

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2000-9440  
c/w 2013-8334

DIVISION "F-7"

ANTONIO D. ASSUNTO, AS ADMINISTRATOR OF THE  
ESTATE OF FRANK J. ASSUNTO

VERSUS

JOHN SHOUP, TELERECORD TELEVISION PRODUCTIONS  
LTD., T.L.P. OF NEW ORLEANS, INC., et al

The deposition of

JOHN SHOUP,

taken in the above-entitled cause pursuant to  
the following stipulation before Michael W.  
Franco, Certified Court Reporter, in the  
offices of Edgar D. Gankendorff, Provosty and  
Gankendorff, 650 Poydras Street, Suite 2700,  
New Orleans, Louisiana 70130, on the 25<sup>th</sup> day  
of September 2014.

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REPORTED BY:

Michael W. Franco  
Certified Court Reporter

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PROGRESSIVE CERTIFIED COURT REPORTERS  
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New Orleans, Louisiana 70122  
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A P P E A R A N C E S

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For: JOHN SHOUP, TELERECORD TELEVISION  
PRODUCTIONS LTD., T.L.P. OF NEW  
ORLEANS, INC., et al

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For: JOHN SHOUP, TELERECORD TELEVISION  
PRODUCTIONS LTD., T.L.P. OF NEW  
ORLEANS, INC., et al

Also Present:

ANTONIO DEANO ASSUNTO

S T I P U L A T I O N

It is stipulated and agreed by and between all parties that the deposition of JOHN SHOUP, is hereby being taken pursuant to the Louisiana Code of Civil Procedure, pursuant to notice, for all purposes. All formalities, including those of signing, sealing, certification, and filing, are waived. All objections except those as to the form of the question and the responsiveness of the answer are reserved until the time of the trial of the cause.

- - - -

Michael W. Franco, Certified Court Reporter, in and for the Parish of Orleans, State of Louisiana, officiated in administering the oath to the above-named witness.

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John Shoup  
747 Magazine Street  
New Orleans, Louisiana 70130,  
a witness having been first duly sworn in the  
cause, testified on his oath as follows:

E X A M I N A T I O N

MR. GALANTE:

Good morning, Mr. Shoup. I am  
Scott Galante. I represent Mr.  
Assunto, as the administrator of  
the Estate of Frank Assunto.

WITNESS:

Yes, sir.

MR. GALANTE:

Before we begin, let me attach  
the Notice of Deposition and mark  
it as Plaintiff's Exhibit No. 1.

MR. DORVEE:

Okay.

MR. GALANTE:

Would you state your full name  
for the record?

WITNESS:

John Shoup.

BY MR. GALANTE:

1 Q. Do you have any middle name?

2 A. No.

3 Q. Okay. What is your date of birth?

4 A. October 27, 1937. I'm sorry, October 28,  
5 1937.

6 Q. October 28?

7 A. Yes.

8 Q. I know you have given depositions before.  
9 I will not go through all of those rules  
10 with you. But unless you correct me, or  
11 if you answer me, I will assume that you  
12 heard my question correctly.

13 A. Okay.

14 Q. If for any reason, you need me to restate  
15 it, let me know.

16 A. Okay.

17 Q. Did you do anything to prepare for  
18 today's deposition, other than to speak  
19 with your attorneys?

20 A. No.

21 Q. You have not reviewed any documents?

22 A. No.

23 Q. Did you review the documents that were  
24 attached to Mr. Assunto's deposition from  
25 yesterday?

1 A. Yes.

2 Q. And did you do that since yesterday's  
3 deposition?

4 A. No. I did not review them.

5 MR. DORVEE:

6 I don't think he knows what  
7 you are talking about. He has not  
8 reviewed any documents that were  
9 attached to the deposition  
10 yesterday.

11 MR. GALANTE:

12 Okay.

13 BY MR. GALANTE:

14 Q. You have never review any of the  
15 documents that were attached to the  
16 deposition yesterday?

17 A. No.

18 Q. Okay. And your attorneys did not tell  
19 you what we had attached to the  
20 deposition yesterday?

21 A. No.

22 Q. Alright. Have you met or spoken with  
23 anybody else in preparation for your  
24 deposition, other than the attorneys?

25 A. No.

1 Q. What is your current residential address?

2 A. 747 Magazine Street.

3 Q. And ----

4 A. In New Orleans.

5 Q. It is in that peach building?

6 A. Yes.

7 Q. The photographs are on your website?

8 A. Yes.

9 Q. So is that entirely a residential  
10 property?

11 A. No.

12 Q. Part of it is commercial?

13 A. Yes.

14 Q. And it is also residential?

15 A. Yes.

16 Q. Who do you live there with?

17 A. Just myself.

18 Q. So you are the sole resident at that  
19 property? Is that correct?

20 A. No.

21 Q. Are there multiple units there?

22 A. Yes.

23 Q. Who lives in those other units?

24 A. Dr. Haas, Dr. Thomas, and Mr. Blakeman.

25 Q. So on the commercial end of the building,



1           who occupies the commercial properties or  
2           the commercial areas of the property?

3           A.    Those three (3) owners.

4           Q.    Who are those owners?

5           A.    The condominium owners.

6           Q.    Who are those?

7           A.    George Rodrigue.

8           Q.    Alright.

9           A.    Talbot Realty and Great Chefs Television.

10          Q.    Alright.  And Dukes of Dixieland?

11          A.    And Dukes of Dixieland, that is correct.

12          Q.    Okay.  Do you have another residential  
13               property where you spend significant  
14               amounts of your time?

15          A.    Significant amounts, no.

16          Q.    Do you have another residential property?

17          A.    Yes.

18          Q.    Where is that residential property?

19          A.    In Mandeville.

20          Q.    Mandeville?

21          A.    Yes.

22          Q.    What is the address?

23          A.    210 Scotch Pine.

24          Q.    Scotch Pine.  Is that Scotch Pine Lane or  
25               Street?

1 A. Just Scotch Pine.

2 Q. The zipcode?

3 A. 70148.

4 Q. Alright. Do you have any other  
5 residences?

6 A. Yes.

7 Q. Where is the other residence?

8 A. St. Croix.

9 Q. Do you have an address for that?

10 A. No.

11 Q. You do not have an address?

12 A. There is no street address there.

13 Q. So it does not receive mail at that  
14 address?

15 A. No.

16 Q. There is no way to identify it other than  
17 to say it is at St. Croix?

18 A. Correct.

19 Q. What town is it in?

20 A. It is not in any town. It is near  
21 Christianstead.

22 Q. Thank you. Near Christensen (sic)?

23 A. Christianstead.

24 Q. Christianstead?

25 A. Yes.

1 Q. I am even having a hard time hearing you.

2 A. I'm sorry. I do not talk loud.

3 Q. I understand. But you understand, the  
4 court reporter, he has to take everything  
5 down.

6 A. I understand. I'm trying to direct my  
7 voice toward him.

8 Q. Okay. That's fine. About how far from  
9 Christianstead is it?

10 A. Twenty (20) minutes.

11 Q. Do you have a residency in St. Croix?

12 A. No.

13 Q. And ----

14 A. Define residency.

15 Q. Meaning, what country is St. Croix in?

16 A. In the United States.

17 Q. For purposes of your driver's license,  
18 where is your driver's license?

19 A. My driver's license is in St. Croix.

20 Q. Do you have a St. Croix, or excuse me.

21 Do you have a New Orleans driver's  
22 license?

23 A. No.

24 Q. Where are you registered to vote?

25 A. New Orleans.

1 Q. Okay. Are you currently receiving Social  
2 Security?

3 A. Yes.

4 Q. Where is the Social Security  
5 correspondence and payments directed,  
6 meaning to which address?

7 A. It is directed to my bank account.

8 Q. They do mail your statements to you?

9 A. Yes.

10 Q. Where are they mailed to?

11 A. My statements are mailed to Madisonville  
12 or Mandeville. It is between those two  
13 (2).

14 Q. Alright. And what is your current  
15 profession? Or strike that. Are there  
16 any other residences that you own?

17 A. No.

18 Q. Those are the only three (3)?

19 A. Correct.

20 Q. You would say your principal place of  
21 residency would be 747 Magazine Street?

22 A. Yes.

23 Q. What is your current profession?

24 A. I am an entrepreneur.

25 Q. Alright. What companies do you have a

1 business interest in?

2 A. Nothing.

3 Q. None?

4 A. None, other than my own. And are you  
5 talking about my businesses?

6 Q. Yes.

7 A. Great Chefs Television.

8 Q. Okay. With regard to Great Chefs  
9 Television, is that a limited liability  
10 company or a corporation?

11 A. A corporation.

12 Q. Where is that corporation registered?

13 A. New Orleans.

14 Q. And when you say New Orleans, are you  
15 saying the State of Louisiana?

16 A. Louisiana.

17 Q. You filed that with the Secretary of  
18 State?

19 A. Yes.

20 Q. And is it currently up to date?

21 A. Yes.

22 Q. You are familiar with corporate  
23 formalities?

24 A. Yes.

25 Q. And you are familiar with how to maintain

1           your authorization to do business with  
2           the Louisiana Secretary of State?

3       A.    Yes.

4       Q.    Correct?

5       A.    Yes.

6       Q.    The other one you mentioned was Dukes of  
7           Dixieland?

8       A.    Yes.

9       Q.    And is that a business entity?

10      A.    No.

11      Q.    Has it ever been a business entity?

12      A.    At one time, it was.

13      Q.    When?

14      A.    Back in the 1970s.

15      Q.    What kind of a business entity was it?

16      A.    It was a Dixieland ----

17      Q.    But what kind of a business entity? Was  
18           it a corporation?

19      A.    A corporation, yes.

20      Q.    And when did you end up that corporation?

21      A.    I don't recall.

22      Q.    You don't know when you shut it down?

23      A.    No.

24      Q.    Do you remember what decade that was done  
25           in?

1 A. No.

2 Q. Alright. Were there any other  
3 shareholders?

4 A. No.

5 Q. Okay. Do you remember the formal name of  
6 the organization?

7 A. No.

8 Q. So then, do you have any other business  
9 interests, other than those two (2)?

10 A. No.

11 Q. Do you derive any income from any other  
12 sources, other than those two (2)  
13 businesses?

14 A. No.

15 Q. And what does Great Chefs Corporation of  
16 New Orleans do?

17 A. It produces television.

18 Q. What kind of television does it produce?

19 A. Cooking shows.

20 Q. What cooking shows does it currently  
21 produce?

22 A. It does not currently produce any.

23 Q. When was the last time it produced a  
24 television show?

25 A. 2004.

1 Q. What was the name of that show?

2 A. Great Chefs.

3 Q. Alright. So what has it done since 2004?

4 A. Nothing.

5 Q. So then, it is dormant?

6 A. No. We do have a website.

7 Q. Alright.

8 A. We license shows.

9 Q. So it is a vehicle that licenses shows  
10 that have already been produced?

11 A. Yes.

12 Q. So it has been dormant on the production  
13 end of it since 2004?

14 A. Yes.

15 Q. But it still does license shows?

16 A. Yes.

17 Q. How many shows are there available to  
18 license?

19 A. Seven hundred (700).

20 Q. And who works for the Great Chefs  
21 Corporation of New Orleans?

22 A. I have two (2) employees.

23 Q. What are their names?

24 A. Cybil Curtis.

25 Q. I'm sorry?



1 A. Cybil Curtis. That's C-Y-B-I-L, Cybil  
2 Curtis.

3 Q. Okay.

4 A. Nate Williams.

5 Q. Nate Williams?

6 A. Yes.

7 Q. And are they W-2 employees?

8 A. Yes.

9 Q. And they work for Great Chefs Corporation  
10 of New Orleans?

11 A. Yes.

12 Q. Are there any other shareholders in Great  
13 Chefs?

14 A. No.

15 Q. I will ask you about a series of  
16 organizations, okay?

17 A. Yes.

18 Q. Telerecord Productions, Limited. Are you  
19 familiar with that company?

20 A. I was.

21 Q. Was that your company?

22 A. Yes.

23 Q. And is it true that it ceased to exist in  
24 1987?

25 A. I do not remember the date, but yes.

1 Q. What did that company do?

2 A. It produced records.

3 Q. Alright. What artists did it produce  
4 records for?

5 A. I don't remember.

6 Q. How long did you operate that company?

7 A. I don't remember.

8 Q. Was it a successful company?

9 A. No.

10 Q. Would you say that you operated it for  
11 just a very short period of time?

12 A. I don't recall.

13 Q. Okay. And what about Telerecords, or  
14 Telerecord Relevision Productions? It is  
15 Telerecord Relevision Productions.

16 A. I never heard of it.

17 Q. What about Telerecord Television  
18 Productions?

19 A. The same thing.

20 Q. You have never heard of it?

21 A. No. I did hear of it.

22 Q. You have heard of it?

23 A. Yes, I have.

24 Q. Well then, tell me about Telerecord  
25 Television.

1 A. It did television productions.

2 MR. DORVEE:

3 Make sure that he finished his  
4 question before you answer it.

5 WITNESS:

6 Okay.

7 BY MR. GALANTE:

8 Q. What kind of television productions did  
9 it do?

10 A. Music.

11 Q. Do you remember who it produced?

12 A. Who?

13 Q. Yes, music television shows.

14 A. It was music television shows.

15 Q. With regard to any particular act or  
16 band?

17 A. We had numerous acts and bands.

18 Q. Can you name some of them?

19 A. Stephan Grapelli (spelled phonetically).

20 Q. Anyone else?

21 A. Tuts Fielmans (spelled phonetically).

22 Q. Okay.

23 A. Dukes of Dixieland.

24 Q. Okay. Anyone else?

25 A. Irma Thomas.

1 Q. Okay. Anybody else?

2 A. I cannot remember any others.

3 Q. Was that a company that was incorporated  
4 in the State of Louisiana?

5 A. I don't remember.

6 Q. It ceased to operate, hasn't it?

7 A. Yes.

8 Q. Do you know when it ceased operations?

9 A. No.

10 Q. Was it within the last five (5) years?

11 A. No.

12 Q. So it was before that?

13 A. Yes.

14 Q. Was it within the last ten (10) years?

15 A. It was before that. I have no idea  
16 really.

17 Q. So at least ten (10) years ago?

18 A. Over ten (10) years ago, yes.

19 Q. At least fifteen (15) years ago?

20 A. I don't remember.

21 Q. Alright. And what about T.L.P. of New  
22 Orleans?

23 A. I remember there was a T.L.P.

24 Q. Does it sound correct that it was, or the  
25 Secretary of State says that it would

1 down in about 1987?

2 A. That is about right.

3 Q. Well strike that. If the Secretary of  
4 State shows that it went inactive in  
5 1987, would that be accurate?

6 A. I would think so.

7 Q. The Dukes of Dixieland Limited  
8 Corporation in Delaware.

9 A. Yes.

10 Q. Is that a corporation that you currently  
11 own interest in?

12 A. No.

13 Q. Does it exist any longer?

14 A. No.

15 Q. And is that a corporation that you used  
16 to own business interest in?

17 A. Yes.

18 Q. Were there any other shareholders?

19 A. No.

20 Q. And when did that cease to exist?

21 A. I don't remember.

22 Q. And do you know when it came into  
23 existence?

24 A. 1974.

25 Q. And what was its purpose?

1 A. To manage the Dukes of Dixieland.

2 Q. Alright. And what about the Dukes of  
3 Dixieland Corporation?

4 A. I think it is the same thing.

5 Q. And ----

6 A. I don't know.

7 Q. If I were to tell you that I found  
8 evidence that there was a Dukes of  
9 Dixieland Limited and a Dukes of  
10 Dixieland Corporation, would you dispute  
11 that?

12 A. If you found evidence of it, I do not  
13 remember.

14 Q. Is it fair to say that you do not recall  
15 the corporate structures?

16 A. I do not recall the corporate structures.  
17 That is fair to say.

18 Q. And what about the Leisure Music Group?

19 A. The Leisure Music Group?

20 Q. Yes.

21 A. We had a Leisure Music Group, yes.

22 Q. What business did it do?

23 A. It sold leisure products or leisure music  
24 products.

25 Q. What is a leisure work product?

1 A. Those were television shows that were  
2 produced and records that were produced.

3 Q. So it is another television production  
4 company?

5 A. A distribution company.

6 Q. A distribution company?

7 A. Yes.

8 Q. Similar to Great Chefs Corporation?

9 A. Yes.

10 Q. And similar to Telerecord Television  
11 Productions?

12 A. Yes.

13 Q. And similar to Telerecord Productions,  
14 Limited?

15 A. Yes.

16 Q. In any of the entities that I have named  
17 to this point, did you ever have any  
18 other partners in those entities?

19 A. Not that I recall.

20 Q. So when you say the word "we", you are  
21 simply referring to the corporate shell.  
22 Is that correct?

23 A. Yes.

24 Q. And it is fair to say that other than  
25 Great Chefs Corporation of New Orleans,

1 not a single one of those entities is in  
2 operation that we have discussed so far?

3 A. Correct.

4 Q. If I told you that I was unable to find  
5 any formal wind down procedures or shut  
6 down procedures for any of these  
7 entities, would you dispute that?

8 A. No.

9 Q. Is it fair to say that when it comes to  
10 corporate vehicles, you simply just stop  
11 operating them and let the Secretary of  
12 State do what it wants with the corporate  
13 shell?

14 A. I would assume that that is correct.

15 Q. What I'm trying to get at is that you go  
16 through no formal steps to shut down a  
17 corporation?

18 A. No.

19 Q. And it has been your consistent business  
20 practice for as long as you have been at  
21 these kinds of businesses?

22 A. Not necessarily.

23 Q. If I were to tell you that I checked with  
24 the Louisiana Secretary of State and  
25 could find no formally wound down entity



1           you are associated with, would you  
2           dispute that?

3       A.    Ask me that again.

4       Q.    If I were to tell you that I consulted  
5           with the Secretary of State records and  
6           could find no entity that you have ever  
7           been involved with having been wound down  
8           formally, would you dispute that?

9       A.    No.

10      Q.    Alright.  Have you ever heard of a record  
11           company by the name of Jasmine or Jasmine  
12           Records?

13      A.    No.

14      Q.    And have you ----

15                   MR. DORVEE:

16                            I was going to ask you to  
17                            spell it.

18                   MR. GALANTE:

19                            J-A-S-M-I-N-E.

20                   WITNESS:

21                            No.

22      BY MR. GALANTE:

23      Q.    You've never heard of it?

24      A.    No.

25      Q.    And you have had no relationship with it?

1 A. No.

2 Q. Do you currently, in your individual  
3 name, have a federal register mark for  
4 the Dukes of Dixieland?

5 A. Yes.

6 Q. Currently, you have no state registration  
7 for a mark?

8 A. No.

9 Q. Alright. What bands do you currently  
10 manage?

11 A. Dukes of Dixieland.

12 Q. Although there is no formal corporate  
13 entity, you treat that as a separate  
14 business. Is that correct?

15 A. Yes.

16 Q. What other partners do you have in that  
17 venture?

18 A. None.

19 Q. Alright. And who does that venture  
20 employ?

21 A. No one.

22 Q. And ----

23 MR. DORVEE:

24 Well, wait a minute.

25 WITNESS:

1 Well ----

2 MR. GALANTE:

3 Alright. Outside of  
4 musicians, who does that entity  
5 employ?

6 WITNESS:

7 I do not employ musicians.  
8 They are independent contractors.

9 BY MR. GALANTE:

10 Q. Other than musicians, and I'm not asking  
11 about the musicians right now. But other  
12 than musicians, who does that entity  
13 employ? I understand it does not even  
14 employ musicians, but outside of  
15 musicians, who does that entity employ?

16 A. No one.

17 Q. You derive the sole financial benefit  
18 outside of the independent contractors or  
19 musicians?

20 A. And the sole losses.

21 Q. Alright. Let me step back. Could you  
22 just give me a very brief history of your  
23 education?

24 A. College, high school and college.

25 Q. College where?

1 A. At Northwestern.

2 Q. Northwestern?

3 A. Yes, with a B.A.

4 Q. In what?

5 A. A B.A. in arts.

6 Q. In any particular area of focus?

7 A. No.

8 Q. Music?

9 A. Music, yes.

10 Q. Do you play an instrument?

11 A. No.

12 Q. Have you ever played an instrument?

13 A. Yes.

14 Q. What instrument?

15 A. A clarinet.

16 Q. When did you stop playing the clarinet?

17 A. When I could not play it well.

18 Q. When was that?

19 A. I have no idea.

20 Q. Could you give me the decade?

21 A. No.

22 Q. You cannot remember when you stopped  
23 playing the clarinet?

24 A. No.

25 Q. Was it a big part of your life?

1 A. No.

2 Q. Was it fairly recent after college that  
3 you stopped playing?

4 A. You might say that.

5 Q. How long have you been in the music  
6 industry?

7 A. For sixty (60) years.

8 Q. Sixty (60) years?

9 A. Yes.

10 Q. What is the first thing that got you into  
11 the music industry?

12 A. Booking entertainment for the fraternity  
13 houses.

14 Q. At Northwestern?

15 A. Yes, and at other universities, too.

16 Q. Okay. So is it fair to say that you have  
17 always been in the management production  
18 side?

19 A. Yes.

20 Q. So then, you have never made any  
21 professional income from playing music?

22 A. No. I was not any good at it.

23 Q. So after college, did you get a job?

24 A. No.

25 Q. Have you ever had a job?

1 A. No.

2 Q. And is it related to the fact that you  
3 may not need one because you are  
4 independently wealthy?

5 A. No.

6 Q. Is it because you made business  
7 immediately out of being a business  
8 entrepreneur?

9 A. Yes.

10 Q. Did you come back to New Orleans  
11 immediately after college?

12 A. No.

13 Q. When did you return to New Orleans after  
14 college?

15 MR. DORVEE:

16 Objection as to the form of  
17 the question.

18 MR. GALANTE:

19 I'm sorry. Are you from New  
20 Orleans?

21 WITNESS:

22 No.

23 BY MR. GALANTE:

24 Q. I'm sorry. I was under the impression  
25 that you were. But when did you first

1 move to New Orleans?

