THEY STILL COLLECTED DUES FROM YOUR MEMBERS
14 OVER THAT TIME PERIOD?

15 A PROBABLY CLOSE TO 40, \$50 MILLION.

16 Q AND THEY NEVER MENTIONED TO YOU ANYTHING
17 DURING THAT TIME PERIOD -- ANYTHING ABOUT YOUR FELONY?

18 A NO.

19 Q AND THAT FELONY WAS A MATTER OF PUBLIC
20 RECORD?

21 A YES.

22 Q FOR EVERYONE TO SEE?

23 A CORRECT.

24 Q ALL RIGHT. LET'S LOOK AT --

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

26 THE COURT: YOU MAY.

1 (DISCUSSION OFF THE RECORD.)

2 MR. SHERMAN: FOR THE RECORD, WE MOVE TO STRIKE THE
3 WITNESS'S TESTIMONY WITH RESPECT TO THE ALLEGED AMOUNT OF
4 MONIES RECEIVED BY COAST TO COAST. THE WITNESS OBVIOUSLY
5 HAS NO BASIS OF KNOWING THAT. IT'S A CONCLUSION AND WAS
6 NOT RESPONSIVE.

7 THE COURT: THAT MOTION IS GRANTED.

8 BY MR. SHAW: Q HOW DO YOU KNOW THAT THEY
9 COLLECTED 40 TO \$50 MILLION WORTH OF DUES FROM THE TIME
10 PERIOD THAT YOU WERE WITH ALL SEASONS RESORTS THROUGH
11 AUGUST OF 1997?

12 A OVER THE YEARS WE HAD -- BETWEEN THE TWO
13 COMPANIES, T.A.I. AND THE DIFFERENT COMPANIES THAT WE HAD,
14 WE HAD 167,000 MEMBERS OVER THE YEARS, MOST OF THEM PRIOR
15 TO THE '97 LETTER, WAY BEFORE THAT. AND YOU TAKE THAT AND
16 AVERAGED IT SOMEWHERE AROUND \$60 A YEAR ON AN AVERAGE OF
17 150,000 MEMBERS, I THINK THAT YOU WILL COME UP WITH THAT
18 FIGURE.

19 MR. SHERMAN: OBJECTION. MOVE TO STRIKE. THE
20 WITNESS HAS DEMONSTRATED -- IT LACKS FOUNDATION, LACKS
21 KNOWLEDGE. AND, MOREOVER, THE TESTIMONY WAS VIOLATIVE OF
22 THE SECONDARY EVIDENCE RULE. THE BEST EVIDENCE ARE RECORDS
23 THEMSELVES.

24 THE COURT: WELL, I'M GOING TO LET THE JURY FIGURE
25 THAT OUT.

26 MR. SHAW: THANK YOU, YOUR HONOR.

1 Q \$60 A MEMBER, 150-, 160,000 MEMBERS A YEAR
2 FROM AN EXTENDED PERIOD OF TIME, OVER A 10-YEAR PERIOD, AND
3 THEY NEVER ONCE MENTIONED TO YOU THAT THEY WOULDN'T ACCEPT
4 THOSE DUES BECAUSE OF SOME FELONY THAT HAPPENED 24 YEARS
5 EARLIER; IS THAT CORRECT?

6 A NO.

7 MR. SHERMAN: OBJECTION. 160,000 VIOLATES THE
8 SECONDARY EVIDENCE RULE, YOUR HONOR.

9 THE COURT: SUSTAINED.

10 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

11 THE COURT: GRANTED.

12 BY MR. SHAW: Q WELL, YOU KNEW HOW MANY MEMBERS
13 THAT YOU HAD THAT WERE PAYING DUES TO COAST; ISN'T THAT
14 CORRECT?

15 A NOT AT ALL TIMES, BUT ON THE AVERAGE I DID,
16 YES.

17 Q SO YOU'RE GIVING US AN AVERAGE STATEMENT
18 BASED ON YOUR OWN PERSONAL KNOWLEDGE?

19 A CORRECT.

20 Q NOW, LET'S TALK ABOUT WHO ELSE KNEW ABOUT
21 YOUR FELONY.

22 YOU MET WITH TOMMY CLOUD AND THE LENDERS IN
23 OR ABOUT THE SPRING OF 1997 WHEN THEY ASKED YOU TO TAKE
24 OVER THE THOUSAND AMERICA PROBLEM; CORRECT?

25 A CORRECT.

26 Q WAS IT YOUR UNDERSTANDING THAT THEY KNEW

1 ABOUT THE FELONY?

2 A YES, THEY DID.

3 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION.

4 THE COURT: SUSTAINED.

5 BY MR. SHAW: Q DID YOU TELL THEM ABOUT IT?

6 A YES.

7 Q WHAT DID YOU TELL THEM?

8 A I TOLD THEM MY BACKGROUND, FROM HOW I GOT
9 INTO THE INDUSTRY, MY BACKGROUND WITH THE CONVICTION, WHICH
10 THEY WERE ALREADY AWARE OF. BUT IN THE MEANTIME I
11 REITERATED IT TO THEM. IT'S PRETTY COMMON KNOWLEDGE IN THE
12 ENTIRE INDUSTRY.

13 Q AND DID THAT EVER STOP THEM FROM ASKING YOU
14 TO TAKE OVER THE THOUSAND AMERICA?

15 A THOUSAND ADVENTURES.

16 Q THOUSAND ADVENTURES PROBLEM.

17 MR. SHERMAN: OBJECTION.

18 THE WITNESS: I DON'T --

19 MR. SHERMAN: CALLS FOR SPECULATION AS TO WHAT WAS
20 IN THEIR MIND.

21 THE COURT: SUSTAINED.

22 BY MR. SHAW: Q AT ANY RATE, WITH THAT BACKGROUND
23 AND WITH THAT KNOWLEDGE, THEY STILL CONSUMMATED THE
24 TRANSACTION WITH YOU IN REGARDS TO THOUSAND AMERICA?

25 A YES.

26 Q THOUSAND ADVENTURES. EXCUSE ME.

1 A YES. THOUSAND ADVENTURES.

2 Q NOW, LET'S LOOK AT THE TESTIMONY THAT YOU
3 GAVE ON JUNE 28TH IN RESPONSE TO MR. SHERMAN'S QUESTIONS,
4 SPECIFICALLY AT PAGE 4965. AND LET'S GO DOWN TO THE BOTTOM
5 OF THE PAGE.

6 I KNOW THIS IS DIFFICULT FOR YOU,
7 MR. NOVELLI, BECAUSE YOU'RE KIND OF BLOCKED A LITTLE BIT.
8 LET ME SEE IF I CAN HAND YOU THE TRANSCRIPT ITSELF, AND
9 I'LL READ.

10 SPECIFICALLY THE LANGUAGE THAT I'D LIKE TO
11 FOCUS ON HAS TO DO WITH MR. SHERMAN'S QUESTION WHERE HE
12 SAYS, "WHAT'S YOUR POSITION TODAY, THAT COAST SNUCK THE
13 MEMBERSHIP LANGUAGE THROUGH, AND YOU WEREN'T AWARE OF THIS
14 LANGUAGE AT THE TIME, OR THAT THIS AGREEMENT WAS SIGNED
15 WITH YOUR BLESSING AND IN YOUR PRESENCE?"

16 AND THEN MY OBJECTION IS OVERRULED.

17 AND YOU SAY, "OVER THE COURSE I'VE SIGNED
18 AND BEEN INVOLVED IN THOUSANDS AND THOUSANDS OF DIFFERENT
19 DOCUMENTS. SOMETIMES A LITTLE DIFFICULT TO REALLY, YOU
20 KNOW, ZERO IN ON ONE DOCUMENT WHEN YOU'RE ASKED A
21 QUESTION. AND ALL OF A SUDDEN, YOU KNOW, YOU'RE REVIEWING
22 THESE DOCUMENTS -- OR I REVIEWED THEM DURING THE COURSE OF
23 THIS LITIGATION. AND MY MEMORY IS SOMETIMES THEN BROUGHT
24 BACK TO WHAT IT WAS AND WHAT HAPPENED DURING THAT TIME.
25 I'M ABLE TO TALK TO MR. SCHULZ."

26 NOW, ONE OF THE DOCUMENTS THAT MR. SHERMAN

1 ASKED YOU ABOUT WAS EXHIBIT 51, WHICH WAS AN AFFILIATION
2 AGREEMENT. AND I'D LIKE TO ASK YOU ABOUT HIS QUESTION AND
3 HIS ANSWER -- YOUR ANSWER.

4 AND LET'S LOOK AT EXHIBIT 230. THAT WAS AN
5 AFFILIATION AGREEMENT THAT WAS SIGNED.

6 MR. SHERMAN: OBJECTION. MR. SHAW DID NOT PLAY THE
7 VIDEO DEPOSITION. THE VIDEO DEPOSITION VERY SPECIFICALLY
8 WAS PREDICATE AND FOUNDATION FOR THE QUESTION AND THE
9 ANSWER. THE VIDEO DEPOSITION WENT TO THE TWO 1994
10 AGREEMENTS THAT MR. SCHULZ SIGNED INVOLVING FIRST
11 NATIONWIDE AND ALL SEASONS RESORTS. AND NOW HE IS TALKING
12 ABOUT OTHER AGREEMENTS. HE IS NOT USING THE SAME
13 DOCUMENTS. IT'S MISLEADING.

14 MR. SHAW: I'M ASKING FOR CLARIFICATION. HE SAID
15 HE REVIEWED THOUSANDS AND THOUSANDS OF DOCUMENTS. I'M JUST
16 ASKING HIM ABOUT ONE THAT'S AN EXHIBIT IN THIS CASE THAT
17 WAS SHOWED TO HIM BY MR. SHERMAN. AND I'M ASKING
18 CLARIFICATION ON CROSS-EXAMINATION. I CERTAINLY HAVE THE
19 RIGHT TO DO THAT.

20 THE COURT: I'LL ALLOW IT. I'LL ALLOW IT.

21 MR. SHERMAN: OKAY. BUT --

22 BY MR. SHAW: Q LET'S LOOK AT EXHIBIT 230.

23 NOW, EXHIBIT 230 IS AN AFFILIATION
24 AGREEMENT.

25 AND, YOUR HONOR, MY RECORDS REFLECT THAT
26 THIS IS NOT IN EVIDENCE. I'D LIKE TO MOVE EXHIBIT 230 INTO

1 EVIDENCE.

2 MR. SHERMAN: FOR THE SAME REASONS THAT THE COURT
3 HAS NOT PERMITTED IT INTO EVIDENCE BEFORE, THE COURT SHOULD
4 STICK WITH ITS PRIOR RULING. THIS WITNESS HAS NO PERSONAL
5 KNOWLEDGE OF THIS AGREEMENT. THIS WITNESS NOR HIS
6 ORGANIZATION SIGNED THIS DOCUMENT. IT'S IRRELEVANT. IT'S
7 LACKING IN FOUNDATION.

8 AND, MOREOVER, IT SHOWS THE MISLEADING
9 NATURE OF THE PRIOR QUESTION. MY QUESTIONS HAD TO DO WITH
10 1994 AGREEMENTS, AND MR. SHAW IS TALKING ABOUT SOMETHING
11 ELSE.

12 THE COURT: OBJECTION IS SUSTAINED.

13 MR. SHAW: YOUR HONOR -- YOUR HONOR, WE REVIEWED
14 THIS -- MR. SHERMAN REVIEWED THIS DOCUMENT WITH MR. NOVELLI
15 YESTERDAY AND THE DAY BEFORE YESTERDAY. I'M GOING BACK TO
16 A DOCUMENT THAT HE SHOWED ON THE SCREEN THAT DIDN'T GET
17 INTO EVIDENCE. I'M ASKING THAT IT BE MOVED INTO EVIDENCE.

18 MR. SHERMAN: YOUR HONOR, NOW THAT --

19 THE COURT: IF I'M GOING TO RULE INCORRECTLY, I
20 WANT TO BE CONSISTENT. I'M STILL GOING TO RULE THE SAME
21 WAY.

22 MR. SHERMAN: IT GOES BEYOND THE SCOPE OF CROSS
23 BECAUSE IN FACT I DIDN'T --

24 THE COURT: I'VE RULED.

25 MR. SHERMAN: I DIDN'T ASK HIM ABOUT THIS DOCUMENT.

26 BY MR. SHAW: Q NOW, LET'S LOOK AT PAGE 5043 OF

1 THE TESTIMONY ON JUNE 28TH. AND, MR. NOVELLI, DO YOU HAVE
2 IT THERE IN FRONT OF YOU?

3 A WHICH PAGE IS THAT? I'M SORRY.

4 Q IT'S 5043. LET ME FIND IT FOR YOU
5 SPECIFICALLY. IT'S GOING TO BE LINE 3, MR. NOVELLI.

6 A MINE DON'T SEEM TO HAVE PAGES. THE NUMBERS
7 ARE MUCH BIGGER.

8 Q IT'S A REAL-TIME. SO WE GO TO -- OKAY.

9 NOW, MR. SHERMAN ASKED THE QUESTION, "NOW,
10 LET'S GO OVER -- THIS IS YOUR CAMPGROUND MEMBERSHIP BOX
11 RIGHT HERE. WE'RE GOING TO GO OVER TO COAST'S MEMBERSHIP
12 LIST ON THE RIGHT SIDE OF THE BLACKBOARD, MR. NOVELLI.

13 "YOU REMEMBER SEEING -- MAYBE WE CAN PUT
14 EXHIBIT 51 UP ON THE BOARD" -- AND 51 IS IN EVIDENCE. "IF
15 WE CAN GO TO -- I THINK IT'S PAGE 4. NO. 3. THERE WE GO.

16 "OKAY. SO LISTS OF MEMBERS OF COAST
17 COMPILED BY COAST FOR SUCH APPLICATIONS ARE THE SOLE
18 PROPERTY OF COAST AND MAY BE USED BY COAST OR OTHERS WITH
19 COAST'S PERMISSION FOR ANY PURPOSES.

20 "SO WITH THAT -- WHAT THAT MEANS IS THAT
21 COAST HAD A MEMBERSHIP LIST; RIGHT, MR. NOVELLI?

22 "ANSWER: OF OUR MEMBERS, YES."

23 I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT
24 WHAT MR. SHERMAN JUST SAID AS TO WHAT AT PAGE 4, NUMBER 3,
25 MEANT IN EXHIBIT 51, BASED ON THE QUESTION THAT HE IS
26 ASKING YOU.

1 NOW, LET'S GO TO EXHIBIT 51, IF WE CAN,
2 MR. DURAN. AND LET'S LOOK AT THAT PARAGRAPH. LET'S GO TO
3 PAGE NUMBER 4.

4 MR. MOSHENKO: PAGE 3.

5 MR. SHAW: IS IT PAGE 3? HERE IT IS. I'M SORRY.

6 Q "LISTS OF MEMBERS OF COAST COMPILED BY COAST
7 FROM SUCH APPLICATIONS ARE THE SOLE PROPERTY OF COAST AND
8 MAY BE USED BY COAST OR BY OTHERS, WITH COAST'S PERMISSION,
9 FOR ANY PURPOSE."

10 NOW, YOU HAD PAT KENNEDY WRITE A LETTER TO
11 COAST REGARDING THAT PARTICULAR PARAGRAPH; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q AND THAT'S EXHIBIT NUMBER 3 THAT IS IN
14 EVIDENCE; CORRECT?

15 A YES.

16 Q LET'S LOOK AT EXHIBIT 3, MR. DURAN.

17 I'D LIKE TO PUT NUMBER 3 IN FRONT OF YOU.

18 AND PAT KENNEDY SAID IN THIS LETTER OF JANUARY OF 1990

19 THAT, "I HAVE ALSO CORRECTED SCHEDULE A TO REFLECT

20 OWNERSHIP IN ALL SEASONS RESORTS, NOT RAY NOVELLI

21 PERSONALLY. WE HAVE ALSO REVISED PARAGRAPH III(E)."

22 AND DO YOU REMEMBER THAT WE LOOKED AT III(E)
23 ON EXHIBIT 51?

24 A YES.

25 Q "THE REVISION REFLECTS THE FACT THAT

26 MEMBERSHIP LISTS ARE PROPRIETARY, AND THAT COAST TO COAST

1 WILL NOT LEND, RENT, SELL OR SHARE THE NAMES WITH OTHERS.
2 I AM ENCLOSING A COPY OF A RECENT INSIDE NEWS BULLETIN
3 WHICH CONFIRMS OUR UNDERSTANDING ON THIS ISSUE."

