

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

H. THAYNE DAVIS, : Case No. 3:04 CV 0059  
Plaintiff, :  
(Magistrate Judge Sharon L. Ovington)  
:  
VS. :  
:  
LIFETIME CAPITAL, INC., :  
and :  
DAVID W. SVETE, :  
Defendants. :

\*\*\*\*\*  
ORAL DEPOSITION OF  
ERNEST BUSTOS  
AUGUST 13, 2004  
\*\*\*\*\*

THE ORAL DEPOSITION OF ERNEST BUSTOS,  
produced as a witness at the instance of the  
Defendant, and duly sworn, was taken in the  
above-styled and numbered cause on the 13th day of  
August 2004, from 10:12 a.m. 12:51 p.m. to, before  
YVETTE MENDEZ, CSR in and for the State of Texas,  
reported by machine shorthand, at the offices of  
Jack Paul Leon, 500 Lexington Avenue, San Antonio,  
Texas, pursuant to the Federal Rules of Civil  
Procedure.

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

2 FOR THE EXAMINER:

3                                   MR. ANDREW C. STORAR  
4                                   Pickrel Schaeffer Ebeling  
5                                   2700 Kettering Tower  
6                                   Dayton, Ohio 45423  
7                                   Tel: 937/223-1130

8 FOR THE RECEIVER:

9                                   MR. D. BENHAM KIRK, JR.  
10                                  Pignato & Cooper  
11                                  1120 Robinson Renaissance  
12                                  119 N. Robinson Avenue  
13                                  Oklahoma City, OK 73102  
14                                  Tel: 405/606-3333

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 I N D E X  
2 Appearances. . . . . 2  
3 ERNEST BUSTOS  
4 Examination by Mr. Storar. . . . . 4, 101  
5 Examination by Mr. Kirk. . . . . 62, 107  
6 Signature Page/Corrections . . . . . 109-110  
7 Reporter's Certificate . . . . . 111

7 EXHIBITS MARKED  
8 NO. DESCRIPTION PAGE  
9 EX-1 7/30/04 Letter to LifeTime investors 13  
10 EX-2 LifeTime notice to investors 32  
11 RX-1 LifeTime correspondence file 69  
12 RX-2 LifeTime and Concilla communications 71  
13 RX-3 Blank page 96  
14 RX-4 Deposition subpoena 100

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

1 ERNEST BUSTOS,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. STORAR:

5 Q. Would you state your full name, please.

6 A. My name is Ernest Bustos.

7 Q. And you're here pursuant to a subpoena  
8 today?

9 A. I'm here pursuant to a subpoena based as  
10 a witness on the LifeTime Capital case, yes.

11 Q. And did you bring any documents with you  
12 today?

13 A. I brought client files and correspondence  
14 that I had with LifeTime Capital's principals  
15 during that period of time before Mr. Davis's  
16 lawsuit.

17 Q. Did you bring any other documents with  
18 you?

19 A. No.

20 Q. Did you review anything in preparation  
21 for your testimony today?

22 A. No. In fact, I've asked you for a copy  
23 of the lawsuit, and you tell me that you're going

24 to give it to me afterwards.

25 Q. Have you ever had your deposition taken

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

5

1 before?

2 A. Absolutely.

3 Q. How many times?

4 A. Twice.

5 Q. In what sort of cases?

6 A. Employment suits.

7 Q. Suits against you?

8 A. Suits that I brought against my  
9 employers.

10 Q. Okay. Who were the employers in which  
11 those --

12 A. Primerica Financial Services and the  
13 Independent Order of Foresters.

14 Q. It's very important that we not speak at  
15 the same time so the court reporter can get a nice  
16 clean record.

17 A. I'm sorry. I thought you were through.

18 Q. I wasn't. Tell me about your educational  
19 background.

20 A. I've been in financial services over 23  
21 years. I was Securities License Series 663 and 26  
22 as a principal for about 15 years.

23 Q. I asked about your educational  
24 background.

25 A. That is my educational background.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

6

1 Q. Are you a high school graduate?

2 A. I am a high school graduate, yes, sir.

3 Q. Do you have any post high school  
4 education or training?

5 A. Somewhat, yes.

6 Q. What?

7 A. I attended college for a short period of  
8 time, and then I've attended and have passed many  
9 rigorous courses in financial services.

10 Q. Are you currently employed?

11 A. Yes.

12 Q. How?

13 A. Bustos & Associates. It's my own firm.

14 Q. What does Bustos & Associates do?

15 A. We do financial services.

16 Q. What sort of financial services?

17 A. Insurance. We do estate planning with  
18 attorneys, accountants.

19 Q. Do you hold any licenses?

20 A. Insurance.

21 Q. Anything else?

22 A. No.

23 Q. You were associated or sold investments  
24 in LifeTime Capital; is that right?

25 A. That is correct.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

7

1 Q. Okay. When did you start that?

2 A. I want to say that we started in 1999.

3 Q. And then how did you become involved with  
4 LifeTime Investments?

5 A. We became involved with LifeTime through  
6 Richard Wilson out of Houston, Texas, Texas Senior  
7 Services. He wasn't there at that time, but he is  
8 now.

9 Q. What does Mr. Wilson do?

10 A. He does basically the same thing I do.

11 Q. And how did he bring you into the  
12 LifeTime?

13 A. They came to San Antonio and ran a  
14 seminar.

15 Q. Who did?

16 A. And it was he and Lindsay Buyrum, if I'm  
17 not mistaken.

18 Q. And so you started selling investments in  
19 LifeTime at that point?

20 A. We started representing LifeTime after we

21 did our due diligence.

22 Q. What due diligence did you do?

23 A. We checked the company to see if they  
24 were clean. Everybody we talked to in Ohio said  
25 that they were. We looked at the viatical industry

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

8

1 and saw that LifeTime Capital was doing something  
2 outside of the normal, and that they represented  
3 that they had excellent medical underwriting, that  
4 they only purchased policies of a million dollars  
5 or better, and that they were one of the leaders in  
6 the industry.

7 Q. Okay. What did you learn about when  
8 LifeTime came into existence, who the principals  
9 were, and things of that nature?

10 A. Well, LifeTime really came into  
11 existence, if I'm not mistaken, at the latter  
12 part. It was actually Wealth Strategies that we  
13 actually were approached by first. And in that  
14 period of time, Wealth Strategies supposedly sold  
15 the operation to LifeTime Capital, and they had  
16 moved it to Boca Raton, Florida.

17 Q. Have you been involved in other viatical  
18 investments?

19 A. We were shortly involved -- we did a



20 couple of investments in mutual benefits, which has  
21 now been placed under a receivership.

22 Q. How much did you sell of mutual benefits?

23 A. I want to say it was probably less than  
24 60,000. We did two cases, I think.

25 Q. How much did you sell with LifeTime?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

9

1 A. I think our total numbers are roughly  
2 about \$2 million.

3 Q. Was there an average as far as the size  
4 of investment?

5 A. No, they varied all through: 40, 50, 30,  
6 20. They varied.

7 Q. What was the largest that you sold?

8 A. I think one family over \$100,000.

9 Q. Do you know what family that was?

10 A. I'm sorry?

11 Q. Do you know what family that was?

12 A. That was the [REDACTED], if  
13 I'm not mistaken.

14 Q. Could you spell that, please?

15 A. [REDACTED].

16 Q. Any other viatical investments that --

17 A. No.

18 Q. -- you sold? Please wait till I finish

19 the question, sir.

20                               What about other investments such as  
21 pay phones, ATMs?

22           A.    We did pay phones.  We did not do ATMs.

23           Q.    Did you do anything other than pay  
24 phones?

25           A.    No.

                                  PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

10

1           Q.    Did there come a time when there was some  
2 problems with the pay phone investments?

3           A.    Absolutely.  We have an organization  
4 representing over 2000 investors in the pay phone  
5 against the Receiver.

6           Q.    What happened in the pay phone  
7 investments?

8           A.    The Securities and Exchange Commission  
9 had just closed down ETS, and ETS was another pay  
10 phone company located out of Georgia.  And shortly  
11 after that, they started attacking all pay phone  
12 companies.  Then they came after Alpha Telecom and  
13 American Telecommunications.

14                               At that point, they filed  
15 bankruptcy, they filed it in Florida, and the SEC  
16 moved the case back to Oregon.  At that point they  
17 appointed a Receiver.  The Receiver terminated all

18 relationships with all of Alpha's lawyers, did not  
19 put up a defense in the case, conceded that the SEC  
20 was correct, proceeded to file documents with the  
21 court that said he was reorganizing the company,  
22 and to date he is still liquidating the company; he  
23 never really did anything with it.

24 Q. And you set up some sort of membership  
25 fund?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

11

1 A. Yes, sir, I did.

2 Q. Pay Phone Owners Legal Fund; is that  
3 right?

4 A. Yes, sir. We're represented by two law  
5 firms in Oregon and two law firms here in Texas.

6 Q. And you have 2000 members in that firm?

7 A. We have a little over 2000 members, and  
8 growing.

9 Q. And that fund has filed a lawsuit against  
10 insurance companies; correct?

11 A. That is correct.

12 Q. What insurance companies?

13 A. There's four insurance companies, all  
14 totaled. I don't have that information in front of  
15 me.

16 Q. Who did they insure?

17 A. Who did they insure?

18 Q. Yes.

19 A. According to the State of Texas, the  
20 insurance agent committed insurance fraud by  
21 assuring the actual companies that the insurance he  
22 had sold was insuring the buyback provision of the  
23 contracts.

24 Q. What is the status of that lawsuit?

25 A. The status of the lawsuit is we're in

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

12

1 discovery at this point right now. They've asked  
2 for discovery from us; we've asked for discovery  
3 from. The lawsuit was filed in Hidalgo County.

4 Q. Is that in state court?

5 A. That's in state court, yes, sir.

6 Q. You're also involved or engaged with the  
7 IRS?

8 A. That's exactly right. In fact, I met  
9 with my tax lawyers yesterday.

10 Q. And what's going on there?

11 A. Well, the Receiver turned all the pay  
12 phone owners in, said that they never bought the  
13 pay phones, for the simple reason is that he wanted  
14 a \$1.8 million tax refund for Alpha in the sale of  
15 the pay phones because they had claimed that much

16 in profit, they had to pay that much in taxes.

17 Q. I see.

18 A. We have basically attempted to have an  
19 adversarial hearing in both the bankruptcy courts,  
20 and now we're in -- we're in Judge Panner's court  
21 which is the original judge that had the case to  
22 begin with. And at this point right now, we are  
23 filing suit on the Internal Revenue Service.

24 Q. So you are suing the Internal Revenue  
25 Service?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

13

1 A. That's exactly right, on behalf of the  
2 owners.

3 Q. Has that been filed?

4 A. We talked to the attorneys yesterday and  
5 that is forthcoming.

6 Q. And who is going to be the plaintiff in  
7 that case?

8 A. It will be Pay Phone Owners Legal Fund.

9 Q. Is that a legal entity?

10 A. It is a registered entity in the State of  
11 Texas.

12 (Examiner's Exhibit No. 1 marked.)

13 Q. (By Mr. Storar) I want to talk about  
14 Examiner's Exhibit 1, which is a letter that I

15 believe you authored and forwarded to investors  
16 involved in LifeTime Capital.

17 A. It is my understanding, sir, that we're  
18 not here to talk about the IP Fund, and if that's  
19 the direction that you are going toward, then we're  
20 going to ask for a direction of a court and a  
21 ruling of a court to see if you are allowed to do  
22 that. Because I was brought here under false  
23 pretense saying that I would be a witness in the  
24 LifeTime Capital case, not your attack on my IP  
25 Fund.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

14

1 Q. I am not attacking anything --

2 A. Well, you're asking questions and that's  
3 exactly what you want to do.

4 MR. STORAR: Let's get the judge on  
5 the phone?

6 THE WITNESS: Well, no, I want  
7 representation. My attorney said that if that was  
8 the case, we would file our documents with the  
9 court.

10 MR. STORAR: Call your attorney.

11 (Witness confers with his counsel by phone.)

12 THE WITNESS: He's on the phone,  
13 sir.

14 MR. STORAR: I have Steven Johnson  
15 on the phone, an attorney with -- what firm are you  
16 with?

17 MR. JOHNSON: Sole practitioner.

18 MR. STORAR: You're a sole  
19 practitioner, located in San Antonio, Texas. And  
20 Mr. Johnson has told me that he is advising his  
21 client not to answer any questions regarding the  
22 solicitation letter sent to the LifeTime Investors  
23 under the name of IP Fund. Is that correct?

24 MR. JOHNSON: Yes.

25 MR. STORAR: Would you confirm that

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

15

1 for the court reporter.

