

Corrected Transcript

IN THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

AVP DESTINY, LLC, ANTHONY V.
PUGLIESE, III, individually, LAND
COMPANY OF OSCEOLA COUNTY, LLC,

Plaintiffs, CASE NO.:
50 2009 CA 040295 XXXXAG

-vs-

FREDERICK A. DELUCA, individually,
FD DESTINY, LLC and DOCTOR'S
ASSOCIATES, INC.,

Defendants.

FD DESTINY, LLC and FD DESTINY
MANAGEMENT LLC and FREDERICK
DELUCA,

Plaintiffs,

-vs-

CASE NO.:
50 2009 CA 029903 XXXXMB

AVP DESTINY, LLC, ANTHONY V.
PUGLIESE, III, ANTHONY V. PUGLIESE
COMPANY, INC. d/b/a THE PUGLIESE
COMPANY, and JOSEPH REAMER,

Defendants.

DEPOSITION OF FREDERICK A. DELUCA
Volume Six
Pages 469 through 536
CORRECTED TRANSCRIPT
Monday, September 24, 2012
2:36 - 5:04 p.m.

444 North Railroad Avenue, Suite 300
West Palm Beach, Florida 33401

Stenographically Reported By:
Barbara Bolton, RPR, FPR
Florida Professional Reporter

Corrected Transcript

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ANTHONY V. PUGLIESE

ROBERT RAY, CORPORATE REPRESENTATIVE
FD DESTINY, LLC (By telephone)

JOE ROVNER, VIDEOGRAPHER

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{NO EXHIBITS MARKED}

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AFTERNOON SESSION

- - -

Deposition taken before Barbara Bolton,
Registered Professional Reporter and Notary Public
in and for the State of Florida at Large, in the
above cause.

- - -

THE VIDEOGRAPHER: We're back on the
video record at 2:36 p.m.

THEREUPON,

(FREDERICK A. DELUCA)

having been previously first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION CONTINUED

BY MS. HOFFLER:

Q. Mr. DeLuca, before our lunch break we were going through the litigation that was disclosed by your counsel, Adam Hodkin, on August 11, 2005 in connection with your loan from Wachovia Bank, and we had gone through a number of -- a number of lawsuits in which you were sued in your individual capacity as well as Doctor's Associates. And I'd like to continue and ask you to turn to number ten on page four.

A. Which document is this?

1 Q. This is A right there in front of you,
2 sir.

3 A. Oh, A, yeah, uh-huh.

4 Q. Uh-huh. And thus far, Mr. DeLuca, it's
5 fair to say that we have not yet talked about the
6 Janotta case in any of these cases that we reviewed
7 thus far, have we, on this document?

8 A. I don't believe so, no.

9 Q. And the Janotta case is a case, some
10 litigation that we discussed during the first two
11 days of your deposition. It was also an Illinois
12 case just for the record. And let me know when
13 you've have a chance to review number ten.

14 A. Okay. Okay.

15 Q. You've had a chance to read it? Okay.
16 Thank you, sir. Now, just like the other multiple
17 lawsuits that I've reviewed with you, you were a
18 defendant in this lawsuit, William Hargett --
19 Hargett, Mary Hargett, Rodrigo Gonzalez, Ed Madgett,
20 Pam Madgett, Jim Venetos, Kalliopi Venetos, George
21 Venetos, Michael Aram, Mehran Roghany, Trey Bennett,
22 Loralie Bennett, et al, sued you along with Doctor
23 Associates, Fred -- you, Fred DeLuca, Peter H. Buck
24 in this case, and the Complaint states that on July
25 1st, 1998, and if you could read with me midway down

1 in the paragraph, do you see where it says on July
2 1st, 1998?

3 A. I see that.

4 Q. The State of Illinois notified DAI, that
5 would be Doctor and Associates, that a complaint had
6 been filed by current and former franchisees
7 claiming fraudulent representation and concealment,
8 violation of the Illinois Franchise Disclosure Act.
9 and the arbitration clauses are void and
10 unenforceable. They claim that the leasing
11 company's owned and employed by the Defendants are
12 the alter egos of the Defendants and that the
13 misrepresentations were made regarding site
14 selection procedures, lease and sublease
15 arrangements, audits, Development Agent duties, the
16 national sales campaign and the franchisee
17 advertising fund in the offering circular and the
18 franchise agreement. Do you see that?

19 A. I see that.

20 Q. And you also see where further down, the
21 sixth line from the bottom, it says: The amounts
22 sought were amended to in excess to \$110,000 in
23 actual damages and in excess of \$100,000 punitive
24 damages per class plaintiff, including named
25 plaintiffs, and additionally in excess of \$50,000 in

1 actual damages and in excess of \$2,000,000 in
2 punitive damages for plaintiffs that -- plaintiffs
3 now named in the suit. Do you see that?

4 A. I see that.

5 Q. Now, I'd like -- I'm sorry. I'd like to
6 now go -- turn the page if you could, sir, and if
7 you could read lawsuit number 11. It's a Daniel
8 Wolf, Patricia Batchman, et al against -- and,
9 again, you're a defendant in that case as well as
10 Doctor Associates, Inc. And if you could read that,
11 please.

12 A. Okay.

13 Q. Okay. Now, in that case, Mr. DeLuca, and
14 referring to number 11, Daniel Wolf, Patricia
15 Batchman, et al, you're a defendant in that case as
16 well as Doctor Associates, aren't you, or weren't
17 you? On the top of page five.

18 A. Yes.

19 Q. And in that case, Mr. DeLuca, in this
20 disclosure it says: On July 1, 1998 the State of
21 Illinois notified DAI, that would be Doctor and
22 Associates, that a complaint had been filed by
23 current and former franchisees claiming breach of
24 contract, violation of Illinois Franchise Disclosure
25 Act, and the arbitration clauses are void and

1 unenforceable. They claim that the leasing
2 companies owned and employed by the Defendants are
3 the alter egos of the Defendants. They also claim
4 that DAI breached their respective franchise
5 agreements by allowing other sandwich shops to open
6 too close to their location, controlling the
7 franchisee advertising fund, misusing audits,
8 limiting the number of qualified vendors thereby
9 causing price increases, denying locations for
10 sandwich shops only to approve them for another
11 franchisee, misusing the lease and sublease
12 arrangement, requiring franchisees to sign the most
13 current form of franchise agreement when they
14 purchase an additional franchise and controlling
15 national sales campaigns.

16 Do you see that? Have I read that
17 correctly?

18 A. Yes.

19 Q. And -- and that's another case, as we said
20 before, where you were sued in your individual
21 capacity, not just in your corporate capacity.
22 Isn't that right?

23 A. That's correct.

24 Q. Now, I'd like you to jump down to number
25 13, Mr. DeLuca in the -- you know, and while we're

1 at number -- before we jump down to number 13, on
2 number 11 where there was an allegation of you and
3 Doctor's Associates and Peter Buck, you're the only
4 three defendants, misusing the audits, do you recall
5 what that was about?

6 A. No, I don't.

7 Q. You have no knowledge or recollection of
8 any allegations of misuse of audits.

9 A. I don't know what that was about.

10 Q. Okay. Have you -- do you recall ever
11 being accused of misusing audits?

12 A. Me personally?

13 Q. Yes.

14 A. Well, I think --

15 Q. Other than in the instances that we've
16 gone through in your deposition thus far.

17 A. Well, I think that when we audit our
18 franchisees, there have been complaints that have
19 come forth in some instances.

20 Q. And what kind of complaints were those,
21 sir?

22 A. They didn't agree with the audit findings
23 generally.

24 Q. And based on the misuse of audit, they
25 sued you personally in your individual capacity?

1 A. I don't know what this is about.

2 Q. Well, in this case they sued you in your
3 individual capacity because you're listed as Fred
4 DeLuca as a defendant. Right?

5 A. Yes.

6 Q. Okay.

7 A. But I don't know about how it relates to
8 the audits.

9 Q. Let's go to number 13. Gerald Hadelman,
10 Robert Dowell and Dennis Rottinghaus versus Fred
11 DeLuca, and there are other defendants as well. Do
12 you see that?

13 A. I'm reading it.

14 Q. Okay.

15 A. I read it.

16 Q. You had a chance to review it now? Mr.
17 DeLuca, read with me. Now, you were a defendant in
18 this case as well, were you not?

19 A. Yes.

20 Q. And this case that's Gerald Hadelman and
21 Robert Dowell, et al versus Fred DeLuca and there
22 are some other defendants. Now, this disclosure
23 reads: In October, 1997, Doctor's Associates, Inc.
24 was advised of this Complaints filed by franchisees
25 claiming breach of fiduciary duty and obligation of

1 good faith and fair dealing, violation of section
2 42-110b of the Connecticut Unfair Trade Practices
3 Act and contractual interference with regard to the
4 elections being held for the SFAFT board. And SFAFT
5 is defined previously as Subway Franchisee
6 Advertising Trust. Have I read that correctly, sir?