4 AND, MR. DURAN, IF WE CAN LOOK AT INSIDE
5 NEWS THAT WAS ENCLOSED. OKAY, LET'S LOOK AT.

6 THIS IS THE INSIDE NEWS THAT WAS BEING
7 DISCUSSED BY MISS KENNEDY?

8 A YES, IT WAS.

9 Q AND THIS WAS A DOCUMENT -- MR. DURAN, CAN WE
10 GET THE TOP OF THE PAGE.

11 THIS WAS THE INSIDE NEWS FROM THE OFFICE OF
12 THE PRESIDENT. AND WE HEARD MR. RYMAN TESTIFY ABOUT THIS
13 DOCUMENT?

14 A YES.

15 MR. SHERMAN: OBJECTION, YOUR HONOR. NOT ONE
16 QUESTION WAS ASKED BY ME OF THIS WITNESS CONCERNING THIS
17 INSIDE NEWS ARTICLE. THEY HAD THEIR OPPORTUNITY IN DIRECT
18 EXAMINATION TO ASK WHATEVER QUESTIONS THEY WANTED ABOUT
19 THIS. THIS GOES BEYOND THE SCOPE OF CROSS.

20 MR. SHAW: YOUR HONOR, ABSOLUTELY NOT. HE ASKED A
21 QUESTION ABOUT WHAT THAT PARAGRAPH MEANT. HE ASKED
22 MR. NOVELLI IN THE CROSS-EXAMINATION WHAT THAT MEANT.

23 THE COURT: I'LL ALLOW IT.

24 MR. SHERMAN: I'D ASK MR. SHAW TO SHOW THAT TO US
25 LATER, BECAUSE IT DOESN'T EXIST.

26 THE COURT: WAIT.

1 BY MR. SHAW: Q THIS PARAGRAPH DOESN'T HAVE TO DO
2 WITH MEMBERSHIP LIST PROTECTION WHERE HE SAYS, "THE
3 CONFIDENTIALITY OF THIS LIST CANNOT BE EMPHASIZED ENOUGH"
4 -- AND THIS WAS THE LIST OF THE COAST TO COAST MEMBERS;
5 CORRECT?

6 MR. SHERMAN: OBJECTION. THIS CALLS FOR
7 SPECULATION. VIOLATES THE PAROL EVIDENCE RULE. CALLS FOR
8 HEARSAY.

9 MR. SHAW: YOUR HONOR, HE OPENED THE QUESTION WHEN
10 HE ASKED ABOUT WHAT THIS MEANT. I READ RIGHT FROM HIS
11 CROSS-EXAMINATION.

12 MR. SHERMAN: AND IT GOES BEYOND THE SCOPE OF OUR
13 CROSS-EXAMINATION.

14 MR. SHAW: HE ASKED WHAT THIS WITNESS UNDERSTOOD BY
15 THAT PARAGRAPH. I AM NOW EXPLORING.

16 MR. SHERMAN: I'M NOT GOING TO ARGUE THE POINT.
17 I'VE MADE MY OBJECTION.

18 THE COURT: I'M GOING TO ALLOW IT, COUNSEL. MAKE
19 IT SHORT. GET IT OVER WITH.

20 BY MR. SHAW: Q "THE CONFIDENTIALITY OF THIS LIST
21 CANNOT BE EMPHASIZED ENOUGH."

22 AND, MR. NOVELLI, THAT IS THE COAST TO COAST
23 MEMBERS' LIST; RIGHT?

24 A THAT'S CORRECT.

25 MR. SHERMAN: OBJECTION. THAT CALLS FOR
26 SPECULATION AS TO WHAT SOMEBODY ELSE INTENDED.

1 THE COURT: OVERRULED.

2 BY MR. SHAW: Q "THE MEMBERSHIP LIST IS A PRIMARY
3 ASSET OF EVERY RESORT. ACCORDINGLY, COAST TO COAST
4 DISTRIBUTES THIS LIST MY CERTIFIED MAIL."

5 THEN LET'S GO TO THE SECOND SENTENCE IN THE
6 SECOND PARAGRAPH WHERE MR. RYMAN SAYS, "OUR POLICY IS QUITE
7 CLEAR, IN THAT WE DO NOT LEND, RENT, SELL, OR SHARE ANY OF
8 THE NAMES ON YOUR RESORT'S LIST."

9 THEN HE SAYS IN CLOSING, "I HOPE THAT YOU
10 WILL JOIN US IN TAKING ALL POSSIBLE PRECAUTIONS TO ENSURE
11 THAT ALL ROSTERS OF YOUR MEMBERSHIP BASE ARE CAREFULLY
12 PROTECTED."

13 NOW, THIS IS THE INFORMATION THAT YOU HAD
14 FROM COAST TO COAST WHEN EXHIBIT 51 WAS SIGNED; CORRECT?

15 A YES, IT WAS.

16 Q LET'S GO BACK TO EXHIBIT 51 WHERE THEY SAY,
17 "LISTS OF MEMBERS OF COAST COMPILED BY COAST FROM SUCH
18 APPLICATIONS ARE THE SOLE PROPERTY OF COAST AND MAY BE USED
19 BY COAST, OR BY OTHERS WITH COAST'S PERMISSION, FOR ANY
20 PURPOSES."

21 YOU HAD THEIR INSIDE NEWS THAT STATED WHAT
22 THEIR POLICY WAS REGARDING THOSE LISTS OF MEMBERS; IS THAT
23 CORRECT?

24 A THAT'S CORRECT.

25 THE COURT: APPROACH THE BENCH, PLEASE, GENTLEMEN.

26 (DISCUSSION OFF THE RECORD.)

1 BY MR. SHAW: Q SO EXHIBIT 51, JUST TO CLARIFY IT,
2 WAS SIGNED PRIOR TO THE JANUARY 1990 INSIDE NEWS?

3 MR. SHERMAN: OBJECT.

4 BY MR. SHAW: Q LET ME SHOW YOU EXHIBIT 51, IF I
5 CAN.

6 MR. SHERMAN: IT GOES BEYOND THE SCOPE.

7 THE COURT: THE OBJECTION IS SUSTAINED.

8 BY MR. SHAW: Q LET ME SHOW YOU EXHIBIT 51 THAT
9 MR. SHERMAN SHOWED YOU ON CROSS-EXAMINATION. LET ME HAVE
10 YOU TAKE A LOOK AT IT. HE ASKED YOU QUESTIONS ABOUT
11 EXHIBIT 51.

12 A YES.

13 Q NOW, PRIOR TO EXHIBIT 1500, YOU HAD SIGNED
14 SOME AFFILIATION AGREEMENTS WITH COAST; CORRECT?

15 A YES, I DID.

16 Q ONE OF THOSE WAS EXHIBIT 51?

17 A CORRECT.

18 Q AND WHEN AN INSIDE NEWS CAME OUT IN JANUARY
19 OF 1990, DID THAT CONFIRM WHAT YOUR THINKING WAS REGARDING
20 THE LIST OF MEMBERS IN EXHIBIT 51?

21 MR. SHERMAN: OBJECTION.

22 THE WITNESS: YES.

23 MR. SHERMAN: OBJECTION. IT CALLS FOR PAROL
24 EVIDENCE. IT GOES BEYOND THE SCOPE OF THE CROSS. IT'S
25 BASED ON HEARSAY. AND IT'S LACKING IN FOUNDATION. I MOVE
26 TO STRIKE THE ANSWER.

1 MR. SHAW: YOUR HONOR, HE BROUGHT UP WHAT THIS
2 PARAGRAPH MEANT. I'M EXPLORING WHAT THIS PARAGRAPH MEANT.
3 HE BROUGHT IT UP ON CROSS-EXAMINATION.

4 THE COURT: YOU'VE DONE IT. LET'S GO NOW. MOVE
5 ON. I'LL ALLOW IT.

6 BY MR. SHAW: Q ALL RIGHT. LET'S LOOK AT SOME
7 QUESTIONS ON PAGE 5001 OF THE TRANSCRIPT ON JUNE 28TH.

8 DO YOU HAVE THAT IN FRONT OF YOU,
9 MR. NOVELLI?

10 A YES, I DO.

11 Q SPECIFICALLY LET'S LOOK AT LINE 20. AND
12 LET'S LOOK AT THIS TO GIVE US SOME CONTEXT.

13 "AND A FEDERAL COURT RECEIVER HAD BEEN
14 APPOINTED OVER YOUR BUSINESS IN THE SUMMER OF 1996?

15 "ANSWER: OVER ALL SEASONS."

16 WAS THAT THE MR. KEIM THAT WE'VE BEEN
17 REFERRING TO?

18 A YES, IT WAS.

19 Q "OVER ALL SEASONS.

20 "QUESTION: IS THAT CORRECT?

21 "ANSWER: OVER ALL SEASONS, YES.

22 "QUESTION: AND YOUR SALES FORCE DWINDLED AS
23 OF THAT POINT IN TIME?

24 "ANSWER: YES."

25 NOW, WE ALSO LOOKED AT AND MR. SHERMAN ASKED
26 YOU SOME QUESTIONS ABOUT EXHIBIT 2002 THAT HAD TO DO WITH

1 THE SALES THAT WERE BEING MADE AND THE NUMBERS THAT WERE
2 BEING ACQUIRED; DO YOU REMEMBER THAT TESTIMONY?

3 A YES.

4 Q LET'S LOOK AT EXHIBIT 2002, PLEASE.

5 AND THIS WAS THE LIST AS YOU REMEMBER OF THE
6 MEMBERS BY YEAR FROM 1987 THROUGH 1999.

7 AND EVEN DURING THIS 1996 PERIOD THERE WERE
8 STILL ACQUISITIONS OF NEW MEMBERS THAT WERE TAKING PLACE;
9 CORRECT?

10 A THAT'S CORRECT.

11 Q SO EVEN THOUGH THE SALES FORCE WAS DWINDLING
12 AND THE SALES HAD DROPPED, IT LOOKS LIKE THEY AVERAGED
13 SOMEWHERE IN THE RANGE OF 1990, 15,031; 1991, 16,476;
14 1992, 15,947; 1993, 16,001; 1994, 16,841; 1995, 13,596.

15 NOW, DURING THIS TIME PERIOD -- AND
16 MR. SHERMAN SHOWED YOU A TIME LINE, A POWER POINT TIME LINE
17 YESTERDAY WHEN CERTAIN BANKRUPTCIES WERE OCCURRING?

18 A YES.

19 MR. SHERMAN: OBJECTION, YOUR HONOR. THIS WAS A
20 COMPOUND -- IT WASN'T EVEN A QUESTION. MOREOVER, IT --
21 THIS DOCUMENT VIOLATES THE SECONDARY EVIDENCE RULE, AND IT
22 MISSTATES THE WITNESS'S OWN TESTIMONY THAT NOT ONLY HIS
23 SALES WERE INCLUDED, BUT OTHER SALES WERE INCLUDED IN
24 THIS. SO THE QUESTION IS COMPOUND.

25 THE COURT: I'LL ALLOW IT.

26 BY MR. SHAW: Q SO EVEN DURING THESE BANKRUPTCIES

1 THAT MR. SHERMAN WAS SHOWING ON HIS TIME LINE -- AND WE'LL
2 GET INTO THAT SPECIFIC TIME LINE IN A MOMENT -- SALES AND
3 ACQUISITION OF NEW MEMBERS -- AND ACQUISITION OF MEMBERS
4 WAS REMAINING PRETTY CONSTANT OVER THIS TIME PERIOD FROM
5 1990 THROUGH 1995?

6 A YES, IT DID.

7 Q AND DURING THE TIME PERIOD THAT MR. KEIM WAS
8 RECEIVER OF ALL SEASONS RESORTS, YOU STILL HAD AN INCREASE
9 OF MEMBERS WHETHER BY SALE OR BY ACQUISITION?

10 A CORRECT.

11 Q NOW, LET'S LOOK AT PAGE 5006. I THINK
12 SPECIFICALLY WHAT I WANT -- I'M SORRY, MR. NOVELLI. I'M
13 LOOKING FOR PAGE 5066, NOT 5006.

14 A YES.

15 Q 5066 -- I NEED 5066. LET'S GO DOWN TO LINE
16 20, IF WE CAN, WHERE MR. SHERMAN ASKS YOU, "THIS IS A
17 LETTER DATED JULY 22, 1998, ADDRESSED TO TRAVEL AMERICA; DO
18 YOU SEE THAT?

19 "ANSWER: YES.

20 "QUESTION: 'TO WHOM IT MAY CONCERN: WE
21 WILL NO LONGER BE PAYING DUES BECAUSE YOU CANNOT FURNISH US
22 WITH A COAST TO COAST MEMBERSHIP.'

23 "LET ME STOP YOU RIGHT THERE, MR. NOVELLI.

24 "IN TRUTH AND IN FACT, AS OF JULY 22, 1998,
25 YOU COULD NOT FURNISH THESE FOLKS WITH A COAST TO COAST
26 MEMBERSHIP?

1 "ANSWER: I COULD HAVE. I COULD HAVE PUT
2 THEM IN CUTTY'S DES MOINES AND GOT THEM ONE.

3 "QUESTION: YOU COULD NOT HAVE -- YOU WERE
4 OUT OF COAST TO COAST?

5 "ANSWER: SIR, I STILL LEFT -- THERE WAS A
6 PARK LEFT IN CUTTY'S DES MOINES. THIS IS WHERE YOU THOUGHT
7 WE WERE GOING TO DO MASS TRANSFER TO DEER RUN. THERE'S A
8 PARK IN -- BEEN IN IT ALL ALONG. WE STILL OWN IT. CUTTY'S
9 DES MOINES. I COULD HAVE TRANSFERRED THESE PEOPLE IF I
10 ELECTED TO. BUT I DIDN'T WANT TO BE A PART OF COAST."

11 NOW, YOU ALSO ATTEMPTED, IN SEPTEMBER OF
12 1997, TO KEEP ONE OF YOUR PARKS -- ONE OF THE PARKS IN THE
13 COAST TO COAST PROGRAM SO THAT YOU COULD CONTINUE YOUR
14 RELATIONSHIP WITH COAST TO COAST; ISN'T THAT CORRECT?

15 A FOR COAST DELUXE, YES.

16 Q AND THAT WAS YOUR SEPTEMBER 3RD, 1997,
17 LETTER THAT WAS EXHIBIT 1577?

18 MR. SHERMAN: OBJECTION, YOUR HONOR. THIS GOES
19 BEYOND THE SCOPE OF CROSS.

20 MR. SHAW: YOUR HONOR, HE QUESTIONED ABOUT NOT
21 BEING ABLE TO STAY IN COAST. MR. NOVELLI ANSWERED THE
22 QUESTION.

23 THE COURT: I'M GOING TO ALLOW IT. GET ON WITH IT,
24 AND LET'S NOT BELABOR THE POINT.

25 BY MR. SHAW: Q LET'S LOOK AT -- WELL, THIS LETTER
26 THAT MR. SHERMAN ASKED ABOUT WAS AS A RESULT OF THE 35,000

1 MASS-TRANSFER LETTERS GOING; CORRECT?

2 MR. SHERMAN: OBJECTION. THAT CALLS FOR
3 SPECULATION.

4 THE WITNESS: CORRECT.

5 THE COURT: SUSTAINED ON THAT GROUND.

6 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

7 THE COURT: GRANTED.

8 BY MR. SHAW: Q LET'S LOOK AT EXHIBIT 1577.

9 MR. SHERMAN: YOUR HONOR, IT GOES BEYOND THE SCOPE
10 OF THE CROSS.

11 MR. SHAW: IT'S THE LETTER OF SEPTEMBER 3RD, 1997.

12 THE COURT: IT DOES.

13 MR. SHAW: I'M SORRY. I MISSPOKE. 1575.

14 MR. SHERMAN: THIS GOES BEYOND THE SCOPE OF THE
15 CROSS, YOUR HONOR.

16 MR. SHAW: YOUR HONOR, THIS IS SHOWING
17 MR. NOVELLI'S TRYING TO KEEP A PARK IN COAST TO COAST, AND
18 THEY DIDN'T ALLOW IT.

19 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION,
20 COUNSEL.

