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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CIVIL TERM : PART 3

-----x
ALM UNLIMITED, INC.,

Plaintiff,

INDEX NO.
603491/08

-against-

DONALD J. TRUMP,

Defendant.

JURY TRIAL

-----x
April 11, 2013

60 Centre Street
New York, New York

B E F O R E :

HON. EILEEN BRANSTEN,
Supreme Court Justice.

A P P E A R A N C E S :

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Senior Court Reporter

Proceedings

1
2 THE COURT: Anything before the jury comes in?

3 MR. GOLDMAN: I don't know if that's a witness or a
4 potential witness.

5 THE COURT: No, that's not a witness.

6 MR. GOLDMAN: Okay.

7 THE COURT: Your schedule at this point is that Mr.
8 Trump will be here when?

9 MR. ITKOWITZ: Well, depending on how efficient we
10 are this morning, it could be this afternoon.

11 THE COURT: This afternoon? Mr. Ross, yes, come on
12 up, please come.

13 MR. GOLDMAN: Your Honor, when we discussed this
14 yesterday, it was Mr. Trump is planning on being here at
15 2:15 because we anticipated that we would be able to be
16 efficient and complete Mr. Ross by the 12:40 break. He is
17 on call. I suggest maybe at some time we take a break at
18 10:00 or 11:00, we see where we are, and I don't know what
19 the protocol would be for him, you know.

20 THE COURT: Okay.

21 (Whereupon, the witness resumes the stand.)

22 (Whereupon, the jury enters the courtroom and the
23 following transpired:)

24 THE COURT: Good morning, jurors. Please be seated
25 everyone. I apologize. The Court was late this morning, so
26 that's the reason why we're a little delayed. Something I

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 had to finish before I could come down here.

3 With that, you're continuing your examination. I
4 don't know what to call it, but your examination.

5 MR. GOLDMAN: Your Honor, upon reflection this
6 evening, I have no more questions for Ms. Glosser. Thank
7 you.

8 THE COURT: Okay. Any redirect?

9 MR. ITKOWITZ: No, Your Honor.

10 THE COURT: Very good. Call your next witness.

11 (Whereupon, the witness exits the stand.)

12 MR. ITKOWITZ: George Ross.

13 THE COURT: Come up while we're waiting for Mr.
14 Ross.

15 (Whereupon, an off-the-record discussion was held
16 at the bench among the Court and counsel.)

17 THE COURT: All right.

18 Sir, who are you calling?

19 MR. ITKOWITZ: Mr. Ross.

20 THE COURT: Mr. Ross, please come up.

21 (Whereupon, the witness takes the stand.)

22 G E O R G E H. R O S S, called as a witness, having been
23 first duly sworn, was examined and testified as follows:

24 THE COURT CLERK: Please have a seat. Please state
25 your name for the record and spell your last name, please.

26 THE WITNESS: George Ross, R-O-S-S.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 THE COURT CLERK: Thank you. And your home
3 address, please.

4 THE WITNESS: 10 Thixton, T-H-I-X-T-O-N, Drive,
5 Hewlett Harbor, New York.

6 THE COURT CLERK: Zip code?

7 THE WITNESS: 11557.

8 THE COURT CLERK: Thank you. Counsel, your witness
9 is sworn.

10 MR. ITKOWITZ: Thank you.

11 DIRECT EXAMINATION

12 BY MR. ITKOWITZ:

13 THE COURT: Mr. Ross, you don't have a middle
14 initial, do you?

15 THE WITNESS: H. I don't usually use it, but I
16 like it.

17 THE COURT: Okay, H is for you. Go ahead.

18 Q Mr. Ross, what is your occupation?

19 A I'm a lawyer.

20 Q And how long have you been a lawyer?

21 A Sixty years.

22 Q Sixty years?

23 A Sixty years. It would be sixty years this year.

24 Q And you work at Mr. Trump's offices?

25 THE COURT: You have to speak up, sir.

26 Q You work at Mr. Trump's offices?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A Yes, I do.

3 Q And how long have you been working in Mr. Trump's
4 offices?

5 A On this last one, 17 years; on a four day a week basis.

6 Q Okay. And you primarily work for Mr. Trump, correct?

7 A At this time, yes.

8 Q And for the last 17 years primarily you work for Mr.
9 Trump?

10 A Well, I have my own practice, but primarily still for
11 Mr. Trump, yeah, you could say that.

12 Q And prior to working for Mr. Trump, you were a partner
13 in a law firm?

14 A Oh, yes.

15 Q And what law firm was that?

16 A Dreyer & Traub.

17 Q And how long were you a partner there?

18 A Twenty years.

19 Q And as a partner at Dreyer & Traub, what was your role?

20 A Well, I was one of the senior partners in charge of
21 running the firm and handling all of the lawyers that work for
22 us, and representing clients.

23 Q Now, at Dreyer & Traub, that was a real estate firm
24 primarily?

25 A Oh, yes.

26 Q And in your experience as a lawyer, you have a lot of

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 experience in real estate; do you not?

3 A Oh, yes, that's my forte. I would think so.

4 Q Okay. Now, when you were working for Mr. Trump in 2004
5 you became aware, did you not, that Mr. Trump was seeking to
6 license his name?

7 A Yes, that's true.

8 Q And, in fact, in connection with that he had entered
9 into a memorandum of understanding with ALM, correct?

10 A That came to my attention, yes.

11 MR. ITKOWITZ: At this time, I would show the
12 witness Exhibits 1 and 2.

13 (Documents handed to witness.)

14 Q Now, Exhibit 1, sir, is a memorandum of understanding,
15 correct?

16 A That is correct.

17 Q Now, when that memorandum was executed, that
18 memorandum -- that was executed in September of '03, correct?

19 A That's right, yeah. It says, entered into September
20 25, 2003.

21 Q And at the time that this was executed, you were
22 working for Mr. Trump?

23 A That is correct.

24 Q But you were not involved with this document, correct?

25 A Not at all.

26 Q And when did you start to become involved with the

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 marketing of Mr. Trump's name?

3 A In 2004.

4 Q And when was that, about February would you say?

5 A I don't recall the exact date, but Mr. Trump was
6 interested in marketing his name, thought that he ought to do it
7 directly; and that he started to do it and told me what he was
8 planning on doing. And also advised me to do this agreement in
9 existence and asked me to look at it.

10 Q Now, there came a time when this agreement was
11 extended, correct?

12 A That's correct.

13 Q And that was in Plaintiff's Exhibit 2, which was an
14 extension agreement?

15 A That's correct.

16 Q And were you involved in that document?

17 A No, I was not.

18 Q And what was the date of that extension?

19 A It's January 13, 2004.

20 Q Now, looking at Exhibit 1, when you were -- since that
21 time, since let's say January of 2004, you have had time to
22 acquaint yourself with these two documents, correct?

23 A Absolutely.

24 Q And the original memorandum of understanding had a
25 number of requirements for ALM to meet before it could get a
26 fee, correct?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A That's correct.

3 Q And among those was it had a provision called the
4 acceptable license requirement, correct?

5 A Absolutely.

6 Q And that acceptable license was a high bar, correct?

7 A It was a what?

8 Q High bar?

9 A It was what they agreed upon. I don't know whether it
10 was high or low. It was what they agreed on.

11 Q So you don't recall ever saying -- noting that it was a
12 very high bar?

13 A No, never. This is what was agreed upon. It was
14 signed, they both signed it. I wasn't privy to it. This is
15 what they agreed to and what the parties would be bound by.

16 Q Now, that bar that they had to meet was a license term
17 of seven years and it had to be \$25 million, correct?

18 A That's -- whatever the agreement says, that's what it
19 was.

20 Q You want to take a look?

21 A Well, that's it, yeah.

22 Q That's what it says, correct?

23 A That's fine.

24 Q Now, it also provided that ALM would have to have a
25 significant role in negotiations, correct?

26 A I agree. Provided they would be the exclusive agent,

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 yes.

3 Q Right.

4 A But I don't know that that's the role, was in
5 negotiations or not. Whatever the agreement says, that's what
6 it says.

7 Q Well, you said you acquainted yourself with it, right?

8 A I read the agreement, yes.

9 Q And it required -- let's turn to page 2 -- that an
10 acceptable deal had to be seven years?

11 A Yeah.

12 Q There had to be \$25 million in guarantee?

13 A Right.

14 Q And there had to be a minimum license fee royalty rate
15 of ten percent?

16 A Right.

17 Q And if all those requirements were met, ALM would get a
18 fee of 22.5 percent, correct?

19 A Correct, that's what the agreement says.

20 Q Now, when you became involved with this, you learned
21 that Mr. Danzer was working for ALM, correct?

22 A When? What point in time?

23 Q Well, let's say as of February '04.

24 A No, no, I don't think at this point -- I don't recall
25 when I first met Mr. Danzer. I don't recall, but it was -- it
26 was in '04, yes. I don't remember the exact date.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q I'm not asking you the exact date. I'm asking you
3 generally when you became involved in this project, because
4 prior to that you weren't, you were doing other things?

5 A That's correct.

6 Q When you started to immerse yourself -- did you immerse
7 yourself in this?

8 A Did I immerse myself in what, in the contract?

9 Q In the marketing program.

10 A Oh, yeah.

11 Q So at that point you became aware that ALM was working
12 on trying to get leads, correct?

13 A At that point, I was aware of the agreement; and I
14 don't remember when I first met Danzer, but he indicated, yes,
15 that at some point he came into the picture at that point and
16 said yes, he was working to make deals.

17 Q Right. And at that point that you had interaction with
18 Mr. Danzer, you learned that Mr. Danzer was the point person for
19 ALM, correct?

20 A He indicated he was, yes. I didn't know that to be a
21 fact, but he indicated he was the point person.

22 Q And he was the person that you were dealing with,
23 correct?

24 A On behalf of ALM, absolutely, correct.

25 Q Now, there came a time -- now, Mr. Danzer was working
26 with a couple of different -- on a number of different leads,

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 correct?

3 A No. That's what he said. I didn't know it to be a
4 fact.

5 Q Well, that's what he told you, right?

6 A Yes.

7 Q He told you he was working on different deals, correct?

8 A At one point in time he did, yes.

9 Q And there came a point where he said I have a good lead
10 with a company called Phillips-Van Heusen; is that correct?

11 A Phillips-Van Heusen, at one point he indicated that he
12 had a connection with Phillips-Van Heusen, yes.

13 Q And he advised you, did he not, that he thought
14 Phillips-Van Heusen would be a very good prospect for this
15 project?

16 A He didn't tell me that at that point, but they had a
17 reputation and, yes, they would be a good prospect, and he
18 indicated that he could control Phillips-Van Heusen.

19 Q And you said, "he could control;" what does that mean?

20 A Effectively means he made it clear to me that if we
21 didn't work through him and pay him what he wanted, he would
22 kill the Phillips-Van-Heusen deal. Made it clear.

23 Q And he told you that before --

24 A He didn't know. He didn't say --

25 Q Excuse me, excuse me, let me finish the question,
26 please.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 He told you that at the outset, before he brought them
3 to the table?

4 A Yes.

5 Q So how did that conversation go; he said, by the way, I
6 have Phillips-Van Heusen who's interested and if you don't -- if
7 I don't like the way you're handling things, I'm going to kill
8 the deal? That was the conversation?

9 A No, that's not the conversation, but that's your
10 interpretation.

11 Q Excuse me, excuse me. If I ask you a question that
12 calls for a yes or no answer, I would appreciate your answering
13 yes or no.

14 A Fine. I have no problem with that.

15 Q Now, in the spring of 2004 Mr. Danzer told you that he
16 was working on a lead with Phillips-Van Heusen; is that correct?

17 A That's correct.

18 MR. GOLDMAN: Your Honor, objection.

19 THE COURT: It has been asked and answered.

20 MR. GOLDMAN: Also hearsay.

21 THE COURT: I'm not so sure about that. You can
22 only answer if you know something personally. So if you
23 don't know something personally, you have to tell us you
24 don't know.

25 THE WITNESS: Okay.

26 Q Now, there came a time when he said I'd like to set up

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 a meeting with Phillips-Van Heusen, correct?

3 A Yes.

4 Q And prior to that, he had talked to you about other
5 companies, correct?

6 A He mentioned other companies, yes.

7 Q Right. And when he mentioned the other companies, did
8 he say, by the way, if I don't like any of those potential
9 arrangements I can kill those deals too?

10 A There were never any deals to kill.

11 Q So I'm just trying to understand how the original
12 conversation went when he brought up Phillips-Van Heusen.

13 THE COURT: Just ask him what the conversation was.

14 Ask him what the conversation was.

15 Q Do you recall your first conversation with Mr. Danzer
16 about Phillips-Van Heusen?

17 A Yes.

18 Q And it's your testimony, is it not, that during that
19 conversation he said I have Phillips-Van Heusen as a lead, I'd
20 like you to meet with them; did he say that?

21 A He wanted us to meet with Phillips-Van Heusen, yes.

22 Q And during that conversation he said, and if I don't
23 like the way you conduct yourself I'll kill the deal?

24 A No, he never said it at that conversation, no.

25 Q So when he told you about Phillips-Van Heusen, he told
26 you that he wanted to set up a meeting with you and Phillips-Van

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Heusen?

3 A That's correct.

4 Q And you were an agent of Mr. Trump, correct?

5 A I was -- yeah. Yes, that's correct. I didn't say an
6 agent is the right word. I was the lawyer in charge of the
7 transaction, yes.

8 Q Well, it's admitted in this case that you were an agent
9 of Mr. Trump?

10 A I wouldn't say agent, at this point.

11 MR. GOLDMAN: Objection.

12 THE COURT: Objection. I'm going to overrule. I'm
13 going allow that question but, you know, come on up.

14 (Whereupon, an off-the-record discussion was held
15 at the bench among the Court and counsel.)

16 Q Now, I show you what's been marked as Exhibit 28.

17 THE COURT: 28 is in evidence. I don't think we
18 have 28.

19 MR. WILTENBURG: I have it right here.

20 THE COURT: It's in evidence, but it's not been
21 shown.

22 (Document handed to witness.)

23 Q This indicates that a meeting was set up with you and
24 PVH for June 24th, correct?

25 MR. GOLDMAN: I'm sorry, I didn't hear the
26 question. I apologize.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q I said, this indicates that a meeting was set up
3 between you and Mr. Danzer and PVH for June 24, 2004, correct?

4 A No, that's not correct. It doesn't say the date. It
5 says, effectively, I want to thank you.

6 MR. GOLDMAN: Objection.

7 A It doesn't say the date.

8 THE COURT: Sir, he asked the question. You know
9 that this is a form of cross examination, right?

10 THE WITNESS: Right.

11 THE COURT: So you have to answer the question
12 either yes or no, all right, or I can't answer.

13 A The answer is no.

14 Q All right. This -- oh, wait a second, I meant 92.
15 Sorry, that's the problem.

16 THE COURT: Wait a second, he gave you the wrong
17 document.

18 MR. ITKOWITZ: Excuse me, I made a mistake. As
19 Gilda Radner used to say, never mind. We're going to go to
20 92.

21 THE COURT: What do you want shown? What number
22 are we talking about?

23 MR. ITKOWITZ: 92.

24 THE COURT: Okay. You didn't tell the Court.

25 MR. ITKOWITZ: I said it, but I didn't speak loud
26 enough, Your Honor. Ninety-two.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 THE COURT: 92 is what we're looking at that has
3 been admitted into evidence also. All right.

4 MR. ITKOWITZ: 92 is in evidence, I believe.

5 THE COURT: Yes, right, I said that.

6 (Document shown to witness.)

7 Q Mr. Ross, this indicates that a meeting was set up by
8 Mr. Danzer with PVH and yourself for Thursday, June 24th at
9 10:00 a.m., correct?

10 A That's correct.

11 Q And that meeting occurred, correct?

12 A I don't recall if it occurred on that date, but it did
13 occur.

14 Q Well, it occurred in June, in late June of 2004,
15 correct?

16 A I would think so.

17 Q And at that meeting you recall what was discussed?

18 A We discussed the possibility of an agreement with PVH
19 where they would be a licensee of the Trump name, as far as
20 shirts and ties were concerned.

21 MR. ITKOWITZ: Okay. Just one second, I've got to
22 find something here.

23 THE COURT: The former document that you were
24 looking at, can we have that back.

25 THE WITNESS: Sure.

26 MR. ITKOWITZ: Just one second.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 THE COURT: You want a few minutes to do that, then
3 we can come back? We can take a break.

4 Q Isn't it a fact, sir, that at that meeting in June you
5 basically came to an agreement with PVH?

6 A That's not a fact.

7 Q That's not a fact. So at the meeting you discussed the
8 potential licensing?

9 A Yes.

10 Q And was that something that you were interested in?

11 A Yes.

12 Q And was PVH interested in?

13 A Yes.

14 Q And it was a positive meeting?

15 A Yes.

16 Q And at the conclusion of that meeting, was it not the
17 case that you and PVH indicated to each other that you wanted to
18 continue to explore this possibility?

19 A Yes.

20 Q And you were interested in this particular company
21 because it was a leading shirt manufacturer in the United
22 States, if not the world, correct?

23 A Yes.

24 Q This was a great opportunity for the Trump
25 Organization, correct?

26 A We thought it was appropriate. How great it was only

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 time would tell.

3 Q But this was something you were excited about?

4 A Oh, absolutely.

5 Q And this was a deal that you thought should be done if
6 it could be done?

7 A Yes.

8 Q Now, just looking for something here I want to ask you
9 about.

10 At your Examination Before Trial, did you not say words
11 to the effect that at that June meeting many of the essentials
12 of a deal were pretty much agreed upon?

13 MR. GOLDMAN: Objection.

14 THE COURT: No, I'll allow that.

15 A It depends on what I call the essentials, but there
16 were a lot of things were basically agreed upon.

17 Q So basically --

18 MR. GOLDMAN: Objection. Can we approach?

19 THE COURT: Yes.

20 (Whereupon, an off-the-record discussion was held
21 at the bench among the Court and counsel.)

22 THE COURT: Jurors, I'm going to give you a little
23 morning break. That doesn't mean you don't get a second
24 break, but please don't discuss the case amongst yourselves;
25 no comments as to anything that's going on, keep an open
26 mind. See you back here about five minutes, which makes it

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 10:20. All right.

3 (Whereupon, the jury exits the courtroom and the
4 following transpired:)

5 THE COURT: All right, Mr. Ross, you can step down.

6 (Whereupon, the witness exits the stand.)

7 (Whereupon, a brief recess was taken.)

8 (Continued on next page.)
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1 Ross - by Plaintiff - Direct

2 (Continued from previous page.)

3 (Whereupon, the jurors entered the courtroom
4 and resumed their respective seats in the jury box.)

