

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 24, 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 - MONDAY, JULY 24, 2000

2 MORNING SESSION

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

5 THE COURT: MR. RIVIN.

6 MR. RIVIN: GOOD MORNING, YOUR HONOR.

7 THE COURT: YOUR NEXT WITNESS.

8 MR. RIVIN: DEFENSE WISHES TO CALL ERIC LAM AS ITS
9 NEXT WITNESS.

10 ERIC W. LAM,

11 CALLED AS A WITNESS ON BEHALF OF THE DEFENDANTS, HAVING
12 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
13 FOLLOWS:

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

16 THE WITNESS: THANK YOU, MA'AM.

17 STATE YOUR FULL NAME FOR THE RECORD AND
18 SPELL YOUR LAST NAME FOR THE REPORTER, PLEASE.

19 THE WITNESS: YES. MY NAME IS ERIC, E-R-I-C. THE
20 MIDDLE INITIAL IS W. THE LAST NAME IS LAM, L-A-M.

21 THE CLERK: THANK YOU.

22 THE WITNESS: THANK YOU.

23 DIRECT EXAMINATION

24 BY MR. RIVIN: Q MR. LAM, GOOD MORNING.

25 A GOOD MORNING.

26 Q WHAT IS YOUR PROFESSION?

1 A I'M A LAWYER.

2 Q COULD YOU BRIEFLY DESCRIBE FOR US YOUR
3 EDUCATIONAL BACKGROUND AFTER HIGH SCHOOL?

4 A SURE. I WENT TO COLLEGE IN ST. PAUL, AND I
5 WENT TO LAW SCHOOL IN IOWA AT IOWA CITY. AND I FINISHED
6 LAW SCHOOL IN MAY OF 1982. I PASSED THE BAR IN IOWA IN
7 JUNE OF 1982, AND I WORKED FOR THE CHIEF JUSTICE OF THE
8 IOWA SUPREME COURT FROM THE SUMMER OF 1982 THROUGH 1983.
9 IN DES MOINES.

10 AND THEN FROM 1983 THROUGH '84 I WORKED FOR
11 THE BANKRUPTCY JUDGE IN CEDAR RAPIDS, IOWA.

12 AND SINCE JUNE OF 1984 I'VE BEEN PRACTICING
13 LAW.

14 Q AND WHERE HAVE YOU BEEN PRACTICING LAW SINCE
15 JUNE OF 1984?

16 A AT THE SAME PLACE. MY LAW FIRM IS CALLED
17 MOYER & BERGMAN, AND WE HAVE ABOUT 30 LAWYERS IN MY LAW
18 FIRM NOW.

19 Q IN WHAT CITY?

20 A OH, IN CEDAR RAPIDS.

21 Q SO YOU'VE BEEN PRACTICING LAW WITH THAT LAW
22 FIRM SINCE 1984 THROUGH TODAY?

23 A YES, SIR, SINCE JUNE.

24 Q DO YOU HAVE ANY PARTICULAR SPECIALTY?

25 A OH, I GO TO BANKRUPTCY COURT A LOT.

26 Q SO YOU WOULD SAY THAT BANKRUPTCY IS YOUR

1 SPECIALTY?

2 A YES, SIR, I WILL.

3 Q FOR HOW MANY YEARS HAS YOUR SPECIALTY BEEN
4 BANKRUPTCY LAW?

5 A EVER SINCE I STARTED PRACTICING.

6 Q DO YOU HAVE ANY CERTIFICATIONS?

7 A YES. SINCE NOVEMBER OF 1992, I'VE BEEN
8 CERTIFIED BY THE AMERICAN BOARD OF BANKRUPTCY,
9 CERTIFICATION IN BUSINESS BANKRUPTCY, AND I HOLD THAT
10 CERTIFICATION TODAY.

11 Q HAVE YOU EVER TAUGHT BANKRUPTCY LAW?

12 A YES. IN THE SPRING OF 1993 I WAS AN ADJUNCT
13 PROFESSOR OF BANKRUPTCY LAW AT THE IOWA LAW SCHOOL.

14 Q AND WHAT DID YOU TEACH?

15 A I TAUGHT BANKRUPTCY.

16 Q FROM TIME TO TIME HAVE YOU BEEN RETAINED TO
17 ACT AS AN EITHER CHAPTER 7 OR A CHAPTER 11 BANKRUPTCY
18 TRUSTEE?

19 A YES, SIR. SINCE ABOUT JUNE -- WELL, SUMMER
20 OF 1990 I'VE BEEN APPOINTED TO SERVE AS A TRUSTEE IN
21 VARIOUS CASES IN IOWA, MOSTLY IN CEDAR RAPIDS. COUPLE IN
22 DES MOINES, COUPLE IN DAVENPORT.

23 Q SO YOU'VE BEEN APPOINTED AS CHAPTER 7
24 TRUSTEE ON MANY CASES, AS WELL AS CHAPTER 11 TRUSTEE?

25 A SINCE THE SUMMER OF 1990, YES, SIR.

26 Q AND THROUGH THE PRESENT TIME?

1 A YES, SIR.

2 Q IS THAT RIGHT?

3 IN SERVING AS A CHAPTER 7 OR A CHAPTER 11
4 TRUSTEE, ARE YOU HELD A CERTAIN -- TO CERTAIN STANDARDS?

5 A SURE. THE BANKRUPTCY CODE HAS A SECTION
6 THAT SPECIFIES WHAT A TRUSTEE IS SUPPOSED TO DO. AND
7 BASICALLY THE TRUSTEE'S JOB IS MORE OR LESS TO SERVE AS A
8 FIDUCIARY TO THE BANKRUPTCY ESTATE, TO THE CREDITORS, TO
9 THE JUDGE, AND TO THE PEOPLE WHO FILE THE BANKRUPTCY
10 PETITION THEMSELVES.

11 Q SO IN A SENSE YOU'RE A NEUTRAL; YOU HAVE
12 DUTIES TO ALL OF THE PARTIES, ALL OF THE PARTIES IN A
13 BANKRUPTCY --

14 A THAT'S CORRECT.

15 Q -- AS A TRUSTEE?

16 A YES.

17 Q ARE YOU FAMILIAR WITH A COMPANY BY THE NAME
18 OF "THOUSAND ADVENTURES"?

19 A YES, SIR, I AM.

20 Q TELL ME, IF YOU WOULD, WHAT PROFESSIONAL
21 CONNECTION YOU HAVE TO THOUSAND ADVENTURES.

22 MR. MOSHENKO: YOUR HONOR, OBJECTION. THE
23 QUESTION IS UNCERTAIN AS TO WHICH THOUSAND ADVENTURES IS
24 BEING REFERRED TO.

25 THE COURT: YOU MAY REPHRASE THAT.

26 MR. RIVIN: SURE.

1 Q ARE YOU AWARE OF SEVERAL THOUSAND ADVENTURES
2 COMPANIES?

3 A YES, SIR, I AM.

4 Q ARE YOU AWARE OF THE PARENT CORPORATION
5 CALLED "THOUSAND ADVENTURES, INC."?

6 A YES, I AM.

7 Q ARE YOU ALSO AWARE OF A NUMBER OF
8 SUBSIDIARIES OF THOUSAND ADVENTURES CALLED THOUSAND
9 ADVENTURES OF VARIOUS STATES?

10 A YES, SIR, I AM.

11 Q YOUR INVOLVEMENT WAS WITH WHICH OF THOSE
12 COMPANIES?

13 A THE PARENT, THOUSAND ADVENTURES, INC.

14 Q AND TELL US, IF YOU WOULD, WHAT YOUR
15 INVOLVEMENT WAS OR IS WITH THOUSAND ADVENTURES.

16 A I AM THE CHAPTER 7 BANKRUPTCY TRUSTEE FOR
17 THE CASE OF THOUSAND ADVENTURES, INC., THAT IS NOW PENDING
18 IN DES MOINES IOWA.

19 Q AND THAT'S A CHAPTER 7 BANKRUPTCY?

20 A YES, SIR. YES, SIR.

21 Q WHEN WERE YOU -- WHEN WERE YOU APPOINTED AS
22 THE CHAPTER 7 TRUSTEE FOR THOUSAND ADVENTURES, INC.?

23 A IN EARLY FEBRUARY OF 1998.

24 Q IN THE COURSE OF PERFORMING YOUR DUTIES AND
25 RESPONSIBILITIES AS THE CHAPTER 7 TRUSTEE FOR THOUSAND
26 ADVENTURES, INC., DID YOU LEARN CERTAIN BACKGROUND

1 INFORMATION ABOUT THE BANKRUPTCY FILINGS FOR THOUSAND
2 ADVENTURES, INC., PRIOR TO THE TIME YOU WERE ACTUALLY
3 APPOINTED?

4 A YES, I DID.

5 Q THERE WAS ACTUALLY -- STRIKE THAT.

6 AT THE TIME THAT YOU WERE APPOINTED IN
7 FEBRUARY OF 1998, THE BANKRUPTCY ALREADY EXISTED FOR
8 SEVERAL MONTHS; IS THAT RIGHT?

9 A WELL, THE BANKRUPTCY STARTED, SIR, IN AUGUST
10 OF 1997 BY WAY OF WHAT WE CALL AN INVOLUNTARY PROCEEDING.

11 Q WHY DON'T WE STOP THERE MR. LAM, AND LET'S
12 TAKE A LOOK AT THE INVOLUNTARY PETITION, IF WE COULD. AND
13 I'D LIKE YOU TO AUTHENTICATE IT. IT'S EXHIBIT 372.

14 A EXHIBIT 372 IS A COPY OF THE INVOLUNTARY
15 BANKRUPTCY PETITION FILED IN THE UNITED STATES BANKRUPTCY
16 COURT FOR THE SOUTHERN DISTRICT OF IOWA ON AUGUST 5TH,
17 1997.

18 MR. RIVIN: YOUR HONOR, I WOULD MOVE EXHIBIT 372
19 INTO EVIDENCE.

20 THE COURT: IT WILL BE SO RECEIVED.

21 MR. MOSHENKO: OBJECTION. RELEVANCE, YOUR HONOR.

22 THE COURT: RECEIVED OVER OBJECTION.

23 (WHEREUPON, EXHIBIT NO. 372, COPY OF
24 INVOLUNTARY BANKRUPTCY PETITION, WAS RECEIVED IN EVIDENCE.)

25 BY MR. RIVIN: Q THIS IS THE INVOLUNTARY PETITION
26 FILED FOR THOUSAND ADVENTURES, INC., IN AUGUST, AUGUST

1 5TH --

2 A YES, SIR.

3 Q -- 1997?

4 A THAT'S CORRECT.

5 Q AND WHO FILED THE INVOLUNTARY PETITION?

6 A WELL, A LAWYER BY THE NAME OF DOUGLAS

7 NAPIER, N-A-P-I-E-R, AND HE FILED ON BEHALF OF SEVERAL

8 CREDITORS, THE MAJOR ONE OF WHICH IS A GENTLEMAN BY THE

9 NAME OF TONY ROSS, R-O-S-S. YOU CAN SEE THAT ON THE SCREEN

10 NOW.

11 Q WHO IS MR. NAPIER -- HE IS AN ATTORNEY. DID

12 HE HAVE SOME BACKGROUND WITH THOUSAND ADVENTURES, INC.?

13 A WELL, HE REPRESENTS MR. ROSS, AS YOU CAN

14 SEE, WHO IS A MEMBER OF THOUSAND ADVENTURES, INC., AS WELL

15 AS OTHER MEMBERS WHO ARE THOUSAND ADVENTURES, INC.,

16 MEMBERS. IN FACT, HE IS THE LAWYER FOR WHAT WE CALL A

17 CLASS-ACTION OF ALL THE MEMBERS OF THOUSAND ADVENTURES,

18 INC.

19 Q WHERE WAS THAT LAWSUIT FILED?

20 A THAT WAS FILED IN FT. MADISON WHICH IS IN

21 LEE, L-E-E, COUNTY, IOWA.

22 Q SO MR. NAPIER FILED THE INVOLUNTARY

23 BANKRUPTCY AGAINST THOUSAND ADVENTURES, INC., IN AUGUST OF

24 1997.

25 WHAT WAS THOUSAND ADVENTURES, INC. --

26 THOUSAND ADVENTURES, INC.'S, RESPONSE?

1 A WELL, THOUSAND ADVENTURES, INC., RESPONDED
2 BY FILING A VOLUNTARY PETITION IN TEXAS SOMETIME IN
3 SEPTEMBER 1997.

4 Q LET'S TAKE A LOOK AT EXHIBIT 801, PLEASE.
5 ALL RIGHT. THIS IS A DOCUMENT THAT IS
6 ALREADY IN EVIDENCE.

7 A THIS IS A COPY OF A VOLUNTARY PETITION,
8 BANKRUPTCY PETITION, FILED BY THOUSAND ADVENTURES, INC.,
9 AND IT WAS FILED IN TEXAS, AND I BELIEVE IN SEPTEMBER,
10 1997.

11 Q AND WE KNOW THAT IT WAS FILED IN SEPTEMBER
12 OF 1997; IT APPEARS TO HAVE A FILE STAMP LATER THAN THAT.

13 A RIGHT.

14 Q PLEASE.

15 A THE WAY IT WORKED IS, AS I MENTIONED, THE
16 EXHIBIT 372 IS THE INVOLUNTARY FILED IN IOWA. 801 IS A
17 VOLUNTARY FILED IN TEXAS, AND THEN THERE WAS SOME
18 PROCEEDINGS IN TEXAS; THE NET EFFECT OF WHICH, THE TEXAS
19 BANKRUPTCY JUDGE MOVED THE TEXAS CASE BACK TO IOWA. AND
20 YOU CAN SEE THAT IT WAS MOVED BACK TO IOWA ON OR ABOUT JUNE
21 30TH, 1998.

22 Q SO THE REASON THAT HAS A FILED STAMP OF
23 JANUARY 30, 1998, IS BECAUSE IT WAS MOVED BACK TO IOWA ON
24 THAT DATE?

25 A YOU'RE CORRECT.

26 Q AND THE REASON THAT IT HAS -- YOU SEE THE

1 NUMBERS THAT -- NEAR THE TOP RIGHT, 97-49385. THE "97"
2 INDICATES THAT THE VOLUNTARY PETITION IS FILED IN 1997;
3 ISN'T THAT RIGHT?

4 A IN TEXAS.

5 Q RIGHT.

6 NOW, BASED ON YOUR INVESTIGATION AS A
7 BANKRUPTCY TRUSTEE, THE CHAPTER 7 TRUSTEE IN IOWA WHEN YOU
8 WERE EVENTUALLY EMPLOYED, DID YOU HAVE AN UNDERSTANDING AS
9 TO WHY THOUSAND ADVENTURES, INC., FILED IN TEXAS?

10 MR. MOSHENKO: OBJECTION. CALLS FOR SPECULATION.
11 LACKS FOUNDATION.

12 THE COURT: OVERRULED.

13 MR. MOSHENKO: IMPROPER EXPERT TESTIMONY BY AN
14 UNDESIGNATED EXPERT.

15 THE COURT: OVERRULED.

16 MR. RIVIN: BASED ON THE WITNESS'S PERSONAL
17 KNOWLEDGE.

18 THE WITNESS: THE REASON THE THOUSAND ADVENTURES
19 FILED A VOLUNTARY IN TEXAS IS BECAUSE THEY DID NOT WANT TO
20 COME TO IOWA. WHAT THEY DID, THEY STARTED A PROCEEDING IN
21 TEXAS WITH THE HOPE THAT THE TEXAS JUDGE WOULD KEEP THE
22 TEXAS CASE. AND THEY WERE HOPING, THEREFORE, THEN THE IOWA
23 WOULD SOMEHOW THEN KIND OF GO AWAY.

24 BY MR. RIVIN: Q TO YOUR KNOWLEDGE DID THOUSAND
25 ADVENTURES, INC., HAVE ANY PROPERTY IN TEXAS?

26 A IT NEVER HAD.

1 MR. MOSHENKO: THE SAME OBJECTIONS, YOUR HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: IT NEVER HAD. IF YOU LOOK AT EXHIBIT
4 801, YOU WILL SEE THAT THERE'S AN ADDRESS ON THE TOP LEFT.

5 THAT ADDRESS WOULD BE THE ADDRESS OF THE GENTLEMAN'S OFFICE

6 BY THE NAME OF TOMMY CLOUD, C-L-O-U-D. THAT ADDRESS --

7 SOUTHWEST FREEWAY, THAT IS THE ADDRESS OF THE OFFICE OF

8 GENTLEMAN BY THE NAME OF TOMMY CLOUD.

9 BY MR. RIVIN: Q NOT THE ADDRESS OF THOUSAND
10 ADVENTURES SERVICE?

11 A NO. THOUSAND ADVENTURES, INC.'S, OFFICE --
12 AS YOU CAN SEE, A NEBRASKA CORPORATION -- IT HAS AN OFFICE
13 IN BLAIR, B-L-A-I-R, BLAIR, NEBRASKA.

14 Q SO IN JANUARY, 1998, THE BANKRUPTCY JUDGE IN
15 TEXAS BASICALLY DISMISSED THAT BANKRUPTCY OR TRANSFERRED
16 IT --

17 A TRANSFERRED.

18 Q -- BACK TO IOWA?

19 A YES, SIR.

20 Q WHICH IS WHERE IT BELONGED?

21 A YES, SIR.

22 Q AND SHORTLY AFTER THAT, YOU WERE APPOINTED
23 AS TRUSTEE; IS THAT RIGHT?

24 A YEAH, IN EARLY FEBRUARY, 1998.

25 Q THE VOLUNTARY BANKRUPTCY IN TEXAS WAS FILED
26 AS A CHAPTER 11?

1 A I BELIEVE SO, YES, SIR.

2 Q AND THE INVOLUNTARY WAS FILED AS A 7?

3 A WELL, THAT'S WHAT IT ENDED UP WITH, YES.

4 Q ALL RIGHT. NOW, IF YOU WOULD DESCRIBE THE
5 CIRCUMSTANCES LEADING TO YOUR APPOINTMENT AS THE CHAPTER 7
6 TRUSTEE.

7 A AS I MENTIONED EARLIER, I AM THE TRUSTEE FOR
8 SEVERAL CHAPTER 7 CASES, BUT I ALSO SERVE AS CHAPTER 7 OR
9 CHAPTER 11 TRUSTEE FOR SO-CALLED BIG CASES, PARTICULARLY
10 CASES IN WHICH THERE ARE CONFLICTS. FOR EXAMPLE, THIS
11 THOUSAND ADVENTURES INC., CASE IS BASED IN DES MOINES.
12 WELL, THE TRUSTEES AND THE LAWYERS IN DES MOINES, THEY'RE
13 EITHER TOO BUSY OR THEY HAVE A CLIENT IN THE CASE. SO
14 THEY HAD TO GO OUT OF DISTRICT.

15 AND SO I -- THE PERSON THAT MAKES THE
16 APPOINTMENT IS THE OFFICE OF THE UNITED STATES TRUSTEE,
17 WHICH IS A BRANCH OF THE DEPARTMENT OF JUSTICE. AND IT
18 MAINTAINS A LIST OF PEOPLE WHO ARE WILLING TO SERVE AS
19 TRUSTEES. AND SINCE THEY HAVE TO GO OUT OF DISTRICT, OUT
20 OF DES MOINES, THEY WENT TO CEDAR RAPIDS. AND THEY FOUND
21 ME.

22 Q WHEN DID YOU GET NOTIFIED THAT SOMEONE WAS
23 SEEKING TO APPOINT YOU AS TRUSTEE?

24 A IT WOULD HAVE BEEN IN MID-JANUARY, 1998,
25 YOU KNOW, ABOUT THE TIME THAT THE TEXAS CASE WAS BEING
26 MOVED BACK. AND YOU CAN SEE THE HANDWRITING ON THE WALL

1 THAT IT IS GOING TO END UP IN IOWA, END UP AS A CHAPTER 7
2 CASE IN IOWA, THAT A TRUSTEE WILL BE NEEDED; AND THAT'S
3 WHEN I STARTED HEARING THINGS ABOUT THOUSAND ADVENTURES,
4 INC., IN JANUARY, 1998. BEFORE THAT, NEVER HEARD OF THE
5 COMPANY.

6 Q AND THEN IT WAS TRANSFERRED BACK -- THE
7 BANKRUPTCY WAS TRANSFERRED BACK TO IOWA ON JANUARY 30,
8 1998, AND THEN YOU WERE APPOINTED, WHAT DAY?

9 A I'M SAYING FEBRUARY 4TH, FEBRUARY 5TH, 1998.

10 Q WOULD YOU -- IN YOUR JOB AS CHAPTER 7
11 TRUSTEE, YOU HAVE CERTAIN RESPONSIBILITIES; YOU HAVE TO
12 INVESTIGATE THE BUSINESS OF T.A.I.

13 WOULD YOU GENERALLY DESCRIBE THE TYPE OF
14 INVESTIGATION YOU DID AND WHAT YOU TRY TO FIND OUT AS A
15 TRUSTEE?

16 A SURE. AS I MENTIONED THE FIRST TIME I EVER
17 HEARD OF THOUSAND ADVENTURES, INC., WAS SOMETIME IN JANUARY
18 1998. AND AFTER I WAS APPOINTED IN FEBRUARY, 1998, ONE OF
19 MY FIRST ASSIGNMENTS, ONE OF MY FIRST JOBS IS TO FIND OUT
20 WHAT THIS COMPANY IS ALL ABOUT, WHAT DID IT DO, WHO WERE
21 ITS PRINCIPALS, WHO WERE ITS BANKS, WHO WERE ITS CREDITORS,
22 JUST GENERAL BUSINESS, FINANCIAL INFORMATION ABOUT THOUSAND
23 ADVENTURES, INC.

24 AND IN TEXAS THEY HAVE FILED SOME PAPERWORK,
25 WHICH WE BANKRUPTCY LAWYERS CALL SCHEDULES, WHICH IS WHERE
26 YOU LIST ALL YOUR ASSETS, ALL YOUR LIABILITIES AND SO ON.

1 SO I THINK I GOT A COPY OF THAT, TOOK A LOOK AT IT. AND I
2 TALKED TO SOME OF THE PEOPLE INVOLVED LIKE MR. NAPIER. AND
3 THEN EVENTUALLY I TRIED TO MEET WITH TWO GENTLEMEN. ONE IS
4 DAVID VOPNFORD, V-O-P-N-F-O-R-D, WHO I UNDERSTOOD TO BE THE
5 PRESIDENT, OFFICER, SHAREHOLDER OF THOUSAND ADVENTURES,
6 INC., AS WELL AS MR. THOMAS CLOUD -- ACTUALLY HIS NAME IS
7 JOHN THOMAS CLOUD, SR. -- WHO I UNDERSTOOD TO HAVE
8 SOMETHING TO DO WITH THIS BANKRUPTCY CASE.

9 SO THOSE ARE THE TWO GENTLEMEN THAT I WANTED
10 TO TALK TO FIRST. MR. VOPNFORD AND MR. CLOUD, SR.

11 Q DID YOU INVESTIGATE TO DETERMINE WHAT
12 THOUSAND ADVENTURES, INC.'S, ASSETS AND LIABILITIES WERE?

13 A YES.

14 Q THAT WAS PART OF YOUR INVESTIGATION?

15 A YEAH. I FOUND OUT THAT THOUSAND ADVENTURES,
16 INC., WAS IN THE BUSINESS OF SELLING CAMPGROUND MEMBERSHIPS
17 TO PEOPLE. MOST OF THE PEOPLE WOULD BUY THE MEMBERSHIPS
18 ARE PROBABLY RETIRED FOLKS. THEY WANT TO TRAVEL, YOU KNOW,
19 ALL OVER THE COUNTRY. AND THEY CAN BUY A MEMBERSHIP THAT
20 ENTITLES THEM TO STAY A WEEK OR WHENEVER AT A CAMPGROUND IN
21 OHIO, AND THEN THEY CAN DRIVE THEIR RECREATIONAL VEHICLES,
22 R.V.'S, TO FLORIDA AND SO ON AND SO FORTH.

23 Q I DON'T THINK WE NEED TO GET INTO IT IN
24 GREAT DETAIL. THE JURY HAS BEEN LISTENING TO THIS
25 TESTIMONY FOR ABOUT TWO MONTHS.

26 A OKAY. I'M SORRY.

1 Q LET'S TALK ABOUT WHAT YOU DID TO PERFORM THE
2 INVESTIGATION.

3 YOU MENTIONED THAT YOU SPOKE WITH -- YOU
4 WANTED TO FIND OUT INFORMATION FROM MR. VOPNFORD TO THE
5 EXTENT YOU COULD AND ALSO FROM MR. CLOUD.

6 DID YOU ALSO HIRE A LAWYER?

7 A YES. I ALSO -- I REALIZED THAT IT WAS BIG
8 ENOUGH CASE THAT I HIRED A LAW FIRM IN CEDAR RAPIDS, A
9 LOCAL LAW FIRM, TO BE MY LAWYER AS A TRUSTEE. I'M THE
10 TRUSTEE BUT I SHOULD NOT BE A TRUSTEE AND A LAWYER AT THE
11 SAME TIME; SO, THEREFORE, I NEEDED A LAWYER. AND AS I
12 MENTIONED, I WANTED TO TALK TO EITHER MR. VOPNFORD OR
13 MR. CLOUD.

14 THEN I FOUND OUT THAT THERE WAS AT LEAST A
15 LITTLE BIT OF RUMOR THAT MAYBE MR. VOPNFORD HIMSELF WAS IN
16 BANKRUPTCY. SO THAT LEFT MR. CLOUD FOR ME TO TALK TO.

17 Q THEN YOU SPOKE WITH -- SO YOU CONTACTED
18 TOMMY CLOUD?

19 A WELL, I FOUND OUT WHO HIS LAWYER WAS, AND I
20 TALKED TO HIS LAWYER FIRST SINCE I COULDN'T TALK TO HIM
21 IN -- IF HE IS REPRESENTED BY COUNSEL. SO I REACHED
22 MR. CLOUD'S LAWYER, A GENTLEMAN BY THE NAME OF
23 MR. RANDOLF FRIEDMAN, F-R-I-E-D-M-A-N. I BELIEVE HE IS
24 EITHER FROM HOUSTON OR DALLAS.

25 AND I SAID, "WELL, I'D LIKE TO MEET WITH
26 MR. CLOUD," AND WE WERE GOING TO MEET. THIS IS

1 MID-FEBRUARY, 1998. WE'RE GOING TO MEET IN KANSAS CITY
2 MORE OR LESS HALFWAY. AND THE DAY -- OR THE DAY -- TWO
3 DAYS BEFORE THE MEETING, MR. CLOUD OR MR. FRIEDMAN, ONE OF
4 THEM CALLED AND SAID THAT THEIR SCHEDULE WAS SUCH THAT THEY
5 COULDN'T MAKE IT; WHY DON'T WE MEET ON THE PHONE. AND SO
6 THAT'S WHAT WE DID. IT WAS MYSELF, MY LAWYER,
7 MR. FRIEDMAN, AND MR. CLOUD. THE FOUR OF US HAD A LONG
8 PHONE CONVERSATION ON AN AFTERNOON IN FEBRUARY.

9 Q THAT MEETING TOOK PLACE -- THAT TELEPHONE
10 MEETING, TELEPHONE CONVERSATION, TOOK PLACE IN FEBRUARY?

11 A YES, SIR.

12 Q ABOUT HOW LONG DID IT LAST?

13 A OH, IT WAS AT LEAST AN HOUR, MORE, LIKE TWO
14 HOURS.

15 Q AND DID MR. CLOUD MENTION TO YOU A COMPANY
16 BY THE NAME OF "TRAVEL AMERICA"?

17 MR. MOSHENKO: OBJECTION. GOING INTO THE HEARSAY
18 CONTENT OF THE -- TELEPHONE --

19 MR. RIVIN: WE'RE LAYING THE FOUNDATION --

20 THE COURT: FOUNDATION.

21 MR. RIVIN: -- FOR AN EXCEPTION TO IT, YOUR HONOR.

22 THE COURT: YES.

23 THE WITNESS: MR. CLOUD MENTIONED THAT HE WAS
24 INVOLVED THROUGH SEVERAL COMPANIES, ONE OF WHICH THE NAME
25 IS "CLPI", C-L-I-P -- C-L-P-I, CONSUMER LOAN PORTFOLIOS,
26 INC., AND A COMPANY CALLED "TRAVEL AMERICA, INC."

1 Q AND MR. CLOUD INDICATED HE WAS ACTUALLY
2 INVOLVED WITH TRAVEL AMERICA?

3 A HE TOLD ME THAT THERE WERE THREE --
4 ONE-THIRD OF THE SHARES OR OWNERSHIP IN TRAVEL AMERICA WAS
5 OWNED BY HIM OR SOME COMPANY THAT HE OWNED. THE OTHER
6 THIRD WAS OWNED BY A MR. RAY NOVELLI OR SOME COMPANY THAT
7 MR. NOVELLI OWNED, AND THE OTHER THIRD IS KIND OF WAITING
8 TO BE OWNED.

9 SO THERE WERE BASICALLY THREE PEOPLE WHO
10 EACH OWNED ONE-THIRD OF TRAVEL AMERICA; MR. CLOUD,
11 MR. NOVELLI, AND A PERSON TO BE NAMED -- A PLAYER TO BE
12 NAMED LATER.

13 Q SO IN -- TELL US ABOUT THIS CONVERSATION
14 THAT YOU HAD WITH MR. CLOUD.

15 A I BASICALLY TOLD HIM, LOOK, I DON'T KNOW
16 WHAT'S GOING ON. I WAS JUST BORN, SO-TO-SPEAK. TELL ME
17 WHAT YOU KNOW. AND IT WAS VERY FREE-FLOWING, EASY-GOING
18 CONVERSATION.

19 I GATHER THAT HE WAS AN OLDER GENTLEMAN. HE
20 GATHERED I WAS A NAIVE YOUNG MAN. AND SO HE WAS TELLING ME
21 HOW IT WORKED. AND SO HE STARTED BY TELLING ME THAT
22 THOUSAND ADVENTURES, INC., HAD BEEN IN THIS CAMPGROUND
23 MEMBERSHIP SALES BUSINESS AND THAT THOUSAND ADVENTURES,
24 INC., GOT INTO FINANCIAL TROUBLE. AND THAT THE MOST
25 CRITICAL EVENT WAS A MEETING IN MARCH OF 1997. WE REFERRED
26 TO IT AS A RANCH MEETING. A BUNCH OF PEOPLE MET AT

1 MR. CLOUD'S RANCH IN TEXAS, AND THAT IS KIND OF WHAT --
2 FROM A BANKRUPTCY TRUSTEE STANDPOINT, THAT WAS A CRITICAL
3 MEETING.

4 AT THIS MEETING MR. VOPNFORD, THE OWNER OF
5 THOUSAND ADVENTURES, INC., WAS PRESENT, MR. CLOUD WAS
6 PRESENT, MR. NOVELLI WAS PRESENT, TOGETHER WITH THREE OR
7 FOUR MAJOR BANKS OR CREDITORS OF THOUSAND ADVENTURES, INC.,
8 NAMELY PRINCETON CAPITAL FROM NEW JERSEY, ALLSTATE
9 FINANCIAL FROM VIRGINIA, WESTERN AMERICAN NATIONAL BANK
10 FROM TEXAS.

11 AND AT THIS MEETING THESE GENTLEMEN WERE
12 TRYING TO FIGURE A WAY HOW TO GET THOUSAND ADVENTURES,
13 INC., OUT OF FINANCIAL TROUBLE, IF THEY COULD.

14 Q WHAT ELSE DID MR. CLOUD TELL YOU IN THAT
15 CONVERSATION?

16 A SO I SAID, "WELL, YOU KNOW, HOW DID YOU GUYS
17 DO IT?" AND THEY DID TWO THINGS, I BELIEVE. ONE IS THEY
18 FORMED A NEW COMPANY, PROBABLY A TEXAS COMPANY, CALLED
19 "R.V. HOLDINGS COMPANY." THAT'S COMPANY NUMBER ONE, AND
20 THEN ANOTHER COMPANY BY THE NAME OF TRAVEL AMERICA, INC.,
21 WITH OFFICES IN IRVINE, HERE IN CALIFORNIA.

22 AND THE IDEA IS THOUSAND ADVENTURES, INC.,
23 THE PARENT, THE DEBTOR, FOR WHICH I'M THE TRUSTEE, IS BASED
24 IN NEBRASKA. AND IT HAS -- HAD CAMPGROUNDS ALL OVER THE
25 COUNTRY. AND WHEN THEY BOUGHT A CAMPGROUND IN IOWA, FOR
26 EXAMPLE, THEY WOULD FORM A COMPANY CALLED "THOUSAND

1 ADVENTURES, INC., OF IOWA" TO BUY THAT CAMPGROUND. THE
2 SAME THING IF THEY WANT TO BUY SOME CAMPGROUND IN FLORIDA,
3 THEY WILL FORM A COMPANY CALLED "THOUSAND ADVENTURES, INC.,
4 OF FLORIDA."

5 SO THEY WERE LIKE ABOUT 20 OR 30 OF THESE --
6 WHAT LAWYERS CALL SUBSIDIARIES OF THOUSAND ADVENTURES,
7 INC. SO THOUSAND ADVENTURES, INC. DID NOT OWN THE
8 CAMPGROUND -- WELL, MAYBE ONE OR TWO.

9 BUT BY AND LARGE THOUSAND ADVENTURES, INC.,
10 DID NOT OWN THE CAMPGROUND. THE SUBSIDIARIES, THOUSAND
11 ADVENTURES, INC., OF IOWA, FLORIDA, MICHIGAN, OHIO, THOSE
12 ARE THE COMPANIES THAT OWNED THE CAMPGROUNDS IN THOSE
13 PARTICULAR STATES. R.V. HOLDINGS WAS FORMED SO THAT THE
14 STOCK THAT THOUSAND ADVENTURES, INC., OWNED IN THESE
15 SUBSIDIARY COMPANIES, THOSE STOCKS WOULD BE TRANSFERRED
16 INTO R.V. HOLDINGS, INC. THE IDEA --

17 Q THIS, AGAIN, IS WHAT MR. CLOUD WAS TELLING
18 YOU --

19 A YES.

20 Q -- TOLD YOU?

21 A YES, SIR. AND THE IDEA THEN IS, ONCE YOU
22 HOLD THE STOCK, YOU OWN THE COMPANY. AND WHEN YOU OWN A
23 COMPANY, YOU CAN DO WITH IT WHATEVER YOU WANT WITH IT. SO
24 THAT'S THE IDEA OF FORMING R.V. HOLDINGS, INC.

25 Q WHAT DID YOU LEARN ABOUT HOW THE BUSINESS OF
26 TRAVEL AMERICA -- OF THOUSAND ADVENTURES IS RUN?

1 A WELL, IT WAS RUN IN BLAIR, NEBRASKA WITH ONE
2 BANK ACCOUNT. THAT'S WHERE THE HEADQUARTERS IS. AND THE
3 MEMBERS, YOU KNOW, WOULD PAY DUES, OR THEY WOULD PAY MONEY
4 ON THE CONTRACTS. ALL THE MONEY WOULD COME INTO BLAIR,
5 NEBRASKA, ONE BANK ACCOUNT. AND WHEN -- LET'S SAY FLORIDA
6 NEEDS TO PAY THE LIGHT BILL. THEY WILL THEN SEND A CHECK
7 OR WIRE THE MONEY TO THOUSAND ADVENTURES, INC., OF FLORIDA
8 WHICH WOULD THEN PAY THE LIGHT BILL. SO IN ESSENCE THE
9 PARENT, THOUSAND ADVENTURES, INC., YOU KNOW, RAN THE ENTIRE
10 OPERATION.

11 Q AND THEY BASICALLY HAD A -- THEIR COMPUTERS
12 WERE ALL LOCATED THERE?

13 A YEAH. ALL THE COMPUTER RECORDS, THE
14 MEMBERSHIP LISTS, THE NAMES AND ADDRESSES OF THE MEMBERS,
15 THE BUSINESS RECORDS AND SO ON, WERE ALL AT BLAIR,
16 NEBRASKA.

17 Q WHAT OTHER STEPS DID YOU TAKE BESIDES
18 TALKING WITH MR. CLOUD TO FURTHER INVESTIGATE THE
19 BACKGROUND OF THOUSAND ADVENTURES, INC., AFTER YOU WERE
20 APPOINTED?

21 A AS I MENTIONED, I WANTED TO TALK TO
22 MR. VOPNFORD BECAUSE I COULDN'T, BECAUSE PEOPLE EITHER
23 COULDN'T FIND HIM OR MAYBE HE WAS IN BANKRUPTCY. AND, IN
24 FACT, THEY PUT FORTH A PERSON BY THE NAME OF
25 MR. STEVEN ALLEMAN, A-L-L-E-M-A-N, WHO REPRESENTED HIMSELF
26 TO BE THE VICE PRESIDENT OF THOUSAND ADVENTURES, INC.

1 AND WHEN I ASKED THOUSAND ADVENTURES,
2 INC.'S, LAWYERS, SAY, HEY, I WANT TO TALK TO SOMEBODY, AND
3 THEY OFFERED ME MR. ALLEMAN.

4 SO MR. ALLEMAN THEN GAVE A DEPOSITION IN
5 LATE FEBRUARY, 1998, YOU KNOW, WITHIN THE BANKRUPTCY CASE
6 IN IOWA. AND ALSO TOWARD THE END OF FEBRUARY OF 1998,
7 THERE WAS WHAT WE CALLED A MEETING OF CREDITORS FOR
8 THOUSAND ADVENTURES, INC. IT IS A MEETING THAT IS -- THAT
9 OCCURS IN EVERY BANKRUPTCY CASE, AND MR. ALLEMAN SHOWED UP
10 AS THE VICE PRESIDENT OF THOUSAND ADVENTURES, INC., AND
11 PROVIDED TESTIMONY AT THAT MEETING.

12 SO I FOUND OUT, YOU KNOW, SOME MORE ABOUT
13 HOW THOUSAND ADVENTURES, INC., OPERATED FROM MR. ALLEMAN AS
14 WELL.

15 Q WHAT STEPS DID YOU TAKE AFTER YOU UNDERTOOK
16 YOUR INVESTIGATION AND HIRED YOUR ATTORNEY IN CONNECTION
17 WITH YOUR DUTIES AS THE CHAPTER 7 TRUSTEE?

18 A I GUESS IN ONE SENSE A TRUSTEE'S JOB IS
19 FAIRLY SIMPLE AS YOU GO OUT AND FIND AS MANY ASSETS AS
20 POSSIBLE, BE IT REAL ESTATE, BE IT MONEY, BE IT
21 RECEIVABLES, WHAT HAVE YOU, AND YOU BRING THE ASSETS INTO
22 YOUR ESTATE. AND THEN YOU PAY THOSE MONIES OUT AS
23 DIVIDENDS TO THE UNSECURED CREDITORS.

24 SO MY JOB WAS TO FIND MONEY, IF YOU CAN PUT
25 IT THAT WAY. AND SO I NEED TO FIND OUT, YOU KNOW, WHETHER
26 THOUSAND ADVENTURES INC., OWNED ANY REAL ESTATE. AS I

1 MENTIONED, IT DIDN'T -- IT MAY HAVE ONE OR TWO CAMPGROUNDS,
2 BUT THE LITTLE SUBSIDIARIES OWN ALL THE REAL ESTATE. I
3 WANTED TO FIND IF THEY OWNED A BANK ACCOUNT. WELL,
4 WHATEVER BANK ACCOUNT, THEY HAD ALL BEEN CLOSED. THERE'S
5 NO MONEY LAYING AROUND. THERE'S NOTHING.

6 SO I WANT TO FIND OUT WHAT HAPPENED TO THE
7 MONEY, BECAUSE THOUSAND ADVENTURES, INC., AT ONE TIME HAD
8 MANY MEMBERS, LIKE 60,000 MEMBERS, AND EACH MEMBER WOULD
9 PAY ANYWHERE BETWEEN 150 TO \$300 A YEAR AS ANNUAL DUES.

10 NOW, IF YOU AVERAGE 200 A YEAR FOR -- FROM
11 60,000 PEOPLE, THAT'S A PRETTY HEALTHY SUM OF MONEY. SO I
12 WANTED TO FIND OUT, YOU KNOW, WHO IS GETTING THOSE DUES.
13 SO THAT IS THE FIRST STREAM OF INCOME, IF YOU WILL.

