

EXHIBIT 106

Nelson, et al. v. Cuban, et al.
United States District Court, Northern District of California
Case No. 3:09-CV-682 PJH

*Exhibit 106 to Supplemental Declaration of John D. O'Connor in Opposition to
Defendant's Special Motion to Strike*

ARBITRATION NO. 1310016794

DON NELSON,)	
)	
Claimant/)	
Counterrespondent)	CIVIL
)	ARBITRATION
vs.)	PENDING BEFORE
)	JAMS
DALLAS BASKETBALL LIMITED d/b/a)	
DALLAS MAVERICKS,)	
)	
Respondent/)	
Counterclaimant.)	

ORAL AND VIDEOTAPED DEPOSITION OF

MARK CUBAN

January 18th, 2008

ANSWERS AND VIDEOTAPED DEPOSITION of MARK

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

1 APPEARANCES

2 APPEARING FOR THE CLAIMANT/COUNTERRESPONDENT:

3 Mr. Mark T. Davenport
4 Mr. Don Colleluori
5 Mr. Ryan K. McComber
6 FIGARI & DAVENPORT, L.L.P.
7 901 Main Street, Suite 3400
8 Dallas, Texas 75202

9 APPEARING FOR THE RESPONDENT/COUNTERCLAIMANT:

10 Mr. Steven H. Stodghill
11 Mr. Geoffrey S. Harper
12 FISH & RICHARDSON, P.C.
13 1717 Main Street, Suite 5000
14 Dallas, Texas 75201

15 ALSO APPEARING

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

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

4 A. Yes, sir.

5 Q. Have you done this before?

6 A. Yes, sir.

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

9 A. Yes, sir.

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

18 A. Sure.

19 Q. Is that fair enough? And you will have to
20 answer --

21 A. Yes, sir.

22 Q. -- me with a "yes" or "no."

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

1 P-R-O-C-E-E-D-I-N-G-S

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

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

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

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

20 EXAMINATION

21 BY MR. DAVENPORT:

22 Q. Please state your name.

23 A. Mark Cuban.

24 Q. Mr. Cuban, I just met you a few minutes ago.

25 I'm Mark Davenport. I'm the lawyer for Mr. Nelson.

1 the company to designate witnesses on particular
2 categories.

3 A. Okay.

4 Q. And what I want to do is briefly go through
5 this with you to see which one of these you may have
6 knowledge of and which ones you really don't have much
7 knowledge of.

8 A. Okay. Which page are we on?

9 MR. STODGHILL: Page 4.

10 Q. (BY MR. DAVENPORT) Page 4.

11 A. Okay.

12 Q. The first one is the negotiation of the
13 employment agreement, First Amendment and the Second
14 Amendment. Now I realize that you didn't come along
15 until, was it January of 2000?

16 A. Yes, sir.

17 Q. So you would not have participated in those
18 early Perot negotiations?

19 A. Right, whichever were Perot oriented, no, I
20 did not.

21 Q. But you've read the employment agreement, have
22 you not?

23 A. I've read them and have a cursory
24 understanding of them.

25 Q. You are generally familiar with them?

1 A. Generally.
 2 Q. And then the Third Amendment was when you came
 3 on board, you were familiar with that one?
 4 A. I don't know which amendment applies to which
 5 date.
 6 Q. Okay. I'll come back to the dates.
 7 A. Right.
 8 Q. How about the Fourth, the Fifth, and the
 9 proposed Sixth Amendment, do you --
 10 A. Just I don't know which amendments apply to
 11 which dates.
 12 Q. All right. But you did participate in
 13 negotiations with Mr. Nelson?
 14 A. For an employment agreement, yes.
 15 Q. The number two is --
 16 A. Let me qualify, for an extension of his
 17 employment agreement.
 18 Q. Okay. Number 2 is his -- Nelson's duties and
 19 obligations under his agreement and his performance or
 20 nonperformance, would you have knowledge of that?
 21 A. As they apply to extensions, yes.
 22 Q. Three is the accrual, vesting, and payment of
 23 Nelson's deferred compensation.
 24 A. In what -- I am not -- in terms of what are
 25 you referring to this?

1 Q. Well, when it was earned --
 2 A. In terms of definitions or in terms of --
 3 again, I am familiar with his employment agreements,
 4 but in terms of definitions and legal aspects and that,
 5 I am not going to pretend to be a lawyer or a CPA.
 6 Q. Well, you are familiar with what this
 7 dispute's about, are you not?
 8 A. Yes, sir.
 9 Q. Over the deferred compensation?
 10 A. Yes, sir.
 11 Q. Okay. What about the next one, the Mavericks
 12 reporting and treatment of Nelson's compensation, both
 13 present and deferred, under his agreement for the
 14 purposes of ERISA, federal income taxes, FICA, FUTA,
 15 Medicare, and so forth?
 16 A. Only on a very, very cursory basis.
 17 Q. Okay. Who in your organization would handle
 18 that end of it, your CFO?
 19 A. Correct. The CFO would handle it, but we
 20 defer to our CPAs for more than anything in terms of
 21 making sure that it's correct.
 22 Q. Who is your CFO?
 23 A. Floyd Jahner, Jahner, I have always pronounced
 24 his name wrong.
 25 Q. Jahner?

1 A. Jahner.
 2 Q. And who is your outside accountants?
 3 THE WITNESS: Who is our outside
 4 accountant?
 5 MR. HART: KPMG.
 6 Q. (BY MR. DAVENPORT) Do you have a particular
 7 partner over there y'all work with?
 8 MR. HART: Kevin Valek.
 9 Q. (BY MR. DAVENPORT) Next is the facts, claims,
 10 and causes of action alleged by the Mavericks in your
 11 counterclaim and response.
 12 A. I'm familiar with those, yes.
 13 Q. The alleged breach of the employment agreement
 14 by Mr. Nelson?
 15 A. I am familiar with those, yes.
 16 Q. The Mavericks' allegations that Nelson used
 17 and disclosed the Mavericks' confidential information,
 18 including the allegation that Nelson's use of that
 19 information allowed the Warriors to defeat the Mavs in
 20 the 2007 playoffs?
 21 A. I would qualify the word "allowed," but yes, I
 22 am familiar with what you are referring to.
 23 Q. The Mavericks' failure to pay Nelson a
 24 consulting salary under the employment agreement?
 25 A. I'm not familiar with any failure, no.

1 Q. Are you familiar with the consulting salary?
 2 A. I am familiar with the consulting salary, yes.
 3 Q. Did you play any role in the decisions on
 4 whether to pay it or not pay it?
 5 A. We've always had -- there was no decision to
 6 be made. We've always stipulated that it would be
 7 paid.
 8 Q. But it wasn't paid. It wasn't paid on July
 9 15th, 2006. Did you participate in that decision?
 10 A. My understanding is we were told not to pay it
 11 by your client, so from our side, it was always
 12 stipulated that it would be paid.
 13 MR. DAVENPORT: Object, nonresponsive,
 14 move to strike.
 15 Q. (BY MR. DAVENPORT) My question was, did you
 16 play any role in the decision not to pay --
 17 A. I am not familiar with any nonpayment and any
 18 decision not to pay.
 19 Q. Did you play any role in the decision to pay
 20 or not to pay?
 21 A. I am not familiar with any decision to pay or
 22 not to pay.
 23 Q. Let me -- let me give another rule here. When
 24 I'm asking a question, let me finish my question before
 25 you give the answer, and I'll do the same courtesy to

1 you. If you are talking, I'll let you finish before I
 2 say anything. And that's for Jerry here, because he
 3 can't get us both at once.
 4 A. Okay.
 5 Q. All right. So my question was, did you play
 6 any role in the decision to either pay or not pay the
 7 payment under the consulting agreement due July 15th,
 8 2006?
 9 A. As I understand the word "decision," there was
 10 no decision to be made that from every minute of every
 11 day that the corporate policy has been to pay
 12 Mr. Nelson, and he chose not to accept our payment.
 13 Q. Did you create any e-mails regarding the July
 14 15th payment?
 15 A. We had discussions, but there were no
 16 decisions that changed that obligation, or not take --
 17 strike that, that changed what our -- that changed
 18 anything.
 19 Q. Did you give any instructions to anyone at the
 20 Mavericks that Mr. Nelson was not to receive any
 21 payment on July 15th, 2006, under his consulting
 22 agreement?
 23 A. We had -- we had discussions about what --
 24 what was going on and what -- whether -- what issues
 25 were in place, but they were merely discussions, not

1 Mr. Nelson was not to receive any payment on July 15th,
 2 2006, under his consulting agreement?"
 3 Q. (BY MR. DAVENPORT) "Yes" or "no."
 4 A. Define the word "instruction."
 5 Q. Communication.
 6 A. Did we have a discussion about whether or not
 7 to pay him? Yes. Did I give an instruction as in a
 8 final decision was made? No.
 9 Q. Did you send anybody an e-mail that he was not
 10 to receive a consulting payment on July 15th, even
 11 though his contract clearly called for it?
 12 MR. STODGHILL: Objection as to form.
 13 Q. (BY MR. DAVENPORT) You can answer.
 14 MR. STODGHILL: You are fine. You are
 15 fine.
 16 A. Okay. Okay. I sent him an e-mail -- I sent
 17 an e-mail that posed the question -- that -- that
 18 raised whether or not we should pay him but did not --
 19 was not a decision not to pay him.
 20 Q. Do you recall Mr. Jahner discussing this
 21 matter with you before June 30th, 2006?
 22 A. Yes.
 23 Q. Do you recall Mr. Jahner telling you that he
 24 was planning to make the consulting salary installment
 25 due July 15, 2006?

1 decisions.
 2 MR. DAVENPORT: Object, nonresponsive.
 3 Would you read the question back,
 4 Mr. Callaway?
 5 (The pending question was read.)
 6 Q. (BY MR. DAVENPORT) That can be answered a
 7 "yes" or "no" and then an explanation.
 8 A. Actually, it cannot be answered with a "yes"
 9 or "no" because you have already put the answer in the
 10 question, because using -- it's very -- it's a leading
 11 question.
 12 Q. Yeah. We ask leading questions of adverse
 13 witnesses.
 14 A. And I have given you my answer.
 15 Q. What is your answer?
 16 A. My answer is that I can't give you -- you have
 17 asked me a question that I -- that isn't applicable.
 18 You might as well ask me if the moon is made of green
 19 cheese, because there were no decisions made. There
 20 was discussion, and that's how I've answered your
 21 question.
 22 MR. DAVENPORT: Read the question one
 23 more time, Jerry.
 24 THE REPORTER: "Question: Did you give
 25 any instructions to anyone at the Mavericks that

1 A. Yes.
 2 Q. Do you recall telling him that your
 3 understanding was that at the time he stepped down as
 4 head coach on March 19, 2005, that you had agreement --
 5 you had made an agreement with Mr. Nelson that he would
 6 not receive any consulting salary?
 7 A. I believe, and if I recall correctly, it was
 8 that I wasn't sure if it was decided or not and that we
 9 should see how Nellie responds to any actions we take.
 10 Q. Did you not tell Mr. Jahner on June 27th,
 11 2006, that he was not to make the payment due on July
 12 15th, and Mr. Jahner thereafter so instructed Lisa --
 13 A. Tyner.
 14 Q. Uh-huh. Yes.
 15 A. I don't know if that was in the context of
 16 when we were negotiation a buyout or not or where it
 17 was within the time frame of the negotiation.
 18 Q. We will come back to that later in the
 19 deposition. Look back at the exhibit, Number 9, the
 20 Mavericks records regarding Nelson and the subject
 21 matter of this arbitration, how the records are
 22 maintained, the steps taken to retrieve the documents
 23 responsive to our discovery requests, and the
 24 completeness of the Mavericks' document production.
 25 Who was in charge -- you know that we



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1 submitted --
 2 A. Right.
 3 Q. -- a very extensive request for production?
 4 A. I can't speak to who was in charge for
 5 anything other than the documents that I was involved
 6 with.
 7 MR. STODGHILL: Mark, I can probably
 8 weigh in on this, that Jeff Harper is probably our one
 9 person to talk to about documents and document
 10 retrieval and all of those issues. Mark, the witness
 11 would probably have a very minimal knowledge of that.
 12 MR. DAVENPORT: Would there be someone in
 13 the Mavericks organization as opposed to Jeff that
 14 would have been in charge of checking the e-mails and
 15 the documents?
 16 MR. STODGHILL: Jeff.
 17 MR. HARPER: It would have been various
 18 people who would have worked with us. I am glad to sit
 19 down talk with you or educate somebody to do it.
 20 Mark's not going to be the guy who is going to know
 21 that.
 22 MR. DAVENPORT: I am just looking for a
 23 name.
 24 MR. HARPER: The problem is there is -- I
 25 mean, KPMG -- no, KPMG.

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1 MR. STODGHILL: PWC. PWC.
 2 MR. HARPER: PriceWaterhouseCoopers would
 3 have searched Mark's e-mail. Floyd Jahner would have
 4 searched the accounting records. Buddy Pittman would
 5 have searched the personnel files.
 6 MR. HART: Keith Grant.
 7 MR. HARPER: Keith Grant would have gone
 8 through the executive offices.
 9 MR. DAVENPORT: Okay.
 10 MR. HARPER: Robert and Susan Montgomery
 11 would have gone through the legal files.
 12 MR. DAVENPORT: I don't know. Did we
 13 ever get a written responses to either of the requests
 14 for production? Do you know, Don?
 15 MR. COLLELUORI: No.
 16 MR. DAVENPORT: Just for purposes of the
 17 record here, then, let me mark, and I am not going to
 18 go through these with you, as Exhibit 2 and Exhibit 3
 19 are first and second requests for production, and what
 20 we can do is just turn these over here. We are not
 21 going to use these now. We will just mark them for the
 22 record.
 23 MR. HARPER: I'll tell you, to the best
 24 of my knowledge, everything's been produced with no
 25 objections. That was certainly the intention.

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1 Q. (BY MR. DAVENPORT) Why don't we walk through
 2 these agreements to kind of get a framework of where we
 3 are. Let's start with the employment agreement.
 4 A. We are finished with this?
 5 Q. Yeah.
 6 A. Okay.
 7 Q. Exhibit Number 4 will be the Employment
 8 Agreement dated February the 7th, 1997. What were you
 9 doing in February of '97, Mr. Cuban?
 10 A. Busting my ass to make a living.
 11 Q. Where, doing what?
 12 A. A lot of things, primary employment was 1997
 13 Audionet, a company called Audionet.
 14 Q. Where was that?
 15 A. Dallas, Texas.
 16 Q. Had you ever played organized basketball, high
 17 school, college?
 18 A. Sure, high school.
 19 Q. And where did you go to high school?
 20 A. Mount Lebanon High School in Pittsburgh.
 21 Q. Where did you go to college?
 22 A. Indiana University.
 23 Q. Did you play at Indiana?
 24 A. No, sir.
 25 Q. Had you ever -- ever coached any type of

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1 organized basketball?
 2 A. Not at a -- no, kids camp, so, no.
 3 Q. How old are you?
 4 A. 49.
 5 Q. Are you married?
 6 A. Yes, sir.
 7 Q. What's your wife's name?
 8 A. Tiffany.
 9 Q. Do you have any children?
 10 A. Two.
 11 Q. A boy, girls, what?
 12 A. Two girls, but I'd rather not disclose their
 13 names.
 14 Q. Okay. After you got out of college, what did
 15 you do?
 16 A. A variety of things. I'm happy to provide you
 17 my resume if you would like.
 18 Q. Just give me an idea.
 19 A. Had various jobs, worked at Mellon Bank, then
 20 I moved to Dallas and got a job in the software
 21 industry, got fired, and then started my own company.
 22 Q. Have you ever talked with anyone about how
 23 this employment agreement was negotiated?
 24 A. No, sir.
 25 Q. When you bought the Mavs in, was it 2000?

1 A. Yes, sir.
 2 Q. Did you have any discussions with anyone at
 3 the Mavs about their contingent liabilities to pay
 4 deferred compensation to anybody?
 5 A. No, sir.
 6 Q. Who was the point person that negotiated with
 7 the Mavs for you, or were you it?
 8 A. Several people, a gentleman by the name of
 9 Jeff Trinklein.
 10 Q. Who is he?
 11 A. He's an attorney that worked for a law firm I
 12 had engaged at that point in time.
 13 Q. Here in Dallas?
 14 A. Yes, sir.
 15 Q. Do you know what kind of due diligence you did
 16 to check out the Mavs' liabilities and obligations?
 17 You obviously did?
 18 A. Traditional due diligence.
 19 Q. He did that?
 20 A. A variety of people did it.
 21 Q. Do you recall during the negotiation phase
 22 with the Mavericks ever discussing the obligations of
 23 the Mavericks to Mr. Nelson?
 24 A. Only in terms of length of employment, not in
 25 terms of details.

1 A. For us the general manager is really just a
 2 title. Everybody -- it's a multiperson position. It's
 3 a title that required -- that has to be assigned to
 4 somebody by -- according to the NBA, but that's -- it's
 5 not typically how we work.
 6 Q. Well, look at paragraph 5, 5 A. It says,
 7 "Employee shall be responsible for all basketball
 8 operations of the club, including hiring, retention,
 9 and ultimate supervision of all coaches, scouts, player
 10 personnel, and so forth."
 11 Do you agree with that paragraph as a
 12 characterization of what a general manager does for the
 13 Mavericks?
 14 A. No.
 15 Q. Pardon me?
 16 A. Not at this point in time, no.
 17 Q. What about back in '97?
 18 A. I couldn't speak to that.
 19 Q. How does what the general manager does now,
 20 how is that different from this?
 21 A. From 1997?
 22 Q. Yeah.
 23 A. We are in a completely differ era. There is
 24 more information available, more technology available,
 25 scouting is completely different, players are

1 Q. Do you have an understanding of how it came to
 2 be that Mr. Nelson was employed as the general manager
 3 of the club in February of '97?
 4 A. Only what I read as a fan.
 5 Q. What do you know about Mr. Nelson? Do you
 6 know anything about his history?
 7 A. Just what he has told me.
 8 Q. Do you regard him as a friend?
 9 A. I did at one point. I'd say now we are just
 10 more cordial acquaintances.
 11 Q. Okay. Do you regard him as an enemy; do you
 12 not like him?
 13 A. I don't regard him as an enemy, no.
 14 Q. In the -- take a -- feel free to take a look
 15 at that agreement. Let me just kind of walk through it
 16 with you a little bit.
 17 A. Uh-huh.
 18 Q. When he came to work in 1997 for the Mavs,
 19 they were going to pay him a salary, I think it was a
 20 five-year term of the agreement, for him to be the
 21 general manager. What does a general manager of a
 22 basketball club do?
 23 A. Depends on the team, it varies by team.
 24 Q. What does a general manager for the Mavericks
 25 do?

1 different, the salary levels are different. So the
 2 cost of running an operation, the value of teams are
 3 completely different. So it's not the same as it was
 4 in 1997 by a long shot.
 5 Q. Well, if -- when we try this, if I ask you a
 6 general question to explain to Judge Ashworth what does
 7 a general manager do for the Mavs, how would you give
 8 me a Reader's Digest version? What would you say?
 9 A. I would say that what I tell people in our
 10 organization that it's stupid that we even have a
 11 position called general manager, because it's not
 12 applicable anymore, that we run the team to the best of
 13 our ability trying to use every single employee as a
 14 resource that's capable of contributing to their
 15 ability.
 16 Q. So this is a requirement of the league that
 17 each team have a general manager?
 18 A. Yes.
 19 Q. Who was the coach of the Mavs in 1997?
 20 A. I don't recall.
 21 Q. In looking at the first page of the paragraph
 22 2 of the compensation, you'll see that the compensation
 23 there --
 24 A. Where are we at?
 25 Q. First page.

1 A. First page.
 2 Q. He was going to get 300,000 through June of
 3 '97, and then a million from July 1, '97, through June
 4 30th, '98, and it kept increasing as you see there. Do
 5 you see that?
 6 A. Yes, sir.
 7 Q. Next paragraph it says, "At the club's
 8 election, the club may defer payment of \$200,000 in
 9 each of the last four 12-month periods of the term as
 10 specified above."
 11 What is your understanding of what
 12 deferred compensation -- what is it, and is it a good
 13 thing or a bad thing for the club and the employee?
 14 MR. STODGHILL: Objection as to form.
 15 A. I don't have a definition for it, and I
 16 couldn't render an opinion whether it's a good thing or
 17 a bad thing. I didn't negotiate this, so I don't know
 18 what they had in mind.
 19 Q. (BY MR. DAVENPORT) What do you understand
 20 deferred compensation is?
 21 A. It's compensation that is paid --
 22 MR. STODGHILL: Objection as to form, but
 23 you can answer.
 24 A. -- paid on the date that it's meant to be paid
 25 if the employee is still under employment.

1 MR. DAVENPORT: Read that answer back to
 2 me again.
 3 (The last answer was read.)
 4 Q. (BY MR. DAVENPORT) Okay. Well, let's see
 5 what the contract says. Look at the last paragraph.
 6 It says, "At the club's election, the club may defer
 7 payment of 200,000 in each of the last -- in each of
 8 the last four 12-month periods of the term, thereby
 9 reducing the salary amount in each of such period to
 10 1.2, 1.3, 1.3, and 1.4 respectively, to be paid instead
 11 in each of the four successive 12-month periods
 12 following the end of the term."
 13 A. Uh-huh.
 14 Q. Do you agree with that definition?
 15 A. You didn't give me a definition. Well,
 16 it's -- you gave me a process, not a definition.
 17 Q. Do you agree with the statement in that
 18 agreement?
 19 A. You read it correctly.
 20 MR. STODGHILL: Objection, form.
 21 Q. (BY MR. DAVENPORT) I did read it correctly?
 22 A. You read it correctly; I read the same thing
 23 that you stated.
 24 Q. So the club may hold back \$200,000 out of this
 25 stated salary in each of the year and pay it instead in

1 each of the four successive 12-month period following
 2 the end of the term. In this first agreement, when do
 3 you understand the end of the term was?
 4 A. I don't have an understanding of the end of
 5 the term. I am not an attorney.
 6 Q. Do you not agree that this was a five-year
 7 contract?
 8 A. I haven't read it in depth enough to know for
 9 certain.
 10 Q. So you don't know what this contract says?
 11 A. I have a general understanding of the
 12 contract.
 13 Q. Look on the second page of the agreement where
 14 this is the -- it sets forth, in each of the successive
 15 12-month period following the end of the term, and it
 16 shows here that the 200,000 would be paid, the first
 17 payment would be due July 1, 2002, through June 30th,
 18 2003, he gets \$200,000; do you see that?
 19 A. Yes, sir.
 20 Q. Now does that not suggest to you that the end
 21 of the term of this particular contract when it was
 22 negotiated was June 30th, 2002?
 23 A. It suggests that, yes, sir.
 24 Q. Then the second deferred comp payment would be
 25 payable during the period from July 1, 2003, to 2004.

1 A. That's what it reads, yes, sir.
 2 Q. Pardon me?
 3 A. I -- I see that you are reading it correctly.
 4 Q. Okay. Now, it says, "Such salary, and any
 5 such deferred payments if so elected by the club, shall
 6 be remitted to employee in accordance with the regular
 7 payroll practices of the club."
 8 Do you see that?
 9 A. Yes, sir.
 10 Q. So this says "deferred payments," as this
 11 contract is written, it says "shall be remitted." What
 12 does the term "shall be remitted" mean to you?
 13 A. If you --
 14 MR. STODGHILL: Objection as to form.
 15 A. It means if you are an employee, you get paid
 16 according to the regular payroll practices of the club.
 17 Q. (BY MR. DAVENPORT) Under the terms of this
 18 agreement, since the deferred comp is not paid until
 19 after termination, Mr. Nelson would no longer be an
 20 employee after June 30th, 2002, would he?
 21 A. I -- it remains to be seen because there is
 22 other positions other than general manager or coach.
 23 Q. Under the terms of this agreement, would you
 24 not agree with me that this agreement terminated on
 25 July 30th, 2002, and as written here, the -- not only

1 would the agreement have terminated on that date, but
2 Mr. Nelson would then no longer have been an employee
3 of the Mavericks after June 30th, 2002?

4 MR. STODGHILL: Objection as to form.

5 A. I am not sure I can give you the correct
6 answer, so I don't know.

7 Q. (BY MR. DAVENPORT) Can you point to any
8 provision in this agreement that would say as it was
9 negotiated and signed in February 7th, 1997, where
10 Mr. Nelson was to be an employee in any capacity for
11 the Mavs after June 30th, 2002?

12 A. I don't know.

13 Q. Would you defer answering my question to what
14 this agreement says?

15 A. Would I defer?

16 Q. Yeah, if you can't answer the question --

17 A. No, I can answer generally what the agreement
18 says; but my perception is that you are asking me to
19 make a legal conclusion, and that I can't do.

20 Q. Well, I am asking you the question, because
21 earlier in the deposition you told me that when I was
22 asking you what deferred compensation was, you made
23 some statement to the effect that it's payable at such
24 and such time if he's still an employee. Remember
25 that?

1 A. Yes, sir.

2 Q. Okay. And I am saying here in the very first
3 agreement that was written, deferred compensation is
4 designed to be paid under this contract after he is no
5 longer an employee; that's the way deferred comp works.
6 Do you agree with that or not?

7 A. I don't know.

8 Q. Okay. It says the obligation of the club --
9 look on this paragraph here.

10 A. Uh-huh.

11 Q. Same one, I am on that first paragraph under
12 the numbers.

13 A. The club shall or --

14 Q. Right here.

15 A. Oh, the first, it says salary?

16 Q. Yeah.

17 A. The obligation of the club, okay.

18 Q. It says, "Such salary shall -- and any such
19 deferred payments shall be remitted to employee in
20 accordance with the regular payroll practices of the
21 club. The obligation of the club to make any such
22 deferred payments that it elects shall survive the
23 termination of this agreement."

24 Is there anything unclear to you about
25 that sentence?

1 A. Yes, sir. Because this contract has, what did
2 you say, six amendments earlier? So --

3 Q. I'm not -- I am going to get to the
4 amendments. I am talking about as of this date this
5 contract's written. We're going to go --

6 A. I can't speak -- I wasn't there. I don't
7 know, and I am not an attorney. But all I know, what I
8 can tell you is that contracts have amendments because
9 they are amended. And so you are asking me to make a
10 conclusion at a point in time when I wasn't a
11 participant and nor did I have an understanding -- nor
12 do I have an understanding of the law to give you a
13 definition. And so I can't tell you exactly what that
14 means at this point in time. And I can't speak to what
15 it meant in 1997 either. I don't mean to be
16 disrespectful; I am just trying to give you the best
17 answer that I can.

18 Q. Okay.

19 MR. DAVENPORT: Object, nonresponsive,
20 move to strike the entire answer.

21 Q. (BY MR. DAVENPORT) So if I wanted to ask
22 somebody how they understood this -- well, strike that.

23 So if I asked you when we are trying this
24 case to Judge Ashworth, and I say, "Mr. Cuban, would
25 you agree with me that this contract dated February

1 7th, 1997, has a provision in it that the obligations
2 of the club to make deferred compensation payments to
3 Mr. Nelson survive the termination of the agreement, do
4 you agree with that statement," what's your answer
5 going to be?

6 A. My answer is going to be you've read it
7 correctly, and so -- I read it the same -- I read the
8 same words you read.

9 Q. Fair enough. Now, if we look back over here,
10 since we are going to be coming back to this agreement
11 a couple more times today, let me just take a look at
12 some other provisions here.

13 A. Sure.

14 Q. If you will turn over to page 6, Mr. Cuban,
15 it's got provisions about number 8, 8 A addresses the
16 rights of the club to terminate this contract for
17 cause. Do you see that?

18 A. Yes, sir.

19 Q. Okay. And paragraph, let's see, B down there
20 on the next page says the club can also terminate the
21 agreement for any other reason being a not for cause
22 termination, you can just terminate it, see that?

23 A. Yes, sir.

24 Q. Okay. Do you know the difference between
25 terminating an agreement for cause and just terminating

1 an agreement because you want to? Do you understand
2 that basic difference?

3 A. Yes, sir.

4 Q. And when you terminate an agreement for cause,
5 does not -- would that not mean that the employee has
6 done something that you felt was a violation of the
7 agreement?

8 A. Yes, sir.

9 Q. Okay. Whereas, a termination for not cause
10 would be say you just decided that the club wanted to
11 go a different direction, and you just wanted to
12 terminate your relationship with the man, even though
13 he hadn't breached the agreement, you had the right to
14 do it?

15 A. I -- you have the right to terminate without
16 cause -- I don't know. I'm not a lawyer. I -- I
17 couldn't tell you to that level of detail, but I will
18 presume so.

19 Q. I am talking a general statement.

20 A. In general terms, yeah.

21 Q. General statement. Now, in the event the --
22 the -- these payments here on the first page, like the
23 first year's payment, the first year, full year, July
24 1, '97, through June 30th, '98, of a million dollars,
25 the club's regular payroll practices I thought I said,

1 clause back here, it says, if you terminate this
2 agreement for cause under 8 A, let's say you terminate
3 it midway through -- let's say you terminate it at the
4 end of June 30th, 1998, then the club would not have an
5 obligation to pay the salaries that are due from '98 to
6 '99, '99 to 2000, and so forth; is that fair?

7 A. I -- again, I am not an attorney, but I'll
8 take your word for it.

9 Q. Well, you don't have to. Let me just read it
10 to you. I am not trying to -- I am just trying to lay
11 some framework here for some later questions.

12 A. Okay.

13 Q. If you will look at page 7, right above B, it
14 says, "Upon termination of employee's employment with
15 the club under paragraph 8 A, the term shall end and
16 the club will have no obligation to pay or provide any
17 compensation or other payments to the employee accruing
18 after such termination date."

19 Do you see that?

20 A. Yes, sir.

21 Q. All right. And what that means is that, for
22 example, if you terminated -- if the club had
23 terminated Mr. Nelson, say, at the end of June 30th,
24 1998, then the club didn't have to pay him the
25 compensation in the subsequent years so long as the

1 it says, "The payment shall be remitted to the employee
2 in accordance with the regular payroll practices of the
3 club."

4 Now, does that mean that the Mavs paid
5 these salaries for Mr. Nelson on a bimonthly basis,
6 every -- every twice a month, every two weeks?

7 A. I don't know. In 1997 I presume so, that --

8 Q. Is that the way you do it now?

9 A. Every two weeks.

10 Q. And so -- and I'll come back to this, but as I
11 understand it, when the club was making these payments,
12 they weren't giving him paper checks; they were just
13 direct depositing into his bank account?

14 A. In 1997 --

15 Q. Yeah.

16 A. -- I don't know.

17 Q. Is that the way they do it now?

18 A. It's up -- in most cases, yes.

19 Q. And who is your payroll guy; is that Jahner?

20 A. No, I think Lisa Tyner does payroll.

21 Q. Lisa Tyner does?

22 A. I am not positive, though.

23 Q. But does she -- does she report to Mr. Jahner?

24 A. Yes, sir.

25 Q. All right. Now, under these termination

1 termination had been for cause, fair?

2 MR. STODGHILL: Objection as to form.

3 A. Fair enough.

4 Q. (BY MR. DAVENPORT) Okay. Now, on the other
5 hand, if you terminate him without cause, just because
6 you-all want to go a different direction and he hadn't
7 breached the contract, if you terminated him at the end
8 of June 30th, or on June 30th, 1998, the Mavs would
9 have had the obligation to make these subsequent
10 payments in '99, 2000, and 2001, subject to your right
11 to offset it against money he'd make at another club?

12 MR. STODGHILL: Objection as to form.

13 You can answer.

14 A. Okay. That's what it -- again, I am not
15 following --

16 Q. (BY MR. DAVENPORT) Look at B here. Look at
17 B.

18 A. Okay. "The club" --

19 Q. "The club may also terminate the agreement on
20 written notice to the employee on account of any reason
21 other than as provided in paragraph 8 A," that's for
22 cause?

23 A. Right.

24 Q. "Upon the termination," this paragraph, "the
25 term shall end and the club will have no obligation to

1 provide any payment -- to provide or pay any
2 compensation or other payments to the employee after
3 such termination date except that such termination
4 shall in no way affect the employee's right to receive
5 the sums payable pursuant to paragraph 2 for the entire
6 term of the agreement in the amounts and at the times
7 called for in the paragraph."

8 MR. STODGHILL: Objection as to form.

9 A. And the question you are asking me?

10 Q. (BY MR. DAVENPORT) The question is simply --
11 I am just pointing out, if you terminate him for cause
12 then payments accruing in the subsequent years when
13 he's not working, you don't have to pay him; if you
14 terminate him without cause, payments accruing in the
15 subsequent years, even though he is not working, you
16 would have to pay him?

17 MR. STODGHILL: Objection as to form.

18 You can answer.

19 A. Again, I didn't negotiate this contract, so I
20 don't know specifically what that means. I can only
21 speak to those that I was involved in.

22 Q. (BY MR. DAVENPORT) So you reading this
23 agreement, that's not the way you would read it if I
24 just read you the agreement?

25 A. No, I can -- I can read it verbatim as you

1 A. Yes, sir.

2 Q. Have you ever visited with him or talked to
3 him about the contract or the agreements with
4 Mr. Nelson?

5 A. Not that I recall.

6 Q. Do you recall in your negotiations with the
7 Mavs at the time you bought them any specific
8 discussions with anyone about Mr. Nelson's role with
9 the team, other than how long he was employed, to be?

10 A. Yes. The only conversation I had with was
11 with Terdema Ussery, and he told me that he didn't want
12 to report -- that Nellie didn't like reporting to
13 Perot. He wanted to report to Terdema, I believe it
14 was. I don't remember a hundred percent. And I had
15 the conversation with Nellie at some point after that
16 that he would be reporting to me.

17 Q. All right. Look at paragraph number 7 of the
18 agreement. This says -- okay. "During the term of the
19 agreement" -- "During the term employee shall not
20 perform directly or indirectly any duties or provide
21 any consultive or related services for any professional
22 or amateur basketball organization or related entity,
23 nor directly or indirectly control or otherwise be
24 involved in any business which is competitive to the
25 club."

1 read it, but I am not in a position to come to any
2 conclusions from it.

3 Q. Well, let me ask you this. From looking at
4 this agreement, have the Mavericks terminated him
5 without cause on June 30th, 1998, as you read this
6 agreement, would the Mavericks have had the obligation
7 to make the subsequent payments as they accrued?

8 A. I don't know.

9 Q. Is that your answer, you don't know?

10 A. I don't know. That's my answer.

11 Q. Frank Zaccanelli, what was his position with
12 the club in '97?

13 A. I don't know.

14 Q. And he's no longer with the club?

15 A. No, sir.

16 Q. When did he leave?

17 A. I don't know.

18 Q. What year did he leave?

19 A. I don't know.

20 Q. Where did he go?

21 A. I have no idea.

22 Q. What was his position when he left?

23 A. I don't know. It all occurred prior to my
24 taking over the team.

25 Q. Zaccanelli left before 2000?

1 Do you see that?

2 A. Yes, sir.

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

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

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

18 A. What is it, am I president?

19 Q. You are the head honcho?

20 MR. HART: Just the owner.

21 A. I am just the owner.

22 Q. (BY MR. DAVENPORT) Just the owner?

23 A. Yeah.

24 Q. Who is the president?

25 A. Terdema, right.

1 Q. Terdema? My question to you is, as you read
2 this contract, had it terminated on June 30th, 2002, in
3 accordance with its terms and had not been renewed or
4 amended, is it not a fact that Mr. Nelson would have
5 had the right to become a coach of another team if he
6 so desired?

7 A. I don't know.

8 MR. STODGHILL: Objection as to form.

9 Q. (BY MR. DAVENPORT) Do you know what a
10 covenant not to compete is? Have you ever heard that
11 term?

12 A. Yes, sir.

13 Q. Do you understand that a covenant not to
14 compete can be an agreement that could prevent an
15 employee from competing with the employer after the
16 agreement is terminated?

17 A. My understanding it could also prevent --
18 after the agreement is terminated, again, I am not a
19 lawyer, but generally I understand that, yes.

20 Q. You have seen those before, haven't you?

21 A. Of course, yes.

22 Q. Okay. And as I have looked at this employment
23 agreement, I didn't find a restrictive covenant that
24 would purport to restrict Mr. Nelson's activities in
25 any way, shape, or form after the contract was

1 terminated.

2 MR. STODGHILL: Objection.

3 Q. (BY MR. DAVENPORT) Have you seen any such
4 provision --

5 MR. STODGHILL: Objection as to form.

6 Q. (BY MR. DAVENPORT) -- in this agreement?

7 A. I don't know from a legal perspective, but I
8 do know from an NBA perspective that there are
9 restrictions. I can't speak to 1997, but I know as
10 they are today that there are restrictions on what you
11 are allowed to define in terms of noncompete, and the
12 NBA has rules that protect teams so that they don't
13 have to include certain things in contracts. So I'm
14 more -- again, I can't speak as a lawyer, but I can
15 speak -- I am more familiar with the NBA rules.

