

## **Exhibit B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - - - -

216 Jamaica Avenue,	:	
LLC,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 06-1288
	:	Judge Boyko
S&R Playhouse Realty	:	
Company,	:	
	:	
Defendant.	:	

- - - - -

DEPOSITION OF THOMAS R. KETTELER

- - - - -

Taken at Schottenstein, Zox & Dunn Co., LPA  
250 West Street, 7th Floor; P.O. Box 165020  
Columbus, OH 43215  
December 19, 2006, 9:27 a.m.

- - - - -

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333 Stewart Avenue, Columbus, Ohio 43206

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Page 2

1 APPEARANCES

2

3 ON BEHALF OF PLAINTIFF:

4 Cooper & Kirk

5 555 11th St. N.W., Ste. 750

6 Washington, D.C. 20004

7 By David M. Lehn, Esq.

8

9 ON BEHALF OF DEFENDANT:

10 Thompson Hine LLP

11 3900 Key Center

12 127 Public Square

13 Cleveland, OH 44114

14 By Gary L. Walters, Esq.

15

16 ON BEHALF OF THE WITNESS:

17 Schottenstein, Zox & Dunn Co., LPA

18 250 West Street, 7th Floor

19 Columbus, OH 43215

20 By Russell J. Kutell, Esq.

21

22

23

24

Page 3

1 Tuesday Morning Session

2 December 19, 2006, 9:27 a.m.

3 -----

4 STIPULATIONS

5 -----

6 It is stipulated by counsel in attendance that

7 the deposition of Thomas R. Ketteler, a witness

8 herein, called by the Plaintiff for

9 cross-examination, may be taken at this time by

10 the notary pursuant to notice and subsequent

11 agreement of counsel that said deposition may be

12 reduced to writing in stenotypy by the notary,

13 whose notes may thereafter be transcribed out of

14 the presence of the witness; that proof of the

15 official character and qualification of the notary

16 is waived.

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Page 4

1 INDEX

2 Examination By Page

3 Mr. Lehn - Cross 5

4 Mr. Walters - Cross 31

5

6 Exhibits Page

7

8 1 - 1912 Lease 18

9 2 - Mr. Ketteler's Affidavit 29

10

11

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21 (Exhibits attached to original transcript.)

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Page 5

1 THOMAS R. KETTELER

2 being first duly sworn, testifies and says as

3 follows:

4 CROSS-EXAMINATION

09:27:35 5 BY MR. LEHN:

09:27:35 6 Q. Would you please state your name for

09:27:36 7 the record?

09:27:36 8 A. My name is Thomas R. Ketteler.

09:27:40 9 Q. And your residence?

09:27:41 10 A. 22270 Banyan, B-A-N-Y-A-N, Hideaway

09:27:47 11 Drive, Bonita Springs, Florida 43135.

09:27:51 12 Q. Okay. Mr. Ketteler, I'm David Lehn,

09:27:54 13 and I represent the plaintiff in this lawsuit.

09:27:58 14 This is going to be, I think, a fairly painless

09:28:02 15 deposition for you. Have you been deposed before?

09:28:05 16 A. Yes, I have.

09:28:06 17 Q. What was that in?

09:28:07 18 A. Oh, various business matters.