14 THE OTHER STREAM OF INCOME IS WHEN A --
15 MEMBERS SIGN UP FOR MEMBERSHIPS, THERE'S TWO DIFFERENT
16 CLASSES OF MEMBERSHIPS THEY CAN BUY. SOME PEOPLE PAY CASH,
17 BUT THE ONES WHO COULDN'T PAY CASH WOULD FINANCE THEIR
18 PURCHASE OF MEMBERSHIPS. THOSE ARE WHAT WE CALLED, YOU
19 KNOW, RETAIL INSTALLMENT CONTRACTS, WHAT'S BASICALLY BUYING
20 A HOUSE, BUYING A CAR, THEY SIGN A NOTE. THEY'RE GOING TO
21 PAY FOR THE MEMBERSHIP OVER TIME. WITH THOUSAND
22 ADVENTURES, INC., IT WOULD GO AND FIND A BANK OR A
23 FINANCIAL INSTITUTION WHO WOULD THEN LOAN THE MONEY AGAINST
24 THE PAPER.

25 SO THERE WERE TWO STREAMS OF INCOME, THE
26 MONTHLY -- THE ANNUAL DUES AND THE CONTRACT INCOME. AND I

1 WANT TO FIND OUT WHERE THE MONEY IS GOING, BECAUSE IT OUGHT
2 TO BE COMING TO ME AS THE TRUSTEE FOR THOUSAND ADVENTURES,
3 INC.

4 Q SO WHAT STEPS DID YOU TAKE TO FIND OUT WHERE
5 THE MONEY WAS GOING?

6 A WELL, I FOUND OUT --

7 Q WHAT DID YOU LEARN?

8 A I FOUND OUT FROM MR. CLOUD AND MR. ALLEMAN
9 AND FROM MEMBERS WHO HAD BEEN CALLING ME. ONCE THEY FOUND
10 OUT THAT THERE WAS A TRUSTEE APPOINTED IN IOWA, THEY CALLED
11 ME. "WHO ARE YOU? WHAT DO YOU DO?" AND SO ON. I FOUND
12 OUT THAT THE MEMBERS ARE PAYING THE DUES TO T.A.I.
13 THOUSAND ADVENTURES, INC., THE ABBREVIATION IS "T.A.I."

14 AND I ALSO FIND OUT THAT -- FIGURE OUT THAT
15 TRAVEL AMERICA, INC., THE ABBREVIATION IS ALSO T.A.I. I
16 FIND OUT WHAT HAPPENED THEN IS BASICALLY TRAVEL AMERICA,
17 INC., WOULD SEND REMINDER INVOICES TO PEOPLE FOR THE
18 MEMBERSHIP DUES, AND IT WOULD BE A LITTLE PIECE OF PAPER,
19 SAYS, "T.A.I." ON TOP. AND IT SAYS, YOU OWE, YOU KNOW,
20 \$200, OR WHATEVER IT IS. AND SEND YOUR PAYMENTS TO A PLACE
21 IN IRVINE, CALIFORNIA.

22 AND I GOT THAT FIGURED OUT RIGHT AWAY.
23 WHAT'S HAPPENING IS TRAVEL AMERICA, INC., T.A.I., WAS
24 COLLECTING THE DUES FROM THE MEMBERS, THE DUES THAT SHOULD
25 HAVE BEEN GOING TO THOUSAND ADVENTURES, INC., T.A.I.

26 AND AS I MENTIONED, I HIRED A LAWYER IN

1 EARLY FEBRUARY, 1998. AND SO I SAID, YOU KNOW, WE NEED TO
2 STOP THAT.

3 SO SOMETIME IN MARCH OR APRIL THEREABOUTS,
4 1998, I FILED A LAWSUIT IN BANKRUPTCY COURT IN DES MOINES
5 TO TRY TO STOP THAT.

6 Q DID YOU EVER FIND OUT THAT TRAVEL AMERICA
7 HAD ACQUIRED THE RIGHTS TO COLLECT THOSE DUES?

8 A WELL, HERE IS WHAT HAPPENED IN THE MARCH,
9 1997, RANCH MEETING --

10 MR. MOSHENKO: OBJECTION AS NONRESPONSIVE. THE
11 WITNESS IS VOLUNTEERING TESTIMONY.

12 THE COURT: I'M GOING TO OVERRULE THAT.

13 THE WITNESS: WHAT HAPPENED WAS IN MARCH OF 1997 AT
14 THE RANCH MEETING, THE PEOPLE WHO WERE THERE DECIDED THAT
15 TRAVEL AMERICA, INC., WOULD BE FORMED TO COLLECT THESE
16 DUES.

17 BY MR. RIVIN: Q AND DID YOU EVER SEE -- DID YOU
18 EVER SEE ANY DOCUMENTATION SUGGESTING THAT TRAVEL AMERICA
19 HAD PAID ANYTHING FOR THE RIGHT TO ACQUIRE THESE DUES?

20 MR. MOSHENKO: OBJECTION. IT'S IRRELEVANT WHETHER
21 HE HAS SEEN IT OR NOT, YOUR HONOR.

22 THE COURT: OVERRULED.

23 THE WITNESS: TRAVEL AMERICA, INC., HAS -- TO MY
24 KNOWLEDGE HAS NEVER, YOU KNOW, MERGED WITH THOUSAND
25 ADVENTURES, INC., OR PURCHASED THE ASSETS OF THOUSAND
26 ADVENTURES, INC. IT JUST KEPT GOING.

1 MR. MOSHENKO: OBJECTION. THIS IS NONRESPONSIVE.
2 THE QUESTION IS DID YOU EVER SEE DOCUMENTATION. MOTION TO
3 STRIKE THE TESTIMONY.

4 THE COURT: OVERRULED.

5 BY MR. RIVIN: Q MR. LAM, WHEN YOU FOUND OUT ABOUT
6 THE EXISTENCE OF TRAVEL AMERICA THROUGH TOMMY CLOUD AND YOU
7 FOUND OUT THAT DUES WERE GOING TO TRAVEL AMERICA FROM
8 THOUSAND ADVENTURES MEMBERS, DID YOU UNDERTAKE AN
9 INVESTIGATION TO DETERMINE HOW THIS APPARENTLY HAD
10 HAPPENED?

11 A IT HAPPENED IN -- AT THE RANCH MEETING. THE
12 BUNCH OF PEOPLE SAT AROUND, AND THEY DECIDED THIS IS HOW
13 IT'S GOING TO WORK.

14 Q DID YOU HEAR THERE WAS SUPPOSEDLY SOME
15 MERGER BETWEEN THOUSAND ADVENTURES AND OTHER COMPANIES TO
16 FORM TRAVEL AMERICA?

17 MR. MOSHENKO: OBJECTION. CALLS FOR HEARSAY.

18 THE COURT: OVERRULED.

19 THE WITNESS: NO, THERE WAS NO MERGER IN THE LEGAL
20 SENSE. LIKE I SAID, WHAT THEY DID, THEY SIMPLY FORMED
21 TRAVEL AMERICA SO THAT TRAVEL AMERICA COULD COLLECT THE
22 DUES.

23 MR. MOSHENKO: OBJECTION. NONRESPONSIVE. THE
24 QUESTION IS DID HE HEAR SOMETHING.

25 THE COURT: OVERRULED.

26 BY MR. RIVIN: Q MR. LAM, YOU WERE TALKING ABOUT A

1 LAWSUIT THAT YOU FILED IN MARCH OR APRIL OF 1998. WHY
2 DON'T YOU TELL US SOMETHING ABOUT THAT LAWSUIT, IF YOU
3 WOULD.

4 A THE LAWSUIT WOULD BE ERIC LAM, AS TRUSTEE,
5 AGAINST TRAVEL AMERICA, INC., AS I RECALL. AND THE LAWSUIT
6 ASKED THE BANKRUPTCY JUDGE IN DES MOINES TO ISSUE WHAT WE
7 LAWYERS CALL AN INJUNCTION, IN OTHER WORDS, TO STOP TRAVEL
8 AMERICA, INC., FROM COLLECTING THOSE DUES FROM THE MANY
9 MEMBERS.

10 AND WE HAD A DEPOSITION OF MR. NOVELLI. WE
11 HAD A HEARING BEFORE THE BANKRUPTCY JUDGE. THIS IS IN THE
12 FALL, LATE SUMMER OF 1998. TOOK ALL DAY. AND THE JUDGE
13 RULED FROM THE BENCH AT 4:00 P.M. THAT AFTERNOON IN MY
14 LAWSUIT.

15 Q AND WHAT WAS THE RULING?

16 A THE JUDGE SAYS THAT, LOOK, ERIC, YOU JUST
17 LOOKING FOR MONEY. AND WHEN YOU ASSUME PEOPLE -- SUING
18 PEOPLE FOR MONEY, YOU CAN'T GET AN INJUNCTION. IT IS NOT
19 LIKE -- AN INJUNCTION IS LIKE -- YOU KNOW, IT'S SOMETHING
20 BAD IS GOING TO HAPPEN TO YOU. YOU WANT TO STOP THEM FROM
21 DOING IT SO YOU.

22 WELL, WHEN YOU ARE SUING PEOPLE FOR MONEY,
23 YOU HAVE A REMEDY CALLED A JUDGMENT, A MONEY JUDGMENT. SO,
24 THEREFORE, SHE REFUSED TO ISSUE AN IMMEDIATE INJUNCTION.
25 SHE SAID, WE'LL GO THROUGH THE LAWSUIT. BUT FOR NOW SHE IS
26 NOT GOING TO ISSUE AN INJUNCTION TO STOP THE COLLECTION OF

1 DUES.

2 Q SO THERE'S A RULE OF LAW THAT EXISTS IN THE
3 BANKRUPTCY COURT AS WELL AS IN CALIFORNIA, THROUGHOUT THE
4 COUNTRY, THAT AN INJUNCTION IS APPROPRIATE WHEN MONEY
5 RELIEF WILL NOT BE ADEQUATE?

6 MR. MOSHENKO: OBJECTION. THE QUESTION IS LEADING
7 AND SUGGESTIVE.

8 THE COURT: OVERRULED.

9 BY MR. RIVIN: Q JUST SUMMARIZING; IS THAT
10 BASICALLY CORRECT?

11 A YES, SIR.

12 Q DID YOU ALSO FILE A LAWSUIT AGAINST R.V.
13 HOLDINGS?

14 A YES.

15 Q TOMMY CLOUD?

16 A YES. THE FIRST LAWSUIT WAS AGAINST TRAVEL
17 AMERICA. THE SECOND ONE -- I REMEMBER I SAID THE R.V.
18 HOLDINGS COMPANY WAS FORMED SO THAT THE STOCK THAT THOUSAND
19 ADVENTURES OWNED IN THESE SUBSIDIARIES WERE TRANSFERRED
20 INTO R.V. HOLDINGS. I WANTED THAT STOCK BACK. SO I SUED
21 R.V. HOLDINGS AND ALSO TOMMY CLOUD. THAT WOULD BE LAWSUIT
22 NUMBER TWO.

23 Q AND WHAT WAS THE BASIS OF THAT LAWSUIT AND
24 THAT COMPLAINT?

25 A OH, THE BASIS OF THAT COMPLAINT IN
26 BANKRUPTCY TERMS IS CALLED A FRAUDULENT CONVEYANCE. IT

1 WOULD BE LIKE IF YOU TOOK SOMETHING FROM ME, AND I DIDN'T
2 GET ANYTHING IN RETURN. YOU JUST GRAB IT FROM ME. YOU
3 DIDN'T PAY ME FOR IT. YOU DIDN'T GIVE ME ANY
4 CONSIDERATION. THAT IS CALLED A FRAUDULENT CONVEYANCE,
5 SO THAT LAWSUIT SAYS THAT THE STOCK WAS
6 TRANSFERRED FROM THOUSAND ADVENTURES, INC., TO R.V.
7 HOLDINGS COMPANY, AND R.V. HOLDINGS DIDN'T PAY ANYTHING TO
8 THOUSAND ADVENTURES, INC., FOR THE STOCK. AND I NAME AS
9 DEFENDANTS R.V. HOLDINGS AND JOHN THOMAS CLOUD, SR.

10 Q WHAT WAS THE RESULT OF THAT LAWSUIT?

11 A THAT LAWSUIT WAS FILED, AS I RECALL, MARCH,
12 APRIL, MAY, 1998, SOMEWHERE THEREABOUTS. AND ONE OF THE
13 FIRST RESPONSES I GOT WAS A NOTICE FROM A LAWYER IN TEXAS
14 WHO APPEARED ON BEHALF OF MR. CLOUD SAYING THAT, ERIC, YOU
15 CANNOT SUE MR. CLOUD BECAUSE MR. CLOUD HAS BEEN IN
16 BANKRUPTCY SINCE NOVEMBER, 1997, WHICH OF COURSE WAS NEWS
17 TO ME BECAUSE I TALKED TO MR. CLOUD IN FEBRUARY, 1998. IT
18 WAS A VERY CORDIAL CONVERSATION. THERE WAS NO MENTION OF
19 HIM BEING IN BANKRUPTCY.

20 SO WHEN I GOT A NOTICE FROM MR. COX,
21 C-O-X -- HE IS THE LAWYER WHO REPRESENTS MR. CLOUD -- IN
22 MR. CLOUD'S BANKRUPTCY CASE THAT WAS FILED IN THE WESTERN
23 DISTRICT OF TEXAS IN NOVEMBER, 1997, IT WAS BIG SURPRISE TO
24 ME.

25 Q AND THEN SO YOU PURSUED THE CASE, BUT YOU
26 ONLY COULD PURSUE IT AGAINST R.V. HOLDINGS, NOT AGAINST

1 MR. CLOUD SINCE HE WAS IN BANKRUPTCY?

2 A RIGHT. ONCE A PERSON OR COMPANY IS IN
3 BANKRUPTCY, YOU CANNOT SUE HIM OR IT ANYMORE. SO I WAS
4 LEFT TO PURSUING R.V. HOLDINGS, INC.

5 Q AND DID YOU EVENTUALLY GET BACK STOCK IN
6 SOME OF THE SUBSIDIARY?

7 A YES, I GOT BACK THE STOCK OF LIKE ABOUT
8 EIGHT OR NINE COMPANIES. I BELIEVE IN AUGUST OF 1999 IS
9 HOW LONG IT TOOK THE LAWSUIT TO PROGRESS.

10 Q DID THAT INCLUDE A COMPANY BY THE NAME OF
11 "FALCON HEAD DEVELOPMENT CORPORATION"?

12 A YES, SIR.

13 Q WAS THAT A SUBSIDIARY OF THOUSAND
14 ADVENTURES, INC.?

15 A YES, THOUSAND ADVENTURES, INC., AS I
16 MENTIONED, HAD ABOUT 20 OR 30 SUBSIDIARIES. MOST OF THEM
17 ARE CALLED THOUSAND ADVENTURES, INC., OF FLORIDA, OHIO,
18 WHAT HAVE YOU. THERE'S ONE COMPANY CALLED "FALCON HEAD
19 DEVELOPMENT CORPORATION," AN OKLAHOMA COMPANY.

20 Q AND WHAT DID YOU FIND OUT ABOUT THAT
21 SUBSIDIARY?

22 MR. MOSHENKO: OBJECTION. RELEVANCE, YOUR HONOR.

23 THE COURT: OVERRULED.

24 BY MR. RIVIN: Q PLEASE.

25 A THAT COMPANY OWNS A BIG RANCH IN LOVE,
26 L-O-V-E, LOVE COUNTY, OKLAHOMA, RIGHT ON THE RED RIVER

1 BETWEEN OKLAHOMA AND TEXAS. IT'S ABOUT 80 OR 90 MILES
2 NORTH OF DALLAS. AND THIS RANCH HAS TWO SECTIONS TO IT.
3 THE SOUTH SIDE HAS ABOUT 1100 ACRES. THE NORTH SIDE HAS A
4 GOLF COURSE AND A HOTEL AND SOME, YOU KNOW, HOMES AND
5 DEVELOPMENTS. SO THIS RANCH IS WORTH A LOT OF MONEY.

6 Q WAS THERE A MEMBERSHIP CAMPGROUND BEING
7 BUILT ON THAT PROPERTY?

8 A THE IDEA WAS THAT THIS IS HORSE COUNTRY.
9 THIS IS WHERE PEOPLE WANT TO RUN HORSES. AND THE IDEA WAS
10 GOING TO BUILD A VERY NICE CAMP FACILITY FOR PEOPLE WHO
11 LIKE HORSES. THERE'S ALSO A SHOOTING GALLERY. THERE'S A
12 BIG HALL, YOU KNOW. PEOPLE HAVE DANCES, DINNERS AND SO ON,
13 AND THEIR LITTLE BUNGALOWS AT WHICH YOU CAN STAY. IT WAS
14 GOING TO BE A BEAUTIFUL PLACE.

15 Q WAS THE CAMPGROUND ACTUALLY BUILT?

16 A SOME OF IT WAS, BUT IT WASN'T --

17 Q WAS IT OPEN?

18 A THAT, I CANNOT TELL YOU.

19 Q AND THE NAME OF THE CAMPGROUND WAS "RED
20 RIVER RANCH"?

21 A YES. IT'S CALLED "RED RIVER RANCH."

22 Q DO YOU KNOW THAT THAT WAS ONE OF THE
23 CAMPGROUNDS THAT TRAVEL AMERICA WAS SUPPOSEDLY GOING TO --

24 A DEVELOP OR WHATEVER.

25 Q DEVELOP, YES.

26 A DEVELOP, YES. BUT IT NEVER REALLY, YOU

1 KNOW, GOT OFF THE GROUND. SO FALCON HEAD DEVELOPMENT
2 CORPORATION OWNS THIS 1100 ACRES, THE RANCH, AND ALSO THE
3 GOLF COURSE AND THE HOUSES AND THE HOTEL AND SO ON. AND I
4 FOUND THAT OUT, YOU KNOW, AS I WAS GOING THROUGH THE
5 LITIGATION. AND I FOUND OUT THAT FALCON HEAD DEVELOPMENT
6 CORPORATION, YOU KNOW, OUGHT TO BE PURSUED. I WANT THAT
7 STOCK BACK.

8 Q SO YOU WERE ABLE --

9 MR. MOSHENKO: OBJECTION, YOUR HONOR. THE ANSWER
10 IS NONRESPONSIVE. THE WITNESS WAS VOLUNTEERING TESTIMONY.
11 MOTION TO STRIKE.

12 THE COURT: OVERRULED. MOTION DENIED.

13 BY MR. RIVIN: Q MR. LAM, YOU WERE SUCCESSFUL IN
14 GETTING BACK THE STOCK IN FALCON HEAD DEVELOPMENT
15 CORPORATION?

16 A YES, SIR.

17 Q WERE YOU ALSO SUCCESSFUL IN GETTING BACK THE
18 STOCK IN A NUMBER OF OTHER THOUSAND ADVENTURES
19 SUBSIDIARIES?

20 A ABOUT EIGHT OR NINE OF THEM THAT I GOT BACK,
21 YES.

22 Q WHAT HAPPENED TO THOUSAND ADVENTURES OF IOWA?

23 A OF IOWA?

24 Q YES.

25 A THOUSAND ADVENTURES OF IOWA OWNED MAYBE A
26 COUPLE OF CAMPGROUNDS. THE CAMPGROUNDS, OF COURSE, WERE

1 LOCATED IN IOWA. BUT THEY WERE FULLY MORTGAGED. THERE WAS
2 NO VALUE IN THEM. I DIDN'T DO ANYTHING TO IT.

3 Q LET ME STEP BACK AND ASK YOU A COUPLE
4 QUESTIONS, BACKGROUND QUESTIONS.

5 DID YOU FIND OUT ABOUT BANKRUPTCIES FILED BY
6 THOUSAND ADVENTURES SUBSIDIARIES?

7 A YES. THERE WERE SEVERAL. I KNEW THAT
8 THOUSAND ADVENTURES, INC., OF FLORIDA --

9 MR. MOSHENKO: OBJECTION. NONRESPONSIVE AFTER
10 "YES, THERE WERE SEVERAL." THE WITNESS IS VOLUNTEERING
11 TESTIMONY.

12 THE COURT: OVERRULED.

13 THE WITNESS: THOUSAND ADVENTURES, INC., OF FLORIDA
14 HAS BEEN IN BANKRUPTCY. THOUSAND ADVENTURES, INC., OF
15 OHIO, THOUSAND ADVENTURES, INC., OF KANSAS, MISSOURI,
16 ALABAMA, MISSISSIPPI, THOSE ARE THE ONES THAT I RECALL
17 RIGHT NOW.

18 BY MR. RIVIN: Q HOW ABOUT ATTORNEY GENERAL
19 COMPLAINTS AND CONSENT JUDGMENTS; DID YOU SEE THOSE?

20 A YES, SIR.

21 Q LET ME SHOW YOU ONE EXHIBIT, 122.

22 A EXHIBIT 122 IS A JUDGMENT.

23 MR. MOSHENKO: OBJECTION. THE WITNESS IS
24 VOLUNTEERING TESTIMONY. NO QUESTION WAS ASKED.

25 THE COURT: NO QUESTION PENDING.

26 PROCEED.

1 BY MR. SHERMAN: Q MR. LAM, PLEASE TAKE A LOOK AT
2 THAT DOCUMENT AND TELL ME IF YOU RECOGNIZE IT.

3 A I HAVE LOOKED AT IT, AND I DO RECOGNIZE IT,
4 YES, SIR.

5 Q CAN YOU TELL US BRIEFLY WHAT IT IS?

6 A IT IS A CONSENT JUDGMENT ISSUED BY A JUDGE
7 IN IOWA, DISTRICT ONE, IN POKE COUNTY, THAT IS DES MOINES,
8 IN A LAWSUIT FILED BY THE ATTORNEY GENERAL OF THE STATE OF
9 IOWA, THOMAS J. MILLER, AGAINST THOUSAND ADVENTURES, INC.,
10 AND THOUSAND ADVENTURES, INC. -- OF IOWA, INC.

11 MR. RIVIN: MOVE EXHIBIT 122 IN EVIDENCE.

12 MR. MOSHENKO: OBJECTION. IRRELEVANT. IT'S NOT
13 PARTY TO THE ACTION. IT'S NOT RELATED TO A PARTY.

14 THE COURT: OVERRULED. IT WILL BE RECEIVED OVER
15 OBJECTION.

16 MR. MOSHENKO: ALSO HEARSAY, YOUR HONOR.

17 (WHEREUPON, EXHIBIT NO. 122, CONSENT
18 JUDGMENT, WAS RECEIVED IN EVIDENCE.)

19 BY MR. RIVIN: Q LET'S TAKE A LOOK AT PAGE 2.
20 THIS IS A FAIRLY LENGTHY DOCUMENT.

21 ARE YOU ABLE TO SUMMARIZE IT FOR US,
22 MR. LAM?

23 MR. MOSHENKO: OBJECTION. THE DOCUMENT SPEAKS FOR
24 ITSELF.

25 THE COURT: OVERRULED.

26 THE WITNESS: BASICALLY THE ATTORNEY GENERAL IN

1 IOWA WAS CONCERNED WITH TWO THINGS. ONE IS CONSUMER
2 CREDIT. THESE CAMPGROUND MEMBERSHIP SALES ARE SOLD TO
3 CONSUMERS; SO, THEREFORE, THERE'S SOME CONSUMER CREDIT LAW
4 THAT'S BEING IMPLICATED.

5 THE SECOND THING IS SOMETHING CALLED
6 CAMPGROUND LAW IN IOWA. AND THE ATTORNEY GENERAL ALLEGED
7 THAT THERE WERE VIOLATION OF BOTH THE CONSUMER CREDIT CODE
8 AND THIS CAMPGROUND LAW IN IOWA, THE NET EFFECT OF WHICH IS
9 THAT THIS JUDGMENT, EXHIBIT 122, WAS ENTERED THAT BASICALLY
10 STOPPED THOUSAND ADVENTURES, INC., AND THOUSAND ADVENTURES,
11 INC., OF IOWA, INC., TO CONTINUE TO VIOLATE THE CONSUMER
12 CREDIT LAWS AND THE CAMPGROUND LAWS.

13 Q AND THIS IS A CONSENT JUDGMENT?

14 A YES, WHICH MEANS THAT THERE WAS NO TRIAL OR
15 HEARING, WHICH MEANS THAT THOUSAND ADVENTURES INC., AND
16 THOUSAND ADVENTURES, INC., OF IOWA BASICALLY AGREED TO THIS
17 JUDGMENT.

18 Q AND IF WE CAN GO TO PAGE 12 OF THIS CONSENT
19 JUDGMENT. YOU'LL SEE THE SIGNATURE IS DAVID VOPNFORD AS
20 THE PRESIDENT, THOUSAND ADVENTURES, INC.

21 MR. MOSHENKO: OBJECTION. LACKS FOUNDATION,
22 PERSONAL KNOWLEDGE.

23 THE COURT: OVERRULED.

24 BY MR. RIVIN: Q SIGNATURE OF DAVID VOPNFORD, SR.,
25 AS PRESIDENT OF THOUSAND ADVENTURES OF IOWA, INC.?

26 A YES, SIR.

1 Q ARE YOU ALSO AWARE THAT IN DECEMBER, 1996,
2 BEFORE THE BANKRUPTCY, THE IOWA ATTORNEY GENERAL'S OFFICE
3 SENT A LETTER TO THOUSAND ADVENTURES IOWA MEMBERS ADVISING
4 THEM THAT THE IOWA DISTRICT COURT HAD ISSUED AN ORDER
5 REGARDING SALES?

6 A I KNOW THAT THERE HAD BEEN CONTACTS BETWEEN
7 ATTORNEY GENERAL'S OFFICE AND VARIOUS MEMBERS. I DON'T
8 KNOW THE SPECIFIC LETTER TO WHICH YOU ARE NOW MAKING A
9 REFERENCE.

10 Q WHY DON'T WE TAKE A LOOK AT EXHIBIT 498.
11 YOU CAN TELL ME WHETHER YOU RECOGNIZE IT OR
12 NOT.

13 A I DO NOT BELIEVE I HAVE SEEN 498.

14 MR. MOSHENKO: OBJECTION. THERE IS NO QUESTION
15 PENDING.

16 THE COURT: OVERRULED. HE SAID HE HAD NEVER SEEN
17 IT.

18 THE WITNESS: I'VE NEVER SEEN IT BEFORE UNTIL NOW.

19 THE COURT: THE QUESTION WAS HAD HE EVER SEEN IT.

20 MR. MOSHENKO: I'M SORRY. I MISSED THE QUESTION.

21 THE WITNESS: AND I'VE NEVER SEEN THIS UNTIL NOW.

22 BY MR. RIVIN: Q DID YOU BECOME AWARE OF CONTACTS
23 BETWEEN THE IOWA ATTORNEY GENERAL'S OFFICE AND MEMBERS OF
24 THOUSAND ADVENTURES OF IOWA?

25 A MEMBERS OF THOUSAND ADVENTURES, INC., YOU
26 MEAN. YES.

1 Q YES. MEMBERS OF THOUSAND ADVENTURES, INC.

2 A YES, SIR. THERE WERE CONTACTS BETWEEN --
3 HERE'S WHAT HAPPENED IS, THE MEMBERS WOULD SAY, WHY ARE WE
4 GETTING THESE INVOICES? WHY DO --

5 MR. MOSHENKO: OBJECTION. THE WITNESS IS
6 VOLUNTEERING HEARSAY TESTIMONY.

7 THE COURT: OVERRULED.

8 MR. MOSHENKO: APPARENTLY DOUBLE HEARSAY, WHAT
9 MEMBERS TOLD ATTORNEY GENERALS TOLD HIM.

10 THE COURT: OVERRULED.

11 THE WITNESS: THE MEMBERS WERE SAYING, YOU KNOW,
12 WHY AM I GETTING INVOICES? WHY AM I GETTING BAD CREDIT
13 REPORTS? AND THE ATTORNEY GENERAL CONSUMER CREDIT PEOPLE
14 WOULD THEN TRY TO CONTACT EITHER THOUSAND ADVENTURES, INC.,
15 AND THEN EVENTUALLY TRAVEL AMERICA AND SAY, "DON'T DO THIS
16 ANYMORE." THAT'S WHAT HAPPENED.

17 BY MR. RIVIN: Q LET'S GO BACK TO THE ACTIONS THAT
18 YOU TOOK AS THE CHAPTER 7 TRUSTEE.

19 YOU INDICATED PREVIOUSLY THAT YOU FILED TWO
20 COMPLAINTS WHAT ARE CALLED ADVERSARY PROCEEDINGS IN THE
21 BANKRUPTCY COURT; IS THAT RIGHT?

22 A YES, SIR.

23 Q IN IOWA.

24 AND, AGAIN, THIS IS IN THE THOUSAND
25 ADVENTURES, INC., BANKRUPTCY?

26 A CORRECT.

1 Q YOU ALSO FILED A THIRD ADVERSARY PROCEEDING,
2 DID YOU NOT?

3 A ACTUALLY I FILED MANY. WHAT HAPPENED, AS I
4 MENTIONED, I HIRED A LOCAL LAWYER IN FEBRUARY, 1998.
5 AND THEN IN AUGUST, SEPTEMBER THEREABOUTS, IN 1998, I
6 REALIZED THAT THIS IS A RATHER BIG CASE. AND, YOU KNOW,
7 THERE ARE MANY BIG COMPANIES INVOLVED. THERE ARE MANY
8 SMART LAWYERS INVOLVED. AND I NEEDED SOMEONE WITH SOME
9 RESOURCES TO HELP ME.

10 SO I WENT TO A LAW FIRM IN CHICAGO, AND I
11 ENGAGED THAT LAW FIRM TO BE MY LAWYER AS WELL. AND THAT
12 WAS DONE IN THE FALL OF 1998.

13 Q WHAT WAS THE NAME OF THE LAW FIRM YOU HIRED?

14 A JENNER AND BLOCK.

15 Q AND THAT'S A FAIRLY LARGE LAW FIRM IN
16 CHICAGO?

17 A THAT'S A VERY BIG LITIGATION FIRM, YES, SIR.

18 Q AND THEY STILL REPRESENT YOU AS THE TRUSTEE?

19 A YES, THEY DO.

20 Q WHO WAS THE ATTORNEY THERE WHO YOU DEAL
21 WITH, PRIMARILY?

22 A THE LEAD PARTNER INVOLVED IS A GENTLEMAN BY
23 THE NAME OF RONALD PETERSON, S-O-N. AND ONE OF HIS YOUNG
24 ASSOCIATES IS DAVID SELIGMAN, S-E-L-I-G-M-A-N. AND, OF
25 COURSE, YOU KNOW, THEY DIDN'T FILE A LAWSUIT THE NEXT DAY
26 I ENGAGED THEM. THEY DID A LOT OF INVESTIGATION,

1 BACKGROUND TYPE OF THING, AND THEY SPENT A LONG TIME DOING
2 THAT.

3 Q AND THIS EVENTUALLY LED TO THE FILING OF
4 ANOTHER-ADVERSARY PROCEEDINGS?

5 A SEVERAL.

6 Q AGAINST TRAVEL AMERICA?

7 A YES. THERE'S ONE PENDING, A TRAVEL AMERICA,
8 THAT WAS FILED IN SEPTEMBER, 1999.

9 Q WHY DON'T WE TAKE A LOOK AT EXHIBIT 123,
10 WHICH IS IN EVIDENCE.

11 IS THIS A COPY OF THE COMPLAINT THAT YOUR
12 ATTORNEYS FILED ON YOUR BEHALF?

13 A YES, SIR.

14 Q AND THIS IS THE COMPLAINT AGAINST TRAVEL
15 AMERICA, INC., RAYMOND NOVELLI, FIRST NATIONWIDE RESORTS
16 MANAGEMENT, INC., ADVENTURE RESORTS OF AMERICA, AND THEN
17 THE REMAINING DEFENDANTS APPEAR TO BE A LUMP OF LENDERS?

18 A YOU'RE CORRECT.

19 Q WHAT CAUSED YOU AND YOUR ATTORNEYS TO FILE
20 THIS LAWSUIT?

21 A WELL, REALLY THE BASIC FACT, ALL GOES BACK
22 TO THIS MARCH, 1997, MEETING AT TOMMY'S RANCH. AND THE
23 IDEA IS THAT AT THIS MEETING, SEVERAL PEOPLE DECIDED THAT
24 THEY'RE GOING TO TAKE THOUSAND ADVENTURES, INC., TAKE ITS
25 MEMBERSHIPS, TAKE ITS MONEY, TAKE ITS DUES, TAKE ITS RETAIL
26 INSTALLMENT CONTRACTS AND NOT PAY ANYTHING FOR IT.

1 SO THE BASIC IDEA OF THIS LAWSUIT IS, AS I
2 MENTIONED EARLIER, A FRAUDULENT CONVEYANCE COMPLAINT. NOW,
3 THERE ARE OTHER COUNTS IN THE LAWSUIT, BUT THE GIST OF THE
4 LAWSUIT -- OF THIS ONE AND OTHERS -- IS FRAUDULENT
5 CONVEYANCE; THAT THESE DEFENDANTS TOOK SOMETHING FROM
6 THOUSAND ADVENTURES INC., AND DIDN'T PAY ANYTHING FOR IT.

7 Q DID IT TAKE YOU A WHILE YOU FIND THE
8 DOCUMENTATION THAT YOU NEEDED TO SEE BEFORE FILING THIS
9 LAWSUIT?

10 A WELL, OBVIOUSLY WHAT YOU WANT TO DO IS --
11 ONE OF THE FIRST THINGS YOU WANT TO DO IS TO SEE IF YOU CAN
12 CAPTURE THE BUSINESS RECORDS OF ANY DEBTOR. SO EARLY IN
13 1998 AFTER I WAS APPOINTED, I LEARNED THAT THE BUSINESS
14 RECORDS WERE AT TWO PLACES. ONE IS HERE IN IRVINE,
15 CALIFORNIA, CONSISTING MOSTLY OF SOME COMPUTERS, COMPUTER
16 DISKS, LIST OF MEMBERS AND SO ON. THAT'S -- THOSE
17 MATERIALS ARE SHIPPED OUT HERE AT A COST OF LIKE \$16- OR
18 \$17,000.

19 AND THEN THE OTHER FILES, THE OTHER OFFICE
20 FILES WERE WITH THE UNITED STATES ATTORNEY'S OFFICE, THE
21 INTERNAL REVENUE SERVICE IN OMAHA, NEBRASKA.

22 Q IT WAS YOUR UNDERSTANDING THAT THE U.S.
23 ATTORNEY'S OFFICE AND THE I.R.S. HAD SEIZED RECORDS?

24 A THAT'S CORRECT. AND MY LAWYERS HAD TO GO TO
25 OMAHA. SEE, THEY WON'T MAKE COPIES FOR YOU. YOU HAVE TO
26 GO THERE AND LOOK AT IT. AND, YOU KNOW, SO LIKE TWO OR

1 THREE LAWYERS HAD TO GO THERE. AND YOU LOOK AT ONE PIECE
2 OF PAPER; YOU MORE OR LESS PUT IT IN A DICTAPHONE. AND
3 THAT WAS JUST EXTREMELY PAINFUL, IF YOU WILL.

4 Q YOU MENTIONED THAT IF -- THE RECORDS WERE
5 OUT IN IRVINE AT THE OFFICES OF TRAVEL AMERICA?

6 A YES, SIR.

7 Q DID MR. CLOUD TELL YOU HOW THE RECORDS GOT
8 OUT THERE?

9 A IT'S EITHER MR. CLOUD OR MR. VOPNFORD. I
10 REMEMBER A FIGURE OF \$16- OR \$17,000. I THINK MR. VOPNFORD
11 TOLD ME THAT SOMEBODY PAID FOR THE SHIPPING OF THOSE
12 COMPUTERS AND THE DISK AND THE FILES FROM NEBRASKA TO
13 IRVINE AT A COST OF \$16- OR \$17,000. THAT KIND OF JUMPED
14 OUT AT ME.

15 Q DID YOU LEARN THAT TRAVEL AMERICA WENT OUT
16 AND SENT SOMEBODY OUT TO BLAIR, NEBRASKA AND BASICALLY TOOK
17 THOSE RECORDS?

18 A YEAH. THERE WAS -- I RECALL EITHER
19 MR. VOPNFORD OR MR. CLOUD TOLD ME THAT MR. NOVELLI OR HIS
20 SON -- I THINK -- I THINK JOE, MAYBE. JOE NOVELLI.

21 Q LEO?

22 A LEO. I'M SORRY. LEO NOVELLI WAS IN BLAIR,
23 NEBRASKA BRIEFLY. AND THEN THE NEXT THING THEY KNEW WAS
24 THE STUFF COME OUT HERE.

25 Q LET'S GO BACK TO THE ADVERSARY COMPLAINT
26 THAT YOU FILED AGAINST TRAVEL AMERICA. LET ME ASK YOU A

1 COUPLE OF QUESTIONS ABOUT FRAUDULENT CONVEYANCE. WE'VE
2 TALKED ABOUT THAT A LITTLE BIT ALREADY.

3 BUT IN A BUSINESS CONTEXT, IF -- OR
4 BANKRUPTCY CONTEXT, IF SOMETHING IS TRANSFERRED WITHOUT ANY
5 CONSIDERATION AND THE DEBTOR IS INSOLVENT, THAT'S IMPROPER;
6 IS THAT RIGHT?

7 A THAT'S CORRECT. THAT IS CALLED A FRAUDULENT
8 CONVEYANCE.

9 Q SO SOMETHING THAT MIGHT OTHERWISE PERHAPS BE
10 A GIFT IS IMPROPER IF THE DEBTOR IS INSOLVENT AND IT'S
11 TRANSFERRED WITHOUT CONSIDERATION?

12 A THAT'S CORRECT.

13 Q AND THAT'S WHAT YOU'RE SUING FOR?

14 A EXACTLY, AMONG OTHER THINGS. BUT THAT'S THE
15 GIST OF WHAT I'M SUING FOR.

16 Q RIGHT.

17 LET'S TAKE A LOOK AT -- WELL, WHY DON'T YOU
18 TELL ME -- LET'S GO TO ALLEGATIONS IN THE COMPLAINT.

19 LET'S GO TO PARAGRAPH 21, PLEASE.

20 A PARAGRAPH 21 DEALS WITH THE MEMBERSHIP DUES,
21 AS I MENTIONED EARLIER, BETWEEN \$150 TO \$300 PER YEAR.
22 AND, YOU KNOW, IF YOU'RE TALKING ABOUT 60,000 MEMBERS OR
23 85,000 MEMBERS AT ONE TIME, YOU CAN FIGURE OUT THAT THAT IS
24 A LOT OF MONEY PER YEAR. THAT'S TO THE ANNUAL DUES THAT I
25 WAS TRYING TO GET FROM TRAVEL AMERICA BY WAY OF THAT
26 INJUNCTION ACTION THAT I TESTIFIED TO EARLIER.

1 Q HAVE THE MEMBERSHIP DUES OF THE MEMBERS OF
2 THOUSAND ADVENTURES EVER BELONGED TO TRAVEL AMERICA?

3 MR. MOSHENKO: OBJECTION. LEADING AND SUGGESTIVE.
4 AND LACKS FOUNDATION.

5 THE COURT: OVERRULED.

6 MR. MOSHENKO: CALLS FOR A LEGAL CONCLUSION.

7 THE COURT: OVERRULED.

8 THE WITNESS: THE ANSWER IS NO.

9 BY MR. RIVIN: Q LET'S GO TO PARAGRAPH 41,
10 PLEASE.

11 I'M SORRY. I DON'T KNOW WHAT PAGE IT IS.

12 PARAGRAPH 41 STATES, "THOUSAND ADVENTURES
13 RECEIVED NO CONSIDERATION FOR THE TRANSFER OF THE STOCK."

14 AGAIN, THIS IS YOUR STATEMENT, YOUR BELIEF
15 THAT -- AS YOU TESTIFIED TO ALREADY -- THAT THOUSAND
16 ADVENTURES RECEIVED NO CONSIDERATION FOR THE TRANSFER OF
17 THE STOCK?

