

CHUMS_CABLZ_0052018-00009-TM

Andres, Kenneth and ASA

7/17/2014

Full-size Transcript

Prepared by:

Mary Jane Berg
STOEL RIVES LLP

Thursday, January 15, 2015

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4 CASE NO.: 2:14-CV-00091

5 CABLZ, INC.,

6 Plaintiff/Counterclaim
7 Defendant,

8 vs.

9 CHUMS, INC.,

10 Defendant/Counterclaim
11 Plaintiff.

12 _____ /

13 VIDEOTAPED

14 DEPOSITION OF: Kenneth Andres and ASA

15 DATE TAKEN: July 17, 2014

16 TIME: 1:36 p.m. - 3:55 p.m.

17 PLACE: Embassy Suites
18 8978 International Drive
19 Orlando, Florida 32819

20 REPORTED BY: Lori Francis, RPR, FPR and
21 Notary Public
22
23
24
25

1 APPEARANCES:

2 APPEARING ON BEHALF OF THE PLAINTIFF/
3 COUNTERCLAIM DEFENDANT:

4 JOSEPH S. BIRD, III, ESQUIRE
5 Bradley, Arant, Boulton, Cummings, LLP
6 1819 Fifth Avenue North
7 Birmingham, Alabama 35203
8 jbird@babco.com

9 APPEARING ON BEHALF OF THE DEFENDANT/
10 COUNTERCLAIM PLAINTIFF:

11 LANDON A. ALLRED, ESQUIRE
12 Stoel Rives, LLP
13 201 South Main Street
14 Suite 1100
15 Salt Lake City, Utah 84111
16 laallred@stoel.com

17 APPEARING ON BEHALF OF THE AMERICAN
18 SPORTFISHING ASSOCIATION AND
19 KENNETH ANDRES:

20 MARC M. GORELNIK, ESQUIRE
21 Law Offices of Marc M. Gorelnik
22 8042 Terrace Drive
23 El Cerrito, California 94530
24 marc@gorelniklaw.com

25 ALSO PRESENT: Shawn Lane, Videographer

I N D E X

EXAMINATIONS

DIRECT CROSS REDIRECT RECROSS FURTHER

Mr. Bird 6 92

Mr. Allred 60

Certificate of Reporter..... 95

Certificate of Oath..... 96

EXHIBITS

Page Line

ASA Exhibit 1..... 5 2

(Notice to take 30(b)(6) deposition of ASA)

ASA Exhibit 2..... 5 3

(Subpoena to testify in a civil action)

ASA Exhibit 3..... 14 2

(New product showcase literature)

ASA Exhibit 4..... 22 6

(Voting ballot for 2009 new product showcase)

ASA Exhibit 5..... 26 2

(ASA web site page)

ASA Exhibit 6..... 26 4

(ICAST web site page)

ASA Exhibit 7..... 32 25

(ICAST web site page)

1	ASA Exhibit 8.....	37	8
2	(ICAST web site page)		
3	ASA Exhibit 8A.....	41	12
4	(Composite of ICAST 2009 new product showcase		
5	entry forms)		
6	ASA Exhibit 9.....	44	16
7	(ASA web site page)		
8	ASA Exhibit 10.....	46	9
9	(ASA web site page)		
10	ASA Exhibit 11.....	48	18
11	(ASA web site page)		
12	ASA Exhibit 12.....	50	4
13	(ASA web site page)		
14	ASA Exhibit 13.....	61	15
15	(Color photographs of Mark Sosin)		
16	ASA Exhibit 14.....	66	21
17	(ICAST 2007 buyers' guide)		
18	ASA Exhibit 15.....	67	23
19	(Color photographs of Mark Sosin)		
20	ASA Exhibit 16.....	78	14
21	(2009 winners in the new product showcase)		
22	ASA Exhibit 17.....	84	10
23	(Color photograph)		
24			
25			

P R O C E E D I N G S

(ASA Exhibit 1 marked for identification.)

(ASA Exhibit 2 marked for identification.)

THE VIDEOGRAPHER: This begins videotape No. 1 in the deposition of Kenneth Andres in the matter of Cablz, Inc. versus Chums, Inc. We are on the record at 1:35 p.m., Thursday, July 17, 2014.

This deposition is taking place at 8978 International Drive, Orlando, Florida. My name is Shawn Lane. I'm representing Freedom Court Reporting. Will counsel please introduce themselves and state whom they represent.

MR. BIRD: I'm Joe Bird and I represent Cablz, Incorporated.

MR. ALLRED: Landon Allred for Chums. As we discussed off the record, any objections made by counsel for ASA, I will deemed to have join without having to state join.

MR. GORELNIK: My name is Marc Gorelnik and I'm here on behalf of the American Sportfishing Association.

THE VIDEOGRAPHER: Will our court reporter please swear in our witness.

KENNETH ANDRES,

1 having been first duly sworn to tell the truth, was
2 examined and testified upon his oath as follows:

3 THE WITNESS: I do, I will.

4 DIRECT EXAMINATION

5 BY MR. BIRD:

6 Q Good afternoon, Mr. Andres. My name is Joe
7 Bird and I represent Cablz and I appreciate you being
8 here. I have given you and your lawyer two exhibits.

9 A Uh-huh.

10 Q And just for the record, Exhibit 1 is the
11 notice of deposition for ASA, which is a 30(b)(6)
12 corporate deposition notice. And are you being
13 tendered as a witness on all of those topics in our
14 notice?

15 MR. GORELNIK: If the question is to me?

16 MR. BIRD: Yes.

17 MR. GORELNIK: Mr. Andres will respond to
18 all the topics in Cablz' notice.

19 MR. BIRD: Okay.

20 BY MR. BIRD:

21 Q I have also marked Exhibit 2, which is the
22 subpoena and list of documents requested by Chums,
23 Incorporated. Now, I want to thank you both for
24 producing documents last week. And my understanding is
25 that there were 553 documents that were produced and I

1 think the bulk of them were for Cablz and then there
2 were some at the end that were for Chums. That's the
3 way I recall.

4 I wanted to ask you, have you produced --
5 have you made a personal search and looked through your
6 files and discussed with your lawyer -- I don't want to
7 know what you talked with him about -- but are you able
8 to make an affirmation that the documents that you
9 produced are all the ones that are responsive in your
10 possession at ASA?

11 A Yes, I did.

12 Q All right. Thank you very much.

13 Let me ask you this: With respect to
14 Exhibit 2, if you'd look at the end, the last page,
15 request No. 10.

16 A Okay.

17 Q Let me read it for the record. It says
18 documents sufficient to show all rigid eyewear
19 retainers considered for best of show award at ICAST.

20 MR. BIRD: Marc, I didn't see any documents
21 produced and I suppose that there were none that
22 were responsive.

23 MR. GORELNIK: I'd let the witness answer
24 that question.

25 MR. BIRD: Okay.

1 THE WITNESS: No, none that I found.

2 MR. BIRD: Okay. Thank you.

3 BY MR. BIRD:

4 Q Who is your employer, please, sir?

5 A American Sportfishing Association.

6 Q What is your position?

7 A I'm the trade show director.

8 Q How long have you been in that position?

9 A For three years.

10 Q So when did you start?

11 A October 2007.

12 Q Okay. Three years ago would have been 2011.

13 Were you in another position at ASA prior to 2011?

14 A I was.

15 Q What was that position?

16 A I was the trade show associate.

17 Q Okay. Who was -- who was the director at
18 the time?

19 A Maria Del Valle.

20 Q Is she still at ASA?

21 A No, she's not.

22 Q Do you know where she is located?

23 A I do not.

24 Q How do you spell her name?

25 A D-E-L-V-A-L-L-E. The first name is Maria,

1 M-A-R-I-A.

2 Q Did you work closely with her on the trade
3 show?

4 A I did.

5 Q And were you involved in the new product
6 showcase in 2009 as the associate?

7 A I was.

8 Q Okay. Now, what does -- what does the trade
9 show director at ASA do?

10 A I oversee the trade show for the
11 association. It's produced annually.

12 Q That's ICAST?

13 A Correct.

14 Q What does ICAST stand for?

15 A International Convention of Allied
16 Sportfishing Trades.

17 Q And is it the world's largest sportfishing
18 trade show?

19 A It is.

20 Q All right. Is there anybody that comes in
21 second? I mean, you-all are far and away the leader?

22 A We're the biggest that we know. That's what
23 we say.

24 Q When was ASA founded, to your knowledge?
25 More than 50 years ago?

1 A Yes, that's correct.

2 Q Has ICAST been going on as a trade show for
3 more than 50 years?

4 A ICAST -- the trade show for the industry has
5 been going on for longer than 50 years.

6 Q It might have had a different name?

7 A That's correct.

8 Q And tell me about the membership of ASA.
9 What -- who belongs?

10 A The trade association is made up mostly of
11 manufacturers.

12 Q And do you know approximately how many
13 members belong to ASA?

14 A An approximate amount of about 650 members.

15 Q All right. So the members --

16 A That's currently.

17 Q Okay.

18 A Yeah.

19 Q Has that been an approximate number that's
20 been good for several years?

21 A Yes.

22 Q It hasn't gone way up or way down?

23 A No, it hasn't. It's probably right around
24 that area.

25 Q And so the members or the manufacturers who

1 join in order to display their goods at ICAST and do
2 other things that the trade association does?

3 A Yeah. The membership does exhibit -- most
4 of the membership does exhibit at the trade show, yes.

5 Q Does -- but there are many other people that
6 come besides members, correct?

7 A That's correct.

8 Q And do you know the attendance this year?

9 A Total attendance is over 11,000.

10 Q Wow. And so can you break it down roughly
11 into categories as to how many people represent
12 manufacturers and how many people represent retail
13 organizations and the media and that sort of thing?

14 A Sure. I'd say about -- for ASA we're at 480
15 manufacturers or exhibitors at the show for this year.
16 The attendance-wise, you're looking at 3,500 exhibitors
17 who are part -- who are badged to attend the show or
18 exhibit at the show. Retailers, we have about 1,800
19 retailers who attend the show and 1,400 wholesalers.

20 Q When you say 1,800 retailers, does that mean
21 1,800 organizations or does that mean 1,800 people?

22 A Yeah, people.

23 Q Okay. And that's a little down from what it
24 had been in prior years? I had seen the number 2,200.

25 A That's -- well, you have to add those two

1 together. As far as buying groups are concerned,
2 buyers, these numbers are the highest ever.

3 Q Okay. Good, good. All right.

4 Now, many of your members come from
5 overseas, don't they?

6 A Yes, they do.

7 Q Are they spread throughout the world?

8 A They are.

9 Q Not just even North America but Europe and
10 the other major continents?

11 A Correct.

12 Q Do buyers come from all over the world?

13 A They do.

14 Q So it's -- ASA is a little bit of a
15 misnomer. Even though it's American Sportfishing
16 Association, it's really a completely international
17 organization?

18 A It is, the trade show.

19 Q Right. But the members -- are the members
20 all American or -- I thought you said some of the
21 members were international.

