

1 your stuff to the wrong party"?

2 A. No. There is no 9-1-1, nothing.

3 MR. MANLEY: All right. Pass the witness.

4 Thank you, Your Honor.

5 THE COURT: Thank you. Mr. Fryar?

6 MR. FRYAR: Yes, Your Honor. Just one  
7 minute.

8 CROSS-EXAMINATION

9 QUESTIONS BY MR. FRYAR:

10 Q. All right. Hello again, Mr. Kubbernus.

11 A. Hello.

12 Q. I want to start by focusing on your story that  
13 you told today, okay, about the structure of the deal.  
14 So as the deal closed in November, you have --

15 A. November when? Which --

16 Q. November 2006.

17 A. Okay. I have it.

18 Q. Right. You've got the acquisition of SkyComm  
19 shares and debentures, which ultimately get turned into  
20 SkyComm shares. Right?

21 A. Correct.

22 Q. And, in fact, then some -- and warrants, which  
23 get turned into shares. Right?

24 A. Correct.

25 Q. And when the dust settles -- your counsel went

1 through the map on this -- the portion of those SkyComm  
2 shares -- the total number of SkyComm shares that the  
3 limited partners owned was 251 million. Right?

4 A. Sounds right.

5 Q. Okay. Out of like 359 --

6 A. Yes.

7 Q. Right. You did the math. And if this is the  
8 bundle of shares, right, and your testimony is that the  
9 ClearSky -- ClearSky LP and the ClearSky investors were  
10 the true owners of those shares. Right?

11 A. The -- yeah, that's right.

12 Q. Okay. I mean, they had -- they had owner -- no  
13 question, they had ownership rights. We hadn't gotten to  
14 whose name it's in, but they had ownership rights.

15 Correct?

16 A. Correct.

17 Q. So they are the true owners, but their name is  
18 not on the certificate. Correct?

19 A. Correct.

20 Q. Now, in your mind, can you still be a true  
21 owner even though your name is not on the certificate?

22 A. You can be a beneficial owner, yes, you can.

23 Q. I mean, you would still -- you wouldn't --  
24 Balaton's name is here, but Balaton is not the true owner  
25 of those 251 shares. Balaton is merely holding those

1 shares for the true owner. Right?

2 A. Correct.

3 Q. And Balaton in that case -- Balaton might be  
4 called an agent, a nominee, a trustee. It all means the  
5 same thing in this context. Right?

6 A. Yes.

7 Q. Okay. So Balaton -- for instance, because  
8 these are the true owners, Balaton would not be free to  
9 simply take the shares back. Right?

10 A. I don't agree with that.

11 Q. Well, there might be a procedure under which  
12 Balaton would acquire those shares like in a foreclosure  
13 or a purchase. Right?

14 A. Or under the general partnership agreement,  
15 there's a lot of conditions and --

16 Q. Okay.

17 A. -- agreements in place.

18 Q. But until Balaton acquires ownership of those  
19 shares, the true owners are ClearSky?

20 A. The beneficial owners are ClearSky.

21 Q. They're the people that own the shares.  
22 Balaton doesn't own them. It's just got its name on  
23 them. Right?

24 A. They're held for ClearSky, yes.

25 Q. Right. Okay. So let's look at how that works.

1 Let's start with Plaintiffs' Exhibit 1 and go to that  
2 2.6. Okay. All right. So the way that we get from  
3 SkyComm and -- SkyComm and CenturyTel owning shares to  
4 the -- ClearSky being the true owner and Balaton being  
5 the named owner, nominee, is that -- the first step is  
6 that Balaton has got two agreements? One was --

7 A. Am I -- am I looking at the screen or am I  
8 looking --

9 Q. I'm going to get to that in just a second.

10 A. Okay.

11 Q. Take it one step at a time.

12 A. Okay.

13 Q. I'm just trying to line it up.

14 A. Okay.

15 Q. All right. So Balaton has a securities  
16 purchase agreement and a debentures purchase agreement,  
17 which is actually in the name of Watershed at this point,  
18 but --

19 A. Understood.

20 Q. Well, and it's -- let me just say it exactly  
21 right. Watershed has got the right to become the owner  
22 of these debentures under this agreement. Correct?

23 A. Correct.

24 Q. And Balaton has the right to become owner of  
25 the stock under the securities purchase agreement.

1 Right?

2 A. Right.

3 Q. Okay. So when Balaton goes to the ClearSky  
4 potential investors, what they will be investing in is  
5 those rights to become owners of the shares that  
6 currently belong to Balaton and Watershed. Right?

7 A. Correct.

8 Q. So what they do is the limited partners put  
9 money into the limited partnership and become limited  
10 partners, and what they get is the opportunity to  
11 participate in acquiring debt and equity securities of  
12 SkyComm -- go to the next page -- because the agreements  
13 that allow Watershed and Balaton to become the owner of  
14 those shares are to be assigned to the partnership by  
15 Balaton and Watershed. Right?

16 A. Correct.

17 Q. Okay. And it references those agreements in  
18 Exhibit B. And those agreements in Exhibit B include the  
19 two we were just looking at, the debenture purchase  
20 agreement and the securities purchase agreement. Right?

21 A. I believe so.

22 Q. Okay. So what you've got is originally SkyComm  
23 and CenturyTel had the ownership rights to the shares.  
24 They do an agreement with Balaton so that Balaton gets  
25 the right to acquire those shares. Balaton assigns those

1 rights to the partnership so that the partnership will  
2 get the right to acquire those shares.

3 I'm not finished but that's right up to  
4 now. Correct?

5 A. Correct.

6 Q. Okay. Then the next step is that Balaton then  
7 holds the rights in its name for ClearSky. Correct?

8 A. Holds the benefit or the rights or again back  
9 to --

10 Q. So let's look at Exhibit 1 -- Exhibit 96, the  
11 trust agreement. And your testimony on this trust  
12 agreement is you don't know if it was signed or it wasn't  
13 but it's true. Is that right?

14 A. I believe, yes.

15 Q. Okay. So your testimony today is this  
16 accurately describes what it is and it's that -- you  
17 know, and it says, "Look, ClearSky is a party to certain  
18 agreements." We just went over that.

19 And then it says that ClearSky -- I mean,  
20 "Balaton is a party to certain agreements." We just went  
21 over that.

22 "ClearSky has advanced and will advance  
23 funds to Balaton to be utilized by Balaton to fund the  
24 particular obligations under those agreements." And we  
25 just went over that. That's the next step. That's

1 happened. Correct?

2 A. Correct.

3 Q. Okay. And then if we go down, the next step  
4 is, "Balaton has agreed to hold an interest in the  
5 SkyComm agreements in trust for ClearSky to the extent  
6 ClearSky advances are utilized by Balaton to fund its  
7 obligations."

8 Okay. And then the maximum is 10 million.  
9 So that's the final step here. That's how come it's your  
10 name on their stock. Right?

11 A. Correct.

12 Q. Because you're holding an interest in the  
13 agreements for them?

14 A. Yes.

15 Q. Correct?

16 A. Correct.

17 Q. Okay. So then we have Balaton. Now, here's  
18 the declaration. Balaton declares that it holds an  
19 interest in the agreements in trust for the sole benefit  
20 of ClearSky, such interest to be determined from time to  
21 time in accordance to Section 2.

22 And in Section 2, it's that "ClearSky  
23 interest from time to time shall be a percentage equal to  
24 the percentage of the SkyComm -- I'm sorry, ClearSky  
25 advances represent of the maximum amount."

1 I'm going to stop there. What that means  
2 is that if SkyComm -- if ClearSky has advanced half the  
3 money for the -- to pay under the SkyComm agreements,  
4 then you're saying half the rights that you hold you're  
5 holding in trust for the sole benefit of ClearSky.

6 Correct?

7 A. Correct.

8 Q. Okay. And the other half still belong to  
9 Balaton?

10 A. I believe so.

11 Q. Okay. So you -- you have an understanding of  
12 what this means and you can -- you can tell us that that  
13 reflects the reality at the time as you understood it.

