

1 IN THE UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 IN RE:)
) CASE NO. 99-36653-RCM-7
5 NICHOLAS E. CHENOWTH,) (CHAPTER 7)
)
6 Debtor.)
)

7 _____
ELECTRONIC DATA SYSTEMS)
8 CORPORATION,)
)
9 Plaintiff,)
) ADV. NO. 99-3560
10 VS.)
)
11 NICHOLAS E. CHENOWTH,)
)
12 Defendant.)

13

14 ORAL AND VIDEOTAPED DEPOSITION OF
NICHOLAS E. CHENOWTH
15 APRIL 13, 2000
VOLUME 1
16 ORAL AND VIDEOTAPED DEPOSITION OF

17 NICHOLAS E. CHENOWTH, produced as a witness at the
18 instance of the plaintiff, and duly sworn, was taken in
19 the above-styled and numbered cause on the 13th of
20 April, 2000, from 9:42 a.m. to 4:21 p.m., before Stacy
21 L. Jordan, CSR in and for the State of Texas, reported
22 by machine shorthand, at the U.S. Bankruptcy Court, 1100
23 Commerce, Room 14A8, in the City of Dallas, County of
24 Dallas, State of Texas, pursuant to the Federal Rules of
25 Civil Procedure.

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:
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5 FOR THE DEFENDANT:

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10 ALSO PRESENT:
11 Mr. Mike Corley, videographer
12 Ms. Stephanie Murphy

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1 PROCEEDINGS

2 (Videotape 1.)

3 THE VIDEOGRAPHER: We're on the record at

4 9:42 a.m., April the 13th of 2000, for the videotaped

5 deposition of Nicholas E. Chenowth. This is volume

6 number 1, tape number 1.

7 Will the court reporter now swear in the

8 witness, please.

9 NICHOLAS E. CHENOWTH,

10 having been first duly sworn, testified as follows:

11 EXAMINATION

12 BY MR. GLEBOFF:

13 Q. State your name, please.

14 A. Nicholas Edmond Chenowth.

15 Q. What's your address, sir?

16 A. (deleted for reasons of privacy).

17 Q. Is that in Dallas?

18 A. Yes, it is.

19 Q. Do you own that house, sir?

20 A. Yes, I do.

21 Q. Who else resides at that address?

22 A. My mother and my fiancée.

23 Q. What is your fiancée's name, sir?

24 A. Christi Simmons.

25 Q. And your mother's name is what?

1 A. Mary Ellen Chenowth.

2 Q. And, sir, you've been sworn today, and you

3 understand that you are under oath?

4 A. Uh-huh.

5 Q. And the testimony you give today is the same

6 as if you were testifying in a court before the judge?

7 A. Right.

8 Q. Do you have a job, sir?

9 A. Yes.

10 Q. What do you do?

11 A. I'm an instructor for Cooper Aerobics Fitness

12 Center, and I'm a full-time professional cyclist.

13 Q. How many hours a month do you work at the

14 Cooper Aerobics clinic?

15 A. It varies month to month. On average, I would

16 say, oh, 20 hours a week, so you can figure it out from

17 there.

18 THE REPORTER: I'm sorry?

19 THE WITNESS: 20 hours a week.

20 Q. Do you work anywhere else?

21 A. I do some contract work for some area health

22 clubs in Dallas and in Plano.

23 Q. And which area health clubs do you work at?

24 A. I have worked some at North Dallas, Signature,

25 and The Fit health clubs.

8

1 Q. How much of that do you do in a month?

2 A. It also varies. I would say, on average, an

3 additional 10 hours or so a week, 15, possibly.

4 Q. How are you paid by the Cooper clinic?

5 A. By check.

6 Q. Okay. Do you deposit your checks into a bank

7 account?

8 A. No, I do not.

9 Q. What do you do with them?

10 A. I cash them.

11 Q. What about North Dallas Health Club? How do

12 they pay you?

13 A. By check.

14 Q. Do you deposit those checks?

15 A. No, I do not.

16 Q. How about the Signature Health Club?

17 A. By check.

18 Q. And do you cash those checks?

19 A. No, I do not.

20 Q. What do you do with those checks?

21 A. I cash those checks.

22 Q. And what about for The Fit health clubs?

23 A. By check.

24 Q. And do you deposit those or cash them?

25 A. I cash those.

9

1 Q. What is the reason that you cash your
2 paychecks rather than depositing them in a financial
3 institution?

4 A. Since EDS has begun harassing me last May and
5 frozen mine and my mother's accounts, I don't believe I
6 have much confidence anymore in financial institutions.

7 Q. Do you maintain a bank account that you're
8 using for any purpose right now?

9 A. Not at all.

10 Q. How about your mother? Does she still
11 maintain —

12 A. No.

13 Q. — the joint accounts that you used?

14 A. They've all — they've been frozen by EDS and
15 she has no access to it, and so she also does not use
16 any checking or savings account.

17 Q. Do you have a safety-deposit box anywhere,
18 sir?

19 A. No.

20 Q. Do you have a storage facility anywhere, other
21 than at your home?

22 A. No.

23 Q. Have you ever had a storage facility with a
24 place called Storage USA?

25 A. That's in my mother's name, I believe.

10

1 Q. Okay. Where is that?

2 A. It's on Preston Road.

3 Q. Preston and what?

4 A. Frankford, I believe.

5 Q. What's in that storage facility?

6 A. Mostly my mother's and Christi's possessions.

7 Q. What types of things?

8 A. Old furniture, sofas, mattresses, things like
9 that.

10 Q. Any of your property in the storage facility
11 on Preston Road?

12 A. I have some old water skis, I believe, in
13 there.

14 Q. When was the last time you visited the storage
15 facility, Storage USA, on Preston Road?

16 A. I couldn't say. I don't really remember.

17 Q. This year?

18 A. Oh, sure.

19 Q. Since January 1 of 2000?

20 A. Uh-huh, yes.

21 Q. Okay. What was the purpose of visiting the
22 storage facility?

23 A. I really don't recall. I think I took some
24 mattresses over there, some pillows.

25 Q. How long have you had this access to the

11

1 storage facility at Storage USA?

2 A. I really don't recall. A couple of years, I

3 suppose.

4 Q. How much is the rent on that storage facility?

5 A. I don't know.

6 Q. Who pays for it?

7 A. My mother.

8 Q. How does she pay that bill now that she's not

9 using her bank account?

10 A. She pays all our bills with money orders.

11 Q. Okay. And where are those purchased?

12 A. I don't know.

13 Q. Where does she get the money to buy the money

14 orders?

15 A. From the checks that we all cash.

16 Q. Okay. Were those your checks from the Cooper

17 clinic, the North Dallas Health Club, the Signature

18 Health Club, and The Fit Health Club?

19 A. That would be part of it, sure.

20 Q. Okay. What are your other sources of income?

21 A. I don't have any other sources of income.

22 Q. Okay. What other sources of income do you,

23 your mother, and Ms. Simmons have presently?

24 A. You'd have to ask them. I mean, they have

25 their jobs, she has her pension, things like this.

12

1 Q. And how does your mother access her pension

2 now that she's no longer using her bank account?

3 A. She has her Social Security checks mailed to

4 her, and she cashes them.

5 Q. Okay. Does your mother have any other source
6 of income besides her Social Security checks?

7 A. She has some retirement from her Methodist
8 Hospital years.

9 Q. Anything else?

10 A. Not that I'm aware of.

11 Q. How about Ms. Simmons? What does she do?

12 A. She is in — she works for Richardson Bike
13 Mart.

14 Q. What does she do for Richardson Bike Mart?

15 A. A variety of responsibilities. I'm not sure
16 her exact job description.

17 Q. Does she sell bicycles?

18 A. She sells, does inventory, management, things
19 like that.

20 Q. All right. Is she paid by check?

21 A. Yes, she is.

22 Q. What does she do with her checks?

23 A. She cashes her checks, also.

24 Q. Does she give the money from her cashed
25 paychecks to your mother?

13

1 A. I'm not sure completely, but I believe
2 there's — there's certainly some, just to repay
3 expenses that she may incur for food and things like
4 this.

5 Q. Does she have any other source of income
6 besides Richardson Bike Mart?

7 A. Yes. She also is a spin instructor for
8 Cooper, North Dallas, The Fit, Signature.

9 Q. Same places you work?

10 A. That's correct.

11 Q. Is she also paid by check by the Cooper

12 clinic, The Fit, North Dallas Health Club, and Signature

13 Health Club?

14 A. To my knowledge, she is, yes.

15 Q. And to your knowledge, does she, in turn, cash

16 her paychecks?

17 A. Yes, she does.

18 Q. Do you know if Ms. Simmons has a bank account?

19 A. I'm not aware if she does.

20 Q. Do you have any valuables, Mr. Chenoweth, like

21 jewelry or art or that type of thing?

22 A. No.

23 Q. Have you ever?

24 A. No.

25 Q. Do you own stock in EDS?

14

1 A. I did.

2 Q. Do you know where that stock is?

3 A. I gave it to him, and he said I was going to

4 lose it to you guys.

5 Q. How many shares of stock in EDS did you have?

6 A. Well, I'm not sure. I — I think I was vested

7 for 300. I was ultimately going to be given 1,500

8 shares over a period of time, but I don't think it all

9 matures. I'm not sure exactly what the current number

10 of shares were, but I believe it was 300.

11 Q. Are you familiar with a business in Dallas

12 called — and forgive me if I pronounce it wrong —

13 called L'Image, L apostrophe —

14 A. Uh-huh.

15 Q. — I-M-A-G-E?

16 A. It's a hair salon, uh-huh.

17 Q. Okay. Is someone in your household a customer

18 of that hair salon?

19 A. Not that I'm aware of. My mom used to go
20 there.

21 Q. Does she any longer?

22 A. Very seldom now.

23 Q. Is she the only person in your household who
24 was a customer there?

25 A. I'm not sure.

15

1 Q. Do you know if Ms. Simmons was ever a
2 customer?

3 A. She may have gone there once or twice, yes.

4 Q. Do you ever go there?

5 A. No reason to need to.

6 Q. Well, I wouldn't think so, but I had to ask
7 the question.

8 A. I have gotten my hair cut there before, before
9 I started shaving my head, so, yes, I've been there
10 before.

11 (Exhibit No. 31 marked.)

12 Q. Mr. Chenoweth, I'm going to show you what we've
13 marked as Plaintiff's Exhibit No. 31, and — and I'll
14 represent to you that's the amended notice for your
15 deposition today. And I'd ask you to take a moment to
16 take a look at that, please, sir.

17 A. Okay.

18 Q. Have you seen the notice for your
19 deposition —

20 A. This?

21 Q. — before? Yes.

22 A. This document? This looks similar to
23 something I got last year, an — an earlier attempt for
24 a deposition, but I have not received this most recent

25 copy. Joe was going to mail this to me. I have not

16

1 received it yet.

2 Q. All right, sir. I'll represent to you that

3 part of the deposition notice is also a request for

4 documents —

5 A. Uh-huh.

6 Q. — duces tecum. Have you brought any

7 documents to produce today in response to that?

8 A. Joe has brought documents here.

9 MR. GLEBOFF: Counsel, are there

10 documents —

11 MR. GORDON: There are —

12 MR. GLEBOFF: — that are responsive?

13 MR. GORDON: There are documents here.

14 There is not full response to these because a lot of

15 these, if they exist, I don't know where they are. I —

16 I brought what I have.

17 MR. GLEBOFF: Okay. Well, we'll — if I

18 can get those from you when we take our first break,

19 then we'll — we'll return to that subject at that

20 time.

21 Q. Mr. Chenoweth, when was the first time you

22 bought — let me rephrase that.

23 Was the 1992 Lamborghini that you

24 purchased in 1995, was that the first imported sports

25 car that you owned?

17

1 A. No. The first imported sports car I owned was

2 in 1969.

3 Q. Okay. What kind of car was that?

4 A. It was a Pantera. Actually, it was seventy —

5 in 1970.

6 Q. Okay. How much did you pay for the
7 Lamborghini that you purchased in '95?

8 A. It would have been 120, 125. I don't know.

9 (Exhibit No. 32 marked.)

10 Q. Let me show you what we've marked as Exhibit
11 No. 32, which is a copy of some interrogatory answers
12 that were filed by your lawyers in the state court
13 litigation that preceded this bankruptcy proceeding.

14 Let me ask you to turn to the last page
15 of Exhibit No. 32. Is that your signature that appears
16 on the verification page?

17 A. Yeah, it is.

18 Q. All right. Turn back, if you would, to page
19 11.

20 A. Uh-huh.

21 Q. And the first full paragraph on that page says
22 that you purchased a 1992 Lamborghini in 1995 and that
23 you believed the purchase price was approximately \$132.
24 Do you see where I've read that?

25 A. \$132,000?

18

1 Q. I'm sorry. Yes. \$132,000.

2 A. Yes, I do.

3 Q. And that the monthly payments were around
4 \$1,700?

5 A. That's correct, right.

6 Q. All right. At — at the time that you had car
7 payments of \$1,700 for the Lamborghini, how much were
8 your house payments?

9 A. \$1,400, I believe.

10 Q. How much were you making in 1995?

11 A. I really don't recall. I'm sure you have
12 those records.

13 Q. Well, I guess my question is: How is it that
14 you were able to afford to pay for a Lamborghini in
15 1995?

16 A. Well, this is what a lot of people don't seem
17 to understand, and especially you and EDS. I had — I
18 have no children. I have no alimony. I have no debts.
19 I have lived for nearly nine years rent-free, from 1988
20 to 1995.

21 Since 1969, I have been a car enthusiast,
22 and over those years, I have bought dozens of
23 automobiles that far exceeded my income, I suppose. But
24 if you have good credit, you can get into these cars,
25 put them on major notes, interest notes, and keep the

19

1 payments in a term that is — maybe that's — that's
2 manageable.

3 The budget I've established for myself
4 over the years is around \$2,000 for discretionary
5 income. It's a hobby and an interest that I've had all
6 of my adult life, and I've kept large numbers of
7 vehicles for very short periods of time. Rolled out of
8 them, sold them, lost some money, broke even on some.

9 But in my situation, I felt it was always
10 justifiable because that's what I — I like to do.
11 That's what motivated me. And that's one of the
12 reasons, unfortunately, I do not have — I did not
13 acquire a great deal of savings or wealth in other
14 areas, because I kept buying — buying cars in that
15 manner.

16 Q. Did you finance your purchases, starting with
17 the Lamborghini in '95 and then followed by — what, did

18 you have two Ferraris after that?

19 A. I'm not sure. One or two, yes.

20 Q. Well, your interrogatory answer says that in

21 '96 you traded the Lamborghini for a '91 Ferrari.

22 A. That's correct.

23 Q. Financed that at Legacy Bank.

24 A. That's correct.

25 Q. Financed the Lamborghini at Legacy Bank.

20

1 A. Uh-huh.

2 Q. And then in '98, you traded the first Ferrari

3 for a '98 Ferrari and financed that at Legacy Bank.

4 A. That's correct.

5 Q. Okay. Now, was Legacy Bank previously called

6 Plano Bank & Trust?

7 A. I'm not sure, but I believe so.

8 Q. That's where you've done your banking for —

9 A. Most of the time.

10 Q. — at least the last few years?

11 A. That's correct.

12 Q. All right.

13 (Exhibit No. 33 marked.)

14 Q. Let me show you what we've marked as

15 Deposition Exhibit No. 33.

16 A. Yes.

17 MR. GLEBOFF: There's a copy for you.

18 Q. And it's several documents that have been

19 clipped together, and let me ask you to look at the last

20 document in the group and tell me if you can identify

21 that last document as a financial statement that you

22 filled out for Plano Bank & Trust in or about February

23 of 1996.

24 A. I believe you and I talked about this back in
25 January or whatever. I did not see any of these. My

21

1 mother filled these out and I turned them in to the
2 banks.

3 Q. Okay. Let me ask you to go back to that —
4 that last document has a number on it, EDS02 —

5 A. Uh-huh.

6 Q. — 6353. Do you see that page?

7 A. No. I'm looking.

8 Q. Okay. That's going to be one, two, three,
9 four pages from the back —

10 A. Okay.

11 Q. — of Deposition Exhibit 33. All right. Do
12 you see page EDS026353? The — the Bates number is
13 toward the lower right-hand corner of the document.

14 MR. GORDON: Can you give me that number
15 again? What is that number, again?

16 MR. GLEBOFF: It's 026353.

17 A. Okay. I'm getting there. '352, '354.

18 Q. I tell you what. Maybe we ought to — maybe
19 you don't have all the pages in there. Let me trade
20 with you.

21 A. I think there's one missing.

22 MR. GLEBOFF: And we can put another
23 sticker on that one, if that's all right with you.

24 Q. Okay. EDS026353.

25 A. Okay. I'm there.

22

1 Q. Have you located that page?

2 A. Yes, I have.

3 Q. All right. Is that your signature at the

4 bottom right- —

5 A. Yes.

6 Q. — hand corner?

7 A. Yes, that's my signature.

8 Q. Okay. Whose handwriting is that on the rest
9 of page 026353?

10 A. I believe it's my mother's. The printing?

11 Q. Yes.

12 A. Yeah, I believe it's hers.

13 Q. Okay. How is it that your mother came to fill
14 out this 1996 financial statement?

15 A. I was traveling a great deal, and, again, my
16 mom handled all of my finances, business plans, credit
17 card stuff, checks, bills, et cetera.

18 Q. Okay. Let me direct your attention to some of
19 the entries in the column for assets.

20 A. Uh-huh.

21 Q. About a little more than halfway down in that
22 column, there's an entry for cash value of life
23 insurance.

24 A. Uh-huh.

25 Q. And it appears that the entry there is

23

1 \$150,000. Do you see that?

2 A. Uh-huh.

3 Q. Was that an accurate statement in February of
4 1996 —

5 A. I don't know.

6 Q. — regarding —

7 A. I really don't know. Whatever life insurance
8 I had with EDS.

9 Q. Okay. Let me ask you to turn to the third
10 page, which is 026355.

11 A. Uh-huh.

12 Q. And there's a table there called schedule 3,
13 life insurance.

14 A. Uh-huh.

15 Q. And it appears to say, Allstate, \$150,000 —

16 A. Uh-huh.

17 Q. — face amount? Did you own a policy at
18 Allstate with a \$150,000 face amount in 1996?

19 A. I have — I did have — I don't know if I
20 still do — I had a — it was either 100, \$150,000 life
21 insurance policy. I'm not sure if it was Allstate or
22 not. I've been paying on it for years. I've had it
23 since the early '80s, I believe.

24 Q. You still have it?

25 A. I'm not sure. I think my mom's still making

24

1 payments on it.

2 Q. Where would it be, if you still have it?

3 A. I don't know. Like I told you, I do not keep
4 any of my own records, and I don't pay any attention to
5 that stuff.

6 Q. Well, when you prepared your schedules when
7 you filed your bankruptcy action —

8 A. Uh-huh.

9 Q. — did you make any effort to determine
10 whether you have a cash-value life insurance policy that
11 would be considered an asset of your estate?

12 A. To my knowledge, I do not have any cash-value
13 policy.

14 Q. Did you in 1996 at the time you submitted this
15 financial statement?

16 A. I'm — I'm not sure. I'm not sure, to be

17 frank with you.

18 Q. Did you do anything when you submitted the
19 financial statement to the bank to determine whether
20 that was correct?

21 A. I really didn't look at it, to be honest with
22 you.

23 Q. Okay. Did you read the information that's
24 printed on the form, on page 026353, before you signed
25 it?

25

1 A. No, I did not.

2 Q. Okay. Do you see where it says there that the
3 penalties for misrepresenting information on that
4 statement can be a fine of not more than \$5,000,
5 imprisonment of not more than two years or both under
6 Title 18, Section 1014 of the U.S. Code?

7 A. No.

8 Q. Did you read that before you signed it?

9 A. No.

10 Q. All right. Sir, in February of 1996, did you
11 have \$147,000 worth of cycling equipment?

12 A. Well, as a matter of fact, I — I'm not sure
13 if it's that much, but EDS has stolen from me nearly
14 \$60,000 worth of equipment, and equipment that I had
15 bought during the 1980s, from 1980 to 1990, that, as far
16 as I know, they still have in their possession. In
17 addition to that, the Corima equipment that has been
18 given to me over the past several years would certainly
19 come up very close to that total now, I guess.

20 Q. Okay. My question for you, sir, was: When
21 you submitted this document to the Plano Bank & Trust,
22 did you, in fact, own \$147,000 worth of cycling
23 equipment?

24 A. Well, I think that comes — here we get into a
25 gray area again. I mean, what do I define as ownership?

26

1 I define as ownership virtually anything that I had
2 built for me or made for me, because it was discussed
3 with me completely by my management group, this
4 equipment was mine.

5 The specifics, I can't remember, but I
6 know I had at least 40 or 50 percent of that dollar
7 amount in equipment that I began purchasing since 1980.
8 And actually, I supplied the team with my own equipment
9 through the first two or three years of the team's
10 existence, and virtually every rider on the team was
11 using the equipment that I had sacrificed a great deal
12 for to purchase on my own.

13 Q. But my question is: If, in fact, this is your
14 mother's handwriting —

15 A. Uh-huh.

16 Q. — how did your mother come up with
17 \$147,000 —

18 A. I don't know. I don't know.

19 Q. — to submit to the bank?

20 A. I don't know. I don't know. I — I — you
21 know, there was so much equipment floating around during
22 these — these years. I have no idea. Maybe she talked
23 to someone on the team. I have no idea.

24 Q. All right. Let me ask you to turn your
25 attention to the next financial statement, which begins

27

1 with page EDS026345.

2 A. Uh-huh.

3 Q. And can you identify that as a financial

4 statement that you submitted to Plano Bank & Trust on or
5 about January 10th of 1998?

6 A. I don't recall this.

7 Q. Is that your signature on page 026345?

8 A. It's 026354 I think it's on. That is my
9 signature, yes.

10 Q. If you look in the asset section — well,
11 first of all, there's a name on there, Gary Ritter,
12 under the — in the accountant box.

13 A. Uh-huh.

14 Q. Is he your accountant?

15 A. Yes, he is.

16 Q. Under real estate, on assets, you list your
17 homestead at \$375,000.

18 A. Uh-huh.

19 Q. How did you come up with that number?

20 A. From my understanding, that's the approximate
21 value of it.

22 Q. What do you base that understanding on?

23 A. Just the neighborhood, sales that have taken
24 place in my neighborhood.

25 Q. All right. If you look down to the cash value

28

1 of life insurance entry, on this page, 026345, it says,
2 \$625,000. Do you see where I've read that?

3 A. Yes, I do.

4 Q. And then if you turn to page 026347 on
5 schedule 3, it lists life insurance with, under company,
6 EDS, in the face amount of \$625,000. Do you see where
7 I've read that?

8 A. Uh-huh.

9 Q. Did you ever have \$625,000 of life insurance?

10 A. I think my mom was thinking about that if I
11 were killed inadvertently in travel or trip, that it
12 would be two or three times my income at that point in
13 time. That's the only reason I can think of that she
14 came up with that figure.

15 Q. But, in fact, you did not have cash surrender
16 value life insurance of \$625,000 —

17 A. I'm not sure.

18 Q. — in January of '98, did you?

19 A. I'm not sure how much insurance I ever had
20 with EDS, to be frank with you.

21 Q. This financial statement lists other personal
22 property of \$15,000 on page 026345. What was that?

23 A. Well, again, I'll tell you, I did not fill
24 this out, so I couldn't really tell you.

25 Q. You did sign it, though?

29

1 A. Yes, I did see it. We've already established
2 that.

3 Q. And you did get a loan from the bank?

4 A. Yeah, that I paid off.

5 Q. Under other assets, there's a listing for
6 \$220,000 in furniture.

7 A. Uh-huh.

8 Q. What kind of furniture?

9 A. Well, I don't have any furniture. I have a
10 big-screen TV and a bed, as I told you last time. The
11 rest of the furniture is my mother's, but that's not
12 nearly that much.

13 Q. Why did you sign a financial statement that
14 said you had \$220,000 in furniture?

15 A. Well, as I told you, I didn't read it. That
16 was a big mistake on my part, I suppose.

17 Q. What about electronics of \$45,000?

18 A. No, I don't have any electronics.

19 Q. So that would be a false representation in
20 this financial statement?

21 A. No. I'm — I'm not going to define anything
22 as false. I said I didn't read it.

23 Q. Is it true that you had \$45,000 in
24 electronics?

25 A. No, I — I didn't. To my knowledge, I've

30

1 never had that much.

2 Q. So on the — just so we're clear, on the date,
3 January 10, '98, that you signed this financial
4 statement, you did not have \$625,000 in cash-value life
5 insurance; is that correct?

6 A. I'm not sure if I did or not. And again, I'm
7 not sure what EDS' insurance — I'm sure you can check
8 with them and identify exactly what I had at that point
9 in time. I wouldn't know, but I'm sure you can call EDS
10 and define what was my exact policy.

11 Q. All right. I'm not —

12 A. My mother and I had talked about, at times
13 during — again, because of the nature of what I was
14 doing for EDS, competing and racing and the high
15 potential of injury or death in some of the travels and
16 competitions, she — there may have been some
17 misunderstanding about that.

18 Q. How about the furniture? On the day you
19 signed the financial statement, is it correct that you
20 did not own \$220,000 —

21 A. Yes.

22 Q. — worth of furniture?

23 A. That's correct.

24 Q. You did own a Ducati motorcycle?

25 A. Yes, I did.

31

1 Q. And the approximate purchase price of that was

2 \$15,000?

3 A. That's correct.

4 Q. All right. It is — it's not correct on page

5 026345, then, that you owned \$45,000 in electronics?

6 A. That's correct.

7 Q. And it is also not correct that you owned

8 \$35,000 in jewelry and art on —

9 A. That's correct.

10 Q. Excuse me. — on January 10, 1998?

11 A. Right. That's correct.

12 Q. Mr. Chenoweth, is it fair to say that if you

13 took some of these assets out of your financial

14 statement, the — the furniture, the electronics, the

15 jewelry and the art and the cash value of the life

16 insurance, that you, then, would not have had sufficient

17 net worth to borrow the money you wanted to borrow to

18 buy the Ferrari?

