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1 CIVIL DISTRICT COURT
 2 PARISH OF ORLEANS
 3 STATE OF LOUISIANA
 4
 5 * * * * *
 6 ANTONIO D. ASSUNTO,
 AS ADMINISTRATOR OF
 7 THE ESTATE OF FRANK
 J. ASSUNTO
 8
 9 VERSUS
 10 JOHN SHOUP,
 TELERECORD
 TELEVISION
 11 PRODUCTIONS, LTD,
 TLP OF NEW ORLEANS,
 12 INC., ET AL
 13 * * * * *
 14
 15
 16
 17 Deposition of ANTONIO D. ASSUNTO, taken
 18 on Monday, September 27, 2010, commencing at or
 19 about 10:00 a.m., in the offices of Stanley,
 20 Reuter, Ross, Thornton & Alford, 909 Poydras
 21 Street, Suite 2500, New Orleans, Louisiana
 22 70112.
 23
 24 **COMPLIMENTARY**
 25

3

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1 APPEARANCES:
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 13 BY: STEPHEN M. DORVEE
 14
 15 ALSO PRESENT: John Shoup
 16
 17 Reported by: Barbara S. McGee
 Certified Court Reporter
 State of Louisiana
 18
 19
 20
 21
 22
 23
 24
 25

5

STIPULATION

It is stipulated and agreed by and between Counsel that the deposition of ANTONIO D. ASSUNTO is hereby being taken under the Louisiana Code of Civil Procedure in accordance with the Code.

The formalities of sealing and certification are hereby waived. The witness reserves the right to read and sign the deposition. The party responsible for service of the discovery material shall retain the original.

All objections are to be made in accordance with the Louisiana Code of Civil Procedure.

* * *

Barbara S. McGee, Certified Court Reporter in and for the State of Louisiana, officiated in administering the oath to the witness.

6

ANTONIO D. ASSUNTO, 1041 Aris Avenue, Metairie, Louisiana 70005, after having been first duly sworn, testified on his oath as follows:

MR. DORVEE:

This will be the deposition of Antonio Assunto individually and also as a representative or as the administrator -- let me get that straight -- administrator of the Estate of Frank J. Assunto. And as far as stipulations go, I think all objections except as to form of the question, responsiveness of the answer or privileged will be reserved until the time of the use of the transcript?

MR. HAIR:

Correct.

MR. DORVEE:

Anything else you need?

MR. HAIR:

No, that's it. Generally also privilege objections are --

MR. DORVEE:

Right. Okay. Good. I think we're on the same page.

EXAMINATION BY MR. DORVEE:

7

Q. Good morning, Mr. Assunto. My name is Steve Dorvee, and I represent Mr. Shoup and some of the defendants in this case. Have you ever been deposed before?

A. No.

Q. Let me tell you a few ground rules, not to make you feel uncomfortable but just to let you know how things work. I'm going to ask you a series of questions today and they're designed to find out what information and facts you know either on your own or if there's some difference as the administrator of the Estate of Frank J. Assunto. If I ask you a question and you don't understand it will you please let me know?

A. Yes.

Q. Okay. Also if you need to take a break at any time once you've answered the question you can take a break. It's not designed to be torture --

A. Okay.

Q. -- or an endurance contest. And last but not least and you've started out very, very well, you need to answer audibly. You can't shake your head or nod --

A. Correct. I understand that.

8

Q. And I will go like this if you do and that's not to make fun of you, it's just to --

A. Right.

Q. So we don't mess up the record. Oh, and I said last but not least, one other thing and that is, and this is important when I'm doing a deposition because I tend to trail off sometimes. But do your best to wait until I finish my question before you answer it because she can only take one person at a time. Does that work?

A. That works.

Q. All right. Please state your name and address for the record.

A. My name is Antonio Deano Assunto. My address is 1041 Aris Avenue, Metairie, Louisiana 70005.

Q. And how old are you?

A. Right now I'm 51.

Q. When is your birthday?

A. December 2nd.

Q. What year were you born?

A. 1958.

Q. I should be able to figure that out since I was born in 57. How are you employed

1 currently?
 2 **A. I'm self employed.**
 3 **Q.** What do you do?
 4 **A. I'm a printer. I have a printing**
 5 **business.**
 6 **Q.** Where is that printing business
 7 located?
 8 **A. It's out in Metairie.**
 9 **Q.** How long have you been in that
 10 position?
 11 **A. Twenty-six years now.**
 12 **Q.** And would you take me just through your
 13 educational background starting with your
 14 graduation from high school.
 15 **A. That's it. I graduated from high**
 16 **school and that's it.**
 17 **Q.** Where did you graduate from?
 18 **A. East Jefferson High School, 1977.**
 19 **Q.** I was going to guess at '77. Okay.
 20 And you are a representative of the Estate of
 21 Frank J. Assunto, correct?
 22 **A. That's correct.**
 23 **Q.** And how did you come to be in that
 24 position?
 25 **A. I just asked my family if I could be**

1 **the administrator for my father's estate.**
 2 **Q.** And you brought this lawsuit on behalf
 3 your father's estate, correct?
 4 **A. That is correct.**
 5 **Q.** And you brought this lawsuit about 26
 6 years after your dad died; is that -- was it
 7 your dad?
 8 **A. It was my father, correct.**
 9 **Q.** -- after your dad died, right?
 10 **A. Correct.**
 11 **Q.** And just so I'm clear as to who
 12 benefits from the estate should the estate
 13 prevail in this lawsuit to whom would the
 14 proceeds recovered from John Shoup or any
 15 other --
 16 **A. It would go --**
 17 **Q.** Go ahead.
 18 **A. It would go to the heirs of Frank**
 19 **Assunto and Freddie Assunto.**
 20 **Q.** And who are the heirs? And I guess for
 21 purposes of discussion I'm not asking for every
 22 generation just the people in I guess your
 23 generation. Is there anybody that's from a
 24 previous generation that's still living?
 25 **A. No.**

1 **Q.** So the heirs of Freddie and the heirs
 2 of Frank, right?
 3 **A. Correct.**
 4 **Q.** And who are the heirs of Freddie?
 5 **A. Freddie's heirs starting with the**
 6 **oldest is Mike Assunto.**
 7 **MR. HAIR:**
 8 Real quickly I just want to put an
 9 objection on the record. Obviously to the
 10 extent he's answering factual questions I just
 11 want to point out that he might not legally
 12 understand who would qualify as an heir but
 13 obviously go ahead and answer.
 14 **EXAMINATION BY MR. DORVEE:**
 15 **Q.** He's right. I'm not asking you to
 16 opine as a lawyer or judge. Just tell me --
 17 **A. Right.**
 18 **Q.** -- what you understand.
 19 **A. Who I represent as --**
 20 **Q.** Right --
 21 **A. -- what I consider to be the heirs?**
 22 **Q.** Correct.
 23 **A. Okay. Mike Assunto is No. 1, No. 2 of**
 24 **Freddie's heirs would be Jan Assunto Robichaux.**
 25 **Q.** Okay.

1 **A. And her last daughter is Angela Assunto**
 2 **Soulas, S-O-U-L-A-S.**
 3 **Q.** Do you have any idea what their ages
 4 are?
 5 **A. Mike 53, Jan 51, and Angela, she was**
 6 **born in 1966 so that puts her, I don't know, I**
 7 **guess at -- shoot. I've got to figure that one**
 8 **out.**
 9 **Q.** 44?
 10 **A. Yeah, about 44.**
 11 **Q.** Okay. Those are the heirs of Freddie.
 12 How about Frank?
 13 **A. Well, starting with Frank, Jr., Frank**
 14 **Joseph Assunto, Jr.**
 15 **Q.** Okay.
 16 **A. And Gina Maria Glenn --**
 17 **Q.** Now is Frank --
 18 **A. -- or Gina Assunto Glenn.**
 19 **Q.** What's --
 20 **A. Frank, Jr. is Frank, Jr., my dad's son.**
 21 **Q.** Okay. Is he --
 22 **A. He's dead.**
 23 **Q.** I'm sorry. My apologies. When was he
 24 born?
 25 **A. He was born 1955 Christmas day.**

13

1 Q. Frank, Jr. And then who?
 2 A. **And then Gina Assunto Glenn. She was**
 3 **born 1957, May 31st.**
 4 Q. Okay.
 5 A. **And there's me, Antonio Deano Assunto,**
 6 **December 2, 1958. And then Joseph Juan Assunto,**
 7 **born July 7, 1960.**
 8 Q. You are good to remember all those
 9 birthdays.
 10 A. **Well, we're a close family.**
 11 Q. Well, good.
 12 A. **Very close.**
 13 Q. Even so.
 14 A. **I may not be able to add the numbers**
 15 **and the age anymore but I remember the days.**
 16 **Plus we're holiday kids.**
 17 Q. Yeah. You remembered most of the
 18 birthdays so on and so forth. Okay.
 19 Why did you file this lawsuit?
 20 A. **Well, it came to my knowledge that**
 21 **there was somebody using my father's legacy to**
 22 **promote a band.**
 23 Q. When you say someone was using your
 24 father's legacy what do you mean?
 A. **Well, advertising and portraying a band**

14

1 **considered to be the continuation of my father's**
 2 **band, which in our family's mind ended when he**
 3 **died in 1974.**
 4 Q. Okay. And when did this come to your
 5 attention, do you recall? Better question, how
 6 did this come to your attention?
 7 A. **I got a phone call from somebody out**
 8 **the clear blue that asked me a question.**
 9 Q. Do you recall who that was?
 10 A. **Yes, Charlie Catalano.**
 11 Q. Charlie Catalano.
 12 A. **But I did not know him before the phone**
 13 **call. He called me out of the clear blue.**
 14 Q. And tell me about that phone call as
 15 best you can recall it.
 16 A. **Well, he asked me a simple question or**
 17 **two questions actually. The first question was**
 18 **was I the family from the Assunto Dukes of**
 19 **Dixieland the original Dukes and I told him yes.**
 20 Q. Okay.
 A. **And I asked him why. And he said**
 22 **because he wanted to know if he could lease the**
 23 **name Dukes of Dixieland to start a better band**
 24 **than the one that was performing at that time.**
 25 **He said they didn't sound very well, he thought**

15

1 **he could portray the heritage of my family a lot**
 2 **better.**
 3 Q. And --
 4 A. **And my answer to him was, "We have no**
 5 **connection to that band."**
 6 Q. All right.
 7 A. **And then he said to me, "That's not the**
 8 **way it's portrayed. I'll show you." And he**
 9 **sent me a press kit.**
 10 Q. Where were you at the time?
 11 A. **Standing in my kitchen.**
 12 Q. When was this?
 13 A. **Had to be -- I can't give you the exact**
 14 **date but I know it was late '99, 1999.**
 15 Q. And he sent you a press kit; is that
 16 right?
 17 A. **Yes, sir. He actually sent me one from**
 18 **an oil company that his brother-in-law worked**
 19 **for out of Houston.**
 20 Q. I'm sorry. What?
 21 A. **His sent me one from -- his**
 22 **brother-in-law worked in Houston in an oil**
 23 **company.**
 24 Q. In an oil company. And the oil company
 25 had the press kit?

16

1 A. **Well, they requested it because he was**
 2 **trying to prove to me that somebody out there**
 3 **was using my dad's legacy. And I told him**
 4 **that's not true.**
 5 Q. Now, prior to this time you knew that
 6 there was a band called the Dukes of
 7 Dixieland --
 8 A. **Oh, yeah.**
 9 Q. -- in New Orleans?
 10 A. **Yeah, for sure.**
 11 Q. How long had you known that they were
 12 in New Orleans?
 13 A. **I have no idea. I don't know. I never**
 14 **paid much attention to it.**
 15 Q. Why not?
 16 A. **Because my dad was dead. He wasn't in**
 17 **the band anymore. There was no band.**
 18 Q. Let me rephrase the question. I want
 19 to make sure we're clear. Between the time your
 20 father died -- which was in 1974?
 21 A. **'74, February 24th -- 5th, excuse me.**
 22 Q. -- and 1999 when you got the phone call
 23 you were aware there was a band --
 24 A. **Correct.**
 25 Q. -- called the Dukes of Dixieland?

1 Okay.

2 **A. Correct.**

3 **Q.** What did you know about the band the
 4 Dukes of Dixieland for that period from '74 to
 5 '99, if anything?

6 **A. Nothing. I was a young kid when my
 7 father died. We were taking care of my mother.
 8 That was our main goal. She was a brain tumor
 9 victim.**

10 **Q.** So you just knew that they were
 11 performing?

12 **A. That there was a band, that's all I
 13 knew.**

14 **Q.** Did you know they --

15 **A. But had no connection to my family as
 16 far as I understood it to be in my own thoughts.
 17 Like I said we never pursued anything because we
 18 were taking care of my invalid mother.**

19 **Q.** You said: We never pursued things.

20 **A. My brothers, my sisters.**

21 **Q.** According to your understanding did
 22 they know about the Dukes of Dixieland --

23 **A. No.**

24 **Q.** -- continuing to perform --

-- **A. There was --**

1 **Q.** -- between '74 and '99?

2 THE COURT REPORTER:

3 Wait. One at a time.

4 THE WITNESS:

5 No. Not as far as -- I mean, no
 6 more than I did, let's put it that way. Like I
 7 said we were tube feeding my mother and cleaning
 8 bed sores and doing things you do with an
 9 invalid for five years.

10 EXAMINATION BY MR. DORVEE:

11 **Q.** When did your mom pass away?

12 **A. December 21, 1978.**

13 **Q.** Just so I'm clear what is your mother's
 14 name?

15 **A. Joan Bartlett Assunto, two Rs, two Ts.**

16 **Q.** Joan Bartlett Assunto?

17 **A. Correct.**

18 **Q.** So I guess Betty Assunto was your aunt?

19 **A. My aunt.**

20 **Q.** She was Fred's wife?

21 **A. That is correct.**

22 **Q.** Unlike you the odds of me keeping that
 23 straight for more than about an hour are very
 24 unlikely. So if I make a mistake, just correct
 25 me.

1 **A. Oh, that's no problem.**

2 **Q.** After your mother passed you were also
 3 aware that the Dukes were playing, correct?