16 Q. Let's say in 19 -- let's say in 2000 -- 1997,
17 I am just saying in this agreement, will you agree with
18 me when I ask you the same question in front of Judge
19 Ashworth, and I will have this up on the screen, and I
20 will say, "Is it not a fact, Mr. Cuban, that there is
21 no covenant or restriction in the initial employment
22 agreement that would purport to restrict Mr. Nelson's
23 activities after the agreement terminated on June 30th,
24 2002," if I asked you that question, would you say, "I
25 don't know"?

1 MR. STODGHILL: Objection as to form.

2 A. My response would be that I don't know. I am
3 not an attorney, and I can't speak to what is exactly a
4 fact.

5 Q. (BY MR. DAVENPORT) So, since you are not an
6 attorney, what, you would defer to Judge Ashworth's,
7 he's a judge and an attorney, his reading of the
8 contract?

9 A. Sir, you keep on using the word "fact," and
10 that is a very pejorative word and so I -- a very
11 specific word, and I cannot speak to what is a fact and
12 what is not because I am not an attorney, and to me
13 that has a legal ramification.

14 Q. Do you know if this employment agreement was
15 subsequently amended?

16 A. Yes, sir, I do know.

17 Q. Do you know, have you looked at the first
18 amendment of the agreement dated December 4th, 1997?
19 Have you ever seen that?

20 A. If you show it to me, I'll tell you.

21 Q. Let me hand you Exhibit Number 5.

22 A. Thank you. Yes, sir, I have seen it.

23 Q. And under this agreement --

24 THE WITNESS: Steve, will you grab me a
25 water over there, please?

1 MR. STODGHILL: Sure, you bet.

2 Q. (BY MR. DAVENPORT) December 1997 is -- when
3 does the basketball season get underway, November?

4 A. Approximately November 1st.

5 Q. So they are in the second month of the
6 1997/1998 season, the Mavs decide to promote, or
7 elevate Mr. Nelson to head coach of the team, interim
8 head coach; is that correct?

9 A. I believe -- I don't know for certain, but I
10 believe so.

11 Q. Look at paragraph 2, it says, "For the portion
12 of the term from the amendment date through June 30th,
13 1998, the employee is engaged to be the interim head
14 coach of the team in addition to being the general
15 manager."

16 A. That's what it says here, yes, sir.

17 Q. So the salary and so forth remained the same;
18 is that correct?

19 A. That's what it says here, sir.

20 Q. Do you know anything about why the Mavs
21 decided to make Nellie the head coach during that
22 period of time?

23 A. Only what I read in the paper as a fan.

24 Q. Well, what did you read? What did you
25 remember?

1 A. The Mavs sucked. They thought Nellie could
 2 change things.
 3 Q. How were the Mavs doing in '98 before he took
 4 over?
 5 A. I don't recall specifically, but obviously not
 6 well.
 7 Q. Well, had you been a Mavs fan?
 8 A. Yes, sir.
 9 Q. Were they your favorite team --
 10 A. Yes, sir.
 11 Q. -- back then?
 12 A. Yes, sir.
 13 Q. What are you, just a basketball buff? I mean,
 14 you just love basketball?
 15 A. Pretty much, yeah.
 16 Q. Do you like any other sports?
 17 A. A lot of them, yeah.
 18 Q. Like baseball?
 19 A. Baseball, rugby, football, you name it.
 20 Q. Do you know how the Mavs ended up doing
 21 after -- in the season coming up from -- during the
 22 Second Amendment here until June 30th, 1998; do you
 23 recall?
 24 A. I don't know the record, but I know it wasn't
 25 very well.

1 extending his duties as head coach. Do you know how
 2 the team was doing in that period of time?
 3 A. Not very well.
 4 Q. Okay. Now, do you know much about -- I am
 5 sure you do, you probably know everything about the
 6 history of the Mavs in -- in '98, '99, under the
 7 Perot -- those are the Perot years, weren't they?
 8 A. Two of them, yes.
 9 Q. Two of them. Do you know or have you read the
 10 documents about -- in your e-mails and so forth about
 11 how the Second Amendment was negotiated?
 12 A. No, sir.
 13 Q. Do you -- do you recall reading any e-mails in
 14 connection with your preparation for the deposition
 15 that Mr. Nelson said I'll be the head coach in addition
 16 to the general manager during the '98/'99, and the
 17 '99/2000, during this two years, but I want \$15 million
 18 to do that for both years, for the total for both
 19 years, or seven and a half million dollars a year.
 20 Have you seen anything about that?
 21 A. No, sir.
 22 Q. Do you -- have you ever talked to Mr. Ussery
 23 about how this was negotiated with Mr. Nelson back
 24 then?
 25 A. Not that I recall.

1 Q. Okay. Let's go to the Second Amendment. It
 2 will be marked Exhibit Number 6.
 3 A. Thank you.
 4 Q. Yes, sir. Now, this is going to be signed up
 5 there on July 1, 1998, called the amendment effective
 6 date. Do you see that?
 7 A. Yes, sir.
 8 Q. And it's going to be, let's see who signed it,
 9 for the team was signed by Mr. Ussery, is that the way
 10 you pronounce his name?
 11 A. Yes, sir.
 12 Q. And he's president and CEO of the club back
 13 then?
 14 A. Yes, sir.
 15 Q. Is he still with you?
 16 A. Yes, sir.
 17 Q. In this Second Amendment, this is going to
 18 extend the term of this agreement to June 30th, 2003;
 19 do you see that?
 20 A. Uh-huh.
 21 Q. And this extends the -- the -- his duties as
 22 head coach for the period of the term from the
 23 amendment date through June 30th, 2000, the employee's
 24 engaged to be the head coach of the team in addition to
 25 being the general manager of the team. So they were

1 Q. Do you have any -- well, under the terms of
 2 this agreement, he was going to be head coach and
 3 general manager until June 30th, 2000, and if you'll
 4 look down at the terms of this --
 5 A. Second page?
 6 Q. Yeah. Let me see where the schedule is on it.
 7 It might be the easier. The salary for 1998 -- let me
 8 find it here. Well, let's just go through it. For the
 9 period of time in paragraph 2 (b), for the period of
 10 time from the amendment effective date through June
 11 30th, he's employed as head coach in addition to being
 12 general manager.
 13 A. I read that, yes, sir.
 14 Q. Okay. Then 2 (c) says during the remainder of
 15 the term, July 1, 2000, through June 30th, 2003, he'll
 16 be general manager.
 17 A. I read that, yes, sir.
 18 Q. Okay. And then number 3 says, at the club's
 19 election and by written notice delivered before June
 20 30th, 2000, you could extend the term one additional
 21 year during which he would be the general manager,
 22 2 (d). You have that, right?
 23 A. I have that in front of me, yes, sir.
 24 Q. Do you see it?
 25 A. Yes, sir.

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1 Q. Okay. Paragraph 4, for the full -- for the
 2 two full 12-month periods during which you will be both
 3 head coach and general manager, July 1, '98, through
 4 June two thirty (sic), his annual salary will be 3.5
 5 million per year. Do you see that?
 6 A. Yes, sir.
 7 Q. Okay. Now, 3.5 and 3.5 equals \$7 million; is
 8 that correct?
 9 A. Where I went to school, yeah.
 10 Q. Do you remember when I just asked you the
 11 question that Mr. Nelson said that he wanted to make --
 12 to do those duties he wanted to make \$15 million for
 13 two years? Do you remember me asking you that?
 14 A. Yes, sir.
 15 Q. Okay. Look down at paragraph 4 (d) -- I mean,
 16 I am sorry, 4 (c), it says, "As deferred compensation
 17 to the employee for the services rendered to the club
 18 under the agreement following the amendment effective
 19 date, employee shall earn the aggregate amount of \$8
 20 million, earned \$1.6 million per year if the election
 21 is not made, or earned 1 million 333 per year if the
 22 extension is made, payable \$1 million in each of the
 23 eight consecutive 12-month periods following the end of
 24 the term payable by the club in accordance with the
 25 regular payroll practices."

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1 Did I read that correctly?
 2 A. Yes, sir.
 3 Q. Now, if the \$8 million that's going to be
 4 earned under this agreement, the \$8 million and the \$7
 5 million equals 15 million, like you said, if our math's
 6 right, --
 7 A. Right.
 8 Q. -- do you have any knowledge of where that
 9 number came from as you sit here today?
 10 A. No idea.
 11 Q. Have you ever spoken with Mr. Ussery or anyone
 12 else about how that \$15 million was negotiated, where
 13 the number came from, and so forth?
 14 A. No, sir.
 15 Q. Now, you recall when we went over the original
 16 agreement when he had initially been hired to be the
 17 general manager, the Mavs had a deferred compensation
 18 structure in place where they could defer \$200,000 a
 19 year out of current compensation if they wanted to.
 20 Remember that?
 21 MR. STODGHILL: Objection as to form.
 22 A. I remember we read that paragraph, yes.
 23 Q. (BY MR. DAVENPORT) Read that. Okay. Now,
 24 here when this new amendment's negotiated, the
 25 structure of the deferred compensation appears to have

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1 changed such that the Mavs are now agreeing to pay
 2 Nellie a specific amount of compensation, a lump sum,
 3 and then backing up the amount he is going to earn each
 4 year. Do you know anything about how or why that was
 5 negotiated?
 6 MR. STODGHILL: Objection, form.
 7 A. No, sir.
 8 Q. (BY MR. DAVENPORT) So if I wanted to talk to
 9 somebody from the Mavs that would probably be most
 10 knowledgeable of that, do you think it would be
 11 Mr. Ussery who signed the contract?
 12 A. I don't know. I would have to send you
 13 probably to Mr. Perot.
 14 Q. I am sorry, Mr. Perot?
 15 A. Mr. Perot, yes.
 16 Q. When it says here in -- on paragraph (c) is
 17 what I am looking at, it says, "As deferred
 18 compensation to employee for services rendered to the
 19 club, following the amendment effective date, the
 20 employee shall earn the aggregate amount of 8 million,"
 21 and it says "earned \$1.6 million per year." What does
 22 that mean to you?
 23 MR. STODGHILL: Objection as to form.
 24 A. It doesn't really mean anything because the
 25 contract was amended.

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1 Q. (BY MR. DAVENPORT) Well, we are going to get
 2 to all of the amendments and everything, but as you sit
 3 there and reading this agreement and I ask you when we
 4 are trying the case again, I said, Mr. Cuban, I have
 5 just read this position to you. Now, when the Mavs say
 6 that Mr. Nelson's going to be earning his -- this \$8
 7 million deferred comp at the rate of \$1.6 million a
 8 year, would you explain to Judge Ashworth what that
 9 means to you, how does that work?
 10 MR. STODGHILL: Objection as to form.
 11 A. I wouldn't try. I wasn't involved in this
 12 negotiation.
 13 Q. (BY MR. DAVENPORT) That's not my question.
 14 Can you answer my question?
 15 A. No, I cannot.
 16 Q. So you don't know how it works?
 17 A. I don't know how it works, no.
 18 Q. So if I wanted to ask somebody knowledgeable
 19 at the Mavs, I said, you know, I think that provision's
 20 pretty clear, how do you understand it, you'd read that
 21 and you would say you don't understand?
 22 A. Yes, sir.
 23 Q. Yes, sir, you don't understand?
 24 A. I could not tell you definitively what it
 25 means.

1 Q. Okay. Do you have an understanding of what it
2 means? When I say when it says they are going to earn
3 it at \$1.6 million a year, what does that mean to you,
4 Mr. Cuban?

5 MR. STODGHILL: Objection, form.

6 A. I could give you several different definitions
7 of what that could mean to me.

8 Q. (BY MR. DAVENPORT) Okay. That's good. Tell
9 me.

10 A. It could mean that at some point in time if
11 certain obligations are met, then I would be ob -- the
12 club would be obligated to pay.

13 Q. Okay. I am not talking about paying yet. I
14 am just talking about what the term -- because the
15 contract says, okay, Mr. Nelson, we are going to let
16 you defer \$8 million of this compensation.

17 A. Uh-huh.

18 Q. We are not going to pay it to you in '98. We
19 are not going to pay it to you in '99, but we are going
20 to let you earn it out over this five-year period.

21 A. Right.

22 Q. A million -- you can earn it at a million 6, a
23 million 6 times five, if my math's right, is eight
24 million.

25 A. Uh-huh.

1 A. I mean, that -- you've said what does 1.6
2 earn -- 1.6 million mean to me, it's just as you said,
3 you know, you have earned 1.6 million. It doesn't have
4 a specific meaning to me. You asked me to define the
5 word "earn," and I can give you five different
6 definitions of the word "earn."

7 Q. (BY MR. DAVENPORT) Let's go back to this
8 paragraph 4 (c) for a moment. Talking about earning at
9 \$1.6 million per year, and it says, "Payable, payable
10 \$1 million in each of the eight consecutive 12-month
11 periods following the end of the term payable by the
12 club in accordance with its usual payroll practices."

13 Do you understand that provision?

14 MR. STODGHILL: Objection as to form.

15 A. I believe I potentially do, again among many
16 potential definitions.

17 Q. (BY MR. DAVENPORT) All right. Well, under
18 this agreement, then, the end of the term, if it was
19 not -- well, better still, let's just look at the
20 example that the Mavs used on Exhibit A. And to make
21 this make sense before I get there, let me just
22 reference in paragraph 4 (d), it says, "If the club
23 does not make the election, the extension, as further
24 deferred compensation for his services rendered,
25 employee shall earn the aggregate amount of \$1 million,

1 Q. Okay? We're going to let you earn it out each
2 year. What does that mean to you?

3 MR. STODGHILL: Objection as to form.

4 A. What does it mean to me?

5 Q. (BY MR. DAVENPORT) Yeah.

6 A. If I was involved, it would mean to me, the
7 way I do deals is I always look at it in the
8 perspective of must be present to win. So, in other
9 words, if -- if there is a deferment or any type of
10 pushback at all, then I would expect that everything is
11 hunky-dory before I would make any payment. So to me
12 it means that the parties involved said if you do your
13 job, then this amount that we have deferred will be
14 paid. And at the time that we are -- at the time that
15 it's dated to be paid, we'll ascertain whether or not
16 we are obligated to still pay you.

17 MR. DAVENPORT: Object, nonresponsive,
18 move to strike.

19 Q. (BY MR. DAVENPORT) My question at this point
20 in time is simply, when you say you are earning 1.6 a
21 year, explain what that means, when you say, you know,
22 why is it -- why is it 1.6, why don't you earn all
23 eight million all in one year? What does earn 1.6 a
24 year mean to you?

25 MR. STODGHILL: Objection as to form.

1 earned \$200,000 a year, payable by the club in the
2 ninth 12-month period."

3 So let's go to Exhibit A and see how the
4 Mavs were setting forth this payment schedule. Exhibit
5 Number 1, or Exhibit A it says, "The club makes the
6 extension election."

7 Do you see that?

8 A. Uh-huh.

9 Q. And this says, let's see what his comp is,
10 from '98 to '99 he is going to earn and be paid in
11 accordance with the payroll practices of the club 3.5
12 million.

13 A. Uh-huh.

14 Q. Fair? You have to say "yes" or "no."

15 A. Yes, sir.

16 Q. Okay. The second year when he's going to be
17 head coach, it's going to make -- from '99 to 2000,
18 he's going to make another 3.5 million, right?

19 A. That's the number here, yes, sir.

20 Q. Now, as you are looking at this, though, he is
21 not -- this -- this \$1,600,000 he is earning in
22 deferred comp, he doesn't get to collect that in the
23 first year, does he? That's why they call it deferred
24 comp.

25 MR. STODGHILL: Objection as to form.

1 A. Correct.
 2 Q. (BY MR. DAVENPORT) All right. The second
 3 year, because let's say he works out the first year,
 4 end of the season, June 30th, '99, gets here. Okay.
 5 Everybody's happy. He -- Don's been paid \$3.5 million
 6 by the club by this period of time every two weeks, in
 7 accordance with the payroll practices, fair?
 8 A. Yes, sir.
 9 Q. Okay. He's now earned in this first year
 10 either 1.6 or 1.8 million, depending if the club
 11 ultimately makes the election in deferred comp,
 12 correct?
 13 A. I believe so.
 14 Q. Okay. But he's not going to get -- that
 15 payment's not going to be made to him that year because
 16 he doesn't get a right to start receiving it under this
 17 agreement until July 1, 2004, when it's going to be
 18 paid out over a period of one, two, three, four, five,
 19 six, seven, eight years, at the tune of \$1 million a
 20 year?
 21 A. The only correction I make to that, I would
 22 say the right to potentially start receiving it at that
 23 time.
 24 Q. I am just reading the contract.
 25 A. I understand.

1 Q. All right. Now, so then, just to carry it
 2 forward, if he works a second year as of June 30th,
 3 2000, and he's worked, he's gotten another 3.5 million
 4 as head coach and general manager.
 5 A. Yes, sir.
 6 Q. And he's now earned another 1.6, or 1.8
 7 million in deferred comp, correct?
 8 A. Correct.
 9 Q. All right. Now, but that deferred comp is not
 10 going to be paid to him until a later date?
 11 A. Potentially, yes, sir.
 12 Q. We look over on the next scenario, two, the
 13 club does not make the extension election. Now it's
 14 going to be the same scenario, but one, two, three,
 15 four, five, six, seven, eight, nine, he earns the
 16 additional \$1 million because the club did not make the
 17 election?
 18 A. Yes, sir.
 19 Q. Okay. Is there anything unclear to you about
 20 that agreement?
 21 A. I would just do the qualification that
 22 "earned" still means potentially to be paid.
 23 Q. And show me where it says "potential" in here.
 24 A. I am just saying it's my understanding as you
 25 have been asking me.

1 Q. Okay. Can you show me the word "potentially"
 2 anywhere in here?
 3 A. No, sir, I can't.
 4 Q. Because when I look at the contract, you know,
 5 the contract that was negotiated, the contract that was
 6 signed when the Mavericks had lawyers representing
 7 them, the language in here, it just says the deferred
 8 compensation is payable by the club in accordance with
 9 the payroll practices, payable \$1 million in each of
 10 the eight consecutive years. It doesn't say
 11 potentially payable, does it?
 12 A. No, sir. All I can do is give you my
 13 perspective as you have asked for it.
 14 Q. Okay. In looking at this Second Amendment, I
 15 found nothing in here -- I did not see any covenant
 16 purporting to restrict Mr. Nelson's employment after
 17 the termination of the contract. Do you see any such
 18 document, any such provision in there?
 19 A. I --
 20 MR. STODGHILL: Objection as to form.
 21 A. I don't know since I can't claim to be an
 22 expert in this, but I'll take your word for it.
 23 Q. (BY MR. DAVENPORT) Well, I just didn't see
 24 it.
 25 A. Okay.

1 Q. I don't know if you had seen something that
 2 you thought was a restrictive covenant.
 3 A. Not that I remember.
 4 Q. I guess the '98 -- do you know -- let's see,
 5 Mr. Nelson served as the head coach from '98 to '99 and
 6 general manager, and then from '99 through -- is the
 7 season over in March?
 8 A. For the Mavs back then, April, yeah.
 9 Q. I figured it did. So he's serving as head
 10 coach under this Second Amendment at the time you get
 11 involved with the club, when you start.
 12 A. Yes, sir.
 13 Q. So he's head coach and general manager when
 14 you start the negotiations to buy the club.
 15 A. Yes, sir.
 16 Q. Do you remember the first time you met
 17 Mr. Nelson?
 18 A. Generally, yes.
 19 Q. Was it during that period of time?
 20 A. Yes, sir.
 21 Q. And when you met him, did you like him?
 22 A. I mean, I always like everybody I meet for the
 23 first time. I get along pretty well --
 24 Q. Even Stodghill?
 25 A. Even Stodge, even though it took some doing.

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1 Q. We agree on something. Did you ever refer to
 2 Mr. Nelson as your mentor?
 3 A. Yes, sir.
 4 Q. And so would it be fair that you respected him
 5 as a person and as a player and as a coach when you
 6 first met him?
 7 A. I had no opinion of him as a player. I didn't
 8 come to think of him as a mentor until after I met him.
 9 Q. You thought he was a good coach, didn't you?
 10 A. I didn't -- I wasn't qualified to judge.
 11 Q. Well, you hired him and you kept him on,
 12 didn't you?
 13 A. I didn't hire him. I kept him on.
 14 Q. You kept him on. This brings us, I guess, to
 15 the Third Amendment. Exhibit Number 7. Now this
 16 agreement's going to be extended again. Now we are
 17 going to jump the agreement that -- under the second
 18 amendment the agreement was supposed to end June '03;
 19 do you remember that?
 20 A. Yes, sir.
 21 Q. So as things sat under the second amendment,
 22 when you entered the scene, Mr. Nelson was in the
 23 process of completing the '99/2000 season as head
 24 coach.
 25 A. Yes, sir.

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1 Q. The team was playing and all that stuff at
 2 that time.
 3 A. Yes, sir.
 4 Q. Okay. And the contract under the second
 5 amendment was designed to end on June 30th, 2003.
 6 A. Yes, sir.
 7 Q. So under this contract it says, "The term is
 8 extended to end June 2011," and it says from this date
 9 through 2003 he's going to be head coach?
 10 A. Yes, sir.
 11 Q. And general manager?
 12 A. Yes, sir.
 13 Q. And then from July 1, '03, to '06 he's going
 14 to be general manager, and then from July 1 of '06
 15 through June 30th, 2011, he shall be employed by the
 16 club as a consultant?
 17 A. Yes, sir.
 18 Q. And let's see how you did your compensation
 19 package. Y'all put exhibits on this contract. You
 20 signed this one, didn't you?
 21 A. Yes, sir.
 22 Q. Yes. Look at Exhibit A, maybe that's the
 23 quickest way to cut to it. Now, this is going to show
 24 that from July 1, 2000, to July -- from July 1, 2000,
 25 to 2001, he's going to get paid 3.5 million as head

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1 coach.
 2 A. Uh-huh.
 3 Q. He's going to get paid 1.5 million as general
 4 manager; is that correct?
 5 A. Yes, sir.
 6 Q. But now his deferred comp instead of, you
 7 know, under the old agreement he was earning it at
 8 either 1.6 or 1.8 a year, now he's going to earn his
 9 deferred comp out at 900,000 a year; do you see that?
 10 A. Yes, sir.
 11 Q. Why did -- why did that number drop from 1.8
 12 million a year to 900 a year?
 13 A. I don't recall, sir.
 14 Q. So if -- if my math's right, this -- under
 15 this agreement, up at the top it says, "Compensation
 16 Schedule Earned," you see that?
 17 A. Yes, sir.
 18 Q. Okay. And up there it says for '98 to '99 his
 19 money had been paid under the comp, it says earned 1.8
 20 million deferred; do you see that?
 21 A. Yes, sir.
 22 Q. So that's consistent with what we went over in
 23 the second agreement that he was earning it at 1.8 a
 24 year.
 25 A. I presume so.

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1 Q. And then this says from '99 to 2000, he had
 2 earned another 1.8 million. So 1.8 and 1.8 is 3.6
 3 million, correct?
 4 A. Yes, sir.
 5 Q. And that now in the next one, two, three,
 6 four, five, six, six years he would earn another 6.9 --
 7 5.4 million, right?
 8 A. That's what it says here.
 9 Q. And so the 5.4 plus the 3.6 equals the
 10 9,000 (sic) that's in the box down here at the bottom?
 11 A. Yes, sir.
 12 Q. Am I reading it right so far?
 13 A. So far.
 14 Q. Now, it says -- let's see, let's go back to
 15 the wording of this language again. Turn back on page
 16 2 just so we will have this in there. In this
 17 agreement in the language it says in addition and
 18 midway through the paragraph down there at 4, it says,
 19 "In addition as deferred compensation." Do you see
 20 that?
 21 A. "In addition, the employee will receive a
 22 signing" -- okay.
 23 Q. "As deferred compensation to employee for the
 24 services rendered to the club during the three 12-month
 25 periods," so this is July 1 of '00 to '03, "for

1 services as general manager he shall earn 900,000 per
2 year of deferred compensation as services are rendered
3 for the aggregate of 2.7 over the full 12-month
4 period." And then it says, "The deferred compensation
5 is payable by the club in accordance with the regular
6 payroll practices of the club in the full 12-month
7 periods as follows," and then it starts -- got a
8 payment schedule there; do you see that?

9 A. Uh-huh, yes, sir.

10 Q. Starting July 1, 2006. Then you've got -- the
11 next paragraph addresses the obligations of the club
12 from '03 through June 30th, '06, how they defer it, and
13 again, the language at the bottom of that paragraph
14 says, "Employee shall earn \$900,000 per year of
15 deferred compensation as services are rendered,
16 aggregate amount of 2.7 over the three full 12-month
17 periods. The deferred comp is payable as follows."
18 And it's got the payment schedule there.

19 A. Yes, sir.

20 Q. All right. Then number (c) says he's going to
21 get 200,000 a year when he's a consultant.

22 A. Yes, sir.

23 Q. Okay. It says, (e), "The attached Exhibit A
24 is a table summarizing the compensation payable under
25 paragraph 4, assuming the agreement is in effect for a

1 going to practices, you are not training the team
2 right, you are violating the contract, we are going to
3 terminate you for cause. Are you with me?

4 A. Yes, sir.

5 Q. All right. So at that point in time, I go
6 back to my original agreement because there is nothing
7 about, you know, what happened when you terminate for
8 cause, I look back in my agreement here that we went
9 over earlier.

10 A. Yes, sir.

11 Q. Okay. I just fired Nelson for cause. Now I
12 got to figure out what the Mavs owe him, if anything.
13 Are you with me so far?

14 A. Yes, sir.

15 Q. All right. So I looky here and I say, well,
16 you know, he's been paid his salary as head coach
17 through June 30th, 2001, so I don't owe him anymore
18 there, right?

19 MR. STODGHILL: Objection as to form.

20 A. I don't know, sir.

21 Q. (BY MR. DAVENPORT) Hypothetical question.

22 A. I don't --

23 Q. He's already been paid two years under this
24 agreement --

25 A. I won't say that -- I won't agree with that.

1 continuous term through June 30th, 2011, and taking
2 into consideration the deferred compensation previously
3 earned by the employee for the two 12-month periods
4 from '98 through 2000 in the amount of 3.6 million,"
5 correct?

6 A. Yes, sir. It says that, yeah.

7 Q. If I look -- turn back over to my schedule A,
8 then, that's consistent with the exhibit that says that
9 Mr. Nelson has earned 1.8 and 1.8.

10 A. Correct, assuming the agreement is in effect
11 for a continuous term through June 30th, 2011, yes,
12 sir.

13 Q. Okay. The 1.8 and 1.8 -- let me ask you this,
14 now. Let's say that you had come up -- okay. Let's go
15 back to 2000. You're negotiating. And we get to June
16 30th, 2000. Okay? And you are watching the way the
17 club performed, and you just thought, this is a
18 hypothetical question, you thought Mr. Nelson was a
19 terrible coach.

20 A. Yes, sir.

21 Q. And you said, not only I am going to terminate
22 him, once you got control of the club, you said I am
23 going to make the decision I am going to terminate him
24 for cause. And then you brought him in, said,
25 Mr. Nelson, you are breaching the contract, you are not

1 Q. Let's go to July 1 under this, under my
2 hypothet, you just fired him.

3 A. Okay.

4 Q. Okay? Does the club have -- since you have
5 just fired him, he walked out the door, June 30th, he's
6 gone. Does the club have an obligation in your view to
7 pay him the 3.5 million?

8 MR. STODGHILL: Objection to the form.

9 A. Hypothetically?

10 Q. (BY MR. DAVENPORT) Hypothetically.

11 A. I have no idea.

12 Q. Does the club have an obligation to pay him
13 the 1.5 million as a general manager even though he's
14 just been fired?

15 MR. STODGHILL: Objection, form.

16 A. Hypothetically? I have no idea.

17 Q. (BY MR. DAVENPORT) So you won't go -- you
18 won't answer me?

19 A. I just answered, I have no idea.

20 Q. You don't know?

21 A. I don't know. That was a contract from 1997
22 and --

23 Q. Okay. Let's go back to the contract. This
24 isn't hard stuff. The termination --

25 A. That's why you guys are the lawyers and I am

1 not.
 2 Q. We talked earlier about when you terminate
 3 somebody for cause, remember that --
 4 A. Yes, sir.
 5 Q. -- the contract says, "On termination of the
 6 employee's employment with the club under this
 7 paragraph, the club will have no obligation to provide
 8 or pay compensation accruing after the termination
 9 date." Remember that?
 10 A. Yes, sir.
 11 Q. Now, the compensation of head coach, since
 12 it's going to be accrued on a month -- on a bimonthly
 13 basis, would be accruing under my hypothetical question
 14 after termination, would it not?
 15 A. You have lost me.
 16 Q. So if I asked you this question, I say, okay,
 17 Mr. Cuban, looking at this contract that we have just
 18 been over, and we'll be going over it with the judge
 19 just like we're doing today, now, if you had of fired
 20 him on June 30th, 2000, do you think the club would
 21 have had an obligation to pay him 3.5 million, 3.5
 22 million, pay him for the rest of the eleven years under
 23 this contract, this salary?
 24 MR. STODGHILL: Objection as to form.
 25 A. Well, no, because you are asking me -- you are

1 seems like ten minutes.
 2 THE VIDEOGRAPHER: We are off the record
 3 at 10:58.
 4 (Recess for 14 minutes.)
 5 THE VIDEOGRAPHER: We are back on the
 6 record. The time is 11:12.
 7 Q. (BY MR. DAVENPORT) At the break, I was asking
 8 you -- let me see if I remember where you were. I was
 9 asking you if you had terminated him on June 30th,
 10 2000, for cause, do you believe the club would have had
 11 an obligation to make the payments that were to accrue
 12 thereafter in '01, '02, '03 for head coach, general
 13 manager, and later as a consultant?
 14 A. Honestly, I have no idea, sir.
 15 Q. You said you had no idea?
 16 A. Yes, sir.
 17 Q. So you can't answer that question. All right.
 18 Let's say you had terminated him for cause on June
 19 30th, 2000.
 20 A. Okay.
 21 Q. Okay? The contract. Would the club have had
 22 an obligation to pay him the \$3.6 million that is
 23 recited in Exhibit A as earned?
 24 MR. STODGHILL: Objection as to form.
 25 A. Honestly, sir, I really don't know.

1 combining apples and oranges. You are saying -- you
 2 are giving me a scenario through 2000 -- oh, I am
 3 sorry, you are saying based off the '97/'98 contract.
 4 I don't know. I wasn't involved in that contract at
 5 all, and I wouldn't speculate even hypothetically.
 6 Q. (BY MR. DAVENPORT) I am just asking you,
 7 under the contract, had you fired him when you came
 8 to -- to take over the Mavs, you fired him on June
 9 30th, fired him for cause, do you think the Mavs would
 10 have had an obligation to pay him the compensation as
 11 general manager and as head coach and as consultant for
 12 each of these consecutive years after he had walked out
 13 the door?
 14 MR. STODGHILL: Objection, form.
 15 A. I have no idea.
 16 Q. (BY MR. DAVENPORT) Your answer is you don't
 17 know?
 18 A. I don't know.
 19 MR. STODGHILL: Mark, whenever you get a
 20 chance, we've been going about an hour and a half. Can
 21 we take a break --
 22 MR. DAVENPORT: Yeah, any time you want.
 23 MR. STODGHILL: Yeah, let's just take a
 24 ten-minute break.
 25 THE WITNESS: An hour and a half? It

1 Q. (BY MR. DAVENPORT) And I'm pulling some of
 2 this stuff off of the Mavs' counterclaim and the
 3 answers that we got this, and I am just trying -- who
 4 would I ask about the -- to flesh that out? Are y'all
 5 just going to just rely on whatever the contract says
 6 it says? Is there somebody else I ought to be talking
 7 to?
 8 A. You are more than with welcome to talk to
 9 Robert Hart and my attorneys, because that's what I
 10 would do. I mean, in all candor, I mean, I try to
 11 do -- stick to the business items and what I
 12 understand, and everything else I ask the guys I pay
 13 all the money to.
 14 Q. So if I asked you this question at the time of
 15 trial, you as the head honcho at the Mavs, you just
 16 fired Don Nelson on June 30th, 2000, would you all have
 17 then paid him the 3.6 million that is recited as earned
 18 starting in July 1, 2004, and so forth, you would say
 19 go talk to the lawyers?
 20 A. I'd have a conversation with the lawyers and
 21 they -- then I'd say go talk to the lawyers.
 22 Q. So when we try the case, you are not going to
 23 be opining -- you are not going to be getting up
 24 there -- you are the wrong person to ask, right? I
 25 don't want to hear something different at trial than I

1 will hear today. If you are not the right guy, I will
 2 ask somebody else.
 3 A. Okay.
 4 Q. Okay. I just want to make sure I understand
 5 what you are saying.
 6 A. You can ask whoever you want, Mark.
 7 Q. So you take over, then, in 2000, and the first
 8 season you are there is the 2000 and 2001 season?
 9 A. That's my first full season.
 10 Q. Full season there? And how did -- how did the
 11 Mavs do then?
 12 A. Better than we did the previous season.
 13 Q. And how was your relationship with Mr. Nelson?
 14 A. It was fine.
 15 Q. You liked him, everything was happy?
 16 A. Sure. We got along fine.
 17 Q. So if I go, then, to the end of the first
 18 year, maybe I'll just stay on this, of your contract --
 19 if you want to look at that, that's that exhibit again,
 20 I'll just stick with that. We go to the end of the
 21 2001, he's been paid 3.5, he's been paid 1.5, and then
 22 as of that date he would have earned another 900,000
 23 deferred comp?
 24 A. That's what it says here, yes, sir.
 25 Q. And so as far as you are concerned, at the end

1 Q. You don't recall any problems as you sit here
 2 today with Mr. Nelson in that period of time?
 3 A. Well, he had his own issues in terms of health
 4 and things like that, and that created scenarios for
 5 us, but we dealt with them.
 6 Q. You didn't purport to terminate him for cause
 7 or give him notice of breach or anything of that
 8 nature?
 9 A. Not -- not that I recall, no.
 10 Q. All right. Let's go to 2001/2002 season -- I
 11 mean, 2001/2002, how did the Mavs do that season?
 12 A. 2001/2002, that was the Timmy Hardaway season,
 13 we did -- we did better than we did the previous year
 14 in terms of wins and losses during the regular season,
 15 but did the same in terms of the playoffs.
 16 Q. Okay. And then we go to 2000 -- there is a --
 17 there is going to be a Fourth Amendment to the contract
 18 dated August 1, 2002. Let's go ahead and mark that and
 19 keep them in order, which I will mark as Exhibit 8.
 20 Did you play any role in the negotiation of this
 21 document? Do you have any knowledge of it?
 22 A. I believe so, yes, sir.
 23 Q. Pardon me?
 24 A. Yes, sir.
 25 Q. What do you know about it?

1 of 2001 everything's okay?
 2 A. As far as I am concerned from the basketball
 3 perspective everything -- and our relationship,
 4 everything's okay.
 5 Q. Perfect. Let's go fast forward with me from
 6 2001 to 2002, go to the end of 2002, same, everybody
 7 happy?
 8 A. For the most part from what I remember, yes.
 9 Q. So he was paid the 3.5 and the 1.5 on a
 10 bimonthly basis?
 11 A. I would refer you to all of our accountants
 12 and, you know, and I am sure if -- yeah, I -- I'm
 13 presuming so. I don't know.
 14 Q. And he had earned another 900,000 of deferred
 15 comp at the end -- as of the end of the year?
 16 A. Again, I defer you to all the people who know.
 17 Q. You don't have any -- based on what you know,
 18 though, you don't have any reason to differ with what I
 19 am asking you? You don't know something that says, no,
 20 we didn't pay him that thing? As far as you know, you
 21 paid him everything you owed him?
 22 A. Yeah, I presume so. It's simply because he --
 23 there was a lot of time off. You know, he had issues,
 24 and there were other scenarios, so I don't know one way
 25 or the other.