19 A. I had an extremely good credit rating, and to

20 be frank with you, I'm — I'm — I can't answer that

21 question, nor can you, nor can anybody else, but the

22 loans that I — were approved for me were established on

23 my knowledge of the automobiles, the appreciation or the

24 depreciation of the automobiles over a set period of

25 time. It was common knowledge with the bank I was going

32

1 to keep these automobiles for a short period of time,

2 and as I'm sure your records will show, I paid these

3 loans off precisely on time in fulfillment of my

4 contractual agreement with them.

5 Q. Who was your banker?

6 A. I don't remember his name.

7 Q. Did anybody at the bank ever tell you you had

8 to have some net worth before they'd loan you money to

9 buy a Ferrari?

10 A. No. Like I said, I've been buying cars since

11 1970.

12 Q. All right. Let me ask you to turn to the next

13 financial statement, which is — the first page is

14 EDS026349.

15 A. Uh-huh.

16 Q. And I think it precedes the other one in date

17 order. It appears to be a financial statement of March

18 1, 1997.

19 Let — let me — let me drop back,

20 however, if — if we can, to the January 10, '98

21 financial statement. Is it your testimony that other

22 than your signature, the remainder of the handwriting on

23 that financial statement is the handwriting of your

24 mother?

25 A. It — it looks like it. I'm not sure.

33

1 Q. Is it your testimony that that's not your

2 handwriting?

3 A. Well, this is all printing. I — I really

4 don't recall. It's my signature, definitely, though.

5 Q. But you can't tell me whether it's your —

6 your printing or your mother's printing?

7 A. No.

8 Q. Okay. How about on the — the — the last one

9 in the group, which is the January 15th, 1996 financial

10 statement, 026353 being the first page? Can you tell me

11 whose printing that is above your signature?

12 A. Well, clearly, these all look like the same

13 printing, to me.

14 Q. And whose is that?

15 A. Like I said, I couldn't really say for sure.

16 I would assume it would be my mom. This is my

17 signature, though.

18 Q. But you can't tell the difference between your

19 printing and your mother's printing?

20 A. No. We print very much alike.

21 Q. Okay.

22 A. We really do.

23 Q. All right. Let's go back to EDS026349, the

24 1997 financial statement. That document.

25 A. What page?

34

1 Q. Have you — have you found it?

2 A. No.

3 Q. 026349.

4 A. I'm going backwards. Okay.

5 Q. All right. Can you identify that document?

6 A. It looks like all the rest of them.

7 Q. Is it a financial statement that you submitted

8 to Plano Bank & Trust?

9 A. I don't recall submitting it, but it's — it's

10 my signature.

11 Q. Is it a true statement on the first page of

12 the '97 financial statement that you had \$400,000 of

13 cash-value life insurance?

14 A. Well, again, you'll have to ask EDS what my

15 cash value was because I'm not sure what it was.

16 Q. Did you do anything to investigate it?

17 A. My mother may have. I didn't.

18 Q. Do you know how it is that the amounts of
19 cash-value life insurance on your financial statements
20 that you submitted to the bank changed from 150 in '96
21 to 497 to 625 in '98?

22 A. No.

23 Q. Did you ever tell your mother that you had
24 that amount of cash-value life insurance?

25 A. No.

35

1 Q. You don't know where she got that number?

2 A. Huh-uh.

3 Q. Is it your testimony that you did not put that
4 number on page 026349?

5 A. No. No, I did not.

6 Q. So it's your testimony that that's not your
7 printing on page 026349?

8 A. I don't recall ever having done that. And
9 again, I didn't have any — any numbers to — to
10 document to put that on there with, so, no, it's not my
11 numbers.

12 Q. Well, my — my question is, sir: Are you
13 testifying unequivocally that you did not write in your
14 hand the number 400,000 on page 026349?

15 A. I'm not — I'm absolutely not sure that that's
16 my handwriting, but I do not believe I did it, and I
17 don't recall filling out any of these forms at any time.
18 My mother's handwriting and mine are very close in
19 printing. I asked her to fill out any financial report
20 like this for me. Many times I wasn't even here.

21 Q. The next line — two lines down, other
22 personal property of \$107,000, what's the basis for that

23 number, sir?

24 A. Well, we can keep going over this all day

25 long. I can tell you that I — I don't know, so I have

36

1 no idea.

2 Q. Is it your testimony that that's not your

3 printing on this form, 107,000?

4 A. I've told you from the beginning, I don't

5 believe that this is my printing. It's my signature on

6 the form, but I'm — I cannot tell you the exact

7 justification for any of these numbers.

8 Q. Did — did you own \$107,000 of personal

9 property on March 1st, 1997?

10 A. Well, I was considering the bicycling

11 equipment that I owned to — to be in that — in that

12 ballpark, yes.

13 Q. Did you have any other personal property on

14 March 1st, 1997?

15 A. No.

16 Q. When did you buy your big-screen TV?

17 A. 1984.

18 Q. All right. Let me ask you to turn to the

19 first page of Exhibit 33, which has a number of

20 EDS026340.

21 A. Uh-huh.

22 Q. Do you see that?

23 A. Yeah.

24 Q. All right. Is that your signature on the

25 bottom left of that page?

37

1 A. Yes, it is.

2 Q. And do you recognize that as Ms. Simmons'

3 signature on the bottom right?

4 A. I couldn't tell you if that's hers or not.

5 Q. Were you in her presence when she placed her

6 signature on the first page of Exhibit 33?

7 A. I have no idea.

8 Q. Do you recall where you were when you signed

9 page 026340?

10 A. No.

11 Q. Do you have a recollection of signing it?

12 A. No.

13 Q. What kind of loan were you applying for in

14 February of '99?

15 A. I believe this was for a boat.

16 Q. What kind of boat?

17 A. A Baha boat.

18 Q. What is — what's a Baha boat?

19 A. It's just a boat, just a ski-type boat.

20 Q. Okay. How much does a boat like that cost?

21 A. Oh, 200,000.

22 Q. Where were you going to keep the boat?

23 A. I hadn't decided yet.

24 Q. Had you made a down payment on the boat at any

25 time?

38

1 A. No.

2 Q. Did you fill out page 026340? And by that —

3 A. No.

4 Q. — I mean the printing part.

5 A. No.

6 Q. Is it your testimony that that's not your

7 printing?

8 A. That's correct.

9 Q. Who filled it out?

10 A. I'm not sure.

11 Q. Who do you think filled it out?

12 A. Maybe the dealer or possibly my mom.

13 Q. How would the dealer fill it out and put in
14 your personal financial information?

15 A. I don't remember, but there was this
16 long-drawn-out process when we were considering getting
17 into a boat from the cars, and I don't really recall the
18 process of going through this.

19 Q. Mr. Chenoweth, let me ask you a question that
20 I — I don't mean this to sound argumentative, but I —
21 I do want to understand your explanation, and that is,
22 we — we see that there are four financial statements
23 prepared under your name and submitted to the same bank
24 that contain information that you have testified is not
25 accurate.

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1 My question is: Why is it that you are
2 asking or would ask a bankruptcy judge to believe that
3 you have no knowledge of how your financial information
4 came to appear on these statements and yet you signed
5 them?

6 A. Well, it was a pretty bad judgment call on my
7 part, but like I said, for the past 15 years, I've not
8 managed any of my finances.

9 Q. All right. Let me ask you about some of the
10 particular entries on page EDS026340.

11 A. All right.

12 Q. First of all, do you recall asking Ms. Simmons
13 to witness your signature?

14 A. No, I don't.

15 Q. On February 21st of 1999, did you own life

16 insurance with a cash value of \$775,000?

17 A. Again, that would be dependent on what EDS
18 had — what I had with EDS.

19 Q. If you turn to the next page, the schedule 4
20 for life insurance has a box that says, restricted:
21 yes, no, and it — the no has been circled. My question
22 is: Who did that?

23 A. I have no idea. I don't understand the
24 terminology of restricted or nonrestricted. I don't
25 know what you're talking about.

40

1 Q. Back on the first page, 026340, there's
2 personal property of \$22,000 listed. Do you see where
3 I've read that?

4 A. Yes, uh-huh.

5 Q. Is that accurate as of the date this financial
6 statement was prepared?

7 A. Well, that would be a — a portion of my
8 bicycles at that time, sure.

9 Q. Okay. Other assets of \$355,000, do you see
10 where I've read that?

11 A. Yes, uh-huh.

12 Q. And it references schedule 8, which appears on
13 page EDS026342. If you'll turn to that, do you see
14 schedule 8?

15 A. Yeah, sure.

16 Q. It references furniture with a market value of
17 \$255,000?

18 A. Uh-huh.

19 Q. Do you see that? Is that correct, that you
20 owned furniture having a market value of \$255,000?

21 A. No.

22 Q. Who wrote the entry on line 1 of schedule 8 on
23 this financial statement?

24 A. I couldn't tell you.

25 Q. Is it your testimony that that's not your

41

1 handwriting?

2 A. That's correct.

3 Q. Well, if — if it wasn't you, was it your
4 mother that filled out the financial form?

5 A. I'm sure it must have been, sure.

6 Q. What about electronics in the amount of
7 \$45,000 —

8 A. Uh-huh.

9 Q. — is that a correct statement?

10 A. No, it's not, no.

11 Q. What about jewelry and art of \$40,000? Is
12 that correct?

13 A. No, it's not.

14 Q. Have you ever talked to anybody about your
15 financial statements that you submitted to the bank in
16 Plano, Plano Bank & Trust, later Legacy Bank?

17 A. No.

18 Q. Did you talk to the banker about them?

19 A. Huh-uh.

20 Q. Did you talk to Ms. Simmons about it?

21 A. No.

22 Q. Do you know how it is her signature came to
23 appear on the first page of Exhibit No. 33?

24 A. I don't remember, to be frank with you. I
25 don't.

42

1 Q. Why did you not purchase the boat?

2 A. I just couldn't get a deal together. It

3 didn't work out.

4 Q. Have you ever owned a boat?

5 A. Yes. I think you asked me that question the

6 last time we met.

7 Q. What kind of boat have you owned in the past?

8 A. I've owned Ski Natique and a Chris-Craft —

9 Q. And when —

10 A. — and an Avenger.

11 Q. All right. When did you own the Ski Natique?

12 A. 1978 through 1990.

13 Q. Okay. When did you own —

14 A. Excuse me. Yeah, 1978 through 1980.

15 Q. Okay. And then when did you own the Avenger?

16 A. That would have been in the '77 to '79 time

17 frame.

18 Q. And — and when did you own the Chris-Craft?

19 A. '82 to '84.

20 Q. You haven't owned any boats since then?

21 A. That's correct.

22 Q. Who is Harry Cutting?

23 A. Skip Cutting is — was our team director and

24 coach.

25 Q. Did you ever receive any money from

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1 Mr. Cutting?

2 A. In — what do you mean, receive money from? I

3 don't understand what you mean.

4 Q. Did Mr. Cutting ever deliver to you or give

5 you any money?

6 A. You mean just give me — what do you mean,

7 give me money?

8 Q. I — I mean in any sense of the word, have you

9 ever received from him any money?

10 A. In the early '90s, Skip did deposit some —
11 some money into one of my — our accounts for me to —
12 to purchase some equipment with.

13 Q. Why did he do that?

14 A. I don't recall the details. I think that we
15 were trying to purchase a large number of wheels or
16 tires or something and we needed to generate cash for
17 it, so — again, this was back in the '93, '94 time
18 frame. I don't really recall.

19 Q. Where did he get the money?

20 A. I don't really understand what you're saying.

21 Q. Well, if somebody gives you money or puts
22 money in your bank account, that — that seems a little
23 bit out of the ordinary. What I'm trying to understand
24 is why would Mr. Cutting be depositing his money into
25 your bank account?

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1 A. Well, at that time, my mother and I had paid
2 around 70 to 75, \$80,000 for Team EDS equipment in the
3 early '90s buying equipment, because we did not have the
4 money and the funds for EDS to do that. So basically,
5 my family was financing Team EDS.

6 We did not have the budgets to cover that
7 type of expense. And in the late '92, early '93 time
8 frame, I went to my manager, Vicki Yaccavonni, and
9 explained to her that we had put out large sums of cash
10 to sustain the team and to keep it competitive and we
11 needed to be refunded for that money. So at that
12 particular time, that would have probably been the
13 monies or some of the monies that Skip would have, based
14 on Vicki's direction, to expense out and deliver to me.

15 Q. Okay. Let me see if I can focus in here so I
16 understand this. By sometime in 1992 — is — is that
17 the date that you testified?

18 A. Well, the — the ninety — '93, '94 time frame
19 was when we had a substantial enough budget to withstand
20 the — the repayment of these dollars back to me that
21 incurred — that I incurred debt on between '89, '90,
22 and '91, if memory serves me on that.

23 And in going to Vicki — and I was using
24 vehicles, my own vehicles for the team, vans and
25 Suburbans. I was paying out most of the significant

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1 expenses out of pocket. If you — if you can
2 understand, our budgets for the team were in the 20, 30,
3 \$40,000 range, but at the same time, I was given the
4 responsibility to make it a — competitive at Nationals
5 and ultimately an international team.

6 So there was some growing pains that we
7 went through, and I wanted to do the best I could to —
8 to put the best foot forward in the team, so we
9 decided — my mom and I decided to put the money up, buy
10 the equipment, and then we felt down the road it could
11 be refunded to us, and fortunately it was.

12 Q. Now, is it your testimony that Ms. Yaccavonni
13 authorized you to receive some money from EDS vendors?

14 A. Yes.

15 Q. Is it your testimony that Ms. Yaccavonni
16 authorized you to receive money from Mr. Cutting?

17 A. Yes.

18 Q. Okay. Where did Mr. Cutting get the money
19 that he was going to give to you?

20 A. I'm not sure the exact administrative process
21 because I wasn't responsible for that, but it would have

22 been managed through Vicki's office, her administrative
23 assistant or my administrative assistant.

24 Q. Did you think Ms. Yaccavonni — well, let
25 me — let me focus on what exactly Ms. Yaccavonni said

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1 to you. When did you have a conversation with

2 Ms. Yaccavonni about your receiving funds?

3 A. Vicki took over my organization in September
4 of 1992. Prior to that, I had been part of another
5 organization when EDS went through a major reorg that
6 late summer, just following the Olympics, the '92
7 Olympics that I had successfully delivered for EDS. And
8 during the process of ramping up Global Sports to —
9 to — the group ultimately became — we were negotiating
10 for major Olympic ties and World Cup Soccer ties at that
11 time.

12 Once Vicki came on board, she was a very
13 thorough, detailed-oriented manager. I spent many, many
14 hours briefing her, educating her about the industries
15 that we were doing business with, the Sports Federation,
16 the governing bodies, et cetera, and conversations
17 regarding budgets.

18 How one would go about managing this very
19 unusual industry that we were doing business in was more
20 of a — I'll use the term a cottage industry. It's —
21 doesn't have the normal rules and regulations that
22 typical EDS customers have. So we had to figure out
23 ways to conduct business; at the same time, do it within
24 very confined budget dollars.

25 Q. All right. If you'd — your interrogatory

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1 answers that we've marked as an exhibit, in one of

2 the — interrogatory number 6 asked you who at EDS
3 decided that Team EDS expenses should be disguised, and
4 also, who at EDS instructed you to set in place an
5 accounting system that would allow the team to pay
6 certain expenses and persons without the expenses
7 appearing on the books of EDS.

8 A. Right, right.

9 Q. And in the response to both of those, you
10 answered that Vicki Yaccavonni had — had directed that.

11 A. Yes.

12 Q. Is it — is that direction what you've been
13 describing to me?

14 A. Yes, and this is something else that you have
15 to keep in mind. These were not major decisions. These
16 were just small. Our main focus, during this whole
17 period — our — our Team EDS cycling projects accounted
18 for maybe 10 percent, 10 percent of our focus. It was
19 very, very minor projects.

20 The — the big stuff, if you will, was,
21 at that time, World Cup '94, soon to be our Formula One
22 projects and South Australia '95 and, of course, the
23 Olympics in '96 that this stuff was part of, but these
24 were very trivial decisions that were discussed in an
25 environment that was — there were no accounting systems

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1 set up within EDS to manage payments for bike wheels,
2 for tires.

3 EDS is a hierarchy and a bureaucracy, as
4 I'm sure you can appreciate, that did not work well with
5 the type of cost centers that we were generating. And
6 so we would quickly boil down to a stalemate of getting
7 nothing done, and that was not acceptable by the

8 executive management. So we had to find ways to — to
9 get the job done.

10 Q. Okay. As part of the authorization that you
11 claim Ms. Yaccavonni gave you, did she authorize you to
12 submit or to have vendors submit to EDS documents that
13 were not accurate in what they described?

14 A. Absolutely.

15 Q. Did you think that Ms. Yaccavonni had the
16 authority to authorize you to do that?

17 A. Absolutely.

18 Q. Why did you think Ms. Yaccavonni could
19 authorize you to submit false documents to EDS?

20 A. Until last spring when I met with a few EDS
21 legal people, I never thought twice about it. It was
22 just a form of doing business and, again, excelling in
23 the projects that we had. And you have to keep in mind,
24 too, that these projects were highly successful for EDS.

25 Q. Did anybody other than Ms. Yaccavonni ever

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1 tell you you could submit false documents to EDS?

2 A. I'll be frank with you. This was common
3 practice within EDS.

4 Q. And my question is: Did anybody other than
5 Ms. Yaccavonni tell you or you understood that they had
6 told you —

7 A. Vicki Yaccavonni was my manager, so it was
8 irrelevant. These — these things wouldn't be
9 discussed. I mean, they were certainly confidential
10 issues like compensation and things like this. We would
11 never discuss this openly for any reason.

12 I mean, it was a very taboo topic to
13 discuss financing, budgets, compensation issues,
14 whatever, in any type of a public forum. So Vicki was a

15 senior executive within the corporation. I believe her
16 title was VP of marketing. She was one of the top 50
17 people in the company, so —

18 Q. Do you know when she started at EDS?

19 A. Yeah. She started when she was, like, 18 or
20 19. I mean, she was — she was a 25-year veteran. I
21 mean, she was one of the old-timers.

22 Q. Do you know who she worked for when she
23 started?

24 A. Absolutely. She worked for — well, she
25 worked for Perot for quite a while. She also worked for

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1 Mort Meyerson for a great deal of her career.

2 Q. Are you aware — are you aware of any other
3 circumstances in which Ms. Yaccavonni authorized anyone
4 to submit false documents to EDS?

5 A. Yes.

6 Q. What was that?

7 A. I know Gail Davis, within her organization,
8 constantly was confronted with unusual bills and things
9 like this, and Vicki was openly telling me that she
10 frequently had unusual issues that she had to fund and
11 take advantage of to get the things done under the
12 budget.

13 Q. Tell me, as best you can remember, exactly
14 what Ms. Yaccavonni said to you that you construed to be
15 authorization to submit invoices that were not accurate
16 or to receive funds from vendors.

17 A. Well, each situation would have been somewhat
18 different, but we — it would depend on this — the time
19 and — and issue, but I would — I would tell her my
20 problem or my situation, and — and again, all these

21 were done under constraints of budget.

22 And I want to add, too, that I never
23 exceeded my budget in any of the years that I managed
24 these projects, and every year my budgets were
25 restricted and reduced up to 20 to 30 percent. So we

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1 not only had set goals that had to be met, we were
2 working under a very confined, strict environment of
3 budgets have to be reduced.

4 So we — Vicki and I were both forced
5 with creatively coming up with ways to get the job done
6 but doing it in a manner that was very nontraditional.
7 So when we looked at our ultimate budgets and we looked
8 at so many times the budgets that were being reduced, we
9 had to come up with ways, in my case, to purchase
10 equipment that is quite expensive, comparatively. In
11 the world of EDS, it's very trivial, but, you know,
12 for — in the world that we were working in, it was
13 quite expensive.

14 So I established a network of — of
15 individuals and people both that we contracted, both
16 that we had coaching and working for us, and vendors
17 that supplied equipment to us. That was gray-market
18 equipment. That was equipment that was damaged. That
19 was equipment that was flawed, possibly, and couldn't be
20 sold in a regular manner. That would save us 90, 80
21 cents on the dollar in many cases.

22 So I would come to her with my situation
23 and tell her how it would impact our budget one way or
24 another, and I wanted to know if there were ways that we
25 could address it. And she would query me on — on ways

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1 that I thought we could get this done, and we would come
2 up with a solution from there, but I didn't do anything.
3 Vicki was a very tough manager, and I spent multihours a
4 week with her. A fine woman, very professional, and
5 only one of the cornerstones of EDS.

6 Q. Where is she today?

7 A. She's dead.

8 Q. Is there anybody alive who was privy to any of
9 your conversations in which Ms. Yaccavonni authorized
10 you to do any of the things you've talked about?

11 A. I think Wynn Willis may have been involved in
12 some meetings where we talked about this. Wynn was my
13 number-2 person in Global Sports. I'm not sure. I
14 haven't talked to Wynn. Certainly with lower — lower
15 ranking staff people in my group.

16 She may have talked to Gail Davis about
17 it. Gail was very close to Vicki and very good friends,
18 but — they were friends as well as business associates,
19 but I wouldn't — Vicki — Vicki was very extremely —
20 how do I put it — reclusive. She talked to very little
21 people, a few people.

22 Q. Are — are there any documents that would show
23 that Ms. Yaccavonni gave you authorization?

24 A. No. I mean, I think that this was — this was
25 something
and this was the — the standard in working

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1 with Vicki, that these were all oral communications.
2 These were verbal commands. Certainly, you know, she
3 doesn't write down a document, make up a receipt, Nick
4 for X dollars. She reviewed every receipt that I turned
5 in to her that was produced, and she called me
6 continually. We would meet face-to-face to discuss

7 these.

8 Q. And did you tell her that a number of the
9 receipts and a number of the invoices did — were —
10 were false, did not —

11 A. Oh, I —

12 Q. — represent actual —

13 A. Well, I would — we would certain —

14 Q. — products?

15 A. Well, I would certainly identify to her the
16 exact receipts that we're going to go purchase equipment
17 that we needed to purchase for cash and the receipts
18 that were conventional receipts that were going to any
19 of the vendors who were — we were just buying normal
20 equipment from. But I cannot think of virtually anytime
21 that a receipt was not submitted that it was not
22 reviewed by her. It just didn't happen. I mean, she
23 was on top of everything. She did not like surprises.

24 Q. Is there anybody who's alive today who was
25 aware of what was going on, who can testify as to the

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1 system you were using and the alleged authority that you
2 had?

3 A. Well, Dick Wiles. He was certainly aware of
4 this. He was my technology director. Not to any
5 detail. I mean, he was — he was aware of how we were
6 compensating Marty as well as Lisa Voight, a CEO of USA
7 Cycling. But as far as — I mean, these were — and I
8 don't mean to be trite about it, but these were detail
9 issues that were just looked at as trivial
10 administrative issues of equipment.

11 Vicki was — all — all this stuff that
12 has become such a huge ordeal, these bikes and equipment
13 and parts, were — were just commodities to us. They —

14 they were just simply like trading cards. We — we were
15 just using them as tools. The value that was placed
16 on them, particularly to Vicki, was absolutely zero.

17 They were — in — in her mind, you know,
18 a wheel, a bike, clothing, whatever, it was just a piece
19 of paper. It's just, well, it goes over there, it goes
20 over here, who cares. Her world and other senior
21 executives' worlds with EDS were used to, you know,
22 large-dollar purchases.

23 So when I would come to her about 5,000,
24 2,000, 3,000, it — it was extremely a mundane topic for
25 her. And all that she instructed me to do was, if I

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1 could get things cheaper than buying them in a
2 conventional manner, then to do so. It made good
3 business sense. I was awarded for that. I was
4 applauded for all the things that I'm being pursued on
5 now.

6 And I'm serious about this. All the
7 things that — that you guys are — are crawling down my
8 neck for the past year about are things that, up until
9 the termination of Mr. Alberthal and Gary Fernandes and
10 when John Wroten and these guys came on board, I was
11 applauded for. So it was business as usual for me for
12 all those years.

13 MR. GLEBOFF: Let's take a short break so
14 we can get a drink of water.

15 THE VIDEOGRAPHER: Off the record at
16 10:44.

17 (Off the record 10:44-11:01.)

18 THE VIDEOGRAPHER: We're back on the
19 record at 11:01.

20 Q. Mr. Chenoweth, is it your testimony that
21 Mr. Alberthal ever gave you any authorization to
22 disguise any expenses or submit any inaccurate documents
23 to EDS?

24 A. I never — I had very close access to
25 Mr. Alberthal. I never had any specific conversations,

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1 with one exception. When we were in the process of
2 renewing a USCA — USA Cycling partnership, there was a
3 significant meeting that we had in — and I'm — I'm not
4 sure of the dates here. I think this was late 1995.

5 I was responsible for giving a report to
6 the, at that time, leadership council, and I was
7 presenting the measurable results of — of World Cup
8 Soccer for '94. We were discussing and I was updating
9 on our Olympic program for 1996, and it was coming time
10 to renew our relationship that I was advocating with USA
11 Cycling, to renew for a period of eight years.

12 And usually in leadership council
13 meetings, which were the top 9 executives of the company
14 at that time, there was a broad-based discussion. I
15 gave my presentation. There was rhetoric and dialogue
16 going on, pros and cons about being involved in sports
17 technology, being involved in this, and spending the
18 sizable dollars that we were spending.

19 But generally, I would say the consensus
20 was more for it than against it. However, the meeting
21 dissolved down into a gridlock of — of special
22 interests, I guess, is the best way to describe it,
23 between some of the senior executives. Mr. Alberthal
24 got somewhat irritated, asked the meeting to go on hold,
25 and called me out in the hallway.

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1 He asked me what were the financials
2 regarding our continuing relationship with USA Cycling,
3 our sports-technology program as it related to Team
4 EDS. I gave him the dollar amount that it would cost
5 annually to renew it. He listened quite closely. I
6 told him that would include our relationship with Marty.

7 And his specific instructions, as they
8 were all the time, to do this, keep it quiet, and do not
9 discuss the details of any of your sports-technology
10 partnerships with anyone outside of Vicki. Now — and I
11 don't mean that to — to make this sound so covert and
12 clandestine, but in the world that I lived from 1992 to
13 late 1998, I was instructed on a need-to-know basis
14 only, that the only people that I was to discuss these
15 programs with were Vicki, Gary Fernandes, Jeff Heller,
16 Les Alberthal.

