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PUBLIC MEETING

before

SENATE SPECIAL NEW JERSEY HIGHWAY AUTHORITY INVESTIGATION COMMITTEE

To address issues of Garden State Arts Center
management and operations

April 10, 1989
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Gabriel M. Ambrosio, Chairman
Senator John A. Lynch
Senator Laurence S. Weiss
Senator Henry McNamara

New Jersey State Library

ALSO PRESENT:

E. Joan Oliver
Office of Legislative Services
Aide, Senate Special New Jersey Highway
Authority Investigation Committee

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TABLE OF CONTENTS

	<u>Page</u>
George P. Zilocchi Executive Director New Jersey Highway Authority	2
Patricia M. Horan Administrative Manager Garden State Arts Center	2
John H. Scher President Monarch Entertainment	69
Ron Delsener President R. D. Enterprises	101
Douglas Logan Vice President Facility Services Ogden Allied, Inc.	139
Fred Ordower Vice President of Events Ogden Allied	139

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SENATOR GABRIEL M. AMBROSIO (Chairman): I'm going to call this hearing to order of the Senate Special New Jersey Highway Investigation Committee. I just want to say from the outset that several members of the Committee are in the building and will be joining us shortly, and one or two members are stuck in traffic.

We have several witnesses who are going to be here during the day. I want to get as much as of the testimony from the Highway Authority people in this morning as we can, so we can complete this hearing today.

I might also add, for the record, that the purpose of today's hearing is to focus strictly on the Highway Authority's operation of the Arts Center. I was just going to say that the two Senators of the Committee that requested this meeting are Senator McNamara and Senator Lynch.

We're going to focus particularly on the operation of the Arts Center. I might just say at the outset, I personally have come to the conclusion that the Highway Authority should not continue operation of the Arts Center. I'm not sure at this point whether the majority of our Committee feels that way. If it does, whether or not any recommendation that we make will be acceptable to the full Senate, and will eventually wind up in legislation, I am really putting my cards on the table to you, Mr. Zilocchi and Ms. Horan.

What I'm looking for from you is to give us a defense of your position in terms of the operation of the Arts Center and some of the questions that are going to be raised in today's hearing. What I'd like to start out with is for both Mr. Zilocchi and Ms. Horan to give a very brief explanation of your individual roles with regard to the operation of the Arts Center.

G E O R G E P. Z I L O C C H I: My role, Senator, as the Executive Director of the New Jersey Highway Authority is to oversee and be responsible for the planning and operation of the Arts Center itself, along with the Garden State Parkway. I don't know how specific you want me to be, because you said generally. That basically is it.

SENATOR AMBROSIO: Ms. Horan?

P A T R I C I A M. H O R A N: I'm the Administrative Manager. As such, I report to Mr. Zilocchi, and I'm responsible for day-to-day operations of the Arts Center, and also the Cultural Fund and Foundation, which funds the programing.

SENATOR AMBROSIO: Would you tell us what the Cultural Fund and the Foundation are?

MS. HORAN: The Cultural Fund has been in existence since the beginning of the Arts Center in 1968.

The Foundation was established in 1984 with its sole beneficiary, the Cultural Fund. The Foundation raises the monies and passes them down through to the Cultural Fund to provide the free daytime programing, which is predominantly in the spring and fall for the school children, senior citizens, handicapped, and other deserving New Jerseyans.

SENATOR AMBROSIO: On our previous hearing on the Arts Center operation, and particularly with regard to the Booz Allen report, certain recommendations were made concerning the operation of the Arts Center, and the separating of the Arts Center's activities from the rest of the Highway Authority's activities.

Have those recommendations been implemented?

MR. ZILOCCHI: Yes, they have, Senator.

SENATOR AMBROSIO: Would you explain how you did that, Mr. Zilocchi?

MR. ZILOCCHI: The recommendations, I assume you're talking about the finances; is that correct, Senator?

SENATOR AMBROSIO: That's correct.

MR. ZILOCCHI: First of all, Senator, let me start by saying, we have always separated, costs from the roadway operations. Historically all direct theater charges have been charged against the profits made in the theatre. In line with our determination to sharpen that system, we have readdressed three major expense areas in our 1989 budget: They are, salaries, maintenance costs and printing costs.

In terms of salaries, all employees directly assigned to the Arts Center have always had their salaries charged to it. In our recent examination of this issue, other employment positions which supported the Arts Center were considered for similar inclusion.

In our 1989 operating budget, you will not find any employment position which deals exclusively with the Arts Center that is not charged to the Arts Center operating budget which was a recommendation made by the Booz Allen report.

SENATOR AMBROSIO: What about employees that share the time between the Arts Center and--

MR. ZILOCCHI: The Booz Allen report addressed that, Senator, and said if the employees' predominant responsibility was the Garden State Arts Center, that salary should be charged to the Garden State Arts Center. If the employee provided maybe 10% of their time to the Arts Center, but the greater amount of time at the Center, regardless of the weather, the Garden State Arts Center, it did not see the reasoning and rationale of charging any of that time to the Garden State Arts Center.

SENATOR AMBROSIO: How many full-time employees are there that are chargeable to the Arts Center operation?

MR. ZILOCCHI: I believe, and Pat can correct me, but I believe it's about eight or ten.

MS. HORAN: That's correct.

SENATOR AMBROSIO: You previously testified that there were 16 full-time employees.

MR. ZILOCCHI: We're talking Arts Center or Cultural Fund? We're talking two different operations there.

SENATOR AMBROSIO: I assume the Cultural Fund employees are paid out of Cultural Fund revenues.

MR. ZILOCCHI: That's right.

SENATOR AMBROSIO: And those are not part of your budget numbers, is that right?

MR. ZILOCCHI: They are not part of the Garden State Arts Center budget, right.

SENATOR AMBROSIO: You have 8 to 10.

MR. ZILOCCHI: Full-time employees that come out of the Garden State Arts Center budget.

SENATOR AMBROSIO: And you have another 8 or so that come out of the Cultural Fund budget?

MR. ZILOCCHI: The Arts Center, that 16, we're now operating with 10, Senator.

SENATOR AMBROSIO: What's the total allotment of the budget for the Arts Center activities?

MR. ZILOCCHI: I don't know if I have that figure with me. You're talking about the '89 budget. I don't have that figure with me, Senator. I can get that for you.

SENATOR AMBROSIO: Fine. Is any of your salary, Mr. Zilocchi, apportioned to the Arts Center?

MR. ZILOCCHI: No.

SENATOR AMBROSIO: Are there any other administrative expenses, other than salaries, that are apportioned to the Arts Center's operation?

MR. ZILOCCHI: All administrative expenses that are directly involved with the Arts Center are charged to the Arts Center operation. As I was beginning to say, Senator, in accordance with the recommendations that were

made last year, we are now charging all maintenance costs to the Garden State Arts Center. All printing costs which were administrative to the Garden State Arts Center.

SENATOR AMBROSIO: How about insurance?

MR. ZILOCCHI: No.

SENATOR AMBROSIO: So the insurance for the entire facility is not allocated to the Arts Center?

MR. ZILOCCHI: No, it's not.

SENATOR AMBROSIO: Why is that?

MR. ZILOCCHI: It was determined that it was difficult to separate, and it was really not that significant. Even Booz Allen in their report mentioned it, that they didn't feel it was germane and important to allocate that to the Arts Center.

SENATOR AMBROSIO: Do you know how much that figure is?

MR. ZILOCCHI: I don't have that figure with me, Senator, no.

SENATOR AMBROSIO: How do you apportion maintenance costs? What goes into the maintenance of the Arts Center?

MR. ZILOCCHI: Of course, any maintenance costs involved with the theatre itself, all maintenance costs involved with the parking lot, the mall, the plaza, everything that's directly related to the function of the Arts Center in Telegraph Hill Park.

SENATOR AMBROSIO: But you don't have a maintenance crew that works there, do you?

MR. ZILOCCHI: No, we have a maintenance -- the maintenance personnel that work at the Arts Center work out of one of maintenance districts. Whenever they are working at the Arts Center, their time is charged in our payroll records to the Garden State Arts Center.

SENATOR AMBROSIO: When you say you have 8 to 10 salaries that are attributable to the Arts Center operations, none of those salaries are maintenance workers?

MR. ZILOCCHI: Correct.

SENATOR AMBROSIO: And all of the maintenance work that gets done, and salaries to pay, those are all paid out of the total operation?

MR. ZILOCCHI: But charged to the Garden State Arts Center.

SENATOR AMBROSIO: How are they charged?

MR. ZILOCCHI: Through the records. Maintenance person "A" gets assigned for that specific day. They cost it out of their payroll records, and then our finance department reflects that cost in the Arts Center operation.

SENATOR AMBROSIO: What have you allocated for 1989 for maintenance of the Arts Center?

MR. ZILOCCHI: Senator, I believe it's \$600,000.

SENATOR AMBROSIO: That figure was not in the '88 budget for the Arts Center. You segregated it?

MR. ZILOCCHI: Correct.

SENATOR AMBROSIO: In the previous numbers where you show that the Arts Center was making a profit, that \$600,000 item was not part of your operating expense; is that right?

MR. ZILOCCHI: Correct, Senator.

SENATOR AMBROSIO: Does that \$600,000 resume maintenance of the facility?

MR. ZILOCCHI: No. All the maintenance inside the building is now going to be paid by the manager of the facility.

SENATOR AMBROSIO: We'll get to that contract in awhile. That contract has been let already?

MR. ZILOCCHI: That contract has been awarded by the Commissioners at their last commission meeting.

SENATOR AMBROSIO: The Booz Allen report recommended that the Arts Center should become a separate department with personnel and activities within the single responsibilities, and you say you've done that?

MR. ZILOCCHI: Senator, we've done it as far as the finances are concerned and everything. Now, the next move is to structure it as such that it is a separate department, and that's our next step.

SENATOR AMBROSIO: When is that going to be accomplished?

MR. ZILOCCHI: I anticipate it's going to be accomplished in the next three or four months.

SENATOR AMBROSIO: How are the costs allocated between the Arts Center and the Cultural Fund?

MR. ZILOCCHI: Basically, the same way, Senator. If any costs are involved with performances that are paid out of the Cultural Fund, those costs, be they payroll records and accounting allocations, are then passed on to the Cultural Fund.

SENATOR AMBROSIO: Mr. Zilocchi, in our last meeting on the Arts Center, I believe it was at the new reception facility, as I recall, at that time you indicated that there was no -- you had no use for that facility booked, and this goes back to October. What has happened between October and now with regard to the use of that facility?

MR. ZILOCCHI: Senator, we have proceeded as we had previously intended by soliciting and awarding lease arrangements through an outside professional firm to run the reception center. I can give you a chronology of how it happened, in terms of leasing the building. We last spoke with this Committee in October of 1988. The building itself was not entirely completed until December 1, 1988. We did not receive a certificate of occupancy until March 29 of this year. We brought in a consultant called

Restaurant Management Consultants of Midland Park, New Jersey, to help us prepare the request for proposal from which we would seek proposals. We then solicited proposals through a newspaper advertisement by contacting a large list of possible interested parties, some 25 to thirty firms, and by answering the many industry inquiries we received from word of mouth. We held a pre-proposal meeting at the reception center in February and finally we received three proposals.

SENATOR AMBROSIO: When did you first request that proposal?

MR. ZILOCCHI: I believe it was sometime in February, very early February, Senator.

SENATOR AMBROSIO: And I'm a little confused at the timing. You did nothing prior to February in terms of trying to book that facility; is that correct?

MR. ZILOCCHI: Senator, whatever we had received as inquiries of booking that facility, we were holding on and waiting to award a proposal to a manager so we can pass that information on. Senator, may I go on?

SENATOR AMBROSIO: I'm just trying to get the timing on this. You went out for proposals in February?

MR. ZILOCCHI: Early February.

SENATOR AMBROSIO: Early February. Who did you send proposals to?

MR. ZILOCCHI: Like I indicated, Senator, first of all we advertised in the newspaper. We had compiled a list of concerns that had expressed interest, some 25 to thirty firms. And we had received inquiries by word of mouth. In other words, what we did is we advertised in the newspapers. Those that had expressed an interest in and sent us proposals, we said, "When it's ready," and we mailed it to them.

SENATOR AMBROSIO: What were you asking the people to propose on, to operate this hall as a catering hall?

MR. ZILOCCHI: To manage and operate the facility.

SENATOR AMBROSIO: What were the parameters that you indicated to perspective people that wanted to make proposals? What were they going to do with this facility?

MR. ZILOCCHI: Actually manage and operate it. Do a marketing plan.

SENATOR AMBROSIO: As what?

MR. ZILOCCHI: As a reception facility, whatever use anyone would inquire about it, to be used for seminars, meetings, etc., and so forth.

SENATOR AMBROSIO: What I'm trying to understand, Mr. Zilocchi, when you talked about this facility at our last meeting, I had an understanding that this reception facility was integrally related to the Arts Center operation.

MR. ZILOCCHI: Absolutely, Senator.

SENATOR AMBROSIO: And it was going to be an adjunct to the Arts Center. Now I'm hearing what you're asking for is some outside operator to come in and basically run this as a catering hall; is that true?

MR. ZILOCCHI: Manage it as a reception facility, also assist us in managing our affairs in conjunction with the Arts Center and fund raising, etc.

SENATOR AMBROSIO: Well, I looked at the requested proposals, and that's not in your request for proposals, basically the request for proposal remained to bid on operating this facility as catering hall. I don't see anything that relates it at all to the Arts Center operations.

MR. ZILOCCHI: The proposal might have been general in terms, but, believe me, that is the way it's going to happen?

SENATOR AMBROSIO: Explain to me how that's going to happen.

MR. ZILOCCHI: Well, actually, the manager of the facility will be responsible for operating the entire facility. That's what it's commonly called -- a triple net lease deal. He's responsible for all the expenses and so on and will be managing all the events at that facility. Those events will consist of events that we will have, events in conjunction with the Arts Center operations -- and this is a year-round facility -- whatever other events come about that people will inquire about utilizing.

SENATOR AMBROSIO: When you say events that you will have, will the Arts Center have to pay the operator to use this facility?

MR. ZILOCCHI: The Arts Center will have to pay the operator to use that facility. Now, the operator, Senator, according to the arrangements, will be paying a percentage of all gross to the New Jersey Highway Authority.

SENATOR AMBROSIO: As I understand it, you entered into a contract for an operator to have total control of this facility, and has the exclusive booking rights for this facility.

MR. ZILOCCHI: It has the control for managing and operating that facility.

SENATOR AMBROSIO: Does it have the exclusive booking rights?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: What control has the Highway Authority maintained with regard to the use of this reception facility?

MR. ZILOCCHI: According to the contract, which is being drawn up, Senator, we will have controls to oversee and insure that it's being managed and operated properly.

SENATOR AMBROSIO: I don't understand what that means?

MR. ZILOCCHI: That it's made available to the public and whoever wants to utilize it.

SENATOR AMBROSIO: Provided they pay what the operator charges.

MR. ZILOCCHI: Absolutely, Senator, yes.

SENATOR AMBROSIO: And does the Highway Authority in any way have control over the rates that they charge?

MR. ZILOCCHI: There will be a provision in the contract, Senator, where the Highway Authority will have the control in the sense that they will be able to monitor the rates to see that they are reasonable and competitive.

SENATOR AMBROSIO: And the Highway Authority to the extent that it wants to use this facility has to pay.

MR. ZILOCCHI: Has to negotiate with the manager, yes.

SENATOR AMBROSIO: And what is the Highway Authority going to receive for its share of the operation?

MR. ZILOCCHI: Senator, according to the agreement, the Highway Authority will receive a guarantee versus percentage of gross, whichever is greater. The way it turns out, Senator, that the guarantee in the first year will be \$150,000. In 1991 it will be \$250,000, and in 1992, the guarantee will be \$350,000. The percentage, Senator, will vary from zero to \$1 million in gross sales. The Authority will receive 10%. And then from \$1 million to \$2 million the Authority will receive 12% and then it goes from \$2 million to \$3 million, 15%

SENATOR AMBROSIO: Let me just go back. You're telling me, is this a five-year contract we're talking about?

MR. ZILOCCHI: Three-year and there's a provision for two-year options on our part to renew if we want.

SENATOR AMBROSIO: When does the contract run, from what period to what period?

MR. ZILOCCHI: The contract will run from April 15, 1989, to the end of 1992.

SENATOR AMBROSIO: And on a year-by-year basis, tell me what the minimum guarantee is?

MR. ZILOCCHI: The minimum guarantee: In 1989, there will be no minimum guarantee. In 1990 the minimum guarantee is \$150,000. In 1991, it will be \$250,000, and in 1992 it will be \$350,000.

SENATOR AMBROSIO: And what's that, 8% of gross?

MR. ZILOCCHI: No, Senator. The percentage will fluctuate. If I may, it will start off at 10% of gross from zero to \$1 million. Then it goes to 12% of gross from \$1 million to \$2 million; 15% of gross from \$2 million to \$3 million; 18% of gross from \$3 million to \$4 million; 21% of gross from \$4 million to \$5 million, and 24% of gross from \$5 million to \$6 million.

SENATOR AMBROSIO: So, as I understand it, for the balance of this year, you'll get no revenue.

MR. ZILOCCHI: We'll get a percentage, we will not have a guarantee in '89.

SENATOR AMBROSIO: As I also understand it, Mr. Zilocchi, based upon the numbers that you gave us at the last meeting, the total cost of this facility runs something in the neighborhood of \$6.8 million; is that true?

MR. ZILOCCHI: No. If I gave you that number, I apologize, because I've been repeatedly stating publicly that the cost of the facility is \$6.4 million.

SENATOR AMBROSIO: Now, that includes the construction costs, and the interior renovations?

MR. ZILOCCHI: It includes everything, engineering, construction, interior.

SENATOR AMBROSIO: -\$6.4 million. Obviously you didn't have \$6.4 million sitting in a bank somewhere, so these funds were borrowed, right?

MR. ZILOCCHI: Senator, the funds that pay for our all capital costs: 1) is from bonding, 2) is from excess revenue of the Garden State Parkway, and 3) is from excess revenue of the Garden State Arts Center.

SENATOR AMBROSIO: Where does this \$6.4 million--

MR. ZILOCCHI: Excess revenue that has been accumulated over the years from the Garden State Arts Center.

SENATOR AMBROSIO: And you're saying, none of this is bonded.

MR. ZILOCCHI: Senator, again, they all go into one basic fund, Parkway Construction Fund.

SENATOR AMBROSIO: Well, I'm trying to understand, how it can come from excess revenues from the Arts Center when there weren't any? If you're saying excess revenue.

MR. ZILOCCHI: I don't quite agree with that, that there weren't any excess revenues from the Garden State Arts Center. I think there were.

SENATOR AMBROSIO: I don't want to beat this--

SENATOR McNAMARA: To be honest with you, I understand the answer that you gave Senator Ambrosio before, when you said \$600,000 of expense was not charged against the Arts Center. How could you have excess revenues, if you're saying you had excess revenues, because you didn't charge the expenses against it? That's a case of semantics.

MR. ZILOCCHI: No, Senator, it's not really, because, as an example, we had in 1987 even Booz Allen, when they commented on the review of the Garden State Arts

Center operation for 1987 it was stated that although our records reflected that the Arts Center made a net profit of \$1.5 million, when they applied a cost that they felt should have been charged against it, it was \$600,000, it still would have shown a profit of \$900,000. Translate that into 1988, Senator, our records reflected an Arts Center profit of \$1.2 million. When you apply the cost that Booz Allen recommended that we charge to the Arts Center operation, it still showed a profit of a half a million dollars.

SENATOR McNAMARA: I guess I have a problem groping with that, for the simple reason there doesn't seem to be any attendant cost of the monies that have been invested into it. And in saying that it was constructed and built and paid for out of excess revenues--

MR. ZILOCCHI: Senator, what I'm addressing is that the money paid for the reception center comes out of our capital budget. The sources of funding of the capital budget are threefold: bonding, excess revenue from the road, and excess revenue from the Arts Center. They all get put into the capital budget and then the capital budget expends the money for capital improvements, of which the reception center was paid out of the capital budget.

SENATOR AMBROSIO: If I understand you, Mr. Zilocchi, you're saying that you can't segregate the funds that were applied to raise this \$6.4 million to build this facility because it comes from a number of sources and it was never segregated. Is that true?

MR. ZILOCCHI: They basically-- All the revenue goes into this one source, Senator. Yes.

SENATOR AMBROSIO: My question is, if you had over the years done what Booz Allen recommended that you do, and that is, separate the actual costs of the operation of the Arts Center by attributing to it the appropriate salary costs, maintenance costs, printing fees and

insurance fees? We could save a lot of time, Mr. Zilocchi, if you'd say, "Yes, I agree." If we accumulated all those costs, we couldn't possibly have made a profit.

MR. ZILOCCHI: Senator, I will take exception to that. If you take our records of the Arts Center from 1984 through 1988, without the recommendations of Booz Allen -- the years that I've been Executive Director in which I've been operating and overseeing the Garden State Arts Center -- our records reflect that the Garden State Arts Center returned a net profit of \$6.5 million.

SENATOR AMBROSIO: Over what period of time?

MR. ZILOCCHI: From 1984 through 1988. Now, the Booz Allen recommendations would add an additional cost of a half a million to \$600,000. I think when you do a little arithmetic, you'll still find that the Arts Center still had a substantial return of net profit--

SENATOR AMBROSIO: You gave me a figure of \$600,000 on maintenance alone.

MR. ZILOCCHI: Correct, Senator.

SENATOR AMBROSIO: And that doesn't include salaries, printing costs, and insurance costs.

MR. ZILOCCHI: Senator, the whole thing, like I stated to Senator McNamara, if we retroactively applied the Booz Allen adjustments to 1987, and to 1988, which were part of that period, 1987, instead of reflecting a \$1.5 million profit, would have reflected a \$900,000 profit. That is including all the costs that Booz Allen recommended we should have charged to the Arts Center. In 1988, instead of showing an \$1.2 million dollar profit we would have shown a half a million profit.

SENATOR AMBROSIO: Then you disagree with the Booz Allen report.

MR. ZILOCCHI: I do not disagree with the Booz Allen report. I'm trying to establish, if we had approached the Booz Allen recommendations retroactively,

the Arts Center still would have shown a substantial profit.

SENATOR AMBROSIO: I read the Booz Allen-- As a matter of fact, I'm reading from page 35 of the summary of the report. Recognizing that the allocation, when they are talking about allocation of costs, recognizing that the allocation is avoidably subjective due to the lack of specific labor distribution records, it is our estimate that the Arts Center is operating with a profit of \$100,000 to \$150,000. Now, that's your consultant. And I think his figures are wrong, but let's take his figures.

MR. ZILOCCHI: But Booz Allen goes on to say on that same page that a better approach in determining the true cost of the Arts Center to the Highway Authority might be to allocate cost on an unavoidable cost basis. And that paragraph goes on to say, by using this approach, which is more realistic, the Authority would lose approximately \$900,000 in revenue that it wouldn't have made, if it didn't have the Garden State Arts Center.

SENATOR AMBROSIO: But those aren't dollars there. They are saying if someone else were running it--

MR. ZILOCCHI: No, they are saying if we're running it.

SENATOR AMBROSIO: I think you're wrong, Mr. Zilocchi. I think it's very clear.

MR. ZILOCCHI: Senator, I think it's very clear.

SENATOR AMBROSIO: What I'm trying to understand is where the Authority got \$6.4 million to build a facility that it didn't even know what they were going to do with it? And now you're trying to find someone to operate it and you still don't know what you're going to do.

MR. ZILOCCHI: Not try to find, we have found someone. We know what we're going to do with it. Senator, for the record, I must state, you might disagree with me, but I reviewed this report personally with Booz Allen, I can represent to you, that they are saying in this report

that 1987, which was used as a guide, instead of making \$1.5 million, if we applied their costs, we would have made \$900,000. That is, if we were operating it, not someone else.

SENATOR AMBROSIO: Well, the numbers are there, Mr. Zilocchi. We don't have to argue with them. But my question goes further. Even if you had the money in the bank, you put \$6.4 million into a facility.

Assuming I borrowed, and had a fund out, what would the debt service be on \$6.4 million?

MR. ZILOCCHI: Probably, Senator, in today's rates, I would say around in the vicinity of \$450,000, \$500,000.

SENATOR AMBROSIO: For the foreseeable future, you're not even going to make a return on the operation of this facility to cover your debt service.

MR. ZILOCCHI: It depends on what you say is the foreseeable future.

SENATOR AMBROSIO: Certainly for 1989, you're not.

MR. ZILOCCHI: Definitely not. I'd like to know any capital investment that you make a return on in one year. If I could do that, I wouldn't be here testifying to you, Senator.

SENATOR AMBROSIO: Based upon the guarantees that you have, if you only give the guarantees, what's the most you're going to make?

MR. ZILOCCHI: Over the period, \$1.1 million.

SENATOR AMBROSIO: You're talking about for three years?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: I don't understand that? The first year was zero.

MR. ZILOCCHI: 1990, Senator, \$150,000. I believe 1991 is \$250,000, and 1993 is \$350,000.

SENATOR AMBROSIO: That's like \$750,000, isn't it?

MR. ZILOCCHI: 350 plus 250 is 600, plus 150--750, you're right, Senator. I apologize.

SENATOR AMBROSIO: The debt service is over, actually, a four-year period. That's what you're talking about, right?

MR. ZILOCCHI: Three-and-a-half year period, Senator.

SENATOR AMBROSIO: The debt service in that would probably exceed one-and-a-half, close to two million dollars. The point I'm getting at, Mr. Zilocchi, this facility is not even meeting its costs.

MR. ZILOCCHI: Senator, it will eventually meet its cost. The question is, in what period of time it will meet its cost?

SENATOR AMBROSIO: Let me go back again to the use of this facility. This caterer, what is the experience of the individual or the firm that is going to run this facility, what is their background?

MR. ZILOCCHI: Oh, Senator they've been in this business.

SENATOR AMBROSIO: What business?

MR. ZILOCCHI: In the catering business about ten years.

SENATOR AMBROSIO: So, they are caterers?

MR. ZILOCCHI: They are caterers, yes.

SENATOR AMBROSIO: They don't run art functions, cultural center affairs, they just cater facilities; is that right? Cater parties?

MR. ZILOCCHI: They don't run an Arts Center theatre, no. They cater parties.