4 **A. Correct.**

5 **Q.** Were you aware that they had a place
 6 called Duke's Place in New Orleans?

7 **A. Had no idea.**

8 **Q.** I don't want to know any conversations
 9 that you had with an attorney about filing this
 10 lawsuit. But did you have conversations with
 11 other people other than an attorney about filing
 12 a lawsuit on behalf of the estate?

13 **A. Just with my siblings. That's why I
 14 became the heir -- I mean the administrator,
 15 excuse me.**

16 **Q.** Tell me about those conversations. How
 17 did they come up?

18 **A. I just asked them, I said, "Look,
 19 somebody is using our name or heritage, I should
 20 say, and the legacy of our father without our
 21 permission. In order to pursue it one of us has
 22 to be in charge." And none of them cared enough
 23 to do anything about it or to object to it I
 24 should say so I took the position I guess you'd
 25 say.**

1 **Q.** So they didn't object to you doing it?

2 **A. No, not at all.**

3 **Q.** Were they excited about it?

4 **A. Well, they said, you know -- my father
 5 had been dead. We had a rough young life. They
 6 didn't want to revisit it.**

7 **Q.** Without dredging up bad memories can
 8 you give me sort of an overview? When you said
 9 you had a rough young life, what do you mean?

10 **A. Well, your father dies one morning very
 11 quickly, overnight basically. You've got a
 12 mother who's in a wheelchair who can't feed
 13 herself, you're 15 years old and you got
 14 nothing.**

15 **Q.** I'm showing you a document we've
 16 labeled as Exhibit 1 to your deposition. What
 17 is that?

18 **A. It's a death certificate for my father.**

19 **Q.** And that's a current and correct copy
 20 of that death certificate as far as you know?

21 **A. That's the one that we consider his
 22 death certificate, yes.**

23 **Q.** Okay. On the back of this -- I guess
 24 that document doesn't belong?

25 **A. No, no.**

1 **Q.** Let's take that off and just detach it.
 2 So Exhibit 1 is a one-page document. Exhibit 1
 3 shows your dad died in 1974 of cardiorespiratory
 failure due to cirrhosis of the liver --
 5 cirrhosis; is that right?

6 **A. Correct, February 25th.**

7 **Q.** February 25th. If you can just take a
 8 look at that other page that was attached real
 9 quick.

10 **A. Oh, yeah.**

11 **Q.** That shows -- what does that show, do
 12 you know?

13 **A. From my understanding it looks like pay
 14 statements or payout payroll for the band at the
 15 time right before my father died.**

16 **Q.** So Tom Ebert, E-B-E-R-T --

17 **A. Right. He was a musician if I'm not
 18 mistaken, Ebert.**

19 **Q.** And Gardner and Rubin and Gamble, so
 20 forth, were all those musicians as far as you
 21 know?

22 **A. As far as I know. Now, those names
 23 aren't as familiar to me as Harold Cooker is and
 24 Tom Ebert. Those two names I recognize very
 easily.**

1 **MR. DORVEE:**
 2 Just to clarify the record we've
 3 been talking about a document labeled as Exhibit
 4 No. 2.

5 **EXAMINATION BY MR. DORVEE:**

6 **Q.** So those were the musicians in the band
 7 shortly before your father passed away, as far
 8 as you know; is that right?

9 **A. Yeah, I'm going to assume so. It looks
 10 like it says December 31st. So that would be
 11 within two months of his death.**

12 **Q.** How long was he in the hospital before
 13 he passed away?

14 **A. My memory is a little blurry. No more
 15 than two days. He had just flown in from out of
 16 town. He collapsed on stage.**

17 **Q.** You don't have copies of this one. I'm
 18 not really sure why. But you can look on it.
 19 I'm only going to ask a couple of questions
 20 about it. Do you recognize that document we've
 labeled as Exhibit 3 to your deposition?

21 **A. It looks like this is where I -- I
 22 guess where I'm named the administrator of the
 23 estate; is that right?**

24 **Q.** That's what it looks like to me.

1 **A. Yes. Yes, that's John Keller, correct.**

2 **Q.** And you signed that document?

3 **A. Yes, sir.**

4 **Q.** Who was or is John Keller?

5 **A. John Keller was referred to me --
 6 actually he was a customer of mine that I did
 7 some printing for. He was a lawyer and that's
 8 when he referred Rick Stanley to take the case.
 9 So he initiated the paperwork for me to be
 10 administrator. He set up -- told me what to do
 11 to get my brothers and sister to, you know,
 12 agree.**

13 **Q.** Is Mr. Keller some sort of trust and
 14 estates lawyer, does wills and things?

15 **A. No, not that I know of.**

16 **Q.** Is he still around?

17 **A. Yeah, he's still around, I guess. I
 18 don't think he practices law anymore, though.**

19 **Q.** Where is she located, do you know?

20 **A. I have no idea.**

21 **Q.** When you were dealing with him where
 22 was he?

23 **A. Well, he was located in New Orleans.
 24 His office was here in New Orleans and that was
 25 like over 10 years ago.**

1 **Q.** In this petition it references an
 2 inventory that we've attached.

3 **A. What is inventory?**

4 **Q.** Give it back. Let me show you. I'm
 5 sorry. Paragraph 5 says, "Petitioner attaches
 6 hereto a sworn descriptive list of decedent's
 7 assets." Do you see that?

8 **A. Yes.**

9 **Q.** Let me show you a document labeled as
 10 Exhibit No. 4. And is that -- I see this
 11 document is signed by you. Is that the list of
 12 the assets of your father that you submitted
 13 with that petition?

14 **A. I assume it was, yes.**

15 **Q.** And at the time was that the best
 16 understanding of what the assets were?

17 **A. Correct.**

18 **Q.** Now, it lists items of property and
 19 then it says, "debts of the succession." Are
 20 you aware of any other debts that were owed by
 21 your father's estate as of the date of this
 22 document which was August 4, 1999?

23 **A. No.**

24 **Q.** Any other property?

25 **A. No.**

25

1 **Q.** And my understanding is your father
2 died without a will, correct?

3 **A.** Correct.

4 **Q.** And was your mother able to do anything
5 with regard to the estate?

6 **A.** **No, she didn't talk or walk. She
7 couldn't even feed herself and we ended up
8 having to tube feed her.**

9 **Q.** And who handled the family's affairs
10 after your father passed away?

11 **A.** **There really was no affairs to take
12 care of except taking care of my mother. So us
13 kids took care of her and that was it.**

14 **Q.** Any business, any winding up of the
15 estate, anything like that?

16 **A.** **There was no business. I mean he was
17 dead, the band was over.**

18 **Q.** Now, after your band -- your band.
19 After your father passed away, your Aunt Betty
20 sang with the Dukes of Dixieland, correct?

21 **A.** **I didn't know that firsthand. I didn't
22 find out till later, years later.**

23 **Q.** How did you find out she had sung with
24 the Dukes of Dixieland?

25 **A.** **I don't really recall, to be honest**

26

1 **with you. It was just something that just
2 filtered into the family that we found out years
3 and years later that she had gone off and played
4 with the Dukes or the Shoup's Dukes as they were
5 called.**

6 **Q.** When you say "the Shoup's Dukes as they
7 were called," what do you mean? Who called them
8 the Shoup's Dukes, I guess?

9 **A.** **Well, I guess we did after we found out
10 there was a band calling themselves the Dukes of
11 Dixieland. We never considered them the Assunto
12 Dukes.**

13 **Q.** So there was the Assunto Dukes and
14 there were the Shoup Dukes?

15 **A.** Right.

16 **Q.** You said it filtered into the family.
17 When did it filter into the family that she had
18 sung with the --

19 **A.** **That would be hard.**

20 **Q.** -- Shoup Dukes?

21 **A.** **There's really no telling. I mean,
22 there was so many things going on in our lives
23 just trying to survive. The band was of no
24 consequence to our family or us kids at that
25 time. It didn't really -- you know, at that**

27

1 **time my father died, the family kind of fell
2 apart. So we were not as close as we had been
3 before.**

4 **Q.** So there wasn't any band up until
5 the time -- I guess there wasn't any band,
6 Assunto band after your father passed away,
7 right?

8 **A.** **Oh, no. That's correct. There was no
9 band. I mean, my dad was dead. Freddie was
10 dead eight years prior to that. So Freddie and
11 Betty were out of the loop for almost 10 years,
12 Betty out of it since the mid '50s. She wasn't
13 involved in the Dukes.**

14 **Q.** Going back to when you learned that she
15 had been with the Dukes was that, you know,
16 before you brought this lawsuit, after you --

17 **A.** **Oh, it was before. I can almost tell
18 you that it had to be right before my
19 grandfather died.**

20 **Q.** Okay. Who was your grandfather?

21 **A.** **Papa Jac Assunto. His real name was
22 Anthony Jacinto Assunto. He was known as Papa
23 Jac, though.**

24 **Q.** Papa Jac Assunto. Was he a member of
25 the band?

28

1 **A.** **Well, he performed with the band.
2 Being a member of a band is not the same as
3 performing I guess. I mean, I shouldn't say --
4 in other words, he had no stake in the band. He
5 performed as a fill in. Betty got pregnant in
6 1954 for her son Michael, she didn't want to
7 sing anymore. They needed a special person up
8 on stage. Instead of Betty they asked Papa Jac
9 to quit teaching here in New Orleans -- he was a
10 Redemptorist band director. So he quit that to
11 perform with his sons. But the band was known
12 as Frank and Freddie Assunto's Dukes of
13 Dixieland.**

14 **Actually to clarify that a little
15 better it was known as Frank Assunto and the
16 Dukes of Dixieland. Freddie really never wanted
17 his name up and all that stuff.**

18 **Q.** And you said you learned that Betty had
19 sung with the band around the time your
20 grandfather passed away?

21 **A.** Right.

22 **Q.** When did he pass away?

23 **A.** **Now you're taxing me. I'd like to say
24 1983. I know he was 79 years old when he died.
25 He was born on All Saints' Day November 1st I**

1 think it is 1905. So I think he was 79. So it

2 would have been 1983 approximately.

3 Q. How are you able to link those two
4 events?

5 A. Because I remember him being -- he was
6 going blind from glaucoma and he was dying. And
7 I remember he was upset. He blurted out
8 something about Betty how -- something about how
9 could she have performed with that guy John
10 Shoup. And I didn't go into it with him because
11 he was so upset and I wasn't going to upset him
12 any more than he was.

13 Q. Did anybody go into it with him?

14 A. Not in front of me. Not that I know
15 of.

16 Q. Did you ask him who John Shoup was
17 or -- better question. I'm not trying to be --

18 A. No, that's all right.

19 Q. -- vague.

20 A. No.

21 Q. He blurted out something about Mr.
22 Shoup. At that time did you have any idea who
23 Mr. Shoup was?

24 A. No. He just mentioned his name. He
25 was more upset with saying Betty, how could

1 Betty do this to the family. And that was about
2 it. I saw how it upset him so I just left well
3 enough alone and didn't respond.

4 Q. But he was upset that Betty had sung
5 with the Dukes of Dixieland under John Shoup?

6 A. Correct.

7 Q. And you understood that at the time?

8 A. Well, it dawned on me that: Wow, Betty
9 did that. But I hadn't seen my Aunt Betty in a
10 long, long time at that point. We used to see
11 each other all the time when my dad was alive.
12 But once he died, things changed. We were too
13 busy taking care of my mother for the next five
14 years so we kind of distanced ourselves.

15 Q. Right. By the time your grandfather
16 died, I guess your mother had died as well?

17 A. Correct. About four years earlier I
18 think.

19 Q. And at that point you knew about the
20 Dukes of Dixieland were performing?

21 A. Well, that's when I heard there was a
22 band performing as the Dukes of Dixieland, you
23 know, approximately around that time, I guess.
24 But I was too busy getting ready to start my own
25 printing business. I think I started in '85 or

1 '84, '85.

2 Q. Just so I'm clear is your lawsuit about
3 the fact that Mr. Shoup is using the name Dukes
4 of Dixieland or is your lawsuit about the fact
5 that he's claiming some sort of affiliation with
6 your relatives?

7 A. The latter of the two.

8 Q. Okay. Why are you upset about that?

9 A. Because my father was dead and
10 everything he worked for was being, how do I
11 say, scavenged on by other people. And I felt
12 that they were never going to get their proper
13 recognition for their accomplishments in music
14 and their contributions to the City of New
15 Orleans through that music if there was somebody
16 else out there pretending to be their lineage or
17 the continuation of their heritage and legacy of
18 the music they performed. I didn't think that
19 was right. I still don't.

20 Q. How did you plan to promote the
21 heritage and legacy of your family?

22 A. Well, once they're dead maybe
23 somebody -- the proper acknowledgments of their
24 accomplishments would come to the forefront.
25 And prior to my grandfather's death, right

1 before he died, he gave me all his old
2 recordings. And I sat back and listened to the
3 music and realized that they had performed
4 through various different musical I guess as you
5 would say genres in the sense of recordings from
6 the old 78s to the 33s to the LPs and things
7 like that. First band to record in stereo,
8 performed with all the greats. I mean, the
9 history of the legacy of the family of the band
10 themselves as they were growing up as teenagers
11 meant something to me. Then I realized it's not
12 right that the public not know the real facts
13 that Frank and Freddie were famous musicians and
14 came from the city of New Orleans, started out
15 as teenagers and became world-renowned and
16 internationally famous. Performed on every
17 television show with Louis Armstrong, Duke
18 Ellington, all the greats of their time. And I
19 never thought that that was right that they be
20 covered up by somebody else utilizing my
21 family's legacy.

22 Q. I guess was it covered up? My
23 understanding was it was mentioned that the
24 Dukes had started in 1947 with your family and
25 had continued on.

