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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re: Case No. 07-43128-JBR
Gailon Arthur Joy,
Debtor

FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004
EXAMINATION OF: GAILON ARTHUR JOY, to be taken
before Sarah L. Mubarek, a Notary Public for the
Commonwealth of Massachusetts, at the offices of
Hendel & Collins, P.C., 101 State Street,
Springfield, Massachusetts 01103, on September 9,
2008, commencing at 10:30 a.m.

APPEARANCES:
(Please see page 2)

1 APPEARANCES:

2 Hendel & Collins, P.C., 101 State Street,
3 Springfield, Massachusetts 01103, representing
4 Three Angels Broadcasting Network, Inc. and
5 Danny Lee Shelton.

6 BY: GEORGE I. ROUMELIOTIS, ESQUIRE

7 Fierst, Pucci & Kane, LLP, 64 Gothic Street,
8 Northampton, Massachusetts 01060, representing
9 Fierst, Pucci & Kane, LLP.

10 BY: J. LIZETTE RICHARDS, ESQUIRE

11 Law Offices of Laird J. Heal, 3 Clinton Road,
12 Sterling, Massachusetts 01564, representing the
13 Debtor, Gailon Arthur Joy.

14 BY: LAIRD J. HEAL, ESQUIRE

15 Also Present: M. Gregory Simpson, Esquire
16 (By telephone:) Robert Pickle

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1 The witness, GAILON ARTHUR JOY, having been
2 duly sworn, testifies as follows:

3 MR. ROUMELIOTIS: I am George
4 Roumeliotis of Hendel & Collins. Lizette Richards
5 is here. If you want to introduce yourself?

6 MS. RICHARDS: Attorney Lizette
7 Richards. I am appearing on behalf of the firm
8 Fierst, Pucci & Kane.

9 MR. ROUMELIOTIS: I am appearing on
10 behalf of 3ABN and Danny Shelton in connection with
11 the bankruptcy case. Also present is Attorney Greg
12 Simpson from Minneapolis.

13 MR. SIMPSON: I will be entering a
14 formal appearance shortly in this case, but I won't
15 be asking any questions today. I'm not formally
16 entered in this particular action.

17 DIRECT EXAMINATION BY MR. ROUMELIOTIS

18 Q. Some preliminaries. Mr. Joy, have you
19 ever given a statement under oath?

20 A. I presume so.

21 Q. You've been sworn in in other proceedings
22 and asked to give your testimony in various things?

23 A. Oh, yeah, sure.

1 Q. Do you understand the meaning of being
2 under oath?

3 A. I do.

4 Q. And the consequences of not telling the
5 truth when you are under oath?

6 A. I do.

7 Q. And what are those consequences?

8 MR. HEAL: That's a legal opinion.

9 A. It depends on the relevance.

10 Q. You know what perjury means?

11 A. I'm sorry?

12 Q. Do you know what perjury means?

13 A. Generally speaking.

14 Q. It means that if you are under oath and
15 you do not tell the truth, you can be found guilty
16 of perjury, which is a crime.

17 A. If.

18 Q. You understand that?

19 A. What about it?

20 Q. Do you understand what I just told you
21 about the definition of perjury?

22 A. I already told you I understood perjury.

23 Q. Have you ever testified in a court

1 proceeding?

2 A. I have.

3 Q. How many?

4 A. Relevance?

5 Q. Just your experience in dealing with these
6 matters.

7 A. And the relevance?

8 Q. Have you testified in any other matters --

9 A. This is a 2004 hearing.

10 Q. Have you ever testified in any matters,
11 other than the Section 341 meeting that took place
12 in this case, which I think was continued once or
13 twice, or in any matter relating to --

14 A. And the relevance?

15 Q. -- this bankruptcy case? The relevance to
16 this case is your experience in testifying under
17 oath, and your understanding of --

18 A. I already told you I had. Anything else?

19 Q. Yes. We're going to talk about the rules
20 of this deposition here.

21 A. Okay.

22 Q. The rules are pretty simple. I'm going to
23 ask the questions. Nearly anything I think I can

1 ask is relevant. I can ask you anything dealing
2 with yourself, your employment, your assets, your
3 liabilities, the claim that's been asserted in this
4 case by yourself. It's pretty wide open.

5 A. The claim I've asserted in what case?

6 Q. In this case.

7 A. What claim have I asserted?

8 Q. The adversary proceeding pending against
9 Mr. Shelton and 3ABN and the whole host of lawyers
10 for alleged stay violations.

11 A. Oh, you mean for the violations of the
12 automatic stay?

13 MR. HEAL: I didn't recall there was
14 any deposition in the adversary proceeding noticed.

15 THE WITNESS: Yeah, I wasn't either.

16 MR. ROUMELIOTIS: This is a Rule 2004
17 exam. If you take a look at the rules, and I can
18 get it for you --

19 THE WITNESS: Please do.

20 MR. ROUMELIOTIS: -- we can examine
21 you on anything dealing with assets and liabilities
22 and claims asserted in the case. The adversary
23 proceeding is pending in the case.

1 MR. HEAL: It's not a claim.

2 THE WITNESS: It's a post-petition
3 claim.

4 MR. HEAL: It's not even a claim.
5 There's no creditor asserting a claim.

6 MR. ROUMELIOTIS: No, it's an asset
7 that Mr. Joy --

8 THE WITNESS: We need the rule.

9 MR. HEAL: It's your argument. You
10 brought it up. We're going to discuss it, I
11 suppose.

12 (Pause.)

13 MR. ROUMELIOTIS: I'm reading from
14 Rule 2004(b), scope of examination.

15 THE WITNESS: Start with (a).

16 MR. ROUMELIOTIS: Is this how it's
17 going to go today?

18 THE WITNESS: You know what? We're
19 going to understand the rules.

20 MR. ROUMELIOTIS: Fine. "2004(a)
21 Examination on Motion. On motion of any party in
22 interest, the court may order the examination of
23 any entity." Would you acknowledge that the court

1 has authorized this examination?

2 THE WITNESS: And the rest of it?

3 MR. ROUMELIOTIS: That's it.

4 THE WITNESS: That's the entire (a)?

5 MR. ROUMELIOTIS: That's it. We can
6 read it together. "(b) Scope of Examination. The
7 examination of an entity under this rule or of the
8 debtor under Section 343 of the Code may relate
9 only to the acts, conduct, or property or to the
10 liabilities and financial condition of the debtor,
11 or to any matter which may affect the
12 administration of the debtor's estate, or to the
13 debtor's right to a discharge."

14 Acts, conduct or property. Your acts,
15 your conduct. I want to know, in connection with
16 the pending adversary proceeding in which you've
17 alleged damages now, what acts were you prevented
18 from engaging in that led to the alleged damages
19 that you say that you suffered, and any matter that
20 affects the administration of the debtor's estate.
21 The administration of the debtor's estate involves
22 the pending adversary proceeding. The debtor's
23 estate cannot be closed without the adversary

1 proceeding being wrapped up.

2 Debtor's right to a discharge, there are
3 many issues that might pop up as to whether you're
4 entitled to a discharge, and we believe that some
5 of the things that might have been alleged in the
6 adversary proceeding might bear on that right to a
7 discharge.

8 MR. HEAL: I'm going to object to the
9 line of questioning regarding the adversary
10 proceeding. It is not a matter which is going to
11 affect the administration of the debtor's estate.
12 It's post-petition, and we've not as a preliminary
13 matter made any stipulations regarding objections.
14 But I would just say that if you're asking --

15 MR. ROUMELIOTIS: Why don't we go
16 through the line of questioning, and your objection
17 is preserved and we can deal with it at some later
18 time. I also want to prevent --

19 MR. HEAL: Shall we stipulate --

20 THE WITNESS: Because what you would
21 have to do in a case like that would be to give
22 notice of deposition, not a 2004.

23 MR. ROUMELIOTIS: The acts that --

1 THE WITNESS: And you didn't ask for
2 any documentation relating to that particular
3 adversarial proceeding. You only asked for
4 documentation that related to the petition.

5 MR. ROUMELIOTIS: Off the record.

6 (Discussion held off the record.)

7 MR. ROUMELIOTIS: Back on the record.
8 Let's try it this way, Mr. Joy. I'm going to ask
9 the questions. In response I'd like a response,
10 not another question back from you. If you have an
11 objection to the question that I'm asking, state
12 it, you or Mr. Heal, and the reason for the
13 objection, and we'll just keep moving. Fair?

14 Q. (By Mr. Roumeliotis:) Can you state for
15 the record your full name?

16 A. Gailon, G-a-i-l-o-n, middle name Arthur,
17 A-r-t-h-u-r, last name Joy, J-o-y.

18 Q. Your address where you reside?

19 A. *****, Massachusetts
20 *****.

21 Q. That address, Mr. Joy, who owns it? Who
22 owns the real estate there?

23 A. I have no why idea.

1 Q. Do you rent there?

2 A. Nope. I'm just staying there until the
3 place sells.

4 Q. Do you pay rent to somebody?

5 A. No.

6 Q. Who do you live with?

7 A. I'm living with my wife, my daughter, her
8 four children.

9 Q. Does your wife own the real estate?

10 A. No.

11 Q. Does anybody pay rent for the real estate?

12 A. No, not that I'm aware of.

13 Q. And you don't know who the owner is?

14 A. I've never done a title search. I'm
15 assuming it's Mrs. Novarini maybe. I don't know.
16 I can't remember.

17 Q. Why does that name come to mind?

18 A. Don't know. I think that's her last name.

19 Q. How did you come to live there?

20 A. We were invited to live there.

21 Q. By a Mrs. Novarini?

22 A. No, a friend of ours.

23 Q. Okay. What connection -- what's the

1 friend's name?

2 A. Mr. Bisson.

3 Q. What's Mr. Bisson's connection to this
4 real estate at which you live?

5 A. He knew it was going to be available, and
6 asked if we would -- we were looking for a place
7 last year, and frankly, he asked us if we'd be
8 interested in staying there until it sold.

9 Q. Does Mr. Bisson own the real estate?

10 A. No, I don't think so.

11 Q. Does an entity that Mr. Bisson controls
12 own the real estate?

13 A. I don't believe so.

14 Q. Can you explain to me then why Mr. Bisson
15 would invite you to stay at a piece of real estate
16 that he has no control or ownership or connection
17 to?

18 A. Well, it's post-petition, so what's the
19 relevance?

20 Q. We're trying to find out if you have any
21 connection to this real estate, and whether it does
22 have any pre-petition ties. You stated --

23 A. The answer's no.

1 Q. -- in your bankruptcy schedule that you
2 own no real estate?

3 A. That's right.

4 Q. That's correct?

5 A. That's right, and I also stated I never
6 have in my answers to you.

7 Q. So I just want to understand. Your
8 testimony right now is that you live -- and is this
9 real estate an apartment building, is it an
10 apartment in an apartment building, is it a house?

11 A. It's a single-family home.

12 Q. And this home, you do not know who the
13 owner is of this home?

14 A. I believe it's Mrs. Novarini.

15 Q. You believe it's Mrs. Novarini?

16 A. Yeah.

17 Q. And Mr. Bisson -- first name for
18 Mr. Bisson, please?

19 A. The relevance?

20 Q. Are you going to answer the question?

21 A. Relevance?

22 Q. I believe it's relevant.

23 A. Objection. Relevance. It's post-petition

1 and not in any way relevant.

2 Q. Okay. Your social security number, sir?

3 A. I already gave her a copy of it.

4 MR. ROUMELIOTIS: Did you get that?

5 COURT REPORTER: I didn't write it

6 down.

7 Q. Can you state it for the record?

8 A. ***-**-****. I expect that to be

9 stricken.

10 Q. Where were you born, sir?

11 A. Lubec, Maine.

12 Q. Date of birth?

13 A. **/**/**.

14 Q. And where were you raised? Where did you
15 spend your childhood?

16 A. Relevance?

17 Q. Just background information.

18 A. Not relevant.

19 Q. You're not going to answer the question?

20 A. Objection. Relevance.

21 Q. Just tell me if you're going to answer the
22 question.

23 A. There would be no reason to answer the

1 question.

2 Q. Your current marital status?

3 A. Married.

4 Q. And for how long in this current marriage?

5 A. Current marriage?

6 Q. Yes.

7 A. I've only been married once.

8 Q. That was my next question, whether or not
9 there have been any prior marriages.

10 Educational history, where did you
11 graduate from high school?

12 A. Pioneer Valley Academy.

13 Q. In what city?

14 A. New Braintree, Mass.

15 Q. And post-secondary education? Did you go
16 to college anywhere?

17 A. Yeah.

18 Q. Where?

19 A. Relevance? Objection.

20 Q. We're going to talk about your employment
21 history. I just want to get for the record, are
22 you refusing to answer where you went to college?

23 A. I didn't graduate from college.

1 Q. Okay. Can you tell us where you attended
2 college?

3 A. Well, I attended programs all over the
4 place.

5 Q. Such as?

6 A. And again, objection, relevance.

7 Q. Are you going to refuse to answer where
8 you attended certain programs all over the place?

9 A. Which programs are you looking for, and
10 how are they relevant to a 2004 hearing?

11 Q. Are you going to answer the question? I
12 think they're relevant as to your background, as to
13 your prior work history. I think they're relevant.
14 Any question that I'm going to ask, I believe it's
15 relevant. If you're going to answer it, answer it.
16 If you're not going answer it, tell me so.

17 A. I actually -- let's see. Where did I
18 attend? I did two years at Atlantic Union College.

19 Q. Where is Atlantic Union College?

20 A. In South Lancaster, Mass.

21 Q. Any other schools you attended various
22 programs at?

23 A. I attended Dartmouth College in Hanover,

1 New Hampshire.

2 Q. Okay. Any other schools?

3 A. Let me think.

4 Q. Roughly what years are we talking about?

5 When did you attend these schools?

6 A. Years ago. I don't recall. Is it on my
7 resumé? Probably not.

8 Q. I don't think so. Any other schools other
9 than Atlantic Union College and Dartmouth College?

10 A. I'm trying to think. I've done a variety
11 of -- I've done real estate school, insurance
12 school and so on and so on, but I don't think they
13 were directly affiliated with a college or
14 university.

15 Q. So can you estimate for me about how many
16 college credits you have gathered in total?

17 A. No idea. I think it's the equivalent of a
18 junior year.

19 Q. Let's talk about your employment history.
20 You say in your bankruptcy petition that you're a
21 mortgage broker, I believe it says, with NEMCO?

22 A. Was.

23 Q. Was, okay. Prior to that --

1 A. By the way, I was not the broker. I was
2 the branch manager.

3 Q. You were the branch manager?

4 A. Uh-huh.

5 Q. For something called NEMCO. What does
6 that acronym stand for?

7 A. New England Merchants Corporation. They
8 died last year.

9 Q. New England Merchants Corporation, let's
10 stick with that for a second. Did you have any
11 ownership interest in that entity?

12 A. No.

13 Q. What branch were you a manager of?

14 A. Sterling.

15 Q. What's the address there or was the
16 address there?

17 A. 3 Clinton Road.

18 Q. Who did own New England Merchants
19 Corporation?

20 A. I never asked. I don't know.

21 Q. Somebody that -- it's an entity that --

22 A. I knew the president. The president was a
23 fellow by the name of Mr. Goduti, Philip Goduti.

1 Q. Any relationship with Philip Goduti other
2 than employer/employee? Was there any other prior
3 relationship?

4 A. You mean relative?

5 Q. Friend, relative?

6 A. Well, I've known him for years.

7 Q. So you were not self-employed then, were
8 you?

9 A. We were an FHA branch, so we couldn't be
10 self-employed. We had to be employed by the
11 corporation.

12 Q. Did you have any ownership interest
13 whatsoever, any stock interest, stock or equity
14 interest in New England Merchants Corporation?

15 A. None.

16 Q. From when --

17 A. And let me point something out for the
18 record. It would be useless anyway because the
19 corporation went defunct last year. That's what
20 drove me into a bankruptcy.

21 Q. I understand that, but I'm just trying to
22 get this background.

23 A. Well, I'm giving you the background.

1 MR. HEAL: Are you having any trouble
2 hearing, Bob?

3 MR. PICKLE: No, I'm hearing pretty
4 good. Thank you for asking.

5 Q. So your testimony just now is that you
6 were the branch manager for New England Merchants
7 Corporation. When did it close? When did it go
8 out of business, as you say?

9 A. Let's see. I guess it was probably in
10 July. I don't remember the date. Sometime in
11 July.

12 Q. Of last year?

13 A. Yeah.

14 Q. 2007?

15 A. Something like that, yeah. But it
16 actually -- we ended up -- it took us a while to
17 finish up, cleaning out records, and we didn't
18 finish that until sometime in probably September,
19 October, because we had several years' worth of
20 records there.

21 Q. When you refer to cleaning out records, is
22 that just you're putting things in storage? What
23 was that activity?

1 A. We had client files and they had to be
2 destroyed, except for -- they already audited us,
3 so we had to keep anything from the audit point on
4 and send it to their central archives.

5 Q. Who was auditing you?

6 A. Commissioner. It's every other year.

7 Q. Commissioner of Banking?

8 A. Uh-huh. I believe they were in -- I think
9 they were last in in October of 2006, completed our
10 audit, so we only had about a year's worth of
11 records that we had to retain.

12 Q. That last year of records that you say you
13 needed to retain, was that ever audited subsequent
14 to New England Merchants Corporation closing, to
15 your knowledge?

16 A. I don't know. I have no clue. I mean,
17 they all went to central archives. I'm assuming
18 they would have been, but we were an FHA branch so
19 they wouldn't have audited anything that we did
20 anyway. That was the funny thing. They'd show up,
21 waste the time, spend the day and chitchat with us,
22 and tell us, "Gee, we're not interested in this."

23 Q. I want to show you Schedule I of your

1 bankruptcy petition, which asks for the name of
2 your employer.

3 A. Uh-huh.

4 Q. It lists Gailon Arthur Joy d/b/a NEMCO.

5 A. Yup.

6 Q. That suggests that you were self-employed.

7 A. Well, we had a tax I.D. number that we
8 never used. We were an FHA branch so we had to be
9 paid by the company, so we never maintained
10 separate records, separate books or anything.

11 Q. I'm puzzled. You say that you worked for
12 something called New England Merchants Corporation?

13 A. Yeah.

14 Q. That was your employer?

15 A. Yeah.

16 Q. Then why did you list a d/b/a entity on
17 your bankruptcy schedules?

18 A. Well, because that was the last social
19 security number or the last federal I.D. number we
20 had. We were ordered to obtain federal I.D.
21 numbers, and to do that I did it under --

22 Q. Who's we?

23 A. The corporation. Oh, any of the branch

1 managers were all ordered to do our own federal
2 I.D. numbers, but we didn't keep records. I didn't
3 pay anybody so I never utilized anybody is what it
4 boils down to.

5 Q. So you never did business as Gailon Arthur
6 Joy d/b/a NEMCO?

7 A. We really never did, no. We were
8 supposedly NEMCO, but for purposes of -- because we
9 were an FHA branch, we never really utilized it.
10 See, you have to -- to understand this what you
11 have to understand is that NEMCO maintained two
12 types of branches. There were divisional branches
13 and there were non-divisional branches. We were a
14 divisional branch, which meant that we did FHA
15 loans and therefore we were subject to central
16 bookkeeping.

17 Had we done non-FHA business, then we
18 would have had to have worked it out -- let's say
19 we had brokers that were working with us. Then we
20 would have received a check, okay, and then we
21 would have had to have distributed to other people.
22 That never happened in our case is what I'm telling
23 you. Even though we were set up that way, it never

1 happened.

2 Q. Okay. So in terms of your listing of your
3 current income, and I understand this is as of the
4 bankruptcy filing?

5 A. Yeah.

6 Q. You listed your current income of
7 individual debtor. Is it your testimony then that
8 this is just not accurate, that you never really
9 did business for yourself, that at that time you
10 were working for New England Merchants Corporation?

11 A. New England Merchants was closed by then.

12 Q. Okay. Your bankruptcy --

13 A. But we were still cleaning up records. We
14 were still trying to clean up records, close down,
15 and make sure that the client records were
16 destroyed that were old obviously.

17 Q. Let's go back here. This is Schedule I
18 again on your bankruptcy petition.

19 A. Uh-huh.

20 Q. And if you go forward two pages, you will
21 see a date on it, and it looks like it was dated
22 August 14th, 2007?

23 A. Right.

1 MR. HEAL: I'm sorry. Do we need to
2 enter some of these as exhibits?

3 MR. ROUMELIOTIS: Probably do. I'll
4 get you a copy, but it will be Schedule I of the
5 bankruptcy schedules that we'll mark as Exhibit A.

6 Q. (By Mr. Roumeliotis:) Those schedules
7 were signed on August 17th, 2007?

8 A. Yeah.

9 Q. Is that true?

10 A. Uh-huh.

11 Q. Would you say that those bankruptcy
12 schedules reflect a true and accurate depiction of
13 your financial circumstances as of August 14th,
14 2007?