1 A. Just, you know, pretty much what it says here.
 2 Q. Pardon me?
 3 A. Just what it says here, you know, that we
 4 signed the amendment.
 5 Q. Okay. Do you recall any discussions with
 6 Mr. Nelson about it?
 7 A. Honestly, I don't remember specifics, no, sir.
 8 Q. Did -- was this negotiated -- was this
 9 agreement negotiated by Mr. Jahner and Mr. Keith Grant?
 10 A. This was -- I don't remember, sir.
 11 Q. Do you remember who drafted the document;
 12 Mr. Hart draft it?
 13 A. I don't remember, sir.
 14 Q. You don't have any knowledge of it?
 15 A. No, it's not that I don't have knowledge of
 16 the document. I just don't remember the specifics.
 17 Q. Do you know anything about the negotiations of
 18 how it came about?
 19 A. I don't remember, sir, no.
 20 Q. So other than what's written on the document,
 21 you have no knowledge of it?
 22 A. Not much, no, sir.
 23 Q. Pardon me?
 24 A. No, sir.
 25 Q. Okay. All right. Let's go forward to the end

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1 of the 2003 -- I mean, to the -- we are going to come
 2 up to the last amendment that was signed, June 1 --
 3 July 1, 2003. How did the Mavs do from '02 to '03?
 4 A. We did -- it was our best year to that point,
 5 but it was -- still ended in a disappointment.
 6 Q. And so coming up on the end of '03, were you
 7 still happy with Mr. Nelson?
 8 A. We were having our issues at that point in
 9 time.
 10 Q. When, in your recollection, Mr. Cuban, do you
 11 recall that you first had a, quote, issue with
 12 Mr. Nelson?
 13 A. The start of the 2002/2000 -- the preseason of
 14 the 2002/2003 season.
 15 Q. And what did that have to do with? What was
 16 the subject of the dispute?
 17 A. I went to Nellie in the preseason and said
 18 that I felt like we weren't working hard enough, that
 19 we weren't -- we needed a greater sense of urgency
 20 going into this season. We had made a big trade and
 21 jacked up our payroll and went into his office and said
 22 that, you know, we need to do this.
 23 And then he proceeded to -- rather than
 24 just having a conversation with me tried to make --
 25 basically make a fool of me and decided to bring in our

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1 senior players, I think it was Nash, Finley, Avery
 2 Johnson at that point in time, maybe it was Sean
 3 Bradley, I don't remember who else, and said, okay, you
 4 think you are so smart or something to that effect,
 5 tell these guys.
 6 And I said -- I told these guys, okay, we
 7 need to start the season with a sense of urgency and
 8 really go out there and prove that we are an elite
 9 team. And I didn't think we were taking the preseason
 10 seriously enough to do that. And then after that we
 11 started off the season 14 and O, and but that was the
 12 first point where Nellie and I really had a conflict,
 13 if you will.
 14 Q. And when was that?
 15 A. Before the season started.
 16 Q. Which one?
 17 A. 2002/2003 season.
 18 Q. And did this dispute start -- or part of it --
 19 was one of the subjects of that dispute that you told
 20 Mr. Nelson that you didn't think he was working them --
 21 working the players hard enough in the practice?
 22 A. No, that was even -- this was even before
 23 that.
 24 Q. Did there come -- was there a dispute where he
 25 brought the player coach -- the key players in and

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1 asked them -- did he have a policy that, or his theory
 2 was that you don't work these players that are having a
 3 lot of playing time, you don't work them real -- he
 4 didn't have real exhaustive practices, did he?
 5 A. No, two different issues, because this is
 6 preseason still.
 7 Q. This is preseason?
 8 A. This is preseason still.
 9 Q. Okay. And so he brought the other players in,
 10 and that was an embarrassment to you; you didn't think
 11 that was appropriate?
 12 A. It was definitely not appropriate in my
 13 opinion.
 14 Q. Okay. And so did you talk to him about that;
 15 did you tell him that don't do that again, or --
 16 A. No, no, because, you know, that's not my
 17 style. My style is you just deal with it, and you put
 18 it behind you. It wasn't like, you know -- it was just
 19 the first time we had an issue of significance. It
 20 wasn't -- you know -- you know, wasn't -- I didn't
 21 consider it a serious problem. I just thought it was
 22 just a conflict, and you put it behind you.
 23 Q. Were you and Mr. Nelson, by -- by this period
 24 of time, 2002 or so, but y'all were pretty good
 25 friends, weren't you, as well as being coworkers?

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1 A. I wouldn't say we were pretty good friends,
 2 no. It wasn't like I was calling him up and let's go
 3 have a beer, but we had a nice relationship.
 4 Q. So after that incident, if you will, you say
 5 the company -- the team got off to a 14-O start?
 6 A. Yes, sir.
 7 Q. So had your relationship got okay with
 8 Mr. Nelson again, was it better?
 9 A. Again, it never got that bad. I just thought,
 10 you know, when you manage people, there is things that
 11 don't go the way you want them to, and it was just one
 12 of those things.
 13 Q. So bring me forward. Did you have another
 14 incident with him? Did something else happen?
 15 A. In what period of time?
 16 Q. Well, we are going to be working up to the --
 17 I am going to be working up to the fifth amendment
 18 coming up in July of '03, and I'm just trying -- I
 19 think chronologically, so I am trying to come through
 20 '02 to '03 --
 21 A. Sure.
 22 Q. -- as we are coming up to the season. How did
 23 the '02/'03 season end?
 24 A. Yeah, even before that there were issues,
 25 though.

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1 Q. Okay. You told me the first one was in
 2 preseason.
 3 A. Right, and there were other issues.
 4 Q. What were the other issues?
 5 A. I mean, what -- first one comes to mind, there
 6 was a game in Los Angeles. It was not unusual for me
 7 after a game to go into the coach's locker room just to
 8 listen, you know. And as I told Nellie along the way
 9 that, you know, it was how I got to learn. You know,
 10 here is how the coaches talk after the game, here is
 11 what they say at halftime, here is what they say before
 12 the game, here's the game plan, and it gave me an idea
 13 of their management skills and how they are relating to
 14 players and how players respond to their efforts. So
 15 it's a great learning tool for me.
 16 And, you know, when I talked about Nellie
 17 being my mentor up to that point in time, that really
 18 is what it encompassed, the fact that he let me be
 19 there to pay attention and learn from it.
 20 And there was a game in Los Angeles where
 21 we were up 26 or 28 points going into the fourth
 22 quarter and ended up losing in the biggest fourth
 23 quarter come back in the history of the NBA. And so I
 24 just -- I did as I normally did and walked into the
 25 locker room and said, guys, what due -- you know, what

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1 happened? What do you think? And Nellie blew up,
 2 which was understandable, you know, given what had
 3 happened. But again that was --
 4 Q. What do you mean he blew up?
 5 A. Just, you know, I don't remember his exact
 6 words, but something to the effect of get the fuck out
 7 of the locker room. You don't come in here after a
 8 game like this, and it was pretty much standard
 9 practice that I would come into the locker room. And
 10 so --
 11 Q. Well, did you come in -- did you approach it
 12 like you just said, or were you angry when you --
 13 A. No, I mean, I was upset just like everybody
 14 else. I mean, you know, no one likes to lose a game
 15 like that; and, you know, I am as competitive as
 16 anybody else. But, no, I just went in there and -- and
 17 it was pretty much just that. And, you know, by the
 18 next game it was kind of behind us, but that was just
 19 an incident I remember.
 20 Q. So by yelling at you in front of the
 21 players --
 22 A. It wasn't in front of the players. It was
 23 just in front of other coaches.
 24 Q. Okay. The other coaches.
 25 A. And again, again, it was just one of those

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1 line item things.
 2 Q. Who were the other coaches, do you remember?
 3 A. Whoever was -- Charlie Parker, I don't
 4 remember if Larry -- I don't remember exactly who
 5 all -- I mean, Del Harris.
 6 Q. Okay. Did you ever go after that happened
 7 and, say -- go one on one to Nelson and say that you
 8 thought that was inappropriate, that you don't
 9 appreciate that, or, I mean --
 10 A. I mean, I'd have -- I'd have a conversation.
 11 I do remember just having -- just not sit-downs, but
 12 just saying, look, Nellie, if you have an issue with
 13 me, make sure you address it to me, and that was it.
 14 Q. Okay. Well, of course, coming off a huge loss
 15 like that, he's a very competitive man, isn't he?
 16 A. Sure.
 17 Q. I mean, wasn't that a -- that's a problem, he
 18 liked to do all offense and no defense?
 19 A. Two different issues.
 20 Q. But, I mean, he is a very -- I mean, he's
 21 very, very competitive. He was as a player, as a
 22 coach. You think he could have just been angry at the
 23 moment of the loss?
 24 A. That's what I just said, I felt like he was
 25 angry.

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1 Q. All right. Was there another instance?
 2 A. What else came to mind? There was an incident
 3 where he fired Del Harris, and I had to get Del Harris
 4 back his job. It was in the middle of a Golden State
 5 game. At halftime he fired Del.
 6 Q. Why?
 7 A. Because Del disagreed with him, and Nellie got
 8 pissed off and just went off on a tangent and fired
 9 him. And so Del came to me, and I had to go -- and
 10 explained to me, you know, that Nellie had just fired
 11 him in the middle of a game, and he was getting ready
 12 to leave. And I said, "Del, don't leave. Let me try
 13 to work it out with Nellie."
 14 So I went back in with Nellie, and --
 15 it's funny. It was at Golden State. And I said, you
 16 can't just fire him. Let's just work this through.
 17 You guys are best friends, yadda yadda, and we worked
 18 it out.
 19 Q. As a -- would a -- as a head coach and a
 20 general manager, would that have been within his
 21 authority to fire an assistant coach?
 22 A. I don't know specifically, but it certainly
 23 wasn't the right approach for the club.
 24 Q. You got it worked out?
 25 A. No, to just fire somebody at halftime of a

1 game.
 2 Q. But you got the problem with him worked out?
 3 A. I worked it out.
 4 Q. Okay. So we are still in the '02/'03 season?
 5 A. Yes, sir.
 6 Q. Okay. Was there another incident?
 7 A. During the season, not that comes to the top
 8 of my head.
 9 Q. Okay. So this brings us in --
 10 A. During the regular season.
 11 Q. This then -- when do the negotiations start to
 12 renew the contract, because under the -- what, we are
 13 on the --
 14 A. After the playoffs.
 15 Q. Under the Third Amendment, he was -- on July
 16 1, 2003, the way the second -- the Third Amendment
 17 was -- Third Amendment was structured, he was supposed
 18 to step down as head coach and just go back to being
 19 just general manager, right?
 20 A. Yes, sir.
 21 Q. All right. So at some point after the
 22 playoffs, I guess negotiations start again --
 23 A. Yes, sir.
 24 Q. -- for the next amendment. I guess first
 25 question is, since you had been having some

1 was with me or not, but yes, we went in to meet with
 2 Nellie.
 3 Q. Tell me what you recall about the incident.
 4 A. What I recall about the incident is we were
 5 playing in the Western Conference finals, and Dirk had
 6 been hurt, and we -- like we always do, we send him to
 7 get every possible test available to man at the time.
 8 And our team doctor said that he was under no risk of
 9 injuring himself further.
 10 Q. This is Souryal?
 11 A. Yes, sir. And Souryal doesn't just make that
 12 in a vacuum. He goes and we have -- we have four
 13 doctors that are readily available to us on a game day,
 14 I think it is, and on nongame days, you know, we will
 15 fly people to get specialist's opinions. And
 16 Dr. Souryal stated that that Dirk, in his opinion Dirk
 17 could play, and that he was under no risk of playing
 18 further. Dirk was of the opinion that he wanted to
 19 warm up and see if he could play and was of the opinion
 20 that he could give it a go.
 21 Q. Was this -- which game was it?
 22 A. This was going into game six of the Western
 23 Conference finals. I went into Nellie's office and
 24 restated that exact same thing. And Nellie gave the
 25 story that, you know, he had the same injury as a

1 disagreements with him and since under the agreement he
 2 was supposed to be stopping his duties as head coach on
 3 June 30th, 2003, why didn't you just let him go back to
 4 being general manager and get a new coach, I guess? I
 5 mean, how did it come about?
 6 A. I have a rule that unless I have someplace to
 7 go, you don't just make a change to make a change. And
 8 I did not feel like I had an alternative in terms of
 9 coaches. And so the devil you know is better than the
 10 devil you don't know in this business, at least that's
 11 my opinion.
 12 Q. I may not have heard -- I may have missed, did
 13 you say something that there were some incidents in the
 14 playoff with Mr. Nelson?
 15 A. Yes. There was a single incident, yes, sir.
 16 Q. Was this the Nowitzki incident?
 17 A. Yes, sir.
 18 Q. Where -- is there where he hurt his knee or he
 19 had hurt his knee and he told you that he didn't want
 20 to keep playing? This was -- who were you playing, San
 21 Antonio?
 22 A. Yes, sir.
 23 Q. And this is where Dr. Souryal and you came in
 24 to meet with Nellie?
 25 A. I don't know. I don't remember if Dr. Souryal

1 player.
 2 And I basically said to Nellie, well,
 3 that was in a different technological environment.
 4 Medical science is a lot different today than it is
 5 back then, and I was of the opinion -- and I also made
 6 this statement that, Nellie, you haven't been to the
 7 Western Conference finals in 15 years, or whatever it
 8 is. I mean, it had been a long, long time. This
 9 was -- you know, this could be a once in a lifetime
 10 shot.
 11 And our doctors that we pay, and either
 12 we trust them or we don't, and we've trusted them up to
 13 this point with every other player. There is no --
 14 absolutely no reason for us not to trust them any
 15 further. And I made the comment to him that, in all
 16 candor, you cannot be -- you know, you cannot be afraid
 17 to win. Sometimes, you know, in my experiences in
 18 business and in life, you know, sometimes you got to
 19 take a chance to win. And you can't be afraid to lose.
 20 You can't always be the underdog.
 21 And Nellie didn't like that comment from
 22 me. And that upset him. And he said, you know,
 23 something to the effect that, you know, I am not going
 24 to play him. I said, well, just dress him, just in
 25 case. And he said, no, I am never going to just dress

1 a guy and not play him. And then I walked out of the
 2 office, and that was pretty much it.
 3 Q. Did you make any statements to him that you
 4 demanded that he play Nowitzki?
 5 A. That I demanded? No, because I couldn't force
 6 him to play him in a certain situation. You are not
 7 going to -- no, I did not demand that he play Nowitzki.
 8 Q. Did -- did you insist rather strongly that he
 9 play Nowitzki --
 10 A. No, --
 11 Q. -- after he had balked?
 12 A. -- I insisted that he listen to the doctor,
 13 but I can't make a coach -- I mean, the reality of the
 14 business is he has to put him in the game and take him
 15 out and, you know, he is not going to play somebody 48
 16 minutes. So an insistence on someone playing, you
 17 can't really do it.
 18 Q. Did he tell you that he had had a similar
 19 injury when he was a player?
 20 A. Yes, sir.
 21 Q. And did he tell you that he was afraid that if
 22 you played Nowitzki, who was a young player, that it
 23 could end his career?
 24 A. Yes, sir.
 25 Q. Did he tell you or make a statement to you

1 a loser if they don't get it. And that's -- that
 2 became my feeling about Nellie.
 3 Q. When you didn't -- he didn't play Nowitzki,
 4 right?
 5 A. No, he did not.
 6 Q. Did you win any more games against the Spurs?
 7 A. We won that game against the Spurs, game 6.
 8 Q. That night.
 9 A. And then we lost game 7.
 10 Q. Then you lost game 7. Okay.
 11 A. We were up 14 points going into the fourth
 12 quarter, and we lost that game -- we lost game 6, that
 13 was game 5, I take it back. We won game 5 in San
 14 Antonio, and we lost game 6.
 15 Q. Okay. Well, that -- so that would have been
 16 in -- what does that put us in --
 17 A. May of 2003.
 18 Q. -- May '03. Okay. So I guess you weren't --
 19 A. That wasn't -- I tell you, that wasn't the
 20 only incident. Let me add one other. There was an
 21 incident, we were -- we were in that first round of
 22 that playoff. We were at risk of being the first team
 23 in the history of the NBA to go 3-0 on a team, the
 24 Portland Trailblazers, and then lose the next four
 25 games. And so we end up going to a game 7, and I don't

1 that he would not play Nowitzki; and if you insisted on
 2 it, you would have to fire him on the spot?
 3 A. Yes, sir.
 4 Q. And what did you say to that?
 5 A. I said I can't insist that you play him, but,
 6 Nellie, that -- again, this is my best recollection,
 7 medical science is different, you know. When you hurt
 8 yourself, it's a whole different ball game now. And,
 9 you know, there is different technology, different
 10 evaluation techniques, and we are taking advantage of
 11 all of them. And we have a doctor, we pay him, and
 12 you've taken his opinion and used it in multiple other
 13 scenarios. Why are you not willing to trust him now?
 14 Are you afraid to lose? You can't be afraid to lose.
 15 Everything says, including the player, we should a play
 16 him. And he refused.
 17 Q. Afraid to win?
 18 A. Afraid to win, yeah, afraid to lose, afraid to
 19 win.
 20 Q. I don't understand the -- when you say he's
 21 afraid to win, what does that mean?
 22 A. What it means to me is there is a lot of
 23 people that when -- when you go for it, when you go for
 24 it, when you go for the big win, you may not get it.
 25 And some people are afraid they would be classified as

1 remember what the score at halftime was, but we were in
 2 Dallas game 7 against the Portland Trailblazers, and
 3 there was a lot of pressure on us obviously, you know,
 4 to beat that team. And at halftime Nellie was nowhere
 5 to be found in the locker room, but -- and where the
 6 players are part of the locker room. And in comes
 7 Avery Johnson, and the only commentary at halftime was
 8 from Avery Johnson who came in and said, "Our will, our
 9 way, our win," and got the guys out on the court. And
 10 that was kind of eye-raising to me.
 11 Q. When did Avery Johnson come?
 12 A. Avery Johnson came in a trade, I guess the
 13 year before, when we traded Juwan to Denver Nuggets.
 14 Q. What year?
 15 A. 2001 -- 2001/2002 season.
 16 Q. Okay. Did he come as a player or as a coach?
 17 A. He came as a player.
 18 Q. And then when was he converted to a coach?
 19 A. During the playoffs of that season, he wasn't
 20 on -- he wasn't converted, but he was asked to -- he
 21 was not on the active roster, so Nellie said, why don't
 22 you tag along.
 23 Q. And this is the --
 24 A. 2002/2003 season, during the playoffs, not
 25 during the season.

1 Q. Okay. So we are coming up, then, to the
 2 negotiations leading up to the Fifth Amendment.
 3 A. Correct.
 4 Q. Okay. So have you pretty much summarized
 5 your -- how would you characterize overall? Were you
 6 dissatisfied with Mr. Nelson as a coach, or you just
 7 had had four or five instances with him?
 8 A. No, I was pretty much dissatisfied with him as
 9 a coach, but at the same time I did not have an
 10 alternative place to go.
 11 Q. So had you and Mr. Nelson been exchanging, I
 12 guess, adverse publicity about each other in the press?
 13 A. I don't recall specifically what was occurring
 14 in the press, no.
 15 Q. So your complaints to him were going more or
 16 less to the disputes you just told me about. How was
 17 he doing as a general manager?
 18 A. Not very well.
 19 Q. Had you had talks with him to -- what was he
 20 not doing?
 21 A. He was -- you know, he made me realize the
 22 saying that I now carry day to day, number 1 job of a
 23 general manager is not to win championships, it's to
 24 keep his job. There is only 30 jobs paying a million
 25 dollars a year to work six months and then go to

1 A. No, I just told him, as I mentioned to you,
 2 that I did not think he was doing a great job.
 3 Q. And I understand what you told me, but I am
 4 just saying, to bring you forward to take my snapshot
 5 if I can as of June 30th, at that moment in time he had
 6 been paid his salary of 3.5 as coach and 1.5 as general
 7 manager, he had earned another \$900,000 on his deferred
 8 comp, and you had not either docked his salary, you
 9 hadn't given him a notice of termination, you hadn't
 10 told him in either orally or in writing that he hadn't
 11 earned his deferred comp; is that fair?
 12 A. I mean, you have asked several questions
 13 there.
 14 Q. And I did.
 15 A. But to the best of my knowledge, you know, in
 16 terms of the numbers and in terms of actual payments,
 17 I'd have to defer to people, but there was no -- no
 18 written notices of any sort that I'm aware of.
 19 Q. And we've looked at -- at all the documents
 20 and e-mails and all that other stuff, and we hadn't
 21 seen any. And so -- and we know he was paid his
 22 salary, so I just -- to get on the record, as of June
 23 30th, he hadn't been terminated, he hadn't been given
 24 notice that he wasn't earning his deferred comp,
 25 nothing -- no disputes had arisen other than really the

1 Hawaii, and so it was an expensive lesson for me.
 2 Q. Let's go to the end of the second contract, to
 3 the June 30th, and then we'll get up to the last
 4 amendment, or the next amendment.
 5 MR. STODGHILL: Mark, are you talking
 6 about which exhibit, Exhibit 6?
 7 MR. DAVENPORT: I am still at -- I'm
 8 still back on --
 9 MR. STODGHILL: Third Amendment?
 10 Q. (BY MR. DAVENPORT) -- the Third Amendment.
 11 MR. STODGHILL: Okay, Exhibit 7.
 12 Q. (BY MR. DAVENPORT) And I am going to bring
 13 you forward through June 30th, 2003, as you recall, in
 14 spite of these disagreements or so forth that you had
 15 had with Nelson, he was still -- he had still received
 16 his salary as a head coach and a general manager, and
 17 he had earned another 900,000 in deferred comp; is that
 18 accurate?
 19 A. Again, I'd have to defer to the people who
 20 actually pay, but yes.
 21 Q. But at this point in time you hadn't given
 22 Mr. Nelson any notice that the club did not feel he had
 23 earned his salary and deferred comp?
 24 A. Not formally, no.
 25 Q. Well, informally?

1 ones you are telling me about?
 2 A. Yeah, there weren't any formal notices that I
 3 am aware of.
 4 Q. Okay. Do you recall -- let's say at this
 5 time, do you recall having any discussions with either
 6 Mr. Nelson or anybody else in the organization that you
 7 thought Nelson was making too much money and that you
 8 were going to try to cut him back if you negotiated
 9 another amendment to the contract, a Fifth Amendment?
 10 A. I do remember discussing his compensation. I
 11 don't remember the, what's the word you I am looking
 12 for, the range of numbers being discussed. I do
 13 remember that I wanted to -- to -- to -- I don't want
 14 to say the word "reduce," but at least bring his
 15 compensation more in line with what I thought he
 16 earned. I don't -- the relationship between where he
 17 was and what he was getting and where I thought he
 18 would be, I don't remember specifically.
 19 Q. Had -- at this period of time, was it the '03
 20 playoffs that you lost to the Spurs?
 21 A. Yes, sir.
 22 Q. Okay. Had you talked to anybody else about
 23 becoming a head coach of the Mavs, or had you put
 24 out --
 25 A. No, sir.

1 Q. -- any feelers or anything?
 2 A. No, sir.
 3 Q. So you were pretty much going to decide to
 4 stay with Mr. Nelson?
 5 A. I hadn't made that decision yet. It would --
 6 it was -- I hadn't made that decision yet, but I had
 7 not put any feelers out yet either.
 8 Q. So the contract as it stood, he was just
 9 supposed to be general manager for the next three years
 10 and then a consultant for five years after that?
 11 A. I believe so, yes, sir.
 12 Q. Okay. So tell me how the negotiations
 13 started. Did he come tell you that he wanted to coach
 14 more, did you say, hey, I need to stay on as coach?
 15 How did the -- how do we start getting to the Fifth
 16 Amendment?
 17 A. I just -- I think it was something to the
 18 effect of, and again, I don't remember exactly that, he
 19 wanted to win, that he felt like we were close to
 20 winning something, and he wanted to be part of it.
 21 Q. Well, just back me up. Do you recall when you
 22 first had discussions with him in 2003 about his
 23 continuing on another year or two or three as head
 24 coach?
 25 A. I don't remember specifics, no.

1 negotiations leading up to this document at all?
 2 A. I don't recall a lot of specifics, but
 3 generically.
 4 Q. Do you recall -- well, first, do you recall in
 5 the initial drafts that started circulating in June of
 6 '03 your trying to cut back \$2.7 million of the
 7 deferred compensation that was otherwise being earned
 8 pursuant to the Third Amendment?
 9 A. I don't remember specifics, no.
 10 Q. Do you recall any negotiations in which the
 11 Mavs took a shot early on at trying to cut back the
 12 deferred compensation in any manner?
 13 A. No, sir.
 14 Q. You don't recall that at all?
 15 A. No, sir.
 16 Q. Do you recall who in the Mavs organization was
 17 the point man, if you will, in negotiating with, was it
 18 John O'Connor at that time?
 19 A. It flip-flopped. I deferred -- my -- my
 20 attorney was in terms of drafts.
 21 Q. Robert?
 22 A. Yes, Robert, I think Keith Grant interjected
 23 himself from time to time and then asked to be recused
 24 because Nellie, Nellie went to Keith Grant, and Keith
 25 Grant had some preliminary conversations, and then

1 Q. Do you remember it happening?
 2 A. Yes. I remember that it did happen.
 3 Q. And then Avery was assisting him at that time?
 4 A. No, Avery was still a player.
 5 Q. He is still on the player roster. Was he
 6 being groomed or was he going to be groomed at that
 7 time in '03 to be the head coach?
 8 A. No, we traded him.
 9 Q. You traded Avery?
 10 A. Yes.
 11 Q. In '03?
 12 A. Yes.
 13 Q. Okay. So he wasn't going to be the head
 14 coach.
 15 A. No. '03/'04, yeah.
 16 Q. Okay. Well, tell me about what you recall
 17 about the negotiations leading up to the Fifth
 18 Amendment, going to be effective July 1, 2003, Exhibit
 19 Number 9. Let me see, I think I marked the wrong copy.
 20 Let me remark that. I marked my yellow copy.
 21 A. Yeah, we traded him.
 22 Q. Try that.
 23 MR. HARPER: That's not what you call a
 24 vote of confidence, Mark.
 25 Q. (BY MR. DAVENPORT) First, do you recall the

1 didn't want to be involved in it, and then it all re --
 2 turned to Robert Hart and myself.
 3 Q. So you and Robert were the point men for the
 4 negotiations?
 5 A. Well, actually, I was the point man for the
 6 negotiation, and Robert was the point person for the
 7 contract itself and drafts.
 8 Q. So do you recall anything at all about the
 9 negotiations?
 10 A. Yeah.
 11 Q. What do you recall?
 12 A. I recall that I wanted to pay Nellie less than
 13 he wanted, that we had a conversation about are you
 14 going to retire or are you not going to retire. And,
 15 you know, he would threaten to say I am just leaving,
 16 and I am just going to go back to Hawaii, that that's
 17 basically what he did for a while and came back. That
 18 the -- I mean, it wasn't -- it wasn't a friendly
 19 negotiation, and I think he wanted a reward for us
 20 going to the Western Conference finals. I didn't feel
 21 he deserved a reward in terms of a raise. That I felt
 22 like he actually -- because I wasn't happy with his
 23 general manager -- the way he fulfilled his general
 24 manager duties, that he didn't deserve to be paid as
 25 a -- as a full-time general manager. But, you know,

1 there is union -- not union, there is pension issues
2 and stuff like that by -- you know, by him staying
3 as -- as general manager, he got the benefit of -- of
4 money being paid into his pension via the union or
5 association or whatever they have. And so we went back
6 and forth a lot. And what I remember most is that it
7 just came down to a drop dead date where it was here is
8 the deal, Nellie, take it or leave it.

9 Q. Well, so you don't recall give and take going
10 back and forth, the specifics of give and take
11 regarding the deferred compensation?

12 A. No, sir, I don't.

13 Q. Do you recall trying to change the
14 compensation of the consulting contract?

15 A. I don't recall, no. I told him that I wanted
16 to keep the consulting contract in, I remember that.

17 Q. Do you recall if Mr. Nelson had another
18 attorney at that time, a local attorney that was
19 negotiating?

20 A. I never negotiated with an attorney at all,
21 only with Nellie, and any attorney-attorney
22 communications was through Robert Hart.

23 Q. Do you recall the -- any discussions
24 pertaining to there were so many amendments to this
25 contract, doesn't it make sense just to get a new

1 said earlier, the devil you know in this business is
2 always better than the devil you don't know.

3 Q. Were there any negotiations about whether --
4 during that time as to whether maybe you want to just
5 extend him as a head coach for maybe one more year
6 instead of -- you ended up extending it for three
7 years, didn't you?

8 A. I believe so, because I think by that point in
9 time we had already made Donny the general -- the
10 president, and he was acting in the capacity of general
11 manager. So in my mind I was paying two general
12 managers.

13 Q. How did Donny come aboard? How did that come
14 about?

15 A. Through Nellie.

16 Q. What -- what had he -- what had Donny been
17 doing?

18 A. Donny had been doing a variety of different
19 jobs, but he was primarily an assistant coach for
20 Nellie, and then Donny didn't want to be -- you know,
21 he was the original coach in waiting, and -- and then
22 when Donny said he didn't want to do that any longer,
23 he still stayed on as assistant coach. And then at a
24 point in time he had the opportunity, potential
25 opportunity to go to another team, and Nellie asked

1 agreement and just redraft an entirely new agreement?

2 A. Not with Nellie, no.

3 Q. You don't remember that?

4 A. No, sir.

5 Q. Okay. Do you know if -- if new, completely
6 new -- newly redrafted agreements were exchanged prior
7 to this Fifth Amendment being executed?

8 A. That's something the lawyers did. I don't
9 know.

10 Q. That's something we will visit with Robert
11 about?

12 A. Yeah.

13 Q. You have said it was contentious. Were your
14 negotiations for the Third Amendment contentious back
15 when you first came or not? You --

16 A. That was which date?

17 Q. Back in 2000, when you took over the club.

18 A. No, they were not at all.

19 Q. So was the genie out of the bottle, if you
20 will, with Nelson at this point? You didn't think he
21 was doing a good job or --

22 A. Pretty much so.

23 Q. But --

24 A. I was willing to just say let's go forward and
25 put it behind us and come to an agreement because, as I

1 that we -- if we can make him head of basketball
2 operations. And I had a conversation with Donny, and
3 I -- you know, to this day I think the world of Donny,
4 and we -- we managed to come to a deal.

5 Q. He is still there, isn't he?

6 A. Yes, he is.

7 Q. So you had -- you thought you were paying
8 Mr. Nelson too much?

9 A. Because -- I thought that I was paying an
10 aggregate too much for the work that was being done for
11 a general manager, because I was paying Donny I think
12 \$1.9 million already, and Donny -- Nellie would go to
13 Hawaii, and Donny was doing most of the work.

14 Q. So you enter into another agreement to pay him
15 the same 3.5 for a coach and 1.6 for general manager
16 for three years ending June 30th, '06?

17 A. Yes, sir.

18 Q. Okay.

19 A. That's what it says here.

20 Q. Did -- during the negotiations when you
21 were -- did you suggest other numbers at first? Did
22 you want to suggest dropping him off as general manager
23 since Donny was doing it?

24 A. I don't recall specifically, but I do recall
25 that I wanted to pay him less, and he was of the

1 opinion that since we had just gone to the Western
 2 Conference finals, that his aggregate compensation
 3 should not be less than the previous year.
 4 Q. But you don't -- again, you don't have any
 5 recollections of discussions pertaining to the deferred
 6 compensation aspect of his contract?
 7 A. No, no specific discussions at all.
 8 Q. So you signed up the agreement, then, the
 9 Fifth Amendment. And let's look at this exhibit that's
 10 attached to it, if you will.
 11 So we are now at July 1 of '03, July 1 of
 12 '03. And if you looky here, at this point in time
 13 under the schedule attached to the contract, you've
 14 got -- now he's got the words typed in "earned" by 1.8,
 15 1.8, 900, 900, and 900. That's 3 -- 2.7 and 3.6 is --
 16 that would show an earned -- earned deferred
 17 compensation under this schedule of 6.3 million, if my
 18 math's right. Do you see that?
 19 A. Yes, sir.
 20 Q. And then it says that he's going to earn the
 21 rest of his comp at 900,000 for the year of 2003, 2004,
 22 900 through '04 '05, 900 through June 30th, '06, at
 23 which time he would then have earned out the \$9 million
 24 of deferred comp that we talked about in the Second
 25 Amendment. Do you see that?

1 Q. '03/'04, now is this when Nash left?
 2 A. No, this is before Nash left.
 3 Q. Nash left the next season?
 4 A. Nash left the last season, yeah.
 5 Q. So --
 6 A. I mean, that was also the season when Nellie
 7 kept on saying, speaking of Nash, you know, he's
 8 wearing down. He would tell me he is wearing down. We
 9 have to limit his minutes, you know, 25, 30 minutes a
 10 game. We've got to protect him. It was just a
 11 difficult season.
 12 Q. In the '03/'04 season, did you and Mr. Nelson
 13 have any blowups or disputes like you had had in the
 14 prior season?
 15 A. I don't remember any specific blowups. Yeah,
 16 I remember the beginning of the season being excited
 17 because we had traded for the two Antwons, Antwon
 18 Walker and Antwon Jamison, and Nellie was excited
 19 because he had finally got his point forward. Antwon
 20 Walker was a guy who could bring the ball up, and, you
 21 know, as it turns out it was one of the biggest
 22 mistakes in the history of basketball because we were
 23 giving the ball to Antwon -- Nellie made the decision
 24 to give the ball to Antwon Walker a big percentage of
 25 the time rather than to Steve Nash, a future MVP.

1 A. I see it, yes, sir.
 2 Q. All right. And under the agreement as it's
 3 signed, and rather than just go back through all the
 4 terms of it here, because this language appears to be
 5 strikingly similar to the Second Amendment and the
 6 Third Amendment, looks like the lawyer is just bringing
 7 it forward and changing the numbers, the attached --
 8 the same paragraph, the attached schedule A is a table
 9 summarizing the compensation, payable under paragraph
 10 4, and so forth.
 11 Take me in through the first season of
 12 '03/'04 under the new contract, what happens?
 13 A. It was a horrible season.
 14 Q. Horrible season?
 15 A. Uh-huh.
 16 Q. Okay. Tell me about it. What was -- what --
 17 A. Our road record was our first losing road
 18 record in years, or at least a couple of years. We
 19 lost in the first round of the playoffs to Sacramento,
 20 a team we thought we should beat. Nellie didn't even
 21 hold a practice before the fifth game of the Sacramento
 22 series, which pissed off a lot of the players. It was
 23 just a difficult, difficult season. We had -- we had
 24 made a bunch of trades, and it just -- we had a group
 25 of players that just didn't work well together.

1 So that was -- it turns out in hindsight
 2 a huge strategic mistake, and Antwon Walker turned into
 3 almost a team killer. I mean, his attitude was bad.
 4 He was me first, and it was obvious that he was a
 5 reason why we were struggling. And so, you know, it
 6 was just -- it was just a difficult season.
 7 Q. So at the end of -- of '04, though, had you
 8 had any discussions about either firing -- did you
 9 blame that season on Mr. Nelson --
 10 A. I don't blame any seasons on anybody.
 11 Q. Okay. Did you make any -- did I interrupt
 12 you? You were beginning say something.
 13 A. No.
 14 Q. Did you think about replacing him as head
 15 coach?
 16 A. Yes.
 17 Q. Did you interview other people?
 18 A. No, sir.
 19 Q. So -- now, you said Mr. Johnson had been let
 20 go?
 21 A. He was traded.
 22 Q. Traded. Did you bring him back?
 23 A. No, sir.
 24 Q. Well, you brought him back at some point as --
 25 A. After that season.

1 Q. After that season. Okay. Staying on your
 2 schedule there, if we go to the end of '04, if I'm
 3 hearing you right, Mr. Nelson was paid his 3.5, his
 4 1.6, and he had earned another 900,000 on his deferred
 5 comp. Are you with me so far?
 6 A. You've read it correctly.
 7 Q. Now, if you'll look down, here now the
 8 compensation schedule down here at the bottom it shows
 9 "Paid," do you see that on the schedule?
 10 A. Yes, sir.
 11 Q. So if I'm going through here, if I'm reading
 12 this right, '03 to '04, he had earned -- he had been
 13 paid \$1 million of the deferred comp; do you see that?
 14 A. Yes, sir.
 15 Q. So he had his salary for head coach, his
 16 salary for general manager, and now his nine years of
 17 deferred comp, the first year's kicked in and the club
 18 paid him, yes?
 19 A. I presume so, yes, sir.
 20 Q. Now, when you start paying him his deferred
 21 comp, even though it's being earned out over a -- okay.
 22 It's being earned, that's going to be paid just like
 23 his compensation every two weeks; you take the whole
 24 year of a million dollars of deferred comp and chop it
 25 up into bimonthly payments?