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1 **A. No. I'm talking about with somebody**
 2 **else continuing it on they will never get their**
 3 **proper accolades, in my mind. Because we wanted**
 4 **my father to be dead and have a trophy saying it**
 5 **was their life, not to have somebody else living**
 6 **that life through his own -- for his own reasons**
 7 **or benefits.**

8 **Q. How have you been damaged by the use of**
 9 **that legacy by Mr. Shoup?**

10 **A. Well, that's kind of broad question.**

11 **Q. Yeah, it is. You want to give me like**
 12 **ways or whatever, we can break it down.**

13 **A. Well, I mean, what I just stated before**
 14 **about the family never getting proper**
 15 **acknowledgement for their contributions would be**
 16 **No. 1. Somebody else out there profiting off**
 17 **their recordings and re-releasing unreleased**
 18 **recordings, which I consider bootlegging but I**
 19 **don't know if that's the legal term.**

20 **Q. Are you saying Mr. Shoup did that or**
 21 **somebody else did that?**

22 **A. Oh, Mr. -- your client did that, Mr.**
 23 **Shoup.**

24 **Q. He released bootleg recordings?**

25 **A. Well, unreleased -- previously**

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1 **unreleased recordings by an artist without their**
 2 **permission and acknowledgments and what's it**
 3 **called, I guess acknowledging who the members of**
 4 **the band are at that time through those**
 5 **recordings and putting your own band picture on**
 6 **it would make it a bootleg.**

7 **Q. Okay. Tell me about that. Do you**
 8 **recall what the --**

9 **A. Well, I didn't find out about that**
 10 **until after his case started. So I came across**
 11 **all this information since this case has been**
 12 **brought. This is something I didn't know**
 13 **before.**

14 **Q. Okay. Tell me -- you said you learned**
 15 **there was a bootleg -- was it a bootlegged CD, a**
 16 **bootlegged cassette?**

17 **A. Well, I think it may have been -- you**
 18 **can ask your own client later. But it may have**
 19 **been on an album on Sandcastle Records that he**
 20 **had something to do with, if I'm not mistaken.**
 21 **There are unreleased recordings of Louis**
 22 **Armstrong and my father and my Uncle Freddie**
 23 **first recorded in Chicago and also in New York.**
 24 **And they were not supposed to be released. He**
 25 **somehow got the masters and released them**

35

1 **without anybody's permission and profited. So**
 2 **that's one way we're damaged.**

3 **Q. How do you -- where did you find the**
 4 **masters, do you know?**

5 **A. I have no idea where he got them from.**

6 **Q. Do you know who owned the copyright in**
 7 **those masters?**

8 **A. It would have been Audio Fidelity and**
 9 **the Assunto Dukes, the Assunto brothers.**

10 **Q. How do you know that?**

11 **A. Because they were under a contract with**
 12 **Audio Fidelity when those recordings were made.**

13 **Q. What did the Audio Fidelity contract**
 14 **provide?**

15 **A. What do you mean?**

16 **Q. Have you seen the Audio Fidelity**
 17 **contract?**

18 **A. Yes.**

19 **Q. And who owned the rights of the**
 20 **recordings under that contract, if you know?**
 21 **I'm not asking you --**

22 **A. I don't know legally. I wouldn't want**
 23 **to step on that turf right now because I don't**
 24 **know legally. I would assume, you know, either**
 25 **Audio Fidelity, which is a defunct company now,**

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1 **would to a certain degree but also in the**
 2 **contract it states something to the effect that**
 3 **the Assunto brothers, the artists, would own**
 4 **under lien those rights if Audio Fidelity were**
 5 **to go bankrupt or merge or Sid Fry wasn't in**
 6 **control of the company. And Sid Fry was the**
 7 **owner of the company.**

8 **Q. Do you know did Frank and Freddie get**
 9 **an advance from Audio Fidelity?**

10 **A. Yes.**

11 **Q. Was that advance ever fully paid off?**

12 **A. Yes, it was, as far as I know. I**
 13 **couldn't say that I have a document that shows**
 14 **that. But they continued to perform and record**
 15 **for them for years.**

16 **Q. So you don't know if it was paid off,**
 17 **you just think it was?**

18 **A. I assume it was.**

19 **Q. Okay. Aside from the Louis Armstrong**
 20 **recordings that you mentioned are there any**
 21 **other bootlegged recordings that you're aware of**
 22 **that Mr. Shoup has released?**

23 **A. Not that I know of that would be called**
 24 **bootleg. But I'm sure that there are. I know**
 25 **there's another set he did with -- I forget**

1 **which record company -- maybe MCA or something**
 2 **where they put a collection set together with**
 3 **Pete Fountain on some of his songs, on the album**
 4 **or the CD along with the Dukes, along with I**
 5 **think Louis Armstrong. It was a collection set.**
 6 **And I think your client had something to do with**
 7 **that also. But then again I'm not privy to all**
 8 **the inside knowledge there.**

9 **Q.** So you don't know if he made any money
 10 off of these recordings or not?

11 **A.** **I don't know if he made any money or**
 12 **not. I have no idea. I know we didn't.**

13 **Q.** Now, there were recordings that your
 14 father and Freddie made long before John Shoup
 15 got involved, right?

16 **A.** **Oh, yeah. They had 28 albums I think.**
 17 **About 28.**

18 **Q.** And --

19 **A.** **Excuse me. Not counting some of the**
 20 **early 78s. Because in those days in the early**
 21 **'50s 78s were kind of two sided. Only like a**
 22 **local record company called Bandwagon label was**
 23 **owned by Roger Wolf, they recorded for him.**
 24 **Okay label, a lot of smaller labels where they**
 25 **only recorded two songs, one on each side on a**

1 **78 rpm record.**

2 **Q.** And are any of those albums being sold
 3 today?

4 **A.** **EMI I think sells some of the early 78s**
 5 **that have been transferred over to CD now.**

6 **Q.** Any others?

7 **A.** **The RCA album which is now -- it was**
 8 **RCA originally then it went to BMG, then it went**
 9 **to Sony Records. So Sony owns, if I'm not**
 10 **mistaken, 13 albums at least.**

11 **Q.** My question was are any of those
 12 currently being marketed?

13 **A.** **I can't say. Sony records has got**
 14 **royalties out there I think. But I don't know**
 15 **which records that they're selling. I'm not**
 16 **privy -- I don't have an itemized list of**
 17 **anything.**

18 **Q.** Okay. So they may be selling
 19 something, you just don't know?

20 **A.** **Correct.**

21 **Q.** But you're not selling any
 22 independently?

23 **A.** **No.**

24 **Q.** So the Assunto estate does not sell
 25 record albums?

1 **A.** **No.**

2 **Q.** But you believe that there are
 3 royalties being held by Sony that should be paid
 4 to the estate?

5 **A.** **Correct.**

6 **Q.** Do you know after Fred Assunto passed
 7 away did your father pay any moneys over to
 8 Betty Assunto or her family?

9 **A.** **Not that I know of. I can almost say**
 10 **no for a fact but I don't want to say anything**
 11 **unless I know for 100 percent. I'm pretty sure**
 12 **it was over -- Betty collected a life insurance**
 13 **policy and Social Security and she never worked**
 14 **again.**

15 **Q.** I'm sorry that she collected a life
 16 insurance policy and --

17 **A.** **And Social Security from Freddie,**
 18 **correct. I mean, she was raising three kids**
 19 **herself.**

20 MR. DORVEE:

21 Off the record.

22 (Off-the-record discussion held.)

23 EXAMINATION BY MR. DORVEE:

24 **Q.** Now, you learned that Betty Assunto had
 25 sung with a band formed by John Shoup, right?

1 **A.** **Correct.**

2 **Q.** And that band was called the Dukes of
 3 Dixieland, right?

4 **A.** **Correct.**

5 **Q.** Do you know why she and the band parted
 6 ways?

7 **A.** **She never really discussed any of that**
 8 **with us. I mean that was something that we**
 9 **never -- I mean, she didn't come running to us**
 10 **and tell us anything. It just never worked that**
 11 **way.**

12 **Q.** Okay. According to your understanding
 13 prior to the time that you became the executor
 14 of the Assunto estate did anyone from the
 15 Assunto family object to John Shoup's use of the
 16 term "Dukes of Dixieland"?

17 **A.** **No.**

18 **Q.** Okay. So you're not aware of any
 19 complaints that were made by anybody?

20 **A.** **No.**

21 **Q.** I'd like to show you a document labeled
 22 as Exhibit No. 5 and ask you to please tell me
 23 what that document is.

24 **A.** **It looks like the quitclaim for Mike**
 25 **and Jan and Angela to have me as administrator**

1 of their -- of the estate.

2 Q. Those are your siblings, correct?

3 A. Well, those are my cousins.

4 Q. Those are your cousins. I'm sorry.

5 A. Yes. That's Freddie's children.

6 Q. I told you I wouldn't be able to keep
7 it straight.

8 A. That's okay.

9 Q. Those are your cousins. Now, in this
10 assignment it talks about -- it says the Dukes
11 of Dixieland as the band. It talks about the
12 trade name, any music of the band and royalty
13 payments, so on, the likeness of the band and
14 the history of the band. Was Mr. Shoup using
15 the likeness of the band according to your
16 understanding?

17 A. It depends. I don't understand what
18 "likeness" means. Does it mean, you know, a
19 picture of them or does it mean to you, you
20 know, the history of the band? He was using --

21 Q. Picture.

22 A. Not that I know of, not an individual
23 picture, no.

24 Q. He was using the history of the band?

25 A. He was using their accomplishments and

1 legacy and history, correct.

2 Q. I guess my question is if Mr. Shoup had
3 continued on with the Dukes of Dixieland
4 wouldn't they have just faded into obscurity? I
5 mean, who would have been promoting the original
6 Dukes if the new Dukes weren't out there playing
7 music?

8 A. Well, that was the whole point. The
9 point is that they were dead. The band should
10 have been dead. Somebody picking up the name is
11 one thing. But picking up the name and
12 attaching my father's legacy to it never gives
13 them -- I'll go back to what I said earlier --
14 gives them a way to get acknowledged for their
15 accomplishments because people will consider
16 that the continuation of the life of the Assunto
17 Dukes.

18 Q. Okay.

19 A. And until they're dead, totally gone
20 dead, then they never will be acknowledged
21 correctly.

22 Q. I'm going to show you another document
23 labeled as Exhibit No. 6. What is this
24 document?

25 A. It a quitclaim for Angela Assunto

1 Soulas because she was in charge of Betty's
2 rights. Betty had had a stroke or a heart
3 attack or whatnot and she was out, wasn't of
4 sound mind anymore. So Angela was the
5 administrator of her I guess you would say.

6 Q. At the time this document was signed in
7 May of 2001 Betty Assunto was still alive?

8 A. She was still alive, correct.

9 Q. When did she pass away?

10 A. It was since Hurricane Katrina so I
11 would like to say it was in 2006 maybe. Don't
12 hold me to that exact year. I know it was after
13 Katrina, though. Because during Katrina she was
14 in Slidell and we were worried about her being
15 in a nursing home or actually she was in what
16 they call a neurological rehab in Slidell.

17 Q. I'm going to show you hopefully the
18 only other document I don't have multiple copies
19 of. I'm showing you a document. It's a letter
20 dated March 29, 1994 to Monica Ragge or Ragge
21 (different pronunciation), R-A-G-G-E of RCA
22 Records. And it appears to be a letter from
23 you. I'm labeling that as Exhibit No. 7.

24 A. Correct. I know what that is.

25 Q. What is that letter?

1 A. That was to RCA for the royalties. We
2 used to get royalties for At the Jazz Band Ball
3 album that was recorded by the Dukes in 1955 I
4 think. And we used to get royalties after my
5 father's death. And we collected those
6 royalties, split them amongst the family as
7 normal. Around the early '90s for some reason,
8 royalties stopped. So I was inquiring about the
9 royalties and what ever happened because my
10 grandmother and whatnot was wondering what was
11 going on, you know, that kind of thing.

12 Q. You did that in 1994?

13 A. 1994, correct.

14 Q. You said your grandmother was
15 wondering?

16 A. Yeah, she was still alive.

17 Q. What was her name?

18 A. Josephine Messina Assunto.

19 Q. And did you ever find out what was
20 happening to those royalties?

21 A. Yes, I did.

22 Q. What was happening to those royalties?

23 A. From my understanding is that your
24 client went to RCA and tried to have those
25 royalties redirected to him, which flagged RCA

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1 **to realize that my father was dead. They go by**
 2 **the Social Security number. And he had been**
 3 **dead for quite some time. So in lieu of doing**
 4 **anything wrong, RCA knew not to give it to your**
 5 **client but was then also -- didn't want to give**
 6 **us the royalties either. So royalties accrued**
 7 **until we could verify that we were the proper**
 8 **designee payee for those royalties.**

9 **Q.** When did you verify that you were the
 10 proper designee?

11 **A.** **I think after this case started that**
 12 **was one of the things. So it had to be, I'd**
 13 **like to say, the year 2001 maybe or 2000.**

14 **Q.** Okay.

15 **A.** **In the early 2000s.**

16 **Q.** Did she respond to your letter?

17 **A.** **Pardon me?**

18 **Q.** Did Ms. Ragge respond --

19 **A.** **I don't remember to be honest. I don't**
 20 **recall. I think what we did at this point was**
 21 **to say: Wow, somebody is after our royalties or**
 22 **we're getting screwed. We didn't know what to**
 23 **do. So we sat back for years and didn't do**
 24 **anything.**

25 **Q.** At about this time in 1994 were you

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1 aware of any other situations where you weren't
 2 getting royalties you were entitled to?

3 **A.** **No, no.**

4 **Q.** I'd like to show you a document labeled
 5 as Exhibit No. 8 to your deposition. Do you
 6 recognize this document?

7 **A.** **Uh-huh (affirmative response). They**
 8 **all look the same after a while. I'm sorry.**

9 **Q.** It's okay. I'm an attorney and I think
 10 that.

11 **A.** **Just looks like the lawsuit.**

12 **Q.** This is the petition you filed.

13 **A.** **Yeah. Looks like the initial one if**
 14 **I'm not mistaken.**

15 **Q.** Okay.