2 MR. JOHNSON: Steven Johnson, and I  
3 have informed counsel that without further  
4 explanation regarding the questions he's directing  
5 to Mr. Bustos concerning the letter which I don't  
6 have before me, that I am directing Mr. Bustos not  
7 to answer any questions regarding that document in  
8 response to the notice which has caused Mr. Bustos  
9 to appear this morning.

10 MR. STORAR: Let's get the judge on  
11 the phone.

12 (Brief pause on record.)

13 MR. STORAR: I've just been told  
14 that now Mr. Johnson is available.

15 THE COURT: Wonderful.

16 MR. STORAR: And somebody is now  
17 going to tie us in here, if you would. Let's go on  
18 record.

19 Mr. Johnson, Judge Ovington is on  
20 the line here with us.

21 THE COURT: Mr. Johnson, hello.

22 MR. JOHNSON: Yes.

23 THE COURT: Mr. Storar has  
24 indicated, and we are now on the record as I  
25 understand, that your client is refusing to answer

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

16

1 questions.

2 MR. JOHNSON: Yes.

3 THE COURT: I would like to inquire  
4 as to the basis of the refusal.

5 MR. JOHNSON: The basis of the  
6 refusal is that it is beyond the scope of the  
7 notice for which Mr. Bustos has been summoned, to  
8 use a general term, and as well as the fact that  
9 the nature of the questions really is not one which  
10 would be reasonably designed to lead to the  
11 production of admissible evidence.



12 THE COURT: You think it is beyond  
13 the scope of discovery in this matter, that's your  
14 argument?

15 MR. JOHNSON: That it is beyond the  
16 scope of the notice of the deposition for which  
17 Mr. Bustos was served.

18 THE COURT: Are you arguing that a  
19 notice of deposition requires an outline of the  
20 testimony?

21 MR. JOHNSON: Well, I am suggesting,  
22 Your Honor, that a fair reading of that in the  
23 scope of the documents that were requested was that  
24 it was directed in a different area, and that this  
25 is something which is -- one which is designed to

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

17

1 also harass and surprise the witness. So the scope  
2 of the deposition should be one that is defined by  
3 the nature of the litigation and the relevance of  
4 the reasonable calculation that the questions are  
5 directed to the witness to produced admissible  
6 evidence in connection with that lawsuit. Beyond  
7 that, I believe that it's appropriate for a  
8 protective order.

9 THE COURT: Well, I think the  
10 questioning relates to the receiver. This Court

11 has appointed a receiver, and to the extent it  
12 relates to questions about that, I certainly  
13 believe it's within the scope of the notice of  
14 deposition.

15                   MR. STORAR: Your Honor, this is  
16 Andy Storar. Mr. Bustos was served with a subpoena  
17 out of the Western District of Texas with the  
18 caption of Thayne Davis vs. LifeTime Capital,  
19 pending in the Southern District of Ohio, and  
20 commanded him to appear and to testify for taking  
21 of a deposition and bring along certain documents.  
22 There's no representation as to what the nature of  
23 the inquiry would be whatsoever. And as you  
24 indicated, certainly the Receiver's web site  
25 contains voluminous information regarding the scope

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

18

1 of the case before, Your Honor, and indeed it even  
2 makes mention of this particular deposition.

3                   THE COURT: Well, unless he's making  
4 a privilege claim, that type of thing, I think the  
5 questions are certainly permitted. I mean, I  
6 haven't heard any reason not to allow that.

7                   MR. JOHNSON: Well, if that's your  
8 ruling, Your Honor, that we don't have a privilege  
9 claim, certainly Mr. Bustos knows matters that he's

10 addressed to counsel and the scope of that  
11 privilege.

12                   It was certainly his understanding  
13 that a fair reading of the subpoena and so forth  
14 was that this was not something that was going into  
15 the areas that counsel's wanting to explore at this  
16 point, that the lawsuit itself was dealing with the  
17 viatical and the receivership appointed for that,  
18 and not matters that extend beyond that.

19                   THE COURT: I'm not aware of any  
20 rule or regulation or law that requires counsel to  
21 set forth the questions that they intend to ask at  
22 a deposition.

23                   MR. JOHNSON: Well, I believe, Your  
24 Honor --

25                   THE COURT: Now, let me interrupt

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

19

1 for a moment. If you feel that your client is  
2 somehow prejudiced by this by allowing the  
3 questions to go forward, the only suggestion that I  
4 can make is that you pay the entire cost of this  
5 proceeding and for Mr. Storar to return when your  
6 client is prepared to answer the questions. That  
7 is something that the Court will consider as an  
8 option.

9 MR. JOHNSON: Well, I'm not  
10 authorized to say that that's acceptable to my  
11 client.

12 THE COURT: Well, in the absence of  
13 that, I am ordering the witness to answer the  
14 question.

15 MR. JOHNSON: If that's your ruling,  
16 Your Honor --

17 THE COURT: It is.

18 MR. JOHNSON: -- we will abide by  
19 it.

20 THE COURT: Okay. I appreciate it,  
21 sir.

22 MR. JOHNSON: Thank you, Your  
23 Honor.

24 THE COURT: But yes, we need to  
25 proceed in an orderly fashion here.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

20

1 MR. JOHNSON: I know, Your Honor,  
2 but it is also a matter that if you hadn't assessed  
3 the cost of this, it seems to me that it would be  
4 appropriate for a suitable protective order to  
5 allow this from being an abusive proceeding for  
6 Mr. Bustos, which I believe is actually the way  
7 things are unfolding. But I'm not prepared to

8 commit Mr. Bustos to the undefined costs of  
9 resuming these proceedings at a later time.

10 THE COURT: Well, there are a number  
11 of issues that you have raised. Certainly they  
12 could have been addressed prior to the trip being  
13 made if you had had a problem regarding what  
14 questions might be asked. I think any attorney  
15 knows that the opposing attorney is not required to  
16 set forth the questions to be asked. And on that  
17 basis, I don't believe a protective order would be  
18 warranted.

19 Again, I am going to order the  
20 individual to answer the questions. I appreciate  
21 that you will so comply with that order. And if  
22 you have any further issues that arise, please feel  
23 free to contact the Court.

24 MR. JOHNSON: Very well.

25 THE COURT: Anything further from

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

21

1 either side?

2 MR. STORAR: Nothing, Your Honor.

3 THE COURT: All right. Thank you  
4 very much, then.

5 MR. STORAR: Thank you.

6 THE WITNESS: I need a conference

7 with my attorney.

8 (Witness confers with his counsel by phone.)

9 MR. STORAR: Let's go back on the  
10 record.

11 Q. (By Mr. Storar) Mr. Bustos, you have  
12 before you Examiner's Exhibit 1; correct?

13 A. That is correct.

14 Q. And that is a letter that you authored?

15 A. Yes, sir.

16 Q. And it's set out on the letterhead of IP  
17 Fund?

18 A. That is correct.

19 Q. What is IP Fund?

20 A. That's the investor's protection fund  
21 that was established on July the 19th, here in San  
22 Antonio.

23 Q. And what sort of legal entity is it?

24 A. It is an assumed named.

25 Q. Assumed name?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

22

1 A. It is an assumed named. It was  
2 registered in the County of Bexar, in the State of  
3 Texas.

4 Q. So it's not a not for profit corporation,  
5 partnership --

6 A. Not as of yet.

7 Q. -- or anything else; is that right?

8 A. Not as of yet, sir.

9 Q. And in that letter you request that  
10 people send you a membership check for \$100 for  
11 each LifeTime contract; is that correct?

12 A. That is correct.

13 Q. What does one get for membership in the  
14 IP Fund?

15 A. They belong to the IP Fund. The IP Fund  
16 has intentions of making a motion to intervene in  
17 court to represent the investor's best interest.

18 Q. And what best interest does the IP Fund  
19 have in mind?

20 A. The investor's best interest.

21 Q. What sort of motion? What is the basis  
22 of the intervention?

23 A. We believe that by turning the company  
24 back over to the investors, that the investors can  
25 hire their own management staff and oversee the

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

23

1 running of the investments in LifeTime. The asset  
2 that belongs to the investors is a total of \$154  
3 million.

4 Q. What does one get for one's membership?

5 A. Representation.

6 Q. If an investor decides not to become a  
7 member or can't afford to become a member, are they  
8 affected in any fashion?

9 A. If they can't afford to become a member,  
10 we take those calls and look at the degree of their  
11 financial problems. We may include them at no  
12 cost.

13 Q. And what if one just determines not to  
14 become a member?

15 A. Then they stay with the Receiver and, in  
16 essence, they're represented by the Receiver.

17 Q. So you're talking dual representation; is  
18 that right?

19 A. No, I'm talking about if they put their  
20 vote on the Receiver side, or the members of the IP  
21 Fund have their vote, those who have the most votes  
22 control the most assets, control the company. In  
23 essence, you could look at this as a hostile  
24 takeover by the investors.

25 Q. Do the investors have an ownership

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

24

1 interest in LifeTime?

2 A. They have an ownership interest in the  
3 viatical portfolio of the assets that are in



4 LifeTime.

5 Q. You indicated in that letter in the  
6 second paragraph that you involved yourself in  
7 researching what led to LifeTime's problems?

8 A. Uh-huh.

9 Q. What research did you conduct?

10 A. You can tell by the letters that I had  
11 written to the counsel for LifeTime numerous phone  
12 calls to Phyllis Lucas, trying to determine what  
13 was going on with LifeTime. It wasn't until the  
14 tail end that LifeTime's lawyer, Dennis Concilla,  
15 actually wrote back. And only after I forwarded a  
16 copy of my letter to the FBI.

17 Q. And what did Dennis Concilla tell you?

18 A. Well, Dennis Concilla basically said, you  
19 know, for the most part, he believed that the  
20 viatical contracts were intact, that some of them  
21 maybe had to be reexamined to see what their degree  
22 of illness was. And when I told him that I  
23 believed that Mr. Svete had never sold the company  
24 and that he was still the owner, he did not deny  
25 that.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

25

1 Q. You also indicate in the second paragraph  
2 that you looked into the background of the

3 Receiver, H. Thomas Moran, and his claim of  
4 experience?

5 A. Uh-huh. Exactly right.

6 Q. And what research did you conduct in --

7 A. Well, we looked to see --

8 Q. -- that regard? Please, sir.

9 A. Okay.

10 Q. Please let me finish before you start,  
11 okay?

12 A. Okay.

13 Q. Thank you.

14 MR. STORAR: Would you read the  
15 question back?

16 (Last question read back.)

17 A. (No response.)

18 Q. (By Mr. Storar) What research did you  
19 conduct in that regard?

20 A. Was that your question?

21 Q. Yes, sir.

22 A. So you were finished with your question?

23 Q. No, you were talking before I had  
24 finished.

25 A. You had already finished the question.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

26

1 She has it on record. But I'll answer your

2 question.

3 COURT REPORTER: I am having a  
4 little trouble with the tail end of some of his  
5 questions.

6 THE WITNESS: Okay. But his  
7 question was asked, right.

8 COURT REPORTER: I got that one.

9 THE WITNESS: Okay.

10 Q. (By Mr. Storar) Go ahead and answer it.

11 A. We looked at his involvement in the ABC  
12 case. We also talked to other individuals that had  
13 had some indications of Mr. Moran.

14 For example, I had a call from a  
15 LifeTime investor that received our letter. She  
16 says that she is a board member for the old  
17 Beneficial Company, that she is a million dollar  
18 investor in the new company that was formed by the  
19 board members themselves. She also said that Mr.  
20 Moran attempted to actually intervene or attempted  
21 to purchase the assets from the Beneficial Company  
22 and that they recognized that he was only out for  
23 his own best interest. That's a direct quote from  
24 her.

25 She said that she was happy to see

1 that somebody had initiated the process way earlier  
2 than what they had done, because the receivership  
3 process in cases like this tend to be abusive. And  
4 I agree.

5 Q. And who was this individual?

6 A. [REDACTED]. She's a client for  
7 LifeTime Capital and also Beneficial.

8 Q. Beneficial what?

9 A. It's a viatical company that actually  
10 filed bankruptcy. It's now Premium of America.  
11 I've got the information in my office.

12 Q. So you looked into his handling of the  
13 Accelerated Benefits Corporation, and you talked to  
14 [REDACTED]?

15 A. Uh-huh. And we also looked to see what  
16 his designations are. It's my understanding that  
17 he's an insurance agent that runs a viatical  
18 company in Oklahoma.

19 Q. Did you talk with anyone else?

20 A. I talked to numerous people.

21 Q. Who?

22 A. I can't tell you off the top of my head.

23 Q. Can you think of any of them?

24 A. Not off the top of my head.

25 Q. What investigation did you conduct

1 regarding Accelerated Benefits?

2 A. Well, we looked at the filings, we looked  
3 at the pleadings. We do know that there's lawsuits  
4 being filed by the owners of ABC, that's still in  
5 business, claiming that the expenditures of the  
6 receivers are quite high and that they're fighting  
7 the actual expenses. That's what I read.