18 A AND THIS IS ALSO -- I LEARNED THIS, OF
19 COURSE, AS I MENTIONED EARLIER, FROM TALKING TO MR. CLOUD
20 BACK IN FEBRUARY, 1998, THAT THOUSAND ADVENTURES, INC., GOT
21 NOTHING IN RETURN FOR THE STOCK THAT WENT FROM THOUSAND
22 ADVENTURES, INC., TO R.V. HOLDINGS.

23 Q LET'S GO TO PARAGRAPH 46.

24 AND THIS IS THE ALLEGATION THAT WE WERE
25 TALKING ABOUT A MOMENT AGO THAT TRAVEL AMERICA CLOSED THE
26 THOUSAND ADVENTURES OFFICE IN BLAIR, NEBRASKA AND

1 TRANSFERRED ALL OF THE DEBTOR'S RECORDS AND COMPUTER DATA
2 SYSTEMS, INCLUDING ALL OF THE RECORDS RELATED TO THE
3 DEBTOR'S MEMBERS, TO THE IRVINE, CALIFORNIA OFFICES OF
4 RAYMOND NOVELLI.

5 A RIGHT. SEE, THE MEMBERS' RECORDS CONSIST
6 MOSTLY THE NAMES AND ADDRESSES OF THE MEMBERS AND HOW MUCH
7 THEY OWE. SO IN ORDER TO GET MONEY, IN ORDER TO COLLECT
8 MONEY, YOU NEED THE NAMES AND ADDRESSES AND THE BALANCES
9 AND SO ON. AND THAT TYPE OF RECORD, YOU KNOW, WHERE --
10 MOSTLY ON COMPUTER DISKS AND SO ON, AND I BELIEVE THE
11 COMPUTER AND THE COMPUTER DISKS AND THE PAPER FILES WERE
12 MOVED OUT HERE.

13 Q AND, AGAIN, THIS IS SOMETHING THAT YOU KNOW
14 BASED ON COMMUNICATIONS YOU HAD WITH TOMMY CLOUD OR
15 STATEMENTS BY DAVE VOPNFORD?

16 A THAT'S CORRECT.

17 Q LET'S TAKE A LOOK AT PARAGRAPH -- GO BACK A
18 PARAGRAPH. PARAGRAPH 45, PLEASE.

19 THIS REFERS TO THAT MERGER. WE TALKED ABOUT
20 THAT. YOU ACTUALLY UNDERTOOK AN INVESTIGATION TO TRY TO
21 FIND OUT WHETHER THERE WAS ANY SUCH MERGER, WHETHER THERE
22 WERE ANY DOCUMENTS CONFIRMING THAT THERE WAS A MERGER; IS
23 THAT CORRECT?

24 A THAT'S CORRECT. I UNDERTOOK AN EFFORT TO
25 FIND THOSE MERGER DOCUMENTS, AND I FOUND NO MERGER
26 DOCUMENTS.

1 Q LET'S GO TO PARAGRAPH 47.

2 AGAIN, THIS IS INFORMATION THAT -- YOU
3 ACQUIRED THAT IN THE COURSE OF YOUR INVESTIGATION, YOUR
4 ATTORNEY'S INVESTIGATION, PRIOR TO FILING THIS LAWSUIT.
5 TRAVEL AMERICA FILED A REGISTRATION OF FICTITIOUS NAMES
6 INDICATING THAT IT WAS THE OWNER OF THOUSAND ADVENTURES,
7 WAS DOING BUSINESS AS THOUSAND ADVENTURES.

8 A RIGHT. AS I MENTIONED, I HIRED A LAW FIRM
9 IN CHICAGO, AND IT FIND OUT MANY MORE ITEMS OF INFORMATION,
10 INCLUDING THIS ONE, IN PARAGRAPH 47.

11 Q BASED ON YOUR INVESTIGATION, YOUR ANALYSIS,
12 HAS TRAVEL AMERICA EVER BEEN THE OWNER OF THOUSAND
13 ADVENTURES?

14 A THE ANSWER IS NO.

15 Q IS TRAVEL AMERICA ENTITLED TO ANY OF THE
16 THOUSAND ADVENTURES MEMBERSHIP LISTS BASED UPON YOUR
17 INVESTIGATION?

18 MR. MOSHENKO: OBJECTION. LEGAL CONCLUSION.
19 HEARSAY. LACKS FOUNDATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: THE ANSWER IS NO.

22 BY MR. RIVIN: Q AND IS TRAVEL AMERICA ENTITLED
23 TO ANY OF THE DUES PAID BY THE THOUSAND ADVENTURES MEMBERS,
24 AGAIN, BASED UPON YOUR INVESTIGATION AND YOUR ANALYSIS AS
25 THE CHAPTER 7 TRUSTEE FOR THOUSAND ADVENTURES, INC.?

26 MR. MOSHENKO: THE SAME OBJECTIONS, YOUR HONOR.

1 THE COURT: THE SAME RULING. OVERRULED.

2 THE WITNESS: THE SAME ANSWER.

3 MR. MOSHENKO: COULD WE JUST PUT IT ON
4 TAPE-RECORDING, YOUR HONOR?

5 BY MR. RIVIN: Q LET'S GO TO PARAGRAPH 48,
6 PLEASE.

7 A OKAY.

8 Q THIS PARAGRAPH -- OBVIOUSLY WE CAN READ IT.
9 TRAVEL AMERICA SENT A LETTER TO EACH OF THE MEMBERS OF
10 THOUSAND ADVENTURES, THE -- WHICH WE KNOW ABOUT. THE
11 LETTER INFORMS THE MEMBERS THAT THEY ARE AUTOMATICALLY
12 ENROLLED AS A MEMBER OF TRAVEL AMERICA AS LONG AS THE DUES
13 AND RETAIL INSTALLMENT CONTRACT PAYMENTS, IF ANY, ARE KEPT
14 CURRENT.

15 TRAVEL AMERICA ALSO SENT WITH THE LETTER TO
16 EACH MEMBER AN INVOICE FOR THE PAYMENT OF DUES. THE DUES
17 INVOICE STATED IT WAS FROM THOUSAND ADVENTURES OF IRVINE,
18 CALIFORNIA.

19 AGAIN, THIS ALLEGATION IS BASED UPON YOUR
20 INVESTIGATION AND THE INVESTIGATION OF YOUR ATTORNEYS?

21 A THAT'S CORRECT, SIR.

22 Q SO IT WAS -- WAS IT YOUR BELIEF, BASED ON
23 YOUR INVESTIGATION, THAT TRAVEL AMERICA WAS SENDING OUT
24 THESE INVOICES BASICALLY DISGUISED AS THOUSAND ADVENTURES?

25 MR. MOSHENKO: OBJECTION. LEADING AND SUGGESTIVE.
26 AND CALLS FOR SPECULATION. HIS PERSONAL BELIEF IS

1 IRRELEVANT.

2 THE COURT: I'M GOING TO ALLOW THE ANSWER.

3 OVERRULED.

4 THE WITNESS: IT IS MY BELIEF. IT'S ALSO MY

5 LAWYER'S BELIEF. AND IT IS WHY --

6 MR. MOSHENKO: OBJECTION. NONRESPONSIVE AFTER HE

7 RESPONDED IT WAS HIS BELIEF.

8 THE COURT: SUSTAINED.

9 MR. MOSHENKO: VOLUNTARY TESTIMONY.

10 THE WITNESS: THE ANSWER IS YES.

11 BY MR. RIVIN: Q COUNT 3 OF THE COMPLAINT THAT YOU

12 FILED AGAINST TRAVEL AMERICA AND MR. NOVELLI IS ENTITLED

13 "CONVERSION." TELL US WHAT "CONVERSION" MEANS.

14 A CONVERSION SIMPLY --

15 Q THE LEGAL TERM.

16 A THE LEGAL TERM. CONVERSION IS THE EXERCISE

17 OF DOMINION AND CONTROL OVER PROPERTY IN WHICH THE

18 DEFENDANT HAS NEITHER LEGAL OR EQUITABLE TITLE TO IT.

19 Q BASICALLY IT'S SOMEBODY OR SOME COMPANY

20 TAKING PROPERTY THEY HAD NO RIGHT -- THEY HAVE NO RIGHT TO

21 TAKE?

22 A CORRECT.

23 Q YOUR LAWSUIT IS STILL -- IS PENDING RIGHT

24 NOW?

25 A YES, IT'S PENDING. WE JUST HAD A STATUS

26 CONFERENCE TYPE OF THING, AND WE WILL PROBABLY TRY IT

1 SOMETIME LATER THIS FALL OR WINTER.

2 Q IN THE BANKRUPTCY COURT?

3 A IN DES MOINES.

4 Q HAVE YOU HAD ANY COMMUNICATION WITH

5 DAVE VOPNFORD OVER THE PAST YEAR?

6 A YEAH. I TALKED TO HIM A COUPLE MONTHS AGO.

7 Q WHAT WAS THE NATURE OF YOUR CONVERSATION

8 WITH HIM?

9 MR. MOSHENKO: OBJECTION, YOUR HONOR. SEEKS
10 HEARSAY. MR. VOPNFORD IS NEITHER A PARTY TO THIS ACTION,
11 AND I CAN'T CROSS-EXAMINE THE TESTIMONY OF MR. VOPNFORD
12 THROUGH THIS MAN.

13 THE COURT: I'M GOING TO ALLOW IT FOR FOUNDATION
14 PURPOSES, SEE WHERE WE GO.

15 MR. MOSHENKO: FOUNDATION FOR WHAT ISSUE, YOUR
16 HONOR?

17 THE COURT: WELL, WE'LL SEE. OVERRULED.

18 THE WITNESS: IT WAS ABOUT A BOAT. A BOAT --
19 B-O-A-T -- IN FLORIDA.

20 BY MR. RIVIN: Q WAS THAT THE EXTENT OF THE
21 CONVERSATION?

22 A THAT WAS EXTENT OF THE CONVERSATION.

23 Q YOU WERE TALKING TO HIM IN CONNECTION WITH
24 YOUR DUTIES AS THE CHAPTER 7 TRUSTEE?

25 A I WAS LOOKING FOR A BOAT.

26 Q THAT BELONGED TO THOUSAND ADVENTURES?

1 A YES, SIR.

2 Q DO YOU KNOW WHETHER MR. VOPNFORD STILL IS
3 IDENTIFIED AS THE PRESIDENT OF THOUSAND ADVENTURES, INC.?

4 A AS FAR AS I KNOW HE IS.

5 Q WHAT IS MR. VOPNFORD'S STATUS AT THIS POINT
6 AS FAR AS RUNNING THE COMPANY OR --

7 A OH, NO. HE IS COMPLETELY DONE. I MEAN, HE
8 LIVES IN MISSISSIPPI. I DON'T REALLY KNOW WHAT HE IS
9 DOING. BUT, I GUESS, OFFICIALLY HE STILL IS TECHNICALLY
10 THE PRESIDENT OF THOUSAND ADVENTURES, INC., AND EACH OF THE
11 SUBSIDIARIES, AS FAR AS I KNOW.

12 Q IN YOUR CAPACITY AS CHAPTER 7 TRUSTEE, I
13 TAKE IT YOU'VE SPOKEN WITH A NUMBER OF MEMBERS OF THOUSAND
14 ADVENTURES?

15 A YES.

16 Q TEN OR MORE?

17 A OR MORE THAN TEN.

18 Q MORE THAN 10, 20, 30, 50?

19 A FIFTY, I WOULD SURMISE.

20 Q THESE WOULD BE PEOPLE WHO ARE CALLING YOU?

21 A YES.

22 Q TO FIND OUT WHAT WAS GOING ON?

23 A PEOPLE CALL. PEOPLE WOULD WRITE.

24 Q AND DID THEY EXPRESS CONFUSION TO YOU?

25 A THEY DIDN'T --

26 MR. MOSHENKO: OBJECTION. CALLS FOR HEARSAY. AND

1 THOUSAND ADVENTURES, INC., MEMBERS ARE NOT IN THIS ACTION.

2 THOUSAND ADVENTURES, INC., IS NOT A PARTY.

3 THE COURT: FOUNDATIONAL.

4 MR. MOSHENKO: TO WHAT ISSUE, YOUR HONOR?

5 THE COURT: PROCEED.

6 THE WITNESS: THEY WERE CONFUSED ABOUT WHAT'S GOING
7 ON, WHAT IS THE BANKRUPTCY ALL ABOUT, WHAT IS TRAVEL
8 AMERICA ALL ABOUT, THAT SORT OF QUESTIONS.

9 BY MR. RIVIN: Q DID THEY WONDER WHY -- DID THEY
10 EXPRESS CONCERN AND SURPRISE THAT THEY WERE BEING BILLED
11 BY --

12 MR. MOSHENKO: OBJECTION. LEADING AND SUGGESTIVE.

13 BY MR. RIVIN: Q -- BY TRAVEL AMERICA?

14 MR. MOSHENKO: LEADING.

15 THE COURT: SUSTAINED.

16 BY MR. RIVIN: Q WHAT ELSE DID THEY TELL YOU ABOUT
17 THOUSAND ADVENTURES OR TRAVEL AMERICA?

18 A THEY WANT TO KNOW WHY THEY WERE BEING
19 BILLED.

20 Q HAD MEMBERS GIVEN YOU REASONS WHY THEY
21 WANTED OUT OF THOUSAND ADVENTURES?

22 A THE PEOPLE WANTED OUT IS -- BASICALLY ONE OF
23 TWO REASONS. ONE IS MAYBE THEY'RE GETTING OLDER. THEY
24 DIDN'T WANT TO TRAVEL. YOU KNOW, THEY DIDN'T WANT TO MOVE
25 FROM CAMPSITE TO CAMPSITE. THAT'S ONE REASON.

26 THE SECOND REASON IS THEY'RE NOT GETTING THE

1 SERVICES. IN OTHER WORDS, THEY WERE PAYING FOR SOMETHING,
2 AND THEY'RE NOT GETTING ANY SERVICES BACK.

3 SO THOSE ARE THE TWO REASONS. THOSE ARE THE
4 ONLY TWO REASONS WHY PEOPLE WERE TRYING TO GET OUT. AND I
5 SIMPLY REFER THEM TO THE ATTORNEY GENERAL.

6 Q HAVE YOU EVER HEARD OF "CAMP COAST TO
7 COAST"?

8 A DURING THE COURSE OF MY TRYING TO BECOME
9 FAMILIAR WITH THIS INDUSTRY, I HEAR ALL SORTS OF NAMES, YOU
10 KNOW, PLAYERS IN THE BUSINESS. AND CAMP COAST TO COAST IS
11 ONE OF THE PLAYERS IN THE BUSINESS.

12 Q DO YOU UNDERSTAND THAT COAST TO COAST IS A
13 PROVIDER OF RECIPROCAL SERVICES TO MEMBERSHIP CAMPGROUNDS?

14 A YES, SIR.

15 Q ON THE SUBJECT OF COMMUNICATIONS THAT YOU'VE
16 HAD WITH THOUSAND ADVENTURES MEMBERS, HAVE ANY OF THEM EVER
17 TOLD YOU THAT COAST TO COAST WAS IN ANY WAY A REASON WHY
18 THEY WANTED TO GET OUT OF MEMBERSHIPS?

19 MR. MOSHENKO: OBJECTION. LEADING AND SUGGESTIVE.
20 AND IT'S IRRELEVANT. AND HEARSAY.

21 THE COURT: OVERRULED.

22 THE WITNESS: THE ANSWER IS NO.

23 BY MR. RIVIN: Q HAS ANY MEMBER EVER SAID TO YOU
24 OR USED WORDS TO THE EFFECT THAT THEY WERE CONFUSED BY
25 ANYTHING THAT COAST TO COAST DID?

26 A THE ANSWER IS NO.

1 Q AND HAS ANY MEMBER EVER SAID TO YOU WORDS TO
2 THE EFFECT THAT THEY THOUGHT COAST HAD TRANSFERRED A
3 MEMBERSHIP, THEIR MEMBERSHIP, TO A DIFFERENT PARK, AND
4 THAT'S WHY THEY WANTED TO GET OUT OF THOUSAND ADVENTURES?

5 MR. MOSHENKO: THE SAME OBJECTION. THE ABSENCE OF
6 THE STATEMENT IS IRRELEVANT --

7 THE COURT: OVERRULED.

8 MR. MOSHENKO: -- AS FAR AS THIS WITNESS IS
9 CONCERNED. LACKS FOUNDATION. AND IS HEARSAY.

10 THE COURT: OVERRULED.

11 THE WITNESS: THE ANSWER IS NO.

12 MR. RIVIN: I HAVE NO FURTHER QUESTIONS.

13 THE COURT: THANK YOU. CROSS-EXAMINATION.

14 CROSS-EXAMINATION

15 BY MR. MOSHENKO: Q GOOD MORNING, MR. LAM.

16 A GOOD MORNING, SIR. HOW ARE YOU?

17 Q FINE. THANK YOU.

18 WE'VE MET OVER THE TELEPHONE AND AT YOUR
19 DEPOSITION; IS THAT CORRECT?

20 A YES, IN FEBRUARY, 2000, IN CHICAGO.

21 Q AT THAT TIME YOU WERE DEPOSED BY MR. SHERMAN
22 WHO HAD GONE BACK TO CHICAGO?

23 A THAT'S RIGHT.

24 Q AND I WAS PARTICIPATING IN THE DEPOSITION BY
25 TELEPHONE?

26 A YES, SIR, YOU WERE.

1 Q AND YOU SPENT A COUPLE OF HOURS AT LEAST
2 TALKING WITH MR. SHERMAN BEFORE YOUR DEPOSITION -- RIGHT --
3 ABOUT THE FACTS OF THIS CASE?

4 A THE NIGHT BEFORE.

5 Q THE NIGHT BEFORE, YES.

6 AND YOU SPENT -- HOW MUCH TIME HAVE YOU
7 SPENT WORKING WITH THE DEFENSE ATTORNEYS PRIOR TO TAKING
8 THE STAND TODAY?

9 A I MET WITH MR. SHERMAN, AS YOU MENTIONED, IN
10 FEBRUARY IN CHICAGO FOR MAYBE TWO OR THREE HOURS. AND I
11 MET WITH IRA LAST NIGHT FOR TWO OR THREE HOURS. AND THAT'S
12 THE EXTENT OF MY CONTACT WITH THE GENTLEMEN.

13 Q AND DURING THOSE TWO OR THREE HOURS, YOU
14 WENT OVER THE SUBJECT MATTER OF YOUR TESTIMONY TODAY?

15 A YES.

16 Q NOW, YOUR INVOLVEMENT IN WHAT'S BEEN
17 REFERRED TO AS THE THOUSAND ADVENTURES BANKRUPTCY IS AS THE
18 TRUSTEE OF THOUSAND ADVENTURES, INCORPORATED, ONLY; IS THAT
19 CORRECT?

20 A YES, SIR. YOU'RE CORRECT. YES, SIR.

21 Q NOW, YOU ARE NOT -- YOU HAVE NO POSITION,
22 OFFICIAL OR OTHERWISE, INVOLVING THOUSAND ADVENTURES OF
23 IOWA?

24 A WELL, OTHER THAN THE FACT THAT THOUSAND
25 ADVENTURES, INC., OWNS THE STOCK IN THOUSAND ADVENTURES,
26 INC., OF IOWA, THAT IS THE ONLY CONNECTION.

1 Q YOU HAVE NO -- YOU'RE NOT A TRUSTEE FOR
2 THOUSAND ADVENTURES OF IOWA, ARE YOU?

3 A YOU ARE CORRECT.

4 Q YOU ARE NOT A TRUSTEE FOR THOUSAND
5 ADVENTURES OF OHIO, ARE YOU?

6 A YOU ARE CORRECT.

7 Q YOU'RE NOT A TRUSTEE FOR THOUSAND ADVENTURES
8 OF ALABAMA?

9 A YOU ARE CORRECT.

10 Q SO THERE'S NO OTHER THOUSAND ADVENTURES
11 ENTITY THAT YOU ACT AS THE TRUSTEE FOR; IS THAT CORRECT?

12 A YOU ARE ABSOLUTELY CORRECT.

13 Q NOW, AS A RESULT OF YOUR WORK, YOU'VE FOUND
14 OUT THAT THE ENTITY FOR WHICH YOU ARE A TRUSTEE, THAT IS,
15 THOUSAND ADVENTURES, INC., NEBRASKA, DOES NOT OWN ANY
16 CAMPGROUNDS OR REAL ESTATE; CORRECT?

17 A MAYBE ONE OR TWO. BUT FOR ALL PRACTICAL
18 PURPOSES, YOU ARE CORRECT.

19 Q YOU FOUND OUT THAT AS FAR AS MR. VOPNFORD IS
20 CONCERNED, HE IS OUT OF THE PICTURE EXCEPT FOR THE
21 POSSIBILITY THAT HE MAY STILL HOLD A TITLE?

22 A YOU ARE CORRECT.

23 Q AND DID YOU FIND OUT WHEN HE GOT OUT OF THE
24 PICTURE?

25 A OH, I WOULD SAY ON OR BEFORE MARCH OF 1997,
26 AT THIS RANCH MEETING.

1 Q AND DID MR. CLOUD INFORM YOU WHEN YOU SPOKE
2 TO HIM ABOUT THE RANCH MEETING THAT MR. VOPNFORD WAS, IN
3 ESSENCE, INVITED OUT OF THE PICTURE AT THE RANCH MEETING?

4 A I DON'T KNOW IF THOSE ARE THE WORDS HE USED,
5 BUT YOU'RE CORRECT IN YOUR CHARACTERIZATION.

6 Q YOU'RE FAMILIAR WITH THE TERM "PERSONA NON
7 GRATA"?

8 A YES, SIR.

9 Q AND WHAT'S IT MEAN?

10 A OH, IT MEANS THAT HE WAS THERE, BUT HE
11 REALLY ISN'T.

12 Q OKAY.

13 A HE WAS THERE IN BODY BUT NOT IN SPIRIT.

14 Q KIND OF AN UNDESIRABLE?

15 A THEY DIDN'T WANT HIM THERE. PUT IT THAT WAY.

16 Q NOW, YOU ALSO LEARNED THAT THE PURPOSE OF
17 THE MEETING WAS TO TRY TO ARRANGE CIRCUMSTANCES TO TRY TO
18 SAVE THE OPERATIONS OF THE THOUSAND ADVENTURES RESORTS?

19 A THAT'S ONE OF THE PURPOSES, YES, SIR.

20 Q TO HOPEFULLY CREATE A SITUATION WHERE THERE
21 WOULD CONTINUE TO BE OPERATING RESORTS SO THAT MEMBERS
22 WOULD CONTINUE TO HAVE RESORTS TO VISIT?

23 A YES, SIR. YOU'RE RIGHT.

24 Q SO THAT THE MEMBERS' MEMBERSHIPS THAT THEY
25 HAD PAID A LOT OF MONEY FOR WOULD NOT BE WASTED AND LOST;
26 RIGHT?

1 A YES, SIR. YOU'RE CORRECT.

2 Q AND THAT WOULD HAVE BEEN A GOOD THING FOR
3 THE MEMBERS IF THOSE THINGS HAPPENED?

4 A YES, SIR.

5 Q NOW, YOU HAVE TOLD THIS JURY THAT YOU FILED
6 A LAWSUIT IN MARCH OF 1998 IN DES MOINES, IOWA; CORRECT?

7 A SOMETIME IN MARCH OR APRIL. THE FIRST
8 LAWSUIT. I CALLED IT THE FIRST ADVERSARY.

9 Q THIS JURY MAY NOT UNDERSTAND WHAT AN
10 ADVERSARY PROCEEDING IS. COULD YOU TELL THEM WHAT IT IS?

11 A SURE. WITHIN THE BANKRUPTCY CASE, YOU KNOW,
12 PEOPLE SUE EACH OTHER. AND THOSE LAWSUITS WITHIN THE
13 BANKRUPTCY CASE ARE CALLED ADVERSARY PROCEEDINGS.

14 Q OKAY. SO IT'S LIKE A LAWSUIT WITHIN A
15 LAWSUIT?

16 A EXACTLY.

17 Q MOST LAWSUITS, NON-ADVERSARY PROCEEDING
18 TYPES, WOULD BE FILED IN A COURT LIKE A SUPERIOR COURT OR A
19 CIVIL COURT AS OPPOSED TO A BANKRUPTCY COURT?

20 A WELL, YOU'D HAVE ADVERSARY PROCEEDINGS, OR
21 YOU HAVE WHAT WE CALLED CONTESTED MATTERS, WHICH ARE
22 MOTIONS.

23 Q BUT WITHIN A BANKRUPTCY COURT, IF YOU WANT
24 TO ASSERT A CLAIM IN THE BANKRUPTCY, ONE WAY TO DO THAT IS
25 TO FILE AN ADVERSARY PROCEEDING; CORRECT?

26 A YES, SIR.

1 Q AND THE COURT, THAT IS, THE BANKRUPTCY
2 COURT, THE JUDGE, CAN HAVE A TRIAL IN THE BANKRUPTCY, IN
3 THE ACTION, WITHIN THE BANKRUPTCY ACTION, AND CAN MAKE A
4 DECISION AS TO WHO IS RIGHT AND WHO IS WRONG?

5 A YES. THAT'S WHAT SHE DOES, YES.

6 Q AND THE "SHE" IN THIS CASE WAS THE JUDGE IN
7 THE -- YOU FILED THIS ADVERSARY PROCEEDING IN OHIO; IS THAT
8 CORRECT?

9 A NO. NO. IOWA.

10 Q IN IOWA.

11 BUT YOU ALSO WENT TO THE OHIO BANKRUPTCY
12 COURT, DIDN'T YOU?

13 A YES, I DID.

14 Q WITH YOUR CLAIMS?

15 A WHAT HAPPENED IS THOUSAND ADVENTURES, INC.,
16 OF OHIO WAS ALREADY IN BANKRUPTCY WHEN I CAME ON BOARD.
17 AND THOUSAND ADVENTURES, INC., OF OHIO WAS A CHAPTER 11
18 CASE, AND IT WAS ABOUT TO BE CONFIRMED. THE PLAN IN OHIO
19 WAS ABOUT TO BE CONFIRMED.

20 Q OKAY. AND SO YOU WENT TO THE OHIO
21 BANKRUPTCY COURT AFTER YOU WERE APPOINTED TRUSTEE FOR
22 THOUSAND ADVENTURES, INC., AND YOU TRIED TO INVOLVE
23 YOURSELF IN THE THOUSAND ADVENTURES OF OHIO PROCEEDINGS;
24 CORRECT?

25 A YES, SIR. I FILED AN OBJECTION AND A CLAIM
26 IN THE OHIO BANKRUPTCY CASE.

1 Q AND THE CLAIM WAS VERY SIMILAR TO THE THINGS
2 THAT YOU'VE TESTIFIED TO HERE?

3 A YES. THE CLAIM WAS FOR MONEY.

4 Q THE CLAIM WAS FOR MONEY, BUT IT WAS ALSO A
5 CLAIM THAT THE MEMBERS WERE IMPROPERLY TRANSFERRED, AND
6 THAT THE LISTS WERE IMPROPERLY TAKEN BY TRAVEL AMERICA;
7 CORRECT?

8 A RIGHT.

9 Q AND THAT TRAVEL -- AND YOU ASSERTED IN THE
10 BANKRUPTCY COURT OF OHIO THAT TRAVEL AMERICA AND
11 MR. NOVELLI HAD NO RIGHT TO ANY MEMBERS' DUES; YOU ASSERTED
12 THAT; RIGHT?

13 A AND I TESTIFIED TO THAT IN OHIO.

14 Q AND THAT TRAVEL AMERICA HAD NO RIGHT TO
15 MEMBER LISTS OR INFORMATION REGARDING THAT, ALL THE THINGS
16 THAT YOU'VE SAID IN YOUR OPINION TRAVEL AMERICA HAD NO
17 RIGHT TO HERE IN THIS COURT; RIGHT?

18 A YES, SIR.

19 Q AND THE JUDGE IN OHIO SAID YOU'RE WRONG?

20 A WHAT THE JUDGE DID --

21 Q EXCUSE ME.

22 DID THE JUDGE SAY YOU WERE WRONG?

23 A NO.

24 Q DID THE JUDGE DENY YOUR CLAIM IN THE OHIO
25 CASE?

26 A HE OVERRULED MY OBJECTION, IS THE TECHNICAL

1 TERM.

2 Q OKAY. WELL, THE JURY UNDERSTANDS THAT IN
3 BANKRUPTCIES A PROPOSED PLAN CAN BE FILED?

4 A RIGHT.

5 Q YOU OBJECT TO THE PLAN; RIGHT?

6 A YES, EXACTLY.

7 Q AND YOU MADE CERTAIN ASSERTIONS ABOUT THE
8 PLAN BEING SOMEHOW LACKING?

9 A IMPROPER.

10 Q IMPROPER.

11 A YEAH.

12 Q AND YOU SAID THAT IT WAS IN BAD FAITH?

13 A EXACTLY.

14 Q AND YOU SAID THAT, AGAIN, ALL THE --
15 BASICALLY THE THINGS YOU SAID HERE; TRAVEL AMERICA HAD NO
16 RIGHT TO THE MEMBERS AND THE DUES AND THE THINGS LIKE THAT;
17 RIGHT?

18 A THAT'S CORRECT.

19 Q AND THE JUDGE IN OHIO SAID, "MR. LAM, I'M
20 DENYING YOUR CLAIM THAT THERE'S SOMETHING WRONG WITH THE
21 DISCLOSURE STATEMENT, THE PLAN. I'M FINDING THAT THE PLAN
22 WAS IN GOOD FAITH. I'M FINDING THAT YOUR CLAIM LACKS
23 MERIT," OR WORDS YOU THAT EFFECT?

24 A WELL, HE CONFIRMED THE PLAN OVER MY
25 OBJECTION, ISSUED AN ORDER TO THAT EFFECT. BUT THERE'S
26 ALSO AN ADDITIONAL ORDER THAT HE ISSUED SAYING THAT THE

1 CONFIRMATION OF THE PLAN IN OHIO IS OF NO PREJUDICE
2 WHATSOEVER TO WHATEVER I'M DOING IN IOWA. SO THERE --

3 Q ALL RIGHT. SO HE SAID, I'M DENYING YOUR
4 OBJECTION, AND I'M DENYING YOUR CLAIMS; AND I'M GOING TO
5 GIVE THE RIGHTS TO THE MEMBERS, THE MEMBERS' CONTRACTS, TO
6 TRAVEL AMERICA; DIDN'T HE SAY THAT?

7 A TO ANSWER THE QUESTION IS I DON'T KNOW. MY
8 MAIN FOCUS THERE WAS TO MAKE SURE THAT WHATEVER HAPPENED IN
9 OHIO DOES NOT BAR ME FROM DOING WHAT I'M DOING IN IOWA.
10 AND AS A RESULT, HE SIGNED AN ORDER TO THE EFFECT -- IT
11 WAS A ONE-SENTENCE ORDER SAYING THAT CONFIRMATION OF THE
12 OHIO PLAN IS OF NO PREJUDICE TO WHATEVER I'M DOING IN
13 IOWA. HE SAYS, YOU GO DO IN IOWA WHATEVER YOU WANT TO DO,
14 BUT DON'T DO IT IN OHIO. IF THAT'S HOW YOU WANT TO
15 INTERPRET IT.

16 Q WELL, THERE WAS A MODIFIED DISCLOSURE
17 STATEMENT THE COURT APPROVED; CORRECT?

18 A IF YOU SAY SO, SURE.

19 Q LET ME SEE IF I CAN REFRESH YOUR MEMORY.
20 AND, WELL, I'LL JUST USE IT TO REFRESH THE
21 WITNESS'S MEMORY.

22 I'M GOING TO HAND YOU A WHOLE PACKET OF
23 MATERIAL. JUST ASK YOU TO LOOK AT NUMBER 7 RIGHT NOW.

24 A ALL RIGHT.

25 Q OKAY. LET ME GET BACK TO MINE.

26 THE COURT: IS THAT NUMBER 7 YOU SAID? WHAT WAS

1 THE NUMBER OF THAT?

2 MR. MOSHENKO: YOUR HONOR, THIS IS -- I'VE
3 SEPARATELY TABBED A GROUP OF DOCUMENTS. IT'S NOT AN
4 EXHIBIT.

5 THE COURT: ALL RIGHT.

6 MR. MOSHENKO: AND I'M NOT IDENTIFYING IT AS AN
7 EXHIBIT RIGHT NOW.

8 THE WITNESS: OKAY. YES, SIR.

9 MR. MOSHENKO: OKAY. HOLD ON A SECOND. LET ME GET
10 MR. RIVIN INTO THE MIX HERE.

11 MR. RIVIN: I'M IN THE MIX.

12 YOUR HONOR, I ASSUME THAT -- IT'S MY
13 UNDERSTANDING THAT THE DOCUMENT IS BEING SHOWN TO THE
14 WITNESS ONLY FOR THE PURPOSE OF TRYING TO REFRESH THE
15 WITNESS'S RECOLLECTION.

16 MR. MOSHENKO: AT THIS POINT THAT'S CORRECT, YOUR
17 HONOR.

18 THE COURT: THANK YOU.

19 BY MR. MOSHENKO: Q ARE YOU LOOKING AT A DOCUMENT
20 ENTITLED, "ORDER CONFIRMING DEBTOR'S CHAPTER 11 PLAN"?

21 A I HAVE THAT IN FRONT OF ME, YES, SIR. THAT
22 WOULD BE YOUR TAB NUMBER 8, I BELIEVE, MR. MOSHENKO.

23 Q OKAY. TAB NUMBER 8.

24 A TAB 7.

25 Q TAB 7. THAT'S WHAT I THOUGHT.

26 A ALL RIGHT.

1 Q AND REFERRING TO THE BOTTOM PARAGRAPH OF --
2 FIRST OF ALL, HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

3 A YES, I HAVE.

4 Q DOES IT APPEAR TO BE A TRUE AND CORRECT COPY
5 OF THE UNITED STATES BANKRUPTCY COURT'S ORDER CONFIRMING
6 THE DEBTOR'S CHAPTER 11 PLAN IN THE THOUSAND ADVENTURES OF
7 OHIO, INC., PROCEEDING?

8 A YES, SIR, IT IS.

9 MR. MOSHENKO: YOUR HONOR, I'M GOING TO OFFER IT
10 INTO EVIDENCE. AND IT'S A -- I WANT TO DESIGNATE IT AS AN
11 IMPEACHMENT DOCUMENT. LET ME MAKE SURE THERE IS
12 IMPEACHMENT HERE.

13 Q DO YOU AGREE THAT AS A RESULT OF THE
14 THOUSAND ADVENTURES OF OHIO, INC., COURT ORDER, THAT ALL OF
15 THE PROPERTY OF THOUSAND ADVENTURES OF OHIO WAS TRANSFERRED
16 TO AND VESTED IN TRAVEL AMERICA?

17 A THAT'S ONE OF THE THINGS THAT THE JUDGE IN
18 OHIO DID, YES, SIR.

19 Q OKAY. SO WHEN YOU TESTIFIED A FEW MOMENTS
20 AGO TO MR. RIVIN'S QUESTION, WAS TRAVEL AMERICA EVER
21 ENTITLED TO ANY OF THE DUES OF THE THOUSAND ADVENTURES
22 RESORTS, AND YOU TESTIFIED, NO, THEY WERE NOT, THAT WAS
23 FALSE?

24 A YOU ARE WRONG.

25 Q DOES NOT THE EFFECT OF THIS TRANSFER OF ALL
26 OF THE PROPERTY OF THOUSAND ADVENTURES OF OHIO TO TRAVEL

1 AMERICA ENTITLE TRAVEL AMERICA TO COLLECT THE DUES WHICH
2 RESULTS FROM THE PROPERTY THAT WAS TRANSFERRED TO THEM?

3 A IT DOES NOT, AND THERE'S A REASON WHY IT
4 DOES NOT.

5 Q LET'S GO TO THE DISCLOSURE STATEMENT, TAB 8.

6 A ARE YOU LOOKING AT THE MODIFIED DISCLOSURE
7 STATEMENT, MR. MOSHENKO?

8 Q YES, THE MODIFIED.

9 OKAY. COULD YOU LOOK AT PAGE 2 OF THE
10 MODIFIED.

11 A YES, SIR. I'M THERE.

12 MR. RIVIN: I NEED -- I DON'T HAVE A COPY OF THAT,
13 YOUR HONOR.

14 MR. MOSHENKO: I'M SORRY. I THOUGHT HE HANDED YOU
15 THE WHOLE PACKET.

16 OKAY. WE'RE LOOKING AT TAB 7, MR. RIVIN.

17 MR. RIVIN: TAB 7 IS WHAT WAS GIVEN TO ME
18 PREVIOUSLY. THAT'S THE ORDERS CONFIRMING THE DEBTOR'S
19 CHAPTER 11 PLAN.

20 MR. MOSHENKO: SORRY. WE'RE LOOKING AT TAB 6.

21 Q OKAY. BEFORE THE JUDGE DID WHAT TAB 8 SAYS,
22 WHICH IS -- THAT IS, WHICH CONFIRMED -- BEFORE THE JUDGE
23 CONFIRMED THE PLAN AND TRANSFERRED ALL OF THE PROPERTY OF
24 THOUSAND ADVENTURES OF OHIO TO TRAVEL AMERICA, THE COURT
25 CONSIDERED AND APPROVED THE DISCLOSURE STATEMENT; RIGHT?

26 A YES, SIR. YOU'RE RIGHT.

1 Q AND, IN FACT, THIS IS THE DOCUMENT THAT YOU
2 OBJECTED TO, AND THE COURT OVERRULED YOUR OBJECTIONS?

3 A YES, SIR. YOU'RE RIGHT.

4 Q AND IF YOU WILL LOOK AT PAGE 2 OF THE
5 MODIFIED DISCLOSURE STATEMENT, DOES IT NOT INDICATE THAT
6 THOUSAND ADVENTURES OF OHIO WILL RETAIN CERTAIN
7 CAMPGROUNDS? THAT'S RIGHT BELOW PARAGRAPH A. AND THEN IT
8 NAMES THE CAMPGROUNDS?

9 A RIGHT. INDIAN MILL. THAT IS WHAT --

10 Q IT NAMES SEVERAL OF THEM?

11 A YES, SIR. YOU'RE RIGHT.

12 Q THEN IT ALSO INDICATES THAT MEMBERS'
13 MEMBERSHIP AGREEMENTS, WHICH ARE EXECUTORY CONTRACTS, WILL
14 BE ASSUMED BY THOUSAND ADVENTURES OF OHIO; CORRECT?

15 A THAT'S RIGHT.

16 Q AND EXECUTORY CONTRACTS ARE CONTRACTS THAT
17 HAVE NOT YET BEEN PERFORMED?

18 A THAT'S THE GENERAL DEFINITION, SURE.

19 Q SO IF A MEMBER HAS A CONTRACT THAT SAYS, I
20 HAVE TO PAY FOR MY MEMBERSHIP, THAT -- AND HE HASN'T
21 ALREADY PAID FOR IT, THAT'S AN EXECUTORY CONTRACT?

22 A MAYBE IT IS, AND MAYBE IT ISN'T, YEAH.

23 Q IF THERE'S DUES PAYMENTS UNDER THAT, THAT
24 WOULD ALSO BE AN EXECUTORY ACT UNDER THE CONTRACT?

25 A MAYBE IT IS, YOU KNOW.

26 Q AND THEN DOES THE COURT NOT ALSO INDICATE IN

1 THE APPROVED DISCLOSURE STATEMENT THAT ALL THE TERMS AND
2 CONDITIONS OF THE CONTRACTS THAT THE MEMBERS HAVE WILL
3 REMAIN THE SAME, BOTTOM LINE?

4 A YEAH. THAT'S WHAT THE DISCLOSURE STATEMENT
5 SAYS. YOU'RE RIGHT.

6 Q FOR EXAMPLE, MEMBERS WHOSE DUES OR CONTRACTS
7 ARE FROZEN WILL CONTINUE TO HAVE THEIR DUES FROZEN?

8 A THAT'S WHAT THE DISCLOSURE --

9 Q AND T.A.O. WILL RETAIN THE CONTRACTUAL RIGHT
10 TO RETAIN THE DUES; ISN'T THAT PART OF THE IMPORT, THAT THE
11 RULES OF THE CONTRACTS ARE ASSUMED?