1 don't we go ahead and plow through, keep going. Can we
 2 do that?
 3 MR. DAVENPORT: Your lunch?
 4 THE WITNESS: Yeah, you are not eating.
 5 MR. DAVENPORT: Did you order me
 6 something?
 7 MR. STODGHILL: Well, I asked you what
 8 you wanted to do. You said you wanted to go downstairs
 9 and get something to eat in one of the shops. So
 10 that's fine.
 11 MR. DAVENPORT: Did you order Jerry
 12 something?
 13 THE WITNESS: We got Jerry all he wanted.
 14 MR. STODGHILL: We got Jerry taken care
 15 of.
 16 THE WITNESS: The Palm is coming for
 17 Jerry.
 18 MR. HARPER: Of all things you should
 19 know, Steve is not going to mess with his meals.
 20 MR. DAVENPORT: Okay. Go ahead and
 21 change the tape.
 22 THE VIDEOGRAPHER: We are off the record.
 23 The time is 11:59.
 24 (Recess for 9 minutes.)
 25 THE VIDEOGRAPHER: This is beginning of

1 A. Yes, sir, while he is not in breach of his
 2 contract, if he is not in breach yet.
 3 Q. I am not talking about breach. I am talking
 4 about the way it's paid. I'm going to go let you tell
 5 me all that according to the note, but the way it's
 6 being paid by the club at this point in time is you are
 7 chopping it up every two weeks.
 8 A. I believe so.
 9 Q. Okay. The club paid those obligations during
 10 that year.
 11 A. I believe so.
 12 Q. All right. So --
 13 A. Again -- again, there were multiple times
 14 where he took time off, authorized and unauthorized;
 15 and so I don't know if there were any implications in
 16 terms of what was paid.
 17 Q. But as we --
 18 MR. DAVENPORT: We'll get up to the break
 19 here at '04, he's got to change tape. Maybe we just
 20 ought to go to lunch now while he changes the tape. I
 21 don't care.
 22 MR. STODGHILL: Yeah, that's fine.
 23 MR. DAVENPORT: I'm going to finish --
 24 MR. STODGHILL: I tell you, our lunch
 25 isn't going to get up here for another 20 minutes. Why

1 tape two. We are back on the record. The time is
 2 12:08.
 3 Q. (BY MR. DAVENPORT) Mr. Cuban, I think we had
 4 just finished through the '04 season, and now we are
 5 starting the '0 -- is that right, did we just --
 6 A. We just -- yeah, we were talking about
 7 '03/'04.
 8 Q. So now we are going into the '05?
 9 A. Where were we at? Talking about Nash and --
 10 there was something else we were going to talk about.
 11 Q. Let's see, we just finished the '04, so we are
 12 going to go '04/'05. Is this where Nash -- we lose
 13 Nash?
 14 A. Right before that season, yeah.
 15 Q. Okay. So you start out, how did you -- how
 16 did the team do in the '04/'05?
 17 A. We did -- we did better than we had done in
 18 the past three years.
 19 Q. How is your relationship with Mr. Nelson?
 20 A. Not good.
 21 Q. It's getting worse?
 22 A. Yes, sir.
 23 Q. Why?
 24 A. He's not working.
 25 Q. So tell me about it.

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1 A. He is not -- he is not coaching all the games;
 2 he's not showing up to practice. You know, he's just
 3 not there.
 4 Q. Has Mr. Johnson been brought on board for this
 5 season?
 6 A. Yes, sir. He came on board initially as a
 7 player. He wasn't ready to retire, but I developed a
 8 relationship with him and talked him into staying on as
 9 a coach.
 10 Q. So he came back for the '04 -- was he being
 11 trained as Mr. Nelson's replacement?
 12 A. I think in Avery's mind he wasn't being
 13 trained. He was just surviving. In Nellie's mind he
 14 was being trained. It was pretty interesting in
 15 talking to both of them.
 16 Q. Well, did Mr. Avery perform some coaching
 17 functions in '04/'05?
 18 A. No question, yes, sir.
 19 Q. Okay. What -- you said Mr. Nelson was not
 20 performing -- was he not coming to work or what?
 21 A. On several occasions, yes.
 22 Q. Did you have a talk with him and ask him what
 23 was wrong?
 24 A. I don't remember specifics, but I mean, we --
 25 we had various short discussions. He was always

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1 looking to try to trade away the team, you know. He
 2 went -- you know, he'd call on his own and try to trade
 3 Jason Terry for Carlos Arroyo and Gordan Giricek. He
 4 tried to do some other trades. He just, you know, he
 5 was just -- he made it clear he wasn't happy.
 6 Q. Well, did you-all talk in that season about
 7 cutting the strings?
 8 A. No, sir.
 9 Q. Did you think about firing him for cause for
 10 not doing his duties?
 11 A. Yeah, but I had thought about it many, many,
 12 many times. I mean, there was no question he wasn't
 13 doing his job and wasn't living up to his obligation,
 14 but Avery wasn't ready yet.
 15 Q. Okay. Coming up through, how did the team do
 16 in the '04/'05 season?
 17 A. We did okay in the regular season. You know,
 18 Nellie -- and that was one of the things that pissed me
 19 off about Nellie. Nellie was telling everybody that
 20 would listen that this team would never make it out of
 21 the first round of the playoffs. We didn't have a very
 22 good team, and he didn't like our team. But still, in
 23 spite of that, we made it to the second round of the
 24 playoffs. We -- I forget, who did we play the first
 25 round? I know, we played -- we played Houston the

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1 first round, and it was one of the best comebacks ever.
 2 We went down 2-0, loosing the first two games at home.
 3 Then we -- then we went to Houston and won two games,
 4 and then we lost a game in Houston, and then we came
 5 back in game 7 and we beat Houston by 40 points in a
 6 game 7 which was is incredible. So from that
 7 perspective it was -- it was great, and then we lost to
 8 Phoenix in the next round.
 9 Q. Now, this is '04/'05?
 10 A. Yes, sir.
 11 Q. We know that the events are going to develop
 12 where Mr. Nelson will step down as head coach on March
 13 19th, 2005?
 14 A. Yes, sir.
 15 Q. Okay. Tell me how that came about.
 16 A. We were at our charity event, Tux -- Tux and
 17 Tennies, and, you know, it was just going to be another
 18 event. And then Del Harris came to me and said that
 19 Nellie wanted out, Nellie was ready to leave, and the
 20 most important thing to Nellie was continuing to be
 21 paid. And that if we didn't pay him, we were going to
 22 get exactly what we had been getting from him to this
 23 date. Would I consider letting him resign and continue
 24 to pay him?
 25 And I said, "Where do I sign?" You

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1 know -- and I will qualify that. I think -- well, I am
 2 trying -- yeah, Avery and I had been having
 3 conversations -- what had changed up to that point was
 4 in talking to Avery, I was getting more and more
 5 comfortable that he was ready. His preparation was
 6 meeting my desperation. And so when -- when Del came
 7 to me, I was like "Where I do sign?"
 8 Q. Okay. Let's see what -- this is -- well,
 9 strike that.
 10 Were you and Mr. Nelson beating each
 11 other up in the press at that point?
 12 A. Nellie was throwing -- I don't recall my
 13 saying anything specific in the press, other than I
 14 wasn't going to let Nellie go to Hawaii, and I remember
 15 going in and telling him that. And I don't remember if
 16 it was that year or the previous year. I think it was
 17 that year, saying, "Look, I am not going to fire you.
 18 I am going to make you work this out. I am not going
 19 to pay you to go to Hawaii." And I don't remember
 20 specifics in the press at that point in time. Later
 21 than that, yes, but I don't remember the specifics what
 22 was going on in the press.
 23 Q. Okay. I am sure -- have you read the
 24 petition? Obviously, your recollection of events and
 25 Mr. Nelson's recollection of events are a little bit

1 different. Actually, they are very different. The --
 2 Mr. Nelson recalls that he was approached
 3 by Del Harris who informed him that he had talked to
 4 you and that you had told him that you didn't want
 5 Nelson to continue coaching, but you thought that Avery
 6 Johnson would do a better job in coaching the team and
 7 that you-all asked him to let the transition occur. Is
 8 that not the way you recall it?
 9 A. No. I can tell you with a hundred percent
 10 accuracy that I did not approach Del to approach
 11 Nellie.
 12 Q. Okay. So tell me how it came back, then, you
 13 say that --
 14 A. Del approached me.
 15 Q. Del approached you, and he said Nelson
 16 approached him?
 17 A. Yes, sir.
 18 Q. And what did he say Mr. Nelson said?
 19 A. He wanted paid, and if he was paid, he would
 20 go away nicely, and if he wasn't -- and if he was -- if
 21 something didn't happen, he would continue to coach
 22 with less than full effort.
 23 Q. All right. Well, let's see what the club's
 24 options were. Was that in, what, February of 2005,
 25 January, February, March?

1 he -- in name he was still the coach.
 2 Q. And how was the team doing at the time
 3 Mr. Johnson stepped up?
 4 A. It was doing okay. I mean, I don't remember
 5 exactly what our record was, but I do remember that
 6 once Avery took over, we went like 18 and 2 or
 7 whatever. I mean, we immediately started playing much
 8 better.
 9 Q. So if you -- if I'm understanding you
 10 correctly, you didn't think Mr. Nelson was performing
 11 up to speed as general manager.
 12 A. Correct.
 13 Q. You didn't think he was performing up to speed
 14 as the coach of the Mavericks.
 15 A. Correct.
 16 Q. He was taking a lot of absences off.
 17 A. Correct.
 18 Q. He was making a lot of money.
 19 A. Correct.
 20 Q. Because, in addition to his being coach and
 21 general manager's salary, he was also now getting his
 22 deferred comp had kicked in and the club was paying
 23 that on a bimonthly basis, correct?
 24 A. You would have to check with the accountants.
 25 Q. That's what the records show. The -- at that

1 A. You just told me it was March 19th.
 2 Q. March is when it came down, when y'all had a
 3 press conference, didn't you, and announced it?
 4 A. March was when the Tux and Tennies was, I
 5 believe.
 6 Q. Okay. Well, if I'm hearing what you are
 7 saying right, Donny Nelson was effectively operating as
 8 general manager, doing a lot of the duties as general
 9 manager.
 10 A. Depends on which duties. In terms of trades,
 11 yes. I lost my trust in Nellie in terms of trades. In
 12 terms of drafts, no. Nellie was still very active in
 13 terms of draft picks. He was -- it was his -- Devon
 14 Harris, which is the 2004/2005 season, was his pick.
 15 Specifically, I remember setting there in the draft
 16 room with Nellie and having him watch Devon Harris
 17 tapes from Wisconsin saying I really, really like this
 18 guy, look at the separation, this guy's got
 19 explosiveness, and so he was -- he was still active in
 20 terms of some of his general manager duties but just
 21 not many.
 22 Q. Okay. And he was still performing coaching
 23 duties?
 24 A. Not well, but, yeah, he was -- and I won't
 25 even say he was performing all his coaching duties, but

1 point in time, if you were unhappy with him, why didn't
 2 you just fire him for cause?
 3 A. Because the nature of the industry is, you
 4 know, different coaches have different styles; and to
 5 bring somebody in, they'd have to not only adjust to
 6 the players, but the players would have to adjust to
 7 them. And so even though we were in -- it wasn't an
 8 optimal situation, there was at least some certainty
 9 and understanding to what we were getting. And so I'd
 10 rather -- my preference, as I told you earlier, the
 11 devil you know is a whole lot better than the devil you
 12 don't know. And if you look at the history through
 13 teams -- throughout history NBA, teams that just make
 14 abrupt changes because they don't like what they have,
 15 you are never in a good position to go out and get
 16 something better.
 17 Q. But you had -- Mr. Johnson had been groomed.
 18 You said he was ready for prime time.
 19 A. No, I didn't say that.
 20 Q. I misunderstood you.
 21 A. I said I had been talking to Avery, and he
 22 felt like he was ready, and we -- I felt like I -- what
 23 I think -- if I remember correctly what I said was, his
 24 level of preparation had met my level of desperation,
 25 and -- and I was ready to make the choice. At least I



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<p>1 had some understanding of Avery, Avery knew our 2 players, and our players knew Avery. And I actually 3 talked to some of our players who felt Avery would do a 4 good job. 5 Q. So March of '05, then, Mr. Nelson says he will 6 graciously step down, not make a big scene, yes? 7 A. He didn't use those words to me, but, yeah, 8 that was my understanding. 9 Q. When he stepped down to let Mr. Avery step in, 10 you assured him that the club would honor the terms of 11 his contract, correct? 12 A. I believe -- I don't know specifically the 13 exact words, but I believe so, yes, sir. 14 Q. When he stepped down in March, you never told 15 him that he would not receive his consultant salary 16 that would kick in on July 1st, 2006; is that correct? 17 A. That's correct. 18 Q. Okay. Now, back to my earlier question. 19 Looking at the amount of money that the club was paying 20 him and looking at your allegations today that he 21 wasn't doing a good job and looking at your allegations 22 and the fact that Mr. Johnson had been -- had been in 23 pretty good shape, I mean, you thought he was coming 24 along, explain to me again why you wouldn't have just 25 said, Mr. Nelson, we are going to terminate you for</p>	<p>1 many other problems. 2 Q. What, if you just terminated him, said it's 3 over, what were you afraid -- 4 A. I mean, I can't tell you how many times 5 that -- the nature of the basketball industry is any 6 head coach who is perceived that they could get another 7 job is very incestuous, and so people wanted to stay in 8 their good graces. We had people who were on our 9 staff -- a lot of people who were in the organization 10 that Nellie had hired. And there were many times that, 11 you know, Nellie -- I think Nellie played the fact that 12 he hired him and tried to play to their loyalties or 13 tried to create loyalties that he could leverage. 14 I mean, after he left and was coaching 15 Golden State, he would walk through our offices like he 16 still was there, you know, like he still worked for the 17 Mavericks, just walk through the offices. It wasn't 18 like, hey, can I come in, it was -- and people felt 19 uncomfortable with that. So that's just an example, 20 but that's just the way Nellie is. I wouldn't trust 21 him as far as I can throw him. 22 Q. But going back to March of '05, was he 23 popular? 24 A. Depending on who you spoke to. 25 Q. Was he popular with Dallas; was he popular</p>
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<p>1 cause, enough is enough, you are not doing your job, 2 and just end it like that? 3 A. Because I didn't trust him. 4 Q. What does that mean? 5 A. That means I -- at least I had some 6 obligations from him. You know, he had told me -- I 7 said, look, Nellie, we can be -- we can be friends 8 and -- well, two parts. One, he had said that he was 9 only going to ride off in the sunset friendly if we 10 continued to pay him. So that was -- that was a key. 11 Q. But what could he do? I mean, ride off 12 friendly? 13 A. Nellie, are you kidding me? 14 Q. What could he have done? 15 A. I mean, I can speculate all I want, but let's 16 put it this way, I didn't trust him. 17 Q. But, I mean, if you fired him, then he 18 couldn't have continued to coach less than full speed, 19 isn't that what you told me, if you didn't -- didn't 20 you tell me something, if you kept him on, he would 21 just kind of do it, but his heart wasn't in it? 22 A. Yes, sir. 23 Q. So if you fired him, you wouldn't have that 24 problem, would you? 25 A. No, sir, but I would have the potential for</p>	<p>1 with the press? 2 A. I couldn't speak to that. I don't know. 3 Q. Was he popular with Randy Galloway? 4 A. Yeah, yeah, yeah. They were buddies. 5 Q. Why did Mr. Galloway think so highly of him? 6 A. I don't know. You'd have to ask Randy. 7 Q. But he'd write nice stuff about him, wouldn't 8 he? 9 A. My understanding is they are drinking buddies, 10 yes. 11 Q. The -- was Mr. Nelson popular with other 12 people? Was he popular with the players and the 13 coaches? 14 A. Some players yes, some players no. Some 15 coaches yes, some coaches no. Some in the organization 16 yes, some in the organization no. It varied by person. 17 Q. All right. So the deal was -- 18 A. You couldn't -- I couldn't say across the 19 board he was just well-liked by everybody. I would not 20 make that statement about Nellie. 21 Q. Do you think you are well-liked by everybody? 22 A. I have no idea. 23 Q. As of March 2005, then, he steps down as head 24 coach, and you say if you'll step aside gracefully, we 25 will continue to honor your contract and let Avery</p>

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1 start coaching and team, and he did that?
 2 MR. STODGHILL: Objection as to form.
 3 A. Yes, sir.
 4 Q. (BY MR. DAVENPORT) Now, what did you expect
 5 Mr. Nelson -- since you had effectively taken away his
 6 head coaching duties, he was helping with the draft.
 7 What else did you --
 8 A. That was before. No, that was before.
 9 Q. Huh?
 10 A. When he was helping with the draft, that was
 11 while he was still employed for both positions.
 12 Q. Why -- post March 19, 2005, --
 13 A. Right.
 14 Q. -- what did you expect Mr. Nelson to do?
 15 A. To be available when we had questions or that
 16 we felt that he was best prepared or had the greatest
 17 amount of experience and to help. We knew that there
 18 would be issues that -- not issues, but that Avery
 19 would have questions, you know, and although we had Del
 20 and Donny and Larry Riley and others as a resource, we
 21 wanted him to be there and be available as resource.
 22 There were certain -- you know, Nellie is -- Nellie can
 23 be a very effective coach, and in certain situations
 24 having the benefit of that knowledge could be of value.
 25 Q. So was he available to you if you needed him?

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1 A. Not really. He was supposed to be, but he
 2 wasn't.
 3 Q. Well, did you ever try to ask him to do
 4 something that he didn't do?
 5 A. Avery multiple times called him and didn't
 6 receive a response from him.
 7 Q. Okay. Let me -- let's get up to -- before our
 8 lunch break, why don't we get up to the end -- to June
 9 30th, 2005, and we'll take our snapshot there.
 10 A. Okay.
 11 Q. June of 2005, the 2004/2005 season's over,
 12 yes?
 13 A. Correct.
 14 Q. Did you-all make the playoffs?
 15 A. Yes, as I stated earlier.
 16 Q. Yes, but you didn't -- okay. Avery's now
 17 functioning a head coach?
 18 A. Yes, sir.
 19 Q. You had paid Mr. Nelson the 3.5, the 1.6, and
 20 you had paid him -- I meant 2005, you had paid him
 21 another million dollars on his deferred comp?
 22 A. I presume so, yes, sir.
 23 Q. Okay. Now, up through that point in time, had
 24 either -- had the Mavericks or anybody asked Mr. Nelson
 25 to do something that he had refused to do that you felt

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1 he had an obligation to do under his agreement?
 2 A. I don't recall, no, sir.
 3 Q. All right.
 4 MR. DAVENPORT: So why don't we break.
 5 MR. STODGHILL: Okay.
 6 THE VIDEOGRAPHER: Off the record. The
 7 time is 12:26.
 8 (Recess for 54 minutes.)
 9 THE VIDEOGRAPHER: We are back on the
 10 record. The time is 1:20.
 11 Q. (BY MR. DAVENPORT) I think at the break we
 12 had just gotten through the end of the June 30th, 2005,
 13 so let me take you to the 2005 and 2006 season. What
 14 did Mr. Nelson do during that period of time? What
 15 happened at the Mavs in that period of time? Was Avery
 16 coaching?
 17 A. Avery was coaching, and Nellie was to be
 18 available for questions and just general support
 19 issues.
 20 Q. Did you continue to honor his contract during
 21 that time?
 22 A. Yes, sir.
 23 Q. And did -- did you have any problems with him
 24 or --
 25 A. During the regular season, no.

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1 Q. So had your --
 2 A. Not that I recall.
 3 Q. Had your arguments or the problems that you
 4 had had, had things settled down with him? Was your
 5 relationship better?
 6 A. I mean, it was better simply because it wasn't
 7 a lot of contact.
 8 Q. All right. How did the Mavs do during that
 9 season?
 10 A. We went to the finals.
 11 Q. So if we get through through June 30th, 2006,
 12 under the Fifth Employment Agreement, this is his last
 13 year as the head coach?
 14 A. Correct.
 15 Q. 2005, and --
 16 A. Would have been his last year.
 17 Q. And that's going to be his last year as
 18 general manager?
 19 A. Would have been his last year as general
 20 manager.
 21 Q. And then on July 1 of 2006 through June 30 --
 22 2006 -- '11, he was going to be a consultant?
 23 A. Yes, sir.
 24 Q. Now, during the -- the playoffs you say the
 25 Mavs got to the finals?

1 A. Yes, sir.
 2 Q. Was Mr. Nelson around during the playoffs?
 3 A. Yes, sir.
 4 Q. And how was your relationship with him during
 5 that period of time?
 6 A. Cordial.
 7 Q. Did he -- was he there in the -- in the -- at
 8 the games and everything?
 9 A. Yes.
 10 Q. Seems like I saw somewhere there was an
 11 incident that -- and I don't know whether I read it or
 12 whether Mr. Nelson told me or whether I saw it in a
 13 pleading, that he was standing at or near the tunnel,
 14 and -- and Mr. Woods had a -- security guards asked him
 15 to move?
 16 A. Yes, sir.
 17 Q. What was that?
 18 A. The head coach Avery Johnson called me into
 19 his office and said that on an ongoing basis that he
 20 had been getting reports from friends and media and
 21 others, other coaches I believe he also said, that were
 22 sitting in the areas adjacent to the tunnels, and that
 23 Nellie was continually bad-mouthing him to those
 24 individuals. And so Avery called me into his office
 25 and said, look, it's just not right. Can you do

1 notice that he had in any way breached the contract; is
 2 that a correct statement?
 3 A. That's correct.
 4 Q. And so on July 1, then, he became a
 5 consultant. I looked at this amendment, and I didn't
 6 see really what the duties of a consultant were set
 7 forth in it. What was a consultant supposed to do?
 8 A. I mean, I can just give you my general
 9 impressions of what we discussed, just -- just be
 10 available and be supportive. And in exchange, I mean,
 11 there were several things. There were things he wanted
 12 like, you know, if we were to win a championship at any
 13 point in time during that -- that consulting agreement,
 14 he would get rings, you know, it's traditional to get
 15 championship rings. He would be -- you know, I would
 16 say nice -- we would say nice things about him so he
 17 could take part of the credit and all that kind of
 18 stuff. And he would -- he would be welcome around the
 19 organization.
 20 Q. So you-all weren't beating each other up in
 21 the press?
 22 A. Not that I remember, no.
 23 Q. So you were getting along okay?
 24 A. I mean, as well as you can get along with
 25 people you don't see.

1 something about it?
 2 And I said, okay, we'll come up with a
 3 scheme where we'll just say -- I'll get Terdemda to get
 4 security to clear out that entire area of everybody and
 5 just say it's for a fire hazard reasons. So it was at
 6 the request of Avery Johnson.
 7 Q. When I asked that question I had asked --
 8 MR. DAVENPORT: I said Woods for some
 9 reason. That should be Johnson, Mr. Callaway. Would
 10 you correct that? I want to get that guy's name right.
 11 Q. (BY MR. DAVENPORT) But you didn't have any
 12 big incidents like the Nowitzki incident in the last
 13 season with Mr. Nelson?
 14 A. Other than he wouldn't return phone calls,
 15 Avery's phone calls, and, again, that's according to
 16 Avery.
 17 Q. So if I go to take my snapshot on June 30th,
 18 2006, the Mavs had paid Mr. Nelson the 3.5 million
 19 in -- for head coach, they paid him the 1.6 as the
 20 general manager, and he had earned his last year
 21 \$900,000 of deferred comp, correct?
 22 A. You have got the correct date, yes.
 23 MR. STODGHILL: Objection as to form.
 24 Q. (BY MR. DAVENPORT) Now, as of that period of
 25 time, the Mavs had not given Mr. Nelson any written

1 Q. All right. Exhibit Number 10 is -- it's an
 2 e-mail traffic that you-all produced in response to our
 3 discovery. If I read these correctly, I think you read
 4 them from bottom to top. Turn to the -- in fact, we go
 5 to Monday, June 26th, Floyd Jahner is sending you an
 6 e-mail subject Nellie.
 7 A. Uh-huh.
 8 Q. "We are cutting all" -- "we are cutting all of
 9 Nellie's benefits effective 6/30/06."
 10 A. Uh-huh.
 11 Q. "He will get the consultant's salary and no
 12 benefits. One question I want to clarify as the
 13 question might come up. He is not entitled to his
 14 tickets from this point forward; however, if he asks to
 15 purchase them, can he? My personal opinion is either
 16 say no or reduce the quality as we have a limited good
 17 inventory like the tickets he has. Thanks, Floyd."
 18 So under his deal, under Nelson's deal he
 19 had had some tickets?
 20 A. Correct.
 21 Q. How many?
 22 A. Four, I believe.
 23 Q. And were they good tickets, good seats?
 24 A. I don't know exactly where they were, but I
 25 presume so.

1 Q. And so if you are cutting off -- as of the
2 June 30th, that's the last of the big payments as head
3 coach and as general manager?

4 A. Correct. Correct.

5 Q. Okay. And starting in -- in this consultant
6 period, he's going to be paid \$200,000 a year in
7 accordance with the club's normal payroll practices?

8 A. Correct.

9 Q. All right. But he's not going to -- there is
10 no more -- under your schedule here he is not earning
11 any more deferred compensation because it's already
12 earned at this point, correct?

13 MR. STODGHILL: Objection as to form.

14 A. Again, that's more of a legal question. I --
15 you know, there is a couple of questions in there. He
16 is not -- whatever it says there, I mean, I -- I don't
17 know for certain.

18 Q. (BY MR. DAVENPORT) Well, I understand the
19 Mavs are taking the position that they don't have to
20 pay the deferred comp, but I don't understand the Mavs
21 taking the position that the deferred comp had not been
22 earned under the contract. Are you taking that
23 position?

24 A. I defer to my lawyers for all those types of
25 questions.

1 Q. Okay. So you don't know whether the Mavs are
2 taking the position that the deferred comp is or is not
3 earned as of 6/30/06?

4 MR. STODGHILL: Objection as to form.

5 A. Again, this is just a situation where I would
6 just -- under normal circumstances just call up the
7 lawyers and say, okay, what's our position on this, and
8 I'm not -- rather than me trying to, you know, recount
9 a memory that may or may be incorrect, I would rather
10 just defer to those folks.

11 Q. (BY MR. DAVENPORT) Well, okay. I guess I
12 have not addressed that. Put it this way. As of
13 6/30/06, the Mavs on all of their internal financial
14 documents had treated the deferred compensation as
15 being earned each year; is that correct?

16 A. I don't know. I don't know if we had expensed
17 it, in what year we expensed it, or if we had expensed,
18 or if we were just purely on a cash basis. So I don't
19 know.

20 Q. Aren't the Mavs on accrual basis for tax
21 purposes? You don't -- you are not a cash --

22 A. I am not a tax guy. I wouldn't even know. I
23 know the statements I get, and I know whether we are
24 losing money or making money and what our expenses are,
25 but I am not a CPA.

1 Q. Well, if I go in and look at your Mav
2 documents, we've got your tax returns, my understanding
3 was if the Mavs being accrual basis taxpayers were
4 taking a deduction for the deferred comp in the amount
5 it was earned each, you don't have any knowledge of
6 that one way or the other?

7 MR. STODGHILL: Objection, form.

8 A. I don't know.

9 Q. (BY MR. DAVENPORT) Were the Mavs giving a W-2
10 to Nelson where he had to report the amount of deferred
11 comp he earned for Medicare purposes?

12 A. I have no idea.

13 Q. Okay. And this would be your CFO and your
14 accountants who will look at all those stuff.

15 A. Yeah, I haven't handed anybody a W-2 in a long
16 time.

17 Q. Huh? You have not?

18 A. I haven't handed anybody a W-2 in a long time.
19 I haven't cut one or signed one, so I don't know.

20 Q. Okay. Well, do you have any reason to think
21 the Mavs at this point in time, June 30th, 2006, any
22 reason to think that the Mavs weren't treating the
23 deferred compensation set forth in Exhibit 8 as being
24 earned by Mr. Nelson?

25 A. I have no understanding how we treated it one

1 way or the other.

2 Q. Okay. Now, we do know that the \$9 million set
3 forth in Exhibit A, we do know that the Mavs had
4 started paying that on July 1st -- they started paying
5 it in the year '03 to '04, '04 to '05, and '05 to '06.
6 So as of 6/30 the Mavs had paid \$3 million in deferred
7 comp on a bimonthly basis, right?

8 A. I guess so.

9 Q. All right. As of 6/30/06, had anyone at the
10 Mavs, either orally or in writing, told Mr. Nelson or
11 his attorney or his accountant that as far as the Mavs
12 were concerned Mr. Nelson had not earned his deferred
13 comp?

14 A. Not that I am aware of, no.

15 Q. I'll ask you the same question, and I'll
16 change the word from "earned," had you told any of
17 those people that the Mavs did not believe the deferred
18 comp is payable, the earned deferred comp is payable?

19 A. Have we told Mr. Nelson that we didn't believe
20 that the deferred -- I don't think we made a statement
21 one way or the other.

22 Q. One way or the other. Okay. And up until
23 June 30th, 2006, we know that the Mavs had not
24 treated -- well, strike that -- the Mavs had not given
25 any types of notice to Mr. Nelson that he was in

1 breach?
 2 A. We hadn't made any determinations one way or
 3 the other.
 4 Q. Okay. Let's go back to my exhibit. Floyd
 5 Jahner asked you this question, and you write back,
 6 "Actually, I think he can keep the tickets if he pays
 7 for them and he no longer gets the consultant's salary.
 8 If I remember correctly, that was part of the
 9 termination deal."
 10 Where did that come from?
 11 A. That's -- Floyd was just questioning what the
 12 status of it was, and I really didn't know what the
 13 exact status of it was, and I would have preferred not
 14 to pay him the money.
 15 Q. You didn't say "I don't know." You said, "If
 16 I remember correctly, he no longer gets the
 17 consultant's salary. That was part of the termination
 18 deal."
 19 When you said "termination deal," were
 20 you talking about when he stepped down as head coach on
 21 March 19th, 2005?
 22 A. That's what I was referring to, but as you
 23 note there, and I can read it back to you, is -- I said
 24 I think, even if I remember correctly, I just wasn't
 25 sure, so the way that I worked with Robert, with our

1 one. So Mr. Jahner, coming up e-mail, says, "I will
 2 see if he asks to keep or pay for the tickets. On the
 3 consultant's salary, I waited to check my file this
 4 morning, but I have an e-mail from you back in March
 5 2005 that states his dollars stay the same and no
 6 changes to the contract. This would have us pay him
 7 \$200,000 per year for the next five years as
 8 consultant."
 9 A. Uh-huh.
 10 Q. "Additionally, we are also scheduled to pay
 11 him previously earned deferred comp of \$6,600,000 for
 12 the next nine years."
 13 A. Uh-huh.
 14 Q. Now, does that refresh your recollection that
 15 the Mavs at this point in time was treating all of the
 16 deferred compensation in schedule A as being earned?
 17 MR. STODGHILL: Objection as to form.
 18 A. It's just what Floyd wrote in the e-mail.
 19 Q. (BY MR. DAVENPORT) What was Mr. Johner's
 20 position?
 21 A. He doesn't have a position. He just reflects
 22 what was in the contract.
 23 Q. What was Mr. Johner's job occupation?
 24 A. In this particular case, in our discussions of
 25 these types of situations, he -- his job is to -- to

1 folks is, you know, here is where it is. You guys tell
 2 me otherwise because you are the accountant, you are
 3 the lawyer, and I'll defer to you.
 4 Q. But when you got this e-mail, when you wrote
 5 this e-mail, your recollection was that when he stepped
 6 down as head coach, when he got his last payment as
 7 head coach and as general manager on June 30th, 2006,
 8 that that was the end of the contract?
 9 A. I wasn't sure.
 10 Q. That's what you said, though, that's what you
 11 thought at the time?
 12 A. No, actually what I said was, I think, and if
 13 I remember correctly, and so that I wasn't sure. And
 14 that's just the way I communicate with our folks. This
 15 is just our manner of communications. It wasn't a
 16 declaration of --
 17 Q. I am not arguing with you. I'm just saying
 18 when you wrote that down, your remembrance at that
 19 time, as you said, if I remember it right, you said he
 20 doesn't get if anymore money, that's the termination of
 21 the deal. And you were asking for their input. That's
 22 your words.
 23 A. No, I know what I said. I'm just telling you
 24 what my intent was.
 25 Q. Okay. Come on back. Let's go to the next

1 relay the facts as opposed to take a position.
 2 Q. Was he CFO, chief financial officer?
 3 A. This isn't a public company, so I mean -- I
 4 don't -- is his title CFO specifically? Yes, he is
 5 CFO.
 6 Q. I'm glad we got there?
 7 A. But at the same time --
 8 Q. The chief financial officer --
 9 A. Right.
 10 Q. -- of the Mavericks, the chief financial
 11 officer --
 12 A. Yeah.
 13 Q. -- was telling you on June 27th, 2006,
 14 "Additionally, we are also scheduled to pay him
 15 previously earned deferred comp of 6.6 million over the
 16 next nine years."
 17 A. Right.
 18 Q. So is it not a fair statement, then, that the
 19 Mavs were, in fact, treating the \$6.6 million of the
 20 deferred compensation as being earned by Mr. Nelson as
 21 of the date of this e-mail?
 22 A. No, it's not, it's that -- it's a fair
 23 position it was Floyd's position that that's where we
 24 were at that point in time, because we hadn't had a
 25 reason really to discuss it yet.

1 Q. So the e-mail from the chief -- you are going
 2 to tell this to Judge Ashworth, that the chief
 3 financial officer says, yeah, Mr. Nelson has earned
 4 this comp, and we are going to owe it to him for 6.6
 5 million, you are going to say the CFO officer is
 6 speaking out of school?
 7 A. Yep.
 8 MR. STODGHILL: Objection as to form.
 9 A. Just like I told you, general manager position
 10 wasn't one that we defined traditionally.
 11 Q. (BY MR. DAVENPORT) Had any -- we have looked
 12 at all these e-mails that y'all have produced, and we
 13 don't see a single e-mail up to this point in time or a
 14 single contract or a single document that says under
 15 any reading that the 6.6 million would not have been
 16 fully earned at this point. Is there another document
 17 that I am -- you know of that I don't know about?
 18 A. No, but you didn't see any e-mails about men
 19 on the moon. There are a lot of things that aren't
 20 covered. You know, it just wasn't a topic that would
 21 have come up.
 22 Q. See what he says about this deferred comp. He
 23 says, "This is comprised of \$1 million a year for six
 24 years and \$200,000 for the following three years
 25 relating to a defer ral election we exercised with the

1 A. Uh-huh.
 2 Q. Is that "yes"? I read that right, didn't you?
 3 A. You read it correctly.
 4 Q. So you had asked your advisor about the
 5 \$200,000, you said, "I don't think that's the way I
 6 remember the deal." He said, "Oh, yes, it is. Here is
 7 the contract, here is your e-mail, right there,
 8 contract hadn't been changed."
 9 You said, "I might have left it out of
 10 the e-mail, but we didn't agree that we would pay the
 11 200,000, so let's not pay it." Why didn't you follow
 12 Mr. Johner's advice at that point when you had the
 13 documents right in front of you?
 14 A. Because this was a discussion. It wasn't --
 15 it was ongoing discussion; that's why you discuss.
 16 Q. Let's not pay it, you are telling him, let's
 17 not pay it.
 18 A. Well, but -- let's see. So let's not pay it
 19 because -- we didn't have a discussion about it at all
 20 is what -- Nellie and I didn't have a discussion about
 21 it one way or the other. It was just excluded because
 22 it was a short conversation at that point in time where
 23 we were just trying to make -- you know, hash things
 24 out and make them positive. So here we were in a
 25 situation where we were trying to turn a bad situation

1 Fifth Amendment. See the attached file to help lay out
 2 the numbers."
 3 Now, I didn't get a file with this, but I
 4 suspect the file was this Exhibit A. Do you remember
 5 what he sent you?
 6 A. No, and it probably was just a spreadsheet.
 7 That's typically the way Floyd and I communicate, and
 8 for -- I don't know what -- I don't recall specifically
 9 what was in this --
 10 Q. But the e-mail says here this is comprised of
 11 a million a year for six years, that's exactly what
 12 this schedule shows, isn't it?
 13 A. That's amazing, isn't it?
 14 Q. It is. All right. It says, "When we
 15 renegotiated in 2003, Robert and I already had removed
 16 all benefits post June 30th, 2006, thus all the
 17 ancillary stuff will stop effective at the end of the
 18 month."
 19 And you e-mailed back, you told me that
 20 you relied on Jahner to give you his input, right?
 21 A. Correct.
 22 Q. Now, when you e-mailed him back you say, "I
 23 might have left it out of the e-mail, but we didn't
 24 agree that we would pay the 200,000, so let's not pay
 25 it."