8 Q. Now, you're saying "we looked at," who is  
9 "we"?

10 A. It's a proverbial "we" in Texas, sir.

11 Q. Is that you?

12 A. That's me, yes.

13 Q. Is anyone assisting you or did anyone  
14 assist you in that research?

15 A. No.

16 Q. So you did this completely by yourself?

17 A. By myself, yes.

18 Q. Do you have any documents reflecting your  
19 investigation regarding Accelerated Benefits?

20 A. I think I've got the lawsuits that are  
21 being filed. If I'm not mistaken, I think I  
22 downloaded those through Pacer.

23 Q. What analysis, if any, did you conduct  
24 regarding the Accelerated Benefits portfolio?

25 A. Well, I didn't take a look at the

1 portfolio itself, but I do understand that he sold  
2 it to an Israeli based group for the promise of  
3 premiums, and that the return to the investors is  
4 52 cents.

5 Q. And did you do any analysis of the  
6 portfolio?

7 A. That portfolio was not available.

8 Q. Did you do any analysis of the portfolio  
9 from an actuarial standpoint?

10 A. That portfolio was not available.

11 Q. Do you have an opinion as to what the  
12 value of the portfolio was?

13 A. No.

14 Q. Did you have an opinion as to whether the  
15 sales price was for a fair market value or not?

16 A. I couldn't have formed that opinion, sir,  
17 I didn't have the portfolio.

18 Q. So when you indicate in your letter here  
19 that Mr. Moran sold the portfolio that resulted in  
20 52 cents on the dollar return to investors, you're  
21 not expressing an opinion one way or the other as  
22 to the propriety of that?

23 A. No, I'm making a statement. Mr. Moran's  
24 statement to the investors was that he would start  
25 at \$96 million of money invested. I have no idea

1 what Mr. Moran told the investors of ABC. But if  
2 he told them that he would make them whole also and  
3 only receive 52 cents on the dollar over a seven  
4 year period, it's rather disingenuous.

5 Q. You don't know that he made that  
6 statement?

7 A. We don't know, no. All we're saying is  
8 that's what he did with ABC, it was 52 cents out of  
9 the dollar. He's telling LifeTime investors he's  
10 going to get them \$96 million, and that's the  
11 amount of money that was paid.

12 Q. Back to Accelerated Benefits. So you're  
13 stating that you don't have an opinion one way or  
14 the other as to whether the 52 cents on the dollar  
15 return represented a fair market value of the  
16 portfolio or not?

17 A. That is correct.

18 Q. What, if any, actuarial studies have you  
19 done regarding the LifeTime portfolio?

20 A. I only am going by what I was told by the  
21 attorney, and the attorney says that the majority  
22 of the individual viators are 82 or older. They're  
23 pretty much to the closed end of their life  
24 expectancy even on healthy individuals.

25 Q. And that's what Dennis Concilla, the

1 attorney, told you?

2 A. That's what he told us, right.

3 Q. You haven't looked at the portfolio  
4 yourself?

5 A. We have not been privy to that portfolio,  
6 but we will ask to be able to look at it so that  
7 that way we can do our numbers.

8 Q. How many of these letters, Exhibit 1  
9 there, did you send out?

10 A. I think we sent out 2700.

11 Q. Where did you get the list of investors?

12 A. We actually obtained the list of  
13 investors from Mr. Reginald Parker.

14 Q. And he is who?

15 A. Reginald Parker was the old CEO of  
16 LifeTime Capital, who is also an investor with his  
17 wife.

18 Q. You indicate there on the first page of  
19 Exhibit 1 that the proposed payout by receiver is  
20 \$86 million; correct?

21 A. Yes, sir.

22 Q. Where did you get that figure?

23 A. We figured that if he was going to  
24 discount, he would discount some money off the top,  
25 and we were generous with the discount.



1 Q. "We" meaning you?

2 A. Yes.

3 Q. Anyone else?

4 A. No.

5 Q. You're not attributing that statement to  
6 Mr. Moran, then, are you, where it says proposed?

7 A. Well, the way we took -- the way I took  
8 the actual payout based on Mr. Moran's letter, he  
9 said that the \$96 million was what the amount of  
10 money was invested. The difference between the 96  
11 million and the 154 million is 58 million. Then we  
12 said that he would, based on the number that we saw  
13 of .0001 I think it was, our math came out to  
14 \$86 million.

15 Q. Where did you see that?

16 A. That's in the letter that he originally  
17 sent out to the investors, I think, in the polling  
18 of whether or not to pool the money.

19 (Examiner's Exhibit No. 2 marked.)

20 Q. (By Mr. Storar) I'm handing you what's  
21 been marked as Examiner's 2. Is that the document  
22 that you're referring to?

23 A. That's it. That's the number that we  
24 actually used.

25 Q. And where is that number that you're

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

33

1 referring to?

2 A. The 96 million?

3 Q. No, the number that brings you to a  
4 proposed payout of 86 million?

5 A. Wouldn't that be 10% of the 96 million?

6 Q. Where do you see the numbers that lead  
7 you to a calculation that you set forth as a  
8 proposed payout by the Receiver of \$86 million?

9 A. Well, see, the \$100,000, it says that an  
10 investor with \$100,000 in investment at  
11 approximately -- well, at .001033 interest  
12 portfolio, divided by the amount, would be 96.

13 Q. Yes. So how does that lead you to the  
14 conclusion that the Receiver is proposing a payout  
15 of 86 million?

16 A. Based on that number.

17 Q. How?

18 A. Based on the .001033 --

19 (Brief pause/calculating.)

20 For some reason, I can't make that  
21 come out.

22 (Brief pause/calculating.)

23 Oh, I see what I'm doing.

24 (Brief pause/calculating.)

25 The number is not coming out on this

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

34

1 calculator. I don't know why.

2 Q. Are you aware of any statement or any  
3 document that actually says that the Receiver's  
4 proposed payout is \$86 million?

5 A. No, I actually derived that number from  
6 this percentage here, and I just can't make this  
7 calculator do that.

8 Q. And that percentage there that you're  
9 referring to is on page 3 of Exhibit 2 in the  
10 paragraph entitled "Pro Rata Interest in the  
11 Receivership Assets as a Whole," is that correct?

12 A. The Receiver assets as a whole based on  
13 \$96 million, not 154.

14 Q. The title of the paragraph is "Pro Rata  
15 Interest in the Receivership Assets as a Whole," is  
16 that correct?

17 A. As a whole, that's correct. But it  
18 doesn't refer to the 154 million, because that's  
19 what's on the table, not 96.

20 Am I mistaken in that?

21 Q. Yes.

22 A. Okay.

23 Q. If you read that paragraph, doesn't it in  
24 fact say that the amount invested by the investors  
25 was \$96,789,706?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

35

1 A. That is correct.

2 Q. And then doesn't it say an investor with  
3 a \$100,000 investment would have a .0010331  
4 interest in the portfolio?

5 A. Well, the portfolio and the 96 million --

6 Q. Is that what it says?

7 A. I understand that, sir. But the  
8 portfolio and the interest of 96 million are two  
9 different issues. The portfolio is 154 million.

10 Q. Exactly.

11 A. Okay.

12 Q. And what this is saying, is it not, is  
13 that if you invested \$100,000, you would have a  
14 .0010331 interest in the receivership assets as a  
15 whole regardless of what that number is, whether it  
16 be 150 million or 20 million?

17 A. That's exactly right.

18 Q. Okay. So can you tell me where you came  
19 up with this \$86 million number?

20 A. It could have been a miscalculation on my  
21 behalf. I don't think it was. I'll have to look

22 at my numbers.

23 Q. But you can't direct me to any statement  
24 or document generated by the Receiver or anyone  
25 else other than yourself that indicates that the

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

36

1 proposed payout --

2 A. That is correct.

3 Q. -- is \$86 million, correct?

4 A. Correct.

5 Q. In the next paragraph on Exhibit 1, you  
6 state, "I asked an expert in this field, and he  
7 said that the premiums are likely to be between 15  
8 and 20 million over the next 7 years."

9 A. That is correct.

10 Q. Who's the expert?

11 A. That is Pete Carlisi. Or not Pete  
12 Carlisi, it was Reginald Parker.

13 Q. And he is the former CEO?

14 A. Former CEO, and is now the owner and  
15 operator of Mosaic in Florida.

16 Q. And did he have access to the portfolio  
17 when he gave you this information?

18 A. He knew the portfolio. He was the  
19 manager of the portfolio. They ran analysis of the  
20 portfolio before they closed LifeTime down. They

21 investigated the viators, made sure that the  
22 policies were active and were on real viators. And  
23 the ones that he did find to be questionable, he  
24 paid out to and he distributed the individuals that  
25 were in a third policy into other policies that

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

37

1 were actually available at that time.

2 Q. And this occurred prior to his leaving  
3 LifeTime?

4 A. That occurred prior to his leaving  
5 LifeTime, that's right.

6 Q. When did he leave LifeTime?

7 A. I think it's in the letter that's in one  
8 of these files. I don't know exactly when the date  
9 was.

10 Q. Do you know what year?

11 A. 2001, when they closed down.

12 Q. Now, you indicate there that, "My expert  
13 explained that even planning aggressively,  
14 operating expenses for 7 years would only total a  
15 little less than 4 million, fully staffed and doing  
16 everything."

17 A. Uh-huh.

18 Q. "That would leave 44 million in legal  
19 fees."

20 A. Uh-huh.  
21 Q. "That's a lot of legal fees."  
22 A. Yes. We agree.  
23 Q. "Nearly 46% of your original investment."  
24 This is your statement, correct?  
25 A. Uh-huh.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

38

1 Q. Where do you come up with 44 million in  
2 legal fees?  
3 A. Well, if we take the total amount of  
4 money, which is 154 million, and subtract the 20  
5 from that, subtract the remaining number from the  
6 96 --  
7 Q. The 20 is what?  
8 A. The 20 is the premium.  
9 Q. Okay.  
10 A. Subtract the remaining number from the  
11 96, that leaves us a concluded value of 44.  
12 Q. Based on what?  
13 A. \$29 million in premium, \$96 million in  
14 invested money, total portfolio of 154 million; you  
15 take the 154 million, subtract the 20 from the 54,  
16 154, it leaves 134; subtract the 134 from the 96,  
17 that gives us the 44.  
18 Q. Where do you get the information that 44

19 million is going to legal fees?

20 A. No, we're saying that if that's the case,  
21 if these numbers are correct, that if the premium  
22 really, in all reality, would be about \$20 (sic)  
23 million, the Receiver has already made a statement  
24 if he's only going to recover 96 million, okay.

25 Q. Where has he said that?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

39

1 A. It says right here, didn't it?

2 Q. No.

3 A. It will give you an interest in \$96  
4 million. So you're saying he's going to recover  
5 less?

6 Q. You're referring back to page 3?

7 A. That's what we were talking about  
8 earlier. That's what the numbers are based on.  
9 Are you saying that he's going to recover less?

10 Q. Page 3 of Exhibit 2, correct?

11 A. Yes.

12 Q. Does it say anywhere in there that he  
13 only proposes to recover 96 million?

14 A. He's saying that their asset in the value  
15 is \$96 million.

16 Q. Doesn't he say that that is the  
17 cumulative amount invested?



18           A.    That is correct.  And he's basing their  
19 ownership based on 96 million.  So one can only  
20 come to the conclusion that he's only going to  
21 recover the \$96 million.

22                       Where's the 154?  If that number was  
23 there, if he's sitting there saying, look, it's  
24 \$154 million, you will own 10% of that, less  
25 expenses, we could understand that.  But he's not

                          PREMIERE REPORTING \* (210) 377-0720  
                          10703 Janet Lee \* San Antonio, Texas 78230

40

1   saying that.

2           Q.    What is he saying?

3           A.    He's saying he's basing his numbers on  
4 \$96 million.

5           Q.    He's basing his numbers on the amount  
6 invested as far as what your pro rata interest is;  
7 correct?

8           A.    Well, shouldn't it be pro rata interest  
9 on assigned investment dollars, the 154 million?  
10 You've just made the \$154 million disappear.  Where  
11 in this document does it refer to \$154 million?

12          Q.    There on page 2 of Exhibit 1, in the  
13 first paragraph you say, "If you think \$44 million  
14 is too much..."  And again, you're basing that on  
15 your saying that the Receiver has a proposed payout  
16 of 86 million; right?

17           A.    No, we're basing that on the proposed 96  
18 million.

19           Q.    But I thought you said it was a proposed  
20 86 million?

21           A.    No, because we're basing it, and that  
22 number is based on the 96 million if you do if  
23 math.

24           Q.    On the first page, don't you indicate  
25 that there's a proposed payout by the Receiver of

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

41

1 \$86 million?

