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1 THE CLERK: All rise.

2 THE COURT: Be seated. Okay. Send in
3 the call. All right. Mark Worden. Isaac Pachulski.

4 MR. PACHULSKI: Good morning, Your Honor.

5 THE COURT: Jeffrey Spiers.

6 MR. SPIERS: Good morning, Your Honor.

7 THE COURT: Eric Winston.

8 MR. WINSTON: Good morning, Your Honor.

9 THE COURT: Andy Black. Mike Neville.
10 Francine Montagna. Shaye Diveley.

11 MS. DIVELEY: Present, Your Honor.

12 THE COURT: Ira Herman.

13 MR. HERMAN: Present, Your Honor. Good
14 morning.

15 THE COURT: Clara Strand. John Driscoll.
16 Nathan Rushton.

17 MR. RUSHTON: Good morning, Your Honor.

18 THE COURT: Joli Pecht.

19 MS. PECHT: Present, Your Honor.

20 THE COURT: Gary Clark. Robert Damstra.
21 David Kitchen. Christopher Johnson. Van Durrer, II.
22 Peter Laurinaitis. Steven Church. Daniel Zazove.
23 Wendy Laubach.

24 MS. LAUBACH: Present, Your Honor.

25 THE COURT: Jacob Cherner.

1 MR. CHERNER: Present, Your Honor.

2 THE COURT: Melissa Kahn.

3 MS. KAHN: Present, Your Honor.

4 THE COURT: Erin Ross. Tom Walper.

5 Heather Muller.

6 MS. MULLER: Good morning, Your Honor.

7 THE COURT: Wei Wang.

8 MR. WANG: Present, Your Honor.

9 THE COURT: Brett Young.

10 MR. YOUNG: Present, Your Honor.

11 THE COURT: David McLaughlin. Todd

12 Hanson.

13 MR. HANSON: Present, Your Honor.

14 THE COURT: Anyone else on the phone that

15 I didn't call?

16 MR. CRANE: Ken Crane.

17 SPEAKER: Cindy Krilligan.

18 THE COURT: All right. Anyone else?

19 MS. WHITE: Jennifer White.

20 THE COURT: Thank you. Anyone else? All

21 right. And in the courtroom.

22 MS. COLEMAN: Good morning, Your Honor,

23 Kathryn Coleman and Eric Fromme, Gibson Dunn & Crutcher

24 for the debtor Scotia Pacific.

25 MR. McDOWELL: Good morning, Your Honor.

1 Luckey McDowell on behalf of the Palco debtors.

2 MR. FIERO: John Fiero and Max Litvak for
3 the Committee, Your Honor. Good morning.

4 MR. HAIL: Brian Hail from Goodwin
5 Proctor on behalf of Mendocino Redwood.

6 MR. PENN: John Penn, David Neier, Steven
7 Schwartz, Carey Schreiber all for Marathon.

8 MR. NEIER: Good morning. Your Honor.

9 MR. JONES: Good morning, Your Honor.
10 Evan Jones of O'Melveny & Myers representing Bank of
11 America.

12 MR. PASCUZZI: Good morning, Your Honor,
13 Paul Pascuzzi for the California State Agencies.

14 MR. STERBACH: Good morning. Charles
15 Sterbach for the United States Trustee.

16 THE COURT: While you're there, let me
17 tell you that I found the returned envelopes that were
18 sent over here from the U.S. Trustee's office, having no
19 to do with this case, with another case in the Valley.
20 And after examining them -- the reason you-all sent them
21 over is because they were, in fact, envelopes sent from
22 the clerk's office that were returned and somehow the
23 post office them back to your office. So the mystery
24 has been solved by reviewing this.

25 MR. STERBACH: Thank you, Your Honor.

1 MR. STABER: Good morning, Your Honor.
2 David Staber. Chuck Gibbs will also be joining me
3 shortly for CSG Investments.

4 MR. GREENDYKE: Good morning, Judge.
5 Bill Greendyke from Fulbright & Jaworski, joined today
6 by my partners Richard Krumholz, Toby Gerber, Louis
7 Strubeck, Mr. Clement is in the back, representing the
8 Bank of New York indenture trustee.

9 MR. DAVIDSON: Good morning, Your Honor.
10 I'm Jeffrey Davidson, member of Stutman, Treister &
11 Glatt appearing on behalf of three noteholders.

12 THE COURT: Thank you.

13 MR. GERBER: Good morning, Your Honor.
14 Toby Gerber on behalf of Bank of New York Trust Company
15 indenture trustee. This may surprise the Court, but I
16 think we have reached an agreement among the parties
17 regarding taking care of Ms. Moore's deposition and
18 entered into a stipulation.

19 THE COURT: It doesn't surprise me.
20 Nothing surprises me anymore.

21 MR. GERBER: Your Honor, Mr. Spiers from
22 Andrews & Kurth is on the phone, and he represents
23 Maxxam, Inc. And through his good efforts and the
24 efforts of the other counsel, we are able to reach a
25 stipulation which -- Mr. Spiers, are you going to read

1 it into the record or shall I?

2 MR. SPIERS: I can, Mr. Gerber. Your
3 Honor, good morning. This is Jeff Spiers. The proposed
4 stipulation involving the need for a deposition or
5 testimony by Ms. Moore would be as follows. There are
6 four stipulations.

7 Stipulation No. 1 is that the Bank of New
8 York as indenture trustee did not recommend the
9 investment by Scopac in auction rate securities.
10 Stipulation No. 2 would be that Delona Moore is an
11 employee of Maxxam, Inc. Stipulation No. 3 is that
12 Delona Moore was acting as an agent for Scopac with
13 respect to Scopac's investment and auction rate
14 securities. And stipulation No. 4 would be that Scopac
15 had the written account agreement with Bank of New York
16 Capital Market, Inc., and that the auction rate
17 securities investments were made through that account.
18 Additionally, Ms. Moore, if called to testify, would
19 testify that the auction rate securities were presented
20 by BNY Capital Markets as eligible investments.

21 THE COURT: Okay. This is a stipulation
22 of her expected testimony?

23 MR. SPIERS: That or facts.

24 MR. GERBER: I think it's facts.

25 THE COURT: I think the two of you could

1 probably stipulate to that, but I'm not sure whether
2 everybody else agrees to that.

3 MR. GERBER: I believe they have.

4 THE COURT: Everybody has agreed that
5 would be the stipulation of facts?

6 MR. NEIER: Your Honor, that's acceptable
7 to Marathon.

8 THE COURT: Acceptable to the Committee?

9 MR. LITVAK: Yes, Your Honor.

10 MR. JONES: I'm sorry, I didn't know
11 about -- this is revised a little during the night. And
12 I just want to make sure I understand. I gather the
13 distinction here is that the relationship -- the
14 investment relationship is with BNY Capital Markets, and
15 so this is not a stipulation that BNY Capital Markets
16 didn't recommend these investments. It's a stipulation
17 that a different BNY entity is the indenture trustee and
18 everyone agrees that that entity did not make any
19 recommendations. And it doesn't stipulate whether there
20 was a recommendation or not. The point is simply this:
21 If there was a recommendation, it was by a different BNY
22 entity. Do I correctly understand?

23 MR. GERBER: I think the stipulation says
24 what it says, which is that --

25 THE COURT: Well, it does not say -- you

1 are not stipulating that some other BNY entity didn't
2 make the recommendation. You're just stipulating that
3 the trustee in the capacity as indenture trustee, they
4 did not make the recommendation.

5 MR. GERBER: Yes, we're stipulating as to
6 that. We're stipulating that Scopac, through Ms. Moore
7 acting as their agent, had a contract with BNY Capital
8 Market, which is a totally different entity than the
9 Bank of New York Trust Company indenture trustee, and
10 that the securities in issue -- in question were
11 purchased in accordance with that agreement.

12 THE COURT: It's not a totally different
13 entity; it's a related entity.

14 MR. GERBER: It's related, but there's no
15 evidence --

16 THE COURT: Right. I'm not suggesting
17 there are any, you know --

18 MR. GERBER: Lack of corporate formality
19 or separation or anything like that. It's a separate
20 entity.

21 THE COURT: But it's not like one is
22 Starbucks and one is Bank of New York.

23 MR. GERBER: I don't know that, Judge.
24 There's no evidence in the record to that. I will
25 represent to the Court I understand that they have

1 common ground.

2 THE COURT: But you just said they were
3 totally unrelated. That's not part of the stipulation.

4 MR. GERBER: No, I said it was unrelated.

5 THE COURT: Okay.

6 MR. GERBER: Finally, Your Honor, as to
7 the last part, that these securities were presented as
8 eligible by BNY Capital Markets, Inc., I'm just
9 stipulating that that's what Ms. Moore would testify to.
10 I don't know if that's true or not.

11 THE COURT: Okay. I hear you. Anything
12 else from Bank of America?

13 MR. JONES: Your Honor, here's my
14 problem. Under the indenture, Bank of New York acts not
15 only as indenture trustee but as collateral agent. It
16 has responsibilities with regard to what's in that
17 account. Now, if I understand correctly, this
18 stipulation isn't meant to address whether it complied
19 with its responsibilities or not. But I want to make
20 sure, since I've just heard it for the first time this
21 morning, that that's not intended to be addressed by
22 this stipulation.

23 THE COURT: Mr. Gerber, is that intended
24 to be addressed by this?

25 MR. GERBER: If what he's saying is are

1 we insisting upon a waiver of claims against the
2 collateral agent for its duties as part of this
3 stipulation? The answer is no, we're not insisting.

4 THE COURT: Okay.

5 MR. JONES: Thank you, Your Honor. That
6 stipulation is acceptable to Bank of America.

7 THE COURT: Scotia Pacific has something.

8 MR. FROMME: Your Honor, Eric Fromme of
9 Gibson, Dunn & Crutcher on behalf of Scotia Pacific
10 Company. We agree to the stipulated facts.

11 THE COURT: Thank you. And so does
12 Palco?

13 MR. McDOWELL: We agree as well.

14 THE COURT: Okay. Now the next big
15 question. Documents. Where are we on documents?

16 MR. KRUMHOLZ: Your Honor, we have come
17 to a number of stipulations, as I understand it. I
18 didn't participate, but I understand we have come to a
19 number of agreements. Mr. Bolton is going to help you.

20 THE COURT: Come forward and tell us
21 where we are.

22 MR. BOLTON: Good morning, Your Honor,
23 Jonathan Bolton on behalf of Bank of New York Trust
24 Company, N.A., as indenture trustee.

25 THE COURT: And beside you?

1 MR. SCHREIBER: Good morning, Your Honor.
2 Carey Schreiber from Winston & Strawn on behalf of
3 Marathon. It's a pleasure to be standing up here next
4 to my colleague, Mr. Bolton in this case. Unusual in
5 this case, but we have reached a number of exhibits we
6 want to present to you, what agreements we've reached.

7 THE COURT: Okay.

8 MR. BOLTON: Your Honor, except as to
9 what I'm about to tell you, the parties have stipulated
10 to the admission of nearly all their exhibits. They
11 have asked me to recite the following.

12 By so stipulating, the parties do not
13 concede the truth, reliability or relevance of the
14 information contained in every admitted exhibit and
15 reserve the right to argue the truth, reliability and
16 relevance of any exhibit, as well as the weight the
17 Court should afford any exhibit. This reservation of
18 rights includes the reservation of argument that an
19 exhibit should be given no weight because it's hearsay
20 in whole or in part. We hope that's consistent with the
21 Court's prior rulings and guidance on the hearsay
22 objection.

23 THE COURT: That is correct.

24 MR. BOLTON: I will go through the list
25 of exhibits.

1 THE COURT: Would it be easier just to --
2 do we have a complete list there that you have already
3 written on as to what's admitted?

4 MR. BOLTON: Your Honor, it may be easier
5 to just read it out loud.

6 THE COURT: Go ahead.

7 MR. BOLTON: I'll only read the exhibits
8 that are objected to.

9 THE COURT: Here's the deal. You two
10 guys are responsible for getting with the court clerk,
11 Frenchie, and making certain that what you said complies
12 with what she's written down on the official admission
13 documents, okay? But go ahead and read them.

14 MR. BOLTON: Your Honor, indenture
15 trustee Exhibits 1 through 7 -- I'm sorry, 1 through
16 8 -- 1 through 7 are admitted. With respect to
17 indenture trustee Exhibit 8, Bates numbers 1327 through
18 1329 are admitted. Exhibit 9 is objected to. Indenture
19 trustee Exhibits 10 through 22 are admitted. Exhibit 23
20 is objected to. Exhibits 24, 25 and 26 are admitted.
21 Exhibit 26 is objected to. Exhibit 27 is admitted.
22 Exhibits 28 through 33 are objected to. Exhibit 34
23 through 86 are admitted. Indenture trustee Exhibit 87
24 is withdrawn. Indenture trustee Exhibit 88 through 122
25 are admitted. Exhibits 123 through 128 are objected to.

1 Exhibits 129 through 134 are admitted. Exhibits 135
2 through 146 are objected to.

3 THE COURT: 135 through 146?

4 MR. BOLTON: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. BOLTON: Your Honor, Exhibits 148 --
7 147 and 148 are objected to. To the extent they come
8 into evidence, they would be under seal.

9 THE COURT: Okay.

10 MR. BOLTON: Exhibits 149 and 150 are
11 also objected to. Again, to the extent they come into
12 evidence, they would be under seal. And Exhibit 151 is
13 also objected to. To the extent that comes into
14 evidence, that would be under seal.

15 THE COURT: So 147 through 151 are
16 objected to, but the extent they come in, they would be
17 under seal.

18 MR. SCHREIBER: Your Honor, just to
19 clarify. Carey Schreiber from Winston Strawn on behalf
20 of Marathon. 149 and 150, indenture trustee 149 and 150
21 are admitted. We have no objection to their admission
22 subject to Mr. Bolton's prior statement. But, however,
23 we would be happy to have them come in under seal.

24 THE COURT: Okay. So your objection to
25 147, 148 and 151.

1 MR. SCHREIBER: Correct.

2 THE COURT: What about 150?

3 MR. SCHREIBER: 150 -- okay, go ahead.

4 THE COURT: 49 and 50 are in.

5 MR. SCHREIBER: 49 and 50 are in.

6 THE COURT: 51 is objected to.

7 MR. SCHREIBER: Is objected to for the
8 moment. We're trying to work through those issues, Your
9 Honor.

10 MR. BOLTON: 152 to 154 are admitted.
11 155 and 156 are objected to. 157 is admitted. 158 is
12 objected to, and to the extent it comes in, it would be
13 under seal. 160 is admitted. 159 is admitted. And to
14 the extent 159 -- actually, that's going to be under
15 seal. That is admitted but it will be under seal, 159.
16 Exhibit 161 is objected to. Exhibit 162 is withdrawn.
17 Exhibit 163, 164, 165, 6, 166 and 167 are admitted.
18 Exhibit 168 is objected to. And turning to the
19 MRC/Mendocino plan, Mr. Schreiber will go through those.

20 MR. SCHREIBER: Your Honor, we began at
21 MMX 89, we picked up with our numbers from the prior
22 Court's hearing so we didn't duplicate numbers. MMX 89
23 through MMX 92, and you may recall yesterday MMX 92 was
24 Mr. Young's declaration with respect to 507(b) are all
25 admitted. MMX 93 and 94 are objected to as they're

1 reserved. MMX 95 through MMX 97 are admitted. MMX 98
2 through MMX 102 are objected to. MMX 103 is admitted.
3 104 and 105 are objected to. 106 through 110 are
4 admitted. 111 as it's reserved is objected to. 112
5 through MMX 174 are all admitted. MMX 175 through MMX
6 179 are objected to. MMX 180 through MMX 192 are
7 admitted. MMX 193 is objected to. MMX 194 through 196
8 are admitted. MMX 197 through MMX 204 have been
9 withdrawn. MMX 205 through 207 have been admitted. MMX
10 208 and MMX 209 have been objected to. MMX 210 through
11 MMX 212 have been admitted. And just so that we're
12 clear for the record, Your Honor, the documents that
13 have been objected to, I think, fall into certain broad
14 categories that conceptually if we can get around we can
15 eliminate a lot of the numbers that we have stated
16 objections to on both sides.

17 MR. BOLTON: And Your Honor, we will work
18 today to try to resolve those objections.

19 THE COURT: Okay. So those that are
20 unobjected to, does anyone else have any objection to
21 any of those that are not objected to by these two
22 parties? Bank of America?

23 MR. JONES: Your Honor, Evan Jones for
24 Bank of America. I just had a question. I want to make
25 sure I understand. When things were listed as being

1 objected to, are they going to be resolved?

2 THE COURT: I haven't admitted them yet.

3 MR. JONES: Well, some of them, Your
4 Honor, I just want to mention, 134 through 146 are
5 the Sierra -- I'm sorry, of the indenture trustee are
6 the Sierra Pacific declarations that I think Your Honor
7 has ruled aren't coming in.

8 THE COURT: Are not coming in?

9 MR. JONES: Yes, Your Honor, when you
10 sent Mr. Red -- when you sent him home yesterday, I
11 think you ruled those declarations aren't coming in so
12 we don't need those on an objected to list. They have
13 been ruled on.

14 THE COURT: They're objected to and I
15 have already ruled on them. So as to that, that may
16 well be. But this is helpful in the sense that it's at
17 least paired down those that we know are objected to,
18 some of which we can further pair down because I've
19 already ruled. But that's just a few. But those that
20 are not objected to are now admitted to the extent that
21 that's the question and we'll then perhaps by tomorrow,
22 or if you want to have an argument later today or now,
23 we can maybe pair them down further.

24 MR. SCHREIBER: Your Honor, we prefer to
25 meet and confer a little bit more today. As Mr. Jones

1 mentioned, there are some of these you ruled on or
2 discussed and we would like to take your guidance.

3 THE COURT: I don't expect them to
4 withdraw their request to admit them. I mean, they're
5 not admitting that I have ruled correctly, but I have
6 ruled on those so that one is an easy one. Now let's
7 move on.

8 MR. BOLTON: Thank you, Your Honor.

9 MR. SCHREIBER: Thank you, Your Honor.

10 MR. KRUMHOLZ: Your Honor, we would like
11 to continue with Mr. LaMont.

12 THE COURT: All right. Mr. LaMont, come
13 forward and please raise your right hand to be sworn
14 again.

15 RICHARD LaMONT,
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. KRUMHOLZ:

19 Q. Good morning, Mr. LaMont.

20 A. Good morning.

21 Q. I just want to bring everybody back to where
22 we were last night in terms of testimony at least. We
23 were talking about Pacific Rim Wood Market prices. You
24 recall that?

25 A. Yes, I do.

1 Q. And in that regard, we were talking about
2 generally, you know, what available data was out in the
3 marketplace, but I want to summarize some a little bit
4 just so we get back up to speed.

5 The starting price for all of the prices
6 that you used in connection with your April 30, 2008
7 appraisal, as well as the modeling that you did in
8 connection with this hearing, the 507(b) issues, was the
9 average of the best two years -- or the last two years
10 and the Pacific Rim Wood Market prices, correct?

11 A. Correct.

12 Q. And that came directly from Mr. Dean and MRC?

13 A. Correct.

14 Q. And you don't subscribe to the Pacific Rim
15 Wood Market publication, you never have?

16 A. No.

17 Q. In fact, you've never used those kinds of
18 numbers and incorporated them into any sort of modeling
19 that you've done?

20 A. No.

21 Q. Correct?

22 A. Correct.

23 Q. Now, I want to hand you an exhibit that came
24 from your files.

25 MR. KRUMHOLZ: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 Q. (By Mr. Krumholz) Do you recognize Exhibit
4 169, Mr. LaMont?

5 A. Yes, I do.

6 Q. This is a compilation of redwood at Pacific
7 Rim Wood Market prices, at least the first few pages
8 that you received from MRC and Mr. Dean, true?

9 A. True.

10 Q. And in your deposition, you told me that --
11 when I asked you when is the last Pacific Rim Wood
12 Market prices that you're aware of that were published,
13 you told me, well, when I last looked, February of 2008,
14 right?

15 A. Correct.

16 Q. And if we look at that, this document, that
17 is, this compilation that MRC provided to you, do you
18 see the first page talks about redwood and it says
19 Pacific Rim Wood Market at the top and it says low and
20 high. Do you see that?

21 A. Correct.

22 Q. There are columns going all the way down the
23 page, right?

24 A. Yes.

25 Q. And then you go to the next page, a page down

1 and it goes through all the way through November 2007 at
2 the bottom. Do you see that, the available prices that
3 MRC provided to you?

4 A. Correct.

5 Q. And then go one more. And you see the last
6 date that's provided is just as you told me. Your
7 memory didn't fail you, did it? It was February of
8 2008. That is, this year for Pacific Rim Wood Market
9 prices for redwood.

10 A. No.

11 Q. That's what it says right there, right?

12 A. But those weren't numbers that were provided
13 by MRC.

14 Q. Well, what we do know is you didn't have them
15 from Pacific Rim Wood Market, right?

16 A. Correct. As I said yesterday --

17 MR. KRUMHOLZ: Your Honor, I just would
18 like the witness to answer yes or no when he can.

19 THE COURT: You have got to answer his
20 questions and you make sure you ask specific questions.
21 We're going to do this by the book. You've got to ask
22 very specific questions and then you answer.

23 Q. (By Mr. Krumholz) You didn't get this
24 information from the publishers of the Pac Rim Wood
25 Market pricing, right, for redwood?

1 A. Correct.

2 Q. Because you don't subscribe to that nor have
3 you ever, right?

4 A. Correct.

5 Q. And what you told me yesterday is the first
6 time at your deposition you realized they didn't publish
7 that data after a certain point in 2007, right?

8 A. I didn't recall that. I told you incorrectly
9 at my deposition.

10 THE COURT: He asked you yesterday what
11 you said.

12 A. Yesterday I told you that I thought it was
13 through February, but then when I relooked at the data,
14 it was actually only until August.

15 Q. Okay. So they didn't even publish data for
16 August 2007. But what you do know is that your modeling
17 for your April 30, 2008 confirmation modeling, the
18 discounted cash flow models, entered Pacific Rim Wood
19 Market prices as you understood them from MRC?

20 A. Correct.

21 Q. Through February of 2008?

22 A. Incorrect.

23 Q. That's what you said to us in your deposition,
24 wasn't it?

25 A. And I corrected that yesterday.

1 THE COURT: You just -- you said it in
2 your deposition. Go ahead.

3 Q. (By Mr. Krumholz) You said it in your
4 deposition?

5 A. Correct.

6 Q. That you got all that from MRC, right?

7 A. Correct.

8 Q. You told me in your deposition you didn't try
9 to confirm that data with the Pacific Rim publishers?

10 A. Correct.

11 Q. Okay. And now after talking to counsel in a
12 few days, you've come to some sort of other conclusion,
13 that's your testimony?

14 A. No.

15 MR. SCHWARTZ: Objection, Your Honor.

16 MR. JONES: Objection. Your Honor --

17 THE COURT: Sustained.

18 Q. (By Mr. Krumholz) I want to turn our
19 attention to growth rate. You have some opinions on
20 that, correct?

21 A. Yes.

22 Q. And what your opinion is is that the forest
23 grew more than it was cut since the bankruptcy was
24 filed, right?

25 A. Correct.

1 Q. And specifically you concluded that in 2007
2 there was more growth than harvest, right?

3 A. Yes.

4 Q. Now, in the confirmation hearing, you said
5 that they were almost equal?

6 A. I think I said approximately.

7 Q. You said that multiple times under oath in
8 several different venues.

9 A. Yes.

10 Q. Okay. And in fact, when you did your modeling
11 for your April 30, 2008 valuation, you assumed -- you
12 assumed that harvest equalled growth?

13 A. Correct.

14 Q. And the reason why we know that is because the
15 January 1, 2008 inventory is exactly the same as it was
16 January 1, 2007?

17 A. Correct.

18 Q. So that was an assumption that you had this
19 Court rely upon for purposes of the confirmation
20 hearing?

21 A. Correct.

22 Q. Okay. Now, you've come to a conclusion in
23 this trial that growth is greater than harvest and you
24 put a value on it; is that right?

25 A. Correct.

1 Q. And you have valued it at somewhere between \$5
2 and \$7 million, true?

3 A. Correct.

4 Q. And that means that you believe there's more
5 inventory January 1, 2008 than there was January 1,
6 2007?

7 A. Yes.

8 Q. But you have not done anything to amend your
9 report from the April 30, 2008 valuation, right?

10 A. I brought it as current proffer but I haven't
11 amended my report, no.

12 Q. You haven't told the Court, hold it, no, I was
13 wrong, it's a higher value than what I told you, right?

14 A. Correct.

15 Q. Even though it's over 9 million board feet
16 inaccurate according to your latest decision?

17 A. Correct.

18 Q. And you made this assumption back when the
19 Court was looking at confirmation back when it was
20 Marathon and MRC's position that the timberland was
21 worth a lot less than what the IT's experts were saying,
22 right?

23 A. That was the testimony, yes.

24 Q. And now when you changed it upward, what the
25 position of MRC and Marathon is is that in January '07,

1 in January '07, it was worth lower than what it was at
2 confirmation, right? And to support that position, you
3 put a different growth number in your assumptions,
4 right? That's what's happened?

5 A. I'm not following you on your line of
6 question. Sorry, sir.

7 Q. And it wasn't very artful. Just follow with
8 me, if you can.

9 THE COURT: He has testified that there's
10 a different growth rate. He did zero growth for the
11 confirmation hearing. He now thinks there's 7 million
12 more.

13 MR. KRUMHOLZ: There's 9 million more
14 board feet.

15 THE COURT: Okay. 9 million more. So he
16 has testified to that.

17 Q. (By Mr. Krumholz) Over 8 million in growth?

18 A. I don't think I valued it directly like that.
19 I think my value was between 5 and 7, but --

20 Q. No. Okay. And we'll get to that. Now,
21 actually, let's go ahead and talk about that a little
22 bit. First of all, before we do, Mr. Tedder has been
23 your business partner for many, many years?

24 A. I've had a working relationship with him, yes.

25 Q. Well, how many businesses have you owned

1 together?

2 A. I think two.

3 Q. And do you consider him a friend and a
4 confidante?

5 A. Yes, business professional. I work with him.

6 Q. And a trusted advisor?

7 A. I mean, I listen to what he says, yeah.

8 Q. Can you put up Exhibit 131-A, please. You
9 were in the courtroom when I examined Mr. Dean, right?

10 A. Yes.

11 Q. And have you talked to the lawyers about
12 Exhibit 131-A since then?

13 A. No.

14 Q. You haven't talked about this document at all
15 with any lawyer?

16 A. Not specifically, no. I mean, not that it
17 appeared in court, no.

18 Q. Let's go to the bottom e-mail. By the way, in
19 coming to this \$5 to \$7 million valuation of the growth,
20 you looked at Mr. Barrett's declaration from March of
21 2008?

22 A. For this current -- for this current property,
23 yes.

24 Q. Okay.

25 A. Okay.

1 Q. This is an e-mail dated March 6 of 2008 that
2 says "Counsel, attached please find the proffers of Jeff
3 Barrett together with Exhibits A, B, C thereto and of
4 Steve Zelin. Katie Coleman." You recognize Ms. Coleman
5 as Scopac's attorney, right?

6 A. Yes.

7 Q. And she was sending that, I guess, to all
8 counsel in that case in connection with the hearing that
9 day. And if we can go up one from there. Mr. Neier,
10 who of course is Marathon's counsel, then sends it to a
11 host of folks, both employees and officers of Marathon
12 and Mendocino and also Mr. Tedder, right?

13 A. Yes.

14 Q. And we learned the other day from Mr. Neier
15 that rei@reiweb.com is you?

16 A. Correct.

17 Q. So you received this same e-mail, right?

18 A. Correct.

19 Q. And it says "Valuation folks, please review
20 the affidavit of Jeff Barrett and the two attachments to
21 that affidavit. We will be okay for today's hearing but
22 I would like to give the Court our views of this
23 valuation method at 2 p.m. today when Mr. Barrett
24 testifies." Do you see that?

25 A. Yes.

1 Q. And so Mr. Neier needed some help, and like
2 many of us lawyers do from experts from time to time, he
3 wanted to know, well, tell us what this says in
4 connection with growth. Remember that was the issue?

5 A. Yes.

6 Q. Okay. Let's go one up from there. Now,
7 Mr. Dean was one of the people on this e-mail string,
8 right?

9 A. Yes.

10 Q. And then he responds very quickly at 6:32
11 a.m., I think it's sent very early in the morning. It
12 seems like everything is done very early in the morning
13 or very late in the evening in this case. But
14 regardless, at 6:32 a.m., Mr. Dean responds. Do you see
15 that?

16 A. Yes.

17 Q. He says, "They harvested almost all of the
18 redwood growth for the year." That is 2007, right?

19 A. Correct.

20 Q. It says, "The amount of redwood they did not
21 harvest seems quite small to me." Do you see that?

22 A. Yes.

23 Q. And then it says at the end, "Seems to me like
24 that would be close to the margin of error for
25 estimating what the forest is producing." Do you see

1 that?

2 A. Correct.

3 Q. Then it goes on about Douglas Fir was added to
4 the forest, right?

5 A. Correct.

6 Q. And that's something that you have testified
7 over and again as uneconomic to harvest?

8 A. In the current market, yes.

9 Q. And you said it was back then. Did you
10 testify to that?

11 A. In the current market I have testified to
12 that, yes.

13 Q. Okay. And it says, "However, the market value
14 of Douglas Fir today is less than the cost to the
15 company of removing the Douglas Fir," just as you've
16 described, right?

17 A. Yes.

18 Q. It says, "It is unrealistic to value Fir based
19 on its stumpage contribution since there are large and
20 real costs to get Fir out of the woods beyond log and
21 haul." Did I read that?

22 A. I think so.

23 Q. Okay. And then it goes on to say "Adding
24 hardwood to the property adds no economic value and
25 arguably could detract because it is, at best, can be

1 left alone and may in places have to be treated."

2 Right?

3 A. Yes.

4 Q. So in some -- what your gist is, it's almost
5 all the harvest of redwood, which is most valuable
6 timber, was -- almost all the growth was cut, right?

7 A. Yeah, I think he's indicated like 7 million
8 feet. I think I indicated 9 million feet.

9 Q. Doug Fir is not economic in the market.
10 That's what he's saying as you understand it?

11 A. In March of -- in March of '08, yes.

12 Q. And then hardwoods, really worthless and may
13 be even a liability because of the cost of treatment.

14 A. That's what he's indicating.

15 Q. Okay. And then did you see that Mr. Tedder
16 responded to that, your partner? He responds at 1 p.m.,
17 I guess it's a 2 p.m. hearing on the same day. And he
18 again copies you and everyone else on this e-mail,
19 including Mr. Dean and his executives who are, I guess,
20 going to be running Newco if this plan gets confirmed,
21 right?

22 A. I don't know that directly, but I assume, yes.

23 Q. You've been in the courtroom, I guess, when we
24 have talked about that a little bit. But let's go
25 forward. It says "I agree with all of Sandy's

1 comments." That's what your partner says, right?

2 A. Yes.

3 Q. And then it says, "Harvest was 74 million
4 board feet but all redwood. Redwood harvest minus
5 redwood growth is about zero as Sandy pointed out." Did
6 I read that right?

7 A. Yes, that's what he says.

8 Q. "Therefore, the rest of the growth is Doug Fir
9 and hardwoods." That's what Mr. Tedder, your partner,
10 says?

11 A. Correct.

12 Q. Let's go on. Paragraph eight, commenting on
13 paragraph 8 of Mr. Barrett's declaration. "All net
14 additional growth was on stands that currently have no
15 value when logging costs and the market price are
16 considered." Right?

17 A. That's what he said.

18 Q. You never responded to this e-mail and never
19 indicated or suggested to this line of -- this dialogue
20 that this was incorrect in any way, shape or form,
21 right?

22 A. No, I did not.

23 Q. Let's go on. And then at the end he concludes
24 "So he has added value from trees that the cost of
25 extraction is probably more than the value, Doug Fir and

1 hardwoods." That's kind of the sum total of what
2 Mr. Tedder is saying?

3 A. That's what he says in his e-mail, yes.

4 Q. Now, what I'd like to do is go through -- now,
5 assuming somehow that your partner was wrong when he was
6 talking privately with the folks at this middle table
7 and Mr. Dean, I want to talk to you about the
8 calculations that you did make. And I'm a little
9 reluctant to do this because I'm a lawyer and not a
10 finance guy, but I'm going to try to do a chart. So
11 bear with me. And if I get some numbers wrong, just
12 pipe up and let me know, okay? I'm going to hand you
13 what's been marked as Exhibit 70.

14 MR. KRUMHOLZ: May I approach, Your
15 Honor?

16 THE COURT: You may.

17 Q. (By Mr. Krumholz) Now, this is an analysis
18 that you did for purposes of this hearing, right?

19 A. Correct.

20 Q. You were measuring growth, right?

21 A. Correct.

22 Q. And just to be clear, if you had done a
23 valuation model and come to an opinion about valuation
24 using a discounted cash flow model, it would have taken
25 into account any growth that had occurred and you

1 wouldn't need one of these, right?

2 A. As of -- my appraisal was as of April '08.

3 Q. I'm talking about this sheet that you prepared
4 for this hearing.

5 A. And this is looking at the difference from
6 January '07 to April.

7 Q. I think as the Judge indicated, I have to be
8 very specific in my questions. If you had done a
9 January 18, 2007 valuation model and come to an opinion
10 about valuation using a discounted cash flow model, you
11 wouldn't be valuing growth because it would be included
12 in the terminal value, according to your testimony?

13 A. Correct.

14 Q. Okay. So this is only relevant in any way,
15 shape or form, that is, Exhibit 170, because you have --
16 you decided not to do what you thought was the most
17 reliable way; that is, to do a full valuation of
18 appraisal as of January 18, 2007. And instead, do
19 something along the lines of what you have in Exhibit
20 170, true?

21 A. I don't agree with your statement.

22 Q. Okay. Let me break it down and make sure I
23 understand which part. You do agree that a full
24 valuation appraisal would be the most reliable way to
25 determine if there's any increased or diminished value

1 since the petition date. You told us that earlier
2 yesterday?

3 A. That would be the most reliable.

4 Q. Okay. Instead of doing it that way, the most
5 reliable way, you instead have done calculations like
6 the ones on Exhibit 170, right?

7 A. Yes, I estimated the difference this way.

8 Q. Okay. So these are LaMont opinions about
9 value of growth, right? That's what you talked about on
10 Exhibit 170, right?

11 A. Yes.

12 MR. SCHWARTZ: Mr. Krumholz, can you just
13 turn that so we can see what you're writing on.

14 MR. KRUMHOLZ: If you don't mind coming
15 over here. I'm doing this for the Court. Then you can
16 stand next to me if you like.

17 MR. SCHWARTZ: No.

18 MR. KRUMHOLZ: I really like it when you
19 do.

20 Q. (By Mr. Krumholz) Okay. So, you know, I just
21 want to understand this better. So the top of Exhibit
22 170 it says is the inventory total of 3.9 and some odd
23 million, right?

24 A. Correct.

25 Q. And that's harvestable or not? Or is that

1 total?

2 A. This is total conifer as of 1/1/07.

3 Q. Okay. But you are aware, as we discussed
4 yesterday -- do you have the findings of fact handy, a
5 hard copy? Before we get to the findings of fact, I
6 want to go through this with you. So you took 3.9
7 million, right?

8 A. Yes.

9 Q. As your total conifer harvestable inventory?

10 A. No. It's total conifer.

11 Q. Total conifer. It wasn't harvestable, it was
12 just total?

13 A. Correct.

14 Q. And that's not the way you did it back at the
15 April 30, 2008 modeling, right? You used a different
16 sort of calculation, right?

17 A. I did two approaches and 170 is looking at
18 total conifer. I also looked at harvestable conifer
19 also.

20 Q. Okay. Well, let's just go with your numbers
21 for total for now, even though it's not harvestable.
22 And I guess we understand that. And it's your -- and
23 then you took 2.9 percent, which you multiply .029 to
24 that number, right, to get the total amount of growth
25 because you think 2.9 percent is the growth; is that

1 right?

2 A. That was the growth I derived from
3 Dr. Barrett's proffer.

4 Q. Okay. So if you do that, you get somewhere
5 along the lines, I guess, of 114,000 board feet; is that
6 right, in growth?

7 A. I think we're in MBF, that's basically 114
8 million board feet.

9 Q. 114 million?

10 A. Yes.

11 Q. Of course it is. I should have known that.

12 A. That's okay.

13 Q. And that's the growth. This is the growth
14 rate; is that correct?

15 A. Correct.

16 Q. And then that is for the .029. Then you get
17 114 million board feet. And you know that 74 million
18 board feet is the amount actually harvested, right?

19 A. Correct.

20 Q. So you subtract that; is that right?

21 A. Correct.

22 Q. And you get 40,000 -- or 40 million board
23 feet; is that right?

24 A. Of excess growth.

25 Q. And then you multiply that times 129 per 1,000

1 board feet; is that right?

2 A. Correct.

3 Q. To get a dollar amount; is that right?

4 A. Correct.

5 Q. And you come up with \$5.1 million, right?

6 A. Yes.

7 Q. Okay. I'm glad I understood that. That was a
8 relief. So let's go to the findings of fact for a
9 moment. You do agree that tree growth of trees that
10 cannot be harvested contributes only very minimal value,
11 first of all, to the value of the timberlands?

12 A. There's a time value of money to the ones that
13 can't be harvested right now.

14 Q. Once you get passed 15 years or so, it's very
15 minimal in terms of value?

16 A. I wouldn't use the words "very minimal" but
17 they're less than current harvest, yes.

18 Q. As a percentage of total value, it is minimal,
19 right?

20 A. I'm not going to argue minimal, but it's less.

21 Q. I'm just trying to get a magnitude. So what
22 are you comfortable with other than less? We know it's
23 less. It's not a dollar less. It's substantially less,
24 right?

25 A. It's less than 50 percent.

1 Q. Is it less than 10 percent?

2 A. I would say no. I think it's probably more
3 than 10 percent.

4 Q. Is it less than 20 percent?

5 A. Without doing the calculations or looking at
6 it, it's somewhere between 25 and 50 percent.

7 Q. Fair enough. Let's go to page 24 in the
8 findings of fact. And at paragraph 160 -- paragraph 60,
9 can you see that on the screen at all?

10 A. There is nothing on my screen.

11 THE COURT: There's a way to do it.

12 THE WITNESS: Okay. Now I see the Elmo.
13 Thank you.

14 Q. (By Mr. Krumholz) And it says "based" -- at
15 the end of paragraph 60 in the Court's findings it says
16 "Based on regulatory, economic and physical constraints
17 on the timberlands, MRC determined" -- MRC is Mr. Dean's
18 company, right?

19 A. Yes.

20 Q. "That the total presently harvestable conifer
21 volume is 777 million board feet out of 3.9 billion
22 board feet total conifer volume." Do you see that?

23 A. Yes.

24 Q. Okay. So let's draw a line for a minute and
25 use those numbers. And I'll just put RK for me. And if

1 you use 777 million board feet as the total conifer
2 volume?

3 MR. NEIER: Harvestable.

4 Q. (By Mr. Krumholz) And you go -- and you
5 multiply that times .029, that will get you growth,
6 right, of harvestable?

7 A. Of what MRC says is harvestable in their
8 analysis.

9 Q. I have brought a calculator. And hopefully
10 you can help run these calculations for me. Where is
11 the clear button? There you go. Can you do that
12 calculation quickly.

13 A. I get 22.5 million feet.

14 Q. So 22.9 million board feet. And if you
15 subtract from that 74 million board feet that was
16 harvested, just like you did before, you get negative 51
17 million board feet, true?

18 A. Your math is correct.

19 Q. And if you multiply that by \$129 per thousand
20 board feet, you get \$6.6 million, right?

21 A. Your math is still correct, I believe.

22 Q. And if you look at 170, what you did for 2008,
23 okay, is the same kind of calculation through and
24 projected out to the end of the year, right?

25 A. For '08, yes, I did.

1 Q. And you came up with about 5 million again,
2 right?

3 A. Correct, based on their harvest rate.

4 Q. And you halved it because we're only through
5 June?

6 A. Correct.

7 Q. So you added 2 plus 5 and got 7 million?

8 A. Correct.

9 Q. And if you did the same thing here and assumed
10 that '08 was about the same, which would be \$6.6 million
11 negative growth, then that would be a total at the end
12 of June '08, according to my hypothetical, of \$9.9
13 million, right?

14 A. There's significant flaws in your analysis,
15 but that's the math.

16 Q. I know we're going to disagree on that and
17 we're going to argue about that and I get it. By my
18 calculations it would be almost \$10 million of negative
19 growth, money back in IT's pocket, right?

20 A. Under your analysis, your hypothetical, yes.

21 Q. And if -- the way you got this 129 when I saw
22 it per thousand board feet, it seems really low to me.

23 A. It's based on the total value and the total
24 volume.

25 Q. Really low. So I went back and did some what

1 I thought was kind of very, very straightforward
2 calculations. If you take \$510 million, which is the
3 value at June 6, according to the Court, right?

4 A. Right.

5 Q. And you divide that by 777,000, right?

6 A. Okay.

7 Q. You get a 656 per thousand number, right?

8 MR. JONES: I'm sorry, I need to object
9 here. He talks to fast for me to get it in on time.
10 The Court didn't find the value was \$510 million, the
11 Court found the value didn't exceed \$510 million. It is
12 a very important point and the Court made it clear that
13 that was what the Court was up to. So I should have
14 objected to an assumption in his question maybe a
15 question ago.

16 THE COURT: I'm less concerned about that
17 than I am about what you are now attempting to do is
18 take the total value, assuming the value were 510, which
19 as he indicated that's what I really found. I was
20 comfortable that the maximum value was 510. Assuming
21 that were the case, though, you're going to divide the
22 total number of redwood volume by the -- the total value
23 by the total number of volume to come up with the price
24 for redwood.

25 MR. KRUMHOLZ: Correct.

1 THE COURT: Of course, if you cut all the
2 redwood off the forest, the forest would still have
3 value. You're going to put that in your analysis? You
4 can't just take the total number of redwoods and divide
5 it into the total value and come up with a price per
6 log.

7 MR. KRUMHOLZ: This is a price per log
8 for the harvestable redwood.

9 THE COURT: Fine. Go ahead and do it.
10 If that's what you want to do.

11 Q. (By Mr. Krumholz) So if we use that, then you
12 get a number that's \$656 per thousand board feet, right?

13 A. Based on your hypothetical.

14 Q. And then you would get value during the
15 relevant time frame of \$33.9 million less, correct?
16 Understanding that you believe I've somehow been flawed
17 in my logic.

18 A. There's several but yes, that's the math.

19 Q. I just want to be sure. We can argue from
20 there. I'm sure that Counsel will do a fine job doing
21 that. Now, I want to talk to you a little bit about
22 discount rates, okay?

23 A. Okay.

24 Q. And assuming the growth in the trees has no
25 value, like you saw Mr. Tedder opined about on that

1 previous exhibit, and the discount rate has stayed the
2 same or increased since January of -- I'm sorry, I'll
3 wait for a second just to make sure we're on the same
4 page. Are you ready?

5 A. I'm ready.

6 Q. Okay. Assuming growth in the trees has no
7 value like Mr. Tedder has said in that e-mail and the
8 discount rate has stayed the same or increased since
9 January of 2007, then the timberlands have likely
10 diminished in value. Would you agree with that?

11 A. Under your hypothetical, those would be true.

12 Q. And discount rates are directly tied to
13 expected rates of return?

14 A. That's one of the parameters, yes.

15 Q. And they are many times called yield or yield
16 rates. People you rely on use that terminology?

17 A. Depending on how -- in the context yield rates
18 and discount rates can be synonymous.

19 Q. And Sandy Dean and MRC have been funneling
20 information to you in connection with your valuations,
21 right, providing you information, true?

22 A. They provided me some price information and
23 their views, yes.

24 Q. And they even gave you, I think, Mr. Hancock's
25 PowerPoint that you mentioned?

1 A. Correct.

2 Q. But we're obviously disputing whether it
3 should be admitted. But he gave you that as well,
4 right?

5 A. Yes.

6 Q. And that was regarding discount rates in
7 particular. That's why he gave it to you, as you
8 understand it?

9 A. Yes.

10 Q. Now, I'd like to turn your attention to
11 Exhibit 160. What he didn't show you is Exhibit 160,
12 true?

13 A. It's very small in the screen, but --

14 Q. Let's blow it up a little bit. Can you go
15 back one and show me the -- show him the -- from Sandy
16 Dean to John Fisher, Mr. Higgenbottom who we
17 discussed --

18 THE COURT: Is this one of the two
19 e-mails that we saw yesterday morning or read them when
20 we first came in?

21 MR. KRUMHOLZ: Yes, sir.

22 THE COURT: Okay. And when did you get a
23 copy of these?

24 MR. KRUMHOLZ: We got 100 boxes of
25 documents, over 100 boxes of documents from MRC just

1 before the confirmation hearing and could not get
2 through all of them because they were buried.

3 THE COURT: Okay. Now you're doing to me
4 what you don't ever want them to do to you. But you're
5 not answering my questions. You got it before the
6 confirmation hearing but you didn't have time to find
7 it?

8 MR. KRUMHOLZ: I just wanted to be clear.

9 THE COURT: Okay. Go ahead.

10 Q. (By Mr. Krumholz) So you didn't receive the
11 September 2007 e-mail, true?

12 A. No, I have not seen this e-mail.

13 Q. And he didn't share any of the information in
14 this with you, as far as you know?

15 A. No, I can't see the e-mail, but I don't think
16 he shared it.

17 Q. Okay. I'd like to just to the portion dealing
18 with discount rates. There we go. It says here that
19 "somewhere in here we talked about REIT valuations." Do
20 you see that?

21 A. Yes, I see that sentence.

22 Q. "We talked about that this is not really our
23 world, but when we had thought Scopac deserves a premium
24 yield due to California regulations, political baggage
25 and track records." Do you see that?

1 A. Yes.

2 Q. And that's something that you actually had
3 talked about at this trial, right?

4 A. Correct.

5 Q. And then it says "I guessed at 7 to 8 percent
6 and said it would have been lower six months ago." Do
7 you see that?

8 A. Yes.

9 Q. And you used 7 percent, the low range of what
10 Mr. Dean thought for a discount rate in April of -- for
11 your April 30, 2008 valuation?

12 A. Correct.

13 Q. And you went backwards and used 8 percent for
14 January 2007, petition date, right?

15 MR. NEIER: Your Honor, this is totally
16 mischaracterizing. This e-mail talks about yield, not
17 discount rate. We all went through this. This is
18 entirely mischaracterizing this entire file.

19 THE COURT: Okay. He first asked the
20 question of yield and discount rates are about the same
21 and he said sometimes they are, so now he's going on
22 with that.

23 MR. NEIER: Sometimes they are.

24 THE COURT: Okay. That's why we have
25 redirect.

1 Q. (By Mr. Krumholz) What you used is 8 percent,
2 the highest number in your January 2007 discount rate?

3 A. Correct.

4 Q. And did he ever tell you that he thought that
5 the discount rate had been lower six months prior to
6 September of 2007?

7 A. No.

8 Q. Did he ever tell you that he thought it was in
9 the 6 percent range or the 6 and a half percent range?

10 A. Never.

11 Q. What you do know, that is, if the discount
12 rate goes down as Mr. Neier told us in opening, by 100
13 basis points, 1 percent, it can mean what you said was
14 \$60 million, I think, and what Mr. Neier said is \$70
15 million.

16 A. My analysis was \$60 million.

17 Q. And if you just went down a half a point, it
18 would be \$30 or \$35 million?

19 A. Correct.

20 Q. Yes, \$30 or \$35 million; is that right?

21 A. Correct.

22 Q. But you chose the highest range, at least per
23 this e-mail, right?

24 A. Again, based on my analysis, yes, I did use an
25 8 percent in this current petition value.

1 Q. And the lowest range when we were talking at
2 the confirmation hearing?

3 A. Correct.

4 Q. And he never told you that he thought discount
5 rates were lower in March of 2007?

6 A. No.

7 Q. Now, risk assessment is critical to
8 determining appropriate discount rates, correct?

9 A. It's -- it's one important component, yes.

10 Q. And there are two kinds of risks, there's
11 general market risk, right?

12 A. That's correct.

13 Q. It's sometimes called systematic risk?

14 A. Yes.

15 Q. And there's asset class specific risk,
16 sometimes called nonsystematic risk?

17 A. I agree with your statement.

18 Q. And Exhibit 10, please. This is a report from
19 Mr. Sewall, who you've indicated you rely upon in some
20 way and trust?

21 A. Mr. Sewall doesn't exist. Brett Vickery is
22 the person I talked with.

23 Q. That's fair. I'm sorry for that. I meant
24 Mr. Vickery from Mr. Sewall or from Sewall Company.

25 A. Okay. I want to be clear.

1 Q. It says "generally expected rates of return or
2 discount rates represent the sum of a benchmark
3 risk-free rate and a risk premium which can be broken
4 into two parts, firm or asset class specific risk and
5 market risk." Do you see that?

