

EXHIBIT 1
TO DECLARATION OF O'CONNOR

1 ARBITRATION NO. 1310016794

2 DON NELSON,)

3 Claimant/
4 Counterrespondent)

5 vs.)

6 DALLAS BASKETBALL LIMITED d/b/a
7 DALLAS MAVERICKS,)

8 Respondent/
9 Counterclaimant.)

CIVIL
ARBITRATION
PENDING BEFORE
JAMS

10 ORAL AND VIDEOTAPED DEPOSITION OF

11 MARK CUBAN

12 January 18th, 2008

13 *****

14 ANSWERS AND VIDEOTAPED DEPOSITION of MARK

15 CUBAN, taken at the instance of the Plaintiff, on the
16 18th day of January, A.D., 2008, between the hours of
17 9:42 a.m. and 4:32 p.m., in the above styled and
18 numbered cause at the offices of Fish & Richardson,
19 1717 Main Street, Suite 5000, in Dallas, Dallas County,
20 Texas, before Jerry L. Callaway, RDR, a Certified
21 Shorthand Reporter in and for the State of Texas,
22 pursuant to the Arbitration Rules and the provisions
23 stated on the record.
24
25

A P P E A R A N C E S

APPEARING FOR THE CLAIMANT/COUNTERRESPONDENT:

Mr. Mark T. Davenport
Mr. Don Colleluori
Mr. Ryan K. McComber
FIGARI & DAVENPORT, L.L.P.
901 Main Street, Suite 3400
Dallas, Texas 75202

APPEARING FOR THE RESPONDENT/COUNTERCLAIMANT:

Mr. Steven H. Stodghill
Mr. Geoffrey S. Harper
FISH & RICHARDSON, P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201

ALSO APPEARING

Mr. Robert Hart, House Counsel for Dallas
Basketball Limited
Mr. Darrell Wallace, Videographer

09:41:58 1 P-R-O-C-E-E-D-I-N-G-S

09:41:58 2 THE VIDEOGRAPHER: Today's date is
09:42:04 3 January the 18th, 2008. We are on the record. The
09:42:07 4 time is 9:42 a.m. Please be advised while on the video
09:42:11 5 record all microphones will be recording audio. Will
09:42:13 6 Counsel state their appearances for the record.

09:42:16 7 MR. STODGHILL: Steve Stodghill, we
09:42:18 8 represent the Defendant Dallas Mavericks -- or Dallas
09:42:22 9 Basketball Limited, and -- which is also a
09:42:27 10 counterclaimant in the lawsuit, and we've got -- we are
09:42:30 11 producing a witness Mark Cuban today. Present is
09:42:35 12 Robert Hart, general counsel for the Mark Cuban
09:42:38 13 companies, and Jeff Harper, partner at Fish &
09:42:42 14 Richardson.

09:42:44 15 MR. DAVENPORT: I'm Mark Davenport. I,
09:42:46 16 along with Don Colleluori and Ryan McComber, represent
09:42:50 17 Don Nelson.

18 MARK CUBAN,
19 having been first duly sworn, testified as follows:

20 EXAMINATION

09:43:03 21 BY MR. DAVENPORT:

09:43:03 22 Q. Please state your name.

09:43:07 23 A. Mark Cuban.

09:43:08 24 Q. Mr. Cuban, I just met you a few minutes ago.

09:43:11 25 I'm Mark Davenport. I'm the lawyer for Mr. Nelson.

09:43:14 1 I'm going to ask you some questions today about this
09:43:17 2 arbitration. Do you understand who I am and who I
09:43:20 3 represent?

09:43:21 4 A. Yes, sir.

09:43:21 5 Q. Have you done this before?

09:43:22 6 A. Yes, sir.

09:43:23 7 Q. Okay. So I don't need to go through all the
09:43:26 8 you know you are under oath stuff?

09:43:27 9 A. Yes, sir.

09:43:28 10 Q. Okay. Since we haven't worked together
09:43:33 11 before, let me tell you a little bit about how I take
09:43:35 12 depositions. I'm not here to badger you. I'm not here
09:43:41 13 to ask you trick questions. I'm not here to ask you a
09:43:44 14 question that's unfair. And if I ask you a question
09:43:48 15 that you don't think you can give me a truthful answer
09:43:50 16 because of the way I worded it, will you stop me, and
09:43:53 17 then I will repeat the question?

09:43:54 18 A. Sure.

09:43:54 19 Q. Is that fair enough? And you will have to
09:43:57 20 answer --

09:43:57 21 A. Yes, sir.