5 THE COURT: Please be seated.

6 Mr. Ross, I remind you you are -- you remain
7 under oath.

8 Go ahead.

9 DIRECT EXAMINATION

10 BY MR. ITKOWITZ:

11 Q I started to ask you about the June 24 meeting but
12 I want to backtrack --

13 THE COURT: I can't hear you, sir.

14 BY MR. ITKOWITZ:

15 Q I want to backtrack to the memorandum of
16 understanding.

17 The memorandum of understanding did not have
18 what lawyers would call a merger clause, correct?

19 A A what clause?

20 Q A merger clause.

21 THE COURT: If you want to look it over, look
22 it over.

23 A There's nothing that talks about a merger clause,
24 no. Didn't have it.

25 Q It didn't have a merger clause?

26 A No.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Q Now, a merger clause is a particular clause that
3 lawyers in particular use in agreements on a regular basis,
4 correct?

5 A Depends on the agreement.

6 Q And a merger clause, what it does is says that an
7 agreement can't be modified unless it's modified in writing
8 and signed by the person against whom the writing is going
9 to be charged; isn't that correct?

10 MR. GOLDMAN: Objection.

11 THE COURT: I'll allow it.

12 A You're talking general law at this point?

13 Q Yes.

14 A General law, where parties agree on something and
15 they decide what the agreement is going to say, how it's
16 said, and what clauses it will have. I was not privy to the
17 agreement. Would I have drawn it this way? No. Would I
18 have been -- let it happen? It happened not by me.

19 Q Sir, I think you're going way beyond my question.
20 My question is simple. You stated you're very experienced
21 in real estate transactions, correct?

22 A Yes.

23 Q It's a standard clause in a real estate
24 document --

25 MR. GOLDMAN: Objection, your Honor, this is
26 not a --

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 THE COURT: Sir.

3 Objection is the only word and I sustain
4 that.

5 Go on.

6 Q Is it not -- a merger clause basically says that,
7 an agreement can't be modified unless it's in writing and
8 signed; isn't that correct?

9 MR. GOLDMAN: Objection. I'll allow it. He
10 is a lawyer, I will allow it.

11 A Merger clauses take all shapes, not necessarily
12 that one --

13 THE COURT: Some of them take that shape or
14 not.

15 THE WITNESS: Some of them do.

16 BY MR. ITKOWITZ:

17 Q When it does have that shape, you can't modify the
18 agreement unless it's in writing, correct?

19 MR. GOLDMAN: Objection.

20 THE COURT: I will allow it.

21 A You're giving me a hypothetical clause, a
22 hypothetical merger clause --

23 THE COURT: Sir, this is not a parlor event,
24 okay, this is a trial. This is where we do rules of
25 evidence, and right now you're on the witness stand.
26 There's a question asked. If it's a yes or no question

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 you answer it yes or no. And if you can't answer it
3 because you don't understand the question you tell us
4 so. But if you understand the question, the answer is
5 either yes or no.

6 Q The purpose of a merger clause is to make sure an
7 agreement can't be modified unless it's in writing and
8 signed by the parties; isn't that correct?

9 THE COURT: Yes or no.

10 A Yes.

11 Q Now, when there's a merger clause you can't change
12 it unless it's in writing, correct?

13 MR. GOLDMAN: Objection, your Honor.

14 THE COURT: Asked and answered. Let's go.

15 BY MR. ITKOWITZ:

16 Q Now, did your memorandum of understanding from --
17 did Mr. Trump's memorandum of understanding, that you had
18 nothing to do with, did that have a merger clause, yes or
19 no?

20 MR. GOLDMAN: Objection.

21 Can we go on the record in the back?

22 THE COURT: No.

23 I'm going to sustain the way it's phrased.

24 If you can't figure out why I'm doing it come on up.

25 All right? Rephrase it.

26 Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 BY MR. ITKOWITZ:

3 Q Take a look at the memorandum of understanding and
4 tell me if there's a merger clause in there?

5 A No.

6 Q Take a look at the extension agreement extending
7 the time to get a deal until June 30th and tell me if
8 there's a merger clause in there?

9 A No.

10 MR. GOLDMAN: Objection, your Honor, I'd like
11 to go on the record outside the hearing of the jury.

12 THE COURT: All right, in the back.

13 Mr. Ross, you can sit over there somewhere.

14 Jurors, we're going in the back. You can
15 take a stretch break, if you want to do that, but do
16 not talk about the case and don't talk to anybody else.

17 (The following was heard in the robing room.)

18 MR. GOLDMAN: For purposes of the record, he
19 is not an expert witness, number one, he is a lawyer.
20 Your Honor is the one who's charged with discussing the
21 law as it applies to this case. Your Honor has
22 addressed -- if I can for the record, you may disagree
23 with me but I'm entitled to make my record.

24 Your Honor has addressed what the legal
25 standards are for them to satisfy the statute of frauds
26 as it relates to this unsigned writing connected to a

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 signed writing. It has nothing to do with merger
3 clause or no merger clause. In fact, that was one of
4 the arguments that were raised, and it was said that as
5 to the merger clause, you rejected the defendant's
6 argument that that unsigned writing is to be
7 disregarded because it didn't have a merger clause.
8 However, you ruled that that unsigned writing, if it
9 contains all the material terms and is referable to the
10 two signed writings, could be considered a
11 modification, albeit unsigned to the two signed
12 writings. This merger clause is not for the province
13 of the jury. I want to be very clear on the record
14 that's why I objected. Your Honor overruled me, and I
15 think it's a mistake.

16 THE COURT: Mr. Itkowitz, what are you doing
17 this for?

18 MR. ITKOWITZ: I'm doing this --

19 THE COURT: To try to establish that indeed
20 it's part and parcel, therefore, you're going to merge
21 it together, right?

22 MR. ITKOWITZ: No.

23 THE COURT: What are you doing it for then?

24 MR. ITKOWITZ: I'm trying to establish that
25 Mr. Ross, being as knowledgeable as he is, and he's
26 very knowledgeable, knew that there wasn't a merger

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1 Ross - by Plaintiff - Direct

2 clause in there, okay.

3 THE COURT: So what?

4 MR. ITKOWITZ: That may have informed the way
5 he acted.

6 THE COURT: Well, sir, let me put it to you
7 this way, all right? He isn't an expert but he is an
8 attorney and so, therefore, he is -- he is charged with
9 a modicum of knowledge of the law. So in terms of you
10 ask this of a lay person, do you know what a merger
11 clause is, you made the objection, I would be two times
12 in favor of you because he would have no reason to know
13 what a merger clause is.

14 On the other hand, enough. Let's go on to
15 the issues.

16 MR. GOLDMAN: For the record, your Honor, I'm
17 going to ask for a charge on that. That has to be
18 explained to the jury because they now believe that
19 because the agreements don't have a merger clause --

20 THE COURT: Let's worry about the jury later
21 on.

22 MR. ITKOWITZ: Your Honor, I just -- I've
23 lost track --

24 Can you read back the last question and
25 answer?

26 THE COURT: It's about the merger clause so

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1 Ross - by Plaintiff - Direct

2 forget about it.

3 Go on to the next thing.

4 MR. ITKOWITZ: Okay.

5 (The following was heard in open court.)

6 THE COURT: Go ahead.

7 BY MR. ITKOWITZ:

8 Q Returning to the meeting that was set up by
9 Mr. Danzer on June 24th with you and PVH, isn't it a fact
10 that at that meeting you essentially worked out the deal of
11 the license?

12 A Not a fact.

13 Q It's not a fact?

14 A No.

15 Q Well, do you recall giving deposition testimony in
16 this case?

17 A I recall giving testimony, yes.

18 Q And that was deposition testimony, correct?

19 A Yes.

20 Q So -- and you gave sworn testimony on that?

21 A Yes.

22 Q And that was on April 10, 2000 -- excuse me. No,
23 that was on March 24th, 2011, correct?

24 A That could be the date.

25 Q Is that -- you were in my office when I asked you
26 questions, correct?

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1 Ross - by Plaintiff - Direct

2 A Yes.

3 Q And there was a court reporter there?

4 A Yes.

5 Q And you answered questions under oath?

6 A Yes.

7 Q And do you recall at page 79 being asked this
8 series of questions and giving this series of answers?

9 THE COURT: From line to line.

10 MR. ITKOWITZ: From line two to line 20 on
11 page 80.

12 THE COURT: One second. Actually it's line
13 20 on page 80, okay.

14 MR. ITKOWITZ:

15 "Q --

16 THE COURT: Wait.

17 MR. ITKOWITZ: I'm sorry.

18 MR. GOLDMAN: What page and line are you
19 reading to?

20 THE COURT: Page 80, line 20.

21 Okay.

22 BY MR. ITKOWITZ:

23 Q Do you recall --

24 THE COURT: Wait, one second, I'm asking
25 counsel.

26 MR. GOLDMAN: The only thing I would ask is
Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 that he be shown the same exhibit he was shown for the
3 questions and answers, because if you look at page 78
4 he was given --

5 THE COURT: Sir, no. Enough already.

6 Go ahead. Were you asked these questions and
7 gave these answers.

8 BY MR. ITKOWITZ:

9 Q Were you asked these questions?

10 "Q Look at page two of the document that
11 indicates an agenda for that meeting --"

12 THE COURT: Wait a second. Then show him the
13 document. It's in evidence.

14 It's already in evidence, sir, right?

15 MR. WILTENBURG: It's been in evidence but
16 has not yet been made.

17 THE COURT: We were looking at it yesterday.

18 MR. ITKOWITZ: No, that was the August 26
19 meeting.

20 THE COURT: All right. Let's see.

21 (Pause a.)

22 THE COURT: What number is it?

23 MR. WILTENBURG: Trial Exhibit 93.

24 MR. GOLDMAN: I have it as Trial Exhibit 22.

25 THE COURT: And 93.

26 (Pause.)

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2 THE COURT: It's a duplicate.

3 MR. GOLDMAN: I don't have 93 in the book
4 showing that anything was consented to. Can I see what
5 you have?

6 THE COURT: Here, show mine. See if they can
7 consent.

8 (Pause.)

9 MR. GOLDMAN: Except 93 is --

10 THE COURT: If you're going to have an
11 objection come on up. You don't talk before the jury.

12 (Whereupon, there's a sidebar discussion off
13 the record, out of the hearing of the jury.)

14 THE COURT: Sir, do you have two pages,
15 Mr. Ross?

16 THE WITNESS: Yes, I do.

17 THE COURT: Go ahead.

18 BY MR. ITKOWITZ:

19 Q Sir, take a look at the second page of Exhibit 93.
20 I'll digress then go back to the deposition.

21 That says, agenda --

22 THE COURT: Don't read it. You don't have to
23 read it because it says look at page two of the
24 document. Go from there. You're doing deposition
25 testimony. Begin with question then get an answer.

26 MR. ITKOWITZ: All right.

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1 Ross - by Plaintiff - Direct

2 Q Look sir --

3 "Q Look at page two of the document that
4 indicates an agenda for that meeting?

5 "A Yes.

6 "Q Did you ever see this?

7 "A I don't recall.

8 "Q Was Donald Trump at this meeting?

9 "A I don't know. It may be. I don't recall.

10 "Q Do you recall if Mark Weber was there?

11 "A I don't know.

12 MR. GOLDMAN: Objection. The answer is not I
13 don't know, it's I don't recall.

14 MR. ITKOWITZ: I said I don't recall.

15 THE COURT: You said I don't know.

16 BY MR. ITKOWITZ:

17 "A I don't recall."

18 THE COURT: Do you want me to do it? I'll do
19 it a lot better.

20 MR. ITKOWITZ: I'm sorry.

21 BY MR. ITKOWITZ:

22 "Q Do you recall if Allen Sirkin was there?

23 "A Allen Sirkin was at the meeting and I think
24 Mark Weber was at the meeting, and Ken Wyse was
25 probably there. I was probably there and Jeff was
26 there. So all the parties were there. Was Donald

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1 Ross - by Plaintiff - Direct

2 there? I doubt it.

3 "Q What occurred, to the best of your
4 recollection, at that meeting?

5 "A We worked out the deals of the license. We
6 worked out the terms of the license.

7 "Q And what were the terms that you recall that
8 you worked out?

9 "A Whatever showed up in the final license
10 agreement.

11 "Q So whatever showed up in the final license
12 was negotiated at the meeting?

13 "A Not necessarily. It could have been
14 negotiated at a later date. There could have been
15 times --"

16 THE COURT: No, no. There could. There.

17 MR. ITKOWITZ: Yes.

18 "There could have been times from discussions
19 until you had the documents, until the documents were
20 finalized. I assumed there were changes that were made
21 and then both parties agreed on the documents and they
22 signed it. I don't see that the evolution of how the
23 document got signed is critical, but so be it."

24 Do you recall being asked --

25 THE COURT: Were you asked these questions
26 and did you give those answers?

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1 Ross - by Plaintiff - Direct

2 Q Were you asked these questions and did you give
3 those answers?

4 A Absolutely.

5 Q Now, let's go back to exhibit -- the exhibit
6 that's referred to in the deposition, which is Exhibit 93,
7 trial exhibit. And Exhibit 93, is it not, is an e-mail from
8 Debbie Bonilla on behalf of Kenneth Wyse.

9 Do you recall who Kenneth Wyse was?

10 A Yes.

11 Q Who's Kenneth Wyse?

12 A He was the PVH president of licensing.

13 Q So he was an important person?

14 A Well, he's a person, he was who he was. How
15 important he was I don't know.

16 Q And you said -- this is an e-mail from his
17 secretary saying, attached please find the agenda for the
18 Donald Trump meeting tomorrow, Thursday, June 24th.

19 Now, the next page on this is the agenda. Do
20 you see that?

21 A Yes.

22 Q And it shows business overview Donald Trump,
23 overview opportunity, distribution, consumer profile and
24 Donald Trump marketing participation.

25 Now, it also anticipates who's going to be
26 attending this meeting, Mark Weber.

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1 Ross - by Plaintiff - Direct

2 He was the president of PVH, right?

3 A That's what it says.

4 Q Allen Sirkin. He was the vice chairman of PVH
5 dress shirts, correct?

6 A Correct.

7 Q And Kenneth Wyse, president of PVH licensing and
8 public relations?

9 A Yes.

10 Q George Ross EVP, that means executive vice
11 president of Trump Organization, right?

12 A Right.

13 Q And Jeff Danzer, executive vice president ALM
14 International?

15 A Yes.

16 Q So on June 24th, then, to sum up, you met with the
17 PVH and you basically came to the essentials of an
18 agreement. That's what you said at your deposition,
19 correct?

20 A Yes.

21 Q Now, there might be changes that would be made,
22 but if both parties were willing to go forward you were
23 going to get a deal, and you knew that on June 24th,
24 correct?

25 A There would ultimately be a deal submitted, yes.

26 Q And that's a deal you wanted to make?

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1 Ross - by Plaintiff - Direct

2 A It's a deal we wanted to make if it was
3 acceptable, sure.

4 Q Well, if it's acceptable. You're not meaning --
5 your meaning acceptable in the common parlance of the word,
6 correct?

7 A No, I mean acceptable that we entered into an
8 agreement which was binding upon both parties which covered
9 all aspects of the licensing agreement.

10 Q Right.

11 A A formal agreement based on an agreed set of
12 facts.

13 Q Now, when you used the word acceptable, you
14 weren't talking about acceptable in terms of the definition
15 of acceptable license in the memorandum of understanding,
16 are you?

17 A No.

18 Q And in fact, you knew in June and thereafter,
19 shortly thereafter, certainly, that this agreement was not
20 going to meet the rigorous requirements set out for an
21 acceptable license as stated in a memorandum of
22 understanding, correct?

23 MR. GOLDMAN: Objection to the form.

24 THE COURT: Do you understand the question,
25 yes or no?

26 THE WITNESS: Yes, I understand the question.

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1 Ross - by Plaintiff - Direct

2 THE COURT: I'll allow it to be answered.

3 A I -- my understanding of it was the agreement with
4 PVH would not meet the criteria set forth in the memorandum
5 of understanding.

6 Q And you knew that the deal was not going to get
7 completed by June 30th?

8 A Yes, I knew it would not be completed by
9 June 30th.

10 Q And you knew there was a three month period, a
11 tail period in the memorandum of understanding, correct?

12 A Yes.

13 Q And so you knew that after this meeting a number
14 of things had to happen, correct?

15 A Number of things had to happen? Yes, that's true.

16 Q So among those things that had to happen was that
17 you had to finalize the details and reduce it to a written
18 agreement binding on both parties, correct?

19 A That's correct.

20 Q And also, you knew that you were going to have to
21 renegotiate the commission that ALM would otherwise be
22 entitled to, correct?

23 MR. GOLDMAN: Objection.

24 THE COURT: Sustained on that. There's no
25 background on that.

26

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 BY MR. ITKOWITZ:

3 Q The memorandum of understanding provided that ALM
4 was going to get a 22.5 percent commission if it brought an
5 acceptable license to the table, correct?

6 A That's correct.

7 Q Now, you knew in June that -- on June 24th -- by
8 June 24th you knew that this agreement was not going to meet
9 the acceptable license criteria, as set forth in the
10 memorandum of understanding, correct?

11 A That's correct.

12 Q And you knew that ALM had brought PVH to the
13 table?

14 A Yes.

15 Q And you knew that Jeff Danzer was -- had a close
16 relationship with Kenneth Wyse, correct?

17 A That's what he said. I didn't know that to be a
18 fact.

19 Q Well, you knew that he arranged the meeting?

20 A Yes.

21 Q And you didn't know anybody from PVH prior to this
22 meeting, did you?

23 A No.

24 Q So you knew he arranged the meeting, he brought
25 you to a meeting, and at that meeting you agreed on the
26 essentials of what turned out to be a license, correct?

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1 Ross - by Plaintiff - Direct

2 A We agreed on the basic, yes.

3 Q So Jeff Danzer of ALM made this -- was making this
4 deal happen for the Trump people, correct?

5 A Yes.

6 Q But there was a little problem, was there not, for
7 ALM?

8 A I don't know what you're talking about.

9 Q Okay, well, let me explain it.

10 The memorandum of understanding called for
11 ALM to get a 22.5 percent commission if it brought an
12 acceptable license to the table?

13 A That's correct.

14 Q You knew this wasn't going to be an acceptable
15 license within the meaning of the memorandum of
16 understanding?

17 A I knew that.

18 Q You knew ALM had brought the deal to the table?

19 A That's correct.

20 Q You knew ALM expected to be paid?

21 A Something, yes.

22 Q Right. So you knew that had to be negotiated,
23 correct?

24 A Yes.

25 Q Now, did it ever come to your attention that --
26 after June, going into July, Jeff Danzer was working on

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1 Ross - by Plaintiff - Direct

2 another deal for the Trump Organization, too, was he not?

3 A I don't know that for a fact. I don't know what
4 deal you're talking about.

5 Q Was it not -- do you recall, do you recall if Jeff
6 Danzer was working on a deal involving a company called
7 Coty?

8 A Not to my knowledge, no.

9 Q Not to your knowledge.

10 Did it ever come to your attention that Jeff
11 Danzer was working with Mr. Trump on a proposal involving
12 Coty, which is a fragrance manufacturer?