16 **A.** **Yeah. It would be closest to the first**
 17 **one because John Keller was still listed on**
 18 **here.**

19 **Q.** Please if you would take a look at
 20 paragraph 8 under general allegations on page 4.
 21 It's at the bottom of the page hopefully. See:
 22 Upon information and belief, plaintiff has
 23 learned --

24 **A.** **Uh-huh (affirmative response).**

25 **Q.** Okay. There it says, "Upon information

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1 and belief, plaintiff has learned that John
 2 Shoup and the Shoup defendants have, in certain
 3 instances, claimed entitlement to royalties from
 4 certain of the recording and distribution
 5 defendants in connection with the Dukes of
 6 Dixieland music." My question is have you --
 7 aside from what you've already told me, are you
 8 aware of any other instances where the Shoup --
 9 Mr. Shoup or the Shoup defendants claimed
 10 royalties that they were not entitled to?

11 **A.** **Not that -- I mean, not that I can**
 12 **prove, that I have documentation for.**

13 **Q.** Okay. If you would now flip over to
 14 page 7. I'd like to particularly ask you to
 15 take a look at count 5, paragraph 23.

16 **A.** **Uh-huh (affirmative response).**

17 **Q.** There you say -- petition says, "The
 18 plaintiff is entitled to declaratory and
 19 permanent injunctive relief from the Court
 20 declaring that, among other things, the Estate
 21 of Frank J. Assunto and the lawful heirs of
 22 Frank J. Assunto, as the only lawful heirs and
 23 representatives of Frank J. Assunto, are
 24 entitled to all rights and ownership associated
 25 with the music of the Dukes of Dixieland

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1 produced from the years 1946 through 1974." And
 2 we'll stop there. You can read on. I just want
 3 to ask you about that. So it's my understanding
 4 you are and the estate is claiming royalties
 5 from any and all music that was produced or
 6 recorded from 1946 to 1974; is that correct?

7 **A.** **I would assume so. That's what it**
 8 **says.**

9 **Q.** Well, I mean, so you're not seeking
 10 royalties from any music that the new Dukes have
 11 recorded?

12 **A.** **Oh, no. No.**

13 **Q.** Just flipping over to the attachment,
 14 which is Exhibit 1, that's the -- those are the
 15 letters that were issued making you the
 16 administrator; is that right? That's a copy of
 17 those?

18 **A.** **Looks like that, yes, sir.**

19 **Q.** We talked a little bit about this so
 20 just let me make sure I understand. Were you
 21 ever aware of an establishment called Duke's
 22 Place where the Dukes of Dixieland were playing?

23 **A.** **No, I never followed it. Like I said I**
 24 **was out of the loop on that.**

25 **Q.** How about the Mahogany Room, are you

1 familiar with that?
 2 **A. No.**
 3 **Q.** Were any of your siblings aware of it?
 4 **A. No. I mean, nobody really -- like I**
 5 **said, we were not in that mode at all to follow**
 6 **any of this stuff. It was out of our life.**
 7 **Q.** Have you received any royalty checks in
 8 the last five years relating to the recordings
 9 of the old Dukes?
 10 **A. Of the original Assunto Dukes, you**
 11 **mean?**
 12 **Q.** Yes.
 13 **A. Yes.**
 14 **Q.** When was the last time you received a
 15 royalty check?
 16 **A. Well, EMI -- we lost 96 cents last**
 17 **quarter with EMI so we didn't get a check.**
 18 **Q.** What do you mean you lost 96 cents?
 19 **A. Yeah. I don't know how they do that.**
 20 **They calculate these things. I think EMI may**
 21 **have been the last royalty check, but then we**
 22 **don't get that much, a couple hundred dollars.**
 23 **Q.** For how long? I mean, over what
 24 period?
 25 **A. About a six-month period, I think.**

1 **Q.** And that money comes into the estate?
 2 **A. Correct. It's actually made out to the**
 3 **Estate of Frank Assunto.**
 4 **Q.** And then what happens to it?
 5 **A. I put it into a special bank account I**
 6 **set up with a federal ID number that would go to**
 7 **the family at the end of the day to pay off like**
 8 **our Web site and things like that, little**
 9 **projects.**
 10 **Q.** Do you have a Web site?
 11 **A. Yes, we do.**
 12 **Q.** What is the Web site?
 13 **A. www.thedukesofdixieland.com. But**
 14 **you've got to put the word "the" otherwise you**
 15 **get something else.**
 16 **Q.** And who is the owner of that Web site?
 17 **A. I guess you'd say the estate is.**
 18 **Q.** Who is the administrator of the Web
 19 site, do you know?
 20 **A. Well, the person that does the actual**
 21 **computer entering of all the data is my cousin**
 22 **Mike Marois.**
 23 **Q.** Where is he located?
 24 **A. He's located in Bentonville, Arkansas.**
 25 **Q.** Does he work for Wal-Mart?

1 **A. No, as a matter of fact he doesn't. He**
 2 **works for Tyson chicken. But there are a lot of**
 3 **Wal-Marts up there.**
 4 **Q.** Yes, there are.
 5 **A. The home of Wal-Mart.**
 6 **Q.** He puts all the information --
 7 **A. Yeah, he puts all -- he does the geeky**
 8 **stuff, you know, the techno stuff and all that.**
 9 **So he knows how to do all that stuff.**
 10 **Q.** What is on this Web site?
 11 **A. It's just the history of my family, the**
 12 **legacy. You know, a little bit of music, a**
 13 **little bit of video clips, the history -- a nice**
 14 **couple-page history about the Dukes, how they**
 15 **started, where they were as kids and things like**
 16 **that. It's a historical site. It doesn't sell**
 17 **any products or promote anything like that**
 18 **except for the history of the family. We got**
 19 **pictures on there also.**
 20 **Q.** Between 1974 and 1999 there was no
 21 administrator of the estate of Frank Assunto; is
 22 that correct?
 23 **A. That's correct.**
 24 **Q.** Was there an administrator of the
 25 Estate of Fred Assunto?

1 **A. No.**
 2 **Q.** Aside from your desire to bring this
 3 litigation was there any other reason that you
 4 wanted to be named the administrator of the
 5 Assunto estate?
 6 **A. Well, we had to do it for royalties**
 7 **purposes, in other words, to make sure that if**
 8 **any money came in obviously it would go through**
 9 **one central person for the family to spread it**
 10 **amongst each other correctly. So somebody**
 11 **eventually whether there was a lawsuit or not**
 12 **was going to either have to be named executor or**
 13 **administratorship of some sort to make sure the**
 14 **whole family shared equally in the royalties.**
 15 **And actually, that's one of the main reasons I**
 16 **was named administrator.**
 17 **Q.** Where had the royalty checks been going
 18 prior to the time you were named administrator
 19 of the estate?
 20 **A. All the way until the early '90s the**
 21 **only royalty check that ever came in basically**
 22 **was -- not even basically, the only one we ever**
 23 **got was from the RCA album. And originally it**
 24 **would go to Joe Delaney because he was the**
 25 **manager of the band back in the early days. But**

1 **he quit managing the band in 1966 when Freddie**
 2 **died. So he would get the check, send it to my**
 3 **grandparents, my brother Frank would endorse the**
 4 **back because he was Frank Assunto, even though**
 5 **my father was dead, then we would split the**
 6 **check three ways between the three families and**
 7 **send Joe Delaney his managerial 15 percent fee.**

8 **Q.** That went on from 1974 through the
 9 early '90s?

10 **A.** Through the early '90s until RCA
 11 stopped. But I didn't get involved in that
 12 whole process -- I didn't get involved until,
 13 heck, it must have been the mid '80s. And prior
 14 to that I don't know where the checks went and
 15 how they were distributed.

16 **Q.** And it's your understanding that Joe
 17 Delaney forwarded every penny he got --

18 **A.** Correct, to my grandparents.

19 **Q.** Just so I'm clear, which grandparents
 20 are we talking about?

21 **A.** Papa Jac and Josephine Assunto.

22 **Q.** Why did the royalty checks stop in the
 23 early '90s, do you know?

24 **A.** I told you that before.

25 **Q.** Okay. If you did, I apologize.

1 **A.** It's okay. I don't mean to be rude by
 2 saying it like that. Because your client tried
 3 to have them redirected to him.

4 **Q.** Got it. Okay. What album or
 5 albums did that --

6 **A.** Did the royalty come from?

7 **Q.** Yes.

8 **A.** I didn't mean to cut you off. I'm
 9 sorry.

10 **Q.** No. That's fine. You actually
 11 finished the question and did a better job than
 12 what I was getting ready to.

13 **A.** There was one album recorded in 1955
 14 called At the Jazz Band Ball. And it just so
 15 happens to be the only album that was
 16 featuring -- well, had Pete Fountain playing
 17 clarinet on it with them.

18 **Q.** I'd like to show you a document I'm
 19 labeling as Exhibit 9 which is the first amended
 20 petition in this case. I'd like to address
 21 your -- count 6 says, "Misrepresentation of
 22 likeness and false light/invasion of privacy."
 23 And on 26 it says, "The Shoup defendants had no
 24 authority or consent to use the name, likeness,
 25 or identity of the 'Dukes of Dixieland' existing

1 existing prior to 1975 in connection with the
 2 promotion and/or marketing of the band they
 3 organized in 1975." Okay. They used the name
 4 Dukes of Dixieland. Did they use any sort of
 5 likeness, any sort of pictures that you're aware
 6 of?

7 **A.** Like I said before, not pictures but
 8 all their descriptions state that this band
 9 started in 1949 with Freddy and Frank, blah,
 10 blah. They use the history and the
 11 accomplishments of their musical history to
 12 promote the band.

13 **Q.** Okay. And the last sentence of this
 14 paragraph says, "The actions of the Shoup
 15 defendants have caused and continue to cause
 16 damage to the plaintiff." And what damage has
 17 there been aside from the fact you have not
 18 gotten royalties from RCA? Are you getting the
 19 royalties from RCA now?

20 **A.** No. Well, if they did it would be
 21 through Sony. And Sony, like I told you before,
 22 is still holding whatever royalties they have.

23 **Q.** Okay.

24 **A.** Because Sony kind of acquired all the
 25 other record labels.

1 **Q.** Aside from those withheld royalties are
 2 you aware of any other damage that has been
 3 caused to --

4 **A.** Well, if somebody has a band and
 5 they're using somebody else's legacy to promote
 6 that band, then obviously there is going to be
 7 loss, otherwise you wouldn't have been using the
 8 name of the family to promote your band if you
 9 didn't think it was profitable to you. So
 10 that's just a commonsense answer.

11 **Q.** I guess my question is what damage has
 12 there been to the Assuntos, not what benefit has
 13 there been to Mr. Shoup?

14 **A.** Well, monetary damages and also maybe
 15 the fact that if there are younger Assuntos who
 16 wanted to come up and play jazz and do it under
 17 the moniker of their family's legacy it would be
 18 hard to do that when somebody else is out there
 19 claiming it.

20 **Q.** Are there any Assuntos that are
 21 musicians?

22 **A.** Yes, there are.

23 **Q.** Who?

24 **A.** Well, Frank D. Assunto, III. He was
 25 taking lessons prior to Katrina. He was taking

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1 private lessons with -- at NOCCA, the instructor
2 at NOCCA, which is the New Orleans Center for
3 Creative Arts.

Q. How old is he?

5 A. He's 17 now.

6 Q. Does he still play?

7 A. No, he's moved on to rock and roll,
8 sorry.

9 Q. What instrument does he play?

10 A. Now he plays guitar but he still plays
11 the trumpet a little bit. He was playing
12 trumpet at NOCCA. And Ron Banco who was the
13 instructor said he was a natural.

14 Q. Who else?

15 A. Angela's son, Sebastian Soulas, he's
16 still actively playing trombone like his
17 grandfather.

18 Q. How old is he?

19 A. I knew you were going to ask me that.
20 I'd say he's about 11 maybe, maybe 12.

21 Q. Any others?

22 A. Those are the two right off the top of
23 my head. Now, Mike Marois, my cousin, who does
24 the Web site he was my dad's nephew. His mother
25 was my dad's sister, he plays jazz. And he's an

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1 Assunto but his last name is Marois because of
2 his father.

3 Q. Does he play in a band?

4 A. Yeah. He's got some other bands he
5 plays with in Arkansas with and tours every once
6 in a while.

7 Q. Do you have any idea what the names of
8 those bands are?

9 A. I have no idea, no, sir. But he plays
10 tuba if that helps.

11 Q. Paragraph 30 of this document, you can
12 read that to yourself. It's a long paragraph.

13 No sense having me read it into the record.

14 Just let me know when you're done.

15 A. Okay.

16 Q. Did you go through that?

17 A. Pretty well. These are all legal words
18 and --

19 Q. I know.

20 A. -- some go past me.

Q. Hopefully my question will be simple,

22 however. Is it fair to say that you're
23 objecting to -- not objecting to the fact that
24 Mr. Shoup is using the name Dukes of Dixieland
25 but that he is referring to the pre-1975 Dukes?

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1 A. According to this document, correct.

2 Q. Is that your understanding?

3 A. That's the understanding here. But of
4 course now things have changed. I mean, as time
5 has gone by, the way I see it is that --

6 Q. Well, this was filed in 2009.

7 A. Right. That's what I'm saying, even
8 still this to me in my mind says that -- using
9 the name Dukes of Dixieland now has been so
10 misconstrued that he's set his motion -- this
11 action into motion for so many years using the
12 legacy that it's hard for the common fan to
13 determine or decipher that this band is not the
14 Assunto family lineage when somebody has done
15 something for so long. But obviously people are
16 swayed to thinking that: Oh, wow, you know,
17 that really is the Assunto Dukes still
18 performing.

19 Q. Just so I can find the boundaries of
20 your claim so to speak. At this point would it
21 be fair to say that you just want any reference
22 to the pre-1975 Dukes to stop?

23 A. Correct.

24 Q. Is that enough?

25 A. What do you mean by "is that enough"?

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1 Q. The post 1975 Dukes can continue using
2 the name Dukes of Dixieland as far as you're
3 concerned, they just can't reference the old
4 Dukes, is that --

5 A. Well, that was before. That would have
6 been done in the settlement that we were trying
7 to deal with. But I mean, as far as just for me
8 to sit here now and say that, I can't answer
9 that.