09:28:11 19 Q. Okay. I'm going to just refresh the

09:28:17 20 rules of the deposition for you. I'm going to ask

09:28:21 21 a question; you provide the answer. I'll

09:28:24 22 try -- we should try to speak one at a time. If I

09:28:26 23 interrupt you, please let me know and I will stop

09:28:29 24 and you can finish your answer. If you want to

Page 6	<p>09:28:31 1 take a break at any point, just let me know.</p> <p>09:28:36 2 I am not going to try to probe into</p> <p>09:28:38 3 communications that you've had with your lawyer or</p> <p>09:28:41 4 any lawyer. So if I ask you a question and the</p> <p>09:28:44 5 answer seems to call for you to disclose</p> <p>09:28:47 6 confidential communication with a lawyer, just</p> <p>09:28:49 7 tell me and we can deal with that. I'm not trying</p> <p>09:28:52 8 to sneak anything by you with a privileged</p> <p>09:28:56 9 question.</p> <p>09:28:56 10 Okay. Another important thing is, let</p> <p>09:29:03 11 me know when you are answering -- primarily, you</p> <p>09:29:07 12 should be answering based on your own personal</p> <p>09:29:10 13 knowledge, what somebody told you might have</p> <p>09:29:12 14 happened. But if that is the only answer you</p> <p>09:29:14 15 have, then just let me know that that's the basis</p> <p>09:29:17 16 of your answer.</p> <p>09:29:18 17 MR. WALTERS: Objection.</p> <p>09:29:21 18 Q. And if any lawyer objects to something</p> <p>09:29:23 19 that I say, you should still proceed with</p> <p>09:29:26 20 answering my question.</p> <p>09:29:29 21 Is there anything -- I apologize. It's</p> <p>09:29:32 22 not meant to be an offensive question. But is</p> <p>09:29:37 23 there anything that would impair your ability to</p> <p>09:29:39 24 tell the truth today, any medication or anything</p>	Page 8	<p>09:30:43 1 worked in public accounting approximately 15</p> <p>09:30:48 2 years, through approximately 1981, when I joined</p> <p>09:30:51 3 the Schottenstein Stores Corporation and its</p> <p>09:30:55 4 affiliates as chief financial officer. I stayed</p> <p>09:31:00 5 in that position with Schottenstein until I</p> <p>09:31:03 6 retired in January of 2005. And presently I</p> <p>09:31:11 7 function as a consultant, primarily to the</p> <p>09:31:14 8 Schottenstein organizations.</p> <p>09:31:26 9 Q. At any point were you -- let me take</p> <p>09:31:32 10 this in pieces.</p> <p>09:31:33 11 When you were CFO of Schottenstein</p> <p>09:31:36 12 Stores, was S&amp;R under your auspices?</p> <p>09:31:42 13 MR. KUTELL: When you say "S&amp;R" --</p> <p>09:31:45 14 Q. S&amp;R Playhouse Realty Company.</p> <p>09:31:48 15 A. Could you explain that?</p> <p>09:31:51 16 Q. I guess what I'm asking about is the</p> <p>09:31:53 17 corporate structure, because I know S&amp;R Playhouse</p> <p>09:31:56 18 is, in part, I believe, owned by</p> <p>09:32:01 19 Mr. Schottenstein. So I'm asking whether it is</p> <p>09:32:03 20 related to Schottenstein entities, or is there</p> <p>09:32:06 21 some connection? So I'm asking if you -- if you</p> <p>09:32:10 22 can explain the relationship between S&amp;R and the</p> <p>09:32:11 23 company you worked for, Schottenstein Stores, if</p> <p>09:32:14 24 there is one.</p>
Page 7	<p>09:29:41 1 like that?</p> <p>09:29:41 2 A. No.</p> <p>09:29:42 3 Q. Okay. Did you do anything to prepare</p> <p>09:29:43 4 for this deposition?</p> <p>09:29:45 5 A. I talked with counsel.</p> <p>09:29:47 6 Q. Okay. Did you review any documents?</p> <p>09:29:50 7 A. Well, I -- besides my affidavit, I</p> <p>09:29:55 8 glanced at the lease and the assignment.</p> <p>09:29:57 9 Q. Okay. Did you bring any documents with</p> <p>09:30:02 10 you to the deposition?</p> <p>09:30:03 11 A. No, I did not.</p> <p>09:30:04 12 Q. Do you have any documents that are --</p> <p>09:30:06 13 A. I do not have any documents.</p> <p>09:30:08 14 MR. KUTELL: Tom, just a little</p> <p>09:30:11 15 pointer, just wait for Mr. Lehn to complete the</p> <p>09:30:15 16 question.</p> <p>09:30:16 17 THE WITNESS: Okay.</p> <p>09:30:17 18 Q. Let's do a little bit of background on</p> <p>09:30:19 19 you. Could you give me, almost like a resumé</p> <p>09:30:21 20 here, educational and professional history since</p> <p>09:30:25 21 college?</p> <p>09:30:27 22 A. I graduated from Thomas Moore College</p> <p>09:30:30 23 in 1964 with a bachelor's degree in accounting.</p> <p>09:30:38 24 Two years later I passed the CPA exam, and I</p>	Page 9	<p>09:32:16 1 A. Well, I oversaw the information that</p> <p>09:32:19 2 was passed on to Mr. Schottenstein, in that</p> <p>09:32:26 3 regard.</p> <p>09:32:30 4 Q. Information pertaining to S&amp;R</p> <p>09:32:35 5 Playhouse?</p> <p>09:32:35 6 A. Financial information, yes.</p> <p>09:32:50 7 Q. Are you aware of the nature of this</p> <p>09:32:52 8 lawsuit?</p> <p>09:32:54 9 A. Yes.</p> <p>09:32:55 10 Q. Could you describe it for me, please?</p> <p>09:32:58 11 A. Very simply, it's a question on the</p> <p>09:33:00 12 amount of rent due under the lease.</p> <p>09:33:07 13 Q. Okay. So at Schottenstein Stores, were</p> <p>09:33:11 14 you the CFO for your entire duration of employment</p> <p>09:33:14 15 with them?</p> <p>09:33:14 16 A. Yes.</p> <p>09:33:16 17 Q. CFO. I'm sorry if I misspoke.</p> <p>09:33:20 18 And the time frame was approximately</p> <p>09:33:22 19 1981 until 2005?</p> <p>09:33:24 20 A. Correct.</p> <p>09:33:29 21 Q. Could you also explain for me the</p> <p>09:33:31 22 relationship between the brothers Cleveland and</p> <p>09:33:37 23 Schottenstein Stores -- Halle Brothers Company.</p> <p>09:33:44 24 A. Well, Halle Brothers Company was a</p>