SENATOR AMBROSIO: Is this reception center going to be used for anything other than parties, and functions that are going to be catered?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: What is it going to be used for?

MR. ZILOCCHI: It's going to be used for seminars, senior citizen presentations, going to be used for school children presentations, by heritage festival people that raised the money for the Cultural Fund.

It's going to be used, Senator, in conjunction with group parties, group theatre parties of the Garden State Arts Center. It's going to be used, Senator in many cases in conjunction with the Arts Center operations, yes.

SENATOR AMBROSIO: But every time it's going to be used for that, the Arts Center is going to have to pay to use it.

MR. ZILOCCHI: And get a percentage back.

SENATOR AMBROSIO: Provided there's a profit?

MR. ZILOCCHI: On the other side of the coin, the New Jersey Highway Authority will not have to pay a penny to operate that facility; utilities, maintenance costs, and so on.

SENATOR AMBROSIO: Mr. Zilocchi, I guess, if you said to me, look, this facility was ill-conceived, we really didn't know what we were doing when they built it. Now, that we have it we're trying to make the best of it, I don't think I'd ask another question.

What I'm trying to understand is how you can defend the decision to build this facility knowing now that in the foreseeable future all you've got is somebody that's going to hopefully book it for catered affairs, and you're going to get a net revenue that won't even approach your debt service on it?

This is a nice deal for that caterer. He's got a \$6.5 million facility and the most he's going to have to pay to use it for the next year is \$150,000.

New Jersey State Library

MR. ZILOCCHI: That is, Senator, again, a minimum guarantee that he has to pay. If he didn't--

SENATOR AMBROSIO: If he doesn't do any better than that, that's all he's going to have to pay.

MR. ZILOCCHI: If he doesn't do any better than that, then I'm going to question his ability as manager.

SENATOR AMBROSIO: But he's got a contract for three years, if--

MR. ZILOCCHI: I'm sure, you're taking the most extreme view. In light of that, I'll take the other extreme, and somewhere in the middle we're going to meet.

SENATOR AMBROSIO: Well, I have to go by what you guarantee. All you guaranteed for the next year is \$150,000.

MR. ZILOCCHI: Minimum guarantee, Senator, yes.

SENATOR AMBROSIO: What are the projected gross sales over the next three years that your caterer proposed?

MR. ZILOCCHI: Senator, it seems from the records I have here the projected sales for 1989 is \$750,000; 1990, \$1.5 million; 1991, \$3 million, and 1992, \$4 million.. And that is a projected conservative scale.

SENATOR AMBROSIO: It seems to me that we have different figures here, Mr. Zilocchi. The first set of proposals that we received showed a projection of \$250,000 for '89.

MR. ZILOCCHI: Senator, I'm sorry, but if I could, I was starting to make a point. I don't know what you're looking at. The first proposals that we received, which were three, were all rejected by the Authority because we didn't feel it rendered the best return to the Authority. It was-- They were not the best proposals. We rejected them, went out and re-advertised and subsequently got seven more proposals, and that's where I'm coming from.

SENATOR AMBROSIO: The projections, anybody can put money in for projections. How do you go from \$260,000

from projected sales from '89 to \$750,000? What happened to kick that figure up a half a million dollars?

MR. ZILOCCHI: You'd have to ask the manager that question, Senator.

SENATOR AMBROSIO: You don't have the answers?

MR. ZILOCCHI: I don't have the answers.

SENATOR AMBROSIO: Who is the manager, by the way?

MR. ZILOCCHI: Bott, Incorporated.

SENATOR AMBROSIO: Does anyone have anything to ask at this point?

SENATOR WEISS: I do have one question. If I may, Mr. Chairman, it has to do with the addendum proposal.

Mr. Zilocchi, I think this is part of the Garden State Arts Center Reception Center or catering at--

MR. ZILOCCHI: Yes.

SENATOR WEISS: Would you just do one thing for me, please? On payment proposal number one, there's an unnumbered page, but it does have this schedule.

MR. ZILOCCHI: Yes.

SENATOR WEISS: Okay, I happened to be looking at that when you were quoting the numbers that you did quote, and I find them at quite some variance, except for the first one, 1989, zero, and the guarantee, and that's what you said.

1990, however, I find that the minimum guarantee is \$31,000, but you've changed it. You now have \$150,000. And so for '91 it went from \$43,000 to \$250,000. And so for '92 it went from \$65,000 to \$350,000. Which is right?

MR. ZILOCCHI: Senator, what I stated was right. What happened, in this proposal--

SENATOR WEISS: Then the paper I have is wrong?

MR. ZILOCCHI: Senator, if I may, the proposal submitted by Bott had three proposals. We further

negotiated it and came to an agreement on the figures that I just stated before to Senator Ambrosio.

SENATOR WEISS: Then, of course, that would make the percentages wrong, too.

MR. ZILOCCHI: Yes.

SENATOR WEISS: So then the numbers that we're to accept are the numbers that you gave us last?

MR. ZILOCCHI: Yes, Senator, in fact, those numbers will be reflected in a contract which will be finalized within a week.

SENATOR WEISS: Are there any other numbers in here that have been changed?

MR. ZILOCCHI: Senator, basically, the numbers, or the annual guarantees and projected sales, have changed.

SENATOR WEISS: Not just on Proposal No. 1. There must be some other proposals in here, since this is number one. Number three, is there a process that would change any of these?

MR. ZILOCCHI: Bott Incorporated submitted an addendum with three different approaches. Of all seven, they submitted the best proposal. We further negotiated with them, and the final settlement, the final agreement on the negotiating process reflect those figures I had mentioned before.

SENATOR WEISS: Since I'm not sure what your bidding process is, you said Bott submitted another proposal for three proposals?

MR. ZILOCCHI: In this proposal, Senator, they submitted three alternatives. We further negotiated with Bott and came up with an agreement of a final alternative which we felt was the best one of all seven proposals.

SENATOR WEISS: May I follow that to the next step? Then, Merry Maker, Magnolia and Corporate Caterers--

MR. ZILOCCHI: They are all part of the same operation.

SENATOR WEISS: They are all the same one, so an opportunity was given to all bidders to -- only because they are the same ones?

MR. ZILOCCHI: Yes.

SENATOR WEISS: To do--

MR. ZILOCCHI: To make the changes. Bott, Incorporated also goes under the names of Merry Makers, Magnolia and Corporate Caterer, all one entity.

SENATOR WEISS: This was a bid -- it wasn't bid as such, a regular bid. I thought, looking at this, I didn't know there was a connection.

MR. ZILOCCHI: Senator, it is a professional service. We did advertise it.

SENATOR WEISS: I'm not fighting you. I just want to know.

MR. ZILOCCHI: Yes, I'm sorry, sir.

SENATOR WEISS: I didn't know until just now there was a connection between Bott, Merry Makers, Magnolia, and the Corporate Caterers. I didn't realize that was a firm. Are they partnerships or corporations? How are they connected?

MR. ZILOCCHI: Bott Incorporated operates under those names, Senator. That's about all I know at this point.

SENATOR WEISS: Then, in your opinion -- and I'm going to have to use your opinion -- if you took this out for bid to another party, that bid against Bott, do you think you may have done better?

MR. ZILOCCHI: Senator, we received seven proposals.

SENATOR WEISS: And Bott was the best?

MR. ZILOCCHI: Bott was the best one and we further negotiated it.

SENATOR WEISS: After your negotiations, should you not have gone back to the other six and said, well, we negotiated, could you do better?

MR. ZILOCCHI: Well, Senator, we felt, in the sense of fairness, that Bott, if we had not further negotiated, had rendered the best proposal. And we continued the negotiations with them.

SENATOR WEISS: And the last numbers then that I have here on the returns, could you tell me why there was such great variance between-- I'm just going to take, let's take the last one, 1992. Originally, the minimum guarantee was \$650,000. You apparently went back and negotiated and got \$350,000, going back to that payment Proposal No. 1.

MR. ZILOCCHI: Yes, the minimum guarantee.

SENATOR WEISS: I think you did a much better job the second time around, but I don't understand why it was, let's see, one, two, three, three times better at least.

MR. ZILOCCHI: Senator--

SENATOR WEISS: I don't object to the fact that it was better. Was there a chance that they could have gotten away with \$65,000 for 1992?

MR. ZILOCCHI: We were not too happy with that. That's why we negotiated that guarantee to \$350,000.

SENATOR WEISS: Okay.

SENATOR AMBROSIO: Let me just follow up on that a little more. As I understand, the first request for proposal went out in February. They were supposed to be received on March 16; isn't that true?

MR. ZILOCCHI: I think so, yes.

SENATOR AMBROSIO: Yet, Bott submitted its original proposal before that in February?

MR. ZILOCCHI: That was part of the three that were rejected. But, like I was stating before, we went out and advertised in early February. We received three proposals. Bott was one of them.

SENATOR AMBROSIO: Who were the other two?

MR. ZILOCCHI: Catered Host and Restaurant Associates, I believe.

SENATOR AMBROSIO: And those three proposals were received. And were they formally rejected?

MR. ZILOCCHI: At a meeting of the Commissioners, Senator. Yes.

SENATOR AMBROSIO: When was that meeting?

MR. ZILOCCHI: March 2.

SENATOR AMBROSIO: Immediately you re-advertised. Did you re-advertise?

MR. ZILOCCHI: We re-advertised, Senator.

SENATOR AMBROSIO: Actually put a public ad in?

MR. ZILOCCHI: Yes, Senator.

SENATOR AMBROSIO: How many new proposals did you receive?

MR. ZILOCCHI: Seven.

SENATOR AMBROSIO: And that's the point that you began negotiating only with Bott?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: Bott was the lowest and you began negotiating with them?

MR. ZILOCCHI: Correct, Senator.

SENATOR AMBROSIO: Can you explain this paragraph from the introduction to Bott's original proposal: "Our uniqueness is simply that our entire operation with production and management is located in the same county as the Garden State Arts Center. Some board members have already used our services for personal catering in their homes or businesses"?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: That's right out of the proposal. Do you know anything about that?

MR. ZILOCCHI: Senator, it could be that one or two board members who have personal catered events might have utilized them in the past. That's the only thing I can comment on.

SENATOR AMBROSIO: I'd like to switch gears for a moment, Mr. Zilocchi, and go to the operation of the Garden State Arts Center in general. Would you explain the relationship between the Highway Authority, and Mr. Delsener?

MR. ZILOCCHI: Yes, Senator, Ron Delsener does the bookings of the events at the Garden State Arts Center, paid professional events.

SENATOR AMBROSIO: Under contract with the Arts Center?

MR. ZILOCCHI: Yes, Senator, it's a contract that was first entered into for the '84 season. There was subsequent additional contracts. I believe his present contract expires, goes through the 1990 season.

SENATOR AMBROSIO: And are you saying that these are annual contracts that are renewed annually?

MR. ZILOCCHI: No, Senator. I believe the last contract covered a three- or four-year period.

SENATOR AMBROSIO: And could you just briefly describe what the contract calls for?

MR. ZILOCCHI: It calls for Ron Delsener to do the bookings of the performances for us at the Garden State Arts Center. In practical terms, Ron goes out and approaches through agents, or whatever, the acts; comes up with terms, and then reviews them with us for our final acceptance.

SENATOR AMBROSIO: And does he have the exclusive booking rights to the facility?

MR. ZILOCCHI: From the standpoint, Senator, that he has done all our bookings, and if I have anyone else come to me and ask to book a performance, I will go to Ron and seek his advice as a consultant. But, that's about the extent of it. I can book a show myself if I want to.

SENATOR AMBROSIO: And you don't need to get his approval?

MR. ZILOCCHI: From a practical point of view, I've developed faith and confidence in Mr. Delsener whose advice has been good. I do not need to get his advice. I would not move without at least consulting with him.

SENATOR AMBROSIO: Let me get this straight. This is new to me. I was under the impression that no one could book an act at the Arts Center without going through Mr. Delsener.

MR. ZILOCCHI: Senator, no one can book an activity at the Arts Center without going through me.

SENATOR AMBROSIO: You have the right to book without reference to Mr. Delsener?

MR. ZILOCCHI: Correct, Senator.

SENATOR AMBROSIO: He does not have the exclusive booking rights to the center?

MR. ZILOCCHI: He does all the bookings for us. I don't know what you define as "exclusive," Senator. I don't understand that. He has done all the bookings for us since the 1984 season. Let me read to you from the contract what it states--

SENATOR AMBROSIO: Which contract?

MR. ZILOCCHI: Ron Delsener's contract.

SENATOR AMBROSIO: Dated April 26?

MR. ZILOCCHI: December 1, 1986. Can I read it, Senator, or do you want me to wait?

SENATOR AMBROSIO: Wait a second.

MR. ZILOCCHI: The very first page, Senator, right after item number 21, the caption is "Services in Term: The promoter shall provide booking services including negotiations with artists and/or agents on behalf of the authority for the 1987, '88, '89 and 1990 Arts Center season. The services shall be substantially the same as those services performed by the promoter during 1984 through 1986 Arts Center seasons." It doesn't say the word "exclusive" anywhere in there.

SENATOR AMBROSIO: It doesn't also say what the services for '84 to '86 were.

MR. ZILOCCHI: They were the same, Senator. I represent to you they were the same.

SENATOR AMBROSIO: And what is Mr. Delsener's fee?

MR. ZILOCCHI: It is presently \$75,000 a year.

SENATOR AMBROSIO: And he gets no percentage at all?

MR. ZILOCCHI: Senator, there's a provision in the agreement, I believe, that, based on average attendance, if there's an increase -- in fact, if I may, I'll refer to that agreement. It's on page 2, towards the bottom, Item "B" is "Center Fee." In other words, the way it works, Senator, if the average attendance rises by a certain level each season, he will get a certain percentage.

SENATOR AMBROSIO: Over the previous year?

MR. ZILOCCHI: That's right.

SENATOR AMBROSIO: From 1984 through the '88 season, how much was Mr. Delsener paid per year?

MR. ZILOCCHI: If I may, Senator, I think Pat Horan can answer that question. Is it okay, Senator?

MS. HORAN: Senator, to the best of my recollection, Mr. Delsener's fee in 1984, his first year with us, was \$35,000; '85, '86, and I believe '87, the fee was \$50,000, and '88 through 1990, the base fee will be \$75,000.

SENATOR AMBROSIO: I understand what the base fee is. I'm asking whether or not there was any incentive payments paid?

MR. ZILOCCHI: There was no incentive achieved during the 1988 season. Senator, 1987, if my memory serves me correctly, I believe there was an additional \$3000 payment.

MR. ZILOCCHI: And none in the prior years?

MS. HORAN: No.

SENATOR AMBROSIO: For the entire time, his base contract, and at best a \$3000 incentive?

MS. HORAN: That's correct, Senator.

SENATOR AMBROSIO: Doesn't Mr. Delsener also receive commissions on corporate sponsorships?

MR. ZILOCCHI: That is an arrangement that I don't have any specific knowledge of. I believe he does. But I do not know what the arrangement is there. I believe in the contract it's covered.

SENATOR AMBROSIO: Refer to page 3 of the contract where it says "sponsorships."

MR. ZILOCCHI: Whatever he received, Senator, is not received from us.

SENATOR AMBROSIO: But, as I understand the contract, Mr. Zilocchi, he's not receiving anything unless he gets the Authority's written approval?

MR. ZILOCCHI: As for sponsorship, yes.

SENATOR AMBROSIO: And you're saying, you don't know whether or not--

MR. ZILOCCHI: I'm sorry, he has given us a sponsorship, a very good one. , in fact,, I think, starting with the 1986 season, I could be corrected on that, it's a \$240,000 a year sponsorship. But we do not pay Delsener anything on that.

SENATOR AMBROSIO: You missed the point. That's right. The question is, do you have input, and do you negotiate the Commission that he receives on that?

MR. ZILOCCHI: No, Senator, I do not.

SENATOR AMBROSIO: The contract requires you to do that.

MR. ZILOCCHI: No, Senator, I don't believe it does.

SENATOR AMBROSIO: Well, maybe I'm misreading the contract. And I'll be happy to be corrected if I'm wrong.

MR. ZILOCCHI: I think the contract gives us the right to select a sponsor and gives us the final say on what the sponsor will be, and what the terms that the Authority will receive, absolutely. But, as far as his fee with the sponsorship, the Authority has really nothing to do with that.

SENATOR AMBROSIO: Well, on page 3, under, "sponsorship" on the contract between the Highway Authority and Mr. Delsener, I'm going to read directly from the contract. It says, "Subject to the Authority's written approval, the promoter may provide the Authority with corporate sponsorships. In such event, the parties, meaning the Highway Authority and Mr. Delsener, shall agree upon any additional fee from--

MR. ZILOCCHI: That's from us, Senator, and we have not given him any additional fee.

SENATOR AMBROSIO: You mean to say this doesn't apply to the fee that he gets from the sponsor?

MR. ZILOCCHI: Senator, what he gets from the sponsor is between him and the sponsor. The Authority received \$240,000 from the sponsor, directly from the sponsor, for the past three years.

SENATOR AMBROSIO: And you don't know what he gets directly from the sponsor?

MR. ZILOCCHI: Senator, I have no knowledge of that.

SENATOR LYNCH: This sounds like the Sunshine story, you know, all on the great advice of counsel.

SENATOR AMBROSIO: Let's go back to the secret meetings of March of '85, and the Isuzu deal. I'm going to read directly from those minutes. Starting January '85, the minutes note the proposal by Isuzu Motors to sponsor

events in the Arts Center. The Commission has rejected the proposal in January, February, and March of '85, but by July the Commissioners changed their minds. I'm going to quote: "The Chairman reviewed the matter with the Governor's Office. They have no objection, but it is their desire that the matter not proceed until after November. It was further reported that Delsener and his West Coast partner in the deal will receive a commission of \$60,000 from Isuzu."

MR. ZILOCCHI: Senator, if that was reported, I have no knowledge what he is receiving from Isuzu.

SENATOR AMBROSIO: You mean, you don't deny that that's in the minutes?

MR. ZILOCCHI: Senator, if you're reading from the minutes, what I'm saying, I cannot represent to you that Delsener is, indeed, receiving \$60,000 from Isuzu. I do not know.

SENATOR AMBROSIO: Why does your contract exempt -- the new contract exempt any reference to the Isuzu deal? I mean, it provides that, "All the new sponsorships under the contract provision dealing with sponsorships," it says in this provision, "that he shall not September the specific agreement between the Authority, and the Isuzu, Inc." Why is that in there?

MR. ZILOCCHI: I don't know. Can I refer to it?

SENATOR AMBROSIO: It's the contract that you're referring to: Delsener's contract, page 3.

MR. ZILOCCHI: I have no idea, Senator.

SENATOR AMBROSIO: You don't know what that clause means?

MR. ZILOCCHI: Senator, at this point, no, I do not recall what that means.

SENATOR AMBROSIO: What's the agreement between the Authority and American Isuzu?

MR. ZILOCCHI: The agreement between the Authority and American Isuzu is over a five-year period we will receive \$240,000 per year. In return, we will display the name American Isuzu on our advertising, on our tickets, on our billboard. Basically, that's, in a nutshell, the agreement.

SENATOR AMBROSIO: Is there a written contract for that?

MR. ZILOCCHI: Senator, I would assume so, but, at this point, I don't recall.

SENATOR AMBROSIO: Doesn't the contract refer to the \$60,000 that Mr. Delsener is going to get, 20% of the \$300,000 contract and he's getting 20%.

MR. ZILOCCHI: Senator, I don't recall.

SENATOR AMBROSIO: Don't you think it's appropriate for the Highway Authority to look into the arrangement between Mr. Delsener and Isuzu Motors? You don't think you have any--

MR. ZILOCCHI: Senator, the Highway Authority is receiving \$1.2 million over a five-year period in this arrangement.

SENATOR AMBROSIO: So what?

MR. ZILOCCHI: I don't know if you could say, "so what?" To the Highway Authority, a \$240,000 sponsorship each year, by just stating their names on advertisement, not doing anything else, and not incurring expenses is an arrangement which the Highway Authority is quite pleased with.

SENATOR AMBROSIO: First of all, you rejected this proposal for three years in a row, three months in a row, and then you accepted their proposal, and you're saying that the amount of the commission that Mr. Delsener is getting, you don't care about because the amount that you're getting you're satisfied with. Is that what you're saying?

MR. ZILOCCHI: Basically, the Authority was satisfied with the amount they were receiving, yes.

SENATOR AMBROSIO: I find it hard to believe; \$60,000 is more than Mr. Delsener made on all--

MR. ZILOCCHI: The Authority is looking at it in a five-year period it's making \$1.2 million.

SENATOR AMBROSIO: And Mr. Delsener over this five-year period is making \$300,000.

MR. ZILOCCHI: That's, something, sir, I believe you can ask Mr. Delsener. I am not in a position to answer.

SENATOR AMBROSIO: Okay. I think you should be. I think that \$60,000 a year, that \$300,000 is part of the fund available that Isuzu was committing to this project, and I think the Highway Authority had an obligation to determine whether or not the commission going to Mr. Delsener was appropriate, because if that commission was reduced, that would be more that would be available for the Highway Authority. I mean, it's as simple as that.

Has the Authority sought any other corporate sponsorships?

MR. ZILOCCHI: Senator, at that time, we were seeking corporate sponsorships in general. None of them came up with the money American Isuzu was willing to give.

SENATOR AMBROSIO: Who was doing the negotiating? Who was seeking those sponsorships?

MR. ZILOCCHI: Ron Delsener was doing it for us.

SENATOR AMBROSIO: Now, I find it hard to understand. You were not involved at all in this; is that right?

MR. ZILOCCHI: Senator, I was involved from the standpoint, if there were corporate sponsors out there willing to discuss with us corporate sponsorships, and they approached Ron Delsener, Ron Delsener would approach me. To that extent, I was involved. But most of them, except for American Isuzu, did not really offer much of any money to be considered.

SENATOR AMBROSIO: But, Mr. Zilocchi, I'm trying to understand the process here. If Mr. Delsener was retained by the Highway Authority to seek these corporate sponsorships, then very clearly the Highway Authority had a duty to define the relationship between Mr. Delsener and the Authority and the commission that he could get if he placed these sponsorships. And you clearly didn't do that, did you?

MR. ZILOCCHI: Senator, it's just been brought to my attention here in the minutes of October 25, 1984, that in the preamble of one of the resolutions which appointed Ron Delsener to seek corporate sponsorship there was a definition made and terms made.

SENATOR AMBROSIO: What were they?

MR. ZILOCCHI: If I may read, Senator: "Whereas, under the terms of its letter, R. D. Festival Incorporated, has proposed a three-year contract, as well as a corporate sponsorship estimated to earn an additional \$100,000 to \$200,000 for the Authority for which R. D. Festival will receive 25% of any gross sponsorship fee paid to the Authority over \$200,000."

SENATOR AMBROSIO: Now, that's in the minutes of a meeting?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: Why wasn't that put in the contract?

MR. ZILOCCHI: Pardon me?

SENATOR AMBROSIO: Why wasn't that put in the contract?

MR. ZILOCCHI: I have no idea, Senator.

SENATOR AMBROSIO: Does anybody want to pick up on this? The information I have is that there were several other corporate sponsorships approached. I know Mobil was one of them. Were you involved in the negotiations with Mobil?

MR. ZILOCCHI: I was involved with negotiations of Mobil to operate our service stations.

SENATOR AMBROSIO: No, in terms of corporate sponsorship.

MR. ZILOCCHI: The only ones I recall, Senator, from memory was Pepsi-Cola, Nabisco, Ford Motors. That's all I recall.

SENATOR AMBROSIO: Coca-Cola and McDonald's weren't involved?

MR. ZILOCCHI: We might have approached them, Senator, but they were not interested.

SENATOR AMBROSIO: When you say "we," you mean Delsener?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: And you did not approach anyone directly? Ron was the agent for the Authority?

MR. ZILOCCHI: Correct, Senator.

SENATOR AMBROSIO: To seek these sponsorships out, under what you say now is 25% commissions?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: Did you negotiate that commission with Mr. Delsener?

MR. ZILOCCHI: Oh, I believe at the time we probably did, yes. We're talking about 1984, when we entered into that agreement.

SENATOR AMBROSIO: Well, is it your understanding today that Mr. Delsener still has the same arrangement?

MR. ZILOCCHI: I would say so, Senator, yes.

SENATOR AMBROSIO: But that's not in writing?

MR. ZILOCCHI: Well, Senator, I just read a resolution to you. The question was raised, why isn't it in the contract? I cannot answer that question.

SENATOR AMBROSIO: I find this a very slipshod way of doing business. That resolution is not a contract.

The contract that you supplied us, with Mr. Delsener, makes no reference whatsoever, and then you previously testified what Mr. Delsener got, you didn't care about.

MR. ZILOCCHI: Senator, if I explained it that way and you misunderstood me, I stand corrected. What I was saying is, the Authority was making \$1.2 million over a five-year period, and that was a very attractive offer to the Authority.

SENATOR AMBROSIO: Didn't you say, you didn't care what Mr. Delsener got?

MR. ZILOCCHI: I don't know if I said I didn't care. I said, whatever the arrangements were, I had no knowledge of.

SENATOR AMBROSIO: I'm interested at this point in knowing what Ms. Horan's involvement and role is in all of this?

MR. ZILOCCHI: In what specific--

SENATOR AMBROSIO: Were you involved at all with Mr. Delsener's contract?

MS. HORAN: No, I was not, Senator.

SENATOR AMBROSIO: What is your role as Director? What do you do?

MS. HORAN: I'm responsible for the day-to-day operations of the Arts Center which includes once the performers are booked, making certain that the performance goes on, the terms of the contract are carried out, the ticketing operation, the front office operation, the Cultural Fund, and its Foundation.

SENATOR AMBROSIO: And what is your background and experience with regard to this role?

MS. HORAN: I have been with the Authority for 15 years. Prior to coming over to the Arts Center side of the Authority operation, I was in the finance Department of the Authority for approximately four and one half years.

In November of 1978, I assumed the role of ticket manager of the Garden State Arts Center, a job I held from 1978 until January of 1984, which is when my present position was created by the Commissioners, I so assumed it.

SENATOR AMBROSIO: Is there anybody that's in the 8 or 10 people that are salaried members of the Authority that work at the Arts Center? Is there anybody that was hired specifically to work for the Arts Center and not for the Highway Authority, and you just simply push them over for accounting purposes? Was there anybody hired specifically to work for the Arts Center?