6 A. I see that.

7 Q. Okay. So -- you can take that down. Now,
8 there's no doubt in your mind, I assume, that the
9 general market risk has gone way up since this case
10 began, right? General market risk, not asset specific
11 to timberland, general market risk.

12 A. The market risk has increased, yes.

13 Q. Significantly?

14 A. I'm not sure what magnitude you mean in
15 significantly. Yes, it has gone up significantly. You
16 know, there's much more uncertainty, so I would agree,
17 yeah.

18 Q. You admit that there's general market decline,
19 economic market decline, right?

20 A. General, yes.

21 Q. There's extraordinarily high energy prices,
22 never seen before?

23 A. It just cost me \$100 to fill up my car. Yes.

24 Q. Me, too. There's a subprime crisis going on
25 right now, the likes of which have never been seen

1 before?

2 A. Correct.

3 Q. There's a housing crisis, the likes of which
4 hasn't been seen for decades?

5 A. Correct.

6 Q. Particularly in California?

7 A. That's one of the significantly affected
8 markets, yes.

9 Q. And since the petition date, a credit crisis
10 that we haven't seen since at least the Great
11 Depression, if ever?

12 A. I would agree with that.

13 Q. That's what I mean by general market risk
14 going up. Okay?

15 A. Yes.

16 Q. And that's been substantial?

17 A. Yes.

18 Q. Okay. And when the general market risk goes
19 up, of course, what happens to discount rates if all
20 else being equal?

21 A. Discount rates have fallen in the current
22 term.

23 Q. No, that's not what I asked. I said
24 everything else being equal -- I know your opinion about
25 what they have done, but I don't want to talk about your

1 specific opinion yet. I'm saying all else being equal,
2 when general market risks go way up, what does that do
3 to discount rates? They go up. That's the whole point
4 of what Mr. Sewall said. Do we need to go back to it
5 and go further?

6 A. There's two components of what Mr. -- Sewall
7 Company's publication.

8 Q. You're absolutely right. We're going to get
9 into the asset specific risk and I know that's the core
10 of your opinion.

11 A. Okay.

12 Q. Okay. But all else being equal, if the
13 general market risk goes way up, the systematic risk
14 goes way up, so do discount rates?

15 A. Yes, for different asset classes.

16 Q. Okay. Now, and as to this specific asset,
17 Mr. Dean didn't share with you what he was talking to
18 Mr. Fisher about, his partner, and yield or discount
19 rates?

20 A. No. I said that before.

21 Q. Now, you've talked about comparable sales; is
22 that right?

23 A. In what context?

24 Q. Well, I mean, your 2008 report, your April 30,
25 2008 report talks about comparable sales in two

1 different contexts, true?

2 A. Correct.

3 Q. One in the context of discount rates, right?

4 A. Correct.

5 Q. And the other in the context of comparable
6 sales on overall value?

7 A. Correct.

8 Q. Okay. As to overall value, let's just talk
9 about that for a moment. Those transactions were from
10 all across the country, right?

11 A. For overall value, no, those were all in
12 Humboldt County or Mendocino, as I believe, for overall
13 value. Those were all redwood properties.

14 Q. Let me just go back. Those were all redwood
15 properties for comparable value?

16 A. I believe so, in Northern California.

17 Q. Did you do anything to determine what the
18 harvest rates were on those properties?

19 A. No, I did not have that information available.

20 Q. Did you try in any way, shape or form to try
21 to figure out who the valuation folks were to look at
22 their projections to see what all of the variables were
23 in connection with determining how they got their
24 valuation?

25 A. No, because I was looking at the transactions

1 in total.

2 Q. Right. I understand that. But what can be --
3 what can impact discount rates in that context are a
4 number of other variables that you assume in your
5 modeling, right?

6 A. Yes, there's several priority drivers.

7 Q. If somebody uses an outrageously high harvest
8 rate, that could impact the discount rate, right,
9 because there's more risk associated with being able to
10 achieve it?

11 A. All things being equal, yes.

12 Q. Growth, you have to figure out what type of
13 growth rate they're using in the forest, right?

14 A. Yes.

15 Q. You've got to look at the species mix?

16 A. As it relates to the value, the log values.

17 Q. You've got to look at all the variables that
18 you and Mr. Fleming and others have attempted to do in
19 this case, right?

20 A. Yes, that's the general process.

21 Q. And you didn't look at those to figure out how
22 those numbers fit into those property's equations?

23 A. Because I wasn't looking at discount rates, I
24 was looking at total values of the comparables.

25 Q. By the way, are you an MAI?

1 A. No, I'm not.

2 Q. And tell the Court what an MAI is.

3 THE COURT: I think -- I don't think
4 that's necessary. I mean, I can't imagine that that's
5 an issue that a bankruptcy court needs to be instructed
6 on.

7 MR. KRUMHOLZ: I understand. I didn't
8 know.

9 Q. (By Mr. Krumholz) Now, another transaction
10 you mentioned yesterday was Timber Star; is that right?

11 A. Yes, I did.

12 Q. And at the time of the deposition you pointed
13 out that this was support for your decision on discount
14 rates; is that right?

15 A. Yes, it was one piece of information I
16 considered.

17 Q. And you talked about the transaction with
18 Mr. Vickery you indicated?

19 A. Correct.

20 Q. And I don't want to get into the substance of
21 that. But you had not talked to any of the parties of
22 the transaction at the time of your deposition; is that
23 right?

24 A. I participated in the original valuation of
25 that property, but I didn't talk to them at the time of

1 my deposition. I mean, I did work for one of the
2 acquisition people on that project.

3 Q. You never looked at any projections related to
4 that project in connection with your work on this case,
5 right?

6 A. Correct.

7 Q. And then you talked about some other sales you
8 discussed with Mr. Vickery, right?

9 A. I think we discussed his survey and other just
10 general transactions, yes.

11 Q. And with respect to those sales, you didn't
12 try to figure out the harvest rates related to those
13 sales, correct?

14 A. I'm not sure which sales you're referring to.

15 Q. Any of the transactions that you mentioned
16 with Mr. Vickery.

17 A. Not specific to this case, no.

18 Q. You didn't talk about the inventory available
19 in these properties?

20 A. No.

21 Q. You didn't talk about log prices at the time
22 or in the county or region?

23 A. Not in the general trend that log prices have
24 declined regionally.

25 Q. But you do know that none of them involve

1 redwood or Douglas Fir?

2 A. Correct.

3 Q. And you knew that Mr. Vickery was a paid
4 consultant of the unsecured creditor's committee?

5 A. That is a fact, yes.

6 Q. Now, you've mentioned the availability to
7 Bear-Mattole and the eel areas. Do you recall that?

8 A. Yes, I do.

9 Q. Just to be very clear, almost all of the
10 Bear-Mattole trees are Doug Fir?

11 A. Yeah, I think 98, 99 percent.

12 Q. Which you think is uneconomic?

13 A. In the current market.

14 MR. KRUMHOLZ: Okay. Your Honor, I'm
15 going to pass the witness.

16 THE COURT: I would like for you to have
17 someone type up those charts just so they can be
18 appended to the record just so I have a copy of them
19 because we don't have any way of photographing them or
20 anything.

21 MR. KRUMHOLZ: Yes, Your Honor.

22 THE COURT: All right. Anyone else over
23 here? All right. Redirect. Or anyone else before
24 redirect? Bank of America? Bank of America is going to
25 ask questions?

1 MR. JONES: Your Honor, I suspect they'll
2 get to it.

3 THE COURT: You're just going to let him
4 do it. Okay. Then you ask some questions. Scopac has
5 got questions.

6 MR. FROMME: I just have a couple of
7 questions.

8 CROSS-EXAMINATION

9 BY MR. FROMME:

10 Q. This is Eric Fromme of Gibson Dunn & Crutcher
11 on behalf of Scotia Pacific. I believe it was
12 Exhibit 70, Indenture Trustee's exhibit. Could you put
13 that up for me, please, where you -- and I don't know if
14 we actually need it, Mr. LaMont, but you assume a growth
15 rate of 2.9 percent, do you remember that?

16 A. Correct.

17 Q. Can you walk us through actually how you
18 calculate that 2.9 percent growth rate. Do you need
19 Mr. Barrett's declaration to do that?

20 A. I can give you a basic recall from memory.

21 Q. Would it help if you had Mr. Barrett's
22 declaration?

23 A. That would probably help. I mean --

24 Q. Let me walk that up to you.

25 MR. FROMME: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 Q. (By Mr. Fromme) That's Mr. Barrett's
4 declaration for this hearing, not the March 2008
5 hearing. It has the same Exhibits A and B at the back?

6 A. Yeah, let me just --

7 Q. And you started with Exhibit A where the total
8 inventory is as of January '07; is that right?

9 A. Right.

10 Q. Okay. And that was how much? Can you take a
11 look at Exhibit A there. Exhibit A to Mr. Barrett's
12 declaration.

13 A. Okay. Hang on. You want the grand total?

14 Q. That's the document that you -- that's the
15 document that you used to help -- that's one of the
16 documents you used to calculate growth rate, right?

17 A. Yes.

18 Q. And then Exhibit B is the inventory for
19 January 2008; is that right?

20 A. Yes.

21 Q. And that's the document you used to
22 calculate --

23 A. I actually used his March proffer to calculate
24 that growth rate, not these two documents specifically.

25 Q. And those two documents were attached to his

1 declaration as well.

2 A. Okay. Well, I was -- to be honest, I was
3 working off his text.

4 Q. All right. Now, how did you calculate that
5 growth rate?

6 A. I calculate that growth rate by, I think in
7 the proffer he states there was 55 million board feet of
8 total growth above harvest. So I added the 55 plus the
9 74 of harvest and came up with approximately 115 million
10 feet. I divided that by 3,900,000 board feet and came
11 up with a growth rate of .029.

12 Q. And the total volume, you're using the total
13 volume number from 108?

14 A. The '07.

15 Q. Okay. From the '07.

16 A. '07.

17 Q. Did you want to check your math?

18 A. I mean, I can just -- yeah.

19 Q. That's how you did it?

20 A. Yeah.

21 Q. And do you think that's an accurate way to
22 calculate growth rate?

23 A. That's one methodology, inventory --

24 Q. That's not what I asked you.

25 A. Yeah, I do think it's an accurate way.

1 Q. Do you think it's the most accurate way to do
2 it on Scopac's lands?

3 A. Based on total inventory change, yes.

4 MR. FROMME: Okay. I have no further
5 questions.

6 THE COURT: Anyone else? All right.
7 Redirect.

8 And you're going to object to anything
9 that exceeds your cross-examination, right, because
10 you've had your chance to cross-examine him, it's his
11 witness so don't let him go outside your cross.

12 MR. KRUMHOLZ: Yes, sir.

13 THE COURT: This is the last questions on
14 this witness other than mine.

15 MR. SCHWARTZ: Thank you, Your Honor,
16 Steve Schwartz for Marathon.

17 REDIRECT EXAMINATION

18 BY MR. SCHWARTZ:

19 Q. Good morning, Mr. LaMont.

20 A. Good morning.

21 Q. I want to sort of walk through each of the
22 general topics that Mr. Krumholz asked you about and I
23 want to start with pricing. And you used Pacific Rim
24 data, correct?

25 A. Correct.

1 Q. Can you explain to the Court why you chose to
2 use Pacific Rim data?

3 A. I looked at different price series that were
4 available, primarily that's SBE and Pacific Rim. I
5 looked at the long-term trends for both of those. And
6 the thing you have to remember in the redwood market is
7 that a very limited amount of volume is actually open
8 transacted. A lot of it is internally processed by
9 fielding companies, companies that own timberland. And
10 a lot of those are negotiated. And so that these
11 transactions don't necessarily flow through an open
12 market.

13 And so having looked at that, I felt the SBE
14 prices were basically premiums of the non-timberland
15 owning sawmills paid because they don't have timberland,
16 they are forced to buy wood on the open market. They
17 tend to pay a premium. So I looked at those price
18 theories and felt like the Pacific Rim was the best
19 representation of a long-term pricing for the redwood
20 market.

21 Q. Did you consider the SBE prices?

22 A. Yes, I did.

23 Q. But you ultimately chose not to use them?

24 A. Correct.

25 Q. Now, Mr. Fleming didn't use SBE prices either,

1 did he?

2 A. No.

3 Q. Now, what, if anything, did you do to get
4 comfortable that the Pacific Rim data was an accurate
5 reflection of the market prices?

6 A. I did several analysis, but in my report I
7 displayed graphs of the two SBE and zipgram charted on
8 top of each other. They move exactly the same. There's
9 just typically a small margin, 5 to 10 percent where
10 they're different but they flow in the same price trends
11 so I felt that both of them -- Pacific Rim numbers were
12 very representative of the pricing and trends.

13 Q. Now, during the cross-examination,
14 Mr. Krumholz asked you about how you did 10 percent,
15 that Pacific Rim was 10 percent less than SBE, I
16 believe, and then that you took another 10 percent off.
17 Can you explain why there's two 10 percent deductions?

18 A. Yes. I first determined a two-year average of
19 the Pacific Rim wood prices which was my baseline trend.
20 And that was going to be my historic level for harvest
21 into the future -- I mean, the historic level of pricing
22 into the future. But based in April of '08, prices have
23 significantly dropped off 10 percent, as we have stated
24 before. So I started with the baseline and then the
25 first year prices are 10 percent lower. And then they

1 trend back up to the baseline average in 2010, based on
2 the assumption the economy is going to recover and
3 prices will get back to a normal level.

4 Q. So if I understand what you're saying, the
5 first 10 percent, if you will, is based on historically
6 what was going on. And the second 10 percent was based
7 on what was currently going on in the market; is that
8 right?

9 A. Well, there was no first 10 percent because
10 I'm starting with SBE -- starting with Pacific Rim
11 prices and I'm not using the SBE. That was just
12 Mr. Krumholz's comparison. My prices are 10 percent
13 down in 2008, in 2009 they are low and they recover back
14 in 2010.

15 Q. In your analysis, it's really only one 10
16 percent deduction which reflected the lowering of prices
17 from the historical Pacific Rim until what the current
18 market was when you did your appraisal?

19 A. Correct.

20 Q. Okay. Now, could you put up IT Exhibit 169
21 that was shown to you this morning. Could you put up
22 169, please. Mr. LaMont, they didn't give you a hard
23 copy of it, did they?

24 A. Oh, I do have 169. Yes, I do have a hard copy
25 of it.

1 MR. SCHWARTZ: May I approach, Your
2 Honor?

3 THE COURT: Is this 169?

4 MR. SCHWARTZ: Yes.

5 Q. (By Mr. Schwartz) Okay. You have that?

6 A. I have that now, yes. Thank you.

7 Q. There it is. Thank you. If you go to the
8 last page -- or I'm sorry, the second page. Now,
9 Mr. Krumholz spent a lot of time asking you about the
10 dates for Pacific Rim and when they published data. And
11 that you have concluded that Pacific Rim stopped
12 publishing data for redwood as of August of '07; is that
13 right?

14 A. Correct.

15 MR. KRUMHOLZ: Objection, Your Honor, I
16 just want to make sure we're clear. He determined that
17 just the other day.

18 MR. SCHWARTZ: He got to ask his
19 question. He got to ask his questions, Your Honor.

20 MR. KRUMHOLZ: I think it was a vague
21 question.

22 THE COURT: Okay. Just be sure you ask
23 the specific questions. Go ahead.

24 Q. (By Mr. Schwartz) Now, there are prices on
25 here for August 2007 through February 2008, correct?

1 A. There's a gap and then there's a number
2 starting back on the November.

3 Q. And where did you get the prices that are on
4 this chart from that you used in your analysis?

5 A. Okay. So from the very beginning, which was
6 back in 1999 through August of '07, those came from
7 Pacific Rim Wood Market as I got the data from Mendocino
8 Redwood. The numbers that are in November '07 and on
9 December, the first years are actually formulas that
10 were averages of 1 and 2 and 3 year averages of the
11 historic data.

12 MR. KRUMHOLZ: Your Honor, I'm going to
13 object to this. This is the very first time this has
14 ever been disclosed. He had ever opportunity to
15 supplement his testimony.

16 MR. SCHWARTZ: He --

17 THE COURT: He's trying to tell you how
18 he got those today. I understand that.

19 MR. KRUMHOLZ: No, that's not my --

20 THE COURT: You didn't want to him to
21 answer those questions.

22 MR. KRUMHOLZ: Actually, I'm agreeing
23 with that, Your Honor. Because he had never disclosed
24 it.

25 THE COURT: I agree with you that this is

1 the first time he's now saying. He said different
2 things in his deposition, said different things at other
3 times, but that goes to the weight to be given.

4 MR. KRUMHOLZ: No, I understand. But my
5 objection is this. In discovery, experts are required
6 to disclose the methodologies, the basis and to
7 supplement their deposition testimony. It's never been
8 supplemented. And for the first time we hear this
9 testimony today. That's why I didn't ask the question.
10 It should be stricken. I move to strike.

11 THE COURT: That's overruled. Let's move
12 on.

13 MR. SCHWARTZ: Thank you, Your Honor.

14 Q. (By Mr. Schwartz) Could you -- let me repeat
15 because I don't think you had a chance to finish your
16 answer. Could you explain where you got the prices for
17 the time period after August through February that's on
18 this chart?

19 A. Yes. There are formulas of averages of, I
20 think, two and three year averages of the historic data.
21 So when I was preparing my April report, I put those
22 formulas in. In preparing for this current disclosure
23 of data, I erroneously looked at the end and
24 misunderstood that they were until February when in
25 reality they were until August.

1 Q. And you yourself did the formulas to come up
2 with the prices, correct?

3 A. Yes, I did the formulas and the data is
4 correct for both my April and for my current opinion.

5 Q. Now, in terms of the \$100 to \$150 million
6 reduction that was talked about on direct from
7 Mr. Fleming's valuation, do you recall that you were
8 asked a hypothetical about if you assume the value on
9 October 1st was \$605 million and then log prices -- do
10 you recall what I'm referring to?

11 A. Yes, I do.

12 Q. Do you agree that was the only flaw in
13 Mr. Fleming's analysis, using the October date?

14 A. No, there's several flaws in Mr. Fleming's
15 analysis.

16 MR. KRUMHOLZ: I think this is outside
17 the scope. I just read from his previous testimony.
18 That's all it was. This is outside the scope of my
19 cross. I didn't go through Mr. Fleming's analysis.

20 MR. SCHWARTZ: I'm not about to go
21 through Mr. Fleming's analysis.

22 MR. KRUMHOLZ: You just asked him the
23 flaws.

24 MR. SCHWARTZ: I did not ask him the
25 flaws.

1 MR. JONES: Mr. Krumholz said if you
2 assume the only error was that it was done --

3 THE COURT: Right. So I think that's
4 responsive so let's move on.

5 Q. (By Mr. Schwartz) Now, generally in your
6 analysis, discount rates have the biggest impact on the
7 valuation, right?

8 A. Correct.

9 Q. Now, compared to changing prices, what is the
10 magnitude of difference between the change in a price
11 and a change in the discount rates affect on valuation?

12 A. A change in price may only have a --
13 particularly when you're looking at trend pricing may
14 only have -- may be not even probably 1 to 5 percent
15 change in value.

16 Q. And a change in discount rate?

17 A. Change in discount rate can have 20 percent
18 change in value.

19 Q. Okay. Let's move on now to harvest rates
20 briefly. You were asked several questions about the
21 analysis that you did or the input you did about 78
22 million board feet back in October or November, I
23 believe it was of 2007?

24 A. Correct, my November analysis.

25 Q. Right. Now, what analysis have you done as of

1 October or November, whenever that was, to base the 78
2 million number on?

3 A. At that time all I was provided was the
4 database from the Intralinks website, it was their
5 standing inventory. And I was -- developed my forecast
6 based on the stand data that I had to forecast at that
7 time. But we had no contact with the company or very
8 minimal contact until -- we had some in September, but
9 we had more contact with them in December. So it was
10 based on just the sort of first cut analysis that I had
11 without the advantage of additional input.

12 Q. And what information did you receive from the
13 company that led you to use a lower harvest rate in your
14 appraisal than the 78 million back in October and
15 November?

16 A. In December of '07, we had a very productive
17 meeting with Dr. Barrett and his staff and one of the
18 things we discussed were the harvest restrictions that
19 they were experiencing in particularly Freshwater and
20 Elk with the water boards and the fact that those were
21 at least two to five year restrictions that they were
22 struggling were that limited the amount of harvest that
23 they could get from that specific watershed.

24 Q. And how did that impact your harvest rates in
25 your appraisal?

1 A. So when I went back and remodeled for my
2 appraisal valuation, I put those harvest constraints
3 that the company was experiencing based on Dr. Barrett's
4 discussions into the model and that lowered the harvest
5 from 78 to the 74 even flow number.

6 Q. So when you did your appraisal, you had much
7 more complete detailed information that you didn't have
8 back in October and November?

9 A. Correct.

10 Q. In coming up with your harvest rates, did you
11 rely at all on the harvest rates that MRC told you they
12 would adopt?

13 A. No, I did not.

14 Q. And if MRC was not involved in this case,
15 would you have used the same harvest rates in your
16 appraisal that you reported to the Court and testified
17 about?

18 A. I would have developed similar -- the same
19 harvest scenarios like my 1 through 3 that I did
20 develop.

21 Q. And in fact, your harvest rate was higher than
22 the MRC harvest rate, correct?

23 A. Yes, all my runs are higher.

24 Q. And that would result in a higher value?

25 A. Correct.

1 Q. Let's talk a little bit of growth or value,
2 and I'm going to take the benefit of Mr. Krumholz' chart
3 here. Now, you did an analysis?

4 THE COURT: I don't think he can see
5 that. You might want to turn it.

6 Q. (By Mr. Schwartz) Is that okay?

7 A. Thank you.

8 Q. Now, your analysis is over here on this side,
9 correct?

10 A. Correct.

11 Q. And you agree that the -- with the -- with the
12 \$5.1 million number, right?

13 A. That was the value for '07, yes.

14 Q. For '07, correct.

15 A. Yes.

16 Q. Now, Mr. Krumholz tried to compare it with
17 harvestable timber.

18 A. Correct.

19 Q. And in fact, harvestable timber by MRC, what
20 MRC felt was harvestable?

21 A. Correct.

22 Q. Now, let me ask you, is the \$3.9 million
23 comparable to the 777 in Mr. Krumholz' analysis?

24 A. Not at all.

25 Q. Why not?

1 A. Because he's -- he's looking at just what is
2 the immediate harvest number that can be extracted based
3 on MRC's assumptions and it doesn't take into the total
4 forest and the total forest growth that would occur.

5 Q. Right. And the 3.9 is the total inventory and
6 the 777 is just harvestable?

7 A. Correct.

8 Q. Right? And that difference drives this entire
9 analysis because everything else is the same up until
10 here, correct?

11 A. Correct.

12 Q. Now, Mr. Krumholz also asked you to use -- to
13 divide the 777 --

14 A. I think it was the next page.

15 Q. Yes, thank you. Took the 510 valuation that
16 the Court -- the maximum valuation found by the Court --

17 A. Correct.

18 Q. -- and divided it by 777?

19 A. Yes.

20 Q. Do you think that's an appropriate analysis to
21 determine the price?

22 A. It's absolutely incorrect because it would
23 load all the value on just the harvestable trees and it
24 would give no value to any of the other acres which are
25 young growth or growing which would have significant

1 value. So his approach is flawed significantly.

2 Q. So the 510 that the Court found was a value
3 for the entire forest?

4 A. Correct, for every acre.

5 Q. For every acre. How many acres?

6 A. 220,000.

7 Q. Right. And 777 that Mr. Krumholz used is only
8 a small fracture of that that is currently harvestable,
9 correct?

10 A. Yeah, available based on MRC's analysis.

11 Q. Right. And you did an analysis, didn't you,
12 that showed both the increased value for total inventory
13 and harvestable, did you not?

14 A. Yes. The second page to this -- I don't know
15 what the exhibit number is.

16 Q. And Mr. Krumholz didn't show you that
17 analysis, did he?

18 A. No.

19 Q. Let's take a look, if we could, at MMX 190.
20 Can you see that or would you like a hard copy,
21 Mr. LaMont?

22 A. No, this is fine.

23 Q. Is this your analysis of the --

24 MR. SCHWARTZ: Your Honor, would you like
25 a hard copy?

1 THE COURT: Sure, if you've got it.

2 Q. (By Mr. Schwartz) Is this the analysis that
3 you prepared regarding the growth on the property and
4 how you valued it?

5 A. Yes, it is.

6 Q. Okay. And can you explain generally what you
7 did and then we'll get into a couple of the specifics.

8 A. The first analysis on this page looks at the
9 total inventory and this particular analysis looks at
10 conifer and hardwood. It looks at the harvest, the
11 growth above based on Dr. Barrett's proffer. And that's
12 where I come up with the 129 million feet of growth.
13 That's where I come up with the inventory for 1/1/08.

14 The second table there basically
15 calculates those numbers for the growth and the harvest
16 for 1/1/07 and 1/1/08. And it shows is the excess total
17 growth, which is 40 million each year. It then values
18 it based on the \$510 million value of the Court and
19 that's where I come up with the \$7 million.

20 Q. And then the third chart, that's based on just
21 what you described as available volume?

22 A. Right. There I looked at just available
23 conifer. And I looked at the harvest and the growth
24 that occurred over that time period. And it's, you
25 know, 9.7, approximately 10 million feet for the two --

1 each two years. Valued it. But I used a harvest rate
2 in this calculation which I think was approximately 344
3 per thousand and I came up with \$4.6 million, or round
4 that to \$5 million.

5 Q. And how did you come up with the 344 per
6 thousand?

7 A. That's taking the current harvest rate from my
8 model and dividing it by the total net revenue. So
9 that's the net NOY per MBF that I calculated from my DCF
10 model.

11 Q. And isn't it true that it's this analysis that
12 shows the \$5 million to the \$7 million range that you
13 added for growth?

14 A. Right. In the backwards looking -- you know,
15 going back to petition date, correct.

16 Q. Let's talk a little bit about why that's
17 necessary. Why is it that in looking back at January of
18 '07 you needed to do a calculation to value the growth
19 in between January and your final appraisal at
20 confirmation?

21 A. At the time the data -- the only data
22 available was the 1/1/07 inventory. And even though in
23 January and February '08 we made data requests for it
24 and it wasn't available. So the best assumptions I
25 could run with to make my analysis, based on the company

1 provided data, was the 1/1/07. So it didn't include
2 this additional 55 million board feet of growth. If I
3 had had that data available, my analysis might have gone
4 up by \$5 million from the value as of the confirmation.

5 Q. So your \$430 million number that you testified
6 about at confirmation might have been \$435 to \$437
7 million?

8 A. Correct.

9 Q. Do you consider that a material difference?

10 A. In the -- less than \$5 million is probably the
11 accuracy of my appraisal estimations because of all the
12 rounding and accuracy that you put into an assumption.
13 So less than \$5 million is probably not significant to
14 the overall value of the property.

15 Q. What about \$5 to \$7 million?

16 A. It's not significant.

17 Q. But is it significant when you're looking at
18 the difference in value between the two dates we're
19 looking at, January of '07 and October and the
20 confirmation date?

21 A. Yes, it is. Going back just to your previous
22 question, it's a 1 percent issue if it's looking at the
23 total value, but now when you're looking at value change
24 over the 18 months, now that \$5 million becomes a 10
25 percent issue. And that's why it's important to capture

1 that in a value change.

2 Q. So in a value change, over the 18 months of
3 the bankruptcy, this is worth 10 percent of the value
4 difference?

5 A. Yes.

6 Q. Where it's only a 1 percent issue for the
7 total value of the entire property?

8 A. Correct.

9 Q. Now, Mr. Krumholz asked you a lot of questions
10 about Doug Fir or at least some questions about Doug Fir
11 growth and whether that has any value. It's not
12 economic to harvest the Doug Fir now, correct?

13 A. Yes, given the current log prices in the
14 market area, they are below the cost of harvesting that
15 wood. But you have to remember there's kind of two
16 kinds of stands here. You have stands like the
17 Bear-Mattole, which are virtually all Doug Fir, where
18 that would be a negative operation to harvest those.
19 Stands like in Elk and Freshwater where there's a mix of
20 Doug Fir and redwood and you're going to harvest some
21 Douglas Fir in those stands, though you may lose a
22 little bit of money on those acres, you're making money
23 on the redwood that you're harvesting.

24 Q. Now, even in the Bear-Mattole, however, where
25 it's almost all Doug Fir, the fact that it can't be

1 harvested today, or it's uneconomical to harvest today,
2 that doesn't mean that it has no value or a negative
3 value, does it?

4 A. No, because the prices a year and a half ago
5 were like over \$500 a thousand for Douglas Fir and with
6 costs being 4, 450, it was profitable to harvest Douglas
7 Fir back in the beginning of '07. But as that market
8 has continued to decline, it's now unprofitable. But
9 those prices are going to return in two to three years
10 when the housing market recovers, so by 2010 the prices
11 will have recovered and it will be economical to harvest
12 Doug Fir in those regions, particularly the higher
13 quality Fir.

14 Q. So when you're considering valuation of the
15 timberlands today, you have to consider the value that
16 those Doug Fir stands will have a couple years down the
17 road, correct?

18 A. Correct.

19 Q. And you've done that?

20 A. Yes.

21 Q. Let's move to what you say is the most
22 important driver of the change in value, and that's the
23 discount rate. Again, we don't have that electronic.
24 Would you put up IT 160 that Mr. Krumholz put up
25 earlier. Now, this is the e-mail that you testified you

1 had never seen before, right?

2 A. Correct.

3 Q. It talks about yields and discount rates,
4 right? Do you recall that?

5 A. Yes.

6 Q. Do you know from reading this for the first
7 time whether when they -- when yield is used in this
8 e-mail, it's meant to be the same as the discount rate
9 or as you indicated, it's something different sometimes?

10 A. From reading the e-mail, I'm not sure. I
11 don't think it necessarily relates directly to discount
12 rate.

13 MR. KRUMHOLZ: I'm objecting to
14 speculation beyond that.

15 THE COURT: Okay.

16 Q. (By Mr. Schwartz) Now, can you put up MMX
17 189. Mr. LaMont, can you explain what this document is?

18 A. It's a summary of the comparable sales that I
19 used in determine -- used to determine my discount rate.
20 And the table lists all of the same sales that I listed
21 in my April report except for the addition of the last
22 SPI sale, which was a timberland transaction where
23 Sierra Pacific sold land back to Rayonier in March of
24 '08.

25 Q. And so you didn't have that one available when

1 you did your report?

2 A. No, that transaction hadn't closed.

3 Q. And now when you look at that transaction to
4 the chart, is it consistent with your view on the
5 discount rate?

6 A. Absolutely.

7 Q. And the graph shows the downward trend of the
8 discount rate; is that right?

9 A. Yes.

10 Q. Okay. Now, tell me why you thought that these
11 sales were comparable for purposes of determining a
12 discount rate.

13 A. These are all large transactions bought by
14 very knowledgeable buyers and sellers of commercial
15 timberland, so they're what I describe as sophisticated
16 purchasers. And they also are at the magnitude of
17 dollars from probably -- I think -- like \$200 million to
18 like \$600 million transactions. So they're quite large.
19 And so they're in the market for the same kind of
20 transaction that we would have here, given the current
21 subject property. So I felt they were appropriate based
22 on their nature and kind to determine a base discount
23 rate.

24 Q. And did you have information with respect to
25 these sales regarding the underlying operations, harvest

1 rates and things of that nature?

2 A. Yes. I was familiar with the pricing, the
3 harvest levels and the transactions. I participated as
4 a consultant in virtually all of these transactions.

5 Q. And so when Mr. -- when Mr. Krumholz was
6 asking you about comparable sales that you didn't have
7 harvest rates for and things of that nature, do you
8 remember that?

9 A. Yes.

10 Q. Those weren't the sales you used in
11 determining your discount rate, were they?

12 A. No, they were not.

13 Q. Those were sales you used in your comparative
14 sales approach valuation?

15 A. Correct.

16 Q. And that's a different analysis?

17 A. Different analysis.

18 Q. Mr. Krumholz didn't ask you about these
19 comparable sales, right?

20 A. No, he did not.

21 Q. And explain briefly to the Court what these
22 comparable sales show in terms of discount rates between
23 January '07 and the confirmation hearing.

24 MR. KRUMHOLZ: Your Honor, I guess it was
25 outside my cross, so I'll object as outside my cross,

1 just as Mr. Schwartz just established, I think, with the
2 witness.

3 THE COURT: Did he ask anything about
4 this chart?

5 MR. SCHWARTZ: He didn't ask about the
6 chart, he asked about how he got a discount rate and
7 this is how he got a discount rate.

8 MR. KRUMHOLZ: No, I asked him -- he was
9 saying about the comparable sales as to discount rate
10 that I hadn't asked him --

11 THE COURT: Well, it is true that you
12 asked him about those other comparable sales in
13 discussing the discount rate but you didn't question him
14 about the discount rate and you certainly are calling
15 into question his choice of the discount rate, aren't
16 you? So I think he's entitled to rehabilitate him on it
17 unless you think you didn't do any harm to him on
18 discount rate.

19 MR. KRUMHOLZ: I think I did do harm to
20 him.

21 THE COURT: Then I think you shouldn't
22 object to him rehabilitating him.

23 MR. KRUMHOLZ: I just wanted to follow
24 the Judge's instructions.

25 THE COURT: Okay. I think this is

1 standard rehabilitation on this issue which you did, in
2 fact, cross him on, not on this specific chart, but go
3 ahead.

4 MR. SCHWARTZ: Thank you, Your Honor.

5 Q. (By Mr. Schwartz) So I just asked you to
6 explain generally what you found from the comparable
7 sales in terms of the discount rate change from the
8 petition date to confirmation.

9 A. The discount rate has been falling and these
10 comparables confirm my experience and knowledge of the
11 market already. But basically back in late '06 discount
12 rates were really running about 7 percent in Oregon and
13 Washington and now in '07 they continue to drop and the
14 average that I calculated there was a 6 percent base
15 rate, which is what I used in my April report.

16 Now, doing the petition date estimations I was
17 using a 7 percent base rate which then was adjusted to 1
18 percent for the local market risk, which means that the
19 total discount rate I was using in my current analysis
20 was 8 percent.

21 Q. And why is it, in your opinion, that while we
22 have all these problems that Mr. Krumholz asked you
23 about, the housing crisis and the subprime crisis and
24 the credit crisis, why is it that notwithstanding those
25 events, that the discount rates have -- for timberland

1 properties have been going down?

2 A. Timberlands are a very good hedge against all
3 sorts of economic risks because of the inherent nature
4 the trees grow. God gives you three plus percent growth
5 rate. And there's the scarcity of timberlands and there
6 is an abundance of buyers out there. And so the
7 combination has -- as rates of T-bills and other
8 equitable -- you know, equitable -- other markets for
9 value, the rates have continued to decline with them.
10 They'll bottom out here probably shortly because I think
11 T-bill rates and things will eventually stabilize and go
12 back up.

13 But in the current market over the last year
14 to two years they have continued to decline as people
15 are seeking these safer investments in a competitive
16 market. So they're a hedge against these current
17 instabilities.

18 Q. Now, you based your opinion on the discount
19 rate on your comparable sales analysis, correct?

20 A. Right. Looking in the market and extracting
21 rates was the best way to determine what buyers and
22 sellers are doing.

23 Q. And did you do anything to confirm that what
24 you extracted from the comparable sales was consistent
25 with what others in the market were seeing in terms of

1 the decline in discount rates?

2 A. Yes, that's -- you know, a typical thing
3 you're going to do is check with other market
4 participants and other appraisers and confirm and look
5 at what their opinions are also. This is a universally
6 held opinion in timberland appraisers as the markets
7 have come down. It's been fairly dramatic in the last
8 year and a half, and so all of us discuss, you know,
9 where rates are and where they're going.

10 Q. And Mr. Krumholz asked you about some of your
11 conversations with Mr. Vickery, right?

12 A. Yes.

13 Q. And that was one of the other things you
14 discussed with Mr. Vickery, right?

15 MR. KRUMHOLZ: Your Honor, I object as
16 hearsay.

17 MR. SCHWARTZ: Your Honor, he opened the
18 door, he asked him about some of his conversations with
19 Mr. Vickery. You can't pick and choose.

20 MR. KRUMHOLZ: Actually, I didn't ask him
21 the substance. I asked if he spoke to him and I went
22 into the various Timber Star, which I objected to
23 yesterday.

24 THE COURT: The various what?

25 MR. KRUMHOLZ: Mr. Vickery, according to

1 Mr. LaMont's testimony, talked about the Timber Star. I
2 objected yesterday based on hearsay grounds. I had to
3 talk about that transaction. He also testified about
4 other comparables. I also objected as to hearsay. It
5 was overruled yesterday as to hearsay. I'm again
6 reurging my objection that he should not be able to talk
7 about what Mr. Vickery, a paid consultant in this case,
8 thinks about discount rates. And it's just rank
9 hearsay. It's -- I have not had an opportunity to
10 cross-examine him. And it's the same as these
11 PowerPoint sales materials. That's what they're relying
12 on, truly sales materials for a company that makes money
13 when the timber market is hot so they say it's hot.

14 THE COURT: Okay.

15 MR. SCHWARTZ: Your Honor, he asked
16 Mr. LaMont specifically about conversations with
17 Mr. Vickery. I don't see how it can be that he can ask
18 about certain conversations and not others.

19 THE COURT: Which conversations?

20 MR. SCHWARTZ: He asked him about the
21 Timber Star. I actually think it was in the same actual
22 conversation in a different topic. He asked him about
23 the Timber Star transaction and how that related to his
24 discount rate analysis.

25 MR. KRUMHOLZ: What I asked him was that

1 yesterday you indicated -- and this is just what was on
2 the record that you talked to Mr. Vickery about, the
3 Timber Star transaction. And then I said as to that
4 transaction you don't know the following. I didn't ask
5 him what Mr. Vickery told him. I said you don't know
6 the following. And I established what he didn't know
7 about the transaction. And then I went on to you also
8 mentioned some comparable sales that you talked with
9 him. That was yesterday over my objection. I didn't
10 ask him the substance of that conversation. And then I
11 said, what you don't know about those comparable sales?
12 I was careful not to ask him questions about hearsay.
13 We don't think it's appropriate.

14 THE COURT: Let's move on. Don't get
15 into hearsay.

16 MR. SCHWARTZ: Put up MMX 192.

17 MR. KRUMHOLZ: Is this in evidence?

18 MR. SCHWARTZ: It is.

19 Q. (By Mr. Schwartz) Mr. LaMont --

20 MR. KRUMHOLZ: Hold on one second, Steve.
21 I apologize. Okay. Go ahead.

22 Q. (By Mr. Schwartz) Mr. LaMont, do you
23 recognize Exhibit 192?

24 A. Yes, I do. I prepared this document.

25 Q. And can you tell me what it is?

1 A. It's a summary of the values based on
2 different scenarios that I ran and the resulting values
3 and it shows the discount rates.

4 Q. Okay. And so you did several different
5 scenarios to determine value that you have put on this
6 chart, correct?

7 A. Correct.

8 Q. And the -- can you just -- let's just walk
9 through -- let's just walk through each of these
10 quickly. What is the base case?

11 A. Base case is my April '08 appraisal values for
12 run 1 and run 3.

13 Q. So that's what you previously testified to at
14 confirmation, right?

15 A. Correct.

16 Q. Okay. And would you describe this, what's on
17 this chart, as a sensitivity analysis?

18 A. Yes, I would.

19 MR. KRUMHOLZ: Your Honor, this is
20 completely outside my cross.

21 THE COURT: What now?

22 MR. KRUMHOLZ: This is completely outside
23 my cross-examination. I didn't reference this document.

24 THE COURT: The mere fact that he didn't
25 reference this document doesn't make it outside the

1 cross-examination. I mean --

2 MR. KRUMHOLZ: That's fair enough.

3 THE COURT: But you certainly have called
4 into question his use of different -- I'm not sure yet
5 what any of this means. Base case apparently is April
6 8. Where is the -- and then you make adjustments to
7 this April 8th based on various different things.

8 MR. SCHWARTZ: That's what Mr. LaMont's
9 whole analysis is. And this is a summary of it. It
10 shows different values.

11 THE COURT: All right. I think that --

12 MR. KRUMHOLZ: I think what he's trying
13 to get in direct -- this is all in his proffer.

14 THE COURT: I agree. But I think it's
15 reasonable for him to have the opportunity to say what
16 the impact of the various opinions he has, what
17 mathematically. I mean, for no other reason that if I
18 agree with one of them, I don't have to calculate. If I
19 don't agree with them, it doesn't matter. So go ahead.
20 So this is just a calculation?

21 MR. SCHWARTZ: It is.

22 Q. (By Mr. Schwartz) Would you describe this as
23 a sensitivity analysis?

24 A. Yes, I would.

25 Q. Can you explain generally what a sensitivity

1 analysis is?

2 A. It looks at different scenarios and compares
3 them and sees the sensitivities to different changes and
4 assumptions.

5 Q. Okay. So just so we can walk through what
6 you've done, and for the Court, the first item says
7 "using 8 percent." If I'm right, I'll try and walk
8 through this quickly so we can wrap this up. That's
9 just taking what you did in your initial appraisal and
10 changing the discount rate to 8 percent with no other
11 changes, correct?

12 A. Correct.

13 Q. And if you look at the bottom chart on the
14 graph, that had the effect in run 1 of lowering the
15 value \$61 million and in run 3 of your three runs,
16 lowering it \$59 million, correct?

17 A. Correct.

18 Q. Okay. And the second item, you used 2007
19 prices with declines to trend and you came up with
20 values and that was the only change, right, and the
21 discount rate of 8 percent?

22 A. Correct.

23 Q. And making those changes again, because the
24 prices were lowered, it had less of an effect on the
25 value, correct?

1 A. Correct.

2 Q. And so in that case, the value of the
3 timberland was lowered \$51 million or \$49 million,
4 depending on run 1 and run 3, correct?

5 A. Correct.

6 Q. Okay. And then in 2007 prices with decline,
7 right, again, using 8 percent, but that's using even
8 lower prices, correct?

9 A. Correct.

10 Q. And that had an impact of negative \$44 and \$41
11 million?

12 A. Yes.

13 Q. And then 2007 prices with no decline, since
14 those prices are a little higher, they had a \$47 and \$43
15 million impact, negative again?

16 A. Correct.

17 Q. Right? And the last one is the Eel and Bear
18 restrictions and can you just explain what you did
19 there?

20 A. In '07 they were completing the watershed
21 analysis. And for the Upper Eel and the Bear-Mattole
22 Watershed areas. And so as of January you wouldn't have
23 been able to harvest for one to two years in those
24 areas, or very limited harvesting because of what they
25 call interim rules which would be restricting the

1 harvest levels. So I modeled about an 8 to 10 million
2 foot drop in harvest for the first two years and that's
3 why it's only in run 3 because run 3 is an even flow.
4 So you reduce the harvest for one to two years and then
5 it goes back up to an even flow, which is actually
6 slightly higher than the 74. I think it goes back to a
7 75, 76 million feet.

8 Q. Am I correct that the reason you did that
9 analysis was because if you were looking at January
10 2007, the company was not able, due to the watershed
11 restrictions to harvest in those areas?

12 A. Right. There was heavier restrictions than
13 they experience now.

14 Q. And that they experienced when you did your
15 April analysis?

16 A. Right.

17 Q. So you had to back out those areas, right?

18 A. Correct.

19 Q. And that had an effect of lowering the value
20 as of the petition date, just that issue of \$10 million?

21 A. Correct.

22 Q. Now, would you agree with the following
23 statement: Recent increases in U.S. Timberland property
24 values can be explained fully by lower discount rates?

25 A. Yes.

1 MR. SCHWARTZ: I have no further
2 questions, Your Honor.

3 MR. JONES: Your Honor, I have just a
4 few, if I may.

5 MR. SCHWARTZ: I thought I was supposed
6 to cover them.

7 THE COURT: I thought he was, too.

8 MR. JONES: Your Honor, what I said was I
9 thought Mr. Schwartz would cover these, but there are
10 just very few things he didn't.

11 CROSS-EXAMINATION

12 BY MR. JONES:

13 Q. Mr. LaMont, Evans Jones on behalf of Bank of
14 America. Mr. LaMont, I want to return to Mr. Krumholz'
15 chart here. And you've already mentioned that you think
16 there's an error in that analysis because it assumes all
17 the value is in the harvestable redwoods; is that
18 correct?

19 A. Correct.

20 Q. Even if all the value were in the harvestable
21 redwoods, would that methodology be correct?

22 A. No.

23 Q. And why not?

24 A. The value per MBF is not -- you can't
25 allocate -- if the harvestable value was on those board

1 feet you would -- I'm trying to come up with the right
2 description for you.

3 Q. Would it be fair to say that one of the
4 problems with that is it doesn't attribute any value to
5 the land at all?

6 MR. KRUMHOLZ: I object as leading, Your
7 Honor.

8 MR. JONES: I think Your Honor has
9 already ruled we can lead experts, especially one who's
10 apparently a little confused by my question.

11 MR. KRUMHOLZ: Especially when he doesn't
12 know the answer that he wants him to give.

13 A. I said earlier --

14 THE COURT: I already gave that answer so
15 if nobody knows the answer to that question, that answer
16 has already been given. Now, I think there may well be
17 a figure that has to do with the ratio of value to
18 harvestable timber and that may be a figure that
19 appraisers might use for various things but it wouldn't
20 be necessarily a way to value. I mean, it might be
21 something --

22 THE WITNESS: You wouldn't allocate all
23 that value.

24 THE COURT: -- that people might use in
25 the business to allocate how they do things and

1 everything, but it wouldn't necessarily be a value.
2 Now, you-all can correct me in your argument about that,
3 but moving on. The other thing is that you're comparing
4 my number to the million feet that the -- that the buyer
5 is attributing to it. Those may be apples and oranges.
6 You don't know what my number was based on.

7 MR. KRUMHOLZ: Your Honor, I actually
8 think in closing we're going to be able to connect the
9 dots.

10 THE COURT: Right. So I mean, there are
11 lots of problems with the --

12 MR. KRUMHOLZ: But certainly on the first
13 one.

14 THE COURT: Go ahead.

15 Q. (By Mr. Jones) Mr. LaMont, just to make sure
16 we're clear. Would you agree that this methodology
17 attributes no value to raw land?

18 A. Yes, I do.

19 Q. And in your opinion, does the raw land have
20 value?

21 A. Absolutely. I think the 770 million feet is
22 just what MRC thought they could harvest in like the
23 next ten years, it doesn't represent all the volume over
24 all of the property forever.

25 Q. Now, you mentioned what MRC thought and that

1 actually leads me to my last series of questions.

2 Mr. Krumholz has made quite a bit of the fact that you
3 got some information and heard some opinions perhaps
4 from MRC. And we have the very dramatic, you know, that
5 man over there. And I think the words he used were
6 things like funneling information and so forth.

7 You received some data and opinions from MRC,
8 didn't you?

9 A. Yes, I did.

10 Q. You received data and opinions from other
11 sources, didn't you?

12 A. Yes, I did.

13 Q. In fact, you received data and opinions from
14 the indenture trustee's experts that you considered,
15 correct?

16 A. Correct.

17 Q. As an appraiser, is it fair to say that you
18 want all the data and all the opinions you can get your
19 hands on?

20 A. Absolutely.

21 Q. Okay. Now, in considering those, did you give
22 the opinions from MRC, your analysis to determine
23 whether they were correct and accurate?

24 A. I evaluated their analysis but I didn't give
25 them as much weight as other aspects of the modeling

1 that I did.

2 Q. And would it be fair to say that you evaluated
3 their opinions and data the same way you did every other
4 piece of information that you collected in reaching your
5 opinion?

6 A. Yes, it is.

7 Q. So this is your opinion, this is not just
8 funneling information from MRC?

9 A. Yes.

10 MR. JONES: Thank you. No further
11 questions, Your Honor.

12 MR. NEIER: I'm not asking questions. I
13 want him to step down and get the next witness up there.

14 THE COURT: I have to ask a couple of
15 questions. We all now know what your opinion is about
16 the change in discount, which is what's the dollars if
17 you change the discount, 100 basis point, 1 percent.
18 The dollars are what?

19 THE WITNESS: \$60 million just if you
20 look at --

21 THE COURT: \$60 million for one base.
22 Now, but what I'm not quite sure about is your opinion
23 on the change in pricing. Now, there are two ways you
24 can change the price. You can change the starting point
25 and you can change the rate in which the price either

1 increases or remains flat or decreases or whatever.

2 What is the impact on the appraisal for changing the
3 starting point of the -- of the price.

4 THE WITNESS: It's \$10 million would
5 raise the value --

6 THE COURT: For what?

7 THE WITNESS: For the change in price.
8 Just price only.

9 THE COURT: If you changed the price, how
10 much for a starting point? How does it impact the
11 change in the value? In your case you changed the
12 starting point of the price between the petition date
13 and confirmation date?

14 THE WITNESS: The price -- the level --
15 yes, the --

16 THE COURT: The price level went up how
17 much or went down from -- in other words, going
18 backwards, it went up; is that correct?