1 into a lovey-dovey situation, and we just didn't get to
 2 discuss it. And so I didn't remember what was amended;
 3 and, as we continued to discuss it, it changed.
 4 Q. You keep that e-mail. I am going to come back
 5 to it in just a second.
 6 A. Okay.
 7 Q. Exhibit 11 is another line of e-mails, and --
 8 that were produced. And if you'll look back, if I'm
 9 reading this correctly, you've got Mr. Jahner sending
 10 to you and copying Mr. Hart. It said, "We did not
 11 amend the contract. Per e-mails in March 2005 copied
 12 below, we left the contract as is."
 13 A. I am sorry, where -- where are you reading it
 14 from?
 15 Q. I'm sorry. Look on 11, Exhibit 11, the bottom
 16 of the e-mail traffic.
 17 A. Okay. "We did not amend." Okay. On the
 18 first page.
 19 Q. Huh? Yeah. We are switching, it's hard to
 20 follow these e-mails. June 27th.
 21 A. Okay.
 22 Q. Okay?
 23 A. Got you.
 24 Q. We will come back to that. But if you look
 25 back over there, on the second page of that he

1 apparently sends you the e-mail --
 2 A. Right.
 3 Q. -- dated March 19, '05.
 4 A. See, that's the way we work with our CFO. He
 5 kind of reminds of the e-mails I send him and then we
 6 have that kind of dialogue going back and forth, and
 7 that's what makes it fun.
 8 Q. It says, "No changes, just a job" --
 9 A. Right.
 10 Q. He had asked you back in March 19, that was
 11 the day --
 12 A. Right.
 13 Q. -- Mr. Nelson stepped down. Any immediate
 14 financial impact --
 15 A. I am sorry, you said that was the day
 16 Mr. Nelson stepped down?
 17 Q. March 19, 2005, was the day he announced that
 18 he was going to step -- I thought we had that date.
 19 A. Yeah, yeah, I just didn't hear you.
 20 Q. He writes you and he says, "Any immediate
 21 financial impact for the next payroll, this payroll
 22 needs be submitted by midweek. Do we need to amend the
 23 contract?" You say, "No change, just a job
 24 reassignment, his contract doesn't change."
 25 A. There you go.

1 Q. Right. So that contract that didn't change
 2 was the contract whereby the Mavs are supposed to be
 3 paying him at 200,000 a year in accordance with the
 4 club's monthly payroll practices for him being a
 5 consultant?
 6 A. Yep.
 7 Q. Yes? Is that right?
 8 A. Yep, that's why I pay the CFO to remind me of
 9 these things.
 10 Q. Okay. Let's go back to Exhibit 10. Floyd is
 11 sending you back this e-mail, and he says the same
 12 thing, that he looked -- that he had looked at it,
 13 there were no changes to the contract, and we owe the
 14 money. And you come back and say, we didn't agree to
 15 that, let's not pay it. On what basis did you then say
 16 that, contradict Mr. Jahner's memo when he said, I've
 17 looked at the contract, we owe it, and you come back
 18 and say, let's not pay it, why?
 19 A. It was faulty memory.
 20 Q. But after he had told you you owed it and
 21 showed you the contract and so forth, why did you
 22 say -- what were you relying on?
 23 A. This is July.
 24 MR. STODGHILL: Objection as to form.
 25 A. This is after this.

1 Q. (BY MR. DAVENPORT) Right.
 2 A. So this takes precedent over that. This was
 3 an early conversation. He went back and found the
 4 original e-mails, and then we stuck by where he came
 5 back. So I said, no, pay him the blood money.
 6 Q. But I have an e-mail -- let's stay on my
 7 Exhibit 10. He says, I have an e-mail from you back in
 8 March of '05, presumably -- we will depose him, but I
 9 presume he is referring to the e-mail that I just
 10 pointed out to you, that states that his dollars stay
 11 the same. There is no changes to the contract. Right?
 12 A. Right.
 13 Q. That's the same e-mail. So he said he's
 14 looked at the e-mail, he's looked at the contract, but
 15 yet you said don't pay it, yes? That's what happened,
 16 wasn't it, Mr. Cuban?
 17 A. Oh, because I still hadn't seen the e-mails
 18 yet. He just said it was in an e-mail, and I still
 19 hadn't seen it. I didn't know what he was referring
 20 to, and then when he actually -- this is just the way I
 21 work with our CFOs and my lawyers and other people, and
 22 then they send me -- I'll give them my first
 23 recollection, then they send me the actual e-mail, and
 24 I say, damn, I was wrong. Let's follow through on what
 25 I said originally. That's just the way it works.

1 Q. Okay. June 27th, 2006, at 9:11, let's take
 2 that snapshot. That's this e-mail I'm --
 3 A. Right here. Okay.
 4 Q. At that time, at that moment in time, it is a
 5 fact that the CFO of your company had informed you that
 6 you were wrong in your recollection.
 7 A. Right.
 8 Q. That he had seen the contract, it hadn't
 9 changed, and he had seen an e-mail from you that it
 10 hadn't changed. That's correct, right? That's what he
 11 told you?
 12 A. That's what he told me.
 13 Q. In spite of that, you said, let's not pay it,
 14 that's a fact. That is in your e-mail, right?
 15 A. Correct.
 16 Q. Okay. Now --
 17 A. But the thread wasn't finished yet.
 18 Q. I am going to get -- I am going to let you
 19 tell everything you want to tell. Let me ask the
 20 questions.
 21 A. Okay.
 22 Q. June 27th at 8:27 a.m., Floyd Jahner says, "I
 23 will remove the 200,000 consultant pay from the
 24 schedule for the next five years. If Nellie doesn't
 25 remember this, can I have him discuss it with you?"

1 That's what that says?
 2 A. Yes, that's what it says.
 3 Q. Jahner didn't think you were doing the right
 4 thing, did he?
 5 A. I have no idea.
 6 MR. STODGHILL: Objection as to form.
 7 Q. (BY MR. DAVENPORT) Jahner said if you want
 8 this six foot six guy coming to me about this on this
 9 contract, can I send it to you?
 10 MR. STODGHILL: Objection as to form.
 11 A. I don't know. You have to ask him what he
 12 meant.
 13 Q. (BY MR. DAVENPORT) I will. I will. And so
 14 you e-mail him back, "Just see what he comes back
 15 with."
 16 A. Right.
 17 Q. "If he questions, we can go from there."
 18 A. Right.
 19 Q. Now --
 20 A. Which means I was questioning myself.
 21 Q. Why were you questioning it? There was no
 22 doubt that the Mavericks owed the money.
 23 MR. STODGHILL: Objection as to form.
 24 A. I -- I don't have any -- I don't know that
 25 that's the case, but I do know how I work, and I do

1 determine, I was probably -- doesn't have all of it
 2 here, but I was probably on my sidekick somewhere, and
 3 it was a brief give-and-take conversation as opposed to
 4 a sit-down, in-depth conversation, and this is the way
 5 we communicate.
 6 Q. Well, let's see what happens. We can figure
 7 this out --
 8 A. We will go from there.
 9 Q. -- real easy. So June 27th, at least as of
 10 June 27th the Mavs had taken off of its books any
 11 obligation to pay Mr. Nelson the \$200,000.
 12 MR. STODGHILL: Objection as to form.
 13 A. I say probably that's not the case.
 14 Q. (BY MR. DAVENPORT) "I will remove the 200,000
 15 consultant pay from schedule for the next five years."
 16 That's your CFO talking. What do you think he means by
 17 that?
 18 A. Well, actually, I know -- I can guess what he
 19 means, but there is an e-mail that's an hour later that
 20 says just see what he comes back with. And so knowing
 21 what I do know, he's probably not making any type of
 22 bookkeeping entry at that point in time.
 23 Q. Well, you know, Judge Ashworth is a trial
 24 judge. He hears this stuff all the time.
 25 A. Uh-huh.

1 know that there is a reason why I try to do everything
 2 by e-mail so that -- that there is documentation. So
 3 if I wasn't sure, you can go back and get the original
 4 e-mail, and that's exactly what happened.
 5 Q. (BY MR. DAVENPORT) I'll bet you you wish you
 6 hadn't done this one by e-mail, don't you?
 7 A. No, I am happy we did it by e-mail.
 8 Q. So June 27th you-all had decided not to pay
 9 him --
 10 A. Now, we hadn't decided anything.
 11 Q. You just said let's not pay him, and you've
 12 got Jahner saying we are taking off the 200,000, and
 13 you say, just see what he comes back with. If he
 14 questions, we can go from there.
 15 A. Right.
 16 Q. You are going to say that's not a decision not
 17 to pay him?
 18 A. No, we are going to see where his recollection
 19 is in case it was different than ours.
 20 Q. Well, you had the contract, so what, were you
 21 hoping he forgot?
 22 A. I wasn't hoping anything, actually.
 23 Q. But you weren't going to pay him?
 24 A. No, that wasn't it at all. It was this was a
 25 brief give-and-take conversation with our CFO trying to

1 Q. Now what was happening here was that you-all
 2 had decided not to pay him. You were going to treat
 3 the contract as terminated, yes?
 4 MR. STODGHILL: Objection, form.
 5 A. Is there anything else you'd like to tell me?
 6 Q. (BY MR. DAVENPORT) Yeah. So June 1 -- I
 7 mean, June -- July 1, in your mind, if you weren't
 8 going to pay him, he sure didn't have to do any duties,
 9 did he?
 10 MR. STODGHILL: Objection as to form.
 11 A. Again, what else would you like to tell me?
 12 Q. (BY MR. DAVENPORT) Well, I am reading your
 13 stuff. This is what we're going for ask the judge. I
 14 am asking you the same questions.
 15 A. No, actually you are not. This is all --
 16 these all go hand in hand, and they are part of a
 17 continuous presentation.
 18 Q. I am going to get through all of them.
 19 A. I am looking forward to it. I am looking
 20 forward to it.
 21 Q. As of June 27th, as of June 27th --
 22 A. There were no decisions made. We were having
 23 an ongoing dialogue.
 24 Q. Well, we can see what happened. On July 1,
 25 2007, he would have been paid his monthly installment

1 for deferred compensation; is that correct?
 2 A. I believe so.
 3 Q. He was paid that?
 4 A. I believe so.
 5 Q. All right. Now, the first payment under the
 6 consultant contract is going to come due July the 15th,
 7 2006.
 8 A. I believe so.
 9 Q. All right. So in accordance with the normal
 10 payroll practices of the club, in addition to the
 11 deferred compensation payment that Mr. Nelson received
 12 on that date, he should have also received the first
 13 installment of his consultant contract, if you were
 14 honoring the contract, yes?
 15 A. I --
 16 MR. STODGHILL: Objection as to form.
 17 A. He should -- two different questions there.
 18 One, he should have, but I don't know the relevance to
 19 us honoring the contract.
 20 Q. (BY MR. DAVENPORT) Under the -- I could go
 21 back and read your Fifth Amendment. It's y'all's
 22 contract. It says that on the consultant payment he
 23 gets \$200,000 a month. So he would have earned two
 24 weeks of pay under the consultant contract as of July
 25 15th. And in accordance with the club's normal payroll

1 MR. DAVENPORT: They've got a rule when I
 2 try lawsuits is they won't let me touch the exhibits
 3 because I mess them up every time. Isn't that right,
 4 Jerry?
 5 Q. (BY MR. DAVENPORT) 12, okay. Up here this is
 6 an e-mail, and it may be in this other string, from
 7 Floyd Jahner to Lisa Tyner --
 8 A. Uh-huh.
 9 Q. -- dated June 27th, 2006, "documentation not
 10 to pay consultant's salary per your file, Floyd." Do
 11 you see that?
 12 A. Uh-huh.
 13 Q. So this is your CFO telling the person Lisa
 14 Tyner, as I understand it's the lady that writes --
 15 writes -- does the deposits?
 16 A. Yes, sir.
 17 Q. Okay. So your CFO is telling her not to
 18 pay -- documentation not to pay the consultant salary.
 19 So you decided not to pay it on the 15th. Is that
 20 right? That's what that says, Mr. Cuban.
 21 A. But I don't know what happened between this
 22 date and the 15th.
 23 Q. I am going to get you there.
 24 A. Okay.
 25 Q. But as of this date -- all I am saying, I

1 practices, had it honored that contract, it would have
 2 direct deposited funds for that consulting agreement
 3 payment into his account in addition to the deferred
 4 comp payment that was made, correct?
 5 MR. STODGHILL: Objection as to form.
 6 A. If we had paid it, you would be correct.
 7 Q. (BY MR. DAVENPORT) All right.
 8 A. But we didn't pay it for whatever reason.
 9 Q. Okay. So the fact is is that the Mavs did not
 10 pay the July 15th, 2006, payment due under the
 11 consultant contract, yes?
 12 A. I would have to check specifically as to
 13 dates, but --
 14 Q. I can tell you that didn't happen.
 15 A. Okay. Then I'll take your word for it.
 16 Q. Let's look at Exhibit 12 and get another date
 17 out of here.
 18 A. Oh, we can't spend time with 11?
 19 MR. DAVENPORT: I've already got two 12s?
 20 MR. STODGHILL: Do you have a copy for
 21 me?
 22 MR. McCOMBER: No, he just marked on your
 23 copy.
 24 MR. DAVENPORT: What is that, is that 12?
 25 MR. McCOMBER: Yeah.

1 don't know why you are fighting me on this. It's here.
 2 A. No, there is a communication that is taking
 3 place, yes.
 4 Q. Okay. And I guess now I am going back to you
 5 is, I hadn't seen anything up to June 27, anything in
 6 which the Mavs would have had any reason not to pay
 7 Mr. Nelson his consultant agreement payment, no reason
 8 at all, other than you don't want to pay him. Have I
 9 missed something?
 10 MR. STODGHILL: Objection as to form.
 11 Q. (BY MR. DAVENPORT) Can you think of any
 12 reason --
 13 A. I can think of a thousand reasons why we
 14 wouldn't, but --
 15 Q. Tell me. Tell me.
 16 A. All those things we talked about already
 17 leading up to that point.
 18 Q. Tell me. What, what?
 19 A. But -- but they -- we -- they weren't
 20 relevant. This is just a recollection of that March
 21 19th day, which I obviously turned out to be incorrect
 22 on, so we determined to pay for them.
 23 Q. And the question I am saying, you will agree
 24 with me that there was no basis for the Mavericks not
 25 making the payment under the Fifth Amendment for the

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1 July 15th, 2006, consultant payment, no reason at all?
 2 MR. STODGHILL: Objection as to form.
 3 A. I can think of a thousand reasons, but, again,
 4 we were having the discussion here as to what the
 5 actual agreement was, or they were trying to get
 6 confirmation of what I thought the agreement was is
 7 what it comes down to. Because they wanted to know
 8 where I stood. And so I obviously wasn't completely
 9 certain, and we went through the dialogue.
 10 Q. (BY MR. DAVENPORT) But it doesn't look
 11 anything uncertain about it there. You told your
 12 payroll people, don't make the payment. Didn't say, I
 13 am not certain. It said, don't make the payment.
 14 A. And then there is the part on your Exhibit 11
 15 where -- wherever it was where I said, damn, pay him
 16 the blood money.
 17 Q. We are going to get to that.
 18 A. I know you were.
 19 Q. I am going to let you say all that. I am
 20 going to let you say all that. But I'm just -- I'm
 21 taking -- lawyers think in terms of contract. We have
 22 to work terms of chronology and time and all this other
 23 stuff. And so I keep taking these snapshots on June
 24 30, you probably noticed that, June 30th, 2006. And so
 25 on that moment in time, Judge Ashworth's going to have

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1 to look at this thing and decide what happened.
 2 Because I know I don't see anything happening between
 3 this string of e-mails on June 27th and July 15th. If
 4 there is some documents, y'all didn't produce them.
 5 A. Not that I am -- I am not aware of any other
 6 documents, no.
 7 Q. We do know, though, that come July 15th, the
 8 Mavericks didn't pay anything on the \$200,000
 9 obligation as a consultant fee.
 10 A. Right, because it turns out I was in error.
 11 Q. But we know that -- we know that happened.
 12 Will you agree with me?
 13 A. Yes, sir.
 14 Q. Y'all didn't make that payment.
 15 A. Yes, sir.
 16 Q. At that moment in time the Mavericks were in
 17 breach of the Fifth Amendment, correct?
 18 A. I don't know.
 19 MR. STODGHILL: Objection as to form.
 20 A. That's legal -- I'd ask my lawyers if we were
 21 or not.
 22 Q. (BY MR. DAVENPORT) At that moment in time on
 23 the 15th, Mr. Nelson was not in breach, you had never
 24 claimed he was in breach, and you didn't not make the
 25 payment because you thought he was in breach?

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1 MR. STODGHILL: Objection as to form.
 2 A. That's a legal discussion I would have with my
 3 attorneys. I don't know specifically.
 4 Q. (BY MR. DAVENPORT) I don't want to hide the
 5 ball from you, but on the 15th -- hide the ball, that's
 6 kind of a pun, right? Maybe like you dancing around
 7 the question, how about that?
 8 The -- on the 15th, the Mavs did not make
 9 that payment, so Mr. Nelson contends and we contend
 10 that at that instant in time the Mavericks had first
 11 breached the contract; you understand that's what we
 12 are claiming?
 13 A. I understand it, but I have no --
 14 Q. Okay.
 15 A. I don't know the legal definition of "breach."
 16 Q. Okay. Now, let's go back to the exhibit,
 17 then.
 18 MR. STODGHILL: Which exhibit?
 19 MR. DAVENPORT: Exhibit 11.
 20 MR. STODGHILL: Okay.
 21 Q. (BY MR. DAVENPORT) If I can pick back up on
 22 it. Okay. I am going to go to Wednesday -- look at
 23 page 3 of this.
 24 A. Okay.
 25 Q. See if we can pick this up. Wednesday, July

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1 6, 2006. Okay. We don't -- I'll tell you, in
 2 preparing for the deposition and reviewing the e-mails
 3 that you-all produced in response to our request, we
 4 found no communication that was produced on this
 5 subject between the ones I've just showed you and the
 6 one starting July 26th. So that's almost a month or
 7 so --
 8 A. Correct.
 9 Q. -- where we can't find anything. So the first
 10 thing we see on this topic is the July 26, 2006. Floyd
 11 Jahner wrote, "I got a call from Nellie regarding his
 12 check and the \$200,000 we did not include in his
 13 compensation. He states that this was not discussed in
 14 the negotiations at the time of his departure. He
 15 asked if we had any of this in writing. Then when
 16 asking what he should do next, he briefly alluded to
 17 turning this over to his attorney. I told him I would
 18 talk to you. He asked me to call him back. In case
 19 you want to discuss this directly with Nellie, his new
 20 number is such and such. Tell me how you want to
 21 proceed."
 22 So, when Mr. Nelson didn't receive his
 23 payment, the first thing he did was call Floyd Jahner
 24 and say what's up?
 25 A. Uh-huh.

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1 Q. Why didn't I get my payment? And he states
 2 this was not -- and Jahner is now asking you, what do
 3 you want me to do -- how do you want me to proceed?
 4 And you call, and let's see what you said to that. You
 5 said, "Have his attorney call and state his case."
 6 What does that --
 7 A. Because Nellie agreed with me -- I am sorry.
 8 I didn't mean to step on you. I apologize.
 9 Q. Have his -- you told Mr. Jahner, said, he's
 10 got a lawyer. Have the lawyer call me and state his
 11 case. This is as of July 26th, 2006, a month after you
 12 had been told by Mr. Jahner that the contract hadn't
 13 changed and after you had already looked at your own
 14 e-mail in which you had confirmed that the contract
 15 hadn't changed, rather than saying, Mr. Jahner, we made
 16 a terrible mistake, we breached the contract,
 17 immediately cut him a check, you say tell his lawyer to
 18 call and state his case. What case was he supposed to
 19 state? What were you expecting him to state?
 20 A. Well, we hadn't -- as I said in my e-mail to
 21 Floyd, we hadn't really discussed it, but we didn't
 22 agree that we would pay the 200,000. It was not
 23 discussed. And then Nellie said we didn't discuss it.
 24 And then my response, okay, we didn't discuss it, so
 25 let's deal with it.

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1 Q. You hadn't discussed it, you had entered into
 2 a contract on July 1, 2003.
 3 A. On March 19th we didn't discuss it.
 4 Q. Well, you discussed it -- you said in the
 5 contract you told him, and Mr. Nelson will testify to
 6 this, and it's consistent with your e-mail, that the
 7 contract doesn't change; it's unaffected. This
 8 contract, the Fifth Amendment?
 9 A. Right.
 10 Q. Okay. The Fifth Amendment contractually
 11 obligated the Mavs to make that payment.
 12 MR. STODGHILL: Objection as to form.
 13 A. I will defer to my lawyers on that.
 14 Q. (BY MR. DAVENPORT) Do you want me to read
 15 this to you?
 16 A. I would still defer to my lawyers.
 17 MR. STODGHILL: That will change
 18 everything.
 19 THE WITNESS: That's why I pay them.
 20 Q. (BY MR. DAVENPORT) Okay. So state his case,
 21 when you said tell him to call and state his case, --
 22 A. Right.
 23 Q. -- what did you want him, to beg for his
 24 money?
 25 A. Basically.

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1 MR. STODGHILL: Objection as to form.
 2 Q. (BY MR. DAVENPORT) Basically. Why, you were
 3 mad, thought you had overpaid him before?
 4 A. No, it wasn't that. It was just that wasn't
 5 long after the finals and having him talk all this shit
 6 about us. So, yeah, it was like, okay, state your
 7 case, beg.
 8 Q. So when you say "the finals," the fact that
 9 you-all had lost or what?
 10 A. The fact that he had bad-mouthed us every
 11 which way, and I had to have him removed because he was
 12 bad-mouthing Avery, just all the -- all the things --
 13 no one thing specifically.
 14 Q. So you wanted him to beg for his money?
 15 A. Yep.
 16 Q. Did that just make you feel good?
 17 A. Yep.
 18 Q. Weren't you concerned that you had breached
 19 the contract by not paying him?
 20 A. I deferred to my lawyers on all that stuff. I
 21 mean, this was like I had mentioned to you earlier,
 22 this was an on going dialogue with Floyd. He brought
 23 it up to me. It wasn't something that we had
 24 specifically -- it wasn't something Nellie and I had
 25 specifically discussed in that March 19th meeting. It

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1 was a very brief meeting, and it was one where, you
 2 know, then Floyd showed me the e-mails, and I said,
 3 damn, pay him his blood money.
 4 Q. But first I am going to say, when you said --
 5 I am going to get to that, July 26 at 4:02, Nellie had
 6 called and asked where his money was.
 7 A. Uh-huh.
 8 Q. And he said, "I am going to turn this over to
 9 my lawyer." And you say have his attorney call and
 10 state his case. What did you want him to say, that,
 11 "Mr. Cuban, here is my case. We have a written
 12 contract that requires you to make me a payment on the
 13 15th. You breached the contract by not paying it, and
 14 I'm going to sue you for that money since you haven't
 15 paid me." Would that have convinced you?
 16 MR. STODGHILL: Objection as to form.
 17 A. Say that again?
 18 Q. (BY MR. DAVENPORT) Well, when you say "state
 19 his case," I know you wanted him to beg for the money
 20 because you are mad at him, but when you state his case
 21 if he -- if he calls a lawyer, says okay, Mr. Cuban,
 22 here -- you say state our case, we have a contract, you
 23 didn't make a payment on the 15th. You breached the
 24 contract, so pay me. Is that what you wanted him to
 25 say?

1 MR. STODGHILL: Objection as to form.
 2 A. I don't know. I really didn't have an
 3 expectation what I wanted him it say, simply I wanted
 4 him to beg, and as you can see by the e-mail
 5 correspondence for -- which is, what, from 4 -- where
 6 are we at?
 7 Q. (BY MR. DAVENPORT) It's --
 8 A. From July 26, 4:02, to July 26, 7:59 him
 9 responding, so by that evening, 9:32, by 10:00 o'clock
 10 that very same night we -- I had said we were going to
 11 pay him. So it wasn't like when I told him to beg his
 12 case, it wasn't what like I waited three days for him
 13 to call and beg. It was by that night I had said,
 14 "Damn, pay him his money."
 15 Q. We will see --
 16 A. It was more, you know, hypothetical that,
 17 yeah, I would have -- I would have liked him to beg,
 18 would have liked him to have been on his knees, I would
 19 have liked to seen Randy Galloway on his knees in front
 20 of Nellie. There were a lot of things I would have
 21 liked, but --
 22 Q. If he was on his knees, he would still be
 23 taller than you are.
 24 A. No, he wouldn't. He is not that much bigger
 25 than me.

1 Q. Let's find the next e-mail. You got this
 2 e-mail here is at 4:02 when you say have his attorney
 3 call and state his case.
 4 A. Right.
 5 Q. Now, is the response e-mail the one on the
 6 first page at the bottom from Jahner to you --
 7 A. Yes.
 8 Q. -- dated 1959?
 9 A. Yes.
 10 Q. Huh?
 11 A. Yes.
 12 Q. Let's see, 1959, that's what, 7:00, military
 13 time? That's hard. He comes back, "We did not amend
 14 his contract." He's already told you that before,
 15 didn't he? That's the second time he told you?
 16 A. The second time he sent me the actual e-mails.
 17 Q. But he told you that back in June?
 18 A. Oh, yeah. Yeah.
 19 Q. Said, "Per the e-mails in March copied below,
 20 we left his contract as is."
 21 A. I am more a of tech guy.
 22 MR. STODGHILL: Objection as to form.
 23 A. I don't remember back multiple years on what
 24 specific e-mails. I get over a thousand e-mails a day,
 25 and so when people refer to a specific e-mail, they

1 know by this point you have to send me the actual
 2 e-mail.
 3 Q. (BY MR. DAVENPORT) Right. That's why I have
 4 showed it to you.
 5 A. Yeah. Thank you.
 6 Q. Cuban writes back to Jahner, "So we end up
 7 owing it to him, but that also means we cannot give him
 8 tickets and such if the contract is the entire
 9 contract." So Jahner e-mails back to you, "Correct
 10 that we would end up owing it to him. In the Fifth
 11 Amendment, which we did in 2003, Robert and I removed
 12 all fringe benefits effective June 30th, 2006. That is
 13 why we stopped these type of items. The tickets from
 14 this point forward per our e-mails a few weeks back
 15 will still be his, but he now has to pay for them. Do
 16 you still want me to push it?" And you write back,
 17 "No, pay him the blood money. Damn. Thanks."
 18 Why would you say that money that the
 19 Mavericks contracted to pay him long ago, when did
 20 you -- you -- this consulting thing was going back to
 21 what, 2000 when you first came up?
 22 A. Uh-huh.
 23 Q. Back when you liked him and you signed the
 24 contract --
 25 A. Uh-huh.

1 Q. -- and you put him under the eleven-year
 2 contract, you agreed to pay him under the contract, now
 3 you are calling it "pay him the blood money"; why is it
 4 blood money?
 5 A. Because I couldn't think of a better
 6 adjective.
 7 Q. What did you mean by that, you just wished --
 8 you just cut a bad deal?
 9 A. I just didn't like -- you know, I just didn't
 10 think the guy --
 11 MR. STODGHILL: Objection as to form.
 12 A. I just don't think the guy earned his money,
 13 but, obviously, I agreed there was a contract in place.
 14 Q. (BY MR. DAVENPORT) Just like you don't think
 15 the deferred comp is payable?
 16 MR. STODGHILL: Objection as to form.
 17 A. I defer to my lawyers on that stuff.
 18 Q. (BY MR. DAVENPORT) Have you -- did you -- I
 19 forgot to ask you this. When I was reading this
 20 earlier string of e-mails when your CFO had said that
 21 we are scheduled to pay him previously earned deferred
 22 compensation, did you ever admit that the Mavs agree
 23 that that's earned or not?
 24 MR. STODGHILL: Objection as to form.
 25 A. I -- no, any type of legal issues like that, I

1 just defer to my attorneys to help me with that.
 2 Q. (BY MR. DAVENPORT) Back when -- in June 27th,
 3 Mr. Jahner was telling, you know, we owe him the money,
 4 we didn't amend his contract, I didn't see any e-mails
 5 going to your attorney Hart back then, to get him in
 6 the loop. Do you recall talking to him?
 7 A. I don't, but I do think we cc'ed him on some
 8 of this.
 9 Q. I am seeing it now, but I am talking about in
 10 June. Did he get -- was he in the June traffic?
 11 A. I don't know.
 12 Q. Let me look.
 13 A. I don't see a cc to him, then I presume not
 14 unless it was a bcc. I don't know.
 15 Q. All right.
 16 MR. STODGHILL: And Mark, just -- Mark
 17 Davenport, if we -- if there was a privileged
 18 conversation, Jeff's not in here, there may be some
 19 that exist. I don't know if we have done a privilege
 20 log in the case. We will certainly give you one.
 21 MR. DAVENPORT: We can't even get answers
 22 to interrogatories. If I had a privilege log, I would
 23 fall over with a heart attack. I wouldn't know how to
 24 deal with it.
 25 MR. STODGHILL: Do you promise? We can

1 Q. Okay. So at this instant in time, we know
 2 that the July 15, 2006, first payment had not been
 3 paid. Next payment's going to be due three or four or
 4 five days later. I guess the first thing I don't
 5 understand is, once this e-mail went down, why didn't
 6 Mr. Jahner immediately direct deposit into Mr. Nelson's
 7 account the first installment that had been due on the
 8 15th?
 9 A. You'd have to ask him, but I can guess that
 10 he probably has a relationship with Nellie --
 11 MR. STODGHILL: I don't want you to
 12 speculate --
 13 THE WITNESS: Okay.
 14 MR. STODGHILL: -- or guess. If you know
 15 a fact, Mark, --
 16 THE WITNESS: Don't know any facts.
 17 MR. STODGHILL: -- testify to it.
 18 THE WITNESS: Thank you.
 19 Q. (BY MR. DAVENPORT) But we do know he didn't
 20 do that on the 27th or the 26th. All right. Let's see
 21 what Mr. Jahner, though, as far as you are concerned,
 22 you as the CFO -- I am sorry, you as the boss had
 23 instructed the CFO of the company to make the payment
 24 to Mr. Nelson because you didn't have any -- as far as
 25 you were concerned, you didn't have any legal basis not

1 get one down here pretty quick if -- if we get a
 2 guaranteed result, but...
 3 Q. (BY MR. DAVENPORT) So pay him the blood
 4 money. All right. So July 26, you said uncle, we'll
 5 pay him, pay him the blood money?
 6 A. No, I didn't say uncle.
 7 MR. STODGHILL: Objection, form.
 8 A. This was all in a span of five years, which
 9 is, again, how we worked. It was like we didn't know,
 10 let's find out for certain, we knew the one thing
 11 Nellie's not going to let squeeze by is money. He is
 12 always going to stand up for every nickel. And so he
 13 is part of the -- one of the parties, and he would
 14 inform us. So when we were uninformed, he would add
 15 information; and once we got that information, you
 16 know, and Floyd gave me the e-mails he had referred to,
 17 it took me just minutes to respond.
 18 Q. (BY MR. DAVENPORT) All right. Now, if I'm
 19 reading this right, this is an instruction that you are
 20 giving your CFO and you are copying Mr. Hart, your
 21 company's lawyer, to pay the money, pay him his
 22 consulting fee, right?
 23 A. The 200,000, yes.
 24 Q. Yeah?
 25 A. Yes, sir.

1 to have not paid it, right?
 2 A. I don't think I was referring to any specific
 3 payment per se, just that we would follow through
 4 and -- and -- so we -- okay, so we end up without
 5 giving him the tickets.
 6 Q. All right. So let's see what Mr. Jahner did
 7 after you had given him his marching orders. Exhibit
 8 13. What I would have expected --
 9 MR. STODGHILL: Mark, pardon me one
 10 second. Do you have a copy of that that I could --
 11 MR. DAVENPORT: Yeah.
 12 MR. STODGHILL: All right. Thanks.
 13 Q. (BY MR. DAVENPORT) See, what I would have
 14 expected after I saw that e-mail, I would have thought
 15 the next e-mail would have been an e-mail from Jahner
 16 to Lisa saying "per attached, make a direct deposit
 17 into Mr. Nelson's account." I didn't see that.
 18 So here is what I saw. Exhibit 13, July
 19 27th, next day, from Jahner to you and copy Mr. Hart.
 20 No, copied to you, just first from him to you. "I
 21 called him back," him being Nelson, "and took one shot
 22 at negotiating something less than \$200,000 a year."
 23 What's that about? You now agree that you owe him the
 24 \$200,000. Jahner's -- did you tell him to do that?
 25 A. Nope.

1 Q. So Jahner's going to be a hero now; he's going
 2 to come back and save you some money, right?
 3 A. You would have to ask him.
 4 Q. Because he knows you wanted Nelson to beg for
 5 the money.
 6 A. No, he doesn't know that.
 7 MR. STODGHILL: Objection as to form.
 8 A. He doesn't know that, first of all.
 9 Q. (BY MR. DAVENPORT) He knows that you think
 10 it's blood money. He does know that.
 11 A. Well, I wrote that, yeah.
 12 Q. Yeah, he knows that. So he's going to -- you
 13 say on his own, he is going to get in the arena and
 14 start negotiating Nellie down for no apparent reason
 15 other than you don't want to pay the money, yes?
 16 MR. STODGHILL: Objection as to form.
 17 A. You'd have to ask him.
 18 Q. (BY MR. DAVENPORT) I will.
 19 A. Okay.
 20 Q. "I called him back and took one shot at
 21 negotiating something less than 200,000 a year. He
 22 wouldn't agree to anything less but was open to a lump
 23 sum payment." Do you know what discussion transpired
 24 between them at that time?
 25 A. Just what's referred to here, that's it.

1 Q. "I think he'll agree to a 500,000 lump sum
 2 settlement, and then the 200,000 per year goes away.
 3 If you agree, this would be a good deal for us as a
 4 present value of 200,000 over 5 years at six percent
 5 would be approximately 875,000 versus a one-time
 6 payment of 500,000. Should I call him back and get him
 7 to agree? I would then get this in a written agreement
 8 to his contract and then cut one check. Okay?"
 9 And you say "Agree, do it."
 10 So under this deal, y'all are getting
 11 ready to, let's see, 875, you are getting ready to save
 12 about \$375,000 on the contract; is that how you read
 13 this?
 14 MR. STODGHILL: Objection as to form.
 15 Q. (BY MR. DAVENPORT) I mean, if you pay 200,000
 16 over five years, that's a million. If you give a six
 17 percent discount, that means in present day dollars
 18 that would be 875. You are going to pay him five, you
 19 are going to save 375, yes? You know how these numbers
 20 would work better than I do.
 21 A. This was just a discussion he was going to
 22 have with Nellie. Whether or not it actually came to a
 23 contract based off our history, we had no idea if that
 24 would happen.
 25 Q. When you got this back, what I would have

1 expected you to have written back was when
 2 Mr. Jahner --
 3 A. Are you auditioning for a job? Is that what
 4 you are trying to do?
 5 Q. No, I was surprised. I thought you would have
 6 written back and said, "Floyd, what in the world are
 7 you talking about? We owe Mr. Nelson the full \$200,000
 8 pro rata; let's pay the man what he's owed. We are
 9 already in breach of the contract. You are out of
 10 line." You didn't do that?
 11 MR. STODGHILL: Objection as to form.
 12 Q. (BY MR. DAVENPORT) Huh?
 13 A. You know, when you buy a team, you can do it
 14 any way you want.
 15 Q. Okay. So you are going to agree to -- so then
 16 they get into negotiations, right? I guess. We know
 17 August 1 comes, and we know that no payment's made into
 18 his -- into Mr. Nelson's account on August 1, 2006,
 19 right?
 20 A. I'd have to ask our accountant to help me.
 21 Q. It wasn't, it wasn't, believe me, it wasn't.
 22 But on August 1, the company, the Mavs made the payment
 23 of deferred comp that you were paying out under the --
 24 he had earned his deferred comp, that he earned. You
 25 know that payment was made?