22 A Some of the members are international, yes.

23 Q Okay. Let's talk about the new product
24 showcase.

25 A Uh-huh.

1 Q You're on videotape, Mr. Andres, and I want
2 you to -- this videotape, I hope, will be played at the
3 trial in this case, so please tell the judge and the
4 jury in Alabama what the new product showcase is.

5 A The new product showcase is a feature at the
6 trade show where companies can put a product in a
7 conspicuous location on the show floor that is new for
8 that calendar year.

9 Q And is this the flagship feature of ICAST?

10 A It's been said that, yes.

11 Q I mean, is that -- that's been in your
12 literature and I seen some of the documents that you
13 produced today.

14 A Yes.

15 Q And by flagship feature, do you mean that
16 this is -- the presentation of new products is one
17 thing that really drives interest in coming to ICAST?

18 A Sure.

19 Q And obviously retail buyers are looking for
20 new and innovative products in order to drive
21 excitement in their stores and sell goods, right?

22 A (Witness nods head.)

23 Q You'll need to answer out yes or no.

24 A Yes, yes.

25 Q Now, I'm going to mark as Exhibit 3 a

1 document that you produced.

2 (ASA Exhibit 3 marked for identification.)

3 BY MR. BIRD:

4 Q This bears the Bates label ASA 0006 through
5 8. I'm sorry, through 9. It says new product showcase
6 at the top. This document was produced by you last
7 week. Tell us what this is, please, sir.

8 A The new product showcase forms that we
9 provide to our exhibitors that give information about
10 the new product showcase, including the entry form and
11 the rules and regulations.

12 Q And this was the one for 2009?

13 A That is correct.

14 Q And I'm just going to -- I'm going to try to
15 pick out some words in the first paragraph on the
16 left-hand column on the first page and just read along
17 with me. I'm not going to read the whole thing, but
18 would you say that the new product showcase reflects a
19 creative spirit?

20 A In what sense?

21 Q In the sense that -- it's your phrase. What
22 I'm -- what I'm first trying to get to is that it -- I
23 guess, that it represents creative product development.

24 A Are you referring to something that I said?

25 Q Yeah. In the second line it says creative

1 spirit.

2 A Yeah.

3 Q I'm not -- this isn't a -- you know, I don't
4 think it's a complicated question. It's just, does
5 that refer to the new products that are being
6 presented?

7 A I would say so. I mean, it's certainly part
8 of the new product showcase.

9 Q And a little bit further down it says that,
10 quote, "The New Product Showcase, sponsored by ESPN
11 Outdoors/BASS, is ICAST's flagship feature and
12 recognizes your innovation and rewards your
13 contribution to fishing through our best of show new
14 product awards competition," closed quote.

15 Is that right?

16 A That's what it says, yes.

17 Q The whole focus of the new product showcase
18 is on innovation; is it not?

19 A That's correct.

20 Q Let's talk -- go down the left column just a
21 little bit. It says under "Vie for the Prestigious
22 Best of Show Awards," and under that heading it says,
23 "During the first day of the show, buyers and
24 media-editorial attendees who visit the new product
25 showcase will evaluate each new product and grade them

1 based on their innovation, execution, workmanship and
2 practicality. The product with the most votes in each
3 of the 17 categories will be awarded best of show for
4 that category."

5 Did I read that correctly?

6 A That's correct. That's what it says.

7 Q Now, let's talk about -- we've talked about
8 buyers a little bit, but let's focus in on them.

9 A Uh-huh.

10 Q Are buyers -- tell us who buyers are. What
11 are -- who are they?

12 A So we classify them into two categories:
13 Retailers, and that's independent to big-box retailers,
14 something like your Cabellas or Wal-Mart, all the way
15 down to an independent retailer that's someone in their
16 local home shop. And then we also have the wholesaler
17 buyer, which is a distributor level, where they
18 warehouse the products or goods and distribute it there
19 from their location to retailers.

20 Q Is it your experience that buyers are often
21 looking for new products when they come to ICAST?

22 A Sure, yes.

23 Q All right. And do they find new products
24 and are orders written for new products at ICAST?

25 A They can be. I think a lot of relationships

1 are -- with new products, new companies that come, they
2 don't know who they are, but they do want to see the
3 new products so -- yes, so there is the possibility of
4 writing new orders there.

5 Q Ultimately whether the sale occurs at ICAST
6 or not, it's a sales-oriented show, correct?

7 A Correct.

8 Q It's people trying to sell products and
9 buyers coming to identify products to sell?

10 A Just like the trade show is a meeting place
11 for manufacturers to meet with buyers.

12 Q And is -- is ICAST -- let me put it this
13 way: Is -- are the ICAST best of show awards the
14 preeminent fishing industry product awards in the
15 world?

16 A I couldn't say that they are. I think it's
17 a trade show highlights new product at the -- for the
18 trade show. I mean, I'm sorry, the new product
19 showcase highlights new product at the trade show, yes.

20 Q Do winners sometimes view their public
21 relations and media campaigns around winning awards at
22 new product showcase?

23 A Yes.

24 Q And let's talk about another aspect of that
25 paragraph. We were talking about media-editorial

1 attendees as judges. Let me get this straight.

2 There are buyers and there are media people,
3 two categories of judges, correct?

4 A That's correct.

5 Q And how do people -- how does somebody
6 become qualified to judge as a media representative?

7 A Well, in order to vote as a media-editorial
8 person, they have to be qualified as one and what they
9 have to go through is a validation process, a process
10 or verification process. They would apply for
11 registration and media editorial under that
12 media-editorial category, and they would be verified by
13 providing us with information that we requested that
14 would say that they have -- that they are indeed who
15 they say they are, so a by line, a video or something
16 that they could produce to us.

17 Q And so -- let me ask you this: Was a
18 gentleman named Mark Sosin a member of the credential
19 media as a judge in 2009?

20 A I do not recall. He has been at -- I do not
21 recall 2009 -- I don't know if he voted.

22 Q Do you know him, Mr. Sosin?

23 A I do know him. I do know who he is, yes.

24 Q Did you know him before 2009 when you were
25 the trade show associate?

1 A I did.

2 Q Is he a well-known figure within ICAST?

3 A I think he's a well-known figure in the
4 boating and fishing industry.

5 Q Right. That's not different than ICAST,
6 really, is it?

7 A I mean -- I mean, the trade show is the
8 trade show and we have a lot of different people that
9 come through there.

10 MR. GORELNIK: Mr. Bird, let me object here.
11 Mr. Sosin was not a subject of your -- was not on
12 the list of topics. It is on the list of topics
13 for defendant's deposition and we have identified
14 a separate witness with regard to Mr. Sosin.

15 MR. BIRD: Okay.

16 MR. GORELNIK: So I would ask that you
17 address those questions to that witness as part of
18 your cross perhaps --

19 MR. BIRD: Okay.

20 MR. GORELNIK: -- during defendant's
21 deposition.

22 MR. BIRD: All right. I had my outline. I
23 didn't know you had a second witness coming.
24 We'll be happy to defer.

25 THE WITNESS: Thank you.

1 BY MR. BIRD:

2 Q But, generally, the people who are in the
3 media are very knowledgeable about fishing -- they're
4 knowledgeable in the boating and fishing industry; is
5 that correct?

6 A That's correct.

7 Q Do buyers from the following stores attend
8 ICAST? Let me just ask you some stores that are in
9 North Alabama where this case will be tried.

10 A Okay.

11 Q Academy?

12 A You're just talking about across the board,
13 or are you talking about specifically in 2009?

14 Q 2009.

15 A I don't know if they were, but they have
16 attended before.

17 Q Also Dick's Sporting Goods?

18 A Yes.

19 Q And Hibbetts?

20 A I'm not familiar with Hibbetts.

21 Q What about Wal-Mart?

22 A Yes.

23 Q So -- let me just ask it this way: Are
24 buyers in these larger organizations the specialists
25 within their companies for identifying which new

1 products to stock in their stores?

2 MR. ALLRED: Objection, lacks foundation.

3 BY MR. BIRD:

4 Q Do you understand the question?

5 A Could you repeat the question at this point?

6 I'm not --

7 Q Right. From your knowledge of buyers who
8 attend your shows, in the larger organizations, are
9 these buyers the specialists within these large retail
10 organizations charged with finding new products?

11 MR. ALLRED: Same objection.

12 THE WITNESS: As far as --

13 MR. BIRD: Go ahead.

14 THE WITNESS: As far as it's related to
15 fishing?

16 MR. BIRD: yes.

17 THE WITNESS: Yeah, for fishing products,
18 yes.

19 MR. BIRD: Okay. Great. I meant to limit
20 it to that.

21 BY MR. BIRD:

22 Q Are judges allowed to vote in all product
23 categories?

24 A Yes.

25 Q So there's not one set of judges for one

1 category and down the line?

2 A No. Each individual ballot has all the
3 categories on them, so the ballot is completed so that
4 it --

5 Q We're about to get to that.

6 (ASA Exhibit 4 marked for identification.)

7 BY MR. BIRD:

8 Q Let me mark -- I'm going to show you Exhibit
9 4 to your deposition, which is here.

10 A Okay.

11 Q Just for the record, this is ASA 0001 that
12 says at the top -- well, you tell me, Mr. Andres. What
13 is this document, please?

14 A This is the -- this is the voting ballot
15 that we had for 2009 for the new product showcase.

16 Q It lists all the categories and one of those
17 is apparel; is that correct?

18 A That's correct.

19 Q This ballot would have been given to the
20 individuals who were going through the new product
21 showcase area in order to decide which products to vote
22 for?

23 A Those who are qualified to vote, correct.

24 Q Right. And let me just go back to Exhibit 3
25 for a moment. At the top of the right-hand column it

1 says that -- essentially that exhibitors will not be
2 permitted in the new product showcase during the voting
3 period. Do you see that?

4 A That's correct.

5 Q Was that new for that year?

6 A It was new for -- yes, it was new for that
7 year, 2009.

8 Q Okay.

9 A Yes.

10 Q Now, let's just set the scene.

11 A Okay.

12 Q The products are in a dedicated area that is
13 marked as the new product showcase; is that correct?

14 A That's correct.

15 Q And there's, I think, like a 24-hour period
16 in which judges can come through and look at all the
17 products that are entered?

18 A Yeah. It's within a 24-hour period, but
19 yes.

20 Q And so during that 24-hour period,
21 exhibitors or entrants into the new product showcase
22 were not allowed to be in that area; is that correct?

23 A That is correct, during the voting period.

24 Q And that just prevents somebody from
25 promoting their product, button-holing somebody,

1 campaigning, trying to -- trying to out do somebody
2 else?

3 A Well, doing any of those things during the
4 voting period at the show, correct.

5 Q So -- so in this dedicated area for the new
6 product showcase entrants, the products are laid out.
7 And are they displayed as though they would be in a
8 retail setting?

9 A We ask for the products point of sale, as
10 they would be point of sale.

11 Q Right. Point of sale means as they would be
12 in the store?

13 A In a retail location, yes, in the packaging.

14 Q Right. Are there other special displays
15 that are available or just anything that would be
16 available only at the point of sale.

