

1 STATE OF WISCONSIN CIRCUIT COURT MONROE COUNTY

2

3 STATE OF WISCONSIN
123 West Washington Avenue
4 Post Office Box 7856
Madison, Wisconsin 53707-7856,

5

Plaintiff,

6

v.

Case No. 95CV200
Unclassified: 30703

7

TOP COMMUNICATIONS, INC.
8 3500 West Olive Avenue, Suite 1060
Burbank, California 91505,
9 a California Corporation,

10 and

11 GARY DIMATTIA
14925 Magnolia Avenue
12 Sherman Oaks, California 91403,

13 Defendants

14

15 DEPOSITION OF : GARY DiMATTIA
TAKEN BY : PLAINTIFF
16 COMMENCING : 1:50 P.M.
DAY, DATE : THURSDAY, DECEMBER 5, 1996
17 LOCATION : 1901 Avenue of the Stars
LOS ANGELES, CALIFORNIA
18 PURSUANT TO : NOTICE
BEFORE : CARYL WOLFF, CSR 5764

19

20

21

22

23

CARYL R. WOLFF
CERTIFIED SHORTHAND REPORTER
24 12021 WILSHIRE BOULEVARD, NO. 298
LOS ANGELES, CALIFORNIA 90025
25 (310) 820-7167

1 APPEARANCES OF COUNSEL:

2 FOR PLAINTIFF:

3 WISCONSIN DEPARTMENT OF JUSTICE
4 By DAVID J. GILLES, ESQ.
5 123 West Washington Avenue
6 Post Office Box 7856
7 Madison, Wisconsin 53707-7856
8 (608) 266-1792

9 FOR DEFENDANTS:

10 RICHARDS & CHEMERINSKI
11 By RONALD RICHARDS, ESQ.
12 1901 Avenue of the Stars
13 Suite 1800
14 Los Angeles, California 90067
15 (310) 282-8777

16 ALSO PRESENT:

17 GALINA BLANK

18

19

20

21

22

23

24

25

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

I N D E X

WITNESS	EXAMINATION	PAGE
GARY DiMATTIA	BY MR. GILLES	6, 122, 128
	BY MR. RICHARDS	120, 123

INFORMATION REQUESTED

PAGE LINE

(NONE)

UNANSWERED QUESTIONS

PAGE	LINE
8	16
11	20
12	8
14	19
16	20
23	18
28	4
30	23
31	11
38	2
43	22
86	19
89	4, 25
90	5
91	14
93	14
94	24
95	6
96	14
97	19
98	1

1 PREVIOUSLY MARKED EXHIBITS WHICH WERE
 2 REFERRED TO DURING THIS DEPOSITION

3	NUMBER	PAGE	LINE
4	1, 2	24	24
5	3	38	19
6	12	82	12
7	15	56	15
8	16	87	1

9 E X H I B I T S

10	NUMBER	PAGE	DESCRIPTION
11	23	6	November 13, 1996 Amended
12			Notice of Deposition (Court
13			Reporter's Bates Stamp Nos.
			00010 through 00011)
14	24	6	November 13, 1996 Amended
15			Notice of (Court Reporter's
16			Bates Stamp Nos. 00012 through
			00015)
17	25	6	Top Communication
18			Advertisements (Court
			Reporter's Bates Stamp Nos.
			00016 through 00021)
19	26	6	October 24, 1995 letter,
20			Feldman to Gilles (Court
21			Reporter's Bates Stamp Nos.
			00022 through 00023)
22	27	6	List of persons who acquired
23			the work-at-home booklet (Court
			Reporter's Bates Stamp Nos.
			00024 through 00032)
24	28	72	June 19, 1995 Fax, Persaud to
25			Witcynski (Court Reporter's
			Bates Stamp No. 00033)

1	29	72	Letter and envelope from Top Communications, Inc. To Kim Johnson (Court Reporter's Bates Stamp Nos. 00034 through 00036)
2			
3	30	72	Partial page of newspaper advertisements (Court Reporter's Bates Stamp No. 00037)
4			
5			
6	31	133	Video tape of "Inside Edition" (retained by counsel for plaintiff)
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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

LOS ANGELES, CALIFORNIA
THURSDAY, DECEMBER 5, 1996
1:50 P.M.

(Exhibits 23 through 27 were
marked for identification.)

GARY DiMATTIA,
having been sworn, was examined
and testified as follows:

EXAMINATION

BY MR. GILLES:

Q. This is a deposition taken pursuant to
notice in the matter pending in the State of
Wisconsin and there are two notices, the first of
which is that of Mr. Gary DiMattia which I have had
marked as Exhibit 23. In addition the corporate
defendant Top Communications, Inc. is the subject
of a notice of deposition that's been marked as
Exhibit 24.

It's my understanding that Mr. DiMattia
is appearing as the designated representative of
the corporation Top Communications; is that
correct?

1 MR. RICHARDS: That's correct.

2 Q. (BY MR. GILLES): Sir, have you had your
3 deposition taken before?

4 A. Yes.

5 Q. So if I state a question that you don't
6 understand, would you please tell me and I'll
7 attempt to reframe it?

8 A. Yes.

9 Q. Please state your name.

10 A. Gary DiMattia.

11 Q. Where do you live?

12 A. 15445 Ventura Boulevard, No. 38, Sherman
13 Oaks, California 91403.

14 Q. What is your date of birth?

15 A. 10-9-49.

16 Q. Would you please describe your
17 educational background?

18 A. College educated.

19 Q. Where at?

20 A. Valley College here.

21 Q. In Los Angeles?

22 A. Uh-huh.

23 Q. Did you receive a baccalaureate?

24 A. No. It's just a A.A. Degree.

25 Q. When did you receive that?

1 A. Long time ago. I don't remember.

2 Q. What have you done -- you're currently
3 employed at Top Communications, Inc.?

4 A. Yes.

5 Q. How long have you been so employed?

6 A. I think it's a little over three years.

7 Q. And did you -- are you one of the
8 stockholders of the corporation?

9 A. No.

10 Q. What is your connection with the
11 corporation?

12 A. I'm the president.

13 Q. Who is the -- is it a publicly held
14 corporation?

15 A. No.

16 Q. Who is the primary stockholder?

17 MR. RICHARDS: Objection. I'm going to
18 limit a lot of your questions today to the facts of
19 this case.

20 Who the shareholders are of the
21 corporation is really irrelevant and I'm going to
22 instruct the witness not to answer.

23 MR. GILLES: Well, counsel, you can do
24 what you feel appropriate. In the event it raises
25 to the level that it's obstructing the deposition,

1 the remedies for the State are to go back into
2 court in Wisconsin and seek an appropriate
3 protective order that could compel your client to
4 travel to Wisconsin.

5 MR. RICHARDS: Whatever --

6 MR. GILLES: Just so you appreciate what
7 the consequences are.

8 MR. RICHARDS: I don't think that the
9 judge in Wisconsin is going to find the
10 shareholders of the company relevant to any of the
11 scope of this litigation.

12 MR. GILLES: Well, relevant to the scope
13 of this litigation is who controls the
14 corporation. So to the extent that any shareholder
15 exercises control over it over and above
16 Mr. DiMattia, it may be relevant.

17 MR. RICHARDS: Well, you can ask specific
18 questions relating to who controls the corporation,
19 but, you know, that's up to you.

20 This isn't an inquiry into the financial
21 assets of the company or who owns the company. So
22 you can go get whatever protective order you want.

23 MR. GILLES: No. It would be an order to
24 compel discovery.

25 Let's turn back to the issue at hand.

1 Q. Mr. Dimattia, what are your duties and
2 responsibilities as president of Top
3 Communications?

4 A. The operation, management,
5 administration.

6 Q. Who do you report to?

7 A. The owners of the company.

8 Q. Okay. Who are the owners of the company?

9 A. The owners of the company are Scott
10 Zuckman and Reef Corporation.

11 Q. And who -- first of all Top
12 Communications is incorporated in Nevada?

13 A. Yes.

14 Q. And when was it incorporated?

15 A. I think it's about three years ago.

16 Q. 1993?

17 A. I think so, yeah.

18 Q. And at the time it was incorporated, did
19 Reef Corporation have -- was that involved in the
20 incorporation of the company?

21 MR. RICHARDS: Objection. It calls for a
22 legal conclusion.

23 He's not a lawyer and I don't believe
24 Mr. DiMattia incorporated the company himself.

25 MR. GILLES: I'll restate the question.

1 Q. Who was involved in Reef Corporation?

2 MR. RICHARDS: Objection.

3 You're not going to ask Mr. DiMattia any
4 questions about Reef Corporation. They're not even
5 a defendant here.

6 MR. GILLES: Counsel, he just said that
7 he reported to the owners of the company and he
8 indicated Reef Corporation is one of the owners of
9 the company. If he reports to someone at Reef
10 Corporation, I'm entitled to know that.

11 MR. RICHARDS: Why don't you ask him if
12 he reports to someone at Reef Corporation.

13 MR. GILLES: He said that -- I will.

14 Q. Do you report to someone at Reef
15 Corporation?

16 A. No.

17 Q. Who -- where is Reef Corporation
18 incorporated?

19 A. Out of the country.

20 Q. Is that a corporation that you have an
21 ownership interest in?

22 MR. RICHARDS: Objection. It's
23 irrelevant what my client's involvement is with
24 Reef Corporation. This lawsuit is about
25 advertising in Wisconsin by Top Communications.

1 And again if you're going to use this
2 deposition as a tool to probe into the makeup or
3 the financial status of the company, you're not
4 going to do that because this company has privacy
5 protection under Nevada law and under California
6 law and simply because this is a Wisconsin lawsuit
7 doesn't waive those rights.

8 Q. (BY MR. GILLES): My question is: Do you
9 have an ownership in Reef Corporation?

10 MR. RICHARDS: I'm instructing the
11 witness not to answer any questions relating to
12 Reef Corporation because it's outside the scope of
13 this discovery.

14 Q. (BY MR. GILLES): Is there any other
15 individual other than Scott Zuckman I believe you
16 mentioned who you report to as president of Top
17 Communications?

18 A. No.

19 Q. Mr. -- Are you familiar with an
20 individual named Michael Lauria?

21 A. Yes.

22 Q. In Mr. Lauria's deposition I believe he
23 indicated that -- he referred to you and
24 Mr. Zuckman as partners.

25 Is that a correct --

1 MR. RICHARDS: Objection.

2 Q. (BY MR. GILLES): -- description of the
3 relationship between you and Mr. Zuckman?

4 MR. RICHARDS: Objection. Your question
5 calls for a legal conclusion.

6 The word "partner" is a legal term
7 Mr. DiMattia is not a lawyer and he's not qualified
8 to determine what his relationship is with
9 Mr. Zuckman unless you just want to ask him what he
10 thinks it is.

11 Mr. Zuckman is identified as an owner.
12 That's all he's identified him as.

13 Q. (BY MR. GILLES): Mr. DiMattia, do you
14 understand -- would you refer to Mr. Zuckman as
15 your partner in the Top Communications enterprise?

16 A. No.

17 Q. How would you refer to him?

18 A. He's vice president of sales and
19 marketing.

20 Q. Does he report to you?

21 A. No.

22 Q. As vice president?

23 A. As vice president, yes.

24 Q. But you report to him as owner?

25 A. He's an owner.

1 Q. Again are there any other owners that you
2 report to from time to time?

3 A. No.

4 Q. How long have you held the position as
5 president?

6 A. About three years.

7 Q. Were you president when Top
8 Communications first began doing business?

9 A. Yes.

10 Q. What did you do before you became
11 president of Top Communications?

12 A. I was president of other companies.

13 Q. What company in particular?

14 A. Other communication companies.

15 Q. What was the name of the immediate --
16 your immediate previous employer to Top
17 Communications?

18 A. I don't recall.

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

20 A. No.

21 Q. What is your social security number?

22 MR. RICHARDS: Objection. Under
23 California law he has complete privacy not to
24 disclose a social security number and I'm
25 instructing the witness not to answer.

1 Q. (BY MR. GILLES): When -- at what
2 location did Top Communications begin doing
3 business in 1993?

4 A. What location?

5 Q. Yes.

6 A. I don't recall.

7 Q. Where is Top Communications currently
8 located?

9 A. 3500 West Olive Avenue.

10 Q. How long has it been at that location?

11 A. I would say a year and a half or so, two
12 years maybe.

13 Q. Does it own the offices that are at that
14 location, the space?

15 A. No.

16 Q. Could you describe to me the space that
17 is at that particular location?

18 A. It's about 3,000 square feet with
19 multiple individual offices.

20 Q. So it's office space?

21 A. Yes.

22 Q. Top Communications has occupied that
23 particular location for about a year and a half?

24 A. Somewhere between a year and a half and
25 two years.

1 Q. Does Top Communications have any other
2 physical place of business?

3 A. No.

4 Q. Does Top Communications have any physical
5 presence in the State of Nevada?

6 MR. RICHARDS: Objection. I'm going to
7 caution you that again you're moving way into the
8 stratosphere here.

9 It's irrelevant where Top Communications'
10 location are as to whether they placed ads in
11 Wisconsin or not and you're not going to use this
12 deposition as a tool to obtain a layout of the
13 infrastructure of Top Communications.

14 So I'm going to instruct the witness not
15 to answer this question because you're going into
16 irrelevant territory. There's no way this can lead
17 to the discovery of admissible evidence by whether
18 they have an office in Nevada.

19 MR. GILLES: I'll withdraw the question.

20 Q. How many people at the present time work
21 on a regular basis at the West Olive Avenue address
22 of Top Communications?

23 MR. RICHARDS: Again I'm going to object
24 and instruct the witness not to answer.

25 You're getting again into irrelevant

1 questions. How could that possibly lead you to
2 discoverable information by figuring out how many
3 employees work in the company? It's irrelevant.

4 He's here on behalf of Top Communications
5 as the most knowledgeable person to answer whatever
6 questions you need relating to the advertising in
7 Wisconsin in the year 1995.

8 MR. GILLES: Well, counsel, point number
9 9 in the notice of deposition identifies the topic
10 of the business operation of Top Communications,
11 Inc. including the description of service,
12 customers, et cetera, and the identification of
13 employees and related employment duties. That
14 question is squarely within the scope of that.

15 If you thought that that particular topic
16 was not relevant in the course of this examination,
17 you ought to have sought a protective order from
18 the court. You didn't.

19 If you're going to instruct this witness
20 not to answer questions that I think fairly are
21 within that subject area, we'll seek the
22 appropriate remedies from the court. I think the
23 question as to the number of employees that are
24 doing -- that work for Top Communications squarely
25 fits within that and it's relevant to this

1 proceeding.

2 I'm not going to debate with you --

3 MR. RICHARDS: May I like take a look at
4 that.

5 MR. GILLES: Sure. I'm not going to
6 protract this deposition forever by debating with
7 you. I just want it clear from this point forward
8 when you instruct the witness not to answer, my
9 refusing to get into a debate with you is not
10 acquiescence in your objection because I -- under
11 Wisconsin procedure which controls here, it's
12 explicit in that the witness is supposed to answer
13 the question subject to the objection. And I would
14 refer you directly to 80405 subsection 2 subsection
15 C -- no, I'm sorry. Particular subsection requires
16 that the answer be provided subject to the
17 objection. And I'll find it for you in a second.