Page 10	<p>09:33:47 1 retailer based in Cleveland, Ohio, that at the                  09:33:55 2 time Schottenstein got involved, was owned by                  09:33:57 3 Marshall Fields &amp; Company.                  09:34:00 4 Q. And then Mr. Schottenstein                  09:34:02 5 purchased --                  09:34:03 6 A. Yes.                  09:34:03 7 MR. KUTELL: Just for the record, there                  09:34:06 8 are lots of Schottensteins out there. When you                  09:34:09 9 are talking about Mr. Schottenstein, I take it you                  09:34:11 10 are talking about Mr. Jerome Schottenstein,                  09:34:14 11 correct?                  09:34:16 12 MR. LEHN: Yes, that's correct.                  09:34:20 13 Q. Was Halle Brothers Companies a                  09:34:25 14 subsidiary of Schottenstein Stores?                  09:34:27 15 A. No.                  09:34:27 16 Q. Did you have any responsibilities with                  09:34:30 17 respect to Halle Brothers Company?                  09:34:32 18 A. Yes.                  09:34:32 19 Q. What were those responsibilities?                  09:34:34 20 A. I oversaw the financial records,                  09:34:40 21 established banking relationships.                  09:34:58 22 Q. Was S&amp;R Playhouse a subsidiary of                  09:35:01 23 Schottenstein Stores?                  09:35:03 24 A. No.</p>	Page 12	<p>09:36:18 1 communications with the owner of the property,                  09:36:22 2 with the lessor?                  09:36:24 3 A. I don't recall any contact.                  09:36:32 4 Q. Do you recall hearing from other people                  09:36:35 5 about such contacts --                  09:36:37 6 MR. KUTELL: Objection to form. What                  09:36:39 7 time are we talking about?                  09:36:40 8 Q. At any point after the acquisition of                  09:36:47 9 Halle Brothers.                  09:36:49 10 A. Would you explain it better, please?                  09:36:51 11 Q. Sure. Between 1981 and 2005, when you                  09:37:01 12 were the CFO of Schottenstein Stores, do you                  09:37:09 13 recall hearing about or being informed in any way                  09:37:13 14 of communications between anyone responsible for                  09:37:18 15 managing the Halle building or the property                  09:37:20 16 underlying it and the owner of that property?                  09:37:26 17 A. Are you referring to the building or                  09:37:30 18 the ground lease?                  09:37:32 19 Q. Well, when I say the owner of the                  09:37:36 20 property, I'm talking about the owner of the                  09:37:38 21 ground, the lessor.                  09:37:40 22 A. No, I don't recall any.                  09:37:42 23 Q. Okay. Prior to preparing for this                  09:38:03 24 deposition, had you ever read the lease that is</p>
Page 11	<p>09:35:06 1 Q. So your responsibilities, even though                  09:35:08 2 you were CFO for Schottenstein Stores, your                  09:35:12 3 responsibilities extended beyond just                  09:35:13 4 Schottenstein Stores and its subsidiaries to other                  09:35:16 5 entities?                  09:35:16 6 A. Yes.                  09:35:17 7 Q. Okay. Did you have any responsibility                  09:35:21 8 with respect to the property that's the subject of                  09:35:24 9 this lawsuit or the Halle building?                  09:35:33 10 A. No.                  09:35:33 11 Q. Do you know who was responsible for                  09:35:35 12 managing that property?                  09:35:36 13 A. I don't recall.                  09:35:43 14 Q. Do you know what they used the building                  09:35:45 15 for?                  09:35:45 16 A. It was a retail store, department                  09:35:49 17 store.                  09:35:49 18 Q. That was before it was acquired by                  09:35:53 19 Mr. Schottenstein or also after --                  09:35:55 20 A. Before and after.                  09:36:01 21 Q. Do you know what it's used for today?                  09:36:08 22 A. I believe it was converted into an                  09:36:10 23 office building.                  09:36:11 24 Q. Did you ever have any contacts or</p>	Page 13	<p>09:38:07 1 the subject of this lawsuit?                  09:38:08 2 A. I don't recall.                  09:38:16 3 Q. Were you aware of the existence of a                  09:38:19 4 gold clause in the lease prior to this lawsuit?                  09:38:23 5 A. I don't recall.                  09:38:29 6 Q. So I take it you don't recall                  09:38:31 7 discussing the gold clause with anyone prior to                  09:38:33 8 this lawsuit.                  09:38:34 9 A. That's correct.                  09:38:37 10 Q. I'd like to talk to you about the                  09:38:44 11 assignment and assumption of the lease between                  09:38:49 12 Halle Brothers and S&amp;R Playhouse that occurred in                  09:38:53 13 1982. And just for convenience, I'll refer to it                  09:38:58 14 as the assignment or the 1982 assignment.                  09:39:03 15 Did you have any role in this                  09:39:05 16 transaction, the assignment?                  09:39:09 17 A. As I recall, I worked with Jerome                  09:39:14 18 Schottenstein on the transaction.                  09:39:17 19 Q. By "worked with," can you give me some                  09:39:20 20 examples of specific things you might have done?                  09:39:23 21 A. At that time, it was reviewing tax                  09:39:24 22 implications of the transaction.                  09:39:30 23 Q. Who decided to do this assignment?                  09:39:36 24 A. Jerome Schottenstein.</p>