MS. HORAN: Our Arts Center Coordinator, Senator.

SENATOR AMBROSIO: Who is that?

MS. HORAN: Linda Crane.

SENATOR AMBROSIO: What does she do?

MS. HORAN: She reports to me, is the on-site individual who, as I mentioned before, is responsible for making certain that all of the terms of the performers' agreement, and that the show, in essence, goes on.

SENATOR AMBROSIO: Would you tell us what the '89 season is shaping up to be?

MS. HORAN: We are currently in the process of finishing our renewal of existing subscribers, and advertising for new subscription solicitation.

At the present time, the only public advertising of our shows is our subscription series. We currently have 41 performances confirmed for the professional season, and we have offers in for approximately 17 to 20 more performances which we expect confirmation of within the next month or so.

SENATOR AMBROSIO: Now, these 41 performances that you have booked, did Ron Delsener book them all?

MS. HORAN: Yes.

SENATOR AMBROSIO: Has any outside promoter other than Ron Delsener booked an event at the Arts Center since he's been there?

MS. HORAN: Not to the best of my knowledge.

SENATOR AMBROSIO: Why is that?

MS. HORAN: I don't believe we've ever been approached.

SENATOR AMBROSIO: You say that no outside promoter ever tried to book an act at the Arts Center?

MS. HORAN: Not to me, Senator.

SENATOR AMBROSIO: How long have you been there?

MS. HORAN: I've been with the Authority for 19 years. I've been with the Arts Center, my first full season was 1979.

SENATOR AMBROSIO: John Scher ever try to book a show?

MR. ZILOCCHI: Not to the best of my knowledge. He has not approached me.

SENATOR AMBROSIO: Do you know any other promoter that tried to book an act at the Arts Center?

MR. ZILOCCHI: Senator, I don't know a promoter. I have never met Mr. Scher.

MS. HORAN: Nor have I.

SENATOR AMBROSIO: Would you explain to me, the 41 professional acts, those are the ones--

MR. ZILOCCHI: The evening performances.

SENATOR AMBROSIO: Now, what other performances do you run? And that's part -- the 17 to 20 that you're attempting to book would be part of that?

MR. ZILOCCHI: Absolutely. We target approximately 60. We aim for a 60 performance professional season.

SENATOR AMBROSIO: Now, other than those-- By the way, your season runs from May 1?

MR. ZILOCCHI: Approximately May 1, Senator, until October 1.

SENATOR AMBROSIO: And how many available dates are there for booking acts at the center? If you book the entire season, what could you book?

MR. ZILOCCHI: I'd have to quickly-- Just to give you a barometer, last year we had, in 1988, 105 individual events under the amphitheater roof.

SENATOR AMBROSIO: Okay. Now, other than the paid acts, what other performances do you book?

MS. HORAN: We have, of course, our free performances which are underwritten by the Foundation and Cultural Fund. We currently have approximately 29 to 30 of those performances booked for this year. They run generally in the spring and fall. We currently have 10 heritage festivals scheduled. Again, they run in the late spring and early fall.

SENATOR AMBROSIO: Who pays for those?

MS. HORAN: For the senior citizen and the school children performances?

SENATOR AMBROSIO: Yes.

MS. HORAN: They are funded through contributions which are raised under the auspices of the Foundation and Cultural Fund.

SENATOR AMBROSIO: I've seen some recent newspaper articles that indicate there's a significant drop-off in donations in that fund this year; is that true?

MR. ZILOCCHI: That's correct, yes.

SENATOR AMBROSIO: I saw a figure like 27% down from last year.

MR. ZILOCCHI: The percentage, I'm not absolutely certain of.

SENATOR AMBROSIO: What do you attribute that to?

MS. HORAN: Quite frankly, Senator, I think some of the adverse publicity which has been generated surrounding the Authority has not helped us. We also, a few of our major fund raisers, our major fund raiser, our gala

benefit to benefit the Foundation, we were unfortunately unable to engage a performer who would be able to garner an audience that would attend such a performance, the likes of what we have had in past years -- a Luciano Pavoratti or Placido Domingo, Frank Sinatra.

SENATOR AMBROSIO: Whose responsibility is it to book those?

MS. HORAN: Those are all considered professional, and those in the recent past have been done by Mr. Delsener. I might add, we are fortunate enough this year, we have a gala benefit already booked, and we are looking forward to hosting this August, Liza Minelli.

SENATOR AMBROSIO: What do you plan to do with the funds that are raised to fund the programs that you just outlined?

MS. HORAN: If the money is not there, unfortunately, Senator, the performances can't go on. And I really-- I hate to think of that point, because I feel what we do is rather unique, and, I think, serves an important benefit and service to the certain elements of the population of the State.

SENATOR AMBROSIO: I'm trying to get an understanding. Maybe Mr. Zilocchi can answer this. Is it the policy to go on with these programs even if the funds are not there, by using other revenues to subsidize them, or is it the policy to cancel the programs?

MR. ZILOCCHI: Senator, you make every attempt to raise the revenue for it. If we cannot raise it through contributions and fund raising events, then those programs would have to be cancelled.

SENATOR AMBROSIO: I note also in that same newspaper article, it states that administrative expenses for the fund account for some \$671,000 of the fund's \$1.38 million costs in '88; is that correct?

MS. HORAN: Yes.

SENATOR AMBROSIO: What do those administrative costs represent?

MS. HORAN: Staffing and administrative charges.

SENATOR AMBROSIO: For the fund?

MR. ZILOCCHI: Correct.

SENATOR AMBROSIO: So, of the \$1.38 million, you netted something like \$700,000 that was available to go into these events?

Did Delsener get any of those funds, that \$671,000?

MS. HORAN: No. We book all of our free programs in-house. It's done by staff at the Cultural Fund. Mr. Delsener does not book those performances, nor does he book our heritage festivals.

SENATOR AMBROSIO: Where are the Cultural Fund employees housed? Are they in the reception facilities or are their offices elsewhere?

MS. HORAN: They are located down in Holmdel in the Telegraph Hill area, but across the Parkway from the Arts Center proper.

SENATOR AMBROSIO: The Booz Allen report recommended that a Foundation board of trustees should have a mix of Commissioners and outside members, I think, in their language, "More directly related to the nature of the Cultural Fund's mission." That's a quote from their report. Has anything been done in this regard?

MR. ZILOCCHI: Senator, if I may, I believe it is being looked into, and it is being planned to implement it. When, I don't know, because this is something that the members of the Foundation are reviewing.

SENATOR AMBROSIO: Do you agree with that philosophy?

MR. ZILOCCHI: Yes.

SENATOR AMBROSIO: Do you plan to look at the other areas mentioned in the Booz Allen report specifically

concerning the status of the 501-C3 Foundation? Has anything been done on that?

MR. ZILOCCHI: Senator, this is something that's being addressed by the members of the Foundation itself. Every recommendation in the Booz Allen report has been or will be addressed.

SENATOR AMBROSIO: Who's the Chairman of the Foundation right now?

MR. ZILOCCHI: The Chairman of the Foundation, first of all, the Foundation consists of members -- the Commissioners of the New Jersey Highway Authority, and then there's a Board of Trustees, and then there are officers.

SENATOR AMBROSIO: Is it the same Chairman that's the Chairman of the Highway Authority?

MR. ZILOCCHI: No, the President of the Foundation is Judith Stanley.

SENATOR AMBROSIO: Is Mr. Tremayne a member of the Board?

MR. ZILOCCHI: Mr. Tremayne, by the very nature that he is a Commissioner of the New Jersey Highway Authority, would be a member of the Foundation.

SENATOR AMBROSIO: Does anybody else want to pick up with questions? Senator Lynch? Senator Weiss?

SENATOR WEISS: Yes, Mr. Chairman, I would. I'd like to know who's responsible to whom in this whole corporate makeup. You have the New Jersey Highway Authority, the Parkway, and then -- I'm assuming they are at the top of the pyramid, right? And then I have the Garden State Arts Center, R. D. Delsener, GSP Foundation, the Foundation itself, and Bott. And I'd like to know where the lines of Authority are, who answers to whom?

MR. ZILOCCHI: Senator, let me try to explain. And, I'm sure, the New Jersey Highway Authority owns and operates the Garden State Parkway and the Garden State Arts Center. It's run by a Board of seven Commissioners.

The Garden State Arts Center Foundation is a separate entity that is run by, according to its bylaws, by members who happen to be also the Commissioners of the New Jersey Highway Authority, but is a separate entity.

SENATOR WEISS: Let me just stop you for a moment, the Garden State Arts Center board is responsible to the New Jersey Highway Authority.

MR. ZILOCCHI: The Garden State Arts Center itself, Senator? Not the Foundation?

SENATOR WEISS: The Foundation is another one.

MR. ZILOCCHI: Okay, the Garden State Arts Center is part of the New Jersey Highway Authority, the Board of Commissioners.

SENATOR WEISS: And they report to?

MR. ZILOCCHI: To the Board of Commissioners of the New Jersey Highway Authority.

SENATOR WEISS: Oh. Now give me the Garden State Foundation.

MR. ZILOCCHI: The Garden State Foundation is a separate entity, Senator, that is overseen by the members of the Foundation, which happen to be the Commissioners of the New Jersey Highway Authority.

SENATOR WEISS: Garden State Foundation, 501-C3, right?

MR. ZILOCCHI: Correct, Senator.

SENATOR WEISS: They report directly to the Foundation; is that right?

MR. ZILOCCHI: That's a separate entity in itself, Senator.

SENATOR WEISS: What's a separate entity?

MR. ZILOCCHI: It has nothing to do with the New Jersey Highway Authority.

SENATOR WEISS: They don't report at all? They do whatever they have to do, and there's no overseeing?

MR. ZILOCCHI: It's overseen by the members of the Foundation, Senator, and the members of the Foundation happen to be the Commissioners of the New Jersey Highway Authority, but it's a different hat, so to speak.

SENATOR WEISS: Okay, but they have no direct responsibility, other than dual membership to the New Jersey Highway Authority, is that right? Is that what you're telling me?

MR. ZILOCCHI: Correct, Senator.

SENATOR WEISS: So, they can do whatever they want, ostensibly, but in the meantime, they are doing it on a New Jersey Highway Authority facility.

MR. ZILOCCHI: Correct, Senator.

SENATOR WEISS: Is that right?

MR. ZILOCCHI: Yes.

SENATOR WEISS: But no direct responsibility in reporting, or anything else, other than being members--

MR. ZILOCCHI: Yes.

SENATOR WEISS: So, then, you can consider them a separate Authority?

MR. ZILOCCHI: A separate entity, yes.

SENATOR WEISS: However you want to call it. Okay. Now, R. D., is that Delsener?

MR. ZILOCCHI: That is Ron Delsener trading as R. D. Festivals.

SENATOR WEISS: Is that a corporation, R. D. Festivals?

MR. ZILOCCHI: Yes, yes.

SENATOR WEISS: And he trades as R. D. Corporation, or trades as Ron Delsener Enterprises, or R. D. Festivals?

MR. ZILOCCHI: R. D. Festivals, Incorporated.

SENATOR WEISS: And that's really Delsener?

MR. ZILOCCHI: That's correct, Senator.

SENATOR WEISS: It says here, they were incorporated, and that Ron Delsener Enterprises is a limited partnership.

MR. ZILOCCHI: Well, R. D. Festival, Incorporated, trading as Ron Delsener Enterprises, Ltd., yes.

SENATOR WEISS: Which one do you deal with directly, R. D. Festival or Ron Delsener? Who signed this contract?

MR. ZILOCCHI: Ron Delsener signed as president of the R. D. Festivals, Incorporated.

SENATOR WEISS: Trading as Ron Delsener, Incorporated. Have you looked into these corporations to find out what their connection is to the matter of liability that they are doing this, or why is he doing it, do you know?

MR. ZILOCCHI: I have no idea, Senator, no.

SENATOR WEISS: Who else is involved in the Ron Delsener -- in either Ron Delsener Enterprises or R. D. Festivals, Incorporated?

MR. ZILOCCHI: Ron Delsener is the President. He has a staff that operates--

SENATOR WEISS: Other than Delsener, you don't know who you're dealing with, is that what you're saying?

MR. ZILOCCHI: I've dealt with Mr. Delsener or his staff.

SENATOR WEISS: Is there any connection between Delsener and the Foundation?

MR. ZILOCCHI: No.

SENATOR WEISS: Is there any connection between Delsener and Bott?

MR. ZILOCCHI: No.

SENATOR WEISS: Is there any connection between Delsener and whoever else bid, as Bott did?

MR. ZILOCCHI: I don't believe so, no.

SENATOR WEISS: Now, Delsener is an independent agent in this case, is he not? He works on a commission, like a broker.

MR. ZILOCCHI: He works on a flat fee, Senator, according to the contract, plus there is an incentive, if it meets certain tests.

SENATOR WEISS: What's the incentive and what are the tests?

MR. ZILOCCHI: Well--

SENATOR WEISS: Does he make more than \$60,000, the flat fee, for doing the booking services at the Garden State Arts Center?

MR. ZILOCCHI: \$75,000.

SENATOR WEISS: That's beyond the \$60,000?

MR. ZILOCCHI: I don't know what the \$60,000 is, Senator.

SENATOR WEISS: I thought I heard--

SENATOR AMBROSIO: Yes, it's beyond the \$60,000.

SENATOR WEISS: Senator Ambrosio indicated that there was a \$60,000 fee paid.

MR. ZILOCCHI: The \$75,000 has nothing to do with the \$60,000.

SENATOR WEISS: So, that's beyond it, then?

MR. ZILOCCHI: Yes.

SENATOR WEISS: You should have told me that in the first place. All right, that was \$75,000. That's a flat fee. Okay, and what's the test?

MR. ZILOCCHI: The test, Senator, is based on average attendance the prior year. For example, for the 1989 season, for him to get any additional money, let me read it to you directly from the contract: "1989 Arts Center season, \$1000 for each 100 tickets sold in excess of an average paid attendance of 6,600 for the season.

SENATOR WEISS: Does that mean, for any increment of 100 tickets sold over 6600, he gets \$1000?

MR. ZILOCCHI: On the average, Senator, if you have 60 performances, and you take the attendance on all the performances and divide it by 60, if the average attendance exceeds 6600 for the season, then he gets an incentive paid.

SENATOR WEISS: On each 100 tickets sold over that 6600 amount. What's the cost of a ticket? What's the cost of a ticket, average cost of a ticket?

MR. ZILOCCHI: This is based on the attendance, not the cost of the ticket.

SENATOR WEISS: Attendance. If I buy a ticket, if I'm an attendee, I have to buy a ticket.

MR. ZILOCCHI: This is based on the number of tickets, not the value of the tickets.

SENATOR WEISS: The number of tickets. Well, then, don't say that, because, will 100 tickets cost \$1000?

MR. ZILOCCHI: Senator, 100 tickets on an average attendance basis, I can't convert it. It's really talking about a lot of tickets to be sold.

SENATOR WEISS: I can convert numbers. It's the same thing to me. If you have 100 tickets, if you have 100 apples, you have 100 oranges or 100 bananas, or whatever, there's a cost involved. What I'm trying to determine is, if that cost of those 100 bananas is over \$1000, or is it under \$1000? In other words, is the individual amount coming from the \$100,000, or all into the \$1000 to pay Mr. Delsener? It seems like it's a pretty good test. If tickets cost \$10 apiece, it's costing you money.

MR. ZILOCCHI: 1988, the average ticket price was \$22.

SENATOR WEISS: Okay. Why didn't you tell me that before? You knew it.

MR. ZILOCCHI: I was not understanding your question, sir.

SENATOR WEISS: I didn't think I was that difficult. Okay, the 2200 tickets average, make it 2200, and you pay him almost half that; is that not right?

MR. ZILOCCHI: It's 1000 tickets, I believe, sir.

SENATOR WEISS: No, you said \$1000 for each 100 tickets sold. Do you want to change that?

MR. ZILOCCHI: \$1000 for each 100 tickets sold.

SENATOR WEISS: If you have \$22 per ticket, you sell 100 and you net \$22. You do simple arithmetic, you find out that he's going to get \$1000 at-- You're going to be left with \$1200 and he's going off with \$1000; is that not right?

MR. ZILOCCHI: But the only question is, this is based on average attendance, Senator.

SENATOR WEISS: No, it's based on tickets sold over 6600 tickets.

MR. ZILOCCHI: On the average for the whole season, per performance.

SENATOR WEISS: Okay, then how many thousand dollar increments-- How many tickets over the 6600 did you sell?

MR. ZILOCCHI: Well, for 1988, Senator, I believe our average attendance was 6300. So, he didn't get anything.

SENATOR WEISS: Let me put it another way: Was there ever a time when this was made available to Mr. Delsener, when you did have more than 6600?

MR. ZILOCCHI: 1987, Senator. In 1987, our average attendance for the season was 6300 per performance. And under this formula, he received \$3000.

SENATOR WEISS: You know what, I think you're confusing me.

MR. ZILOCCHI: I'm trying my best not to.

SENATOR WEISS: 6600 people attend a performance; is that right?

MR. ZILOCCHI: On the average, Senator, that's the key word. If we have 60 performances, if, at the end of the season, when you total up all the tickets sold for 60 performances, and divide it by 60, if the average attendance for the season is 6600.

SENATOR WEISS: So, if you have 100 performances, that means you will have sold 66,000 tickets. Is that right, let's assume?

MR. ZILOCCHI: 66,000 tickets.

SENATOR WEISS: 66,000 tickets, that's the key number. If he goes over the 66,000 he gets \$1000 per hundred.

MR. ZILOCCHI: Per hundred of the average.

SENATOR WEISS: If it goes under, he gets nothing.

MR. ZILOCCHI: That's correct.

SENATOR WEISS: Nevertheless, it's the same whether it's average or not, if you look at it from my point of view. And that is, if you sell more tickets than the amount we talked about -- 66,000, right? -- he would get them in increments of 100. If you sold 666,100, he would get \$1000 more.

MR. ZILOCCHI: Correct.

SENATOR WEISS: Okay, correct, has he ever gotten to that point?

MR. ZILOCCHI: Once, Senator.

SENATOR WEISS: Once, in 1987.

MR. ZILOCCHI: Correct.

SENATOR WEISS: That's what I thought you said. How much more did he get?

MR. ZILOCCHI: \$3000 more.

SENATOR WEISS: \$3000 more. And there was no other time?

MR. ZILOCCHI: No, Senator.

SENATOR WEISS: And they always average out over the year, so, Mr. Chairman, that's not much of a test, unless they meet criteria.

SENATOR AMBROSIO: Senator Lynch, do you have anything?

SENATOR LYNCH: I'd like to get into some areas.

SENATOR AMBROSIO: Can I just ask two questions before that? How are ticket prices set? Who sets them?

MR. ZILOCCHI: Ticket prices are set finally by me, my approval. And it's based, Senator, on the terms of the performance, the estimated cost of the performance, and determining what ticket price can be put in place for that performance, in order to give a return, a proper return, for that event.

SENATOR AMBROSIO: So, Mr. Delsener doesn't set the ticket price?

MR. ZILOCCHI: No, many times, Senator, I might add, just to give you the whole picture-- There have been times that the action will decide on a ticket price, and then you have to determine whether it's worth your while to have that performance.

SENATOR AMBROSIO: The ticket price is related to the cost of booking the act. If you have to give that act a higher guarantee, you raise your ticket prices accordingly, do you not?

MR. ZILOCCHI: You raise your ticket prices so that you can expect a return, and also determine if that ticket price is affordable for that performance.

SENATOR AMBROSIO: Are you not in direct competition with the Sports Authority for acts?

MR. ZILOCCHI: Senator, no. Maybe one or two isolated ones, yes, because basically the acts that come to the arena do not come to the Arts Center. There could be one or two acts that could go to both. But,

I have found, in my experience, except for those cases, there's very few times that I feel I'm in direct competition with them.

SENATOR AMBROSIO: Didn't you just recently outbid the Sports Authority for an act?

MR. ZILOCCHI: Which act, Senator?

SENATOR AMBROSIO: I forgot, the Doobie Brothers.

MR. ZILOCCHI: Senator, I didn't realize we were in competition with the Sports Authority on that.

SENATOR AMBROSIO: What was the information that you got?

MR. ZILOCCHI: I don't recall that. SENATOR AMBROSIO: What was the the price you gave the Arts Center for that?

MR. ZILOCCHI: I'm not sure on that, Senator.

SENATOR LYNCH: There are three agreements with Delsener over the years, August '84, April '85, and December '86.

MR. ZILOCCHI: That's correct, sir.

SENATOR LYNCH: And you describe that none of those were, in effect, exclusive agreements; is that correct?

MR. ZILOCCHI: Our relationship with Delsener is not one that's exclusive.

SENATOR LYNCH: It's not part of exclusivity?

MR. ZILOCCHI: No.

SENATOR AMBROSIO: Although between the years of '84, '85, and '86, no one else had done any bookings for the Authority.

MR. ZILOCCHI: No, Senator, no one else.

SENATOR LYNCH: And when you had your agreement of December '86 for the ensuing years '87 and '88, and '89, whatever, you referred to in that contract that the terms between the matters, the scope of service will be the same as had been provided by Delsener from '84 through '86.

MR. ZILOCCHI: Correct, Senator.

SENATOR LYNCH: Correct, so from '84 to '86 no one else had been doing any bookings. Is it safe to assume that that language could be interpreted to mean that it's the next best thing to an exclusive, beginning in January of 1987?

MR. ZILOCCHI: Senator, I can see where someone could come to that conclusion, yes.

SENATOR LYNCH: The same thing with regard to the sponsorships. There was no exclusive agreement with Delsener for Delsener to provide the negotiating for these sponsorships, correct?

MR. ZILOCCHI: Correct, Senator.

SENATOR LYNCH: So that you, or any member of the Authority, or anyone given that responsibility by the Commissioners, could have been negotiating independently of Delsener for corporate sponsorships?

MR. ZILOCCHI: Correct.

SENATOR LYNCH: But that never happened?

MR. ZILOCCHI: No.

SENATOR LYNCH: And in all of your agreements, there have been in those three agreements that I referred to earlier with Delsener there is various language relating to the sponsorship issue. In each case and all three contracts, the language is somewhat different. Do you recall that?

MR. ZILOCCHI: Senator, I don't offhand recall it. I'll gladly review the contract. I don't recall it, Senator.

SENATOR LYNCH: You indicated, and I know that the Chair sort of challenged you on it, let me take it a step further. You indicated that you were very happy. You personally were very happy with the fact that Isuzu was going to give the Authority \$1.2 million over a five-year period.

MR. ZILOCCHI: Correct, sir.

SENATOR LYNCH: And that it was of no moment, no great moment, to you what the commission would be. Yet,, in fact,, you have some reference in the minutes to a not to exceed percentage on commissions, and you have a reference in all three contracts with Delsener that commissions will be agreed upon between the parties, namely Delsener and the Authority, correct?

MR. ZILOCCHI: Correct, sir.

SENATOR LYNCH: Is this the agreement with Isuzu that you signed or that the Authority signed or authorized you to sign with reference to a commission that Delsener would receive?

MR. ZILOCCHI: I don't think it does, Senator but I don't recall specifically.

SENATOR LYNCH: You're talking about from the standpoint of the Authority. Isn't it relevant to the decision that should be made by the Commissioners what the gross amount of the payment is going to be by the sponsor?

MR. ZILOCCHI: Senator, yes, it should be relevant. I'm sure at that time it was discussed. I don't recall the details.

SENATOR LYNCH: Well, did the Authority-- Was it ever presented to the members of the Authority at any meeting to approve the agreement with Isuzu?

MR. ZILOCCHI: Yes.

SENATOR LYNCH: And was it represented to the Authority members, the Commissioners, at that time, what the total terms would be? What was the gross amount of money that Isuzu was going to pay? What was the net amount of money that the Authority was going to get? Therefore, what was the commission that Delsener was going to receive?

MR. ZILOCCHI: Senator, I don't recall. I'd have to check the resolution. At this point, I think that happened two or three years ago. I don't recall all the details on it.

SENATOR LYNCH: And you never had any other corporate sponsors come to you to attempt to negotiate?

MR. ZILOCCHI: Senator, like I mentioned earlier, I recall Pepsi-Cola.

SENATOR LYNCH: Did they come to you?

MR. ZILOCCHI: They came to me through Ron Delsener.

SENATOR LYNCH: Did anyone ever come to you that you referred to Delsener?

MR. ZILOCCHI: I don't think so, Senator, no.

SENATOR LYNCH: Are you sure of that?

MR. ZILOCCHI: I'm not 100% sure. I'm trying to recall. I can't remember right offhand.

SENATOR LYNCH: No other members of the Authority ever presented to you ideas about interested corporate sponsors that you referred to Delsener to negotiate with?

MR. ZILOCCHI: Senator, I don't recall of any.

SENATOR LYNCH: Tell me about the Foundation. I see in the incorporation on the Foundation from, I don't know what year it is, 1986, or whatever, the incorporator being a Marybeth Roamer of Elizabeth.

MR. ZILOCCHI: Senator, I don't know.

SENATOR LYNCH: Who authorized the Foundation to be created?

MR. ZILOCCHI: That was probably authorized by the members of the Foundation, which are the Commissioners of the Highway Authority.

SENATOR LYNCH: Did the Highway Authority resolve at one of its meetings to cause the Foundation to be incorporated?

MR. ZILOCCHI: I don't recall, Senator.

SENATOR LYNCH: Who was the attorney who incorporated the Foundation?

MR. ZILOCCHI: Fox and Fox.

SENATOR LYNCH: Who was the attorney for the Highway Authority?

MR. ZILOCCHI: Yes.

SENATOR LYNCH: Did the members of the Highway Authority at a public meeting agree to allow themselves to be made members, de facto members, jury members, whatever it happens to be, ex-officio members of the Foundation?

MR. ZILOCCHI: I don't recall them doing that, Senator, no.

SENATOR LYNCH: Do you ever remember communications from the Foundation to Commissioners advising them that they were being made members of the Foundation and the Commissioners accepting that role? Obviously, the fact that someone had put you in incorporation papers, by reason of your office, you're going to be a member of this Board, doesn't mean that you're going to be a member of the board.

MR. ZILOCCHI: Senator, I recall that the Commissioners' meeting has members incorporating members of the board. And being advised of that, yes.

SENATOR LYNCH: And did they all accept?

