

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC,           \*  
  \* CASE NO. 07-20027  
DEBTOR                            \*

\* \* \* \* \*

TRIAL ON THE MERITS

TAKEN ON APRIL 29, 2008

\* \* \* \* \*

On the 29th day of April, 2008, the above entitled  
  
and numbered cause came on to be heard before said  
  
Honorable Court, RICHARD S. SCHMIDT, United States  
  
Bankruptcy Judge, held in Corpus Christi, Nueces  
  
County, Texas.

Proceedings were reported by machine shorthand.

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1 THE CLERK: All rise.

2 THE COURT: Be seated. Send in the call.

3 All right. Good morning. Eric Walters.

4 MR. WATERS: Present, Your Honor.

08:58

5 THE COURT: I'm sorry, Waters. Wendy

6 Laubach.

7 MS. LAUBACH: Present, Your Honor.

8 THE COURT: Alan Tenebaum. Somebody from

9 the Department of Justice?

08:59

10 MR. TENEBBAUM: Yes, hello, this is Alan

11 Tenebaum.

12 THE COURT: All right. Thank you. Robert

13 Black.

14 MR. McCLAIN: And McClain.

08:59

15 MR. BLACK: Robert Black is present, Your

16 Honor.

17 THE COURT: Christopher Johnson.

18 MR. JOHNSON: Present, Your Honor.

19 THE COURT: Alan Gover.

08:59

20 MR. GOVER: Present, Your Honor.

21 THE COURT: Allison Byman.

22 MS. BYMAN: Present, Your Honor.

23 THE COURT: Ira Herman. He's not going to

24 be there? All right. Ephraim Diamond.

08:59

25 MR. DIAMOND: Present, Your Honor.

1 THE COURT: Rocky Ho.  
2 (No response.)  
3 THE COURT: Brett Young.  
4 MR. YOUNG: Present, Your Honor.  
08:59 5 THE COURT: Wei Wang.  
6 MR. WANG: Present, Your Honor.  
7 THE COURT: Nathan Rushton.  
8 MR. RUSHTON: Present, Your Honor.  
9 THE COURT: Kim Christensen.  
08:59 10 (No response.)  
11 THE COURT: Dominic Santos.  
12 MR. SANTOS: Present, Your Honor.  
13 THE COURT: James Delaune.  
14 MR. DELAUNE: Present, Your Honor.  
08:59 15 THE COURT: Steven Church.  
16 (No response.)  
17 THE COURT: Clara Strand.  
18 (No response.)  
19 THE COURT: David McLaughlin.  
09:00 20 MR. McLAUGHLIN: Present, Your Honor.  
21 THE COURT: Jeffrey Johnston.  
22 (No response.)  
23 THE COURT: Heather Zelevinsky.  
24 MS. ZELEVINSKY: Present, Your Honor.  
09:00 25 THE COURT: John Driscoll.

1 (No response.)

2 THE COURT: Heather Muller.

3 MS. MULLER: Present, Your Honor.

4 THE COURT: Todd Hanson.

09:00 5 MR. HANSON: Present, Your Honor.

6 THE COURT: Joli Pecht.

7 MS. PECHT: Present, Your Honor.

8 THE COURT: Jacob Cherner.

9 MR. CHERNER: Present, Your Honor.

09:00 10 THE COURT: Daniel Zazove.

11 MR. CRANE: He's not here. This is Ken  
12 Crane.

13 THE COURT: All right. Ana Acevedo.

14 MS. ACEVEDO: Present, Your Honor.

09:00 15 THE COURT: Scott Beaker.

16 MR. BEAKER: Present, Your Honor.

17 THE COURT: Anyone I didn't call? All  
18 right. In the courtroom.

19 MR. JORDAN: Your Honor, Shelby Jordan and  
09:00 20 Pete Holzer, co-counsel for Palco debtors along with  
21 Lucky McDowell and George Lamb, Baker Botts co-counsel to  
22 the Palco debtors.

23 THE COURT: All right.

24 MS. COLEMAN: Good morning, Your Honor,  
09:00 25 Kathryn Coleman, Rich Doren, Eric Fromme of Gibson, Dunn

1 & Crutcher, along with our co-counsel, Kyung Lee of  
2 Diamond, McCarthy for debtor Scotia Pacific.

3 THE COURT: All right. Debtors Committee.

4 MR. FIERO: Good morning, Your Honor.

09:01 5 John Fiero and Max Litvak with the Pachulski Stang firm  
6 here for the Committee.

7 THE COURT: All right. Bank of America  
8 coming down the middle.

9 MR. JONES: Your Honor, Bank of America,  
09:01 10 Evan Jones of O'Melveny & Myers.

11 THE COURT: All right. Marathon.

12 MR. PENN: Your Honor, John Penn, also  
13 with David Neier, Steve Schwartz. Carey Schreiber will  
14 probably be here soon as well, all for Marathon.

09:01 15 MR. NEIER: Good morning, Your Honor.

16 MR. BRILLIANT: Good morning, Your Honor.  
17 Alan Brilliant and Brian Hail from Goodwin Procter on  
18 behalf of Mendocino Redwoods.

19 THE COURT: Thank you. State of  
09:01 20 California.

21 MR. PASCUZZI: Good morning, Your Honor.  
22 Paul Pascuzzi from the California State Agencies, along  
23 with my co-counsel Michael Neville from the California  
24 Attorney General's office.

09:01 25 THE COURT: All right. Thank you.

1 MR. STERBACH: Good morning, Your Honor,  
2 Charles Sterbach for the United States Trustee.

3 THE COURT: Thank you.

4 MR. SPIERS: Good morning, Your Honor.

09:01 5 Jeff Spiers and Alan Gover for Maxim.

6 SPEAKER: Good morning, Your Honor, Steven  
7 Hoit of Asset Management Company, party of interest.

8 THE COURT: All right. Thank you.

9 MR. GREENDYKE: Good morning, Your Honor,  
09:01 10 Bill Greendyke of Fulbright & Jaworski. We represent the  
11 Bank of New York as Indenture Trustee. And, Your Honor,  
12 my partner, Richard Krumholz. And Judge, I'd like to  
13 take the opportunity to introduce you to Governor Pete  
14 Wilson of California who is the Indentured Trustee's  
09:02 15 designated plan agent under our plan.

16 THE COURT: All right.

17 MR. GREENDYKE: With the Court's  
18 permission, Governor Wilson will need to be excused  
19 around lunchtime today and I think we expect him back  
09:02 20 later in the week.

21 THE COURT: All right.

22 MR. GREENDYKE: Thank you, Your Honor.

23 MR. PADDOCK: Your Honor, Robert Paddock  
24 on behalf of bank trustee Jonathan Knight.

09:02 25 THE COURT: All right.

1 MR. JORDAN: Your Honor, I believe the  
2 noteholders are up next with their last witness, or  
3 witnesses.

09:02

4 THE COURT: All right. I received a call  
5 from Judge Isgur saying that the parties that were there  
6 negotiated in good faith and were unsuccessful. So  
7 moving on.

8 MR. KRUMHOLZ: Your Honor, we call Chris  
9 Matthews.

09:02

10 THE COURT: All right. Mr. Matthews.  
11 This will be number four in my book. 4-B. If you'll  
12 raise your right hand.

13 J. CHRIS MATTHEWS,  
14 having been first duly sworn, testified as follows:

09:03

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION

17 BY MR. KRUMHOLZ:

18 Q. Mr. Matthews, can you introduce yourself to the  
19 Court.

09:03

20 A. I'm J. Chris Matthews with the Bank of New  
21 York.

22 Q. You're going to have to speak up a little bit,  
23 Mr. Matthews, it's hard for us to hear. If you could --

09:03

24 A. I'm J. Chris Matthews with the Bank of New  
25 York.

1 Q. Where do you -- you work for the Bank of New  
2 York currently?

3 A. Yes.

4 Q. And how long have you been with the Bank of New  
09:03 5 York?

6 A. I've been with the Bank of New York for two  
7 years.

8 Q. What is your position?

9 A. I'm a vice president and a default manager.

09:03 10 Q. And how does that relate -- how do your  
11 responsibilities relate to this case?

12 A. I supervise accounts that go into default  
13 status such as bankrupt accounts such as this one.

14 MR. KRUMHOLZ: Your Honor, may I approach?

09:04 15 THE COURT: Okay.

16 Q. (By Mr. Krumholz) Mr. Matthews, what is  
17 Exhibit 19? Do you have it there? It's on the screen  
18 here.

19 A. Exhibit 219?

09:04 20 Q. 219.

21 THE COURT: You said 19. It will be 219.

22 MR. KRUMHOLZ: 219, thank you, Your Honor.

23 A. My amended proffer, J. Chris Matthews.

24 Q. And does it contain all the testimony that you  
09:04 25 would provide in open court if you were allowed to

1 testify in open court?

2 A. Yes.

3 MR. KRUMHOLZ: Okay. And Your Honor, we  
4 move for admission of Exhibit 219 into evidence.

09:05 5 THE COURT: Okay. Is there a significant  
6 difference between this one and the one that's in the  
7 book?

8 MR. KRUMHOLZ: There is an amended bid  
9 sheet from the Scotia Redwood Foundation. It's been  
09:05 10 talked about as the Beal bid.

11 THE COURT: There is an amended bid sheet.  
12 How has it changed?

13 MR. KRUMHOLZ: It's been updated and true  
14 and correct -- Mr. Cherner testified about particular  
09:05 15 changes he would be willing to make, and he has now made  
16 those changes.

17 THE COURT: In the bid sheet?

18 MR. KRUMHOLZ: In the bid sheet.

19 THE COURT: So the changes that were  
09:05 20 announced while Mr. Cherner was on the stand have been  
21 included in the bid sheet that's attached to this  
22 gentleman's proffer.

23 MR. KRUMHOLZ: That's correct.

24 THE COURT: Yes, sir.

09:05 25 MR. HAIL: Your Honor, Brian Hail for



1 Mendocino Redwood. We haven't had a chance to thoroughly  
2 study the amended proffer. And I don't think it's  
3 admissible through this witness, but perhaps after the  
4 testimony we can see whether or not it's admissible  
09:05 5 through the witness. But at this point, I would like to  
6 just reserve rights of admissibility of it, specifically  
7 to test what is new.

8 THE COURT: You're talking about the bid  
9 sheet, whether or not --

09:06 10 MR. KRUMHOLZ: I'll lay the foundation,  
11 Your Honor, that's fine.

12 THE COURT: Okay.

13 Q. (By Mr. Krumholz) Is it a true and correct  
14 copy of the bid sheet you received last night from Scotia  
09:06 15 Redwood Foundation?

16 A. Yes, it is.

17 MR. KRUMHOLZ: Your Honor, we move for its  
18 admission. It has been authenticated and it's an  
19 operative document and therefore it's not hearsay,  
09:06 20 clearly admissible.

21 MR. HAIL: I don't know if it's an  
22 operative document or not, I don't know why it makes the  
23 document -- that he didn't alter it, it's not his  
24 document.

09:06 25 THE COURT: Okay. Well, I think that --

1 there's no question of that bid sheet.

2 MR. KRUMHOLZ: It's something he received.

3 THE COURT: First of all, bankruptcy is  
4 sort of a moving process, as we all know. And I suspect  
5 that there's going to be some changes to your -- maybe  
6 not, maybe your plan is the plan you're going to go with  
7 when we get to the final end and decide what we're going  
8 to do. But whether it is or not, I mean, if they have --  
9 it's obvious that the bid that they put together was done

10 at the last minute and there were some changes that were  
11 made. If this accurately reflects what they think the  
12 changes are, I think it's admissible. And he identified  
13 it as being given to him, so I think it's admissible. So  
14 if you want to argue about it, you're welcome to.

15 MR. HAIL: Well, Your Honor, I understand  
16 we would want to test whether or not it is in fact all  
17 those things.

18 THE COURT: Okay. I mean, this is  
19 admissible as to what he believes the offer is anyway.

20 MR. HAIL: That's fine.

21 THE COURT: Under those circumstances,  
22 it's admissible. So let's move on.

23 MR. KRUMHOLZ: Your Honor, is it admitted?

24 THE COURT: It's all admitted.

25 Q. (By Mr. Krumholz) Okay. Mr. Matthews, just

1 quickly, I'm going to turn to paragraph nine of your  
2 proffer. Do you see that? It's on the screen. Do you  
3 see those, paragraph nine of your proffer?

4 A. Yes.

09:07 5 Q. Okay. And could you just real briefly describe  
6 what's in paragraph nine of your proffer.

7 A. Paragraph 9 of the proffer basically sets out  
8 the goals and objectives of our trustee plan.

9 Q. Okay. And does the bid that you received  
09:07 10 yesterday meet all of the goals that you state here in  
11 paragraph 9 of your proffer?

12 A. Yes.

13 Q. From IT's perspective?

14 A. Yes.

09:08 15 Q. Okay. And here is --

16 THE COURT: Do you have another objection?

17 MR. HAIL: I do, Your Honor. I mean, this  
18 is a fact witness, and the standard has been that we're  
19 not eliciting testimony from fact witnesses.

09:08 20 THE COURT: Okay. This is a fact witness.  
21 So your agreement was you're just going to put in their  
22 proffers and take them on cross with fact witnesses, with  
23 expert witnesses you're going to get 15 minutes to direct  
24 them. That was the agreement.

09:08 25 MR. KRUMHOLZ: That is the agreement, Your

1 Honor. I was going to ask a minute worth of questions  
2 and I talked about it with Steve. If I need to do this  
3 on redirect as necessary, then I'll do it then. That's  
4 fine. It was going to take a minute and a half.

09:08 5 THE COURT: Well, they cannot cross him on  
6 those. I mean, he has testified to all of this now. So  
7 you don't need to go over it for it to be --

8 MR. KRUMHOLZ: That's fine. We pass the  
9 witness, Your Honor.

09:08 10 THE COURT: All right. Cross.

11 MR. HAIL: First may I approach, Your  
12 Honor, and give a copy of the deposition in this case  
13 both to the witness and to the Court.

14 THE COURT: Sure.

09:09 15 MR. HAIL: Well, I give one to the  
16 reporter and also one for Your Honor.

17 THE COURT: Okay. Fine.

18 CROSS-EXAMINATION

19 BY MR. HAIL:

09:09 20 Q. Now, Mr. Matthews, I'm Brian Hail for Mendocino  
21 Redwood Company. We met before, right?

22 A. Yes.

23 Q. Okay. And you are representing who currently?  
24 Who is your employer?

09:09 25 A. Bank of New York.

1 Q. And Bank of New York is the Indenture Trustee,  
2 correct?

3 A. Yes.

09:10

4 Q. And you have worked on Bank of New York's  
5 services and the Indenture Trustee for the timber notes  
6 in this case, right?

7 A. Correct.

09:10

8 Q. And you personally have supervised the timber  
9 notes and Bank of New York's role as Indenture Trustee  
10 for approximately how long?

11 A. Starting March, April time frame of last year.

12 Q. So a little over a year; is that fair?

13 A. Correct.

09:10

14 Q. Okay. And Mr. Matthews, you've been an  
15 Indenture Trustee for a while, correct?

16 A. What do you mean exactly?

17 Q. Well, you have worked in a bank in a trustee  
18 capacity for ten years or so; isn't that right?

19 A. Right, yes.

09:10

20 Q. And you're also a lawyer, aren't you?

21 A. Yes.

22 Q. Okay. So you're familiar with contracts; is  
23 that right?

24 A. Generally speaking. I have never practiced.

09:10

25 Q. Okay. And you're familiar with the concepts of

1     fiduciary duty?

2             A.    Yes.

3             Q.    And as Indenture Trustee, do you owe a  
4     fiduciary duty to the timber noteholders?

09:11    5             A.    Yes.

6             Q.    And that fiduciary duty extends to all timber  
7     noteholders, right?

8             A.    Yes.

9             Q.    And your obligation as an Indenture Trustee is  
09:11   10    to get the best or to maximize the interest of all of the  
11    noteholders as a group, correct?

12            A.    Yes.

13            Q.    It's not to favor the interest of one  
14    noteholders over another noteholder, right?

09:11   15            A.    It's to try to ensure the highest maximum turn  
16    for all the noteholders.

17            Q.    Okay. And as a lawyer, you're also familiar  
18    with the concept of distinct corporations, right?

19            A.    Yes.

09:11   20            Q.    And that each corporation has a distinct  
21    corporate form, right?

22            A.    Possibly, yes.

23            Q.    And each has separate assets and separate  
24    liabilities, right?

09:11   25            A.    Generally speaking, possibly, yes.

1 Q. Okay. And very often that companies are set up  
2 to have, you know, certain assets and certain liabilities  
3 at different corporate levels, correct?

4 A. Yes. I'm not an accountant, but generally  
09:11 5 speaking.

6 Q. Now, you in fact signed the Indenture Trustee  
7 plan of reorganization in this case, right?

8 A. Yes.

9 Q. Okay. And last night there was an amended plan  
09:12 10 of reorganization filed also, right?

11 A. I believe so, yes.

12 Q. And your signature appears on that document,  
13 too, correct?

14 A. It should.

09:12 15 Q. Okay. And we also got an amended proffer that  
16 we just saw last night, correct?

17 A. Yes.

18 Q. And can you just tell me what are the  
19 difference is between the amended proffer and the  
09:12 20 original proffer.

21 A. Basically I think the term -- the amended term  
22 sheet.

23 Q. Okay. Are there -- is there any other  
24 difference in the language? I mean, I tried to study it,  
09:12 25 but I didn't see anything that closely.

1 A. I don't recall a material change.

2 Q. Okay. Did you notice -- did you review the  
3 amended proffer before it was filed?

4 A. Yes.

09:12 5 Q. Did you approve its filing?

6 A. Yes.

7 Q. Did you notice any mistakes in it?

8 A. I don't recall any, no.

9 Q. Okay. If you take a look at page 2 of the  
09:12 10 amended proffer, paragraph 8, paragraph 8 says "I am  
11 familiar with the terms and conditions of the Indenture  
12 Trustee plan, the joint disclosure statement and the  
13 documents related thereto. A true and correct copy of  
14 the Indenture Trustee plan is attached hereto as Exhibit  
09:13 15 A." Do you see that?

16 A. Yes.

17 Q. Is that accurate? Well, let's start with the  
18 first sentence. Is the first sentence correct, you're  
19 familiar with the plan in the disclosure statement?

09:13 20 A. Yes.

21 Q. Was a copy of the Indenture Trustee plan  
22 attached as Exhibit A to this document?

23 MR. KRUMHOLZ: Your Honor, we'll admit  
24 that it's a gotcha. And we'll be happy to provide him  
09:13 25 the amended plan, if that's where this is going just to



1 move things along. I don't know what we're doing here  
2 but he has seen the amended plan and we will be happy  
3 to --

09:13

4 THE COURT: Okay. Well, there can be the  
5 trustee's plan. The indenture trustee's plan is not  
6 Exhibit A, it's the amended bid sheet to Exhibit A.

09:14

7 MR. KRUMHOLZ: We will stipulate to that.  
8 And we will also give it to you just like we did last  
9 night with a red line copy so that it's nice and easy to  
10 read what the changes are.

09:14

11 Q. (By Mr. Hail) Okay. Are there any other  
12 changes in the proffer? Well, take a look back at  
13 paragraph 7. There is a sentence that references the  
14 term sheet. Do you see that?

15 A. In paragraph 7?

16 Q. Yeah. The last sentence.

17 A. Yes.

09:14

18 Q. And that's the only sentence I could see that's  
19 new in the proffer, but like I said, I didn't accurately  
20 study it. Do you know of anything else that was added?

21 A. I don't recall. Primarily the amended term  
22 sheet.

09:14

23 Q. Okay. Now, looking at the term sheet that is  
24 attached as Exhibit A and has been offered as Exhibit  
25 219, when did you first see a copy of that, of the

1 amended term sheet in this form?

2 A. Yesterday evening.

3 Q. What is your understanding of the

4 differences -- well, have you -- have you compared the

09:15 5 amended term sheet that's attached as Exhibit A to the

6 prior Beal Bank term sheets?

7 A. Yes, generally speaking.

8 Q. And let's look first at the first paragraph,

9 purpose. Do you see that?

09:15 10 A. Yes.

11 Q. Are there changes in that paragraph between

12 that and the previous amended term sheet?

13 A. I don't recall the exact changes.

14 Q. How about --

09:15 15 MR. PADDOCK: Your Honor, excuse me, I

16 have red line copies of the amended term sheet. Maybe

17 that will be easier.

18 MR. HAIL: We asked for this last night.

19 MR. PADDOCK: Well, we just got it.

09:15 20 MR. NEIER: Do we have one more?

21 MR. JONES: Is there one for the peanut

22 gallery?

23 Q. (By Mr. Hail) Now, we'll get back to the

24 changes of the term sheet in a second. You're familiar

09:16 25 with Beal Bank, aren't you, Mr. Matthews?

1 A. Yes, I am.

2 Q. They sit on -- is there a steering committee of  
3 noteholders?

4 A. Yes, there is.

09:16 5 Q. Okay. And Beal Bank sits on that steering  
6 committee, right?

7 A. Yes, they do.

8 MR. NEIER: Excuse me, Your Honor, this  
9 document is not what we got last night.

09:16 10 MR. SCHWARTZ: It's different than what's  
11 attached to Exhibit 219.

12 MR. NEIER: This is a further amended term  
13 sheet we have never seen before.

09:17 14 THE COURT: Okay. Are you happy about  
15 that or are you --

16 MR. NEIER: Since I haven't had a chance  
17 to study it, I can't figure it out.

09:17 18 MR. PADDOCK: Your Honor, I was told that  
19 the one that I just provided was the amended -- was the  
20 red line amended one, so I just got it in here five  
21 minutes ago. The changes are not material.

22 THE COURT: I agree that the term sheet is  
23 not trivial. However, I am not surprised that there  
24 might well be four or five different copies of one. And  
09:17 25 I think that you're entitled to have the one that's the

1 operative document, so let's take a moment and make sure  
2 we have the right one where it's supposed to be.

3 MR. KRUMHOLZ: The operative one is  
4 attached to his proffer. The black line that we just  
09:17 5 provided, I can't tell you is correct.

6 THE COURT: So this is a red line  
7 agreement of perhaps some interim version.

8 MR. NEIER: No, this is a further revised  
9 version.

09:18 10 THE COURT: Is it further revised?

11 MR. KRUMHOLZ: You don't know that.

12 THE COURT: Hold on. We don't go back and  
13 forth. Everybody.

14 MR. GREENDYKE: Can I address the Court.

09:18 15 I'm Bill Greendyke. I saw all of this happen. The red  
16 line is a prior version to the one Mr. Matthews has. As  
17 the Court said, Mr. Matthews has the operative version.  
18 The one he has has a slight change, I think only in date,  
19 but these lawyers have noticed. That's the only red line

09:18 20 we have. If that's not helpful we'll try and generate a  
21 different red line against 207 which is --

22 THE COURT: What's the difference between  
23 this red line version and the one -- the actual version?  
24 For instance, you obviously have found a difference.

