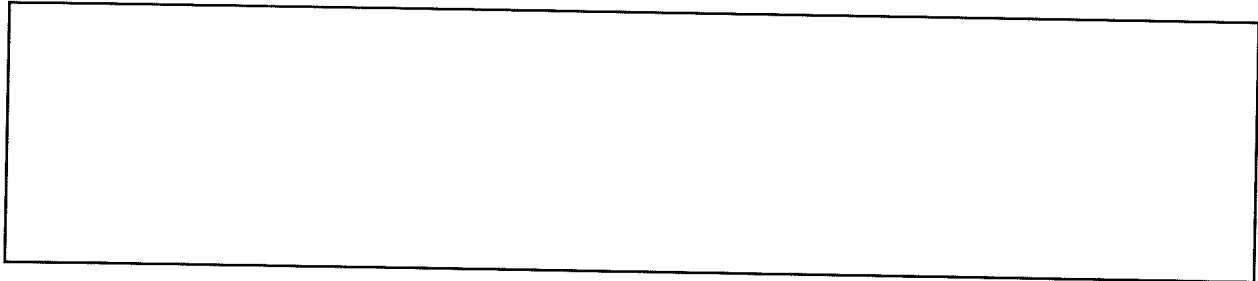


ESTTA Tracking number: **ESTTA400692**

Filing date: **03/30/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185766
Party	Plaintiff C.F.M. Distributing Company, Inc.
Correspondence Address	AMBER L. DAVIS BEUSSE WOLTER SANKS MORA & MAIRE, P.A. 390 NORTH ORANGE AVENUE, SUITE 2500 ORLANDO, FL 32801 UNITED STATES adavis@iplawfl.com, tsanks@iplawfl.com, bjones@iplawfl.com; suzanne@innesmeehle.com
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Signature	/Amber N. Davis/
Date	03/30/2011
Attachments	Reply to Motion for Protective Order.pdf (126 pages)(3944171 bytes)



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Applications:

1. Serial No. 77402411
Date of Publication: July 22, 2008; and
2. Serial No. 77497042
Date of Publication: November 4, 2008

C.F.M. DISTRIBUTING COMPANY,
ORIGINAL MARYLAND FRIED CHICKEN, LLC

Opposers,

vs.

THERESA COSTANTINE, as Personal
Representative of the Estate of Richard Costantine,

Applicant.

OPPOSITION NOS.:

91185766

91187377

91187378

**OPPOSERS JOINT RESPONSE IN OPPOSITION TO APPLICANT'S MOTION FOR
PROTECTIVE ORDER, MOTION TO COMPEL DEPOSITION TESTIMONY AND
MOTION TO EXTEND DISCOVERY**

COMES NOW C.F.M. Distributing Company, Inc. ("CFM") and Original Maryland Fried Chicken, LLC ("OMFC") (CFM and OMFC are referred to throughout each as "Opposer" or together as "Opposers"), by and through their respective undersigned attorneys, hereby file this JOINT RESPONSE IN OPPOSITION TO APPLICANT'S MOTION FOR PROTECTIVE

ORDER, MOTION TO COMPEL DEPOSITION TESTIMONY AND MOTION TO EXTEND DISCOVERY and states as follows:

I. Introduction

Opposers filed their respective Notices of Opposition against Applicant's trademark applications for MARYLAND FRIED CHICKEN COMPLETE DINNERS TO GO! & Design (Serial No. 77/402,411) and for a related Design mark (Serial No. 77/497,042) ("the Marks") in 2008. See OMFC's *Notice of Opposition*, dated November 6, 2008; and CFM's *Notice of Opposition*, dated August 13, 2008. These Oppositions have been stayed for the majority of the time since the original Notices of Opposition were filed while this Board heard various motions. Thus, neither Opposer has had an opportunity to depose the Applicant with regard to the Marks that are the subject of these Oppositions for the over two-and-a-half year pendency of these Oppositions. Now, Applicant seeks a Protective Order from this Board, alleging that her age, health and lack of knowledge regarding the relevant facts of the case should preclude deposition.

Applicant's Motion for Protective Order should be denied because Applicant failed to state sufficient grounds to justify such an extreme measure. Applicant's health condition is not life-threatening. Applicant has made contradictory statements about which the Opposers are entitled to cross-examine Applicant. Further, while Opposer OMFC has had the opportunity to depose the Applicant in a related litigation, Opposer CFM has never had the opportunity to depose the Applicant. Finally, should this Board find compelling evidence that Applicant should not be deposed, Opposers seek to have all of Applicant's statements stricken from the record because of Opposers inability to cross examine the Applicant.

II. Statement of Relevant Facts

Applicant seeks to register the Marks, claiming priority over all other users of the Marks dating back to January 1, 1980. Opposers filed their Notices of Opposition in August and November, 2008, respectively. This Board ordered the Oppositions consolidated and has directed the Opposers to coordinate discovery and arguments. Such Oppositions are currently in the Discovery Period, which is set to expire on March 30, 2011. On March 7, 2011, Opposers noticed Applicant for deposition to take place on March 22, 2011 at 9:30 a.m. at Opposer's attorney's office. Applicant filed her Motion for Protective Order from Deposition on March 15, 2011, alleging that Applicant is unable to be deposed due to her age, cardiac health and physical condition.

III. Standard for Granting a Protective Order

The decision to grant a protective order under Federal Rule of Civil Procedure 26(c) is vested in the Board's discretion. A federal court may issue a protective order from deposition upon a finding of good cause to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. *Id.* Still, courts rarely issue a protective order that prohibits a deposition. *U.S. v. Mariani*, 178 F.R.D. 447, 448 (M.D. Pa. 1998). Moreover, a party seeking a protective order from oral deposition bears a heavy burden of demonstrating good cause for such order. *In re McCorhill Publ'g, Inc.*, 91 B.R. 223, 225 (S.D.N.Y. 1988). The burden to produce compelling evidence of good cause and extraordinary circumstances, such as a substantial threat to the witness's life, is required of the Applicant. *Mariani* at 449.

IV. Argument and Memorandum of Law

A. Applicant has not met her burden of providing compelling evidence of extraordinary circumstances that would preclude oral deposition.

Courts traditionally apply a standard of production that the movant provide "compelling

evidence” to support a claim that infirmity would prevent deposition. *Mariani*, 178 F.R.D. 449; *Dunford v. Rolly Marine Svc. Co.*, 223 F.R.D. 635 (S.D. Fla. 2005). The party seeking protection must make a specific demonstration of facts in support of the motion, not merely conclusory or speculative statements about the need for a protective order and the harm which will be suffered without one. *Dunford* at 636.

In her Motion for Protective Order, Applicant claims that her age (82 years), high blood pressure, congenital heart disease, and neck and back pain make her too infirm to conduct an in-person deposition. To support this contention, Applicant attached to her Motion the following: the transcript of a deposition in a prior, related litigation where accommodations were made to allow Applicant to be deposed; and the sworn statement of Dr. Karan Reddy, Applicant’s cardiologist, stating that subjecting Applicant to “stress” could cause her to go into cardiac arrest. Applicant has failed to provide sufficient evidence to establish that her age and infirmity create a situation where in-person deposition would be life-threatening or even harmful to her health. The affidavit of Dr. Reddy does not establish that a deposition would cause Applicant such stress as to be harmful to Applicant. In cases where sufficient evidence has been found to grant a protective order, medical records and expert testimony has been required even for non-party witnesses. See e.g. *Mariani* at 448 (motion for protective order granted to non-party witness upon providing evidence -including medical records, expert testimony and prosecution’s own doctor’s examination of the witness - that witness was a frail old man with a terminal heart condition); *Dunford* at 636 (motion for protective order granted where non-party witness provided sworn medical evidence that witness was undergoing continued intensive care for a medical condition that does not allow her to be deposed).

However, when the witness is a party to the litigation, the standard of proof is even

higher. In *Armstrong v. United States*, the court found that limited medical records and a doctor's affidavit were insufficient to grant a protective order to the plaintiff. 2010 U.S. Dist LEXIS 102498 (N.D. W. Va., Sept. 28, 2010). Where a party seeks protection from being deposed on her own statements, the court may not unquestioningly accept a doctor's summary opinion. *Id.* at 6. A greater burden of production exists. *Id.* at 7.

Opposers note that Applicant's condition is congenital, meaning that she has had the condition since birth. Webster's New World Dictionary & Thesaurus 130 (2d ed. 2002). Applicant therefore has had the condition throughout her life, and was able to be deposed in the prior litigation between Applicant and OMFC. See *Applicant's Motion for Protective Order*, Exhibit A, at pp. 16-17 (Applicant's deposition was cut off by her attorney but, after a recess was had, Applicant was able to resume answering questions). Applicant provides no medical records showing that her health condition has deteriorated since that time. Moreover, Opposers have offered to do everything possible to accommodate Applicant, including offering to conduct the deposition in Applicant's home and to take frequent breaks to allow Applicant to move around to limit the stressfulness of the deposition.

Finally, Applicant's son, Tony Costantine, an owner/manager of Applicant's Leesburg restaurant was recently deposed by Opponent CFM, the transcript of which deposition is attached hereto as Exhibit "A". When questioned about the Theresa Costantine's role in Applicant's business, Mr. Costantine stated that, "She's still very able. I mean, her mind is good. It's her body that hurts." Exh. A, p. 82, lines 5-6. Thus, it appears that there is no mental infirmity due to age that would prevent Applicant from being deposed.

Therefore, this Board should deny Applicant's Motion for Protective Order from Deposition.

B. Applicant made no good faith effort to resolve this discovery dispute before filing this motion.

Rule 26(c) requires that Applicant certify that a good faith effort was made to resolve discovery disputes before filing a motion for protective order. When first approached to schedule depositions of the Applicant and her sons, Applicant's counsel asked that Opposers depose his client in his offices for her comfort and convenience, to which Opposers agreed. Upon scheduling only Applicant's sons for deposition, Opposers inquired as to dates when Applicant could be deposed, to which Applicant's counsel replied that "she does not want to be deposed," and stated that he would file a protective order if Opposer pursued such a deposition. After Applicant objected to Opposers' *Second Notice of Taking Deposition of Theresa Costantine*, Opposers offered to depose Applicant in her home at a time that was mutually convenient but were denied. Applicant's attorney never offered the opportunity to depose his client via "written deposition questions."¹ Instead, Applicant's counsel instructed that she did not wish to take her deposition upon written questions because written questions are not a substitute for in person testimony and there was a concern that her sons would aid her in answering the questions. *Armstrong* at 7 (finding that written questions are no substitute for oral deposition because follow-up questions cannot be asked, because there is no opportunity to observe witness's demeanor, and because counsel can assist with crafting carefully-worded answers to interrogatories).

Thus, Opposers deny that Applicant made a good faith effort to resolve discovery disputes prior to filing the instant Motion, and therefore Applicant's Motion for Protective Order From Deposition should be denied.

¹ Opposers have made paper discovery requests, including Requests to Produce, Requests for Admission and Interrogatories. We assume that this is what Applicant's counsel means by a "written deposition questions."

C. Applicant May Not Claim Lack of Knowledge of the Facts as Grounds to Avoid Oral Deposition.

An executive officer of a company may sometimes be protected from giving in-person testimony where such executive has no knowledge of the relevant facts of the case. *See Thomas v. International Business Machines*, 48 F.3d 478 (10th Cir. 1995)(finding that IBM president did not have knowledge of discrimination against plaintiff where he was not aware she worked for the company); *Lewelling v. Farmers Ins. of Columbus, Inc.*, 879 F.2d 212, 218 (6th Cir.1989) (upholding protective order barring plaintiffs from deposing their employer's chief executive officer, who lacked knowledge about any pertinent facts); and *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir.1979) (upholding protective order against a drug manufacturer that barred the deposition of the defendant's president where other employees had more direct knowledge).

However, Applicant's case is nothing like the IBM, Farmers Insurance and Upjohn cases. The cited cases all involve the chief executive officer of huge multinational corporations, who are not aware of the day-to-day operations of each individual subsidiary or division. In contrast, Applicant owns and operates a single restaurant in Leesburg, Florida. Applicant is not merely an officer of a company that is being sued; she is herself the defendant. She should be familiar with the day-to-day operations of her business as well as the facts surrounding the rights claimed in her application for registration of the Marks. Additionally, Applicant's lack of knowledge of the facts relevant to the claims made in her Affidavit and on her Applications for Registration is itself relevant to the facts of these Oppositions.

Moreover, during the recent deposition of Tony Costantine, counsel for CFM asked questions related to certain relevant subjects, specifically: the accounting and profits made at the Leesburg restaurant; the form of business entity under which the Leesburg restaurant operates; the exact time when Applicant began operating restaurants under the Marks; and Applicant's

ownership interest in the original Maryland Fried Chicken store and in Maryland Fried Chicken, Inc. The deponent repeatedly instructed CFM's attorney that she would have to ask Theresa Costantine those questions. See Exh. A, p. 20 lines 13-25 and p. 21, lines 1-13 (questions related to accounting and profits made at the Leesburg location); p. 21, lines 14-23 (questions related to changing the partnership to an LLC); p. 32, lines 22-25 and p. 33, lines 1-2 (questions related to when Costantine's restaurant changed from Costantine's to MFC); p. 51, lines 16-23 (questions regarding Richard's ownership in MFC, Inc.); p. 68, lines 17-21 (questions related to earlier first use date claimed in newer applications); and p. 108, lines 24-25 and p. 109, lines 1-7 (questions regarding documents reflecting Richard's ownership interest in the stores and the corporation). The information requested is relevant to statements Applicant has made in her Applications for Registration and her various Motions in these Oppositions. Thus, Opposers will be unfairly prejudiced if they are not able to depose Applicant.

Applicant appears to be the only person who can provide the requested information. In Applicant's Affidavit dated August 23, 2010, attached to *Applicant's Motion for Summary Judgment* as Exhibit 3, Applicant claims personal knowledge of events that are relevant to the instant Oppositions. In her Motion for Protective Order, she does not allege that she has no knowledge of the facts of this case, but simply that she does not know more than what she attested to in such Affidavit. In such circumstances, Applicant should not be allowed to rest on her Affidavit without granting the Opposers the opportunity to cross examine her regarding the statements she has made and whatever knowledge she may have. *Armstrong* at 7.

Additionally, in the previous litigation between the Parties, Theresa Costantine was deposed and responded to the majority of questions by counsel for the Defendant with the answers "I don't know," "I don't know I wasn't there" and "I don't remember." See Opposer

CFM's *Response in Opposition to Applicant's Motion for Summary Judgment* at Exhibit A. In her Affidavit, however, Applicant somehow regained her memory and attests to everything she did not remember before. Because Applicant's Affidavit conflicts with prior testimony, and because it appears that Applicant is the only person who can answer certain of Opposers questions, Opposers should be entitled to in-person deposition regarding her inconsistent statements. See Fed. R. Ev. 613. Therefore, Applicant's Motion for Protective Order should be denied.