13 A Not to my knowledge, no.

14 Q So to this day you've never heard the name Coty in
15 relation to ALM and a Trump license. Is that what you're
16 telling us?

17 A You just told me today at that point --

18 Q This is the first time you're hearing it?

19 A This is the first time I'm familiar with it. I
20 heard of it, I wasn't privy at the meeting so I don't know
21 what they were talking about.

22 Q You never heard Mr. Trump mention the word Coty?

23 A No.

24 Q Let me just ask you this: In June of 2004 --
25 excuse me, in August of 2004, Trump was negotiating with two
26 fragrance companies, correct?

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1 Ross - by Plaintiff - Direct

2 A I don't know. I wasn't privy to it.

3 Q Did you ever hear that Trump, for instance, made a
4 deal with Estee Lauder?

5 A Yes, but not in that time frame.

6 Q Do you recall when that deal got made?

7 A Sometime in 2005. I don't recall the date. There
8 was an agreement, it was a written agreement with Estee
9 Lauder with a license agreement signed. I don't recall the
10 date of it. If you show me the agreement I could give you
11 the date.

12 Q Now, I show you what's been marked as Trial
13 Exhibit 115.

14 THE COURT: Has that record been introduced
15 or not?

16 MR. ITKOWITZ: I'm not sure, your Honor,
17 honestly.

18 (Pause.)

19 MR. ITKOWITZ: No, it has not been
20 introduced.

21 THE COURT: Alright, let me see it.

22 (Pause.)

23 THE COURT: I think this has already been
24 introduced.

25 Guys, you should have a list of everything.

26 115 has already been introduced into

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 evidence.

3 Go ahead. Showing the witness 115 in

4 evidence.

5 Does that refresh your recollection?

6 MR. ITKOWITZ: Thank you, your Honor. I'll

7 let him read it first then I will ask that question.

8 (Pause.)

9 BY MR. ITKOWITZ:

10 Q Mr. Ross, does that refresh your recollection that
11 there was a proposal to the Trump Organization happening in
12 or about August of 2004 from -- involving Coty?

13 A Yes. There were negotiations with Coty.

14 Q Now, let me read you this -- let's read to the
15 jury and to you this document and then I'm going to ask you
16 a few questions about it.

17 This is an e-mail from Jeff Danzer dated
18 August 3rd 2004, to Cathy Glosser with a copy to Mark Hager
19 and a copy to GH Ross at trumporg.com.

20 GH Ross, that stands for George H. Ross,
21 that's you, correct?

22 A That's right.

23 Q And you read your e-mail when you get it, correct?

24 A Sometimes. If it's important enough the answer
25 is, yeah, usually I look at them.

26 Q Well, if you don't read your e-mail you wouldn't

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1 Ross - by Plaintiff - Direct

2 know if it's important?

3 A I glance on it. I don't know the degree of
4 importance I put on it, but in this instance what it was,
5 they were having discussions with Coty, fine.

6 Q Can we assume if this e-mail was sent to you on or
7 about August 3 of 2004, that on or about August 3, 2004, you
8 might have glanced at this e-mail?

9 A Yes.

10 Q Now, it says proposal re Coty and it says, Dear
11 Cathy. It was great meeting with you, Donald and George
12 today. Good luck in your new position. It's going to be
13 fun working with you to build a Trump life-style brand. As
14 discussed, attached is a letter of interest from -- it says
15 form -- Coty. The letter spells out Coty's interest in
16 acquiring a license for Trump fragrance and gives you a
17 broad stroke view of stage one of Trump fragrance detail --

18 THE COURT: Deal. You said detail.

19 Q Trump fragrance deal. Obviously, there is a lot
20 of work yet to be done, and I will be meeting with Coty
21 tomorrow to hash out phase two of the deal. They have
22 promised to do everything necessary to get you five-year
23 numbers, proposed advances and guarantees by Friday.

24 Regarding our deal, as it pertains to the
25 Coty deal, Mark and I discussed Donald's offer of
26 10 percent, as well as his suggestion to try and get a

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 higher percentage from Coty to justify a higher percentage
3 for ALM. Mark and I thought about how to make this a win
4 win situation for everyone and have come up with the
5 following proposal.

6 Then it goes forth and it sets forth a
7 proposal for Coty for what the percentages would be. And it
8 shows, to shorten this, that if Coty signs at 5 percent and
9 Trump's net is 4.5 percent ALM's fee would be 10 percent.
10 And if Coty signs at 6 percent ALM's fee would be
11 15 percent. And if Coty signs at 7 percent ALM's fee would
12 be 27 percent. Now, this was a proposal that ALM was making
13 to Trump; is that correct?

14 A That's what it says.

15 (Continued on next page.)
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Donna Evans, Official Court Reporter

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q That's what it is, is it not?

3 A This is an e-mail letter. If it's a proposal, it's a
4 proposal. It is what it is. It's an e-mail letter indicating
5 what they said was discussed at the Coty meeting.

6 Q Well, it says that Donald offered ten percent, correct?

7 A That's what it says.

8 Q Is that accurate?

9 A I don't know. I wasn't there.

10 Q You don't remember?

11 A Not that I don't remember. Donald -- that's not
12 Donald's style. Donald doesn't offer a percentage.

13 Q I just asked you if you remember. I didn't ask you for
14 anything else. So I would ask you to just restrict yourself to
15 my questions.

16 A All right. Will you repeat the question, please?

17 Q Okay. Were you there at this meeting?

18 A No.

19 Q So Jeff Danzer said in this e-mail that Donald offered
20 ten percent. Now, that indicates that at that time the issue of
21 how much ALM would be getting for deals that it was going to be
22 bringing to the table was being negotiated; is that correct?

23 A No, being discussed. I wouldn't call that a
24 negotiation.

25 Q Discussed. Okay. So you knew bringing it back to PVH
26 that PVH was also being discussed at this time, correct?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A I didn't know -- being discussed at the time, yes, but
3 not as a result of the meeting with Coty.

4 Q Right. But at or about the same time --

5 A Yes.

6 Q -- you were discussing a percentage with ALM, correct?

7 A I was discussing a percentage with ALM? No.

8 Q Donald was discussing a percentage?

9 A I don't know that to be a fact.

10 Q So you were never present when Donald mentioned the
11 word ten percent to ALM?

12 A That's correct.

13 Q Is that correct?

14 A That's correct, I was never present then.

15 Q All right.

16 MR. ITKOWITZ: At this time, I'd like to introduce
17 Exhibit 100.

18 THE COURT: Is that in evidence or is that
19 identification?

20 MR. ITKOWITZ: I believe it is in evidence, but it
21 hasn't been introduced. It hasn't been discussed.

22 MR. GOLDMAN: Your Honor, it's in evidence and it's
23 the same as Defendant's M. Both are the same document.

24 THE COURT: Okay.

25 Q This is a proposal that was sent by Jeff Danzer to
26 Donald Trump on August 3rd, correct?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A That's what it appears to be, yes.

3 Q And that was sent on the same day as this e-mail which
4 I just showed you, which is Trial Exhibit 115, which discussed
5 the Coty deal, correct?

6 A Yes.

7 Q Now, in this particular document Jeff Danzer writes,
8 "Donald," he says, "regarding our deal as it pertains to any
9 licensing deal ALM brings to the Trump Organization, Mark and I
10 discussed your offer of ten percent as well as your suggestion
11 to try and get a higher percentage from potential licensees to
12 justify a higher percentage for ALM."

13 And then it goes through a similar formula as that set
14 forth. Actually, an identical formula as that set forth in this
15 e-mail which was sent to Cathy Glosser, except this one was sent
16 directly to Donald Trump, correct?

17 A That's correct.

18 Q Now, do you recall anytime from August 3, 2004 to
19 August 23rd of 2004 ever having a discussion with Mr. Trump
20 about a different percentage for ALM than that set forth in the
21 memorandum of understanding?

22 A The answer is we never discussed the percentage. There
23 again, I never discussed that with Mr. Trump.

24 Q Okay. Now, you did discuss it with Mr. Danzer though,
25 correct?

26 A Yes.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q And there came a point, did there not, when you reached
3 an agreement with Mr. Danzer that if the PVH deal would come
4 through that they would get ten percent, correct?

5 A No, that's absolutely false.

6 Q That's absolutely false. You got the -- on August 23rd
7 Mr. Danzer sent a proposal to you and to Cathy Glosser -- not a
8 proposal, its actually a statement -- as to what was discussed
9 between you and Mr. Danzer, and that's Plaintiff's Exhibit 6.

10 I would ask that -- excuse me, Plaintiff's Exhibit
11 Trial 72, and I would ask that it be shown to the witness.

12 (Document handed to witness.)

13 THE COURT: In evidence.

14 Q Now, do you recognize this document?

15 A Yes.

16 Q Have you looked at this document at all in the last
17 couple of weeks?

18 A The last couple of weeks?

19 Q Yes.

20 A No, I don't recall looking at it in the last couple of
21 weeks, so no.

22 Q So you didn't look at any documents before coming in to
23 testify today?

24 A I looked at the ones the stock holder -- the agreement
25 that you had, and it says memorandum of understanding. I looked
26 at that and the one, the extension of the time. And the answer

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 is, yeah, I looked at those.

3 Q So you've looked at the documents that I've shown you
4 today?

5 A I didn't look at this one, no.

6 Q I'm asking you, sir --

7 A Yeah.

8 Q -- did you look at any document in the last week or two
9 weeks that you might be asked about when you were going to come
10 here and testify to?

11 A Yes.

12 Q And you didn't look at this particular document in the
13 last two weeks?

14 A The last two weeks, I might have looked at that time.

15 Q You might have?

16 A Yeah, I might have.

17 Q Okay. Now, in this document Jeff Danzer writes to you
18 essentially, and I'm just going to -- it says, "Dear George, I'm
19 happy we have been able to come to terms regarding our deal as
20 it pertains to bringing licensing deals to the Trump
21 Organization. As we've agreed, ALM's fee for any introduction
22 of a potential licensing partner to Donald Trump and/or any
23 other entity associated with Donald Trump which evolves into a
24 licensing deal and any subsequent renewal thereof shall be ten
25 percent of all royalties or such other fees, advances -- i.e.
26 advances, sign-on bonuses, marketing fees, et cetera paid to

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Trump. ALM's fee shall be paid to ALM or any other entity it so
3 chooses within 15 days from when Trump receives payment from the
4 licensing partner."

5 That's what he wrote to you on that day, correct?

6 A That's correct.

7 Q Now, this was three days before you were going to have
8 a critical follow-up meeting to your June 24th meeting, correct?

9 A Three days before? I don't remember the exact dates,
10 but it was before.

11 Q Well, I'll show you what's been marked as Plaintiff's
12 Exhibit 27 so we get the chronology, and I also ask that you be
13 shown Exhibit 73.

14 THE COURT: What's the first one?

15 MR. ITKOWITZ: 27 and 73.

16 THE COURT: That's been shown already.

17 MR. WILTENBURG: According to my records, it has
18 not been.

19 THE COURT: Show 73. 73 is in evidence.

20 (Documents shown to witness.)

21 Q So let's get the context here, sir.

22 On August 23rd Danzer writes you and states what he
23 says he negotiated with you is going to be the deal, right?

24 A He doesn't talk about negotiation. He says, as we've
25 agreed.

26 Q That's right. He says -- he writes to him, he says to

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 you --

3 A That we've agreed. That's what he said. But we didn't
4 agree.

5 Q That's right. Excuse me.

6 A We didn't agree.

7 Q I didn't ask you that question, sir, and I really
8 appreciate if you just answer my question. I asked you --

9 THE COURT: Mr. Ross, please. I said to you before
10 I don't want to have to become sharp. You are here to
11 answer questions and not to add anything else.

12 THE WITNESS: Okay.

13 THE COURT: That last portion is stricken and it is
14 to be disregarded by the jury and it's not part of this
15 action.

16 THE WITNESS: I'm sorry, Your Honor, I didn't mean
17 to do that.

18 Q So again, Trial Exhibit 72 e-mailed to you from Jeff
19 Danzer, August 23rd, Jeff Danzer says, George, this is our deal,
20 correct?

21 A That's correct.

22 Q This is what we negotiated. He says, this is what
23 we've negotiated?

24 A He says this is what we've agreed.

25 Q That's right. This is what we've agreed?

26 A Yes.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q On August 25th, two days later, he says, "Hi, George,
3 it was good speaking with you. I'm looking forward to a
4 productive meeting tomorrow with Van Heusen. I e-mailed you an
5 agreement letter detailing ALM's new deal with the Trump
6 Organization. I would appreciate it if you could please sign it
7 and fax it back to me before our meeting tomorrow. I've
8 attached a copy to this e-mail for quick reference."

9 And in that there's an attachment to that e-mail, which
10 is the same -- which is a letter which states the exact same
11 words as to what the deal was in the August 23rd letter, but
12 it's in a letter format to you; is that correct?

13 A It indicates what he understood the deal to be, yes.

14 THE COURT: No. Is it a letter format to you, sir?

15 THE WITNESS: Is it a letter format, yes.

16 Q And in that letter format he states, just as he stated
17 on August 23rd, "I'm happy we've been able to come to terms" --
18 I'm just skipping a couple of words -- "as we've agreed, ALM's
19 fee for any introduction of a potential licensing partner," et
20 cetera, "which evolves into a licensing deal," et cetera, "shall
21 be ten percent of royalties or other fees paid to Trump. ALM's
22 fee shall be paid to ALM or any other entity it so chooses
23 within 15 days from when Trump receives payment," correct?

24 A Correct.

25 Q So on the 25th, two days later, he sends you another
26 e-mail saying, "Hey, we're meeting tomorrow in advance of the

1 Ross - Plaintiff - Direct (Mr. Itkowitz)
2 meeting. By the way, again here's a reminder this is the deal
3 we've negotiated. This is the deal we've agreed to. Here it
4 is, please sign it." Correct?

5 A That's what he says.

6 Q Now, turn to Plaintiff's Exhibit 31.

7 THE COURT: Thirty-one?

8 MR. ITKOWITZ: Excuse me. Twenty-seven, excuse me,
9 which is a deposition, Exhibit 31. My mind keeps going to
10 the bottom instead of the top.

11 Q Trial 27, look at that. That's the agenda for the
12 Donald Trump meeting on August 26th, correct?

13 A Yes.

14 Q And that indicates that attending this meeting was
15 Donald Trump himself, you, Cathy Glosser, Jeff Danzer and Mark
16 Weber, president of PVH; Alan Sirkin; Ken Wyse, president of
17 licensing; and Lynn Flynn, correct?

18 A Yes.

19 Q That meeting occurred?

20 A Yes.

21 Q You were at that meeting?

22 A Yes.

23 Q Okay. So just to set the stage again, August 23rd Jeff
24 tells you what the deal was as he agreed to with you. He
25 restates that on August 25th and reminds you about your meeting
26 with PVH tomorrow. At the PVH meeting the next day, Donald

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Trump comes.

3 Now, that was a very successful meeting; was it not?

4 A I don't know how you qualify a success. The answer was
5 the basis of dealing with PVH, that they would be a good
6 licensee, yes.

7 Q And Donald Trump emerged from that meeting very happy
8 about the meeting; isn't that correct?

9 A Absolutely, yes.

10 Q And, in fact, when Donald Trump left that meeting he
11 gave instructions to his team and that included Jeff Danzer?

12 A No.

13 Q He didn't give instructions?

14 A Jeff Danzer was not part of his team. Cathy Glosser
15 and I were the team.

16 Q Okay. So Jeff Danzer wasn't interested in making the
17 deal happen?

18 A Oh, I didn't say he wasn't interested. He was looking
19 for a commission, of course he was interested.

20 Q And his commission was based on bringing the deal to
21 the table for Donald Trump?

22 A He was entitled to get paid something for bringing the
23 deal to the table, yes.

24 Q Can I have my question read back?

25 THE COURT: Plead read it back.

26 (Whereupon, the last question was read back by

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 the court reporter.)

3 MR. ITKOWITZ: I would move to strike the answer.

4 THE COURT: The motion is -- your objection is
5 overruled. I am going to strike the answer. The answer
6 required a yes or no. Please answer.

7 A Yes.

8 Q Now, according to Cathy Glosser's handwritten notes,
9 which are in evidence as Exhibit 11 in this case, Cathy Glosser
10 noted, as per Donald, make the deal happen.

11 That was an accurate statement as to what Donald's
12 intentions were following this meeting, correct?

13 A Yes.

14 Q And I show you what's been marked as Exhibit 74.

15 (Document handed to witness.)

16 A Go ahead.

17 Q Okay. Now, this is an e-mail from Mr. Danzer, and he
18 says, "I want to thank you and George" -- he's writing to
19 Cathy -- "for bringing Donald up to PVH. We had a fantastic
20 meeting. Now you and I have been charged to make it happen."

21 So obviously Jeff Danzer knew that Donald wanted this
22 deal to happen as a result of the outcome of this meeting,
23 correct?

24 A That's correct.

25 Q And he was certainly incentivized to make it happen,
26 correct?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A Yes.

3 Q Because he didn't get paid unless this deal went
4 through, correct?

5 A That's correct.

6 Q And, in fact, you knew, did you not, that if ALM wasn't
7 getting paid there was no point of them doing any of this work,
8 correct?

9 A Yeah, they get paid. I never had objection -- the
10 answer is yes, they get paid.

11 Q Now I want to show you Plaintiff's Exhibit 31.

12 (Document handed to witness.)

13 Q Now, this is another e-mail from Jeff Danzer to you
14 dated August 30th, just four days after the PVH meeting, and he
15 says, "Again, this will confirm that you have agreed to terms
16 outlined in my letter of August 23rd."

17 THE COURT: Read the whole thing.

18 MR. ITKOWITZ: Excuse me?

19 THE COURT: Read the whole thing.

20 Q "Dear George, as per our conversation on Thursday, this
21 will confirm that you have agreed to terms outlined in my letter
22 of August 23rd and that based upon your agreement we have
23 proceeded and introduced you to PVH. I look forward to working
24 with you."

25 Did you receive that?

26 A Yes.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q So you knew that -- now, let me ask you something. At
3 any time up until August 30th, did you ever write back to Jeff?
4 He now sends you three communications stating explicitly what he
5 says you agreed to.

6 At any time during that period of time, did you write
7 back to him and say no?

8 A I never wrote back to him, no.

9 Q And you knew that this was a critical stage of bringing
10 the deal together, correct?

11 A Yes.

12 Q Now, at some point -- now, Jeff Danzer is the one who
13 arranged for PVH to send its proposal, its formal proposal,
14 correct?