7 A. Almost. It's Subway Franchisee
8 Advertising Fund Trust.

9 Q. Fund Trust. I apologize. But other than
10 that little snafu in reading what SFAFT was, have I
11 read it correctly?

12 A. Yes.

13 Q. And you were a defendant in that action.
14 Isn't that correct?

15 A. Yes.

16 Q. And then I'd like you to read into the
17 record if you could, Mr. DeLuca, at the bottom of
18 page five to the top of page six that whole full
19 paragraph starting on November 20th, 2001.

20 A. Yes. On November 20th, 2001, the
21 arbitrators issued their final award, concluding
22 that Mr. DeLuca, on behalf of DAI, improperly
23 interfered with the election, and that DAI
24 tortiously interfered with the franchisees' right
25 to seek election, and, therefore violated the

1 Connecticut Unfair Trade Practices Act.

2 Q. Continue on to the end of that paragraph,
3 sir, please.

4 A. Okay. The panel awarded the plaintiffs
5 unpaid expenses they had from the election,
6 punitive damages totaling \$300,000, attorney's
7 fees and costs totaling \$150,000 and ordered DAI
8 to reimburse plaintiff's AAA fees and arbitrator
9 compensation totaling one hundred \$107,961. DAI
10 moved in the Connecticut Superior Court to vacate
11 the award. On June 12, 2003, the Connecticut
12 Superior Court denied the motion to Vacate the
13 Award and confirmed it. DAI has filed a notice
14 of appeal with the Connecticut Supreme Court.

15 Q. And now, sir, I'd like you to jump down to
16 number 16, in the case of David M. Duree, Plaintiff
17 versus Doctor Associates, Inc., Subway Restaurants
18 and -- sorry, Fred -- Fred A. DeLuca -- Frederick A.
19 DeLuca, Peter H. Buck, William A. Darrin, Jr.,
20 et al. Do you see that?

21 A. Yes.

22 Q. Okay. And that case was filed in 2001.
23 Is that right?

24 A. Yeah. Let me read it. Then I'll be
25 right with you. Okay.

1 Q. Now, in that case that was filed in 2001
2 the disclosure that was submitted by your lawyer
3 reads in pertinent part: This complaint was filed
4 on June 8th, 2001, by an attorney claiming tortious
5 interference, invasion of privacy, abuse of process,
6 libel, and malicious prosecution. Mr. Duree claims
7 that because he had successfully represented Subway
8 franchisees and landlords in their disputes with
9 DAI, and that would be Doctor and Associates, SRI,
10 Mr. DeLuca and Dr. Buck, the defendants have acted
11 to discredit him, bankrupt him and prevent him from
12 representing others with claims against DAI, SRI,
13 Mr. DeLuca and Dr. Buck. Mr. Duree also claims that
14 the defendants have filed numerous motions for
15 contempt, motions for sanctions, tried to have him
16 disbarred in the states of Illinois and Missouri and
17 tried to intrude upon his attorney-client
18 relationship with a former Subway franchisee. Have
19 I read that correctly, sir?

20 A. I think so.

21 Q. Okay. Now let's move on. I'd like you to
22 move to page -- go to page eight if you could, and
23 look at number 32.

24 A. You don't want to finish that one?

25 MR. CHAPMAN: Which one?

1 BY MS. HOFFLER:

2 Q. I've asked you the questions. On page
3 eight, number 32.

4 A. Page eight.

5 Q. Your lawyer can ask whatever he wants
6 there.

7 A. Okay.

8 MR. HUTCHISON: Finish your answer. If
9 your answer is finished --

10 MS. HOFFLER: His answer was finished.

11 BY MS. HOFFLER:

12 Q. Number 32.

13 MR. HUTCHISON: I think he'll make that
14 decision.

15 MS. HOFFLER: Stop trying to lead your
16 witness.

17 MR. GARY: Now he'll want to read two
18 more pages.

19 MS. HOFFLER: Right. That's not going to
20 work. When you come back, you just ask him
21 all the questions you want. That's all.

22 BY MS. HOFFLER:

23 Q. Okay. Mr. DeLuca, this is a short one.
24 Could you please look at number 32 and let me know
25 when you finish reading that one.

1 A. I'll read it. I read it.

2 Q. Okay. Now, in this case Omar Hadaidi,
3 **Plaintiff versus Doctor Associates, Inc., you're**
4 **also named as a defendant, aren't you, in that case,**
5 **Mr. DeLuca?**

6 A. I am.

7 Q. And this was a 2004 case, was it not?

8 A. Correct.

9 Q. I'd like you to read into the record if
10 **you could starting from this action was filed, and**
11 **this is a Nevada -- this case came out of the United**
12 **States Bankruptcy Court in the District of Nevada,**
13 **Reno Division. If you could read into the record**
14 **the -- beginning with this action was filed to the**
15 **end of the paragraph.**

16 A. This action was filed on November 24th,
17 2004 by a franchisee claiming fraud, conspiracy
18 to commit fraud, and breach of fiduciary duties.
19 The Plaintiff alleges the Defendants knew that by
20 letting another franchise open within one mile of
21 his restaurant would cause him financial harm and
22 adversely affect his business while at the same
23 time increasing the dependence -- the Defendants
24 revenue. The plaintiff is seeking compensatory
25 damages in excess of \$250,000 to be proven at

1 trial, punitive damages, costs, expenses and
2 relief.

3 Q. Okay. Again, that was a case where you
4 were accused of fraud and conspiracy to commit
5 fraud. Isn't that right, sir?

6 A. Well, there was an allegation.

7 Q. Right. An allegation is accusing you of
8 fraud, and you would agree that someone alleges that
9 they're accusing you of that, aren't they?

10 A. Not necessarily.

11 Q. Okay. Is it your testimony here under
12 oath that in this lawsuit you weren't accused of
13 fraud? That's not your testimony, is it?

14 A. No, you asked me a question about if
15 there's an allegation. To me it's an allegation.

16 Q. Were you accused of fraud in this case,
17 sir?

18 A. I don't know the details of this case.

19 Q. So when you're accused of fraud -- I mean
20 share with us when you are accused of fraud or when
21 someone's seeking punitive damages against you, do
22 you take that lightly?

23 A. No, of course I don't take it lightly.
24 What I do is sometimes have to put things in
25 context. Like quite a few cases that you talked

1 about were filed by the exact same attorney who
2 just seemed to come up with a litany of
3 accusations, the -- sometimes twenty or thirty
4 accusations that included everything in the
5 kitchen sink. So I'd have to take that in
6 context.

7 Q. Absolutely. And, of course, quite a few
8 cases that I mentioned there were arbitration awards
9 against you as well and there were punitive damage
10 awards against you as well. So let's continue
11 down --

12 A. That's not correct. That's not correct.

13 Q. Well, you want to go through all of them?

14 A. Let's go through them.

15 Q. I thought we went through them, but if you
16 want to go through them where we can see where there
17 were arbitration awards against you, certainly we
18 can do that. And I might -- let me keep on going
19 down my list, and I might very well do that since
20 you appear not to remember what you just read.

21 MR. HUTCHISON: Objection. Comments of
22 counsel.

23 BY MS. HOFFLER:

24 Q. Let's go through -- let's go through page
25 nine. Let's start with page nine. Now, this -- the

1 caption here is -- the second category is civil
2 actions which have been settled, dismissed, reached
3 judgment or withdrawn prior to final judgment. Now,
4 here's a case that was settled and it's entitled --
5 it's captioned Century Plaza Company, Plaintiff
6 versus Doctor Associates, Inc. -- Doctor's
7 Associates, Inc., Franchise World Headquarters,
8 Inc., Franchise Real Estate Leasing Corp., Inc.,
9 Fred DeLuca, Peter Buck, Subway Development of North
10 Alabama, Inc., Bernie Frausto, Defendants. Do you
11 see that? And this was a case in Alabama in 1994.

12 A. I see that.

13 Q. Okay. And do you see also, turning the
14 page, that the landlord claimed that the affiliates
15 are the alter ego of DAI and that DAI was liable for
16 rent owned -- owed, I'm sorry, owed. They claimed
17 the Defendants conspired together to convince the
18 landlord to enter into a lease and they did not
19 disclose information to that -- to the landlord.
20 And it says the action was settled with payment of
21 \$567,000 to the Plaintiff and dismissal of all
22 pending actions.