MR. ZILOCCHI: Yes.

SENATOR LYNCH: And this was at a Highway Authority meeting.

MR. ZILOCCHI: No, Senator, I don't recall the circumstances.

SENATOR LYNCH: Did you at that time cause any legal opinions to be obtained as to whether or not the Highway Authority itself had the power to cause the creation of a Foundation--

MR. ZILOCCHI: Senator, I recall--

SENATOR LYNCH: --or are you suggesting to me that this action that created a Foundation did not come through the Highway Authority, but through some independent third party action?

MR. ZILOCCHI: Senator, my role was very limited in that.

SENATOR LYNCH: You're not trying to tell us here today that this Foundation was created by some independent third party action, ancillary or collateral or independent of the Highway Authority, are you?

MR. ZILOCCHI: Senator, all I know is that Fox and Fox, the attorney, did get involved with this with certain members of the Board, and the Foundation was created. I'm not being evasive, because you know my past history here is not to be evasive. I don't know all the details.

SENATOR LYNCH: Why was the Foundation created, IRS problems, because--

Let me finish the train of thought. I assume that it was created because in seeking contributions for the Cultural Fund, there was some question in the minds of the contributors, accountants, attorneys, whatever, as to whether or not this would be a tax deductible contribution, correct?

MR. ZILOCCHI: Correct, Senator.

SENATOR LYNCH: So that it became more feasible to create an independent 501-C3 nonprofit corporation for the purpose of receiving these funds that would then become charitable contributions, and clearly so.

MR. ZILOCCHI: Exactly, Senator.

SENATOR LYNCH: So that there is a logical flow here, that points to the fact that the Authority members themselves agreed to create, have this Foundation created, and that they would become the Board of Directors?

MR. ZILOCCHI: Right.

SENATOR AMBROSIO: But you know of no opinion that was rendered by the counsel that said you had the power -- the Highway Authority had the power -- to cause this action to be taken?

MR. ZILOCCHI: I know of no opinion.

SENATOR AMBROSIO: We're getting back into the area of the whole idea of creation of the hospitality center and whether or not that may have been contra-advised to this date. Has there been any action taken to clarify either of those areas? Has the Authority sought to have legislation introduced to cure any of those areas?

MR. ZILOCCHI: Not to my knowledge, Senator.

SENATOR WEISS: Has the Authority ever received any reports from Delsener as to negotiations that Delsener may have had with other prospective corporate sponsors?

MR. ZILOCCHI: I don't recall any written reports. Conversations over the phone concerning prospective sponsors, yes, Senator, but not any written reports.

SENATOR WEISS: I have no further questions at the moment.

SENATOR AMBROSIO: Before Senator McNamara takes over the questioning, I'm very confused over the relationship between the Highway Authority, Mr. Delsener, and the sponsors. Perhaps you can clear my confusion up. The contract between Mr. Delsener and the Highway Authority provides, as we've said, subject to the Authority's written approval, the promoter, meaning Mr. Delsener, may provide the Authority with corporate sponsorships. So, you have given him the right to obtain corporate sponsorships.

In such an event, the parties shall agree upon any additional fee which may be due the promoter for obtaining such sponsorships. You originally said that that fee was a fee that the Highway Authority was going to pay. Is that still your testimony?

MR. ZILOCCHI: Yes, Senator.

SENATOR AMBROSIO: So, that does not refer to a fee that Mr. Delsener is going to get from the promoter?

MR. ZILOCCHI: That's right, Senator.

SENATOR AMBROSIO: And then you entered into a contract, and I have the contract, by the way, between the Highway Authority and Isuzu in which there's a reference to a broker. And I assume that's Mr. Delsener. And that reference says: "The Authority shall pay no brokerage commissions or fees in connection with this agreement. All such fees shall be paid by American Isuzu."

Now, there seems to be a gap here. And I have to remind you, again, Mr. Zilocchi, that I'm approaching this from the standpoint of the Highway Authority being a public agency. I think, for a public agency to have an agreement with a third party that does not spell out the consideration or the remuneration that that third party is going to get, and leave it for that third party to set his own commission, because that's what you've done. You were so happy you were getting \$1.2 million, that you didn't care what he was getting.

And, I guess, I'm saying that as a public entity, you have a duty to know what he's getting. Because, whatever he's getting is coming out of your pocket as a public agency. And for you to sit and say \$1.2 million is great, you don't know that he's getting an equal \$1.2 million, and if that's true, that there was \$2 million available. You owe it as a public official to see to it that you get as much of that as possible, and that the commission is a reasonable one that you approve. And you didn't do that here, did you?

MR. ZILOCCHI: Senator, I don't recall all the details. I was not expected to come here and answer questions on the sponsorship. I thought we had covered that at the last meeting. I will gladly go back to my files, refresh my memory, and go back into that in greater detail.

SENATOR McNAMARA: It's my understanding that there was no exclusivity in the contract with Delsener.

MR. ZILOCCHI: I'm not a lawyer, Senator.

SENATOR McNAMARA: Lawyers could say it is.

MR. ZILOCCHI: I can tell you from the standpoint of operating, and the practical sense, Ron Delsener does our bookings. But I can book a show at the Arts Center without Ron Delsener.

SENATOR McNAMARA: And you also, in response to a question by Senator Ambrosio, said that there had been no other approach made. And, in specific, I believe he asked about a promoter by the name of John Scher. Is that correct?

MR. ZILOCCHI: Senator, as I stated before, I have yet to meet Mr. Scher.

SENATOR McNAMARA: We're not talking about meeting him. If I called up and asked you on the telephone, I don't think you would interpret that as a meeting.

MR. ZILOCCHI: Senator, I have not even talked to him on the telephone.

SENATOR McNAMARA: I guess my problem is, I have a copy of a letter from a law firm of Abramoff, Fox Zaro and Guthrie representing one John Scher or Monarch Entertainment, Inc., dated July 28, 1986, and maybe it would be proper to let him take a look at the letter to review it. It talks very clearly in the letter that the firm has been retained by Monarch Entertainment and its President John Scher to discuss the New Jersey Highway Authority, access to the Garden State Arts Center by Monarch Entertainment, that they have been frustrated in an attempt--

MR. ZILOCCHI: Senator, I'm aware of that letter. It's addressed to the Chairman of the New Jersey Highway Authority at that time, correct. I'm aware of that

New Jersey State Library

letter, Senator. And I don't know where that statement comes from. I have not had any phone conversations, any correspondence, or any communications with Mr. Scher.

SENATOR McNAMARA: Well, the letter is some sort of communication. Whether it be addressed to you, or you were aware of the letter--

MR. ZILOCCHI: I'm aware of the letter, Senator, that the letter was sent by the attorney of Mr. Scher. The letter was sent to the Chairman, and it was referred by the Chairman to Mr. Robinson. I can tell you, Senator, that in the business world, and my doing business with people and all, if I want to do some business with someone, I contact that individual. I don't hire an attorney to send me a letter. I had not had any dealings with this person.

SENATOR McNAMARA: Mr. Zilocchi, I have to say, if I get a letter from an attorney, and I'm in business, and we had-- It's via the other attorney and not the other principal, then I obviously would respond and/or look into it.

MR. ZILOCCHI: We did look into it, Senator.

SENATOR McNAMARA: Who did you look into it with, if, in fact, you didn't contact Monarch Entertainment?

MR. ZILOCCHI: Again, the letter was referred to the attorney. He contacted the attorney, and the next thing I knew we were in litigation.

SENATOR McNAMARA: Well, is there any reference in the minutes of the Highway Commissioners as to when it was referred to the attorney and what directions were given to the attorney?

MR. ZILOCCHI: I don't think that matter ever came up in a public meeting of the Commissioners, no. It was a letter that was just referred to the attorney by the Chairman.

SENATOR McNAMARA: The Commissioners would not be aware of the fact that there had been a request.

MR. ZILOCCHI: I don't know if they were aware or not. But your question was I believe at a public meeting or something of that nature. I don't think it ever came to that point, Senator.

SENATOR McNAMARA: But I still don't understand your response in saying that they've never been in touch with you, and yet you were aware of this letter, and you're the operations manager of the Parkway.

MR. ZILOCCHI: I was aware of that letter and the letter specifically stated, Senator, that the attorney wanted to get in touch with the attorney to discuss this matter further. And that's what exactly was done.

SENATOR McNAMARA: If I read this letter, I would not interpret it as meaning that they wanted to get in touch with the attorney. They wanted to get access to the Garden State Arts Center to promote events, and wanted to know if there were any mutually agreeable dates.

MR. ZILOCCHI: Senator--

SENATOR McNAMARA: I'm a businessman. If I have available dates, and I read that paragraph, I don't need an attorney to interpret it for me. I would get on the phone, contact them, ask them what they were proposing, and if it fit in -- I'm not talking about a rock concert -- if it fit into the overall operation of the Arts Center and they were willing to use those particular days, it's a way of generating revenue. And having an empty house, the fixed costs are there. The semi-fixed is the only thing that makes a difference.

MR. ZILOCCHI: Senator, that's an assumption, that the house could be empty with or without other alternatives. There's only a limited number of acts that are available.

Senator, if I might add to that letter, it states, "I would appreciate your counsel contacting me to arrange a meeting to discuss the terms."

SENATOR McNAMARA: Did counsel arrange a meeting?

MR. ZILOCCHI: Yes, counsel did contact them. Like I said, Senator, the next thing I knew, we were in litigation. I do not know specifically what transpired.

SENATOR McNAMARA: Will you forward, through the Chair, a copy of the response from counsel as to the correspondence with this firm, and also a copy of the discussions and notes that were taken as to what transpired?

MR. ZILOCCHI: Absolutely, sir.

SENATOR AMBROSIO: Before I turn the microphone over to Senator Lynch, I just wanted to give you some idea of scheduling. There are three witnesses this afternoon, in addition to Mr. Delsener. What I plan to do is break for lunch, as soon as Senator Lynch is finished -- but a very short break, a half hour break -- and then reconvene at one o'clock. And, hopefully, we can complete everything that we want to complete by three o'clock, three-thirty. Senator Lynch.

SENATOR LYNCH: Just one little area, two areas. I want to start with this one. In running the center for the senior citizen activities, and in paying for the reception center, the Foundation is making its own decisions as to what its priorities are, and spending the money in accordance with that structure, or are these payments being made in accordance with the agenda being set by the Highway Authority?

MR. ZILOCCHI: You're talking about the reception center, Senator?

SENATOR LYNCH: The funding for the senior citizen programs.

MR. ZILOCCHI: The reception center, and, Senator, I hope I understand your question -- correct me if I'm wrong -- the reception center is being operated by the New Jersey Highway Authority. The decisions of operating that facility is the New Jersey Highway Authority. The

Foundation, in planning fund raising events, would utilize the reception center in whatever purpose it can in order to raise the money.

SENATOR LYNCH: You referred to, earlier, that the Authority has always been careful to separate out the toll road activities from the Arts Center activities. I'm not sure what "careful" means, but based upon the history that we've seen here with the Sunshine Law and the careful nature of how we address that, the creation of the Foundation which is clearly ultravirus, as far as I'm concerned-- The development of the reception center, which is clearly ultravirus, as far as I'm concerned--

But, I remember some discussions earlier on in some of these hearings, that seem to fly in the face of the statement you made about the separation; namely, that in the negotiations with Mobil on the franchise agreement, that the Authority, through whoever, clearly authorized and discussed with counsel -- the Authority attempted to get Mobil to divert \$5 million out of \$10 million towards the reception center, or the Foundation. I'm not sure which. Was it the Foundation?

MR. ZILOCCHI: The Foundation, sir.

SENATOR LYNCH: Which in turn would have been used to maybe pay for parts of the reception center and the activities there.

MR. ZILOCCHI: Senator, that was discussed by staff during the negotiations with Mobil. Perhaps it was an ambitious thought that staff had, but when it was brought to our attention and upon consultation with counsel, we felt like you.

SENATOR LYNCH: That's not in the record. The minutes are very clear that it was not your staff, and it was not your counsel. It was not your Board that turned down this concept. It was counsel for Mobil; that it had gotten that far, that, in fact, they said you didn't have the power to do this, this would be totally improper.

MR. ZILOCCHI: The record clearly states that. I represent to you that our counsel also made that point to us.

SENATOR LYNCH: Your counsel made points on the Sunshine Law. Your counsel made points on the reception center. Your counsel made points on the Foundation, and your counsel made advice with Mr. Delsener and his contract, which are the most vague and ambiguous contracts that I've seen in a long, long time, and your counsel, in this case, as it relates to Mobil certainly didn't tell you, put the red flag up and say, you can't do that under any circumstances, did he?

MR. ZILOCCHI: Yes, he did, Senator.

SENATOR LYNCH: Why in the world were you negotiating with Mobil, and why was it Mobil's attorneys who came to the point who said, you can't do this? How did it ever get in their hands? How did it ever get that far?

MR. ZILOCCHI: I have no knowledge of that, Senator.

SENATOR LYNCH: Weren't you the Director? Who was responsible forgetting it that far?

MR. ZILOCCHI: When I became aware of it and we discussed it with counsel, we came to the same conclusion that counsel at Mobil had stated.

SENATOR LYNCH: Who was it that authorized you to go try to negotiate such an arrangement with Mobil?

MR. ZILOCCHI: No one authorized me to do that.

SENATOR LYNCH: Who was in charge of the Highway Authority?

MR. ZILOCCHI: Members of the operation staff.

SENATOR LYNCH: Who were they?

MR. ZILOCCHI: Senator, at that point, the management in the operations department.

SENATOR LYNCH: Who was that?

MR. ZILOCCHI: The manager would be Mr. McGowan.

SENATOR LYNCH: Was Mr. McGowan charged with the responsibility to go negotiate with Mobil by you?

MR. ZILOCCHI: No, he was charged to negotiate the Mobil contract in relation to its roadway activity.

SENATOR LYNCH: Who gave him that authority? You did?

MR. ZILOCCHI: Yes.

SENATOR LYNCH: And you were authorized to do that through the Board?

MR. ZILOCCHI: Yes, sir.

SENATOR LYNCH: Are you saying McGowan didn't have the Authority of diverting \$500,000?

MR. ZILOCCHI: It was something that developed during the negotiation process with Mobil.

SENATOR LYNCH: Are you suggesting that Mr. McGowan came up with this idea himself?

MR. ZILOCCHI: I don't know if it was him or the people representing Mobil at the time.

SENATOR LYNCH: Why in the world would Mobil care whether the \$10 million went to the toll road Authority, or the Foundation?

MR. ZILOCCHI: Senator, I don't know.

SENATOR LYNCH: And interestingly enough, the Foundation had just been created within the last year before that.

MR. ZILOCCHI: Yes, yes.

SENATOR LYNCH: So, Mr. McGowan took it upon himself, or Mobil, in gratuitous fashion and thought that they might want to divert \$5 million and give it to the Foundation, rather than give it to the Highway Authority. Is that what you're telling us here today?

MR. ZILOCCHI: Yes.

SENATOR LYNCH: I have no further questions.

SENATOR WEISS: Just one, Mr. Chairman. George, has there ever been an audit of the Foundation?

MR. ZILOCCHI: Every year, sir.

SENATOR WEISS: Who does the audit?

MR. ZILOCCHI: Touche Ross.

SENATOR WEISS: Is there a copy of it here? I saw a Touche Ross document in front of me, and I'm not sure. Okay, it's in the brown folder. Have you seen the audit?

MR. ZILOCCHI: Yes.

SENATOR WEISS: Are you satisfied with it?

MR. ZILOCCHI: Yes.

SENATOR WEISS: I didn't see the audit and I was looking for it. Okay, thank you.

SENATOR AMBROSIO: Does anybody else have any questions at this point?

SENATOR WEISS: I'm going to have to look at the audit.

SENATOR AMBROSIO: While you're doing that, I want to ask Mr. Zilocchi, as I understand it, again, I don't want to beat this thing into the ground, but, the arrangement between Mr. Delsener and the Highway Authority, in your mind, was not an exclusive arrangement, yet, you know of no other act that was booked, except through Mr. Delsener.

MR. ZILOCCHI: Correct, sir.

SENATOR AMBROSIO: Okay, and Mr. Delsener's contract was basically a fixed fee contract with some incentives that were kind of hard to reach, or else he only reached them once over the five years?

MR. ZILOCCHI: Correct.

SENATOR AMBROSIO: Did it ever strike you as an arrangement that is really not in the Highway Authority's best interest to have a promoter that has a contract that he gets a fixed fee, and there's really very little incentive if he's not making it, if he's not?

MR. ZILOCCHI: Senator, I was concerned about that myself, and it's a good point you raised. But I can tell you that my concerns were alleviated because whether it was by accident or by design, since Mr. Delsener has been doing the bookings for us, we have experienced the most successful season in the history of the Garden State Arts Center.

SENATOR AMBROSIO: Compared to what?

MR. ZILOCCHI: Compared to the prior seasons.

SENATOR AMBROSIO: Well, except that the contract that you have with Mr. Delsener, if it was a reasonable contract, he clearly didn't do all he could, because he didn't get a dollar's worth of incentive in four of the five years.

MR. ZILOCCHI: I think the standards were set quite high, and he was willing to agree to them.

SENATOR AMBROSIO: It seems that a promoter is someone who really takes some risks and goes out there and promotes, and there's a carrot at the end that says, "If you do a good job, you're going to benefit." I don't see any incentive here for Mr. Delsener to do anything. Since the ceiling is so high, the chances of him reaching that ceiling are remote, so he's going to get his \$50,000 or \$75,000 a year, together with what he gets on his--

MR. ZILOCCHI: Senator, again, I have to go back, though. The Arts Center, since Mr. Delsener has been associated with us, has developed the best seasons in the whole history of the 21, 22 years of the Arts Center.

Now, whether the incentives are there or not, the results speak for themselves.

SENATOR AMBROSIO: That really points to one of the problems I have with the Highway Authority running the Arts Center. You have no experience.

MR. ZILOCCHI: Oh, Senator, I disagree with you on that one.

SENATOR AMBROSIO: You have no experience to compare this with. The only experience you have, Mr. Zilocchi, is the Garden State Arts Center's experience. You have no experience with any other facility, and you don't know whether or not your facility is doing well.

MR. ZILOCCHI: Senator, we do.

SENATOR AMBROSIO: No, you don't.

MR. ZILOCCHI: We do, if you read that Booz Allen report, which was submitted to this Committee, it shows that it compared us to other outdoor facilities similar to the Arts Center, and in all the major categories, we came out with top grades. We do know that.

In addition, Senator, can I answer the question, Senator?

SENATOR AMBROSIO: I'm Chairing this meeting, Mr. Zilocchi.

MR. ZILOCCHI: I'm trying to answer the question.

SENATOR AMBROSIO: I didn't ask a question yet. I was making a statement, and I read the Booz Allen report, which you commissioned.

MR. ZILOCCHI: Oh, Senator, that's ridiculous.

SENATOR AMBROSIO: And they selected certain amphitheaters around the country. I have a couple lists of a couple hundred others that they didn't select, at this point.

MR. ZILOCCHI: Senator, I can't reply to that?

SENATOR AMBROSIO: It wasn't a question, Mr. Zilocchi. This isn't a trial.

MR. ZILOCCHI: Senator, I'm sorry, the attorney here advises that I should say that exclusive in the sense of Ron Delsener contracts is that all bookings--

SENATOR LYNCH: He advised you to read a prepared statement?

MR. ZILOCCHI: He advised me to say that statement, Senator Lynch, I regret that I can't answer any more questions on that.

SENATOR AMBROSIO: We'll meet again at one o'clock.

(Recess)

AFTER RECESS:

SENATOR AMBROSIO: The rest of our Committee is on the way up. I think we'll get started. The first witness this afternoon is John Scher.

I should point out, for the record, that Mr. Scher is here testifying at my request. I sought him out as someone I know from my district that is in the business of promoting events, entertainment events that would normally be booked in places like the Arts Center. I know his reputation, and he was kind enough to meet with me and give me an overview of the industry, and, frankly, what I'm asking him here for this afternoon is to give us some overview of what this industry is about, and how the business runs, and particularly how it relates to the operation of the Garden State Arts Center.

With that background, John, we also have asked our witnesses to be sworn. The other witnesses were sworn before, if you wouldn't mind.

J O H N S C H E R: (Witness is sworn.)

SENATOR AMBROSIO: I should also mention at outset that Mr. Scher is involved in a lawsuit with the Highway Authority, and it's clearly not my aim to go in the details of that lawsuit, but to the extent that they relate in any way to the public activities in the Highway Authority, I've advised Mr. Scher that he can reserve any rights that he has. He's got this attorney with him to protect his rights in that lawsuit. So, you might want to put your name on the record.

J A M E S M. M c G O V E R N, J R., E S Q.: James M. McGovern, Jr., with the law firm of Ansell, Fox, Zaro and Mc Govern.

SENATOR AMBROSIO: John, if you would, give a brief background of yourself and what you do.

MR. SCHER: I'm the president of two corporations, Monarch Entertainment, Incorporated, a New Jersey corporation, and John Scher Presents, Inc., which is a New York corporation. Both companies are in the entertainment business, principally as concert promoters.

We promote throughout New York and New Jersey. We also have management divisions, and video divisions. Our company for the past two years has been named promoter of the year by "Performance Magazine" and this past year by another news organization in the music industry called "Pollster."

As promoter of the year, I've been promoted into sixteen-- I was born and raised in New Jersey. I went to college in Brooklyn. Our company promotes throughout New Jersey, Capital Theatre in Passaic; a lot of concerts at Meadowlands Arena; Rutgers, Piscataway; Director's Athletic Center, Fairleigh Dickinson University.

We used to promote a lot in Asbury Park. We also promote in New York City. We operate a night club called the Ritz in New York City, two shows at Madison Square Garden, Nassau Coliseum, Carnegie Hall, and throughout upstate New York, in Buffalo, Syracuse, and Albany.

SENATOR AMBROSIO: Would you describe what the relationship is between a promoter and the various forums that you book acts in?

MR. SCHER: Generally, a promoter rents a facility for four walls. In other words, rents the facility without any entrepreneurial involvement in the facility, guarantees minimum rent, guarantees that all the expenses are paid, pays all the outside expenses, such as advertising, staffing, catering, etc., guarantees the artists a minimum guarantee against a percentage of either the net or gross, depending on the arrangements. Basically

the promoter takes all of the risk. The facility is left risk-free with a minimum - guarantee of profit. The facilities also generally retain all of the parking, concession items, and both food and non-food concession items.

SENATOR AMBROSIO: I'm going to continually interrupt you to try to get you to compare what is going on at the Arts Center as compared to what you have just said.

I'd like to ask you now to switch to the Arts Center. Are you familiar with the arrangement between Mr. Delsener and the Highway Authority?

MR. SCHER: Only so much as my professional observation and the reading of documents that have been produced in relation to the current lawsuit.

SENATOR AMBROSIO: Well, in terms of the risk that's being borne, who bears the risk at the Garden State Arts Center for a performance that does not sell?

MR. SCHER: Currently or in the past?

SENATOR AMBROSIO: Currently.

MR. SCHER: To the best of my knowledge, the New Jersey Highway Authority bears all of the risk.

SENATOR AMBROSIO: If the arrangement for Mr. Delsener is to receive a fixed fee for handling all the bookings, without any guarantees given to the Arts Center, does that mean that the Arts Center has to bear the risk?

MR. SCHER: It appears that way, yes.

SENATOR AMBROSIO: Whereas, the normal arrangement, the arrangement that you make with the forums that you deal with are that you produce all the guarantees, and the facility is guaranteed that it will lose no money and will receive a minimum; is that right?

MR. SCHER: Yes, at the very least, for example, when we promote shows at the Meadowlands, entering into an agreement with the New Jersey Sports and Exposition

Authority, at the very least, they are guaranteed a minimum rent plus all their ancillary income every time we do a show there.

SENATOR AMBROSIO: Okay, how does the artist work into all of this?

MR. SCHER: The artists are guaranteed a minimum guarantee, depending on what their stature is in the business, their drawing power. It would depend on how much a guarantee they could demand. They are guaranteed that minimum, no matter what. So, if the show does not draw well, both the artists, and in the case of the Sports Authority, make their minimum guarantee.

SENATOR AMBROSIO: So the promoter bears the risk of the failure of the act to draw, in terms of the guarantee to the facility that it has rented and the artist that is performing?

MR. SCHER: The risk is not very fair for most promoters. For example, if there is an unsuccessful show, the promoter generally, in almost all cases, receives 100% of the failure. In other words, if a show loses \$20,000, the promoter loses all of that \$20,000, with neither the artist nor the facility sharing in any of that loss.

However, if the show is successful, both the artist and the facility generally share, to some degree -- the artist to a much larger degree -- in that success. The promoter is generally guaranteed 20% to 10% of net receipts of a profitable show.

SENATOR AMBROSIO: How many promoters would you say there are in this business that work in this area?

MR. SCHER: Well, I'd say that there are probably hundreds of promoters, from, even thousands, on a level of small clubs onto major arena promoters, but, as far as major facility promoters, people who promote in facilities, say, that are the size of the Arts Center up

through the Meadowlands facilities, there probably are no more than 40 or 45 in the country.

SENATOR AMBROSIO: And do they all basically work on the same arrangement that you just outlined?

MR. SCHER: Well, independent promoters do, yes. There are some other-- It's not without precedent that there are facilities such as the Garden State Arts Center that are operated by people like symphony orchestras, and State facilities. But--

SENATOR AMBROSIO: When they have their own in-house promoter?

MR. SCHER: When they have their own in-house promoter, they book it themselves. They promote it themselves, and they take the inherent risk themselves. I don't really know of any other major amphitheaters that have an outside person that is only responsible for the booking and doesn't take any of the risk.

The examples that I know of, the major amphitheaters, there are some amusement park facilities that have them -- but that's really a loss leader -- such as Great Adventure. They might book an act to just bring people in. But, in most cases, either the promoter is an in-house employee, or in a case of, for example, the Mann Music Center in Philadelphia, it's a facility that's run and owned by the city of Philadelphia, much like the Garden State Arts Center, approximately the same size, which is available for rental to any qualified promoter.

SENATOR AMBROSIO: How does the competition between promoters work? Explain how promoters would be vying against each other for various acts.