15 A No, that's not true.

16 Q That's not true?

17 A No, he didn't arrange it.

18 Q So he set up the meeting, right?

19 A Yes.

20 Q He urged you to bring Donald Trump?

21 A Yes.

22 Q He organized the meeting?

23 A No.

24 Q He didn't organize?

25 A Well, he organized the people that were there, but he
26 didn't run the meeting.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q I didn't say he ran the meeting, I said he organized
3 the meeting.

4 A He organized the people that were going to be there,
5 yes.

6 Q You organized the June meeting?

7 A Yes, yes.

8 Q And he had contacts at PVH that brought PVH into the
9 mix with Donald Trump?

10 A That's correct, he indicated that.

11 Q And following that, a proposal came from PVH to Donald
12 Trump, correct?

13 A That's correct.

14 Q And at some point in September you or Cathy Glosser or
15 somebody said, you know what, it would be more effective to get
16 this deal done for PVH to send its proposal directly to Trump,
17 correct?

18 A Yes.

19 Q And you thought that the deal would get done faster,
20 correct, if it was done that way?

21 A Absolutely.

22 Q And you were in charge of the deal on the Trump end,
23 correct?

24 A That's correct.

25 Q Now, how many deals -- prior to this time, how many
26 deals did you negotiate, approximately; thousands?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A Are we talking about licensing or talking generally?

3 Q Anything.

4 A Thousands.

5 Q Thousands. So you know how to get a deal done?

6 A Beg your pardon?

7 Q You know how to get a deal done?

8 A Oh, sure.

9 Q Now, on November 29, 2004 an executed agreement
10 occurred, that's Trial Exhibit 3. Can I show the witness trial
11 Exhibit 3?

12 (Document handed to witness.)

13 A Yes.

14 Q And did you know whether or not anybody sent a copy of
15 that agreement to Mr. Danzer at ALM?

16 A Probably did. I don't know. I didn't send it, but it
17 may have been sent.

18 Q And there came a time when you started getting -- you
19 started getting -- the deal went into production, the shirts
20 went into production and they started selling the shirts, and lo
21 and behold in July or August you got your first commission
22 check, correct, you got your first royalty check?

23 A Yes.

24 Q At that time you became aware, did you not --

25 THE COURT: One second. Do you need a break,
26 folks? Okay. All right, so we're going to take a break

1 Ross - Plaintiff - Direct (Mr. Itkowitz)
2 right now and in the middle of your sentence you'll pick it
3 up. So please don't discuss the case amongst yourselves.
4 Keep an open mind. We'll see you back here in ten minutes,
5 at 11:30.

6 (Whereupon, the jury exits the courtroom and the
7 following transpired:)

8 THE COURT: You may step down, sir.

9 (Whereupon, the witness exits the stand.)

10 (Whereupon, a brief recess was taken.)

11 MR. GOLDMAN: Your Honor, before we get to
12 scheduling.

13 THE COURT: I was going to ask how long.

14 MR. GOLDMAN: We're just now getting to 2005, and I
15 assume we're going to go through the papers and letters and
16 communications.

17 THE COURT: I thought the whole point of taking so
18 much time with the other woman was that you said you weren't
19 going to take so much time today.

20 You know what, Mr. Ross, you can stand outside, you
21 don't need to listen to this.

22 (Mr. Ross exits the courtroom.)

23 MR. GOLDMAN: Let's wait for Mr. Ross to leave.

24 THE COURT: Yesterday when we talked about Mr.
25 Ross, you said that, gee, most everything was done through
26 Ms. Glosser, and we spent the whole day on Ms. Glosser, but

1 Ross - Plaintiff - Direct (Mr. Itkowitz)
2 everything was basically done. Mr. Ross was going to take,
3 according to your words, a maximum of one and a half hours,
4 a maximum. Now we've already been at it since, well, we
5 were late this morning, 9:45. I'm sorry?

6 MR. GOLDMAN: 9:45.

7 THE COURT: 9:45, 10:45, 11:45, basically two and a
8 half hours have gone by and you are nowhere near done. Am I
9 correct, nowhere near done?

10 MR. ITKOWITZ: I would think honestly there's a
11 shot that I can get this done before 12:45, but I'm
12 notoriously bad at estimating.

13 MR. GOLDMAN: Apparently.

14 THE COURT: Oh, yes. Have you ever done trials
15 before?

16 MR. ITKOWITZ: Yes, I've done many trials.

17 THE COURT: So how come you can't figure out how
18 long a witness is going to take?

19 MR. ITKOWITZ: Because sometimes depends on what
20 the witness says and how this witness reacts.

21 THE COURT: Look, if you knew Mr. Ross, and you did
22 his deposition and you read his deposition, you could come
23 to the conclusion that Mr. Ross is not going to be the most
24 amenable witness, he's not going to be quick, you're going
25 to have to pull things out of him, right?

26 MR. ITKOWITZ: I knew that.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 THE COURT: Right. So you told me an hour and a
3 half yesterday. That's what you told me.

4 MR. ITKOWITZ: I said I think we can get Mr. --

5 THE COURT: You're playing with this Court.

6 MR. ITKOWITZ: No, no, no, I'm not playing.

7 THE COURT: You're playing.

8 MR. ITKOWITZ: Believe me, Judge, let me tell you
9 something. Honestly, I would like this trial to be over as
10 quick as possible. I am not interested --

11 THE COURT: You should have taken the settlement.

12 MR. ITKOWITZ: I am not interested -- no, I
13 disagree with that, but I am not interested in prolonging
14 the trial.

15 THE COURT: You think you can get it done --

16 MR. GOLDMAN: Before lunch?

17 THE COURT: -- before lunch?

18 MR. ITKOWITZ: I'm going to give it my best effort.
19 It might be almost done, but I think it's going to be done.

20 THE COURT: I think you're outrageous, I really do.
21 This is the kind of thing you're playing with the jury,
22 you're playing with me.

23 MR. ITKOWITZ: I will try and move it as fast as I
24 can.

25 MR. GOLDMAN: Just for the record, Your Honor,
26 practically speaking, even if he finished, and I doubt he

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 will, at the pace that Counsel proceeds with exhibits, even
3 if he did and we came back at 2:15, I'm going to be at least
4 an hour or more because I get my cross of him, and he has
5 now covered the gambit from January 2004, presumably, to
6 2008, so I will use the better part of the afternoon, if not
7 the full afternoon. So Mr. Trump is not going this
8 afternoon, and he'll be here 9:30 sharp tomorrow morning.

9 MR. ITKOWITZ: Your Honor, I can't argue with that
10 planning, so long as if we get finished earlier we break. I
11 mean, and I don't want to have to put on another witness
12 after this witness. So, I mean ...

13 THE COURT: Counselor, I am a very reasonable
14 person. If anybody knows ,I've done close to maybe 800
15 trials since I took the bench, and I did lots of, like, 300
16 trials when I was an ADA. And let me tell you something, if
17 I were an ADA and estimated the way you estimated, I would
18 have not been an ADA much longer. Not been an ADA because,
19 guess what, the judges didn't permit that kind of behavior.
20 You said to the judge I'm going to put on this witness, that
21 witness is going to be approximately an hour for direct, and
22 the judge would say how long for cross, okay, we could put
23 two on in the morning. You didn't get two done in the
24 morning, you were in deep trouble; deep.

25 MR. ITKOWITZ: I will move this along as fast as I
26 can.

Ross - Plaintiff - Direct (Mr. Itkowitz)

THE COURT: You better. Bring the jury in. Bring
Mr. Ross in first, please.

(Continued on next page.)

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1 Ross - by Plaintiff - Direct

2 (Continued from previous page)

3 THE COURT: Okay, Mr. Ross. Please take the
4 stand.

5 (Whereupon the witness resumes the witness
6 stand.)

7 (Whereupon, the jurors entered the courtroom
8 and resumed their respective seats in the jury box.)

9 THE COURT: Okay, jurors, please be seated.
10 Mr. Ross, please take your seat.

11 Please continue, Mr. Itkowitz.

12 DIRECT EXAMINATION

13 BY MR. ITKOWITZ:

14 Q Mr. Ross, I show you -- Mr. Ross, the first
15 commission check arrived in July or August of 2004 -- 2005,
16 excuse me?

17 A Yes.

18 Q And when that first check arrived ALM knew about
19 it, right?

20 A Yes.

21 Q And Mr. Danzer from ALM wrote to the Trump
22 Organization and said I am glad to hear you got your
23 commission check -- your royalty check, when can I get my
24 commission check, right?

25 A I don't have that information.

26 Q Do you have any memory of it?

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 A I don't remember him -- he certainly never
3 mentioned it to me.

4 Q Do you remember having any discussions with
5 anybody in the Trump Organization in July or August of 2005
6 about whether ALM and Mr. Danzer were entitled to get paid?

7 A Yes, I remember. I discussed it with Cathy
8 Glosser.

9 Q Now, I show you what's been marked as Plaintiff's
10 Exhibit 39. I direct your attention to the bottom e-mail in
11 that chain where it says -- it's from Jeff Danzer to Kathy
12 Glosser with a cc to you. Do you see that?

13 A Yes.

14 Q You would have gotten that e-mail, right?

15 A Yes.

16 Q It says, Thanks, Cathy, I'll miss you, have a good
17 trip and a great weekend. On a separate note, the addressed
18 information for ALM has changed, please send the first
19 commission check regarding the PVH Trump deal to, and it
20 gives an address, correct?

21 A Correct.

22 Q Now, Kathy Glosser wrote back to him and says in
23 the next e-mail up there in the chain says, Jeff is the
24 below address correct --

25 THE COURT: That's not what it says.

26 Q Is the below address your new office address? I

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct
2 assume you have checked with Mark Hager and he is
3 comfortable with the check going to your attention. Please
4 advise, correct?

5 A I don't see what you're referring to.

6 THE COURT: There's a series of e-mails,
7 okay? So you have the first one here down there you
8 just read. The answer is the next one up, okay?

9 (Pause.)

10 THE COURT: Do you see it now?

11 THE WITNESS: Yes, I see it.

12 Q You see there's some handwriting on this document?

13 A Yes.

14 Q The testimony in the case is that that's Kathy
15 Glosser's handwriting.

16 A Yes.

17 Q So Kathy Glosser says -- she made a notation when
18 she got this e-mail, says, wait to hear back from George
19 before processing?

20 A Correct.

21 Q As you sit here now, do you recall whether Kathy
22 Glosser contacted you on or about July 15th with respect to
23 sending a commission check to ALM?

24 A She spoke to me.

25 Q She spoke to you?

26 A Yes.

 Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Q And you okayed that first commission check, did
3 you not?

4 A I okayed a check, I didn't okay --

5 THE COURT: Up, up. You just say yes or no.
6 You okayed the check?

7 THE WITNESS: I okayed the check.

8 Q So when she wrote George okayed on 7/20/05 she was
9 being accurate, correct?

10 A Absolutely.

11 Q Now, you also okayed for her to send out royalty
12 statements to ALM, correct?

13 A I never okayed it. I never knew about it.

14 Q You never new about it?

15 A No.

16 Q Did it come to your attention in August of 2005
17 that there was an issue as to whether there was a signed
18 agreement with respect to ALM's entitlement to payment of a
19 commission?

20 A Yes.

21 Q And in fact, Kathy Glosser --

22 MR. ITKOWITZ: Withdrawn.

23 Q Jeff Danzer had sent an invoice to Kathy Glosser
24 for that first commission check on or about August of 2005,
25 correct? On August 8th?

26 A I don't have any knowledge of that. I assume he
Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 did it.

3 Q I show you Plaintiff's Exhibit 79.

4 (Pause.)

5 BY MR. ITKOWITZ:

6 Q This is an e-mail chain -- I want to move this
7 along, so let me see if I can summarize this in an
8 acceptable way.

9 Jeff Danzer is telling Kathy there's an
10 invoice in the mail. Kathy writes back saying sending an
11 invoice is fine but I'd sure like to see -- she says in the
12 next to the top, she says, separate from that please send me
13 the ALM/Trump executed agreement as well, I never received a
14 copy of it. Once I receive that I can move on my side.

15 Do you see that?

16 A Yes.

17 MR. GOLDMAN: Your Honor, I'm going to object
18 to the form of the question paraphrasing four pages.

19 THE COURT: Actually funny enough -- all
20 right, your objection is sustained.

21 However, the second e-mail from the top you
22 read what it said, am I correct?

23 MR. ITKOWITZ: I read from Jeffrey -- excuse
24 me, I read --

25 THE COURT: From an e-mail from Kathy Glosser
26 to Jeff Danzer, right?

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 MR. ITKOWITZ: Yes.

3 THE COURT: Dated 8/8/2005 at 1:34 p.m.

4 MR. ITKOWITZ: Yes.

5 THE COURT: Do you see that?

6 THE WITNESS: Yes.

7 Q So Kathy Glosser is asking for the ALM Trump
8 executed agreement, correct?

9 A Yes, that's what she's asking.

10 Q Jeff Danzer writes the following at the top on
11 August 9th: Dear Kathy, as you know Trump and ALM entered
12 into a memorandum of understanding dated September 25, 2003
13 that was extended through June 30th, 2004. During the
14 course of the performance of its obligations and services
15 Mr. Trump requested that ALM continue its efforts past
16 June 30th, 2004 at a reduced rate of 10 percent for any
17 licensing deal originated by ALM. In this connection, ALM
18 introduced PVH to the Trump licensing opportunity on
19 May 14th, 2004 that resulted in Trump entering into a
20 licensing agreement for dress shirts, tuxedo shirts and neck
21 wear with royalties of 8 percent and 3 percent for
22 closeouts. ALM's agreement to receive reduced fee of
23 10 percent is set forth in various e-mails dated August 23,
24 2004, August 25, 2004 and August 30th, 2004, which were
25 acknowledged to have been received by Mr. Ross. If you have
26 any questions please do not hesitate to let me know. All

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 the best, Jeff.

3 Now, that's -- when Jeff wrote that back,
4 Jeff was referring to the three e-mails that I previously
5 read with you that you just testified about, correct?

6 MR. GOLDMAN: Objection.

7 THE COURT: Poorly worded. Rephrase it.

8 MR. ITKOWITZ: Okay.

9 Q The e-mails -- excuse me. ALM's agreement to
10 receive the reduced fee was set forth in various e-mails
11 dated August 23, 2004, August 24 -- 25th, 2004 and
12 August 30th, 2004, all of which were forwarded to you
13 correct, directed to you?

14 MR. GOLDMAN: Objection to the form.

15 May we approach? I don't want to --

16 THE COURT: Come on up.

17 (Whereupon, there's a sidebar discussion off
18 the record, out of the hearing of the jury.)

19 BY MR. ITKOWITZ:

20 Q Mr. Ross, do you recall getting the three e-mails
21 dated August 23, 2004, August 25, 2004 and August 30, 2004,
22 that are referred to in this e-mail?

23 A Yes.

24 Q Now, I'm going to direct your attention to trial
25 Exhibit 81.

26 THE COURT OFFICER: Eighty-one in evidence.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 BY MR. ITKOWITZ:

3 Q At the bottom -- let's go to the third page of
4 this document, which actually if you go to the bottom of the
5 second page indicates this is an e-mail from Jeff Danzer to
6 Kathy. Says, Hi Kathy --

7 THE COURT: Put the date in.

8 Q Dated August 22nd, 2005. 10:30 a.m.

9 It says: Hi Kathy, good morning. I haven't
10 heard from you since my last e-mail concerning ALM's first
11 invoice for semi-annual earned commissions on the Trump PVH
12 deal. The payment is now overdue. Please let me know when
13 we can expect to receive payment.

14 She writes back on August 22nd, 2005, at 5:39
15 pm. She says: Jeff, since we do not have paper on the
16 deal, George has asked that we quickly draw up a letter
17 stating the verbal deal. Could you draft one pager and send
18 it my way? I will then see to it that you receive payment.
19 Thanks very much.

20 Do you see that?

21 A Yes.

22 Q Was Kathy Glosser accurate when she said George
23 asked that we quickly draw up a letter?

24 A Yes.

25 Q Now, skipping ahead to the first page of this
26 exhibit, Kathy Glosser writes on August 23rd: Jeff, I have

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 an e-mail but accounting told me that they need the actual
3 deal in order to process an invoice. I believe George did
4 check his file and that was when he determined that he
5 didn't have a signed paper from ALM. If you think it will
6 be too tricky for your lawyer to quickly draw something up,
7 let me know and I will ask George.

8 Do you see that?

9 A Yes.

10 Q Then Jeff writes back on September 6th: Hi,
11 Kathy, how are you? I hope you had a fun filled holiday
12 weekend. I just wanted to follow up with you regarding the
13 signed agreement you need for your accounting department in
14 order for us to start getting paid. Please let me now if
15 your attorney is in the process of drafting an agreement or
16 if I need to have mine do it. Thanks and all the best,
17 Jeff.

18 You see Kathy writes back at the top on
19 September 22, 2005? She says: Jeff, George is drafting
20 something. I don't know what his timing is but I will get
21 something to you as soon as I can get it.

22 Do you recall telling Kathy Glosser that you
23 were going to draft something up?

24 A I never told her I was going to draft something up
25 I told her --

26 Q Sir, excuse me, I asked you --

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 A I don't recall.

3 Q You don't recall?

4 A No.

5 Q So you don't recall means you don't remember or
6 you don't recall means she was being inaccurate?

7 A No, she was not inaccurate. I don't recall.

8 Q Now, that e-mail that she wrote on September 7 at
9 9:54 a.m., do you see that, Trial Exhibit 81?

10 A Yes.

11 Q I have an e-mail here I direct your attention to,
12 Trial Exhibit 122.

13 THE COURT: This hasn't been marked in
14 evidence yet or it has?

15 MR. ITKOWITZ: It has, Judge. 122.

16 Q Have you familiarized yourself with the document?

17 A Yes.

18 Q So contained in Exhibit 122 is an e-mail from
19 Kathy Glosser to you dated September 7, 2005. Do you see
20 that?

21 A I don't see anything here that talks about that
22 date. I have an e-mail from Kathy Glosser dated November 6,
23 2005.

24 THE COURT: Right down below the original
25 message. Do you see that?

26 THE WITNESS: Yes.

Donna Evans, Official Court Reporter

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Ross - by Plaintiff - Direct

THE COURT: What date is that?

THE WITNESS: September 7, 2005.

THE COURT: What time?

THE WITNESS: 10:01 a.m.

Q Going back to trial Exhibit 81, her e-mail, Kathy
Glosser's e-mail saying George is drafting something up,
that was written on September 7 at 9:54 a.m., correct?

A That's correct.

(Continued on next page.)

Donna Evans, Official Court Reporter

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 Q So six minutes, seven minutes later she writes you, and
3 she writes and she says the following: "George, I received yet
4 another e-mail from Jeff Danzer regarding their outstanding
5 payment. I let him know that you are drafting a letter and we
6 will get it to him as soon as we can. I know we briefly
7 discussed a while back that ALM may expect that they should
8 benefit from the sportswear deal. I don't know that he even
9 knows that we did a sportswear deal, but we should probably
10 specify in the letter that they get a percentage of dress shirt
11 and neckwear royalties."