18 MR. RICHARDS: Do you mind if I make my
19 own record while you're looking?

20 MR. GILLES: No. Go right ahead.

21 MR. RICHARDS: The first request states
22 the preparation, content, and distribution of
23 advertisements, examples of which are described in
24 paragraph 4 of the complaint.

25 My objection based on how many employees

1 is there was misstated a few minutes ago by
2 opposing counsel.

3 My objection is simply if you want to ask
4 questions regarding to item number 1, you may feel
5 free to ask him about how things are prepared and
6 about how advertisements are distributed.

7 The number of employees at his company
8 presently is irrelevant because we're dealing with
9 a matter in that occurred in 1995 and in no way am
10 I trying to impede discovery.

11 I think counsel should reread number 1
12 and the see that the amount of employees --

13 MR. GILLES: No, no. Point number 9.
14 Look at number 9.

15 MR. RICHARDS: Point number 9 requires
16 the identification of employees who dealt with the
17 advertisements in 1995.

18 Mr. Dimattia has no problem identifying
19 the people that dealt with it.

20 MR. GILLES: Counsel, the notice is not
21 limited to 1995. It says from the time period
22 January 1, 1994 to present. So it's not.

23 MR. RICHARDS: The number -- it doesn't
24 ask for that in the number of employees.

25 MR. GILLES: Again let me just direct

1 your attention specifically to --

2 MR. RICHARDS: You don't need to put me
3 on notice of anything in the Wisconsin code. We
4 have an attorney in Wisconsin that will review any
5 objections I made. So just ask your next question.

6 MR. GILLES: No. I think you should be
7 apprised of this and I'll go on.

8 80405 subsection 4 subsection B. It
9 says,

10 "All objections shall be made on
11 the record," da, da, da, da. "Upon request
12 any party where the witness has refused to
13 answer and with the consent of the court the
14 court may be contacted by phone and rule on
15 any objection. The court's ruling shall be
16 recorded. In the absence of a ruling by the
17 court, the evidence objected to shall be
18 taken subject to the objection."

19 So I haven't made arrangements for the
20 court to be available telephonically to deal with
21 objections here. So the procedure that's provided
22 here is that the answer is supposed to be provided
23 subject to the objection.

24 We'll proceed.

25 MR. RICHARDS: Well, my client under --

1 in no court in the United States is obligated to
2 provide an answer that either violates his privacy
3 rights or the privacy rights of the corporation and
4 they don't have to provide those and they're not --
5 this isn't a form question that I'm objecting to or
6 I'm not objecting to any type of what your question
7 calls for. These are objections that are invading
8 either privileged information or privacy rights.
9 So I don't think that rule is applicable to here.

10 And, of course, any question I make
11 that's objection to form and he still wants to
12 answer, he can.

13 My instructions are specifically going to
14 be limited to areas where he has privacy
15 protections under California law.

16 Q. (BY MR. GILLES): My question again,
17 Mr. DiMattia, is: How many people currently are
18 working at Top Communications, Inc.?

19 A. None.

20 Q. Is Top Communications, Inc. currently in
21 business?

22 A. Yes.

23 Q. But it has no employees?

24 A. No.

25 Q. You indicated that you were a president

1 of the corporation?

2 A. Yes.

3 Q. Do you regard yourself as an employee?

4 A. No.

5 Q. How would you describe yourself?

6 A. President of the corporation.

7 Q. What other agents are there that perform
8 services on behalf of the corporation?

9 MR. RICHARDS: I'm going to object to the
10 term "agents." It's a legal term. I don't think
11 Mr. DiMattia is a lawyer or is qualified to
12 understand what the word "agent" means.

13 MR. GILLES: I'll reframe the question.

14 Q. Are there other people that arrive on a
15 daily basis at the offices of Top Communications at
16 3500 West Olive Avenue?

17 A. Yes.

18 Q. Who are they?

19 A. They are people that perform services for
20 another company --

21 Q. What's --

22 A. -- that are at that address.

23 Q. What's the name of the other company?

24 A. Pass Payroll Services.

25 Q. Do you perform services for that company?

1 A. Yes.

2 Q. What business is Pass Payroll Services
3 involved with?

4 A. They lease employees.

5 Q. They lease employees to Top
6 Communications?

7 A. Yes.

8 Q. Which employees do they lease to Top
9 Communications?

10 MR. RICHARDS: I'll object as to the form
11 of question.

12 What do you mean when you say "which"?
13 Do you mean what type of employees?

14 MR. GILLES: I'll reframe the question.

15 Q. How many employees are leased to Top
16 Communications?

17 A. Four.

18 Q. Who are they?

19 MR. RICHARDS: I'm going to instruct the
20 witness not to answer because I believe that they
21 have a contract with Pass which gives them their
22 own privacy protections and I also believe that
23 these employees have instructed you not to divulge
24 their personal information. So that's all I could
25 tell you.

1 Q. (BY MR. GILLES): I take it you -- how
2 often do you go to the offices of Top
3 Communications at the present time?

4 A. Every day during the week.

5 Q. And there are three other people there
6 usually when you're there?

7 A. Usually.

8 Q. And you're refusing to name the three
9 other people that are there?

10 A. Yes.

11 MR. RICHARDS: And let the record be
12 clear. Those aren't employees of Top
13 Communications.

14 And so just to protect Mr. DiMattia and
15 Top Communications, I don't think Mr. DiMattia
16 should disregard the privacy rights of those
17 individuals or their requests not to be involved in
18 litigation of Top Communications since they're not
19 employees of Top Communications.

20 But you're free to conduct your own
21 discovery as to find out who they are.

22 Q. (BY MR. GILLES): Mr. DiMattia, I want to
23 show you what was marked at the deposition of
24 Michael Lauria as Exhibit number 1 and I would ask
25 if you --

1 MR. RICHARDS: Thank you.

2 Q. (BY MR. GILLES): -- would review that,
3 please.

4 A. (Witness complies.)

5 Q. I would direct your attention to the
6 second-to-the-last page of the exhibit.

7 A. Second-to-the-last?

8 Q. I believe so, yes.

9 Is that a document that has at the top --
10 it's Order Form -- it says page 7 of 8 at the top?

11 A. Yes.

12 Q. About three quarters of the way down the
13 document, do you see in bold face in capital
14 letters Top Communications, Inc.?

15 A. Yes.

16 Q. And below that, it says "Signed."

17 Do you see that?

18 A. Yes.

19 Q. Is that your signature?

20 A. Yes.

21 Q. And did you sign that on or about the
22 date indicated, namely, April 6, 1995?

23 A. Yes.

24 Q. Now, let's go back, Mr. DiMattia, to when
25 Top Communications began doing business.

1 What was the nature of the business
2 operation at that time?

3 A. Service bureau.

4 Q. Did it provide information services for
5 -- would you explain what you mean by "service
6 bureau"?

7 A. Service bureau is a company that provides
8 information services through a telephone number.

9 Q. Were there any particular type of
10 information services that Top began offering when
11 it began business in 1993?

12 A. Yes.

13 Q. Would you describe those, please?

14 A. I think it was a party line and a date
15 line in a custom recorded message.

16 Q. As a service bureau, how did Top
17 Communications anticipate making money?

18 A. Two ways. Top Communications leases
19 telephone numbers and Top Communications gets paid
20 a commission from the local phone company and that
21 commission -- gets paid a commission from the local
22 phone company.

23 Q. And the phone --

24 A. Or an affiliate of the phone company.

25 Q. Now, when Top Communications began, did

1 it provide information services through a local
2 phone company located in the Dominican Republic?

3 A. Yes.

4 Q. And that particular location is accessed
5 through an (809) area code; right?

6 A. Yes.

7 Q. When Top began its operating as a service
8 company, is that how you --

9 A. Service bureau.

10 Q. Was it involved in providing information
11 services through (900) numbers?

12 A. I believe when Top very first started,
13 Top was reselling services of another company that
14 had (900) numbers.

15 Q. How long did Top continue with resale of
16 (900) number services?

17 A. A short period of time.

18 Q. Since -- apart from that short period of
19 time, has Top been involved in the offer of service
20 bureau services through (809) numbers?

21 A. Yes.

22 Q. You mentioned before that when Top
23 Communications began, it anticipated revenues from
24 two sources.

25 What were those again?

1 A. The leasing of telephone numbers and
2 being paid a commission for minutes that were
3 generated on those telephone numbers.

4 Q. How would Top Communications acquire the
5 right to lease telephone numbers?

6 MR. RICHARDS: I'm going to object
7 because again you're trying to use this deposition
8 as a forum to probe into Top Communications. And
9 we're dealing with advertising in Wisconsin. It's
10 are irrelevant and it can't even lead to admissible
11 evidence.

12 I'm going to instruct the witness not to
13 answer.

14 Q. (BY MR. GILLES): Directing your -- did
15 there come a time in the operation of Top
16 Communications when a work-at-home program was
17 developed?

18 A. Yes.

19 Q. Would you describe when that first was
20 made available?

21 A. I don't recall when it was first made
22 available.

23 Q. Was it available in 1994?

24 A. I don't recall.

25 Q. What is the date of the contract there?

1 A. April 6, 1995.

2 Q. Do you remember if it was available in
3 1995?

4 A. I think that's obvious it was available
5 in 1995. I don't remember if it was available
6 prior.

7 Q. Who was involved in the initiation of the
8 program?

9 A. Can you restate that?

10 Q. Sure. You mentioned a couple other
11 service offerings that you had and sometime after
12 Top Communications began, a work-at-home program
13 was developed as well; is that right?

14 A. Right.

15 Q. Sometime prior to 1995?

16 A. Right.

17 Q. My question is: Who was involved at Top
18 Communications in developing that program?

19 A. The work-at-home program?

20 Q. Yes.

21 A. Scott Zuckman and myself.

22 Q. What was involved in the program?

23 A. I don't know what you mean.

24 Q. How -- if you would refer to exhibit
25 number --

1 What's the exhibit number there?

2 MR. RICHARDS: 2.

3 Q. (BY MR. GILLES): -- 2, paragraph 1A says
4 that,

5 "Top shall lease to lessee an ...
6 809 number for a Turn Key Work At Home
7 Program."

8 Do you see that?

9 A. Uh-huh.

10 Q. Would you describe to me what a turnkey
11 work-at-home program is?

12 A. A work-at-home program is a recorded
13 message that describes to the caller how they can
14 work at home doing clerical and administrative
15 work.

16 Q. Does it also involve the preparation of
17 an ad to invite a person to call a particular (809)
18 number?

19 A. Is your question: Does the program
20 involve creating an advertisement?

21 Q. Yes.

22 A. Yes.

23 Q. Now, how did Top obtain (809) numbers to
24 lease to persons that were interested in the
25 turnkey work-at-home program?

1 MR. RICHARDS: Objection. Again you're
2 going beyond the scope.

3 We're dealing with advertisements in
4 Wisconsin. How Top obtains their number I can't
5 conceivably see how this is going to lead to the
6 discovery of admissible evidence as to why Top
7 placed their ads. So I'm going to instruct the
8 witness not to answer.

9 Move it along, counselor, to some
10 relevant grounds here.

11 Q. (BY MR. GILLES): How many -- how would
12 Top offer the work-at-home program to persons who
13 were interested in acquiring that opportunity?

14 MR. RICHARDS: Objection as to the term
15 "opportunity."

16 And again you're trying to have the
17 witness now discuss -- or trying to led him into
18 some type of answering questions relating to what I
19 think you're going to ask him about business
20 opportunities.

21 Your lawsuit has nothing to do with
22 business opportunities. It's dealing with
23 advertising in Wisconsin and I'm going to instruct
24 the witness not to answer not on relevancy grounds,
25 but on grounds that the statements he makes in this

1 deposition could prejudice him in a different
2 matter and the witness hasn't been properly
3 counselled or told all of his rights under federal
4 and state law dealing with opportunities. So on
5 advice of his attorney, I'm going to instruct him
6 not to answer. It's beyond the scope of this
7 deposition.

8 Q. (BY MR. GILLES): How would you -- may I
9 have the --

10 MR. RICHARDS: Yeah.

11 MR. GILLES: Thanks.

12 MR. RICHARDS: I'll just make the record
13 clear. If you are going to spend this afternoon
14 trying to ask my client stuff that's not related to
15 what you're suing him for, this is going to be a
16 long afternoon. You're not going to get anywhere.
17 So you might as well deal with the topic at issue,
18 and that's what ads were placed in Wisconsin.

19 MR. GILLES: I appreciate your
20 suggestion.

21 Q. Under the terms of the contract that's in
22 front of you that's marked as exhibit number 2,
23 what services does Top provide the lessee of an
24 (809) number in return for the payment of 29.95?

25 MR. RICHARDS: I'm going to just have to

1 object again.

2 Are you -- do you want him to just ask
3 him about what service they provided for this
4 contract so we can keep the question specific or
5 any (809) number in general?

6 MR. GILLES: We'll confine it to this
7 contract.

8 MR. RICHARDS: Go ahead and answer.

9 THE WITNESS: Top -- the services Top
10 provided was the (809) number, the administration
11 of the (809) number.

12 Q. (BY MR. GILLES): What's involved in the
13 administration of the (809) number?

14 A. Making sure that the (809) number message
15 is functional, that the equipment is functional,
16 and then paying for the minutes that are generated
17 on that number.

18 Q. What sort of equipment is used to answer
19 the calls that are made to an (809) number that is
20 the subject of the lease that we've marked as
21 Exhibit number 2?

22 A. What do you mean "what sort of
23 equipment"?

24 Q. I mean what sort of answering machine,
25 what sort of audio text equipment --

1 A. Very sophisticated computerized
2 equipment.

3 Q. So I take it the particular -- Mr. Lauria
4 as a result of this contract received the right to
5 lease a particular (809) number?

6 A. He didn't receive the right to lease it.
7 He leased the (809) number that's right here
8 (indicating).

9 Q. You're referring to page 7 of the
10 contract?

11 MR. RICHARDS: I got to -- this is just
12 an instructional thing for the witness.

13 Mr. DiMattia, if you're going to make
14 references to something, even though you're on
15 video tape, many times in a court we don't use the
16 video tape. It's more for a jury or for other
17 purposes. Since this isn't a jury trial, I can't
18 figure out what purpose yet.

19 When you make a reference to an exhibit,
20 so -- these exhibits are Bates stamped 513 through
21 520. Just in your own words, let the record
22 reflect that you're now looking at exhibit -- let's
23 say you just held up 519 and you're pointing to the
24 number.

25 THE WITNESS: 519.

1 MR. RICHARDS: Just let the record be
2 clear.

3 Q. (BY MR. GILLES): Mr. DiMattia, the
4 question was: The particular equipment that would
5 handle calls that were placed to the number that
6 Mr. Lauria leased from Top Communications, what
7 kind of equipment is it?