17 A We allow the product to be as it is point of
18 sale. We also allow the product to be displayed
19 outside if they would like to do that with the
20 packaging behind it and also a tent card that's
21 provided to provide information to the buyer or the
22 media-editorial person regarding what the product name
23 is and the company who is providing the product, the
24 product description and manufacturer's suggested retail
25 price and their booth location.

1 Q So the purpose of these rules in the
2 structure you've just outlined is to make it where the
3 product itself is being examined by people who don't
4 have anybody pushing them or trying to campaign to get
5 their vote; is that right?

6 A That's correct.

7 Q It's just a -- as much as you can, you're
8 trying to purify the product evaluation process?

9 A As pure as we can, right.

10 Q There's a lot of selling done outside,
11 right?

12 A There's no doubt about it.

13 Q Okay. Thank you.

14 This may be sort of implied from what we
15 just said. What you're trying to do is have the
16 judging done solely on the merit of the products
17 themselves?

18 A Without -- without any kind of influence
19 from -- without any outside influence, yes.

20 Q All right. And is it a secret ballot?

21 A It is -- the ballots are dropped into a box
22 and they're manually tabulated at that time.

23 Q Were you involved in the counting?

24 A I was overseeing the counting, yes.

25 Q Now, let's talk about -- let me mark first

1 Exhibit 5.

2 (ASA Exhibit 5 marked for identification.)

3 MR. BIRD: And Exhibit 6.

4 (ASA Exhibit 6 marked for identification.)

5 BY MR. BIRD:

6 Q If you'll let me read for the record,
7 Exhibit 5 bears ASA 00216 to 218 and Exhibit 6 bears
8 the number ASA 00539 to 541. Now, I'm not really going
9 to apologize for how small this print is because it's
10 how it was produced to us, but I've got my middle-aged
11 glasses on here. And if you can -- I'm just going to
12 ask you a few questions here if I can get my eyes to
13 focus.

14 It says that -- in the first paragraph, that
15 there were over 2,200 buyers and over 500 media
16 representatives who were -- those were going to be the
17 judges, correct?

18 A Those are the potential judges, yes.

19 Q People eligible to be judges?

20 A Correct. But in 2009, we limited it to one
21 vote per a buying entity.

22 Q Okay. That was new for that year?

23 A It was --

24 Q Okay.

25 A -- or media outlet, I should say, as well.

1 Q Okay. It says in the -- I think the fourth
2 line that these people, these -- all these folks that
3 you just -- we just talked about are gathered to see
4 the latest innovations in tackle gear and apparel and
5 network with the global sportfishing community.

6 Do you see that?

7 A Yeah. I know -- I recognize it. I just
8 don't see it.

9 Q It's about -- it's hard to read --

10 A Uh-huh.

11 Q -- because it's a little bit small, but it
12 just says -- beginning on the -- on the third line it
13 says, Including over 2,200 buyers and over 500 media
14 representatives are gathered to see the latest
15 innovations in tackle gear and apparel and network with
16 the global sportfishing community.

17 Do you see that?

18 A I do. I see that now.

19 Q Again, that's a focus on the innovations
20 that are coming out, right?

21 A That's right.

22 Q And in the next paragraph it says that --
23 I'm just going to read it because it will probably be
24 quicker. This year, the 52nd year of ICAST, the new
25 product showcase, the trade show's flagship event, was

1 more competitive than ever.

2 Do you see where I read from that?

3 A Yes.

4 Q Did I read it correctly?

5 A Yes.

6 Q Is it something that you wrote at the time?

7 A No, sir, it's not.

8 Q Okay. Did it come from your -- your boss?

9 A Yeah, at that time, yes.

10 Q But that's what you-all felt at the time?

11 A That's the part of the marketing that we had
12 to get retailers to come to the show.

13 Q Right. Now, it also says that there were
14 208 exhibiting companies in the new product showcase.
15 Do you see that?

16 A Yes.

17 Q It says that -- it says 600 tackle products
18 and accessories were entered.

19 A Uh-huh.

20 Q All right. Now, it's not -- look at Exhibit
21 6.

22 A Okay.

23 Q In the second paragraph there, it just says
24 600 new products from 208 companies.

25 A Okay.

1 Q In other words, the 600 products weren't all
2 tackle, right?

3 A That's correct.

4 Q The 600 products refer to all categories?

5 A That's correct.

6 Q All right. That's what I thought.

7 And these two documents list the winners of
8 the best of show awards. And who won the award in 2009
9 at ICAST for best of show in the apparel category?

10 A Cablz.

11 Q Now, had Cablz ever attended ICAST before?

12 A Not prior to 2009.

13 Q And had -- was Cablz a first entry -- was --
14 how would you say it? This was the first time Cablz
15 had ever entered the new product showcase also?

16 A That's correct.

17 Q And it's not common, but it does happen
18 occasionally, that first entrants do win the category,
19 right?

20 A I think that's everybody's surprise that
21 they won. Yes, that's true.

22 Q That Cablz specifically won or that the
23 new --

24 A Everybody wants to win.

25 Q Right.

1 A Yeah.

2 Q And just, in general, a lot of -- all of
3 these manufacturers that are there in the trade show
4 itself, they're there to sell products, right?

5 A That's correct.

6 Q And is there a -- is there a self-selection
7 process for who enters products in the new product
8 showcase?

9 A How do you mean?

10 Q Well, some people -- some exhibitors don't
11 enter the new product showcase, correct?

12 A Correct. That's true.

13 Q And would you say that it's generally the
14 companies who feel like they have something new and
15 innovative will enter and so it's sort of a
16 self-selection process as to who's in that product
17 showcase?

18 A That's correct, yes.

19 MR. ALLRED: Objection, lacks foundation.

20 MR. BIRD: All right.

21 BY MR. BIRD:

22 Q That's your experience?

23 A Has been.

24 Q And so there are a lot of products at ICAST
25 that aren't in the new product showcase?

1 A At the trade show? At ICAST?

2 Q Right, right.

3 A That's correct.

4 Q Now, do you know if another eyewear retainer
5 has ever won a best of show award at ICAST?

6 A During my time, no.

7 Q So that means Chums has never won a best of
8 show award at ICAST?

9 A No, they have not.

10 Q And has a company called Croakies ever won a
11 best of show award at ICAST?

12 A Not to my knowledge.

13 Q Have Chums or Croakies ever entered a
14 product in the new product showcase?

15 A I cannot be for certain.

16 Q Let's talk about sort of the scope of the
17 whole show. Something I read -- I'm not sure it was
18 for 2009, but I think I can put my hands on it, but let
19 me ask you this: Would it be your recollection that
20 400 square thousand feet of show space were being --
21 was used in the trade show?

22 A Gross square feet, gross square footage at
23 the time in 2009.

24 Q Okay. And I did some kind of, you know,
25 rough calculations.

1 A Uh-huh.

2 Q I think that's equivalent to over eight
3 football fields.

4 A You did the math. I have no idea.

5 Q Well -- all right. So 300 feet in one
6 direction and 50 feet in the other, 150 in the other,
7 100 yards long and 50 yards wide, that's 45,000 square
8 feet and that goes -- 45,000 goes into 400,000 at least
9 eight times.

10 So this is a very large show with lots and
11 lots of products displayed literally probably
12 thousands; isn't that right?

13 A I'd agree, yes.

14 Q If you would look at the first paragraph of
15 Exhibit 6, again it says, Making up a special section
16 of ICAST show floor, the new product showcase gives the
17 industry's latest innovation special visibility during
18 the show, correct?

19 A That's correct, yes.

20 Q Again, the whole product is on innovation
21 and products?

22 A That's the -- that's part of the -- yes.

23 Q Right.

24 A Yeah.

25 (ASA Exhibit 7 marked for identification.)

1 BY MR. BIRD:

2 Q I'm going to show you Exhibit 7 and I'll
3 tell you this is something I got off your web site.
4 I'll see if you can identify this as coming from ICAST
5 2009 or the ASA web site relating to ICAST 2009.

6 A Oh, yes.

7 Q Okay. Thank you.

8 It says in the first paragraph that there
9 was a sold-out show for the eighth consecutive year,
10 correct?

11 A Yes, sir.

12 Q That is that you -- you didn't have any room
13 for additional exhibitors?

14 A We closed it at that time, yes.

15 Q All right. Now, did you -- did you get to
16 meet Cablz when they won the award in 2009?

17 A I did.

18 Q So did you meet Ron Williams as well as
19 Holly Williams?

20 A I believe I only met Ms. Williams.

21 Q And what was their reaction from Cablz?

22 A She was excited.

23 Q Did she have any idea that she would win?

24 A Like I said, I think everybody goes in
25 thinking they're going to win.

1 Q Even the small companies?

2 A Even the small companies.

3 Q All right. Fair enough. Exhibit 7 says
4 that this -- again, it makes the claim that this is the
5 world's largest sportfishing trade show; is that right?

6 A That's correct.

7 Q And that's -- that's, in fact -- has always
8 been true, to your knowledge?

9 A That's correct.

10 Q Ever since you've been at ASA?

11 A Since 2007.

12 Q And it says that -- this is where it has
13 some information about international attendees. It
14 says that -- the first paragraph it says that more than
15 700 attendees from 63 countries attended.

16 A Okay. Yeah, that's right there.

17 Q That there were nearly 74 representatives of
18 the sportfishing industry at the show itself.

19 A I'm sorry. Where do you see that?

20 Q It's in the first line.

21 A 7,400, that's correct.

22 Q Mr. Andres, you are not the person -- did
23 you have a vote?

24 A No, I did not.

25 Q All right. And you're not the person who

1 makes the call as to who wins best of show?

2 A No, I do not.

3 Q And, in fact, nobody at ASA does that,
4 right?

5 A That's correct.

6 Q And because you-all represent the trade show
7 as a whole and you don't want to be favoring anybody,
8 right?

9 A That's correct.

10 Q That's your role.

11 And all you know as to these particular
12 winners is that they won the most votes, correct?

13 A That's how we determine the winner, yes.

14 Q I mean, you don't have any independent role
15 in determining who wins this award other than setting
16 up the contest, having the rules, having the display
17 and then counting the votes, correct?

18 A That's correct.

19 Q So, in other words, you're not a person who
20 has any knowledge than any of the other judges as to
21 what's the most innovative; is that correct?

22 A That's correct.

23 Q I just want to make sure the jury understood
24 that you're the guy who runs the election, but you're
25 not the guy that makes the call yourself?

1 A That's correct.

2 Q All right. Is it a big deal for a new
3 company to win an award in the best of show contest?

4 A I think so.

5 Q Do you know whether Cablz benefited from
6 that award?

7 A I think anybody who wins the new product
8 showcase gets a little bit heightened exposure to their
9 product because of the media attention and the
10 promotion that we do through the association or through
11 the trade show.

12 Q And the award leads to other media, doesn't
13 it?

14 A It does.

15 Q And are you aware that winners of the
16 awards, the best of show awards actually tell everybody
17 that they see that they won that award?