2 A. 1961.

3 Q. Have you lived anywhere else since then?

4 A. Yes.

5 Q. As your primary residence?

6 A. Yes.

7 Q. Where would that be?

8 A. New York, Chicago, and Los Angeles.

9 Q. Alright. And when was the last time you  
10 were involved in the production of, or  
11 when was the last time you were involved  
12 in the management of a musical act, other  
13 than the Dukes of Dixieland?

14 A. Other than the Dukes of Dixieland?

15 Q. Yes.

16 A. I don't remember.

17 Q. Could you give me a decade?

18 A. I don't remember.

19 Q. You have no recollection of the last time  
20 you managed a band?

21 A. I probably have managed several bands,  
22 but I do not remember.

23 Q. If I were to sit here and tell you that  
24 you have not managed another band for  
25 fifty (50) years, you could not disagree

1 with me?

2 A. I have managed other bands, yes, I have.

3 Q. When was the last time? You cannot tell  
4 me when?

5 A. What about 1968?

6 Q. So I was about four (4) years off then?  
7 Is that correct? Maybe forty six (46)  
8 years ago?

9 A. Yes.

10 Q. So then since 1968, the only musical act  
11 that you have actively managed are the  
12 Dukes of Dixieland? Is that correct?

13 A. I can't remember. I do not remember.

14 Q. You don't remember?

15 A. I don't remember.

16 Q. Okay. Have you ever had your memory  
17 evaluated?

18 MR. DORVEE:

19 Objection as to the form of  
20 the question.

21 MR. GALANTE:

22 You have to answer the  
23 question.

24 WITNESS:

25 No.



1 BY MR. GALANTE:

2 Q. Do you feel like you have a good memory?

3 A. When I went to remember, or if I have  
4 tried to remember, yes.

5 Q. So then, you do not want to remember the  
6 last time that you managed a band?

7 A. I am seventy seven (77) years old. I do  
8 not try to remember. I'm sorry.

9 Q. So then, is it your testimony that you  
10 are not making an effort to answer my  
11 questions today?

12 A. No, absolutely not. I just do not  
13 remember.

14 Q. So then, will you try for me and remember  
15 the last time you managed a musical act,  
16 other than the Dukes of Dixieland?

17 A. Let me say in 2000, okay, 1999 or 2000.

18 Q. Alright. And what band was that?

19 A. Charlie Byrd Trio, that's B-Y-R-D,  
20 Charlie Byrd Trio.

21 Q. And is that the only other band that you  
22 managed at the time?

23 A. I believe so.

24 Q. Alright. So then prior to Charlie Byrd  
25 Trio, can you try to remember the last

1           time you managed a band, other than the  
2           Dukes of Dixieland?

3           A.   Rotary Connection.

4           Q.   Alright.

5           A.   The Dells, that's D-E-L-L-S.

6           Q.   Okay.

7           A.   Charles Stephney, S-T-E-P-H-N-E-Y.

8           Q.   Okay.

9           A.   Charisma, and then New Era.

10          Q.   Okay.

11          A.   I cannot think of any others.

12          Q.   So then, as you sit here today, those are  
13          the bands that you can recall having  
14          managed?

15          A.   Having to think about them, yes.

16          Q.   Okay. Could there have been others?

17          A.   Probably.

18          Q.   Are any of those bands that you started  
19          yourself?

20          A.   New Era is one band.

21          Q.   So then, the Charlie Byrd Trio was in  
22          existence when you came into contact with  
23          them?

24          A.   Yes.

25          Q.   Rotary Connection was in existence when

1           you came into contact with them?

2       A.    Yes.

3       Q.    The Dells were in existence?

4       A.    Yes.

5       Q.    When you came into contact?

6       A.    Yes.

7       Q.    Charisma?

8       A.    Yes.

9       Q.    And Charles Stephney was in existence  
10           when you came into contact with them?

11      A.    Yes.

12      Q.    Alright. Was the Charlie Byrd Trio a  
13           commercial success while you managed  
14           them?

15      A.    Yes.

16      Q.    What circumstances surrounded you ending  
17           your relationship with them?

18      A.    A death.

19      Q.    The death of whom?

20      A.    Charlie Byrd.

21      Q.    Was Rotary a commercial success while you  
22           managed them?

23      A.    Yes.

24      Q.    What circumstances surrounded ending your  
25           relationship with them?

1 A. The band broke up.

2 Q. Was Charles Stephney a commercial  
3 success?

4 A. Yes.

5 Q. And what circumstances surrounded you  
6 ending your relationship with them?

7 A. A death.

8 Q. Were the Dells a commercial success when  
9 you managed them?

10 A. Yes.

11 Q. And what surrounded the end of your  
12 relationship with them?

13 A. They went with another manager.

14 Q. Are the Dells still in existence?

15 A. I don't know.

16 Q. What about Charisma?

17 A. No, I doubt that.

18 Q. But was Charisma a commercial success  
19 when you managed them?

20 A. Not really, no.

21 Q. What circumstances surrounded you ending  
22 your relationship with them?

23 A. I don't recall.

24 Q. Do you consider the Dukes of Dixieland to  
25 be a commercial success?

1 A. No.

2 Q. When was the last time the Dukes of  
3 Dixieland were a commercial success?

4 A. I would say in the late 1990s.

5 Q. Can you define for the record what you  
6 believe a commercial success to be?

7 A. My not having to fund the overhead and  
8 expenses.

9 Q. Alright. So it has been fifteen (15)  
10 years since you last were able to operate  
11 the band at either break even or a  
12 profit?

13 A. That is correct. There might be one (1)  
14 or two (2) exceptions to that.

15 Q. One (1) or two (2) exceptions?

16 A. One (1) or two (2) years that could have  
17 been exceptions.

18 Q. And even within those years, it was not a  
19 dramatic income?

20 A. Absolutely not.

21 Q. Why do you keep doing it then?

22 A. Because it is a hobby.

23 Q. So then the Dukes of Dixieland, from your  
24 estimation, are not a commercial endeavor  
25 any longer, but more a hobby?

1 A. It always has been a hobby.

2 Q. Can you tell me essentially what, in an  
3 average year, what the Dukes of Dixieland  
4 grosses in income?

5 A. Two hundred fifty thousand dollars  
6 (\$250,000).

7 Q. How many members of the Dukes of  
8 Dixieland are there?

9 A. Six (6).

10 Q. On an average year, how much money do  
11 each of those members get?

12 A. Divide six (6) into two hundred fifty  
13 thousand dollars (\$250,000).

14 Q. So no money goes toward the overhead?

15 A. Not much.

16 Q. Okay. Is it less than one (1%) percent?

17 A. I don't remember.

18 Q. So essentially, the members of the band  
19 who are independent contractors split all  
20 of the income?

21 A. Yes, less the expenses.

22 Q. What are the expenses?

23 A. Travel.

24 Q. In an average year, how much are the  
25 expenses?

1 A. I have no idea.

2 Q. Give me an estimate.

3 A. I believe I furnished all the  
4 documentation on the previous  
5 interrogatories back before 2011, so all  
6 of that is available to you.

7 Q. I'm trying to get your understanding of  
8 it.

9 A. Well, I am telling you that you have  
10 already gotten it.

11 MR. DORVEE:

12 Do you have any understanding  
13 of it, as you sit here now?

14 WITNESS:

15 No.

16 MR. GALANTE:

17 Okay.

18 WITNESS:

19 That is past history, you  
20 know. I don't know.

21 BY MR. GALANTE:

22 Q. So then, your operation of the band,  
23 okay, does it have you close enough to  
24 the finances to even understand what it  
25 costs to operate, even as an estimate?

1 MR. DORVEE:

2 Objection.

3 WITNESS:

4 That is correct. I don't  
5 know.

6 BY MR. GALANTE:

7 Q. I have sat down in front of you a copy of  
8 what is marked as Plaintiff's Exhibit No.  
9 2. Do you recognize the document?

10 MR. DORVEE:

11 Just give me one second.

12 WITNESS:

13 Okay.

14 MR. DORVEE:

15 Can we take just a quick  
16 break?

17 MR. GALANTE:

18 Sure.

19 MR. DORVEE:

20 Off the record.

21 MR. DORVEE:

22 On the record.

23 BY MR. GALANTE:

24 Q. Have you had a chance to review that?

25 A. Yes.



1 Q. You do recognize the document?

2 A. Yes.

3 Q. You agree to that document, correct?

4 A. Yes.

5 Q. You signed that document. Is that  
6 correct?

7 A. Yes.

8 Q. Okay. It was after a long period of  
9 litigation, though, correct?

10 A. Eleven (11) years.

11 Q. At the time of the settlement, the goals  
12 of this were to completely resolve the  
13 case. Is that correct?

14 A. Yes.

15 Q. In fact, one of the terms is that the  
16 case would be dismissed. Is that  
17 correct?

18 A. Yes.

19 Q. You voluntarily contracted for the  
20 settlement, didn't you?

21 A. Yes.

22 Q. And at the time you requested your  
23 counsel to negotiate Mr. Assunto being  
24 limited from using the word "real" in  
25 association with the Dukes of Dixieland.

1 Is that correct?

2 A. Yes.

3 Q. And it was communicated to you through  
4 counsel that he refused to add that as a  
5 settlement term, correct?

6 MR. DORVEE:

7 Objection.

8 WITNESS:

9 No.

10 BY MR. GALANTE:

11 Q. What is your understanding as to why your  
12 request was not met with an agreement to  
13 include the word "real"?

14 A. I am not aware of that.

15 Q. You are not aware of what?

16 A. Of the word "real".

17 Q. The discussion with counsel about the  
18 word "real"?

19 A. I do not remember that.

20 Q. Again, you do not recall?

21 A. No.

22 Q. Can you try to recall that for me?

23 A. No.

24 Q. Are you refusing to recall?

25 A. No, I do not remember.

1 Q. Okay. So then if Mr. Ross, who was  
2 negotiating the settlement agreement,  
3 indicated that he had a discussion with  
4 your counsel that you were requesting Mr.  
5 Assunto be prevented from using the word  
6 "real" in association with the Dukes of  
7 Dixieland, you have no recollection that  
8 could contest that? Is that correct?

9 A. I would defer to counsel.

10 Q. But again, you have no recollection that  
11 can contest that, correct?

12 A. I don't remember.

13 Q. Yes or no?

14 A. No.

15 Q. You have no recollection that could  
16 contest that? Is that correct?

17 A. No.

18 Q. It is not correct. What recollection do  
19 you have that could contest that?

20 A. I don't remember.

21 Q. Alright.

22 MR. DORVEE:

23 I think the answer is yes,  
24 that you have no recollection.

25 WITNESS:

1 Yes.

2 BY MR. GALANTE:

3 Q. You cannot contest that fact?

4 A. Correct.

5 Q. So if Mr. Ross provides testimony, you  
6 yourself could not controvert it. Is  
7 that correct?

8 A. Correct.

9 Q. Alright. But it is fair to say that that  
10 document that you reviewed, Plaintiff's  
11 Exhibit No. 2, does not have a limitation  
12 on Mr. Assunto's ability to use the word  
13 "real". Is that correct?

14 A. Yes.

15 Q. The settlement agreement does not limit  
16 Mr. Assunto from selling music CDs, does  
17 it?

18 A. No.

19 Q. The settlement agreement does not prevent  
20 Mr. Assunto from distributing recordings  
21 of the Dukes of Dixieland from its  
22 Assunto days, does it?

23 A. Correct.

24 Q. The settlement agreement does not prevent  
25 Mr. Assunto from operating a band, does

1           it?

2       A.    Yes.

3       Q.    It does prevent him from operating a  
4           band?

5       A.    Yes.

6       Q.    Can you show me in what portion the  
7           settlement agreement prevents Mr. Assunto  
8           from operating a band?

9       A.    Okay.

10                   MR. DORVEE:

11                           A band ----

12                   MR. GALANTE:

13                           Does it prevent him from  
14                   operating a band?

15                   WITNESS:

16                           Yes.

17       BY MR. GALANTE:

18       Q.    And if you could show me where that is.

19       A.    At No. 4.1.

20       Q.    Would you read that language?

21       A.    This limited license will not be used in  
22           connection with a live musical band.

23       Q.    So it prevents him from using the license  
24           of the name Dukes of Dixieland with the  
25           band, correct?

1 A. Correct.

2 Q. But it does not prevent him from  
3 operating band, does it?

4 MR. DORVEE:

5 Objection as to the form of  
6 the question because it asks for a  
7 legal conclusion.

8 WITNESS:

9 He will not be running a band  
10 with the Dukes of Dixieland name.

11 MR. GALANTE:

12 That's fair, but that was not  
13 the question.

14 BY MR. GALANTE:

15 Q. My question is, this agreement does not  
16 prevent him from operating a band. It  
17 only limits his ability to use the name  
18 Dukes of Dixieland in association with  
19 the band.

20 MR. DORVEE:

21 Objection.

22 BY MR. GALANTE:

23 Q. It does not limit his ability to operate  
24 a band in any way. I mean, it does not  
25 prevent him from operating a band ----

1 A. It prevents him from operating a band  
2 called the Dukes of Dixieland.

3 Q. But that is the only limitation in this  
4 agreement?

5 A. Correct.

6 Q. With regard to a band?

7 A. A live band.

8 Q. A live band or a recorded band. Isn't  
9 that correct?

10 A. With the term of Dukes of Dixieland?

11 Q. Right.

12 A. Correct.

13 Q. Yes. Is that the only limitation with  
14 regard to the operation of a band of any  
15 kind by Mr. Assunto as agreed upon in  
16 this agreement? It cannot be named Dukes  
17 of Dixieland?

18 A. Yes.

19 Q. That term is in quotation marks, isn't  
20 it?

21 A. Yes.

22 Q. Alright. And at the time the parties  
23 agreed that you and Mr. Assunto would and  
24 could simultaneously use the term Dukes  
25 of Dixieland. Is that correct?

1 A. Yes.

2 Q. And you agreed to that when you signed  
3 this document. Is that correct?

4 A. Unfortunately, yes.

5 Q. Nothing prevents Mr. Assunto from hosting  
6 a website that shares the history of the  
7 Assunto years of the Dukes of Dixieland?  
8 Is that correct?

9 A. That is correct.

10 Q. And at the time you settled this, you  
11 agreed that you were fully aware Mr.  
12 Assunto was operating a website that  
13 shared the history of the Dukes of  
14 Dixieland. Is that correct?

15 A. I don't remember that.

16 Q. And again, could you try to remember it  
17 for me?

18 A. I do not remember.

19 Q. Okay. If I were to ask you to review the  
20 terms to see if there is anything in this  
21 document that makes reference to existing  
22 website, would you do that for me?

23 A. Yes.

24 Q. Okay.

25 MR. DORVEE:



1                   Do you have a particular  
2                   paragraph to direct him to?

3           MR. GALANTE:

4                   Considering all of the  
5                   communications back and forth  
6                   between them, I am shocked that he  
7                   cannot remember that it was in  
8                   existence at the time. But it is  
9                   what it is. His memory seems to  
10                  be convenient.

11          MR. DORVEE:

12                   Well ----

13          MR. GALANTE:

14                   I will withdraw that.

15          MR. DORVEE:

16                   Thank you.

17          MR. GALANTE:

18                   If you will review this, sir.

19          WITNESS:

20                   Sir.

21          BY MR. GALANTE:

22          Q.   Under Section No. 4.4, does that not  
23               acknowledge that Mr. Assunto was  
24               operating a website regarding this  
25               matter?

1 A. Yes.

2 Q. Does it also acknowledge that you would  
3 remove all references to the Assunto  
4 family from your website?

5 A. Yes.

6 Q. There is nothing in this settlement  
7 agreement that prevents Mr. Assunto from  
8 attending live shows of the Dukes of  
9 Dixieland, does it?

10 A. No.

11 Q. There is nothing in this settlement  
12 agreement that limits what he may or may  
13 not wear to attend those shows?

14 A. No.

15 Q. You have no basis to believe that this  
16 settlement agreement provides you the  
17 right to prevent Mr. Assunto from going  
18 anywhere in the world, does it?

19 A. No.

20 Q. In the event that you encounter Mr.  
21 Assunto at a Dukes of Dixieland show and  
22 ask him to leave is solely a personal  
23 request. Is that correct?

24 A. Yes.

25 Q. You do not believe you have any legal

1 right to ask him to leave, do you?

2 A. When?

3 MR. DORVEE:

4 That asks for a legal  
5 conclusion, but you can tell him  
6 of the understanding you have.

7 MR. GALANTE:

8 But I'm asking, do you believe  
9 you have a legal right?

10 WITNESS:

11 Absolutely.

12 BY MR. GALANTE:

13 Q. What is that predicated on?

14 A. Someone getting into my face.

15 Q. What is the legal right that prevents or  
16 which allows you to prevent someone ----

17 A. It could be anywhere.

18 Q. Did you call the police?

19 A. No.

20 Q. And ----

21 A. I did look for the police, though.

22 Q. And you never reported that to any law  
23 enforcement of any kind?

24 A. Yes.

25 Q. To whom?

1 A. A police officer who was standing there.  
2 But he was out of uniform and not with  
3 the service anymore.

4 Q. A retired police officer?

5 A. Yes.

6 Q. Out of uniform?

7 A. Yes.

8 Q. In your estimation, that is a reporting  
9 to the police department?

10 A. No, but I told him about it.

11 Q. What is his name?

12 A. G. Devlin.

13 Q. How long have you known Mr. Devlin?

14 A. For twenty (20) years.

15 Q. Alright. Let's talk about the Dukes of  
16 Dixieland.

17 A. Okay.

18 Q. You agree that the name, the Dukes of  
19 Dixieland pre-exists any music entity  
20 with which you have ever been involved?

21 A. Yes.

22 Q. You would agree that the name, Dukes of  
23 Dixieland, was known in the jazz  
24 community prior to 1974?

25 A. Prior to 1974?

1 Q. Correct.

2 A. Yes.

3 Q. You agree that nothing prevents Mr.  
4 Assunto from using the term "the Dukes of  
5 Dixieland" for any reference to the pre-  
6 1974 Assunto legacy?

7 A. Yes.

8 Q. You agree that other than naming a live  
9 music band, nothing prevents Mr. Assunto  
10 from using the term "the Dukes of  
11 Dixieland"?

12 MR. DORVEE:

13 Objection. That question  
14 calls for a legal conclusion, but  
15 you can answer it.

16 WITNESS:

17 Yes.

18 BY MR. GALANTE:

19 Q. You have no basis, or strike that. You  
20 would agree that nothing in this  
21 agreement prevents Mr. Assunto from using  
22 the term "the Dukes of Dixieland", except  
23 in connection with a live music band?

24 A. Yes.

25 Q. And how much does the band currently

1 gross annually from record sales?

2 A. A couple of thousand dollars.

3 Q. Is it fair to say almost nothing?

4 A. Almost nothing.

5 Q. And how much does the band currently  
6 gross annually from DVD sales?

7 A. None, or well ----

8 MR. DORVEE:

9 If it is within the two  
10 thousand dollar (\$2,000) area.

11 WITNESS:

12 A couple of thousand dollars.

13 MR. DORVEE:

14 Is that in addition to the  
15 couple of thousand dollars?

16 WITNESS:

17 It is so minute that it really  
18 does not matter.

19 BY MR. GALANTE:

20 Q. Is it fair to say that almost all the  
21 money that the Dukes of Dixieland has  
22 made for a number of years now is  
23 involved in relationship with the  
24 Steamboat Natchez?

25 A. Yes.

1 Q. When you say they are not a commercial  
2 success outside of that one (1) gig,  
3 there is almost no income?

4 A. We would do probably seven (7) dates this  
5 year.

6 Q. Do you know how many of those DVDs that  
7 were produced this past year sold?

8 A. This past year?

9 Q. Yes. You released a new Dukes of  
10 Dixieland CD?

11 A. Yes.

12 Q. Do you have any idea of what number of  
13 those sold?

14 A. I have no idea.

15 Q. And do you think their lack of a  
16 commercial success is related to the kind  
17 of music they play?

18 A. No.

19 Q. What do you think their lack of  
20 commercial success is related to?

21 A. Confusion.

22 Q. Tell me about that confusion.

23 A. There are two (2) Dukes of Dixielands out  
24 there basically.

25 Q. Okay. What is the other Dukes of

1 Dixieland that is out there?

2 A. If you go on the website, Assunto has  
3 Dukes of Dixieland out there. We have it  
4 out there.

5 Q. What other Dukes of Dixieland has played  
6 a musical show in the last decade ----

7 A. None.

8 MR. DORVEE:

9 Let him finish with his  
10 question. Not that you are aware  
11 of?

12 WITNESS:

13 Not that I am aware of, no.

14 BY MR. GALANTE:

15 Q. Where is the confusion between the two  
16 (2) Dukes of Dixieland that you have  
17 mentioned coming from?

18 A. Just Google the Dukes of Dixieland.

19 Q. But if there is only one (1) band, how  
20 are they getting confused with somebody  
21 else?

22 A. You do not get that impression from  
23 Google.

24 Q. So then, it is your testimony that in the  
25 last fifteen (15) years, there has been



1 no commercial success with the Dukes of  
2 Dixieland as a result of Mr. Assunto's  
3 website?