19 THE WITNESS: Going backwards the price
20 was higher in June of '07.

21 THE COURT: How much?

22 THE WITNESS: In my analysis it was \$15
23 to \$20.

24 THE COURT: And that \$15 to \$20 change
25 accounted for a \$10 million change in the value?

1 THE WITNESS: Yes. And can I explain
2 why?

3 THE COURT: Yes.

4 THE WITNESS: Okay. Because the level
5 was higher, but then it goes down to the same trend and
6 it returns to trend.

7 THE COURT: In your analysis?

8 THE WITNESS: In my analysis.

9 THE COURT: But if you just assume -- but
10 taking a starting point, if you have a different
11 starting point for price.

12 THE WITNESS: Yes.

13 THE COURT: And you assume a constant
14 increase of 3 and a half percent.

15 THE WITNESS: Yes.

16 THE COURT: How does that impact the
17 change in the value? That's not what you did, but how
18 would that impact the change in the value?

19 THE WITNESS: It has the effect of
20 amplifying the value change because you're starting from
21 a higher point and going higher, where my analysis just
22 stays on trend.

23 THE COURT: So you know, have you done
24 the calculation?

25 THE WITNESS: I don't think --

1 THE COURT: How that would change?

2 THE WITNESS: No, I have not done.

3 THE COURT: Would it be profoundly more
4 than \$10 million?

5 THE WITNESS: It probably would be more
6 like the \$15 million, which is just using 2007 prices
7 with no decline.

8 THE COURT: Okay. You can step down.

9 MR. PACHULSKI: Your Honor, this is Isaac
10 Pachulski, Stutman, Treister & Glatt for certain
11 noteholders. And I don't want to overstay my welcome,
12 but if the Court and the parties will indulge me, there
13 were two answers that the witness gave in his redirect
14 that I'd like to recross or whatever the litigators call
15 it. I'll understand if the Court says no because I'm
16 only on the phone and I'm not there but I couldn't hand
17 Mr. Krumholz notes and I didn't want to bombard him with
18 Blackberries while he was asking questions. But I'm
19 just going to ask about two very specific answers if the
20 Court will permit it and the witness can hear me.

21 THE COURT: That wasn't really the way we
22 do it, but I'll let you ask two questions. Two
23 questions. You have counsel in the courtroom, don't
24 you, that's with you?

25 MR. PACHULSKI: Yes, but the problem is

1 one of communications. I don't want to make a big deal
2 of this.

3 THE COURT: I'll let you ask two
4 questions.

5 CROSS-EXAMINATION

6 BY MR. PACHULSKI:

7 Q. Question number one: Mr. Young -- I'm sorry,
8 Mr. LaMont, you've testified about a meeting with
9 Mr. Barrett in December of 2007 that affected your
10 projection of a harvest rate of 78 million board feet.
11 Isn't it true that if you were valuing this property in
12 January of 2007 you would have not learned whatever you
13 learned at that meeting in December of 2007?

14 A. That would be true.

15 Q. Okay. The second question: I believe I heard
16 you give an answer that suggested that a change in log
17 pricing would have a 1 to 5 percent change in value
18 roughly. Isn't it true that that's inconsistent with
19 the Court's finding that if you change Mr. -- if you
20 changed only log pricing in Mr. Fleming's October 2007
21 appraisal, his \$600 million number would have been
22 reduced by \$100 to \$150 million? And that's a yes or no
23 answer.

24 A. If that was the only change in his analysis,
25 yes, that is true.

1 Q. And isn't that more than 1 to 5 percent?

2 A. Yes, that is.

3 Q. And isn't it, in fact, 16 to 25 percent? And
4 I'm done with my questions after this one.

5 A. I think 150 is, yeah, that percentage.

6 Q. So my math is right?

7 A. Yes.

8 MR. PACHULSKI: Thank you.

9 MR. JONES: Your Honor, I have to ask
10 this because I think there's a misimpression.

11 CROSS-EXAMINATION

12 BY MR. JONES:

13 Q. Mr. LaMont, is it fair to say that changes in
14 log pricing have a much greater impact on Mr. Fleming's
15 analysis than yours because Mr. Fleming's analysis is
16 over a much shorter time period?

17 A. Absolutely.

18 Q. And that accounts for the difference that you
19 were just asked over the phone?

20 A. Correct.

21 MR. JONES: Thank you. No further
22 questions, Your Honor.

23 THE COURT: You can step down.

24 MR. NEIER: Get out of there.

25 THE COURT: It's about 10:30, I think we

1 ought to break. And then I would assume we'll do a
2 lunch today and then start back up. But we'll take a
3 short break now. Ten minutes.

4 (A recess was taken.)

5 THE CLERK: All rise.

6 THE COURT: Be seated. Somebody call
7 in the --

8 MR. NEIER: Your Honor, David Neier on
9 behalf of Marathon. We call Dr. Barrett.

10 THE COURT: Okay.

11 MR. JONES: Your Honor, I'm sorry. Could
12 I ask a procedural question. Last night there was some
13 question about the indenture trustee not having finished
14 its case in chief because they might have to call the
15 Maxxam witness. I just want to confirm that the
16 indenture trustee has now rested on their case in chief.

17 THE COURT: Other than rebuttal; is that
18 correct?

19 MR. STRUBECK: That's true, Your Honor.

20 MR. JONES: Thank you, Your Honor.

21 THE COURT: All right. Dr. Barrett,
22 raise your right hand to be sworn.

23 JEFFREY BARRETT,
24 having been first duly sworn, testified as follows:

25 MR. NEIER: Your Honor, Dr. Barrett's

1 proffer, I think, is tab 6 in your materials. And it's
2 also been marked as MMX Exhibit 92 and I believe its
3 submission has been agreed to.

4 THE COURT: Okay.

5 MR. NEIER: Somebody get me the number.

6 THE COURT: It's one of those that's been
7 admitted?

8 MR. NEIER: It's now MMX 93 is my
9 understanding.

10 THE COURT: I mean, we went through a
11 bunch of them that were uncontested.

12 THE CLERK: That's objected to.

13 THE COURT: It's objected to.

14 MR. NEIER: It was objected to because it
15 was a reserved number but now it's Dr. Barrett's
16 proffer.

17 THE WITNESS: I do have a copy, thank
18 you.

19 THE COURT: Well, let's just make it real
20 clear. Are you-all objecting to Dr. Barrett's proffer?

21 MR. GERBER: No, Your Honor.

22 THE COURT: Okay. So 93 which was
23 originally objected to is now a designated number and
24 it's not objected to and it's admitted. All right. Go
25 ahead.

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DIRECT EXAMINATION

BY MR. NEIER:

Q. Good morning or afternoon, whichever it is,
Dr. Barrett.

THE COURT: It's morning, depending on
where you're from.

A. Good morning, Mr. Neier.

Q. Just once again for the -- since you're the
chief executive officer of Scopac, I just ask you if you
could take a look at what's now been marked as MMX 93
and ask you, is that your declaration in these
proceedings?

A. Yes, sir, it is.

Q. And it's true and correct, as far as you know?

A. Yes, sir, I found one very small math there,
but we'll probably get to that somewhere.

Q. I think we will. There's a dollar sign blank.
Is that the one you're referring to?

A. Yes, and also the price for old growth redwood
at the new adjusted SBE is off by \$10.

Q. Okay. So when we get there maybe we can fix
those problems.

A. Yes, sir.

Q. Now, Dr. Barrett, you are the chief executive
officer for Scotia Pacific Company; is that right?

1 A. Yes, sir.

2 Q. Also known as Scopac?

3 A. Yes, sir.

4 Q. And I don't want to say it in a way that is
5 wrong but would it be fair to describe you also as a
6 chief scientist for Scopac?

7 A. Yes, sir.

8 Q. And as part of your duties and
9 responsibilities do you manage Scopac's timber
10 production?

11 A. Yes, sir.

12 Q. And are you responsible for the growth and
13 yield modeling of Scopac's forests and for tracking the
14 inventory of Scopac's forests?

15 A. Yes, sir.

16 Q. In connection with tracking Scopac's forests,
17 do you use the Kryptos growth model?

18 A. My staff do, yes, sir.

19 Q. And what is the Kryptos growth model?

20 A. Kryptos is a model that was developed out of
21 UC Berkley. It was designed specifically for North
22 Coast forests. It's what's called a growth model or a
23 growth and yield model and it's a way to calculate how
24 much forests are growing over time.

25 Q. And is the use of that model generally

1 accepted by the California State Agencies?

2 A. Yes, sir.

3 Q. And with respect to the Kryptos growth model,
4 you said your staff uses it. Is that under your
5 supervision?

6 A. Yes, sir.

7 Q. Your personal supervision?

8 A. Yes, sir.

9 Q. And were you able to determine a growth rate
10 for Scopac's timber using the Kryptos growth model?

11 A. Yes, sir.

12 Q. And what is that growth rate?

13 A. Understand that within Kryptos, growth rates
14 are applied to different tree types which in our
15 inventory database are called strata and if you average
16 the growth rate across all strata it averages
17 approximately 3.5 percent.

18 Q. And is it fair to say that that was the growth
19 rate that the forest experienced in your -- you know, in
20 the company's view in the year of 2007?

21 A. Yes, sir.

22 Q. And is it also true that you expect that to be
23 the approximate growth rate for 2008 of the Scopac's
24 timberlands?

25 A. Yes, sir.

1 Q. And with respect to the year 2007, I believe
2 you've already testified at the confirmation hearing
3 that the harvest -- the amount that was harvested was
4 74.2 million board feet; is that correct?

5 A. Yes, sir. Just to be clear, 74.2 million of
6 conifer harvest and that's net, meaning that it's
7 been -- deductions for breakage and so on are taken out
8 of it, so we would say 74.2 million net conifer harvest.

9 Q. So let's sort of break that down. You harvest
10 more, approximately 88 million board feet; is that about
11 right?

12 A. No, sir, not correct.

13 Q. Okay. How much would you typically -- how
14 much did you harvest just in gross volume, if it's even
15 measured that way, in 2007?

16 A. The gross harvest is approximately 8 percent
17 greater than the net harvest. So if you took 74.2
18 million and multiply it by 1.08, you would have a pretty
19 good estimate of the gross volume that was harvested.

20 Q. And that number is 74.2 million, the net
21 number?

22 A. The net number is 74.2, yes, sir.

23 Q. And by conifer what you're saying is the soft
24 woods; is that right?

25 A. Yes, sir.

1 Q. So that would include redwood and Doug Fir?

2 A. Yes, sir. And another group called white
3 woods, which on our land is primarily a Fir species.

4 Q. Okay. So Doug Fir, whitewood and redwood?

5 A. Yes, sir.

6 Q. And is it also the case that you will harvest
7 approximately that amount in 2008 as well; that is,
8 approximately 74.2 million board feet net conifer
9 volume?

10 A. Yes, sir. We're anticipating harvest of
11 approximately 75 million board foot, quite close to
12 74.2.

13 Q. And when we talk about harvesting the net
14 conifer volume, is that something that is important to
15 establish for the company?

16 A. Yes, sir.

17 Q. Is there any requirement on the company to
18 report with accuracy the amount of net conifer volume
19 that has been harvested each year?

20 A. Yes, sir.

21 Q. And if you could explain why that's important
22 to the company.

23 A. Well, first, understanding that we have a very
24 close relationship with our best customer, Palco, it's
25 important for us to have accurate projections of harvest

1 so that the mill can plan its operations, so that, in my
2 mind, would probably be the most important reasons.

3 Secondly, it will tell us a great deal about the
4 revenues we expect to generate for the year. There's
5 some uncertainty about log prices but nonetheless, one
6 can come up with a reasonable projection of revenues,
7 base your budgets accordingly. Third, we're required to
8 report our harvest to the State Board of Equalization to
9 pay our taxes.

10 Q. That's the timber yield tax?

11 A. Yes, sir.

12 Q. And the SBE price set by the State Board of
13 Equalization, that's primarily to derive the amount of
14 revenue that's -- that the tax revenue that the
15 government is going to receive, correct?

16 A. Yes, sir.

17 Q. Are there any other reasons that it's
18 important to get the harvest -- the net conifer harvest
19 volume correct?

20 A. Maybe the last thing might be just general SCC
21 reporting. Since our debt is publicly traded we report
22 our harvest every year so certainly we would want to get
23 those filings correct.

24 Q. Are you also required to file any
25 certifications of the harvest with respect to the

1 indenture and the timber notes?

2 A. I'm not sure that we're -- yes, we are
3 required to report harvest, yes, sir.

4 Q. So you're required to sign a statement
5 verifying Scopac's standing timber inventory; is that
6 correct?

7 A. Yes, sir. And that's why I hesitated. Let's
8 not get those confused. Inventory is the tree standing
9 on the ground, harvest is the amount that's delivered
10 each year. And I certify the inventory each year. But
11 as I recall, we are required to report our harvest
12 relative to the indenture as well.

13 Q. And if you report the harvest for -- sorry. I
14 apologize. If you report the inventory for 2007, you
15 have to certify that to the timber notes; is that right?

16 A. Yes, sir.

17 Q. And you have to do the same for 2008?

18 A. Yes, sir.

19 Q. And that's something that you sign?

20 A. Yes, I do.

21 Q. If you can take a look at Exhibit A of your
22 proffer, which has now been marked as Exhibit 93,
23 MMX 93.

24 A. I'm there.

25 Q. Okay. Looking at Exhibit A of MMX 93, can you

1 tell me what this is?

2 A. Yes, sir. This is the annual inventory
3 calculation or a spreadsheet that's done in January of
4 each year. This particular one is for January of '07.

5 Q. And you signed this, this document -- as I
6 point the laser directly at my chest. I'm going to turn
7 it around. You signed this on January 17th, 2007; is
8 that right?

9 A. Yes, sir.

10 Q. And that's the day before Scopac filed for
11 bankruptcy, correct, or the day of?

12 A. Yes, sir.

13 Q. And there are other signatures on this as
14 well. Who are these people?

15 A. Sam Boyd is our director of asset management.
16 He runs the GIS and modeling group, so his staff would
17 have been the ones doing most of the calculations. Jim
18 Adams is an RPF, registered professional forester. He
19 leads the forester group. He has very extensive
20 background in inventory analysis and modeling and so
21 he's directly involved. And Eric Johnson, the last
22 name, an inventory forester. I believe Eric also is a
23 registered professional forester. He's the one who
24 actually does the computer modeling of Kryptos and so we
25 have all four of those people sign.

1 Q. And if you could tell me, what are these rows?

2 MR. GERBER: Your Honor, we're pretty
3 well past the ten minutes.

4 MR. NEIER: This is not my witness. This
5 is not my witness. I called him adversely. I'm the
6 creditor, he is the debtor. I'm not limited to ten
7 minutes.

8 THE COURT: I think that's probably true.

9 MR. KRUMHOLZ: They're each on the same
10 side.

11 MR. NEIER: That's ridiculous. He's not
12 my witness. I'm the creditor and he's the debtor. I
13 deposed him.

14 THE COURT: The ten-minute rule was
15 something that was agreed to. However, he's not his
16 witness. I mean.

17 MR. NEIER: I didn't prepare him.

18 THE COURT: You-all called other
19 witnesses that were adverse also. Now, whether he's
20 actually adverse we can argue about.

21 MR. KRUMHOLZ: That's a huge difference.

22 THE COURT: There's no question he was
23 adverse in the confirmation hearings.

24 MR. KRUMHOLZ: He's not adverse as to
25 507(b) in no way, shape or form.

1 MR. NEIER: I didn't prepare him.

2 THE COURT: Hold it. You can't lead him
3 perhaps but you can still question him more than ten
4 minutes because this is not the proffer you prepared for
5 him.

6 MR. NEIER: Absolutely not, Your Honor.

7 THE COURT: If you have a proffer that
8 you'd like to prepare for him, I would be happy to
9 accept that rather than the questions. But go ahead,
10 question the witness.

11 MR. NEIER: Thank you.

12 Q. (By Mr. Neier) And is this the inventory that
13 you certified to the timber notes; that is, Exhibit A to
14 your proffer?

15 A. Yes, for January of '07, sir.

16 Q. And can we look at Exhibit B. And is this the
17 inventory that you certified with respect to the timber
18 notes for 2008?

19 A. Yes, sir.

20 Q. And once again, this is your signature here?

21 A. Yes, sir.

22 Q. And this is the signature of Mr. Boyd and
23 Mr. Johnson?

24 A. Yes, sir.

25 Q. Okay. Now, there are various rows here. Can

1 you briefly describe, what are these rows?

2 A. Yes, sir. Scopac not only owns its own
3 timberlands, it also owns the timber rights to various
4 other parcels. So what we've done in our inventory
5 analysis is broken out each of those individual timber
6 holdings, if you will. So by example, the top row is
7 land that is owned by the City of Eureka for which
8 Scopac has the timber rights, so it's not our land but
9 it's our timber and so we did an analysis of that
10 parcel's timber and so on and so forth.

11 THE COURT: And I have to interrupt. So
12 what in the world does the garbage have to do with that?

13 THE WITNESS: The City of Eureka
14 historically chose to bury its garbage out in
15 timberlands. We apparently arranged for that but
16 retained the timber rights for the portion of the dump.

17 THE COURT: You have the timber rights on
18 the garbage dump. Go ahead.

19 Q. (By Mr. Neier) And as you look at these
20 various rows, this one right here, this is the third row
21 on Exhibit B. It's by far the largest; is that correct?

22 A. Yes, sir.

23 Q. And this is the Scopac timberlands owned by
24 Scopac, correct?

25 A. Yes, sir.

1 Q. And the -- you have a total net here in the
2 last column. Is that the total net inventory for the
3 forest that you certified to in 2008?

4 A. Yes, sir.

5 Q. And that's a higher number, correct, a higher
6 inventory number than appeared in 2007? We can switch
7 back to Exhibit A for a second. The same number,
8 4,264,000,000; is that correct?

9 A. Yes, sir.

10 Q. And in Exhibit B, if we go back to Exhibit B
11 it's 4.3 billion?

12 A. Yes, sir.

13 Q. So higher by 100 million board feet
14 approximately?

15 A. Okay. Approximately. It looks closer to
16 about 40, 55, something like that.

17 Q. 55. I'm sorry.

18 A. Certainly higher.

19 Q. Certainly higher. And when you go down to the
20 grand totals; that is the grand total on Exhibit A,
21 which is the 2007 inventory, and the grand total in the
22 2008 inventory, the 2008 inventory is higher than the
23 2007 inventory, correct?

24 A. Yes, sir.

25 Q. Now, if I could direct your attention to

1 paragraph 11 of your proffer.

2 A. Yes, sir.

3 Q. Is it fair to say that you just performed an
4 analysis and did the calculations as to the differences
5 between your 2007 inventory and your 2008 inventory, is
6 that what you did?

7 A. Yes, sir.

8 Q. And what did you conclude with respect to the
9 inventory from 2007 to 2008?

10 A. That during that one-year period, the
11 inventory increased by approximately 55.5 million board
12 foot for all tree species. And approximately 36 million
13 board feet of conifer.

14 Q. And then with respect to second growth
15 redwood?

16 A. That there was approximately 6.8 million of
17 growth of second growth redwood.

18 Q. And would you describe 6.8 million in second
19 growth redwood from 2007 to 2008 in a 4 billion foot
20 forest or 4 point something billion foot forest a modest
21 number?

22 A. Yes, sir.

23 Q. And with respect to old growth redwood, was
24 there an increase or a decrease from 2007 to 2008?

25 A. There was a decrease.

1 Q. And how much?

2 A. Approximately 1.3 million board feet.

3 Q. An even more modest number; is that fair to
4 say?

5 A. Yes, sir.

6 Q. And when you look at these numbers, can you
7 estimate the total amount of increase from 2007 to 2008
8 in the volume of timber that would be delivered to a
9 mill?

10 A. I'm sorry, I'm not sure I understand your
11 question, Mr. Neier.

12 Q. You know what, I'm going to get it wrong so
13 I'm just going to point you to paragraph 12 of your
14 proffer and ask you generally, what did you mean when
15 you said that the total growth of Scopac's timber in
16 year 2007 was approximately 124.8 million board feet,
17 not 110.2 million board feet?

18 A. Sure. And this is a change from the proffer
19 that I offered earlier that otherwise was similar in
20 many respects.

21 Q. That was the proffer in connection with the
22 DIP financing?

23 A. Yes, sir.

24 Q. B of A DIP financing -- no, it was the Lehman
25 DIP financing.

1 A. I believe that's correct, sir. The amount
2 that our computer modeler reduced the forest inventory
3 to account for harvest was actually about 88.8 million
4 board feet. But the amount of harvest that was recorded
5 at the lumber mills where we sent the logs was 74.2
6 million. So this paragraph was designed to show that
7 the volume that was recorded as delivered to mills was
8 not the same as the amount of growth that was removed
9 from the inventory to account for harvesting.

10 Q. So you removed more growth than you harvest
11 essentially?

12 A. Yes, sir.

13 Q. Now, were you able to perform a financial
14 analysis using the SBE prices that you talked about
15 before to determine how much more growth in dollars
16 there was in the forest?

17 MR. GERBER: Objection.

18 THE COURT: What's the objection?

19 MR. GERBER: He's asking a question about
20 a financial analysis. It's not clear to me whether he's
21 calling the witness as an expert witness and I'd like to
22 clarify what it is he's asking the witness.

23 MR. NEIER: Well, since the proffer is
24 already in evidence, this is all in evidence but I'm
25 just -- I'm -- the proffer wasn't prepared by me so I'm

1 asking the witness about it.

2 THE COURT: I think it's a fair question.
3 I mean, I think what you're asking, why don't you just
4 go to the proffer then.

5 MR. NEIER: I am.

6 THE COURT: I don't think you need to be
7 specific about the questions because I don't think -- I
8 think he is right that he's got to be careful not to let
9 you expand things into areas that he's not an expert.

10 MR. CLEMENT: Your Honor, the
11 cross-examination will deal with whether the witness is
12 an expert. To avoid have to voir dire him on that now,
13 as long as Counsel sticks to what the affidavit actually
14 says.

15 THE COURT: Okay. Go ahead.

16 Q. (By Mr. Neier) Can you turn to paragraph 14 E
17 of your -- of your proffer?

18 A. Yes, sir.

19 Q. And can you tell me, using SBE prices, that is
20 the SBE prices that were in effect as of January 1,
21 2008, were you able to calculate the dollar value, if
22 you will, of the growth of the -- in the forest?

23 A. Yes, sir.

24 Q. And what was that number?

25 A. Approximately \$9.6 million.

1 Q. And if you were to use -- you're familiar with
2 how SBE prices are set, that is, by the State Board of
3 Equalization?

4 A. Yes, sir.

5 Q. And are they set every month or some different
6 period?

7 A. They're set twice yearly.

8 Q. And have they been set since the prices that
9 are in effect as of January 1, 2008?

10 A. Yes, sir.

11 Q. And what are those new prices?

12 A. The price of redwood dropped approximately
13 \$130 per thousand. The price of Douglas Fir dropped
14 approximately \$70 per thousand. So a fairly significant
15 decline in the SBE values for logs.

16 Q. So about 13 percent for redwood, if I'm
17 guessing? Does it compute or not?

18 A. I haven't done the math. I'll take your word
19 for it.

20 Q. So if you use these new prices, that is, the
21 prices that will be in effect as of July 1, 2008; is
22 that when the new prices come into effect?

23 A. Yes, sir.

24 Q. They haven't come into effect yet, correct?
25 Well, I guess they have because now we're in early July,

1 right?

2 A. Yes, sir.

3 Q. Okay. So as of July 1, 2008, which is
4 literally the second day of this hearing, these new
5 prices came in effect?

6 A. That is correct.

7 Q. And if you were to use the new prices that
8 came into effect, what would be the total amount of
9 dollar value that was added of growth that was added to
10 Scopac's inventory?

11 A. Yes. I actually estimate that in paragraph
12 15-E in my proffer at approximately \$6.8 million.

13 Q. Somewhere between \$5 and \$7 million, correct?

14 A. Yes, sir.

15 Q. Now --

16 THE COURT: 6 point how much?

17 THE WITNESS: Approximately 6.8.

18 MR. NEIER: This is in paragraph 15-E of
19 the witness's affidavit, Your Honor.

20 Q. (By Mr. Neier) Now, this is about the growth
21 and the inventory that's happened from January 1, 2007
22 to January 1, 2008; is that correct?

23 A. Yes, sir.

24 Q. And I think you already testified that you
25 expect a similar growth in the inventory of the forest

1 from January 1, 2008 to January 1, 2009; is that
2 correct?

3 A. Yes, sir.

4 Q. And that's because you're harvesting
5 approximately the same amount in 2008 as you harvested
6 in 2007, correct?

7 A. Yes. And also because we expect comparable
8 growth rates in our timber strata for this year compared
9 to last year.

10 Q. And the prices that just went into effect
11 yesterday, they're going to be the prices for the timber
12 that's growing in the forest or the growth in the
13 inventory in 2008, correct?

14 A. The current SBE prices will be in effect from
15 July 1 through December 31st of this year, sir.

16 Q. Now, in addition to the growth in the
17 inventory of the forest, that is the total net conifer
18 inventory, there's also been growth in the amount of
19 inventory that could have been harvested by the company
20 in 2007; is that correct?

21 A. Yes, sir.

22 Q. And what is that due to?

23 A. It's due to watershed analysis.

24 Q. And what is watershed analysis?

25 A. Watershed analysis is a science-based process

1 that was established by our habitat conservation plan.
2 Our habitat conservation plan started out in 1999 with a
3 very conservative and restricted set of measures called
4 the interim measures. The company only agreed to the
5 use of those interim measures if there was a process by
6 which further science would be used to develop some
7 final set of prescriptions. That process is watershed
8 analysis. It's been ongoing since 1999. In the
9 calendar year 2007 two areas of the Scopac timberlands
10 were subject to, or I guess you could say, had approved
11 by the agencies reductions in restrictions from the
12 interim measures, given the completion of watershed
13 analysis for those areas.

14 Q. And by a reduction in the interim measures,
15 that increases the amount of land that Scopac is able to
16 harvest; is that correct?

17 A. Yes, sir. In other words, an acre that
18 historically since 1999 we may not have been allowed to
19 harvest or harvest only in a very limited way, after
20 watershed analysis is available for harvest or partial
21 harvest. And that's the increase in availability, which
22 is separate, of course, from any increase in growth per
23 se. It's just whether or not the availability has
24 changed.

25 Q. Okay. And were you able to perform -- what

1 were the two areas that were subject to this watershed
2 analysis that resulted in additional areas that Scopac
3 can now harvest?

4 A. One area is called the Upper Eel watershed and
5 the other one is the Bear River watershed.

6 Q. Okay. And with respect to the Upper Eel
7 watershed, were you able to determine the same way you
8 used SBE prices that went into effect on July 1, 2008,
9 how much of an increase there has been in harvestable
10 area for the year 2007? This will be paragraph 23-D of
11 your affidavit; is that correct?

12 A. Yes, sir. But in your questioning, you asked
13 me first about value and then about area. Those are
14 separate, if you will.

15 Q. I apologize. How much area first?

16 A. The amount of area that was made available
17 through the watershed analysis translates into
18 approximately 74.8 million board foot of additional
19 conifer for harvest. So the watershed analysis makes
20 available approximately 75 million board foot more trees
21 for harvest.

22 Q. Than it had been?

23 A. Yes, sir.

24 Q. And that's in 2007?

25 A. Yes, sir.

1 Q. And will there be also similar watershed
2 analysis in 2008?

3 A. Yes, sir. We have watershed analysis underway
4 in what's called the outer Lawrence watershed. And
5 we're hoping that that gets completed this year.

6 Q. And what is the company's expectation, will
7 that free up additional areas that can be harvested?

8 A. Yes, sir.

9 Q. And approximately how much?

10 A. I'm sorry, we won't know that until we finish
11 the process.

12 Q. Okay. Fair enough. Is it a substantial
13 amount or an insubstantial amount?

14 A. We have not yet done a watershed analysis that
15 did not free up what I would define as a substantial
16 amount of timber. So given that precedent, I would
17 expect that we would probably get a substantial amount
18 of timber freed up in that watershed analysis as well.

19 Q. In fact, I think you testified that the
20 company has been doing watershed analysis ongoing
21 since -- since these interim measures were imposed; is
22 that right?

23 A. Yes, sir.

24 Q. And over that entire time, how much additional
25 areas have been freed up for harvest?

1 A. The acreage alludes me, but I know that it
2 exceeds 600 million board foot of volume.

3 Q. And that would be, you know, something like
4 eight years of harvestable timber; is that right?

5 A. Yes, sir.

6 Q. So were you able to extract a dollar value for
7 the additional inventory that was made available for
8 your watershed analysis using the prices that went into
9 effect from the State Board of Equalization as of July
10 1st, 2008?

11 MR. CLEMENT: Objection, Your Honor.
12 Counsel keeps trying to edge up to asking expert opinion
13 testimony. If he wants to ask can you multiply the SBE
14 price times the volume, that's fine. If he wants to
15 call that value, he is edging up to eliciting expert
16 opinions that this witness is not competent to give.

17 MR. NEIER: You know what, I'll ask the
18 question a different way.

19 THE COURT: Okay.

20 MR. NEIER: Because the word value is in
21 his affidavit which has already been admitted.

22 THE COURT: Well, this is the debtor.
23 And contrary to -- I mean, I think he's, I think, the
24 president of the debtor. I think the debtor is entitled
25 to actually give an opinion of value in a bankruptcy

1 court. You know, for whatever that's worth. It doesn't
2 mean -- we have a rule in bankruptcy that debtors can
3 testify as to value even though they're not experts. I
4 have not said he's not an expert but that value is
5 certainly to be given whatever weight the Court thinks
6 is appropriate. But go ahead and ask the question the
7 way you want.

8 MR. CLEMENT: Only if the witness is
9 competent, Your Honor.

10 THE COURT: Right. Well --

11 Q. (By Mr. Neier) Can I direct your attention to
12 paragraph 23 of your affidavit?

13 A. Yes, sir.

14 Q. The first line of paragraph 23 of your
15 affidavit says "using an adjusted SBE price with SBE
16 harvest value schedule as of July 1st -- as of July 1st,
17 2008, I estimate the values as follows." Did you write
18 that, sir? Or was that something that you signed and
19 agreed to?

20 A. I wrote it and signed it and agreed to it.

21 Q. Okay. Now, turning your attention to
22 paragraph 23-D, okay?

23 A. Yes, sir.

24 Q. Your affidavit states "Thus, after adjusting
25 the July 1st, 2008 SBE based prices for the logging

1 methods used on Scopac's timberlands, successful
2 completion of the Upper Eel prescriptions increased the
3 value of the harvestable timber on Scopac timberlands by
4 an estimated \$29,551,004.50 in 2007." Did you write
5 that, sir, and is that your testimony?

6 A. That is my testimony, yes, sir.

7 Q. You mentioned there's another area, the Bear
8 River area; is that correct?

9 A. Yes, sir.

10 Q. And you also did a watershed analysis on the
11 Bear River area?

12 A. Yes, sir, in 2006 and finished in 2007.

13 Q. And was there additional areas in the Bear
14 River watershed that were freed up for harvesting?

15 A. Yes, sir, and it made approximately 37 million
16 board foot of conifer available for harvest.

17 Q. And if you use the SBE harvest value schedules
18 as of July 1st, 2008, can you tell me what the estimated
19 value of increased available harvestable timber on
20 Scopac's timberlands is? I know you didn't figure it
21 out in your affidavit because it says dollar sign blank
22 but have you since had a chance to fill in the amount?

23 A. Yes, sir. First an apology. We were trying
24 to meet the Saturday noon deadline and I missed this.
25 If you take the 45.3 million of paragraph 25-A and add

1 the 4.4 million of paragraph 25-B, you end up with
2 approximately 49. -- I believe it's 8 million. So 50
3 million more or less.

4 THE COURT: In paragraph A that's
5 supposed to be 45 million, not 45,000?

6 Q. (By Mr. Neier) Let's go slowly. 25-A, is
7 that 45,000 or 45 million?

8 A. Excuse me. Thank you, sir. I'm a bit
9 nervous. Let's take my paragraph 25-B, which is
10 approximately 4.4 million and add to it approximately
11 45,000.

12 Q. Okay. So the total would be \$4,416,077; is
13 that correct?

14 A. Yes, sir.

15 Q. So it's not 44 million, it's 4 million?

16 A. It would have been nice if it was, sir, but
17 no, I'm sorry. Just nervous again.

18 THE COURT: So it's how much?

19 MR. NEIER: It's \$4,416,077 in 2007 that
20 was added to the harvestable timber on Scopac's
21 timberlands using the SBE prices that went into effect
22 as of July 1st, 2008. Did I get that correct?

23 A. Yes, sir.

24 Q. Thank you. And in addition to the growth of
25 the timberlands and in addition to the watershed

1 analysis that has freed up additional areas to be
2 harvested, were there also capital improvements made on
3 Scopac's timberlands?

4 A. Yes, sir.

5 Q. And what are those types of capital
6 improvements?

7 A. The two that I cover in my proffer are related
8 to roads and reforestation.

9 Q. Okay. So going to paragraph 27 of your
10 affidavit, is this where you list the capital
11 improvements that were made to Scopac's timberlands?

12 A. Four roads in 2007, yes, sir.

13 Q. Are there similar improvements that are being
14 made in 2008?

15 A. Yes, sir.

16 Q. And the company continues to perform those
17 capital improvements?

18 A. Yes, sir, even as we speak.

19 Q. And those -- when you do roadwork, why is that
20 a capital improvement, in your view?

21 A. The roadwork that we do will have a very long
22 lasting duration. In fact, in many cases the roadwork
23 that we're doing, we think, will last for 50 or more
24 years. It, therefore, constitutes a long-term
25 improvement in the transportation system and also a

1 long-term improvement in terms of our environmental
2 compliance. So that's probably the core reason. But I
3 would be remiss if I didn't say that when we improve our
4 road network, we also get short-term benefits in terms
5 of being able to use the roads, have them withstand that
6 use, reduce maintenance costs and so on. So I think it
7 technically, as an accountant is considered, to be a
8 capital expense because it's long-term but we certainly
9 get short-term benefit as well, sir.

10 Q. And were you able to total up the amount of
11 long-term capital improvements that were made on the
12 roads on Scopac's timberlands in 2007?

13 A. Yes, sir, that's in my paragraph 28. And it
14 summed to approximately \$4.4 million.

15 Q. And for 2008, you've already made some of the
16 improvements, correct?

17 A. Yes, sir.

18 Q. And you expect to make further improvements?

19 A. Yes, sir.

20 Q. And directing your attention to paragraph 29
21 of those -- of that affidavit. Can you tell me -- of
22 your affidavit. Can you tell me how much of those
23 improvements have made and you expect to make in the
24 June through October period of 2008.

25 A. Yes, sir. In paragraph 28, we -- excuse me,

1 29, we've already made approximately 400 as of June 1.
2 Excuse me. We made approximately \$479,000 of road
3 improvements that are classified by the accountants as
4 long-term capital. And an additional \$513,000 on
5 repairs and maintenance. We will at year end reclassify
6 some of that \$513,000 into the same categories that I
7 listed in 27, paragraph 27. So some component of the
8 \$513,000 I would consider to be longer term improvements
9 to the road system. But we don't do that until year
10 end, so I simply listed the total amount of expense here
11 for now, sir.

12 Q. And have you also done any reforestation in
13 the -- in the Scopac's timberlands?

14 A. Yes, sir.

15 Q. And by reforestation, what does that mean?

16 A. After harvest is done, typically you do
17 something called site preparation, which is basically
18 getting the ground ready for planting and then you
19 actually plant the new baby trees. We consider that,
20 you know, most of my crew would call that the
21 reforestation or the planting. We also do vegetation
22 management, which typically is either at the time of
23 planting or for the first two to three years after the
24 trees are planted. We try and minimize competing
25 vegetation to make sure that the new trees survive and

1 have a healthy start. We call that vegetation
2 management.

3 Q. And will this add to the value of Scopac's
4 timberlands?

5 A. Yes, sir.

6 Q. And in 2007, can you tell me, were you able to
7 determine how much the company spent in this improvement
8 of Scopac's timberlands through the reforestation?

9 A. Yes, sir. My paragraph 31-A shows that we
10 spent approximately \$995,000 on planting or
11 reforestation.

12 Q. And how about with respect to vegetation
13 management?

14 A. Yes, sir, paragraph 31-B shows that we spent
15 approximately \$417,000.

16 Q. And have you been able to determine how much
17 money you have spent or will spend in 2008 on
18 reforestation activities?

19 A. I don't know yet how much we will spend
20 through year end. I know that through June 1 we spent
21 approximately \$1.8 million on either replanting or
22 vegetation management.

23 Q. You were present when Mr. LaMont testified?

24 A. Yes, sir.

25 Q. And you saw that he testified that based on

1 his analysis, the average growth was 2.9 percent in the
2 forest?

3 A. Yes, sir.

4 Q. Do you agree with that?

5 A. No, sir.

6 Q. What do you think is the growth rate for the
7 forest in 2007 and in 2008?

8 A. Based on the Kryptos runs that we're using in
9 our different strata, I believe that growth rate to be
10 approximately 3.5 percent.

11 Q. So a higher growth rate than Mr. LaMont
12 determined?

13 A. Yes, sir.

14 Q. So the forest, according to you, grew more
15 than Mr. LaMont estimated for the year 2007, correct?

16 A. Yes, sir.

17 Q. And it's growing more in 2008 than would be
18 true with Mr. LaMont's growth rate?

19 A. Yes, sir.

20 MR. NEIER: I have no further questions,
21 Your Honor.

22 THE COURT: All right. Does anyone else
23 have -- anyone other than this table have questions?

24 MR. FROMME: Your Honor, I'll have some
25 questions but I'll wait until after Mr. Clement.

1 THE COURT: So you're just going to be --
2 you're just going to redirect whatever he does?

3 MR. FROMME: Correct.

4 MR. NEIER: Well, it's his witness, Your
5 Honor. I know I put his proffer into evidence but it's
6 his witness so I think that's fair.

7 THE COURT: Well, thank you.

8 MR. CLEMENT: Your Honor, do you have a
9 copy of Mr. Barrett's affidavit?

10 THE COURT: I do.

11 MR. CLEMENT: I have a loose copy here.

12 THE COURT: I have it right here. I was
13 given a copy of all the affidavits prior to the hearing,
14 as well as all the pleadings.

15 CROSS-EXAMINATION

16 BY MR. CLEMENT:

17 Q. Mr. Barrett, do you have a copy of your
18 affidavit?

19 A. Yes, sir, I do, Mr. Clement.

20 Q. Mr. Barrett, what is your current job title?

21 A. Chief executive officer of Scopac.

22 Q. Prior to that, what was your job title?

23 A. Vice president of Scopac.

24 Q. Now, can we pull up on the screen
25 the certification. In your prior job title were you

1 responsible for forest operations?

2 A. Yes, sir.

3 Q. Am I correct that every year you signed and
4 submitted to the state a certificate about your
5 inventory?

6 A. I don't know if this was submitted to the
7 state or not, Mr. Clement, but I certainly did every
8 year sign a certification that went to the noteholders
9 as part of the indenture.

10 Q. Now, is that what's up on the board? I've got
11 both the 2007 and the 2008 up there.

12 A. Yes, sir.

13 Q. Those are exhibits A and B to your affidavit;
14 is that correct?

15 A. Yes, sir.

16 Q. Now, in there what is the total annual January
17 2007 inventory?

18 A. For both hardwood and conifer combined, sir,
19 approximately 4.46 billion board feet.

20 Q. Let me back up. Am I correct that when --
21 what number have you come to as the stated growth and
22 excessive cutting in your affidavit for the year 2007?

23 A. I'm not sure that I've actually done a
24 calculation of growth net of harvest as you've asked,
25 sir.

1 Q. Well, let me ask it differently then. Go to
2 paragraph 11.

3 A. Yes, sir.

4 Q. What number have you come to in Paragraph 11
5 for the excess of growth for harvest?

6 A. I'm sorry. I misunderstood your previous
7 question. I apologize. I came to a conclusion of
8 approximately 55.5 million board foot total and
9 approximately 36 million board foot of that being
10 conifer, sir.

11 Q. Okay. Now, when you -- when you calculated
12 that number, you took your 2007 January 1 certification
13 and your 2008 January certification and you did
14 arithmetic, am I correct?

15 A. Yes, sir.

16 Q. Now, sir, those numbers are for the whole
17 forest, aren't they?

18 A. Yes, sir.

19 Q. How big is the whole forest?

20 A. Approximately 209,000 acres, 210,000.

21 Q. But the whole forest is not loggable, is it?

22 A. No, sir.

23 Q. Out of the whole forest, you have subtracted
24 for non-log ability the MMCAs?

25 A. They are not currently being harvested, no,

1 sir.

2 Q. You have no cut zones?

3 A. Yes, sir.

4 Q. Those include owl circles?

5 A. Yes, sir.

6 Q. Riparian zones?

7 A. Yes, sir.

8 Q. Slivers?

9 A. Some are not harvestable and some are, but
10 certainly some are not harvestable, yes, sir.

11 Q. Adjacency requirements?

12 A. Those have the effect of inducing no harvest
13 zones, yes, sir.

14 Q. So about a third of the whole forest is not
15 loggable, isn't it?

16 A. That's an estimate that I came up with that I
17 confirmed with staff is a good -- it's a good
18 approximate estimate.

19 Q. So if you go to paragraph 11, all of those
20 numbers there should be reduced by a third, shouldn't
21 they?

22 A. Again, I think that would be --

23 THE COURT: Are you talking about
24 starting -- reducing the first part by a third, too?

25 MR. CLEMENT: I'll ask it much more

1 clearly.

2 Q. (By Mr. Clement) For example, in paragraph 11
3 when you calculate the excess of growth over cutting --

4 THE COURT: To loggable timber reduce it
5 by a third.

6 MR. CLEMENT: That is correct, Your
7 Honor.

8 Q. (By Mr. Clement) That is correct, isn't it,
9 if you were to convert it to loggable timber you would
10 take the numbers in paragraph 11 and reduce them by a
11 third?

12 MR. JONES: Your Honor, objection. The
13 question is still vague because do we mean loggable
14 today or do we mean loggable at some point in the future
15 because there's been all sorts of testimony on some of
16 these restrictions, they're going to change and move and
17 so forth. If he wants to ask --

18 THE COURT: I think the point is that if
19 you assume that one-third of the total timber area is
20 loggable and if you assume that there's an equal
21 distribution of all the logs throughout the entire area
22 and if you assume that there was an equal distribution
23 of cutting throughout the year throughout all of the
24 area, then the remaining thing, assuming you assume that
25 it's equally distributed throughout the area and that

1 one-third of it is not loggable, the remaining thing you
2 should reduce by one-third to come up with a figure that
3 represents the loggable timber increase. Or the growth.

4 MR. JONES: But Your Honor, my point
5 is -- and I agree he didn't make all those assumptions
6 in his question. My point is that what's loggable
7 changes over time. In other words, timber that grows
8 and may not be loggable --

9 THE COURT: Right, but you're not getting
10 to testify, so go ahead.

11 MR. JONES: The question is vague, Your
12 Honor.

13 MR. CLEMENT: Your Honor, I will --

14 THE COURT: Some of the questions are
15 vague, but you know, none of us are -- there's not a
16 Pendleton shirt in the room. And I doubt that any of us
17 have ever cut down a tree, but we can all ask questions.
18 Some of us are mathematicians and some of us are
19 accountants and some of us have different skills, but
20 his is asking questions, so go ahead and ask them.

21 Q. (By Mr. Clement) Mr. Barrett, isn't it a fact
22 that if we go to paragraph 11 and we go to paragraph A,
23 total standing timber volume in 2007 increased by 55.5
24 million board feet, net volume above and beyond the 74.2
25 million board feet of delivered harvest, that that 55.5

1 number should be reduced by a third if you want to put
2 it on the basis of the cuttable percentage of the
3 forest?

4 A. Yes, sir, that would be a good approximate way
5 to do it.

6 Q. And that every other similar number in
7 paragraph 11 should be reduced by a third?

8 A. Yes, sir. Again, I think that would be a
9 reasonable approach.

10 Q. And isn't it a fact, sir, that when you move
11 over to paragraphs 14 and 15 of your affidavit, which
12 Mr. Neier took you through in which you multiply those
13 volumes times a current adjusted SBE price, that every
14 one of the numbers in paragraph 14 and 15, which are
15 volume numbers, should be reduced by a third for you to
16 put this on the basis of the percentage of the forest
17 that could be cut?

18 A. Yes, sir. Again, I think that's a reasonable
19 approximate approach.

20 Q. Now, let's go on to paragraph 8. Or excuse
21 me, go on to paragraphs 12 through 13 of your affidavit.
22 Now, in an effort to save time, I'm going to ask this
23 question. In paragraphs 12 and 13, you describe yet
24 another adjustment, don't you? For the greater amount
25 of board feet that were actually cut last year, that

1 results in a smaller increase of growth over cutting
2 than what you got when you based your calculations just
3 on logs that were actually delivered; isn't that
4 correct?

5 A. I want to be clear, Mr. Clement. So yes,
6 but --

7 Q. Go ahead and explain it.

8 A. Good. There's been some question about
9 whether witnesses get to do that. The 88.8 million
10 board feet that we reduced from the inventory, I wanted
11 to be clear in my affidavit so that everyone would
12 understand the way it was done internally. But the
13 difference between 74.2 million and 88.8 million is not
14 meant to imply that there's, say, a 14 -- that there are
15 14 million board feet of logs that got cut and somehow
16 didn't get accounted for. In fact, the vast majority of
17 that difference, if not virtually all of the difference
18 between 88.8 and 74.2 are logs that our computer model
19 treated as cut that, in fact, are still standing in the
20 forest. And that makes our estimates of the inventory,
21 therefore, conservative.

22 Q. So if you start with the inventory number and
23 you subtract what was cut or if you start with the
24 inventory increased by growth and then subtract what was
25 cut and you subtract 74 or if you subtract 88, what is

1 the impact on the remaining number?

2 A. Maybe I can work it through my head and see if
3 this answers your question, sir. What we do is we
4 estimate the total growth without any consideration of
5 harvest at all. And we come up with a number. Let's
6 say that that number is about 125 -- 130 million board
7 feet. We then subtracted from that 88.8 million board
8 feet for harvest impacts. Imbedded within that 88.8 is
9 the 74.2, if you will. So when we did the modeling, we
10 grow the entire forest, we took out 88.8 million for
11 harvest effects and what was left was the 55 million
12 board feet growth that you and I have been discussing
13 earlier.

14 Q. So isn't it a fact, sir, that if you subtract
15 out the 88, you drive the remaining number down lower
16 than if you only subtract out the 74?

17 A. Yes, sir.

18 Q. And isn't that phenomenon shown over in your
19 paragraphs 14 and 15 where in paragraphs 14 the numbers
20 are all based upon the \$74 million subtraction and
21 paragraph 15, the numbers are all based upon the \$88
22 million subtraction. Isn't that what happened in
23 paragraphs 14 and 15?

24 A. No, sir, I don't believe so.

25 Q. What is the difference then between paragraphs

1 14 and 15 that results in the numbers in paragraph 15
2 being lower than the numbers in paragraph 14?

3 A. In paragraph 15, I included the \$130 drop in
4 second growth redwood and \$70 drop in Douglas Fir prices
5 that you would receive under SBE beginning July 1.
6 Those dollar figures or drops account for the
7 differences in value.

8 Q. And, sir, in both paragraph 14 and 15, the
9 volume numbers and the resulting dollar numbers should
10 be reduced by a third if you are to put it on the basis
11 of the portion of the forest that is harvestable; is
12 that correct?

13 A. Yes, sir.

14 Q. Now, sir, you are not a timber valuation
15 expert, are you?

16 A. No, sir.

17 Q. And in paragraph 14, for example, actually
18 paragraph 12 -- actually, paragraph 14, the first
19 sentence says "the financial value of these changes in
20 timber volume on the Scopac timberlands can be
21 estimated." When you say "estimated," you're not
22 expressing an expert opinion on valuation, are you?

23 A. No, sir.

24 Q. The expert opinions in this case concerning
25 timber valuation have all done DCF analysis, haven't

1 they?

2 A. I believe that's true, yes, sir.

3 Q. You haven't done a DCF analysis, have you?

4 A. No, sir.

5 Q. So when you say you estimated the value of
6 growth in excess of harvest for the year 2007, you took
7 the increase in MBF timber volume in excess of last
8 years cutting and simply multiplied it times current
9 SBE, right?

10 A. Yes, sir.

11 Q. Now, that method of estimation essentially
12 assumes that the increase in MBF is all cuttable right
13 now today, doesn't it?

14 A. Yes, sir.

15 Q. But in fact, that increase will only be cut
16 over ten years or more; isn't that correct?

17 A. Yes, sir. I think ten years is probably a
18 reasonable approximation.

19 Q. And you have not projected cutting the board
20 footage of this 2007 increase over ten years out into
21 the future in order to estimate the cash flow from it,
22 have you?

23 A. No, sir, I have not.

24 Q. You have not discounted those cash flows back
25 to present, have you?

1 A. No, sir.

2 Q. Anyway, your estimation of the value of this
3 increased board footage -- let me just move on.

4 As to watershed analysis. I think you
5 described it very well. Am I correct, essentially as
6 follows that once upon a time the HCP had strong
7 limitations permitting you to do case by case analysis
8 possibly freeing up more cutting; is that essentially
9 what the watershed analysis is?

