

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:)
) Case No. 01-0706 (MFW)
eTOYS, INC., et al.,)
)
Confirmed Debtors.)

COPY

Deposition of PAUL TRAUB, taken pursuant to notice at Federal Court, 824 Market Street, Third Floor, Wilmington, Delaware, beginning at 11:39 a.m., on Wednesday, February 9, 2005, before Stacy L. Vickers, Registered Professional Reporter and Notary Public.

APPEARANCES:

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APPEARANCES (Continued):

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For Barry Gold

Also Present:

Sheryl Ann Dec, eToys
Gary Ramsey
Steven Fox, Esq., Traub, Bonacquist & Fox

1 PAUL TRAUB,
2 the deponent herein, having first
3 been duly sworn on oath, was
4 examined and testified as follows:

5 BY MR. ALBER:

6 Q. Hello, Mr. Traub. My name is
7 Robert Alber.

8 A. Good morning, Mr. Alber.

9 Q. For purposes of this deposition
10 TB&F shall stand for Traub, Bonacquist and Fox.

11 A. I understand.

12 Q. Aside from ADA and TB&F, do you
13 conduct business under any other names?

14 A. No.

15 Q. No. Okay. So Traub, Bonacquist
16 and Fox, LLC?

17 A. Yes. I'm assuming that when you
18 say TB&F you mean the entity TB&F, LLC -- LLP,
19 actually.

20 Q. Right. Registered corporation

21 A. It's actually a limited liability
22 partnership.

23 Q. Excuse me. LLP. Pardon me.

24 When did you first call eToys to

1 promote the candidacy of Barry Gold for
2 employment at eToys?

3 A. I never did.

4 Q. You never did?

5 A. (Witness nods).

6 Q. Okay. There's no reason to ask you
7 who you talked to there then.

8 Are you aware of anybody at TB&F
9 that ever contacted eToys to promote Barry
10 Gold's candidacy?

11 A. I believe that Mr. Fox may have.
12 I'm not sure that he did. I know that I spoke
13 to Mr. Cartoon about it.

14 Q. That you spoke with who?

15 A. I asked Mr. Cartoon. I mentioned
16 Mr. Cartoon. I spoke to nobody at eToys.

17 Q. Mr. Fox, is that Michael Fox or
18 Steven Fox?

19 A. Michael.

20 Q. Michael Fox. Okay. Who else was
21 considered for position of CEO/President of
22 eToys?

23 A. I'm not sure I know. I believe
24 that Cross Roads was considered for a wind down

1 position. I'm not sure of the exact title. I
2 don't know that anybody else, other than Haddad
3 and the other fellow who were considering
4 whether they would stay on or not, but I'm not
5 sure who else's name was thrown into the
6 running.

7 Q. Okay. Dave Gatto, would that be
8 the person?

9 A. That's who I mean, yes.

10 Q. Does the name Ian Hunter ring a
11 bell?

12 A. No.

13 Q. When was eToys board of directors
14 expanded?

15 A. I don't know.

16 Q. Are you familiar with any of the
17 board members of eToys?

18 A. No.

19 Q. Never had any communications or
20 dealings with them I guess?

21 A. Not knowingly. I mean if you told
22 me who the people on the board were and
23 mentioned the name I might have. I don't
24 recall ever having a conversation with any of

1 them.

2 Q. Okay. When did Mr. Gold's
3 employment start with eToys?

4 A. I believe his agreement was
5 effective in June and was retroactive to some
6 date in the middle of May.

7 Q. Was any other ex-executive for
8 eToys ever considered for retention of
9 CEO/President of eToys after David Gatto left
10 or to replace him that you're aware of?

11 A. Not that I'm aware of.

12 Q. Was it ever suggested by anyone at
13 ADA to participate in eToys bankruptcy?

14 A. No, not to my knowledge. I have no
15 knowledge of anybody making that suggestion.

16 Q. Okay. Please state the name of all
17 companies, organizations where you've been a
18 partner or principal.

19 A. To the best of my recollection,
20 you're asking a very long period of time. I'll
21 do the best that I can. I started practice of
22 law in 1978. Shortly thereafter took on a
23 partner, Jim Miniaski, so went under the name
24 of Traub Miniaski.

1 I thereafter formed a partnership
2 with Dwight Yellen and Harold Bonacquist and
3 operated under the name Traub, Bonacquist and
4 Fox. Thereafter --

5 Q. If I may, was -- you said you
6 formed a partnership with Dwight Yellen. Was
7 it Traub, Bonacquist and Yellen or --

8 A. I thought I said that.

9 Q. I heard Traub Bonacquist and Fox.

10 A. I may have said it mistakenly.
11 Thank you. I meant to say Traub, Bonacquist
12 and Yellen.

13 Q. Okay.

14 A. At some of point after Traub,
15 Bonacquist and Yellen was in business, we all,
16 the three of us, went to a firm called Leaf,
17 Sternklar and Drogin. I can spell that if you
18 want. L-e-a-f, Sternklar, S-t-e-r-n-k-l-a-r,
19 and Drogin, D-r-o-g-i-n.

20 Thereafter either reconstituted as
21 Traub, Bonacquist and Yellen and then shortly
22 after -- thereafter took on Fox, which I think
23 is how it worked. I'm not a hundred percent
24 sure that we went from Leaf, Sternklar and just

1 Traub, Bonacquist and Yellen. I believe we
2 did. And then we went to Traub, Bonacquist
3 Yellen and Fox. And then we became Traub,
4 Bonacquist and Fox, LLP. So that's the legal
5 history of my legal career.

6 At one point for a short period of
7 time I had a business involvement, was a
8 principal with a company called Phoenix, which
9 was intended to be a trading company but that
10 was not terribly successful, spent limited time
11 on it. It was dissolved.

12 Q. I didn't hear. Was it in Phoenix
13 or was it called Phoenix?

14 A. It was called Phoenix.

15 Q. Okay.

16 A. And then Asset Disposition
17 Advisors. And I believe that's it.

18 Q. Okay. Thank you. Are you aware of
19 who drafted the employment letter for Barry
20 Gold's initial retention at eToys?

21 A. I believe Morris, Nichols drafted
22 it.

23 Q. MNAT.

24 A. I believe so.

1 Q. Okay. So it wasn't a member of the
2 TB&F firm then?

3 A. I don't believe so.

4 Q. Okay.

5 A. I don't know that though. I mean,
6 I wasn't -- I'm not sure who did it actually.
7 I believe it was Morris Nicholas who eventually
8 drafted it.

9 Q. Could have been somebody from TB&F
10 and you're just not sure about that?

11 A. Correct.

12 MR. SUSSMAN: I don't want him to
13 speculate. His testimony is what it is.

14 Q. Right. Yeah, I understand.

15 A. It wasn't me.

16 Q. Right. It wasn't you. Okay.

17 When did you first meet Barry Gold?

18 A. I think the first time I ever saw
19 Barry Gold, actually met him in person, was in
20 Tampa, Florida at the offices of Jumbo Sports.

21 Q. And that was while you were
22 performing what duties on behalf of Jumbo
23 Sports?

24 A. I was orchestrating on behalf of

1 the company and disposition of inventory and
2 might have thought of disposing of some leases
3 but we ultimately didn't do that. Our role was
4 to sell -- help them understand how to sell
5 inventory by conducting an auction for them
6 among various national liquidation firms.

7 Q. So was it you, yourself, or your
8 firm was employed directly by Jumbo Sports?

9 A. The firm was employed.

10 Q. It was counsel or special counsel?

11 A. I believe it was special counsel.
12 I'm fairly certain the debtor had a Tampa firm
13 who represented them and we came in for that
14 limited purpose.

15 Q. And do you recall the dates of
16 tenure your firm was employed there?

17 A. I would say '99 or 2000.

18 Q. Beginning the first year or two of
19 the bankruptcy then?

20 A. I'm sorry?

21 Q. You were employed from the
22 beginning of the bankruptcy?

23 A. No. We were -- the company was --
24 had filed Chapter 11 and a recommendation was

1 made that we could be helpful in getting them
2 to get good values for their inventory assets
3 and we actually went down, I believe I went
4 myself, but I went down and explained that we
5 felt the firm could do a good job for them and
6 they hired us.