23 So that one was settled, but you still
24 had to pay \$567,000. Right?

25 A. I think we had to pay the rent.

1 Q. Well, you had to pay a judgment --

2 A. No.

3 Q. -- of \$567,000, didn't you?

4 A. No.

5 Q. Or did you just pay it out of your
6 kindness of your heart?

7 A. No.

8 Q. Did you pay it out of the kindness of your
9 heart, sir?

10 A. I didn't finish the question that you
11 asked me.

12 Q. No, no, you didn't finish the answer you
13 mean.

14 A. The answer, yeah.

15 Q. Okay.

16 A. This wasn't a judgment. What it says
17 here was this action was settled with payment of
18 567,000.

19 Q. Okay. You're right. I stand corrected.
20 And that was a settlement, so do you typically just
21 settle claims for over half a million dollars out of
22 the kindness of your heart, Mr. DeLuca?

23 A. I don't understand the question. What do
24 you mean by out of the kindness of my heart?

25 Q. Let's just move on to number 13, Mr.

1 DeLuca. Number 13 on page 11, in this case again
2 it's Subway Equipment Leasing Corporation which was
3 the Plaintiff versus John A. McCrary, Defendant, and
4 there were counterclaims and crossclaims in this
5 case. And you see where Doctor and Associates was a
6 defendant as well as you in your individual
7 capacity?

8 A. Let me just read this.

9 Q. Sure. You've had a chance to read it,
10 sir?

11 A. I did.

12 Q. Okay. Now, in this case, sir, you were
13 sued as well as Doctor Associates, Inc. Isn't that
14 correct?

15 A. In a counterclaim, yes.

16 Q. Were you sued, sir?

17 A. I said yes, in a counterclaim.

18 Q. Okay. But you were sued.

19 MR. HUTCHISON: Objection. Asked and
20 answered.

21 BY MS. HOFFLER:

22 Q. My question is, were you sued?

23 A. I think I answered it twice. I said yes
24 in the counterclaim.

25 Q. Yes, you're saying you were sued in a

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counterclaim.

A. Yes, that's what I said.

Q. Well, let's go further and see what the Court found here and what happened in the case. This was Alabama, Alabama case, and based on the disclosure that your attorneys furnished to Wachovia in 2005, it says this matter was settled on October 4th, 1996. In the amended complaint a franchisee was being evicted by DAI for equipment leasing payments, royalties and advertising charges claimed DAI, its affiliate Franchise World Headquarters Inc., its leasing affiliates and local Development Agent made fraudulent misrepresentations and fraudulent concealments, failed to disclose material facts, induced the franchisee to purchase a franchise, interfered with his business relationship, committed breach of fiduciary duty and negligence, breach of contracts and breach of the covenant of good faith and fair dealing. He also claimed the affiliated leasing corporations are shell corporations and the alter ego of DAI, that would be Doctor and Associates, Inc., Fred DeLuca and Peter Buck. Let me read that sentence again. He also claimed the affiliated leasing corporations are shell corporations and the alter ego of DAI,

1 **Frederick DeLuca and Peter Buck. This matter was**
2 **settled for \$200,000 in return for which Mr. McCrary**
3 **dismissed his lawsuit, executed a complete release**
4 **and transferred his store to DAI. Have I read that**
5 **correctly, Mr. DeLuca?**

6 A. You have.

7 **Q. Let's go back to number seven on page ten**
8 **if we could. Number seven on page ten, if you could**
9 **follow with me halfway through the paragraph.**

10 MR. HUTCHISON: Are you going back to
11 page ten?

12 MS. HOFFLER: Number seven.

13 BY MS. HOFFLER:

14 **Q. You followed me, didn't you, Mr. DeLuca?**
15 **We're on page ten.**

16 A. Let me just read it. I'm on page ten.

17 **Q. Yes.**

18 A. Looking at number seven. So I'll read
19 it. I read it.

20 **Q. Okay. Now, Mr. DeLuca, halfway through**
21 **this paragraph, and follow with me where it says on**
22 **June 21st, 1994. Do you see that?**

23 A. Yes.

24 **Q. The fifth line down?**

25 A. I see it.

1 Q. Now, you were a defendant in this case as
2 well, weren't you, based on the amended complaint?

3 A. Yes.

4 Q. And in this amended complaint your
5 disclosure from your lawyer reads: The landlord
6 claimed that DAI is the alter ego of CJDC and CJREC.
7 And those were defined as Cajun Joe Real Estate
8 Corporation and Cajun Joe's Development Corporation.
9 And that all defendants committed breach of
10 contract, tortious interference with contract,
11 violated the South Carolina Unfair Trade Practices
12 Act, and committed constructive fraud. This action
13 was settled on April 27th of 1995 with payment of
14 \$325,000 to the landlord, transfer of the property
15 located at the intersection of Highway 25 and
16 Donaldson Road, Greenville County, South Carolina
17 from the landlord to Donaldson Augusta Realty, Inc.,
18 a corporation owned by principals of CJDC and
19 Mr. Saifi -- and Mr. Saifi and dismissal of the
20 action. Have I read that correctly?

21 A. That's correct.

22 Q. Now, in this -- Mr. DeLuca, in this
23 lawsuit as well as the amended complaint, your
24 mother was sued as well. Right?

25 A. I see that.

1 Q. Was your mother involved at this point,
2 this was in 1994, in any of the operations of Subway
3 Restaurants or Subway Restaurants, Inc.?

4 A. In terms of operations? No.

5 Q. Well, was she a -- was she a principal in
6 Subway Restaurants, Inc.?

7 A. No.

8 Q. Was she a principal in Cajun Joe's Real
9 Estate Corporation, CJREC?

10 A. No.

11 Q. Was she a principal in Cajun Joe's
12 Development Corporation, CJDC?

13 A. No.

14 Q. What about Ali Saifi, doing business as
15 South Carolina Franchise Development?

16 A. What about it?

17 Q. Was she a principal in that?

18 A. Oh. No.

19 Q. Was she a principal or have any connection
20 to Subway Restaurants, Inc.?

21 A. Subway Restaurants, Inc.? No.

22 Q. So it's your testimony that in 1994 your
23 mother was not involved in any of those entities
24 that I just named?

25 A. Not to my knowledge.

1 **Q. In 1994 what was your mother's role in**
2 **Doctor's Associates or any of the companies that you**
3 **ran or owned?**

4 A. Well, I can't remember what year she
5 retired. Let me just think for a second. I
6 think she was retired then, and she had a seat on
7 the Doctor's Associates Board of Directors.

8 **Q. She had a seat on the Doctor's Associates**
9 **Board of Directors. Now, Doctor's Associates wasn't**
10 **named in this lawsuit, was it?**

11 A. I don't see Doctor's Associates' name.

12 **Q. There's just you in your individual**
13 **capacity, among other defendants, and Peter Buck, of**
14 **course, and whose Haydee Buck?**

15 A. Haydee Buck is Pete Buck's first wife.

16 **Q. Oh, that's his first wife. Okay. Did his**
17 **first wife -- was she involved in Doctor Associates**
18 **or any of the companies that you owned or ran in**
19 **1994, his first wife?**

20 A. She was similar -- like my mom, she also
21 had a seat on the Doctor's Associates Board of
22 Directors.

23 **Q. Board. Now, have you ever been involved**
24 **in litigation with your mother other than this**
25 **litigation, any other litigation?**

1 A. I don't recall any.

2 **Q. Okay. Have you and your mother ever been**
3 **engaged in any litigation against each other?**

4 A. I don't recall that.

5 **Q. I'd like you to turn to page number 12.**
6 **If you look at number 19, please. And, again, in**
7 **this litigation if you look midway down, your**
8 **mother's named again as a defendant, but I'll allow**
9 **you to read further.**

10 A. This was 19 you're having me read?

11 **Q. Number 19, uh-huh.**

12 A. Oh, it keeps going, I'm sorry.

13 **Q. It does. Yes, sir.**

14 A. Okay.

15 **Q. And, sir, I just have a couple of quick**
16 **questions on this one so -- in this case John --**

17 A. Excuse me, I'm not done reading.

18 **Q. You read the first part. Right? The**
19 **complaint, the caption.**

20 A. I'm not even done with the caption. On
21 the second -- on the second paragraph?

22 **Q. No, I'm saying the first caption.**

23 A. The first caption.

24 **Q. The John Weible. This is in the John**
25 **Weible case, the first case that John Weible filed,**

1 Doctor Associates and you as well as other
2 defendants were named. Isn't that correct? In the
3 first four lines.

4 A. Yes.

5 Q. Doctor Associates in the first four lines.

6 A. Yes, I see that.

7 Q. Yes. And this was a 1991 case. Isn't
8 that correct?

9 A. Yes.

10 Q. And in the second case, that's the second
11 full paragraph, Doctor Associates, you, Frederick
12 DeLuca, Peter Buck and Carmela DeLuca as well as
13 Haydee Buck were named. Isn't that right?