8 You said it's very sophisticated.

9 A. It's called Interactive Voice Response
10 computers.

11 Q. How many calls are -- is the equipment
12 capable of handling at any given time?

13 A. I don't recall.

14 Q. Was it half a dozen or is it more like
15 several hundred, a couple thousand?

16 MR. RICHARDS: By the way, you weren't
17 give an instruction on the difference between an
18 estimate and a guess.

19 A guess is the size of the desk in his
20 office where you can estimate the size of the desk
21 in my office.

22 But I'm instructing you not to guess on
23 anything. If you don't know the answer is "I don't
24 know." If you can give an estimate --

25 THE WITNESS: I don't know.

1 Q. (BY MR. GILLES): Is it more than 100
2 simultaneous calls?
3 A. I don't know.
4 Q. More than ten?
5 MR. RICHARDS: I'm going to object as
6 asked and answered. He said he doesn't know.
7 MR. GILLES: They're different questions,
8 counsel.
9 Q. Is it more than ten?
10 A. Yes.
11 Q. So more than 50?
12 A. I don't know.
13 Q. Do you know the manufacturer of the
14 equipment?
15 A. No.
16 Q. If you would please turn to page 8 of the
17 exhibit.
18 A. (Witness complies.)
19 Q. Does 8 set forth the consideration
20 involved in --
21 A. Is this page 8, 520?
22 Q. Yes.
23 A. Okay.
24 Q. Page 2 of Exhibit 2.
25 MR. RICHARDS: Object to the term

1 "consideration."

2 I know Mr. DiMattia doesn't know what
3 that means and it calls for a legal conclusion.

4 Q. (BY MR. GILLES): What's depicted on page
5 -- on that page, Mr. DiMattia?

6 A. Number 1 says "Maintenance Fees."

7 Number 2 says "Payout."

8 Number 3 says, "Client may advertise per
9 Top Communications approval of content and
10 placement."

11 Number 4 says, "Client has choice of
12 payment plans," and then it lists the
13 different payment plans.

14 Q. What -- in terms of the maintenance fee,
15 is that an amount that is paid by the lessee to Top
16 Communications?

17 A. It's deducted from the commissions that
18 would be paid to the lessee.

19 Q. Does Top Communications receive that
20 amount?

21 A. Yes.

22 Q. The lessee is compensated on the basis of
23 20 cents a minute for the amount of time that
24 persons are on -- have called the (809) number; is
25 that right?

1 A. Yes.

2 Q. Who receives the factor fee and how does
3 that work?

4 MR. RICHARDS: Objection. I'm going to
5 again on the same objection that I made about
6 dealing with business opportunities, I'm going to
7 on advice of counsel instruct the witness not to
8 answer any questions relating to different
9 factoring arrangements as way beyond the scope of
10 this lawsuit which is dealing with consumers
11 calling (809) numbers resulting from advertisements
12 in Wisconsin.

13 And the deponent has not had the benefit
14 of advice of counsel to review any questions
15 relating to factoring fees or what they even
16 mean --

17 MR. GILLES: Okay. That's --

18 Q. Mr. DiMattia, I'd like to show you what
19 was marked as Exhibit 3 at the deposition of
20 Mr. Lauria.

21 Mr. Lauria testified that he received
22 that particular document from Top Communications.

23 Do you recognize the document, sir?

24 A. Yes.

25 Q. What is it?

1 A. It's a document that shows various
2 example ads for the types of programs that Top
3 Communications offered at the time.

4 Q. Who prepared the document?

5 A. Scott.

6 Q. The ads depicted on the exhibit in front
7 of you were approved by Top Communications for
8 lessees to use to generate calls to (809) numbers;
9 is that right?

10 A. Yes.

11 Q. May I see the document, please.

12 A. (Witness complies.)

13 Q. How would -- did Top Communications have
14 any procedures in place to make certain that
15 lessees complied with the format set out in Exhibit
16 3?

17 A. It says in the lease that the lessees
18 needed to get Top's approval for the content and
19 placement of the advertising. They were to send
20 advertising, communicate somehow to Top for
21 approval.

22 Q. Now, I want to direct your attention to
23 the exhibit on the top right part of the -- let me
24 restate that.

25 I want to direct your attention to the ad

1 format that appears on the top right part of
2 exhibit number 3 which begins "Earn \$9.00 plus per
3 hour at home."

4 Do you see that?

5 A. Yes.

6 Q. Now, let's assume for purposes of my
7 questions that Mr. Lauria placed an ad like that in
8 Wisconsin and someone responded to the ad by
9 calling the (809) number in March of 1995.

10 Can we make that assumption,
11 Mr. DiMattia?

12 A. Okay.

13 Q. In that event under the terms of
14 Mr. Lauria's contract, he would receive 20 cents
15 per minute for the duration of time that a
16 particular caller listened to the information
17 supplied as a -- by the audio text equipment; is
18 that correct?

19 A. Yes.

20 Q. And the audio -- by audio text, that's
21 the prerecorded message that one would hear if they
22 called the (809) number; right?

23 A. Yes.

24 Q. That prerecorded message was prepared by
25 Top Communications?

1 A. Yes.

2 Q. Who at Top Communications was involved in
3 recording the message?

4 A. Scott.

5 Q. It's his voice that's on all the
6 work-at-home programs?

7 A. I don't know.

8 Q. Was there anyone else at Top
9 Communications involved in reviewing the
10 prerecorded messages that people would hear if they
11 responded to ads such as depicted on Exhibit 3?

12 A. Yes.

13 Q. Who else?

14 A. Myself.

15 Q. Anyone other than you and Mr. Zuckman?

16 A. No.

17 Q. Under the arrangement with the lessee in
18 our hypothetical situation, we have said
19 Mr. Lauria -- he would receive 20 cents for each
20 minute that the caller listened to the message;
21 correct?

22 A. Yes.

23 Q. And would Top Communications receive a
24 commission over and above the 20 cents per minute?

25 A. Yes.

1 Q. How much would Top Communications receive
2 per minute?

3 A. I don't recall at the time.

4 Q. Was it more than 10 cents?

5 A. I don't recall. I know it's more than 20
6 cents, but I don't remember what it was.

7 Q. It was more than -- so Top Communications
8 would receive more than the lessee did on a
9 per-minute basis?

10 A. Yes.

11 MR. RICHARDS: I want to confer with my
12 client.

13 (Conference held outside the record.)

14 MR. RICHARDS: You're confused. Say you
15 want to augment your answer because I think you're
16 confused.

17 THE WITNESS: Let me clarify that answer.

18 Q. (BY MR. GILLES): Sure.

19 MR. RICHARDS: Read back the question,
20 please, and then answer the question.

21 Can you read back the last question?

22 (Record read.)

23 THE WITNESS: To clarify that question,
24 Top Communications received an amount that was
25 greater than the 20 cents, and from that amount 20

1 cents was paid to the lessee.

2 Q. (BY MR. GILLES): Okay. And you
3 indicated before that you don't recall what the
4 total amount was that Top received?

5 A. That's correct.

6 Q. Was it more than 30 cents a minute?

7 A. I don't recall.

8 Q. Was the portion that Top retained equal
9 to the amount it paid the lessee?

10 A. No.

11 Q. Was it greater than or less than?

12 A. Less than.

13 Q. But from the -- and you refer to the
14 payments to the lessee as "commissions"?

15 A. Yes.

16 Q. From the commissions that were paid to
17 the lessees, Top deducted a \$250 per month
18 maintenance fees under Mr. Lauria's contract;
19 right?

20 A. I'll have to check that and see here.

21 Yes.

22 Q. And deducted a factoring fee as well?

23 MR. RICHARDS: I'm going to have to
24 object because I already told you I haven't
25 discussed with him any aspects of the factoring

1 section of the agreement or advised him.

2 MR. GILLES: Well --

3 MR. RICHARDS: Because Top's not a
4 factor. So there's other intricacies involved in
5 the arrangements how Top gets paid and how the
6 lessee gets paid which is way beyond the scope of
7 your lawsuit.

8 And I haven't even discussed with my
9 client any questions relating to the different
10 types of agreements they have. And so you would
11 not be under the advice of counsel to give
12 testimony on this because I haven't advised him
13 thoroughly on factoring agreement.

14 MR. GILLES: I don't know if this is --
15 if you're confessing malpractice here or what, but
16 whether or not you advised your client isn't proper
17 objection. If you're telling your client not to
18 answer, tell him.

19 MR. RICHARDS: No. I'm not advising
20 he --

21 I resent your comment about malpractice.

22 MR. GILLES: Just a little bit of levity.

23 MR. RICHARDS: The scope -- that's fine.

24 The scope of this deposition in my
25 understanding was the ads that were placed by R & R

1 Advertising in Wisconsin and the consumers that
2 phoned as a result of those ads. In preparing for
3 the deposition --

4 MR. GILLES: I understand.

5 MR. RICHARDS: I'm not going to discuss
6 with my client every business aspect of every
7 agreement he's drafted. Furthermore, as I stated
8 on the onset, I'm not going to have my client
9 testify to things that may prejudice him in other
10 hearings or matters that somehow wouldn't give him
11 the benefit of consultation with counsel.

12 And also my objection for this purpose
13 is -- I don't interrupt you. You got to let me
14 finish. I know maybe in criminal law you did, you
15 don't have that, but in civil law we can talk on
16 the record. It's okay.

17 The scope of my objection based on
18 questions relating to the factoring agreement is
19 based on the fact that there is no suit pending for
20 the factoring agreement nor is Michael Lauria suing
21 Top Communications. The suit is from the State of
22 Wisconsin for advertisements placed by R & R
23 Advertising in the state of Wisconsin and the
24 damages seeking are for a violation of a Wisconsin
25 consumer protection statute dealing with

1 advertising.

2 So I'm instructing the witness not to
3 answer questions relating to the factoring
4 agreement because it's outside the scope of the
5 discovery of admissible evidence and it's not the
6 topic of this lawsuit.

7 Q. (BY MR. GILLES): Mr. DiMattia, having
8 said all that, did there -- you mentioned earlier
9 that there were two sources of revenue that Top
10 Communications anticipated.

11 One was from commissions and the other
12 was from what?

13 A. Leasing the lines.

14 Q. Leasing the lines.

15 And the level of the commissions depended
16 upon the response to the ads that the lessees
17 placed; right?

18 A. Right.

19 Q. And Top Communications also coordinated
20 to some extent the placement of ads with a company
21 called R & R Advertising; right?

22 A. Wrong.

23 Q. Did Top Communications recommend that
24 lessees contact R & R Advertising?

25 A. I don't know.

1 Q. How is my question wrong?

2 A. My understanding of what you just said
3 was -- repeat what you just said.

4 Q. My question was: Top Communications
5 coordinated the placement of ads by lessees or on
6 behalf of lessees with a company -- an advertising
7 company called R & R Advertising?

8 A. Okay. The reason it's wrong is that Top
9 did not coordinate the advertising.

10 Top's function was to give money to R & R
11 on behalf of lessees to place ads. Period. No
12 more than that. It did not coordinate the
13 advertising. It did not instruct the placement.

14 Q. So Top simply directed that R & R use its
15 expertise and skill to place the ads?

16 A. Yes.

17 MR. RICHARDS: I can probably -- I'm not
18 going to testify, but I am going to delineate for
19 my client.

20 Off the record.

21 THE VIDEO OPERATOR: Are we going off the
22 record?

23 MR. GILLES: No, we aren't going off the
24 record.

25 If you want, we'll say that. But go

1 ahead. That's okay.

2 (Conference held outside the record.)

3 MR. RICHARDS: Unless there was --

4 THE WITNESS: I don't know if there was
5 or not.

6 MR. RICHARDS: So why don't you reask
7 your last question and let him clarify it.

8 Q. (BY MR. GILLES): I was asking what the
9 relationship was between Top Communications and
10 R & R Advertising with respect to the placement of
11 ads such as are marked as Exhibit 3, I believe it
12 is, right there.

13 A. Are we talking about this contract?

14 Q. Would you -- if it's easier to answer the
15 question relative to the contract, that's fine,
16 yes. Let's focus on that.

17 That is a specific provision relating to
18 R & R Advertising; right?

19 A. Yes.

20 Q. Okay. Would you --

21 A. This contract is a contract between Top
22 Communications and Michael Lauria. And this
23 contract states that Michael Lauria is to contract
24 with R & R a certain amount of money for this
25 contract, meaning that Michael Lauria -- this

1 contract was guaranteed and that Top directed R & R
2 Advertising to purchase ads for Michael Lauria for
3 the amount of money he invested here but did not
4 place the ads and did not direct anyone at R & R to
5 specifically place this kind of ad in any
6 newspaper. It was entirely given to R & R.

7 There are also -- the majority of clients
8 that contracted with R & R directly outside of Top
9 although they had leased a line from Top.

10 Q. Did Top receive reports or records from
11 R & R regarding the ads that were placed on behalf
12 of persons who leased (809) lines?

13 A. I think the only correspondence was an
14 acknowledgment or notification that a Top client
15 placed advertising with R & R. And I'm not sure if
16 it was everybody, but I remember seeing sometimes
17 correspondence that way.

18 Q. Would someone at Top monitor the response
19 to ads that R & R placed?

20 A. Ads that R & R placed on behalf of
21 clients?

22 Q. Yes.

23 MR. RICHARDS: I'm going to have to
24 object.

25 When you say "response," what do you mean

1 by "response"?

2 MR. GILLES: I mean the number of minutes
3 that would be generated in response to the ads.

4 MR. RICHARDS: I'm going to consult with
5 my client.

6 (Conference held outside the record.)

7 THE WITNESS: Clarify that.

8 There wasn't a management of the client's
9 advertising or the results weren't given to Top to
10 measure. What Top did was whatever minutes were
11 generated, Top sent a commission check to the
12 client.

13 Q. (BY MR. GILLES): On a -- but let's say
14 in Mr. Lauria's case, it would be his
15 responsibility during the initial term of this
16 contract to contact R & R and indicate that he was
17 interested in having an ad placed; is that right?

18 A. Right. And it says that right here
19 (indicating).

20 Q. And you're referring to the second page
21 of exhibit number --

22 A. This is number 514. It's the first
23 paragraph.

24 Q. On that page.

25 Mr. Lauria had agreed to pay the amount

1 of \$6,000 for the initial advertising; is that
2 right?

3 A. I don't know. I don't think it says
4 here.

5 Q. That was his testimony at the deposition;
6 that he paid \$6,000; that he was guaranteed to
7 recoup that amount; if the ads that were placed
8 using that money didn't produce enough revenue,
9 R & R would continue to place the ads.

10 A. That's what that says here.

11 Q. Now, in that case and in that
12 circumstance, would Top Communications receive
13 confirmation that ads had been placed for
14 Mr. Lauria?

15 A. I believe was notification that there was
16 ads placed for Mike Lauria.

17 Q. And would Top -- once an ad was placed
18 and the 80 number was displayed in a given
19 publication, Top Communications had the opportunity
20 to monitor the volume of calls that were being
21 placed to the number in the ad; right?

22 A. Top had the opportunity to, but Top did
23 not do that. What Top did was merely see how many
24 minutes were generated and pay a commission check
25 from that.