14 Correct?

15 A. Yeah, along with all the other conditions --

16 Q. Okay.

17 A. -- and clauses.

18 Q. Now, when you assigned the 251 -- the 251,  
19 that's a hundred percent. Right? In fact, it's more  
20 than a hundred percent. They got their full -- the  
21 limited partnership's full ownership of every piece of --  
22 every share that they would have gotten if they had  
23 raised 10 million. Right?

24 A. I don't know if the timing is right on that.

25 Q. Well, your -- under the partnership agreement,



1 the limited partners get 70 and the general partner gets  
2 30. Right?

3 A. Correct.

4 Q. And your own lawyer got up here and did the  
5 math and said, "This is 70 and the other piece is 30."  
6 Right?

7 A. Correct.

8 Q. And he testified that was correct?

9 A. Correct.

10 Q. Okay. So they didn't get docked any because  
11 they only raised 70 percent of the money. Right? They  
12 didn't get docked. They got the full amount they were  
13 supposed to get even though they didn't raise the full  
14 \$10 million or you didn't raise the full \$10 million.  
15 Right?

16 A. But I also said that Balaton had to go finish  
17 off the deal and still assign it.

18 Q. Okay. And their -- the shares that you're  
19 saying belong to the limited partnership -- what you're  
20 saying today belonged to the limited partnership, they  
21 weren't decreased by any of these expenses that Balaton  
22 incurred as a general partner. Right?

23 A. Well, I don't believe so, but at the point in  
24 time whenever the accounting is done, those adjustments  
25 will be made.

1 Q. Okay. Well, at the time you did the Lavell  
2 prospectus, you're saying they owned 251?

3 A. Correct.

4 Q. Okay. So by that time, you know that they own  
5 all the shares and you're not making any deducts. Right?

6 A. Correct.

7 Q. Okay. So then what you -- oh, you know, let's  
8 go to 1 -- PX160. All right. And just -- the unsigned  
9 trust agreement, were it to have been signed, would have  
10 been signed by you and by you. Right?

11 A. What's at -- what's at the bottom?

12 Q. That's what it is. We've seen it three or four  
13 times. You don't remember?

14 A. Well --

15 Q. The trust agreement is by you and by you?

16 A. Could I see the bottom of the document?

17 Q. We'll go back to it. Okay. And this vend-in  
18 agreement that your lawyer -- your lawyer has shown to I  
19 think every single witness is also an agreement that's  
20 signed by you -- go to the bottom, by you, by you, by you  
21 and by your employee Pat Brant. Right?

22 A. My employee Pat Brant or Lavell's employee --

23 Q. You hired --

24 A. -- in SkyPort?

25 Q. You hired Pat Brant. Correct?

1           A.     Well, SkyPort and Lavell hired Pat Brant.  When  
2 you say "you," do you mean Robert Kubbernus or do you  
3 mean a company?

4           Q.     Robert Kubbernus is the person who's running  
5 these companies, chairman on the board of these  
6 companies.  Right?

7           A.     Okay.  As a company, we hired Pat Brant.

8           Q.     Right.

9           A.     No question.

10          Q.     And you signed two blanks on this agreement.  
11 Correct?

12          A.     Correct.

13          Q.     Now, go back up to the top.  And what it says  
14 is that you're just a nominee and that ClearSky is the  
15 one who really owns the shares.  And you're now telling  
16 us that that's true.  Correct?

17          A.     Correct.

18          Q.     Okay.  And then you have indicated that in the  
19 Lavell prospectus, in various cap tables and in various  
20 financial statements they all say -- from this time  
21 period, 2007, they all say either that the shares are  
22 owned by ClearSky outright or they say the shares are  
23 owned by Balaton, et al.  You remember going through that  
24 with your lawyer?

25          A.     Yes, I do.

1 Q. And you identified that when it says Balaton,  
2 et al, that means Balaton and ClearSky. Correct?

3 A. Or other parties. Et al is any party.

4 Q. Well, but there were no other parties here.  
5 Right? It's just Balaton and ClearSky.

6 A. Yeah, but there's ClearSky -- there's ClearSky  
7 GP and there's ClearSky LP.

8 Q. Fair enough. When you say -- when it says in  
9 one of these schedules -- it doesn't say owned by -- it  
10 doesn't say, "Owned by ClearSky." It says, "Owned by  
11 Balaton, et al," that means Balaton, ClearSky and  
12 ClearSky. Right?

13 A. ClearSky LP is Clear -- ClearSky GP, yes.

14 Q. Okay. And that's how it's reflected in  
15 financial statements and the prospectus and the various  
16 cap tables. Right?

17 A. Correct.

18 Q. Now, why is it that not a single one of those  
19 agreements that say either ClearSky owns the shares or  
20 that ClearSky -- that Balaton, et al -- Balaton and  
21 ClearSky own the shares mentions the trust agreement?

22 A. I don't know. You know, we're surrounded by  
23 lawyers that are crafting all these documents, attorneys  
24 on all different fronts.

25 Q. Not a single -- not a single document that your

1 lawyer has been through with you today and with virtually  
2 every other witness here says -- when you're showing them  
3 to other people that characterizes the ownership of these  
4 shares says, "Yes, ClearSky owns them but Balaton --  
5 they're only -- they're in Balaton's name." Right? None  
6 of them say that, do they?

7 A. I'm following all the lawyers' instructions on  
8 how this stuff all comes together.

9 Q. Answer my question. None of them say that.  
10 You do not make this disclosure?

11 A. I -- no, I do not.

12 Q. What you tell the world is that ClearSky owns  
13 the shares and there's no intermediate step. Right?  
14 That's what those documents say?

15 A. No. The documents say Balaton owns those  
16 shares.

17 Q. Well, they say either Balaton and ClearSky,  
18 et al, own the shares or they say just ClearSky own the  
19 shares. None of them say Balaton owns the shares in name  
20 only and ClearSky -- and ClearSky is the true owner, do  
21 they?

22 A. I think they say et al always. I think they  
23 clearly show --

24 Q. All right.

25 A. -- ClearSky through the documents, in trust

1 for.

2 Q. You think your lawyer can come up here with any  
3 of the public disclosure documents that will say "In  
4 trust for"?

5 A. Oh, I don't know what my lawyer can come up  
6 with.

7 Q. Well, you're not aware of any such document?

8 A. Well, I don't know what he -- what he has or --

9 Q. You're not aware of any such document?

10 A. I'm not.

11 Q. We haven't seen one in this trial so far?

12 A. Well, we've seen trust agreements. We've seen  
13 a lot of agreements.

14 Q. We've seen an unsigned trust agreement. We've  
15 seen a vend-in agreement. But in terms of what your --  
16 you know, that big old thick document that they wave  
17 around and all the audited financial statements, all of  
18 that, none of them disclose the trust agreement. Right?  
19 None of them acknowledge that that exists?

20 A. I have not seen that.

21 Q. All right. And also you never told your  
22 investors going into this that there was going to be any  
23 sort of trust arrangement. Correct?

24 A. Well, holding on to the shares, I think there's  
25 lots of documentation that says, "These shares are being

1 held by Balaton for their benefit."

2 Q. Well, let's look at the first document, the  
3 confidential investment memorandum. This document -- you  
4 acknowledge this document says that -- tells the ClearSky  
5 limited partners they are going to acquire those shares.  
6 Right?

7 A. A portion of it, yes --

8 Q. And what you're --

9 A. -- subject to FCC approval.

10 Q. What you're telling the jury today is that that  
11 is true, they did acquire the shares. The shares just  
12 had your name on it, but you're holding them for their  
13 benefit. Right?

14 A. Yes.

15 Q. So -- but it doesn't tell them that that's the  
16 way it's going to be done, does it?

17 A. In this marketing document?

18 Q. Yeah.

19 A. Well, I think it says also that once the FCC  
20 approval -- the shares will be held until the FCC  
21 approval is completed.

22 Q. It says, the part -- well, let's go to the use  
23 of proceeds, third page.

24 Okay. What it says is that "Completion of  
25 the equity investment will be deferred until receipt of

1 FCC approval of the -- to the acquisition of control of  
2 SkyComm and SkyPort by the partnership."

3                   You never told your investors that you  
4 weren't seeking FCC approval on their behalf. Fair  
5 enough?