2           A.    And then the math that is done after that  
3 is based on the 96 million, if I'm not mistaken.

4           Q.    You can't point us to where that 86  
5 million came from?

6           A.    You can't point me where that 96 million  
7 come from, and what happened to the 54 -- or 154.

8           Q.    Could you answer the question?

9                   MR. STORAR:  Would you read it back,  
10 please?

11                           (Last question read back.)

12           Q.    (By Mr. Storar)  can you answer that  
13 question?

14           A.    No.

15           Q.    You won't answer the question?

16 A. Not at this time.

17 Q. Why not?

18 A. You said, can you point me in that  
19 direction, and I'm saying, no, not at this time.

20 Q. So you don't know where that 86 million  
21 number came from?

22 A. It was a number that I came up with, but  
23 I can't tell you how I came up with that number. I  
24 don't have those numbers in front of me.

25 Q. You can't attribute that to the Receiver,

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

42

1 however; is that right?

2 A. No.

3 Q. In paragraph 2, you say: In analyzing  
4 the situation, my expert placed a "best case"  
5 scenario at a return of as much as 120 million.

6 Is this a different expert or the  
7 same expert?

8 A. Same expert.

9 Q. Who is it?

10 A. Reginald Parker.

11 Q. Now, right under the second paragraph you  
12 have another calculation. The first line: You  
13 spent, of a single dollar, 96 cents.

14 A. Uh-huh.

15 Q. You were promised \$1.54. The Receiver  
16 projects 86 cents. Where did you get that?

17 A. That's off the number that we actually  
18 put back over on either side.

19 Q. But you can't attribute that to the  
20 Receiver; is that right?

21 A. No, not at this point.

22 Q. Further down on page 2 of Exhibit 1, you  
23 make the request for \$100 for membership for each  
24 LifeTime contract. So if someone has --

25 A. I know what it is on the 86.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

43

1 Q. All right.

2 A. I took 10% -- I took the number instead  
3 of doing the number on 100,000, I did the number on  
4 96.

5 Q. So is this number right?

6 A. The number is not correct based on the  
7 number that's actually there.

8 Q. All right. So your statements here  
9 about --

10 A. It was a miscalculation on my behalf.  
11 That's what it looks like.

12 Q. Your statements here about the Receiver  
13 projecting a return of 86 million and projecting

14 44 million in legal fees is incorrect; is that  
15 right?

16 A. No, that's not what I said that the  
17 projection of the \$44 million was. We can only  
18 assume the difference of money that was between the  
19 20 million in premiums that we projected that are  
20 going to be paid. And we did receive a letter from  
21 one of your counsel that said that the premium was  
22 \$4.6 million a year at this point right now, and  
23 they were projecting \$32 million over a seven year  
24 period. We questioned that math also. They're  
25 saying that they will not have any maturities over

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

44

1 a seven year period and that the premium will be  
2 level over that period of time.

3 Q. Where are you coming up with 44 million  
4 in legal fees?

5 A. Well, what we did is we took the \$20  
6 million in expense for the premium. Take that off  
7 the 154. Oh, that's 134. Take the 96 from that  
8 number.

9 Q. And why --

10 A. And I'm rounding the numbers off.

11 Q. And why are you taking 96 from that  
12 number?

13           A.    Because that's the projected number that  
14 the Receiver used in his letter here.

15           Q.    Isn't he saying that's the amount that  
16 was invested; he's not saying that's the amount  
17 projected as a return, is he?

18           A.    Well, he's saying that they have  
19 ownership of \$96 million.  If he was going to  
20 project that he was going to recover the entire  
21 154, why didn't he use the 154 as the number?  Can  
22 you answer that for me?

23           Q.    Is he saying that he's projecting  
24 returning 96 million there or --

25           A.    It is my assumption that he actually is.

                  PREMIERE REPORTING \* (210) 377-0720  
                  10703 Janet Lee \* San Antonio, Texas 78230

45

1           Q.    Let me finish my question.

2           A.    Okay.

3           Q.    Is he saying that he's projecting a  
4 return of 96 million or is he saying 96 million was  
5 invested?

6           A.    It is my understanding by my reading of  
7 this document that he's projecting the \$96 million,  
8 not the 154.

9           Q.    Where does he say --

10          A.    It is my understanding, sir.

11          Q.    Where does it say --

12           A.    It is my understanding by reading the  
13 document.

14           Q.    I don't care what your understanding is.  
15 I want you to point me to where it says --

16           A.    It says right here 96 million,  
17 96,789,706.

18           Q.    Does it say that that is the amount of  
19 the return or that that is the amount of the  
20 investment?

21           A.    It says that that's the amount of the  
22 investment, but we --

23           Q.    Thank you very much.

24           A.    But we have to consider that that's --

25           Q.    Thank you very much.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

46

1           A.    -- probably the amount of money he's  
2 projecting.

3           Q.    Okay.

4           A.    He never talked about the 154.

5           Q.    So you're assuming that --

6           A.    It is my assumption, that's correct.

7           Q.    It's your assumption that since he said  
8 96 million was invested, that that's all he intends  
9 to return?

10          A.    That's correct.

11 Q. And from that is how you come up with  
12 this statement about 44 million in legal fees?

13 A. That's the only thing, administration  
14 fees, legal fees, the money's disappeared.

15 Q. All right. Now, you also, on page 2, ask  
16 the investors to, "Sign the enclosed (very limited)  
17 Power of Attorney"?

18 A. Uh-huh.

19 Q. And that is attached as page 3 of Exhibit  
20 1, is it not?

21 A. That's correct.

22 Q. Who prepared that document?

23 A. I did.

24 Q. Are you in the business of preparing  
25 legal documents?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

47

1 A. No. We had that document actually  
2 prepared for our pay phone owners, and I took the  
3 template and used it.

4 Q. So you prepared this document and sent it  
5 out to investors?

6 A. I prepared that document, but that  
7 document was originally prepared by Steve Johnson.

8 Q. Now, it says "very limited".

9 A. Uh-huh.



10 Q. Would you tell me where your discretion  
11 is limited in that power of attorney?

12 A. Yes. It's all claims against LifeTime  
13 Capital and Steve Svete, the founder, the  
14 successors or assignors, in any way or in a manner  
15 deemed the best interest in general to perform acts  
16 not constituting the law.

17 Q. So where is your discretion limited?

18 A. Only to the LifeTime case.

19 Q. So you don't have a power of attorney  
20 over their entire estate?

21 A. That's exactly right.

22 Q. So that's your reference to "very  
23 limited" --

24 A. Yes.

25 Q. -- that you're not taking over this

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

48

1 individual's entire estate?

2 A. Exactly.

3 Q. Do you explain that anywhere in here?

4 A. No, but they --

5 Q. That's what you mean by "very limited"?

6 A. They could take it to a lawyer and have  
7 him read it, and many of them have.

8 Q. You also indicate on page 2 of Exhibit 1

9 that you have spoken with a qualified  
10 administrator?

11 A. Uh-huh.

12 Q. Who's that qualified administrator?

13 A. That's Mr. Reginald Parker.

14 Q. And again, he's the former CEO of  
15 LifeTime?

16 A. Uh-huh.

17 Q. And you state there that he has a bank  
18 that will lend the money needed without giving away  
19 the farm?

20 A. Yes, sir.

21 Q. What bank does he have?

22 A. He has that information.

23 Q. You're asserting this as a fact, do you  
24 know what bank?

25 A. He does. I don't know what the name of

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

49

1 the bank.

2 Q. Do you know what terms the loan would be  
3 made on?

4 A. No.

5 Q. Okay.

6 A. It's not before me.

7 Q. So you have --

8           A.    But it wouldn't be 7% of each viatical as  
9 far as it comes through.

10          Q.    How do you know?

11          A.    That's my understanding, sir.

12          Q.    How do you know?

13          A.    Because we would negotiate that term.

14          Q.    But you don't know what the terms are?

15          A.    We would negotiate the terms, and we will  
16 be prepared to present those terms to the Court  
17 when the time comes.

18          Q.    So where you state here that this  
19 qualified administrator has a bank that will lend  
20 the money, you don't know what bank and you don't  
21 know on what terms?

22          A.    We know the bank. I don't know the name  
23 of the bank in front of me today, sir. I wasn't  
24 asked to bring this information with me.

25          Q.    And you don't know on what terms?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

50

1           A.    Well, it's in favorable terms.

2           Q.    Do you know the terms?

3           A.    It will be in favorable terms.

4           Q.    Yes or no, do you know the terms?

5           A.    It'll be in favorable terms, and I'm  
6 telling you that's what I know, it'll be in

7 favorable terms.

8 Q. The answer is yes or no, do you know the  
9 terms?

10 A. Yes.

11 Q. What are the terms?

12 A. Favorable.

13 Q. Have they been worked out?

14 A. They're being worked out now.

15 Q. What are the rates?

16 A. Favorable.

17 Q. As compared to what?

18 A. As to the 7% of what the Receiver is  
19 paying as a fee.

20 Q. Have you engaged in the negotiations?

21 A. Yes.

22 Q. With the bank?

23 A. Through Reginald Parker.

24 Q. And you don't know the name of the bank?

25 A. I don't have the name of the bank with

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

51

1 me, sir.

2 Q. And Mr. Reginald Parker is actively  
3 pursuing negotiations with this bank?

4 A. It's my understanding that he is, yes.

5 Wouldn't it be best to present all

6 the facts at court, that way you can get your best  
7 case scenario and let us present ours; wouldn't  
8 that be in the best interest of the investors?

9 Q. What is your position with the IP Fund?

10 A. I am the originator, the administrator.

11 Q. Do you receive any compensation in that  
12 regard?

13 A. No.

14 Q. Of any sort?

15 A. None.

16 Q. How many current members are there?

17 A. As we speak today, we have 100 that have  
18 already signed on, and many more to come.

19 Q. Many more what?

20 A. Many more to come.

21 Q. If you're unsuccessful in unseating the  
22 Receiver, are you going to refund these individuals  
23 money?

24 A. Whatever is left in the IP Fund.

25 Q. So they won't be made whole?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

52

1 A. No.

2 Q. Have you ever been arrested or charged  
3 with a crime?

4 A. I don't think that has anything to do

5 with this.

6 Q. It's relevant, sir.

7 A. In what manner?

8 Q. Have you ever been arrested or charged  
9 with a crime?

10 A. No.

11 Q. Have you ever been convicted of a crime?

12 A. No.

13 Q. Have you ever been a party to a civil  
14 suit?

15 A. Yes.

16 Q. How many?

17 A. Two -- three.

18 Q. What were the names of those cases?

19 A. It was Bustos vs. Primerica Financial  
20 Services, Bustos vs. The Independent Order of  
21 Foresters, and one in, small claims court, Bustos  
22 vs. Abraham Walker.

23 Q. Are you presently involved in an action  
24 with the IRS?

25 A. Yes, we are. We spoke to our attorneys

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

53

1 yesterday and they're representing me in a tax  
2 case.

3 Q. You're talking about filing a suit

4 against the IRS?

5 A. We are planning on filing a declaratory  
6 judgment.

7 Q. Is there an active suit right now between  
8 you and the IRS?

9 A. Yes.

10 Q. The IRS has sued you?

11 A. Yes.

12 Q. And where is that?

13 A. That is here.

14 Q. What's the nature of that claim?

15 A. That is for discovery on all the members  
16 on the Pay Phone Owners Legal Fund.

17 Q. That's not any sort of enforcement action  
18 or anything like that?

19 A. It's an enforcement action is what it  
20 is.

21 Q. Against you personally?

22 A. Against me personally.

23 Q. For how much?

24 A. No dollar amount. It's an enforcement  
25 action to enforce a summons, a subpoena.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

54

1 Q. You refused to comply with the subpoena?

2 A. Yes.

3 Q. Have you ever been subject to any  
4 disciplinary proceedings of any governmental  
5 agency?

6 A. No.

7 Q. Including licensure or anything of that  
8 nature?

9 A. No.

10 Q. And you're sure you've never been  
11 arrested or convicted of a crime or pled guilty?

12 A. No.

13 Q. Or pled no contest?

14 A. No.

15 Q. Have you done any actuarial studies  
16 regarding the LifeTime portfolio?

17 A. No as of yet.

18 Q. Do you know anyone that has?

19 A. Dennis Concilla and Reginald Parker.

20 Q. Do you know if they did actuarial  
21 studies?

22 A. That's what they told me, that they  
23 actually looked at the portfolio, they studied the  
24 portfolio.

25 Q. They looked at it?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

1 A. That's what they said, yes.



2 Q. Did they have actuaries look at it?  
3 A. I don't know that to be true.  
4 Q. They didn't tell you they had actuaries  
5 look at it?  
6 A. No.  
7 Q. They told you they looked at it?  
8 A. Uh-huh.  
9 Q. And you don't consider that an actuarial  
10 study, do you?  
11 A. I don't know.  
12 Q. Do you know what an actuarial study is?  
13 A. Absolutely.  
14 Q. A lawyer sitting in Columbus, Ohio  
15 looking at the portfolio, you deem that an  
16 actuarial study?  
17 A. No.  
18 Has the Receiver done an actuarial  
19 study on the portfolio?  
20 Q. Have you had any contact with David Svete  
21 or any other persons associated with LifeTime in  
22 the last six months?  
23 A. No.  
24 Q. Or anyone formerly associated with  
25 LifeTime other than Reginald Parker?