14 A. Yeah. Let me read this.

15 Q. Sure. And, Mr. DeLuca, I'm just going to
16 in this as it relates to number 19, there's really
17 only one sentence. It's a long sentence that I'm
18 going to read, and I'd like you to follow along with
19 me. It's the fourth line down of the paragraph that
20 you've read. It starts with: In this action. You
21 see where I am, in this action? It's one, two,
22 three, four -- I'm sorry, the fifth line down that
23 says this action was finally determined. Do you see
24 that line?

25 A. No.

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Q. The fifth line --

A. The fifth line down --

Q. -- of the second paragraph.

A. Yes.

Q. And then the next sentence says: In this action, a former franchisee claimed the Defendants violated California Corporation Code Sections 2105, 31000, 31101, 31111, 31123, 31200, 31202, 31210, 31220, 31300 and Civil Code Section 3336 by committing fraud, deceit, suppression of facts, breach of contract, tortious breach of contract, making material misrepresentations, failing to register the franchise, failing to properly exercise exemption, and negligent misrepresentations of fact, breaching of the covenant of good faith and fair dealing, committing civil conspiracy, intentional and negligent interference with contractual relations, intentional and negligent interference with prospective economic advantage, and interference with rights to join trade association, fraudulent conversion and intentional and negligent infliction of emotional distress.

Have I read that correctly, sir?

A. I lost track of it actually. I wasn't tracking with you.

1 Q. Okay. All right. Well, let's turn to
2 number 22 on page 13. Okay. Number 22, this is a
3 case -- this is a Massachusetts case, is it not,
4 that was filed in August 22nd of 1993?

5 A. I'll have to read it, please.

6 Q. Okay. Certainly. Take your time.

7 A. I read it.

8 Q. Okay. Now, Mr. DeLuca, you again were a
9 defendant in this case. This is a case of David
10 Breslow, John Castanes, et al, versus a number of
11 defendants, including Doctor Associates, Inc. and
12 you. Mr. DeLuca, do you see that?

13 A. I'm not sure.

14 Q. Were you a defendant -- can you see -- do
15 you know whether you were a defendant in this case,
16 this Boston, Massachusetts case?

17 A. I'm not sure that I was.

18 Q. All right. Well, let me go through it.
19 It says David Breslow, John Castanes, et al. Do you
20 see that? And it says -- if you go about nine lines
21 down where it says Joyce Depray and it says
22 Claimants versus Cajun Joe's Development Corporation
23 CJDC, Cajun Joe's Real Estate Corporation, CJREC,
24 Doctor's Associates, Inc., DAI, Fred DeLuca, Peter
25 Buck, Respondents. Do you see that? And it says

1 American Arbitration Association, AAA, in Boston,
2 Massachusetts filed on August 26, 1993.

3 A. I see it.

4 Q. And it says -- does that help you to
5 understand whether you were sued in this case?

6 A. In reading through this, it talks about
7 how the case was amended, and it sort of
8 indicates that we may have been taken out. I
9 just don't know.

10 Q. Were you sued in this case? That was my
11 question to you. Were you a defendant in this case?

12 A. Yeah, in the beginning.

13 Q. Yeah, it says versus and you come after
14 the versus. After the "v" it says a few names and
15 it says Doctor Associates, Inc., DAI, Fred DeLuca.
16 And that would be you. Right?

17 A. Yeah, but then it says it was amended.

18 Q. Oh, we're going to go through that. My
19 question, sir, was to you, were you a defendant in
20 this case?

21 A. I was named in the initial action.

22 Q. This demand for arbitration was filed by
23 former Cajun Joe's franchisees claiming breach of
24 contract, breach of implied duty of good faith and
25 fair dealing, fraud, unfair and/or deceptive acts or

1 practices in violation of 16 C.F.R. 436, Mass. G.L.
2 c. 930A, section 9 and 11 and Connecticut Uniform
3 Trade Practices Act Section 42-110a through q. The
4 Claimants allege that CJDC did not provide adequate
5 marketing, training, advertising and operating
6 assistance, underestimated the costs of building and
7 operating the Cajun Joe's franchise, concealed
8 material facts and non-disclosure and made earning
9 representations. The claimants also claim that
10 shell corporations held Cajun Joe store leases, CJDC
11 and DAI were interrelated and that Mr. DeLuca and
12 Dr. Buck created shell corporations to shield
13 themselves from liability.

14 I read that correctly, haven't I?

15 A. I think so. I didn't track it real well.

16 Q. You want to read it --

17 A. If you want me to.

18 Q. -- into the record? I want it to be
19 absolutely accurate. If you feel I haven't read it
20 correctly, Mr. DeLuca, please read it into the
21 record.

22 A. What would you like me to --

23 Q. Starting with this demand all the way down
24 to from liability. This demand --

25 A. Over here? This demand?

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Q. Yes, sir.

A. Okay. This demand for arbitration was filed by former Cajun Joe's franchisees claiming breach of contract, breach of implied duty of good faith and fair dealing, fraud, unfair and/or deceptive acts or practices and violation of 16 C.F.R. 436, Mass. G.L. c. 93A, sec 9 and 11 and Connecticut Uniform Trade Practices Act Section 42-110a-q. The Claimants alleged that CJDC did not provide adequate marketing, training, advertising and operating assistance, underestimated the costs of building and operating the Cajun Joe's franchise, concealed material facts and non-disclosures and made earnings representations. The Claimants also claimed that shell corporations held Cajun Joe store leases, CJDC and DAI were interrelated and that Mr. DeLuca and Dr. Buck created shell corporations to shield themselves from liability. On October 6th, 1993 the AAA determined that the Claimants could not consolidate the arbitration and on November 30th, 1993 they divided the actions up separately and assigned new arbitration numbers to all of the claimants as listed above. All of the Respondents and claims

1 remained the same. Doctor's Associates, Inc.,
2 Frederick DeLuca, Peter Buck and Cajun Joe's Real
3 Estate Corp., Plaintiffs, versus Estate of John
4 Castanes, Defendant (Superior Court for Suffolk
5 County, Massachusetts, Case Number 942755B, filed
6 May 20th, 1994).

7 Q. Okay. Now, Mr. DeLuca, what I'd like you
8 to do so we can read into the record the final
9 determination of this case, and that would be
10 contained in the last three lines of -- or last four
11 lines of this paragraph beginning on August 15th,
12 1996. Do you see that?

13 A. I do.

14 Q. Okay. If you could read that, please,
15 into the record.

16 A. On August 15th, 1996 by Order Confirmed
17 by the Bankruptcy Court in the CJDC bankruptcy
18 case, an Agreement assigning all of the
19 Claimants' causes of action in this case to a
20 third party nominee representing Mr. DeLuca,
21 Mr. Buck and DAI became effective. The nominee
22 purchaser paid the sum of 1,620,000.

23 Q. That would be 1.620 million dollars.
24 Okay. Continue.

25 A. To be split among the 27 Claimants. The

1 claims were subsequently waived in the course of
2 the Confirmation of the Bankruptcy Case.

3 Q. Okay. Now, Mr. DeLuca, I'd like you to
4 turn to page 15, number 34. Now, Mr. DeLuca, number
5 34 again in the Roger W. Mensing, Claimant versus a
6 number of defendants, you were one of those
7 defendants listed in this case that was brought by
8 Roger W. Mensing, weren't you, in 1995?

9 A. Yeah, let me just read it.

10 Q. Okay. Well, you can look at the second
11 line and see you were a defendant, can you not?

12 A. Let me just read it so I understand what
13 this is.

14 Q. Sure.

15 A. I read it.

16 Q. Okay. Now, again, I ask the question,
17 were you a defendant in this case, Mr. DeLuca?

18 A. Yes.

19 Q. And in this case, and this was a 1995
20 case, basically the plaintiffs state, as disclosed
21 by your lawyers in this document sent to Wachovia,
22 that the Defendants, including you, failed to state
23 and misrepresented material facts -- and I'm reading
24 from one, two, three, four, five -- the sixth line
25 from the top. Mr. DeLuca, follow with me. At the

1 end failed to state and misrepresented material
2 facts, committed fraud, violated the Minnesota
3 Franchise Law and Illinois Franchise Disclosure Act
4 by making unsubstantiated earnings claims, providing
5 break-even information and engaging in deceptive
6 practices. He, meaning the Claimant, also claims
7 breach of contract, breach of covenant of good faith
8 and fair dealing, tortious interference with
9 contract, unjust enrichment, and promissory/
10 equitable estoppel because Respondents failed to
11 provide him with the exclusive use of the We Care
12 Hair trademark and sale of salon products.

13 Do you see that?

14 A. I see that.

15 Q. Now let's go to number 35. David Otis
16 versus Doctor's Associates, Fred DeLuca and Peter
17 Buck. In this 1994 case in the Northern District of
18 Illinois you were also a defendant, were you not?