6           A.    Well, not fair enough.

7           Q.    Okay.

8           A.    I don't recall that.

9           Q.    And you didn't say in here or to any of your  
10 investors that there were actually two FCC approvals that  
11 would be necessary, one for you and then one for them and  
12 then all -- I guess three ultimately, one for the IPO.

13                   You didn't tell them about those extra  
14 steps, did you?

15          A.    The extra steps?

16          Q.    Right.

17          A.    I think everybody understood that.

18          Q.    You didn't tell them?

19          A.    Didn't need to, but okay.

20          Q.    All right. So what you're telling your  
21 investors is that the partnership is going to purchase,  
22 but you're not telling them that you're going to do it by  
23 means of a trust. Right?

24          A.    Balaton -- I think it says in here that Balaton  
25 will hold the interest and upon certain activities --



1 Q. We -- nobody's read that language yet.

2 A. In this? Okay.

3 Q. I mean, are you sure that it says in here  
4 something about Balaton will hold it in trust?

5 A. No, I'm not sure.

6 Q. Okay. I didn't think so. Now, from your  
7 perspective -- I mean, this is the way you're saying you  
8 did it and this was not just a story that you made up so  
9 that Brogan Taylor would not get nervous about his  
10 father's \$1 million investment that he knew would not go  
11 into ClearSky's name. This was actually the truth is  
12 what you're saying today. Right?

13 A. Can you say -- can you say that again?

14 Q. Yeah.

15 A. Sure.

16 Q. Okay. We suggested that this story about  
17 holding it in trust was something you made up for your  
18 employees specifically so that Brogan Taylor wouldn't get  
19 nervous about his father's million bucks once he found  
20 out that the purchaser would be Balaton and not ClearSky.

21 And you're saying, "No, no, no. This is  
22 really what happened. This is really what's true."  
23 Correct?

24 A. So over the four-year period where Brogan is  
25 managing all the coming and going and unfettered access

1 to everybody else, somehow I kept this a secret from him?  
2 Is that -- is that what you're suggesting?

3 Q. Absolutely not.

4 A. Oh.

5 Q. I'm trying to figure out what your testimony is  
6 today. Your testimony is today that it really was in  
7 trust?

8 A. Yeah. Brogan followed the agreements, just as  
9 I did, and so did the other lawyers in the firm and  
10 everybody else and the bankers. We followed all this.

11 Q. And you never hid -- after November 2nd, never  
12 hid that ClearSky limited partners were really the owners  
13 of 251 million shares. Right? You never hid that?

14 A. Not that I've seen.

15 Q. Okay. In fact, you were openly transparent  
16 about it. It was in a bunch of documents that were given  
17 to a bunch of people. Right?

18 A. I believe the whole team was transparent.

19 Q. Okay. Why then did you keep it a secret from  
20 CenturyTel?

21 A. Why did I keep it a -- CenturyTel wasn't a  
22 party to it.

23 Q. Well --

24 A. How I raised our funds and using our balance  
25 sheet or somebody else -- somebody else's investment

1 was --

2 Q. Beginning November 2nd, you couldn't wait to  
3 tell the whole world that ClearSky really owned these  
4 shares. Prior to that, it was a state secret. Right?  
5 That's the story you're trying to tell. Right?

6 A. No. I think we had full transparency with  
7 everybody.

8 Q. With Clear -- with CenturyTel as well?

9 A. Yeah. We had investors coming in.

10 Q. So they knew that there were these investors  
11 coming in and you're saying --

12 A. I needed investors.

13 Q. Huh?

14 A. I needed investors. The foreman structure, how  
15 I was doing it, no, they did not receive detailed...

16 Q. Why would you be so eager to say it after  
17 November 2nd and -- I mean, tell me why it would make  
18 sense that you could keep that from CenturyTel.

19 A. Well, I heard a couple of things in your  
20 comments.

21 Q. Last question?

22 A. Why was -- why was I so eager and then why  
23 would I keep it --

24 Q. Let me re-ask.

25 A. -- a secret?

1 Q. Let me re-ask.

2 A. Okay.

3 Q. Tell me why it would make that sense that you  
4 would keep the identity, the fact that there were true  
5 owners of these shares from the folks who were  
6 responsible for approving the transaction. Why is it a  
7 secret from CenturyTel?

8 A. It's not a secret. We needed investors.

9 Q. So you told CenturyTel that there were true  
10 owners?

11 A. There were investors.

12 Q. You told CenturyTel there were true owners just  
13 like you told everybody in the world in the Lavell  
14 prospectus? Did you or didn't you?

15 A. There were investors. If you want to  
16 characterize it as true owners, that's your language,  
17 sir. There were investors.

18 Q. And you told that to CenturyTel?

19 A. And we told CenturyTel there were investors.

20 Q. Did you tell CenturyTel you were just holding  
21 this in name only?

22 A. I don't believe so.

23 Q. Why would you keep that a secret from  
24 CenturyTel?

25 A. Because it wasn't necessary. It's not a

1 secret.

2 Q. Let's look at 2 --

3 A. There were investors.

4 Q. -- 2C. If your story is true today, you not  
5 only kept it from this CenturyTel. You affirmatively  
6 lied to them, didn't you? Go to 4.06 -- 4.6.

7 Now, y'all had all these lawyers asking  
8 all these questions, checking this out backwards and  
9 forwards, and you testified about how important these  
10 representations and warranties are.

11 And here the purchaser, which is only  
12 Balaton, is acquiring the units and warrant shares for  
13 investment for its own account, not as a nominee or an  
14 agent. Right?

15 A. This is what we signed.

16 Q. Why did you lie to CenturyTel?

17 A. I don't believe we lied to CenturyTel.

18 Q. You just said you're taking it as a nominee.  
19 That says you're not taking it as a nominee. There's no  
20 two ways, I'm taking it as a nominee and I'm not taking  
21 it as a nominee, can both be true. Right?

22 A. That's your conclusion.

23 Q. That's a fact, isn't it, sir?

24 A. That's your conclusion.

25 Q. All right. So under your story, you lied to

1 somebody. You just are saying that "No. Today my  
2 testimony is I didn't lie to you guys who were suing me.  
3 I lied to those guys who were not." Right?

4 A. That is your conclusion, sir.

5 Q. That's a lie, isn't it?

6 A. That's your conclusion, sir.

7 Q. Tell me some way that that is not a lie.

8 A. We provided full disclosure to everybody along  
9 the way, the board of directors, including your clients,  
10 who were involved from A to Z, full disclosure, full  
11 access, lots of information surrounded by lawyers,  
12 however you want to characterize it, however you want to  
13 color it --

14 Q. Does full --

15 A. -- whatever cartoons you want to create. The  
16 whole body of the information is full and transparent.

17 Q. Well, let me come back to that. I'm glad you  
18 raised that. You do recognize, sir, that when you're  
19 holding something in trust that that is a valid existing  
20 relationship between two parties. Right?

21 A. Yes.

22 Q. The parties have to agree to enter into that  
23 relationship. Right?

24 A. Yes.

25 Q. You're not -- Robert Kubbernus can't hold

1 somebody else's property in trust just because Robert  
2 Kubbernus says so. Right?

3 A. I agree.

4 Q. Okay. Because if that was the truth, then  
5 every bank robber in the world, the moment they got  
6 popped, would say, "No. Don't worry about it. I'm not  
7 stealing it. I'm holding it in trust"?

8 A. Well, that's --

9 Q. Right?

10 A. -- kind of HBO, but go ahead. Keep going.

11 Q. Well, that would be the consequence if you  
12 could just say, "Hey, it's in trust. No worries."  
13 Right? And you're not saying that you can do that, are  
14 you?

15 A. No, I'm not.

16 Q. Now, let's go back to what you just said. You  
17 said, "Every party, including my clients, got full  
18 disclosure"?

19 A. The staff, yes, everybody.

20 Q. When you say "my clients," you're talking about  
21 like Mr. Pouliot and the other ClearSky investors?

22 Or are you --

23 A. Well, those are separate categories; but, yeah,  
24 board members like Adrien Pouliot who is on every single  
25 board, yes, and then information shared from the staff to

1 the shareholders.