21 MR. SHAW: OKAY.

22 Q LET'S LOOK AT COAST'S -- COAST WOULDN'T
23 ALLOW YOU TO KEEP A PARK IN; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND WE LOOKED AT THEIR NOVEMBER 12TH
26 LETTER -- THAT WAS EXHIBIT 1503 -- WHERE THEY TOLD YOU THAT

1 THEY WOULDN'T ALLOW YOU TO KEEP A COAST TO COAST PARK IN --

2 A CORRECT.

3 Q -- IN ORDER TO KEEP THE --

4 MR. SHERMAN: GOES BEYOND THE SCOPE OF THE CROSS.

5 MOVE TO STRIKE THE ANSWER.

6 THE COURT: SUSTAINED. GRANTED.

7 BY MR. SHAW: Q LET'S GO BACK TO 15 -- PAGE 5066.

8 MR. SHERMAN: OBJECT TO THE USE OF 5066. THE

9 TESTIMONY THERE ONLY DEALT WITH CUTTY'S DES MOINES. IT HAS

10 NOTHING TO DO WITH DEER RUN, NOTHING TO DO WITH THE

11 NOVEMBER 12TH LETTER.

12 THE COURT: SUSTAINED.

13 MR. SHAW: WELL, YOUR HONOR, I'M NOT GOING TO BE

14 ASKING ABOUT CUTTY DES MOINES. I'M GOING TO BE ASKING

15 ABOUT HIS LETTER THAT HE SENT THAT MR. SHERMAN ASKED HIM

16 QUESTIONS ABOUT, EXHIBIT 69-173. HE ASKED THIS WITNESS

17 QUESTIONS ABOUT IT, AND NOW MR. SHERMAN GETS UP AND

18 TESTIFIES ABOUT WHAT I'M GOING TO BE ASKING --

19 THE COURT: WE HAVE A SPEAKING OBJECTION HERE.

20 MR. SHERMAN: I WASN'T TESTIFYING. IF THE QUESTION

21 IS GOING TO BE WITH RESPECT TO THAT LETTER AS OPPOSED TO

22 CUTTY DES MOINES, WHICH HE WAS GOING TO EARLIER, THEN WE

23 DON'T HAVE A PROBLEM WITH IT.

24 THE COURT: ALL RIGHT. PROCEED.

25 MR. SHAW: THAT'S GOOD TO KNOW.

26 Q LET'S GO BACK TO THE LETTER, 69-173.

1 I'M SORRY, MR. DURAN. I WANT TO STAY WITH
2 THE 5066 TRANSCRIPT. I DON'T WANT TO GO WITH THE EXHIBIT.
3 MR. SHERMAN QUOTED THE EXHIBIT 5066.

4 WHEREUPON EXHIBIT NUMBER 69-173 WAS
5 RECEIVED.

6 MR. SHERMAN ASKED YOU A QUESTION AT PAGE
7 5067, LINE 1, "IN TRUTH AND IN FACT, AS OF JULY 22, 1998,
8 YOU COULD NOT FURNISH THESE FOLKS WITH A COAST TO COAST
9 MEMBERSHIP?"

10 LET'S EXPLORE THAT QUESTION THAT MR. SHERMAN
11 ASKED YOU ON JUNE 28TH AT PAGE 5067.

12 AND THEN YOU RESPONDED, "I COULD HAVE. I
13 COULD HAVE PUT THEM INTO CUTTY'S DES MOINES AND GOT THEM
14 ONE."

15 COULD -- YOU ATTEMPTED TO KEEP A COAST TO
16 COAST PARK IN SEPTEMBER OF 1997 WHEN YOU SENT THE LETTER;
17 IS THAT CORRECT?

18 A YES, I DID.

19 Q AND WHY DID YOU DO THAT?

20 MR. SHERMAN: OBJECTION. THE LETTER -- THE
21 SEPTEMBER '97 LETTER THAT THE COURT JUST RULED ON IS STILL
22 BEYOND THE SCOPE OF THE CROSS. THEY'RE MIXING APPLES AND
23 ORANGES, CUTTY DES MOINES AND DEER RUN.

24 THE COURT: SUSTAINED.

25 MR. SHAW: YOUR HONOR, HE ASKED HIM A QUESTION.

26 I'M AMPLIFYING THE QUESTION.

1 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION,
2 COUNSEL.

3 BY MR. SHAW: Q WHY -- WHY WOULD CUTTY'S DES
4 MOINES HAVE ALLOWED YOU TO KEEP THE COAST TO COAST
5 MEMBERSHIP?

6 A WE OWNED CUTTY'S DES MOINES AND CONTROLLED
7 THAT. AND WE COULD TRANSFER MEMBERS IF WE ELECTED TO TO
8 CUTTY'S DES MOINES FOR A COAST TO COAST MEMBERSHIP. I WAS
9 ONLY LOOKING FOR THAT FOR THE COAST DELUXE MEMBERS.

10 Q AND SO WHEN COAST TO COAST TERMINATED THEIR
11 RELATIONSHIP WITH YOU, YOU STILL HAD A PARK THAT COULD HAVE
12 KEPT THEIR MEMBERS; CORRECT?

13 MR. SHERMAN: OBJECTION. THAT MISSTATES THE
14 EVIDENCE. COAST DID NOT TERMINATE. THEY DISAFFILIATED.

15 THE COURT: SUSTAINED.

16 BY MR. SHAW: Q YOU DIDN'T DISAFFILIATE ALL
17 SEASONS RESORTS, DID YOU?

18 A NO. THEY TERMINATED ALL SEASONS RESORTS.

19 Q YOU WITHDREW FIRST NATIONWIDE; CORRECT?

20 A CORRECT. FIRST NATIONWIDE AND NOT ALL
21 SEASONS.

22 Q AND SO YOU DIDN'T TERMINATE -- YOU DIDN'T
23 WITHDRAW ALL SEASONS RESORTS; THAT'S SOMETHING THAT
24 HAPPENED BECAUSE OF COAST; CORRECT?

25 A THAT'S CORRECT.

26 Q AND LET'S LOOK AT EXHIBIT 1577. LET'S LOOK

1 AT PAGE 25 --

2 MR. SHERMAN: BEYOND THE SCOPE. THIS IS BEYOND THE
3 SCOPE. I DIDN'T ASK HIM ANYTHING ABOUT THIS DOCUMENT.

4 THE COURT: SUSTAINED.

5 MR. SHAW: YOUR HONOR, TO MAKE A RECORD, I HAVE THE
6 RIGHT TO EXPLORE WHY COAST TO COAST TERMINATED THEM WHEN
7 THEY HAD A PARK, CUTTY DES MOINES, WHERE THEY COULD HAVE
8 STILL TRANSFERRED COAST TO COAST MEMBERS TO.

9 AND I'VE GOT A DOCUMENT IN EVIDENCE THAT
10 MR. RYMAN TESTIFIED THAT I WANT TO EXPLORE WITH THIS
11 WITNESS, WHO WAS THERE DURING THAT TIME PERIOD, AS TO THE
12 REASON WHY COAST TO COAST TOOK THE PUNITIVE MEASURES OF
13 TERMINATING MR. NOVELLI'S PARKS WHEN HE STILL HAD CUTTY DES
14 MOINES AND DEER RUN THAT COULD HAVE TAKEN THOSE MEMBERS. I
15 BELIEVE I HAVE THE RIGHT TO EXPLORE THAT.

16 MR. SHERMAN: MAY WE APPROACH?

17 THE COURT: APPROACH.

18 MR. SHERMAN: COULD WE APPROACH?

19 THE COURT: APPROACH.

20 (DISCUSSION OFF THE RECORD.)

21 BY MR. SHAW: Q LET'S STAY WITH THIS ISSUE,
22 MR. NOVELLI.

23 THE FACT IS, YOU DIDN'T WITHDRAW OR
24 TERMINATE ALL OF THE COAST TO COAST RELATED PARKS; CORRECT?

25 A NO.

26 Q AND THAT WOULD HAVE ALLOWED YOU TO KEEP

1 COAST TO COAST MEMBERS; CORRECT?

2 A YES.

3 Q COAST TO COAST DIDN'T WANT YOUR BUSINESS,
4 DID THEY?

5 MR. SHERMAN: OBJECTION. THAT GOES BEYOND THE
6 SCOPE OF THE CROSS.

7 THE COURT: SUSTAINED.

8 BY MR. SHAW: Q WITHOUT YOUR WITHDRAWING ALL
9 SEASONS RESORTS, THEY TERMINATED ALL SEASONS RESORTS?

10 A YES.

11 Q CORRECT?

12 A CORRECT.

13 Q NOW, LET'S GO TO PAGE 5009, LINE 23, THROUGH
14 5010, LINE 17.

15 DO YOU HAVE THAT IN FRONT OF YOU,
16 MR. NOVELLI?

17 A YES.

18 Q NOW, I'D LIKE TO EXPLORE THIS AREA THAT
19 MR. SHERMAN ASKED YOU ABOUT ON JUNE 28TH WHERE HE SAID,
20 "AND IF WE CAN GO BACK TO EXHIBIT 39.

21 "THE ONLY REASON WHY THE NAME 'ALL SEASONS
22 RESORTS' DOESN'T APPEAR ON THIS DOCUMENT IS BECAUSE YOU
23 KNEW THAT THE BANKRUPTCY TRUSTEE OF ALL SEASONS RESORTS,
24 MR. DAFF, WOULD HAVE OBJECTED IF YOU HAD DONE THAT; RIGHT?

25 "ANSWER: NO. THIS LETTER WAS DRAWN UP IN
26 AUGUST -- YES, THAT'S CORRECT, AUGUST 27TH.

1 "QUESTION: YOU KNEW THAT MR. DAFF WOULD
2 HAVE OBJECTED IF YOU PUT A.S.R.'S NAME?

3 "ANSWER: I DIDN'T KNOW IF HE WOULD OBJECT.
4 I DIDN'T TALK TO HIM ABOUT IT. SO I DIDN'T PUT IT ON
5 THERE."

6 NOW, LET'S LOOK AT EXHIBIT 39 THAT
7 MR. SHERMAN ASKED YOU ABOUT.

8 THIS IS THE FORMAL NOTIFICATION OF FIRST
9 NATIONWIDE RESORTS MANAGEMENT. NOWHERE IN HERE DOES IT
10 MENTION ALL SEASONS RESORTS?

11 A NO.

12 Q AND THAT DIDN'T HAVE ANYTHING TO DO WITH
13 ANYTHING THAT MR. DAFF SAID OR DIDN'T SAY?

14 A NO, IT DIDN'T.

15 Q AND THEN MR. SHERMAN ALSO ASKED YOU LATER IN
16 THE TEXT ABOUT EXHIBIT 423. LET'S LOOK AT EXHIBIT 423.

17 MR. SHERMAN: YOUR HONOR, THIS GOES BEYOND THE
18 SCOPE OF THE CROSS. I DON'T BELIEVE THAT WE ASKED HIM
19 ABOUT 423, AND I WOULD LIKE THE OPPORTUNITY TO SEE THE
20 EXHIBITS BEFORE THEY'RE PUT UP ON THE BOARD.

21 MR. SHAW: YOUR HONOR, I'LL SHOW HIM IN THE
22 TRANSCRIPT.

23 MR. SHERMAN: IF IT WAS, IT WAS -- I BELIEVE IT
24 GOES BEYOND THE SCOPE.

25 MR. SHAW: MR. SHERMAN WANTS TO SEE EVERY PIECE OF
26 THE TRANSCRIPT WHERE 423 --

1 THE COURT: COUNSEL.

2 BY MR. SHAW: Q LET'S LOOK AT PAGE 5010. LET'S GO
3 DOWN TO THE BOTTOM OF THE PAGE.

4 MR. SHERMAN: THE OBJECTION IS WITHDRAWN.

5 MR. SHAW: IN THE INTEREST OF SAVING TIME, YOUR
6 HONOR, I DIDN'T GO INTO THIS. BUT I'LL DO IT. I'LL DO IT
7 EVERY TIME.

8 "NOW, COAST'S LETTER OF NOVEMBER 12TH -- IF
9 WE CAN PUT THAT UP ON THE BOARD. THAT'S EXHIBIT 423,
10 COAST'S LETTER OF NOVEMBER 12, GIVING NOTIFICATION OF THE
11 TERMINATION OF ALL SEASONS RESORTS --"

12 LET'S GO TO EXHIBIT 423. NOW, MR. SHERMAN
13 HAS WITHDRAWN HIS OBJECTION.

14 CAN YOU BLOW THIS UP FOR ME, MR. DURAN.

15 "WE HAVE RECEIVED YOUR LETTERS DATED AUGUST
16 27, 1997, AND SEPTEMBER 3, 1997, REGARDING TERMINATION OF
17 AFFILIATION OF 16 RESORTS IN THE COAST TO COAST SYSTEM.
18 THIS LETTER SERVES AS ACKNOWLEDGEMENT OF TERMINATION OF
19 AFFILIATION OF ALL THOSE RESORTS LISTED IN YOUR LETTER OF
20 AUGUST 27, 1997. TERMINATION INCLUDES DEER RUN RESORT,
21 NOTWITHSTANDING YOUR REQUEST IN THE SUBSEQUENT LETTER OF
22 SEPTEMBER 3 TO RESCIND YOUR TERMINATION OF DEER RUN RESORT
23 AS A COAST TO COAST AFFILIATED RESORT."

24 AND THE SECOND PARAGRAPH SAYS, "THIS LETTER
25 IS ALSO TO SERVE AS NOTIFICATION OF TERMINATION OF THE
26 AFFILIATION AGREEMENT OF ALL THE ALL SEASONS RESORTS AS

1 WELL AS DUE TO THE DISSOLUTION OF THAT SYSTEM OF RESORTS
2 THROUGH BANKRUPTCY AND AUCTION PROCEEDINGS."

3 NOW, AFTER THEY SENT THIS LETTER, THEY
4 STARTED TO TRANSFER 35,000 OF YOUR MEMBERS; CORRECT?

5 A CORRECT.

6 Q LET'S LOOK AT -- AND WE'LL TAKE IT
7 PAGE-BY-PAGE.

8 LET'S LOOK AT PAGE 4967 OF MR. SHERMAN'S
9 QUESTIONS.

10 LET'S LOOK AT, MR. NOVELLI, LINE 21 ON PAGE
11 4967.

12 MR. SHERMAN. "SO ACCORDING TO YOU, 2/3RDS
13 OF YOUR MEMBERS NEVER RECEIVED A LETTER FROM COAST IN THE
14 FALL OF 1997; RIGHT?

15 "ANSWER: I DON'T KNOW THE EXACT NUMBER.

16 "QUESTION: THEY DIDN'T RECEIVE A LETTER
17 FROM COAST?

18 "ANSWER: 35,000 OF THEM DID. I DON'T KNOW
19 HOW MANY OF THEM DIDN'T. I BELIEVE AT THE TIME I HAD
20 ACTIVE MEMBERS OF SOMEWHERE AROUND 60,000, 62,000, OF WHICH
21 35,000 RECEIVED MEMBERS -- I MEAN LETTERS OF TRANSFER."

22 LET'S EXPLORE THAT 35,000 MEMBERS.

23 YOU KNOW FOR A FACT THAT THEY SENT THE
24 35,000 LETTERS FROM COAST'S OWN RECORDS; CORRECT?

25 A CORRECT.

26 Q LET'S LOOK AT EXHIBIT 2149, PAGE 805 --

1 MR. SHERMAN: YOUR HONOR.

2 BY MR. SHAW: Q -- DOCUMENT IN EVIDENCE.

3 MR. SHERMAN: IT'S IN EVIDENCE, AND IT GOES BEYOND
4 THE SCOPE OF THE CROSS. I DIDN'T ASK ANY QUESTIONS ABOUT
5 THAT AT ALL.

6 MR. SHAW: YOUR HONOR, I'LL READ EVERY PAGE AND
7 LINE FROM MR. SHERMAN'S QUESTIONS. HE ASKED HOW HE KNEW
8 ABOUT THE 35,000.

9 THE COURT: ALL RIGHT. MOVE ON. OVERRULED.

10 MR. SHAW: YOU CAN BLOW THIS UP FOR ME, MR. DURAN.

11 Q THIS IS A LETTER FROM MARY URIOSTE OR A MEMO
12 THAT WE RECEIVED DURING DISCOVERY IN THIS CASE?

13 A YES.

14 Q AND IT SAYS, "I DO APOLOGIZE THAT YOU WERE
15 NOT NOTIFIED; HOWEVER, FOR THE LAST MONTH AND A HALF I HAVE
16 BEEN TRANSFERRING MORE THAN 35,000 THOUSAND ADVENTURES AND
17 ALL SEASONS MEMBERS TO VARIOUS PARKS. AS YOU CAN IMAGINE,
18 THAT ALONE IS VERY TIME-CONSUMING, NOT TO MENTION THE 500
19 PHONE CALLS I GET A WEEK."

20 MR. SHERMAN: OBJECTION. THE DOCUMENT SPEAKS FOR
21 ITSELF. THIS IS COMPOUND.

22 THE COURT: OVERRULED.

23 BY MR. SHAW: Q NOW, NOWHERE IN THIS LETTER,
24 MR. NOVELLI, DOES IT SAY COAST TO COAST MEMBERS. IT SAYS
25 THAT THEY'RE TRANSFERRING 35,000 THOUSAND ADVENTURES AND
26 ALL SEASONS MEMBERS; CORRECT?