Page 14	<p>09:39:57 1 Q. Were there any negotiations with anyone                  09:40:00 2 on behalf -- anyone who was representing S&amp;R                  09:40:05 3 Playhouse?                  09:40:05 4 A. I don't recall.                  09:40:13 5 Q. Do you recall who might have                  09:40:14 6 represented S&amp;R if there were such negotiations                  09:40:19 7 if --                  09:40:19 8 A. No, I don't.                  09:40:39 9 Q. Who else was involved in the process of                  09:40:42 10 deciding to assign the property, assign the lease?                  09:40:47 11 A. The decision was made by Jerome                  09:40:50 12 Schottenstein.                  09:40:50 13 Q. Did he consult anyone?                  09:40:52 14 A. I don't recall that he did.                  09:40:56 15 Q. Did you have -- strike that.                  09:41:26 16 You said that Mr. Schottenstein                  09:41:29 17 consulted you about tax implications, is that                  09:41:34 18 correct, related to the assignment?                  09:41:37 19 A. Well, I looked at tax considerations,                  09:41:41 20 yes.                  09:41:50 21 Q. What did you discover?                  09:41:51 22 A. At this time, I don't recall.                  09:41:59 23 Q. Did you look at anything else besides                  09:42:02 24 the tax implications?</p>	Page 16	<p>09:43:47 1 MR. LEHN: Certainly.                  09:43:48 2 Q. Halle Brothers is the entity I meant.                  09:43:51 3 MR. WALTERS: Objection; foundation.                  09:43:52 4 Q. Was the assignment of the lease a                  09:43:56 5 necessary component of Mr. Schottenstein's plan to                  09:44:01 6 convert the use of the Halle building?                  09:44:03 7 A. Yes.                  09:44:04 8 Q. And why was it a necessary component?                  09:44:07 9 A. It was a necessary component because we                  09:44:12 10 did not have the expertise of developing -- or                  09:44:17 11 redeveloping property like that.                  09:44:23 12 Q. Who did?                  09:44:26 13 MR. WALTERS: Objection.                  09:44:28 14 Q. You may answer.                  09:44:29 15 MR. KUTELL: If you know.                  09:44:31 16 A. Mr. Schottenstein worked with the                  09:44:35 17 Ratners.                  09:44:41 18 Q. Jim Ratner?                  09:44:44 19 A. I don't recall the first name.                  09:44:46 20 Q. Do you know who drafted the assignment,                  09:44:58 21 the contract itself?                  09:45:04 22 A. At what point in time? Do I know now                  09:45:07 23 or back at that time?                  09:45:09 24 Q. If you know now -- well, do you know</p>
Page 15	<p>09:42:05 1 A. I don't recall.                  09:42:20 2 Q. Do you recall what period of time                  09:42:29 3 these -- over which you were doing these                  09:42:31 4 investigations into the tax implications? Was it                  09:42:35 5 a week, was it a month?                  09:42:37 6 A. I don't recall.                  09:42:46 7 Q. Do you know why Mr. Schottenstein                  09:42:49 8 wanted to assign the property?                  09:42:50 9 A. Yes. We -- the downtown Halle Brothers                  09:42:59 10 store was losing approximately \$6 million a year.                  09:43:06 11 And he felt that that real estate would be put to                  09:43:08 12 a better use, rather than running a department                  09:43:13 13 store. At the time there was a lot of                  09:43:17 14 redevelopment going on in downtown Cleveland.                  09:43:23 15 Q. Why was the assignment a necessary                  09:43:27 16 component to that? Why not just have Halle                  09:43:31 17 Cleveland convert their building into an office or                  09:43:33 18 some other use?                  09:43:35 19 MR. WALTERS: Objection.                  09:43:35 20 MR. KUTELL: Halle Cleveland?                  09:43:39 21 MR. LEHN: Halle Brothers. Excuse me.                  09:43:41 22 We have quite a few Halle entities.                  09:43:43 23 MR. KUTELL: I know. That's why I                  09:43:45 24 wanted the record to be clean.</p>	Page 17	<p>09:45:14 1 now?                  09:45:15 2 A. Yes -- sorry.                  09:45:17 3 MR. KUTELL: Objection, again,                  09:45:19 4 foundation. I don't know if you actually have                  09:45:21 5 your own personal knowledge of that or not.                  09:45:28 6 Q. Well, do you know now, today?                  09:45:31 7 A. It was drafted by Schottenstein, Zox &amp;                  09:45:35 8 Dunn back in 1982.                  09:45:36 9 Q. Okay. Do you know -- did you know that                  09:45:41 10 at the time or --                  09:45:43 11 A. I don't recall that at the time. But                  09:45:45 12 when I looked at the document, I saw the address                  09:45:47 13 of the law firm.                  09:45:52 14 Q. When you looked at the document,                  09:45:53 15 meaning in preparation for this deposition?                  09:45:55 16 A. Yes.                  09:45:56 17 Q. Did you ever review the contract at the                  09:46:06 18 time of the transaction?                  09:46:09 19 A. I don't recall.                  09:46:17 20 Q. Would Mr. Schottenstein -- would                  09:46:20 21 Mr. Schottenstein have reviewed that document?                  09:46:22 22 MR. WALTERS: Objection.                  09:46:24 23 Q. You may answer.                  09:46:25 24 MR. KUTELL: To the extent you know.</p>