09:43:58 22 Q. -- me with a "yes" or "no."

09:44:02 23 Let me hand you Exhibit 1, which is our
09:44:04 24 Notice of Deposition, and if you will turn over on the
09:44:08 25 back of it, since we are suing a company, we've asked

10:20:55 1 Do you see that?

10:20:55 2 A. Yes, sir.

10:20:56 3 Q. Now, let's say that this agreement came into
10:21:02 4 being on February 7th, 1997, and it expired under its
10:21:07 5 terms June 30th, 2002, okay, for a hypothetical
10:21:14 6 question. Okay. We know it was amended. But assuming
10:21:18 7 it had expired under its terms and had not been amended
10:21:22 8 and had not been removed on June 30th, 2002, is it not
10:21:25 9 a fact that Mr. Nelson would have been free to become
10:21:28 10 the coach of another team?

10:21:31 11 A. Again, you are asking me to come to a legal
10:21:33 12 conclusion on a contract in 1997, and I'm just not
10:21:36 13 prepared to do that.

10:21:37 14 Q. I'm asking you a hypothetical question, and
10:21:40 15 I'm not asking you for a legal conclusion. I am asking
10:21:43 16 for your understanding of the agreement as president of
10:21:45 17 the Mavs -- is that what you are, president?

10:21:46 18 A. What is it, am I president?

10:21:48 19 Q. You are the head honcho?

10:21:52 20 MR. HART: Just the owner.

10:21:53 21 A. I am just the owner.

10:21:54 22 Q. (BY MR. DAVENPORT) Just the owner?

10:21:55 23 A. Yeah.

10:21:55 24 Q. Who is the president?

10:21:57 25 A. Terdema, right.

12:12:08 1 first round, and it was one of the best comebacks ever.
12:12:12 2 We went down 2-0, loosing the first two games at home.
12:12:16 3 Then we -- then we went to Houston and won two games,
12:12:19 4 and then we lost a game in Houston, and then we came
12:12:21 5 back in game 7 and we beat Houston by 40 points in a
12:12:26 6 game 7 which was is incredible. So from that
12:12:29 7 perspective it was -- it was great, and then we lost to
12:12:33 8 Phoenix in the next round.

12:12:35 9 Q. Now, this is '04/'05?

12:12:41 10 A. Yes, sir.

12:12:42 11 Q. We know that the events are going to develop
12:12:48 12 where Mr. Nelson will step down as head coach on March
12:12:55 13 19th, 2005?

12:12:56 14 A. Yes, sir.

12:12:57 15 Q. Okay. Tell me how that came about.

12:13:02 16 A. We were at our charity event, Tux -- Tux and
12:13:08 17 Tennies, and, you know, it was just going to be another
12:13:11 18 event. And then Del Harris came to me and said that
12:13:14 19 Nellie wanted out, Nellie was ready to leave, and the
12:13:20 20 most important thing to Nellie was continuing to be
12:13:23 21 paid. And that if we didn't pay him, we were going to
12:13:27 22 get exactly what we had been getting from him to this
12:13:30 23 date. Would I consider letting him resign and continue
12:13:34 24 to pay him?

12:13:35 25 And I said, "Where do I sign?" You

12:13:39 1 know -- and I will qualify that. I think -- well, I am
12:13:44 2 trying -- yeah, Avery and I had been having
12:13:47 3 conversations -- what had changed up to that point was
12:13:49 4 in talking to Avery, I was getting more and more
12:13:53 5 comfortable that he was ready. His preparation was
12:13:57 6 meeting my desperation. And so when -- when Del came
12:14:02 7 to me, I was like "Where I do sign?"

12:14:05 8 Q. Okay. Let's see what -- this is -- well,
12:14:10 9 strike that.

12:14:10 10 Were you and Mr. Nelson beating each
12:14:14 11 other up in the press at that point?

12:14:16 12 A. Nellie was throwing -- I don't recall my
12:14:20 13 saying anything specific in the press, other than I
12:14:23 14 wasn't going to let Nellie go to Hawaii, and I remember
12:14:26 15 going in and telling him that. And I don't remember if
12:14:28 16 it was that year or the previous year. I think it was
12:14:31 17 that year, saying, "Look, I am not going to fire you.
12:14:33 18 I am going to make you work this out. I am not going
12:14:36 19 to pay you to go to Hawaii." And I don't remember
12:14:41 20 specifics in the press at that point in time. Later
12:14:47 21 than that, yes, but I don't remember the specifics what
12:14:49 22 was going on in the press.