MR. SCHER: Assuming that a facility is available to any qualified promoter, then the promoter is really a classic entrepreneurial position. He and his staff view what artists are out there on tour. They make a

decision whether they want to make an offer to the agent or manager. They make the offer. Their competitor might be making a similar offer. There are various intangibles that go into an artists' representatives making a decision on which promoter to play for or not.

And then you're in a position, if the artist that you made an offer for accepts your offer, you're in a position of promoting a show in the amount of which I described earlier.

SENATOR AMBROSIO: You deal as a promoter with the agents of the artists. You don't represent artists?

MR. SCHER: Well, in my role as a promoter, I deal with the agents or, in some cases, their managers. There is a division of my company that represents as managers some artists, and those artists in turn are represented by agents.

SENATOR AMBROSIO: But, in dealing, for example, with an artist that you do not represent, you're free to approach that artist as any other promoter is, and if you're both vying to book that act at a particular facility, it's whichever promoter gives that artist the best deal will generally get the act to book. Is that the way it works?

MR. SCHER: It's not necessarily always just the financial terms. Very often there's intangibles that will go into the artist and agent, thinking, who will do the best job, who will do the most for business. In creating a special advertising or public relations campaign, who pays the most attention to detail in the actual presentation of the show, what kind of star. There are elements involved other than just dollars and cents; dollars and cents are clearly the most important.

SENATOR AMBROSIO: Once the act is booked, the promotion of that act is yours, the advertising, where you advertise, how you advertise is both in your hands.

MR. SCHER: Both the financial risk and the risk factor of how well the show ultimately does.

SENATOR AMBROSIO: Who controls the ticket price that is to be set for that event?

MR. SCHER: The ticket price is determined ultimately by the promoter but with approval by the artist. And there are certain artists are sensitive to how much the ticket is, the incongruous-- Sometimes the artist will want a lot of money and a low ticket price. They want to be an act of the people, sometimes, but get the fee of royalty. But, generally, there's an accommodation made between the artist, and what they are asking for, and what the promoter thinks ultimately will be the best price to sell that particular show at, and a promoter who's involved in full-time promotion in a particular market, as we are in New Jersey, for example, one always has to be sensitive to what the ripple effect of that ticket price is.

You'll always be able to get a higher ticket price for the best seats, and if it's a very hot attraction, you'll be able to get a higher ticket price, proven by the scalping problem. The problem with that is, if you can price the show, for example, as we do at the Meadowlands generally between \$18.50 and \$20 at most, for an artist, then, there's also a Ticketron or Ticket Master charge on top of that. There's obviously another cost involved with the concert goer, whether it be buying a hot dog, or whatever. There's a fine line. With respect the the amount of money, a promoter who's representing his marketplace well has to keep in mind, if you can get \$30 for that artist, you might be able to sell the ticket, but somewhere down the line, a week or a month or six months,

that particular concert goer might not have the money to be able to go to another show.

There's a certain responsibility that you try to maintain on a year-long basis. It's particularly difficult to maintain during the summer when more and more artists are touring during the summer because of the proliferation of amphitheaters that have been built in the last ten years around the country. More artists have been forced, so to speak, out.

You have to be sensitive in the market to the pricing structure concept, October, November, December, when the amphitheaters are closed, you still want the public to be able to afford to go to a show.

SENATOR AMBROSIO: Would you explain the proliferation of amphitheaters around the country? As I understand it, this is the current rave. Amphitheaters are going to be where most of the action is going to be in the summertime; is that right?

MR. SCHER: Clearly, I would estimate that probably 60% to 70% of the artists that tour throughout the year tour during the three-month summertime period.

SENATOR AMBROSIO: And approximately how many amphitheaters are there in the country?

MR. SCHER: They are being built at probably the rate of two or three a year now. Usually a great deal larger than the Arts Center; usually in 15,000 to 20,000 range. I would say there are probably now 40. And, for example, there's under construction right now, a new amphitheater in Atlanta, a new amphitheater in Chicago. Those are the two that I'm aware of that are going to open up this year.

SENATOR AMBROSIO: What's the nearest amphitheater?

MR. SCHER: The Mann Music Center in Philadelphia to the south. And, I guess, Saratoga Performing Arts Center.

SENATOR AMBROSIO: How about Jones Beach?

MR. SCHER: Jones Beach is not a classic amphitheater in that it doesn't have a roof over it. It's the closest and approximately the same size as the Arts Center.

SENATOR AMBROSIO: Would you describe, in whatever detail you want, your relationship with the Garden State Arts Center?

MR. SCHER: Well, there isn't really much of a relationship to discuss. Back in the late '70s, there was a contract for many, many years, probably dating back to the inception of the Arts Center. There was a contract with Nederlander organization, in reviewing the documents that we've seen. That contract was one where essentially the Nederlanders were given the facility to operate on every level. They were in a classic entrepreneurial position. As I stated before, they made a profit or loss based on their entrepreneurial skill.

Unlike my situation, with the Sports Authority, the Nederlanders also participated in the concessions and all the an ancillary income. There came a time when that relationship ended for one reason or another. And in the late '70s, I was approached by the Highway Authority at the time, and had two very lengthy meetings at their offices in Woodbridge to discuss what the future of the booking policy and the promoting policy at the Arts Center would be.

At the time I made certain recommendations. For example, at the time they were using what we refer to as hard tickets and script. You would go to someplace like Bambergers and pay for a ticket and they would give you a little receipt, and you would turn that in for a ticket. I introduced them to the people at Ticketron at the time,

which was the wave of the future, and now really the rule, in terms of ticketing. We discussed various alternatives to booking, at the time. Although there were no guarantees, I left with the idea that they were going to go in-house with their booking policy. There would be a role for myself and my company on an outside advising capacity. That never materialized, at the time. And they did go in-house. They had someone, whose name escapes me right now, that was on the staff of the Highway Authority, who booked the shows for a number of years.

At the time the Meadowlands Arena was just opening. And there really wasn't a lot of competition. At the time I wasn't really promoting a great deal of what's referred to as middle of the road. Although we do a lot now, I wasn't at the time. And--

SENATOR AMBROSIO: What do you mean by middle of the road?

MR. SCHER: Frank Sinatra, Liza Minelli, Perry Como, Steve and Edie, more adult-oriented entertainment.

I promoted Mr. Sinatra at the Meadowlands on four occasions, and Liza Minelli and Kenny Rogers, and all of the major middle of the road artists that have played the Meadowlands, or most of them, we've promoted since the Meadowlands was opened. Prior to that, there wasn't really a facility in New Jersey that enabled us to promote such shows.

And at the time the Arts Center was principally booking those kinds of shows. If you went back and looked at their line-ups through the '70s, into the very early '80s, you'd see that there were very few week-long engagements by those type of artists, and very little contemporary pop and rock, as I would refer to it.

So, there wasn't really a great deal of conflict. They weren't really going after the shows that I traditionally had relationships with, and that I was

bringing to the Meadowlands. And I was just starting, quite honestly, to understand and to get into the booking of the more adult-oriented shows.

There came a time, though, not too long after that, that the Arts Center started getting very, very aggressive about booking everything and anything. I heard earlier in the day some of the testimony that talked about, they don't book rock shows. They certainly do. They book virtually every kind of rock show that there is. And I would say, without exception, since about 1983 or '84, every single major touring artist that was capable of playing the Meadowlands Arena, there had been a competitive bid by the Arts Center to play.

SENATOR AMBROSIO: Mr. Zilocchi says that there is no competition between the Arts Center and the Sports Authority. You disagree with that?

MR. SCHER: I think that's an absurd statement.

SENATOR AMBROSIO: And have you seen in your promoting of acts at the Meadowlands-- Have you seen that competition firsthand?

MR. SCHER: Absolutely. I've seen it over the last four or five years drive the price up anywhere from 15% or 20% to 100% over what the original asking price or, what those artists were getting in comparable facilities outside of metropolitan New York-New Jersey.

SENATOR AMBROSIO: Two New Jersey State agencies competing with each other for acts that drive up the price that that act gets in, consequently drives up the ticket price?

MR. SCHER: No question about it. I think that you'd find, even by comparing the same artists that might have played the Meadowlands, or the Arts Center within a one-, two-, or three-year period, generally, when they play the Arts Center, ticket prices, top ticket prices are two to four or five dollars higher than they were, if they

played in the non-amphitheater season in the fall, winter, or spring at the Meadowlands.

SENATOR AMBROSIO: I asked Mr. Zilocchi to comment on whether or not he's ever had any contact from your organization, and requests to book acts there.

He indicated that he did not. Would you agree with that statement?

MR. SCHER: No, absolutely not.

SENATOR AMBROSIO: Would you explain the contact and the efforts that you've had trying to book acts at the Arts Center?

MR. SCHER: Over the years I put two different calls in to Mr. Zilocchi, myself, personally. I've dialed the phone and called myself, left messages and had no response.

Following that, there have been a number of letters from my attorneys to the then Chairperson of the Highway Authority. There have been some attempt by members of the professional staff of the Sports Authority to set up a meeting, one in particular that Mr. Smith, who's no longer at the Sports Authority, who was the former general manager of the stadium, tried to set up with Mr. Zilocchi and myself -- I believe in 1984; I could be mistaken, perhaps 1985 -- that Mr. Zilocchi didn't come to.

There were a number of letters from my attorneys prior to the lawsuit. As an example, the letter that was referred to earlier today was a letter dated in 1986, and I believe that was the last letter. There were letters prior to that. And in conversation between my attorneys and the Highway Authority attorneys, the lawsuit that they referred to was not filed until 1988. So, even if Mr. Zilocchi was correct, that the only piece of correspondence he had was from 1986, and I believe there were three or four pieces of correspondence that we can produce, the lawsuit wasn't filed until two years later.

And it was only out of frustration of not being able to get together with them, not being able to have a conversation with them, that the lawsuit was filed.

After the lawsuit was filed, Mr. Robinson, their attorney, set up a meeting in his offices in downtown Newark. That at least I was told was going to take place between myself, my attorneys, and Mr. Zilocchi, which Mr. Zilocchi did not appear at.

And Mr. Robinson told us when we got there, Mr. Zilocchi had something else come up, and he was unable to come. Mr. Zilocchi is right. I've never met Mr. Zilocchi. But it's not been for want of trying.

SENATOR AMBROSIO: It's your testimony that you had acts that you would like to have booked at the Arts Center, and you got no response from Mr. Zilocchi in trying to respond to you?

MR. SCHER: Absolutely.

SENATOR AMBROSIO: Do you know of any other facility in the country that has the same arrangement that the Garden State Arts Center has with regard to promotion?

MR. SCHER: In other words, it has an outside promoter booking it, but self-promoter there? There could be, but none that I'm aware of. There are some, I believe, at some of the amphitheatres. Many of the newer amphitheatres that are being built, principals within the group of people that are building them, generally they are facilities that cost between \$10 million and \$15 million to build.

In Boston there's a facility called Great Woods that one of the principals of the developers is a gentleman named Don Law, who also happens to be one of the major promoters in the Boston-New England area. So, he also promotes and books the shows there. There may be some situations that are similar to the Arts Center.

SENATOR AMBROSIO: Are there any facilities that you have attempted to promote that you've been denied access to?

MR. SCHER: Yes.

SENATOR AMBROSIO: Where?

MR. SCHER: There's a facility in Canandaigua, New York, Finger Lakes Performing Arts Center. We promoted it for one year, and the Rochester Philharmonic Orchestra, who has a lease with the county, promotes their own shows.

SENATOR AMBROSIO: Okay.

MR. SCHER: Excuse me, the one other situation that I think has great relevance is that after many years of frustration of trying to gain access to the Arts Center -- and we believe, by the way, that there is some access from people for fights and closed circuit events, people who are not directly competitive -- we attempted to construct at Liberty State Park, that is also the source of this particular litigation. And the reason that it is, after, as I said, lack of response in not being able to have access to the Arts Center -- we had artists who wanted to play for us -- we entered into negotiations with Liberty State Park. And the Department of Environmental Protection came to an agreement, came to an agreement to construct this temporary amphitheater, and came to contract, which the State prepared. That contract was -- again, after a great deal of negotiation -- sent to me in its final form. I signed it; sent it back for counter-signature; and, between that time, the New Jersey Highway Authority and the Arts Center intervened on a political level and managed to bring this Sports Authority into those negotiations, and managed to quash it.

So that after a contract had been negotiated and signed by one of the two principal parties, the Highway Authority did what it could politically to quash my attempt to compete on an even level with them, at which time it resulted in this lawsuit.

SENATOR AMBROSIO: You discussed with me earlier today, and once before, the physical constraints that you see in the facility at the Garden State Arts Center. Would you explain your understanding of that in comparison to other facilities?

MR. SCHER: Most of the amphitheaters that have been built, and certainly the new ones that are being built, are being built with much larger lawns. In other words, the Arts Center, as I understand it, has approximately 5000 fixed seats under the roof, and then a lawn area for general admission of about 5000 capacity.

My observation, from around the country, is that the overwhelming majority of the facilities around the country have much larger lawn areas, hence, being able to accommodate more people, a larger gross, and being able to compete on a different level financially. It was my observation to you, and it was my general observation, that instead of spending \$6.4 million on a reception center, which, in my, again, outside observation doesn't seem to have any real clear-cut purpose, probably for less than half that amount of money, there could have been some engineering studies and the lawn could have been created to make it a much more competitive facility, vis-a-vis the larger amphitheaters around the country.

SENATOR AMBROSIO: Do you have any direct examples of competition between the Meadowlands and Garden State Arts Center for acts? Can you give me a specific example?

MR. SCHER: I don't have any records with me. Off the top of my head, there has been competition for acts, Tina Turner, Billy Idol, Duran Duran, the Moody Blues. I could prepare a list, and I'm sure it would number at least ten per season for the last seven or eight years.

SENATOR AMBROSIO: Is there anything else that you can tell us that you think might be appropriate for us to know about the business or relationship between you and the Garden State Arts Center?

MR. SCHER: To be perfectly honest with you, I concur with Mr. Zilocchi that we never met and have never spoken. As I described earlier, it certainly wasn't for my lack of trying, up through and including the filing of the lawsuit.

I'd be very happy to resolve this matter by simply being able to have access. Quite honestly, I wasn't interested in booking their entire season. I couldn't see, even though I found out after the fact when Mr. Delsener was hired for the first year for \$35,000, how it possibly made financial sense for our company -- where we could potentially make that amount of money in three or four shows at the Meadowlands -- to take a small flat fee like that.

But, the facts were, there was no request for proposals that I'm aware of. There was no bidding process that I'm aware of. And that being said, not being able to have the opportunity to at least make a proposal until after the fact, the reality is, I don't believe they used the facility seven days a week during the December months. There are days, if they were made available to us, that I believe we could bring those to the facility.

Assuming that we could compete on an even level, in other words, the expenses were the same to us to present the artists as they were when they self-promoted, we simply want access. We feel that we've been damaged over the years, especially in the Jersey City episode. But, more importantly, for the future to move forward, we're interested in being able to on the days that they don't want to promote, or the days that they don't have anything firmly booked, have the ability to go in there and bring

the artists who would prefer to work with us, who we've worked with in New Jersey over the years from having played them on college campuses, through the Capital Theatre, on up to the Meadowlands when they toured during the summer.

We would simply like the access. There's nothing arrogant about that. Quite to the contrary, my limited dealings with the Arts Center and the Highway Authority has always been one of arrogance, has always been one of not being able to deal with them on an even playing field, them always wanting to have some advantage, without ever really, over the last ten years, being given any opportunity whatsoever to talk to them and show them our credentials and let them get a feeling firsthand of who and what we were about.

SENATOR AMBROSIO: How would the public interest be served, if you were to be given access to booking acts there also?

MR. SCHER: I think, first of all, depending on what their posture was, if we had access, vis-a-vis the acts that they wanted to promote, and we wanted to promote, assuming that they were just happy to have those artists at the Arts Center in a no-risk situation, then I believe strongly that the public would benefit, because ticket prices would come down. I'm not a big believer, for the reasons I stated earlier, in having ticket prices in the \$22, \$24, \$26, \$30 range. I think that hurts the market. I think it hurts the market much more than just the concerts that I put on.

I think there's a certain limited amount of leisure money available to the average person. The average resident of New Jersey doesn't make 50 or 80 or \$100,000, the average person is a middle- or lower-middle class person who has a limited amount of income to go out. And they will always go to see that hot artist. They will always go to pay the price for Sinatra or Minelli or the Doobie Brothers.

What happens is, there's only so much money at the end of the year, so they might not go to a concert. They also might not go to a club. They also might not buy a record, or not go to the sporting events or Rutgers basketball game or football game. I think the escalation of ticket prices-- It's a very simple comparison.

As I said, some of the same artists over a short period of time have played both facilities, meaning the Meadowlands and Arts Center. I think you can clearly see that the ticket price is something higher because of their competitive nature, vis-a-vis me, and I guess, to some degree, other promoters who have access to the Meadowlands, because anybody who is a promoter who has the proper credentials can rent the Meadowlands Arena or Giants Stadium.

It clearly hurts the general public from that level. From an industry point of view, it forces artists to not necessarily have the choice to have who they want to play for. That doesn't mean they would always want to play for me. I don't have a crystal ball. I can't tell you and the artists don't have the choice. There are artists who only want to play outdoors during the summer. There has been a creation over the last 8 or 10 years of a very unique and separate summer touring season that surrounds the proliferation of all of these amphitheaters, which the Arts Center was one of the first. Therefore, there are artists who perhaps we've worked with, or we've worked with their managers, that might prefer the way we promote shows versus the way the Highway Authority-- There also might be artists that prefer the way the Highway Authority promotes, but given, being on the so-called level playing field, we believe the artists would play for us at the Arts Center if it was the appropriate facility, and their needs would be better served.

SENATOR McNAMARA: One question on that particular matter. What would be the net to the Arts Center?

MR. SCHER: If we promoted the show?

SENATOR McNAMARA: In other words, say, it's a particular act that's particularly hot. But the act would definitely prefer to deal with your company, because you've dealt with them a number of times. What's the effect on the net income to the Authority?

MR. SCHER: There's no way to determine that right now, because we don't know. I've never seen any figures, what they write off as rent, expenses. So, I don't know what accommodation we would be able to come to them with.

Clearly, if the act was hot, the Highway Authority would make more money promoting it themselves than they would by us promoting it, because they would not only make the expenses, and we would guarantee them an ancillary income, but they would also make the profit.

On the other hand, sometimes they guess wrong. We all do.. If it was an artist that they paid a great deal of money for, and the show didn't draw well and they lost money on that show, there would never be a loss, at least for the shows that we and other qualified outside promoters went to. I think in the course of the year, no one has a crystal ball in our business. I would guesstimate that they would probably come out even or slightly better if they let promoters have access to their facility.

SENATOR AMBROSIO: As far as the evenings or afternoons, whenever the shows were put on, is there a problem if they,, in fact,, book most weekends, and the other evenings that would be open might be less desirable? Do you see that as a problem?

MR. SCHER: That's not a significant problem during the summer. I think it's a problem in June and

September when the younger element of the audience is still in school. But, most of the season, no, it wouldn't really matter. Assuming that they played the game fair and square, in other words, assuming they really had somebody. If we called up and they said, there was a Saturday night, for argument's sake, and they say, "You can't have that, we have a show there." And we say, "Okay, what can we have?" "Well, you can have the 17th". That's a Monday. And we book the show and found out a week or two later, when they broke an ad, that they didn't have a show on the 15th, they were just trying to hold that prime day. That's all a matter of good faith; something, in all due respect, they've never shown to me.

SENATOR McNAMARA: And there had been a meeting scheduled at Robinson's office which was to include you and Mr. Zilocchi?

MR. SCHER: The meeting took place with Mr. Robinson.

SENATOR AMBROSIO: Mr. Robinson and you?

MR. SCHER: And Mr. Zilocchi. And the first we knew Mr. Zilocchi wasn't coming was when we arrived at Mr. Robinson's office. That was a meeting that supposedly was going to, quite honestly, make the first attempts to settle the lawsuit without having to go through discovery, motions, or the lawsuit itself.

But, by the way, along those lines, it's my observation -- and my attorney is here, he might be able to give you a better review of it -- but the defense so far that the Highway Authority has put forth in this particular lawsuit is one that, again, in layman's terms is trying to take the case that you, the Senate, or your predecessors at one point earlier very clearly legislated for the Arts Center to operate in a monopolistic manner, that the State Senate of New Jersey was made aware of and knew that they

were going to operate in a monopolistic manner. Even if that is so, I have no way of knowing that, because I haven't talked to the Senators that voted at that time.

The business has vastly changed since the Arts Center opened some twenty-odd years ago. As I said, a great deal more amphitheatres have been built. More than that, the Meadowlands exists in New Jersey. The Nassau Coliseum has been built. There have been a number of arenas built.

The entire entertainment and sports industry has vastly changed during those days, and, again, the Arts Center-- If you go back and look at schedules, it was really developed originally as an Arts Center. It wasn't developed as a multi-type entertainment facility.

There were rarely, if ever, in the '70s anything that would be considered a rock concert. Now, I'd say as much as one-third to 50% of their schedules are rock concerts.

SENATOR AMBROSIO: Do you see any particular downside to the fact that you do a lot of booking, and do you see that as an advantage or disadvantage if you were to work out of the Arts Center in relationship to the Sports Center?

MR. SCHER: To be perfectly honest, having lived in New Jersey all of my life, the Sports Authority didn't exist when the Arts Center was created. It would seem now, if an Arts Center was going to be built, that, again from a layman's point of view, that an Authority that on a day-to-day basis has professional people operating the entertainment industry might have a better handle on the overview of what show should go where, to not compete between two State facilities.

Another example of that is, right now, there are at least on the drawing board two other amphitheatres to be built in northern New Jersey, with either State funds or

New Jersey State Library

partially State funds, or on State land, one in Liberty State Park, one up in Waterloo Village, New Jersey, combined, itself, with three amphitheaters and the Meadowlands, operated by four different authorities, all competing for the same ultimate artists and leisure dollar.

I think that, clearly, if it stayed that way, and we had access to, let's talk about in real terms, now, the Arts Center and the Meadowlands, that there would be a certain balance that would have to be struck. Because of the relationship that we have as a company that we have with the Sports Authority, I think it would be very important to consult them. I think it would be very important to talk to them about what acts belonged in what facilities.

But, my experience in being involved very closely as a major tenant at the Sports Authority is that had there not been what, in my view, has become an ugly bidding war for artists that don't belong in either facility because of the apparent Arts Center's insatiable thirst to get everything that they could, and, therefore, make you draw first the artists who are traditionally playing larger indoor arenas, or could certainly play the large indoor arenas. I think the Sports Authority to back off a great deal, their Sports Center is much more multi-purposed than the Arts Center is.

One year I promoted at the Meadowlands arena, John Denver, several years ago. He is an artist that had traditionally played the Arts Center. Several years before that I had gone to the Sports Authority, and said, "I would like to promote John Denver. I have a way that I can." Inevitably, for two or three straight years, the Sports Authority management said, "No, that's a show that belongs to the Arts Center. We don't want you to do that." Of course, I went along with that. There then came a time when this bidding war that Mr. Zilocchi says doesn't exist

got very heated, and the Sports Authority, several years ago, said, "Book anything you want. Go for it. You want to take the risk. Go for it." We indeed booked John Denver that one year and had a very big success, the Boston Pops with Henry Mancini, New Jersey Symphony Orchestra with James Galway, and there were a number of other shows that we promoted over the years, that probably were better suited to the Arts Center, but because I didn't have access to the Arts Center, there was no way I could promote them there.

Those two pop classical events are the best example. Those are shows that we would have only been too glad to promote them at the Arts Center. They are certainly not rock shows. We ended up promoting them at the Meadowlands Arena, because we had no access.

SENATOR AMBROSIO: So, actually, if I interpret what you have just said, it should fall to the benefit of the Arts Center in opening it up to other promoters, because of higher utilization rate without the risk of losing some of the base that they have.

MR. SCHER: I would think so. That's my observation, yes.

SENATOR AMBROSIO: Just to pick up on that point, especially since the promoters are given guarantees, I don't see the downside of any of this.

SENATOR McNAMARA: They took the risk but they also lose the profit.

SENATOR AMBROSIO: I understand that. Just as a hypothetical, following through where you were going, assuming that the Arts Center facility was put under the jurisdiction of the Sports Authority -- and there are problems as to how that could be done -- but let's assume that that would take place. Since the Sports Authority is an entity that is an open entity that takes promotions from a whole host of sources, if they were given the

responsibility of seeing to it that the Arts Center succeeds, do you see them adjusting their policies to channel more of their stuff to the Arts Center?

MR. SCHER: I don't think there's any question about it. I think that if the Sports Authority did it or even if there was an independent outside management firm that did it, that wasn't necessarily connected with the Sports Authority, but was given the duty because they were hired to keep a balance between the facilities, you know, I don't think there's any question that it would even out; that there would be a few shows that belonged at the Arts Center that were at the Meadowlands that would go back to the Arts Center and vice versa.

There also would be the ability for some other companies, not just ours -- ours is a reasonably large company, the largest New Jersey based concert promoters -- but I'm sure that there are a lot of other promoters who might want to, on that off day, take a chance with a particular show that would again ensure the Arts Center of both additional income and a more varied schedule.

SENATOR AMBROSIO: Thank you. Senator Weiss, do you have anything?

SENATOR WEISS: Thank you, Mr. Chairman, yes. John, you said something before that aroused my curiosity. The New Jersey Highway Authority, through some means, politically squashed a side contract that you had to entertain at Liberty State Park.

MR. SCHER: Yes, signed by myself, not countersigned. It was prepared, so it's not too self-serving-- It was prepared by the State, negotiated with my attorneys, myself, and the State, prepared by the State as to final form, sent to me for signature, which I signed, sent it back for countersignature, and between my sending it back and it being countersigned, the deal fell apart.

SENATOR WEISS: It was not signed by anyone but you at that point?

MR. SCHER: Right, correct.

SENATOR WEISS: When you sent it back, where was it sent back to?

MR. SCHER: To the Department of Environmental Protection.

SENATOR WEISS: Who administers the Liberty State Park?

MR. SCHER: Right.

SENATOR WEISS: I didn't know that they had that kind of clout.

MR. SCHER: Highway Authority, I think you'll find upon investigation, that that's exactly the type of clout that they did have.

SENATOR WEISS: I didn't know that they had it. If they had it, they wouldn't have been before this Committee.

SENATOR AMBROSIO: You might be talking past tense.