1 A YES.

2 MR. SHERMAN: OBJECTION. THE DOCUMENT SPEAKS FOR
3 ITSELF.

4 THE COURT: SUSTAINED.

5 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

6 THE COURT: MOTION GRANTED.

7 BY MR. SHAW: Q IN FACT, MR. NOVELLI, DESPITE THE
8 FACT THAT THEY COME HERE TO THE COURT AND TRY TO SAY THAT
9 THEY'RE TRANSFERRING THEIR OWN COAST TO COAST MEMBERS,
10 MISS URIOSTE WAS CORRECT IN DECEMBER OF 1997 WHEN SHE WROTE
11 THIS MEMO THAT SHE WAS TRANSFERRING 35,000 OF YOUR
12 MEMBERS --

13 MR. SHERMAN: OBJECTION.

14 BY MR. SHAW: Q -- TO THE VARIOUS PARKS AND NOT
15 THE COAST TO COAST MEMBERS?

16 THE COURT: THE OBJECTION IS SUSTAINED. MOTION TO
17 STRIKE IS GRANTED.

18 BY MR. SHAW: Q DO YOU HAVE ANY REASON NOT TO
19 BELIEVE MISS URIOSTE?

20 MR. SHERMAN: OBJECTION. THIS IS IRRELEVANT. AND
21 IT'S ARGUMENTATIVE.

22 THE COURT: THE LETTER SPEAKS FOR ITSELF, COUNSEL.

23 MR. SHAW: THANK YOU, YOUR HONOR.

24 Q LET'S LOOK AT -- THERE WERE OTHER DOCUMENTS.
25 YOU RECEIVED A CD, A DISK FROM COAST TO COAST, IN DISCOVERY
26 IN THIS CASE THAT SHOWED HOW MANY LETTERS THEY SENT OUT AND

1 HOW MANY MEMBERS THEN OF THE 35,000 THOUSAND ADVENTURES AND
2 ALL SEASONS RESORTS MEMBERS REFERRED TO BY MISS URIOSTE --
3 HOW MANY OF THOSE MEMBERS STAYED WITH COAST TO COAST AND
4 DIDN'T STAY WITH THOUSAND ADVENTURES AND ALL SEASONS
5 RESORTS; CORRECT?

6 MR. SHERMAN: OBJECTION. MISSTATES THE EVIDENCE.
7 THE COAST RECORDS SHOW IT WAS SENT TO COAST'S MEMBERS.

8 MR. SHAW: YOUR HONOR, THE DOCUMENT IS GOING TO
9 SPEAK FOR ITSELF.

10 MR. SHERMAN: AND IT DOES SPEAK FOR ITSELF, FOR
11 THAT FURTHER REASON.

12 THE COURT: CORRECT. THE OBJECTION IS SUSTAINED.
13 THE DOCUMENT SPEAKS FOR ITSELF.

14 BY MR. SHAW: Q LET'S LOOK AT -- YOU RECEIVED THE
15 CD, AND THAT CD -- WHAT DID THAT CD SHOW?

16 A IT HAD A LIST OF OUR MEMBERS THAT COAST TO
17 COAST TRANSFERRED, THIRTY-FIVE THOUSAND SOME,
18 APPROXIMATELY.

19 Q BUT NOT ALL 35,000 OF THOSE MEMBERS ON THAT
20 CD MOVED FROM YOUR RESORTS; ONLY 22,000; CORRECT?

21 A CORRECT.

22 MR. SHERMAN: OBJECTION. THIS VIOLATES THE
23 SECONDARY EVIDENCE RULE. THE CD IS THE BEST EVIDENCE OF
24 THIS. THIS WITNESS'S TESTIMONY IS NOT.

25 MR. SHAW: THERE'S BEEN TESTIMONY ALREADY FROM
26 MR. RYMAN, MR. RANDALL ABOUT WHAT OCCURRED. I'M ASKING

1 THIS WITNESS TO EXPLORE WHAT MR. SHERMAN ASKED HIM AS TO
2 HOW HE KNEW THAT 22,000 MEMBERS LEFT. AND IT COMES FROM
3 COAST'S OWN DOCUMENTS. AND I'M EXPLORING THIS WITNESS ON
4 CROSS-EXAMINATION.

5 THE COURT: YOU GUYS ARE MAKING ME WORK TOO HARD
6 THIS MORNING, ALL THESE DECISIONS. LET'S GET ON WITH IT,
7 AND LET'S MOVE ALONG.

8 MR. SHAW: OKAY.

9 Q WE HAVE EXHIBIT 1808. AND LET ME SHOW IT TO
10 YOU, MR. NOVELLI. IT'S IN EVIDENCE.

11 NOW, IN THAT CD, WHICH, AS MR. SHERMAN SAYS,
12 IS THE BEST EVIDENCE, IT SHOWS THAT 22,000 OF YOUR MEMBERS
13 STAYED WITH COAST TO COAST AND DIDN'T STAY WITH YOUR
14 RESORT; CORRECT?

15 MR. SHERMAN: OBJECTION, YOUR HONOR. THAT TOTALLY
16 MISSTATES THE EVIDENCE. VIOLATES THE SECONDARY EVIDENCE
17 RULE.

18 THE COURT: THE OBJECTION IS SUSTAINED.

19 BY MR. SHAW: Q WHAT DOES THAT DOCUMENT SHOW,
20 MR. NOVELLI?

21 MR. SHERMAN: SAME OBJECTIONS, YOUR HONOR. THIS
22 WITNESS HAS NO BUSINESS TESTIFYING TO THAT. IT VIOLATES
23 THE SECONDARY EVIDENCE RULE. HE IS NOT QUALIFIED AS AN
24 EXPERT TO SPEAK TO THESE ISSUES. HE HAS NO KNOWLEDGE OF
25 THIS. IT LACKS FOUNDATION.

26 MR. SHAW: YOUR HONOR, THIS IS --

1 THE COURT: I'M GOING TO SUSTAIN THE OBJECTIONS ON
2 ALL THOSE GROUNDS.

3 BY MR. SHAW: Q THE FACT IS, YOU TESTIFIED ON
4 CROSS-EXAMINATION THAT 22,000 OF THOSE 35,000 LETTERS THAT
5 MISS URIOSTE WAS INVOLVED IN DIDN'T STAY WITH YOUR RESORT;
6 CORRECT?

7 A YES. 65 PERCENT. 22-, 21-, 22,000.

8 Q AND THEN YOU REVIEWED THE EXHIBIT 1808 THAT
9 WAS GIVEN TO US BY COAST TO COAST?

10 A YES, I DID.

11 Q NOW, IN ORDER -- AND WE LOOKED AT IT AT PAGE
12 5009, AND I'M NOT GOING TO GO BACK THERE. BUT I'M TRYING
13 TO GIVE US A REFERENCE POINT.

14 WE LOOKED AT THE FACT THAT COAST TO COAST
15 MEMBER COULDN'T STAY WITH COAST TO COAST UNLESS IT WAS A
16 COAST TO COAST HOME RESORT. DO YOU UNDERSTAND?

17 A YES, I DO.

18 Q THAT WASN'T VERY ARTFULLY DONE. LET ME STOP
19 AND TRY TO BREAK IT UP.

20 MR. SHERMAN ASKED YOU SOME QUESTIONS THAT
21 YOU COULDN'T PROVIDE A COAST TO COAST HOME RESORT ANY
22 LONGER. DO YOU REMEMBER THAT QUESTION?

23 A YES, I DO.

24 Q WE LOOKED AT THE LETTER THAT WAS SENT BY THE
25 PARTICULAR MEMBER?

26 A YES.

1 Q EVEN THOUGH YOU TESTIFIED THAT YOU COULD
2 STILL.

3 IT WAS YOUR UNDERSTANDING THAT COAST TO
4 COAST NEEDED TO HAVE A COAST TO COAST RESORT -- NOT ONE OF
5 THE PLAINTIFFS' RESORTS, BUT A COAST TO COAST RESORT -- IN
6 ORDER FOR THAT MEMBER TO STAY WITH COAST TO COAST?

7 A YES.

8 Q CORRECT?

9 AND THAT IN EXHIBIT 1808, IT SHOWS 22,000 OF
10 THOSE 35,000 MEMBERS STAYED WITH COAST TO COAST AND NOT
11 WITH THE PLAINTIFFS?

12 MR. SHERMAN: YOUR HONOR, THE SAME OBJECTIONS THAT
13 WERE MADE JUST A MOMENT AGO.

14 THE COURT: SUSTAINED.

15 BY MR. SHAW: Q THE ONLY WAY A COAST TO COAST
16 MEMBER COULD STAY WITH COAST TO COAST WHEN YOU
17 DISAFFILIATED AND THEN THEY DISAFFILIATED WAS FOR THE COAST
18 TO COAST MEMBER TO CHANGE RESORTS; CORRECT?

19 A YOU'D HAVE TO HAVE A NEW MEMBERSHIP, YES.

20 Q WHICH MEANS YOU WEREN'T GETTING THEIR DUES
21 ANY LONGER?

22 A CORRECT.

23 MR. SHERMAN: OBJECTION. OBJECTION, YOUR HONOR.
24 THAT LACKS FOUNDATION. VIOLATES THE SECONDARY EVIDENCE
25 RULE.

26 THE COURT: SUSTAINED.

1 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

2 THE COURT: GRANTED.

3 BY MR. SHAW: Q LET'S GO TO PAGE 5068, LINES 3 TO
4 10. LET'S LOOK AT LINE 3 TO 10.

5 MR. SHERMAN ASKS YOU -- I'M SORRY. IT
6 STARTS UP AT 2.

7 "BECAUSE ANYONE -- YOUR POSITION NOW IS THAT
8 ANYONE WHO TOLD YOU THAT THEY WANTED TO BE WITH COAST COULD
9 STAY WITH COAST; CORRECT?

10 "ANSWER: WHEN WE DID THE TRANSFER, WE WERE
11 EXPECTING SOME FALLOUT. WE WEREN'T EXPECTING THAT 100
12 PERCENT OF THE PEOPLE WOULD BE SATISFIED. I THINK I TOLD
13 YOU THAT. WE EXPECTED A FEW LETTERS LIKE THIS. WE MIGHT
14 HAVE GOT 200 LETTERS LIKE THIS, MAYBE EVEN 300. THIS IS A
15 VERY SMALL, SMALL PERCENTAGE, LESS THAN ONE-TENTH OF A
16 PERCENT."

17 LET'S FOCUS ON THIS ONE-TENTH OF A PERCENT.
18 300 LETTERS OF 35,000 TRANSFERS THAT WERE MADE, THAT'S WHAT
19 YOU WERE SAYING WAS A SMALL PERCENTAGE?

20 A YES. THAT WAS VERY SMALL PERCENTAGE.

21 Q AND MR. SHERMAN ASKED YOU ABOUT THE NUMBERS
22 OF LETTERS, AND HE ASKED ABOUT SOME EXHIBITS.

23 THESE WERE THE LETTERS THAT YOU WERE
24 RECEIVING THAT INDICATED THAT PEOPLE HAD GOTTEN COAST TO
25 COAST LETTERS AND WANTED TO TRANSFER?

26 A YES.

1 MR. SHERMAN: OBJECTION. THE DOCUMENTS SPEAK FOR
2 THEMSELVES. CALLS FOR SPECULATION AS TO WHY SOMEONE SENT
3 THE LETTER UNLESS IT'S STATED THERE IN THE LETTER. I MOVE
4 TO STRIKE THE ANSWER ON THOSE GROUNDS.

5 MR. SHAW: YOUR HONOR, MR. SHERMAN WENT OVER
6 CUMULATIVELY ALL THOSE LETTERS YESTERDAY. I'M TRYING TO
7 CUMULATIVELY GO OVER THEM SO I DON'T HAVE TO COME BACK.

8 THE COURT: WE'RE GETTING TOO CUMULATIVE HERE.
9 WE'RE GOING OVER THE SAME THING OVER AND OVER.

10 MR. SHERMAN: OBJECTION TO ARGUMENT.

11 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.
12 MOVE ON.

13 BY MR. SHAW: Q LET'S LOOK AT ONE OF THE LETTERS.

14 5069, LINE 23. LET'S START AT LINE 23.

15 MR. SHERMAN ASKED YOU, "THIS IS A LETTER DATED JUNE 22,
16 1998 -- EXCUSE ME. JUST FOR THE CLERK'S BENEFIT, IT'S 69,
17 BATES NUMBER 181.

18 "THIS IS A LETTER FROM YOUR FILES ACTUALLY
19 ADDRESSED TO R.P.I., RESORT PARKS INTERNATIONAL; RIGHT?

20 "ANSWER: YES. WE GAVE YOU ALL OUR FILES.
21 ALL THESE LETTERS WE GAVE YOU.

22 "QUESTION: 'DEAR SIR: PLEASE CANCEL MY
23 MEMBERSHIP WITH YOUR ORGANIZATION, DELTA ISLE, AS I HAVE
24 DECIDED TO STAY WITH COAST TO COAST AND HAVE TRANSFERRED TO
25 ANOTHER HOME PARK.

26 "'FROM, ARLENE JOSEPHSON.'

1 "ARLENE JOSEPHSON HAD THE RIGHT TO DO THAT,
2 DIDN'T SHE?

3 "ANSWER: YEAH."

4 I WANT TO STAY RIGHT HERE WITH MR. SHERMAN'S
5 QUESTION OF YOU REGARDING PEOPLE LIKE ARLENE JOSEPHSON.

6 THESE PEOPLE DECIDED TO STAY WITH COAST TO
7 COAST, AND THEY TRANSFERRED TO ANOTHER HOME PARK. THAT'S
8 WHAT SHE SAYS IN HER LETTER; CORRECT, MR. NOVELLI?

9 A YES.

10 MR. SHERMAN: OBJECTION. THAT MISSTATES THE
11 QUESTION AND THE ANSWER.

12 THE COURT: THE LETTER SPEAKS FOR ITSELF, COUNSEL.

13 MR. SHERMAN: IT'S ARLENE JOSEPHSON.

14 THE COURT: OBJECTION IS SUSTAINED.

15 BY MR. SHAW: Q WHEN PEOPLE LEFT -- EXCUSE ME.

16 WHEN PEOPLE INDICATED THEY WANTED TO STAY
17 WITH COAST TO COAST, THE ONLY WAY THEY COULD DO THAT LIKE
18 ARLENE JOSEPHSON DID, WHO HAD THE RIGHT TO DO THAT, WAS BY
19 TRANSFERRING TO ANOTHER HOME PARK OTHER THAN ONE OF THE
20 PLAINTIFFS' HOME PARKS; CORRECT?

21 MR. SHERMAN: OBJECTION. THAT MISSTATES THE
22 EVIDENCE. IT'S LEADING. IT ASSUMES FACTS NOT IN EVIDENCE.
23 AND IT LACKS FOUNDATION THAT THAT WAS THE ONLY WAY.

24 THE COURT: SUSTAINED.

25 BY MR. SHAW: Q DO YOU HAVE PERSONAL KNOWLEDGE OF
26 THE FACT THAT WHEN PEOPLE, THE 22,000, STAYED WITH COAST TO

1 COAST, THEY HAD TO GET A NEW HOME PARK? CORRECT?

2 MR. SHERMAN: OBJECTION. I'D LIKE TO ASK THE COURT
3 TO REQUIRE COUNSEL TO LAY FOUNDATION AS TO MR. NOVELLI'S
4 PERSONAL KNOWLEDGE AS TO HOW THESE 22,000 PEOPLE THAT HE IS
5 SEEKING DAMAGES FOR KNEW THAT THEY ONLY HAD ONE OPTION AND
6 THAT THEY DIDN'T HAVE OTHER OPTIONS.

7 MR. SHAW: YOUR HONOR, THE COURT ADMONISHED US
8 ABOUT MAKING THESE SPEAKING OBJECTIONS, AND MR. SHERMAN
9 KEEPS MAKING SPEECHES IN THE MIDDLE OF REDIRECT
10 EXAMINATION. AND, YOUR HONOR, I OBJECT. HE CONTINUES TO
11 TESTIFY. HE IS TESTIFYING MORE THAN MR. NOVELLI IS
12 TESTIFYING.

13 MR. SHERMAN: CAN THE COURT ASK COUNSEL TO LAY
14 FOUNDATION AS TO THE WITNESS'S PERSONAL KNOWLEDGE OF THE
15 22,000 PEOPLE?

16 THE COURT: YOU KNOW, WHEN I TOLD YOU GUYS TO
17 TOUCH GLOVES AND COME OUT FIGHTING, I WASN'T REALLY BEING
18 SERIOUS THIS MORNING. LET'S CALM IT DOWN, AND LET'S GET ON
19 WITH IT.

20 BY MR. SHAW: Q MR. NOVELLI, THE LETTERS LIKE
21 ARLENE JOSEPHSON, THE ONLY WAY THAT THESE PEOPLE COULD STAY
22 WITH COAST TO COAST IS IF THEY LEFT PLAINTIFFS' PARKS AND
23 WENT TO ANOTHER HOME PARK; CORRECT?