1 A. Agents.

2 Q. What agents?

3 A. Numerous.

4 Q. Which ones?

5 A. Numerous. I can't tell you the names.

6 Q. You don't know of any?

7 A. I don't know the names.

8 Well, I do know Thell Prueitt. He

9 was here yesterday.

10 Q. And he's an individual that has been

11 soliciting for your IP Fund as well; is that right?

12 A. That's correct.

13 Q. Does he have a position with your IP

14 Fund?

15 A. No, just an agent.

16 Q. Just a what?

17 A. An agent. A LifeTime Capital agent.

18 Q. Who else is associated with the IP Fund?

19 A. Just Steven Johnson, the attorney.

20 Q. Other than Accelerated Benefits and this

21 company that [REDACTED] told you about, do you

22 have any other knowledge, personal knowledge, of

23 the Receiver's previous activities prior to being

24 involved in LifeTime?

25 A. Future First.

1 Q. What do you know about Future First?

2 A. My understanding is he was involved in  
3 Future First. I don't know that much about it. I  
4 was told that by someone else that was involved in  
5 Future First.

6 Q. Do you know anything about the results in  
7 that case?

8 A. Very limited. What I've been able to  
9 search on the internet and through Pacer, the  
10 amount of money recovered by the investors was  
11 something like 30 or 20 cents on the dollar. Not  
12 very much.

13 Q. Do you know anything about the condition  
14 of the portfolio --

15 A. No.

16 Q. -- at the time he became involved as a  
17 receiver?

18 A. No.

19 Q. So you don't have an opinion one way or  
20 the other --

21 A. No.

22 Q. -- as to whether that was a good result  
23 or a bad result; is that right?

24 A. No.

25 Q. Is that correct?

1 A. That is correct.

2 MR. STORAR: Let's take a break for  
3 a few minutes.

4 (Recess/off record.)

5 MR. STORAR: Back on the record.

6 Q. (By Mr. Storar) We got off to a rather  
7 unusual start, and consequently I didn't get a lot  
8 of the background information that I usually do.

9 What is your current address?

10 A. Business address or home address?

11 Q. Business will be fine.

12 A. 909 Northeast Loop 410.

13 Q. And your date of birth?

14 A. 10/25/51.

15 Q. Social Security number?

16 A. You want my Social Security for what  
17 purpose?

18 Q. I'm entitled to know it.

19 A. You're entitled to know my Social  
20 Security number?

21 Q. Yes.

22 A. How do I know you're not going to go and  
23 open up credit cards and run up my bills?

24 Q. What's your Social Security number?

25 A. Isn't that information protected by

1 HIPAA?

2 Q. Will you answer the question?

3 A. I'm just asking. I mean, it's very  
4 unusual for somebody to ask me for my Social  
5 Security number.

6 Q. Will you answer the question or not?

7 A. No.

8 Q. Once again, you've never been  
9 convicted --

10 A. No.

11 Q. -- of any crime --

12 A. No.

13 Q. -- in Bexar County?

14 A. No.

15 Q. Even one that maybe the records were  
16 sealed in?

17 A. No.

18 Q. Looking again at Examiner's Exhibit 2, if  
19 you would turn to page 2 of the motion to pool,  
20 which is several pages back.

21 A. What page is that?

22 Q. Page 2 of the motion to pool. Are you  
23 looking at Examiner's Exhibit 2?

24 A. No, you gave me 1. Oh, here it is.

25 Page 2?

1 Q. Farther back in the Examiner's motion to  
2 pool.

3 A. Oh, okay.

4 Q. That's page 2.

5 A. Uh-huh.

6 Q. Do you see that?

7 A. Yes.

8 Q. Now, the first actual full paragraph  
9 there does discuss the \$154,698,000, does it not?

10 A. Uh-huh.

11 Q. As an asset of LifeTime?

12 A. (Nodded affirmatively.)

13 Q. So does that refresh your recollection at  
14 all as to whether the Receiver has made any  
15 representations whatsoever as to the size of the  
16 return that he expects?

17 A. Well, yes, it does. And the reason I'm  
18 saying that is because down on the bottom it talks  
19 about the \$96 million that the individuals  
20 invested. Our conclusion is that he's basing his  
21 numbers on the 96 million, because his math was  
22 done on the 96 million and not on the 154. If he  
23 had intentions of giving them credit on the full  
24 154, why wasn't the math done on the 154?

25 Q. So you're saying that --

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

61

1 A. Is that a reasonable question?

2 Q. I'm not here to answer questions.

3 A. Oh, okay.

4 Q. You're saying because he refers to the  
5 amount invested, that you can extrapolate from that  
6 that he is only going to return 86 million?

7 A. Reading between the lines, we're saying  
8 that he's basing his return on 96 million.

9 Q. Do you see anywhere where he actually  
10 says that?

11 A. We can see by the number that he's  
12 actually put down and the .001 of the 96 million is  
13 86.

14 Q. If you wanted --

15 A. In fact, I think that's how I actually  
16 came up with the math.

17 Q. If you wanted to determine what  
18 percentage of the money invested by an individual  
19 as compared to all individuals, what number would  
20 you look at, the death benefit or the amount  
21 invested?

22 A. Well, you'd have to take each individual  
23 and do that. You couldn't do it as a whole.

24 Q. But what numbers would you look at, the  
25 amount they invested or the death benefit?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

62

1 A. I would have to tend to think that you  
2 would have to look at the entire portfolio,  
3 wouldn't you?

4 Q. If you were trying to determine an  
5 individual's interest in the investment compared to  
6 everyone else's --

7 A. Oh, okay. No, you're right.

8 Q. -- what number would you look at?

9 A. 96. You are correct.

10 Q. And isn't that exactly what the Receiver  
11 has done when he's saying that in determining what  
12 the pro rata interest of the pool, whatever that  
13 pool might be, you have to look at the amount  
14 invested as compared to the total amount invested?

15 A. I think that it's disingenuous for the  
16 Receiver to use one number and have other people  
17 assume what he's thinking.

18 Q. So what is contained in Exhibit 1 is  
19 merely assumptions on your part; isn't that right?

20 A. It is an assumption on the numbers on our  
21 part.

22 MR. STORAR: Okay. I don't have any



23 further questions.

24 EXAMINATION

25 BY MR. KIRK:

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

63

1 Q. Mr. Bustos, I believe it was your  
2 testimony earlier today that you said you had  
3 placed approximately two million dollars in  
4 investments with LifeTime; is that correct?

5 A. We, as a group, have two million dollars  
6 in investments in LifeTime, approximately, yes.

7 Q. All right. When you say as a group, what  
8 do you mean?

9 A. That is detailed in the letters that were  
10 sent to the attorney and names that were included  
11 there, as a whole.

12 Q. You're referring to yourself, [REDACTED]  
13 [REDACTED]?

14 A. Uh-huh. And any other agents that were  
15 underneath that group of business, that's correct.  
16 And we know that we have over \$2 million in  
17 LifeTime as a group.

18 Q. Do you have agents that work for you?

19 A. Yes, I do.

20 Q. Please identify all those agents that  
21 work for you that placed investments with LifeTime?

22 A. They're investors also. [REDACTED],

23 [REDACTED]. A

24 couple more, but it escapes my --

25 Q. Do you have something available to you

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

64

1 that would identify the rest of the --

2 A. 1099s, when they were paid, how much they

3 were paid.

4 Q. Will you make that information available?

5 A. I will.

6 Q. You're talking about in-house agents?

7 A. Correct.

8 Q. Did you share commissions --

9 A. Yes.

10 Q. -- with those agents?

11 A. Yes.

12 Q. How much commission did you make on your

13 placement of your investments with LifeTime?

14 A. I can't tell you that number. I have no

15 idea.

16 Q. What was the percentages?

17 A. I can't tell you. I don't have any

18 idea.

19 Q. You don't remember the percentages?

20 A. I don't remember the percentages, no.

21 Q. How long have you been in the insurance  
22 business?

23 A. 20 -- well, since 1979.

24 Q. What companies do you write insurance  
25 for?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

65

1 A. Right now we're appointed with Great  
2 American and Jackson National.

3 Q. Have you ever been a captive agent?

4 A. Yes, Primerica Financial Services.

5 Q. And you mentioned previously you had a  
6 lawsuit with Primerica, is that what that was over?

7 A. It was over the ownership of the records  
8 that we had established over a 15 or 16 year  
9 period.

10 Q. So basically your book of business?

11 A. My book of business.

12 Q. What was the outcome?

13 A. We settled; they paid.

14 Q. Did you have to enter into a  
15 non-solicitation for a certain investment group of  
16 customers as a part of the settlement?

17 A. No.

18 Q. When did you get away from the  
19 non-traditional type of insurance products?

20 A. LifeTime Capital.  
21 Q. That was your first insurance?  
22 A. Uh-huh.  
23 Q. Had you not been involved in pay phone  
24 investments at that point?  
25 A. No, not at that time.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

66

1 Q. Have you ever been involved in anything  
2 called, I think they refer to it in the industry, a  
3 monthly income plan?  
4 A. No, never even heard of that. What is  
5 that?  
6 Q. Where an investor loans money to a  
7 company, and then the company agrees to make  
8 payments back on a monthly basis.  
9 A. No.  
10 Q. When did you get involved with the pay  
11 phone investments?  
12 A. I want to say the latter part of 1999,  
13 early part of 2000.  
14 Q. Okay.  
15 A. No, wait a minute. It was -- yeah, it  
16 was the latter part of 1999, early part of 2000 as  
17 well.  
18 Q. And how much in investment dollars did

19 you place with the pay phone investments?

20 A. About \$600,000 or \$700,000.

21 Q. Aside from the names of the other former  
22 LifeTime brokers who are reflected in your letter  
23 to LifeTime, who else have you spoken with in  
24 connection with the current LifeTime situation?

25 A. I've spoken to a lot of people who have

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

67

1 called on the phone, even lawyers who represent the  
2 investors, agents that are getting called by the  
3 investors to place a call to me, and some of these  
4 agents know of me because of the Pay Phone Owners  
5 Legal Fund.

6 Q. Would it be fair to characterize that  
7 most of those communications were a result of you  
8 having sent the letter out to investors?

9 A. Yes.

10 Q. How many letters have you sent to  
11 investors?

12 A. I think I answered that earlier, 2700.

13 Q. No. How many different letters, not how  
14 many letters?

15 A. One letter.

16 Q. All right. Are you communicating with  
17 brokers through E-mail?

18           A.    No.  That E-mail is -- I am, but I'm not  
19 communicating with a lot of agents and a lot of  
20 clients.

21           Q.    What is your E-mail address?

22           A.    IPFund@aol.com.

23           Q.    What's your regular E-mail address?

24           A.    erblassoc2@aol.com.

25           Q.    Repeat that again, please?

                  PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

68

1           A.    erblassoc2@aol.com.

2           Q.    You brought a file with you today, and  
3 I'd like you to just briefly examine that file and  
4 then I want to ask some very general questions  
5 regarding the contents of that file.

6                   MR. KIRK:  Let's go off the record  
7 for a second.

8                                (Off record.)

9                   MR. KIRK:  Back on the record.

10          Q.    (By Mr. Kirk)  Would it be a fair  
11 characterization to identify that particular file  
12 that you're going through as being primarily the  
13 marketing materials that you've received from time  
14 to time from LifeTime Capital during the period in  
15 which you had a brokerage relationship with them?

16          A.    That is correct.

17 Q. Now, if I can refer you to this other  
18 thinner file. And what I would like to do is mark  
19 -- let me go through some of it.

20 Mr. Bustos, these are copies of what  
21 was in this file right here.

22 A. Okay.

23 Q. Do you have any objection to me marking  
24 these as an exhibit?

25 A. As long as it's a complete file of what

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

69

1 you're taking, and you've said that it is.

2 MR. KIRK: We'll mark this as  
3 Receiver's 1

4 (Receiver's Exhibit No. 1 marked.)

5 Q. (By Mr. Kirk) and Describe for me in  
6 your own words, please, the contents of the file  
7 you have in front of you.