1 Q. At the end of the month?

2 A. I don't know when it was because there's
3 various plans here and I don't know which one
4 Michael Lauria was on.

5 Q. So if someone had opted to have their
6 money paid on a weekly basis, Top Communications
7 would receive from the phone company in the
8 Dominican Republic that it obtained the lines from
9 a report as to the number of minutes directed at a
10 particular (809) number?

11 A. Yes.

12 Q. Would the report that Top received simply
13 indicate the total number of minutes that had
14 been -- or the duration of the calls to a
15 particular number?

16 A. I don't recall. I don't recall which way
17 it was.

18 Q. Just so I'm clear, going back to the ads
19 that were placed, if an ad appeared and someone
20 responded to the ad and it was a (809) number that
21 Top had leased to a lessee client, Top would
22 receive a payment over and above what was passed on
23 to the lessee?

24 A. Yes.

25 Q. And that payment would be based on the

1 amount of time that the person who responded to the
2 ad stayed on the phone and listened to the audio
3 tech -- listened to the prerecorded message?

4 A. Yes.

5 Q. Now, in providing services to lessees,
6 Top also took care of persons who responded to the
7 ads; right?

8 A. I don't understand what you mean.

9 Q. The ads -- what do the ads -- why
10 would -- let me restate the question.

11 The ad such as the one that appears on
12 the top right of exhibit number 3 represent to
13 provide a work-at-home arrangement for someone; is
14 that right or what did...

15 A. I still don't understand what your
16 question is.

17 Q. Let me rephrase it.

18 If a person responded to the ad at the
19 top of exhibit number 3 and was interested in
20 obtaining work at \$9.00 an hour, how would he go
21 about obtaining that?

22 A. The first thing they would do is call the
23 (809) number, listen to the message. If they were
24 interested in this type of job, they would then
25 send a request to Top Communications requesting an

1 application be sent to them and then an application
2 would be sent to them. They would fill it out,
3 return it to Top Communications; and Top
4 Communications would then review the application
5 and then based on certain criteria may or may not
6 hire that person.

7 Q. How many -- did you have any information
8 that would indicate how many people responded to
9 ads that Top placed in any given time period?

10 A. No.

11 Q. How many applications would Top receive,
12 let's say, during March of 1995?

13 A. I don't know.

14 Q. Did Top keep records of the number of
15 applications that were received?

16 A. I don't think we kept records of the
17 number of applications, no.

18 Q. Now, at some --

19 MR. RICHARDS: Hold on one second.

20 (Conference held outside the record.)

21 MR. RICHARDS: Why don't you just ask him
22 how many questions he's received total because he
23 knows that information instead of by month because
24 he doesn't know by month.

25 I already told you at the onset that he

1 already got those figures for you but just the
2 total figures.

3 Q. (BY MR. GILLES): How many applications
4 have you received in total?

5 A. For Wisconsin?

6 Q. Well, can you indicate by Wisconsin?

7 A. I don't know what you mean.

8 Q. I don't know what total is so --
9 From 1993 forward.

10 A. I don't know what the total is, but there
11 is some information that --

12 Q. What information do you have about the --

13 A. There was some old information that I had
14 somehow looked up and it was for Wisconsin and I
15 don't even recall what time period. It was in the
16 earlier -- in '95 sometime where there was
17 approximately 60 applications had come to us and of
18 those 60 applications, approximately half of them
19 were disqualified applications.

20 Q. They were disqualified upon the basis of
21 incorrect spelling or --

22 A. Incorrect spelling. There was also a
23 minor tests on the applications. The applications
24 were illegible, not filled out correctly, et
25 cetera.

1 Q. Now, at some point in time, in addition
2 to deriving income from commissions and lease
3 payments, initial lease payments, Top also began to
4 offer a work-at-home booklet or a manual on how to
5 make money by working at home; is that right?

6 A. That's right.

7 Q. At what point in time was that made
8 available to persons responding to ads?

9 A. I don't recall when it was.

10 Q. Did it go into effect at the initiation
11 of the program? Was it available right at the
12 beginning?

13 A. I don't recall.

14 Q. I'm going to show you what we marked as
15 Exhibit 15 at Lauria's deposition and ask if you
16 recognize that.

17 A. Yes.

18 Q. What is it?

19 A. It's the Top Communications work-at-home
20 booklet or manual.

21 Q. Who authored that?

22 A. Scott.

23 Q. Did you assist him?

24 A. I reviewed it with him.

25 Q. How much -- how was that made available

1 to the public?

2 A. There was an option in this recorded
3 message that if people wanted to purchase a book
4 that described how to do the job working at home,
5 the clerical work, that they could purchase this
6 book. If they did purchase this book, it was noted
7 on the message that there was a guarantee that came
8 with the book.

9 Q. What was the guarantee?

10 A. My recollection is that the guarantee
11 with this book, that if you do what it says in this
12 book and you go to -- I think it is 25 local
13 businesses in your area and do what it says in this
14 book, that if you don't get work from these
15 businesses, all you would have to do is send the
16 book back to us and we would send your money back
17 to you.

18 Q. Did you direct anyone to follow the
19 procedure outlined in the booklet?

20 A. What do you mean?

21 Q. I mean go door to door and talk to 25
22 different businesses.

23 A. I don't understand what you're saying.

24 MR. RICHARDS: Neither do I.

25 Q. (BY MR. GILLES): Did you direct -- did

1 you have anyone try the procedure that's
2 recommended in the booklet for someone to secure
3 work?

4 A. I didn't have anyone do that. There are
5 people that have done it.

6 MR. RICHARDS: I don't think you
7 understand his question.

8 The question is: He wants to know: Did
9 you test your recommendations in the book to see if
10 they work before you put them in the book? The
11 businesses that you told people -- the types of
12 businesses that you told people to go to and ask if
13 they need work at home, did you ever try it out or
14 did you know that there was a need for these
15 businesses to have people to do work at home?

16 THE WITNESS: The answer is yes, I know
17 there was a need for it and yes, I know that
18 attorneys did it, and yes, I've talked to
19 professional people that say this is the kind of
20 people that they look for to do their own work at
21 home and that's why they are included in here.

22 Q. (BY MR. GILLES): At least in this case,
23 you indicated that through October of '95, '96
24 persons in Wisconsin acquired the booklet?

25 A. Okay.

1 Q. Have you ever -- do you have figures for
2 sales following that date to people in Wisconsin?

3 A. I don't recall.

4 Q. Have you ever surveyed persons who
5 purchased the booklet to see whether they thought
6 it was useful?

7 A. Over here are testimonial letters that
8 people have sent us to saying that booklet was
9 useful.

10 What is this? Number 395.

11 MR. RICHARDS: Yeah. Let the record
12 reflect that when the witness is referring to 395,
13 he's referring to the attorney general's Bates
14 stamp.

15 If you're going to make a testimony from
16 this booklet, let the record reflect what you're
17 doing. What are you doing?

18 THE WITNESS: On this number 395 there
19 are testimonial letters from people that have
20 followed the program that say how good a program it
21 is, that they've done it, that they're real happy
22 with it.

23 Q. (BY MR. GILLES): You have -- I don't
24 believe the addresses of any of the individuals are
25 set out here.

1 Do you have those?

2 A. I don't know if we do.

3 Q. Can you supply those?

4 A. Possibly.

5 Q. Did you undertake a contract with any

6 marketing company to do a scientific sample to see

7 whether people thought your booklet was useful?

8 A. No.

9 Q. Have you ever consulted with a marketing

10 company or -- to do a perception study of the ads

11 for the work-at-home program?

12 A. I don't know what you mean.

13 Q. Have you heard of the term of a

14 "perception study" with respect to advertising?

15 A. No.

16 Q. Have you ever -- has Top Communications

17 consulted with a marketing company to attempt to

18 determine how people interpret the ads that are

19 placed by lessees?

20 A. No.

21 Q. Has Top Communications hired any person

22 who sent an application in response to a Top ad?

23 MR. RICHARDS: From Wisconsin?

24 MR. GILLES: No. It's a general

25 question.

1 THE WITNESS: Can you say that again?

2 Q. (BY MR. GILLES): Has Top Communications
3 hired people who responded to ads?

4 A. Yes.

5 Q. How many people?

6 A. Do you mean for this program or for all
7 programs or what do you mean?

8 Q. For all work-at-home programs.

9 A. Thousands of people.

10 Q. Are these -- in response that was made to
11 request from the State of Wisconsin in October of
12 '95, a lawyer represented -- Deborah Feldman
13 represented -- and the date of the letter is --
14 Exhibit 26. It's dated October 24 --

15 MR. RICHARDS: I'm going to have to
16 object to you asking questions from this letter
17 because it clearly states on the letter for
18 settlement purposes only. So therefore --

19 MR. GILLES: You can object. I'm going
20 to ask questions about it.

21 Q. I'd like to tender to you what's been
22 marked as Exhibit 24, which is a letter dated
23 October 24, 1995.

24 Have you seen that before?

25 MR. RICHARDS: I haven't seen it till you

1 showed it to me today.

2 MR. GILLES: It was attached to notice
3 of --

4 THE WITNESS: You said 24. It says 26.
5 Is it the same thing?

6 Q. (BY MR. GILLES): Thank you. No. The
7 date is October 24. It's Exhibit 26. Sorry.

8 A. Your question to me is?

9 Q. Have you seen it before?

10 A. Yes.

11 Q. And I'm referring to directly to the
12 paragraph following the numbered paragraph 4 where
13 it indicates as of that date, Top has hired
14 approximately 60 people.

15 Do you see that?

16 A. Yes.

17 Q. What type of arrangement did Top have
18 with those 60 people in terms of what -- were they
19 hired to work at the offices in Burbank or would
20 you describe the employment -- the work that was
21 provided?

22 A. All home workers are sent work, clerical
23 work, from our office to be performed at their
24 home. They then send the clerical work back to us
25 and then we pay them. Number 4 here (indicating).

1 Q. You're pointing to number 4?

2 A. Number 4 on this document where it has
3 this person's name (indicating).

4 Q. That's Jessica Drew?

5 A. Yes.

6 Q. That's a person who was hired who resides
7 in Wisconsin?

8 A. At this time who was apparently hired to
9 do work and was paid. And I think she's been hired
10 recently again.

11 And I didn't bring it with me, but I have
12 a letter from her thanking us for hiring her,
13 stating that she made \$34.00 an hour working for us
14 and that she was very happy working for us.

15 Q. What did she do for Top?

16 A. She I believe processed clerical work at
17 home.

18 Q. Was she paid on an hourly basis?

19 A. She was paid by the piece basis.

20 But what ended up happening, she was paid
21 so much, it ended up being \$34.00 an hour for her.

22 Q. And this is on a per-job basis?

23 A. Yeah. That's the reason this ad reads
24 this way.

25 Q. Which ad is that?

1 A. The ad that you have been referring to.

2 Q. Okay.

3 A. It doesn't say \$9.00 an hour. It says
4 \$9.00 plus an hour, indicating it could be more
5 than \$9.00 an hour.

6 And the reason it's that way is because
7 she got paid on a piecemeal basis and she ended up
8 making \$34.00 an hour.

9 Q. How many people has Top hired on a
10 full-time basis?

11 A. I don't know what you mean by "full
12 time."

13 Q. What does "FT" mean in the ad that you're
14 referring to?

15 A. This means part time or full time.

16 Q. My question is: How many people
17 understand the terms in there, that's what it
18 means, "full time"?

19 A. I don't know. I don't know what time
20 they put in. I don't know if they put in part time
21 or full time.

22 Q. This is an ad that came from Top,
23 Mr. DiMattia.

24 What is Top intending to convey to
25 someone who looks at the ad by including FT in that

1 ad?

2 A. I think the interpretation -- are you
3 asking me for my interpretation or what are you
4 asking?

5 Q. I'm asking what Top intended to convey
6 to someone who would read that ad by including --

7 A. That they could work part time or full
8 time, they could work little hours or many hours
9 depending on what they wanted.

10 Often what would happen is we'd give work
11 to these people and they didn't want as much work
12 as we were giving them. They asked for less. If
13 they did a good work, we would always give them
14 more and more. And it got to the point where many
15 people, "Don't give me any more. I don't want any
16 more than what you have given me."

17 Q. Did you know whether that was the case
18 for Mrs. Drew, Ms. Drew, Jessica Drew from Racine?

19 A. She didn't say it that way. She just
20 said, "It was great doing it and thanks for the
21 work. If you have more, send it to me."

22 We said, "You did a great job. Here's
23 more work."

24 And I think the thing she was so excited
25 about was how much money she made per hour.

1 When we find somebody that is a good
2 worker, we like give them more work because we have
3 also had problems where we give work to people and
4 they keep it. They never send it back. They're
5 not reliable. So when we find somebody like this
6 person in Wisconsin, we give them more.

7 Q. So what specific work did you provide to
8 Jessica Drew in terms of --

9 A. I don't recall what specific. It's
10 clerical work. I don't recall what it is. Various
11 things.

12 Q. Putting labels on envelopes --

13 A. I think it's labels and stuffing
14 envelopes and hand writing envelopes, various
15 things.

16 Q. Is it putting labels on envelopes so that
17 you can send people applications to seek --

18 A. I think that's part of it.

19 Q. -- work at Top?

20 I mean Top -- the sources of revenue that
21 you have described so far from Top relate to income
22 generated from the commissions from the ads and the
23 payments made to lease the ads and then the sale of
24 the booklets.

25 Does Top do anything else to generate

1 revenue?

2 A. No.

3 Q. So all the work that people are doing at
4 home is related to that activity; right?

5 A. No.

6 Q. What else do people do for you at home?

7 A. Well, there are -- there are other
8 companies in our office that also have clerical
9 work that get sent to the home workers that have
10 nothing to do with Top's work.

11 Q. What companies are those?

12 A. In the office? What other companies are
13 in my office?

14 Q. What I'm understanding you to say if
15 someone who responds to this ad may get some work
16 on a piecemeal basis from Top or top being an
17 intermediary for some other company and send them
18 -- piecemeal?

19 A. It will all go through Top. But there
20 will be other times there's other clerical work to
21 do for home workers.

22 Q. It won't go through Top?

23 A. Top's home workers are used for clerical
24 work in the office, office work.

25 Q. For other companies?

1 A. Other companies that have needs for
2 clerical work will give that work to Top so Top can
3 send it to home workers.

4 Q. What are the names of those companies?

5 A. I don't see what that has to do with
6 this.

7 Do you?

8 MR. RICHARDS: Can you repeat the last
9 question?

10 Q. (BY MR. GILLES): What are the names of
11 those companies?

12 MR. RICHARDS: That Top sends work to?

13 THE WITNESS: There are other companies
14 in Top's office that lease space in Top's office.
15 They have work that gets done work outside as well.
16 So they tell Top, "Do you have any home workers
17 that are interested in doing this kind of work?"