18 A Of course they do.

19 Q Do you authorize them to say they won the
20 ICAST award, best of show award?

21 A We encourage it.

22 Q You're aware that Cablz spread the word
23 about having won the ICAST 2009 best of show in the
24 apparel category?

25 A Yes.

1 Q You were okay with that and encouraged it?

2 A That's correct.

3 Q To focus a little bit on what we know about
4 the competition, I reviewed some of the documents -- I
5 reviewed all the documents that you produced, and
6 before we get to that, I have one -- let me strike that
7 and start over.

8 (ASA Exhibit 8 marked for identification.)

9 BY MR. BIRD:

10 Q I took this document, which you had
11 produced, and I found it on your web site and it's just
12 a little bit easier to read. I've marked this Exhibit
13 8.

14 The one that I printed from the web site,
15 Marc, if you don't mind, I'll make that an exhibit.
16 Feel free to verify it's the same.

17 I'll just ask you, does this appear to be
18 from ASA's web site?

19 A Yes, it does.

20 Q Does it appear to be the same as the
21 document which has the Bates number -- could you read
22 that?

23 A 219, ASA 00219.

24 Q Does that appear to be the same?

25 A It does.

1 Q All right. Again, it makes the claim that
2 this was the world's largest sportfishing trade show in
3 the title right there.

4 A Uh-huh.

5 Q And it says halfway down that there was a --
6 that ICAST had 400,000 square feet of show floor. Do
7 you see that? It's right under the blue print, the
8 paragraph that begins --

9 A Oh, yes, sir.

10 Q That's where I had gotten the 400,000 square
11 feet from.

12 A That's right.

13 Q This was -- this was posted on your web site
14 as information about ICAST 2009?

15 A Yes, sir.

16 Q Now, let me go back to the documents that I
17 was starting to get into. You referred to a tent card
18 a few minutes ago.

19 A Uh-huh.

20 Q Tell us what a tent card is.

21 A The tent card is completed by the exhibitor
22 when they enter the product in the new product
23 showcase. It has information regarding the product
24 that they're entering.

25 Q Okay. Now, you produced a few tent cards.

1 A Uh-huh.

2 Q You're aware it wasn't all the tent cards
3 for the apparel category?

4 A We actually -- that year we actually
5 produced almost all of them.

6 Q Okay.

7 A Yes.

8 Q Okay. Well, what I came up with was --
9 well, I took the entry forms. Are the entry forms
10 submitted to -- to begin the entry process?

11 A That's correct.

12 Q And do you then have -- do you know if there
13 was a product entry that represented each of the entry
14 form -- in other words, did you have a product entered
15 as it was expressed on the entry form?

16 A That's typically how it happens.

17 Q Okay.

18 A Yes.

19 Q Now, what I did is I took what we could find
20 of the entry cards -- of the tent cards and the entry
21 forms and I tried as best I could to calculate how many
22 products were entered in the apparel category.

23 A Okay.

24 Q What I came up with was over 50.

25 A Uh-huh.

1 Q Now, I have the stack of documents here and
2 I'm happy for you to look at them.

3 A Okay.

4 Q They're pulled from your documents. I don't
5 have another copy. Sorry. I don't even have a copy
6 for myself.

7 Generally speaking, what I'm trying to do is
8 just have you tell us, you know, if there were about 50
9 products entered in this particular category.

10 A In the apparel category?

11 Q Yes, sir.

12 A Yes, sir, it looks like so.

13 Q All right. Feel free to look through.
14 There are some tent cards in there that are for other
15 products, but we've pulled -- when you had a tent card
16 that had apparel, they were sometimes clustered with
17 other products, so I just put them all in. And I'm not
18 trying to represent that every tent card in there is
19 for an apparel entry.

20 A Uh-huh. I just wanted to check it. Yes.

21 Q Okay. So it's your testimony that the
22 number of entrants in the new product showcase apparel
23 category in 2009 were approximately 50?

24 A Yes, I'd agree with that.

25 MR. ALLRED: Is that Exhibit 9?

1 MR. BIRD: It's 8A. It's a combination of
2 entry forms with sort of scattered Bates labels,
3 Bates numbers and then entry cards, many of which
4 are for apparel entrants but some that are not.
5 The reason the not are in there because they were
6 for -- they were submitted by a company in another
7 category --

8 THE WITNESS: That's correct.

9 MR. BIRD: -- that had an apparel entry.

10 THE WITNESS: That's correct.

11 MR. BIRD: All right.

12 (ASA Exhibit 8A marked for identification.)

13 BY MR. BIRD:

14 Q Let's talk about what some of the hurdles
15 are for a first-time exhibitor in the new product
16 showcase. Would no reputation be a hurdle?

17 A Yes, sir.

18 Q Would no network among buyers and credential
19 media be a hurdle in winning the new product showcase?

20 A It would be, yes, sir.

21 Q And do you think it speaks volumes about the
22 innovativeness of a product that a new product -- a new
23 product showcase entry from a company that's never
24 exhibited before will win?

25 MR. ALLRED: Object to the form of the

1 question.

2 THE WITNESS: We have -- that's why we're
3 here. I mean, that's what the new product
4 showcase is for.

5 BY MR. BIRD:

6 Q Well, all things being equal, it's easier
7 for a big company with a long track record to win than
8 a company that's small and has never been here before,
9 correct?

10 A I would agree.

11 Q And just so I'm clear, I think I've asked
12 this, but let me make sure. To your knowledge, at
13 least as long as you've been at ICAST, you're not aware
14 of an eyewear retainer ever winning a best of show
15 award?

16 A Not since I've been at ASA, no, sir.

17 Q Okay. Would it be fair to say it's a big
18 achievement to win a new product showcase award,
19 whether it's a big or small company?

20 A I would say so, yes.

21 Q And it's highly coveted and all these
22 companies that come and exhibit are trying to get that
23 label, aren't they?

24 MR. ALLRED: Objection, lacks foundation.

25 THE WITNESS: I think that winning the new

1 product showcase advantages newer companies as far
2 as getting their product out, their brand out into
3 the industry but --

4 MR. BIRD: Right.

5 THE WITNESS: Yeah.

6 MR. BIRD: I didn't mean to cut you off.

7 THE WITNESS: No, no, no.

8 BY MR. BIRD:

9 Q But the big companies are also here and, for
10 lack of a better word, they're gunning for the award
11 too, right?

12 MR. ALLRED: Objection, lacks foundation.

13 THE WITNESS: Yes. The new product showcase
14 is there for big and small to promote their new
15 products for that calendar year, yes, sir.

16 BY MR. BIRD:

17 Q In other words, you have big companies that
18 are entered every year, correct?

19 A We do.

20 Q And you had a few big companies that won
21 awards in 2009, including I think -- Hobie Cat, I think
22 they won the overall best of show award.

23 A Right, that's correct, yes, sir.

24 Q And Hobie Cat is -- are you aware it's part
25 of a very large sales organization?

1 A It's a recognizable brand in the industry,
2 yes.

3 Q I mean, I believe it's actually owned by
4 Jarden. Are you familiar with that?

5 A Yes. I know who Jarden is, yes.

6 Q Jarden is a very large company with multiple
7 brands?

8 A They're a conglomerate, yes, sir.

9 Q By the way, if -- I'm trying to get through
10 this as quickly as I can. If you need a break, you
11 just let me know and --

12 A I feel fine.

13 MR. GORELNIK: Do you need any water?

14 THE WITNESS: No. I think I'm okay. Thank
15 you.

16 (ASA Exhibit 9 marked for identification.)

17 BY MR. BIRD:

18 Q I'm going to show you Exhibit 9. Again, I
19 got this from your web site and it says, News from the
20 American Sportfishing Association, Fall 2010.

21 A Uh-huh.

22 Q Do you see that?

23 A Yes, sir.

24 Q Does this -- does this appear to be printed
25 from the ASA web site?

1 A Yes. It looks like it came from our web
2 site.

3 Q Now, if you'll look at the second page near
4 the bottom, the second heading from the bottom, it says
5 welcome new members.

6 A Uh-huh.

7 Q And you'll need to answer out yes or no.

8 A Yes, sir.

9 Q Under new members, do you see that on the --
10 let me just read what it says. ASA welcomes these new
11 members of members who reinstated their membership in
12 September and October, and one of those happens to be
13 Chums of Salt Lake City, Utah.

14 Do you see that?

15 A Yes, sir.

16 Q Do you know whether Chums had been an old
17 member that was inactive before this or a new member?

18 A To my recollection, they were a new member.

19 Q Okay. Were you aware when Chums became a
20 new member in 2010?

21 A I can't put my finger on the date, no, sir.

22 Q Are you aware that Chums is now a sponsor of
23 ICAST?

24 A I do.

25 Q You know who all the sponsors are, right?

1 A Yes, sir.

2 Q And Chums has been a sponsor for, I believe,
3 three years.

4 A I believe that's correct.

5 Q I think they started in 2011?

6 A In 2011.

7 Q I'm going to show you Exhibit 10 which,
8 again, is from your web site.

9 (ASA Exhibit 10 marked for identification.)

10 BY MR. BIRD:

11 Q On the third page at the bottom it says,
12 Thank you ICAST sponsors, at the last paragraph, and
13 you say, ASA would like to thank its generous members
14 who have already signed on as ICAST sponsors, and it
15 includes Chums, correct?

16 A Yes, sir.

17 Q And sponsorship is not free, right?

18 A No, sir.

19 Q They pay money in order to be featured at
20 the trade show?

21 A That's correct.

22 Q And that's part of how ASA meets its
23 expenses for the trade show itself?

24 A That's one way, yes, sir.

25 Q Before Cablz won the best of show award in

1 2009, do you know whether Chums had ever been to ICAST
2 before?

3 A I do not.

4 Q And certainly you don't have any information
5 that Chums had ever been a sponsor of ICAST before
6 Cablz won the 2009 best of show award?

7 A That's correct.

8 Q Has anybody from Chums ever talked to you
9 about why they decided to start coming to ICAST?

10 A I talked to -- at the time, you know, I was
11 selling booth space so our appeal to a broader exhibit
12 base, much like -- much like the apparel category or
13 boating category. We sent out solicitations to
14 companies we felt would fit the trade show. Chums was
15 one of them.

16 Q And did you talk to anybody at Chums about
17 their becoming a sponsor?

18 A I did.

19 Q And who did you talk with?

20 A Tom Ferries.

21 Q Did you talk with Mr. Tom Ferries at Chums
22 about the fact that one of his competitors, Cablz, had
23 won the award in a previous year?

24 A I did not.

25 Q Do you know that Chums was aware, though, of

1 Cablz having won the best of show award when they
2 became a member and then a sponsor?

3 MR. ALLRED: Objection.

4 THE WITNESS: I don't know that -- I didn't
5 know what the reason was behind them joining the
6 show. I just simply wanted to -- thought we had
7 some appeal to them because maybe there was
8 more -- more companies interested in ICAST.

9 MR. BIRD: Right.

10 THE WITNESS: That's what I thought.

11 MR. BIRD: I know. You're trying to get up
12 the membership.

13 THE WITNESS: That's right.

14 BY MR. BIRD:

15 Q Do you know whether you initiated the
16 contact with them or whether they did?

17 A I believe I did.

18 (ASA Exhibit 11 marked for identification.)

