

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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

* * * * *

DAILY COPY

APRIL 30, 2008

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On the 30th 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 it in.

3 Hello? Wendy Laubach.

4 MS. LAUBACH: Present, Your Honor.

08:59 5 THE COURT: Chris Johnson. Christopher

6 Johnson.

7 (No response.)

8 THE COURT: Alan Tenebaum.

9 MR. TENEBBAUM: Present, Your Honor.

08:59 10 THE COURT: Thank you. Robert Black.

11 MR. BLACK: Present, Your Honor.

12 THE COURT: Alan Gover.

13 MR. GOVER: Present, Your Honor.

14 THE COURT: Ana Acevedo.

08:59 15 MS. ACEVEDO: Present, Your Honor.

16 THE COURT: Rebecca Riley.

17 MS. RILEY: Present, Your Honor.

18 THE COURT: Ira Herman.

19 (No response.)

08:59 20 THE COURT: Allison Byman.

21 MS. BYMAN: Present, Your Honor.

22 THE COURT: Ephraim Diamond.

23 MR. DIAMOND: Good morning, Your Honor.

24 THE COURT: Wei Wang.

08:59 25 MR. WANG: Present, Your Honor.

1 THE COURT: Francine Brodowicz.
2 MS. BRODOWICZ: Present, Your Honor.
3 THE COURT: Kim Christensen.
4 MS. CHRISTENSEN: Present, Your Honor.
08:59 5 THE COURT: Heather Muller.
6 MS. MULLER: Present, Your Honor.
7 THE COURT: Todd Hanson.
8 MR. HANSON: Present, Your Honor.
9 THE COURT: Joli Pecht.
08:59 10 MS. PECHT: Present, Your Honor.
11 THE COURT: John Driscoll.
12 MR. DRISCOLL: Here, Your Honor.
13 THE COURT: Rocky Ho.
14 (No response.)
09:00 15 THE COURT: Jacob Cherner.
16 MR. CHERNER: Present, Your Honor.
17 THE COURT: Dominic Santos.
18 MR. SANTOS: Present, Your Honor.
19 THE COURT: David McLaughlin.
09:00 20 (No response.)
21 THE COURT: Brett Young.
22 MR. YOUNG: Present, Your Honor.
23 THE COURT: Heather Zelevinsky.
24 MS. ZELEVINSKY: Present, Your Honor.
09:00 25 THE COURT: Eric Waters.

1 MR. WATERS: Present, Your Honor.

2 THE COURT: Nathan Rushton.

3 MR. RUSHTON: Good morning, Your Honor.

4 THE COURT: David Bario.

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

6 THE COURT: Anyone else on the phone? All
7 right. In the courtroom.

8 MR. JORDAN: Your Honor, Shelby Jordan,
9 Pete Holzer, co-counsel for the Palco debtors along with

09:00 10 George Lamb and Lucky McDowell of Baker Botts, co-counsel
11 for the Palco debtors.

12 THE COURT: All right.

13 MR. DOREN: Your Honor, Richard Doren,
14 Katie Coleman and Eric Fromme on behalf of Scotia
09:00 15 Pacific.

16 THE COURT: All right. Creditors
17 committee.

18 MR. FIERO: John Fiero of Pachulski Stang
19 Ziehl & Jones for the committee, Your Honor. Good
09:00 20 morning.

21 THE COURT: All right. Marathon.

22 MR. PENN: Good morning, Your Honor. John
23 Penn and David Neier on behalf of Marathon.

24 THE COURT: Mr. Greendyke.

09:01 25 MR. GREENDYKE: Good morning, Judge, Bill

1 Greendyke of Fulbright & Jaworski on behalf of the Bank
2 of New York as Indenture Trustee. I'm joined today by my
3 partners Todd Shields and Richard Krumholz. And Judge, I
4 would like to introduce you to another lawyer at the
09:01 5 table who has either filed or will file today a motion to
6 appear pro hac. This is Issac Pachulski. Yes, there is
7 a relationship, but we're in separate firms. He's with
8 the Pachulski firm in California. He's appearing today
9 on behalf of several of the noteholders.