17 And for the majority of those years, it
18 was primarily to Vicki. She would talk to Les about the
19 nuances and details. At times, she would ask me to meet
20 with Les. We certainly, though, did not — and I don't
21 want to misrepresent — get down into talking about
22 \$4,000 bills, \$5,000 bills, things like this. We were
23 talking about the major scope of the relationships, the
24 direction of the programs, and what we were trying to
25 accomplish and some of the unique aspects of some of the

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1 team personnel and makeup.

2 I had to have his permission to — to
3 bring one or two people on board, through Vicki, bring
4 people on board like Marty, who was not really an
5 employee of the company, per se. He had a unique role
6 and direction. But I was continually bombarded with,

7 don't talk to anyone regarding the details, they do not
8 need to know, these are confidential matters, and there
9 are too many contrary beliefs regarding my program
10 within EDS. These sports-technology programs were very
11 controversial.

12 Now, we contended, and the reason I kept
13 getting them renewed year after year is, that we were
14 delivering a great deal of value. But EDS was a very
15 conservative company, and for many of the engineers who
16 were the old guards in EDS, it was very difficult for
17 them to understand the concepts of marketing, promotion,
18 advertising, and so on. But we were renewed annually
19 based on Mr. Alberthal's consent and direction, and
20 ultimately, that proved my downfall, because as soon as
21 Mr. Alberthal was terminated, I was doomed.

22 Q. Okay. More specifically, I'm trying to find
23 out whether it's your testimony that Mr. Alberthal said
24 to you that you could receive money from EDS vendors
25 or —

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1 A. No.

2 Q. — you could receive —

3 A. We never talked to that level of detail.

4 Q. Okay. Let — let me just get the question

5 out —

6 A. Okay.

7 Q. — so we can get it on the videotape and the
8 court reporter can take it down.

9 Did Mr. Alberthal tell you you could
10 receive money from EDS vendors?

11 A. No. We never discussed — we never
12 discussed — and it would be absurd for a CEO of a \$20

13 billion company to be discussing that level of detail.

14 Q. All right.

15 A. That was full — well, well below his level of

16 interest or direction.

17 Q. Did — did Mr. Alberthal ever tell you that

18 you could submit documents or invoices to EDS that were

19 not accurate in what they reflected?

20 A. No, not at all.

21 Q. What about Mr. Fernandes? Did he ever —

22 A. No.

23 Q. — tell you —

24 A. No, no. Mr. Fernandes or Mr. Heller, either

25 one, did not.

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1 Q. Okay. Just — just so the record's clear —

2 and, you know, the court reporter has to —

3 A. I'm sorry.

4 Q. — keep up with us. She can't take us both

5 down at once.

6 A. Okay.

7 Q. And I wanted to make sure it was clear the

8 questions that I was going to ask.

9 A. All right.

10 Q. With respect to Mr. Fernandes —

11 MR. GLEBOFF: Go ahead.

12 MR. GORDON: I — I was just going to ask

13 Nick, be sure to — let him finish —

14 THE WITNESS: I'm sorry.

15 MR. GORDON: — the question. You know,

16 the — the court reporter can't do two —

17 THE WITNESS: I'm sorry.

18 Q. Did — did Mr. Fernandes ever tell you that

19 you could receive any money from EDS vendors?

20 A. No, he did not.

21 Q. Did Mr. Fernandes ever tell you that you could
22 submit documents to EDS that were not accurate in what
23 they reflected?

24 A. No, he did not.

25 Q. How about Mr. Heller? Did he ever tell you

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1 you could receive money from EDS vendors?

2 A. No.

3 Q. And did Mr. Heller ever tell you you could
4 submit documents that were not accurate?

5 A. No, he did not.

6 Q. Now, did Ms. Yaccavonni specifically tell you
7 that you could receive money from an EDS vendor?

8 A. Absolutely.

9 Q. And did Ms. Yaccavonni specifically tell you
10 you could submit documents that were not accurate in
11 what they reflected in terms of goods allegedly —
12 allegedly sold to EDS or to you?

13 A. Absolutely.

14 Q. How many occasions did she tell you that? On
15 how many occasions did she tell you that?

16 A. Oh, it's — again, this was a course of
17 business over — spanning nearly seven years, so it
18 would be impossible for me — and, again, I want to
19 emphasize that these were very trivial issues to her.

20 In light of the other major projects that
21 we were engaged in, these were looked at as
22 administrative details, nuances that I would say, you
23 know, we — if we had a three-hour meeting, that would
24 require maybe two or three minutes of discussions. They
25 were — they were — the purpose and the intent was

1 valid: to benefit EDS, to save EDS money, and for us to
2 continue to work within budget guidelines and to get the
3 job done. Unorthodox? Certainly. But there would be
4 numerous conversations about this.

5 (Exhibit No. 34 marked.)

6 Q. Let me show you what we've marked as
7 Deposition Exhibit No. 34. Have you ever seen that
8 document before?

9 A. I saw this — I'm assuming this is the letter
10 that my mother sent to Mr. Heller, and I did not know
11 this had gone until she had sent it.

12 Q. Where was it prepared?

13 A. I'm not sure where she did this.

14 Q. Does she have a typewriter?

15 A. No. We have a — a computer at home.

16 Q. What kind of computer do you have?

17 A. I don't know. It's — I don't know. I don't
18 know the brand of it.

19 Q. How long have you had it?

20 A. It's actually Christi's, when she moved in
21 with me.

22 Q. When was that?

23 A. A couple of years ago.

24 Q. Do you use the computer?

25 A. Sure, yes, of course.

1 Q. Do you have an e-mail account?

2 A. I do have an e-mail account.

3 Q. What's your e-mail address?

4 A. It's nchenowth@mindspring.com.

5 Q. How long have you had a MindSpring account?

6 A. A year, year and a half.

7 Q. So it's just nchenowth? No spaces?

8 A. Yeah, yeah, yeah.

9 Q. Do you have a cell phone?

10 A. Yes.

11 Q. What's your cell phone number?

12 A. Is that anyone's business?

13 MR. GORDON: In fact, I'll object to
14 that. I don't — I don't believe that's relevant, his
15 cell phone number is relevant to the — to what's going
16 on.

17 MR. GLEBOFF: Are you instructing him not
18 to answer?

19 MR. GORDON: I'm instructing him not to
20 answer.

21 Q. Are you going to follow the direction of your
22 counsel and refuse to answer the question?

23 A. I don't think it's your business, I mean, to
24 know my cell phone number. I give that number out to
25 virtually no one.

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1 Q. Who's your cell phone service with?

2 A. I think that's the same thing. Is that any of
3 your business?

4 MR. GORDON: I — I will object. I don't
5 believe that's relevant.

6 MR. GLEBOFF: Counsel, I'll try to
7 explain to you why I'm pursuing it. One of the issues
8 is whether there are assets in the estate that have not
9 been disclosed, and I'm trying to find out if — if
10 there are expenses that are being paid.

11 Cell phones can be pretty expensive, and
12 all I want to know is who the carrier is. And I can't

13 imagine that I've got to go file a motion to just find
14 out which of the several services in the Metroplex he
15 has his cell phone service with.

16 MR. GORDON: I'll allow him to answer as
17 to the company, but not the number.

18 A. Well, to be frank with you, I'm not sure, but
19 I think it's AT&T, though. Again, I don't pay the
20 bills.

21 Q. Who does?

22 A. My mom.

23 Q. How much does it cost a month for you to have
24 your cell phone?

25 A. I have no idea. I've never seen a bill.

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1 Q. At the creditors meeting, I believe you told
2 me that your mother had recently purchased a Chevrolet
3 van.

4 A. That's correct.

5 Q. All right. When was that purchased?

6 A. Last fall, I believe.

7 Q. Where was it purchased?

8 A. The Chevrolet dealership.

9 Q. Which one?

10 A. It was either — I think she got it either in
11 Denton or Carrollton. I'm not sure.

12 Q. Were you with her when she bought it?

13 A. I went to look at different cars that she was
14 looking at at that time. We looked at several
15 dealerships, but I don't believe I was with her when she
16 actually purchased it, no.

17 Q. How was that vehicle paid for?

18 A. She just financed it.

19 Q. With which financial institution?
20 A. I'm not sure.
21 Q. Did you contribute any money to the purchase
22 of the van?
23 A. No, no.
24 Q. Is the title to the van in her name?
25 A. Well, I'm assuming so. It's not — it's not

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1 in my name. I'm assuming she put it in her name.
2 Q. Do you know how she goes about making payments
3 on the van, since she doesn't use her bank account?
4 A. Well, again, as I told you earlier, any bills
5 that we have in the family are being paid for with money
6 orders.
7 Q. And you've identified to me all of the sources
8 of income that you and your mother and Ms. Simmons have?
9 A. That I'm aware of. I mean, I — again,
10 it's — it's — it's — I — I know the money that
11 Christi and I are making, and, you know, that's about
12 it.
13 Q. In Exhibit No. 34, about the middle of the
14 page, it says, Mr. Heller, Nick and I have lived
15 together for over 13 years. Over that time, I have
16 managed every aspect of his finances. Do you see where
17 I've read that?
18 A. Uh-huh.
19 Q. Is that correct?
20 A. Yes. I mean, as — as I have been mentioning
21 to you, that — 13 years, give or take. I'm not sure of
22 the exact number of years, but that is — that's
23 correct.
24 Q. Okay. And does your mother still — she pays
25 the bills and manages your —

1 A. Yeah.

2 Q. — finances?

3 A. Basically, our relationship is that I do
4 whatever I do full time, and that's her role in the —
5 in the family, I guess you might say.

6 Q. All right. The next sentence, she said, there
7 is absolutely no way in which Nick or our family
8 profited from any misuse of EDS' money. Do you see
9 where I've read that?

10 A. Yes, I do.

11 Q. How would you mother know that?

12 A. Well, again, my mom and I have, from a
13 financial standpoint, lived as one for that entire
14 period of time. I never had any monies or accounts or
15 checks that weren't simply turned over to her, and our
16 joint assets have always been pooled, as I would suppose
17 any family's is.

18 So, I mean, there's really no guidelines
19 or divisions between her and me, from a family
20 standpoint, from — from — from mine and her's
21 perspective, but there were no different — there were
22 no separation of income sources or — she knew
23 everything I did, basically. I mean, that's the best
24 way I can describe that, is that she would be totally
25 aware of anything that I was doing, from a financial

1 standpoint.

2 Q. All right. When did Vicki Yaccavonni die?

3 A. May of '98.

4 MR. GORDON: Did you say '99?

5 THE WITNESS: '98.

6 MR. GORDON: '98.

7 Q. How is your mother's health, Mr. Chenoweth?

8 A. This has been tough on her. She is a very
9 independent woman, and over the past year has
10 deteriorated a great deal as a result of this mess and
11 the problems that have hit our family. She's been
12 hospitalized at least three times since May of last
13 year.

14 Q. Where?

15 A. Once in Alabama, once at Medical City in
16 Dallas — it may be twice there. I think both times at
17 Medical City.

18 Q. Does she still get out?

19 A. Yes. She has had — she's collapsed twice in
20 the grocery store, so — and she has hypertension and is
21 under medication, and she has good days and bad days,
22 but she is — yes, she still —

23 Q. Does she drive?

24 A. Occasionally, yes. Some days she's unable to.
25 She has a — she's under severe depression and

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1 hypertension and is medicated.

2 Q. Are you aware of whether she is refusing to
3 accept service of a subpoena for a deposition in this
4 case?

5 A. She is completely incapable of sitting in a
6 situation and environment like this and going through
7 the stresses that that will bring on her. She is
8 absolutely not capable of doing that. She's physically
9 a wreck. And as a 78-year-old women who, up to the past
10 year, has been very healthy and vibrant — and — and
11 still is a vibrant, lucid person — this is extremely

12 disturbing and — to see how she has deteriorated over
13 the past several months.

14 Q. Well, Mr. Chenoweth, I — certainly no one
15 wishes anything negative toward your mother. My
16 question was, though: Is she refusing to answer the
17 door to accept a subpoena to give a deposition in this
18 matter?

19 A. No. She received a subpoena, I believe, last
20 week and accepted it at the door. I was not there.
21 Someone came to the door and she received a subpoena
22 to — to be here.

23 Q. Well, as you know, sir, we rescheduled your
24 deposition to accommodate your schedule and, in turn,
25 had to reschedule hers.

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1 A. Yeah.

2 Q. And in the past several days, there has not
3 been an answer at the door when the gentleman tried to
4 deliver another subpoena to her with the rescheduled
5 date, and my question is: Are you aware of whether
6 she's refusing to accept another subpoena?

7 A. Well, first, is that —

8 Q. It's a pretty simple question. Do you know
9 whether or not she's — she's refusing to answer the
10 door?

11 A. Oh, absolutely not. And to be frank with you,
12 I don't recall hearing at any time that anyone came to
13 our door and was refused. But I want to make it clear,
14 she is not physically able to do this. And you can keep
15 rescheduling them all you want, but — and her doctor
16 concurs.

17 Q. Let me ask you a question, Mr. Chenoweth.
18 If — if you are unable to answer questions about your

19 finances, such as the financial statements that you
20 believe were filled out by your mother, and your mother
21 was aware of all the details of your financial life,
22 many of which you appear unaware of —

23 A. Right.

24 Q. — who's going to tell Judge McGuire what the
25 details were of your finances in this case?

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1 A. Well, I can certainly tell you any details you
2 want to know. You haven't asked me any details. You
3 asked me what was written on documents that,
4 unfortunately, there have been errors in, for whatever
5 reasons. But I will be happy to discuss with you any
6 nuance, and that's what I'm here for.

7 Q. I want to know who filled out the financial
8 statements.

9 A. Well, I told you who did that. It was my
10 mother.

11 Q. That — that is your sworn testimony today —

12 A. Oh, absolutely.

13 Q. — that that is your mother's printing?

14 A. Absolutely, and I've told you that several
15 times.

16 Q. I'm — I'm sorry if I misunderstood. I
17 thought that the testimony was you were unclear or
18 unable to testify under oath that that was, in fact,
19 your mother's printing.

20 A. Well, I think that we had to assume it is.

21 Q. But I — it —

22 A. It's my belief that these are my — my mother
23 has filled these out, yes. I — I don't know who else
24 would have, who, you know — I — I think they are

25 wrong.

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1 Q. Where did she get the numbers?

2 A. I don't know.

3 Q. And so I and Judge McGuire will never know

4 where that information came from unless she gives us a

5 deposition, correct?

6 A. Well, I — I humbly disagree with you. I am

7 here to tell you anything you want to know.

8 Q. Where did the information come from about the

9 furniture that was listed —

10 A. I think —

11 Q. — as your asset?

12 A. I think that she made a tremendous mistake,

13 misjudgment, maybe she thought it was no big deal. I

14 have no idea.

15 Q. Well, help me understand the issue of the

16 furniture, because I think we all know that — that you

17 have, from time to time, made a number of purchases at

18 the Cantoni store —

19 A. Uh-huh, right.

20 Q. — in North Dallas.

21 A. Right.

22 Q. And I would — you tell me. Is that furniture

23 now located in the home that you live in?

24 A. Yes, it is.

25 Q. And it is your sworn testimony today that,

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1 however, you do not own that furniture?

2 A. That's absolutely correct. My mom and I

3 shopped there on numerous occasions. I'm — I'm not a

4 furniture person. I'm not a possess — that type of —

5 I have no interest in stuff like this.

6 I went with her on numerous occasions to
7 this store. She's very fond of it. We know the
8 owner — or the manager of the store very well, and on
9 numerous occasions, I went with her to pick out and
10 select things, and I purchased them on her credit cards.

11 Q. Who paid for it?

12 A. She did.

13 Q. With what?

14 A. Money.

15 Q. From where?

16 A. My mother is 78 years old and has worked all
17 her live. She saved every dime, is the tightest person
18 I've ever known.

19 Q. Where is the money?

20 A. Well, there's no money now. It's gone.

21 Q. Okay. Is it your testimony that every nickel
22 that was paid to Cantoni for any furniture or accessory
23 that you bought there was paid for by your mother with
24 her money and not yours?

25 A. To my knowledge. Again, I — I don't know any

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1 of the nuances of the payments. We had joint checking
2 accounts, but to my knowledge, all my money was going
3 into automobiles and other things and trips, and these
4 were things that she wanted to purchase.

5 (Exhibit No. 35 marked.)

6 Q. Let me show you what we've marked as
7 Deposition Exhibit No. 35, Mr. Chenoweth.

8 A. Uh-huh.

9 Q. I'll represent to you that it's a multipage
10 document consisting of what appear to be orders and
11 invoices from Cantoni on 4800 Alpha Road in Dallas,

12 Texas.

13 A. Uh-huh.

14 Q. If you want to take a second to look at those,
15 you may. And then I'd like to ask you some questions.

16 A. Okay.

17 Q. Okay. Let's look at the first page of Exhibit
18 No. 35, which is an order form with Cantoni's number,
19 21281, up in the upper right. First of all, is that
20 your signature in the bottom left-hand corner?

21 A. Yes, it is.

22 Q. All right. Did you purchase furniture from
23 Cantoni in February of '95?

24 A. As I look through here, these look like items
25 that my mother and I selected, and over a period of

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1 years or months, this stuff was purchased.

2 Q. Okay. On — on the first page — I just want
3 to focus on that, February of '95 — did — that — that
4 appears to be — it looks like a sectional sofa
5 arrangement —

6 A. That's correct.

7 Q. — you purchased.

8 A. Uh-huh.

9 Q. Okay. Do you have that piece of furniture in
10 your home?

11 THE WITNESS: Is that a relevant
12 question?

13 MR. GORDON: Hm?

14 THE WITNESS: Do I have it? I mean, is
15 that something that we need to discuss now?

16 MR. GORDON: Yeah.

17 A. Yes, I have it.

18 Q. Okay. All right. And is that the purchase
19 price that's shown on here, \$8,740?
20 A. I suppose it is. I don't — if it's down
21 here, I'm assuming that's what we paid for it.
22 Q. All right. Do you have — the — the second
23 item that's listed is — I think the abbreviation there
24 is a table with glass. Do you — do you have a table?
25 A. There is a table with glass.

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1 Q. Okay.
2 A. I don't know if it's the exact one.
3 Q. And a blue pillow and a purple pillow?
4 A. Yes.
5 Q. Are those items that are in your home?
6 A. Yes.
7 Q. All right. On that first page there, the sale
8 price is \$10,500 —
9 A. Uh-huh.
10 Q. — bottom right, and then it says, deposit
11 \$5,000.
12 A. Uh-huh.
13 Q. How was that deposit made?
14 A. I have no idea.
15 Q. Do you remember making a deposit at Cantoni?
16 A. No.
17 Q. Now, February of '95 is shortly after you
18 moved into your house; is that correct?
19 A. I believe so. I think it was January of '95.
20 January '95.
21 Q. Where is your house located, Mr. Chenoweth?
22 A. In Dallas.
23 Q. What part of town?
24 A. North of the Galleria.

25 Q. Okay. Let's look at the second page of

77

1 Exhibit No. 35, which is numbered 21532 on the customer
2 order form. Do you — is there a particular person you
3 deal with at Cantoni?

4 A. Yes. Pogir is a good friend of mine. I used
5 to work out with him, train with him.

6 Q. Pogir? How do you spell that?

7 A. I have no idea.

8 Q. First name or last name?

9 A. It's first and last, I believe.

10 Q. And do you know why Pogir would list you as
11 the customer rather than your mother?

12 A. Because, like I said, we were very good
13 friends.

14 Q. Was your mother with you when you selected
15 this furniture?

16 A. Almost all the time. If not, she would — we
17 would have — she would have gone in there prior to me,
18 picked out what she wanted or told me the ballpark of
19 what she was looking for. I might go talk to Pogir
20 about it, then she'd go back and look at it some more
21 and discuss it and then tell me what she wanted to do.

22 Q. Has your mother always had such expensive
23 tastes in furniture, Mr. Chenoweth?

24 A. Well, I don't consider this expensive at all,
25 and I think that you'd have to determine for yourself

78

1 what — define what's expensive. We have a very small
2 house and a very limited amount of furniture in it, and
3 I would say it would be Spartan, by most people's
4 standards. And I think that it's a very subjective

5 statement to make, what is expensive.

6 Q. Well, I — I don't —

7 A. It's not — my mother — I mean, how do you
8 define expensive?

9 Q. Well, let's just look at some of the amounts
10 on these invoices. I just want to see —

11 A. I see the amounts.

12 Q. — if this is furniture that's in your house.

13 On the second page —

14 A. I've already defined this as it's in my house.

15 Q. What — what — I'm sorry, sir?

16 A. Nothing. Go ahead. Sorry.

17 Q. Have you had a chance to look at Exhibit No.
18 35 and determine that all of the furniture and
19 accessories that is reflected in here as being sold to
20 you by Cantoni is in your home?

21 A. As being sold to my mother by Cantoni, and I
22 have no reason to believe there's anything in here

23 that's not, but I haven't — I have not done an
24 inventory to match up with this sheet, unfortunately.

25 Q. Well, see if you can help me on the second

79

1 page. That appears to be what?

2 A. I have no idea.

3 Q. A floor lamp, a lamp. Do you know what those
4 other — the first and third entries are?

5 A. No.

6 Q. Do you have lamps from Cantoni in your home?

7 A. There is one, I believe.

8 Q. Have there been any that were purchased that
9 were returned or have — are no longer in your home?

10 A. My mom has dealt with that, and if something

11 was returned, she would have been involved in that, but

12 I had no idea of knowing.

13 Q. All right. How about the — the third page is

14 number 22956. A lamp, and then — can you read what the

15 description is there. Ceiling something black fixture?

16 A. Uh-huh, uh-huh.

17 Q. Do you have a black lamp or lighting fixture

18 from Cantoni?

19 A. Yes, my mom has one.

20 Q. Okay. Where is that?

21 A. It's in the house.

22 Q. Let's go to the next page, 11/4 of '96, sales

23 order. It says that it's to ship to Nick Chenoweth on

24 Chalfont?

25 A. Uh-huh.

80

1 Q. 11-foot ficus and pot for \$1,435. Do you see

2 that?

3 A. Uh-huh.

4 Q. Do you have an 11-foot ficus from Cantoni?

5 A. My mother does, yes.

6 Q. Your mother does?

7 A. Uh-huh.

8 Q. And then at the bottom, it says — is that

9 Avant Gardens?

10 A. I don't know what that is.

11 Q. You don't know what Avant Gardens is?

12 A. Huh-uh. Never heard of it.

13 Q. Have you ever bought anything at Avant

14 Gardens?

15 A. Huh-uh.

16 Q. Okay. All right. The next page is dated

17 October 19th of '96?

18 A. Uh-huh.

19 Q. It lists, sold to Nick Chenoweth, ship to Nick

20 Chenoweth. Do you see where I'm reading that?

21 A. Uh-huh.

22 Q. And the description is a 36-inch pedestal.

23 What is that?

24 A. I don't have any idea.

25 Q. Do you have a 36-inch pedestal from Cantoni in

81

1 your home?

2 A. I don't know what a pedestal is, really.

3 Q. Do you have a table that sits on a pedestal?

4 A. I don't recall anything with a pedestal.

5 Q. The next page is dated November 12th of '96.

6 It references you and refers to a signature sculpture.

7 Do you have a sculpture from Cantoni?

8 A. Not that I'm aware of.

9 Q. Does your mother have a sculpture from

10 Cantoni?

11 A. I'm not — I don't recall any kind of

12 sculpture, no.

13 Q. Are you — do you have any idea why Cantoni

14 generated this document with your name on it? Did you

15 buy a sculpture?

16 A. Again, as I told you, my mother purchased

17 everything from Cantoni. Pogir and I were friends, so

18 he was the — I was the contact with him, but I do not

19 recall this, no.

20 Q. All right. The next page is dated February

21 1st of '97, again, referencing you, and it refers to a

22 rug of \$2,985.

23 A. Uh-huh.

24 Q. Do you see that?

25 A. Uh-huh.

82

1 Q. Is there such a rug in your home?

2 A. Yeah, my mom had that rug ordered.

3 Q. Okay. And did your mother pay for it?

4 A. Yes. She — as I said, she paid for

5 everything from Cantoni.

6 Q. Okay. And it says at the bottom here,

7 comments, Nick to approve rug —

8 A. Uh-huh.

9 Q. — or approve drawing.

10 A. Uh-huh.

11 Q. What does that mean?

12 A. This was a rug with a specific design on it

13 with colors, and when my mom had ordered it, she wanted

14 three separate colors in there, and that she was not

15 willing to take delivery on it until I had looked at

16 it.

17 Q. There's a name at the top of that document

18 under sales designer.

19 A. Uh-huh.

20 Q. P-O-G-I-R?

21 A. Well, I'm assuming that's Pogir.

22 Q. Okay.

23 A. I've never seen it written, so I don't know

24 how he spells it.

25 Q. Did you make any of the purchases from Cantoni

83

1 using your EDS American Express card?

2 A. Not to my knowledge at all, no.

3 Q. Did your mother have access to your EDS

4 American Express card?

5 A. No.

6 Q. Okay. The next page is dated March 28th of
7 '98, and it refers to something that looks like sesame
8 ultra electronic cover, black chrome with mirrored doors
9 for \$4,099.

10 A. I'm not sure what that is.

11 Q. Do you have a piece of furniture with mirrored
12 doors from Cantoni in your home?

13 A. There's a piece of furniture with a mirror on
14 it. I wouldn't call it mirrored doors.

15 Q. Do you have a two-story house?

16 A. Yes, uh-huh.

17 Q. It says on this form here that this is an
18 upstairs delivery.

19 A. Uh-huh.

20 Q. Is that your signature?

21 A. Yes, it is.

22 Q. Okay. Is this piece of furniture upstairs in
23 your home?

24 A. There is a — a — a black piece of furniture
25 with a mirror on it upstairs, yes.

84

1 Q. Is it from Cantoni?

2 A. Yes, it is.

3 Q. What part of the house is it in?

4 A. We've just defined that as upstairs, I
5 believe.

6 Q. Is it in a room that you occupy or your mother
7 occupies?

8 A. My mom has her area downstairs, and my area is
9 upstairs.

10 Q. Okay. So this piece of furniture from Cantoni
11 that you've testified belongs to your mother is in your
12 area of the house, however?

13 A. Yes. She got this for me, along with a bed
14 for the upstairs bedroom.

15 Q. Is this like a piece of furniture that holds a
16 TV or a stereo?

17 A. Uh-huh, uh-huh, a TV.

18 Q. And it's in your bedroom?

19 A. Yes, it is.

20 Q. But it belongs to your mom?

21 A. She got that for me, yes.

22 Q. Okay. Let's turn to the next page dated March
23 28th, 1998, which appears to be a California king bed
24 for \$2,785.