15 A. Approximately at that time, yeah.

16 Q. Schedule I of those schedules asks you
17 what is your occupation?

18 A. Right.

19 Q. And what did you say?

20 A. D/b/a NEMCO.

21 Q. Right. Loan consultant, and the name of
22 employer --

23 A. Exactly.

1 Q. -- your name, d/b/a NEMCO?

2 A. Uh-huh.

3 Q. How long employed?

4 A. Well, how about we never invoked NEMCO.

5 We never got paid under NEMCO.

6 Q. You state in your bankruptcy petition that
7 you were working for NEMCO for four years, d/b/a
8 NEMCO.

9 A. Well, New England Merchants Corporation is
10 what I worked with for four years.

11 Q. So then there's only one way to reconcile
12 it. If your testimony today is that you worked for
13 New England Merchants Corporation, even though you
14 set up some d/b/a and tax I.D. number for something
15 else --

16 A. No, we set it up for New England Merchants
17 Corporation, as a branch of New England Merchants
18 Corporation. That's where NEMCO came from. We
19 were -- NEMCO Sterling was I think the abbreviation
20 we used or the code name we used.

21 Q. Did you ever get a d/b/a certificate from
22 the town of Sterling or any other town?

23 A. No.

1 Q. So therefore --

2 A. We were working under New England
3 Merchants Corporation.

4 Q. So therefore is Schedule I inaccurate
5 where it says that the name of your employer is
6 Gailon Arthur Joy d/b/a NEMCO? Did you own NEMCO?

7 A. No.

8 Q. Did you work for yourself?

9 A. But we were still being paid by NEMCO
10 until we closed our business. If you look at the
11 records that we gave you last time, which included
12 I believe a statement of account for the branch,
13 when does that end? October, I believe.

14 Q. July 31st, or the last transaction was the
15 end of July. The statement I think goes through
16 the end of August.

17 A. No, it was until the end of October.

18 Q. This QuickBooks report has a date
19 limitation on it through August 31, '07.

20 A. Oh, okay. All right.

21 Q. And no transactions after the --

22 A. By the way, did you see what it says?
23 Sterling NEMCO.

1 Q. You're starting to ask the questions?

2 A. Did you see what it said?

3 Q. Mr. Joy, I'm not the one being deposed
4 here.

5 A. Let me ask you a question.

6 Q. No, we're not --

7 A. If you had this document and you were
8 filling out this paperwork, would you not use this
9 designation? Would you not use the designation the
10 company gave you?

11 Q. Mr. Joy, we're not going to do it this
12 way. I'm going to ask the questions, and you're
13 going to answer them. So let me --

14 A. You're not going to bait me.

15 Q. I'm not trying to bait you.

16 A. You are.

17 Q. I'm trying to find out what the truth is.

18 A. The truth is exactly what I told you.

19 Q. Then you're telling me two different
20 truths. Who was your employer on August 14th,
21 2007?

22 A. At that time it was still NEMCO. Did we
23 get paid? No.

1 MR. HEAL: I'm sorry. He's not
2 telling you two different truths.

3 Q. On August 14th, 2007 --

4 A. Did we get paid? The answer is no.

5 Q. Did you work for -- that's not my
6 question. That's not my question.

7 A. I was still working for NEMCO on
8 August 15th, 16th, 17th, and all the way through
9 September and October.

10 Q. Who is NEMCO? New England Merchants
11 Corporation, correct?

12 A. Exactly, and they designated us Sterling
13 NEMCO, and we had a federal I.D. number for it even
14 though we never did our own bookkeeping. Do you
15 understand that?

16 Q. Let me ask one more question that I think
17 will just clarify something. Is it your testimony
18 that you had no ownership interest in any mortgage
19 brokerage firm whatsoever?

20 A. I was not a broker. I never had a license
21 as a broker, and never had any equity interest in a
22 brokerage firm.

23 Q. Is it your testimony that you had no

1 equity or ownership interest in any loan consulting
2 or financial services firm?

3 A. To the degree that I had commissions,
4 obviously I had an equity interest.

5 Q. Did you have a shareholder interest?

6 A. The answer is still no.

7 Q. Equity means shareholder interest.

8 A. That's not true. Equitable can be many
9 ways.

10 Q. When you go to law school, you let me
11 know. We're going to move on.

12 Prior to NEMCO, what was your immediately
13 preceding employment prior to NEMCO?

14 A. Let me see. That would have been First
15 Bankers.

16 Q. And what did you do for First Bankers?
17 First Bankers what?

18 A. First Bankers Mortgage Services
19 Corporation out of Florida.

20 Q. And where was your job physically located?

21 A. Lancaster, Massachusetts.

22 Q. And what did you do for First Bankers
23 Mortgage?

1 A. Branch manager again.

2 Q. And again, you had no ownership interest
3 in First Bankers Mortgage Service?

4 A. No, I was not a stockholder. I held no
5 equity interest in First Bankers Mortgage Services.

6 Q. And for what period of time roughly did
7 you work for First Bankers Mortgage Services?

8 A. Let's see. I left First American in June
9 or July maybe of 2000, until I started with Phil
10 Goduti, which was probably May of 2003 maybe.

11 Q. You mentioned you left First American. Is
12 that a different company than First Bankers?

13 A. Yeah.

14 Q. Where was First American -- First American
15 what?

16 A. First American Mortgage Trust.

17 Q. And where was that job physically located?

18 A. Brookline, Massachusetts.

19 Q. And what did you do for them?

20 A. I was a senior VP.

21 Q. Again, no ownership interest?

22 A. Nope. Got them set up -- I went to work
23 with them specifically to set them up to do FHA

1 loans, and we went from FHA Mini-Eagle all the way
2 to Ginnie Mae status before I left.

3 Q. And prior to that, prior to First American
4 Mortgage Trust, who did you work for or what was
5 your employment?

6 A. Probably North Middlesex Savings Bank, I'm
7 guessing.

8 Q. Sir, were you ever self-employed?

9 A. Well, define self-employment. You mean
10 was I ever totally independent, had my own
11 brokerage license, et cetera? The answer's no.

12 Q. The answer's no?

13 A. The answer's no, never had my own broker's
14 license.

15 Q. Did you ever derive any income directly
16 from clients that didn't go to your employer first
17 and then you derive a salary from that employment?

18 A. Years ago.

19 Q. How long ago?

20 A. In the '80s, early '90s maybe. I had to
21 unravel a mess.

22 Q. We understand that there was a criminal
23 issue that you were involved with back some time

1 ago.

2 A. In 1986, '85, something like that.

3 Q. Can you describe briefly what that was
4 about?

5 A. Sure. We had an invoice issue with a
6 client. We couldn't verify payments, and so what
7 we did is we took their invoice and we said, fine,
8 we're not paying you, and I ordered the secretary
9 or the bookkeeper to put it in her bottom drawer
10 until they started verifying payments.

11 They filed a complaint. The Attorney
12 General decided to prosecute for it, and under the
13 Massachusetts embezzlement statute, that
14 constituted -- we went to trial on it, and the
15 judge adjudged that it constituted a violation of
16 the embezzlement statute in Vermont because of the
17 way it was structured. So bottom line is we ended
18 up having to pay restitution. That was it.

19 Q. Okay. Did you plead guilty in that case
20 or was it contested?

21 A. Did not.

22 Q. Did not?

23 A. No.

1 Q. And so the conviction, was that a
2 misdemeanor or a felony?

3 A. I'm assuming it would be a felony,
4 embezzlement.

5 Q. What was the sentence, just restitution?

6 A. That's it.

7 Q. There was no probation, no suspended --

8 A. Well, probation until I paid restitution.
9 I paid restitution, and that was the end of it.

10 Q. And you paid the restitution in full?

11 A. Absolutely.

12 Q. And since then there have been no --

13 A. \$1,186, by the way.

14 Q. And since then there have been no criminal
15 issues --

16 A. No.

17 Q. -- that you've been involved with?

18 A. Not that I'm aware of.

19 Q. So it's your testimony then that you were
20 convicted in that criminal matter after trial, not
21 that you pled guilty?

22 A. Absolutely. We did not plead guilty.

23 Q. You did not pled guilty?

1 A. No. We even appealed it. Unfortunately,
2 the attorney that we had for the appeal ended up
3 becoming the Chief Justice of the Supreme Court,
4 and some other idiot carried it forward and didn't
5 even argue the right arguments. But in any event,
6 at that point it didn't make any difference.
7 Wasn't worth going back to challenge.

8 Q. You are appearing today as a result of the
9 subpoena that we sent out at the end of July of
10 2008, do you understand that?

11 A. Yeah, that and six months before.

12 Q. And in that subpoena we attached a list of
13 documents, we described a lengthy list of documents
14 that we expected to be produced by August 29th of
15 2008.

16 A. In our possession, right.

17 Q. Did you take any steps to inform us or
18 your lawyer that you had no documents in your
19 possession other than what might have been produced
20 back in I think April?

21 A. We had already produced our documents.

22 MR. ROUMELIOTIS: I guess we're going
23 to introduce as Exhibit B the subpoena and the list

1 of documents.

2 (Rule 2004 Examination Subpoena marked
3 Exhibit B for identification.)

4 Q. Mr. Joy, I'm going to show you this list.
5 This is Exhibit A to the subpoena that we issued on
6 you in July.

7 A. Got you.

8 Q. That lists the documents, data and
9 information, categories that we asked that you
10 produce.

11 A. Uh-huh.

12 Q. Category one asks for, "Any and all
13 documents, data and information, whether in paper
14 or electronic form, in the debtor's possession,
15 custody or control that identify or relate to the
16 ownership, registration, hosting, billing, payment,
17 appraisal, value or transfer of, or relationship
18 among, any internet domain names ever registered in
19 the name of the debtor or Robert Pickle, or any
20 entity of which the debtor or Robert Pickle is or
21 was a shareholder, officer or director." Then it
22 goes on to list the domain names, among the domain
23 names that we're interested in, save3abn.com,

1 save3abn.org, save-3abn.com and save-3abn.org.

2 You say that you have no such documents in
3 your response?

4 A. That's correct.

5 Q. There is no electronic record of any
6 invoice, any registration?

7 A. Nope.

8 Q. Who registered save3abn.com?

9 A. How about I don't know. I know it was
10 registered and I know it got registered in my name,
11 but that's all I know.

12 Q. You know it got registered in your name?

13 A. Yeah.

14 Q. Do you recall registering it in your name?

15 A. I did not register it in my name. Did I
16 authorize it to be registered in my name? Yes, I
17 did.

18 Q. Who did you authorize to register that?

19 A. BlueHost.

20 Q. And what is BlueHost?

21 A. They're a hosting company, and they
22 reserve domain names for you.

23 Q. So you directed a domain name registrar to

1 register the domain name?

2 A. Well, we authorized them to do that, put
3 it in my name.

4 Q. Who's we?

5 A. Me.

6 Q. So is it your testimony that you
7 registered save3abn.com --

8 A. I authorized the registration.

9 Q. -- in your name?

10 A. I wouldn't even begin to know how to
11 register a domain name.

12 Q. BlueHost, in order to register that name,
13 which you say you authorized them to do, did you
14 have to pay them a fee?

15 A. I didn't pay the fee. I never paid the
16 fee.

17 Q. Did they require a fee?

18 A. I don't know. I never got a bill.

19 Q. Do you know if somebody else might have
20 paid a fee?

21 A. Very possible.

22 Q. Who?

23 A. Could be any number of people.

1 Q. When you authorized BlueHost to register
2 save3abn.com at your direction, did they not
3 require payment for the registration of that domain
4 name at that time?

5 A. No, I was not told that they would require
6 payment. I never got a bill for it, I never got an
7 e-mail on it, I never got anything on it.

8 Q. How did you authorize BlueHost to register
9 save3abn.com?

10 A. I went through the webmaster.

11 Q. Through their webmaster?

12 A. The webmaster for save3abn.com.

13 Q. And who was the webmaster for
14 save3abn.com?

15 A. Mr. Pickle.

16 Q. Okay. Is there any communication -- what
17 communication did you have with Mr. Pickle that
18 authorized him to do all this?

19 A. Telephone. I've used the telephone for
20 years.

21 Q. There are no e-mails --

22 A. No.

23 Q. -- relating to this?

1 A. Not that I'm aware of. If they did, you'd
2 have them. Or I'm sorry, they'd have them
3 (indicating). We gave them everything.

4 Q. And is it your testimony that you do not
5 know if Mr. Pickle paid anything to register this
6 domain name, save3abn.com?

7 A. I understand that he filed a claim.
8 That's all I'm aware of.

9 Q. I'm going ask the same question for
10 save3abn.org. Who registered that?

11 A. No idea.

12 Q. Did you give the same authorization --

13 A. No.

14 Q. -- with respect to save3abn.org?

15 A. No. Oh, wait a minute. Save3abn.org?

16 Q. Yes, sir.

17 A. You know, I may have. I don't recall. It
18 would make sense that I would have at the time.

19 Q. You would have done what?

20 A. That I would have authorized the
21 registration in my name.

22 Q. And you would have given that
23 authorization to Mr. Pickle?

1 A. The webmaster, yeah. I'm pretty sure they
2 all went to the same. I may be wrong, but I
3 thought they all went into the same.

4 Q. Do you remember when you gave the
5 authorization to Mr. Pickle to register
6 save3abn.com and save3abn.org, when that took
7 place?

8 A. No. Probably January 2006. No, 2007.
9 Probably January 2007, I would suspect.

10 Q. January of 2007?

11 A. Yeah. Wasn't it? I'm pretty sure. Why
12 does that surprise you?

13 Q. And prior to January of 2007 --

14 A. No such name exists, as far as I know.

15 Q. Okay. I'm going to ask similar questions
16 about save-3abn.com --

17 A. Can't help you on those. No idea who was
18 involved.

19 Q. -- and save-3abn.org. Did you register
20 those?

21 A. No.

22 Q. Did you authorize somebody to register
23 them?

1 A. No.

2 Q. Do you know who registered them?

3 A. No idea.

4 MR. HEAL: I'm sorry. How is this
5 relevant to the administration of the estate?

6 MR. ROUMELIOTIS: We're looking --

7 THE WITNESS: They're looking for
8 assets.

9 MR. ROUMELIOTIS: Thank you. We're
10 looking for assets.

11 THE WITNESS: But that would have been
12 post-petition, I'm sure.

13 MR. ROUMELIOTIS: We're trying to find
14 out what existed as of the petition date.

15 THE WITNESS: Well, these would have
16 been post-petition, I'm sure. I think if you check
17 the registration, you'll find that they were.

18 MR. HEAL: And I'm not finding any
19 available information --

20 MR. ROUMELIOTIS: Let me ask the
21 questions.

22 Q. (By Mr. Roumeliotis:) Do you have any
23 connection with --

1 A. The answer's no.

2 Q. What was my question?

3 A. Your question was do I have any connection
4 with any of the current 28 domain names that are
5 out there, and the answer is no, I don't. I
6 specifically gave notice that we did not copyright
7 the site. I had been asked by several people if
8 they could copy the site. We said it's not
9 copywritten, it's up to you, and I think it's been
10 copywritten in several countries, not to mention
11 the United States.

12 Q. So is it your testimony then that the
13 content --

14 A. It's been copied.

15 Q. -- that the content that you are
16 responsible for that now appears on various
17 websites throughout the world, you did not post on
18 those websites?

19 A. I've never posted on a website, on those
20 websites, no.

21 Q. You've never authorized any of those other
22 parties to post that information on their websites?

23 A. Oh, absolutely. We made it very clear

1 that anybody who wanted to copy that information
2 and post it could certainly do so. We had it very
3 clearly posted on the bottom that it was not
4 copywritten and it was in the public domain. As a
5 matter of fact, we re-lit the site specifically to
6 allow certain people to copy if they wanted to.

7 Q. I'm sorry. You did what to the site?

8 A. I re-lit the site. I authorized the
9 re-lighting of the site. I had shut the site off
10 at one point.

11 Q. Which site are we talking about?

12 A. Save3abn.com and save3abn.org, I'm
13 assuming. Save3abn.com I can tell you we did. I
14 authorized the re-lighting of that site. It was
15 shut down. I had shut it down.

16 Q. When did you shut it down?

17 A. Sometime in January.

18 Q. And when did you authorize it to be
19 re-lit? That means restarted?

20 A. Yeah.

21 Q. When did you authorize it to be restarted?

22 A. When I got an e-mail from the chairman of
23 the board that essentially lied and said that we

1 had lost control because the Bankruptcy Court had
2 ordered it transferred, and so to demonstrate to
3 the world that that had not happened, I re-lit the
4 site and made it very clear that anybody who wanted
5 to copy it during that period of time could do so.

6 Q. Okay. Did you do this yourself?

7 A. I did. Oh, you mean did I re-light the
8 site?

9 Q. Uh-huh.

10 A. No, I authorized it redone. I ordered it
11 redone.

12 Q. Who did you direct to redo that?

13 A. The webmaster.

14 Q. Mr. Pickle?

15 A. Uh-huh. I gave him a specified time and
16 ordered him to shut it down thereafter. I think it
17 was one or two weeks.

18 Q. And the purpose again for re-lighting the
19 site was to do what?

20 A. To demonstrate that the chairman of the
21 board of 3ABN had lied in an e-mail.

22 Q. Was it also to allow other people to
23 gather the content from the site?

1 A. I made it clear it was certainly
2 available, but the reason I did it was specifically
3 in response to the chairman's e-mail.

4 Q. And again, I just want to clarify, when
5 the websites were re-lit, they were re-lit under
6 save3abn.com and .org, not save-3abn.com and .org?

7 A. As far as I know. I never had authority
8 on any other site other than -- I don't even know
9 if I had authority on the .org. I'm assuming I
10 did.

11 Q. Have you ever had any ownership interest
12 or has your name ever been listed as the registrant
13 on any other domain other than save3abn.com and
14 save3abn.org?

15 A. I'm assuming. I have my own,
16 gabbjoy4.com, g-a-b-b-j-o-y-4.com.

17 Q. Sticking with that for a moment, when did
18 you register that?

19 A. It's post-petition, that's all I know.
20 Everything I've registered other than save3abn has
21 been post-petition. I think I've registered a
22 total of four.

23 Q. But the other ones -- all right.

1 A. Nothing to do with 3ABN or its board.

2 Q. Okay. Continuing on the list of
3 information that we asked for, you stated in
4 response to number two that you had no such
5 documents. Number two has to do with documents in
6 your possession, custody or control that were
7 identified or related to the ownership, transfer,
8 appraisal or value of any real estate ever owned by
9 the debtor or any entity of which the debtor is or
10 was a shareholder, officer or director.

11 Is it your testimony that you never owned
12 any real estate ever?

13 A. Not that I'm aware of.

14 Q. Don't you think that you would be aware of
15 the ownership of real estate?

16 A. I would think so, but I have served as
17 trustee, nominee trustee on several real estates.

18 Q. When was the last time that occurred?

19 A. Let's see. I was cleaning up messes from
20 '89 through '94, so it would have been in that
21 period.

22 Q. Are there any realty trusts in existence
23 right now --

1 A. No.

2 Q. -- that you are a beneficiary of or
3 trustee of?

4 A. Oh, no, I was not a beneficiary. I was
5 just a trustee, nominated trustee. They all
6 involved extensive litigation, and there weren't
7 too many people out there with the guts willing to
8 take care of it.

9 Q. Number three asks for documents, data and
10 information relating to the ownership or transfer
11 of any bank, brokerage, financial or retirement
12 accounts ever owned by the debtor or any entity
13 that you were shareholder, officer or director.

14 Your response to that was that you have no
15 such documents except the personal joint checking
16 account of the petitioner, that's you, held jointly
17 with your wife. What bank account does that joint
18 checking account reside at?

19 A. You mean what bank?

20 Q. What bank, yeah.

21 A. Workers' Credit Union.

22 Q. Woodbridge Credit Union?

23 A. No, Workers, W-o-r-k-e-r-s.

1 MR. HEAL: Well known in Worcester
2 County.

3 Q. And when did you have that account set up?

4 A. Couple of decades.

5 Q. So you've had a checking account, joint
6 checking account with your wife at Workers' Credit
7 Union for a couple of decades?

8 A. Since '86, '87 maybe. Actually, at that
9 point it was the College Credit Union, and Workers'
10 took it over.

11 Q. And do you still have that same checking
12 account?

13 A. As far as I know.

14 Q. I'm going to show you -- I guess this will
15 be exhibit -- so Exhibit A is Schedule I, Exhibit B
16 is the summons for today. Exhibit C, I'm going to
17 show you Schedule B to your bankruptcy schedules.
18 Schedule B requires you to list all of your
19 ownership interest and personal property.

20 You've already stated that you had no
21 ownership interest in real estate, but among the
22 various categories of personal property that
23 Schedule B asks for is number two, the ownership of

1 any checking, savings or other financial accounts.
2 You just stated that you've had a checking account
3 at Workers' Credit Union for a couple of decades
4 and that you still have it?

5 A. Yup.

6 Q. In response to question number two, you
7 checked off the box "None." Is it your testimony
8 that Schedule B to your bankruptcy schedules is
9 inaccurate?

10 A. That's clearly a clerical error.

11 Q. Okay. How much was in the account on
12 August 14th, 2007?

13 A. The answer is it was a negative balance.
14 I didn't get paid.

15 Q. There was a negative balance at that time?

16 A. There would have been, yes.

17 Q. Why haven't you produced, in response to
18 our subpoena --

19 A. You've asked for records in my possession.
20 I don't have them, and it was going to cost me a
21 fortune to get them.