12 Do you see that?

13 A Yes.

14 Q So does this refresh your recollection that you had
15 told Cathy Glosser that you were going to draft a letter to Jeff
16 Danzer with your signature on it?

17 A I never told her I would draft a letter.

18 Q You never told her?

19 A No.

20 Q So she was making it up?

21 THE COURT: Do you have something else?

22 A At that point I told her I would resolve the matter,
23 but I was never drafting a letter.

24 Q So Cathy Glosser's e-mails, these two e-mails in which
25 she says that you're going to draft a letter, are completely
26 inaccurate?

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 A That's not true.

3 Q Well, you've just said that you were not going to draft
4 a letter?

5 A No, I said I was going to resolve the situation, but I
6 was not going to do it by drafting a letter.

7 Q I understand that's what you said, but she said to Mr.
8 Danzer that you were going to write a letter, didn't she?

9 A That's what she said.

10 Q And when she wrote to you, she was telling you what to
11 put in the letter that you were going to be drafting, correct?

12 A What to put in a letter that I was drafting, yes,
13 that's correct.

14 Q All right. Now, let's talk a second about the
15 sportswear deal. The sportswear deal is a separate deal from
16 the original license agreement that was set forth in November of
17 2004, correct?

18 A I don't know. I don't know how the sportswear deal,
19 how it was separated out. It's not to my knowledge.

20 Q Well, Cathy Glosser is saying here, sir, is she not,
21 that she's concerned that she had discussed with you that ALM
22 may expect to benefit from a sportswear deal?

23 A That's what she said. She didn't say she discussed it
24 with me. She wrote what she wrote.

25 Q She said I know -- look at the third sentence here. "I
26 know we," we being you and Cathy Glosser, correct, that's who

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 the "we" refers to?

3 A Okay.

4 Q Is that correct?

5 A That's -- I would be we, yeah.

6 Q So it says, "We briefly discussed a while back that ALM
7 may expect that they should benefit from the sportswear deal."

8 Does that refresh your recollection that there was an
9 issue that you and Cathy Glosser were concerned that ALM would
10 seek to benefit from a sportswear deal which was separate and
11 apart from the neckwear and the shirt deal that was signed in
12 November of 2004?

13 A It doesn't refresh my recollection at all.

14 Q So you just don't remember?

15 A I don't recall.

16 Q So you don't recall whether there was a separate sports
17 deal -- sportswear deal in May of 2005 between PVH and Trump;
18 you just don't recall that?

19 MR. GOLDMAN: Objection.

20 THE COURT: Overruled.

21 A I don't. To my knowledge, there was never a separate
22 deal made with PVH on sportswear.

23 Q So, to your knowledge, there was never a separate deal
24 made, there was never an issue in which ALM would be entitled to
25 its commission on sportswear royalties, correct?

26 A To my knowledge, that didn't exist.

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 Q And so, therefore, is it your knowledge that ALM was
3 paid money on the sportswear deal?

4 A I don't know that. I have no recollection, no
5 knowledge of that fact at all.

6 Q Now, Cathy writes you on September 7th saying that
7 you're going to write a letter. She's written Jeff Danzer that
8 you're going to write a letter.

9 And then you say you're going to -- and now you're
10 testifying that you were going to resolve it without writing a
11 letter, correct?

12 A That's correct.

13 Q You knew ALM -- withdrawn. The way you resolved it --

14 THE COURT: Did he resolve it?

15 Q Did you resolve it?

16 A No.

17 Q So just as far as you are sitting here now, you left
18 the whole thing hanging?

19 A Yes.

20 Q So you don't recall saying to Cathy Glosser that ALM
21 was entitled to payment?

22 A I told entitled to a payment, yes.

23 Q To payment, not a payment?

24 A No, to a payment.

25 Q One second. Do you recall having a discussion with
26 Cathy Glosser about any of the three e-mails that we've referred

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 to that Jeff Danzer sent you stating what he said was the deal
3 between you and him?

4 A Would you repeat the question, please?

5 Q Yes. Do you recall having ever had any discussion with
6 Cathy Glosser about Jeff Danzer's statements as to what deal he
7 reached with you as articulated in the three e-mails he sent you
8 in August of two thousand --

9 A Yes, I had a discussion with Cathy Glosser.

10 Q You discussed that with Cathy?

11 A Yes.

12 Q Now, Ms. Glosser testifies -- I asked Ms. Glosser the
13 following question on deposition and she gave the following
14 answer. Question -- and now I'm reading from --

15 THE COURT: Wait a second.

16 MR. ITKOWITZ: Page 71.

17 THE COURT: Come up on that.

18 MR. ITKOWITZ: You know what, let me just shorten
19 it.

20 Q Do you recall telling Cathy Glosser to see that ALM --

21 A What?

22 Q Do you recall telling Cathy Glosser to make sure ALM
23 got paid?

24 A Got a payment, yes.

25 Q Just one payment?

26 A Yes.

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 Q You told her to make one payment?

3 A I only knew she was making one payment.

4 Q How much was that payment that you told her to make?

5 A My recollection is somewhere in six, seven thousand
6 dollars.

7 Q So your testimony is that you told Cathy Glosser to
8 make one payment of six or seven thousand dollars in connection
9 with ALM bringing PVH to the table to make this multi-million
10 dollar deal with Donald Trump; is that your testimony?

11 A My testimony is that I --

12 Q Is that your testimony, yes or no?

13 THE COURT: Yes or no?

14 A Yes.

15 Q And you authorized no other payments?

16 A That's correct.

17 Q Did you ever put that instruction in writing?

18 A No.

19 Q With the earlier e-mails I showed you when Jeff Danzer
20 sent an invoice, did you ever look at the invoice that he sent?

21 A No.

22 Q Is it not a fact that you directed Cathy Glosser to
23 send royalty statements to ALM?

24 A I don't recall.

25 Q You don't recall. So if Cathy Glosser testified that
26 you directed her to do that, you're not quarreling with that,

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 correct?

3 A No, I'm not quarreling with that.

4 Q And you knew, did you not, that the royalty statements
5 would be used to invoice Trump, correct?

6 A I didn't know that.

7 Q You have no idea about that?

8 A I didn't know that.

9 Q And you had no idea of that?

10 A I had no idea royalty statements were going to be used
11 to make a payment to ALM.

12 Q Now -- hold on a second. Did you ever confirm --
13 withdrawn.

14 Did you ever tell -- did you ever confirm to Cathy
15 Glosser that ALM should be paid ten percent?

16 A Never.

17 Q So if Cathy Glosser testified to that, she's lying?

18 A No, that's not true.

19 Q Well, are you aware of the fact that Cathy Glosser has
20 testified to the fact that George confirmed to her that they
21 should be paid ten percent?

22 A Could be ten percent on the first payment. That's how
23 it was arrived at, yes, but not forever.

24 Q So your testimony is that ALM, you authorized her and
25 confirmed to her, that they should be paid ten percent on the
26 first payment and that's it?

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 A No, I agreed --

3 Q Yes or no?

4 A They could be -- it's not ten percent. I agreed on an
5 amount.

6 Q I ask that the question be read back to the witness.

7 THE COURT: Please read it back.

8 (Whereupon, the last question was read back by
9 the court reporter.)

10 THE COURT: Yes or no?

11 A No.

12 Q Well, Cathy Glosser testified that you confirmed to her
13 that ALM should be paid ten percent and she, upon that
14 confirmation from you, she went to accounting and told
15 accounting that they should be paid ten percent.

16 Did you ever learn that?

17 A That's her testimony. The answer is yes.

18 Q And you're not disagreeing with her testimony, right?

19 A No, not at all.

20 Q So if Cathy Glosser testified that she understood, on
21 the basis of conversations with you, that ALM was to be paid ten
22 percent of royalties on a continuing basis, you're not arguing
23 with that either?

24 MR. GOLDMAN: Objection, that's not what the
25 testimony was.

26 THE COURT: Well, if you're going to quote

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 testimony, quote from the trial record.

3 MR. ITKOWITZ: The record will reflect what the
4 testimony is.

5 THE COURT: Come up.

6 (Whereupon, an off-the-record discussion was held
7 at the bench among the Court and counsel.)

8 Q Now, sir, in order for a check to be issued by Trump, a
9 process has to be set up, correct?

10 A Yes.

11 Q And that process would include setting up a vendor
12 account, correct?

13 A Yes.

14 Q And after a vendor account is set up, when an invoice
15 comes in it gets approved by a person in authority at the Trump
16 Organization, correct?

17 A Yes.

18 Q And so if after July or September or October of 2005
19 ALM every single quarter for 11 consecutive quarters sent an
20 invoice for commission based upon royalties, that would have had
21 to go through the accounting department, correct?

22 A Yes.

23 Q And before any such check would be issued, it would
24 have to be approved by somebody in authority at the Trump
25 Organization, correct?

26 A That's correct.

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 Q And Cathy Glosser was a person with such authority,
3 correct?

4 A Yes.

5 Q And Cathy Glosser testified -- withdrawn.
6 Ordinarily -- withdrawn.

7 In order for accounting to set up a vendor account to
8 approve invoices, accounting would have to get appropriate
9 documentation from somebody in the Trump Organization that it's
10 okay, right?

11 A I would assume so. I don't know how accounting handles
12 it in detail.

13 Q Well, you've been in the Trump Organization for how
14 many years?

15 A Seventeen.

16 Q Is it your understanding that checks on a regular basis
17 get issued by the accounting department without authorization
18 from somebody in authority?

19 A No, always gets authorized. Always gets authorized.

20 Q And you would have had that authority and Cathy would
21 have had that authority, correct?

22 A I would have had the authority. Cathy would have had
23 the authority as far as ALM was concerned, yes.

24 Q And now, Cathy Glosser testified in deposition that you
25 authorized for a vendor account to be set up?

26 MR. GOLDMAN: I'm going to object. We need the

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 deposition transcript.

3 MR. ITKOWITZ: 84, page -- it's 83 starting at 22.

4 THE COURT: What are we talking about? Whose
5 deposition?

6 MR. ITKOWITZ: Cathy Glosser.

7 THE COURT: What date was it taken on? March 8,
8 2011. What page?

9 MR. ITKOWITZ: Page 83.

10 THE COURT: You have to come up and let me know
11 what you're doing with this.

12 (Whereupon, an off-the-record discussion was held
13 at the bench among the Court and counsel.)

14 MR. ITKOWITZ: At this time -- do we have an extra
15 copy of this deposition?

16 MR. WILTENBURG: The Court has two.

17 THE COURT: I have a copy here.

18 MR. ITKOWITZ: All right.

19 THE COURT: This is what you're talking about, the
20 deposition?

21 MR. ITKOWITZ: Yes, deposition of Cathy Glosser.

22 THE COURT: Okay. You want the witness to look at
23 something?

24 MR. ITKOWITZ: Yes. I would like to direct his
25 attention to page 83.

26 THE COURT: Mark it for identification.

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 MR. ITKOWITZ: Sorry?

3 THE COURT: What number are we at?

4 MR. WILTENBURG: Ask you mark it 129.

5 THE COURT: Do you know?

6 MR. WILTENBURG: We have others marked to that
7 point. They have not been introduced yet.

8 THE COURT: 129 for identification.

9 (Whereupon, the above-mentioned document was marked
10 as Plaintiff's Exhibit 129 for identification.)

11 THE COURT: I show you 129 for identification.
12 Please turn to page 83 and read to yourself, not to anybody
13 else. From line 20 to what?

14 MR. ITKOWITZ: To line six.

15 THE COURT: Line six of page 84.

16 THE WITNESS: What was the starting point?

17 THE COURT: Line 20.

18 MR. ITKOWITZ: Line 20.

19 THE WITNESS: Page 82?

20 MR. ITKOWITZ: 83.

21 THE COURT: 83, line 20, to page 84, line 4.

22 THE WITNESS: I see. I have it.

23 Q Does that refresh your recollection that you told
24 Catherine --

25 THE COURT: Cathy.

26 Q Cathy Glosser to arrange for a vendor account to be set

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 up for ALM?

3 A I don't --

4 Q Yes or no?

5 A No, I don't recall.

6 Q You don't recall?

7 A I don't recall.

8 Q And when you say you don't recall, you're not
9 disagreeing with anything that Cathy Glosser may have said with
10 respect to this, correct?

11 A No, I don't recall the conversation.

12 Q Now, just for the record, the witness was shown 80 --
13 page 83 from line 20 to 84 line six of the Cathy Glosser
14 deposition.

15 Now, you remember I just asked you, you just testified
16 that you authorized one payment to ALM, correct?

17 A That's correct.

18 Q I'm going to read you -- I mean, Cathy Glosser
19 testified yesterday that she knew ALM was collecting ten
20 percent?

21 MR. GOLDMAN: Excuse me. Objection. Can we see
22 what he's reading from?

23 MR. ITKOWITZ: Page 194, sorry, line 24.

24 THE COURT: Of what?

25 MR. ITKOWITZ: Of trial testimony yesterday.

26 THE COURT: What was the page number?

1 Ross - Plaintiff - Direct - (Mr. Itkowitz)

2 MR. ITKOWITZ: 194.

3 MR. GOLDMAN: And beginning when and ending when?

4 MR. ITKOWITZ: Well, we'll start the beginning at
5 line 22 and going to 195.

6 THE COURT: No. Start 192, okay.

7 (Continued on next page.)

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1 Ross - by Plaintiff - Direct

2 MR. ITKOWITZ: 194, line 22, going to 195,
3 line 16.

4 MR. GOLDMAN: Okay.

5 BY MR. ITKOWITZ:

6 Q So Kathy Glosser testified to the following. I'm
7 going to ask you -- I'm going to read it to you and ask you
8 if you remember it or if you don't remember it. Not the
9 testimony but what she's stating, okay? Do you understand?

10 A I think so.

11 Q 194, line 22:

12 "Q So you knew at that time that ALM was
13 expecting 10 percent, correct?

14 "A I knew ALM was expecting 10 percent.

15 "Q And you knew and George knew that, correct?
16 You discussed that with George?

17 "THE WITNESS: Yes.

18 "Q What?

19 "A Yes.

20 "Q So George knew they were expecting
21 10 percent, correct?

22 "A I believe so, yes."

23 Q And when George knew they were expecting
24 10 percent, George told you pay them, notwithstanding that I
25 don't have a signed document here, correct?

26 THE COURT: That's not what it says.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Notwithstanding that I don't -- I'm sorry, it does say
3 that.

4 BY MR. ITKOWITZ:

5 "Q Notwithstanding that I don't have a signed
6 document here, correct?

7 "A George said they would do something.

8 "Q Did George say pay them; yes or no?

9 "A He said pay them.

10 "Q And pay them meant 10 percent, correct?

11 "A At that time it did mean 10 percent."

12 Do you disagree with that?

13 A No.

14 Q Okay, skipping ahead now.

15 (Pause.)

16 Q Now, there came a time in 2008 when Mr. Trump
17 inquired about payments to ALM; is that correct?

18 A That's correct.

19 Q And Mr. Trump said don't pay them anymore,
20 correct?

21 A Yes, that's basically correct.

22 Q Now, when that happened, you wrote an e-mail,
23 which is Exhibit 49.

24 Now, you wrote the following e-mail -- excuse
25 me.

26 What happened was that Mark Hager wrote you
Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 an e-mail on June 25, 2008.

3 THE COURT: That's on the second page. At
4 the bottom of the first.

5 Q It says, Hi, George, please let me know ASAP when
6 we should expect your payment for commission due for Trump
7 royalties from PVH for period 0108. By that 0108 he was
8 referring to the first order of '08, correct?

9 A Yes, I assume so.

10 Q And you wrote back to him, Mark, I've been in
11 contact -- the next e-mail starting June 25th at 2008 at
12 12:13, you wrote back to him, Mark, I've been in contact
13 with Jeff, I think that the payments which you received were
14 paid in error. I had told Jeff that you were entitled to
15 some reasonable compensation for whatever you did in
16 connection with the PVH but I never agreed to a percentage
17 forever. Until Jeff can show me something from the Trump
18 Organization agreeing to the deal he claims was made we will
19 not make any further payments, George.

20 Then Mark Hager wrote back, George, we have
21 provided to you the documentation that shows the agreement
22 of the Trump Organization to pay the royalty payment for the
23 term of the license with PVH, the course of conduct between
24 the parties underscores that agreement. You're after the
25 fact claim that prior payment was made in error is
26 unbecoming. We expect the Trump Org we will abide by it's

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 agreement, we will strongly urge you to reconsider and pay
3 us at once.

4 You wrote back: Mark, on August 25th,
5 2004 -- when you wrote back on June 30th, by the way, at the
6 top. On August 25th, 2004 Jeff sent me an e-mail referring
7 to his prior e-mail setting forth what he called a new deal
8 with ALM. He asked me to sign this new deal and fax it back
9 to him. If you will send me something with my signature of
10 some other authorized signatory for the Trump Organization
11 agreeing to those terms that will end the matter. My
12 recollection is that I never agreed to a flat 10 percent but
13 told Jeff that he was entitled to some reasonable payment
14 for his participation in the PVH transaction. Any dealings
15 after August 25th were with Kathy Glosser, who Jeff led to
16 believe that I had agreed to the 10 percent, and she
17 authorized payments based on that erroneous assumption.
18 This entire situation came to light when Donald Trump
19 questioned the payments to you and thought they were
20 exorbitant. When I learned that you have been paid almost
21 300,000 to date I agreed with Donald.

22 Now, this e-mail that you wrote was not
23 correct, was it?

24 A That's not -- that's not the end of the e-mail.

25 Q You want me to read the end?

26 A Yeah, read the end.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Q Okay.

3 I think a Judge would apply the theory of
4 quantum meruit and reduce the amount you received
5 accordingly. We will no longer pay you 10 percent of all
6 monies received from PVH, but I am willing to discuss any
7 suggestions you have to resolve this dispute, George.

8 Now, you say you never agreed to a flat
9 10 percent and that Kathy Glosser acted on some kind of
10 erroneous understanding that she received from Jeff Danzer.
11 Is that correct?

12 A That's correct.

13 Q That's not true, is it?

14 A What's not true, that she --

15 Q That she paid out this money because of what Jeff
16 Danzer told her?

17 A Well, Jeff Danzer told her we had a deal --

18 Q Excuse me, I'm asking you a question that calls
19 for a yes or no answer. Please respectfully answer yes or
20 no.

21 A What's the question, please.

22 MR. ITKOWITZ: Can I have it read back?

23 THE COURT: Please read it back.

24 (Record read.)

25 BY MR. ITKOWITZ:

26 Q Yes or no?

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 A Yes.