19 BY MR. BIRD:

20 Q I'm going to mark -- Exhibit 11 is another
21 document that I pulled from your web site and it's --
22 it says it's ICAST 2013 sponsors and on the second page
23 it lists Chums. Do you see that?

24 A I'm sorry.

25 Q Second page.

1 A Yes, sir.

2 Q A third of the way up.

3 A That's right, yeah.

4 Q Somewhere there's a list of 2014 sponsors
5 that has Chums on there also, right?

6 A That's correct.

7 Q Can you tell me -- I believe Chums is a
8 bronze sponsor?

9 A That's correct.

10 Q How much does Chums pay to be a bronze
11 sponsor in 2014?

12 A The amount is, I believe, under -- from zero
13 dollars to \$3,000; 2,999 I believe is what it is for
14 bronze sponsor.

15 Q Okay. What -- what special benefits does a
16 sponsor receive?

17 A I think for the bronze sponsor it's just the
18 branding in different locations.

19 Q They get their name featured on various
20 signage and things like that?

21 A Correct.

22 Q And on web sites and stuff like that?

23 A Uh-huh.

24 Q Now, are you familiar -- I think I've
25 touched on briefly, are you familiar with a company

1 called Croakies also?

2 A I am.

3 Q And Croakies -- well, let me show you.

4 (ASA Exhibit 12 marked for identification.)

5 BY MR. BIRD:

6 Q This is, again, from your web site. This
7 document is -- I am not sure what the title is, but at
8 the top it says July 2010, I guess, member update.

9 A Okay.

10 Q And --

11 MR. ALLRED: Are you marking this as an
12 exhibit?

13 MR. BIRD: Yeah, this is No. 12.

14 BY MR. BIRD:

15 Q And, again, does this appear to be an ASA
16 web site --

17 A Yes, sir, it does.

18 Q -- printout?

19 Look on the third page. The third heading
20 down it says welcome new members. And in the -- I'll
21 just read this. ASA welcomes these new members or
22 members who reinstated their membership in July, and
23 that would be 2010. And a couple lines down it says
24 Croakies, Jackson, Wyoming. Fourth line -- oh, one,
25 two, three -- yeah, third line.

1 A Yes, I do see it, yes, sir.

2 Q And I think maybe we touched on this
3 briefly, but were you aware of the company Croakies
4 ever having been at ICAST before Cablz won the 2009
5 award?

6 A Not prior -- being at ICAST?

7 Q Right.

8 A Not that I'm aware of.

9 Q Not during your tenure?

10 A That's correct.

11 Q Has Croakies become a sponsor?

12 A Not that I can recall.

13 Q Have they been attending ever since the year
14 after Cablz won the award?

15 A On and off.

16 Q Were they here -- are they here this year?

17 A Not this year.

18 MR. BIRD: Let me look at my notes a moment.

19 THE WITNESS: Sure.

20 (Pause.)

21 MR. BIRD: We can just go off the record for
22 a minute and take five minutes.

23 MR. GORELNIK: Sure.

24 MR. BIRD: I'll verify that I don't have
25 anything else.

1 THE VIDEOGRAPHER: Going off the record.

2 The time is approximately 2:36 p.m.

3 (A recess was taken.)

4 THE VIDEOGRAPHER: Going back on the record.

5 The time is approximately 2:42 p.m.

6 BY MR. BIRD:

7 Q Thank you.

8 A Thanks.

9 Q Just a few more.

10 A Okay.

11 Q We'll try to make it quick. If you'll go --
12 if you'll look at Exhibit 3, which is entitled new
13 product showcase --

14 A Yes.

15 Q -- in the paragraph under -- the second big
16 heading on the left it says, "Vie for the Prestigious
17 Best of Show Awards. In the first sentence it says --
18 I'm not going to read the whole thing. We went through
19 it earlier, but I wanted to get back to this just
20 briefly.

21 The evaluation is based on, in this order,
22 innovation, execution, workmanship and practicality.
23 Do you see that?

24 A Yes, sir.

25 Q By talking about innovation, I didn't want

1 to exclude these other qualities also.

2 Now, is it your understanding that the
3 process by which your members submit or enter into the
4 new product showcase is they focus on their most
5 innovative products?

6 A That's correct. I'd say that's correct.

7 Q And so all of these qualities are important,
8 execution, workmanship and practicality, but those all
9 relate to the first quality, which is the innovation?

10 A Yes, sir.

11 Q All right. And so if somebody had an
12 innovation that wasn't good workmanship or well
13 executed or not practical, then they wouldn't likely
14 win the award, would they?

15 A They probably wouldn't get a vote.

16 Q Right. But innovation is -- is important
17 for everybody that wins a new product showcase award?

18 MR. ALLRED: Objection.

19 THE WITNESS: It's one of the criteria that
20 drives the new product showcase.

21 MR. ALLRED: Joe, are you saying it's
22 important to the people who submit or the people
23 voting?

24 MR. BIRD: To the people that are voting.

25 THE WITNESS: Well, if we're talking about

1 the people that are submitting the product, that's
2 definitely the criteria. The people who are
3 voting we do not provide criteria for.

4 BY MR. BIRD:

5 Q These are the criteria for voting. I think
6 you said -- I think you said you didn't provide
7 criteria for voting.

8 A We do not provide criteria for voting.

9 Q It's on the ballot, though.

10 MR. ALLRED: I'm going to object to the
11 extent that his answer to your question is taken
12 to testify about the intent or understanding of
13 anyone other than ASA or Mr. Andres.

14 MR. BIRD: Okay.

15 BY MR. BIRD:

16 Q Do you see on the left -- on the right
17 column on the ballot it has the right qualities listed.

18 A Please base your decision on each product's
19 level of innovation, execution, workmanship and
20 practicality.

21 Q So not only the entrants but the judges know
22 that these are the four qualities that are being
23 evaluated?

24 A Yes. It appears so, yes.

25 Q Okay. I'm going to show you Exhibit 8A.

1 I'm going to direct your attention to the one page --
2 this is the -- you don't have a copy of that. We just
3 have one copy.

4 A Uh-huh.

5 Q This is the collection of entry forms and
6 tent cards.

7 A Correct.

8 Q And this is the entry form of Cablz.

9 A Uh-huh.

10 Q It's signed by Holly Williams.

11 A Yes.

12 Q All right. And what is the category she put
13 down for entry?

14 A Eyewear.

15 Q All right. But who makes the decision as to
16 which categories an entry goes into?

17 A Ultimately the decision is the exhibitor's.
18 At that time there's discussion when they get down to
19 the new product showcase which category fits best.

20 Q Okay. So what you say is that the exhibitor
21 selects and ASA, meaning you or your other staff, talk
22 to the exhibitor about what works best for their
23 product, where their product fits best?

24 A Some products there's not a lot of
25 discussion. It is what it is.

1 Q Sure.

2 A But in her case, I remember this
3 conversation as an eyewear retainer didn't necessarily
4 fit in eyewear based on the description that we had.

5 Q The eyewear is -- they're glasses, right?

6 A Correct, yes, sir.

7 Q And so did you discuss with Ms. Williams
8 putting -- putting the Cablz entry in the apparel
9 category?

10 A I did not have that discussion with her. I
11 know there was discussion going on at the new product
12 showcase about it, yes.

13 Q Her with ASA people?

14 A With our staff down at the new product
15 showcase, yes.

16 Q And she ended up in apparel?

17 A That was the ending result, yes.

18 Q Right.

19 MR. GORELNIK: Mr. Bird, for the record, can
20 you state the Bates number on that document?

21 MR. BIRD: It's ASA 00051.

22 MR. GORELNIK: Thank you.

23 BY MR. BIRD:

24 Q Now I'm going to just ask you a few
25 questions about a gentleman named Mark Sosin. Okay?

1 Just real briefly, have you known him since you've been
2 at ICAST, been at ASA or known of him?

3 A I've known him before that, of him before
4 ASA, yes.

5 Q And the reason you know him is because he's
6 well known within the ASA organization?

7 A Because he's -- he has a fishing and boating
8 personality television show.

9 Q Okay. And are you aware that he -- were you
10 aware that he was at ICAST 2009?

11 A I do recall that he was at ICAST in 2009,
12 yes.

13 Q Do you remember talking with him in 2009
14 about --

15 A In Orlando, yes.

16 Q Do you remember any discussion with him?

17 A I do.

18 Q What do you recall?

19 A I remember having several discussions about
20 how the trade show has been -- the industry's evolving
21 and the trade show is getting larger and how he recalls
22 the trade show in the early days.

23 Q Okay. And he's -- he's a larger-than-life
24 character, right? He's a TV personality?

25 A That's correct.

1 Q And not only in the fishing and boating
2 industry, but also among people at ICAST who are
3 regulars Mr. Sosin is well known?

4 A I would say so, yes.

5 Q He would be well known -- would Mr. Sosin
6 have also been well known among the judges at the new
7 product showcase in 2009?

8 A I can't speak for all the judges, but I
9 would think that anybody who was in the fishing
10 industry would recognize who Mark Sosin was, yes.

11 Q And you don't know for sure, but do you
12 suspect that he was a judge in 2009?

13 Let me ask you this. Let me strike that and
14 start over.

15 Was he a member of the credential media
16 qualified to be a judge in 2009?

17 A Yes, he was.

18 Q You just don't know whether he actually
19 participated or not?

20 A That's correct.

21 Q Do you know whether Mr. Sosin wore his -- do
22 you know that he has tied monofilament to his glasses
23 before?

24 A Yes.

25 Q Do you know whether he wore that at the 2009

1 ICAST?

2 A I don't recall.

3 Q Do you remember any other discussion with
4 Mr. Sosin in 2009?

5 A No, just that he thanked me for helping him
6 get his media credentials.

7 Q Has he been a member of the credential media
8 at ICAST for some time?

9 A Long before I got there.

10 Q Okay. Maybe before you were born.

11 A That's probably true too.

12 Q Is he a member of any advisory board or any
13 board of directors of ASA?

14 A Not currently.

15 Q He has been?

16 A I believe so.

17 Q Has he been on the board of directors?

18 A Not to my knowledge.

19 Q It was an advisory board?

20 A We have committees. I would have to go back
21 and check.

22 Q Okay. Fair enough.

23 MR. BIRD: Okay. That's all. Thank you
24 very much.

25 THE WITNESS: Okay. Great. Thank you.

1 MR. ALLRED: Let's go off the record.

2 THE VIDEOGRAPHER: Going off the record.

3 The time is approximately 2:52 p.m.

4 (A recess was taken.)

5 THE VIDEOGRAPHER: Going back on the record.

6 The time is approximately 3 p.m.

7 CROSS-EXAMINATION

8 BY MR. ALLRED:

9 Q Mr. Andres, my name is Landon Allred. I
10 represent Chums and we spoke briefly off the record,
11 but I'd like to state on the record which topics you've
12 been identified as the witness on behalf of ASA, so if
13 you could go to Exhibit 2.

14 A Okay.

15 Q You'll see a few pages back there will be
16 topics for deposition and there are seven listed
17 topics.

18 A Okay.

19 Q Can you tell me which of those topics -- for
20 which of those topics you've been identified as the
21 witness on behalf of ASA?