24 MR. SHERMAN: THE SAME OBJECTIONS.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES.

1 BY MR. SHAW: Q AND, IN FACT, YOU HAVE FACTS AND
2 INFORMATION OF YOUR OWN PERSONAL KNOWLEDGE THAT 22,000
3 PEOPLE DID THAT; CORRECT?

4 A YES, I DO.

5 THE COURT: THE QUESTION ARISES IN MY MIND, HOW DO
6 YOU HAVE THE -- WHAT'S THE KNOWLEDGE? WHERE DO YOU GET THE
7 FACT THAT 22,000 LEFT?

8 THE WITNESS: WE DID A SAMPLING OF THE ENTIRE
9 35,000 THAT I DID WHERE WE MATCHED THE NAMES. WE TOOK THE
10 NAMES THAT COAST GAVE US, THE 35,000, AND WE MATCHED THOSE
11 NAMES WITH OUR LIST SO WE COULD TELL WHICH LIST -- AND THEN
12 THEY ALSO HAD A LIST OF THE ONES THAT PAID THEM. AND WITH
13 THOSE TWO LISTS, WE WERE ABLE TO DETERMINE WHO PAID COAST
14 THAT DIDN'T PAY US. AND THE SAMPLING WAS, I BELIEVE, VERY
15 ACCURATE.

16 THE COURT: WHO DID THE SAMPLING?

17 THE WITNESS: I HAD MR. THOMPSON DO THE SAMPLING,
18 AND ALSO OUR EXPERT, MR. BIERLY.

19 MR. SHAW: YOUR HONOR, MR. THOMPSON WILL BE
20 TESTIFYING LATER THIS WEEK, AND -- POSSIBLY MONDAY. AND
21 DR. BIERLY WILL ALSO BE TESTIFYING MONDAY ON THIS VERY
22 ISSUE.

23 MR. MOSHENKO: NOT MONDAY. AFTER MR. THOMPSON.
24 MAYBE TUESDAY.

25 MR. SHAW: MAYBE TUESDAY, SOMETIME COMING.

26 Q BUT YOU HAVE PERSONAL KNOWLEDGE OF THAT, OF

1 THAT SAMPLING BEING DONE?

2 A YES.

3 Q AND YOU HAVE PERSONAL KNOWLEDGE OF THE FACT
4 THAT THE PLAINTIFFS MATCHED UP THE FACT THAT THOSE 22,000
5 STOPPED PAYING THEM AND INSTEAD PAID COAST TO COAST?

6 A WHAT WE DID, WE FIGURED SOMEWHERE AROUND 65
7 PERCENT. AND THAT'S PRETTY MUCH IN LINE WITH COAST'S
8 FIGURE OF 22,000. THE FIGURES WERE SOMEWHERE BETWEEN --
9 THAT WE DID ON THE SAMPLING BASIS -- SOMEWHERE BETWEEN
10 19,000 AND 22,000. I BELIEVE COAST'S FIGURES OF THE
11 MEMBERS THAT PAID COAST WAS SOMEWHERE AROUND 22,000 THAT
12 THEY GAVE US. AND THE ACTUAL FIGURE THAT WE CAME UP WITH,
13 I BELIEVE, WAS 19,000.

14 Q THAT STOPPED PAYING YOU AND PAID COAST TO
15 COAST INSTEAD?

16 A THAT'S CORRECT.

17 Q NOW, MR. SHERMAN ASKED YOU A LOT -- AND I
18 WON'T PUT IT UP ON THE SCREEN FOR INTEREST OF TIME BECAUSE
19 WE CAN GET TO OUR BREAK -- THIS ISSUE OF REVERSALS; DO YOU
20 REMEMBER THAT DISCUSSION?

21 A YES.

22 Q AND LET'S LOOK AT EXHIBIT, THE EXHIBIT THAT
23 MR. SHERMAN SHOWED YOU ON THE REVERSALS WAS 64, I BELIEVE.

24 LET ME GO WITHOUT THE EXHIBIT,

25 MR. NOVELLI.

26 YOU TALKED YESTERDAY ABOUT THE FACT THAT IN

1 NOVEMBER OF 1998, IF MY MEMORY SERVES ME CORRECT FROM
2 YESTERDAY, THAT CLOSE TO 100,000 REVERSALS WERE DONE?

3 A YES.

4 Q NOW, AND THEN WE TALKED -- MR. SHERMAN
5 TALKED ABOUT THE SIX-MONTH -- THE 180-DAY RULE I THINK IT
6 WAS.

7 WHY DID -- WELL, FIRST OF ALL, DO THOSE
8 REVERSALS HAVE ANYTHING TO DO WITH THE EVIDENCE THAT'S A
9 CLAIM FOR DAMAGES IN THIS CASE?

10 A NO.

11 MR. SHERMAN: OBJECTION. THAT SEEKS A LEGAL
12 CONCLUSION OF THE WITNESS.

13 THE COURT: SUSTAINED.

14 MR. SHAW: WE'RE NOT OFFERING --

15 MR. SHERMAN: MOVE TO STRIKE THE ANSWER.

16 THE COURT: MOTION IS GRANTED.

17 BY MR. SHAW: Q WE'RE NOT OFFERING ANY EVIDENCE
18 REGARDING THOSE REVERSALS. IN TERMS OF PROVING THAT
19 COAST'S RECORDS OF 22,000 PEOPLE LEFT THE HOME RESORTS,
20 WE'RE NOT OFFERING IT FOR THAT PURPOSE; CORRECT?

21 A NO.

22 MR. SHERMAN: OBJECTION. ARGUMENTATIVE. AND SEEKS
23 A LEGAL CONCLUSION. MOVE TO STRIKE THE ANSWER.

24 THE COURT: SUSTAINED.

25 MR. SHAW: I'LL WITHDRAW THE QUESTION.

26 THE COURT: THANK YOU.

1 PERHAPS I SHOULD AT THIS POINT ADVISE THE
2 JURY THAT I HAVE BIFURCATED THIS CASE AND THAT WE ARE
3 HEARING EVIDENCE ONLY TO DETERMINE WHETHER OR NOT THERE WAS
4 CAUSE AND WHETHER OR NOT THERE WAS LIABILITY ON THE PART OF
5 THE DEFENDANTS. WE'RE NOT GOING TO DISCUSS THE MATTER OF
6 DAMAGES UNLESS AND UNTIL YOU MAKE YOUR DECISION AS TO
7 WHETHER OR NOT THERE'S LIABILITY TO CAUSE.

8 MR. SHAW: THANK YOU, YOUR HONOR, FOR THAT
9 CLARIFICATION.

10 THE COURT: PROCEED.

11 BY MR. SHAW: Q LET'S LOOK AT 62 -- EXHIBIT 62,
12 PAGE 44.

13 THE COURT: TO MAKE MY POINT A LITTLE CLEARER, IN
14 THE EVENT THAT YOU WERE TO DECIDE THAT THERE WAS NO
15 LIABILITY AND THERE IS NO CAUSE, THAT'S THE END OF THE
16 CASE.

17 BY MR. SHAW: Q AND LET'S LOOK AT THESE REVERSALS
18 THAT WERE DONE.

19 TOTAL REVERSALS THAT WERE DONE IN OR ABOUT
20 1998 WAS THIS 100,000. 101,239. IS THAT CORRECT?

21 A YES.

22 Q AND THAT WAS DONE FOR -- THIS WAS DONE FOR A
23 REASON?

24 A YES.

25 Q WHY WERE 101,000 REVERSALS DONE IN 1998?

26 A WE WERE -- WHEN WE DID THE MERGER BETWEEN

1 ALL SEASONS AND THE DIFFERENT COMPANIES AND T.A.I., THERE
2 WAS A LOT OF PAPER AND STUFF IN THERE BEING CARRIED ON
3 THE RESORTS, THE MEMBERSHIP LISTS THAT WERE SUSPENDED BUT
4 NOT REVERSED, AND THE REASON FOR SUSPENSION; IF THEY DON'T
5 PAY, WE SUSPEND THEM. REVERSALS SOMETIMES DOESN'T TAKE
6 PLACE AND ESPECIALLY IN THE CASE OF T.A.I., THOUSAND
7 ADVENTURES, THAT THEIR LENDERS DIDN'T WANT REVERSALS ON
8 THEIR CONTRACTS. THAT THEY'D HAVE TO REVERSE THEM.

9 WHEN WE GOT INVOLVED WITH THE T.A.I. SYSTEM,
10 THEN WE MADE IT CLEAR TO THE -- TO THEIR LENDERS THAT WE
11 NEED TO GET THOSE PEOPLE REVERSED, NOT JUST SUSPENDED, BUT
12 REVERSED OFF THE SYSTEM. SO WE REVERSED THE TOTAL PEOPLE
13 THAT HADN'T PAID IN OUR TIME FRAME LIMIT, AND I BELIEVE
14 THAT WE USED THE LIMIT OF 180 DAYS. WE SUSPENDED THEM,
15 ALL OF THEM -- OR REVERSED THEM.

16 Q AND I GUESS IT IS LOGICAL THAT YOU COULDN'T
17 HAVE DONE IT BEFORE 1998 BECAUSE THE MERGER DIDN'T HAPPEN
18 UNTIL 1997?

19 MR. SHERMAN: OBJECTION. IT'S ARGUMENTATIVE.
20 MISSTATES THE EVIDENCE GIVEN THE 100,000 IS FOR EVERYTHING.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES. WE -- THE REASON IT WAS 100,000
23 WE REVERSED -- WE'RE NOT CLAIMING THAT COAST TO COAST
24 CAUSED 100,000 REVERSALS. 80,000 OF THOSE REVERSALS CAME
25 BECAUSE OF ADJUSTMENTS ON OUR RECORDS.

26 BY MR. SHAW: Q BECAUSE OF THE MERGER OF THOUSAND

1 ADVENTURES --

2 A T.A.I. AND THE DIFFERENT COMPANIES, YES.

3 Q AND THOSE PEOPLE MAY NOT HAVE BEEN PAYING
4 FOR SEVERAL YEARS, BUT YOU DIDN'T HAVE THOSE BOOKS AND
5 RECORDS TO MAKE ANY REVERSALS PRIOR TO THAT BECAUSE THE
6 MERGER HADN'T OCCURRED?

7 A CORRECT. AND THERE WAS REASONS ALSO BECAUSE
8 OF BANK -- YOU KNOW, DIFFERENT BANKRUPTCIES WHERE IF A
9 BANKRUPTCY HAS AN ASSET OF A CONTRACT, WE'RE NOT ALLOWED TO
10 CANCEL THOSE CONTRACTS BECAUSE THEY BECOME AN ASSET OF THE
11 ESTATE. SO THERE'S DIFFERENT REASONS FOR THE SUSPENSION
12 AND NON-REJECTION OF THOSE CONTRACTS.

13 Q LET'S LOOK AT AN EXHIBIT THAT MR. SHERMAN
14 SHOWED YOU YESTERDAY, EXHIBIT 123.

15 NOW, THIS WAS THE THOUSAND ADVENTURES
16 BANKRUPTCY LAWSUIT BY MR. LAM THAT WAS FILED IN
17 SEPTEMBER -- I'M SORRY. I CAN'T READ IT FROM HERE,
18 MR. NOVELLI. CAN YOU SEE IT OKAY? OR DO YOU WANT ME TO
19 GET YOU THE EXHIBIT?

20 A IT'S KIND OF BLURRED. NOW I CAN SEE IT.
21 SEPTEMBER 10TH, 1999.

22 Q NOW, THIS LAWSUIT WAS FILED BY MR. LAM. AND
23 WHAT HAPPENED WITH THE LAWSUIT?

24 MR. SHERMAN: OBJECTION. CALLS FOR HEARSAY, YOUR
25 HONOR. HE HAS NO PERSONAL KNOWLEDGE.

26 THE COURT: I'LL ALLOW IT.

1 PROCEED.

2 BY MR. SHAW: Q DO YOU HAVE PERSONAL KNOWLEDGE OF
3 WHAT HAPPENED IN THE LAWSUIT?

4 A YES. WELL, THIS IS THE SECOND OF THE --
5 MR. LAM FILED A LAWSUIT PRIOR TO THIS ONE, AND WE HAD A
6 HEARING IN THE FEDERAL COURT BASED ON THE MEMBERSHIP. AND
7 THE JUDGE ALLOWED US TO CONTINUE ON WITH THE MEMBERS
8 THAT -- MR. LAM COULDN'T SUPPORT THE MEMBERS. HE HAD NO
9 RESORTS. HE HAD NO WAY OF BILLING. AND HE SAID IF HE DID
10 HAVE THE RESORTS -- OR HE DID HAVE THE MEMBERS, HE WOULD
11 JUST SHUT THEM DOWN. SO THE JUDGE RULED IN OUR FAVOR.

12 HE THEN PROCEEDED WITH THIS NEW CAUSE OF
13 ACTION CLAIMING PRETTY MUCH THE SIMILAR-TYPE THING. AND
14 RIGHT NOW HE IS OFFERING SOME KIND OF -- YOU KNOW, A
15 SETTLEMENT JUST TO GET IT OUT OF THERE.

16 MR. SHERMAN: MOVE TO STRIKE AS NOT RESPONSIVE TO
17 THE QUESTION.

18 THE COURT: GRANTED.

19 MR. SHERMAN: AND BASED ON HEARSAY.

20 BY MR. SHAW: Q WHAT HAPPENED TO THE SECOND
21 LAWSUIT? LET'S JUST -- SPECIFICALLY WHAT HAPPENED -- WHAT
22 WAS YOUR UNDERSTANDING, YOUR STATE OF MIND, YOUR
23 UNDERSTANDING AS TO WHAT HAPPENED IN THE SECOND LAWSUIT?

24 MR. SHERMAN: MR. NOVELLI'S UNDERSTANDING IS
25 IRRELEVANT.

26 THE COURT: SUSTAINED.

1 BY MR. SHAW: Q YOU REMEMBER MR. SHERMAN ASKING
2 YOU SOME QUESTIONS ABOUT THIS LAWSUIT YESTERDAY?

3 A YES.

4 Q AND MR. LAM HASN'T BEEN SUCCESSFUL IN THIS
5 LAWSUIT, HAS HE, MR. NOVELLI?

6 A NO.

7 MR. SHERMAN: OBJECTION. THE COURT DOCUMENT AS THE
8 RECORDS SPEAKS FOR THEMSELVES.

9 THE COURT: SUSTAINED.

10 BY MR. SHAW: Q WERE YOU PRESENT AT A HEARING JUST
11 RECENTLY WHEN THIS LAWSUIT WAS DEALT WITH?

12 A NOT THIS ONE HERE.

13 MR. SHERMAN: OBJECTION. HEARSAY.

14 THE WITNESS: THAT WAS THE ONE IN OHIO.

15 THE COURT: OVERRULED.

16 THE WITNESS: THIS IS IOWA.

17 BY MR. SHAW: Q BUT THE FACT IS THAT THERE'S BEEN
18 NO LIABILITY FOR ANY OF THE DEFENDANTS IN THIS PARTICULAR
19 CASE?

20 A NO.

21 Q LET'S LOOK AT PAGE 5100 OF THE JUNE 28. AND
22 LET'S LOOK AT THE QUESTIONS THAT MR. SHERMAN ASKED YOU ON
23 JUNE 28TH. AND LET'S GO DOWN TO THE BOTTOM QUESTION.

24 "AND THEN IN CLOSING THIS LETTER, YOU TOLD
25 YOUR MEMBERS WHAT THEY NEEDED TO DO IF THEY WANTED TO
26 BECOME MEMBERS OF TRAVEL AMERICA?

1 "ANSWER: YES.

2 "QUESTION: SO TO BECOME A MEMBER, YOU
3 BELIEVE THEY HAD TO PAY THEIR DUES?

4 "ANSWER: NO. SIR, WHAT THIS IS, APOLLO DID
5 NOT GET ALL OF THE PARKS, AS YOU REMEMBER IN THE ALL
6 SEASONS CASE. IT GOT SIX OF THEM OR FIVE OF THEM. THERE
7 WERE SEVERAL PARKS THEY DIDN'T GET.

8 "SO THE PRESIDENT'S TRAVEL CLUB SENT A
9 LETTER TO THE MEMBERS OF PARKS THAT WERE LOCKED OUT, THAT
10 WERE LOCKED OUT OF THEIR HOME PARKS AT FOX RIVER AND SOME
11 OF THOSE. AND THEN SENT A LETTER SAYING, IF YOU'D LIKE TO
12 HAVE A COMPARABLE SYSTEM, SEND US SOME DUES, AND YOU'RE IN.

13 "THIS LETTER DID NOT GO TO ALL THE ALL
14 SEASONS MEMBERS, ONLY TO THOSE MEMBERS WHO GOT LOCKED OUT
15 OF THEIR PARKS BECAUSE THERE WAS -- THREE OF THOSE PARKS
16 WERE NOT ACQUIRED BY APOLLO BUT BY OTHERS WHO LOCKED THESE
17 MEMBERS OUT."