12 A THAT'S WHAT THE DISCLOSURE STATEMENT SAYS.

13 Q NOW --

14 THE COURT: T.A.O. BEING TRAVEL AMERICA?

15 MR. MOSHENKO: OHIO.

16 THE WITNESS: NO. THOUSAND ADVENTURES.

17 MR. MOSHENKO: THOUSAND ADVENTURES OF OHIO, T.A.O.

18 Q AT THIS POINT, T.A.O., THOUSAND ADVENTURES
19 OF OHIO, PER THE DISCLOSURE STATEMENT HAS THE RIGHT TO
20 COLLECT MONEY UNDER CONTRACTS, EXECUTORY CONTRACTS?

21 A WELL, I'LL GIVE YOU THAT'S WHAT THE
22 DISCLOSURE STATEMENT SAYS. HOW IS THAT?

23 Q NOW, AFTER APPROVING THE DISCLOSURE
24 STATEMENT, ALL OF THE PROPERTY OF THOUSAND ADVENTURES OF
25 OHIO, INCLUDING ALL OF ITS RIGHTS TO ENFORCE THE CONTRACTS,
26 WAS TRANSFERRED TO TRAVEL AMERICA; DON'T YOU AGREE?

1 A WHATEVER THE CONFIRMATION ORDER SAYS TO
2 WHICH YOU REFERRED EARLIER, BUT THAT IS ONLY ONE OF THE
3 CONFIRMATION ORDERS. AS I MENTIONED EARLIER, THERE'S A
4 REASON WHY I DISAGREE WITH YOU. THAT'S BECAUSE THERE'S
5 ANOTHER ORDER ENTERED BY THE JUDGE IN OHIO.

6 THE COURT: LET'S GET BACK TO THE SECOND ORDER
7 AFTER OUR BREAK.

8 ALL MEMBERS OF THE JURY, BEFORE YOU LEAVE,
9 SO YOU CAN BETTER PLAN YOUR DAY, YOU'RE GOING TO BREAK AT
10 NOON AND NOT COME BACK TODAY BECAUSE WE HAVE A LOT OF
11 ARGUMENTS TO HEAR AND A LOT OF MOTIONS TO BE HEARD. SO
12 YOU'RE ONLY WORKING HALF A DAY.

13 (RECESS TAKEN.)

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
15 COURT IN THE PRESENCE OF THE JURY:)

16 THE COURT: PROCEED, COUNSEL.

17 MR. MOSHENKO: THANK YOU, YOUR HONOR.

18 Q MR. LAM, COULD YOU LOOK AT TAB 3 IN THE
19 DOCUMENTS I GAVE YOU.

20 A YES, SIR.

21 Q TAB 3 IS THE OBJECTION WHICH YOU FILED?

22 A YES.

23 Q IN THE OHIO BANKRUPTCY COURT?

24 A YES, SIR.

25 Q AND I WONDER IF YOU COULD LOOK AT THE SECOND
26 DOCUMENT, WHICH IS THE AMENDED AND ADDITIONAL OBJECTIONS.

1 A YES, SIR.

2 Q OKAY. AND THAT WAS FILED IN JULY OF 1998.

3 A YES.

4 Q NOW, I ASKED YOU GENERALLY BEFORE THE BREAK
5 IF -- REGARDING WHAT THE COURT -- WHEN YOU OBJECTED TO AND
6 WHAT THE COURT DID.

7 LET ME BE MORE SPECIFIC. I WONDER IF I
8 COULD ASK YOU TO LOOK AT PARAGRAPH 7.

9 A YES, SIR. I'M THERE.

10 Q OKAY. NOW, PARAGRAPH 7 IS YOUR OBJECTION
11 CLAIMING THAT THERE WAS NO SEPARATENESS BETWEEN TRAVEL --
12 THOUSAND ADVENTURES, INC., AND THOUSAND ADVENTURES OF OHIO;
13 CORRECT?

14 A YOU'RE CORRECT.

15 Q SIMILAR TO THE THING THAT WE SAW THIS
16 MORNING ON THE SCREEN WHEN THEY WERE GOING THROUGH YOUR
17 COMPLAINT; IN FACT, IT WAS ALMOST EXACTLY THE SAME
18 LANGUAGE; RIGHT?

19 A YES, SIR.

20 Q SO WHERE YOU SAID IN YOUR COMPLAINT THAT THE
21 JURY SAW THIS MORNING THAT T.A.I., THOUSAND ADVENTURES,
22 INCORPORATED, RECEIVED ALL THE MONIES AND -- YOU
23 TESTIFIED -- AND PAID THE BILLS FOR THOUSAND ADVENTURES,
24 FOR THE OTHER THOUSAND ADVENTURES CORPORATIONS AND
25 THEREFORE, THOUSAND ADVENTURES, INCORPORATED, WAS, IN FACT,
26 THE OWNER OF THE OTHER CORPORATIONS, THAT'S WHAT YOU'RE

1 TALKING ABOUT IN YOUR PARAGRAPH 7 OBJECTION; RIGHT?

2 A YES, SIR.

3 Q AND THE BANKRUPTCY JUDGE OVERRULED THAT
4 OBJECTION, DISAGREED; CORRECT?

5 A HE CONFIRMED THE PLAN AND OVERRULED MY
6 OBJECTION; YOU'RE CORRECT.

7 Q ALL RIGHT. AND THEN YOU ALSO ALLEGED IN
8 YOUR OBJECTION THAT THERE WERE TRANSFERS OF MEMBERSHIPS AND
9 CONTRACTS AND DUES PAYABLE THAT TOOK PLACE FROM THOUSAND
10 ADVENTURES OF OHIO TO THIRD PARTIES SUCH AS TRAVEL AMERICA;
11 CORRECT?

12 A THAT'S RIGHT.

13 Q OKAY. AND SO THAT IS THE SAME THING THAT
14 YOU'RE ALLEGING WHEN YOU TALKED ABOUT SO-CALLED FRAUDULENT
15 TRANSFERS, IMPROPER TRANSFER WITHOUT CONSIDERATION; RIGHT?

16 A THAT'S CORRECT.

17 Q AND, IN FACT, IN YOUR OBJECTION YOU SPECIFY
18 TRAVEL AMERICA AS BEING THE RECIPIENT OF THE TRANSFERRED
19 MEMBERS' MEMBER RIGHTS; CORRECT?

20 A WHICH PARAGRAPH?

21 Q PARAGRAPH 8 WHERE IT SAYS, "SHORTLY BEFORE
22 THE FILING OF THE CHAPTER 11 PETITION BY THE DEBTOR, THE
23 DEBTOR, OR TRAVEL AMERICA, VIA THEIR AGENTS, CAUSED TO BE
24 TRANSFERRED" -- DO YOU SEE THAT?

25 A YES, SIR.

26 Q AND THEN YOU ACTUALLY USED THIS LANGUAGE

1 REGARDING FRAUDULENT TRANSFERS BY SAYING, THE TRANSFER
2 OCCURRED WHILE THOUSAND ADVENTURES, INC., WAS INSOLVENT --
3 SORRY -- THOUSAND ADVENTURES OF OHIO WAS INSOLVENT?

4 A NO. NO. THOUSAND ADVENTURES, INC.

5 Q WHY DON'T YOU LOOK BACK AND SEE YOUR
6 DEFINITION OF T.A.I., NUMBER ONE, WHICH IS --

7 A PARAGRAPH ONE.

8 Q OKAY. CORRECT. YOU'RE CORRECT.

9 YOU ALLEGE THAT TRANSFERS THEN OCCURRED
10 WHILE THOUSAND ADVENTURES, INC., WAS INSOLVENT, AND THEY
11 WERE DONE WITH THE INTENT TO HINDER, DEFRAUD OR DELAY
12 CREDITORS, AND THAT THERE WAS NO CONSIDERATION --

13 A THAT'S --

14 Q -- FOR THE TRANSFERS?

15 A YOU'RE RIGHT.

16 Q AND JUDGE OVERRULED THAT OBJECTION AND
17 DISAGREED WITH YOU; RIGHT?

18 A THE JUDGE OVERRULED MY OBJECTION AND
19 CONFIRMED THE PLAN.

20 Q NOW, ON PARAGRAPH 9 YOU TALKED ABOUT OTHER
21 ASSIGNMENTS OF CONTRACTS AND DUES. AND AGAIN YOU OBJECT,
22 AND YOU SAY THAT THE -- THOSE ASSIGNMENTS WERE ALSO
23 FRAUDULENT; CORRECT?

24 A THAT'S RIGHT.

25 Q AND THAT -- THAT OBJECTION WAS OVERRULED BY
26 THE OHIO BANKRUPTCY JUDGE?

1 A YOU'RE CORRECT.

2 Q OKAY. AND YOU ALSO ALLEGE IN PARAGRAPH 10
3 THAT IF THE PLAN IS CONFIRMED, THERE WILL BE DUES PAYMENTS
4 IN THE HANDS OF THIRD PARTIES THAT BELONG, AS YOU CONTEND
5 HERE TODAY, TO THOUSAND ADVENTURES, INC.; RIGHT?

6 A CORRECT.

7 Q AND YOU SAID THAT WAS WRONG, AND THAT
8 SHOULDN'T -- AND THAT'S WHAT'S WRONG WITH THE DISCLOSURE
9 STATEMENT?

10 A AND THE PLAN.

11 Q AND THE PLAN.

12 AND THE JUDGE DISAGREED AGAIN AND OVERRULED
13 THAT OBJECTION?

14 A HE OVERRULED THE OBJECTION, YOU'RE RIGHT.

15 Q OKAY. AND ON PARAGRAPH 11 YOU CONTENTED
16 THAT THE THOUSAND ADVENTURES OHIO PLAN WAS NOT BEING
17 PROPOSED IN GOOD FAITH, AND INSTEAD IT WAS BEING PROPOSED
18 VIA MEANS PROHIBITED BY LAW?

19 A RIGHT.

20 Q AND THE JUDGE OVERRULED THAT OBJECTION?

21 A HE DID.

22 Q AND PARAGRAPH 16, YOU'VE ALLEGED THAT THE
23 DEBTOR, WHICH IS THOUSAND ADVENTURES OF OHIO, WAS BEING
24 USED AS THE VEHICLE BY WHICH TRAVEL AMERICA WAS GOING TO BE
25 ENRICHED?

26 A YES, I DID.

1 Q OKAY. AND YOU SAID THAT THAT ENRICHMENT WAS
2 TO THE DETRIMENT OF THE MEMBERS AND TO THE DETRIMENT OF THE
3 INTERESTS OF THE THOUSAND ADVENTURES, INC., AND TO THE
4 DETRIMENT OF THE CREDITORS OF THE ESTATE; YOU SAID ALL
5 THREE OF THOSE THINGS WERE TRUE?

6 A YES, I DID.

7 Q AND THE JUDGE DISAGREED AND OVERRULED YOUR
8 OBJECTION; RIGHT?

9 A HE OVERRULED MY OBJECTION. YES, HE DID.

10 Q AND THEN THE JUDGE APPROVED THE DISCLOSURE
11 STATEMENT AND SUBMITTED THE PLAN WITH THE DISCLOSURE
12 STATEMENT FOR A VOTE OF THE MEMBERS?

13 A YES.

14 Q AND THE CREDITORS?

15 A YES, HE DID.

16 Q AND IT WAS APPROVED BY THE MEMBERS AND THE
17 CREDITORS, WASN'T IT?

18 A IT WAS APPROVED IN THE AMOUNT AS REQUIRED BY
19 THE BANKRUPTCY CODE. IT DOESN'T REQUIRE UNANIMITY. IT
20 REQUIRES A CERTAIN PERCENTAGE.

21 Q CORRECT. IT REQUIRES A SUFFICIENT
22 PERCENTAGE UNDER THE BANKRUPTCY LAW?

23 A YES, SIR.

24 Q AND THAT MEANS IT WAS APPROVED; RIGHT?

25 A YES.

26 Q NOW, BEFORE THE COURT OVERRULED YOUR

1 OBJECTIONS, THERE WAS A TWO-DAY HEARING, WASN'T THERE?

2 A THAT'S RIGHT. IN COLUMBUS. I WAS THERE.

3 Q A TRIAL?

4 A YES.

5 Q WHERE WITNESSES ARE CALLED AND YOU TESTIFY;
6 RIGHT?

7 A YES, I DID.

8 Q AND AT THE CONCLUSION OF THE TWO-DAY
9 HEARING, IN YOUR PRESENCE THE COURT ANNOUNCED THE DECISION;
10 RIGHT?

11 A WELL, HERE IS WHAT HAPPENED. I WAS THERE
12 THE FIRST DAY, AND I LEFT THAT AFTERNOON. SO I WAS NOT
13 THERE THE SECOND DAY.

14 Q BUT YOU HAVE REVIEWED THE COURT'S DECISION?

15 A MY LAWYER WAS THERE.

16 Q CORRECT.

17 AND YOU REVIEWED WHAT THE COURT SAID IN
18 COMING TO ITS DECISION?

19 A MY LAWYER TOLD ME WHAT HAPPENED. HOW IS
20 THAT?

21 Q OKAY. WELL, IN FACT, WHAT HAPPENED WAS THE
22 JUDGE FOUND THAT THERE WAS NO EVIDENCE THAT THOUSAND
23 ADVENTURES HAD FAILED TO MEET ANY OF THE REQUIREMENTS OF
24 THE BANKRUPTCY CODE REGARDING THE PLAN?

25 A IF THAT'S WHAT HE FOUND, THAT'S WHAT HE
26 FOUND. BUT I WASN'T THERE THE SECOND DAY.

1 Q WOULD YOU LOOK AT TAB 5 --

2 A OKAY.

3 Q -- WHICH I'LL TELL YOU IS THE TRANSCRIPT OF
4 THE JUDGE'S RULING.

5 A OKAY.

6 Q AND I'M ON THE PAGE -- SECOND PAGE IN -- THE
7 THIRD PAGE IN, THE MIDDLE PARAGRAPH.

8 A SO YOU'RE ON PAGE 162?

9 Q CORRECT.

10 A OKAY.

11 Q SEE, IT SAYS SO THE COURT IN ITS FINDINGS
12 AND CONCLUSIONS IS THAT THERE IS NO EVIDENCE THAT THIS
13 DEBTOR HAS FAILED TO MEET ANY OF THE REQUIREMENTS OF THE
14 BANKRUPTCY CODE?

15 A YES, THAT'S WHAT HE SAID.

16 Q AND IF YOU CAN FLIP THE PAGE.

17 A YES.

18 Q THAT INDICATES THAT EVERY CREDITOR EXCEPT
19 ONE ACCEPTED THE PLAN?

20 A NO. EVERY SECURED CREDITOR.

21 Q THANK YOU. I AGREE WITH THAT.

22 AND, THEREFORE, THE COURT CONCLUDED THAT THE
23 PLAN, WHICH INCLUDES THE TRANSFER OF ALL THE PROPERTY FROM
24 OHIO TO TRAVEL AMERICA, WAS FAIR AND EQUITABLE AS TO THE
25 CREDITORS?

26 A AS TO THE SECURED CREDITORS, YES.

1 Q THE SECURED CREDITORS.

2 AND THE UNSECURED CREDITORS ALSO ACCEPTED
3 THE PLAN?

4 A RIGHT.

5 Q AND THE REASON WHY IS BECAUSE IF TRAVEL
6 AMERICA WASN'T THERE TO SAVE THE RESORTS AND THE MEMBERS,
7 THE MEMBERSHIPS -- MEMBERS' MEMBERSHIPS WOULD HAVE BEEN
8 RENDERED WORTHLESS?

9 A I DON'T KNOW WHY THE UNSECURED CREDITORS
10 ACCEPTED THE PLAN.

11 Q WELL, COULD YOU LOOK AT LINE 9, PAGE 163,
12 WHERE THE COURT SAYS, "ABSENT CONFIRMATION, MEMBERSHIP
13 WOULD UNDOUBTEDLY BE RENDERED WORTHLESS"?

14 A THAT'S EVIDENTLY WHAT THE COURT FOUND.

15 Q AND, IN FACT, THAT'S THE WHOLE THRUST OF
16 WHAT YOU AND TRAVEL AMERICA WERE ARGUING ABOUT IN THAT
17 PROCEEDING; THEY WERE SAYING THEY WERE THERE TO TRY TO
18 PRESERVE THE VALUE FOR THE MEMBERS; CORRECT?

19 A THAT'S WHAT TRAVEL AMERICA WAS SAYING, RIGHT.

20 Q AND YOU WERE THERE SAYING, "I WANT THE
21 MONEY"?

22 A SURE.

23 Q AND YOU HAD NO PLAN OR INTENT, IF YOU GOT
24 THE MONEY, TO MAINTAIN AND KEEP OPEN ANY RESORTS; RIGHT?

25 A OH, THAT'S NOT TRUE. IF I COULD GET MY
26 MEMBERSHIP LISTS BACK, SO-TO-SPEAK, I COULD AT LEAST GO AND

1 TRY TO FIND SOMEBODY ELSE, BE IT ABC, INC., OR XYZ, INC.,
2 WHO COULD PROVIDE SERVICES TO THE MEMBERS. BUT SINCE I
3 DIDN'T HAVE THE MEMBERSHIP LISTS, I HAD NOTHING TO SELL.

4 Q YOU OFFERED TO THE COURT SOME POSSIBILITY
5 THAT YOU MIGHT FIND AN ABC CORPORATION TO STEP IN AND TAKE
6 OVER, BUT YOU NEVER DID PRESENT ANY EVIDENCE THAT THERE WAS
7 SUCH A PERSON OR ENTITY; RIGHT?

8 A YOU'RE CORRECT.

9 Q AND, IN FACT, ONE OF THE REASONS THAT THE
10 JUDGE DISAGREED WITH YOU WAS BECAUSE THERE WAS NO SUCH
11 EVIDENCE FROM YOU THAT THERE WAS ANYBODY ELSE OUT THERE TO
12 TAKE OVER?

13 A I DID NOT PRESENT ANY EVIDENCE AS TO ABC OR
14 XYZ.

15 Q THE JUDGE ALSO MADE THE FINDING -- IF YOU
16 COULD LOOK ON PAGE 166, LINES 7 THROUGH 9 -- THAT YOUR
17 INTERESTS IN THIS CASE WERE NOT CONSISTENT WITH THE
18 INTERESTS OF THE MEMBERS?

19 A RIGHT.

20 Q NOW, YOU TESTIFIED EARLIER THAT YOU WERE
21 NEUTRAL?

22 A UH-HUH.

23 Q AND THAT YOUR JOB WAS TO REPRESENT THE
24 INTERESTS OF THE CREDITORS AND THE DEBTOR AND THE COURT?

25 A YES, SIR.

26 Q THE JUDGE IS HERE SAYING YOUR INTERESTS WERE

1 NOT CONSISTENT WITH THE INTEREST OF THE CREDITORS, MEMBER
2 CREDITORS; RIGHT?

3 A HE SAYS NOT CONSISTENT WITH THE INTEREST OF
4 THE DEBTORS. THE DEBTOR IS THOUSAND ADVENTURES, INC., OF
5 OHIO MEMBERS.

6 Q THE DEBTOR'S MEMBERS?

7 A THE DEBTOR IS THOUSAND ADVENTURES, INC., OF
8 OHIO.

9 Q CORRECT.

10 A RIGHT.

11 Q ALL RIGHT. NOW, YOU'VE ALSO TESTIFIED THAT
12 SOMEHOW THE TRANSFERS OF STOCK FROM THOUSAND ADVENTURES OF
13 OHIO TO R.V. HOLDINGS WAS SOMEHOW IMPROPER?

14 A CORRECT.

15 Q AND THE JUDGE DISAGREED WITH YOU ON THAT,
16 DIDN'T HE?

17 A IF YOU POINT ME TO HIS TRANSCRIPT, I CAN
18 AGREE OR DISAGREE WITH YOU.

19 Q PAGE 167, LINE 2, "THERE IS NO CREDIBLE
20 EVIDENCE TO EQUATE THE OWNERSHIP OF THOUSAND ADVENTURES OF
21 OHIO, WHOSE STOCK IS NOW HELD BY R.V. HOLDINGS, TO THAT OF
22 TRAVEL AMERICA, AND THERE IS NO VIOLATION OF THE ABSOLUTE
23 PRIORITY RULE"?

24 A THE ABSOLUTE PRIORITY RULE WAS IN SECTION
25 1129(B) OF THE BANKRUPTCY CODE. THAT SECTION DOES NOT
26 APPLY BECAUSE 1129(A) APPLIED. 1129(A) APPLIED BECAUSE THE

1 UNSECURED CREDITORS AS A CLASS ACCEPTED THE PLAN. THAT'S
2 WHAT HE IS SAYING THERE.

3 Q SO, NOW, YOU KNOW THAT THE MEMBERS OF
4 THOUSAND ADVENTURES OF OHIO HAD BEEN TRANSFERRED TO TRAVEL
5 AMERICA LONG BEFORE YOU BECAME A TRUSTEE?

6 A THAT'S RIGHT. THE THOUSAND ADVENTURES,
7 INC., OF OHIO CASE HAS BEEN GOING LONG BEFORE I WAS BORN,
8 SO-TO-SPEAK.

9 Q SO THE THRUST OF YOUR EFFORT WAS TO TRY TO
10 UNRAVEL OR UNDO IT; RIGHT?

11 A RIGHT. SEE, WHEN I WAS APPOINTED, I NEEDED
12 TO DO THAT. I JUST FOUND OUT OHIO WAS IN BANKRUPTCY, AND I
13 SAID, "WE'VE GOT TO DO SOMETHING."

14 Q AND ONE OF THE THINGS WAS YOU NEEDED TO GET
15 AN INJUNCTION?

16 A WELL, NOT AGAINST THOUSAND ADVENTURES, INC.,
17 OF OHIO. I TRY TO GET INJUNCTION AGAINST TRAVEL AMERICA.

18 Q AND YOUR EFFORTS IN OHIO TO GET AN
19 INJUNCTION WERE REJECTED?

20 A I DIDN'T TRY TO GET AN INJUNCTION IN OHIO.

21 Q WHY NOT?

22 A BECAUSE OF THE AUTOMATIC STAY.

23 Q OKAY. YOUR EFFORTS IN IOWA TO GET AN
24 INJUNCTION WERE REJECTED?

25 A CORRECT.

26 Q AND ONE OF THE REASONS THAT YOU CLAIMED TO

1 THE -- NOW, WE'RE TALKING ABOUT A DIFFERENT JUDGE, A JUDGE
2 IN IOWA, BANKRUPTCY JUDGE IN IOWA --

3 A YES.

4 Q -- YOU WENT IN FRONT OF THAT JUDGE, AND YOU
5 SAID, BASICALLY, ALL THE SAME THINGS YOU SAID TO THE OHIO
6 JUDGE?

7 A YES.

8 Q AND ALL THE SAME THINGS THAT YOU SOUGHT IN
9 THE LAWSUIT THAT YOU FILED AGAINST MR. NOVELLI AND TRAVEL
10 AMERICA; RIGHT?

11 A RIGHT.

12 Q AND THE IOWA JUDGE ALSO REJECTED YOUR
13 POSITION AND REFUSED TO GIVE YOU AN INJUNCTION; RIGHT?

14 A SHE REFUSED TO GIVE ME AN INJUNCTION, YOU'RE
15 RIGHT.

16 Q AND THE REASON YOU SAID YOU NEEDED THE
17 INJUNCTION WAS BECAUSE THERE WERE -- THERE WAS MEMBER
18 CONFUSION YOU ALLEGED?

19 A IF YOU LET ME LOOK AT MY COMPLAINT, I CAN
20 VERIFY IT ONE WAY OR THE OTHER.

21 Q WHY DON'T YOU LOOK AT THE PRELIMINARY
22 INJUNCTION HEARING TRANSCRIPT, WHICH IS TAB 8.

23 A OKAY. I'M THERE.

24 Q AND PAGE 23, YOU'RE THERE IN THE HEARING?

25 A YES, SIR.

26 Q AND YOU'RE ASKED SPECIFICALLY QUESTIONS

1 ABOUT THE REASONS WHY YOU'VE REQUESTED A PRELIMINARY
2 INJUNCTION?

3 A YES.

4 Q AND YOUR ANSWER IS, "THERE ARE MEMBERS OUT
5 THERE WHO FOR ONE REASON OR ANOTHER DON'T KNOW WHAT'S GOING
6 ON"?

7 A RIGHT.

8 Q YOU SAID THAT?

9 A YES, IT IS.

10 Q THEY ARE GETTING DUES NOTICES FROM T.A.I.,
11 AND YOU'RE TALKING ABOUT TRAVEL AMERICA; RIGHT?

12 A I SAID THEY ARE GETTING DUES NOTICES FROM
13 T.A.I.

14 Q FOR EXAMPLE, AND THEY DON'T KNOW WHETHER
15 IT'S THOUSAND ADVENTURES, INC., OR TRAVEL AMERICA, INC.,
16 AND WE NEED TO HAVE AN INJUNCTION TO STOP THAT ACTIVITY
17 FROM PROCEEDING?

18 A EXACTLY.

19 Q AND THE JUDGE SAID, NO, NO INJUNCTION?

20 A THE JUDGE SAYS, "YOU'RE REALLY GOING AFTER
21 MONEY," AND SHE IS NOT ABOUT TO ENTER AN INJUNCTION FOR A
22 CASE THAT INVOLVES MONEY.

23 Q YES. BUT YOU KNOW THAT THE COURT, HAD THE
24 COURT FOUND IMPROPER CONDUCT, COULD HAVE ENJOINED THAT
25 CONDUCT?

26 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

1 THE COURT: OVERRULED. I'LL ALLOW THE ANSWER.

2 THE WITNESS: I THINK WHAT THE JUDGE FOUND WAS AS,
3 YOU KNOW --

4 BY MR. MOSHENKO: Q EXCUSE ME. COULD YOU RESPOND
5 TO MY QUESTION?

6 COULD THE COURT, HAD IT FOUND IMPROPER
7 CONDUCT, ISSUED AN INJUNCTION?

8 A SURE, HE COULD.

9 Q EVEN THOUGH YOU'RE GOING AFTER MONEY?

10 A I'M NOT THE JUDGE.

11 Q I'M NOT ASKING YOU IF HE SHOULD. I'M ASKING
12 YOU IF HE COULD.

13 A SHE.

14 Q SHE COULD. RIGHT?

15 A SHE COULD ENTER WHATEVER ORDER SHE DESIRED,
16 BASED ON THE EVIDENCE THAT SHE HAS HEARD, HOW IS THAT?

17 Q NOW, YOU TOLD US ABOUT A LAWSUIT THAT YOU
18 FILED IN SEPTEMBER OF 1999 THAT WAS A -- THE COMPLAINT WAS
19 PUT UP ON THE SCREEN.

20 FIRST OF ALL, THAT'S JUST AN ACCUSATION;
21 CORRECT?

22 A CORRECT. THAT'S CORRECT.

23 Q IT'S AN UNPROVEN SET OF ALLEGATIONS IN A
24 COMPLAINT?

25 A YOU'RE ABSOLUTELY RIGHT.

26 Q AND, IN FACT, YOU HAVE NOT EVEN COME TO THE

1 TIME WHICH YOU'RE CALLED -- PUT TO THE TASK TO TRY TO PROVE
2 THOSE --

3 A WE'RE NOT THERE YET.

4 Q EXCEPT A LOT OF THINGS THAT YOU WILL HAVE TO
5 PROVE, YOU ALREADY TRIED TO PROVE AND FAILED IN TWO
6 DIFFERENT CASES; RIGHT?

7 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

8 THE COURT: OVERRULED.

9 YOU MAY ANSWER.

10 THE WITNESS: I DISAGREE WITH THAT
11 CHARACTERIZATION, BECAUSE THE TWO LOCATIONS TO WHICH YOU
12 MAKE REFERENCE ARE A, AN INJUNCTION HEARING, AND B, AN OHIO
13 CONFIRMATION HEARING, THE STANDARDS AND THE ELEMENTS AND
14 THE LEGAL REQUIREMENTS OF WHICH ARE DIFFERENT FROM WHAT WE
15 WILL HAVE IN THE TRIAL IN IOWA ON THAT COMPLAINT.

16 BY MR. MOSHENKO: Q ALL RIGHT. WELL, THE JURY HAS
17 HEARD.

18 OKAY. NOW, MR. RIVIN DIDN'T ASK YOU --
19 STRIKE THAT. I'LL START OVER AGAIN.

20 THIS LAWSUIT YOU FILED IN DES MOINES;
21 CORRECT?

22 A YES.

23 Q AND MR. RIVIN DIDN'T ASK YOU ABOUT THE OTHER
24 LAWSUIT THAT YOU FILED IN DES MOINES TO TRY TO STOP -- TO
25 SUE TRAVEL AMERICA; WASN'T THERE ANOTHER LAWSUIT YOU FILED
26 IN DES MOINES?

1 A THERE WERE TWO. THE FIRST ONE THAT -- THE
2 INJUNCTION HEARING, THAT WAS HELD IN SEPTEMBER, 1998.
3 THAT'S THE FIRST ADVERSARY. AND THE SECOND ONE AGAINST
4 TRAVEL AMERICA IS EXHIBIT 120, OR WHATEVER IT IS. THAT WAS
5 FILED IN SEPTEMBER, 1999.

6 Q OKAY. AND AS A RESULT OF THE JUDGE IN THE
7 BANKRUPTCY COURT DENYING YOUR REQUEST FOR AN INJUNCTION,
8 YOU DECIDED TO GO JUDGE SHOPPING?

9 A THAT'S ABSOLUTELY NOT TRUE. THE SAME JUDGE.

10 Q YOU DISMISSED THE CASE IN FRONT OF
11 BANKRUPTCY JUDGE?

12 A OF THE IOWA BANKRUPTCY JUDGE AND STARTED
13 OVER AGAIN.

14 Q IN FRONT OF A DIFFERENT JUDGE?

15 A THE SAME JUDGE.

16 Q THE SAME JUDGE.

17 THE SAME IOWA JUDGE, THE SAME CASE?

18 A THE SAME CASE, THE SAME JUDGE.

19 Q BUT YOU DISMISSED THE FIRST ACTION AND
20 REFILED IT AGAIN AFTER -- EVEN AFTER YOU HAD BEEN REJECTED
21 BY THE IOWA JUDGE?

22 A THERE'S TWO REASONS FOR THAT. THE FIRST
23 ACTION WAS REALLY IN THE NATURE OF AN INJUNCTION. SO SINCE
24 THE INJUNCTION WAS DENIED, THERE'S REALLY NO REAL REASON TO
25 KEEP THAT ACTION GOING.

26 THE SECOND OF -- SO AS I MENTIONED, I HIRED

1 A NEW LAW FIRM IN CHICAGO, AND THEY DRAFTED THIS OTHER
2 COMPLAINT THAT WAS FILED IN SEPTEMBER, 1999.

3 Q DO YOU KEEP MAKING THE SAME CLAIMS
4 UNSUCCESSFULLY OVER AND OVER AGAIN?

5 A DO I KEEP MAKING THE SAME CLAIMS?

6 Q YES.

7 A WELL, THE LAWSUIT IS PENDING. LET ME PUT IT
8 THIS WAY.

9 Q ALL RIGHT. THE JURY WAS SHOWN A DOCUMENT
10 CALLED "CONSENT JUDGMENT" THIS MORNING. NOW, THAT IS
11 EXHIBIT 122. THAT CONSENT JUDGMENT WAS SIGNED BY
12 DAVID VOPNFORD; CORRECT?

13 A AND HIS LAWYER, CORRECT.

14 Q AND HIS LAWYER.

15 AND THAT IS NOT THOUSAND ADVENTURES -- I'M
16 SORRY -- THOUSAND ADVENTURES OF OHIO SIGNING, WAS IT?

17 A YOU'RE CORRECT.

18 Q IT WAS NOT THOUSAND ADVENTURES OF ALABAMA,
19 THE OTHER THOUSAND ADVENTURES PLAINTIFF IN THIS CASE,
20 SIGNING; RIGHT?

21 A THERE ARE ONLY TWO, THOUSAND ADVENTURES,
22 INC., AND THOUSAND ADVENTURES, INC., OF IOWA.

23 Q CORRECT.

24 AND IT WAS NOT TRAVEL AMERICA CONSENTING TO
25 THAT JUDGE; CORRECT?

26 A YOU ARE CORRECT.

1 Q SO THOSE -- WHATEVER IT WAS THAT'S CONSENTED
2 THERE, IT WAS BETWEEN YOU AND THOUSAND ADVENTURES, INC.,
3 AND IOWA?

4 A NO, IT WASN'T BETWEEN ME -- REMEMBER 122 IS
5 BETWEEN THE ATTORNEY GENERAL OF THE STATE OF IOWA.

6 Q YOU'RE CORRECT.

7 ALL RIGHT. I WANT TO GO ON TO THE TESTIMONY
8 YOU GAVE REGARDING SOMEONE GOING TO NEBRASKA AND TAKING ALL
9 THE PROPERTY OF THOUSAND ADVENTURES, INC.

10 REMEMBER THAT TESTIMONY?

11 A YES, SIR.

12 Q NOW, THE FACT IS THAT YOU KNOW YOUR
13 STATEMENT THAT ALL THE PROPERTY OF THOUSAND ADVENTURES,
14 INC. -- THE STATEMENT THAT YOU PUT IN YOUR COMPLAINT,
15 EXHIBIT 122 THAT SAID ALL OF THE PROPERTY OF THOUSAND
16 ADVENTURES, INC. WAS TAKEN TO IRVINE WAS FALSE; YOU KNOW
17 THAT, DON'T YOU?

18 A FIRST OF ALL, IT'S NOT EXHIBIT 122. 122 IS
19 THE CONSENT JUDGMENT.

20 Q I'M SORRY.

21 A THAT'S OKAY. YOU'RE REFERRING TO THE
22 SEPTEMBER, 1999, COMPLAINT.

23 Q EXHIBIT 123?

24 A OKAY. I'M SORRY. I BELIEVE THAT EVERY
25 ALLEGATION IN THAT COMPLAINT IS TRUE AND CAN BE PROVEN.

26 MR. MOSHENKO: COULD WE GET 123 UP ON THE SCREEN,

1 MR. DURAN. AND I WANT TO LOOK AT PARAGRAPH 46.

2 Q ALL RIGHT. IN AUGUST, 1997, TRAVEL AMERICA
3 CLOSED THE THOUSAND ADVENTURES OFFICE IN BLAIR, NEBRASKA,
4 AND TRANSFERRED ALL OF THE DEBTOR'S RECORDS AND COMPUTER
5 DATA SYSTEMS TO IRVINE. YOU SEE IT SAYS THAT?

6 A YES, SIR.

7 Q THAT'S A FALSE STATEMENT?

8 A I DISAGREE WITH YOU.

9 Q DIDN'T YOU TESTIFY THIS MORNING THAT
10 SUBSTANTIAL RECORDS HAD GONE TO THE I.R.S.?

11 A I DID.

12 Q ALL RIGHT. SO IF ALL OF THE RECORDS HAD
13 BEEN TRANSFERRED TO IRVINE, CALIFORNIA, NONE OF THE RECORDS
14 WOULD HAVE REMAINED BEHIND FOR THE INTERNAL REVENUE
15 SERVICE?

16 A NO. NO. THE WAY YOU CAN LOOK AT THIS WHOLE
17 COMPLAINT, THE WHOLE COMPLAINT IS ABOUT MEMBERSHIP DUES AND
18 RETAIL INSTALLMENT CONTRACTS AND SO ON. SO I THINK WHAT IS
19 MEANT THERE IS THE RECORDS AND COMPUTER DATA SYSTEM IN
20 RELATION TO THE MEMBERSHIP LISTS, THE NAMES AND ADDRESSES,
21 YOU KNOW, THE DUES AND THE RETAIL INSTALLMENT CONTRACTS,
22 THAT'S THE RECORDS TO WHICH PARAGRAPH 46 IS BEING DIRECTED.

23 Q OKAY. FAIR ENOUGH.

24 NOW, LET ME ASK YOU THIS: HOW DO YOU KNOW
25 THAT IN AUGUST OF '97 ALL OF THE RECORDS AND COMPUTER
26 SYSTEMS, INCLUDING THE RECORDS RELATED TO THE MEMBERS, WENT

1 TO IRVINE?

2 A THAT'S WHAT MR. VOPNFORD TESTIFIED TO AT HIS
3 DEPOSITION CONDUCTED IN JULY OF 1998 BY ME AND BY MY
4 LAWYERS.

5 Q OKAY. SO THAT'S WHAT WE CALL HEARSAY; IS
6 WHAT SOMEBODY ELSE SAID THAT YOU WEREN'T THERE TO SEE AND
7 HEAR; CORRECT?

8 A I WAS NOT THERE, YOU'RE RIGHT.

9 Q AND IN FACT --

10 MR. RIVIN: YOUR HONOR, THERE'S AN EXCEPTION. TO
11 THE EXTENT THAT WAS A SUGGESTION THAT THE TESTIMONY IS
12 INAPPROPRIATE, IT'S WRONG BECAUSE THERE'S AN EXCEPTION TO
13 THE HEARSAY RULE; IT'S AN ADMISSION OF A PARTY.

14 THE COURT: SUSTAINED.

15 BY MR. MOSHENKO: Q AND AS A MATTER OF FACT, WHAT
16 YOU REALLY -- WHEN YOU TESTIFY ALL OF THE RECORDS WERE
17 GONE -- YOU'RE REALLY TELLING US IS WHAT YOUR LAWYER TOLD
18 YOU WHAT MR. VOPNFORD TOLD HIM?

19 A WELL, I WAS THERE WHEN MR. VOPNFORD
20 TESTIFIED. SO BOTH. YEAH, WHAT MY LAWYER TOLD ME AND WHAT
21 I FIND OUT WHEN I WAS AT HIS DEPOSITION.

22 Q NOW, DO YOU KNOW WHETHER OR NOT -- WHETHER
23 OR NOT THE SO-CALLED TRANSFER WAS INSTEAD OF A PHYSICAL
24 MOVING OF THE RECORDS, A COPYING OF THE RECORDS?

25 A I DO NOT KNOW. LIKE YOU MENTIONED, I WASN'T
26 THERE.

1 Q OKAY. SO WHAT -- WHAT YOU REFER TO AS
2 TRANSFER COULD BE A REFERENCE TO COPYING?

3 A I SUPPOSE IT COULD.

4 Q AND IF THEY WERE -- IF THERE WAS A COPYING
5 RATHER THAN A PHYSICAL MOVING, THEN THOSE RECORDS WOULD
6 HAVE REMAINED BEHIND TO THE EXTENT THE COPIED ONES WERE
7 TAKEN AWAY?

8 A IT IS THEORETICALLY POSSIBLE, YES, SIR.

9 Q OKAY. NOW, YOU ALSO PUT IN THAT COMPLAINT
10 AN ALLEGATION THAT THE MEMBERSHIP DUES NEVER BELONGED TO
11 TRAVEL AMERICA?

12 A I DID MAKE THAT ALLEGATION, YES, SIR.

13 Q AND SO YOU TESTIFIED HERE THIS MORNING?

14 A RIGHT.

15 Q BUT YOU KNOW THAT SINCE THE BANKRUPTCY COURT
16 IN OHIO APPROVED TRANSFER OF MEMBERSHIP CONTRACTS AND DUES
17 TO TRAVEL AMERICA, MEMBERSHIP DUES DID BELONG TO TRAVEL
18 AMERICA, SOME OF THEM?

19 A NO. THE REASON I WAS -- I THINK I TOLD YOU
20 EARLIER BEFORE THE BREAK THAT THERE ARE TWO CONFIRMATION
21 ORDERS. THERE'S ONLY ONE THAT YOU PUT IN FRONT OF ME HERE.
22 THERE'S ANOTHER ONE THAT'S A ONE-SENTENCE ORDER ENTERED BY
23 THE SAME JUDGE IN OHIO.