19 A. Let me read that. I read it.

20 Q. Okay. You were a defendant, were you not,
21 as well as Doctor Associates in this litigation
22 brought by David Otis?

23 A. Yes.

24 Q. And the action was filed by former
25 development agent for Cajun Joe's Development

1 Corporation claiming that defendants committed
2 fraud, tortious interference with contract, breach
3 of contract and common law fraud. The Plaintiff
4 alleged that the Defendants were responsible for
5 fulfilling Cajun Joe's Development Corporation's
6 obligation to him under a Development Agent contract
7 and induced him to sell his Subway store so he could
8 devote his full time to Cajun Joe's franchisees in
9 his territory.

10 And this matter was settled, was it not,
11 Mr. DeLuca?

12 A. It was.

13 Q. Now let's turn to page 16. Actually it
14 would be the bottom of number page 15. This is
15 number 37. Gerardo Mariani, Georgina Louriero, et
16 al, versus Doctor Associates, and at the bottom --
17 that's at the bottom of page 15 -- Inc., Fred
18 DeLuca, Elizabeth DeLuca, Dr. Peter Buck and Haydee
19 Buck. Now, Elizabeth DeLuca is your wife. Is that
20 correct?

21 A. That's correct.

22 Q. Why don't you take time to read this.

23 A. Okay. I read it.

24 Q. Okay.

25 A. And if it's okay after this can we take a

1 break?

2 Q. Would you like to take a break now before?

3 Because this might be a little long.

4 A. Either way. Either way.

5 Q. This might be a little long. Because I

6 have questions about your wife's involvement.

7 A. Okay.

8 MS. HOFFLER: So why don't we take a

9 break.

10 THE WITNESS: Let's take a few minutes.

11 THE VIDEOGRAPHER: Going off the video

12 record at 3:41 p.m.

13 (A recess is taken.)

14 THE VIDEOGRAPHER: We're back on the

15 video record at 4:18 p.m.

16 BY MS. HOFFLER:

17 Q. Now, Mr. DeLuca, when we last broke we

18 were on number 37, and we were looking at the

19 litigation entitled Gerardo Mariani, et al versus --

20 this is on the bottom of page 15 -- Doctor

21 Associates, Inc., Elizabeth DeLuca, Fred DeLuca,

22 Dr. Peter Buck and Haydee Buck. Do you see that?

23 That's at the top of page 16.

24 A. I do.

25 Q. Now, and before the break you had read

1 **this paragraph. Isn't that right, Mr. DeLuca?**

2 A. I don't recall. I don't think so.

3 **Q. Okay. Now, while you're reading that --**
4 **Elizabeth DeLuca is your wife. Isn't that correct?**

5 A. That's correct.

6 **Q. And what is her role in Doctor Associates?**

7 A. Well, she doesn't work now but --

8 **Q. What was her role in 2004 in Doctor**
9 **Associates?**

10 A. Well, she was retired in 2004.

11 **Q. What was her role in 1997 in Doctor**
12 **Associates when this lawsuit was filed?**

13 A. She worked in the Operations Department,
14 and she mainly worked on writing operations
15 manuals.

16 **Q. And I misspoke, this was a 1994 lawsuit.**
17 **I said 1997.**

18 MR. HUTCHISON: I thought it was 1988.

19 MS. HOFFLER: Well, it's 1997. Well,
20 let's -- we're going to go through it. This
21 is at the bottom of page 15, top of page 16.

22 MR. HUTCHISON: It says filed July 19th,
23 1988.

24 MS. HOFFLER: Let's continue to go
25 through.

1 A. Yeah, so I think for her whole time
2 working there she worked in the Operations
3 Department and either ran the company stores or
4 wrote operations manuals.

5 **Q. Okay. So you had company stores in 19 --**
6 **in the 1990's?**

7 A. In the 1990's we may have had an
8 occasional company store. But we didn't -- if we
9 did have them, it wasn't more than a small
10 handful at a time, two or three.

11 **Q. And now you don't have any company stores?**

12 A. From time to time we have a company
13 store, but generally we don't have company
14 stores.

15 **Q. And why would you have a company store?**

16 A. See, I'd have to go back to specifics. I
17 remember in Paris we bought a company -- a store
18 from a franchisee that wasn't run too well. We
19 thought it would be better to buy it. Sometimes
20 we buy a company store. Usually we don't need to
21 operate company stores.

22 **Q. Okay. Now, in this case -- in this case**
23 **the Gerardo Mariani litigation, you were a defendant**
24 **in that case along with your wife. Right?**

25 A. Yes.

1 Q. And this was a -- it was filed in July of
2 1988. Isn't that right?

3 A. Yes, it says July 19th, 1988.

4 Q. 1988. And read along with me the first
5 few lines. It says: Former franchisees of DAI --
6 that's Doctor and Associates. Right? Filed this
7 arbitration proceeding with the American Arbitration
8 Association. The Claimants claimed violation of the
9 RICO Act, breach of contract, fraud and deceit,
10 nullity of contract and damages. Claimants allege
11 that Respondents represented that they would assist
12 in site selection, negotiate suitable leases,
13 provide training and a company representative for
14 consultation and provide effective advertising
15 techniques. Claimants also claim that Respondents
16 improperly represented sales and profit information
17 as inducements to purchase franchises.

18 Have I read that correctly, sir?

19 A. I think so.

20 Q. And this is another case that settled.
21 Right? These cases settled? These cases settled as
22 well.

23 A. Yes.

24 Q. Okay. Now, Mr. DeLuca, if you go to page
25 20, we talked previously during your deposition

1 about the Janotta case, but I'd like to focus in on
2 number -- which is number 60, I'd like to focus on
3 number 63 if I could.

4 A. Okay. I'll read it.

5 Q. Let us know when you're finished. Sir,
6 you've had a chance to look at this?

7 A. I have.

8 Q. And this is paragraph number 63?

9 A. 63, yes.

10 Q. And 63 has a number of different lawsuits
11 mentioned, does it not, in that full complete, I
12 think two full paragraphs? There are a number of
13 different lawsuits mentioned. Isn't that right?

14 A. A number of plaintiffs, yes.

15 Q. Well, there are a number of different
16 lawsuits mentioned. For example, let's talk about
17 the number. The first one is Paul and Melissa
18 Riise, Rhonda Benton, John Gillon, et al, versus
19 Doctor Associates, DAI, Subway Restaurants, Inc.,
20 Subway Sandwiches Shop, Inc., Subway Equipment
21 Leasing Corporation, Subway Development of North
22 Alabama, Bernard Frausto, Frederick DeLuca and Peter
23 Buck. So you're named as a defendant in this
24 litigation, were you not?

25 A. That's correct.

1 Q. And this Alabama case that was filed in
2 1994?

3 A. Correct.

4 Q. And in this case the franchisees claim
5 that DAI, its leasing affiliates and local Alabama
6 Development Agent made fraudulent misrepresenta-
7 tions, committed -- committed breach of fiduciary
8 duty -- duty, negligence, breach of the covenant of
9 good faith and fair dealing -- let me read that
10 again. I missed a line. Okay. So let me start
11 again. In this case, the Plaintiffs in this case
12 stated that DAI was served with an action brought by
13 franchisees claiming that DAI, its leasing
14 affiliates and local Alabama Development Agents made
15 fraudulent misrepresentations, committed breach of
16 the fiduciary duty, negligence, breach of the
17 covenant of good faith and fair dealing, interfered
18 with business relations and concealed and
19 intentionally did not disclose material facts. Have
20 I read that correctly, sir?

21 A. Pretty close.

22 Q. And then -- well, what do you mean pretty
23 close?

24 A. You omitted the word "the" twice, but I
25 don't think that was material.

1 Q. Okay. I said "the" twice?

2 A. Like the covenant of good faith was one
3 example.

4 Q. Okay.

5 A. But it was just small.

6 Q. Okay. But I -- the essence of the claims
7 I read correctly.

8 A. Correct.

9 Q. Now, in the same paragraph -- and in that
10 case you were sued in your individual capacity. In
11 this same paragraph there are a number of other
12 lawsuits that are listed. Isn't that correct?

13 A. Let me keep reading.

14 Q. And the lawsuits are underlined. Do you
15 see where there are lawsuits --

16 A. Yeah, they're all related to the same
17 original action.

18 Q. Right. But there are -- but there are a
19 number of lawsuits listed as well in this paragraph,
20 are there not? That was my question. Even if
21 they're related, there are a number of other
22 lawsuits that are listed in this paragraph, are
23 there not?