8 A. These are letters that were sent out  
9 immediately after our client started receiving  
10 premium notices from LifeTime Capital. And we  
11 wanted to have information to see whether or not we  
12 had cause to sue LifeTime Capital for  
13 misrepresentation.

14 Q. Is that the sum total of the  
15 correspondence that you had --

16 A. Basically that was --  
17 Q. -- with LifeTime or with --  
18 A. -- that was the intent, yes.  
19 Q. Remember we've got the problem with  
20 getting a record if you cut me off.  
21 A. Okay. I'm sorry.  
22 Q. -- with LifeTime or its agents or  
23 representatives, including its attorney?  
24 A. Yes, I believe it is.  
25 Q. So you don't have any other

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

70

1 correspondence or communications from or about  
2 Dennis Concilla other than what's in that file?  
3 A. Hold on, let me see here. Yes, that's  
4 correct. He wrote back to us one time. I talked  
5 to him on the phone and he wrote back to us one  
6 time.  
7 Q. Earlier I believe your testimony was that  
8 you said that Mr. Concilla informed you that the  
9 majority of the viators represented by the LifeTime  
10 portfolio were 82 or older?  
11 A. That's what I've been told, yes.  
12 Q. That's what you've been told?  
13 A. That's what I was told, yes, sir.  
14 Q. And who told you that?



15           A.    Two sources, Dennis Concilla and Reginald  
16 Parker.

17           Q.    They told you personally?

18           A.    Yes.  Dennis did it by phone and Reginald  
19 Parker, I think we talked about it in Florida.

20           Q.    So you're not saying that that's the  
21 case, you're just saying that's what you were told?

22           A.    That's what I've been told.  I suggested  
23 that what we needed to do was to do a new  
24 examination of all viators to bring the portfolio  
25 up-to-date to see exactly where these people stood,

                  PREMIERE REPORTING \* (210) 377-0720  
                  10703 Janet Lee \* San Antonio, Texas 78230

71

1 whether or not they were ill at the time that they  
2 actually sold their policies and whether or not  
3 they part of the conspiracy to defraud the  
4 investors.

5           Q.    Again, this is copies of the contents of  
6 this file we were just referring to on your  
7 communications with LifeTime and Mr. Concilla?

8           A.    Uh-huh.

9           Q.    I'd like to have her mark this as  
10 Receiver's 2.

11           A.    Sure.

12                         (Receiver's Exhibit No. 2 marked.)

13           A.    And it's my understanding that there is a

14 tape that is in existence that was done by one of  
15 -- you'll see the E-mail that was sent to me.

16 Q. (By Mr. Kirk) Would that be [REDACTED]?

17 A. [REDACTED], that's exactly right.

18 Q. You taped his conversation with  
19 Mr. Concilla?

20 A. Uh-huh.

21 Q. Have you got a copy of that tape?

22 A. No, I do not.

23 Q. Where is [REDACTED] located?

24 A. Mr. Stark is in Orange, Texas. [REDACTED]

25 [REDACTED] were representatives of LifeTime and

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

72

1 they were also inside of our group. These are  
2 people who all left Primerica at basically the same  
3 time.

4 Q. All right. Do you claim to be an expert  
5 in the analysis or management of viatical  
6 portfolios?

7 A. No.

8 Q. Do you have any idea what percentage of  
9 the face value of a portfolio, viatical portfolio,  
10 would be the premium costs?

11 A. Not without the actuarials and the  
12 studies that need to be done yet.

13 Q. Do you have actuarial firms in mind to do  
14 this analysis that you want to do?

15 A. No.

16 Q. But you haven't talked to anybody about  
17 it?

18 A. Not as of yet.

19 Q. Have you secured counsel in the state of  
20 Ohio?

21 A. Not as of yet.

22 Q. Have you talked to counsel in Ohio?

23 A. Not as of yet. I did talk to a lawyer  
24 that was an investor in LifeTime in Ohio, but he  
25 wasn't our counsel.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

73

1 Q. Do you know who that individual's name  
2 was?

3 A. I think the last name was [REDACTED].

4 Q. Would it be [REDACTED]?

5 A. [REDACTED]. He said he was an  
6 investor.

7 Q. Have you spoken with anyone besides Steve  
8 Johnson regarding the legal aspects of the IP Fund?

9 A. No.

10 Q. How long has Mr. Johnson been your  
11 attorney?

12 A. Since 1998.

13 Q. When was the last time you looked at the  
14 Receiver's web site?

15 A. I want to say it was the first part of  
16 July. First part of July.

17 Q. Have you ever had anyone file a complaint  
18 against you with any regulatory agencies?

19 A. No.

20 Q. Have you ever entered into any sort of  
21 cease and desist order?

22 A. No.

23 Q. You mention that you at one time you had  
24 a series 6 license?

25 A. Yes.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

74

1 Q. Why did you give that up?

2 A. Basically because we wanted to get away  
3 from the marketplace. We saw a lot of things  
4 happening in the marketplace and all of our  
5 investors were in the marketplace. The 1998-2000  
6 market was soaring. We believed that it couldn't  
7 sustain its pace and we decided to pull. And we  
8 looked at other avenues and there was no avenues  
9 available other than annuities, and we didn't want  
10 to sell annuities.

11 Q. Do you sell more life insurance products  
12 or property and casualty insurance?

13 A. I have no property and casual license.

14 Q. Do you sell health?

15 A. We have health, yes.

16 Q. What percentage of your business is life  
17 insurance?

18 A. I would tend to think it's better than  
19 20%, 30% or 40% maybe.

20 Q. And who do you mainly write your life  
21 insurance for?

22 A. Two companies, Jackson National and Great  
23 American.

24 Q. And how long have you been an agent for  
25 these companies?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

75

1 A. Shortly after I left Primerica, back in  
2 '98.

3 Q. The examiner asked you questions about  
4 the Pay Phone Investors Fund.

5 A. Right.

6 Q. You mentioned that the actual face --

7 A. Can I ask you what that pertains to in  
8 this case?

9 Q. It's within the standard that the judge

10 enunciated on the phone that is --

11 A. I believe that that's true.

12 Q. -- relevant or --

13 A. Can we get a determination on that on the  
14 phone?

15 Q. -- likely to be relevant evidence.

16 A. Can we get a determination on that?

17 Q. I'm going to ask the question,  
18 Mr. Bustos.

19 A. Okay.

20 Q. I think the judge has already made her  
21 determination.

22 A. Based on the LifeTime Capital case. I'll  
23 answer your question anyway, I don't have knowing  
24 to hide in the Pay Phone Owners.

25 Q. Where is that case in Oregon?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

76

1 A. Right now it's before Judge Panner.

2 Q. Is that a state court judge or a federal  
3 district judge?

4 A. It's in U.S. Court.

5 Q. And what city is that court located?

6 A. Portland.

7 Q. Portland?

8 A. I think it's Portland, yeah.

9 Q. What are the names of the attorneys who  
10 are representing --

11 A. Shushman and Shanks represented us in the  
12 bankruptcy case against the Receiver. There's  
13 voluminous documents on that. The firm that now  
14 represents us is Schwabe out of Portland, Oregon.  
15 They've got a big name and have the 16th, 17th,  
16 18th and 19th floors. They represent the agents in  
17 the case.

18 Q. Are there actions against the agents?

19 A. Yes, discouragement actions that were  
20 brought fourth by the Receiver.

21 Q. And you said you had some firms in Texas  
22 also?

23 A. We have two firms in Texas, one being  
24 Steve Johnson, and the other one being Pizen in --  
25 I can't recall his entire firm's name, but Pizen is

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

77

1 the lead attorney that we wrote a retainer to.  
2 He's in Hidalgo County, McAllen.

3 Q. Spell that name for me, please.

4 A. P-i-z-e-n, I think it is. I can get you  
5 the correct spelling.

6 Q. I would appreciate that. Have you had  
7 any of your investors threaten to sue you?

8 A. None.

9 Q. Have you bought back any investments from  
10 any of your investors at any time?

11 A. None.

12 Q. When you were selling for LifeTime, who  
13 did you deal with primarily within the LifeTime  
14 organization?

15 A. Richard Wilson was my up-line, and we  
16 really didn't deal with anybody at LifeTime -- or  
17 actually through Wealth Strategy at first, because  
18 that's what we started with, was with Wealth  
19 Strategy, so we really didn't deal with anybody  
20 directly with Wealth Strategy. It was when  
21 LifeTime Capital came aboard. And our assigned  
22 representative at that time that we dealt with  
23 directly was Pete Carlisi.

24 Q. Where is Mr. Carlisi, do you know?

25 A. He's in Florida.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

78

1 Q. Still?

2 A. Uh-huh.

3 Q. Have you spoken with him recently?

4 A. I do speak to him, yes, sir.

5 Q. Excuse me?

6 A. I do speak to him.



7 Q. How much business did he place?

8 A. Mr. Carlisi, I have no idea how much  
9 business he placed, but I do know that he did place  
10 some business.

11 Q. He wasn't in-house with LifeTime?

12 A. He was an in-house representative for  
13 LifeTime Capital.

14 Q. He was a captive representative, in other  
15 words?

16 A. Yeah. He was an account representative.  
17 He had agents in the State of Texas and some other  
18 states.

19 Q. It is my understanding, Mr. Bustos, that  
20 when LifeTime relocated from Ohio to southern  
21 Florida, that LifeTime took over its own marketing  
22 duties and responsibilities and Wealth Strategy  
23 ceased to be involved; is that your understanding?

24 A. It is my understanding that Wealth  
25 Strategy was actually sold to LifeTime.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

79

1 Q. So after they moved to Florida, you  
2 didn't do business through Wealth Strategy anymore?

3 A. It's my understanding that they ceased to  
4 be in existence, in business.

5 Q. Did you ever have occasion to talk with

6 David Svete?

7 A. Never met the man.

8 Q. Did you ever have occasion to talk to Ed  
9 Pearson?

10 A. I've talked to Ed Pearson several times  
11 since the letter has gone out.

12 Q. Let's talk about that.

13 A. Okay.

14 Q. Describe for me, please, how it was that  
15 you and Mr. Pearson communicated?

16 A. Through phone.

17 Q. Did he call you?

18 A. Yes, he did.

19 Q. And what did he have to say, describe  
20 that conversation?

21 A. He said that he was an agent for LifeTime  
22 Capital and that he had been notified by some of  
23 his investors that they had received a letter, and  
24 that he wanted to discuss with me a little bit  
25 further before he actually gave the go ahead to his

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

80

1 investors.

2 Q. All right. And so did you have that  
3 discussion?

4 A. We did.

5 Q. Please describe for me in as much detail  
6 as possible that conversation.

7 A. Basically his question was: What's the  
8 plan? Where is it going to go? I told him that  
9 the plan was still being developed and that we  
10 would be unveiling that plan in court.

11 Q. Let's talk about that plan.

12 A. That plan is still being developed and  
13 will be presented in court.

14 Q. Well, let's talk about what you know at  
15 this point about your plan. What are the  
16 components of that plan?

17 A. We believe that the company can be  
18 assembled to the benefit of the investors. We  
19 believe that all the investors separating  
20 themselves from LifeTime as a whole, appointing a  
21 board made up of investors themselves to oversee  
22 the expenses and overseeing the back-room expenses,  
23 can control the expenses of LifeTime, and also do  
24 their investigative work on the policies that are  
25 actually in hand, to see whether or not they have

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

81

1 validity, whether or not these individual people  
2 were ill at the time that they sold the policies,  
3 whether or not they were coconspirators of

4 Mr. Svete by selling policies at the time that they  
5 were dealing.

6 Q. And how do you propose to fund that cost?

7 A. Through loans. By leveraging \$154  
8 million package through loans, favorable loans.

9 Q. When you say favorable, you've obviously  
10 looked at the terms of the credit facility that's  
11 been approved by court.

12 A. Uh-huh.

13 Q. What is it that you think you can  
14 accomplish through a loan that is better than the  
15 terms that the court approved?

16 A. Well, it's my understanding that the  
17 arrangement that has been established by the  
18 Receiver himself is that he is paying a 7% premium  
19 on all viaticals that are maturing as payment. And  
20 7% is quite a bit.

21 Q. Have you --

22 A. It's my understanding he's borrowed \$5  
23 million, and if there's any policies that have  
24 matured, then they've probably more than received  
25 their \$5 million back. We don't know how many

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

82

1 policies have matured, but we intend to find out.

2 Q. How many other viatical cases have you

3 examined as far as premium finance or insurance?

4 A. We really haven't examined companies for  
5 premium arrangements. What we're mainly concerned  
6 about is the expenditures of the Receiver and the  
7 receivership process.

8 For example, mutual benefits right  
9 now, according to what we're seeing right now, the  
10 Receiver and his lawyers - well, the Receiver is a  
11 lawyer, and his back-room people are billing mutual  
12 benefits at \$500,000 a month at this point right  
13 now. That's a considerable amount of money.