7 Q. Okay. Had you heard of Barry Gold
8 prior to that?

9 A. Yes.

10 Q. Can you please describe the
11 circumstances for us?

12 A. There was an out of court
13 restructuring called Witmark, which the firm
14 was involved and I was very peripherally
15 involved. I think I may have been involved in
16 the case for a couple of days early on as they
17 were doing an auction of assets, which is sort
18 of a specialty that I have.

19 And then it was Mr. Fox, Michael
20 Fox, worked on an out of court restructuring
21 with that, and I was told that the wind down
22 officer of the company was Barry Gold. And I
23 don't believe I actually met him at that time,
24 and I don't recall whether I ever had a

1 conversation with him, but I know that the firm
2 had dealt with him, but I really don't believe
3 I met him at that time.

4 Q. Okay. When was the subject of you
5 and Barry Gold first brought up as far as
6 working together, forming your own company
7 perhaps or just working together?

8 A. I believe in early 2001, January,
9 around January of 2001.

10 Q. Who promoted that idea? Who is the
11 one who first brought it up?

12 A. I think I did. I thought it was --
13 I did.

14 Q. Okay. And apparently Mr. Gold was
15 amenable to the situation to the -- to being in
16 business and forming a company at that time?

17 A. It was certainly I believe
18 respected my skill set and felt that he was
19 willing to entertain a conversation about the
20 possibility of working together, yes.

21 Q. So you had not worked with Barry
22 Gold in any capacity prior to and as opposed to
23 -- you know, except for when he was involved in
24 certain bankruptcy cases?

1 MR. SUSSMAN: I'm not sure what the
2 question is, so to that extent I object to the
3 form, but certainly you can answer.

4 THE WITNESS: Could you just
5 rephrase it? I'm happy to answer the question,
6 I'm just not sure I understand.

7 Q. I understand. Just wondering if
8 you have any direct business dealings with
9 Barry Gold in any capacity, other than he
10 worked for debtor or you worked for, you know,
11 your firm worked with creditors committee or
12 whatever or if he had subcontracted for you or
13 anything like that prior to --

14 A. No.

15 MR. SUSSMAN: Allow him to finish
16 the question.

17 THE WITNESS: I'm sorry.

18 MR. SUSSMAN: Prior to?

19 Q. Prior to when they first discussed
20 ADA, which would have been January 2001.

21 MR. SUSSMAN: Object to the form.
22 You can answer.

23 MR. ALBER: Excuse me.

24 MR. SUSSMAN: I'm just objecting to

1 the form of the question but he can certainly
2 answer it.

3 MR. ALBER: Okay.

4 A. No.

5 Q. Okay. So that was the first
6 instance and discussions involved with them to
7 where you formed ADA?

8 A. Yes.

9 MR. SUSSMAN: I don't understand
10 your question. Object to the form.

11 Q. Well, from January 2001 that was
12 your first discussion of being in business
13 together and then you went on to form ADA
14 together?

15 A. Yes.

16 Q. Are you and Barry Gold 50/50
17 principals and partners in ADA?

18 A. Yes.

19 Q. Does anyone with TB&F work on a
20 regular or semi-regular basis for ADA?

21 A. I'm not sure I understand what
22 you're asking me.

23 MR. SUSSMAN: The form is
24 objectionable but you can answer to your best.

1 A. There are several people who over
2 time have done work for ADA who are also
3 employed with Traub, Bonacquist and Fox. One
4 is my administrative assistant, Cindy Williams,
5 and from time to time Mr. Steven Fox and/or
6 Mora Russell who have done some work for ADA.
7 Nobody else does.

8 Q. Okay. Nobody else in your firm
9 does?

10 A. Correct.

11 Q. Steven Fox has been listed as an
12 attorney with TB&F as working on the eToys
13 case, and has his work on the eToys case
14 overlapped with his work with ADA during that
15 period of time?

16 MR. SUSSMAN: In the eToys case
17 you're asking?

18 MR. ALBER: Right.

19 A. No.

20 Q. No? Okay. Have you ever had any
21 connections to Office Max?

22 A. Traub, Bonacquist performed
23 services for Office Max, yes.

24 Q. About what period of time would

1 that be?

2 A. Early 2001. Traub, Bonacquist
3 performed services for Office Max, yes.

4 Q. What services would those be?

5 A. They were also interested in
6 outside of a bankruptcy proceeding, healthy
7 company, in gaining some advice on how to
8 maximize the value from closing some ongoing
9 stores and they wanted us to advise them about
10 how to try to get the highest value for them.
11 And we worked with various people at Office Max
12 in designing a process for them to bid out the
13 inventory that they were looking for and
14 negotiate with various interested parties as to
15 how to get the best price.

16 Q. Now, can you describe Barry Gold's
17 involvement with the Office Max, with Office
18 Max at that time as it applies to TB&F?

19 MR. SUSSMAN: Object to the form
20 but you can answer.

21 A. One of the things that we at Traub,
22 Bonacquist and Fox advised Office Max was that
23 in order to maximize the value of their
24 inventory several different expertises would

1 And then went to the warehouse
2 because a lot of the merchandise was going to
3 be in one or more warehouses and met with the
4 director of the warehouse and asked them
5 numerous good questions about how they kept
6 these goods because somebody was going to have
7 to count the merchandise in the warehouse and
8 made recommendations, which Office Max
9 accepted, that they should stack the
10 merchandise in a more counting friendly manner
11 so that people would be sure to count it all.

12 And we -- Office Max was happy with
13 our services and we received a bill from
14 Mr. Gold which we attached to our bill and
15 passed it on to the company for payment.

16 Q. So Mr. Gold acted as a
17 subcontractor to TB&F?

18 A. I would say that we explained to
19 Office Max that to do this project it would be
20 helpful to have us hire a consultant, which
21 they agreed to that it was a good idea and we
22 hired Mr. Gold and he rendered a bill to us
23 which we attached to our statement and passed
24 it on to the company for payment.

1 Q. So maybe I don't understand. Maybe
2 I don't understand. But does that mean he
3 worked as a consultant for TB&F on a part-time
4 basis or was it contract type basis then?

5 MR. SUSSMAN: Object to the form
6 but you can answer.

7 MR. MINUTI: I'm going to join in
8 that objection.

9 THE WITNESS: I think it would be
10 -- I want to respond. I'm just trying to
11 understand. I mean, if I hired a private
12 investigator in the context of the company
13 thought that was a good idea, in addition to
14 our bill the company would -- the private
15 investigator would give me his bill and I would
16 attach it and pass it on to the client.

17 If the client objected to that
18 bill, then the client would object to that part
19 of the bill.

20 Q. So people were on a subcontractor
21 basis?

22 MR. SUSSMAN: Object to that
23 speech. He's here to answer questions and
24 doing the best he can. I understand you're not

1 a lawyer. When you keep insisting upon the
2 term "subcontractor," that has legal meaning.
3 That does not complete in this context. The
4 witness is doing his best to answer your
5 question but your questions are legally
6 improper in their form.

7 MR. ALBER: Okay. Thank you.

8 Q. Out source. Was there -- was
9 Mr. Gold working as an individual or did he
10 have any type of firm or company that he was --
11 that he was a participant in during that time?

12 A. I believe he had a company called
13 Barry Gold Consulting. And this is it was in
14 the January, February period, yes, I believe
15 that's correct.

16 Q. 2001?

17 A. Yes.

18 Q. We also had -- now, Drug Emporium,
19 were you involved in Drug Emporium, with Drug
20 Emporium?

21 A. Traub, Bonacquist and Fox was
22 engaged by various banks who were lenders to
23 Drug Emporium and I was involved in that
24 capacity, yes.

1 Q. What banks would those be?

2 A. I know that the lead bank was
3 Fleet. I'm not -- I believe that they had, as
4 is common, many deals. Participant Bank. I'm
5 not sure I ever knew the names of the other
6 banks that were part of the deal, so I don't
7 know.

8 Q. Retail Finance Group? Fleet Bank?

9 A. I believe it was Fleet Retail
10 Finance.

11 Q. Excuse me?

12 A. I believe it was Fleet Retail
13 Finance.

14 Q. Thank you. I'm a little hard of
15 hearing.

16 A. I'll speak up, if you'd like.

17 Q. I'm trying to listen as hard as I
18 can.

19 A. I'll sit up.

20 Q. Thank you. Would participation of
21 Barry Gold in the Drug Emporium business, would
22 that have been essentially the same as the
23 Office Max?