22 MR. GORELNIK: If I may, Mr. Allred, this is
23 Marc Gorelnik, attorney for ASA. Mr. Andres will
24 be ASA's witness on all topics listed in the
25 deposition subpoena, aside from topic 2, topic 3

1 and topic 6 to the extent it deals with Mr. Sosin.

2 MR. ALLRED: Okay. Thank you.

3 BY MR. ALLRED:

4 Q So I might jump around a little bit based on
5 Mr. Bird's questioning. Let me start off talking
6 about -- I know you're not the designated witness for
7 Sosin on behalf of ASA, but that came up in Mr. Bird's
8 deposition, so I'd like to talk about that a little
9 bit. I'm going to hand you --

10 MR. GORELNIK: Just to be clear, within the
11 scope of Mr. Bird's direct testimony.

12 MR. ALLRED: Yes.

13 I'm going to hand you what's been marked as
14 Exhibit 13.

15 (ASA Exhibit 13 marked for identification.)

16 BY MR. ALLRED:

17 Q Do you recognize the person in that picture?

18 A I do.

19 Q Who do you recognize that person to be?

20 A A younger Mark Sosin.

21 Q A younger Mark Sosin. You discussed with
22 Mr. Bird the retainer that Mr. Sosin attaches to his
23 glasses. Is that an accurate representation of that
24 retainer?

25 A Yes.

1 Q Do you have an understanding of how that
2 retainer is made?

3 A I just know that it's monofilament.

4 Q Do you know how it's attached to Mr. Sosin's
5 glasses?

6 A I believe it's wrapped.

7 Q Do you agree with me that in this first
8 picture, second picture of Exhibit 13, that the
9 retainer extends off the back of Mr. Sosin's head and
10 stays off of his neck?

11 A Yes.

12 Q You said you understand that to be made of
13 monofilament. Is a monofilament a type of fishing
14 line?

15 A It is.

16 Q Would monofilament absorb water?

17 A I don't think so, no.

18 Q Do you know whether it would absorb sweat or
19 suntan lotion?

20 A I don't think so, no.

21 Q Do you know whether monofilament attached to
22 glasses in the way that Mr. Sosin has done in Exhibit
23 13, if that were to get wet, would the monofilament
24 droop down onto his neck or would it remain off of his
25 neck?

1 A It shouldn't.

2 Q It shouldn't droop down?

3 A It shouldn't droop down, no.

4 Q You said you were aware of Mr. Sosin at
5 least prior to 2009.

6 Do you have a memory of when you first
7 became aware or first saw Mr. Sosin?

8 A As a child.

9 Q Can you tell me what year roughly that would
10 be?

11 A Gosh, I was -- mid to early teens, so
12 probably in the '80s.

13 Q Okay. Where did you see him?

14 A On television.

15 Q Do you remember the name of his television
16 show?

17 A Not at the time, not right now, and I don't
18 remember which one it was.

19 Q Do you believe he had multiple television
20 shows?

21 A I feel like I've seen him on several
22 different things, several different television shows,
23 yes.

24 Q Do you remember the first time you saw Mr.
25 Sosin wearing this retainer that remained off of his

1 neck?

2 A No, I don't recall. I don't recall the
3 retainer.

4 Q Do you recall if you saw him wearing that
5 retainer any time prior to 2007?

6 A Not to my knowledge.

7 Q Does Mr. Sosin where this retainer -- have
8 you seen Mr. Sosin wear this retainer at an ICAST
9 convention?

10 A I have.

11 Q Do you recall what year that was?

12 A I saw him today with it on.

13 Q Okay. Any time prior to today?

14 A I believe every time I've seen him.

15 Q Can you recall the first year you remember
16 seeing Mr. Sosin at an ICAST convention?

17 A That would be 2008.

18 Q You said you began working with ASA in 2007;
19 is that correct?

20 A That's correct.

21 Q So if Mr. Sosin has attended prior to that
22 time, you wouldn't have seen him there?

23 A No, sir.

24 Q Okay. Have you seen any other people
25 anytime in your life wearing a similar eyeglass

1 retainer that remained off their neck at any time prior
2 to 2007?

3 A I have.

4 Q Where did you see those people?

5 A In Charleston, South Carolina.

6 Q Can you describe the retainer that they were
7 wearing?

8 A It was made of monofilament and it was whip
9 finished to the sunglass.

10 Q Can you describe what a whip finish is?

11 A It's a type of lashing. You take a smaller
12 diameter monofilament and wrap it around the -- around
13 the -- around the larger monofilament to the -- to the
14 sunglass, you know, sunglasses so it'll stay on there.

15 Q Are you a fisherman yourself?

16 A I am.

17 Q Have you ever worn that type of monofilament
18 retainer?

19 A I have not.

20 Q So you saw people in Charleston, South
21 Carolina wearing it prior to 2007.

22 Do you have an idea what year that was, the
23 first time you saw it?

24 A 1990 -- well, I got in Charleston in 1993,
25 so probably in and around that year, mid '90s.

1 Q Can you describe how often you see people
2 wearing this type of retainer that remains off their
3 neck prior to 2007?

4 A No.

5 Q Is it every time you go to the dock?

6 A No, it's not.

7 Q Okay.

8 A Back then? Are you talking about back then?

9 Q Back then.

10 A Yeah, back then it wasn't necessarily that
11 common --

12 Q So --

13 A -- that I saw, but I did see it, yes.

14 Q Did you see it on more than one person?

15 A Yes.

16 Q Do you have an estimate of how many people
17 you saw wearing that type of retainer?

18 A It would be less than six.

19 Q Okay. I'm going to hand you what we'll mark
20 as Exhibit 14.

21 (ASA Exhibit 14 marked for identification.)

22 BY MR. ALLRED:

23 Q Can you describe what this is for me?

24 A This is the buyers' guide that we distribute
25 at the trade show.

1 Q This is part of ASA's production, correct?

2 A It is.

3 Q For the record, it's ASA 00520.

4 Can you tell me the date on the first page
5 of that buyers' guide?

6 A July 11 through the 13, 2007.

7 Q Can you turn to the next page, ASA 521? Do
8 you see that blue box in the middle referencing Mark
9 Sosin?

10 A I do.

11 Q And do you recognize that as a picture of
12 Mark Sosin?

13 A I do.

14 Q And does Mark Sosin appear to be wearing his
15 eyeglass retainer holding his glasses around his neck?

16 A It appears to be a retainer.

17 Q But you can't -- does it appear to be the
18 same retainer that he was wearing in Exhibit 15?

19 A Yeah, it does look like it now. I'm sorry.
20 I can't see. It's a little grainy.

21 Q I'm handing you what's been marked as
22 Exhibit 15.

23 (ASA Exhibit 15 marked for identification.)

24 BY MR. ALLRED:

25 Q Does Exhibit 15, that first picture, appear

1 to be the same picture that is shown on the second page
2 of Exhibit 14?

3 A Yes, it does.

4 Q Does that offer a better view of Mr. Sosin's
5 retainer?

6 A It does.

7 Q Does that appear to be the same retainer
8 that he's wearing in Exhibit 13?

9 A It does.

10 Q If you flip two pages back on Exhibit 15,
11 can you describe -- this is part of ASA's production.
12 We're now looking at ASA 00511. Can you describe what
13 this is a picture of?

14 A This is a picture of the Keep American
15 Fishing event that we had in 2011 in Las Vegas, I
16 believe.

17 Q Is that Mark Sosin in the white shirt on the
18 left?

19 A It is.

20 Q Does he appear to be wearing the same
21 retainer that he's wearing in Exhibit 13 and Exhibit
22 14?

23 MR. BIRD: For the record, I'm going to
24 object because it's not a clear picture.

25 MR. ALLRED: You can answer.

1 THE WITNESS: It appears to be.

2 BY MR. ALLRED:

3 Q In the times that you've seen Mr. Sosin, is
4 it common for him to be wearing that type of
5 monofilament retainer?

6 A The times I've seen him, yes.

7 Q If you look at the first picture on Exhibit
8 15, can you describe where the whip finish is placed on
9 the temple arms of Mr. Sosin's glasses?

10 A In the middle of the arms.

11 Q If you look at the picture in Exhibit 13 --
12 we'll start with the first picture in Exhibit 13.

13 Can you describe where the whip finish is
14 placed on the arms of Mr. Sosin's temple retainers?

15 A It looks like it's in the middle as well.

16 Q If you flip to the last picture in Exhibit
17 15, is that, again, Mr. Sosin?

18 A It is.

19 Q And does the whip finish appear to be
20 farther back on the temple retainer arms in this photo
21 than it was in the other exhibits?

22 A It does.

23 MR. BIRD: I have the same objection,
24 Landon, only because the picture is unclear.

25 MR. ALLRED: Okay.

1 BY MR. ALLRED:

2 Q In the times that you've seen Mr. Sosin or
3 any other person wear monofilament retainer prior to
4 2007, have they all been connected with a whip finish?

5 A The ones that I've seen.

6 Q You haven't seen any other mode of
7 connecting the monofilament on the glasses?

8 A Not that I saw back in the mid '90s, no.

9 Q Have all of the whip finishes been placed on
10 the same location on the temple arms?

11 A Some are farther back. I've never -- I
12 never saw them too much farther forward than the
13 middle.

14 Q How far back have you seen them?

15 A Well, if you go too far back, it angles down
16 so you have to stay kind of parallel so it stays above
17 the return on the -- on the -- on the -- on the arm.

18 Q So is it your understanding that when people
19 are connecting the monofilament to their sunglasses,
20 they want to avoid the monofilament going down?

21 A Yes.

22 Q Why is that?

23 A Because then it starts to hit your back.

24 Q So they're intentionally connecting the
25 monofilament to a place on their glasses so that the

1 monofilament will remain off of the neck while they're
2 wearing the sunglasses?

3 A That's correct, at least that's what I --
4 that's been all of our discussion, yes.

5 Q Whose discussion?

6 A Well, when you ask somebody why they did
7 that in the mid '90s, you know, why -- I mean, why not
8 just have a pair of those cloth retainers which
9 everybody else had? And that's what a lot of offshore
10 guys will do, is they'll have it off of their neck and
11 off their back.

12 Q Okay. Are you aware of an individual named
13 Lefty Kreh?

14 A I am.

15 Q Have you ever seen Mr. Kreh where a
16 monofilament retainer similar to Mr. Sosin?

17 A That's another person I've seen with that.

18 Q Do you recall the earliest year that you saw
19 Mr. Kreh wearing that retainer?

20 A I want to say that it was -- I cannot be for
21 certain it was in the mid '90s at the shallow water
22 festivals that they had back at Charleston, but I
23 definitely have seen it more recently.

24 Q Do you know whether the first time you saw
25 Mr. Kreh wear this type of monofilament retainer was

1 before 2000?