22 Q. Doesn't your wife get bank statements? If
23 it's a joint account --

1 A. She does, but we don't keep bank
2 statements.

3 Q. You don't keep --

4 A. No, because we do electronic banking, but
5 that only goes back six months. So by the time you
6 asked, it was outside of the window where I could
7 recover them. As a matter of fact, that's how I
8 found out it only went back six months, but anyway.

9 Q. It's your practice to not retain checking
10 account statements, bank account statements when
11 they arrive at the house?

12 A. Don't need to for any reason.

13 Q. You don't see a reason to retain financial
14 information going back more than six months?

15 A. I don't see any reason to retain financial
16 information for much of anything personally.

17 Q. So is it your testimony that you and your
18 wife do not have in your residence any bank account
19 information?

20 A. Not during the period that you asked for.

21 Q. For the period that we asked for?

22 A. No, but you're free to get a copy of it if
23 you wish. It's \$5 per statement.

1 Q. Do you or your wife have any joint
2 accounts anywhere other than at Workers' Credit
3 Union?

4 A. I don't have any accounts anywhere else.
5 My wife doesn't either that I'm aware of.

6 Q. And you don't have any accounts held just
7 by yourself anywhere?

8 A. No, never have.

9 Q. How about retirement accounts, do you have
10 any --

11 A. Never.

12 Q. -- IRAs, 401(k)s?

13 A. No.

14 Q. Nothing of the sort? Do you have any life
15 insurance policies?

16 A. No.

17 Q. Ever have any life insurance policies?

18 A. Yes.

19 Q. When was the last time you held a life
20 insurance policy?

21 A. Last year.

22 Q. Through when? When did it lapse?

23 A. Probably September, October.

1 Q. September or October of 2007?

2 A. Yeah.

3 Q. I point you to Schedule B. Item number
4 nine on Schedule B requires the listing of
5 insurance policies.

6 A. Well, it didn't have any cash value.

7 Q. That's not what it asks. Number nine asks
8 for interest in insurance policies, and you checked
9 off "None." So is it your testimony that that is
10 inaccurate?

11 A. You know, I'm not sure. It may have
12 been -- now that I think about it, I don't think it
13 was even in force at that time. We didn't pay it.
14 We didn't pay it in July, so it wouldn't have been
15 in force in October.

16 Q. When was the policy premium due?

17 A. Probably July. It was quarterly.

18 Q. What kind of life insurance policy was it?

19 A. Term policy.

20 Q. What was the death benefit on it, how
21 much?

22 A. \$300,000.

23 Q. And who was the beneficiary listed on it?

1 A. My wife, I'm sure.

2 Q. And why did you not continue the coverage?

3 A. Couldn't afford it.

4 Q. Are there any other life insurance
5 policies that you had in the past five years?

6 A. Yeah, I had one with Lincoln Benefit, half
7 a million.

8 Q. Sticking with the Lincoln Benefit for a
9 minute, half a million, when did that lapse?

10 A. Oh, I think it was a ten-year policy. I
11 think it just came to the end, and that's why we
12 ended up going with the New York Life.

13 Q. Was the \$300,000 policy New York Life?

14 A. Yeah, yup.

15 Q. There was never any cash value in that?

16 A. No, no. No, the other was a ten-year
17 term. I don't remember what the term was of that
18 one. Five years, I think.

19 Q. This may have been covered in the
20 Section 341 meeting with the trustee, but I'd like
21 to ask here as well. Your bankruptcy schedules
22 list under the category of household goods and
23 furnishings, including audio, video and computer

1 equipment, you've checked off the box that says
2 "None." Is it your testimony that you own nothing
3 in terms of household goods?

4 A. Personally? Me personally?

5 Q. Uh-huh, yes.

6 A. Well, I never have --

7 Q. Mr. Joy, do you have a television set?

8 A. Do I have a television set? Let me think.
9 I'm not sure who owns which television set around,
10 but I've never purchased a television set, no.

11 Q. Do you have a computer?

12 A. I do have a computer.

13 Q. What kind of computer is it?

14 A. It's a -- what do you call it? Generic.

15 Q. How old is the computer?

16 A. Pretty old.

17 Q. Have you ever purchased any furniture?

18 A. I never have.

19 Q. Do you have a dining room set?

20 A. I believe my wife did buy a dining room
21 set.

22 Q. Is there a living room set?

23 A. You know what? There is one. It's my

1 daughter's.

2 Q. Is your wife employed?

3 A. No. Hasn't been since '97.

4 Q. Has there been any furniture purchased for
5 your family since 1997?

6 A. Good question. I don't know.

7 Q. Any appliances purchased since 1997?

8 A. Appliances came with the house.

9 Q. Have you purchased any clothing since
10 1997?

11 A. Have I purchased clothing? I never go
12 near a store. How's that?

13 Q. Who else in your family --

14 A. Do I have clothing? I think I do have
15 clothing, yeah.

16 Q. Who else in your family earns income?

17 A. Nobody.

18 Q. So is it your testimony that since 1997,
19 you've been the sole breadwinner in your family?

20 A. Well, define family. Are you talking
21 about my wife and I?

22 Q. Yes.

23 A. I'm trying to think. My daughter probably

1 was still --

2 Q. No, let's stick with you and your wife.
3 Between you and your wife, you were the sole
4 breadwinner since 1997?

5 A. Pretty much so. I don't think she's --

6 Q. All right. Let me cut to the chase. In
7 Schedule B, personal property, you checked off
8 "None" to all of the questions dealing with the
9 ownership of what I would describe as tangible
10 assets; furnishings, clothing, books, pictures,
11 compact disks, furs, jewelry, photographic
12 equipment, things of that sort.

13 Is it your testimony that you have not
14 acquired anything since 1997 that fall into any of
15 those very broad categories?

16 A. Me personally?

17 Q. Or with your money.

18 A. Well, I don't know what my wife does with
19 my money, never have.

20 Q. Sir, what's the most valuable single piece
21 of furniture or equipment in your house, single
22 most valuable asset in your house?

23 A. That's ours?

1 Q. If it's in the house, I assume it's yours.

2 A. Well, you can't assume that. My

3 daughter's living with us.

4 Q. Name the single most valuable asset in the
5 house, and then we'll worry about who owns it.

6 A. Oh, asset in the house?

7 Q. Yes, sir.

8 A. Let me think. I've never done such an
9 inventory. Probably the furnace.

10 Q. What kind of television is in the house?
11 What's the most recently purchased television in
12 the house?

13 A. It's been a while.

14 Q. Describe a while.

15 A. I don't even know. Probably six, seven
16 years minimum.

17 Q. Is it your testimony that you own none of
18 these things that are in your house?

19 A. You asked if I purchased them. I haven't
20 purchased any of them. I don't know what the
21 status of ownership would be. You mean if my wife
22 and I separated, who would get it all? I'd give it
23 to her in a heartbeat.

1 Q. Sir, you filed a bankruptcy case --

2 A. That's right.

3 Q. -- in August of 2007.

4 A. Yup.

5 Q. In connection with that bankruptcy case,
6 you were obliged to list the ownership of all of
7 your assets.

8 A. I think we listed -- I don't understand
9 that because my understanding is that we did list
10 furnishings as a certain sum of money. That was my
11 understanding.

12 Q. That's not accurate. The only item that
13 was listed, cash on hand, you have cash in change
14 purse of \$2.

15 A. Yup.

16 Q. And then --

17 A. Surprised I had that.

18 Q. And then under the category of office
19 equipment, furnishing and supplies was desks,
20 chairs and electronic equipment, \$2,500.

21 A. Well, that would be your computer and the
22 desk, chairs.

23 Q. But you listed nothing else?

1 A. I got a printer.

2 Q. But you listed nothing else?

3 A. No.

4 Q. So is it your testimony then that the
5 failure to list some ownership of some personal
6 property in your house is an error?

7 A. I don't know. Can't tell you why we did
8 that.

9 Q. Did you review these bankruptcy schedules
10 before you signed them?

11 A. Well, in the same way that anybody reviews
12 a mortgage paper, I guess. Not very well. I
13 signed them. But let me say this. There's
14 nothing there that would be beyond whatever the
15 statutory --

16 Q. That's not what the question asks.

17 A. Well, it may not ask that, but in any
18 event, I don't know the answer to that question.

19 Q. Were you advised to review these documents
20 carefully and that they had to be answered
21 truthfully?

22 A. You know, at the time I filed we were
23 pretty anxious to get it done, and I didn't worry

1 too much about the details.

2 Q. Were you advised of the consequences of
3 the failure to list assets? Yes or no answer.

4 A. I don't recall, but I did list assets.

5 Q. Can you explain why you did not list the
6 registrations for save3abn.com and save3abn.org as
7 assets?

8 A. I didn't look at those assets. I looked
9 at those -- first of all, I didn't even look at
10 them. I didn't even think about them as assets or
11 liabilities. Never even thought of them that way.
12 I had no idea they were worth \$5,000.

13 Q. Have you filed a tax return for 2007?

14 A. Don't think so.

15 Q. Is it on extension?

16 A. No.

17 Q. So when was the last federal tax return
18 that you filed?

19 A. I don't recall. Probably 2005 maybe.

20 Q. Did you receive a payment on that economic
21 stimulus package that Congress passed earlier this
22 year?

23 A. No, I did not.

1 Q. Do you believe you're entitled to receive
2 it if you had filed your 2007 tax return?

3 A. No, do not.

4 Q. And the reason why you don't think you'll
5 be entitled to it?

6 A. State would have taken it.

7 Q. Why would the state have taken it?

8 A. I think I owe them \$1,800.

9 Q. You owe the state of Massachusetts --

10 A. I believe so.

11 Q. -- \$1,800 for what, past taxes?

12 A. Yeah.

13 Q. And is that on account of some annual tax
14 return?

15 A. Yeah. I think 2005.

16 Q. What, sir, have you done for gainful
17 employment, for income, since the closing of NEMCO,
18 which you said took place in roughly July or August
19 2007?

20 A. Well, actually we didn't finish up until
21 probably September or October, something like that.
22 I can't remember when it was.

23 Q. When you say you didn't finish up, are you

1 saying that you continued to be paid for a little
2 while longer?

3 A. We didn't get paid. As you can see, we
4 didn't get paid. We were supposed to get paid. We
5 didn't get paid. As a matter of fact, we didn't
6 get credit for any of our work that was done in
7 July or August.

8 Q. Okay. So your last income then was when?

9 A. You mean with NEMCO?

10 Q. From NEMCO, yes.

11 A. Apparently July. I didn't get paid beyond
12 that.

13 Q. What have you done -- what do you do now
14 for income?

15 A. Well, if the question is a post-petition
16 question, when I left NEMCO, I went to work with
17 First American Mortgage Trust again.

18 Q. First American Mortgage Trust?

19 A. Yup.

20 Q. One of your prior employers?

21 A. Exactly, yeah.

22 Q. Are you still working for First American
23 Mortgage Trust?

1 A. No, they failed, and we didn't get paid by
2 them sometime in February I think, January,
3 February.

4 Q. When did you go back to work for First
5 American Mortgage Trust?

6 A. In November maybe, late November.

7 Q. Late November?

8 A. Sometime in November. I don't remember
9 when. You know what? I may have been putting in
10 accounts in October. I don't recall. I'd have to
11 look and see. I have no clue, to be honest with
12 you.

13 Q. And then you say that that employer failed
14 when?

15 A. First part of the year they collapsed.

16 Q. January 2008 approximately?

17 A. Yeah, but I think they -- I think the
18 final undoing was the Bear Stearns. They started
19 having incredible difficulty. They could not move
20 their product. You know, they couldn't sell their
21 loans beginning sometime in January, and then from
22 there on in, it just wholesale collapsed by March.

23 Q. Were you an employee from November to

1 January of First American Mortgage Trust?

2 A. Well, I was an account exec for them, but
3 didn't get paid during that period.

4 Q. You never got paid anything from them?

5 A. No. The company collapsed. They took the
6 money with them.

7 Q. So you worked for two months or so and
8 never received any compensation?

9 A. Well, I received about \$3,000 in December,
10 I think, if I recall.

11 Q. Subsequent to First American Mortgage
12 Trust's failure, have you worked for somebody else
13 or something else?

14 A. I tried several things. Nothing seems to
15 have gained traction yet significantly.

16 Q. My specific question is have you worked
17 for somebody else? Have you been an employee with
18 another firm or another company since January of
19 2008?

20 A. I haven't -- not really, no. I have
21 talked to several, but we've never consummated a
22 deal.

23 Q. And you alluded to some other efforts that

1 haven't gained traction. What have you tried to do
2 for income?

3 A. Just other odd jobs. You know, putting
4 together -- helping people out of some of the
5 messes that they were in.

6 Q. In what capacity? As a mortgage
7 consultant?

8 A. I guess you could say a consultant. I
9 don't know as it would be a mortgage consultant.
10 They weren't able to get mortgages.

11 Q. Were you paid for any of those efforts?

12 A. Not yet.

13 Q. Do you have some receivables out there,
14 some expectation of payment?

15 A. Probably.

16 Q. How much?

17 A. I'd say I really never totalled it.

18 Q. Approximately?

19 A. Maybe as much as \$6,000.

20 Q. How is it that you would be paid for --
21 were you billing these people hourly?

22 A. Yeah. They came, they needed work done.

23 I just did it for them, helped them with it, helped

1 them do whatever they needed to get done.

2 Q. Did you invoice them?

3 A. No.

4 Q. So how do they know that they owe you
5 money?

6 A. They probably don't. I never invoiced
7 them, just kind of helped them out. A couple of
8 them have agreed that, you know, if they get what
9 they needed, then they would pay me, but who knows
10 if that will ever happen.

11 Q. I'd like to ask you some questions about
12 the facts and circumstances that you raised in your
13 adversary proceeding. If you're willing to answer
14 them, that would be much appreciated. If you're
15 not willing to answer them, I guess I need you to
16 tell us that.

17 In connection with the District Court
18 action, where the District Court entered the order
19 compelling you to make your computer hard drive
20 available for imaging, what did you do in response
21 to that order? Can you take me through the steps
22 of what you did to deal with the entry of that
23 order?

1 A. Was there an order? I don't remember.
2 That's academic. We had no problem with making
3 them available. I had no problem with making it
4 available. I had already given them everything.

5 Q. I understand that there was a specific
6 order of the District Court in light of your
7 bankruptcy filing that was limited to ordering you
8 to produce the computer hard drive, which was then
9 going to be imaged, and the image of which was
10 going to be placed under seal.

11 A. And then that was reversed, I believe,
12 right?

13 Q. So you didn't actually produce the hard
14 drive then for anybody to make an image of?

15 A. We had already made it clear that they
16 were free to come to the house and make a copy of
17 the hard drive.

18 Q. So you would have had no problem with
19 that?

20 A. I was sick at the time, and I got a note
21 from Jerrie Hayes saying that because of my
22 illness, she did not want to have them come to the
23 house, and so there was an agreement that we would

1 deliver them to Mr. Heal's office and it would be
2 done there. That's my recollection of it.

3 Then we had a hearing all the way in
4 Boston, which I had to go to. To say the least,
5 that was aggravating. I had a setback, by the way,
6 from that hearing.

7 Q. When was that hearing that you attended?

8 A. You don't believe me, do you?

9 Q. We'll talk about that. When was that
10 hearing that you attended?

11 A. I don't recall.

12 Q. Was that November 13th, 2007?

13 A. Probably makes sense, yeah.

14 Q. Status conference?

15 A. Yeah.

16 MR. HEAL: I believe so.

17 A. And we had to -- no, it was not. It was a
18 specific conference before the magistrate. That
19 would not have been a status conference.

20 Q. How many conferences did you attend in the
21 District Court or hearings did you attend in the
22 District Court personally in connection with --

23 A. I've attended all hearings, so whatever

1 was during that period of time, I attended them.

2 Q. I believe that the only hearing that took
3 place prior to the lifting of the stay that is at
4 question was the November 13th, 2007 status
5 conference.

6 A. That's not true. We had a whole hearing
7 on the production of the -- we had a -- let me
8 think. We had a -- I'm trying to remember the date
9 on that. We had a full hearing before the judge
10 magistrate.

11 Q. In connection with your attendance at
12 those hearings, did you have to reschedule any
13 appointments or anything that would have otherwise
14 led to income opportunities?

15 MR. HEAL: I'm sorry. Is this a Rule
16 2004 exam or a deposition?

17 MR. ROUMELIOTIS: I acknowledge that
18 this leads into issues dealing more directly with
19 the adversary proceeding. If you're willing to
20 answer them, I would appreciate it. If you're not,
21 then tell me so.

22 A. I don't recall the dates of the hearings
23 or what the circumstances were. If it's a question

1 of whether or not there was a huge income
2 opportunity, I seriously doubt it given the fact
3 that we were in bankruptcy. I can't imagine
4 anybody in bankruptcy -- but I guess there's some
5 people that don't really have bankruptcies that
6 file for bankruptcy -- but mine was a real
7 bankruptcy.

8 Q. So it's your testimony then that you were
9 not deprived of any real income producing
10 opportunities as a result of your having to attend
11 the hearings?

12 A. How would I know? I wouldn't know. If I
13 was attending hearings, how would I know if I
14 missed something?

15 Q. Were there any messages?

16 A. Let's put it this way. If I would have
17 earned it, I probably wouldn't have gotten paid
18 anyway, so what difference does it make?

19 MR. ROUMELIOTIS: Why don't we take a
20 break for a half hour, hour?

21 (Lunch recess taken at 12 p.m.)

22 (The examination resumed at 1:15 p.m.)

23 Q. Back on the record. I think we were

1 talking about issues regarding your reacting to the
2 court order in the District Court with respect to
3 the preservation of evidence and dealing with the
4 status conference and things of that sort. I want
5 to ask you to be a bit more specific regarding what
6 you did in response to those various things that
7 took place in the November 2007 timeframe.

8 In your amended complaint -- I'm reading
9 from paragraph 28 of the amended complaint -- you
10 say, "Plaintiff," that would be you, "was put to
11 spend his own time both in answering the messages
12 of the Defendants in violation of the Automatic
13 Stay." We'll start with that, answering messages
14 of the Defendants in violation of the automatic
15 stay. What messages are you referring to?

16 A. Combination of e-mail, mail.

17 Q. And did you actually answer the messages?
18 Did you respond by either letters or e-mails?

19 A. I've responded to everything that required
20 a response.

21 Q. And you have not, however, produced any
22 copies of any of those e-mails in connection with
23 the document request that we put forward to you

1 today. Do you have copies of those e-mails?

2 A. Where's the document for today that
3 addresses that?

4 Q. Pardon me?

5 A. Show me the document request for today
6 that demonstrates that.

7 Q. Number nine in the document request says
8 as follows: "Any and all documents, data and
9 information, including electronic mail and internet
10 postings, whether saved in paper or electronic
11 form, describing, discussing or referring to the
12 fact of your filing for bankruptcy, the creditors
13 or debts listed in your bankruptcy petition, or the
14 adversarial complaint you have filed in this
15 bankruptcy matter."

16 So the adversarial complaint that you
17 filed in the bankruptcy matter is the complaint
18 that you filed against 3ABN, Danny Shelton, and the
19 various lawyers that you named as defendants. So I
20 do believe that any documents, mail, communications
21 that deal with the things that you state in your
22 adversarial complaint do qualify. So do you have
23 copies -- I understand you may not have brought

1 them with you -- but do you have e-mails?

2 A. During that period?

3 Q. You said that you were put to spend your
4 own time in answering messages of the defendants,
5 so yes, in November of 2007.

6 A. I seem to remember that Mr. Pucci was the
7 first one to address it and put a notice of
8 bankruptcy on the record in the U.S. District
9 Court. That's my recollection. Sent a copy of
10 that notification to us, and then from there --
11 obviously I would not have responded to that. Then
12 from there, there were a series of requests, which
13 I'm assuming I received copies of by e-mail. I
14 would have to go back and look.

15 But in any event, obviously I received
16 multiple communications regarding obviously the
17 most -- their biggest concern seemed to be the
18 question of securing the hard drive information. I
19 seem to recall making it pretty clear that the hard
20 drive had been preserved and was not in danger, and
21 yet they wished to pursue that and wanted to send
22 an expert from out in Minnesota -- claimed to be an
23 expert -- and he was supposedly going to only copy

1 the relevant information. There was a great deal
2 of discussion regarding that, as I recall, but I
3 can't tell you whether it was by e-mail or by mail.
4 I can't recall.

5 MR. HEAL: Excuse me. It seems that
6 there's a category that you appear to be asking for
7 in your last question that the request doesn't
8 address; namely, before the adversarial proceeding
9 would be filed, communications that would relate to
10 the adversarial proceeding. You appear to be
11 asking for that, and it doesn't appear to be
12 something that's written down there.

13 MR. ROUMELIOTIS: I'm trying to get --

14 MR. HEAL: I'm asking if that's what
15 you want for documents.

16 MR. ROUMELIOTIS: Yes, I would like to
17 see documents that relate to the responses. So if
18 you can produce those for us, even after today, we
19 would appreciate it.

20 Q. (By Mr. Roumeliotis:) You said in
21 answering the messages of the defendants in
22 violation of the stay, not reading the messages, in
23 answering the messages. I'm trying to quantify

1 what you had to do in response to the alleged stay
2 violations.

3 A. And then there were a series of hearings.

4 Q. We'll get to the other items, but in
5 answering the messages of the defendants, how much
6 time would you say you spent doing that?