3 Q But that's not correct, is it?

4 A That she paid out the money because of -- because
5 of what Jeff told her?

6 Q You wrote in this letter or this e-mail in June of
7 2008, you're writing to Mr. Hager, you're saying this was
8 all a big mistake, Jeff convinced Kathy Glosser to send this
9 money and it was sent out by mistake?

10 A Yes.

11 Q That's what you wrote, correct?

12 A Yes.

13 Q But that's not true, is it?

14 A No, it is true.

15 Q It is true.

16 I thought you just said in your earlier
17 testimony, the record will reflect it, that Kathy Glosser
18 got authorization to pay this money based upon directions
19 from you?

20 A To pay -- make one payment, yes.

21 Q Oh, to make one payment?

22 A Yes.

23 Q So she completely misunderstood what you said,
24 correct?

25 A I don't know how completely. She misunderstood
26 it.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Q If you authorized one payment and she made 11
3 payments, she either misunderstood or disobeyed what you
4 told her?

5 A She never disobeyed. She misunderstood.

6 Q She misunderstood.

7 So in other words, it's your testimony,
8 you're telling the members of this jury that you authorized
9 one payment of approximately \$6,000 for this multi-million
10 dollar deal to ALM and that you directed Kathy Glosser to go
11 to accounting and set up a vendor account for a one time
12 payment of \$6,000; is that what you're telling us?

13 A No, set up a vendor account not for the one time
14 payment.

15 Q So you set up a vendor account and she's going to
16 do all that trouble for one payment that you authorized
17 correct? That's your testimony?

18 A For one payment -- the answer is yes.

19 Q So in order to do that, she's testified she had to
20 go to the controller, set up a vendor account, get a tax ID
21 number sent for one \$6,000 payment?

22 A She set up the account.

23 Q And your testimony is that if Kathy Glosser
24 continued to approve checks she was completely acting on her
25 own without your approval?

26 A That's correct.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Q Now, going back to the e-mail, preceding one on
3 Exhibit 49, where you say I think the payments which you
4 received were paid in error. And then you said I had told
5 Jeff that you were entitled to some reasonable compensation
6 for whatever you did in connection with PVH but I never
7 agreed to a percentage forever. Let's focus on I never
8 agreed to a percentage forever. Okay?

9 It's not uncommon in licensing when somebody
10 brings -- puts together a license for them to get a
11 commission as long as the agreement is in effect; is that
12 unusual?

13 A I had no knowledge at that point, this is the
14 first license agreement I ever did.

15 Q So this is the first licensing agreement you ever
16 did so, therefore, it seems odd -- it seemed odd to you as
17 you were writing this letter -- this e-mail four years
18 later, it seemed odd to you that somebody would have an
19 expectation that they would continue to get commissions for
20 the life of the agreement, correct?

21 A He could have whatever expectation he wanted.

22 Q So let's go to the memorandum of understanding.
23 That memorandum of understanding, which was agreed to by
24 Mr. Trump prior to your involvement, that was dated
25 September 25th, 2003, correct?

26 A Correct.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 Q And that particular agreement said:

3 Hold on a second.

4 Turn to paragraph 3 of that agreement which
5 is on page 3?

6 THE COURT: What was that? What number?

7 MR. ITKOWITZ: Paragraph 3 which is on page 3
8 of Exhibit 1.

9 Q I would direct your attention to the second
10 sentence and ask you if this original memorandum of
11 understanding provides for commissions to be paid during the
12 course of any renewal; yes or no?

13 A Yes.

14 Q So the original agreement that Mr. Trump executed
15 in 2003 provided for any renewals it provided for commission
16 to be paid. Correct, yes or no?

17 A Yes.

18 Q Now, fast forward to June of 2004. You're in the
19 process -- you have that June 24 meeting and you reach the
20 essential elements of a transaction with PVH. You know, A,
21 that that agreement is not going to meet the threshold set
22 forth for the original memo of understanding. You know that
23 Mr. Trump is -- you and Mr. Trump are going to want to
24 negotiate downward the 22.5 percent commission provision in
25 there. So clearly negotiations were going to follow before
26 a deal got done as to some of the terms of the original

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 memorandum of understanding, correct?

3 MR. GOLDMAN: Objection to the form, it's a
4 compound question.

5 THE COURT: I'll allow it.

6 If you understand the question, answer it.

7 A You've got to read back the question, it was a
8 long question.

9 THE COURT: Read back the question.

10 (Record read.)

11 Q Yes or --

12 A Yes.

13 Q And then fast forwarding after that. So when
14 Mr. Danzer wrote to you on August 23rd, August 25th and
15 August 30th and reiterated that he had reached an agreement
16 with you that the commission was going to be reduced to
17 10 percent, to any deal brought to the table, and that it
18 would include any renewals, the any renewals portion was not
19 a foreign concept, was it?

20 A No.

21 Q The any renewals was just a reiteration of what
22 was in the memorandum of understanding, correct?

23 A That's correct.

24 Q So when you wrote that you never agreed to a
25 percentage forever, you weren't being entirely accurate,
26 were you?

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 A Oh, I was being entirely accurate.

3 Q You made it sound like the idea of agreeing to a
4 percentage forever was somewhat absurd?

5 A Yes.

6 Q But how absurd could it have been if it was in the
7 original memorandum of understanding signed by Mr. Trump
8 himself?

9 A Because the original understanding, there was a
10 threshold that had to be met, if the threshold was met then
11 you covered it. The threshold here wasn't met. It
12 obviously didn't comply with the threshold, so therefore
13 another deal had to be struck as to what would be paid.

14 Q So in other words, what you're saying, if you met
15 the 25 million threshold and you had a 22.5 percent
16 commission, the 22.5 percent commission would go on forever.
17 That's okay, right?

18 A It would go on during the terms of the renewal,
19 not forever.

20 Q Through each renewal?

21 A But that's not forever. And it assumes --

22 Q Nothing is forever, correct?

23 A Nothing is forever.

24 Q When we say forever, we're talking in context in
25 terms of the original memo of understanding, if you got
26 25 million, and you got 22.5 percent commission, the

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Direct

2 22.5 percent commission would go on for each and every
3 renewal that followed the original agreement. That's what
4 it said, correct?

5 A Assuming that you met the threshold, yes.

6 Q So now, there's a renegotiation because they're
7 not going to meet the threshold?

8 THE COURT: Look at the time. We're going to
9 have to pick this up after lunch.

10 MR. ITKOWITZ: Okay.

11 THE COURT: Jurors, I'd like you to have a
12 wonderful lunch. It's not quite as beautiful as it was
13 yesterday but, nevertheless, it's not pouring rain so
14 we feel that's a good idea. So please do not discuss
15 the case among yourselves, don't call anybody up and
16 talk about the case, keep an open mind. See you back
17 here at 2:15. The room will be kept open upstairs.

18 (Whereupon, the jury retired from the
19 courtroom.)

20 THE COURT: How much longer?

21 MR. ITKOWITZ: I think I'm going to ask about
22 15 minutes.

23 THE COURT: Okay, good.

24 So you'll be done this afternoon, right?

25 MR. GOLDMAN: We can only hope.

26 THE COURT: If he does 15 minutes he'll be

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1 Ross - by Plaintiff - Direct

2 done by 2:30, that gives you basically one hour and 50
3 minutes.

4 MR. GOLDMAN: It gives me 2:30 to 3:30, 3:30
5 to 4:30. I certainly will do it in -- I feel like Name
6 That Tune, I can do it in less than two hours. He
7 also, subject to your discretion, has a right to go
8 back and --

9 THE COURT: Mr. Ross can always come back for
10 a short period of time the following day.

11 MR. GOLDMAN: Yes, he could.

12 THE COURT: All right, goodbye. Thank you.
13 Have a nice lunch.

14 (Lunch recess.)

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Donna Evans, Official Court Reporter

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 THE COURT: Please be seated. Anything before we
3 start?

4 MR. ITKOWITZ: Excuse me, I couldn't hear what you
5 said.

6 THE COURT: Anything before we start?

7 MR. GOLDMAN: Can we approach for a second?

8 THE COURT: Yes, Mr. Goldman.

9 (Whereupon, an off-the-record discussion was held
10 at the bench among the Court and counsel.)

11 (Whereupon, the witness resumes the stand.)

12 (Whereupon, the jury enters the courtroom and the
13 following transpired:)

14 THE COURT: Good afternoon, jurors. Please be
15 seated, and we are continuing Mr. Itkowitz's examination of
16 Mr. Ross.

17 THE COURT: Go ahead, Mr. Itkowitz.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. ITKOWITZ:

20 Q Mr. Ross, before the break we were talking about
21 certain changes that needed to be made in the memorandum of
22 understanding or amendment that needed to be made in the
23 memorandum of understanding. One, we agreed that the threshold
24 wasn't going to be made by the PVH deal; and so basically since
25 the threshold wasn't going to be made, there was going to be a
26 renegotiation of certain terms to amend the original agreement;

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 isn't that correct?

3 A That's the way -- your characterization, I can't say it
4 was correct, no.

5 Q Okay. All right. Basically, the memorandum of
6 understanding called for a 22 and a half percent commission,
7 correct?

8 A That's correct.

9 Q And it called for a 22 and a half percent commission
10 based upon a \$25 million contract over seven years, correct?

11 A Correct, for seven years.

12 Q So 25 million threshold was not going to be made by the
13 PVH deal?

14 A Correct.

15 THE COURT: Please speak up.

16 Q You wanted to do the PVH deal?

17 A Yes.

18 Q And ALM wanted to do the PVH deal, correct?

19 A Of course.

20 Q All right. And so in order for ALM to get a
21 commission, that threshold provision had to be amended, correct?

22 A No. Under the threshold provision you're entitled to
23 nothing.

24 Q Right. And we can agree that ALM was not in it to work
25 for nothing, correct?

26 A We can agree to that.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 Q So ALM needed to amend that provision that was
3 contained in the memorandum of understanding in order for ALM to
4 get paid, correct?

5 A No. When you say amended, at that point that agreement
6 is gone. That agreement was never going to be in existence and
7 they were never going to get paid anything under that agreement,
8 because they were entitled to nothing.

9 MR. ITKOWITZ: I move to strike that. All that
10 answer is unresponsive to my question, which called for a
11 yes or no.

12 THE COURT: I want to hear the question again.

13 (Whereupon, the last question was read back by
14 the court reporter.)

15 THE COURT: I'm going to allow it in.

16 Q All right. The other thing that needed -- well,
17 whether you call it an amendment or a change, you needed to
18 change the agreement or have a different agreement, correct?

19 A A different agreement is correct.

20 Q Let's call it a different agreement.

21 And the other requirement -- so you weren't going to
22 pay a 22 and a half percent commission if the deal wasn't going
23 to be 25 million, correct?

24 A No. That's correct, we weren't paying a commission.

25 Q And it was your testimony you would have been happy to
26 pay a 22 and a half percent commission for every renewal for a

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 \$25 million deal?

3 A No, never willing to pay. Never was not a deal that we
4 were going to pay that. They never performed and they would not
5 be entitled to it unless they did perform.

6 Q Sir, I just asked you this question. I asked you would
7 you have been happy to pay a 22 and a half percent commission on
8 a deal that netted 25 million, as provided for in the memorandum
9 of understanding, for every renewal that occurred thereafter;
10 would you have been happy with that?

11 A I don't think we'd have been happy, we'd have done it.

12 Q Now, the other thing that needed to be changed is was
13 the fact that the deal wasn't going to get done at the end of
14 June, correct?

15 A When you say changed, we knew the deal wasn't going to
16 be done by the end of June.

17 Q Right. In fact, in August you knew the deal was not
18 likely to get finished or might not get finished before the end
19 of September, correct?

20 A That's correct.

21 Q But you wanted the deal to get done and ALM wanted to
22 get the deal done, correct?

23 A Yes.

24 Q Now, you stated that when Cathy Glosser came to you in
25 August of 2005 that you told her you approved one check,
26 correct?

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 A That's correct.

3 Q But isn't it a fact that you previously testified that
4 she didn't have a discussion with you?

5 A I don't recall the discussion.

6 Q All right. I'm going to direct your attention to your
7 deposition, which occurred on March 23, 2011. Do you recall
8 being asked questions?

9 A Yes.

10 Q Page 132, line 10.

11 THE COURT: To?

12 MR. ITKOWITZ: To 134, line 8.

13 THE COURT: Okay, one second.

14 Q Question --

15 THE COURT: Wait. Wait one second, you know. He's
16 going to want to read it.

17 MR. GOLDMAN: Thank you.

18 Q Question --

19 THE COURT: No.

20 MR. GOLDMAN: I can't read that fast. Just give me
21 a minute.

22 MR. ITKOWITZ: 134, line 8.

23 MR. GOLDMAN: To 134?

24 MR. ITKOWITZ: 134, line 8.

25 MR. GOLDMAN: Okay.

26 Q Do you recall being asked the following questions and

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 giving the following answers:

3 "QUESTION: So it's your testimony that at no point in
4 August of 2005 did Cathy Glosser discuss with you what ALM was
5 entitled to receive?

6 "ANSWER: No. She may have discussed with me at this
7 time that ALM was going to get some money somewhere along the
8 line, which I agreed to, but certainly not on the basis of ten
9 percent.

10 "QUESTION: In other words, your testimony is she did
11 not come to you and speak to you and ask you whether ALM was
12 entitled to ten percent of the license fee?

13 "ANSWER: She may have asked me at that point, and I
14 said early on, before this one, that the answer was no. When he
15 wrote the memorandum to her on August 9th, at that point she
16 believed what he wrote. He said the deal was ten percent, and
17 we agreed to it. She trusted him. He lied. He lied.

18 "QUESTION: She didn't have a discussion with you?

19 "ANSWER: He lied. If she told me before she sent out
20 the check, he never would have gotten the first check.

21 "QUESTION: So, in other words, just to make it very
22 plain and simple, in August of 2005 Cathy Glosser did not have a
23 discussion with you about what ALM was entitled to as a result
24 of the PVH deal in August of 2005?

25 "ANSWER: I don't recall whether she had a discussion
26 or not.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 "QUESTION: Excuse me?

3 "ANSWER: I don't recall whether she had a discussion
4 or not. All I know --

5 "QUESTION: With you?

6 "ANSWER: With me, I don't know. If in fact --

7 "QUESTION: I'm not asking you to speculate. If you
8 don't recall, you don't recall.

9 "ANSWER: I don't recall.

10 "QUESTION: If you do recall, I'm happy to have your
11 recollection. I don't want your speculation.

12 "ANSWER: I understand. I don't recall."

13 Did you give those answers to those questions?

14 A Yes.

15 Q Okay. Now, let's turn back to August of 2004 where
16 Jeffrey Danzer sent you those e-mails on August 23rd, August
17 25th and August 30th outlining what he said was an understanding
18 he reached with you.

19 You've already said that you never wrote him back?

20 A That's correct.

21 Q Now, you've previously testified in deposition, did you
22 not, that each time he wrote you those e-mails you called him up
23 and you said I don't agree with this characterization; is that
24 correct?

25 A That's correct.

26 Q And you recall I asked you on your deposition -- in

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 your deposition why you didn't write back to him, right; do you
3 recall that?

4 A I don't recall, but you may have asked it.

5 Q And do you recall stating words to the effect that you
6 didn't write back to him because you thought that if you wrote
7 back to him disputing his characterization of what the deal was
8 that he made with you that he could kill the PVH deal; do you
9 recall that?

10 A Absolutely. That's correct.

11 Q So it's your testimony, and I want to understand this,
12 it's your testimony that you thought that as you called him up
13 on the telephone and said, Jeff, this is not the deal, I don't
14 know where you're getting this, this is not the deal, that Jeff
15 would go forth and make the deal happen; but if you put it in
16 writing somehow that would disturb him so that he would go out
17 and kill the deal? Is that your testimony?

18 A No, that's -- again, you're characterizing it.
19 Characterizing --

20 Q Excuse me, is that your testimony?

21 A No.

22 Q Did you not testify in the past that if you wrote him
23 he could kill the deal?

24 A He said he could kill the deal, yes.

25 Q No, but you -- when you testified you didn't say what
26 he said he could do.

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 MR. GOLDMAN: Objection.

3 THE COURT: Sustained.

4 Q All right. Let's -- as Warner Wolf says, let's go to
5 the videotape. Turning to page 115 of the deposition, line 12.

6 THE COURT: Going to?

7 MR. ITKOWITZ: Going to 116, line 19.

8 THE COURT: Give us time.

9 MR. GOLDMAN: No objection.

10 THE COURT: Okay. Go ahead.

11 Q Do you recall being asked these questions and giving
12 these answers:

13 "QUESTION: Did it occur to you that you should
14 write him a note whether it be" --

15 MR. GOLDMAN: That's not --

16 THE COURT: Wait one second. Are you starting at
17 line 12?

18 MR. ITKOWITZ: Yes, starting -- sorry about that.

19 Q "QUESTION: Did it occur to you that you should write
20 something to him in e-mail or letter saying -- let me finish my
21 question. Did it occur to you that you should write him a note,
22 whether it be e-mail or letter saying, you know what, you're not
23 entitled to ten percent?

24 "ANSWER: The answer is there was no question in my
25 mind that if I wrote that type of a letter he had the ability to
26 kill or he indicated to me that he could kill the PVH deal; and

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 therefore, I didn't want to kill the PVH deal because it was a
3 good deal, and I thought it ought to be made. As to how much
4 he's going to get paid, that's different.

5 So rather than entering into e-mails back and forth
6 saying yes, yes, sending self-serving e-mails every time I got
7 one, I spoke to him. He asked me to sign, and I refused to, and
8 I told him why. I said, Jeff, I'm not going to sign it at that
9 point, we'll work out a deal later on, but I'm not paying you
10 ten percent. Then he wrote me another one and the same thing;
11 no, I'm not saying -- I am not saying the ten percent. I didn't
12 want to put it in writing for the express purpose of later on
13 that it might have created a situation where he would kill the
14 PVH deal, and I thought he was devious enough to do that."

15 Now, it's your testimony, as you sit here now, that
16 you're calling him up and telling him you're not going to pay
17 him, that wasn't going to cause any reaction, but if you would
18 have put it into writing, whoa, if you would have put it into
19 writing then, of course, you risk the deal; is that what you are
20 telling us?

21 A No, I never said I want going to pay him. I never said
22 at this point we're going to pay him, but a reasonable amount.

23 Q You said in this testimony, you said that if you wrote
24 back and disagreed with what he said, okay -- and, by the way,
25 let's go back to what he said. He said basically three things
26 in his e-mails to you. He said our deal is now ALM gets ten

1 Ross - Plaintiff - Direct (Mr. Itkowitz)
2 percent, ALM gets its percentage on the renewals, and we have on
3 any deal it brings to the table.

4 That's what he wrote to you on September 23rd,
5 September 25th and September 30th; isn't that correct?

6 THE COURT: Objection is going to be sustained,
7 because what you have to do is you actually have to go with
8 the exact language. I think that you have to do it exactly.