09:18 25 What is the difference you found right now?

09:19 1 MR. NEIER: This term sheet has a  
2 contingency in it that the \$10 million deposit that's  
3 being put down by Scotia Redwood Foundation has to have  
4 an acquisition agreement that's acceptable to the parties  
5 that has to be signed by May 30th or the deposit gets  
6 returned.

7 THE COURT: Okay. And the one that's  
8 attached does not have that provision?

9 MR. NEIER: It had a different date of --  
09:19 10 I don't remember the prior date.

11 MR. SCHWARTZ: May 10.

12 MR. NEIER: May 10. And then this offer  
13 expires on May 14. I believe the prior one has a date of  
14 May 10. And there are other changes -- I mean, I can't  
09:19 15 tell you where all the other changes are but I notice  
16 those two right away.

17 MR. GREENDYKE: Well, Judge, we offer to  
18 try and generate a red line. We're not trying to confuse  
19 anybody.

09:19 20 THE COURT: All right. Let's not deal  
21 with the red line.

22 MR. NEIER: All I'm really interested in  
23 is getting the latest version.

24 MR. KRUMHOLZ: We just don't have a red  
09:19 25 line.

1 THE COURT: Okay. So we thought we had a  
2 red line version of Exhibit A, now we have a red line  
3 version of the previous one and the dates are later in  
4 Exhibit A?

09:19 5 MR. NEIER: No, I think they're later in  
6 this version.

7 THE COURT: Okay. So they backed off of  
8 some of their dates. All right. Moving on. Let's go  
9 ahead. If you want to use the red line version with that  
09:20 10 caveat, you can. Or if you don't want to use it because  
11 of that caveat, then don't use it. That's fine with me,  
12 either way. Just everyone needs to understand the record  
13 clear that this red line -- the blue inked red line is  
14 not the official bid sheet. Go ahead.

09:20 15 MR. HAIL: Okay. It's not a red line to  
16 the official bid sheet, I think.

17 THE COURT: Right.

18 Q. (By Mr. Hail) It's not a red line to Exhibit  
19 219. Now, Mr. Matthews, has fiduciary -- as Indenture  
09:20 20 Trustee, when did you first receive a potential term  
21 sheet from the Beal Bank entities?

22 A. I don't recall specifically. It goes back some  
23 period of time, but I don't recall exactly when.

24 Q. How about April 7th during the confirmation  
09:20 25 hearing? Do you remember that?

1 A. Not specifically, I do not recall that, no.

2 Q. Okay. Do you recall that there was an amended  
3 term sheet a couple of days later from Beal Bank?

4 A. Yes, I think there was an amended at one time,  
09:21 5 yes.

6 Q. Okay. And do you recall in between the first  
7 term sheet that was received and the second term sheet  
8 that was received from Beal Bank, and I think this is the  
9 third term sheet, right?

09:21 10 A. It could be, yes.

11 Q. It could be, you're not sure?

12 A. I'm not positive.

13 Q. And between the first term sheet and the second  
14 term sheet that we got at the confirmation hearing, did  
09:21 15 you discuss with your lawyers -- well, did you discuss  
16 that term sheet with Beal Bank?

17 A. Our lawyers advised us to discuss the term  
18 sheet with Beal Bank, yes.

19 Q. Yes, but did you as Indenture Trustee?

09:21 20 A. I consulted with our advisors and attorneys and  
21 they had discussed the terms with Beal Bank, yes.

22 Q. But my question is: Did you discuss that with  
23 Beal Bank, did you as Indenture Trustee?

24 A. No, but my advisors did.

09:21 25 Q. Okay. And in that interim period between the

1 reception of the two term sheets, did you have any  
2 substantive involvement in the negotiations between Beal  
3 Bank and Fulbright & Jaworski?

09:22

4 MR. KRUMHOLZ: Your Honor, just to be  
5 clear, he testified that he consulted with attorneys and  
6 it's already out there and it's privileged as to exactly  
7 what he got into with counsel. So to the extent he's  
8 calling for privileged information, we object as  
9 privileged.

09:22

10 THE COURT: Okay. I don't know what  
11 privilege there would be between if he was negotiating  
12 with Beal Bank and his lawyers. And I thought that's  
13 what the question was.

09:22

14 MR. KRUMHOLZ: If he's negotiating it  
15 through his counsel, what he says, too, is --

16 THE COURT: I don't think that was the  
17 question.

18 Q. (By Mr. Hail) Now, you just testified that  
19 between the reception --

09:22

20 THE COURT: So do you want to reask the  
21 question to make sure that you're not asking for  
22 privileged information.

09:22

23 MR. HAIL: Sure. I'm not asking for  
24 privileged information, I'm only asking whether or not  
25 the communications took place.



1 Q. (By Mr. Hail) Now, as you sit here today, do  
2 you recall discussing between the first term sheet and  
3 the second term sheet, discussions with your lawyers,  
4 Fulbright & Jaworski about that term sheet?

09:22 5 A. Yes.

6 Q. And do you remember me taking your deposition  
7 on Thursday in this case?

8 A. Yes.

9 Q. If you wouldn't mind turning to page 124 of  
09:23 10 that deposition. Beginning at line 24.

11 MR. KRUMHOLZ: 124, line 24?

12 MR. HAIL: That's right.

13 MR. KRUMHOLZ: Starting with Mr. Hail  
14 saying "okay"?

09:23 15 MR. HAIL: No, that's not the right line.  
16 You're right.

17 Q. (By Mr. Hail) How about page 123, line 24. Do  
18 you remember me asking you this question:

19 "Okay. Between the two of these, do you recall  
09:23 20 any conversations with Fulbright & Jaworski about the  
21 Beal Bank term sheet?"

22 Answer: "Not specifically, no."

23 Question: "Okay. Do you have any general  
24 recollections?"

09:24 25 Answer: "No."

1 Do you recall me asking you those questions,  
2 Mr. Matthews?

3 A. Yes.

09:24

4 Q. Do you recall you providing those answers to  
5 me?

6 A. Yes, but I think was mistaken.

09:24

7 Q. Okay. And between the last set of confirmation  
8 hearings and this confirmation hearing, were you aware of  
9 any dialogue between Beal Bank and the Indenture Trustee  
10 or its representatives?

11 A. Well, I was aware that Mr. Cherner and Beal  
12 Bank were trying to accommodate a number of requests for  
13 changes to their term sheet.

09:24

14 Q. Do you know if there were any discussions  
15 between Scotia Redwood and Beal Bank and your  
16 representatives as the Indenture Trustee?

17 A. Well, they would have been discussing any  
18 requested changes to the term sheet, yes.

09:24

19 Q. If you wouldn't mind turning in your deposition  
20 to page 126, please, beginning at line 8. Do you  
21 remember me asking you this question.

09:25

22 "Do you know if anyone on behalf of the  
23 Indenture Trustee is in discussions with Mr. Beal or  
24 Scotia Redwood Foundation or any affiliate, any entity  
25 affiliated with Beal about terms contained in the most

1 recent term sheet?"

2 MR. KRUMHOLZ: Your Honor, I'm going to  
3 object as improper impeachment. He didn't say that he  
4 knew then. I mean, he's gotten new information. That's  
09:25 5 not impeachment. This is improper impeachment. It isn't  
6 even inconsistent with his testimony.

7 MR. HAIL: He testified he was aware there  
8 were discussions and I think it's pretty clear.

9 MR. KRUMHOLZ: He is. He wasn't. He is.  
09:25 10 Is there something I'm missing?

11 MR. HAIL: Did something change between  
12 Thursday of this week -- of last week and --

13 THE COURT: Well, ask him that question.

14 Q. (By Mr. Hail) As of Thursday of last week,  
09:25 15 were you aware of any discussions involving the Indenture  
16 Trustee representatives and Beal Bank?

17 A. I was not aware of any discussions on that day,  
18 no.

19 Q. How about prior to that, between the close of  
09:26 20 the confirmation and last Thursday, were you aware of any  
21 discussions with Beal Bank?

22 A. I was aware that Beal Bank was doing their best  
23 to accommodate requested changes to the term sheet.

24 Q. Were you aware of any dialogue between your  
09:26 25 lawyers and Beal Bank?

1           A.    Fulbright normally dialogues with Beal Bank  
2   fairly frequently.

3           Q.    Yeah, but were you aware of those discussions?  
4   Did you know of them?

09:26   5           A.    I would expect Fulbright would have dialogue  
6   with Beal Bank on the term sheet.

7                   MR. KRUMHOLZ:  Your Honor, I would object.  
8   It's asked and answered.  He already said he didn't  
9   specifically know.  That was his testimony then, it's his  
09:26   10   testimony now, that he now knows generally.  And he would  
11   expect it.  That's exactly what he testified to.  It's  
12   improper impeachment, it's also a waste of time.

13                   THE COURT:  Well, I mean, I think the  
14   impact of whatever is for us to argue about but I think  
09:26   15   they can ask the question, but they've got to be very  
16   specific.  I mean, you've got to ask the question the  
17   same as the question in the deposition.  I mean, you  
18   know, there are proper ways to lay the foundation for  
19   impeachment with the deposition so make sure you do that,  
09:27   20   and then let's go on.

21           Q.    (By Mr. Hail)  Okay.  Now, Mr. Matthews, as of  
22   last Thursday, did you have any knowledge of dialogue  
23   between the Indenture Trustee and the Beal Bank entities  
24   relating to the potential bid?

09:27   25           A.    Any knowledge, what do you mean of that?

1 Q. Any knowledge of any dialogue.

2 A. Generally, yes, Fulbright has contact with Beal  
3 Bank on requested changes to the bid sheet.

4 Q. If you wouldn't mind turning to page 126, line  
09:27 5 22. Do you remember me asking you this question:

6 "You don't have any knowledge of any such  
7 dialogue between the Indenture Trustee and Mr. Beal and  
8 his entities on the other hand, do you?"

9 Answer: "No."

09:27 10 MR. KRUMHOLZ: Your Honor --

11 MR. HAIL: Let me finish.

12 THE COURT: Okay. I think he's entitled  
13 to ask his question.

14 MR. KRUMHOLZ: Well, I can object to  
09:27 15 impeachment before he's done, and the problem is he's  
16 just read on page 123, two pages earlier, that he said,  
17 "not specifically, no," and that's the context of all of  
18 this discussion. So trying to do a gotcha on three lines  
19 of the deposition when he just asked him two pages  
09:28 20 earlier, "not specifically, no," and then he testified  
21 today "generally, yes." I just don't get it.

22 THE COURT: Okay. Well --

23 MR. HAIL: We can go back where he says  
24 "generally no" then, Your Honor. He interrupted me  
09:28 25 before --

1 THE COURT: Okay. I think, though, I  
2 think that we have now made the point, so let's move on.

09:28

3 Q. (By Mr. Hail) Okay. Now, there was -- after  
4 the last confirmation hearing, were there a series of  
5 steering committee meeting calls to discuss the Beal Bank  
6 offer?

7 A. That's been a subject of a number of calls,  
8 yes.

09:28

9 Q. Well, between the two -- between when we last  
10 came here two weeks ago and your deposition, there were  
11 two such meetings of the steering committee, correct?

12 A. I believe so, yes.

13 Q. And you didn't participate in either of those;  
14 isn't that right?

09:28

15 A. I don't recall, no.

16 Q. You don't recall whether or not you did?

17 A. I do not recall participating in both of them.  
18 I think I may have participated in one of them.

09:29

19 Q. In fact, there was a call the day before your  
20 deposition which would have been last Wednesday, correct?

21 A. Correct.

22 Q. And you forgot about that call and didn't  
23 participate; isn't that right?

09:29

24 A. I did not forgot about the call. I had a  
25 conflict.

1 Q. And -- but you weren't on that phone call, were  
2 you?

3 A. I don't recall being on that call.

09:29

4 Q. And prior to that phone call, which would have  
5 been last Wednesday, there was another one the previous  
6 Friday, right?

7 A. Yes.

8 Q. And you didn't participate in that phone call  
9 either, did you?

09:29

10 A. No, I was out of the city that day.

11 Q. Now, in connection with your role as Indenture  
12 Trustee, you would like to see the Beal Bank firmed up as  
13 firm as possible; is that fair?

14 A. Yes.

09:29

15 Q. Did you push your lawyers to get as much as  
16 they could from Beal Bank?

17 A. Yes.

09:29

18 Q. And it would be in your interest to get as much  
19 as you possibly could to tie Beal Bank down as much as  
20 you could in connection with your plan; isn't that right?

21 A. Yes, we would like a valid stalking horse bid.

22 Q. Do you know if there was any discussion of an  
23 asset purchase agreement with Beal Bank?

24 A. Do I know specifically?

09:30

25 Q. Yes.

1           A.    I don't know specifically but generally there  
2    would be a discussion of such a --

3           Q.    But do you have any knowledge of those  
4    discussions or are you just thinking there might have  
09:30 5    been such discussions?

6           A.    No, normally you would talk about an ATA in a  
7    bid sheet, at least on the timing side.

8           Q.    In this case do you know if there's been any  
9    discussion of an ATA between Beal Bank on the one hand  
09:30 10   and Indenture Trustee on the other?

11          A.    I would assume that there would be some  
12   discussions of an APA.

13          Q.    But do you know of any such discussions?  
14   Putting aside what you assume or you speculate might  
09:30 15   happen, do you have any knowledge of those discussions?

16          A.    I do not, no.

17          Q.    Okay.  And do you know if there has been any  
18   negotiations about the contents of any asset purchase  
19   agreement?

09:30 20          A.    I don't know if there's been any negotiations  
21   but it's fairly early in the process.

22          Q.    Now, Beal Bank is the largest noteholder,  
23   correct?

24          A.    Yes.

09:31 25          Q.    They have been active on the steering



1 committee, correct?

2 A. Yes.

3 Q. And they -- have they participated in

4 discussions at the steering committee level about the

09:31 5 Beal Bank offer, to the best of your knowledge?

6 A. To the extent that it's been discussed, they

7 may have -- they may have clarified or made some general

8 comments. I don't recall them being in any specific

9 discussions about the entire term sheet.

09:31 10 Q. You don't know if in fact the Beal term sheet

11 has been discussed on a noteholder call, do you?

12 A. Yes, I do.

13 Q. When was that -- before last Thursday was it

14 discussed?

09:31 15 A. I don't know before last Thursday, no.

16 Q. But since last Thursday, you recall a

17 discussion of a noteholder call involving the Beal Bank

18 term sheet?

19 A. Yes.

09:31 20 Q. And did Beal in fact participate in those

21 discussions?

22 A. They were present.

23 Q. Okay. Did they excuse themselves at any point

24 during those discussions?

09:32 25 A. I don't recall if they did or not.

1 Q. Okay. Now, are there bylaws of the ad hoc  
2 committee?

3 A. Not in this case, no.

09:32

4 Q. Now, last Thursday you thought there were  
5 written bylaws of the ad hoc committee, correct?

6 A. I was mistaken. Most bankruptcies tend to have  
7 them. This does not.

8 Q. But that's not true in this case, right?

9 A. That's right.

09:32

10 Q. All right. And has the Indenture Trustee  
11 received a written direction from the noteholders in this  
12 case?

13 A. Yes, it has.

14 Q. Okay. Have you seen that written direction?

09:32

15 A. Not in some time, but yes, I did see it.

16 Q. Do you know if that written direction was ever  
17 produced to the debtors or to Marathon or to anyone in  
18 this case?

19 A. I believe it was produced at one time.

09:32

20 Q. Do you know if an actual written direction was  
21 actually executed by the noteholders in this case?

22 A. Yes.

23 Q. Now, are you familiar at all with Scotia  
24 Redwood Foundation, Inc.?

09:33

25 A. That is the entity I think that Beal Bank

1 proposes in their term sheet to take over the assets.

2 Q. Do you know -- have you investigated its  
3 financing for the transaction?

4 A. Our advisors and attorneys have investigated  
09:33 5 and reviewed it, yes.

6 Q. When did they make that investigation?

7 A. Some time in the last several weeks.

8 Q. Do you recall me asking you the question last  
9 Thursday whether or not you had -- the Indenture Trustee

09:33 10 had done any investigation of the finances of Scotia  
11 Redwood Foundation?

12 A. Yes.

13 Q. And do you recall telling me not yet?

14 A. I was thinking in terms of personally what I  
09:33 15 have done.

16 Q. So you haven't done any -- the Indenture  
17 Trustee itself hasn't done any investigation?

18 A. Personally I have not. Our advisors  
19 representing the Indenture Trustee have investigated Beal

09:33 20 Bank and Scotia Redwood and they are happy with what they  
21 found so far.

22 Q. Now, if you take a look at -- we talked about  
23 what you would do to investigate the financial condition  
24 of Scotia Redwood, correct?

09:34 25 A. Correct.

1 Q. And what would you do to investigate the  
2 financial condition of Scotia Redwood?

3 A. We need our advisors and the Indenture Trustee  
4 need to make ourselves comfortable that this is a valid  
09:34 5 real bid and that it can be performed within the period  
6 of time that we think it can be performed in.

7 Q. Do you recall that you -- would you meet --  
8 would you seek to meet with the officers of Scotia  
9 Redwood?

09:34 10 A. Well, that's a possibility, yes, but not in  
11 this case. I think we're satisfied with what we found so  
12 far.

13 Q. Do you remember -- turn to page 60 of your  
14 deposition, please, line 14.

09:34 15 A. 60?

16 Q. Page 6-0.

17 A. Yes.

18 Q. The question was: "And how do you plan to go  
19 about investigating the financial condition of Scotia  
09:35 20 Redwood Foundation?"

21 Answer: "We would meet with their officers and  
22 get as much information as we can on their proposed  
23 financing, how they are going to handle coming up with  
24 the money for this bid."

09:35 25 Do you see that?

1 A. Yes.

2 Q. Have in fact any such meetings taken place?

3 A. Yes, our advisors have met and reviewed the  
4 financing structure, and they're completely comfortable  
09:35 5 with it. In the normal -- if we had an independent party  
6 come in that we had not dealt with before, we would go  
7 through these steps in meeting management, looking at  
8 their capital structure. Our advisors are perfectly  
9 comfortable with Beal and their capabilities and believe  
09:35 10 they can perform this transaction.

11 Q. Can you take a look at page 61, please, line 5.  
12 "Have any meetings with any representatives of Scotia  
13 Redwood Foundation been set up yet for that?

14 Answer: "Not yet."

09:36 15 And then I finished the question "-- purpose."  
16 Do you recall that testimony?

17 MR. KRUMHOLZ: Your Honor, this is  
18 improper impeachment. I mean, he has testified as to  
19 what he knows. If he wants to testify -- ask him  
09:36 20 questions about --

21 THE COURT: You know, if we had a jury, I  
22 would be worried about that. I mean, I think he's  
23 entitled to ask the questions that he's asking. I mean,  
24 it's true that they may not be -- I mean, the issue of  
09:36 25 whether he knew it Thursday or whether he knew it now or

1 what he got now, what he had then, I mean, those -- I'm  
2 hoping that at some point we're going to get something a  
3 little more substantial because whether he knew it on  
4 Thursday or knew it now or whether they asked before and  
09:36 5 now he's found out they have asked, I mean, I'm not sure  
6 that that stuff is that significant. But you're welcome  
7 to continue to go.

8 Q. (By Mr. Hail) Have you met with any officers  
9 of Scotia Redwood Foundation since Thursday?

09:37 10 A. I have not.

11 Q. Okay. Have you seen from Scotia Redwood  
12 Foundation any written loan commitment?

13 A. What do you mean by a written loan commitment?

14 Q. Have you seen any document addressed to Scotia  
09:37 15 Redwood Foundation from any bank or any financial  
16 institution pursuant to which that financial institution  
17 agrees to lend money to Scotia Redwood Foundation?

18 A. No, I have not.

19 Q. Have you seen any written document in which any  
09:37 20 person or entity agrees to invest equity capital into  
21 Scotia Redwood Foundation?

22 A. No, I have not.

23 Q. Do you know if Scotia Redwood Foundation has  
24 any certified foresters on its staff?

09:37 25 A. I understand from Mr. Cherner's testimony they

1 do have experts -- or they do have people that do have  
2 timberlands experience, yes.

3 Q. Are you familiar with the concept of a  
4 certified forester in the State of California?

09:38 5 A. Not familiar with the term, no.

6 Q. Do you know if they have anyone registered or  
7 certified by the State of California to practice forestry  
8 in the State of California?

9 A. I do not know, no.

09:38 10 Q. Do you know if Scotia Redwood Foundation has  
11 ever owned or operated timberlands before?

12 A. As I understand from the testimony they have  
13 had timberlands in Europe.

09:38 14 Q. And that's Scotia Redwood Foundation's  
15 timberlands in Europe?

16 A. Or one of Beal's affiliates.

17 Q. Do you know if they've ever owned or operated  
18 timberlands in the State of California?

19 A. I do not, no.

09:38 20 Q. Do you know of any of the Scotia Redwood  
21 Foundation's experience in the California regulatory  
22 environment?

23 A. Both personnel and experience are something  
24 that a typical bidder can obtain. You can hire a  
09:38 25 consultant, you can hire expertise. An indenture plan, I

1 think, encompasses retaining all the employees for Scopac  
2 for a year except for senior management.

09:39 3 Q. Do you know if Scotia Redwood Foundation has  
4 any experience operating in that environment? That was  
5 the question.

6 A. Not direct experience, but they can obtain it.

7 Q. Have you ever seen any financial statement  
8 produced by Scotia Redwood Foundation?

9 A. I have not, no.

09:39 10 Q. Do you know if any such financial statements  
11 exist?

12 A. I do not.

13 Q. Now, taking a look at your proffer, at your  
14 first proffer, the lawyers drafted that proffer, correct?

09:39 15 A. Well, yes, lawyers drafted this document.

16 Q. And did your lawyers also draft the amended  
17 proffer?

18 A. Yes.

09:39 19 Q. Now, did you make any changes -- you didn't  
20 make any changes to your first proffer, did you, any  
21 written changes and send them back?

22 A. I don't recall right offhand.

23 Q. Do you recall making any specific comments and  
24 changes to your amended proffer?

09:40 25 A. No, I did not.



1 Q. Now, the disclosure statement in this case, did  
2 you review the section drafted or submitted on behalf of  
3 the Indenture Trustee?

4 A. Yes, at the time it was submitted.

09:40 5 Q. Did you approve it being filed?