25 A. Uh-huh, uh-huh.

85

1 Q. And a python nightstand for \$715.

2 A. Uh-huh.

3 Q. Two of those —

4 A. Uh,huh.

5 Q. — \$1,430.

6 A. Right.

7 Q. Do you have furniture like that in your home?

8 A. Yes. My mom gave that to me.

9 Q. Is it in your bedroom?

10 A. Yes, it is.

11 Q. Is that your signature?

12 A. I don't have a signature on this page.

13 Q. On the page dated March 28th, 1998 listing the
14 bed and the nightstand, is there a signature at the
15 bottom?

16 A. This is a blank page.

17 MR. GORDON: You need to back up — I
18 think you need to back up one.
19 Q. Is that your signature?
20 A. Yes, it is.
21 Q. Okay. Let's go to — there's a blank page in
22 there, or one that's illegible. If you go to the one
23 dated May 11th, 1998, again, it's a Cantoni form of some
24 sort that references sold to and shipped to Nick
25 Chenoweth, and it references a California king mattress?

86

1 A. That would be the mattress that went with the
2 bed.
3 Q. For \$495?
4 A. Uh-huh.
5 Q. Did you receive that?
6 A. Yes. This was all together as a gift from my
7 mom.
8 Q. It says at the bottom of that page from May
9 of — 11th of '98 that client has deposit on other
10 furniture in system.
11 A. Uh-huh.
12 Q. Do you see where I've read that?
13 A. Yeah.
14 Q. What was that referencing?
15 A. I have no idea.
16 Q. Whose deposit was it?
17 A. As I said, I have no idea.
18 Q. All right. Go to the next page, dated May
19 30th, 1998. Do you see that page?
20 A. Yes, I do.
21 Q. It references a contour 3-D wall sculpture —
22 A. Uh-huh.

23 Q. — in the amount of \$2,595.

24 A. Right.

25 Q. Do you see that?

87

1 Does such an item exist in your house?

2 A. Yes, it does.

3 Q. What part of the house is it in?

4 A. Downstairs.

5 Q. Living room?

6 A. Uh-huh.

7 Q. Kitchen? What?

8 A. Living room.

9 Q. Who does it belong to?

10 A. It's my mother's. It's a controversial piece
11 of sculpture.

12 Q. How so?

13 A. It's just rather strange-looking.

14 Q. The next entry is for a table lamp, \$293. Do
15 you have a table lamp in your home?

16 A. I'm not aware of that, no.

17 Q. The next one is another table lamp in the
18 amount of \$293.

19 A. Huh-uh.

20 Q. Not familiar with table lamps?

21 A. Huh-uh. No.

22 Q. Okay. The next page is not legible.

23 All right. This, again, references a
24 36-inch pedestal. Earlier we looked at a document dated
25 October 19th, and this one now is dated November 4th of

88

1 1996. Is that your signature at the bottom of the —

2 the page dated November 4th?

3 A. Well, it's pretty cut off. I can't really see

4 all of it, but it looks like my scribbling —

5 Q. Okay.

6 A. — the top part of it.

7 Q. And then the comments say, client needs

8 delivery closer to 2 to 3 p.m., needs to leave by 3

9 p.m. —

10 A. Uh-huh.

11 Q. — and then there's some initials there.

12 A. Uh-huh.

13 Q. What does that mean?

14 A. I have no idea. My mom took delivery on — on

15 all of this stuff. I was — I was — I don't recall

16 ever being here when any of this furniture was

17 delivered.

18 Q. Okay. Turn to the next page. There's a —

19 the date is November 12th of '96. This — this

20 document's called a pickup slip. Do you see the one I'm

21 looking at?

22 A. Yes.

23 Q. And it references a signature sculpture with

24 the price of \$515. Do you see that?

25 A. Uh-huh.

89

1 Q. What does that refer to?

2 A. I don't know.

3 Q. Do you have a sculpture in your home?

4 A. No. It's — wouldn't it be the same thing you

5 were talking about a while ago? It's some sculpture.

6 I'm — I'm not familiar with this.

7 Q. It says that P-O-G-I-R, however you pronounce

8 that, to take to client's house on Thursday evening

9 after work. Did anybody from Cantoni ever deliver

10 anything to your house in the evening?

11 A. Pogir would — would frequently come by.

12 Again, he was a — a friend and would stop by and visit,

13 but I'm not familiar what this refers to, no.

14 Q. Okay. Turn to the next one on May 9th of

15 '97. It refers to a custom rug?

16 A. Uh-huh.

17 Q. Is this the same rug we talked about earlier?

18 A. Yeah, the one that my mom signed for down

19 here, it looks like.

20 Q. All right. I appreciate that. I saw that.

21 Where is that rug in your home?

22 A. It's the same rug we were discussing earlier.

23 Q. And — and where is it?

24 A. It's in the house.

25 Q. What part of the house?

90

1 A. It would be in the living area.

2 Q. Okay. Turn to the next page —

3 A. It does say, customer signature, Mary

4 Chenoweth, yeah.

5 Q. I'm — I'm aware of that —

6 A. When, you didn't — when, you didn't —

7 Q. — Mr. Chenoweth.

8 A. When, you didn't refer to it, I was going to

9 point it out to you.

10 Q. The next page is dated June 4 of '98?

11 A. Uh-huh.

12 Q. The delivery ticket for the electronic

13 cabinet?

14 A. Uh-huh.

15 Q. This — at the bottom, there's some

16 handwriting that says — it appears to say, receive

17 \$2,000 cash plus credit cards.

18 A. Uh-huh.

19 Q. And on the document, it also references a

20 deposit of \$2,000?

21 A. Uh-huh.

22 Q. Do you see that?

23 A. Yes.

24 Q. Was there a \$2,000 cash deposit paid on this

25 piece of furniture?

91

1 A. I don't recall. Again, this was a gift from

2 my mother, and she did whatever she was going to do

3 to — to purchase it.

4 Q. So if it was —

5 A. My mom —

6 Q. — a gift from your mother —

7 A. Uh-huh.

8 Q. — you own it, right?

9 A. No. I mean, I don't — again, it — it's —

10 my mother paid for it. I — if — if she moved or left

11 and wanted to take it with her, it would be hers. She

12 let me use it, if you want to say that. I mean, I —

13 Q. Sir, you —

14 A. It wasn't a gift. A gift to use. A gift

15 to — to sleep on, if you want to define it that way.

16 Q. And to put your TV in?

17 A. Sure, sure.

18 Q. And it's in your bedroom?

19 A. Yes.

20 Q. In the house that you own?

21 A. Correct.

22 Q. But you expect the United States bankruptcy

23 judge to believe that you don't own it?

24 A. I don't expect the bankruptcy judge — I have
25 no idea what a bankruptcy judge would believe. I'm

92

1 telling you what the truth is, that if my mom moved and
2 if she wanted to take it with her, she'd be more than
3 entitled to. She paid for it. I didn't.

4 If I own something, it's mine. If I'm
5 able to use it, super. She picked it out, and it's not
6 even necessarily what I would personally use, but it
7 certainly works very nicely for me now and it's — it's
8 great to have.

9 Q. Turn to the — two pages back, a document
10 dated — I'm sorry. Back toward the end of the
11 document —

12 A. Okay.

13 Q. — not the front. July 15th of '98, there's a
14 delivery ticket. This references a Pasadena sofa —

15 A. Uh-huh.

16 Q. — that costs \$3,240?

17 A. Right, right.

18 Q. A Pasadena armchair —

19 A. Uh-huh.

20 Q. — that costs \$2,175?

21 A. Uh-huh, uh-huh.

22 Q. A Pasadena ottoman —

23 A. Right.

24 Q. — that costs \$985?

25 A. Right.

93

1 Q. For a total of \$6,928?

2 A. Uh-huh.

3 Q. And then it appears it was delivered or, in
4 some form, your mother signed it at the bottom?

5 A. Yes.

6 Q. She actually took —

7 A. These were things that she ordered. They
8 were — had a — a particular fabric that she liked, and
9 it matched the color of her cat's skin, so she was fond
10 of it, and she put them in the house.

11 Q. Where in your house is it?

12 A. It's in her little den area.

13 Q. Is — this is in addition to the sofa that is
14 described on the first page of Exhibit 35, the sectional
15 sofa?

16 A. Yes, that would be correct.

17 Q. What part of your house is the sectional sofa
18 in?

19 A. It's in a common area. I think we defined it
20 as a living area.

21 Q. Is that downstairs or upstairs?

22 A. That's downstairs.

23 Q. Turn a couple more pages back toward the end
24 to the document — a delivery ticket dated September 7th
25 of 1998.

94

1 A. I think we're going backwards now.

2 Q. We are — yeah. No, we're going toward the
3 back of the document. We're three — eight pages from
4 the end.

5 A. Okay. Got you.

6 Q. A delivery ticket for a custom mirror in the
7 amount of \$2,000?

8 A. Yes, uh-huh.

9 Q. Is there — do you have such a mirror in your
10 house?

11 A. Yeah, my mom wanted a mirror to fit on a wall
12 that was blank, and she wanted a large one, and that's
13 what was put there.

14 Q. What part of your house is it in?

15 A. That's in the common area. The — the — the
16 house just has one open area. I mean, it's — it's —
17 there is — it's a very small house. It's — it's —
18 there's one bedroom upstairs, one common area
19 downstairs, and the bedrooms downstairs, so it's just
20 all one open area.

21 Q. Well, that's what I was trying to figure out,
22 how you got room for a sectional sofa and then this
23 black sofa that matches the cat.

24 A. Well, I mean, I think that — thanks for your
25 narration on that. It's — again, I don't know — I

95

1 don't know how many pieces of furniture the average
2 person has in their house. I have never been in a house
3 with less furniture than my house has in it.

4 There is one sectional, there is one
5 table, there is one little sofa in an adjoining den, and
6 that's it. So, I mean, I think that if you went into
7 anyone's house, in comparison — you have just defined
8 all the furniture that exists in this house. There is
9 no other furniture.

10 Q. Turn to the next page, if you would, sir.
11 Let's see. Are you on a page that appears to be a cash
12 register ticket dated 11/02/96?

13 A. Right. I got you. I got you now.

14 Q. Okay. And do you see on there on — in the
15 middle of that ticket where it says, account number —

16 A. Uh-huh.

17 Q. — 378302579301007?

18 A. Under account, yeah. Sure, I see it.

19 Q. Okay. That's the account number for your
20 EDS-issued American Express card, Mr. Chenoweth.

21 A. Uh-huh.

22 Q. Can you explain why you were using your EDS
23 card to buy things at Cantoni?

24 A. Well, that would have been a mistake on my
25 part, but it was not uncommon with our group — within

96

1 all of Global Sports and Vicki's organization, in
2 general, that occasionally credit cards were used for
3 personal activity.

4 However, that does not imply that that
5 credit card would have been paid for by EDS. I received
6 those bills and would have to pay them differently
7 because Vicki would have reviewed those.

8 Q. Okay.

9 A. I was not formally told — if you want me to
10 expand on that. In March of 1999, John Harris' admin
11 called me up on the phone and said, although she was not
12 aware of this, that a rule had been put down that
13 personal purchases should not be used on the EDS credit
14 cards. That was the first time I had heard about that.

15 However, if I had used that card, it was
16 simply just a — for convenience's sake, and it would
17 have been paid by me completely. If you're getting at
18 this would — would this have been turned in as an
19 expense report, of course it would not have. Expense
20 reports were reviewed very closely.

21 Q. Okay. Before we move on to another topic, I

22 just want to make sure. Of — of the furniture that was
23 purchased at Cantoni, apparently from February of '95 to
24 the present, is any of it yours?

25 A. No, it's not.

97

1 (Exhibit No. 36 marked.)

2 Q. Mr. Chenoweth, let me show you Deposition

3 Exhibit No. 36 —

4 A. Uh-huh.

5 Q. — which appears to be a fax cover sheet and a
6 purchase agreement from International Boating Center
7 in —

8 A. Right.

9 Q. — either Mabank or Dallas.

10 A. Uh-huh.

11 Q. Can you describe to me what this document is?

12 A. This was the boat that we were discussing
13 earlier that I was negotiating to purchase, that the
14 deal fell through on.

15 Q. All right. You said it was a Baha ski boat?

16 A. I said it was a Baha boat. I mean, it's —
17 you can ski behind it, a performance boat.

18 Q. Is there anything special about this boat?

19 Was this a special edition or...

20 A. This was a standard Baha boat, a large one.

21 Q. All right. On the purchase agreement, which
22 is the second page of Exhibit 36, about halfway down the
23 right-hand column it says, total trade-in allowance,
24 \$153,000.

25 A. Uh-huh.

98

1 Q. What does that mean?

2 A. Well, this is one of the reasons that I cut
3 this deal off with this guy. He seemed to be kind of a
4 wheeler-dealer, and I explained to him at the time that
5 I began talking to him in January of '99 that I had in
6 my possession a Ferrari that I had a few thousand
7 dollars' equity in and that I would want to use that as
8 a trade, and if he could get my payments down in the
9 ballpark of 2,000 to \$1,800, I would consider making a
10 deal with him. And then he began coming up with some
11 creative financing that I didn't feel comfortable with,
12 and as a result, the deal fell through.

13 Q. Why did you not feel comfortable with the
14 financing he had proposed?

15 A. Well, I just didn't feel good about the value
16 of the boat, the depreciation of the boat. I didn't
17 have a good feeling about this guy. He was kind of a
18 young kid who just seemed to be running his business by
19 the seat of his pants. And to be frank, I did some
20 checking on him, and his dealership has somewhat of a
21 bad reputation.

22 (Exhibit No. 37 marked.)

23 Q. Let me show you what we've marked as
24 Deposition Exhibit No. 37 and ask you if you can
25 identify that as a bank statement from Legacy Bank dated

99

1 June 9, 1999, addressed to you and your mother?

2 A. Uh-huh, uh-huh.

3 Q. Is that yes, that is what that document is?

4 A. That's what it says, yes.

5 Q. Let me ask you to look at the last page of
6 that exhibit. And we're going to have to stop and
7 change the tape, and I'll ask you a question.

8 A. Okay.

9 THE VIDEOGRAPHER: We're off the record
10 at 11:57, the end of tape number 1 of the videotaped
11 deposition of Nicholas E. Chenowth.

12 (Off the record 11:57-12:00.)

13 (Videotape 2.)

14 THE VIDEOGRAPHER: And we're back on the
15 record at 12 noon, the start of tape number 2 of volume
16 number 1 of the videotaped deposition of Nicholas E.
17 Chenowth.

18 Q. Mr. Chenowth, do you have in front of you
19 Deposition Exhibit No. 37?

20 A. Right.

21 Q. Your June 1999 bank statement from Legacy
22 Bank. On the last page of that document, there is the
23 image of a check from International Boating Center to
24 you in the amount of \$7,500 —

25 A. Right.

100

1 Q. — with the memo notation in the lower
2 left-hand corner, sorry, Nick.

3 A. Uh-huh.

4 Q. Tell me what that check is, sir.

5 A. Well, back in the March time frame, I was
6 going to trade — I traded this car in, initially, that
7 he was going to turn around and sell to a dealer. The
8 drafting instructions on his end from the credit — this
9 was another reason that this deal was beginning to fall
10 apart, is that he didn't have the credit line to carry
11 this car, even to purchase it and then turn to sell it.

12 So this was the difference between the
13 equity. I had — this was the equity I had in that car
14 that would have gone toward a down payment. When I

15 began to get cold feet because his drafting didn't
16 clear, I pulled the plug on it, and he took several
17 weeks to get this money back to me, unfortunately, and
18 that's what the apology was for.

19 The car had been out of my possession, I
20 think, since late March or early April, when I was
21 panicking because I was concerned that he was not going
22 to be able to get the drafting instructions from his
23 bank to purchase it and then, in fact, to trade it,
24 because he was not a car dealer.

25 But by that time, I was going to sell

101

1 that car, regardless. So it — it was — it didn't —
2 the net result didn't mean any difference. I lost a few
3 thousand collars on it doing it this way, unfortunately,
4 but it's — that was the bottom line.

5 Q. So the money that he paid back to you was the
6 result of equity that you had in a Ferrari?

7 A. Uh-huh.

8 Q. You had not paid cash to the International
9 Boating Center?

10 A. Oh, no.

11 (Exhibit No. 38 marked.)

12 Q. Mr. Chenoweth, let me show you what we've
13 marked as Deposition Exhibit No. 38. It's a multipage
14 document. Take a look at it, please, and I'll ask you
15 some questions about it.

16 A. Okay.

17 Q. All right. With respect to the documents that
18 bear the name — or the logo of Richardson Bike Mart —

19 A. Uh-huh.

20 Q. And I understand in Exhibit 38, there's some
21 gas station receipts —

22 A. Yeah.

23 Q. — and things like that, but with respect to
24 the Richardson Bike Mart logo documents, is the
25 handwriting on those documents yours?

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1 A. Yes. These appear to be all the documents
2 that I submitted to Vicki over the years with the words,
3 paid in full —

4 Q. All right.

5 A. — or paid.

6 Q. Now, is — is it correct to say that the —
7 the Bike Mart documents in Exhibit 38 do not actually
8 represent goods that were purchased by you from
9 Richardson Bike Mart?

10 A. I can't say if every one of these represent
11 that just by looking through it closely, but — but the
12 documents that you're referring to, in general, would
13 have been the documents that we used to generate cash,
14 correct.

15 Q. Where did you get the Bike Mart invoices that
16 you filled out?

17 A. They were given to me at Bike Mart. I
18 explained to them what I needed to have done. It was a
19 common — again, a common practice, and it was no big
20 deal.

21 Q. Did Mr. Goodwin give you the invoices?

22 A. I recall talking to Tim on numerous occasions,
23 and I explained to him what I needed them for.

24 Q. Well, my — my question specifically is: Is
25 he the guy that gave them to you?

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1 A. Yes, uh-huh.

2 Q. And then were the Bike Mart documents that are
3 contained in Exhibit 38, in turn, submitted to EDS
4 with — with a reimbursement request?

5 A. Yes, and the code that I put on this for Vicki
6 was paid or paid in full, and as she was reviewing these
7 documents, she would identify those as the ones that
8 would be ones that I had a special need for to have cash
9 to purchase some other equipment that could not be
10 purchased through conventional manners and/or would have
11 been too expensive to do so and it would have put us
12 over budget.

13 Q. All right. After you — when you submitted
14 the — and for now, I want to just focus on the Bike
15 Mart invoices. When you submitted the Bike Mart
16 invoices to EDS that were marked paid in full, then you
17 would receive, in return, from EDS, a reimbursement
18 check; is that correct?

19 A. These would also be lumped together with
20 conventional receipts for travel expenses, so, yes, but
21 they would be — dependent if they were isolated by
22 themselves or with other travel. I was traveling a
23 great deal during this period of time and incurring
24 other expenses, so they would have been kind of lumped
25 together.

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1 Q. Okay. So, for example, you — you may have
2 had invoices in here to La Madeleine and the gas station
3 and things like that —

4 A. Right.

5 Q. — along with the Bike Mart invoices, but the
6 net effect would be at least the amount of the Bike Mart
7 invoices would generate cash —

8 A. Correct.

9 Q. — that would be available to you?

10 A. Yes, and that cash, to the penny, was spent —

11 actually, more than the penny, because I actually spent

12 a more amount of money, but to the penny
was spent on

13 equipment over a seven-, eight-year period.

14 Q. Do you have any records to show what you

15 bought with the cash that was generated by the Bike Mart

16 invoices in Exhibit 38?

17 A. No. I mean, this was dating back to — again,

18 for two or three years, I was purchasing equipment, just

19 carrying the debt that my mom and I had put money up

20 for, but this would have been for — I managed all the

21 team equipment by myself through at least 1995. I was

22 the equipment manager, purchaser, agent, whatever. I

23 also negotiated all the contracts with vendors during

24 the entire 10-year period.

25 But these were done in — as a cottage

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1 industry, is the best way I can describe it to you, with

2 individuals or vendors who had access to equipment they

3 had purchased at wholesale, they had purchased damaged

4 equipment, flawed equipment and were willing to sell in

5 volumes to me bulk amounts of stuff for specific needs

6 that we may have had on a given time.

7 Q. Okay. Who were these people that you — once

8 you deposited the EDS reimbursement checks in your bank

9 account and then had access to the cash, who were the

10 people that you purchased equipment from with that cash?

11 A. Eric Wesphal.

12 Q. Who's he?

13 A. Eric Wesphal is a distributor that I dealt

- 14 with over a multiyear period of time.
- 15 Q. Where is he from?
- 16 A. Either Belgium or Switzerland.
- 17 Q. Do you know how to get in touch with him?
- 18 A. No, I do not. I've been trying.
- 19 Q. Is he still in the business?
- 20 A. I have no idea. I haven't seen him lately.
- 21 Q. Does anybody other than you know him?
- 22 A. My mother does.
- 23 Q. Anybody else?
- 24 A. No.
- 25 Q. Does Skip Cutting know him?

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- 1 A. No. Skip did not deal with all of our
2 equipment purchases, nor did Brett Hydrick.
- 3 Q. Do any of the riders on the team know this
4 guy?
- 5 A. No, no. There's no reason, again, to
6 discuss — I had a theft problem with — with equipment
7 from a large number of the riders on the team and things
8 would disappear, so we would not make people aware of
9 all the equipment we had at any given time.
- 10 Q. Eric Wesphal. Okay. Who else did you buy
11 equipment from with the cash that was generated by the
12 Bike Mart invoices?
- 13 A. There may have been other individuals early
14 on, prior to '96 or '95, that we — we used equipment to
15 barter with individuals for and other small purchases,
16 but Eric constituted the — I'd say at least 95, 98
17 percent of all the equipment.
- 18 Q. How did you meet Eric Wesphal?
- 19 A. I met Eric at the Olympics Sports Festival in
20 '91 in Seattle.

21 Q. Was he working for somebody?
22 A. No. He was just one of the traveling people
23 that follow cycling and elite events, and he knew that
24 our team was a — a growing team at that time, that we
25 were getting into competitive international

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1 competitions, and he let me know that he had access to
2 very good deals, particularly on the type of tires that
3 I was interested in. Some wheels, some components,
4 also, and that he could save me literally tens of
5 thousands of deals — dollars over a period of — a long
6 period of time.

7 Q. And are these — what kind of tires are these?

8 A. Oh, I'm sorry. I thought you were showing me
9 something.

10 Q. No. It's just bottled water.

11 A. I'm sorry. I thought you were pulling a tire
12 out.

13 A wide variety. Victorias. Basically,
14 they would be track and road tires, sew-ups, as they're
15 defined, that are quite expensive, that have a very
16 short life but are needed for the level of competition
17 that we were — were managing. Also, an assortment
18 of, at that time, hard-to-find wheels and carbon-fiber
19 discs and things like this.

20 Q. Where did he get this stuff? He being Eric
21 Wesphal.

22 A. Well, he had told me that he was — had access
23 to German National Team, Italian National Team, and with
24 some of the European distributors, that he was buying
25 stuff in bulk and bringing it over to the U.S., and that

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1 he could get me, you know — I mean, I — I was very
2 familiar with the prices on all of this equipment.

3 And he quoted me some of the prices he
4 could get. He showed me some of the product that he
5 had, and I was quite impressed with it, so from, you
6 know — it was — it was too good of a deal to pass up.

7 Q. How did he get the product to you?

8 THE MARSHAL: Your package is here.

9 A. I'm sorry?

10 MR. GLEBOFF: Just so the record will be
11 clear, I think that was a member of the marshal staff.
12 I — I think that we had asked that some documents be
13 delivered. So apparently, that's what that
14 announcement was. I'm sorry we were interrupted.

15 A. What was your question, again?

16 Q. My question was: How did Mr. Wesphal get to
17 you the products that you purchased from him?

18 A. At various events, in early years, primarily
19 the West Coast, I would take delivery on some of this
20 stuff. In the later years, he'd bring it to my house.

21 Q. How did — was he importing this product from
22 Europe?

23 A. Well, the origin of the products were — were
24 certainly all out of Europe, yeah.

25 Q. When was the last time you spoke to

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1 Mr. Wesphal?

2 A. Shortly after we realized the team was being
3 dismantled.

4 Q. Early '99? Mid-'99?

5 A. No. It was early '99.

6 Q. How did you contact him?

7 A. He contacted me. I did not contact him.

8 Q. Have you ever had a phone number for

9 Mr. Wesphal —

10 A. No.

11 Q. — in your life?

12 A. Not anymore. I assume that — he was a great

13 market distributor that had access to equipment. A

14 little bit of a shady character, to be honest with you,

15 but — and he delivered the equipments, and that's all I

16 cared about.

17 Q. So you've never had a phone number for him —

18 A. No.

19 Q. — correct? Ever had an e-mail address for

20 him?

21 A. No.

22 Q. Ever had a physical address from him?

23 A. No.

24 Q. Ever received a check from him?

25 A. No. I mean, he was giving me —

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1 Q. I — I understand.

2 A. — equipment.

3 Q. I'm trying to determine if you have ever had

4 any information regarding the address, telephone number,

5 whereabouts of Mr. Wesphal.

6 A. No, no, no.

7 Q. You don't know what country he lives in?

8 A. Well, I believe he was living for a while in

9 Los Angeles, and then when I met him in Seattle, he told

10 me that he was living in the Portland area. Other than

11 that — again, I think he traveled between Belgium,

12 Switzerland, and Germany.

13 Q. Do you know what — do you know of which

14 country he is a citizen?

15 A. No. I never looked at his passport.

16 Q. Did he speak English as if he were a native?

17 A. He spoke of — to me, had a very strong

18 Northern Europe accent, probably Swiss, German, and he

19 had blond hair, looked very Scandinavian.

20 Q. Okay. And of all the people you know in the

21 cycling business, you don't know anybody else who knows

22 Eric Wesphal?

23 A. I've never really asked, to be frank with you.

24 Q. Okay.

25 A. And also, I would not have divulged the — the

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1 deals that I was getting from this guy, too.