9 MR. ITKOWITZ: Okay. All right.

10 Q Let's read -- let me read to you what Jeff wrote to
11 you. Jeff Danzer wrote to you on August 25, 2004, which is page
12 two of Plaintiff's Exhibit 26.

13 "Dear George, I'm happy we've been able to come to
14 terms regarding our deal as it pertains to bringing licensing
15 deals to the Trump Organization. As we've agreed, ALM's fee for
16 any introduction of a potential licensee partner to Donald Trump
17 and/or any other entity associated with Donald Trump which
18 evolves into a licensing deal and any subsequent renewal thereof
19 shall be ten percent of all royalties or such other fees, i.e.
20 advances, sign-on bonuses, marketing fees, et cetera, paid to
21 Trump. ALM's fee shall be paid to ALM or any other entity it so
22 chooses within 15 days from when Trump receives payment from the
23 licensing partner."

24 He wrote that to you on August 25th, correct?

25 A Correct.

26 Q And he wrote the same thing to Cathy Glosser, which you

1 Ross - Plaintiff - Direct (Mr. Itkowitz)

2 were copied on on August 23rd; is that correct?

3 A Possibly. I don't recall the dates.

4 Q All right. Well, the record will reflect that.

5 Just with respect to this, you didn't write back and
6 contradict this e-mail because you've just testified, and you
7 testified on deposition, that if you wrote back Jeff could have
8 killed the deal and you were afraid he would kill the deal,
9 correct?

10 A Correct.

11 Q But it's your testimony that if you called him up and
12 said the same things on the telephone, you didn't run that risk;
13 is that what your testimony is?

14 A The testimony is at this point that it didn't warrant a
15 telephone call. It didn't warrant a writing. But the effective
16 part that I told him when I made the telephone call was
17 effectively we would work out a deal. He was entitled to get
18 paid something, but we never agreed to the terms.

19 Q He's writing you on August 25th. On August 26th you
20 are going to have the penultimate meeting, Mr. Trump is going to
21 be there, you're going to be there, the heads of PVH are going
22 to be there, the deal is going to be finally put to bed in
23 principle, if it wasn't already done so on June 24th, as you've
24 previously testified.

25 So it's the day before this meeting, you're saying you
26 called him up and you said I'm not agreeing to this, but you

1 Ross - Plaintiff - Cross (Mr. Goldman)

2 didn't put it in writing; is that what you're telling us?

3 A Yes.

4 Q And your testimony is that if you put it in writing he
5 could have killed the deal, but if you called him up you didn't
6 run that risk; is that what you're telling us? Yes or no? Is
7 that what you're telling us?

8 A No.

9 MR. ITKOWITZ: I have no further questions.

10 THE COURT: All right, cross examine.

11 MR. GOLDMAN: I do have an extra witness exhibit
12 book for the witness of the exhibits of mine that are
13 already in evidence. So if I can give you that.

14 THE COURT: No. I prefer that you do it one at a
15 time, because that way we have it as exhibits actually shown
16 to the witness.

17 MR. GOLDMAN: All right. I'll give you a book.

18 THE COURT: Okay, that's fine.

19 MR. GOLDMAN: Your Honor, I believe I may have a
20 book already. I have a book and I'll give the witness a
21 book, and I can just go to tab C and we'll do it one at a
22 time.

23 THE COURT: No, I want it given out. All right.

24 MR. GOLDMAN: No problem.

25 CROSS-EXAMINATION

26 BY MR. GOLDMAN:

1 Ross - Plaintiff - Cross (Mr. Goldman)

2 Q Mr. Ross.

3 A Yes.

4 Q I'd like to take you back to early 2004. Do you recall
5 any conversations with Mr. Danzer in early 2004?

6 A Yes.

7 Q And do you recall how it came to be that you even got
8 to speak to Mr. Danzer?

9 A Yes.

10 Q Okay. Tell us how it came to be?

11 A He, Jeff Danzer, called me, okay, and indicated that he
12 had found out in the trade that Mr. Trump was planning on doing
13 the licensing himself and that this effectively constituted a
14 breach of what he considered the exclusive license agreement
15 where we would forestall -- effectively forestall their ability
16 to make the commission that they thought they were entitled to
17 under the agreement.

18 Q Now, with respect to that statement by Mr. Danzer to
19 you, do you recall approximately what month that was?

20 A I don't recall the approximate -- it was -- no, I don't
21 recall the approximate, but it was very early on.

22 Q Now, what did you say to him in response to that
23 statement?

24 A No. In response to that statement I said, we never did
25 anything or will do anything which violates the terms of the
26 agreement. I said, they don't understand; in all the period of

1 Ross - Plaintiff - Cross (Mr. Goldman)

2 time you had, you didn't come up with one proposal, you didn't
3 come up with one situation that was even rejected by Mr. Trump.
4 Instead, you sat all this period of time, did absolutely
5 nothing, and then all of a sudden when you find out or think
6 that you say that you find out that now Mr. Trump is ready to do
7 deals directly himself, all of a sudden there's a flurry of
8 supposed activity.

9 Q Now, with respect to that conversation, did Mr. Danzer
10 agree or disagree with your statement that Mr. Trump was free to
11 do his own deals?

12 A He never disagreed with it at all.

13 Q Now, what was Mr. Danzer's response to your statement
14 that he hadn't done anything in months?

15 A Well, his response was made a lot of excuses and said
16 they were working very hard. That's what he said. I didn't
17 know that, nor there weren't any deals that came up, but he said
18 he was working very, very hard in doing it, and he was really
19 being frustrated by what was going on, he said, in the industry.

20 Q Okay. Now, when you say or when you said you told Mr.
21 Danzer that ALM wasn't doing anything, just can you explain what
22 the basis for that statement was?

23 A Yeah. The basis for the statement, very clear, when
24 Mr. Trump was involved with doing a deal on his own, he said he
25 remembered having some type of an agreement with ALM and asked
26 me to look at the agreement, which I did. I looked at the

1 Ross - Plaintiff - Cross (Mr. Goldman)

2 agreement, which I had never prepared, and I looked at the
3 extension and read it over; and then what came up when I heard
4 from Mr. Danzer and asked him, I said, in all the period of
5 time, I examined the entire file, there's not one evidence of
6 something that you did that's constructive that Mr. Trump would
7 be interested in.

8 Mr. Trump had the right to reject it if he wanted to.
9 He never had an opportunity to look at it, because there was
10 never anything. So I said, you got the agreement, it's got a
11 short fuse, you did absolutely nothing, and I can't see ever
12 working with you.

13 Q Now I'm going to show you Defendants O and P in
14 evidence. Now, Defendant's O is a letter dated April 1, 2004
15 from you to Mr. Danzer and references the memorandum of
16 understanding.

17 It says, "Dear Jeff, this will confirm that until June
18 30, 2004 ALM International Corp. is authorized to be the sole
19 and exclusive licensing agent for Trump high quality apparel
20 utilizing the Trump brand. We have no written agreement with
21 any other party to perform a similar function." And then you
22 signed your name to the letter.

23 Do you recall why you wrote that letter dated April 1,
24 2004?

25 A Yes, I do.

26 Q Please tell us why.

Ross - Plaintiff - Cross (Mr. Goldman)

A He told me -- Jeff told me that he couldn't get any credibility in dealing with any people in the industry unless he had some authorization to act; and that since they thought or learned what Mr. Trump was doing directly, they thought he didn't have the authorization. So they wanted to -- in order to get him in the door, he needed the authorization. And I wrote this letter saying he's got the authorization. This was his calling card.

(Continued on next page.)

1 Ross - by Plaintiff - Cross

2 Q And this calling card came seven or eight months
3 after the initial memorandum of understanding in September
4 of 2003?

5 A Yes, absolutely.

6 Q Now, if you could look at Defendant's P in
7 evidence. It's a letter dated April 5, 2004, a few days
8 after the Defendant's O, addressed the same way, referencing
9 the memorandum of understanding. And it says, Dear Jeff, in
10 furtherance of my letter of April 1 -- April 1st, while we
11 have had discussions with several parties concerning the
12 licensing of the Trump name for High Quality Power this will
13 confirm that said discussions have not been finalized now
14 has any written agreement been executed.

15 Was that a truthful statement when you sent
16 this letter to Mr. Danzer on April 5?

17 A Absolutely.

18 Q And why did you send this letter on April 5 after
19 you had already sent the letter on April 1st?

20 A Because Jeff said to me that he understood that
21 there was another company that was going to make suits, and
22 they were coming up with a sample line and they must have
23 had a deal, and therefore they wouldn't do all of that work
24 unless they had a written deal. And he didn't believe that
25 they didn't have a written deal, and I said they don't. To
26 clarify he was dealing with companies that manufactured

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1 Ross - by Plaintiff - Cross

2 suits, he wanted to bring in another company, I think
3 Peerless that manufactured suits. They refused to talk
4 because they thought it was a competitor. I wrote to
5 clarify, I wrote, no, we don't have a written agreement with
6 anybody. And it was truthful.

7 Q Now, in April, from the point of time of April 5,
8 2004 through April 30 of 2004, did you get any proposals
9 from -- I'm going to use Mr. Danzer as a representative of
10 ALM, from Mr. Danzer?

11 A No.

12 Q Now, let's turn to May of 2004.

13 MR. GOLDMAN: If I can show the witness
14 Defendant's Q in evidence.

15 Q Now, this is a letter from you to Mr. Danzer dated
16 May 27, 2004. It says: Dear Jeff, please let this letter
17 serve to represent that Mark Burnett's wife has absolutely
18 nothing to do with licensing for Mr. Trump or the Trump
19 brand. Your letter was the first we ever heard of such a
20 situation. As you may not be aware Mark Burnett was
21 recently divorced and is currently not married. Mr. Trump
22 does not even know Mr. Burnett's ex wife.

23 Before I read the rest of the letter, can you
24 tell the Court and the jury what prompted you to write this
25 to Mr. Danzer on May 27th of 2004?

26 A Probably Mr. Danzer said to me that as part of the
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1 Ross - by Plaintiff - Cross

2 everything going on in the industry, that Mark Burnett's
3 wife also had some inside track to get the license -- to get
4 licensing agreements and that this was -- he didn't believe
5 what I wrote in the prior letter, what we discussed that we
6 hadn't done with anybody else. This was evidence, he said,
7 what you said is not basically true, Mark Burnett's wife is
8 making statements.

9 Q Did you believe Mr. Danzer when he told you that?

10 MR. ITKOWITZ: Objection.

11 THE COURT: I'll allow it.

12 A Did I believe what he told me that --

13 Q That he could not get other deals done because of
14 Mark Burnett?

15 A Not at all. Now, I'm going to read the second
16 paragraph that you have in front of you that's Q in
17 evidence.

18 As far as other manufacturers or distributors
19 of the clothing, they are calling us all the time, but we
20 will have no interest in pursuing any of these deals until
21 after your license expires on June 30, 2004.

22 Q Now, that's the June 30, 2004 exclusive period
23 that was in the signed writings?

24 A Yes.

25 Q And it's your understanding from having read it
26 that if they brought you somebody by June 30, but the deal

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1 Ross - by Plaintiff - Cross

2 was not finalized by the end of the tail, which would be
3 September 30, that they would get -- they being ALM, would
4 get no commission?

5 A Nothing at all.

6 Q Next paragraph: I have not heard anything
7 concrete from you and are somewhat disappointed that you
8 have not been able to obtain any definitive proposal during
9 your option period. However, you still have one month to go
10 and I hope you are able to bring us someone with a sincere
11 proposal which we will find acceptable to make a deal with
12 you.

13 Now, when you mentioned the one month, was
14 that the June 30 date that you were talking about?

15 A Yes.

16 Q Then in your last sentence you say: Again, and
17 sadly, you have not produced anything of real value to date.

18 Do you recall writing that letter?

19 A Absolutely.

20 Q And as of May 27, 2004, had you -- you or
21 Mr. Trump received any proposal from anybody?

22 A No.

23 Q Now, there came a time in --

24 MR. GOLDMAN: Withdraw that for a second.

25 If I can see -- I believe it's Exhibit 23.

26 (Pause.)

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1 Ross - by Plaintiff - Cross

2 MR. GOLDMAN: Hold on a second, I may be
3 mistaken.

4 (Pause.)

5 MR. GOLDMAN: Eighty-eight. I apologize.
6 Eighty-eight.

7 THE COURT: Eighty-eight.

8 BY MR. GOLDMAN:

9 Q Do you want to take a moment to look at it?

10 A Yes.

11 Q Just tell me when you're ready, Mr. Ross.

12 (Pause.)?

13 A Okay.

14 Q You've read it?

15 A Yes.

16 Q Now, let me read the first paragraph to you from
17 Mr. Danzer on June 8 of 2004. Dear George, thank you for
18 your letter clarifying the situation with Mark Burnett's ex
19 wife. I have passed this information along to Ken Wyse at
20 Phillips Van Heusen and continue to push for their proposal.

21 Now, in that sentence the letter they are
22 talking about is your May 27, 2004 letter?

23 A Yes.

24 Q He goes on to say: To address the other points in
25 your letter, I am also extremely disappointed in the lack of
26 results from me and ALM pertaining to this project. As you

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1 Ross - by Plaintiff - Cross

2 know, I have been working diligently with Mark Hager at ALM
3 to bring deals to the table for Trump Apparel.

4 Let me take that sentence: As you know, I
5 have been working diligently with --

6 MR. ITKOWITZ: Objection. He just read it.
7 He's going to read it again?

8 THE COURT: He's going to ask a question
9 about it.

10 I'll allow it.

11 Q Did you know that Mr. Danzer has been working
12 diligently to bring deals to the table?

13 A No. No, absolutely not.

14 Q He then goes on to say: We got close several
15 times only to be turned down and disappointed by the
16 companies we were so certain would come to the table with
17 viable proposals.

18 Were you aware prior to receiving this letter
19 how close and how viable any proposal was that Mr. Danzer
20 had ever gotten?

21 A No. There were no deals that I know of that got
22 close or even proposed.

23 Q Now, he's going to go on to explain -- and he puts
24 it in all caps: WHY we have been unable to do so.

25 Does he say in the letter that he believes,
26 through the industry, what I'll quote, word and deed, close

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 quote, that there was some deal promised to Marcraft. Do
3 you see where he says that?

4 A Yes.

5 Q As of June 8, 2004, was any deal promised to
6 Marcraft?

7 A No.

8 Q Were there discussions with Marcraft?

9 A Yes.

10 Q And under the signed memorandum of understanding
11 and under the signed extension of memorandum of
12 understanding, was Donald free to do his own deals?

13 A Absolutely.

14 Q Now, at some point in time, did you enter into a
15 contract with Marcraft?

16 A Yes. With PVH.

17 Q No, with Marcraft, did you enter into a contract
18 with Marcraft for suits?

19 A Yes, I'm sorry.

20 Q And were you shown samples of the suits before you
21 ever entered into that contract?

22 MR. ITKOWITZ: I'm going to object on
23 relevancy. It has nothing to do with the direct, it's
24 way beyond the scope.

25 THE COURT: Come up.

26 Give me an offer of proof on this.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 MR. GOLDMAN: Okay.

3 (Whereupon, there's a sidebar discussion off
4 the record, out of the hearing of the jury.)

5 THE COURT: Let me have you in the back,
6 please.

7 (The following was heard in the robing room.)

8 THE COURT: Let me have an offer on this.

9 MR. GOLDMAN: Sure.

10 It is Mr. Ross's testimony that he's got
11 nothing but excuses, number one, from Mr. Danzer.
12 Number two, that there were no deals being done and
13 Mr. Danzer's response is, the reason I have not been
14 able to do any deals for you is because of, I'll call
15 it the Marcraft issue. And there are writings in
16 evidence. This document is already in evidence that
17 speaks to, at least as of June 8th, this allegation
18 that they or ALM and Danzer have been unable to do
19 anything effectively by virtue of that.

20 I believe Mr. Danzer will testify -- I'm
21 sorry, Mr. Ross will testify, and it is part of my
22 case, that based upon their perception of the work that
23 ALM had done, ALM/Danzer had done, there is no way that
24 they were going to enter into what has been
25 characterized as an August 23 modification that is not
26 PVH specific, and that only refers to any deal that

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 they ever bring at 10 percent with no termination
3 period. That is a component of what I will be arguing
4 to the jury as to why they never would have agreed to
5 what it is that he is proposing, which is a general
6 modification of the signed writing.

7 MR. ITKOWITZ: Your Honor, with all due
8 respect, not only is it way outside of the direct case,
9 but this kind of inquiry is just -- only serves to
10 prolong unnecessarily the trial. Because --

11 MR. GOLDMAN: That's a pot.

12 MR. ITKOWITZ: Wait a second, because now he
13 is going to talk -- he wants to talk about Marcrafft,
14 now my client is going to want to talk, I can
15 guarantee, my client is back there, he'll say start
16 talking about Peerless.

17 THE COURT: Look, the point he's trying to
18 make is this, all right? He's trying to make that
19 because of the relationship that Danzer had with Ross,
20 that Ross would never have entered into a general
21 contract with Danzer. In other words, the idea that
22 nothing would be in writing or would have been verbal
23 or something like that, that goes out the window when
24 there was so much previous problems with the
25 relationship. That's what he's trying to prove.

26 MR. ITKOWITZ: I understand that, but you

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 know also, the evidence is in the case that there were
3 two deals cooking in August, one was Coty and one was
4 PVH. Now, if he wants to start talking about what a
5 bad job we were doing with respect to other companies,
6 he's opening the door for me to have my client and Jeff
7 Danzer testify extensively about how Trump breached --
8 was in breach of its agreement by pursuing Marcraft
9 without involving us, and by refusing, by the way, to
10 go with Peerless, who they ultimately did a deal with
11 in 2012, who was the premiere suit maker, who my client
12 could have brought a deal to. So we're going to go
13 down this road now, and I don't think it's germane to
14 the primary issue in this case, which is whether this
15 deal got made.

16 MR. GOLDMAN: Just very briefly, on the issue
17 of credibility it is all about what happened in August
18 of 2004 and what one's motives would have been to
19 either tell the truth or not tell the truth, number
20 one.

21 Number two, a quote, a famous jurist, what
22 happened with Peerless eight years later is of no
23 consequence because Mr. Trump was free to do his own
24 deals at any point in time, regardless. So you
25 withdrew your claim for Marcraft on the eve of trial
26 because you chose that it wasn't worthy of merit. That

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 doesn't mean that Marcrafft, with documents in evidence,
3 goes out the door. You chose not to sue for it. So
4 you can make all hey you want, you're not suing for it.
5 It goes to credibility.

6 THE COURT: The problem that you have -- the
7 only problem I really see with this is, you say it goes
8 to credibility but he is your witness. He was called
9 by him, as is often done in civil cases as a hostile
10 witness. He remains --

11 MR. GOLDMAN: Adverse, I prefer adverse. He
12 wasn't hostile. But he attacked his credibility, and
13 I'm entitled not to wait days to rehabilitate his
14 credibility. I have every right to examine him on
15 credibility issues as to what he created.