10 Q. What relief do you want?

11 A. Well, I'd like them to shut the band
12 down completely and stop going after our
13 royalties and using our music. I mean, enough's
14 enough. And if he's profited over the years as
15 he has, I mean, had he gone into business with
16 us there would have been a percentage paid to
17 the family to use the legacy. He never did
18 that. He decided to take it all on himself and
19 promote it for himself and make advantages of
20 profitability on his on. Had he did it the
21 right way, a business person would have gone to
22 the family and say: Can I use -- boom, boom.
23 Like Charlie Catalano had called me out of the
24 clear blue for that sole purpose.

25 Q. Now, did Charlie Catalano offer a

1 percentage?

2 **A. No, no. He just asked me. He said he**
3 **could put a better product on the stand or on**
4 **the stage. And he thought we were being, how do**
5 **I say this, misrepresented by having that type**
6 **of music being played. He wasn't a fan of the**
7 **Dukes. And he only did that because he had been**
8 **instructed and taught how to play clarinet by my**
9 **grandfather who was a music instructor. So he**
10 **grew up knowing the Assunto family name. And he**
11 **thought he'd be doing us a favor by approaching**
12 **us. So that -- you say what's lost in the whole**
13 **deal would be like that particular thing,**
14 **somebody called us up and said: Hey, Mr.**
15 **Assunto, you are the Dukes of Dixieland. I'd**
16 **like to put a band out there and pay you a**
17 **percentage. That is nil because of the**
18 **situation as it is.**

19 **Q.** Aside from Mr. Catalano has anybody
20 called you asking to use the name Dukes of
21 Dixieland?

22 **A. No.**

23 **Q.** Have you done any sort of research as
24 to what kind of a royalty you would be entitled
25 to for use of the name?

1 **A. I'm not a professional in that sense**
2 **so, no, I never did.**

3 **Q.** Did anybody?

4 **A. No.**

5 **Q.** So you have no idea what you might be
6 entitled to?

7 **A. Well, I've had people say 30 percent**
8 **would be normal, but that's people on the street**
9 **talking. You know, I don't think these were**
10 **people that would be, you know, willing to do it**
11 **or whatnot.**

12 **Q.** Let me show you a document labeled as
13 Exhibit 10, which is the second amended
14 petition. This says "By their own account" --
15 paragraph 33. "By their own account, therefore,
16 the Shoup defendants acted as a mandatary or
17 servant with respect to the affairs of the
18 pre-1975 Dukes of Dixieland." Do you understand
19 what that means?

20 **A. I have no idea.**

21 **Q.** Look at the previous paragraph. It
22 says, "The Shoup defendants purport to have
23 obtained authorization in the mid-1970's after
24 Frank Assunto's death to register the Dukes of
25 Dixieland name, assist in the recovery of

1 royalties, and manage the band all on behalf of
2 the Assunto family, including the plaintiff."

3 What facts do you have that support that
4 allegation?

5 **A. I think that had something to do with**
6 **the signature that Mr. Shoup got from Betty**
7 **Assunto giving him rights to trademark the name.**

8 **Q.** Aside from that document that Betty
9 Assunto gave Mr. Shoup the right to use or
10 trademark the name, whatever it is, are you
11 aware of any other facts which indicate to you
12 that Mr. Shoup is going to assist in the
13 recovery of royalties and manage the band on
14 behalf of the Assunto family?

15 **A. Not really. The only thing in the**
16 **newspaper article that was done in 19 -- the**
17 **case was filed at the end of the article and he**
18 **states something about the Assuntos would get**
19 **the royalties and he would help us.**

20 **Q.** Do you know -- when you're referring to
21 the royalties, is that all royalties or pre-1975
22 royalties?

23 **A. I think it's pre -- my understanding of**
24 **the article he was referring to the fact that we**
25 **were not getting certain royalties and that's**

1 **why we brought action and then he said no, we**
2 **should get our royalties. And he was quoted as**
3 **saying that he would help us if we needed help**
4 **or something to that effect.**

5 **Q.** Do your attorneys have this case on a
6 contingent fee?

7 **A. Correct.**

8 **Q.** What are the terms of that engagement?
9 MR. HAIR:

10 I'm going to object. I think the
11 terms of the contingency fee itself are
12 privileged.

13 MR. DORVEE:

14 I don't think they are. Free
15 agreement is not privileged. I'm not going to
16 ask him, I just --

17 MR. HAIR:

18 Sorry. You mean not -- what
19 exactly are asking, I guess?

20 MR. DORVEE:

21 What's the percentage.

22 MR. HAIR:

23 Oh, okay. I don't think that's
24 privileged.

25 THE WITNESS:

1 Oh, okay. Twenty-five percent.
 2 EXAMINATION BY MR. DORVEE:
 3 Q. Does it go up if there's a trial?
 4 A. **Twenty-five percent. Actually it's**
 5 **done pro bono if you really want to know the**
 6 **truth at the end of the day.**
 7 Q. If you would look back real quick at I
 8 think it was Exhibit -- was Exhibit 7 the
 9 original petition; is that right? Is that 7?
 10 A. **No, that's the letter to RCA.**
 11 MR. HAIR:
 12 You're looking at that first
 13 petition?
 14 MR. DORVEE:
 15 Yeah.
 16 MR. HAIR:
 17 8.
 18 EXAMINATION BY MR. DORVEE:
 19 Q. Paragraph 2 lists a large fairly long
 20 list of defendants. Do you see that?
 21 A. **Yes, sir.**
 22 Q. Of the people listed here who are still
 23 defendants in the case or who did you actually
 24 get served, do you know?
 25 A. **These are all Shoup stuff.**

1 Q. Well, BMG isn't, is it?
 2 A. **You're talking about 2.1, 2.2 and 2.3?**
 3 Q. I'm sorry. My mistake. I apologize.
 4 Paragraph 3.
 5 A. **Oh, okay. Okay.**
 6 Q. You answered the right question. I
 7 asked the wrong one.
 8 A. **You're make me wonder here.**
 9 Q. It was a plot to confuse you --
 10 A. **Well, you're doing well.**
 11 Q. -- and I confused myself.
 12 A. **I'm trying to stay focused. BMG, well,**
 13 **that's Sony now, you see which is a successor to**
 14 **RCA. So that's Sony. Bandwagon, there is no**
 15 **Bandwagon. Those records -- any of those**
 16 **recordings that Bandwagon may have signed over**
 17 **went over to EMI Records, those are the old 78s.**
 18 Q. Okay.
 19 A. **Bose Corporation. No, Bose is out of**
 20 **the case.**
 21 Q. Okay. CBS?
 22 A. **CBS, I don't even know why they're in**
 23 **the case. You'd have to talk to them. I have**
 24 **no idea about CBS's involvement.**
 25 Q. They're in as far as you know?

1 A. **Yes, they are.**
 2 THE WITNESS:
 3 Aren't they?
 4 MR. HAIR:
 5 I believe that's true. I mean,
 6 just --
 7 EXAMINATION BY MR. DORVEE:
 8 Q. Just tell me what you know.
 9 MR. HAIR:
 10 -- answer to the best of your
 11 knowledge.
 12 THE WITNESS:
 13 CBS as far as I know, they're still
 14 in it. Capital Records which would be EMI also
 15 now. Yeah, see, EMI Manhattan Records. Cema, I
 16 have no idea. Chiaroscuro, no idea. They
 17 should be off probably because they had
 18 something to do with Audio Fidelity, Double
 19 Gold. Concert Gold, I have no idea. Coral
 20 Records I have no idea. Curb Records, no idea.
 21 Delta Records, no idea. First Choice,
 22 Incorporated, no idea. Happy Hour Music, no
 23 idea. Hindsight, could still possibly be in it
 24 through Larry -- I think through Larry Spier
 25 maybe. I forget what it's called. Memory Lane

1 Records or something like that. Imperial
 2 Records would be EMI. Laserlight, have no idea.
 3 Memory Lane Music is the other one. I have no
 4 idea. Larry Spier should still be in it. And
 5 Sony is in it. Platinum, I have no idea.
 6 Sandcastle, which I don't think -- I think
 7 they're gone, which Mr. Shoup may have had some
 8 involvement with it's gone so I have no idea
 9 about them.
 10 Q. Okay. One other question on page 4.
 11 At the time that your dad died who was the child
 12 that was not a minor?
 13 A. **Frank, Jr.**
 14 Q. Frank, Jr.
 15 A. **He had just turned 18 by Christmas.**
 16 **Actually eight weeks earlier he had just turned**
 17 **18.**
 18 Q. Did you ever see either version of the
 19 Dukes of Dixieland, the pre-'75 or post '75 --
 20 A. **Oh, yeah.**
 21 Q. -- Dukes of Dixieland on TV?
 22 A. **I saw both of them, yes.**
 23 Q. You say both on TV?
 24 A. **Correct.**
 25 Q. How did you see our dad's band on TV?

1 **A. I have video clips of the Ed Sullivan**
 2 **shows, Gene Cooper Battle of the Bands TV pilot.**
 3 **I mean they were on numerous television shows so**
 4 **I've got videos.**

5 **Q. Did you see those at the time?**

6 **A. Oh, I have them now. But I mean I saw**
 7 **them as I was growing up, yes.**

8 **Q. How about the post '75 Dukes, did you**
 9 **see them on TV?**

10 **A. Yes.**

11 **Q. How?**

12 **A. It was a television show. I think it**
 13 **was called the American Steamship that they were**
 14 **on. Had to be after the year 2000. And Dickey**
 15 **Taylor did an interview and talked about my**
 16 **family.**

17 **Q. Anybody else? Any other TV shows?**

18 **A. No, I didn't really pay attention to**
 19 **them until we brought this lawsuit. They were**
 20 **of no interest to me.**

21 **Q. Do you recall your mother being upset**
 22 **that Mr. Shoup was using the Dukes of Dixieland**
 23 **name?**

24 **A. My mother couldn't communicate. I mean**
 25 **she couldn't talk or anything.**

1 **Q. So the answer is no?**

2 **A. No.**

3 **Q. Are you aware of anyone contacting the**
 4 **Louisiana Attorney General's office about Mr.**
 5 **Shoup's use of the Dukes of Dixieland name?**

6 **A. No.**

7 **Q. Earlier you said when you were talking**
 8 **about how Mr. Shoup agreed to collect royalties**
 9 **from the band or you thought he was obligated to**
 10 **collect royalties --**

11 **A. No. I just stated that he had stated**
 12 **in a newspaper article quoted. I didn't say he**
 13 **said to us. It was an interview he did in the**
 14 **newspaper.**

15 **Q. Right. But before that the other**
 16 **document you had that related to that obligation**
 17 **to collect royalties for the Dukes I think you**
 18 **said was an authorization that he got from Betty**
 19 **Assunto; is that right?**

20 **A. Oh. But that had nothing to do with**
 21 **royalties. That just had to do with register of**
 22 **the trademark.**

23 **Q. Okay.**

24 **A. It didn't refer to royalties.**

25 **Q. Okay. I'm showing you a document**

1 labeled as Exhibit 11, which is Bates labeled
 2 B00542. And it's entitled "Authorization."
 3 First question, is that the document you're
 4 referring to?

5 **A. Yes, that's what I understand, correct.**

6 **Q. And to the best of your knowledge is**
 7 **that Betty Assunto's signature?**

8 **A. I don't know. I mean I can't say yes**
 9 **or no. I can't say I've ever seen her**
 10 **signature. I mean, I'd hate to say yes.**

11 **Q. When was the first time you saw this**
 12 **document?**

13 **A. It had to be years ago. No, I guess it**
 14 **was when the case first started.**

15 **Q. My question is before or after the**
 16 **case. I believe this has a document number**
 17 **indicating that you all produced it to us.**

18 **A. Yeah, it was before the case -- right**
 19 **when the case started that Betty provided us**
 20 **with this document.**

21 **Q. Betty gave that to you?**

22 **A. Right. When I went to -- well, to give**
 23 **to the lawyers.**

24 **Q. Did you talk to her about this**
 25 **document?**

1 **A. She said -- the only thing she told me**
 2 **that she signed --**

3 MR. HAIR:

4 Can I get a clarification real
 5 quick? Did you talk to her?

6 THE WITNESS:

7 Yes.

8 MR. HAIR:

9 Okay. I want to make sure this
 10 wasn't from her lawyers.

11 THE WITNESS:

12 No, no. She didn't have lawyers.
 13 I was talking about of this law firm, in other
 14 words. Yeah, she said she signed a document
 15 saying that she allowed Shoup to -- originally
 16 she said she didn't sign the document. She said
 17 that typewritten part was added after she signed
 18 something at my father's benefit. And people
 19 getting autographs. So she signed an autograph
 20 on a sheet of paper and then this was documented
 21 afterwards, it was added afterwards. And we all
 22 thought: Okay, Betty, that's fine. That's all
 23 I know about it. She said she did not sign away
 24 the trademark to this guy.

25 EXAMINATION BY MR. DORVEE:

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1 **Q.** When she changed her mind I thought you
2 indicated that's what she said at first and then
3 she changed her mind?

4 **A.** She was kind of wishy-washy about it.
5 I think that was one of the problems I told you
6 before my grandfather was upset because he got
7 wind of this document somehow. I'm speculating
8 on that. I'm piecing that together myself
9 knowing that when he referred to how could she
10 go with Shoup and sing with Shoup that he
11 thought that this was her way of signing over
12 the Dukes to Shoup. But I kept explaining to
13 him and like Betty knew too, she had no rights.
14 She was not the heir to my father's estate.

15 **Q.** And so the conversation about this
16 document occurred when your grandfather got
17 upset, right?

18 **A.** Well, no. No. I kind of reached back
19 in my own mind to say that Papa Jac must have
20 been upset knowing that Betty was singing and
21 that he had knowledge of this document. He must
22 have known about this. I just speculated on
23 that.

24 **Q.** Why do you think he knew about this
document?

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1 **A.** Because the way he acted. He just
2 acted like there was more to it than singing
3 with a band. "How could she do that? How could
4 she do that?" he kept saying. So in my mind, I
5 knew my grandfather very well, it had to be more
6 than just her getting on the stand and singing
7 under the moniker of the Dukes of Dixieland.

8 **Q.** Now, who owned the original Dukes of
9 Dixieland? Was there an owner of the band?

10 **A.** You mean by owner -- be a little more
11 specific, I think.