18 NOW, I'D LIKE TO GO BACK UP TO THE QUESTION,
19 IF I CAN.

20 MR. DURAN, IF YOU COULD SCROLL DOWN FOR ME.

21 SO WHAT WAS THE PURPOSE OF THIS LETTER TO
22 THE MEMBERS WHO WERE LOCKED OUT AT FOX RIVER AND SOME OF
23 THE OTHER PARKS?

24 MR. SHERMAN: YOUR HONOR, AS THE RECORD SHOWS, THE
25 TESTIMONY WAS NOT RESPONSIVE. WE MADE A MOTION TO STRIKE.
26 THE COURT GRANTED IT. THE ENTIRE QUESTION WAS IMPROPER.

1 THE ENTIRE QUESTION BY MR. SHAW WAS IMPROPER.

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 AND I NEED A BREAK. LET'S TAKE 20.

4 MR. SHERMAN: YOUR HONOR, MAY I ASK THAT THESE
5 REMARKS BE STRICKEN SO IT'S NOT IN THE RECORD.

6 THE COURT: IT'S STRICKEN.

7 (RECESS TAKEN.)

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

10 BY MR. SHAW: Q MR. NOVELLI, I'D LIKE TO HAVE US
11 LOOK AT EXHIBIT 164. AND THIS WAS A DOCUMENT THAT WE
12 LOOKED AT THAT WAS THE FINOVA ORDER BY ALL SEASONS
13 RESORTS.

14 REMEMBER MR. SHERMAN WAS ASKING YOU SOME
15 QUESTIONS ABOUT THIS?

16 A YES.

17 Q AND LET'S LOOK AT PAGE 5118, LINE 15 OF --
18 AND I HAVE IT HERE FOR YOU, MR. NOVELLI. 5118 OF THE
19 TESTIMONY AND THE QUESTIONING BY MR. SHERMAN ON JUNE 29TH.
20 CAN YOU TAKE THAT OFF JUST FOR A MINUTE? I WANT TO MAKE
21 SURE. MR. SHERMAN, PAGE 5118, LINES 15 THROUGH 18.

22 MR. SHERMAN: I DON'T HAVE THE TRANSCRIPT. BUT IF
23 IT'S -- IF IT'S WHAT WE DISCUSSED, THAT'S FINE.

24 MR. SHAW: YES. IT'S WHAT WE DISCUSSED.

25 MR. SHERMAN: THAT'S FINE.

26 BY MR. SHAW: Q LET'S PUT UP 5118. AND THIS WAS

1 MR. SHERMAN'S QUESTIONING REGARDING THE CAMPGROUNDS. AND
2 NUMBER 19.

3 "QUESTION" -- I'M SORRY. LINE 15.

4 "QUESTION: AND ALL SEASONS CAMPGROUNDS WERE
5 IN NEED OF SUBSTANTIAL AND EXPENSIVE MAINTENANCE AND
6 REPAIR?

7 "ANSWER: I DON'T KNOW ABOUT THAT. THAT'S
8 NOT MY OPINION."

9 I'D LIKE TO FOCUS ON YOUR ANSWER TO
10 MR. SHERMAN'S QUESTION THAT THAT'S NOT YOUR OPINION. AND
11 I'D LIKE TO GO TO EXHIBIT 2172, THE BATCH REPORTS FROM
12 COAST, CAMP COAST TO COAST, WHERE IT SHOWS THE RATINGS OF
13 THE VARIOUS PARKS.

14 DO YOU REMEMBER THE TESTIMONY REGARDING
15 2172?

16 A YES, I DO.

17 MR. SHERMAN: OBJECTION, YOUR HONOR. WITH THE
18 EXCEPTION OF ONE DOCUMENT IN 2172, THIS MANY-HUNDRED-PAGE
19 EXHIBIT, NOT ONE OTHER PAGE WAS SHOWN.

20 THE COURT: IT WAS ONLY SHOWN -- JUST ONE PAGE.
21 AREN'T YOU --

22 MR. SHERMAN: GOES BEYOND THE SCOPE OF THE CROSS.

23 MR. SHAW: THERE WERE FIVE RESORTS THAT WERE PART
24 OF ALL SEASONS RESORTS THAT MR. SHERMAN ASKED ABOUT, AND
25 EACH ONE OF THEM HAD A 4 OR A 5 RATING IN THEIR OWN BATCH
26 REPORTS. ALL I WANT TO DO IS SHOW THOSE PAGES AND THE

1 BATCH REPORTS THAT ARE ALREADY IN EVIDENCE THAT SHOW THAT,
2 THE STATUS OF THE UPKEEP OF THE RESORTS.

3 THE COURT: ALL RIGHT. PROCEED. I'LL ALLOW IT.

4 BY MR. SHAW: Q LET'S LOOK AT 2172. LET ME SHOW
5 YOU -- BEFORE WE GO -- MR. DURAN AND MR. MICHAELS ARE GOING
6 TO ORGANIZE THAT SO WE DON'T WASTE ANY TIME. I'M GOING TO
7 MOVE TO A SUBJECT AND THEN COME BACK.

8 AND I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED
9 AS 1633-001 AND 1633-003 AND 1634.

10 MR. SHERMAN, I'LL WAIT UNTIL YOU HAVE IT.

11 MR. SHERMAN: THANK YOU.

12 YOUR HONOR, THESE DOCUMENTS WERE NOT SHOWN
13 THE WITNESS IN CROSS-EXAMINATION. THEY GO BEYOND THE
14 SCOPE. THE BATCH REPORTS ARE ONE THING. THESE ARE
15 ANOTHER. THEY GO BEYOND THE SCOPE.

16 MR. SHAW: YOUR HONOR, THESE ARE LETTERS FROM --
17 THESE ARE -- THESE HAVE TO DO WITH THE STATUS OF THE
18 RESORTS. I'D LIKE TO BE SEEN AT SIDEBAR AND SHOW THE COURT
19 THE LETTERS.

20 THE COURT: LET ME SEE THE LETTERS.

21 MR. SHAW: I DON'T WANT TO STATE WHAT THEY ARE IN
22 FRONT OF THE JURY.

23 THE COURT: LET ME SEE THE LETTERS. SIDEBAR.

24 (DISCUSSION OFF THE RECORD.)

25 BY MR. SHAW: Q ALL RIGHT. LET'S SAVE THE LETTERS
26 FOR ANOTHER WITNESS, MR. NOVELLI.

1 BUT LET'S LOOK AT THE BATCH REPORTS FROM
2 COAST TO COAST, EXHIBIT 2172.

3 MR. SHERMAN: YOUR HONOR, FOR THE SAME REASONS AS
4 DISCUSSED AT SIDEBAR, IT'S BEYOND THE SCOPE.

5 THE COURT: THE SAME THING. THE SAME THING.

6 MR. SHAW: YOUR HONOR, ON DIRECT -- I'LL SHOW THE
7 COURT THE TRANSCRIPT, BUT MR. SHERMAN SHOWED HIM THE BATCH
8 REPORTS AND DISCUSSED THEM. ALL I WANT TO DO IS CLARIFY
9 WHAT THE BATCH REPORTS HAVE TO SAY ABOUT THE STATUS OF THE
10 RESORTS.

11 MR. SHERMAN: WE WENT OVER THIS, YOUR HONOR, AT THE
12 SIDEBAR.

13 THE COURT: I'M GOING TO STAND BY MY RULING HERE,
14 MR. SHAW.

15 BY MR. SHAW: Q YOU SAID IN RESPONSE TO
16 MR. SHERMAN'S QUESTION THAT IN YOUR OPINION THE RESORTS
17 WERE IN PRETTY GOOD SHAPE?

18 A YES, THEY WERE.

19 Q WHY DID YOU MAKE THAT STATEMENT THAT -- IN
20 YOUR OPINION?

21 A AS FAR AS THE RESORTS THEMSELVES, I KEEP IN
22 CONTACT WITH ALL THE MANAGERS AS WELL AS THE RESORT
23 MEMBERS, AND OUR RESORTS CONSISTENTLY THROUGH THE YEARS
24 HAVE HAD A HIGH RATING ON THE -- RATING WITH COAST TO
25 COAST, 4 OR BETTER. AND ALSO WITH OUR OWN MEMBERS OUR
26 RATING HAS BEEN EXTREMELY HIGH.

1 Q AND, IN FACT, IN EXHIBIT 2172 -- WE'RE NOT
2 GOING TO TAKE THE TIME TO SHOW THEM -- YOU RECEIVED -- THEY
3 HAD 4'S AND 5'S AS TO THE ALL SEASONS RESORT?

4 MR. SHERMAN: OBJECTION. GOES BEYOND THE SCOPE.

5 THE COURT: SUSTAINED.

6 BY MR. SHAW: Q AND YOU WERE -- YOU NEVER RECEIVED
7 ANYTHING LESS THAN A 4 OR 5?

8 MR. SHERMAN: OBJECTION. GOES BEYOND THE SCOPE.

9 THE COURT: SUSTAINED.

10 BY MR. SHAW: Q LET'S LOOK AT PAGE 5143, LINE 20.

11 A I DON'T BELIEVE I HAVE THAT UP HERE.

12 Q I'M SORRY. I APOLOGIZE. PAGE 143, LINE 20
13 IS IN THIS BOOK, MR. NOVELLI.

14 I'M SORRY, MR. MICHAELS. THE PAGE IS 5144,
15 LINE 20. I MISSPOKE. PAGE 5144 FROM THE JUNE 29.

16 SPECIFICALLY I'D LIKE YOU TO FOCUS ON THE
17 QUESTION FROM LINE 20 THROUGH 25 MR. SHERMAN ASKS.

18 "NOW, THESE LOSSES OF \$7 MILLION A YEAR, IN
19 THE YEARS PRIOR TO THE MERGER OF YOUR COMPANIES AND
20 MR. VOPNFORD'S COMPANIES, YOU'RE NOT BLAMING MY CLIENTS FOR
21 THOSE LOSSES NOW, ARE YOU?"

22 MR. SHERMAN: YOUR HONOR, I MOVED TO STRIKE THE
23 ANSWER. THE COURT GRANTED THE MOTION TO STRIKE THE ANSWER.
24 COUNSEL HAS NO BUSINESS READING FROM THIS TRANSCRIPT.

25 THE COURT: SUSTAINED.

26 MR. SHAW: YOUR HONOR, HE SAYS EVERYTHING AFTER

1 "NO." I'M JUST -- I'M READING THE QUESTION.

2 MR. SHERMAN: THE TESTIMONY SHOULD BE STRICKEN
3 THEN. IT SHOULD NOT BE SHOWN TO THE JURY. COUNSEL KNOWS
4 THAT.

5 THE COURT: STRICKEN.

6 MR. SHAW: I ACKNOWLEDGE IT'S NO.

7 NOW, THOSE LOSSES OF \$7 MILLION A YEAR PRIOR
8 TO THE MERGER, YOU'RE NOT BLAMING MY CLIENTS FOR -- LET'S
9 TAKE IT DOWN. IT SAYS, "NO." LET'S FOCUS ON THAT QUESTION
10 AND THAT ANSWER, MR. NOVELLI, MR. SHERMAN'S QUESTION.

11 YESTERDAY WE SAW SEVEN BOXES. DO YOU
12 REMEMBER WHEN MR. SHERMAN WHEELED IN SOME BOXES RIGHT HERE
13 INTO -- ABOUT TRAVEL AMERICA -- THOUSAND ADVENTURES AND
14 ABOUT MR. VOPNFORD'S PROBLEMS WITH THE ATTORNEY GENERAL'S
15 OFFICE?

16 A YES, I DO.

17 Q NOW, THAT WAS ALL IN THE TIME PERIOD PRIOR
18 TO THE MERGER WITH TRAVEL AMERICA; CORRECT?

19 MR. SHERMAN: OBJECTION. MISSTATES WHAT'S IN THE
20 BOXES.

21 THE COURT: I DIDN'T ALLOW THE BOXES TO COME IN,
22 MR. SHAW.

23 BY MR. SHAW: Q TRAVEL AMERICA NEVER RECEIVED
24 ANY --

25 A NO.

26 Q -- ATTORNEY GENERALS --

1 A NO.

2 Q AS FAR AS YOU KNOW, THE ONLY ATTORNEY
3 GENERALS PROBLEMS WERE WITH MR. VOPNFORD; CORRECT?

4 A YES.

5 Q AND YOU KNEW ABOUT THAT?

6 A SOMEWHAT, YES.

7 Q YOU KNEW BECAUSE THAT WAS DISCUSSED AT THE
8 TOMMY CLOUD RANCH MEETING?

9 A YES, IT WAS.

10 Q AND TO YOUR INFORMATION COAST KNEW ABOUT
11 THAT ALSO?

12 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION.

13 THE COURT: SUSTAINED.

14 BY MR. SHAW: Q DO YOU HAVE ANY BACKGROUND OR ANY
15 INFORMATION OR KNOWLEDGE THAT COAST TO COAST KNEW ABOUT IT?

16 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION AND
17 HEARSAY.

18 THE COURT: SUSTAINED.

19 MR. SHAW: I'M JUST ASKING HIM A YES OR NO
20 QUESTION.

21 THE WITNESS: NO, I HAVE NO KNOWLEDGE.

22 BY MR. SHAW: Q YOU HAVE NO KNOWLEDGE OF THAT.

23 THOSE MATTERS MR. SHERMAN MADE A POINT OF
24 YESTERDAY WERE MATTERS OF PUBLIC RECORD. REMEMBER WHEN HE
25 ASKED YOU ABOUT THOSE DOCUMENTS; THAT THEY WERE A MATTER OF
26 PUBLIC RECORD?

1 A YES.

2 Q SO, YOUR UNDERSTANDING, COAST WOULD HAVE
3 THAT INFORMATION ALSO?

4 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION.

5 THE COURT: SUSTAINED.

6 BY MR. SHAW: Q MATTER OF PUBLIC RECORD MEANS IT'S
7 OPEN FOR ANYONE; RIGHT?

8 A YES.

9 Q EVEN COAST TO COAST?

10 A YES.

11 Q NOW, AND THAT TIME PERIOD, PRIOR TO THE
12 MERGER, WAS PRIOR TO 1997; CORRECT?

13 A YES.

14 Q AND DO YOU HAVE ANY UNDERSTANDING THAT COAST
15 TO COAST KNEW ABOUT THE STATUS OF MR. VOPNFORD'S RESORTS?

16 MR. SHERMAN: OBJECTION. CALLS FOR SPECULATION.

17 THE COURT: SUSTAINED.

18 BY MR. SHAW: Q LET'S LOOK AT EXHIBIT 1900 THAT
19 WAS ADMITTED INTO EVIDENCE ON JUNE 7TH.

20 AND IF YOU WILL PUT IT UP, MR. MICHAELS.

21 MR. SHERMAN: EXCUSE ME. COULD I SEE IT FIRST,
22 PLEASE.

23 MR. SHAW: YES, CERTAINLY.

24 MR. SHERMAN: AGAIN, THIS IS NOT AN ADMISSIBILITY
25 ISSUE. IT GOES BEYOND THE SCOPE OF THE CROSS. NO

26 QUESTIONS OF THIS NATURE WERE ASKED OF THIS WITNESS AS TO

1 THIS EXHIBIT 1900.

2 MR. SHAW: YOUR HONOR, I'D LIKE TO SHOW THE COURT
3 THE EXHIBIT, BECAUSE IT GOES DIRECTLY TO THE ISSUES THAT
4 WERE DISCUSSED BY MR. SHERMAN.

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: THE OBJECTION IS SUSTAINED.

7 MR. SHAW: YOUR HONOR, I HAVE NOTHING FURTHER OF
8 MR. NOVELLI.

9 MR. SHERMAN: I HAD INDICATED TO YOUR HONOR THAT I
10 WOULD HAVE SOME QUESTIONS. AND WHAT I'D LIKE TO ASK IS
11 THAT WE TAKE A BRIEF RECESS SO THAT I CAN GET THOSE
12 TOGETHER SO THIS CAN PROCEED EFFICIENTLY AND SO WE CAN
13 CONCLUDE.

14 THE COURT: HOW LONG DO YOU NEED?

15 MR. SHERMAN: TWO MINUTES.

16 THE COURT: OKAY. THEN THIS WILL BE OUR LAST BREAK
17 OF THE MORNING FOR 20 MINUTES.

18 MR. SHERMAN: THANK YOU, YOUR HONOR. WE'LL BE OUT
19 OF HERE AT 1:00 TODAY.

20 (RECESS TAKEN.)