SENATOR WEISS: Maybe so. It suddenly occurred to me, you have the New Jersey Highway Authority, and then suddenly they can get to the DEP and do that with them. What reason were you given by DEP or whoever was in charge that the contract was,, in fact,, null and void, or you were going to get it back or whatever they told you?

MR. SCHER: They were very honest with me. They told me the Highway Authority had intervened with the Governor's Office. There were two meetings. The Sports Authority was brought into it. Mr. Smith, again, who was the general manager of the Sports Authority was brought into the meeting to try and resolve the matter. And I was told by both the DEP, Liberty State Park people, and Mr. Smith exactly what was going on, and that the decision had been made. I'm not quite sure whether it was made

independently by DEP together with their sister agency Highway Authority or whether the Governor's Office intervened. I really don't know. The decision was made to abort the agreement.

SENATOR WEISS: Why would they want to do that? Were you competing for the act that was on that night or were they competing with you? I don't understand why they would?

MR. SCHER: The Highway Authority's position as it was explained to me was that they didn't want us competing for the same acts that they might want to play.

SENATOR WEISS: That they might want to play. In other words, it was not on their agenda at that point.

MR. SCHER: There weren't any shows booked yet. There wasn't a signed contract. There were any shows. They didn't want any competition in any manner. Even though, by the way, Mr. Smith, acting for the Sports Authority, agreed to arbitrate.

In other words, it got so far in the discussions, as we said, well, maybe there are some artists who would play both Holmdel and Jersey City, and if there was one artist, or not necessarily only one, who couldn't play both facilities because their drawing ability wasn't good enough, Mr. Smith would arbitrate that and see where the artist really wanted to play. That apparently was rejected.

SENATOR WEISS: May I ask you this? How do you know all this?

MR. SCHER: Because of discussing it with Mr. Smith, and discussing it with the people from the Liberty State Park who-- You have to understand, this was not an arrangement that was a helter-skelter arrangement. We had produced a benefit for the Statue of Liberty Foundation a year prior which had become an HBO special, among other

things. The people that ran Liberty State Park were very interested. This was going to be in the year of the Statue of Liberty celebration. They were very interested in having a series of contemporary concerts there. This was a contract that was negotiated over, I'd say, a three- or four-month period. And when you negotiate with people, and you're negotiating in good faith with them and you have contact, and you sit down at a table or in an office with them for hours and hours at a time to workout the details, you develop a business relationship with those people.

And they were very embarrassed by this. Because, as I said, the negotiations were over. We had made an agreement. The agreement was relegated to a contract, or written contract, that was prepared by the State of New Jersey, all right, and then sent to me. I don't think that's unusual for being the vendor to sign it and send it back.

In my over eighteen years in business, I have never one time gotten to that point, negotiated a contract, signed it, and sent it back when it hadn't been returned as a fully executed agreement. That's the only time it ever happened in my life.

SENATOR WEISS: I can't say too much more about that. I don't know -- assuming that DEP made the contract up, and I don't know what route the contract took between there and the time it got to you and came back and then was refused, but I'm just curious about how -- what the influence -- that's not the right word--

Let's talk about an act for a moment, okay. Let's say it's something at the beginning of the season. Was this an act you were booking?

MR. SCHER: It wasn't an act. It was a proposal for an entire series of shows.

SENATOR WEISS: There would have been some conflict between the two?

MR. SCHER: Yes, yes.

SENATOR WEISS: And I ask you this: In your best estimation, would there have been?

MR. SCHER: Yes, in all likelihood, yes.

SENATOR WEISS: How, then, are those conflicts that you indicated? How do you make arrangements with others that would feel, in this case, two New Jersey or three New Jersey facilities involved, Garden State Arts Center, there's the Meadowlands, obviously, that's where you are, and then there's Liberty State Park. How do you adjust those so there is--

MR. SCHER: I would suggest that if the artist was only big enough, in America it was the artist's decision where and for whom he wanted to play.

SENATOR WEISS: And that artist wanted to play at Liberty?

MR. SCHER: If that artist-- It would have been a whole series. Listen, we may have entered into an agreement with Liberty State Park, constructed this amphitheater, and fallen flat on our face. We may not have been able to book any acts, but we weren't given that opportunity.

SENATOR WEISS: But then you would have taken all the risk.

MR. SCHER: 100% of the risk.

SENATOR WEISS: Which brings me to the other question. I don't know too much about the promoting business. From that point of view, although some people would say that up here we're really promoters, I don't know if that's good or bad, but, whatever. You indicated before that the promoter does take all the risks and that there's a minimum guarantee for the house, or whoever?

MR. SCHER: That's right.

SENATOR WEISS: Does that include renting the mall, too?

MR. SCHER: Yes.

SENATOR WEISS: And that means everything including any profit that's taken from the ancillary facilities, such as the hot dog stand?

MR. SCHER: Right, that goes to the house. Yes, that goes to the house.

SENATOR WEISS: Okay, so it all goes in.

MR. SCHER: Yes.

SENATOR WEISS: Is that what the situation is down at the Garden State Arts Center, except that they are the promoters?

MR. SCHER: They are the promoters. I have no idea how much rent they charge for themselves.

SENATOR WEISS: They are the promoters and they take all the risks?

MR. SCHER: Correct.

SENATOR WEISS: And they could have had promoters such as yourself intercede between you and the artists, and that would have been your responsibility?

MR. SCHER: Yes, and our risk.

SENATOR WEISS: If there's a loss, under those circumstances is the house minimum paid off?

MR. SCHER: Yes.

SENATOR WEISS: So the house gets its share?

MR. SCHER: The house makes a profit, no matter what.

SENATOR WEISS: And your people?

MR. SCHER: We absorb the loss.

SENATOR WEISS: The promoter bears the brunt of the whole situation?

MR. SCHER: Yes, 100%.

SENATOR WEISS: And you also said something about a successful show. Since you take all the risks, how much of the successful part do you participate in as a promoter?

MR. SCHER: Generally between 10% or 20% of the net after the paying of all expenses.

SENATOR WEISS: Okay, can you tell me, if I were a promoter, and I wanted to hire, let's say, for the evening, and I guess they don't go for an evening, Liza Minelli or Frank Sinatra, how much does that cost?

MR. SCHER: There's no set price. It depends on the gross potential and the circumstances.

SENATOR WEISS: I think that Sinatra appeared at Garden State Arts Center.

MR. SCHER: Yes, he does.

SENATOR WEISS: Recently, but I don't know how much they paid him.

MR. SCHER: Either do I.

SENATOR WEISS: Okay. I would assume they paid him something. The thing that leads me to that, I was looking through the statement at the Arts Center. They indicate cost of talent for the year of 1987 first was \$268,000.

MR. SCHER: That was their cost of talent for the entire year?

SENATOR WEISS: Yes.

MR. SCHER: That's very difficult to believe.

SENATOR WEISS: Let me try this number on you. For 1988, cost of talent, and this is right out of the statement, \$322,000.

MR. SCHER: It seems impossible. If that's all they paid--

SENATOR WEISS: That's why I asked you about the price. I'm not sure if Liza Minelli was there. I'm reasonably sure that Frank Sinatra was there, and I heard some other numbers about how much these artists get for one evening's work.

Now, I don't argue with anyone that they are charging what they are entitled to, if they can make \$322,000 in one night.

MR. SCHER: You're saying they made \$322,000 for the entire year?

SENATOR WEISS: I'm arguing with the number that I see here.

MR. SCHER: If that's true, you should take me out and shoot me. I pay artists a great deal more. That's approximately over sixty shows a season?

SENATOR WEISS: It doesn't say. In their statement, Garden State Arts Center Fund, expenses, administrative costs, and the second number down in that paragraph--

Okay, we're back to reality. It didn't look right to me. Apparently there are a number of statements within the statement. So, they are back to some number that all promoters would like, anyway, because for 1987 it was \$7.5 million, and dropped off in '88 to \$6.5 million. So, there's a million dollars difference, and I just heard that they have some people, eight people, that operate in this area. So that most of it does, in fact, go to the acts that are booked.

When I saw that \$322,000 on the other page, I can't tell you that my heart did begin to palpitate. I don't know who works that reasonably?

MR. SCHER: Nor do I.

SENATOR WEISS: Tell me about the ticket prices. There was one thing in there. There's one thing in there I don't quite understand. Tickets are like a value business. The more you sell, the more you make.

MR. SCHER: Generally, yes.

SENATOR WEISS: You fill the house and then use the lawn?

MR. SCHER: Yes.

SENATOR WEISS: You fill up the lawn, then go somewhere else. But, nevertheless-- And that's the general idea.

MR. SCHER: Yes.

SENATOR WEISS: Why wouldn't-- Taking it from the point of view, okay, it's a volume business of a sort, why wouldn't the Arts Center want to fill the house every night? Why wouldn't they want you there on the nights it's closed, for instance, if they have no acts?

MR. SCHER: That's the question I've been asking for years. It doesn't make sense to me.

SENATOR WEISS: They are open May, June-- I'm going to assume, from May to October, to the end of October, so, there are 180 days. The Arts Center is not booked for 180 days.

MR. SCHER: Not in my observation.

SENATOR WEISS: Well, you follow it and I don't. I drive by it, but I don't watch the signs that closely. How many days do you think that they are booked for?

MR. SCHER: I think there's been testimony that they book it approximately sixty days.

SENATOR WEISS: So, they have 120 days, another 100 days that they have no booking.

MR. SCHER: Well, they might be a little choosy during that time, certainly, the weather in early May, but certainly there are days.

SENATOR WEISS: 75 days.

MR. SCHER: Whatever, yeah, I'm not sure.

SENATOR WEISS: 70 days.

MR. SCHER: There certainly are days.

SENATOR WEISS: I'm trying to determine why they wouldn't go ahead and do whatever they have to do to bring up another act on that night and maybe because of the volume of acts, a greater volume, lower the price of the tickets during the regular season, or even if they didn't want to do that, enhance their cash position.

MR. SCHER: Nor do I know why.

SENATOR WEISS: I don't know if it's fair asking you these questions, because you're in a different category than the New Jersey Arts Center at the moment. You're an individual, and maybe, Mr. Chairman, I think, maybe we should have listened to John first, so we could have listened to Mr. Zilocchi and that group later on.

SENATOR AMBROSIO: You can ask those questions to Mr. Delsener.

SENATOR WEISS: Okay, then I have no further questions at this point.

SENATOR AMBROSIO: Thank you, Mr. Scher. It might be appropriate to have Mr. Delsener come up first, and we might get right into those questions.

R O N D E L S E N E R: (Witness sworn.)

SENATOR AMBROSIO: Mr. Delsener, I don't want to go over the same ground we covered with Mr. Zilocchi, but I would like you to give me your understanding of your relationship with the Garden State Arts Center.

MR. DELSENER: In the fall of 1983, it was common knowledge in the business that David Hart who was employed by the Arts Center was leaving his position and the position would be open. At that time, I read in Billboard Magazine this fact. I took it upon myself to make inquiry into the Arts Center, if indeed that position would be available. And I suggested that my company be hired for a fee to book.

I was told to submit a proposal, a letter, and it would be taken into consideration. I know for a fact that in my negotiations and after we were awarded the bid that other people had done the same. Actually Stan Flagg worked for me, who now works for Bill Graham, at the time, and Roger Abramson, New Jersey residents had a company, also submitted bids. I don't know how many other people submitted bids. I was told that my bid was the lowest, \$35,000.

At that time I said because it was so low, and I had various costs such as hiring somebody to oversee the operation, I hired Jack Logenfeld to be the house manager out of my own fee. If I brought in additional business or sponsorship that warranted it, I would want some sort of help.

SENATOR AMBROSIO: What did you mean by promotion?

MR. DELSENER: Mainly sponsorship, sir.

SENATOR AMBROSIO: Was that in your original contract?

MR. DELSENER: I talked about it at the time, and I don't know if it was in the original contract or not at the time. It may or may not have been.

SENATOR AMBROSIO: Let me get this straight, when you originally submitted a proposal to the Highway Authority, you submitted a proposal for \$35,000 on an annual fee to do the bookings, and you obviously thought that that was a reasonable figure, otherwise you wouldn't have submitted it as a proposal. And the Highway Authority accepted that proposal, is that right?

MR. DELSENER: Correct.

SENATOR AMBROSIO: Now, then, I missed the link between additional consideration.

MR. DELSENER: I don't have-- If at that time in the original time there was to be a fee to me based upon bringing in sponsorship, of which the Arts Center had complete approval over. They had alcoholic beverages such as beer and cigarettes, because they have no place to go. They are not allowed to advertise on television, which should be the most prevalent, we were denied having access to even talking to these people because the Arts Center excluded those two categories. So, I had to solicit sponsors who were not in the alcohol or cigarette business.

SENATOR AMBROSIO: Permit me, excuse me for interrupting you, a lot of what you're saying is not in documents, Mr. Delseener. I see nothing in your contract that talks about excluding anybody. Was this all verbal?

MR. DELSENER: Yes, verbal, as far as alcoholic beverages and cigarettes was concerned, yes.

SENATOR AMBROSIO: So, your agreement with the Highway Authority, a public agency, on sponsorships is purely a verbal understanding.

MR. DELSENER: No, as far as the agreement as far as sponsorships, it might have been in the original contract. I don't have a copy of it here today. Don't look at the amended one, sir. In the original contract we talked about sponsorship.

SENATOR AMBROSIO: The contract that you're talking about and the one I have here is the '85 contract.

MR. DELSENER: The original one should have, fall of '83, or maybe spring of '84.

SENATOR AMBROSIO: August of '84, was that your first contract?

MR. DELSENER: I don't know.

SENATOR AMBROSIO: We've asked for all the contracts. That's the earliest date in contract that we have, unless you know of one that was before that? Can we assume that this was your first contract? Is that the

first contract?

MR. DELSENER: I really have no idea if that was the first contract. It sounds a little bit late. But maybe that's the date it was signed and executed, but I believe--

SENATOR AMBROSIO: I'm pretty sure it was the first contract, because it doesn't refer to any other contracts, whereas the subsequent contracts do.

MR. DELSENER: Okay.

SENATOR AMBROSIO: But one of the things that's missing from this contract is a Schedule A, that's supposedly attached, in which it provides that, "You are to perform additional services as more expressly provided and specifically described in Promoters' Proposal, Schedule A, attached hereto, as modified by letter from Promoter to Authority dated December 2, 1983, Schedule B." Neither one of those are attached.

And I'd ask you, Mr. Robinson, on behalf of the Highway Authority, whether you can track down those two schedules and submit them to our Committee?

Now, as I understand it, this contract, by the way, calls for \$35,000 as an annual fee?

MR. DELSENER: Yes.

SENATOR AMBROSIO: What were you supposed to do for that \$35,000?

MR. DELSENER: Well, we were supposed to entertain bids from various agents who wished to have their acts perform at the Arts Center and also solicit agencies if they had any acts. We called agents, or they called us or managers, or they called us, agents and managers.

SENATOR AMBROSIO: Did you make a decision at that time that you would not deal with promoters?

MR. DELSENER: Well, no promoter would think to call me, I guess, because I was working for the Arts Center directly. I didn't make the decision -- I did get calls from people from time to time, and I referred them to Mr. Zilocchi, people who had certain acts that I was not aware of, or they wanted to play at an afternoon children's show, which I don't book. These calls were all given to Mr. Zilocchi's office.

SENATOR AMBROSIO: Did you consider that this contract gave you exclusive rights to book this facility?

MR. DELSENER: That's a difficult question. Since I was working for the Arts Center, it would make it difficult, if there was another person working with me to book it. There would be no continuity as far as certain morals and standards, for instance, what would prevent another promoter from putting on a heavy metal performer?

SENATOR AMBROSIO: Mr. Delsener, let me just understand something. The question I asked, to me, is such a fundamentally basic question. And that is whether you had the exclusive right to book? And your answer was, that's a difficult question to answer.

MR. DELSENER: Yeah, well, I didn't then, cut and dry, no. My contract didn't call for exclusive, if that's what you mean. I was hired as a talent booking agent.

SENATOR AMBROSIO: Was it your understanding that you would have the exclusive right?

MR. DELSENER: No.

SENATOR AMBROSIO: Well, then, explain what you started to say about practically, it would be difficult for anybody to be booked.

MR. DELSENER: If someone else wanted to book the facility, I would refer them to Mr. Zilocchi's office, as I said, if somebody wanted to book the same act that I had booked. For instance, I had the Beach Boys, let's say, for example, that would just escalate the price. It would be foolish for me, sure, to put the Beach Boys in there, because I would be working for \$1200 a night, and if the Arts Center would be renting it out, no one else would stand for a \$1200 profit that night.

SENATOR AMBROSIO: I missed that. My understanding of what promoters do is they guarantee that if they are going to book an act, they take all the risks.

MR. DELSENER: Is that indeed what the Arts Center has said?

SENATOR AMBROSIO: No, no.

MR. DELSENER: In general, yes.

SENATOR AMBROSIO: Promoters take the risk, don't they?

MR. DELSENER: Correct.

SENATOR AMBROSIO: So, if an outside promoter wanted to book an act at the Arts Center, all he does is rent the facility for a night, and gives the Arts Center a certain guarantee.

MR. DELSENER: Based upon what? There's been no experience, I believe, right? Had they rented it prior to somebody, would this be a fee that was established?

SENATOR AMBROSIO: I have the feeling that I asked you what time it is, and you said, "Cleveland." I just can't seem to make this connection.

MR. DELSENER: You're right about this. There is a rental fee that would go, plus a percentage to a facility.

SENATOR AMBROSIO: Isn't that the way promoters book facilities?

MR. DELSENER: Unless they have a financial interest in a facility, and only half of it, or have an exclusive arrangement, that's right.

SENATOR AMBROSIO: And none of those situations fit here?

MR. DELSENER: No, I don't have a financial interest in, nor do I have a financial contract.

SENATOR AMBROSIO: Did you consider yourself an employee?

MR. DELSENER: Not an employee, because I received no benefits. I considered myself under their guidance. In other words, if they didn't want a certain performance, that was it. If they didn't want a certain sponsor or something, I would push, and if they said, "No," that was the final decision. They were my boss. They were not working for me, no. I was working for them.

SENATOR AMBROSIO: So, the ultimate decision as to whether to book an act was not yours?

MR. DELSENER: Correct.

SENATOR AMBROSIO: You would go out and get acts and bring them to Mr. Zilocchi?

MR. DELSENER: Or Vince Seminera, or I would ask Pat Horan, if Mr. Zilocchi was busy to bring it to his attention. Invariably it would end up with Mr. Zilocchi.

SENATOR AMBROSIO: You mean to say there was no procedure for a committee or some professional to sit down and evaluate the needs and the mission of the Arts Center for a season and decide what acts you were going to see and what acts you were not going to see? It was simply a matter, if you go to see Mr. Zilocchi, and he is busy, you go to see someone else?

MR. DELSENER: It was quite obvious that he knew. We have records starting way back when, showing what performers had done, what they had lost or gained, what the attendance was, what the act was paid.

I had a file in my office. He had cards in his office. There's no guessing game. Based upon past history, I would explain to him how important the act was, on past history acts. It would be no problem. I don't have to tell him that Diana Ross is an important act.

SENATOR AMBROSIO: Okay, let's get back to your contract. Your contract called for \$35,000 a year, and then you started to say that you realized it wasn't enough money, and you wanted to make an arrangement for additional remuneration.

MR. DELSENER: Correct. I was paying Mr. Logenfeld out of my \$35,000 to be house manager, plus I was paying for tolls and a car, plus I was paying for phone calls. I found out that \$35,000 was not enough. That's correct.

SENATOR AMBROSIO: But when you made the proposal of \$35,000, you knew you were going to have all these costs.

MR. DELSENER: No, no, I didn't. I thought it would be good business to hire somebody there nightly. I have not since had someone on the premises nightly. I thought it would be good business to have somebody there. It was my own choice to do that. I do that presently at Waterloo Village, where I have the same contract. Only at Waterloo Village, I have the exclusive booking agreement, for pop music only, correct.

SENATOR AMBROSIO: You don't see that as a conflict?

MR. DELSENER: No, not at all.

SENATOR AMBROSIO: Between your obligation to the Arts Center as an exclusive booking agent for the Arts Center and also for Waterloo Village?

MR. DELSENER: No, it's worked fine.

SENATOR AMBROSIO: Well, if you had an act and you had a choice of booking at Waterloo Village or the Arts Center, where would your priorities be?

MR. DELSENER: Arts Center. It's a better facility.

SENATOR AMBROSIO: You don't see that as a conflict?

MR. DELSENER: Absolutely not.

SENATOR AMBROSIO: Now, would you just tell me how the sponsorship arrangement came about?

MR. DELSENER: Yes, besides sponsorship, I also helped and advised them on ticketing, Ticketron, additional ways to make an ancillary income. Sponsorship was my forte. I had been in sponsorship since 1966.

SENATOR AMBROSIO: Did you get paid for the that extra advice?

MR. DELSENER: No, absolutely not. Also, as far as they were talking about tee shirts, whether they should do it in-house, or have an outside contract, they can make more doing it themselves. So they rented tee shirts as an additional income. I get no profit or incentive to that.

When it comes to concessions, whether it should be run by one company or another, it should be on a bidding process. I get no additional monies for that.

On the sponsorship, which I thought could help them, I asked for an additional fee, which is negotiated by the Commissioners, and they establish the fee.

SENATOR AMBROSIO: What was that fee?

MR. DELSENER: 25%, which they would not pay. It would not come out of the Arts Center's money. If the Arts Center wanted \$1 million, I'd have to get my fee on top of that from the sponsor. The original fee that Isuzu offered was not enough. It took me two years to negotiate with them, two trips to California.

SENATOR AMBROSIO: What was the original fee?

MR. DELSENER: I don't remember. It was considerably less than \$240,000. It might have been \$100,000 per season.

SENATOR AMBROSIO: At the time you were negotiating with Isuzu did you have an agreement in place as to what your commission would be?

MR. DELSENER: I really don't remember. Senator, if I did, it probably was verbal. I'd have to defer to counsel to find any correspondence.

SENATOR AMBROSIO: Mr. Delsener, you see nothing unusual that a public authority like the Highway Authority is doing business in the hundreds of thousands of dollars, and is having verbal agreements and understanding? You see nothing unusual about that?

MR. DELSENER: I don't know if there is a paper-- If there is, you'd have to look into his files and see what the correspondence is. I'm sure there is a paper to that.

SENATOR AMBROSIO: It's not in your contract, that's for sure.

MR. DELSENER: That's correct.

SENATOR AMBROSIO: And it's also your testimony that since the Highway Authority was not paying for this, that your commission was not part of public funds, isn't that true?

MR. DELSENER: Right, right.

SENATOR AMBROSIO: But you didn't see your commission and the amount of your commission in anyway related to a total package that you were negotiating with Isuzu?

MR. DELSENER: Correct. I had an intermediary, David Salz. He's the gentleman who made the deal with Isuzu. Isuzu refused to pay the commission. I went to David, and said, since he's your client, it cannot come from the Arts Center. It cannot come from their fee. They want a firm \$1.2 million.

SENATOR AMBROSIO: What did he get as a commission?

MR. DELSENER: He got \$25,000. I got \$35,000. We got \$60,000. I gave him \$25,000 of my \$60,000.

SENATOR AMBROSIO: Was the Highway Authority aware of the fact that you were splitting commissions with somebody else?

MR. DELSENER: Sure.

SENATOR AMBROSIO: Is that in writing?

MR. DELSENER: I don't know.

SENATOR AMBROSIO: By the way, that's the first time we've heard that. How did you make that known to the Highway Authority that you were splitting commissions with someone else?

MR. DELSENER: I think David was on the phone with them on some occasion, conference calls, or whatever, and they knew that I had somebody working on this with me.

SENATOR AMBROSIO: And what was his role?

MR. DELSENER: The commission -- sir, it would not have been any less. It would have been \$60,000. It was my prerogative to take it upon myself to give \$25,000 out to David. I could have given him \$10,000 if I wanted.

SENATOR AMBROSIO: Who set the \$60,000 figure?

MR. DELSENER: I did with the Commissioners. It was based upon 25%.

SENATOR AMBROSIO: That's not 25% of \$300,000?

MR. DELSENER: 25% of the total that they received, I think it was \$1.2 million for five years.

SENATOR AMBROSIO: In other words, now I'm totally-- MR. DELSENER: They received \$240,000?

SENATOR AMBROSIO: \$60,000.

MR. DELSENER: There was no \$60,000. It was \$240,000, and I had to argue to get my commission from Isuzu, because they refused to pay it. They, in the Arts Center.

SENATOR AMBROSIO: \$60,000 is 25% of the \$240,000.

MR. DELSENER: Over and above the flat fees, Isuzu was willing to pay. I had to seek my commission. That's what I'm saying.

SENATOR AMBROSIO: Was that \$60,000 a year?

MR. DELSENER: Per annum, yes.

SENATOR AMBROSIO: Over the course of the five-year contract?

MR. DELSENER: Yes.

SENATOR AMBROSIO: So you got \$300,000 for placing this sponsorship?

MR. DELSENER: I haven't received it all as of yet. At the conclusion of the 1990 season, it will be that, sir, yes.

SENATOR AMBROSIO: But you have a legal right to receive \$300,000?

MR. DELSENER: Yes.

SENATOR AMBROSIO: What other sponsorships did you negotiate with?

MR. DELSENER: I called up Coca-Cola. Jim Patton who I know, he refused to give any money. I think he offered \$10,000 a season. I made calls, I think, to either Ford or Chrysler. They didn't want to know about it. It was too local. Garden State Arts Center is a local facility. They don't want to know about it. I was surprised that I was able to obtain Isuzu. I think the fee I got for them for the 60 or 65 shows a year is more than sufficient.

SENATOR AMBROSIO: More than sufficient for what?

MR. DELSENER: As far as sponsorship fees go--

SENATOR AMBROSIO: What did you compare it to?

MR. DELSENER: I compared it to the other sponsors I've had since 1966. Miller Beer is my current sponsor. I receive \$200,000 in Jones Beach and Pier 84 is no more, \$200,000 a facility is a pretty high fee, because breweries can pay that. Isuzu can advertise any place they wish. They are not controlled by the government. Alcohol and cigarettes are.

SENATOR AMBROSIO: Who else did you approach for sponsorships?

MR. DELSENER: Those were the three right there that I remember, Ford, Chrysler and Coca-Cola. There might have been one or two others. Miller, definitely, I was told no beer.