12 **Q.** I guess here's my question. I'm not
13 trying to be deceptive. Let me tell you my
14 thought. You said that Betty had no right to do
15 anything with regard to the Dukes of Dixieland.
16 Is that a fair?

17 **A.** That's correct.

18 **Q.** Now, my understanding was her husband
19 Freddie was in the band?

20 **A.** Correct.

21 **Q.** And she was -- he died and she was
22 beneficiary of his estate, right?

23 **A.** Correct.

24 **Q.** So any rights he had in the band
25 arguably would have gone to her?

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1 **A.** Correct. If there was, yes.

2 **Q.** Did Fred Assunto have ownership rights
3 in the Dukes of Dixieland?

4 **A.** There was never a legal document to my
5 knowledge saying that Frank and Freddie owned
6 the name as far as saying as partners. It was
7 never registered as a federal trademark or
8 anything like that because they were performing
9 live using the name. They were well-known, you
10 know, world renowned and whatnot. But they were
11 basically 50/50 partners in the actions of the
12 band. So when Freddie died the assets of the
13 band were none and thus Frank performed.
14 Freddie wasn't there so Freddie didn't get
15 anything because there was not any moneys there.
16 If Freddie would have lived -- if they would
17 have sold the band, let's put it that way. If
18 they would have sold the band's name to
19 somebody, sure, Betty would have gotten 50
20 percent of those proceeds.

21 **Q.** Did the Dukes of Dixieland pre-1975, in
22 other words, your dad's band receive a Grammy
23 award or any nominations?

24 **A.** No, not that I know of.

25 **Q.** Did they receive any sort of awards?

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1 **A.** Yeah, they had gotten awards, I guess.
2 But nothing like a Grammy, no.

3 **Q.** Do you recall any awards that they
4 received?

5 **A.** I mean they've gotten trophies and
6 things like that. I've got a whole shelf full
7 of trophies and memorabilia pieces like from
8 Lady Bird Johnson and things like that. But as
9 far as a national -- the only national or
10 accolades they got was mostly when they were
11 teenagers when they won the Horace Heidt's
12 contest in 1949.

13 **Q.** What is the Horace Heidt's contest?

14 **A.** I think it was a national talent
15 search. They went around the country. Kind of
16 like Star Search of today or American Idol as of
17 today or whatever you want to call it.

18 **Q.** Is it your understanding that the fact
19 there is a band call the Dukes of Dixieland
20 playing today helpful to the sale of the
21 pre-1975 Dukes album?

22 **A.** I don't think so.

23 **Q.** Why not?

24 **A.** Because I've had too many people
25 contacting me saying they bought Dukes albums

1 **and they sound like crap and it's not the**
 2 **original Dukes and they don't know where to buy**
 3 **them. So there's been a big confusion with**
 4 **bands out there who want to buy the original**
 5 **Dukes music but since there's no clarification**
 6 **on John Shoup's Dukes albums or CDs as they are,**
 7 **people are buying them hoping they're getting**
 8 **the originals and they're finding out they're**
 9 **not. I've gotten e-mails over the years.**

10 **Q.** How many e-mails have you gotten?

11 **A. I don't even want to speculate. Quite**
 12 **a few. More than 50, less than 150.**

13 **Q.** And these are e-mails that indicate
 14 confusion between the old and the new Dukes?

15 **A. Correct. And some of them are not very**
 16 **nice.**

17 **Q.** How do they know where to send an
 18 e-mail?

19 **A. Our Web site.**

20 MR. DORVEE:

21 Why don't we take a five-minute
 22 break.

23 MR. HAIR:

24 Sure.

MR. DORVEE:

1 I mean, I've got plenty more
 2 questions but --
 3 MR. HAIR:
 4 That's fine. Whatever you want.
 5 EXAMINATION BY MR. DORVEE:
 6 **Q.** Now, back in 1973, late '73, '74 your
 7 dad was performing with the Dukes of Dixieland,
 8 right?

9 **A. Correct.**

10 **Q.** Now, at that point he was using
 11 basically contract musicians, correct?

12 **A. Correct.**

13 **Q.** And so the original members of the
 14 Dukes had all died or left the band by that
 15 point except for your dad, correct?

16 **A. Well, they've always had transitions in**
 17 **the band from the beginning. The only steadfast**
 18 **two were Freddie and Frank.**

19 **Q.** Freddie had been dead about eight years
 20 by the time --

A. Correct.

22 **Q.** And as you said after your dad died
 23 there was nobody to carry on with the band,
 24 correct?

25 **A. Correct.**

1 **Q.** Just so we're clear Assunto family has
 2 never licensed the name Dukes of Dixieland until
 3 1991, correct?

4 **A. Correct.**

5 **Q.** I note in the discovery in this case
 6 that various corporate records relating to the
 7 Dukes of Dixieland, Telerecords and so forth,
 8 were produced by your side of the case and those
 9 included stock certificates showing Betty
 10 Assunto and your mom -- what was your mom's --

11 **A. Joan.**

12 **Q.** Joan. Thank you. -- Betty and Joan
 13 Assunto as stockholders of the corporation. My
 14 question is how did you get those corporate
 15 records?

16 **A. Betty had hers. I have no idea other**
 17 **than that.**

18 **Q.** Did your older brother have any
 19 involvement in preparing for this lawsuit?

20 **A. None whatsoever.**

21 **Q.** When did he pass away?

22 **A. It's been two and a half years.**

23 **Q.** So well after the lawsuit was filed?

24 **A. Oh, yeah. Yeah.**

25 **Q.** Did he help you gather any documents

1 relating --

2 **A. No. No. I did everything myself.**

3 **Q.** When did you start the Web site that
 4 you're operating now?

5 **A. I think 2001, maybe or 2000. Late**
 6 **2000, 2001.**

7 **Q.** And why did you start it?

8 **A. Because a lot of people, you know, were**
 9 **interested as I talk to people around town they**
 10 **say: Y'all should have a Web site. Your family**
 11 **has a legacy to share.**

12 **Q.** Prior to that Web site had you done
 13 anything else to promote the legacy of the
 14 Assuntos?

15 **A. No. Not in a public arena, no.**

16 **Q.** So just so we're clear the Web site was
 17 the first time you began to promote that legacy?

18 **A. Just to share the legacy, correct.**

19 **Q.** Who is Bob Assunto?

20 **A. He's not an Assunto. He's a guy who**
 21 **claims -- he changed his name to Assunto. And**
 22 **he promotes himself as an Assunto band member,**
 23 **whatnot. He lives out in Vegas. He contacted**
 24 **me years and years ago trying to say that -- I'm**
 25 **sorry. I don't mean to laugh but it's pretty**

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1 **much a joke. But he sent me a promo picture --**
 2 **just to show you how false he is, he sent me a**
 3 **promo picture with him cut into the drummer's**
 4 **spot. And it just so happens I have the**
 5 **original photo for that promo shot and he's not**
 6 **in that promo shot. He just put his own picture**
 7 **in there and he started up some kind of society**
 8 **band out in California, Las Vegas area,**
 9 **something like that. But he's not related to**
 10 **me.**

11 **Q.** When you say "a society band," what do
 12 you mean?

13 **A. Well, he called it the Bob Duke Assunto**
 14 **Society Jazz Band or something to that effect.**
 15 **But we're not related.**

16 **Q.** Do you know a guy named Benny Brown?

17 **A. No.**

18 **Q.** Do you know -- you never heard of Benny
 19 Brown?

20 **A. No, not at all.**

21 **Q.** Did your brother Frank Assunto, Junior
 22 have a police record?

23 **A. Yes.**

24 **Q.** For what?

25 **A. Boy, where does it start? He had a**

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1 **long one. Long enough. Drugs mostly.**

2 **Q.** I think you testified to this. You
 3 said Joe Delaney was the manager of the Dukes.
 4 When did he stop?

5 **A. 1966 when Freddie died. He stayed out**
 6 **in Las Vegas and became the entertainment editor**
 7 **for the Las Vegas Sun Times.**

8 **Q.** Do you know how record companies go
 9 about deciding how royalties are paid to
 10 artists?

11 **A. I have no idea.**

12 **Q.** Does the estate file tax returns?

13 **A. Yes. We have made anything. It's not**
 14 **like it has any consequence.**

15 **Q.** I'd like to show you a document labeled
 16 as Exhibit No. 12 to your deposition. And let
 17 me just go ahead while I'm at it mark 13 as well
 18 because these letters are very, very similar.
 19 Probably a lot better to discuss them together.
 20 There's 12 and there's 13.

MR. HAIR:

22 Did you have another one of the
 23 second letter?

MR. DORVEE:

25 Yes, I do.

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1 EXAMINATION BY MR. DORVEE:

2 **Q.** Okay. I've now shown you two letters
 3 both dated March 12, 1975. Both are copies of a
 4 letter from John Shoup to two different people
 5 who appear to be attorneys. They appear to be
 6 in response to letters from these attorneys. Do
 7 you know who Mr. Robert Glass, Esquire is?

8 **A. I have no idea.**

9 **Q.** Ever heard of him?

10 **A. No, sir.**

11 **Q.** Do you know if he represented Betty
 12 Assunto?

13 **A. I would have no idea. That was within**
 14 **a year of my father's death. Like I said, we**
 15 **were out of the loop.**

16 **Q.** Okay. How about Mr. Garretson, do you
 17 know who he was?

18 **A. No, sir. Obviously seems to be a**
 19 **lawyer maybe. But I don't know anything about**
 20 **him either.**

21 **Q.** So you know nothing about either of
 22 those?

23 **A. No, sir. Like I said, we were so**
 24 **disconnected right after my father died**
 25 **especially. But that would have been the time**

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1 **Betty was with Shoup I think.**

2 **Q.** This has some highlighting on it but
 3 I'm showing you a document labeled as Exhibit
 4 14. Is that the CD that you contend Mr. Shoup
 5 released that had the pre-1975 Dukes music on
 6 it, Satchmo?

7 **A. That's one of them.**

8 **Q.** What other ones were there?

9 **A. Well, I can see this one is distributed**
 10 **by Happy Hour. There's another one out there**
 11 **that's distributed by Leisure Jazz, which I**
 12 **think is Shoup's record company label or**
 13 **whatnot. I don't know if Happy Hour is his or**
 14 **not.**

15 **Q.** Now, is that label name the same?

16 **A. No. This is just the backside of the**
 17 **CD it looks like. The front sides are two**
 18 **different fronts that he uses.**

19 **Q.** Are they the same --

20 **A. I think it's the same recordings.**

21 **Q.** Same recordings.

22 **A. But different packaging.**

23 **Q.** Are they both called Satchmo and the
 24 Dukes of Dixieland?

25 **A. I think so.**

1 Q. I'd like to show you a document that
2 will be Exhibit No. 15. Do you recognize this
3 document?

4 A. **I think I've seen it before, yes.**

5 Q. This was produced by your side of the
6 case and my question is where did you get a copy
7 of this?

8 A. **I honestly don't know.**

9 Q. Do you know -- do you recall when you
10 first saw it?

11 A. **So much stuff I did. I can't recall,
12 to be honest with you. I really can't recall.
13 There was so many different things that were
14 just popping up out of the clear blue.**

15 Q. Do you recall if you saw this before or
16 after the lawsuit was filed?

17 A. **After.**

18 Q. After the lawsuit was filed?

19 A. **Yes, sir.**

20 Q. Let me ask you a few questions, just
21 fact questions. On the first page of this
22 document about halfway down it says, "The
23 personnel of the group turned over repeatedly
24 after Freddie's death, and on many unfortunate
25 occasions Frank Assunto led a group of 'has

1 beens' and 'never-wases'." Is that a fair
2 statement?

3 A. **No. No.**

4 Q. Take a look at page 2 at the second
5 full paragraph. Well strike that, the first
6 full paragraph. This says, "When Frank died,
7 plans were in the works for Frank to have his
8 own club on Bourbon Street, and he had the
9 financial backing to do it." Is that correct?

10 A. **Correct.**

11 Q. Tell me about that. Who was backing
12 him?

13 A. **He was buying the Famous Door where he
14 and his brother had started a career.**

15 Q. Who was funding that?

16 A. **Jim Moran.**

17 Q. How long had the plans been in the
18 works for that?

19 A. **I don't know how long they were in the
20 works but I knew they were getting ready to be
21 finalized.**

22 Q. Right before he died?

23 A. **Correct.**

24 Q. This says, last full paragraph, "When
25 Frank died, he was terribly in debt." Is that

1 correct?

2 A. **No, not at all.**

3 Q. Was he in debt?

4 A. **I think he owed the IRS \$3,000 for back
5 taxes which my mother paid it off. Well, we
6 paid it. I say my mother but we paid off.**

7 Q. And then I guess going on to the next
8 page, "the band was reformed in 1974, with
9 Connie Jones leading the group, and Freddie
10 Assunto's widow, Betty Owens performing some
11 vocal chores." You don't know if that's true or
12 not?