24 A. Yes.

1 Q. Where he would send the bill to
2 TB&F and TB&F would submit the bill, like
3 attached to their own to the -- I guess to
4 Fleet Retail Finance Group --

5 A. Yes.

6 Q. -- was paying the bills?

7 A. Yes.

8 MR. SUSSMAN: Wait until he
9 finishes even if you know where he's going with
10 it.

11 Q. Have you ever had any connection to
12 Toytime?

13 A. The only recollection I have of
14 being involved in Toytime was I think I may
15 have originally considered whether or not we
16 should try to get involved in the case. I
17 think we ultimately decided not to. And I
18 think I may have made a referral of some
19 creditor to a law firm in the Massachusetts
20 area to represent them.

21 Q. Do you recall who the creditor was?

22 A. I don't.

23 Q. Do you recall the Massachusetts law
24 firm?

1 MR. SUSSMAN: Note my objection to
2 scope. I'm not going to stop him from
3 answering, but I do want to remind you,
4 Mr. Alber, that there's a scope order in place
5 and this deposition is being taken pursuant to
6 that. I'm not sure I see the connection of
7 this question to the scope of this examination.

8 That said, you're entitled to some
9 background knowledge to ask the question.

10 MR. ALBER: Okay. We can dismiss
11 the question.

12 Q. So with the Toytime bankruptcy
13 basically you and your firm considered
14 participating in the case but decided not to,
15 do I understand that correctly?

16 A. I can only say this, that you asked
17 the question what do I have to do with it. I
18 had very -- that's my -- I gave you my full
19 recollection of it. It considered being
20 involved. I don't know if other people in our
21 firm considered being involved. I don't know
22 that.

23 Q. That's fine. Have you ever had any
24 connection to Adelphia?

1 A. Yes.

2 Q. Would you please explain the
3 connection?

4 A. Sure. We, the firm, has been
5 retained as special counsel to Adelphia to
6 prosecute certain avoidance actions claims that
7 the company felt it was not in a position given
8 there were other things they were doing at the
9 time to handle and so we became special counsel
10 through Adelphia to handle considerable number
11 of avoidance actions claims.

12 Q. Was Barry Gold involved with TB&F
13 involved at all during that case?

14 A. No. Was he involved in the
15 Adelphia case?

16 Q. Yes.

17 A. No.

18 Q. Okay. Thank you. Has your firm
19 ever had any connection to Playco Toys?

20 A. Who?

21 Q. Playco. There were several names
22 associated with that bankruptcy, Playco, Toys
23 International.

24 A. Which bankruptcy?

1 Q. Well, Playco was also known as Toys
2 International. Do you recall the name of that
3 company?

4 A. No. If we did, I -- I wasn't
5 involved in it.

6 Q. Okay. Thank you. Has your firm
7 ever had any connection to Luria & Sons?

8 A. Yes.

9 Q. Would you please explain the
10 connection, the duties of your company?

11 A. We were counsel to the creditors
12 committee.

13 Q. You were counsel to the creditors
14 committee?

15 A. Mm-hmm.

16 Q. Okay. And which members of the
17 TB&F firm were involved in the Luria & Sons
18 case?

19 A. I know that Michael Fox was
20 involved. I, like in many of these cases, was
21 involved with the sale of assets, so I was
22 involved for a limited period of time doing
23 that. Who Michael used at the firm for the
24 other parts of the case I don't know.

1 Q. Okay.

2 A. But principally Michael was
3 involved in that.

4 Q. Thank you.

5 A. And I did have the involvement I
6 described.

7 Q. Limited involvement?

8 A. Principally in the sale of assets.
9 I've had a couple of other things where people
10 may have asked me a question and my opinion,
11 but fairly limited involvement of it, yes.

12 Q. How would you describe your
13 involvement in the eToys case, eToys
14 bankruptcy? Limited involvement or --

15 A. Yeah, I would say my involvement
16 was limited. I principally was involved in the
17 sale of assets in that case. I had some other
18 dealings with people in the case, but I would
19 say given the amount of effort that the firm
20 expended on the case, I would fairly
21 characterize my involvement as minimal. I
22 would like to think I made a good contribution
23 to the case, but I -- and I hope I did in terms
24 of my time, attention to it, my day-to-day

1 management, but I would consider my involvement
2 fairly minimal.

3 Q. I'm trying to recall from memory,
4 correct me if I'm wrong, was the auction, was
5 eToys bankruptcy auction held at TB&F offices
6 or was that MNAT? I couldn't recall.

7 A. I'm not sure which auction you're
8 talking.

9 Q. Excuse me?

10 A. Which auction are you talking
11 about?

12 Q. The initial auction that eToys had
13 to dispose their assets. There were two of
14 them. One was in mid to late March 2001 and
15 the other, I believe, was April 4th or April
16 10th, somewhere in that time frame of 2001?

17 MR. SUSSMAN: Why don't you just
18 ask him if he knows about any of the auctions
19 and where they were.

20 Q. Okay.

21 A. Sound familiar. I believe that
22 they were down at MNAT as best as I can recall.

23 Q. I can't recall exactly but I should
24 be able to.

1 A. Again, counsel told me not to
2 speculate, but I believe as I think about it I
3 think they were done there or at Young,
4 Conaway. Somebody's office in Delaware. I'm
5 not sure whose office in Delaware.

6 Q. It was in Delaware. I'm sure it
7 was MNAT. I'll address that with them. Thank
8 you.

9 Has yourself or TB&F firm ever had
10 any connection to Pharmor?

11 A. Yes.

12 Q. Can you please explain that
13 connection?

14 A. We were special counsel. I believe
15 we were -- I'm not sure whether ADA had that
16 engagement or we did. One of the two of us.

17 Q. Okay. So special counsel you
18 worked for the estate?

19 A. Yes. I'm not sure. Again, I
20 apologize for being confused about that, but
21 I'm not sure whether Asset Disposition Advisors
22 had that engagement or Traub, Bonacquist had
23 that engagement.

24 Q. Okay. Is it possible both had that

1 engagement?

2 A. It's possible. I could look it up.
3 I don't know. I don't recall. I thought it
4 was Asset Disposition Advisors actually.

5 Q. Not recalling who was involved then
6 as far as TB&F or ADA you couldn't really
7 expand upon what ADA did for Pharmor?

8 A. I believe it would have done the
9 design of the liquidation sale process, getting
10 the highest value for the assets, visiting
11 stores, making sure the inventory is matched
12 out, that sort of thing.

13 Q. Who would have promoted ADA as far
14 as employment or employment retention by
15 Pharmor?

16 A. Me.

17 Q. You, okay.

18 A. Me and -- I would say all the
19 promotions of ADA's business on behalf of ADA
20 is done by me.

21 Q. Okay. Does any member of the TB&F
22 firm ever participate in the promotions of ADA?

23 A. No.

24 Q. Okay. You said no, right?

1 A. Mm-hmm. Promotions for business.

2 Q. Promotions of business, right.

3 A. No.

4 Q. Has Barry Gold ever brought in a
5 contract or an assignment for ADA while ADA has
6 been in existence?

7 A. No.

8 Q. Okay. Do you recall the tenure of
9 the Pharmor case as far as the ADA involvement,
10 whether it be ADA or TB&F?

11 MR. SUSSMAN: Do you mean how long
12 was ADA in the case?

13 Q. Right. Approximate starting date,
14 ending date?

15 A. I believe it was a 2001 case and
16 that would have been probably a couple of
17 months.

18 Q. Do you recall about what time of
19 year that was?

20 A. I don't.

21 Q. Have you or your firm ever had any
22 connection with Fisher Big Wheel?

23 A. Not to my knowledge. I remember at
24 one time in Delaware pitching the creditors

1 committee in the case. We didn't get it. I
2 don't know whether it's possible that if there
3 were preferences or other cases somebody in the
4 firm handling the defense of that, but
5 certainly we had what I would consider to be an
6 insignificant involvement, if any, to the
7 Fisher people.

8 Q. Okay. Thank you. Have you or your
9 firm ever had any connection to SFMB
10 corporation, which is San Francisco Music Box?

11 A. Yes.

12 Q. Can you please explain that
13 involvement, please?

14 A. I believe we represented the
15 creditors committee. I think there may have
16 been more than one case actually. Mr. Fox
17 would be involved in that.

18 Q. We find them separate listings for
19 SFMB and San Francisco Music Box, so we're not
20 quite clear on that either.

21 A. I'd be guessing, but there may have
22 been two cases. There may have been one case.
23 I think it's more likely there were two.
24 Again, I was not principally involved in that.