24 MR. MOSHENKO: I'M GOING TO OBJECT AS HEARSAY, AND
25 UNLESS THE DOCUMENT IS PRODUCED IT'S NOT THE BEST EVIDENCE.

26 THE COURT: OBJECTION IS OVERRULED.

1 MR. RIVIN: YOUR HONOR, FOR THE RECORD WE HAVE THAT
2 DOCUMENT. WE JUST OBTAINED A COPY OF IT.

3 THE COURT: ALL RIGHT.

4 MR. RIVIN: IF MR. MOSHENKO WOULD LIKE TO SEE IT,
5 HE IS WELCOME TO IT.

6 MR. MOSHENKO: MAY I SEE IT?

7 I'LL SHOW IT TO THE WITNESS.

8 MR. RIVIN: WE WOULD LIKE TO SEE THIS ORDER MOVED
9 INTO EVIDENCE AS WELL, YOUR HONOR.

10 MR. MOSHENKO: IF YOU WANT TO MOVE THE OTHER ORDERS
11 INTO EVIDENCE, THIS ORDER CAN COME INTO EVIDENCE. LET'S
12 PUT ALL THE ORDERS IN EVIDENCE.

13 THE COURT: WE'LL TALK ABOUT THAT LATER. IT'S
14 UNDER SUBMISSION.

15 MR. RIVIN: THIS WOULD BE EXHIBIT 1474.

16 BY MR. MOSHENKO: Q IS THIS THE ORDER TO WHICH
17 YOU REFER, 1474?

18 A YES, SIR.

19 Q AND WHAT THE COURT BASICALLY DID IS SAID, MY
20 ORDER WORKS IN OHIO, AND IF THERE ARE OTHER COURTS
21 INVOLVING OTHER STATES, THOSE -- LIKE IOWA, THOSE OTHER
22 COURTS CAN DECIDE WHAT HAPPENS TO THEIR CORPORATION
23 MEMBERS; CORRECT?

24 A WELL, I WOULD JUST STICK WITH WHATEVER THE
25 ORDER SAYS. THE ORDER IN OHIO SAYS I CAN DO WHATEVER I
26 WANT IN IOWA, IRRESPECTIVE OF OHIO ORDER.

1 Q EXCEPT THE JUDGE IN IOWA SAID YOU COULDN'T
2 GET AN INJUNCTION AND DO WHATEVER YOU WANTED IN IOWA, TOO?

3 A THAT'S WHAT THE IOWA JUDGE DID IN THE
4 INJUNCTION HEARING, CORRECT.

5 Q YOU'RE TRYING TO MAKE THE SAME ALLEGATIONS
6 IN KANSAS UNSUCCESSFULLY?

7 A I'VE NEVER BEEN TO KANSAS.

8 Q HAVEN'T YOU GONE TO A TRUSTEE RELATING TO
9 THOUSAND ADVENTURES OF KANSAS AND TRIED TO INVOLVE YOURSELF
10 IN GETTING THE MEMBERSHIP DUES THERE?

11 A I DID NOT. THE ONLY THING I'VE DONE WITH
12 KANSAS IS I THINK I FILED A CLAIM THERE, AND I'VE TALKED TO
13 THE LADY WHO IS THE KANSAS TRUSTEE GENERALLY ABOUT WHAT IS
14 GOING ON. I'VE NEVER BEEN TO THE KANSAS BANKRUPTCY COURT.

15 Q AND THAT TRUSTEE DISPUTED YOUR CLAIM; RIGHT?

16 A I DON'T THINK SHE HAS DONE ANYTHING, SEE,
17 BECAUSE I DON'T THINK THERE'S SUFFICIENT ASSET IN THAT CASE
18 EITHER. WHY TALK ABOUT CLAIMS WHEN THERE ARE NO ASSETS?

19 Q THAT'S PENDING?

20 A THAT'S WHY I SAYS, IT'S PENDING, YES.

21 Q HOW ABOUT FLORIDA; YOU MADE THE SAME
22 ALLEGATIONS IN FLORIDA UNSUCCESSFULLY?

23 A THAT'S WRONG. I MADE A CLAIM IN FLORIDA,
24 AND I GOT PAID.

25 Q NOW, YOU TESTIFIED THIS MORNING THAT AS A
26 RESULT OF TALKING TO I THINK YOU SAID 50 MEMBERS?

1 A GIVE OR TAKE, YES, SIR.

2 Q YOU CAME TO THE -- TO SOME CONCLUSIONS THAT
3 THERE WAS SOME MEMBER CONFUSION ABOUT WHAT WAS GOING ON?

4 A RIGHT.

5 Q BY WHEN HAD YOU DONE THAT?

6 LET'S PUT IT THIS WAY: HAD YOU DONE THOSE
7 CONVERSATIONS WITH 50 MEMBERS BY THE TIME YOU APPEARED IN
8 FRONT OF THE IOWA BANKRUPTCY COURT IN SEPTEMBER OF 1998?

9 A HERE IS WHAT I REMEMBER. IN FEBRUARY, 1998,
10 BEGINNING FROM THE TIME PERIOD LIKE THE FIRST WEEK, FOR
11 EXAMPLE, I PROBABLY GOT FIVE TO TEN CALLS. THEN THE NUMBER
12 OF CALLS AND THE FREQUENCY OF THE CALLS AS TIME WENT ON
13 DECREASED.

14 SO, FOR EXAMPLE, NOW I PROBABLY GET ONE CALL
15 A MONTH OR ONE LETTER A MONTH. THAT'S REALLY THE BEST I
16 CAN CHARACTERIZE THE NUMBER AND FREQUENCY OF THE CALLS.

17 Q WELL, LET ME JUST PUT IT THIS WAY: DIDN'T
18 YOU GO IN FRONT OF THE BANKRUPTCY JUDGE IN IOWA AND TESTIFY
19 THAT YOUR IMPRESSIONS REGARDING MEMBER CONFUSION WERE BASED
20 PRIMARILY ON DISCUSSIONS WITH A MR. DAN HOPPER?

21 A YES, THERE IS A DAN HOPPER.

22 Q AND YOU KNOW HIM AS AN ACTIVIST MEMBER WHO
23 IS SUBSTANTIALLY INVOLVED IN NOVELLI BASHING ACTIVITIES?

24 A WELL, YOU HAVE TO ASK HIM WHAT HE IS
25 INVOLVED IN, BUT HE CHARACTERIZES HIMSELF AS THE CHAIRMAN
26 OF -- THE PRESIDENT OF THE MEMBERS' ASSOCIATION.

1 Q OKAY. AND, IN FACT, YOU WERE GOING TO HIRE
2 MR. HOPPER TO PROVIDE SOME SERVICES TO YOU?

3 A NO, NEVER.

4 Q WELL, I'LL GET BACK TO THAT.

5 DIDN'T YOU TESTIFY THAT YOUR IMPRESSIONS
6 ABOUT WHAT MEMBERS BELIEVED ABOUT TRAVEL AMERICA WAS BASED
7 UPON DISCUSSIONS WITH DAN HOPPER, MR. CLOUD AND TWO OR
8 THREE MEMBERS THAT YOU MET IN THE HALLWAY AT THE
9 COURTHOUSE?

10 A THIS TESTIMONY IS WHEN, MR. MOSHENKO?

11 Q SEPTEMBER OF 1998.

12 A WELL, I SAID WHAT I SAID. BUT I LEARNED
13 THINGS FROM MR. CLOUD, FROM MR. VOPNFORD, FROM PEOPLE'S
14 PHONE CALLS, FROM PEOPLE'S LETTERS, FROM PEOPLE I MET IN
15 THE HALLWAY. SO --

16 Q LET ME SHOW YOU -- I'LL SHOW IT TO COUNSEL.
17 APPROACH, YOUR HONOR? THANK YOU.

18 ALL RIGHT. I WANT TO SHOW YOU WHAT I
19 REPRESENT AS PART OF A PARTIAL TRANSCRIPT IN FRONT OF THE
20 BANKRUPTCY COURT ON SEPTEMBER 11, 1998.

21 A OKAY.

22 Q AND YOU WERE BEING QUESTIONED ABOUT YOUR
23 IMPRESSIONS AS A CHAPTER 7 TRUSTEE THAT MEMBERS DO NOT
24 BELIEVE TRAVEL AMERICA WILL DO WHAT IT SAYS IT WILL DO.
25 AND YOUR RESPONSE IS THAT YOUR BELIEF -- YOUR BELIEF IS
26 PRIMARILY BASED ON THESE DISCUSSIONS WITH DAN HOPPER AND

1 WITH MR. CLOUD YOU ANSWER; CORRECT?

2 A RIGHT. RIGHT.

3 Q AND THEN YOU'RE ASKED SPECIFICALLY, "HOW
4 MANY MEMBERS HAVE YOU SPOKEN TO
5 WITH RESPECT TO THE DEBTOR'S
6 PROPOSED PLAN OTHER THAN
7 MR. HOPPER?

8 "ANSWER: NOT MANY. I
9 WOULD SAY MAYBE TWO OR THREE
10 THAT I'VE SEEN IN THE HALLWAY,
11 IF THAT'S WHAT YOU MEAN, BUT NOT
12 MANY.

13 "QUESTION: AND THOSE ARE
14 THE ONLY MEMBERS YOU HAVE SPOKEN
15 TO; THAT WOULD BE TWO OR THREE
16 WHO HAVE ATTENDED THESE
17 HEARINGS?

18 "ANSWER: YES, MA'AM.

19 "AND THAT'S OUT OF 20,000
20 MEMBERS?

21 "ANSWER: HOWEVER MANY
22 THERE ARE."

23 A THAT'S MY TESTIMONY IN OHIO.

24 MR. RIVIN: YOUR HONOR, TO THE EXTENT THAT --
25 BY MR. MOSHENKO: Q OHIO OR IOWA?

26 A OHIO.

1 Q ARE YOU SURE?

2 A ABSOLUTELY OHIO. MS. DANEMAN IS THE LAWYER
3 FOR THOUSAND ADVENTURES, INC., OF OHIO. MS. DANEMAN HAS
4 NEVER BEEN TO IOWA.

5 Q WHY ARE YOU RESPONDING "YES, MA'AM"?

6 A BECAUSE THE LAWYER IS A LADY -- AS I SAID,
7 MS. DANEMAN.

8 Q IN OHIO?

9 A YES. SARA.

10 MR. RIVIN: YOUR HONOR, WE HAVE A PROBLEM -- WE
11 DON'T HAVE AUTHENTICATION OF THAT TRANSCRIPT. THERE IS
12 OBVIOUSLY SOME CONFUSION. IT HASN'T BEEN SHOWN TO YOU
13 PREVIOUSLY.

14 TO THE EXTENT COUNSEL IS SUGGESTING THAT
15 THIS IS IMPEACHMENT, IT'S NOT IMPEACHMENT. THE WITNESS
16 TESTIFIED HE TALKED TO TWO OR THREE PEOPLE ABOUT THE PLAN,
17 AND THAT'S WHAT HE WAS REFERRING TO IN THAT TESTIMONY, NOT
18 PEOPLE ABOUT TRAVEL AMERICA OR THOUSAND ADVENTURES, INC.,
19 ET CETERA. IT'S NOT IMPEACHMENT.

20 THE COURT: WITH THAT CLARIFICATION, IT'S BEFORE
21 THE JURY.

22 BY MR. MOSHENKO: Q MR. LAM, HOW DO YOU GET PAID
23 AS A TRUSTEE?

24 A I GET PAID BY PERCENTAGE OF WHATEVER ASSET I
25 ADMINISTER.

26 Q SO IT'S HIGHLY IN YOUR PERSONAL INTEREST TO

1 TRY TO ACHIEVE A GOAL OF HAVING THE ASSETS OF TRAVEL
2 AMERICA BE DECLARED THE ASSETS OF THOUSAND ADVENTURES,
3 INC.; RIGHT?

4 A TO BE PRECISE, A 5-PERCENT INTEREST. SO THE
5 OTHER 95 PERCENT BELONG TO MY CREDITORS.

6 Q OKAY. AND YOUR CREDITORS INCLUDE THE
7 PROFESSIONALS THAT YOU HIRE; RIGHT?

8 A OH, YEAH.

9 Q THESE VERY BIG LAW FIRMS THAT -- VERY BIG
10 CHICAGO LAW FIRM THAT YOU TESTIFIED YOU HIRED; RIGHT?

11 A IT IS A BIG FIRM.

12 Q ARE YOU OUT-OF-POCKET WITH THEM OR ARE THEY,
13 TOO, WAITING AROUND TO GET -- FOR YOU TO COLLECT MONEY FROM
14 MR. NOVELLI?

15 A THEY HAVE NOT BEEN PAID ANY FEE SO FAR.
16 THEY HAVE BEEN PAID I WANT TO SAY \$8,000 OF EXPENSES. THEY
17 HAVE NOT BEEN PAID DIME ONE OF FEES.

18 Q SO WE HAVE YOUR PERSONAL FINANCIAL INTEREST;
19 CORRECT?

20 A MY FEES.

21 Q FIVE PERCENT?

22 A OF WHATEVER ASSETS I ADMINISTER.

23 Q THE LAW FIRM FOR WHOM YOU WORK, ARE THEY
24 PAID FOR WORK THEY HAVE DONE?

25 A THEY HAVE NOT BEEN PAID ANY FEE.

26 Q CORRECT.

1 THEY'RE WAITING TO COLLECT MONEY FROM MR. --
2 IF YOU CAN GET ANYTHING OUT OF MR. NOVELLI, TRAVEL AMERICA,
3 THEY CAN GET PAID; RIGHT?

4 A OR FROM RED RIVER RANCH.

5 Q OKAY. AND THEN THERE'S THE THIRD LAW FIRM,
6 THE CHICAGO LAW FIRM.

7 WHO ELSE ARE THE PROFESSIONAL -- THE
8 INVESTIGATOR THAT YOU HIRE HAVE TO GET PAID?

9 A IT MAY BE THE LAW FIRMS THEMSELVES EMPLOY
10 INVESTIGATORS, BUT I HAVE NOT.

11 Q OKAY. AND, NOW, YOU TESTIFIED THAT YOU'RE A
12 NEUTRAL BECAUSE YOU HAVE TO LOOK OUT FOR THE INTERESTS OF
13 THE CREDITORS AND THE DEBTOR AND THE COURT. BUT THERE IS
14 ALSO ANOTHER CLASS THAT YOU MUST LOOK OUT FOR THE INTEREST
15 OF, ISN'T THERE?

16 A SUCH AS?

17 Q THE PROFESSIONALS WHO HAVE TO BE PAID.

18 A THE BANKRUPTCY CODE ESTABLISHES A PRIORITY
19 BY WHICH PEOPLE GET PAID.

20 Q AND THEY GET PAID FIRST AHEAD OF THE
21 CREDITORS, DON'T THEY?

22 A WELL, THEY AND THE COURT COSTS, SO-CALLED
23 ADMINISTRATIVE CLAIMS, GET PAID FIRST, YES.

24 Q NO. YOU GET PAID FIRST AHEAD OF THE
25 CREDITORS, TOO?

26 A I'M ALSO IN THE ADMINISTRATIVE CLASS, YES,

1 SIR.

2 Q AND THE MEMBERS OR THE UNSECURED CREDITORS,
3 THEY GET PAID LAST?

4 A NOT TRUE. SECTION 507(A)(5) OF THE
5 BANKRUPTCY CODE GIVES THE MEMBERS A PRIORITY IN THE AMOUNT
6 OF ONE THOUSAND -- USED TO BE \$1,950. THEY HAVE GOTTEN IT
7 BIGGER. SO THE MEMBERS HAVE WHAT WE CALL A PRIORITY CLAIM
8 THAT IS AHEAD EVEN OF THE INTERNAL REVENUE SERVICE.

9 AS I MENTIONED EARLIER, THERE'S A PRIORITY
10 SCHEME. YOU HAVE ADMINISTRATIVE CLAIMS, AND THEN YOU HAVE
11 WAGES, EMPLOYEES' CLAIMS, VACATION PAY, PENSION PAY. AND
12 THEN FISHERMEN GET PAID, CORN GROWERS GET PAID. AND THEN
13 THE MEMBERS WHO ARE LIKE THE CONSUMER, THEY GET PAID. THEN
14 ALIMONY AND CHILD SUPPORT, THEY GET PAID. THEN INTERNAL
15 REVENUE SERVICE GET PAID, AND THEN THE UNSECURED CREDITORS
16 GET PAID.

17 Q AND ALL THAT IS BEHIND THE SECURED
18 CREDITORS; RIGHT?

19 A IT'S BEHIND THE SECURED CREDITORS, CORRECT.

20 Q AND IT'S BEHIND YOU AND YOUR PROFESSIONAL --

21 A ALL THAT MEANING UNSECURED.

22 Q ALL THAT YOU LISTED. CORN GROWERS AND
23 MEMBERS AND ETCETERA?

24 A THEY'RE ALL BEHIND THE SECURED CREDITORS AND
25 ADMINISTRATIVE CREDITORS AND THE WAGE EMPLOYEE CREDITORS
26 AND THE VACATION CREDITORS.

1 Q SO WHEN YOU DECIDE YOU NEED TO GO HIRE A BIG
2 LAW FIRM, LARGE LAW FIRM IN CHICAGO WHO SPECIALIZES IN
3 COMPLICATED LITIGATION, IF YOU FAIL TO FORCE SOMEHOW THE
4 RETURN OF THESE MEMBERS THAT THE COURT IN OHIO ORDER CAN GO
5 TO TRAVEL AMERICA, HOW DO THESE PEOPLE GET PAID?

6 A AS I SAID, THE BALL GAME IS NOT OVER YET.
7 THAT'S WHY EVIDENTIARY COMPLAINTS LIKE 120, WHATEVER THE
8 COMPLAINT IS, WE HAVE, YOU KNOW, OTHER POTENTIAL DEFENDANT
9 TARGETS, ALSO RED RIVER RANCH. REMEMBER I MENTIONED FALCON
10 HEAD OWNS THIS ACREAGE, AND I'VE ENGAGED A REALTOR TO SELL
11 RED RIVER RANCH.

12 Q ARE ALL THESE LAWYERS ON A CONTINGENCY IF
13 YOU COLLECT NOTHING?

14 A I'M THE ONLY CONTINGENT FEE CREDITOR,
15 SO--TO--SPEAK.

16 Q WHAT IF THE ESTATE HAS NO MONEY; DO YOU HAVE
17 TO FIND A WAY TO PAY THEM?

18 A NOPE.

19 Q THEY DON'T GET PAID?

20 A THEY DON'T GET PAID, I DON'T GET PAID.

21 Q THEY DON'T COME AFTER YOU FOR THE MONEY --

22 A THEY CAN'T.

23 Q -- BECAUSE YOU HIRE THEM?

24 A NO, THAT'S NOT TRUE.

25 Q SO THEY COULD COME AFTER YOU FOR THE MONEY?

26 A THEY CANNOT. BECAUSE I ONLY ACT IN MY

1 CAPACITY AS TRUSTEE. SO THEY HAVE A CLAIM AGAINST THE
2 ESTATE, NOT AGAINST ME PERSONALLY.

3 Q SO YOU'RE NOT COMPLETELY NEUTRAL IN THIS,
4 ARE YOU?

5 A I'M NEUTRAL IN THE SENSE THAT -- OBVIOUSLY I
6 HAVE A FEE INTEREST, LIKE EVERYTHING ELSE. BUT MY GOAL IS
7 TO GET MONEY FOR THE CREDITORS.

8 MR. MOSHENKO: THAT'S ALL. THANK YOU.

9 THE COURT: REDIRECT.

10 MR. RIVIN: THANK YOU, YOUR HONOR

11 REDIRECT EXAMINATION

12 BY MR. RIVIN: Q MR. LAM, YOU BELIEVE THE
13 TRUTHFULNESS OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT
14 THAT YOU FILED IN SEPTEMBER, 1999, AGAINST TRAVEL AMERICA
15 AND RAY NOVELLI, DO YOU NOT?

16 A I ABSOLUTELY DO BELIEVE IN THAT, YES.

17 Q ARE YOU FAMILIAR WITH A RULE 11 IN FEDERAL
18 COURT?

19 A 9011 IN BANKRUPTCY.

20 Q 9011 IN BANKRUPTCY COURT. AND WHAT DOES
21 THAT PROVIDE?

22 A THE RULE PROVIDES THAT ANY TIME YOU FILE A
23 COMPLAINT, THAT YOU HAVE TO HAVE PERFORMED THE ADEQUATE
24 INVESTIGATION, THAT YOU HAVE SIGNED THE COMPLAINT IN GOOD
25 FAITH, THAT IT IS NOT SIGNED FOR THE PURPOSE OF HARASSMENT,
26 OR ELSE THE JUDGE CAN DO BAD THINGS TO YOU.

1 Q AND THAT APPLIES TO YOUR ATTORNEYS?

2 A YES.

3 Q AND THAT MEANS, IN ESSENCE, THAT YOU AND
4 YOUR ATTORNEYS ARE CONFIRMING TO THE COURT, ARE
5 REPRESENTING TO THE COURT THAT YOU HAVE DONE AN ADEQUATE
6 INVESTIGATION, AND YOU BELIEVE THE ALLEGATIONS IN THE
7 COMPLAINT TO BE TRUE?

8 A ABSOLUTELY.

9 Q AND, AS YOU SAID, IF THAT REPRESENTATION IS
10 NOT TRUE -- IF THAT REPRESENTATION IS NOT TRUE, IF THE
11 COURT FINDS THAT REPRESENTATION IS NOT TRUE, YOU CAN BE
12 SANCTIONED?

13 A CORRECT.

14 Q AND YOU COMPLIED WITH RULE 9011 --

15 A YES, SIR.

16 Q -- IN FILING THAT COMPLAINT?

17 A YES, SIR.

18 Q MR. MOSHENKO ASKED YOU A SERIES OF QUESTIONS
19 ABOUT THOUSAND ADVENTURES OF OHIO, AND HE FOCUSED ON OHIO.
20 AND I THINK HE MENTIONED ALABAMA ONCE.

21 THE PLAN -- THE CHAPTER 11 PLAN FOR T.A.I.
22 OHIO APPLIED ONLY TO THOUSAND ADVENTURES OHIO; ISN'T THAT
23 CORRECT?

24 A THAT'S CORRECT.

25 Q AND IT DID NOT APPLY TO ANY OTHER THOUSAND
26 ADVENTURES SUBSIDIARIES?

1 A OR THE PARENT.

2 Q OR THE PARENT. OR THE MEMBERS OF ANY
3 OTHER -- OF ANY OTHER THOUSAND ADVENTURES SUBSIDIARY OR ANY
4 OTHER THOUSAND ADVENTURES COMPANY; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q NOW, THE ORDER WHICH I HANDED TO
7 MR. MOSHENKO AND HE SHOWED YOU, THIS SECOND ORDER REGARDING
8 THE EFFECT OF CONFIRMATION -- AND LET ME JUST READ IT. WE
9 DON'T HAVE IT IMAGED. THIS COURT'S ORDER OF CONFIRMATION
10 PLAN OF REORGANIZATION -- AGAIN, THIS IS THE OHIO
11 BANKRUPTCY COURT -- ENTERED ON SEPTEMBER 17, 1998, SHALL
12 NOT IN ANY FORM OR MANNER HAVE PRECLUSIVE EFFECT WITH
13 REGARD TO ANY CASES OR ISSUES PENDING IN OTHER
14 JURISDICTIONS.

15 SO, IN OTHER WORDS, EVEN THOUGH THE
16 BANKRUPTCY COURT IN OHIO -- THE BANKRUPTCY JUDGE IN OHIO
17 OVERRULED YOUR OBJECTIONS, THE COURT DID NOT DETERMINE ANY
18 OF THE ISSUES ASSERTED IN YOUR COMPLAINT THAT'S CURRENTLY
19 PENDING IN IOWA; IS THAT CORRECT?

20 MR. MOSHENKO: OBJECTION, LEADING AND SUGGESTIVE.
21 AND THE DOCUMENTS SPEAKS FOR THEMSELVES.

22 THE COURT: OVERRULED. I WILL ALLOW IT.

23 THE WITNESS: YOU'RE CORRECT. THAT'S PRECISELY THE
24 REASON WHY I GOT THAT ORDER IS I WAS AFRAID THAT SOMETHING
25 LIKE THIS WOULD HAPPEN LIKE WHAT HAPPENED THIS MORNING.

26 BY MR. RIVIN: Q HAVE YOU FOLLOWED THE THOUSAND

1 ADVENTURES OF OHIO BANKRUPTCY FOLLOWING THE CONFIRMATION OF
2 THE PLAN?

3 A YES, I HAVE.

4 Q AND IN YOUR CAPACITY AS CHAPTER 7 TRUSTEE
5 FOR THOUSAND ADVENTURES, INC.?

6 A YES, SIR.

7 Q HAS THOUSAND ADVENTURES OF OHIO OR TRAVEL
8 AMERICA PERFORMED UNDER THE PLAN OF REORGANIZATION?

9 MR. MOSHENKO: OBJECTION, YOUR HONOR. WE SHOULD
10 HAVE SOME FOUNDATION FOR HIS ALLEGED KNOWLEDGE.

11 THE COURT: HE IS ASKING HIM IF HE FOLLOWED IT.
12 OVERRULED.

13 MR. MOSHENKO: FOLLOWED IT WITH HIS WIFE? FOLLOWED
14 IT HOW?

15 THE WITNESS: I HAVE BEEN FOLLOWING THE DEVELOPMENT
16 IN THAT CASE IN OHIO, AND I UNDERSTAND THAT THE PAYMENTS
17 THAT WERE CALLED FOR UNDER THE CONFIRMED PLAN WERE NOT
18 MADE.

19 BY MR. RIVIN: Q BY TRAVEL AMERICA?

20 A BY WHOMSOEVER.

21 Q TRAVEL AMERICA OR THOUSAND ADVENTURES OF
22 OHIO?

23 A EXACTLY, RIGHT.

24 Q THE MERITS -- AS YOU UNDERSTAND IT, MR. LAM,
25 THE MERITS OF THE ALLEGATIONS IN YOUR COMPLAINT, THE ONE
26 THAT'S CURRENTLY PENDING IN IOWA, HAVE NOT BEEN RULED UPON

1 BY ANY COURT?

2 A YOU ARE CORRECT. THAT'S CORRECT. WE'RE
3 STILL DOING DISCOVERY.

4 Q AND NO COURT HAS DECIDED THAT THE
5 ALLEGATIONS IN YOUR COMPLAINT ARE WRONG?

6 A YOU ARE CORRECT.

7 Q MR. MOSHENKO STATED IN HIS
8 CROSS-EXAMINATION, USING HIS WORDS, THAT -- IN ASKING YOU
9 ABOUT OHIO, HE SAID, AND OTHER COURTS IN OTHER STATES LIKE
10 IOWA CAN DECIDE WHAT HAPPENS TO THE MEMBERS, CAN DECIDE
11 WHAT HAPPENS TO THE -- I BELIEVE IT WAS THE RELATIONSHIP
12 BETWEEN TRAVEL AMERICA AND THOUSAND ADVENTURES.

13 DO YOU REMEMBER THAT QUESTION MR. MOSHENKO
14 ASKED YOU?

15 A SURE.

16 Q AND THAT WOULD MEAN THAT A COURT IN
17 CALIFORNIA, LIKE THIS COURT, CAN MAKE A DECISION THAT MAY
18 BE INCONSISTENT WITH WHAT A COURT IN OHIO MAY HAVE DECIDED?

19 A I SUPPOSE IT'S THEORETICALLY POSSIBLE, SURE.

20 Q AND THAT ASSUMES --

21 A BUT YOU'RE TALKING ABOUT APPLES AND
22 ORANGES. THE COURT IN OHIO MADE HIS FINDINGS BASED ON THE
23 BANKRUPTCY CODE.

24 Q AND THAT'S WHAT I WAS GOING TO ASK YOU.
25 THAT'S RIGHT.

26 A HERE -- YOU'RE NOT DEALING WITH BANKRUPTCY

1 HERE.

2 MR. RIVIN: I HAVE NO FURTHER QUESTIONS.

3 THE COURT: THANK YOU.

4 ANYTHING FURTHER, MR. MOSHENKO?

5 MR. MOSHENKO: JUST ONE. I THINK ONE OR TWO.

6 RECROSS-EXAMINATION

7 BY MR. MOSHENKO: Q GIVEN THAT THE BANKRUPTCY
8 JUDGE APPROVED AND -- APPROVED THE PLAN WHICH INVOLVED AN
9 ORDER THAT THE PROPERTY BE TRANSFERRED TO TRAVEL AMERICA,
10 ISN'T IT TRUE THAT APPROXIMATELY 20,000 TRAVEL AMERICA --
11 THOUSAND ADVENTURES OHIO MEMBERS WERE -- HAD THEIR ACCOUNTS
12 TRANSFERRED, AND TRAVEL AMERICA CAN COLLECT THOSE DUES?

13 MR. RIVIN: OBJECTION. LACK OF FOUNDATION.

14 THE COURT: SUSTAINED.

15 BY MR. MOSHENKO: Q DOES YOUR LATEST LAWSUIT
16 INCLUDE A CLAIM THAT MR. NOVELLI OR TRAVEL AMERICA HAS NO
17 RIGHT TO THE OHIO MEMBERS THAT THE COURT ORDERED TO
18 TRANSFER?

19 A TO BE FRANK WITH YOU, I DON'T KNOW.

20 Q DID YOU NAME THE BANKRUPTCY JUDGE IN YOUR
21 COMPLAINT FOR IMPROPER TRANSFERS?

22 A NO, I DIDN'T.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. RIVIN: Q ONE QUESTION FURTHER ON ONE
25 EXHIBIT DEALING WITH OHIO, THE DISCLOSURE STATEMENT. IT'S
26 EXHIBIT 361. I'D LIKE TO GO TO THE THIRD PAGE.

1 MR. MOSHENKO: OBJECT. BEYOND THE SCOPE, YOUR
2 HONOR.

3 THE COURT: OVERRULED.

4 MR. RIVIN: THIS GOES TO WHAT MR. MOSHENKO WAS
5 ASKING ABOUT, THE TRANSFERS OF THE THOUSAND ADVENTURES OF
6 OHIO MEMBERS.

7 Q MR. LAM, ARE YOU FAMILIAR WITH THIS LANGUAGE
8 OF THE PARAGRAPH ON PAGE 4? THIS IS THE DISCLOSURE
9 STATEMENT TO THE MEMBERS?

10 A RIGHT.

11 Q SAYING THAT ANY MEMBER WHO DECIDED HE OR SHE
12 NO LONGER WANTED TO MAINTAIN MEMBERSHIP WITH THOUSAND
13 ADVENTURES OF OHIO WAS ENTITLED TO SUBMIT A WRITTEN REQUEST
14 TO TRAVEL AMERICA AND REQUEST TO BE RELEASED FROM ANY
15 LIABILITY --

16 A I SEE THAT.

17 Q -- FOR DUES?

18 A I SEE THAT.

19 Q SO, IN ESSENCE, THE MEMBERS OF THOUSAND
20 ADVENTURES OF OHIO HAD NO OBLIGATION TO PAY TRAVEL AMERICA?

21 MR. MOSHENKO: OBJECTION. MISSTATES THE DOCUMENT.
22 NOT A DECLARATION. NO OBLIGATION.

23 THE COURT: IT SPEAKS FOR ITSELF, COUNSEL.

24 MR. MOSHENKO: IT SPEAKS FOR ITSELF. I AGREE.

25 MR. RIVIN: NO FURTHER QUESTIONS.

26 THE COURT: THANK YOU.

1 MR. MOSHENKO: COULD WE HAVE THE NEXT PAGE? I'M
2 SORRY. IT'S ONE MORE. COULD YOU BLOW UP THE TOP
3 PARAGRAPH?

4 YOUR HONOR, THIS DOES INVOLVE A REQUEST TO
5 REOPEN FOR ONE QUESTION ABOUT THAT PARAGRAPH.

6 THE COURT: ALL RIGHT. GO AHEAD.

7 MR. MOSHENKO: THANK YOU.

8 FURTHER RE-CROSS-EXAMINATION

9 BY MR. MOSHENKO: Q YOU ASSERTED THIS MORNING
10 THAT THERE WERE FINDINGS OF IOWA LAW VIOLATIONS REFERRING
11 TO THE CONSUMER FRAUD ACT AND THE IOWA MEMBERSHIP
12 CAMPGROUND ACT INCLUDED IN A JUDGMENT?

13 A THE CONSENT JUDGMENT, RIGHT.

14 Q AND HERE THIS APPROVED -- THIS DOCUMENT,
15 WHICH THE COURT APPROVED, MAKES FINDINGS SPECIFICALLY
16 RELATED TO THAT SUBJECT, THAT IS TO SAY, THAT, QUOTE: YOUR
17 MEMBERSHIP AGREEMENT WITH T.A.O. IS GOVERNED BY CONTRACT
18 LAWS IN OHIO, AND IOWA LAW HAS NOTHING TO DO WITH THE
19 CONTRACT IN T.A.O., THOUSAND ADVENTURES OF OHIO; RIGHT?

20 MR. RIVIN: OBJECTION. THE DOCUMENT SPEAKS FOR
21 ITSELF.

22 THE COURT: SUSTAINED.

23 MR. SHERMAN: CALL OUR NEXT WITNESS AND EXCUSE THIS
24 WITNESS.

25 THE COURT: MR. LAM, YOU'RE EXCUSED. THANK YOU
26 VERY MUCH.

1 AND RATE THE RESORTS.

2 Q NOW, THE JURY HAS HEARD ABOUT A 5-STAR
3 RATING; AND THOSE INSTANCES WHERE THERE IS A 5-STAR RATING,
4 DOES COAST GIVE THE RESORT SOMETHING?

5 A YES.

6 Q AND WHAT'S THAT?

7 A THEY RECEIVE WHAT WE CALL A 5-STAR PLAQUE.

8 Q SO THEY CAN PUT IT UP?

9 A USUALLY IN EITHER THE OWNER/DEVELOPER'S
10 OFFICE, OR THEY'LL DISPLAY THEM IN THE SALES OFFICES
11 SOMETIMES.

12 Q AND OTHER THAN THOSE INSTANCES WHERE THERE
13 IS A 5-STAR RATING GIVEN, TO YOUR KNOWLEDGE DOES COAST DO
14 ANYTHING ELSE TO PUBLICIZE RATINGS TO THE PUBLIC OR TO
15 MEMBERS?

16 A NO. NO. GENERALLY SPEAKING, WE LIKE TO LET
17 THE PUBLIC AT LARGE KNOW THAT 70 PERCENT, OR SOME NUMBER
18 LIKE THAT -- IT'S A PRETTY LARGE AMOUNT -- ARE RATED 4-STAR
19 AND HIGHER. BUT TO ASSIGN OR TO PUBLISH WHAT RESORTS HAVE
20 WHAT RATING, NO, WE DON'T DO THAT.

21 Q SO, IN OTHER WORDS, IF YOU WERE TO LOOK IN
22 THE DIRECTORY OR HANDBOOK, YOU DON'T SEE A RATING IN THERE?

23 A NO.

24 Q NOW, LET ME SHOW YOU A DOCUMENT THAT HAS
25 BEEN PREVIOUSLY SHOWN THE WITNESS. THIS IS EXHIBIT 423. I
26 BELIEVE YOU WERE GIVEN A COPY EARLIER TODAY, COUNSEL.

1 WHAT IS EXHIBIT 423?

2 A IT'S A DEPARTMENT OF JUSTICE MEMORANDUM FOR
3 THE STATE OF IOWA.

4 Q DID YOU EVER SEE THIS DOCUMENT?

5 A YES, I'VE SEEN THIS DOCUMENT.

6 Q AND HOW DO YOU KNOW THAT YOU'VE SEEN THIS
7 DOCUMENT?

8 A WELL, A COUPLE OF REASONS. THERE'S MY
9 DOODLING DOWN HERE ON THE RIGHT-HAND SIDE. AND THEN I AM
10 LISTED AS PART OF THE "COPY TO" PORTION ON HERE, THAT ROGER
11 ROUTED THIS TO.

12 Q DID YOU SEE THIS DOCUMENT IN LATE '96?

13 A IT WOULD HAVE BEEN LATE '96, EARLY '97. THE
14 DATE ON IT IS DECEMBER 18, '96. SO I WOULD SAY AT LEAST BY
15 EARLY '97, YES.

16 MR. SHERMAN: I'D LIKE TO MOVE EXHIBIT 423 INTO
17 EVIDENCE.

18 MR. MOSHENKO: YOUR HONOR, HIS SEEING IT IS NOT
19 PROPER FOUNDATION FOR THE AUTHENTICITY OR ADMISSIBILITY.

20 MR. SHERMAN: YOUR, HONOR IT'S NOT BEING OFFERED
21 FOR THE TRUTH OF THE MATTER ASSERTED. IT FALLS WITHIN THE
22 EXCEPTION TO THE HEARSAY RULE FOR THE OTHER REASONS WE
23 DISCUSSED.

24 THE COURT: IT WILL BE RECEIVED OVER OBJECTION
25 MADE.

26 MR. SHERMAN: IT IS A MEMORANDUM FROM THE STATE OF

1 IOWA ATTORNEY GENERAL'S OFFICE.

2 498. I MISSPOKE.

3 (WHEREUPON, EXHIBIT NO. 498, DEPARTMENT OF
4 JUSTICE MEMORANDUM FOR THE STATE OF IOWA, WAS RECEIVED IN
5 EVIDENCE.)

6 BY MR. SHERMAN: Q THOSE ARE YOUR DOODLES YOU SAY
7 ON THE BOTTOM?

8 A YES.

9 Q SO WE CAN GET TO THIS LATER, ESSENTIALLY
10 THIS WAS A NOTIFICATION THAT YOU'D RECEIVED FROM THE IOWA
11 DEPARTMENT OF JUSTICE?

12 A CORRECT.

13 Q NOW, LET'S GO TO -- ACTUALLY, LET'S GO TO
14 EXHIBIT 423. THAT'S BEEN SHOWN BEFORE, AS WELL. I JUST
15 WANT TO AUTHENTICATE THIS DOCUMENT.

16 IS THIS A LETTER YOU SENT?

17 A YES, IT IS.

18 MR. SHERMAN: I'LL MOVE 423 INTO EVIDENCE.

19 MR. MOSHENKO: I GOT SOME CONFUSION. YOU WERE
20 LOOKING AT 498. YOU SWITCHED TO 423?

21 MR. SHERMAN: YES.

22 MR. MOSHENKO: OKAY. MAY I JUST LOOK AT IT?

23 NOW I KNOW WHAT IT IS.

24 THE COURT: IT WILL BE RECEIVED IN EVIDENCE.

25 (WHEREUPON, EXHIBIT NO. 423 WAS RECEIVED IN
26 EVIDENCE.)

1 MR. MOSHENKO: THIS DOCUMENT IS ALREADY IN
2 EVIDENCE.

3 MR. SHERMAN: NO, IT WASN'T. I CHECKED THIS
4 MORNING. IT WASN'T. MR. RANDALL IS HERE. SO I FIGURED,
5 WHY NOT?

6 MR. MOSHENKO: WELL, I WANT IT IN EVIDENCE THEN,
7 TOO.

8 MR. SHERMAN: SO WE AGREE.

9 THE COURT: THEN THERE'S NO OBJECTION.

10 MR. MOSHENKO: I HAVE NO OBJECTION.

11 THE WITNESS: I'M STARTING TO WONDER IF I SHOULD.

12 BY MR. SHERMAN: Q NEXT EXHIBIT IS EXHIBIT 949-298
13 TO 299. AND THE BATES NUMBER IS 08707 AND 08708.

14 ARE YOU FAMILIAR WITH THESE DOCUMENTS,
15 MR. RANDALL?

16 A YES.

17 Q WHAT ARE THEY?

18 A IT'S THE -- 08707 IS THE COVER SHEET,
19 INTERNAL COMMUNICATION THAT WE USE AT COAST TO COAST
20 REGARDING THE MEMBER TRANSFER.

21 AND THE 08708 IS THE ACTUAL LETTER FROM A
22 MEMBER DATED MAY 1, 1998. THE MEMBER'S LAST NAME IS
23 MATZKE, M-A-T-Z-K-E.

24 MR. SHERMAN: I'M GOING TO MOVE EXHIBIT 949-298 TO
25 299 INTO EVIDENCE.

26 MR. MOSHENKO: MY PROBLEM IS MINE IS THREE PAGES,

1 AND FROM THE NAMES, IT APPEARS AS THOUGH THE THIRD PAGE IS
2 INADVERTENTLY STAPLED TO THE FIRST TWO PAGES. THEY DON'T
3 SEEM TO BE RELATED.