4 A. In the last fourteen (14) years.

5 Q. Fourteen (14) years?

6 A. Yes.

7 Q. But that is your contention?

8 A. Yes.

9 Q. Notwithstanding about three (3) years  
10 ago, you signed Plaintiff's Exhibit No.  
11 2, the settlement agreement?

12 A. Yes.

13 Q. When did the Dukes of Dixieland win a  
14 Grammy Award?

15 A. They did not win the Grammy, but they got  
16 nominated for it.

17 Q. Excuse me. You are correct. But when  
18 were they nominated for a Grammy award?

19 A. 1999.

20 Q. Alright.

21 MR. GALANTE:

22 I am going to give you what I  
23 will mark as Plaintiff's Exhibit  
24 No. 3.

25 WITNESS:

1                   Okay.

2           MR. GALANTE:

3                   That is a copy of your answer  
4                   in this suit.

5           WITNESS:

6                   Okay.

7           MR. GALANTE:

8                   Did you review this before it  
9                   was filed?

10          MR. DORVEE:

11                   Review that.

12          WITNESS:

13                   Okay.

14          MR. DORVEE:

15                   And what was your question?

16          MR. GALANTE:

17                   The question was, did you  
18                   review that before it was filed?

19          WITNESS:

20                   Yes.

21          MR. GALANTE:

22                   Okay.

23          BY MR. GALANTE:

24          Q.    You personally verified all of its  
25                contents?

1 A. Yes, I did.

2 Q. Do you agree with its content?

3 A. Yes.

4 Q. Did your lawyers discuss Mr. Assunto's  
5 testimony from yesterday with you?

6 A. No.

7 Q. I want you to go to Page No. 9.

8 A. Okay.

9 Q. To Paragraph No. 7.

10 A. Okay.

11 Q. Do you still believe that paragraph to be  
12 true?

13 A. Yes.

14 Q. Didn't you just testify that there was  
15 only one (1) Dukes of Dixieland out  
16 there?

17 A. That's right.

18 Q. And it is yours?

19 A. Yes.

20 Q. You think that is consistent with  
21 Paragraph No. 7?

22 A. Yes.

23 Q. Tell me about this Dukes of Dixieland  
24 that recently has been formed.

25 A. The real Dukes of Dixieland or the Dukes

1 of Dixieland?

2 Q. The real Dukes of Dixieland.

3 A. The confusion with the agents.

4 Q. Tell me about the band.

5 MR. DORVEE:

6 He wants to know what you  
7 know.

8 MR. GALANTE:

9 What do you know about the  
10 band referenced in Paragraph No.  
11 7?

12 WITNESS:

13 It is on their website.

14 BY MR. GALANTE:

15 Q. What else do you know about that band?

16 A. Nothing.

17 Q. Do you have any testimony about any time  
18 they have ever played?

19 A. No.

20 Q. Have they ever been booked?

21 A. Yes.

22 Q. Where were they booked?

23 A. They were booked in the New Orleans Jazz  
24 Club.

25 Q. When was that?

1 A. I don't recall the date.

2 Q. Was it more than ten (10) years ago?

3 A. It was within the last couple of years.  
4 It has been since the settlement.

5 Q. Who booked that band?

6 A. I don't know.

7 Q. How did you get information that they  
8 were booked at the New Orleans Jazz Club?

9 A. Somebody told me that they saw them at a  
10 hotel.

11 Q. Who was that someone?

12 A. I don't recall.

13 Q. Can you think about that to try to  
14 recollect that for me?

15 A. I get a lot of feedback from a lot of  
16 friends and a lot of musicians. I have  
17 no idea of who told me about that.

18 MR. DORVEE:

19 If you think of it, let him  
20 know.

21 WITNESS:

22 I will let you know if I can  
23 think of it.

24 BY MR. GALANTE:

25 Q. As you sit here today, you cannot testify

1 as to who that was?

2 A. No.

3 Q. And what gives you the impression that it  
4 has been since this settlement?

5 A. It was within the last couple of years.

6 Q. Tell me everything you know about that.

7 A. It was either held at the Royal Sonesta  
8 Hotel or at Mayfields, or it was at, and  
9 what is the name of that hotel at  
10 Causeway and Veterans? It is a high rise  
11 building.

12 Q. Are you talking about Lakeway or the  
13 Landmark?

14 A. The Landmark.

15 Q. Alright. And how did you come about that  
16 information? Did somebody tell you?

17 A. One of the band members or one of the  
18 band members' friends told me that.

19 Q. If there is evidence that the show you  
20 are referring to took place in 2004,  
21 could you contradict that with any  
22 evidence?

23 A. In 2004?

24 Q. Yes.

25 A. No, I don't know.

1 Q. Is it fair to say that you do not know?

2 A. I don't know.

3 MR. DORVEE:

4 You are asking him ----

5 WITNESS:

6 In 2004.

7 MR. DORVEE:

8 The performance he is talking  
9 about was in 2004?

10 MR. GALANTE:

11 Is it possible the performance  
12 you are referring to was in 2004?

13 WITNESS:

14 No. This was in the past two  
15 (2) years or so.

16 BY MR. GALANTE:

17 Q. And again, you have no recollection of  
18 who told you?

19 A. No.

20 Q. And you have no recollection of how you  
21 came upon that information?

22 A. No.

23 Q. And you have no evidence to support that?

24 A. Not at this moment.

25 Q. What kind of evidence may you have at

1           some other moment?

2       A.    I will start asking around.

3       Q.    Who would you ask about that?

4       A.    I will start with the band.

5       Q.    Who is in the band that you would ask?

6       A.    Every member of the band.

7       Q.    Who are the members of the band?

8       A.    They are on the website.

9       Q.    Can you list them for me?

10      A.    You have the website, and you have a copy

11      -----

12                   MR. DORVEE:

13                               Just list them, if you can.

14                   MR. GALANTE:

15                               Can you list them?

16                   WITNESS:

17                               Kevin Clark, Ryan Berwidge

18                                       (spelled phonetically), Kevin

19                               Clark, Allen Broom, Scott

20                               Oberchain (spelled phonetically),

21                               John Mahoney, Joe Kennedy.

22       BY MR. GALANTE:

23       Q.    And these are the independent

24               contractors, correct?

25       A.    These are the current musicians who are



1 independent contractors.

2 Q. They are not employees?

3 A. Correct.

4 Q. You have no employment relationship with  
5 them?

6 A. Correct.

7 Q. And in fact, you have no employees  
8 relating to the Dukes of Dixieland?

9 A. Correct.

10 Q. And the Dukes of Dixieland are not a  
11 party to this lawsuit, are they?

12 A. The Dukes of Dixieland are not a part of  
13 this lawsuit.

14 Q. They are not party to this lawsuit?

15 MR. DORVEE:

16 The Dukes of Dixieland entity?

17 MR. GALANTE:

18 The entity or the independent  
19 contractors are not a part of this  
20 lawsuit, correct?

21 MR. DORVEE:

22 The entity is.

23 WITNESS:

24 The entity is.

25 MR. GALANTE:

1                   Where is that?

2                   MR. DORVEE:

3                   It is in front of you.

4                   BY MR. GALANTE:

5                   Q.    Show me on the caption how the Dukes of  
6                   Dixieland are related to this lawsuit.

7                   A.    John Shoup. John Shoup is the Dukes of  
8                   Dixieland.

9                   Q.    But these independent contractors, who do  
10                  not work for you, are not related to this  
11                  lawsuit in any way?

12                  A.    No. They are not, no.

13                  Q.    In fact, they have no rights in the Dukes  
14                  of Dixieland, do they?

15                  A.    No.

16                  Q.    Who else would you ask around to when you  
17                  asked around?

18                  A.    Other musicians.

19                  Q.    Who?

20                  A.    I cannot tell you who.

21                  Q.    You cannot tell me who you are going to  
22                  ask around?

23                  A.    I have no idea of who yet.

24                  Q.    Who would you think, as you sit here  
25                  today you would start to ask?

1 A. Whoever books the jazz clubs would be one  
2 way of doing ----

3 Q. Who are the people that books the jazz  
4 clubs?

5 A. I have no idea.

6 Q. You operate a jazz band, but you don't  
7 know who books them?

8 A. I am saying I don't know who books the  
9 jazz band clubs.

10 Q. Alright.

11 A. I don't know who they are, no.

12 Q. In all of your years of operating a jazz  
13 band in New Orleans, you have not gotten  
14 to know the club bookers?

15 A. Not really.

16 Q. Then how do you get your jazz band booked  
17 at clubs?

18 A. I don't.

19 Q. You don't even try to do that anymore?

20 A. No.

21 Q. You have not tried in fifteen (15) years?

22 A. I have not tried in twenty (20) years.

23 Q. So, well before any dispute arose, you  
24 stopped trying to get them booked?

25 MR. DORVEE:

1 To get them booked in clubs?

2 WITNESS:

3 Correct, to get them booked in  
4 clubs.

5 MR. GALANTE:

6 Okay.

7 BY MR. GALANTE:

8 Q. I want you to go to Page 11.

9 A. Okay.

10 MR. DORVEE:

11 Page 11 in the Answer?

12 MR. GALANTE:

13 Yes, in that same exhibit that  
14 he has. Go to Paragraph No. 18.

15 WITNESS:

16 Okay.

17 BY MR. GALANTE:

18 Q. What evidence do you have to support  
19 that?

20 A. Almost every daily Google alert.

21 Q. What are those Google alerts? What do  
22 they say?

23 A. Telling about a new release.

24 Q. Telling about a new release?

25 A. Yes.

1 Q. When was the last time you got a Google  
2 alert of a new release?

3 A. Probably yesterday.

4 Q. Alright. When did that, or what did that  
5 Google alert say?

6 A. What did it say?

7 Q. Correct.

8 A. Let me find it.

9 MR. DORVEE:

10 Do not pull it out just from  
11 your memory.

12 WITNESS:

13 I cannot give you that  
14 verbatim, but it talked about a  
15 new release.

16 BY MR. GALANTE:

17 Q. Have you verified who is doing the  
18 production of those?

19 A. I can assume.

20 Q. Okay.

21 A. I cannot verify it, though.

22 Q. So you have no evidence to support the  
23 contention that Mr. Assunto or the  
24 Assunto family is releasing new releases?  
25 Is that correct?

1 A. Who else would be doing it?

2 Q. That is not the question. You have to  
3 answer my question first. And I'm not  
4 here to answer your questions. But the  
5 question is, you have no evidence to  
6 support the indication that Mr. Assunto  
7 or the Assunto family is releasing  
8 recordings?

9 A. Correct.

10 Q. It is purely an assumption, then?

11 A. Well, yes.

12 Q. Since this dispute has re-arisen, you  
13 have made no effort to investigate  
14 whether or not evidence does exist,  
15 correct?

16 A. Yes, I have.

17 Q. So you have investigated?

18 A. Yes.

19 Q. And you still have been unable to find  
20 evidence, correct?

21 A. Correct.

22 Q. When you filed this lawsuit, you assumed  
23 it to be true?

24 A. Yes.

25 Q. Since that time, you have investigated

1           what you alleged in this paragraph. Is  
2           that correct?

3       A.    Yes.

4       Q.    And it is fair to say that as you sit  
5           here today, you have been unable to  
6           ascertain any evidence of support for  
7           that statement?

8       A.    Correct.

9       Q.    Did you know Frank Assunto?

10      A.    Yes.

11      Q.    How long had you known Frank?

12      A.    On and off since 1962.

13      Q.    Why does 1962 stand out for you?

14      A.    Because they were playing in Chicago at  
15           that time.

16      Q.    And you lived in Chicago at that time?

17      A.    I was in Chicago at the time, yes.

18      Q.    And in 1962, you first met Frank Assunto?

19      A.    Yes.

20      Q.    What was the context of your meeting?

21      A.    He was performing at the Bourbon Street  
22           Club and Rush Street.

23      Q.    How much time did you spend with Mr.  
24           Assunto before he passed in 1974?

25      A.    Three (3) or four (4) different times.

1 Q. So then, you were in his physical  
2 presence three (3) or four (4) times?

3 A. Yes.

4 Q. For how long each time?

5 A. One time was for all night in 1962.

6 Q. Okay. So you all met in 1962. You hit  
7 it off, and you went out all night?

8 A. They locked the doors, and they kept  
9 playing inside the club.

10 Q. That's fine. But I'm just saying that  
11 you all met and hit it off?

12 A. Yes.

13 Q. And after that, you were around him two  
14 (2) or three (3) more times?

15 A. Correct.

16 Q. For how long each time?

17 A. Once at Pete Fountain's Club. Once at Al  
18 Hirt's Club. The last time was in  
19 November of 1973 in St. Charles,  
20 Illinois.

21 Q. And how long were you with them for each  
22 of those times?

23 A. I sat through several sets with him.

24 Q. He was playing, and you were out in the  
25 audience?



1 A. Yes.

2 Q. How long did you converse with him  
3 between those sets?

4 A. In between the sets for the whole time.

5 Q. For ten (10) minutes?

6 A. Fifteen (15) minutes.

7 Q. Alright. How many sets would he do?

8 A. Four (4).

9 Q. So then each of those occasions might  
10 have been forty five (45) minutes worth  
11 of speaking with him?

12 A. Probably forty (40) to forty five (45)  
13 minutes.

14 Q. Was it exclusively with you?

15 A. One time was exclusively with me, yes.

16 Q. And those other times was in a group of  
17 people?

18 A. Yes.

19 Q. So it is fair to say that you guys were  
20 not directly communicating?

21 A. Yes.

22 Q. And you guys were never in bands  
23 together?

24 A. No.

25 Q. You guys never traveled together?

1 A. No.

2 Q. It is fair to say that you would not be  
3 able to call yourself friends?

4 A. We were acquaintances.

5 Q. Alright. And you never accompanied him  
6 on holidays?

7 A. No.

8 Q. Or on vacations?

9 A. No.

10 Q. Or out to meals?

11 A. No.

12 Q. To doctors?

13 A. No.

14 Q. On social times?

15 A. No.

16 Q. You were not with him or his family when  
17 he passed?

18 A. No.

19 Q. You were not at the hospital when he  
20 passed?

21 A. No.

22 Q. You have never reviewed his medical  
23 records?

24 A. No.

25 Q. And I want you to look at Page 11 at

1 Paragraph 19.

2 A. Okay.

3 Q. Let me get your evidence to support that  
4 Mr. Assunto died from chronic alcoholism.

5 A. He could kill a bottle of vodka that  
6 night.

7 Q. And did he tell you that he was an  
8 alcoholic?

9 A. No.

10 Q. So you were with him this one (1) night,  
11 and he killed one (1) bottle of vodka  
12 that night?

13 A. Correct.

14 Q. What size bottle was it?

15 A. A quart.

16 Q. So he killed a quart in how many hours?

17 A. I have no idea, maybe twenty four (24)  
18 ounces.

19 MR. DORVEE:

20 He said, how many hours.

21 BY MR. GALANTE:

22 Q. In how many hours?

23 A. Well he killed it in the last break, so  
24 whatever that was. I don't know. I  
25 don't remember.

1 Q. Could you give me an estimate?

2 A. He had been drinking before.

3 Q. Alright. So then other than the night  
4 that you were with him when he drank what  
5 you recall to be a one quart bottle of  
6 vodka?

7 A. Correct.

8 Q. What other evidence do you have to  
9 support that he died from chronic  
10 alcoholism?

11 A. At the fund raiser after he died, other  
12 people told me that that is what  
13 happened.

14 Q. Who were these people who told you this?

15 A. People who were at the fund raiser.

16 Q. And who were those people?

17 A. I don't remember them now.

18 Q. And again, they are not friends of yours?

19 A. No.

20 Q. Not even acquaintances?

21 A. They might have been acquaintances, yes.

22 Q. So you are basing the statements in  
23 Paragraph 19 regarding his chronic  
24 alcoholism on the night he drank a bottle  
25 of vodka and statements from

1 acquaintances at his fund raiser?

2 A. The acquaintances said that he died of  
3 cirrhosis of the liver.

4 Q. In Paragraph No. 19, it does not refer to  
5 cirrhosis of the liver, does it?

6 A. Chronic alcoholism.

7 Q. That does not say cirrhosis of the liver,  
8 does it?

9 A. No, it does not.

10 Q. So again, the basis of your statement  
11 that he died from chronic alcoholism in  
12 1973 is that he drank a bottle of vodka  
13 one night you were with him and that  
14 acquaintances of yours said at a fund  
15 raiser that he died of cirrhosis of the  
16 liver?

17 A. Yes.

18 Q. And that is the sole basis of your  
19 evidence to support that paragraph?

20 A. Yes.

21 Q. And you have no other evidence, correct?

22 A. Correct.

23 Q. You do not know what his cause of death  
24 is, do you?

25 A. Correct.

1 MR. DORVEE:

2 Actually, he has looked into  
3 that.

4 MR. GALANTE:

5 I'm asking him a question.

6 MR. DORVEE:

7 You are correct. I apologize.

8 BY MR. GALANTE:

9 Q. Your evidence and what you know which  
10 supports this paragraph has nothing to do  
11 with anything but those two (2) things  
12 that you have just given us?

13 A. Correct.

14 Q. And do you have any evidence that a  
15 diagnosis of alcoholism was made?

16 A. No.

17 Q. Do you have any evidence of a diagnosis  
18 of chronic alcoholism was made?

19 A. No.

20 Q. Do you consider referring to somebody as  
21 an alcoholic to be a disparaging remark?

22 A. Not really.

23 Q. So you do not think referring to somebody  
24 as a chronic alcoholic or dying from  
25 chronic alcoholism is disparaging in any

1 way?

2 A. No.

3 Q. So if I were to call the Times Picayune  
4 and have an article written, or to  
5 encourage an article to be written on the  
6 front page of the Times Picayune to say  
7 that John Shoup was a chronic alcoholic,  
8 you would not take issue with that?

9 A. You do not tell them what to print.

10 Q. But if I were able to accomplish that,  
11 you would not take issue with that?

12 A. No.

13 Q. Do you drink alcohol?

14 A. Absolutely.

15 Q. How much alcohol do you drink?

16 A. Three (3) or four (4) drinks a night.

17 Q. Every night?

18 A. No.

19 Q. How many nights each week?

20 A. Sometimes every night in a week and  
21 sometimes I do not drink at all.

22 Q. And have you ever consumed a significant  
23 amount in one (1) sitting?

24 A. Probably.

25 Q. Have you ever been really drunk?

- 1 A. Probably.
- 2 Q. Out all night?
- 3 A. No.
- 4 Q. Out for most of the night?
- 5 A. Yes.
- 6 Q. And had more than you should?
- 7 A. Probably.
- 8 Q. You drank more than what would allow you  
9 to drive?
- 10 A. No.
- 11 Q. No?
- 12 A. No.
- 13 Q. You have never gotten to the point where  
14 you were drunk?
- 15 A. Yes.
- 16 Q. But you were still able to drive?
- 17 A. No. I took a cab.
- 18 Q. But that's what I'm asking you.
- 19 A. No.
- 20 Q. So you have been out when you were unable  
21 to drive home?
- 22 A. Yes.
- 23 Q. Have you ever passed out?
- 24 A. No.
- 25 Q. And have you ever had a black out?



1 A. No.

2 Q. Do you consider yourself to be an  
3 alcoholic?

4 A. No.

5 Q. Do you consider, or have you ever  
6 reported your alcoholic consumption to  
7 your doctor?

8 A. No.

9 Q. And ----

10 A. Well, that is not completely true. Every  
11 time you go into the hospital, you report  
12 it.

13 MR. DORVEE:

14 If you remember it, you report  
15 it.

16 WITNESS:

17 Right.

18 MR. GALANTE:

19 Alright.

20 BY MR. GALANTE:

21 Q. Tell me about the operation of the Dukes  
22 of Dixieland. Who does their booking?

23 A. I do.

24 Q. And ----

25 A. And booking agents.

1 Q. Who are the booking agents?

2 A. They will vary.

3 MR. DORVEE:

4 Can you give us a time frame?

5 MR. GALANTE:

6 Currently.

7 WITNESS:

8 Currently?

9 BY MR. GALANTE:

10 Q. Paul Bongiorno?

11 A. Not anymore.

12 Q. Does Meredith Hankenson?

13 A. Yes.

14 Q. Does Marilyn Rosen?

15 A. Yes.

16 Q. R-O-S-E-N, Rosen?

17 A. Yes.

18 Q. Who does their public relations?

19 A. We don't have anybody doing public  
20 relations.

21 Q. Gamble Communications no longer does  
22 public relations?

23 A. She does public relations for the  
24 steamboat, but not for the Dukes of  
25 Dixieland.

1 Q. So if your website for the Dukes of  
2 Dixieland indicates that the public  
3 relations are handled by Gamble  
4 Communications, that would be incorrect?