1 A. I would have to ask the accountants.
 2 Q. But you wouldn't have been -- the Mavs
 3 wouldn't have been paying him the deferred comp on the
 4 1st and 15th unless the Mavs thought he had earned it,
 5 would you?
 6 A. Again, yeah, I presume not.
 7 Q. Okay. So you get into some negotiations over
 8 the sixth amended contract, so basically you are going
 9 give him -- try to give him a one-shot payment, right,
 10 and in connection with those negotiations you are going
 11 back and forth, were you familiar -- were you doing
 12 them? Were you in those negotiations --
 13 A. No, sir.
 14 Q. -- for Fifth --
 15 A. Oh, for --
 16 Q. -- for what was going to be the Sixth
 17 Amendment, where you were going to pay him lump sum on
 18 the consulting contract?
 19 A. No, sir.
 20 Q. Do you remember the basis why no agreement was
 21 ever reached?
 22 A. I don't remember exactly why not in terms of
 23 timeline, no.
 24 Q. Well, the parties never -- it's a fair reading
 25 from these e-mails that it was the Mavericks, not

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

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

10 Q. Okay.

11 MR. DAVENPORT: Object, nonresponsive,
12 move to strike.

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

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

20 A. Correct.

21 Q. According to these e-mails?

22 A. According his e-mails, yes.

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

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

4 A. No.

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

7 A. No, we do all communicating via e-mail.

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

10 A. I don't think I've ever called him.

11 Q. Never have called Jahner?

12 A. Nope.

13 Q. Really? Does he office near you?

14 A. He's at the Mavs office.

15 Q. And is that where you are?

16 A. Rarely.

17 Q. You mostly work out of home?

18 A. I work out of my home and several offices.

19 Q. So once Jahner starts talking to -- let's see.

20 Did you get involved in any of the
21 negotiations concerning this possible buyout?

22 A. No.

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

1 negotiating, right?

2 A. That's right.

3 Q. But we know they never got to reach agreement?

4 A. Correct.

5 Q. All right. Now, August 15th's going to
6 come -- well, let's stay in order. Give me the
7 O'Connor letter, August 4th.

8 Do you know John O'Connor?

9 A. No, sir.

10 Q. Have you ever met him?

11 A. Not that I know of.

12 MR. DAVENPORT: Let me go off the record
13 a minute.

14 THE VIDEOGRAPHER: Off the record at
15 2:20.

16 (Recess for 16 minutes.)

17 THE VIDEOGRAPHER: Back on the record.
18 The time is 2:36.

19 Q. (BY MR. DAVENPORT) After you had written
20 Mr. Jahner the e-mail instructing him to pay the, as
21 you called it, blood money, when did you learn that
22 Jahner had -- instead of paying him like you told him,
23 had decided to go start negotiating with him for a lump
24 sum, was it in this e-mail?

25 A. In the e-mail, yeah.

1 club has breached the agreement that you had made when
2 you asked him to resign by not paying him 200,000
3 annually to which he would have been entitled."

4 You understand what he is talking about?

5 A. Yes, sir.

6 Q. Okay. Now what did you do when you got this
7 letter?

8 A. I don't think I got the letter. I think it
9 went to my attorney.

10 Q. Okay. Do you recall, now, Mr. O'Connor saying
11 that when you didn't make -- you hadn't made the
12 payment on 7/15 and 8/1/06, that the Mavericks were in
13 breach, did you tell somebody to immediately make the
14 payment, says get -- you know, somebody direct deposit
15 the money into his account, get us out of breach?

16 A. I can't recall receiving this letter.

17 Q. Well, what do you recall next after you got
18 Jahner's e-mail saying that he was going to try to
19 negotiate with him, what -- in your mind, what happened
20 next?

21 A. There was negotiation. We couldn't come to an
22 agreement, so we made the payments. We rectified it as
23 quickly as possible.

24 Q. Well, actually the Mavericks never made a
25 payment on the \$200,000 contract.

1 A. Well, we directed to make the payment, and
 2 Nellie never accepted it is the way I understand it.
 3 Q. Did you -- do you have personal knowledge of
 4 that?
 5 A. That he never accepted it? That's just what
 6 was responded to me.
 7 Q. Well, we will come back in a little bit, but
 8 let's go on August 4th -- we go to August 15th, and we
 9 know that on August 15th the Mavs did not deposit any
 10 money on the \$200,000 consulting agreement into
 11 Mr. Nelson's account. Are you familiar with that? Are
 12 you aware of that?
 13 A. I am not sure of the dates, but my
 14 recollection is that we made an attempt to make a
 15 payment, although, again, I don't know the dates
 16 relative to August 1st or 15th.
 17 Q. You know, I was looking in all of this e-mail
 18 traffic and all this other stuff, and let me show you
 19 what I found. Somebody had said -- you said you think
 20 you tried to cut a check?
 21 A. I don't believe it was a check. We don't cut
 22 checks, but we meant to make -- attempted to make a
 23 payment of some sort.
 24 Q. Well, attempted to make one, all you had to do
 25 is to put the money into the account. You didn't need

1 A. No, sir.
 2 Q. Okay. Did you make any attempt to call Nelson
 3 to talk to him about getting this resolved?
 4 A. I don't even know anything about the letter.
 5 Any -- any communications that happened would be via
 6 e-mail.
 7 Q. Okay. Can you tell me why, since you had
 8 given Jahner the instructions to make the payment to
 9 Mr. Nelson, why the payment was not made on August 1st,
 10 August 15th, and August 30th?
 11 A. My understanding is that we were attempting to
 12 make a payment, and I don't -- and it was refused.
 13 Q. Okay. Well, let's talk about that. We are
 14 going to be asking Lisa about that. Do you know a man
 15 named Rothman, Al Rothman?
 16 A. Not that I am aware of.
 17 Q. Mr. Nelson's accountant?
 18 A. Not that I am aware of, no.
 19 Q. Had you ever in the payroll -- in the common
 20 payroll practices of the Mavericks, did you have to
 21 call either Mr. Nelson or Mr. Rothman on the 1st or the
 22 15th and ask them if it was okay to deposit the funds?
 23 A. I don't know.
 24 Q. You didn't, you know y'all didn't do that, did
 25 you?

1 anybody's permission to make a payment. You never had,
 2 right?
 3 A. Are you telling me or asking?
 4 Q. Well, I am asking, yeah, I am -- you say here
 5 is what we know happened. We know August 1 you-all did
 6 not direct deposit any part of the 200,000. We know on
 7 August 15th you did not direct deposit, which was the
 8 normal payroll practice of the club, wasn't it, to do
 9 the direct deposits?
 10 A. Depending on the employee.
 11 Q. On Nelson it was direct deposit, that was the
 12 normal payroll practice.
 13 A. I believe so.
 14 Q. On the 15th we know -- on the 1st of August
 15 and the on the 15th of August we know that you direct
 16 deposited his deferred compensation payment, you know,
 17 that?
 18 A. I don't know one way or another.
 19 Q. All right. Now, we now know coming up to
 20 August 30th, let me show you -- when Mr. O'Connor wrote
 21 you a letter, or Mr. Hart a letter on August 4th that
 22 the Mavericks were in breach of the agreement, I didn't
 23 see any response to that letter until the next month.
 24 Do you know why there was not a response to this
 25 letter?

1 A. I just don't know.
 2 Q. Okay. And in truth and fact -- in truth and
 3 fact, no effort was made by Lisa or anybody else to
 4 deposit money into Mr. Nelson's account for this before
 5 you learned that he was talking to the lawyers.
 6 A. Say that again?
 7 Q. The Mavericks never -- well, we know the
 8 Mavericks never deposited any money into Nelson's
 9 account; you don't dispute that, do you, for this
 10 consulting fee?
 11 A. Well, you -- this is -- it was at a
 12 negotiation point. You would never make a direct
 13 deposit on it in the process of a negotiation. In
 14 other words, even if we had settled this -- a
 15 consultant amount one way or the other, it wouldn't be
 16 done by direct deposit. That's an automatic process --
 17 automated process. You would have to -- since it was a
 18 very specific resolution process, you would have to
 19 deal with parties on both sides to deal with however
 20 the payment was going to be made, --
 21 MR. DAVENPORT: Objection --
 22 A. -- so everything would be back on course.
 23 That's just the way, you know, general business.
 24 MR. DAVENPORT: Okay. Object,
 25 nonresponsive, move to strike.

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1 Q. (BY MR. DAVENPORT) You weren't in any
 2 negotiations with Mr. Nelson on July 15th?
 3 A. July 15th?
 4 Q. July 15th, 2006, when the first payment was
 5 due. You just said don't pay it, and y'all didn't.
 6 A. Not that I am aware of, no.
 7 Q. Okay. Now --
 8 A. You know what, I take that back. We were in a
 9 process where I said let's wait to hear back from
 10 Nellie, because we hadn't delineated anything in our
 11 discussions one way or the other that I had remembered
 12 or that he had remembered, and so we were in a form of
 13 negotiation by seeing if he responded.
 14 MR. DAVENPORT: Object, nonresponsive,
 15 move to strike.
 16 Q. (BY MR. DAVENPORT) We already have the e-mail
 17 traffic. We've been through that. Whatever it says,
 18 it says.
 19 I guess what I am trying to get to you on
 20 is, I want you to admit that the Mavericks --
 21 A. That I was on the grassy knoll?
 22 Q. I want you to admit that the Mavericks never
 23 made a payment under the consultant contract. Let's
 24 start with that.
 25 A. And I am not prepared to do that, no, because

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1 my understanding --
 2 Q. It's not disputed.
 3 A. No, my understanding is, you are delineating
 4 it as a direct deposit as a differentiator, and that's
 5 not -- and I'm not willing to do that. My
 6 understanding is, we attempted to make a payment.
 7 Q. And I'm just saying, under your contract it
 8 required you to make the payments in connection with
 9 the regular payroll practices of the club. And all
 10 your payments up to this point were being made,
 11 including your deferred compensation payments were
 12 being made by direct deposit into his checking account.
 13 A. That's not true, because there have been
 14 multiple times when Nellie asked for an acceleration of
 15 payments and various things.
 16 Q. That's true. That's true. I know what you
 17 are talking about.
 18 A. And so we dealt with a negotiated scenario,
 19 and this is no different.
 20 Q. That was on one occasion, wasn't it?
 21 A. But it was asked for on multiple occasions,
 22 and we had to go through the process of negotiating or
 23 discussing it, and this was just no different. And on
 24 those occasions this is how we handled it, and there
 25 was no reason to think this would be different.

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1 Q. Is that your explanation as to why payment was
 2 never made?
 3 A. Well, yeah, I mean we were in the course of
 4 conversation.
 5 MR. STODGHILL: Objection, form.
 6 Q. (BY MR. DAVENPORT) Uh-huh.
 7 A. And it was the same way we had done it
 8 historically.
 9 Q. Let me ask you this, then. When did you learn
 10 that -- when and how did you learn that Mr. Nelson had
 11 been talking to the lawyers?
 12 A. I don't remember specifically, but there was
 13 rumors in the media.
 14 Q. Well, there was a press release, was there
 15 not?
 16 A. Well, when did I learn factually, or when did
 17 I hear rumors? It's different.
 18 Q. Either one. Let's start with rumors, and when
 19 did you hear them factually?
 20 A. Factually, I -- Nellie called me the night
 21 before, I think it was, or two days before, and let me
 22 know when he called Donny -- Nellie left me a message,
 23 I think it was, and he had called Donny and told him,
 24 and Donny told me probably two days before this.
 25 Excuse me.

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1 Q. So this is the -- the release I just gave you
 2 is dated August 30th, 2006, you think you learned about
 3 it before then?
 4 A. Yes, sir.
 5 Q. Did you say you talked to Nelson, or he talked
 6 to Donny?
 7 A. He left me a message, and he talked to Donny,
 8 and Donny let me know.
 9 Q. And what did -- what did -- what did they say?
 10 A. That he was taking a job, thank you very much,
 11 I am taking a job with the Warriors. Not what you
 12 would expect from somebody who had been working for you
 13 and taken a lot of money.
 14 MR. DAVENPORT: Object, nonresponsive.
 15 Q. (BY MR. DAVENPORT) Let's see what happened,
 16 Exhibit 16, on the way you-all were handling --
 17 MR. STODGHILL: Could I see a copy of
 18 that exhibit? Great. Thank you.
 19 Q. (BY MR. DAVENPORT) Let's see how the Mavs had
 20 been handling the payments to Mr. Nelson. Exhibit 16
 21 is a copy of the electronic funds transfer services
 22 drawn on JPMorganChase, 8/30/2006. Do you see that?
 23 A. Uh-huh.
 24 Q. Requester's name Lisa Tyner, company Dallas
 25 Basketball Limited, individual's name Don Nelson,

1 individual ID. You got a transit routing ABA number
 2 there, you see that? Account number, and you got a
 3 \$29,998.40 payment, which is the bimonthly deferred
 4 comp payment.
 5 A. Okay.
 6 Q. Okay? So we know that this is the form that
 7 the Mavericks were following in compensating Mr. Nelson
 8 on his contract by and large. Okay? Do you disagree
 9 with that?
 10 A. This is one manner, sure.
 11 Q. Huh?
 12 A. This is one manner, yes.
 13 Q. But this is the way you normally would make
 14 the payment if there wasn't something exceptional.
 15 A. On continuous payments, yeah.
 16 Q. Yeah. Okay. Now, when that wire goes, we
 17 know that after that wire goes that Lisa turns around
 18 and reverses it, Exhibit 17, "entry is being reversed,
 19 ordered payment to or from a receiver not intended to
 20 be credited by the company." Okay. Did you stop the
 21 payment of this deferred comp?
 22 A. I don't remember the process behind it.
 23 Q. Okay. What do you remember about it?
 24 A. I literally don't remember anything one way or
 25 the other about it.

1 A. I presume so.
 2 Q. And now you are deducting out of that federal
 3 income tax of 11,000, Medicare tax 36,000 for the
 4 year-to-date, federal income tax 878, okay, let's stop
 5 there. There are no federal incomes taxes either
 6 deducted by the club or payable by Mr. Nelson on
 7 deferred comp at the time it's deferred.
 8 A. I don't know.
 9 MR. STODGHILL: Objection --
 10 Q. Strike that. Let me read it. Deferred comp
 11 at the time it's earned is not reportable as income by
 12 Mr. Nelson.
 13 MR. STODGHILL: Objection as to form.
 14 Q. (BY MR. DAVENPORT) Do you know that or not?
 15 A. I have no idea.
 16 Q. Deferred comp is reportable as income by
 17 Mr. Nelson when he receives the money; do you know that
 18 or not?
 19 MR. STODGHILL: Objection as to form.
 20 A. I have no idea. Can I ask a question? What's
 21 the advance and what's the airfare? What are we giving
 22 him an advance for, and what's he charging us back
 23 airfare against for somebody who really isn't doing
 24 anything?
 25 Q. (BY MR. DAVENPORT) Are you asking me?

1 Q. This is the first time you ever knew about
 2 that?
 3 A. Honestly, I seriously don't know specifically
 4 what happened in terms of the process. That's why I
 5 refer to my lawyers and my CFO.
 6 Q. Let's look at, just so we will have a record
 7 here of the payment, let's look at Deposition Exhibit
 8 18. This is showing the earnings statement for the
 9 period August 31st, 2006, pay date August 31st, 2006.
 10 If you will look over there on the payment history, it
 11 shows "Earnings," deferred comp payment, or "FWT," I
 12 guess, \$666,672. Is that deferred comp, as you
 13 understand it, that had been paid up to date this year?
 14 A. Again, assuming that all the accounting
 15 entries are correct, then that would be presumable.
 16 Q. Okay. And then he would have been paid as of
 17 August eight months for coaching a million, seven,
 18 1,749,999 and for general manager 699,999; is that the
 19 way you read that?
 20 A. I guess so.
 21 Q. So this check is going to be a gross payment
 22 of 41,560 -- 500 -- strike that, forty-one thousand, it
 23 looks like five sixty-seven, if I'm reading that right.
 24 That would be the bimonthly payment of the \$1 million
 25 deferred comp that's being paid that year, correct?

1 A. Yeah.
 2 Q. If you can't answer questions on your own
 3 documents, how do you think I can?
 4 A. You have been telling me everything else, so I
 5 figured you would know. Seriously, because that means
 6 he's doing -- he thinks he is doing something for us.
 7 Q. Maybe you can add that to the counterclaim.
 8 What -- do you have any knowledge of why
 9 the wire was reversed?
 10 A. No.
 11 Q. Okay.
 12 A. Not specific, no.
 13 Q. Okay. Now, when -- after you learned that
 14 Mr. Nelson had undertaken -- become the coach of the
 15 Warriors, what, if anything, did you do?
 16 A. I don't remember specifically that we took
 17 specific action. I just remember I was upset, in
 18 particular I was upset because -- you know what, this
 19 goes back, didn't he initiate -- oh, no, okay. What I
 20 was really upset about was because in the -- in the
 21 negotiations with Floyd to -- for a single-time
 22 payment, that he basically was fucking us, excuse my
 23 French, that he was -- it's like asking for your --
 24 your annual bonus knowing that you are leaving the job.
 25 And so I was particularly upset at that point in time.

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

8 A. No question.

9 Q. -- when he did that?

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

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

21 MR. STODGHILL: Objection as to form.

22 Q. (BY MR. DAVENPORT) That's what Mr. Jahner
23 said he said.

24 MR. STODGHILL: Objection as to form.

25 A. Well, we can read what Mr. Jahner said rather

1 than you telling us.

2 Q. (BY MR. DAVENPORT) Nellie wanted to know why
3 you weren't honoring the contract. I can go find it if
4 you want.

5 A. Anyways --

6 Q. Okay. Here is my point then, in light of what
7 you just said --

8 A. Okay.

9 Q. -- and in light of your statements in your
10 counterclaims, your own documents refute that position.
11 Your own documents show that it was you, the Mavericks,
12 that wanted the buyout. Mr. Jahner was being a hero.

13 It wasn't Mr. Nelson didn't bring it up.

14 A. Those are your words, "hero."

15 MR. STODGHILL: Objection as to form.

16 A. And secondly, had this been an honorable
17 person, then he would have said, look, I'm looking at
18 taking another job. This probably isn't appropriate.
19 Let's just figure this out. And that -- and that in
20 particular upset me.

21 Q. (BY MR. DAVENPORT) Well, when you had
22 breached the contract, you had no way to prevent
23 Mr. Nelson from competing if you had breached the
24 contract.

25 MR. STODGHILL: Objection --

1 A. We didn't --

2 Q. (BY MR. DAVENPORT) You know that, don't you?

3 MR. STODGHILL: Objection as to form.

4 A. I'll defer to my lawyers, but my understanding
5 is we did not breach the contract.

6 Q. (BY MR. DAVENPORT) Well, I just pointed out
7 to you on July 15th, I mean, this ain't rocket science,
8 on July 15th you didn't make the payment, and that's
9 under any construction of -- even your lawyers'
10 construction, that's a breach of the contract. Do you
11 disagree with that?

12 MR. STODGHILL: Objection as to form.

13 A. I don't have a comment on it one way or the
14 other.

15 MR. STODGHILL: Don't respond. Yeah, his
16 lawyer does disagree with that. There is -- I mean,
17 Mark, you're -- you got to be fair with the witness
18 here, and that's -- you know, you are -- there is a
19 difference between a breach and a material breach and
20 whether there is even a breach at all. And so I am
21 going to object as to form and then let Mr. Cuban
22 respond if he understood the question to what your
23 question was. Could you restate it for me? I'd
24 appreciate it.

25 MR. DAVENPORT: Sure.

1 MR. STODGHILL: That would be great.

2 Q. (BY MR. DAVENPORT) The contract says you owe
3 him X dollars on the 15th. Nobody disputes that.
4 Mavericks don't make the payment on the 15th because
5 you tell them not to. Don't dispute that. Yeah.
6 Okay. Well, when I went to law school, that tells me
7 that at that instant in time on July 15th, that was a
8 breach of the contract because you failed to perform a
9 material obligation, that is make the payment. Do you
10 disagree with that?

11 MR. STODGHILL: Objection as to form.

12 You can respond.

13 A. When I went to business school and took my
14 business law class, all I can remember is -- the little
15 bits that I remember is that usually contracts have how
16 do you deal with disputes in contracts to mitigate
17 circumstances on a timely basis so they don't go into
18 breach. So since that's all I remember, I turn to my
19 lawyers and say, "Okay, guys, what's going on here?"
20 So...

21 Q. (BY MR. DAVENPORT) That would be a good
22 question for you to ask your lawyers. Let me ask you
23 this. On Exhibit 19 -- did I give you 19?

24 A. Yes, you did.

25 Q. All right. Let's see what y'all are saying.

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1 It says -- this is from -- from Keith Grant to Mark
 2 Cuban. It says, let's see, Keith Grant wrote on
 3 September the 14th, 2006, "Nellie called me on the way
 4 home tonight. Told me that we were not paying his
 5 deferred money. I played really dumb, not hard to do.
 6 He asked if I could help in any way. I told him that I
 7 would go underground and check it out. He really
 8 bought that. Let me know what you want me to do.
 9 Thanks."
 10 Was -- did Mr. Nelson regard Mr. Grant as
 11 a friend? As far as you could tell, were they friends?
 12 A. I don't know that they were friends, no.
 13 Q. Didn't Mr. Nelson request Mr. Grant's
 14 assistance in discussing the Fourth Amendment when
 15 Mr. Nelson had had some health problems and he had made
 16 the statement that if he -- if he were to die before
 17 all of his deferred compensation were earned, he would
 18 want the Mavericks to pay that to Joy; do you ever
 19 recall any discussion with him about that?
 20 A. I don't recall. What does that have to do
 21 with Keith Grant, though?
 22 Q. Because he talked to Mr. -- is Mr. Grant the
 23 one that was talking to you-all on Nellie's behalf
 24 about the Fourth Amendment and about his concerns?
 25 A. Right, but I don't think that's because they

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1 were friends. I think that's because Nellie feels he
 2 could dominate Keith.
 3 Q. Why do you say that?
 4 A. That's just my feeling.
 5 Q. Do you have a recollection of those
 6 discussions regarding the Fourth Amendment that I just
 7 brought about?
 8 A. Which discussions?
 9 Q. Exhibit 20, the Fourth Amendment, this is
 10 dated August 27th, '02. The Fourth Amendment was dated
 11 August 1, 2002. And reading your e-mail traffic down
 12 here from the bottom, it's from Floyd Jahner to Keith
 13 Grant. "Attached is the amendment for Nellie's
 14 contract. The effect of this amendment is as follows:
 15 Only additional risk would be in the event of death.
 16 Total deferred comp is nine million, and he has already
 17 earned 5.4 million as of 6/30/02."
 18 A. Uh-huh.
 19 Q. Do you dispute that, that he had earned that?
 20 A. I don't know, but I presume.
 21 Q. You don't dispute it?
 22 A. I don't know one way or the other.
 23 Q. Do you have any reason to dispute it?
 24 A. I don't have -- I don't know one way or the
 25 other.

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1 Q. Total unearned deferred comp that would be
 2 paid upon death with this amendment but is still
 3 unearned is 3.6 million, which is earned at the rate of
 4 \$900,000 for each of the next four years earning
 5 6/30/06. Do you remember us going over that in the
 6 contract?
 7 A. Do I remember us going over it in the
 8 contract?
 9 Q. Where we showed him earning the \$900,000 a
 10 year each year?
 11 A. We went through the appendix and the listing
 12 of it.
 13 Q. Yeah.
 14 A. But that --
 15 Q. Well, do you dispute the statement of what he
 16 just said in summarizing what the contract said?
 17 A. Again, I defer to my attorneys and everybody
 18 else on that stuff.
 19 Q. "Payment schedule would stay the same at \$1
 20 million a year." You see the word "payment"? That
 21 doesn't say "earned," it says that's "payment
 22 schedule." Do you understand the difference between
 23 "earned" and "paid"?
 24 A. I can read the difference.
 25 Q. Well, do you understand the difference between

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1 "earned" and "paid"? For example, if I work for two
 2 weeks, I earn my salary, but I don't get paid until the
 3 15th.
 4 MR. STODGHILL: Objection as to form.
 5 A. I see your point.
 6 Q. (BY MR. DAVENPORT) Do you get it? That's not
 7 hard stuff, is it?
 8 A. I am fine with it.
 9 Q. "Thus, the net effect of the amendment
 10 guarantees Nellie payment of the 3.6 of deferred comp
 11 that he has not yet earned. Each of the next four
 12 years that pass will reduce the effect of this
 13 amendment by the additional 900,000 of deferred comp
 14 that is earned. Contact me if you have any questions."
 15 Do you understand what he is saying?
 16 A. Yeah. He is saying if he dies, he gets paid;
 17 and if he doesn't, he doesn't.
 18 Q. But look carefully in the contract. It says
 19 if he dies, he gets paid the unearned portion of his
 20 comp, because you recall us talking earlier in the base
 21 contract, we had a termination for cause provision, and
 22 you had a termination without cause provision.
 23 Remember I was talking about it?
 24 MR. STODGHILL: Objection as to form.
 25 A. My memory's not that good, so --

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1 Q. (BY MR. DAVENPORT) Oh, I'll bet it's good.
 2 I'll bet it's real good.
 3 A. You have jumped around on a lot of things.
 4 Q. Termination for cause, one of the terminations
 5 for cause was death, right? Don't you remember in the
 6 contract?
 7 A. I don't know.
 8 Q. The termination -- the Mavericks could
 9 terminate the agreement for cause in the event
 10 Mr. Nelson died.
 11 A. That's a legal issue, so I will determine -- I
 12 will defer to my lawyers.
 13 Q. Okay. That's what the contract said. In the
 14 event of the death under that provision, then the Mavs
 15 wouldn't have to pay the unearned portion of the
 16 deferred comp, and it wouldn't have to pay the salaries
 17 and so forth that would be accrued after death. Do you
 18 remember that?
 19 A. Again --
 20 MR. STODGHILL: Objection as to form.
 21 Q. (BY MR. DAVENPORT) What the purpose of this
 22 amendment was --
 23 A. -- that's an analysis -- go ahead.
 24 Q. (BY MR. DAVENPORT) The purpose of this
 25 amendment was, the intent of the amendment was

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1 Mr. Nelson was worried that he thought that in his mind
 2 he had earned it all, all the deferred comp had been
 3 earned in the '98 and the '99 seasons when he wanted to
 4 get his 15 million for those two years. And so what he
 5 is saying, look, I let the Mavs spread this out, you
 6 know, on the Third Amendment you spread it out for six
 7 years. I let you spread it out, that's fine. But if
 8 something happens and I should die, it's not fair that
 9 Joy won't get the unearned portion of my deferred comp.
 10 That's what he told Keith Grant, was it not? Do you
 11 know anything about that?
 12 A. Just generally because I've read various
 13 e-mails, but I wasn't involved in that.
 14 : Objection as to form.
 15 Q. (BY MR. DAVENPORT) Do you remember that? Do
 16 you remember Mr. Grant talking about that?
 17 A. I remember us talking about changing this for
 18 death; but, again, I deferred to my attorneys on it.
 19 Q. And then Mr. Grant writes back to Mr. Jahner,
 20 "I am just getting back to you on this, since Nellie
 21 thinks that he has earned all of his deferred money,
 22 shouldn't the language be that if his contract is
 23 terminated under paragraph 8A or B, he gets his
 24 deferred money. Death is just one example of
 25 terminating the contract." And Jahner comes back, he

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1 said, "I thought it was agreed that we'd amend only for
 2 the death issue. I think the death clause and possibly
 3 the permanent disability clause make sense to amend for
 4 payment of the deferred, but the remaining items that
 5 would be terminate the contract are controlled by
 6 Nellie, and he should be left in."
 7 So what that means, if I'm reading this
 8 right, is what they were talking about is if he dies,
 9 yeah, Joy gets the unearned deferred comp; but if we
 10 terminate for cause, like he violates the contract,
 11 then he doesn't get it because that's within his
 12 control.
 13 MR. STODGHILL: Objection as to form.
 14 Q. (BY MR. DAVENPORT) Is that the way you read
 15 this?
 16 A. I don't read it one way or the other. I just
 17 call my lawyers and say what does this mean, and what
 18 do we do? That's why I pay them the big bucks.
 19 Q. All right. So let's -- let's go back to the
 20 contract, so we got -- Nellie has gone and signed with
 21 the Mavs. his lawyers have written you back on August
 22 4th that the Mavs had breached the contract.
 23 The Mavs don't respond. He goes to the
 24 Warriors, and now here comes a letter, Exhibit 21. And
 25 it looks like this is an August 31st fax header, but

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1 it's cut off. I think it's from Terdema Ussery; do you
 2 see that?
 3 A. Uh-huh.
 4 Q. Back on that Fourth Amendment, just before I
 5 get it, were you ever asked to approve --
 6 A. Excuse me.
 7 Q. -- Mr. Nelson's request that he get paid the
 8 unearned deferred comp in the event of his death, or
 9 that he, his estate get paid that? Do you have any
 10 recollection of approving that, because I saw you --
 11 you remember it all?
 12 A. Yeah, I believe so. Yeah, I don't remember
 13 all the details, but, yeah, that there was a change so
 14 that certain payments would go to his estate.
 15 Q. Did you recall focusing on the difference in
 16 that period of time between earned deferred comp and
 17 unearned deferred comp?
 18 A. No, I referred to my lawyers in that.
 19 Q. Do you know the financial reasons -- if you
 20 are not a cash basis taxpayer, do you know the
 21 financial reasons the club would want to spread out the
 22 earnings of deferred comp? Do you know from a business
 23 sense -- do you know why --
 24 MR. STODGHILL: Objection as to form.
 25 A. The longer you defer, the cheaper your net

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1 present value is.
 2 Q. (BY MR. DAVENPORT) Why, because you don't
 3 have to pay it?
 4 A. No, because time value -- two different
 5 questions.
 6 Q. I got you. I understand what you mean.
 7 A. Yeah.
 8 Q. The -- when you defer this -- this -- when you
 9 earn 900,000 a year and you are earning it out each
 10 year, and you don't have to start paying it until in
 11 the future, you start paying the million dollars, is it
 12 your understanding that you have to pay interest on
 13 what you defer, or are you just paying the principal
 14 amount of the deferred?
 15 A. Depends on the agreement.
 16 Q. Do you know what your agreements required?
 17 A. I don't.
 18 Q. Look at the August 31st letter from
 19 Mr. Ussery -- Ussery to Nelson. Says based on the news
 20 reports and Jahner's conversation, it appears you are
 21 and may have been in long time in material breach of
 22 the agreement. We have given you written notice of
 23 your breaches.
 24 Now, as of August 31st, as of the date of
 25 this letter, had the Mavericks made any payments to

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1 Mr. Nelson on his consulting agreement?
 2 A. I think the better way to look at it, as
 3 Nellie -- did Nellie accept any payments on the
 4 consulting agreement. We made the attempts to pay. He
 5 just wasn't willing to accept them.
 6 Q. And I went back to that, and I have looked at
 7 all your documents, and you know what I didn't see was
 8 I didn't see wire transfers like the ones we marked as
 9 an exhibit going into this account. And you say you
 10 attempted to make payment. I hear what you are saying,
 11 but I don't see any evidence of a wire. Why not?
 12 A. Because he told us not to send them, from my
 13 understanding. And they may have been refused. I
 14 don't remember the exact issues, but they -- either
 15 they -- either he told us or they were refused, one or
 16 the other. That is possible, you know, it does happen
 17 where, you know, people say no.
 18 Q. Y'all document all this stuff in e-mails right
 19 and left, and here you got an obligation that -- that
 20 is so important on making this payment of the breach,
 21 there is not one single document anywhere that you-all
 22 have produced, not one single document, not an e-mail,
 23 not a letter, not a confirmation letter from an
 24 attorney, not one single thing, other than an
 25 allegation in your counterclaim, that Lisa attempt --

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1 called Mr. Rothman and, quote, attempted to make
 2 payment and he told her not to pay it, which is what I
 3 think the position is you are taking. If that
 4 occurred, why wouldn't it have been documented?
 5 MR. STODGHILL: Objection as to form.
 6 Q. (BY MR. DAVENPORT) Why wouldn't you have put
 7 that in writing?
 8 A. You are asking to put a negative in writing.
 9 MR. STODGHILL: Objection as to form.
 10 A. I don't know -- I don't know why Lisa chose
 11 not to put it in writing, but she communicated to us,
 12 and Lisa has been known to tell the truth.
 13 Q. (BY MR. DAVENPORT) Well, what I am getting at
 14 is, though, is why, if you are going to make the
 15 payment, why wouldn't you call somebody? Why wouldn't
 16 you just say, here it is, boom, send the money just
 17 like you did on there? Does that make sense to you
 18 what you are saying?
 19 A. It makes perfect sense to me.
 20 Q. She would call and say, oh, can we send the
 21 money? I think we may be in breach. Did you know she
 22 said that?
 23 MR. STODGHILL: Objection as to form.
 24 A. I don't know what she said specifically.
 25 Q. (BY MR. DAVENPORT) You ever talked to

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1 Mr. Rothman?
 2 A. No, I have not.
 3 Q. Do you know what he's going to testify to?
 4 A. I have no idea.
 5 Q. Okay. In truth and fact, what had happened by
 6 the end of August when you saw that Mr. Nelson had
 7 signed up with the Warriors, you and your lawyers well
 8 realized that he had the right to do that because you
 9 had breached the contract; is that right?
 10 MR. STODGHILL: Objection as to form.
 11 A. Can I -- can we work from the premise that if
 12 you say "in truth and fact" to start a sentence --
 13 Q. (BY MR. DAVENPORT) Yeah.
 14 A. -- that it's not a question?
 15 Q. In truth and fact -- no, you can't. That is a
 16 question. In truth and fact, in truth and fact,
 17 you-all, when he went to work for the Warriors, you
 18 realized that he had the right to do it because, number
 19 1, you had breached the contract, and there was no
 20 covenant not to compete in the contract; is that
 21 accurate?
 22 MR. STODGHILL: Objection as to form.
 23 A. If -- oh, I feel like I am playing one of
 24 those crossword puzzle games. In truth and fact --
 25 Q. (BY MR. DAVENPORT) Yeah. Now that --

1 September 27th. Exhibit 22 --
 2 MR. HARPER: Did he answer the question?
 3 THE WITNESS: No, because I don't
 4 remember what the question was.
 5 Q. (BY MR. DAVENPORT) The question was --
 6 A. Kind of like hearing in truth and fact.
 7 MR. HARPER: It's because your answer was
 8 in truth and fact.
 9 MR. STODGHILL: Mark, which exhibit
 10 number is this, make sure I'm --
 11 MR. DAVENPORT: The one coming up is 22.
 12 MR. STODGHILL: Okay.
 13 Q. (BY MR. DAVENPORT) My question was that by
 14 the end of August, when Mr. Nelson had signed up with
 15 the Warriors, the Mavericks and its attorneys realized
 16 that by not paying him the consultant fee that they had
 17 breached the contract, that the contract was therefore
 18 terminated, and you had no legal way to stop him from
 19 coaching another team; is that right?
 20 MR. STODGHILL: Objection as to form.
 21 A. Absolutely not.
 22 Q. (BY MR. DAVENPORT) Absolutely not. So look
 23 at Exhibit 22. Here is a letter. This is from Robert
 24 Hart. The lawyers are writing to O'Connor a letter,
 25 and he says that, "Don will have repudiated the

1 wet, and I want you to look at the second paragraph
 2 here, actually the third paragraph. You see down there
 3 it says, "It does not take a lawyer"? Do you see that
 4 sentence beginning there?
 5 A. Where?
 6 Q. You see in the third paragraph, about the
 7 second or third sentence down, fourth sentence? "It
 8 does not take a lawyer"?
 9 A. Oh, I have got it.
 10 Q. "It does not take a lawyer to see what was
 11 going on. Don's and your actions leading up to the
 12 announcement of the deal with the Warriors and
 13 discussions had over several weeks in July and August
 14 about a possible one-time present value payment to
 15 settle contractual obligations were obviously designed
 16 to do one of two things. Either get Don as much money
 17 as possible through an agreed termination of his
 18 employment agreement, or modification that would have
 19 required payment of the deferred comp even if he were
 20 terminated for cause all before his breaches of the
 21 agreement became apparent, or maneuver the club into a
 22 technical breach so that Don could do exactly what he
 23 has done, take another job, insist that the club still
 24 owes him millions, and threaten the club with adverse
 25 publicity."