D. Opposers' Have the Right to Depose Applicant

Applicant argues that OMFC has already had the opportunity to depose Applicant and that it did so on December 4, 2008. As the Board noted in its Order of February 8, 2011, only trial testimony from a prior litigation is admissible as evidence under Trademark Rule 2.122(f). Thus, Opposer may not rely on Applicant's prior deposition because it was not trial testimony. Moreover, the facts in the instant Oppositions, where Applicant's claims in her Applications for Registration are at issue, are not identical to those in the previous litigation, where OMFC's right to use the Marks was the primary issue; thus, OMFC should be permitted to depose Applicant on the facts of these Oppositions. Finally, since more than two (2) years have passed since such deposition was taken, Applicant may provide different statements than she provided in 2008, as she did in her Affidavit.

More troubling, however, is the implication by Applicant that Opposer CFM should not be entitled to depose Applicant because Opposer OMFC "participated" in the prior litigation. See *Applicant's Motion for Protective Order from Deposition*, p. 2. Opposer CFM was only a non-party witness in the prior litigation; CFM has never had the opportunity to depose Applicant. Therefore, denying CFM the right to depose Applicant would be unjust, and Applicant's Motion

for Protective Order should be denied.

V. Should the Board Grant the Applicant's Motion, All of Applicant's prior testimony should be stricken from the record.

Where the Opposers have no opportunity to cross-examine Applicant on the statements she has made in her Affidavit and in her Application for Registration, such statements should not be permitted to be used by Applicant. Fed. R. Civ. P. 30 (c); Fed. R. Ev. 613(b). Additionally, Applicant's attorney should not be entitled to depose Applicant during the Testimony Period or use any statements by Applicant in the form of Affidavit or Declarations if Opposers are forbidden from deposing Applicant. If Applicant is unable to sit for a deposition noticed by Opposers, then she is also unable to sit for a deposition noticed by her own attorney.

VI. Opposers' Motion to Compel Deposition Testimony

Opposers seek an order to compel deposition testimony of the Applicant, Theresa Costantine, pursuant to 37 CFR § 2.120(e). Applicant failed to attend a deposition on March 22, 2011 for which she was properly noticed on March 7, 2011.

Where a party to an *inter partes* proceeding before the Board fails to provide discovery requested by means of discovery depositions, the Board may compel discovery. TBMP § 523.01. More particularly, when discovery may not be had by other, less intrusive means, the Board may compel the deposition of an employee of an organization. See *Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.*, 74 USPQ2d 1672 (TTAB 2005) (finding grounds to compel deposition testimony of three employees who took an active role in generating information for others regarding the use of the subject mark).

According to Tony Costantine, Applicant Theresa Costantine is the sole person who has knowledge as to the history of the Marks in question and as to the financial aspects of Applicant's business. See *Deposition of Tony Costantine*, p. 20 lines 13-25 and p. 21, lines 1-13

(questions related to accounting and profits made at the Leesburg location); p. 21, lines 14-23 (questions related to changing the partnership to an LLC); p. 32, lines 22-25 and p. 33, lines 1-2 (questions related to when Costantine's restaurant changed from Costantine's to MFC); p. 51, lines 16-23 (questions regarding Richard's ownership in MFC, Inc.); p. 68, lines 17-21 (questions related to earlier first use date claimed in newer applications); and p. 108, lines 24-25 and p. 109, lines 1-7 (questions regarding documents reflecting Richard's ownership interest in the stores and the corporation). Therefore, Opposers have no other, less-obtrusive means of obtaining the requested information.

VII. Opposers' Motion to Depose Applicant Outside the Discovery Period

Should this Board deny Applicant's Motion for Protective Order, the Discovery Period, set to expire on March 30, 2011, will expire before Opposers have the opportunity to depose Applicant. Therefore, Opposers request that Opposers be allowed to take the discovery deposition of Applicant outside the discovery period. In the alternative, Applicant requests an extension of the discovery period until April 30, 2011 for the sole purpose of deposing Applicant. Pursuant to Fed. R. Civ. P. 6(b), Opposers have shown good cause as to why the extension is necessary. Opposer's properly noticed Applicant's deposition during the discovery period to which Applicant filed a Motion for Protective Order. It is unlikely that this Court will rule on the Motion for Protective Order prior to March 30, 2011 making an extension necessary.

VIII. Conclusion

Opposers, C.F.M. DISTRIBUTING COMPANY, INC. and ORIGINAL MARYLAND FIED CHICKEN, LLC, respectfully request that the Board DENY Applicant's Motion for Protective Order From Deposition and GRANT Opposers' Motion for Extension of Discovery Period, and provide such other and further relief as this Board deems appropriate.

Respectfully submitted on this 30th Day of March 2011.

By: Suzanne D. Meehle *(fax)*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via prepaid U.S. First Class Mail this 30th day of March, 2010 to: Neil A. Saydah, Esquire, Saydah Law Firm, 121 South Orange Avenue, Suite 1500, Orlando, Florida 32801.

Suzanne D. Meehle *(fax)*

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EXHIBIT A

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3
4 In the Matter of Application Serial No. 77402411
Date of Publication: July 22, 2008

5 C.F.M. DISTRIBUTING COMPANY, INC.

6 Opposer,

7 v.

Opposition No.
91185766

8 THERESA CONSTANTINE, PERSONAL
9 REPRESENTATIVE OF THE ESTATE OF
RICHARD CONSTANTINE,

Serial No:
77402411

10 Applicant.

11
12
13
14 March 23, 2011
10:01 o'clock a.m.

15
16 The deposition of TONY CONSTANTINE,
17 taken pursuant to notice on behalf of the
18 Opposer, at the offices of Saydah Law Firm,
19 121 South Orange Avenue, Suite 1500, Orlando,
20 Florida, before Barbara G. Perry, Registered
21 Professional Reporter, Florida Professional
22 Reporter and Notary Public, in and for the State
23 of Florida at Large.
24
25

1 APPEARANCES:

2
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Representing the Applicant.

ALSO PRESENT:

Mary Jo Leslie
Bob Constantine

* * *

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel present for the respective parties and the deponent that the reading and signing of the deposition is expressly reserved.

(End of stipulation)

REPORTER'S KEY TO PUNCTUATION:

-- At end of question or answer references an interruption.

... References a trail-off by the speaker.
No testimony omitted.

"uh-huh" References an affirmative sound.

"unh-unh" References a negative sound.

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

2 TONY CONSTANTINE,

3 HAVING BEEN FIRST DULY SWORN BY THE REPORTER,

4 THEREUPON TESTIFIED UPON HIS OATH AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. DAVIS:

7 Q. Good morning Mr. Constantine.

8 A. Good morning.

9 Q. My name is Amber Davis. I represent C.F.M.
10 Distributing Company. Is it all right if I call you
11 Tony?

12 A. That will be fine.

13 Q. Tony, have you ever had your deposition
14 taken before?

15 A. I have.

16 Q. So you understand the rules of a deposition?

17 A. Yes.

18 Q. I'm going to ask you questions, and I just
19 ask that you respond affirmatively, yes or no. No
20 nodding of the head, because we need to make sure
21 that the court reporter understands your answer.

22 A. Okay.

23 Q. If I ask a question and you don't understand
24 it, please ask me to rephrase the question, and I'll
25 do that for you.

1 A. Okay.

2 Q. Can you just please state your name and
3 address for the record, please?

4 A. Anthony Constantine. 161 Spring Chase
5 Circle, Altamonte Springs, Florida. 32714.

6 Q. How long have you lived at that location?

7 A. We bought that house in, I think it was '03,
8 '04.

9 Q. Are you married?

10 A. No.

11 Q. So, are you the owner of the house?

12 A. Yes, I am.

13 Q. Does anybody else own it with you?

14 A. No.

15 Q. Are there any other properties that you rent
16 or own?

17 A. No.

18 Q. Did you review any documents prior to taking
19 the deposition today?

20 A. No.

21 Q. Did you have any discussions with anyone
22 prior to the deposition?

23 A. I did.

24 Q. With anyone other than your attorney?

25 A. No.

1 Q. What's your educational background, if you
2 don't mind me asking?

3 A. Graduated from Lake Brantley High School and
4 went to college for four years, did not graduate.

5 Q. What college did you go to?

6 A. Tennessee Tech.

7 Q. What was your major?

8 A. Psychology.

9 Q. Are you currently taking any medications?

10 A. I take Vytorin, cholesterol, and Levoxyl.

11 Q. Vytorin is for high cholesterol?

12 A. Yes.

13 Q. And what was the other thing?

14 A. Levoxyl.

15 Q. And what is that for?

16 A. Thyroid.

17 Q. Do either of the medications cause you to
18 not be able to answer --

19 A. No.

20 Q. -- any questions here today?

21 A. No.

22 Q. Have you ever been convicted of a crime?

23 MR. SAYDAH: Objection. If you want to ask
24 it the way, I mean, that it would be admissible,
25 that's fine.

1 BY MS. DAVIS:

2 Q. Have you ever been convicted of a felony?

3 MR. SAYDAH: If you know what it is. If you
4 want to take his social security number off the
5 record, his date of birth, that's fine. You can
6 just do the search.

7 But if you can answer the question, go
8 ahead.

9 A. In college, yeah, I had a DUI.

10 Q. Anything other than that?

11 A. No.

12 Q. Have you ever been involved in any other
13 type of litigation besides this case here today?

14 A. Hmm --

15 MR. SAYDAH: I object to the form.

16 BY MS. DAVIS:

17 Q. You can still answer.

18 A. Divorce. That would be it.

19 Q. What about the lawsuit between your father
20 and your brother, Robert?

21 A. Oh, yeah, of course.

22 Q. What was your involvement in that lawsuit?

23 A. I worked at the Leesburg store and another
24 restaurant was trying to open up 13 miles away.

25 Q. How did you participate in the publication?

1 A. I was present.

2 Q. You were what?

3 A. Present. What do you mean? Be more specific.

4 Q. Did you have your deposition taken?

5 A. I did, yes.

6 Q. Did you sign any Affidavits?

7 A. I don't recall.

8 Q. We'll hear a lot of people's names today --

9 A. Okay.

10 Q. -- and I just want to make sure I have the
11 family tree correct.

12 A. Okay.

13 Q. So please correct me if I'm wrong.

14 A. I will.

15 Q. Alfonso and Rose are your grandparents on
16 your father's side.

17 A. Correct.

18 Q. And your father's name is Richard?

19 A. Correct.

20 Q. Mother's Theresa?

21 A. Correct.

22 Q. How many brothers?

23 A. Umm, three.

24 Q. I'm aware of Michael and --

25 A. My oldest brother, Ricky, passed.

1 Q. So Ricky is no longer here?

2 A. Correct.

3 Q. And there is Michael, who was just here
4 earlier today.

5 A. Right.

6 Q. And there's Robert?

7 A. Right.

8 Q. And then your father, Richard, how many
9 brothers did he have?

10 A. And I have a sister, Debbie, too.

11 Q. Okay, I'm sorry. You also have a sister,
12 Debbie.

13 A. No problem.

14 Q. Your father; how many brothers did he have?

15 A. Four.

16 Q. The ones that were involved with Maryland
17 Fried Chicken?

18 A. Angel and Richard.

19 Q. And Albert?

20 A. I mean, Angel and Albert, I'm sorry.

21 MR. SAYDAH: Let her finish the question so
22 that she can get the question down, and then you
23 can answer.

24 THE WITNESS: All right.

25 BY MS. DAVIS:

1 Q. So it was Angel, whose legal name is Angelo?

2 A. Yes.

3 Q. But you call him Angel. Everyone calls him
4 Angel?

5 A. Yes.

6 Q. So Angel, Albert and Richard were involved
7 in Maryland Fried Chicken?

8 A. Correct.

9 Q. And as far as your siblings, which of your
10 siblings has been involved in Maryland Fried Chicken?

11 MR. SAYDAH: I object to the form.

12 BY MS. DAVIS:

13 Q. Which have run a -- have worked at a
14 Maryland Fried Chicken?

15 A. All of them at one time or another.

16 Q. Okay, even your sister?

17 A. No, no. Oh, she's worked there, yes.

18 Q. Has she ever owned a Maryland Fried Chicken?

19 A. No.

20 Q. Who of your siblings has owned a Maryland
21 Fried Chicken?

22 A. None of them. Nobody that I know for sure.

23 Q. Is that because your parents owned the
24 Maryland Fried Chickens?

25 A. Correct.

1 Q. And you worked at the Maryland Fried Chickens?

2 A. Correct.

3 Q. Are you currently working at the Maryland
4 Fried Chicken?

5 A. I currently am.

6 Q. Is that the Leesburg location?

7 A. That is.

8 Q. How long have you been working there?

9 A. At least 25 years.

10 Q. Do you have a title?

11 A. Umm, my title is --

12 MR. SAYDAH: I object to the form.

13 BY MS. DAVIS:

14 Q. You can still answer.

15 A. My title, I guess you would say, manager/
16 owner, even though I'm not owner on paper, I guess
17 you could say that. That's how I would say it.

18 Q. Who do you consider to be the owner on paper?

19 A. Richard, my dad, my mom.

20 Q. Who else --

21 A. Richard and Theresa. Now it's Theresa.
22 Theresa.

23 Q. Richard has --

24 A. Deceased.

25 Q. -- passed away?

1 A. Yes.

2 Q. Sorry, let me just finish my question.

3 A. No problem.

4 Q. So Richard has passed away and so right now
5 Theresa is the owner of the Leesburg location?

6 A. Correct. That's how we have it set up, yes.

7 Q. Does your other brother, Michael, also work
8 at the Leesburg location?

9 A. He does.

10 Q. Is he also considered a manager?

11 A. You could say that. Yes.

12 Q. Do your job responsibilities differ from
13 Michael's?

14 A. No.

15 Q. What are your job responsibilities?

16 A. We're -- we -- everything involved. We're
17 like an owner. We're manager slash owner, because we
18 handle everything.

19 Q. And when you say you handle --

20 A. Everything that's involved in running the
21 restaurant.

22 MR. SAYDAH: Let her ask the question.

23 THE WITNESS: I'm sorry.

24 MR. SAYDAH: Stop cutting her off, let her
25 ask the question.

1 THE WITNESS: I'm sorry.

2 MR. SAYDAH: Calm down. No more coffee.

3 THE WITNESS: I don't want anymore coffee.

4 BY MS. DAVIS:

5 Q. Do you actually go into the restaurant every
6 day to work?

7 A. Not every day.

8 Q. How often do you go in the restaurant?

9 A. Three days a week, four days a week, three
10 or four.

11 Q. How about your brother?

12 A. The same.

13 Q. Is there someone there, the days that you
14 are not there, who is acting as a manager?

15 A. Either Michael, myself or we have a couple
16 of other managers we have hired.

17 Q. And who are those individuals?

18 A. Andrew Mentor. M-E-N-T-O-R. Zack. And I
19 don't know Zack's last name. I don't know his last
20 name.

21 Q. Okay. How long has Andrew worked for you?

22 A. Right at seven yeas.

23 Q. And Zack?

24 A. About four years, off and on.

25 Q. What is your mother's involvement with the

1 Leesburg restaurant at this point?

2 A. She's the owner, legally. She's legally the
3 owner.

4 Q. Does she come --

5 A. Involvement, she has no involvement on
6 location.

7 Q. So she never comes into the restaurant?

8 A. He -- she comes in occasionally to eat.

9 Q. Does she come in to work?

10 A. No.

11 Q. Does she handle any of the bills or
12 financing for --

13 A. She does. She does. She writes some bills
14 out, uh-huh.

15 Q. Does she write checks to --

16 A. Yes.

17 Q. -- different distributors?

18 A. Yes.

19 MR. SAYDAH: Let her finish.

20 THE WITNESS: Got you.

21 BY MS. DAVIS:

22 Q. Let me finish my question. All right. When
23 you say that Theresa is the owner, is there some type
24 of corporation, Limited Liability Company, fictitious
25 name that she owns the Leesburg location under or

1 does she own it personally?