24 A. Yeah, with the same plaintiffs and
25 defendants.

1 Q. Right. But these are all separate
2 lawsuits with separate case numbers. Isn't that
3 correct?

4 A. Yes.

5 Q. All right. The next paragraph within
6 number 63 is yet another lawsuit Bernardo Fausto --
7 Frausto and Subway Development of North Alabama,
8 Inc. versus Doctor Associates, Inc., Subway
9 Restaurants, Inc., Franchise World Headquarters,
10 Inc., Subway Sandwich Shops, Inc., Fred DeLuca and
11 Peter Beck -- Buck. Have I read that correctly?

12 A. Yes.

13 Q. So you were a defendant in the Bernardo
14 Frausto litigation as well.

15 A. Yes.

16 Q. And in that Mr. Frausto claimed, and let's
17 turn on page -- the top of page 21, the third line,
18 he claimed that DAI had not complied with the
19 responsibility of transferring funds from the
20 present Development Agent's account to him as part
21 of an Assignment of Development Agent Agreement
22 among him, DAI and the present Development Agent.
23 He also claimed that DAI used these funds for its
24 own use. Mr. Frausto cited judgment against DAI in
25 an undetermined amount plus one million dollars in

1 costs. Do you see that?

2 A. I do.

3 Q. And then the last three lines from the
4 bottom, it says: The Defendants admitted no
5 liability and paid \$100,000 to Mr. Frausto's Chapter
6 13 Bankruptcy Trustee. Do you see that?

7 A. I see that.

8 Q. So that case was settled as well.

9 A. Yes.

10 Q. Now I'd like you to turn on page 22 to
11 number 71. The bottom of page 22, number 71, you
12 were sued again in your individual capacity as well
13 as Doctor Associates by a plaintiff by the name of
14 Earl Sims. And third line down, this is a case in
15 Louisiana, a 1988 case, Mr. Sims claimed breach of
16 contract, unfair and deceptive practices,
17 misrepresentation, refusal to pay for services
18 rendered, wrongful deductions and withholding of
19 moneys from his compensation check, seeking
20 \$16,000,000. Do you see that?

21 A. I saw that.

22 Q. And that, too, was a case on page 23 that
23 was settled, was it not?

24 A. Yes.

25 Q. Now, in that case at the top of page 22 --

1 23, the same case, Earl Sims, and this is the fourth
2 line down, it says in these civil actions, because
3 there were multiple actions, he filed two other
4 actions against one that we talked about, then there
5 was another action against Doctor Associates and
6 Frederick DeLuca and Subway Restaurants, Inc. Do
7 you see that at the top of the page?

8 A. You know, I've got to read this
9 because --

10 Q. Certainly.

11 A. -- I answered previously without reading
12 it.

13 Q. Certainly.

14 A. Yes.

15 Q. And make sure you read all three of the
16 actions where you were named individually --

17 A. Okay.

18 Q. -- that were filed by Mr. Sims.

19 A. I read it.

20 Q. Now, you see that there were three civil
21 cases filed against you and other defendants,
22 including Doctor Associates by Mr. Sims. Do you see
23 that?

24 A. I think that's correct.

25 Q. Okay. Well, let's not -- let's be certain

1 here so that our record is clean. The first was on
2 the previous page, the Earl Sims versus Doctor
3 Associates, Inc. and Fred DeLuca. Do you see that?
4 That was the first one that we talked about --

5 A. Let me get there.

6 Q. -- on page 22. The second and third or it
7 says at the top of page 23 Mr. Sims filed two other
8 actions. Do you see that? Earl Sims, Subway
9 Development of Louisiana, Inc., Plaintiffs versus
10 Doctor Associates, Inc., DAI, Frederick DeLuca and
11 Subway Restaurants, Inc. Do you see that?

12 A. Yes.

13 Q. That was the second of three. Then -- and
14 that was 1990. Then he filed the third lawsuit
15 which was Earl and Dorothy Sims versus Doctor
16 Associates, DAI, Frederick DeLuca and Subway
17 Sandwich Shops. Do you see that? That was the
18 third. So there were three lawsuits that he filed
19 against you.

20 A. Yes.

21 Q. And in these civil actions, reading from
22 the disclosure that was submitted by your lawyer, in
23 these civil actions the Plaintiffs claimed that
24 Defendants violated Connecticut General Statutes
25 section 42-110 et seq., Louisiana Revised Statutes

1 51-1402 et seq, and section 2315 of the Louisiana
2 Civil Code by misrepresenting facts, committing
3 breach of contract and engaging in unfair and
4 deceptive trade practices. And it says the
5 Plaintiffs also claimed violation of the Bankruptcy
6 Code by Defendants' withholding of Plaintiffs'
7 compensation, causing Plaintiffs economic injury.

8 Do you see that, sir?

9 A. I do.

10 Q. And then we jump to the bottom of this
11 paragraph where it says: On August 20th, 2001, the
12 parties agreed to a full settlement. Without
13 admitting to any liability DAI paid \$450,000 to the
14 Simses in return for dismissal of all pending
15 actions and exchange for releases. So that case was
16 settled as well --

17 A. Correct.

18 Q. -- for \$450,000. Now, let's go if you
19 could, Mr. DeLuca, to -- let's go to number 77 which
20 is at the top of page 24. Another case, Ronald
21 Rothmund and Patricia Rothmund versus Doctor
22 Associates, Inc., DAI, Frederick DeLuca, Peter Buck,
23 Subway Development Corporation of Chicagoland, Inc.
24 Phil Mesi, Defendants. Do you see that? This is a
25 1994 case.

1 A. I see that.

2 Q. And in that action the fourth line --
3 fifth line down, they -- the Plaintiffs claimed that
4 DAI's offering circular, franchise agreement and
5 advertising materials made untrue statements of
6 fact, misrepresentations of fact and omissions.
7 They also claimed that DAI intentionally used unfair
8 methods of competition and deceptive acts and
9 practices to fraudulently induce them to purchase a
10 franchise. The Plaintiffs claimed that the leasing
11 corporations were shell corporations and the alter
12 egos of DAI and that they were unfairly evicted from
13 their franchise.

14 Now, this case was also settled, was it
15 not, Mr. DeLuca?

16 A. Yes.

17 Q. I'd like you to go to case number 79 in
18 the middle of page 24. This is a case entitled Mike
19 Kanchwala, Anver Kanchwala, et al against Doctor
20 Associates, Inc., DAI, Frederick A. DeLuca, Peter H.
21 Buck, JoAnn Bachewicz and Subway Restaurants, Inc.
22 And this is a 1995 case. This action was filed on
23 August 20th of 1995, according to this disclosure,
24 by franchisees claiming DAI, its local Development
25 Agent, and its leasing affiliate committed common

1 law fraud, breach of contract, breach of the
2 covenant of good faith and fair dealing and breach
3 of the Illinois Consumer Fraud and Deceptive
4 Business Practices Act because DAI's advertising
5 materials contained misrepresentations. They also
6 claimed that DAI failed to disclose affiliate
7 litigation and evicted franchisees prior to
8 arbitration. The Plaintiffs claimed that the
9 Offering Circular and Franchise Agreement made
10 untrue statements, omitted material facts and made
11 their -- made their transfer -- I'm sorry, material
12 facts and made their transfer was unenforceable.
13 I'm sorry, made -- let me read that last sentence.
14 The Plaintiffs claimed that the Offering Circular
15 and Franchise Agreement made untrue statements,
16 omitted material facts and made misrepresentations
17 of fact.

18 Have I read that correctly?

19 A. I think so. I wasn't tracking as well
20 with that one.

21 Q. Okay. Well, in this case they -- and
22 follow with me, this is the third line, it says that
23 Doctor Associates and its local Development Agent
24 and its leasing affiliate committed common law
25 fraud, breach of contract, breach of the covenant of

1 good faith and fair dealing and breach of the
2 Illinois Consumer Fraud and Deceptive Business
3 Practices Act because DAI's advertising materials
4 contained misrepresentations.

5 Did you follow me on that?

6 A. Were you reading the same thing again
7 that you read before?

8 Q. Yes. I just wanted to make sure you were
9 following.

10 A. I followed that.

11 Q. Okay. And this case was also settled, was
12 it not?

13 A. Yes.

14 Q. Okay. Now, I'd like you to turn to number
15 82 at the bottom of page 24. Now, in Interway
16 Produtos Alimenticios Ltda, et al you were also sued
17 along with Doctor Associates, Subway Partners, C.V.,
18 Frederick A. DeLuca and Peter H. Buck. Right? You
19 were a defendant in that case that was filed in
20 Connecticut, were you not?

21 A. Yeah. Let me just read that.

22 Q. Okay. Have you had a chance?

23 A. I have.

24 Q. Okay. Now, sir, in that case you were
25 also sued in your individual capacity. Is that

1 correct? I'm referring to the Interway Produtos
2 Alimenticios Ltda, et al versus Doctor Associates,
3 et al. You were sued individually.