1 agreement and will excuse the club from any further
 2 obligation to perform under the agreement." Do you see
 3 that?
 4 A. Where are you at?
 5 Q. Second paragraph.
 6 A. That's what I was looking for, curing. I
 7 couldn't think of that word.
 8 Q. So he writes and he says, Don, you are
 9 violating the agreement because you went to the Mavs --
 10 I mean, you went the Golden State.
 11 A. Right. Okay.
 12 Q. Okay? Exhibit 23, Mr. Nelson's lawyer, John
 13 O'Connor writes back, said, don't think so. The
 14 breaches you are talking about all deal with and flow
 15 from your allegations that Don was still under contract
 16 with the Mavericks when he signed with the Warriors.
 17 And he said it is black letter elementary law that any
 18 material breach of a contract by one party excuses
 19 counter performance by the other. And he says you-all
 20 breached when you didn't make the payment under the
 21 consulting contract. That's kind of the issues we are
 22 fighting it out in the lawsuit now. Right?
 23 A. Apparently.
 24 Q. Okay. So, then, Exhibit 24, lawyer Hart
 25 writes back arguing, telling Mr. O'Connor why he is all

1 Now, in light of what I have just
 2 developed in the case here, we know that the idea of
 3 the lump sum payment was initiated by Mr. Jahner. You
 4 don't dispute that, do you?
 5 MR. STODGHILL: Objection as to form.
 6 A. Not from what the e-mail said, no.
 7 Q. (BY MR. DAVENPORT) Okay. It says, "As for
 8 the consultant pay, Don and Mark simply had different
 9 understandings of their agreement at the time Don
 10 stepped down as coach."
 11 We know that's not factual, is it? We
 12 know that you and Mr. Nelson actually had the same
 13 understanding of the contract.
 14 A. No, not necessarily because as we said that we
 15 didn't discuss the -- on that March 19th, we didn't
 16 discuss the consulting agreement at all. So there was
 17 some uncertainty there. And so, I mean, if -- in
 18 looking at it as we were going through all this, his
 19 biweekly payments were how much, \$7,000 every two
 20 weeks? And so you are talking about three periods, so
 21 that's \$21,000 over the course of however many millions
 22 of dollars and however many millions of years that we
 23 have been paying him. And so as a prudent business
 24 person, looking at the total amounts relative to the
 25 whole bigger picture, it was -- it shouldn't have been

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1 any basis for any conversations at all, as the
 2 discussion of something wrong, you know. And that's
 3 kind of the bigger picture element that I was looking
 4 at it, and then here we were having this conversation
 5 at the same time over a half million dollar payment.
 6 So on one hand \$21,000 over three periods and the other
 7 hand him trying to get a half million dollar
 8 acceleration and then go and take another job. And so
 9 it wasn't -- we didn't have a full conversation on how
 10 that all was to play out and how it all was defined.
 11 MR. DAVENPORT: Object, nonresponsive,
 12 move to strike.
 13 Q. (BY MR. DAVENPORT) My question was very a
 14 specific question. And I was pointing out that the
 15 statement in this letter that says, "As for the
 16 consultant pay, Don and Mark simply had different
 17 understandings of their agreement at the time Don
 18 stepped down." And I stopped right there.
 19 A. Right.
 20 Q. And then I went back, and I thought back at
 21 your e-mail dated the same date in March and so forth
 22 that you said don't change the payroll, the contracts
 23 don't change. Do you remember the e-mail?
 24 A. Right.
 25 Q. So y'all had the same understanding.

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1 A. No, not true at all, because there is things
 2 that we didn't complicate -- what's the word,
 3 contemplate. And so if you don't contemplate certain
 4 issues because neither one of us are lawyers and we
 5 didn't know to -- to undertake certain issues and
 6 discuss those issues, then the presumption is, okay,
 7 keep it the same. But if there was a material issue
 8 that was left out of our conversation, I wouldn't have
 9 said that. Had I known that we had -- that the
 10 consulting issue would have been such a big deal, I
 11 wouldn't have said everything's okay.
 12 Q. Well, now, you are confusing me. When you
 13 stepped down --
 14 A. Okay. We're even now.
 15 Q. When he stepped down in March as head coach --
 16 A. Right.
 17 Q. -- and you said the -- you had your e-mail
 18 that the contracts are unchanged, still have
 19 eleven-year contract, do you take the position that --
 20 that you did or did not want to keep him on as a
 21 consultant after --
 22 A. I take the position --
 23 Q. -- June 30th, 2006?
 24 A. I take the position that we had a five-minute
 25 conversation and that at that point in time in my mind

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1 set coming out that we didn't contemplate -- that we
 2 hadn't contemplated -- there wasn't a reason for us to
 3 contemplate all the possibilities that could go right
 4 or wrong as we moved forward, that we would just -- it
 5 was implicit that we would just deal with those issues
 6 as they came up. And so when I sent the e-mail saying
 7 things are the way they are, I hadn't even perceived,
 8 not being a lawyer, what possibly could go wrong. So
 9 it wasn't a definitive statement. How was that long
 10 answer to a short question?
 11 MR. STODGHILL: Could we take a break? I
 12 need to take a bathroom break.
 13 MR. DAVENPORT: It happens at your age,
 14 doesn't it? Okay.
 15 MR. STODGHILL: More than you think.
 16 MR. DAVENPORT: Take a break. He has to
 17 change the tape.
 18 THE VIDEOGRAPHER: We are off the record
 19 at 3:21.
 20 (Recess for 13 minutes.)
 21 THE VIDEOGRAPHER: This is the beginning
 22 of tape three. We are back on the record. The time is
 23 3:34.
 24 Q. (BY MR. DAVENPORT) Look at Exhibit 24 on page
 25 2. Look at this sentence here. I want to see if I can

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1 read this to you. On the top of that paragraph, come
 2 down about eight lines, and it says, "That Don, quote,
 3 earned, close quote, the deferred compensation called
 4 for by the agreement did not make the compensation
 5 indefeasible. Earned, close quote, means only that Don
 6 did not have to provide additional services in order to
 7 be eligible for payment."
 8 Now, you understand what I just read?
 9 This is your lawyer's talk. I think this is Mr. Hart's
 10 letter.
 11 A. I can't say that I understand it, but I can
 12 read the same words.
 13 Q. Now, can we take this issue out of the
 14 lawsuit, that the Mavericks are not contending that the
 15 compensation was not -- that the deferred compensation
 16 was not, quote, earned, the contention is is that even
 17 though it was earned, the Mavs should not have to pay
 18 it for some reason or another?
 19 MR. STODGHILL: Objection as to form.
 20 Q. (BY MR. DAVENPORT) Is that -- is that
 21 not a -- why are we whipping that horse? It's all over
 22 the place, and I don't think it's disputed. For some
 23 reason you won't admit it.
 24 MR. STODGHILL: Objection as to form.
 25 A. No, we can't --

1 Q. (BY MR. DAVENPORT) Is that -- huh?
 2 A. No, we can't take it out of the lawsuit.
 3 Q. Are you claiming that Mr. Nelson, in light of
 4 everything I have been readying you, everything from
 5 Mr. Jahner, now here is your lawyer, that Don earned
 6 the compensation, does not make it infeasible, are
 7 you saying he didn't earn it?
 8 A. I don't know what "infeasible" means.
 9 MR. STODGHILL: Objection as to form.
 10 Q. (BY MR. DAVENPORT) You can't take it away,
 11 infeasible means that you can't take it away. I
 12 mean, I don't know, is there some reason that y'all are
 13 running from that admission that I am missing?
 14 MR. STODGHILL: Objection as to form.
 15 A. I am going to defer to my attorneys on that.
 16 Q. (BY MR. DAVENPORT) So if we asked Robert and
 17 say you don't -- based on what you are saying is, you
 18 are saying, yeah, he earned it, but we got the right to
 19 take it away, you are not claiming he didn't earn it.
 20 If he says, yeah, that's a correct statement, you
 21 wouldn't contest?
 22 A. I am going to defer to my lawyers on that.
 23 Q. All right. Okay. Listen to this next one,
 24 then.
 25 A. Okay.

1 going on to object to storm.
 2 Q. (BY MR. DAVENPORT) Well, normally you say --
 3 he is making reference to this bad-boy or claw-back
 4 provision.
 5 A. I am still waiting for what you want to do.
 6 Q. But, you know, here we've got -- I guess look
 7 at it this way, look at it from the defense viewpoint.
 8 You've got a \$9 million deferred compensation agreement
 9 that Nelson claims was part of the '98 and '99 seasons.
 10 \$9 million, a lot of money, right?
 11 A. Uh-huh.
 12 Q. Important provision, right? \$9 million? Even
 13 to you that's a big number, right?
 14 A. That's a big number.
 15 Q. Now, I got all these agreements that the
 16 lawyers doctored over from time to time to time, and
 17 every one of these agreements talk about when it's
 18 earned and when it's paid, payable this, they attach
 19 examples and schedules of when it's earned and when
 20 it's to be paid. And even the Mavericks perform under
 21 that. Okay. Stay with me just for that. This is just
 22 a matter of contract interpretation. Okay? Now we get
 23 to now, though, and all of a sudden the Mavericks say,
 24 no, we are not going to pay under these contracts
 25 because they have a claw-back or a bad-boy provision

1 Q. "But executive compensation agreements quite
 2 commonly have the so-called claw-back or bad-boy
 3 provision that result in loss of agreed compensation
 4 based on events occurring after the compensation is
 5 earned."
 6 See that?
 7 A. Uh-huh.
 8 Q. Now, what I would think, if I was a lawyer
 9 writing that letter, what I was expecting to see here,
 10 I would have thought he would say, the employment
 11 agreement states, boom, and then quote the provision.
 12 I didn't see that.
 13 MR. STODGHILL: Objection.
 14 Q. (BY MR. DAVENPORT) I would have thought he
 15 said the First Amendment or the Second Amendment or the
 16 Third Amendment states -- states Nelson agrees that if
 17 he breaches the agreement and the Mavericks terminate
 18 the agreement for cause, the Mavericks will not have to
 19 pay him the earned or unearned deferred compensation,
 20 one sentence. Doesn't say that anywhere in the
 21 agreement, does it?
 22 MR. STODGHILL: Is your question, does
 23 Mark agree that's what you think?
 24 MR. DAVENPORT: No.
 25 MR. STODGHILL: Because, otherwise, I am

1 that states, in effect, if we terminate for cause, we
 2 don't owe you the deferred comp. And I challenge you
 3 or your lawyers or anybody else to show me where that
 4 type of forfeiture provision is in any document, any
 5 e-mail, anything. Do you know?
 6 MR. STODGHILL: Objection as to form.
 7 A. Well, I -- I am not a lawyer, so I couldn't
 8 give you specifically language or paragraphs, but I do
 9 know what I instructed -- I wouldn't say -- what my
 10 intent was in our -- my discussions with my attorney,
 11 and that was I had questions of trust with Nellie and
 12 having a bad-boy provision my words in the past in
 13 place to protect us was very, very important. It also
 14 was one of the reasons why the -- when we had our
 15 negotiation over the acceleration of the consulting
 16 agreement, why I think we didn't reach an agreement,
 17 because in the acceleration it was still meant to be
 18 that, yes, we are paying you all of it, we may pay you
 19 all of it up front, but you still have an obligation
 20 for those five years. And one of the reasons I want
 21 that obligation for those five years is because I'm
 22 concerned about what you might do and other issues, and
 23 it just -- it accrues to my benefit, and there is
 24 specific value to me to retain that bad-boy language,
 25 whatever it may be.

1 Q. (BY MR. DAVENPORT) Well, I hear what you are
 2 saying now in the -- you know, as we look at everything
 3 in 20/20, but looking back over the period of from
 4 1970 -- 1997 through August 2006, almost ten years, not
 5 one e-mail, not one letter, not one contract provision
 6 that should simply say if we terminate the contract for
 7 cause, you don't get your earned or unearned deferred
 8 compensation, one sentence, one single sentence. If
 9 you say it's that important to you, the Mavericks want
 10 to take the position that all of this money that he's
 11 earned and all these contracts -- the contracts say
 12 that you are going to pay him. The contracts don't say
 13 bad-boy, they don't say restrictive covenant. They
 14 don't say claw-back. They don't say anything about
 15 that. Why isn't that provision in there?

16 MR. STODGHILL: Objection as to form.

17 A. I presume my lawyers felt that the language
 18 was already -- the necessary language was already
 19 there.

20 Q. (BY MR. DAVENPORT) Have you seen -- did you
 21 ever see in any e-mail, because we've requested every
 22 single document that has any relevance to this thing,
 23 we've tried to. We hadn't seen one single provision
 24 that says anything to this claw-back or bad-boy effect.
 25 Had you ever used that word in talking to Mr. Nelson?

1 MR. STODGHILL: Objection as to form.

2 A. In talking to Mr. Nelson, I don't -- don't
 3 know.

4 Q. (BY MR. DAVENPORT) Did you ever tell
 5 Mr. Nelson in all the discussions you had with him
 6 before he went to the Warriors that if the Mavericks
 7 thought he breached the contract, he's going to give up
 8 \$9 million worth of deferred compensation? Did you
 9 ever tell him that?

10 A. Did I use the specific words he is going to
 11 give up \$9 million in compensation? No. Did I use the
 12 words that I am going to do everything I possibly can
 13 to make sure this works to our benefit? Yes.

14 Q. Okay. At no time until we get the lawyer's
 15 letter, and it's not dated, it's got to be September, I
 16 am guessing. I don't see a fax header on it. I am
 17 guessing September -- got to be September of 2006 or --
 18 no, it's got to be later than that, says I have your
 19 letter of October 12th, so it's October 2006, no time
 20 prior to this letter have I seen the word claw-back or
 21 bad-boy provision. Do you have any other explanation
 22 as to why a provision like that is not in any contract
 23 other than what you have told us?

24 MR. STODGHILL: Objection as to form.

25 A. I am not a lawyer, so I couldn't begin to

1 guess.

2 MR. STODGHILL: Objection, form. Let's
 3 be careful about talking over each other. Mark, you
 4 just pause for a second, let me have an opportunity.
 5 It will help our court reporter here get everybody's --
 6 Mark's questions out, my objection, and your statement.

7 Q. (BY MR. DAVENPORT) Wouldn't you think if the
 8 Mavericks were going to say that they had a right in
 9 the -- in the -- under some circumstances to make
 10 Mr. Nelson forfeit this money that in his mind he had
 11 earned back in '97 -- I mean, '98 and '99, if they have
 12 that right to forfeit that money for any reason, that
 13 it was incumbent on the Mavs to have put that in the
 14 contract so Mr. Nelson would have been on fair notice
 15 of what you were going to do?

16 MR. STODGHILL: Objection as to form.

17 A. I mean, I am not a lawyer, but I think to me
 18 it made sense that we could -- it wasn't a stretch to
 19 think that somebody would take \$200,000 -- somebody who
 20 had told me time in and time -- I mean, I can't tell
 21 you how many times Don Nelson told me that this was his
 22 last contract, he was going to retire, he was not going
 23 to work anymore. So when someone tells you this is his
 24 last contract, he is not going to work anymore multiple
 25 times, and then you make an offer to them to pay them

1 \$200,000 a year just to take your phone calls if and
 2 when you ever decide to do it and basically just be
 3 nice to you, that's a pretty damn good deal, wouldn't
 4 you think?

5 And so I didn't think there was really
 6 any necessity for us to try to explore every single
 7 negative option that might possibly take place, because
 8 it had never crossed my mind, based off of the
 9 conversations with Nellie, that he would go to take
 10 another job because he told me specifically multiple
 11 times that he never would take another job.

12 Q. Hadn't you and others at the Mavericks
 13 discussed with him the fact that you wanted him to take
 14 another job, that he ought to talk with some other
 15 clubs?

16 A. Not me.

17 Q. Did anybody else?

18 A. I have no idea, but not me, not the guy who
 19 writes the checks.

20 Q. So to go by this provision, you have no other
 21 explanation as to why there is no forfeiture clause in
 22 the documents other than what you have now told me?

23 MR. STODGHILL: Objection as to form.

24 Q. (BY MR. DAVENPORT) Hello?

25 A. No.

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
1201 Elm Street
Dallas, Texas 75270
(214) 855-5300

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1 A. I'll defer to our lawyers on that part of the
 2 claim. I don't know specifically what we asked for.
 3 Q. I think that that's a claim in here. And then
 4 after you've enjoined him, after you've taken away his
 5 retirement, after you've made him forfeit all the money
 6 for coaching the Warriors' for two years, just as a
 7 matter of good measure, then you want him to pay
 8 Mr. Stodghill's attorney's fees on top that of, right?
 9 MR. STODGHILL: Objection as to form.
 10 A. Well, first of all, I don't think that this is
 11 Nellie's retirement. Nellie's very well off. And
 12 second of all, I wouldn't pay Stodge if my life
 13 depended --
 14 Q. (BY MR. DAVENPORT) Well --
 15 MR. STODGHILL: Ouch.
 16 Q. (BY MR. DAVENPORT) In your language from your
 17 lawyers, "for claimant he saw it as his retirement
 18 fund." That's the language in your pleading. That's
 19 what your lawyers said.
 20 A. Yeah. That's in there.
 21 Q. Okay. So as Mr. Nelson in return for his nine
 22 or ten years of service to the Mavs, the retirement
 23 fund, his retirement fund, you want the judge to take
 24 that away from him, right?
 25 A. Yes, sir.

1 Q. Yes, sir. Anything else you want to do to
 2 Mr. Nelson for being a bad boy?
 3 A. Spank him -- no.
 4 Q. You want to --
 5 MR. DAVENPORT: Let me take a short
 6 recess.
 7 THE VIDEOGRAPHER: We are off the record
 8 at 4:18.
 9 (Recess for 13 minutes.)
 10 THE VIDEOGRAPHER: We are back on the
 11 record at 4:31.
 12 Q. (BY MR. DAVENPORT) Mr. Cuban, I think I am
 13 just about concluded. Have you understood all my
 14 questions?
 15 A. No.
 16 Q. Have you understood any of my questions?
 17 A. Yes.
 18 Q. All right. As you reflect here now as we
 19 conclude today, and you'll have the chance to read your
 20 deposition and -- and sign it and everything, but as
 21 you sit here right now, I always give the witness a
 22 chance if you said something that you just think was
 23 wrong at the time you said it, is there anything you
 24 want to --
 25 A. No.

1 Q. -- change? As far as you -- as you recall,
 2 your answers have been truthful and correct; and if I
 3 asked you the same questions at the time we try this to
 4 Judge Ashworth, you will give me the same answers if I
 5 ask the same questions; is that fair?
 6 A. If I understand them, yes.
 7 Q. If you understand them. Okay. Have I been
 8 courteous to you?
 9 A. Yes.
 10 Q. Okay. Fair enough. Thank you. I'll pass the
 11 witness?
 12 MR. STODGHILL: We are going to reserve
 13 our questions, but I did want an opportunity to look at
 14 the transcript to see if there is any part we want to
 15 designate as confidential.
 16 MR. DAVENPORT: Well, we won't do
 17 anything with it until you do that.
 18 MR. STODGHILL: I'd appreciate that. And
 19 let's -- I think we are done unless you have anything
 20 else.
 21 MR. DAVENPORT: We are done. I am done.
 22 THE VIDEOGRAPHER: We are off the record
 23 at 4:32.
 24
 25

1 CHANGES AND SIGNATURE
 2 WITNESS: MARK CUBAN DATE OF DEPO: 1/18/2008
 3 PAGE LINE CHANGE REASON
 4 _____
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1 A. I already explained to you what he got.
 2 Q. Does he have anything physical; does he have
 3 anything in writing?
 4 A. Does he have -- I don't know what kind of
 5 notes he took; I don't know.
 6 Q. But what -- the thing that you are complaining
 7 about is he's got the wherewithal to know the strengths
 8 and weaknesses of the players that played for the Mavs
 9 when he was their coach, and that gives him an
 10 advantage?
 11 A. It's like if you know -- asking somebody who
 12 knows the secret formula for Coke who went to work for
 13 Pepsi, what's he going to give back?
 14 Q. Yeah. Well, you think he lost that
 15 information when you-all played the Warriors a couple
 16 of weeks ago? Didn't you win?
 17 A. Yes, we did win.
 18 Q. So I guess if he got those trade secrets, he
 19 must have gotten kind of rusty on it or what?
 20 A. I couldn't -- I don't know. You will have to
 21 ask him. Maybe he felt guilty and decided not to use
 22 them.
 23 Q. You think he just blacked that off?
 24 A. I guess that was the case.
 25 Q. Must have been.

1 Nellie understands what the implications of that are,
 2 and even that's a trade secret. The fact that he
 3 can -- he can have the comfort to walk in. It's like a
 4 former lawyer walking through here, you know, someone
 5 here would probably kick him out unless they were all
 6 intimidated by him. That's just the nature.
 7 Q. Did y'all kick Nelson out?
 8 A. No, the people he -- I wasn't there. The
 9 people he walked by, the people that he had hired, no,
 10 they didn't feel comfortable kicking him out.
 11 Q. Did you call the police?
 12 A. No, we didn't call --
 13 Q. Did you all security?
 14 A. No. Like I said, if I was -- Nellie made the
 15 point to be around people he knew would not do that,
 16 and it's kind of like the dog pissing on his old turf,
 17 and, you know, and just -- that's Nellie.
 18 Q. I'll bet you really didn't like getting beat
 19 in the playoffs last year, did you, by him?
 20 A. No, I didn't.
 21 Q. Especially by Mr. Nelson, right?
 22 MR. STODGHILL: Objection as to form.
 23 A. No, I mean, but I don't like getting beat by
 24 anybody.
 25 Q. (BY MR. DAVENPORT) I guess that kind of

1 A. Maybe he had a few Buds.
 2 Q. Okay. Well, can you tell me anything else
 3 about your trade secret claim, any other trade secrets
 4 that he's got, other than the knowledge he gained of
 5 the Mavericks' strengths and weaknesses of the players
 6 while he was working them?
 7 A. And if you'll remember -- sorry, I didn't mean
 8 to interrupt, but if you remember back, I didn't say it
 9 was just knowledge of players. It was access to
 10 personnel, so he was able to hire people. It was
 11 access even to personnel when -- when we played the
 12 Warriors this year and during the playoffs last year he
 13 would walk around our office like he still worked here
 14 without any sense of common decency or respect for the
 15 fact that other people were in charge. And he tries to
 16 intimidate people and retains access.
 17 One of the things about this industry is
 18 that it's very incestuous. When -- people know that
 19 coaches are hired to be fired, and that because of
 20 that, people want to stay in good graces with anybody
 21 they think might get another job. And so they are
 22 afraid, and they're afraid of Nellie. And so that --
 23 that comes -- and Nellie knows that.
 24 And so the concept of just coming into
 25 our offices and walking around, it's just -- you know,

1 reinforced the decision you had made back in June of
 2 2006 to make him beg for his consulting salary?
 3 MR. STODGHILL: Objection as to form.
 4 A. Actually, you have got your dates wrong, but
 5 no, they weren't related.
 6 Q. (BY MR. DAVENPORT) I didn't? It didn't?
 7 Okay. Any other trade secrets that he has got?
 8 A. That's enough.
 9 Q. That's enough? And so now you want Judge
 10 Ashworth to -- let me see if I got this right. You
 11 want Judge Ashworth to, number 1, say Mavericks, you
 12 don't have to pay him the six and a half million in
 13 deferred compensation that Mr. Nelson earned. You want
 14 the judge to say you don't have to pay him that.
 15 A. Yes, sir.
 16 Q. And then you are saying, oh, in addition,
 17 Judge, we want you to enjoin Mr. Nelson from coaching
 18 the rest of the season -- let's see if we try this in
 19 March, we want you to enter an injunction to say you
 20 can't coach the Golden State for the rest of 2008, yes?
 21 A. Yes, sir.
 22 Q. Okay. And then on top of that, you say, Judge
 23 Ashworth, and by the way, while you are at it, we want
 24 you to make Nelson pay to the Mavericks all the money
 25 that Golden State has paid him. Yeah?

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1 your scouts dissect a playbook is just a small, small
 2 portion of it because the playbook doesn't hold to form
 3 from the beginning of the year to the end of the year.
 4 It's understanding personnel that makes the different.
 5 Q. So when you get -- like if the Mavs were to
 6 hire, say, a basketball player from another team
 7 that's, say, been playing with the Nicks for five
 8 years, you come in, then you would ask him what the
 9 Nicks do? You try to learn everything he knows about
 10 the Nicks before you play the Nicks?
 11 A. Yes, sir.
 12 Q. So that would give you an advantage --
 13 A. Yes, sir.
 14 Q. -- having a Nicks ex-player? Is that what you
 15 are talking about that since Don had coached your team,
 16 he knew the strengths and weaknesses of a number of the
 17 players, and you thought that gave him an advantage?
 18 A. Yes, sir.
 19 Q. Okay. But insofar as you claim that
 20 Mr. Nelson took a playbook or something with him from
 21 the Mavericks that had this is a list of Nowitzki's
 22 strengths and weaknesses, this is what he is going to
 23 do in the playoffs, he's going to cut right or
 24 whatever, if you let him play him?
 25 A. Actually, a playbook would have plays that

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1 you -- if you were to go through all the regular season
 2 and -- and dissect, as you say, or scout the teams and
 3 define all their plays, you would only get a subset of
 4 the total playbook. But having access to the total
 5 playbook would give you information, so when you say
 6 what plays haven't they run that we haven't seen
 7 through the scouting reports, oh, let's look at the
 8 playbook, they may be in there. That's an advantage.
 9 Q. So I guess after coaching the Mavericks from
 10 '98 to 2005, seven or eight years, whatever it is, I
 11 guess Nelson would have seen every kind of play not
 12 only that you have run, but what the other teams
 13 played. He knows what the Nicks do. He knew what the
 14 Golden State did, the other teams; isn't that right?
 15 A. No, it changes.
 16 Q. Huh?
 17 A. It changes.
 18 Q. But, I mean, I guess when he went from the
 19 Nicks to the Mavs, was the Nicks where he was before he
 20 came to the Mavs?
 21 A. Yes, sir.
 22 Q. Well, why couldn't the Nicks come in and say,
 23 you know all about all of our secret plays, and that's
 24 why the Mavs keep beating us, you can't do that because
 25 you are using our trade secrets? Isn't there something

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1 just patently absurd about that?
 2 MR. STODGHILL: Objection as to form.
 3 A. No. Hey, what's patently absurd is the
 4 question, because he worked for the Nicks three months
 5 and got fired. And so he really -- and because -- he
 6 got fired because he wanted to use the personnel in a
 7 completely different way than the personnel wanted to
 8 be used, and the team basically rebelled from him. And
 9 so it's --
 10 Q. (BY MR. DAVENPORT) Just use a different
 11 hypothet. Let's say the -- any coach, though, that
 12 coaches, him or whoever, you coach five years for the
 13 Nicks, and then you leave the Nicks and you go to work
 14 for the Mavs, couldn't you say the same thing, that
 15 that coach has a better knowledge of the Nicks and
 16 their players?
 17 A. Absolutely.
 18 Q. But there is nothing in the league that
 19 prevents that coach from using his knowledge, is there?
 20 A. Sure. There is called noncompete contracts.
 21 Q. Which you don't have in this case.
 22 MR. STODGHILL: Objection as to form.
 23 A. You just said about the rest of the league.
 24 Again, I'm not going to pretend to be the lawyer, but
 25 Nellie is still under contract to us. And so --

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1 Q. Why aren't you paying him, then?
 2 A. We tried.
 3 Q. He's still under contract. Here it's been
 4 three years, and you haven't made a payment to him.
 5 This man has been under contract to you since July
 6 2006, July 2007, and you haven't made him a payment,
 7 and you are claiming he is still under contract?
 8 A. Well, it's -- let me re --
 9 MR. STODGHILL: Objection as to form.
 10 A. Again, I will defer -- I will defer to the
 11 lawyers, but let's just say, you know, he's -- he
 12 breached or whatever the legal term is.
 13 Q. (BY MR. DAVENPORT) We'll see. So if you
 14 said -- if Nelson was sitting here and you said, okay,
 15 Judge Ashworth, Mr. Nelson's got our trade secrets.
 16 And the judge says, all right, Mr. Cuban, I'll make him
 17 give them back. What are going to tell the judge he's
 18 got? What do you want to get? Nellie's sitting right
 19 there.
 20 MR. STODGHILL: Objection as to form.
 21 Q. (BY MR. DAVENPORT) Just tell me, what do you
 22 want Nelson to bring back? Has he got names of
 23 players? What's he got? Has he got a book?
 24 A. I just explained to you what he got.
 25 Q. What, up here?

1 A. I certainly didn't make him step down.
 2 Q. Why did you replace with Avery?
 3 A. Because he didn't want to do his job.
 4 Q. So you wouldn't fire him; you kept him around.
 5 A. I want -- I would not have fired him, no.
 6 Q. Hum. Well, tell me the trade secrets he has.
 7 What does he have? Did he take a playbook or
 8 something?
 9 MR. STODGHILL: Objection, form.
 10 A. No, I explained -- I just explained to you.
 11 Q. (BY MR. DAVENPORT) Just because -- so does
 12 that -- under your theory, I guess anybody that coaches
 13 an NBA team or a professional football team or a
 14 professional baseball team, if they leave after a
 15 number of years and go to another team, they have an
 16 advantage when they play their former employer?
 17 A. I couldn't speak to other sports, but I don't
 18 think there is any question, only an idiot would think
 19 otherwise when it comes as to professional basketball.
 20 There is only five players on the court at any one
 21 time, and one or two players can dominate -- can carry
 22 a team to a championship. We saw that with Shaq and
 23 Kobe. And when you have somebody who understands those
 24 players better than anybody, who actually trained them
 25 and developed them to define certain strengths to

1 play -- to go away from their weaknesses, that's
 2 certainly an advantage.
 3 Q. But that's a fair advantage; that's not a
 4 trade secret, --
 5 MR. STODGHILL: Objection as to form.
 6 Q. (BY MR. DAVENPORT) -- his knowledge as a
 7 coach. I mean, he has been a coach for how many years
 8 with the Nicks, the Warriors, the Mavericks? Are you
 9 saying that he can't use his knowledge of basketball to
 10 compete against you?
 11 A. He's welcome to use his --
 12 MR. STODGHILL: Objection, form.
 13 A. He's welcome to use his knowledge of
 14 basketball as anybody would, but there is certain other
 15 information that he would otherwise not have access to
 16 had he not been the coach for eight years, not only
 17 access in terms of information about our players, but
 18 access to our -- our coaches that he hired away. Had
 19 he not gone -- had he not breached his contract and
 20 taken this job with the Warriors, he never would have
 21 been in the position to hire who Larry Riley, or I
 22 forget who else that he has over there as well. Had he
 23 not taken -- breached his contract and taken these
 24 other positions, you know, he wouldn't have been in a
 25 position of being a competitor with eight years of

1 experience with several of our players.
 2 Q. Larry Riley, was he under a covenant not to
 3 compete?
 4 A. No, he was not.
 5 Q. Did you sue Larry Riley saying he didn't have
 6 the right to leave?
 7 A. He had every right to leave.
 8 Q. Well, I guess -- and I am not a big basketball
 9 fan, but -- and I don't know much about it.
 10 A. I'll sell you season tickets, and we'll teach
 11 you.
 12 Q. But are these games televised?
 13 A. Yes, sir.
 14 Q. And after you play the Mavericks or after the
 15 Mavericks play Golden State or whatever, do the coaches
 16 go back and look at what happened in the game, study
 17 the game films?
 18 A. Yes, sir.
 19 Q. So everything you do in a basketball game,
 20 every play and everything else, the coaches can all
 21 look at what was done, nothing secret about that?
 22 A. No, sir.
 23 Q. Just like football or whatever?
 24 A. Not true at all.
 25 Q. Huh?

1 A. Not true at all.
 2 Q. You can't look at the -- I couldn't look at
 3 the game, or Don Nelson couldn't look at the Mavericks'
 4 tape of the game --
 5 A. Sure.
 6 Q. -- and dissect it, know every play that you
 7 did --
 8 A. But we don't -- it's not about plays, and we
 9 don't use all the plays in the regular season or do the
 10 same things in the regular season that we would do in
 11 the playoffs, and you do things that leverage your
 12 personnel in the playoffs differently because there is
 13 more at stake. And Nellie -- someone who has coached
 14 your team knows that.
 15 I mean, I'll give you a perfect example.
 16 When you trade for a player, so when we traded for Raef
 17 LaFrentz and Avery Johnson, traded for four guys from
 18 the Denver Nuggets, when we play the Denver Nuggets,
 19 one of the first things Nellie would do or any head
 20 coach would do was talk to that player and ask them
 21 about their plays, about their personnel to try to get
 22 an advantage because it is an advantage. So and that's
 23 just from a player's perspective it provides an
 24 advantage.
 25 So just dissecting a playbook or having

1 Q. Well, you say after the finals, what are you
 2 referring to?
 3 A. The NBA finals where we lost.
 4 Q. Right.
 5 A. Where I got fined multiple times for
 6 situations that had occurred.
 7 Q. All right. So you didn't want to go back.
 8 But you would have had -- is there a procedure in place
 9 with the NBA where if you felt that Mr. Nelson had
 10 violated the contract by going to work for the Mavs
 11 that you could have filed a complaint?
 12 A. There are procedures for tampering, yes, and
 13 we could have.
 14 Q. Is that -- what do they call it?
 15 A. Tampering.
 16 Q. So if you had filed that complaint, how would
 17 it have played out? What -- procedurally what would
 18 have happened?
 19 A. We would have had to file it, and then the
 20 commissioner would have ruled upon it, and we probably
 21 would have won.
 22 Q. If you probably would have, why didn't you
 23 file it?
 24 A. Like I said, I didn't want to deal with the
 25 NBA.

1 Q. So you made a conscious decision not to pursue
 2 remedies with the league that you now say you thought
 3 you could have won?
 4 A. Right, because the reward isn't financial.
 5 You get a second round draft pick type thing. It's
 6 just not worth -- you know, and a second round draft
 7 pick isn't worth much.
 8 Q. In your petition you say that you are seeking
 9 a permanent injunction, claimant has breached his
 10 contractual obligations by disclosing the Mavericks'
 11 confidential information and by competing against the
 12 team. These breached promises have caused and unless
 13 enjoined will cause the Mavericks irreparable harm and
 14 you want Judge Ashworth to grant you a permanent
 15 injunction enjoining Mr. Nelson from using or
 16 disclosing or transferring the Mavericks' confidential
 17 proprietary information until 2011/12 performing any
 18 duties or providing any services for other professional
 19 or amateur basketball organizations. Are you still
 20 asking for that are relief?
 21 A. Yes, sir.
 22 Q. So you want -- you are going to ask Judge
 23 Ashworth now that after Mr. Nelson coached the Warriors
 24 last year, after he beat the Mavs in the playoffs,
 25 after he coached them this year, you are going to come

1 into court and say, oh, by the way, we want you to
 2 enter an injunction? Are you really going to tell
 3 Judge Ashworth that?
 4 A. Yes, sir.
 5 MR. STODGHILL: Objection as to form.
 6 Q. (BY MR. DAVENPORT) You really are?
 7 A. That's what it says, you know.
 8 Q. I know it says a lot of things in here.
 9 That's why I was just going to say --
 10 A. Yes, sir.
 11 Q. Okay. And so you think Mr. Nelson's got a
 12 bunch of the Mavs trade secrets?
 13 MR. STODGHILL: Objection as to form.
 14 A. Define "trade secrets."
 15 Q. (BY MR. DAVENPORT) It's your term, one you
 16 and your lawyers say. He got his trade secrets, and
 17 what, did he use the trade secrets to beat you in the
 18 finals last year?
 19 A. I think he has --
 20 MR. STODGHILL: Objection as to form.
 21 A. I think he has an advantage relative to the
 22 other 28 teams in the league.
 23 Q. (BY MR. DAVENPORT) Let's first talk about
 24 trade secrets. What trade secrets does Mr. Nelson have
 25 other than he is a good coach?

1 MR. STODGHILL: Objection as to form.
 2 A. Well, to your point earlier or to your -- I
 3 think it was in your claim, whatever you call it, about
 4 talent evaluation, he helped pick and draft a lot of
 5 our players. And, you know, Nellie's the king of the
 6 matchups, and so he understands the players that we
 7 have in our -- many of the players we have on our
 8 roster strengths and weaknesses better than anybody.
 9 He was with them longer than any other coach, even our
 10 most current coach. In addition, he hired away our
 11 bench coach, Larry Riley, who spent multiple years and,
 12 as a matter of fact, Larry was responsible for actually
 13 training and teaching all of our younger players and
 14 putting them through specific evaluations.
 15 He also has gone on to take multiple
 16 former Mavericks that were -- that he coached and add
 17 them to their roster. So that gives him an advantage
 18 in understanding our players and understanding their
 19 strengths and weaknesses that 28 other coaches don't
 20 have. That's not available just through scouting.
 21 Q. If he was such a good coach, why did you make
 22 him step down in March, if you liked him so much?
 23 MR. STODGHILL: Objection, form.
 24 A. I didn't make him step down.
 25 Q. (BY MR. DAVENPORT) Huh?

1 Alternatively, we'll have to seek the commissioner's
2 involvement in investigating the Warriors' apparent
3 tampering with Don's contract with the Mavs. I trust
4 you would prefer a private resolution. I am willing to
5 hold off contacting the commissioners for now, but I
6 need to hear from you one way or the other."

7 Did you ever hear from the Warriors?

8 A. Yes.

9 Q. What did they say?

10 A. They said, can't we work this out, give you a
11 second round -- I forget exact -- we will give you a
12 second round pick, or we will work something else out.
13 And we just -- I just said just basically drop it.

14 It's not worth it. Except then I also asked -- I asked
15 Donny -- Donny to see if they'd do a deal where I'd
16 basically save \$6 million in a trade, and then I was
17 like, okay, we can work it out that way.