1 Q. Do you recall if Barry Gold was
2 involved in that case?

3 A. No, he was not involved in that
4 case.

5 MR. SUSSMAN: Mr. Alber, perhaps
6 this is an opportune time for me to ask you
7 when you're asking about connections with
8 cases, unless, as I understand your scope
9 order, this is about the nature and extent of
10 the disclosures that TB&F and Barry Gold have
11 made in these cases or the nature and extent of
12 the relationship between Traub, Fox, the firm
13 TB&F and Barry Gold, it's beyond the scope of
14 this question, so when you're asking -- or this
15 deposition. When you're asking Mr. Traub about
16 connections to cases in which Mr. Gold was not
17 involved, I'm one wondering what relevance it
18 has to this proceeding.

19 Let me explain my concern. There's
20 a -- and this is why the order is in existence,
21 the Traub firm has business. It is not your
22 place nor is it the role in this deposition for
23 you to simply be able to ask him about all the
24 business of Traub Bonacquist and Fox.

1 If you can make a representation
2 that you have reason to believe that the Traub,
3 Bonacquist and Fox firm is involved in this
4 case and Barry Gold or Barry or ADA is somehow
5 involved in that case as well, that's a
6 different story and you're free to ask all the
7 questions about that.

8 But if Gold and ADA don't have
9 anything to do with a particular case that
10 you're asking about as it relates to TBF,
11 there's no purpose for you to ask the question.

12 MR. ALBER: The basis for my
13 questions, and of course these can be addressed
14 later on in court anyways, are we're here to
15 establish any -- like as you say, any
16 connections between Mr. Traub, Mr. Fox, TB&F
17 and Barry Gold in any capacity.

18 MR. SUSSMAN: Okay.

19 MR. ALBER: Now, as our
20 investigations turned up that there were
21 undisclosed connections between the parties,
22 that's what we're trying to delve into and find
23 out.

24 We're not just on a fishing

1 expedition of every case that TB&F did.

2 MR. SUSSMAN: Although I'm not --

3 MR. ALBER: We're only concerned
4 with the ones where they're together. We're
5 willing to compare all our notes when the day
6 is all done to see what connections we have
7 where in this discovery as we understand it.

8 MR. SUSSMAN: Although I'm not your
9 lawyer, let me make a suggestion that might be
10 helpful to you to cut through it.

11 MR. ALBER: Sure.

12 MR. SUSSMAN: If you want to know
13 whether TBF has a connection to a particular
14 matter, perhaps you could start by asking, can
15 you tell us, Mr. Traub, whether TBF and ADA
16 have a connection to the particular matter.

17 If the answer to that is yes, then
18 you can ask all the questions you want. But if
19 the answer is they don't both have a connection
20 or Gold and TBF have a connection to the
21 particular matter, there's no reason to ask
22 further questions about it.

23 This is not an opportunity for you
24 simply ask open-ended questions about business

1 of Traub, Bonacquist and Fox.

2 MR. ALBER: Fair enough. To
3 address that concern we can always bring it up
4 in the March first hearing. But as far as for
5 purposes here today, I'll just simply ask,
6 please name all the cases and any involvement
7 you ever had with Barry Gold or as a member of
8 ADA.

9 You can list all the cases that ADA
10 has ever been involved in. But we would, you
11 know, going through our list of companies as
12 we've been doing we hoped to be able refresh
13 your memory.

14 If we're being forced to simply
15 bring up the cases that we know that both
16 parties have been involved in that may put you
17 on the spot, but we're prepared to go in that
18 direction.

19 MR. SUSSMAN: I'm not -- understand
20 something, I'm not forcing you to do anything.
21 You can ask any question you'd like. If you
22 want to ask him with respect to every single
23 company name you have in front of you, ask him
24 whether or not --

1 MR. ALBER: Please understand I'm
2 not making any inferences.

3 THE WITNESS: No, I'm trying to be
4 responsive to the questions.

5 MR. ALBER: I believe you're being
6 a hundred percent responsive. We know TB&F is
7 a well respected law firm.

8 MR. SUSSMAN: Let me again just
9 suggest take every single case that you're
10 concerned about, ask him whether or not Traub
11 and Gold or ADA are involved in that case and
12 he'll answer you.

13 THE WITNESS: I will.

14 MR. ALBER: Okay. All right.

15 BY MR. ALBER:

16 Q. Okay. I believe the last one I
17 mentioned was SFMB, San Francisco Music Box
18 Company. I believe we went through that?

19 A. Yes, I believe so.

20 Q. Have you or your firm ever had any
21 connection to Sun 'n Ski corporation?

22 MR. SUSSMAN: Again, the point is,
23 are you asking him whether the firm, ADA or
24 Gold all had connections in that case, is that

1 what you want to know?

2 THE WITNESS: Let me answer the
3 question.

4 I don't know. I certainly had no
5 involvement in Sun n' Ski that I'm aware of.

6 Q. Okay. Fair enough.

7 MR. SUSSMAN: Off the record.

8 (Brief discussion off the record.)

9 BY MR. ALBER:

10 Q. Okay. Were you or TB&F involved in
11 the Enron bankruptcy?

12 A. Say that again?

13 Q. Were you or TB&F involved with the
14 Enron bankruptcy?

15 A. Yes.

16 Q. Was Mr. Gold connected to -- did he
17 perform any services for the Enron bankruptcy?

18 A. Not at all.

19 Q. Are you or your firm connected to
20 the K-Mart bankruptcy?

21 A. Yes.

22 Q. Okay. And --

23 A. We represented the equity
24 committee.

1 MR. SUSSMAN: Wait for a question.
2 See if it makes sense for him to go further.

3 THE WITNESS: I'm sorry.

4 Q. So you represented the equity
5 committee. How is the equity committee formed?
6 As far as the relevance, the information we
7 have is that TB&F represented Ron Burko in that
8 case?

9 A. Right.

10 THE WITNESS: Can I answer this
11 question, Ron?

12 MR. SUSSMAN: Have you established
13 if Mr. Gold is in this case or ADA is in this
14 case that you're talking about?

15 MR. ALBER: No. It's just a simple
16 question about was TB&F involved in the case.
17 I was trying to make it clear.

18 MR. SUSSMAN: But if it has nothing
19 to do with the scope of this deposition it's
20 improper to go into. That's why I'm suggesting
21 to you if you ask him if TBF is in the case,
22 fine. If you ask him if Gold or ADA is in the
23 case and the answer is yes, then ask him
24 anything you want. But if they're both not in

1 the case, there's no reason for you to be
2 asking the question. That's why I'm actually
3 trying to help you to identify what keeps you
4 within the scope.

5 Have you established whether or not
6 Barry Gold or ADA is in this case you just
7 referred to?

8 BY MR. ALBER:

9 Q. Are they?

10 A. No.

11 MR. ALBER: Maybe you can clarify
12 something for me, Mr. Sussman. In the Bonus
13 Stores case, for instance, what we have is an
14 objection by US Trustee as to the involvement
15 of ADA and TB&F with a connection to Fleet
16 Retail Finance Group. And as we were told in
17 an earlier --

18 MR. SUSSMAN: I think if you --

19 MR. ALBER: -- deposition that
20 there have been -- that ADA -- pardon me for
21 continuing, but that ADA has done various work
22 for Fleet Retail Finance Group. So is it
23 perhaps a connection? Is it perhaps within the
24 scope to determine if Fleet Retail Finance

1 Group may be involved in any of the cases that
2 TB&F law firm participates in.

3 MR. SUSSMAN: Well, if you were to
4 ask with respect to Bonus Stores, Mr. Traub,
5 was your firm, your law firm involved in that
6 case, he'll give you an answer.

7 Was ADA involved in that case,
8 he'll give you an answer. I think you'll find
9 that that will allow you to fully explore all
10 the relationships there. If you follow that
11 procedure with any engagement you're concerned
12 about, I think you'll be able to ask him all
13 the questions you want.

14 MR. ALBER: Okay. I am trying to
15 do my best here.

16 MR. SUSSMAN: I know. And I really
17 am trying to be helpful but to keep us focused
18 at the same time.

19 BY MR. ALBER:

20 Q. So what cases have --

21 A. Do you want to ask about Bonus
22 Stores, is that what you're asking me?

23 Q. I want to formulate it a little bit
24 differently. So in regards -- I suppose Bonus

1 Stores would be one instance where we have ADA
2 and TB&F for Fleet Retail Finance Group. What
3 other instances are there of ADA working for
4 Fleet Retail Finance for the three parties
5 being involved, TB&F, Fleet Retail Finance and
6 ADA?