SENATOR AMBROSIO: By the way, what did these sponsorships-- How did they manifest? The name Isuzu is on the facility somewhere?

SENATOR AMBROSIO: In other words, Isuzu was the only sponsor?

MR. DELSENER: Yes. In other words, if Johnson & Johnson put up a \$1.2 million, they will be the only sponsor too. I don't think the name is be displayed with 6 or 8 other sponsors on a marquee.

SENATOR AMBROSIO: I'm having difficulty understanding who's setting the rules here. You were given the right to sell sponsorships, plural. Did anybody say to you, "We're looking for one sponsorship?" And if we have that one sponsorship, that's all we're interested in?

MR. DELSENER: No. I was given the right to get a sponsor for the series of concerts. If they wanted to have signage all over the place as hockey games and Meadowlands and the Garden, they can make that a billboard. I don't think they wanted to do that.

Sir, that wasn't my job. My job was to get a series sponsor.

SENATOR AMBROSIO: Your job was to go find one sponsor, and when you found Isuzu, you considered your job done?

MR. DELSENER: Well, until that contract expires, if someone else wants to take over next year, then that would go out again, or someone else would go out and try to find somebody.

SENATOR AMBROSIO: Did the Commissioners, either by resolution or by letter to you, define for you these parameters that you explained?

MR. DELSENER: I don't believe so, sir. Probably verbally in a meeting with the Commissioners. Sir, but I'd have to look at the minutes of those meetings to verify that.

SENATOR AMBROSIO: Is there anything incompatible with your arrangement with the Arts Center and private booking by outside promoters?

MR. DELSENER: It's up to the Arts Center. They take what somebody could do. They have a public image to uphold. So it can't be blatant. There's no signage in the facility. In most cases a signage would be on the stage, to the left or right of the stage. In the case of the Arts Center, this was not permitted, although Isuzu did want that. Most places would have a big sign outside. This is not permitted at the Arts Center.

SENATOR AMBROSIO: What was permitted?

MR. DELSENER: Very low key name, American Isuzu Motors presents the Garden State Arts Center.

SENATOR AMBROSIO: Where?

MR. DELSENER: On the billboard announcing the series of shows that's coming up. And also on the ads.

SENATOR AMBROSIO: Well, I'm trying to understand, Mr. Delsener, how many sponsorships were available? In other words, if I had a series of corporations with money to commit to sponsorships, how many could you logically let out?

MR. DELSENER: Well, the more you have, the less their fee would be.

SENATOR AMBROSIO: That's not my question.

MR. DELSENER: Well, that's the answer to that.

SENATOR AMBROSIO: Forget about fees. If I had 25 corporations ready to commit to sponsorships, could you accommodate those 25 corporations?

MR. DELSENER: No.

SENATOR AMBROSIO: How many corporate sponsorships could you accommodate?

MR. DELSENER: Well, I don't think a corporate sponsor putting up that kind of money would allow another sponsor.

MR. DELSENER: Well, as Mr. Scher said, there may be. But I don't know of any. I really haven't checked into it.

SENATOR AMBROSIO: You know of no reason why Mr. Scher should be denied access to booking acts at the Arts Center?

MR. DELSENER: That's a tough question to answer. If I was to book an act at the Arts Center and if I can't get it, I don't know if he can get it.

SENATOR AMBROSIO: Let's assume he could. Is there any reason that you know of?

MR. DELSENER: Yeah, there's a good reason. I don't think Mr. Scher would September the \$1200 fee.

SENATOR AMBROSIO: What fee?

MR. DELSENER: 60 or 65 shows, \$1200 a night, he is excluding the sponsors. Most promoters, if you have a major act-- He'd make more money putting them in the Meadowlands Arena, where he can make \$15,000 to \$20,000 or \$30,000, then he could be where he'd make \$1200 because the Arts Center is set up, as they are the in-house promoters, and the promoter would get a \$1200 fee for the service, if it doesn't change.

SENATOR AMBROSIO: I'm totally lost.

MR. DELSENER: Let me explain, about the business, if I can.

SENATOR AMBROSIO: Let's do it so I can understand it. If Mr. Scher were to call you up and say to you, do you have August 17 available, and you looked at your bookings, and you booked all your acts, and you see that August 17 is open, could he book the Arts Center for that night?

MR. DELSENER: I would say so, yes. He would have to speak to Mr. Zilocchi, and if Mr. Zilocchi said the act was okay, if it wasn't a heavy metal group or

something, that would be okay. If somebody used dirty language from the stage, I think Mr. Zilocchi wouldn't let him do it.

SENATOR AMBROSIO: Who makes those judgments?

MR. DELSENER: Mr. Zilocchi decides what acts are acceptable. I would never present anything to Mr. Zilocchi or any State agency that I didn't think was acceptable. I worked with the city and State of New York in Jones Beach. I wouldn't present anything that would be detrimental.

SENATOR AMBROSIO: You would be the initial censor?

MR. DELSENER: I'm the initial.

SENATOR AMBROSIO: And then you would throw it to Mr. Zilocchi, he's the second?

MR. DELSENER: Yes. SENATOR AMBROSIO: Between you and Mr. Zilocchi, you decide what people in New Jersey should see?

MR. DELSENER: Yes.

SENATOR AMBROSIO: He kicks it around with--

MR. DELSENER: He did with Vince Seminera and Pat Horan. I know Vince Seminera.

SENATOR AMBROSIO: The arbitors of the public morals, after you, Mr. Zilocchi and Ms. Horan, and who else?

MR. DELSENER: Maybe Linda Crane, I don't know.

SENATOR AMBROSIO: And those people decide what acts are fit for the people of New Jersey to see?

MR. DELSENER: If you put it that way, yeah. I'm a professional, sir, just like you are.

SENATOR AMBROSIO: Tell me.

MR. DELSENER: People in New Jersey believe in you to control the budget. That's why we voted for you, sir, the same reason they voted for me; because he believes in my 25 years of business. I'm not questioning you. Please don't question my professional ability.

SENATOR AMBROSIO: We're talking about booking acts.

MR. DELSENER: Yes, and I know that Ozzie Osborne would not play or should not play the Arts Center. I would put him at the Meadowlands Arena.

SENATOR AMBROSIO: You mean there's a difference between the Meadowlands Arena and the Arts Center?

MR. DELSENER: The difference is 12,000 seats almost.

SENATOR AMBROSIO: No, no, we're talking about censorship here.

MR. DELSENER: Sure, the Meadowlands will play metallic, that AC/DC and Ozzie Osborne, those bands should not play the Arts Center.

SENATOR AMBROSIO: Why?

MR. DELSENER: Because there may be damage to the property, out-of-state involved, and you also have a sponsor involved, a sponsor which would withdraw in a minute. They don't want to see anybody get hurt. It's foolish, but that's the truth.

SENATOR AMBROSIO: Let me go back. I don't want to belabor this, but you seem to indicate that there's a certain quality of act in terms of public morals. We would not want acts that would be not acceptable to the Arts Center.

MR. DELSENER: You'd have to define that. There's different types. There's people that say abusive language. The audience comes in and beats each other up and destroys property.

SENATOR AMBROSIO: Let's talk about abusive language. Do you have any standards for the booking of acts that deal with the question of abusive language?

MR. DELSENER: Do I?

SENATOR AMBROSIO: Yes.

MR. DELSENER: No, not when I play a public place, and the place knows who the act is, and they understand who the act is. And most arenas, I don't have a problem. They don't have a problem. It's okay.

SENATOR AMBROSIO: I'm talking about the Arts Center. Are there any acts at the Arts Center that you would not book because of their language?

MR. DELSENER: Possibly one, maybe two, comedians.

SENATOR AMBROSIO: So, out of the all the acts you know, there are two?

MR. DELSENER: Two comedians.

SENATOR AMBROSIO: Who are they?

MR. DELSENER: I would not mention them, because I play them at other places.

SENATOR AMBROSIO: Of all the acts you know, only two are beneath the standards of the Arts Center?

MR. DELSENER: Possibly more, sir.

SENATOR AMBROSIO: And those are your standards, aren't they?

MR. DELSENER: Those are my standards with the Arts Center, yes.

SENATOR AMBROSIO: And who set those standards? Did anybody from the Arts Center give you instructions as to what acts you should book and what acts you shouldn't book?

MR. DELSENER: No.

SENATOR AMBROSIO: Then why are you setting those standards?

MR. DELSENER: Because I know these performers, just like you know your job. I know I would get chewed out if somebody said the kind of language sometimes that goes on at some of these concerts. I know the sponsor would here it. There's reporters that write everything that would become a headline in tomorrow's paper.

SENATOR AMBROSIO: I'm more concerned about the process, Mr. Delsener, as to who makes decisions on what acts to book, and what acts not to book, and who should be allowed to book acts and who should not be allowed to book acts. It's very clear to me that there is no policy that's been adopted by the Highway Authority as to the types of acts that you should book and not book, is there? Is there a written policy?

MR. DELSENER: No, there's no written policy. They rely on my judgment.

SENATOR AMBROSIO: You have the exclusive judgments as to what acts to book?

MR. DELSENER: I have the good taste and the good judgment, I believe.

SENATOR AMBROSIO: Okay. Is there any policy as to who should be allowed to book acts?

MR. DELSENER: Not that I know of.

SENATOR AMBROSIO: Now, let's go back to that August 17 date that's available, and Mr. Scher has an act he wants to book. Let's assume it's a very mild act that doesn't interfere with anybody's sensibilities, and the arena is available. What is this \$1200 fee that you're talking about?

MR. DELSENER: Well, if you times 60 to 65 shows by \$1200, that comes up to \$75,000. That's how I get at my fee.

SENATOR AMBROSIO: Oh, that's what you get paid?

MR. DELSENER: Yes.

SENATOR AMBROSIO: Why are you entitled to get paid?

MR. DELSENER: Because I book the facilities. I book the shows there.

SENATOR AMBROSIO: But you don't have the exclusive right to book.

MR. DELSENER: Even if I don't or do, whatever reason, you're trying to confuse this issue. I book a show there that night, I indeed do that, I get \$1200, as opposed to \$15,000 or \$20,000. Remember, you're forgetting, since I've been there, they've made over \$1 million a year.

Prior to this, since 1968, they'd been in the red. So, let's not forget that. If someone hands you \$1 million, I sure as heck would give them \$240,000 commission.

SENATOR AMBROSIO: You're saying that any act that's booked, you're to get paid from?

MR. DELSENER: Excuse me, sir?

SENATOR AMBROSIO: You get \$75,000 a year whether the place sells out or not, don't you?

MR. DELSENER: If I book the show that night, whether it sells out or not, yes.

SENATOR AMBROSIO: So the place could be empty and you still get your \$75,000?

MR. DELSENER: For the season, it hasn't been empty. If you go by, at the end of the season, if the place is empty I get \$1200.

SENATOR AMBROSIO: No, you don't get \$1200.

MR. DELSENER: If the place is empty that night?

SENATOR AMBROSIO: You have a contract for \$75,000 a year.

MR. DELSENER: That's correct.

SENATOR AMBROSIO: That contract does not in any way depend upon the attendance on any given night?

MR. DELSENER: Yes. There is an incentive.

SENATOR AMBROSIO: No, no, the \$75,000.

MR. DELSENER: Oh, the base, there's a base against a percentage. Don't forget that. That has a lot to do with the contract.

SENATOR AMBROSIO: If you don't sell a single ticket the whole year, don't you still get the \$75,000?

MR. DELSENER: Sure, but I wouldn't be sitting here if I couldn't. My record proves that I can. It's a ridiculous statement. It's like saying you wouldn't be here if a plane came in and collided into this building. I think that's ridiculous, Senator. I'll go on record. How can you make a hypothesis like that? My record shows I have nothing-- But \$1 million on a \$1200 fee, I defy Mr. Scher to do that at \$1200 a night. I feel very strong about that, sir, I'm sorry.

SENATOR AMBROSIO: The \$1200 in your mind is a figure that divides the number of available dates into the \$75,000; isn't that true?

MR. DELSENER: That's correct.

SENATOR AMBROSIO: But my question is, if you book-- , How many available dates are there, by the way?

MR. DELSENER: Well, if you forget about the holidays and stuff, anywhere between 110 and 112 days.

SENATOR AMBROSIO: Last year, how many days did you book?

MR. DELSENER: I don't have it in front of me.

SENATOR AMBROSIO: Will you book 100?

MR. DELSENER: The days we don't book, usually, it's because they are having something else like a cultural event or cultural show.

SENATOR AMBROSIO: Were there any days last year?

MR. DELSENER: Yes. If I couldn't book it, nobody else could. If somebody else-- Usually those acts aren't performing. They are playing, because we can't-- The reason acts can't play there, as Senator Weiss asked questions before, I'd be willing to give him a little lecture on the concert business.

If I can't get the act, neither can Mr. Scher. What he says he has done in the past four or five years, I'd back him up on that. It's not that we can't book the place. The acts don't play it because they are not touring

it, like Tina Turner or Stevie Wonder, and/or they are going to play the Meadowlands where they can play and make-- Some nights they don't want. If they have to, they will give up three nights, because they want to play only one.

SENATOR AMBROSIO: Try to follow my questions. I'm trying to develop a very simple point. If there were several days last year that the facility was dark, your fee wasn't reduced because the facility was dark; is that true?

MR. DELSENER: That's correct. It also wasn't increased if I did more than 60 shows. If I do 100 shows, I get the same \$75,000. Let's not forget that.

SENATOR AMBROSIO: Now, let's assume this year you've got all your shows booked.

MR. DELSENER: Yes.

SENATOR AMBROSIO: And there are five empty dates, five dates when the facility is dark. And they are kept dark, because they are not booked. You still get your \$75,000, don't you?

MR. DELSENER: Correct, sir.

SENATOR AMBROSIO: Now, let's assume that instead of keeping them dark, Mr. Scher brings in five acts to book on that night, on those five nights. Do you get any more money?

MR. DELSENER: No.

SENATOR AMBROSIO: Thank you.

SENATOR WEISS: I'm not sure, but I don't know, maybe I should listen to Mr. Delsener now and take advantage of that lecture. That's all right. I don't know anything about it.

MR. DELSENER: I didn't mean to point you out, sir.

SENATOR WEISS: I wouldn't be able to go into that business. I don't know, whether I'm interested at

this point. But, let's get back to your salary, only to straighten some things out. I spoke earlier with Mr. Zilocchi, and he told me that, before it was brought out here, that you made \$75,000 as a flat fee. And that was averaged out on your prior year's performances; is that correct?

MR. DELSENER: Well, basically, sir.

SENATOR WEISS: I don't care if you make \$75,000. I have no problem with that.

MR. DELSENER: I think it's a little bit incorrect. It's a small percentage, if I add more than \$6000.

SENATOR WEISS: That was the other part of it.

MR. DELSENER: May I tell you what that is, sir? That's selling out the entire arena, underneath the shed, 5300 people, selling out quite a number of seats on the lawn. I've been able to, in the two years that that's been in existence, to sell out. I reached on an average, every night under the shed, but also on the lawn. That's a pretty good average.

SENATOR WEISS: 1978 you mean?

MR. DELSENER: 1987.

SENATOR WEISS: 1987, which is not that much money.

MR. DELSENER: No.

SENATOR WEISS: And I just wanted to straighten the formula out in my mind, and starting with other things, I thought I had it down right the first time. You operate as R. D. and as Delsener. Is there a reason for that?

MR. DELSENER: I believe all my shows that I do out of the State of New York are R.D. Festivals. That's how my accountant set it up.

SENATOR WEISS: And in New Jersey you're operating as Delsener Enterprises?

MR. DELSENER: I think the contract with the A.R.D.E.E. Festivals.

SENATOR WEISS: Okay. Generally, Mr. Delsener, how-- Tell me, when you book these acts, and you said -- and let me follow through for a moment -- you said you went to Mr. Zilocchi, and to some other people, and I don't recall their names, and you decided amongst yourselves, or they decided that the act that you brought in were,, in fact,, acceptable to the audiences of the Arts Center.

MR. DELSENER: Well, ultimately, if I thought the act should play the Arts Center.

SENATOR WEISS: You were making a judgment call.

MR. DELSENER: I was pushing pretty hard to play this act, unless he said it was out of the question, in most cases I wouldn't bring him an act that was out of the question. If the money was high, we would try to get the act for less. If he really wanted the act, he would probably bump the tickets up fifty cents or a dollar.

SENATOR WEISS: The thing that I'm driving at, I don't think it's your call, but we're in a public forum. I should say it at this point, that the Garden State Arts Center should have an act selection committee, such as that that has the experience in picking these acts.

I appreciate the fact that you don't want vile language used out there. I don't think anyone really wants that. I'm not sure, though, that the people who select the acts should be the ones to, as the Chairman indicated, censor that which we're hearing in New Jersey, although I personally object to language that's profane.

So, I really am using you to get a message to those who make the acts selection, and you're a part of it, so you can hear it. There ought to be some more standard way of selecting the acts for the Garden State Arts Center.

It would take, sir, the responsibility and possibly even some accountability from you, and from Mr. Zilocchi, and those involved, and put it on a Committee, so that the selection of those acts could be made on a more standardized basis. But I'm not giving you hell for it. I'm letting it go from you to those who are really responsible.

MR. DELSENER: That may be a good idea, Senator, but, I think my track record-- I've done these shows for 25 years, outdoors. I think I've done more than most people with city and State government, and I've had one incident. That was in the mid-sixties, when there was rioting in Detroit and we happened to have an incident after a show in New York.

So I'm very aware of acts and the kinds of crowds they may draw. I'm not worried about being my own self censor.

SENATOR WEISS: I'm not worried about that either, from your own point of view being your own censor. That's your problem. I'm concerned, as the Chairman of the this Committee, who is going to censor what our people are going to see?

MR. DELSENER: That's a good point.

SENATOR WEISS: I don't go to shows normally that are of that type. Maybe if I were somewhat younger, I would. Nevertheless, there are people that resent the language and so on, and I can't disagree with that, as far as you're concerned, but, I don't know if you are, or the folks that do make the decisions are qualified to make them for all of us in New Jersey. And there are 7.5 million of us. Yes, we can do it for us, and we do. We police ourselves, one way or the other.

But, I don't know that you, Mr. Delsener or Mr. Zilocchi, or whoever else is involved in this thing, should be making a decision for the other 7,499,999 of us. That bothers me a bit.

SENATOR AMBROSIO: Before I turn it over to Senator McNamara, I would just like to clear something up. As I do some arithmetic with the calendar, it looks like there are approximately 100 to 150 very available days from May to September, to October, that this facility would be used; is that a fair statement?

MR. DELSENER: I really don't book many shows in May. Number one, there aren't many acts early and the weather is objectionable.

SENATOR AMBROSIO: Mr. Delsener, just a minute, the season runs from May 1 to October
1. That's when the season is?

MR. DELSENER: Maybe that's their season. The summer season is usually not in the month of May. It's usually after Labor Day (sic).

SENATOR AMBROSIO: When is the first show?

MR. DELSENER: I usually like to run June one or May 31. Kids are coming out of college, and the kids in high school are still in high school. It's still cold. It's not really that warm yet.

Memorial Day begins the summer season.

SENATOR AMBROSIO: Mr. Delsener, I'm trying to develop two or three simple facts. You run 55 shows a year, approximately. That's what your records show. Is that fair to say?

MR. DELSENER: We've averaged 55 shows.

SENATOR AMBROSIO: 55 paid shows?

MR. DELSENER: We've averaged that in the last five years.

SENATOR AMBROSIO: You tell me, I'm asking you.

MR. DELSENER: I don't know. You have all the facts up there. I don't have them in front of me, sir.

SENATOR AMBROSIO: I'm looking at last year. You had 55 paid shows. You also had -- and your projections this year are that you'll have 33 free shows.

MR. DELSENER: So, 55 and 33 would be 88.

SENATOR AMBROSIO: Isn't it true that most of the free shows are in September and May?

MR. DELSENER: I don't know, Senator. I really don't know.

SENATOR AMBROSIO: You don't know?

MR. DELSENER: No, I don't know. I don't go to the free shows. I don't book them. And I wouldn't run any shows in May. I'd run them the summer months, Memorial Day to Labor Day. That's about 107 days.

SENATOR AMBROSIO: What I'm getting at is that the theatre appears to be dark about half the time.

MR. DELSENER: Well, let's take the 107 and take out three holidays, Memorial Day, when you don't run a show because of the Parkway and the traffic to the beaches, and Fourth of July, and Labor Day. So it's about three or four days right there. So that comes down to 107 minus 3 is 104. If we average about 65 shows, 65 from 104 is 35 nights. And they have 33 of those for senior citizens.

SENATOR AMBROSIO: 39, no, no, senior citizens and the free shows are generally in May and October, or May and September.

MR. DELSENER: And they are not in June? I think there are some in June.

SENATOR AMBROSIO: You're in charge of every booking at this facility.

MR. DELSENER: Okay, I think there are some in June. The gentleman holding his head, he probably has the schedule in front of him.

SENATOR AMBROSIO: Based upon your numbers in June, that there's probably two dozen occasions, at least--

MR. DELSENER: Yes.

SENATOR AMBROSIO: --when this facility is dark?

MR. DELSENER: Yes.

SENATOR AMBROSIO: What efforts do you make to try to book it on those nights?

MR. DELSENER: If the act doesn't make sense. For instance, if an act is only going to draw 1500 people, I, myself or Ogden Allied, myself, or Nederlander will not book the facility. They will lose thousands of dollars.

SENATOR AMBROSIO: You make no effort to book it on those nights?

MR. DELSENER: If there's no act available, number two, if the act is not available, does not sell tickets, it's a tremendous loss, I will not book it.

SENATOR AMBROSIO: Why have you not taken those 24 or so odd days and gone out to the private promoters, and said, we have 24 days available that we're not using the facility? If you've got an act to book and you're willing to give us a guarantee, these are the dates that you can book it.

MR. DELSENER: Because I don't set that principle. What's the guarantee to be to rent the Arts Center? Suppose they come in with an act that's detrimental? Suppose something happens? Somebody gets stabbed in the parking lot. Don't you want to protect the image of the Arts Center? I want to protect the image of the Arts Center and sponsor.

SENATOR AMBROSIO: What does anybody--

MR. DELSENER: This happens when you sublease to people who are there for one or two nights and don't care.

SENATOR AMBROSIO: Now, that's a different issue. Are you saying to me that the promoters that would come in for one act for one night wouldn't be as responsible as you would be?

MR. DELSENER: You own a house down the shore in Cape May. Are you going to rent it out to a couple of groupies? No.

SENATOR AMBROSIO: We're not renting out cottages.

MR. DELSENER: If they want to rent it out, that's their business, Senator.

SENATOR AMBROSIO: If we can continue, Senator McNamara has one or two questions for Mr. Delsener.

SENATOR McNAMARA: Mr. Delsener, from listening to your testimony, to be very honest with you, I understand what you're saying. You end up doing the acts for about \$1200. And I'm beginning to wonder, number one, maybe the Arts Center, I'm not so sure the Highway Authority should be the one operating it. I'm beginning to think they should have an in-house promoter or a system maybe close to what they have with you, because the net effect to the Arts Center, if every program was done on the outside, with an outside promoter, their net would have to be substantially different. I mean, of great substance, I would assume.

MR. DELSENER: That's correct.

SENATOR McNAMARA: Well, I guess what puzzles me is that, what motivates your largesse in making that contribution, so to speak, to the State of New Jersey, or to the Highway Authority?

MR. DELSENER: First of all, I make \$110,000, with the \$75,000 and the commission on Isuzu. \$110,000 is not money to sneeze at. I don't think the money is that bad.

SENATOR McNAMARA: But the \$110,000 wasn't really guaranteed.

MR. DELSENER: No, I had to go out and work.

SENATOR McNAMARA: That may be difficult to duplicate, especially from different figures that you threw out as to what corporate sponsors are willing to pay, you know, for those types of facilities, because it is definitely a local market, and for the simple fact that

you're also limited, although it doesn't seem to appear in writing, but you are limited to the type of sponsor that you can get.

And even this particular sponsor, according to some minutes that we have here, there were some questions raised because of, I guess, Isuzu of America, but there was some questions because there was a foreign oil producer, whether they would be appropriate or not.

So, you know, if it were turned around and the Authority decided to go via the outside promotion route, would it be safe to assume that you would be an active bidder to get that business?

MR. DELSENER: You mean to discontinue my fee?

SENATOR McNAMARA: Say, when your contract lapses, at that point in time, since you've had the benefit of historical track record with the Authority over a period of years, would you become, if they had an RFP and it went out to bid, would you be an interested bidder to obtain the status as an exclusive promoter?

MR. DELSENER: In all honesty, Senator, yes, I would, but the restriction put on me, wearing another hat as the promoter who has to pay the rent and expenses, I'd be looking to go put beer in there, because you can make more money on, as Ogden will tell you later-- I'd be looking to go charge for parking. I'd be looking for other ancillary activities, such as cigarettes at the door, they would pay at least \$50,000 to \$100,000 to sample everybody who came through those doors.

So, an outside entrepreneur would be looking for all this ancillary income which the act does not participate in. They do not get a percentage of that. That's how most arenas stay in business, the ancillary income.

SENATOR McNAMARA: I would imagine that those particular items would be brought up, if they had a bidder's meeting, and were developing a set of specs, and that would be something that they would have to make a decision on whether they would include those options or not. But, I would assume with the track record and history that you've had with the Authority, and I don't really mean it in anyway critical, because, obviously, you know, you're booking an act in there and making what you're netting per show. I understand how you priced at that figure. One has to say, it's hardly worth the time. I guess, when you add the two numbers together, it's a reasonable return on an investment of time, but, would it be safe to say that you would be one of those that would be interested in bidding on that type of facility?

MR. DELSENER: Yes.

SENATOR McNAMARA: That's all I wanted to know.

SENATOR AMBROSIO: Thank you, Mr. Delsener.

MR. DELSENER: Thank you, sir.

SENATOR AMBROSIO: Next we have two gentlemen I would like to call up together, Doug and Fred from Ogden Allied.

DOUGLAS LOGAN: (Witness sworn.)

FRED ORDOWER: (Witness sworn.)

SENATOR AMBROSIO: For the record, Fred Ordower, and Doug Logan on my right.

MR. LOGAN: That's correct, Senator.