2 A I would -- that's what I'm thinking, that
3 mid '90s is when I think I saw that, yes.

4 Q Okay. Are you familiar with a person by the
5 name of Larry Dahlberg?

6 A I am.

7 Q Have you seen Mr. Dahlberg where this type
8 of monofilament retainer?

9 A I can't recall if I've seen him or not.

10 Q Can you pull out Exhibit 4?

11 A Okay.

12 Q I believe you stated earlier this is the
13 ballot that was used in 2009 for the best of show
14 awards.

15 A It is.

16 Q New product showcase.

17 A It is.

18 Q You discussed with Mr. Bird the
19 qualifications for those that are allowed to vote in
20 the new product showcase. Among other things, you said
21 they had to be verified as a media member.

22 Are there any other qualifications that
23 voters have to meet?

24 A Specific to?

25 Q Do they have to demonstrate a knowledge of

1 the products currently available in the industry?

2 A No.

3 Q Do they have to show that they've been
4 involved with sportfishing for any number of years?

5 A No.

6 Q Do they have to show an education or
7 training background with regard to product development?

8 A No.

9 Q Do they have to be the person representing a
10 buyer that is actually going to make a purchasing
11 decision?

12 A No.

13 Q Do they have to be educated in marketing?

14 A No.

15 Q So anyone that attends and qualifies as a
16 media member or a buyer is allowed a ballot; is that
17 correct?

18 A That -- that's correct. That's -- now
19 that's per entity.

20 Q Okay.

21 A That's both media or retail.

22 Q How do you verify that each entity is given
23 only one ballot?

24 A I printed out a list of all the attendees in
25 those categories, and once I distributed a ballot or a

1 ballot was distributed to an attendee to that company,
2 that company was struck from the record from being able
3 to receive a ballot. We had a master list.

4 Q Do you make any efforts to prevent one
5 entity from influencing another entity's vote?

6 A How do you mean?

7 Q Button-holing or bribery or any other --
8 I'll buy you dinner if you let me use your ballot.

9 A We don't -- I didn't experience that. I
10 have yet to experience that.

11 Q Do you take any efforts to prevent that?

12 A As far as just bribery?

13 Q Right.

14 A Just flat out -- we try -- yeah, we
15 definitely discourage it. We wouldn't allow it to
16 happen as much as possible, yes.

17 Q What do you do to prevent it from happening?

18 A I mean, this is -- we -- it's a self-policed
19 process. We provide the procedures, and at that
20 point -- and the ballot. What they do with that ballot
21 is up to them, but I do not think we have that going
22 on.

23 Q Yeah, hopefully.

24 A Yeah, hopefully. That's my -- that's my --

25 Q You're going to have to start staining their

1 fingertips.

2 On the right side of this ballot under what
3 is a new product it says, A product qualifies as new if
4 it has not appeared in national distribution in the
5 North American market at any level of distribution
6 prior to January 1, 2009 or appeared in any 2008 or
7 earlier product catalog.

8 Did I read that correctly?

9 A You did.

10 Q Does ASA -- excuse me. In 2009 did ASA take
11 any steps to verify that products that were submitted
12 for the new product showcase met this qualification?

13 A What kind of steps? What are you --

14 Q So is there an independent body that says --
15 that verifies that a product has not been sold prior to
16 2009?

17 A So we only get the entry forms.

18 MR. BIRD: Object to the form. That's not
19 what the document says.

20 THE WITNESS: We only get the entry forms.
21 When we receive the entry forms, we don't know
22 what the product is. We know what the category
23 that the product will be entered in, so we don't
24 know what the product is until we actually get to
25 the show.

1 At that time, it's a determination whether
2 or not a product might or might not be new for
3 that calendar year.

4 BY MR. ALLRED:

5 Q Is there anyone at ASA that's assigned to go
6 through the new products, let's say, a fishing pole and
7 pick up a fishing pole and then check whether it's been
8 sold prior to that year?

9 A Not -- there's no one assigned, no. Again,
10 this is self-policed. We have -- it passes through
11 many hands. People will know whether a product has
12 been sold prior to 2009, for example, under the same
13 name or the same product name or line.

14 Q Okay. So you're just counting on enough
15 people seeing it, that if it's been sold prior to
16 whatever year, it's going to get flagged?

17 A That's correct.

18 MR. BIRD: Excuse me. I'm sorry, Mr.
19 Andres, but I have an objection because this is a
20 trial deposition and I need to make it. You're
21 using a term that's not used in this document and
22 I object on that basis.

23 MR. ALLRED: Which term?

24 MR. BIRD: You said sold. The term is
25 national distribution in the North American

1 market.

2 MR. ALLRED: Okay. Thank you.

3 MR. GORELNIK: If I may just ask the witness
4 to -- when you're asked a question, please pause
5 in case an attorney wants to make an objection.

6 THE WITNESS: Okay.

7 MR. BIRD: Sorry I wasn't quick on the draw.

8 THE WITNESS: Okay.

9 MR. ALLRED: Let me rephrase my question.

10 BY MR. ALLRED:

11 Q So in -- so ICAST is counting on enough
12 people seeing a product that has been submitted for the
13 new product showcase that one of them will recognize if
14 that product has been in national distribution in the
15 North American market at any level of distribution
16 prior to the year at issue in order to determine
17 whether that product meets the qualification of a new
18 product?

19 A We have staff at the new product showcase
20 that have been there for years that recognize the
21 product as they come in and they will recognize whether
22 or not a product is new or not for that year.

23 Q Okay. Let's say a product has been sold by
24 one company.

25 A Uh-huh.

1 Q Let's keep it to 2009 to be easy. Let's say
2 it's been sold by one company in 2007. A different
3 company comes in in 2009 and they've -- they've
4 prettied it up, but it's functionally the same product.
5 Could that product be submitted to the new product
6 showcase?

7 MR. BIRD: Object to the form on the same
8 basis.

9 MR. GORELNIK: Also, I'd just like to say
10 I'm not sure what the term "prettied it up" means.
11 I'm not sure if the witness does either.

12 MR. ALLRED: Let's make this a little more
13 concrete.

14 (ASA Exhibit 16 marked for identification.)

15 BY MR. ALLRED:

16 Q Sir, I've handed you what's been marked as
17 Exhibit 16. This is Bates No. ASA 00539 through 541.
18 Can you identify this for me?

19 A It's the winners for 2009 in the new product
20 showcase on our web site.

21 Q This shows Cablz as the winner of the best
22 apparel category, correct?

23 A It does.

24 Q Just below Cablz it shows best eyewear,
25 Costa Del Mar sunglasses.

1 A Uh-huh.

2 Q So on the ballot, Exhibit 4, and Mr. Bird
3 drew your attention to the fact that it requires or it
4 instructs the voters to base their decision on each
5 product's level of innovation, execution, workmanship
6 and practicality; is that correct?

7 A Yes.

8 MR. BIRD: Could I just interject? I think
9 this is the same document that I marked as Exhibit
10 6. It's Bates number 539 and 540. It's just for
11 clarity. You can keep it marked separately.

12 MR. ALLRED: Thank you.

13 BY MR. ALLRED:

14 Q On Exhibit 4 when this ballot uses the word
15 innovation, can you describe what ASA intends when it
16 asks its voters to base their decision on innovation?

17 A You're talking about the entry of the
18 product, not the voting, correct?

19 Q I believe this -- the ballot --

20 A You're talking about the voting, then, the
21 process?

22 Q Yes, the voting.

23 A There's been discussion about that because
24 we don't want to lead the voter on what the criteria is
25 that they vote for. The reason that we put that is to

1 give some kind of guide -- help give some parameters or
2 guidelines for the voter on why -- or criteria why they
3 would vote for a certain product.

4 Q Is ASA just trying to get voters to pick
5 their favorite?

6 MR. BIRD: Object to the form.

7 THE WITNESS: The issue is that products
8 that are sold in the southeast or bought in the
9 southeast would not be maybe a product that would
10 be the best product in the northwest.

11 MR. ALLRED: Okay.

12 THE WITNESS: So there's regional
13 applications or because we're an international
14 show, it's not applicable in Australia or Europe.

15 BY MR. ALLRED:

16 Q Okay. When ASA uses the word innovation, is
17 it intending to mean patentable? Does it have to be
18 the first time this product has ever appeared?

19 A Not necessarily.

20 Q Okay. For example, on Exhibit 16 we have
21 these Costa Del Mar sunglasses.

22 Is that the first time sunglasses have been
23 entered in the new product showcase?

24 A No.

25 Q Do you have any understanding of why these

1 particular sunglasses -- well, strike that.

2 Do you know whether these sunglasses won
3 their best eyewear category? Do you know whether they
4 won because they were innovative?

5 A I do not.

6 Q Same with -- down to the right it has the
7 best hard lure. Is that the first time lure has been
8 submitted to the new product showcase?

9 A No.

10 Q Have you seen lures similar to that prior to
11 2009?

12 A Yes.

13 Q Do you know whether this lure won its
14 category because it was innovative?

15 A No, I do not.

16 MR. BIRD: Well, hold on. I object because
17 the witness testified earlier that he had no
18 special knowledge about what the voters did. And
19 I -- sorry I have to make that objection now, but
20 I do. And I think he's testified contrary that he
21 doesn't know. He just knows what he gives them
22 and what the rules are and that's all.

23 MR. ALLRED: I believe my question was
24 whether he knew whether it won because it was
25 innovative. He answered he did not, which I think

1 is still consistent with your concern or doesn't
2 really implicate your concern because he's saying
3 he doesn't know why it won.

4 MR. BIRD: Fair, if that's what he said.

5 BY MR. ALLRED:

6 Q If you turn over the page on Exhibit 16,
7 you'll see the best freshwater reel.

8 Is that the first time a freshwater reel has
9 been submitted for a new product showcase?

10 A No.

11 Q Same with best saltwater reel; first time?

12 A No.

13 Q Best freshwater rod, is that the first time
14 you've seen a freshwater rod at ICAST?

15 A No.

16 Q Same with the best saltwater rod; is that
17 the first time a saltwater rod has appeared at ICAST?

18 A No.

19 Q So do you have any idea why any of these
20 products won their category in 2009?

21 MR. BIRD: Same objection.

22 THE WITNESS: No, I do not.

23 BY MR. ALLRED:

24 Q After you've received the votes, do you go
25 find the people that submitted the vote and ask them

1 what about the product made them choose that product?

2 A No, I do not.

3 Q Do you have any idea why Cablz won their
4 category for best apparel in 2009?

5 A Aside from getting the most votes, no.

6 Q Is it your understanding that 2009 is the
7 first year that the apparel category appeared on the
8 new product showcase?

9 A I am.

10 Q Do you know why the apparel category began
11 in 2009?

12 A In 2008 there was the clothing category and
13 to appeal to the apparel manufacturers, I suggested
14 that we start the apparel category.

15 Q So this was your suggestion?

16 A It was.

17 Q Was there any -- did anyone submit any
18 complaints about the change from a clothing category to
19 an apparel category?

20 A No. I think because it broadened that
21 category, from clothing to apparel could mean footwear.
22 We thought pants, shirts, all those things.

23 Q Did ASA receive any complaints associated
24 with Cablz winning the apparel category in 2009?

25 A No.

1 Q Are you familiar with Cablz -- that the
2 manner in which the Cablz product connects the actual
3 stainless steel cable to the rubber ends, are you
4 familiar with that connection?