2 Q. When you say "full disclosure," that means all  
3 the facts?

4 A. I'm assuming that that is delivered.

5 Q. And so if there was full disclosure including  
6 all the facts, you would have had to tell CenturyTel that  
7 you were holding it in name only, you were a nominee,  
8 unlike what you said here, and that the ClearSky folks  
9 were the true owners. Right?

10 Is that your testimony now?

11 A. Well, I'm not a lawyer, sir. I'm saying draw  
12 your own conclusion.

13 Q. No, no, no, no. You don't get out of it that  
14 easy. You said "full disclosure."

15 A. Yes.

16 Q. You said "full disclosure" means "all the  
17 facts."

18 A. Yes.

19 Q. Therefore, "full disclosure" means you had to  
20 tell CenturyTel that that's what was going on. Right?

21 A. That there's investors involved, and that's  
22 what we disclosed.

23 Q. And that those investors were going to be the  
24 true owners because you're only a nominee. Right?

25 A. Or trustee, nominee, yes.



1 Q. You told CenturyTel that, and -- but you signed  
2 this agreement saying the opposite. Right?

3 A. Well, we signed this agreement, yes.

4 Q. You told CenturyTel that you were just a  
5 nominee like you just said, but you signed this agreement  
6 creating a paper record that it was not that. Right?

7 A. What I know is: We had --

8 Q. Stick to my question, please.

9 A. Okay. I will. I'll try to.

10 Q. You just told me that you told CenturyTel that  
11 you were taking as a nominee, but you signed an agreement  
12 saying that you were a nominee which was false.

13 A. You know, we told CenturyTel we had investors,  
14 not nominees.

15 Q. So you did or you did not make full disclosure  
16 to CenturyTel?

17 A. Well, if that's your conclusion, then we  
18 didn't.

19 If that's your conclusion, we didn't make  
20 full disclosure.

21 Q. So you lied to CenturyTel?

22 A. I did not lie to CenturyTel.

23 Q. You also lied to the FCC, didn't you?

24 A. No, I did not.

25 Q. Well, let's look at Exhibit 93, Plaintiffs'

1 Exhibit 93.

2 MR. FRYAR: And we're going to go to the  
3 fourth page in.

4 Q. (By Mr. Fryar) Now, we've kind of glossed over  
5 this. But there was an FCC application that you all put  
6 in in April of 2006 that listed only Balaton and its five  
7 shareholders as people who might be owners in the future.  
8 Correct?

9 A. The original one, yes.

10 Q. Okay. But there was a next step in the summer  
11 in which the FCC and Team Telecom, including the FBI,  
12 came back and said, "We want a more specific statement."  
13 Correct?

14 A. I don't recall that. The FCC attorneys handled  
15 all of this.

16 Q. Let's go back to the first page.

17 Okay. You see this first page. This is  
18 an e-mail from Jeffrey Marks. And he's the FCC lawyer.  
19 Right?

20 A. I don't see Jeffrey on here.

21 Q. Go to the second -- not the forward but the  
22 second one.

23 A. The first one is Roger Klotz, Guy Fielder --

24 Q. Underneath that.

25 From Jeffrey Marks.

1 A. All right. Latham Watkins.

2 Q. Right.

3 Now, ultimately what he's saying here is  
4 that they have asked for additional information. "Roger  
5 and Tom - As anticipated, the Executive Branch has taken  
6 notice of our application and has provided a 'Standard  
7 Questions List' for SkyPort to fill out and return."

8 And you all, Balaton, would have had to  
9 provide the information that went into that. Right?

10 A. So "Roger and Tom - As anticipated" -- we  
11 haven't reviewed this in trial yet, have we?

12 Q. I don't remember.

13 A. Okay. I want to read it, then, please.

14 So I'm not on this e-mail. This is  
15 Jeffrey, Roger, Stewart, Tom, Stacey. "Roger and Tom -  
16 As anticipated, the Executive Branch has taken notice of  
17 our application and has provided a 'Standard  
18 Questionnaire List' for SkyPort to fill out and return.  
19 This is a process Latham has gone through several times,  
20 but the 'standard list' is a new document and appears  
21 to - as the title indicates" --

22 Q. Are you just burning time?

23 A. No.

24 Q. I didn't ask you to read it.

25 A. Sir, I haven't seen the document. You're going

1 to ask me, you're going to grill me, you're going to  
2 attack me on a document that I was not a party to.

3 Q. Let me get you to the part of the document that  
4 I want ask you about.

5 MR. FRYAR: Go to the next page -- two  
6 more pages.

7 No. I'm sorry. Back one page.

8 Q. (By Mr. Fryar) You see it says Standard  
9 "Questions for International 214 Applicants."

10 A. I see that.

11 Q. Okay. Then you go to the next page, Question  
12 No. 6. Question No. 6 is: "Based on the FCC  
13 application" -- and you're familiar with the FCC  
14 application in this case. Correct?

15 A. My lawyers are -- or our lawyers are.

16 Q. -- "we understand that the Applicant is at  
17 least partially owned by non-U.S. citizens. Identify  
18 every non-U.S. individual, government or every other  
19 entity that exercises or may exercise voting or other  
20 ownership rights of the Applicant."

21 You just told me that ClearSky there at  
22 closing is going to exercise ownership rights.

23 A. It depends on your definition of "closing,"  
24 but -- okay. I'm reading an e-mail that I was not  
25 included in.

1 Q. You provided the information to the FCC  
2 regarding the answer to these questions, didn't you,  
3 sir --

4 A. I'm --

5 Q. -- you and your staff?

6 A. -- sure that the staff provided this  
7 information.

8 Q. All right. And you all did not provide  
9 information relating to the ClearSky people who would  
10 exercise ownership rights even though they're in your  
11 name?

12 A. I don't believe so.

13 Q. And the FCC is saying here that they want  
14 information on everyone who may exercise ownership  
15 rights. Correct?

16 A. I think maybe that's what this document says,  
17 but I wasn't a party to this document.

18 Q. Right.

19 And they don't say "Just because those  
20 ownership rights may be exercised in someone else's name,  
21 you don't have to tell us," do you?

22 A. Sir, I followed FCC counsel's advice.

23 Q. Well, if you told the FCC counsel that you  
24 weren't holding it as a nominee just like you told  
25 CenturyTel but that these people only had a future

1 contingent right to acquire some of your stock where you  
2 were the true owner, that would be different from the  
3 situation that actually existed, according to your  
4 testimony today?

5 A. I believe our attorneys and all professionals  
6 and employees followed the process.

7 Q. Well, I didn't ask you about that at all. Try  
8 to answer my question.

9 You're saying today that they were the  
10 true owners; you just held it in your name so they don't  
11 have anything to complain about.

12 A. Beneficial owners. You've characterized it as  
13 true owners. I cannot argue your points with you.

14 Q. You agree that these true owners, these  
15 beneficial owners, had ownership rights?

16 A. The end owners -- at some point in time when  
17 certain things happened, they would be the owners.

18 Q. No. You held it in trust for them --

19 A. Correct.

20 Q. You held it in trust for them as of May 2006,  
21 according to your testimony.

22 A. Correct.

23 Q. Right?

24 That's even before the FCC approval.

25 Right?

1 A. Right.

2 Q. Okay. So under the story you're telling us  
3 today, you didn't lie to my clients -- well, not  
4 really -- but you did lie to the FCC and CenturyTel.  
5 True?

6 A. I don't believe I lied to anybody --

7 Q. Well, let's look at that.

8 A. -- or my staff or the attorneys or the  
9 auditors. I don't believe any of us lied.

10 Q. Will you agree that the story you're telling  
11 today is vastly different than the story you told in your  
12 deposition about how all this happened?

13 A. I don't recall my deposition.

14 Q. Let me help.

15 A. I'm sure you will.

16 Q. Now, the story you told in your deposition,  
17 which we all watched, including you, was that there were  
18 two reasons why the ClearSky investors were never  
19 entitled to an assignment of your rights under these  
20 agreements. Right?

21 Do you recall that?

22 A. I recall that.

23 Q. Okay. Now, as we walked through the process a  
24 minute ago, you told me that you had rights, those rights  
25 were assigned to the ClearSky partnership, that that

1 assignment was held in your name, held in trust, and  
2 existed even as early as May of 2006; but your prior  
3 testimony was that those rights were never assigned.  
4 Correct?