16 THE COURT: But let me ask you this question.
17 Like everything else is there is another way to skin
18 this cat, and that is instead of getting into the
19 Marcrafft issue, is there another way that you could
20 redo the same thing without getting into this letter
21 and the next letter.

22 MR. GOLDMAN: What I suggest I will do is
23 based upon -- what I would want -- rather than getting
24 into details based upon what Mr. Danzer was saying to
25 you about the Marcrafft, was there an impression as to
26 the truthfulness of that. I just need to get his

 Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 impression of Danzer's allegations concerning that and
3 what impact, if any, it had on his decision-making.

4 That's all I want.

5 THE COURT: Let's limit it to that and for
6 that I'll allow it.

7 MR. GOLDMAN: Okay.

8 (The following was heard in open court.)

9 THE COURT: All right. Please continue.

10 MR. GOLDMAN: Thank you.

11 Q Getting into -- you read that exhibit in evidence?

12 A Yes. It's a letter of June 8.

13 Q Right.

14 With respect to the allegations that
15 Mr. Danzer made regarding Marcraft, based upon what you knew
16 about Marcraft, what was your impression of Mr. Danzer's
17 comments in this letter to you about Marcraft?

18 A Well, my impression was that he was angling to get
19 something from the Marcraft deal even though he was not the
20 party that made the deal, or the agent. Mr. Trump made it
21 direct himself. We didn't have an outside agent. And it
22 indicated to me that Danzer was angling to get paid if the
23 Marcraft deal got made.

24 Q And the Marcraft deal did get made, did it not?

25 A Yes, it did.

26 Q And isn't it true that Mr. Trump was sued for the

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 Marcraft deal, is it not?

3 A Is what?

4 Q Isn't it true that Mr. Trump was sued --

5 THE COURT: That I'm going to sustain.

6 Q What he said about the Marcraft deal in this
7 letter, was it truthful or untruthful?

8 A It was untruthful.

9 Q He says in the letter, I quote: By definition,
10 the Trump Organization has no right to enter into or
11 initiate any deal, even in principal, during the exclusive
12 period to be effected and executed upon the expiration of
13 ALM's agreement on June 30, 2004.

14 Is that a truthful statement or untruthful
15 statement?

16 A It's an untruthful statement.

17 Q Now, in the third paragraph of this June 8, 2004
18 letter, Mr. Danzer writes: At our initial meeting on
19 March 24, you mention that the Trump Organization had lost
20 faith in ALM.

21 Is that a truthful statement?

22 A Oh, yes.

23 Q And he then goes on to say: And because of this
24 had, quote, taken matters into their own hands to secure a
25 deal for Trump Apparel, close quote.

26 Now, did you say, quote, taken matters into
 Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 their own hands to secure a deal for Trump Apparel, close
3 quote. Is that an exact quote, what was said?

4 A I don't know if it's exact by any means but the
5 concept is there.

6 Q Tell us, what is it that you had said?

7 A I had said to him that there was nothing in the
8 agreement that prohibited Mr. Trump from doing deals
9 directly. He couldn't hire another agent but he could do it
10 directly, and that is what the agreement didn't prohibit.

11 Q There's another sentence in which he writes,
12 quote -- on page 2, second line: The fact is ALM was
13 working very hard to successfully live up to its end of the
14 bargain while you believed that we were stagnating.

15 Let me take that sentence in two parts. Did
16 you believe ALM and Jeff Danzer were stagnating?

17 A Yes.

18 Q Were you aware or did you have any knowledge of
19 the fact of how hard or successful -- or how hard that ALM
20 was working?

21 A I had no -- other than what they said, I had no
22 knowledge that that was, in fact, true.

23 Q Now, further on in that first paragraph in
24 Mr. Danzer's June 8, 2004 letter, he writes: Unfortunately,
25 when I wrote to you and asked for your assistance in the
26 matter, my request was met with resistance. Yes, you did

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 write the letters attesting to the fact that, quote, ALM was
3 the exclusive licensing agent, close quote, for the deal,
4 and that, quote, no deal had been agreed to or signed,
5 quote, but you refused to work -- all cap -- WITH -- end,
6 all cap -- me as requested in my letters to you and
7 subsequent conversations with you in order to bring the best
8 deal to Mr. Trump.

9 Did you at any point in time, through June 8
10 of 2004, refuse to work with Mr. Danzer on any potential
11 deal?

12 A No.

13 Q He then says: Granted, you had no, quote,
14 obligation to work with me, as you stated during one of our
15 calls. However, I was most disappointed when you refused to
16 meet with Ronnie Wurtzburger, the president of Peerless to
17 allay his concerns and discuss the project.

18 It is truthful that you refused to meet with
19 Peerless, is it not?

20 A Yes, it's truthful.

21 Q And isn't it truthful that you wanted a proposal
22 before you would meet with Peerless?

23 A That's true as to Peerless and any other
24 prospective licensee.

25 Q And isn't it true that Peerless didn't want to
26 give you a proposal until you met with them first?

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 A That's correct.

3 Q And then as Mr. Danzer writes, I'm quoting:

4 Unfortunately there was a catch 22 that went nowhere.

5 That would be a fair statement with respect
6 to Peerless?

7 A Yeah, that's a fair statement.

8 Q Did -- would it -- at some point in time after the
9 June 8, 2004 letter, after you received that letter, and
10 before the PVH meeting in the end of June, you and
11 Mr. Danzer spoke?

12 A Yes.

13 Q Did you speak about the letter that you had just
14 gotten with respect -- the June 8 letter? Did you talk to
15 him about the June 8 letter?

16 A Yes, absolutely, we talked about that.

17 Q In some substance, can you tell us what you said
18 to Mr. Danzer, having received the June 8, 2004 letter?

19 A I already told him basically this is what he said
20 he did. I don't have any evidence that he did. We don't
21 have any proposals, I don't have any faith in his ability to
22 deliver something, and my personal feeling, I told him, was
23 that in my mind -- I didn't tell him this, but in my mind
24 the purpose of the letter that he had was to set up a
25 potential lawsuit for interference with his contract. That
26 was in my mind.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 Q Now, there did come a time that you met with PVH,
3 you were asked questions about this on June 24, 2004,
4 correct?

5 A Correct.

6 Q And at that meeting Mr. Trump was not there. Is
7 that correct?

8 A That's correct.

9 Q Putting aside for the moment --

10 MR. GOLDMAN: Withdrawn.

11 Q You did just mention that you didn't want to meet
12 with Peerless unless they had given you a proposal, correct?

13 A Correct.

14 Q Now, you did meet with PVH without a proposal. Is
15 that correct?

16 A That's correct.

17 Q Can you tell us why you met with PVH without a
18 proposal but would not meet with Peerless unless you had a
19 proposal?

20 A Yes, because Peerless was talking about men's
21 suits and we were talking to Marcraft at the time, so I
22 didn't think it was appropriate to start negotiations with
23 Peerless if, in fact, we didn't have a proposal. PVH was
24 there primarily for shirts and ties and they had the
25 reputation, that was an entirely different transaction and
26 we were interested in them.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 Q At the June 24, 2004 PVH meeting, some of the -- I
3 think you testified on direct that some of the terms were
4 discussed that would lead to the PVH deal?

5 A Yes. Loosely that's true.

6 Q Now, ultimately -- and at the conclusion of that
7 meeting, did you, within a week or a couple of weeks within
8 June 24 to early July, did you get any proposals from PVH at
9 that point?

10 A I don't remember a proposal coming. There was a
11 substantial delay until we did get a written proposal.

12 Q Now, is it fair to say that the June 24 meeting
13 with PVH was six days before the exclusive period under the
14 signed writings was to expire, correct?

15 A Yes.

16 Q And it was your understanding that having brought
17 PVH in six days before, that had ALM ultimately satisfied
18 the signed writings, the requirements of the signed writings
19 over -- and over the next 30 days -- I'm sorry, over the
20 next 90 days, through September, had there been a deal
21 signed by the end of September they, ALM, would have gotten
22 a fee?

23 A Yes.

24 Q And the fee would have been whatever the signed
25 contract was, which was 22.5 percent or -- on a 25 million
26 minimum, et cetera?

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 A That's correct.

3 Q And I believe you testified in response to
4 counsel's questions that they would be entitled to zero
5 under the signed writings even if they brought PVH to the
6 table before June 30, if the agreement was signed in
7 November and still satisfied the acceptable license
8 requirements they would get zero, because it wasn't by
9 September 3rd?

10 MR. ITKOWITZ: Objection, calls for
11 speculation.

12 MR. GOLDMAN: No, it doesn't.

13 MR. ITKOWITZ: Yes, it does.

14 THE COURT: I'm going to sustain the
15 objection. The question is too complex.

16 MR. GOLDMAN: I'll try to make it simpler.

17 Q Would it be fair to say under the agreement that
18 you were questioned extensively by plaintiff's counsel this
19 morning, under that agreement, had PVH -- PVH came to
20 Mr. Trump on June 24, it ultimately got negotiated and a
21 deal was signed on November 30, which is two months after
22 the tail period, under the signed writings if the PVH
23 agreement satisfied the acceptable license requirements but
24 was after the tail period, would ALM be entitled to a fee?

25 MR. ITKOWITZ: Objection.

26 THE COURT: I'm going to sustain that

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 objection.

3 MR. GOLDMAN: We'll go backwards.

4 Under what circumstances could ALM get a fee
5 under the signed writings?

6 A If they produced a proposal which met the
7 threshold questions.

8 Q What was the period between the exclusive period
9 and the tail period? What was to happen under that period
10 of time?

11 A Under that time you had to get a signed agreement
12 that was acceptable to Mr. Trump meeting those
13 qualifications.

14 Q And if there was no signed agreement during the
15 tail period, the signed agreement only occurred after the
16 tail period, if there was no signed agreement during the
17 tail period does ALM get a fee?

18 A No.

19 MR. ITKOWITZ: Objection.

20 MR. GOLDMAN: Can we approach so I don't get
21 interfered with, can we please approach?

22 THE COURT: That was an uncalled for remark.
23 If you want to approach just ask.

24 MR. GOLDMAN: May we approach?

25 THE COURT: Yes.

26 And Mr. Ross, every time they come up.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 (The following was heard in the robing room.)

3 MR. GOLDMAN: You permitted him to
4 extensively examine this witness on the tail, what was
5 required, if he'd be happy with 22.5. We spent time
6 and time --

7 THE COURT: I agree with you.

8 MR. GOLDMAN: And notwithstanding my
9 objection, which I believe was incredibly valid, that
10 he improperly asked question after question about a
11 merger clause that's not even in the agreement and that
12 has nothing to do with this case. I'm simply now
13 asking him questions about how ALM would be entitled to
14 a fee under the agreement or not entitled to a fee
15 under the agreement, and I am being objected to every
16 time to that question. That's just not proper. I know
17 why he wants to do that but I'm entitled to ask those
18 questions, and it's not beyond the scope of direct in
19 quotes, it's exactly what he did.

20 THE COURT: Yes, but you see your problem is
21 this, okay? Your problem is that you're not really
22 cross examining the witness, which is what you are
23 doing, and there's been no objection so I've not said
24 anything, but it is not really up to you to
25 cross-examine this witness. You are to examine this
26 witness. There's a very fine line but you have been

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 doing only cross, only.

3 No objection so you get away with it, okay?

4 So that's the problem. But the problem with what

5 you're saying, how you're asking it is you're asking

6 through this convoluted question, which is rather

7 convoluted.

8 MR. GOLDMAN: The first one was I agree with

9 you.

10 THE COURT: The second was a little less, but

11 nevertheless it had its points. You're asking him in

12 the end do you agree with me, and the answer is yes.

13 And the point is the problem with that is that you're

14 asking him for an opinion. Now, you objected to his

15 asking for opinions and when he makes that objection I

16 think that you're in trouble with that, too.

17 MR. GOLDMAN: Let me just say I did not ask

18 him for his -- so the record is clear, at no time did I

19 ask him do you agree with me, I said would this happen,

20 would they get a fee, I didn't say isn't it true.

21 THE COURT: You're very suave as a lawyer, I

22 have to congratulate you, but nevertheless, the bottom

23 line to what you're doing is indeed an attempt to use

24 this witness to have him interpret the language of that

25 particular letter.

26 MR. GOLDMAN: The agreement, that's what he

 Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 did.

3 THE COURT: But you see the difference is,
4 there is a difference here, and that is that this is
5 your witness. This is not -- this is not an adverse
6 witness, it is your witness. And as such you really
7 should be conducting more of a direct examination,
8 despite the fact that you're doing it on cross, I
9 understand that. But you should be doing more of a
10 direct examination, letting him form his opinions.

11 MR. GOLDMAN: I don't think any question was
12 leading, all I said was if the agreement was signed
13 after November 30 -- after September 30 are they
14 entitled to a fee. The answer is I didn't put an
15 answer into his mind. That couldn't be a more direct
16 question, under the agreement are they entitled to a
17 fee?

18 THE COURT: But I think the problem is that
19 you have to say that in your opinion, because you see
20 here's the problem, he is not -- he is not -- well, you
21 pointed out to me he may be a lawyer but he's not an
22 expert.

23 MR. GOLDMAN: Oh, expert on -- I don't think
24 any lawyer is an expert on merger clauses.

25 MR. ITKOWITZ: What are you talking about,
26 he's a real estate guy. I bet you every single deal he

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 does has a merger clause.

3 MR. GOLDMAN: It wasn't the issue, it's a
4 folly.

5 MR. ITKOWITZ: May I be heard? Here's my
6 problem with his line of questioning. I can tell you
7 from experience that certain contractual clauses,
8 while they may be on their face are not necessarily
9 enforceable. In other words, take an option clause,
10 you could have a lease that says very simply, I'm sure
11 Mr. Goldman would understand this, you can have a lease
12 that says you have to exercise an option by such and
13 such a date or you lose it. You go to court, courts
14 don't enforce that provision.

15 THE COURT: You don't know that.

16 MR. ITKOWITZ: I do know that.

17 MR. GOLDMAN: Come on.

18 MR. ITKOWITZ: Courts will give a liberal
19 interpretation. So if he says -- I'm telling you if
20 there was a 25 million-dollar fee, okay, and it got
21 executed on November 30th, if there was a 25 million
22 deal, 25 million-dollar deal, I think that would well
23 be a litigated issue.

24 MR. GOLDMAN: I'm sure it would be with your
25 client, yes.

26 MR. ITKOWITZ: With any client.

Donna Evans, Official Court Reporter

1 Ross - by Plaintiff - Cross

2 MR. GOLDMAN: Okay, that has nothing to do
3 with your question.

4 MR. ITKOWITZ: Then what would happen is a
5 Judge would decide. So you're asking him essentially
6 for a legal conclusion.

7 THE COURT: But he has the right to have --
8 look he was -- indeed you did, so I think there is an
9 opening of the door. But I think you have --

10 MR. GOLDMAN: I will ask direct questions.
11 I'm not going to ask leading questions. Let me just
12 say I do not think if an agreement was signed after the
13 tail period would they be entitled to a commission,
14 that's not leading, that's not putting an answer in
15 his -- it doesn't say do you agree with it, fair to
16 state that?

17 MR. ITKOWITZ: I'm going to go back --

18 THE COURT: He's going to go back and
19 reoffer.

20 MR. ITKOWITZ: I'm trying to --

21 MR. GOLDMAN: You're not trying to make
22 anything quicker here. Please. Please don't say that
23 again.

24 THE COURT: That is really outrageous. You
25 have been the slowest human being I've ever heard as a
26 litigant. Please.

Donna Evans, Official Court Reporter

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Ross - by Plaintiff - Cross
Off the record for a second.
(Discussion off the record.)
(The following was heard in open court.)
(Continued on next page.)

Donna Evans, Official Court Reporter

Proceedings

1
2 THE COURT: Okay. What we are going to do right
3 now is take a -- let's give it a ten-minute break for this
4 afternoon. Please don't discuss the case amongst yourself.
5 Keep an open mind. Ten minutes from now will make it --
6 well, not quite ten minutes. It's a nine-minute break, all
7 right.

8 Don't discuss the case. Keep an open mind, please.
9 I forgot to tell you that.

10 (Whereupon, the jury exits the courtroom and the
11 following transpired:)

12 (Whereupon, a recess was taken.).

13 MR. GOLDMAN: Mr. Ross is not going to be able to
14 be here tomorrow, because he has a doctor appointment. I'm
15 not looking to waste time. I don't see any prejudice to
16 take Mr. Trump out of turn.

17 THE COURT: Would that be okay? As long as status
18 quo stays. Just because we're going to have Mr. Trump
19 doesn't change the potential.

20 MR. GOLDMAN: I don't know how long the potential
21 is going to be there for, but it won't change it between now
22 and tomorrow.

23 THE COURT: Okay. I'm not going to telling that to
24 the jury until tomorrow. I'm going to tell them we're
25 continuing tomorrow, that's all.

26 MR. GOLDMAN: Okay. Mr. Ross, we're going to keep

Proceedings

1
2 you in the status quo right now.

3 THE COURT: All right. Thank you, jurors. Please
4 be seated. Jurors, there are occasions during the course of
5 a trial that legal issues develop that require the judge to
6 make legal decisions, and as I told you at the very
7 beginning those decisions are always made outside the
8 presence of the jury. And you may say, well, what's
9 happened, why can't I know what's going on. Well, in fact,
10 you can't, okay. So that's the end of that. That is what
11 we were doing before I sent you out. We had these issues
12 that we had to deal with.

13 So what I'm going to ask you tonight is to go home,
14 rest up and guess what? Now, anybody have a cat? Anybody
15 has a cat? Not one cat? You have a cat.

16 THE JUROR: Yes, Your Honor.

17 THE COURT: I thought you have a dog, two dogs.

18 THE JUROR: I have two dogs and a cat.

19 THE COURT: A person after my own heart. But the
20 cat is going to say to you tonight meow, meow, meow; isn't
21 that what the cat says? What are you going to say to that
22 cat? You're going to say to that cat, no, I can't tell you
23 anything about it, because you made me promise I'm not going
24 to tell you anything about it. Despite the fact that we had
25 to wait for nothing this afternoon, I'm not even going to
26 tell you that, okay.

Proceedings

1
2 So keep an open mind, please, and come back
3 tomorrow. We'll try to get started at 9:30. I'm working
4 tonight, so that's what I'm going to do. So, thanks again.
5 Open mind, don't talk about the case with anybody. Don't
6 forget.

7 (Whereupon, the jury exits the courtroom and the
8 following transpired:)

9 THE COURT: Okay. You may step down, Mr. Ross, and
10 good luck tomorrow. All right, let's go in the back.

11 (Whereupon, the matter was adjourned to April 12,
12 2013 at 9:30 a.m.)

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