12:14:51 23 Q. Okay. I am sure -- have you read the
12:14:53 24 petition? Obviously, your recollection of events and
12:14:55 25 Mr. Nelson's recollection of events are a little bit

12:19:16 1 had some understanding of Avery, Avery knew our
12:19:19 2 players, and our players knew Avery. And I actually
12:19:22 3 talked to some of our players who felt Avery would do a
12:19:25 4 good job.

12:19:26 5 Q. So March of '05, then, Mr. Nelson says he will
12:19:35 6 graciously step down, not make a big scene, yes?

12:19:40 7 A. He didn't use those words to me, but, yeah,
12:19:42 8 that was my understanding.

12:19:42 9 Q. When he stepped down to let Mr. Avery step in,
12:19:47 10 you assured him that the club would honor the terms of
12:19:51 11 his contract, correct?

12:19:54 12 A. I believe -- I don't know specifically the
12:19:56 13 exact words, but I believe so, yes, sir.

12:19:58 14 Q. When he stepped down in March, you never told
12:20:03 15 him that he would not receive his consultant salary
12:20:13 16 that would kick in on July 1st, 2006; is that correct?

12:20:18 17 A. That's correct.

12:20:25 18 Q. Okay. Now, back to my earlier question.
12:20:28 19 Looking at the amount of money that the club was paying
12:20:30 20 him and looking at your allegations today that he
12:20:33 21 wasn't doing a good job and looking at your allegations
12:20:37 22 and the fact that Mr. Johnson had been -- had been in
12:20:40 23 pretty good shape, I mean, you thought he was coming
12:20:43 24 along, explain to me again why you wouldn't have just
12:20:46 25 said, Mr. Nelson, we are going to terminate you for

12:22:55 1 with the press?

12:22:55 2 A. I couldn't speak to that. I don't know.

12:22:56 3 Q. Was he popular with Randy Galloway?

12:22:58 4 A. Yeah, yeah, yeah. They were buddies.

12:23:01 5 Q. Why did Mr. Galloway think so highly of him?

12:23:04 6 A. I don't know. You'd have to ask Randy.

12:23:06 7 Q. But he'd write nice stuff about him, wouldn't
12:23:08 8 he?

12:23:08 9 A. My understanding is they are drinking buddies,
12:23:11 10 yes.

12:23:11 11 Q. The -- was Mr. Nelson popular with other
12:23:15 12 people? Was he popular with the players and the
12:23:17 13 coaches?

12:23:18 14 A. Some players yes, some players no. Some
12:23:20 15 coaches yes, some coaches no. Some in the organization
12:23:23 16 yes, some in the organization no. It varied by person.

12:23:27 17 Q. All right. So the deal was --

12:23:29 18 A. You couldn't -- I couldn't say across the
12:23:32 19 board he was just well-liked by everybody. I would not
12:23:35 20 make that statement about Nellie.

12:23:36 21 Q. Do you think you are well-liked by everybody?

12:23:39 22 A. I have no idea.

12:23:40 23 Q. As of March 2005, then, he steps down as head
12:23:48 24 coach, and you say if you'll step aside gracefully, we
12:23:52 25 will continue to honor your contract and let Avery

12:23:55 1 start coaching and team, and he did that?

12:23:57 2 MR. STODGHILL: Objection as to form.

12:23:58 3 A. Yes, sir.

12:23:59 4 Q. (BY MR. DAVENPORT) Now, what did you expect
12:24:00 5 Mr. Nelson -- since you had effectively taken away his
12:24:05 6 head coaching duties, he was helping with the draft.

12:24:09 7 What else did you --

12:24:09 8 A. That was before. No, that was before.

9 Q. Huh?

12:24:10 10 A. When he was helping with the draft, that was
12:24:14 11 while he was still employed for both positions.

12:24:16 12 Q. Why -- post March 19, 2005, --

12:24:18 13 A. Right.

12:24:18 14 Q. -- what did you expect Mr. Nelson to do?

12:24:20 15 A. To be available when we had questions or that
12:24:23 16 we felt that he was best prepared or had the greatest
12:24:26 17 amount of experience and to help. We knew that there
12:24:29 18 would be issues that -- not issues, but that Avery
12:24:32 19 would have questions, you know, and although we had Del
12:24:34 20 and Donny and Larry Riley and others as a resource, we
12:24:38 21 wanted him to be there and be available as resource.
12:24:41 22 There were certain -- you know, Nellie is -- Nellie can
12:24:44 23 be a very effective coach, and in certain situations
12:24:47 24 having the benefit of that knowledge could be of value.