09:01 10 THE COURT: All right. Thank you.

11 MR. PASCUZZI: Good morning, Your Honor,
12 Paul Pascuzzi for the California State Agencies, along
13 with our co-counsel Michael Neville from the California
14 Attorney General's office.

09:01 15 THE COURT: All right.

16 MR. JONES: Good morning, Your Honor, Evan
17 Jones from O'Melveny & Myers representing Bank of
18 America.

19 MR. STERBACH: Good morning, Your Honor,
09:01 20 Charles Sterbach for the United States Trustee.

21 MR. SPIERS: Good morning, Your Honor,
22 Jeff Spiers and Alan Gover for Maxxam.

23 MR. HOORT: Good morning, Your Honor,
24 Steven Hoort of Ropes & Gray representing the interest of
09:01 25 party Harvard Management Company.

1 MR. BRILLIANT: Good morning, Your Honor,
2 Alan Brilliant and Brian Hail on behalf of Mendocino
3 Redwoods Company.

4 THE COURT: All right.

09:02 5 MR. LEE: Good morning, Kyung Lee,
6 co-counsel with Diamond McCarthy.

7 THE COURT: All right.

8 MR. JORDAN: Your Honor, Shelby Jordan. I
9 want to report to you about what transpired yesterday
09:02 10 afternoon and for most of the night. I will say this
11 because I'm going to be deliberately vague in the rest of
12 my report but I will say this, it was well worth the
13 time. We believe the business people have reached enough
14 of an agreement that the lawyers and the boards can now
09:02 15 become involved.

16 We're not going to ask for additional
17 time, but so where we are at this point, we have the
18 various parties involved, Maxxam and the Palco debtors as
19 well as the MRC and the Marathon, and I also believe we
09:02 20 have subject to, again, board approval, the lawyers
21 Scribner's and the terms being approved and inked. The
22 official unsecured creditors committee in principle
23 agreeing to what I think may result some time today in a
24 detailed presentation to the Court. So for the purposes
09:03 25 of at least Palco debtors, we are going to --

1 THE COURT: And you just sort of carving
2 off the noteholders or what? I mean, they're not
3 involved in this?

4 MR. JORDAN: Well, no, the noteholders are
5 particularly not involved because the Palco debtors are
6 going to stand down for the time being in respect to any
7 proof that we had intended to put on. If the Court
8 recalls, we were opposed to both plans. We have been
9 told that there will be modifications that will come at

10 some point in time to the MRC/Marathon plan. We are
11 awaiting those to develop. But we've also seen yesterday
12 what happened to the noteholders plan in particular, the
13 announcement from the podium that they were going to cut
14 off all existing employees' benefits, which the Court
15 might note if I were told my sick pay is going to be cut
16 off in a month, I might take it tomorrow.

17 So we have additional reasons to be even
18 more firm that the noteholders plan is not one that Palco
19 will support and we may or may not take a particular
20 role, depending on what evidence they decide to put on.

21 In that regard, the MRC and Marathon plan, I think, will
22 be going forward and we will be in sort of a stand down
23 position only for the purposes of getting this
24 transaction documented as we can or -- and in
25 anticipation of what the Marathon and MRC modifications

1 may be.

2 So I want encourage the Court that we
3 didn't waste the Court's time yesterday and I will tell
4 the Court we're ready to be here today and at this point
09:04 5 be more in an observation role for whatever hours it
6 takes to conclude the evidence that the parties remaining
7 need to put on or that the various decide on.