6 A. Yes.

7 Q. And did you have any questions about it or know  
8 anything that wasn't correct in it?

9 A. I recall several drafts and cleanups back when  
09:40 10 it was being prepared, but I don't recall anything  
11 specifically, no.

12 Q. But the final version, you authorized, correct?

13 A. Yes.

14 Q. The final version you approved, correct?

09:40 15 A. Yes.

16 Q. And at the time you filed it, you weren't aware  
17 of any mistakes or misunderstandings or anything like  
18 that, right?

19 A. No, not at the time.

09:40 20 Q. And in drafting that, you relied -- or in  
21 signing off on that, I should say, you relied on your  
22 advisors to draft it for you, didn't you?

23 A. Correct.

24 Q. And to provide the information to you, correct?

09:40 25 A. Yes.

1 Q. And those advisors were both your lawyers at  
2 Fulbright, correct?

3 A. Right.

4 Q. And Houlihan Lokey?

09:41 5 A. Yes.

6 Q. Okay. And Houlihan Lokey in fact provided you  
7 information related to your opinions about value in this  
8 case, didn't they?

9 A. Experts did, yes.

09:41 10 Q. Houlihan Lokey did also, didn't they, or not?

11 A. The opinions I primarily relied upon are  
12 Mr. Fleming's.

13 Q. Did Mr. Fleming have anything to do with  
14 expressions of interest by other parties in purchasing  
09:41 15 the timberlands?

16 A. I don't know.

17 Q. Do you know if -- as you sit here today before  
18 you look at it, do you know if your statements in the  
19 disclosure statement referenced expressions of interest  
09:41 20 by other third-parties?

21 A. It's been a long time since I've looked at the  
22 disclosure statement.

23 Q. Okay. Do you remember opining anywhere that  
24 you expected that any auction would produce an increase  
09:41 25 in the sales price over your projected value?

1           A.    I believe our noteholders have always been very  
2   firm in the market test of value on the transaction.

3           Q.    That wasn't my question.  My question was:  Do  
4   you remember talking about that in your disclosure  
09:42 5   statement?

6           A.    I don't recall offhand.

7           Q.    Now, if you take a look at the disclosure  
8   statement, which I believe is Exhibit 35.

9                         MR. HAIL:  May I approach, Your Honor?

09:42 10                        THE COURT:  Yes.

11          Q.    (By Mr. Hail)  Just to save you flipping  
12   through the page, I will get to page 194.  Exhibit B-2 to  
13   the disclosure statement is a letter from the Indenture  
14   Trustee, correct, or it's a statement of the Indenture  
09:43 15   Trustee, right?

16          A.    Let me review it for a second.

17          Q.    Of course.

18          A.    Yes.

19          Q.    Now, take a look at the first full paragraph  
09:44 20   where it says "it is not a fire sale for foreclosure of  
21   Scopac's assets."  Do you see that?

22          A.    Yes.

23          Q.    Now, you would agree with me that what you  
24   meant in this paragraph as a fire sale did not apply to  
09:44 25   the MRC/Marathon plan.  You would agree that's not a fire

1 sale, correct?

2 A. No, I would not necessarily agree with that.

3 Q. If you wouldn't mind turning to your deposition  
4 page 95, please, line 12. Do you remember me asking you

09:44 5 this question: "Do you view the Marathon/MRC plan as a  
6 fire sale?"

7 Answer: "Marathon/MRC plan as a fire sale?"

8 Question: "Yes."

9 Answer: "No."

09:44 10 Do you recall giving that testimony?

11 A. Page 95, what line?

12 Q. Line 12 through 16.

13 A. Okay. And your question again is?

14 Q. The question is: "Do you view the Marathon/MRC  
09:45 15 plan as a fire sale?" You questioned me, "the  
16 Marathon/MRC plan as a fire sale?" I answered yes. You  
17 answered no. Do you recall giving that testimony last  
18 Thursday?

19 A. Yes.

09:45 20 Q. Okay. The next statement, we talked about  
21 foreclosure. Do you remember discussing with me what you  
22 referenced in foreclosure in this sentence?

23 A. Yes.

24 Q. And do you view the MRC/Marathon plan as a  
09:45 25 foreclosure in this case?

1           A.    I view the Marathon/MRC plan as providing much  
2   less value to our noteholders.

3           Q.    That wasn't my question to you.  Did you view  
4   it as a foreclosure?  It's a yes or no question.

09:45       5                   THE COURT:  That question doesn't make any  
6   sense.  I mean, it's not a foreclosure.  I mean --

7                   MR. HAIL:  I agree.

8                   THE COURT:  Are you suggesting do you view  
9   it as the price you would receive if it were foreclosed?

09:46       10          I mean, that question might make some sense.  But it's  
11   certainly in a foreclosure, there's no share of sale,  
12   there's no trustee going out and foreclosing.  I mean --

13                  MR. HAIL:  I agree, Your Honor.

14                  THE COURT:  Are you trying to -- so let's  
09:46       15   be specific so that we can argue --

16                  MR. KRUMHOLZ:  We're not suggesting it's a  
17   foreclosure.

18                  THE COURT:  Are you questioning about the  
19   value?  Is the value under the Marathon plan equivalent  
09:46       20   to the value of a foreclosed asset, is that what you're  
21   asking him?  Or is the procedure in the plan that they're  
22   providing similar to a foreclosure, is that what the  
23   question means?

24                  MR. HAIL:  No, Your Honor.  The point of  
09:46       25   the question is that he's criticized us as not being a

1 robust market practice and rather it's akin to a fire  
2 sale or foreclosure. I think he's agreed with me it's  
3 not a fire sale and it's not a foreclosure. That's the  
4 point of the questions.

09:46

5 THE COURT: But that doesn't have any  
6 meaning. I mean, are you suggesting we're talking about  
7 value? Are you limiting your question to the value  
8 received?

09:47

9 MR. HAIL: Your Honor, no. We're going to  
10 get to what he meant when he said it rather than it is  
11 not a fire sale or foreclosure. And I want to know if he  
12 interprets the MRC plan as a fire sale or a foreclosure.  
13 We have established it's not a fire sale.

09:47

14 THE COURT: He believes his plan is not a  
15 fire sale or foreclosure.

16 MR. HAIL: Correct. That's what he says.

17 THE COURT: Okay.

09:47

18 MR. HAIL: And he agrees the Marathon plan  
19 is not a fire sale, and I think he's going to agree with  
20 me that the Marathon plan is not a foreclosure.

09:47

21 THE COURT: Okay. I just don't know what  
22 value the answer to that question is unless the  
23 question -- I mean, it is true he said those things. But  
24 the issue today won't be decided on the issue of whether  
25 you're a fire sale or a foreclosure. I mean, if you're a

1 fire sale, obviously they're not getting equivalent of  
2 their value and you're not going to get approved. I  
3 mean, and it's clear your sale is not a foreclosure. So  
4 I don't believe that what you are suggesting is that  
09:47 5 you're somehow foreclosing somebody's lien. You don't  
6 even have a lien on the property. It couldn't be a  
7 foreclosure. It could be perhaps interpreted as a  
8 foreclosure of the Palco property, but not the Scopac  
9 property. So let's ask questions that have some meaning.

09:48 10 MR. HAIL: I'll move on, Your Honor.

11 THE COURT: Okay.

12 Q. (By Mr. Hail) Okay. Now, Mr. Matthews,  
13 Houlihan Lokey was retained as a financial advisor in  
14 this case, correct?

09:48 15 A. Yes, they were.

16 Q. And Houlihan Lokey has been out soliciting  
17 interest in the timberlands, correct?

18 A. I believe so, yes.

19 Q. And Houlihan Lokey, it was part of their duties  
09:48 20 in this case to go out and solicit interest in the  
21 timberlands, right?

22 A. Yes.

23 Q. And they went out to contact potential  
24 purchasers, correct?

09:48 25 A. Yes.

1 Q. And allow them access to company information,  
2 correct?

3 A. Yes.

4 Q. And to try and generate potential bids or  
09:48 5 interest in the property, correct?

6 A. We would love to see more bids on this  
7 property.

8 Q. Say it again.

9 A. We would love to see more bids on this  
09:49 10 property.

11 Q. And in fact, Houlihan Lokey has been out  
12 beating the bushes looking for interest since they were  
13 retained in this case, right?

14 A. Yes, normal process.

09:49 15 Q. And that process has been ongoing since April  
16 of last year, correct?

17 A. Yes.

18 Q. Okay. And the results of that process were the  
19 three expressions of interest that we -- that we've seen  
09:49 20 in this case, correct?

21 A. Yes.

22 Q. And that's -- so that process has been going on  
23 for about a year and it's led up to ultimately what we  
24 see as the Beal term sheet, Exhibit 219, this morning,  
09:49 25 correct?



1 A. Yes.

2 Q. And the -- well, are you familiar with a  
3 financial firm called UBS?

4 A. I've heard of the name, yes.

09:49 5 Q. Okay. Do you know if UBS was ever obtained by  
6 the debtors to market the properties?

7 A. I do not know that.

8 Q. Before you executed and signed off on the  
9 disclosure statement, were you familiar with any efforts  
09:49 10 by UBS to sell the properties in 2005?

11 A. I'm not personally aware of those efforts. I  
12 had heard of them but I'm not personally aware of them.

13 Q. And who did you hear of them from?

14 A. I don't recall right offhand.

09:50 15 Q. Do you remember if UBS contacted potential  
16 purchasers?

17 A. I do not.

18 Q. Do you know if UBS provided them information  
19 about the timberlands?

09:50 20 A. I do not.

21 Q. Do you know the results of any of that  
22 marketing process?

23 A. I do not.

24 Q. Okay. Do you know if the company itself tried  
09:50 25 to sell the timberlands before bankruptcy?

1 A. I do not know.

2 Q. Do you know if they approached my client,  
3 Mendocino Redwood Company about purchasing the  
4 timberlands?

09:50 5 A. I do not know.

6 Q. Now, if you take a look at the new term sheet,  
7 Exhibit 219, and specifically the excluded assets  
8 section, do you see that?

9 A. Yes.

09:51 10 Q. Now, it references something called the  
11 Headwaters litigation. Do you see that?

12 A. Yes.

13 Q. Now, are you familiar with the plaintiffs in  
14 the Headwaters litigation?

09:51 15 A. Generally speaking.

16 Q. Do you know if the plaintiffs include Scopac  
17 and Palco?

18 A. I believe that the debtors in general, yes.

19 Q. Okay. And is it your understanding that  
09:51 20 pursuant to this agreement, the Headwaters litigation  
21 shall either be dismissed with prejudice or results  
22 settled in a manner acceptable with the Scotia Redwood  
23 Foundation prior to closing the acquisition?

24 A. Well, I reviewed Mr. Cherner's testimony and I  
09:51 25 believe he expanded on that and said that they would

1 certainly like to get this litigation behind them because  
2 he didn't want it to impact his timberland operations.

3 Q. That's not my question, though. You understand  
4 that that's a condition to closing the transaction is the  
09:51 5 settlement of that case in a manner acceptable to the  
6 buyer?

7 A. Well, I understand that Mr. Cherner indicated  
8 that in fact he would like to ensure that litigation does  
9 not impact his operations.

09:52 10 Q. You know, I'm asking you a different question.  
11 I'm not asking you what Mr. Cherner said.

12 THE COURT: And I think it would be  
13 helpful if you just answer the question, and I mean, so  
14 is it your understanding that in terms of the deal that  
09:52 15 that provision -- they're not waiving this provision. I  
16 mean, it says what it says. Are they waiving anything  
17 about that excluded asset provision?

18 THE WITNESS: No, sir.

19 THE COURT: So it's in full force and  
09:52 20 effect. Let's move on.

21 Q. (By Mr. Hail) And in fact, that condition  
22 remains the document after Mr. Cherner testified two  
23 weeks ago, right?

24 A. Yes.

09:52 25 Q. Okay. And now if you take a look down at the

1 consideration and deposit section, do you see that?

2 A. Yes.

3 Q. Is there any discussion in there about a  
4 liquidated damages provision or anything like that?

09:52 5 A. No.

6 Q. Okay. Now, you heard Mr. Cherner testify,  
7 correct?

8 A. I did not hear him testify. I reviewed his  
9 testimony.

09:53 10 Q. You read his testimony, right?

11 A. Yes.

12 Q. And I think you testified both when your lawyer  
13 questioned you and previously that it's your  
14 understanding this term sheet is what Mr. Cherner's  
09:53 15 willing to do, correct?

16 A. No, not entirely. I think Mr. Cherner  
17 obviously made some changes to accommodate the requests  
18 of several parties.

19 Q. But he didn't make several other changes that  
09:53 20 we talked about or that were in his testimony, right? Or  
21 do you know?

22 A. Repeat the question again.

23 Q. Sure. Mr. Cherner did not make several changes  
24 that he discussed in his testimony, did he?

09:53 25 A. I couldn't say specifically.

1 Q. Well, for example, the Headwaters litigation,  
2 that remains as a condition to closing, right?

3 A. It's still in the term sheet, yes.

09:54

4 Q. And do you remember any discussions about  
5 whether or not there would be a provision in the  
6 agreement that any entity would guarantee the debts of  
7 Scotia Redwood Foundation?

8 A. No.

09:54

9 Q. Do you remember whether or not under this --  
10 MR. KRUMHOLZ: Your Honor, I just want to  
11 clarify. You're not suggesting that Mr. Cherner said  
12 that in his testimony?

13 MR. HAIL: I'm asking what he knows, what  
14 he recalls.

09:54

15 MR. KRUMHOLZ: Well, I'm asking you.  
16 Objection, vague. Because I don't understand if he  
17 testified to that or not.

09:54

18 THE COURT: It's a valid issue. The issue  
19 of the likelihood of that this plan might be followed by  
20 other reorganization, the feasibility of the plan, those  
21 are all issues that are on the table. So he gets to ask  
22 these questions. I mean, I don't know that his  
23 understanding of it is necessarily binding, but I think  
24 that since he's one of the parties to this deal, that he  
25 gets to ask him questions about it.

09:55

1 MR. KRUMHOLZ: Well, I have no problem  
2 with the general nature of the question. I just want to  
3 know if he's asking the witness to recall what  
4 Mr. Cherner specifically said he would do or not relative  
09:55 5 to guaranteeing, because I think he mischaracterized --

6 THE COURT: I think we all would agree,  
7 and whether this witness knows it or not, there are  
8 things that were discussed in Mr. Cherner's testimony  
9 that were not solved by -- when I use the word solved, I  
09:55 10 mean, in other words, there were suggestions about  
11 problems with the bid sheet, some were corrected with new  
12 proposals here and some were not. Okay. There are some  
13 that he didn't change. They went with the deal that they  
14 have, like the Headwaters agreement is one of those that  
09:55 15 they didn't change. That's their deal.

16 MR. HAIL: Your Honor, that is obviously  
17 the point, and I'll ask a more focused question.

18 Q. (By Mr. Hail) Is there anything in this  
19 agreement in which the Scotia Redwood Foundation binds  
09:55 20 itself to specifically perform the agreement and close a  
21 transaction?

22 THE COURT: You're asking him for a legal  
23 answer to that?

24 MR. HAIL: No. I'm just asking if he has  
09:56 25 any understanding if such a term exists in the term

1 sheet.

2 A. Well, that's a legal conclusion that I don't  
3 control. I can't draw that conclusion.

4 Q. I'm sorry, I didn't hear you.

09:56 5 A. I don't know that I can draw that conclusion.

6 Q. Okay. Now, if you take a look down under the  
7 consideration and deposit section, do you see that?

8 A. Yes.

9 Q. And I'll draw you, unfortunately, to the  
09:56 10 inaccurate red line, I think is the best way of saying  
11 it. I know there are certain changes but I think this  
12 one is correct. In page 2 of that, of the red line  
13 references this section. And specifically the paragraph  
14 that begins "other than the MAE provision." Do you see  
09:57 15 that?

16 A. Yes.

17 Q. The clause that -- there was a clause inserted  
18 after the acquisition documents. Do you see that? Other  
19 than the MAE provision -- so the record is clear, "as  
09:57 20 defined below, agreement on the definitive acquisition  
21 documents and" -- this is the new section -- "obtaining  
22 all required governmental consents/approvals to the  
23 conveyance and assignment of the Scotia assets to the  
24 buyer." Do you see that?

09:57 25 A. Yes.

1 Q. So was there a new condition added in this term  
2 sheet related to the ability to obtain governmental  
3 consents and approvals?

4 A. Yes.

09:57

5 Q. Now, if you also turn to the page -- the last  
6 page of the agreement, which is page 5, there is a new  
7 section added there, isn't there, and you can work off  
8 both the red line and the final, even though I know the  
9 red line might not be exactly right.

09:58

10 And my first question would be: Do you recall  
11 whether or not there was a section in the prior term  
12 sheet that was titled acquisition agreement?

13 A. I don't recall there being a section titled  
14 that, no.

09:58

15 Q. Okay. And do you know if the various  
16 provisions that are in this section here were in the  
17 prior agreement, or the prior term sheet?

18 A. I don't believe so, no.

09:58

19 Q. Okay. And once again, I don't think the red  
20 line is 100 percent accurate so we want to be really  
21 careful reading off the red line. Focussing on the  
22 document which was attached to your proffer.

23 A. On the red line document or the --

24 THE COURT: No, the non-red line.

09:58

25 Q. (By Mr. Hail) The non-red line because, like I



1 said, I think the red line is not 100 percent accurate  
2 here. But if you take a look at the agreement, the third  
3 bullet point is that "Scotia Redwood offers to enter into  
4 an evergreen supply agreement, terminable upon 18 month  
09:59 5 notice by either party, under which buyer shall have the  
6 obligation to sell," and sell out the obligation of  
7 purchase, I'm kind of skipping through here. "50 percent  
8 of the harvest from the commercial timberlands at market  
9 terms, such volumes and terms to be arrived at quarterly  
09:59 10 by mutual agreement." Do you see that?

11 A. Yes.

12 Q. Okay. Is this a new provision?

13 A. I believe so, yes.

14 Q. Okay. And is it contemplated that -- is it  
09:59 15 your understanding that Scotia Redwood Foundation every  
16 quarter would sit down with the mill and negotiate  
17 volumes and prices?

18 A. I believe that every quarter would have mutual  
19 agreement.

10:00 20 Q. And how would that price be determined?

21 A. They say by reference to prevailing market  
22 transaction prices or other agreed mechanisms.

23 Q. Now, you're not an expert on redwood logging  
24 pricing, are you, Mr. Matthews?

10:00 25 A. No, I am not.

1 Q. Okay. And have you ever been involved in --  
2 well, let me ask you a bigger broader question. You've  
3 been involved in the auction of assets before coming out  
4 of bankruptcy, right?

10:00

5 A. Yes.

6 Q. And specifically recently you supervised an  
7 auction of assets of a real estate business, correct?

8 A. Yes.

10:00

9 Q. And it was a vacant land development that was  
10 taken out and put up for auction, right?

11 A. Yes.

12 Q. And in fact, a bidder bid on those assets,  
13 right?

14 A. Yes.

10:00

15 Q. And you came to an agreement on a price with  
16 that bidder, right?

17 A. In that specific case, no.

18 Q. You chose a buyer, didn't you?

19 A. A buyer was appointed by the court.

10:00

20 Q. And that buyer then defaulted, correct?

21 A. Yes.

22 Q. And, in fact, after that buyer defaulted, you  
23 had to change the plan and go into a land bank plan,  
24 right?

10:01

25 A. Correct.

1 Q. Okay. And have you ever seen a case where a  
2 timber company agrees only on a quarterly basis to have  
3 volumes and prices negotiated?

4 A. Have I seen an exact duplicate of that  
5 transaction? No.

6 Q. Have you ever seen any company that agrees to  
7 sell to another company at volumes and prices adjusted on  
8 a quarterly basis?

9 A. Not specifically, no.

10 Q. And if the mill declines to purchase these 50  
11 percent of the logs, that would have a significant effect  
12 on the financial performance of the commercial  
13 timberlands, wouldn't it?

14 A. Unless you're assuming that no one else would  
15 buy the logs, and I don't think you can make that  
16 assumption.

17 Q. Well, is that the assumption you make?

18 A. Huh?

19 Q. That somebody else will buy the logs?

20 A. I think there's a market out there for those  
21 logs, yes.

22 Q. Now, are you aware if another mill would  
23 purchase the logs, would the timberlands generate the  
24 same amount of revenue?

25 A. The very same amount of revenue, I could not

1 say. Revenue, yes.

2 Q. Have you done any analysis of that effect if  
3 the mill declines to purchase your logs?

4 A. I have not, no.

10:02 5 Q. Have you seen any of that analysis?

6 A. No, I have not yet.

7 Q. And obviously, if the price term is  
8 unfavorable, the mill might decline to purchase the logs,  
9 right?

10:02 10 A. They could, yes.

11 Q. Okay. And that could also have a deleterious  
12 effect on the mill, right, depending what the prices are?

13 A. That could, yes.

14 Q. Okay. Now, in connection with the financing of  
10:02 15 this offer, if you turn back to page 3 of the document,  
16 and we come down to the top of page 3, right there, the  
17 first paragraph. The buyer has already arranged for  
18 approximately \$420 million in equity and two-year debt  
19 from related entities. Do you see that?

10:03 20 A. Yes.

21 Q. That didn't change, did it?

22 A. I don't believe it did, no.

23 Q. Okay. The buyer reserves the right to obtain  
24 additional first or second lien debt. Do you see that?

10:03 25 A. Yes.

1 Q. Now, of this \$420 million, do you know what the  
2 breakdown currently is of equity and/or debt?

3 A. Not specifically.

4 Q. And the 420, that still leaves a gap of about  
10:03 5 \$183 million, right?

6 A. Yes.

7 Q. Okay. Do you know where that \$183 million is  
8 coming from?

9 A. Not specifically.

10:03 10 Q. Now, if this is all debt or the \$603 million  
11 purchase price generates or is financed with debt, the  
12 acquirer would have to fund that debt, correct?

13 A. Yes.

14 Q. And the timberlands would have to generate  
10:04 15 sufficient revenue in order to make the interest payments  
16 and any amortization on the debt, correct?

17 A. Yes.

18 Q. And if the debt was not in fact serviced, the  
19 company would perform poorly, right?

10:04 20 A. If the debt was not serviced, it could.

21 Q. Okay. And you have in fact opined that the  
22 potential purchasers would not need further  
23 reorganization, haven't you?

24 A. Yes.

10:04 25 Q. Okay. And in connection with evaluating a type

1 of proposal like this or a potential purchaser, you would  
2 want to know whether or not they could service their  
3 debt, wouldn't you?

4 A. Yes.

10:04 5 Q. And in order to know whether or not they could  
6 service their debt, you would want to know first of all  
7 the amount of the debt, correct?