Page 18	<p>09:46:27 1 A. I don't know.</p> <p>09:46:34 2 Q. Do you know if anyone else reviewed that document?</p> <p>09:46:36 3</p> <p>09:46:37 4 MR. WALTERS: Objection.</p> <p>09:46:38 5 A. I don't recall.</p> <p>09:46:44 6 Q. That is, at the time of the -- at the</p> <p>09:46:49 7 time of the 1982 assignment not, you know, last</p> <p>09:46:51 8 week or something, do you know whether --</p> <p>09:46:54 9 A. I don't recall names. I can only</p> <p>09:46:56 10 speculate, which I'm not going to do.</p> <p>09:46:58 11 Q. Well, you can speculate.</p> <p>09:47:00 12 MR. KUTELL: You said --</p> <p>09:47:03 13 Q. If you can speculate, please speculate,</p> <p>09:47:06 14 and you can qualify it.</p> <p>09:47:07 15 A. It would just be a guess.</p> <p>09:47:08 16 Q. Take a guess.</p> <p>09:47:09 17 A. We had an attorney, Lou Pearlman.</p> <p>09:47:18 18 Q. He is in-house counsel?</p> <p>09:47:21 19 A. Yes.</p> <p>09:47:21 20 Q. At Schottenstein Stores?</p> <p>09:47:24 21 A. Uh-huh.</p> <p>09:47:24 22 -----</p> <p>09:47:24 23 Thereupon, Exhibit 1 is marked for</p> <p>09:47:24 24 purposes of identification.</p>	Page 20	<p>09:50:15 1 A. Yes.</p> <p>09:50:16 2 Q. Okay. Do you recall having any</p> <p>09:50:18 3 discussions with anyone at Schottenstein Stores</p> <p>09:50:23 4 during the time of the 1982 transaction about that</p> <p>09:50:26 5 clause of the lease?</p> <p>09:50:27 6 A. I don't recall.</p> <p>09:50:37 7 Q. Do you recall hearing about any</p> <p>09:50:38 8 discussions between anyone else at Schottenstein</p> <p>09:50:42 9 Stores at the time of the 1982 assignment about</p> <p>09:50:45 10 that clause of the lease?</p> <p>09:50:47 11 A. I don't recall.</p> <p>09:50:48 12 Q. Okay. Do you recall participating in</p> <p>09:50:53 13 any discussions, generally, about the rent on this</p> <p>09:50:56 14 property during the time of the 1982 assignment?</p> <p>09:51:05 15 A. Not at the time of the 1982 assignment.</p> <p>09:51:13 16 Q. Do you recall participating in any</p> <p>09:51:17 17 discussions about the rent on the property at any</p> <p>09:51:21 18 time other than the 1982 assignment or in</p> <p>09:51:24 19 anticipation of this litigation?</p> <p>09:51:26 20 MR. WALTERS: Objection.</p> <p>09:51:32 21 Q. You may answer.</p> <p>09:51:33 22 A. Would you repeat that again, please?</p> <p>09:51:35 23 Q. Sure. Do you recall having any</p> <p>09:51:37 24 discussions about the rent on the property that is</p>
Page 19	<p>09:48:22 1 -----</p> <p>09:48:22 2 Q. I'm marking as Exhibit 1, this is the</p> <p>09:48:26 3 original 1912 lease that is the subject of this</p> <p>09:48:34 4 lawsuit. If you want to take a minute and peruse</p> <p>09:48:39 5 it, feel free.</p> <p>09:49:11 6 Would you turn to page 2? It's about</p> <p>09:49:15 7 the 10th or 12th line down from the top. I'm</p> <p>09:49:21 8 going to read it. It says, "The lessees shall pay</p> <p>09:49:21 9 or cause to be paid unto the lessor, its</p> <p>09:49:21 10 successors and assigns, during the continuance of</p> <p>09:49:21 11 this lease, rental as follows: For the first two</p> <p>09:49:21 12 (2) years ending on the 31st day of March, 1914,</p> <p>09:49:42 13 the sum of ten thousand dollars (10,000.00)."</p> <p>09:49:42 14 Then it goes on to define the rent for various</p> <p>09:49:47 15 other years.</p> <p>09:49:48 16 And then, maybe about ten lines farther</p> <p>09:49:51 17 down it says, "For the remainder of said term, to</p> <p>09:49:56 18 wit: Eighty nine (89) years the sum of thirty</p> <p>09:49:58 19 five thousand dollars (\$35000.00) per year,</p> <p>09:50:02 20 payable in advance in quarterly installments of</p> <p>09:50:05 21 eight thousand seven hundred and fifty dollars</p> <p>09:50:06 22 (\$8,750.00) each upon the first day of April,</p> <p>09:50:10 23 July, October and January in each year." Do you</p> <p>09:50:15 24 have that?</p>	Page 21	<p>09:51:39 1 the subject of this lawsuit at any time other than</p> <p>09:51:45 2 in anticipation of this litigation?</p> <p>09:51:48 3 MR. KUTELL: I would just remind you</p> <p>09:51:50 4 not to disclose any sort of attorney-client</p> <p>09:51:53 5 communications.</p> <p>09:51:57 6 A. When we acquired Halle Brothers, what I</p> <p>09:52:00 7 recall is that the personnel we worked with from</p> <p>09:52:06 8 Marshall Fields indicated in a meeting that I</p> <p>09:52:09 9 attended with Jerome that it was a very cheap</p> <p>09:52:12 10 lease.</p> <p>09:52:21 11 Q. Did they explain why it was a cheap</p> <p>09:52:24 12 lease?</p> <p>09:52:24 13 A. I don't recall at this time.</p> <p>09:52:38 14 Q. Did you inquire yourself into why it</p> <p>09:52:41 15 was a cheap lease?</p> <p>09:52:42 16 A. I don't recall.</p> <p>09:52:55 17 Q. Do you recall whether anyone else at</p> <p>09:52:57 18 Schottenstein Stores inquired as to whether it was</p> <p>09:53:00 19 a cheap lease?</p> <p>09:53:01 20 A. I don't recall.</p> <p>09:53:01 21 Q. And by "cheap lease," what do you mean?</p> <p>09:53:05 22 A. The dollar amount paid over the period</p> <p>09:53:08 23 of time.</p> <p>09:53:22 24 Q. Okay. Back to page 2 of the exhibit,</p>