2 A. It's a partnership.

3 Q. With whom?

4 A. Well, it was -- it was a partnership with my
5 brother, Michael, but we changed it, or it's in the
6 process of being changed to an LLC. I believe, I'm
7 not a hundred percent on it exactly. They're still
8 discussing that.

9 Q. Okay. Are there any documents reflecting
10 the partnership with your brother, Michael?

11 A. Yeah. There were.

12 Q. Were these documents filed with the State of
13 Florida?

14 A. Yes.

15 Q. Do you know what the partnership was called?

16 A. No.

17 Q. Do you know what the LLC that you're
18 changing it to is called?

19 A. No.

20 MS. DAVIS: Let's take a short break.

21 (A recess was taken from 10:12 a.m. to 10:15 a.m.)

22 MS. DAVIS: Would you read back the last
23 question?

24 (The question was read by the reporter as
25 follows:

1 Q. Do you know what the LLC that you're
2 changing it to is called?)

3 THE WITNESS: Can I clarify something?

4 BY MS. DAVIS:

5 Q. Certainly.

6 A. I own the house at 161, the address I gave
7 you, but I spend a lot of time with my mother right
8 now. Because our divorce papers are saying that she
9 moves out at a certain date, then I get back in my
10 house, my ex-wife.

11 Q. So your ex-wife is currently still living
12 there?

13 A. She stays there. I also stay there
14 sometimes with the kids, but I also stay at my
15 mother's house.

16 Q. Where is your mom?

17 A. The same neighborhood. 153 Variety Tree
18 Circle, Altamonte Springs, the same city.

19 Q. Back to the partnership with Michael, are
20 you also a partner or just Michael and Theresa?

21 A. I'm not a partner.

22 Q. Okay. Why not?

23 A. It's just the way we set it up. It's a
24 family business. We set it up for -- set it up that
25 way.

1 Q. Is there a reason that you set it up where
2 you're not a partner?

3 A. Huh?

4 Q. Is there a reason why you were not listed as
5 a partner?

6 A. Hmm, my parents wanted it that way just in
7 case there was a divorce in the family or something.
8 It's just the way we chose to set it up.

9 Q. Is Michael married?

10 A. No.

11 Q. Does it have anything to do with you filing
12 bankruptcy in 2008?

13 A. No.

14 Q. When did it change from Theresa being the
15 sole owner to there being a partnership with Michael?

16 A. I'm not exactly sure.

17 Q. Was it before or after your father passed
18 away?

19 A. Would you restate the question?

20 Q. When did the ownership of the Leesburg
21 location change from being owned by your father and
22 Theresa to being a partnership of Theresa and Michael?

23 A. It was -- it was a partnership -- at one
24 time I was on the partnership. It was a partnership
25 a long time ago. When, I -- I don't know. Years ago.

1 Q. And you don't know the name of the
2 partnership?

3 A. No.

4 Q. How did --

5 A. It was just a partnership. I don't know the
6 legal name of it.

7 Q. How do you currently split the profits --

8 MR. SAYDAH: I object to the form.

9 BY MS. DAVIS:

10 Q. -- from the Leesburg location? You can
11 still answer.

12 A. That's private.

13 Q. You are still required --

14 A. That's private.

15 Q. -- to answer it.

16 A. How we split the profits?

17 Q. Yes.

18 MR. SAYDAH: If you know how you split them.

19 A. We -- we get paid on a base rate.

20 Q. Do you get paid a certain amount each month?

21 A. Each week.

22 Q. And how much do you get paid each week?

23 A. I get paid --

24 MR. SAYDAH: How is this relevant?

25 MS. DAVIS: It's relevant to determine --

1 THE WITNESS: I get paid 800 a week.

2 MS. DAVIS: -- how the profits -- he does
3 have to answer that.

4 BY MS. DAVIS:

5 Q. You get paid 800 a week?

6 A. Uh-huh.

7 Q. And how much does your brother get paid?

8 MR. SAYDAH: Objection to the form.

9 A. You'll have to ask Mike.

10 Q. How much does your mother get paid?

11 MR. SAYDAH: I object to the form.

12 A. I'm not -- I can't speak for her.

13 Q. You're an owner slash manager of the
14 Leesburg restaurant. Correct?

15 MR. SAYDAH: I object to the form.

16 A. I said that we -- we say we're an owner
17 slash manager because we work as a manager slash
18 owner.

19 Q. So you're aware of how much money the
20 location makes each month. Correct?

21 A. That would probably be the -- the owner on
22 record's question to answer. I'm not really aware
23 completely.

24 Q. So you're saying the person that I would
25 have to ask would be Theresa?

1 A. That's correct.

2 Q. And you said earlier that Theresa handles
3 the accounting for --

4 A. Correct.

5 Q. -- your restaurant? So, does she issue a
6 paycheck to you --

7 A. She does.

8 Q. -- each week?

9 A. Yeah.

10 Q. And does she keep part of the proceeds for
11 herself?

12 MR. SAYDAH: I object to the form.

13 A. Again, that's a question for her.

14 Q. Why are you considering changing the
15 partnership to an LLC?

16 A. Actually, Theresa is considering it. But,
17 again, you'd probably have to ask her why exactly.
18 I'm not sure.

19 Q. So you're not aware of why?

20 A. No.

21 Q. Theresa would be the one that I would need
22 to ask that?

23 A. (Nods head up and down)

24 Q. When your dad was alive, was there a
25 partnership with Michael or was it -- was the

1 location only owned by Theresa and Richard?

2 MR. SAYDAH: I object to the form.

3 A. They were partners.

4 Q. Go ahead. You can still answer the question.

5 A. Can you restate it?

6 Q. When your father was alive, who owned the
7 Leesburg store?

8 MR. SAYDAH: I object to the form.

9 BY MS. DAVIS:

10 Q. You can still answer the question.

11 MR. SAYDAH: If you can. Can you clarify as
12 to the time frame?

13 BY MS. DAVIS:

14 Q. From 1979 until 2008, who owned the Leesburg
15 store?

16 A. My mom and dad.

17 Q. Did anyone else own it at any time from 1979
18 to 2008?

19 A. Not in my recollection, no.

20 Q. What year were you born?

21 A. '62.

22 Q. Do you remember when your parents opened up
23 the Leesburg restaurant?

24 MR. SAYDAH: I object to the form.

25 A. I do.

1 Q. When was that, do you remember which year?

2 A. '79.

3 Q. Do you know who owned the Leesburg location,
4 the restaurant, prior to your parents?

5 A. I can't recall her name. I did remember,
6 but I cannot recall her name. If I heard it, I would
7 -- I would know it. I can't recall her name.

8 Q. When they purchased the restaurant, was it a
9 Maryland Fried Chicken at that time?

10 A. Yes.

11 Q. Was it ever a Burger Queen?

12 A. That was the rumor, that it was a Burger
13 Queen before it was a Maryland Fried Chicken in the
14 fifties.

15 Q. So what is your understanding as far as when
16 the Leesburg location first opened up as a Maryland
17 Fried Chicken?

18 A. In the early-to-mid sixties.

19 Q. Do the names Jim and Mary Curnutt refresh
20 your recollection as to who owned the store prior to
21 your parents?

22 A. No.

23 (The document was marked for identification as
24 T. Constantine Exhibit No. 1.)

25 BY MS. DAVIS:

1 Q. Let me show you what's been marked as
2 Exhibit 1. Would you take a look at that and let me
3 know when you're ready to discuss it?

4 A. (Reviews document)

5 Q. Are you ready?

6 A. Uh-huh.

7 Q. At the top it states this Agreement is made
8 the 28th of June 1979. Do you see that?

9 A. Yes.

10 Q. And it's between Richard Constantine and
11 Theresa Constantine. Correct?

12 A. Yes.

13 Q. And a Jim and Mary Curnutt; is that correct?

14 A. That's correct.

15 Q. At 153 Variety Tree Circle, is that your
16 mother's --

17 A. My mother and father's house, yes.

18 Q. Personal address. Correct?

19 A. Correct.

20 Q. And that 708 North 14th Street, Leesburg,
21 Florida, 32748, is that the location of your store?

22 A. Correct.

23 Q. So you would agree that on June 28th of
24 1979, Richard and Theresa purchased that location
25 from Jim and Mary Curnutt?

1 MR. SAYDAH: I object to the form.

2 BY MS. DAVIS:

3 Q. Correct?

4 A. Would I agree that that's what this says?

5 Q. Correct.

6 A. Yes.

7 Q. And if you look at the third page where it
8 says Schedule "A", Equipment for Maryland Fried
9 Chicken --

10 A. Okay.

11 Q. -- are those different machines and items
12 that you would need to run a Maryland Fried Chicken?

13 MR. SAYDAH: I object to the form.

14 BY MS. DAVIS:

15 Q. Being someone that's operated one for the
16 last 30 years.

17 MR. SAYDAH: I object to the form.

18 A. Yes.

19 Q. Prior to 1979, did your father or mother own
20 any other Maryland Fried Chicken restaurant?

21 A. Yes.

22 Q. Which restaurant?

23 A. My father was one of the original founders.
24 So he owned all of the restaurants in the sixties.

25 Q. Okay. Well, first answer my question.

1 A. Okay.

2 Q. Which restaurant prior to 1979 or restaurants
3 did your father own?

4 A. He owned -- he personally owned the store on
5 Orange Blossom Trail. But through the corporation,
6 they owned several restaurants.

7 Q. And the corporation you're referring to is
8 Maryland Fried Chicken, Incorporated?

9 A. Correct. Maryland Fried Chicken.

10 Q. Who were the owners of Maryland Fried
11 Chicken, Incorporated?

12 A. That was my grandparents, Alfonso, Rose, and
13 my Uncle Albert, Uncle Angel and my dad.

14 Q. Okay. Now, I want to ask you about your
15 statement that he was one of the founders of Maryland
16 Fried Chicken. What do you mean by that?

17 A. When they started the original corporation,
18 he was one of that was -- him and his two brothers
19 that started the original corporation, started
20 franchising. It was, you know, the three brothers,
21 and I believe my grandparents.

22 Q. And which brother was the one to move down
23 to Florida first to start the corporation?

24 A. First was --

25 MR. SAYDAH: I object to the form.

1 BY MS. DAVIS:

2 Q. You can still answer.

3 A. First was Albert.

4 Q. And do you know when Albert moved down?

5 A. In '59.

6 Q. And when --

7 A. Roughly, I could be -- '58, '59, somewhere
8 around there.

9 Q. When did your father and Angel move down to
10 Florida?

11 A. I don't know exactly. I was born in '62 and
12 they were already here. So I don't know the exact
13 year.

14 Q. So sometime after '59 and before '62?

15 A. Correct.

16 Q. What's the address of the Orange Blossom
17 Trail location?

18 A. I don't know.

19 (The document was marked for identification as
20 T. Constantine Exhibit No. 2.)

21 BY MS. DAVIS:

22 Q. I show you what's marked as Exhibit 2. If
23 you look at the top of the document, do you see where
24 it states Albert Constantine and Rose Constantine?

25 A. I do.

1 Q. And Rose is your --

2 A. Grandmother.

3 Q. -- grandmother, and Albert is your uncle.

4 Correct?

5 A. Yes.

6 Q. And if we go to that center section where it
7 states "All equipment, inventory, furniture, fixtures,
8 signs of any kind and nature, and any and all other
9 equipment, good will, now used and constituting
10 Chastain's Restaurant located at 2740 South Orange
11 Blossom Trail, Orlando, Florida," do you see where
12 I've read that?

13 A. I do.

14 Q. The 2740 South Orange Blossom Trail, is that
15 the Maryland Fried Chicken that was located on South
16 Orange Blossom Trail?

17 A. I don't know the address, but I assume.

18 Q. Was that location ever --

19 A. Is there a date on this?

20 Q. Yes.

21 A. Yes, March 3rd, 1959. Yes.

22 Q. Was the Maryland Fried Chicken that was
23 located on South Orange Blossom Trail ever called
24 Constantine's Restaurant?

25 A. Yes.

1 Q. After looking at this document, which has a
2 date on the bottom of February 26th of 1959, do you
3 see your father's name on here anywhere?

4 A. Just by glancing over it, no, I don't see
5 it.

6 Q. Do you see your father's signature in the
7 signature block?

8 A. I don't recognize it, no.

9 Q. Were you aware that Albert and Rose
10 purchased the South Orange Blossom Trail location?

11 A. I was. Constantine's Restaurant?

12 Q. Yes.

13 A. Yes.

14 Q. Is it your position that Richard had
15 anything to do with that purchase?

16 MR. SAYDAH: I object to the form.

17 A. I don't know.

18 (The document was marked for identification as
19 T. Constantine Exhibit No. 3.)

20 BY MS. DAVIS:

21 Q. I show you what's marked as Exhibit 3.

22 A. I know he -- he owned the store later on
23 when it became Maryland Fried Chicken.

24 Q. And you're talking about your father?

25 A. Yes.

1 Q. Do you know when it was -- when it operated
2 as Constantine's Restaurant?

3 A. I know they opened it -- that was the, I
4 believe that was the original name when they opened
5 it in '59. That's actually when they developed the
6 recipe, my grandfather. Actually, my grandfather
7 developed the recipe.

8 Q. What do you mean by "the recipe"?

9 A. The Maryland Fried Chicken recipe.

10 Q. The breading?

11 A. The breading.

12 Q. What else do you consider the recipe?

13 A. The breading mostly and marination. Mostly
14 the breading.

15 Q. So it was Constantine's in 1959?

16 A. Uh-huh.

17 Q. Do you know when it turned or when the name
18 changed to Maryland Fried Chicken?

19 A. I do not know exactly, no.

20 Q. If you look at the document I just handed
21 you that's marked as Exhibit 3, if you look at the
22 top, it states "Angelo R. Constantine, Albert
23 Constantine and Richard Constantine, doing business
24 as Constantine's Restaurant." Do you see that?

25 A. I do.

1 Q. And if we look down at the bottom, where
2 there's all three of their signatures and the date,
3 it states the 21st day of February 1962. Do you see
4 that?

5 A. I do.

6 Q. And if we look to the second page, again,
7 the center part states "Equipment listed on reverse
8 side, located at Constantine's Restaurant, 2740 South
9 Orange Blossom Trail, Orlando, Florida". If you look
10 at the bottom, it states December 9, 1964. Do you
11 see that?

12 A. I see the -- I see the date, December 9,
13 1964. To be honest, I can't read any of that small
14 print.

15 Q. I'm not asking you to read the small print,
16 I'm asking you if the date --

17 A. I see the date, yes.

18 Q. And the print in the center which states
19 "Constantine's Restaurant," do you see that?

20 A. I do. "Located at Constantine's Restaurant?"
21 Yes. "Equipment listed on reverse side, located at
22 Constantine's Restaurant."