8 A. Correct.

9 Q. You would want to know the interest rate of the  
10:04 10 debt, correct?

11 A. Generally speaking.

12 Q. You'd want to know the cash flow that was  
13 generated by the timberlands or that the buyer projected  
14 to be generated, right?

10:05 15 A. Possibly, yes.

16 Q. You would want to see the operational plan that  
17 would justify that cash flow schedule, correct?

18 A. Yes, generally.

19 Q. And that would allow you to determine whether  
10:05 20 or not the potential buyer would be able to adequately  
21 service its loan obligations in connection with the  
22 transaction, right?

23 A. Yes.

24 Q. Have you seen any of that information from the  
10:05 25 Scotia Redwood Foundation?

1           A.    Our advisors have looked generally at this term  
2 sheet. They believe that Beal Bank has the wherewithal  
3 to form this particular bid and that it's valid and  
4 viable right now.

10:05 5           Q.    That's not my question to you. My question is:  
6 Have you seen any information that would allow you to  
7 conclude that the purchaser, Scotia Redwood Foundation  
8 would be able to operate the timberlands in such a way to  
9 service its debt in connection with the acquisition?

10:05 10          A.    Not specific information, no.

11          Q.    Now, banks have -- you're a banker, right?

12          A.    Trust banker.

13          Q.    Trust. Trust banker. Fair enough. Banks have  
14 certain lending limits that are imposed, correct?

10:06 15          A.    Generally speaking, yes, they could, yes.

16          Q.    There are various regulatory provisions that  
17 govern banks?

18          A.    Generally speaking, yes, they're subject to a  
19 lot of regulations.

10:06 20          Q.    And the regulatory structure for each bank  
21 depends on where its incorporated and operated, correct?

22          A.    It could, yes.

23          Q.    There might be state regulations, correct?

24          A.    Possible.

10:06 25          Q.    There might be governmental regulations, right?

1 A. Possibly.

2 Q. And those state and governmental regulations  
3 might limit the amount of capital -- well, not limit the  
4 amount of capital. They would limit the amount that any  
5 bank could loan to any one borrower, correct?

10:06

6 A. Possibly, yes.

7 Q. And they might limit the amount that any one  
8 borrower could loan to an affiliate, correct?

9 A. Possibly, but I'm not really sure, you know, in  
10 my mind that that's necessarily relevant. What we're  
11 really trying here is to get a stalking horse bid in  
12 place and we believe we have a party that can perform.  
13 Our advisors believe that this party can perform.

10:07

14 Q. I'm not asking you that question, though. I'm  
15 asking you whether or not --

10:07

16 MR. KRUMHOLZ: I would like the witness to  
17 be allowed to finish that. I think it was the --

18 THE COURT: Okay. Well, I think on  
19 redirect he can make those statements, but I don't think

10:07

20 that -- I mean, it was related to the question, but it  
21 wasn't a direct answer to the question. So if you think  
22 it's important, I think you should ask him that on  
23 redirect. But do try to answer just the question. I  
24 know that you'd like to give the best possible spin on  
25 every question they ask, but basically he gets to ask the

10:07



1 question and if there is a spin that needs to be put on  
2 it, and I use that in the kindest sense of the word.  
3 Still, that's why you've hired big time expensive  
4 lawyers. They get the chance to decide whether that's  
10:08 5 important, not you. All right. Go ahead.

6 Q. (By Mr. Hail) Now, as you sit here today, you  
7 don't know whether or not the Beal Bank entities can in  
8 fact loan \$400 million to Scotia Redwood Foundation, do  
9 you?

10:08 10 A. I have every confidence they can.

11 Q. But do you know that?

12 A. Do I know it? No. I have every confidence  
13 they can.

14 Q. And do you know -- banks have limits on  
10:08 15 dividends of their capital, correct?

16 A. I'm not a CPA. That's possible, but I  
17 generally cannot really even comment on some of that.  
18 Yes, but -- generally speaking, yes, but I'm not the CPA.

19 Q. Well, a CPA may not know bank dividend  
10:08 20 requirements either. Would that be relevant to your  
21 decision whether or not Beal Bank could finance this bid?

22 A. The main consideration I think for us is  
23 whether or not our advisors believe Beal Bank can perform  
24 in this bid.

10:08 25 Q. That wasn't my question. My question was:

1 Would the ability of Beal Bank to dividend money out of  
2 its banks be relevant to your decision whether or not to  
3 accept the term sheet?

4 A. It could be relevant, but the main  
10:09 5 consideration is our faith in the bidder.

6 Q. And it's your faith in the bidder, is that the  
7 most relevant thing?

8 A. Well, I think it's more relevant, yes.

9 Q. And have you done any investigation on Beal  
10:09 10 Bank's ability to dividend money out of subsidiaries to  
11 inject its equity capital in this case?

12 A. No.

13 Q. Have you seen any such analysis prepared by  
14 your advisors?

10:09 15 A. No.

16 Q. Now, if the Beal Bank bid is actually  
17 consummated at \$603 million, the noteholders don't  
18 receive \$603 million, correct?

19 A. Well, \$603 million would go into the noteholder  
10:10 20 pot.

21 Q. It would go into the noteholder pot but would  
22 it start at the waterfall coming down and down and down  
23 and there would be various deductions before you can go  
24 to the noteholders, correct?

10:10 25 A. Correct.

1 Q. And specifically under the plan, the Indenture  
2 Trustee plan, there's a series of waterfalls, correct?

3 A. Yes.

4 Q. Okay. And before the noteholders receive  
10:10 5 anything, the first thing you would get would be  
6 deductions for administrative claims, correct?

7 A. Yes, but I think that's a little bit of a red  
8 herring. I mean, our view is we got in this case, our  
9 plan is going to generate even Chapter 7 liquidation \$603  
10:10 10 million verses 500 under the Mendocino plan.

11 Q. Mr. Matthews, my question was about the  
12 administrative claims.

13 A. Right.

14 Q. The administrative claims would have to be paid  
10:10 15 first?

16 A. Yes, it would but I don't think it's relevant.  
17 It's not the real issue in the case.

18 Q. Well, the question was: Administrative claims  
19 would be paid first and then after that there is a series  
10:10 20 of tax claims, for example, right?

21 A. Yes.

22 Q. And who is Bank of America?

23 A. A secured lender of the other debtor.

24 Q. Are you familiar with something called the SAR  
10:11 25 account?

1 A. Yes.

2 Q. Now, even the Bank of America is repaid under  
3 the SAR account, right?

4 A. Correct.

10:11 5 Q. And then if Bank of America is in fact owed  
6 more money under your plan, then in the SAR account, Bank  
7 of America is paid that money in full basically, correct?

8 A. Yes.

9 Q. Okay. So if there's a deficiency between the  
10:11 10 amount of the SAR account and B of A's claim, they get  
11 paid 100 cents on the dollar for that before the  
12 noteholders receive anything, right?

13 A. Yes.

14 Q. And then the noteholders -- well, you've also  
10:11 15 guaranteed that the unsecureds receive \$1.45 million,  
16 right?

17 A. We provided a pot for them to share in that  
18 amount, yes.

19 Q. Do you know how much it is?

10:11 20 A. 1.45.

21 Q. Okay. And that's funded 100 percent, too,  
22 right?

23 A. Yes.

24 Q. And only then do the noteholders receive what's  
10:11 25 left after all that, right?

1 A. Right.

2 Q. And --

3 THE COURT: Is there a deficiency claim  
4 for the noteholders in the unsecured?

10:12 5 THE WITNESS: No, Your Honor, there is  
6 not.

7 THE COURT: So the deficiency claim is  
8 waived?

9 THE WITNESS: Yes.

10:12 10 THE COURT: Okay.

11 Q. (By Mr. Hail) Now, have you seen -- well,  
12 there's also going to be expenses that will be associated  
13 with the sales process, right?

14 A. Correct.

10:12 15 Q. And in fact, at your deposition we talked about  
16 some of the possible sales expenses. Do you remember  
17 talking about there would be plan agent expenses?

18 A. Yes.

19 Q. The cost of retaining Mr. Wilson and Governor  
10:12 20 Wilson and his firm, correct?

21 A. Right.

22 Q. And I think the revised plan that was filed  
23 last night also contemplates a supplemental plan agent,  
24 right?

10:12 25 A. Yes.

1 Q. And that plan agent is -- acts in situations  
2 where Mr. Wilson might not be able to act, right?

3 A. Right.

10:12

4 Q. And that supplemental plan agent would also be  
5 paid a fee, correct?

6 A. Yes, they could.

7 Q. Okay. And then there would also be the  
8 expenses of the board members for Scotia and Palco,  
9 correct?

10:13

10 A. Yes.

11 Q. And then there would also be expenses related  
12 to the employees retained, correct?

13 A. Yes.

10:13

14 Q. What about the Palco employees, are there going  
15 to be expenses associates with the Palco employees  
16 between the time of confirmation and the time of any  
17 sale?

18 A. I'm not aware of any, no.

19 Q. You wouldn't pay for those anyway, would you?

10:13

20 A. No.

21 Q. Okay. Now, you also said there would be  
22 expenses associated with hiring an outside management  
23 company to run the timberlands, right?

10:13

24 A. There could be, yes, if additional expertise is  
25 needed.

1 Q. There would be expenses associated with the  
2 sales process itself, right?

3 A. Yes.

4 Q. There would be expenses associated with  
10:13 5 Houlihan Lokey running that sales process, right?

6 A. Yes.

7 Q. And we talked that Houlihan Lokey in fact will  
8 be paid a transaction fee in this case, right?

9 A. Yes.

10:13 10 Q. And have you had discussions with Houlihan  
11 Lokey about that fee?

12 A. General discussion, yes.

13 Q. Okay. And it's your expectation that fee will  
14 run in the millions of dollars, right?

10:14 15 A. It would be a normal success fee that's  
16 approved by the Court.

17 Q. Okay. And that success fee will be probably a  
18 two percent of the transaction proceeds, is that market?

19 A. Market two, three percent.

10:14 20 Q. So that transaction fee could be between \$12  
21 and \$18 million, right?

22 A. Possibly.

23 Q. All right. And not only then do we have --  
24 those expenses would also be deducted before any money  
10:14 25 starts falling through the waterfall, right?

1           A.    Well, not necessarily.  I mean, you would have  
2   a sale and then proceeds coming in and then, yes, those  
3   general unsecured prior expenses get taken off the top.

10:14

4           Q.    Well, all those expenses we have just been  
5   talking about, would they not be paid under your plan?

6           A.    Generally speaking, yes.

7           Q.    So those expenses get paid before the money  
8   starts coming through the waterfall, don't they?

9           A.    But I mean, yes, off the top.

10:14

10          Q.    Okay.  And have you personally prepared any  
11   estimate of those expenses?

12          A.    Personally, no.  Our advisors have.

13          Q.    Have you seen any written estimates of those  
14   expenses?

10:15

15          A.    No, I have not.

16          Q.    Have you seen any preliminary sum of those  
17   expenses?

18          A.    No, I have not.

10:15

19          Q.    Now, in addition to the fact that there will be  
20   the expenses associated with running the sales process  
21   and the money falling through the waterfall before we hit  
22   the plan engine, the transaction with the noteholders or  
23   any bidder wouldn't close for a period of time after the  
24   sales process, right?

10:15

25          A.    For a period of time, yes.



1 Q. Okay. And how long is it contemplated under  
2 this document that the sales process would take place?  
3 And this document is Mr. Cherner's -- or Scotia Redwood  
4 Foundation's term sheet.

10:15 5 A. Is there a specific reference you have to a  
6 section?

7 Q. Take a look at Section 363 sale and timing,  
8 which I believe relates to page 2.

9 THE COURT: Okay. Well, you can lead the  
10:16 10 witness. Isn't it true that it will close in X months.

11 Q. (By Mr. Hail) Isn't it true that the bid  
12 procedures contemplate about a six month sales process,  
13 right?

14 A. Yes.

10:16 15 Q. Okay. And then you would have to have -- well,  
16 what about regulatory approval, the Beal Bank -- or the  
17 Scotia Redwood Foundation's condition on regulatory  
18 approval, right?

19 A. Right.

10:16 20 Q. Okay. Do you know how long regulatory approval  
21 would take?

22 A. Our advisors, and I think testimony here from  
23 Mr. Kazinski had indicated that it's a rather  
24 administrative function. Once you're able to prove up  
10:17 25 funding and expertise, that our approval should be

1     administerial.  So we don't really look at that as a  
2     long-term time issue at all.

3             Q.  That wasn't my question.  Do you know how long  
4     that might take?

10:17 5             A.  A short time based on what our advisors say.

6             Q.  60 days?  Have you ever viewed something called  
7     a habitation conservation plan?

8             A.  I personally have not, no.

9             Q.  Have you ever reviewed an implementation  
10:17 10     agreement relating to those plans?

11            A.  I personally have not, our advisors have.

12            Q.  Have you received any advice about that?  That  
13     was going to be my next question.

14            A.  Our advisors have reviewed it.

10:17 15                    THE COURT:  Can we be more specific about  
16     what regulatory approval you're talking about.  Are you  
17     talking about approval to purchase the property or  
18     approval to operate the property and cut timber, or both?  
19     So let's be more specific.

10:17 20                    MR. HAIL:  Fair enough, Your Honor.

21            Q.  (By Mr. Hail)  Are you familiar that under the  
22     Habitat Conservation Plan and the various implementation  
23     agreements, the State of California must approve the  
24     transfer of title of any of the timberlands, are you  
10:18 25     familiar with that?

1 A. I've heard of that, yes.

2 Q. Okay. Is that your understanding?

3 A. I believe so, yes.

4 Q. Okay. And are you familiar with the approval

10:18 5 process for obtaining the State of California's consent?

6 A. I am not; our advisors are.

7 Q. Are you familiar with the timing of it, have

8 you heard 60 days, for example?

9 A. I am not; our advisors are.

10:18 10 Q. Your advisors have heard 60 days?

11 A. Well, our advisors are familiar with the

12 process.

13 Q. I'm sorry. Say that again.

14 A. Our advisors are familiar with the process.

10:18 15 Q. Okay. I'm speaking specifically the timing of

16 the process, putting aside what the process is or is not

17 or what it means or does not mean. Are you familiar with

18 the timing of it?

19 A. No, I am not.

10:18 20 Q. Okay. But given that that's a condition of the

21 bid, that would have to take into the timing of closing,

22 right?

23 A. Right.

24 Q. Okay. So do you know if it's contemplated that

10:18 25 any regulatory approval would be obtained before or after

1 the bidder is selected?

2 A. Say that again.

3 Q. Sure. The way this offer is structured, would  
4 regulatory approval be obtained before or after the

10:19 5 bidder is selected by the Court?

6 A. Obtained after.

7 Q. So the Court then would confirm a bidder, then  
8 that party would go off to the State of California to get  
9 regulatory approval for the consent to transfer the

10:19 10 title; is that right?

11 A. Right.

12 Q. And so closing then would only happen after the  
13 State of California consented to the sign-off, correct?

14 A. I believe so, yes.

10:19 15 Q. Okay. And in fact, the document says  
16 "obtaining all required governmental consents and  
17 approval to the conveyance of the timberlands," correct?

18 A. Right.

10:19 19 Q. So that could potentially involve the federal  
20 government; is that right?

21 A. Yes.

22 Q. That could potentially involve local Humboldt  
23 County transfers?

10:20 24 MR. KRUMHOLZ: Your Honor, the witness is  
25 not a lawyer as to speak as to what regulatory would be

1 required.

2 THE COURT: All he has to say is he  
3 doesn't know.

4 MR. KRUMHOLZ: The way it's phrased -- I  
10:20 5 mean, the foundation hasn't been laid as to what is  
6 necessary. I just don't think that's an appropriate  
7 question for this witness.

8 THE COURT: Governmental approval is one  
9 of the conditions upon the sale. If he has some  
10:20 10 information about that, then I think he's welcome to  
11 testify to it. But I think we all understand that he's  
12 not an expert in governmental approval of conveyance of  
13 California redwoods. We might have one in the courtroom  
14 but he's not on the stand right now.

10:20 15 MR. HAIL: Your Honor, my question --

16 THE COURT: So I think you have made your  
17 point on this, too. I don't know if you think he's going  
18 to say something about it that's going to -- I mean, he  
19 doesn't really know.

10:20 20 MR. HAIL: Your Honor, my point is not  
21 whether he's an expert of governmental approvals; my  
22 point is on timing, and the timing that's going to be  
23 required to close the transaction.

24 THE COURT: Okay. Well, none of us know  
10:21 25 whether or not you can get approval for some sort of

1 blank -- I mean, I would -- you know, I hate to even say  
2 this, but my guess is, if I were a guessing man, which I  
3 have been prone to do from time to time, and I usually  
4 say too much about it on the stand, but I would probably  
10:21 5 guess that California would not generally approve just a  
6 blanket -- anybody who buys this pursuant to this is  
7 approved. My guess is they're going to have specific --  
8 want specific information about the buyer and the  
9 transaction so that this process could not be started  
10:21 10 until after the bidding procedure is done and there's an  
11 agreement. Now, if I'm wrong, please tell me right now  
12 because this is probably something that's just a matter  
13 of California law.

14 MR. PASCUZZI: You're not wrong, Your  
10:21 15 Honor.

16 THE COURT: So if you're trying to point  
17 out that it's going to take longer from doing that, I  
18 think that's probably true. I don't think anybody is  
19 going to suggest that it's going to take -- that they're  
10:22 20 going to get pre approval for this deal so you can add on  
21 to the sales process of six months, regulatory process of  
22 something that he thinks administerial. You may have  
23 other witnesses that will say something else. Okay.

24 MR. HAIL: All right. So --

10:22 25 THE COURT: I guess what I'm saying is I'm

1 trying to give you latitude to do your cross-examination,  
2 but it sure would be good to try to focus on areas that  
3 this witness knows about and point out in argument those  
4 things that he doesn't know anything about. And the rest  
10:22 5 of us can argue about.

6 MR. HAIL: Your Honor, this is a question  
7 about timing. Like I said, I'm not trying to get an  
8 expert on governmental approvals.

9 Q. (By Mr. Hail) Only the point that the closing  
10:22 10 of the transaction wouldn't take place until after that  
11 approval took place, right?

12 A. Yes.

13 Q. Okay. So in order to evaluate the value of the  
14 \$603 million consideration after expenses, after it falls  
10:22 15 through the waterfall you would present value it back to  
16 today, wouldn't you?

17 A. Well, I still, in my mind, that is not as  
18 important as whether or not we've got a valid bid that  
19 starts at auction market test.

10:23 20 Q. You would agree with me that -- I'm sorry, I  
21 didn't mean to interrupt. You would agree with me that a  
22 dollar today is worth more than a dollar a year from now,  
23 right?

24 A. Yes.

10:23 25 Q. And if you were comparing two offers, one that

1 closes a year from now, one that closes today, you would  
2 want to present value that, wouldn't you?

3 A. Yes.

4 Q. Okay. Now, you opine in your proffer that you

10:23

5 would receive more under the Indenture Trustee plan --  
6 let me refer you specifically to it. Paragraph 10 of  
7 your proffer, Chapter 7, liquidations states "unsecured  
8 creditors of Scopac will recover more than they would  
9 receive in a Chapter 7 liquidation"; is that correct?

10:24

10 A. Yes.

11 Q. Are you familiar with the Chapter 7 liquidation  
12 process?

13 A. Not specifically, but generally.

14 Q. Are you familiar with the expenses of a Chapter  
15 7 trustee?

10:24

16 A. Yes.

17 Q. Are you familiar that a Chapter 7 trustee would  
18 get 3 percent of the proceeds of any sale?

19 A. Possibly, yes.

10:24

20 Q. Would a Chapter 7 trustee retain separate  
21 professionals?

22 A. I don't know.

23 Q. Do you think that a Chapter 7 trustee would  
24 want professionals to assist them in connection to

10:24

25 selling \$603 million of timberland?



1 A. Yes, they could, yes.

2 Q. Okay. Have you prepared any schedules about  
3 expenses anticipated under a Chapter 7 plan?

4 A. Not specifically, no.

10:24 5 Q. Okay. Now, also under the revised plan, there  
6 is a -- under your plan, under the Indenture Trustee  
7 plan, a litigation trust is created, correct?

8 A. Right.

9 Q. And is the Headwaters litigation -- well, the  
10:25 10 litigation trustee is also appointed, correct?

11 A. Yes.

12 Q. And is the Headwaters litigation given to the  
13 litigation trust?

14 A. Yes.

10:25 15 Q. So the litigation trustee then controls the  
16 disposition of the Headwaters trust -- I'm sorry, the  
17 Headwaters litigation, correct?

18 A. Yes.

19 Q. And the proceeds received from the Headwaters  
10:25 20 litigation benefit which classes of creditors, do you  
21 remember?

22 A. It would flow down through the waterfall.

23 Q. It would benefit classes 2-B, 3, 4, 5 and 6;  
24 isn't that right?

10:25 25 A. Right.

1 Q. Okay. Those are the beneficiaries of the  
2 litigation trust, right?

3 A. Right.

10:25

4 Q. And so the litigation trustee would have an  
5 obligation to settle the Headwaters litigation on terms  
6 he thought were best for the beneficiaries of the trust,  
7 right?

8 A. Generally speaking, yes.

10:25

9 Q. He would not necessarily have the same  
10 incentive to settle the case that would be consistent  
11 with Scotia Redwood Foundation, would he?

12 A. I don't know that you can make that assumption.

13 Q. Now, the Indenture Trustee has raised concerns  
14 about antitrust issues in this case; is that right?

10:26

15 A. Yes.

16 Q. And your antitrust issue is that the Mendocino  
17 Redwood is a significant manufacturer of redwood  
18 products, right?

19 A. I believe so, yes.

10:26

20 Q. And that therefore, the product sold into the  
21 market, there would be one fewer producer of those  
22 products, correct?

23 A. Yes.

10:26

24 Q. Okay. Are you familiar with the various  
25 products that redwood competes with?

1           A.     Just my understanding of what I've heard  
2     attending some of the hearings, but I have no particular  
3     expertise or knowledge about those products at all.

10:26

4           Q.     You don't have any -- do you have any  
5     insight -- have you received any legal advice in this  
6     case about potential antitrust issues?

7                     MR. KRUMHOLZ:  I will object as invades  
8     attorney/client privilege, Your Honor.

9                     THE COURT:  Excuse me?

10:27

10                    MR. KRUMHOLZ:  I will object that it  
11     invades the attorney/client privilege.

12                    MR. HAIL:  That's a yes or no question.  
13     Has he discussed the issue with his lawyers.

10:27

14                    MR. KRUMHOLZ:  He's discussed the subject  
15     matter with the lawyers.  He's discussed the matter with  
16     the attorneys.  It's privileged, we object.