7 MR. SUSSMAN: Object to the form.
8 You can answer.

9 MR. MINUTI: Same objection.

10 A. I'd just like to clarify your
11 question is it correct what I consider to be an
12 erroneous assumption and then I'll be happy to
13 answer the question.

14 Traub, Bonacquist and Fox did no
15 work for Fleet Retail Finance in the Bonus
16 Stores matter. Asset Disposition Advisors did
17 work for Fleet Retail Finance with respect to
18 one of its specialities is examining the
19 collateral and see how it could best be sold
20 and packaged.

21 At some point in time prior to its
22 bankruptcy filing and after the completion by
23 ADA of its work on behalf of Fleet Retail
24 Finance in understanding the collateral and

1 issues it was having in terms of its lending
2 arrangement to the company, the company was
3 still evaluating whether it had any
4 reorganization prospects. And the company
5 requested and Fleet agreed that Asset
6 Disposition Advisors be released from its job
7 servicing Fleet and examining the collateral
8 and help assist the company in its marketing of
9 that collateral and other related tasks with
10 respect to doing store closings, etcetera.

11 During that period of time the
12 company was of the view -- the board was of the
13 view that it was going to need to file for
14 bankruptcy. So the company sought out
15 bankruptcy counsel and we were not the only
16 firm that was considered. The company and its
17 board felt comfortable hiring Traub, Bonacquist
18 and Fox, and Traub, Bonacquist and Fox and
19 Asset Disposition Advisors advised the company
20 prior to its bankruptcy filing.

21 And thereafter Fleet I might add
22 was all times represented by its own counsel as
23 to its legal issues both prebankruptcy filing
24 and post bankruptcy filing. It was the

1 trustee's position, and ultimately the court's
2 position, that Asset Disposition's services to
3 Fleet prepetition, prebankruptcy filing
4 presented a conflict that would prohibit its
5 engagement in the bankruptcy case.

6 And I hope that's responsive to
7 what you're asking. I'll answer more questions
8 about it if you have more.

9 Q. Okay. Thank you very much for that
10 detailed explanation.

11 There was a separate -- maybe I'm
12 not clear on everything. I understood what you
13 said. Thank you. There was a separate
14 objection to TB&F. I believe TB&F was retained
15 as special counsel in the bankruptcy. So what
16 was -- they were retained as special counsel, I
17 believe; is that correct?

18 A. Ultimately they were, yes.

19 Q. Ultimately. Was it because of the
20 -- it was because of the connection between ADA
21 and TB&F and then ultimately then as a side
22 issue ADA and Fleet Retail Finance that caused
23 that ruling was made; was it not?

24 THE WITNESS: Can you read back

1 that question. I can answer if I understand
2 it.

3 (The record was read as requested.)

4 MR. SUSSMAN: Object to the form of
5 the question. You can answer it if you can, if
6 you understand what he's asking.

7 A. I think -- would you like to try to
8 rephrase it?

9 Q. Sure, I can rephrase it. So then
10 what I'm understanding is that it was the TB&F
11 connection with ADA that caused TB&F to be
12 appointed special counsel in that case and it
13 was ADA's connection that to Fleet Retail
14 Finance Group that was the conflict, but then
15 therefore it stretched into TB&F and ADA being
16 connected?

17 MR. SUSSMAN: Object to the form.

18 Q. That got TB&F involved?

19 MR. SUSSMAN: Object to the form of
20 the question. Do you think you understand?

21 THE WITNESS: I understand what
22 happened in the case. I'm not sure I'm
23 responding directly to what he's asking.

24 MR. SUSSMAN: Would you like him to

1 explain what happened in the case?

2 THE WITNESS: If you're asking me
3 to explain my understanding of what happened
4 with respect to the alleged conflicts that
5 were, I'm happy to do that. I just don't want
6 to -- I'm not sure I understand your questions
7 or if you want to let me answer what my
8 understanding of what happened was and you have
9 additional questions, I'm happy to answer those
10 as well.

11 Q. However you feel comfortable.
12 Would you like me to rephrase?

13 A. No, I'm offering to tell you what I
14 understood happened in terms of the objections
15 that were filed, the court's ruling and what
16 happened, and if after hearing that you have
17 questions subject to my counsel's objection to
18 form, I'll answer them.

19 Q. That will be fine. Go ahead.
20 Thank you.

21 A. When the case filed, as I said
22 earlier, both Traub, Bonacquist and Fox and ADA
23 had been working for the company. As I
24 explained to you, as I explained earlier, I

1 tried to explain, ADA had switched over to
2 represent the company after its work with Fleet
3 was done, obtained a waiver to do that, and did
4 work for the company.

5 Q. If I may, if you don't mind, my
6 confusion was whether or not TB&F worked
7 directly for Fleet Retail or if they worked for
8 Bonus during the entire time?

9 A. Then I'm happy to answer that.
10 Traub, Bonacquist and Fox at no time in the
11 Bonus Stores case ever work for Fleet Retail
12 Finance.

13 Q. That was what I was trying to
14 establish was I believe it was solely the
15 connection between TB&F and ADA that caused the
16 objection to TB&F in that case.

17 MR. SUSSMAN: There's no question
18 pending. I'm not sure what you just said, but
19 maybe he's able to answer your question.

20 Q. There were two objections. One was
21 to TB&F.

22 A. Yes.

23 Q. And they were entered in to become
24 general counsel, I believe?

1 A. Correct.

2 Q. And then the ruling was that they
3 become special counsel in the case. And then
4 there's the objection to ADA, but ADA was
5 allowed to participate in the case in Bonus
6 Stores, were they not? Or were they excluded
7 from the case?

8 MR. SUSSMAN: Objection to the
9 form. You can answer.

10 A. ADA was not retained in the
11 bankruptcy case. Did not further participate
12 in the case.

13 Q. They were excluded from the case
14 because of the objection by the US Trustee's
15 Office?

16 MR. SUSSMAN: Objection to the
17 form.

18 MR. MINUTI: Same objection.

19 MR. SUSSMAN: Court's order speaks
20 for itself.

21 A. The court did not allow the
22 retention of ADA before it ultimately allowed,
23 as we said earlier, the retention of Traub,
24 Bonacquist, and that is general counsel but as

1 special counsel.

2 Q. Right. Thank you.

3 A. I hope that's responsive to the
4 question.

5 Q. It is. It's a complicated issue
6 with all the objections.

7 MR. SUSSMAN: Let me be clear about
8 something. What I meant to say earlier, not
9 that the court's order speaks for itself, but
10 the record of the proceedings in that case will
11 speak for itself, including the fact, as I
12 recall, although I'm not testifying, but I will
13 represent that the application to retain ADA
14 was withdrawn.

15 MR. ALBER: I was just simply
16 attempting to clarify it was the objection of
17 the trustee that caused the application to be
18 withdrawn.

19 MR. SUSSMAN: You can argue that to
20 the court at the appropriate time. For now I'd
21 like to get on with the questions of the
22 witness.

23 MR. ALBER: That's fine.

24

1 BY MR. ALBER:

2 Q. Were you or TB&F involved in the
3 K-Mart bankruptcy?

4 A. Yes.

5 Q. Did I ask that already?

6 MR. SUSSMAN: Asked. All right.
7 Go ahead.

8 THE WITNESS: Did I answer that?

9 MR. SUSSMAN: You said yes. Next
10 question.

11 Q. Was ADA or Barry Gold involved in
12 that bankruptcy?

13 A. No.

14 Q. Was any application ever made by
15 ADA to be involved in that bankruptcy?

16 A. No.

17 Q. Were you or TB&F ever involved in
18 what the Cerplex Group bankruptcy, if you
19 recall?

20 A. We may have been, but it wouldn't
21 have been a matter that I had anything to do
22 with.

23 Q. Therefore, you wouldn't know if
24 Barry Gold was involved in that or not?

1 A. Well, I wouldn't know that Barry
2 Gold wasn't involved in that because if he had
3 been involved I would know about it.

4 Q. Right. Okay. Were you or TB&F
5 involved in the FAO Schwartz bankruptcy?

6 A. Yes.

7 Q. Now they had two bankruptcies. Was
8 that the one in 2003 the last one?

9 A. I was involved in both of them.

10 Q. In both of them. Okay. And what
11 was the position --

12 MR. SUSSMAN: Can we first
13 establish whether or not Mr. Gold or ADA was
14 involved in either or both of them and then go
15 on to further questions.