18 MR. RICHARDS: You are really going
19 beyond the scope. If you could give me some
20 modicum of justification as to why somehow this is
21 relevant, I'd be happy --

22 MR. GILLES: Well, it's --

23 MR. RICHARDS: I don't just give these
24 instructions out just to feel good about myself.

25 But I mean you got to realize,

1 Mr. Gilles, your lawsuit is about advertising in
2 Wisconsin and I'm trying to give you as much
3 latitude as we can because I know this is a
4 deposition. But you got to really realize this
5 isn't a custodial interrogation in the police
6 station. It's a deposition. And you don't have
7 the same latitude that you can just ask him
8 questions from here till next year. I mean let's
9 try to stick with what we're suing for. I mean I
10 was real happy when we were talking about full
11 time, part time, and the ads themselves and these
12 are germane questions. But now who do they
13 subcontract work out to or who do they work with,
14 if you can give me a basis here --

15 MR. GILLES: Mr. Richards, the person who
16 responds to this ad wants to get some employment.
17 Your client is telling me that he has an
18 arrangement with a third party to provide
19 employment to a person that responds to an ad that
20 he drafted.

21 MR. RICHARDS: That's not what he said.

22 MR. GILLES: Provide work.

23 MR. RICHARDS: You're misstating his
24 testimony.

25 THE WITNESS: I didn't say that.

1 MR. GILLES: I'll restate the question.

2 Q. People in Wisconsin have responded to ads
3 that Top lessees have placed -- have through
4 various advertising agencies have placed in
5 Wisconsin; right?

6 Do you understand that?

7 A. Yes.

8 Q. And you understand that because you've
9 gotten requests from people from Wisconsin to
10 purchase your booklet such as marked as exhibit
11 number 15; right?

12 A. You just lost me again, I'm sorry.

13 Q. People from Wisconsin have purchased the
14 booklet?

15 A. Yes.

16 Q. And included with correspondence that's
17 marked as Exhibit 26 was a list of 96 persons from
18 Wisconsin who were represented to have acquired the
19 booklet, and I've had that marked as Exhibit 27.

20 A. Okay.

21 Q. Have you seen this before?

22 A. Yes.

23 Q. And was that prepared at your direction?

24 A. The attorney prepared that.

25 Q. You supplied the information to the

1 attorney?

2 A. Yes.

3 Q. And it was accurate at the time you
4 prepared it?

5 A. We think so, yes.

6 Q. So my question is -- or I understood you
7 to say that Top had an arrangement with other
8 companies to provide work to persons that responded
9 to these ads.

10 MR. RICHARDS: No. That's -- see, you're
11 missing it. My client was --

12 Q. (BY MR. GILLES): Is the answer no?

13 A. The answer is no.

14 Q. Is the only way that someone would get
15 work by responding to a Top ad through Top from
16 Top?

17 A. The only way someone would get work is
18 responding to an ad that one of Top's clients has
19 placed and they went through the procedure with the
20 application and then Top would send them work.

21 Q. If they qualified?

22 A. If they were a qualified person, sure.

23 Q. So Top didn't send work to these people
24 from other companies?

25 A. No.

1 I need to go to the bathroom.

2 MR. RICHARDS: You can take a break
3 whenever you want. This isn't a custodial
4 interrogation.

5 (Recess, 3:13 to 3:44 p.m.)

6 (Exhibits 28 through 30 were
7 marked for identification.)

8 Q. (BY MR. GILLES): I'd like to show you
9 what has been marked as Exhibit 28.

10 Would you look at that, please.

11 MR. RICHARDS: Thank you. I want to note
12 that Mr. Gilles has complied with all California
13 code of civil procedures and I have been
14 appreciative of him providing me copies of all
15 exhibits. It's been very nice.

16 Q. (BY MR. GILLES): Have you seen the
17 document before?

18 A. No.

19 Q. Do you recognize it as Top Communications
20 letterhead?

21 A. Yes.

22 Q. Do you see the signature at the bottom of
23 the page?

24 A. Yes.

25 Q. Anita Persaud is that --

1 A. Persaud.

2 Q. Did she at the time this was prepared
3 work for Top Communications?

4 A. Yes.

5 Q. It's dated June 19, 1995.

6 Does she still work there?

7 A. No.

8 Q. When did she leave?

9 A. A month or two ago.

10 Q. What was her position while she worked
11 for Top Communications?

12 A. She did administrative work.

13 Q. Directing your attention then to what's
14 been marked as Exhibit 29 which has three pages to
15 it, and I direct your attention to the second page
16 of the exhibit, do you recognize that?

17 A. I recognize the letterhead. This was
18 somebody that worked in the office a long time
19 ago.

20 I don't even know what this is.

21 Q. Would you review the letter, please.

22 A. Sure.

23 Okay.

24 Q. Is that a letter that Top would use to
25 respond to people who had requested an application?

1 A. I don't think so. What it appears to me
2 to be is a letter that is sent to people that we
3 either could not use their services at the time
4 that we received their application or the
5 application that we did receive, they weren't
6 qualified. So they probably got a letter like
7 this.

8 Q. Were you involved in preparing the
9 letter?

10 A. No.

11 Q. I notice in the second paragraph it
12 indicates that, "We have been in business since
13 April of '93."

14 A. Okay.

15 Q. And does that refresh your recollection
16 as to when Top began?

17 A. I think I said 1993, for three years.

18 Q. So April of that year would be about --

19 A. It's possible.

20 Q. And the second sentence says,
21 "We launched the Work At Home Program
22 nationwide in February of this year."

23 Do you see that?

24 A. Yes.

25 Q. There is no date on the letter, but if

1 you direct your attention to the first page of the
2 exhibit -- and I have the original and the postmark
3 that's attached to it is in May of '95.

4 Do you see that?

5 A. Yeah.

6 Q. So would that refresh your recollection
7 as to the time when the work-at-home program began?

8 A. Well, let's see, that's postmarked May of
9 '95 and here it said what? Two months.

10 Q. I think it said February of this year.

11 A. And in Michael Lauria's contract, it said
12 April of '95. There you have it. Somewhere in
13 there.

14 Q. Somewhere in there, okay.

15 A. (No audible response.)

16 (Conference held outside the record.)

17 Q. (BY MR. GILLES): Now, during -- let's
18 take May of 1995, can you indicate what revenue
19 would be produced, let's say, during that month
20 from people who would respond to work-at-home ads?

21 A. No. I have no idea.

22 Q. That information was available to Top,
23 though, wasn't it?

24 MR. RICHARDS: Can you clarify what you
25 mean by "revenue"?

1 MR. GILLES: Sure.

2 Q. Each month Top would get -- each month
3 Top or -- perhaps on a weekly, biweekly, or monthly
4 basis, Top would receive a report from the
5 telephone company in the Dominican Republic as to
6 the amount of minutes that had been generated or
7 called -- the duration of calls to the (809)
8 numbers; right?

9 A. That's correct.

10 Q. And you would have information that would
11 indicate the commissions that were being paid to
12 Top and channeled on to lessees; right?

13 A. Yes.

14 Q. And what I'm asking is: During the --
15 let's say, May of 1995 or some other month, what
16 generally was the amount of revenue that was
17 produced?

18 A. I don't know. There is no general
19 amount.

20 MR. RICHARDS: Also I'm going to object
21 to the questions along this specific line dealing
22 with how much revenue was generated because that's
23 a question of assets and we've already -- there's
24 already been testimony and you're already aware
25 that there is no way for Top to delineate what

1 calls came from Wisconsin and what came from all
2 over. So it's a figure we can't -- that Top can't
3 give you.

4 Q. (BY MR. GILLES): I want to direct your
5 attention to what's been marked as Exhibit 30.

6 MR. RICHARDS: Thank you.

7 Q. (BY MR. GILLES): And Exhibit 30 is a
8 copy of portion of the classified advertising from
9 newspaper in Wisconsin and has Bates stamp number
10 what?

11 MR. RICHARDS: I want to talk to my
12 client for a minute.

13 MR. GILLES: 322.

14 (Conference held outside the record.)

15 Q. (BY MR. GILLES): Do you see the ad? It
16 reads, "Part time nine-twenty-five slash H-R."

17 Do you see that?

18 A. Yes.

19 Q. Do you recognize that as an ad placed by
20 a Top lessee?

21 A. I don't know who placed it.

22 (Conference held outside the record.)

23 THE WITNESS: This is not an ad that Top
24 would endorse and give to anybody to place.

25 Q. (BY MR. GILLES): Do you -- based on your

1 memory today, do you know whether or not that
2 particular number was one that Top had leased from
3 the telephone company in the Dominican Republic?

4 A. I don't know for sure.

5 I can volunteer that the 474 is a prefix
6 that Top used, but so did other companies for the
7 telephone company.

8 Q. So that particular prefix was not
9 exclusively assigned to Top?

10 A. That's right.

11 Q. Did Top have other prefixes for the
12 work-at-home program?

13 A. I don't recall. I don't know.

14 Q. Has Top maintained a list of specific
15 numbers that were used in the work-at-home program?

16 A. I don't think there is a list now. This
17 isn't used -- this is old and I don't know if there
18 is anything like that anymore.

19 Q. If -- let's assume that the number was --
20 if someone called the number and received a
21 prerecorded message in which Top Communications was
22 identified, you would agree that would have been a
23 number that Top had leased to a lessee to place
24 ads; right?

25 A. At this time?

1 Q. Yes.

2 A. That this was run?

3 If the recording said Top Communications
4 at this number, I would say that that's a number
5 that Top leased to a client.

6 Q. And Top would have received some money
7 based on the length of time that someone listened
8 to the prerecorded message?

9 A. If it was Top's number, yes.

10 Q. On occasion people who listened to the
11 message, they would be billed for that in their
12 following month's phone bill; right?

13 A. I don't know for sure when the time frame
14 would be. But if they called this number, they
15 would be billed for it.

16 Q. And on occasion people would not pay the
17 bill; right?

18 MR. RICHARDS: Objection; lack of
19 personal knowledge.

20 What people? What bill? What are you
21 talking about?

22 Q. (BY MR. GILLES): On occasion did
23 people -- was information communicated to Top
24 Communications that people had refused to pay for
25 the telephone call to the (809) number?

1 A. No.

2 Q. Was there an arrangement that Top had
3 with the telephone company in the Dominican
4 Republic to handle chargebacks, in other words,
5 bills that the telephone company couldn't collect?

6 MR. RICHARDS: Just, Mr. Gilles, you
7 don't understand really procedurally how this works
8 because I can just tell from your questions. I'm
9 not trying to insult you or anything. The phone
10 bills are from American carriers to the people and
11 there is no such thing as a chargeback in the (809)
12 business. So if you just want to -- I mean I don't
13 mind you asking questions and I don't want you to
14 sit here for 20 minutes trying to figure it out.

15 MR. GILLES: Let's lay the foundation.

16 Q. If someone would call the (809) number
17 such as depicted in exhibit number 20 -- exhibit
18 number 30; right?

19 A. Yeah.

20 Q. And they would be charged at a rate set
21 by -- if they dialed 1 plus from their residence,
22 set by their prescribed long distance carrier;
23 right?

24 A. I think so. If you're asking me do they
25 get charged by their long distance carrier whatever

1 the long distance carrier charges, yeah, I guess
2 so.

3 We have nothing to do with the charges.
4 There is no way to set it.

5 Is that what you mean?

6 Q. And the --

7 MR. RICHARDS: Or do you care?

8 THE WITNESS: Yeah. There is no -- it's
9 not a (900) number where you -- it's a set price.

10 Q. (BY MR. GILLES): Right. The long
11 distance carrier has an arrangement with the
12 carrier in the Dominican Republic to pay that
13 carrier for the privilege of terminating a call in
14 the Dominican Republic; is that right?

15 MR. RICHARDS: No. And I'm going to --

16 MR. GILLES: You're not the --

17 MR. RICHARDS: This is beyond the scope
18 of his knowledge.

19 I mean do you have any knowledge of how
20 AT&T, MCI, or Sprint make a contract with a carrier
21 -- with a tariff in the Dominican Republic?

22 THE WITNESS: No.

23 MR. RICHARDS: I mean I could tell you if
24 you just need to know. But you're going way beyond
25 the scope of what he knows. He's a service bureau.

1 Q. (BY MR. GILLES): If someone refuses to
2 pay the bill for the call, at any point in time is
3 that amount deducted from a payment made to Top
4 Communications?

5 A. No.

6 Q. Is there any reserve set up with the
7 phone company in the Dominican Republic to take
8 care of particular persons who fail to pay for the
9 long distance call?

10 A. No.

11 Q. I'd like to direct your attention to
12 exhibit number 12 that was marked at the Lauria
13 deposition.

14 A. Okay.

15 MR. RICHARDS: Let me take a look.

16 THE WITNESS: This is not --

17 MR. RICHARDS: I know, I know.

18 (Conference held outside the record.)

19 MR. RICHARDS: Yeah, go ahead.

20 Q. (BY MR. GILLES): Would you review the
21 exhibit, please.

22 A. I see.

23 Q. Do you see the column depicted there or
24 there is a section in the left hand side that's
25 entitled "Chargebacks"?

1 A. Yes.

2 Q. Would you explain what that means or
3 refers to in connection with the arrangement with
4 Mr. Lauria?

5 A. This -- what that means is that this
6 telephone company -- back up.

7 The long distance company that delivers
8 the traffic to this telephone company did not
9 deliver the traffic there. It delivered it to an
10 alternative telephone company and by delivering it
11 to an alternative telephone company, there weren't
12 any commissions paid for that traffic from the long
13 distance carrier to this telephone company.
14 Consequently, we didn't get paid any commissions.
15 Consequently, he doesn't get paid any commissions.
16 It wasn't fraud traffic. It wasn't consumers
17 saying, "I'm not paying." It was nothing like
18 that. It was merely the long distance carrier
19 redirecting traffic for technical reasons. In
20 other words, the consumer still paid the bill.

21 Q. But Lauria and Top didn't receive any
22 commissions?

23 A. That's correct.

24 Q. Because the company other than the one
25 that leased you the (809) number handled the

1 traffic?

2 A. That's correct.

3 MR. RICHARDS: If you want at the end
4 I'll explain to you technically how that works.
5 They're only allowed a certain amount of ports into
6 the country.

7 Q. (BY MR. GILLES): Now, directing your
8 attention to exhibit number 30, you indicated that
9 this particular ad would not be endorsed by Top
10 Communications?

11 A. That's correct.

12 Q. Why is that?

13 A. It doesn't have the proper disclosure in
14 it.

15 Q. What's the proper disclosure?

16 A. It needs to say that international long
17 distance tolls apply.

18 Q. But the reference to part time 9.25 per
19 hour is consistent with Top protocol?

20 A. Yes.

21 Q. Now, what people -- in terms of -- the ad
22 refers to clipping classified ads from newspapers.

23 How was that involved in Top's
24 work-at-home program?

25 A. I don't know.

1 Q. Now, during most of the deposition, we've
2 discussed the arrangement whereby Top would place
3 ads whereby lessees of (809) numbers from Top would
4 be involved in the placement of work-at-home ads.