5 A. That is because they do the steamboat.  
6 They are on the steamboat.

7 Q. How many nights a week are they on the  
8 steamboat?

9 A. It depends on when they run and when they  
10 do not run. But on the average for the  
11 year, maybe five (5) nights, four (4) or  
12 five (5) nights.

13 Q. Is it fair to say that that is a full  
14 time job for them?

15 A. Full time, yes.

16 Q. We have already gone over that there are  
17 no employees.

18 A. Right.

19 Q. You listed the current band members,  
20 which are all independent contractors.

21 A. Right.

22 Q. Do those independent contractors serve  
23 any management functions?

24 A. No.

25 Q. Do they have access to the accounting

1 records or the books?

2 A. No.

3 Q. Have you ever been asked for the  
4 accounting records or the books by the  
5 band?

6 A. No.

7 Q. Would you provide them to them if they  
8 asked you for them?

9 A. No.

10 Q. Why is that?

11 A. Because it is none of their business.

12 Q. So then, they are simply independent  
13 contractors who have no interest in the  
14 income of the Dukes of Dixieland?

15 A. Correct.

16 Q. Do you have contracts with them?

17 A. Contracts?

18 Q. Yes.

19 A. No.

20 Q. Do you have any written arrangement  
21 whatsoever with the Dukes of Dixieland  
22 members?

23 A. No.

24 Q. Who does the advertising work for the  
25 Dukes of Dixieland?

1 A. Who?

2 Q. Yes.

3 A. We do, or I do that.

4 Q. Who is we?

5 A. My office does it.

6 Q. Who is in your office, other than you  
7 that does that?

8 A. I pull the two (2) people that work for  
9 Great Chefs, and I have them do that.

10 Q. Who are those two (2) people?

11 A. Cybil Curtis and Nate Williams.

12 Q. But neither of those people work for the  
13 Dukes of Dixieland?

14 A. No.

15 Q. There is no functional employee that  
16 works for the Dukes of Dixieland?

17 A. I am the employee.

18 Q. Who does the marketing?

19 A. I do the marketing work.

20 Q. You are responsible for all the marketing  
21 materials?

22 A. Yes.

23 Q. Who does the negotiations for the Dukes  
24 of Dixieland?

25 A. I do.

1 Q. When was the last time you negotiated a  
2 contract for the Dukes of Dixieland?

3 A. For a concert?

4 Q. For anything.

5 A. For anything? A week or so. Maybe a  
6 week ago.

7 Q. What kind of a contract were you  
8 negotiating for them?

9 A. Doing a concert.

10 Q. Where is that concert going to be?

11 A. The concert is in Pensacola.

12 Q. How did they find you?

13 A. They came to us through a booking agent.

14 Q. So the booking agent ----

15 A. No, it was not that. It was a month ago.  
16 The booking agent does all that work for  
17 us.

18 Q. So the booking agent was successful in  
19 finding you a gig?

20 A. After he was terminated, yes.

21 Q. Why was he terminated?

22 A. Because he would not sell anything.

23 Q. It is fair to say that you were  
24 disappointed with the services he  
25 provided?

1 A. Correct.

2 Q. You think the booking agent was not doing  
3 his job?

4 A. He said that he could not do his job.

5 Q. Why is that?

6 A. Because there was too much confusion.

7 Q. There is this word "confusion" again.

8 A. Yes. That word is everywhere.

9 Q. How long has that been going on where  
10 your booking agents have been telling you  
11 that there is too much confusion?

12 A. About fourteen (14) years.

13 Q. Is it fair to say that it is no different  
14 today than it was fourteen (14) years ago  
15 in your perception? Would that be  
16 correct?

17 A. It is worse now than what it was before  
18 because of the internet.

19 Q. But the internet and the web presence was  
20 around three (3) years ago when you  
21 settled the case, correct?

22 A. Yes.

23 Q. And still, knowing all of this discussion  
24 about the booking agents, you still  
25 agreed to settle this case. Is that

1 correct, or to settle the case, correct?

2 A. The internet was not what it is today,  
3 you have to admit that.

4 MR. DORVEE:

5 Just answer his question.

6 BY MR. GALANTE:

7 Q. Who manages the internet presence for the  
8 Dukes of Dixieland?

9 A. We do, or I do.

10 Q. Who is we?

11 A. Me. Nate Williams and myself.

12 Q. Who built the website?

13 A. An outfit here in New Orleans.

14 Q. And who ----

15 A. I designed it.

16 Q. Who adds or removes information from the  
17 website?

18 A. Nate Williams.

19 Q. Can you do that?

20 A. No.

21 Q. Does he seek your approval for its  
22 content?

23 A. Yes.

24 Q. Is it your testimony that you approve  
25 every insertion on the website?



1 A. Yes. Well, no, no.

2 Q. And ----

3 A. I do make corrections on the inserts.

4 Q. Where does he get the information from to  
5 insert it?

6 A. That is a good question. I don't know.  
7 I give him the basics.

8 Q. Alright. Who manages the Facebook page?

9 A. Nate.

10 Q. Nate Williams?

11 A. Yes.

12 Q. What does Nate do for the Facebook page?

13 A. He runs it.

14 Q. So when there is a Facebook posting that  
15 appears to come from the Dukes of  
16 Dixieland on your Facebook page, it is  
17 Nate who is typing it?

18 A. He had to because I do not do it.

19 Q. Alright. Who is responsible for the  
20 press releases?

21 A. I do those.

22 Q. Do you have anybody that contributes in  
23 any way to press releases other than  
24 yourself?

25 A. Cybil Curtis.

1 Q. Okay. Who is responsible for media  
2 interviews?

3 A. Media interviews?

4 Q. Correct.

5 A. Usually, it is done through the  
6 steamboat. That would be the public  
7 relations people.

8 Q. And when people interview somebody with  
9 regard to the Dukes of Dixieland, it is  
10 done through an unaffiliated employee for  
11 the steamboat company?

12 A. Yes.

13 Q. And ----

14 A. Or who is contracted for the steamboat  
15 company.

16 Q. Who is that?

17 A. Gordon Stevens.

18 Q. Gordon Stevens?

19 A. Yes.

20 Q. He does not work for you?

21 A. No.

22 Q. He is not an employee?

23 A. No.

24 Q. He is not even a contractor?

25 A. No.

1 Q. He is completely distinct from you?

2 A. Yes.

3 Q. Who is responsible for retaining the  
4 booking agents?

5 A. I am.

6 Q. Do you have any assistance in doing that?

7 A. No.

8 Q. You do that exclusively yourself?

9 A. Yes.

10 Q. Take me through the process of acquiring  
11 a booking agent.

12 A. You go interview them and pitch, and that  
13 is it.

14 Q. You provide them with information about  
15 your band?

16 A. Yes.

17 Q. Do you provide it in a printed form?

18 A. No.

19 Q. You orally express what the history of  
20 the band is?

21 A. No.

22 Q. Well then, tell me about the pitch.

23 A. I will direct them to the website.

24 Q. That is what I was going to ask you.

25 A. Yes.

1 Q. You point people to your website for  
2 information about your band?

3 A. Yes.

4 Q. Exclusively?

5 A. Yes.

6 Q. So the content of that site is where all  
7 of the other information on the Dukes of  
8 Dixieland comes from?

9 A. Yes.

10 Q. And it is your testimony that if anybody  
11 comes to you and says, I need information  
12 about the Dukes of Dixieland, you would  
13 say, go to my website?

14 A. Yes.

15 Q. Who handles the royalty checks?

16 A. What royalty checks?

17 Q. The several hundred dollars that you  
18 make.

19 A. I do.

20 Q. So you are not meaning to testify that  
21 there are no royalty checks?

22 A. There are no royalty checks. I'm sorry,  
23 there really are. Yes, there are.

24 Q. You do handle them?

25 A. Yes.

1 Q. And none of those recording rights are  
2 owned by any of the independent  
3 contractors?

4 A. No.

5 Q. Do you have any interns who work for you?

6 A. Not any longer.

7 Q. What interns have worked for you?

8 A. Interns?

9 Q. Yes.

10 A. The last intern years ago was Casey  
11 Moriarity (spelled phonetically).

12 Q. Casey Moriarity?

13 A. Yes.

14 Q. And when did Casey Moriarity work for  
15 you?

16 A. I would say for three (3) years or maybe  
17 four (4) years, up to last year.

18 Q. And where is Casey now?

19 A. He is in New Orleans somewhere getting  
20 married.

21 Q. Okay. Does he work for another entity of  
22 yours?

23 A. No.

24 Q. Was he paid?

25 A. Was he paid?

1 Q. Yes.

2 A. Yes.

3 Q. So what did an intern do at Dukes of  
4 Dixieland?

5 A. Anything that he could do.

6 Q. Like a personal assistant?

7 A. Not a personal assistant, no.

8 Q. Okay. A business assistant?

9 A. Yes.

10 Q. Did he work on the website?

11 A. Yes.

12 Q. Did he work on the Facebook page?

13 A. Probably.

14 Q. Alright. And was he responsible for the  
15 content on either of those?

16 A. Probably, yes.

17 Q. And what kind of content would he have  
18 been responsible for?

19 A. Whatever would be going up, you know,  
20 where they would be going next or what is  
21 the next concert.

22 Q. Insofar as the band history pages, who  
23 had the authority to make changes to the  
24 band history pages?

25 A. Nate Williams.

1 Q. Would you have to instruct Nate to make  
2 changes?

3 A. If I see something that is wrong, yes.

4 Q. Would Nate voluntarily make changes to  
5 the history section without your  
6 direction?

7 A. He has.

8 Q. For what reason, do you believe?

9 A. Just being a young kid who does what he  
10 does.

11 Q. Do you have any other interns that work  
12 for you?

13 A. None.

14 Q. How did you hire him?

15 MR. DORVEE:

16 Hire the intern?

17 WITNESS:

18 Through Craig's List.

19 MR. GALANTE:

20 Correct.

21 WITNESS:

22 Through Craig's List.

23 BY MR. GALANTE:

24 Q. What was his resume like? What kind of  
25 work has he done?

1 A. I think marketing.

2 Q. And what was his salary?

3 A. I don't remember that. But it was not  
4 much.

5 Q. Do you work closely, or did you work  
6 closely with him?

7 A. In the beginning, yes.

8 Q. Is it fair to say that you are not in New  
9 Orleans a great deal anymore?

10 A. I am in New Orleans fifty (50%) percent  
11 of the time.

12 Q. Is it fair to say that he managed the  
13 affairs of the band while you were away?

14 A. Who?

15 Q. Your intern.

16 A. No. Nate Williams would manage that.

17 Q. Nate Williams, who did not work for the  
18 band?

19 A. Right.

20 Q. When you were gone, he would manage the  
21 band?

22 A. Correct.

23 Q. Instead of doing work for the television  
24 company?

25 A. Yes, the Great Chefs.



1 MR. DORVEE:

2 Great Chefs?

3 WITNESS:

4 Yes.

5 BY MR. GALANTE:

6 Q. How many hours a week do you think it  
7 takes to manage the affairs of the band?

8 A. I never calculated that. I don't know.

9 Q. How many hours a week do you work on the  
10 band?

11 A. More than I should, but I don't know.

12 Q. How many hours a day do you work on the  
13 band?

14 A. I do not put it into any column that way,  
15 so I don't know.

16 Q. And you cannot tell me how many hours  
17 Nate Williams works on the band?

18 A. No. I cannot give that to you.

19 Q. He does not keep track of that in any  
20 way?

21 A. No.

22 Q. He does not get paid for it?

23 A. No.

24 Q. He gets paid by the other company?

25 A. Correct.

1 Q. Do you share office space with any other  
2 companies?

3 A. No.

4 Q. Do you have an accountant who handles the  
5 royalties earned by the band?

6 A. No. They handle all of our financials.

7 Q. Do you have an accountant who handles the  
8 financials for the band?

9 A. Yes.

10 Q. Who is that accountant?

11 A. Ericson Krentel Laporte.

12 Q. Which accountant handles your business?

13 A. Jim Laporte.

14 Q. How long has Jim been handling the  
15 business for you?

16 A. Since the late 1980s.

17 Q. So in the couple of years leading up to  
18 1997 or 1998, do you recall what the  
19 annual gross for the Dukes of Dixieland  
20 was?

21 A. No.

22 Q. Do you recall for any year prior to 2000  
23 what the annual gross was?

24 A. No.

25 Q. Or the average annual gross?

1 A. No.

2 Q. Did it decline precipitously in 1999?

3 A. Yes.

4 Q. Do you still maintain your business  
5 records from that time?

6 A. No.

7 Q. When did you, or what years do you have  
8 business records for?

9 A. Over the past seven (7) years.

10 Q. So you have no business records prior to  
11 the last seven (7) years? Is that  
12 correct?

13 A. Correct.

14 Q. So again, Paul Bongiorno, B-O-N-G-I-O-R-  
15 N-O, Paul does no longer, or he no longer  
16 books for you?

17 A. No.

18 Q. Meredith Hankenson does book for you?

19 A. Yes.

20 Q. Marilyn Rosen presents books for you?

21 A. Yes.

22 Q. Who else books for you?

23 A. Nobody.

24 Q. If I were to tell you that I phoned a  
25 booking agent, inquiring about booking

1 the Dukes of Dixieland, and they  
2 indicated they could accomplish the same,  
3 and it was not one (1) of those two (2)  
4 names ----

5 A. I don't know who it was then.

6 Q. It would be without your authority?

7 A. Without my authority, correct.

8 Q. So the only two (2) people that have the  
9 authority to book you are Meredith  
10 Hankenson and Marilyn Rosen, who  
11 presents?

12 A. Correct.

13 Q. How much do you pay Meredith Hankenson  
14 each month for her services?

15 A. I do not.

16 Q. Is it true that she is on straight  
17 commission?

18 A. Correct.

19 Q. Do you have an exclusive relationship for  
20 her?

21 A. Just for Florida.

22 Q. Marilyn Rosen presents?

23 A. Yes.

24 Q. Do you have an exclusive relationship  
25 with her?

1 A. Just with orchestras.

2 Q. That is national?

3 A. Yes.

4 Q. So then outside of the State of Florida  
5 and symphonies specifically, you are  
6 employing no other booking agents for the  
7 Dukes of Dixieland?

8 A. Meredith Hankenson can book outside of  
9 Florida. She has exclusive for Florida.

10 Q. And has she ever booked you a show  
11 outside of Florida?

12 A. Yes.

13 Q. Where?

14 A. Wisconsin.

15 Q. Okay. Do you have any booking agents in  
16 the New Orleans area?

17 A. No.

18 Q. How long have you been without a booking  
19 agent in the New Orleans area?

20 A. We have never had a booking agent in New  
21 Orleans.

22 Q. Who typically has done the booking for  
23 the band in the New Orleans area?

24 A. We do not do any bookings in New Orleans,  
25 other than on the boat, and other than an

1 occasional convention.

2 Q. Who does that booking?

3 A. I do that.

4 Q. How do you accomplish booking for the  
5 band in the New Orleans area?

6 A. I get to know a convention is coming in  
7 town, and I will meet with them, and we  
8 book it.

9 Q. It is fair to say that there is no full  
10 time employee or contractor in the New  
11 Orleans area attempting to book the band?

12 A. Correct.

13 Q. How long have you not been employing an  
14 agent to book the band in the New Orleans  
15 area?

16 A. I don't think we have ever had an agent  
17 booking the band in New Orleans.

18 Q. Alright. Do you see a value in music  
19 history in general?

20 A. Yes.

21 Q. Do you think it contributes to the value  
22 of the music organization or band?

23 A. No. I think it values the artists, the  
24 large forum more than anything else.

25 Q. So you do not think the name has any

1 value?

2 A. No.

3 Q. You don't think the legacy has any value?

4 A. Absolutely not.

5 Q. You don't think the historical context of  
6 the band has any value?

7 A. No.

8 Q. You think it has everything to do with  
9 the musicians?

10 A. Absolutely.

11 Q. It is fair to say that if you have good  
12 musicians, that they will build an  
13 audience?

14 A. Yes.

15 Q. It is fair to say that as a music  
16 professional, that in the music business,  
17 it is all about the product that you put  
18 out?

19 A. Correct.

20 Q. Do you think New Orleans jazz history is  
21 important in general?

22 A. Yes.

23 Q. Do you think that the facets, or the  
24 characters, or the performances, or the  
25 performers, or any of those qualities

1           that I have just listed contribute toward  
2           the importance of jazz history in New  
3           Orleans?

4                   MR. DORVEE:

5                           Objection as to the form of  
6                           the question. But you can answer  
7                           it.

8                   WITNESS:

9                           To a degree.

10           BY MR. GALANTE:

11           Q.    A degree?

12           A.    Yes.

13           Q.    You would agree that New Orleans is a  
14           very significant place when it comes to  
15           jazz music history?

16           A.    Yes.

17           Q.    In fact, didn't you work at WYES years  
18           ago?

19           A.    No.

20           Q.    Did you work with WYES?

21           A.    Yes.

22           Q.    Wasn't part of that doing historical  
23           perspectives on jazz music?

24           A.    We did one (1) or two (2) shows on that.

25           Q.    Isn't it fair to say that those shows





1                   makes sense. Could you read it  
2                   back, or play that back?

3   BY MR. GALANTE:

4   Q. Do you agree with the importance of the  
5       history and heritage of jazz music in New  
6       Orleans?

7   A. Yes.

8   Q. And that would include both significant  
9       performances and significant performers.  
10       Isn't that correct?

11   A. Yes.

12   Q. In fact, on your own website, you  
13       showcase famous jazz New Orleans  
14       performers?

15   A. Correct.

16   Q. It is fair to say that you see Satchmo or  
17       Louis Armstrong as a very important  
18       historical figure?

19   A. Yes.

20   Q. And it is fair to say that you see your  
21       band's connection to Satchmo a very  
22       important element?

23   A. No.

24   Q. So then, the recent recordings that have  
25       been released relating to Satchmo, in

1           your measure, should be taken as  
2           completely unrelated to Satchmo and  
3           solely based on the performance value of  
4           the performers?

5       A.    I cannot answer that with yes or no.

6       Q.    And you are in musician management ----

7       A.    For example, we did Jellyroll Salute. We  
8           did Salute to Big Spider. We did  
9           Celebrating Satchmo.

10      Q.    Correct.

11      A.    We did Country Dixie.

12      Q.    Okay.

13      A.    We do a lot of old things. The Gospel.

14      Q.    Okay.

15      A.    We do different themes. So is it all  
16           important? Yes, it is. But is it  
17           related to just one (1) artist? I mean,  
18           we could do Fats Domino and so on. But  
19           no, my answer is no to the question.

20      Q.    That is exactly where I'm going with  
21           this. Part of the value of your band is  
22           that it salutes or it has relationships  
23           with other artists?

24      A.    Part of it.

25      Q.    In fact, it is fair to say that a

1           substantial percentage of their  
2           recordings are just that, either tributes  
3           to or collaborations with other artists?

4       A.    No.

5       Q.    No?

6       A.    No, they are not. There is only a  
7           handful of artists.

8       Q.    The ones that you have just listed?

9       A.    Those do come to mind, yes.

10      Q.    And there are more?

11      A.    Some more, yes.

12      Q.    Do you see a value in the mark of the  
13           Dukes of Dixieland?

14      A.    Yes.

15      Q.    How do you derive that value?

16      A.    By spending forty (40) years building the  
17           name back up.

18      Q.    Did you see a value in it prior to forty  
19           (40) years ago?

20      A.    No.

21      Q.    It was valueless? Would that be fair to  
22           say?

23      A.    Yes.

24      Q.    Does that include its contribution to the  
25           New Orleans music history?

1 A. Yes.

2 Q. Would you say that the Assunto name was a  
3 pretty important name in New Orleans jazz  
4 tradition as of 1974?

5 A. In the 1950s, yes.

6 Q. And into the 1960s?

7 A. No. It stopped with rock and roll.

8 Q. But I'm talking about specifically in the  
9 genre of jazz.

10 A. Jazz went downhill when rock and roll  
11 came in.

12 Q. But I'm asking if the Assunto name is a  
13 significant name in the jazz history of  
14 New Orleans?

15 A. Of New Orleans, yes.

16 Q. And that would be true in the 1960s, even  
17 though you are saying jazz generally had  
18 declined?

19 A. Correct.

20 Q. And that would be true at the time Mr.  
21 Assunto died in the early 1970s, correct?

22 A. Yes.

23 Q. And although the jazz significance  
24 nationally was getting smaller and  
25 smaller because we had the Beatles and

1 Rolling Stones solely in the slice of the  
2 music history or tradition known as jazz  
3 until his death, Mr. Assunto's name was  
4 significant?