17                    THE COURT:  The subject matter -- I don't  
18     know.  Do you think it's privileged to ask him if he's  
19     discussed it with his lawyers?

10:27

20                    MR. KRUMHOLZ:  If he has discussed the  
21     subject matter with his lawyer, that is privileged.  We  
22     object, Your Honor.

23                    MR. HAIL:  Your Honor, I don't think so.

10:27

24                    THE COURT:  I agree with you that the  
25     subject matter of what he discussed is privileged.  Do

1 you think the question, asking the question whether he  
2 has discussed it with his lawyer is privileged?

3 MR. KRUMHOLZ: He prefaced it with the  
4 subject matter. Have you discussed the antitrust issue  
10:27 5 with your lawyer? That is the subject matter. It's  
6 attorney/client privilege. There's no way around that.  
7 It's a back doorway of trying to get privileged  
8 information.

9 THE COURT: Ask another question.

10:27 10 MR. HAIL: Your Honor, I'll follow-up that  
11 I think he's waiving it because I asked him this question  
12 in his deposition, and there was an answer without an  
13 objection or an assertion of privilege, Your Honor.

14 THE COURT: Okay. Well, what did he say  
10:28 15 in his deposition?

16 MR. HAIL: Page 136, line 4. "Have you  
17 received any legal analysis on this potential issue?"

18 Answer: "I have not, no."

19 "Have you authorized or approved your  
10:28 20 lawyers to research this issue?"

21 Answer: "I think generally the  
22 noteholders group has been looking at it but a specific  
23 authorization, I don't recall."

24 THE COURT: Okay. Let's move on.

10:28 25 Q. (By Mr. Hail) Are you familiar with whether or

1 not Hart Scotia Rodino filing will be required in this  
2 case?

3 A. Not personally, no.

4 Q. And you haven't done any research on that  
10:28 5 issue, have you?

6 A. No.

7 Q. Or you don't have any knowledge about that, do  
8 you?

9 A. No.

10:28 10 MR. HAIL: Your Honor, I don't think I  
11 have any further questions for the witness.

12 THE COURT: All right. Mendocino. This  
13 is Marathon now that's next?

14 MR. SCHWARTZ: Yes, Your Honor.

10:28 15 THE COURT: All right.

16 MR. SCHWARTZ: May I approach, Your Honor?

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. SCHWARTZ:

10:29 20 Q. Mr. Matthews, I'm handing you what's been filed  
21 around midnight last night, which is the first amended  
22 plan of the Indenture Trustee. You signed that document,  
23 correct?

24 A. Yes.

10:30 25 Q. Did you review it before you signed it?

1 A. Yes.

2 Q. Are you familiar with the terms of the amended  
3 plan?

4 A. Yes.

10:30 5 Q. Now, is it correct that under the amended plan  
6 of the Indenture Trustee that classes 3, 4 and 5 are  
7 going to be treated in a similar fashion?

8 A. For recovery purposes, yes.

9 Q. And that's a change from the prior plan,  
10:30 10 correct?

11 A. Yes.

12 Q. Do you know why that change was made?

13 A. I think they were trying to be fair and  
14 equitable.

10:30 15 Q. Did you think the original plan was not fair  
16 and equitable?

17 A. Well, I think they were trying to meet some  
18 objections filed by certain parties, and they thought it  
19 was perhaps a fair method.

10:31 20 Q. Now, as a result of that change, any unsecured  
21 deficiency of the noteholders would be treated similar to  
22 unsecured creditors, correct?

23 A. No. My understanding is a deficiency of the  
24 noteholders would not share in this pot.

10:31 25 Q. They would not share in the \$1.45 million?

1 A. Right.

2 Q. But they would receive other recoveries,  
3 correct, under the plan?

4 A. Yes, they could.

10:31 5 Q. So they're not waived, which is what I thought  
6 you said earlier.

7 A. They could depending on what comes in, yes.

8 Q. So just so we're clear, the noteholders are not  
9 waiving their deficiency claim, they are entitled to a  
10:31 10 recovery?

11 A. That's right.

12 Q. Okay. Now, in addition, you have included  
13 intercompany claims in the same class, correct?

14 A. Yes.

10:31 15 Q. Do they get to share in the \$1.45 million?

16 A. I believe so, yes.

17 Q. Okay. Do you know what the amount of the  
18 intercompany claims are?

19 A. I don't recall specifically, no.

10:32 20 Q. Do you still have the disclosure statement.  
21 Page 83. I guess the intercompany claims are on page 86.  
22 Do you see that? It says "intercompany claims, \$2  
23 million." It's on the screen as well, if that helps.

24 A. Okay. I'm sorry. Repeat your question now.

10:33 25 Q. Do you see that the intercompany claims in the

1 disclosure statement are \$2 million?

2 A. Yes.

3 Q. Do you know if that number has changed in any  
4 way since the disclosure statement?

10:33 5 A. I do not.

6 Q. Now, in your amended plan, you changed the  
7 definition of intercompany claims. And if you will look  
8 on the definition in the document I sent you, I handed  
9 you when we started under intercompany claims, you added  
10 in addition to affiliates any insider of the debtor. Do  
11 you know if that adds to the total of the intercompany  
12 claim amount?

10:33

13 A. I do not.

14 Q. And so -- and the unsecured claims that were  
15 going to be sharing in the \$1.45 million, that was  
16 estimated to be around a million dollars, right?

10:34

17 A. I believe so, yes.

18 Q. Okay. So now you have taken the pot for the  
19 secured creditors and added at least \$2 million to claims  
20 in that pot for insiders and affiliates, right?

10:34

21 A. It could be, yes.

22 Q. And why was that done?

23 A. I don't recall the exact reason behind it.

24 Q. Do you recall any reason?

10:34

25 A. No.



1 Q. In addition to your -- in your amended plan you  
2 changed the treatment of the Pension Benefit Guaranty  
3 Corporation, correct?

4 A. Yes.

10:34 5 Q. What did you change that treatment to be?

6 A. I think to allow them to the extent they have  
7 allowed claims, to allow them to share in the unsecured  
8 recovery pot.

9 Q. Okay. And do you know the amount that the  
10:35 10 Pension Benefit Guaranty Corporation is claiming is the  
11 amount of their claim?

12 A. I do not. Our advisors do, but I do not.

13 Q. Have you heard that it's in excess of \$20  
14 million?

10:35 15 A. I have not heard that, no.

16 Q. Assume that for the moment for the purposes of  
17 this next question. If the PBGC has an unsecured claim  
18 of \$20 million, they're also sharing in the \$1.45  
19 million?

10:35 20 A. I think to the extend that the Court approves  
21 on the allowed claim they would share in the pot, yes.

22 Q. Okay. But you're not changing the amount  
23 that's going to that class of creditors, it's still \$1.45  
24 million, correct?

10:35 25 A. Right.

1 Q. So the general unsecured creditors as a result  
2 of the change in your plan are going from receiving close  
3 to 100 percent on the dollar to potentially receiving  
4 pennies on the dollar; is that correct?

10:35 5 A. Well, it's also entirely possible that PBC may  
6 not have any claims in our case.

7 Q. I understand. But under the prior plan there  
8 was no possibility of that, correct, and now there is?

9 A. There is also the possibility PBGC may not have  
10:36 10 an allowed claim.

11 Q. Understood. Now, is it also possible that PBGC  
12 has an administrative or priority claim?

13 A. It is possible, yes.

14 Q. And if they have an administrative or priority  
10:36 15 claim, whatever the amount is, \$20 million, whatever it  
16 turns out to be that the Court allows, that would be paid  
17 before you received any distribution from the sale of the  
18 property, correct?

19 A. Yes.

10:36 20 Q. So going back to Mr. Hail's analysis, that  
21 would be another payment added in the waterfall that  
22 would be paid before the noteholders received any money?

23 A. Yes.

24 Q. All right. And I just want to follow-up on one  
10:36 25 point Mr. Hail made about the waterfall. Have you, we'll

1 start with you personally, done any analysis to determine  
2 how much the noteholders would actually get on a present  
3 value basis out of the \$603 million if the Beal deal is  
4 consummated?

10:36 5 A. I personally have not.

6 Q. Do you know if your advisors have done that?

7 A. I believe our advisors have looked at that.

8 Q. Okay. And do you know what your advisors have  
9 concluded?

10:37 10 A. No.

11 Q. And just so we're clear, you are the person at  
12 the Bank of New York, the Indenture Trustee with the most  
13 knowledge of this case, correct?

14 A. Yes.

10:37 15 Q. Now, you have not accepted the term sheet that  
16 is attached to your amended proffer; is that correct?

17 A. Yes, I have not.

18 Q. Why not?

19 A. I think it may be premature.

10:37 20 Q. Have you had any discussions with the  
21 noteholders about whether it should be accepted?

22 A. We have ongoing discussions at all times, but  
23 nothing has been decided at this point. I think the  
24 noteholders are really, as we said early on, interested

10:37 25 in having a market value test. They're really looking at

1 this as the beginning, the start of a marketing process.

2 Q. I'm sorry to interrupt, but that has nothing to  
3 do with my question. My question is: Have you discussed  
4 with them accepting the term sheet?

10:38 5 A. Yes.

6 Q. Okay. But you haven't reached a conclusion?

7 A. We have not accepted the term sheet.

8 Q. Now, you said you received this term sheet last  
9 night.

10:38 10 A. Yes.

11 Q. Is that right? So did you have discussions  
12 between last night and this morning about whether this  
13 revised term sheet should be accepted by the noteholders?

14 A. Yes.

10:38 15 Q. Okay. And were those telephone conversations?

16 A. Yes.

17 Q. And who was on those -- on that conversation,  
18 on the telephone call?

19 A. A group of noteholders. I cannot recall  
10:38 20 specifically which ones, but a group of noteholders was  
21 on the phone.

22 Q. And did they each have copies of this term  
23 sheet that's attached to your proffer?

24 A. Yes.

10:38 25 Q. And no decision was made whether to accept?

1 A. No decision was reached.

2 Q. Okay. Now, we talked a little bit about your  
3 deposition, about what percent of the noteholders would  
4 have to agree to accept the term sheet. Do you recall  
10:39 5 that?

6 A. Yes.

7 Q. And I think -- and I don't mean this in a  
8 negative way. You're not sure whether it's 50 percent or  
9 two-thirds at the time of your deposition, correct?

10:39 10 A. Yes.

11 Q. Have you come to a conclusion as to what  
12 percentage of the noteholders would have to accept the  
13 term sheet?

14 A. Well, two-thirds, I think, would be required  
10:39 15 for a credit bid instruction.

16 Q. I'm not asking about a credit bid. We'll come  
17 to that. I'm just asking for acceptance of the term  
18 sheet, the Indenture Trustee has to determine whether  
19 they are going to accept, do you need 50 percent or do  
10:39 20 you need two-thirds of the noteholders to approve  
21 acceptance of the term sheet?

22 A. I'd have to go back and look through it again.

23 Q. Okay. Why don't we see if we can look at it  
24 quickly and see if you can reach a conclusion. I'm going  
10:40 25 to show you what's been marked as Indenture Trustee

1 Exhibit 112, which is the indenture.

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

3 THE COURT: You may.

4 Q. (By Mr. Schwartz) Now, Mr. Matthews, you're

10:40 5 familiar with the terms of the indenture, correct?

6 A. Generally, yes.

7 Q. Okay. Would you turn to section 7.18, which is

8 on page 48 of the indenture. And let me know when you're

9 there.

10:41 10 A. Which article again? I'm sorry.

11 Q. 7.18 on page 48.

12 A. Okay. Yes.

13 Q. Okay. Now, generally under this provision,

14 isn't it true that the Indenture Trustee needs two-thirds

10:41 15 of a vote of noteholders to take anything less than the

16 full amount of the notes that are outstanding?

17 A. Yes.

18 Q. Okay. And so to accept the Beal bid of \$603

19 million would be accepting less than the full amount of

10:42 20 the notes?

21 A. Yes.

22 Q. So you would need two-thirds?

23 A. Yes.

24 Q. Okay. And there's a steering committee of

10:42 25 noteholders, correct?

1 A. That's right.

2 Q. And the notes represented on the steering  
3 committee are less than two-thirds, correct?

4 A. Are less than two-thirds?

10:42 5 Q. Yes. Less than two-thirds in amount.

6 A. All the notes represented --

7 Q. On the steering committee.

8 A. -- on the steering committee are less than  
9 two-thirds?

10:42 10 Q. Yeah.

11 A. No.

12 Q. That's what you testified at your deposition.  
13 Do you recall that?

14 A. I must have misunderstood.

10:42 15 Q. You thought it was around 64 percent?

16 A. I may have misunderstood the question.

17 Q. Okay. Are more than two-thirds of the  
18 outstanding notes represented on the steering committee?

19 A. Yes.

10:42 20 Q. Okay. And do you recall that that's not what  
21 you testified at your deposition?

22 A. I don't recall that specifically.

23 Q. Let's see if we can -- do you still have your  
24 deposition?

10:43 25 A. Yes.

1 Q. Would you turn to page 17. Tell me when you  
2 have it. Line 2.

3 A. Okay. 17?

4 Q. Yes, page 17, line 2. And I asked you,  
10:43 5 question: "In terms of the face amounts of notes, the  
6 timber notes outstanding, what percentage, if you know,  
7 is represented on the steering committee?"

8 And you said: "About 65 percent."

9 And further down you said "64, 65 percent." Do  
10:43 10 you see that?

11 A. Yes.

12 Q. Is that testimony not accurate?

13 A. No, I don't think entirely, unless I  
14 misunderstood the question. I think there's more that  
10:44 15 participate on the steering committee than 65 percent.

16 Q. Okay. But that's not what you said at your  
17 deposition?

18 A. Right.

19 Q. Okay. Have you talked to any of the  
10:44 20 noteholders outside of the steering committee with  
21 respect to whether or not to accept the Beal term sheet?

22 A. No.

23 Q. Do you intend to do that before making a  
24 decision whether to accept the Beal term sheet?

10:44 25 A. To talk to the noteholders outside the steering



1 committee or talk to the noteholders as a group?

2 Q. Any noteholders individually or as a group that  
3 are not on the steering committee.

4 A. I'm sure we'll continue discussions, yes.

10:44 5 Q. So have you had previous discussions with  
6 noteholders outside the steering committee?

7 A. No, no, we'll continue ongoing discussions with  
8 the steering committee.

9 Q. Right. But I'm trying to understand if you're  
10:44 10 going to seek to have any discussions with noteholders  
11 that are not on the steering committee.

12 A. Most of the noteholders are on the steering  
13 committee.

14 Q. That's not my question.

10:45 15 A. Most --

16 Q. It's a simple question, I thought.

17 A. Let me think. I understand what you're saying,  
18 but I'm trying to -- most of the holders that are vitally  
19 interested in these issues have participated in the  
10:45 20 steering committee discussions.

21 Q. Do you feel there's no need to talk to any  
22 noteholders who are not on the steering committee?

23 A. I think we've reached out to most people who  
24 would express an opinion.

10:45 25 Q. I'm going to try one more time to get a

1 straight answer to the question. Do you intend to ask  
2 any of the noteholders who are not on the steering  
3 committee whether they think it's appropriate to accept  
4 the term sheet that's attached to your proffer?

10:46 5 A. We would not go outside the steering committee,  
6 no.

7 Q. Thank you. Now, I want to go back over some of  
8 the changes that were made last night to your plan. We  
9 discussed a few. There are a few more I want to talk  
10:46 10 about. You provide for a special plan agent, correct?

11 A. Yes.

12 Q. And what is the reason for the special plan  
13 agent?

14 A. Well, I think Governor Wilson, the intended  
10:46 15 plan agent, someone raised the objection because he had  
16 some contacts, previous contacts with the Headwaters  
17 agreement that perhaps a special plan agent might be best  
18 suited to handle those litigations in case someone raised  
19 a conflict of interest.

10:46 20 Q. And have you made any decision as to who the  
21 special plan agent will be?

22 A. No.

23 Q. Have you talked to anybody about potentially  
24 playing that role?

10:46 25 A. No.

1 Q. Do you know if anybody has done that on behalf  
2 of the Indenture Trustee?

3 A. Our advisors may have, but I'm not aware  
4 specifically of those efforts.

10:47 5 Q. You don't know. They may have, they may not?

6 A. Right.

7 Q. Now, another change in your plan is that it  
8 provides for the rejection of employee benefit plans; is  
9 that right?

10:47 10 A. Yes.

11 Q. So that would include, for example, 401(k)  
12 plans?

13 A. Yes.

14 Q. Medical plans?

10:47 15 A. Yes.

16 Q. Health insurance?

17 A. I believe so, yes.

18 Q. Retirement benefits?

19 A. Yes.

10:47 20 Q. Anything else that you can think that would fit  
21 into that category? Vacation time?

22 A. I don't recall that specifically, no.

23 Q. Do you still have the plan in front of you?

24 A. Okay.

10:48 25 Q. Okay. And if you would turn to section 6.4 of

1 the plan. It's on page 16. Do you see that?

2 A. Yes.

3 Q. Okay. Do you see that it provides for "the  
4 rejection of the 401(k) plans, retirement plans, all  
10:48 5 savings plans, accrued and unpaid vacation/sick leave,  
6 healthcare plans, medical benefits." Do you see all  
7 that?

8 A. Yes.

9 Q. Do you know why that change was made?

10:48 10 A. Not specifically outside of perhaps a tie-in to  
11 the PBGC claims.

12 Q. Do you know if the -- if vacation, sick leave  
13 and healthcare, that's not related to the PBGC, is it?

14 A. No, it generally is not, but retirement.

10:49 15 Q. Retirement. But the other ones are not?

16 A. No.

17 Q. Okay. In making this change -- you may have  
18 answered this. Do you know why this change was made?  
19 I'm sorry if I asked that.

10:49 20 A. Not specifically, no.

21 Q. Okay. Do you have any general idea why it was  
22 made?

23 A. No, not really.

24 Q. Now, your plan provides for retaining the  
10:49 25 employees for at least a year, correct?

1 A. For all employees except senior management,  
2 yes.

3 Q. Right. And have you given any consideration to  
4 whether the employees would be interested in continuing  
10:49 5 to remain working at Scopac with the rejection of all  
6 their benefits?

7 A. I have not, no.

8 Q. Has anybody?

9 A. I don't know if our advisors have considered it  
10:50 10 or not, no.

11 Q. Now, the rejection of these claims would have  
12 the effect of increasing the unsecured -- the total  
13 unsecured claims, right?

14 A. Yes, they could, yes.

10:50 15 Q. And that would further dilute the unsecured  
16 creditors, correct?

17 A. I'm not sure.

18 Q. Well, there's a pot for unsecured creditors of  
19 \$1.45 million, so if the claims go up, the amount for  
10:50 20 each creditor receives goes down, correct?

21 A. Right.

22 Q. Okay. And that would be the effect of  
23 rejecting some of these programs?

24 A. It could be, yes.

10:50 25 Q. Okay. And it would also -- this rejection

1 could also increase administrative claims, correct, to  
2 extend the post petition agreements, those could be  
3 administrative claims, correct?

4 A. Possibly.

10:50 5 Q. And those would have to be paid before the  
6 noteholders received any distribution on account of the  
7 sale to Mr. Beal, correct?

8 A. Right.

9 Q. Okay. And in addition, one other point on the  
10:50 10 waterfall analysis, the plan agent that we discussed,  
11 Governor Wilson is the primary plan agent. What is his  
12 fee?

13 A. I understand currently to be \$120,000.

14 Q. \$125,000 a month?

10:51 15 A. Yes.

16 Q. Okay. And so that would have to be paid first  
17 before the noteholders received any recovery also, right?

18 A. Yes.

19 Q. And the special plan agent who you have not  
10:51 20 retained yet, that would also have to be paid before the  
21 noteholders --

22 A. Yes.

23 Q. Right?

24 A. Yes.

10:51 25 Q. And together that can be a million to two

1 million dollars in the time it takes to consummate the  
2 transaction, correct?

3 A. Possibly. I think most of the parties here are  
4 looking at a fairly quick resolution, though.

10:51 5 Q. Well, the \$125,000 a month for just Mr. Wilson,  
6 even if you were very optimistic and said it could be  
7 done in six months, in that six months is over \$700,000,  
8 and that's not even the special plan agent, right?

9 A. Correct.

10:51 10 Q. And if it takes ten months, it's a lot more?

11 A. It could be.

12 Q. Now, do you have your proffer in front of you?

13 A. Yes.

14 Q. Could you look at paragraph 11, which is on the  
10:52 15 bottom of page 3 and then continues on to the top of page  
16 4. And just, if you would just read that to yourself and  
17 then I want to ask you some questions about it.

18 A. Okay.

19 Q. Now, the very end of that paragraph says that  
10:53 20 if there's a shortfall in the SAR account for payment of  
21 Bank of America, then a group of noteholders will fund  
22 that shortfall. Do you see that?

23 A. Yes.

24 Q. Do you have any knowledge as to what the  
10:53 25 current shortfall, if any, is in the SAR account?

1 A. No.

2 Q. But the noteholder -- certain noteholders have  
3 agreed to fund it no matter what the number is, whether  
4 it's \$2 million, \$10 million, \$20 million?

10:53 5 A. They're not anticipating a shortfall but I  
6 think to the extent there is, they will agree to ensure  
7 that, yes, that the --

8 Q. And is there any written agreement by which  
9 they have committed to fund whatever the shortfall is?

10:53 10 A. No.

11 Q. And which noteholders have made such a  
12 commitment?

13 A. I don't recall exactly.

14 Q. Is Beal and his entities one of those?

10:54 15 A. I don't recall exactly.

16 Q. Well, how was this commitment communicated to  
17 you? Was it on a phone call? In a letter?

18 A. There was steering committee discussions.

19 Q. And when were those discussions on which this  
10:54 20 issue was discussed?

21 A. That was back a long time ago.

22 Q. A long time ago?

23 A. Yeah.

24 Q. So do you know, have you had any discussion  
10:54 25 recently as to whether the noteholders are willing to



1 continue, if they are committed to fund the shortfall?

2 A. They are aware of the changes that were made in  
3 the proffer statement and know what was raised in the  
4 objections.

10:54 5 Q. Okay. But they don't know what the shortfall  
6 amount is?

7 A. I don't think they're anticipating a large  
8 shortfall amount, no.

9 Q. What if there is a large shortfall, are they  
10:54 10 still committed to fund it?

11 A. No one has revoked their commitment at this  
12 point, no.

13 Q. Okay. But there's no written commitment?

14 A. No.

10:55 15 Q. Okay. Now, have you discussed with those  
16 noteholders the terms on which they would fund it? Is  
17 this going to be a loan? A gift? How is it going to be  
18 funded?