4 MR. SHERMAN: OKAY. TWO PAGES. THE TWO I
5 MENTIONED.

6 THE COURT: IT WILL BE RECEIVED.

7 MR. MOSHENKO: THEN THE USUAL OBJECTIONS TO MEMBER
8 LETTERS. OTHER THAN THAT, NO.

9 (WHEREUPON, EXHIBITS NO. 949-298, 299,
10 COVER SHEET REGARDING THE MEMBER TRANSFER, LETTER FROM
11 MEMBER MATZKE DATED MAY 1, 1998, WERE RECEIVED IN
12 EVIDENCE.)

13 BY MR. SHERMAN: Q LAST, MR. RANDALL, I'D LIKE TO
14 TURN TO THE SUBJECT OF HOW COAST PAYS ITS AFFILIATED
15 RESORTS.

16 THERE ARE PAYMENTS FROM TIME TO TIME THAT
17 COAST DOES MAKE TO AFFILIATED RESORTS ON ACCOUNT OF HOSTING
18 OF MEMBERS; IS THAT RIGHT?

19 A THAT IS CORRECT.

20 Q AND WERE YOU HERE WHEN THE MANAGER OF DELTA
21 ISLE TESTIFIED, MR. GUIRE, THAT CERTAIN PAYMENTS HADN'T
22 BEEN MADE BY CAMP COAST TO COAST?

23 A YES, I WAS HERE.

24 Q WAS HE CORRECT?

25 A NOT -- AS FAR AS I'M CONCERNED, NO, HE WAS
26 NOT CORRECT.

1 Q HOW DO YOU KNOW THAT TO BE THE CASE, THAT HE
2 WAS NOT CORRECT?

3 A AS SOON AS I HEARD HIM MAKE THAT COMMENT, I
4 ASKED TO -- ONE OF THE LADIES THAT I WORK WITH BACK IN
5 DENVER TO PULL UP SOME OF THE RECORDS. AND THERE ARE
6 PAYMENT RECORDS TO DELTA ISLE FOR THAT PERIOD OF TIME. IT
7 WAS NOT IN THE SAME AMOUNT.

8 MR. MOSHENKO: OBJECTION. MOTION TO STRIKE. IT'S
9 OBVIOUSLY THE HEARSAY STATEMENT FROM A THIRD PARTY.

10 THE COURT: OVERRULED.

11 BY MR. SHERMAN: Q PLEASE CONTINUE.

12 A IT WAS NOT IN THE SAME AMOUNT THAT I
13 RECALLED MR. GUIRE SAYING. I THINK HE TESTIFIED THAT
14 SOMEWHERE AROUND \$8,000 THAT HE CLAIMED COAST TO COAST HAD
15 NOT PAID HIM. THE AMOUNTS THAT WE SHOWED PAYMENTS WERE
16 MADE FOR -- DURING THAT TIME FRAME WERE SOMEWHERE AROUND
17 \$5700.

18 Q SO DELTA ISLE WAS PAID?

19 A DELTA ISLE WAS PAID MONEY FOR HOSTING FROM
20 COAST TO COAST, YES.

21 MR. SHERMAN: I HAVE NO FURTHER QUESTIONS.

22 THE COURT: THANK YOU.

23 MR. MOSHENKO: NO QUESTIONS. BUT I WANT THE
24 WITNESS TO BE AVAILABLE FOR THE PLAINTIFFS' CASE WHEN WE
25 GET BACK TO IT.

26 THE COURT: I DON'T THINK HE IS OUT OF HERE.

1 MR. SHERMAN: MR. RANDALL IS NOT GOING ANYWHERE.

2 THE COURT: OKAY. WELL, YOU GUYS CAN ALL LEAVE FOR
3 THE DAY. WE'LL SEE YOU TOMORROW MORNING AT 9:00.

4 ALL RIGHT. YOU GENTLEMEN WILL BE BACK AT
5 2:30.

6 MR. MOSHENKO: 2:30.

7 THE COURT: SEE YOU THEN.

8 (WHEREUPON THE COURT WAS IN RECESS UNTIL
9 2:30 P.M. OF THE SAME DAY.)

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1 WESTMINSTER, CALIFORNIA - MONDAY, JULY 24, 2000

2 AFTERNOON SESSION

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

5 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

6 WELL, IT COMES TIME FOR THE HEARING ON THE
7 MOTIONS.

8 FIRST LET'S DEAL WITH THE MOTION FOR
9 JUDGMENT ON THE EQUITABLE CAUSES OF ACTION.

10 YOU'VE SEEN THE RESPONSE?

11 MR. RIVIN: WE HAVE, YOUR HONOR. AND THE ARGUMENT
12 BY THE DEFENDANTS -- BY THE PLAINTIFFS IS THAT THE
13 DISMISSAL OF EACH OF THOSE CAUSES OF ACTION, IN EFFECT --

14 THE COURT: RENDERS THE MOTION MOOT.

15 MR. RIVIN: RENDERS THE MOTION MOOT. AND WE DO NOT
16 DISAGREE WITH THAT.

17 THERE IS A DISCUSSION, I BELIEVE, IN THAT
18 MOTION OF THE EQUITABLE DOCTRINE OF UNCLEAR HANDS, WHICH
19 APPLIES TO ALL OF THE PLAINTIFFS' CLAIMS. AND WE DO
20 BELIEVE -- WE DO CLAIM THAT BASED UPON A FINDING OF UNCLEAR
21 HANDS, WHICH WE THINK IS CLEAR FROM THE EVIDENCE, THAT
22 DEFENDANTS ARE ENTITLED TO A NONSUIT BASED UPON -- OR A
23 JUDGMENT BASED UPON A FINDING OF UNCLEAR HANDS. THAT IS IN
24 THE MOTION FOR JUDGMENT ON THE EQUITABLE CLAIMS.

25 THE COURT: ALL RIGHT. THANK YOU.

26 MR. MOSHENKO: WELL, I DON'T KNOW HOW YOUR HONOR

1 CAN RENDER A JUDGMENT ON THE DISMISSED CAUSE OF ACTION JUST
2 BY MY ABLE OPPONENT'S ARGUMENTS. SO I DON'T KNOW WHAT TO
3 SAY. THEY'RE GONE. THEY'RE GONE.

4 MR. RIVIN: MY ARGUMENT, IF I DIDN'T MAKE MYSELF
5 CLEAR, IS THAT THE UNCLEAN HANDS DEFENSE APPLIES TO THE
6 LEGAL CAUSES OF ACTION, NOT ONLY TO THE EQUITABLE CAUSE OF
7 ACTION.

8 THE COURT: WE ALL AGREE, THEN, THAT THE MOTION FOR
9 JUDGMENT ON THE EQUITABLE CAUSES OF ACTION IS MOOT BECAUSE
10 THEY NO LONGER ARE A PART OF CASE.

11 MR. RIVIN: YES, WE AGREE.

12 THE COURT: OKAY. NOW WE DEAL WITH THE MOTION FOR
13 NONSUIT ON THE LEGAL CAUSES OF ACTION.

14 AND YOU'VE SEEN THE OPPOSITION, I PRESUME.

15 MR. RIVIN: WE HAVE.

16 THE COURT: ANYTHING YOU WISH TO ADD TO YOUR --

17 MR. RIVIN: WELL, I WOULD LIKE TO INDICATE TO THE
18 COURT THAT WE BELIEVE THERE ARE CERTAIN PRINCIPLES THAT
19 APPLY TO ALL OF THE REMAINING CAUSES OF ACTION, IN OTHER
20 WORDS, SPECIFICALLY THE LEGAL CAUSES OF ACTION, WHICH WE
21 BELIEVE ENTITLE THE DEFENDANTS TO NONSUIT.

22 IN OTHER WORDS, THE PLAINTIFFS HAVE FAILED
23 TO MEET THEIR BURDEN ON ELEMENTS WHICH ARE KEY TO ALL THE
24 REMAINING CAUSES OF ACTION.

25 ONE IS CAUSATION. WE BELIEVE THAT
26 PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN ON THE ELEMENT

1 OF CAUSATION, WHICH IS A REQUIREMENT OF EACH OF THE
2 REMAINING LEGAL CAUSES OF ACTION.

3 WE ALSO BELIEVE THAT THE INTERPRETATION OF
4 THE CONTRACTS BETWEEN THE PARTIES, WHICH IS A MATTER WITHIN
5 THE PROVINCE OF THE COURT, YIELDS ONLY ONE CONCLUSION; AND
6 THAT IS THAT COAST TO COAST HAD THE RIGHT TO SEND THE
7 LETTERS, WHICH IT SENT TO ITS MEMBERS IN 1997. AND WE
8 BELIEVE THAT A FINDING THAT COAST HAD THAT RIGHT WOULD
9 NECESSITATE JUDGMENT FOR COAST ON ALL OF THE LEGAL CAUSES
10 OF ACTION.

11 BECAUSE IF COAST HAD THAT RIGHT, THEN
12 OBVIOUSLY THE BREACH OF CONTRACT CLAIM FAILS, THE
13 MISAPPROPRIATION OF TRADE SECRET CLAIM FAILS, THE
14 INTERFERENCE CLAIMS FAIL. ALL OF THE CLAIMS FAIL IF COAST
15 HAD THE RIGHT TO DO WHAT IT DID, BASED UPON THE LANGUAGE OF
16 THE CONTRACTS.

17 AND AS I MENTIONED A MOMENT AGO, WE ALSO
18 BELIEVE THE COURT IS EMPOWERED TO DECIDE THE EQUITABLE
19 DEFENSE OF UNCLEAN HANDS IN FAVOR OF DEFENDANTS. THAT IS
20 AN EQUITABLE DEFENSE WHICH THE COURT IS EMPOWERED TO RULE
21 ON. NOT ONLY EMPOWERED TO RULE ON, BUT THE DEFENSE OF
22 UNCLEAN HANDS IS WITHIN THE PROVINCE OF THE COURT TO
23 DECIDE.

24 WE BELIEVE THAT THE EVIDENCE OVERWHELMINGLY
25 REVEALS UNCLEAN HANDS ON THE PART OF THE PLAINTIFFS IN THIS
26 CASE, WHICH BARS ALL OF THEIR LEGAL CAUSES OF ACTION.

1 BEFORE LAUNCHING INTO A FURTHER ARGUMENT --
2 IN FACT, YOUR HONOR INDICATED OR ASKED WHETHER WE HAD
3 ANYTHING TO ADD TO OUR MOVING PAPERS. WE CERTAINLY ARE IN
4 A POSITION TO ARGUE THE ISSUES PRESENTED IN THE MOTIONS AND
5 TO RESPOND TO THE POINTS RAISED IN THE OPPOSITIONS, BUT I
6 WOULD PERHAPS -- I WOULD LIKE TO ASK THE COURT FOR SOME
7 GUIDANCE OR DIRECTION ON WHAT WE SHOULD ADDRESS OR SHOULD
8 ARGUE TO ASSIST THE COURT IN MAKING ITS DETERMINATION, AS
9 OPPOSED TO SIMPLY LAUNCHING INTO A DISCUSSION OF ALL OF THE
10 ISSUES.

11 THE COURT: WELL, PERHAPS WE OUGHT TO LET THE
12 PLAINTIFFS CARRY THE BALL. THEIRS IS THE BURDEN. AND THEN
13 WE'LL LET YOU RESPOND A LITTLE.

14 MR. RIVIN: AND OUR POSITION, AGAIN, IS THAT ON THE
15 MOTION FOR NONSUIT, AS TO ALL OF THE LEGAL CAUSES OF
16 ACTION, THE PLAINTIFFS HAVE FAILED TO PROVE SUBSTANTIAL
17 EVIDENCE -- FAILED TO PRESENT SUBSTANTIAL EVIDENCE ON AT
18 LEAST ONE CLAIM, ONE ELEMENT OF EVERY ONE OF THEIR LEGAL
19 CLAIMS.

20 THE COURT: MR. SHAW?

21 MR. SHAW: THANK YOU, YOUR HONOR.

22 MAY I USE THE PODIUM JUST TO PUT SOME
23 DOCUMENTS -- A COUPLE OF THINGS.

24 ONE, IT IS NOT OUR BURDEN. HOWEVER, WE'RE
25 HERE TO PRESENT ALL OF THE EVIDENCE. AND IT'S NOT -- THE
26 STANDARD IS NOT SUBSTANTIAL EVIDENCE. THE STANDARD IS

1 SUFFICIENT EVIDENCE, AND ANY EVIDENCE THAT WE OFFER.

2 SO THE CASE OF DIESEL ELECTRIC SALES VERSUS
3 MARCO MARINE SAYS, ANY EVIDENCE BY THE PLAINTIFF MUST BE
4 ACCEPTED AS TRUE, LIKE A DEMURRER. AND CONFLICTING
5 EVIDENCE MUST BE DISREGARDED.

6 SO KEEPING THAT STANDARD IN MIND, YOUR
7 HONOR, I HAVE PREPARED A GRID, IF YOU WILL. AND IF I CAN
8 GIVE IT TO YOUR BAILIFF TO ASK TO GIVE TO THE COURT. AND,
9 YOUR HONOR, JUST FOR THE SAKE OF THE RECORD, IF I COULD
10 HAVE AN EXHIBIT NUMBER PLACED ON IT JUST FOR IDENTIFICATION
11 PURPOSES.

12 YOUR HONOR, WHAT I HAVE DONE IS IN THE
13 BRIEFS THAT WE FILED -- I KNOW IT DOESN'T LOOK LIKE IT, BUT
14 I -- WE TRIED TO BE BRIEF AND NOT PUT ALL THE TESTIMONY
15 THAT RELATES TO THE PARTICULAR PRIMA FACIE ELEMENTS --
16 THE COURT: OFF THE RECORD.

17 (DISCUSSION OFF THE RECORD.)

18 MR. SHAW: BUT, YOUR HONOR, WHAT WE'VE -- WHAT I'VE
19 DONE ON THIS GRID IS I'VE GONE THROUGH THE ELEMENTS OF THE
20 CONTRACT, AND THE INTERFERENCE CLAIM, AND THE
21 MISAPPROPRIATION OF TRADE SECRET, AND THE FRAUD CLAIMS.

22 AS TO CONTRACT, THERE IS NO DEFENSE OF
23 UNCLEAN HANDS ON THE CONTRACT. BUT LET ME TALK ABOUT THAT
24 FOR A MINUTE, SINCE THAT'S WHAT MR. RIVIN RAISED.

25 IT'S VERY ALSO CLEAR IN THE LAW ON A NONSUIT
26 THAT THEIR DEFENSES MUST BE PRECISELY STATED SO THAT THE

1 PLAINTIFF CAN ADDRESS THEM. ONLY IN THE EQUITABLE ISSUE
2 BRIEF WAS UNCLEAN HANDS RAISED. NOWHERE IN THEIR BRIEF ON
3 THE ISSUE OF THE LEGAL CAUSES OF ACTION IS IT RAISED FOR
4 ANY OF THE CAUSES OF ACTION.

5 SO I WOULD ARGUE THAT THEY FAIL, BECAUSE
6 THEY DIDN'T RAISE THE ISSUE. THAT'S NUMBER ONE.

7 BUT NUMBER TWO, UNCLEAN HANDS, VIS-A-VIS
8 WHOM? I THINK WE'VE LISTENED TO DAYS AND DAYS OF TESTIMONY
9 REGARDING THOUSAND ADVENTURES BACK IN 1994 AND '95, ALL
10 SEASONS RESORTS BACK IN 1994, '95, WHEN THIS CLAIM IS ABOUT
11 THE ACTIONS THAT TOOK PLACE FROM AUGUST, 1997, FORWARD.

12 SO UNCLEAN HANDS VIS-A-VIS COAST TO COAST,
13 YOUR HONOR, WHAT'S THE STATE OF THE EVIDENCE AS TO THE
14 RELATIONSHIP BETWEEN THE PLAINTIFFS AND COAST TO COAST?
15 PLAINTIFFS SOLD COAST TO COAST MEMBERSHIPS, AND COAST TO
16 COAST GOT PAID DUES FOR 35,000 MEMBERS. THERE'S NO UNCLEAN
17 HANDS VIS-A-VIS COAST TO COAST AND THE PLAINTIFFS IN THIS
18 CASE. SO FIRST ARGUMENT IS IT'S NOT RAISED. SO IT'S NOT
19 AN ISSUE.

20 THE SECOND ARGUMENT IS, WHERE IS THE UNCLEAN
21 HANDS? IT'S NOT ATTORNEY GENERAL REPORTS AND SEVEN BOXES
22 HAVING TO DO WITH THOUSAND ADVENTURES BACK IN 1994 AND
23 '95. PLAINTIFFS WEREN'T EVEN INVOLVED IN THAT, ALL SEASONS
24 RESORTS, FINOVA LAWSUITS, FINOVA ORDERS, ALL THINGS THAT
25 HAPPENED PRIOR TO THE CONTRACTUAL ISSUES THAT WERE AUGUST
26 OF 1997 CURRENTLY. SO THAT'S THE POINT ON UNCLEAN HANDS.

1 YOUR HONOR, WE HAVE, AS THE COURT CAN SEE --
2 IF I CAN GO TO THE GRID, WHICH WE'VE MARKED AS AN EXHIBIT,
3 AND I'LL TAKE WHATEVER NEXT IN ORDER.

4 THE COURT: WHAT IS THE NEXT IN ORDER?

5 THE CLERK: WHAT I SHOW ON THEM -- I DON'T KNOW.
6 YOU MEAN YOUR IMPEACHMENT -- I DON'T KNOW WHICH LIST YOU
7 WANT ME TO LOOK AT.

8 MR. SHAW: WHATEVER THE HIGHEST NUMBER.

9 THE CLERK: YOU WANT THE 2200 SERIES. SO THE NEXT
10 ONE WOULD BE 2203.

11 MR. SHAW: THANK YOU. SO 2203 CONSISTS OF --

12 MR. MOSHENKO: HARRIET, I'M SORRY. I THOUGHT THERE
13 WAS A 2203. COULD WE SAY 2206 TO BE SAFE?

14 THE CLERK: THAT'S FINE WITH ME. DO YOU WANT TO
15 USE 2206?

16 MR. RIVIN: I WOULD LIKE TO CLARIFY, THE EXHIBIT IS
17 BEING MARKED AT THIS TIME.

18 MR. SHAW: THAT'S CORRECT, ABSOLUTELY. ONLY FOR
19 THE PURPOSES --

20 THE COURT: 2206 IS MARKED.

21 THE CLERK: FOR IDENTIFICATION.

22 (WHEREUPON, EXHIBIT NO. 2206, GRID, WAS
23 MARKED FOR IDENTIFICATION.)

24 MR. SHAW: CONSISTS OF EIGHT PAGES DEALING WITH THE
25 FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT, SECOND CAUSE
26 OF ACTION FOR IMPLIED BREACH OF CONTRACT, FIFTH CAUSE OF

1 ACTION FOR INTERFERENCE WITH RESPECT TO ECONOMIC ADVANTAGE,
2 FOURTH CAUSE OF ACTION FOR INTERFERENCE WITH CONTRACT,
3 SIXTH CAUSE OF ACTION FOR MISAPPROPRIATION OF TRADE
4 SECRETS, AND SEVENTH CAUSE OF ACTION FOR FRAUD.

5 YOUR HONOR, THE TWO ISSUES THAT WERE RAISED
6 IN THE PLAINTIFFS' -- OR THE DEFENDANTS' BRIEF HAVE TO DO
7 WITH A COGNIZABLE BREACH OF CONTRACT. AND FOR YOUR HONOR,
8 I HAVE SET ON THE EXHIBIT 2206, UNDER DEFENDANTS' BREACH,
9 THE TESTIMONY OF MR. MITCHELL REGARDING THE GIVEAWAY
10 PROGRAM BEING A BREACH, THE 90-DAY RULE BEING BREACHED, THE
11 TRANSFER LETTERS BEING A BREACH. AND I'M JUST, YOUR
12 HONOR, READING DOWN THE GRID.

13 SPECIFICALLY, MR. RYMAN'S KNOWLEDGE OF THE
14 AUTOMATIC STAY, MR. RYMAN'S KNOWLEDGE OF THE VIOLATION OF
15 THE AUTOMATIC STAY. LET ME STOP THERE. AND WHY THAT'S AN
16 IMPORTANT ISSUE.

17 MR. RIVIN MADE THE COMMENT THAT ALL COAST
18 WAS DOING WERE THINGS THAT THEY HAD A RIGHT TO DO UNDER THE
19 CONTRACT. ALL WE HAVE TO LOOK AT IS THE TESTIMONY OF
20 MR. MALPASS AND MR. RYMAN AND MR. RANDALL; THAT THEY WERE
21 AWARE OF THE BANKRUPTCIES; THAT THE AUTOMATIC STAYS WERE IN
22 EFFECT FOR ALL OF PLAINTIFFS' RESORTS; AND THAT MR. MALPASS
23 WE POINTED IT OUT IN OUR BRIEF. I WON'T RECITE IT AGAIN,
24 BUT MR. MALPASS SAYS THAT THE LETTERS THAT WERE SENT
25 VIOLATED THE AUTOMATIC STAY AND WERE ILLEGAL. THAT'S THE
26 TESTIMONY TO BE ACCEPTED AS TRUE. NO CONFLICTING

1 EVIDENCE. IF THEY WERE A VIOLATION OF THE AUTOMATIC STAY
2 AND ILLEGAL, THEY VIOLATED THE CONTRACT.

3 WE ALSO POINT OUT TO THE COURT THROUGH THE
4 TESTIMONY ON 2206 AND THE TESTIMONY -- THE OTHER BREACHES
5 OF CONTRACT, THE BREACHES OF THE ANTI-RAIDING RULE, THE
6 BREACH OF THE PRIMARY PRODUCT RULE, THE BREACH OF THE
7 MEMBER MUST VISIT HIS RESORT RULE BEFORE IT BECOMES A HOME
8 RESORT, THE BREACH OF THE TRANSFER RULES AND THE LICENSE
9 MANUAL. I'VE ALREADY TALKED ABOUT THE BREACH OF THE
10 GIVEAWAY RULE, AND THE MASS TRANSFER BEING A BREACH OF THE
11 CONFIDENTIALITY AND PROPRIETARY. YOUR HONOR, I'M READING
12 FROM THE BRIEF AT PAGE 16, LINE 17.

13 AS TO CAUSATION, AGAIN, ON THE GRID, WE'VE
14 CITED THE TESTIMONY OF -- I'M SORRY. BEFORE I LEAVE
15 CAUSATION, LET ME STAY ON BREACH JUST FOR A MOMENT AND I'LL
16 JUST POINT OUT ONE PIECE OF TESTIMONY FROM MR. MITCHELL AT
17 PAGE 1318, LINE 12. AND IT'S ON PAGE 17, LINE 8,
18 THROUGH -- 8 THROUGH 18 OF OUR BRIEF, WHERE I ASKED
19 MR. MITCHELL:

20 "THEY DIDN'T FOLLOW THEIR
21 OWN CONTRACT?

22 "ANSWER: THAT'S CORRECT.

23 "QUESTION: WHAT DID THEY
24 DO?

25 "ANSWER: THEY DID
26 SOMETHING THEY HAD NEVER DONE

1 BEFORE. THEY TRANSFERRED, SENT
2 THE LETTER TO THE MEMBERS JUST
3 SAYING, HI, YOU'RE TRANSFERRED.
4 THAT'S NEVER BEEN DONE. THE
5 HISTORICAL PROCEDURE WAS TO SEND
6 A LETTER TO THE MEMBER AND SAY,
7 HERE ARE TWO OR THREE RESORTS IN
8 YOUR AREA. YOU CAN GO VISIT
9 THESE PROPERTIES AND NEGOTIATE
10 YOUR OWN ARRANGEMENTS WITH THOSE
11 OTHER COAST AFFILIATES FROM YOUR
12 AREA."

13 AND THEN THE QUESTION WAS ASKED OF MR. RYMAN
14 WHETHER HE BELIEVED THAT THE LETTERS WERE UNDERSTOOD BY THE
15 MEMBERS AS BEING A TRANSFER OF THEIR HOME OWNERSHIP, AND HE
16 TESTIFIED AT PAGE 2541, LINES 1 THROUGH 24. MR. MOSHENKO
17 ASKED HIM THE QUESTION, AND I QUOTE:

18 "YOU THINK THAT ANYBODY
19 READING THIS LETTER MIGHT
20 BELIEVE THAT THEIR MEMBERSHIP IN
21 AMERICAN HOLIDAYS HAD BEEN
22 TRANSFERRED TO HOLIDAY LAKE?

23 "ANSWER: I KNOW THAT
24 THOUSANDS -- THOUSANDS BELIEVED
25 IT, YES."

26 MR. RYMAN ALSO TESTIFIED AT LINE 2314

1 REGARDING THE 30-DAY NOTICE PROVISION IN THE CONTRACT,
2 WHERE MR. -- OR I ASKED MR. RYMAN:

3 "SO THIS PARAGRAPH
4 VIOLATES THE AGREEMENT;
5 CORRECT? YOU DIDN'T GIVE
6 30-DAYS NOTICE?

7 "ANSWER: NO, WE DID NOT
8 GIVE 30 DAYS' NOTICE."

9 AND THEN, YOUR HONOR, AS TO CAUSATION, I
10 ASKED MR. MITCHELL AT PAGE -- AND IT'S WRONG IN THE BRIEF,
11 YOUR HONOR, AND I APOLOGIZE. PAGE 21, LINE 1, IS 1185, NOT
12 1179. AND I ASKED MR. MITCHELL:

13 "QUESTION: WITH YOUR
14 SPECIAL TRAINING, KNOWLEDGE,
15 SKILL AND EXPERTISE, WHAT
16 OPINION HAVE YOU FORMED IN THIS
17 CASE?

18 "ANSWER: IT IS MY
19 OPINION THAT THE ACTIONS AND
20 CONDUCT OF THE DEFENDANTS CAUSED
21 DAMAGE TO YOUR CLIENTS, THE
22 PLAINTIFF."

23 END OF QUOTES.

24 UNDER THE DIESEL ELECTRIC CASE, FULL STOP.
25 EVIDENCE TO BE TAKEN AS TRUE. NO CONFLICTING EVIDENCE TO
26 BE TAKEN INTO CONSIDERATION. THAT'S THE EVIDENCE.

1 AND THEN I CONTINUE TO ASK HIM AT PAGE 1307,
2 LINE 6 THROUGH 11:

3 "QUESTION: WHAT ACTS
4 CONDUCT AND BEHAVIOR OF COAST
5 CAUSED THE DAMAGE TO THE
6 PLAINTIFFS?

7 "ANSWER: THE MASS
8 TRANSFER OF THE MEMBERS."

9 I CONTINUE AT PAGE 1308:

10 "QUESTION: WHEN YOU SAY
11 'MASS TRANSFER,' DESCRIBE FOR ME
12 WHAT YOU MEAN. HOW DID YOU KNOW
13 THAT THE LETTERS WENT OUT TO
14 34,000 PEOPLE?

15 "ANSWER: I'VE READ THE
16 REPORTS THAT COAST GENERATED
17 INDICATING THAT THEY SENT
18 LETTERS TO 34,000 PEOPLE, AND OF
19 THE 34,000 PEOPLE THEY
20 TRANSFERRED IN THE MASS
21 TRANSFER, SOME 22,000 OF THEM
22 WERE MOVED TO OTHER RESORTS.

23 "QUESTION: AWAY FROM THE
24 PLAINTIFFS?

25 "ANSWER: RIGHT."

26 SO, YOUR HONOR, BREACH OF CONTRACT ON --

1 I'VE LAID OUT FOR THE COURT THREE FULL PAGES ON THE GRID OF
2 THE TESTIMONY, THAT IS, THE TESTIMONY THAT GOES ON
3 SIMILAR -- VERY SIMILAR TO MITCHELL. AND I DON'T WANT TO
4 GET CUMULATIVE FOR OUR ARGUMENT. BUT GOES ON VERY SIMILAR
5 TO MITCHELL, RYMAN, RANDALL, MALPASS, REGARDING THE
6 VIOLATION OF THE AUTOMATIC STAY, ROBINSON, MR. KEDRICK
7 ROBINSON, THAT MR. DURAN PLAYED HIS PART ON THE STAND,
8 ABOUT SPECIAL FEE AND GIVING THE LISTS TO THE DEVELOPERS,
9 ALL THE COGNIZABLE BREACH OF CONTRACT. AND WE WOULD ARGUE,
10 JUST LOOK AT MITCHELL'S TESTIMONY. BUT THERE'S MORE THAN
11 ENOUGH TESTIMONY TO MEET THE NONSUIT ISSUE.

12 ON CAUSATION, I'VE READ MITCHELL'S TESTIMONY
13 WHICH UNDER THE STANDARD IS TO BE TAKEN AND ACCEPTED AS
14 TRUE. BUT MR. NOVELLI TESTIFIES ABOUT -- AND I JUST WANT
15 TO FOCUS ON THAT FOR A MOMENT, YOUR HONOR.

16 MR. NOVELLI TESTIFIES ABOUT THE THOUSAND
17 ADVENTURES MEMBERS -- WELL, I'M GOING TO HOLD THAT FOR A
18 MINUTE AND COME BACK TO IT. BUT HE TESTIFIES ABOUT THE
19 FACT THAT THE MEMBERS WERE TRANSFERRED, AND THAT CAUSED
20 DAMAGE. IT'S SPECIFICALLY AT PAGES 4715 THROUGH 4718.

21 AND I'D LIKE TO FOCUS ON THE ISSUE FOR A
22 MOMENT -- AWAY FROM CONTRACT, AWAY FROM CAUSATION, BECAUSE
23 WE FILED A SEPARATE BREACH ON CAUSATION. AND I JUST WANT
24 TO POINT YOUR HONOR TO IT, AND I WANT TO INCORPORATE IT
25 INTO OUR ARGUMENT -- ARE THE TERMS OF THE CONTRACT.
26 BECAUSE WE'VE HAD A LOT OF DISCUSSION ABOUT PAROL EVIDENCE

1 AND THE CONTRACT ITSELF. I THINK IT'S IMPORTANT TO
2 UNDERSTAND THE STATE OF THE EVIDENCE IN THE CASE REGARDING
3 THE CONTRACTS.

4 WE HAVE THE -- WHAT I'LL CALL THE
5 MICHAEL SHERMAN STIPULATION, FOR LACK OF A BETTER TERM.
6 THE COURT MAY RECALL DURING THE READING OF
7 KEDRICK ROBINSON'S TESTIMONY, WE ENTERED INTO A
8 STIPULATION ON THE COURT, AND THE -- THAT'S AT PAGE 5622.
9 AND I'LL JUST QUOTE FROM THE COURT, QUOTE:

10 "THE COURT: WELL, WHAT YOU'RE WILLING TO
11 STIPULATE TO IS SIMPLY THE CONTRACT WASN'T NECESSARY IF
12 THEY WERE TO BE TREATED AS AN AFFILIATE," END OF QUOTES.

13 NOW, WHY THAT'S IMPORTANT IN THIS CASE IS
14 BECAUSE WE HAVE -- AND MR. MOSHENKO HAS THE NUMBERS FOR ME,
15 IN THIS CASE WE HAVE EVIDENCE OF THE NUMBERS OF CONTRACTS
16 IN THIS CASE. AND MORE IMPORTANTLY THE CASES -- YOUR
17 HONOR, IF YOU DON'T MIND, MR. MOSHENKO HAS DONE THE
18 BACKGROUND ON THIS, IF HE MIGHT JUST ADD WHAT THESE NUMBERS
19 ARE. THANK YOU, YOUR HONOR.

20 MR. MOSHENKO: THANK YOU, YOUR HONOR.

21 YOUR HONOR, BECAUSE THE DEFENSE MAKES SUCH A
22 BIG -- PLACES SUCH GREAT EMPHASIS ON TERMS OF A WRITTEN
23 AGREEMENT AND BECAUSE YOUR HONOR YOURSELF COMMENTED THAT
24 THE AGREEMENT AS REGARDS USE OF LISTS STATED WHAT YOUR
25 HONOR COMMENTED, I THOUGHT IT IMPORTANT TO LOOK AT THE
26 STATE OF THE EVIDENCE AS OF THE RESTING OF THE PLAINTIFFS'

1 CASE TO DETERMINE HOW MANY OF THE PLAINTIFFS' RESORTS WERE
2 SUBJECT TO WRITTEN AGREEMENTS, WHICH WRITTEN AGREEMENTS
3 WERE IN THE RECORD, WERE IN EVIDENCE.

4 AND I CAME TO THE CONCLUSION THAT MAYBE 25
5 PERCENT OF THE PLAINTIFFS' RESORTS WERE SUBJECT TO ACTUAL
6 WRITTEN AGREEMENTS. AND I HAVE A LIST OF WHAT THOSE
7 RESORTS WERE, WHICH LEFT THE CONCLUSION THAT 75 PERCENT,
8 APPROXIMATELY -- THESE ARE APPROXIMATES -- OF THE RESORTS
9 WERE NOT PARTIES TO A WRITTEN AGREEMENT AT ALL.

10 WHERE IT LEAVES YOU IS -- I HAVE A COPY FOR
11 COUNSEL, AND I HAVE ANOTHER COPY FOR THE COURT.

12 WHAT IT LEADS YOU TO CONCLUDE, YOUR HONOR,
13 IS THAT 75 PERCENT, APPROXIMATELY, OF THE PLAINTIFFS'
14 RESORTS CANNOT BE CONSIDERED TO HAVE BEEN AFFECTED OR BOUND
15 BY THE CONTRACT.

16 IT ALSO LEADS THE COURT TO CONCLUDE THAT THE
17 STIPULATION THAT MR. SHAW REFERRED TO AS THE SHERMAN
18 STIPULATION -- OKAY. COULD I ASK MR. BAILIFF TO HAND THIS
19 TO HIS HONOR -- THAT OF THE TOTALITY OF THE PLAINTIFFS'
20 RESORTS, ONLY VERY FEW OF THEM ARE SUBJECT TO WRITTEN
21 CONTRACTS. AND NOW MR. DURAN HAS PUT UP ON THE SCREEN --
22 WHAT EXHIBIT NUMBER IS THAT?

23 MR. DURAN: 1808, PAGE 3.

24 MR. MOSHENKO: EXHIBIT 1808, PAGE 3, AND I'VE HAD
25 HIM HIGHLIGHT WHICH RESORTS WERE -- ARE ON THE LIST THAT
26 WE'VE HANDED YOUR HONOR.

1 THE CLERK: 1808-A, B, C, D, E, F, G.

2 MR. MOSHENKO: OKAY. THIS IS -- WE'RE NOW IN
3 ARGUMENT, AND THIS IS A SUMMARY OF WHAT THE CONTENT OF 1808
4 SHOWS, YOUR HONOR.

5 THE COURT: 1808-A, B, C, D, E, F, OR G.

6 MR. MOSHENKO: A AND B SHOW THE NAMES OF THE
7 RESORTS AND THE NUMBERS OF MEMBERS WHO WERE TRANSFERRED TO
8 AND FROM. AND THIS IS WHAT 1808 SHOWS THE COURT AND THE
9 JURY. IT SHOWS -- AND OBVIOUSLY IT'S A SUMMARIZATION OF
10 WHAT -- OF THIS MUCH PAPER.

11 IT SHOWS THE NAME OF THE RESORT. IT NAMED
12 THE MEMBERS BY NAME THAT WERE TRANSFERRED. AND IT CLAIMED
13 THE RESORT THAT THEY WERE TRANSFERRED -- NAMED THE MEMBERS
14 THAT WERE TRANSFERRED AND ALSO NAMED THE MEMBERS THAT
15 WERE -- THE RESORTS THEY WERE TRANSFERRED TO AND FROM.

16 BUT JUST TO PICK ONE OUT, BIG TURTLE, LAKE
17 FRANCE, HAD IT SHOWED 560 MEMBERS WERE TRANSFERRED. OKAY.
18 WELL, IT ALSO SHOWS THAT HAYDEN CREEK HAD 1685 MEMBERS
19 TRANSFER. NOW, THE SIGNIFICANCE OF THE DISTINCTION BETWEEN
20 THE TWO IS THAT IF -- IT IS THAT HAYDEN CREEK AND ALL THE
21 UN-YELLOWED RESORTS HAVE TO BE CONSIDERED AS IMPLIED
22 CONTRACT RESORTS UNDER THE SECOND CAUSE OF ACTION; CAN'T BE
23 CONSIDERED UNDER THE EXPRESS WRITTEN AGREEMENT ARGUMENTS
24 THAT THE DEFENSE IS RAISING IN THEIR BRIEF.

25 THEREFORE, WERE THEY AFFILIATED? YES. THEY
26 WERE STIPULATED TO HAVE BEEN AFFILIATED.

1 DID THE AFFILIATIONS INCLUDE SUCH THINGS AS
2 ANTI-SIGNABILITY CLAUSES OR INTEGRATION CLAUSES? NO.
3 BECAUSE THOSE -- THERE WAS NO SUCH WRITTEN AGREEMENT THAT
4 WAS ATTACHED OR ATTACKED TO THEM. IT WAS THE DEFENSE'S
5 BURDEN IF THE DEFENSE WANTED TO APPLY THOSE CAUSES -- THOSE
6 CLAUSES TO CERTAIN PLAINTIFFS, THEN THE DEFENSE HAD TO SHOW
7 THAT THAT PLAINTIFF WAS BOUND BY THAT -- THE TERMS OF THAT
8 CONTRACT.

9 AND I CAN INFORM THE COURT THAT THE -- THEY
10 HAVE FAILED TO DO THAT. THEY HAVE FAILED TO SHOW THAT
11 EVERY PLAINTIFFS' RESORT THAT WAS BY STIPULATION AN
12 AFFILIATED RESORT WAS BOUND BY THE WRITTEN TERMS OF THE
13 CONTRACT.

14 YOUR HONOR HAS THE LIST OF THOSE THAT WERE.
15 AND THIS IS A TWO-PAGE DOCUMENT. COULD WE HAVE THE SECOND
16 PAGE.

17 YOU CAN SEE I DIDN'T DO A COUNT, BUT THERE'S
18 APPROXIMATELY 70 RESORTS. AND THERE'S A HUGE NUMBER THAT
19 WERE NEVER BOUND BY A WRITTEN AGREEMENT. YET, BY THE
20 STIPULATION AND BY THE FACTS THEY FIT UNDER THE SECOND
21 CAUSE OF ACTION FOR IMPLIED AGREEMENT.

22 EACH PLAINTIFF HAS RESORTS THAT FIT IN THE
23 IMPLIED AGREEMENT. EACH PLAINTIFF WAS STIPULATED TO HAVE
24 BEEN AN AFFILIATED RESORT.

25 AND NOW I CAN TURN IT BACK TO MR. SHAW.

26 MR. SHAW: THANK YOU.

1 AND, YOUR HONOR, THE SIGNIFICANCE OF ASKING
2 MR. MOSHENKO TO DO THAT IS BECAUSE YOU'VE GOT 25 PERCENT OF
3 THE RESORTS THAT HAVE CONTRACTS, AND THESE TERMS AND
4 CONDITIONS OF THE CONTRACTS. AND YOU HAVE TESTIMONY FROM
5 THE -- TESTIMONY REGARDING HOW THE CONTRACTS --
6 SPECIFICALLY WHAT THE CONTRACT ISSUES ARE.

7 AND THE COURT MIGHT REMEMBER THIS ISSUE OF
8 LISTS OF THE MEMBERS. AND THE TESTIMONY FROM MR. RANDOLF
9 TUCKER AT PAGE 4911 -- HIS TESTIMONY WAS -- IF THE COURT
10 WILL BEAR WITH ME FOR JUST A MINUTE. I WANT TO FIND THE
11 SPECIFIC TRANSCRIPT. 4911 HE SAID.

12 THE QUESTION WAS -- AND I'M READING THE
13 WORDS HERE. IT WAS THIS LIST OF MEMBERS. MR. TUCKER SAID,
14 AND I QUOTE:

15 "THE LIST IS THE PROPERTY OF COAST. THE
16 MEMBERS ARE THE PROPERTY OF THE DEVELOPER. THE DEVELOPER
17 PAYS ENORMOUS COSTS TO GET A MEMBER. THE MEMBER PAYS
18 \$5,000, \$6,000, \$7,000 TO COME IN. THEY'RE PUT ON A LIST
19 AND SENT TO COAST TO COAST. AND COAST TO COAST GETS \$39 OR
20 \$29 -- I THINK IT'S UP TO \$69 NOW.