2 Q. Did you have any other sources for equipment

3 other than Mr. Wesphal? It looks like you were buying

4 quite a bit of stuff, given the dollar values and the

5 number of —

6 A. Well —

7 Q. — Bike Mart invoices.

8 A. There was \$221,000 over a 10-year period, and

9 that is —

10 Q. How did you determine that?

11 A. I added it up.

12 Q. When did you do that?

13 A. Last year. Ongoing.

14 Q. And was all of that to Mr. Wesphal or —

15 A. Yes.

16 Q. — was it to anybody — anybody else?

17 A. Yes. Well, there is — actually, it wasn't.

18 It was — it was all — 155,000 or so was to him, but

19 it — it would have been — in total, receipts that we

20 had generated was \$221,000.

21 MR. GLEBOFF: Okay. This is probably a
22 good place to take a break and have a sandwich, if
23 that's all right with y'all. I — I know I need one, so
24 we'll do that.

25 THE VIDEOGRAPHER: We're off the record

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1 at 12:17.

2 (Lunch recess 12:17-1:36.)

3 THE VIDEOGRAPHER: We're back on the
4 record at 1:36.

5 Q. Mr. Chenoweth, is it fair to say that Marty —
6 is it Nothstein?

7 A. Nothstein.

8 Q. Nothstein. — that Marty Nothstein had an —
9 an official contract with EDS that he was paid about
10 \$20,000 a year?

11 A. That's correct. That's — as his — the —
12 the known compensation for Marty was in the ballpark of
13 20,000, that's correct, as an EDS employee.

14 Q. Okay. Then in addition to that, there was an
15 additional arrangement?

16 A. That's correct.

17 Q. And — and I understand that your position is
18 that you were authorized to enter that agreement —

19 A. Yes.

20 Q. — and you understand that it's EDS' position
21 that you were not authorized to enter it, so that
22 there's no confusion, but —

23 A. That's correct.

24 Q. — what I want to talk to you about is that
25 additional component of Mr. Nothstein's competition —

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1 A. Okay.

2 Q. — compensation.

3 A. Okay.

4 Q. When did that originate?

5 A. Well, going back to the early '90s, the '93,
6 '94 time frame, one has to understand that USA Cycling,
7 which is the governing body for the sport of cycling, is
8 that the Federation — that was our customer. When I
9 say our customer, it was the one that was giving us
10 Olympic rights and benefits, and what we delivered to
11 them was technology services. So in other words, we
12 delivered for them IT, which is what we do as a living,
13 and they gave us Olympic benefits.

14 Now, a part of that specific program was
15 our involvement in the activity called Project '96,
16 which was the process of developing technology and
17 components that would go into making the athletic
18 performance of the athletes competing at the Olympics
19 better. In this particular case, cycling, bicycles,
20 superbikes, et cetera.

21 Now, the U.S. Olympic Committee pays each
22 governing body based on — or they paid them, if you
23 will, a bonus based on Olympic-medal performance. So it
24 behooved the Federations to perform very well in
25 Olympic — in the Olympics coming up. In this

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1 particular case, the '96 Olympics.

2 Lisa Voight, the — the newly appointed
3 CEO of USA Cycling, in 1993, January, and I had a very
4 strong partnership to help them become more competitive,
5 to help them, basically, move up the rankings as far as
6 a governing body, and to do so, they had to establish

7 themselves as an international powerhouse in the sport
8 of cycling at events like World Cups, the World
9 Championships, the Panamerican Championships, and
10 ultimately the Olympics in Atlanta of '96.

11 Now, one of those people that we had
12 identified jointly was Marty. At that time, he was an
13 up-and-comer, in the '91, '92, '93 time frame, and was
14 quickly moving up the ranks to where we felt within a
15 year or two, he would have been — would have — be
16 ranked in the top three in the world, which is
17 ultimately what happened.

18 As a result of that, Marty began to be, I
19 guess, a valuable asset to the U.S. Olympic Committee
20 and USA Cycling, and he had strong aspirations to
21 potentially turn pro and to maybe race in Japan where
22 there is a professional circuit called Kerin racing.
23 Well, that does not benefit the individual. Someone
24 does not benefit the — the U.S. Olympic program, and
25 ultimately, it did not benefit USA Cycling.

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1 So Lisa came to me with a problem. She
2 wanted Marty to be compensated at a level that would
3 keep him content to be part of the USA Cycling program,
4 but yet, she did not have the ability to pay him because
5 of the potential conflicts that would be generated with
6 other athletes of lesser performance and their board, et
7 cetera. So she was in a very awkward spot.

8 She needed a top-performing athlete to be
9 a hood ornament for her program, but yet she could not
10 pay him the competitive compensation that would be
11 required. So that's — and I'm not — I'm sorry to give
12 you such a long story, but that leads you up to where we

13 are now.

14 As a result of that, she came to me with
15 a problem and says — well, she felt she was going to
16 lose Marty as their hood ornament for '96 to the pro
17 circuit if — if we couldn't work out a compensation —
18 compensation program that we could handle, EDS as
19 opposed to her, because she didn't have the wherewithal
20 to put him on a salary that was commensurate with his
21 skills at that time.

22 So I went to Vicki in the — and I —
23 I'm — excuse me on the dates — somewhere in the '93
24 time frame, and said, we have an issue here of a
25 top-performing athlete who I believe that we can bring

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1 on board as an employee. At the same time, he needs to
2 be compensated at an elite level that would be outside
3 the boundaries of anyone being able to know about it.
4 It should not be common knowledge. It would — it would
5 put the USA Cycling in a really embarrassing situation,
6 but we would pay for it based — out of our dollars that
7 were allocated to USA Cycling for operations budgets.

8 What we delivered to USA Cycling is what
9 we called value in kind. In other — in other words, we
10 negotiated with them on an annual commitment to deliver
11 technology services that were between a million and \$2
12 million a year. What I did was carve out a few of those
13 dollars and keep them back on my side of the fence for
14 communication dollars, which enabled me to pay Marty
15 these additional dollars.

16 So she was all for that. She asked me
17 how we should do that, and I said I really didn't know.
18 So basically, we just — myself and Lisa and Dick Wiles
19 and other members of my organization at that time tried

20 to figure out a way that we could pay Marty outside the
21 boundaries of EDS or USA Cycling that would keep this
22 confidential.

23 Now, it was my impression that Vicki had
24 talked to Les about this. I am not claiming, however,
25 that she did. It was my impression, because she said

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1 she needed to talk it over with Les and think about
2 this. She came back to me in a few days and said, you
3 guys figure out a way to do it and make it happen.

4 So at that point in time, again, this
5 little committee we had put together developed a concept
6 with Marty, to keep him on board as an amateur, loyal to
7 EDS, riding for EDS, at the same time, delivering some
8 value to us, a great deal of value, but also a value to
9 our customer, USA Cycling. So it was a joint project
10 that was derived to keep, really, EDS maintaining
11 control of Marty. At the time same, USA Cycling being
12 able to claim him as a product of their development
13 program.

14 Q. Okay. Originally, was Marty being paid by a
15 firm in New York, a marketing firm?

16 A. Goldsmith & Jeffrie was the first group
17 that — and please excuse me. I don't remember the
18 exact conversations — how it came about. Goldsmith &
19 Jeffrie was, at that time, a — our ad agency that was
20 helping us with advertising, and we were developing a
21 joint pro — promotional program for commercials, both
22 print and TV commercials, that would be aired in and
23 around the Olympics.

24 They were a relatively small firm, and in
25 some conversation with one of the members of our team,

1 this operations team, they said this was a — an easy
2 practice for them to do to be able to use Marty as an
3 agent, if you will, of Goldsmith & Jeffrie, and that we
4 can pay them and they would pay him compensation.

5 Q. Okay. So did Goldsmith & Jeffrie put Marty on
6 their payroll?

7 A. I'm not — again, I — I never was privy to
8 the exact details, whether he was an independent
9 contractor with them or an agent, if you will. He
10 appeared in all the commercials that were produced,
11 which they, in turn, were going to use for promotional
12 purposes to — to advocate their style and technique,
13 and hopefully — they were really using us, slash,
14 Global Sports as a guinea pig, to say, here's how we can
15 produce commercials on a tight budget, and hoping that
16 the success that we generated would — would develop
17 more business. So they looked at it more as a business
18 relationship.

19 Q. How did the money get from EDS to Goldsmith &
20 Jeffrie for them to, in turn, pay Marty?

21 A. They — the — again, the dollars that were
22 approved for USA Cycling, the operational dollars, I had
23 a portion of those under my control and defined as
24 communication dollars. And with Lisa's approval, as far
25 as a dollar amount that we negotiated with Marty, those

1 dollars were — along with the advertising dollars that
2 we were working with Goldsmith & Jeffrie, were — were
3 sent to Goldsmith & Jeffrie to — to pay Marty, and
4 Goldsmith & Jeffrie would bill us, I believe, for it.

5 Q. Okay. That — that's — that's my question.

6 I'm trying to drill down to the paperwork level.

7 A. Yeah, I would —

8 Q. Would — would they submit an invoice —

9 A. I believe so.

10 Q. — to EDS?

11 A. I believe — and, again, I never personally

12 saw that, and it might be elitist, but that was just way

13 down the — the pecking order of things that I would be

14 involved in, so I never actually saw an invoice, but

15 it's my understanding that they — they did deliver an

16 invoice and —

17 Q. Who was the person at EDS that was responsible

18 for processing Goldsmith & Jeffrie's invoices and

19 payments?

20 A. I really couldn't tell you at that point.

21 Q. Was that D'Rinda Taylor? Was she —

22 A. No. She wasn't working for us at that time.

23 This was — Jennifer White was my administrative

24 assistant, a very good admin that — she may have

25 processed it just as she would have processed any — she

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1 had no decision power, but this would have been put

2 through either — this was — there was a USA Cycling

3 dollar amount. It may have gone through Dick Wiles as

4 area or it may have gone straight through Vicki

5 Yaccavonni. I'm not sure.

6 Q. Who were the people at Goldsmith & Jeffrie

7 that were handling the Marty Nothstein issue?

8 A. I do not know. The only person that I ever

9 interfaced with on a business level was Mark Deneusuek,

10 who —

11 Q. Deneusuek?

12 A. Deneusuek, and I don't — it's — I don't know

13 how to spell the name. That's the pronunciation of it.

14 A good guy, and they did some wonderful

15 work for us, and — but I think he was just the

16 intermediary on this. And again, it was all rolled

17 together with the expenses for advertising dollars,

18 and — and Marty was considered a product of the

19 advertising dollars and an — and an agent for

20 Goldsmith & Jeffrie, which was legitimate. I mean, that

21 was actually the case.

22 Q. How long did the payments to Marty go

23 through Goldsmith & Jeffrie?

24 A. I'm really not sure. For the length of time

25 that we did business with Goldsmith, however long their

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1 contract with us was. I know that it would have gone

2 through '95. I — I don't —

3 Q. Starting in '93 or '94?

4 A. Either one. I — I don't know. I think

5 ninety — I think '94, but it would certainly have gone

6 through — we — our last big shoot that we did for

7 commercials were in the spring of '95, and that was

8 preparation for the Olympic commercial program that

9 we — we had began to unfold in late '95 through '96.

10 I know shortly after that, it — it may

11 have gone a year beyond that, but — but whatever the

12 length of time that we — we were under contract with

13 Goldsmith & Jeffrie, it would have — it would have gone

14 that long.

15 Q. And how much was Marty being paid per year in

16 the '94, '95 time frame?

17 A. I didn't negotiate Marty's specific

18 compensation dollars. It would have been anywhere — I

19 believe he started off in the 30, \$40,000 range, and as
20 he won World Championships, it escalated to over
21 100,000.

22 He won two World Championships in '94
23 and, of course, Olympic silver medal in '96. So, again,
24 we really weren't setting the value. It was based on
25 USA Cycling's consent of what portion of their money

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1 they wanted to spend.

2 Again, I want to emphasize that value in
3 kind dollars are a hard thing to understand from a
4 laymen's terminology, but as we contracted with USA
5 Cycling or FIFA or the Indy Car Racing or whoever else,
6 we actually gave them services that we put in our
7 dollar amount that — that were EDS cost dollars. The
8 retail value of those dollars would have been
9 considerably higher, maybe 40 percent more. So their
10 perception of the dollars were street value versus our
11 real cost.

12 So — but those dollars were — were
13 culled out of the dollars that were, if you will,
14 contractually guaranteed to USA Cycling. So these were
15 not extra dollars, or we didn't take them out of some
16 other area. They were USA Cycling dollars.

17 Q. Now, beginning in 1996, Mr. Nothstein was paid
18 through Texas Racing Works —

19 A. Yes.

20 Q. — is that correct?

21 A. I would assume that would have been the time
22 that Goldsmith & Jeffrie exited from the partnership
23 with EDS, and I do believe that was about the time
24 that — or thereabouts. It may have been a year or so
25 lagging or whatever. I don't know.

1 Q. Was — was the system through which
2 Mr. Nothstein was paid that Mr. Hydrick at TRW would
3 submit an invoice to EDS that purported to be for
4 cycling goods?

5 A. Yes.

6 Q. He would be paid, and, in turn, he would pass
7 on the money —

8 A. Yeah. He was —

9 Q. — to Mr. Nothstein?

10 A. He was an employee, if you will, or a vendor,
11 an agent of Texas Racing Works, and Brett basically
12 facilitated that activity.

13 Q. And was — Brett being Mr. Hydrick?

14 A. Uh-huh.

15 Q. Was — was he doing that at your request and
16 your direction?

17 A. Well, again, I gave him the general parameters
18 that we needed to accomplish compensation to Marty at
19 whatever dollar amount had been negotiated, and that,
20 you know, as our partner and vendor, I was hopeful that
21 he could accommodate us on this. The details, I never
22 discussed with him.

23 Q. The details in terms of what he wrote down on
24 the invoices?

25 A. The invoices, the money, the specific amount,

1 I did not negotiate any of that.

2 Q. But — but the — there — just so we're
3 clear, there wasn't any question, in your mind, that
4 Mr. Hydrick would be receiving funds from EDS —

5 A. Correct.

6 Q. — and then paying them over —

7 A. Correct.

8 Q. — to Marty Nothstein?

9 A. Absolutely.

10 Q. And that continued until the time Team EDS was
11 terminated?

12 A. Correct. When — when I was notified that —
13 in a very abrupt manner, that all funding for our
14 programs had been stopped since — of course,
15 Mr. Alberthal left the company in December of '98 — '98
16 and Fernandes left shortly after that. It took about
17 three weeks for the dismantling process to begin on
18 projects that Les was close to, which were certainly
19 mine.

20 Q. Do you know how much money Marty was paid by
21 TRW in 1996?

22 A. I would have no idea. I really wouldn't.

23 Q. '97, '98? You don't know? You don't know on
24 any real basis?

25 A. I, sincerely, never got that involved.

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1 What — what I was responsible for is to making sure
2 that our overall budgets were obtained, and the — the
3 direct people who were over that would have been
4 involved in the negotiations, certainly with my consent,
5 I must add. I mean, no one in my organization, to my
6 knowledge, did anything on their own, but they did have
7 a great deal of leeway to — to get the — again, we
8 were using USA Cycling dollars.

9 Q. It — it — you — you were aware that from
10 '96 into '99 that Mr. Nothstein was receiving over
11 \$100,000?

12 A. Oh, certainly, certainly. I mean, and this
13 was based on a collaborative effort between myself and
14 Lisa and other individuals, that we were trying — and a
15 very difficult issue was to determine true market value
16 and what is an athlete worth after his or her
17 performances at World or Olympic levels.

18 But we made a determination. The value
19 that Marty — that we documented that Marty generated
20 for the company in 1996 alone was over \$6 million,
21 and — due to his performance and the technology story
22 that we took to the Atlanta Olympics. So it was a very
23 significant materially investment, and USA Cycling
24 agreed, because the silver medals that both Marty and
25 Erin earned generated several million dollars for them

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1 in bonuses, in you will, from the U.S. Olympic
2 Committee.

3 So both — it was a — very much of a
4 win-win proposition. We produced millions of dollars
5 and a positive activity off of him that year, and so did
6 USA Cycling. So it was deemed that — a very small
7 price to pay for that kind of return in an investment.

8 Q. Did you have a written contract with
9 Mr. Nothstein? Nothstein?

10 A. Nothstein.

11 Q. Nothstein. I can't get it straight.
12 Nothstein.

13 A. Yes. I believe there was at least one
14 contract that we had with him for the — the — well,
15 the — the quadrennium, which would have been the '97,
16 '98, '99, 2000 time frame. So most of our partnerships,
17 whether it be with USA Cycling, FIFA, International
18 Football Federation, wanted a quadrennium basis.

19 And, to be frank with you, this was
20 the — the challenge that we were faced with in dealing
21 with an athletic-performance issue. We had an
22 individual who had just come off of a silver medal at
23 the Olympics. His value was skyrocketing but he was
24 committed to us already. And we wanted to keep him on
25 board through the 2000 Olympics, where we felt that he

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1 would be good for at least one more medal performance.

2 And — and again, the measurement that we
3 were generating out of these programs was so positive.
4 We felt that even though his salary was escalating, it
5 was still a small price to pay.

6 Q. Who else, other than yourself and Mr. Hydrick,
7 was aware that payments were being made to Marty?

8 A. Vicki Yaccavonni, Dick Wiles, Lisa Voight,
9 Phil Milburn, Mike Plant, D'Rinda Taylor, Wynn Willis,
10 previous employees, Kelly Martin. I mean, basically our
11 whole organization, and most of the — the executive
12 staff of USA Cycling.

13 Q. What about John Harris?

14 A. No. I never discussed this with John. I did
15 discuss with John, however, the cash receipts through
16 Bike Mart. He was aware that I was able to get
17 discounted purchases.

18 As Vicki, he would query me on any
19 purchase — any receipt that I would turn in, and I
20 would tell him that the — I needed the cash to pay
21 different vendors that I was — or — or vendors that I
22 was dealing with, and he — he — he was consciously
23 aware of it because I — we discussed it. He queried me
24 on it.

25 Q. Did — did you tell him that the vendor was

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1 not Richardson Bike Mart, it was —

2 A. Yes.

3 Q. — somebody else?

4 A. Yes, I did tell him that. In fact, I can

5 distinctly remember this last-dated one here, 1/29/99,

6 because this was as we were going through our final

7 meltdown in our organization.

8 And I remember John calling me up,

9 saying, okay, Nick, you know, you're — we were

10 discussing our budgets. We are really wrapping these

11 budgets down now, and I was instructed to basically

12 settle all bills or whatever we had, and I explained to

13 him that I had some outstanding debts that I needed to

14 wrap up. He said, fine, take care of it, just — just

15 cut it off as soon as you can.

16 Q. Okay. You're — you're referring to the first

17 page of Deposition Exhibit No. 38?

18 A. Yes. This is the — the — the — the —

19 January 29th, '99.

20 Q. Right. It's Bates number EDS025694.

21 Now, is it your testimony that you

22 informed Mr. Harris that this invoice was being used to

23 generate a cash payment to you in order to pay someone

24 other than Richardson Bike Mart?

25 A. Absolutely.

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1 Q. Okay. Who — who was it in order for you to

2 pay? Who were you going to pay with the money for

3 this —

4 A. All —

5 Q. — invoice?

6 A. All the bills that were remaining in 1999 that
7 I was scrambling to cover were — let me give you a
8 little background here. Our budgets were completely
9 frozen in 1998 due to our World Cup Spin. From
10 mid-January — mid-July through December '98, we were
11 basically in a — we devoted virtually every dime to our
12 World Cup Internet project.

13 Following that, we had accumulated a
14 great deal of expense and debt in our other areas. So
15 the first quarter, I had a backlog of nearly 18 months'
16 worth of expenses that had — that had been building up
17 that I had to — to get rid of. And when I was notified
18 that my budgets were going away quickly, that's when I
19 began to submit these to square away with — for the
20 debt that I had. I was trying to — I was trying to
21 basically get — get out of all of the existing debts
22 that we had, with the exception of Marty, because I knew
23 that was going to be impossible.

24 Q. Who did you tell Mr. Harris you were going to
25 pay with the proceeds of the first page of Exhibit 38?

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1 A. Well, I told him Eric Wesphal. I used Eric
2 Wesphal's name.

3 Q. And was that, in fact, who you intended to
4 pay?

5 A. Oh, absolutely.

6 Q. Let me show you what's been previously marked
7 as Plaintiff's Exhibit 9, which is a multipage document.
8 Let me ask you to take a look at that and tell me if can
9 identify what those documents are.

10 A. Well, again, there were three sources of cash
11 that were deposited to me over a 10-year period: Texas

12 Racing Works, Skip Cutting, and Richardson Bike Mart,
13 that totaled the figure of \$221,000, and every dime of
14 that amount was withdrawn and paid for equipment over
15 that period of time. So I've not seen these before, but
16 these, I'm assuming, in that time frame, would have been
17 that dollar amount.

18 Q. Well, do — do these appear to you to be
19 transfers — or — or receipts for transfers from
20 Mr. Cutting to you?

21 A. I'm not sure. I don't recall how — how Skip
22 had done that. I believe that he withdrew the money
23 from his accounts, or however, or just deposited it into
24 whatever account he — I guess NationsBank is who he
25 deposited it with.

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1 Q. Well, did the — the amounts that are shown on
2 these tickets, 9,500, 9,100, 9,250, 8,950, 6,300, and
3 5,000, do those appear to you to be the correct and
4 total amount that you received from Mr. Cutting?

5 A. The — the majority of — I — I can't tell
6 you I — I actually recall any one of these amounts, but
7 in totality and around the approximate dates, yes, I
8 would believe this would be accurate.

9 As I said earlier, my mom had contributed
10 in '93 and '94 and '97 nearly — and I — and I'm not
11 sure of the exact amount, but approaching 70 to \$75,000
12 that we paid for equipment. So some of this was paying
13 that back, because we did not have a large enough budget
14 until approximately the '94 time frame to be able to do
15 that.

16 Q. Okay. We — we started down this road
17 earlier. Now maybe it will make a little sense, now

18 that we've got the — the documents to show the
19 transfers.
20 How was it that Mr. Cutting came to get
21 the money that he was paying to you? I mean, as I — I
22 assume this was not Mr. Cutting giving you his paycheck
23 or his savings.

24 A. No, and I — I — to be frank with you, I — I
25 don't — I really don't recall why we did it through

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1 Skip as opposed to the Bike Mart. I don't remember. I
2 do know that I had notified Vicki that — when I first
3 started in her organization in the fall of '92, that we
4 had — my — my mom and I were willing to spend money to
5 cover expenses over a period of a couple of years.

6 And, in fact, in '93 and '94 — and,
7 again, our budgets for Team EDS back then were very
8 small, like, 40,000, 50,000, \$60,000. But to get the
9 job done, she contributed — I — I think it was \$32,000
10 in '93 and 29,000 in '94, and then \$7,500 more in '97.
11 And when I — we were set on our budgets in the '95 time
12 frame, that our budgets were large enough to be —
13 withstand that type of a — of an impact, that's when
14 this money was — was — was put back into our
15 accounts.

16 Q. Well, I guess what I'm trying to ask is: Do
17 you know whether Mr. Cutting submitted invoices to EDS
18 that reflected to be for cycling goods or services in
19 order to obtain the money that he transferred into your
20 account?

21 A. I can only make that assumption. I don't
22 recall the exact process. Well, I — I don't remember
23 why we did not do it this way versus this way. It may
24 have just been a random act. I don't — I don't recall,

25 and I don't specifically — I remember having the

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1 conversations with Vicki about needing to — to — to —

2 to — to get a rather large amount back as quickly as

3 I could, but I — but I don't recall if she directed it

4 through her staff or if — if it was just the first

5 thing that came up. I just don't remember, I really

6 don't, but the net — the net difference was the same.

7 Q. If you look at the dates on the deposit

8 tickets — or transfer tickets in Plaintiff's Exhibit 9,

9 they all appear to be fairly near the time that you had

10 purchased and were moving into your new home. Did —

11 did that situation have anything to do with your need to

12 receive this money?

13 A. Well, certainly my mom was beginning to get

14 antsy. This is the first quarter of '95, which was the

15 first quarter of new budget year for us. Again, our

16 budgets in '92, '93, and '94 were extremely small

17 budgets, and it was a corporate decision that we begin

18 to ramp up our program at that time.

19 The first available dates that I could

20 withdraw that money from our accounts — obviously, I

21 couldn't have done that prior to January 1st because our

22 fiscal year started January 1. And once our budgets

23 were approved somewhere in the December —

24 November/December time frame, we would have an idea of

25 what our budgets would be in the first quarter.

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1 I remember going to Vicki in the late '94

2 time frame saying that I — I could no longer stand to

3 have that money just sitting in limbo and would she

4 please work with me on this, and that's when she gave me

5 authorization to go ahead as quickly as possible at the
6 first part of the year.

7 I had already financed my home. I mean,
8 I moved in in January. So, I mean, this was — I had a
9 double mortgage on my home. I mean, I — it was a
10 \$200,000 home and I had my first mortgage and a second
11 mortgage, so I just had — geez, I don't know. I think
12 it was \$20,000 down, but, I mean, that was when —
13 again, I had lived in — lived eight years
14 mortgage-free. I lived — from '88 to December '94, I
15 didn't pay any rent to anybody. I was — my mom had a
16 lease house and I was living in that house.

17 So — but that's — yeah, so my house had
18 already been purchased then, so I had already moved in,
19 actually. But — but to be quite clear, yes, my mom and
20 both myself, we desperately needed to get that money
21 back because I was scared that EDS would change their
22 mind, or in the bureaucracy of things, or Vicki, she'd
23 change her mind and said, you know, hey, sorry,
24 that's — I guess, you're just going to pick up part of
25 the costs, because we really, in the long term, couldn't

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1 afford that.

2 (Exhibit No. 39 marked.)

3 Q. Mr. Chenoweth, let me show you what's been
4 marked as Exhibit No. 39. It also bears a Deposition
5 Exhibit sticker from the prior state court case. Let me
6 ask you to take a second and look at those.

7 A. Okay.

8 Q. Let me just see if I can cut to the chase on
9 these. Do you recognize Deposition Exhibit No. 39 to be
10 invoices from Texas Racing Works that were marked

11 paid — paid in full or paid by you that you submitted

12 to EDS for reimbursement?

13 A. I've never seen these. I never saw any

14 invoices from Texas Racing Works.

15 Q. Okay. Were — if you haven't seen them, I

16 guess you're not going to be able to identify them, so

17 I'll ask you a different question.

18 A. Okay.

19 Q. Did you understand that Mr. Hydrick had

20 submitted some invoices that were marked, paid by Nick

21 Chenoweth, in order to receive reimbursement that he, in

22 turn, paid over to you?