10 A. Yes, sir, but I would be remiss if I didn't
11 point out that watershed analysis cuts both ways because
12 it's science based. So in some areas, the restrictions
13 actually increase. But the net effect is that more land
14 becomes available at the end of the watershed analysis
15 for harvesting.

16 Q. How many watersheds does Scopac have?

17 A. It depends on how you define watersheds. But
18 I think it's fair to say that we have nine large
19 watersheds.

20 Q. And you've now done this analysis on all but
21 two of those watersheds?

22 A. Technically we haven't done it on three, but
23 as I testified in my deposition, in one watershed, which
24 is more than a half a million acres in size, we only own
25 about 3,000 acres. And I think it highly likely that

1 the HCP controlling agencies in the company will agree
2 to forego watershed analysis in that basin. If that
3 should be the case, then we have really eight watersheds
4 where we're doing watershed analysis. We have completed
5 it in six and it's ongoing in two.

6 Q. Only two to go and you finished two in the
7 year 2007?

8 A. Yes, sir.

9 Q. And those two that you did in 2007 were Eel
10 River and Bear River?

11 A. Yes, sir.

12 Q. Upper Eel River and Bear River?

13 A. Yes, sir.

14 Q. Now, let me just ask as a foundation question.
15 What was the harvest rate for Scopac in the year 2007?
16 What did you harvest?

17 A. We harvested 74.2 million board feet net
18 conifer.

19 Q. What is Scopac intending to harvest in the
20 year 2005?

21 A. 75 million board foot net conifer.

22 Q. Essentially no change at all, correct?

23 A. Yes, sir.

24 MR. KRUMHOLZ: You mean 2009?

25 Q. (By Mr. Clement) Let me say it over again.

1 2007 it was 74.2; is that correct?

2 A. Yes, sir.

3 Q. And the projection for the year 2008 is
4 essentially the same at 75 million board feet; is that
5 correct?

6 A. Yes, sir.

7 Q. Now, when did you finish -- let's take Eel
8 River. It's easiest just to use it. You say that your
9 watershed analysis freed up how many additional board
10 feet for cutting that had not previously been available
11 for cutting?

12 A. Approximately 74.8 million board foot conifer.

13 Q. When did you learn that that was true? Spring
14 of 2007?

15 A. Yes, sir.

16 Q. Notwithstanding that you had 74 million more
17 board feet in Upper Eel that you could cut, the 2008
18 harvest rate for Scopac was unaffected because it is the
19 same 74 million that you cut last year, isn't it?

20 A. Yes, sir. 75 million, but your point is
21 correct, sir.

22 Q. It had no impact at all that in March of 2007
23 you got more board footage available in Upper Eel that
24 you could cut on what Scopac proposes to cut in the year
25 2008?

1 A. Yes, sir.

2 Q. So in the spring of 2007, you freed up to be
3 harvested in Upper Eel 74.8 million board feet that had
4 previously been restricted, but Upper Eel is part of the
5 whole forest, isn't it?

6 A. Yes, sir.

7 Q. You've already measured the growth in excess
8 of cut for the whole forest of which Upper Eel is a
9 part, haven't you?

10 A. Yes, sir.

11 Q. So isn't there some double counting here?

12 A. Yes, there is some double counting. I want to
13 try and --

14 Q. I'll just move on.

15 A. Yes, sir, there is some double counting.

16 Q. Additionally, you found out in the spring of
17 2007 -- now, strike that.

18 As to this 74.8 million board feet of
19 additional tree volume that watershed analysis freed up
20 in Upper Eel, it will be ten or more years before you
21 cut that, won't it?

22 A. Before we complete cutting it, yes, sir.

23 Q. And you have not done a projection of when
24 this additional volume will be done and what cash flow
25 it will generate, have you?

1 A. No, sir.

2 Q. And you haven't discounted any such cash flow
3 back to present?

4 A. No, sir, I have not.

5 Q. The same things I've just gone through with
6 respect to Upper Eel would also apply to the watershed
7 analysis that you did for Bear River, wouldn't it?

8 A. Yes, sir, except in that case I'm only
9 estimating approximately 37 million board foot of
10 additional timber. Otherwise, everything we've talked
11 about would apply as well.

12 Q. Let's move on to paragraphs 26 through 29, the
13 deal with road maintenance. Now, sir, am I correct that
14 within the company you were an advocate of doing more
15 instead of less road maintenance?

16 A. Yes, sir.

17 Q. And doing it sooner instead of later?

18 A. Yes, sir.

19 Q. And when you were such an advocate you were in
20 the position of vice president of operations?

21 A. Yes, sir.

22 Q. Now, some of the road maintenance that was
23 done in the year 2007 could have been done later,
24 couldn't it?

25 A. Yes, sir, Mr. Clement. I was vice president

1 of Scopac, not of operations. We do have a vice
2 president of operations. So for clarity, I was vice
3 president of Scopac.

4 Q. Thank you. But let me come back to this.
5 Some of the road maintenance that was done in 2007 could
6 have been done later?

7 A. Yes, sir.

8 Q. And some of the maintenance that was done in
9 2007 was catch-up work?

10 A. Yes, sir.

11 Q. And some of this was get-ahead work, wasn't
12 it?

13 A. Yes, sir.

14 Q. Under the theory that it would be a better
15 operational practice for the company to do things in
16 year two of when they could be done instead of year
17 five?

18 A. Yes, sir. And just to be clear, most of this
19 work is part of timber harvest plans, which are
20 five-year documents maximum. So when you refer to years
21 two versus year five, I take it to mean that it's within
22 that five-year THP window.

23 Q. So your operational philosophy was that the
24 company would be better served if it started doing its
25 maintenance work sooner instead of later?

1 A. Yes, sir.

2 Q. Now, are you a real estate appraisal expert?

3 A. No, sir.

4 Q. Do you know the impact on the value of a house
5 if you spend money to put a really nice driveway in
6 front of the house?

7 A. No, sir.

8 Q. Are you a timber valuation expert?

9 A. No, sir.

10 Q. Do you know how much it would add or subtract
11 to the value of the timberlands if this road maintenance
12 were not done last year?

13 A. No, sir. Except I would offer generally one
14 would expect it would offer some value, but I'm not in a
15 position to quantify that.

16 Q. Thank you. As to reforestation, you spent
17 \$1.8 million in 2008 replanting and managing the growth
18 of new trees?

19 A. Yes, sir.

20 Q. When is the first time any of these trees will
21 be old enough for commercial logging? It's about 25
22 years from now, isn't it?

23 A. Yes, sir.

24 Q. And until then, these trees will not generate
25 any cash for Scopac, will they?

1 A. No, sir, they will not.

2 MR. CLEMENT: Your Honor, I'm almost
3 done. Could I have a moment, please?

4 THE COURT: Sure.

5 MR. CLEMENT: Pass the witness, Your
6 Honor.

7 THE COURT: All right. That was your
8 cross. So anything further?

9 MR. FROMME: Your Honor, Eric Fromme,
10 Gibson Dunn & Crutcher on behalf of Scopac. A few
11 questions for Dr. Barrett.

12 CROSS-EXAMINATION

13 BY MR. FROMME:

14 Q. There was some questioning of you about the
15 growth rate on the overall forest as compared to the
16 growth rate that Mr. LaMont came up with of 2.9 percent.
17 Do you recall?

18 A. Yes, sir.

19 Q. And you came up with a number, you and your
20 forester staff came up with a number of about 3 and a
21 half percent for the entire forest?

22 A. Yes, sir.

23 Q. Can you explain to the Court why you believe
24 the 3 and a half percent number is a more accurate
25 number?

1 A. Yes, sir. It can be a bit confusing but let
2 me see if I can bring some clarity. The problem really
3 is Mr. LaMont's estimate of growth rate and the one that
4 I've referred to are kind of apples and oranges. What
5 happens when you grow a forest is you have a bunch of
6 different timber types, which in our case are strata,
7 different types of strata of trees. And there are
8 growth rates that apply to each of those stands to try
9 and capture what is the correct growth rate. We had
10 access to those values since we do the modeling.

11 And so we know from that that, in fact, as
12 foresters, the timber stands themselves are growing the
13 average of approximately 3 and a half percent.
14 Mr. LaMont, not having apparently access to those --
15 those details of how we do Kryptos modeling, instead
16 looked at how much new fiber was produced on the land
17 according to my tables.

18 And that's not unreasonable given the data
19 that was available to him. But it results in an
20 incorrect growth rate for some reasons that have been
21 discussed and also are in my proffer.

22 Q. There was also some discussion with regard to
23 the value of the hardwoods that are growing on Scopac's
24 land. Do you recall that?

25 A. Yes, sir.

1 Q. In your opinion, do hardwood species have some
2 value to Scopac?

3 A. Yes, sir.

4 Q. And what is that?

5 A. Well, you have to understand we have a power
6 plant at our sister company, Palco. That power plant is
7 able to generate power that they sell for a profit,
8 particularly during the summer months when they get
9 relatively high rates for peak power. So we're in the
10 enviable situation of having a close market for our
11 hardwood from a customer that is willing to pay us rates
12 that are attractive and that they're able to in turn to
13 use to generate power and get capital.

14 Q. Does Scopac achieve a price on the hardwood
15 that's greater than the log and haul costs?

16 A. Yes, sir.

17 Q. Is it substantial or not?

18 A. No. It's -- I mean, we pay for our log and
19 haul and then if we make, you know, a couple of bucks
20 per ton, we're happy.

21 Q. Is there any other advantage to harvesting
22 hardwoods?

23 A. Yes. One of the longer term good forestry
24 practices is we're trying to restore some stands that
25 have gone to hardwood through past forestry practices

1 that were sub optimal back to the kind of conifer forest
2 that they originally were. That's too many words to
3 say. We have hardwood forests that we're trying to
4 convert back to conifer so when we're able to harvest
5 those trees and deliver them to the power plant, in
6 essence we're getting a free ride, if you will, to
7 actually clear ground so that we can replant it in
8 conifers. If we did not sell the hardwood, we would
9 have to use some of the hack and squirt type hardwood
10 elimination methods that have been discussed previously
11 in testimony in confirmation hearings and so on. So we
12 forego a reforestation cost by selling the hardwoods.

13 Q. There was also some testimony that harvesting
14 of Doug Fir is unprofitable at this time in the market.
15 Do you recall that?

16 A. Yes, sir.

17 Q. Does Scopac -- is Scopac currently harvesting
18 Doug Fir?

19 A. Yes, sir.

20 Q. And does it achieve a price occurred in the
21 log and haul costs?

22 A. Yes, generally we do, sir.

23 Q. Approximately how much?

24 A. Anywhere from \$100 to \$200, depending on the
25 contract and the distance of the specific THP to the

1 mill we're delivering to.

2 Q. Just to be clear to use the terminology
3 everybody has been using, \$100 to \$200 per thousand
4 board feet?

5 A. Yes, sir.

6 Q. But to also to be clear, that does not account
7 for any fixed costs that Scopac may incur running its
8 business in general, right?

9 A. That's correct. That's the net amount after
10 we pay for our logging and hauling costs.

11 Q. Have you attempted to make that calculation?

12 A. No, sir, I have not.

13 Q. There's been discussion with Mr. LaMont's
14 testimony and yours about what the harvestable timber is
15 on Scopac's land. Do you recall that?

16 A. Yes, sir.

17 Q. Let's start with Mr. LaMont's testimony. I
18 think it came up on cross-examination where MRC
19 estimates that there's 777 million board feet that are
20 harvestable on Scopac's lands?

21 A. Yes, sir. As I understand it over the next 15
22 years.

23 Q. Do you agree with that number?

24 A. No, sir.

25 Q. And why not?

1 A. I had previously submitted a proffer that went
2 through this in detail. But to calculate that 777
3 million board foot number, Mr. Dean discounted in a
4 number of ways the harvestable base to something that he
5 believed and his staff believed was harvestable. I
6 disagreed with several of those discounts. And so I
7 believe the actual amount that can be harvested is
8 substantially greater.

9 Q. Well, for example, in your proffer at the
10 confirmation hearing, you discussed the business
11 decision by MRC to not clearcut and use, I think,
12 selection harvesting; is that right?

13 A. Yes, sir.

14 Q. And that accounts for a substantial reduction
15 in the harvest ability of logs, right?

16 A. Yes, sir. That alone, as I recall, would
17 reduce the harvestable volume by something like 40
18 percent.

19 Q. But that's not based on an environmental
20 restriction, it's a business decision; is that right?

21 A. Yes, sir.

22 Q. So then Mr. Clement asked you some questions
23 about approximately one-third adjustment on the log
24 ability of the total volume; is that right?

25 A. Yes, sir.

1 Q. And that's a number that you came up with at
2 your deposition to estimate the harvestable logs --
3 harvestable timber on Scopac's land; isn't that right?

4 A. Yes, sir. Not to belabor the point, but to
5 get a hard number would require a fairly complex
6 computer simulation in which we interface the Kryptos
7 model with our HCP restrictions model. It's possible.
8 We haven't done it. It's nothing that could be done in
9 a short period of time. But my staff and I have had
10 discussions and reviewed some particular portions of the
11 ownership in detail as indicators. And based on that, I
12 came up with approximately one-third of our current
13 volume not being harvestable based on existing
14 restrictions.

15 Q. All right. So to be clear, you and the
16 forestry staff at Scopac have not done the complicated
17 modeling to determine -- get a precise number of the
18 harvestability of Scopac's timber?

19 A. No, sir, we have not.

20 Q. And the one-third reduction that you talked
21 about at your deposition and today in court is just an
22 estimate?

23 A. Yes, sir.

24 Q. Now, you were asked about whether you did a
25 discounted cash flow on the estimate of value you made

1 on the growth of the timber for 2007, for example. Do
2 you remember that?

3 A. Yes, sir.

4 Q. And you testified that that timber may not be
5 harvestable for about ten years, right?

6 A. Yes. Just to make sure we get it right, I
7 believe it could take ten years to be able to harvest
8 all of that volume. Some of it certainly is available
9 immediately and we do go get it immediately. But to
10 capture all of the volume that I was identifying in my
11 proffer could take ten years or even more.

12 Q. And the trees that you don't harvest now, but
13 you harvest in year ten, you would grow for ten years as
14 well, right?

15 A. Yes, sir.

16 Q. At approximately 3 and a half percent each
17 year, right?

18 A. Yes, sir.

19 Q. So to do a Gropper DCF, you would have to grow
20 the entire forest each year and then continue to
21 discount back each year; is that right?

22 A. Yes, sir.

23 Q. There was some questioning about what you call
24 baby trees, the planting of -- planting of trees in the
25 forest. Do you recall that?

1 A. Yes, sir.

2 Q. And the baby trees do have a value in your
3 mind, do they not?

4 A. Yes, sir.

5 Q. And that's because as they grow, as the years
6 go by, they eventually become harvestable, right?

7 A. Yes. And also because we're legally required
8 to do the replanting. So to the extent we do it, we
9 reduce the future cash requirements of an owner of the
10 timberlands. And also, in my deposition we talked about
11 the fact that we are improving the forest stands very
12 aggressively through cultivars, vegetation management
13 and so on. So in most cases we believe the future
14 forest will be healthier and more valuable than the
15 forest that we harvested.

16 Q. Now, in your proffer you describe the growth
17 of the timber over the years and you assigned a value to
18 that and then you also did the watershed analysis and
19 the freeing up of the harvest and you assigned an
20 estimate of value to that. Do you remember that?

21 A. Yes, sir.

22 Q. Now, there was some questioning about whether
23 that's double counting. Can you explain how those are
24 two different exercises?

25 A. Yes, sir. Just let me go broad brush.

1 THE COURT: I certainly understand how
2 they're two different exercises. If you want him to
3 explain what the double counting is, you're welcome to
4 do that. But I'm not sure why we need to go over his
5 analysis. I mean, he was very clear about it on the
6 semi direct that Marathon did.

7 MR. FROMME: Your Honor, if you
8 understand the separate exercises, I have no further
9 questions.

10 THE COURT: Okay. You can step down.
11 All right. It's 12 o'clock. Where are we on witnesses?
12 Who's your next witness? And how many more do you have?

13 MR. NEIER: I think that's an interesting
14 question. We're contemplating not calling any
15 additional witnesses, but one of the issues -- you know,
16 one of the things we're thinking about is that some of
17 our exhibits were objected to and we can put a witness
18 on merely for authentication if that's the nature of the
19 objection. We're not sure what the nature of some of
20 those objections are.

21 THE COURT: They're working on those. I
22 can't imagine that while the lawyers who are trial
23 lawyers may well want to raise an objection as to
24 authenticity. I suspect that the bankruptcy lawyers
25 will probably win the day and will convince -- and

1 that's probably not a good idea -- not waste the Court's
2 time. But if there is a serious question about
3 authenticity or proving it up, then obviously we have to
4 have that. But they were going to discuss those
5 documents, so why don't we now break for lunch and we'll
6 see where we are at, let's say, 2 o'clock.

7 MR. KRUMHOLZ: Just so you know, Your
8 Honor, authenticity is not --

9 THE COURT: I didn't think so.

10 MR. STRUBECK: Your Honor, here's my
11 question. I was actually talking to Mr. Schwartz about
12 this. Neither of us know how much time the Court has
13 allotted for closing arguments and if there are no more
14 witnesses, we may coming back and --

15 THE COURT: Okay. Well, the Court will
16 give you some latitude to decide among yourselves how
17 much you need. And if you exceed my tolerance of
18 reasonability, then I'll carve it down but you-all can
19 work that out amongst yourself.

20 MR. STRUBECK: Okay.

21 THE COURT: 2 o'clock. Thank you.

22 (A recess was taken for lunch.)

23 MR. NEIER: Your Honor, I don't know if
24 you need it officially, but we rest.

25 THE COURT: Okay.

1 MR. NEIER: I take it there's one more
2 exhibit that somebody wants to put in. I don't remember
3 who that was.

4 MR. BRILLIANT: Your Honor, we understand
5 that Scopac is going to put in one more exhibit at our
6 request on the amount of monies that have been paid to B
7 of A as interest payments. And with that being included
8 and all the exhibits issues --

9 THE COURT: Where are we on the exhibits?

10 MR. KRUMHOLZ: We're almost there, Your
11 Honor.

12 THE COURT: All right.

13 MR. KRUMHOLZ: We may need some guidance.

14 THE COURT: All right.

15 MR. SCHREIBER: Your Honor, we have
16 resolved, I would say, 90 percent of the outstanding
17 issues.

18 THE COURT: Okay. Of the ones that are
19 unresolved then, we can start with No. 9, IT -- 9.

20 MR. BOLTON: Your Honor, before No. 9,
21 No. 8, the others -- MRC has agreed that the entire
22 Exhibit 8 is in.

23 THE COURT: Okay. No. 9.

24 MR. BOLTON: No. 9, there's still an
25 objection to that.

1 THE COURT: No. 23. Let's get rid of the
2 ones that aren't objected.

3 MR. SCHREIBER: On the IT Nos. 23, 26, 28
4 through 33, those are still open issues, Your Honor.

5 THE COURT: Objected to. Okay. No. 23.
6 Let's go to No. 28.

7 MR. SCHREIBER: 123 to 128 are just
8 reserved, Your Honor, and that's the only reason there's
9 an objection to those.

10 THE COURT: So there's no exhibits.
11 Scratch that off. Okay. 135 and 146.

12 MR. SCHREIBER: Those have been -- Your
13 Honor ruled on those. Those -- the objection was
14 sustained. Those are not being admitted. Those were
15 the declarations of the Red Emerson and those other
16 related type of operations.

17 THE COURT: Okay. 147.

18 MR. BOLTON: That's been withdrawn, Your
19 Honor.

20 THE COURT: 148.

21 MR. BOLTON: That's been withdrawn.

22 THE COURT: 151.

23 MR. BOLTON: Withdrawn.

24 THE COURT: 55 through 56.

25 MR. BOLTON: 55 and 56 are withdrawn,

1 Your Honor.

2 THE COURT: 58.

3 MR. BOLTON: 58 --

4 THE COURT: 158.

5 MR. BOLTON: That one's still at issue.

6 THE COURT: Okay. 161.

7 MR. BOLTON: That one's been withdrawn.

8 THE COURT: 168.

9 MR. BOLTON: 168 is admitted.

10 THE COURT: All right. So we have 9, 23,
11 26, 28 through 33, and 158.

12 MR. BOLTON: That is correct.

13 THE COURT: All right. With respect to
14 MMX starting at 93, 94.

15 MR. SCHREIBER: We just take a step back
16 on that, Your Honor. There is an open issue on MMX 89
17 that we --

18 THE COURT: All right.

19 MR. SCHREIBER: -- has to be resolved.

20 THE COURT: Okay. 89 -- 93 to --

21 MR. SCHREIBER: One second, Your Honor.
22 I'm just going to interject, MMX 90 is being withdrawn.

23 THE COURT: 90 is withdrawn. Okay.

24 MR. SCHREIBER: Yes, Your Honor. MMX 93
25 is now the Dr. Barrett affidavit. There is no -- that's

1 been admitted, Your Honor.

2 THE COURT: Okay. 93 is in. 94?

3 MR. SCHREIBER: 94 is just a reserved.

4 THE COURT: So it's not -- it's not --

5 MR. SCHREIBER: It's moot.

6 THE COURT: Okay. 98 through 102.

7 MR. SCHREIBER: 98 through -- 98 through
8 100, Your Honor -- 98, 99 and 100 are open issues. 101
9 has been withdrawn.

10 THE COURT: Okay.

11 MR. SCHREIBER: 102 is being admitted.

12 THE COURT: Okay. So they're taken care
13 of. 104.

14 MR. SCHREIBER: 103 -- I'm sorry. 104,
15 Your Honor?

16 THE COURT: 103's already been taken care
17 of. 104?

18 MR. SCHREIBER: 104 and 105 are both
19 being withdrawn.

20 THE COURT: Okay. 111.

21 MR. SCHREIBER: Is reserved.

22 THE COURT: So that means it's nothing
23 there.

24 MR. SCHREIBER: Nothing there.

25 THE COURT: 175 through 9.

1 MR. SCHREIBER: 175 through 179 are all
2 being admitted, Your Honor.

3 THE COURT: All right. 193.

4 MR. SCHREIBER: It's being admitted.

5 THE COURT: 208 and 209.

6 MR. SCHREIBER: 208 is an open issue.
7 209 is being admitted.

8 THE COURT: Okay.

9 MR. SCHREIBER: 211 is being withdrawn.

10 THE COURT: 211 is withdrawn. Okay.

11 MR. SCHREIBER: And that -- just for the
12 record, Your Honor, to the extent they're withdrawn,
13 they're withdrawn for the purposes of the hearing on the
14 507(b) and all parties reserve their rights to raise
15 these issues again with respect to these documents in
16 the context of other matters that may be now currently
17 pending or may in the future be pending in court.

18 THE COURT: Okay. All right. So we've
19 got three or four exhibits on each side that need to be
20 ruled on. Yes, sir.

21 MR. JONES: I'm sorry, Your Honor. One
22 procedural matter, is the call in? I just asked because
23 my client indicated to me she intended to listen in.

24 THE COURT: Well, they're still on. I
25 never hung up.

1 MR. JONES: I apologize, Your Honor.

2 Thank you.

3 THE COURT: Now, whether anyone stayed on
4 the phone or not, that's --

5 SPEAKER: The phone line is live.

6 MR. JONES: Thank you, Your Honor.

7 MR. SCHREIBER: Does Your Honor want to
8 hear argument on those issues?

9 THE COURT: I think we ought -- I mean,
10 if we're -- is that all we have left?

11 MR. SCHREIBER: Yes, Your Honor.

12 THE COURT: And then argument? So let's
13 start.

14 MR. NEIER: Scopac had an additional
15 exhibit.

16 MR. FROMME: Your Honor, I have two
17 issues: Number one, during the testimony of John Young
18 there was some discussion about the Marathon carve out
19 and how that's calculated. It is described in the
20 orders of the court, dockets No. 3230 and docket No.
21 3053. We just ask you to take judicial notice of that.

22 THE COURT: 3053 and 3230?

23 MR. FROMME: Correct.

24 THE COURT: Any objection? Okay.

25 MR. FROMME: The next issue is over the

1 lunch hour the middle table here asked Scopac to provide
2 them some updated information. And we've been doing
3 that to all parties throughout -- during this
4 proceeding. What we did was we obtained the interest
5 paid to B of A from the petition date to July 1st. That
6 document is being created and is going to be run over,
7 and it should be here any minute. And we'd like that to
8 be admitted as an exhibit. I think you can just add it
9 on to the Marathon/MRC exhibit list. And I don't think
10 we have any objection to that. It was prepared by
11 Mr. Young and reviewed by him.

12 THE COURT: So when that arrives, I'll
13 allow you to supplement the record if there's no
14 objection.

15 MR. FROMME: Thank you, Your Honor.

16 MR. GREENDYKE: Judge, in that
17 connection, we have not seen it.

18 THE COURT: Right. I'm not asking you
19 to --

20 MR. GREENDYKE: I know. I know, I'm just
21 informing the Court.

22 THE COURT: I got you.

23 MR. GREENDYKE: We can't agree to it at
24 this point. We don't know what it is.

25 MR. HAIL: Your Honor, do you want to

1 address the remaining --

2 THE COURT: So going through the
3 remaining issues, I guess, let's start with No. 9, IT
4 No. 9.

5 MR. HAIL: Well, Your Honor, I actually
6 think there's one macro issue that encompasses the
7 majority of the exhibit issues.

8 THE COURT: Okay.

9 MR. HAIL: And that is there's a
10 series -- the documents to which we continue to object
11 and that have not resolved on the indenture trustee
12 exhibit list are a series of analyst reports from
13 people; from Merrill Lynch, UBS, things like that.

14 And also in the context of the Radecki
15 production, there's a whole series of analyst reports.
16 We understand Your Honor to think that if those
17 documents are generally what they purport to be, we
18 don't have any reason to think they are not, that they
19 should come into the record, except that the indenture
20 trustee is not agreeing that the presentations that have
21 been put together in this case from the Sewall firm,
22 Hancock investors and Musselman. They are saying those
23 are hearsay and, therefore, they do not agree to their
24 admittance. Those documents are hearsay. Their analyst
25 reports are hearsay. And sauce for the goose is sauce

1 for the gander in this case, and that's the basis of
2 that objection.

3 As it relates to the Sewall document, the
4 indenture trustee has already put forth at least a cover
5 page of that document and then redacted out a whole
6 bunch of it as their Exhibit 131. We think that they
7 should all come in. There's no reason to doubt they
8 aren't what they are. You can give them the relevant
9 weight to those documents just like any other documents.
10 I guess we advocate for letting them all in the record.

11 THE COURT: Okay.

12 MR. KRUMHOLZ: Your Honor, if I may, it's
13 a discussion we had, and I don't want to beat a dead
14 horse to death, but, you know, the three documents I'm
15 speaking of are -- one of which is a paid consultant's
16 PowerPoint that he's put together in our mind in
17 connection with this proceeding and suggesting that
18 somehow authoritative literature or learned treatise is
19 far different than what Mr. Radecki has already proven
20 up as authoritative literature that's from analysts
21 reports. S&P, Merrill Lynch, those are all the
22 documents we're doing; or the big investment houses and
23 the -- and S&P and otherwise. And even the S&P
24 documents they have requested to be admitted, we've said
25 fine to.

1 MR. HAIL: We haven't objected to S&P
2 documents.

3 MR. KRUMHOLZ: But, regardless, it's far
4 different. And one item, Your Honor. And I know that
5 we don't want to get too technical here. But
6 Mr. Radecki proved them up as nontreatises at the time.
7 And that's why I wanted them in at the time, so we would
8 all have it fresh in our memory. He proved them up in a
9 very specific way, and I took him through the predicate.
10 That was never done, never done with respect to these
11 three documents. And these three documents are all I
12 care about. The other ones, the S&P, the others, fine;
13 but there's no predicate at all that's been laid. And
14 it's fundamentally unfair to allow those sorts of
15 documents into the record when they're really just
16 expert opinion, I guess, from folks who aren't in the
17 courtroom that I can't cross-examine and aren't some
18 third-party analyst that have no real issue in the fight
19 here today. And they do have --

20 MR. HAIL: I'll quickly address that,
21 Your Honor. The civil document that he says was part of
22 this case was actually one of his exhibits. He redacted
23 out some stuff from it --

24 MR. KRUMHOLZ: Not true.

25 MR. HAIL: -- but Exhibit 131, he put in

1 a cover page and a couple of pages and wiped out the
2 rest of it.

3 MR. KRUMHOLZ: That's not true.

4 MR. HAIL: And it wasn't done.

5 THE COURT: Is part of it in?

6 MR. KRUMHOLZ: All I did -- just so you
7 know so I could identify it with Mr. LaMont for
8 impeachment purchases, we put the cover page that said
9 Sewall and the conference date and nothing else. I
10 redacted everything else. Huh? I redacted out every
11 single part of that document other than that. That's
12 all I did. It was only for identification purposes. No
13 hearsay. No nothing. There was Sewall on the bottom
14 right-hand corner, I think, of every page, but every
15 substantive comment on there, I didn't use it for any --

16 THE COURT: Where is that document?

17 MR. HAIL: Exhibit 131.

18 THE COURT: Where is that? Is that in
19 one of these things over here?

20 MR. HAIL: It is, Your Honor. Yeah.

21 Let's see if we can get it up on the screen.

22 THE COURT: These are all the Marathon.

23 Where is --

24 MR. SCHREIBER: It's an indenture trustee
25 exhibit, Your Honor.

1 THE COURT: IT is over here?

2 MR. HAIL: The Sewall document also, Your
3 Honor, that we're talking about was not prepared in
4 Texas. It is a PowerPoint that was at an investor
5 conference that was relied upon by the expert.

6 MR. KRUMHOLZ: Which also has not been
7 proven up.

8 THE COURT: So the document -- the
9 difference between this document and the document --
10 your 131 --

11 MR. KRUMHOLZ: Our 131 had various LaMont
12 materials in it. It had -- it had the Sewall
13 presentation redacted completely other than the first
14 page, and then it had other materials that Mr. LaMont --
15 that Mr. LaMont has relied upon that I knew I was going
16 to use -- or that Mr. LaMont saw.

17 THE COURT: There's nothing in it.

18 MR. KRUMHOLZ: Right. That's exactly
19 what I --

20 THE COURT: What is it that he relied on?
21 The name?

22 MR. KRUMHOLZ: No, no, I just wanted to
23 identify it as a Sewall -- let me just remind the Court,
24 all I wanted to be able to do is to say you relied on
25 the Sewall document, and there was another document I

1 used today with Mr. LaMont that talked about the
2 definition of general market and the specific market.
3 That was something that was --

4 MR. HAIL: That's a Sewall document, too.

5 MR. KRUMHOLZ: Well, it's also
6 definitional. And all it was was a definition of market
7 risk or risk as to investment.

8 THE COURT: Which exhibit numbers are we
9 talking about?

10 MR. KRUMHOLZ: I think you could have
11 objected to it.

12 MR. SCHREIBER: On the MMX exhibit list,
13 Your Honor, Terry Schreiber for Marathon, it's MMX 98,
14 MMX 99. Those are the Sewall and Musselman documents
15 respectively.

16 MR. KRUMHOLZ: And then there was a
17 Hancock.

18 MR. SCHREIBER: And there is an MMX 100
19 as well, Your Honor, in order. Your Honor, that should
20 be in our Binder 1 of 1, the small one. The smaller
21 one.

22 MR. KRUMHOLZ: There is another -- I also
23 wanted to tell the Court. I didn't ask Mr. Radecki
24 questions about it because Your Honor had previously
25 excluded it in Mr. Dean's testimony, and I was going to

1 tell him -- ask him questions about it as to why it's
2 not in any way reliable for the purposes invested. And
3 I didn't because I thought it would be excluded.

4 MR. HAIL: Mr. Radecki didn't know must
5 about timberlands. I don't know -- how are you going to
6 ask him about it then? He never even heard of him.

7 MR. KRUMHOLZ: Because you can -- that's
8 not true. You confronted him.

9 MR. HAIL: In his deposition he never
10 heard of Sewall.

11 MR. KRUMHOLZ: Okay. You confronted him
12 in the deposition with the documents. I had a
13 conversation with him, are they important, and he said
14 absolutely not, and he told me why.

15 THE COURT: MMX 100.

16 MR. SCHREIBER: MMX 98, 99, and 100, Your
17 Honor.

18 MR. HAIL: They were also relied upon by
19 the experts. They were specifically identified and
20 relied upon by the experts, including Mr. LaMont.

21 MR. KRUMHOLZ: No question about that.

22 MR. HAIL: And I also don't think the
23 indenture trustee has any reason to doubt these
24 documents are what they say they are, that they were
25 prepared, and that they are somehow not what they

1 purport to be.

2 MR. KRUMHOLZ: I'm not objecting to the
3 authentication. That's absolutely true. It's a hearsay
4 objection.

5 THE COURT: Well, I'm going to allow all
6 of the exhibits in and give the weight to be -- the
7 objection will be given to the weight to be assigned to
8 it. There certainly is -- you have raised issues of --
9 that go to what weight to be given to them, and I
10 certainly understand that. So all of those are in.

11 MR. HAIL: Okay. Now, Your Honor, I
12 think there's two other issues. The first is --

13 THE COURT: Which one does that take care
14 of now? What have we ruled on? That takes -- out of
15 the IT exhibits, which one is those?

16 MR. KRUMHOLZ: 9.

17 THE COURT: 9 is in.

18 MR. KRUMHOLZ: I think it's also 9.1 and
19 9.4. It's all of 9, including these --

20 THE COURT: All of 9. So that's fine.
21 What about 23?

22 MR. SCHREIBER: 23 is the same objection,
23 Your Honor, that's been --

24 THE COURT: It's in. 26?

25 MR. SCHREIBER: Same issue, Your Honor.

1 THE COURT: What?

2 MR. SCHREIBER: Same issue, Your Honor.

3 THE COURT: So it's in. 28 through 33.

4 MR. SCHREIBER: Those are in, Your Honor.

5 THE COURT: All right. So everything's
6 been done. ITT exhibits are now in.

7 MR. HAIL: Hold on, Your Honor. There's
8 one that --

9 THE COURT: Oh, 158.

10 MR. HAIL: 158, Your Honor. I think that
11 --

12 MR. KRUMHOLZ: Let me just shorten this.
13 It's a transition plan of MRC, and it's a proprietary
14 document.

15 THE COURT: 158 is?

16 MR. KRUMHOLZ: Yes. And in my mind it's
17 the same issue as -- or very similar issue as
18 Mr. Emerson. So while we are offering it, we presume
19 what the ruling might be.

20 MR. HAIL: Your Honor, it's not relevant
21 to anything in this case. You've already ruled
22 Mr. Emerson --

23 THE COURT: You were trying to show me
24 how it is that you were really going to take care of
25 everything in the event if the plan doesn't go through.

1 MR. KRUMHOLZ: Well, that, and Mr. Dean
2 testified about risk associated with lower value at the
3 petition -- at the '08 date if the mill was going to be
4 shut down. And Your Honor rejected it.

5 THE COURT: Well, I don't think I get the
6 benefit. This is not an issue of equity. This is an
7 issue of the code and what it does, etcetera. So I
8 think the same rule applies. So that does not come in.

9 All right. And I don't think they get to
10 argue that it closes down the mill or any of those sorts
11 of things either. They can't argue the equity of why I
12 should rule in your favor or rule -- whatever.

13 MR. HAIL: Okay. Your Honor, MMX 89 is
14 the proffer of Mr. Dean. It was admitted this morning.
15 I think that there is a general misunderstanding. And
16 we've agreed that it can be admitted. Mr. Krumholz and
17 I agree it can be admitted, but we need to strike
18 paragraph 15.

19 THE COURT: Okay. So it is admitted
20 without 15.

21 MR. HAIL: Your Honor, I -- I agree, Your
22 Honor, except that I would just like to note for the
23 record paragraph 15 is not being withdrawn. It is a
24 series of statements that were made to Mr. Dean about
25 discount rates that I understand Your Honor ruled as

1 hearsay, so therefore, that's where that --

2 THE COURT: You're still wanting it in,
3 but I've overruled you. 89. All right. What about 98
4 through 100? Those are the ones I just ruled on.

5 MR. KRUMHOLZ: So 15 is stricken with all
6 its subparts?

7 THE COURT: Right. And then 98 to 100
8 are in. What about 208?

9 MR. SCHREIBER: Excuse me one second,
10 Your Honor. Let me just turn my page to make sure I get
11 it right. 208, the Campbell Group, that should be in,
12 Your Honor.

13 THE COURT: All right. So that's all of
14 the MMX exhibits.

15 MR. SCHREIBER: I believe that's it, Your
16 Honor.

17 THE COURT: And we're waiting on the
18 exhibits from Scotia Pacific.

19 MR. FROMME: No, Your Honor. We do have
20 it now. I have handed it to the parties.

21 THE COURT: Have you handed it to the
22 table over there?

23 MR. FROMME: Yeah, all the tables, Your
24 Honor, except for Mr. -- for the jury. Your Honor, may
25 I hand it to the Court.

1 THE COURT: You can. Now we need to know
2 what -- what is it going to be marked as?

3 MR. SCHREIBER: Your Honor, I would
4 propose just to make this easier to mark it as MMX 111.
5 There's no magic to that, just the reserved number.

6 THE COURT: Any objection to it now?

7 MR. JONES: Your Honor, Evan Jones for
8 Bank of America. I understand counsel to represent that
9 Mr. Young has reviewed this; and if he has, I have no
10 objection.

11 MR. FROMME: That's exactly right, Your
12 Honor.

13 THE COURT: Mr. Greendyke.

14 MR. GREENDYKE: Thank you, Judge. Bill
15 Greendyke for the Bank of New York as indenture trustee.
16 This is the first time we've seen it. And I don't know
17 how to object to it, but I sure can't agree to it
18 because I haven't been able to verify it with my client.

19 THE COURT: So when -- how do you propose
20 we deal with it?

21 MR. GREENDYKE: I beg your pardon?

22 THE COURT: How do you propose we deal
23 with it?

24 MR. GREENDYKE: If Mr. Young says this is
25 it, I swear to it, then I don't have any --

1 THE COURT: Is Mr. Young still here?

2 MR. FROMME: Mr. Young is here and he's
3 available, Your Honor.

4 THE COURT: Okay. So come forward,
5 Mr. Young. Raise your right hand to be sworn.

6 JOHN YOUNG,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FROMME:

10 Q. Mr. Young, you have before you a document that
11 has been identified as MMX 111. Do you recognize that?

12 A. I do.

13 Q. What is it?

14 A. It is a schedule showing payments -- interest
15 payments made to Bank of America since the petition
16 date.

17 Q. Were you involved in its preparation?

18 A. I was.

19 Q. Did you review it?

20 A. I did.

21 Q. Is this an accurate statement of the payments
22 to Bank of America based on the debtor's records?

23 A. It is.

24 MR. FROMME: I have no questions, Your
25 Honor.

1 MR. GREENDYKE: We have no questions
2 either. Thank you.

3 THE COURT: All right. It's admitted.

4 MR. DAVIDSON: Your Honor, may I question
5 the witness, please?

6 THE COURT: Oh, sure.

7 MR. DAVIDSON: For the record, Your
8 Honor, Jeffrey Davidson, member of Stutman, Treister &
9 Glatt appearing on behalf of three noteholders.

10 CROSS-EXAMINATION

11 BY MR. DAVIDSON:

12 Q. In reference to the payment of interest, did
13 those payments come through the indenture trustee?

14 A. I'm not sure I understand what you're asking.

15 Q. When the money was transferred to you, was it
16 directly from the debtor or was it from the indenture
17 trustee?

18 A. I don't know the answer to your question.

19 MR. JONES: Your Honor, I think the
20 question is confusing. The money wasn't transferred to
21 Mr. Young. It was transferred by Mr. Young.

22 MR. DAVIDSON: I'll rephrase the
23 question.

24 THE COURT: You're asking did he transfer
25 it to the indenture trustee first? Or did he transfer

1 it directly to Bank of America? Do you know?

2 THE WITNESS: I don't know the answer to
3 that.

4 Q. (By Mr. Davidson) Okay. Do you have an
5 understanding as to what the procedures are for payment
6 of interest under the indenture?

7 A. No.

8 Q. Do you have an understanding as to the payment
9 of fees and expenses of Bank of America under the
10 indenture?

11 A. No.

12 Q. Have you ever read the indenture?

13 A. No.

14 Q. Okay. When you caused the interest to be
15 transferred, what legal rights did you think you were
16 satisfying?

17 A. Could you repeat the question, please.

18 Q. Sure. When you made the payments of interest,
19 why were you paying interest?

20 A. It was -- it was my understanding that those
21 payments of interest were to be made on the principal.
22 I don't know that I have -- I don't have an answer
23 beyond that.

24 Q. Are you familiar with the concept of adequate
25 protection?

1 A. I am.

2 Q. Is it true that those payments were being made
3 as adequate protection to Bank of America?

4 A. Yes.

5 Q. And that which you are adequately protecting
6 was the lien of Bank of America, wasn't it?

7 MR. JONES: Your Honor, objection. The
8 witness isn't a lawyer. Mr. Davidson has suggested in
9 e-mails to me that somehow Bank of America wasn't
10 entitled to those payments. The fact is that the very
11 order that the indenture trustee relies upon, the
12 adequate protection order, says and has said at all
13 times that payments will be made by the debtor to Bank
14 of America. And that's why these payments were made.
15 There's no reason to hide that fact from this witness.
16 He's not an expert on the indenture. He's not an expert
17 on adequate protection. He did what the order --

18 THE COURT: I'm not sure where we're
19 going. You have just now been given your position --

20 MR. KRUMHOLZ: Your Honor, may I just ask
21 that Mr. Jones stops having his speaking objection. And
22 if he has an objection, state it succinctly. If it's
23 ambiguous or something, fine. Speaking objections just
24 coach the witness. He's educating the witness --

25 THE COURT: So where are we going?

1 MR. JONES: Yes, Your Honor, let me lay
2 it out.

3 Q. (By Mr. Davidson) under the terms of the
4 indenture, there's a waterfall. And that waterfall says
5 that payments go to counsel for Bank of America and
6 counsel for the indenture trustee on a prorated basis.
7 And only after those fees and expenses have been paid in
8 full are any interest payments supposed to go to the
9 bank. Now, Your Honor, ordinarily if there's more than
10 enough to go around, it doesn't matter.

11 But when there isn't enough to go around, it
12 matters significantly. And the problem we have here is
13 that there's a single lien secured by a single security
14 interest in favor of the indenture trustee. The funds
15 should be flowing as adequate protection to the
16 indenture trustee on account of that lien, and then they
17 should be distributed pursuant to the waterfall in the
18 indenture. Now, that issue may not be right for
19 resolution today, but I think in connection with
20 introducing this exhibit and the witness being here,
21 again, what I would suggest, Your Honor, is we --

22 THE COURT: You don't have any doubt that
23 they made these payments, and that they didn't come to
24 you. They went to -- or to counsel for IT to pay the
25 indenture trustee. These payments went to Bank of

1 America, and everybody understands that; isn't that
2 true?

3 MR. DAVIDSON: The only question, Your
4 Honor, is whether they complied with the indenture or
5 not.

6 THE COURT: Okay. Well, and he has no
7 idea whether they complied with the indenture.

8 MR. DAVIDSON: Yeah, evidently that's the
9 case.

10 THE COURT: All right. And you don't
11 think they did; and you think they did?

12 MR. DAVIDSON: We can resolve this
13 issue --

14 THE COURT: Right, at some other time.

15 MR. DAVIDSON: -- with a witness who
16 knows the facts. Thank you, Your Honor.

17 MR. JONES: Your Honor, Mr. Davidson has
18 now made his speech. If I could, I'd like -- I'm not
19 going to ask the witness a question.

20 THE COURT: I prefer, first of all, just
21 to -- we have no more questions. Does anybody else have
22 any questions for the witness? Okay. You can step
23 down.

24 MR. FROMME: Well, Your Honor, I just --

25 THE WITNESS: Thank you, Your Honor.

1 MR. FROMME: I'm sorry. Mr. Young,
2 excuse me.

3 REDIRECT EXAMINATION

4 BY MR. FROMME:

5 Q. Mr. Young, when you made -- when you
6 authorized payments to partisans in the case, what
7 document did you refer to? What document were you
8 operating under?

9 A. The cash collateral budget.

10 MR. FROMME: Thank you. No further
11 questions.

12 THE COURT: Okay. So you're going to
13 have some questions now.

14 MR. JONES: No, Your Honor, but I would
15 like to withdraw the speech.

16 THE COURT: He can step down. All right.
17 Now we're ready to argue -- this issue may come up
18 somewhere collaterally. Maybe there's some dispute
19 between Bank of America and the indenture trustee. I
20 don't know.

21 MR. JONES: Thank you, Your Honor.

22 THE COURT: And maybe there's some
23 dispute that we have to resolve in the context of this
24 hearing if payments have been made that shouldn't be
25 made. But I don't know that that's the case, but in

1 argument we'll argue about that if that's important.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: Now, has anyone decided --
4 have you-all got among yourselves a plan for arguing?

5 MR. STRUBECK: Yes, Your Honor.

6 THE COURT: Okay. What is it?

7 MR. STRUBECK: Louis Strubeck on behalf
8 of the indenture trustee. We have a plan. We're going
9 to need about an hour on my side.

10 THE COURT: Okay. And then you're going
11 to give them an hour, the rest of them?

12 MR. STRUBECK: Well, I think this table
13 will have an hour, and then Mr. Jones is going to have
14 some time. He said he needed about 15 minutes, and I
15 don't know how much time the debtors believe --

16 MS. COLEMAN: Your Honor, we only need
17 approximately 10 minutes.

18 THE COURT: Okay.

19 MR. McDOWELL: Your Honor, we don't
20 anticipate any time.

21 THE COURT: Okay. Do you want to reserve
22 your time -- some time for the end?

23 MR. STRUBECK: I do. I want to reserve
24 about 10, 15 minutes --

25 MR. PASCUZZI: Your Honor, I just may

1 have five minutes, depending on what other people say.

2 THE COURT: Okay.

3 MR. STRUBECK: And, Your Honor, just the
4 last piece of procedure as to how we worked it all out.
5 As the Court knows, we've got several lawyers
6 representing some individual or collections noteholders
7 on our side. And they've asked to participate -- will
8 be within this one hour period that has been assigned.

9 THE COURT: Okay.

10 MR. STRUBECK: So I think we'll be all
11 right. May it please the Court, Your Honor.

12 THE COURT: Go right ahead.

13 MR. STRUBECK: Again, Louis Strubeck on
14 behalf of the indenture trustee. And, Judge, I want to
15 thank you for how patient you've been and how
16 accommodating you've been to all of us as far as how
17 much time you've given us over the course of the last
18 couple of days. We know it wasn't easy on you to come
19 back and step into this hornet's nest again. I think I
20 speak for all the counsel here today when I say that we
21 appreciate your time and your dedication to this case.

22 I told you on Monday, Judge, when I made
23 my opening statement that we were going to give the
24 Court what we thought the Court needed in order to
25 quantify the super-priority administrative expense,

1 which had been granted to us pursuant to the various
2 cash collateral orders. And I told you, Judge, that I
3 believed then and I still believe now that that claim is
4 in excess of \$170 million.

5 The evidence as you're going to see very
6 shortly is going to highlight how we get to that. And I
7 think I outlined for you in the opening statement that
8 it wasn't all that difficult, at least conceptually in
9 terms of how we got there. I told you that a big part
10 of our presentation was going to be the history of the
11 case, in particular reliance upon the Court's orders,
12 the Court's finding, multiple findings as it turns out,
13 and that I thought there would be an attempt made at
14 some revisionist history by parties other than the
15 indenture trustee.

16 And I think the evidence showed just
17 that. And really where we are, Judge, today is where we
18 were, I think, at the end of the first week of the
19 confirmation hearing when you said you thought this was
20 all about value. And we still think it is. But we
21 think from the standpoint of the indenture trustee's
22 super-priority administrative expense claim, the
23 question now is just how to quantify that value.

24 There was a remarkable assumption, Judge,
25 that needs to be made, I think, in order for our claim

1 to be defeated based upon the findings that you've made
2 and the orders that have been entered in the case. And
3 there are two pieces to it. I think the first piece is
4 that -- and just because Mr. Jones seems to be aligned
5 more with this table, I don't think he made a single
6 objection that was ever in our favor. I'm just going to
7 refer to the other side, and I think it encompasses
8 everybody on this side, and also Mr. Jones.

9 They want you to believe two things.
10 They want you to believe, first of all, Judge --

11 THE COURT: Isn't that also the debtor's
12 position?

13 MR. STRUBECK: I think Scopac is not
14 necessarily on that side, but I'll throw them in the
15 definition of the other side.

16 THE COURT: Okay.

17 MR. STRUBECK: And, Judge, the first
18 proposition is -- and, you know, the debtors for that
19 matter told you this at the confirmation hearing, that
20 they thought these timberlands were worth more than a
21 billion dollars. Now, you've told us what you think
22 it's worth, and you've also told all the lawyers that we
23 weren't going to relitigate that issue of the value
24 determination made for purposes of this, and we're not.