4 A. I was sued individually.

5 Q. Okay. As well as Doctor Associates.

6 Wasn't Doctor Associates sued, too?

7 A. It was.

8 Q. Okay. And this case was also settled, was
9 it not?

10 A. Correct.

11 Q. And the Plaintiffs in that case claimed
12 negligence, and I'm reading from the sixth line
13 down, negligence, breach of contract/agency
14 liability, breach of contract/apparent agency,
15 unjust enrichment, constructive trust and unfair
16 trade practices, and they demanded ten million
17 dollars in actual damages and a hundred million
18 dollars in punitive damages, interest, costs of suit
19 attorney's fees and imposition of a constructive
20 trust.

21 Have I read that correctly?

22 A. Yes.

23 Q. Okay. Let's turn to the next page. Now,
24 page number 25, the final page of this disclosure of
25 litigation document that your counsel provided to

1 Wachovia Bank on August 11 of 2005, has Part C,
2 Restrictive Orders. And would you take a moment to
3 look at those restrictive orders, please.

4 A. Okay. I will do that. I read them.

5 Q. Okay. So you read numbers one and two.

6 Is that correct?

7 A. Yes.

8 Q. Now, the first restrictive order, this is
9 a case where the State of California was a plaintiff
10 and sued Franchise World Headquarters, Inc. Right?

11 A. Yes.

12 Q. And Franchise World Headquarters, Inc.,
13 that's a company that you own in part, isn't it?

14 A. Yes.

15 Q. Okay. What is your -- what is your
16 ownership in that company? What percentage do you
17 own of that company?

18 A. Well, I owned fifty percent of that
19 company.

20 Q. And Peter Buck owns the other fifty
21 percent?

22 A. He owned fifty percent of that company.

23 Q. As well. So the two of you are the only
24 owners of that company. Fifty percent you own and
25 didn't percent he owns.

1 A. I'm not sure if this company is still in
2 existence now but at the time --

3 **Q. In 1996.**

4 A. -- Pete -- Pete Buck and myself owned
5 fifty percent each.

6 **Q. Okay. Well, when this restrictive order**
7 **was entered where the State of California sued**
8 **Franchise World Headquarters, you and Peter Buck**
9 **owned that company as fifty percent owners, right,**
10 **each?**

11 A. I believe that's correct.

12 **Q. All right. Now, according to this**
13 **restrictive order on May 21st of 1996, and that's**
14 **called -- FWHI is Franchise World Headquarters,**
15 **Inc., voluntarily entered into an injunction and**
16 **final judgment pursuant to stipulation with the**
17 **State of California after negotiation without any**
18 **prior court proceedings. Under the negotiated**
19 **injunction, FWHI agreed for itself and for all**
20 **entities acting on its behalf, without admitting**
21 **liability, that it would be permanently enjoined**
22 **under the California Business and Professions Code**
23 **sections 17203 and 17536, in Orange County,**
24 **California, from failing to comply with Health and**
25 **Safety Code section 26460 in the advertising and**

1 labeling of seafood/crab products. FWHI agreed to
2 take reasonable measures to cause franchisees to
3 comply with the laws governing the sale and
4 advertising of food, and to send a copy of the
5 injunction to franchisees operating in Orange
6 County.

7 Have I read that correctly?

8 A. Yes.

9 Q. Now, do you remember this restrictive
10 order being entered by the State of California
11 against FWHI, a company that you owned in part?

12 A. I have a vague recollection of it.

13 Q. Okay. And certainly this was not a good
14 thing to be sued by the State of California for
15 these types of violations, was it?

16 A. A good thing?

17 Q. It was not a good thing, was it?

18 A. It's never a good thing to have a suit.

19 Q. But it certainly wasn't a good thing to
20 have the State of California sue you.

21 A. This wasn't a very big suit, but it
22 was -- I mean, no, we don't want to have
23 situations like this, and it just was a labeling
24 issue in one county.

25 Q. It was a labeling issue you say,

1 **Mr. DeLuca?**

2 A. That's what it says here.

3 Q. Well, let me see. FWHI agreed to take
4 reasonable measures to cause franchisees to comply
5 with the laws governing the sale and advertising of
6 food and to send a copy of the injunction to
7 franchisees operating in Orange County. FWHI agreed
8 that the seafood/crab product will be labeled with
9 the term "a processed blend". FWHI paid 26,274 as
10 civil penalties and 20,803 as reimbursement of the
11 investigative costs of the Orange County District
12 Attorney's Office and the Orange County Health Care
13 Agency.

14 Were there health implications to -- to
15 the non-compliance of Franchise World Headquarters,
16 Inc.?

17 A. No.

18 Q. So it's your testimony that there were no
19 health implications to the improper labeling of
20 Subway products.

21 MR. HUTCHISON: Objection. Asked and
22 answered.

23 A. Not to my knowledge.

24 Q. Not to -- do you remember one way or the
25 other?

1 A. I have no recollection of any -- any
2 health implications.

3 Q. Now, let's go to the second restrictive
4 order that was entered in the matter of Doctor
5 Associates, Inc. And that was in Maryland. On
6 November 4th of 2002 DAI, that would be Doctor
7 Associates, and the Maryland Securities Division
8 agreed to enter into a Consent Order. No hearing,
9 trial or adjudication took place and DAI neither
10 admitted nor denied any violation of law. Under the
11 Consent Order, the Commissioner concluded that DAI
12 violated sections 14-214 of the Maryland Franchise
13 Law by selling franchises in Maryland during a brief
14 period when DAI was not registered to sell
15 franchises and DAI's exemption from registration had
16 lapsed. Pursuant to the Consent Order the
17 franchisees were redisclosed, offered rescission of
18 their franchise agreements (which were refused) and
19 DAI sold no further franchises until it had filed an
20 effective exemption from registration. Have I read
21 that correctly?

22 A. You did.

23 Q. Again, that was not something to be
24 jumping up and down about or to be happy about where
25 you had basically the Securities Commissioner of

1 **Maryland issuing a Consent Order for Doctor**
2 **Associates to take certain actions. Right?**

3 MR. HUTCHISON: Objection to the form and
4 move to strike comment of counsel.

5 A. I didn't understand the question.

6 **Q. You weren't excited about this Consent**
7 **Order entered by the Securities Commissioner of**
8 **Maryland, were you?**

9 MR. HUTCHISON: Objection to the form.

10 A. This was a very minor matter.

11 **Q. It's a very minor matter? It's a very**
12 **minor matter? Is that your testimony, Mr. DeLuca,**
13 **when you've got a Securities Commissioner of**
14 **Maryland that issues a consent order?**

15 A. Yes, this was a minor matter.

16 **Q. And the Consent Order, just to be clear,**
17 **was against Doctor Associates. Right?**

18 A. It was an agreement to offer the
19 franchises that had been purchased -- franchisees
20 who purchased franchises during a very brief
21 period where the Commissioner thought that our
22 registration had lapsed.

23 **Q. Right. Were you --**

24 A. We offered them --

25 **Q. I'm sorry.**

1 A. We offered them rescission and none of
2 them took the rescission. They all kept their
3 franchise agreements. And that was that.

4 Q. Right. It was during a period where you
5 all had violated Maryland law. It wasn't just
6 like -- you violated Maryland law during that
7 period. That's according to the Commissioner.
8 Right?

9 A. No, that's not true.

10 Q. Well, let's read it. It said on the
11 fourth line: Under the Consent Order, the
12 Commissioner concluded that DAI violated section
13 14-214 of the Maryland Franchise Law. Have I read
14 that correctly?

15 A. Yeah, it says -- and it says here that
16 DAI --

17 Q. Excuse me. Have I read that correctly?

18 A. I'm answering your question.

19 Q. Did I really that correctly, sir?

20 A. I didn't track with you. Why don't you
21 say it again.

22 Q. Okay. Let's do it again. Under the
23 Consent Order, the Commissioner concluded that DAI
24 violated section 14-214 of the Maryland Franchise
25 Law. Isn't that what -- isn't that what this said?

1 **Have I read that correctly, sir?**

2 A. Yes, that's what the Commissioner
3 thought.

4 **Q. Now, of these again -- in the beginning**
5 **when we talked about all of this litigation and**
6 **according to this disclosure, there were a total of**
7 **121 actions that were cited in this -- in this**
8 **disclosure. Right? If you look at the last page of**
9 **the disclosure.**

10 A. I believe that's correct.

11 **Q. Now, I'd like to go to the first page of**
12 **this disclosure. Now, this disclosure only**
13 **pertains -- was principally designed to disclose**
14 **litigation for potential franchisees. Right? For**
15 **their own knowledge? Is that why this was**
16 **disclosed -- this was produced?**

17 A. This disclosure, this Exhibit L, is
18 fairly -- not fairly, it's a standard insert that
19 goes into what is called a disclosure document
20 for the sale of franchises.