5 A. The Dukes of Dixieland name was  
6 significant.

7 Q. Do you see a value in the Assunto legacy  
8 connected to the Dukes of Dixieland?

9 A. No.

10 Q. How do you dissect the Assunto legacy  
11 from the name Dukes of Dixieland?

12 A. It is a different band.

13 Q. How do you mean that?

14 A. Just listening to the old albums and  
15 comparing it to today's albums.

16 Q. But that is not the question that I'm  
17 asking.

18 A. Okay.

19 Q. You have just testified that at the time  
20 of his death, the name Dukes of Dixieland  
21 was a significant name?

22 A. Yes, it was.

23 Q. So then, my question was, do you see a  
24 value in the Assunto legacy as it relates  
25 to that?

1 A. Well ----

2 MR. DORVEE:

3 Objection as to the form of  
4 the question. But you can answer  
5 it.

6 MR. GALANTE:

7 Yes or no?

8 MR. DORVEE:

9 Could you read it back?

10 BY MR. GALANTE:

11 Q. Do you see a value in the Assunto legacy  
12 as it relates ----

13 A. Well, wait a minute.

14 MR. GALANTE:

15 Let me withdraw the question.

16 MR. DORVEE:

17 I'm sorry.

18 BY MR. GALANTE:

19 Q. You have just testified that you saw, as  
20 of the time that Mr. Assunto died in  
21 1974, a value in the name of Dukes of  
22 Dixieland?

23 A. Yes.

24 Q. Do you see a value in the Assunto legacy  
25 as it relates to that name at that time?

1 MR. DORVEE:

2 Objection. So that we are  
3 clear, as it relates to the name  
4 of Dukes of Dixieland?

5 MR. GALANTE:

6 Yes.

7 WITNESS:

8 Yes.

9 BY MR. GALANTE:

10 Q. So the Assunto legacy has value in regard  
11 to the name Dukes of Dixieland?

12 A. Yes.

13 Q. Okay. Do you see the contributions of  
14 the Assuntos as important moments in  
15 music history and development?

16 A. History, yes.

17 Q. Do you see the collaborations of the  
18 Assuntos with Louis Armstrong as an  
19 important moment in music history in New  
20 Orleans?

21 A. Not necessarily, no.

22 Q. Do you agree that they are the first  
23 white musicians that Louis Armstrong  
24 played with on stage?

25 A. Yes.



1 Q. Do you agree that many music historians  
2 consider that to be a very important  
3 point in music development?

4 A. I am not aware of that.

5 Q. But you will not agree with that?

6 A. I do not agree.

7 Q. Do you see, as a music person or as a  
8 professional in the music industry, do  
9 you see the significance of race as it  
10 relates to the development of jazz in New  
11 Orleans?

12 A. Yes.

13 Q. Do you see the significance of white  
14 musicians being associated with Louis  
15 Armstrong at that time?

16 A. Not really, no.

17 Q. Okay. Is it fair to say that you  
18 yourself have put this kind of  
19 information on your own website?

20 A. I know that.

21 Q. But that's not what I'm asking. Is it  
22 fair to say ----

23 A. Yes.

24 Q. That you yourself ----

25 A. Yes.

1 Q. That nobody else put it there, but you  
2 did?

3 A. Yes.

4 Q. And it is fair to say that you put it  
5 there because it is important?

6 A. Correct.

7 Q. And that that relationship between Louis  
8 Armstrong and the name Dukes of Dixieland  
9 is important?

10 A. No, I do not agree with that. I'm sorry.

11 Q. Then why do you keep putting it back on  
12 your website?

13 A. That Louis Armstrong is celebrating  
14 Satchmo.

15 Q. To sell a record?

16 A. We are celebrating him.

17 Q. Yes.

18 A. To sell records.

19 Q. So you are putting the relationship  
20 between the Dukes and Louis up there  
21 because you have a record?

22 A. Because everybody else, we have Jellyroll  
23 Martin.

24 Q. I understand all of that.

25 A. Numerous ----

1 Q. But I'm asking specifically about  
2 Satchmo.

3 A. Yes.

4 Q. You put this relationship on the website  
5 because it supports the project you are  
6 doing?

7 A. Yes.

8 Q. You put the relationship between the name  
9 Dukes of Dixieland and Satchmo on the  
10 website because it supports the project,  
11 correct?

12 A. Yes.

13 Q. Okay. And when you started ----

14 A. It never would have happened had it not  
15 been for Joe Glaser managing booking both  
16 Louis Armstrong and the Dukes at the  
17 time, by the way.

18 Q. I understand, yes. I mean, sometimes ---  
19 -

20 A. Joe did those things because of that, you  
21 know. He ties up one artist.

22 Q. Sometimes those are the greatest moments  
23 in music history with accidents of  
24 people?

25 A. Yes.

1 Q. In the music industry in New Orleans, you  
2 have to work hard to get your band out  
3 there?

4 A. Yes.

5 Q. And you really have to get them into  
6 clubs to get them to be known, don't you?

7 A. You have to get them out there somewhere.

8 Q. And if you are going to get them out  
9 there, whether it is in the 1950s or in  
10 2010, a lot of times it has to do with  
11 the booking agents having multiple bands  
12 who can play and collaborate together?

13 A. Yes.

14 Q. When you started the Dukes of Dixieland  
15 that is operating now in 1974, you were  
16 immediately able to get them on stage at  
17 the Jazz Fest, weren't you?

18 A. Yes.

19 Q. He died on Mardi Gras Day?

20 A. Right.

21 Q. And by that Jazz Fest just months later,  
22 you had him on stage at the Jazz Fest?

23 A. Yes.

24 Q. With completely different members. Isn't  
25 that correct?

1 A. No.

2 Q. What members were coming?

3 A. Completely different members then?

4 Q. Yes.

5 A. Absolutely, yes, absolutely.

6 Q. So with nothing but that name and a local  
7 connection, you could get them on stage  
8 at the Jazz Fest?

9 A. Yes.

10 Q. Which at that time, it was very  
11 difficult?

12 A. Not back in 1974.

13 Q. I'm not saying that it was as difficult  
14 as it is now. But even at that time,  
15 getting an act on stage was a difficult  
16 task, wasn't it?

17 A. No, it was not.

18 Q. They would throw anybody on stage?

19 A. No. But you said that earlier. It is  
20 who you know.

21 Q. And the name of the band as well?

22 A. I would say that that is probably  
23 correct, yes.

24 Q. Okay.

25 MR. DORVEE:

1 I need to take a break.

2 MR. GALANTE:

3 Okay.

4 MR. DORVEE:

5 Off the record.

6 MR. DORVEE:

7 On the record.

8 MR. GALANTE:

9 I am going to mark this as  
10 Plaintiff's Exhibit No. 4.

11 MR. DORVEE:

12 Thank you.

13 WITNESS:

14 Okay.

15 MR. GALANTE:

16 Do you recognize this?

17 WITNESS:

18 Yes.

19 BY MR. GALANTE:

20 Q. Did you author this?

21 A. Yes.

22 Q. Who is Tom Coleman?

23 A. I have no idea.

24 Q. Tom Coleman?

25 A. No.

1 Q. So then, when you addressed this to Tom  
2 Coleman, why were you addressing it to a  
3 Tom Coleman?

4 A. He sent us an email with negative  
5 comments.

6 Q. What were those negative comments?

7 A. I don't have the copy. Don't you have  
8 his email?

9 MR. DORVEE:

10 Just answer the question.

11 WITNESS:

12 I don't know.

13 BY MR. GALANTE:

14 Q. Do you recollect what the negative  
15 comments were?

16 A. No.

17 Q. But in response, you sent this to him,  
18 correct?

19 A. Yes.

20 Q. We can both agree that it is complete  
21 with references to the Assunto legacy?

22 Is that correct?

23 A. Correct.

24 Q. And this is on September 17, 2012,  
25 correct?

1 A. Yes.

2 Q. Almost a year after the agreement was  
3 signed, correct?

4 A. Correct.

5 Q. You had no belief that Mr. Coleman was  
6 related to Mr. Assunto in any way, did  
7 you?

8 A. I assumed he had some relationship, but I  
9 did not know what.

10 Q. But as you sit here today, do you have  
11 any awareness whether or not there is any  
12 relationship?

13 A. I would still assume the same thing.

14 Q. If my client testifies that there was no  
15 relationship, would you be able to  
16 dispute that?

17 A. I cannot dispute that one way or the  
18 other.

19 Q. So again, you are just making some  
20 assumptions?

21 A. Okay.

22 Q. A couple of bullet points that I wanted  
23 to go through with you in your time line,  
24 or it is fair to say that as of 2013, or  
25 maybe 2014, the Dukes of Dixieland have



1 appeared at every Jazz Fest since you  
2 began your relationship with the name in  
3 1974?

4 A. Yes, they have.

5 Q. And it is fair to say that in 2014, it  
6 was much, much more difficult to get a  
7 band into Jazz Fest than what it was back  
8 in 1974?

9 A. I don't know.

10 Q. Who gets them into Jazz Fest?

11 A. I do.

12 Q. How do you do that?

13 A. Because I call them.

14 Q. Alright. Have they ever declined?

15 A. No.

16 Q. Alright. And in 2002, Kevin Clark got  
17 married and moved to Canada. Is that  
18 correct?

19 A. Correct.

20 Q. Tom McDermott left to pursue travel  
21 writing or a travel writer and acting  
22 career?

23 A. Correct.

24 Q. Were those two (2) significant members of  
25 the band at the time?

1 A. They were a part of the band, yes.

2 Q. Alright. And was Kevin Clark a pianist  
3 before that?

4 A. No.

5 Q. Who was the pianist who left?

6 A. Tom McDermott.

7 Q. So then, at the time, roughly forty (40%)  
8 percent of the band had changed?

9 A. Yes.

10 Q. And in 2005, the band member's homes were  
11 destroyed?

12 A. Yes.

13 Q. Only one (1) member stayed. Is that  
14 correct?

15 A. Yes.

16 Q. But by December of 2005, a Christmas CD  
17 was released?

18 A. Correct.

19 Q. Are you working on another CD right now?

20 A. I just finished it.

21 Q. Why do you keep making CDs if they are  
22 not profitable?

23 A. They are promotional. They are  
24 promotional.

25 Q. Why are you promoting a band that you are

1 not actively trying to book in New  
2 Orleans?

3 A. I am trying to book them, but not in New  
4 Orleans.

5 Q. Where are you trying to actively book  
6 them? In Florida?

7 A. Anywhere in the world. Anywhere we can  
8 outside of New Orleans.

9 Q. Are they still actively touring?

10 A. Describe touring.

11 Q. In 2008, you released a double CD, Deep  
12 South Blues, which was mostly concert  
13 tours. Is that correct?

14 A. Correct.

15 Q. So then, those recordings were made as a  
16 result of an active touring schedule?

17 A. No.

18 Q. What were they made as a result of?

19 A. Of individual concerts.

20 Q. Why would you chose to use the word  
21 "tour"?

22 A. I don't know.

23 Q. You don't know why?

24 A. No.

25 Q. So this is not accurate?

1 A. Sure it is, yes, going on a concert is a  
2 tour.

3 Q. So then, you do not see any distinction  
4 between a single concert and a concert  
5 tour?

6 A. It is leaving town. It is touring  
7 outside of the town.

8 Q. And again, it looks like about sixty  
9 (60%) percent of the band changes again  
10 in 2010, correct?

11 MR. DORVEE:

12 Hold on for a second.

13 WITNESS:

14 Okay.

15 BY MR. GALANTE:

16 Q. Four (4) members changed in 2010?

17 MR. DORVEE:

18 We have six (6) members, okay?

19 BY MR. GALANTE:

20 Q. Dicky Taylor passed away?

21 A. Yes.

22 Q. Kevin Clark returned?

23 A. Yes.

24 Q. Allen Broom replaced Everett Link?

25 A. Yes.

- 1 Q. J.J. Juliano took Dicky Taylor's place on  
2 the drums?
- 3 A. That would still be two (2) of them.
- 4 Q. Okay. So then, the people who left were  
5 Dicky Taylor ----
- 6 A. Dicky Taylor was the drummer. He died.
- 7 Q. Right. Everett Link?
- 8 A. He retired.
- 9 Q. Kevin Clark, Allen Broom, and J.J.  
10 Juliano all joined the band. Is that  
11 correct?
- 12 A. Yes.
- 13 Q. So someplace between fifty (50%) and  
14 sixty (60%) percent of the band turned  
15 over that year?
- 16 A. Actually, Kevin Clark came back.
- 17 Q. Two (2) people were gone?
- 18 A. Two (2) people left.
- 19 Q. And three (3) people were added that were  
20 not there in 2010. Is that correct?
- 21 A. Well, if you want to include Kevin Clark  
22 coming back, that would be three (3).
- 23 Q. Alright. You wrote this. Is that right?
- 24 A. Yes.
- 25 Q. I am reading what you wrote.

1 A. I did not care what this guy read anyway.

2 Q. But you cared enough to let him know that  
3 there was a connection between the  
4 Assuntos?

5 A. No, there is no connection. I said  
6 nothing about a connection to the  
7 Assuntos.

8 Q. So then, in other words, this entire list  
9 where there is Assunto Family assigns  
10 Dukes of Dixieland name to John Shoup.

11 A. Show me the email that he sent. You have  
12 it, so show it to me.

13 Q. I am reading your words.

14 A. I cannot answer your question.

15 MR. DORVEE:

16 Hold on.

17 BY MR. GALANTE:

18 Q. Did you not testify that you wrote this?

19 A. I testified that I did write this.

20 Q. And in this, it says, April 1974. And  
21 read with me on Page No. 1, Assunto  
22 Family assigns Dukes of Dixieland name to  
23 music television producer John Shoup.  
24 Does it not say that in this, which you  
25 wrote?

1 A. Yes, it does.

2 Q. That is a connection between the Assunto  
3 name and the Dukes, isn't it?

4 A. Why don't you show me what the response  
5 was to that? I don't remember. I cannot  
6 tell you why.

7 Q. I'm asking you to verify what is in the  
8 document.

9 A. Okay.

10 Q. You can keep laughing at me all you want,  
11 sir, and play like this is a joke.

12 A. It is. You are right.

13 Q. It is not a joke. But isn't it true that  
14 the line you wrote makes a connection  
15 between the Assunto legacy?

16 A. Yes. How many times do you want me to  
17 say yes?

18 MR. GALANTE:

19 Thank you.

20 MR. DORVEE:

21 Listen to the question. Do  
22 not get upset.

23 WITNESS:

24 Okay. We are going with half  
25 the book with this.

1 MR. DORVEE:

2 Just relax and answer the  
3 questions.

4 MR. GALANTE:

5 And I want to go to Page No. 3  
6 under 2011, near the bottom.

7 BY MR. GALANTE:

8 Q. Did you write that in 2011, the U.S.  
9 Patent Office re-issued the 1974  
10 trademark back to the Dukes?

11 A. Yes.

12 Q. Is that what you, as you sit here,  
13 believed to be the truth?

14 A. Yes.

15 Q. And if the records at the U.S. Patent and  
16 Trademark Office differ from that, could  
17 you dispute that?

18 A. I don't know.

19 Q. Do you possess any documents to evidence  
20 the 1974 trademark?

21 A. Yes.

22 Q. Where are those documents?

23 A. They are in my office somewhere.

24 Q. Why were they not produced?

25 A. They were not asked for.



1 Q. So then, it is your belief that the  
2 discovery in the last litigation did not  
3 ask for the trademark from 1974?

4 A. In the last litigation?

5 Q. Yes, the one that was settled.

6 A. They did not.

7 Q. If it did not ----

8 A. Yes, they did, and that was furnished.

9 Q. They did?

10 A. And it was furnished.

11 Q. In 2012 at the very last page, is that  
12 evidence that in 2012, the Dukes had a  
13 sold out Brazilian tour?

14 A. Yes.

15 Q. How much money did that tour make?

16 A. Probably about four thousand dollars  
17 (\$4,000).

18 Q. So then, you sold out a tour in Brazil  
19 for the Dukes?

20 A. Yes.

21 Q. And you only made four thousand dollars  
22 (\$4,000) off of it?

23 A. I netted four thousand dollars (\$4,000)  
24 after it was over.

25 Q. And in your experience in the music

1 industry, is it common for musicians to  
2 tour in foreign countries and make nearly  
3 no money?

4 A. Yes.

5 Q. Was there any way that you could have  
6 increased the income associated with that  
7 tour?

8 A. No.

9 Q. Is that the reality that the music world  
10 does not make very much money?

11 A. When there are free concerts, you are  
12 correct.

13 Q. And is it fair to say that in the history  
14 of your management of the Dukes of  
15 Dixieland, it has never made significant  
16 amounts of money touring?

17 A. That is correct.

18 Q. From 1974 to 2014?

19 A. Correct.

20 Q. That the Dukes of Dixieland are not a  
21 profitable venture and have not been  
22 since 1974?

23 A. Correct.

24 Q. Okay.

25 MR. GALANTE:

1                   Let me show you what I will  
2                   mark as Plaintiff's Exhibit No. 5.

3                   WITNESS:

4                   Okay.

5                   BY MR. GALANTE:

6                   Q. Do you recognize this website? And for  
7                   the record, this was printed on April 24,  
8                   2013. Do you recognize it?

9                   A. Yes.

10                  Q. Is this Grabow, G-R-A-B-O-W, Grabow? Is  
11                  that what this website is?

12                  MR. DORVEE:

13                                What is the question?

14                  MR. GALANTE:

15                                Yes, is that what this is?

16                  WITNESS:

17                                It looks like it.

18                  BY MR. GALANTE:

19                  Q. Who is Grabow?

20                  A. It was a booking agent in Houston that  
21                  booked us in the 1980s.

22                  Q. On April 24, 2013, did they have the  
23                  authority to be listing you as a band  
24                  that they represented?

25                  A. No.

1 Q. The last time they booked for you was  
2 when?

3 A. In the 1980s.

4 Q. Do you have any idea of why they would  
5 still have the name of your band that you  
6 could contact them for a private  
7 corporate event, if they did not have  
8 your authority?

9 A. They did not have my authority. I sent  
10 them a letter to that effect.

11 WITNESS:

12 I even sent you a letter.

13 MR. DORVEE:

14 Just answer the question.

15 BY MR. GALANTE:

16 Q. So you have sent them correspondence  
17 saying they had no authority?

18 A. Yes.

19 Q. When was that correspondence sent?

20 A. It was when my attorney made me aware of  
21 this. Otherwise, I was not even aware of  
22 it.

23 Q. So since we produced copies of this in  
24 discovery, you sent them a cease and  
25 desist letter?

1 A. Yes.

2 Q. Okay.

3 MR. GALANTE:

4 Could I have copies of those  
5 cease and desist letters?

6 MR. DORVEE:

7 Yes. If they exist, you can  
8 have them, sure.

9 BY MR. GALANTE:

10 Q. So the content of that information on the  
11 website, do you know where that came  
12 from?

13 A. From Google, I would imagine. But I have  
14 no idea.

15 Q. Is this the same or very similar to  
16 content you have written before?

17 A. No.

18 Q. Okay.

19 MR. GALANTE:

20 I will mark this as  
21 Plaintiff's Exhibit No. 6.

22 BY MR. GALANTE:

23 Q. Do you recognize this web page?

24 A. Yes.

25 Q. What is this web page?

1 A. It looks like WWL.

2 Q. Yes, but if you look at this, it is a WWL  
3 video image. Is that correct?

4 A. It looks like it.

5 Q. Do you see at the top, or do you also  
6 recognize this as a printout of the Dukes  
7 of Dixieland web page?

8 MR. DORVEE:

9 Answer the question.

10 MR. GALANTE:

11 Do you recognize it?

12 MR. DORVEE:

13 Do you recognize it?

14 WITNESS:

15 To the best of my knowledge,  
16 yes.

17 BY MR. GALANTE:

18 Q. So it is true that you have direct  
19 knowledge that as of April 25, 2013, your  
20 website was streaming the video of a WWL-  
21 TV performance of the Dukes of Dixieland?

22 A. To the best of my knowledge, yes.

23 Q. It was under your instruction that that  
24 video stream was put through the website?

25 A. Probably.

1 Q. Are you aware of the content of that  
2 video?

3 A. No.

4 Q. Did you ever watch that video?

5 A. No, I did not.

6 Q. Did anybody describe to you what was on  
7 that video?

8 A. Just that the Dukes were on WWL.

9 Q. Did you watch the broadcast of it?

10 A. I was there, but I did not watch the  
11 whole thing, no.

12 Q. So you were there?

13 A. Yes.

14 Q. Were you aware of the content of the  
15 interview?

16 A. No, I was not there for the interview.

17 Q. Were you ever aware that there was a  
18 relationship made between the Assunto  
19 legacy and the current Dukes of  
20 Dixieland?

21 A. No.

22 Q. And if that broadcast reveals that there  
23 was an avert relationship between the  
24 two, you would not contest that?

25 A. I don't know. I did not see the

1 interview.