25 But the first proposition, Judge, that

1 you have to buy in order to conclude that we don't have
2 an administrative expense priority claim for diminution
3 in value is that the value of the assets in this case
4 went up from the petition date until the confirmation
5 date. That's the first proposition that they want you
6 to buy off on.

7 And that proposition is a proposition
8 that they try to sell you in the face of all the
9 economic data that's out there that's talking about --
10 and I'll call it macro economic data, that's out there
11 that shows you what's happened. And it was happening
12 before the petition date and certainly has happened at a
13 rather accelerated rate since.

14 So proposition number one is, Judge, they
15 have to show that you that the value of the timberlands
16 has gone up since the petition date.

17 And proposition 2, which I think is even
18 more remarkable, they need to show you -- this is what
19 they're telling the Court that they don't dispute the
20 findings that value went down from October 1st, 2007 to
21 the confirmation date. But what they tell you was that
22 there was this fortuitous spike in the value of the
23 timberlands in the face of everything else going down
24 with the possible exception of the metals market,
25 healthcare, and we all know about the energy market.

1 But that the timberlands went up in value from the first
2 of January until October 1st.

3 THE COURT: They're you that the value
4 went down from the appraisal to the -- or that the price
5 went down from the appraisal to the actual date of
6 confirmation.

7 MR. STRUBECK: They're telling you that
8 the value of the timberlands from the petition date
9 through the confirmation date went up.

10 THE COURT: Right.

11 MR. STRUBECK: And they're also telling
12 you because you found they also told you the value of
13 the timberlands went down because log prices went down
14 from October 1st to the confirmation date. What they're
15 telling you in connection with this hearing, Judge --

16 THE COURT: Let's deal with that issue.
17 Let's get to that. That's number -- finding number
18 what? 135?

19 MR. STRUBECK: I think it might be 158,
20 Your Honor.

21 THE COURT: 158. I got it.

22 MR. STRUBECK: 158, Your Honor. There
23 are other findings that lead the Court to that finding,
24 but 158, I think. Can you put 158 up. That will be
25 slide -- I think if you put 9 up, we can find it and

1 then we can blow it up. It's slide 9 -- sorry, slide
2 21.

3 THE COURT: Well, the --

4 MR. STRUBECK: We'll get there. There it
5 is, 158. Yes, 158. If you could highlight 158.

6 THE COURT: Now, you think that that was
7 a finding that the fair market value of the timberland
8 went down from the date of his appraisal to the date of
9 confirmation?

10 MR. STRUBECK: I'm saying that the
11 timberlands went down, Judge, and that's not the correct
12 finding. The correct finding is 158 -- it doesn't look
13 like it's reading that way.

14 THE COURT: Okay. It does say that if
15 you'd just change the starting amount of the valuation
16 in Mr. Fleming's report --

17 MR. STRUBECK: Correct.

18 THE COURT: -- from -- to 800, 850 MBF,
19 that that would result in dropping of the fair market
20 value from 605 to 452.

21 MR. STRUBECK: Correct. Correct. And
22 what I told you during my opening statement, Your Honor,
23 is that it was that finding in addition to other
24 findings that I can go through, that led you to conclude
25 two things: That log prices were declining because you

1 relied upon Mr. LaMont for that evidence.

2 THE COURT: There's no question the log
3 prices were declining.

4 MR. STRUBECK: And that there was --
5 there was also a direct correlation to that in terms of
6 value that was declining.

7 THE COURT: Isn't the point though that
8 if you use a ten year rather than a 50 year, and you do
9 various things, that price is not as significant. But
10 if you use a ten year, price could become more
11 significant and it can -- it can drop it. I mean, these
12 things are very difficult.

13 You know, the Supreme Court doesn't
14 really like the idea of battling appraisers to core
15 value. That seems to be one of the rulings they have
16 said, and that that might be a problem, although I don't
17 know that that's true. But it does point out -- this
18 case can point out a problem, that you can have good,
19 honest people trying to represent their client and
20 trying to represent their point of view come up with
21 completely different numbers. And in a case like this,
22 they're -- you know, everything is driven by
23 primarily -- I mean, more so than anything else by the
24 discount rate perhaps. But the price of log you put in
25 can drive it a little bit, what the rate of the increase

1 drives it. All the various things you can pick drive
2 what the value will be.

3 Now, various different ways of valuing
4 have more or less impact on what happens to value. And
5 whether an appraisal is bogus or not is one of those
6 issues we have to look at. But if you have a -- I
7 mean -- oh, well, never mind. Go ahead.

8 MR. STRUBECK: And, Judge, just before I
9 lose that thought because Your Honor raised it, I agree.
10 It's a very difficult process, and the Court's in a very
11 difficult task, particularly in a case this complex to
12 have to have -- I think you heard it was from four or
13 five valuation experts during the confirmation hearing.
14 And the variables are, as you pointed out, discount rate
15 and growth rates and log prices. I think those are the
16 three main ones. There are some others.

17 And, judge, what I told you during my
18 opening is that we believe if you look --

19 THE COURT: And let us know if you can
20 have an impact that highlights those different variables
21 in different ways --

22 MR. STRUBECK: Correct.

23 THE COURT: -- is another thing.

24 MR. STRUBECK: And you hit the nail right
25 on the head, Judge, and I was not going to use the word

1 "bogus" appraisal in my closing argument. You might
2 hear that from Mr. Krumholz when we switched positions.
3 But the credibility of those appraisers that you
4 listened to is critically important when you're
5 formulating your opinions.

6 And, Judge, if we can just stay with the
7 chart for just a second. And you saw -- this is going
8 to be page 21, please. And, Judge, these were the
9 findings that I had shown you during our opening that
10 kind of juxtaposed the proposed findings that were made
11 by the Marathon/MRC side, and then your ultimate
12 findings. And I don't intend to go through all of them
13 again. I did with the Court during the opening.

14 But the finding, Judge, on 134, I think,
15 is particularly important based upon what you just said
16 because the proposed finding that they asked you to make
17 was that Mr. LaMont is a credible witness whose
18 testimony deserves significant weight and whose
19 conclusions are as testified in court. That was what
20 they said.

21 And then when you made your finding,
22 Judge, you relied so heavily on Mr. LaMont because you
23 thought that he was a very incredible witness. You
24 added the words "given great weight." And if you read
25 your findings and conclusions, I submit that the fairest

1 reading of them is that when you considered the
2 testimony of all the appraisers, you decided for factors
3 that you observed that Mr. LaMont was entitled to the
4 most credibility. And that's -- these findings that
5 we've been going through about your value conclusions
6 are geared to specific things that he testified to that
7 you agreed to accept, which is your prerogative as the
8 trier of fact.

9 But when it later occurs, Judge, that
10 there's evidence that it's clear that maybe that witness
11 was not entitled to the credibility that he was given,
12 not for purposes of what happened during the
13 confirmation hearing because I'm not here today to try
14 to make any arguments that those findings need to be
15 upset. What I am saying is for purposes of credibility
16 what Mr. LaMont is telling you and what Mr. Dean is
17 telling you, for that matter, ought to raise some issues
18 about their credibility when you're deciding the story
19 they're telling you and when you're going to buy it in
20 terms of what's happened to the value of the timberlands
21 from the petition date to the confirmation date. And
22 more specifically in that very narrow period of time
23 between the petition date and October 1st, 2007, because
24 that's when they tell that you there's a big spike right
25 before -- and they say it goes all the way up

1 coincidentally to October 1st, and then it immediately
2 goes all the way down. And so my suggestion, to
3 follow-up with what Your Honor says, is not for purposes
4 of the findings you made earlier because you made your
5 own determinations about credibility. But you heard
6 some things, I think -- Mr. Krumholz will put some gloss
7 on it in a little while that I submit will make you
8 think twice about the credibility of two particular
9 witnesses. And I think the MRC/Marathon case for
10 purposes of value since the petition date for purposes
11 of going up rests on two people. It's Mr. LaMont and
12 it's Mr. Dean.

13 And I think we've heard some things
14 today, and you'll see some more exhibits in a little
15 while, that will show you again that what they truly
16 believed was a whole lot different than what they told
17 the Court at the confirmation hearing.

18 So I think you're right, Judge, we've got
19 to go back and we've got to look at these findings
20 again. And we submit that for a lot of reasons, they
21 boxed themselves in because of what they told you during
22 the confirmation hearing. And they can't come in now
23 and change their story. I want to talk a couple -- very
24 quickly about a couple of things because I'm quickly
25 using up my time, and I want to leave time for others.

1 But there are two components, Judge, to
2 our claim for diminution of value. And I'm going to go
3 back for just a second to remind you that it's our
4 position your prior orders established as a matter of
5 law conclusively that we have been awarded a
6 super-priority administrative expense claim. The only
7 issue that needs to be decided is for you to quantify
8 that claim. And I highlighted the different paragraphs
9 from the various orders that Your Honor had entered, and
10 this is not one of those situations that you see in some
11 of the cases that they cite where only the debtor had a
12 stipulation with the secured creditor. I mean, the
13 committee was on board for this. And it's crystal clear
14 what you ordered in three separate orders. And that is
15 that you granted the administrative super-priority
16 claim, and we just had to prove diminution in value.
17 And that's what we're here to do.

18 There were two parts I told you the first
19 day to diminution in value. The first one we talked
20 about a little bit already, which is the timberlands.
21 And I told you that just based upon finding 158 and the
22 other related findings, that we believed the value had
23 gone down by at least \$150 million. And Simon, if you
24 can put page No. 10 up, please, on the board.

25 And this is effectively, Judge, what I

1 showed you on the first day with just one variation. We
2 tried to take a very simplistic approach to this. And
3 we've taken your confirmation finding on value. And I
4 know that some people say it's up to 510, but the way
5 that I read your findings is because we have to receive
6 at least 510, that that's effectively the value. And
7 then we work backwards.

8 We go to Mr. Fleming's appraised number
9 for October 2007, \$605 million. And then we take it
10 back even further to get to January 18, the petition
11 date. And we have three values you can see that we
12 highlighted for you as of January the 18th.

13 The first value is the Palco Scopac which
14 we say is the consistent suggestion at least they were
15 making to you from the get go that the indenture trustee
16 was oversecured. And, again, as late as December of
17 2007 if you look at the record to proceedings before
18 Your Honor, you're still not finding that that's a value
19 that is necessarily -- needs to be imposed here, but
20 you're still thinking about that number.

21 No. 2 is \$646 million. That's the number
22 that Mr. Fleming came up with when we asked him to value
23 the timberlands as of the petition date. No. 3 is 668
24 million, and I footnoted that just because if you use
25 some information that Mr. Dean gave you and some cost

1 assumptions by Mr. LaMont and a 6 and a half percent
2 discount capitalization rate, you get to \$668 million
3 for a value as of the petition date.

4 And when it comes to what Mr. Fleming
5 testified to, Judge, I want to point out a couple of
6 things about him. I wish he were more loquacious, and I
7 wish that he raised his voice a little bit more, and I
8 wish he got a little more excited when he testified.
9 But the fact of the matter is that Mr. Fleming is the
10 guy when it comes to appraising and valuing timberlands
11 in Northern California involving specifically redwoods.
12 And he's the only MAI appraiser you've heard from over
13 the course of the last couple of days. I know the Court
14 knows what MAI is from your exchange with Mr. Krumholz.
15 He's also the only certified forester.

16 And we would -- we would -- we would
17 think to come in here, Judge, with a higher value on
18 petition date, so I could have shown you this huge
19 enlargement we're trying to decline in value. But we
20 didn't get there with Mr. Fleming because he came up
21 with his own value. He took his time. And \$646 million
22 is where he got. And he did it the right way, Judge.

23 You asked me if you go back in time for
24 purposes of an appraisal, what is it that you can
25 consider. And I think I told you we had that very issue

1 in the Asarco case in front of Judge Hahns. And what
2 the case says -- what the case law says, Judge, is you
3 can only go back in time -- you can only look at
4 information that was available at that point in time
5 based upon the circumstances that existed at that point
6 in time. And you can't consider anything else. And I
7 submit that's exactly what Mr. Fleming did. He went
8 back in time to January the 18th, 2007. He considered
9 all the information that was relevant at that period of
10 time and didn't look at information that became apparent
11 and that became discoverable and was provided after --

12 THE COURT: Except for price, and then he
13 used a few months afterwards to try to come up with a
14 price.

15 MR. STRUBECK: Just as a check, right.
16 And I'll just cite you some authority, Judge, for the
17 proposition of what I'm telling you, I think, is correct
18 as far as how you have to go back. And you can consider
19 what goes on in the future and just look at things as
20 they existed at that point in time. And it's the
21 Creditors Liquidation Trust versus WRT bankruptcy
22 litigation master file. And it's 282 Bankruptcy
23 Reporter 343. That's a 2001 case out of the Western
24 District of Louisiana.

25 So we think, Judge, that Mr. Fleming did

1 exactly the kind of appraisal that he was required to do
2 under the law and considered exactly the things that he
3 was supposed to consider. And you can see because
4 there's only a \$41 million difference in value between
5 January 18th and October 2007 that he wasn't able to
6 come up with a real high number that I can come in here
7 and argue in front of you today.

8 And, again, I think that's to his credit
9 because I think, you know, he's a little quirky. Yeah,
10 he likes Excel spreadsheets, but so does Mr. Dean.
11 There was an e-mail that said he liked them, too. And
12 he is the guy that people go to when they want a redwood
13 forest appraisal in Northern California. And so that's
14 what you're seeing.

15 And Mr. Krumholz is going to talk about
16 Mr. LaMont and Mr. Dean specifically in just a second,
17 but I want to go back in the ten minutes I think I still
18 have and talk about the other part of our diminution in
19 value claim here. And, Judge, that involves the cash
20 collateral and the cash collateral equivalents. And I
21 will give you a chart to put up on that one.

22 Judge, my exhibits got mixed up on the
23 way over. Simon, can you help me. Do you know what
24 chart it is that shows the cash position on the -- I've
25 got it now. I'm sorry, Judge. It is page 25.

1 And, Judge, this -- I showed you the
2 monthly operating report during the opening statement
3 that was filed effective as of May 31st, and you heard
4 from Mr. Young during his testimony. What he did is he
5 brought it current to June the 28th. And if you look on
6 the second column from the left, you can see cash in the
7 operating accounts as of the petition date was \$4.3
8 million. There were no auction rate securities then.
9 Cash and cash equivalents were 39.8 million, and total
10 cash on hand, \$46,888,930.

11 And now if we go to the next column which
12 is the amount on June 27, 2008.

13 THE COURT: You believe there were no
14 auction rate securities? Have we proven that there were
15 no auction rate securities on the date of the filing?

16 MR. STRUBECK: I believe we have. Or if
17 we haven't proven -- I thought we did prove that, Judge,
18 through Mr. Young. To the extent that I'm mistaken,
19 then what I'll say --

20 THE COURT: It wasn't clear when it
21 started. We know that there was some time they rolled
22 over during the bankruptcy, but I didn't think there was
23 any definitive evidence as to -- help me if I'm wrong,
24 but I didn't remember anyone saying that they knew for
25 certain when the first auction rate securities were

1 purchased.

2 MR. FROMME: Your Honor, I hate to
3 interrupt, but I think the testimony is clear that
4 Mr. Young did not know when the auction rate securities
5 were initiated.

6 THE COURT: I know it wasn't Mr. Young's
7 testimony, but it was somebody else.

8 MR. STRUBECK: Judge, I might have
9 mistaken. I thought that there were no auction rate
10 securities, but for purposes of what I'm about to say,
11 it's not going to matter because we do know that prior
12 to the time that Mr. Young testified, that he moved what
13 is now in an auction rate securities box into a
14 different category in the monthly operating report. It
15 was considered to be a cash or cash equivalent. So
16 that's my point. And, excuse me one second.

17 And, Judge, again, going back to the cash
18 collateral orders that Your Honor had entered in this
19 case, the adequate protection orders to speak more
20 specifically about it. On the petition date, the
21 left-hand column shows you -- you might have to move
22 the -- the cash and cash equivalent of \$39.8 million,
23 Judge, is really how I believe the portion of the
24 auction rate securities were classified at that time.
25 And judge --

1 THE COURT: Am I bound by that?

2 MR. STRUBECK: Are you bound by this
3 chart that we put up?

4 THE COURT: Well, I know I'm not bound by
5 your chart. But the mere fact that everybody thought
6 that they were cash equivalents at the time you filed,
7 that somehow makes them cash equivalent?

8 MR. STRUBECK: Well, I think the only
9 evidence is that that's what they were because they
10 weren't moved until later on. At least no one on the
11 debtor's side thought that they needed to fall someplace
12 else on the monthly operating reports.

13 THE COURT: Okay.

14 MR. STRUBECK: And, Judge, so going to
15 the definition of 363(b) of the Bankruptcy Code, and
16 specifically where it talks about 363(a) of the
17 Bankruptcy Code, where it talks about cash collateral,
18 it says: "In this section, cash collateral means cash,
19 negotiable instruments, documents of title, securities,
20 deposit accounts or other cash equivalents were never
21 acquired in which the estate and an entity other than
22 the estate have an interest." And it goes on to say
23 what it includes.

24 And I submit, Judge, that on the petition
25 date, the auction rate securities were considered to be

1 cash or cash equivalent by the debtors because they were
2 not yet moved to another column and footnoted like
3 Mr. Young testified he did later on.

4 And so from a very simplistic protection
5 definition, Judge, our cash collateral and cash
6 equivalents is significantly less to the tune of about
7 \$41 million than it was on the petition date. And we
8 believe that we're entitled to be protected for the
9 diminution dollar for dollar.

10 THE COURT: The definition then that if
11 the dollar became so bad that everybody decided we want
12 Euros to trade in, that the dollars would not be
13 considered cash equivalent then true?

14 MR. STRUBECK: I think the dollar will
15 always be considered cash, but I think there's a very
16 big difference between the dollar, which has some
17 value -- you can always exchange a dollar for something.
18 When you went over to Italy, it may have been that you
19 could only exchange a Euro and a half for a dollar, but
20 it still had some ability to receive --

21 THE COURT: A dollar and a half for a
22 Euro.

23 MR. STRUBECK: I think that's what it is,
24 but you heard Mr. Young testify that he had five
25 people -- or he had some person now trying to find bids

1 for the auction rate securities, and he was not
2 successful in getting a single bid. So I submit to you
3 that a dollar, even with inflation and even with the
4 value of the dollar declining is very, very different
5 from an auction rate securities.

6 THE COURT: Are auction rate securities
7 negotiable instruments?

8 MR. STRUBECK: At the point where they
9 can be negotiated. But if there's no market for them --

10 THE COURT: I'm not saying negotiable
11 instrument with a market. It just says negotiable
12 instruments.

13 MR. STRUBECK: Well, we have testimony,
14 Judge, it was uncontroverted that said there was no
15 ability to even receive a bid.

16 THE COURT: Where in here does it say you
17 have to be able to sell them?

18 MR. STRUBECK: I think that's the reason
19 that they moved from the column, Judge, on the monthly
20 operating reports.

21 THE COURT: I agree. I mean, this is an
22 issue that's never -- I have never had this issue come
23 before. What do you do about something -- what do you
24 do about a document that prior to -- early in the case
25 everybody believes that it's negotiable, you know, you

1 can divert cash easily. It can be done that way,
2 etcetera. And then later in the case some totally
3 unrelated to the case, some market thing happens, you
4 know, that causes the negotiability or whatever you want
5 to call it, monetization ability to change. Does it
6 convert it from a cash equivalent to something else
7 called an investment? Maybe it would from an accounting
8 standpoint on a -- on a -- according to GAP or somebody
9 on a monthly operating report or on a -- whatever, you
10 know, monthly statement it might have to change. But
11 would it change in accordance with this provision of the
12 code? Who guarantees the value of that thing?

13 MR. STRUBECK: I think the debtor does
14 pursuant to the super-priority administrative expense
15 claim that you awarded us in this case.

16 THE COURT: It can do that, but I'm just
17 saying do you have some case law or anything -- I mean,
18 is this something -- is this something -- this has had
19 to have come up before where something was considered
20 negotiable and then, you know, the negotiable
21 instruments.

22 MR. STRUBECK: Judge, to my knowledge, it
23 hasn't come up before. And I guess the closest analogy
24 that maybe I could make to it is that these aren't --
25 these aren't negotiable instruments as much as they're

1 probably securities.

2 THE COURT: The documents are titled --
3 securities, for instance. If you had Exxon stock and
4 they were considered securities, cash collateral and --
5 or, no, not Exxon, pardon me. Enron stock, and they
6 filed bankruptcy and it goes to zero, do you get
7 super-priority?

8 MR. STRUBECK: I think you do. I think
9 you do get one. If you have been granted one and on the
10 day of the petition, as in this case right here, we
11 could have exercised our right for control of those
12 assets and could have gotten them dollar for dollar.

13 THE COURT: You didn't request the
14 lifting of stay as to the auction rate securities ever
15 in the case, right?

16 MR. STRUBECK: True.

17 THE COURT: Okay. Go ahead.

18 MR. STRUBECK: We didn't, Your Honor, but
19 we filed a lot of motions in this case. And as I think
20 you pointed out on the very first day, it's hard to
21 imagine we could have ended up getting anything, even if
22 we had filed a motion for relief or stay from an
23 adequate protection standpoint, it would have adequately
24 protected us any differently than what we were
25 ultimately ordered. And, of course, Judge, as we

1 pointed out we did file a motion, I believe, in the
2 second week or second month of the case for the case to
3 be treated as a single asset real estate case, which
4 would have had the effect of compressing all the time
5 frames under Section 362.

6 So my argument, Your Honor, is that these
7 auction rate securities are no longer the same kind of
8 cash and cash equivalents as they were on the petition
9 date. There's clearly been a diminution in value and
10 that from the standpoint of Section 363(a) of the Code,
11 we're entitled to a dollar-for-dollar claim for the
12 diminution.

13 Now, Judge, even if you don't agree with
14 that argument, and there are other aspects -- can you
15 put up slide No. 23, please.

16 Judge, the slide that's up right now
17 demonstrates what the difference was between the filing
18 date in January and the most recent monthly operating
19 report that Mr. Young testified was filed. And, again,
20 we highlighted the first cash aspect of that, which is
21 the \$46 million plus number on the petition date. And
22 then the \$5 million number that takes you through the
23 end of May. But it also shows how the cash and cash
24 equivalents morphed into something completely different
25 by the time we get to May of 2008.

1 And I think several of those categories,
2 Judge, I just want to run through very, very quickly
3 before we move on to another aspect of this. The first
4 one I want to talk about -- and I think I said, Judge,
5 in my opening that there was some low lying fruit here,
6 I thought, with respect to the cash collateral at least.
7 And we had to jump for it a little higher than I thought
8 because Mr. Young certainly spent much more time on the
9 stand than I believed that he would. But, Judge, let's
10 first look to the amount of attorneys' fees and
11 professional fees that were paid in the case. And I
12 believe they may be footnoted in that exhibit.

13 MR. NEIER: Which one are you looking
14 for?

15 MR. STRUBECK: The total professional
16 fees, Your Honor, that were paid at the very bottom of
17 the chart on the very bottom right-hand side are
18 \$25,713,443. And there was an issue that had come up,
19 Judge, during the opening about the professional fees
20 paid to the indenture trustee. And for purposes of this
21 hearing, we said that we would agree to account for that
22 later on, but I think it's only fair that those amounts
23 be subtracted out of the total fees that have been paid
24 to all professionals in the case, which leaves with a
25 balance of about \$17 million.

1 Clearly that is a movement in our -- on
2 the negative side from our cash collateral position as
3 existed on the petition date to the end of May of 2008.
4 And, Judge, the only argument I heard as to how that
5 somehow should not be considered specifically to
6 diminution is that we had agreed to a carve out for part
7 of those fees; and now that we're undersecured, we
8 shouldn't be entitled to say that we've been hurt by
9 that. I would simply say, Judge, that if were the
10 precedent that Your Honor were to carry forward, there
11 would be very few security creditors that would probably
12 ever come in and agree to a carve out again in a case.

13 The only other major item in this that
14 I'll focus on is what I told the Court earlier, which
15 had to do with the reclassification of the auction rate
16 securities. Again, the testimony from Mr. Young and
17 also from Mr. Radecki was that those were completely
18 illiquid.

19 I'm going to -- I'm going to pass on to
20 Mr. Krumholz the mantle so he can talk to you, Judge,
21 about the timberlands valuation and specifically
22 Mr. LaMont and Mr. Dean's testimony.

23 THE COURT: All right.

24 MR. KRUMHOLZ: May it please the Court.
25 Your Honor, I know that this isn't my usual form. And

1 I'm a little excitable over time, and I apologize to the
2 extent that that was somehow --

3 THE COURT: I wouldn't waste any time on
4 apologizing. Nobody's been hurt in terms of -- nobody's
5 been offended. Let's just move on. Let's get --

6 MR. KRUMHOLZ: With that said, it is rare
7 in my world, and as I understand it, in the bankruptcy
8 world where you get to peer into the hearts and minds of
9 litigants and witnesses. Not just here in court as to
10 what they're saying, but what they're saying behind
11 closed doors where no one can see in, with their
12 attorneys, with their officers, with their directors,
13 with their owners, and with their expert witnesses. It
14 just doesn't come around very often that that's the
15 case.

16 But that, fortunately for us, is exactly
17 what we've got to do here. And, you know, not unlike
18 the Court, I got to see some bad evidence in a very
19 short period of time when I got involved. As I became
20 involved, it was sort of like an investigation of sorts.
21 And as I came across evidence, you heard it either just
22 before or just after I did. But I think that we can all
23 say that we were shocked by what we heard from a couple
24 of these witnesses. I don't think anybody in this
25 courtroom can credibly say otherwise. So I want to go

1 ahead and talk about a couple of those witnesses.

2 And first, I'd like to address
3 Mr. LaMont. First of all, Mr. LaMont has never in his
4 life -- and he's admitted this -- appraised a redwood
5 timberland. He's testified to you in a number of
6 occasions that they are very unique, very unique
7 regulations, very unique in how they grow, very unique
8 in every way, Your Honor. And he has never done it, not
9 even once.

10 Your Honor, he used pricing that he has
11 never before used in any way. He got pricing
12 information from MRC and Mr. Dean. And we'll turn to
13 the credibility of that information in a moment.

14 He got all of his pricing information
15 from Mr. Dean and MRC and had never used it before for
16 any purpose in connection with incorporating it into any
17 sort of valuation opinion or any appraisal. Another
18 thing, he was forthright to tell you that three weeks
19 ago, just came out for the first time during this trial.

20 But if you dig a little deeper as we did
21 in connection with that pricing, it got much worse than
22 that because what we learned is that the Pacific Rim
23 Wood Market prices were not published after April, he
24 admits August of 2007. And yet his model contains --
25 and it's shown in evidence -- every single month

1 thereafter through February of 2008 as having Pacific
2 Rim Wood Market prices in it, as provided by MRC and
3 Mr. Dean.

4 Now, as you'll recall from your findings
5 of fact and conclusions of law, the Court criticized and
6 was as concerned about Mr. Fleming's numbers that he
7 used, the date, October 1, 2007. You heard from
8 Mr. Fleming that the reason he used that date was
9 because it was the last time that he could gather
10 information from actual log buyers and sellers in and
11 around Humboldt County in connection with redwood forest
12 and timberland that he appraises all the time and still
13 have a valuation in time for the confirmation hearing.
14 That was the reason that Mr. Fleming provided.

15 But that wasn't the reason Mr. LaMont
16 provided because what you now have are valuations that
17 are based not on a cutoff date because of the
18 reliability of the data; you're faced with valuations
19 that are based upon what I believe are absolutely false
20 data, made-up data that didn't even know was made up
21 until I deposed him. Completely irrelevant data. Data
22 that was not in existence at all. And we still don't
23 know how it was calculated or formed by MRC, the one
24 that provided it.

25 So any concern that you may have had

1 about Mr. Fleming's analysis is exacerbated tenfold by
2 that testimony. He doesn't even subscribe to the very
3 newsletter he relied on for purposes of pricing and in
4 our mind, fabricated the information.

5 He also testified that growth rates
6 outpaced harvest rates. He told you, and Marathon and
7 MRC actually stood up and proffered testimony time and
8 again, including Mr. Barrett, including Mr. Barrett, for
9 the proposition that the forest grew an added value from
10 2007 through June of 2008. But what they were telling
11 each other behind closed doors to each other when there
12 was no reason in the world to hide something -- and by
13 the way, when they were wanting to do something far
14 different than what they want to do today, that is, find
15 a lower value, they were saying something much
16 different.

17 Your Honor will recall the back and forth
18 between the experts, Mr. Dean, officers of both Marathon
19 and MRC. You will recall that the Barrett affidavit and
20 declaration, the very same Mr. Barrett that testifies
21 that there was somehow a three and a half percent growth
22 rate that they wanted to now all of a sudden rely upon,
23 I guess. What they were saying about that supposed
24 growth, right -- just three months ago, right as they
25 were coming into your court trying to figure out an

1 argument that might be favorable to them in this
2 context. Go to the next screen, please.

3 Mr. Neier, of course, asked for that
4 information. Next screen. And he talks about --
5 Mr. Dean talks about very candidly his thoughts on the
6 subject. The growth that Mr. Neier spent so much time
7 on with Mr. Barrett based upon the declaration that they
8 had attached to this e-mail and were discussing the very
9 same declaration and testimony, except with minor
10 revisions by Mr. Barrett, they were saying that growth
11 was equal to zero. They harvested almost all of the
12 redwood, seems quite small, margin of error. The only
13 thing that's left are hardwoods and Doug Fir, both of
14 which are worthless because they're uneconomic,
15 something they've stated since day one. They're saying
16 something completely different than that as they sit
17 here today.

18 That is just amazing to me that they
19 continue to even voice that opinion based upon what
20 Mr. Dean had said. And they never refuted this.
21 Mr. LaMont did not come back even one time. Yes, they
22 refuted the 5 to \$7 million number, if there is any
23 growth. But not once did Mr. Schwartz ask him what did
24 you mean by this? Did it mean anything to you? Did you
25 ask Sandy? Did you talk to Mr. Tedder about it? What

1 was the discussion? Where is the response? Not once.

2 We didn't hear any of that.

3 Next e-mail. Then Mr. Tedder weighs in,
4 long time associate and partner of Mr. LaMont. The same
5 day, says the same thing. Agrees with Sandy. Next one.

6 "I agree with all of Sandy's comments.
7 Here are mine." Harvest was 74 million, but all
8 redwood. Redwood harvest minus redwood growth is zero.
9 Sandy pointed out, same thing. The rest of the growth
10 is Doug Fir, has no value, hard woods have no value.
11 All net additional growth have no value. That is what
12 they said to you back in March. That is what they said
13 to each other. And now they stand up before you, just
14 weeks later, with a completely different hat on. And
15 the question is are you going to buy it. And I don't
16 see how anyone can.

17 We talked about discount rates, and
18 Mr. Strubeck said the appropriate time to look at
19 discount rates is -- and information is on January '07.
20 You know, they have not shown you one document, except
21 for the three that I talked about, that are literally
22 PowerPoint sales presentations that talk about discount
23 rates applicable to January '07 and what the credit
24 markets have done. It doesn't take a rocket scientist
25 to figure out if there's fewer buyers in the market,

1 then it's going to affect the prices. I mean, the
2 reality is that there is less credit, there are less
3 hedge funds, there are fewer private equity holdings
4 that could invest. There are fewer dollars out there,
5 Your Honor. That is just a fact of life. That we don't
6 only have to rely on what I say or Mr. Radecki who lives
7 in these markets every single day. We can actually go
8 to Mr. Dean's own mind because it was shared for us what
9 he thought on this subject.

10 And by the way, Mr. Dean, of course,
11 proffered testimony, five to 15 million dollars right
12 there on the growth. Despite having been on that
13 e-mail, never refuted it, not even asked about it in any
14 significant way. I couldn't even understand the
15 response. It wasn't believable.

16 But I want to talk to you about
17 misrepresentations to the Court. I asked Mr. Dean every
18 single question I could to get the answer of what truly
19 was going on here. I asked him about a dozen questions,
20 and I asked him a lot of different ways. How do I know
21 that? Because I got a lot of objections asked and
22 answered. But I wanted to make sure I got it because I
23 knew I would hear from this table that somehow it wasn't
24 the right question. I asked him if he ever stated to
25 you they wanted to capture the value. I asked him if

1 they ever indicated or suggested to you that they wanted
2 to capture the value. I asked him whether or not they
3 wanted to combine entities somehow to capture the value
4 at Scopac. I asked him if they ever wanted to propose a
5 bogus appraisal. Did they ever tell you that? Suggest
6 it? Imply it? Did you ever believe that, top side or
7 bottom? No, no, no, no, no, no, no, each and every
8 time. From that witness stand he said it every single
9 one of those responses over and again. But this e-mail
10 says a far different story.

11 Next slide. Of course, we know who it's
12 to, Mr. Fisher, the Fisher brothers who you've heard so
13 much about. I guess the Fisher brothers probably is Don
14 and John is the son. Go forward, please. And we know
15 it's -- keep on going. Keep on going.

16 It talks about how they think one of the
17 main things the company needs is to better integrate the
18 functioning of the lands and the mill. That's Marathon.
19 And we talked at this point, it became clear -- and by
20 the way, he took exception with that. It didn't make
21 any sense from his perspective. The lands and the mill
22 are well integrated. It's the corporate flow because of
23 the indentures, but they're not. That's what he
24 thought.

25 But as we talked on this point, it became

1 clear that they see a need to combine the mill, same
2 question I asked him, because they wanted access when
3 they seized land values to bolter their collateral
4 position. I asked him if they wanted to access the
5 lands for that value. Mr. Dean said no. Actually, he
6 first said: What do you mean by access? I guess I
7 meant exactly what he meant here.

8 Let's go forward. Most important
9 discussion of the whole day. They believe that Palco
10 and Scopac cases are not going to be separated and,
11 therefore, even if they are undercollateralized, that
12 Palco -- they can tap into the equity at Scopac.
13 Exactly what we have told you since day one. Just like
14 the change of business. What we told you then is
15 exactly what they were trying to do. They were trying
16 to pull wool over your eyes then, and now they're trying
17 to pull the wool over your eyes again.

18 Mr. Dean says: "Hey, wait a second. If
19 I'm a noteholder, and I object" and they go on. And he
20 conceded that if noteholders can prove impairment, they
21 would not have to share with Marathon. And then it gets
22 into the muddying of the waters in the appraisals.
23 They're going to have to fight with the experts, and
24 they know that if they do that, then maybe, Judge, just
25 maybe you won't figure any of this out unless this

1 e-mail comes to light. You won't figure any of that out
2 until you get this e-mail, which they never thought
3 would see the light of day.

4 Next one. Then it says: "It would seem
5 like perhaps our job is to convince the noteholders of
6 the train wreck that is coming." This is Marathon. It
7 says, "The debtor and Marathon communication proceeds
8 with a bogus appraisal and can cram down," something he
9 denied three or four different ways on the stand.

10 Next slide. Interestingly, Marathon
11 thought they were overcollateralized, and if that's
12 true, were owed over \$2 million. Go forward. And then,
13 of course, it talks about the slight of hand. This
14 tells you exactly what kind of people we're dealing with
15 here. Whether the Court likes to admit it or not,
16 whether it's nicety or not, I don't know how else to say
17 it. But complimenting him on the logging and hold
18 inventory. Next slide.

19 So, Your Honor, at the end of the day,
20 and put bluntly what we have seen is both appalling and
21 offensive. It's offensive to me as a lawyer. It ought
22 to be offensive to this Court. Witnesses taking
23 positions they didn't believe just weeks ago. Witnesses
24 lying from the stand and immediately being confronted
25 with the truth, never responding in any sort of

1 substantive way to those allegations.

2 What Your Honor must now decide is what
3 litigants all over the state of Texas and I guess this
4 country are going to be thinking when they come into
5 this court. Are they going to be thinking on the one
6 hand that the Court will not tolerate playing fast and
7 loose with the facts, or are they going to think
8 something far different than what you want.

9 An that, of course, is not something we
10 can decide. It's something that only you can decide.
11 Thank you, Your Honor.

12 THE COURT: Mr. Gibbs, are you next?

13 MR. GIBBS: I am, Your Honor. Your
14 Honor, for the record, Chuck Gibbs with Akin, Gump,
15 Strauss, Hauer & Feld. I represent CSG Investments,
16 Inc. and several of its affiliates. We're the largest
17 creditor in this case. At face value, the claims that
18 we hold against Scopac are maybe 50 percent higher than
19 Marathon's claims against Palco. We're here to see --
20 we're here today to see that justice is done.

21 I have to be candid with you and tell you
22 that my client firmly believes that justice wasn't done
23 in the confirmation process, that a grave injustice was
24 done.

25 THE COURT: Here you are owning all of

1 these notes, knowing how undercollateralized Marathon
2 was, and all you had to do was go find Red or whatever
3 his name was to buy Palco, and you could have. I mean,
4 we eliminated exclusivity. This is a big world. These
5 are not -- this is not mom and pop versus anyone. Your
6 client is a big guy. He can figure it out. You're
7 intelligent. Why didn't you propose a plan that cashed
8 out Marathon at the value of their collateral?

9 MR. GIBBS: My client is one of a group
10 of noteholders bound by an indenture, Your Honor, and
11 whether we had all the flexibility that you would like
12 to think that we had or not really isn't the issue.
13 What Your Honor did --

14 THE COURT: When you lift exclusivity,
15 it's no holds barred. Anybody can steal the company. I
16 mean, you've got to do it legally admittedly. You can't
17 do it with bogus appraisals or whatever that means. I
18 agree; there's no question about any of all that. But
19 it's a new game. I mean, it's capitalism at its finest.
20 Go be as ruthless as you want to. Why are you -- why
21 did all not get together -- and I don't know how
22 undercollateralized Marathon was, but it certainly
23 wouldn't have taken months to just put forth a plan.
24 Your attorneys fees might have paid them off what they
25 are owed. Maybe not yours, but the whole table's might

1 have.

2 MR. GIBBS: I understand. I understand
3 that Your Honor is frustrated over why --

4 THE COURT: It makes one wonder from an
5 economic standpoint if you're not willing to do that,
6 you must not really think -- I don't know what you
7 think. I mean, that's not my business to think.

8 MR. GIBBS: And I think it's an unfair
9 speculation to infer that. But I think what Your Honor
10 was faced with was deciding whether to confirm a plan in
11 our mind that allowed a hostile acquirer to acquire our
12 collateral without giving us the credit bid right.
13 That's the injustice that I'm referring to. Simply
14 that.

15 THE COURT: We wouldn't even have had to
16 worry about that if you would have tried to acquire
17 their collateral with much less -- I mean, you are
18 way -- in terms of leverage, you had the big stick in
19 this case. And it would have been easy enough for
20 you-all to have found somebody if you didn't want to run
21 Palco, because you now found somebody apparently.

22 MR. GIBBS: Well, Your Honor, it would be
23 an equal injustice to the remaining of the noteholders
24 should we take time debating what we should have done or
25 why we didn't do what we --

1 THE COURT: Okay. I'm sorry. But when
2 you bring up the issue of the equities or something like
3 that, the equities don't have anything to do with when
4 you open up the -- open up the case for anyone to file a
5 plan, not anyone, but it was all of you here at the
6 table were able to file a plan.

7 MR. GIBBS: Your Honor, we filed -- last
8 comment and then I'm going to talk about 507(b).

9 THE COURT: I'm wasting time.

10 MR. GIBBS: We filed a plan that dealt
11 with the debtor that owed us money.

12 THE COURT: That was your choice to do
13 that.

14 MR. GIBBS: Let's talk about the justice
15 that needs to be done today.

16 THE COURT: Okay.

17 MR. GIBBS: Your Honor entered not
18 three -- six orders in this case. You entered an order
19 on January 19th. You entered an order on January 24th.
20 You entered an order on February 15th. You entered an
21 order on March 9th. You entered an order on June 1st,
22 all in 2007. And you entered an order on March 18th of
23 2008. In each of those, you've seen the consistent
24 language in all six orders that gave my clients and B of
25 A protections for the use of our cash collateral.

1 That language is the same: "B of A and
2 the trustee are also each granted a super-priority cost
3 of administration priority claim under 11 USC 507(b) to
4 the extent of the diminution of their respective
5 interest and the pre-petition collateral and the cash
6 collateral."

7 Lest you think for a second that that's
8 loose language or boilerplate or somehow doesn't mean
9 what it says, I'd like to turn the Court's attention to
10 what the debtor asked for and what the debtor offered in
11 its motion that resulted in six separate orders of this
12 Court. If you could put up 59.

13 This is paragraph 30 of the debtor's
14 motion filed the first day of the case. As a
15 parenthetical, Palco filed a motion also on the first
16 day of the case where they sought use of cash
17 collateral. In Palco's motion, they offered their
18 lender, whose cash collateral they wanted to use, a
19 replacement lien. That's all they offered in their
20 motion.

21 Scopac filed a motion and proposed that
22 this Court enter an order granting their use of our cash
23 collateral and as part of the protection -- look at the
24 first sentence: "Second, Scopac will grant to B of A
25 and the trustee a super-priority claim as provided by

1 Section 507(b) to the extent of any diminution of their
2 respective interests in the cash collateral resulting
3 from Scopac's actual use thereafter." They asked you
4 only to give us a 507(b) claim to the extent that
5 there's been a diminution only in cash collateral and
6 only resulting from Scopac's actual use thereof.

7 In response to that motion, Your Honor
8 has filed -- has entered six separate orders that gave
9 us a super-priority claim under 507(b) to the extent of
10 diminution, not only in the cash collateral, but in the
11 pre-petition collateral -- that's the timberlands -- and
12 not limited by the diminution caused by Scopac's actual
13 use thereof. The creditor's committee came on board.
14 Did they ever once ask you to set aside those orders?
15 Did they ever once object to the entry of those
16 remaining orders? No. Millions of dollars of our cash
17 collateral have been spent on professional fees, and
18 they never have complained about those orders.

19 Six separate times you've given us a
20 507(b) claim, and they came in today and say: We didn't
21 really mean it. You really shouldn't get a 507(b) claim
22 even though the testimony, as you've heard Mr. Strubeck
23 and Mr. Krumholz summarize, shows that we have had
24 hundreds of millions of dollars of diminution in the
25 value of our pre-petition collateral and in our cash

1 collateral.

2 I won't reiterate and go back over the
3 concerns we have in the summaries of the evidence that
4 you've seen. But it is real clear that you need to
5 look --

6 THE COURT: What exactly is the language
7 of the order?

8 MR. GIBBS: The actual language of the
9 order says --

10 THE COURT: Do you have that?

11 MR. GIBBS: Yeah. That is one of their
12 slides. And let me read it to you, Judge.

13 THE COURT: Just read it.

14 MR. GIBBS: "B of A and the trustee are
15 also each granted a super-priority cost of
16 administration priority claim under 507(b) to the extent
17 of the diminution of their respective interests in the
18 pre-petition collateral and the cash collateral." So
19 you gave us a priority claim that trumps every other
20 priority claim, administrative claim. To the extent our
21 timberlands go down in value, to the extent our cash
22 collateral goes down in value, and it doesn't have to be
23 proven that it went down in value because of Scopac's
24 use. That's what they asked to give us, was a
25 diminution claim only resulting from their use. And

1 they asked that we only get that claim. To the extent
2 that cash collateral has been diminished, we got that.
3 We got it six times, and justice isn't done and the law
4 is not followed if those orders don't have meaning. And
5 the law of judicial estoppel is real clear, and it's
6 laid out very well in the IAG's brief on that issue.

7 What's probably most odious in this whole
8 process is the continued objections of B of A to the
9 Court's granting of what we're asking for. They get it.
10 They get the same thing we get. It's pretty clear what
11 they want to do is be a big enough pain that maybe
12 somebody will buy them out. But they got the same grant
13 that we got. He came in and wanted to make sure that
14 Your Honor -- he being Mr. Jones -- came in and just
15 before we started closing arguments and said: Oh, no,
16 the orders mean what they say. We're supposed to get
17 paid. And we got paid. Don't touch the orders as long
18 as it's benefiting directly his client and his firm with
19 respect to payment of fees. But he doesn't want Your
20 Honor to follow this order. Nor do the parties in
21 interest.

22 Let me back up. In each of those six
23 orders, in addition to having that language as far as
24 the grant of protection to us says real clearly, they're
25 binding on Scopac, they're bind on the committee, and

1 they're binding on all parties in interest. Each one of
2 those six orders has that finding by the Court. And yet
3 they asked you not to make a finding on it and not to
4 give us that kind of a claim.

5 Let me deal lastly -- because I know
6 Mr. Pachulski has quite a bit he wants to say, and he's
7 reserving some time also for rebuttal. Your Honor
8 questioned Mr. Strubeck as to the diminution in the cash
9 collateral. Those auction rate securities are
10 securities, and Your Honor asked him about what happens
11 if it's Enron stock. It's real clear. If the debtor
12 uses cash, buys Enron stock, or maybe they held Enron
13 stock and didn't get rid of it and rode it all the way
14 down to where they're worthless, and we were given a
15 507(b) claim, we, the lender in this case, and that's
16 what they've done with our cash collateral, we get a
17 claim for the diminution in the value of our cash
18 collateral in that case occasioned by their use. They
19 invest --

20 THE COURT: That's what I'm saying. If
21 you've got cash collateral and it's talked about cash
22 collateral being secured. So if you're secured by Enron
23 stock when you file your bankruptcy, one of the
24 creditors, and you've got a security interest in it, and
25 then the stock goes down, merely holding the stock

1 wasn't the use of it.

2 MR. GIBBS: Well, in this situation it's
3 a little different because these securities have always
4 been thought of as cash equivalents. That's the way
5 they're sold. You can go in and out of them on a daily
6 basis. There's not a holding period like a T-bill where
7 you lose some kind of penalty if you cash it in early.
8 People -- companies have invested in auction rate
9 securities. Whether they were doing it on the day of
10 the case or afterwards, they were completely liquid
11 securities.

12 What has happened is they're now holding
13 what had once been completely liquid securities that
14 have no market value. The evidence is pretty clear that
15 there's \$22.2 million worth of auction rate securities
16 that they hold. Whether they owned them on the day of
17 the case or whether they bought them post is irrelevant.
18 It's un rebutted that those were liquid and as good as
19 cash on the day they were using -- they were using that
20 money as well as what was sitting in cash accounts to
21 run their company. Those were the budgets.

22 Your Honor said, well, you never came in
23 and asked to foreclose on the auction rate securities.
24 No, we objected each time to their continued use of cash
25 collateral.

1 MR. NEIER: Judge, that's just not true.

2 MR. GIBBS: We filed objections.

3 MR. NEIER: These are agreed orders for
4 cash collateral. There was no objection.

5 MR. GIBBS: Well, I believe that there
6 was objections.

7 THE COURT: Go ahead. There is a
8 difference between -- and maybe it doesn't matter in
9 this case because the order has been entered. But
10 there's a difference between cash collateral liens
11 that -- super-priority liens based on the use of cash
12 collateral and 507 liens based upon diminution in
13 collateral. That doesn't have anything to do with the
14 use. You get a lien like, for instance, in a typical
15 case you filed a 362 motion, you lose, whatever, you get
16 a lien if it goes down in value, no matter what happens.
17 The car burns. It goes down in value. You still get a
18 super-priority lien because you didn't get the car back.
19 There wasn't insurance or whatever. I mean, whatever
20 the reason is.

21 MR. GIBBS: But the 507(b) super-priority
22 protection is for the diminution in value caused in the
23 case of a cash collateral. They were using it. We
24 didn't foreclose. We didn't get the accounts. They
25 used it each month. We got a super-priority

1 administrative claim. We had \$45 million in cash. We
2 went down to 40. Clearly 17 to 18 million was spent on
3 debtor's professionals and the committee's
4 professionals.

5 THE COURT: Using that theory, let me ask
6 you this. If they spent all the cash and bought an
7 asset, which you'd have a lien in, that turned out to be
8 worth millions more than the cash they spent, you
9 wouldn't get a super priority for the lack of cash and a
10 lien on this million dollar asset that's worth more --
11 millions of dollars assets that's worth more than the
12 cash, would you?

13 MR. GIBBS: Well, but -- yeah, Your
14 Honor, maybe it would be an offset. And what Your Honor
15 has done is valued the rest of our collateral. Those
16 current assets are part of the collateral. That's the
17 opinion of value of \$510 million. The working capital
18 and the other current assets were part of the Court's
19 finding, we believe, as of the confirmation date of the
20 \$510 million value. That's our other collateral that
21 has gone down since the petition date. The cash is a
22 separate component, and it's gone down. We think very
23 clearly.

24 I'm going to yield the rest of the time.
25 Mr. Pachulski has comments to make, and I know there's

1 some rebuttal time.

2 MR. PACHULSKI: Good afternoon, Your
3 Honor, Isaac Pachulski of Stutman, Treister & Glatt,
4 representing the noteholders. And thank you again for
5 allowing me to participate by phone. To put this all in
6 context --

7 THE COURT: Before you start, before you
8 start, somebody wanted to say something.

9 MR. PACHULSKI: I'm sorry, I'll be quiet.

10 MR. FIERO: John Fiero for the committee,
11 Your Honor. We've been studiously keeping time, and
12 there is no time for Mr. Pachulski.