5 A. Under this deposition, which was -- which  
6 deposition is this?

7 Q. There's only one deposition in this case, sir;  
8 and it happened in November of last year.

9 A. Okay.

10 Q. So eight months ago --

11 A. All right.

12 Q. -- seven months ago.

13 You told me in that deposition, the very  
14 first question which we all watched before we went to  
15 sleep, that --

16 A. -- which is about to happen again.

17 Q. We'll see.

18 I asked you: "As I understand your  
19 position" -- this is on Page 6, Line 11 -- "As I  
20 understand your position with respect to the ClearSky,  
21 Limited Partnership, is that because less than  
22 \$10 million was raised in that limited partnership, the  
23 assignment" -- "because less than \$10 million was raised  
24 in that limited partnership, the limited partnership  
25 never became entitled to an assignment of Balaton's



1 rights to the 133 million shares that were acquired in  
2 2006. Is that a correct statement?"

3 A. That is a correct statement.

4 I said that exactly verbatim.

5 Q. My question was: "Is that a correct  
6 statement?"

7 A. Your answer was: "That is my belief."

8 Q. Today you said it was assigned and the  
9 \$10 million had nothing to do with anything. Right?

10 A. No. The statement is what I said under  
11 deposition.

12 Q. You also said that you had a second theory.  
13 The second theory, Theory A, was "No ten million equals  
14 no rights." Correct?

15 A. Yeah. And I'm glad you used "A" because that  
16 was the attorneys.

17 Q. Your attorney put you up to tell this lie?

18 A. Pardon me, sir?

19 Q. I'm sorry. I was trying to anticipate where  
20 you were going with that.

21 A. That was our bankruptcy attorney's theory of  
22 review of the documents, but --

23 Q. Okay. B was: They get some rights after  
24 deductions. Right?

25 A. Correct.

1 Q. And on this theory, there wasn't any way to  
2 know how much they would ultimately get until all the  
3 dust settled. Right?

4 A. Correct.

5 Q. So neither of these theories which you  
6 testified to in your deposition would have allowed the  
7 ClearSky people to be the true owners as of May of 2006.  
8 Right?

9 A. I'm not certain.

10 Q. And in neither of these theories would they  
11 have gotten the full 251- that you said belonged to them.  
12 Correct?

13 A. Again, I'm not certain.

14 Q. Instead, you said, "I've got two theories. One  
15 is: They get nothing. The other is: They get  
16 something, but there's a lot of deducts that will come  
17 later." Right?

18 A. Correct.

19 Q. These two things cannot be simultaneously true.  
20 Correct?

21 A. I agree with that.

22 Q. Okay. Which one today -- and in your  
23 deposition, you said they were both true. Right?

24 Today you're agreeing they can't both be  
25 true. Which one's a lie?

1           A.     Well, neither one's a lie. Under A, our  
2 bankruptcy attorneys at the time that this is going on  
3 says this is the theory that they thought was accurate;  
4 and under B, that's what happened. Under B, they had  
5 some rights. And they absolutely had rights, and we  
6 testified that throughout the entire trial that they had  
7 rights.

8           Q.     Your testimony was that you had two  
9 interpretations -- right -- not that you had one  
10 interpretation and your lawyers had fed another one to  
11 you. Correct?

12          A.     If that's what my testimony is.

13          Q.     Okay. So when I asked you on Page 25, Line 18  
14 "So would it be a fair statement of your interpretation  
15 that if less than 10 million is raised, Balaton is under  
16 no obligation to transfer any portion of its rights under  
17 the agreements referenced in Exhibit B," your answer was:  
18 "That is one of my interpretations." Right?

19                         So that's Interpretation A, which you said  
20 was your interpretation.

21          A.     One of my interpretations.

22          Q.     One of them.

23                         Interpretation A, they get nothing.

24          A.     Yes.

25          Q.     And you said that was true, and now you say

1 that's false. Right?

2 A. I believe we followed Plan B. Interpretation A  
3 from the bankruptcy attorneys was one of the  
4 interpretations. B is what we followed all the way  
5 through.

6 Q. Okay. Look at Page 25, Line 25. I asked you:  
7 "And the other interpretation is if the limited  
8 partners" -- "is that if the limited partners are  
9 entitled to some proportionately reduced assignment, that  
10 proportionately reduced assignment has to be adjusted for  
11 expenses, partnership allocation, liability of the  
12 general partner, management fees of the general partner.  
13 Correct?"

14 And your answer is: "Legal fees,  
15 accounting fees, everything."

16 I say: "Okay."

17 And you say: "So I agree with both of  
18 those." Right?

19 A. Yes.

20 Q. Okay. So there wasn't any notion here in your  
21 testimony with your counsel today that we're going to  
22 figure out what B -- how many they get under B later and  
23 do all these deductions?

24 You didn't -- in fact, you didn't do that,  
25 did you?

1 A. Sorry. I'm not understanding your question.

2 Q. Your testimony here today is that as soon as  
3 the money started coming in, they started getting the  
4 rights and when the dust settled, they got the full 251-  
5 which would be every share they could possibly be  
6 entitled to. Correct?

7 A. There was an assignment of that, and it was  
8 more than that. There was an assignment of that and  
9 certain entitlements to that.

10 Q. So in your deposition, you say, A, if they get  
11 less than 10 million, which they did -- you raised less  
12 than 10 million in that partnership -- they get nothing.  
13 Right?

14 A. That was the lawyers, yes.

15 Q. And you said: "And, B, if they raise  
16 70 percent, then they get 70 percent. But it's not  
17 really going to be 70 percent; it's going to be  
18 70 percent minus management fees, legal fees, accounting  
19 fees, everything." Right?

20 A. Yes.

21 Q. But you didn't do that either, did you?

22 A. I didn't.

23 Q. You didn't do that, the B -- you didn't follow  
24 A or B when you actually did these agreements. Correct?

25 A. Sorry, sir. I am not following you.

1 Q. You didn't make deductions. You didn't give  
2 them 70 percent of their share; you gave them 100 percent  
3 of their share.

4 A. Well, there was obligations of owing back to  
5 Balaton.

6 Q. Okay. And you testified that you didn't  
7 transfer -- you didn't add them as an additional  
8 purchaser to the share purchase agreement because they  
9 raised less than 10 -- right -- or you raised less than  
10 10.

11 A. No. I don't think that's an accurate  
12 statement.

13 Q. Look at Page 53.

14 Page 53, beginning at Line 8, I asked you:  
15 "Why was ClearSky never added as an additional purchaser  
16 prior to closing?"

17 Your sworn testimony is: "I think in the  
18 partnership agreement, the partnership agreement speaks  
19 to that."

20 My question: "Are you saying because  
21 ClearSky never raised the \$10 million prior to closing?"

22 Your answer: "I believe that would be one  
23 reason."

24 My question: "Is there another reason?"

25 Your answer: "You know, I don't recall

1 what was going on at that time." Correct?

2 That's your testimony?

3 A. That's my testimony.

4 Q. And even under Theory B, your testimony in your  
5 deposition was that there wouldn't be any way to figure  
6 out what the ClearSky people would get unless and until  
7 the IPO happened. Right?

8 A. Say that again, please.

9 Q. Under Theory B where you have to do all these  
10 deductions, your testimony was that there wouldn't be any  
11 way to figure out how much they're entitled to until you  
12 got to the IPO. Right?

13 A. Well, no. My testimony says: "You know, I  
14 don't recall what was going on at that time."

15 You're saying that my testimony was  
16 different?

17 Are you saying that I testified something  
18 different?

19 Q. I am on a different question.

20 A. We're not on this subject anymore?

21 Q. We're certainly on this subject.

22 A. Okay.

23 Q. We are not talking about the last answer that  
24 you contradicted; we're talking about a new one.

25 A. Okay.

1 Q. Okay?

2 A. All right.

3 Q. Now, under your deposition theory, what you  
4 testified that day as opposed to this day, you said there  
5 wouldn't have been any way to know -- to make a  
6 determination of how many shares they got until the IPO.  
7 Correct?