2 Q. Has anybody ever made you aware that that  
3 connection was made on that video?

4 A. No.

5 Q. And as you sit here today, you still are  
6 unaware that that video contains that  
7 kind of information?

8 A. Yes.

9 MR. GALANTE:

10 Let me give you what I am now  
11 marking as Plaintiff's Exhibit No.  
12 7.

13 BY MR. GALANTE:

14 Q. Do you recognize this website?

15 A. Yes.

16 Q. Did these people have the authority to  
17 list your content?

18 A. No.

19 Q. Has Ted Kirkland and Associates ever  
20 represented the Dukes of Dixieland?

21 A. Many years ago, yes.

22 Q. How many is many years ago?

23 A. At least five (5) years.

24 Q. Longer than five (5) years?

25 A. Yes.



1 Q. Not since the settlement?

2 A. Not to my knowledge.

3 Q. Who authorized them to put the video on  
4 the website on March 15, 2012?

5 A. I have no idea.

6 Q. It is fair to say that March 15, 2012  
7 would have been since you, or since they  
8 stopped representing you, according to  
9 your testimony?

10 A. Yes.

11 Q. Have you contacted them to cease and  
12 desist any indication ----

13 A. I did not know they were doing this.

14 Q. And again, it is something that we  
15 produced in discovery. This is your  
16 first understanding that they were doing  
17 this?

18 A. Right.

19 Q. At this point, you have not reached out  
20 to Ted Kirkland and Associates?

21 A. No.

22 Q. Okay.

23 MR. GALANTE:

24 Let me give you an image of  
25 your website.

1 WITNESS:

2 Okay.

3 MR. DORVEE:

4 Just a single image?

5 MR. GALANTE:

6 Just a single image, and it is  
7 from the period of time, well,  
8 strike that.

9 BY MR. GALANTE:

10 Q. It is true that the time line as it  
11 appears on this image appeared on your  
12 website for a period of time?

13 A. Yes.

14 Q. Following the settlement? Is that right?

15 A. I don't remember when it was. But it was  
16 on the website. I cannot tell you what  
17 date.

18 Q. Are you responsible for that content  
19 being on your website?

20 A. I was responsible for getting it removed.

21 Q. But were you responsible for it going up  
22 there the first time?

23 A. Probably.

24 Q. Okay. So then, you take responsibility  
25 after the settlement for putting this

1 information on the website?

2 MR. DORVEE:

3 Objection.

4 MR. GALANTE:

5 I am asking the question.

6 WITNESS:

7 No.

8 MR. DORVEE:

9 Okay.

10 BY MR. GALANTE:

11 Q. You are responsible for it going up there  
12 before the settlement, correct?

13 A. Probably.

14 Q. Correct?

15 A. Before the settlement, yes.

16 Q. And that you instructed that it be taken  
17 down?

18 A. After I was advised of it, yes.

19 Q. By your lawyers that you needed to take  
20 it down?

21 A. Yes.

22 Q. And then who put it up there voluntarily?

23 A. We had an intern in place at that point,  
24 and it came right back off again.

25 Q. Alright. What do you mean by right off?

1 A. The minute that I was aware of it, it  
2 came off.

3 Q. Okay. If our records show that it was up  
4 there for the better part of six (6)  
5 months, could you contest that?

6 A. Yes.

7 Q. How could you contest that?

8 A. How can you say it was up there for six  
9 (6) months?

10 Q. I'm just asking, if we have evidence that  
11 says that it was.

12 A. I do not agree with that.

13 Q. I understand that you do not agree with  
14 it, but do you have evidence that would  
15 contest it? Yes or no.

16 A. No.

17 Q. Okay. So then other than your  
18 disagreement with it, you have no  
19 evidence to contest it?

20 A. I have no evidence.

21 Q. But you do admit that this was on the  
22 website?

23 A. Yes.

24 Q. And it was also on the website after the  
25 settlement?

1 A. I do not admit that.

2 Q. You do not admit that it was on the  
3 website after the settlement?

4 A. I don't know.

5 Q. Then how did you know to tell them to  
6 take it down, if you did not know that it  
7 was on there?

8 A. Because we had an intern in there that  
9 put something up. And looking at it, I  
10 said, take that off.

11 Q. So you looked at it after the settlement.  
12 Is that correct?

13 A. I look at the website periodically. I do  
14 not look at it every day.

15 Q. So you admit that this information that  
16 connects the Assunto legacy to the Dukes  
17 of Dixieland currently was on your  
18 website after the settlement?

19 A. I don't know. Whatever I saw, whenever  
20 I saw it, I told them to take it off. I  
21 don't know the dates.

22 Q. I understand that. But it was after the  
23 settlement when you told them to take it  
24 down?

25 A. It could be, but I don't know.

1 Q. Why would you tell them to take it down  
2 if it was not after the settlement?

3 A. Because I did not want anything tied in  
4 to the Assunto family anyway.

5 Q. Isn't that interesting? Didn't you just  
6 testify that you voluntarily wrote to Mr.  
7 Tom Coleman on September 12<sup>th</sup> connecting  
8 those legacies, didn't you?

9 A. Yes.

10 MR. DORVEE:

11 Objection. That is not what  
12 he testified to.

13 BY MR. GALANTE:

14 Q. Did you not just agree with me that you  
15 wrote that yourself?

16 A. Yes, I wrote it.

17 Q. Doesn't that verbatim say the same thing  
18 that is on the website that I'm showing  
19 you, Plaintiff's Exhibit No. 7?

20 A. Yes.

21 Q. Isn't that verbatim?

22 A. It could be, yes.

23 Q. But now you are saying that you would put  
24 it into a communication to somebody that  
25 is a detractor of yours personally in

1           2012, but you did not want it on your  
2           website?

3           A.    Correct.

4           Q.    Okay.

5                       MR. GALANTE:

6                                Let me show you what I will  
7                                mark as Plaintiff's Exhibit No. 8.

8           BY MR. GALANTE:

9           Q.    Do you recognize this?

10          A.    Yes.

11          Q.    You authorized, or did you authorize the  
12                content in this?

13          A.    Probably.

14          Q.    In fact, it has direct quotes from you,  
15                doesn't it?

16          A.    Yes.

17          Q.    In fact, if you look at that third page,  
18                and you will agree that this print is  
19                dated 5-31-2013, correct?

20          A.    Yes.

21          Q.    And you will agree that the Satchmo  
22                recording that is being promoted on this  
23                was released around the time of the 2013  
24                Jazz Fest. Is that right?

25          A.    Yes.

1 Q. And in fact, this was a promotional item  
2 just for that release, isn't it?

3 A. Correct.

4 Q. If you would go to Page No. 3, would you  
5 read into the record that quote where it  
6 starts, according to John Shoup, CEO of  
7 the Leisure Music Group?

8 A. Okay.

9 Q. I think you told me at that time in 2013  
10 the Leisure Music Group no longer  
11 existed.

12 A. I did not say it no longer existed.  
13 Leisure does exist.

14 Q. So now it exists?

15 A. It always existed.

16 Q. So when we started the deposition ----

17 A. No, no. It was a label that we used for  
18 the records.

19 Q. So when we started this deposition ----

20 A. There is no Leisure Enterprise or nothing  
21 like that. I was correct in telling you  
22 that.

23 Q. So when we started the deposition, and  
24 you said there were only two (2)  
25 businesses you were operating, one (1) of



1           them was the television shows?

2       A.    Yes.

3       Q.    And the other was the incorporated band?

4       A.    Right.

5       Q.    The unincorporated band, and you told me  
6           specifically that Leisure Music Group was  
7           no longer in existence.

8       A.    It was really not in existence, no.

9       Q.    So you at least are putting it on your  
10           website that you are the CEO of that  
11           entity?

12      A.    Which does not exist.

13      Q.    Which does not exist, is that right?

14      A.    Right.

15      Q.    And could you read into the record the  
16           quote on behalf of CEO, or as the CEO on  
17           behalf of Leisure Music.  What did you  
18           write on the website?

19      A.    According to John Shoup, CEO of Leisure  
20           Music Group New Orleans, is the perfect  
21           place to celebrate Satchmo from his music  
22           to the Summer Satchmo Fest.  It is only  
23           fitting that the Dukes, the oldest  
24           continuously playing jazz band in the  
25           area, pay special tribute to Louis

1 Armstrong, the City's most reverent  
2 musician.

3 Q. Now there are jazz bands in the area that  
4 have been playing continuously for longer  
5 than forty (40) years.

6 A. No, there has not.

7 Q. There are none?

8 A. No.

9 Q. So if I can produce a jazz band that has  
10 been playing continuously for forty one  
11 (41) years or more, then you will correct  
12 that statement? You will agree with me  
13 that that would be a false statement?

14 A. No, it is not false. That is not a false  
15 statement.

16 Q. Why is it not a false statement?

17 A. It is correct.

18 Q. It is because you are relying on the  
19 Assunto legacy, too?

20 A. No.

21 Q. Why don't we go over to Page No. 6, then,  
22 okay?

23 A. Okay.

24 Q. No, I'm sorry, Page No. 6 and 7. Again,  
25 the same promotional material, isn't it,



1 Famous Door on Bourbon Street,  
2 where they inherited Sharkey  
3 Bonnano's spot, as well as in Las  
4 Vegas. That was where they signed  
5 to the Audio Fidelity label where,  
6 in the late 50's, they recorded  
7 with Armstrong himself, who is  
8 also known as Satchmo, correct?

9 WITNESS:

10 Yes.

11 MR. GALANTE:

12 The current lineup playing  
13 under that name dates its own  
14 versions back to 1974, when the  
15 last of the original leaders  
16 passed away. Since then, many  
17 players have passed through the  
18 band's ranks.

19 BY MR. GALANTE:

20 Q. You wrote that?

21 A. No.

22 Q. You are responsible for it being on the  
23 website, aren't you?

24 A. Ultimately, I am always responsible, but  
25 no, I did not write that.

1 Q. Who wrote that?

2 A. Someone from the Times Picayune. It is a  
3 Times Picayune article.

4 Q. But who put it on your website? Who put  
5 the content on your website?

6 MR. DORVEE:

7 Excuse me. Lower your tone of  
8 voice. Just lower the tone of  
9 your voice.

10 BY MR. GALANTE:

11 Q. Who put it on your website?

12 A. Nate Williams.

13 Q. Under whose authority was this  
14 promotional material for the Satchmo  
15 release assembled?

16 A. I am ultimately responsible.

17 Q. Did you review it before it went out?

18 A. No.

19 Q. Had you read the Times Picayune article  
20 yourself?

21 A. Yes.

22 Q. Did you tell Nate to put that on the  
23 website?

24 A. Probably because it was written by a  
25 third party.

1 Q. So you believe that because somebody else  
2 got it wrong, that you could then put it  
3 on your website?

4 A. Absolutely.

5 Q. So even though you knew that it was in  
6 violation of the agreement, you still put  
7 it on your website? Isn't that right?

8 A. No.

9 Q. Because you had the ability to say that a  
10 third party wrote it, didn't you?

11 A. Yes.

12 Q. So from your perspective, you were no  
13 longer responsible for it?

14 A. Correct.

15 Q. It did not matter where you put it?

16 A. Correct.

17 Q. So what you are really trying to tell us  
18 is that because somebody else writes it  
19 down, you can say it?

20 A. Absolutely.

21 Q. Okay. And you do not believe it is a  
22 violation of the agreement?

23 A. Absolutely not.

24 MR. GALANTE:

25 And let me now show you what

1                   we have marked as Plaintiff's  
2                   Exhibit No. 9.

3   BY MR. GALANTE:

4   Q.   That is an image from your Facebook page,  
5        is it not?

6   A.   If you say so.

7   Q.   Have you ever reviewed it?

8   A.   I have never seen it.

9   Q.   You have never seen the website?

10   A.   I do not do Facebook.

11   Q.   If you look on the right hand column, if  
12        I represent to you that that is your  
13        Dukes of Dixieland Facebook page, making  
14        a posting, drawing a attention to the new  
15        time line of the Dukes on the website  
16        from the very start in 1949, you could  
17        not dispute that that appeared. Is that  
18        correct?

19   A.   I don't know.

20   Q.   On September 4, 2012, correct?

21   A.   I have never seen this before.

22   Q.   But you cannot dispute that if I tell you  
23        it is from that page? You cannot dispute  
24        that?

25   A.   If you tell me that, that is fine.

1 Q. It is interesting that on September 4,  
2 where it is announcing a new time line,  
3 if you look back at Plaintiff's Exhibit  
4 No. 4, that is just about thirteen (13)  
5 days before you mailed that same time  
6 line to Mr. Coleman, isn't it?

7 A. I don't know.

8 Q. Isn't it?

9 A. I don't know.

10 Q. You are telling me that you don't know if  
11 that September 4<sup>th</sup> is thirteen (13) days -  
12 ---

13 A. If you say so.

14 MR. DORVEE:

15 If you can match them up.

16 BY MR. GALANTE:

17 Q. Less than two (2) weeks from one another,  
18 your Facebook page announces a new time  
19 line, and you are sending that to Mr.  
20 Coleman.

21 A. Okay.

22 MR. GALANTE:

23 If I could keep Plaintiff's  
24 Exhibit No. 4 back so that I can  
25 keep them in order.



1 WITNESS:

2 Okay.

3 BY MR. GALANTE:

4 Q. Again, you are responsible for the time  
5 line content, aren't you? Is that  
6 correct?

7 A. I do not do anything with Facebook.

8 Q. I understand that, but I'm talking about  
9 the content that was in that email to Mr.  
10 Coleman?

11 A. Yes.

12 Q. So once it was written down and sent to  
13 Mr. Coleman, do you believe that that  
14 gave you the authority to post it on your  
15 website?

16 A. To be posted on the website?

17 Q. Absolutely.

18 A. I don't think so.

19 Q. Okay.

20 A. I don't think so.

21 Q. So it is your belief, or if we have  
22 evidence that disputes that, what  
23 evidence do you have to dispute that?

24 MR. DORVEE:

25 Wait a minute. Hold on.

1 MR. GALANTE:

2 That was a poor question.

3 BY MR. GALANTE:

4 Q. If we have evidence to show that on  
5 September 3, 2012, on both your Facebook  
6 page and your website, you had time lines  
7 that connected the Assunto legacy to the  
8 Dukes of Dixieland. Do you have any  
9 evidence to dispute that?

10 A. No.

11 Q. Okay. So again, it is another assumption  
12 that you are making. Is that correct?

13 A. No.

14 Q. Then tell me how you are predicating your  
15 answer.

16 A. You have just ----

17 Q. You have no evidence to support it?

18 A. Correct.

19 Q. You told me yourself that you do not put  
20 all that stuff up and down?

21 A. Right.

22 Q. That the people in your office may do it?

23 A. Yes.

24 Q. Okay. Nate Williams is the one you had  
25 to engage to take all of that stuff down

1 off the website after the settlement. Is  
2 that right?

3 A. Yes.

4 Q. He is the guy who you actually had to  
5 tell, we just settled the case, and all  
6 of this has to come back off, correct?

7 A. Something like that.

8 MR. DORVEE:

9 Something like that?

10 WITNESS:

11 Right. I am not even sure  
12 that he was working for us at that  
13 time, but I don't know.

14 BY MR. GALANTE:

15 Q. Nate Williams is the guy. Is that right?

16 A. He has been there for two (2) years. You  
17 can figure it out.

18 Q. Who was working there when you settled  
19 the case?

20 A. I had an intern.

21 Q. So the intern was still there? Is that  
22 right?

23 A. The intern had left. I don't know. I  
24 don't know when the intern left.

25 Q. Didn't you say that the intern had left

1 about a year ago?

2 A. Maybe a little bit more than that. I  
3 don't know.

4 Q. Here is the question. Did you tell your  
5 people what you could or could not have  
6 on the website?

7 A. I told them absolutely no connection to  
8 the Assuntos.

9 Q. And you are telling me that the interns  
10 and the employees that you have ignored  
11 that directive?

12 A. I don't know.

13 Q. And they made this direction?

14 A. I don't know.

15 Q. Can you explain to me how the connection  
16 to the Assuntos kept popping back up on  
17 your website?

18 A. I don't know.

19 Q. Can you tell me how it made it into your  
20 communication to Mr. Coleman?

21 A. I did that.

22 Q. Can you tell me how the article making  
23 reference to it made it to your website?

24 MR. DORVEE:

25 The Times Picayune article?

1 WITNESS:

2 The Times Picayune article?

3 MR. GALANTE:

4 Yes.

5 WITNESS:

6 I told them to put it up.

7 BY MR. GALANTE:

8 Q. You told them to put it up?

9 A. Yes.

10 Q. At least in some instances, you admit on  
11 the record that there are references to  
12 the Assunto family on your website were  
13 at your direct control?

14 A. Yes.

15 Q. Okay.

16 MR. GALANTE:

17 I will show you what I will

18 mark as Plaintiff's Exhibit No.

19 10. Would you read the content of  
20 that email?

21 WITNESS:

22 Okay.

23 BY MR. GALANTE:

24 Q. Would you agree with the content of that  
25 email?

1 A. Yes.

2 Q. Would you agree that you have the whole  
3 claim for recordings following 1974, and  
4 I will say following Fat Tuesday of 1974,  
5 and that you have no claim for recordings  
6 prior to Fat Tuesday of 1974?

7 A. Correct.

8 Q. Do you admit or deny that you later told  
9 Sound Exchange that you wanted royalties  
10 for all of their catalog due to Dukes  
11 prior to 1974?

12 A. Yes.

13 Q. You deny that?

14 A. Yes.

15 Q. So in the event that Sound Exchange  
16 communicated that to me or to my client,  
17 they either would have been lying or  
18 misunderstanding what you told them?

19 A. It did not happen.

20 Q. And if they provided any sort of written  
21 communication, could you dispute it?

22 A. If I see the written communication, I  
23 will tell you. But I don't know.

24 Q. In other words, did you put it in  
25 writing?

1 A. No.

2 Q. Did you record the conversation in any  
3 way?

4 A. I put it in writing to Sound Exchange.

5 MR. DORVEE:

6 So that we are clear, what did  
7 you put in writing?

8 BY MR. GALANTE:

9 Q. Tell me what you put in writing to Sound  
10 Exchange.

11 A. I sent them a letter saying I wanted all  
12 recordings, all royalties from recordings  
13 from 1974 on.

14 Q. And if they indicated to us that they had  
15 written evidence that says you wanted  
16 more than that?

17 A. No.

18 Q. Could you dispute that?

19 A. Yes.

20 Q. Okay. How could you dispute that?

21 A. Show me the evidence.

22 Q. Would you say the document is forged?

23 MR. DORVEE:

24 Wait a minute.

25 MR. GALANTE:

1                   It is simple.

2           MR. DORVEE:

3                   You are asking him about a  
4                   fictional document.

5           MR. GALANTE:

6                   I'm asking him if he can  
7                   dispute evidence.

8           WITNESS:

9                   You have not shown me the  
10                  evidence.

11          MR. DORVEE:

12                  I would object as to the form  
13                  of the question.

14          MR. GALANTE:

15                  Just object as to the form of  
16                  the question, and then we can move  
17                  on.

18          MR. DORVEE:

19                  That's fine. Let's move on.

20          MR. GALANTE:

21                  All you guys are just laughing  
22                  on the record. I'm trying to deal  
23                  with a difficult witness. I'm  
24                  doing my best.

25          MR. DORVEE:



1                   Let's just move on.

2                   MR. GALANTE:

3                   I will make some references to  
4                   documents now just for the record,  
5                   which I am not going to attach,  
6                   but I will refer to them by bates  
7                   numbers of what you produced as we  
8                   attached them in yesterday's  
9                   deposition. It is up to you. If  
10                  you want to attach them, you can.  
11                  I only brought one (1) copy with  
12                  me.

13                  MR. DORVEE:

14                  Let's see how many there are.  
15                  You can either mark them or not.  
16                  But just identify what you are  
17                  talking about.

18                  MR. GALANTE:

19                  Okay. And I am going to show  
20                  you, well let me go back to ask  
21                  you a couple of quick questions  
22                  because these documents were  
23                  produced by your attorney  
24                  yesterday.

25                  WITNESS:

1                   Okay.

2                   MR. GALANTE:

3                   These were produced in  
4                   discovery, okay? There was a  
5                   signature line on an email that  
6                   references "the Great Chefs  
7                   Worldwide Media", which is one of  
8                   the companies that you admit to  
9                   operating.

10                  WITNESS:

11                   Yes.

12                  MR. GALANTE:

13                   And the world famous Grammy  
14                   nominated Dukes of Dixieland Jazz.

15                  WITNESS:

16                   Yes.

17                  MR. GALANTE:

18                   It is interesting. It also  
19                   lists Leisure Music Group, yet  
20                   another entity you say is no  
21                   longer in existence.

22                  WITNESS:

23                   It is not operational.

24                  BY MR. GALANTE:

25                  Q. But you still use it in your emails?

1 A. Yes.

2 Q. And then the Villa des Great Chefs B&B  
3 St. Croix?

4 A. Yes.

5 Q. That is a property that you own?

6 A. Yes.

7 Q. It is actually a business that you  
8 operate?

9 A. Yes. Well, not really.

10 Q. And ----

11 A. How do you want to deal with it?

12 MR. DORVEE:

13 That is your answer.

14 WITNESS:

15 Okay.

16 MR. DORVEE:

17 He said not really.

18 MR. GALANTE:

19 It is listed in the signature  
20 as a B&B?

21 WITNESS:

22 It does not say B&B.

23 BY MR. GALANTE:

24 Q. It does, in fact, say B&B.

25 A. No.

1 Q. It is right there.

2 MR. DORVEE:

3 Let him show it to you.

4 WITNESS:

5 Okay.

6 MR. GALANTE:

7 Let me show it to you.

8 MR. DORVEE:

9 You need to show it to him.

10 MR. GALANTE:

11 Eventually, I will.

12 MR. DORVEE:

13 Show it to him now.

14 WITNESS:

15 I don't think it says B&B.

16 MR. GALANTE:

17 If the copy your lawyer has  
18 produced, and I will show it to  
19 you in a minute. But if it does  
20 say B&B, you will not dispute  
21 that, will you?