13 THE COURT: Okay. I'll give him -- how
14 much time do you want, Mr. Pachulski?

15 MR. PACHULSKI: Your Honor, I thought I
16 would have like at least 10 minutes. I wanted 15, and,
17 you know, if Your Honor has questions. I'm assuming no
18 questions.

19 THE COURT: I'll try and be quiet, but
20 I'll give you ten minutes. Go ahead.

21 MR. PACHULSKI: Your Honor, you can ask
22 all the questions you want as long as you give me time
23 to answer.

24 THE COURT: I hear you.

25 MR. PACHULSKI: Basically MRC and

1 Marathon are asking Your Honor to make a finding which
2 you'll have to put on a piece of paper that when the
3 market trend business product plummets, not only does
4 the business retain its value, but the business goes up
5 in value. The timberlands basically produce a product,
6 and the end use of that product is in the residential
7 housing market.

8 And what they want you to find is that
9 even though the residential housing market and housing
10 construction particularly has plummeted in a way not
11 seen since the depression, not only did the timberlands
12 that produced this product retain their value; they went
13 up. Now to get you to this remarkable fantasy because
14 there's no other word, the fact is that they're going
15 through the very process of muddying value and bogus
16 appraisals that was foreshadowed in the Dean e-mail that
17 you've seen.

18 And let me be specific. Let's start with
19 two basic ways in which Mr. Fleming did it right and
20 Mr. LaMont did it wrong. Mr. Fleming provided an
21 appraisal as of January 2007 to provide ways to compare
22 January 2007 to confirmation. That avoids the kind of
23 double counting that I'll get to that Mr. LaMont did.
24 But more importantly, what Mr. Fleming did is he said if
25 I'm valuing this asset in January 2007, I have to look

1 at the information that was known then. I can't value
2 an asset as of 2007 based on what happened in December
3 of 2007, based on what happened in 2008. Mr. LaMont
4 adopted the exact opposite approach, came through in the
5 testimony. And I'll summarize.

6 But the third thing that's quite
7 interesting is that the assumptions that Mr. Fleming or
8 some of the assumptions, key assumptions that
9 Mr. Fleming used in his January 2000 appraisal are more
10 consistent with the assumptions that Mr. LaMont was
11 using at that time when Marathon wasn't paying him to
12 testify than as Mr. LaMont's current testimony. Let me
13 give you two examples.

14 First, Mr. LaMont admitted that in late
15 2006, a few months before the petition date, he had a
16 business plan prepared that assumed a harvest rate of 78
17 million board feet. That's very close to the 82 million
18 that LaMont -- that Fleming used in January, and it's
19 way higher than the 60 million that Mr. LaMont used in
20 April of 2008 that he insists on retrojecting to January
21 2007.

22 Second, in order to make the decline in
23 value smaller, the log -- the one part that's
24 attributable to log prices, Mr. LaMont said that in
25 valuing the property as of January, he would assume that

1 log prices dropped. Well, that's very interesting
2 because when he did seven appraisals in December of 2006
3 which Marathon didn't pay, he assumed flat log prices.
4 And obviously the reason he used a -- he assumed
5 declining log prices in January when you're being paid
6 by Marathon is so you can start with a lower value.

7 But now more importantly as you'll see,
8 instead of an appraisal what Mr. LaMont gives you are
9 valuations, bits and pieces that ignore vast differences
10 between the landscape in January 2007 and the landscape
11 of April 2008.

12 And to focus the Court on where
13 Mr. LaMont has tried to muddy the waters, I want to talk
14 about harvest rates and about log prices. Now, harvest
15 rates are particularly interesting because Mr. LaMont
16 said that harvest rates are one of the three main
17 drivers of value. Yet, he assumed that harvest rates in
18 January of 2007 were the same as harvest rates in April
19 of 2008. And what he testified was that he changed his
20 view as to a 78 million board feet per anum harvest rate
21 based on a meeting he had with Mr. Barrett in December
22 of 2007, which, of course, absent a crystal ball or
23 clairvoyance would be irrelevant to a January appraisal.
24 And we have to understand how a landscape of harvest
25 space was different in January.

1 In January, the prior year's harvest had
2 been 100 million board feet. Not 74 million board feet.
3 In March of 2007, Mr. Barrett filed a declaration under
4 penalty of perjury with this Court in connection with
5 cash collateral proceedings where he indicated that the
6 business plan was 100 million. And to understand how
7 important this is, Your Honor, I'd like to take a
8 finding that you made that I think was important to you,
9 namely, your finding that Mr. Fleming's approach in
10 April 2008 or October 2007 really didn't square with the
11 fact that there was a \$74 million harvest in 2007.

12 In finding 151, you said: "Currently the
13 harvest rate is approximately 100 million board feet
14 annually. This means that Mr. Fleming is proposing to
15 increase the harvest rate an average of 10 percent for
16 each of the first nine years." Well, if you had made
17 this finding, Your Honor, in January, the way it would
18 have read was: Currently the harvest level is
19 approximately 100 million board feet. This means that
20 Mr. Fleming is proposing to decrease the harvest rate an
21 average of over 10 percent for each of the nine years.

22 Now, that's pretty reasonable, but
23 there's a more fundamental problem, Your Honor. And I'd
24 like to refer Your Honor to your finding 103 and 104. I
25 just don't have time to read them. But what's

1 important, Your Honor, is Your Honor found that the
2 harvest rates that LaMont, Yerges, and Fleming projected
3 for redwood were all about the same. The divergence was
4 that LaMont used a much lower harvest rate for Douglas
5 Fir because it is not now profitable. Now while
6 Mr. Barrett said it is profitable, I don't know if you
7 can consider that. You found that it isn't. So I'm
8 assuming it wasn't as of April 2008.

9 The point is that Your Honor found that
10 the primary difference in harvest rates was that
11 Mr. Fleming made what Your Honor considered the mistake
12 of including Douglas Fir. And, in fact, in finding 137
13 Your Honor noted that Mr. Fleming projected that 26
14 percent of his 81 million board feet harvest rate is
15 attributed to Douglas Fir.

16 Now, Your Honor, there is no evidence,
17 none, that harvesting Douglas Fir was unprofitable in
18 January of 2007. Notwithstanding that, Mr. LaMont
19 sticks to his 60 million board feet, sticks to his
20 assumption that Douglas Fir can't be harvested. And
21 just to show you how off base he is in his proffer when
22 he is criticizing Mr. Fleming and Mr. Fleming's
23 technique in paragraph 33, he says Mr. Fleming made a
24 mistake because approximately 25 percent of
25 Mr. Fleming's harvest is of Douglas Fir, which the mill

1 is not harvesting -- is not processing currently. And
2 that it's not -- it's unprofitable at the current time.
3 The fact that it's unprofitable now is irrelevant. The
4 question is January 2007.

5 So clearly Mr. Fleming's harvest rate is
6 far more consistent with the harvest landscape in
7 January 2007 than the fairy tale that Mr. LaMont is
8 trying to tell you. Maybe it's not bogus. Maybe he
9 just made a mistake, but it sure muddies value.

10 Now let's go to log prices because this
11 is really more impact to the company. And in due course
12 I'll answer a question that Your Honor asked about to
13 the other side. Mr. LaMont finds that the effect of the
14 decline in log prices between January 2007 -- and this
15 one factor, he says the effect on the decline between
16 January 2007 and April 2008 is \$10 million. That's his
17 number.

18 Now, this is remarkable because this is
19 the same Mr. LaMont, hired by the same Marathon who
20 convinced the Court -- and this is in finding 158 --
21 that you if you just adjust Mr. Fleming's appraisal for
22 the fact that he didn't consider a 10 to 15 percent drop
23 in log prices since October, there would be a 100 to 150
24 million dollar adjustment. Now, as Your Honor will
25 recall, this finding is verbatim the words proposed by

1 Marathon and this finding is taken from Mr. LaMont's
2 testimony.

3 Now, how do we get from \$100 million to
4 \$153 million to \$10 million? Well, the one thing --
5 somebody might argue that log prices went up from
6 January 2007 to October 2007, and that's an offset.
7 Nobody, not even Mr. LaMont, makes that kind of a
8 frivolous statement. In fact, Mr. LaMont admits the
9 prices starting dropping in the spring.

10 So what did they arrest? They say, well,
11 Mr. Fleming had a short-term projection, a shorter term
12 projection than Mr. LaMont. So let's look at it in
13 context. Mr. Fleming has projected out until 2018 and
14 then had a terminal value. Mr. LaMont projected out to
15 2058. What they forget to tell you is Mr. LaMont
16 testified, I believe, that log prices would rebound in
17 2010. Now, if log prices are going to rebound in 2010,
18 why does it make a difference whether my projection
19 period goes out to 2018 or to 2058?

20 And on top of that, Your Honor, log
21 prices are considered not only in your cash flow
22 projection, whether you do it for ten years or whether
23 you do it for 50 years, but you have to consider log
24 prices in terminal value because your terminal value
25 makes some assumption about cash flow. And if somebody

1 can figure out a way to assume cash flow on a timber
2 operation without plugging in an assumption for log
3 prices, I think they're smarter than anybody in this
4 courtroom. You just can't do it that way.

5 Now, finally -- and this is a smaller
6 point, but it just shows the permeation of flaws. The
7 parties, I believe, wasted a lot of time arguing about
8 the growth of the forest in 2007. You know, was it the
9 whole forest? Was it part of the forest? Was it
10 redwood? Was it hardwood? It doesn't matter, Your
11 Honor, it's double counting. As I mentioned in oral
12 argument -- and also I'll just make a point briefly
13 here. Every appraisal that you've seen assumes growth.
14 Some people talk about 2.9 percent, some people talk
15 about 3.5 percent. And this reflects the fact that
16 every buyer of timber knows that trees grow. It's not
17 like this is a big secret. So if Mr. LaMont had
18 actually done an appraisal in January, the same way
19 Mr. Fleming actually did an appraisal, the growth in the
20 forest would have been reflected in that appraisal
21 either in the harvest during the discounted cash flow
22 period or in determining your terminal value and
23 determining the size of the forest.

24 But all I'm saying here is, you know, I'm
25 sure the Court found this testimony interesting, but

1 it's wrong because you're double counting. The value of
2 the forest in January 2007, whatever it is, would have
3 imbedded in that determination as a matter of simple,
4 you know, finance 101, it would have had imbedded the
5 growth rate, so we don't have to have these debates.
6 Now, I'd like to spend what remains of my time -- and I
7 don't even know how much time I have left.

8 THE COURT: You have one more minute.

9 MR. PACHULSKI: The other thing is this
10 whole assumption about growth and working capital. Your
11 Honor ordered two things: Diminution of value of cash
12 collateral, diminution of other collateral. Clearly the
13 cash collateral declined. To the extent it was turned
14 into anything else, that anything else is part of the
15 510. If the roads increased the other value of the
16 other collateral, that's in the 510, if the log deck
17 increased it, you gave us 510. There is no working
18 capital adjustment, Your Honor.

19 All this testimony that we heard for
20 hours, I submit, is irrelevant because the cash
21 collateral diminished clearing, including the SARs,
22 because the testimony was they were worth par before the
23 filing date. And they dropped in value after the filing
24 date. And under Your Honor's order, that's all that
25 matters. You did not say diminution in value based on

1 use; you said diminution in value, period, end of
2 sentence.

3 So unless there's going to be a motion to
4 change the order, we get diminution in value, and it's
5 undisputed the SARs diminished in value. That's cash
6 collateral. Roads, all that stuff, they're not cash
7 collateral. They're part of the other collateral. And
8 that other collateral is 510. And if the 510 was bigger
9 than the value in January, if you believe the story that
10 it went up since January, then there will be an offset
11 to the diminution of the cash collateral. But
12 otherwise, all that stuff is irrelevant. And I thank
13 Your Honor for letting me go beyond my one minute.

14 THE COURT: All right. Who's next?

15 MR. NEIER: Your Honor, I think their
16 side is finished now.

17 THE COURT: That's their opening.

18 MR. NEIER: Do you want me to go next?

19 THE COURT: You-all decide that.

20 MR. NEIER: I'm happy to go next.

21 MR. FROMME: Why don't you let --

22 MR. NEIER: That's fine.

23 MR. FROMME: Your Honor, Eric Fromme,
24 Gibson, Dunn & Crutcher on behalf of Scopac. I will
25 try -- I think I'll be very brief. Your Honor, Scopac

1 filed its response to the motion for 507(b), the IT
2 motion for 507(b) claim, prior to the Court's findings
3 of facts and conclusions of law. Scopac's response had
4 two bases. First, that the indenture trustee was
5 significantly oversecured. Your Honor's finding -- Your
6 Honor found otherwise.

7 Our second basis was that there was not a
8 failure of adequate protection because the forest grew
9 faster than the amount harvested. That issue, I guess,
10 is still relevant; the prior basis is not. Scopac
11 presented experts on value at confirmation, whom the
12 Court did not give much weight. So what we decided to
13 do was not burden the Court and the estate with another
14 expert and with fees and time, and we relied on the
15 experts that the indenture trustee and Marathon/MRC will
16 present.

17 Instead, Scopac reiterated the evidence
18 that is consistently presented to this Court throughout
19 the case. And we provided all information that the
20 parties requested and tried to give them the most
21 up-to-date information. We provided the foundational
22 facts on Scopac's assets. First, through Mr. Young,
23 Scopac presented evidence on Scopac's non-forest assets
24 as of the petition date and compared to January -- or
25 June 2008. We provided the most recent data as

1 evidenced by our lunchroom -- our lunchtime scramble to
2 provide evidence on B of A's interest payments.

3 Second, through Dr. Barrett, Scopac
4 presented the foundational facts of Scopac's forest
5 inventory as of the petition date.

6 THE COURT: What do you think the
7 non-forest asset information showed? Or are you going
8 to get to that?

9 MR. FROMME: I'll get to that right now,
10 Your Honor, and I'll skip ahead. Your Honor,
11 Mr. Young's declaration lays out the -- what that shows
12 as of petition date and as of today.

13 THE COURT: What is it?

14 MR. FROMME: In all due respect to
15 Mr. Strubeck's demonstrative, that was very confusing.
16 And Mr. Young's declaration lays it out. As of the
17 petition date -- and this is on Exhibit C to Mr. Young's
18 declaration on the MOR, page 2. As of petition date,
19 the SAR account had approximately \$39.8 million. The
20 operating account had approximately \$4.3 million. That
21 we know is cash. And the timber -- and then the SAR
22 account had an additional -- well, there was an
23 additional \$2.8 million held by Scopac, and those were
24 the face -- that's the face amount of the timber notes
25 held by Scopac. So if you add up those numbers --

1 THE COURT: So the treasury things are in
2 those other numbers?

3 MR. FROMME: No. Those are timber notes.

4 THE COURT: Wasn't there also some
5 treasury?

6 MR. FROMME: At the time of the petition
7 date, that \$39.8 million number that I gave you
8 consisted of several cash, including treasuries and
9 perhaps auction securities. The evidence is not clear
10 on that.

11 THE COURT: Okay. Go ahead.

12 MR. FROMME: And I believe the evidence
13 is clear that at that time, at the petition date, that
14 the auction rate securities and all the investments,
15 however you want to phrase them, held in the SAR account
16 were cash or cash equivalents.

17 THE COURT: Okay.

18 MR. FROMME: So if you add those numbers
19 together, excluding the timber notes, you get \$44.1
20 million; with the timber notes, you get 46.9.

21 THE COURT: I guess the question I have,
22 though, is now somehow this side has asked me to believe
23 that auction rate securities are no longer considered
24 cash equivalents under the code. I understand how
25 counsel would consider them to now be investments rather

1 than cash equivalents. Maybe cash equivalent is the
2 wrong word, but cash collateral as defined by the code.
3 Is your position that they are still --

4 MR. FROMME: I do not think that --

5 THE COURT: Or does it matter?

6 MR. FROMME: I don't think that it
7 actually matters, but I also don't think it's cash
8 equivalent. If you look at Mr. Young's declaration, as
9 of June 27, 2008, that's Friday, Scopac had -- and this
10 is Exhibit B to his declaration, \$4.4 million of cash.
11 On Exhibit A he breaks out the remaining assets,
12 specifically 21.5 million in auction rate securities and
13 still the 2.8 million dollars in the timber notes. That
14 gets you to 28.7 million dollars approximately.

15 THE COURT: What was the original one?

16 MR. FROMME: The cash?

17 THE COURT: The 39.4 and 2.8.

18 MR. FROMME: If you include the timber
19 notes, that's 46.9, and that's identified in Exhibit C
20 to Mr. Young's declaration.

21 THE COURT: Okay. And the -- as of June
22 27, that's how much?

23 MR. FROMME: 28.7. Now, the parties can
24 dispute about what the value of those auction rate
25 securities are, what the value of the timber notes are,

1 but that's the face amount of the notes.

2 MR. BRILLIANT: Your Honor, I don't mean
3 to interrupt. Alan Brilliant on behalf of Mendocino.
4 But I believe we have apples and oranges now.
5 Mr. Fromme made a mistake in answering your question.
6 He had originally excluded the timber notes. Now, we
7 know they had 2.8 timber notes on the date of the filing
8 and they still have them today. And it may be easier to
9 use the 44.1 which exclude it and the 28.7 which also
10 excludes it, rather than using the numbers with it which
11 have to add 2.8. I believe the second number he gave
12 you, the June number, the 28.7 did not have the timber
13 notes.

14 THE COURT: The 28 --

15 MR. FROMME: Your Honor, it's easy to
16 resolve. And Your Honor can resolve it himself just by
17 looking at the exhibits.

18 THE COURT: We'll deal with that later.
19 But go ahead.

20 MR. FROMME: And I'll direct Your Honor
21 to Exhibits A, B and C of Young's declaration.

22 THE COURT: And what's the total amount
23 that's been paid to the noteholders' lawyers?

24 MR. FROMME: That's a good question, Your
25 Honor, and that's exactly where I'm going next. There

1 were questions of how much was paid to the indenture
2 trustee's professionals. We calculated that as of
3 December or June 2008, and that's in paragraph 22 of
4 Mr. Young's declaration, \$8.92 million.

5 THE COURT: How much?

6 MR. FROMME: I'm sorry. 8.92. We also
7 calculated for you on paragraph 23 of Mr. Young's
8 declaration how much money has been paid to B of A's
9 attorneys, also secured by the note, by the deed of
10 trust and the indenture trustee, 1.67 million. And then
11 our scramble at lunch, how much interest has been paid
12 to B of A during the pendency of the case. That's
13 MMX -- that's a tongue twister -- 111. That's 3.9 --
14 \$3.99 million.

15 THE COURT: And what relevance are those
16 two figures?

17 MR. FROMME: I think the parties argue
18 that those payments were for the benefit of the
19 indenture trustee and for the benefit of B of A was also
20 the indenture trustee for the benefit of the indenture
21 trustee.

22 THE COURT: Cash is paid out to Bank of
23 America, that that is not a diminution of their -- of
24 the indenture trustee's cash collateral?

25 MR. FROMME: I believe that Mr. Neier

1 will argue that. And we -- we presented that evidence
2 to the Court.

3 THE COURT: All right.

4 MR. FROMME: The other important fact, I
5 think, and is in paragraph 13 of Mr. Young's
6 declaration. And that is the value of the log deck.
7 Scopac didn't have a log deck at the beginning of the
8 case, now it does as of June -- as of June 2008. It's
9 worth approximately 3.3 million as soon as we sell those
10 logs to Scopac at SBE price. And that's not including
11 the log and haul.

12 Okay. Scopac used the cash to create a
13 log deck. There may be some suggestion that you
14 can't -- you know, it's double counting because the
15 trees are in the forest, now they're on a log deck. But
16 the fact is cash was used, a small amount of cash, the
17 cost of logging and hauling when we created logs.

18 I think that's more clearly represents,
19 and it's in the declarations and it's in evidence,
20 exactly what Scopac's current assets, non-forest assets
21 consist of. There was some evidence as to --

22 THE COURT: What about the accounts
23 receivable?

24 MR. FROMME: The accounts receivable it's
25 clearly laid out in MOR C.

1 THE COURT: How much was it on the date
2 of and how much is it now?

3 MR. FROMME: The current cash receivable
4 as of the MOR, and those are harder to calculate, was
5 approximately \$11.1 million.

6 THE COURT: 11.1. On the date of filing
7 was how much?

8 MR. FROMME: On the date of filing,
9 Exhibit C to his declaration, \$1.8 million. Now, Your
10 Honor, we made clear through Mr. Young that the \$1.8
11 million is a pre-petition claim that hasn't yet been
12 paid by Palco. And then there was another \$4.3 million
13 for the January 2008 logs, and Palco did not make that
14 payment in February 2008. So those receivables are over
15 90 days old. That's \$6.1 million.

16 The remaining number of that 11.1, just
17 to be clear, was approximately \$5 million, and that was
18 paid by Palco in June for the May logs. However, Scopac
19 continues to supply Palco with logs. Palco will make a
20 payment in July. That's how the accounts receivables
21 work.

22 THE COURT: The prepetition amount was
23 how much?

24 MR. FROMME: \$1.8 million, Your Honor.

25 THE COURT: And the rest of the over 90

1 days is how much?

2 MR. FROMME: 4.3, Your Honor.

3 THE COURT: What was that from?

4 MR. FROMME: That was from logs shipped
5 to Palco in January 2008.

6 THE COURT: Still has not been paid?

7 MR. FROMME: Still has not been paid.

8 Scopac asserts an administrative claim for both
9 receivables. I think that summarizes the current assets
10 of Scopac.

11 THE COURT: 4.3 was the post-petition?

12 MR. FROMME: It's post-petition.

13 THE COURT: 4.3. All right.

14 MR. FROMME: Right. How to value those
15 receivables -- somebody asked me to put Exhibit C on the
16 Elmo.

17 THE COURT: Are accounts receivable cash
18 equivalents?

19 MR. FROMME: Your Honor, but for the
20 4.4 -- or \$6.1 million, Palco has continued to pay
21 the -- pay the amounts.

22 THE COURT: The diminution -- I guess I
23 keep saying cash equivalents. The term under the code
24 is cash collateral, not cash equivalent. So is the term
25 under the order cash collateral, diminution of cash

1 collateral or diminution in cash equivalents?

2 MR. FROMME: Diminution of cash
3 collateral.

4 THE COURT: Cash collateral.

5 MR. FROMME: Yes, Your Honor.

6 THE COURT: But the accounts receivable
7 are cash collateral, too, aren't they?

8 MR. FROMME: Arguably it is cash
9 collateral, Your Honor. The \$4.5 million over 90 days
10 old. And Mr. Neier and Mr. Brilliant, I'm sure, can
11 argue that under the MRC plan, that's going to be paid
12 in full. But if the MRC plan is not confirmed, we don't
13 know what's going to happen to those accounts
14 receivable.

15 THE COURT: Okay.

16 MR. FROMME: The other thing that
17 Mr. Young testified to was the auction rate securities
18 in his attempt to get some bids on those auction rate
19 securities. And he obtained three indications of
20 interest or soft bids, if you remember, and those were
21 on he called the PHEAAs. That's on Exhibit A. You can
22 see how much those were in face amount. And PHEAAs are
23 P-H-E-A-A. It's pretty clear. Actually, here's Exhibit
24 A.

25 THE COURT: I have got it right here.

1 PHEAA is 3.5 million.

2 MR. FROMME: Right.

3 THE COURT: They're the lowest rated
4 auction rate securities?

5 MR. FROMME: Those are actually the
6 highest rated auction rate securities.

7 THE COURT: That's higher than A. So
8 that's not a rated. That A, AAA stuff is just --

9 MR. FROMME: Yeah, the PHEAAs are fully
10 backed by the federal government. And the -- thank you,
11 Luckey. And the Iowa student loans are approximately 50
12 percent backed by the federal government. We did not
13 receive any bids on those.

14 THE COURT: Okay.

15 MR. FROMME: We have expressed no opinion
16 on value on the auction rate securities. That's the
17 status of the debtor Scopac's current assets. Through
18 Dr. Barrett we presented again the foundational facts of
19 the forest, the inventory as of January '07, the
20 inventory as of January '08, the growth rate of the
21 forest.

22 Dr. Barrett disagrees the growth rate
23 used by Mr. LaMont. To -- the growth rate that Mr. --
24 that Scopac's foresters, through Dr. Barrett's
25 supervision, calculate at 3 and a half percent on

1 average is a different comparison or a different way to
2 measure it than Mr. LaMont. They just disagree. We
3 think Dr. Barrett believes that this is the most
4 accurate way to calculate it because you're comparing
5 apples to apples. You're comparing apples to apples.
6 In his methods, it's apples, oranges, peaches, as I've
7 explained to others, when you compare what Mr. LaMont
8 did. He doesn't account for the way Scopac adjusts its
9 inventory.

10 Just to be clear, it's in Dr. Barrett's
11 declaration. And just to be clear, when the harvest is
12 cut, it's measured differently at the mill than in the
13 inventory. That accounts for a slight -- requires a
14 slight adjustment. When they harvest an area of the
15 forest, they remove all the logs from the inventory in
16 that forest, however, some do remain in the forest that
17 may be cut later.

18 And then finally, third, when they do
19 what they call a selection cut, cut some of the trees in
20 that area. They only can make an estimate as to how
21 much volume was removed, and they generally overestimate
22 that to be safe. These are generally corrected, as
23 Dr. Barrett explains in his declaration, through audits
24 afterwards. But that's why there's a different number
25 between Mr. LaMont and Dr. Barrett. And Mr. LaMont just

1 didn't have access to that information.

2 We summarized that information for all
3 the parties in the case, and we believe that that's
4 consistent with what we've presented. And it's up to
5 the Court to decide whether there's been a diminution in
6 the value of the noteholders collateral. You have been
7 presented with two experts, and you can weight those two
8 experts. And we've presented all of the evidence up to
9 the date of this hearing as accurate as possible to the
10 best of our ability so that can be presented.

11 One last thing in closing, Your Honor, is
12 that something happened during this week and the last
13 couple of days that we didn't expect. The testimony and
14 evidence that has come out during this hearing has been
15 extraordinary, and it's cause for concern. This
16 evidence may be relevant to the indenture trustee's
17 507(b) claim, but it certainly will have a significant
18 effect on the motions you may hear in the coming days.
19 That's all I have to say, Your Honor.

20 THE COURT: Okay. Who's next? Is Bank
21 of America going next.

22 MR. JONES: Your Honor, thank you.

23 MR. NEIER: Your Honor, do you want to
24 take a break before that?

25 THE COURT: No, I sure don't.

1 MR. JONES: Your Honor, a couples of
2 request and then an observation. Actually, I'll start
3 with the observation. I think Mr. Strubeck said I had
4 asked for 15 minutes. I asked for 20. I'll try to keep
5 it to 15, but I don't want to be held to that 15 number
6 because that's not what I asked for. The two requests
7 are -- I forgot. Was it Mr. Gibbs? Someone over here
8 had up on this screen the operative language in the cash
9 collateral order. I would like to get that up, if I
10 could.

11 THE COURT: Can your IT guy do that? Can
12 the IT guy do that?

13 MR. KRUMHOLZ: Yes.

14 MR. JONES: Your Honor, may I move this
15 easel over here? I may need it.

16 THE COURT: Sure.

17 MR. FIERO: Can you bring control over
18 here.

19 MR. JONES: Can I see the marker, the red
20 marker? Your Honor, Evan Jones on behalf of Bank of
21 America. The first thing I'd like to start with -- I
22 have been directed by my client to make this very clear.
23 I think we made this clear throughout the case and the
24 confirmation hearing. We bear no ill wills towards any
25 of these parties. We would have been more than happy to

1 have any of them get their plans confirmed and come
2 effective. They all offered the pay us, and we're all
3 in favor of that.

4 I think the indenture trustee's lawyers
5 are a bunch of great fellows. I think it's pretty clear
6 Mr. Krumholz and I share a painful enjoyment of the
7 rules of evidence, probably well beyond what any adult
8 this many years out of law school should have. But Your
9 Honor, on this issue, the indenture trustee is simply
10 wrong. I want to start with several initial
11 observations, get things out of the way.

12 The first one, Mr. Gibbs, who I have
13 never met until today, says I only want part of this
14 Court's orders enforced. That's not true, Your Honor.
15 I insist that every aspect of this Court's order be
16 enforced to the letter. I'm a secured creditor's
17 lawyers. I believe in orders. And I want this order
18 enforced.

19 Your Honor, the second point, we've heard
20 a lot whole about the integrity of the process, bogus
21 appraisals, sleights of hand, etcetera. Your Honor, I
22 would suggest to the Court that the Court needs to
23 understand that as a business person's usage -- and I
24 would submit to the Court, and I think the Court frankly
25 can take judicial notice, that most of the lawyers in

1 this room's clients view most of the things that happen
2 in any courtroom as bogus.

3 What we view as clever legal strategem or
4 brilliant legal work, they view as sleights of hand. I
5 have gotten e-mails from clients before referring to my
6 work as being black magic. I don't they think thought I
7 walked into court and hypnotized the judge. So Your
8 Honor, I think we need to understand those random
9 comments in that context.

10 Your Honor let's start with this issue of
11 integrity of the process because in the indenture
12 trustee's motion, they say their only argument in the
13 motion, Your Honor, is you ruled that they were
14 oversecured, and they're not today; therefore, they have
15 an administrative claim. Well, Your Honor, right here
16 on the very page where they have their administrative
17 priority claim, we come down on paragraph 31 right there
18 at the bottom of that paragraph, we see the sentence,
19 the very last sentence there: "Scopac reserves the
20 right to contend that any time after entry of this order
21 that the value of the pre-petition collateral does not
22 exceed the total amount of the secured obligations."

23 Your Honor, if you want to talk about a
24 bogus theory, I think suggesting to this Court that it
25 ruled in that order that the indenture trustee was

1 oversecured meets whatever definition Mr. Krumholz has
2 of bogus. Now, Your Honor, let's go on and let's look
3 at what the order actually says. And Your Honor, here
4 we see a strategy, a technique, a strategem that we all
5 learned in law school. If the professor asks a question
6 that you don't know the answer to or you don't want to
7 answer, answer a different question; answer the one you
8 want to.

9 Your Honor will see there what this order
10 says about the super-priority claim is -- thank you --
11 that B of A and the trustee shall have a super-priority
12 claim to the extent of post-petition diminution of their
13 respective interest in the pre-petition collateral and
14 the cash collateral.

15 Now, amazingly, Your Honor, Mr. Pachulski
16 and I agreed on the very first day what that language
17 means; interest in the collateral. Mr. Pachulski, you
18 may recall, called in from beyond, the voice of wisdom.
19 That means the right to do what a secured creditor can
20 do: Foreclose. Now, when they get up and read this
21 language, they want you to say, that's fair market
22 value, Your Honor. That's not what it says. And Your
23 Honor, we've submitted a brief that shows all of the
24 cases go exactly along with what Mr. Pachulski said. A
25 secured creditor's entitlement to adequate protection is

1 to get what it could have gotten if this Court didn't
2 impose its stay.

3 Your Honor, the cases say that means you
4 have to figure out. And by the way, they had to prove
5 when an actual foreclosure would have taken place, what
6 it would have cost, and what the value would have been
7 from that. And then you compare that to what they
8 actually received because, Your Honor, we know what
9 they're receiving at the end of this case. They're
10 receiving Your Honor's order -- findings, excuse me,
11 that says they are receiving more than fair market
12 value.

13 Now, Your Honor, again, a little stuff
14 that frankly most of the lawyers in my firm who don't do
15 bankruptcy law view as black magic hocus pocus, but
16 after a while in bankruptcy, we realize that it's
17 exactly right. Section 506(c) of the Bankruptcy Code
18 says that value for one purpose is not the same as value
19 for another. And all of our non-bankruptcy colleagues
20 look at us and say, you must be crazy, value is value.
21 But then we begin to realize after we do this for a
22 while, Professor Clee, as he always reminds us, when he
23 wrote the code, he got it right. Foreclosure value is
24 important sometimes, liquidation value is important
25 sometimes, fair market value is important sometimes,

1 retail value is important sometimes. And they're all
2 different.

3 What they were entitled to protect -- and
4 by the way, Your Honor, Bank of America was entitled to
5 protect was foreclosure value on the date that a
6 foreclosure could have been conducted if it weren't for
7 the automatic stay. Again, Your Honor, we've submitted
8 cases that make that point. And yet they haven't
9 offered one whit of evidence on what that value is.
10 Your Honor will recall I asked Mr. Radecki, don't you
11 usually get less than a foreclosure sale than you do in
12 a fair market sale? Fair market value. And he said
13 yes.

14 I asked Mr. Fleming -- Your Honor may
15 recall Mr. Fleming didn't want to agree with a question
16 by anyone. His own counsel would throw him softballs
17 and the answer would be usually, maybe, perhaps. And so
18 I asked him that question. I said, Mr. Fleming, in your
19 experience, when you're doing appraisals, do you include
20 foreclosure prices? Aren't they usually lower? And he
21 said, they can be. And I said again, aren't they
22 usually lower? He said, often. I said one more time,
23 aren't they usually lower? He said yes, they're usually
24 lower.

25 And now the one question, the only

1 question I heard in his whole testimony substantive
2 question that you got just a straight answer to was when
3 you have a foreclosure comparable and you're doing an
4 appraisal, what do you do with it? Do you exclude it?
5 Do you adjust for it somehow? And the only straight
6 answer was: I throw it out. He didn't even say I
7 adjust it. I don't count it. Because we all know
8 foreclosure value is different from fair market value.
9 But they haven't put a single bit of evidence in on
10 that. How much less is it? I don't know. But it's
11 their burden. We know it's different. How long does
12 that foreclosure take? I don't know. I do know under
13 California law it's got to be at least 110 days. You
14 cannot foreclosure on real property in California in
15 less time. And we've cited the California code
16 provisions in there. And I think Mr. Davidson and
17 Mr. Pachulski and all the other California lawyers will
18 be happy to confirm that.

19 But is that minimal time going to be what
20 they're going to do? Of course not. They're dealing
21 with a foreclosure here that if it went forward would
22 certainly be the largest redwood foreclosure ever in
23 Humboldt County. I suspect if it actually concluded, it
24 would be the largest real estate foreclosure in this
25 country's history. You're going to market that, Your

1 Honor. How long does that take? I don't know. The
2 Court doesn't know, though. And it's their burden to
3 show that.

4 Now, Your Honor, there's some other
5 things that it's their burden to show. They have got to
6 show how long that foreclosure takes, they've got to
7 show how much they spend and they've got to show what
8 they get from it. And they haven't. We know, because
9 their experts told us, it's less than fair market value.
10 How much less, we don't know. But we do know at the end
11 of this process, they're getting the fair market value
12 at that time. Is that more or less than foreclosure
13 value at some point along the way that they haven't told
14 us what the date is. Because we know they couldn't have
15 foreclosed on the start date of the case. When would
16 they actually have foreclosed? We don't know. So we
17 can't make that comparison, Your Honor. And that
18 failure causes them to fail to meet their burden. It's
19 a sleight of hand. They don't want to answer those
20 questions, so they say, well, let's assume you wrote up
21 here they're entitled to fair market value. But Your
22 Honor, that's not what the case law says. And Your
23 Honor, that wouldn't make sense. Here's where I'll go
24 to my chart.

25 Let's suppose we have a case like this

1 one that goes on for 18 months. And let's suppose that
2 the fair market value of the property starts here and
3 goes down by 5 million dollars. Let's say it's 100
4 million, it becomes 95 million. Let's say the
5 foreclosure value -- and these are obviously notional
6 because I don't know the increment there. But let's
7 just say it's 80 million. And let's say that it stays
8 the same throughout the case. Now, if they asked for
9 relief on the first day and Your Honor said no and gave
10 them an adequate protection order like that one, but
11 then 16 months into the case it became clear this debtor
12 can't reorganize -- which by the way may happen, Your
13 Honor -- and they foreclosed and got their \$80 million,
14 surely the court isn't going to say, well, they also get
15 a \$5 million claim for the diminution of the fair market
16 value because that didn't hurt them. What they were
17 entitled to was the liquidation value.

18 Now, Your Honor, what's happened here, we
19 can argue about what happened to the fair market value.
20 And by the way, Your Honor, I want to be clear. We
21 entirely agree with the Marathon folks that the value
22 was that the fair market value has actually gone up, but
23 the Court doesn't need to get there. By the way, I want
24 to make very clear, we disagree with the Marathon folks
25 that if this Court finds there was a diminution of their

1 interest in the collateral, you have to go through
2 anymore to find they're entitled to an admin claim. The
3 Court has ruled that. The Court needs to enforce that
4 order.

5 But what the Court meant by a diminution
6 of their interest is what they're getting at the end of
7 this case. And Your Honor has said they are getting
8 more than \$510 million -- I'm sorry, they're getting
9 more than fair market value at the end of this case.
10 They're getting \$510 million. And they've got to prove
11 that that number is less than what they would have
12 gotten if they were permitted to do what a secured
13 creditor is entitled to do, and that's foreclose.

14 I'm a security creditors lawyer, Your
15 Honor. I'm not entitled to demand my borrowers hold an
16 orderly sale of their collateral, of my collateral.
17 Often I convince them to, often they agree. And there's
18 a reason for that. And Mr. Radecki testified to this.
19 It gets more money. Orderly sales, you get higher
20 prices. We all know that. The Court can take judicial
21 notice of that. You get rep, you get warranties, you
22 get full marketing. You don't have to worry about
23 hidden liens if you get a 363 sale -- a 363-F sale.

24 Your Honor is perfectly aware there are
25 hundreds, even thousands, of hidden liens that don't

1 rely on UCC priority. I'm on my opinions -- I'm sorry,
2 I'm on my firm's opinions committee. And we give prior
3 opinions, priority liens. The State Bar of California
4 has a publication of over 200 hidden liens that don't
5 follow UCC priority. There are tax liens, my favorite
6 one is in California there's a lien for gin millers.
7 There are padded liens. I don't know if there's a lien
8 for people who grow redwood trees. But if I were
9 selling this, I might worry about that. In a
10 foreclosure sale I have to worry about can I really
11 transfer all the things that go along with my
12 collateral, or all those permits I hold. And I'm not
13 just talking about the redwood plans, I'm talking about
14 all those other normal, you know, ancillary permits that
15 any business has. Are they subject to my lien? Can
16 they be transferred? An orderly sale, I don't have to
17 worry about that.

18 Now, they may argue, well, that's a 5
19 percent discount or a 10 percent discount or whatever.
20 But there's not one whit of evidence, Your Honor, and
21 they can't carry that burden. It's the ultimate apples
22 and oranges comparison. And it's not that -- that order
23 does not say they are entitled to be paid an admin claim
24 if there's a diminution in the fair market value. It
25 says they are entitled to be paid an admin claim if

1 their interest declines. At the end of this case you're
2 paying them more than fair market value. And the
3 interest they had when that cash collateral order was
4 entered is precisely what Mr. Pachulski said, and it's
5 precisely what the cases say, which is the right to
6 foreclosure. And they have offered no evidence on what
7 that is.

8 Now, Your Honor, I want to address one
9 more red herring. And then if I may, I -- actually, two
10 more red herring, one that relates specifically to Bank
11 of America and was raised to Mr. Davidson. The other
12 one relates to these auction rate securities. First of
13 all, Your Honor is correct. The testimony -- and I went
14 round and round with Mr. Young and he said I don't know
15 when they went in there. That's the testimony. Now,
16 Your Honor, they did put in a resolution by the company
17 in -- I'm sorry, in 2006 authorizing them to buy auction
18 rate securities. No one in this room knows whether they
19 did unless, of course -- by the way, Your Honor, this is
20 not a criminal case. The Court can draw an inference
21 from what they don't produce. And as Mr. Young noted,
22 Bank of New York knows what was in that account when.

23 Now, Your Honor, the second point there,
24 Mr. Strubeck says, well, they're not cash collateral as
25 defined in the Bankruptcy Code. Your Honor, it's

1 another sleight of hand. He reads the definition and
2 just zips right by the provision. The definition of
3 cash collateral says it includes securities. It doesn't
4 say it includes securities that are negotiable. It
5 doesn't say it includes securities that are cash
6 equivalents. It doesn't say there's securities that
7 have full value. It says securities.

8 Now, Mr. Strubeck may be absolutely
9 correct if he could prove that between the day he would
10 have conducted his foreclosure sale and the date -- the
11 test date, the close of this case where Your Honor is
12 seeing that they get paid, more than fair market value,
13 \$510 million. If he could prove that during that time
14 period the value of those auction rate securities
15 declined, then he may have a claim.

16 But Your Honor, the argument that they're
17 not classified as cash collateral under the code is both
18 wrong and irrelevant because the language says they get
19 a claim for the diminution of their interest in the cash
20 collateral and other pre-petition collateral. That has
21 to be understood, Your Honor, to mean the combination of
22 those things. As Your Honor pointed out, if it were the
23 case that they took cash collateral, the debtor took
24 cash collateral and went out and bought an earth mover,
25 and that became their collateral, it --

1 THE COURT: To make it easier you, if
2 they bought copper and it went up --

3 MR. JONES: I don't even care if it went
4 up. But it cannot -- if it retained the value, they
5 have a super-priority claim because the amount of cash
6 collateral has gone down, but the amount of total
7 collateral has gone up. That sleight of hand won't
8 work. Now, Your Honor, the last thing -- and this is a
9 point particular to Bank of America. But it is relevant
10 to this case.

11 Mr. Davidson says, well, I've read the
12 trust indenture and I don't think it entitles B of A to
13 be paid its fees. I'm sorry, is there a question?

14 MR. NEIER: No, I'm just telling him to
15 go to paragraph 31.

16 MR. JONES: Thank you. Your Honor, the
17 suggestion seems to be that somehow that doesn't count
18 as a payment ahead of them or the Court didn't authorize
19 it. You know, Mr. Wells says I only want part of this
20 order enforce. Your Honor, I remind you of some of the
21 history of this case. Your Honor may recall when we
22 first got here, I showed up on behalf of Bank of America
23 and Evan Flashing showed up on the behalf of the
24 noteholders. There were some great e-mails that got
25 sent to Ms. Coleman where I said, remember I'm the

1 reasonable, cooperative Evan and then there's another
2 one. Mr. Flashing, in the very first collateral order
3 -- and by the way, Mr. Campbell, Brett Campbell, showed
4 up on behalf of the indenture trustee. The very first
5 cash collateral order said the indenture trustee's fees
6 and my client's fees were all to be paid.

7 Now, three months later -- actually,
8 longer than that -- Mr. Clement shows up at the hearing
9 in Houston for the first time and he says, I'm not here
10 on behalf of the noteholders, I'm here on behalf of the
11 indenture trustee. We're still keeping Mr. Campbell and
12 his firm in, but I'm here also. And Your Honor will
13 recall the very first thing he did is he said, I have a
14 cash collateral here, Your Honor, I've agreed to it, and
15 the debtor says my fees get paid, too. And I said, wait
16 a second, I haven't seen this. And Your Honor said,
17 Mr. Jones you have three days to decide whether this is
18 acceptable. And Your Honor will recall what that cash
19 collateral order says is several things. And one of
20 them we have right here on this page.

21 You really didn't need to read much more
22 than this page of Your Honor's order to deal with all
23 three of these arguments I've dealt with because on this
24 page in paragraph 31, the one where they reserve their
25 rights on whether they're oversecured or not, Your Honor

1 ordered "without further order application to the Court,
2 the debtor will pay B of A all interest and fees." It
3 doesn't say to the extent permitted by the indenture.
4 If Mr. Davidson wanted to argue, he had an opportunity
5 to do so.

6 Now, by the way, Your Honor, it was a
7 compromise. Of course it was a compromise because what
8 the indenture says is the indenture trustee is entitled
9 to collect his reasonable fees. And Your Honor, it
10 won't surprise the Court to hear because the Court had
11 raised the issue. Are these six partners sitting over
12 here really representing the indenture trustee or are
13 they really representing the noteholders? Is the six
14 partners sitting over here quote "reasonable" for the
15 indenture trustee? Or is that not reasonable for the
16 indenture trustee? They have done a fine job for the
17 noteholders. And Your Honor, they have told us various
18 times when they go to get instruction -- Mr. Greendyke
19 filed a declaration. When he goes to get instruction,
20 he talks to the noteholders steering committee.

21 Now, Your Honor, I don't want to reopen
22 that issue. The cash collateral stipulation, which we
23 ended up with and which Mr. Clement suggested, and we
24 agreed to after Your Honor told us we had three days to
25 decide, has a -- has a deal in there. The deal is B of

1 A gets its fees, B of A gets its interest. The
2 indenture trustee gets fees up to a certain dollar
3 amount paid on a current basis. And the rest of them
4 accrued. And we'll ultimately be paid if a plan goes
5 effective.

6 Now, Your Honor, for Mr. Davidson to come
7 in here and say, oh, but that's not consistent with the
8 indenture, it's a pound short and several months late.
9 There is an agreement here that's set forth in that
10 order. Mr. Young, when he made the payments, made the
11 payments pursuant to that order. And the suggestion
12 that somehow that's not appropriate, I would suggest
13 that parties could have learned if they would have
14 bothered to read a single page of this Court's order.

15 Your Honor, I'm sure I have taken my 20
16 minutes. I have nothing more unless the Court has
17 questions. And, again, I do want to be clear. We also
18 agree with Marathon's position that the value, the fair
19 market value of this property has changed. But we don't
20 think that's the relevant question. We think the
21 relevant question is when could the trustee have
22 foreclosed? What would he have gotten from that
23 foreclosure?

24 And by the way, Your Honor, I just want
25 to make it real clear. We think that also applies to

1 these auction rate securities. If the trustee had to
2 wait six months or nine months or a year to market the
3 real property, I'd suggest to the Court it's pretty
4 unlikely that they would have taken away all of the
5 debtor's cash during that time period. Now, maybe he
6 would have. Maybe he would have. And maybe the
7 foreclosure value is more than that \$510 million you're
8 paying them today.

9 But Your Honor, they haven't produced the
10 evidence that would permit you to conclude that. They
11 have shown up to argue about the value of a house in
12 Corpus Christi with an appraisal of a house in Los
13 Angeles. And unless the Court is willing to make all
14 sorts of speculative guesses and assumptions and
15 adjustments and so forth without any guidance from any
16 witness, you cannot conclude that they have met their
17 burden to prove a diminution of their interest in the
18 collateral. Thank you, Your Honor.

19 MR. NEIER: David Neier on behalf of
20 Marathon, Your Honor. Since it's on the screen, I
21 thought we'd start with the order and maybe answer some
22 additional questions Your Honor has asked some of the
23 other people and some of the statements that have been
24 made. Can we go the first page of the order.

25 This is an agreed order. And if we go to

1 the last page of the order, not the budget, before the
2 budget, this order was not only agreed to by the
3 noteholders, by Mr. Flashing, it was also agreed to by
4 Bank of New York as indenture trustee. So this is an
5 agreed cash collateral order. And as Mr. Jones pointed
6 out, in paragraph 31 it did authorize the payment of
7 Bank of America's interest and its professional fees.
8 It was all agreed to with the noteholders. Also, one
9 more question that Your Honor asked. If we go to the
10 bottom of paragraph 14. You asked what was the
11 definition of cash collateral in this order. It says in
12 the last sentence "the proceeds" -- I'm sorry. Thank
13 you very much. "The proceeds and product of the
14 prepetition collateral constitute cash collateral (as
15 that term is defined in the Bankruptcy Code)." So the
16 proceeds and product of a prepetition collateral, that's
17 the physical collateral, all the collateral really,
18 constitute cash collateral.

19 So we're really talking about everything
20 being in cash collateral. Of course, cash collateral is
21 defined in Section 363 of the Bankruptcy Code to mean
22 cash, negotiable instruments, I suppose that includes
23 copper features, documents of titles, securities,
24 deposits or other cash equivalents whenever acquired in
25 which the estate and an entity other than the estate has

1 an interest. And then it continues on from there.

2 So we have an agreed order. It agreed to
3 pay B of A its professional fees and the committee's
4 professional fees. It also agreed to pay B of A its
5 interest. And that was because B of A, of course, is
6 way overcollateralized, unlike the noteholders. Now I'm
7 going to go to the beginning of where I was going to
8 start. But we had the order up on the screen, so I
9 thought I would take advantage of it.

10 Your Honor, just like Mr. Jones pointed
11 out, the burden of proof on a claim is always with the
12 claimant. And, you know, I would say the indenture
13 trustee has utterly failed to meet that burden. It
14 seems like the indenture and the noteholders have chosen
15 to use this hearing to retry the confirmation and
16 perhaps to develop further evidence for some other
17 pleadings that will be filed. But they're going after
18 Mr. Dean, they're going after Mendocino, they're going
19 after Mr. LaMont on issues that really have nothing to
20 do with the 507(b) claim. Essentially they're trying to
21 prove some kind of nefarious conspiracy that does not
22 exist and is really devoid of merit.