8 THE COURT: Okay.

9 MR. GREENDYKE: A couple of brief
09:04 10 comments, Judge. This is Bill Greendyke for the
11 Indenture Trustee. We were not involved in any talks and
12 we weren't invited to any talks and I understood that to
13 be the case when we left yesterday. In response to the
14 comments about the pension plan, we are currently looking
09:05 15 at modifications to correct that objection. I wanted
16 them to be aware of it. We intend to recommend those
17 modifications to our client. We don't have client
18 approval yet but I would think perhaps sometime today
19 they will.

09:05 20 THE COURT: Well, it's an ongoing process.

21 MR. GREENDYKE: Yes, sir.

22 MR. JORDAN: Judge, may I say something
23 though in that respect. Because they are not our
24 employees it might not have been my position to complain
09:05 25 about the announcement on the record but there are those

1 employees on the phone, and I suspect they may be more
2 interested today so if there is a decision to be made at
3 any time that they're not going to lose their vacation
4 and sick leave and those other things that were
09:05 5 announced, it was a surprise to all of us yesterday, I
6 would ask that you do that as quickly as you can make
7 that decision.

8 MR. GREENDYKE: We are. We're working
9 hard.

09:05 10 THE COURT: All right. Thank you. So
11 who's next? Are we calling your witnesses or are we not
12 calling your witnesses?

13 MS. COLEMAN: We are calling our
14 witnesses, Your Honor.

09:05 15 THE COURT: All right.

16 MS. COLEMAN: I will turn it over to
17 Mr. Doren.

18 MR. DOREN: Your Honor, we call Dr. Kim
19 Iles.

09:06 20 THE COURT: All right.

21 KIMBERLY ILES, Ph.D.,
22 having been first duly sworn, testified as follows:

23 THE COURT: This is No. 4-C for me. I
24 don't know if anybody else has this book. All right. Go
09:06 25 ahead.

1 MR. DOREN: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. DOREN:

4 Q. Sir, will you please state your name.

09:06 5 A. My name is Kimberly Iles.

6 Q. And what is your profession?

7 A. I'm a forest biometrician.

8 Q. What does a forest biometrician do?

09:06 9 A. Pull statistics to forestry and biological
10 data.

11 Q. And do you have a particular area of expertise?

12 A. I do.

13 Q. And what is that?

14 A. That's forest inventory.

09:06 15 Q. And if you could please speak into the
16 microphone.

17 A. That's forest inventory.

18 Q. Thank you very much. And how long have you
19 been in that line of work?

09:06 20 A. Approximately 35 years.

21 Q. Much better. Thank you. And could you please
22 tell the Court your educational background.

09:07 23 A. I received in '69 a bachelor's degree in forest
24 management. I went into the Army, came back a couple
25 years later and got a master's degree in forest

1 biometrics. A few years later after teaching for two
2 years I came back and got a Ph.D. in forest biometrics in
3 1969 at UBC.

4 Q. University of British Columbia?

09:07

5 A. Yes.

6 Q. And could you please generally describe your
7 employment background since that time.

8 A. I worked for about a dozen years in MacMillan
9 Bloedel, a large forestry company, doing biometrics and
10 growth yield studies.

09:07

11 Q. And what were you responsible for at MacMillan
12 Bloedel?

13 A. For the growth studies and for setting
14 allowable constants on degree and forest inventory
15 cuttings.

09:07

16 Q. And what is MacMillan Bloedel or what was it at
17 the time?

18 A. It's a large forestry company, about 4 million
19 acres mostly in timber cutting, but it included mills as
20 well.

09:07

21 Q. And you mentioned that you spent some time
22 teaching. Are you still teaching courses?

23 A. I am.

24 Q. And what courses are you teaching?

09:07

25 A. I teach courses to professional timber cruisers

1 in the Pacific Northwest and also I teach statistics at
2 the university.

3 Q. And in teaching courses on timber cruising,
4 what topics do you address?

09:08 5 A. Sample size, sample location, tree measurements
6 and new techniques in the field.