23 A. There was a certain amount of money, yes, that

24 I did. I questioned, however — I questioned how much I

25 actually received of that.

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1 (Exhibit No. 40 marked.)

2 Q. Let me show you what we've marked as

3 Deposition Exhibit 40, which is a multipage document

4 consisting of some TRW invoices and some copies of

5 checks from EDS to TRW. Have you ever seen any of these

6 documents before?

7 A. I never, ever was in the loop directly between

8 Brett, Steve Walsh, or D'Rinda Taylor on any of this.

9 Q. How much money did you receive from

10 Mr. Hydrick that was paid in cash?

11 A. 12, 14,000, possibly.

12 Q. Did you request that Mr. Hydrick submit

13 invoices to EDS in order to get reimbursement so that he

14 could pay for memberships at Larry North or The Fit

15 for — either for you or for Team EDS?

16 A. No. We had memberships, but those memberships

17 were paid through my group. All of our — all of our

18 team members had training memberships at Larry North
19 health clubs or The Fit health clubs, but I cannot think
20 of a reason that that would have gone through Brett.
21 That would have been — I would have been — I would
22 have directed D'Rinda to pay that, based on my
23 recommendation of where I wanted the team to work out.

24 Q. Are you aware of Mr. Hydrick ever making
25 payments to health clubs on behalf of Team EDS —

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1 A. No.

2 Q. — for you?

3 A. I — I can't imagine there being any need to
4 do that. At the — at the Alumni Hall up at the
5 Superdome, we built some workout platforms for the
6 Alumni Hall, which was a part of the Frisco complex, but
7 I think that platform was, like, \$800, but I don't — I
8 don't recall anything else.

9 I had very little to do with the
10 operational side of the — by that time, with the team's
11 nuts and bolts as far as training and et cetera. That
12 was — we were so tied up in other activities.

13 (Exhibit Nos. 41-44 marked.)

14 Q. Mr. Chenoweth, I'm going to show you four
15 exhibits that we've marked Plaintiff's Exhibit 41, 42,
16 43, and 44, and I'll ask you to take a look at them. My
17 question is going to be: Can you identify those as TRW
18 invoices that were submitted in order to obtain funds
19 for Mr. Hydrick to pay to Marty Nothstein?

20 A. I never saw a single one of those.

21 Q. Well, if you would, just take a look at
22 those —

23 A. I'll check.

24 Q. — four exhibits and make sure there's nothing
25 there you've seen before, and then that's fine, I'll

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1 accept that as your answer.

2 A. Olympic agreement for athletes, I — I —

3 I'm...

4 Q. Have you ever seen any of the documents in

5 Exhibit No. forty —

6 A. No.

7 Q. — one?

8 A. I've never seen this. I don't understand any

9 of this terminology, Olympic equipment. I never saw

10 anything like this at all.

11 Q. Is it your testimony that you have not seen

12 any of the documents that comprise Exhibit No. 42?

13 A. That's correct.

14 Q. Mr. Chenoweth, are you familiar with or have

15 you ever seen before any of the documents that make up

16 Exhibit No. 43?

17 A. No.

18 Q. Mr. Chenoweth, have you ever seen before or can

19 you identify any of the documents that make up Exhibit

20 44?

21 A. No. I've never seen those.

22 MR. GLEBOFF: Why don't we just go off

23 for a second.

24 THE VIDEOGRAPHER: Off the record at

25 2:17.

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1 (Off the record 2:17-2:20.)

2 (Exhibit Nos. 45-58 marked.)

3 THE VIDEOGRAPHER: We're back on the

4 record at 2:20.

5 Q. Mr. Chenoweth, I'm going to hand you a stack of
6 documents that we've marked as Plaintiff's Exhibit 45
7 through 58 and just see if we can go through those one
8 by one.

9 A. Uh-huh.

10 Q. First of all, if you look at the first page of
11 Exhibit No. 45, do you recognize those as photocopies of
12 cashier's checks drawn on Compass Bank and paid from
13 Texas Racing Works to you?

14 A. Yes, I do.

15 Q. Okay. And just as a general question, over
16 the course of the last couple of years, did you receive
17 cashier's checks from Mr. Hydrick and Texas Racing
18 Works?

19 A. Yes, I did.

20 Q. Okay. If you turn to the second page of
21 Exhibit No. 45, can you identify that as a printout of
22 your July 21, 1998 bank statement?

23 A. Well, yeah, I think it's a photocopy of — it
24 appears to be a photocopy of my mom's and mine joint
25 checking account.

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1 Q. Okay. And if you look under the deposit
2 section of that document, does it indicate a deposit on
3 July 3rd in the amount of \$8,224? Right there on — on
4 that page in the deposit section.

5 A. July 3rd, yes, eighty — 8224.

6 Q. Okay. And that corresponds to the first
7 cashier's check on the first page of —

8 A. Yes, it does.

9 Q. Okay. And then the third page of Exhibit No.
10 45, does that appear to you to be a photostatic image of

11 that same cashier's check that was — and the —

12 A. Yes.

13 Q. — deposit slip?

14 A. Yeah, it sure does.

15 Q. Okay. And is that, in fact, what you did with

16 that cashier's check —

17 A. Yes.

18 Q. — that you deposited it?

19 A. Yes, yes. This would be the — the — again,

20 along with Texas Racing Works, Skip, and — excuse me —

21 Bike Mart and Texas Racing Works, this would be the

22 third source that we utilized.

23 Q. And the — the — the following exhibits are

24 of the same nature —

25 A. Same, right.

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1 Q. — and I just want to go through them with

2 you. And if you look at Exhibit No. 46 —

3 A. All right.

4 Q. — it's — it's, again, a photocopy of three

5 cashier's checks. As to the second cashier's check in

6 that series, the one in the amount of \$2,125 —

7 A. Uh-huh.

8 Q. — do you know whether that check was

9 deposited into a bank account or whether it was cashed

10 or you made some other disposition of it?

11 A. I — I don't understand. I mean, I would —

12 Q. What did you do with that second cashier's

13 check? Do you know?

14 A. Well, I would — I would assume it would have

15 been deposited into an account.

16 Q. Were — were there any instances in which you

17 did something other than deposit the cashier's check?

18 A. No, no. Basically the — the — the procedure
19 would be on any of these items, whether it be Texas
20 Racing Works, Richardson Bike Mart, or Skip, they were
21 deposited, I guess, directly into my account, or in this
22 case, I turned them over to my mom and she deposited
23 them.

24 Q. Okay. Turn to Exhibit No. 47, please, and
25 then draw your attention to the copy of the cashier's

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1 check at the bottom of the first page in the amount of
2 \$2,000.

3 A. Uh-huh.

4 Q. Do you recall receiving that cashier's check
5 from Mr. Hydrick?

6 A. I'm — I'm sorry. I don't remember the
7 specific check, no.

8 Q. Okay. If you turn to the second page, does
9 that appear to be a copy for the first page of — a bank
10 statement for your account at Legacy Bank?

11 A. Yes, uh-huh.

12 Q. And do you see in the last deposit on that
13 page for September 8th, a deposit in the amount of
14 \$2,018.10?

15 A. Yes, uh-huh.

16 Q. And — and if you turn within the final page
17 of Exhibit No. 47, do you see the — the image of that
18 \$2,000 cashier's check along with another \$18.10 check
19 and the deposit ticket —

20 A. Uh-huh.

21 Q. — for those two?

22 A. Right.

23 Q. And is — is that, in fact, what you did with

24 that cashier's check, deposited it into your Legacy Bank
25 account?

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1 A. Without knowing the specific — yeah, I mean,
2 I'm assuming that's what — that would have been the
3 procedure on any — any cashier's check I got.

4 Q. All right. Turn to Exhibit No. 48, if you
5 would, please.

6 A. Uh-huh.

7 Q. Can you identify that as a \$9,000 cashier's
8 check —

9 A. Yes.

10 Q. — from TRW to you?

11 A. Yeah. These were one of the last — last ones
12 that were —

13 Q. Okay. The second page of the exhibit, which
14 is a — does that appear to you to be a reprint of your
15 bank statement for March 19th of '99?

16 A. Yes, uh-huh.

17 Q. And the last entry on the first page of that
18 bank statement reprint is a deposit in the amount of
19 fourteen thousand eight —

20 A. Right.

21 Q. — hundred and ninety-four. Do you see that?

22 A. Yeah, I sure do.

23 Q. And then if you turn to the next page, can you
24 identify that as a deposit slip and a copy of two of the
25 cashier's — I'm sorry. One more page.

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1 A. Okay.

2 Q. Then —

3 A. Sure. Yeah. Right.

4 Q. So the — the two cashier's checks from Texas
5 Racing Works, one in the amount of 5,894 and one in the
6 amount of \$9,000 —

7 A. Uh-huh, right.

8 Q. — were deposited to your account on March 4th
9 of 1999 —

10 A. That's correct.

11 Q. — correct?

12 Okay. And if you look at Exhibit No. 49,
13 that's just the second half of that transaction?

14 A. Right, right.

15 Q. That's the other cashier's check?

16 A. Right.

17 Q. All right. Okay. Let's turn now to Exhibit
18 No. 50. Can you identify that as a \$7,500 cashier's
19 check from TRW to you?

20 A. Yes, uh-huh.

21 Q. Okay. And then the next page, can you
22 identify that as a copy of your February 5th, 1999 bank
23 statement?

24 A. Yes.

25 Q. And on that first page of that bank statement

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1 under the deposits and credits —

2 A. Uh-huh.

3 Q. — do you see the nine thousand two hundred —

4 A. Right.

5 Q. — and forty-nine dollar —

6 A. Right.

7 Q. — deposit?

8 And then, if you turn to the last page of
9 the exhibit, do you recognize there on the bottom

10 right-hand the image of that same cashier's check in the

11 amount of seventy-five —

12 A. Right.

13 Q. — hundred dollars?

14 A. Uh-huh, yes, I do.

15 Q. And you did, in fact, deposit that to your —

16 A. Yes.

17 Q. — account?

18 A. Yes.

19 Q. Let's turn now to Exhibit No. 51. Can you

20 identify that as another \$7,500 cashier's check —

21 A. Yes.

22 Q. — from TRW to you?

23 A. That's correct.

24 Q. I'm — I'll — I'll try to short-circuit

25 this —

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1 A. I understand.

2 Q. — a little bit.

3 A. I understand.

4 Q. The — the next page, again, you can identify

5 that as a copy of your bank statement?

6 A. Yes, I can.

7 Q. And it reflects a deposit on February 2nd in

8 the amount of 7,944 —

9 A. That's correct.

10 Q. — and eight cents?

11 A. Uh-huh.

12 Q. And if you turn to the last page of the

13 exhibit, that reflects the image of the cashier's

14 check —

15 A. Yes, it does.

16 Q. — that you, in fact, deposited to your

17 account?

18 A. That's correct.

19 Q. Okay. When you move on to Exhibit No. 52, can

20 you identify that as a \$5,000 cashier's check from

21 TRW —

22 A. Yes, I can.

23 Q. — to you?

24 A. Yes.

25 Q. The second and third page of the exhibits, you

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1 can identify as a printout of your bank statement?

2 A. Yes.

3 Q. Which reflects on its second page a deposit of

4 \$5,000 on February 1?

5 A. Yes.

6 Q. And the final two pages of the exhibit are the

7 image of the \$5,000 cashier's check and the deposit slip

8 reflecting its deposit into your account?

9 A. That's correct.

10 Q. Okay. Exhibit No. 53, can you identify that

11 as a \$4,000 cashier's check from Texas Racing Works —

12 A. Yes, I can.

13 Q. — to you?

14 A. Uh-huh.

15 Q. Can you identify the second page of Exhibit 53

16 as a copy of your April 1999 Legacy —

17 A. Uh-huh.

18 Q. — Bank statement?

19 A. Yes, I can.

20 Q. Does that statement, in the second entry under

21 deposits, reflect a \$4,000 deposit into your account?

22 A. Yes, it does.

23 Q. And the final page of the exhibit, does it
24 reflect the image of the cashier's check and the deposit
25 ticket showing the deposit of the \$4,000 cashier's check

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1 into your account?

2 A. Yes, it does.

3 Q. Turn, please, to Exhibit No. 54. Can you
4 identify that as a \$3,000 cashier's check from —

5 A. Yes.

6 Q. — TRW to you?

7 A. Yes, I can.

8 Q. And can you identify the next two pages as a
9 reprint of your Bank of America account statement?

10 A. Yes.

11 Q. And the last page of the exhibit reflecting a
12 deposit of \$3,000 on March 17th? At the very top of the
13 last page.

14 A. Yes, I see it. Yes, uh-huh.

15 Q. Okay. And does — does that reflect the
16 deposit of that cashier's check from —

17 A. Yes.

18 Q. — TRW?

19 A. Yes, it does.

20 Q. Please look at Exhibit No. 55. Can you
21 identify the first page of the exhibit as a \$3,000
22 cashier's check from TRW to you?

23 A. Yes, I can.

24 Q. Can you identify the second page as a copy of
25 your bank statement, which reflects a \$3,000 deposit on

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1 March 17th into your account?

2 A. Yes.

3 Q. And the final two pages of the exhibit, can
4 you identify those as the image of the cashier's check
5 and the savings deposit ticket showing deposit of the
6 cashier's check into your account?

7 A. Yes, I can.

8 Q. Is that your handwriting or —

9 A. That is not my signature. No, it's not.

10 Q. Okay. Okay. Turn, please, to Exhibit No.
11 56. Can you identify the first page of the exhibit as a
12 \$5,000 cashier's check from Texas Racing Works —

13 A. Yes, I can.

14 Q. — to you? I'm sorry.

15 A. Yes.

16 Q. Can you identify the second page and third
17 page as a copy of your Legacy Bank account —

18 A. Yes, I can.

19 Q. — statement? And does that bank statement
20 reflect a deposit in the amount of \$5,795 on April 7th?
21 On the first page, the very last deposit.

22 A. Yes.

23 Q. And does the final page of that last exhibit
24 reflect the cashier's check and the deposit ticket by
25 which it was deposited into your account?

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1 A. Yes.

2 Q. All right. Turn, please, to Exhibit No. 57.
3 Does the first page of the exhibit reflect a cashier's
4 check in the amount of \$5,000 from TRW to you?

5 A. Right.

6 Q. And does the second page show a printout of
7 your bank statement for April of '99 on which —

8 A. Yes.

9 Q. — on which there's a \$5,000 deposit on April

10 7th?

11 A. Yes.

12 Q. And the final two pages of the exhibit reflect
13 the image of the cashier's check and the deposit ticket
14 by which it was deposited into your account?

15 A. Yes.

16 Q. All right. Finally, Exhibit No. 58, can you
17 identify that as a copy of a \$2,500 cashier's check from
18 TRW to you?

19 A. Yes.

20 Q. And do you know what was done with the check
21 that's reflected on Exhibit 58?

22 A. I have no idea.

23 Q. Mr. Chenoweth, after — after Mr. Hydrick had
24 been making payments to you for some period of time, did
25 he express to you that he was getting behind in terms of

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1 his tax situation, that he had revenue from EDS but
2 without any corresponding expenses?

3 A. I believe he told that to Steve Walsh, and
4 Steve Walsh communicated that to me.

5 Q. What did — what, if anything, did you tell
6 him to do about it?

7 A. Well, my agreement with Brett from — from day
8 one was that he was a very small bike shop and was
9 spending an inordinate amount of time on Team EDS
10 issues, and we wanted to make sure that we did not — I
11 don't know how to say it — put him out of business as
12 opposed to helping him prosper and thrive as a — as a
13 small business guy.

14 So Steve came to me and we talked about
15 this, and anything that we could do to help pay his

16 taxes or to cover the expenses that he would have for
17 his taxes, I authorized Steve to — to see what we could
18 do to help out, because I did not want Brett to lose
19 money in our business relationship.

20 And as most small business owners, he was
21 always kind of right on the — the edge of solvency and
22 nonsolvency, but he was a big part of our success over
23 the years and had helped us a tremendous amount, and I
24 felt obligated not to, in any way, have Brett go through
25 hardship as a result of our business relationship that

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1 we had together.

2 Q. Okay. I want to drop back just for a minute
3 and make sure I — I'm clear on something. I understood
4 your testimony to be that you had not seen the actual
5 copies of the invoices from TRW?

6 A. That's correct.

7 Q. Is it correct, though, that you understood
8 that that's how Mr. Hydrick was receiving money from
9 EDS, was by submitting invoices that reflected cycling
10 goods or services?

11 A. I wasn't really specific on — on — on the —
12 on what he was putting on the invoices. I knew that he
13 and Steve and D'Rinda had discussed this, and whatever
14 they came up with as a — as a — I guess he must have
15 delegated it for them to figure out what was the best
16 procedure to do on this.

17 Q. Did you know that, just in general terms, the
18 deal was invoice from TRW, check from EDS?

19 A. Correct.

20 Q. Okay. And what was on those invoices was
21 cycling equipment or services that had not, in fact,
22 gone from TRW to EDS?

23 A. But you have to keep in mind, too, that we
24 were doing a lot of parts business with both Bike Mart
25 and Texas —

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1 Q. Right.

2 A. — Racing Works. So in some instances, there
3 was a great deal of equipment that was being purchased,
4 components, wheels, other items that we did not have any
5 other route to get, that we would go through, if you
6 call — call it pay regular retail dollars for it, so —
7 both with Bike Mart and with Texas Racing Works and
8 other vendors, for that matter, but —

9 Q. I hate to interrupt you, but I — I understand
10 that.

11 A. Okay.

12 Q. The stuff where there was actually bike
13 stuff —

14 A. Yes.

15 Q. — going from Bike Mart or TRW. But as to
16 the — the invoices that would then, in turn, generate a
17 payment to you —

18 A. Uh-huh.

19 Q. — you understood that — that it was invoiced
20 from TRW that had cycling entries on it —

21 A. Yes.

22 Q. — but there hadn't actually been a sale. And
23 then in response to that, EDS would write a check back
24 to Mr. Hydrick?

25 A. Correct, correct.

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1 Q. And that would, in turn, lead to a payment to
2 you of either cash, a check, or a cashier's check?

3 A. Yeah. I mean, these things that you've seen
4 here, and the — an approximate amount of cash,
5 cash-cash that I told you about, but yes.

6 Q. Okay.

7 (Exhibit No. 59 marked.)

8 Q. Let me show you what was marked as Deposition
9 Exhibit No. 59. My — my question for you is: Can you
10 identify those invoices from TRW or the checks from EDS
11 as being the — the documents that were submitted in
12 order to help Mr. Hydrick catch up on his taxes?

13 A. I had absolutely no involvement in that. I
14 know that there was an — there was an issue with
15 Brett. He was concerned that he was getting behind, and
16 I had no involvement in that whatsoever.

17 I mean, I — I — I was aware of it.
18 They had mentioned it to me. Brett had mentioned it to
19 me on a couple of occasions that he was concerned. My
20 comment to him was, we need to see what we can do. But
21 I had — I don't know if he talked directly to Steve or
22 D'Rinda on how to come out with that, but I — I had no
23 specific involvement, nor do I know the exact amount.

24 Q. You did know that there was going to be some
25 effort to help Mr. —

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1 A. Yes.

2 Q. — Hydrick —

3 A. Yes.

4 Q. — get caught up?

5 A. Yes.

6 MR. GLEBOFF: Why don't we take just a
7 couple of minutes, take a quick break.

8 THE VIDEOGRAPHER: Off the record at

9 2:39.

10 (Off the record 2:39-2:52.)

11 (Exhibit No. 60 marked.)

12 THE VIDEOGRAPHER: We're back on the
13 record at 2:52.

14 Q. Mr. Chenoweth, let me show you what we've
15 marked as Deposition Exhibit No. 60 —

16 THE VIDEOGRAPHER: Your microphone,
17 Steve.

18 Q. Let me show you what we've marked as
19 Deposition Exhibit No. 60, and let me ask you if you can
20 identify that as a printout of your credit card
21 statements for the months of February and March of '95
22 for your General Motors credit card?

23 A. I had forgotten about these cards. Yes,
24 I'm — I'm sure they are.

25 Q. Okay. What is — there — there are two

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1 charges in February from Silks A Bloom in Dallas. What
2 is that establishment?

3 A. I'm telling you, I — I have no idea.

4 Q. Did you ever buy any silk flowers?

5 A. No. I mean, I'm — no, I mean, I'm — I don't
6 know what a silk flower is, I'm afraid.

7 Q. Okay. Did — did you buy anything to decorate
8 your new house in February of '95 from a business with
9 that name?

10 A. I don't recall at all, no.

11 Q. Okay. Let me ask you to turn to the second
12 page. There's a charge on there to Cantoni for
13 \$1,759.06. Do you see that one?

14 A. Yes, I do.

15 Q. Okay. Do you know what you charged in that

16 amount in March of '95?

17 A. I sure don't. I'm sorry.

18 Q. If you go back to Exhibit No. 35 —

19 A. Okay.

20 Q. If you look at Exhibit No. 35 on its second

21 page there, that's dated March 4, 1995, and it's a

22 charge — or the total amount on that order form from

23 Cantoni in the amount of \$1,759 and —

24 A. Uh-huh.

25 Q. — six cents, doesn't that appear to

157

1 correspond to the —

2 A. Right.

3 Q. — charge on the second page of Deposition

4 Exhibit No. 60?

5 A. Right. Sure.

6 Q. Okay. So does that appear to you to be the

7 same thing, that that was charged —

8 A. I —

9 Q. — at Cantoni —

10 A. I — I would assume so. Again, if it — if

11 it —

12 Q. — on that date and in that amount?

13 A. Yeah.

14 Q. And is it correct that Deposition No. 60 is a

15 credit card that was in your name?

16 A. The businesscard?

17 Q. I'm sorry. Deposition Exhibit No. 60

18 represents — is for a GM MasterCard

19 Businesscard that —

20 A. Right.

21 Q. — was in your name?

22 A. Right, uh-huh.

23 Q. What kind of — was that a — a Visa or

24 MasterCard? Do you know?

25 A. I had — I had forgotten about these. This

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1 was before EDS converted over to American Express, I

2 believe. That would have been right at that transition.

3 I might have forgotten that, to be frank with you, that

4 we even had MasterCards or Visas back then. I — it

5 says, GM MasterCard, so I would assumed it was —

6 Q. Oh.

7 A. — a MasterCard.

8 Q. You're right.

9 A. Yeah.

10 Q. But is this a card that was issued to you by

11 EDS?

12 A. If it — certainly. I mean, I didn't — I —

13 I had no business cards of my own for any reason. I —

14 I don't have any reason for a business card outside of

15 EDS over those years. Again, it was not uncommon within

16 Vicki's organization, but that does not mean that I — I

17 expensed that through. I say that for the record. I

18 certainly wouldn't have done that.

19 (Exhibit No. 61 marked.)

20 Q. Mr. Chenoweth, let me show you what we've

21 marked as Deposition Exhibit No. 61.

22 A. Uh-huh.

23 Q. Excuse me. Can you identify — and take a

24 moment to look at it, if you'd like — Exhibit 61 as

25 copies of your account statements for your EDS corporate

159

1 American Express card?

2 A. Uh-huh. Okay.

3 Q. My question was: Can you identify that as the
4 statements of your account for your —

5 A. Yes.

6 Q. — EDS corporate card?

7 A. There's clearly a tremendous amount of
8 volume — volume here, but for the most part, it
9 certainly looks identifiable.

10 Q. It — it — it is correct, isn't it, sir, that
11 Exhibit 61 reflects a number of personal charges in
12 addition to business charges?

13 A. Right, it would.

14 Q. Did — did you understand while you were
15 employed at EDS that under EDS' procedures, you were
16 prohibited from using your corporate card for personal
17 purchases?

18 A. Well, like I — I'd like to clarify with you
19 on this, is under Vicki Yaccavonni, that didn't really
20 seem to be an issue with her on this. I was notified
21 in — in March of '99, through John Harris' office, by
22 his administrative assistant, that that should not be
23 done.

24 And I would like to clarify, though, that
25 just because there was an expense paid or there was an

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1 expense charged does not necessarily mean that it was
2 paid for by the company, because these would have all
3 had to have gone through for approval, and there's
4 certainly some things on here that wouldn't have been
5 approved.

6 Q. Are you familiar with the EDS code of conduct?

7 A. Well, I'm — I'm not aware — or familiar with
8 it verbatim, no.

9 Q. Did you read it?

10 A. I'm sure at one point in time or another over
11 my 11-and-a-half-year career I did read it, yes.

12 Q. Did — did you understand that it applied to
13 you as an employee —

14 A. Yes, I'm aware of that.

15 Q. — and as a manager?

16 A. Yes.

17 Q. On the first page of Exhibit 61, charges
18 number 10 and 11 appear to be from Palm Beach, and it
19 references tanning products —

20 A. Right.

21 Q. — or services?

22 A. Uh-huh.

23 Q. What is that?

24 A. That's a tanning service that I'm familiar
25 with.

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1 Q. Do you have the same first page as I do?

2 A. No.

3 MR. GORDON: No.

4 A. I saw that in there, but it's not the same
5 first page.

6 Q. I'm sorry.

7 MR. GORDON: It's the first page on the
8 one you gave me, but he has his, Preston Road, Shell,
9 Plano.

10 MR. GLEBOFF: What's the Bates number?

11 MR. GORDON: 005458.

12 Q. I need to catch up to you, then. Okay. Thumb
13 through, if you would, until you — until you get to
14 page '5381.

- 15 A. '5381?
- 16 Q. Yeah.
- 17 A. Okay.
- 18 Q. And at that point —
- 19 A. Okay.
- 20 Q. — my question should make more sense.
- 21 A. Yeah, and I saw this a while ago.
- 22 Q. Charges 10 and 11? Okay.
- 23 A. Right.
- 24 Q. What is that charge for?
- 25 A. To be honest with you, I — I could not tell

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- 1 you.
- 2 Q. Is it you or somebody else?
- 3 A. I'm — I'm assuming it would be me. I've used
- 4 that facility before.
- 5 Q. Okay.
- 6 A. But I do want to reiterate again that these
- 7 bills came to my house and I paid these bills based on
- 8 expense reports turned in, and certainly an expense
- 9 report to a Palm Beach tanning salon or an unauthorized
- 10 restaurant would not have been approved. So these would
- 11 have been itemized down and eliminated, unless there was
- 12 an error somewhere.
- 13 Q. Okay. Just so you'll understand, this —
- 14 I'm — I'm just asking you questions about what the
- 15 particular charges are —
- 16 A. Yeah, but — but I —
- 17 Q. — as opposed to —
- 18 A. I understand.
- 19 Q. — the funds that —
- 20 A. Yeah.
- 21 Q. — that paid the bills.