23 I think it's interesting that it's based
24 on e-mails that were produced -- produced by Marathon
25 and by Mendocino, and they were produced prior to the

1 confirmation hearing. So I think it's -- even if we
2 were to retry the confirmation hearing, that day has
3 passed and we're really here on a different issue. We
4 should really be talking about the business at hand.
5 And that is, whether or not the indenture trustee has a
6 507(b) claim.

7 And I think it's pretty simple to
8 determine whether or not there is a 507(b) claim because
9 not only do you have the question as to whether or not
10 we're talking about liquidation value. And Your Honor
11 knows that super-priority claims really are about
12 liquidation. In fact, you don't have a super-priority
13 claim, you just have an administrative claim typically
14 in a Chapter 11. And all administrative claims are
15 required to be paid at 100 cents on a dollar at
16 confirmation. When you call it a super-priority claim,
17 what you're really talking about is you're talking about
18 a liquidation where the administrative creditors,
19 Chapter 7 where the administrators creditors are not
20 going to be paid in full. And then you have to
21 determine which creditor, among the administrative
22 creditors, gets a super-priority.

23 And so if we -- if we gave the indenture
24 trustee the benefit of the doubt in all respects under
25 this order, and we simply looked at what the value of

1 the assets were on the petition day and what the value
2 of the assets were at the conclusion of the confirmation
3 hearing on June 6, 2008, that would give them the most
4 that they could ever expect. It's not what they should
5 get. They should get the liquidation value because
6 that's what the super-priority claim is all about. But
7 it would be the benefit of the doubt and just
8 concentrate on the facts instead of looking at the law.

9 First we have Mr. Pachulski's argument,
10 well, we just look at cash, we don't look at anything
11 but cash. But of course, the statute and the definition
12 of what is cash collateral and what is the prepetition
13 collateral in the agreed cash collateral order makes it
14 clear we're really talking about all collateral. And
15 all companies that borrow money, all companies that
16 borrow money, turn that money into working capital.
17 That's what they do. They use the money to create a
18 product. They have accounts receivable. They have
19 inventory. And yes, they even have investments. And
20 when they do that --

21 THE COURT: What non-movable assets did
22 the debtor then have, you believe? The non-movable
23 assets of the debtor on the date of the -- so let's take
24 the real property out.

25 MR. NEIER: That's right.

1 THE COURT: Let's start with, first of
2 all, all the non-real assets.

3 MR. NEIER: The working capital assets is
4 what I would call them.

5 THE COURT: Whatever you want to call
6 them, that's fine.

7 MR. NEIER: And I would say that
8 the noteholder -- to answer your question, I think it's
9 probably pretty clear from the deed of trust and the
10 other documents, the UCC documents, that the indenture
11 trustee has put forward, give the noteholders an
12 interest in all collateral. The prepetition collateral
13 is all encompassing, all encompassing. And certainly
14 proceeds and product from the prepetition collateral do
15 constitute cash collateral, and they have an interest in
16 that.

17 And so when we look at the working
18 capital assets, they include cash, they include the
19 accounts receivable, they include inventory, they
20 include retainers, they include prepaid expenses and
21 they include investments. And the noteholders' interest
22 are not limited to a particular form of collateral. And
23 we have testimony as to the CFO of the company as to
24 those assets. And, you know, if we can put up Exhibit,
25 I think, B -- or C, sorry, to Mr. Young's proffer.

1 THE COURT: Were there any other
2 movable cash -- other moveable, other than real estate
3 that was owned other than the SAR account, the operating
4 account, the timber notes and the account receivable?

5 MR. NEIER: Not that's been presented
6 before Your Honor. I mean, this is it.

7 THE COURT: Okay.

8 MR. NEIER: So we have the cash, and that
9 went from 46 to 5. And then we have the accounts
10 receivable. And Your Honor asked some questions about
11 the accounts receivable. You know, are they aged and,
12 you know, how old are they? You know, Scopac says that
13 the accounts receivable are all against Palco. That's
14 money owed by Palco. And they would say that the
15 \$1,834,401 owed on the petition date, that is an
16 administrative claim because it's under 503(b)9. That
17 would be the allegation of Scopac. And let's assume
18 that allegation is true.

19 And all the rest are post-petition
20 accounts receivable owed by Palco. So now we have \$11
21 million of accounts receivable owed by Palco. And
22 there's an upward adjustment of the distribution that's
23 going to be given to the noteholders based on these
24 post-petition accounts receivable, how could it be
25 otherwise. Clearly there's an interest in these

1 receivables. And so when you look at that, do we have
2 to value that? The answer is no. The burden is on the
3 claimant.

4 Have they presented to you any testimony
5 that you should somehow take the \$11 million that's
6 listed here and value it at less than \$11 million
7 because they're old? You know, what is the effect of
8 the carveouts from the collateral that Marathon has
9 given for some of these receivables? What is the effect
10 of the fact that all of these receivables, certainly the
11 post-petition receivables, are administrative priority
12 and will have to be paid under the Marathon plan? The
13 answer is it's up to the indenture trustee to come to
14 Your Honor and say, well, gee, \$11 million is not 11
15 million dollars, it's some other amount. And have they
16 done that? They have not.

17 Then we have inventory. And you've heard
18 from Dr. Barrett, Mr. Young and Mr. Fromme that this is
19 the logging and hauling costs, \$526,367. And it's going
20 to be turned into \$3.3 million of revenue because it's
21 going to be sold to Palco. So there should be an upward
22 adjustment, I guess, of this amount. But there was no
23 testimony about that other than Mr. Young. His
24 testimony is unrefuted. So there should be an upward
25 adjustment here. But the noteholders didn't come in and

1 say, wait a minute, we think it's somehow less than
2 \$526,000.

3 Then we have prepaid expenses. We have
4 unrefuted testimony from Mr. Young as to the value,
5 \$6,497,000. We had no other testimony. The retainers,
6 that's the retainers to offset professional fees
7 incurred in this case. We've had no testimony other
8 than the fact that they offset an administrative claim
9 in this case and that they're cash and that they're
10 subject to Your Honor's court because all professionals
11 that have retainers, you can order those retainers
12 disgorged, you can order those retainers returned to the
13 estate, you can order them paid to the professionals in
14 lieu of some of the fees that they have applied for.
15 But clearly they're cash and they're worth that amount,
16 and nobody has testified differently.

17 And then we have the auction rate
18 securities. Now, we've heard some testimony by a
19 nonexpert, by Mr. Young, that he -- he got an analyst
20 from Xroads, tried to sell them, and he found out they
21 were illiquid. We've heard testimony that the estate
22 has been rolling these investments over for a great deal
23 of time. We heard that BONY, that is Bank of New York,
24 sorry, was certainly aware of these investments, that
25 they were an eligible investment under the indenture.

1 We've heard that Bank of New York Capital Markets was
2 the broker for these investments.

3 We've heard that the debtors certainly
4 understood that these investments were rolling over, but
5 they were really relying on their agent, which was
6 Maxxam, to make the investments and to rollover the
7 funds. And what a shock, there was, as you put it, a
8 surprise in the marketplace, an unexpected event.

9 But this investment was not being used at
10 any point by the estate, it just was continually rolling
11 through the period. So how do the noteholders claim
12 that this is use of cash collateral under Section 363?
13 They didn't make a motion to lift the automatic stay.

14 THE COURT: The order doesn't say use of
15 cash collateral. That's what the code says as far as
16 cash collateral, but that's not what the order says.

17 MR. NEIER: The order says they get
18 diminution for use of cash collateral. It is a -- it is
19 an order.

20 THE COURT: The order doesn't say for the
21 use. It just says the diminution of the value to the
22 extent of their interest.

23 MR. NEIER: The order is entitled
24 Scopac's Third Final Order (Agreed) Authorizing Use of
25 Cash Collateral Pursuant to Section 363 of the

1 Bankruptcy Code. This is an order for use of the cash
2 collateral.

3 THE COURT: Okay. You're arguing,
4 though, that that somehow limits the actual specific
5 language which grants the super-priority? The
6 super-priority grants it? I mean, it could have said
7 grants a super-priority to the extent applicable by 507
8 to the extent that the collateral is -- the value of the
9 collateral is diminished by the use of the collateral,
10 just like it says in the code. But it is doesn't say
11 that.

12 MR. NEIER: Your Honor, do you think that
13 this court, without any notice to any party, simply on
14 day one somehow gave the noteholders more rights than
15 they're entitled to under Section 507(b)? Or is this
16 really saying that to the extent there is diminution as
17 a result of the use of the cash collateral by the
18 debtors, the noteholders are entitled to a 507(b) claim.
19 It's an acknowledgment. Since I'm also a secured
20 creditors lawyer, it's an acknowledgment by the debtors
21 that if they use cash collateral, it's going to be
22 subject to a 507(b) claim, and that claim will be
23 allowed. That's what this is all about. It's notice to
24 the world. It's acknowledgment by the creditor.

25 You don't get more rights than you're

1 entitled to under the Bankruptcy Code. After all,
2 administrative claims are strictly construed. They
3 should not ordinarily be awarded because they are
4 disrespecting priority. We should always rely on the
5 Bankruptcy Code for the final answer. And the order
6 doesn't really say anything different, Your Honor.

7 Now, with respect to these -- you know,
8 this investment, it wasn't really use of cash collateral
9 since it just sat there. And everybody knew about it.
10 And I don't think that the indenture trustee or Maxxam
11 or the debtors, you know, could have been aware of the
12 fact that the markets would suddenly become frozen and
13 this investment would become illiquid, nor do I think
14 that simply because the investment is illiquid somehow
15 it's devalued. There is no market for it today but, you
16 know what, timber is also an illiquid investment. And
17 there are only a few buyers and it only produces a small
18 amount of cash. There are lots of illiquid investments.
19 And so simply because an asset cannot be immediately
20 liquidated doesn't go to its value.

21 And the most important point is you've
22 heard absolutely no testimony from the indenture trustee
23 as to what the value of that investment really is.
24 You've simply heard a nonexpert say I tried to sell them
25 and couldn't. And certainly the indenture trustee could

1 have hired somebody to value that investment if they
2 wished to assert a claim on that. They did not do so.
3 The burden is on the claimant, not on the respondent to
4 show what the value of this is.

5 So the conclusion, which is really
6 unrefuted by Mr. Young, for the non -- for the working
7 capital assets, for the -- I think you called them the
8 movable assets, it went from 54 to 51 as a total. As I
9 said, that's really -- that's really all the testimony
10 that there is. But then if you were to go and look at
11 the professional fees that were paid in this case. And
12 remember, there is a carveout under the agreed upon cash
13 collateral order, and there are payments to the
14 noteholders. And certainly we all understand that when
15 the noteholders use their own collateral, that should
16 not be a part of an allowed administrative claim. And
17 the noteholders haven't argued otherwise and the
18 indenture trustee hasn't argued otherwise.

19 But if you were to go to Exhibit D of
20 Mr. Young's affidavit, you would see that a total of
21 \$28,561,697 has been paid in professional fees. The
22 debtors have gotten the lion's share of that, \$17.38
23 million, which is on top. If you were to take out the
24 debtor's fees, the amount of fees paid under the
25 carveout to the unsecured creditors committee to B of A,

1 both under the agreed upon order, which the noteholders
2 agreed to and the indenture trustee agreed to through
3 their counsel, and if you were to take out these fees,
4 you would have \$11,181,230 of professional fees that
5 were paid to the non-debtor professionals in this case.

6 So first we have a \$3 million deduction
7 in the assets, the movable assets I think is what Your
8 Honor called them in this case, and then you have \$11
9 million of professional fees paid to somebody other than
10 the debtors. And, you know, 8.9 million of that was
11 paid to the noteholders. So clearly there is no
12 administrative claim, no super-priority administrative
13 claim that could be asserted, giving every benefit of
14 the doubt to the noteholders and the indenture trustee.
15 There is no super-priority administrative claim because
16 the professionals of the noteholders have been paid far
17 more than the \$3 million that would be -- that would
18 exist, according to the unrefuted testimony of the chief
19 financial officer of this company.

20 Let's look at the timberland assets or
21 the forestry assets now. We have Mr. Fleming who
22 testified. And, you know, his valuation is pretty
23 simple. It's based on price, volume and discount rate.
24 Those are the things that are really the drivers of
25 his -- of his valuation. And, you know, with respect to

1 price, he testified that he used the highest possible
2 price to determine what should be paid. The spring
3 price, if you will, when log sales are at their highest
4 for his opening valuation.

5 And then he only valued the assets as of
6 October 1, not as of June 6. So we really don't know
7 what he would think about June 6. He simply valued the
8 assets using prices from the spring in both times. So
9 he went from peak to peak in terms of price. And then
10 in terms of volume, he used a volume figure that is
11 higher than the harvest of the company. And, you know,
12 there's been this idea that he has to use retrospective
13 appraisal. That's really when you have a good faith
14 purchased for a fraudulent conveyance allegation, and
15 that was the case that was cited to you by Mr. Strubeck.

16 But here you're just actually trying to
17 figure out what those assets are. So we can look at it.
18 And he used a harvest higher than the company actually
19 harvested. It's pretty clear -- it's pretty clear that
20 you're going to get a higher value.

21 So, you know, then we have the biggest
22 factor, which is discount rates. Now, you've heard a
23 lot of testimony, a lot of testimony about discount
24 rates. And you've heard all the professionals speak
25 about discount rates and the way they calculate discount

1 rates. And they've all used the major ways. Or
2 actually, the exclusive ways of calculating discount
3 rate. You have weighted average, cost and capital rate
4 or WAC. Mr. Johnson and Mr. Daniel from Houlihan both
5 used a WAC. You had investor surveys. Both Mr. Yerges
6 and Mr. LaMont used investor surveys to determine what
7 the proper discount rate should be. You have
8 capitalized asset pricing or cost of equity. That was
9 something that Mr. Daniel used in his analysis as one of
10 the ways to determine the appropriate discount rate.

11 And then you have comps. You look at
12 precedent transactions, you look at transactions that
13 are in the marketplace and you determine what the
14 discount rate is from those transactions. And
15 Mr. Daniel from Houlihan, Mr. Di Mauro, Mr. Yerges and
16 Mr. LaMont all used comps. And what did Mr. Fleming
17 use? He used the BAA bond. There's no authoritative
18 literature that's been presented, Your Honor, that shows
19 the BAA bond is somehow a way to set a discount rate.
20 And in fact, Mr. LaMont, I believe, said that in all the
21 years he's been doing appraisals, the 20 plus years,
22 he's never heard of anyone using the BAA bond to do --
23 or to calculate what a discount rate is. And there's no
24 relevant testimony that has been presented by the
25 noteholders to justify using a BAA bond for a discount

1 rate. And, of course, the discount rate is the primary
2 driver of value in all of the valuations.

3 And then you had testimony from
4 Mr. Radecki. You know, I don't want to spend too much
5 time on this but, you know, Mr. Radecki testified as to
6 market trends, and then he never tried to take those
7 trends and apply it to this debtor and these assets.
8 And I think because he never connected them to this
9 debtor and these assets, I don't think -- I think he
10 admitted that he was not competent to do so and he
11 didn't have the expertise to do so. And he only had
12 four hours of work before he testified at his deposition
13 and a few more hours before he testified before Your
14 Honor. I don't think he even had the expertise, the
15 competency or the time to make that connection. But
16 because he didn't do any of those things, his testimony
17 is really irrelevant for a 507(b) claim.

18 You know, Mr. LaMont testified that
19 discount rates have come down in the past 18 months.
20 That's primarily because interest rates have come down.
21 The Fed has -- you know, to try and help the economy,
22 move the interest rates down. And the Fed has lowered
23 its various discount rates or, you know, the Fed funds
24 discount rate. And yes, did risk go up? Of course risk
25 went up during that period. But as Mr. LaMont

1 testified, you know, not every asset is subject to the
2 same amount of risk. People invest in gold when
3 interest rates move downwards. It's a hedge. People
4 invest in copper when that happens.

5 People invest in commodities.
6 Timberlands are a scarce commodity. There's only so
7 much timberlands. It makes perfect sense that as a
8 hedge, people would invest their money in this kind of
9 asset because the asset grows, it appreciates, it's
10 there. It doesn't disappear. So it's not subject to
11 the whims of the marketplace because less consumers are
12 buying your product or what have you. Trees are going
13 to be there.

14 You know, Dr. Barrett testified. And his
15 testimony is only refuted by Mr. Fleming. Mr. Fleming
16 said that as far as he was concerned, there was less
17 trees on the petition date than there were on October 1,
18 2007, which is the last date of his appraisals. But
19 clearly that's an error. There's more inventory today
20 than there was in the petition day.

21 THE COURT: I think you just said it
22 backwards. He said that there were less trees on the
23 petition date than October 1?

24 MR. NEIER: That's right. He testified
25 that he used a higher harvest rate and he used -- he

1 believed --

2 THE COURT: I thought he testified there
3 were more trees at the beginning of the case than there
4 were --

5 MR. NEIER: You're right. You're right,
6 Your Honor. I apologize. You're right. Okay.

7 And, you know, I think Dr. Barrett was
8 able to clear up that confusion pretty easily. There
9 are clearly more trees because the Court -- as the Court
10 has already found, as Scopac said in its original
11 opposition to this claim, the trees grew faster than
12 they were cut. And that was a finding that this Court
13 made in connection with one of the cash collateral
14 hearings. And it's still true. And there's no evidence
15 that it isn't true. In fact, the unrefuted evidence is
16 that the trees continue to grow faster than they were
17 cut. Not only was that true in 2007, it's true in 2008.
18 And there are more trees available for harvest today
19 than there were on the petition date. And there were
20 capital improvements and reforestation.

21 And if I can go back -- or if I can go to
22 Dr. Barrett's affidavit. If you were to use the lower
23 prices that became effective on July 1, 2008, you would
24 have six million -- or close to 6.8 million of new
25 growth that was available in 2007. There was an

1 additional \$29 million of additional growth that became
2 available. And this is using his other analysis from
3 the watershed areas. An additional 29 million became
4 available in the Upper Eel area. And an additional
5 4,416,000 became available in the Bear Creek area.

6 And, you know, there was areas that got
7 road improvements and there was reforestation. And if
8 you were to add all of that up as we did, right from his
9 affidavit, you would get a total of \$50 million --
10 \$49.3 million of additional value that is in the forest
11 based on capital improvements and SBE prices.

12 So the idea that there's been -- and this
13 is giving every benefit of the doubt to the noteholders
14 that they somehow have a fair market claim as of the
15 petition date compared to today. There's clearly more
16 value in the forest than there was even when you account
17 for the lower SBE prices that came into effect July 1,
18 2008. And as I said, the burden is on the claimant.
19 They haven't proven otherwise.

20 So if you -- if you look at what we're
21 talking about, we're talking about really just one claim
22 left on the timberland assets. And that's Mr. Fleming's
23 idea that since October 1, prices have declined and
24 there have been market problems that make this asset
25 less valuable. But they haven't presented any evidence

1 of that. In October 1, as you saw from the graphs, the
2 S&P forest index and those other analysis, that was
3 really the peak of the market. We all know that from
4 reading the newspapers.

5 In any event, the market has declined
6 since October 1. And Your Honor found that in the
7 findings as of the confirmation hearing. So there's
8 really no evidence that's been presented by the claimant
9 to show that the value today is less than the value
10 there was on the petition date. They've simply
11 presented minor evidence during the period, not from
12 either end of the period, which is the first thing Your
13 Honor said when we began this hearing. I want evidence
14 from the petition date to the end of the confirmation
15 hearing. That's how you judge this kind of claim.
16 Whatever -- and forget about whether that's fair market
17 value or liquidation value that you have to go to. The
18 fact of the matter is they can't even show diminution,
19 giving every benefit of the doubt in using fair market
20 value.

21 One more thing. Just going back to the
22 non-movable assets. Your Honor may recall that there
23 was an exhibit that was filed and agreed to with respect
24 to the payments that were made to Bank of America.
25 Those payments were agreed to under the cash collateral

1 order, the interest payments to B of A. So in addition
2 to their professional fees, it would also be appropriate
3 to not include those fees in any administrative claim
4 and to offset any such claim. If you were to add that
5 amount, it's \$3,994,788.47.

6 If you were the add that to the
7 professional fees that we talked about earlier, the
8 \$11,181,230 of professional fees other than those paid
9 to the debtors, you would get a total of \$15,176,018
10 that should offset any \$3 million decline in the
11 non-movable assets. And then we have a \$49 million
12 uptake in the value of the forest, even disrespecting
13 the experts, just relying on Dr. Barrett and the
14 increases in the inventory of the areas available for
15 harvest, the reforestation and the capital improvements.

16 Not only is there no claim, Your Honor,
17 the claim has been refuted. -- has been totally denied
18 by the unrefuted evidence that's been presented to you.
19 What the noteholders are down to is a few catch phrases.
20 You know, bogus appraisal, sleight of hand, double
21 counting. And they're trying to stitch something
22 together in some kind of attempt to eviscerate this
23 Court's findings at confirmation. They haven't used the
24 507(b) hearing to prove up their claim. They have used
25 it as way to attack Your Honor's ruling and

1 confirmation. That was inappropriate. But more
2 importantly, it's pretty easy for this Court to deny the
3 claim. Thank you, Your Honor.

4 THE COURT: Mendocino is going to speak,
5 too.

6 MR. BRILLIANT: Yes, Your Honor, very
7 briefly. I just have very few comments. I want to
8 follow-up on a few things that my colleague, Mr. Neier,
9 said. The first thing is with respect to B of A, Your
10 Honor. I just wanted to remind you as to how the
11 indenture trustee and the B of A loans work and why it's
12 relevant, the amount of professional fees that have been
13 paid on account of B of A and why the interest payments
14 that they're paid are, you know, relevant in
15 determining, you know, the cash collateral and whether
16 there is any diminution.

17 As Your Honor probably remembers, B of A
18 and the noteholders share the same collateral. They
19 both have, you know, a first lien on, you know, the
20 timberlands and the other assets. But as Mr. Greendyke
21 had said, there's a waterfall -- or actually, I guess it
22 was Mr. Davidson had said there's a waterfall, and the
23 waterfall is that ultimately, you know, B of A gets paid
24 ahead of the noteholders. I'm not expert enough to know
25 whether or not whose professional fees gets paid first.

1 But the bottom line is B of A gets all of its
2 prepetition loan and its post-petition interest before
3 the noteholders on account of their notes get any dollar
4 at all.

5 And that's why it's relevant when Your
6 Honor, you know, looks at this \$4 million in interest
7 they have gotten, the \$1.6 million of fees that have
8 already been paid on account of B of A's professionals
9 to make sure that you take that into account in looking
10 at whether or not there's been any diminution in the
11 cash collateral.

12 The second point, Your Honor, that I
13 wanted to make is that -- is with respect to the -- you
14 know, the going concern appraisals. We understand, you
15 know, Mr. Jones and B of A's argument about the
16 foreclosure issue. Obviously from our perspective we
17 think no matter how you value this, whether you rule
18 because the indenture trustee failed to put any evidence
19 about foreclosure, or you look at this on a piecemeal or
20 a liquidation or just cash collateral and then whether
21 or not the trees have been harvested or not, or whether
22 you look at it on a fair market value basis.

23 Any way you look at it, there's been no
24 diminution. Obviously from our perspective, from
25 Mendocino's perspective, who hasn't closed on a

1 transaction yet, we would like Your Honor to rule on all
2 of the levels and not -- so that's on the factual basis
3 which we think exist here. So on any appeal it's not
4 just limited to legal issues as to what the right level
5 was.

6 Here, I think, Your Honor, you know, it
7 really comes down, you know, to credibility of the
8 witnesses. I think that the indenture trustee has that
9 right. It does come down to the credibility of the
10 witnesses. And with respect to Mr. Fleming let me talk
11 about him first. I think Your Honor understands
12 something. He said he read your opinion and that you
13 disagreed with him and you disagreed with his
14 methodology. And yet he did nothing, absolutely
15 nothing, to fix that. He still used the ten years
16 instead of the 50 years that everybody else uses.

17 He still used the same assumptions that
18 Your Honor, you know, had rejected. And he didn't do
19 the things that you would expect somebody who wanted to
20 impress Your Honor from a valuation perspective that he
21 would do. He didn't do it. He didn't do it right. And
22 as their own counsel, Mr. Strubeck says, when he
23 answered questions, you know, he wasn't particularly
24 articulate, he was evasive, he avoided, you know,
25 answering questions.

1 MR. STRUBECK: Judge, I object. I'm
2 sorry. I didn't say any of those things about
3 Mr. Fleming. I said he wasn't the most loquacious
4 witness. I never said he was evasive.

5 MR. BRILLIANT: I was talking about --

6 THE COURT: He went on. I agree you did
7 not say that.

8 MR. BRILLIANT: And Your Honor, I do not
9 want the record to reflect that.

10 THE COURT: You raised it, though. In
11 the record it could -- in the record it would sound like
12 you were saying he said all of those things. He didn't
13 say all of those.

14 MR. BRILLIANT: No, I didn't. What I was
15 saying --

16 THE COURT: I know that's not what you
17 meant. But the record is now clear.

18 MR. BRILLIANT: Thank you, Your Honor.
19 But clearly, Your Honor, Mr. Fleming's work was not
20 persuasive at the confirmation hearing, it's not
21 persuasive here. As Your Honor again has pointed out
22 with respect to his log prices, he used the May prices,
23 you know, well after the January date which raised his
24 value. Also because of the seasonality of the log
25 prices, manipulated the log prices in order to get the

1 type of evidence that he was looking for.

2 Now, Your Honor, with respect to Mr. Dean
3 and Mr. LaMont, you know, we've seen the indenture
4 trustee, you know, argue this case, you know, in the
5 confirmation hearing, you know, first on the facts and
6 valuation. That didn't seem to get them anywhere. Then
7 they had the arguments about 1129. That didn't seem to
8 get them anywhere. And here they came up with something
9 new, which is if you don't have the law on your side and
10 you don't have the facts on your side, well, attack the
11 character of the people that are on the other side.

12 Now, Your Honor has had the opportunity
13 to see Mr. LaMont and Mr. Dean both testify twice in
14 front of Your Honor. And Your Honor knows that these
15 are honest, hard-working, credible people. Now, the
16 indenture trustee had three opportunities to depose
17 Mr. Dean, two opportunities to depose Mr. LaMont, at
18 least two opportunities that I'm aware of to depose
19 Mr. LaMont. And they found two documents, two e-mails
20 that they have had, at least with respect to the one
21 from Mr. Dean, that they have had for, you know, for, I
22 don't know, three or four months at this point in time.
23 And they tried to take them out of context and make
24 something here that really doesn't exist.

25 Now, at the time in September when

1 Mr. Dean, you know, had this meeting with Marathon, the
2 unrefuted evidence is they weren't working together.
3 And Mr. Dean reported to his colleagues about what
4 happened at the meeting and what Marathon had said to
5 them. And he surmised some of the things about
6 Marathon's, you know, thinking and the fact that
7 Marathon had a misconception about value and whether or
8 not, you know, what the value of the trees, you know,
9 was at that particular time.

10 And that's all that the e-mail says. It
11 doesn't say anything about what Mr. Dean was thinking or
12 that Mr. Dean was planning to do something wrong or that
13 Marathon was planning to do something wrong. All of
14 that is something that the indenture trustee tries to
15 infer out of an e-mail that just reflects a business
16 person's view of a conversation about the fact that the
17 Marathon people thought there was going to be.

18 THE COURT: When was the mediation? When
19 was the first mediation in this case?

20 MR. BRILLIANT: We weren't involved at
21 that time. I believe it was in November.

22 MS. COLEMAN: November of 2007.

23 THE COURT: November of 2007. And when
24 was the second mediation?

25 MR. BRILLIANT: The one that Your Honor

1 required?

2 MR. NEIER: No, no. I think he means the
3 second round with Judge Isker.

4 THE COURT: The second round of
5 mediations.

6 MS. COLEMAN: December 11th, Your Honor.

7 THE COURT: December 11. Okay.

8 MR. BRILLIANT: And it wasn't -- in
9 September, Marathon and Mendocino weren't working
10 together, hadn't even really talked about the
11 possibility of working together. It was many months
12 later after the two mediations when Marathon --

13 THE COURT: When was the third -- wasn't
14 there a third mediation?

15 MR. NEIER: Yes, Your Honor. You ordered
16 Judge Isker during the confirmation process to also be a
17 mediator.

18 THE COURT: When was that?

19 MR. BRILLIANT: In May, right?

20 MR. NEIER: Was it May?

21 MS. COLEMAN: April.

22 MR. NEIER: Of 2008, Your Honor.

23 THE COURT: And when is this e-mail?

24 MR. BRILLIANT: September of 2007.

25 MR. NEIER: Before any of them, Your

1 Honor.

2 MR. BRILLIANT: Before any of them. And
3 there's a point in time, Your Honor, when Marathon and
4 Mendocino weren't working with each other, had no
5 relationship. And it just explains to Mr. Dean's, you
6 know, colleagues what he had learned about the meeting.
7 It doesn't reference any kind of the foggiest intent on
8 behalf of Mendocino or on behalf of Marathon other than
9 it sets out some of Marathon's views and the possibility
10 that there might be a valuation fight with the
11 noteholders in the case.

12 The second e-mail that they, you know,
13 bring up is Mr. Dean's response to the March Barrett
14 affidavit where, you know, in Mr. Dean's response to the
15 growth of the trees and how valuable, you know, that
16 would be. And it's a very quick response, uses language
17 like after a quick review, you know, I guess this, I
18 think that. And he critiques, you know, Mr. Barrett's,
19 you know, proffer in connection with the cash collateral
20 hearing that was going to occur.

21 And none of the testimony that you have
22 heard from Mr. Dean has ever been inconsistent with that
23 e-mail. And, in fact, on questioning from Mr. Neier,
24 Mr. LaMont, you know, said that the amounts of the tree
25 growth is modest in comparison to the whole forest,

1 which is Mr. Dean's, you know, position.

2 It's anything -- Your Honor sees
3 witnesses every day and has done it your entire career
4 as a judge and a lawyer, and you know that it is not
5 uncommon for people to forget about particular meetings
6 nine, ten, 11 months ago and specific words that are
7 used. And it's just lawyers tricks. You know, lawyers,
8 you know, sleight of hand here, you know, to try to make
9 it into something more than it really is. Your Honor
10 knows from seeing these men on the stand that they're
11 honorable, credible and hard-working people. And this
12 is really just a side show that shouldn't be countenance
13 by Your Honor and has nothing to do with the issues of
14 whether or not their collateral has diminished in value
15 during the case.

16 I think it's pretty clear, Your Honor,
17 when you look at this just on a working capital
18 perspective, when you look at this just on whether or
19 not there's more or less trees today than there were on
20 the first day of the case, or if you even look at it at
21 a market value perspective when you consider
22 Mr. Fleming's appraisal versus Mr. LaMont's that there
23 had been no diminution in the value of the noteholders
24 collateral during this case. And then you take into
25 effect all the legal issues, the questions about whether

1 use is involved or you have to use foreclosure levels.
2 And it's just absolutely clear that as a matter of fact,
3 and as a matter of law that there's no 507(b) claim
4 here. The indenture trustee hasn't carried its burden
5 of proof. The claim should be denied.

6 THE COURT: Is that everybody other than
7 this table? No, you want to?

8 MR. FIERO: The committee is going to
9 take a quick shot at it, Your Honor. And I'll try not
10 to repeat anything that's been said before. John Fiero
11 for the committee, Your Honor. Mr. Penn, if you could
12 put up MMX 125, page 12, in particular paragraph 34.

13 Your Honor, you'll recall when I first
14 made my remarks to the Court at the beginning of this, I
15 spoke about the concept of integrity and why it was
16 important because the noteholders had told you it was
17 important. And we haven't changed our position. We
18 still think it's extremely important. And if we're
19 going to have integrity in this court, Your Honor, then
20 the orders of this Court are going to have to be
21 enforced. I need paragraph 34.

22 THE COURT: Do you want the beginning of
23 34?

24 MR. FIERO: Yes, I do. I'm sorry, we've
25 got the wrong document. I'm sorry. Your Honor, one of

1 the things that Mr. Strubeck said to you was, well, Your
2 Honor, if they get the carveout that they're asking for,
3 if the carveout rights -- if there's some carveout here
4 that's going to diminish our cash, then no secured
5 creditor is going to agree to a carveout in any case
6 anywhere in America. Well, I don't think it really
7 matters what happens in any other case anywhere in
8 America. I think all that matters of what happens here
9 is what happens in this case. And this is the carveout
10 that the noteholders agreed to. And if you take a look
11 at it -- can I have a pointer? So, you see, it says any
12 provision of this order. "And the super-priority costs
13 of administration claims granted pursuant to this order
14 shall be subject and subordinate to a carveout for the
15 payment of all allowed consultant and professional fees
16 and disbursement incurred by the consultants and
17 professions retained," blah, blah, blah, "by Scopac and
18 any committee appointed under 11 -- U.S.C. 1102." So
19 let's go ahead and take a look at that.

20 I'm looking for the debtor's professional
21 fees. You can see, Your Honor, that there's \$17 million
22 of agreed upon fees. You can look at the committee's
23 fees and see that there's \$580,000 of agreed upon fees.
24 Go down to Bank of New York's fees. Of course we're not
25 counting those. They've agreed to that. Then you've

1 got Bank of America. We can't not pay the oversecured
2 creditors attorneys' fees, can we? And then the last
3 thing you have to deal with would be the interest paid
4 to Bank of America. All of those are allowed expenses.
5 And if you were to total them, Your Honor, what you'd
6 end up with is more than 32 and a half million dollars.

7 So in this instance, Your Honor, you're
8 going to have to find that there was a diminution in
9 excess of that before you're going to be able to find
10 that anything untoward happened here.

11 Now, one of the suggestions that
12 Mr. Strubeck made to you was that Mr. Fleming was
13 qualified. And in particular, the suggestion was that
14 he is the guy that people go to when they want a redwood
15 forest appraisal. Well, you know what, I don't think
16 there's any dispute about whether or not Mr. Fleming has
17 the paper qualifications to be an appraiser in this
18 case. I think there's a great and reasonable dispute
19 about the methodology that he used. And, in particular,
20 his decision to ignore all market data and focus instead
21 on a general index like corporate BAA bonds.

22 But the notion that he is the guy that
23 people go to, there was no evidence of that, Your Honor.
24 There was no one who came up to corroborate the
25 qualifications of Mr. Fleming. So you can't, based on

1 anything we heard here today, determine that he was the
2 only credible witness that you heard from.

3 THE COURT: That's not true. I can do
4 that just because I listen to him and think he's
5 credible, can't I?

6 MR. FIERO: No. My suggestion is --

7 THE COURT: There's no evidence here to
8 suggest that he's the only guy. I guess you're right
9 about that. But I think I can give whatever weight I
10 want to to any witness based on what I believe to be
11 their veracity and their capability and their -- you
12 know, the quality of their testimony.

13 MR. FIERO: I would agree with that, Your
14 Honor. My suggestion was there was nothing to
15 corroborate the suggestion that for some reason he was
16 anymore qualified than anyone else who might have chosen
17 to look at the actual market comps in determining how to
18 value this particular forest.

19 The last thing I want to talk about, Your
20 Honor, is this notion that there was something nefarious
21 going to. Because I think we're going to hear more
22 about it. If the Court confirms this plan and if we
23 move to another stage, if there's questions of appeal
24 and a stay of an appeal, there's going to be a
25 suggestion from this table -- it's been a murmur so far.

1 It's going to become a roar.

2 And the suggestion is going to be there
3 was some kind of fraud, there was a theft, there was an
4 effort to take something which didn't belong to them.
5 And it's going to relate, Your Honor, to this phrase
6 that Mr. Dean used about tapping into the value. Well,
7 everyone in this courtroom knows that you cannot tap
8 into the value of an undersecured creditor's collateral.
9 It's not possible, right? Their lien covers the whole
10 darn thing. What happened and what undoubtedly -- and
11 you can conclude this from the circumstances, Your
12 Honor. What Mr. Dean perceived was that Marathon
13 believed it was oversecured. Marathon knew it owned --
14 it had a lien on the stock of Scopac. It believed that
15 that lien would give it leverage and rights inside the
16 bankruptcy.

17 And, Your Honor, that was a perfectly
18 reasonable belief at the time. As events unfolded, it's
19 obvious that Marathon came to recognize that the
20 noteholders were undersecured, that they were severely
21 undersecured, and that the only way out of this problem
22 was to throw new money at it. And that's exactly what
23 Marathon agreed to do here.

24 Lastly, Your Honor, I would like to point
25 out that just in the last few hours the noteholders have

1 filed a brief which refers to a nefarious argument. And
2 this -- this nefarious argument are these very questions
3 about these e-mails which the noteholders had for a very
4 long period of time which they chose to show in part but
5 not in whole to witnesses during depositions, and which
6 they then trumpeted in this court as being the reason
7 why something about the confirmation decision and the
8 findings of fact and conclusions of the law was
9 inappropriate.

10 You don't have to give any credence to
11 any of those inferences because it's just as possible
12 for you to infer perfectly reasonably, based on the
13 posture of the parties throughout the case, that there
14 was nothing wrong or inappropriate about Marathon
15 believing at some point in time prior to the mediation,
16 two months prior to the mediation, that in fact its lien
17 on the stock of Scopac gave it some sort of value which
18 it could later realize on as a secured creditor. Thank
19 you.

20 THE COURT: Now the state wants to say
21 something.

22 MR. FIERO: I'm sorry, Your Honor. I
23 misspoke when I said that Marathon had a lien on the
24 stock of Scopac. The stock of Scopac was an asset of
25 Palco, and they had a lien on virtually every other

1 asset of Palco and viewed it as, you know, their
2 problem.

3 MR. PASCUZZI: Your Honor, Paul Pascuzzi
4 for the California State Agencies. I just want to state
5 for the record that we join in the oppositions and the
6 arguments in opposition to the indenture trustee's
7 motion. Thank you, Your Honor.

8 THE COURT: How much time do you want in
9 rebuttal?

10 MR. NEIER: Well, they used it all, Your
11 Honor.

12 THE COURT: They're going to get time in
13 rebuttal. How much time do you want?

14 MR. PACHULSKI: This is Isaac Pachulski,
15 Your Honor, and I have 15 minutes. I don't know if this
16 is because Mr. Strubeck wanted to punish me or what
17 because I was asked to do the rebuttal.

18 THE COURT: Okay. But I'm going to take
19 a short break before that happens. If he wants a couple
20 of minutes, he can have it also.

21 MR. PACHULSKI: Will it been at least
22 five minutes so I can do something?

23 THE COURT: It will be ten minutes.

24 (A recess was taken.)

25 THE CLERK: All rise.

1 THE COURT: Be seated. Are we going to
2 start with the telephone?

3 MR. PACHULSKI: Yes, Your Honor. Good
4 afternoon again. For the record, Isaac Pachulski of
5 Stutman, Treister & Glatt Professional Corporation
6 appearing on behalf of three noteholders. I would first
7 like to start by addressing this whole liquidation value
8 theory. And this was the theory espoused by Mr. Jones.
9 And the theory is in substance, well, since the
10 indenture trustee would have foreclosed on the
11 collateral, we have to use liquidation value, we can't
12 use concern value; and so it was wrong to rely on any
13 appraisal at or about January.

14 The flaw in that theory is this. If you
15 look at the definition of fair market value, this
16 situation qualified. And it's important to understand,
17 this situation is unique because of the terms of the
18 indenture and the type of collateral.

19 Now, fair market value assumes a willing
20 seller, a willing buyer, and no compulsion to sell. The
21 issue here turns around, is there some compulsion to
22 sell? Well, in fact, Your Honor, the facts are just the
23 opposite. As I'm sure you'll recall from the extensive
24 discussion at the confirmation hearing, under Section
25 7.18 of the indenture, the indenture trustee is

1 prohibited, is affirmatively prohibited from taking
2 anything less than 100 cents on the dollar of cash in
3 lieu of credit -- and month credit bid unless you get
4 two-thirds of the noteholders to agree to take less.

5 So the starting point is there's a
6 presumption. If we didn't get paid in full there would
7 be a credit on the part of the indenture trustee. Now,
8 there is no basis to conclude that the indenture trustee
9 is under any compulsion to sell and can't conduct an
10 orderly sales process. So to say you're going to use
11 liquidation value, you know, that's based on cases where
12 number one, you don't have an indenture which
13 specifically lays out what the indenture trustee can't
14 take less than full amount, but also, we're not dealing
15 with used airplanes and used cars where you have
16 hundreds of these things around. This is a unique
17 asset, everyone has highlighted that. And whether it's
18 marketed by an indenture trustee or anyone else, the
19 result is the same.

20 Now, Mr. Jones speculates about secret
21 liens, and I will stress, liens are not an issue of
22 fact, they are an issue of law. We don't have to prove
23 the law. I don't have to prove that there is not a
24 secret lien here, okay? Secondly, I don't have to prove
25 the law of foreclosure. As Mr. Jones pointed out,

1 basically under California law if you go power of sale,
2 you're done in 110 days. And of course, there's no
3 reason why during that same 110 day period you can't
4 concurrently have the indenture trustee doing marketing.
5 Now, there is a reference in the brief to what's called
6 a judicial foreclosure. You're not going to do judicial
7 foreclosure here, Your Honor, because it has to do with
8 deficiency claims and a deficiency claim in Scopac is
9 worth nothing. So you have power of sales of 110 days.
10 You have an indenture trustee who is required to credit
11 bid unless he gets paid in full in cash. And you have
12 an indenture trustee who is certainly under no
13 compulsion to sell, and who are the noteholders? Well,
14 we know from evidence Your Honor has heard previously
15 that the biggest noteholder of more than a third is Beal
16 and they're certainly under no compulsion to sell.

17 So the very definition of fair market
18 value that you see in all of the appraisals applies
19 absolutely to this case. Again, we're not talking about
20 used cars, we're not talking about a situation where
21 somebody isn't covered by an indenture. So that whole
22 argument while very clever, I have to give Mr. Jones
23 credit, is absolutely wrong. Moreover, while it's true
24 that there's -- you know, it would take you 110 days
25 before you can actually get the property, you could

1 market it during that period. And nobody testified that
2 between January and April the value of the property
3 declined. Mr. LaMont certainly didn't say that. He
4 kept on insisting that the property kept going up even
5 after the housing market crashed. So that -- you know,
6 there's a good reason why Mr. Brilliant asked Your Honor
7 not just to rely on an argument of law like that but
8 upon finding of the fact, that argument of law is wrong.
9 There is no authority that supports a blanket assumption
10 that in any foreclosure sale all you're going to get is
11 liquidation value and that assumption is contradicted by
12 the record in this case.

13 Now let's go to the issue of the
14 integrity of the Court's order. The other side said,
15 and it's a free country so you can say anything even
16 though it's not true, that our purpose in this hearing
17 was to challenge the confirmation order, to challenge
18 the finding. Absolutely false. To the contrary, our
19 position is, number one, based on the findings that Your
20 Honor made in connection with confirmation that were
21 urged on you by Mr. LaMont and by Marathon, there is
22 a -- there is already a predicate for finding a
23 substantial decline in value. The second reason I refer
24 to the findings in my argument was simply to highlight
25 to the Court the difference between the facts as you

1 found them in -- as of April 2008 and the facts as they
2 existed as of January 2007.

3 For example, and this is an important one
4 that I stressed, that maybe it wasn't profitable to
5 harvest Douglas Fir in April 2008, but it was certainly
6 profitable to harvest it in January 2007. And there's
7 no suggestion that it became unprofitable until some
8 time after the housing market collapsed.

9 But now turning to the integrity of the
10 Court's orders, I would now like to focus on the attack
11 on the integrity on the simple and straightforward
12 statement in the Court's cash collateral order. By the
13 way, you know, I understand that one of the counsel
14 argued that should be qualified by the fact that the
15 title of the pleading uses the word use. But we know
16 that titles of pleadings are not operative orders.

17 The operative language says "The trustee
18 is also granted a super-priority cost of administration
19 priority claim under 11 U.S.C. 507(b) to the extent of
20 the postpetition diminution of its interest in the
21 prepetition collateral and the cash collateral." It
22 doesn't say to the extent of use. And if that isn't
23 intended people know how to do it. It doesn't say to
24 the extent that diminution is the debtor's fault. It
25 was an absolute unqualified grant. And unless someone

1 is going to make a motion to vacate or amend this order
2 claiming now, years after the fact that they didn't get
3 notice, this language is binding.

4 Now, speaking of the order, and this
5 is -- actually this is an interesting question. I'll be
6 honest, I'm not sure of the answer because the order
7 isn't completely clear. The argument has been made that
8 even if something isn't cash collateral under the
9 Bankruptcy Code, for example, an account receivable
10 which is not cash collateral under the Bankruptcy Code,
11 it's not a cash equivalent, it's not included in the
12 definition. It is nevertheless included in the
13 definition of cash collateral under Your Honor's order.
14 And what the order says -- and I'm looking at -- and I'm
15 sorry, I can't, you know, telepathically get this on the
16 screen. But it's paragraph 15 of Scopac's final order
17 authorizing use of cash collateral. I think it looks
18 like No. 372 if I read it right. It's kind of hard to
19 read. But basically it says after describing all the
20 prepetition collateral it says "the proceeds and product
21 of the prepetition collateral constitute cash collateral
22 as that term is defined in the Bankruptcy Code."

23 Now, the Court didn't use this kind of
24 terminology and the unqualified language I discussed
25 earlier, so I read the reference to the Bankruptcy Code

1 to say yeah, the proceeds and products are cash
2 collateral to the extent they fall within the Bankruptcy
3 Code definition. If not, that parenthetical will be
4 surplusage and in a construing order, we're supposed to
5 assume that no language is surplusage. So the
6 parenthetical, as that term is defined in the Bankruptcy
7 Code, and in some ways you can construe an order like a
8 contract sometimes, you have to give effect to that
9 language, you have to limit it.

10 And what does the Bankruptcy Code tell
11 us? The bankruptcy code tells us that an account
12 receivable isn't cash collateral, a road isn't cash
13 collateral, a retainer isn't cash collateral.

14 Now, one last point regarding the order.
15 Counsel for the committee rest on the carveout. And
16 what the carveout says is our super-priority claim is
17 subordinated to these other things. Okay. Well, it
18 says subordinated, it doesn't say you get a credit. So
19 the logical way to read this order is we have an
20 unqualified super-priority claim measured by the
21 diminution of, A, cash collateral, and B, non-cash
22 collateral. That is subordinated but it is still a
23 super-priority administrative claim, and under 1129(a)9,
24 all administrative claims, whether subordinated or not,
25 have to be paid.

1 All this really meant was that if this
2 case crashed and burned the professionals would get paid
3 before the super-priority claim. So in fact, what
4 counsel read to you belies the notion that the carveout
5 reduces our super-priority claim.

6 Now, there was a whole argument about is
7 the auction rate securities cash collateral, are they
8 not cash collateral. It doesn't matter. But they are
9 cash collateral because they're securities, but that's
10 not the issue. The issue is the diminution and the
11 interest. And it is undisputed. I don't know if it was
12 Mr. Radecki or somebody testified, maybe it was
13 Mr. Young, but there was testimony that the auction rate
14 securities did not decline in value until well after the
15 petition date. So they were worth par at the petition
16 date and thereafter.

17 Now, Mr. Jones says, well, we would have
18 to foreclose on it. Well, this isn't an issue of fact,
19 it's an issue of law. And under the UCC, I believe that
20 on a personal property like this, you could have
21 finished your foreclosure in 30 to 60 days easily. And
22 if you need supplemental citations we'll get them to
23 you. This is personal property and everybody knows as a
24 matter of commercial law you can foreclose much faster
25 on personal property. And there is no suggestion that

1 these auction rate securities which were basically
2 things that were being resold on a weekly basis couldn't
3 have been sold at par.

4 Now, somebody says, well, nobody foresaw
5 that it would drop or it wasn't the debtor's fault.
6 Well, under the unqualified language of Your Honor's
7 order which we're asking Your Honor to enforce that
8 doesn't matter. It is cash collateral because of the
9 securities. The value dropped, it diminished, that's
10 the end of the discussion.

11 On a related point, because I anticipate
12 in rebuttal somebody will mention this. Your Honor is
13 going to be aware -- this may be a little tedious, but
14 it's important. Remember I said that maybe you can
15 limit in cash collateral would captured in the \$510
16 million. I was waiting for Mr. Neier to tell me that
17 I'm wrong because there's a credit against the class 6
18 distribution adjustment for the account receivable. And
19 let me explain quickly why that doesn't provide any
20 value. That adjustment is a deduction in the nominal
21 \$530 million payment for the amount by which the
22 administrative claim exceeds -- administrative claim
23 exceeds \$5 million and for the shortfall in the SAR
24 account in cash to pay B of A. Because this Court set a
25 floor of \$510 million, unless that shortfall is less

1 than \$20 million, the credits for this intercompany
2 administrative claim is worthless.

3 If there is \$20 in reduction, then we're
4 are at \$5 or \$10 million. If there's \$30 million, we're
5 still at \$5, \$10 million, we don't need the credit. And
6 given the fact that the debtor estimated or someone
7 estimated that the number would be 517 in May, it's only
8 gone down because of the administrative claims and the
9 consumption of the class in the operation. If you want
10 to give credit for the value of this account receivable,
11 Your Honor would have had to provide that our minimum
12 distribution is \$510 million plus the amount of this
13 account receivable which is an administrative claim.
14 Your Honor didn't do that. I'm not making a motion to
15 reconsider, although we think that's what should have
16 been done, but this credit mechanism doesn't give us
17 value. So we're back to where I was earlier, which is
18 that whatever money stopped being cash collateral, and
19 went into the other collateral is all captured in the
20 510. So what we have are two components.