21 **Q. Right. So this was something that the**
22 **franchisees would get typically. Right? Potential**
23 **franchisees.**

24 A. It's public record available to anyone,
25 and I think it might even be available online.

1 Q. And so there's an updated version of this
2 online.

3 A. I think this is typically updated twice a
4 year.

5 Q. Now, this -- this was an attachment to a
6 letter that your lawyer sent to Wachovia Bank on
7 August 11th of 2005. Right? I think we established
8 that. Right?

9 A. I believe so.

10 Q. And all of the litigation that we reviewed
11 was litigation that pertained to franchises, some of
12 the franchises that Doctor -- the franchises that
13 Doctor and Associate had as a franchisor. Right?
14 Litigation that was involved with some of the
15 franchisees. Pretty much that's what this
16 litigation --

17 A. I don't think all of them were franchisee
18 related.

19 Q. So some of them were not franchisee
20 related.

21 A. Not -- I don't think so. I don't think
22 all of them were.

23 Q. Well, the ones that we reviewed were the
24 ones that where you were named individually, but
25 certainly there were -- I didn't go over 121

1 lawsuits, did I?

2 A. Correct.

3 Q. I just went over the lawsuits in this
4 document where you were named individually. Right?

5 A. Correct.

6 Q. Now, this litigation here does not
7 incorporate, for example, the litigation that you
8 had with Thomas Hislop. Right?

9 A. I don't know if that's included in here.

10 Q. I submit to you it was not included.

11 A. Okay.

12 Q. And Thomas Hislop was your former
13 controller for Subway. Right? Or for Doctor and
14 Associates, Inc.

15 A. That's correct.

16 Q. And nor was the litigation that we
17 discussed during the last part of your deposition
18 that you had with UBS. Do you remember the UBS
19 litigation that you had in 2007? Of course that
20 would have been after this was submitted.

21 A. Yes.

22 Q. Okay. So that type of litigation would
23 not have been included in a document like this
24 because this -- this basically involves more
25 disputes between you or Doctor's Associates or

1 affiliated companies and franchisees. Is that
2 right?

3 A. Repeat the question, please.

4 Q. Litigation such as the UBS litigation or
5 the Thomas Hislop litigation that was involving you
6 personally was not -- that type of litigation was
7 not included in this litigation disclosure because
8 this litigation, the 121 cases that are disclosed in
9 this litigation in Exhibit L, pertain to litigation
10 involving franchisees primarily. Isn't that right?

11 MR. HUTCHISON: Objection to the form.

12 A. Actually I don't know. The UBS and the
13 Hislop I think were after this date. I'm not
14 sure. I'm not sure which ones would have been
15 included in the updated versions. I don't -- I
16 wouldn't get -- well, I shouldn't guess but --
17 I'm not sure what was included.

18 Q. Okay. I think the Hislop litigation was
19 not after this but was during the same time. But my
20 question to you is, do you know whether litigation
21 that is outside of franchisee litigation is included
22 in this disclosure? And for that why don't you read
23 the first paragraph if you need to refresh your
24 recollection.

25 MR. HUTCHISON: Objection. Asked and

1 answered. It's five o'clock, CK. You want to
2 finish up with this document and we'll call it
3 a night?

4 MS. HOFFLER: That was my intention.

5 A. Okay. So I read the heading.

6 **Q. Does that give you any clarity,**
7 **Mr. DeLuca, as to whether this litigation that was**
8 **disclosed in Exhibit L is litigation primarily**
9 **involved -- involving franchisee disputes?**

10 A. Primarily? I think, yes. Not that it
11 says it up here. This heading talks about
12 something totally different.

13 **Q. Well, I asked if this would refresh your**
14 **recollection.**

15 A. Oh, no.

16 **Q. But the question is --**

17 A. This would not refresh my --

18 **Q. The question is, do you agree, so we have**
19 **a clean record, that the litigation, the 121 cases**
20 **that are disclosed in this attachment A to the**
21 **letter that your attorney sent to Wachovia involves**
22 **litigation primarily involving franchisees?**

23 A. I'd say it's primarily -- I think that if
24 we look through this, we would primarily find
25 franchisee litigation.

1 Q. And also you would agree with me, sir,
2 that there could be other litigation that was out
3 there pending during the time that this opinion
4 letter was sent by your lawyer to Wachovia that was
5 not disclosed in this.

6 A. Oh, there was certainly other litigation,
7 such as described in the heading on top, that was
8 not in this listing. You know, consumer type
9 litigation and so forth would not be here.

10 Q. And in 2005, in 2005 when you were engaged
11 in a business deal with Anthony Pugliese and LCOCL,
12 you didn't think that Anthony Pugliese was entitled
13 to know about any of these franchisee disputes, did
14 you, or any other litigation?

15 A. It's a public document. Everybody's
16 entitled to see it.

17 Q. So did you disclose this to -- did you
18 send a copy of this to Anthony Pugliese?

19 A. This letter?

20 Q. Yes.

21 A. I didn't send a copy of this letter to
22 Anthony Pugliese.

23 Q. Did you have a meeting with Anthony
24 Pugliese regarding all the pending litigation that
25 you had at the time prior to executing the operating

1 **agreement with him?**

2 A. We did not have a meeting to discuss
3 pending litigation.

4 **Q. Because you never intended to disclose any**
5 **of the pending litigation to Anthony Pugliese prior**
6 **to going into business with him, did you?**

7 MR. HUTCHISON: Objection to form.

8 A. I think he knew about the situation.

9 **Q. Do you know that he knew about the**
10 **situation, Mr. DeLuca?**

11 A. What's the question?

12 **Q. Do you know if he knew about the**
13 **situation, Mr. DeLuca?**

14 A. He told me that he knew all about my
15 company. He'd heard all about it. He read the
16 material. And I think I even saw him with the
17 disclosure document.

18 **Q. It's your testimony today under oath, I**
19 **know it's the end of the day, that you saw Anthony**
20 **Pugliese with this disclosure document and all of**
21 **these 121 pieces of litigation?**

22 A. This letter? No.

23 **Q. This disclosure document.**

24 A. Not this piece of paper.

25 **Q. Okay. This disclosure document, you saw**

1 **him with this disclosure document?**

2 A. With a disclosure document.

3 **Q. Oh, but not this disclosure document that**
4 **disclosed all this litigation.**

5 A. Not this piece of paper.

6 MS. HOFFLER: All right. I don't have
7 any further questions today.

8 MR. HUTCHISON: All right. We'll see you
9 in the morning.

10 THE VIDEOGRAPHER: Going off the video
11 record at 5:04 p.m.

12
13 (The deposition was adjourned at 5:04
14 p.m.)

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C E R T I F I C A T E

- - -

The State of Florida,)
County of Palm Beach.)

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this _____ day of _____,
2012.

FREDERICK A. DELUCA

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CERTIFICATE OF OATH

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Barbara Bolton, Registered
Professional Reporter, Notary Public, State of
Florida, certify that FREDERICK A. DELUCA
personally appeared before me on the 24th day of
September 2012, and was duly sworn.

Signed this 25th day of September, 2012.

Barbara Bolton

Barbara Bolton
Notary Public, State of Florida
My Commission No.: EE9150
My Commission Expires: 09/01/14

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CERTIFICATE OF REPORTER

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, Barbara Bolton, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of FREDERICK A. DELUCA, pages 469 through 536; that a review of the transcript was requested; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 25th day of September, 2012.



Barbara Bolton
Barbara Bolton, RPR
Florida Professional Reporter

Corrected Transcript

540

DATE: September 25, 2012

TO: Mr. Frederick A. DeLuca
c/o Richard C. Hutchison, Esquire
Holland & Knight, LLP
222 Lakeview Avenue, Suite 1000
West Palm Beach, Florida 33401

IN RE: AVP Destiny v. Frederick A. DeLuca

Please take notice that on Monday, the 24th of September, 2012, you gave your deposition in the above referred matter. At that time, you did not waive signature. It is now necessary that you sign your deposition.

The transcript will be furnished to you through counsel. Please read the following instructions carefully:

At the end of the transcript, you will find an errata sheet. As you read your deposition, any changes or corrections that you wish to make should be noted on the errata sheet, citing page and line number of said change. DO NOT write on the transcript itself. Once you have read the transcript and noted any changes, be sure to sign and date the errata sheet and sign the transcript at Page 537 and return these pages.

If you do not read, sign, and return the deposition within a reasonable period, the original, which has already been forwarded to the attorney who ordered your deposition, may be filed with the Clerk of the Court. If you wish to waive your signature, sign your name in the blank at the bottom of this letter and return it to us.

Very truly yours,
U.S. LEGAL SUPPORT

Barbara Bolton, Notary Public

I do hereby waive my signature:

cc via transcript:

Willie Gary, Esq.
Richard C. Hutchison, Esq.

Corrected Transcript

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