19 A. I don't think we've actually memorialized the  
10:55 20 structure of the loan.

21 Q. Have you talked about it at all, what the terms  
22 might be?

23 A. Generally speaking, yeah.

24 Q. And what are the terms that have been  
10:55 25 discussed?

1 A. Generally speaking they would expect that they  
2 get paid first for --

3 Q. I'm sorry, I couldn't hear you.

4 A. Generally speaking, they would get paid first

10:55 5 before anything else paid out of the pot to get their  
6 monies back, so they would have kind of a senior from the  
7 sales proceeds.

8 Q. Maybe you didn't understand my question or  
9 maybe I don't understand what this paragraph says. After  
10:55 10 the sale closes, and let's assume you have \$603 million,  
11 right, and you go through the waterfall analysis, but  
12 Bank of America gets paid out of the SAR account, right?

13 A. Right.

14 Q. Do you know how much Bank of America's claim  
10:56 15 is?

16 A. I don't recall exactly.

17 Q. Around \$37 million, does that sound about  
18 right?

19 A. Yes.

10:56 20 Q. Okay. Let's assume for now that the SAR  
21 account only has \$27 million in it at the time of  
22 closing. Okay. There's a \$10 million shortfall. Is  
23 that \$10 million going to come out first from the \$603  
24 that's paid or is it going to be funded by the  
10:56 25 noteholders or something else?

1           A.    To the extent there is a shortfall and B of A  
2    needed to be paid and there were no funds available  
3    immediately, then the noteholders would cover that  
4    shortage.

10:56   5           Q.    Okay.  So there would be funds if the sale  
6    closed, right, because it would be paid from the \$603  
7    million, correct?

8           A.    Correct.

9           Q.    So the funding by the -- and so that would come  
10:56 10   also before the noteholders got any money?

11          A.    Yes.

12          Q.    The B of A, right?

13          A.    Yes.

14          Q.    Okay.  And so the situation in which you would  
10:57 15   not have any funds available to pay B of A is if the  
16    Indenture Trustee credit bid, right, then the noteholders  
17    would have to fund B of A, right?

18          A.    Right.

19          Q.    Okay.  And what I'm trying to understand is on  
10:57 20   what terms have you discussed with the noteholders their  
21    willingness to fund B of A in that situation?

22          A.    In a specific credit bid situation?

23          Q.    Well, if the Indenture Trustee credit bid and  
24    the Indenture Trustee would own the timberlands, right?

10:57 25          A.    Right.

1 Q. And B of A would be owed \$10 million in our  
2 hypothetical deficiency and you would have to fund that  
3 somehow?

4 A. Right.

10:57 5 Q. And you're saying in this paragraph the  
6 noteholders would pay?

7 A. Right.

8 Q. And I'm trying to understand in exchange for  
9 what? Would it be an unsecured loan? Would it be a  
10:57 10 secured loan? Would it a gift? Has it been discussed?

11 A. And I don't recall -- I think at this time  
12 we've got a verbal commitment that they would cover the  
13 shortage. We don't have the exact structure  
14 memorialized.

10:58 15 Q. I understand it's not memorialized. Was it  
16 even discussed?

17 A. I don't recall it being specifically discussed.

18 Q. Okay. Now, if you would turn now to the term  
19 sheet that's attached to your proffer, page 3 talks about  
10:58 20 a deposit of \$10 million. Do you see that?

21 A. Yes.

22 Q. Now, that \$10 million deposit has not been made  
23 yet, correct?

24 A. Right.

10:58 25 Q. It's due when and if you accept the term sheet?

1 A. Right.

2 Q. Okay. And assuming you accept the term sheet  
3 and the \$10 million deposit is made, Scotia Redwood gets  
4 the \$10 million back if you don't reach an agreement on  
10:59 5 documentation, correct?

6 A. Yes, uh-huh.

7 Q. Now, turning to page 4 of the term sheet,  
8 there's a break-up fee of \$21 million. Do you see that?

9 A. Yes.

10:59 10 Q. And that's approximately 3 and a half percent  
11 of the \$603 million offer?

12 A. Right.

13 Q. Do you know if bid procedures have been filed  
14 by the Indenture Trustee in this case?

10:59 15 A. Well, I think the bid procedure is outlined  
16 generally, yes, it would be submitted for court approval.

17 Q. Did you review those bid procedures before they  
18 were filed?

19 A. Yes.

10:59 20 Q. Did you approve them being filed?

21 A. Generally, yes.

22 Q. Okay. Do you know what those bid procedures  
23 say about the break-up fee?

24 A. I would have to go back and take a look at it.

11:00 25 Q. Why don't we do that. I'm going to hand you

1 what's been marked as MMX 72, which is the plan  
2 supplement of the Indenture Trustee.

3 MR. SCHWARTZ: May I approach?

4 Q. (By Mr. Schwartz) Mr. Matthews, are you  
11:00 5 familiar with the document that's been marked as MMX 72?

6 A. I don't see that reference on here, no.

7 Q. I'm sorry?

8 A. MM --

9 Q. Don't worry about it. The document I just  
11:01 10 handed you, are you familiar with that document?

11 A. Let me quickly look at it.

12 Q. Mr. Matthews, if you can speak into the  
13 microphone, they are saying they can't hear you.

14 A. Let me look at it briefly first. Okay.

11:02 15 Q. Did you approve this document before it was  
16 filed by the Indenture Trustee?

17 A. I remember reviewing something like this, yes.

18 Q. Okay. Do you see the page numbers in the upper  
19 right-hand corner?

11:02 20 A. Yes.

21 Q. 1 of 67 and so on. If you would turn to page  
22 35 of 67. Are you there?

23 A. Yes.

24 Q. Do you see that the second page provides -- the  
11:02 25 second paragraph provides for a break-up fee not to

1 exceed 3 percent of the purchase price?

2 A. Yes.

3 Q. Okay. That's lower than the break-fee in the  
4 term sheet, correct?

11:02 5 A. Yes.

6 Q. Do you know if there was any attempt to  
7 negotiate --

8 THE COURT: Did we lose the screen?

9 MR. NEIER: We did, Your Honor. The  
11:03 10 lightbulb, I think, went out because there's no light.

11 THE COURT: Okay. Can we call the -- did  
12 it get turned off or did we just lose it? Okay. So we  
13 can all look at the documents on the screen and we don't  
14 have the big screen, it will be to the detriment of those  
11:03 15 of you who can't see a screen. We have other -- well,  
16 I've got another of those and we will get squared away.

17 MR. PENN: It may have just overheated  
18 slightly.

19 THE COURT: Possible. But I'm open to  
11:03 20 taking a break right now and then -- and maybe we can fix  
21 it in 15 minutes and then come back on the record.

22 MR. SCHWARTZ: I'm fine, Your Honor.

23 (A recess was taken.)

24 THE COURT: Okay. I think we have all the  
11:18 25 parties back in the courtroom. Prior to recess -- and we

1 have the video working, thanks to the outstanding work of  
2 the clerk's office in the Southern District of Texas.

3 It's all working.

4 I guess I mentioned the mediation, and I

11:19 5 probably was remiss in not, first of all, thanking on the  
6 record Judge Isgur for the hard work that he did over the  
7 weekend and getting prepared and doing what he did.

8 Although it wasn't successful, mediations are always  
9 helpful. It might have worked. It didn't work in this

11:19 10 particular case, but perhaps the parties have a better  
11 understanding of all the issues so that the trial will be  
12 more smoothly. But in any event, Judge Isgur did not  
13 have to do that. It was awfully nice of him to agree to

14 do it, and I thank him officially on the record. Go  
11:19 15 ahead.

16 MR. SCHWARTZ: Thank you, Your Honor.

17 Q. (By Mr. Schwartz) Mr. Matthews, when we broke,  
18 we were looking at the plan supplement that was filed

19 that is Exhibit MMX 72 and specifically page 35. Do you  
11:20 20 still have that in front of you? And it's on the screen,  
21 thanks to the fixing of the monitor. Using the numbers  
22 at the top right.

23 A. Yes.

24 Q. Okay. And that provides for a 3 percent

11:20 25 break-up fee, correct, what was filed with the Court --



1 A. Right.

2 Q. -- correct? Now, the bid procedure -- I'm  
3 sorry. The term sheet provides for a break-up fee of  
4 about 3 and a half percent, right?

11:20 5 A. It could be, yes.

6 Q. Okay. Well, 21 -- if it was 3 percent, it  
7 would be about \$18 million, right?

8 A. Right.

9 Q. And the break-up fee in the term sheet is \$21  
11:20 10 million?

11 A. Right.

12 Q. So as it's currently drafted, the term sheet is  
13 inconsistent with what the Indenture Trustee filed with  
14 the Court for bidding procedures on this issue, correct?

11:21 15 A. It's always intended to be subject to Court  
16 approval.

17 Q. Right. But it is -- you proposed a 3 percent  
18 break-up fee, correct?

19 A. Right.

11:21 20 Q. And now Mr. Beal is proposing a 3 and a half  
21 percent break-up fee, correct?

22 A. Right.

23 Q. Are you going to make any efforts to reduce the  
24 break-up fee to be in compliance with what you filed with  
11:21 25 the Court or have you made a decision?

1 A. We have discussed it with our advisors, and  
2 we're still discussing it.

3 Q. So you haven't made a decision yet?

4 A. No.

11:21 5 Q. Now, you mentioned credit bidding earlier, and  
6 I want to touch on that, albeit briefly. Is it your  
7 understanding under the indenture that you are required  
8 as the Indenture Trustee to make a credit bid unless you  
9 receive direction to the contrary from two-thirds of the  
11:21 10 notes?

11 A. Yes.

12 Q. Have you received such direction?

13 A. No, we have not.

14 Q. Have you sought such direction?

11:22 15 A. No, we have not. We think it's premature.

16 Q. So as it currently stands now, if we were to  
17 have a sale, an auction, you would be required to credit  
18 bid?

19 A. Yes.

11:22 20 THE COURT: Credit bid the entire amount  
21 of the note?

22 THE WITNESS: Yes, Your Honor.

23 MR. SCHWARTZ: Yes. Thank you, Your  
24 Honor.

11:22 25 Q. (By Mr. Schwartz) Now, there is discussion in

1 the term sheet, the acquisition agreement. That hasn't  
2 been drafted yet, right?

3 A. The acquisition agreement?

4 Q. Right.

11:22 5 A. Well, it may have been drafted. I have not  
6 seen a copy of it yet.

7 Q. You haven't seen it?

8 A. No.

9 Q. So you don't know one way or the other if it's  
11:22 10 been drafted?

11 A. Not specifically, no. I understand -- I think  
12 attorneys are working on it, but I have not seen  
13 anything.

14 Q. Who's working on it?

11:23 15 A. Well, the bidders' attorneys. Typically in  
16 these you will have a first draft document and you  
17 comment back and forth and you negotiate it down.

18 Q. I want to move to one other topic. Under your  
19 plan, if your plan is confirmed, there is some period of  
11:23 20 time before the sale actually takes place, right? Six,  
21 seven, eight months, whatever it is, right?

22 A. Right.

23 Q. Who's going to operate the property during that  
24 time period?

11:23 25 A. The plan agent will be operating the property

1 with any -- with the retained employees from Scotia. And  
2 then to the extent that he feels it's necessary to hire  
3 some expertise they don't have, they can be brought in,  
4 perhaps outside consultants.

11:23 5 Q. The plan agent --

6 A. The plan agent and the board, an independent  
7 board.

8 Q. But the plan agent doesn't have any experience  
9 operating timberlands, does he?

11:24 10 A. Well, I think Governor Wilson -- I'm not going  
11 to comment on his expertise, but he's been around the  
12 Headwater stuff for a long time. Based on my  
13 understanding, he can get the appropriate people in place  
14 to manage the facility.

11:24 15 Q. So the plan agent may have to hire people?

16 A. Yes.

17 Q. Beyond the people that are currently employed  
18 to operate the timberlands, correct?

19 A. Yes.

11:24 20 Q. And that would be another expense that would  
21 have to be paid prior to the noteholders getting any  
22 money out of the sale proceeds, correct?

23 A. Well, it could be, possibly.

24 Q. Have you or anybody on your behalf done any  
11:24 25 analysis in terms of what the cash flows are projected to

1 be for the company during the time period between  
2 confirmation of the Indenture Trustee plan and the actual  
3 sale?

11:24

4 A. Our advisors have taken a look at the issues,  
5 yes.

6 Q. Do you know what the conclusions, if any, are?

11:25

7 A. Generally I think they believe that after we  
8 cut out the bankruptcy expenses -- I'm sorry to my lawyer  
9 friends -- that they believe initially I think there will  
10 be sufficient cash flow to service the operations until  
11 we can get a sale to close.

12 Q. Okay. Have you seen that analysis?

13 A. No.

14 Q. Do you know if that analysis is complete?

11:25

15 A. I do not know if it's complete. I've asked  
16 questions about it. It's still in process, I believe.

17 Q. Still in the process. And while there may be  
18 no bankruptcy lawyers working on the matter, there will  
19 be plenty of other lawyers working on the acquisition  
20 documents and regulatory approvals and things like that  
21 that have to be paid, right?

11:25

22 A. Yes, there will. But in my experience -- you  
23 know, redwood, this is a unique company. But from a  
24 complexity standpoint, the acquisition transaction is  
25 fairly simple. It's not that difficult. You know, it's

11:25

1 not -- you're not going to see four teams of lawyers  
2 dragging these documents spending four months doing it.  
3 It's just not going to happen. It's going to be fairly  
4 quick.

11:26 5 Q. That might be your opinion. And I think there  
6 are some people in the room that might disagree with  
7 that.

8 THE COURT: Let's not argue with the  
9 witness.

11:26 10 MR. SCHWARTZ: No. I'm almost done.

11 THE COURT: Before you get off that, has  
12 someone given you an opinion that you will have the  
13 ability to operate this business while you wait for the  
14 sale to close?

11:26 15 THE WITNESS: We have not gotten specific  
16 advice, Your Honor, but they believe it's feasible.

17 THE COURT: Go ahead.

18 MR. SCHWARTZ: Thank you, Your Honor.

19 Q. (By Mr. Schwartz) Now, if you credit bid and  
11:26 20 become the owner of the timberlands, who will operate it  
21 for you?

22 A. We go through the same process. We would hire  
23 a consultant to manage the operations who has expertise  
24 in that area.

11:26 25 Q. And have you reached any agreements with any

1 consultants to do that?

2 A. We would very likely look at the various  
3 consultants that's in place under the current plan.

4 Q. My question was whether you've reached an  
5 agreement with any of the consultants.

6 A. No, no.

7 Q. Now, under your plan -- Mr. Hail talked to you  
8 briefly about selling 40 or 50 percent of the timber to  
9 the Palco mill. Do you recall that?

10 A. Yes.

11 Q. Do you know whether that would be sufficient  
12 for the mill to operate profitably?

13 A. I do not know.

14 Q. Have you considered what impact it would have  
15 on Scopac should the mill shut down?

16 A. It would certainly have a transportation  
17 expense impact.

18 Q. So it would have a negative impact from an  
19 expense standpoint?

20 A. Yes.

21 Q. And it would have a negative impact on a  
22 revenue standpoint as well?

23 A. It could, yes.

24 Q. Have you done any analysis of that?

25 A. I think our advisors are looking at it, but I

1 haven't seen any final conclusions.

2 Q. Now, have you considered at all the cost of  
3 basic infrastructure that Scopac lacks right now that it  
4 receives from Palco and how you would obtain that, such  
11:28 5 as human resources, accounting functions, legal  
6 functions, things of that nature?

7 A. No. I understand that it will be necessary to  
8 obtain it, but I have not seen any detail of that.

9 Q. Have you made any decisions about who would  
11:28 10 provide those services?

11 A. Not that I'm aware of.

12 Q. Now, I just want to go back and conclude with,  
13 if I can, with a summary of what I think you said  
14 throughout your testimony today. We have this Beal --

11:28 15 MR. KRUMHOLZ: Your Honor --

16 THE COURT: Sustained. I don't think you  
17 can go back and summarize his testimony. You can do that  
18 in argument, if you like.

19 Q. (By Mr. Schwartz) Let me ask you this way  
11:29 20 then, and then I'll conclude. If the Indenture Trustee  
21 does not accept the term -- the term sheet, then Mr. Beal  
22 actually doesn't have to go forward with his bid,  
23 correct?

24 A. Correct.

11:29 25 Q. And if there's insufficient documentation where



1 you can't agree on documentation, Mr. Beal doesn't have  
2 to go forward with his bid, correct?

3 A. Correct.

4 Q. If the Headwaters litigation is not settled in  
11:29 5 a manner sufficient to satisfy Mr. Beal in his  
6 discretion, Mr. Beal doesn't have to go forward with his  
7 bid, correct?

8 A. Well, I'm not sure that's the impression I got  
9 from Mr. Cherner's testimony, but --

11:29 10 Q. That's what the term sheet says, right?

11 A. He did not really look at that as, I don't  
12 think, a significant impediment.

13 Q. But it does say that in the term sheet,  
14 correct?

11:29 15 A. Correct.

16 Q. And if there is not government approval, then  
17 Mr. Beal does not have to go forward with his bid,  
18 correct?

19 A. Right.

11:29 20 MR. SCHWARTZ: I have no further  
21 questions, Your Honor.

22 THE COURT: The committee.

23 CROSS-EXAMINATION

24 BY MR. LITVAK:

11:30 25 Q. Good morning, Mr. Matthews.

1 A. Good morning.

2 Q. Max Litvak for the trustee estate on behalf of  
3 the official unsecured creditors committee. I just  
4 wanted to ask you a couple more questions about your  
11:30 5 amended proffer. Do you still have that? If you could  
6 go with me to paragraph 9(b).

7 THE COURT: Page 3.

8 MR. LITVAK: Yes, Your Honor.

9 Q. (By Mr. Litvak) And specifically where it  
11:30 10 refers to earmarking \$1.45 million of the proceeds of the  
11 sale of Scopac's assets for the benefit of unsecured  
12 creditors. Do you see that?

13 A. Yes.

14 Q. And then further on down in paragraph 10 you  
11:30 15 say that unsecured creditors will recover more than they  
16 would receive in a Chapter 7 liquidation. You were  
17 previously asked about that. Do you see that?

18 A. Right.

19 Q. Okay. Now I want to -- and I don't know if you  
11:31 20 have this in front of you, but I want to go back to your  
21 original proffer because I think this is another  
22 difference between your amended proffer and the original  
23 proffer. Maybe we can get that up on the screen if you  
24 don't have that.

11:31 25 A. I do not have that.

1 Q. And you can see in paragraph 9(b), this is the  
2 original proffer. Do you see that on the screen,  
3 Mr. Matthews?

4 A. Yes.

11:31 5 Q. Do you see you had a projection there of 100  
6 percent recovery for all of Scopac's unsecured creditors?

7 A. Yes.

8 Q. And that statement is no longer contained in  
9 your amended proffer; is that correct?

11:31 10 A. That is correct.

11 Q. And why did you take that out?

12 A. Because I think when we grouped in some of the  
13 classes for recovery purposes, we could not make that  
14 earlier statement.

11:32 15 Q. And grouping in other classes, you're talking  
16 about contingent claims; is that right?

17 A. Right.

18 Q. And you're talking about intercompany claims?

19 A. Right.

11:32 20 Q. Is that right? And specifically with respect  
21 to contingent claims, you're talking about the claim of  
22 the Pension Benefit Guaranty Corporation; is that right?

23 A. The possible claim, yes.

24 Q. Possible claim. And you're talking about  
11:32 25 possible litigation claims as well, aren't you?

1 A. Possible.

2 Q. Are you aware that there are litigation claims  
3 asserted against Scopac?

4 A. Not specifically.

11:32 5 Q. So you haven't done any analysis of what those  
6 litigation claims may be?

7 A. I mean, our advisors have, but I have not.

8 Q. Do you know what litigants are asserting what  
9 claims against Scopac?

11:32 10 A. No, not specifically.

11 Q. Okay. So you're not aware that there is a \$270  
12 million claim that's asserted against Scopac by Earth  
13 Justice?

14 A. By who?

11:33 15 Q. Earth Justice?

16 A. No, I'm not aware.

17 Q. Are you aware that that claim was allowed for  
18 voting purposes in connection with the Indenture Trustee  
19 plan that was sent out for solicitation purposes to  
11:33 20 creditors?

21 A. I'm not personally aware of it, no.

22 Q. Okay. Let's go a little bit further down in  
23 your original proffer.

24 THE COURT: What was the amount that it  
11:33 25 was allowed at?

1 MR. LITVAK: \$270 million approximately.  
2 Your Honor, it was subsequently objected to by the  
3 debtors, but it had not been objected to as of the record  
4 date, so for voting purposes.

11:33 5 THE COURT: Okay.

6 Q. (By Mr. Litvak) If we can go down to paragraph  
7 10. And here again in your original proffer you're  
8 saying that all unsecured creditors are anticipated to  
9 receive payment in full in cash. And then if you cross  
11:33 10 over to the amended proffer, you're just saying that  
11 unsecureds will receive more than they would receive in a  
12 Chapter 7 liquidation. I presume your answer for the  
13 reason that you changed that would be the same as for  
14 paragraph 9(b)?

11:34 15 A. Yes.

16 Q. Now, the other thing that I noticed about your  
17 plan is that -- the amended plan, is that intercompany  
18 claims to the extent they're allowed. They're not only  
19 sharing in the \$1.45 million that's set aside for  
11:34 20 unsecured creditors, they're also sharing in everything  
21 else that's distributed to unsecured creditors in the  
22 case; isn't that right?

23 A. Yes, I believe so.

24 Q. Okay. So -- and you haven't -- I think you  
11:34 25 testified you haven't evaluated what the amount of those

1 intercompany claims may be?

2 A. No.

3 Q. But you were asked previously that the debtors  
4 had estimated that they were in the range of \$2 million  
11:34 5 or so, right?

6 A. I recall that, yes.

7 Q. Wouldn't that have a diluted effect on the  
8 bondholder deficiency claim? That is, to have  
9 intercompany claims sharing in distributions that would  
11:35 10 otherwise have gone to bondholders?

11 A. Yes.

12 Q. Okay. And that wasn't something that you had  
13 in the prior version of your plan that was sent out to  
14 creditors for both, right?

11:35 15 A. Right. I recall that, yes.

16 Q. Okay. And with respect to your prior plan, as  
17 to contingent claims, they shared in everything that was  
18 left over, other than the \$1.45 million, to the extent  
19 that those contingent claims were allowed as of the  
11:35 20 effective date of your prior plan. Do you recall that?