13 A. **Well, I know now it's true. But at the
14 time obviously -- I got this since the case. I
15 wasn't privy to that at that time. Like I said
16 I was out of the loop for many years after my
17 dad died.**

18 Q. I'll show you a document labeled as
19 Exhibit 16 to your deposition. Have you seen
20 this letter before?

21 A. **Yes.**

22 Q. This is a letter dated April 5, 1994
23 from Monica R. Ragge, business affairs, to the
24 executor/administrator estate of Frank Dukes
25 Assunto care of Joe Delaney at an address in Las

1 Vegas. And the date is circled and written on
2 it says, "Sent to Antonio Assunto." Do you see
3 that?

4 A. **Yes, sir.**

5 Q. And was this letter sent to you?

6 A. **Yes, it was.**

7 Q. When?

8 A. **Well, according to the date 1994. This
9 is a response from that other letter. Remember?
10 We they found out that Frank had died. When
11 John tried to get the royalties redirected they
12 stopped everything.**

13 Q. Okay.

14 A. **Remember you were asking if there was a
15 reply and I couldn't recall where and when it
16 was. That's No. 7.**

17 Q. So the reply -- this is the reply to
18 Exhibit No. ??

19 A. **Correct. Correct.**

20 Q. And what did you do after you received
21 this letter?

22 A. **Nothing. We all looked at each other
23 and said: Oh, well, we need to figure out what
24 to do. They're not going to send us the
25 royalties for dad anymore.**

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1 Q. Did you have any discussion with Monica
2 Ragge about --
3 A. **No, I never talked to anybody. The
4 letter had come to us and they sent it to Joe
5 Delaney also because he was listed as the
6 manager of the band. And remember originally I
7 told you that the checks went to Joe. Joe would
8 then forward them to my grandmother.**

9 Q. And so you got this letter but you
10 didn't really know why they were withholding the
11 checks or you did?

12 A. **Well, no. They were withholding the
13 checks because my dad was dead and they can't
14 issue royalties to a dead person, even though
15 they had been doing it for years and we never
16 told them. Because we kept it in the family
17 anyway and we were all dealing with a family
18 issue, everybody got their share. Joe Delaney
19 was good with that. He said -- he's the
20 manager, we gave him his 15 percent off the top.**

21 Q. At the time you got this letter did you
22 know that Mr. Shoup had asked --

23 A. **No.**

24 Q. -- that royalties be redirected?

25 A. **Had no idea. None of that was brought**

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1 **to me until later on.**

2 Q. How later on?

3 A. **After the case was filed.**

4 Q. I'd now like to show you a document
5 labeled Exhibit 17 to your deposition. I think
6 we've already established John Keller was an
7 attorney helping you out prior to the time when
8 the matter was referred to the law firm that's
9 currently handling this lawsuit.

10 A. **Correct.**

11 Q. And this is a letter dated September 8,
12 1999 to the Secretary of State of Louisiana.
13 And it contains an application to register the
14 trade name of Dukes of Dixieland, right?

15 A. **Correct.**

16 Q. And did you authorize Mr. Keller to
17 send this letter and this application?

18 A. **Yes.**

19 Q. And let's go over to the second page.
20 There in paragraph 4 of this application it says
21 that the trade name, trademark or service mark
22 to be registered as Dukes of Dixieland. Do you
23 see that?

24 A. **Yes.**

25 Q. And then it says, "Type of business or

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1 list of goods or services to which the trade
2 name, trademark or service mark is applied." It
3 says, "musical jazz band," right?

4 A. **Correct.**

5 Q. And at this point you were not
6 operating a musical jazz band, correct?

7 A. **Correct.**

8 Q. In fact, you had never operated a
9 musical jazz band under this name, correct?

10 A. **That's correct.**

11 Q. And in fact the last time anyone
12 associated with the Assunto family had operated
13 a jazz band under the name Dukes of Dixieland
14 was in late 1974, correct?

15 A. **That's correct. Or early '74, February
16 of '74 when Frank died.**

17 Q. This document was filed in August of
18 1999, correct?

19 A. **Correct.**

20 Q. Why?

21 A. **Because I had pictures and things that
22 we wanted to share. And obviously we wanted to
23 have a name to put it under so it was suggested
24 that I use the name Dukes of Dixieland because
25 that's the pictures I was going to be able to**

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1 **put into a picture book, things like that. And
2 I have old recordings that maybe we were going
3 to release.**

4 Q. This indicates you were registering the
5 name in connection with a musical jazz band,
6 right?

7 A. **No. This is for pictures and things
8 like that that would come out to the public that
9 would be under the name Dukes of Dixieland.
10 That's all it was for.**

11 Q. Isn't it true that you filed this in an
12 attempt to get the name away from Mr. Shoup?

13 A. **Oh, no, not at all.**

14 Q. I'll show you Exhibit 18 to your
15 deposition. This is a letter from Larry Spier,
16 Incorporated Music Publishers to John Keller.
17 And apparently Mr. Keller had sent Mr. Spier a
18 letter earlier in November of 1999. And this
19 says, "We turn over all sums, less our small
20 administration fee, directly to Mr. Pugliese,
21 whom we presume to be responsible for these
22 payments." Whose is Mr. Pugliese?

23 A. **From my understanding he had something
24 to do with at one time some type of ownership of
25 the Audio Fidelity masters which were the 12**

1 **albums that the Dukes recorded on for Audio**
2 **Fidelity.**

3 **Q.** So he had been getting royalty checks?

4 **A. I don't know. We tried to contact him,**
5 **Mr. Pugliese, and we never got a response from**
6 **him. This is just their response, Larry Spier,**
7 **the music publisher.**

8 **Q.** Okay. In the next paragraph it says,
9 "We can't, however, make these payments to Mr.
10 Assunto's estate starting with this current
11 period to end on December 31, 1999." Do you see
12 that?

13 **A. Yes, sir.**

14 **Q.** And did Larry Spier Music start making
15 those payments?

16 **A. Not that I know of. I don't recall**
17 **getting royalties from them.**

18 **Q.** So as far as you know you still haven't
19 gotten any?

20 **A. Correct. Correct.**

21 **Q.** Do you know if anyone responded to this
22 letter?

23 **A. Pardon me?**

24 **Q.** Did anyone respond to this letter?

25 **A. Not that I know of. But Larry Spier is**

1 **still in our suit. He's one of those listed on**
2 **that page, remember? So that might be why we**
3 **haven't heard anything.**

4 **Q.** Now, I'll show you Exhibit 19 to your
5 deposition. This is a letter to Mr. Keller
6 apparently responding to a letter sent by Mr.
7 Keller dated November 11, 1999 and January 5,
8 2000. Have you seen that before?

9 **A. Yes. Oh, yes.**

10 **Q.** Did Mr. Keller send the letters dated
11 November 11th and January 5th on behalf of the
12 estate?

13 **A. Yes.**

14 **Q.** This says, "All payments and accounting
15 have been made via Kevin Bradshaw as per the
16 contract." Who was Mr. Bradshaw?

17 **A. He like Mr. Pugliese, no idea. I have**
18 **no idea.**

19 **Q.** Did anybody follow up?

20 **A. Not that I know of. I think we tried**
21 **to find Mr. Bradshaw but never could. I don't**
22 **think anything ever came of any of this from**
23 **Platinum.**

24 **Q.** I would now like to show you a letter
25 marked Exhibit 20 dated November 1, 1999. This

1 is from Joseph P. Delaney to Jeffrey Schulberg
2 at RCA Records. And it appears to have been --
3 a copy of this appears to have been sent to you;
4 is that correct?

5 **A. Correct.**

6 **Q.** And did you ask Mr. Delaney to send
7 this letter to RCA Records?

8 **A. No. I think he did that on his own.**
9 **And then he had just forwarded to me a copy of**
10 **the letters because he and I had been on the**
11 **phone talking and he said, "Oh, all the**
12 **royalties go your way. I don't need them. I've**
13 **been out of the picture." So he just had to**
14 **confirm with RCA that they come to me, that's**
15 **all.**

16 **Q.** Just so I'm clear RCA then became?

17 **A. BMG, now it's Sony. That's the same At**
18 **the Jazz Band Ball album.**

19 **Q.** It says, "I hereby agree to having
20 royalty statements, payments and all other
21 correspondence being sent directly to Antonio D.
22 Assunto at his Metairie, Louisiana address."

23 Then it says, "It has been some years since I
24 have received any correspondence from RCA,
25 nothing at all."

1 **A. Correct.**

2 **Q.** So I guess during the mid to late 1990s
3 you weren't getting any royalty checks?

4 **A. Correct. From early '90s, '93, '94-ish**
5 **when that woman that sent that other letter**
6 **found out that Frank was dead, royalties**
7 **stopped. He he's responding saying that -- you**
8 **know, obviously he noticed the royalties had**
9 **stopped for years prior to this.**

10 **Q.** After he sent this letter did royalties
11 start up again?

12 **A. No.**

13 **Q.** Why not?

14 **A. Because I still had to be -- had to do**
15 **some kind of paperwork, you know, the legal**
16 **stuff had to be drawn up and sent to RCA. At**
17 **the time it was BMG I think. Or actually, it**
18 **may have still been RCA at the time and then**
19 **switched over to BMG. I'm not clear on when it**
20 **transferred from one entity to the other.**

21 **Q.** I'd like to show you a document labeled
22 as Exhibit 21. This is a letter dated January
23 5, 2000 from John Keller to Hank O'Neal at
24 Chiaroscuro Records, C-H-I-A-R-O-S-C-U-R-O. Why
25 was this letter sent?

1 **A. Because Chiaroscuro Records was**
 2 **releasing or had released some Dukes of**
 3 **Dixieland recordings that were originally on**
 4 **Audio Fidelity. We were trying to get royalties**
 5 **and see who owed us anything out there that was**
 6 **still producing the records.**

7 **Q. Did anyone respond to this letter do**
 8 **you recall?**

9 **A. I don't recall. We never received any**
 10 **royalties from them so I would assume not.**

11 **Q. Did anyone ever tell you why you**
 12 **weren't receiving royalties from Chiaroscuro**
 13 **Records?**

14 **A. No.**

15 **Q. Or Audio Fidelity?**

16 **A. No. Audio Fidelity at that time was**
 17 **defunct. They were out of business. Sid Fry**
 18 **had sold out in 1967 I think.**

19 **Q. And a similar letter dated January 5,**
 20 **2000 from Mr. Keller to Jean Luc Yung we've**
 21 **labeled as Exhibit 22. Why was that sent?**

22 **A. For the same reason. The trail went**
 23 **from Chiaroscuro to Dante Pugliese, that guy out**
 24 **in California, and then it was -- I did more**
 25 **investigative work and I found out the guy named**

1 **Jean Luc Yung supposedly had the masters but he**
 2 **was out in London, England.**

3 **Q. What happened after you sent this**
 4 **letter?**

5 **A. Not a thing. The word got back to me**
 6 **that this guy Jean Luc was a bootlegger, that**
 7 **we'd never hear from him anyway.**

8 **Q. Who is Harry Porter?**

9 **A. A fan that got in touch with me during**
 10 **the -- after I started the Web site. And he's**
 11 **kind of an older fellow. He kind of had a crush**
 12 **on Betty, loved her music and loved the Dukes of**
 13 **Dixieland. He loves jazz and he had done a**
 14 **discography of every song my father ever did.**
 15 **And so he kind of got connected to me so we**
 16 **posted his discography on our Web site once I**
 17 **verified it was all pretty accurate. So he's**
 18 **just a fan.**

19 **Q. I'll show you a document labeled**
 20 **Exhibit 23 and ask you if you recognize that?**

21 **A. Yes. This is that guy Bob Assunto and**
 22 **his son who calls himself Michael Assunto.**

23 **Q. Says, "Hi Cousin, my son Michael told**
 24 **me he had a chance to talk to you about our**
 25 **family, which I'm glad he did." So you talked**

1 to Michael?

2 **A. I talked to Michael. He called me up**
 3 **and said he wanted to send some kind of**
 4 **information, like I told you, a packet to me**
 5 **that you might have right in front of you right**
 6 **there, the next thing coming up. And I looked**
 7 **into it, found out he's not an Assunto.**

8 **Q. What did you do to investigate that?**

9 **A. Just called relatives, I guess. I**
 10 **don't really recall exactly how I did it.**
 11 **Talked to I think may have talked to my**
 12 **grandmother or even Betty about it, said: Betty**
 13 **do you have any idea who this guy is and**
 14 **whatnot? And she's like: No. You know, it was**
 15 **just kind of a joke to the family is really what**
 16 **it was, meaning we didn't understand where these**
 17 **people came from.**

18 MR. DORVEE:

19 Off the record.

20 (Off-the-record discussion held.)

21 EXAMINATION BY MR. DORVEE:

22 **Q. 23 is a letter from Bob Assunto to you,**
 23 **right?**

24 **A. Correct.**

25 **Q. 24 is some promotional material**

1 concerning Bob Assunto's Dukes of Dixie.

2 **A. Right.**

3 **Q. And his re-enactment of the original**
 4 **Dukes of Dixieland and family. Did you ever see**
 5 **this show?**

6 **A. No. I don't mean to laugh. It was a**
 7 **real laughing point when it came across to us.**

8 **Q. When did you learn of this?**

9 **A. When it was first sent to me. Honestly**
 10 **I don't recall the date. It had to be -- I'd**
 11 **like to say after the case had started, out of**
 12 **the clear blue sky it just plops into my lap**
 13 **saying he's our relative. I talked to my great**
 14 **aunts and stuff like that who were still alive**
 15 **at the time. They were like: No, there's no**
 16 **Bob Assunto, Bob Duke Assunto.**

17 **Q. He included a copy of a driver's**
 18 **license.**

19 **A. Right.**

20 **Q. And you just think that's false?**

21 **A. Oh, yeah. Yeah. There is -- you know,**
 22 **I don't know for sure and I wouldn't want to say**
 23 **it, he may be related through my grandfather's**
 24 **side of the family out in Lake Charles like a**
 25 **son-in-law type of thing where he saw an**

1 opportunity to change -- he changed his name to
2 Bob Duke and just did it because he thought he
3 could make money at it. But it was so far
4 removed from the family I have no idea. That
5 was all speculation.

6 Q. Does any of this material contain the
7 picture you're talking about where he had
8 himself --

9 A. No. No, it doesn't. The picture the
10 one he had given me was just an 8-by-11. It was
11 a drum company's promotional plaque with my dad
12 and the band. Bill Smiley I think was the
13 drummer originally but he had cut his face and
14 put his face in there.

15 Q. Once you got these materials you didn't
16 do anything to stop him?

17 A. No. There's nothing I could -- I mean,
18 no. I mean, it almost felt kind of comical to
19 us that someone would change their name and try
20 to do that.

21 Q. Do you know if they're still operating?

22 A. I have no idea.

23 Q. So you don't know if the Assunto's
24 Dukes of Dixie and Jazz Society, Inc. is still
in operation?

1 A. I have no idea. I haven't been --
2 they've never contacted me since they first sent
3 this stuff to me. And after I saw it -- it was
4 funny but kind of creepy, you know.

5 Q. To make a long story short you have no
6 connection with this?

7 A. None whatsoever.

8 Q. I guess Exhibit 24 has various pictures
9 of the Assuntos, right?

10 A. Correct.

11 Q. Including a picture of your dad and his
12 brother on page 481; is that right?

13 A. Correct.

14 Q. Exhibit 25, this appears to be more of
15 material put out by the Assunto's Dukes of Dixie
16 Jazz Society; is that right?