23 Q. So, would you agree that it would appear
24 from this exhibit that the South Orange Blossom Trail
25 location was still a Constantine's Restaurant in 1964?

1 MR. SAYDAH: I object to the form.

2 A. I don't know exactly when it was changed
3 over.

4 Q. Who would --

5 A. This doesn't really -- this doesn't really
6 state whether or not it was changed.

7 Q. You would agree that it states "located at
8 Constantine's Restaurant"?

9 A. I agree it says "located at Constantine's
10 Restaurant".

11 Q. And that it says December 9, 1964?

12 A. Yes. I see the date.

13 Q. Who would know --

14 A. But this could have -- if they switched it
15 over, this -- this -- you know, this Constantine --
16 this paper, would still be in existence, but --
17 unless we had the paper when it was switched. I
18 don't know at this time.

19 Q. I'm not understanding what you're trying to
20 say. Would you explain?

21 A. I don't know.

22 Q. Who would know when Constantine's Restaurant
23 was renamed Maryland Fried Chicken?

24 MR. SAYDAH: I object to the form.

25 A. I don't know exactly who would know.

1 Q. Would Theresa know that?

2 A. She probably would.

3 Q. And would your father have known that?

4 A. Absolutely.

5 Q. Would Albert know that?

6 A. Absolutely.

7 Q. Or Angelo?

8 A. Absolutely.

9 (The document was marked for identification as
10 T. Constantine Exhibit No. 4.)

11 BY MS. DAVIS:

12 Q. Let me show you what's marked as Exhibit 4.
13 We were just talking about the Orange Blossom Trail
14 location. Correct?

15 A. Yes.

16 Q. And we were talking about how previously it
17 was a Constantine's Restaurant. Correct?

18 A. Yes.

19 Q. Well, this is corporate records from the
20 Florida Department of State, and the corporation's
21 name is Maryland Fried Chicken of S.O.B., South
22 Orange Blossom Trail, Incorporated. Do you see that
23 at the top?

24 A. I do.

25 MR. SAYDAH: I object to the form.

1 BY MS. DAVIS:

2 Q. Do you see where it states the date filed?

3 A. I do.

4 Q. And what does it say for the date filed?

5 A. Event. Effective date filed. Wait. Event.

6 Event Effective Date, none. Event Date Filed.

7 Q. Date Filed.

8 A. 12-5-1978.

9 Q. No. Where it states Date Filed, not Event
10 Date Filed.

11 A. Oh, Date Filed? Oh, 5/26/1967.

12 Q. It would appear from this document that the
13 Maryland Fried Chicken Corporation was not formed
14 until May 26 of 1967; is that correct?

15 MR. SAYDAH: I object to the form. It calls
16 for speculation. And it can file it at any time.

17 MS. DAVIS: You can object to the form,
18 Neil, you're allowed to do that.

19 MR. SAYDAH: I mean, if you can answer the
20 question, then answer it.

21 A. What is the question? It's very confusing.

22 Q. Do you know when Maryland Fried Chicken, do
23 you know when the Orange Blossom Trail location
24 changed from a Constantine's Restaurant to Maryland
25 Fried Chicken?

1 MR. SAYDAH: I object to the form. You can
2 answer it, if you know.

3 A. I was told by my dad that it changed in the
4 very early 1960s: He was one of the original founders.

5 Q. Were you ever an owner of the Orange Blossom
6 Trail --

7 A. No.

8 Q. -- restaurant? Who were the owners?

9 A. The founders.

10 Q. Albert, Angelo and Richard?

11 A. And Alfonso and Rose.

12 Q. Did you ever work at that location?

13 A. No. I mean, I was a kid.

14 Q. If you look at the second page of this
15 document --

16 A. Yes.

17 Q. -- one of the directors is Michael
18 Constantine. So, was Michael ever an owner of the
19 Orange Blossom Trail location?

20 A. Not to my knowledge.

21 Q. Did he ever work there?

22 A. I believe he did.

23 Q. When did he work there?

24 A. I don't know.

25 Q. Is this location still in business?

1 A. As a Maryland Fried Chicken?

2 Q. Yes.

3 A. No.

4 Q. When did it shut down?

5 A. I don't know exactly. In the seventies.

6 Q. Was it before or after Maryland Fried Chicken,
7 the corporation, filed bankruptcy?

8 A. After.

9 Q. Besides the Orange Blossom Trail location,
10 did your father personally own any other Maryland
11 Fried Chicken restaurants?

12 A. He did.

13 Q. Which restaurant?

14 A. The Apopka restaurant.

15 Q. When did he own that?

16 A. In the seventies. I don't know exactly.

17 Q. Any other restaurant?

18 A. He had some ownership on the -- on Highway 50,
19 Union Park.

20 Q. That's the location that's currently owned
21 by Angelo's wife. Correct?

22 A. Actually, it's owned by his son now.

23 Q. Danny?

24 A. Yes.

25 Q. When you said he had some ownership of that

1 store, who did he share ownership with?

2 A. Angelo.

3 Q. Did there come a time when he was no longer
4 an owner of that store?

5 A. Yes.

6 Q. Do you know when that happened?

7 A. I do not. In the seventies, I know.

8 Q. So the first location that you're claiming
9 your father had ownership in the Orange Blossom Trail
10 location. Correct?

11 A. Yes.

12 Q. And in Leesburg --

13 A. He actually sold -- I'm sorry.

14 Q. Go ahead.

15 A. He actually sold the -- the Orange Blossom
16 Trail location.

17 Q. Okay. When did he sell it?

18 A. In the seventies sometime.

19 Q. Who did he sell it to?

20 A. I do not know.

21 Q. Did he sell it before he purchased the
22 Leesburg location?

23 A. Yes.

24 Q. Did he ever have ownership in the Maryland
25 Fried Chicken that was located on Edgewater?

1 A. Through the corporation, yes. That was the
2 third Maryland Fried Chicken.

3 (The document was marked for identification as
4 T. Constantine Exhibit No. 5.)

5 BY MS. DAVIS:

6 Q. Let me show you what's marked as Exhibit
7 Number 5. If you look at the top, it states Maryland
8 Fried Chicken of Northgate by Phillip V. Perryman,
9 Jack L. Gale and George H. Dabbs. Do you see that?

10 A. You'll have to excuse my eyes. Yes.

11 Q. Was your father part-owner in Maryland Fried
12 Chicken of Northgate?

13 A. I don't know.

14 Q. Do you know who Phillip Perryman is?

15 A. I do not.

16 Q. Or Jack Gale?

17 A. No.

18 Q. Or George Dabbs?

19 A. No.

20 Q. If you look at the second page, if you flip
21 it over, where it states the address, 5001 Edgewater
22 Drive, Orlando, Florida, do you see that?

23 A. Yes.

24 Q. Is that the address for the Maryland Fried
25 Chicken on Edgewater?

1 A. I assume. I don't know.

2 Q. And so is it your position that your father
3 owned this Maryland Fried Chicken?

4 MR. SAYDAH: I'm going to object to the form.

5 BY MS. DAVIS:

6 Q. You can still answer it.

7 A. It is.

8 Q. Can you show me on this document --

9 A. Through the corporation.

10 Q. Can you show me on this document where his
11 name is, where his signature is?

12 MR. SAYDAH: Objection to the form. This is
13 a mortgage.

14 BY MS. DAVIS:

15 Q. Is his name on there anywhere?

16 A. I don't see his name.

17 Q. And if we look at the date, if you flip it
18 back over --

19 A. Back to the first page?

20 Q. No. The second page, just flip it over the
21 other way. Yes, you have it right.

22 A. Right.

23 Q. It states November 13, 1962. Do you see
24 that?

25 A. Hmm, where is it at the top? Where is it? I

1 do. The said mortgage -- yeah. 13th day of November.

2 Q. Do you know if the Lee Road location was
3 opened before or after the Orange Blossom Trail
4 location?

5 A. After.

6 Q. So, the Orange Blossom Trail location was
7 first. Correct?

8 A. Yes.

9 Q. And it was originally a Constantine's?

10 A. Correct.

11 Q. And then it turned into a Maryland Fried
12 Chicken?

13 A. Yes.

14 Q. And then after that, which locations, if
15 you're aware, opened up?

16 A. I don't know at this second. I just know it
17 stuck out in my head that Edgewater was the third. I
18 know that. That's what my dad told me. But the
19 second, I don't -- I don't know.

20 Q. Okay, let's talk about the Maryland Fried
21 Chicken, the corporation. Who were the owners of the
22 corporation?

23 A. To my knowledge, it was my two uncles -- my
24 two uncles, my dad and my grandparents.

25 Q. Who is W.H. Truesdell?

1 A. I have heard that name, but I'm not exactly
2 sure who that is. I've definitely heard that name
3 before.

4 Q. Do you know if he was ever an owner of
5 Maryland Fried Chicken?

6 A. Not a hundred percent. I think he was, but
7 I can't say for sure. He probably was.

8 (The document was marked for identification as
9 T. Constantine Exhibit No. 6.)

10 BY MS. DAVIS:

11 Q. Let me show you what's marked as Exhibit 6.
12 It's a Florida Trademark Application for Maryland
13 Fried Chicken. Do you see that at the top, it states
14 "Maryland Fried Chicken"?

15 A. Yes.

16 Q. Do you see underneath owners, where it says
17 W.H. Truesdell and Albert Constantine?

18 A. I do.

19 Q. Why isn't your father's name listed as an
20 owner of the Florida trademark?

21 A. On this document?

22 Q. Yes.

23 A. I don't know.

24 Q. Was he ever an owner of the trademark?

25 A. Through the corporation.

1 Q. Underneath the owners, does it list any
2 corporation?

3 A. I don't see that.

4 Q. Do you know the 17-92 address, do you know
5 what was at this time located there?

6 A. That's probably the -- the Fern Park
7 location, they referred to it as.

8 Q. So there was a Maryland Fried Chicken located
9 at that address. Correct?

10 A. I -- I don't know about the address. I know
11 it was on 17-92.

12 Q. The 17-92 location?

13 A. Yes.

14 Q. Who owned the Fern Park location?

15 MR. SAYDAH: I object to the form.

16 A. I don't know the corporation actually.

17 Q. If we look under Date Filed, it says February
18 10, 1961. Do you see that?

19 A. I do.

20 Q. Which Maryland Fried Chicken stores were
21 opened in 1961?

22 A. I don't know.

23 Q. There came a time when Maryland Fried
24 Chicken filed for bankruptcy. Correct?

25 A. I believe so.

1 Q. What's your recollection of what happened
2 and why they needed to file for bankruptcy?

3 MR. SAYDAH: Objection. I object to the
4 form.

5 A. There was a lawsuit.

6 Q. Who was there a lawsuit with?

7 A. The corporation merged with an insurance
8 group in Georgia.

9 Q. Why did they merge with an insurance group
10 in Georgia?

11 MR. SAYDAH: If you know.

12 A. Why did they? I don't know.

13 Q. Do you know at what time the corporation had
14 to file for bankruptcy?

15 A. No.

16 Q. What year it was?

17 A. Seventies.

18 Q. And do you know when they merged with the
19 insurance group?

20 A. Seventies.

21 Q. At that time, prior to the merger, do you
22 know how many Maryland Fried Chickens there were
23 throughout the United States?

24 A. I do not.

25 Q. What happened as a result of the merger?

1 A. Can you be more specific?

2 Q. Prior to the merger, it's your position that
3 the corporation owned all of the Maryland Fried
4 Chickens?

5 A. They -- they franchised all of the Maryland
6 Fried Chickens, correct.

7 Q. And after the merger, did they still have --
8 were they still a franchiser to all of these other
9 Maryland Fried Chicken locations?

10 A. They were.

11 Q. They were or weren't?

12 A. They were --

13 Q. After the merger?

14 A. After the merger?

15 Q. Yes.

16 A. The date that they merged, after that? Yes.

17 Q. At some point, was your father, Angelo and
18 Albert left with only five locations, five Maryland
19 Fried Chicken locations?

20 MR. SAYDAH: I object to the form.

21 A. Say that again.

22 Q. At some point after the merger, did the
23 Maryland Fried Chicken Corporation cease to exist?

24 A. They -- I know they -- they opened up another
25 corporation.

1 Q. Okay.

2 A. Where they operated Maryland Fried Chickens.

3 (The document was marked for identification as
4 T. Constantine Exhibit No. 7.)

5 BY MS. DAVIS:

6 Q. Let me show you what's marked as Exhibit 7.
7 It says "Maryland Fried Chicken, Inc., a Delaware
8 Corporation". Do you see that at the top?

9 A. I do.

10 Q. And then the cross-reference name is
11 Maryland Fried Chicken, Inc.?

12 A. Yes.

13 Q. So, is this the new corporation you're talking
14 about?

15 A. Umm, that's not the name I remember.

16 Q. Do you know who James Mairs is?

17 A. No.

18 Q. Or Carol Register?

19 A. No.

20 Q. Or Robert Warfield?

21 A. No.

22 Q. Are they owners of the Maryland Fried
23 Chicken trademark?

24 A. No.

25 Q. But it appears as though they were officers

1 of Maryland Fried Chicken, Incorporated. Correct?

2 A. I can --

3 MR. SAYDAH: I object to the form.

4 A. If -- if they were -- I don't know if they
5 were owners of -- of, they had common-law rights to
6 the trademark.

7 Q. So if they were owners of Maryland Fried
8 Chicken, Incorporated, you're saying that they have
9 common-law rights to the trademark?

10 MR. SAYDAH: I object to the form.

11 A. What's the question? I'm trying to answer
12 the original question.

13 Q. You said earlier that Maryland Fried Chicken
14 merged with some insurance people. Correct?

15 A. Correct.

16 Q. Is this the new corporation that was created
17 after the merger? If you know.

18 A. I don't know.

19 (The document was marked for identification as
20 T. Constantine Exhibit No. 8.)

21 BY MS. DAVIS:

22 Q. I'm going to show you what's marked as
23 Exhibit 8. It's corporate records for Maryland Fried
24 Chicken, Incorporated. And if you look at the date
25 it was filed, it says February 15th of 1963. Do you

1 see that?

2 A. I do.

3 Q. And then under "Last Event," it says
4 "Merged". Do you see that?

5 A. I do.

6 Q. And then it says "Event Date Filed,
7 4-16-1970". Do you see that?

8 A. Yes.

9 Q. If we look back at the exhibit I just showed
10 you, the previous exhibit, where it says "Date Filed,"
11 it says 4-16-1970. Correct?

12 A. February --

13 Q. Date Filed, 4-16.

14 A. Yes.

15 Q. And that's the same date as this Maryland
16 Fried Chicken, Incorporated merged as referenced on
17 that document, the other exhibit. Correct?

18 A. Where do you see "merged"?

19 Q. Under last event. It says "Merged".

20 A. Yes.

21 Q. And then it says "Event Date Filed,
22 4-16-1970". Correct?

23 A. Yes.

24 Q. Which is the same date as the date that this
25 new corporation was filed. Correct?

1 MR. SAYDAH: You're referring to Exhibit 7
2 as the new corporation filing?

3 MS. DAVIS: Yes.

4 THE WITNESS: Yes, same date.

5 MS. DAVIS: Exhibit 8, actually, is the
6 date.

7 MR. SAYDAH: 7 is the Maryland Fried
8 Chicken, Inc., a Delaware corporation.

9 MS. DAVIS: And 8 is the Maryland Fried
10 Chicken, Incorporated.

11 BY MS. DAVIS:

12 Q. So would you agree that the Maryland Fried
13 Chicken, Incorporated merged into the Maryland Fried
14 Chicken, Incorporated, a Delaware corporation, on
15 April 16, 1970?