21 A. Not specifically, but it's possible, yes.

22 Q. Okay. I'm hoping that we can pull up the plan  
23 that was filed by the noteholders on March 4th. And if  
24 we can go to Section 5.4. And hopefully, Mr. Matthews,  
11:36 25 this will pop up on your screen as well.

1           So this is the agreement of contingent  
2 unsecured claims in your prior plan. I think this is the  
3 version that was sent out to creditors. And you'll see  
4 that it says each -- and I'm skipping down three or four  
11:36 5 lines. "Each holder of an allowed class for contingent  
6 unsecured claims that is prior to the effective date  
7 determined to be no longer contingent shall receive," and  
8 then it goes through what those claimants would receive.  
9 Do you see that, Mr. Matthews?

11:36 10           A. Yes, uh-huh.

11           Q. And under your prior plan, contingent claimants  
12 did not share in the \$1.45 million pot, right?

13           A. Yes.

14           Q. Now if we go to your amended plan that was just  
11:37 15 submitted yesterday. And, again, Section 5.4, and it's  
16 page 21 of 52.

17                           THE COURT: 21 of 67.

18           Q. (By Mr. Litvak) Okay. Now, do you see that,  
19 Mr. Matthews? It should be on your screen as well.

11:37 20 Treatment of class 4. And now you're saying those claims  
21 are determined by the bankruptcy court to be no longer  
22 contingent, then they'll be treated just like class 3.  
23 In other words, they'll share in the \$1.45 million pot  
24 and everything else that's distributed, right?

11:37 25           A. Yes.

1 Q. There's no limitation there as to the effective  
2 date of the plan?

3 A. No.

4 Q. Okay.

11:37 5 A. 54?

6 Q. Yes, sir. Is that your answer, no?

7 A. No.

8 Q. Okay. So it could be under your revised plan  
9 that you have contingent claims such as the pension claim  
10 that's determined months down the road if that's allowed  
11 under your amended plan, that would dilute recoveries to  
12 the bondholder deficiency class, right? The bondholder  
13 deficiency claims would be diluted if the pension claims  
14 are allowed after the effective date under your amended  
15 plan?

11:38

16 A. It could, yes.

17 Q. Okay. And isn't that potentially worse for  
18 bondholders than your prior plan? Because under the  
19 prior plan, those claims had to be decided and allowed by  
20 the effective date?

11:38

21 A. Well, I'm not sure. From the standpoint that  
22 we can get a true market test and a real bidding process  
23 going, I think our bondholders will be better off in the  
24 long run.

11:39

25 Q. Well, I'm only talking about the deficiency



1 claims of the bondholders, if any. Assuming that there  
2 is a deficiency claim because through your bidding  
3 process the bids do not come in high enough to pay off  
4 those claims in full, there would be a deficiency claim  
11:39 5 for the bondholders, right?

6 A. Yes.

7 Q. And that deficiency claim would share in the  
8 distributions that are otherwise -- other assets of the  
9 estate and what have you, they would share with other  
11:39 10 unsecureds, right?

11 A. Yes.

12 Q. And now those other unsecureds may include the  
13 pension plan whenever it's allowed?

14 A. Yes.

11:39 15 Q. Okay. And just so I'm clear on the  
16 intercompany, that next section down, 5.5, says the  
17 holders of intercompany claims to the extent they're  
18 allowed, they will be treated just like the contingent  
19 claimants and just like class 3. They will also share in  
11:39 20 the \$1.45 million --

21 A. Yes.

22 Q. -- and everything else, right?

23 A. Yes.

24 Q. Now, if we can go back to your prior plan. And  
11:40 25 you can see Section 5.5. Why don't you take a moment to

1 read that section, Mr. Matthews. Just let me know when  
2 you're done.

3 A. Okay.

4 Q. Now, my reading of that is intercompany  
11:40 5 claimants, even if allowed under your prior plan, they  
6 never share in any of the distributions that would  
7 otherwise go to other unsecured creditors, other  
8 contingent claimants or noteholder deficiency; is that  
9 right?

11:40 10 A. Yes.

11 Q. So in the waterfall, they would not be paid  
12 until all other unsecureds got paid, including the  
13 bondholder deficiency, right?

14 A. Correct.

11:41 15 Q. Okay. But now under your amended plan, which  
16 we just looked at, they would share, along with other  
17 unsecureds and along with specifically a bondholder  
18 deficiency?

19 A. Yes.

11:41 20 MR. LITVAK: Thank you, Your Honor.  
21 That's it.

22 Q. (By Mr. Litvak) Oh, I'm sorry. One other  
23 question. I just missed this in my notes. I apologize.

24 And that is, in formulating your new treatment  
11:41 25 in the amended plan of unsecured creditors, what

1 approvals did you get in terms of actually formulating  
2 that and filing it in the form of an amended plan,  
3 specifically with reference to the treatment of unsecured  
4 creditors? Did you go out to noteholders and get their  
5 approval?

11:41

6 A. The -- we did not get specific approval,  
7 although our noteholders are aware of what we intend to  
8 do when we make plan changes.

9 Q. All of the noteholders are aware or just the  
10 steering committee?

11:41

11 A. The steering committee, the people that  
12 participate in the steering committee.

13 Q. So you did not go out to the noteholders  
14 generally --

11:42

15 A. No.

16 Q. -- and ask them about this new treatment of  
17 unsecured creditor?

18 A. No. The large noteholder group was aware of  
19 it.

11:42

20 Q. And they authorized you to file the amended  
21 plan?

22 A. Yes, yes.

23 MR. LITVAK: Thank you.

24 THE COURT: We have the noteholders. All  
25 right. Bank of America.

11:42

1 CROSS-EXAMINATION

2 BY MR. JONES:

3 Q. Good morning, Mr. Matthews. My name is Evan  
4 Jones. I'm a lawyer for Bank of America.

11:42 5 A. Good morning.

6 Q. We'd certainly like to thank you for watching  
7 out for our interest also. Mr. Matthews, I gather you've  
8 read the transcript of Mr. Cherner's testimony when he  
9 was here before; is that correct?

11:42 10 A. That's correct.

11 Q. And it's your understanding that he agreed to  
12 make certain changes or fixes to the Scotia Redwoods  
13 Foundation bid in response to that examination?

14 A. I believe so, yes.

11:43 15 Q. Sir, one of the changes, I believe, he agreed  
16 to make was to make clear that the bid would not be  
17 contingent -- or let me put that affirmatively -- that  
18 the bid would close over the objection of parties who are  
19 unhappy so long as there were appropriate findings of  
11:43 20 good faith in the record. Do you recall that discussion  
21 from the transcript?

22 A. Not specifically, no, sir.

23 Q. Do you know if that change was made to the bid  
24 document that you received last night?

11:43 25 A. Not specifically, no, sir.

1 Q. Let me ask a general question. In  
2 connection -- I assume you wanted to see the changes he  
3 agreed to make made to the bid document; is that fair?

4 A. Yes. I think he was trying to be very  
5 accommodating.

6 Q. And you wanted to see those changes made?

7 A. Yes.

8 Q. Did you direct someone to go through the bid  
9 document and make sure that the changes were, in fact,  
10 made that he agreed to?

11 A. I think our advisors generally take on that  
12 responsibility, our attorneys, to try to get those  
13 changes made, yes.

14 Q. Did you direct them to?

15 A. Specifically direct them to, no. They've got  
16 authority to do that.

17 Q. So you didn't ask them to do it, but you  
18 assumed they did?

19 A. Right.

20 Q. Did they ever report to you if they had done  
21 that?

22 A. Made the change-out?

23 Q. Yes, sir.

24 MR. KRUMHOLZ: Your Honor, it is  
25 privileged communications between lawyer and the client.

1 MR. JONES: Your Honor, it's not  
2 privileged. One of the problems we have here, Counsel  
3 seems to think that every conversation with an attorney  
4 is privileged. It's only privileged if it's legal advice  
11:44 5 and is confidential. Checking a document to see if  
6 changes have been made is not legal work. If you send a  
7 lawyer to do business work, that's not privileged. I  
8 certainly don't think the witness would suggest that it's  
9 confidential if his lawyers told him whether changes in a  
11:44 10 public document that we don't even have a red line on at  
11 this point were made or not.

12 MR. KRUMHOLZ: I'll admit that --

13 THE COURT: That's a legitimate question,  
14 so go ahead, it's overruled.

11:45 15 Q. (By Mr. Jones) Do you have a question, sir?

16 A. Could you repeat the question?

17 Q. Sure. Did they tell you whether the changes  
18 that Mr. Cherner had agreed to had been made in the  
19 document?

11:45 20 A. I think they said changes were made. Now,  
21 whether or not it was all the changes, I'm not sure.

22 Q. Okay. So no one ever told you whether all the  
23 changes Mr. Cherner said he had made were made?

24 A. Right.

11:45 25 Q. You haven't checked that?

1 A. Right.

2 Q. Okay. Mr. Matthews, one other question. Last  
3 night you filed an amended plan of reorganization. And  
4 I've gotten the hard copy. Mr. Greendyke has told me  
11:45 5 he'll get me a red line as soon as he can, so I'm sure he  
6 will. But it's a real simple question. Are you aware of  
7 any changes to the treatment of the B of A creditors  
8 under that amended plan?

9 A. I don't recall specifically.

11:45 10 MR. JONES: Thank you, sir. Your Honor, I  
11 have no further questions.

12 THE COURT: All right. Anyone else in the  
13 jury box? What about the Debtor?

14 MR. LAMB: Yes, Your Honor.

11:46 15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. LAMB:

18 Q. Mr. Matthews, I'm George Lamb, attorney for the  
19 Pacific Lumber Company. The first thing I'd like to talk  
11:46 20 to you about are Scopac's claims in the Headwaters  
21 litigation. Under the first amended plan that has been  
22 submitted, those claims go into a litigation trust,  
23 correct?

24 A. That's correct.

11:46 25 Q. Has there been any discussion about who the

1 trustee of that trust would be?

2 A. I'm not aware of any specific decision reached.

3 I think, you know, we obviously try to meet some of the  
4 potential conflict issues that someone raised, needing to

11:47 5 make it separate from the plan agent, but I'm not aware  
6 that we have decided on a specific person or entity for  
7 the specific plan agent.

8 Q. Do you expect that it will be someone  
9 independent of whoever is the successful bidder for the  
11:47 10 timberlands?

11 A. Yes.

12 Q. And you would expect that person, even after  
13 the timberlands are sold under your plan, to vigorously  
14 pursue the Headwaters litigation to maximize their  
11:47 15 recovery for that litigation?

16 A. I would think so, yes.

17 Q. The term sheet from Scotia Redwood Foundation  
18 in the excluded asset section on page 2 still seems to  
19 contemplate that the Headwaters litigation is going to be  
11:47 20 settled before the acquisition under this term sheet is  
21 closed. Do you see the language I'm talking about there?

22 A. Could you specifically say which?

23 Q. Yeah. On page 2 under excluded assets.

24 A. I'm sorry. Hold on. Okay.

11:48 25 Q. It talks about the Headwaters litigation being



1 an excluded asset, then it goes on to say "which shall  
2 either be dismissed with prejudice or resolved, settled  
3 in a manner acceptable to buyer."

4 A. Yes.

11:48 5 Q. Is there any way that that settlement could  
6 possibly happen before closing, given that the new plan  
7 puts that litigation into a trust?

8 A. I'm not sure I could give you a probability on  
9 it. Possible, yes.

11:48 10 Q. Has anybody asked Scotia Redwood Foundation to  
11 remove this condition from their term sheet?

12 A. Not yet.

13 Q. Do you expect that to happen?

14 A. Frankly, I haven't had time to really sit down  
11:49 15 with our advisors to address the issue.

16 Q. The second topic is the treatment of employee  
17 benefits under your plan. What is your understanding of  
18 what happens to Scopac's employees' benefits?

19 A. I think under the bidding process they would  
11:49 20 generally be rejected.

21 Q. They're all rejected. How much money are you  
22 saving for the post confirmation debtor by doing that?

23 A. I don't know. Our advisors do, but I don't  
24 know specifically.

11:49 25 Q. Has there been an analysis of what you're

1 saving by rejecting all of the employee benefits?

2 A. Yes, I believe so.

3 Q. You just don't know that number?

4 A. I don't know the number, no, sir.

11:49 5 Q. Have you given any consideration as to the  
6 likelihood that Scopac continues to operate smoothly with  
7 its current employees between now and the time that your  
8 proposed transaction is consummated when you have  
9 rejected all their benefits?

11:50 10 A. I think it would be a challenge.

11 Q. And do you have a plan to address that  
12 challenge?

13 A. We would be in discussions, I think, with the  
14 plan agent and our advisors to ensure that one was  
11:50 15 prepared.

16 Q. Any consideration being given to restoring  
17 those benefits so you don't have that challenge anymore?

18 A. I'm not aware of it. But I think most of the  
19 parties to this transaction, both from the bidding side  
11:50 20 and the trustee side, have all been fairly flexible in  
21 trying to accommodate folks.

22 Q. So there's still some room to negotiate and  
23 change in the treatment of the employees' benefits?

24 A. Well, yeah, I think we're open to addressing  
11:51 25 concerns, yes.

1 Q. The final topic I have is -- concerns the sale  
2 of the timberlands and MMCAs. As I understand it, you're  
3 proposing to do that by auction, correct?

4 A. Yes, sir.

11:51 5 Q. And you've separated out the commercial  
6 timberlands from the MMCAs?

7 A. Right.

8 Q. A bidder would have to submit a bid, separate  
9 bids, for the commercial timberland and a separate bid  
11:51 10 for the MMCAs?

11 A. They could, I guess, be one bid, but, you know,  
12 they have two values.

13 Q. They've got to break out and assign a value to  
14 each one?

11:51 15 A. Yes.

16 THE COURT: Is the Beal bid for all of  
17 that? Or is the Beal bid just for the commercial  
18 timberlands?

19 MR. LAMB: That's where I'm going.

11:51 20 Q. (By Mr. Lamb) The Beal bid doesn't break out  
21 the commercial timberlands and the MMCAs, does it?

22 A. Right. Lock, stock and barrel.

23 Q. Do you know how the Beal bid apportions between  
24 commercial timberlands and MMCAs?

11:52 25 A. No, sir, I do not.

1 Q. Has anyone asked Scotia Redwood Foundation to  
2 submit a bid that would comply with your new auction  
3 procedures and break out the bid into two numbers?

4 A. I'm not aware of such a request.

11:52 5 Q. Do you think that needs to be done to make it a  
6 real stalking horse bid to comply with the new bid  
7 procedures?

8 A. I think it's worth bringing up to our attorneys  
9 and discussing it.

11:52 10 Q. Who designed the new bid procedures?

11 A. I'm sorry, could you repeat the question?

12 Q. Who designed the new auction process that's  
13 Exhibit B to your new plan?

14 A. Outside of -- well, our advisors, but who  
11:53 15 specifically, I'm not sure.

16 Q. Did Houlihan do it?

17 A. Again, I'm not sure.

18 Q. Houlihan is given a responsibility for  
19 executing the auction, correct?

11:53 20 A. Yes.

21 Q. And that's the same Houlihan that was the  
22 consultant to the noteholders before they were consultant  
23 to the Indenture Trustee, correct?

24 A. Well, it's the same firm, to my understanding,  
11:53 25 yes.

1 Q. Have you given any consideration to hiring  
2 someone to run the auction independent of an entity  
3 associated with the Indenture Trustee and the  
4 noteholders?

11:53 5 A. Not yet.

6 MR. LAMB: Thank you, Your Honor.

7 THE COURT: Any other debtor?

8 MR. DOREN: No, Your Honor.

9 MR. JONES: Your Honor, I'm sorry. I  
11:53 10 actually have one more question, having been given the  
11 red line, if I may.

12 THE COURT: Go ahead. Would someone  
13 remind me. The voting on the timber noteholders plan,  
14 what did the unsecured creditors class do, Mr. Greendyke?

11:54 15 MR. GREENDYKE: The unsecured creditors  
16 overwhelmingly voted against our plan in favor of the  
17 Marathon plan. The only class that voted for our plan  
18 was the timber noteholders.

19 MR. JONES: And Bank of America. I  
11:54 20 apologize, Your Honor, we didn't vote on that.

21 CROSS-EXAMINATION

22 BY MR. JONES:

23 Q. Evan Jones for Bank of America. Mr. Matthews,  
24 a question for you on the revised plan. In Section 7.1,  
11:54 25 there's a provision that's been added that says that "the

1 post confirmation debtors operations will be funded by  
2 the post confirmation debtors cash on hand, including  
3 cash in the SAR account and from cash generated by its  
4 timber operations."

11:55 5 Am I correct in understanding that that  
6 provision isn't intended to excuse the post confirmation  
7 debtor from making an appropriate cash collateral motion  
8 to use the SAR account and other cash?

9 A. I'm sorry. Could you -- which document are you  
11:55 10 looking at?

11 Q. Maybe I can break it down.

12 A. Which document?

13 Q. At present, is it your understanding that if  
14 the debtor wants to use cash collateral, including the  
11:55 15 SAR account, it has to file an appropriate motion with  
16 the Court or get an appropriate stipulation of the  
17 parties?

18 A. At present, yes.

19 Q. And you've added a provision to your plan  
11:55 20 saying that the post confirmation debtor will be funded  
21 from those sources. Is it your intention that the post  
22 confirmation debtor or perhaps the plan agent would still  
23 have to get an order from the Court authorizing him to  
24 use that cash collateral prior to the sale?

11:56 25 A. I don't know. I'd have to consult with our

1 attorneys.

2 MR. JONES: Thank you, Your Honor. I have  
3 no further questions.

4 THE COURT: All right. Anyone else now on  
11:56 5 cross? All right. Redirect.

6 REDIRECT EXAMINATION

7 BY MR. KRUMHOLZ:

8 Q. Mr. Matthews, I only have a few questions,  
9 actually. Mr. Hail discussed with you efforts made by  
11:56 10 Houlihan Lokey in connection with trying to find a buyer  
11 for the timberlands. Do you recall that generally?

12 A. Yes.

13 Q. Do you consider that a market test or check?

14 A. No, it's not a market test or check.

11:56 15 Q. Why not?

16 A. It's an effort to drum up interest and get  
17 people to the dinner table. It's not -- it's not a  
18 market test by drumming up interest. We're trying to get  
19 a process going. We've got a bid, valid bid, in place,  
11:56 20 and we think more interest is going to be generated.

21 It's our understanding another bidder may be coming in.

22 Bidder B monitoring court proceedings this week.

23 Possible another investor in the mill may be coming in.

24 So this has really kind of whetted the appetite, and we

11:57 25 hope to get the process running quickly.

1 Q. When that was going on, was there any type of  
2 bankruptcy court approval for that process, removing any  
3 cloud of uncertainty as to what might be purchased?

4 A. Removing the cloud of uncertainty always  
11:57 5 encourages folks to come out of the woodwork.

6 Q. And had that happened in connection with these  
7 efforts by Houlihan Lokey?

8 A. No. There's still a cloud probably chilling  
9 efforts.

11:57 10 Q. Now, why is it important to have a market  
11 check, in your mind?

12 A. The noteholders from day one are absolutely  
13 certain. I agree with them you need a market test to  
14 really come up with a true value for these properties.

11:58 15 The market test is not, like the Marathon plan, two guys  
16 cutting a deal and assigning a value. A market test is  
17 what someone wants to pay. And hopefully you can get  
18 some more people out of the woodwork and pay a higher  
19 fee, ensure a higher recovery.

11:58 20 Q. Now, Marathon and MRC have come in here and  
21 obviously complained about this auction process, but  
22 could they actually participate in this auction?

23 A. Absolutely. Bring an open checkbook.

24 Q. If they feel like that they want to buy this  
11:58 25 property for a fair market value, can they do so under



1 this auction process?

2 A. Absolutely.

3 Q. Are they welcome to do so?

4 A. Absolutely.

11:58 5 Q. Do you believe the Beal offer is a real offer?

6 A. Yes, it's a very real offer.

7 Q. Is it clean, in your mind, as compared to other  
8 transactions of this nature in your line of business?

9 A. This has some unusual aspects to it. And yes,  
11:58 10 there are a few things to jump through, but from a  
11 complexity standpoint, this is a fairly clean -- I won't  
12 say anything about Scotia is simple, but from a  
13 complexity standpoint, I have seen a lot more complicated  
14 deals that require a lot more effort to get done. This  
11:59 15 can be done in a fairly short time frame. The documents  
16 are fairly easy to put together.

17 Q. Are you concerned about -- there's been some  
18 talk in this courtroom and testimony, I guess, questions  
19 about whether an asset purchase agreement is going to be  
11:59 20 some sort of obstacle here. What are your views on that?

21 A. No. I think it's an issue, but I don't think  
22 it's an obstacle, no. I think that will be one of the  
23 probably easiest things to get accomplished.

24 Q. Now, there was also a question about why you  
11:59 25 haven't gotten approval or acceptance by the noteholders

1 of the Beal bid. Do you recall that testimony generally  
2 or those questions?

3 A. Yes.

4 Q. Why haven't you done that yet?

11:59 5 A. Well, we think it's premature. Now that we've  
6 kind of gotten far enough along in the auction -- in the  
7 bankruptcy process, the cloud has lifted a little bit and  
8 we're seeing some interest. We're seeing some people  
9 show up that all of a sudden in the past have wanted to  
12:00 10 hang in the background. Now they're kind of willing to  
11 walk out in the sunshine.

12 Q. In your mind, is there a possibility there  
13 could be a better stalking horse bid out there once the  
14 auction begins?

12:00 15 A. Oh, I absolutely hope so.

16 Q. And speaking of that, how do you view the \$603  
17 million bid in terms of valuation-wise?

18 A. Well --

19 MR. SCHWARTZ: Objection, Your Honor, he's  
12:00 20 not an expert.

21 THE COURT: Sustained.

22 Q. (By Mr. Krumholz) I'll rephrase. What's your  
23 hope with respect to this \$603 million offer going  
24 forward in this auction? And realistic hope here. I  
12:00 25 mean, what's the basis for you thinking we need to go

1 forward with this auction? Do you feel like this \$603  
2 million is going to be a floor? Do you think it's going  
3 to be a ceiling? What's your thought process there?

4 A. I think it's a floor. I believe it's a floor.

12:01 5 MR. SCHWARTZ: Objection, Your Honor,  
6 leading.

7 MR. KRUMHOLZ: You know, Mr. Dean --

8 THE COURT: Well, I think --

9 MR. KRUMHOLZ: -- testified about a  
12:01 10 hundred opinions. And for him to say he thinks it's a  
11 floor is not particularly intrusive of an opinion.

12 MR. SCHWARTZ: I think it's just total  
13 speculation.

14 MR. KRUMHOLZ: So is Mr. Dean.

12:01 15 THE COURT: I think the question has been  
16 asked and answered and I'm not going to strike the  
17 question, so go ahead.