14 Q. Okay.

15 A. Even though it's a billion dollar  
16 proposal.

17 Q. Do you have any idea what the premium  
18 cost is on that portfolio?

19 A. No, not necessarily. We've not looked at  
20 it in detail. We're really not concerned about  
21 mutual benefits, we're concerned about LifeTime  
22 Capital.

23 Q. Have you ever dealt with Doug Cordell?

24 A. I don't know who Doug Cordell is.

25 Q. Have you ever dealt with Roger Lang?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

83

1 A. I don't know who Roger Lang is.

2 Q. Have you ever dealt with Charmin Austin?

3 A. Don't know who he is.

4 Q. Have you ever dealt with a gentleman by  
5 the name of Ron Gerardo?

6 A. No.

7 Q. Did you have more than one conversation  
8 with Ed Pearson?

9 A. I think I've had two conversations with  
10 Ed Pearson. And Bob Hanseman called me because he  
11 supposedly is an investor underneath Mr. Pearson.

12 Q. What was the trigger point for you,  
13 Mr. Bustos, that you decided to write this letter  
14 to investors and you came up with this idea of the  
15 IP Fund?

16 A. Well, I -- please keep in mind when I  
17 tell you that I didn't need anymore on my plate.  
18 My plate is quite full right now.

19 Q. Okay.

20 A. I had calls from individual agents that  
21 suggested I take a look at it, one being Thell  
22 Prueitt, Winona and Bill Stark. And I went on the  
23 web site and started looking, and looked at the  
24 expenses that were being generated. There was one  
25 conversation or one billing for one of the items

1 that the Receiver was speaking about in his billing  
2 process, and this was in -- I want to say it was in  
3 April that he charged .20 in time to talk to  
4 someone about looking for financing of an amount of  
5 \$3 million for attorney's fees, and that alarmed  
6 me. The Receiver had been involved just for a few  
7 months and he was already looking for financing for  
8 \$3 million for the attorneys. We couldn't see a  
9 good end to that.

10 We believe that the investors made  
11 those investments. We believe that the investors  
12 have more of a vested interest to receive more  
13 money in return, and we believe that they can  
14 assemble a company that can be run in a  
15 cost-effective manner, rather than one that's  
16 abusive, at best.

17 The receivership process in every  
18 case that we have seen is abusive.

19 Q. So it's not just Mr. Moran, it's  
20 receiverships in general that --

21 A. Receiverships in general, that's right.

22 Q. -- you are against?

23 THE WITNESS: Can I have some water?

24 MR. KIRK: You need to take a break?

25 THE WITNESS: Yeah.

1 (Recess/off record.)

2 Q. (By Mr. Kirk) Mr. Storar asked you what  
3 brokers you had spoken to, and you and I talked  
4 about that that as well. Do you make notes  
5 anywhere when you talk to these people?

6 A. There's so many people that are calling,  
7 that I do not.

8 Q. You don't?

9 A. And in most cases, I'm out of the office  
10 so I'm talking on the phone and driving at the same  
11 time.

12 Q. You don't have a pad or you don't --

13 A. It's rather hard to drive and talk and  
14 write at the same time, sir.

15 Q. Well, will you commit that if you have  
16 any records or your memory improves, that you will  
17 provide us with a list of any other brokers that  
18 you have spoken to about the LifeTime situation?

19 A. What I will commit to you to do is at  
20 this point, that anybody who calls into my office  
21 before they forward the phone call to me, that the  
22 receptionist that answers that phone call gets a  
23 name.

24 At this point right now, we're  
25 attempting to find out who's calling. Because we



1 get calls and these people say who they are, but we  
2 have no way of verifying who they are.

3 Q. What's the suite number for your  
4 business?

5 A. 300.

6 Q. Is that an executive suite arrangement?

7 A. Yes, it is.

8 Q. Did you say you have received 100 powers  
9 of attorney?

10 A. I think that that's the number that we  
11 closed out yesterday with, that's right.

12 Q. Okay.

13 A. And that number pretty much mirrors the  
14 Pay Phone Owners Legal Fund when we got it started.

15 Q. And what does that translate to in terms  
16 of dollars that you've received?

17 A. I think we've received so far --  
18 actually, it's less than 100; it's about 85 or 90  
19 right now. I think the deposits into the IP Fund  
20 to date is about that amount, about \$9,000 or  
21 \$10,000. Not a lot.

22 Q. You understand, don't you, Mr. Bustos,  
23 that administration of the portfolio is not the  
24 only aspect of the receivership?

25 A. We understand that.

1 Q. And you understand that even under your  
2 plan, that you would still have costs associated  
3 with other litigation related to LifeTime?

4 A. If we separated our company from  
5 LifeTime, we don't see how those expenses could be  
6 passed on if the investors have walked away from  
7 LifeTime.

8 Q. Have you read the indictment?

9 A. Uh-huh. It's an indictment to LifeTime  
10 Capital and Steve Svete. The assets belong to the  
11 investors, not Dave Svete or LifeTime Capital.

12 Q. Including the \$20 million that is alleged  
13 to have been taken out of the treasury of LifeTime?

14 A. I saw that, yeah.

15 Q. And you think the investors are just  
16 going to walk away from that?

17 A. Well, the investors can actually form  
18 their own lawsuit to go after Dave Svete.

19 Q. So your question is you don't know? I  
20 mean, your answer is you don't know?

21 A. My answer is, no, I don't know. I don't  
22 know what the investors want to do in that case.

23 Q. All right. Let's go back to your plan.

24 A. Okay.

25 Q. If I understand what you're saying, and I

1 don't want to put words in your mouth, I just want  
2 to understand the plan, you're going to ask the  
3 Court to appoint a committee or a group of  
4 investors, and ask that those investors be given  
5 power by the Court to administer the assets of  
6 LifeTime?

7 A. No. We're asking the Court to allow the  
8 formation of another company so that that way these  
9 people can sit on the board to administer the  
10 assets of the new company.

11 Q. With the company not being subject to the  
12 Court's jurisdiction?

13 A. Well, I don't know if they would be  
14 subject to the Court's jurisdiction. I guess we'd  
15 have to look at that as a cross in the road.

16 Q. Have you ever spoken to Mr. Moran?

17 A. No.

18 Q. Have you ever spoken to anyone who worked  
19 for or with Mr. Moran?

20 A. No, but I've had clients that have called  
21 me and said that they have.

22 Q. And who are those clients?

23 A. [REDACTED], she's not in the  
24 actual viatical because it was an individual  
25 retirement account, but she told me that the

1 receiver's person who answered the phone said that  
2 the recovery was looking grim.

3 Q. But you don't have any information --

4 A. Other than what she was told, no.

5 Q. -- as to why that might be the case?

6 A. No.

7 Q. Okay.

8 A. I do not.

9 Q. Now, did I understand you to say that you  
10 got on Pacer and you got pleadings?

11 A. No, I downloaded a couple of documents to  
12 Pacer, but I couldn't download everything.

13 Q. Relating to ABC?

14 A. ABC, yes.

15 Q. Do you remember what those documents  
16 were?

17 A. The initial pleadings I guess it was,  
18 what the pleadings were.

19 Q. That were filed by the Department of  
20 Securities?

21 A. I think it was filed by the Department of  
22 Securities, yes.

23 Q. And what else?

24 A. That's it.

25 Q. So you didn't download any of the

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

90

1 pleadings that related to the --

2 A. They were voluminous.

3 Q. -- the sale process or anything?

4 A. They were voluminous.

5 Q. And you haven't done any due diligence

6 beyond just information that you've received

7 from --

8 A. From individual people who know about the

9 cases.

10 Q. -- individuals?

11 Now, you talked about Future First

12 earlier. What's the source of your information on

13 Future First?

14 A. Richard Wilson. And if I'm not mistaken,

15 the Receiver was involved in Future First somehow.

16 Q. But you don't know how?

17 A. I don't know how.

18 Q. And what was Richard Wilson's

19 involvement?

20 A. His statement to me was that the

21 investors were getting very little money, something

22 like 22 cents or 32 cents out of every dollar.

23 Q. But you don't know whether the Receiver

24 had anything to do with that or not?

25 A. No.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

91

1 Q. Do you know what kind of an entity you  
2 would form for this hostile takeover?

3 A. Well, it would probably be something  
4 similar to maybe a closed-end mutual fund, you  
5 know, to be able to get the permission of the Court  
6 to do so.

7 Q. Is Mr. Johnson a securities lawyer?

8 A. No, we would have to engage the lawyers  
9 to be able to do that.

10 Q. Do you happen to know what type of  
11 practice Mr. Johnson has?

12 A. Contract lawyer.

13 Q. So he --

14 A. He's primarily contract lawyer.

15 Q. A commercial lawyer?

16 A. Contract lawyer.

17 Q. Not a litigator?

18 A. He litigates also. He's also a mediation  
19 judge. He did some mediation cases, arbitration  
20 cases.

21 Q. Have you ever been involved in an  
22 arbitration or mediation?

23 A. Primerica Financial Services.

24 Q. Now, you talked about a [REDACTED].

25 A. [REDACTED] is --

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

92

1 Q. I was very confused by your testimony  
2 about that. Would you please elaborate?

3 A. She called me, my gosh, I can't remember  
4 when she did call me. But I did write her phone  
5 number down and I wrote down some information  
6 because I found her conversation rather  
7 interesting. She called me when I was in my  
8 office. And what she told me was that she was on  
9 the creditor's committee on the bankruptcy case for  
10 Beneficial, and --

11 Q. Which Beneficial?

12 A. It's a viatical company. Beneficial -- I  
13 don't have the complete name of the company, but I  
14 do have the pleading. I went to Pacer and  
15 downloaded that.

16 Q. Would you be kind enough to provide that  
17 to us?

18 A. I will. And what she told me was that  
19 the committee was held at bay by the Receiver and  
20 the Receiver's lawyers, which is not uncommon. She  
21 also told me that they stood by and watched them

22 basically charge a lot of money for the  
23 administration of the company. And that finally  
24 what they did is they went to court and had the  
25 Receiver unseated and formed a new company. She

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

93

1 did tell me the name of the company, and I have  
2 that written down also.

3 Q. But that was in a bankruptcy context?

4 A. That was in a bankruptcy context, in the  
5 context of a bankruptcy. And I understood what she  
6 was saying because we'd been fighting the Receiver  
7 over the bankruptcy case in the Pay Phone Owner  
8 Legal Fund and I understand the process of how that  
9 can actually turn. And she said that she was a  
10 million dollar investor in Beneficial and that she  
11 was only a hundred thousand dollar investor in  
12 LifeTime Capital. She also said that she believed  
13 that this was the best case scenario for the  
14 investors, and that she would support the movement  
15 to try to unseat the Receiver.

16 Q. Where is [REDACTED] from?

17 A. I have that information in my office. I  
18 couldn't tell you.

19 Q. Will you provide that for us?

20 A. I will.



21 Q. Have you made any arrangement, informal  
22 or otherwise, with Reginald Parker that if you are  
23 successful in implementing your plan, that he will  
24 have a part in it?

25 A. He will have an opportunity to present

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

94

1 his best case scenario.

2 Now, we will take the individuals  
3 that we are able to fund.

4 Q. Do you have a source of funds outside of  
5 what Mr. Parker's been telling you he can do?

6 A. No. But once we actually take a close  
7 look at the portfolio and see what and how the  
8 portfolio is, we believe that we can market that  
9 portfolio and get loans against it.

10 Q. What do you think you can get for that  
11 portfolio?

12 A. I don't know. I've got to look at it.  
13 I've got to have people look at it, and then we can  
14 negotiate a price.

15 Q. But you don't know who those people would  
16 be?

17 A. No, not at this point right now.

18 You have to keep in mind that we  
19 started this on July the 19th or 20th, and this is

20 the initial stages of this. Right now we need to  
21 get enough support to be able to intervene.

22 Q. Who told you that the ABC portfolio was  
23 sold with a promise that the premiums would be  
24 paid?

25 A. Reginald Parker told me that.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

95

1 Q. Do you have notes from your conversations  
2 with Mr. Parker?

3 A. No.

4 Q. So it's all memory?

5 A. Uh-huh.

6 Q. You have no written recollection of any  
7 kind in your conversations with Mr. Parker?

8 A. I do not.

9 Q. Did Mr. Parker call you first or did you  
10 call him?

11 A. No, I called him. I called him. I  
12 wanted to have more information about LifeTime and  
13 I wanted to be able to get the information before I  
14 made the commitment to start the IP Fund.