17 A. That's correct.

18 Q. This is Bob Assunto's group I guess?

19 A. Well, no, that picture -- that's not a
20 real -- that's a real Dukes of Dixieland
picture.

22 Q. So that picture on the front of this is
23 Dukes of Dixieland with --

24 A. My father, with Louis Armstrong, Pete
25 Fountain, Artie Seelig, Bill Porter, Roger

1 Johnson and Betty and Freddie in the background
2 too.

3 Q. Where -- is your dad on the right?

4 A. My dad is looking at Louis.

5 Q. Okay.

6 A. And Freddie is standing behind Louis.
7 And Pete Fountain is to the far right corner and
8 Betty is in the middle and Artie Seelig,
9 keyboard player, is looking at Betty.

10 Q. Okay. You have no idea where if
11 anywhere the Assunto's Dukes of Dixie Jazz
12 Society is performing?

13 A. Have no idea, none whatsoever. Like I
14 said, we thought it was kind of creepy and
15 weird.

16 Q. I would now like to show you a document
17 labeled as Exhibit 26 to your deposition. And
18 just in the interest of full and fair disclosure
19 this document -- this copy is really a one-page
20 document. It's just my photocopier screwed up.
21 So basically we've got this letter here and I
22 think there was a copy of an envelope.

23 A. Correct.

24 Q. Okay. This is a letter dated February
25 28, 1975 from Paul Edwards to somebody, right?

1 A. Correct.

2 Q. This is from Paul Edwards to Ms. Betty
3 Assunto; is that right?

4 A. That's what I'm assuming; that's
5 correct.

6 Q. And what is this letter?

7 A. I have no idea. Like I said, in '75 I
8 was out of the loop. This is something that
9 came across our plate after we had started the
10 suit, Betty produced this.

11 Q. Betty produced it to you?

12 A. Well, she produced it to the lawyers.

13 Q. Did she ever indicate to you why she
14 had this letter?

15 A. No. I mean, I could say what I think
16 but that doesn't really matter.

17 Q. What is your understanding as to why
18 she had this letter?

19 A. Sounded like Paul Edwards was a
20 disgruntled person and upset the way John Shoup
21 fired the entire band.

22 Q. Okay.

23 A. And I guess he was asking Betty how he
24 could do all this when the Assunto's supposedly
25 owned the band. He was under the understanding,

1 obviously, that Betty was part ownership of the
2 band and that she had certain rights not to --
3 for him and the whole band to get fired. He
4 didn't want to go on the road or something like
5 that. Some kind of band, you know, stuff going
6 on.

7 Q. You did not receive this document until
8 a lawsuit was filed?

9 A. That's correct.

10 Q. As far as you know this was sent to
11 Betty Assunto?

12 A. Yeah. I'm assuming because she had it
13 in her little box, little folder.

14 Q. I guess -- did she receive it,
15 according to your understanding, at or about the
16 time it was sent, like a little bit after
17 February of '75?

18 A. I don't have firsthand knowledge of
19 that.

20 Q. But she got it at some point?

21 A. Right. Right. And she kept it for
22 whatever reason.

23 MR. DORVEE:

24 Let's take a break and I may be
25 done.

1 (Recess was taken.)

2 MR. DORVEE:

3 I'm finished at this point.
4 Depending on your questions I might have a few
5 more.

6 MR. HAIR:

7 Of course.

8 EXAMINATION BY MR. HAIR:

9 Q. Mr. Assunto, just a few questions for
10 you. I want to go back to Charlie Catalano real
11 quick. Charlie Catalano, he's the person that
12 had contacted you about putting on -- creating a
13 band called the Dukes of Dixieland?

14 A. Correct. Well, leasing the name from
15 the family because he had thought that we
16 were -- we owned the name.

17 Q. Okay. You -- Mr. Dorvee asked you some
18 questions about him and you said that
19 negotiations didn't go very far or there wasn't
20 a discussion about price; is that right? Is
21 that a fair --

22 MR. DORVEE:

23 You can ask him what the discussion
24 was.

25 THE WITNESS:

1 There was no really conference or
2 discussion. All I flat out told Mr. Catalano
3 was that my family has no connection to that
4 band that's performing. And he said, "You have
5 to. Yes, they are." I said, "No, they're not."
6 That's when he suggested he'll send me the promo
7 pack to prove to me that there is a band using
8 my dad's legacy.

9 EXAMINATION BY MR. HAIR:

10 Q. So you just never got that far?

11 A. Right. Because I told him, "It's not
12 my deal. I don't own the name."

13 Q. Okay. Can you explain a little bit
14 about what was going on with your mother right
15 around the late '70s or mid '70s?

16 A. Well, my father died in '74. By that
17 time she had already three brain tumor
18 surgeries. She was unable to walk. She
19 couldn't feed herself so we had to hand feed
20 her. We had to pick her up, put her in the bed
21 because she couldn't move without assistance.
22 She could barely talk. And then within a year
23 she had a fourth brain tumor surgery which left
24 her in a bedridden state where she couldn't sit
25 up anymore for a long period of time. We had

1 special machines. And then by next -- year and
2 a half later she had another brain tumor surgery
3 which left her unable to eat so we had to start
4 tube feeding her. But she stayed with us kids
5 until she died and she died, like I said, a
6 couple of days before Christmas and I was with
7 her when she died.

8 MR. DORVEE:

9 What year was that?

10 THE WITNESS:

11 1978, December 21st.

12 EXAMINATION BY MR. HAIR:

13 Q. Before you told Mr. Dorvee that you
14 knew the Dukes of Dixieland existed before --
15 before filing the lawsuit.

16 A. I had heard there was a band playing
17 using the name Dukes of Dixieland. I knew that.

18 Q. How did you know that?

19 A. Just from being around the city, you
20 know. If you read Gambit or anything else you
21 saw advertisements for the name of different
22 bands that were playing, you know, the lagniappe
23 section would say whatever music bands were
24 playing.

25 Q. Did you ever go to any concerts?

1 **A. No. Only time I ever saw his band play**
2 **was after the lawsuit. And I would go see them**
3 **if I was at the French Quarter Fest or something**
4 **like that.**

5 **Q. That was after the lawsuit?**

6 **A. Yeah. But I went to places where I**
7 **didn't have to pay.**

8 **Q. Okay. Before the lawsuit did you look**
9 **at any promotional materials?**

10 **A. No. I wasn't privy. I wasn't looking**
11 **into anything. Nothing set -- nothing seemed**
12 **out of sorts except there was a band using the**
13 **name Dukes of Dixieland. But we had no recourse**
14 **as far as I know.**

15 **Q. I want to talk about Betty singing with**
16 **the Dukes for a second. You were talking about**
17 **Papa Jac and he blurted out something on his**
18 **bed. Was that the first time you knew that**
19 **Betty sang with the Dukes?**

20 **A. Yes.**

21 **Q. When was the first time you found out**
22 **for sure that she sang with the Dukes?**

23 **A. When she told me that she had sang with**
24 **them. It was right prior to filing the lawsuit**
25 **she and I were talking. And I told her I was --**

1 **you know, told her what happened with Charlie**
2 **Catalano and whatnot. And I said, "You have to**
3 **tell me everything you know, Betty." So she**
4 **told me, "Well, I had sang with the Shoup Dukes**
5 **for about six months." And then she said the**
6 **guy was a shiester and that she didn't feel**
7 **comfortable and he wanted her to train somebody**
8 **else to sing like her. And she said that's not**
9 **what she enlisted in the band for. She thought**
10 **she was going to -- you know, so she quit.**

11 **Q. You said right prior to the lawsuit.**
12 **Can you give me a time frame, just generally?**

13 **A. Six months maybe. About six months**
14 **prior to the suit, maybe nine months. Within**
15 **the year of the suit, let's put it that way**
16 **because I remember asking her would she want to**
17 **join in and be part of this thing and did she**
18 **have the energy for it if it were to go forward**
19 **not knowing what was going to come of it.**

20 **Q. When looking at -- I'm referring to**
21 **this RCA letter which might be Exhibit 7. Well,**
22 **there's one I don't have. 17, is that right?**

23 **A. 16 you're talking about.**

24 **Q. 16?**

25 **A. No. 7, and No. 16 is the follow-up of**

1 **7.**

2 **Q. Okay. So this is in '94?**

3 **A. Correct.**

4 **Q. And I believe you stated earlier that**
5 **Mr. Shoup was trying to get those royalties?**

6 **A. Yeah. They were trying to redirect the**
7 **royalties to him in the early '90s.**

8 **Q. When did you find that piece of -- when**
9 **did you become aware of that piece of**
10 **information?**

11 **A. After the lawsuit was filed through**
12 **discoveries and stuff like that. These letters**
13 **came because they were answering, you know,**
14 **basically why the royalties weren't coming was**
15 **because they found out that Frank Assunto --**
16 **well the Social Security number of Frank Assunto**
17 **was deceased and they couldn't issue them until**
18 **it was determined where to issue them to or whom**
19 **to.**

20 **Q. But no one brought that information**
21 **about Mr. Shoup to your attention at that time?**

22 **A. No, no, no. Because it was**
23 **unrecoverable. We didn't even suspect anything.**
24 **We just knew oh, well I guess they did a check**
25 **on Social Security numbers and they found out**

1 **dad's dead. Then we all said: What are we**
2 **going to do? We sat back and waited. And said:**
3 **Well, if anything, nobody else can get them.**
4 **We'll let them accrue until we decide what's**
5 **going to happen with going after those**
6 **royalties. We didn't know how to do the legal**
7 **process and none of us -- like I said, I wasn't**
8 **involved in Dukes kind of stuff at that time.**

9 **Q. Let's talk about this document with a**
10 **signature by Betty Assunto on it authorizing Mr.**
11 **Shoup. You said before Papa Jac knew about**
12 **that?**

13 **A. I'm assuming he did because of after**
14 **hearing how he stated, you know, how could Betty**
15 **do that to the family it kind of creped into my**
16 **mind he must have known more than the fact she**
17 **was singing on stage with a band called the**
18 **Dukes of Dixieland. In my mind I couldn't see**
19 **where he would be upset with her just singing**
20 **with a band. Then after I saw the document,**
21 **after I saw that I said, "Oh, that's why paw-paw**
22 **with a little miffed with Betty and not**
23 **understanding why she could have signed over**
24 **anything."**

25 **Q. Did Papa Jac ever refer to that**

1 document --
 2 **A. No.**
 3 **Q.** -- when he was talking to you?
 4 **A. Never did.**
 5 **Q.** He never acknowledged its existence?
 6 **A. No.**
 7 **Q.** I want to talk about your goals in this
 8 lawsuit. It's come up a couple of times. Have
 9 you -- well, I want to talk about, I guess, the
 10 damage that's been alleged more specifically.
 11 Has the estate had any opportunities to use the
 12 Dukes of Dixieland name?

13 **A. Yes. Charlie Catalano is a perfect**
 14 **example of that, you know. But I've never**
 15 **pursued it because until legal things come to a**
 16 **conclusion you don't know -- you can't really go**
 17 **out and promote or try to start something up if**
 18 **you don't have laid claim to it properly. So I**
 19 **never have pursued it. I've had musicians**
 20 **around town say that we should -- the Assuntos**
 21 **should get back and involve themselves in the**
 22 **Dukes and be the Dukes. But the objective of**
 23 **the lawsuit is really to stop and to clarify**
 24 **there was an original Dukes and there was a**
 25 **secondary Dukes. The secondary Dukes had no**

1 **connection to the first Dukes. And through**
 2 **settlement negotiations we just couldn't reach**
 3 **to that point.**

4 **Q.** Are there any other examples? You said
 5 Charlie Catalano is a perfect example. Are
 6 there any others that you can think of?

7 **A. Well, not in the sense of any**
 8 **substantial ones that I would consider real. I**
 9 **mean people talk. But that's not somebody**
 10 **putting a proposal in front of you.**

11 MR. HAIR:
 12 That's all I have.
 13 MR. DORVEE:
 14 Thank you very much for coming.
 15 THE WITNESS:
 16 No problem.
 17 (Conclusion of deposition at or about
 18 12:30 p.m.)
 19
 20
 21
 22
 23
 24
 25

WITNESS' ATTESTATION

1 I have read or have had the foregoing
 2 testimony read to me, pursuant to Rule 30(e) of
 3 the Federal Rules of Civil Procedure and/or
 4 Article 1445 of the Louisiana Code of Civil
 5 Procedure, and hereby attest that, to the best
 6 of my ability and understanding, it is a true
 7 and correct transcription of my testimony, with
 8 the exception of any attached corrections or
 9 changes, complete with reasons for changes, on
 10 the Witness' Amendment Pages;
 11

12 I have in no way altered the printed
 13 transcript pages containing testimony herein,
 14 tampered with the seal on the last numbered page
 15 herein, or tampered with the security strip on
 16 the binder hereof. The integrity of this
 17 certified transcript has been maintained in the
 18 identical form as it was received by me, with
 19 the exception of any changes on the Witness'
 20 Amendment Pages.
 21

22 Signature _____
 23 ANTONIO D. ASSUNTO

24 _____
 25 Date

CERTIFICATE

1 This certification is valid only for a
 2 transcript accompanied by my original signature
 3 and original stamp on this page.
 4

5 I, BARBARA S. MCGEE, Certified Court
 6 Reporter in and for the State of Louisiana, as
 7 the officer before whom this testimony was
 8 taken, do hereby certify that ANTONIO D.
 9 ASSUNTO, after having been duly sworn by me upon
 10 authority of R.S. 37:2554, did testify as
 11 hereinbefore set forth in the foregoing (114)
 12 pages;

13 That this testimony was reported by me
 14 in the stenotype reporting method, was prepared
 15 and transcribed by me or under my personal
 16 direction and supervision, and is a true and
 17 correct transcript to the best of my ability and
 18 understanding;

19 That I am not related to counsel or to
 20 the parties herein, nor am I otherwise
 21 interested in the outcome of this matter.
 22

23 _____
 24 BARBARA S. MCGEE
 25 Certified Court Reporter
 State of Louisiana
 Certificate No. 87384

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