22 WITNESS:

23 I have not seen it.

24 BY MR. GALANTE:

25 Q. What about GCI, Inc.?

1 A. What about it?

2 Q. What is that?

3 A. That is the holding company for Great  
4 Chefs.

5 Q. So the Great Chefs is actually two (2)  
6 different businesses?

7 A. GCI is Great Chefs.

8 Q. Alright. Can you identify this email,  
9 and then can you confirm that it says B&B  
10 and your signature?

11 MR. DORVEE:

12 Let me take a look at that.

13 WITNESS:

14 Okay.

15 MR. DORVEE:

16 Read everything.

17 BY MR. GALANTE:

18 Q. Do you recognize that email?

19 A. Yes.

20 Q. And you are personally making corrections  
21 to a description of your band, aren't  
22 you?

23 A. Yes.

24 Q. And let me see this. It is true that you  
25 are going back and forth with Sean

1 Westergaard regarding his description of  
2 the Dukes of Dixieland, correct?

3 A. On what he put down there, yes, on what  
4 he put down there.

5 Q. Alright. And it is fair to say that at  
6 the end, your revised copy for approval  
7 is again complete with references to the  
8 Assunto legacy, isn't it?

9 A. No.

10 Q. So it does not say, the story of the  
11 Dukes of Dixieland ----

12 A. It is not just a simple answer of yes or  
13 no.

14 Q. Does it make a reference to the Assunto  
15 family?

16 A. Yes.

17 Q. Does it make a reference to the Dukes of  
18 Dixieland connected to the Assunto  
19 family?

20 A. Yes.

21 Q. Is it something that you personally,  
22 through email, were approving the edited  
23 copy of?

24 A. I said that he could run that. I had no  
25 control over it.

1 Q. For a music guide review. Isn't that  
2 correct?

3 A. Yes.

4 Q. You approved this to be written, to be  
5 printed, with regard to your band in a  
6 music guide, didn't you? Didn't you?  
7 Yes or no. Didn't you?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. Where in here does this say, no I'm  
12 sorry, or where does it say, I'm sorry,  
13 there is no connection?

14 A. I have had an email that says that in the  
15 beginning. You do not have that.

16 Q. Really? So then, in other words, the  
17 email that your lawyer produced to us  
18 yesterday for my client to be deposed is  
19 incomplete?

20 A. It is like everything else. It is only  
21 one half of the book.

22 Q. Again ----

23 A. Just like Mr. Coleman.

24 Q. And again, this is the final revised copy  
25 you approved, isn't it?

1 A. He sent it to me. I did not want it that  
2 way.

3 Q. You did not correct it, did you?

4 A. Yes, I did correct it.

5 Q. Where?

6 A. He said we have to keep Assunto in there.  
7 I said I did not want it in there.

8 Q. Where does it say that?

9 A. I have another email that'll tell you  
10 that.

11 Q. Okay, I see. So it is in another email.  
12 So there was another email to Sean  
13 Westergaard after March 1, 2012 that  
14 tells him that you cannot keep that  
15 reference to the Assunto legacy in there?

16 A. I went in the beginning, and I told him  
17 that I wanted it removed.

18 Q. There is an email, okay, yes. But you  
19 knew that you were approving the final  
20 copy for printing in this email?

21 A. I'm just approving my portion of it, not  
22 that at all.

23 Q. So again, somebody else wrote it?

24 A. To the best of my knowledge, yes.

25 Q. They sent it back to you? Is that



1 correct?

2 A. This is what we are printing. I said,  
3 ours is correct, but I cannot say  
4 anything about the rest of it.

5 Q. You failed to correct him and tell him,  
6 look, there is no connection between the  
7 Assunto legacy ----

8 A. There is correspondence.

9 Q. But you did not do it here?

10 A. I did not do it in that one.

11 Q. And not after this date. Is that  
12 correct?

13 A. No.

14 Q. Right. So you let it go to print?

15 A. I had no choice.

16 Q. You did not have a choice?

17 A. No, you do not have a choice.

18 Q. Alright. You did not tell them that what  
19 they were doing was inaccurate?

20 A. Yes, I did.

21 Q. After March 1<sup>st</sup> when they sent you the  
22 final copy, you gave them edits and  
23 typographical errors, but you did not  
24 say, look, there is no connection?

25 A. There were no typos in the Assunto

1 section, no.

2 Q. Regardless, as with the prior testimony,  
3 you were aware that this was going to be  
4 disseminated to the public making a  
5 connection between the Dukes of Dixieland  
6 and the Assunto legacy. Isn't that  
7 correct?

8 A. Yes.

9 Q. And if you had not already produced these  
10 emails that you are making reference to,  
11 you will produce emails that show that  
12 you told them that they could not do that  
13 because it was inaccurate, correct?

14 A. Yes.

15 Q. Okay. And if you have those, you will  
16 produce them?

17 A. I will look for them.

18 Q. No, but I'm asking that of your lawyer.

19 MR. DORVEE:

20 Yes.

21 MR. GALANTE:

22 You will agree that those have  
23 not been produced?

24 MR. DORVEE:

25 I have no idea.

1 WITNESS:

2 What is the name of that  
3 outfit? Is it All Music?

4 MR. GALANTE:

5 You tell me.

6 WITNESS:

7 You want me to tell you?

8 MR. GALANTE:

9 It is All Music Guide Review.

10 WITNESS:

11 It is Sean Westergaard?

12 MR. GALANTE:

13 That is W-E-S-T-E-R-G-A-A-R-D,  
14 Westergaard.

15 WITNESS:

16 Okay.

17 BY MR. GALANTE:

18 Q. Did you read that part where you are  
19 telling Sean Westergaard that you had to  
20 change part of the real Dukes of  
21 Dixieland description because of,  
22 according to the legal settlement  
23 documents ----

24 MR. DORVEE:

25 Are you reading that?

1 BY MR. GALANTE:

2 Q. Do you recall reading that? Isn't that  
3 what you said on Page No. 3, to actually  
4 tell him that he had to make changes  
5 because of the settlement documents?

6 A. Yes.

7 Q. You were going to tell him to change the  
8 name of your band because of the  
9 settlement documents, which sounds a lot  
10 like a settlement term, correct?

11 A. Yes.

12 MR. DORVEE:

13 Objection as to the form of  
14 the question. Could you read the  
15 question back?

16 BY MR. GALANTE:

17 Q. You told him to change the name of the  
18 band in accordance with the settlement  
19 documents, correct?

20 A. My band.

21 Q. Yes.

22 A. Yes.

23 Q. But you did not tell them to change the  
24 history according to the settlement  
25 documents, did you?

1 A. Not in that email.

2 Q. And that was the last email change that  
3 you all went and had before it went to  
4 print. Is that correct?

5 A. I have no idea.

6 Q. Do you derive any income from recordings  
7 sold on iTunes?

8 A. No.

9 Q. Have you ever received a royalty check  
10 from iTunes?

11 A. No.

12 Q. Are you aware of any other royalty checks  
13 that you have received through Sound  
14 Exchange as a result of iTunes' sales?

15 A. I think so.

16 Q. Do you personally oversee that  
17 relationship?

18 A. Yes.

19 MR. DORVEE:

20 What relationship?

21 WITNESS:

22 With Sound Exchange.

23 MR. DORVEE:

24 Okay.

25 MR. GALANTE:

1                   And I will show you another  
2                   email that your lawyer produced  
3                   yesterday.

4                   WITNESS:

5                   Okay.

6                   BY MR. GALANTE:

7                   Q. Are you familiar with this email? And I  
8                   will mark that ----

9                   MR. GALANTE:

10                   Let me mark this email as  
11                   Plaintiff's Exhibit No. 11.

12                   WITNESS:

13                   Okay.

14                   BY MR. GALANTE:

15                   Q. Are you familiar with it?

16                   A. Yes.

17                   MR. DORVEE:

18                   Make sure you read the front  
19                   and back of it.

20                   WITNESS:

21                   Okay.

22                   MR. GALANTE:

23                   I'm sorry. It'll be marked as  
24                   Plaintiff's Exhibit No. 12, not  
25                   No. 11. But Plaintiff's Exhibit



1                    questions about it, he needs to  
2                    see it.

3                    MR. GALANTE:

4                    He just read it. I'm asking a  
5                    very simple question.

6                    BY MR. GALANTE:

7                    Q. Does it make reference to the  
8                    grandchildren in the Duke family?

9                    A. Yes.

10                  Q. Is Deano his grandchild or his son?

11                  A. I do not know who the estate was involved  
12                  with, but I know Deano is the point  
13                  person.

14                  Q. You know Deano is the son of the  
15                  Assuntos, correct?

16                  A. Yes.

17                  Q. But you make reference to them being the  
18                  grandchildren?

19                  A. But I mean, it is the estate of the  
20                  Assunto family.

21                  Q. That is your testimony?

22                  A. Yes.

23                  Q. You know that Deano, as the son of Mr.  
24                  Assunto, represents the estate?

25                  A. Yes.



1 Q. But you still refer to them as the  
2 grandchildren?

3 A. Yes.

4 Q. Isn't it true that you are trying to  
5 create more distance between the family  
6 and the music?

7 A. I've been trying to distance the Assuntos  
8 from the very beginning.

9 Q. I know you have, believe me. The problem  
10 is that they just will not go away, will  
11 they?

12 A. We will find out.

13 Q. We will, won't we?

14 A. Yes, we will.

15 Q. And then, don't you tell them in that  
16 email that you paid ten thousand dollars  
17 (\$10,000) to get rid of this?

18 A. I was mistaken. I paid twenty five  
19 thousand dollars (\$25,000).

20 Q. And again, that is a disclosure of a term  
21 from the settlement agreement, isn't it?

22 A. It is the wrong number.

23 Q. It doesn't matter. But you are still  
24 disclosing that monies were paid under  
25 the settlement, correct?

1 A. Yes.

2 Q. That violates the settlement agreement  
3 confidentiality to your understanding?

4 MR. DORVEE:

5 To your understanding.

6 WITNESS:

7 To the best of my knowledge.

8 BY MR. GALANTE:

9 Q. It does, doesn't it?

10 A. To the best of my knowledge, yes.

11 Q. Then why did you violate the agreements  
12 in the settlement agreement?

13 A. I do not think I did.

14 Q. Didn't you just say ----

15 A. At the time, I did not think that I did.

16 Q. But you do now? You know that you did,  
17 don't you?

18 A. If you say so.

19 Q. Didn't you just testify that to your  
20 understanding, it did?

21 A. To the best of my knowledge.

22 Q. Right, to the best of your knowledge, it  
23 violated the confidentiality agreement?

24 A. Yes.

25 Q. Why did you do it?

1 A. I accidentally did it.

2 Q. It was an accident, wasn't it?

3 A. Yes.

4 Q. Okay. You are careless when it comes to  
5 your communications?

6 A. Occasionally.

7 Q. So again, the final thing is that you  
8 just instructed your attorney to file a  
9 ten million dollar (\$10,000,000) lawsuit.

10 A. Absolutely.

11 Q. Did you do it?

12 A. I can't.

13 Q. Why?

14 A. Because there are limitations. You  
15 cannot put a dollar amount on it.

16 Q. You can't?

17 A. No, not in the State of Louisiana.

18 Q. Did you file the lawsuit?

19 A. We filed a counterclaim, yes.

20 Q. But you were telling somebody else on  
21 September 16, 2013 that you were going to  
22 file a lawsuit. Is that correct?

23 A. Yes.

24 Q. Did you ever file that lawsuit?

25 A. No.

1 Q. Okay. You did not consider that to be  
2 disparaging someone else that you are  
3 about to sue them, do you?

4 A. No.

5 Q. Just like it is not disparaging to call  
6 them an alcoholic, is it?

7 A. If you say so.

8 Q. No, that is what you said, sir.

9 A. Okay.

10 MR. GALANTE:

11 And now we are going to look  
12 at what I will mark, and this is a  
13 document attached to yesterday's  
14 deposition by your own lawyer.  
15 And do you recognize the email  
16 dated February 7, 2012? And it'll  
17 be marked as Plaintiff's Exhibit  
18 No. 13.

19 WITNESS:

20 Okay.

21 BY MR. GALANTE:

22 Q. Do you remember that?

23 A. Yes.

24 Q. Did you write that thing at the bottom  
25 where it says you paid ten thousand

1           dollars (\$10,000) to get the bio thrown  
2           out, and it was? Did you write that?

3       A.    No.

4       Q.    What does it say? Read that.

5       A.    I spent over one hundred thousand dollars  
6           (\$100,000) in legal fees.

7       Q.    Okay.

8       A.    In legal fees.

9       Q.    Yes, to get it thrown out?

10      A.    To get that bio they used thrown out.

11      Q.    Is that true? Was it thrown out?

12      A.    No.

13      Q.    So why did you write that? Was it  
14           another careless communication?

15      A.    We tried to get it thrown out.

16      Q.    But it did not work, did it?

17      A.    No, because you have All Music.

18      Q.    I am suggesting to you, I spent over one  
19           hundred thousand dollars (\$100,000) in  
20           legal fees to get that bio they used  
21           thrown out, and now it re-appears.

22      A.    Yes.

23      Q.    That is not a true statement, is it?

24      A.    Yes, it is true.

25      Q.    You are telling me that you do not read

1           that as implying that it was thrown out?

2           A.    No.

3           Q.    Again then, that would violate the  
4           settlement agreement?

5           A.    No.

6           Q.    That is not a discussion?

7           A.    No.

8           Q.    Okay.  So under the confidentiality  
9           agreement where you all discuss and agree  
10          that you can make reference to the  
11          litigation and make reference to the suit  
12          number and the fact that it has settled,  
13          you don't think that statement violates  
14          that rule?

15          A.    No.

16                   MR. GALANTE:

17                           I will not attach this, but I  
18                           will make reference to it.  This  
19                           was presented at my client's  
20                           deposition yesterday, and it is  
21                           bates No. Shoup 0000349 through  
22                           Shoup 0000481.

23                   BY MR. GALANTE:

24          Q.    Do you recognize that, and do you have a  
25          copy of that?

1 MR. DORVEE:

2 Before we start, this was  
3 where? I mean, it may be more  
4 helpful to use this.

5 MR. GALANTE:

6 That's fine. I'm going to ask  
7 him a very general question.

8 MR. DORVEE:

9 That's fine. You can ask him  
10 a general question.

11 MR. GALANTE:

12 Well, first of all, I just  
13 want to know, do you recognize  
14 that? And then secondly, do you  
15 take full responsibility for all  
16 of the content on that site as of  
17 September 12, 2014, fifteen (15)  
18 days ago?

19 WITNESS:

20 Okay.

21 MR. GALANTE:

22 And for purposes of the  
23 record, I will not attach this.

24 MR. DORVEE:

25 And I would make the same

1 objections you made yesterday.

2 MR. GALANTE:

3 You produced it.

4 MR. DORVEE:

5 I know.

6 MR. GALANTE:

7 I want to make sure that he is  
8 going to take responsibility for  
9 the content that he produced in  
10 litigation.

11 MR. DORVEE:

12 That's fine.

13 WITNESS:

14 Okay.

15 MR. DORVEE:

16 Off the record.

17 MR. DORVEE:

18 On the record.

19 WITNESS:

20 I cannot read them anyway.

21 MR. GALANTE:

22 We had problems reading them,  
23 too.

24 WITNESS:

25 Okay.



1 BY MR. GALANTE:

2 Q. Is that a true and correct copy?

3 A. Yes.

4 Q. As it currently exists, correct?

5 A. Yes, or well, as it exists ----

6 Q. On September 12, 2014?

7 A. Yes.

8 Q. Thirteen (13) days ago, correct?

9 A. Yes.

10 Q. Well after this litigation had begun?

11 A. Yes.

12 Q. And well after you had received a  
13 multitude of notices in the past about  
14 the content on the site?

15 MR. DORVEE:

16 Objection as to the form of  
17 the question.

18 MR. GALANTE:

19 I am about to show you why,  
20 but you will agree that you  
21 received notification of what the  
22 belief was, that some of that  
23 material was objectionable?

24 BY MR. GALANTE:

25 Q. Correct?

1 A. To the best of my knowledge.

2 Q. And it is your choice and not your  
3 webmaster's and not the intern, but it is  
4 your choice to leave the entirety of that  
5 content on that site during those years?  
6 Is that correct?

7 A. Yes.

8 MR. GALANTE:

9 And I want to show you what I  
10 now will mark again, a document  
11 produced by your attorney in my  
12 client's deposition as Plaintiff's  
13 Exhibit No. 14. It is a letter  
14 dated April 2, 2012 to Mr. Dorvee  
15 from J. Robert LeBlanc. And do  
16 you recognize the letter, and have  
17 you ever reviewed it?

18 MR. DORVEE:

19 Just go ahead and review it.

20 WITNESS:

21 Okay.

22 BY MR. GALANTE:

23 Q. Do you recognize that?

24 A. Yes.

25 Q. Have you read that?

1 A. Yes.

2 Q. And you looked at the content?

3 A. Yes.

4 Q. Okay. Let me draw your attention now to  
5 Page No. 4 under Section No. 7. Were you  
6 not notified that WWL Television  
7 Broadcast made a connection between the  
8 Assunto legacy and your Dukes of  
9 Dixieland?

10 A. Yes.

11 Q. It does, doesn't it?

12 A. Yes.

13 Q. Isn't that the same thing you were  
14 telling me earlier that you had no idea  
15 there was a connection in, isn't it?

16 A. To the best of my knowledge, I did not.

17 Q. Now you admit, as of this date, as of,  
18 according to your own letter, which was  
19 sent to your attorney that you said you  
20 read, as of April 2, 2012?

21 A. Yes.

22 Q. This now tells you that you were aware  
23 that that made a connection between the  
24 Assunto legacy and the Dukes of  
25 Dixieland.

1 A. From that letter.

2 Q. From that letter?

3 A. Yes.

4 Q. But you never watched it, correct?

5 A. I just totally changed, I told them to  
6 change what needed to be changed.

7 Q. But you never took it down?

8 A. I don't know.

9 Q. You never instructed if it was up to a  
10 year later to take it down?

11 A. No.

12 Q. It was up there on the website for a  
13 year. Is that right?

14 A. If you say so. But to the best of my  
15 knowledge, I asked them to take it down.

16 Q. Clearly, if it is on your website a year  
17 later, they did not take it down. Is  
18 that right?

19 A. Right.

20 Q. So you put in the hands of an intern the  
21 responsibility to comply with the  
22 settlement agreement?

23 A. Yes.

24 Q. After notification of the settlement  
25 agreement?

1 MR. DORVEE:

2 Objection as to the form of  
3 the question. It misstates the  
4 testimony. There is no notice  
5 asking him to take the video down.

6 MR. GALANTE:

7 Okay.

8 MR. DORVEE:

9 There was no notice.

10 MR. GALANTE:

11 That is an improper speaking  
12 objection, but secondly, this is  
13 all what they believe to be a  
14 violation of the settlement  
15 agreement.

16 MR. DORVEE:

17 They proposed what they needed  
18 him to do, but it was not to take  
19 the video off.

20 MR. GALANTE:

21 It violates Section 4.2 of the  
22 agreement, and you need to stop  
23 testifying. Your client has a bad  
24 memory, but he is advised to stop  
25 making such references.

1 WITNESS:

2 Which I did.

3 BY MR. GALANTE:

4 Q. If I represent to you that this video  
5 went up on your website after this letter  
6 was sent, do you have any evidence to  
7 dispute that?

8 A. No.

9 Q. In other words, after you received notice  
10 directly from the opposing counsel that  
11 they objected to the content of that  
12 interview, you put it on your site,  
13 didn't you?

14 A. No.

15 Q. How did it get there?

16 A. They put it up on the site.

17 Q. These mysterious interns who were just  
18 taking control over all of your  
19 advertising?

20 A. Yes.

21 Q. How about that. What a shame. I thought  
22 in the beginning of the deposition, you  
23 said that you did all of it.

24 A. I do not do everything.

25 Q. In other words, it is not your

1           responsibility when you violate the  
2           settlement agreement?

3       A.    I take the responsibility.

4       Q.    You admit that on your website was  
5           information that violated the terms of  
6           this agreement?

7       A.    That is debatable, but we did correct it  
8           after we got that notice.

9       Q.    No. This was the notice before you ever  
10           put it up on the website. That is what I  
11           am representing to you.

12      A.    I do not agree with that.

13      Q.    Yes, this was at the time of the  
14           interview.

15      A.    I don't know. I cannot remember.

16      Q.    Okay. Again, your memory begins to fail  
17           you.

18                   MR. DORVEE:

19                            Alright. Let me object as to  
20                            the form of the question.

21                   MR. GALANTE:

22                            Okay.

23                   BY MR. GALANTE:

24      Q.    Have you ever tried to collect recordings  
25           from audio fidelity to collect money for

1 any recordings of the Dukes of Dixieland  
2 on audio fidelity?