15 Q. What is Mr. Parker's current state of  
16 health?

17 A. I don't know, I'm not a doctor.

18 Q. Well, how did he seem to you?

19           A.    Okay.  He said he was going to be a  
20 witness for the prosecution in the Dave Svete  
21 trial.

22           Q.    Did he tell you what he was going to be  
23 testifying to?

24           A.    No, he did not.

25           Q.    Have you resolved in your mind where you

                  PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

96

1 got the 86 million figure that was in your letter  
2 to the investors?

3           A.    I think I did.  I think what I did was I  
4 took the .001 number and divided it into the 96,  
5 because it comes out to 86.  I think that's what I  
6 did.

7           Q.    I need you to walk me through that  
8 calculation, please.

9                   MR. KIRK:  And let's mark this page  
10 as Receiver's 3.

11                   (Receiver's Exhibit No. 3 marked.)

12           A.    Do you have a real calculator that I can  
13 use?

14           Q.    (By Mr. Kirk)  I don't.  I don't know if  
15 we can --

16           A.    This one doesn't go as high.  It stops  
17 at -- we can only identify 2700.  It doesn't go

18 that high. I need a big calculator.

19 Q. Excuse me?

20 A. I need a big calculator. It only goes up  
21 to that number.

22 Q. That will go to 96 million.

23 A. 154, I thought we were dealing with that  
24 number. You mean we should deal with the 96?

25 Q. I wanted to know how you got the 86

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

97

1 million.

2 A. Okay.

3 Q. That's the calculation I wanted you to  
4 perform?

5 A. Okay. All right.

6 (Brief pause/calculating.)

7 I took the .00101331 out of the 96  
8 million, and that gave me -- which is 10%; isn't  
9 that correct? I can't make it do it.

10 (Brief pause/calculating.)

11 I come up with 99999, if I take that  
12 number as a percentage of the 96 million. But it  
13 puts the placement in a different place.

14 Q. So we still don't know where you got that  
15 number from?

16 A. No, I have to go back and check to see

17 exactly how I did that.

18 Q. Mr. Bustos, would you state your full  
19 name for the record, please?

20 A. I just did that a while ago.

21 Q. Would you mind doing it again?

22 A. Ernest Bustos.

23 Q. What's your middle initial?

24 A. No middle initial.

25 Q. No middle initial?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

98

1 A. No middle initial.

2 Q. Are you a Jr.?

3 A. No. And I don't know of an existence of  
4 a Jr. either, so if you know that, please let me  
5 know.

6 Q. Are you also known as Ernesto Bustos?

7 A. Yes.

8 Q. And where do you live?

9 A. 2110 -- actually, 2163 Encino Loop.

10 Q. But you have no middle initial?

11 A. No.

12 Q. Is your Social Security number

13 [REDACTED]?

14 A. That is correct.

15 Q. Have you ever been arrested?

16 A. According to the court records, no.

17 Q. Have you ever been arrested?

18 A. According to the court records, no.

19 Q. Have you ever had records expunged?

20 A. Yes.

21 Q. Tell me about that.

22 A. I can't really recall the situations  
23 behind it, but I know I've had records expunged.  
24 The lawyer that handled that was -- God, I can't  
25 even remember his name now. Allen Cazier.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

99

1 Q. Have you ever received a pardon from the  
2 governor of the State of Texas?

3 A. No.

4 Q. Have you ever had an arrest which led to  
5 any type of supervision?

6 A. Let me check of that's my alarm ringing.

7 (Interruption/off record.)

8 Q. (By Mr. Kirk) Okay. I don't think you  
9 answered the question.

10 A. What was the question?

11 Q. The question was, has any of your arrests  
12 ever led to a situation where you were under the  
13 supervision of any regulatory authority?

14 A. I can tell you that any involvement that

15 I've had in the past has been fully exonerated by a  
16 judge.

17 Q. Dismissed?

18 A. Dismissed. Any existence or penalties  
19 thereof also dismissed.

20 Q. After completion of certain conditions?

21 A. That's correct.

22 Q. What was the charge?

23 A. I can't recall the charge at this point.

24 Q. Would it have been participation in  
25 organized crime?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

100

1 A. I think that -- yes, I think that that  
2 was one of the charges.

3 Q. What was the situation that led to those  
4 charges?

5 A. I was an employee of a company, and  
6 according to the attorneys, they needed to have  
7 five or six people, so they charged the nearest  
8 five or six people.

9 Q. What were the terms of the --

10 A. I can't remember, sir. It's been so long  
11 ago, I just can't remember. It was back in  
12 the '70s.

13 (Receiver's Exhibit No. 4 marked.)

14 Q. (By Mr. Kirk) Mr. Bustos, this is a copy  
15 of the subpoena which you received. I need you to  
16 verify that to be the case. Here's your original.  
17 You can compare it.

18 A. Yes, sir.

19 Q. Have you provided everything that you  
20 believe you were required to provide by the  
21 language in Exhibit A to the subpoena?

22 A. I believe that we provided everything  
23 under our understanding of the subpoena, yes, sir.

24 Q. And it was your understanding, your  
25 interpretation of the subpoena, that it did not

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

101

1 extend to matters related to the IP Fund?

2 A. That is correct.

3 Q. But you also understand that the judge  
4 did not agree with your interpretation?

5 A. That is true.

6 Q. And that you were directed to give  
7 testimony concerning the IP Fund?

8 A. Uh-huh.

9 Q. Will you produce all your documents  
10 related to the IP Fund?

11 A. I think we're going to file a motion with  
12 the Court to further our contention that this has



13 nothing to do with the IP Fund, but if the Court  
14 finds that we have to produce them, we will produce  
15 them.

16 Q. All right.

17 A. Satisfied?

18 Q. Yes.

19 MR. KIRK: Do you have any other  
20 questions?

21 MR. STORAR: I do have a few.

22 EXAMINATION

23 BY MR. STORAR:

24 Q. Have you ever managed a viatical  
25 portfolio?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

102

1 A. No.

2 Q. Have you ever sold a viatical portfolio?

3 A. No.

4 Q. Have you ever valued a viatical  
5 portfolio?

6 A. No.

7 Q. Has this Pay Phone Owners Fund ever  
8 returned any money to the investors?

9 A. The nature of the Pay Phone Owners Legal  
10 Fund is to pursue the legal return of their money,  
11 and right now we have \$170 million lawsuit on the

12 insurance company.

13 Q. Have the investors received any money  
14 back?

15 A. No.

16 Q. And how long ago was this entity formed?

17 A. It was formed in 2002.

18 Q. Arising out of a pay phone investment  
19 failure in when?

20 A. 2001.

21 Q. The arrest and conviction that you were  
22 just talking to Mr. Kirk about --

23 A. There is no arrest and conviction, sir.  
24 All of that has been thrown out by the judge.

25 Q. It did occur, did it not?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

103

1 A. Not according to the court records, no.

2 Q. You received probation?

3 A. Yes.

4 Q. For what period of time?

5 A. I can't recall. A short period.

6 Q. Eight years?

7 A. No, I wasn't on probation for eight  
8 years.

9 Q. More than a year?

10 A. I think it was like -- yes, a little bit

11 over a year, maybe. Maybe that.

12 Q. After completion of your sentence, the  
13 records were sealed; right?

14 A. The records were not sealed.

15 Q. What happened to them?

16 A. According to the judge, the judge made a  
17 ruling saying that any arrest or conviction or any  
18 penalty of such arrest would be discharged, would  
19 not be held liable, something like that, I can't  
20 recall the wording. It basically says it didn't  
21 exist.

22 Q. So when I asked you earlier if you had  
23 been convicted of a crime, you weren't being  
24 exactly truthful, were you?

25 A. I was telling you what the Court said.

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

104

1 The Court said it didn't exist.

2 Q. Well, I asked you if you had been  
3 convicted of a crime and you told me no.

4 A. No, I have not.

5 Q. You still say that, that you have not?

6 A. I still say that. According to the court  
7 records, I have not been convicted of any crime.

8 Q. You said that Mr. Parker will have the  
9 chance to present his best case scenario?

10 A. (Nodded affirmatively.)

11 Q. What do you mean by that?

12 A. Well, if he presents a plan that the  
13 investors will accept, then he will get the job.

14 Q. As administrator?

15 A. As the administrator, yes.

16 Q. Has he put any money into the IP Fund to  
17 this point?

18 A. No.

19 Q. Has he promised to?

20 A. I think his wife has a viatical that is  
21 about \$125,000 that's overdue, and she has said  
22 that she was going to join the IP Fund. We're  
23 still waiting for his documents. In fact, I don't  
24 know where if his documents are in here.

25 Q. Has his wife or anyone acting on his

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

105

1 behalf put any money into the IP Fund?

2 A. No.

3 Q. Has any money gone into the IP Fund that  
4 was not received from LifeTime investors?

5 A. My personal money to be able to start the  
6 IP Fund.

7 Q. How much was that?

8 A. I think the number is right at maybe

9 \$2,000 with mailing, stamps and printing.

10 Q. And just to summarize, you can point us  
11 to nothing that says that the Receiver has ever  
12 indicated that there would be an \$86 million  
13 payoff?

14 A. Well, I didn't say that. I said that my  
15 numbers were figured in a way, and I think I've got  
16 my notes in the office, but I'll be able to refer  
17 to them. I'll be able to produce that to you.

18 Q. You've never heard the Receiver say that;  
19 correct?

20 A. It's based on his filing, sir.

21 Q. Answer the question, please, yes or no?

22 A. I've never heard the Receiver speak, if  
23 that's what you're saying.

24 Q. You've never seen the Receiver write out  
25 on any document where it says, We project a payout

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

106

1 of \$86 million, have you?

2 A. They said it's projected at 96 million  
3 and, the percentage that they're using is  
4 .00010333. Based on that number, it's 86.

5 Q. It's a yes or no answer. Have you seen  
6 anything on behalf of the Receiver where it says --

7 A. This document.

8 Q. -- we project a payout of \$86 million, in  
9 that language?

10 A. Based on this document and based on my  
11 calculation --

12 Q. In that language, sir.

13 A. Based on this document and based on my  
14 interpretation of that document, that's how we  
15 arrived to that number.

16 Q. On your assumption?

17 A. On our assumption, that's correct.

18 Q. So your number is, no, you haven't seen  
19 that?

20 A. Based on the document that's presented  
21 for us, we have assumed that that number would be  
22 correct.

23 Q. And you've never seen anything wherein  
24 the Receiver projects \$44 million in legal fees and  
25 expenses?

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

107

1 A. That is also an assumption based on the  
2 amount of money that we're assuming that the  
3 premium will actually entail.

4 Q. That's your assumption?

5 A. That's our assumption, sir.

6 Q. And you're not licensed to practice law?

7           A.    I am not licensed to practice law, and I  
8 do not do so.

9           MR. STORAR:  That's all I have.

10           MR. KIRK:  I have two questions,  
11 Mr. Bustos.

12                               EXAMINATION

13 BY MR. KIRK:

14           Q.    Will you provide us with the list, a copy  
15 of the list of the investors that you got from  
16 Mr. Parker?

17           A.    I sure will.

18           Q.    And did you disclose your organized crime  
19 charge on your application for a license with the  
20 Texas Department of Insurance?

21           A.    No.

22           MR. KIRK:  That's all I've got.

23           MR. STORAR:  You have a right to  
24 read this and sign it.

25           THE WITNESS:  Read what?

                          PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

108

1           MR. STORAR:  The deposition once  
2 it's typed up.

3           THE WITNESS:  Oh, sure.

4           MR. STORAR:  Or you can waive that  
5 right.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: No, I'll read it.

(Deposition concluded.)

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

109

1  
2  
3  
4

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
------	------	--------	--------



5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

110

1 I, ERNEST BUSTOS, have read the  
2 foregoing deposition and hereby affix my signature  
3 that same is true and correct, except as noted  
above.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ERNEST BUSTOS

THE STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ :

Before me, \_\_\_\_\_,  
on this day personally appeared ERNEST BUSTOS,  
known to me (or proved to me under oath or through  
\_\_\_\_\_) (description of identity card or  
other document) to be the person whose name is  
subscribed to the foregoing instrument and  
acknowledged to me that they executed the same for  
the purposes and consideration therein expressed.

Given under my hand and seal of  
office this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public in and for  
The State of

My Commission Expires \_\_\_\_\_

PREMIERE REPORTING \* (210) 377-0720  
10703 Janet Lee \* San Antonio, Texas 78230

1  
2

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION



Unless otherwise indicated or obvious from the nature of this transmittal, the information contained in this email message is attorney-privileged and confidential, intended for the use of the intended recipient. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that action, distribution or copying of this communication is prohibited. If you have received this email communication in error, please immediately notify us by collect telephone call or reply to the message indicating that you are not the intended recipient and then delete it from your system. If you have any questions, please contact (937) 223-1130 and speak with the Legal Administrator.

\*\*\*\*\*  
\*\*

This email has been checked by MailMax II.

\*\*\*\*\*  
\*\*\*