7 A. I'd have to look at my log.

8 Q. Do you keep a log of --

9 A. I keep a log of every communication that I
10 have with these creatures, including Danny Shelton,
11 Walter Thompson and on and on.

12 Q. How far back does the information in the
13 log go?

14 A. My first communications with Danny Lee
15 Shelton go back to -- let me see. I believe it
16 would be August of 2006, and they already have a
17 copy of that all. It's part of the 6,000 e-mails
18 that were produced for you.

19 Q. Okay. Another category of activities that
20 you say that you did in reaction to the alleged
21 stay violations is, "Preparing to meet the orders
22 of the District Court during the pendency of the
23 Automatic Stay." To what do you refer to in that

1 statement, "Preparing to meet the orders of the
2 District Court during the pendency of the Automatic
3 Stay"?

4 A. They, after they put notice on the record
5 of the bankruptcy, then proceeded to push the issue
6 of recovering the hard drive, and in fact the order
7 said one thing, they pushed for yet another. The
8 order said that they were allowed to copy it. They
9 wanted the production of it. They wanted the
10 production of it sent to them, and then they would
11 supposedly copy it and send it back. Oh, yes,
12 Mr. Simpson, that's exactly what happened. So they
13 went way beyond even the order of the court.

14 It was finally decided -- as a matter of
15 fact, as part of that whole process, it was finally
16 decided that they would have to come to my
17 residence and they would have to come there with
18 equipment, and we would monitor the types of
19 equipment that they would use to actually secure
20 the information they were looking for.

21 The reason for it was because at that
22 point I still had a ton of information from
23 borrowers, et cetera, and special files on that

1 computer that I either had copied from the office
2 or had downloaded from -- you know, just as back-up
3 information. It was preserved on that computer.
4 We were concerned that that not obviously be
5 available for -- I mean, it included credit
6 reports, it included everything on every single
7 client we had. So we were concerned about that,
8 and we debated exactly how we were going to protect
9 the clients' information on those computers.

10 Then there was a debate over -- my system,
11 I have it set up so that it automatically -- what's
12 the term? Defrags on a regular basis. I think
13 it's once a week, twice a week, something like
14 that. I can't remember. But it defrags frequently
15 to keep it, you know, to keep it corrected. The
16 debate came up of, well, if we eliminate these
17 channels, you're still going to pick them up -- not
18 channels, not the proper term. If we eliminate
19 these sectors, then there was a concern that
20 because of the defragging that they would actually
21 still be in other sectors, and the question was how
22 to protect that information from being taken from
23 the alternative sectors. We went back and forth on

1 that, and finally just decided that the only way to
2 deal with it was to go to a hearing, and we did.

3 Q. And what happened at that hearing?

4 A. They brought their expert from Minnesota,
5 and we actually had an evidentiary hearing, and it
6 took us about maybe three hours, four hours,
7 something like that, while we demonstrated that he
8 wasn't as expert as he thought he was.

9 Q. And then the third item that you stated in
10 here is, "Attending the status conference hearing
11 at which you objected, through your bankruptcy
12 attorney, to the violation of the automatic stay."
13 Is that the hearing you're referring to?

14 A. No, separate hearing.

15 Q. Separate hearing?

16 A. Later on we were asked to appear before --
17 it was an ongoing debate. I can't remember the
18 exact sequence. Something happened, and suddenly
19 the judge magistrate realized that he had a little
20 problem; that there was a bankruptcy hearing and he
21 had to deal with that issue first, so he reversed
22 his order.

23 So then we went to a hearing in Boston

1 sometime in November. At that point I had
2 pleurisy, and I went down there, and unfortunately
3 we had to park almost like a mile from the bloody
4 courthouse and it just beyond winded me. I ended
5 up with a remission.

6 Q. You had a what, sir?

7 A. Remission.

8 Q. Of what?

9 A. Pleurisy.

10 Q. You estimate that you spent about ten
11 hours or at least ten hours here in your complaint
12 dealing with these various things. Would you say
13 that that's an accurate number?

14 A. Probably light, probably a light number.
15 That controversy went over what, two months?

16 Q. And you say that you had in the past done
17 paralegal work in attempting to affix a dollar
18 value to the time that you say you spent. Have you
19 ever worked as a paralegal?

20 A. Yes.

21 Q. When?

22 A. Oh, I have worked -- I worked for -- I
23 worked three days a week working with a firm in

1 Vermont from probably around '84 through -- I think
2 the last case I did up there was '93, '94,
3 somewhere in there. Primarily personal injury,
4 medical malpractice, worker's comp.

5 Q. What was the name of that firm?

6 A. Illuzzi Associates.

7 Q. And when did you work there?

8 A. Oh, I think it was somewhere from the
9 period about 1984. I was hired to go up there and
10 actually work with them on a class action case.

11 Q. 1984 through when? I'm sorry.

12 A. Probably '91.

13 Q. You were living in Vermont at that time?

14 A. '93, I'm sorry. Oh, no, no, I commuted
15 back and forth. It was a part-time thing.

16 Q. Part-time thing, at the same time as you
17 were working other jobs?

18 A. Oh, sure, yeah. Since then I have on
19 occasion worked with attorneys on other cases.

20 Q. Also in your complaint you say that you
21 incurred legal fees and costs in the sum of
22 \$1,593.60 in connection with -- it says actually
23 prior to the filing of that adversarial proceeding,

1 I assume in connection with the alleged stay
2 violations. Did you receive an invoice from your
3 attorney for the \$1,593.60?

4 A. I received an invoice. I don't recall
5 what it was. I seem to recall it being higher than
6 that, but whatever.

7 Q. Were you not acting at that point -- hold
8 on one second.

9 (Pause.)

10 Q. Have you ever paid the \$1,593.60 that you
11 state in your complaint you incurred?

12 A. Not yet.

13 Q. Is your obligation to pay that legal fee
14 contingent on winning the adversary proceeding, in
15 recovering funds or winning?

16 A. I doubt it. It's not a -- I didn't do a
17 contingency case.

18 Q. So your understanding with your lawyer is
19 that he's billing you hourly for the services that
20 he's doing for you?

21 A. That was the agreement.

22 Q. Now, in the complaint you assert various
23 counts against the various defendants. Count One

1 is designated as against defendants Danny Shelton
2 and 3ABN. What specific things did Danny Shelton
3 or 3ABN do to you in terms of communication or
4 otherwise during the pendency of the stay, prior to
5 when the stay was lifted?

6 A. Direct communications in that period?

7 Q. Yes, from either Danny Shelton or 3ABN
8 relating to --

9 A. They were represented by counsel at that
10 time, so I don't believe there were any direct
11 communications. There were a lot of indirect
12 communications, but not direct communications.

13 Q. So it's your testimony that Danny Shelton
14 and 3ABN did not directly communicate with you
15 during the --

16 A. Well, I don't know. What's counsel for?

17 Q. I'll ask that question in a minute.

18 A. Well, it's academic. The point is he was
19 represented by counsel, and counsel acted on his
20 behalf.

21 Q. I understand that, but --

22 A. So that's the answer.

23 Q. I'm asking you a question about whether

1 Danny Shelton or some other representatives or
2 officer of 3ABN contacted you directly with respect
3 to any claims or any other communications that
4 would be prohibited or arguably prohibited by the
5 automatic stay?

6 A. Other than through counsel, no.

7 Q. Okay. Now, you stated earlier that
8 subsequent to the closing of New England Merchants
9 Corporation, you really didn't have any gainful
10 employment other than a brief stint with another
11 company that closed up in January. You stated,
12 however --

13 A. I don't think they closed in January. I
14 think they closed in March.

15 Q. But you worked through January, I believe,
16 is what your testimony was?

17 A. No, I worked through March.

18 Q. Okay.

19 A. As a matter of fact, I worked diligently
20 at finding financial solutions, serious financial
21 solutions, and nothing worked.

22 Q. But you've also stated that you were not
23 self-employed during that timeframe?

1 A. Well, I guess I became self-employed,
2 didn't I? I didn't get paid.

3 Q. In the complaint you state that the effect
4 of the order compelled you to turn over some of the
5 "business equipment." I assume that's the computer
6 that was at issue or the hard drive?

7 A. I believe it was a fax machine and
8 something else, but anyway, yeah.

9 Q. You say, "The effect of this order is to
10 make it impossible for the Debtor Plaintiff to
11 conduct his normal business operations." This
12 would have been in November 2007. What normal
13 business operations are you referring to there?

14 A. In what month now?

15 Q. During the timeframe that you say the
16 violations of the automatic stay took place, late
17 October 2007, early November 2007.

18 A. Okay. I would have to look at my pipeline
19 report, but there was an obvious pipeline in
20 progress at that point, building for First American
21 Mortgage Trust. That obviously represented an
22 interruption of that process.

23 Q. You refer to a pipeline report. What is

1 that?

2 A. Just a list that I kept myself of the
3 pending.

4 Q. Number eight of the document request that
5 was attached to the subpoena called for any and all
6 documents, data and information in your possession,
7 custody or control that identify or relate to
8 debtor's employment and income from January 1, 2005
9 to the present, including self-employed.

10 I don't recall seeing any information
11 dealing with the generation of income or employment
12 in that timeframe, certainly no reference in any
13 documents to a pipeline or any notes with respect
14 to that.

15 A. And?

16 Q. Did you have any employment or income
17 generating activities during --

18 A. You mean did we get paid for what we did
19 during that period of time? The answer is no. I
20 already told you that.

21 May I point out, my presumption was this
22 was a 2004 hearing. That would have been
23 pre-petition, and that would not have been done

1 pre-petition.

2 Q. Debtor's income post-petition I think is
3 relevant to the administration of a bankruptcy case
4 because it may affect your right to stay in a
5 Chapter 7 case if you have income.

6 A. You want to dismiss the Chapter 7? Go to
7 it. I'll stipulate.

8 MR. ROUMELIOTIS: I'm just saying it's
9 relevant. Let's go off the record for a minute.

10 (Discussion held off the record.)

11 Q. Back on the record. Can you tell me how
12 you arrived at the requested punitive damages
13 amount of \$5,000 per occurrence in the adversary
14 proceeding?

15 A. Just looked at other cases that had been
16 done. I felt that was a little on the light side,
17 to be honest with you. There was a case that came
18 out of that court recently where a mortgage company
19 appealed with \$750,000, so I felt \$5,000 apiece was
20 generous.

21 Q. You said earlier that you were employed by
22 New England Merchants Corporation. What was your
23 compensation agreement with them? How were you

1 paid?

2 A. Our compensation -- hm-mm. I actually
3 drew income from the branch based on the production
4 of the branch.

5 Q. Percentage of the loans closed? Help me
6 out here. How exactly did that work?

7 A. No, it would really be based on
8 productivity, the profitability of the branch. My
9 income would be based on the profitability of the
10 branch, and of course, you know, contingent upon us
11 getting paid by the mortgage companies as well,
12 which in 2007 became more and more of an onerous
13 problem.

14 Q. Did you have any written understanding,
15 contract, e-mail, anything that memorialized
16 precisely the percentage that was used to calculate
17 your compensation or some other formula that would
18 be used to calculate your compensation?

19 A. It may have been going back to 2004, but I
20 don't recall.

21 Q. One of the items that we requested that
22 you produce is copies of any and all contracts or
23 written agreements that were entered into by the

1 debtor in any fashion from the period of January 1,
2 2005 to the present.

3 A. Actually, it would have been 2003,
4 wouldn't it? That's when we started there.
5 Anyway, I don't have it anymore.

6 MR. HEAL: Can we go off the record
7 briefly?

8 MR. ROUMELIOTIS: Sure.

9 (Discussion held off the record.)

10 Q. (By Mr. Roumeliotis:) Back on the record.
11 Take me through a typical day at New England
12 Merchants Corporation. What did you do in terms of
13 generating business or closing deals? What was
14 your function other than -- I understand you
15 mentioned it was branch manager. What did that
16 entail?

17 A. I did a combination of everything from
18 marketing to working with the loan officers. My
19 position on management was that management should
20 not be competing with the loan officers, and so I
21 always worked with the loan officers to help them
22 accomplish the completion of their loans so they
23 could get paid. Documentation, working with

1 underwriters, just a pile of stuff. It was busy
2 stuff, kept you busy all day long, sometimes into
3 the evenings. Then communicating with the
4 borrowers themselves quite often.

5 Q. Did you derive any income directly from
6 any closings?

7 A. No, I did not. Could not on an FHA loan.
8 You could not be in a contingency arrangement.

9 Q. Your office was solely doing FHA loans?

10 A. Well, we did conventionals, Fannie,
11 Freddie, conventional loans.

12 Q. So on conventional loans did you derive
13 any income directly through the closings?

14 A. No, because I put everything through the
15 central office, so no. Again, I never closed a
16 loan in my name, my personal name. It was always
17 closed in the name of a loan officer.

18 Q. We're going to move on to a different area
19 of inquiry here. Did you believe at the time of
20 the bankruptcy filing, so as of August 14th, 2007,
21 that you had any claims against 3ABN or Danny
22 Shelton, whether as a direct claim that's unrelated
23 to the litigation in the District Court, or as a

1 direct counterclaim that would be brought up in
2 connection with that litigation?

3 A. Yes, I did.

4 Q. What were the nature of those claims or
5 the nature of that claim?

6 A. Misuse of process.

7 Q. Excuse me?

8 A. Misuse of process.

9 Q. And you believe that you would have held
10 those claims as of August 14th, 2007?

11 A. The claim was filed in I believe late
12 April, we began dealing with it. It was served in
13 May.

14 Q. When you say the claim, you mean the
15 complaint filed by 3ABN and Danny Shelton in the
16 District Court?

17 A. Exactly, uh-huh.

18 Q. So again, I just want to clarify this. As
19 of August 14th, 2007, did you believe you had an
20 actionable claim?

21 A. We did.

22 Q. Okay. What was the -- you say it was for
23 misuse of process.

1 MR. HEAL: Can I confer with Mr. Joy
2 for a moment?

3 (A brief recess is taken.)

4 MR. HEAL: Did you want to change your
5 last answer?

6 THE WITNESS: Yes, I need to amend my
7 last answer.

8 Q. (By Mr. Roumeliotis:) I'm sorry. This is
9 the answer to my question about whether you
10 believed you had any claims against 3ABN or Danny
11 Shelton?

12 A. Exactly. I believed that during the
13 course of the litigation that we would be able to
14 demonstrate beyond a reasonable doubt that we had a
15 case for misuse of process, malicious prosecution,
16 whatever you wish to refer to it as. However, they
17 were not complete by the time of the bankruptcy.
18 They are largely complete now.

19 Q. When you refer to complete, what are you
20 referring to?

21 A. We did not meet all the elements at the
22 time. We were still working on the elements to
23 demonstrate that we had those claims.

1 Q. And when did you complete that analysis?

2 A. The analysis of what? What would be a
3 misuse of process claim?

4 Q. You just said you had not completed a
5 review of all of the elements with respect to abuse
6 of process as of the time of the bankruptcy filing,
7 but now you have. When did you complete that
8 analysis?

9 A. Upon the production of discovery in the
10 last month or two, as well as additional
11 information to come our way from various other
12 players.

13 Q. But in August of 2007, at the time that
14 you filed the bankruptcy case, did you believe that
15 you had a claim against 3ABN and Danny Shelton?

16 A. I believed that we ultimately would, yes.

17 Q. Your bankruptcy schedules, and I can show
18 them to you if you'd like --

19 MR. HEAL: I need to speak with
20 Mr. Joy again, please.

21 (A brief recess is taken.)

22 MR. ROUMELIOTIS: Back on the record.

23 MR. HEAL: If I can state for the

1 record that Mr. Joy is not a lawyer, and I
2 apologize.

3 Q. (By Mr. Roumeliotis:) After now speaking
4 with your attorney a second time, do you wish to
5 change or supplement the answer to that last
6 question?

7 A. The issue really relates to the question
8 of the ripeness of the claim.

9 Q. However, as of August of 2007, the time
10 that you were preparing your bankruptcy petition,
11 you believed that you had a claim --

12 A. No.

13 Q. -- is that correct?

14 A. No, I believed that we would have a claim.
15 I believed that we would win based on the evidence
16 that we already had, and I believed that there was
17 a strong possibility that if we won at the ripeness
18 of time, we would be potentially have a claim
19 against 3ABN and its lawyers.

20 Q. But had the events already taken place?

21 A. No. Well, to the degree that the case was
22 filed? The case was filed. Had the case gone to
23 trial? No, it has not. Still hasn't as of this

1 date, as I recall.

2 Q. Item 21 in Schedule B of your bankruptcy
3 schedules requires that you list, "Other contingent
4 and unliquidated claims of every nature, including
5 tax refunds, counterclaims of the debtor, and
6 rights to setoff claims." Would you not say that
7 as of August 2007, although it might not have been
8 a ripe claim, that you had --

9 A. It didn't qualify.

10 Q. -- an unliquidated claim?

11 A. Didn't qualify. It was an unripe -- how
12 did we know how the case was going to go? It was
13 possible because of the bankruptcy that they would
14 have caved and gone away.

15 Q. Why did you file the bankruptcy case?

16 A. It didn't have anything to do with 3ABN,
17 not one thing.

18 Q. You just stated that you thought that the
19 filing of the bankruptcy case would cause 3ABN to
20 cave and go away.

21 A. I didn't say that at all. I said it might
22 have happened. Isn't that what I said? I did not
23 say that I stated that, and there is no way you can

1 infer that. In fact, it cannot be inferred. I
2 would not have filed for 3ABN's sake, believe me,
3 not in 100 years.

4 Q. As you were going through your bankruptcy
5 schedules in August of 2007, reviewing them for
6 accuracy, did you understand that they had to be
7 complete? Did you understand that you were filing
8 these and signing them under the penalties of
9 perjury?

10 A. I don't think anything that's filed there
11 is in any way warrantable as perjury, period.

12 Q. Well, sir, you stated earlier that you
13 reviewed these schedules and you listed the
14 ownership of no bank account, for example.

15 A. Uh-huh.

16 Q. Yet we determined today that you had an
17 interest in a bank account.

18 A. And? That's perjury? I don't think so.

19 Q. It is an inaccuracy. You misstated
20 something.

21 A. It was a clerical error at best.

22 Q. Answer my question about whether you
23 understand that signing the filing of the

1 bankruptcy petition and signing the schedules is
2 done under the penalty of perjury. Do you
3 understand that?

4 A. No, I do not.

5 Q. I'm going to show you the declaration page
6 concerning debtor's schedule. Somewhere there's
7 some document with your actual signature on it. I
8 realize that this is an electronic version of it,
9 but you signed these somewhere.

10 MR. HEAL: It was present at the 341
11 meeting. I can probably send a copy if you really
12 need it.

13 MR. ROUMELIOTIS: What was present at
14 the 341 meeting?

15 MR. HEAL: The original.

16 THE WITNESS: The signed document.

17 Q. (By Mr. Roumeliotis:) Sir, can you read
18 that sentence starting with, "I declare"?

19 A. Let me get my glasses on. I left my
20 glasses over there. Let me try. "I declare under
21 penalty of perjury that I have read the foregoing
22 summary and schedules, consisting of 17 sheets, and
23 that they are true and correct to the best of my

1 knowledge, information and belief." Did you hear
2 those last three?

3 Q. I'm asking the questions.

4 A. That's right, and I'm pointing out what it
5 says. There was no material misrepresentation in
6 that filing.

7 Q. Sir, the absence of a bank account --

8 A. That is not a material misrepresentation.
9 There was nothing in that bank account for you to
10 worry about, that's for sure.

11 Q. Sir, the failure to list the ownership of
12 any personal assets or articles of clothing
13 whatsoever, as trivial as they may seem to you, are
14 material.

15 A. They're not material.

16 Q. At any rate, you understand now that you
17 signed these things under the penalties of perjury?

18 A. I understand that I signed those things,
19 and that in fact it was to the best of my
20 knowledge, information and belief. That's what I
21 understand.

22 Q. What due diligence did you do to determine
23 or to ensure that the listing of assets in the

1 bankruptcy schedules were accurate?

2 A. And may I ask you what assets we missed?

3 Q. Again, as trivial as you may think they
4 may be, the bank account.

5 A. They met the requirements of that
6 statement. I had no idea that a --

7 Q. You had no idea that you had a joint bank
8 account with your wife, sir?

9 A. It was worthless, and I never would have
10 even considered it. As a matter of fact, I really
11 thought I was going to lose it at that point.
12 That's what I thought. But in any event, the
13 bottom line is, it was worthless.

14 Q. Are there any other --

15 A. By the way, I really rarely use the
16 account. It's one that my wife uses on a regular
17 basis. She even has the ATM card. I've never even
18 had an ATM card to the thing, okay?

19 Q. When you get paid, how do you get paid, by
20 check, when you worked for NEMCO?

21 A. When I worked for NEMCO, I think we were
22 on direct deposit.

23 Q. And where would the funds have been direct

1 deposited to?

2 A. I'm assuming they went into the checking
3 account.

4 Q. That joint checking account with your
5 wife?

6 A. I would assume so.

7 Q. Did you not have any access to that
8 account?

9 A. I rarely, if ever, used it.

10 Q. When was the last time you wrote a check
11 against that account?

12 A. I have no idea.

13 Q. Would you say it's a year ago? More than
14 a year ago?

15 A. I don't know. I'd have to look. I rarely
16 use it.

17 Q. You said you got paid direct deposit from
18 NEMCO. Is that the exclusive way NEMCO paid you or
19 did they pay you by other means?