21 To the extent the cash collateral or its
22 value such as its auction rate securities is less than
23 what was around on the petition date, we have a claim
24 for that diminution without regard to roads and log
25 decks and prepaid retainers. To the extent that there

1 was a diminution between the petition date and the \$510
2 million, to the extent there's a delta, either that
3 delta increases our administrative claim or it reduces
4 our administrative claim. But all these other set items
5 are not separate components of value because frankly
6 Your Honor took them away from us under the plan and
7 just said here's \$510 million. The only exception is
8 the Headwaters litigation lien which is not part of any
9 of this analysis.

10 Finally just real quickly, and I don't
11 want to spend a lot of time, you know, rehashing who
12 testified as to what. But two points regarding sort of
13 credibility and assumptions. One of these things that
14 came out in the third e-mail, and I don't have the
15 exhibit number, maybe Mr. Krumholz has it. Is that
16 Mr. Dean was using a 90 million to -- I believe a 90
17 million to 100 million harvest rate in mid 2006 in a
18 preliminary analysis. All right. People had forgotten
19 about that, which was very reasonable in light of the
20 fact that the actual harvest was \$100 million. So
21 again, the notion -- you know, the notion that the
22 harvest as of January 2007 should have been assumed to
23 be 60 is contradicted by Mr. Dean's e-mail.

24 Second, in the -- in the e-mail that
25 people have more fun with, the bogus appraisal e-mail,

1 there's also another statement that's important.
2 Mr. Dean, who has an extensive finance background, even
3 though he said, you know, I'm not sure if I'm right or
4 not said look, discount rates for REITs have gone up and
5 not down in the last six months and he indicated, I
6 believe, that they had gone up to 7 or 8 percent from a
7 lower number. So you want to talk about credibility,
8 that's what Mr. Dean was saying when it was sort of
9 spontaneous and when there was no need to really tailor
10 what he was saying to achieve a desired result.

11 So the bottom line is fair market value
12 applies here because the indenture trustee could not
13 accept anything less than cash, would have to go through
14 an orderly process. The terms of the order define the
15 measure of our claim. It's unqualified. We fit within
16 the measure, and the carveout just means our claim is
17 subordinated but it does not change the measure of our
18 claim by one dollar. And thank you for letting me go
19 over, Your Honor.

20 MR. JONES: Your Honor, may I have two
21 minutes? Oh, I' sorry.

22 THE COURT: Well, they get the last time,
23 so I'm not sure. What are you going to respond to?

24 MR. JONES: Well, he said he was sure I
25 would respond, and I would like to.

1 MR. STRUBECK: I don't think he gets the
2 right to respond, does he?

3 MR. PACHULSKI: Your Honor, I didn't
4 stipulate that he could respond but if he says
5 something, I want the last word.

6 MR. JONES: Your Honor, the Court's
7 practice has been to permit sur replies and rebuttals.
8 So keep in mind, the argument that they're advancing,
9 the whole argument wasn't in any of their papers. Your
10 Honor just at lunch got our response to that because
11 you'll remember you let Mr. Krumholz completely change
12 their case at 4 o'clock on Monday.

13 THE COURT: I understand.

14 MR. JONES: And I'll take three minutes
15 if I may. Your Honor, the first one, Mr. Pachulski says
16 I said it should be liquidation value. I never said
17 that. In fact, the last instruction I gave to my
18 colleagues last night is that word doesn't appear in our
19 brief because it's not the right word. It's foreclosure
20 value. Mr. Pachulski says, well, this isn't a forced
21 sale, no one is under compulsion. That's not what their
22 witnesses testified. Both of their witnesses testified
23 that a foreclosure is a compelled sale and is not fair
24 market value.

25 Now, what Mr. Pachulski is really arguing

1 is, well, we could have taken it back at a fast slam
2 bang 110 day foreclosure, and they could have. And he
3 asked you to speculate that they would have. By the
4 way, Your Honor, I think it's entirely reasonable to say
5 maybe they would have done a reasonable marketing effort
6 to sale to if they could get cash but we don't know.
7 But let's assume they did take it back. Well, now, the
8 indenture trustee is holding this property and he has to
9 go through a further marketing process to get to a fair
10 market sale and who knows whether the decline that
11 they're asserting would have occurred in that time.
12 Mr. Pachulski says, oh, the witnesses testified it
13 didn't happen until such a date. That's not true.
14 Mr. Radecki said the decline he's talking about wasn't
15 linear and he didn't delineate at all when it occurred.
16 So you're guessing when it occurred. And Mr. Fleming,
17 when I asked him did you test any date besides the two
18 you made appraisals, he said no. So we can guess where
19 it was in between. We've seen the charts that people
20 have put up. Values are bouncing all around. They're
21 once again asking this Court to just guess what would
22 have happened. Guess we would have taken it back in 110
23 days. And by the way, Your Honor, I absolutely --

24 THE COURT: Let me ask you this question.

25 MR. JONES: Yes, Your Honor.

1 THE COURT: Put up the money on the
2 day -- you know, the monthly operating report. Has
3 somebody got that?

4 MR. NEIER: Exhibit C to the Young
5 affidavit, I think, is what you want.

6 THE COURT: C to the Young affidavit.
7 Okay. Do you agree that in addition to the -- in
8 addition to the forest and maybe the lawsuit, that on
9 the date of the petition they had a lien on whatever it
10 is, what, how many dollars in non -- in movable assets.

11 MR. JONES: Absolutely, Your Honor. That
12 was the next point I wanted to get to. Mr. Pachulski
13 says, well, we could have done a slam bang 10 day UCC
14 foreclosure on the auction rate securities. He's right
15 as a legal matter but why should we assume as a factual
16 matter that if these guys haven't taken back the forest
17 yet the first thing they're going to do is take away all
18 the cash that operates this company. They're not going
19 to do that. It's an absurd assumption, Your Honor, and
20 it's not one that we can make. What that means is we
21 have to figure out when that foreclosure really would
22 have occurred and on that date --

23 THE COURT: My question is, could they
24 foresee 30 days prior to the liquidity problem in
25 auction rate securities? Did they have a crystal ball

1 that would have caused them to foreclose them or not
2 hold them.

3 MR. JONES: Exactly.

4 THE COURT: Regardless of that fact,
5 that's not the question. You've got \$54 million in some
6 kind of assets, maybe they're liquid, maybe they are
7 not. They're some kind of assets of \$54 million that
8 they have a lien on; is that correct?

9 MR. JONES: Your Honor, that certainly
10 seems to be what this chart shows. I don't want to
11 evade but I don't know the answer.

12 THE COURT: Okay. Under the plan, and
13 they have a lien on the forest.

14 MR. JONES: Yes, Your Honor.

15 THE COURT: And under the plan they get
16 paid for the forest. What do they get paid for out of
17 all of that under the plan?

18 MR. BRILLIANT: Your Honor --

19 MR. JONES: Yes, please someone who knows
20 the plan. I don't pretend to.

21 MR. BRILLIANT: Your Honor, there's one
22 thing that Mr. Pachulski conveniently forgets to tell
23 you. Under the plan B of A gets paid the \$36 million
24 they're ordered, the noteholders get a minimum of 510
25 and there's the purchase price adjustment. So it's not

1 as if -- and keep in mind B of A and the noteholders
2 have the same collateral. So -- and at least \$36
3 million is going to them. And there's \$15 million of
4 cash that has already been paid to the indenture trustee
5 for their professional fees, to B of A for their
6 professional fees. And for post-petition interest for B
7 of A. So if you just want to look at it, Your Honor, as
8 to how this works, there's -- they're going to get, you
9 know, total compensation here 510, 36, plus they have
10 already received 15. So all of the nonforest assets are
11 either going to be used to pay B of A or the
12 professional fees and --

13 THE COURT: Purchase price adjustment?

14 MR. BRILLIANT: Well, that's all dealt
15 with in the purchase price adjustment. You know, the
16 SAR account and you know, but --

17 THE COURT: So then before he says it,
18 Mr. Pachulski says, well, assuming everything you're
19 saying is true and they're getting \$41 million, is that
20 \$54 million, what is the figure?

21 MR. BRILLIANT: Well, the \$54 million
22 includes \$6 million of prepaid expenses that, you know,
23 the testimony was --

24 THE COURT: So you have to subtract that
25 from the 54, so it would still be 48 and you're at 41.

1 MR. BRILLIANT: 51, Your Honor.

2 THE COURT: You're at 51. Okay. I can't
3 add. You're right. Okay. All right.

4 MR. JONES: Your Honor, my only point is
5 Mr. Pachulski's scenario is possible, maybe they would
6 have foreclosed in 110 days, maybe they would have
7 pulled all the cash from this company before that, maybe
8 they would have flipped it to someone else in a fair
9 market sale, but it is completely speculative to think
10 they could have done that and we have no testimony that
11 would permit this Court to say, yes, they would have
12 conducted this flash foreclosure sale in 110 days. They
13 would have taken it back. Then they would have turned
14 around --

15 THE COURT: What was the value of
16 Marathon's consideration, Marathon's collateral? You
17 don't know the answer?

18 MR. NEIER: Your Honor, Marathon is owed
19 approximately \$170 million. Part of that is a
20 prepetition term loan and the rest of it is the DIP
21 loan. It's a \$75 million DIP loan and it's an \$85
22 million term loan. And the collateral, if you will, is
23 the town and the mill and the power plant. And I think
24 the testimony at the confirmation hearing essentially
25 was that those assets would equal about, you know, \$100

1 to \$125 million.

2 THE COURT: How much of that is the town?

3 MR. NEIER: The town is -- and it depends
4 what you put in the town, but the town --

5 THE COURT: Not counting the mill or the
6 power plant.

7 MR. NEIER: Right. The power plant is
8 about 20 and the mill, at least in our view, is 25.

9 THE COURT: And the offer to purchase
10 those two are how much?

11 MR. NEIER: The mill was offered to be
12 purchased for \$45 million. And I think it included the
13 power plant.

14 MR. SCHWARTZ: And the working capital.

15 MR. NEIER: And the working capital. So
16 we were offered essentially \$7 million for the mill and
17 \$20 million for the power plant, and the working capital
18 of Palco is approximately the rest. I don't know what
19 that number is. It was significantly below what, you
20 know, our collateral.

21 THE COURT: Thank you.

22 MR. JONES: Your Honor, thank you. I
23 have nothing more unless Your Honor has questions.

24 MR. NEIER: By the way, I should add the
25 offer that was received from Mr. Emerson, you know, the

1 way this works, as far as Marathon is concerned, is the
2 mill really needs a long-term supply in order to be
3 viable.

4 THE COURT: I don't want to get into all
5 of that.

6 MR. NEIER: Right. But I was going to
7 say there's a 15 year log supply agreement that was part
8 of this offer and unfortunately, that log supply
9 agreement is optional, doesn't really supply logs
10 long-term to the mill. So...

11 THE COURT: Okay. Mr. Strubeck, are you
12 the man on the button?

13 MR. STRUBECK: I think I am, Your Honor.
14 And you know, if I had any sense I probably wouldn't get
15 back up and say anything.

16 MR. PACHULSKI: Just one thing, can I
17 have a couple of minutes after Mr. Strubeck is done?

18 THE COURT: You can go right now.

19 MR. PACHULSKI: All right. Real quick.
20 I just want to respond very briefly. Mr. Jones referred
21 to the testimony of witnesses who testified in the
22 abstract that foreclosure sales can produce less than
23 real sales. But there was no attempt to correlate it,
24 say, in this case that would or wouldn't happen. It was
25 a general observation. Which is true in many

1 foreclosure sales but it didn't take into account, you
2 know, the factors that I just addressed in terms of the
3 credit bid requirement, etcetera.

4 Second, Mr. Jones suggests that there's a
5 sequence that, you know, first it takes 110 days to
6 foreclose on a new market. That just doesn't make any
7 sense. Once you know you're going to foreclose, you can
8 start marketing. And he says, well, it's speculative to
9 think they would have foreclosed immediately. What are
10 you supposed to do when you're in default and there's no
11 other alternative? You got relief from the stay. Of
12 course creditors foreclose immediately when they get
13 relief from the stay. They're not just going to sit
14 there. And then Mr. Jones says, well, maybe under the
15 UCC we'll have the right to get rid of the auction rate
16 securities in 30 or 60 days but you wouldn't have done
17 it because the debtor needs the money. That's wrong.
18 The debtor has had enough cash and it was only recently
19 when the cash was dropping, and this was in April, it
20 was dropping to very low levels, that somebody figured
21 out these auction rate -- they had these auction rate
22 securities and they needed to bid them and they
23 couldn't.

24 There's no reason to believe that early
25 in this case when there was plenty of cash that you had

1 any reason to keep the auction rate securities. It made
2 no sense to be in that kind of investment at that point,
3 especially if what you did was take some of the cash and
4 distribute it to noteholders. So to say that, you know,
5 we would have held the auction rate securities the way
6 the debtor did, it just -- it simply doesn't make any
7 sense.

8 And finally, as this whole discussion of
9 510 and whatever, the main point is, Your Honor, that
10 510 captures everything that was -- that was listed on
11 that balance -- on those monthly operating reports other
12 than the actual cash. And so all of these other issues
13 that people have talked about simply can't --

14 THE COURT: But it doesn't -- okay.
15 You're right. All right.

16 MR. STRUBECK: Your Honor, I need to come
17 back up here for two reasons. One is because
18 Mr. Pachulski told me that I was trying to punish him,
19 and I was actually planning to stand up anyway and I
20 thought he had wanted to reserve the last time for
21 rebuttal. And secondly, I wasn't that successful in
22 getting through what I want to talk to you about when I
23 was up the first time. I spent some time asking
24 questions -- answering questions -- and asking, I guess,
25 too.

1 But I had one thing that I wanted to
2 mention as kind of the final point, Judge, and that's
3 this. I suggested to you when I stood here making the
4 opening on Monday that I thought one question that kind
5 of needed to be answered by you in your own mind is what
6 did you really think that the forest was worth
7 throughout all of these proceedings which cash
8 collateral orders are being entered and they were being
9 renewed. And the reason I asked that question, Judge,
10 is because I believe that if you thought that the value
11 of the forest was declining the way they say the value
12 has been declining, you probably wouldn't have done some
13 of the things you did in terms of the cash collateral
14 orders, particularly if you thought we were going to be
15 back in here and there was a significant decline in
16 value. And everybody was arguing and we had no way to
17 make up for that value pursuant to the administrative
18 super-priority claim that was granted to us. And I'll
19 just leave you with this one last thought, Judge, and it
20 goes back to kind of the second last cash collateral
21 hearing that was held, I believe, in December 2007. And
22 I flashed up on the board in the opening a notation you
23 had made regarding, well, we don't have to determine
24 what value is, words to this effect, not exactly. We
25 don't have to determine, I'm not going to determine what

1 the value is for the purposes of this hearing but, you
2 know, the debtor still says it's \$758 million. And in
3 fact, they were saying it was over a billion dollars as
4 late as when we started the confirmation hearing three
5 weeks ago, a month ago. And I just submit, Judge, if
6 you really thought when all of these cash collateral
7 hearings were going on, that you were going to find in
8 June of 2008 that the value of the timberlands was \$510
9 million, you probably would not have allowed them to
10 continue to do what they did under all the interim cash
11 collateral orders and the final cash collateral orders.

12 So I think in summary, Judge, for us to
13 have a \$510 million claim on the timberlands, given the
14 history of this case, the cash collateral orders that
15 were entered, the fact that we took opposition to almost
16 every single one and have no administrative expense
17 claim to help us try to bridge the gap between the 510
18 and 758 which was a number you had in your mind last
19 December seems to me to be very fair and equitable. And
20 that's all I have to say, Your Honor.

21 THE COURT: All right. Tell me what's
22 been filed in the way of responses to this -- now, have
23 you modified -- have you filed a brief?

24 MR. KRUMHOLZ: No, Your Honor, we
25 separately filed the trial amendment that you authorized

1 previously.

2 THE COURT: This is a trial amendment
3 that sets out the specifics of what your claim is?

4 MR. GREENDYKE: We did file a brief over
5 the weekend.

6 THE COURT: What's that?

7 MR. GREENDYKE: We filed a brief over the
8 weekend. This is Bill Greendyke. We filed a brief, I
9 think, over the weekend and that's what Mr. Jones was
10 referring to. And then you had the discussion between
11 Mr. Jones and Mr. Krumholz and yourself where you
12 allowed the trial amendment and we have today, late this
13 evening, filed.

14 THE COURT: Do you have a copy of both of
15 those for me? Do you have them there somewhere? And
16 what about Mr. Pachulski, did he file something?

17 MR. PACHULSKI: Your Honor, we filed a
18 joinder -- excuse me, we filed a joinder in the
19 indenture trustee's brief. I figured Your Honor had
20 enough paper.

21 THE COURT: That's fine then.

22 MR. NEIER: Your Honor, you do have their
23 brief because you mentioned on the first day that you
24 had read it because you were reading it in the first
25 order.

1 THE COURT: Okay. So that was the brief
2 you had? I tell you, just to be safe, though, would you
3 get your trial amendment and your brief. Now, what
4 about you-all, what did you file?

5 MR. NEIER: Your Honor, we also filed a
6 brief and we filed it, I believe, Monday morning and
7 it's in the binders.

8 THE COURT: I know I have in here the
9 copy of your objection but I'm not certain I have your
10 brief.

11 MR. NEIER: The brief is called a
12 supplemental objection.

13 THE COURT: Okay. So supplemental
14 objection is your brief. Now, what did you file?

15 MR. JONES: Your Honor, on Friday we
16 filed a joinder in the debtor's response and then just
17 today at lunch we filed a supplemental joinder.

18 THE COURT: Do you have a copy of that?

19 MR. JONES: Your Honor, I'm afraid I
20 don't. But I understand -- and Your Honor, I apologize
21 on the late timing. I have been working on it every
22 evening since I learned their theory on Monday and
23 frankly, I didn't think we were going to finish today so
24 I thought I was going to get one more turn at it. And
25 when we left today at lunch I called my colleagues and

1 said, file it, whatever it says because I'm not going to
2 get to revise it.

3 THE COURT: What about the debtor?

4 MS. COLEMAN: Your Honor, on May 22nd
5 Scopac filed a response on the two basis that Mr. Fromme
6 detailed in his argument. We have not filed anything
7 further.

8 THE COURT: Okay. Well, now, does
9 someone here think that I would be helped by some
10 further filing?

11 MR. NEIER: No, Your Honor.

12 MR. JONES: No.

13 MR. STRUBECK: Judge, for what it's
14 worth, we were planning to file proposed findings and
15 conclusions and I don't know what state they're in but
16 if you would find those helpful, we were planning to
17 file them anyway.

18 MR. BRILLIANT: Your Honor, Alan
19 Brilliant on behalf of Mendocino. In terms of
20 post-trial activity, you know, we obviously understand
21 that there's complicated issues here. It was a lengthy
22 hearing, I don't know how much time Your Honor is going
23 to need to rule. Obviously Your Honor is well aware of
24 the cash condition of the company.

25 THE COURT: I think it's realistic that I

1 probably cannot rule this week, quite honestly. I mean,
2 I have got tomorrow and then we've got a holiday. You
3 know, this is important. I know how important it is to
4 everyone. I mean, I suspect that there are lawyers in
5 this courtroom that will work on the 4th of July,
6 probably not necessarily just -- even if it weren't on
7 this case it would be on something else as these are,
8 you know, the kind of lawyers who have such jobs that
9 they have to do what they got to do. But realistically,
10 this is a significant issue that requires, just like in
11 the confirmation, consideration of expert testimony and
12 evaluating all of that sort of stuff. And then this is
13 an issue that I haven't had to deal with a lot, so I've
14 got to go back and rethink all of the -- you know, I
15 don't know if I can find law on administrative
16 super-priorities. You know, I don't know what I've got,
17 so I've got to look into all of that.

18 So I guess if somebody wants to file
19 something that they want me to consider, it probably
20 needs to be filed by Monday at a reasonably early time.
21 Because I'd really like to get this done by Monday. So
22 if I get it by 10 o'clock, I probably can consider it.
23 So if you're going to -- I know that means that's a
24 weekend that somebody has to work on it. But I don't
25 know what you want to do. But --

1 MR. BRILLIANT: We appreciate that, Your
2 Honor. I rose not really to inquire about Your Honor's
3 timing. Because as Your Honor knows, it costs a lot of
4 money to do all of this.

5 THE COURT: Right. My guess is that I
6 will work this weekend but I probably won't work on
7 Friday and I probably will work tomorrow, of course, and
8 now I have -- I have the Asarco hearing in the morning
9 but it's just going to be for half an hour.

10 MR. McDOWELL: I think it's going to be
11 less than that, Your Honor.

12 THE COURT: Okay. So I'm going to spend
13 a lot of time on this tomorrow and if I finish and can
14 rule, perhaps I will, but the odds are real good that if
15 you get me something by 10 o'clock in the morning, so
16 you've got to send it to me by somehow by e-mail, too, I
17 mean, so that I know it's here and everybody knows how
18 to do that. My e-mail is not a mystery to anyone, I
19 don't think.

20 MR. BRILLIANT: Thank you, Your Honor.
21 How does Your Honor -- we got to the first phase or the
22 first portion of the hearings that were scheduled today.

23 THE COURT: If we get beyond this hearing
24 then it's going to go very quickly after that, too,
25 because everybody knows what's going to file, what's

1 going to be filed. I don't know how we're going to do
2 it. There are -- I don't know what's going to get
3 filed. It sounds to me like before we have an appeal
4 there's going to be a motion to reconsider, if we get to
5 that point.

6 MR. BRILLIANT: Yes, Your Honor. I guess
7 given that there would necessarily be travel
8 requirements, should we all anticipate being here on
9 Tuesday?

10 THE COURT: Well, let's see. That's a
11 good question. Yeah, we may have to be here on Tuesday.
12 I'm not sure what we're going to do but I'm not sure
13 what the motion will be but we'll be moving along. If
14 this plan is still confirmable and timing is not going
15 to be the thing that stops it. It's not confirmable, if
16 there's a problem with the administrative claim or
17 something that's not confirmable and it gets stopped
18 then the time doesn't matter. We'll move on and you-all
19 can appeal and do what you want to do.

20 But if -- if it gets confirmed, we're
21 moving forward with the time and I've told everyone that
22 ahead of time because I think everybody needs to be
23 prepared to move quickly. It doesn't take a rocket
24 scientist to figure out what the next step is going to
25 be. If we got to have a motion to reconsider before we

1 have a state pending appeal hearing, we're going to have
2 that and then we'll move on to the next. But each one
3 will be considered on its merits in a reasonable -- I
4 mean, the time isn't going to be what's going to be
5 unreasonable. What's going to be reasonable is that
6 you're going to have reasonable time to present it and
7 argue it and we'll move on from there.

8 MR. BRILLIANT: Your Honor, I want to
9 raise one other question or comment. With respect to --
10 you know, assuming that we go forward, and again, if
11 Your Honor rules in the 507(b) such that the plan can go
12 effective, the next step would be the entry of a
13 confirmation order.

14 THE COURT: Right. There's one here and
15 I'm not sure what the current status of the plan is.

16 MR. GREENDYKE: There's a lot of dispute
17 about it.

18 THE COURT: Right.

19 MR. BRILLIANT: I think probably, Your
20 Honor, my guess is that, you know, it probably takes --
21 it's all legal arguments, two hours of argument, Your
22 Honor can take decisions, it's your order ultimately as
23 to what you want to decide on that. But then the issue
24 after that would either be, as you say, a motion for
25 reconsideration or possibly a stay motion or maybe both.

1 One thing that has become very clear to us is that, you
2 know, Mr. Emerson plays into some theory of the
3 indenture trustee with respect to a stay. When we had
4 previously had the discovery conference with Your Honor,
5 we had asked them at that time whether specifically on
6 the -- in the hearing, telephonic hearing with Your
7 Honor on the call, whether Mr. Emerson would be a
8 witness and they, you know, ignored the question. They
9 did not put him on their witness list and then we saw a
10 declaration from Mr. Emerson and, I don't know, 12 or 13
11 of his friends and colleagues and neighbors, and --

12 THE COURT: Who is Mr. Emerson?

13 MR. KRUMHOLZ: Red Emerson.

14 MS. COLEMAN: From Sierra Pacific.

15 THE COURT: Oh, Red. Okay.

16 MR. BRILLIANT: And in addition to that,
17 Your Honor, he was never on their list, he wanted to
18 come in here and testify, never had the opportunity to
19 depose him. Again, if he's going to be one of their
20 stay witnesses, we would like them to tell us that and
21 we would like to have the opportunity to depose him.
22 And then the second thing is, Your Honor, in discovery,
23 we had asked for communications between the indenture
24 trustee or their counsel or other professionals and
25 Sierra Pacific, Mr. Emerson, because we had understood

1 that, you know, he had come twice before and tried to
2 get involved in these circumstances. They had agreed to
3 produce all the relevant documents.

4 We got one document related to
5 communications. We raised the issue with them and then
6 we were told that they were asserting a privilege with
7 respect to all communications with Mr. Emerson. We
8 still have never gotten any documents with respect to
9 that, other than one. We will note, I don't know what
10 it means, Your Honor, we will note that on the bottom of
11 the proffer proposed by Mr. Emerson, it does say
12 includes -- something like includes comments from JCB,
13 which, you know, may be a coincidence but one would
14 think is Jonathan C. Bolton of the Fulbright & Jaworski
15 firm, but I don't know that and I could be wrong about
16 that. But our sense is that there is communication that
17 they're part of this and that to the extent they're
18 going to call him as a witness in connection with a
19 stay, we would like the opportunity to have documents
20 and to depose Mr. Emerson.

21 MR. KRUMHOLZ: Your Honor, may I respond?
22 First of all, of course, no motion has even been filed
23 yet. I think we talked about that, there's no order.
24 Counsel for MRC mentioned that there was an agreement or
25 that you had -- there was a discussion about telling

1 them of witnesses. And what the specific ruling was
2 from the Court was that we should tell them what we know
3 and if we don't know yet, then you don't have to tell
4 them and when you find out, tell them. And that's
5 exactly what we did with Mr. Emerson.

6 As to documents between Sierra Pacific
7 and the IT, there's a couple issues there. First of
8 all, there's no motion. You know, we haven't looked
9 into this completely but we believe that they are a
10 common interest privilege. There's no question about
11 that. They filed a motion, a 363 motion. In connection
12 with that 363 motion, I do understand there have been
13 communications. I'm not the one -- what's that?

14 MR. FIERO: It's in the Palco case. Your
15 creditor is Scopac.

16 MR. KRUMHOLZ: Regardless, in the 363
17 motion. And regardless of all that, we do still believe
18 that the common interest privilege applies and we'll be
19 happy to brief the Court on that if and when it's
20 meaningful. We also believe that they're not -- it
21 would be cumbersome to have to do that.

22 THE COURT: Make a privilege log and file
23 it, the appropriate privilege log. I normally review
24 those things in camera so just figure a way to do all of
25 that.

1 MR. GREENDYKE: I'm going to go back up
2 about 40,000 feet where Mr. Brilliant was, I think. And
3 I think his question and our question is the same is,
4 what should we expect in terms of proceedings. There
5 are a lot of pending motions that have been filed, both
6 by us and by the debtors and some of which we think
7 ought to be heard, if the Court gets past an
8 administrative claim order in some way and finds the
9 plan confirmable.

10 THE COURT: Right.

11 MR. GREENDYKE: I think discussions about
12 the form of the orders that they proposed by Marathon
13 and MRC and the proposed plan amendments is going to
14 take more than two hours. We have a lot to talk about.
15 And we have tried to talk, we have talked on and off
16 over the last couple of weeks but really haven't made a
17 lot of headway and that was the point of the filings
18 that we made.

19 Another question is, you know, as
20 Mr. Krumholz said, we don't have a confirmation order
21 yet, we have a stay motion pending yet. I think the
22 idea of deliberately doing discovery in connection with
23 a motion that's not been filed in connection nor has not
24 been entered yet is a little bit premature, which raises
25 the question, one of the issues of dispute between us is

1 whether or not there's going to be a waiver of the
2 automatic ten day stay of the effectiveness of an order
3 of confirmation. That's a point that we are still
4 discussing and we don't agree upon among the parties but
5 if we knew we had time to get ready to do a stay motion
6 without worrying about a plan going effective out from
7 under us, then it would -- in my mind, it would make
8 everybody's planning a lot easier about how to proceed
9 and what to do.

10 THE COURT: What's -- do we have anyone
11 from Thompson Knight on the phone? No longer?

12 MR. JONES: We did earlier, Your Honor.

13 THE COURT: I know. I have one case set
14 on Tuesday and it's an old case, 2002, so -- and it's a
15 status hearing, so I think it's probably short and so I
16 think that we'll figure that Tuesday is going to be the
17 next big day in this case.

18 MR. JONES: Your Honor, if I may.

19 MR. NEIER: Your Honor, what time?

20 THE COURT: 9 o'clock.

21 MR. JONES: Two points. The first one,
22 Your Honor asked whether people wanted --

23 THE COURT: Is there a better time? Do
24 you want to start at 10, does that help you for travel
25 purposes?

1 MR. NEIER: 9 is fine.

2 MR. JONES: Your Honor asked whether
3 people wanted to submit suggested findings and
4 conclusions. I can only speak for myself. But I would
5 suggest, Your Honor, that those really aren't going to
6 help the process and it's just a lot of unnecessary
7 paper. Your Honor, I was able to watch Your Honor
8 deliver your decision yesterday in Asarco from your
9 notes and I, at least, have complete confidence in your
10 ability to state whatever your ruling is orally and I
11 think we'll just get a bunch of suggested findings that
12 are diametrically opposed and really won't help the
13 process. Obviously if Your Honor thinks they will help,
14 we'll submit them.

15 THE COURT: I didn't ask for anything.

16 MR. JONES: Thank you, Your Honor. Your
17 Honor, the second point, Your Honor may recall before
18 Your Honor set the date for this hearing, Your Honor
19 observed, and we certainly agreed, these debtors -- and
20 by the way, Your Honor, both of them are running out of
21 money. They need to go forward. At least the message I
22 understood from Your Honor before and why we've actually
23 filed a response to a stay motion that hasn't even been
24 filed is we all know there's going to be -- if Your
25 Honor confirms a plan, or the Marathon plan, there is

1 going to be a stay motion and that needs to be --

2 THE COURT: And there's going to be an
3 appeal and now there's going to be a motion for
4 reconsideration. Now, I don't know if that's going to
5 happen but if I were Mr. Greendyke, I would make certain
6 I did all of that. I would have to. I mean, I think he
7 has a duty to file those. But everybody has known it
8 for way more than ten days. We have known it for now
9 for two weeks while I was in Paris and Rome. So you
10 know -- and I had a great time, of course.

11 MR. JONES: Your Honor, that goes
12 directly to my point. I had understood what Your Honor
13 told us before.

14 THE COURT: I can't rule on -- I mean, I
15 can't rule on things that haven't been filed but I have
16 been trying my best to tell everyone that, you know, we
17 do things quickly in bankruptcy and in this particular
18 case, I think there's good reasons to do things quickly.
19 And everybody needs to foreshadow what they're going to
20 do because it isn't going to be -- I don't think there's
21 a reasonable time period is ten days from when I rule.
22 A reasonable time period to get all of this done is ten
23 days from when I ruled back a long time ago. I feel
24 like this whole part of it should have been dealt with
25 at the confirmation hearing. Maybe it was my fault.

1 Maybe it was their fault. Maybe it was their fault. I
2 don't know. I think we all have a hand in it. I
3 probably should have seen it. I think all of them
4 should have argued it. Both of you. Regardless of that
5 fact, we're all now going to move quickly. And maybe
6 I'll get overturned by forcing you to hear a motion to
7 stay pending appeal in a day but it's going to happen.
8 And then you get to take it up on that, too, but I've
9 been telling you for three weeks now that we're going to
10 move quickly. And I just -- we're now at the 4th of
11 July so that delays it another day. It's going to take
12 me a couple of days to get ready. So Monday I'm going
13 to rule, hopefully, and Tuesday we're going to move on
14 if we can. If we can't, then all bets are off.

15 MR. JONES: Your Honor, that was frankly
16 my suggestion. I think Your Honor can set the stay
17 motion for Tuesday and say if --

18 THE COURT: They're not going to file an
19 appeal. They're not going to file an appeal, they're
20 going to file a motion to reconsider. They've got to.

21 MR. GREENDYKE: Ms. Coleman has motions
22 you can hear on Tuesday.

23 THE COURT: Right, there's some other
24 motions that we've got to move forward on.

25 MR. JONES: But Your Honor, you can hear

1 both of them.

2 THE COURT: True.

3 MS. COLEMAN: I was actually going to
4 suggest that you hear them tomorrow. We have time for
5 tomorrow, Your Honor. There are a number of motions
6 that do not depend upon the ruling on this 507(b) and I
7 would suggest that since we are all here -- one of them
8 I'm hopeful that we'll be able to get an agreement on
9 tonight if Your Honor will just give us another hour or
10 two to get the -- obviously we don't mean today but to
11 get the approval of the Bank of New York, I think that
12 if we come back in the morning we'll be able to have a
13 ruling on the motion to settle the lien claim objection.
14 We also need to readdress Scopac's cash collateral and I
15 would suggest that we also need to talk about the lien
16 and DIP because as Mr. Jones says, the debtors both need
17 money. The Lehman DIP allows both Scopac to continue
18 going forward and it also allows Scopac to ensure the
19 continued viability of Palco by providing Palco with the
20 logs that it needs to run the mill, which everybody
21 wants to have happen, and allowing Scopac to agree to
22 accept terms for payment from Palco and keep going
23 forward. But it can't do that unless it has the
24 proceeds from the DIP so I would suggest that we go
25 forward on both of those motions tomorrow morning.

1 MR. JONES: Your Honor, the Lehman DIP
2 can't be dealt with independently of the stay motion.
3 If there's no stay --

4 MS. COLEMAN: That's not true.

5 MR. JONES: -- Ms. Coleman has stated
6 they don't need the DIP.

7 MS. COLEMAN: Your Honor, that's simply
8 not true, Your Honor.

9 MR. FIERO: John Fiero for the committee.
10 The notion that the quickie settlement between Scopac
11 and the indenture trustee about the indenture trustee's
12 claim that it can be heard on short notice in this
13 incredibly complicated miasma of activity is just -- is
14 one that the committee completely rejects. We cannot
15 have a hearing on that 9019 motion which is very
16 complicated which will knock over a whole bunch of
17 dominoes in this case without some notice and some time.

18 MS. COLEMAN: Your Honor, if I might. We
19 took the committee's objections seriously and we have
20 negotiated a change to that language in the settlement
21 agreement to accommodate the committee's and Marathon's
22 concerns. That's what I'm talking about. If the Court
23 will give us the time to come back tomorrow morning, I
24 think we can make the committee and Marathon happy. We
25 are not trying --

1 THE COURT: Well, how many people have to
2 come back?

3 MR. BRILLIANT: Your Honor, this is Alan
4 Brilliant. A settlement of the estate's issues, Scopac
5 estate's issues as to whether or not they have a lien on
6 the Headwaters litigation shouldn't occur until after we
7 see if the plan is going forward and how Your Honor
8 decides to rule on the form of the order.

9 THE COURT: Well, if you agree to a
10 settlement, I mean, that is settlement that everybody is
11 going to agree to?

12 MR. BRILLIANT: We have not agreed to
13 this. I don't think that they're saying that there's
14 going to be a settlement tomorrow, there's going to be
15 an agreed order. If we do that, that's not going to be
16 an issue. I don't believe it's going to be an agreed
17 order.

18 MS. COLEMAN: Your Honor, I think it
19 might be.

20 MR. GREENDYKE: Number one, we agreed.

21 MR. NEIER: It is not going to be.

22 MS. COLEMAN: Even though you don't know
23 what it's going to say.

24 THE COURT: Well, it might be. Stranger
25 things have happened.

1 MR. GREENDYKE: I'll address the Court
2 rather than the other lawyers but my first response to
3 Mr. Brilliant is what standing does he have to object to
4 a settlement in Scopac between Ms. Coleman and my client
5 at this point? I mean, really, what standing? He's not
6 a creditor, he's a plan proponent.

7 MR. BRILLIANT: We are a plan proponent
8 of a plan that Your Honor has entered proposed findings
9 of fact -- or not proposed -- findings of fact and
10 conclusions of law and indicated that he's going to be
11 confirming it and what happens with the assets of Scopac
12 affects our plan of reorganization.

13 MR. GREENDYKE: He hasn't decided to
14 confirm the plan yet because of the 507(b) claim and we
15 would ask that he would rule on the 9019 motion before
16 such time as he would entertain a confirmation order
17 because it's an equitable thing to do and something the
18 debtor has asked for.

19 MR. NEIER: Your Honor, this is obviously
20 another attempt to derail the MRC/Marathon plan. That's
21 the whole scheme.

22 THE COURT: I don't think the --

23 MR. NEIER: Why would you rush through a
24 settlement motion on the eve of a confirmation of a
25 plan? Why would you do that?

1 THE COURT: Well, I don't know what the
2 settlement is. I just pushed the button.

3 MS. COLEMAN: Your Honor, we're kind of
4 arguing -- if you only had an eject button, I'm sure you
5 would push that as well.

6 THE COURT: Let's do this. I don't think
7 we have the -- I think that my time can best be used
8 tomorrow working on ruling on this appeal. If you get
9 an agreement and you-all can work on that and get an
10 agreement, you don't need -- you can call in. You don't
11 even need to be here as far as that's concerned. We'll
12 start Tuesday with all of this stuff.

13 MS. COLEMAN: Your Honor, and then in
14 terms of Scopac's cash collateral, which we were going
15 to address at the end of the week, which now appears to
16 have happened today instead of tomorrow, Scopac is
17 renewing its request to enter into the DIP budget that
18 has been signed off on by the Bank of America and by the
19 indenture trustee.

20 THE COURT: That does not provide for the
21 Lehman borrowing.

22 MS. COLEMAN: It does not provide for the
23 Lehman borrowing, Your Honor, it does provide --

24 THE COURT: So is there some agreement
25 now on that?

1 MR. LITVAK: Your Honor, Max Litvak for
2 the creditor's committee. We continue to have an
3 objection. It's a practical one to inclusion of the
4 budget of really quite exorbitant professional fees. We
5 don't think that the professional fees need to be paid
6 this month. There is 2 and a half million --

7 THE COURT: She meant accommodating her
8 own fees.

9 MR. LITVAK: No, that was just for this
10 week, and it's only \$350,000 that's budgeted for this
11 week but I think it's next week or the week after that
12 there is a \$2 million payment that's budgeted for Gibson
13 Dunn, but there are also other professionals and the
14 total is \$4 and a half million.

15 MS. COLEMAN: Your Honor, I have
16 professionals who are saying that they cannot make
17 payroll unless they get these payments. What Your Honor
18 needs to understand is that Gibson Dunn, Fulbright and a
19 bunch of the other professionals in the case, both legal
20 and non-legal, have all been waiting because the terms
21 of the cash collateral order that just expired on the
22 27th had very strict limitations on the amounts that
23 have been paid. So we have all been building up. It is
24 simply not fair to finance the case on the backs of the
25 professionals, both the legal and non-legal

1 professionals, and I think it's simply outrageous to
2 suggested that's the case.

3 Mr. Litvak is objecting to the inclusion
4 in the budget. Obviously we can't pay it if we don't
5 have the money. That's not the issue. But Scopac
6 should certainly be able to include in the budget the
7 fees that have been approved. None of these have been
8 objected to. They have all gone through a 20 day
9 period, they're all being paid on an interim basis. The
10 indenture trustee ones are being paid pursuant to a
11 stipulation. Now, if the indenture trustee wants to
12 continue to agree that it will reserve its rights,
13 that's fine, but as to the other professionals the
14 accommodation I made was for one week only, Your Honor,
15 because I just simply cannot agree to building up
16 professional fees further when there's no reason to do
17 so. This isn't the Palco case. We don't have a DIP
18 lender who has insisted that no professional gets paid
19 for months. That's what Marathon did. We don't have
20 that problem on Scopac, it's a different situation.

21 MR. LITVAK: Your Honor, the reality is
22 that Scopac has about \$4 or \$5 million in cash. They
23 can't afford to spend \$4 and a half million to pay for
24 professionals. If there is a particular hardship --

25 THE COURT: Do you have a Chapter 7

1 trustee that might get appointed in the event this plan
2 doesn't get confirmed? I mean, these fees have to be
3 paid if the plan is confirmed; isn't that true?

4 MR. LITVAK: Yes, Your Honor, but this is
5 also the basis for the Lehman DIP, so --

6 THE COURT: We haven't done the Lehman
7 DIP.

8 MR. LITVAK: I understand that.

9 THE COURT: I'm not going to approve the
10 Lehman DIP. I may if we get beyond -- I mean, there's
11 certainly the possibility but if we confirm the plan, I
12 don't know that the Lehman DIP is going to get approved.

13 MR. LITVAK: Fair enough, Your Honor, but
14 we have a responsibility of the unsecured creditors of
15 Scopac and we feel strongly that this is not a proper
16 exercise of fiduciary duty for the debtor to say we're
17 going to pay the professional fees.

18 THE COURT: The unsecured creditors don't
19 get a dime before the administrative claims get paid.

20 MR. LITVAK: Your Honor, we want the
21 company to survive long enough for the MRC/Marathon plan
22 to go effective and this is putting the company at risk.

23 MR. FIERO: The budget, Your Honor, makes
24 very clear if they pay all of those professionals they
25 will go negative, they will be below zero, they will be

1 forced to borrow money from Lehman. That's the
2 committee's concern. That's what we're trying to
3 prevent.

4 MS. COLEMAN: Your Honor, how am I going
5 to use money I don't have? If I put it in a budget and
6 it comes to pass that I don't have the money, then I'm
7 not going to pay it. But having the authority to pay it
8 is different from actually having the money to pay it
9 and I simply don't think there's -- there's no legal
10 basis. As Mr. Litvak admitted the other day, there is
11 no legal basis to not put those payments in the budget.
12 There are due, they are owed. It's just like paying for
13 logs -- or not for logs since Scopac sells logs. It's
14 just like paying for logging and hauling or paying
15 payroll. It is an administrative expense of the estate.
16 As Your Honor points out, it has to be paid. And it is
17 simply unfair to insist upon this limitation when the
18 unsecured creditors, frankly, Your Honor, the settlement
19 that we're asking you to approve takes care of the
20 unsecured creditors clearly in the Scopac case, even if
21 the MRC plan isn't confirmed. So it makes the -- it
22 makes the objection even --

23 MR. LITVAK: I find that hard to believe,
24 Your Honor.

25 MS. COLEMAN: Well, if you read the terms

1 of the settlement --

2 THE COURT: You-all work on the
3 settlement because we're not dealing with that. I'll
4 think about the collateral order.

5 MR. BRILLIANT: Your Honor, can I come
6 back to Mr. Emerson one more time. I understand your
7 ruling that they're going to have to provide a privilege
8 log with respect to --

9 THE COURT: Have you talked to Mr. Klein
10 about his deposition?

11 MR. BRILLIANT: We have not. I was going
12 to say --

13 THE COURT: Well, do you have a problem
14 with taking Mr. Emerson's deposition?

15 MR. KRUMHOLZ: Your Honor, we have no
16 problem taking Mr. Emerson --

17 THE COURT: I don't know that Mr. Klein
18 has some other argument. He's not here. So I don't
19 know. It sounds to me like you ought to schedule a
20 deposition.

21 MR. BRILLIANT: We'll schedule it, Your
22 Honor, before Tuesday.

23 THE COURT: And if Mr. Klein has a
24 problem, we can discuss it on the phone what his
25 objection is.

1 MR. BRILLIANT: That would be fine, Your
2 Honor. Thank you.

3 MR. CLEMENT: Your Honor, I assume Your
4 Honor is setting for Tuesday any matters relating to
5 cash collateral, Lehman DIP loan, settlement of the
6 lien, all of those things, the 363, all of that will be
7 set for Tuesday.

8 THE COURT: Right.

9 MS. COLEMAN: Your Honor, I have a cash
10 collateral order. I need an order to get me to Tuesday.
11 So I have an order that limits the payment of
12 professional fees for one week. Might I suggest that
13 the Court enter this order and then any amendments to
14 the order will be considered on Tuesday.

15 THE COURT: Okay. Why don't you --

16 MR. LITVAK: We're fine with the order,
17 Your Honor, as long as it just carves out the
18 professional fees.

19 THE COURT: Have an order for that --

20 MR. LITVAK: Not just for this week.

21 THE COURT: We can work on it on Tuesday.

22 MS. COLEMAN: Mr. Litvak, I just
23 suggested -- no, the order that I have -- I can prepare
24 a different order, obviously, but the order that I have
25 in front of me --

1 THE COURT: Is there a way to quickly fix
2 the order to where --

3 MS. COLEMAN: Yes, Your Honor, what would
4 you like it --

5 THE COURT: That just prohibits payments
6 until after Tuesday -- until further order.

7 MS. COLEMAN: That's fine, Your Honor.

8 THE COURT: And I'll sign for it. You
9 work on that and you can hand it.

10 MS. COLEMAN: We'll take it back, we'll
11 fix it, we'll hand it to you tomorrow. Thank you, Your
12 Honor. Did you want to say something?

13 MR. McDOWELL: I did, Your Honor, Lucky
14 McDowell on behalf of the Palco debtors. I just wanted
15 to advise the Court of two additional pieces of
16 information that may become relevant to the Court in
17 determining scheduling matters as they arise. First of
18 all, the most current budget the Palco debtors have
19 prepared shows that Palco will go cash negative the week
20 of July 25th. I think that the schedule that you
21 proposed accommodates that but were there further
22 delays, I just want to keep the Court apprised of
23 current cash position.

24 The second point with regard to the
25 anticipated motion for relief from stay, Palco has

1 actually filed a proffer by George O'Brien in
2 anticipation of that. It was circulated last Saturday
3 so to the extent that we hear arguments later about
4 timing issues, I wanted the Court to be aware that
5 parties have had that in front of them for almost a week
6 now.

7 THE COURT: Okay.

8 MR. McDOWELL: Thank you.

9 MR. JONES: Your Honor, point of personal
10 privilege. I'm not going to be here next week. If I
11 were, I'd have a 12-year-old son wandering around Paris
12 trying to meet up with my wife coming from London. I
13 will have one of my colleagues here and I have no idea
14 whether when I come back if this case will still be in
15 this Court or not. But if I disappear, I wanted to
16 thank the Court for all its courtesy. Thank you, Your
17 Honor.

18 THE COURT: All right.

19 MR. KRUMHOLZ: Just one last comment in
20 connection with MRC's counsel's position. You mentioned
21 a privilege log and I talked to my colleagues about what
22 may be required in that regard. There may be a lot of
23 electronic information as a result of that. So what I
24 would request, Your Honor, is this. That we put forward
25 affidavits from both Sierra Pacific and Fulbright that

1 support the objections, that is the privilege objection,
2 because we believe on their face they are and we
3 shouldn't be going through the burden of having to
4 produce a privilege log. So as a result, if we can just
5 do that, and on their face they are privileged. We're
6 not going to have to spend the man-hours that it would
7 take --

8 THE COURT: Well, if they're on their
9 face it's real easy for me to tell, okay, these are
10 privileged.

11 MR. KRUMHOLZ: But we have to gather them
12 for that to be the case. But it would be easier if you
13 saw the affidavits, the timing and put it in an
14 affidavit, which won't take long, in two affidavits from
15 both entities. And I think that would be the best way
16 to move forward without the burden of having to collect
17 the sort of documentation and electronic information
18 over a holiday weekend when a lot of other, obviously,
19 action items are going to be on our plate.

20 MR. HAIL: Your Honor, in one respect, I
21 think the issue is going to be does this privilege
22 extend between the two parties and not the individual
23 documents. I think some of the documents, even if that
24 interest exists will have been disclosed to third
25 parties and whatever that common interest is will have

1 been waived, but I do think there might be one common
2 legal thread between the entire process, whether there's
3 any privilege at all on this documents; that is, was
4 there any common legal interest between Sierra Pacific
5 and the indenture trustee.

6 MR. KRUMHOLZ: That's why I suggested an
7 affidavit.

8 MR. HAIL: That might be something that
9 we can talk about in the way that that's the legal issue
10 to tea up for Your Honor.

11 THE COURT: Do that. Talk about that and
12 then we'll go from there.

13 MR. KRUMHOLZ: We'll provide affidavits
14 to support it.

15 MR. NEIER: Your Honor, are we having any
16 hearings here tomorrow?

17 THE COURT: It doesn't seem that way.
18 All right. Thank you.

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THE STATE OF TEXAS:

COUNTY OF NUECES:

I, SYLVIA KERR, Certified Court Reporter in and for the State of Texas, do hereby certify that the above foregoing contains a true and correct transcription, to the best of my ability, of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court and were reported by me.

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