8 A. Until the -- say it again, sir. That I  
9 wouldn't know --

10 Q. You wouldn't -- there wouldn't be any way to  
11 determine what percentage of the shares would be that  
12 would be transferred to ClearSky until and unless there  
13 was a successful IPO. Right?

14 A. It was in this testimony?

15 Q. Yeah.

16 Do you want to look at it?

17 A. Sure.

18 Q. Okay. Let's go to Page 126, Line 13.

19 So I asked you: "Well, under the second  
20 theory, at what point in time would you make the  
21 determination as to whether or not ClearSky owned any  
22 stock?"

23 And your answer is: "I think had the IPO  
24 been successful, that's the time that all ledgers are  
25 cleared up, all accounting is done, and the transaction



1 is completed. I think that would have been -- had the  
2 IPO, I think would have been the time to do that."

3 That's your testimony that day. Right?

4 A. Yes.

5 Q. Your testimony this day is that "No, no, no,  
6 no, no," you were holding it in trust for them all along.  
7 Correct?

8 A. I think that is not what this is saying.

9 Q. Well, in point of fact, sir, you honestly did  
10 intend to make things right in the -- with the ClearSky  
11 people in the IPO. Right?

12 A. Make things right or to reconcile the accounts  
13 or to vest the shares as per the agreements?

14 Q. What happened was that you set up the agreement  
15 so that ClearSky could be added -- the securities  
16 purchase agreement. Correct?

17 It was set up that way?

18 A. At the right time.

19 Q. In February 2006, you set up the securities  
20 purchase agreement so that ClearSky or the ClearSky  
21 investors could be added as additional purchasers.  
22 Right?

23 A. It was set up to allow for additional investors  
24 to be added to it at the right time, and it allowed for  
25 all of those circumstances.

1 Q. The only additional purchasers that you  
2 contemplated at that time were investors in the ClearSky  
3 partnership. Right?

4 A. The only ones on our horizon at that time, yes.

5 Q. Okay. So, you know, as many times as we've  
6 heard, "Well, if you meant ClearSky, you would have said  
7 ClearSky" -- we know, No. 1, you left a blank. Right?

8 A. Yes.

9 Q. And we know, No. 2, based on what you just told  
10 me, that the only party that you contemplated putting in  
11 there was ClearSky. Right?

12 A. I agree.

13 Q. Okay. Now, that became unworkable during the  
14 FCC process, and so the decision was made to do the deal  
15 without ClearSky. Correct?

16 A. I believe with all the counsel and all the  
17 attorneys working on this, that was the path forward.

18 Q. Okay. But since you put the application in in  
19 April as just Balaton, no additional purchasers, you had  
20 to have made the decision at least by the beginning of  
21 April. Right?

22 A. Okay. Yes.

23 Q. Okay. And similarly when you set up --

24 Let me just ask it this way. When it came  
25 time to close the deal and completion of -- I'm talking

1 about the September 2006 time frame, August-September  
2 2006.

3 A. Right.

4 Q. Okay?

5 And you've got a Things To Do list, and  
6 one of the things to do is complete Schedule A. I mean,  
7 we saw three copies of that. Right?

8 A. Oh, yeah. Yeah, yeah. I agree.

9 Q. Now, all I'm saying is: You had a choice at  
10 that point to just go ahead and tell CenturyTel, "Well,  
11 let's just do it the way I intended to at the beginning,"  
12 or you had a choice to do it differently from what you  
13 intended in the beginning. Right?

14 You had a choice whether or not to put  
15 their name in here. Right?

16 A. Yes, we had a choice.

17 Q. Okay. Why didn't you just choose to do it the  
18 way you set out to do it?

19 A. Because with all the lawyers, that's what we  
20 signed, that's what was decided based on the agreements  
21 in the contracts, whether it was the two law firms we  
22 worked with, their law firm. All of our law firms said  
23 that is a finished document.

24 Q. Yeah, but none of that told me the reason why  
25 you made the choice that you did.

1                   The reason was because you didn't have FCC  
2 approval. Right? And so you had to do the deal this  
3 way.

4           A.     At the time of this, no, we didn't have FCC  
5 approval.

6           Q.     At the time you closed this and left ClearSky  
7 out, you hadn't gotten FCC approval for them; so you  
8 didn't have any choice. You had to close it this way.  
9 Right?

10          A.     There was no FCC approval.

11          Q.     So the answer to my question is: Yes, in  
12 November 2006, you had to do this? You had to close it  
13 in a way different from what you had originally intended.  
14 Right?

15          A.     Well, that's how we closed it. It's not  
16 whether we had to or not. That's how we closed the deal.  
17 We closed the deal exactly this way.

18          Q.     Yeah, I know you did. That's the one thing in  
19 this case that nobody disputes. The question is "Why?"  
20 Why wouldn't you just do what you set out to do instead  
21 of change it?

22                                 And I'm suggesting that the reason is:  
23 Because the way you put the FCC application in precluded  
24 you from doing anything else at least in November.  
25 Correct?

1           A.    Well, that's your suggestion.

2           Q.    Well, then, you give me a different reason why  
3 you changed the deal other than the FCC.

4           A.    We think we were -- I'm -- we were in complete  
5 compliance with what we're signing off.  The lawyers were  
6 all ready to sign off.  Everybody was ready to sign off.  
7 They've all reviewed the information.  We're good to  
8 close.

9           Q.    And that tells me lots of people were satisfied  
10 with your decision, but it doesn't tell me why you made  
11 that decision.  Are you capable of expressing the reason  
12 why you made the decision to do this differently from  
13 what you said?

14          A.    Sir --

15          Q.    Not capable?

16          A.    I guess not.  I guess I'm not capable.

17          Q.    All right.  Let's try it with the other one.

18                    You told the ClearSky people that they  
19 were buying -- they were funding and buying the  
20 debentures.  Right?

21                    That's what you told them?

22          A.    It was in the marketing agreement, yes, along  
23 with other statements made.

24          Q.    You had a choice --

25                    And Watershed did not work out?

1 A. No, it did not?

2 Q. Okay. And you probably knew that pretty quick  
3 because you're already in February distributing  
4 Plaintiff's Exhibit 3, the information memorandum, that  
5 says: "To ClearSky: Watershed is assigning its rights  
6 to you; and, ClearSky, you're going to buy the  
7 debentures." Right?

8 A. I would agree with that.

9 Q. Okay. So you had a choice. Your choice was --  
10 you had to change this agreement at closing. Right?

11 You had to.

12 A. Yes.

13 Q. So you had a choice, "Do I change it to  
14 ClearSky, or do I change it to Balaton?" And you chose  
15 to change it to "Balaton."

16 A. Correct.

17 Q. Why didn't you just change it the way you said  
18 you would?

19 A. Because money wasn't raised in ClearSky.

20 Q. Okay. Well --

21 A. It was -- you know, Balaton stepped forward  
22 with its guarantee and everything else that it was  
23 providing for the purchase, and the ClearSky investors  
24 took time to come into the opportunity.

25 Q. And so it was your intention to give them those

1 debentures later?

2 A. Assign them.

3 Q. Right, which you say you did.

4 A. Trust, yes --

5 Q. Okay.

6 A. -- which we did all the way through.

7 Q. All right. Now, let's go back to Exhibit 96.

8 If we go to that No. 2 at the bottom of  
9 that page -- your lawyer asked you about this No. 2  
10 language; I asked you about it. You've been very clear  
11 that that is the truth, that is what happened. But you  
12 wouldn't answer that question in your deposition, would  
13 you?

14 A. This statement, No. 2, "The ClearSky Interest  
15 from time to time shall be a percentage equal to the  
16 percentage that the ClearSky Advances represent of the  
17 Maximum Amount" -- I agree with that, but there's other  
18 conditions of the deductions and all the rest of it.

19 Q. I'm just talking about -- you are telling this  
20 jury you know what that means and you agree with it and  
21 that's the truth?

22 A. I know what that means.

23 Q. Okay. But look at Page 123, Line 22 of your  
24 sworn testimony given eight months ago.

25 And I asked you: "Item 2, the ClearSky

1 interest from time to time shall be a percentage equal to  
2 the percentage that ClearSky advances represent of the  
3 maximum amount." And I said: "I think that should  
4 probably read 'relative to the maximum amount.'"