Page 22

09:53:25 1 Exhibit 1, after the last sentence that we just  
 09:53:31 2 read, it says -- I'm going to read the next one.  
 09:53:34 3 "All of said rents shall be paid in a gold coin of  
 09:53:37 4 the United States of the present standard of  
 09:53:39 5 weight and fineness by depositing it to the credit  
 09:53:42 6 of the lessor, its successors or assigns, with the  
 09:53:47 7 Citizens Savings & Trust Company of Cleveland,  
 09:53:48 8 Ohio, of at such other place in the City of  
 09:53:51 9 Cleveland as the said lessor, its successors and  
 09:53:54 10 assigns, may from time to time designate." I'm  
 09:53:57 11 going to refer to that as the gold clause.  
 09:54:01 12 Do you recall having any discussions  
 09:54:03 13 with anyone at Schottenstein Stores about the gold  
 09:54:06 14 clause at the time of the 1982 assignment?  
 09:54:08 15 A. I don't recall.  
 09:54:11 16 Q. Do you recall having any conversations  
 09:54:14 17 with anyone at Schottenstein Stores about the gold  
 09:54:17 18 clause at any other time other than in  
 09:54:19 19 anticipation of this lawsuit?  
 09:54:21 20 A. I don't recall.  
 09:54:28 21 Q. Do you recall having any conversations  
 09:54:30 22 about a gold clause with anyone not at  
 09:54:32 23 Schottenstein Stores about the gold clause other  
 09:54:36 24 than in anticipation of this deposition?

Page 23

09:54:39 1 A. I don't recall.  
 09:55:01 2 Q. Okay. I'm going to return to page 2 of  
 09:55:04 3 Exhibit 1. The next sentence, "As a part of the  
 09:55:10 4 consideration for this lease and in addition to  
 5 the rentals hereinbefore provided, the lessees  
 6 hereby covenant and agree to indemnify and save  
 7 harmless the lessor, its successors and assigns,  
 8 from any and all taxes, assessments or levies on  
 9 or against this lease (expecting, however, any  
 10 income tax that may be levied against the lessor  
 11 by reason of this lease) the lessees estate  
 12 hereunder and the premises hereby leased and all  
 13 improvements thereon, for the full term of this  
 14 lease and of any and all extensions thereof,  
 15 beginning with the taxes, assessments and levies  
 09:55:48 16 due and payable in December 1012." I'm going to  
 09:55:49 17 call that the indemnification clause.  
 09:55:52 18 Do you recall having conversations with  
 09:55:54 19 anyone other than in anticipation of this lawsuit  
 09:55:57 20 about the indemnification clause?  
 09:56:03 21 A. No, I don't.  
 09:56:24 22 Q. On page 3 of Exhibit 1, about the  
 09:57:03 23 middle of the page, it says, "From and after the  
 24 erection and completion of the building provided

Page 24

1 for in Article IV hereof the lessees agree to keep  
 2 the building and improvements on said premises  
 3 insured against loss by fire for an amount equal  
 4 to the full insurable value thereof or, if such  
 5 insurable value exceeds one hundred thousand  
 6 dollars (\$100,000.00) then for an amount not less  
 7 than one hundred thousand dollars (\$100,000.00) in  
 8 responsible insurance companies authorized to do  
 9 business in the State of Ohio or in such companies  
 10 as may be from time to time approved by the  
 09:57:40 11 lessor." I'll call that the insurance clause.  
 09:57:45 12 MR. KUTELL: I'll note for the record  
 09:57:46 13 that the word "be" was handwritten in there, I'm  
 09:57:51 14 not sure by whom and when.  
 09:57:53 15 MR. LEHN: Okay.  
 09:57:55 16 MR. KUTELL: It may be typed.  
 09:57:57 17 MR. LEHN: I think it's typed.  
 09:57:58 18 MR. KUTELL: I'm not sure.  
 09:58:00 19 Q. Do you recall having any conversations  
 09:58:02 20 with anyone other than in anticipation of this  
 09:58:06 21 litigation about the insurance clause?  
 09:58:08 22 A. No, I don't.  
 09:58:21 23 Q. Okay. Farther down the page, maybe  
 09:58:26 24 about ten lines up from the bottom or so, "It is

Page 25

09:58:26 1 further mutually agreed that in case the building  
 09:58:26 2 or buildings and improvements upon said premises  
 09:58:26 3 shall be at any time damaged or this lease shall  
 09:58:41 4 not be terminated, the laws of the State of Ohio  
 09:58:42 5 to the contrary notwithstanding, and that neither  
 09:58:44 6 of the parties hereto shall be released by reason  
 09:58:47 7 of any such damage or destruction from any  
 09:58:49 8 obligation created or imposed by virtue of this  
 09:58:52 9 instrument." Are you with me?  
 09:58:54 10 A. Yes.  
 09:58:54 11 Q. Do you recall having conversations  
 09:58:56 12 about that clause with anyone other than in  
 09:58:58 13 anticipation of this lawsuit?  
 09:59:00 14 A. No, I don't.  
 09:59:38 15 Q. On page 5 of Exhibit 1, in the middle  
 09:59:42 16 of the page, "The lessor, for itself, its  
 09:59:48 17 successors and assigns, further expressly agrees  
 09:59:52 18 that the lessees shall have the right and option,  
 09:59:55 19 which is hereby granted, to extend and renew this  
 09:59:58 20 lease for a further period of twenty five (25)  
 10:00:00 21 years or of fifty (50) years" -- I believe it says  
 10:00:04 22 of, but I think I'll read it as or, -- "ninety  
 10:00:08 23 nine (99) years, from and after the expiration of  
 10:00:11 24 the said term herein, granted if the lessees shall