7 Q. And how many courses on timber cruising have
8 you taught?

9 A. I've taught about 50 on timber cruising at
09:08 10 Oregon State and another 20 or 30 throughout the world.

11 Q. Have you written any textbooks on the topic of
12 timber inventory?

13 A. Yes, I have.

14 Q. And what have you written?

09:08 15 A. I wrote a textbook on inventory techniques and
16 also I've done chapters in other books as well.

17 Q. Now, since setting up -- and you set up a
18 consulting firm after leaving MacMillan Bloedel?

19 A. Yes, in about 1991.

09:08 20 Q. And what's the name -- I apologize.

21 A. It's Kim Iles & Associates.

22 Q. And when did you do that?

23 A. In 1991.

24 Q. And since setting up your consulting firm, what
09:08 25 sort of work have you done?

1 A. It's generally speaking forest inventory
2 techniques and some samplings.

3 Q. And can you give the Court a few examples of
4 some of the clients you've done inventories for?

09:08 5 A. World Wood, Georgia-Pacific, TimberWest,
6 Campbell Group.

7 Q. Have you done work for the Province of British
8 Columbia?

9 A. Yes, I have.

09:08 10 Q. And what work have you done for it?

11 A. I have designed the inventory for the Province
12 of British Columbia.

13 Q. And how large was the area you inventoried?

14 A. It was about 250 million acres.

09:09 15 Q. Have you also regularly validated inventories
16 for clients with preexisting inventories?

17 A. Yes, I have.

18 Q. Over the course of your average year, if you
19 will, how much of your time do you spend on timber

09:09 20 inventory activities?

21 A. About 80 percent.

22 Q. Now, have you worked with Scopac in the past?

23 In other words, prior to this bankruptcy proceeding?

24 A. I have.

09:09 25 Q. And can you describe that work, please.

1 A. In about '94 Dr. Bell, a colleague, and I
2 reviewed their growth and yield and to some extent their
3 inventory. And since about 2001, Sam Boyd has had me
4 work on their inventory as well.

09:09 5 Q. And that's in relation to the 2001 inventory?

6 A. That's right.

7 Q. And how many plot samples were taken in that
8 inventory?

9 A. In excess of 10,000.

09:09 10 Q. And what was the margin of error on that
11 inventory?

12 A. About one and a half percent.

13 Q. And what work were you asked to do in relation
14 to the 2001 inventory?

09:09 15 A. I was asked to improve the inventory in terms
16 of its flexibility and to add a few items as appropriate
17 and make it more generally useful for management
18 purposes.

09:10 19 Q. And are you speaking of refinements of the
20 established inventory or are you talking about
21 alternations in the overall inventory itself?

22 A. It refines the current totals into better
23 estimates for individual polygon.

09:10 24 Q. Okay. So individual forest stands, do I have
25 that right?

1 A. That's right.

2 Q. And were your recommendations to Scopac
3 accepted?

4 A. They were.

09:10 5 Q. And were they implemented?

6 A. They were.

7 Q. And have you had an opportunity to assess the
8 impact of the efforts to allocate the overall inventory
9 on a stand-by-stand basis?

09:10 10 A. Yes, I have.

11 Q. And what's your impression?

12 A. Impression is that it is more useful and
13 flexible as well as a little bit more accurate as well.

14 Q. Now, you've also been asked to perform
09:10 15 additional work in reference to this bankruptcy
16 proceeding, correct?

17 A. That's right.

18 Q. And what have you been asked to do?

19 A. I was asked to check the overall total of the
09:11 20 inventory and as well, I suggested that we check the
21 growth rates and site indexes.

22 Q. And have you completed those three tasks?

23 A. I have.

24 Q. And have you formed opinions in those three
09:11 25 areas?

1 A. Yes.

2 Q. Dr. Iles, I'd like to direct your attention to
3 Exhibit DX-41. Is this a proffer that you prepared and
4 executed in this manner?

09:11 5 A. Yes, it is.