20 A. That's a good question. I don't --
21 actually, I'm sorry. They were not direct deposit.
22 They would send me a draft, a check.

23 Q. Okay. A moment ago you said that you had

1 very little, if any, involvement with the checking
2 account. However, if they gave you a check, how
3 did you deposit that check into that account?

4 A. I didn't. You're not getting the picture.
5 My wife --

6 Q. Paint it for me.

7 A. My wife managed the family household.
8 Frankly, I rarely knew how much money I made at the
9 end of the year until I found out from doing
10 summaries or getting my W-2s or whatever.

11 Q. So you would get a check from NEMCO, and
12 then what would you do with it? Would you endorse
13 it?

14 A. I'm sure it was deposit only, and she
15 probably put it into an account. I have no idea.

16 Q. You do not recall taking any of your pay
17 checks or draw checks from NEMCO to the bank and
18 depositing them yourself?

19 A. I don't think I ever have made a deposit
20 into that account. How's that?

21 Q. I'm just looking for the truth, sir.

22 A. What's your point? I already told you
23 what the situation is.

1 Q. All right. Are there any, now knowing
2 that -- because you said you did not know before --
3 now knowing that it is important to accurately list
4 all of your assets and rights and claims against
5 parties and things of that sort in your bankruptcy
6 schedules, do you believe that you might have
7 omitted any other assets?

8 A. No.

9 Q. Claims, rights, et cetera?

10 A. Absolutely not.

11 Q. Do you drive a car, sir?

12 A. No.

13 Q. How do you get around?

14 A. I haven't had a license in ten years.

15 Q. How do you get around?

16 A. Somebody else drives me.

17 Q. Your wife?

18 A. Sometimes.

19 Q. Why haven't you had a license in ten
20 years?

21 A. It's irrelevant.

22 Q. Are you refusing to answer the question?

23 A. I non-renewed my license in I believe it

1 was either '99 or 2000, and just never went back to
2 get it done. Actually, I didn't not renew it. I
3 moved and it never followed me, and I didn't
4 realize it was gone until it was too late.

5 Q. Is there an automobile -- you said your
6 wife sometimes drives you around, so your wife owns
7 a car?

8 A. No, she does not.

9 Q. Does she lease a car?

10 A. No, not anymore.

11 Q. The car that she uses to drive herself and
12 you around, who owns that car?

13 A. Either my daughter or other people.

14 Q. What kind of car is it?

15 A. What kind of car is what?

16 Q. The car that --

17 A. And how would that be relevant? The car
18 that what, that my daughter owns?

19 Q. You said --

20 A. Actually, I don't think it's even in her
21 name.

22 Q. You said your wife drives you around?

23 A. Yes, on occasion.

1 Q. Does your wife have an interest in a motor
2 vehicle?

3 A. No, she does not.

4 Q. The car that she drives you around in, who
5 owns that?

6 A. I'm not sure. I've never checked the
7 title.

8 Q. Does a family member own it?

9 A. I'm not positive. I don't think she does,
10 as I think about it.

11 Q. Who pays the insurance on that car?

12 A. Not me.

13 Q. Do you know if there's any loan
14 outstanding against it?

15 A. How would I know that?

16 Q. I'm asking you the question.

17 A. I have no idea.

18 Q. What kind of car is it?

19 A. I think it's a Ford Expedition.

20 Q. What year?

21 A. I don't know. Do you have any clue? I
22 don't know. I have no clue, not a car guy.

23 Q. Is this the car that your wife drives, the

1 Expedition that we're talking about right now?

2 A. On occasion.

3 Q. Are there any other vehicles that your
4 wife drives?

5 A. Not anymore. Well, yeah, I mean,
6 sometimes she drives other people's cars. Some
7 friends, you know, they go driving and they drive
8 together, she drives.

9 Q. Is it your testimony that you do not pay
10 for the insuring, upkeep, payments, any other
11 expenses relating to the operation or ownership of
12 a motor vehicle?

13 A. I don't pay any of it at all. Haven't for
14 years.

15 Q. Has your wife paid for it?

16 A. Doubt it.

17 Q. You said before that your wife derives no
18 income from any source and she hasn't since 1997?

19 A. I didn't say that. I said she hasn't
20 worked since 1997. She's an RN.

21 Q. Okay, she hasn't worked since 1997. Has
22 she derived any income from any sources since then?

23 A. I don't think so, other than what we may

1 have paid her when she was working with NEMCO. She
2 would do odd jobs for us, and we would reimburse
3 her for that.

4 Q. Sir, you said before that your wife had
5 not worked since 1997. Are you changing your
6 testimony now?

7 A. Not really. She did some part-time stuff
8 that she would do odd jobs and so on, and
9 consequently she's not worked in her field of
10 occupation since 1997.

11 Q. That wasn't my question. My question was
12 not whether she worked in her field of occupation.
13 Has she derived any income from any employment, and
14 you said earlier that she hadn't worked anywhere
15 since 1997. Are you changing your testimony now?

16 A. Well, I'm trying to think when the last
17 time. She had a heart attack in 2005, and I don't
18 believe she's done even any other work since then.
19 She may have done some work with us. As a matter
20 of fact, I'm fairly certain we -- I'm trying to
21 remember. I don't know. I really don't know.
22 After 2005, no. Prior to 2005, she may have done
23 some odd jobs and been reimbursed for it.

1 Q. With NEMCO?

2 A. I would think so, yeah. I can't imagine
3 where else we would have.

4 Q. Who authorized her employment, albeit
5 part-time? Who authorized her employment with
6 NEMCO?

7 A. Oh, it would have been at best very
8 part-time.

9 Q. Who authorized that employment? Who hired
10 her for NEMCO?

11 A. Well, technically I would have.

12 Q. And she got paid by a NEMCO check?

13 A. Oh, I'm sure. She would have had to have
14 been paid on pay roll.

15 Q. So aside from that very part-time job
16 which you described, your wife has had no income in
17 the past eleven years, is that true?

18 A. In the past eleven years?

19 Q. Uh-huh.

20 A. Well, let me say this, okay? Your request
21 was for information from what year to what year?

22 Q. That was a document information request.
23 I'm asking you --

1 A. That's exactly right.

2 Q. That's not the scope of this 2004 exam.

3 A. Well, the 2004 exam, obviously she's had
4 no income since 2005. If you have --

5 Q. Sir, you said before under oath --

6 A. If you have a need to depose her and find
7 out if she had an income before 2005, that's fine,
8 but I'm not aware of any. How's that?

9 Q. How long have you been with your wife?

10 A. Let me think now. 34 years.

11 Q. Is it safe to say -- would you say that
12 spouses generally know where their spouse works
13 outside the home or whether they work at all?

14 A. She has not had a regular full-time job
15 that I'm aware of since 1997.

16 Q. Fine. You have stated earlier that you
17 have not been working for NEMCO because it folded
18 in July or so --

19 A. Well, actually I think -- I'm not sure
20 what time, at what point they gave up their
21 license, but I think it was later.

22 Q. But you stopped deriving any income in
23 July of 2007, and since then your income has been

1 nominal at best?

2 A. Yeah, believe me.

3 Q. How do you, sir, pay for your living
4 expenses?

5 A. Generosity of friends and relatives. What
6 can I say?

7 Q. Do you get gifts, donations, things of
8 that sort from people that perhaps read your
9 postings on various websites?

10 A. No, absolutely not.

11 Q. Do you solicit gifts, donations, support
12 from people?

13 A. No, we don't. We make no requirement that
14 anybody. Anybody who wants to can certainly read
15 it.

16 Q. Again, let's go back to how do you pay for
17 normal living expenses. How do you pay for rent?

18 A. I think I told you, I don't have any rent.

19 Q. You're staying rent-free at this
20 single-family residence that you're in?

21 A. Yeah. As a matter of fact, the guy even
22 pays the lights for me.

23 Q. Do you have a telephone bill?

1 A. Not anymore.

2 Q. You have a cell phone, I saw earlier. Who
3 pays for that service?

4 A. I just started it, and I'll be paying for
5 it.

6 Q. From what income?

7 A. Whatever I can make.

8 Q. Do you have cable television?

9 A. That's being paid for by him as well.
10 It's only \$10.95.

11 Q. When did you start the cell phone service
12 that you say you just got?

13 A. Three weeks ago, two weeks ago.

14 Q. Have you received a bill yet?

15 A. Nope.

16 Q. Did you have to put down a downpayment or
17 a deposit?

18 A. No.

19 Q. Was the telephone free?

20 A. It was some sort of deal. The guy called
21 me up and sent me a phone.

22 Q. Groceries, who pays for your groceries?

23 A. Well, let's see. I'm not sure.

1 Q. Do you do the grocery shopping in your
2 family?

3 A. I do not.

4 Q. Does your wife do the grocery shopping in
5 your family?

6 A. Sometimes.

7 Q. Okay. If you do not and your wife
8 sometimes does, who else does grocery shopping for
9 your family?

10 A. You know, this is really outside of the
11 realm of what's going on here.

12 Q. It's not, sir.

13 A. It is.

14 Q. It's not. We're reviewing assets and
15 liabilities. Among the assets include your income
16 streams and your income sources. I do find it
17 difficult to believe that you have -- you have to
18 have some expenses that you need to cover, yet you
19 have no income and your wife has no stated income.

20 A. She has no income.

21 Q. So I'm trying to connect the dots as to
22 how you --

23 A. Well, I've had some odd-job income that

1 I've been able to derive over the course of time,
2 you know? Most of it unfortunately did not get
3 paid for, but I have had some work that I've done
4 and been paid periodically.

5 Q. You stated a few moments ago that you
6 don't pay for rent, you live at this single-family
7 home through the good graces of an individual. How
8 long have you been living there?

9 A. November, I believe, October.

10 Q. October or November of 2007?

11 A. I believe so, yeah.

12 Q. Where did you live prior to that?

13 A. In a condominium that a realtor friend of
14 mine owned.

15 Q. Did you pay rent there?

16 A. I did for a good chunk of the time, until
17 I couldn't afford it anymore.

18 Q. What was the monthly rental?

19 A. Oh, I think it was probably \$1,800.

20 Q. \$1,800 a month?

21 A. Yeah, I believe that's correct.

22 Q. Let me go through just some other
23 expenses. Again, gas in the car, who pays for

1 that?

2 A. You're insane. I told you --

3 Q. Not the car that you don't own, but you
4 get around. The family incurs --

5 A. You know what? I literally live in my
6 bunker, and when I do get out, it's very rare, but
7 when I do get out, I go with someone else. Who
8 puts the gas in, I don't know.

9 Q. Mr. Joy, did you report Danny Shelton to
10 the Internal Revenue Service for the nonpayment of
11 taxes?

12 A. Are you nuts? I did not.

13 Q. Did you report 3ABN to the Internal
14 Revenue Service for the nonpayment of taxes?

15 A. Now wait a minute. First of all, no, but
16 how is that relevant to this claim?

17 Q. It has to do with claims that you owned,
18 sir.

19 A. I don't have any claims.

20 Q. That's what I'm trying to develop here.

21 A. You mean am I going to get a fee for
22 turning them in? No, I didn't turn them in. I
23 reported it. I didn't turn them in.

1 Q. I just asked you, did you report --

2 A. I reported it to the general public. I
3 did not turn them in to the Internal Revenue
4 Service. I have only spoken to an IRS agent
5 exactly once, and told her that I had no evidence
6 to give her other than what was already on the
7 court record, period.

8 Q. When was that? When did you have that
9 discussion with the IRS agent?

10 A. Probably in -- let's see. You know, I
11 don't even know. It's been months and months.
12 Sometime -- hm-mm. I don't recall. I honestly do
13 not recall.

14 Q. Did you fill out a form --

15 A. I did not.

16 Q. -- in connection with this discussion with
17 the IRS agent or otherwise?

18 A. I didn't -- there was one communication by
19 phone.

20 Q. By telephone only?

21 A. Exactly.

22 Q. No letters, nothing in writing?

23 A. Nothing.

1 Q. Did you sign a form? I'm just asking the
2 question.

3 A. Zero communications other than a phone
4 conversation. Is that clear?

5 Q. Do you know who did report it?

6 A. And if I did, they would be a protected
7 witness.

8 Q. I'm not sure you have the right to protect
9 them, but the IRS might.

10 A. Well, I think I do. In the state of
11 Massachusetts, witnesses are protected.

12 Q. Just answer the question. Do you know who
13 did? I'm not asking you to identify that person
14 right now.

15 A. I think I do. Actually, let me say this.
16 I happen to believe that the report came from
17 several people based on the information that I was
18 given by various witnesses.

19 Q. And are you going to tell me who you
20 believe these people are? I'm asking you to tell
21 me. Are you going to tell me?

22 A. I don't think it's appropriate for me to
23 do that, and it certainly doesn't relate to this at

1 all. There's no way it's relevant to this action.

2 MR. HEAL: Absolutely.

3 Q. Do you expect to recover a reward from the
4 IRS as a result of these reportings by other
5 people?

6 A. I understand how qui tam claims run.

7 Q. Just answer the question.

8 A. I have no way of recovering money from any
9 report that went from me to anyone in the federal
10 government at any level.

11 Q. Do you expect to share in any recovery
12 that somebody else might make or recover --

13 A. I do not.

14 Q. -- from the government?

15 A. Why would I? I was not a source. I am
16 the reporter. I am not the source. I'm the
17 reporter, do you understand that, Mr. Roumeliotis?

18 Q. So is it your testimony that you are not
19 expecting to recover any reward or part of a reward
20 or splitting of a fee from any source whatsoever as
21 a result of the qui tam claim that somebody else
22 might have raised?

23 A. That is absolutely my statement of fact.

1 Q. So just to close out this inquiry, you
2 stated that you believe you know the names of the
3 people that made the reports to the IRS?

4 A. I believe I did.

5 Q. But that you are unwilling to state their
6 names on the record?

7 A. It's not relevant to a 2004 hearing, and
8 it's absolutely not relevant to anything else that
9 is being discussed here, and the answer is I will
10 not give the sources at this hearing.

11 MR. HEAL: And if it's not true, he'd
12 be exposing himself to liability.

13 Q. Have you reported anybody else to the IRS?

14 A. Never have.

15 Q. Are you expecting to receive any funds
16 from anybody as a result of work that you've done
17 in the past, accounts receivable? I'm switching
18 gears here a little bit on you. Anybody owe you
19 money?

20 A. I've got so many people that owe me money,
21 it's pathetic, and the answer is no, I don't ever
22 expect to see a dime of it.

23 Q. How much money do you think people owe you

1 for work that you've done?

2 A. Over what period of time? I mean, in 2007
3 we had over \$100,000 worth of commissions that were
4 lost to all kinds of banks out there. You want to
5 start with that?

6 Q. And what happened to these banks? Did
7 they fail or are they still in business?

8 A. They're gone. One of the 257 that failed
9 last year.

10 Q. So then just state for me an estimate as
11 to how much you believe you are owed. Not we,
12 NEMCO. I'm talking about you, Mr. Joy. What are
13 you owed for lost commissions, lost income?

14 A. Well, if we had that \$100,000, I'm sure I
15 could probably get paid what I was owed in the fall
16 of last year, amongst other things. Probably could
17 have gotten paid a lot more. You know, I lost
18 track. I'm sure it's over \$100,000, well over
19 \$100,000.

20 Q. Why didn't you list your entitlement to
21 any accounts receivable in your bankruptcy
22 schedules?

23 A. Because I wasn't entitled to anything.

1 They were gone. They were bankrupt. There was no
2 chance of recovery in any one of their cases.

3 Q. So as of mid-August of 2007, although
4 other companies owed you money --

5 A. Well, they owed, yeah, that's right.

6 Q. They were out of business?

7 A. They were gone. Why do you think we went
8 broke?

9 Q. As of that day, were you owed any money
10 from anybody that was not out of business?

11 A. I don't know. Well, I mean, to the degree
12 that NEMCO is still there, but we were never going
13 to get it, so no, we didn't have anything. We knew
14 they were liquid.

15 Q. Mr. Joy, in December of 2007, you filed a
16 motion to dismiss the Chapter 7 bankruptcy case, do
17 you recall that?

18 A. I believe I asked my attorney to file
19 that, yeah.

20 Q. Did you have an opportunity to read it
21 prior to it being filed?

22 A. I'm assuming I got a copy of it.

23 Q. Forgive me if you're having difficulty

1 reading this, but there's the motion. That's a
2 copy of the motion to dismiss the case.

3 A. Uh-huh.

4 (Debtor's Motion to Dismiss Case
5 marked Exhibit D for identification.)

6 Q. You can refer to it if you'd like.
7 Paragraph one says, "The debtor is confident that
8 he can repay his creditors after having to change
9 his business model in a manner in which he has
10 employed before, to row with the ebbs and flows of
11 the tides of the financial service industry, so the
12 effect on the creditors will be wholly and
13 uniformly positive."

14 What does that refer to? What change in
15 your business model had you accomplished by
16 December of 2007?

17 A. I had gone back to a lender who I assumed
18 was reasonably safe. First American Mortgage was a
19 Ginnie Mae lender, and I had assumed being a Ginnie
20 Mae lender they were in reasonably safe condition,
21 and frankly, one of the reasons that I even
22 answered his e-mail -- when he knew NEMCO went
23 down, he wanted me to come back to work for him.

1 So I assumed at that point we'd be in
2 pretty good shape, and frankly, I think that month
3 I got paid -- the month of December I got paid
4 \$3,000 or whatever. But in any event, bottom line
5 is, pipeline virtually evaporated in January.

6 Q. So in December of 2007, when this was
7 filed, you believed that you would have some income
8 going forward?

9 A. Are you kidding? We thought we were in
10 great shape. We thought they we were in pretty
11 good shape. Believe me, I wish we had been. Who
12 expected Ginnie Mae to go down or a Ginnie Mae
13 lender to go down?

14 Q. Sir, how come you did not list 3ABN or
15 Danny Shelton in your bankruptcy petition as
16 creditors?

17 A. Well, number one, we were far from the
18 finish line. Number two, they hadn't stated a sum
19 certain that was necessary for any potential
20 judgment. Number three, I really didn't feel they
21 were going to prevail. I thought the chances of
22 their prevailing was extremely slim.

23 Q. Did your attorney advise you that you

1 needed to list all --

2 A. Oh, I think --

3 Q. -- creditor claims even if they --

4 A. I think we noted them somewhere in there.

5 I remember putting them in some sort of schedule.

6 Q. They were noted in the statement of

7 financial affairs.

8 A. Yeah. So what more did you want?

9 Q. Except that noting them there does not
10 give them direct notice of the existence of the
11 bankruptcy filing from the Bankruptcy Court.

12 A. And?

13 Q. The purpose of listing creditors in the
14 bankruptcy filings is to give them notice of the
15 bankruptcy filing.

16 A. But they weren't a creditor.

17 Q. They were pursuing you in a District Court
18 action in which damages was an issue.

19 A. That's in your opinion.

20 Q. Have you talked to your counsel since the
21 filing of the bankruptcy case about whether the
22 petition ought to be amended to list them as a
23 creditor?

1 A. I believe he told me that I should amend
2 the bankruptcy filing, but I don't recall whether
3 it was specifically to do with 3ABN.

4 Q. Have you amended your bankruptcy filing --

5 A. I did not. I refused.

6 Q. The amendment to the bankruptcy filing
7 could have perhaps extended to the listing of the
8 domain names. Do you still maintain that those
9 were not assets of any import at the time of the
10 listing?

11 A. At the time I filed they weren't. I did
12 not look at those names as being worth anything.

13 Q. Did you not list 3ABN, sir, because you
14 wanted the lawsuit against you to continue in the
15 District Court?

16 A. I don't think I even had a moment's
17 thought. Didn't bother me one way or the other.

18 Q. Was the suggestion of bankruptcy filed by
19 either yourself or your counsel --

20 A. Her chief (indicating) filed it.

21 Q. It's the debtor's responsibility to file
22 it in the first place, not a creditor's. I mean,
23 it's good that she filed it.

1 A. But you weren't a creditor.

2 Q. Pardon me?

3 A. But you weren't a creditor.

4 Q. But there's pending litigation. Is it
5 your position that the bankruptcy filing did not
6 affect or shouldn't have affected the District
7 Court action?

8 A. Didn't think about it one way or the
9 other.

10 Q. Didn't think about it one way or the
11 other?

12 A. Nope. 3ABN was not on my mind when I
13 filed bankruptcy, believe me. It is the last thing
14 on my mind when I filed bankruptcy.

15 Q. What was the first thing on your mind when
16 you filed bankruptcy? What was the impetus for
17 filing the bankruptcy then?

18 A. The impetus was multi-faceted. I had a
19 situation where we had buybacks coming in from
20 lenders.

21 Q. Hold on. What's a buyback from a lender?

22 A. The lenders were threatening to charge us
23 back with loans that they felt were potentially --

1 they had -- the big thing -- let me put it this
2 way. You have a situation where you do a loan, and
3 if one of your loan officers does the loan again
4 within a certain period of time, you owe them the
5 premium back. That would impact your ability to
6 collect future commissions obviously.