5 Did Top apart from lessees place ads?

6 A. Top never placed an ad.

7 Q. Did Top contract with R & R Advertising
8 to place ads?

9 A. Yes.

10 Q. On behalf of Top Communications?

11 A. There was a very few ads that Top had,
12 like, test lines that they wanted to test and we'd
13 give instructions to R & R for that phone number to
14 place ads to this phone number to just wherever
15 they wanted to place them for a certain amount of
16 money, very few ads. I don't recall what it is.

17 Q. What sort of tests -- what sort of things
18 was Top attempting to test?

19 A. Probably -- god, I'm not sure.

20 (Conference held outside the record.)

21 THE WITNESS: Let me go back with that
22 last part.

23 Part of the reason for the test, often
24 when the ads were placed, they were -- R & R was
25 told to place them wherever.

1 And one of the recollections is that we
2 were testing the long distance carriers to see if
3 they would carry the call from various places in
4 the country. So I remember that being one of the
5 tests.

6 Q. (BY MR. GILLES): Is the work-at-home
7 program currently being offered by Top?

8 A. No.

9 Q. Is Top currently operating as a service
10 bureau?

11 A. Yes.

12 Q. What sort of programs -- withdraw the
13 question.

14 MR. RICHARDS: Hold on one second.

15 (Conference held outside the record.)

16 Q. (BY MR. GILLES): Does Top offer a
17 Mystery Shoppers program?

18 A. Used to.

19 Q. When did it offer a Mystery Shoppers
20 program?

21 MR. RICHARDS: I'm going to instruct the
22 witness not to -- you're now really going beyond
23 the scope because not one single ad in Wisconsin
24 dealt with Mystery Shopper.

25 MR. GILLES: Well, counsel, let me show

1 you what was marked as Exhibit 16 at the Lauria
2 deposition which is a consumer complaint about a
3 Mystery Shopper ad that appeared in Wisconsin
4 within the last couple months.

5 MR. RICHARDS: Your lawsuit, though, is
6 limited to ads that went in '95. So you want to
7 file another lawsuit on this ad, go ahead.

8 But I mean I'm going to instruct him not
9 to answer any questions about programs that aren't
10 related to these ads.

11 MR. GILLES: You can instruct him however
12 you want. The deposition framework is from '94 to
13 present and the ad is similar enough to the ad that
14 prompted us to file the lawsuit that I think it's
15 relevant.

16 You wait for my questions and you make
17 whatever objections or comments you want.

18 Q. Mr. DiMattia, I'd like to show you what's
19 marked as Exhibit 16.

20 Would you review that, please.

21 A. Okay.

22 Q. Is the Mystery Shopper program one that
23 Top Communications ran?

24 A. Used to run, yes.

25 Q. How long did it run that program?

1 A. I don't know. Six months maybe.

2 MR. RICHARDS: Are you entering this --
3 this is going to be an exhibit to this deposition
4 because that was my request on our earlier
5 deposition if you were going to show him anything,
6 it's going to be part of the record.

7 MR. GILLES: It's marked, yes.

8 MR. RICHARDS: Do we need to make copies
9 of this?

10 MR. GILLES: You had a copy.

11 MR. RICHARDS: I mean this one you're
12 going to put into the transcript here?

13 MR. GILLES: We can deal at the end of it
14 if you want. I mean you've already gotten copies
15 of it.

16 MR. RICHARDS: I've never seen this
17 document ever, to tell you the truth, and it's not
18 in what you handed me earlier today. I've never
19 seen it before.

20 MR. GILLES: Do you need some time to
21 review it?

22 MR. RICHARDS: No. As long as we're
23 going to put it in part of the record, that's fine.

24 Q. (BY MR. GILLES): So did Top
25 Communications operate the Mystery Shopper program

1 as it had operated the work-at-home program?

2 A. Top Communications offered a recorded
3 message that had to do with mystery shopping.

4 Q. Did Top lease particular lines to
5 individuals for the specific (809) numbers that
6 resulted -- that connected people to the
7 prerecorded message for the Mystery Shopper
8 program?

9 MR. RICHARDS: Objection.

10 First of all, instruct the witness to
11 wait until my objections are through and give me a
12 chance to make an objection.

13 I'm going to instruct you not to answer
14 about any questions about an ad that appeared on
15 August 14, 1996.

16 There is no lawsuit pending relating to
17 this ad. The mystery shopping program is
18 completely different than the work-at-home program
19 even though you have the assertion that you think
20 they're the same.

21 And I'm going to instruct you not to
22 answer any questions about an ad that was placed on
23 August 14, 1996 as being beyond the scope of this
24 litigation.

25 Q. (BY MR. GILLES): Did Top Communications

1 offer to sell persons who responded to the Mystery
2 Shopper ad anything?

3 MR. RICHARDS: Again same objections,
4 same instructions.

5 Q. (BY MR. GILLES): Are you refusing to
6 answer any questions about Mystery Shoppers on
7 advice of counsel, Mr. DiMattia?

8 MR. RICHARDS: Objection. My
9 instructions are clear as for each question. I'm
10 not making blanket instructions.

11 I'm instructing you not to answer that
12 question in that it's nonresponsive to my
13 objection.

14 Q. (BY MR. GILLES): Who is Jessica Golden?

15 MR. RICHARDS: Objection. Outside the
16 scope of this --

17 Do you want to lay a foundation for her
18 first?

19 MR. GILLES: No. I want to know if
20 Mr. DiMattia knows a person named Jessica Golden.

21 MR. RICHARDS: You can answer that
22 question.

23 THE WITNESS: Yes.

24 Q. (BY MR. GILLES): How do you know -- in
25 what capacity do you know her?

1 A. She is somebody that works in the office.
2 Q. At Top Communications?
3 A. No.
4 Q. At what office?
5 A. 3500 West Olive.
6 Q. That's the address of Top Communications?
7 A. That's true.
8 Q. So what company does she work for?
9 A. She works for a company called Web
10 Builders International.
11 Q. Is that located in the offices in the
12 space that Top Communications has at that address?
13 A. Yes.
14 Q. What is the -- what if any affiliation is
15 there between Top Communications and the company
16 you mentioned?
17 MR. RICHARDS: Objection. Again
18 Mr. Gilles, you're not going to go on a fishing
19 expedition here. We're dealing in ads in '95. Now
20 you want to know a company affiliated -- that
21 shares office space with Top Communications. It's
22 a big executive suite. There are a lot of
23 companies in there.
24 I mean if you want to know about the
25 office location, go drive out there. You're in

1 California. Go take a look and walk around and ask
2 people questions. But you're not going to get it
3 from my client today.

4 We're dealing with a lawsuit for ads in
5 1995. Let's get back to the topic while you're
6 taking this deposition, these ads.

7 Q. (BY MR. GILLES): Will you answer the
8 question?

9 MR. RICHARDS: I'm instructing him not to
10 answer.

11 Q. (BY MR. GILLES): Do you know a Doug
12 Nuss?

13 A. Yes.

14 Q. Who is he?

15 A. Was a client of Top's.

16 Q. Was he -- for the work-at-home program?

17 MR. RICHARDS: Let the record reflect
18 you're reading off a document that you're not
19 showing the witness and I object to you asking him
20 questions off a document that's in evidence --

21 MR. GILLES: It's not in evidence. It's
22 not marked.

23 Make your objection. Let's get on with
24 this.

25 (Conference held outside the record.)

1 THE WITNESS: I'd like to see your
2 document. Help me.

3 Q. (BY MR. GILLES): Well, I don't want to
4 show it to you.

5 MR. RICHARDS: Don't answer any questions
6 about it.

7 Q. (BY MR. GILLES): My question is if you
8 know a Mr. Nuss and you said yeah, and he was a
9 distributor of Top Communications. And then my
10 question asks whether he did the work-at-home
11 program and that's it.

12 Did he do the work-at-home program?

13 A. Yes.

14 Q. Did he also do the Mystery Shopper
15 program?

16 MR. RICHARDS: Objection. You're beyond
17 the scope.

18 I'm instructing you not to answer.

19 Q. (BY MR. GILLES): Mr. DiMattia, are you
20 familiar with a subpoena that the Federal Trade
21 Commission has issued to Top Communications?

22 MR. RICHARDS: Objection. You asked
23 these questions earlier in the first deposition
24 with David Nadell.

25 How could a Federal Trade Commission

1 subpoena be relevant to the ads placed in Wisconsin
2 in 1995?

3 Q. (BY MR. GILLES): Mr. DiMattia, are you
4 familiar with the subpoena that was issued by the
5 Federal Trade Commission?

6 A. Yes.

7 Q. Did you -- did you prepare a response to
8 this subpoena?

9 A. Yes.

10 Q. And was the response that you prepared --
11 did it include documents that Top Communications --
12 and business records of Top Communications?

13 MR. RICHARDS: Objection. His attorneys
14 helped prepare the response and you're moving to
15 attorney-client work product privilege and it's
16 completely irrelevant, what the subpoena called
17 for, what was prepared.

18 Do you want to go get a copy of the
19 subpoena and get it from the FTC? Go ahead.
20 You're not entitled to that information. Their
21 subpoena is different than yours.

22 MR. GILLES: I don't think it's
23 privileged.

24 Q. My question is whether or not you
25 produced business records and information in

1 response to the subpoena.

2 MR. RICHARDS: I'm going to instruct you
3 not to answer. It's accessible information to him
4 and I don't think you really are qualified to
5 testify into how you responded to it.

6 Q. (BY MR. GILLES): Is that your testimony
7 today, Mr. DiMattia, that you're not prepared to
8 answer the question whether you submitted business
9 records or information in response to the subpoena?

10 MR. RICHARDS: I'm just giving you an
11 instruction not to answer questions about what you
12 responded to the subpoena because that information
13 he already said earlier in the previous deposition
14 he can get himself. So let him go and get it.

15 MR. GILLES: I'm entitled to ask
16 Mr. DiMattia whether or not the information he
17 supplied in response to a subpoena was what it was.

18 MR. RICHARDS: You're calling for a legal
19 conclusion.

20 MR. GILLES: It's not a legal
21 conclusion.

22 Q. I mean, Mr. --

23 MR. RICHARDS: Do you know the legal
24 definition of a business record?

25 THE WITNESS: (No audible response.)

1 MR. RICHARDS: Is that a yes or a no?

2 THE WITNESS: No.

3 Q. (BY MR. GILLES): Mr. DiMattia, did you
4 provide documents that were at the offices of Top
5 Communications to the Federal Trade Commission in
6 response to a subpoena?

7 MR. RICHARDS: You can answer that.

8 THE WITNESS: Yes.

9 Q. (BY MR. GILLES): Were the documents that
10 you provided altered in any way?

11 A. Not that I'm aware of.

12 Q. Were they in any way falsified?

13 A. Not that I know of.

14 Q. Did you attempt to provide accurate
15 information to the best of your ability to --

16 MR. RICHARDS: Objection.

17 Are you trying to conduct a deposition
18 for the Federal Trade Commission or for the State
19 of Wisconsin? What is the matter with you? This
20 has nothing to do with your lawsuit. These
21 questions are inappropriate. They really are. His
22 response to the FTC subpoena is way beyond the
23 scope of your 1995 ads.

24 I'm instructing you to answer no more
25 questions regarding this FTC subpoena.

1 Let's move this along, counselor. Let's
2 get back to relevance here.

3 Q. (BY MR. GILLES): Did the information
4 that you supplied to the Federal Trade Commission
5 include a list of the (809) numbers that you had
6 leased in the work-at-home program, that Top had
7 leased in the work-at-home program?

8 A. I don't know.

9 Q. Did the information that you supplied --
10 did you review all the documents that you furnished
11 to the FTC personally?

12 A. Not all the documents.

13 Q. Were you required to sign an affidavit
14 before they were delivered to the FTC?

15 A. Yes.

16 Q. And the affidavit attested to the
17 authenticity of the documents?

18 A. I don't recall.

19 Q. Well, were the documents that you
20 submitted what they purported to be?

21 MR. RICHARDS: Objection. Same
22 instruction.

23 Move it along. Same instruction and my
24 objection, he's going to follow my instruction.
25 Move it along.

1 Q. (BY MR. GILLES): Did you -- when did you
2 tender the documents to the FTC?

3 MR. RICHARDS: Objection. Same
4 instruction. He's going to follow it. Move it
5 along.

6 It's really none of your business, to
7 tell you the truth, what his response to that FTC
8 investigation was. This is way beyond the scope of
9 the deposition.

10 Unless are you the attorney for the FTC
11 as well? Because I know the attorney, I've talked
12 to him a couple of times, and he didn't tell me
13 that you'd be conducting the deposition on their
14 behalf today and he hasn't had any complaints in
15 our response to the subpoena.

16 MR. GILLES: The last --

17 MR. RICHARDS: I'm very familiar with the
18 FTC investigation.

19 Q. (BY MR. GILLES): The last part that I
20 want to move on to: Are you familiar with the
21 program that aired on "Inside Edition" regarding
22 Top Communications?

23 A. Yes.

24 Q. Do you have an opinion as to the accuracy
25 of the information that was set out in the program?

1 A. Yes, I have an opinion.

2 Q. What's your opinion?

3 A. My opinion is that they did not report
4 the facts. They did not gather any facts from Top
5 or myself or any spokespeople for Top. They made
6 up a lot of accusations. My recollection is almost
7 everything they said was false.

8 (Conference held outside the record.)

9 Q. (BY MR. GILLES): Can you be precise as
10 to what was false in the report?

11 MR. RICHARDS: Hold on a minute. He
12 still wants to augment his answer.

13 THE WITNESS: I was just going to say
14 that "Inside Edition" used methods that I believe
15 were improper. They trespassed inside my office,
16 came inside my office without permission. They --

17 What was I going to say? They --

18 (Conference held outside the record.)

19 THE WITNESS: We offered them an
20 interview to give them the facts about everything.
21 They refused the interview.

22 They also went to the Dominican Republic
23 under false pretenses, pretended they were not who
24 they actually are, and convinced an employee at the
25 phone company there to give them confidential

1 information that the employee of that phone company
2 says that they misquoted him, didn't report the
3 truth whatsoever.

4 Q. (BY MR. GILLES): I brought the tape with
5 me. If I play it, can you point to the specific
6 things that are inaccurate?

7 MR. RICHARDS: Do you mind? It's very
8 irrelevant, but I happen to --

9 THE VIDEO OPERATOR: We'll have to go off
10 the record.

11 (Discussion held off the record.)

12 MR. GILLES: For the record I'm going to
13 play a video cassette that contains a portion of
14 the "Inside Edition" broadcast recording Top
15 Communications. I will mark the individual
16 cassette as Exhibit 31 and supply counsel with a
17 copy following the deposition.

18 So we can go off the record so that we
19 can view the cassette.

20 MR. RICHARDS: Is that following today's
21 deposition you be mailing me a copy?

22 MR. GILLES: I'll be mailing you a copy.

23 MR. RICHARDS: That's fine.

24 (Discussion held off the record.)

25 (The video of "Inside Edition"

1 is being played.)

2 MR. GILLES: For the record we have been
3 viewing segment of "Inside Edition" that's about
4 Top Communications and Mr. DiMattia had -- prior
5 to presenting the tape, I had asked Mr. DiMattia
6 to comment on the accuracy of it and we had stopped
7 the tape at the point where they are going to
8 interview an official from a company in New
9 Jersey.