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

23 MR. RIVIN: YOUR HONOR, I'D LIKE TO TALK ABOUT
24 SCHEDULING FOR TOMORROW.

25 MR. SHERMAN: IF YOUR HONOR DOESN'T MIND, IF I
26 COULD EXCUSE MYSELF.

1 THE COURT: NO. GO AHEAD.

2 MR. RIVIN: IF WE'RE GOING TO BE SPENDING A GOOD
3 DEAL OF TOMORROW WITH DEPOSITION TESTIMONY, WE HAVE SOME --
4 COUNSEL HAS SOME PRELIMINARY WORK TO DO WITH RESPECT TO THE
5 DEPOSITION TESTIMONY. MR. MOSHENKO AND I SPENT 20 OR 25
6 MINUTES TWO OR THREE WEEKS AGO GOING OVER MR. BLOCK'S
7 TESTIMONY. BUT I KNOW HE ADDED SOME TESTIMONY. SO IT TOOK
8 US QUITE A WHILE, AND WE DIDN'T EVEN GET THROUGH IT.

9 I THINK WE NEED SOME TIME TO GO THROUGH THE
10 PROPOSED TESTIMONY TO MAKE IT GO MORE SMOOTHLY IN FRONT OF
11 THE JURY. SO WE SHOULD GO THROUGH IT, REVIEW IT, SPEND THE
12 TIME TO REVIEW MR. BLOCK'S TESTIMONY, REVIEW MR. ROBINSON'S
13 TESTIMONY.

14 MR. SHAW: MY UNDERSTANDING IS ROBINSON HAS ALREADY
15 BEEN REVIEWED. YOU GAVE YOUR OBJECTIONS. MR. RUTENBERG
16 DID.

17 MR. RIVIN: WELL, I'LL TALK WITH HIM ABOUT THAT. I
18 THINK IT MIGHT NOT BE A BAD IDEA FOR US TO SPEND AN HOUR
19 AND A HALF TOMORROW MORNING IF WE NEED TO GO OVER THAT.

20 THE COURT: CAN'T YOU DO IT THIS MORNING?
21 AFTERNOON?

22 MR. RIVIN: I CAN'T, YOUR HONOR.

23 MR. MOSHENKO: I WAS GOING TO SPEND TIME PREPARING
24 FOR THE NEXT LIVE WITNESS THIS AFTERNOON. BUT THE
25 REASON -- A REASON --

26 THE COURT: YOU MEAN YOU WANT TO BRING THE JURY IN

1 AN HOUR AND A HALF LATER?

2 MR. RIVIN: A LITTLE BIT LATER.

3 THE COURT: BRING THEM IN AT 10:00.

4 MR. MOSHENKO: WE MIGHT NEED SOME OF THE COURT'S
5 TIME IF WE CAN'T REACH AGREEMENTS ON EVERY PART OF THE
6 DEPOSITION.

7 MR. SHAW: SAY 10:30.

8 MR. MOSHENKO: IT MIGHT MAKE MORE SENSE TO HAVE THE
9 OBJECTIONS TO THE DEPOSITION HEARD BEFORE THE JURY GETS
10 HERE.

11 THE COURT: WHY DON'T WE START AT 8:30 TOMORROW
12 MORNING AND BRING THEM IN AT 10:00.

13 MR. MOSHENKO: THAT WORKS.

14 THE COURT: FAIR?

15 MR. RIVIN: YES.

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

18 THE COURT: PROCEED.

19 MR. SHERMAN: WITH THE COURT'S PERMISSION, THERE
20 WERE ONE OR TWO AREAS THAT I WAS HOPING TO INQUIRE FROM
21 COUNSEL BECAUSE I HAD SOME INFORMATION ON THE COMPUTER
22 SCREEN.

23 MAY I PROCEED?

24 RECROSS-EXAMINATION

25 BY MR. SHERMAN: Q OKAY. MR. NOVELLI, I'D LIKE
26 TO START OUT WITH THE TESTIMONY THAT YOU GAVE IN RESPONSE

1 TO MR. SHAW'S QUESTIONING OF YOU.

2 YOU RECALL MR. SHAW SHOWED YOU THIS
3 DOCUMENT; CORRECT?

4 A YES.

5 Q AND HE ASKED YOU SOME QUESTIONS ABOUT THIS
6 DOCUMENT; CORRECT?

7 A CORRECT.

8 Q AND HE ASKED YOU SOME QUESTIONS ABOUT THE
9 TIMING OF CERTAIN EVENTS AS THEY RELATED TO THIS DOCUMENT;
10 CORRECT?

11 A YES.

12 Q AND THEN HE ASKED YOU WHETHER YOU HAD THIS
13 INFORMATION FROM COAST WHEN EXHIBIT 51 WAS SIGNED; DO YOU
14 RECALL HIM ASKING YOU THAT?

15 A WHAT IS EXHIBIT 51?

16 Q LET'S PUT EXHIBIT 51 UP ON THE BOARD.

17 MR. SHAW ASKED YOU WHETHER YOU HAD THAT
18 INSIDE NEWS WHEN EXHIBIT 51 WAS SIGNED; DO YOU RECALL THAT
19 QUESTION?

20 MR. MOSHENKO: OBJECTION. MISSTATES THE TESTIMONY,
21 WHETHER HE HAD THE INFORMATION IN HAND OR IN MIND. COUNSEL
22 READ IT A MOMENT AGO. NOT EXHIBIT 51.

23 MR. SHERMAN: I'LL READ IT. QUOTE, "NOW, THIS IS
24 THE INFORMATION THAT YOU HAD FROM COAST TO COAST WHEN
25 EXHIBIT 51 WAS SIGNED; CORRECT?

26 "ANSWER: YES, IT WAS."

1 NOW, LET'S GO TO THE LAST PAGE OF -- THE
2 SIGNATURE PAGE OF EXHIBIT 51. DO YOU SEE THE SIGNATURE OF
3 MR. RYMAN?

4 A YEAH. I THOUGHT ON 51 --

5 Q DO YOU SEE THE SIGNATURE OF MR. RYMAN?

6 A YES.

7 Q DO YOU SEE THE DATE NEXT TO THAT?

8 A YES, I DO.

9 Q THE DATE IS MARCH 28, 1988, RIGHT;

10 A YES.

11 Q OKAY, LET'S GO BACK TO THE INFORMATION THAT
12 MR. SHAW WAS SHOWING YOU.

13 THE DATE AT THE TOP IS JANUARY, 1990; IS
14 THAT CORRECT?

15 A YES. BUT HE WAS SHOWING ME A LETTER FROM
16 PAT KENNEDY, I BELIEVE.

17 MR. SHERMAN: MOVE TO STRIKE, YOUR HONOR --

18 THE COURT: GRANTED.

19 MR. SHERMAN: -- AFTER "YES."

20 Q NOW, LET'S GO TO THE ISSUE OF EXHIBIT 2002.

21 AND, MIKE, IF WE COULD PUT THAT BACK UP ON
22 THE BOARD, PLEASE.

23 AND DURING THE RECESS WE GRACIOUSLY HAD THE
24 COURT REPORTERS PRINT OUT A COPY OF SOME OF THE TESTIMONY
25 THAT MR. NOVELLI HAD GIVEN AND GIVEN A COPY TO COUNSEL AS
26 WELL.

1 QUESTION: AND DURING THE TIME PERIOD THAT
2 MR. KEIM WAS RECEIVER OF ALL SEASONS RESORTS, YOU STILL HAD
3 AN INCREASE OF MEMBERS; IS THAT RIGHT?

4 A IN THE QUESTIONS, YES.

5 Q AND YOU WERE ASKED WHETHER -- AND YOUR
6 POSITION IS YOU HAD AN INCREASE OF MEMBERS WHETHER BY SALE
7 OR ACQUISITION; CORRECT?

8 A I BELIEVE THE QUESTION WAS "BY SALE OR
9 ACQUISITION."

10 Q AND YOUR TESTIMONY WAS "THAT'S CORRECT"?

11 A YES.

12 Q OKAY. NOW, THE SALES IN 1996 -- IF WE COULD
13 HIGHLIGHT THE 1996 SALES. THE 1996 SALES, THAT 7,000
14 FIGURE, 7,779, THOSE WERE SALES THAT WERE IN PART
15 ATTRIBUTABLE TO SALES MADE BY THOUSAND ADVENTURES, INC., IN
16 1996; CORRECT?

17 A YES, ALL THOSE FIGURES ARE INCLUDING T.A.I.

18 Q IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q YOU DID NOT OWN THOUSAND ADVENTURES, INC.,
21 IN 1996; CORRECT?

22 A THAT'S CORRECT, BUT THE CONTRACTS WERE
23 SIGNED.

24 Q YOU DID NOT OPERATE THOUSAND ADVENTURES,
25 INC., IN 1996; CORRECT?

26 A THAT'S CORRECT.

1 Q OKAY. LET'S NOW GO TO 1992.

2 JUST, MIKE THE -- THAT 16,000 FIGURE RIGHT
3 THERE. 16,000 FIGURE THERE.

4 NOW, YOU'LL RECALL -- YOU'VE ALREADY
5 TESTIFIED ABOUT WHEN YOU ACQUIRED SALT SPRINGS; RIGHT?

6 A I BELIEVE SO, YES.

7 Q AND THAT WAS IN 1993?

8 A YES.

9 Q AND WHEN YOU ACQUIRED SALT SPRINGS, THEY HAD
10 THOUSANDS OF MEMBERS; RIGHT?

11 A YES, THEY DID.

12 Q AND SALT SPRINGS MADE SOME SALES IN 1992 TO
13 MEMBERS; CORRECT?

14 A WE BOUGHT ADVENTURE RESORTS OF AMERICA. WE
15 DIDN'T BUY SALT SPRINGS. ADVENTURE RESORTS OF AMERICA IS
16 WHAT -- IS ONE OF THE PLAINTIFFS IN THIS CASE WHO SOLD
17 MEMBERS THROUGHOUT THAT TIME FRAME.

18 Q OKAY. THROUGHOUT THAT TIME FRAME; THEY SOLD
19 MEMBERSHIPS IN '90, '91 AND '92; CORRECT?

20 A CORRECT.

21 Q AT A TIME WHEN YOU DID NOT OWN A.R.A.;
22 CORRECT?

23 A A.R.A. IS A CORPORATION. I WASN'T --
24 WHETHER I OWNED IT OR SOMEBODY ELSE OWNED IT, THE STOCK OF
25 IT, A.R.A. WAS A CORPORATION THAT HAD MEMBERS AND WAS
26 SELLING MEMBERSHIPS.

1 MR. SHERMAN: MOVE TO STRIKE. NOT RESPONSIVE.

2 THE COURT: GRANTED.

3 BY MR. SHERMAN: Q YOU DID NOT OWN A.R.A. IN '90,
4 '91 OR '92; CORRECT?

5 A I NEVER DID OWN A.R.A. MYSELF. THAT'S A
6 CORPORATION OWNED BY FIRST NATIONWIDE. FIRST NATIONWIDE --
7 IT'S A FIRST NATIONWIDE CORPORATION.

8 Q FINE.

9 FIRST NATIONWIDE RESORTS MANAGEMENT, WHICH
10 ACQUIRED A.R.A. IN JUNE, 1993, DID NOT THEN BY LOGIC AND
11 DEFINITION OWN IT IN '90, '91 OR '92; CORRECT?

12 A DID NOT HAVE THE STOCK.

13 Q AND FIRST NATIONWIDE DID NOT OPERATE A.R.A.
14 IN '90, '91 OR '92; CORRECT?

15 A CORRECT.

16 Q AND SO ANY SALES ATTRIBUTABLE IN THIS 2002
17 IN '90, '91 AND '92 TO A.R.A. WERE SALES MADE WHEN YOUR
18 ORGANIZATION, FIRST NATIONWIDE RESORTS MANAGEMENT, NEITHER
19 OWNED IT NOR OPERATED IT; CORRECT?

20 A WHEN THE PLAINTIFF SOLD THEM A.R.A. --

21 THE COURT: YOU CAN ANSWER YES OR NO, MR. NOVELLI.

22 THE WITNESS: WOULD YOU REPEAT THE QUESTION.

23 MR. SHERMAN: PLEASE READ IT BACK.

24 (THE FOLLOWING TESTIMONY WAS READ BACK:

25 "AND SO ANY SALES ATTRIBUTABLE IN THIS 2002 IN '90, '91 AND
26 '92 TO A.R.A. WERE SALES MADE WHEN YOUR ORGANIZATION, FIRST

1 NATIONWIDE RESORTS MANAGEMENT, NEITHER OWNED IT NOR
2 OPERATED IT; CORRECT?")

3 THE WITNESS: CORRECT.

4 BY MR. SHERMAN: Q AND THIS 2002, ALL THE NUMBERS
5 HERE TELL US NOTHING ABOUT MEMBERS WHO QUIT YOUR
6 ORGANIZATION OR OTHERS' ORGANIZATIONS OR STOPPED PAYING
7 DUES; CORRECT?

8 A THAT'S CORRECT.

9 Q NOW, YOU'LL RECALL TESTIFYING ABOUT YOUR
10 ASSERTION THAT THE BANKRUPTCY COURT -- THOUSAND ADVENTURES,
11 INC., OF OHIO BANKRUPTCY COURT DID NOT DISMISS THE THOUSAND
12 ADVENTURES, INC., BANKRUPTCY, AND THAT YOU WERE THERE AND
13 YOU SAW IT; DO YOU RECALL THAT?

14 A YES, I WAS THERE.

15 MR. SHAW: YOUR HONOR, I OBJECT. THOSE OBJECTIONS
16 WERE SUSTAINED. AND WE DIDN'T ASK ANY QUESTIONS
17 REGARDING -- SO IT'S OUTSIDE THE SCOPE.

18 MR. SHERMAN: THIS IS THE EXACT POINT WE BROUGHT UP
19 IN CHAMBERS. WE COULD RECALL THE WITNESS IF THAT'S WHAT WE
20 CHOSE TO DO.

21 MR. SHAW: YOUR HONOR, BUT IT'S OUTSIDE THE SCOPE.
22 I WAS NOT ALLOWED TO GET INTO THAT AREA. THE OBJECTIONS
23 WERE SUSTAINED.

24 THE COURT: I'M GOING TO ALLOW IT, COUNSEL.
25 PROCEED.

26 BY MR. SHERMAN: Q I'M GOING TO PUT UP YOUR

1 TESTIMONY FROM YESTERDAY ON THIS SUBJECT FROM PAGE 5425 AND
2 5426.

3 IF YOU CAN ZOOM IN THERE, MIKE, ON LINE 19.

4 "QUESTION: NOW, THERE IS PENDING PRESENTLY,
5 MR. NOVELLI, ACTIVITY IN THE BANKRUPTCY COURT IN OHIO TO
6 DISMISS THE THOUSAND ADVENTURES, INC., OF OHIO CASE;
7 CORRECT?

8 "ANSWER: THAT WAS DENIED. NO, NOTHING
9 PENDING."

10 AND THEN THE NEXT PAGE, LINE 4.

11 "QUESTION: AND THE COURT HAS NOT YET
12 DECIDED THAT?

13 "ANSWER: THE COURT'S ALREADY DENIED IT.
14 THAT'S WHERE I WAS GONE. THE DAY THAT I WASN'T HERE AT THE
15 TRIAL I WAS BACK IN OHIO IN THE -- AND THE COURT DISMISSED
16 THAT ACTION.

17 "QUESTION: ON THAT DAY?

18 "ANSWER: ON THAT DAY."

19 I'M GOING TO PLACE BEFORE YOU, MR. NOVELLI,
20 AS EXHIBIT 1471, AND SHOW TO COUNSEL, A PLEADING. YOU'LL
21 SEE THAT YOUR COMPANY AND YOU WERE SERVED WITH THIS
22 PLEADING.

23 DO YOU SEE THAT, MR. NOVELLI?

24 A YES, I DO.

25 Q YOU WERE SERVED WITH THIS PLEADING ON JULY
26 3RD, 2000; RIGHT?

1 A WE DIDN'T GET SERVED WITH THIS. WE GOT IT
2 IN THE MAIL, I BELIEVE. BUT I JUST SEEN IT THE OTHER DAY.
3 THIS IS THE OBJECTION.

4 Q AND WHEN YOU SAY YOU SAW IT THE OTHER DAY,
5 YOU'RE NOT SUGGESTING YOU SAW IT YESTERDAY AFTER YOU CAME
6 BACK FROM COURT?

7 A YESTERDAY I SEEN THIS COME INTO OUR OFFICE.
8 I SEEN THIS COME FROM A OUTSIDE PARTY, IS WHAT IT IS.

9 Q OKAY. SO LET'S JUST MAKE SURE THAT WE'RE
10 ALL UNDERSTANDING THIS.

11 YESTERDAY, JULY 10, YOU TESTIFIED ON THIS
12 SUBJECT; RIGHT?

13 A YES, I DID.

14 Q AND WE BROKE AT AROUND 4:30. AND YOU WENT
15 BACK TO YOUR OFFICE, AND YOU SAW A PIECE OF MAIL FOR THE
16 FIRST TIME. IS THAT YOUR TESTIMONY?