16 MR. SAYDAH: I object to the form.

17 A. I don't know.

18 Q. Earlier you said that Angelo, Rose, Albert,
19 Richard and -- who am I missing?

20 A. Alfonso.

21 Q. Alfonso, were all owners of Maryland Fried
22 Chicken, Incorporated. Correct? They were owners of
23 the corporation?

24 A. Of the -- they were owners of the -- I don't
25 know exactly how it was set. I know my -- my

1 grandparents were involved with Albert when he came
2 down. Then the other two brothers came down and they
3 formed the corporation. So they were all involved at
4 some point.

5 Q. Do you know why none of their names are
6 listed on Exhibit 8 --

7 A. I do not.

8 Q. -- as Officers or Directors?

9 A. I do not know why.

10 Q. Earlier we were talking about the Fern Park
11 location. Do you remember that?

12 A. Yes.

13 Q. Who originally opened up the Fern Park
14 location, if you know?

15 A. I don't know.

16 Q. Did your father ever personally own the Fern
17 Park location?

18 A. I don't know.

19 Q. Do you know the address of the Fern Park
20 location?

21 A. I do not.

22 Q. Is it on 17-92 in Maitland, Florida?

23 A. Yes.

24 Q. Do you know when it was first opened --

25 A. No.

1 Q. -- as a Maryland Fried Chicken?

2 A. No.

3 (The document was marked for identification as
4 T. Constantine Exhibit No. 9.)

5 BY MS. DAVIS:

6 Q. Let me show you what's marked as Exhibit 9.
7 Please look under, it says "General description of
8 improvements, Chicken Take Out Establishment." Do
9 you see that?

10 A. Yes.

11 Q. And the owner, Maryland Fried Chicken,
12 Incorporated. Do you see that?

13 A. Yes.

14 Q. And the address is Highway 17-92, Fern Park,
15 Maitland, Florida. Do you see that?

16 A. Yes.

17 Q. Would that be the Maryland Fried Chicken
18 that was located in Fern Park, is that the address
19 for it?

20 A. Yes. I guess.

21 Q. Is that location still operating?

22 A. No.

23 Q. If you look at the bottom right-hand portion
24 of this document, do you see where it states,
25 "Maryland Fried Chicken by," and it says "Owner,

1 Albert C. Constantine, President"?

2 A. I do.

3 Q. And the date is January 15th of 1969. Do
4 you see that?

5 A. I do.

6 Q. Do you know if Richard Constantine was an
7 Officer or Director for Maryland Fried Chicken,
8 Incorporated at any time?

9 A. I do.

10 Q. Do you know that he was or wasn't?

11 A. He was.

12 Q. What was his position?

13 A. Treasury.

14 Q. Treasurer?

15 A. Treasurer, yeah.

16 Q. Do you have any documents reflecting your
17 father's ownership in Maryland Fried Chicken,
18 Incorporated?

19 A. Do I?

20 Q. Yes.

21 A. No.

22 Q. Do you know if your mother has any documents?

23 A. I don't know.

24 Q. Do you know when the Union Park location
25 first began operating?

1 A. I do not.

2 Q. Earlier you said that Angelo and your
3 brother -- sorry, your father, Richard --

4 A. Yeah.

5 Q. -- owned that location originally. Correct?

6 A. Correct.

7 Q. And right now Danny Constantine owns it?

8 A. Yes.

9 Q. Who is Angelo's son. Correct?

10 A. Yes.

11 Q. At some point, would you agree that all
12 three brothers had rights in the Maryland Fried
13 Chicken trademark? By "all three brothers," I mean,
14 Albert, Richard and Angelo.

15 MR. SAYDAH: Objection to the form.

16 A. I would agree.

17 Q. And each brother owned and operated at least
18 one store on their own. Correct?

19 A. At various times, yes.

20 Q. Richard owned and operated the Leesburg
21 location on his own. Correct?

22 A. And -- and the Trail.

23 Q. And did anyone else --

24 A. The Trail is one he operated on his own. At
25 first he operated with Angelo, and then he operated

1 on his own.

2 Q. Originally it was Angelo and Richard?

3 A. Well, originally, that was the very first
4 store that the brothers, that's where it all started.
5 So, originally, I don't know. Probably all of them,
6 I would have thought.

7 Q. Probably all of them owned the Orange
8 Blossom location at one point?

9 A. Yes.

10 Q. And then at some point you're saying Richard
11 owned it on his own?

12 A. He did.

13 Q. And Angelo owned Union Park on his own?

14 A. At -- at one point, he did. In the end he
15 did, yes.

16 Q. And how about Albert?

17 A. Did he ever own that store?

18 Q. Did he ever own any Maryland Fried Chicken
19 solely on his own?

20 A. Yes.

21 Q. Which Maryland Fried Chicken?

22 A. I know Sanford for sure. Other than that --
23 through the corporation. Other than not through the
24 corporation, I don't know.

25 Q. So, when each of the brothers owned a

1 restaurant on their own, was this after the corporation
2 ceased to exist?

3 A. No.

4 Q. So they owned the restaurants on their own --
5 they owned the restaurants personally when Maryland
6 Fried Chicken, Incorporated was still incorporated?

7 A. Yes.

8 Q. And did they own them personally after
9 Maryland Fried Chicken was no longer incorporated?

10 A. Well, there was -- there was different
11 corporations that they started. But -- I actually
12 don't know the answer to that question about the
13 times and the dates.

14 MR. SAYDAH: When you get to a good stopping
15 point, can we take a break?

16 MS. DAVIS: Yes. In a couple of minutes.

17 BY MS. DAVIS:

18 Q. Is Albert still alive?

19 A. No.

20 Q. Does his family, meaning his wife or sons or
21 daughters, do any of them own a Maryland Fried Chicken?

22 A. No.

23 Q. When did they stop -- when did he no longer
24 own a Maryland Fried Chicken location?

25 A. He owned a Maryland Fried Chicken in Sanford

1 that he -- he changed the name to Mr. C's, which sold
2 Maryland Fried Chicken product. But I don't know
3 what year he sold that location. I believe it was in
4 the eighties.

5 Q. And then Angelo, Angelo's family has operated,
6 and by "family" I mean immediate family, his wife or
7 his son, have operated the Union Park restaurant
8 since what, the 1960s, 1970s?

9 A. My guess would be the late seventies,
10 somewhere in the seventies.

11 Q. And Danny still owns and operates?

12 A. Danny still owns and operates.

13 Q. Does Danny have any rights to the trademark,
14 Maryland Fried Chicken?

15 MR. SAYDAH: Objection to the form.

16 A. He has common-law rights.

17 Q. What do you mean by "common-law rights"?

18 MR. SAYDAH: I object to the form.

19 A. Are you familiar with common-law rights?

20 Q. Yes, I am. I'd like to see if you are.

21 A. That's nice. We actually had a Maryland
22 Fried Chicken shut down because of common-law rights.
23 I'm very familiar.

24 Q. Okay. So it's your position that Danny has
25 common-law rights in the trademark, Maryland Fried

1 Chicken?

2 A. Yes.

3 Q. Does Theresa have common-law rights in the
4 Maryland Fried Chicken trademark?

5 MR. SAYDAH: Objection to the form.

6 A. Yes.

7 Q. Does she have anything more than common-law
8 rights?

9 MR. SAYDAH: Objection to the form.

10 BY MS. DAVIS:

11 Q. You can answer that.

12 A. (Indicating)

13 Q. I don't know what that means.

14 A. Excuse me. What?

15 Q. I asked a question, you didn't respond.

16 A. You just made... Umm, what's the question?

17 Q. Do you consider Theresa's rights to the
18 Maryland Fried Chicken trademark superior to Danny's
19 rights?

20 A. I've got to take this call. It's the
21 restaurant.

22 MS. DAVIS: Let's take a break.

23 (A recess was taken from 11:15 a.m. to 11:26 a.m.)

24 MS. DAVIS: Back on the record.

25 BY MS. DAVIS:

1 Q. I'll ask my previous question again.

2 A. Okay.

3 Q. Do you consider Theresa's rights to the
4 Maryland Fried Chicken trademark superior to Danny's?

5 MR. SAYDAH: I object to the form.

6 A. I don't know. Do I consider her rights
7 superior to Danny's?

8 Q. You don't know?

9 A. I don't know, no. Obviously I don't.

10 Q. All three brothers originally owned the
11 corporation. Correct?

12 A. Correct.

13 Q. And they all had rights to the trademark.
14 Correct?

15 MR. SAYDAH: I object to the form.

16 A. Correct.

17 Q. Do you agree that they -- is it your
18 position that they all owned the trademark?

19 A. That is -- yes. They were the corporation.

20 Q. So why --

21 A. They founded it.

22 Q. So why can only your father and Theresa have
23 a Federally Registered Trademark?

24 MR. SAYDAH: I object to the form. You
25 don't have to answer that.

1 A. Who said that?

2 Q. Your father filed for a trademark for
3 Maryland Fried Chicken. Correct?

4 A. Uh-huh.

5 Q. And he listed himself as the owner. Correct?

6 A. Correct.

7 Q. Why didn't he list Angelo or Albert?

8 MR. SAYDAH: I object to the form. And
9 actually, I'm going to direct you -- well, can I
10 ask him a quick question?

11 MS. DAVIS: Off the record.

12 (A discussion was held off the record.)

13 MR. SAYDAH: Go back on the record. If your
14 answer doesn't come from a conversation you had
15 from an attorney that was representing you, then
16 you can give an answer. But if it's only from a
17 conversation or a communication you've had with
18 your attorney, then don't answer it.

19 THE WITNESS: Now, what's the question again?

20 MS. DAVIS: Can you read the question?

21 (The question was read by the reporter as
22 follows:

23 Q. Why didn't he list Angelo or Albert?)

24 THE WITNESS: I don't know.

25 BY MS. DAVIS:

1 Q. You don't know?

2 A. No.

3 Q. Did you know that Albert originally filed a
4 trademark for Maryland Fried Chicken?

5 A. I did. As President.

6 Q. Of Maryland Fried Chicken, Incorporated?

7 A. Yes. I did.

8 (The document was marked for identification as
9 T. Constantine Exhibit No. 10.)

10 BY MS. DAVIS:

11 Q. Let me show you what's marked as Exhibit 10.
12 It's a Trademark Application that Albert filed. And
13 if you look at the filing date, it's July 22nd, 1964.
14 Do you see that?

15 A. Hmm, not yet.

16 Q. Under "Filing Date"?

17 A. Yes.

18 Q. Do you see where it says "Registrant,
19 Maryland Fried Chicken, Inc. (Corporation Florida),
20 Highway 17-92, Maitland, Florida"?

21 A. I do.

22 Q. And then do you see where it says "Last
23 Listed Owner, Albert C. Constantine, Individual,
24 Assignee of United States 9710 East State Road 5,
25 Orlando, Florida 32806"?

1 A. I do.

2 Q. If you look at the logo that's at the top of
3 the document, that's the logo that your father also
4 filed a Trademark Application for. Correct?

5 A. Correct.

6 Q. Now, this application, when Albert filed for
7 it, he originally listed Maryland Fried Chicken,
8 Incorporated as the owner. Correct? See where it
9 says "Owner (Registrant), Maryland Fried Chicken,
10 Inc."?

11 A. Hmm, yes.

12 Q. And were you aware that he assigned the
13 trademark to himself personally?

14 A. No, I wasn't.

15 (The document was marked for identification as
16 T. Constantine Exhibit No. 11.)

17 BY MS. DAVIS:

18 Q. Let me show you what's marked Exhibit 11.
19 If you look at this, do you see where it states
20 "Assignment" at the top?

21 A. What page are you on? This one?

22 Q. Yes. Exhibit 11, where it states "Assignment"
23 at the top. Do you see that? At the top, where it
24 says "Assignment," underlined?

25 A. Yes.

1 Q. I'm going to read through the document with
2 you, and I want to make sure I'm reading everything
3 correctly, so please correct me if I'm wrong.

4 A. Okay.

5 Q. It states, "Whereas, Maryland Fried Chicken,
6 Inc., a Florida corporation, is the owner of the mark
7 'Maryland Fried Chicken' and Design, which is
8 registered in the United States Patent and Trademark
9 Office, Reg. No. 798,190, dated October 26, 1965".

10 Did I read that correctly?

11 A. Yes.

12 Q. Now, if we look back at Exhibit 10, and if
13 you look at the registration number for Exhibit 10,
14 do you see where it says Registration Number 0798190?

15 A. I do.

16 Q. Is that the same registration number that
17 they've listed -- that Albert has listed on this
18 Assignment, 798,190?

19 A. Yes.

20 Q. The second Whereas clause, it says, "Albert
21 C. Constantine, 9710 East State Road 5, Orlando,
22 Florida, 32806 is desirous of obtaining said mark and
23 the registration thereof". Am I reading that
24 correctly?

25 A. Which paper are you reading that from?

1 Q. From the Assignment. Exhibit 11.

2 A. Okay. Do you want to repeat it?

3 Q. Yes. The second clause states, "Whereas,
4 Albert C. Constantine, 9710 East State Road 5,
5 Orlando, Florida 32806 is desirous of acquiring said
6 mark and the registration thereof". Did I read that
7 correctly?

8 A. Yes.

9 Q. And the last clause, Now, therefore, for
10 good and valuable consideration, the receipt of which
11 is hereby acknowledged, said Maryland Fried Chicken,
12 Inc. does hereby assign, nunc pro tunc January 1,
13 1972 unto the said Albert C. Constantine the entire
14 right, title and interest in and to the said mark,
15 together with the good will of the business
16 symbolized by the mark, and the registration thereof
17 number 798 dash 190, or comma, sorry, 798 comma 190.
18 Besides that last part, did I read that correctly?

19 A. Yes.

20 Q. So it appears as though Albert Constantine
21 assigned the Maryland Fried Chicken trademark to
22 himself on January 1st, 1972. Is that correct?

23 A. Yes. It appears.

24 Q. Do you have any recollection of this
25 assignment?

1 A. I do not.

2 Q. So you were not aware that Albert Constantine
3 assigned the trademark to himself?

4 A. No. I know that he was the one that went
5 through the process. I did know that. I knew that
6 Albert went through the process of registering the
7 mark. So naturally he would put his name and, you
8 know.

9 Q. Were you also aware that he assigned the
10 trademark to an Edith Swain and a Richard Heavilon?

11 A. I was not aware.

12 Q. If you look at page 4 of Exhibit 10.

13 A. Oh, okay.

14 Q. This is a history of the Maryland Fried
15 Chicken trademark and its assignments. If we look at
16 the top, it states that the original registrant was
17 Maryland Fried Chicken, Inc., and it was filed on
18 July 22nd of 1964. Do you see that?