3 A. Not that I can remember.

4 Q. If there is evidence to the contrary,  
5 would you be able to dispute it?

6 MR. DORVEE:

7 Objection as to the form of  
8 the question.

9 MR. GALANTE:

10 That's fine.

11 MR. DORVEE:

12 I am not even sure that is a  
13 proper question.

14 MR. GALANTE:

15 It is asked every day. But  
16 you can tell me that is not good.  
17 I disagree. Just object, like I  
18 did with you yesterday. We can  
19 leave it at that.

20 BY MR. GALANTE:

21 Q. If I have evidence to the contrary, would  
22 you have any evidence to dispute it?

23 MR. DORVEE:

24 Objection.

25 WITNESS:



1 To dispute what?

2 MR. GALANTE:

3 That you tried to collect  
4 money from audio fidelity  
5 recordings.

6 WITNESS:

7 Not since the settlement, no.

8 BY MR. GALANTE:

9 Q. Prior to the settlement?

10 A. I don't know.

11 Q. Have you ever been party to the release  
12 of a pre-1974 Duke recording?

13 A. Yes.

14 Q. When did that take place?

15 A. I don't remember that now.

16 Q. Since the settlement?

17 A. No.

18 Q. Before the settlement?

19 A. Absolutely.

20 Q. Why was that?

21 A. Why was what?

22 Q. Why were you trying to collect ----

23 MR. DORVEE:

24 No.

25 WITNESS:

1 I did not say collect.

2 BY MR. GALANTE:

3 Q. Why were you releasing their music?

4 A. At the time, we owned the master.

5 Q. What's the name of the current recording  
6 label you are using?

7 A. Leisure.

8 Q. Is that the only recording label you are  
9 using?

10 A. Yes.

11 Q. Since the settlement, have you provided  
12 anybody, any third party, with recordings  
13 of the pre-1974 Dukes?

14 A. No.

15 Q. Alright. When was the first time you are  
16 aware of Mr. Assunto, or any attorney on  
17 his behalf, was contacted regarding the  
18 band on The Real Dukes' website?

19 A. I do not recall that.

20 Q. Do you have any specific knowledge as to  
21 when that first took place?

22 A. No.

23 Q. If I were to tell you that my client was  
24 first informed about that by anybody on  
25 your behalf at the status conference in

1           this litigation, would you have any basis  
2           to dispute that?

3           A.    I would not even know.

4           Q.    Alright.  When did you first become aware  
5           that that website was out there?

6           A.    What website?

7           Q.    The one that you made reference to with  
8           the band.

9           A.    I think you have the correspondence.

10          Q.    When did you first become aware?

11          A.    Whatever the date was on the  
12          correspondence that you have there.

13          Q.    There was not any correspondence.

14          A.    Yes, there was.  It was All Music.

15          Q.    No.  Do you remember earlier in the first  
16          half of this deposition when you talked  
17          about the fact that your pleadings say  
18          that Mr. Assunto has a band that was  
19          competing with you?  Do you remember  
20          that?

21          A.    Yes.

22          Q.    And you said somebody told you that,  
23          somebody told you that they played at a  
24          hotel someplace?

25          A.    I cannot remember the date.

1 Q. But my question to you is, when did you,  
2 or you also mentioned that because there  
3 is a website about it, do you remember  
4 stating that on the record?

5 A. Yes.

6 Q. When did you first become aware of the  
7 website?

8 A. At that time.

9 MR. DORVEE:

10 At what time? You have to  
11 give him a time.

12 WITNESS:

13 I don't remember the time. I  
14 have no idea.

15 BY MR. GALANTE:

16 Q. It was before this lawsuit was filed,  
17 wasn't it?

18 A. To the best of my knowledge, I do not  
19 remember.

20 Q. You have a failing memory again? Can you  
21 try to remember this?

22 A. I can't remember.

23 Q. Your first deposition makes reference to  
24 residence at the time being the U.S.  
25 Virgin Islands. Is that correct?

1 A. If you say so.

2 Q. And now you are saying that your  
3 residence is Louisiana. Is that correct?

4 A. I live in both places.

5 Q. Fifty (50%) percent of the time in each  
6 place?

7 A. It will vary.

8 Q. And ----

9 A. I don't know exactly.

10 Q. Do you have any information about the  
11 disposition of Frank's wife, Joan, at the  
12 time he died in 1974?

13 A. No.

14 Q. Have you ever, or can you tell me how her  
15 health was?

16 A. She was in a wheelchair. I only met her  
17 once.

18 Q. When did you meet her?

19 A. At the fund raiser.

20 Q. That was the only time you ever met her?

21 A. That was the only time.

22 Q. And you knew that that was Frank's widow?

23 A. Yes.

24 Q. Did you speak with her?

25 A. Just to say, I'm sorry, and everything

1 else, but that's all.

2 Q. Did she speak to you?

3 A. I don't remember.

4 Q. Alright. You are familiar with the  
5 "Don't be confused" statement? Is that  
6 right?

7 A. Yes.

8 Q. Will you tell me for the record how is  
9 that damaging?

10 A. It sent out, or it is sent out to almost  
11 every concert promoter that we have ever  
12 dealt with.

13 Q. So it has been sent ----

14 A. It has been sent to everybody.

15 Q. I think you testified that at least in  
16 the last four (4) or five (5) years, the  
17 only promoters that you have employed  
18 were Meredith Hankenson ----

19 A. But I had previous promoters.

20 Q. But more than five (5) years ago. Isn't  
21 that correct? That is what you said  
22 before.

23 A. Yes.

24 Q. And that "Don't be confused" statement  
25 has not been disseminated ----

1 A. Well, now they are producers.

2 Q. You will agree, though, that there has  
3 been very few people you have actually  
4 employed in the last five (5) years?

5 A. Yes.

6 Q. Again, explain to me how it is damaging  
7 you because you are still ----

8 A. Well ----

9 Q. They have not broken their relationship  
10 off with you?

11 A. No.

12 Q. You are still able to have the same  
13 booking agents you had that received it  
14 before?

15 A. No.

16 Q. Didn't you tell me that it was your  
17 decision to get rid of Tom?

18 A. No.

19 Q. Tom Bongiorno?

20 A. He did not sell anything.

21 Q. You got rid of him?

22 A. I just told him no.

23 Q. You made a decision to get rid of him?

24 A. His exclusivity was over with.

25 Q. So you had an exclusive arrangement with

1 him?

2 A. Yes.

3 Q. You fired him?

4 A. Yes.

5 Q. That was more than four (4) or five (5)  
6 years ago?

7 A. It was last year.

8 Q. Last year?

9 A. Yes.

10 Q. So he did not leave you because he  
11 received the "Don't be confused", did he?

12 A. Not him, no.

13 Q. Meredith Hankenson did not leave you?

14 A. Yes.

15 Q. Yes, what?

16 A. Yes, she did.

17 Q. But she did not leave you? She still  
18 works for you?

19 A. Yes.

20 Q. Marilyn Rosen still works for you?

21 A. Yes.

22 Q. And she got it?

23 A. Yes.

24 Q. Who got the "Don't be confused. That  
25 will not work for you."



1 A. Producers.

2 Q. Who?

3 A. Producers, Inc., Craig Hankenson at  
4 Producers, Inc.

5 Q. Who else?

6 A. Siegel Artists, that is Jane at Siegel  
7 Artists.

8 Q. Okay.

9 A. Those two (2) come to mind right off the  
10 bat.

11 Q. Those two (2) have told you, we will not  
12 work with you?

13 A. Tom Cassidy.

14 Q. Where is Tom Cassidy?

15 A. Booking Agency.

16 Q. At Booking Agency?

17 A. Tom Cassidy Agency is a booking agency.

18 Q. These people received the "Don't be  
19 confused"?

20 A. Yes.

21 Q. They have told you that because of that,  
22 they will not represent you?

23 A. They were not interested because of the  
24 confusion.

25 Q. Okay. And who else?

1 A. I cannot come up with them right now.

2 Q. Alright. Is there anybody else at all as  
3 you sit here today?

4 A. Not to the best of my knowledge. Not  
5 right now.

6 Q. So if we contact each of these four (4)  
7 people, they are going to tell us that we  
8 are not going to represent the Dukes of  
9 Dixieland, no, I'm sorry, three (3)  
10 people, yes. If we contact each of these  
11 three (3) people, they are going to tell  
12 us that because Deano had sent them the  
13 "Don't be confused" email, that it  
14 created confusion, and they would not  
15 represent you?

16 A. Absolutely.

17 Q. Okay. It would not have anything to do  
18 with your lack of connection to the  
19 Assunto legacy, would it?

20 A. No.

21 Q. Has anybody told you that your band is  
22 more marketable with connection to the  
23 Assunto legacy?

24 A. Never.

25 Q. Why does it keep getting on your website?

1 A. What?

2 Q. Why does it keep getting on your website  
3 and in your printed materials?

4 A. Because we travel. It is the best band  
5 in New Orleans.

6 Q. Other than being, I mean, you are not a  
7 band. Is that right? You employ  
8 independent contractors? Is that right?

9 A. Right.

10 Q. So you are not anything?

11 A. No.

12 Q. What you are is a name in a market. Is  
13 that correct? And a catalog? Is that  
14 correct?

15 A. No.

16 Q. You are not a band?

17 A. It is a band.

18 Q. No. Didn't you tell me that all of the  
19 musicians are independent contractors?

20 A. Yes.

21 Q. They are not employed?

22 A. No.

23 Q. You hire third parties to make the music  
24 for you?

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. And then you own the music, correct?

4 A. Yes.

5 Q. You make money off of their performances?

6 A. Yes.

7 Q. But you are not a band.

8 A. Okay.

9 MR. DORVEE:

10 When you say, you are not a  
11 band, what do you mean, you are  
12 not a band?

13 WITNESS:

14 Yes.

15 MR. DORVEE:

16 Objection as to the form of  
17 the question.

18 BY MR. GALANTE:

19 Q. Again, why is it that in your marketing  
20 and promotional material and your online  
21 presence, this connection with the  
22 Assunto legacy keeps coming back up?

23 A. It isn't.

24 Q. Why are you writing it yourself in 2012,  
25 if you hate it so much? Why?

1 A. Produce the Coleman letter, and I will  
2 tell you why.

3 Q. That's fine.

4 A. The letter that Coleman wrote. Just go  
5 to my response.

6 Q. Alright. And in your response ----

7 A. No. Go to the letter, okay, what he asks  
8 for.

9 Q. In your response ----

10 A. I know what it is.

11 Q. And ----

12 A. Go to his letter.

13 Q. Why do you keep continuing ----

14 A. Why don't you just go to his letter?

15 Q. Why don't you tell me why instead of  
16 directing me to a document? Why don't  
17 you testify?

18 A. That is only half of the document.

19 Q. But tell me why. Tell me why John Shoup  
20 keeps connecting it, and he did not write  
21 it here.

22 MR. DORVEE:

23 Objection as to the form of  
24 the question.

25 BY MR. GALANTE:

1 Q. Why did John Shoup connect the Assunto  
2 legacy to the Dukes of Dixieland in that  
3 writing?

4 A. To respond to a question that he had  
5 asked.

6 Q. What was the question?

7 A. I don't have it in front of me.

8 Q. So how are you so sure ----

9 A. If you have it, you have his first  
10 letter.

11 Q. You understand that you have testified  
12 that that content made it from your email  
13 to the website?

14 A. I just do not know. Do you understand?

15 Q. So this connection keeps getting made  
16 over and over, all over the place. You  
17 have admitted constantly that you were  
18 ultimately responsible for it, but you  
19 cannot tell me why that connection keeps  
20 happening, if what you are telling me is  
21 it damages you.

22 MR. DORVEE:

23 He said he did not know why he  
24 responded to Tom ----

25 BY MR. GALANTE:

1 Q. Isn't it true that you cannot tell me why  
2 this connection keeps happening, can you?

3 A. No.

4 Q. It just seems to mysteriously keep  
5 happening?

6 A. Isn't it amazing?

7 Q. Isn't it amazing. But from your  
8 perspective, it is damaging, isn't it?

9 A. Yes.

10 Q. You do not need it, correct?

11 A. Yes, I do.

12 Q. You do not want it, correct?

13 A. Do I want what?

14 Q. The connection between you and the  
15 Assuntos, but it keeps showing up on the  
16 printed materials you produce?

17 A. No, it does not.

18 Q. Not on your website?

19 A. No.

20 Q. And you did not identify ----

21 A. The third party, yes.

22 Q. That you printed on your website?

23 A. The third party wrote it. I did not.

24 Q. But you put it on your website?

25 A. You are damned right. I put everything

1 on the website. But right now, all I am  
2 telling you is a third party ----

3 Q. Okay. So if I sit down here, and do you  
4 know what I'm going to do for you? If I  
5 sit down and write the Assuntos and the  
6 Dukes are related, okay, if I give you  
7 that right now in this deposition, you  
8 will post this on your website? Is that  
9 right?

10 A. No.

11 Q. Will you?

12 A. No.

13 Q. I am a third party.

14 A. It is false.

15 Q. It is false?

16 A. Yes.

17 Q. So the information in the Times Picayune  
18 article, that is false should have been  
19 taken down?

20 A. It was not false. It was true. The time  
21 line was true.

22 Q. It is not contrary to the settlement  
23 agreement?

24 A. It is a third party. I had nothing to do  
25 with it.



1 Q. You are splitting hairs, aren't you?

2 A. Yes, I am.

3 Q. Okay.

4 A. And so are you.

5 Q. You think I am splitting hairs?

6 A. Yes.

7 Q. Which of the two of us agreed to the  
8 settlement agreement?

9 MR. DORVEE:

10 Objection.

11 BY MR. GALANTE:

12 Q. Did you agree to the settlement  
13 agreement?

14 MR. DORVEE:

15 It's been asked and answered.

16 Objection.

17 BY MR. GALANTE:

18 Q. So as you sit here today, okay, as you  
19 sit here today with references to 1949 in  
20 the Assunto legacy on your current  
21 website, are you going to walk out of  
22 this conference room and go back and take  
23 that stuff down immediately?

24 A. No.

25 Q. You are not?

1 A. No.

2 Q. As far as you are concerned, you are not  
3 going by the settlement agreement?

4 A. What?

5 Q. You are not going to abide by the  
6 settlement agreement, are you?

7 A. He violated the settlement agreement  
8 after the first year.

9 Q. You are not going to abide by the  
10 settlement agreement, are you? Are you,  
11 Mr. Shoup?

12 A. To the best of my knowledge, I will.

13 Q. So, and I am telling you that you  
14 produced documents yesterday that shows  
15 references to the Assunto legacy on your  
16 website.

17 A. We took them down.

18 Q. They are there right now.

19 A. Not if it is through a third party.

20 Q. There are references on your website ----

21 A. Not by us.

22 Q. To the Assunto legacy.

23 A. Not by us, no.

24 Q. You own that website, don't you?

25 A. It is a third party.

1 Q. So in other words, you are not going to  
2 take down references to the Assunto  
3 legacy from your website?

4 A. Not at this time.

5 Q. So you are not going to follow the  
6 settlement agreement?

7 A. I am following it.

8 Q. Where in that settlement agreement does  
9 it tell you that if it is written by a  
10 third party, it is okay?

11 A. Where does it say that it is not okay?

12 Q. I will tell you where it says it is not  
13 okay. It is not supposed to be on your  
14 website at all.

15 A. It is a third party.

16 Q. It does not say a third party anywhere.  
17 Show me where it says a third party with  
18 regard to the website.

19 MR. DORVEE:

20 Why don't you go ahead and  
21 show him where he is supposed to  
22 take it down?

23 MR. GALANTE:

24 Sure, I will. Mr. Shoup shall  
25 remove all references to the

1                   Assunto family and the Assunto  
2                   Dukes from his website. Show me  
3                   where there is an exception for a  
4                   third party? I am dying to find  
5                   out. Where is it, Mr. Shoup? I  
6                   will give you all the time in the  
7                   world to read it.

8                   MR. DORVEE:

9                                   Just go over it.

10                  BY MR. GALANTE:

11                  Q.   Where is it?

12                  A.   It is not in there. I did not say ----

13                  Q.   So it is not in there?

14                  A.   But it does not say it isn't there.

15                  Q.   What?

16                  A.   No, never mind.

17                  Q.   What? Come on. You are making that up.

18                               Does it say in there ----

19                  A.   No.

20                  Q.   That a third party is an exemption?

21                  A.   No.

22                  Q.   No. You are creating an exemption that  
23                               does not exist, aren't you?

24                  A.   No.

25                  Q.   So that way you can continue to connect

1           yourself to the Assunto legacy, aren't  
2           you?

3       A.    No.

4       Q.    Then why don't you take it down?  Even if  
5           a third party said it, and you do not  
6           want it, why don't you take it down?  
7           Why?  Do you just want to get under his  
8           skin?  Is that it?

9       A.    Of course not.

10      Q.    Then why won't you take it down?  If a  
11           third party wrote it, and you do not want  
12           it, why won't you take it down?

13      A.    Because it was written in a newspaper.  
14           Why should I take it down?

15      Q.    Because it violates the settlement  
16           agreement.

17      A.    No, I do not agree with that.

18      Q.    So if you do not want the connection,  
19           again, you will not take it off of your  
20           website?

21      A.    Because it talks more than about that  
22           section of it.

23      Q.    So you would rather ----

24      A.    Do you want me to edit it?  Do you want  
25           me to edit it?

1 Q. You would rather leave a reference to the  
2 Assunto legacy on your website?

3 A. Why would I?

4 MR. DORVEE:

5 I think his question is this.

6 MR. GALANTE:

7 There is no such thing as a  
8 question by him in the deposition.

9 MR. DORVEE:

10 Okay. You asked him, would he  
11 take it down.

12 MR. GALANTE:

13 Yes.

14 MR. DORVEE:

15 Does that include ----

16 WITNESS:

17 Is it legal? Can I take down  
18 something ----

19 MR. DORVEE:

20 We can talk about that later.

21 BY MR. GALANTE:

22 Q. Very clearly, you do not want references  
23 to the Assunto family on your website?

24 A. No.

25 Q. Why don't you just take it down?

1 A. Because it concerns more than just the  
2 Assuntos.

3 Q. You would rather the value of the whole  
4 thing? So I guess it is not so damaging  
5 to be connected to the Assuntos?

6 A. It is very damaging.

7 Q. Do you understand how absurd that sounds,  
8 sir, that you will not take something  
9 down that you say damages you.

10 MR. DORVEE:

11 It is argumentative. And I  
12 ask one (1) question when you are  
13 done.

14 MR. GALANTE:

15 I am done.

16 MR. DORVEE:

17 Okay. As opposed to taking it  
18 down, if you find out it is legal  
19 to revise it ----

20 WITNESS:

21 I will take it down in a  
22 second. Absolutely.

23 BY MR. DORVEE:

24 Q. What will you take down?

25 A. Everything that refers to the Assuntos.

1 Q. Okay.

2 MR. GALANTE:

3 So it is your testimony that  
4 as you are sitting here in this  
5 deposition today, it is the first  
6 time that you have considered that  
7 you could down a part of an  
8 article?

9 WITNESS:

10 I do not know yet. If it is  
11 possible, we will do it.

12 MR. GALANTE:

13 That's not what I'm asking.

14 WITNESS:

15 If it is legal, we will do it.

16 I don't think it is legal.

17 BY MR. GALANTE:

18 Q. I am asking you, is this the first time  
19 it has occurred to you that you can  
20 change ----

21 A. Probably.

22 Q. That you have had to list the Assunto  
23 name. You have had to list the Assunto  
24 name on your website for all of these  
25 years because you could not redact that



1 name out of an article someone else  
2 wrote. Is that your testimony?

3 A. No.

4 Q. That is your testimony?

5 A. No.

6 Q. And even though it is damaging you, you  
7 have to leave it up there because the  
8 rest of that article is important?

9 A. You are so concerned about the Assunto  
10 legacy. Why don't you call it Assunto's  
11 Dukes of Dixieland? That is fine, okay.  
12 Then that enhances your legacy. That  
13 enhances your legacy and avoids  
14 everything else.

15 MR. DORVEE:

16 Okay. We are done.

17 WITNESS:

18 We are done.

19 MR. GALANTE:

20 Off the record.

21

22

23

24

25

REPORTER'S PAGE

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2  
3 I, MICHAEL W. FRANCO, Certified Court  
4 Reporter, in and for the State of Louisiana,  
5 the officer, as defined in Rule 28 of the  
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7 Article 1434 (B) of the Louisiana Code of  
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9 testimony was taken, do hereby state on the  
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This certification is limited to only those transcripts which bear my ORIGINAL signature and ORIGINAL seal on this page; I, Michael W. Franco, Certified Court Reporter, do hereby certify that the above and foregoing sworn testimony was taken by me at the same time and place herein above recited; that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and advisory opinions of the Board; that the same is true and correct, to the best of my ability and understanding; that I am in no way related to counsel or parties of interest in the matter, nor am I otherwise interested in the outcome of this matter; and that the testimony was taken down by me in shorthand (stenomask) and transcribed under my direction and control.

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Michael W. Franco

Certified Court Reporter