12:24:49 25 Q. So was he available to you if you needed him?

13:56:40 1 to look at this thing and decide what happened.
13:56:42 2 Because I know I don't see anything happening between
13:56:45 3 this string of e-mails on June 27th and July 15th. If
13:56:52 4 there is some documents, y'all didn't produce them.

13:56:55 5 A. Not that I am -- I am not aware of any other
13:56:57 6 documents, no.

13:56:57 7 Q. We do know, though, that come July 15th, the
13:57:02 8 Mavericks didn't pay anything on the \$200,000
13:57:07 9 obligation as a consultant fee.

13:57:10 10 A. Right, because it turns out I was in error.

13:57:12 11 Q. But we know that -- we know that happened.
13:57:15 12 Will you agree with me?

13:57:15 13 A. Yes, sir.

13:57:16 14 Q. Y'all didn't make that payment.

13:57:18 15 A. Yes, sir.

13:57:18 16 Q. At that moment in time the Mavericks were in
13:57:21 17 breach of the Fifth Amendment, correct?

13:57:23 18 A. I don't know.

13:57:24 19 MR. STODGHILL: Objection as to form.

13:57:25 20 A. That's legal -- I'd ask my lawyers if we were
13:57:28 21 or not.

13:57:28 22 Q. (BY MR. DAVENPORT) At that moment in time on
13:57:30 23 the 15th, Mr. Nelson was not in breach, you had never
13:57:34 24 claimed he was in breach, and you didn't not make the
13:57:38 25 payment because you thought he was in breach?

13:57:39 1 MR. STODGHILL: Objection as to form.

13:57:40 2 A. That's a legal discussion I would have with my
13:57:42 3 attorneys. I don't know specifically.

13:57:43 4 Q. (BY MR. DAVENPORT) I don't want to hide the
13:57:45 5 ball from you, but on the 15th -- hide the ball, that's
13:57:48 6 kind of a pun, right? Maybe like you dancing around
13:57:51 7 the question, how about that?

13:57:54 8 The -- on the 15th, the Mavs did not make
13:57:58 9 that payment, so Mr. Nelson contends and we contend
13:58:01 10 that at that instant in time the Mavericks had first
13:58:05 11 breached the contract; you understand that's what we
13:58:07 12 are claiming?

13:58:07 13 A. I understand it, but I have no --

13:58:09 14 Q. Okay.

13:58:09 15 A. I don't know the legal definition of "breach."

13:58:11 16 Q. Okay. Now, let's go back to the exhibit,
13:58:15 17 then.

13:58:18 18 MR. STODGHILL: Which exhibit?

13:58:21 19 MR. DAVENPORT: Exhibit 11.

13:58:22 20 MR. STODGHILL: Okay.

13:58:23 21 Q. (BY MR. DAVENPORT) If I can pick back up on
13:58:32 22 it. Okay. I am going to go to Wednesday -- look at
13:58:41 23 page 3 of this.

13:58:43 24 A. Okay.

13:58:44 25 Q. See if we can pick this up. Wednesday, July

13:58:51 1 6, 2006. Okay. We don't -- I'll tell you, in
13:58:54 2 preparing for the deposition and reviewing the e-mails
13:58:58 3 that you-all produced in response to our request, we
13:59:01 4 found no communication that was produced on this
13:59:06 5 subject between the ones I've just showed you and the
13:59:09 6 one starting July 26th. So that's almost a month or
13:59:17 7 so --

13:59:17 8 A. Correct.

13:59:17 9 Q. -- where we can't find anything. So the first
13:59:19 10 thing we see on this topic is the July 26, 2006. Floyd
13:59:25 11 Jahner wrote, "I got a call from Nellie regarding his
13:59:30 12 check and the \$200,000 we did not include in his
13:59:34 13 compensation. He states that this was not discussed in
13:59:39 14 the negotiations at the time of his departure. He
13:59:44 15 asked if we had any of this in writing. Then when
13:59:47 16 asking what he should do next, he briefly alluded to
13:59:52 17 turning this over to his attorney. I told him I would
13:59:56 18 talk to you. He asked me to call him back. In case
14:00:00 19 you want to discuss this directly with Nellie, his new
14:00:03 20 number is such and such. Tell me how you want to
14:00:05 21 proceed."

14:00:07 22 So, when Mr. Nelson didn't receive his
14:00:12 23 payment, the first thing he did was call Floyd Jahner
14:00:16 24 and say what's up?