19 A. Excuse me.

20 Q. That's okay. Take your time.

21 A. Where are you reading that from, what part?

22 Q. Under "Total Assignments: 2," it says,
23 "Registrant, Maryland Fried Chicken, Inc. --

24 A. Oh, there.

25 Q. "-- Filing Date: July 22nd, 1964". Do you

1 see that?

2 A. I do.

3 Q. And then there's an assignment from Maryland
4 Fried Chicken to Albert Constantine. Do you see that,
5 where it says "Assignor"?

6 A. Right underneath?

7 Q. Yes.

8 A. Assignment 1?

9 Q. Yes.

10 A. Yeah.

11 Q. And then on December 23rd of 1996, under
12 Assignment 2, do you see where Albert Constantine
13 assigned the trademark to Edith Swain?

14 A. I do.

15 Q. Do you know who Edith Swain is?

16 A. I do not. I -- I think she was somebody out
17 of Ohio. I don't remember the name. I do not know
18 her.

19 Q. Did you know that your uncle sold the
20 trademark to Edith Swain?

21 MR. SAYDAH: I object to the form.

22 A. I remember he tried to make a quick buck,
23 something I remember from -- you know, I heard a
24 little bit through the family.

25 Q. What did you hear?

1 A. That -- basically what I just said.

2 Q. That he tried to make a quick buck?

3 A. Yeah.

4 Q. Do you have any documents reflecting Richard
5 Constantine's ownership in the Maryland Fried Chicken
6 trademark?

7 A. I do not.

8 Q. Do you have any assignments from Maryland
9 Fried Chicken, Incorporated to Richard Constantine?

10 A. I do not.

11 Q. Do you have any assignments from Albert
12 Constantine to Richard Constantine of the trademark?

13 A. I do not.

14 Q. Or any assignments from Edith Swain to
15 Richard Constantine?

16 A. I do not.

17 Q. Have you ever heard of National Restaurant
18 Supply?

19 A. I have.

20 Q. What is that?

21 A. That was a, to my knowledge, that was a
22 corporation that was developed after the early
23 seventies lawsuit where they ended up with five
24 restaurants, the three brothers.

25 Q. So after the lawsuit, the three brothers

1 ended up with five restaurants?

2 A. Correct. And I believe that's the
3 corporation they put those five restaurants under.

4 Q. National Restaurant Supply?

5 A. Yes.

6 Q. Do you know --

7 A. I believe, to the best of my knowledge.

8 Q. Do you know what the five restaurants were?

9 A. They were the Apopka store, Union Park,
10 Sanford, the OBT store and I believe the Fern Park
11 store.

12 Q. So, which brothers owned National Restaurant
13 -- yes, which brothers owned National Restaurant
14 Supply?

15 A. To my knowledge, they put that corporation
16 under Richard and Angelo.

17 Q. So, at the time that National Restaurant
18 Supply was incorporated, did National Restaurant
19 Supply own those five locations or did the brothers
20 individually own the locations?

21 A. I don't know how they had it set up exactly.

22 Q. And who owned the trademark at that time,
23 National Restaurant Supply or the brothers
24 individually?

25 MR. SAYDAH: I object to the form.

1 A. I'm not sure.

2 Q. Do you have any documents reflecting an
3 assignment of the trademark from a Maryland Fried
4 Chicken, Incorporated to National Restaurant Supply,
5 Incorporated?

6 A. I do not.

7 Q. Do you have any documents reflecting an
8 assignment from National Restaurant Supply,
9 Incorporated, to Richard Constantine?

10 A. I don't.

11 Q. Did National Restaurant Supply have an
12 office?

13 A. I don't know.

14 (The document was marked for identification as
15 T. Constantine Exhibit No. 12.)

16 BY MS. DAVIS:

17 Q. Let me show you what's marked as Exhibit 12.
18 This is the Trademark Application that your father
19 filed or that Matthew McKinney filed for your father
20 on February 21st, 2008. Does this look familiar to
21 you?

22 A. Yes.

23 Q. Under the Goods and Services, do you see
24 that, where it says Goods and Services, Restaurant
25 services, including sit-down service of food and

1 take-out restaurant services"?

2 A. Yes.

3 Q. It states First Use in Commerce. Do you see
4 that?

5 A. Uh-huh.

6 Q. January 1st of 1980. Do you see that?

7 A. No, I don't, actually.

8 Q. It says "19800101"?

9 A. Yes.

10 Q. Do you know why your father provided a first
11 use date of January 1st, 1980 when he filed his
12 application?

13 A. I do not.

14 Q. Do you remember when, again, the Leesburg
15 location was opened?

16 A. '79.

17 Q. Are you or is your mother now claiming an
18 earlier first use date than 1980?

19 A. I can't speak for her.

20 Q. I would have to ask her that?

21 A. (Nods head up and down)

22 Q. You're not familiar with the --

23 A. Well, I mean, she, either being married to
24 my father, their first use of the mark was in the
25 early sixties. And it's continued all along.

1 Q. What use are you referring to in the early
2 sixties?

3 A. The origination of Maryland Fried Chicken.

4 Q. The OBT location?

5 A. Yes. And then the franchises, so on and so
6 forth.

7 Q. But the OBT location was a Constantine's
8 Restaurant until 1964. Correct?

9 MR. SAYDAH: I object to the form.

10 A. I don't know the exact date. I would have
11 to say it was -- I think they had the Constantine's
12 on the sign maybe until 1964, but I know Maryland
13 Fried Chicken started before 1964.

14 Q. What do you mean it started, like what does
15 that mean to you?

16 A. They started the corporation, you know, they
17 franchised restaurants. That's when the whole thing
18 started, early sixties.

19 Q. Look at that exhibit, Exhibit 12.

20 A. Where does it say the exhibit number?

21 Q. Right here.

22 MR. SAYDAH: On the sticker.

23 A. Oh, okay.

24 Q. What is the word portion of that mark?

25 A. Where it says Word Mark?

1 Q. No. This logo right here, what are the
2 words that are on it?

3 A. Maryland Fried Chicken.

4 Q. And what is the other, what else does it say
5 besides Maryland Fried Chicken?

6 A. On the -- on the logo?

7 Q. Yes.

8 A. This one, I imagine, says dinners --

9 Q. Does it say "Complete Dinners to Go"?

10 A. Yes.

11 MR. SAYDAH: Isn't it somewhere on there?

12 BY MS. DAVIS:

13 Q. The bottom portion of the logo underneath
14 Maryland Fried Chicken.

15 A. You can't really read it. But it says
16 "complete". This one here.

17 THE WITNESS: Huh?

18 MR. SAYDAH: It's written on the first line,
19 isn't it?

20 THE WITNESS: Is it written? I know they've
21 changed over the years.

22 MR. SAYDAH: Is that what you're referring
23 to?

24 MS. DAVIS: Yes.

25 THE WITNESS: "Complete Dinners to Go"?

1 BY MS. DAVIS:

2 Q. Yes.

3 A. I believe that's what this one says.

4 Q. So it's your position that your father, now
5 your mother, owns the trademark "Maryland Fried
6 Chicken Complete Dinners to Go". Correct?

7 MR. SAYDAH: I object to the form.

8 BY MS. DAVIS:

9 Q. It's your position that they own that
10 trademark?

11 A. On the Leesburg location? They owned it
12 originally.

13 Q. No, do they own it all throughout the United
14 States?

15 A. I never said that.

16 Q. Okay. So is it your position they just own
17 it in Leesburg?

18 A. Yeah.

19 Q. Can other people use the terms Maryland
20 Fried Chicken, Complete Dinners to Go?

21 MR. SAYDAH: I object to the form.

22 A. They do.

23 Q. Who does?

24 A. All the other -- all the other restaurants.

25 Q. How many other Maryland Fried Chicken

1 restaurants are there?

2 A. Oh, I don't know, somewhere in the twenties
3 is my guess.

4 Q. And they all use the trademark Maryland
5 Fried Chicken and Maryland Fried Chicken, Complete
6 Dinners to Go. Correct?

7 A. No, not all of them. There's -- there's
8 some out there with completely different logos. They
9 say Maryland Fried Chicken. Some of them just say
10 Maryland Fried Chicken.

11 Q. And some have that same logo, some have
12 other logos. Correct?

13 A. I believe.

14 Q. And does Theresa Constantine have any
15 ownership over those other 20-some locations that
16 you're talking about?

17 A. No.

18 Q. Does she license the use of the trademark to
19 them?

20 MR. SAYDAH: I object to the form.

21 A. Did she license the use of the trademark to
22 them?

23 Q. Yes.

24 A. No.

25 Q. Does she tell them what type of food they

1 can sell?

2 A. No.

3 Q. Does she tell them they have to use the
4 special recipe?

5 A. She does not.

6 Q. Does she tell them they have to purchase
7 their products from C.F.M.?

8 A. No.

9 Q. Does she tell them that their signage needs
10 to look the same as all of the other Maryland Fried
11 Chickens?

12 A. She does not.

13 Q. Did Richard tell them to do that?

14 A. He did not, to my knowledge.

15 Q. Are you aware of any other restaurants filing
16 their own trademarks for Maryland Fried Chicken?

17 MR. SAYDAH: I object to the form.

18 A. I don't know.

19 (The document was marked for identification as
20 T. Constantine Exhibit No. 13.)

21 BY MS. DAVIS:

22 Q. I'm going to show you what is marked as
23 Exhibit 13. If you look at the top of this exhibit,
24 it says "Trademark, Maryland Fried Chicken - Complete
25 Dinners to Go". Do you see that?

1 A. I do.

2 Q. And under the Date Filed, it says June 21st,
3 1978. Do you see that?

4 A. Yes.

5 Q. And Expiration Date, June 21st, 1988. Do
6 you see that?

7 A. Yes.

8 Q. And the owner is Maryland Fried Chicken, Inc.
9 And the address is 5935 Southwest 64th Avenue, South
10 Miami, Florida 33134. Do you see that?

11 A. I do.

12 Q. Did your father or Theresa own Maryland
13 Fried Chicken, Incorporated located at 5935 Southwest
14 64th Avenue in Miami, Florida?

15 A. I know my dad franchised, when they were --
16 they franchised the -- I remember my dad saying
17 something about a restaurant down in Miami. I believe
18 they franchised one down there.

19 Q. Okay. But when did the franchising cease to
20 exist? Because I thought that was in the early 1970s.

21 A. What is your date here?

22 Q. This trademark was filed on June 21st of
23 1978. So, in 1978, was there a franchising system in
24 existence?

25 A. I don't believe so.

1 (The document was marked for identification as
2 T. Constantine Exhibit No. 14.)

3 BY MS. DAVIS:

4 Q. And if we look at Exhibit 14, these are
5 corporate records for Maryland Fried Chicken, Inc.,
6 located at 5935 Southwest 64th Avenue. If you look
7 down at the Officers and Directors, do you see an
8 Evan Zagoria and a Jack Zagoria?

9 A. I do.

10 Q. Do you know who those individuals are?

11 A. I do not.

12 Q. Do you know if your father or Theresa ever
13 sent a cease and desist letter to Evan or Jack
14 Zagoria --

15 A. No.

16 Q. -- because of their use of the Maryland
17 Fried Chicken trademark?

18 A. I do not.

19 Q. To your knowledge, has Richard or Theresa
20 sent any cease and desist letters to the other
21 Maryland Fried Chicken restaurants related to their
22 use of the trademark?

23 A. To my knowledge, no.

24 Q. If Theresa obtains this trademark
25 registration, do you know if she intends on

1 attempting to stop these other restaurants from using
2 the trademark?

3 MR. SAYDAH: Objection to the form.

4 A. I -- she would not stop it.

5 Q. So they would be able to continue to use the
6 mark?

7 A. Yeah.

8 Q. Are you aware of a trademark registration
9 for The Original Maryland Fried Chicken?

10 A. I'm not aware.

11 Q. Do you think that The Original Maryland
12 Fried Chicken is confusing --

13 MR. SAYDAH: Objection.

14 BY MS. DAVIS:

15 Q. -- with Maryland Fried Chicken?

16 A. Right.

17 Q. Would you be confused between the two?

18 A. No.

19 Q. Why not?

20 A. Maryland Fried Chicken, Original Maryland
21 Fried Chicken, I wouldn't; as a consumer, I wouldn't.

22 Q. That doesn't confuse you?

23 A. No.

24 (The document was marked for identification as
25 T. Constantine Exhibit No. 15.)

1 BY MS. DAVIS:

2 Q. Look at Exhibit 15. This is a trademark
3 registration for The Original Maryland Fried Chicken.
4 If you look down at the Registrant, it says Richard
5 Heavilon and Edith Swain. Do you see that?

6 A. Yes.

7 Q. Do you know if your father or Theresa, if
8 your father was ever aware or if Theresa is aware
9 that this trademark exists?

10 A. My -- my father has seen that trademark, yes.

11 Q. Did he have a problem or did he take issue
12 with someone having a trademark for The Original
13 Maryland Fried Chicken?

14 MR. SAYDAH: I object to the form.

15 A. He did not have a problem with this logo.

16 Q. Okay. Why not?

17 A. It doesn't even look like the Maryland Fried
18 Chicken logo.

19 Q. Do you know if he ever sent a cease and
20 desist letter to Edith Swain or Richard Heavilon?

21 A. I do not.

22 Q. Or if Theresa did?

23 A. I do not.

24 Q. You don't know or they didn't?

25 A. To my knowledge, they did not. The only

1 cease and desist letter I know of was my Uncle Angel
2 sent one to someone who wanted to open up in Maitland.

3 Q. When did that happen?

4 A. That's the only knowledge of a cease and
5 desist. When did that happen?

6 Q. When did that happen. Yes.

7 A. I believe that was in the eighties.

8 Q. Is that because Angel was operating Maryland
9 Fried Chicken in Union Park --

10 A. Yes.

11 Q. -- and he thought it was too close?

12 A. Correct.

13 Q. Did that person end up opening a location in
14 Maitland?

15 A. No.

16 Q. Did your father have a will when he passed
17 away?

18 A. He did.

19 Q. Did the will or does the will say anything
20 about the Maryland Fried Chicken trademark or the
21 Leesburg restaurant?

22 A. I personally have not read the will.

23 Q. Do you know if he assigned over his rights
24 to the trademark to Theresa?

25 MR. SAYDAH: I object to the form.

1 A. I do not know.

2 Q. We're going to talk about your mother for a
3 second. You're aware that your attorney filed a
4 motion requesting that I not be allowed to depose
5 her. Correct?

6 A. Yes.

7 Q. What is her current health condition?

8 A. Hmm, not good.

9 Q. And what do you mean by "not good"?

10 A. She has a hard time walking. I mean, for
11 81, she's fairly strong, but she's -- she's in a lot
12 of aches and pain, she has a lot of pain.

13 Q. Does she take any medication?

14 A. She does.

15 Q. Do you know what type of medication she takes?

16 A. It would take an hour to tell you. It's a
17 lot. She takes a lot of medication. Do I know what?
18 No.

19 Q. Do you know what it's for, the medication is
20 for?

21 A. For all of her aches and pains, her heart,
22 high blood pressure, cholesterol. She literally
23 takes -- she takes a lot of pills.

24 Q. Does she have any help, as far as, does she
25 have someone that comes in and helps take care of

1 her, like a nurse or anything like that?