Page 26	<p>10:00:16 1 desire an extension thereof for either of said                  10:00:19 2 additional periods." I'll call this the renewal                  10:00:23 3 clause.                  10:00:23 4 Do you recall having conversations with                  10:00:25 5 anyone other than in anticipation of this lawsuit                  10:00:27 6 about the renewal clause?                  10:00:29 7 A. I do not recall.                  10:00:44 8 Q. Do you recall hearing about                  10:00:49 9 conversations or discussions about the rent                  10:00:53 10 between other people at any point other than in                  10:00:56 11 anticipation of this lawsuit?                  10:00:57 12 A. No, I don't recall.                  10:00:59 13 Q. Do you recall hearing about                  10:01:02 14 conversations or discussions about the gold clause                  10:01:05 15 at any point other than in anticipation of this                  10:01:08 16 lawsuit?                  10:01:08 17 A. No.                  10:01:12 18 Q. Do you recall hearing about                  10:01:14 19 conversations or discussions about the                  10:01:16 20 indemnification clause at any point other than in                  10:01:20 21 anticipation of this lawsuit?                  10:01:22 22 A. No.                  10:01:23 23 Q. Do you recall hearing about                  10:01:25 24 conversations or discussions pertaining to the</p>	Page 28	<p>10:02:37 1 conversations about the renewal clause at any                  10:02:42 2 point other than in anticipation of this lawsuit?                  10:02:45 3 A. No, I don't recall.                  10:02:46 4 Q. I believe that you said when                  10:03:02 5 Schottenstein purchased Halle Brothers from                  10:03:07 6 Marshall Fields, Marshall Fields indicated that it                  10:03:12 7 was a cheap lease; is that correct?                  10:03:16 8 A. Yes.                  10:03:16 9 Q. Okay. Do you recall any other                  10:03:18 10 conversations that you participated in or that you                  10:03:22 11 heard about between others that referred to any                  10:03:26 12 aspect of the lease at any point other than in                  10:03:29 13 anticipation of this litigation?                  10:03:31 14 A. No, I don't recall.                  10:04:28 15 MR. LEHN: Could we take a ten-minute                  10:04:31 16 break, five-minute break?                  10:04:34 17 THE WITNESS: Sure.                  10:04:34 18 MR. KUTELL: Sure.                  10:04:35 19 (A brief recess is taken.)                  10:14:00 20 Q. Just a few more questions,                  10:14:03 21 Mr. Ketteler.                  10:14:07 22 In your affidavit you said in paragraph                  10:14:13 23 3, "On behalf of Halle Brothers Company, I                  10:14:17 24 participated in the negotiations of the transfer</p>
Page 27	<p>10:01:27 1 insurance clause other than in anticipation of                  10:01:30 2 this lawsuit?                  10:01:31 3 A. No, I don't recall.                  10:01:34 4 Q. Do you recall any conversations about                  10:01:36 5 the -- I forgot what I termed it, but the clause                  10:01:46 6 that pertained to if the building was destroyed,                  10:01:50 7 it doesn't discharge any obligations? We can go                  10:01:54 8 back and look at it, since I have forgotten what I                  10:01:57 9 termed it. It was on page 3, towards the bottom,                  10:02:02 10 "It is further mutually agreed that in case the                  10:02:04 11 building or buildings and improvements upon said                  10:02:07 12 premises shall be at any time damaged or destroyed                  10:02:09 13 this lease shall not be terminated, the laws of                  10:02:14 14 the State of the Ohio to the contrary                  10:02:15 15 notwithstanding, and that neither of the parties                  10:02:18 16 hereto shall be released by reason of any such                  10:02:18 17 damage or destruction from any obligation created                  10:02:20 18 or imposed by virtue of this instrument."                  10:02:22 19 Do you recall hearing about                  10:02:24 20 conversations or discussions between others at any                  10:02:28 21 point other than in anticipation of this lawsuit                  10:02:31 22 about this clause?                  10:02:32 23 A. No, I don't recall.                  10:02:35 24 Q. Do you recall hearing about</p>	Page 29	<p>10:14:20 1 of that leasehold."                  10:14:22 2 MR. KUTELL: Do you have a copy of the                  10:14:24 3 affidavit?                  10:14:24 4 MR. LEHN: I don't have a copy. I'm                  10:14:26 5 sorry.                  10:14:27 6 MR. KUTELL: Why don't we mark a copy                  10:14:29 7 so he can take a look at it.                  10:14:31 8 MR. WALTERS: I'm happy to give you a                  10:14:33 9 copy.                  10:14:33 10 -----                  10:14:33 11 Thereupon, Exhibit 2 is marked for                  10:14:33 12 purposes of identification.                  10:14:46 13 -----                  10:14:46 14 MR. LEHN: So the affidavit is Exhibit                  10:14:49 15 2.                  10:14:49 16 Q. Paragraph 3, it's the last sentence.                  10:14:59 17 Okay.                  10:15:04 18 I believe you said previously that you                  10:15:07 19 don't recall who participated in the negotiations                  10:15:10 20 besides yourself; is that correct?                  10:15:15 21 MR. KUTELL: Objection.                  10:15:17 22 Q. You may answer.                  10:15:17 23 A. I think what I said was Jerome                  10:15:20 24 Schottenstein did the negotiations.</p>