5 Your answer was: "Yeah, that's bad  
6 language. I have no opinion on that." Right?

7 A. I'm trying to follow you here.

8 123.

9 Q. Yeah, 123, Line 22. I read this to you, and  
10 your answer was: "Yeah, that's bad language. I have no  
11 opinion on that."

12 That's what you said that day. Right?

13 A. Okay.

14 Q. Yes?

15 A. That's what I said that day.

16 Q. And when I asked you if that would be  
17 consistent with one of your opinions but not the other,  
18 you acknowledged that that would be completely  
19 inconsistent with one of the theories that you were  
20 saying was true.

21 A. In a deposition?

22 Q. Yeah.

23 A. Is that your next question?

24 Q. It sure is.

25 Oh, you mean the next question in the



1 deposition? It's actually 124 -- yeah, 1 24, Line 5.

2 A. Line 5?

3 Q. Uh-huh.

4 A. "It would be your opinion that, in point of  
5 fact, unless ClearSky raises the entire amount" -- have I  
6 got the right place?

7 Q. Yeah.

8 Here. I'll do it.

9 A. Okay.

10 Q. "Well, would it be your opinion that, in point  
11 of fact, unless ClearSky raises the entire amount,  
12 they're not entitled to any percentage. Right?"

13 You ask me: "Are you saying that's what  
14 No. 2 says?"

15 And I say: "No. That's not what No. 2  
16 says, but that's your opinion. Your opinion is No. 2 is  
17 not going to be correct?"

18 And you say: "I have two opinions on  
19 that," as you'll recall. Right?

20 A. Yes.

21 Q. You acknowledge that that was -- your testimony  
22 today would be consistent with one of the opinions you  
23 said was true. Correct?

24 A. I think it's consistent. I have at that time.

25 "I have two opinions, if you recall."

1 That was my answer.

2 Q. Let's look at Exhibit 160.

3 MR. FRYAR: Go to that first paragraph  
4 that says how many shares ClearSky owns.

5 No. It's the previous page.

6 Yeah. There you go.

7 The 251- that ClearSky owns right there.

8 Q. (By Mr. Fryar) I asked you about that in your  
9 deposition, too; and you said you didn't know what that  
10 meant, didn't know if that was true or false, didn't you?

11 A. I don't recall. Is that in the deposition?

12 Q. Sure is.

13 A. Do you want to point me out?

14 Q. Yeah. Look at Page 161, Line 16.

15 A. I'm there.

16 Q. Okay. You're certainly able to answer  
17 questions today when it might help you prove that you  
18 didn't lie to my clients that that is a true statement.  
19 Right?

20 You're able to -- you know what that  
21 means. That's your testimony today. Right?

22 A. Okay. So your question on Line 16 --

23 Q. I haven't gotten there yet.

24 A. Okay.

25 Q. Your testimony today is: You know what

1 Paragraph A says, and it's true. That's how things  
2 really work. Right?

3 A. Yes.

4 Q. Okay. But when I asked you in your deposition:  
5 "All right. Let me show you Exhibit 29. Exhibit 29 is  
6 an agreement dated 26 September 2007. ClearSky limited  
7 Partnership, LP, the vendor, and Balaton, Inc., the  
8 nominee and Lavell Systems, Inc., the purchaser -- do you  
9 see that?"

10 You say: "Yes. Share purchase  
11 agreement."

12 And at Line 11 -- I'm reading on the next  
13 page -- I say: "All right. First page. Background, the  
14 vendor has an interest in 251,807,080 common shares of  
15 capital stock of SkyComm Technologies Corporation, such  
16 interest, the, quote, transferred property, period. The  
17 nominee is the legal owner of the transferred property --  
18 is that a true statement?"

19 And you say: "It's in the agreement.  
20 That's what's in the agreement."

21 And I asked you: "Is it factually true?"

22 And your answer was: "I have no opinion.  
23 I would rely on counsel as to what was factual at the  
24 time."

25 So I asked you: "Did you at the time you

1 signed this agreement believe that ClearSky Limited  
2 Partnership, LP, had an ownership interest in 251,807,080  
3 common shares of the capital stock of SkyComm  
4 Technologies Corporation" -- and your answer -- you read  
5 it.

6 A. "I don't recall what was going on at the time.  
7 Can I finish reading this, or are we done with it?"

8 Q. And I said: "We're done." You didn't --  
9 because -- you indicated you didn't remember. Right?  
10 You didn't have any opinion on that. Right?

11 A. "I don't recall what was going on" --

12 Q. Let's look at Kubbernus Exhibit 21.

13 Now, Kubbernus Exhibit 21 is a document  
14 that has been shown to almost everybody in this case; and  
15 it's a series of different cap tables. Correct?

16 A. Yes.

17 Q. Do you believe -- you looked at this document  
18 in detail with your counsel. Do you remember?

19 A. Well, I looked at it.

20 Q. -- and answered questions about it. Right?

21 A. Yes.

22 MR. FRYAR: Go down to the -- go down the  
23 page to where it shows the 251-.

24 There we go.

25 Q. (By Mr. Fryar) So ClearSky, LP's 251- which

1 your lawyer put up there calculated -- you agreed with me  
2 that that number is what they really, really owned.

3 Right?

4 A. In trust or nominee, yes. I agree.

5 Q. Well, maybe in somebody else's name; but they  
6 really, really own it.

7 A. Really, really or just really own?

8 Q. How about just one "really"?

9 A. One "really"?

10 Q. One "really."

11 A. Okay. I'll agree with that.

12 Q. Good.

13 But when I asked you on Page 172, Line 6  
14 about this table.

15 MR. FRYAR: 172, Line 6.

16 Q. (By Mr. Fryar) "Now, in your opinion, this  
17 table, in that it shows 251 million shares owned by  
18 ClearSky, LP, is false. Am I right?"

19 And your answer is: "I would agree."  
20 Correct?

21 A. Correct.

22 Q. That's what you testified to under oath  
23 eight months ago on that day. Correct?

24 A. Correct.

25 Q. And if we go on in toward the end of this

1 document, there's another schedule that breaks out --

2 A. Which document? This one?

3 Q. No, this one we're looking at, Kubbernus  
4 Exhibit 21.

5 MR. FRYAR: Just scroll on through because  
6 we're going to come to a place where the limited partners  
7 are broken out individually.

8 Q. (By Mr. Fryar) Now, you agree with me, don't  
9 you, that Mr. Pouliot's company, Draco, put up a little  
10 more than half the total amount of money that's in  
11 ClearSky Limited Partnership?

12 MR. FRYAR: Keep going.

13 Q. (By Mr. Fryar) Right?

14 Correct?

15 A. Where are you on this?

16 Q. I haven't asked any questions about that yet.  
17 I'm just leading into it.

18 Do you agree with me that Mr. Pouliot put  
19 up a little over half the total \$7 million that was  
20 raised in the ClearSky Limited Partnership?

21 A. Yes.

22 Q. Okay. So if their -- if ClearSky Limited  
23 partners owned 251 million, he's going to own a little  
24 bit more than half that. Right?

25 Okay. So go on down, and there we've got

1 to stop. Draco.

2 And Draco owns -- they put in \$3,816,523;  
3 and they get 135,447,637 shares of SkyComm. Right?

4 A. Correct.

5 Q. That's how much their percentage of the  
6 ownership is. Right?

7 A. Yes.

8 Q. Okay. But your testimony in your deposition  
9 was that this table is incorrect. Right?

10 A. Did I say that?

11 Q. Look at 176.

12 A. Okay.

13 Q. And we'll start on Line 18.

14 I ask you: "And the second biggest  
15 shareholder is Draco Capital, Inc., for 135 million  
16 shares. Right?"

17 You say: "I see that now."

18 I say: "And Draco Capital was a ClearSky  
19 limited partner. Correct?"

20 You say: "Yes, he was."

21 "All right. But he never, according to  
22 your testimony today, was a SkyComm shareholder.  
23 Correct?"