6 Q. And does it summarize the work you performed
7 and the conclusions you reached?

8 A. Yes.

9 Q. And could I also direct your attention to DX-3
09:11 10 which I believe is an attachment to your proffer as well
11 as a separate exhibit. Is this your expert report?

12 A. Yes, it is.

13 Q. And does it further describe the work you
14 performed and the conclusions you have reached?

09:11 15 A. Yes, it holds the details.

16 MR. DOREN: Your Honor, I would move these
17 two exhibits into evidence.

18 THE COURT: Any objection?

19 MR. NEIER: No objection, Your Honor.

09:11 20 MR. SHIELDS: No objection.

21 THE COURT: They are admitted.

22 MR. DOREN: Your Honor, I would also move
23 to the Court to permit Dr. Iles to testify as an expert
24 witness.

09:11 25 THE COURT: Any objection?

1 MR. NEIER: On what subject, Your Honor?

2 MR. DOREN: These subjects set out in his
3 expert report and proffer, Your Honor. Those that have
4 already been accepted into evidence.

09:11 5 MR. NEIER: We have no objection to him
6 testifying as an expert on the forest inventory, if
7 that's what you're asking.

8 THE COURT: Okay. What about -- all
9 right. He's an expert.

09:12 10 MR. DOREN: Thank you, Your Honor. I
11 wasn't quite sure it was a hard question.

12 Q. (By Mr. Doren) Dr. Iles, did you undertake a
13 four-step process to validate the inventory of Scopac?

14 A. Yes.

09:12 15 Q. And could you please describe the first of
16 those four steps.

17 A. Well, the first was to choose a systematic
18 sample across the land properties of approximately 200
19 locations.

09:12 20 Q. All right. And how did you select that number?

21 A. We used a random start and then it was a
22 systematic distance between each of the plots after that.

23 Q. All right. If we could put the plot map up on
24 the screen, please. And this represents -- and I realize
09:12 25 it's hard to see. Hopefully you can see it in the

1 smaller screen, but does this represent where the
2 individual plot samples were?

3 A. Yes, it does. The dots go infinitely in each
4 direction but the green ones were the ones that fell
09:12 5 inside the company lands.

6 Q. Okay. And how did you select the number 200?

7 A. It was my judgment that that would be
8 approximately right for doing this kind of check.

9 Q. All right. And did you use all 200 plots?

09:13 10 A. No. We intentionally set up two interlocking
11 grids so that one would be set aside and could be used as
12 an independent addition if we needed it.

13 Q. And how many plots did you consider to be an
14 appropriate amount for your validation work?

09:13 15 A. Approximately 100.

16 Q. 100?

17 A. Yes.

18 Q. Did you ever use the second grid of 100?

19 A. No, we didn't.

09:13 20 Q. Why not?

21 A. Well, the results were very good on the first
22 100 and nobody else evidenced an interest in using that
23 to check our work.

24 Q. Now, after you had set out the test grids, what
09:13 25 was the second step of your process?

1 A. We sent out timber cruisers to put a set of
2 cluster of plots in each of those locations,
3 approximately five, and they measured all the trees
4 involved.

09:13 5 Q. And how many timber cruisers did you hire?

6 A. We had about eight to 10 through the summer.

7 Q. And did you train these folks as to what
8 specifically you were looking for in this task?

9 A. Yes, of course.

09:14 10 Q. And how did that work?

11 A. Well, they had a manual for what was to be done
12 in the areas. We spent a day of training them and
13 getting all of the techniques familiar. And then we
14 spent some time in the woods practicing those before they
09:14 15 did their work.

16 Q. And were they also told where to go within each
17 sample area to test specifically?

18 A. Oh, yes, of course. It is very precisely done
19 both on the maps and on the photo base as well.

09:14 20 Q. And what were they told in that regard?

21 A. They were told to put the plots exactly in
22 those locations and they were told in what order to
23 measure them.

09:14 24 Q. And how many trees were measured in each of the
25 approximately 100 plots that you tested?