2 A. A nurse? No.

3 Q. Is she able to get up and take her own bath
4 or shower in the morning?

5 A. She -- she struggles through it. But she --
6 she's pretty tough.

7 Q. Does she make her own food?

8 A. Not very often. Once in a while.

9 Q. Okay. So how does she eat?

10 A. One of her kids either will help her cook or
11 my ex-wife still cooks for her. You know.

12 Q. Does she have to go to the doctor often?

13 A. She does.

14 Q. Do you know who her doctor is?

15 A. She's got several doctors.

16 Q. Can you name any of them?

17 A. Dr. Tamayo, Tamayo (ph), Dr. Reading.

18 That's all I can recall right now.

19 Q. How often does she leave the house?

20 A. There are some months where she never leaves
21 the house. And she might -- not very often.

22 Q. Does she still drive?

23 A. No.

24 Q. How does she get her groceries?

25 A. One of her nieces or sons or daughter or

1 friends will go get it for her.

2 Q. So she never goes to the grocery store on
3 her own?

4 A. Very rarely.

5 Q. Earlier you said that she is in charge of
6 the accounting for the Leesburg store. Correct?

7 A. She writes bills out. We have a -- she has
8 a bookkeeper slash accountant who takes care of the
9 accounting.

10 Q. Okay. Who is that?

11 A. Scott Roberts.

12 Q. Scott Roberts?

13 A. Scott, yes.

14 Q. What do you mean by he takes care of the
15 accounting, he does your taxes?

16 A. He does the taxes, yes.

17 Q. What else?

18 A. He takes care of the monthly books.

19 Q. Anything else? So what does she do
20 specifically? She just writes checks?

21 A. She writes checks.

22 Q. Who does she write checks to?

23 A. The vendors, the employees' checks.

24 Q. How does she know how much to write the
25 check for?

1 MR. SAYDAH: I object to the form.

2 A. It usually says it on the bill.

3 Q. So does somebody give her the bills and she
4 writes checks?

5 A. She's still very able. I mean, her mind is
6 good. It's her body that hurts.

7 Q. Okay. You're familiar with an MTM
8 Enterprises Group, LLC. Right?

9 A. Yes.

10 Q. Who are the managing members of MTM
11 Enterprises Group?

12 A. Michael, Tony and Matthew.

13 Q. And when was this LLC created?

14 A. Hmm. I don't remember the exact -- I want
15 to say it was a couple of years ago. I can't
16 remember exactly when. Probably '09.

17 (The document was marked for identification as
18 T. Constantine Exhibit No. 16.)

19 BY MS. DAVIS:

20 Q. I will show you what's been marked as
21 Exhibit 16. Does April 14 of 2009 sound right?

22 A. That sounds right.

23 Q. Why was this Limited Liability Company formed?

24 A. This is -- this is proprietary information.
25 You can -- you can go on the website and look at it

1 and see. But other than that, it's proprietary.

2 Q. You're required to answer it unless it's
3 something that's attorney-client privileged.

4 MR. SAYDAH: Well, that's not necessarily
5 true. But you can ask -- I mean, if you know
6 why the company was formed, you can tell her.

7 THE WITNESS: Huh?

8 MR. SAYDAH: If you know why the company was
9 formed, you can answer the question.

10 BY MS. DAVIS:

11 Q. What's the purpose of the company?

12 A. The purpose of the company was to possibly
13 start franchising some restaurants.

14 Q. And who came up with the idea to start
15 franchising again?

16 A. All three of us.

17 Q. And you have a website,
18 MarylandFriedFranchise.com. Correct?

19 A. Correct.

20 Q. Who created that website for you?

21 A. I can't recall. I honestly can't recall the
22 company.

23 Q. Have you had anyone take an interest in
24 opening a franchise?

25 MR. SAYDAH: Objection. You don't have to

1 answer that. It's what we consider proprietary
2 information and privileged.

3 MS. DAVIS: Then it can be considered
4 Attorneys' Eyes Only. But he still needs to
5 answer the question.

6 MR. SAYDAH: No, he doesn't. It's
7 privileged information.

8 MS. DAVIS: We have a Protective Order in
9 place and under the Protective Order, there's a
10 clause which states that anything that's
11 Confidential, Attorneys' Eyes Only will be
12 marked as such.

13 MR. SAYDAH: There's a difference between
14 privilege under the Rules of Evidence and
15 something that's considered to be confidential.

16 MS. DAVIS: I want to understand exactly why
17 you consider this something that he should not
18 have to testify to. Especially since MTM
19 Enterprises just recently filed a Trademark
20 Application with the two little Maryland Fried
21 Chickens, which is directly relevant to this
22 case.

23 MR. SAYDAH: Okay. So what do you want to
24 know?

25 MS. DAVIS: I want to know why it's

1 considered privileged, his relationship.

2 MR. SAYDAH: Their offer to conduct business
3 or obtaining potential clients to be franchises?
4 The way they do it is something that would be
5 considered a trade secret.

6 MS. DAVIS: Well, they're doing it under the
7 trademark Maryland Fried Chicken, and we're here
8 based on an Opposition Proceeding for the
9 trademark Maryland Fried Chicken that's directly
10 relevant to this case. And if you instruct him
11 not to answer, that's perfectly fine, but I will
12 file a motion with the court.

13 MR. SAYDAH: That's fine.

14 BY MS. DAVIS:

15 Q. I'm going to continue to ask you questions
16 and if you will choose not to answer them, that's
17 fine, but I am going to ask them.

18 How do you split the proceeds for any new
19 franchises that you open up between yourself, Michael,
20 and Matthew?

21 MR. SAYDAH: Objection. You don't need to
22 answer that.

23 BY MS. DAVIS:

24 Q. Does Matthew acquire any of the proceeds?

25 MR. SAYDAH: Objection. You don't have to

1 answer that.

2 BY MS. DAVIS:

3 Q. Do any inquiries about franchises go
4 directly to Matthew McKinney?

5 MR. SAYDAH: If you know, you can answer
6 that one.

7 A. Can you restate the question?

8 Q. Do inquiries about opening up a new Maryland
9 Fried Chicken go to Matthew McKinney?

10 A. They go to all of us.

11 Q. Is there an email address that you have
12 related to MTM Enterprises?

13 MR. SAYDAH: I object. Can you be more
14 specific?

15 BY MS. DAVIS:

16 Q. Do you have an email address where, if
17 somebody were interested in the franchise and they
18 looked on your MarylandFriedFranchise.com website, is
19 there an address that the email would come to you
20 directly?

21 A. No. Me personally?

22 Q. Who does it go to?

23 A. It goes to -- well, I guess whoever -- whoever
24 is on the website that day. Matthew, you know, is in
25 charge of the legal end of it. So --

1 Q. There's an address?

2 A. It goes to him mostly.

3 Q. Info@MarylandFriedFranchise.com. Are you
4 familiar with that email address?

5 A. No.

6 Q. So that's not your email address?

7 A. No.

8 (The document was marked for identification as
9 T. Constantine Exhibit No. 17.)

10 BY MS. DAVIS:

11 Q. I'm going to show you what's marked as
12 Exhibit 17.

13 If somebody sends an email to
14 info@marylandfriedfranchise.com, who does it go to?

15 A. Not me.

16 Q. Does it go to Matthew?

17 A. I believe so.

18 Q. Exhibit 17 are printouts from your website,
19 MarylandFriedFranchise.com, correct? Does this look
20 like your website?

21 A. It does.

22 Q. And this is all publicly available. Correct?

23 A. Yes.

24 Q. If we look at the first page, the second
25 paragraph, it states, "Each Maryland Fried Chicken

1 Franchise will be strengthened by consistency
2 throughout the stores." Do you see that?

3 A. I do.

4 Q. Is there currently any consistency throughout
5 the stores?

6 A. All of the existing stores?

7 Q. Yes.

8 A. Is there a consistency?

9 Q. Yes.

10 A. No.

11 Q. "Uniformity is a key element in the
12 franchise recipe for success." Did I read that
13 correctly?

14 A. I guess you did. I lost you there.

15 Q. "Uniformity is a key element in the
16 franchise recipe for success."

17 A. The second paragraph?

18 Q. Yes. Do you see that? Second sentence,
19 second paragraph.

20 MR. SAYDAH: It starts at the first line
21 there. Right?

22 MS. DAVIS: Yes.

23 THE WITNESS: Oh, okay. Yeah, "Uniformity
24 is a key element in the franchise recipe for
25 success."

1 BY MS. DAVIS:

2 Q. And if you look down at the bottom of that
3 paragraph, where it states, it's the fourth sentence
4 up, "Current locations for expansion in Florida". Do
5 you see that?

6 A. Yes.

7 Q. "Where we are interviewing potential
8 franchisees include the areas of Ocala, Gainesville,
9 Clermont, Orlando, Tampa, Jacksonville, Lake City and
10 Tallahassee, among others, in Georgia, we are
11 interviewing potential franchisees in Macon, Warner
12 Robbins, Atlanta, Cartersville, and other locations."
13 Did I read that correctly?

14 A. You did.

15 Q. Do you intend on contacting the existing
16 restaurants if someone wants to open up a restaurant,
17 one of your new franchises, right down the street?

18 A. They wouldn't -- they wouldn't do that.

19 Q. Okay. So how far away, if I called you
20 today and said, "I want to open up a restaurant in
21 Orlando," where would I be able to -- where would I
22 be allowed to open up a restaurant?

23 MR. SAYDAH: I object to the form.

24 BY MS. DAVIS:

25 Q. Which part of Orlando?

1 MR. SAYDAH: I object to the form.

2 A. Well, it would change in Orlando, because
3 it's a bigger city, more people. If it was a rural
4 area, it would be further apart. In the City of
5 Orlando, it would be closer. But I don't know.

6 Q. Which restaurants are currently in Orlando?

7 A. Marylands?

8 Q. Yes.

9 A. I don't know. I don't know if there are any
10 there.

11 Q. Is the Edgewater?

12 A. Except the, yeah, Edgewater. I don't know
13 if that's considered Orlando. And Union Park is not.
14 I don't think there's any.

15 Q. Let's assume for the purposes of this
16 deposition that the Edgewater location is in Orlando.

17 A. Okay.

18 Q. If somebody wanted to open up a restaurant
19 in downtown Orlando, would you let them?

20 MR. SAYDAH: Objection to the form.

21 BY MS. DAVIS:

22 Q. You can still answer the question.

23 A. That would have to be discussed.

24 Q. With who?

25 A. The other two partners.

1 Q. Would you call the restaurant on Edgewater
2 and ask their permission?

3 MR. SAYDAH: I object to the form.

4 A. I probably would, yes.

5 Q. Have you disclosed to any of the potential
6 franchisees the fact that there is dispute over your
7 ownership of the trademark?

8 MR. SAYDAH: Objection. You don't have to
9 answer that.

10 A. Yes.

11 Q. You have told them that?

12 A. Uh-huh.

13 Q. Have you told them about the other 20-some
14 stores that are operating currently under the
15 Maryland Fried Chicken trademark?

16 MR. SAYDAH: I'm going to object to that.
17 You don't have to answer that, if you don't want
18 to.

19 A. I haven't told anyone.

20 Q. Are they aware that you currently do not own
21 the trademark?

22 MR. SAYDAH: I object to the form. Who, is
23 who aware?

24 BY MS. DAVIS:

25 Q. Are potential franchisees aware that MTM

1 Enterprises and Theresa Constantine do not own the
2 trademark?

3 A. Some are and some aren't.

4 Q. Some are and some aren't?

5 A. Yeah.

6 Q. Some know, some don't?

7 A. Some know, some don't. It depends on how
8 serious it gets.

9 Q. Have there been any new restaurants opened
10 as a franchise through MTM Enterprises?

11 A. No.

12 Q. Was there a person that tried to open a
13 store in Georgia and your attorney sent them a cease
14 and desist letter?

15 MR. SAYDAH: Objection. You don't have to
16 answer that.

17 BY MS. DAVIS:

18 Q. Did you have a personal conversation with
19 Scott Renfroe from Georgia?

20 A. I did not.

21 Q. You never spoke with him on the phone?

22 A. No.

23 Q. You never told him that he had to pay
24 \$50,000 to use the Maryland Fried Chicken name?

25 A. I did not.

1 Q. You never told him that he had to go through
2 MTM Enterprises if he wanted to open up a Maryland
3 Fried Chicken?

4 A. I -- you know, I should say, I mean, I get a
5 lot -- at the restaurant, a lot of people come in, a
6 lot of people inquire. But I don't recall ever
7 saying anything like that to Scott Renfroe. I never
8 heard of him. I don't recall that name.

9 Q. But if somebody wants to open a new Maryland
10 Fried Chicken, do they have to go through MTM
11 Enterprises?

12 MR. SAYDAH: I object to the form.

13 A. No.

14 Q. So I could open one up and not have to pay
15 you any licensing fees or any franchise fees?

16 A. Yeah.

17 Q. Is it your position that MTM now owns the
18 Maryland Fried Chicken trademark?

19 A. No.

20 Q. Who owns it?

21 MR. SAYDAH: I object to the form.

22 A. I don't know.

23 Q. You don't know who owns it?

24 A. Do you mean new stores? I don't know.

25 Q. Who owns the trademark?

1 A. I don't know who owns it. That's kind of
2 why we're here, isn't it?

3 Q. Yes.

4 (The document was marked for identification as
5 T. Constantine Exhibit No. 18.)

6 BY MS. DAVIS:

7 Q. I show you what's marked as Exhibit 18.
8 It's a Trademark Application for -- of a chicken and
9 a little chicken, and it's filed under the owner MTM
10 Enterprises Group. Do you see that?

11 A. I do.

12 Q. That big chicken and little chicken --

13 A. Uh-huh.

14 Q. -- how long has that been used by the
15 different Maryland Fried Chicken restaurants?

16 MR. SAYDAH: I object to the form.

17 A. I don't think anybody is using that. That's
18 just a modern logo that -- a more modern logo that we
19 came up with.

20 Q. So that's not used by any of the current
21 Maryland Fried Chicken restaurants?

22 A. Not to my knowledge.

23 Q. You don't use that at the Leesburg location?

24 A. No.

25 Q. And none of the other locations use that?

1 A. Not to my knowledge.

2 Q. Does MTM Enterprises own or operate any
3 Maryland Fried Chicken restaurants?

4 A. No.

5 Q. Did Theresa give a license to MTM Enterprises
6 Group to use the Trademark Maryland Fried Chicken?

7 MR. SAYDAH: I object to the form.

8 A. I believe so.

9 Q. Is Theresa aware of MTM Enterprises?

10 A. She is.

11 Q. So you believe that she gave you a license?

12 A. I know the paperwork was drawn up. I -- we
13 can go through and -- I believe so. I believe so.
14 I think we went through with that. I'm not a hundred
15 percent.

16 Q. So there is some document where Theresa is
17 allowing MTM Enterprises to use the Maryland Fried
18 Chicken Trademark?

19 A. I believe so.

20 Q. And have you produced that document in this
21 opposition proceeding?

22 MR. SAYDAH: I object to the form.

23 A. There might not be a document. I said I
24 believe. I'm not a hundred percent.

25 Q. If you look at Exhibit 17, page 2. The last

1 sentence of the first full paragraph next to the
2 picture of the woman standing in front of the
3 Maryland Fried Chicken restaurant, where it starts at
4 "after building". Do you see that?