16 MR. ALBER: That's what I'm trying
17 to establish.

18 Q. Was Mr. Gold or ADA involved in
19 either one of the bankruptcies?

20 A. ADA was involved in the second
21 bankruptcy.

22 Q. That would be the last one, the
23 2004 one I believe?

24 A. Actually 2003, but that's -- the

1 first bankruptcy you're referring to with FAO
2 was really that of Zany Brainy. And Zany
3 Brainy was bought out of bankruptcy by an
4 investment group who ultimately entered into a
5 transaction with FAO and became FAO. And
6 Traub, Bonacquist was counsel to the creditors
7 committee and Zany Brainy.

8 When FAO filed for bankruptcy,
9 Traub, Bonacquist was counsel to the creditors
10 committee, also counsel to a prepetition
11 committee, and Asset Disposition Advisors was
12 also retained in that bankruptcy case. That by
13 meaning FAO bankruptcy may be called a
14 different name at this point, but the FAO
15 entity that filed the later case is where Asset
16 Disposition Advisors and Traub, Bonacquist were
17 involved.

18 Q. We're aware of the Zany Brainy
19 bankruptcy and FAO bought them, but then there
20 were two FAO bankruptcies a year apart is what
21 I was trying to nail down.

22 I believe your firm was involved in
23 the 2003 bankruptcy at the beginning of the
24 year.

1 MR. SUSSMAN: Just wait for another
2 question.

3 MR. ALBER: Clarification for the
4 record.

5 MR. SUSSMAN: Just wait for another
6 question.

7 Q. So was it your duty to promote ADA
8 to be able to participate in the case? You
9 stated that you did in some instances that you
10 were --

11 MR. SUSSMAN: I object to the form
12 of the question and the recharacterization of
13 using the word "you stated in some instances".
14 That said, ask your question, please.

15 Q. Did you participate in promotion of
16 ADA as for the retention employment by -- in
17 the bankruptcy?

18 A. Are you referring to the recent FAO
19 bankruptcy?

20 Q. The one that you said that ADA and
21 TB&F are involved in?

22 A. Yes, I made a suggestion that it
23 would be a good idea to hire them, yes. Yes, I
24 did.

1 Q. Now in the last bankruptcy, the FAO
2 bankruptcy, was it ever discussed that ADA be
3 involved in that bankruptcy?

4 MR. SUSSMAN: You just asked and he
5 just answered that question. He said yes.
6 Perhaps you misunderstood his last answer.

7 Q. Okay. Was TB&F or yourself ever
8 involved with Wisconsin Toy Company?

9 A. Traub, Bonacquist and Fox was
10 counsel through one of the creditors committees
11 in Wisconsin Toy.

12 Q. One of creditors committees?

13 A. There were two --

14 THE WITNESS: May I answer this?

15 MR. SUSSMAN: I don't know yet
16 because I don't know if it's relevant to
17 anything. Can we wait until we find out
18 whether or not Mr. Gold many or ADA was in that
19 case.

20 MR. ALBER: I was confused. I
21 didn't hear the answer because we're --

22 MR. SUSSMAN: Give him the answer.

23 THE WITNESS: He's asking me
24 whether I was involved, I'm happy to answer

1 that.

2 MR. SUSSMAN: Give him the answer.
3 There were -- it was a bankruptcy case in
4 Milwaukee, Wisconsin. There were two separate
5 businesses. As I sit here I don't remember
6 what the name of the master business was, but
7 there were two separate companies that filed
8 together.

9 There was a company called
10 Everything's a Dollar and there was a company
11 called might have been the Toy Soldier or
12 Wisconsin Toy, I don't specifically recollect
13 what it was but there was a toy part of it,
14 Value Merchants -- Invalu Merchants.

15 The case I believe Mr. Alber is
16 asking about is a case that was called Value
17 Merchants. I don't believe there was a
18 separate bankruptcy for Wisconsin Toy, but the
19 way the trustee dealt with the case was to set
20 up two different creditors committee. One for
21 the toy part, whatever that was called. I
22 don't remember if was Toy Soldier or Wisconsin
23 Toy, and one for Everything's a Dollar. We
24 represented one of the -- Traub, Bonacquist

1 represented the creditors committee for the toy
2 part of it.

3 Q. Okay. My confusion was when I
4 heard you say two creditors committees. I
5 wasn't familiar that they did that in different
6 cases. My ignorance sitting here.

7 A. Do I have to respond to the
8 question?

9 Q. It's not a response. Thank you for
10 clearing that up for me. Barry Gold and ADA
11 were not involved?

12 A. No.

13 Q. TB&F involved in the Witmark
14 bankruptcy case; is that true?

15 A. I don't believe that Witmark was a
16 bankruptcy case.

17 Q. It was a restructuring, corporate
18 restructuring, that's true.

19 A. I don't know if you're asking was
20 Traub, Bonacquist and Fox involved in Witmark.
21 I believe I answered that the answer is yes.

22 Q. What involvement was -- are you
23 aware of any involvement between TB&F or any of
24 the members of TB&F and Barry Gold at that time

1 in the Witmark case?

2 A. What I know about Witmark was that
3 Witmark was represented by the law firm of
4 Skadden, Arps.

5 Q. Excuse me?

6 A. Skadden, Arps represented Witmark.
7 It was a case in Michigan and the committee,
8 unofficial committee or ad hoc committee,
9 whatever they call it, was represented by
10 Traub, Bonacquist and Fox, principally by
11 Michael Fox.

12 I believe I testified earlier if I
13 had a conversation with Barry Gold I don't
14 remember. I doubt that I did. I was not
15 involved in the case and I certainly didn't
16 meet him but certainly members of Michael Fox
17 would.

18 MR. SUSSMAN: The question, I
19 think, is simply whether or not do you know if
20 Barry Gold was in that case.

21 A. Yeah, he was.

22 MR. SUSSMAN: Next question.
23 Listen to the question.

24 THE WITNESS: I'm just trying to be

1 helpful.

2 MR. SUSSMAN: I know you are.
3 Listen to the question.

4 Q. But that was the only -- okay. So
5 that was the only connection you know Barry
6 Gold was on the case and TB&F did the case as
7 well, that was the only connection between the
8 two at that time?

9 MR. MINUTI: Excuse me, Mr. Alber,
10 can I ask you to keep your voice up. I'm
11 having difficulty hearing.

12 MR. ALBER: Pardon me.

13 MR. MINUTI: Thank you.

14 Q. So I'm just establishing that so
15 you know Barry Gold was involved in the case,
16 TB&F was involved in the case, but that's the
17 only connection that you're aware of at that
18 time?

19 A. Yes.

20 Q. Okay. Thank you. Was TB&F or
21 yourself involved in Stage Stores? I believe
22 they were known as Apparel Retailers --

23 A. Yes.

24 Q. -- prior to that?

1 A. Yes.

2 Q. And was Barry Gold also involved in
3 that case?

4 A. Yes.

5 Q. Would you please explain the
6 involvement of TB&F in that case?

7 A. We were special counsel to the
8 company for the limited purposes of assisting
9 the company in doing the work to set up an
10 auction process and present the court a store
11 closing program and motion to help the company
12 close I believe it was a hundred stores.

13 Mr. Gold was employed by the
14 company, I'm not sure of his title, but doing a
15 lot of things for the company and we interacted
16 on the store closing aspect of it.

17 Q. Do you recall approximate dates of
18 tenure of TB&F in that case?

19 A. I would say that was in mid to late
20 2000.

21 Q. Okay. And who all at TB&F was
22 involved in that case?

23 MR. SUSSMAN: By that you mean who
24 worked in the Jumbo Sports case?

1 MR. ALBER: No, we're talking about
2 Stage Stores.

3 MR. SUSSMAN: Excuse me. Who
4 worked in the Stage Stores case?

5 Q. Right. Which members of the TB&F
6 firm were working on the Stage Stores case,
7 yes.

8 A. Myself and Mora Russell.

9 Q. So your involvement was only in
10 2000, year 2000?

11 A. I believe so, yes.

12 MR. SUSSMAN: Before you ask your
13 next question since our reporter might need
14 nourishment -- off the record.

15 (Brief discussion off the record.)