10 Q. And is there something up to this point,
11 Mr. DiMattia, that's been unfairly characterized in
12 the tape?

13 A. Well, the first thing that I noticed is
14 they said that the thousands of people that have
15 applied for jobs are in for a surprise.

16 Why would they say that unless they have
17 information? What -- do they have proof that it's
18 thousands of people that applied for a job?

19 Q. So is that an inaccurate statement?

20 A. Who knows if it's accurate or not? They
21 didn't find out any information from us. They have
22 no records of this.

23 The second thing, this fellow here -- I
24 forgot the name of his company now.

25 Q. I think it's Dale Systems.

1 A. Dale Systems or something like that, yes.

2 He claims he never heard of us.

3 The fact of the matter is he contacted us
4 to get our applications for Mystery Shoppers for
5 his company.

6 Q. Did he contact you -- how did he contact
7 you?

8 A. The story is we listed I think 12, 15
9 companies in the Mystery Shopper script that as far
10 as we knew were hiring, looking for Mystery
11 Shoppers. These were research marketing
12 companies. We got that information from a manual
13 that was sent to us that listed all of these
14 companies.

15 We then listed those companies in our
16 script and after -- as far as we knew, they wanted
17 to hire people. So then the people that responded
18 to the Mystery Shopper program would send request
19 for applications to these companies as well.

20 He makes a statement that he didn't know
21 anything about it and says that we are a scam and
22 all this.

23 Yet a few weeks after this was done, he
24 called the office and said, "I'd like to get all
25 your Mystery Shopper applications for our jobs. We

1 need them."

2 And I think -- I'm not sure if it says in
3 this one or not, but there was a comment made here
4 about people having to pay for a Mystery -- to get
5 a Mystery Shopper application or job. And this
6 gentleman here does the exact same thing. But he
7 made the accusation that we are not legitimate and
8 we are a scam and all the other things. Yet he's
9 asking us for the people. I don't know how
10 accurate this reporting actually is.

11 Q. Is there anything else up to this point?

12 A. No.

13 (The video of "Inside Edition"
14 is being played.)

15 THE WITNESS: That statement is not true
16 that he has -- he has no right to say he has no
17 information from us whatsoever. That's his
18 assumption and "Inside Edition" reported that.

19 MR. RICHARDS: You got to respond to the
20 statement because that's not being taken down.

21 The statement was -- make the record
22 clear what the statement was.

23 MR. GILLES: The statement was one made
24 by the individual interviewed at Dale Systems which
25 said in substance that people were responding to

1 ads for jobs that did not exist.

2 THE WITNESS: That's what he said.

3 He has no information that what he's
4 saying is the truth.

5 Q. (BY MR. GILLES): What jobs did Top
6 Communications have for people that responded to
7 Mystery Shopper ads?

8 A. Top didn't have jobs. Top had companies
9 that requested Top's applications for Mystery
10 Shoppers from Top. They had jobs, many jobs. And
11 as far as we know, almost everybody that filled out
12 an application correctly and sent it in has been
13 hired as far as we know, almost everybody.

14 Q. How would Top know that?

15 A. The information was given to Top from
16 these companies.

17 Q. All 17 that are listed in the prerecorded
18 message?

19 A. No, not all 17.

20 What we've come to find out, which we
21 don't know at the time, was that some of these
22 companies on the messages -- once we found out, we
23 changed it. Some of these companies didn't want
24 any more applications. Some of the companies since
25 we put them on our script from the book went out of

1 business or nonexistent. We didn't know. Once we
2 found out, we changed the company names. The
3 script was changed.

4 We had so many companies contacting us
5 because it was a good thing for research companies
6 not to have to pay to find people to be Mystery
7 Shoppers; we were doing it for them so we were
8 getting contacted by everybody to supply Mystery
9 Shopper applications to. So we put their names on
10 the recording. We updated it every time somebody
11 wanted it on the recording.

12 (The video of "Inside Edition"
13 is being played.)

14 THE WITNESS: That's not true. Why would
15 he say finding the job offers were phony? How did
16 he find that out? How is it phony?

17 Q. (BY MR. GILLES): Mr. DiMattia, you're
18 questioning the statement on the tape to the effect
19 that Top job offers for Mystery Shopper were phony?

20 A. Absolutely.

21 (The video of "Inside Edition"
22 is being played.)

23 MR. RICHARDS: I object to that, too.

24 Q. (BY MR. GILLES): You're objecting,
25 Mr. DiMattia, to the statement that people are

1 being duped by the Mystery Shopper ads to call the
2 Dominican Republic?

3 A. Right.

4 Q. Is there a statement in the Mystery
5 Shopper ad that the --

6 A. There's a couple things here. One is
7 they aren't even finding out where they're calling
8 even though there's disclosures as I recall in four
9 different places as to where they're calling.

10 Q. In the ad, in the Mystery Shopper ads,
11 there is a disclosure of where people who respond
12 to the ad are calling?

13 A. When you add the phone number for Mystery
14 Shopper ads, there's a disclosure that says it's an
15 international long distance toll charge. That's
16 before you ever call the (809) number. That's just
17 a local call. So they can decide if they want to
18 call the (809) number and pay for more information.

19 If they do, they decide to call the (809)
20 number and decide they want to pay for more
21 information, it's disclosed either two or three
22 more times in the (809) script that it's being
23 charged as an international toll charge. And it
24 goes on to say what the range of the cost would be
25 and it goes on to say it varies depending on the

1 long distance carrier, the time of day, and day of
2 the week and all that.

3 (Conference held outside the record.)

4 THE WITNESS: Hold on one second.

5 (Conference held outside the record.)

6 THE WITNESS: None of these people
7 bothered to check with their carrier or phone
8 company or anyone to find out where they were
9 calling prior to placing the call.

10 Q. (BY MR. GILLES): You mean the persons
11 who would respond to the --

12 (Conference held outside the record.)

13 THE WITNESS: They knew it was an
14 international long distance call. It says it all
15 over.

16 Q. (BY MR. GILLES): In the ad?

17 A. Not in the ad. In the script.

18 Q. In the script that you get when you call
19 the (809) number?

20 A. No. In there, too.

21 MR. RICHARDS: Hold on a minute.

22 (Conference held outside the record.)

23 THE WITNESS: When someone would call,
24 they'd call a domestic phone number from an ad that
25 we advertise. They'd call a domestic phone number.

1 That domestic phone number gave total disclosure
2 about what the program was or is -- was. And in
3 that script it would say that was an international
4 toll charge.

5 It would also say things like, "You're
6 probably not going to get hired. The reason you're
7 probably not going to get hired is you're not even
8 going to request an application. Or if you
9 request an application, you won't send it back. Or
10 if you send one back to us, it won't be legible
11 that we could even read about it. But whoever
12 sends one back and it's legible and readable, the
13 chance would be very high that you would be
14 hired."

15 That was in the domestic message. If
16 they wanted more information, they could then call
17 an (809) number.

18 When they called the (809) number, there
19 are in the (809) number either two or three times
20 in that script that it was an international toll
21 charge, they were being charged for it, and it
22 would describe the program.

23 (The video of "Inside Edition"
24 is being played.)

25 Q. (BY MR. GILLES): So is the fee splitting

1 arrangement depicted there an accurate
2 representation?

3 A. Totally inaccurate.

4 Q. How is it inaccurate?

5 Let me for the record mention what was
6 depicted on the tape. There was a portrayal of a
7 map where the long distance carrier from the
8 domestic long distance carrier would pay a fee to a
9 carrier in the Dominican Republic which was
10 represented to be five times the fee associated
11 with a country, thereby enabling the Dominican
12 Republic carrier to pay a commission to the Top
13 Communications.

14 Is that -- have I accurately described
15 what was set out in the video?

16 A. Yes.

17 Q. Now how was that inaccurate?

18 A. Number of things wrong with it.

19 One, it's not a foreign carrier. It's
20 AT&T that delivers it, the call from the United
21 States to the Dominican Republic.

22 The cost of that call varies all over the
23 place depending on -- like I was saying, if there
24 is a discount, the time of day, the day of the
25 week, who the carrier is. Sometimes it's cheaper

1 to call there than to call across the country in
2 the U.S. So it's misrepresented that it's five
3 times as much to another country.

4 The actual splitting of the money that is
5 charged, the way it works is if a caller ends up
6 with, for argument's sake, a dollar a minute for
7 the call, 90 percent of that money, 90 cents, would
8 end up going to AT&T and his local phone company,
9 in this case like Pacific Bell, and TriComm. Those
10 three telephone companies get about 90 percent of
11 the total.

12 The other 10 percent is given to us
13 approximately, of which we give more than half of
14 it to a client for advertising. The end result, we
15 make the smallest profit of everybody in the whole
16 thing, tiny profit. The client makes more for
17 advertising and the telephone companies make the
18 bulk of it.

19 And the telephone companies including
20 AT&T endorse this kind of structure. That's why
21 they pay for the traffic.

22 Q. Has anyone at AT&T specifically endorsed
23 Top Communications?

24 A. No.

25 MR. RICHARDS: Hold on a minute.

1 (Conference held outside the record.)

2 THE WITNESS: They collect the money.

3 AT&T gets paid the most money for the deal.

4 I was told by TriComm that their
5 conversations with AT&T, they're very pleased that
6 TriComm is generating so much traffic for them.

7 (The video of "Inside Edition"
8 is being played.)

9 Q. (BY MR. GILLES): Do you know
10 Mr. Sylvestri?

11 A. Yes.

12 Q. Does he represent TriComm?

13 A. He was fired for doing this.

14 Q. Before -- at the time this happened --
15 let me start over.

16 What was his position with TriComm?

17 (Conference held outside the record.)

18 THE WITNESS: What was his position?

19 Q. (BY MR. GILLES): Right.

20 A. I'm not sure. A representative of some
21 sort, account representative.

22 Q. And he dealt with Top Communications?

23 A. Top Communications doesn't even do
24 business with TriComm and never has. This is all
25 total false.

1 Q. So the claim on the tape that one month
2 Top Communications generated \$840,000 is wrong?

3 A. That's correct.

4 Q. Is it -- would it have come through some
5 affiliate of Top Communications or intermediary
6 that we haven't named yet?

7 A. It's not an affiliate, but there is
8 another structure involved. Top does not do
9 business with TriComm.

10 Q. Who does Top do business with?

11 A. Who does Top do business with?

12 Q. Yeah, in terms of leasing the lines that
13 ring in the Dominican Republic.

14 (Conference held outside the record.)

15 MR. RICHARDS: Go ahead.

16 Q. (BY MR. GILLES): Who does Top do
17 business with in connection with acquiring the
18 lines in the Dominican Republic?

19 A. Who does Top -- what?

20 Q. Let's get back to the tape.

21 You mentioned you knew the gentleman who
22 was depicted on the tape as representing TriComm.
23 You indicated that he was fired because of what
24 appears on the tape.

25 And my question was whether or not it was

1 an accurate representation that in one month Top
2 Communications was the recipient of \$840,000 in
3 commissions.

4 A. The answer is no.

5 Q. Was a intermediary -- somehow did Top
6 receive that amount as a result of a company --

7 A. No.

8 Q. -- an intermediary carrier company
9 between it and TriComm?

10 A. No.

11 Q. Is it your testimony that he's just
12 making it up?

13 A. That's my testimony, yeah.

14 (Conference held outside the record.)

15 THE WITNESS: Yeah, maybe he's just
16 saying things to make a sale to what was
17 misrepresented to him from these two reporters.

18 Q. (BY MR. GILLES): Earlier this afternoon
19 I asked you what the monthly level of commissions
20 for Top Communications was and you indicated that
21 you didn't recall.

22 Looking at this and your testimony --
23 you're very emphatic about saying it isn't
24 \$840,000.

25 Does that refresh your recollection as to

1 what a good month would have been for Top
2 Communications?

3 A. No.

4 Q. In terms of commissions?

5 A. That's not what you asked me. What you
6 asked me was generally what does Top make in
7 commissions. And I told you I had no idea
8 generally what Top makes and what I'm telling you
9 now for sure, this isn't accurate.

10 Q. How far off is it?

11 A. What does that have to do with this?

12 Q. I'll go on.

13 (The video of "Inside Edition"
14 is being played.)

15 THE WITNESS: Can you stop it right
16 there? What they're reporting is inaccurate.

17 Q. (BY MR. GILLES): Let me -- you're
18 referring to the segment on the video tape that
19 refers to the disclosures in the ad and it says
20 that it's --

21 A. On the script.

22 MR. RICHARDS: And I got a comment that
23 my letter that they just showed on the screen was
24 severely edited and even on the quotes they have,
25 there's three ellipses in between my sentence, and

1 that's not a fair representation of the letter I
2 wrote on behalf of Top.

3 THE WITNESS: And what they're saying
4 right now is the disclosure that I mentioned to you
5 about international toll charges at the end of the
6 message, it's at the end of the two-minute domestic
7 message, not the (809). They're trying to make you
8 believe that that disclosure is at the end of at
9 the (809) message after you've already paid for the
10 call. That's not what it is at all. It's prior to
11 making the call.

12 (The video of "Inside Edition"
13 is being played.)

14 MR. RICHARDS: I got to stop it there.

15 Let the record reflect they just showed
16 to the State of Michigan. That document was a
17 document to not sell a business opportunity which
18 the attorney general in Michigan -- and I spoke to
19 him directly -- thought that the work-at-home
20 program was a business opportunity. And so the
21 result of that was Top just consented to service of
22 process in Michigan. That was not a lawsuit or any
23 complaint or anything like that. And again that's
24 an example of how the "Inside Edition"
25 misrepresented. It tried to imply somehow that

1 Michigan was investigating.

2 That matter was resolved in about ten
3 minutes by Top signing an acceptance of consent.
4 So that's just a good example.

5 THE WITNESS: And hold on before you go.

6 That is a picture of the reception area
7 of my office and that's where they pushed the door
8 open after I told them to leave. Everybody told
9 them to leave. And they were trespassing.

10 Q. (BY MR. GILLES): You're referring to
11 the --

12 A. That's the back of the reporter.

13 Q. -- the back of the reporter on the tape.
14 (The video of "Inside Edition"
15 is being played.)

16 MR. RICHARDS: I got to stop on one more
17 time.

18 They showed your lawsuit, Mr. Gilles.
19 This isn't --

20 MR. GILLES: That's not my lawsuit.

21 MR. RICHARDS: The State of Wisconsin's
22 lawsuit.

23 This isn't an investigation by the State
24 of Wisconsin. This is a civil suit relating to an
25 alleged --

1 MR. GILLES: I know what it is.

2 MR. RICHARDS: Right. But I'm saying the
3 implication on the tape was somehow Wisconsin is
4 investigating Top Communications. What they're
5 doing is suing Top and we're having that litigated
6 right now. It's not some type of investigation.
7 It is a lawsuit which has already been filed.

8 (The video of "Inside Edition"
9 is being played.)