09:14 1 A. There would have been a number of small ones
2 depending on the structure of the stand, about six to
3 eight medium sized ones that were selected with variable
4 plot sampling and an occasional larger one with a fixed
5 plot.

6 Q. And was there any quality control work done
7 specifically as to the timber cruisers?

09:14 8 A. Oh, yes, the company doing the initial work had
9 their own quality control program, but in addition I had
10 a second, another phase done where we sent out check
11 cruisers, two of them, to 15 of these locations to redo
12 the entire set of work.

13 Q. And would that have been the third step in your
14 process?

09:15 15 A. It would, yes.

16 Q. And how did you identify and hire these check
17 cruisers?

09:15 18 A. They were people that were known to me that
19 worked in the area and had a lot of experience there and
20 I hired them myself.

21 Q. And did they report directly to you?

22 A. They reported directly to me. They were paid
23 through the usual process for getting the process done,
24 but they reported only to me.

09:15 25 Q. Now, did the timber cruisers, in other words,

1 the first group of eight to ten, know which plots the two
2 check cruisers would be sampling?

3 A. No. And most of those checks were done after
4 they were completed with their work.

09:15 5 Q. Now, after the check cruisers completed their
6 work, what was the fourth step in your process?

7 A. Well, having sent people out with more time,
8 more experience to do this as near as we could
9 measurement on the trees, we then failed a series of

09:15 10 these trees to make sure there couldn't be any
11 difficulties involving birth bark tree taper or computer
12 programming errors or anything like that.

13 Q. All right. And failed is what I would call cut
14 down?

09:15 15 A. Yes, indeed.

16 Q. Okay. And once those trees were on the ground,
17 what did they do with them?

18 A. They cut them into logs and then measured the
19 ends of the logs precisely.

09:16 20 Q. And after you had those three different data
21 sets, did you analyze them?

22 A. Of course.

23 Q. And if we could please put up the next
24 demonstrative. Dr. Iles, does this represent your

09:16 25 analytical steps?

1 A. It does.

2 Q. And what does the bar on the left-hand side of
3 the diagram show?

4 A. That represents the 2007 inventory updated from
09:16 5 2001 as 100 percent.

6 Q. All right. And what is the first bar chart to
7 the right of that or the first bar rather?

8 A. If you were to correct the initial estimates of
9 those 100 positions by the new measurements that the
09:16 10 initial cruisers put in, there would be about a five
11 percent increase.

12 Q. All right. And then what does the next bar
13 reflect?

14 A. That's the increase between the auditors, the
09:16 15 check cruisers and the initial cruisers on 15 of those
16 sets.

17 Q. And what was the correction made as a result of
18 the check cruisers?

19 A. About 4.4 percent.

09:16 20 Q. And then finally, what does the bar on the
21 right illustrate?

22 A. After the final set of measurements were done
23 on the trees, it lowered the volumes by about 6 and a
24 half percent, and the green bar represents the volume of
09:17 25 the 100 plots, locations that we did after all of those

1 corrections.

2 Q. And based on your analysis as broadly reflected
3 in this bar chart, did you reach any conclusions about
4 the quality of the inventory?

09:17 5 A. Oh, yes.

6 Q. And what were those conclusions?

7 A. Well, simply that the volume, after all
8 corrections that I could possibly think of and done by me
9 personally and currently resulted in only about a 2.4
09:17 10 increase in the volume that was there and that this set
11 of data was perfectly adequate for doing planning and
12 projections.

13 Q. And when you're referring to this set of data,
14 are you referring, again, to the 2001 inventory as
09:17 15 updated in 2007?

16 A. Either that or if it was corrected by all three
17 sets of measurements, either one of those would be
18 adequate, yes.