17 A THIS CAME IN THE MAIL, YES.

18 Q AND SO BETWEEN JULY 3RD AND JULY 10TH, YOU
19 DIDN'T RECEIVE THIS DOCUMENT, EXHIBIT 1471; RIGHT?

20 A NO.

21 MR. SHERMAN: AND THIS EXHIBIT 1471 -- I'D LIKE TO
22 MOVE 1471 INTO EVIDENCE, YOUR HONOR.

23 MR. SHAW: YOUR HONOR, OBJECTION. IT'S TOTALLY
24 HEARSAY. IT'S NOT A PLEADING. IT'S AN OBJECTION --

25 THE COURT: MAY I SEE THE DOCUMENT, PLEASE.

26 MR. SHAW: AND I WOULD LIKE TO BE HEARD ON THE

1 RECORD, YOUR HONOR.

2 YOUR HONOR, I WOULD LIKE TO BE HEARD ON THIS
3 MATTER. THIS SUPPORTS MR. NOVELLI'S TESTIMONY. IT CAN'T
4 BE USED FOR IMPEACHMENT. IT'S -- AN ORDER HAS ALREADY BEEN
5 GIVEN BY THE COURT. THIS IS AN OBJECTION TO THE COURT'S
6 ORDER. IT'S HEARSAY. IT'S MISLEADING. AND I WOULD ASK
7 THAT IT -- IT'S OUT -- CERTAINLY OUTSIDE THE SCOPE OF ANY
8 CROSS-EXAMINATION -- REDIRECT THAT I DID TODAY. AND I
9 COULD NOT GET INTO AREAS THAT I THOUGHT WERE IN TESTIMONY.
10 THIS IS OUTSIDE THAT SCOPE.

11 MR. SHERMAN: YOUR HONOR, THE WITNESS TESTIFIED TO
12 AN ORDER BEING MADE.

13 MR. SHAW: YOUR HONOR, I OBJECT TO MR. SHERMAN
14 TESTIFYING.

15 THE COURT: WELL, WAIT A MINUTE.

16 MR. SHERMAN: NO. THE WITNESS TESTIFIED.

17 THE COURT: I'LL HEAR HIM.

18 MR. SHERMAN: THE WITNESS TESTIFIED THAT HE WAS IN
19 COURT IN OHIO. IF NEED BE, WE CAN PUT IT BACK UP ON THE
20 BOARD.

21 THE COURT: WILL YOU STIPULATE -- APPROACH THE
22 BENCH.

23 (DISCUSSION OFF THE RECORD.)

24 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 1471 INTO
25 EVIDENCE, YOUR HONOR.

26 MR. SHAW: OBJECTION. IRRELEVANT. HEARSAY.

1 VIOLATES EVIDENCE CODE SECTION 1300 AND EVIDENCE CODE
2 SECTION 352.

3 THE COURT: THANK YOU. EXHIBIT WHAT WAS IT?

4 MR. SHERMAN: 1471.

5 THE COURT: IT'S RECEIVED.

6 (WHEREUPON, EXHIBIT NO. 1471, OBJECTION TO
7 PROPOSED ORDER, WAS RECEIVED IN EVIDENCE.)

8 MR. SHERMAN: SINCE WE DO NOT HAVE THIS IMAGED YET,
9 YOUR HONOR, SINCE WE JUST RECEIVED IT THIS MORNING, I WOULD
10 JUST READ FROM A PORTION OF IT.

11 THIS IS THE OBJECTION TO THE PROPOSED ORDER
12 ON MOTION OF THE UNITED STATES TRUSTEE'S MOTION FOR ORDER
13 CONVERTING CHAPTER 11 CASE. THIS IS A PLEADING. IT IS A
14 PLEADING SIGNED BY ATTORNEY GRADY L. PETTIGREW, SHOWING A
15 SERVICE OF JULY 3RD, 2000, ON TRAVEL AMERICA, RAYMOND
16 NOVELLI.

17 QUOTE, "NOW COMES THE COUNSEL FOR THE OHIO
18 MEMBERS COMMITTEE, SOME 85 CREDITORS IN THE WITHIN CASE
19 HOLDING CLAIMS IN THE PRIORITY AND GENERAL UNSECURED
20 CLASSIFICATION, TO OPPOSE THE AGREEMENT OF THE DEBTOR AND
21 THE OFFICE OF THE UNITED STATES TRUSTEE AS A RESOLUTION TO
22 THE TRUSTEE'S MOTION TO CONVERT OR DISMISS THE CHAPTER 11
23 CASE," CLOSE QUOTE.

24 AND THEN IN THE NEXT PARAGRAPH IT GOES ON TO
25 SAY, QUOTE, "THE DEBTOR AND U.S. TRUSTEE HAVE SERVED A
26 PROPOSED ORDER ON PARTIES WHICH AT FIRST BLUSH DOES NOT

1 RECOGNIZE RIGHTS OF PARTIES." AND IT GOES ON.

2 THE COURT: OKAY.

3 BY MR. SHERMAN: Q NOW, IF WE CAN PUT EXHIBIT 123
4 BACK UP ON THE BOARD, PLEASE. THAT IS THE LAWSUIT,
5 MR. NOVELLI, THAT WAS FILED AGAINST YOU AND TRAVEL AMERICA
6 BY THE BANKRUPTCY TRUSTEE FOR THOUSAND ADVENTURES, INC.,
7 ERIC LAM, ON SEPTEMBER 10, 1999; CORRECT?

8 MR. SHAW: I'LL OBJECT TO ANY QUESTIONS REGARDING
9 THIS DOCUMENT. MR. SHERMAN OBJECTED THAT THIS WAS OUTSIDE
10 THE SCOPE. I WAS NOT ALLOWED TO ASK ANY QUESTIONS. SO I
11 BELIEVE ASKING ANY QUESTIONS REGARDING THIS DOCUMENT IS
12 OUTSIDE THE SCOPE OF MY REDIRECT SINCE I WASN'T ALLOWED TO
13 ASK QUESTIONS.

14 MR. SHERMAN: THESE VERY SPECIFIC QUESTIONS WERE
15 ASKED, AND MR. NOVELLI GAVE TESTIMONY ABOUT WHAT HAPPENED
16 BEFORE AND THEN AFTER IN THE REDIRECT, YOUR HONOR. I'M
17 JUST FOLLOWING UP ON THAT.

18 THE COURT: ALL RIGHT.

19 MR. SHAW: THE SAME OBJECTION.

20 THE COURT: OVERRULED.

21 BY MR. SHERMAN: Q SO THIS IS THE COMPLAINT;
22 CORRECT, MR. NOVELLI?

23 A IT APPEARS TO BE, YES.

24 Q THIS IS A LAWSUIT BY THE THOUSAND
25 ADVENTURES' BANKRUPTCY TRUSTEE AGAINST YOU PERSONALLY;
26 RIGHT?

1 MR. SHAW: OBJECTION. CUMULATIVE. THIS WAS DEALT
2 WITH ON DIRECT -- EXCUSE ME -- ON CROSS-EXAMINATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES, I'M NAMED AS ONE OF THE
5 DEFENDANTS.

6 BY MR. SHERMAN: Q AS OF TODAY, MR. NOVELLI, IS
7 THIS LAWSUIT STILL PENDING -- PENDING AGAINST YOU
8 PERSONALLY?

9 A YES, IT IS.

10 Q IS THIS LAWSUIT STILL PENDING AGAINST TRAVEL
11 AMERICA TODAY?

12 A YES, IT IS.

13 Q NOW, YOU'RE AWARE THAT MANY R.V.'ERS HAVE
14 MEMBERSHIPS IN MORE THAN ONE R.V. CAMPGROUND; RIGHT?

15 A YEAH, THERE'S SOME.

16 Q AND YOU MEMBER -- ACTUALLY YOU WEREN'T HERE
17 THAT DAY BECAUSE YOU WERE IN OHIO. BUT I'LL TELL YOU THAT
18 YOU HAD A MEMBER COME IN, PETE PREMO. HAVE YOU HEARD ABOUT
19 MR. PREMO?

20 MR. SHAW: I'LL OBJECT. OUTSIDE THE SCOPE.

21 THE COURT: SUSTAINED.

22 BY MR. SHERMAN: Q WELL, LET ME START WITH THE
23 TESTIMONY, THEN, THAT MR. NOVELLI GAVE.

24 YOU RECALL BEING SHOWN BY MR. SHAW TESTIMONY
25 ABOUT THE LETTER FROM ARLENE JOSEPHSON JUST A FEW MOMENTS
26 AGO, BY GERALD SHAW?

1 A I BELIEVE SO.

2 Q AND YOU RECALL MR. SHAW ASKING YOU WHETHER
3 LETTERS LIKE ARLENE JOSEPHSON'S SUGGESTED THAT THE ONLY WAY
4 PEOPLE COULD STAY WITH COAST IS IF THEY LEFT PLAINTIFFS'
5 PARKS AND WENT TO ANOTHER HOME PARK? DO YOU RECALL BEING
6 ASKED THAT QUESTION BY MR. SHAW?

7 A I BELIEVE SO.

8 Q DO YOU RECALL THAT YOUR ANSWER WAS YES?

9 A YES.

10 Q LET'S DIG INTO THAT A LITTLE BIT MORE.

11 I JUST ASKED YOU A MOMENT AGO -- I THINK
12 WE'VE ESTABLISHED THAT YOU ARE AWARE THAT MANY R.V.'ERS
13 HAVE MEMBERSHIPS IN MORE THAN ONE R.V. CAMPGROUND; RIGHT?

14 A CORRECT.

15 Q AND NOW LET'S TALK ABOUT WITNESS PETE PREMO,
16 ONE OF YOUR WITNESSES WHO TESTIFIED HERE.

17 YOU KNOW THAT HE HAD MEMBERSHIPS IN MORE
18 THAN ONE CAMPGROUND; RIGHT?

19 MR. SHAW: OBJECTION. OUTSIDE THE SCOPE.

20 THE COURT: OVERRULED.

21 THE WITNESS: I DON'T KNOW.

22 BY MR. SHERMAN: Q DO YOU KNOW WHETHER MR. PREMO
23 HAD MEMBERSHIPS AT ORLANDO AND WITH NACO AND WITH TRAVEL
24 RESORTS OF AMERICA, THREE MEMBERSHIPS?

25 A I DON'T KNOW. I WASN'T HERE WHEN HE
26 TESTIFIED.

1 Q YOU KNOW WHETHER PETE PREMO WAS STILL A
2 COAST MEMBER WITH ALL THOSE MEMBERSHIPS INCLUDING
3 MEMBERSHIP IN YOUR ORGANIZATION?

4 A I'M SORRY. I WASN'T HERE. I DON'T KNOW
5 WHAT HE TESTIFIED TO.

6 Q SO WHEN YOU TESTIFIED THIS MORNING,
7 MR. NOVELLI, THAT THE ONLY WAY A MEMBER COULD KEEP THEIR
8 COAST MEMBERSHIP WAS TO LEAVE YOUR PARKS AND STOP PAYING
9 YOU DUES, THAT'S JUST WRONG; ISN'T IT?

10 A THEY CAN HAVE TWO MEMBERSHIPS, YES. BUT THE
11 FIRST HOME PARK MEMBERSHIP WAS THE ONE THAT COUNTS.

12 THE COURT: THERE'S NO QUESTION PENDING.

13 MR. SHERMAN: MOVE TO STRIKE EVERYTHING BEFORE.

14 Q NOW, LET'S GO BACK TO COAST LISTS OF 22,000
15 THAT YOU WERE ASKED SOME QUESTIONS ABOUT BY MR. SHAW.

16 COAST HAS A LIST OF APPROXIMATELY 22,000 OF
17 COAST TO COAST'S MEMBERS THAT WERE PRODUCED IN THIS CASE;
18 CORRECT?

19 A 35,000, AND ANOTHER LIST OF 23,000,
20 SOMETHING LIKE THAT.

21 Q AND THAT LIST, WHETHER IT'S 22,000 OR
22 23,000, THAT'S A LIST OF PEOPLE WHO ARE PAYING COAST TO
23 COAST DUES; CORRECT?

24 A THAT'S CORRECT.

25 Q IT'S FAIR TO SAY THAT COAST TO COAST DOES
26 NOT HAVE ANY DATA ON WHO PAYS OR DOES NOT PAY DUES TO

1 TRAVEL AMERICA; CORRECT?

2 MR. SHAW: OBJECTION.

3 THE WITNESS: THAT'S NOT TRUE. I GAVE ALL OUR
4 DATABASE TO YOU.

5 BY MR. SHERMAN: Q I'M NOT TALKING ABOUT YOUR
6 DATABASE. I'M TALKING ABOUT OUR DATABASE.

7 A I GAVE YOU OUR DATABASE --

8 Q I'M TALKING ABOUT INFORMATION THAT COAST TO
9 COAST GENERATES ON ITS OWN.

10 COAST TO COAST DOESN'T HAVE ANY OF ITS OWN
11 DATA THAT SHOWS WHAT MEMBERS PAY YOU DUES AND WHAT DON'T;
12 CORRECT?

13 A I GAVE YOU THE DATA. IF YOU LOOKED AT IT, I
14 DON'T KNOW.

15 MR. SHERMAN: MOVE TO STRIKE THE ANSWER AS NOT
16 RESPONSIVE.

17 THE COURT: MOTION GRANTED.

18 MR. SHAW: YOUR HONOR, THE QUESTION WAS WHAT DID
19 COAST HAVE. MR. NOVELLI TESTIFIED OF HIS OWN PERSONAL
20 KNOWLEDGE THAT HE GAVE THEM THAT INFORMATION.

21 MR. SHERMAN: IT'S VERY CLEAR WHAT THE WITNESS --

22 THE COURT: I HEARD THE TESTIMONY.

23 BY MR. SHERMAN: Q MR. NOVELLI, I WANT TO EXCLUDE
24 NOW FROM THE QUESTION -- FROM THE ANSWER ANYTHING THAT YOU
25 CLAIM THAT YOU PURPORTEDLY GAVE TO US DURING THE DISCOVERY
26 PROCESS IN THIS CASE.

1 DO YOU UNDERSTAND?

2 A YES.

3 Q SO PUTTING THAT ASIDE, YOU HAVE NO FACTS TO
4 SUGGEST THAT COAST TO COAST KNOWS FROM ITS OWN RECORDS
5 WHOSE PAYING YOU AND WHO ISN'T; CORRECT?

6 A I DON'T KNOW WHAT THEY KNOW.

7 MR. SHERMAN: NO FURTHER QUESTIONS.

8 MR. SHAW: I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: WE'VE FINISHED WITH MR. NOVELLI?

10 MR. SHAW: YES.

11 MR. SHERMAN: WE RESERVE THE RIGHT TO RECALL HIM IN
12 OUR CASE IN CHIEF.

13 THE COURT: THANK YOU, SIR.

14 MR. SHAW: YOUR HONOR, WE'LL BE PREPARED FOR THE
15 DEPOSITIONS TOMORROW MORNING THAT WE TALKED ABOUT IN COURT.

16 THE COURT: ARE WE FINISHED FOR THE DAY, THEN?

17 MR. SHAW: YES.

18 THE COURT: NOW, TOMORROW MORNING WE'RE GOING TO BE
19 CONVENING -- WE'RE GOING TO WORK FROM 8:30 UNTIL ABOUT
20 10:00 WITHOUT YOUR ASSISTANCE. SO SLEEP IN. BE IN HERE AT
21 10:00 TOMORROW MORNING, PLEASE.

22 MR. SHERMAN: YOUR HONOR HAS HEARD A VOICE IN THE
23 VIDEOTAPES, NOT MINE, NOT MR. RIVIN. IT'S THE MASKED MAN
24 HERE, MR. HEIMBOLD. HE DECIDED TO COME DOWN, I GUESS, THIS
25 MORNING. HE WAS PROBABLY NOT VERY BUSY. BUT I WANTED TO
26 INTRODUCE HIM TO YOU.

1 MR. HEIMBOLD: I MOVE TO STRIKE THE COMMENT ABOUT
2 NOT VERY BUSY.

3 MR. RIVIN: HE IS ON THE WITNESS LIST.

4 MR. MOSHENKO: I KNOW WE AGREED NOT TO EXCLUDE
5 WITNESSES, BUT MR. HEIMBOLD -- HE HAS TO BE EXCUSED.

6 THE COURT: SO WE'LL SEE YOU AT 8:30 IN THE MORNING.

7 MR. SHAW: YES.

8 THE COURT: SEE YOU THEN.

9 (WHEREUPON THE COURT WAS IN RECESS UNTIL
10 8:30 A.M., WEDNESDAY, JULY 12, 2000.)

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