10 THE WITNESS: Can you stop it right
11 there, too?

12 Q. (BY MR. GILLES): Yes. You're referring
13 to the reference by the narrator or the reporter
14 that it makes people who have fallen for the scam
15 fighting mad?

16 A. Right.

17 And one other thing. These three people
18 that they're talking about right now they
19 interviewed, they have never sent a request for an
20 application to us for us to even consider hiring
21 them.

22 Q. You have -- Top Communications both for
23 the Mystery Shopper and the job ads has no way of
24 determining how many people actually call in
25 response to the ads; is that right?

1 A. That's correct.

2 Q. The only feedback other than duration of
3 time that you get from the telephone company in the
4 Dominican Republic are people who send letters for
5 the job ads asking for applications; right?

6 A. People -- people send requests for an
7 application. That's how the process starts.

8 What I was saying before, these three
9 people that they're showing on here never sent a
10 request for an application, never gave themselves
11 the possibility of being hired as a Mystery
12 Shopper, which most likely they would have been
13 hired as a Mystery Shopper.

14 MR. RICHARDS: So it's misleading on the
15 video to imply that somehow they were duped from
16 their money when they have never sent in an
17 application.

18 Q. (BY MR. GILLES): How are Mystery
19 Shoppers paid?

20 A. Per assignment.

21 Q. And I mean, are they -- how much are they
22 paid?

23 A. It varies. All over. It depends on the
24 kind of store they go into, how involved the survey
25 has to be.

1 (Conference held outside the record.)

2 (The video of "Inside Edition"

3 is being played.)

4 Q. (BY MR. GILLES): So with respect to the

5 Mystery Shopper program, Top doesn't actually ask

6 applicants to go out and perform that service;

7 right? It's the 17 companies or so that you

8 mentioned earlier that --

9 A. Other companies hire Mystery Shoppers to

10 do assignments and we would supply qualified

11 applications to them.

12 Q. You receive any information from these

13 companies as to the number of people that have

14 actually -- that they have actually paid to do this

15 sort of work?

16 A. We haven't, no.

17 Q. I don't have any more questions,

18 Mr. DiMattia.

19 A. Okay.

20 MR. RICHARDS: Wow. We did it in one

21 day.

22 MR. GILLES: Do you want to take a few

23 minutes and, you know, we can take a break?

24 MR. RICHARDS: No, I'm not going to take

25 a break.

1 Let's go off the record for a second.

2 (Discussion held off the record.)

3

4 EXAMINATION

5 BY MR. RICHARDS:

6 Q. Yeah, I'm showing Mr. DiMattia Exhibit
7 16. Bates stamped number 591.

8 Mr. DiMattia, this is a complaint
9 relating to a Mystery Shopping program that
10 apparently a lessee of yours had an ad placed in
11 Wisconsin.

12 Are you familiar with this ad or with the
13 incident that arose that occurred to have an ad
14 placed in Wisconsin?

15 A. I heard about it.

16 Q. Okay. Prior to you hearing about it,
17 since, let's say, 1995 did you have a policy
18 adopted with respect to advertising in Wisconsin?

19 A. Yes.

20 Q. What was that policy?

21 A. The policy was that once we were notified
22 by the State of Wisconsin about the situation, we
23 notified all our clients to stop advertising in
24 Wisconsin immediately.

25 Q. And has that policy changed up to today?

1 A. No.

2 Q. In any way does Top Communications
3 endorse, encourage, or promote or allow any of its
4 lessees to advertise in Wisconsin?

5 A. No.

6 Q. Now, going back to Exhibit 16, do you --
7 what is your personal knowledge of how and why an
8 ad was placed in Wisconsin?

9 A. I got a call from a client named Doug
10 Nuss who told me that you had just finished talking
11 to him and --

12 Q. When you say "you," do you mean David
13 Gilles?

14 A. Yes.

15 MR. RICHARDS: Let the record reflect
16 that the witness is identifying the assistant
17 attorney general for the State of Wisconsin.

18 THE WITNESS: And what Doug told me was
19 that one of his advertising agencies accidentally
20 placed an ad on his behalf in Wisconsin and that
21 you had mentioned that to him and he apologized.
22 He said this to me -- that he apologized to you for
23 the accident.

24 And that you had said to him you weren't
25 interested in going after him for this accident but

1 you were interested in going after Top
2 Communications for this accident.

3 And that's how I first knew about this.

4 MR. RICHARDS: That's it for me.

5

6 FURTHER EXAMINATION

7 BY MR. GILLES:

8 Q. I just have one clarification.

9 The action filed by the State of
10 Wisconsin was filed in August of 1995, August 31 I
11 think it was?

12 A. Right.

13 Q. It was that which prompted you to direct
14 Top lessees not to advertise in Wisconsin; right?

15 A. That's correct. As soon as we were told
16 not to, we stopped.

17 Q. So up until that point in time, Top
18 lessees were free to advertise in Wisconsin?

19 A. Yes.

20 Q. And Top sold or sent booklets such as we
21 marked as Exhibit 15 to people who lived in
22 Wisconsin?

23 A. If they sent the money for the booklet,
24 if they purchased that booklet. I don't know what
25 time period that was. I guess prior to August of

1 '95. I'm not sure. Then yeah, we'd sell the
2 booklet to them.

3 MR. RICHARDS: Actually I have a few more
4 questions relating to the book.

5 Are you somehow leaving this book out of
6 evidence?

7 MR. GILLES: Do you have a question for
8 the witness?

9 MR. RICHARDS: Yes because I'm trying to
10 figure out what are exhibits from today's
11 deposition.

12 MR. GILLES: We can deal with that, but
13 let's complete the examination.

14

15 FURTHER EXAMINATION

16 BY MR. RICHARDS:

17 Q. Are you familiar with the guarantee for
18 this book?

19 A. Are you asking me?

20 Q. Yeah.

21 A. Yes.

22 Q. What is the guarantee?

23 A. The guarantee with that book is that if
24 you do what it says to do in the book and contact
25 25 local businesses in your area and you fail to

1 get clerical administrative type of work to be done
2 in your home from any of those businesses, list
3 those businesses on a piece of paper and send it to
4 Top Communications and request a refund, and then
5 we will refund you the cost of the book.

6 Q. And have you ever had a request for a
7 refund?

8 A. Yes.

9 Q. And did you refund these people?

10 A. Yes.

11 Q. I'm showing you exhibit number 30 and
12 this is the ad referred to that appears to be
13 missing some of these disclosures.

14 I asked Mr. Nadell earlier in his
15 deposition if every ad that he received from your
16 office had a certain set of criterion or
17 disclosures accompanying the ad and he said yes.
18 And then he said that sometimes the newspapers
19 would mix up the ads and not put in all the
20 appropriate disclosures.

21 Have you ever had that experience?

22 A. I noticed that there were ads based on
23 the material that was -- is presented here that did
24 not have a full disclosure on it.

25 Q. Would that type of ad be approved by you?

1 A. No, never.

2 Q. And was it your intention somehow to
3 deceive residents of the State of Wisconsin into
4 thinking they weren't making an international long
5 distance call?

6 A. No.

7 Q. Why not?

8 A. Because that would be dishonest. We put
9 disclosures in that we thought we were appropriate
10 everywhere to make sure that they knew they were
11 paying for information just like on a (900) number.

12 Q. You're under no legal obligation as far
13 as you know that you have to put the estimated
14 price per call on an ad advertising an (809)
15 number; is that true?

16 A. That's true.

17 Q. Have you ever attempted to call your
18 phone company and give them an area code and ask
19 them where that call goes to?

20 A. Have I ever done that personally?

21 Q. Yeah.

22 A. Yes.

23 Q. And have you found that to be a procedure
24 that is somehow difficult?

25 A. No.

1 Q. You just dial operator and read them the
2 area code and ask them where the number is going?

3 A. Yes.

4 Q. And will they, in fact, tell you what the
5 price of that call is?

6 A. Yes.

7 Q. Would you say that -- actually I'm going
8 to strike that question.

9 On the newspapers -- when you said a very
10 small -- few of the newspapers were ads placed
11 directly by Top --

12 A. Top never placed ads directly.

13 Q. Right. The ads that Top requested, were
14 they done through R & R Advertising?

15 A. Yes.

16 Q. Did Top specifically tell R & R
17 Advertising to place ads in Wisconsin or just to
18 run a series of test ads on a series of phone
19 numbers?

20 A. There was no request to run ads in
21 Wisconsin.

22 Q. So was it just happenstance that some of
23 the ads that Top was doing test marketing on ran in
24 Wisconsin?

25 A. Yes.

1 Q. Was that Top's choice or R and R's
2 choice?

3 A. R & R.

4 Q. Right. These are the -- these are the
5 ads that you sent over?

6 A. Uh-huh.

7 Q. When Top gave someone -- a lessee a line
8 and sent them to R & R, did Top have any control
9 over what -- where the lessee placed their ads
10 after they went to R & R?

11 A. No.

12 Q. Did Top have any -- did R & R ever assist
13 the lessee in placing the ads?

14 A. Yes.

15 MR. GILLES: Counsel, you've been
16 referring to an exhibit, I believe?

17 MR. RICHARDS: I'm not referring to
18 anything. I'm just looking through your -- some
19 exhibits that you handed me today.

20 MR. GILLES: Okay.

21 MR. RICHARDS: I'm not really looking at
22 anything.

23 I have nothing further.

24 MR. GILLES: You've raised a couple
25 issues I want to clear up.

1

FURTHER EXAMINATION

2 BY MR. GILLES:

3 Q. The first is: Directing your attention
4 to Exhibit 25, have you seen that particular chart
5 before today?

6 A. Yes.

7 Q. And that is a chart or summary that was
8 prepared by the State of Wisconsin in conjunction
9 with this lawsuit that purports to depict
10 advertisements that appeared in Wisconsin by --
11 that had Top (809) numbers.

12 And are you also familiar with the
13 responses to the State of Wisconsin's request for
14 admissions that were filed in this matter?

15 A. What's your question?

16 Q. Are you familiar with the responses to
17 the State of Wisconsin's request for admissions
18 that was filed on behalf of the defendants in this
19 case?

20 A. Yes.

21 Q. Did you assist attorney Deborah Feldman
22 in preparing those?

23 A. I think it was prepared by Bob Horowitz.

24 Q. Did you review them before they were
25 submitted to the State of Wisconsin?

1 A. Yes.

2 Q. I hand you a copy of the pleading.

3 Since it's part of the case file, I don't
4 think we need refer to it as an exhibit.

5 And directing your attention to the first
6 admission request and its response, which in sum
7 and substance asks you to admit that each of the
8 ads depicted on Exhibit 25 are ads that have been
9 placed on behalf of Top, is that a fair
10 characterization of it?

11 A. That's not exactly what it says. It
12 says,

13 "The attached exhibit is an
14 accurate and correct summary of
15 advertisements placed by or on behalf of Top
16 appearing in publications."

17 I did not make or create this chart. It
18 was shown to me, as I said.

19 MR. RICHARDS: You denied it anyway.

20 THE WITNESS: With the exception of that,
21 there were six or seven ads that had a phone number
22 that we looked up that were test ads for Top.

23 All of the rest was done for clients by
24 R & R.

25 Q. (BY MR. GILLES): Okay. Did the ads that

1 you -- other than those set out in your response
2 have (809) numbers that Top had leased to clients?

3 A. These (809) numbers that are in this
4 chart are Top's (809) numbers that were leased to
5 clients.

6 Q. So that if someone called a number that
7 is -- that you have denied was placed by or on
8 behalf of Top -- let me start over.

9 The chart contains ads that have Top
10 (809) numbers that it leased to clients is what you
11 call the lessees?

12 A. That's correct.

13 Q. So your denial is not based on the fact
14 that someone else -- that by calling the number,
15 you would not get a prerecorded message from Top?

16 A. My denial is based on what it says here
17 in the request that it's accurate and a correct
18 summary.

19 I didn't prepare it. I have no idea
20 where this even originated or copied from.

21 Q. Okay.

22 A. So I can't agree to that.

23 Also when the numbers were looked up, the
24 (809) numbers, we noticed that almost all of these
25 (809) numbers were client numbers, meaning that

1 clients advertised these numbers through R & R.

2 Q. If someone called the numbers, the client
3 numbers, Top would still receive a commission for
4 the duration --

5 A. Yes. These (809) numbers were leased to
6 clients and the idea behind the clients leasing
7 them was for the clients to make a commission from
8 Top's commission.

9 Q. And there would be a Top prerecorded
10 message that someone would hear if they called the
11 line?

12 A. That's right. The clients would hear a
13 (809) number that had prerecorded messages for
14 programs. The...

15 Q. Let me just...

16 And just so I'm clear, the specific ads
17 that you noted in here were actually placed by Top?

18 A. No.

19 Q. Were they placed by R & R Advertising on
20 behalf of Top?

21 A. All ads were placed by R & R
22 Advertising. Top never placed an ad.

23 But those particular ads -- those phone
24 numbers associated with those particular ads were
25 test numbers for Top.

1 Q. So no client or lessee was involved in
2 those?

3 A. On those few numbers there.

4 Q. Okay. And I'm referring to the response
5 to defendants' request for -- defendants' response
6 to plaintiff's request for admissions that's dated
7 November 22, 1996.

8 Thank you very much.

9 (Interruption.)

10 MR. RICHARDS: We're going to make the
11 following stipulations: One, that the court
12 reporter can be relieved of her duties under the
13 code; and that the original of the transcript be
14 sent to my office at 1901 Avenue of the Stars, 18th
15 floor, Los Angeles, California 90067; that in lieu
16 of a notary, the deponent can execute the document
17 under the penalty of perjury and make any
18 corrections, additions, or deletions within 30
19 days; and we will send the original back to the
20 court reporter who can then send a copy to the
21 State of Wisconsin.

22 MR. GILLES: So stipulated.

23 THE REPORTER: Did you want a copy of the
24 transcript?

25 MR. RICHARDS: No.

1 MR. GILLES: The depositions will be --
2 the exhibits will remain with the deposition except
3 for Exhibit 31 which plaintiff's counsel will
4 retain and provide defendants' counsel with a copy
5 within 30 days.

6 MR. RICHARDS: And that -- I'll also
7 stipulate that a certified copy of the original
8 which is going to be kept by the court reporter
9 will be as good as the original.

10 MR. GILLES: That's fine.

11 (Exhibit 31 was
12 marked for identification.)

13 (Whereupon at 5:14 p.m., the deposition
14 of GARY DiMATTIA was adjourned.)

15 * * *

16

17

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF)

4 I, GARY DiMATTIA, do hereby certify:

5 That I have read the foregoing deposition;

6 That I have made such changes in form and/or
7 substance to the within deposition as might be
8 necessary to render the same true and correct but
9 have limited such changes to actual reporting
10 errors or errors of fact as opposed to editing the
11 text generally;

12 That having made such changes thereon as were
13 required, I hereby subscribe my name to the
14 completed deposition.

15 I declare under the penalties of perjury that
16 the foregoing testimony is true and correct.

17

18 Executed this day of , 19 ,

19 at , California.

20

21

22

SIGNATURE OF THE WITNESS

23

24

25