18 Q. (By Mr. Krumholz) Now, you testified earlier  
19 about a Houlihan Lokey fee in connection with services of  
12:01 20 a sales agent. Do you recall that?

21 A. Yes.

22 Q. Have you been a party to those discussions  
23 recently?

24 A. Not directly, but I'm aware of it.

12:01 25 Q. What is your understanding of the general range

1 of the fee in that regard?

2 A. Well, I may have misspoke earlier. It's not 3  
3 percent, more like \$2 million. The breakage fee in the  
4 debt agreement is closer to 3 percent.

12:01 5 Q. And speaking of the break-up fee that  
6 Mr. Schwartz talked to you about, who pays the break-up  
7 fee?

8 A. The noteholders.

9 Q. The estate doesn't do so?

12:02 10 A. No.

11 Q. And what's the purpose there?

12 A. Well, the noteholders, that's really the price  
13 they pay to get what they think is a true market value  
14 test in process.

12:02 15 Q. You've been asked about governmental approvals  
16 for a plan or for a buyer to take title. Are you  
17 concerned about the Beal bid gaining those approvals?

18 A. No, I'm not concerned about that.

19 Q. And why is that?

12:02 20 A. Well, because I think they understand the  
21 importance of the -- all the -- I guess the environmental  
22 regulatory structure. They understand the problems that  
23 the debtors have had with this. Mr. Cherner in his  
24 testimony said this is an issue he wants to put behind  
12:02 25 him. I anticipate clearly -- and I think all the

1 noteholders have been involved in this much longer than  
2 we have as an Indenture Trustee -- all of them want this  
3 put behind them. So it's hard to imagine a scenario  
4 where we don't have everybody literally rowing the boat  
5 in the same direction.

12:03

6 MR. KRUMHOLZ: Pass the witness, Your  
7 Honor.

8 THE COURT: Am I to understand you just  
9 said that the break-up in the event that you credit bid  
10 the entire -- whatever. Say you credit bid the entire  
11 amount of the note, you have to do that; isn't that  
12 correct? If you accept the Beal bid, you have to -- you  
13 have to bid the entire amounts of the notes at the  
14 auction; isn't that correct?

12:03

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Unless you have instruction  
17 from two-thirds to do something else?

18 THE WITNESS: That's right, Your Honor.

19 THE COURT: So if that happens, then  
20 somebody has to pay. The noteholders bought the property  
21 for the value of their notes, correct?

12:03

22 THE WITNESS: Yes.

23 THE COURT: They get a credit for the  
24 value of their note. And they agree to pay the break-up  
25 fee to Beal Bank?

12:03

1 THE WITNESS: It would come out of their  
2 pockets.

3 THE COURT: Out of their what?

12:03

4 THE WITNESS: It would come out of their  
5 ultimate proceeds.

6 THE COURT: What proceeds? They're credit  
7 bidding. They're not giving anything other than their  
8 bonds.

12:04

9 THE WITNESS: We're credit bidding.  
10 Depending on cash flow, I'm not sure there would be  
11 enough there immediately to pay them, but at some point.

12:04

12 THE COURT: It's coming out of -- in other  
13 words, there's not some -- what did we do? Did it fall  
14 down or something? Yeah, just set her up. There's not  
15 some provision in the plan that provides that the  
16 noteholders have to come up with money to pay the  
17 break-up fee separate from money out of the estate?

18 THE WITNESS: I don't recall, Your Honor.

12:04

19 MR. GREENDYKE: Judge, this is not my  
20 witness, but as an officer of the court, I'd like to help  
21 you. It's in the term sheet. The term sheet that was  
22 submitted by the Scotia Redwood Foundation provides an  
23 equity type of bid, which would be a credit bid. The  
24 break-up fee would be paid in cash. It would have to

12:05

25 come from the people who are making the equity bid.

1 THE COURT: So the equity bid, if you  
2 bid -- in other words, if Beal Bank doesn't vote to stop  
3 you from credit bidding, you've got to credit bid; isn't  
4 that correct?

12:05 5 THE WITNESS: Yes, sir.

6 THE COURT: There's no provision in the  
7 indenture agreement that says that if there's a conflict  
8 of interest a bondholder doesn't bid and then two-thirds  
9 of the remainder control?

12:05 10 THE WITNESS: Correct, Your Honor.

11 MR. KRUMHOLZ: Your Honor, the Beal -- or  
12 rather Scotia Redwood already committed to vote not to  
13 credit bid above \$603 million in the term sheet.

14 THE COURT: Well, let me ask that then.  
12:05 15 Do you have an agreement with Beal Bank or the Beal  
16 entities that they will vote their shares or their bonds  
17 to not require you to credit bid?

18 THE WITNESS: Well, we've got the current  
19 bid sheet, which we have not accepted yet, but they --

12:06 20 THE COURT: And it says that they will not  
21 vote to require -- in other words, they automatically  
22 vote to allow you to do something less than credit bid  
23 the entire amount? There are two separate things. To  
24 bid less than the full amount of the bond, you've got to  
12:06 25 have two-thirds of your bondholders, correct?

1 THE WITNESS: Right.

2 THE COURT: Otherwise, you must bid that?

3 THE WITNESS: Yes, sir.

4 THE COURT: And then in order to bid less

12:06 5 than the total amount for any specific bid, you've got to  
6 have two-thirds?

7 THE WITNESS: Yes.

8 THE COURT: Isn't that correct?

9 THE WITNESS: Yes, Your Honor.

12:06 10 THE COURT: Now, do you have any  
11 agreement -- what does it say?

12 MR. KRUMHOLZ: It's in the acquisition  
13 agreement. "Buyer will agree, so long as the acquisition  
14 agreement remains in effect to instruct the Indenture  
15 Trustee not to credit bid an amount in excess of cash  
12:07 16 consideration of \$603 million and not to assign or  
17 transfer any of its timber notes."

18 THE COURT: It agrees not to -- it agrees  
19 to instruct them not to credit bid an amount in excess.

12:07 20 So if you accept this, you cannot credit bid; is that  
21 correct?

22 MR. SCHWARTZ: Your Honor, that's not  
23 correct. Just so we're clear, what that provides is that  
24 Beal won't make the instruction. But he needs that  
12:07 25 instruction from two-thirds. And Beal, I think the



1 testimony is, has 38 percent. So he would have to get  
2 the instruction from another whatever, 25 percent, of the  
3 noteholders; otherwise, he will have to credit bid.

12:07 4 MR. KRUMHOLZ: And, Your Honor, just to be  
5 clear, that's why we asked the question: Why haven't you  
6 gotten acceptance of the Beal bid? And he said it's  
7 premature until he knew which stalking horse it's going  
8 to be and it's going to be pretty profitable, or there's  
9 a good possibility it will be so.

12:08 10 THE COURT: I'm not sure. We'll talk  
11 about this when this person has gotten off.

12 MR. JONES: Your Honor, I'm sorry, I have  
13 a follow-up question based on a subject that was raised.  
14 And I think Your Honor had some confusion or  
12:08 15 Mr. Greendyke may.

16 THE COURT: What's that?

17 MR. JONES: The question of whether the  
18 break-up fee gets paid from. The document says it will  
19 be paid in cash directly to the buyer by the bidder, but  
12:08 20 then it goes on to say it is a super priority claim  
21 against the estate. So it sounds like it's a claim  
22 against the estate, Your Honor.

23 THE COURT: Okay. All right. I have no  
24 further questions. You can step down. Okay. I guess it  
12:08 25 seems as though -- now, help me out here since you-all

1 are --

2 MR. KRUMHOLZ: Your Honor, there's been  
3 some discussion about order of witnesses. And I know  
4 that Marathon had kind of passed in terms of their case  
12:09 5 in chief reserving the right to call other witnesses.  
6 We're going to do the same.

7 We're trying to work out an agreement  
8 about how we might do that efficiently; for example,  
9 through deposition or otherwise. So at this time, I'd  
12:09 10 like to allow the debtors to go ahead and begin their  
11 case in chief, with the understanding that we're  
12 reserving our right to call a witness.

13 THE COURT: Help me with this, though. I  
14 think you're the litigator. So maybe if you want to be  
12:09 15 the bankruptcy guy, you can. But otherwise -- they've  
16 got several of them here. Isn't it true that claimants,  
17 unsecured claimants for certain, just general unsecureds,  
18 the claim is being watered down by the amended plan that  
19 was filed last night.

12:09 20 We can argue about whether or not the  
21 pension plan contingent claim is worth anything and so,  
22 therefore, it's not really watering it down. But there  
23 are intercompany claims that are certainly watering down  
24 to 1.45 that they would get; is that correct?

12:09 25 MR. GREENDYKE: Your Honor, this is Bill

1 Greendyke for the Indenture Trustee. That is correct.

2 THE COURT: So that's not an insignificant  
3 change to the plan that just -- I mean, why would we not  
4 have to renotice and revote the plan? Because they have  
12:10 5 already voted against it?

6 MR. GREENDYKE: Yes, sir, exactly.

7 THE COURT: So you're saying that there's  
8 a principle that you don't have to revote or renotice a  
9 plan as long as the provisions treat the parties that  
12:10 10 works --

11 MR. GREENDYKE: They already voted against  
12 us. We already have to cram them down.

13 THE COURT: So you could go out -- under  
14 that theory, you could go out and solicit votes, and then  
12:10 15 when you find a class didn't vote in your favor, now you  
16 can really screw them and change the plan?

17 MR. GREENDYKE: I suppose you could find  
18 somebody with that kind of attitude.

19 THE COURT: I know. I'm not suggesting  
12:10 20 you did that. This is not a question that --

21 MR. GREENDYKE: Can I explain?

22 THE COURT: This is more of a question of  
23 did you inadvertently change the plan in a way that we  
24 now have to renotice it and revote it?

12:11 25 MR. GREENDYKE: We deliberately tried not

1 to have to renote the plan. The reason why the  
2 amendments were made were to cure objections that were  
3 made by the Pension Benefit Guaranty Corporation. You  
4 recall their lawyer at the last hearing announced he had  
12:11 5 withdrawn his objection. We had to deal with those  
6 claims. We also received objections from lots of folks,  
7 proponents or otherwise, that we had unfairly  
8 discriminated against certain classes.

9 Now there's no longer that type of  
12:11 10 objection because all the unsecured creditors are treated  
11 fairly, equally, equivalently.

12 THE COURT: Okay. Well, that issue is one  
13 we'll have to perhaps talk about. I'm not suggesting  
14 that you have done what I said you did in the first  
12:11 15 place, which is -- I mean, you know, I'm not suggesting  
16 that. I'm just suggesting that if there is a general  
17 rule that you can change a plan as long as your only --  
18 if somebody has voted against a plan, you can change  
19 their treatment as long as -- as long as you don't do  
12:11 20 anything to the people that voted for your plan, but you  
21 make it worse for those who voted against it, then that's  
22 okay.

23 MR. GREENDYKE: Correct.

24 THE COURT: Is that some generally  
12:12 25 accepted bankruptcy principle that I'm not aware of? I

1 mean, I'm not familiar with that. There may be cases  
2 that say that.

3 MR. GREENDYKE: What would be the purpose  
4 of resolicitation if we already have to cram them down?

12:12 5 They've already voted against our plan. And the  
6 treatment has changed to the negative slightly. I mean,  
7 they would not vote for our plan at this point. They  
8 already haven't voted for our plan. They are treated  
9 equivalently with all our similarly classified or  
12:12 10 similarly characterized creditors. I mean, I think it  
11 meets all the standards of cram down standards. That's  
12 the argument.

13 THE COURT: Okay.

14 MR. LITVAK: Your Honor, I guess one final  
12:12 15 point, and that is, we obviously don't agree with that,  
16 but we still need to take a look at it. We just got  
17 their amended plan last night around midnight. But the  
18 point that I was trying to make with the cross as well  
19 was that the amended plan treats their own constituency  
12:12 20 worse. And it's their constituency that voted in favor  
21 of the plan. It's the bondholder deficiency claims that  
22 now has to be -- that potentially will be diluted by  
23 intercompany claims, contingent claims, litigation  
24 claims, pension claims.

12:13 25 THE COURT: And you don't represent all

1 the bondholders. You don't have a commitment from all  
2 the bondholders that this change -- they waived any  
3 provision of this change?

12:13

4 MR. GREENDYKE: I am not sure to what  
5 extent that I can represent -- I know we don't represent  
6 100 percent of the bondholders, we can't. We represent a  
7 huge, a huge percentage.

12:13

8 THE COURT: I think it's fair that the  
9 parties be given the opportunity to review the plan.  
10 This is just a legal issue. This is not -- I mean, it's  
11 a legal issue that might delay consideration of this  
12 plan. It's purely dilatory. I mean, nobody really  
13 believes anybody is going to vote differently. But --

12:13

14 but I don't know. Is it a technicality that can be dealt  
15 with or not? You say it is, that this is not a change  
16 that affects anything.

17 Okay. Well, I'm going to let people argue  
18 about this at a later time after they have reviewed it.

12:14

19 MR. NEIER: Your Honor, I think there's  
20 one more concern. David Neier on behalf of Marathon.  
21 There's one more concern, I think, that we noticed right  
22 away, which 1129(A)13 requires the assumption of all  
23 benefit plans, 401(k) plans, and all employee benefit  
24 plans, unless you've had a rejection pursuant to 1114.

12:14

25 You know, a distressed termination. There has no such

1 distressed termination.

2                   So I think their plan has a disclosure  
3 issue because they did not advise all people who are  
4 beneficiaries of 401(k) plans and other retirement and  
12:14 5 benefit plans that are not covered by the PBGC. They  
6 didn't tell them that those people were going to be now  
7 forced into this diluted pot of \$1.45 million on  
8 rejection claims. And they haven't assumed those claims,  
9 so they violated 1129(A)13. The only way I know -- when  
12:15 10 you have a plan, you have to either have a distress  
11 termination of all employee benefits, and that has to be  
12 ruled on by the Court, and that's on notice to all the  
13 beneficiaries. Or alternatively, you have to assume all  
14 those obligations as part of your plan. And now they're  
12:15 15 rejecting all those obligations. So I think their plan  
16 is patently unconfirmable as of today.

17                   MR. JORDAN: Your Honor, without  
18 responding to any of that, could we request a two-hour  
19 full lunch hour today, only because there's so much just  
12:15 20 developed this morning. There are things that need to be  
21 reviewed and the debtor needs that additional time.

22                   THE COURT: Anybody opposed to that? With  
23 this in mind. We're going to go later tonight. We'll  
24 probably go later Wednesday and Thursday. We'll stop at  
12:15 25 3 o'clock on Friday or perhaps a little before then.

1 I've got to be in the Valley Friday night. And I suspect  
2 that all of you need to make flights. So I think that's  
3 a deal we can make without anybody being that upset about  
4 it. But we'll take two hours. Thank you.

12:16

5 MR. PADDOCK: May Mr. Matthews be  
6 released?

7 THE COURT: Nobody is going to recall  
8 Mr. Matthews; isn't that correct? All right. He's  
9 released.

12:16

10 THE CLERK: Your Honor, and the call?

11 THE COURT: Parties, do you want to leave  
12 it on or do you want to call back at 2:18? Do you want  
13 to just leave it on and then the parties can get back on  
14 the line?

12:16

15 SPEAKER: That's fine, I can just leave it  
16 open.

17 (A recess was taken for lunch.)

18 THE COURT: Be seated.

02:25

19 MR. JORDAN: Your Honor, Shelby Jordan on  
20 behalf of the Palco debtors. I'd like to address an  
21 issue, Your Honor.

22 THE COURT: You have three people standing  
23 up.

02:25

24 MR. JORDAN: And, Your Honor, I want you  
25 to take special notice who they are so I can make a few



1 comments about what we would request the Court to allow  
2 us to do this afternoon.

3 The first thing I want to mention to the  
4 Court, that we didn't mention anything this morning about  
02:26 5 the failed results of the mediation. One of the reasons  
6 we didn't is because I think as it's working out, it was  
7 not a failed mediation. I have been accused even by my  
8 own clients for the last couple of times of whining about  
9 the fact that no one would talk to us. And as it has  
02:26 10 turned out, we have had a few phone calls returned and  
11 have spent the last 30 hours or so in negotiations toward  
12 a term sheet that could, we believe, lead to a consensual  
13 plan among at least a majority of the parties that are  
14 now all arguing and fighting.

02:26 15 We're not certain that we will get there,  
16 but we do believe -- in fact, one of the reasons we asked  
17 for the little extra time over the lunch hour is to  
18 personally reconfirm among the lawyers and the various  
19 parties that we have made enough progress that it would  
02:26 20 justify asking the Court for a continuation of this  
21 afternoon session only so that we could try to, by  
22 probably late afternoon, reach agreements, if we can.  
23 And by some time in the morning -- it was very early this  
24 morning when the last series of e-mails went back and  
02:27 25 forth to document a proposal, if it could happen. I

1 believe that --

2 THE COURT: So who are the parties  
3 involved?

02:27

4 MR. JORDAN: Your Honor, the parties that  
5 are so far, it's the Mendocino/Marathon plan parties  
6 which would include, in a limited extent, and I can't  
7 speak for the committee, but I think the committee is not  
8 opposed to this. I think they probably have their own  
9 input, but we have not spent direct time with the

02:27

10 committee. So it would be the committee, Mendocino,  
11 Marathon, and Palco debtors. Scopac is at this point  
12 still studying their circumstances, but they are not  
13 opposed. I won't speak for the Scopac counsel, but I  
14 believe we have everyone's agreement. Other than the

02:27

15 noteholders, we have not spoken to the noteholders about  
16 whether or not they would oppose a one afternoon  
17 continuance so that we could start fresh in the morning  
18 and potentially start with a completely different  
19 proposal that fits into the existing format of the

02:28

20 Marathon/Mendocino plan.

21 THE COURT: Okay.

22 MR. GREENDYKE: Judge, this is Bill  
23 Greendyke for the noteholders. This is the first we've  
24 heard of this obviously. The continuation --

02:28

25 THE COURT: Do you want to talk to them

1 about it a while?

2 MR. GREENDYKE: Sure. I need to visit  
3 with my team. I think the big question in my mind is if  
4 this doesn't come to fruition, what impact is it going to  
02:28 5 have on us finishing this week, if any? And that will be  
6 a big question, I think.

7 THE COURT: Well, I have permission from  
8 higher headquarters to go as late as we need to in the  
9 evening. I'm going to try to finish, whether we take off  
02:28 10 the afternoon or not. I also have from my staff three  
11 more days available in May, but I don't really want to  
12 use them. I'd like to get this done. I don't know what  
13 monies are available, etcetera. And delay is sometimes  
14 death. So let's take, what, 15 minutes. All right.

02:29 15 THE CSO: All rise.

16 (A recess was taken.)

17 THE CLERK: All rise.

18 THE COURT: Be seated. Mr. Greendyke,  
19 Mr. Jordan.

02:41 20 MR. GREENDYKE: Judge, Bill Greendyke on  
21 behalf of the noteholders. We have conferred with all  
22 Counsel, and we will obviously consent to the  
23 continuance. We feel like we can get done within a week  
24 if something happens where this all of a sudden falls  
02:41 25 apart and we have to go forward.

02:41 1 We would like to make a request because of  
2 this potential apparent change in the way things are  
3 going to proceed this week. Some of the witnesses the  
4 debtor intended to call and told us all along they wanted  
5 to call are an important part of, in a sense, our  
6 bracketing of certain factual issues. We would ask that  
7 the Court direct the debtor, in the event these folks are  
8 present in the courtroom, the Court swear them in and  
9 order them to remain here in case a settlement isn't  
02:42 10 reached tonight so that we may be able to call those  
11 folks. Otherwise --

12 THE COURT: Let's hear the names.

13 MR. GREENDYKE: Yerges, Reimer and Iles.

14 THE COURT: Are they here?

02:42 15 MR. DOREN: They are, Your Honor.

16 THE COURT: Any objection to that,  
17 Mr. Jordan?

18 MR. DOREN: No, Your Honor.

19 MS. COLEMAN: No, Your Honor.

02:42 20 THE COURT: Okay. You-all understand that  
21 you need to be present for testifying. Now, they don't  
22 actually have to remain here. They have to remain here  
23 or they have to agree to get their you-know-whats back  
24 here in time for us to call them. Is tomorrow when we're  
02:42 25 going to call them?

1 MR. GREENDYKE: If they settle, I think  
2 the object of the settlement would be for the debtor not  
3 to put on the case. I think that's the consequence. So  
4 if we reconvene tomorrow, it's possible that we would  
5 want to call the witnesses.

02:42

6 THE COURT: All right. They understand.

7 MR. JORDAN: One other comment. I believe  
8 it was Bank of New York asked us to put on the record  
9 that what we are negotiating is not going to require  
10 resolicitation. So at this point, that process is not  
11 going to be something we come back and ask for.

02:43

12 THE COURT: Okay. That's on the record.

13 MR. JONES: Your Honor, actually it was  
14 Bank of America. They may have also asked. But with  
15 that, we certainly support --

02:43

16 THE COURT: If you're from Corpus Christi,  
17 Bank of New York and Bank of America sort of sound alike.  
18 I know they are two different entities.

19 MR. JONES: Your Honor, it's better than  
20 the two weeks I spent in Lexington, Kentucky where I was  
21 referred to as the German banker. Your Honor, though, in  
22 all seriousness, we certainly support the --

02:43

23 THE COURT: I do have one New York lawyer  
24 story that I love to tell, so this gives me the  
25 opportunity.

02:43

1 MR. NEIER: Your Honor, this isn't part of  
2 the Jordan/Greendyke rule again, is it?

3 THE COURT: Perbagenrach (phonetic). What  
4 was the name of the case? It was a big case. And he was  
02:43 5 always by the phone. And, you know, he's got a  
6 distinctive sounding voice if you-all know him. And  
7 there's no question that, I mean, you knew it was him  
8 every time he was talking. We finally get to  
9 confirmation and he shows up. He flies to Houston and  
02:44 10 takes a cab to Corpus, I swear to God. That's a New  
11 Yorker's version of Texas.

12 MR. JONES: Thank you, Your Honor. Thank  
13 you, Mr. Jordan.

14 MR. JORDAN: Your Honor, so we would  
02:44 15 commence then tomorrow at 9 o'clock?

16 THE COURT: Tomorrow at 9 o'clock.

17 MR. DOREN: Just one remark. We will  
18 certainly have Messieurs Iles, Reimer and Yerges here.  
19 We'll reserve on whether or not it would be appropriate  
02:44 20 to have our expert witnesses called by another party.

21 THE COURT: Okay. Thank you.

22 THE CSO: All rise.

23

24

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25

1 THE STATE OF TEXAS:

2 COUNTY OF NUECES:

3

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