7 In addition to that -- well, there's other
8 implications as well, but in addition to that, we
9 had pendency of specific services that if I had not
10 filed were going to impact our ability to continue
11 to exist.

12 Q. What services?

13 A. Utilities, phones, electric.

14 Q. Where, at the NEMCO branch?

15 A. No, in my home. I had moved the branch to
16 my home.

17 Q. I thought you said that NEMCO was all but
18 wrapped up at the end of July?

19 A. I moved the branch back to my house in
20 early 2007, so that we could save the costs of a
21 branch and keep things going, because we were hit
22 by people who were not paying us.

23 Q. And NEMCO did not reimburse you for

1 utility costs or anything like that?

2 A. No.

3 Q. So did you believe that you had any
4 liability directly, personally to any of these
5 lenders for these buybacks or any other?

6 A. No.

7 Q. So you were simply trying to keep the
8 lights on?

9 A. Basically.

10 Q. Any other lawsuits other than 3ABN pending
11 against you?

12 A. No.

13 Q. Or filed against you?

14 A. Nope, nothing that I'm aware of. I think
15 I would have known by now.

16 Q. Once the bankruptcy case was filed, who
17 notified the utility companies that you had filed a
18 bankruptcy case?

19 A. I did.

20 Q. Was the utility bill in your name?

21 A. Yes.

22 Q. Is it still in your name, the electric
23 bill?

1 A. We moved.

2 Q. Oh, you moved. Is the utility bill
3 currently in your name or is it in your wife's
4 name?

5 A. I told you, it's being paid by our
6 benefactor.

7 MR. ROUMELIOTIS: Off the record.

8 (A brief recess is taken.)

9 MR. ROUMELIOTIS: Back on the record.

10 I do have a few questions to ask, but prior to
11 doing that, a little bit of housekeeping, if I
12 could. Earlier we designated as Exhibit A the
13 Schedule I to the bankruptcy petition, and as
14 Exhibit C, Schedule B to the bankruptcy petition.

15 During the examination we did refer to
16 other sections and other parts of the bankruptcy
17 filing, the bankruptcy petition and the schedules,
18 and so instead of introducing as Exhibit A the
19 Schedule I and as Exhibit C the Schedule B, we
20 would introduce as Exhibit A the entire set of
21 schedules and the petition and all the related
22 documents. So I'd like to have this submitted as
23 Exhibit A.

1 (Bankruptcy Petition marked Exhibit A
2 for identification.)

3 MR. ROUMELIOTIS: We'd like to
4 introduce as Exhibit C all of the documents that
5 Mr. Joy produced in connection with the document
6 production request that we served upon him in I
7 believe it was February or March, in connection
8 with the 2004 exam that was to take place in April
9 but did not go forward. These are the documents
10 that he had previously produced.

11 (Response to Document Production
12 Request marked Exhibit C for identification.)

13 Q. (By Mr. Roumeliotis:) Mr. Joy, I simply
14 would like you to affirm that the documents that we
15 just designated as Exhibit C, which are the
16 documents that you're reviewing right now, are all
17 of the documents in your possession, custody or
18 control that are responsive to the document
19 production request that we made of you in our
20 subpoena. Can you confirm that for us?

21 A. Well, I'm not sure that -- see, my problem
22 is I put in a search for bankruptcy, it must be,
23 and everything came up that had bankruptcy in it.

1 I'm not sure that I have -- I believe, and I may be
2 wrong, there may be additional documents from
3 Jerrie Hayes somewhere in my e-mail that would
4 relate to the issues in the adversarial proceeding,
5 because I seem to recall a series of e-mails with
6 her that would have obviously been followed up with
7 letters, but I do seem to recall those and I can't
8 tell you for the life of me why --

9 MR. HEAL: As I mentioned earlier, it
10 sounds like the literal reading of the request
11 didn't meet them, but there's something that you're
12 thinking probably do fall within it, and we already
13 agreed that we can provide those.

14 THE WITNESS: Yeah, we'll supplement
15 it to add those items if we have them.

16 MR. ROUMELIOTIS: Can you confirm for
17 us by September 30th?

18 THE WITNESS: I can confirm with you
19 tonight. I just have to go through my database.

20 MR. ROUMELIOTIS: I'll give you two
21 weeks. Let's just say September 30th. Can you
22 confirm by September 30th, give us an indication by
23 September 30th if there are additional documents

1 that are responsive to our request, and if so,
2 produce them by September 30th, or if there are
3 not, let us know by then as well.

4 MR. HEAL: Uh-huh.

5 THE WITNESS: Now, are you interested
6 in the bank statements?

7 MR. ROUMELIOTIS: We asked
8 specifically --

9 THE WITNESS: Well, I understand that,
10 but I'm not going to go to the expense of producing
11 them. I'll be happy to give you an authorization
12 if you want to. I have nothing to hide.

13 MR. ROUMELIOTIS: Could you produce
14 for us the one that would have covered the
15 timeframe that would have included the bankruptcy
16 filing date, August 14th, 2007?

17 THE WITNESS: It's past six months.

18 MR. ROUMELIOTIS: You said it will
19 cost \$5. We'll reimburse you for it if you get it.

20 THE WITNESS: Just one, is that what
21 you want? That's fine. I can get that, I guess.

22 MR. ROUMELIOTIS: Laird, can you get
23 that to us by September 30th as well?

1 MR. HEAL: Have you requested the
2 documents provided the Chapter 7 trustee?

3 MR. ROUMELIOTIS: I have not. I don't
4 know if you have. What documents were produced to
5 the Chapter 7 trustee?

6 MR. HEAL: I'm sure just the usual,
7 but I'm also sure that, you know, it's one command
8 to bring the thing up and another command to send
9 it over. It's so quick. It might have that bank
10 statement in it.

11 MR. ROUMELIOTIS: Do you think you
12 produced that information electronically so that
13 the trustee may just have that in a --

14 MR. HEAL: Oh, I know I have
15 electronically. I doubt if she does.

16 MR. ROUMELIOTIS: The information that
17 you produced for the trustee, you have it in
18 electronic form? Can you e-mail it to me then?

19 THE WITNESS: We would have done three
20 months of bank statements, right?

21 MR. HEAL: That's my thought.

22 THE WITNESS: Yeah, I forgot about
23 that. Oh, yeah, so they're there.

1 MR. ROUMELIOTIS: Please e-mail that
2 information then.

3 THE WITNESS: That's a good point. I
4 forgot about that.

5 Q. (By Mr. Roumeliotis:) I have a few
6 questions that I'd like to ask. What we just
7 designated as Exhibit C, which is the information
8 that you provided to us last time in response to a
9 document production, you listed a series of 1099
10 forms, you included a series of 1099 forms at the
11 end?

12 A. Yup.

13 Q. One is from New England Merchants
14 Corporation to you?

15 A. Yeah.

16 Q. For \$13,792.21?

17 A. Right.

18 Q. For 2007. I assume that that is for your
19 work for New England Merchants Corporation that you
20 described earlier?

21 A. Yeah.

22 Q. And there's another one from Northern
23 Mortgage Services, LLC, in 2007?

1 A. Yeah.

2 Q. You might have mentioned it, but I do not
3 recall that you did mention a Northern Mortgage
4 Services, LLC. Did you mention that before?

5 A. No, but it's work that I did for them.

6 Q. At the same time as you when you worked
7 for NEMCO?

8 A. Probably. Let's see. We were using them
9 as a retail conduit for FHA business that we were
10 putting through First American, so it would have
11 been after NEMCO had pretty much collapsed.

12 Q. Give me the timeframe by months, I guess,
13 for this \$9,700 worth of compensation that you
14 earned.

15 A. Probably would have covered the period
16 from maybe -- I don't know -- September, October,
17 November possibly.

18 Q. You mentioned earlier that you worked in
19 late 2007 for First Bank or First --

20 A. First American Mortgage. I was doing
21 wholesaling, and we had a situation where some of
22 our brokers were not FHA approved. They could not
23 place loans directly, so we conduited them through

1 Northern Mortgage Services Corporation. So what I
2 did is I still, you know, I placed some loans. I
3 didn't get -- I think we closed one loan directly,
4 myself and Kevin, who was one of my loan officers.

5 Q. Did you get paid in 2007 from First
6 American Mortgage?

7 A. Well, yeah. I got, what? About \$3,000, I
8 believe. They never 1099-ed me.

9 Q. They never gave you a 1099?

10 A. They never gave me a 1099. I think they
11 treated it as advanced because they never did a
12 formal accounting and paid commission.

13 Q. I'm just going to show you page 21 of
14 Exhibit C, which again is the package of documents.
15 I'll show you this here, a package of documents
16 that you previously produced. The bottom of page
17 21 is an e-mail from you to a person named Bille?

18 A. No, that's from Bille -- I'm sorry.

19 Q. That's from you to Bille?

20 A. This is from --

21 Q. That's from you to Bob. Looks like you
22 wrote an e-mail to Bille.

23 A. No, that's the end of Bille. I don't know

1 who that is to. Doesn't say. It says, "Blessings,
2 Bille," so it would have been the end of this
3 particular e-mail that I forwarded to Bob.

4 Q. Can you take a look at this, at the foot
5 of which appears your name?

6 A. Yup.

7 Q. And read this and simply affirm for us
8 that you in fact wrote that.

9 (Pause.)

10 A. Yeah, that would definitely have been me.

11 Q. And that passage that we're referring to
12 starts, "Unfortunately, because of the very narrow
13 charges pressed by 3ABN and Danny Lee Shelton, we
14 must substantially expand the case to bring in the
15 most damaging and certain to sway the jury
16 details." That's how the passage begins. It was
17 written on January 20th, 2008, the time stamp on
18 this is 10:28 p.m.

19 It closes with, "They clearly have been
20 getting information that we had the exclusive on
21 and jumping us at every opportunity. C'est la vie.
22 Gailon Arthur Joy." That's the paragraph that I'm
23 referring to. You did in fact write that?

1 A. I believe so. I have no reason to believe
2 otherwise. I'm pretty sure I did, as a matter of
3 fact.

4 Q. That passage includes the following
5 statement: "Remember the IRS has already been
6 investigating for nearly 18 months that we are
7 aware of, and given the complaint from Fran, I
8 would guess that they are well past two years into
9 the investigation." What complaint are you
10 referring to in that?

11 A. It was a series of complaints given. We
12 tracked it out. There was a series of complaints
13 given to a special group that was formed to deal
14 with eBay claims. Are you familiar with that? No.
15 The IRS set up a special task force back about
16 probably three years ago now, and that particular
17 task force was given the responsibility of tracking
18 out people who utilized eBay for purposes of making
19 money, and to see whether or not they were actually
20 taking that as income on their income tax.

21 There was a girl, actually an accountant
22 who had worked for the IRS, and what happened, in a
23 nutshell, is she discovered in the process of

1 buying things from 3ABN's eBay site, that certain
2 transactions were not in fact being -- she was
3 supposedly buying things that were on the 3ABN --
4 what do you call that? You know, if you give a
5 gift to 3ABN and they want to dispose of it, they
6 would put it on their eBay site.

7 She went in and she would buy things off
8 that site periodically, and the experiences that
9 she had was that number one, she did not get the
10 receipt specifically for the contribution that she
11 made for purchasing whatever it is that she took
12 from the eBay site. The second thing she
13 discovered is that when receipts came through on
14 her charge cards, they didn't go into 3ABN
15 accounts.

16 What was the third thing? There were
17 three key issues there. Oh, the third thing was
18 that the money was actually going into family
19 accounts, Shelton family accounts. She had sent us
20 a complete set of documents relating to that. We
21 had discovered that obviously to Mr. Simpson. It
22 was a CD that she sent to us, and we put it in a
23 hard drive and just re-disclosed it.

1 The nut of it is that she, realizing this,
2 began inquiring, and one thing led to another, and
3 at some point, it would be quite a ways away now --
4 what date was that? January? So it would have
5 been sometime in either late 2005, 2006, she
6 actually gave notice to the Internal Revenue
7 Service that there was something awry here. She
8 filed a formal complaint regarding the eBay site.

9 She actually came up with some pretty
10 phenomenal numbers on short sale deals, on sales
11 that were done at -- you know, that were done
12 supposedly through 3ABN and then ultimately ended
13 up going into personal checking or other -- let me
14 restate that. As far as I know, the evidence that
15 we had was that they were going into other peoples'
16 Mastercard accounts. Do you understand what I'm
17 saying? In other words, they had their own
18 Mastercard account going through their checking
19 account.

20 From that she developed a synopsis, put
21 together a package and sent it to the Internal
22 Revenue Service regarding those complaints, and
23 asked them to investigate because she was not

1 getting answers. That happened I'm pretty sure it
2 was sometime in 2005. I can't remember now, but I
3 seem to recall that being the case.

4 Q. What's Fran's last name?

5 A. McDonald. She's on the witness list.

6 Q. Thank you. I want to get some additional
7 information from you, Mr. Joy. Your telephone
8 number?

9 A. I've got to look it up.

10 Q. You have to look up your telephone number?

11 A. I don't dial myself very often.

12 ***-***-****.

13 Q. E-mail addresses that you use?

14 A. My e-mail address is gabbjoy4@*****.***.

15 Q. G-a-b-b or just g-a-b?

16 A. G-a-b-b. It's Gailon, Ann, Brett, Brook.

17 Gabbjoy4@*****.***. Then I have Arthur@*****.

18 No, it's Gailon, I'm sorry. I used my first name.

19 Gailon@*****. That I set up last spring. Let

20 me think. Actually, I don't get the AU Reporter

21 anymore. What do I get? Oh, I know what it is.

22 It's Arthur@*****.***, First American Mortgage

23 Trust. I set that up in the fall of last year.

1 Q. Those are all your e-mails addresses that
2 you -- have you used them in the past year, let's
3 say?

4 A. Well, actually prior to that I had
5 gabbjoy4@*****.***, I believe, right? Yeah, I
6 think it was gabbjoy4@*****.***.

7 Q. So the comcast.net one is no longer
8 active?

9 A. No, hasn't been since I got the Verizon
10 account.

11 Q. Are there any other names, monikers,
12 aliases that you use in connection with posting
13 things on the internet, on blogs, on contribution
14 sites, things of that sort?

15 A. Let me tell you something. I have never
16 used anything other than my birth name. How's
17 that?

18 Q. If that's your testimony. So is it your
19 testimony that --

20 A. It has always been my testimony.

21 Q. -- whenever you post something on the
22 internet, you use your name, your full name?

23 A. I use my actual name. Usually I use the

1 full Gailon Arthur Joy so there's no question that
2 it's me.

3 Q. What is the Atlantic Union Reporter?

4 A. It was actually a -- it started out as --
5 I'm trying to remember what it was now. It goes
6 back into the 1980s. What it is is it was
7 basically an ecclesiastical reporting journal that
8 we used to deal with specific issues of
9 maladministration and abuses within the
10 denomination.

11 It became AU Reporter I believe when we
12 were dealing -- I think it was either New England
13 Memorial or it was Pawtucket Health Institute, I
14 can't remember which one. Then of course we did
15 a series on Atlantic Union College that dealt with
16 maladministration there, and after that we dealt
17 with issues at a couple of independent institutes.
18 Then we were made aware of the issues at 3ABN in
19 2006, and we started dealing with that.

20 Q. What was your involvement with Atlantic
21 Union Reporter?

22 A. Oh, I basically had been the -- I guess
23 you would say the producer, the investigator,

1 although I've had other people that have worked
2 with me periodically, you know, doing field reports
3 and so on.

4 Q. Does it have a website?

5 A. No, we never had a website.

6 Q. Or a blog or anything of that sort?

7 A. No, we weren't into blogs. Just reporting
8 what we found.

9 Q. So it's your testimony that Atlantic Union
10 Reporter has no domain name?

11 A. Oh, it has a domain name or it did have a
12 domain name.

13 Q. For what purpose, for e-mail?

14 A. Yeah.

15 Q. What was the?

16 A. Aureporter@*****.***.

17 Q. And you had no ownership interest or
18 control over that domain name?

19 A. Oh, I would have -- I set up that domain
20 name.

21 Q. Were you the registrant?

22 A. I'm assuming so.

23 Q. When did that -- is that domain name still

1 active?

2 A. As far as I know. I just paid for it a
3 little while ago. It will be good for a year.

4 Q. Did you own it as of the bankruptcy
5 filing?

6 A. No. I just paid for it.

7 Q. Was it started up or established by
8 anybody else prior to August of 2007?

9 A. I don't think so.

10 Q. So can you pinpoint the date then for me a
11 little bit better as to when you first established
12 it? When was it first reserved?

13 A. I don't have any clue. It was some point.
14 I don't recall when.

15 Q. But sometime in the past 12 months?

16 A. I'd have to look back. I think it's only
17 about maybe six months.

18 Q. Do you derive any income whatsoever from
19 AU Reporter activities?

20 A. Barking up the wrong tree. No, we never
21 have. We've never even sold the papers. We've
22 made them available for free. Of course, in those
23 days we were doing relatively well so it was not a

1 big deal. Actually, it started out -- I mean, the
2 e-mail thing is a relatively new concept in the
3 last several years, 2003, 2004. Prior to that we
4 actually produced it the old way, as a newsletter.

5 Q. In your bankruptcy schedules you listed a
6 series of creditors on your Schedule F. I'll just
7 name them real quick: Charter, First Premiere
8 Bank, Fraticelli Oil Company, HSBC, Leominister
9 Plumbing & Heating, Lustig Glaser & Wilson, NSTAR,
10 Verizon, and West Boylston Municipal Light Plant.
11 Did you owe Bob Pickle anything as of August of
12 2007?

13 A. He wasn't in my list of payables, let's
14 put it that way. Whether I owed him something or
15 not, I don't know, but in what I had in my drawer
16 as payable, I did not have him there. He was not
17 there.

18 Q. Regardless of whether you might have had a
19 bill from him, was it your understanding in August
20 of 2007 that you owed him anything?

21 A. Well, I knew that he had put some time and
22 effort into the website and so on, but I did not
23 have an invoice from which to pay him.

1 Q. Had Bob Pickle indicated to you prior to
2 your bankruptcy filing that you owed him something,
3 albeit it might not have been itemized or detailed,
4 but that you owed him something for the work that
5 he had done?

6 A. Well, it was understood that he had some
7 time and effort into it.

8 Q. For which he expected to be paid some day?

9 A. Eventually, at some point, yeah, I would
10 assume.

11 Q. So why didn't you list him as a creditor
12 in your bankruptcy?

13 A. Because I didn't have anything from him.
14 He wasn't in my drawer. I reached into my drawer
15 and I picked out what I had for actual payables
16 and, I used that as the basis for filing. I did
17 not list him because I did not have a bill.

18 Q. Were you not advised that you needed to
19 list all people that you potentially owed money to
20 or that held a claim against you?

21 A. Well, if I had a claim I would have been
22 happy to add him, but I didn't have one, so I
23 didn't put him in.

1 Q. Mr. Pickle filed it appears to be two
2 different claims, one on December 17th, 2007,
3 naming Bob Pickle as a creditor in the claim, but
4 signed by Laird Heal, for \$15,533; and one on
5 July 14th, 2008, this one purportedly signed by Bob
6 Pickle himself, for \$15,590.25, for services
7 performed as of the date the case was filed.

8 Is it your testimony that you did not
9 believe that you owed him \$15,000 or so as of the
10 date of the bankruptcy filing?

11 A. I had no idea what I owed him at the time
12 of the bankruptcy filing.

13 Q. Does it surprise you that Bob Pickle now
14 says that as of the date of the bankruptcy filing,
15 he believes that you owed him over \$15,000?

16 A. Let me think. I'm trying think back.
17 Does it surprise me? You mean because of the
18 amount of work put into it?

19 Q. It seems to me that if somebody was doing
20 work for me --

21 A. Let me answer the question simply this
22 way. I've already told you, I did not have a bill
23 for any work done at the time that I filed the

1 bankruptcy petition, okay? So any claim that came
2 after that fact came as a complete surprise to me
3 because I did not know that there was an amount
4 anything close to that, all right?

5 Now, after the fact, after the fact there
6 was no question that at one point I had a
7 discussion and I was told that the services
8 rendered came to about \$20,000. I did not have
9 anything prior to the petition.

10 Q. Do you dispute the amount that Mr. Pickle
11 asserts at this point?

12 A. How would I know?

13 Q. He filed a claim. I can show it to you.

14 A. Well, he may have filed a claim. I've
15 never seen it. Never saw the invoice, never saw
16 the claim.

17 Q. There's the claim. That's the later of
18 the two claims I referred to earlier. Mr. Heal
19 apparently filed one on his behalf.

20 A. And how would I know from this whether or
21 not I disputed it?

22 Q. It says that the biggest component of this
23 claim is an item called website development through

1 August 14th, 2007. He has a quantity of 636.15 --
2 I assume that that's hours -- with a unit price of
3 \$25, amounting to \$15,900 or so.

4 MR. HEAL: Shall we mark that as an
5 exhibit?

6 (Pickle Proof of Claim marked
7 Exhibit E for identification.)

8 Q. (By Mr. Roumeliotis:) What was the basis
9 for the understanding for the work that he was
10 doing for you?

11 A. I'm not sure that we ever went over it.
12 We were --

13 Q. Did he ever give you a periodic update as
14 to the amount of work that he had done for you on
15 this website?

16 A. No.

17 Q. Was there ever an agreement to actually
18 pay him for his services as of the date of the
19 bankruptcy? Never mind what you might have said to
20 him afterwards, but as of the date or prior to, was
21 there an agreement that you would pay him for the
22 work that he was doing?