22 A. Yeah, but again, I — I'd like to say that
23 during the — the dates of these things, in my
24 management group, this was a very casual policy. And,
25 in fact, to my knowledge, no one had enforced this. No

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1 one in my organization was enforced directly on this at
2 all, as long as the bills did not go past due or
3 delinquent.

4 I would occasionally receive notices for
5 some of my staff that would have past due on their
6 corporate cards, and that's what was frowned on, but
7 within the guidelines of as long as the payments were
8 made, any individual purchases, as long as they were
9 paid promptly, in — in my regime, was not — it was
10 just not an issue.

11 Q. Okay. Let me ask you to turn to page '5384.

12 A. Uh-huh.

13 Q. Do you see the charges on there, number 2, at
14 Cantoni —

15 A. Yes.

16 Q. — for \$557.49?

17 A. Right, uh-huh.

18 Q. If you look back at Exhibit No. 35, that
19 appears to correspond to a charge on a Cantoni sales
20 order in the amount of \$557.49 for a signature sculpture
21 with a retail price of \$515 and \$42 in tax. Does that
22 appear to be — to you, as well, to be what that charge
23 is for, for the sculpture from Cantoni? I think it's
24 the sixth page of Exhibit No. 35.

25 A. It's the same price, so I would assume it is.

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1 \$557.49.

2 Q. What was the reason that you used your
3 corporate American Express card as opposed to another
4 credit card that you might carry for charges such as the
5 Cantoni sculpture?

6 A. Well, again, as — as I — I mentioned
7 earlier, it would just be carelessness on my part, I
8 suppose, an — an incidental issue that — with the
9 randomness that it occurred. I couldn't give you a
10 valid explanation, and I'll say it was a mistake on my
11 part.

12 At the same time, it was not paid for by
13 EDS. It was paid for by me, and I was never criticized
14 on that at any point in time. And, you know, I paid the
15 bills on time, and I never had any delinquents on my
16 credit card, and if — if I pulled out the wrong credit
17 card, I made a mistake and I shouldn't have done it, I
18 suppose.

19 Q. Okay. Let's turn to page '5390 in Exhibit No.
20 61.

21 A. '5390?

22 Q. Yes, sir. There's a charge on there for
23 Cantoni in the amount of \$3,231.26.

24 A. Uh-huh.

25 Q. And if you look at Exhibit No. 35, that

165

1 appears to correspond to the — in the same amount to
2 the purchase of a custom rug from Cantoni, in fact, the
3 one that you described to me with — that had the
4 drawing —

5 A. Right.

6 Q. — that you were to approve.

7 To the best of your knowledge, is that

8 what the charge is that's on document number '5390?

9 A. If the dollar amount matches. I'm sure it is.

10 3,231, yes, uh-huh.

11 Q. Okay. Who is Dr. Lu?

12 A. Dr. Lu is my general practitioner.

13 Q. Is he located in Dallas?

14 A. DeSoto, I think.

15 Q. Turn, if you would, back to page '5432.

16 Charges 15, 16, and 17 are — appear to be at L'Image

17 Salon.

18 A. Uh-huh.

19 Q. Did you have hair back in August of '98?

20 A. No. That, too, someone must have taken my —

21 my — the wrong credit card out of my wallet at that

22 time to have some hair done.

23 Q. Did — did your mom have access —

24 A. Yeah.

25 Q. — to your credit card?

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1 A. My — yeah, my mom. L'Image is her place

2 of — salon.

3 Q. Okay. What about number 14, the charge on

4 there, liposculpture/laser? What is that?

5 A. I have no idea what that is.

6 Q. Okay.

7 A. Again, it's something — my mom had some

8 cancerous lesions on her face removed. That may have

9 been that.

10 Q. Okay. Turn to page '5436. Charge number 5 on

11 that page is for — it appears to be a store called J.

12 Harris?

13 A. Uh-huh.

14 Q. What is that charge for, sir?

15 A. I have no idea.

16 Q. Have you ever been in a store called J.

17 Harris?

18 A. No, I have not.

19 Q. Okay. Do you know what Salon de Joie is?

20 Pardon my French.

21 A. Pardon your French. Where do you see that?

22 Q. Charge number 11.

23 A. Never heard of that, no.

24 Q. Do you know how these charges came to be on

25 your credit card?

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1 A. I, again, could only assume that my mom took

2 credit cards out of my wallet and was confused on which

3 one she was using.

4 Q. If you look at page '5439 and then page '5441,

5 there are eight charges to L'Image beauty shop. Does

6 your mom get her hair done an awful lot?

7 A. During that time she was, yeah.

8 Q. Okay.

9 A. Again, I would emphasize that these would be

10 paid for by me —

11 Q. Okay.

12 A. — and not turned in to the company.

13 Q. Page number '5443 —

14 A. I doubt very — I doubt very seriously that

15 any of my management would approve L'Image hairstyles.

16 I'm sorry. Go ahead.

17 Q. Page '5443.

18 A. Uh-huh.

19 Q. Entry number 5 is Frederick's of Hollywood?

20 A. Yeah.

21 Q. What's that?
22 A. I know what it is, but I'm not familiar
23 with —
24 Q. I — I mean, the charge, in particular.
25 A. I'm not familiar with what that is. I mean, I

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1 know what Frederick's of Hollywood is, but I'm not
2 familiar with the — the charge on there.
3 Q. Is — is that not a purchase that you made?
4 A. Not that I'm aware of. I —
5 Q. Okay. How about — how about number 10, Wild
6 Birds, Unlimited? What's that?
7 A. I have no idea.
8 Q. Do you have a bird?
9 A. Oh, I used to years ago. I had a macaw for
10 several years.
11 Q. Is that — did you pay \$767 for him?
12 A. I paid about 2,000 for him, but that was back
13 in the '80s.
14 Q. Okay. Do you know what this charge is for,
15 Wild Birds, Unlimited?
16 A. My mom bought a bird feeder, a bronze bird
17 feeder, as a gift for her sister — her daughter. So,
18 again, I can only assume she grabbed the wrong credit
19 card.
20 Q. Okay. Well, you were — were you present when
21 she made the purchase?
22 A. No, but I'm aware — I'm specifically aware of
23 that, because I know that she — I wasn't aware it was
24 on my credit card, though.
25 Q. Okay. Let me ask you about page '5449, and

169

1 charge number 1 is the Intercontinental Hotel in

2 Dallas —

3 A. Uh-huh.

4 Q. — lodging?

5 A. Uh-huh.

6 Q. Was that your charge?

7 A. I am not aware of what that would be. We may

8 have had a — a guest from USA Cycling sometimes stay at

9 the Intercontinental. I'm not sure.

10 Q. Turn to page '5454, please.

11 A. '5454?

12 Q. Uh-huh.

13 A. That's outside of my — I have '5453 as my

14 last page.

15 MR. GORDON: '5458 is the front.

16 THE WITNESS: Oh, okay.

17 A. I have '5454 here.

18 Q. Okay. Do you see charge number 7, Home

19 Entertainment —

20 A. Uh-huh.

21 Q. — up in Plano —

22 A. That was —

23 Q. — 2,000 —

24 A. That was the — the expense that John's office

25 called me on. And when that showed up, they got a

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1 computer printout of this, and that's when I was

2 notified that, don't screw up and put any type of

3 personal expenses on your credit card anymore.

4 Not that they were being expensed

5 through, but he said he didn't want to see anything in

6 my grouping anymore on that, and that was the one that

7 his admin called me that morning and said — or whatever

8 morning it was, but that was one of the last — I — I
9 remember that distinctly because she said to me that he
10 had not enforced that rule but it had been handed down
11 from above, and that — and no longer, in corporate
12 marketing, would there be any toleration for expenses.
13 Whether they were paid for or not, he didn't want to see
14 them on the — on the — come through, as if we're being
15 audited by whoever audited this stuff.

16 Q. What is that charge?

17 A. That was for a TV.

18 Q. What kind of TV?

19 A. A TV. A Sony or something.

20 Q. Do you still have it?

21 A. Yeah. This — actually, yes, I still have
22 that on another credit card, actually. I have it on —
23 on one of my mom's credit cards now.

24 Q. Okay. Is — is that the TV that you listed on
25 your schedules in your bankruptcy proceeding?

171

1 A. Well, no, this is — it's the TV that's in my
2 mom's room. The big-screen TV that I have is a
3 Mitsubishi.

4 Q. Turn back, if you would to — I guess it's at
5 the beginning of your exhibit — '5468.

6 A. '5468?

7 Q. Uh-huh.

8 A. I don't seem to have — where did you find it?

9 THE WITNESS: Did you find it?

10 MR. GORDON: Yeah.

11 A. Can I look at yours?

12 Q. Do you see there's an entry on there for —
13 number 1, Avant Gardens —

14 A. Uh-huh.

15 Q. — in Garland, Texas?

16 A. Uh-huh.

17 Q. What is that?

18 A. I don't have any idea.

19 Q. Is that not a charge that you made?

20 A. It's a charge on my credit card, but I did not

21 make that charge.

22 Q. Do you know who did?

23 A. I would assume my mom did.

24 Q. Does your mother sign your name when she uses

25 your credit card?

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1 A. She has in the past, yes.

2 (Exhibit No. 62 marked.)

3 Q. Mr. Chenoweth, let me show you what I've marked

4 as Deposition Exhibit No. 62. It's a multipage

5 document, and I'm going to ask you some questions about

6 the different pages.

7 A. Uh-huh.

8 Q. The first page of Exhibit No. 62, can you

9 identify that as an EDS form document?

10 A. Well, it looks like an EDS form document

11 because it has an EDS contact on it of D'Rinda Taylor,

12 yes.

13 Q. Okay. But are you familiar with documents

14 like the first page of Exhibit 62?

15 A. No, I'm not, because I had — I never did my

16 own expense reports.

17 Q. Who did them for you?

18 A. Well, D'Rinda Taylor did mine, Kelly Martin

19 did some of them for a while, and Jennifer White did

20 some for a while —

21 Q. Okay.
22 A. — during their era.
23 Q. All right. If you look below the middle of
24 the page, there is a section called expense report
25 summary. Do you see where I'm reading that, right in

173

1 the middle of the page?

2 A. Expense — expense report —

3 Q. Summary. It's the second, really, category
4 heading from the bottom.

5 A. Yes. Okay. Yes.

6 Q. All right. And then under that it says,
7 expense report total, 7,233.09.

8 A. Uh-huh, uh-huh.

9 Q. And then two lines down, special hand
10 instruction, EFT payment. Do you see that. It's —
11 it's —

12 A. Oh, yeah, SPL hand —

13 Q. Right.

14 A. — instruct. Okay. Yes, uh-huh.

15 Q. And EFT payment.

16 A. Okay.

17 Q. Now, did you receive electronic funds transfer
18 payments of your reimbursement like this?

19 A. On my expense reports, yes, I did.

20 Q. Okay. Now, if you look above that — above
21 the report total, there are two separate miscellaneous
22 expense descriptions, cycling tube and tape, \$3,823, and
23 then another one, cycling equipment, \$3,270. Do you see
24 those entries —

25 A. Right. Sure.

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1 Q. — right about in the middle of the page.

2 A. Yeah.

3 Q. Okay. Now, then, if you will, turn to the

4 fourth page of Exhibit 62. It's Bates-labeled

5 EDS025750.

6 A. Okay.

7 Q. All right. There are two Richardson Bike Mart

8 tickets there that appear to be from the group that we

9 talked about earlier?

10 A. Yes, uh-huh.

11 Q. Okay. One in the amount of \$3,270 and one in

12 the amount of \$3,823 —

13 A. Right.

14 Q. — correct? And these are from the group

15 that you testified that the descriptions on there are

16 not of products that were actually delivered by

17 Richardson Bike Mart to EDS, correct?

18 A. Right, correct.

19 Q. And then if you'll turn two more pages back to

20 the page marked EDS027208, does that appear to be a

21 printout of your bank statement for the month of July

22 1998?

23 A. Yes.

24 Q. Okay. And you see under deposits and other

25 credits where the EFT payment from EDS in the amount of

175

1 \$7,233 —

2 A. Uh-huh.

3 Q. — and nine cents went into your account?

4 A. Right.

5 Q. Okay. And then if you look at your daily

6 balance summary at the bottom of that page, it shows

7 that on June 25th, prior to that particular deposit,

8 there was \$580.86 in the account?

9 A. Uh-huh.

10 Q. And then after that hit, the balance was

11 \$7,562.28 —

12 A. Right.

13 Q. — correct?

14 A. Uh-huh.

15 Q. All right, sir. Then if you turn to the next

16 page, there is an image there of a check payable to

17 American Express in the amount of \$5,016.83. Do you see

18 that?

19 A. Yes, I do.

20 Q. And that check is signed by your mother,

21 correct?

22 A. It looks like it is.

23 Q. All right. And that date of that check is

24 June 28th, 1998, correct?

25 A. Right.

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1 Q. All right, sir. And June 28th was the day

2 before the EFT transfer in payment of the expense report

3 that's the first page of Exhibit 62, correct?

4 A. Right.

5 Q. Okay. Now, then, if you will turn to the back

6 portion of Exhibit 62, there's a copy of your American

7 Express bill, EDS corporate American Express bill, for

8 June of 1998, and the balance due on the first page,

9 EDS5419, is \$5,016.83 —

10 A. Okay.

11 Q. — is that correct?

12 A. Uh-huh.

13 Q. And that corresponds to the amount of the

14 check that precedes the bill in this exhibit, which was

15 written by your mother on June 28th, 1998 —

16 A. Right.

17 Q. — \$5,016.83?

18 A. Okay.

19 Q. And then if you'll turn to the second page of

20 the American Express bill, charge number 14 on the bill

21 is a \$3,443.43 charge from Cantoni —

22 A. Uh-huh.

23 Q. — correct?

24 A. Uh-huh.

25 Q. All right, sir. It — it appears that the

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1 Richardson Bike Mart tickets in the amount of 3,270 and

2 3,823 were reimbursed to you on June 29th, and on June

3 28th, a check was drawn on an account that otherwise had

4 insufficient funds to pay the American Express bill, and

5 the payment of that bill, with the reimbursement funds,

6 included payment for a charge from Cantoni.

7 Now, is there an explanation other than

8 that for how this money went directly into your account

9 and then to American Express?

10 A. Well, sure, there'd be. My mom had multiple

11 checking accounts and that — mostly at the bank that

12 you've frozen — or that EDS froze the accounts on, so

13 it's — in that particular case, money was being moved

14 back and forth to cover any kind of expense.

15 So simply the fact that that particular

16 expense covered that — it's just like for three, two

17 years, we covered \$75,000 out of pocket that was

18 reimbursed in '94 and '95. So in many cases, these

19 different accounts' deposits that she may have put my

20 check account — my check in or — or other incomes in,
21 it just happened to fall that way.
22 I mean, I think that, yes, that's — it's
23 unusual, but I don't — I don't — I'm not suspicious,
24 again, on what your implications are that she is — we
25 were using that money to pay our bills. In that

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1 particular case, that money may have covered that, but
2 the other accounts or the — the monies that we had
3 already put out of pocket, it all came out in the wash,
4 so that is —

5 Q. Well, at least —

6 A. That is — that is an ironic point from that
7 standpoint, I agree with you, but —

8 Q. At least for purposes of Exhibit No. 62, it —
9 it is clear that the money went into the account and
10 then was used to pay the American Express bill —

11 A. In that particular instance, it —

12 Q. — dollar for dollar?

13 A. — it looks like it did, but there were
14 multiple other accounts that my mom had, and also my mom
15 dealt a great deal with cash in making payments to a
16 large number of — of organizations as far as cashier's
17 checks and money orders, so that particular situation,
18 I'm sure it was just a matter of convenience.

19 (Exhibit No. 63 marked.)

20 Q. Let me show you now what we've marked as
21 Deposition Exhibit No. 63, which is a similar collection
22 of documents. There is an expense report on the first
23 page of Exhibit No. 63 that bears your name, and the EDS
24 contact is D'Rinda Taylor.

25 A. Uh-huh.

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1 Q. Do you see that?
2 A. Yeah.
3 Q. And do you also see on the first page that the
4 expense description is 50 Continental Olympic —
5 A. Right.
6 Q. — and I assume that's Sonderklasse —
7 A. Sonder —
8 Q. — tires?
9 A. Sonderklasse, right.
10 Q. Okay. And the total for the report is
11 \$4,956.38 —
12 A. Right.
13 Q. — correct? And then you say on the second
14 page that that money is reflected on the copy of your
15 bank statement as being deposited on August 26th. Do
16 you see that in the deposit section?
17 A. I'm looking here.
18 Q. Okay.
19 A. Yes, uh-huh.
20 Q. All right. And in the daily balance summary
21 below on August 25th, the day before that money hit the
22 account, there was only \$92 and —
23 A. Right.
24 Q. — 54 cents —
25 A. Right.

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1 Q. — in the account? Okay. And then the next
2 page is the American Express account statement for
3 August of 1998 in the amount of \$2,917 —
4 A. Uh-huh.
5 Q. — and 82 cents?
6 A. Uh-huh.

7 Q. And then if you turn back to the bank
8 statement under the account checks by serial number,
9 check number 3090 was paid by the bank on August 27th in
10 the amount of \$2,917.82.

11 A. Uh-huh.

12 Q. Does that appear to correspond exactly to the
13 amount of the American Express bill for that month?

14 A. I don't see the canceled checks you're talking
15 about.

16 Q. It's — it's actually in the bank statement in
17 the second section. It's called account checks by
18 serial number, and the second check there, the serial —

19 A. 29, uh-huh, uh-huh.

20 Q. Okay. And does that appear to you to
21 correspond to the penny to the amount of the American
22 Express statement that's on the next page, 2,917.82?

23 A. Uh-huh. Yes, it does.

24 Q. Okay. And if you look at the bank statement,
25 the average daily balance, there was not sufficient

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1 funds in that account to pay the American Express bill
2 prior to the deposit on August 26th.

3 A. Again, I understand what you're saying, but we
4 were advancing cash and payments, holding money out of
5 our accounts for long periods of time, so we had to
6 replace that money at different times, and it probably
7 was done — it may have been done intentionally, but,
8 again, I think that it was — again, out of all the
9 large numbers of EFTs that were made, if it did ring up
10 that way occasionally, that — that's — when so much
11 money was going back and forth and being spent in
12 advance by us, I don't know what else to say or tell

13 you.

14 Q. Let me ask you to turn to the second page of
15 the American Express statement, and there are several of
16 the charges on there. Number 20 is to a Centennial
17 Liquor Store.

18 A. Uh-huh, uh-huh.

19 Q. It's a personal charge, is it not, as opposed
20 to a business charge?

21 A. We had — I'm not sure that that could have
22 been some type of an event or a gift or an activity for
23 one of our customers. I'm not sure. I don't drink,
24 personally, so I don't know.

25 Q. Okay. How about Tom Thumb, the two charges to

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1 Tom Thumb, number 21 and 22? Are those personal or
2 business?

3 A. Not necessarily. Those could have been also
4 for team meetings. We had a lot of get-togethers over
5 at the corporate apartments, things like this, for food.
6 So anytime we had meetings and stuff, we would go
7 shopping for our own food a lot of times. I couldn't
8 say for sure that that was the case, no.

9 Q. Number 24, that's a personal charge of your
10 mother's —

11 A. Yes.

12 Q. — the L'Image?

13 A. That's definitely a personal charge.

14 Q. Okay. And number 25, Dr. Lu is your personal
15 physician?

16 A. Yes, that's correct.

17 MR. GLEBOFF: Okay. Do we need to
18 change tapes? Okay. Why don't you change it now.

19 THE VIDEOGRAPHER: Off the record at

20 3:31, the end of tape number 2 of the videotaped
21 deposition of Nicholas E. Chenoweth.
22 (Off the record 3:31-3:34.)
23 (Videotape 3.)
24 (Exhibit NO. 64.)
25 THE VIDEOGRAPHER: We're back on the

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1 record at 3:34, the start of tape number 3 of volume
2 number 1 of the videotaped deposition of Nicholas E.
3 Chenoweth.
4 Q. Mr. Chenoweth, you have in front of you what
5 we've marked as Deposition Exhibit No. 64, and have you
6 had a chance to look at it?
7 A. Just the top page of it, yeah.
8 Q. Okay. Is the top page an expense report
9 request bearing your name submitted to EDS?
10 A. Yes, uh-huh.
11 Q. Okay. And does it reflect — pardon me — one
12 expense in the amount of \$2,985.59, which is referenced
13 as equipment for cycling, and a second in the amount of
14 \$3,215, which is also equipment —
15 A. Uh-huh.
16 Q. — for cycling?
17 A. Right, right.
18 Q. And the total for this expense report is
19 \$6,241.14?
20 A. Right.
21 Q. And does the first page of Exhibit 64 further
22 indicate that the payment method to you was an
23 electronic funds transfer? Right under —
24 A. Yeah. Sure.
25 Q. Okay.

1 A. Yeah, uh-huh.

2 Q. Now, the second and third pages of the exhibit
3 are Texas Racing Works invoices, both marked paid by
4 Nick Chenoweth —

5 A. Uh-huh.

6 Q. — is that correct? The first one in the
7 amount of \$2,985.59?

8 A. Well, it's — it's typed in, yes.

9 Q. And then the second one is typed in, paid by
10 Nick Chenoweth?

11 A. Yeah, they both are.

12 Q. And the total of that one is \$3,215, if you
13 add the subtotal and the freight?

14 A. The — the subtotal of each one of these?

15 Q. No. The subtotal of the second TRW invoice,
16 number 51809.

17 A. Is 1,750?

18 Q. Plus the freight of 1,465.

19 A. Yeah. Right. Okay.

20 Q. Now, did — did you submit these two invoices
21 to — either to Ms. Taylor or somebody else at EDS for
22 reimbursement?

23 A. No. I would not have used any — again, all
24 of the invoices that I submitted, I was directed to do
25 in handwriting with a paid signal that Vicki would

1 notify — would see when it came through. So I — I
2 didn't do any — I had no ability to do any forms like
3 this.

4 Q. Okay. If you look at the next page of the
5 exhibit — which it appears to be a printout of your

6 February 1998 bank statement. Do you see that?

7 A. Uh-huh, yeah.

8 Q. All right. And does it reflect a deposit into
9 your account of January 29th in the amount of \$6,241.14?

10 A. You've lost me here. Just a second. Six
11 thousand — yes, yes, uh-huh.

12 Q. Okay. And that 6,241.14 is the same amount
13 that's reflected as the expense report total on the
14 first page of Exhibit 64, correct?

15 A. Okay. Yes, right here. Okay. Right. Okay.

16 Q. All right. And if you turn back to the bank
17 statement, it shows the — the next prior activity in
18 the day — daily balance summary was on January 21st.
19 There was an account balance of \$173.30, and then on
20 January 29th —

21 A. Uh-huh.

22 Q. — following the EFT, there was a balance of
23 \$6,414.44, correct?

24 A. Yes.

25 Q. Okay. Now, the next page of Exhibit No. 64 is

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1 an image of a check dated January 30th, 1998, signed by
2 your mother, and payable to the — to David Childs, tax
3 assessor collector, in the amount of \$1,025.26 —

4 A. Uh-huh.

5 Q. — is that correct?

6 A. Uh-huh.

7 Q. And David Childs is the property tax collector
8 for Dallas County, correct?

9 A. I don't know. I guess. I'm not familiar with
10 that.

11 Q. Okay. The — the next check at the end of
12 Exhibit 64 is, likewise, a check dated January 30th,

13 '98 —

14 A. Uh-huh.

15 Q. — signed by your mother —

16 A. Uh-huh.

17 Q. — and payable to the City of Dallas property

18 tax —

19 A. Uh-huh.

20 Q. — for \$4,887.47 —

21 A. Right.

22 Q. — correct?

23 A. Uh-huh.

24 Q. Mr. Chenoweth, it appears that the EFT from EDS

25 in payment of the two TRW invoices went into your

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1 account on January 29th, and the following day, two
2 checks were drawn to pay the property taxes on your
3 house out of those funds.

4 A. Well, again —

5 Q. Is — is — is there an explanation, other

6 than that, for what's —

7 A. Yes. I —

8 Q. — represented in Exhibit 64?

9 A. Yes. I would have another explanation for
10 that. Again, you're looking at one of multiple accounts
11 that was — that my mother had in her possession, plus
12 the cash she kept on hand, and I would say, again,
13 that's just a coincidence.

14 I mean, it's — it's — it — maybe she
15 had accumulated that — not enough money in each single
16 account and she wanted to write a single check on it,
17 but that, by no means, means that that expense report
18 was created to pay these two bills.

19 I mean, it's — again, we had, in many
20 times, waited months to get reimbursed on activity,
21 \$7,500 in 1997, again, nearly \$75,000 in '93 and '94.
22 So that money was trickling in over a long period of
23 time. But just because she deposited, out of
24 convenience, a lump sum in one account does not mean
25 that we did not already have that money withdrawn or had

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1 already paid expenses out of another.

2 In many cases, that money had already
3 been spent by us out of cash and was being reimbursed
4 back to us. But simply because it was put into a single
5 account in order to pay a given bill at that time, it
6 doesn't mean anything to me.

7 I mean, it's — if you had been there and
8 seen the — the large volume of accounts that she was
9 managing and dealing with — not a large amount, but
10 several accounts — that's the way she did business.

11 Q. Was your mother aware that the invoices that
12 had been submitted that resulted in — to the EFT into
13 your account — and — and by the invoices, in this
14 instance, I mean the second and third page of Exhibit
15 64 — contained descriptions of equipment that were not
16 actually sold to EDS?

17 A. We have discussed that, yes. She was aware of
18 the procedure that I was going through with Vicki. I
19 think that she and Vicki had talked about it at one
20 time.

21 Q. She knew that Mr. Hydrick was submitting
22 invoices that were not accurate —

23 A. Oh, yes.

24 Q. — in order to generate —

25 A. Yes.

1 Q. — payments that he'd pass —

2 A. Yes.

3 Q. — through to you?

4 A. Yeah, because she was — in some cases, she
5 had paid Eric herself on at least two separate
6 occasions. So, I mean, she was quite aware that we
7 were, you know, in a unique situation, we had to
8 generate cash, so certainly she would have been aware of
9 that, to a certain degree, I suppose.