14:00:18 25 A. Uh-huh.

14:00:18 1 Q. Why didn't I get my payment? And he states
14:00:22 2 this was not -- and Jahner is now asking you, what do
14:00:25 3 you want me to do -- how do you want me to proceed?
14:00:28 4 And you call, and let's see what you said to that. You
14:00:32 5 said, "Have his attorney call and state his case."
14:00:35 6 What does that --

14:00:35 7 A. Because Nellie agreed with me -- I am sorry.
14:00:37 8 I didn't mean to step on you. I apologize.

14:00:39 9 Q. Have his -- you told Mr. Jahner, said, he's
14:00:43 10 got a lawyer. Have the lawyer call me and state his
14:00:46 11 case. This is as of July 26th, 2006, a month after you
14:00:50 12 had been told by Mr. Jahner that the contract hadn't
14:00:53 13 changed and after you had already looked at your own
14:00:57 14 e-mail in which you had confirmed that the contract
14:01:00 15 hadn't changed, rather than saying, Mr. Jahner, we made
14:01:06 16 a terrible mistake, we breached the contract,
14:01:09 17 immediately cut him a check, you say tell his lawyer to
14:01:12 18 call and state his case. What case was he supposed to
14:01:15 19 state? What were you expecting him to state?

14:01:17 20 A. Well, we hadn't -- as I said in my e-mail to
14:01:20 21 Floyd, we hadn't really discussed it, but we didn't
14:01:24 22 agree that we would pay the 200,000. It was not
14:01:26 23 discussed. And then Nellie said we didn't discuss it.
14:01:29 24 And then my response, okay, we didn't discuss it, so
14:01:33 25 let's deal with it.

14:01:36 1 Q. You hadn't discussed it, you had entered into
14:01:38 2 a contract on July 1, 2003.

14:01:42 3 A. On March 19th we didn't discuss it.

14:01:45 4 Q. Well, you discussed it -- you said in the
14:01:48 5 contract you told him, and Mr. Nelson will testify to
14:01:51 6 this, and it's consistent with your e-mail, that the
14:01:54 7 contract doesn't change; it's unaffected. This
14:01:57 8 contract, the Fifth Amendment?

14:02:00 9 A. Right.

14:02:00 10 Q. Okay. The Fifth Amendment contractually
14:02:03 11 obligated the Mavs to make that payment.

14:02:05 12 MR. STODGHILL: Objection as to form.

14:02:06 13 A. I will defer to my lawyers on that.

14:02:08 14 Q. (BY MR. DAVENPORT) Do you want me to read
14:02:09 15 this to you?

14:02:10 16 A. I would still defer to my lawyers.

14:02:14 17 MR. STODGHILL: That will change
14:02:15 18 everything.

14:02:16 19 THE WITNESS: That's why I pay them.

14:02:18 20 Q. (BY MR. DAVENPORT) Okay. So state his case,
14:02:23 21 when you said tell him to call and state his case, --

14:02:26 22 A. Right.

14:02:26 23 Q. -- what did you want him, to beg for his
14:02:28 24 money?

14:02:28 25 A. Basically.

14:02:30 1 MR. STODGHILL: Objection as to form.

14:02:31 2 Q. (BY MR. DAVENPORT) Basically. Why, you were
14:02:32 3 mad, thought you had overpaid him before?

14:02:34 4 A. No, it wasn't that. It was just that wasn't
14:02:37 5 long after the finals and having him talk all this shit
14:02:40 6 about us. So, yeah, it was like, okay, state your
14:02:43 7 case, beg.

14:02:44 8 Q. So when you say "the finals," the fact that
14:02:48 9 you-all had lost or what?

14:02:49 10 A. The fact that he had bad-mouthed us every
14:02:52 11 which way, and I had to have him removed because he was
14:02:55 12 bad-mouthing Avery, just all the -- all the things --
14:02:58 13 no one thing specifically.

14:03:01 14 Q. So you wanted him to beg for his money?

14:03:03 15 A. Yep.

14:03:04 16 Q. Did that just make you feel good?

14:03:06 17 A. Yep.

14:03:07 18 Q. Weren't you concerned that you had breached
14:03:09 19 the contract by not paying him?

14:03:10 20 A. I deferred to my lawyers on all that stuff. I
14:03:13 21 mean, this was like I had mentioned to you earlier,
14:03:15 22 this was an on going dialogue with Floyd. He brought
14:03:19 23 it up to me. It wasn't something that we had
14:03:21 24 specifically -- it wasn't something Nellie and I had
14:03:24 25 specifically discussed in that March 19th meeting. It

14:03:26 1 was a very brief meeting, and it was one where, you
14:03:31 2 know, then Floyd showed me the e-mails, and I said,
14:03:33 3 damn, pay him his blood money.