23 A. I'm not -- you know, I'd have to go -- I

1 don't know. I'd have to look back on my e-mails.
2 I don't recall anything that was ever in writing.
3 I mean, it was understood that obviously at some
4 point those were going to have to be paid for, but
5 one of the other things is that there were other
6 people that were contributing to the site. The
7 credits on account were not for me.

8 Q. I'm not asking what other people did in
9 terms of contributions to the site. Bob Pickle
10 obviously states that he did some work, 636 hour's
11 worth of work as of the petition date. It seems to
12 me that if I'm going to employ somebody to do work
13 on my behalf that might add up to \$15,000 worth of
14 work, I'd have an inkling.

15 A. Well, that's good for you. I didn't.

16 Q. Did you have any idea, although you may
17 not have had a bill from him as of the petition
18 date, did you have any idea how much you might have
19 owed him at the time?

20 A. No. How would I?

21 Q. Never came up? Never asked him?

22 A. To be honest with you, no, I never asked
23 for an accounting because I did know there were

1 people who were contributing to the site. I
2 assumed if he was having a problem he would let me
3 know.

4 Q. Contributing to the site. I'm sorry, does
5 that mean financial contributions?

6 A. Yeah.

7 Q. They're donating money --

8 A. Yeah.

9 Q. -- through the site?

10 A. No, they were contributing money to
11 support the site.

12 Q. To whom was the money being paid?

13 A. It wasn't me.

14 Q. Who do you think the money was being paid
15 to?

16 A. I'm assuming it went directly to
17 Mr. Pickle. I don't know.

18 Q. Do you have any details? Do you know how
19 much --

20 A. No.

21 Q. -- had been paid or from whom?

22 A. Never. I'm trying to think. No, I
23 wouldn't have any -- I don't have any idea. I know

1 that there were contributions being made. That's
2 all I really know.

3 Q. Were contributions being solicited from
4 the website?

5 A. No.

6 Q. Could people click through on the website
7 and get to a Paypal account page or some other
8 external site where people could make
9 contributions?

10 A. There was a contribution link there for
11 legal services, but not for the site itself that I
12 recall.

13 Q. For legal services?

14 A. Yeah.

15 Q. Legal services for your legal issues?

16 A. No. I was pro se.

17 Q. You were pro se in the District Court?

18 A. Yeah, I was pro se.

19 Q. So what legal services did you need
20 contributions for?

21 A. I didn't. Mr. Pickle had counsel.

22 Q. So is it your testimony that none of the
23 contributions that were made through the save3abn

1 websites, whether .com or .org, were used to pay
2 your legal fees?

3 A. I didn't have any legal fees.

4 Q. You had bankruptcy legal fees?

5 A. Well, they were not used for the
6 bankruptcy, absolutely were not used for the
7 bankruptcy. That's ludicrous.

8 Q. Did Mr. Heal represent you at some point
9 in connection with the District Court action?

10 A. No. He answered the initial -- I did my
11 own answer, and we worked together to make a
12 combined answer for the initial answer, but in fact
13 on the very first motion out, I was actually pro se
14 and did my own responses. As a matter of fact, to
15 her (indicating) motions or to her responses.

16 Q. Do you know if the current website, I
17 guess it would be the save-3abn.com website, does
18 that continue to solicit or can people click
19 through and contribute towards the payment of legal
20 expenses?

21 A. I have no idea. I don't think I've ever
22 even looked at it. Pretty sure I haven't, as a
23 matter of fact. I don't think so though. I don't

1 think it does have a link on it anymore. I don't
2 think it's had a link on it since Mr. Pickle went
3 pro se and they ended the Paypal site. I'm pretty
4 sure.

5 Q. Mr. Pickle has now gone pro se in the
6 District Court litigation as well?

7 A. Absolutely, yeah.

8 Q. Did you owe Mr. Heal anything as of the
9 date of the bankruptcy filing?

10 A. For the bankruptcy.

11 Q. But nothing for anything that he had done
12 prior to or for any other legal services? He
13 wasn't a creditor of yours in your bankruptcy case?

14 A. No. For what?

15 Q. I'm asking the question.

16 A. Not that I'm aware of.

17 Q. Earlier you referred to the need to review
18 some business activities by reviewing a log for
19 late 2007. You kept a log about your business
20 activities?

21 A. Yeah, for First American Trust.

22 Q. Is that something that you can produce as
23 well? That certainly is something that, in my

1 mind --

2 A. I think the only thing I have left -- I'm
3 sure I got rid of the database. I don't know,
4 maybe it's still there. I don't think so. But in
5 any event, I have -- oh, I know. The one I have
6 left is the one done by the processors, so I can
7 get you a copy of that, but I'm not sure when that
8 was.

9 Q. You said you had a log book. Is that a
10 notebook?

11 A. I told you I kept track of the people that
12 we pre-approved and forwarded to First American for
13 funding. That's what I did.

14 Q. And how did you keep track of it? Is it
15 in electronic form, in a notebook?

16 A. Well, at the time I probably kept it -- I
17 think I started out keeping it just as kind of a --
18 you know, I'm a printer, so I had my own little
19 format, but later on I think I consolidated it and
20 put it into -- I'm pretty sure I consolidated it
21 and put it into a log, not online, but on the
22 computer. I'll have to check. I'm not sure.

23 Q. Can you confirm for us whether you have

1 such information and confirm for us --

2 A. Well, I know that I have one that was done
3 by the processors, and that I have -- the reason I
4 know is because I found it wrapped up inside of a
5 drawer the other day. When I was going through
6 looking for stuff, I found it. You know, it was
7 just rolled up where I had it taped to the thing so
8 I could keep track.

9 Q. What we would like is any business records
10 which would include these logs, list of names,
11 things of that sort, in connection with any
12 business that you operated at any time during 2007
13 or 2008. So you mentioned this log?

14 A. That's a log of people's -- you can have
15 the part that's not relevant to their credit
16 information, but I'm pretty sure there would be
17 other information on there that would obviously not
18 be appropriate.

19 Q. I'm not interested in social security
20 numbers or anything.

21 A. I understand. Even if you were, you're
22 not getting them.

23 Q. You can redact that, but if you can give

1 us --

2 A. I don't know if I can put those on the
3 log, to be honest with you. I probably did put
4 their addresses on there and so on, just because
5 normally in the industry we track flow by address
6 rather than by name, particularly for FHA because
7 FHA has a case number that's usually assigned by
8 the address, not by the name.

9 Q. Do you know when 3ABN and Danny Shelton
10 first got notice of your bankruptcy filing?

11 A. I have no idea.

12 Q. Did you make any effort to make sure that
13 they were notified of your bankruptcy filing?

14 A. The only thing I did was I put them in the
15 schedules. Not in the schedules, but wherever I
16 put it on the thing.

17 Q. Again, they were listed in a statement of
18 financial affairs.

19 A. Okay. Well, whatever. That's not a
20 schedule?

21 Q. No, sir.

22 A. Oh.

23 Q. Do you know if your attorney did anything

1 to directly notify 3ABN or Danny Shelton?

2 A. I would not have asked him to because I
3 did not consider them creditors, and I still don't,
4 by the way.

5 Q. So if you took no actions to notify them
6 of the bankruptcy filing, would it surprise you
7 then if they took some actions in connection with
8 the District Court case?

9 A. Well, you know, I would have thought that
10 to be a rather stupid thing on their part, but
11 that's their problem.

12 Q. Why would you think that was a stupid
13 thing on their part, to take actions in a District
14 Court case if they knew nothing about the
15 bankruptcy filing?

16 A. Why would they put a notice of bankruptcy
17 on the record in an ongoing litigation issue?

18 Q. So would you have been all right if they
19 simply proceeded with what they were --

20 A. I would have been, except what they did
21 was they used it as the basis to try to come after
22 hard drives. That's what they did. They were
23 malicious.

1 Q. But you have no problem with the fact that
2 they proceeded against you in the District Court
3 litigation, notwithstanding your bankruptcy filing?
4 You had a problem because they were going after the
5 hard drive?

6 A. You know what? I wouldn't have had a
7 problem with that if they had come to us in the
8 right circumstances. But to do it in a malicious
9 way that they did made it absolutely unacceptable,
10 and that's been classic for them, malicious
11 activity. I've engaged in a lot of litigation in
12 my life. These people are particularly malicious,
13 and they happen to have really ticked me off.

14 Q. Again, I want to understand precisely what
15 it was that ticked you off. Did they tick you off
16 because they took action in connection with the
17 District Court litigation that in your mind they
18 shouldn't have because of the bankruptcy filing?
19 Or are you upset because they took action --

20 A. They maliciously abused the idea that
21 there was a bankruptcy in an effort to try to
22 enhance their ability to get information that they
23 knew they already had.

1 Q. So you were not upset that they were
2 taking action because you were in bankruptcy? You
3 think that they were using the bankruptcy as
4 pretext to do something else?

5 A. Leverage, absolutely. There's no question
6 about it. Their filings immediately thereafter
7 certainly proved it. They jumped immediately in
8 and decided that they needed these hard drives,
9 that we had already volunteered the production of
10 everything.

11 We sent them more goddamn information that
12 they could ever possibly ask for. Everything we
13 gave them, and they still decided that they wanted
14 more. Why? What do they expect to find? We've
15 never had anything to hide. Danny Shelton is the
16 one that has stuff to hide. 3ABN has plenty to
17 hide. We don't have anything to hide.

18 Q. One of the things that they asked for was
19 a status conference. Were you upset that a status
20 conference took place at which they notified,
21 apparently, the District Court judge that you were
22 in bankruptcy?

23 A. I don't recall them asking for a status

1 conference. There was a status conference
2 scheduled.

3 Q. No, they --

4 A. They filed an emergency petition to get
5 the drives, an emergency petition on drives that
6 they knew were already protected. That was
7 malicious.

8 Q. But the emergency motion though was
9 precipitated by your bankruptcy filing, was it not?

10 A. No, it had been months. We had produced
11 all kinds of information in the meantime. We had
12 done our 26(f). What are you talking about?
13 You're all wet. It was malicious, Mr. Roumeliotis.
14 Get the picture here.

15 Q. I'm asking the questions.

16 A. I'm answering them.

17 Q. What I want to understand is whether you
18 had an expectation that the District Court
19 litigation would stop as a result of --

20 A. No.

21 Q. -- the bankruptcy filing?

22 A. I did not.

23 Q. You did not have an expectation that the

1 District Court litigation would stop?

2 A. Why would I? I had produced
3 documentation --

4 Q. Did you expect it to continue in fact --

5 A. I did not consider 3ABN to be a creditor.

6 Q. So therefore did you expect the District
7 Court litigation to continue notwithstanding your
8 bankruptcy filing?

9 A. Once they put a notice of bankruptcy on
10 the record, they put themselves in a position where
11 they should have stopped, and they didn't do it. I
12 didn't put it on the record; they did. And they
13 utilized that petition maliciously.

14 Q. If 3ABN and Danny Shelton had not put on
15 the record that you were in bankruptcy, and they
16 proceeded with the litigation in the normal course,
17 would you have done anything to stop it?

18 A. Can't imagine. There was --

19 Q. The question is would you have done
20 anything to stop the litigation?

21 A. I can't imagine that I would have done
22 anything to stop the litigation at that point other
23 than exactly what -- the thing that precipitated

1 the entire issue was they put it on record, and
2 then they abused it and used it maliciously to do
3 something that they should never have done.

4 Q. So it is your --

5 A. To gain some form of advantage.

6 Q. So is it your testimony that had they done
7 nothing to inform the District Court of your
8 bankruptcy filing, that you would not have taken
9 any action to inform the District Court of your
10 bankruptcy filing, and in fact you would have
11 simply expected the District Court litigation to
12 continue as if you had never filed bankruptcy? Is
13 that your testimony?

14 MR. HEAL: I'm sorry. This is very
15 hypothetical. I have to object to that. I think
16 he answered the question. You're assuming things
17 that didn't happen, and the line of questioning --

18 MR. ROUMELIOTIS: Mr. Joy has filed a
19 complaint alleging that he's been harmed, and
20 insisting on punitive damages for something that my
21 clients and related parties have done in the
22 District Court litigation. He's sitting here
23 saying, "I fully expected the litigation to go on

1 and I had no problem with it," and I simply want to
2 know that if we did not tell the District Court of
3 the bankruptcy filing --

4 MR. HEAL: If I may --

5 MR. ROUMELIOTIS: Would you have
6 told --

7 MR. HEAL: If I may. You have gone to
8 a point in your hypothetical situation where there
9 are facts that actually did occur that, you know,
10 are not being dealt with. You're creating a
11 fictional situation and --

12 MR. ROUMELIOTIS: I'm trying to get to
13 Mr. Joy's state of mind. Mr. Joy's state of mind,
14 stated in the complaint that was filed, asserts
15 that we harmed him in some way, and I'm simply --

16 MR. HEAL: And the automatic stay does
17 not ask what the debtor's state of mind is.

18 MR. ROUMELIOTIS: However, the
19 debtor's state of mind with respect to his
20 expectation regarding the continuation of the
21 litigation in question is entirely relevant.

22 THE WITNESS: Why?

23 MR. ROUMELIOTIS: If you fully

1 expected the litigation to go on, notwithstanding
2 your bankruptcy filing, I do not see how it is
3 relevant at all that my clients notified the
4 District Court that you had in fact filed
5 bankruptcy.

6 THE WITNESS: You don't find that
7 relevant?

8 MR. ROUMELIOTIS: I do not. If you
9 are the one that expected the litigation to stop,
10 and you complained in your adversarial proceeding
11 that it did not and now are looking for damages, I
12 do find it relevant.

13 MR. HEAL: And if I may, I will have a
14 couple of questions for him because of things that
15 are being ignored in your line of questioning that
16 basically, as I said --

17 THE WITNESS: I've already explained
18 to you what my state of mind was. You guys crossed
19 the line, and when you crossed the line, you were
20 subject to your own imposed rules. Not my fault
21 that you tripped up on a land mine.

22 Q. (By Mr. Roumeliotis:) Mr. Joy, I realize
23 we're talking about a hypothetical.

1 A. That's right, it's a hypothetical. I did
2 not do it. They did it, and then they crossed the
3 line and kept on going. That's not my problem.
4 They set the land mine and then they tripped into
5 it.

6 Q. Do you understand that by failing to list
7 3ABN and Danny Shelton as creditors in your --

8 A. No, I do not understand that.

9 Q. -- bankruptcy schedule that they would not
10 have gotten notice directly?

11 A. I have no idea. I listed them. I put
12 them in the paperwork. Whether they were supposed
13 to get notices directly, I don't know. All I know
14 is I listed them. They were there. It was known
15 what they were there for. The bottom line is they
16 were not creditors, they are not creditors today,
17 and frankly, in my opinion, they don't have a
18 chance of ever becoming creditors.

19 Q. So if they're not creditors and in your
20 mind never will be creditors, then do you believe
21 the automatic stay applies?

22 A. Well, that's a very good question. Ask
23 them. They're the ones that put it on the record.

1 You're asking the wrong person. They invoked the
2 automatic stay by putting it on the record.

3 Q. They didn't invoke, they simply informed
4 the District Court of the pendency of the
5 bankruptcy.

6 A. They invoked the automatic stay, and then
7 they went and petitioned for relief of the
8 automatic stay, of course after they had trampled
9 over the entire process.

10 Q. Again, I need you to confirm for me --

11 A. I've already told you what I'm going to
12 tell you.

13 Q. -- that you took no steps to inform the
14 court, either directly or through your counsel --

15 A. That's not true.

16 Q. -- that you filed the bankruptcy filing?

17 A. We put them on the filing.

18 Q. It didn't work.

19 A. And so what?

20 Q. It was your duty --

21 A. Who said?

22 Q. -- to make sure the creditors --

23 A. They were not creditors.

1 MR. ROUMELIOTIS: I think I've gotten
2 what I need to get at this point. I'm all set.

3 MR. HEAL: Would this be an
4 appropriate time for me to ask those questions?

5 MS. RICHARDS: I do have a couple
6 questions, so I think it probably would make sense
7 for me to go first.

8 Just for the record, I'm Lizette Richards,
9 and I'm here on behalf of Fierst, Pucci & Kane. I
10 just have a few follow-up questions. Can you
11 remind me what letter we gave to the amended
12 complaint?

13 MR. ROUMELIOTIS: We didn't mark it
14 yet.

15 MS. RICHARDS: I'd like to go ahead
16 and have the amended complaint with all the
17 attachments as Exhibit F.

18 (Amended Complaint marked Exhibit F
19 for identification.)

20 CROSS-EXAMINATION BY MS. RICHARDS

21 Q. Mr. Joy, if you can just take a look at
22 that, I'd ask you to refer you to page four of
23 eight, Count Two against defendant Pucci. You may

1 recollect this independently, but if not, you can
2 go ahead and feel free to review the amended
3 complaint. I just want to be clear that your
4 claims against Attorney Pucci are that he violated
5 the automatic stay on at least two occasions. Is
6 that your claim?

7 A. He invoked it and then he violated it.

8 Q. My question to you is in your amended
9 complaint, is it your claim --

10 A. Whatever in the complaint --

11 Q. And I'll refer you to paragraph 37, if
12 that would be helpful.

13 A. If that's in the amended complaint, then
14 that's obviously my position.

15 Q. Can you please look at paragraph 37?

16 A. Yes.

17 Q. And in that paragraph, do you allege that,
18 "Defendant Pucci has violated the automatic stay on
19 at least two occasions," yes or no?

20 A. Did I say that? Obviously.

21 Q. That's an allegation in your complaint?

22 A. You know, let's say this, okay? This is
23 already on the record. Why are you questioning it?

1 Q. So is your answer yes?

2 A. I'm going to stand with what's on the
3 record.

4 Q. I'd like to ask that the record reflect
5 that the witness is not answering the question.

6 Referring you to paragraph 32, one of
7 those allegations is, "Defendant Pucci violated the
8 automatic stay on or about October 24th, 2007, by
9 filing a motion in the case 07-40098-FDS for
10 further proceedings." Do you recall that
11 paragraph?

12 A. Yeah.

13 Q. And do you remember what that was a motion
14 for?

15 A. Wasn't that the emergency motion?

16 Q. An emergency motion for what? What's your
17 recollection of that?

18 A. It had to do with an emergency motion
19 relative to the hard drives, that's all I recall.
20 I don't remember the exact.

21 Q. And you've mentioned several times today
22 that it was -- and I don't know if you've been
23 specific -- but that the plaintiffs in the civil

1 action and the defendants in your adversarial
2 complaint are the ones who put the District Court
3 on notice that you had filed --

4 A. The defendants did not dot hat.

5 Q. -- a bankruptcy case, is that correct?

6 A. The defendants did not.

7 Q. Let me just ask you to pause for a second.
8 Just because we're keeping a record of everything
9 that's said, you need to try to let me finish my
10 question and then give your answer. Otherwise it's
11 very difficult to create a record when two people
12 are talking at the same time. So I'd just ask you
13 to let me finish my question and then you can give
14 your answer.

15 Your testimony has been, if I understand
16 it correctly, that it was the plaintiffs in the
17 civil case, so 3ABN and Danny Shelton, and their
18 counsel, who were also the defendants in your
19 adversarial bankruptcy complaint, who put the
20 District Court on notice that you had filed for
21 bankruptcy, is that accurate?

22 A. Yes.

23 Q. And what is your recollection of how they

1 accomplished providing that notice to the court?

2 A. Let me see. I have to go back through my
3 PACER documents. I just remember that it was done
4 by them, and then they immediately moved for an
5 emergency motion.

6 Q. So Exhibit F, which is the amended
7 adversarial complaint, has a number of exhibits,
8 and I would like to refer you to what's Exhibit 1
9 to the complaint, plaintiff's motion for a status
10 conference. I'd like to ask you to review that,
11 and then let us know whether that refreshes your
12 recollection of how 3ABN, Danny Shelton and their
13 counsel put the District Court on notice that you
14 had filed for bankruptcy.

15 (Pause.)

16 A. I believe that's correct.

17 Q. So is it now your recollection that 3ABN
18 and Shelton and their counsel notified the District
19 Court of the bankruptcy through a motion for a
20 status conference?

21 A. And they did so based on a lie, number
22 five.

23 Q. I'd ask you to answer my question. Is it

1 your now your recollection that 3ABN, Danny Shelton
2 and their counsel put the District Court on notice
3 of your bankruptcy through this motion for a status
4 conference that you've attached to your adversarial
5 complaint?

6 A. I'm not sure. I'd have to go back through
7 and look at the record that I have. I don't recall
8 that, no. I seem to recall that there was a notice
9 made prior to this.

10 Q. So your recollection sitting here today is
11 that some notice was provided before the motion for
12 the status conference?

13 A. It was something. I'll have to go back
14 through the record to see exactly what it was.

15 Q. And your testimony just a few moments ago
16 was that the plaintiffs in fact didn't file a
17 motion for a status conference, that one was
18 already scheduled. Does this refresh your
19 recollection that in fact the plaintiffs did file a
20 motion for a status conference?

21 A. I'd have to go back again through the
22 record. I believe there was one already scheduled,
23 and then they obviously had filed an additional

1 motion.