21 "MY UNDERSTANDING -- AND I'VE SEEN A FORM.
22 I DON'T THINK I'VE SEEN THIS AGREEMENT. BUT MY
23 UNDERSTANDING IS THE ENHANCEMENT, WHICH WOULD BE THE OTHER
24 THING SOLD BY COAST TO COAST TO THE MEMBERS, WHATEVER THOSE
25 THINGS MIGHT BE THAT WOULD ENHANCE THE MEMBERSHIPS. BUT
26 THE MEMBERS -- NO DEVELOPER WOULD HAVE EVER SIGNED AN

1 AGREEMENT WITH COAST TO COAST, WITH R.P.I., WITH R.C.I., OR
2 ANYONE ELSE GIVING THEIR MEMBERS AWAY AFTER THEY HAVE SPENT
3 \$3,000, \$4,000 GETTING A MEMBER. NOT GOING TO DO IT. I
4 MEAN, JUST -- I DON'T CARE WHAT YOU'RE TRYING TO MAKE THAT
5 SAY. THAT'S NOT WHAT IT SAYS."

6 AND THE REASON I'M ISOLATING ON THAT
7 TESTIMONY IS THAT MR. MITCHELL ALSO TESTIFIED -- AND I
8 WON'T READ IT INTO THE RECORD BECAUSE IT'S IN OUR BRIEF --
9 THAT THERE WAS A -- THE CUSTOM AND USAGE IN THE INDUSTRY
10 WAS CONFIDENTIALITY OF THE MEMBER LIST, AND THAT THE
11 MEMBERS BELONG TO THE RESORT, AND THAT THIS LIST BELONGED
12 TO COAST TO COAST.

13 AND THE ISSUE THEN IS 25 PERCENT OF THE
14 AGREEMENTS, YOUR HONOR, HAS TO DEAL WITH 75 OF THE OTHER
15 RESORTS HAVE IMPLIED CONTRACTS WHERE NONE OF THESE
16 PROVISIONS APPLY. AND IT'S THE CUSTOM AND USAGE IN THE
17 INDUSTRY THAT APPLIES, AS FAR AS THE FIRST AND THE SECOND
18 CAUSES OF ACTION.

19 LAST POINT AND -- I'LL JUST FINISH ON
20 CAUSATION BECAUSE -- I'M SORRY. I'LL FINISH ON TWO
21 POINTS.

22 IN THE BRIEF THEY RAISE -- AND NOW, YOUR
23 HONOR, I'M AWAY FROM THE GRID THAT'S 2206.

24 BUT IN THEIR BRIEF -- AND I ADDRESSED IT IN
25 OUR BRIEF. IN THEIR BRIEF THEY TALK ABOUT THE FACT THAT
26 TRAVEL AMERICA DOES NOT HAVE ANY CLAIM TO THE THOUSAND

1 ADVENTURES MEMBERS. AND THE EVIDENCE IS JUST TO THE
2 CONTRARY.

3 MR. NOVELLI TESTIFIED AT LINE 4914, LINE 17,
4 THROUGH PAGE 4915, LINE 8, AND I ASKED HIM THIS QUESTION --
5 I'M SORRY. MR. MOSHENKO ASKED HIM THIS QUESTION:

6 "WHERE DID THE MEMBERS
7 THAT WERE T.A.I. MEMBERS THAT
8 CAME TO TRAVEL AMERICA COME
9 FROM? HOW DID THEY GET TO
10 T.A.I.?

11 "ANSWER: THEY WERE
12 DEEDED. WE GOT DEEDS IN JULY OF
13 1997 FROM THE LENDERS
14 CORPORATION CALLED R.V.
15 HOLDING. THE LENDERS, AS YOU
16 RECALL, WANTED US TO SERVICE
17 THESE MEMBERS IN ORDER FOR THEM
18 TO COLLECT ON THEIR RECEIVABLES.

19 "QUESTION: MR. NOVELLI,
20 YOU SAID THAT YOU OBTAINED
21 CERTAIN OF THESE RESORTS
22 INVOLVING A BANKRUPTCY IN OHIO?

23 "ANSWER: YES.

24 "QUESTION: WHAT WAS
25 THAT?

26 "ANSWER: IN MAY OF 1997

1 OR SOMETIME AROUND THAT TIME,
2 THE THOUSAND ADVENTURES OF OHIO
3 WAS PLACED INTO BANKRUPTCY, AND
4 TRAVEL AMERICA WAS A PROPONENT
5 OF THAT PLAN. TRAVEL AMERICA
6 DURING THE BANKRUPTCY WITH COURT
7 APPROVAL OPERATED THOSE RESORTS,
8 HOWEVER, SINCE JULY OF 1997, AND
9 THEN BECAME OWNER OF THOSE AT
10 THE CONFIRMATION OF THE PLAN OF
11 REORGANIZATION."

12 SO WHEN MR. RIVIN AND MR. SHERMAN RAISE THE
13 ISSUE THAT TRAVEL AMERICA CAN'T BE A PARTY TO THIS CAUSE OF
14 ACTION FOR BREACH OF CONTRACT BECAUSE THEY DON'T OWN THE
15 CONTRACTS, THERE'S EVIDENCE IN THE RECORD THAT IS DIRECTLY
16 OPPOSITE, AND THAT EVIDENCE HAS TO BE ACCEPTED AS TRUE.

17 FINALLY, ON THE CAUSATION ISSUE, I READ
18 MR. MITCHELL'S TESTIMONY, AND I JUST WOULD LIKE TO READ THE
19 TESTIMONY OF MR. NOVELLI AT PAGE 4819, LINE 1 THROUGH 19.

20 "QUESTION: DO YOU HAVE
21 PERSONAL KNOWLEDGE AS TO WHETHER
22 OR NOT ANY OF THE PLAINTIFFS'
23 MEMBERS STOPPED PAYING DUES IN
24 1998?

25 "ANSWER: YES.

26 "QUESTION: IN 1997?

1 "ANSWER: YES.

2 "QUESTION: DO YOU HAVE
3 PERSONAL KNOWLEDGE AS TO THE
4 APPROXIMATE NUMBER OR PERCENTAGE
5 OF THE COAST TO COAST MEMBERS,
6 THE 35,000 FIGURE, WERE INCLUDED
7 IN THAT GROUP THAT STOPPED
8 PAYING DUES?

9 "ANSWER: YES.

10 "QUESTION: WHAT
11 PERCENTAGE?

12 "ANSWER: 65 PERCENT --
13 65 PERCENT OF THE 34,000 PEOPLE
14 QUIT PAYING DUES, APPROXIMATELY
15 65 PERCENT.

16 "QUESTION: AS A RESULT
17 OF THE STOPPED PAYING DUES
18 EVENT, DID THE PLAINTIFFS LOSE
19 INCOME?

20 "ANSWER: YES.

21 "QUESTION: DID THE
22 PLAINTIFFS LOSE RESORTS?

23 "ANSWER: YES, WE DID."

24 SO BACK TO THE GRID, 2206, YOUR HONOR. THE
25 EVIDENCE IN THE RECORD IS THE CONTRACT, AS TO SOME OF THE
26 RESORTS, NOT ALL OF THEM. MR. SHERMAN STIPULATED THAT ALL

1 THE RESORTS WILL BE TREATED AS AFFILIATED FOR CONTRACT
2 PURPOSES. PLAINTIFFS' PERFORMANCE WAS NOT AN ISSUE RAISED,
3 BUT EVIDENCE IS THERE REGARDING THE PERFORMANCE, THE FACT
4 THAT THE DUES WERE PAID, AND THEY CONTINUED TO PROCEED.
5 BUT IT'S NOT AN ISSUE FOR THIS NONSUIT.

6 DEFENDANTS' BREACH -- I'VE GONE THROUGH
7 THREE PAGES ON THE GRID OF THE TESTIMONY REGARDING THE
8 BREACH. AND IN THE BRIEF I CITED SPECIFIC PORTIONS.

9 CAUSATION OR SUBSTANTIAL FACTOR. YOUR
10 HONOR, I'VE GONE THROUGH, AND FOR A PAGE -- WELL, CLOSE TO
11 A FULL PAGE AND A LITTLE ON THE SECOND -- GONE THROUGH THE
12 ACTIONS THAT CAUSED DAMAGE; MR. MITCHELL'S TESTIMONY
13 REGARDING THE MASS TRANSFER, MR. NOVELLI'S TESTIMONY ABOUT
14 THE ACTIONS BY COAST CAUSED MEMBERS TO LEAVE, ALL OF THIS.

15 AND, AGAIN, WE'RE NOT TALKING ABOUT WEIGHING
16 THE TESTIMONY. WE'RE NOT EVEN LOOKING AT CONFLICTING
17 EVIDENCE NOW. WE'RE TALKING ABOUT IS THERE EVIDENCE. AND
18 THAT EVIDENCE HAS TO BE ACCEPTED AS TRUE. AND THAT IS THE
19 SITUATION IN THIS CASE; THAT THE COURT, WE RESPECTFULLY
20 REQUEST, WOULD DENY A MOTION FOR NONSUIT ON THE FIRST TWO
21 CAUSES OF ACTION, BREACH OF CONTRACT FOR THE WRITTEN
22 CONTRACTS, BREACH OF IMPLIED CONTRACT FOR THOSE RESORTS
23 WHERE THERE IS NO WRITTEN CONTRACT. BUT THERE'S A
24 STIPULATION FOR THE COURT THAT ALL THOSE RESORTS WILL BE
25 TREATED AS BEING AFFILIATED.

26 WE BELIEVE, YOUR HONOR, THAT THAT

1 STIPULATION EVEN CARRIES OVER TO THIS TRAVEL
2 AMERICA/THOUSAND ADVENTURES ISSUE. THE STIPULATION BY THE
3 COURT WAS VERY CLEAR; THAT ALL -- I'LL JUST READ IT
4 AGAIN.

5 WELL, WHAT YOU'RE WILLING TO STIPULATE TO IS
6 SIMPLY THAT THE CONTRACT WASN'T NECESSARY IF THEY WERE TO
7 BE TREATED AS AN AFFILIATE. THOSE TRAVEL AMERICA RESORTS
8 WERE ALL TREATED AS AFFILIATES. WE WENT THROUGH EXHIBIT
9 1884, WHICH WAS -- IF THE COURT WILL RECALL, WAS THE
10 DIRECTORY, THAT SMALL DIRECTORY. AND I ASKED MR. NOVELLI
11 AND SOME OF THE WITNESSES TO READ WHICH OF THE PLAINTIFFS'
12 RESORTS WERE IN THE DIRECTORY. THEY WERE ALL. EVEN THE
13 TRAVEL AMERICA ONES WERE ALL IN THE DIRECTORY.

14 YOUR HONOR, THAT'S CONTRACT. I DON'T KNOW
15 HOW THE COURT WANTS TO COMPARTMENTALIZE THE ARGUMENT OR
16 WHETHER YOU WANT ME TO GO NOW INTO INTERFERENCE, WHICH IS
17 THE SECOND AREA.

18 THE COURT: LET'S COMPARTMENTALIZE.

19 MR. SHERMAN: YOUR HONOR, A COUPLE OF REMARKS.

20 FIRST, CONTRARY TO THE NOTION THAT WE HAVE
21 NOT SET FORTH OUR GROUNDS FOR NONSUIT, WE HAVE SET FORTH
22 OUR GROUNDS FOR NONSUIT. THEY'RE ALL IN THE PAPERS.
23 THEY'RE ALL THERE. SO I'D LIKE TO DISPOSE OF THAT ISSUE
24 OFF THE BAT.

25 SECOND, WE SPECIFICALLY SPECIFIED IN OUR
26 PAPERS THAT THE UNCLEAR HANDS -- THAT THE UNCLEAR HANDS

1 CLAIM BY THE DEFENDANTS -- I'M JUST READING FROM OUR PAPERS
2 RIGHT NOW, QUOTE, PLAINTIFFS' UNCLEAN HANDS HAVE LEFT A
3 STENCH THAT PERMEATES ALL OF THEIR CLAIMS ASSERTED IN THIS
4 CASE, CLOSE QUOTE.

5 I'M NOT SURE HOW THERE COULD BE ANY
6 CONFUSION OVER THE FACT THAT WE ARE ASSERTING THIS POSITION
7 WITH RESPECT TO ALL OF THE CLAIMS.

8 AND, AS A MATTER OF LAW, BLAINE VERSUS
9 DOCTORS COMPANY, AGAIN CITED IN OUR PAPERS, 22 CAL.APP.3D
10 1048, 1990, THE APPLICATION OF THE DEFENSE IS NOT LIMITED
11 TO SUITS IN EQUITY. HENCE, THEIR ATTEMPT TO RUN FROM THE
12 COURT WHAT HAD BEEN ASSERTED AS EQUITABLE CLAIMS DOES THEM
13 NO GOOD ON THE SUBJECT OF THE DEFENSE OF UNCLEAN HANDS.

14 THE THIRD POINT THAT I'D LIKE TO MAKE SURE
15 IS CLEAR IS THAT PLAINTIFFS MUST SHOW THAT THEY HAVE
16 PRESENTED EVIDENCE TO ESTABLISH THE ELEMENTS OF EACH OF
17 THEIR CLAIMS, JUST LIKE A DEMURRER.

18 AND, AGAIN, IN OUR PAPERS, THE WESTSIDE
19 CENTER CASE, A WESTSIDE CENTER CASE WHERE THE COURT -- 1996
20 CASE WHERE THE COURT SAYS, "IF A PLAINTIFF PRODUCES NO
21 SUBSTANTIAL EVIDENCE OF LIABILITY OR APPROXIMATE CAUSE, A
22 NONSUIT IS PROPER."

23 SO WE'VE GOT THE RIGHT STANDARD. WE'RE IN
24 THE RIGHT COURTROOM BEFORE THE RIGHT JUDGE WITH THE RIGHT
25 STANDARD.

26 FOURTH, WITH RESPECT TO THE ISSUE OF

1 CAUSATION, AND I DON'T WANT TO PICK ON CAUSATION AS OPPOSED
2 TO ANYTHING ELSE. IT JUST SO HAPPENS THAT IN PLAINTIFFS'
3 CASE IN CHIEF, THEY HAVE NOT PRESENTED EVIDENCE OF
4 CAUSATION.

5 IT IS NOT ENOUGH TO SHOW THAT THE COAST
6 LETTER WAS CONFUSING. IT IS NOT ENOUGH TO SHOW THAT THE
7 COAST LETTER WAS INACCURATE OR EVEN -- AND THEY HAVEN'T
8 EVEN BEGUN TO MEET THIS -- OR EVEN THAT THE COAST LETTER
9 WAS SENT MALICIOUSLY. OBVIOUSLY, ALL ISSUES THAT WE DENY.
10 BUT NOT APPROPRIATE TO CONSIDER IN THE WEIGHING OF THE
11 EVIDENCE. BUT IT'S NOT ENOUGH TO SHOW THOSE THINGS BECAUSE
12 UNDER ANY CIRCUMSTANCE, PLAINTIFFS' OBLIGATION --
13 PLAINTIFFS' OBLIGATION IS TO LINK -- IS TO LINK THE ALLEGED
14 CONFUSION OR INACCURACY WITH A MEMBER'S REACTION, AS THE
15 MEMBER'S REACTION IS WHAT CAUSES THE LOSS. BECAUSE WITHOUT
16 THE MEMBER REACTION, THERE IS NO LEGAL CAUSE SHOWN,
17 SUBSTANTIAL FACTOR OR BUT FOR.

18 PROOF OF CONFUSION, THEREFORE, ONLY PROVES,
19 AT BEST FOR PLAINTIFFS' CASE, PROOF OF CONFUSION, THEN
20 PROVES ONLY AT BEST THAT THE ACT WAS WRONGFUL. IT DOES NOT
21 PROVE ANY LEGAL LINKAGE BETWEEN THE ALLEGED WRONGFUL ACT
22 AND THE LEGAL DAMAGE.

23 AS FAR AS THE GRID -- AND WE COULD SIT HERE
24 AND LISTEN TO THE FILIBUSTER FOR HOURS, AND I SUPPOSE WE
25 MAY. BUT EVERYTHING ON THIS CHART -- WE'VE LOOKED AT THE
26 CHART BRIEFLY -- THE SUMMATION OF EVIDENCE THAT WE'RE

1 HEARING FALLS, I SUBMIT, INTO TWO CATEGORIES: EVIDENCE
2 THAT IS CONCLUSIONARY, THE POINT WHERE IT IS OF NO VALUE,
3 ZERO VALUE -- I'M NOT -- AND, AGAIN, NOT ASKING THE COURT
4 TO WEIGH THE EVIDENCE -- OR DIRECTED TO ISSUES THAT HAVE
5 NOTHING TO DO WITH THE PROOF OF CLAIMS.

6 LET ME GIVE JUST A COUPLE OF QUICK EXAMPLES
7 SO AS -- BECAUSE I DON'T WANT TO GET DOWN AND TALK ABOUT
8 EACH ONE OF THE POINTS. WE TALKED ABOUT THEM IN OUR
9 PAPERS, AND I THINK WE'VE COVERED THEM ADEQUATELY IN OUR
10 PAPERS.

11 MR. NOVELLI'S TESTIMONY. WE DEEDED
12 MEMBERS. WELL, SLAVERY'S DEAD. 13TH AMENDMENT TO THE
13 CONSTITUTION. I SAY THAT FACETIOUSLY. BUT THE POINT IS,
14 THAT DOESN'T ESTABLISH ANYTHING. WE GOT DEEDS OF MEMBERS.
15 THEY DIDN'T -- THAT'S NOT THE ISSUE THAT THIS COURT IS
16 BEING ASKED TO ADDRESS.

17 RANDOLF TUCKER, DEVELOPERS PAID A LOT OF
18 MONEY. THAT'S VERY INTERESTING. WHAT ABOUT THIS
19 DEVELOPER? RAYMOND NOVELLI? AGAIN, THAT DOESN'T SUPPORT
20 THEM.

21 YOU KNOW WHAT BOB MITCHELL HAPPENS TO
22 THINK. AS THE EVIDENCE SHOWED, BOB MITCHELL, HE WASN'T
23 THERE. HE DIDN'T NEGOTIATE THE CONTRACTS. MITCHELL'S
24 TESTIMONY IS CONCLUSIONARY. MITCHELL'S TESTIMONY IS
25 VIOLATIVE OF THE PAROL EVIDENCE RULE. MITCHELL'S TESTIMONY
26 IS USELESS.

1 ON THE SUBJECT OF WHY AT LEAST AS TO THE
2 CONTRACT CLAIMS NONSUIT OUGHT TO BE GRANTED, I THINK WE'VE
3 ESTABLISHED THAT. THE ISSUE THAT I'D ASK THE COURT TO
4 CONSIDER AND WHERE I THINK WE ULTIMATELY OUGHT TO WIND UP
5 IS THE FOLLOWING: IT'S NO SECRET. PLAINTIFFS KNOW THIS
6 DEFENDANTS KNOW THIS. THE COURT KNOWS THIS. IF THE COURT
7 IS INCLINED TO GRANT THE MOTION FOR NONSUIT, AS WE THINK
8 THE COURT OUGHT TO BE INCLINED TO DO, PLAINTIFFS WOULD HAVE
9 AN OPPORTUNITY TO REOPEN THEIR CASE. AND THAT'S A
10 PRACTICAL ISSUE RIGHT NOW. AND I'D LIKE TO JUST SHARE SOME
11 THOUGHTS WITH THE COURT ON THAT. BECAUSE I THINK THAT THIS
12 CAN CUT THROUGH A LOT OF INSIGNIFICANT ARGUMENT.

13 PLAINTIFFS BEAR THE BURDEN OF ADEQUATELY
14 SPECIFYING THE ADDITIONAL PROOF THAT THEY INTEND TO OFFER.
15 AND, IN FACT -- LET ME JUST READ FROM THE CALIFORNIA
16 PRACTICE GUIDE, CIVIL TRIALS AND EVIDENCE, THE RUTTER GROUP
17 GUIDE, FROM SECTION 12-236, SPEAKING NOW ABOUT NONSUIT.
18 TRYING TO GET TO THE BOTTOM LINE ON THIS.

19 "PLAINTIFFS BEAR THE BURDEN OF ADEQUATELY
20 SPECIFYING THE ADDITIONAL PROOF THEY INTEND TO OFFER OR
21 WHAT MATTERS THEY INTEND TO ADD TO THEIR OPENING
22 STATEMENT."

23 THEY'RE OBVIOUSLY TALKING ABOUT OR THEIR
24 CASE IN CHIEF.

25 "LACK OF PRECISION CAN BE FATAL. IN THE
26 ABSENCE OF A MORE PRECISE OFFER OF PROOF, HOWEVER, WE ARE

1 IN NO POSITION TO ARRIVE AT A CONCLUSION ABOUT THESE
2 SUBJECTS FAVORABLE TO PLAINTIFFS WHO MUST BEAR THE
3 CONSEQUENCES OF ALL DEFECTS AND AMBIGUITIES IN ITS OFFER,"
4 CITING TO ANDERSON VERSUS BANK OF AMERICA, 24 CAL.APP.4TH
5 549, 1994 DECISION.

6 AND SO HERE IS WHERE WE'RE AT AFTER TWO AND
7 A HALF MONTHS. WE'D ASK YOUR HONOR TO ASK A SIMPLE
8 QUESTION OF THE PLAINTIFFS. THE MOTIONS FOR NONSUIT ARE
9 PROPERLY BROUGHT. THEY OUGHT TO BE GRANTED. WHAT ITEMS OF
10 PROOF ARE YOU GOING TO COME UP WITH? TELL US WHAT YOU'RE
11 GOING TO DO SO WE DON'T HAVE TO HAVE ED MALPASS BACK ON THE
12 STAND FOR FIVE DAYS OR BOB MITCHELL BACK ON THE STAND FOR
13 THREE DAYS, OR RAYMOND NOVELLI FOR ANOTHER FEW DAYS. WHAT
14 ARE YOU GUYS GOING TO DO? WHERE IS YOUR PROOF TO EACH OF
15 THE ELEMENTS THAT DEFENDANTS SET FORTH APPROPRIATELY IN
16 THEIR MOVING PAPERS?

17 AND LET'S HEAR IT. BECAUSE, OTHERWISE,
18 WE'RE IN A QUAGMIRE. AND SO THAT'S OUR RESPONSE TO THIS
19 FIRST COMPARTMENT, IF YOU WILL. AND THAT'S OUR RESPONSE AS
20 FAR AS THE BIG PICTURE AND NONSUIT ARE CONCERNED.

21 THE COURT: THANK YOU.

22 MR. MOSHENKO: MAY I REPLY, YOUR HONOR?

23 MR. SHERMAN: EXCUSE ME. ONE OTHER ITEM, IF I
24 MAY, MR. MOSHENKO, AS FAR AS THE STIPULATION IS CONCERNED
25 AND SO-CALLED SHERMAN'S STIPULATION.

26 IT'S SOMEWHAT DISINGENUOUS. WE DO HAVE A

1 TRANSCRIPT FORTUNATELY, AND THE TRANSCRIPT IS WHAT THE
2 TRANSCRIPT IS. AND WHAT SHERMAN SAID -- WHAT I SAID WENT
3 TO -- AND IT SAYS IT RIGHT HERE.

4 "LET ME STATE THE STIPULATION, PLEASE, THAT
5 I'M PREPARED TO OFFER ON BEHALF OF DEFENDANTS. THE
6 STIPULATION IS THAT THE DEFENDANTS STIPULATE THAT IN
7 ADDITION TO ANY OF THE WRITTEN AFFILIATION AGREEMENTS THAT
8 HAVE BEEN MOVED INTO EVIDENCE IN THIS CASE BETWEEN COAST TO
9 COAST AND THE PLAINTIFF RESORTS AND RECEIVED INTO EVIDENCE,
10 THAT IN THOSE INSTANCES WHERE THERE WAS NOT A WRITTEN
11 AFFILIATION AGREEMENT SIGNED BY THAT PARTICULAR RESORT IN
12 CAMP COAST TO COAST, CAMP COAST TO COAST DID, IF IT KEPT
13 THE AFFILIATED RESORT IN THE DIRECTORY AND GAVE IT THE
14 HOSTING PRIVILEGES, AND THE RECIPROCAL PRIVILEGES, TREATED
15 IT AS IF IT HAD SIGNED ONE OF THOSE WRITTEN AFFILIATION
16 AGREEMENTS."

17 THAT'S WHAT I OFFERED. AND THAT'S WHERE WE
18 ARE. AND --

19 THE COURT: THAT WAS ACCEPTED, WASN'T IT?

20 MR. SHERMAN: YES. AND YOUR HONOR ASKED THE
21 QUESTION, AND I RESPONDED TO YOUR HONOR'S QUESTION, BUT
22 THAT WAS ACCEPTED. AND WE UNDERSTAND WHERE THIS IS GOING.

23 I MEAN, WE COULD BE HERE FOR HOURS ON THE
24 CHART. AND YOUR HONOR HAS HAD THE BENEFIT OF SITTING
25 THROUGH THIS TRIAL OBVIOUSLY FOR NEARLY TWO AND A HALF
26 MONTHS. WE DIDN'T NEED TO MOVE WITH WRITTEN PAPERS. WE

1 DID MOVE WITH WRITTEN PAPERS. AND WE THINK THAT THE
2 SUGGESTIONS THAT WE'RE MAKING AS FAR AS GETTING TO THE
3 BOTTOM HERE AND CUTTING TO THE CHASE ARE PRACTICAL ONES
4 THAT MAY GET US TO WHAT WE KNOW.

5 THE COURT: ALL RIGHT. MR. MOSHENKO?

6 MR. MOSHENKO: WELL, YOUR HONOR, DEALING WITH THE
7 LAST POINT FIRST, IT WOULD APPEAR, THEN, THAT THERE IS A
8 LAYER, A POTENTIAL FOR A LAYER IN THE EVIDENCE AS TO THE --
9 BOTH THE FIRST AND THE SECOND CAUSE OF ACTION WITH RESPECT
10 TO THE RESORTS.

11 WE HAVE THOSE THAT HAVE SIGNED WRITTEN
12 AGREEMENTS WE HAVE THOSE THAT HAVE NOT SIGNED WRITTEN
13 AGREEMENTS. AS REGARDS THOSE THAT HAVE NOT SIGNED WRITTEN
14 AGREEMENTS, CLEARLY COUNSEL HAS AGREED, AND YOUR HONOR
15 INTERPRETED, THE STIPULATION AS AN AGREEMENT WAS NOT
16 NECESSARY. AND I RECALL THE COMMENT THAT WE'RE TREATING
17 THEM AS THOUGH THEY WERE AFFILIATED.

18 NOW, WHEN THE -- COUNSEL USES THE PHRASE
19 "THOSE WRITTEN AGREEMENTS," CLOSE QUOTE, WHICH WRITTEN
20 AGREEMENT? THE STIPULATION IS SILENT. THE WRITTEN
21 AGREEMENTS THAT APPEAR ON THE LIST OF RESORTS THAT I
22 MENTIONED YOUR HONOR THAT SHOW -- THAT HAVE AGREEMENTS IN
23 EVIDENCE, ARE ALL ACROSS THE BOARD. THEY INCLUDE THE
24 AGREEMENT THAT SAYS SIMPLY LISTS MAY BE USED FOR
25 ENHANCEMENT. AND I PUT THAT IN A FOOTNOTE.

26 AND, YOUR HONOR, I OMITTED PUTTING IN THE

1 QUOTE FROM THE AGREEMENT, BUT THAT'S EXHIBIT 230 AND
2 EXHIBIT 245. BOTH OF THOSE EXHIBITS ARE IN EVIDENCE. AND
3 BOTH OF THOSE EXHIBITS DO NOT SAY THE LISTS BELONG TO
4 COAST. THEY DO NOT SAY COAST MAY USE THE LIST FOR ANY
5 PURPOSES. THEY SIMPLY SAY LISTS MAY BE USED FOR
6 ENHANCEMENT OF MEMBERSHIP. IS THAT THE -- THOSE AGREEMENTS
7 THAT MR. SHERMAN REFERS TO?

8 AND THE OTHER AGREEMENTS INCLUDE -- THAT ARE
9 ON THE RESORTS THAT HAVE AGREEMENTS INCLUDE THE ONES IN
10 1996 THAT WE HAVE HEARD ABOUT THAT DO SAY LISTS ARE THE
11 PROPERTY OF COAST, BUT THEY DON'T SAY LISTS MAY BE USED FOR
12 ANY PURPOSE. THEY SAY LISTS MAY BE USED FOR ENHANCEMENT.

13 NOW, YOUR HONOR IS SUBJECT TO THE
14 OBLIGATION, BOUND BY THE RULE THAT YOU MUST GIVE ALL
15 REASONABLE INFERENCES TO THE PLAINTIFFS' EVIDENCE, AND YOU
16 MUST DISCOUNT THE ARGUMENTS AND INFERENCES OFFERED BY THE
17 OTHER SIDE. OBVIOUSLY, THEY ARE OFFERING AN INFERENCE THAT
18 CONTRADICTS WITH OURS. OURS IS THAT LISTS MAY BE USED FOR
19 ENHANCEMENT IS A LIMITING LANGUAGE. AND UNDER THOSE
20 CIRCUMSTANCES, THERE ARE RESTRICTIONS ON USES OF LISTS.

21 AND THE STIPULATION DOESN'T SOLVE THAT
22 PROBLEM. ALL IT DOES IS IT ADDS ANOTHER LAYER OF AGREEMENT
23 TO WHAT WE KNOW ALREADY EXISTS. THESE IMPLIED AGREEMENTS
24 ARE NOT JUST BASED ON THE STIPULATION. THEY ARE BASED ON
25 CONDUCT, AND ALL THE TESTIMONY OF CONDUCT AND INDUSTRY
26 PRACTICES THAT YOUR HONOR HAS HEARD FOR A SUBSTANTIAL

1 AMOUNT OF TIME RELATING TO WHAT HAPPENED BETWEEN THESE
2 PEOPLE, THEREBY WHAT CREATED THE IMPLIED AGREEMENTS.

3 NOW, ANOTHER POINT, YOUR HONOR, IS THAT
4 WE'VE KIND OF LOST TRACK OF THE FACT THAT THIS JUST ISN'T A
5 CASE ABOUT LETTERS. THIS IS A CASE ABOUT LETTERS AND
6 CONDUCT. IT'S A CASE ABOUT DISTRIBUTION OF LISTS TO
7 COMPETITORS. IT'S A CASE ABOUT CONTACTING THE COMPETITORS
8 AND URGING THEM TO GO AFTER THE PLAINTIFFS' MEMBERS. IT'S
9 A CASE ABOUT HAVING THE COMPETITORS SEND THEIR OWN LETTERS
10 AND HAVING COAST PUT IN THE COAST LETTERS CONTACT -- OR YOU
11 WILL BE CONTACTED BY JOE DOKES, THE COMPETITOR. AND THEN
12 IT'S A CASE ABOUT MARY URIOSTE SAYING, WE HAVE TRANSFERRED
13 35,000 MEMBERS WITH 500 PHONE CALLS A DAY.

14 THE REASONABLE INFERENCE TO BE DRAWN FROM
15 THE SUM OF THE WHOLE EVIDENCE REGARDING CONDUCT, IT IS NOT
16 JUST WE SENT A LETTER. IT'S WE SENT A LETTER IN THIS
17 SETTING UNDER THESE CIRCUMSTANCES. WE FOLLOWED UP ON THE
18 LETTER. WE HAD 500 PHONE CALLS A DAY. WE HAD -- AND,
19 FRANKLY, ALL OF THE LETTERS THAT THE DEFENSE PUT UP TO TRY
20 TO PROVE THAT THE MEMBERS WERE MOTIVATED TO LEAVE BECAUSE
21 THEY, QUOTE, LIKED COAST TO COAST PROVED, IN MY OPINION,
22 THAT THOSE LETTERS THEY PUT UP WERE RESPONDING TO THE
23 LETTERS COAST SENT OUT.

24 HOW CAN ONE NOT CONCLUDE, EVEN FROM THE
25 LETTERS THEY PUT UP, THAT THE DEFENDANTS' LETTERS CAUSED
26 MEMBERS TO SHIFT? EVEN IF THEY SHIFTED BECAUSE THEY WANTED

1 TO STAY WITH COAST. THEY CAUSED THEM TO SHIFT. TO
2 TRANSFER. THEY BELIEVED THEY WERE TRANSFERRED, AND THEY
3 TRANSFERRED. AND MR. NOVELLI'S TESTIMONY IN THE RECORD IS
4 IT WAS DEVASTATING. IT CAUSED US TO LOSE "X" AMOUNT OF
5 MONEY. IT CAUSED "X" AMOUNT OF PEOPLE TO STOP PAYING
6 DUES. THAT'S CAUSATION TESTIMONY. IT WAS THE RESULT. HE
7 USED THE PHRASE "THE RESULT WAS." THAT'S CAUSATION
8 TESTIMONY.

9 I RECOGNIZE THEY HAVE A DIFFERENT SPIN ON
10 IT. BUT YOUR HONOR IS OBLIGATED TO DISREGARD, I BELIEVE,
11 THAT DIFFERENT SPIN AND GIVE TO THE PLAINTIFFS' TESTIMONY
12 CREDIBILITY AND DISREGARD CONFLICTING AND CONTRADICTING
13 TESTIMONY AND INDULGE IN ALL REASONABLE INFERENCES THAT
14 FAVOR THE PLAINTIFFS' CASE IN RULING ON THIS MOTION.

15 I HEARD COUNSEL SAY THAT MR. MITCHELL'S
16 TESTIMONY IS -- VIOLATED THE PAROL EVIDENCE RULE. FOR 75
17 PERCENT OF THE PLAINTIFFS' RESORTS THERE IS NO PAROL
18 EVIDENCE RULE. JUST BECAUSE THE DEFENDANTS TAKE THE
19 POSITION THAT THEY WANTED TO APPLY, QUOTE, THOSE CONTRACTS,
20 WHATEVER THAT MEANS, DOESN'T MEAN THAT THE IMPLIED
21 AGREEMENTS OF THE PARTIES DID NOT INCLUDE OTHERWISE OR WAS
22 NOT OTHERWISE.

23 THIS, YOUR HONOR, IS NOT A MATTER FOR YOUR
24 HONOR TO WEIGH THE EVIDENCE AND AGREE OR DISAGREE WITH
25 THEIR ARGUMENTS. IT'S A MATTER IF THE EVIDENCE AND A
26 REASONABLE INFERENCE GOES IN THE DIRECTION THE PLAINTIFFS

1 ASSERT, I THINK THE COURT IS BOUND TO GO WITH IT.

2 I NOTE THAT MR. SHERMAN'S ARGUMENT WAS
3 SILENT ON THE ISSUE OF BREACH. I'LL SAY IT FOR HIM. IT'S
4 IN OUR PAPERS. BUT, YOUR HONOR, WE LISTED A DOZEN
5 DIFFERENT BREACHES. AND BREACH HAS NOT BEEN ARGUED
6 AGAINST. BREACH HAS BEEN ESTABLISHED.

7 THE TWO ISSUES, BREACH AND CAUSATION, THERE
8 IS SOME EVIDENCE IN THE RECORD. IT'S BELIEVABLE. IT'S
9 CREDIBLE. IF THE COURT -- AND IT MUST BE CONSIDERED
10 CREDIBLE IF THE COURT FOLLOWS THE RULES.

11 AND WE'VE MET OUR BURDEN OF SHOWING
12 SUFFICIENT EVIDENCE TO GET BY A NONSUIT ON THAT ISSUE OF
13 THE TWO CONTRACT CAUSES.

14 MR. SHERMAN: THE COURT GETS TO INTERPRET THE
15 CONTRACTS.

16 THE COURT: LET'S TAKE UP FOR A MOMENT THE ISSUE OF
17 ALTER EGO.

18 MR. SHAW: YES, YOUR HONOR.

19 THE COURT: DO YOU WANT TO BE HEARD ON IT?

20 MR. SHAW: YES.

21 MR. MOSHENKO: YOUR HONOR, WHILE MR. SHAW GOES
22 THROUGH HIS DOCUMENTS, I'D JUST LIKE TO INDICATE ON THE
23 RECORD THAT OBVIOUSLY IF THE COURT IS PREPARED TO RULE
24 ALTER EGO IN A MANNER FAVORABLE TO THE PLAINTIFFS, WE CAN
25 SIT DOWN. AND I'M NOT ASKING YOU TO TELL ME THAT.

26 THE COURT: I AM I'M PLANNING TO RULE IN FAVOR OF

1 DEFENSE ON ALTER EGO.

2 MR. MOSHENKO: OKAY. THEN IF THAT IS THE CASE, IT
3 IS OUR POSITION, YOUR HONOR, THAT YOUR HONOR HAS NOT YET
4 HEARD ALL THE ALTER EGO EVIDENCE.

5 AND THE REASON I MENTION THAT, I CAN THINK
6 OF TWO PARTICULARS THAT APPLY TO THAT COMMENT.

7 THE COURT: OKAY.

8 MR. MOSHENKO: NUMBER ONE IS, YOUR HONOR TOOK THE
9 BOGCESS TESTIMONY AND INDICATED THAT YOU WOULD REVIEW IT
10 AND DETERMINE WHETHER THERE'S TESTIMONY TO BE PRESENTED TO
11 THE JURY OR NOT. AND WE HAVEN'T HEARD WHAT HAPPENED.

12 NOW, I'M GOING TO PRESUME THAT YOU'RE GOING
13 TO SAY, "I READ IT AND I CONSIDERED IT." OKAY. FINE.

14 IN ADDITION, THOUGH, AS MR. SHERMAN WAS
15 PRESENTING EVIDENCE TO THE JURY ON WHAT WE CALL THE
16 TWO-PRONG ISSUE OF ACTUAL INVOLVEMENT BY AFFINITY IN THE
17 MISCONDUCT VERSUS THE USE OF THAT EVIDENCE FOR ALTER EGO
18 PURPOSES, THERE WERE TIMES WHEN YOUR HONOR SAID, "OBJECTION
19 SUSTAINED. IT CAN'T GO TO THE JURY."

20 THE TESTIMONY THAT MR. SHAW WAS ARGUING AT
21 THAT TIME, I PRESUME YOUR HONOR WAS RULING, IT DOESN'T GO
22 TO THE ONE PRONG OF ACTUAL INVOLVEMENT BY AFFINITY. OKAY.
23 I COULD DISAGREE OR NOT, BUT IT DOESN'T MATTER.

24 AS TO THE OTHER PRONG OF ALTER EGO,
25 MR. SHERMAN SAID, "YOUR HONOR, I RESERVE THE RIGHT" -- OR
26 WORDS TO THIS EFFECT, "WE RESERVE THE RIGHT TO OFFER THIS

1 EVIDENCE TO THE COURT IN PRIVATE SO THAT THE COURT CONSIDER
2 THIS ADDITIONAL EVIDENCE AS WELL."

3 SO HAVING SAID THAT, I'M GOING TO LET
4 MR. SHERMAN ARGUE WHY WE THINK YOU'RE INCORRECT IN YOUR
5 TENTATIVE RULING.

6 MR. SHERMAN: MR. SHERMAN IS HAPPY TO ARGUE ON
7 THAT. I THINK YOU WANT MR. SHAW, THOUGH.

8 MR. MOSHENKO: I APOLOGIZE, MR. SHAW, FOR CALLING
9 YOU MR. SHERMAN.

10 MR. SHAW: THAT'S ALL RIGHT.

11 BUT FIRST I WANT TO NOTE IF MR. SHERMAN SAYS
12 I'M INVOLVED IN THE FILIBUSTER, IS THAT THE SAME AS A CHEAP
13 TRICK? OR ARE THOSE DIFFERENT?