14:03:35 4 Q. But first I am going to say, when you said --
14:03:38 5 I am going to get to that, July 26 at 4:02, Nellie had
14:03:42 6 called and asked where his money was.

7 A. Uh-huh.

14:03:44 8 Q. And he said, "I am going to turn this over to
14:03:46 9 my lawyer." And you say have his attorney call and
14:03:48 10 state his case. What did you want him to say, that,
14:03:52 11 "Mr. Cuban, here is my case. We have a written
14:03:55 12 contract that requires you to make me a payment on the
14:03:59 13 15th. You breached the contract by not paying it, and
14:04:01 14 I'm going to sue you for that money since you haven't
14:04:05 15 paid me." Would that have convinced you?

14:04:07 16 MR. STODGHILL: Objection as to form.

14:04:12 17 A. Say that again?

14:04:13 18 Q. (BY MR. DAVENPORT) Well, when you say "state
14:04:14 19 his case," I know you wanted him to beg for the money
14:04:16 20 because you are mad at him, but when you state his case
14:04:19 21 if he -- if he calls a lawyer, says okay, Mr. Cuban,
14:04:22 22 here -- you say state our case, we have a contract, you
14:04:27 23 didn't make a payment on the 15th. You breached the
14:04:32 24 contract, so pay me. Is that what you wanted him to
14:04:37 25 say?

14:04:37 1 MR. STODGHILL: Objection as to form.

14:04:38 2 A. I don't know. I really didn't have an
14:04:40 3 expectation what I wanted him to say, simply I wanted
14:04:43 4 him to beg, and as you can see by the e-mail
14:04:46 5 correspondence for -- which is, what, from 4 -- where
14:04:52 6 are we at?

14:04:53 7 Q. (BY MR. DAVENPORT) It's --

14:04:54 8 A. From July 26, 4:02, to July 26, 7:59 him
14:05:01 9 responding, so by that evening, 9:32, by 10:00 o'clock
14:05:05 10 that very same night we -- I had said we were going to
14:05:08 11 pay him. So it wasn't like when I told him to beg his
14:05:11 12 case, it wasn't what like I waited three days for him
14:05:14 13 to call and beg. It was by that night I had said,
14:05:19 14 "Damn, pay him his money."

14:05:20 15 Q. We will see --

14:05:21 16 A. It was more, you know, hypothetical that,
14:05:23 17 yeah, I would have -- I would have liked him to beg,
14:05:26 18 would have liked him to have been on his knees, I would
14:05:29 19 have liked to see Randy Galloway on his knees in front
14:05:32 20 of Nellie. There were a lot of things I would have
14:05:33 21 liked, but --

14:05:33 22 Q. If he was on his knees, he would still be
14:05:36 23 taller than you are.

14:05:37 24 A. No, he wouldn't. He is not that much bigger
14:05:41 25 than me.

14:17:17 1 A. I would have to ask the accountants.

14:17:19 2 Q. But you wouldn't have been -- the Mavs
14:17:20 3 wouldn't have been paying him the deferred comp on the
14:17:22 4 1st and 15th unless the Mavs thought he had earned it,
14:17:25 5 would you?

14:17:27 6 A. Again, yeah, I presume not.

14:17:30 7 Q. Okay. So you get into some negotiations over
14:17:37 8 the sixth amended contract, so basically you are going
14:17:44 9 give him -- try to give him a one-shot payment, right,
14:17:47 10 and in connection with those negotiations you are going
14:17:51 11 back and forth, were you familiar -- were you doing
14:17:55 12 them? Were you in those negotiations --

14:17:56 13 A. No, sir.

14:17:58 14 Q. -- for Fifth --

14:18:00 15 A. Oh, for --

14:18:00 16 Q. -- for what was going to be the Sixth
14:18:05 17 Amendment, where you were going to pay him lump sum on
14:18:08 18 the consulting contract?

14:18:09 19 A. No, sir.

14:18:09 20 Q. Do you remember the basis why no agreement was
14:18:11 21 ever reached?

14:18:15 22 A. I don't remember exactly why not in terms of
14:18:20 23 timeline, no.