Page 30

10:15:23 1 Q. On behalf of Schottenstein Stores?  
 10:15:26 2 A. Yes.  
 10:15:26 3 Q. Or on behalf of Halle Brothers Company?  
 10:15:29 4 A. Well, both, really. But it would be  
 10:15:33 5 Halle Brothers Company, yes.  
 10:15:34 6 Q. Do you remember who did the  
 10:15:36 7 negotiations on behalf of S&R Playhouse?  
 10:15:38 8 A. No, I don't.  
 10:15:40 9 Q. Okay. And by participate in the  
 10:15:44 10 negotiations, what did you do to participate?  
 10:15:48 11 A. I assisted Jerome Schottenstein at the  
 10:15:52 12 time.  
 10:15:52 13 Q. Can you give me some examples of things  
 10:15:55 14 you did?  
 10:15:55 15 A. He may have asked me a question  
 10:15:57 16 regarding it. As I mentioned before, he was  
 10:16:02 17 concerned with the tax ramifications of the  
 10:16:06 18 transfer, that type of thing.  
 10:16:08 19 Q. Okay. At no point did you discuss the  
 10:16:10 20 lease with him?  
 10:16:11 21 A. I don't recall at this time.  
 10:16:13 22 Q. Okay. After the assignment in 1982,  
 10:16:54 23 did you have responsibility for -- financial  
 10:17:01 24 responsibility for S&R Playhouse?

Page 31

10:17:03 1 A. No.  
 10:17:05 2 Q. But you did see financial information  
 10:17:08 3 from S&R Playhouse?  
 10:17:10 4 A. As I recall, we got a report every so  
 10:17:14 5 often.  
 10:17:15 6 Q. What would be the content of that  
 10:17:18 7 report?  
 10:17:18 8 A. It had to do with the renovation of the  
 10:17:25 9 building.  
 10:17:27 10 Q. The costs?  
 10:17:28 11 A. Costs.  
 10:17:30 12 Q. Okay. Would the report include any  
 10:17:34 13 reference to rental payments made on the lease?  
 10:17:40 14 A. I don't recall.  
 10:17:53 15 Q. Do you recall ever seeing any financial  
 10:17:56 16 information that contained a record of the rent  
 10:18:03 17 that S&R Playhouse was paying on the lease?  
 10:18:06 18 A. I don't recall.  
 10:18:08 19 Q. At any point?  
 10:18:09 20 A. At any point.  
 10:18:12 21 Q. Okay.  
 10:18:13 22 MR. LEHN: I don't think I have  
 10:18:15 23 anything further.  
 10:18:15 24 MR. WALTERS: Mr. Ketteler, I'm Gary

Page 32

10:18:22 1 Walters.  
 10:18:22 2 -----  
 10:18:22 3 CROSS-EXAMINATION  
 10:18:22 4 BY MR. WALTERS:  
 10:18:23 5 Q. We met for the first time this morning,  
 10:18:25 6 correct?  
 10:18:25 7 A. That's correct.  
 10:18:26 8 Q. And I represent S&R Playhouse Realty  
 10:18:29 9 Company. I'm from Thompson Hine, for the record.  
 10:18:34 10 Did you generally advise Mr. Jerome  
 10:18:36 11 Schottenstein with respect to his business  
 10:18:38 12 financial affairs?  
 10:18:39 13 A. Yes, I did.  
 10:18:43 14 Q. And in your deposition, which has been  
 10:18:47 15 marked here today as Plaintiff's Exhibit 2 --  
 10:18:51 16 MR. LEHN: In his affidavit?  
 10:18:53 17 MR. WALTERS: Affidavit, yes. Thank  
 10:18:54 18 you. Let me back up just a second.  
 10:19:06 19 Q. Mr. Lehn had shown you today in  
 10:19:08 20 Plaintiff's Exhibit 1 the 1912 lease. And he has  
 10:19:13 21 read to you at least part of the rental provision  
 10:19:16 22 from that lease. Do you recall that?  
 10:19:17 23 A. Yes.  
 10:19:18 24 Q. Does that refresh your memory that rent

Page 33

10:19:23 1 under the lease was \$35,000 per year?  
 10:19:25 2 A. Yes.  
 10:19:25 3 Q. Were you generally involved with the  
 10:19:32 4 Halle building just before the time of the 1982  
 10:19:37 5 assignment in 1982 and then just after the 1982  
 10:19:44 6 assignment in 1982?  
 10:19:45 7 A. Yes.  
 10:19:47 8 Q. Sir, would you know if there were any  
 10:19:54 9 discussions respecting plaintiff's theory in this  
 10:19:58 10 case in which under this gold clause theory rent  
 10:20:01 11 at the time in 1982 would have been in excess of  
 10:20:04 12 half a million dollars per year?  
 10:20:07 13 A. I don't recall any such conversations.  
 10:20:08 14 Q. Would that have been a rather  
 10:20:11 15 astounding development in the course of  
 10:20:13 16 negotiating the 1982 assignment?  
 10:20:16 17 A. Yes.  
 10:20:16 18 Q. It would have been an increase in rent  
 10:20:18 19 of at least 17 times, wouldn't it?  
 10:20:22 20 A. I believe that's correct, yes.  
 10:20:24 21 Q. And that would have been remarkable,  
 10:20:26 22 correct, sir?  
 10:20:27 23 A. Yes.  
 10:20:31 24 Q. To your knowledge, sir, no one at any