2 Q. So your recollection now is that they did
3 file a motion for a status conference?

4 A. Well, certainly if this is a true copy of
5 the record, then they obviously did indeed file a
6 motion for a status conference.

7 Q. If I can just refer you back to
8 paragraph 29 of your adversarial complaint, is it
9 your allegation that one of the violations
10 committed by Attorney Pucci was filing this motion
11 for the status conference which is attached as
12 Exhibit 1 to your adversarial complaint?

13 A. No. As I said, there was some other -- I
14 recall some other document, and as I said, I would
15 have to look at what I have in my docket to be able
16 to tell you whether or not that is true.

17 Q. Again, I'd ask you to look at paragraph 29
18 of your complaint. That's on page three of eight.
19 You say that, "Defendant Pucci violated the
20 automatic stay on or about October 24th of 2007, by
21 filing a motion in the case --"

22 A. I'm sorry. What's the number again?

23 Q. Paragraph 29, page three of eight.

1 "Defendant Pucci violated the automatic stay on or
2 about October 24, 2007, by filing a motion in the
3 case --"

4 A. It's 36 on mine. But anyway, go ahead.

5 MR. HEAL: You might be looking at the
6 original, not the amended.

7 MS. RICHARDS: I think I actually am.
8 I apologize for that.

9 Q. (By Ms. Richards:) Let me correct that
10 and refer you to paragraph 32 of your amended
11 complaint. I apologize for referring to the
12 original complaint. "Defendant Pucci violated the
13 automatic stay or on about October 24th, 2007, by
14 filing a motion in the case 07-40098-FDS for
15 further proceedings. See Exhibit 1."

16 Is it now your testimony that that was not
17 the violation of the automatic stay that you were
18 alleging against defendant Pucci?

19 A. Which?

20 Q. Filing the motion for the status
21 conference that you attached as Exhibit 1 to your
22 adversarial complaint.

23 A. That would be a violation if he filed it.

1 Q. So your testimony is that that motion for
2 a status conference is one of the violations of the
3 two that you've alleged against defendant Pucci in
4 your complaint?

5 A. Yeah.

6 Q. Before that October 24, 2007 date, had you
7 made any efforts to notify the District Court where
8 the civil action is pending that you had filed for
9 bankruptcy?

10 A. We already covered that. That's
11 repetitive.

12 Q. What is your answer?

13 A. Objection.

14 Q. Are you refusing to answer the question?

15 A. I already answered it.

16 Q. You're refusing to answer?

17 A. I already answered it. It's on the
18 record.

19 Q. Earlier this morning you testified, I
20 believe it was during the morning session, about an
21 evidentiary hearing that took place in the civil
22 litigation. Do you recall that testimony
23 generally?

1 A. Yeah.

2 Q. And you recall testifying that 3ABN and
3 Danny Shelton called an expert witness to the
4 stand?

5 A. That's true.

6 Q. And I believe it was your testimony that
7 you discredited that witness?

8 A. We had addressed -- I think you were
9 there. We specifically addressed the question of
10 whether or not there was movement on the disk, and
11 he very clearly testified that he did not believe
12 that that was in fact the case, and in fact it was.
13 Every technical journal out there demonstrated that
14 he was wrong.

15 Q. Do you recall the date of that evidentiary
16 hearing?

17 A. Before Hillman? I don't. I seem to
18 recall it was probably what, October? I don't
19 recall.

20 Q. So your recollection at present is that it
21 was somewhere in or around October of 2007?

22 A. I know it was before the emergency
23 hearing. That's all I know.

1 Q. Is it your recollection that that
2 evidentiary hearing regarding electronic discovery
3 issues before Judge Hillman took place after you
4 filed for bankruptcy?

5 A. I'm pretty sure it did.

6 Q. And so you filed for bankruptcy on I
7 believe it was August 14th, 2007.

8 A. 14th or 15th, something like that.

9 Q. And so your recollection is that this
10 particular evidentiary hearing would have taken
11 place after that?

12 A. With Hillman? Yes, I seem to recall that.

13 Q. At that hearing, do you recall anyone --
14 strike that.

15 So is it your understanding that that
16 evidentiary hearing was in violation of the
17 automatic stay?

18 A. No.

19 Q. That's not your understanding?

20 A. No.

21 Q. And why is that?

22 A. We didn't consider you a creditor.

23 Q. So you didn't consider that the automatic

1 stay was in place because you didn't consider 3ABN
2 and Shelton creditors?

3 A. You were not creditors and you're not to
4 this date.

5 Q. Who's not? You're saying "you," but for
6 clarity on the record, who's "you"?

7 A. The plaintiffs, Shelton and 3ABN, were not
8 creditors at the time I filed and they are still
9 not creditors to this date.

10 Q. So to be clear, you do not consider that
11 evidentiary hearing to have taken place in
12 violation of the automatic stay?

13 A. As I said, we did not consider you
14 creditors.

15 Q. So is your answer no, it wasn't in
16 violation of the automatic stay because 3ABN and
17 Shelton were not creditors?

18 A. We had not invoked the automatic stay, and
19 proceeded to defend the case.

20 Q. Is it your belief that you did invoke the
21 automatic stay at some point?

22 A. We did not. You did.

23 Q. And that was by filing the motion for the

1 status conference?

2 A. Whatever. You're the one that gave
3 notice. Why would you do that if there had already
4 been a hearing on the issue?

5 Q. So is it your belief that whether it was
6 in the motion for the status conference or some
7 other filing, whatever filing was the first filing
8 to put the District Court on notice that you had
9 filed for bankruptcy, that was when the automatic
10 stay was invoked?

11 A. We did not invoke the automatic stay. The
12 plaintiffs, by whatever process, invoked the
13 automatic stay, and they knew or should have known
14 at that point that they needed to quit, and they
15 invoked the automatic stay for a very specific
16 purpose, to abuse and to violate what was already
17 under consideration by the U.S. District Court.

18 Q. And your belief of when the plaintiffs
19 invoked the automatic stay would have been when
20 they first put the District Court on notice that
21 you had filed for bankruptcy?

22 A. Absolutely. They invoked the automatic
23 stay. We did not invoke the automatic stay. We

1 did not consider you creditors. You made yourself
2 creditors artificially.

3 Q. I believe you testified that --

4 A. Hold on. "Parties appeared before the
5 Honorable Timothy S. Hillman on August 9, 2007."
6 Wouldn't that be before August 14th, counselor?

7 Q. I think August 9th goes before the 14th.

8 A. I do too. So there would have been no
9 violation of a stay that didn't exist at the time.

10 Q. So is your recollection now that in fact
11 that evidentiary hearing took place before you
12 filed for bankruptcy? Is that what you're
13 testifying?

14 A. Isn't that what it says in the record?

15 Q. I'm asking you a question about what your
16 recollection is.

17 A. I don't recall. I'm going by the record.
18 By the way, counselor, that's your own record.

19 Q. That's what? I didn't hear what you said.

20 A. That is your own record.

21 Q. I believe that you testified that you did
22 not provide direct notice to 3ABN or Danny Shelton
23 that you had filed for bankruptcy, is that correct?

1 A. Did I provide direct notice? I put it
2 on -- I listed it on the bankruptcy.

3 Q. Did you contact personally Danny Shelton
4 or anyone associated with 3ABN and notify them that
5 you had filed for bankruptcy?

6 A. Danny Shelton and 3ABN would have been
7 represented by counsel, and obviously I would not
8 have noticed them, particularly if they weren't
9 creditors.

10 Q. Did you provide notice to any of the
11 lawyers that you've listed as defendants in the
12 adversary proceeding, lawyers who represent 3ABN
13 and Danny Shelton, that you had filed for
14 bankruptcy?

15 A. I don't recall it, no.

16 Q. And do you know how they learned that you
17 had filed for bankruptcy?

18 A. I have no clue.

19 Q. Do you know when they learned that you had
20 filed for bankruptcy?

21 A. How would I know that?

22 Q. So is your answer no, you don't know?

23 A. How would I know?

1 Q. I don't know how you would know. I'm
2 asking you if do know.

3 A. You're asking me to -- you're asking the
4 wrong person that question. It's completely out of
5 order. How would I know?

6 Q. Let me just see Exhibit F again, the
7 adversarial complaint. Referring you to Exhibit F,
8 your adversarial complaint, and specifically to
9 Exhibit 6, that document which is a letter from
10 Jerrie Hayes dated September 13th, 2007, if you
11 could just review the first sentence of that letter
12 and just read that for the record, please?

13 A. September 13th, 2007. It's actually
14 addressed to Laird Heal, Esquire. "Attorney Heal,
15 it has come to our attention that Gailon Joy has
16 filed a bankruptcy protection and that you are
17 serving as his attorney for the bankruptcy."

18 Q. And do you recall having any notice before
19 September 13th, 2007, that 3ABN, Danny Shelton or
20 any of their lawyers had notice you had filed for
21 bankruptcy?

22 A. I don't know, but the rest of the sentence
23 says, "Under our reading of all applicable

1 bankruptcy statutes and rules, the automatic stay
2 suspends all pending activity involving Gailon Joy
3 in the matter of *3ABN v. Joy and Pickle*, thus
4 prohibiting any additional pleadings by Mr. Joy and
5 precluding Mr. Joy's involvement in discovery and
6 pretrial practice."

7 Q. My question to you was prior to
8 September 13th, 2007, do you recall receiving any
9 notice from 3ABN, Shelton or any of the lawyers
10 that you've named as defendants in your adversarial
11 complaint that they knew you had filed for
12 bankruptcy?

13 A. Do I recall? I did not receive anything
14 that I recall, but I can't tell you for sure. But
15 certainly on September 13th he gave notice.
16 Apparently thought it was a one-way street.

17 Q. I'd like to refer you to page four of
18 eight of your adversarial complaint.

19 A. Page four of eight, what number?

20 Q. I'd direct your attention to paragraph
21 number 36, and just ask you is it your allegation
22 against Attorney Pucci that the second of the two
23 alleged violations against the automatic stay was

1 that he, on November 13th, 2007, failed to
2 terminate the proceedings against you, and instead
3 participated in the status conference that took
4 place on that date?

5 A. I don't recall that that was a status
6 conference on November 13th. I thought that that
7 dealt with the emergency hearing.

8 Q. Does it refresh your recollection to
9 review paragraph 35 of your adversarial complaint
10 about the fact that it was a status conference?

11 A. But I would consider any hearing after him
12 giving notice to certainly be a violation of the
13 automatic stay.

14 Q. Does paragraph 35 refresh your
15 recollection that what took place on November 13th,
16 2007, was in fact a status conference?

17 A. It says it was.

18 Q. Say again?

19 A. It says that it was.

20 Q. And this is your complaint, right?

21 A. Well, I assume so, yeah.

22 Q. Say again?

23 A. Yes.

1 Q. This is your adversarial complaint?

2 A. Yeah.

3 Q. Did you prepare this?

4 A. No, I didn't prepare this.

5 Q. Did your attorney prepare this?

6 A. I believe it was, yeah.

7 Q. And did you assist him in preparing that?

8 A. Just obviously -- I'm not sure. I don't
9 recall it.

10 Q. Do you remember looking at it before it
11 was filed?

12 A. Oh, I'm sure I scanned it.

13 Q. For accuracy?

14 A. Well, to the degree that I was familiar
15 with it.

16 Q. Do you have any reason to believe that it
17 wasn't a status conference that was held on
18 November 13th, 2007?

19 A. Just my personal recollection. I thought
20 we were dealing with the emergency.

21 Q. So according to your personal
22 recollection, the averments in your complaint would
23 be wrong?

1 A. I just don't recall. I didn't come
2 prepared. I did not prepare for this. I didn't
3 even do preparation for the other. I didn't have
4 to. But in any event, I would have to go through
5 the docket. As a matter of fact, do we have a
6 docket? We must have a PACER docket somewhere in
7 this room.

8 MR. ROUMELIOTIS: We can get it, but
9 it's not in this room.

10 THE WITNESS: Nobody has a PACER
11 docket?

12 MR. HEAL: The docket is extensive.

13 THE WITNESS: A docket is a docket.
14 It certainly wouldn't be that difficult to put this
15 sequence in perspective.

16 Q. (By Ms. Richards:) In paragraph 29 of
17 your complaint, and feel free to review it if you
18 want, you allege that you incurred the sum of
19 \$1,593.60 at 7.85 hours, plus legal costs and fees,
20 prior to the filing of the adversary proceeding.
21 Who do you owe those legal fees to?

22 A. I've only had one counsel in this case,
23 and that was Mr. Laird Heal.

1 Q. And have you paid those legal fees?

2 A. I already answered that. No.

3 Q. In your complaint you allege that those
4 were incurred prior to the filing of the adversary
5 proceeding. What was the start date for when you
6 began incurring those \$1,600 approximately in legal
7 fees?

8 A. I was going to say I think it's more than
9 that. I don't recall.

10 Q. Would it have been from the date you filed
11 the bankruptcy case, on August 14th?

12 A. No, not at all.

13 Q. So when did you start -- from what date
14 did you start calculating --

15 A. I don't know.

16 Q. -- the accumulation of legal fees?

17 A. I don't have a copy of the invoice.

18 Q. So sitting here today, you can't say when
19 that \$1,600 in legal fees started accruing?

20 A. I can't give you the date specific. I
21 don't have the invoice in front of me.

22 Q. And do you have a recollection or an
23 understanding, if those fees were incurred before

1 the filing of the adversary proceeding, what were
2 they incurred in connection with?

3 A. I don't know. I do not have an invoice
4 sitting in front of me.

5 Q. And all of those \$1,600 in fees, were they
6 incurred in connection with the bankruptcy case?

7 A. I'm assuming they were, but it would not
8 have been asserted.

9 Q. So none of them were incurred in
10 connection with the civil case?

11 A. There were no fees in connection with the
12 civil case.

13 Q. And that's because you're pro se, right?

14 A. That's exactly correct.

15 Q. I believe that you testified that Mr. Heal
16 drafted this adversarial complaint, is that right?

17 A. I may have done some of the facts, but I
18 do believe that he drafted it.

19 Q. And your testimony earlier today was, if I
20 understood correctly, that you had done some
21 research to come up with the claim for \$5,000 in
22 punitive damages per alleged violation, is that
23 right?

1 A. I went back and looked at claims that had
2 come down either from the District Court, Judge
3 Saylor specifically, and/or from the U.S. First
4 Circuit Court of Appeals. I did that through my
5 Findlaw system, and I discovered that \$5,000 seemed
6 to be a little light compared to what has been
7 asserted in many other cases, particularly for
8 something as egregious as this violation.

9 Q. So was it you who instructed Mr. Heal to
10 request \$5,000 per alleged violation, that
11 particular figure?

12 A. We agreed to stop at \$5,000. My personal
13 opinion was that we were entitled to far more based
14 on what I saw.

15 MS. RICHARDS: No further questions.
16 Thanks.

17 CROSS-EXAMINATION BY MR. HEAL

18 Q. Mr. Joy, immediately after your bankruptcy
19 filing, did 3ABN notify the world that you had
20 filed bankruptcy?

21 A. Yes, as a matter of fact, they did.

22 Q. Who sent that message out to the world?

23 A. Doctor Walter Thompson, chairman of the

1 board at 3ABN.

2 Q. How many days after you filed bankruptcy?

3 A. It wasn't very long. I don't recall the
4 exact dates. I'd have to look at my --

5 Q. Was it within a week?

6 A. I believe so.

7 MR. HEAL: Thank you.

8 REDIRECT EXAMINATION BY MR. ROUMELIOTIS

9 Q. And this is Doctor Walter Thompson you
10 said notified everybody?

11 A. Well, we were given a copy of an e-mail, I
12 believe, from Doctor Walter Thompson. In any
13 event, we had -- actually there were several
14 notices. What am I talking about? There were
15 notices of it on blacksda. As a matter of fact, I
16 seem to recall they even posted the filing on
17 there. Then there were e-mails from Doctor
18 Thompson to inquiries from people who sent a copy
19 to me and asked what the story was.

20 Q. And do you have any idea how Doctor
21 Thompson obtained the information that you had
22 filed for bankruptcy?

23 A. No clue. How did any of them find out? I

1 mean, it's public record. Why wouldn't it be?

2 Q. Are these postings on a blog or on a
3 website that you're referring to?

4 A. Blacksda is one blog.

5 Q. Is that Doctor Thompson who would have --

6 A. Oh, I don't know about that. I think what
7 I received was a copy of e-mails from -- I can't
8 remember who. I'd have to go back through and see
9 that. But I do recall that there was some
10 communication where he wrote that -- I seem to
11 recall that the twist that he had was that he was
12 hoping for a speedy resolution because of the
13 bankruptcy.

14 Anyway, bottom line is it was clear he
15 knew about the bankruptcy as the chairman of 3ABN,
16 but I'm pretty sure you'll find it had already been
17 on the 3ABN -- as a matter of fact, we have a copy
18 of it. I'm pretty sure you'll find on the blacksda
19 site copies where they actually posted a copy of
20 the bankruptcy or a link to the bankruptcy. I
21 can't remember whether it was a link to the
22 bankruptcy or -- I seem to recall it was posted as
23 a copy.

1 Q. But that's not Doctor Thompson's doing?
2 The only evidence that you have that Doctor
3 Thompson knew was something that purported to be an
4 e-mail from him to somebody else?

5 A. Yeah.

6 Q. A posting on blacksda does not necessarily
7 guarantee that Doctor Thompson or anybody else at
8 3ABN would see it.

9 A. Well, depends on who it is at blacksda,
10 right?

11 Q. Excuse me?

12 A. The moniker that posted it would have
13 gotten the information obviously, and there's a
14 whole group of them there that are consistent
15 players that worked directly with people at 3ABN.
16 They are constantly providing information to us by
17 default because they come out and they post, so
18 they're clearly getting the information from people
19 at 3ABN. They're not getting it on their own.

20 Q. But you are simply making an assumption
21 here that that's how the information ended up being
22 posted at blacksda? You have no independent --

23 A. I have no idea -- well, what difference

1 does it make? It was obviously public knowledge on
2 there, and then in addition to that, we had
3 obviously the e-mails from Doctor Thompson stating
4 that he was aware.

5 Q. Do you have any confirmation that those
6 e-mails were in fact from Doctor Thompson?

7 A. Well, they came from his e-mail address.
8 I'd have to get you a copy of them, I guess. I'd
9 have to dig them out and give them to you.

10 Q. Do you have any contacts within 3ABN
11 presently or in the past that you get information
12 from regarding the knowledge of 3ABN, various
13 matters, workings?

14 A. And how is that relevant to this hearing?
15 Objection. Relevance.

16 Q. You just stated that you believe that
17 Doctor Thompson sent an e-mail --

18 A. He didn't send me an e-mail. I didn't say
19 that.

20 Q. He sent an e-mail --

21 A. He responded to somebody's inquiry, and I
22 then received a copy of that e-mail from his
23 inquiry, and that's happened consistently for the

1 entire two years of this mess.

2 Q. Are you going to answer or not going to
3 answer the question as to whether you have any
4 contacts presently or in the past within 3ABN that
5 you obtain information from regarding proceedings
6 that involve 3ABN?

7 A. Proceedings involving 3ABN?

8 Q. The inner workings, the problems that 3ABN
9 may be having with respect to you, with respect to
10 others. Do you have an internal source that is
11 getting information to you?

12 A. Mr. Roumeliotis, the place is a sieve.
13 There are so many --

14 Q. I'm asking for a yes or no --

15 A. There are so many drips coming out of that
16 sieve, we could sit here all day. There's names,
17 addresses, phone numbers, et cetera, and the bottom
18 line is yes.

19 Q. Could you identify these individuals?

20 A. No.

21 Q. The question was can you identify these
22 individuals, not would you. Do you know who these
23 individuals are?

1 MR. HEAL: Now, this is kind of a
2 topic not even for the adversary proceeding, let
3 alone a 2004 exam.

4 THE WITNESS: It's a fishing
5 expedition, and it goes way beyond.

6 MR. HEAL: It's a topic of the main
7 case if a deposition would be held, and I'm just
8 take a long breath to suggest if we're going to go
9 down here, it should be done on another date.

10 Q. (By Mr. Roumeliotis:) But just to close
11 the loop then --

12 MR. HEAL: Go right ahead.

13 Q. -- it is your testimony that you do have
14 contacts, that you do speak with people within
15 3ABN --

16 A. I didn't say that. You asked if there
17 were people that were giving us information from
18 within 3ABN, and I told you the place is a sieve.
19 It has drips everywhere.

20 Q. And then yes, you do obtain information
21 from people within 3ABN?

22 A. I guess you would argue that that would be
23 in fact the case, either directly or indirectly.

1 Q. Just to confirm that you would address
2 that question in more detail in connection with the
3 District Court case and the noticing of a
4 deposition in that case?

5 A. I don't know. You're asking a
6 hypothetical question. I'll deal with that at the
7 time.

8 (Whereupon, the examination concluded
9 at 4:38 p.m.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 COUNTY OF HAMPDEN

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5 I, Sarah L. Mubarek, Registered Professional
6 Reporter, hereby certify that the foregoing is a
7 true and accurate transcript of my stenographic
8 notes to the best of my knowledge and ability.

9

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Sarah L. Mubarek
Registered Professional Reporter

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DATED: September 17, 2007

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