14:18:21 24 Q. Well, the parties never -- it's a fair reading
14:18:30 25 from these e-mails that it was the Mavericks, not

14:18:35 1 Mr. Nelson, who initiated the thought that they wanted
14:18:39 2 to buy him out rather than just abide by the contract?

14:18:42 3 A. Well, let me just put a qualifier in that we
14:18:44 4 had had a history of having these types of negotiations
14:18:47 5 with Nellie. He -- there are multiple times he would
14:18:50 6 ask for acceleration of payments, and he had asked for
14:18:54 7 prepayments of other things with us. So this wasn't
14:18:58 8 unusual for us to be in this kind of conversation with
14:19:00 9 him.

14:19:00 10 Q. Okay.

14:19:00 11 MR. DAVENPORT: Object, nonresponsive,
14:19:02 12 move to strike.

14:19:02 13 Q. (BY MR. DAVENPORT) I am going to stay right
14:19:04 14 on this one because this is pretty important.

14:19:07 15 In this track of e-mails, if I am reading
14:19:09 16 it correctly, it was Mr. Jahner that suggested to
14:19:15 17 Mr. Nelson, would you like to negotiate something less
14:19:20 18 than the 200,000 paid out per month at that we owe you?
14:19:26 19 He brought it up, not Nelson, yes?

14:19:29 20 A. Correct.

14:19:29 21 Q. According to these e-mails?

14:19:31 22 A. According his e-mails, yes.

14:19:32 23 Q. Correct. Nelson said, I'll listen to what you
14:19:34 24 got to say or we'll negotiate, I could do a lump sum
14:19:38 25 payment if you want to do, you know, and they were

14:19:41 1 negotiating, right?

14:19:42 2 A. That's right.

14:19:42 3 Q. But we know they never got to reach agreement?

14:19:45 4 A. Correct.

14:19:45 5 Q. All right. Now, August 15th's going to

14:19:50 6 come -- well, let's stay in order. Give me the

14:19:52 7 O'Connor letter, August 4th.

14:19:56 8 Do you know John O'Connor?

14:19:57 9 A. No, sir.

14:19:58 10 Q. Have you ever met him?

14:19:59 11 A. Not that I know of.

14:20:47 12 MR. DAVENPORT: Let me go off the record

14:20:49 13 a minute.

14:20:49 14 THE VIDEOGRAPHER: Off the record at

14:20:51 15 2:20.

14:20:52 16 (Recess for 16 minutes.)

14:36:11 17 THE VIDEOGRAPHER: Back on the record.

14:36:14 18 The time is 2:36.

14:36:18 19 Q. (BY MR. DAVENPORT) After you had written

14:36:23 20 Mr. Jahner the e-mail instructing him to pay the, as

14:36:30 21 you called it, blood money, when did you learn that

14:36:34 22 Jahner had -- instead of paying him like you told him,

14:36:38 23 had decided to go start negotiating with him for a lump

14:36:41 24 sum, was it in this e-mail?

14:36:43 25 A. In the e-mail, yeah.

14:36:43 1 Q. And then did you -- did you have any
14:36:45 2 communication with him, did you call him after that and
14:36:47 3 say what are you doing or what's going on?

14:36:49 4 A. No.

14:36:49 5 Q. You just figured if he could negotiate
14:36:51 6 something out, that was all the better?

14:36:53 7 A. No, we do all communicating via e-mail.

14:36:56 8 Q. Okay. You don't ever talk to him, just ask
14:36:59 9 him what's going on?

14:37:00 10 A. I don't think I've ever called him.

14:37:02 11 Q. Never have called Jahner?

14:37:03 12 A. Nope.

14:37:04 13 Q. Really? Does he office near you?

14:37:05 14 A. He's at the Mavs office.

14:37:07 15 Q. And is that where you are?

14:37:09 16 A. Rarely.

14:37:09 17 Q. You mostly work out of home?

14:37:12 18 A. I work out of my home and several offices.

14:37:17 19 Q. So once Jahner starts talking to -- let's see.

14:37:42 20 Did you get involved in any of the
14:37:44 21 negotiations concerning this possible buyout?

14:37:47 22 A. No.

14:37:48 23 Q. All right. Look at the letter of August 4th
14:37:52 24 addressed to you from John O'Connor, August 4, 2006,
14:37:58 25 Exhibit 14, "Dear Mark, As you know, Don claims the

14:54:38 1 Q. Well, you know, I saw the -- that allegation
14:54:43 2 in this counterclaim that you-all filed, and that's why
14:54:47 3 I was particularly interested in reading the e-mail
14:54:50 4 traffic, which shows clearly that the person that first
14:54:54 5 brought up this lump sum payment was not Mr. Nelson who
14:54:59 6 had just wanted his contract to be honored, it was
14:55:02 7 Mr. Jahner, don't you remember --

14:55:04 8 A. No question.