5 A As far as just the connection?

6 Q In that -- you can correct me if I'm wrong,
7 Mr. Bird, but it uses a ball bearing inside the rubber
8 connector?

9 A No, I didn't know anything about that.

10 (ASA Exhibit 17 marked for identification.)

11 BY MR. ALLRED:

12 Q I'm handing you what's been marked Exhibit
13 17. It's Bates labeled ASA 00514. Can you describe to
14 me what this is?

15 A It's a picture of our president with Holly
16 Williams and their product.

17 Q And this is -- is this in 2009 when they won
18 the best apparel award?

19 A It appears to be, yes.

20 Q Is that the Cablz product on those mannequin
21 heads?

22 A It is.

23 Q Does the cable on those mannequin heads
24 appear to remain off the neck like the Sosin retainer
25 did?

1 A Yes.

2 Q Is that Ron Williams in the blue shirt on
3 the right?

4 A I'm not familiar with Mr. Williams.

5 Q Does the individual on the right in the blue
6 shirt appear to be wearing a retainer -- appear to be
7 wearing Cablz retainers?

8 A Yes.

9 Q And are they holding his sunglasses in the
10 same way that Mr. Sosin's retainer hold his sunglasses
11 around his neck?

12 MR. BIRD: Object to form.

13 THE WITNESS: It doesn't appear so.

14 BY MR. ALLRED:

15 Q In what way is it different?

16 A You mean from just where it's joined to the
17 sunglass?

18 Q I'm sorry. If you compare Exhibit 15, which
19 is that large picture of Mr. Sosin --

20 A Uh-huh.

21 Q -- to Exhibit 17, which is the picture of
22 the man in the blue shirt who I understand to be Ron
23 Williams, in both cases, are the sunglasses being hung
24 from around their neck by some sort of retainer?

25 A Oh, yes.

1 Q I understand you've also been designated to
2 testify on behalf of ASA with regard to topic No. 7,
3 which is the documents requested under Exhibit B; is
4 that correct?

5 A Yes.

6 MR. GORELNIK: I would say except to the
7 extent it refers to Mr. Sosin.

8 MR. ALLRED: Right.

9 MR. GORELNIK: To the extent there are any.

10 BY MR. ALLRED:

11 Q So if you can flip to the last couple pages
12 of Exhibit 2, were you involved in ASA's collection of
13 documents in response to the subpoena?

14 A I was.

15 Q Does ASA have any videos related to Cablz,
16 Ron Williams or Holly Williams?

17 A Not to -- as far as in 2009?

18 Q Any at all.

19 A Not to my knowledge. Video, no, I don't
20 think so.

21 Q Does ASA have -- I'll represent to you that
22 we've seen videos on You Tube from trade shows.

23 A Uh-huh.

24 Q Does ASA produce its own videos from ICAST
25 that it posts somewhere on the Internet?

1 A We do. We do have videos, yes.

2 Q Where do you post those videos?

3 A On You Tube and on the web site.

4 Q Do you know what your You Tube account is?

5 I'm sorry, the You Tube account for ASA?

6 A For ASA or for ICAST?

7 Q Are there -- do you have two accounts or
8 just one?

9 A Well, it's my understanding that we have --
10 it might be just one. Yes, it is one, but it has both
11 ASA and ICAST videos.

12 Q Do you know what the -- the user name is for
13 that account?

14 A I believe it's ASA fishing or ICAST fishing.

15 THE VIDEOGRAPHER: Mr. Allred, we have about
16 five minutes left on this disc.

17 BY MR. ALLRED:

18 Q When you mentioned when speaking with Mr.
19 Bird that the attendance this year was over 11,000 --

20 A Yes.

21 Q -- do you have any idea what the attendance
22 has been -- even approximations of the attendance at
23 ICAST since 2000 -- let's say, 2007/2008?

24 A In 2007 and 2008, we were in the 6,500
25 range.

1 Q Have you seen any eyewear retainers apart,
2 from Cablz product or the monofilament retainers,
3 retainers made from any other substance that remains
4 off the neck when worn such as surgical tubing, latex,
5 paracord?

6 A Not to my knowledge.

7 Q Can you go to Exhibit 3?

8 A Okay.

9 Q On the first page, the second line Mr. Bird
10 drew your attention to where it discusses the new
11 product showcase reflects this creative spirit.

12 So we reviewed in Exhibit 16 certain
13 products that won the new product showcase such as
14 fishing lures or fishing rods that are not new to
15 anyone.

16 MR. BIRD: Well, I object to that. That's
17 mischaracterizing his testimony.

18 MR. ALLRED: I'll rephrase.

19 BY MR. ALLRED:

20 Q You remember our discussion about fishing
21 rods with regard to Exhibit 16?

22 A Yes.

23 Q And fishing lures with regard to Exhibit 16?

24 A Yes.

25 Q In light of that, can you explain what ASA

1 is referring to when it discusses the creative spirit
2 of the new product showcase?

3 MR. BIRD: Object to form.

4 THE WITNESS: I struggled with this earlier.

5 BY MR. ALLRED:

6 Q Did you write this document?

7 A I did not.

8 Q When ASA uses the term "creative spirit,"
9 does it necessarily mean that products in the new
10 product showcase have never been seen before?

11 MR. BIRD: Object to the form.

12 THE WITNESS: I'm still trying to understand
13 how creative spirit relates to catching a fish, to
14 be honest with you.

15 BY MR. ALLRED:

16 Q You disagree with the writing?

17 A I changed a lot of this content as we moved
18 forward, yes.

19 Q So tell me, what's your -- your
20 understanding now as the trade show director of what
21 the new product showcase means, what it stands for?

22 MR. BIRD: Object to form. It's irrelevant
23 as to anything that's not printed in these
24 documents for 2009.

25 THE WITNESS: I think what's in here is --

1 is a description of a marketing piece. That's
2 what the promotional pack which is included in, is
3 -- is for. It is to try to explain to exhibitors
4 what the new product showcase is in a manner that
5 is all encompassing. It's not so definitive. It
6 allows for people to impose on the new product
7 showcase what they think it might be for them.

8 THE VIDEOGRAPHER: I'm sorry, Mr. Allred. I
9 need to go ahead and change the tape.

10 MR. ALLRED: Okay.

11 THE VIDEOGRAPHER: This concludes disc No.
12 1. The time is approximately 3:43. We are off
13 the record.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: This is the beginning of
16 disc No. 2 in the deposition of Kenneth Andres.
17 The time is approximately 3:49 p.m. We are on the
18 record.

19 BY MR. ALLRED:

20 Q Mr. Andres, you are designated as the
21 witness on behalf of ASA with regard to ICAST in 2009;
22 is that correct?

23 A Correct.

24 Q So in 2009 when ASA published this Exhibit
25 3, what did they intend when they discussed the

1 creative spirit at the new product showcase?

2 A As I see it, as I'm reading it, it's just
3 talking about the new product showcase as an
4 opportunity to -- to show innovation in the industry.

5 Q So you mentioned earlier that it's
6 marketing. Is this just marketing language?

7 A It's marketing --

8 MR. BIRD: Object to the form.

9 THE WITNESS: Well, it's -- it's a manner
10 of -- in a sense -- yeah, I -- I did say that -- I
11 mean, it is marketing. It's just the -- it's like
12 the first line. It's kind of like a catch phrase
13 to get you -- to entice the reader to read on, I
14 guess. It's talking about the new product
15 showcase and the innovation that might be involved
16 in the new product showcase.

17 BY MR. ALLRED:

18 Q Are you in the sales industry?

19 A I am.

20 Q Are you familiar with the phrase puffery?

21 A I am not.

22 MR. ALLRED: Okay. I have no further
23 questions.

24 MR. BIRD: Okay. Mr. Andres, I have just a
25 few that are limited to what he went into,

1 probably three or four questions. Okay?

2 THE WITNESS: Okay.

3 REDIRECT EXAMINATION

4 BY MR. BIRD:

5 Q You don't -- the only thing -- the only
6 guidance you gave your voters and your entrants in the
7 new product showcase were these four words and that was
8 innovation, execution, workmanship and practicality,
9 correct?

10 A Yes. That was on the ballot, correct.

11 Q It's on the entry form too or it's given to
12 entrants, right?

13 A Correct.

14 Q And so we agree, don't we, that -- that you
15 gave -- that's the only guidance you gave the voters
16 and the entrants, and all the voters made their
17 decision with those words in mind, right? That's the
18 only guidance they had?

19 A Yes, I'll agree with that.

20 Q And this hand tie thing in these photos of
21 Mr. Sosin, I'll direct your attention to that
22 testimony. There were some exhibits there.

23 Prior to 2009 had you ever seen a product
24 with rubber temple retainers and the monofilament
25 connected to those rubber temple retainers?

1 A Together? You're talking about monofilament
2 and rubber --

3 Q Right.

4 A No, I have not.

5 Q And there was a question about fishing
6 lures. I mean -- I mean, fishing lures have been
7 around for thousands of years, correct?

8 A That's correct.

9 Q That's pretty clear. But what -- what you
10 would expect a fishing lure would do to get the award
11 would be innovative in some respect, right?

12 A Yes, sir.

13 Q There are plenty of fishing lures. There
14 have been thousands of them, but the fact there had
15 been a product in that category doesn't mean that
16 somebody can't be innovative on that, correct?

17 A As far as fishing lures are concerned?

18 Q Sure.

19 A Yes, that's correct.

20 MR. BIRD: That's all I have. Thank you.

21 MR. ALLRED: I don't have any.

22 MR. BIRD: Thank you, Mr. Andres.

23 THE WITNESS: Thank you so much.

24 MR. GORELNIK: We'll go off the record until

25 Mr. Nussman arrives to conclude the topics in

1 defendant's deposition notice.

2 MR. ALLRED: Okay.

3 THE VIDEOGRAPHER: This concludes the video
4 recorded deposition of Kenneth Andres. The time
5 is approximately 3:54 p.m. We are off the record.

Certificate of Reporter

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, Lori Francis, Registered Professional Reporter
and Notary Public, do hereby certify that I was
authorized to and did stenographically report the
foregoing deposition of Kenneth Andres; that a review
of the transcript was requested; and that the foregoing
transcript, pages 1 through 94, is a true record of my
stenographic notes.

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

Dated this 25th day of July, 2014,
in Orlando, Orange County, Florida.

LORI FRANCIS, RPR, FPR, NOTARY
PUBLIC AND COURT REPORTER

1 Certificate of Oath

2 STATE OF FLORIDA)
3 COUNTY OF ORANGE)

4 I, LORI FRANCIS, REGISTERED PROFESSIONAL
5 REPORTER, Notary Public, State of Florida, certify that
6 the witness, Kenneth Andres, personally appeared before
7 me on the 17th of July, 2014 and was duly sworn.

8 WITNESS my hand and official seal this 25th
9 day of July, 2014.
10
11
12

13 _____
14 Lori Francis, RPR, FPR
15 Notary Public - State of Florida
16 My Commission Number: EE052018
17 My Commission Expires: March 17, 2015
18
19
20
21
22
23
24
25