10 The other thing you're not taking into
11 account — and this is one thing that I would like to
12 say, is that throughout my career with EDS, I was
13 receiving a paycheck, and I received, over a certain
14 period of years, very significant bonuses.

15 And the — the direction that these
16 conversations are going are that the only source of
17 income I had was the money coming in from expense
18 reports or these cash receipts that I was paying vendors
19 with. There's been total disregard for — for my actual
20 income that has been put in here and, over the years,
21 the 40, 50 percent of my income that were in bonuses in
22 lump sums. I was making money when I worked for EDS.

23 Q. Why did you maintain multiple bank accounts?

24 A. My mom grew up in the Depression, okay? She's
25 nearly 80 years old. She has some quirky

1 characteristics, I agree with you. I mean, I don't
2 agree with you; I'll tell you. She's some — odd,
3 sometimes, about stuff like this.

4 She's paranoid. She always felt that the
5 banking institutions were corrupt. She kept large sums

6 of money over the years in boxes and at home and hidden
7 stuff away. I mean, she's a classic person you hear
8 about stuffing money in her —

9 MR. GORDON: Mattress?

10 A. — her pillow, mattress and pillow. She did
11 not trust banking institutions, and she was very
12 reluctant — anytime we opened up an account, she was
13 very reluctant to put any kind of a large sum of money
14 in any one account.

15 When I got a bonus or this or that, she'd
16 want to break it down in two or three accounts. I mean,
17 when I say multiple accounts, I'm not exactly sure. She
18 had some checking and savings accounts and then most of
19 them were joint, but, you know, five, six, seven
20 accounts, and I — I — I don't think that, in itself,
21 is that unusual, but what was unusual is that she did
22 hoard large volumes of cash. She was a pack rat, and
23 only as we got into the '90s did she begin to relinquish
24 this, monies that she and I had jointly saved.

25 Q. Do you know if your mother has any stock

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1 brokerage accounts or investment accounts?

2 A. No.

3 Q. No, you don't know, or, no, she doesn't?

4 A. No, she doesn't. She does not, no.

5 Q. Does she still have cash on hand?

6 A. Very little now. We have, unfortunately,
7 lived up virtually everything. We're down to the bone
8 right now.

9 Q. Excuse me for a minute. I have to find an
10 exhibit.

11 Let me go back and show you Plaintiff's

12 Exhibit No. 45, Mr. Chenowth. You'll recall that we
13 talked about this earlier. I believe that Exhibit No.
14 45 showed a cashier's check in the amount of \$8,224 from
15 TRW to you and followed by the deposit of that same
16 cashier's check into your bank account on July 3rd —

17 A. Right.

18 Q. — of 1998; is that correct?

19 A. That's what the records show.

20 Q. Okay. And then if you look at the second
21 page, the — the copy of your bank statement —

22 A. Right.

23 Q. — it shows check number 3065 was written on
24 July 16th in the amount of \$9,840.39. Do you see that?

25 A. I'm looking here.

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1 Q. The last one.

2 A. Yes. Yes, I do. Yes, I see it. Yes, I see
3 it.

4 (Exhibit No. 65 marked.)

5 Q. Okay. If you'll just hold on to Exhibit

6 45 —

7 A. Okay.

8 Q. — for a second.

9 I don't have another copy of this, so
10 we're going to have to share this one, but I'm going to
11 show you Deposition Exhibit No. 65 and ask you if you
12 can identify it as a June 22nd, 1998 American Express
13 statement of account for an account in the name of M.E.
14 Chenowth —

15 A. Uh-huh.

16 Q. — on which there are also card transactions
17 for Nick Chenowth?

18 A. Right.

19 Q. That's your mother's platinum card?
20 A. This is her card, that's correct.
21 Q. And — and you have a card in her name, as
22 well?
23 A. Yeah, but it's her account.
24 Q. Okay. Now, is the amount of — that's due on
25 that platinum card that's referenced on Exhibit No. 65

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1 in the amount of nine thousand —
2 A. Yeah, right.
3 Q. — eight hundred and forty dollars and
4 thirty-nine cents?
5 A. Right.
6 Q. That's the same amount as check number 3065
7 that is —
8 A. Right.
9 Q. — drawn on your account and paid by the bank
10 on July 16th —
11 A. Right.
12 Q. — 1998, correct?
13 A. That's correct.
14 Q. All right. Now, that American Express bill in
15 that amount includes — excuse me — under the charges
16 by Nick Chenoweth on June 2nd a charge by Bernard H.
17 Bloom —
18 A. Uh-huh.
19 Q. — M.D. of Dallas, Texas —
20 A. Right.
21 Q. — in the amount of five thousand and —
22 A. Right.
23 Q. — seventy-five dollars?
24 A. That's correct.

25 Q. What is that charge, Mr. Chenowth?

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1 A. I believe that was for some plastic surgery
2 for my mother.

3 Q. Okay. Your mother had plastic surgery
4 performed by Dr. Bernard H. Bloom of Dallas?

5 A. No. She has had some laser surgery done on
6 her face by Dr. Bloom, that's correct.

7 Q. All right. And is — is that, in fact, what
8 Dr. Bloom's records would reflect —

9 A. I —

10 Q. — he charged to you in — on — on your card
11 in June of 1998?

12 A. No, this is — no.

13 Q. What is that charge?

14 A. I'm not sure what this is for. He was both —
15 I've had some plastic surgery by Dr. Bloom on three
16 different occasions from injuries, but I'm not sure if
17 that's it or not. I've had eye surgery and I've had
18 chin surgery and I've had nose surgery.

19 Q. And — and Dr. Bloom has performed that?

20 A. Yes, he has.

21 Q. Okay. You don't recall who would have had
22 surgery in June of 1998 in your household?

23 A. Yes. Christi had some surgery, but she paid
24 for that, and we — and we — we put this on our card
25 and she reimbursed me for that.

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1 Q. Okay. So is — is it your testimony that the
2 charge that's reflected on Exhibit No. 65 from Dr. Bloom
3 is, in fact, surgery that was performed on Ms. Simmons?

4 A. And it could have been some on me, also, but,

5 yes, one or both.

6 Q. Okay. Well, wouldn't you expect if it was two
7 different people, that the doctor would have put two
8 different charges through —

9 A. Well —

10 Q. — on the credit card?

11 A. — maybe. I've worked with him for a long
12 time, so possibly not.

13 Q. Okay. What about the charge from Cantoni that
14 is listed as a Nick Chenoweth charge?

15 A. Well, again, we paid in advance for a great
16 deal of equipment, and as bills may have come due out of
17 my mother's cash reserves, we may have paid it with
18 deposits against those cash reserve spends that we had
19 in advance.

20 Q. Okay. Well, what was the nature of the
21 surgery that Ms. Simmons had performed?

22 A. I'm not going to get into her personal issues.
23 That's her issues, and you can talk to her about that.

24 Q. Well, it — it appears from the combination of
25 Exhibit 45 and Exhibit 65, that funds that were obtained

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1 from Texas Racing Works in the form of a cashier's check
2 were used to satisfy an obligation to American Express
3 that included the charge for surgery that you have
4 testified now was performed on Ms. Simmons.

5 A. But it does not show the monies that were
6 spent in advance of that for equipment by my family in
7 advance, which totals up well over \$80,000. My mother
8 had up to \$110,000 cash in 1992 that we advanced most of
9 the expenses that she paid for months in advance,
10 sometimes over two years in advance.

11 She managed these funds. The cash was

12 coming and going. What I was responsible for was to
13 make sure that all the monies that we spent were repaid
14 or all the vendors that I dealt with were paid on time.
15 If it meant that I had to pay it in advance, I did.

16 And in many cases, particularly in
17 situations like this, yes, we did possibly use deposits
18 to pay for our household expenses, but they were to
19 repay us for what we had already spent money on.

20 Now, that was a lackadaisical way of
21 doing things, and I can understand the issues you're
22 bringing up, but the bottom line is that we went out of
23 our way to try to make this team functional and
24 successful, which we did. And, of course, that's not a
25 part of our discussion today, but it was done within our

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1 working budgets.

2 And lots of money were — were
3 transferring back and forth, and my mom did the best job
4 she could. I think she did a pretty darn good job of
5 it. But you're not taking into account the side that
6 you can't see, which is the monies that we'd already
7 spent in advance. It's as simple as that.

8 Q. Setting that aside —

9 A. Right.

10 Q. — my question for you, though, is: It — it
11 is clear from the combination of Exhibit 45 and Exhibit
12 65 —

13 A. Right.

14 Q. — that some of the money that came from Texas
15 Racing Works went into the account and then went out to
16 American Express for some personal —

17 A. Clearly, what you've demonstrated me to was —

18 Q. — expenses?

19 A. — I was not completely aware of the — the
20 level it happened, but certainly I'm — you — you —
21 you have shown that clearly, but you have not shown what
22 you can't see, is the other side of the fence, is which
23 the large sums of money that we were paying in advance
24 simply out of our good nature to keep this team going or
25 to keep the supplies and equipment necessary for us to

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1 perform at an international level that the company could
2 not pay on certain times.

3 And that's my frustration with this
4 discussion, is that as these monies were refunded to me,
5 yes, they may have gone to certain areas, but it was
6 monies that were owed to me long since that time. The
7 team could not have functioned, we could not have run
8 our organization if this money had simply been got —
9 sent off in other directions, other than to service the
10 team. We are talking about \$300,000 budgets, max, each
11 year.

12 MR. GLEBOFF: Let's take a short break.

13 THE VIDEOGRAPHER: Off the record at
14 3:56.

15 (Off the record 3:56-4:03.)

16 THE VIDEOGRAPHER: And we are back on the
17 record at 4:03.

18 Q. Mr. Chenoweth, can you tell me when you closed
19 on the house that you reside in?

20 A. Well, according to that document, it was
21 January 3rd, '95.

22 Q. Okay. And when you say that document, while
23 we were off the record, you looked at the settlement —

24 A. Yes.

25 Q. — statement?

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1 A. Yes, that's correct.

2 Q. All right. Earlier we looked at some
3 electronic funds transfer tickets or deposit tickets for
4 payments that were made by Mr. Cutting —

5 A. Right.

6 Q. — to you, and I'm not sure that I covered
7 that as much as I should have. What — what did you do
8 with the money that was deposited into your account?

9 A. Well, back at that time frame, in the '92, '93
10 time frame, my mom and I had contributed over \$70,000 to
11 Team EDS in purchase of equipment that really dated back
12 '90, '91, '92, '93.

13 At that time, our team budget was
14 extremely small. We were adding a number of riders to
15 the team, and the company had not yet — the company had
16 not yet began to expand the team as we had anticipated,
17 from a budget standpoint. It was still being restricted
18 quite a bit, even though that we were entering into the
19 next phase of the second quadrennium, '93 through '96.

20 So I went to Vicki and I explained to her
21 that we were — were — were encountering an
22 insurmountable amount of money that we could not
23 continue to go without. She agreed, and she allowed me
24 to begin to recoup that money through the expense
25 routine that we had talked about earlier, where a — a

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1 large number of the deposits were made in order for us
2 to recoup that money, because we were losing, obviously.

3 Although, it was not interest money, my
4 mom had over \$100,000 in cash that she had accumulated

5 since the early 1970s, and she had kept that, basically,
6 hidden to herself until she made me aware that — around
7 the 1990, '91 time frame to where we could begin to kind
8 of plan a new future and, you know, all that kind of
9 stuff and, you know, put our lives in a new direction
10 and, you know, take advantage of my new career at EDS
11 and start having a little bit better lifestyle than we
12 had previously.

13 So that's when she decided to make me
14 aware that she had accumulated this money that — monies
15 that I had both given her and that she had saved.
16 And because of my propensity not to save money, she felt
17 that was something that she was going to do, and then
18 jointly, we could use that money however we choose.

19 I chose to use that money, initially,
20 to fund the team and to fund equipment for that team. I
21 was very zealous and very excited about getting an
22 organization together that I thought was truly capable
23 of being a world-class contender in representing EDS
24 around the world.

25 And combining the own — my own equipment

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1 that I had put in over — well, since 1980, '81, we had
2 quite a war chest of — of monies to — to go forth
3 and — and buy a lot of stuff and get the team well
4 established.

5 But with that said, as we moved into the
6 '93, '94 time frame, our budgets were still too small
7 for me to comfortably get that money back, and Vicki
8 began to approve that in late '94. So once that
9 occurred, we began to reimburse ourselves with that.

10 Q. All right. Now, do you know — I don't know

11 that we ever got straight on this — how Mr. Cutting got
12 the money from EDS? He sent them invoices?
13 A. Again, I — I — what I'm really not clear on
14 is why the decision was made at that time not to go —
15 well, we didn't — Goldsmith & Jeffrie, I don't —
16 wasn't always even around then. So this was the initial
17 effort that we had, and it may have been because of that
18 that was pre-Global — or pre — pre-Bike Mart and, of
19 course, pre-Goldsmith & Jeffrie and — and certainly
20 Texas Racing Works wasn't even in existence then.

21 So it may have been decided that Skip was
22 the only — well, he was a vendor, and he was a — a —
23 he was considered a vendor to EDS, both as a coach, but
24 also, to a certain degree, a purchaser and a buying
25 agent for us, kind of our Global director/sportif, I

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1 guess is the best way to describe him.

2 So probably because he was the only
3 source we could go to outside of EDS at that time, he
4 was the logical way to go. Again, I'm making an
5 assumption because I don't really remember the intricate
6 details of it, but I would assume that would be the
7 case.

8 Q. Did Mr. Hydrick ever ask you if he could just
9 send you a 1099 for the money that he had paid to you?

10 A. I'm not aware of that.

11 Q. You never talked to him about whether you —

12 A. Huh-uh.

13 Q. — should get a 1099?

14 A. No.

15 Q. Do you know whether he sent one to Marty?

16 A. From what I understood through Steve Walsh is
17 that everything was being handled appropriately where,

18 you know, taxes were being paid and all that kind of
19 stuff.
20 So all I cared about is that we were
21 managing it in a way that we should manage it, and he
22 was being taxed on his income and paying the appropriate
23 taxes and all that kind of stuff and that Brett wasn't
24 being penalized for it, so — but I never had any
25 detailed information like that, no.

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1 Q. Do you know a person named Sky Christoferson?

2 A. Uh-huh, yes, Sky.

3 Q. Who — who is that?

4 A. Sky is a National Team rider for USA Cycling.

5 He's here in town right now.

6 Q. Okay. Have you sold a bike to

7 Mr. Christoferson?

8 A. Yes, I did, uh-huh.

9 Q. What did you sell him?

10 A. I sold him a Corima.

11 Q. Where did that bike come from?

12 A. I bought that bike back in 1996.

13 Q. From whom?

14 A. An individual on the West Coast.

15 Q. What was that person's name?

16 A. I don't remember. This was a long time ago.

17 I don't think I dealt with him directly. I — a friend
18 of mine knew he had a bike and I bought it from him, and
19 it was an early Corima version that I had bought.

20 Q. Okay. What is your current cycling program?

21 What do you — what do you do? How often do you race?

22 A. Well, I'm — how often do I race? The racing

23 season is just beginning to start. I'll have the usual

24 assortment of — of track races, both locally,
25 nationally, and internationally this year. National

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1 Championships, Regional Championships, Cups, and the
2 Olympic trials coming up in a couple of weeks.

3 Q. Do you have a sponsor?

4 A. Yes, Corima.

5 Q. Anybody else?

6 A. No.

7 Q. Are you intending to enlist sponsorship to pay
8 for the expenses of travel or...

9 A. I'm pretty burned out on the enlisting of
10 sponsorship routine that I went through for Team EDS
11 over a 10-year period. It's — you know, I — I know
12 how to do it. I'm pretty good at it, but I've had a —
13 I'm — just my own personal opinion, I've got a real bad
14 taste in my mouth.

15 I helped a lot of people over the past 10
16 years. The entire team basically raced full time, while
17 I worked full time, and reaped a lot of benefits, and
18 now I'd like to have those — a few of those benefits
19 myself, so — when I started Team EDS, ironically, all
20 that Les Alberthal cared about was Marty and myself.

21 I could have managed the whole team with
22 no more than the two of us, but I felt that it wasn't
23 good for the company just to have two riders. So I
24 expanded the team, made it a culturally diverse team,
25 both men and women, to show a more diverse side of EDS.

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1 In hindsight, for myself, that wasn't the
2 best move, but that's the way I went. But I think my
3 large team-building days are over, so I'm going to focus

4 on myself and do the best job I can.

5 Q. Was — was Mr. Alberthal a supporter of the
6 Team EDS concept from the beginning?

7 A. Mr. Alberthal definitely was. He was my
8 mentor, and I probably cared more about Les than any
9 person I've ever cared about, from a professional
10 standpoint. He's a great man, a visionary, and if it
11 weren't for him, I wouldn't have been allowed to create
12 the things that we created so successfully over the last
13 11 years. He didn't do it for me, but he gave me
14 opportunity, and he rewarded me with more responsibility
15 as a result.

16 But despite these problems that are
17 obviously very severe, we — we've accomplished some
18 wonderful things for EDS and made EDS a lot of money,
19 and I think that that was recognized, and I certainly
20 enjoyed the time with Les, and I was very sad when that
21 era ended because I knew I was quickly going to be ended
22 with it, so it was a matter of time.

23 Q. If — if Mr. Alberthal were a supporter of
24 Team EDS and given his position with the organization,
25 wouldn't it seem logical to you that Mr. Alberthal could

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1 ensure that you would have sufficient budget resources
2 so that you wouldn't have to resort to submitting
3 invoices that were not accurate?

4 A. I'm smiling because you had no idea what the
5 environment was like in the 11 years, and — and that's
6 really the whole problem here, is our sports-technology
7 programs began in 1988, really, with Malgudis supporting
8 me and one other rider for — for some National
9 Championship competition. It grew from that. We
10 developed a technology store, we developed some

11 national/international alliances, and then by 1998, we
12 had the number one team in the world, but it started off
13 very small.

14 EDS was a company, and the problem with
15 EDS is that it's full of division, it is full of
16 political infighting, and it was the most — in that
17 company you could possibly image as far as getting a
18 decision made. I cannot tell you how many times I
19 had meetings with Les or Gary, and the decision was,
20 yes, do it, but don't tell anybody. Yes, go ahead, good
21 luck, you know, but I'm not going to fight your battle.
22 Yes, you need to do that, but you don't have a budget,
23 you figure out a way to get it done.

24 Now, that sounds maybe insane or goofy or
25 whatever else, but that was — for instance, World Cup

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1 '98, which was the largest project we ever were involved
2 in, we spent around \$40 million to develop an — an
3 Internet — an IT solution for World Cup '98. It was
4 the most significant web site ever built. I won't go
5 into the details. It was a big success for the company,
6 for the customer, blah-blah-blah.

7 Throughout that whole span of time, I
8 fought budget reductions that would have caused us to
9 fail in the delivery of that system. There was no
10 concept, and once we agreed to do something, to follow
11 through with budget support for it. I had to fight year
12 in, year out to keep just enough dollars on the table,
13 with Les' support and Gary's support, to keep these
14 programs viable.

15 I was forced from day one — and we've
16 talked a great deal about cycling, but the — the real

17 problems were within our World Cup and Olympic and
18 Formula One alliances to where we had partnerships that
19 were in the multimillions of dollars, with
20 Hewlett-Packard, with Sun, Sprint, et cetera. We were
21 partnering with them and expected to carry our fair
22 weight.

23 What we had to do was to create mirrors
24 and smoke and ways to do this without spending a
25 fraction of the dollars these other organizations were

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1 spending. So if you ever saw the movie The Great Escape
2 with the guy who was a scrounger in the — in the
3 prisoner of war camp,
James Garner, we were the
4 scroungers. We had to come up with ways to get things
5 done.

6 It made no sense. It never did make any
7 sense. I would walk out of meetings where no one would
8 say yes to me. They'd just say, okay, if you want to do
9 it, go do it, because they didn't want the ultimate
10 responsibility if it failed. I had that responsibility.

11 And I lived for 11 and a half years in
12 that environment. I'm not crying about it, and I got
13 fired. You know, I got fired with no severance package.
14 Les Alberthal got \$35 million, Gary Fernandes got \$12.5
15 million, John Harris got \$2 million.

16 Now, I was fired two weeks later and I'm
17 being sued now for over \$400,000. Now, again, I'm a big
18 guy and I can take it, but the — the bottom line is,
19 EDS was a complex, diverse, strange company in — in
20 which marketing programs — I was the only one who kept
21 marketing programs alive because I managed and figured
22 out ways to create and finance them in a unique manner.

23 If I had been a black-and-white person,
24 like most of the people in EDS would, I would have
25 lasted about a year and a half to two years and our

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1 programs would have failed. Every program, the World
2 Cup, 1992 Olympics, '94 World Cup, Formula One Grand
3 Prix, '96 Olympics, World Cup '98, and Women's World Cup
4 '99 were an immense success for EDS, and my group
5 generated \$9 billion for the company, and I managed over
6 \$125 million in budgets during that same period of time
7 without one budget screw-up.

8 Now, again, I'm giving you my sales pitch
9 here, but you have to look at the whole perspective of
10 this, and I'm proud of that, and I'm ashamed of what's
11 happened. And I am truly sorry that your time and EDS'
12 time has been spent this past year looking in my
13 underwear, so to speak. I understand it's a serious
14 matter and I take it very seriously, but my career has
15 been ruined.

16 I — I cannot get a job in my industry to
17 save my life. I am working in health clubs now, and I
18 don't have a car because my car got repoed last week.
19 So this is a whole different world for me, and I'm not
20 asking for your sympathy or anyone else's sympathy here,
21 but I've been nailed. And if I made mistakes because I
22 was overzealous and maybe arrogant, boy, you know, you
23 guys win, okay? It's — it's 1 for you guys and zero
24 for me, but I'm still not ashamed for what I did for the
25 company, and I was proud of the 11 and a half years that

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1 I worked there.

2 MR. GLEBOFF: We haven't gotten the

3 documents, and this might be a good time for me to get
4 the documents, and I think the — we're going to need to
5 go off the record so we can disassemble the room before
6 the marshal service will want us out, but we — we also
7 need to talk about a time to complete the deposition,
8 because I'm — I'm certain I'm going to have some more
9 questions based on the documents.

10 And I'm — I'm — I'm not finished at
11 this point, anyway, but I had hoped that we could
12 continue tomorrow. Have you guys had a chance to talk
13 about when we can complete the deposition?

14 MR. GORDON: Well — well, Nick says he
15 just can't afford to take another day off of work this
16 week. I'm — I'm available tomorrow but he's not.

17 MR. GLEBOFF: What about Monday?

18 MR. GORDON: Monday? Again — well, I
19 don't know. What about Ms. Chenoweth's deposition, if we
20 try to — I don't think even you and I can take two
21 depositions at the same time here, so I don't know how
22 we're — how that's going to work.

23 MR. GLEBOFF: Well, this witness is
24 appearing pursuant to notice. I'm not completed, so I
25 need to know when you'll present him to complete it.

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1 I'm — I'm not saying that it has to be —

2 MR. GORDON: Sure.

3 MR. GLEBOFF: — Monday, but the problem
4 is, by my account, the discovery deadline in this case
5 is approaching pretty quickly, and so if that's — un —
6 unless you want to agree to extend that for our side,
7 then I'm going to have to finish the deposition within
8 the time lines, so...

9 MR. GORDON: Yeah. Tuesday afternoon is

10 out for me. I have to be in hearings. It's been
11 scheduled for three months, probate court in Tarrant
12 County. Other than that, I can — I'm — I'm available
13 anytime. So it's when Nick —

14 THE WITNESS: I'm — I'm available
15 anytime Tuesday. I'm available anytime Wednesday until
16 about 3:30. I'm available Thursday anytime. I'm just
17 not available tomorrow. I'm available Sunday. I'm
18 available — Monday's just completely out of the
19 question. I just — there's just no way.

20 MR. GLEBOFF: Okay. Well, there's
21 several options. We'll — we'll pick one of those.
22 We'll do that off the record.

23 MR. GORDON: Okay.

24 MR. GLEBOFF: All right. I trust that if
25 we — as a result of that we have any issues about the

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1 discovery deadline, you'll accommodate me —

2 MR. GORDON: Yeah.

3 MR. GLEBOFF: — so that we can
4 accommodate Mr. Chenowth.

5 Okay. Why don't we go off the record for
6 today. We will have an agreement of counsel and through
7 defendant on when we're going to continue this
8 deposition, but it appears next Tuesday or Wednesday can
9 probably be agreed upon.

10 THE VIDEOGRAPHER: We're off the record
11 at 4:21, the end of tape number 3 of volume number 1 and
12 recess of the videotaped deposition of Nicholas E.
13 Chenowth.

14 (Deposition adjourned at 4:21 p.m.)

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: NICHOLAS E. CHENOWTH

3 PAGE LINE CHANGE REASON

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1 I, NICHOLAS E. CHENOWTH, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4

5 _____

6 NICHOLAS E. CHENOWTH

7

8 THE STATE OF _____)

9 COUNTY OF _____)

10

11 Before me, _____, on this
12 day personally appeared NICHOLAS E. CHENOWTH, known to
13 me (or proved to me under oath or through
14 _____) (description of identity card or other
15 document) to be the person whose name is subscribed to
16 the foregoing instrument and acknowledged to me that
17 they executed the same for the purposes and
18 consideration therein expressed.

19 Given under my hand and seal of office this
20 _____ day of _____, 2000.

21

22

23 NOTARY PUBLIC IN AND FOR
THE STATE OF _____

24 My commission expires: _____

25

1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 I, Stacy L. Jordan, Certified Shorthand Reporter,
4 in and for the State of Texas, certify that the
5 foregoing deposition of NICHOLAS E. CHENOWTH was
6 reported stenographically by me at the time and place
7 indicated, said witness having been placed under oath by
8 me, and that the deposition is a true record of the
9 testimony given by the witness.

10 I further certify that I am neither counsel for nor
11 related to any party in this cause and am not
12 financially interested in its outcome.

13 Given under my hand on this the _____ day of
14 _____, 2000.

15

16

17

18

Stacy L. Jordan, Certified
Shorthand Reporter No. 7499
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My commission expires 12-31-00

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