14:55:04 9 Q. -- when he did that?

14:55:06 10 A. Yeah, he -- Floyd definitely brought it up,
14:55:08 11 but it was how Nellie tried to deal with it that
14:55:10 12 particularly upset me in that he wanted just to -- he
14:55:14 13 was willing to take less just to get it all at once
14:55:16 14 sooner rather than later. And so my interpretation of
14:55:19 15 it was just the analogy I gave.

14:55:22 16 Q. But when the Mavericks first breached the
14:55:24 17 contract on July 15th and Mr. Nelson learned about the
14:55:28 18 breach when the payment wasn't made, the only thing he
14:55:32 19 said was, why aren't you honoring my contract? Don't
14:55:35 20 you remember the e-mail?

14:55:37 21 MR. STODGHILL: Objection as to form.

14:55:37 22 Q. (BY MR. DAVENPORT) That's what Mr. Jahner
14:55:39 23 said he said.

14:55:39 24 MR. STODGHILL: Objection as to form.

14:55:40 25 A. Well, we can read what Mr. Jahner said rather

16:32:03 1 Q. -- change? As far as you -- as you recall,
16:32:06 2 your answers have been truthful and correct; and if I
16:32:10 3 asked you the same questions at the time we try this to
16:32:13 4 Judge Ashworth, you will give me the same answers if I
16:32:17 5 ask the same questions; is that fair?

16:32:19 6 A. If I understand them, yes.

16:32:21 7 Q. If you understand them. Okay. Have I been
16:32:23 8 courteous to you?

16:32:24 9 A. Yes.

16:32:25 10 Q. Okay. Fair enough. Thank you. I'll pass the
16:32:28 11 witness?

16:32:28 12 MR. STODGHILL: We are going to reserve
16:32:29 13 our questions, but I did want an opportunity to look at
16:32:33 14 the transcript to see if there is any part we want to
16:32:35 15 designate as confidential.

16:32:37 16 MR. DAVENPORT: Well, we won't do
16:32:39 17 anything with it until you do that.

16:32:40 18 MR. STODGHILL: I'd appreciate that. And
16:32:41 19 let's -- I think we are done unless you have anything
16:32:43 20 else.

16:32:43 21 MR. DAVENPORT: We are done. I am done.

16:32:44 22 THE VIDEOGRAPHER: We are off the record
16:32:46 23 at 4:32.

24

25

	CHANGES AND SIGNATURE			
	WITNESS: MARK CUBAN		DATE OF DEPO: 1/18/2008	
	PAGE	LINE	CHANGE	REASON
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1 I, MARK CUBAN, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.
4

5 _____
6 MARK CUBAN

7 THE STATE OF _____)

8 COUNTY OF _____)

9 Before me, _____, on this
10 day personally appeared MARK CUBAN, known to me (or
11 proved to me under oath or through _____)
12 (description of identity card or other document) to be
13 the person whose name is subscribed to the foregoing
14 instrument and acknowledged to me that they executed
15 the same for the purposes and consideration therein
16 expressed.

17 Given under my hand and seal of office
18 this _____ day of _____, 2008.
19
20

21 _____
22 NOTARY PUBLIC IN AND FOR

23 THE STATE OF _____
24
25

1 COUNTY OF DALLAS)

2 STATE OF TEXAS)

3 I, Jerry L. Callaway, RDR, certified
4 shorthand reporter in and for the State of Texas, do
5 hereby certify that the facts as stated by me in the
6 caption hereto are true; that there came before me the
7 aforementioned named person, who was by me duly sworn
8 to testify the truth concerning the matters in
9 controversy in this cause; and that the examination was
10 reduced to writing by computer transcription under my
11 supervision; that the deposition is a true record of
12 the testimony given by the witness.

13 I further certify that I am neither
14 attorney or counsel for, nor related to or employed by,
15 any of the parties to the action in which this
16 deposition is taken, and further that I am not a
17 relative or employee of any attorney or counsel
18 employed by the parties hereto, or financially
19 interested in the action.

20 Given under my hand and seal of office on
21 this, the 23rd day of January, A.D., 2008.

22
23 Jerry L. Callaway, RDR, CSR 948
24 Expiration Date: 12/31/2008
25 Firm Registration No. 209
5220 Renaissance Tower
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