SENATOR AMBROSIO: I don't know how you want to do this. I'd like one of you to give a brief history of what your company is, the background and the clients that you represent.

MR. LOGAN: Thank you, Senator. We're delighted to be here. Ogden Allied is a service company that is headquartered in New York City. We have-- We're a public company listed on the New York Stock Exchange. We do about \$1 billion worth of business a year.

SENATOR AMBROSIO: Billion, with a "B."

MR. LOGAN: With a "B." We have 40,000 employees, many of whom are residents of New Jersey. We operate about a fourth of our total business -- a little over \$250 million is in the Leisure Division, which my colleague Fred and I are officers in.

And we have a total of over 100 contracts, service contracts, for auditoriums throughout the country, stretching from San Juan, Puerto Rico to Anchorage, Alaska. 67 of them are in major arenas, performing arts centers, outdoor amphitheatres, ski slopes, those kinds of venues.

We, at one time, were the food and beverage concessioner at the Garden State Arts Center, some fifteen years ago to about ten years, which we won by competitive bid, and then did not win the bid ten years ago.

We are now embarked upon two interesting business lines which have had an extraordinary amount of growth in the last three years, particularly. We are managers, private sector managers, of public assembly facilities, and have total facility management contracts representing some fourteen or fifteen venues in nine separate contracts.

And in those instances, what we do is become private sector implementors of public policy and run those facilities on behalf of public clients. In addition to that, Fred manages an entity called Ogden Allied Presents, which is a service to our other contracts.

We are in the promotion business much like, but on a smaller scale than, Mr. Delsener and Mr. Scher where we, in fact, promote events, principally musical concerts, also sporting events, and family shows in the facilities that we have contracts in.

SENATOR AMBROSIO: Mr. Logan, I have a list of your clients. I'm not going to ask you to go through the whole list of them, just one or two of them. You're the managing company for the Jacob Javitz Convention Center.

MR. LOGAN: That's correct.

SENATOR AMBROSIO: What other facilities in the area do you manage?

MR. LOGAN: Well, that is the closest and largest of the full facility management contracts that we have. We have a facility in upstate New York. We operate under a five-year arrangement in Houston Field House at Rensselaer Polytechnic Institute which Mr. Scher and some of his partners are promoters in.

We are food and beverage concessioners at Jones Beach, and we have a working relationship with Mr. Delsener. The closest of our large facilities that we have, large service contracts, is the Cap Center in Landover, Maryland, the home of the Washington Bullets and also the Washington Capitals in the National Hockey League.

We have a total facility management contract in three buildings, two separate contracts for two public sector clients in Pensacola, Florida. We are the managers of the Los Angeles Forum, the home of the Lakers. We also have developed, and in the last ten days, signed the first private management contract on an amphitheater, major amphitheater, where we will be managing the new amphitheater on the south side of Chicago, referred to by Mr. Scher before.

There, we will do private sector management of the facility, manage everything but the booking. And also have a food and beverage contract on that particular facility. We have some service contracts in addition to that in the City of New York, Madison Square Garden, Yankee Stadium.

SENATOR AMBROSIO: I understand you're the groundskeepers at Yankee Stadium, is that correct?

MR. LOGAN: That's correct.

SENATOR AMBROSIO: Mr. Ordower, do you have anything you want to add to the background of the company?

MR. ORDOWER: Just that we have a large number of contracts of varying sophistication. Some of them we do housekeeping; some we do food and beverage; some we do booking and promoting and managing, at about close to seventy public assembly facilities in the country.

SENATOR AMBROSIO: What I'd like to do for the balance of the afternoon is to develop for the benefit of the Committee the concept of private management of a public facility. And I'd like to, if you can, see if you can wash away the testimony that you heard, and just start with the premise that you were given the job of coming up with a management plan to operate the Garden State Arts Center, and what information would you need, and how would you go about it, and what advice would you give?

MR. LOGAN: The first thing is, we would not come up with a plan. The first issue at hand in contracts of this type is to, number one, identify the client, and that may sound awfully simple, but sometimes in the public sector, particularly where there are competing agencies and institutions all with a vested interest, developing who the client is and who represents it sometimes is rather adventuresome. Whether it be a public university or public facility of this type that is operated with a public agency, determining who the client is, is the first issue, and privity of who the contract would be with.

The second thing that we would enter into is a period of time where we would want to have our client, our public client, clarify its values, clarify what its

motivations were, clarify a mission statement, and find out exactly how they would want that facility and particular entity run.

SENATOR AMBROSIO: You want to find its goal and its mission as the first priority?

MR. LOGAN: That's exactly right. Sometimes that's extremely difficult. This venue is a perfect example of competing interests, where today we've heard most address the issues of commercial entertainment for the common good, but ultimately to generate revenues to satisfy the economics of the expense side of that particular facility.

There are also motivations involved in producing quality artistic events and cultural events, and also events for special constituencies, so that out of discussions which we would insist upon would come out prioritized goals insofar as what was important to that client, and this is the very first thing we would do prior to entering into any kind of contract from the standpoint of the balance of the terms.

SENATOR AMBROSIO: Okay, and I assume considering the Arts Center is governed right now by the Highway Authority, you would sit down with the Commissioners and the Executive Director and his staff and have this lengthy discussion and come up with a series of goals and missions. What's the next step?

MR. LOGAN: Normally, what we try and do is we try and structure a contract that's in the best interest of both parties. We are in the private sector. We are private sector operators, and we're profit motivated as others who have to succeed in business are.

As a consequence, we would try and make up whatever fee we charged for the services that we were going to provide that would be consistent with those motivations.

In other words, if profit were not the only criterion, if some pro bono activity for the common good kinds of activity had to take place, we would make sure that we were not only just remunerated on net profit, but also being compensated to carry out the goals that were articulated by our client.

The other thing that we would do is we would find out what services were being provided, particularly with an existing contract, provided by the existing institution in place, whether it be, for example, contract garbage hauling or snow removal or other kinds of maintenance activities. We're not in the business of fixing things that aren't broken. So, we would go through a litany of services that are being provided at the present time, analyze how efficiently they are being provided and carve out a scope of work that is consistent with the efficiencies that we think we can bring to a contract.

SENATOR AMBROSIO: Okay. And I assume that in the public sector that you've dealt with, this is the process that you followed in other areas in the country?

MR. LOGAN: Yes, Senator. We do this as a matter of several times a month with clients.

SENATOR AMBROSIO: Is it true that the Highway Authority is charged with the responsibility of a public facility and has certain public responsibilities? Is it unusual to find a facility that is not only charged with a responsibility of at least breaking even, but of also delivering a series of services to groups that are not moneymaking groups?

And, if that's the case, how do you combine these two functions?

MR. LOGAN: It's a delicate, delicate tightrope act that one has to perform. But we suggested we're uniquely well-suited for becoming that third party that brings those elements together.

We frequently find that in public universities and public campuses, where, for example, Iowa State University in Ames, Iowa, we manage four buildings, an arena that is used for basketball and wrestling as part of the intercollegiate program and also hosts some 25 commercial concerts per year, 2000-seat performing arts center that is home to a large number of symphonic performances and legitimate Broadway offerings that are indeed almost a part of the music curriculum of the University and also the theatrical curriculum of the University that has its own repertory, in a rather large building that hosts the University's extension service.

We have a variety of constituencies that are represented by the users of that building, both internally and externally. We become an excellent third party to generally arbitrate among those users, while satisfying the economic requirement of the University to reduce the subsidy that is paid for those four entities every year during the course of the five years of our contract.

We're into the second year, and have made all of our milestones. And it's a relationship that's working extraordinarily well. You know, we manage a lot of what's known as civic centers throughout the country.

And civic centers is a two-word phrase. It's got the component part of civic. While most of these entities attempt to break-even -- and indeed we do break-even and make a modest amount of money with the smallest of them -- they do have the civic component which means that we have to pay due diligence to the local needs of not for profit groups looking for fund raisers to the local charitable events that are hosted there, to the civic and patriotic events that are hosted there, and somehow blend them into a commercial calendar where it always makes sense locally.

Trying to find out what makes sense for that local client is probably the most challenging in having a successful arrangement with a client.

SENATOR AMBROSIO: I'd like you to center on the Arts Center, first of all, from the standpoint of a seasonal facility.

Are there other seasonal facilities that you have some expertise in or that you manage?

MR. ORDOWER: There are fourteen outdoor amphitheaters that principally host various musical performances as their main event, and we are service providers to them. I heard a figure of there being a universe of forty facilities that are comparable to the Garden State Arts Center.

MR. LOGAN: Three dozen to forty is about the number that exists. There are quite a few more that are under development now.

I might point out that the unusual phenomena of what's occurring is the fact that this was one of the first of the modern day amphitheaters that were built, and initially this facility was built to basically take care of cultural and ethnic offerings with some commercial events that were of the middle-of-the-road genre. I think that as a consequence of the way the music business is evolved, these facilities have become extremely lucrative places, as a consequence of more and more contemporary music acts touring.

So the business has changed, and one of the problems that you're facing in analyzing governance comes as a consequence of changing needs and changing opportunities within the music business.

SENATOR AMBROSIO: If the demographics serve me right, this is the only facility in the northeast within a tankful of gas of about sixty million people.

Would that make this a strategically located facility?

MR. LOGAN: It is very well strategically located. It's only downside is lack of capacity,

geographically very well oriented, market demographics are extraordinary; that amphitheaters could be easily developed under cover, and another ten thousand down, and easily accommodate the offerings that are out there on a regular basis in the summertime.

SENATOR AMBROSIO: You've been at the facility?

MR. LOGAN: Yes.

SENATOR AMBROSIO: And you're familiar with it. And I'm not asking you for any technical information that you don't feel you can give, but would it take much to expand the capacity of that facility, if you have any expertise that you can give us on that?

MR. ORDOWER: To expand the seating capacity?

SENATOR AMBROSIO: Yes.

MR. LOGAN: The difficulty is extending the lawn, which should be a near 50-50 balance of the seating on the lawn and under cover, or something close to that -- that's what works -- I couldn't tell you at this time.

SENATOR AMBROSIO: But it is your testimony and belief that this type of facility is a hot item today?

MR. LOGAN: The second amphitheaters built in Chicago proper -- and actually the fourth one in the region if you consider Chicago and Milwaukee to be almost a megalopolis in the southwest is almost in the south of Chicago -- it's being built to have 12,000 under cover, 12,000, I believe, on the lawn, and actually includes suites. It includes boxes that are being suspended from the roof and it's the fourth of this type that's being built for that particular market.

I think it's fair to say the City of Los Angeles, for example, has got four such amphitheaters, and it's fair to say that probably from a standpoint of capacity, the City of New York has fewer of these facilities of a scale that are being built throughout the country than any other major city.

SENATOR AMBROSIO: Can you tell me, based on your experience, what percentage or how many of these types of facilities are publicly managed, rather than put out for private management?

MR. LOGAN: There are very few. I think the one that I can identify is one that was recently opened costing somewhere near \$20 million. It was built on the lakefront in Milwaukee. It is owned and operated by the City of Milwaukee, basically, as a home for their Summerfest Program.

I think that on the scale of the Garden State Arts Center, there are a few that have public owners yet have chosen either to contract out management, or have local symphonies. There are a few that are not for profit. Generally, the largest of these amphitheatres, the ones that are being built generally are being built by the private sector and operated by--

SENATOR AMBROSIO: Why is that?

MR. ORDOWER: It probably has to do with the complexities and the challenges today in providing the singular service that's the most difficult to an amphitheater, which is the booking and promoting of it. Some twenty years ago when there were -- when you could count the number of facilities comparable to the Garden State Arts Center, it was relatively easier to book then, because they were very unique.

If today the population of these things is exceeding forty, and climbing, they become tougher and tougher to win their fair share of the lucrative performers that tour during the warm weather months.

So, what has happened is, most of the entrepreneurs who feel qualified to operate one of these things have found funding and are, in fact, developing these things. It seems as though there are fewer and fewer municipalities or counties or State agencies that are

building them and operating them today, and we suspect the reason is because it is so very, very difficult, and it's such a far more complex business in terms of booking and operating a public assembly facility like that, than it was some twenty years ago.

SENATOR AMBROSIO: Obviously, you're from the private sector and it's your belief that private sector management is the most effective.

Can you give me sort of a prototype of a management contract that you would superimpose on this facility?

MR. LOGAN: Well, we have contracts that perhaps we could do an overlay on. It all depends on what the scope of services would be. If we were to be asked to manage seasonal facilities, like we are going to manage the one just south of Chicago, that will open in August, the first thing that we examine is, where we can use staffing in a complimentary way, with some of our fall, winter and springtime activities? Principally into our arenas, if we were to have something like that that's not complimentary, or even at a distance, it would have a significant relevance on, basically, our fee structure. Generally it includes three major component parts. Number one is a flat fee for managing those activities that we put in there for -- that we think is relevant and should be parallel to meeting a modest amount of success in a facility. And a fee could be 100 to \$120,000, for example.

We generally accompany that fee proposal for incentives and disincentives provisions, so that after sitting down and defining not only goals but what the definition of success is with our public client, we generally put in an incentive fee for exceeding that level of success, and also reduce our fee in the event that we don't achieve that success.

So, conceivably we could have a contract that would say that for performing these services we would be paid \$120,000 for the year that would be reduced, let's say, on some formula, down to a minimum fee of some \$40,000 or \$50,000, but that could be exceeded, let's say, by a like amount of \$80,000 to a maximum of \$200,000 for the year, for achieving extraordinary results.

We would want a term of no less than about five years, because it takes that long to really establish ourselves in the marketplace. We will want to have the prerogatives of doing what we do best, which is generally to stimulate the marketplace. And we would probably get into that later.

We believe in running accessible facilities and would stimulate as much competition by the gentlemen as have spoken before as possible, not only by them, but by others, and having our own in-house promotions facilities. We would act as promoter of last resort in those instances where we could not get the attention of regional promoters.

SENATOR AMBROSIO: You don't agree in exclusive promoting arrangements?

MR. LOGAN: Not at all.

SENATOR AMBROSIO: What's wrong with that?

MR. LOGAN: We think they are un-American. We normally find that by stimulating the marketplace, by drawing upon the creativity of the relationship and the leverage of those people who are within the region that are risk takers from the standpoint of promotion, we can get the best of all possible worlds from the standpoint of our client facilities.

SENATOR AMBROSIO: You indicated that your standard arrangement would be a five-year contract of \$120,000 base fee with a scale up or down depending upon success or failure.

MR. LOGAN: That's correct.

SENATOR AMBROSIO: I think you said that you tend to use in-place services where they are appropriate, and in-place staff. Physically, what change -- I don't mean what change in the physical -- what physically would you do? Would you move in a staff of people there? Would you use existing staff?

MR. LOGAN: We have some competitors, Senator, in our business who make it a practice to walk into a facility that they have a new contract with and clean house and get everybody new.

We happen to believe that we think the best of people rather than the worst, and we happen to think that under different motivations, under private sector meritocracy rather than bureaucracy, we can motivate people who are there doing a job to do it better. What we generally do is assume that we're going to keep everybody there, after going through an assessment of job levels that we think are merited in those instances to make sure that people are matched up to appropriate job descriptions.

So, generally, you will find, I think, that of the 7 or 8 facilities that we've taken over in the last 24 months we have every single manager, and assistant manager in the place with the exception of one, which we think is a pretty good track record.

What we do is provide different motivations. We think that these facilities ought to be run entrepreneurially. For better or worse the public sector is an extraordinarily difficult area to work entrepreneurially. Some of the things that you're talking about today are a consequence of the rub between public sector needs and private sector requirements of operating entertainment facilities. And we think that there is a marketplace in some instances.

We don't think it's a universal premise that the private sector management is better in all instances, but particularly when we get into issues of governance like this, and we get into the delicate governance issues that, indeed, your Committee is contemplating; that we think there is an appropriate place for the private sector to play a role.

SENATOR AMBROSIO: In terms of the opening up of the market by having -- by moving out of the confines of a Highway Authority, my concern is that the Highway Authority is basically a closed shop that deals in one world, and is not aware of the rest of the world.

And I tried to develop that point earlier with Mr. Zilocchi and he took my point wrong. The expertise that I'm looking for is expertise in the industry. Do you see private sector management having more access to more expertise in the industry than a closed shop governmentally operated facility?

MR. LOGAN: Undeniably. I think one of the greatest examples we use, when we have university clients, which is similar, what we afford our clients is the ability to do what they do best, which, if it's roads or if it's educating youngsters, or whatever that maybe, that's where their focus ought to be.

Our focus is in the entertainment, sports, and other leisure pursuits. That's what we do best. Then we can free them up to do what they do best.

MR. ORDOWER: The thought that I think you're looking for is that because our company distinguishes itself by not building a guillotine when we are awarded an agreement to come in and manage a facility, what we have, and really enjoy a great success level at, is retaining and transitioning employees in the facility to our payroll and, in fact, being able to motivate them with different benchmarks, different standards, and with the access to a much

better look at what else is happening in the industry, at comparable facilities, because we're service providers in so many like facilities.

It's far easier for them to be better at what they do, all of which produces some excellent results for our clients.

MR. LOGAN: If I can add one thing, John and I have had some differences along the way. I can't afford not to talk to John Scher, despite those differences. I can't afford not to talk to any promoter in this country and not sit down and try to do business with them. Despite the arguments that we may have had on a business level, we still communicate regularly, and find a common ground to do business in. And that is what you get from a professional company that sometimes you don't get from the narrow point of view of a single, stand-alone director of a single facility.

And, like I say, I mean no offense by it, but I think it's important that you hear that.

SENATOR AMBROSIO: Let me just go back to the initial point you made, that was defining goals and setting the mission. I would assume that that's where you would get into the questions that I was talking to Mr. Delsener about, in terms of who decides what's acceptable in terms of language and decorum?

MR. LOGAN: I have some very strong feelings about this. This, again, I hope I'm not insulting Mr. Delsener. We take the responsibility of facilities, where activities are generally protected by the First Amendment, protective free speech. The ultimate censor is the marketplace, and the ultimate censor of taste is the marketplace.

We see our role not to act as a censor, except in those instances where there's a proven track record of safety issues and public safety.

But, from the standpoint of censorship of music or lyrics or taste levels or image, that's best left to the marketplace and we don't participate in that.

SENATOR AMBROSIO: What about involvements with unions? I assume that several of the facilities that you operate-- How does your company deal with a management contract with a facility that already has in place a union?

MR. LOGAN: We have no problems with that. About 40% of our labor force -- I think the correct number is about 36% -- belongs to a labor union and is a part of a collective bargaining agreement.

The balance is open shop. We have international agreements with every single major union that is related to the leisure business. And, as a matter of fact, I have a labor and management full-time staff, twelve throughout the industry, that do nothing else except negotiate on our behalf.

We would have no problems with bargaining collectively with employees. In those instances where that's not appropriate, we run open shop operations and find no problems.

SENATOR AMBROSIO: In general, of the numbers of venues around the country that are operating, particularly the ones that you're involved in, how many of these fail?

MR. LOGAN: It all depends on who gets to define failure.

SENATOR AMBROSIO: I'm not talking about making a profit. I'm talking about how many of them go under.

MR. LOGAN: Shut their doors and don't open them again? Very few, because you have to understand that a lot of these venues are the new, modern day weapons of the war between the city and states.

Instead of using chariots and spears and sling-shots, these days we're using festivals and arts centers and arenas and stadiums to compete with one

another. That's how Toledo competes with Wichita. Civic pride is there, and it is not unusual to have legislative hearings. It is not unusual for that to grab front-page headlines. But very few of them fail to open their doors.

SENATOR AMBROSIO: I don't know if you can comment on this, but in terms of the promotional contracts, how do the venues handle those types of arrangements? You heard of the Isuzu contract referred to.

MR. LOGAN: Which contract, sir? The Isuzu one?

SENATOR AMBROSIO: Yes, where Isuzu is paying something like \$240,000 a year to use its name in a facility. I know that the Meadowlands, the Madison Square Garden has these types of promotional sponsorship contracts. How do these small arts centers or art festival type centers handle those type of arrangements?

MR. LOGAN: I really can't address that. There's a standardized way. I can only tell you that sponsorship dollars are becoming increasingly more important to the equation of making successful personal appearances. I mean, they are part and parcel with successful seasons.

Number two, there are a variety of different kinds of sponsorships. And they run the wide gamut from sponsorships for an attraction, such as when Kenny Rogers being sponsored for a tour by Dodge, to facility sponsorships, to serious sponsorships that frequently promoters have.

I know that John, for example, at one time -- he may still have a St. Pauli Girl series, and and I know Ron has other kinds of series sponsorships. They are an important part of the equation.

There's no roll book of who says who's entitled to who, a lot of which you were grappling with this morning, with regard to where are the rules.

It's a catch-as-catch-can. There are no rules. I can't identify whether a single sponsor of that magnitude is good or bad, because I don't know what the comparisons are. But, I can only tell you that's a controversial aspect of the industry. 25% commissions are not unheard of from the standpoint of soliciting them.

And I think, quite honestly, what ought to be looked at is, was this something that was entered into in an American system with operating a public body? On that, I won't comment.

SENATOR AMBROSIO: Fred, do you want to add anything further?

MR. ORDOWER: On the sponsorship and signing issue, it's becoming such an essential ingredient that our company was involved in renaming the Los Angeles Forum. It's now called the Great Western Forum after a savings and loan chain.

The Carrier Dome is another example of a facility that's named after a corporate product. So, this is a very essential ingredient, but, again, at the time, if this State further examines some of the issues that would appear to us to not have been looked at as thoroughly as they could be, when you get to the issue of do you want to rename the Garden State Arts Center, there's a substantial income opportunity there. If that blend of capitalism is desired by the State, before you have to have something-- As you suggested earlier, how many of these places fold or go under? The ones that are public, that are owned by a city, or a State, or a county, or a university generally never do, because if they get into the deep, serious financial trouble, the taxpayers will be asked to ante up the difference.

SENATOR AMBROSIO: Or the toll road payers.

MR. ORDOWER: What have you. But the only ones that have gone under in the last two years or so are the

ones, a couple of ones built with private funds that don't have the deep public pocket, if you would.

SENATOR AMBROSIO: Senator Weiss or Senator McNamara, do you have any questions?

SENATOR McNAMARA: Not at this time. Thank you.

SENATOR WEISS: I just have one question. Really, it's a matter of information. Someone said that up at the Meadowlands, the Arena, wherever they have these shows, has 12,000 seats.

MR. LOGAN: It's more than that, the Meadowlands.

SENATOR WEISS: I thought I picked up the number 12,000 for these shows.

MR. ORDOWER: Perhaps the Meadowlands is 12,000 seats larger than the Garden State Center.

SENATOR WEISS: Maybe we were talking about--

SENATOR AMBROSIO: 19,000 to 20,000, for basketball, and 20,000--

SENATOR WEISS: Is that where they hold their functions in that Arena?

MR. ORDOWER: Yes.

SENATOR WEISS: How many seats at the Garden State Arts Center, does anyone know?

SENATOR McNAMARA: Five under cover, and a couple thousand on the lawn.

SENATOR WEISS: Is it financially worthwhile to take on an issue such as the 5000 seats under cover to the Garden State Arts Center, plus whatever is on the lawn? It used to be very reasonable at one time. I don't think they are any longer.

MR. LOGAN: There's an interesting phenomena of capacity. If you have a 7000 seat arena, there are many nights when a promoter says it makes money. At 12,000 seats, if it's a structure of 7000 seats indoors, the minute you move out-of-doors with a different environment, in an arts center that is close to the beaches, and close

to vacation opportunities, and where you can increase prices, the economics says that for many of the acts that play the arena, there is a summertime alternative in playing either single or multiple nights in an outdoor venue like this.

I think it is undoubtedly competition -- and I don't know firsthand -- with certain acts between the two vendors.

SENATOR WEISS: I'm not sure what the ticket prices are over at the Meadowlands. Here they were represented to be \$22 a ticket.

MR. LOGAN: They are probably, I don't mean to tell John his business-- He probably has an average ticket price of \$18.50, so, there's probably \$3.50 to \$4 differential. And that's common in the marketplace.

SENATOR WEISS: Well, getting back to what I thought of before, or at least what I said before, I thought if you base this on a volume basis, if, in fact, -- you can't.

MR. LOGAN: It defies oversimplifying on volume terms, sir. It really does. Every business deal for every act is different. And you can't overgeneralize it by saying that, you know, "If I get the greater volume, I'll make more money."

SENATOR WEISS: I wasn't thinking of that, if you have a large volume, you lower the price of the tickets.

MR. LOGAN: You can't do that. If you have the large volume, you'll be asked for more money on the standpoint of a guarantee. There's no fixed price for an act.

SENATOR WEISS: I'm having a problem, because I can't put together from the statements that I have from the Garden State Arts Center as to what their real overhead is, what they charge for rentals and so on? Until I break that out, I'm going to have to ask these questions.

MR. LOGAN: Sure, it's not an easy thing to do in many instances.

SENATOR WEISS: Are we putting things in the right columns and so on? And I was trying to determine from an example as to, okay, you got, let's say, \$20,000 at the Meadowlands and you get \$18 and some odd cents for them, here, we have 5000 under cover. I'm going to use under cover seats, so I have something commensurate with it.

MR. ORDOWER: Another one of the services that our company provides, is clarification of financial management reports and things of that nature. I'd be happy to help you with it.

SENATOR WEISS: Okay, we'll talk about that at some other time. Nevertheless, I wanted, basically, if I could, get some equal comparison, under cover versus under cover, and the chart that should be the charges what they should be at the Garden State Arts Center for a performance.

MR. LOGAN: You cannot do it.

SENATOR WEISS: It can't be done?

MR. LOGAN: What you're doing is taking two venues of different characteristics with probably two different stated prices in the marketplace, with two different assignable overheads, two different sets of direct costs. You can't make a comparison.

SENATOR WEISS: There's no way of making a comparison?

MR. LOGAN: No.

MR. ORDOWER: No, there is not.

SENATOR AMBROSIO: Mr. Ordower and and Mr. Logan, I want to especially thank you for coming. The record should reflect that both of these gentlemen came here from Chicago without compensation, as witnesses, to volunteer testimony on a subject that's very important to us. And I personally want to thank you for the time and effort that you spent in helping this Committee.

I know your advice is going to be valuable.
Thank you.

MR. ORDOWER: Thank you. Best of luck with your
investigation.

(MEETING CONCLUDED)