18 Q. Where you do what, say again?

19 A. Do a trade with them where I would have saved
20 \$6 million, give or take, and gotten a better player.

21 Q. Where does the six million come from?

22 A. Exchange of contracts in a trade.

23 Q. But you are not talking about the six and a
24 half million on the deferred comp that you were -- that
25 you were not going to pay Nelson?

1 A. I was saying, look -- yeah, that's exactly. I
2 am talking, okay, if you want me to walk away from
3 this, save it to me -- save it for me on the other
4 side.

5 Q. Did you make the decision not to pay the
6 deferred comp? Were you the man that did that?

7 A. Did I make the decision? I deferred to my
8 attorneys who -- we dealt within accordance to guidance
9 from our attorneys.

10 Q. Let me ask you this. We have been over the
11 fact that the contract does not have a covenant not to
12 compete or a restrictive covenant following
13 termination.

14 MR. STODGHILL: Objection as to form.

15 A. Not necessarily true. You know, you are
16 referring to contractual issues and legal issues that I
17 am not -- you know, every time that you have said in
18 truth and fact, every time you have said we have agreed
19 upon, and just what you have said right now, I am not
20 acquiescing that I was in agreement just because I
21 didn't answer a five-part question with five answers.

22 MR. DAVENPORT: Object, nonresponsive,
23 move to strike.

24 Q. (BY MR. DAVENPORT) Your contract does not
25 have a restrictive covenant that survives termination.

1 It has a provision that Mr. Nelson will not compete as
2 long as the contract term -- the contract is in force
3 in the term. That's what the contract says. We can
4 argue about it, we can be silly about it, but that's
5 what your documents say.

6 Now, do you agree with the fact that if,
7 in fact, the judge finds that the Mavericks breached
8 the contract on July 15th, 2006, if he finds that, and
9 he says the contract was terminated on that date
10 because of the Mavericks' breach, do you contend that
11 the Mavericks would still have the right to seek or to
12 try to prevent Mr. Nelson from competing with another
13 team?

14 MR. STODGHILL: Objection as to form.

15 A. I will defer to my attorneys on that. That's
16 a legal issue.

17 Q. (BY MR. DAVENPORT) You won't answer the
18 question?

19 A. That's a legal issue. I don't know.

20 MR. STODGHILL: Mark, I want to remind
21 you, let me have an opportunity to log my objections
22 for the court reporter.

23 THE WITNESS: Right.

24 MR. STODGHILL: No problem. Just to
25 remind you.

1 Q. (BY MR. DAVENPORT) The -- okay. So here we
2 are, October 2006, you are claiming Mr. Nelson has
3 got -- is breaching the contract. He's going in
4 competition against you, but you don't follow up
5 anymore with the Warriors other than discussing this
6 one-time trade, you let it go?

7 A. Because you have to go through the NBA. This
8 is an NBA issue, and at that point in time after the
9 finals, dealing with the NBA is not something I wanted
10 to do.

11 Q. Okay. We are in the -- we are in October of
12 2006. Did you approach the NBA and file a complaint
13 that Don was violating the contract about competing
14 with you?

15 A. We approached the NBA and discussed what would
16 take place in the event we filed a complaint.

17 Q. And what did you -- who did you talk to and
18 what did you say and what did they say?

19 A. We talked to their attorneys, and I don't
20 remember specifically what was said because there was
21 other people having the conversation. But as it was
22 relayed to me, you know, there was a lot that we would
23 have to do, and the last thing I wanted to do at that
24 point in time after the finals was deal with the NBA.
25 So I didn't think the hassle was worth the reward.

1 this is you-all's statement that you filed with the
 2 mediator.
 3 A. Right.
 4 Q. And you say, none of the deferred comp would
 5 be paid to the claimant if the employment contract was
 6 ever terminated for cause such as if claimant breached
 7 the contract. Okay? So what I did is I went to
 8 looking in the contract, where does it say that? The
 9 only thing that you-all put in in the contract, aside
 10 from the initial agreement that said the obligation to
 11 pay deferred comp survives the agreement, that's the
 12 very first time when the Perot group did it, the only
 13 provision you-all put in is what happens to this
 14 deferred comp if you terminate for cause is it says you
 15 quit earning it. You earn it up to half a year or
 16 whatever. When if this contract read what you say it
 17 does now, it would say if the employment is terminated
 18 for cause at any time during the term of this
 19 agreement, all deferred compensation is forfeited.
 20 That's what I would have expected to see. But instead,
 21 you have a provision that specifically deals with a
 22 termination for cause, and what the Mavs and Nelson put
 23 in the agreement was he earned it on a pro rata basis.
 24 Do you have any explanation for that?
 25 MR. STODGHILL: Objection as to form.

1 Q. (BY MR. DAVENPORT) Payment on the 15th,
 2 payment on the -- let's see how many times you pay
 3 it -- you didn't pay him, four -- you missed four
 4 payments to him before he went to the Warriors. How
 5 much are you getting out of that?
 6 A. I don't know. I don't know how many we --
 7 Q. Whatever it was.
 8 A. What's being disputed, but out of 20 some
 9 million dollars, you would think, out of how many
 10 years, the guy would, you know -- it comes back the
 11 other way, too.
 12 Q. He had been paid --
 13 A. The obligation comes back the other way to
 14 say, okay, guys, you have given me tens of millions of
 15 dollars. Let's -- we are in dispute here, let's work
 16 something out. Isn't that -- wouldn't you think
 17 that's, you know, a decent analysis?
 18 Q. There was no dispute. He hadn't disputed
 19 anything. There was no controversy. There was no
 20 alleged breach by Mr. Nelson. The only dispute was you
 21 didn't want to pay him this blood money.
 22 A. Not necessarily.
 23 MR. STODGHILL: Objection as to form.
 24 Q. (BY MR. DAVENPORT) The record's clear on
 25 that. Listen, on this other -- I was reading this

1 A. I mean, all I can tell you is we never
 2 terminated him, and if he would not have breached the
 3 contract, it wouldn't be an issue.
 4 Q. (BY MR. DAVENPORT) So you say you have never
 5 terminated Mr. Nelson for cause?
 6 A. Again, I'll defer to lawyers, but not that I
 7 am aware of. I mean, if he was still hanging out in
 8 Maui, we could still be paying him, and everything
 9 would be hunky-dory.
 10 Q. Well, you say that, but you didn't pay him on
 11 July 15th when everything was hunky-dory, did you?
 12 MR. STODGHILL: Objection as to form.
 13 A. No, but we paid him --
 14 Q. (BY MR. DAVENPORT) I'll bet you wish you had
 15 have paid him now, don't you?
 16 A. I mean, \$21,000 out 25, \$26 million, you
 17 know --
 18 Q. Just enough to constitute a material breach,
 19 right?
 20 A. Not --
 21 MR. STODGHILL: Not quite.
 22 A. Not quite where I grew up.
 23 MR. STODGHILL: Objection as to form.
 24 A. I would say that was a -- the GAAP folks, the
 25 accounting folks wouldn't consider that material.

1 agreement, and it says, "As the contract makes clear,
 2 and as the parties had agreed, claimant was not
 3 entitled to any compensation that had been deferred if
 4 claimant's employment was terminated for cause."
 5 So I got Judge Ashworth here, and I am
 6 going to show everything up there. Do you have any
 7 idea where in the contract in all these amendments it
 8 makes this point so clear, to use the language of your
 9 lawyers?
 10 MR. STODGHILL: Objection as to form.
 11 A. I'll defer to the people who created the
 12 language.
 13 Q. (BY MR. DAVENPORT) I am sure the judge will
 14 have some questions for them. All right.
 15 Let's -- let's get to the end of this.
 16 Let's get to the -- I tell you what, while I am on this
 17 thing, let me -- let me come back to Exhibit 25; do you
 18 have that before you?
 19 A. Yes, sir.
 20 Q. Okay. At this point in time, Ussery writes
 21 Golden State and says, Nelson's under contract, blah,
 22 blah, blah, "We would prefer to resolve this matter
 23 without the aid of the commissioner or the courts.
 24 With the start of training camps, we need to promptly
 25 resolve the issue of Don's numerous breaches.

1 Q. Do the Mavericks take the position that --
 2 that if they terminate the contract for cause, they
 3 have the right to forfeit all of the deferred
 4 compensation that he has earned?
 5 MR. STODGHILL: Objection as to form.
 6 You can respond.
 7 Q. (BY MR. DAVENPORT) Do you know?
 8 A. I don't know. I'd have to defer to my
 9 attorneys.
 10 Q. You'd do what?
 11 A. I'd defer to my attorneys.
 12 MR. STODGHILL: Let me ask you a
 13 question, Mark, did you mark this as Exhibit 25? Are
 14 we not --
 15 MR. DAVENPORT: I am coming back to it.
 16 MR. STODGHILL: Is it Exhibit 25? I've
 17 got this -- the letter from Mr. Ussery dated October 6?
 18 Okay. Good.
 19 MR. DAVENPORT: Is that the one --
 20 MR. STODGHILL: Okay, good.
 21 MR. DAVENPORT: Have I got it?
 22 MR. STODGHILL: I was just making sure --
 23 MR. McCOMBER: It's right here.
 24 MR. STODGHILL: Okay.
 25 MR. DAVENPORT: Hold it for me. I am

1 read. I under -- I am not an attorney, so I am not
 2 going to say I understand that in the legal terms.
 3 Q. We read that, okay, what we did is I went back
 4 and read the employment agreement, the original one,
 5 and it didn't say that. And then I read the first, the
 6 second, the third, the fourth, and the fifth
 7 amendments, and they didn't say that. But you know
 8 what I did find when I was reading all these
 9 amendments, I found a provision that started in the
 10 Second Amendment, and it was repeated and brought
 11 forward in the third. And at the end of the day it was
 12 brought forward in the Fifth Amendment. And this is
 13 the example you-all put in three different amendments.
 14 The deferred -- this is a paragraph 4 (e) in the Fifth
 15 Amendment -- 4 (c).
 16 MR. STODGHILL: Which exhibit are we
 17 talking about?
 18 MR. DAVENPORT: Exhibit 9. Okay. Listen
 19 to me.
 20 THE WITNESS: Exhibit 9?
 21 MR. STODGHILL: Exhibit 9.
 22 Q. (BY MR. DAVENPORT) If you want to get it,
 23 that would probably be easier. Can you find 9?
 24 A. 6, 7, 8, 9, okay.
 25 Q. Turn over to page 3, paragraph (c) at the

1 going to come back to it.
 2 Q. (BY MR. DAVENPORT) I am going to read part of
 3 this to you from your counterclaim. You are talking
 4 about the Second Amendment. "The Second Amendment
 5 entirely rewrote and replaced the compensation
 6 provisions in the original contract. In addition to a
 7 significant raise, the new amendment changed the way
 8 claimant was to be paid. For example, in '98 to 2000
 9 the Mavs no longer had the right to defer 200,000 of
 10 salary. Instead, he would be paid a set salary, and on
 11 top of the regular salary he would receive additional
 12 deferred compensation of up to eight million that would
 13 be paid out at the end of the contract term.
 14 "This new kind of deferred compensation
 15 served two purposes. For claimant he saw it as a
 16 retirement fund and an ability to have additional
 17 monies being paid to him long after he stepped down
 18 when he would be in possibly a lower tax bracket. For
 19 the Mavericks, it was another key way to enforce
 20 claimant's restrictive covenants as none of this
 21 deferred compensation would be paid to claimant if the
 22 employment contract was ever terminated for cause, such
 23 as if claimant breached the contract?"
 24 Do you understand what I just read?
 25 A. No. But I -- I know generically what you have

1 bottom of the page. So when I was going through all
 2 these documents, I was looking for that sentence that
 3 says that for the Mavericks it was another key way, as
 4 none of the deferred comp would be paid to claimant if
 5 the employment contract was ever terminated for cause,
 6 such as if claimant breached the contract. I couldn't
 7 find that, but here is what I did find.
 8 It says, "The deferred compensation
 9 earned by employee for each 12-month period as
 10 referenced in paragraph 4 (a) above shall be earned pro
 11 rata over the 12-month period?"
 12 Now, this is what got my attention. It
 13 says, "i.e., if the employee is terminated for cause
 14 halfway through a 12-month period for which deferred
 15 compensation is earned as provided above, half of such
 16 deferred compensation amount for that period will have
 17 been earned." And I got to looking at that, and that
 18 is completely and totally inconsistent with the
 19 Mavericks' statement that if you terminate for cause,
 20 he forfeits it. You see what I am saying? You see how
 21 that confused me?
 22 MR. STODGHILL: Objection as to form.
 23 A. We've never terminated him one way or the
 24 other.
 25 Q. (BY MR. DAVENPORT) But I'm reading your --

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1 this is you-all's statement that you filed with the
 2 mediator.
 3 A. Right.
 4 Q. And you say, none of the deferred comp would
 5 be paid to the claimant if the employment contract was
 6 ever terminated for cause such as if claimant breached
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 8 looking in the contract, where does it say that? The
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 23 in the agreement was he earned it on a pro rata basis.
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 2 terminated him, and if he would not have breached the
 3 contract, it wouldn't be an issue.
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 5 terminated Mr. Nelson for cause?
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 7 am aware of. I mean, if he was still hanging out in
 8 Maui, we could still be paying him, and everything
 9 would be hunky-dory.
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 11 July 15th when everything was hunky-dory, did you?
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 15 have paid him now, don't you?
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 10 years, the guy would, you know -- it comes back the
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 16 Let's get to the -- I tell you what, while I am on this
 17 thing, let me -- let me come back to Exhibit 25; do you
 18 have that before you?
 19 A. Yes, sir.
 20 Q. Okay. At this point in time, Ussery writes
 21 Golden State and says, Nelson's under contract, blah,
 22 blah, blah, "We would prefer to resolve this matter
 23 without the aid of the commissioner or the courts.
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 24 half million on the deferred comp that you were -- that
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 12 try to prevent Mr. Nelson from competing with another
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 16 a legal issue.
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 18 question?
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 21 you, let me have an opportunity to log my objections
 22 for the court reporter.
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 9 finals, dealing with the NBA is not something I wanted
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 11 Q. Okay. We are in the -- we are in October of
 12 2006. Did you approach the NBA and file a complaint
 13 that Don was violating the contract about competing
 14 with you?
 15 A. We approached the NBA and discussed what would
 16 take place in the event we filed a complaint.
 17 Q. And what did you -- who did you talk to and
 18 what did you say and what did they say?
 19 A. We talked to their attorneys, and I don't
 20 remember specifically what was said because there was
 21 other people having the conversation. But as it was
 22 relayed to me, you know, there was a lot that we would
 23 have to do, and the last thing I wanted to do at that
 24 point in time after the finals was deal with the NBA.
 25 So I didn't think the hassle was worth the reward.

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1 Q. Well, you say after the finals, what are you
 2 referring to?
 3 A. The NBA finals where we lost.
 4 Q. Right.
 5 A. Where I got fined multiple times for
 6 situations that had occurred.
 7 Q. All right. So you didn't want to go back.
 8 But you would have had -- is there a procedure in place
 9 with the NBA where if you felt that Mr. Nelson had
 10 violated the contract by going to work for the Mavs
 11 that you could have filed a complaint?
 12 A. There are procedures for tampering, yes, and
 13 we could have.
 14 Q. Is that -- what do they call it?
 15 A. Tampering.
 16 Q. So if you had filed that complaint, how would
 17 it have played out? What -- procedurally what would
 18 have happened?
 19 A. We would have had to file it, and then the
 20 commissioner would have ruled upon it, and we probably
 21 would have won.
 22 Q. If you probably would have, why didn't you
 23 file it?
 24 A. Like I said, I didn't want to deal with the
 25 NBA.

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1 Q. So you made a conscious decision not to pursue
 2 remedies with the league that you now say you thought
 3 you could have won?
 4 A. Right, because the reward isn't financial.
 5 You get a second round draft pick type thing. It's
 6 just not worth -- you know, and a second round draft
 7 pick isn't worth much.
 8 Q. In your petition you say that you are seeking
 9 a permanent injunction, claimant has breached his
 10 contractual obligations by disclosing the Mavericks'
 11 confidential information and by competing against the
 12 team. These breached promises have caused and unless
 13 enjoined will cause the Mavericks irreparable harm and
 14 you want Judge Ashworth to grant you a permanent
 15 injunction enjoining Mr. Nelson from using or
 16 disclosing or transferring the Mavericks' confidential
 17 proprietary information until 2011/12 performing any
 18 duties or providing any services for other professional
 19 or amateur basketball organizations. Are you still
 20 asking for that are relief?
 21 A. Yes, sir.
 22 Q. So you want -- you are going to ask Judge
 23 Ashworth now that after Mr. Nelson coached the Warriors
 24 last year, after he beat the Mavs in the playoffs,
 25 after he coached them this year, you are going to come

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1 into court and say, oh, by the way, we want you to
 2 enter an injunction? Are you really going to tell
 3 Judge Ashworth that?
 4 A. Yes, sir.
 5 MR. STODGHILL: Objection as to form.
 6 Q. (BY MR. DAVENPORT) You really are?
 7 A. That's what it says, you know.
 8 Q. I know it says a lot of things in here.
 9 That's why I was just going to say --
 10 A. Yes, sir.
 11 Q. Okay. And so you think Mr. Nelson's got a
 12 bunch of the Mavs trade secrets?
 13 MR. STODGHILL: Objection as to form.
 14 A. Define "trade secrets."
 15 Q. (BY MR. DAVENPORT) It's your term, one you
 16 and your lawyers say. He got his trade secrets, and
 17 what, did he use the trade secrets to beat you in the
 18 finals last year?
 19 A. I think he has --
 20 MR. STODGHILL: Objection as to form.
 21 A. I think he has an advantage relative to the
 22 other 28 teams in the league.
 23 Q. (BY MR. DAVENPORT) Let's first talk about
 24 trade secrets. What trade secrets does Mr. Nelson have
 25 other than he is a good coach?

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1 MR. STODGHILL: Objection as to form.
 2 A. Well, to your point earlier or to your -- I
 3 think it was in your claim, whatever you call it, about
 4 talent evaluation, he helped pick and draft a lot of
 5 our players. And, you know, Nellie's the king of the
 6 matchups, and so he understands the players that we
 7 have in our -- many of the players we have on our
 8 roster strengths and weaknesses better than anybody.
 9 He was with them longer than any other coach, even our
 10 most current coach. In addition, he hired away our
 11 bench coach, Larry Riley, who spent multiple years and,
 12 as a matter of fact, Larry was responsible for actually
 13 training and teaching all of our younger players and
 14 putting them through specific evaluations.
 15 He also has gone on to take multiple
 16 former Mavericks that were -- that he coached and add
 17 them to their roster. So that gives him an advantage
 18 in understanding our players and understanding their
 19 strengths and weaknesses that 28 other coaches don't
 20 have. That's not available just through scouting.
 21 Q. If he was such a good coach, why did you make
 22 him step down in March, if you liked him so much?
 23 MR. STODGHILL: Objection, form.
 24 A. I didn't make him step down.
 25 Q. (BY MR. DAVENPORT) Huh?

1 A. I certainly didn't make him step down.
 2 Q. Why did you replace with Avery?
 3 A. Because he didn't want to do his job.
 4 Q. So you wouldn't fire him; you kept him around.
 5 A. I want -- I would not have fired him, no.
 6 Q. Hum. Well, tell me the trade secrets he has.
 7 What does he have? Did he take a playbook or
 8 something?
 9 MR. STODGHILL: Objection, form.
 10 A. No, I explained -- I just explained to you.
 11 Q. (BY MR. DAVENPORT) Just because -- so does
 12 that -- under your theory, I guess anybody that coaches
 13 an NBA team or a professional football team or a
 14 professional baseball team, if they leave after a
 15 number of years and go to another team, they have an
 16 advantage when they play their former employer?
 17 A. I couldn't speak to other sports, but I don't
 18 think there is any question, only an idiot would think
 19 otherwise when it comes as to professional basketball.
 20 There is only five players on the court at any one
 21 time, and one or two players can dominate -- can carry
 22 a team to a championship. We saw that with Shaq and
 23 Kobe. And when you have somebody who understands those
 24 players better than anybody, who actually trained them
 25 and developed them to define certain strengths to

1 experience with several of our players.
 2 Q. Larry Riley, was he under a covenant not to
 3 compete?
 4 A. No, he was not.
 5 Q. Did you sue Larry Riley saying he didn't have
 6 the right to leave?
 7 A. He had every right to leave.
 8 Q. Well, I guess -- and I am not a big basketball
 9 fan, but -- and I don't know much about it.
 10 A. I'll sell you season tickets, and we'll teach
 11 you.
 12 Q. But are these games televised?
 13 A. Yes, sir.
 14 Q. And after you play the Mavericks or after the
 15 Mavericks play Golden State or whatever, do the coaches
 16 go back and look at what happened in the game, study
 17 the game films?
 18 A. Yes, sir.
 19 Q. So everything you do in a basketball game,
 20 every play and everything else, the coaches can all
 21 look at what was done, nothing secret about that?
 22 A. No, sir.
 23 Q. Just like football or whatever?
 24 A. Not true at all.
 25 Q. Huh?

1 play -- to go away from their weaknesses, that's
 2 certainly an advantage.
 3 Q. But that's a fair advantage; that's not a
 4 trade secret, --
 5 MR. STODGHILL: Objection as to form.
 6 Q. (BY MR. DAVENPORT) -- his knowledge as a
 7 coach. I mean, he has been a coach for how many years
 8 with the Nicks, the Warriors, the Mavericks? Are you
 9 saying that he can't use his knowledge of basketball to
 10 compete against you?
 11 A. He's welcome to use his --
 12 MR. STODGHILL: Objection, form.
 13 A. He's welcome to use his knowledge of
 14 basketball as anybody would, but there is certain other
 15 information that he would otherwise not have access to
 16 had he not been the coach for eight years, not only
 17 access in terms of information about our players, but
 18 access to our -- our coaches that he hired away. Had
 19 he not gone -- had he not breached his contract and
 20 taken this job with the Warriors, he never would have
 21 been in the position to hire who Larry Riley, or I
 22 forget who else that he has over there as well. Had he
 23 not taken -- breached his contract and taken these
 24 other positions, you know, he wouldn't have been in a
 25 position of being a competitor with eight years of

1 A. Not true at all.
 2 Q. You can't look at the -- I couldn't look at
 3 the game, or Don Nelson couldn't look at the Mavericks'
 4 tape of the game --
 5 A. Sure.
 6 Q. -- and dissect it, know every play that you
 7 did --
 8 A. But we don't -- it's not about plays, and we
 9 don't use all the plays in the regular season or do the
 10 same things in the regular season that we would do in
 11 the playoffs, and you do things that leverage your
 12 personnel in the playoffs differently because there is
 13 more at stake. And Nellie -- someone who has coached
 14 your team knows that.
 15 I mean, I'll give you a perfect example.
 16 When you trade for a player, so when we traded for Raef
 17 LaFrentz and Avery Johnson, traded for four guys from
 18 the Denver Nuggets, when we play the Denver Nuggets,
 19 one of the first things Nellie would do or any head
 20 coach would do was talk to that player and ask them
 21 about their plays, about their personnel to try to get
 22 an advantage because it is an advantage. So and that's
 23 just from a player's perspective it provides an
 24 advantage.
 25 So just dissecting a playbook or having

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<p>1 your scouts dissect a playbook is just a small, small 2 portion of it because the playbook doesn't hold to form 3 from the beginning of the year to the end of the year. 4 It's understanding personnel that makes the different. 5 Q. So when you get -- like if the Mavs were to 6 hire, say, a basketball player from another team 7 that's, say, been playing with the Nicks for five 8 years, you come in, then you would ask him what the 9 Nicks do? You try to learn everything he knows about 10 the Nicks before you play the Nicks? 11 A. Yes, sir. 12 Q. So that would give you an advantage -- 13 A. Yes, sir. 14 Q. -- having a Nicks ex-player? Is that what you 15 are talking about that since Don had coached your team, 16 he knew the strengths and weaknesses of a number of the 17 players, and you thought that gave him an advantage? 18 A. Yes, sir. 19 Q. Okay. But insofar as you claim that 20 Mr. Nelson took a playbook or something with him from 21 the Mavericks that had this is a list of Nowitzki's 22 strengths and weaknesses, this is what he is going to 23 do in the playoffs, he's going to cut right or 24 whatever, if you let him play him? 25 A. Actually, a playbook would have plays that</p>	<p>1 just patently absurd about that? 2 MR. STODGHILL: Objection as to form. 3 A. No. Hey, what's patently absurd is the 4 question, because he worked for the Nicks three months 5 and got fired. And so he really -- and because -- he 6 got fired because he wanted to use the personnel in a 7 completely different way than the personnel wanted to 8 be used, and the team basically rebelled from him. And 9 so it's -- 10 Q. (BY MR. DAVENPORT) Just use a different 11 hypothet. Let's say the -- any coach, though, that 12 coaches, him or whoever, you coach five years for the 13 Nicks, and then you leave the Nicks and you go to work 14 for the Mavs, couldn't you say the same thing, that 15 that coach has a better knowledge of the Nicks and 16 their players? 17 A. Absolutely. 18 Q. But there is nothing in the league that 19 prevents that coach from using his knowledge, is there? 20 A. Sure. There is called noncompete contracts. 21 Q. Which you don't have in this case. 22 MR. STODGHILL: Objection as to form. 23 A. You just said about the rest of the league. 24 Again, I'm not going to pretend to be the lawyer, but 25 Nellie is still under contract to us. And so --</p>
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<p>1 you -- if you were to go through all the regular season 2 and -- and dissect, as you say, or scout the teams and 3 define all their plays, you would only get a subset of 4 the total playbook. But having access to the total 5 playbook would give you information, so when you say 6 what plays haven't they run that we haven't seen 7 through the scouting reports, oh, let's look at the 8 playbook, they may be in there. That's an advantage. 9 Q. So I guess after coaching the Mavericks from 10 '98 to 2005, seven or eight years, whatever it is, I 11 guess Nelson would have seen every kind of play not 12 only that you have run, but what the other teams 13 played. He knows what the Nicks do. He knew what the 14 Golden State did, the other teams; isn't that right? 15 A. No, it changes. 16 Q. Huh? 17 A. It changes. 18 Q. But, I mean, I guess when he went from the 19 Nicks to the Mavs, was the Nicks where he was before he 20 came to the Mavs? 21 A. Yes, sir. 22 Q. Well, why couldn't the Nicks come in and say, 23 you know all about all of our secret plays, and that's 24 why the Mavs keep beating us, you can't do that because 25 you are using our trade secrets? Isn't there something</p>	<p>1 Q. Why aren't you paying him, then? 2 A. We tried. 3 Q. He's still under contract. Here it's been 4 three years, and you haven't made a payment to him. 5 This man has been under contract to you since July 6 2006, July 2007, and you haven't made him a payment, 7 and you are claiming he is still under contract? 8 A. Well, it's -- let me re -- 9 MR. STODGHILL: Objection as to form. 10 A. Again, I will defer -- I will defer to the 11 lawyers, but let's just say, you know, he's -- he 12 breached or whatever the legal term is. 13 Q. (BY MR. DAVENPORT) We'll see. So if you 14 said -- if Nelson was sitting here and you said, okay, 15 Judge Ashworth, Mr. Nelson's got our trade secrets. 16 And the judge says, all right, Mr. Cuban, I'll make him 17 give them back. What are going to tell the judge he's 18 got? What do you want to get? Nellie's sitting right 19 there. 20 MR. STODGHILL: Objection as to form. 21 Q. (BY MR. DAVENPORT) Just tell me, what do you 22 want Nelson to bring back? Has he got names of 23 players? What's he got? Has he got a book? 24 A. I just explained to you what he got. 25 Q. What, up here?</p>

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1 A. I already explained to you what he got.
 2 Q. Does he have anything physical; does he have
 3 anything in writing?
 4 A. Does he have -- I don't know what kind of
 5 notes he took; I don't know.
 6 Q. But what -- the thing that you are complaining
 7 about is he's got the wherewithal to know the strengths
 8 and weaknesses of the players that played for the Mavs
 9 when he was their coach, and that gives him an
 10 advantage?
 11 A. It's like if you know -- asking somebody who
 12 knows the secret formula for Coke who went to work for
 13 Pepsi, what's he going to give back?
 14 Q. Yeah. Well, you think he lost that
 15 information when you-all played the Warriors a couple
 16 of weeks ago? Didn't you win?
 17 A. Yes, we did win.
 18 Q. So I guess if he got those trade secrets, he
 19 must have gotten kind of rusty on it or what?
 20 A. I couldn't -- I don't know. You will have to
 21 ask him. Maybe he felt guilty and decided not to use
 22 them.
 23 Q. You think he just blacked that off?
 24 A. I guess that was the case.
 25 Q. Must have been.

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1 A. Maybe he had a few Buds.
 2 Q. Okay. Well, can you tell me anything else
 3 about your trade secret claim, any other trade secrets
 4 that he's got, other than the knowledge he gained of
 5 the Mavericks' strengths and weaknesses of the players
 6 while he was working them?
 7 A. And if you'll remember -- sorry, I didn't mean
 8 to interrupt, but if you remember back, I didn't say it
 9 was just knowledge of players. It was access to
 10 personnel, so he was able to hire people. It was
 11 access even to personnel when -- when we played the
 12 Warriors this year and during the playoffs last year he
 13 would walk around our office like he still worked here
 14 without any sense of common decency or respect for the
 15 fact that other people were in charge. And he tries to
 16 intimidate people and retains access.
 17 One of the things about this industry is
 18 that it's very incestuous. When -- people know that
 19 coaches are hired to be fired, and that because of
 20 that, people want to stay in good graces with anybody
 21 they think might get another job. And so they are
 22 afraid, and they're afraid of Nellie. And so that --
 23 that comes -- and Nellie knows that.
 24 And so the concept of just coming into
 25 our offices and walking around, it's just -- you know,

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1 Nellie understands what the implications of that are,
 2 and even that's a trade secret. The fact that he
 3 can -- he can have the comfort to walk in. It's like a
 4 former lawyer walking through here, you know, someone
 5 here would probably kick him out unless they were all
 6 intimidated by him. That's just the nature.
 7 Q. Did y'all kick Nelson out?
 8 A. No, the people he -- I wasn't there. The
 9 people he walked by, the people that he had hired, no,
 10 they didn't feel comfortable kicking him out.
 11 Q. Did you call the police?
 12 A. No, we didn't call --
 13 Q. Did you all security?
 14 A. No. Like I said, if I was -- Nellie made the
 15 point to be around people he knew would not do that,
 16 and it's kind of like the dog pissing on his old turf,
 17 and, you know, and just -- that's Nellie.
 18 Q. I'll bet you really didn't like getting beat
 19 in the playoffs last year, did you, by him?
 20 A. No, I didn't.
 21 Q. Especially by Mr. Nelson, right?
 22 MR. STODGHILL: Objection as to form.
 23 A. No, I mean, but I don't like getting beat by
 24 anybody.
 25 Q. (BY MR. DAVENPORT) I guess that kind of

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1 reinforced the decision you had made back in June of
 2 2006 to make him beg for his consulting salary?
 3 MR. STODGHILL: Objection as to form.
 4 A. Actually, you have got your dates wrong, but
 5 no, they weren't related.
 6 Q. (BY MR. DAVENPORT) I didn't? It didn't?
 7 Okay. Any other trade secrets that he has got?
 8 A. That's enough.
 9 Q. That's enough? And so now you want Judge
 10 Ashworth to -- let me see if I got this right. You
 11 want Judge Ashworth to, number 1, say Mavericks, you
 12 don't have to pay him the six and a half million in
 13 deferred compensation that Mr. Nelson earned. You want
 14 the judge to say you don't have to pay him that.
 15 A. Yes, sir.
 16 Q. And then you are saying, oh, in addition,
 17 Judge, we want you to enjoin Mr. Nelson from coaching
 18 the rest of the season -- let's see if we try this in
 19 March, we want you to enter an injunction to say you
 20 can't coach the Golden State for the rest of 2008, yes?
 21 A. Yes, sir.
 22 Q. Okay. And then on top of that, you say, Judge
 23 Ashworth, and by the way, while you are at it, we want
 24 you to make Nelson pay to the Mavericks all the money
 25 that Golden State has paid him. Yeah?

1 A. I'll defer to our lawyers on that part of the
 2 claim. I don't know specifically what we asked for.
 3 Q. I think that that's a claim in here. And then
 4 after you've enjoined him, after you've taken away his
 5 retirement, after you've made him forfeit all the money
 6 for coaching the Warriors' for two years, just as a
 7 matter of good measure, then you want him to pay
 8 Mr. Stodghill's attorney's fees on top that of, right?
 9 MR. STODGHILL: Objection as to form.
 10 A. Well, first of all, I don't think that this is
 11 Nellie's retirement. Nellie's very well off. And
 12 second of all, I wouldn't pay Stodge if my life
 13 depended --
 14 Q. (BY MR. DAVENPORT) Well --
 15 MR. STODGHILL: Ouch.
 16 Q. (BY MR. DAVENPORT) In your language from your
 17 lawyers, "for claimant he saw it as his retirement
 18 fund." That's the language in your pleading. That's
 19 what your lawyers said.
 20 A. Yeah. That's in there.
 21 Q. Okay. So as Mr. Nelson in return for his nine
 22 or ten years of service to the Mavs, the retirement
 23 fund, his retirement fund, you want the judge to take
 24 that away from him, right?
 25 A. Yes, sir.

1 Q. -- change? As far as you -- as you recall,
 2 your answers have been truthful and correct; and if I
 3 asked you the same questions at the time we try this to
 4 Judge Ashworth, you will give me the same answers if I
 5 ask the same questions; is that fair?
 6 A. If I understand them, yes.
 7 Q. If you understand them. Okay. Have I been
 8 courteous to you?
 9 A. Yes.
 10 Q. Okay. Fair enough. Thank you. I'll pass the
 11 witness?
 12 MR. STODGHILL: We are going to reserve
 13 our questions, but I did want an opportunity to look at
 14 the transcript to see if there is any part we want to
 15 designate as confidential.
 16 MR. DAVENPORT: Well, we won't do
 17 anything with it until you do that.
 18 MR. STODGHILL: I'd appreciate that. And
 19 let's -- I think we are done unless you have anything
 20 else.
 21 MR. DAVENPORT: We are done. I am done.
 22 THE VIDEOGRAPHER: We are off the record
 23 at 4:32.
 24
 25

1 Q. Yes, sir. Anything else you want to do to
 2 Mr. Nelson for being a bad boy?
 3 A. Spank him -- no.
 4 Q. You want to --
 5 MR. DAVENPORT: Let me take a short
 6 recess.
 7 THE VIDEOGRAPHER: We are off the record
 8 at 4:18.
 9 (Recess for 13 minutes.)
 10 THE VIDEOGRAPHER: We are back on the
 11 record at 4:31.
 12 Q. (BY MR. DAVENPORT) Mr. Cuban, I think I am
 13 just about concluded. Have you understood all my
 14 questions?
 15 A. No.
 16 Q. Have you understood any of my questions?
 17 A. Yes.
 18 Q. All right. As you reflect here now as we
 19 conclude today, and you'll have the chance to read your
 20 deposition and -- and sign it and everything, but as
 21 you sit here right now, I always give the witness a
 22 chance if you said something that you just think was
 23 wrong at the time you said it, is there anything you
 24 want to --
 25 A. No.

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

MARK CUBAN
THE STATE OF
COUNTY OF

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

Given under my hand and seal of office this day of , 2008.

NOTARY PUBLIC IN AND FOR THE STATE OF

INDEX

Table with 4 columns: Ex #, Description, Pg, Ln. Includes entries for Appearances, The Witness: MARK CUBAN Examination by MR. DAVENPORT, Signature Page, Reporter's Certificate, and EXHIBITS (1-11).

COUNTY OF DALLAS)
STATE OF TEXAS)

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

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

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

Jerry L. Callaway, RDR, CSR 948
Expiration Date: 12/31/2008
Firm Registration No. 209
5220 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
(214) 855-5300

Table with 4 columns: Ex #, Description, Pg, Ln. Includes entries for E-mail strings, Letter dated 8/4/2006 to Cuban from John O'Connor, Web site printout dated 8/30/2006, Transmission Verification Report, Check stub dated 8/31/2006, E-mail string most recent being dated 9/14/2006 to Keith Grant from Cuban, Re: Nellie, E-mail string most recent being dated 8/27/2002 to Grand from Jahner Re: Nellie amendment, Letter to Don Nelson c/o John D. O'Connor from Terdema Ussery, Fax cover with letter dated 9/27/2006 to O'Connor from Robert Hart, Letter dated 10/12/2006 to Hart from O'Connor, Letter to O'Connor from Robert Hart, Letter dated 10/6/2006 to Christopher Cohan from Ussery.