5 A. I do.

6 Q. "After building a successful franchise
7 system, the Constantine brothers sold the company."
8 Do you see that?

9 A. I do.

10 Q. Who did they sell the company to?

11 A. That's -- that's not correct.

12 Q. So this is incorrect, they didn't sell the
13 company?

14 A. That sentence is incorrect.

15 Q. Did they sell the trademark?

16 A. No.

17 Q. Why does it say --

18 A. The sentence is not right.

19 Q. Who wrote this paragraph?

20 A. Not me.

21 Q. Who wrote it, if it wasn't you?

22 A. It must have -- I believe this was Matthew.

23 Q. Did you or your brother or Theresa provide
24 any information to Matthew as to how to draft this
25 paragraph?

1 MR. SAYDAH: I object to the form. You
2 don't have to answer that.

3 BY MS. DAVIS:

4 Q. Okay. The second paragraph says,
5 "Unfortunately, the company was dissolved more than
6 20 years ago with Richard retaining ownership of a
7 Maryland Fried Chicken restaurant in Orlando,
8 Florida."

9 Do you see that?

10 A. Yes.

11 Q. Didn't Angelo retain ownership of a Maryland
12 Fried Chicken restaurant, too?

13 A. Yeah.

14 Q. And Albert, as well?

15 A. Yes.

16 Q. Why isn't that in here?

17 A. I don't know. This is a brief description.

18 Q. Your father also filed a trademark for the
19 Word Mark "Maryland Fried Chicken". Correct?

20 A. Correct.

21 Q. And are you aware of the fact that that was
22 refused?

23 A. I am.

24 Q. Registration?

25 A. Uh-huh.

1 (The document was marked for identification as
2 T. Constantine Exhibit No. 19.)

3 BY MS. DAVIS:

4 Q. This is a copy of that Trademark Application.
5 If you look at the First Use Date, it again says
6 January 1st of 1980. Do you see that?

7 A. Yes.

8 (The document was marked for identification as
9 T. Constantine Exhibit No. 20.)

10 BY MS. DAVIS:

11 Q. And then I'm going to show you Exhibit 20,
12 which is a more recently filed Trademark Application
13 for the same Word Mark, Maryland Fried Chicken, but
14 if you look under the First Use Date, the First Use
15 In Commerce, it says July 1st of 1963. Do you see
16 that? It says 19630701.

17 A. Yes, I'm looking for it. Where is that?

18 Umm, yes.

19 Q. Do you know why, when this application was
20 filed in 2008, the First Use Date was 1980 and now
21 it's 1963?

22 A. No.

23 Q. Were you involved at all with the filing of
24 this more recent Trademark Application?

25 MR. SAYDAH: I object to the form.

1 A. Yes.

2 Q. What was your involvement?

3 A. I told them to do it.

4 Q. Is Theresa aware of this --

5 A. Yes.

6 Q. -- Trademark Application?

7 A. Uh-huh.

8 Q. Did she sign any Affidavit attesting to the
9 First Use Date of July 1st of 1963?

10 A. Not that I'm aware.

11 Q. What was the purpose of filing another
12 Trademark Application for the Maryland Fried Chicken
13 Word Mark?

14 MR. SAYDAH: I object to -- well, I'm going
15 to say that if it involves you giving an answer
16 that includes the content of any communication
17 with your attorney at the time, don't answer.
18 But if it isn't, give an answer, if you can.

19 A. No comment.

20 MS. MEEHLE: I have a question.

21 MS. DAVIS: Go ahead.

22 MR. SAYDAH: Can we finish with her?

23 MS. MEEHLE: All right.

24 MS. DAVIS: Actually, let's take a break, if
25 that's okay.

1 (A recess was taken from 12:27 p.m. to 12:36 p.m.)

2 MS. DAVIS: Back on the record.

3 BY MS. DAVIS:

4 Q. Earlier you said that this new logo that you
5 filed under the MTM Enterprises Group --

6 A. Yeah.

7 Q. -- was a -- what did you call it, a modern?

8 A. The chicken --

9 Q. A new modern?

10 A. -- a modern, it's a more modern version.

11 Q. Can you look back at Exhibit, I think it's
12 12, I'll help you find it, yes, Exhibit 12.

13 A. Uh-huh.

14 Q. If you look at that logo, there are also two
15 little -- there's a big chicken and a little chicken,
16 is there not?

17 A. Yeah.

18 Q. Would you agree that they look surprisingly
19 familiar to the big chicken and little chicken that
20 you filed under MTM Enterprises?

21 MR. SAYDAH: I object to the form.

22 A. I'd agree there's a big chicken and little
23 chicken in both of them. But it looks more modern to
24 me.

25 Q. So who owns the big chicken and little

1 chicken, MTM Enterprises or Theresa?

2 A. I didn't say either one did.

3 Q. I'm asking you who does.

4 A. Huh?

5 Q. I'm asking you who owns it. MTM Enterprises
6 or Theresa?

7 MR. SAYDAH: Objection to the form.

8 A. The -- the restaurant. That would be
9 Theresa.

10 Q. So, Theresa owns the big chicken and little
11 chicken, not MTM Enterprises?

12 MR. SAYDAH: We're talking about the image
13 on exhibit, which exhibit? You need to be clear
14 here.

15 MS. DAVIS: Well, the image that's located
16 on the logo on Exhibit 12, as well as the image
17 on Exhibit 18.

18 MR. SAYDAH: Okay.

19 THE WITNESS: So we're talking about both of
20 these?

21 BY MS. DAVIS:

22 Q. Yes.

23 A. Who owns this logo?

24 Q. Who owns the part of the logo that has the
25 big chicken and the little chicken, Theresa or MTM

1 Enterprises?

2 A. Well, that's exactly why we're all here
3 right now.

4 Q. Who do you think owns that?

5 A. That's why we're arguing over that. Huh?

6 Q. Who do you think owns it, MTM or Theresa?

7 A. I think -- I think she -- I think she's
8 definitely developed some ownership. She was the
9 wife of one of the original founders.

10 Q. So she's developed some ownership.

11 A. Well, I mean, at one time that was theirs.

12 Q. So she can own it and MTM Enterprises can
13 own it?

14 MR. SAYDAH: Objection to the form.

15 Q. Can they both own it?

16 MR. SAYDAH: Objection to the form.

17 A. Can they both own it?

18 Q. Can they both --

19 A. It's --

20 Q. The big chicken and little chicken.

21 A. It might be possible. I don't really know
22 if they can or not.

23 Q. Did you report to the Trademark Trial and
24 Appeal Board these new trademark applications that
25 were filed?

1 A. Did we report to who?

2 Q. The Trademark Trial and Appeal Board.

3 A. I'm not sure. That's attorney stuff.

4 Q. Are you familiar with when C.F.M. was created?

5 A. I think the late seventies, the mid-seventies.

6 Q. Do you know the purpose for their creation?

7 A. The purpose?

8 Q. Yes. Why were they created?

9 A. To service Maryland Fried Chickens.

10 Q. To distribute different types of products?

11 A. Products.

12 Q. What types of products?

13 A. Boxes. All types of products.

14 Q. Napkins?

15 A. Yeah.

16 Q. Forks, knives?

17 A. Yeah.

18 Q. Plates?

19 A. Plates, yeah. Everything. Bags.

20 Q. Do all of these products have either the

21 Maryland Fried Chicken name or the Maryland Fried

22 Chicken logo on them?

23 A. No.

24 Q. Which products do not have a name or logo on

25 them?

1 A. Well, it would probably be easier to say
2 which products do, because there's a lot of them that
3 don't.

4 Q. Which products do?

5 A. The jumbo box. All of the dinner boxes and
6 the take-out boxes have the trademark and logo on
7 them. There might be other products that they have
8 that I'm not aware of. But as far as the ones that
9 we use, it's just the -- it's the boxes, the dinner
10 boxes and the take-out boxes for chicken.

11 Q. And you purchase these products, the
12 Leesburg location purchases these products from
13 C.F.M. Correct?

14 A. We do.

15 Q. And you've done that since inception?

16 A. We have other distributors we purchase them
17 from, too, but not with the logo on it. The only --
18 the only products we purchase with the logo on it is
19 C.F.M.

20 Q. Do you purchase the breading mix from C.F.M.,
21 too?

22 A. Yes. But I know some stores that do not
23 purchase the breading or the boxes --

24 Q. Right. Because not everyone --

25 A. -- from C.F.M.

1 Q. -- does the same thing?

2 A. Correct.

3 Q. It's all different?

4 A. It's all over the place.

5 Q. Do you purchase the coleslaw from C.F.M. as
6 well?

7 A. The slaw dressing, we do.

8 Q. The slaw dressing?

9 A. Uh-huh.

10 Q. If you wanted to have a different Maryland
11 Fried Chicken logo on your boxes, do you have the
12 authority to change what's on the boxes?

13 MR. SAYDAH: I object to the form.

14 A. I believe so.

15 Q. Do you have a business relationship with the
16 company that C.F.M. utilizes to print the logo on
17 boxes?

18 A. I have no idea who they use. I know there
19 are companies that will do it, but I don't know who
20 C.F.M. uses.

21 Q. Have you ever used a different company to
22 print the logo on some other type of product besides
23 the products you purchase from C.F.M.?

24 MR. SAYDAH: Objection to the form.

25 A. I couldn't hear you. We have never used a

1 -- we use C.F.M.'s boxes. Other companies have
2 printed the same -- similar looking boxes with the
3 logo on it, trying to get our business.

4 Q. Okay. What companies?

5 A. I cannot recall the names of them.

6 Q. When was that?

7 A. For the past couple of years.

8 Q. Does the Leesburg location do any type of
9 advertising for the restaurant?

10 A. We do.

11 Q. What type of advertising do you do?

12 A. We -- we advertise in, it's called The Book.

13 Q. Does that --

14 A. That's the only advertisement we do.

15 Q. What is The Book?

16 A. The Book is a coupon book that's through
17 most of Lake County. And...

18 Q. Where is it distributed?

19 A. It's distributed in Mount Dora, Eustis,
20 Leesburg, The Villages, Tavares, Wildwood, you know.

21 Q. Are these all cities in Lake County?

22 A. They're all -- yeah, it's all right around
23 Leesburg.

24 Q. What would you consider your customer base
25 to be; how far out do your customers travel from to

1 come to your location?

2 A. Oh, I don't know. We have a large customer
3 base, we've been there for so long.

4 The majority of it is probably within 15, 20
5 miles. But every day we get people from further out
6 than that.

7 Q. Since 1979, has your father or Theresa
8 opened up any new Maryland Fried Chicken restaurants?

9 A. No.

10 Q. So they haven't expanded their business
11 outside of Leesburg?

12 A. Correct.

13 MS. DAVIS: I have nothing further.

14 * * *

15 CROSS EXAMINATION

16 BY MS. MEEHLE:

17 Q. For the record, I'm Suzanne Meehle, I'm the
18 attorney for The Original Maryland Fried Chicken,
19 LLC, the other opposer in these cases.

20 Going back to your relationship with the
21 Leesburg restaurant, you said that you are a manager
22 slash owner. Correct?

23 A. I stated that, but it's just, manager would
24 be fine.

25 Q. Okay. So you don't consider yourself a

1 partner in the restaurant?

2 A. I do. I mean, that -- it's going to be...

3 Q. When the restaurant makes a profit, do you
4 get a bonus?

5 MR. SAYDAH: I object to the form.

6 A. There's times, yes.

7 Q. When the restaurant loses money, have you
8 ever had to put money into the restaurant yourself?

9 A. Hmm, there have been times, sure.

10 Q. Okay, so you have?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Uh-huh.

14 Q. Have you made any other investment, personally
15 invested in the restaurant?

16 A. I bought equipment.

17 Q. So you personally like put out your credit
18 card?

19 A. I paid cash for it. Well, for that -- no,
20 I'd say no for that restaurant. Usually the business
21 takes care of it. I bought equipment for another
22 restaurant that was going to open. Just gave it to
23 them.

24 Q. You stated that your father had ownership in
25 Apopka and Union Park --

1 A. Yes.

2 Q. -- restaurants? Okay. Do you have or do
3 you know of anyone who would have documents
4 supporting those claims?

5 A. I don't know. I do not have, no. Whether
6 my mother has some old documents, you know, it's
7 pretty common knowledge amongst family members.

8 Q. Okay. What about corporate records for
9 Maryland Fried Chicken, Inc.?

10 A. It's a long time ago. I don't -- I don't
11 have any records.

12 MS. MEEHLE: I think that's it.

13 MR. SAYDAH: I have a couple of things.

14 * * *

15 CROSS EXAMINATION

16 BY MR. SAYDAH:

17 Q. You were being asked questions about the
18 existence of a license between your mother and MTM
19 Enterprises. Is the trademark or the mark for the
20 big chicken, little chicken and Maryland Fried
21 Chicken Dinners To Go or Maryland Fried Chicken, do
22 you know if there is a license agreement between MTM
23 and Theresa Constantine as the representative of your
24 father's estate?

25 MS. DAVIS: I object to the form.

1 MR. SAYDAH: Was it confusing?

2 MS. DAVIS: A little bit.

3 MR. SAYDAH: Yes.

4 MS. MEEHLE: Yes.

5 BY MR. SAYDAH:

6 Q. Do you know if there's a license agreement
7 between MTM Enterprises and Theresa Constantine?

8 A. I do not. I don't think there's one.

9 MR. SAYDAH: Okay. That's it. Anything
10 else? We're going to read. For now I'm going
11 to say no, we won't order a copy.

12 MS. DAVIS: We are ordering.

13 MS. MEEHLE: I'll take a regular size copy.

14 MS. DAVIS: I'll have an original, a mini as
15 my copy. No ASCII.

16 (The deposition was concluded at 12:54 p.m.)

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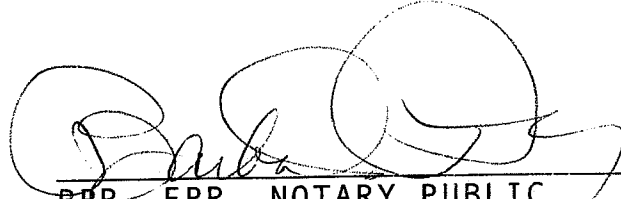
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CERTIFICATE OF OATH

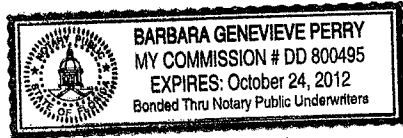
STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Barbara G. Perry, do hereby certify that I placed under oath the Deponent, TONY CONSTANTINE, at the time and place herein designated.

WITNESS MY HAND AND OFFICIAL SEAL this 29th day of March 2011.



RPR, FPR, NOTARY PUBLIC,
STATE OF FLORIDA AT LARGE.




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CERTIFICATE OF REPORTER

I, Barbara G. Perry, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings at the time and place herein designated; and that the foregoing pages 5 through 111, inclusive, constitute a true, complete and accurate transcription of my said stenotype notes.

I further certify that I am not of counsel for, related to, or employed by any party hereto or attorney involved herein, nor am I financially interested in the outcome of this action.

Witness my hand this 29th day of March 2011.



BARBARA G. PERRY, RPR, FPR
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