16 BY MR. ALBER:

17 Q. So to restate, I believe we were
18 last TB&F's involvement was in the year 2000 In
19 the Stage Stores case?

20 A. I believe that's correct.

21 Q. And not extending in 2001 that
22 you're aware of?

23 A. I don't think so. I don't think
24 so. I mean, the action in the case was in

1 2000. If there was some cleaning up or
2 follow-up that once I'm not required I couldn't
3 tell you the exact date. Was it possible, is
4 it possible, I don't remember having anything
5 to do with it after that.

6 Q. To my recollection the reorganized
7 company emerged the end of 2000, beginning
8 2001. That's when they emerged. I was trying
9 to just distinguish whether or not your company
10 was employed after the reorganization?

11 A. I can tell you without any question
12 of a doubt we're not. There were other people
13 working on it well after we did it.

14 Q. Okay. Thank you. Did you or your
15 firm work on the KB Toys bankruptcy case?

16 A. Yes.

17 Q. Please tell me the position that
18 your company held or the title?

19 MR. SUSSMAN: Can we stay with the
20 procedure first establishing that the Gold
21 relationship before you start delving into what
22 TBF did.

23 MR. ALBER: We can.

24 Q. Was Barry Gold involved in that

1 case?

2 A. Yes.

3 MR. SUSSMAN: Good. Go ahead.

4 Q. Can you please state what TB&F's
5 duties were in that case?

6 A. It's an ongoing case, so the case
7 continues. We were -- Traub, Bonacquist and
8 Fox was counsel to an ad hoc committee to --
9 excuse me -- to an ad hoc committee of
10 creditors commencing in mid to late December of
11 '03.

12 And then when the case filed,
13 Traub, Bonacquist and Fox as retained as
14 bankruptcy counsel to the creditors committee,
15 official committee of unsecured creditors.

16 Q. And Mr. Gold's position, that was
17 -- well, how was Mr. Gold involved in that
18 case?

19 A. The company was entertaining the
20 thought of closing three to 400 stores within
21 the early phases of the case. We, when I say
22 "we," the creditors committee, was not
23 comfortable that they had the requisite
24 expertise to completely vet out how to go about

1 closing those stores, how to get packages out,
2 etcetera, in terms of bid packages and other
3 issues.

4 And it was creditors committee
5 retained Asset Disposition Advisors for that
6 initial store closing to help the committee
7 given that it was not in the primary role of
8 the committee in that case of running the store
9 closing program but certainly the committee's
10 input was important.

11 Asset Disposition Advisors rendered
12 services in the planning stages of the initial
13 store closing program. Thereafter became a
14 dispute in the inventory liquidation process
15 between the liquidators and the company and
16 Asset Disposition Advisors assisted the company
17 in understanding certain issues that were being
18 raised that I believe were hopeful in helping
19 to achieve an ultimate resolution of that
20 dispute.

21 Q. Who is it that prepares the billing
22 record, the billing to whatever case, let's say
23 KB Toys case, for instance, on behalf of ADA?
24 Is it an employee of Traub, Bonacquist and Fox?

1 A. Yes.

2 Q. Could you please name that
3 individual?

4 A. Cindy Williams.

5 Q. ADA was formed in April, I believe,
6 2001?

7 A. Yes.

8 Q. Who were the members of ADA at that
9 time?

10 A. There's only ever been two members,
11 Barry Gold and myself.

12 Q. Who is Nancy Valente?

13 A. I have no idea.

14 Q. She's -- okay.

15 A. I've never heard of the name
16 before.

17 Q. Okay. The reason I ask is Nancy
18 Valente signed the registration papers for ADA
19 as an authorized person for ADA. I'm just
20 trying to find out who she is?

21 A. Can I speculate on this or --

22 Q. I'll show you the -

23 MR. SUSSMAN: Do you have a
24 document to show him?

1 MR. ALBER: Yes, I do.

2 MR. SUSSMAN: To perhaps refresh
3 his recollection.

4 MR. ALBER: It's on the second
5 page.

6 MR. SUSSMAN: Why don't we mark it
7 as an exhibit so the record refers to who it
8 is.

9 (Alber Exhibit No. 1 marked for
10 identification.)

11 THE WITNESS: What I believe that
12 is, is that when lawyers form a corporation,
13 and I didn't form this particular corporation,
14 we had counsel do it, they use a variety of
15 corporate services in the various states,
16 Delaware being a very popular place, and that
17 person is, I would assume, somebody who works
18 for Corporation Trust Company, which would be
19 one of the outfits that would be -- in other
20 words, in order to set up a company in Delaware
21 or maybe other states --

22 Q. We know that Corporation Trust --

23 MR. SUSSMAN: He's in the middle of
24 his answer.

1 THE WITNESS: I'm just trying to
2 explain.

3 MR. SUSSMAN: Do you want him to
4 finish his answer?

5 MR. ALBER: Sure.

6 THE WITNESS: I won't go on too
7 long. I think that Nancy Valente is likely to
8 be somebody that works for Corporation Trust
9 Company. She's certainly nobody I've ever met
10 or heard of or has anything to do with the
11 business of Asset Disposition Advisors.

12 Q. Who filed the formation papers for
13 ADA then in Delaware? We'll have to recheck
14 out the information. CT Corporation, they told
15 us that this was somebody affiliated with ADA
16 who filed these. Maybe we were given the wrong
17 information by CT Corporation. We'll have to
18 reverify that.

19 Who filed the corporation
20 registration papers in the state of Delaware
21 for ADA?

22 MR. SUSSMAN: Object to the form to
23 the extent that it incorporates the speech
24 beforehand, but you can answer the question.

1 A. I would assume that CT Corporation
2 services who formed it. I believe that we
3 hired a law firm to do it. That firm was
4 Hutchins, Wheeler in Boston.

5 Q. Hutchins, Wheeler?

6 A. In Boston. So any contact that
7 they might have had would have been through
8 them.

9 Q. Is Hutchins, Wheeler a law firm,
10 are they located in Delaware?

11 A. No.

12 Q. Where are they located at?

13 A. Boston.

14 Q. Boston, Massachusetts. Okay.

15 Why would a Boston law firm be
16 employed by TB&F to file these papers when TB&F
17 was actually closer to Delaware practices? Who
18 made that decision?

19 MR. SUSSMAN: Object to the form of
20 the question. You can answer.

21 A. I did. Traub, Bonacquist and Fox
22 has a -- or I have a lot of contacts all over
23 the country and I was comfortable going to this
24 particular lawyer in Boston to discuss it and

1 he was agreeable to do it.

2 Q. You went to -- I didn't -- pardon
3 me, I didn't hear all --

4 A. Let me lean forward again.

5 Q. You went to the law firm, you say
6 you went to him at the law firm and capable of
7 doing it? I didn't hear your answer. I
8 apologize.

9 MR. ALBER: If you want to read it
10 back.

11 MR. SUSSMAN: Why don't you read
12 back his last answer.

13 MR. ALBER: That's fine.

14 MR. SUSSMAN: Just answer the
15 question.

16 (The record was read as requested.)

17 THE WITNESS: Asset Disposition
18 Advisors hired this law firm, not Traub,
19 Bonacquist and Fox.

20 Q. You did personally as a principal
21 of Asset Disposition Advisors?

22 A. Correct.

23 Q. I guess I'm just confused as to why
24 if there are certain parties in Traub,

1 Bonacquist and Fox who do actively participate
2 with ADA, why it wasn't a Traub, Bonacquist and
3 Fox attorney who would file the paper?

4 I would see no problem with that.

5 MR. SUSSMAN: Object to the form.
6 You can answer it.

7 A. It's not what we do.

8 Q. I guess the same form to the
9 question would be why would you make a decision
10 to hire an outside law firm when you had very
11 capable attorneys within TB&F to do it, to do
12 it for you?

13 A. I have multiple --- first of all,
14 Asset Disposition Advisors is a separate
15 business, treated as a separate business. And
16 I wanted to discuss it with a lawyer who was
17 unrelated to Traub, Bonacquist and Fox who had
18 a capability in the corporate area. While we
19 appreciate -- I appreciate your comment that
20 Traub, Bonacquist and Fox is a good law firm,
21 corporate work is not what we principally do.

22 Q. Did Mr. Gold also participate in
23 this discussion with Hutchins, Wheeler in the
24 formation of ADA, I believe as you put it?