24 You say: "Correct. Correct."

25 "Why are you sending out to the four star

1 group a shareholder listing showing each of the ClearSky  
2 limited partners as SkyComm shareholders?"

3                   And your answer is: "Yeah, I think this  
4 is incorrect."

5                   I say: "Why did you send it to them?"

6                   And you say: "I don't know. I don't  
7 recall." Right?

8           A.    So your question is --

9           Q.    Was that your testimony on that day, that this  
10 schedule's incorrect?

11          A.    I think this breaks down the ClearSky ownership  
12 at the time that an IPO would happen.

13          Q.    Now --

14          A.    This is a breakdown of the ClearSky investors  
15 and what their proportionate benefit would be if the IPO  
16 closes.

17          Q.    Your testimony on that day was "This is  
18 incorrect, and I don't remember why I sent it out."  
19 Right?

20          A.    "I don't know. I don't recall."

21          Q.    Let me ask you on a different subject.

22          A.    Did I send this out or did Brogan or somebody  
23 else, or did I send this out?

24          Q.    At this point, I can't remember; but certainly  
25 your organization sent it out. Would you agree with



1 that?

2 A. Yes.

3 Q. And you've testified -- well, this whole idea  
4 that you're holding it in trust and then the shares got  
5 forfeited -- right?

6 That's what you're saying actually  
7 happened.

8 A. Correct.

9 Q. Right?

10 It wasn't that you weren't holding them in  
11 trust; they're just yours and you intend to give them  
12 over at the IPO if it's successful; and when it's not,  
13 successful you just decide to keep them. You're saying  
14 that's not what happened?

15 A. That's a really confusing question for me. Can  
16 you --

17 Q. Well, there are two possibilities. One  
18 possibility is that you told the truth to CenturyTel in  
19 the documents you signed with them and that these limited  
20 partners were never real owners but you intended later on  
21 to work it all out in the IPO. But the IPO didn't go, so  
22 you just decided to keep them. That's one possibility.  
23 Do you concede that?

24 A. That we foreclose on them based on accounts  
25 payable and every obligation and all the different

1 clauses and conditions, legal counsel --

2 Q. My theory would explain the facts. There would  
3 be no need to foreclose on shares that you never  
4 transferred. Right?

5 Do you agree with that, that there would  
6 be no need to foreclose on shares that you never  
7 transferred?

8 A. Well, it's a book entry. You still have to  
9 deal with it.

10 Q. You never transfer them. They're yours in the  
11 beginning, and they're yours in the end. Correct?

12 A. They're held for the benefit of somebody else.

13 Q. If they weren't, then you would just own them.  
14 Right?

15 A. Is that a hypothetical, or are you asking me a  
16 question?

17 Q. Are you really unable to answer that question?

18 Do you really think we believe that?

19 A. Sorry, sir. I'm not understanding your  
20 question.

21 Q. This foreclosure you did --

22 A. Yes.

23 Q. -- there's nothing in the limited partnership  
24 agreement that provides a foreclosure mechanism, is  
25 there?

1 A. A foreclosure mechanism?

2 Q. There is no article that says "Foreclosure. In  
3 the event the general partner is owed more than the value  
4 of the capital contributions, the general partner may  
5 foreclose on the capital contributions"?

6 That's not in there, is it?

7 A. I don't believe so.

8 Q. Okay. You foreclosed on your limited partners  
9 and gave them absolutely no notice that it would happen  
10 or that it did happen. Correct?

11 A. Well, it's either a positive or negative  
12 covenant where we notified them that unless they get  
13 involved --

14 Q. Answer my question.

15 A. Okay.

16 Q. Did you or did you not notify them that this  
17 would happen before it did?

18 A. I did not personally. Brogan may have, others  
19 may have; but I did not personally.

20 Q. And you didn't notify them afterwards, did you?

21 A. I did not personally.

22 Q. Okay. But you're saying Brogan might have.  
23 Right?

24 A. I'm not certain. He may have.

25 Q. By which you mean he would have been --

1 A. Sorry.

2 Q. -- he would have been there, he would have been  
3 in a position to notify them.

4 Right so far?

5 A. Whether he was still employed at that time, I  
6 don't recall.

7 Q. Well, you said, "I didn't notify them. Brogan  
8 may have." That would indicate -- you do know when this  
9 happened, don't you?

10 When exactly did it happen?

11 A. Well, it happened -- the --

12 Q. What day?

13 A. -- foreclosure?

14 Q. Yeah.

15 A. Is that what you're talking about?

16 Q. Yeah.

17 A. Between when we filed for bankruptcy and when  
18 we went for plan [sic] confirmation.

19 Q. Were there employees there?

20 Was Brogan there?

21 A. I'd have to look at the dates. There was a lot  
22 of employees --

23 Q. You didn't send out any notice -- you didn't  
24 file any schedule in the bankruptcy court about it, did  
25 you.

1                   We looked at all the disclosures that are  
2 done in bankruptcy. You didn't file anything in the  
3 bankruptcy that says you've done this.

4           A.    I'd have to look at the filings.

5           Q.    Okay. There is no piece of paper in evidence  
6 or in existence that shows that you foreclosed, is there?

7           A.    Not that I've seen.

8           Q.    You can't tell us how much the ClearSky  
9 partnership owed you, can you?

10          A.    Oh, there was accounting records kept. I don't  
11 have those. I haven't seen them in any of the  
12 documentation.

13          Q.    You can't tell us how much you determined the  
14 value of the capital contributions was relative to what  
15 was owed to you, can you?

16          A.    Well, the stock was worthless; so it's zero. I  
17 think that's an easy assessment.

18          Q.    If it was worth zero, why did you bother to  
19 foreclose?

20                   What advantage was it to you to foreclose?

21          A.    There was money owed to us, so you follow your  
22 lawyer's instructions and you foreclose.

23          Q.    Well, it was a big advantage to you to pretend  
24 that you could do that because it got Mr. Pouliot kicked  
25 out of the bankruptcy with his competing plan. Right?

1           A.    Well, you're using the word "pretend." I don't  
2 agree with the "pretend" word.

3           Q.    The reason you wanted to foreclose and take  
4 back shares that you now say were worth nothing was  
5 because you wanted to kick Mr. Pouliot out of having a  
6 competing plan. Right?

7           A.    Oh, I don't know that that was in our thought  
8 process at all.

9           Q.    Well, there wasn't any other way that that  
10 benefited you -- right -- because they're worthless.  
11 Right?

12                    You pay a 10-dollar debt for something  
13 worth nothing, how much do you still have? 10-dollar  
14 debt. Right?

15           A.    Yeah.

16                    I followed all the lawyers.

17           Q.    You can't tell us when it happened, you can't  
18 tell us why it happened, you can't show us that it  
19 happened. Right?

20                    All of that's right?

21           A.    Again, sir, I followed all of my counsel's  
22 guidance all the way through the process.

23           Q.    Well, regardless, you can't tell us when it  
24 happened, you can't tell us why it happened, you can't  
25 show us that it happened. Am I right?

1           A.    Today I cannot show you that.  I followed all  
2 of our lawyer's guidance.

3           Q.    All right.  A couple of other things.  You  
4 testified that Balaton incurred a bunch of expenses and  
5 that nobody at the time ever complained about any of  
6 those expenses.  Right?

7           A.    Yes.

8           Q.    And I'm talking specifically fees.

9                         Now, you mentioned that Mr. Pouliot had  
10 testified, as he did, that when he was on the audit  
11 committee for Lavell, that your expenses, Balaton's  
12 expenses, were flagged as unreasonable and that you were  
13 requested to rescind.  Do you recall that testimony?

14          A.    I remember his testimony.

15          Q.    Okay.  You talked about that this morning with  
16 your counsel and stated it in such a way that made it  
17 sound to me like you were saying that that didn't happen  
18 at the time.  Right?

19          A.    Oh, I can't confirm or deny that he had his  
20 board meeting, that they flagged this.  I don't recall --

21          Q.    I'm going to show you --

22          A.    -- that being brought to our attention.

23          Q.    Plaintiffs' Exhibit --

24                         MR. FRYAR:  Don't put it up yet.

25          Q.    (By Mr. Fryar) -- Plaintiffs' Exhibit 216.