14 MR. SHERMAN: JERRY, WHY DON'T YOU TAKE THAT PILL.

15 MR. SHAW: OKAY. I HAVE A RETORT TO THAT, BUT I'M
16 GOING TO HOLD MY TONGUE.

17 ALTER EGO, YOUR HONOR, I JUST WANT TO ECHO
18 WHAT MR. -- WHAT MR. MOSHENKO JUST SAID.

19 THERE WAS SOME EVIDENCE REGARDING
20 THAT MR. ADAMS -- THAT I WANTED TO ASK MR. ADAMS ABOUT THE
21 ISSUE OF A \$300 MILLION CROSS-COLLATERALIZATION IN HIS
22 AFFINITY GROUP COMPANIES. AND WHERE THAT WENT WAS TO THE
23 SECOND PRONG THAT MR. SHERMAN HAS TALKED ABOUT IN THE PAST,
24 AND THAT'S UNASSOCIATED VENDORS. YOU HAVE TO SHOW NOT ONLY
25 UNITY OF IDENTITY OF INTEREST, WHICH I THINK IS VERY CLEAR
26 THAT THE EVIDENCE FOR PURPOSES OF A NONSUIT IS THERE -- OR

1 FOR THE COURT -- EXCUSE ME. THIS IS THE COURT ISSUE. I
2 APOLOGIZE.

3 BUT NUMBER TWO, FAILURE TO DISREGARD THE
4 CORPORATE ENTITY WOULD SANCTION A FRAUD OR PROMOTE
5 INJUSTICE. AND THAT'S THE ONE THAT I BELIEVE MR. SHERMAN
6 THREW DOWN THE GAUNTLET AND SAID THEY HAVE TO BE PRECISE AS
7 TO WHAT EVIDENCE THEY SHOW THIS COURT REGARDING THE SECOND
8 PRONG OF SANCTIONING A FRAUD OR PROMOTING INJUSTICE. AND
9 THAT EVIDENCE WAS, YOUR HONOR -- I WOULD OFFER TO YOUR
10 HONOR IS IN THE ADAMS TESTIMONY.

11 IN HIS DEPOSITION HE TESTIFIED THAT HE
12 BOUGHT THE COMPANY FROM AMERICAN BAKERIES, PUT IN \$5
13 MILLION CASH AND ENCUMBERED IT TO THE TUNE OF \$100 MILLION
14 LOAN. HE THEN INCREASED THAT LINE -- I'M SORRY. AND COAST
15 TO COAST WAS A GUARANTOR ON THAT LOAN.

16 HE THEN TESTIFIED THAT HE INCREASED THAT
17 LINE TO \$300 MILLION AT A LATER DATE, AND THAT COAST NOW IS
18 ENCUMBERED BY \$300 MILLION.

19 SO WHAT WE'RE LEFT WITH, THE STATE OF THE
20 EVIDENCE, IS AFFINITY GROUP TAKES ALL THE PROFITS; ALL THE
21 MONEY GOES BACK TO AFFINITY GROUP, AND THAT COAST TO COAST
22 HAS A BUDGET. AND THEY BASICALLY HAVE NO VALUE AT THIS
23 POINT. THE FINANCIAL STATEMENTS ARE CONSOLIDATED.
24 MR. ADAMS TESTIFIED ABOUT THAT.

25 SO I WOULD ASK THE COURT TO CONSIDER THE
26 LINE OF CREDIT ISSUE FOR THE FACT THAT THERE REALLY IS NO

1 VALUE IN COAST TO COAST ANY LONGER BECAUSE OF THE WAY IT'S
2 BEEN ENCUMBERED. SPECIFICALLY REGARDING THE DOCUMENTS THAT
3 I WOULD ASK THE COURT TO CONSIDER, BY ALLOWING US TO
4 REOPEN, WOULD BE EXHIBITS 425 AND 426, WHICH ARE THE 10-K
5 REPORTS.

6 MR. SHERMAN WILL CORRECT ME IF MY MEMORY IS
7 INCORRECT. BUT WHEN MR. ADAMS WAS ON THE STAND, I TRIED TO
8 ASK HIM REGARDING THE 10-K'S. THE COURT SAID MR. SHERMAN
9 STIPULATED, I BELIEVE, THAT THEY WERE ACCURATE, AND THEN I
10 DIDN'T NEED FOUNDATION. AND THEN THE COURT TOOK IT UNDER
11 SUBMISSION.

12 NOW, IN THOSE TWO 10-K'S, ONE FOR 1997 AND
13 ONE FOR 1996, THE EVIDENCE, IT BECOMES EVEN MORE CLEAR.
14 COAST TO COAST IS NOT EVEN A SUBSIDIARY. IT'S AN OPERATING
15 DIVISION WHICH MEANS IT IS AFFINITY GROUP. IT'S LIKE
16 HAVING A LAW FIRM HAVING A CORPORATE DEPARTMENT AS OPPOSED
17 TO A LITIGATION DEPARTMENT. THERE'S NO SEPARATE CORPORATE
18 DEPARTMENT. IT'S PART OF A LAW FIRM. IT'S AN OPERATING
19 DIVISION. IT DOES BUSINESS UNDER THAT LAW FIRM UMBRELLA.

20 HERE WE HAVE THE AFFINITY GROUP THAT'S GOT A
21 COAST TO COAST CLUB AS AN OPERATING DIVISION. THERE IS NO
22 SEPARATE COAST TO COAST. IT IS THE AFFINITY GROUP.

23 BUT, YOUR HONOR, EVEN ON THAT ARGUMENT, THAT
24 FOCUSES ONLY ON THESE CONTRACT ISSUES. BECAUSE WE'VE
25 SUBMITTED TO THE COURT A RESPONDEAT SUPERIOR BRIEF ON THE
26 ISSUE OF INTERFERENCE -- THE TORT CLAIMS; INTERFERENCE,

1 MISAPPROPRIATION WITH TRADE SECRET AND FRAUD. THERE WE
2 DON'T EVEN HAVE AN ISSUE OF ALTER EGO. AFFINITY GROUP WAS
3 INVOLVED. AFFINITY GROUP WAS INVOLVED IN THE MASS
4 TRANSFER. THE EVIDENCE, MARY URIOSTE AND ALL THE -- WHAT
5 MR. ADAMS TESTIFIED ABOUT THE BOILER ROOM, IF THE COURT CAN
6 RECALL. THEY HAVE A BIG ROOM IN DENVER, AND THEY HAVE ALL
7 OF THEIR ENTITIES IN THERE. THEY'RE ALL AFFINITY GROUP
8 PEOPLE.

9 SO I ARGUE ALTER EGO. I HAVE STATED FOR THE
10 COURT WHICH I UNDERSTAND TO BE THE STANDARD. I HAVE TO
11 STATE TO THE COURT WHAT SPECIFICALLY I WOULD PRESENT ON
12 THOSE ISSUES. AND THEY WOULD BE MR. ADAMS'S FURTHER
13 TESTIMONY ON THE ISSUE OF THE LINES OF CREDIT. AND THERE
14 WERE A COUPLE OF OTHER ADAMS ITEMS THAT YOUR HONOR
15 SUSTAINED OBJECTIONS TO THAT I WOULD WANT TO READ TO YOUR
16 HONOR.

17 NUMBER TWO, THERE'S KEDRICK ROBINSON
18 TESTIMONY. SOME OF IT YOUR HONOR HEARD IN THE AFTERNOON, I
19 BELIEVE. I GOT TO COME BACK TO YOUR HONOR AND READ TO YOUR
20 HONOR SOME OF THE EVIDENCE. BUT I DIDN'T READ ALL OF IT
21 REGARDING THE ALTER EGO ISSUE.

22 AND THIRD WOULD BE THE DOCUMENTS, THE 10-K
23 REPORTS. I WOULD ASK THE COURT TO ADMIT THOSE INTO
24 EVIDENCE AND TAKE THOSE INTO CONSIDERATION REGARDING THIS
25 OPERATING DIVISION ISSUE.

26 AND THERE'S INFORMATION, FINANCIAL

1 INFORMATION ABOUT THE LINE OF CREDIT IN THERE THAT GOES TO
2 THE SECOND PRONG OF THE TEST.

3 SO -- BUT AGAIN, THOSE ONLY FOCUS ON OUR
4 COMPARTMENTALIZING THE ARGUMENT. THAT ONLY FOCUSES ON
5 BREACH OF CONTRACT. BECAUSE WE KNOW THAT UNDER THE 25
6 PERCENT, THERE WERE CONTRACTS, AND THEY WERE COAST TO COAST
7 ON THE ONE HAND AND THE RESORTS ON THE OTHER HAND.

8 BUT THERE WERE 75 PERCENT WHERE THERE'S NO
9 CONTRACTS, AND THE RESPONDEAT SUPERIOR WOULD BE THE THEORY
10 THAT AFFINITY GROUP HAD AN OPERATING DIVISION. AND THAT'S
11 WHO THE RELATIONSHIP WAS WITH.

12 INTERFERENCE WITH CONTRACT WAS DONE BY THE
13 AFFINITY GROUP IN THE BIG BOILER ROOM THAT WAS INVOLVED IN
14 DISSEMINATING INFORMATION AND TAKING PHONE CALLS FROM MASS
15 TRANSFER.

16 MISAPPROPRIATION OF TRADE SECRET WAS
17 COMMITTED BY THE OPERATING DIVISION OF AFFINITY GROUP. AND
18 THE FACT THAT AFFINITY GROUP WAS THERE AT INVERNESS,
19 COLORADO, PASSING OUT THESE MEMBER LISTS TO THE OTHER --
20 THESE CONFIDENTIAL MEMBER LISTS, PROTECTED TRADE SECRETS TO
21 THE OTHER COMPETITOR RESORT OWNER.

22 AND THEN THE FRAUD. THE MISREPRESENTATIONS
23 THAT WERE MADE THAT THERE WON'T BE ANY RAIDING OF YOUR
24 MEMBERS. THERE WILL BE A PRIMARY PRODUCT. THERE WILL BE
25 CONFIDENTIALITY. SENDING OUT THE INSIDE NEWS, EXHIBIT 285,
26 THAT SAYS THESE ARE A PROTECTED ASSET. WE'RE NOT GOING TO

1 DISSEMINATE THEM OR LEND THEM OR DISSEMINATE THEM IN ANY
2 WAY.

3 ALL THOSE MISREPRESENTATIONS THAT
4 MR. NOVELLI TESTIFIED THAT HE RELIED ON WERE NEVER GOING TO
5 BE TRUE. AND THEY WEREN'T TRUE, AND THEY CAUSED DAMAGE.
6 THOSE WERE ALL DONE BY AFFINITY GROUP, WHO WAS THE
7 OPERATING MANAGER, AS THE COURT CAN SEE, FROM THE
8 DOCUMENTATION.

9 SO JUST TO SUM UP, ALTER EGO ONLY GOES TO
10 THE CONTRACT ISSUES WE WOULD ARGUE. THE OTHER ISSUES, IT'S
11 RESPONDEAT SUPERIOR, AND WE WOULD ARGUE THE JURY HAS THE
12 RIGHT, BECAUSE OF THE FACT THAT WE'VE SHOWN ENOUGH EVIDENCE
13 TO GET OVER THE NONSUIT, THAT THERE IS CREDIBLE EVIDENCE IN
14 THE RECORD THAT THE COURT HAS TO DEEM AS TRUE. THE JURY
15 SHOULD KNOW WAS THERE INTERFERENCE -- I'M PARAPHRASING --
16 AND WHO ACTED AND MADE THOSE REPRESENTATIONS. YOU EITHER
17 SAY AFFINITY GROUP, CHECK YES OR NO. COAST TO COAST YOU,
18 EITHER CHECK YES OR NO. THAT SHOULD BE THE STATE OF THE
19 SPECIAL JURY VERDICT THAT SHOULD GO TO THE JURY ON THAT
20 PARTICULAR ISSUE.

21 THE COURT: MR. SHERMAN?

22 MR. SHERMAN: YOUR HONOR, JUST A FEW POINTS ON
23 ALTER EGO, WHICH IS WHAT YOUR HONOR'S QUESTION DEALT WITH.

24 THE AMENDED COMPLAINT DIRECTS THE ALTER EGO
25 ALLEGATIONS TO ALL THE CLAIMS. SO TO SUGGEST NOW, AS
26 MR. SHAW DOES, THAT IT IS SOMEHOW COMPARTMENTALIZED ONLY TO

1 MAY THE WITNESS BE EXCUSED?"

2 "MR. SHAW: YES, YOUR

3 HONOR."

4 CLOSE QUOTE.

5 AND WHAT I HAVEN'T HEARD MR. SHAW SAY IS

6 THAT THERE ARE ANY FACTS, ANY PROFFER OF EVIDENCE THAT

7 WOULD CHANGE THE COMPELLING CONCLUSION THAT THERE'S NO

8 EVIDENCE OF FRAUD OR INJUSTICE.

9 AS FAR AS RESPONDEAT SUPERIOR IS CONCERNED,

10 THERE'S JUST -- THERE'S NO EVIDENCE THAT AFFINITY

11 PARTICIPATED IN THE DECISION TO SEND THE LETTERS. SO WE'LL

12 SUBMIT.

13 MR. SHAW: YOUR HONOR, I JUST HAVE ONE FINAL

14 POINT.

15 ON THE AMENDED COMPLAINT IT'S PRETTY CLEAR

16 THAT EACH CAUSE OF ACTION -- AND, IN FACT, I'M READING FROM

17 THE -- IF THE COURT WILL BEAR WITH ME FOR A MOMENT --

18 READING FROM SEVENTH CAUSE OF ACTION FOR FRAUD, PAGE 18,

19 LINES 23 THROUGH 24. AGAIN --

20 MR. SHERMAN: THAT'S BEEN STRICKEN. THAT'S BEEN

21 STRICKEN.

22 MR. SHAW: THE SEVENTH CAUSE OF ACTION FOR FRAUD?

23 MR. SHERMAN: IN THE AMENDED COMPLAINT. IT'S BEEN

24 STRICKEN.

25 THE COURT: MAY 1ST IT WAS STRICKEN.

26 MR. MOSHENKO: YOUR HONOR, THAT WAS A RATHER

1 COMPLEX ISSUE IN FRONT OF JUDGE THOMAS. THERE WAS A
2 DETERMINATION THAT AMENDMENT -- AN AMENDMENT -- PROPOSED
3 AMENDMENT WOULD NOT BE ALLOWED.

4 BUT THE FRAUD CAUSE OF ACTION HAS NOT BEEN
5 STRICKEN. WHAT JUDGE THOMAS SUBSEQUENTLY RULED WAS IT
6 WOULD BE LIKE A BACK TO THE FUTURE; THAT IS, THE FUTURE
7 WOULD BE THAT THE ORIGINAL FRAUD CAUSE OF ACTION WOULD BE
8 THE CAUSE OF ACTION TO GO FORWARD ON. SO MR. SHAW --

9 MR. SHERMAN: MR. MOSHENKO -- YOUR HONOR,
10 MR. MOSHENKO IS CORRECT; THAT A FRAUD CAUSE OF ACTION STILL
11 REMAINS IN THE CASE.

12 BUT, AGAIN, WHAT MR. MOSHENKO APPARENTLY
13 ISN'T PICKING UP IS THE FACT THAT IF YOU GO BACK TO THE
14 ORIGINAL COMPLAINT WHERE FRAUD WAS ALLEGED, IN THE -- IT
15 WAS THEN THE SIXTH CAUSE OF ACTION, IT BEGINS WITH,
16 PLAINTIFFS RE-ALLEGE HERE IN PARAGRAPHS 1 THROUGH 33 ABOVE,
17 AS THOUGH FULLY SET FORTH. AND IF YOU GO BACK TO PARAGRAPH
18 7 -- AND PARAGRAPH 7 GOES ON FOR QUITE SOME TIME.
19 PARAGRAPH 7 ARE THEIR ALTER EGO ALLEGATIONS.

20 SO I DON'T REALLY SEE WHERE THEY'RE GOING
21 WITH THIS BECAUSE THEY HAVE ALLEGED ALTER EGO, YOU KNOW,
22 ALL ACROSS THE BOARD. AND IF THEY HAVEN'T, SO WHAT?

23 MR. MOSHENKO: WELL, MR. SHERMAN IS CORRECT. I
24 DIDN'T MENTION THAT BECAUSE HE INTERRUPTED ME BEFORE I
25 COULD GET THERE, YOUR HONOR.

26 IT IS CORRECT THAT THE ALLEGATIONS IN THE

1 FIRST COMPLAINT AS REGARDS FRAUD APPLY. AND THERE WERE
2 ALLEGATIONS REGARDING ALTER EGO INCORPORATED INTO THE FRAUD
3 CAUSE OF ACTION ALONG WITH EVERY OTHER CAUSE OF ACTION. SO
4 AFFINITY GROUP WAS NAMED AS A DEFENDANT, AND AFFINITY GROUP
5 WAS CHARGED WITH COMMITTING FRAUD. AND THEY WERE ALSO
6 CHARGED WITH BEING RESPONSIBLE FOR FRAUD BY COAST, AS COAST
7 WAS THEIR ALTER EGO.

8 MR. SHAW: SO THE STATE WOULD BE, YOUR HONOR -- IF
9 YOUR HONOR WOULD GRANT THE ALTER EGO, WHAT WE'D BE LEFT
10 WITH IS -- THE STATE OF THE COMPLAINT IS THAT AFFINITY
11 GROUP IS STILL A DEFENDANT IN THE CAUSES OF ACTION.
12 THEY'RE A DEFENDANT. INSTEAD OF VICARIOUS LIABILITY, IF I
13 CAN USE THAT TERM, VIA COAST, THEY'RE A DEFENDANT AS
14 THEMSELVES INDIVIDUALLY, AS AN ENTITY. NOT INDIVIDUALLY.
15 BUT THE LAST TWO DEFENDANTS THAT WOULD BE THERE ON THE
16 CAUSES OF ACTION WOULD BE COAST AND AFFINITY GROUP. AND
17 THERE WOULDN'T BE ANY ALTER EGO RELATIONSHIP IF THE COURT
18 STANDS BY THE TENTATIVE. AND THE CASE WOULD GO FORWARD
19 WITH THE AFFINITY GROUP AND COAST TO COAST STANDING ON
20 THEIR OWN.

21 AND WE, AGAIN, YOUR HONOR, JUST -- I DON'T
22 WANT THAT ANALYSIS TO CONCEDE THAT. I WOULD RESPECTFULLY
23 REQUEST THAT THE COURT CHANGE ITS TENTATIVE ON THE ALTER
24 EGO, OR IF -- AT THE VERY LEAST I KNOW MR. SHERMAN SAID
25 THAT I RESTED WITH MR. ADAMS. BUT BEFORE WE RESTED IN THIS
26 CASE, I REMEMBER MR. MOSHENKO MAKING A COMMENT THAT THERE

1 WAS SOME EXHIBITS THAT WERE UNDER SUBMISSION. THERE WAS
2 ALSO SOME EVIDENCE THAT WE WERE ASKING THE COURT TO TAKE
3 INTO CONSIDERATION. SO WITH THAT, I'LL SUBMIT.

4 THE COURT: ALL RIGHT. THANK YOU.

5 ANYTHING FURTHER?

6 MR. SHERMAN: NO.

7 MR. MOSHENKO: ON ALTER EGO, YOUR HONOR.

8 THE COURT: ON THE SUBJECT OF ALTER EGO.

9 I FIND IN FAVOR OF THE DEFENDANTS ON THAT
10 PARTICULAR ISSUE.

11 NOW, THEN THAT LEAVES US WITH THE MOTIONS
12 FOR NONSUIT.

13 MR. SHAW: CORRECT, YOUR HONOR.

14 THE COURT: AND I WOULD LIKE A LITTLE TIME --

15 MR. MOSHENKO: I'M NOT SURPRISED.

16 THE COURT: -- TO DIGEST THE WHOLE THING AND RENDER
17 MY OPINION AND DECISION IN MORNING. FAIR ENOUGH?

18 MR. SHERMAN: YES, YOUR HONOR.

19 WHAT I WOULD LIKE TO AT LEAST EMPHASIZE IS
20 THIS: OBVIOUSLY WE HAVE TWO SIDES WHO STRENUOUSLY BELIEVE
21 IN THEIR POSITIONS. I THINK THAT I CAN CONCEDE THAT TO
22 MR. SHAW, AND HE CAN CONCEDE THAT TO US.

23 GOING ON THE PROSPECT THAT WE'RE RIGHT AND
24 THAT THE COURT AGREES THAT WE'RE RIGHT, WHAT WE WOULD ASK
25 IS THAT THROUGH A PRACTICAL STANDPOINT, YOUR HONOR, THINK
26 ABOUT, OKAY, NOW WHAT HAPPENS NEXT. AND RATHER THAN FIND

1 OURSELVES AND HAVE THE JURY JUST SWEEPED UP IN A
2 MERRY-GO-ROUND OF, YOU KNOW, RECYCLING ROBERT MITCHELL,
3 GETTING HIM BACK HERE SO HE CAN TALK ABOUT WHAT HE KNOWS
4 AND HIS EXPERTISE, AND WE GET ED MALPASS -- I CAN JUST SEE
5 IT AGAIN. IT'S DEJA VU ALL OVER AGAIN. WE DON'T NEED
6 THAT. AND I THINK EVERYONE KNOWS WE DON'T NEED THAT.

7 WHAT I WOULD ASK THAT YOUR HONOR CONSIDER
8 DOING IS WHAT I SUGGESTED BEFORE, AND THAT IS -- AND I
9 THINK THIS OUGHT TO BE DONE IN THE PRESENCE OF THE
10 REPORTER, OBVIOUSLY. WHAT ARE YOU GOING -- WHAT'S NEW?
11 WHAT'S NEW? TELL ME SOMETHING NEW, AND TELL ME HOW YOU'RE
12 GOING TO PROVE IT WITH ADMISSIBLE EVIDENCE, AND MAKE YOUR
13 OFFER OF PROOF. AND THEN LET'S SEE IF THERE'S REALLY
14 ANYTHING THERE.

15 BECAUSE IF ALL WE'RE GOING TO DO IS GET
16 THESE GUYS WITH A NEW TIE AND SHIRT ON, TO COME BACK IN AND
17 TO TELL US THE THINGS THEY SAID BEFORE, WE DON'T NEED
18 THAT. THE JURY DOESN'T NEED THAT. WE CAN ALL GO HOME, IF
19 WE'RE RIGHT. AND I SUBMIT THAT, YOU KNOW, EVEN --

20 THE COURT: MEANING YOU WANT THEM TO GIVE THAT
21 OFFER OF PROOF NOW --

22 MR. SHERMAN: I'D LIKE THEM --

23 THE COURT: -- PRIOR TO MY DECISION?

24 MR. SHERMAN: ABSOLUTELY. I THINK THEY OUGHT TO
25 GIVE THE OFFER OF PROOF. BECAUSE I THINK THAT UPON
26 REFLECTION, I THINK THAT THE COURT SHOULD CONCLUDE THAT A

1 NONSUIT IS APPROPRIATE.

2 BUT, IN ORDER TO MAKE SURE THAT THE
3 APPELLATE RECORD IS PRESERVED, YOU KNOW, LET'S HEAR WHAT
4 THEY HAVE TO SAY, AND LET'S DISSECT IT. BECAUSE IT REALLY
5 WILL NOT WITHSTAND, IN MY JUDGMENT, THE HARSH LIGHT.

6 THE COURT: ALL RIGHT.

7 MR. MOSHENKO: YOUR HONOR, WITH ALL DUE RESPECT, I
8 CAN'T THINK OF ANYTHING THAT SOUNDS MORE RIDICULOUS TO ME.
9 WE DON'T HAVE ANY IDEA HOW YOUR HONOR IS GOING TO RULE.
10 WE'RE GOING TO NOW GUESS WHAT ISSUES YOUR HONOR MIGHT TURN
11 ON. WE'RE NOW GOING TO, WITHOUT THE OPPORTUNITY TO HAVE
12 FOCUSED ON WHAT WE WOULD DO UNDER A GIVEN, DEPENDING ON
13 WHICH ISSUE, AND COME UP WITH AN OFFER OF PROOF? IT'S A
14 SPECULATION ON SPECULATION. IT'S PREPOSTEROUS.

15 THE COURT: I AGREE WITH YOU. I THINK I HAVE TO
16 GIVE YOU SOME GUIDELINES HERE.

17 MR. MOSHENKO: THANK YOU, YOUR HONOR.

18 MR. SHAW: THANK YOU, YOUR HONOR.

19 MR. MOSHENKO: MY COMMENT WAS -- WOULD BE, WE'VE
20 COMPARTMENTALIZED THE ARGUMENTS, AND I COULD CONCEIVE THAT
21 THE COURT WOULD COME TO A CONCLUSION WITHOUT HEARING
22 DISCUSSIONS OF THE OTHER CAUSES OF ACTION. BUT WE'VE ONLY
23 TALKED ABOUT TWO OF THE SEVEN VIABLE CAUSES OF ACTION. AND
24 YOU'LL LET US KNOW IN THE MORNING IF WE'LL BE ARGUING THOSE
25 OTHER CAUSES OF ACTION?

26 THE COURT: WELL, WE CAN PROCEED FOR A WHILE TODAY

1 ON THE OTHER CAUSES OF ACTION.

2 MR. MOSHENKO: AS YOUR HONOR WISHES. WHATEVER.

3 THE COURT: YEAH. WE'VE GOT SOME TIME TODAY.

4 MR. MOSHENKO: THEN LET'S DO THAT.

5 MR. SHAW: YOUR HONOR, THE NEXT ONE, THEN, WOULD BE
6 THE INTERFERENCE, AND I'M GOING TO TAKE THEM BOTH TOGETHER.

7 THE COURT: DOES ANYBODY NEED A BREAK?

8 LET'S TAKE FIVE MINUTES.

9 (RECESS TAKEN.)

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

12 THE COURT: PROCEED.

13 MR. SHERMAN: YOUR HONOR, ON THE SUBJECT OF TO BE
14 CONTINUED TO TOMORROW MORNING, WE THINK THAT THAT'S A FINE
15 IDEA. THE ONLY OBSERVATION I'D LIKE TO MAKE IS THAT IF WE
16 COULD, LET'S START THIS AT A TIME SO THAT IF THERE IS GOING
17 TO BE A JURY IMPANELED TOMORROW MORNING, THAT WE CAN START
18 IT AT 9:00 A.M.

19 THE COURT: WELL, I CAN BE HERE AT 8:30.

20 THE CLERK: YOU CAN BE HERE AT 8:15.

21 MR. MOSHENKO: I'LL BE HERE AT 8:00, AND I'LL SIT
22 UP HERE.

23 MR. SHERMAN: RIGHT. AND I'VE GOT WINGS AND I CAN
24 FLY.

25 MR. SHAW: THANK YOU, YOUR HONOR.

26 INTERFERENCE -- AND I JUST INVITE THE

1 COURT'S ATTENTION TO THE THIRD AND FOURTH PAGES OF THE
2 GRID.

3 AND THE ONLY POINT I WANT TO MAKE ABOUT THE
4 GRID, YOUR HONOR -- I KNOW IT'S IN MY BRIEF -- ARE THE
5 APPLICABLE SECTIONS THAT WE CITED. BUT I JUST -- IF THE
6 COURT HAS A QUESTION ABOUT ANYTHING MORE THAN WHAT'S IN THE
7 BRIEF -- I'VE TRIED TO GIVE THE COURT OTHER AREAS OF
8 TESTIMONY.

9 NOW, ON INTERFERENCE, THE ISSUES THAT WE HAD
10 TO CARRY THE BURDEN ON AND THE ISSUES THAT WERE -- ONE OF
11 THE ISSUES THAT WAS RAISED IN THE PRECISE STATEMENT OF THE
12 NONSUIT BY THE DEFENDANTS WAS THE FACT THAT THEY WERE
13 NOVELLI'S MEMBERS, IF YOU WILL.

14 AND I'M NOW INVITING THE COURT TO LOOK AT
15 PAGE 2174 OF THE TRIAL TRANSCRIPT, WHERE MR. RYMAN
16 TESTIFIES IN RESPONSE TO MY QUESTION WHERE HE SAYS:

17 "BUT THE FACT IS, ANY
18 TERMINATION LETTERS THAT YOU
19 RECEIVED FROM MR. NOVELLI, YOU
20 SENT TRANSFER LETTERS REGARDING
21 THOSE RESORTS; IS THAT CORRECT?

22 "ANSWER: THAT IS
23 CORRECT.

24 "QUESTION: AND THE TOTAL
25 OF THOSE TRANSFER LETTERS WAS
26 OVER 34,000?

1 "ANSWER: I BELIEVE SO.

2 APPROXIMATELY 34,000, YES."

3 AND THEN WE SKIPPED DOWN TO 19:

4 "BUT THE COMMON THREAD
5 WAS THAT EVEN THOUGH THEY WERE
6 COAST TO COAST MEMBERS, THEY
7 WERE ALL MEMBERS OF
8 MR. NOVELLI'S RESORTS?

9 "ANSWER: THAT'S
10 CORRECT. IT'S A PREREQUISITE TO
11 BE ELIGIBLE TO GET A COAST TO
12 COAST MEMBERSHIP."

13 AND THEY ALSO RAISE THE ISSUE THAT SOMEHOW
14 TRAVEL AMERICA WASN'T A SUCCESSOR TO TRAVEL -- TO THOUSAND
15 ADVENTURES -- EXCUSE ME -- TRAVEL AMERICA WAS NOT A
16 SUCCESSOR TO THOUSAND ADVENTURES. AND WE CITED ALREADY THE
17 TESTIMONY FROM MR. NOVELLI THAT HE GOT DEEDS OF THOUSAND
18 ADVENTURES RESORTS WHICH CAME ALONG WITH MEMBERSHIPS. AND
19 THAT WAS THE TESTIMONY REGARDING THE TRAVEL AMERICA
20 INVOLVEMENT.

21 WE THEN HAVE MR. RYMAN KNOWING THAT THEIR
22 34,000 ARE NOVELLI MEMBERS -- SO IT'S AN INFERENCE. AND
23 THE COURT CAN DRAW AN INFERENCE FROM THE EVIDENCE THAT WE
24 PRESENT. IT'S AN INFERENCE THAT HE KNEW THAT MR. NOVELLI
25 HAD OWNERSHIP OF THOSE MEMBERSHIP CONTRACTS.

26 THE ISSUE OF DID COAST ENGAGE IN WRONGFUL

1 CONDUCT DESIGNED TO INTERFERE WITH THESE 34,000 MEMBERS,
2 THE LAW, AS I UNDERSTAND IT IN CALIFORNIA NOW REGARDING
3 INTERFERENCE IS YOU'VE GOT TO SHOW SOME WRONGFUL CONDUCT,
4 MORE THAN JUST A BREACH OF THE CONTRACT BETWEEN THE TWO
5 PARTIES BUT -- OR EXCUSE ME -- MORE THAN JUST PERFORMANCE
6 OF THE CONTRACT, BUT WRONGFUL CONDUCT.

7 HERE AGAIN, I JUST INVITE THE COURT'S
8 ATTENTION TO MR. MALPASS'S TESTIMONY REGARDING THE FACT
9 THAT THERE WAS A VIOLATION OF THE AUTOMATIC STAY.

10 I ASKED MR. MALPASS A QUESTION REGARDING THE
11 FACT THAT ALL OF THE PLAINTIFFS' MEMBERS WERE SUBJECT TO
12 THE AUTOMATIC STAY. AND I'VE GONE THROUGH THE COURT HERE
13 WITH THOUSAND ADVENTURES, FIRST NATIONWIDE, REVCON, ALL
14 SUBJECT OF THE AUTOMATIC STAY.

15 AND THEN MR. MALPASS'S TESTIMONY THAT'S
16 SENDING OUT THOSE LETTERS WHILE THERE WAS AN AUTOMATIC STAY
17 IN EFFECT WAS ILLEGAL -- THAT WAS HIS TESTIMONY -- AND A
18 VIOLATION OF THE AUTOMATIC STAY. THAT'S THE WRONGFUL
19 CONDUCT THAT GOES TO THE INTERFERENCE IN THIS PARTICULAR
20 CASE.

21 ALSO THE ACTIONS BY THE DEFENDANTS IN DOING
22 SOMETHING THAT THEY HAVE NEVER DONE BEFORE -- AND I WON'T
23 REVISIT THE MITCHELL TESTIMONY, BUT HE WAS A SPEAKER AT ALL
24 OF THE -- SOME OF THE COAST TO COAST CONVENTIONS, SPOKE AS
25 AN EXPERT.

26 HE TESTIFIES THAT COAST TO COAST HAD NEVER

1 SENT OUT A LETTER LIKE THIS BEFORE. AND WE SHOWED THE
2 COURT EVIDENCE OF THE OTHER LETTERS THAT WERE SENT OUT THAT
3 SAID, "WE INVITE YOU TO LOOK AT THREE OR FOUR DIFFERENT
4 RESORTS. PICK ONE THAT MAY BE GOOD FOR YOU." MR. MITCHELL
5 TESTIFIED THAT THIS WAS THE ONLY TIME WHERE THEY
6 TRANSFERRED ONE TO THE OTHER.

7 WE SHOWED THE COURT MR. RYMAN'S TESTIMONY
8 WHERE HE UNDERSTOOD THAT THOUSANDS OF PEOPLE UNDERSTOOD
9 THAT THEY WERE BEING TRANSFERRED FROM ONE RESORT TO
10 ANOTHER. SO THIS IS THE WRONGFUL CONDUCT.

11 NOW, THE NEXT ELEMENT WOULD BE PROVING THAT
12 THE ECONOMIC RELATIONSHIP WAS DISRUPTED. AND I'M MERGING
13 THE TWO CONCEPTS OF CONTRACT AND ECONOMIC RELATIONSHIPS FOR
14 THE FIFTH AND SIXTH CAUSES OF ACTION.

15 BUT MR. NOVELLI TESTIFIED AT PAGE 4717, LINE
16 25, THROUGH 4719, LINE 18 -- AND I'VE GOT IT IN MY BRIEF
17 AND PAGE 9, AND I INVITE THE COURT'S ATTENTION TO IT. AND
18 MR. NOVELLI TESTIFIED. THEN YOU'LL NOTICE -- AND I'M
19 STARTING MID-PARAGRAPH, BUT I QUOTE:

20 "THEN YOU'LL NOTICE IN
21 1998 AND '99 WE ONLY HAD 457 AND
22 314. AND THAT WAS A DIRECT
23 RESULT OF WHAT HAPPENED BETWEEN
24 US AND COAST TO COAST. IN OTHER
25 WORDS, IT'S WHERE WE JUST -- WE
26 WERE DEVASTATED BY THIS ACTION."

1 END OF QUOTES.

2 THAT'S EVIDENCE, AS FAR AS A NONSUIT. IT'S
3 EVIDENCE BEFORE THE JURY. AND IT HAS TO BE ACCEPTED AS
4 TRUE, DISREGARDING ANY CONFLICTING TESTIMONY.

5 THEN MR. NOVELLI TESTIFIED AT PAGE 419,
6 LINES 1 THROUGH 19 ABOUT THE 35,000. AFTER LOOKING -- TO
7 SET IT IN CONTEXT, AFTER LOOKING AT THE CD, THE DISK THAT
8 WAS SENT OVER INTO DISCOVERY FROM COAST TO COAST, WHEN HE
9 LOOKED AT THE DISK, HE SAW 35,000 -- I'M ROUNDING IT UP.
10 35,000 MEMBERS, SO HE TESTIFIED. AND 22,000 OF THEM
11 STOPPED PAYING DUES TO THE PLAINTIFFS' RESORTS. THAT'S THE
12 TESTIMONY OF THE DAMAGE. THE AFFIRMATIVE ACT OF NO LONGER
13 PAYING DUES IS THE CAUSATION ISSUE.

14 AND THEN I INVITE THE COURT TO MY BRIEF,
15 SEPARATE BRIEF ON CAUSATION BECAUSE IT TALKS ABOUT OTHER
16 PARTICULAR AREAS.

17 FINALLY, THE AREA OF --

18 THE COURT: MR. SHAW, WITHOUT FURTHER ARGUMENT, I'M
19 PREPARED TO RULE. I WOULD GRANT A NONSUIT RIGHT NOW ON THE
20 CAUSE OF ACTION FOR FRAUD. I DON'T FIND THERE WAS ANY
21 EVIDENCE PRESENTED ON THAT CAUSE OF ACTION.

22 AND I WOULD GRANT A NONSUIT ON THE CAUSE OF
23 ACTION FOR CONSPIRACY, I BELIEVE IS THE CAUSE OF ACTION FOR
24 THAT ALSO.

25 MR. SHAW: WE DISMISSED THAT LAWSUIT, YOUR HONOR.

26 THE COURT: IS THAT DISMISSED?

1 MR. SHAW: I BELIEVE -- I'M PRETTY SURE WE DID.

2 THE COURT: OKAY. WHAT ELSE DID YOU DISMISS?

3 LET'S SEE. WE'VE DISMISSED UNFAIR COMPETITION, INJUNCTION,
4 ACCOUNTING, DEFAMATION. I THINK I'VE RECITED THEM ALL.

5 MR. RIVIN: THAT'S IT.

6 THE COURT: WHAT DOES IT LEAVE?

7 MR. SHAW: IT LEAVES THE BREACH OF CONTRACT, BREACH
8 OF IMPLIED CONTRACT, INTERFERENCE WITH CONTRACTUAL
9 RELATIONS, INTERFERENCE WITH PROSPECTIVE BUSINESS
10 ADVANTAGE, AND MISAPPROPRIATION OF TRADE SECRET.

11 THE COURT: SYNOPSISIZE THAT FOR ME. PRESENT IT TO
12 ME IN THE MORNING, JUST WHAT YOU'RE LOOKING FOR.

13 MR. SHAW: OKAY. JUST THE REMAINING CAUSES OF
14 ACTION.

15 THE COURT: JUST THE REMAINING CAUSES OF ACTION AND
16 WHAT YOU THINK, YEAH.

17 MR. SHAW: OKAY. THANK YOU, YOUR HONOR.

18 THE COURT: LET'S GO HOME.

19 MR. MOSHENKO: YOUR HONOR, COULD I JUST MARK THE
20 LIST OF RESORTS WITH CONTRACTS AS EXHIBIT 2207 FOR
21 IDENTIFICATION, MAKE IT A PART OF THE RECORD?

22 THE COURT: IDENTIFICATION ONLY.

23 MR. MOSHENKO: YES. THANK YOU.

24 (WHEREUPON, EXHIBIT NO. 2207, LIST OF
25 RESORTS WITH CONTRACTS, WAS MARKED FOR IDENTIFICATION.)

26 THE COURT: WHAT DID YOU CALL IT?

1 MR. MOSHENKO: IT WAS A LIST OF RESORTS THAT HAD
2 WRITTEN AGREEMENTS IN EVIDENCE.

3 THE COURT: AFFILIATION AND LICENSING AGREEMENTS,
4 AND YOU'RE MARKING THAT AS 2207?

5 MR. MOSHENKO: YES, YOUR HONOR. THANK YOU.

6 THE COURT: BRING ME THAT SYNOPSIS IN THE MORNING,
7 JUST THE CAUSES OF ACTION REMAINING.

8 MR. SHAW: DO YOU WANT SOMETHING IN WRITING?

9 THE COURT: JUST VERY BRIEFLY.

10 MR. SHERMAN: YOUR HONOR, AND SPECIFICALLY ON THE
11 FRAUD COUNT, WE EXPECT TOMORROW MORNING TO HEAR FROM
12 PLAINTIFFS AS TO THE SPECIFIC PROFFERS --

13 THE COURT: RIGHT.

14 MR. SHERMAN: -- OF EVIDENCE AS TO FRAUD, AS WELL
15 AS TO THOSE OTHER CLAIMS ASSUMING THAT NONSUIT IS GRANTED.

16 THE COURT: THAT'S WHAT I WANT TO HEAR.

17 MR. MOSHENKO: YOUR HONOR, WOULD YOUR HONOR BE
18 WILLING TO LET US KNOW WHAT IT IS ON THE FRAUD CAUSE OF
19 ACTION THAT YOUR HONOR THOUGHT WAS LACKING?

20 MR. SHERMAN: WE'D ASK THE COURT TO ADOPT OUR
21 PAPERS WITH RESPECT TO THE FRAUD CAUSE OF ACTION AS WELL AS
22 IF NONSUIT IS GRANTED AS TO THE REMAINING, THEN ON OUR
23 PAPERS.

24 THE COURT: YES. SEE YOU IN THE MORNING.

25 (WHEREUPON THE COURT WAS IN RECESS UNTIL
26 TUESDAY, JULY 25, 2000, 8:30 A.M.)

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