1 MR. SUSSMAN: Object to the form.
2 You can answer.

3 A. I don't know. I don't recall. I
4 don't think so.

5 Q. Was Mr. Gold aware that you went to
6 an outside law firm to have ADA -- to consult
7 with an outside law firm, Hutchins, Wheeler,
8 before you had ADA formed?

9 A. Yes.

10 Q. Okay. And so you hired the
11 Hutchins, Wheeler law firm to, number one,
12 consult with you on setting up ADA?

13 A. Mm-hmm.

14 Q. And this was just simply an
15 attorney that they assigned from the law firm
16 or is this the attorney you dealt with
17 directly?

18 MR. SUSSMAN: What are you
19 referring to as "this"?

20 Q. Is Nancy Valente an attorney that
21 you dealt with directly in the Hutchins,
22 Wheeler law firm?

23 MR. SUSSMAN: Object to the form of
24 the question.

1 A. I don't know that Nancy Valente is
2 a lawyer or that she works at the Hutchins,
3 Wheeler law firm.

4 I tried to say earlier that I think
5 that what law firms do when they file
6 corporations is they hire a service to act as
7 registered agent and file the papers. That's
8 who I think Nancy Valente is. I would highly
9 doubt that she had anything to do with
10 Hutchins, Wheeler.

11 MR. SUSSMAN: Wait for another
12 question. What's your next question?

13 MR. ALBER: Off the record.

14 (Brief discussion off the record.)

15 BY MR. ALBER:

16 Q. So does Hutchins, Wheeler, have
17 they performed any other services for ADA or
18 for yourself or Mr. Gold --

19 A. No.

20 Q. -- since then? Okay. It was just
21 that one consultation period prior to the
22 formation of ADA?

23 MR. SUSSMAN: Object to the form.
24 You can answer.

1 A. They set up -- they filed -- they
2 caused the corporation to be filed in Delaware.
3 I believe they filed the certificate to
4 incorporate it to do business in New York.

5 Q. Do you know who did -- who filed
6 the papers on behalf of ADA in the state of New
7 York? These are the Delaware papers, I'm
8 talking about the state registration in New
9 York?

10 A. I wouldn't have the foggiest idea.

11 Q. Who would have that information as
12 far as who filed? Who made the arrangements?

13 A. The arrangements, I would believe,
14 would have been made by Hutchins, Wheeler and
15 believe would have a corporate service they use
16 analogous to this one to file the papers.

17 Q. So they would have did it all about
18 the same time, we can presume?

19 A. I think so.

20 MR. SUSSMAN: You're asking him to
21 speculate?

22 THE WITNESS: I'm speculating.
23 That's right.

24 Q. Have you or the TB&F firm ever had

1 any connections to Consolidates Store who later
2 changed their name to Big Lots?

3 A. I believe I originally met them
4 when they put in a bid for some assets in the
5 Value Merchants case. I don't think I have --
6 whatever how many years ago, that was more than
7 a few years ago, they are also now a member of
8 the KB Toys creditors committee.

9 Q. Okay. Right. But that's the only
10 connection though is the Value -- as I
11 understand Value Merchants, and then as a party
12 in the KB Toys case. I'm understanding that
13 correctly?

14 MR. SUSSMAN: What's the question?
15 What are you asking, if he thinks you
16 understand it correctly?

17 Q. I didn't understand. I'm saying
18 you seem to remember something with the Value
19 Merchants case and now they're a party in the
20 KB Toys case. We know they're a party in the
21 KB Toys case.

22 MR. SUSSMAN: He said they're a
23 member of the creditors committee is what his
24 testimony is. Is there another question you'd

1 like to ask him about this? Is there another
2 question?

3 THE WITNESS: I'd like to
4 supplement my answer.

5 MR. SUSSMAN: Go ahead.

6 THE WITNESS: They may have bid on
7 other assets in cases that I'm involved in. I
8 don't have a specific recollection of them
9 doing that, but we've been involved in a lot of
10 cases and they may have made a bid. I don't
11 recall specifically what case that may have
12 been. It may be a case additional to Value
13 Merchants. I don't know.

14 Q. Okay. I was just trying to clarify
15 it.

16 A. That's why I wanted to expand my
17 answer.

18 Q. Thank you. Have you or TB&F ever
19 had any connection with the Homelife stores
20 bankruptcy?

21 A. No.

22 Q. No? Sears Homelife?

23 A. Traub, Bonacquist and Fox has never
24 had a connection with the Homelife bankruptcy.

1 Q. Okay. Thank you. Have you
2 yourself or TB&F ever had any business dealings
3 with Bombay Company?

4 A. Not to my knowledge.

5 Q. Okay. Thank you. Have you or your
6 firm ever had any business dealings with
7 PillowTex?

8 MR. SUSSMAN: I'm sorry, I missed
9 the question. Could you just tell me what the
10 question is, she doesn't have to read it back.
11 I'm sorry.

12 Q. Sure. Just have you or your firm
13 ever had any business dealings with PillowTex?

14 A. Yes. Do you want me to tell you
15 what they were?

16 Q. Excuse me?

17 A. Do you want to know what they were?

18 MR. SUSSMAN: Why don't we wait and
19 see if Gold is involved in the case first.

20 THE WITNESS: I'm sorry. I'm just
21 trying to be helpful.

22 MR. SUSSMAN: I know, but I also
23 don't want this just to go off because you're
24 volunteering. Let's wait for the question.

1 THE WITNESS: Okay.

2 Q. As a matter of course I'd like to
3 verify PT Partners in that case. Are you
4 familiar with them?

5 A. I believe I am.

6 Q. Can you state your -- what does PT
7 Partners stand for?

8 A. I'm guessing, but what I believe it
9 was is that Traub, Bonacquist and Fox
10 represented a joint venture that bid on the
11 assets of PillowTex at an auction at a New York
12 law firm. I believe that PT Partners was one
13 of those entities that was part of the venture.
14 Certainly not an entity that I had anything to
15 do with, no equity interest. I believe it was
16 a vehicle that may have been formed for the
17 purpose of buying some assets.

18 I'd like to supplement that. I
19 also represented a real estate venture called
20 Manchester Real Estate who attempted to buy a
21 piece of property from PillowTex
22 unsuccessfully. "I" Traub, Bonacquist and Fox
23 Traub did.

24 Q. Traub, Bonacquist and Fox?

1 A. On both occasions it was Traub,
2 Bonacquist and Fox.

3 Q. Okay. Thank you. Was Mr. Gold
4 involved in PillowTex at all to your knowledge?

5 A. No, he was not.

6 MR. SUSSMAN: Let me just state
7 this on the record, and that's why I would like
8 you to wait, answer his question, and then just
9 wait for a question. Unless he establishes
10 that Traub, Bonacquist and Fox and ADA and
11 Barry Gold are in it, there's no reason to be
12 talking about it.

13 THE WITNESS: I was trying to be
14 helpful.

15 MR. SUSSMAN: I know you're trying
16 to be helpful.

17 MR. ALBER: Okay. Thank you very
18 much.

19 MR. SUSSMAN: That concludes
20 Mr. Traub's deposition. It's 1:30. Shall we
21 break for lunch and reconvene at 2:30 to start
22 with Mr. Fox? Is that enough time?

23 MR. ALBER: That's fine.

24 (Deposition concluded at 1:25 p.m.)

DEPONENT: PAUL TRAUB

PAGE

Examination by Mr. Alber

3

DEPOSITION EXHIBITS

MARKED

1. Exhibit No. 1

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(Mr. Alber retained the exhibit.)

CERTIFICATE OF REPORTER

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1 State of Delaware)
2 New Castle County)

3
4 CERTIFICATE OF REPORTER

5 I, Stacy L. Vickers, Registered
6 Professional Reporter and Notary Public, do hereby
7 certify that there came before me on the 9th day
8 of February, 2005, the deponent herein, PAUL
9 TRAUB, who was duly sworn by me and thereafter
10 examined by counsel for the respective parties;
11 that the questions asked of said deponent and the
12 answers given were taken down by me in Stenotype
13 notes and thereafter transcribed by use of
14 computer-aided transcription and computer printer
15 under my direction.

16 I further certify that the foregoing is a
17 true and correct transcript of the testimony given
18 at said examination of said witness.

19 I further certify that I am not counsel,
20 attorney, or relative of either party, or
21 otherwise interested in the event of this suit.

22
23 
24 Stacy L. Vickers, RPR
Cert.#: 115-RPR
Exp.: 01/31/05

DATED: February 11, 2005