19 Q. Now, I notice there is a vertical line there,
09:17 20 and does that reflect the margin of error?

21 A. It does, yes.

22 Q. And what was the margin of error in your
23 sampling population?

24 A. For the original population or for the
09:18 25 corrections if they were applied?

1 Q. Well, let's start with the corrections as
2 applied.

3 A. As applied it would be about 9 and a half
4 percent.

09:18 5 Q. And did you consider that to be a reasonable
6 margin of error for the work you were doing?

7 A. Yes, I did.

8 Q. And did you consider with that margin of error
9 that your result was still reliable in terms of the
09:18 10 validity of the original inventory?

11 A. Yes, I think they show the validity of the
12 original inventory, yes.

13 Q. And, again, what was the margin of error in the
14 original 2001 inventory?

09:18 15 A. In the original with 10,000 plus plots, it was
16 approximately one and a half percent.

17 Q. Now, you were also asked to test certain growth
18 rates. Do I have that right?

19 A. Yes.

09:18 20 Q. And how did you do that?

21 A. We -- on the growth rates of individual trees
22 for basal area, we had a great many plats that were
23 individually bored, a random sample on the test plots.

24 They were bored with a tree that extracts the core, the
09:19 25 growth of the last ten years was directly measured and

1 that was used as a percentage for the entire tree growth.

2 Q. And how many trees did you bore in total?

3 A. It was somewhere around 400 but we only used
4 fewer than that when we did the analysis.

09:19 5 Q. And why did you use fewer than the entire 400?

6 A. Because the analysis was for trees eight inches
7 and larger. Some of them ended up not being confers or
8 there were defects that prevented us from doing the
9 measurement or they were just too young.

09:19 10 Q. Were some of them smaller than eight inches?

11 A. None of them that we analyzed were smaller than
12 eight inches but we bored some that were smaller than
13 eight inches in case that question came up.

09:19 14 Q. And had you included those trees in your growth
15 rate what effect would it have had?

16 A. Well, it would have increased the percentage
17 growth rate.

18 Q. And what conclusions did you reach about the
19 overall growth rate, if you will, on the Scopac property?

09:19 20 A. Well, simply that it was appropriate for the
21 uses of Dr. Reimer and the overall growth rate was about
22 three and three-quarters percent.

23 Q. And did you differentiate between species in
24 running that calculation?

09:20 25 A. The three and three-quarters percent is the

1 culmination. I checked them individually as well and
2 they were also approximately what Dr. Reimer was using.

3 Q. And then additionally I believe you said that
4 you did work to analyze the site index as used by the
09:20 5 company, do I have that correct?

6 A. Yes.

7 Q. First of all, can you tell the Court what a
8 site index is.

9 A. A site index is a graph of the growth versus
09:20 10 the height growth and the age of the tree.

11 Q. And what does it measure?

12 A. Well, it measures directly and specifically the
13 height growth of the tree, but that's well correlated
14 with the volume of the tree and of the stand.

09:20 15 Q. And does it reflect the productivity of the
16 site on which that tree stands?

17 A. Yes.

18 Q. And how did you analyze the identification of
19 site indexes by Scopac?

09:20 20 A. Well, here again, on each of the locations we
21 chose a sample tree, if a suitable one was there, using
22 an agreed upon procedure, and then we measured the total
23 age and the height of that tree.

24 Q. And what conclusions did you reach?

09:20 25 A. That the site indexes were in fact very close

1 to what Dr. Reimer was using.

2 Q. And again, you're referring to the site indexes
3 maintained by Scopac as to each of those test plots?

4 A. I am. The difference was on the order of a
09:21 5 couple of percent.

6 Q. Dr. Iles, based on your work on this project
7 and your 35 years as an inventory specialist, is it your
8 opinion that Scopac's inventory is accurate and
9 appropriate for purposes of long-term harvest planning?

09:21 10 A. Oh, yes, either in an uncorrected or corrected
11 form, I think it's perfectly adequate to that -- to that
12 purpose. If you did correct it, it would raise
13 approximately two and a half percent.

14 Q. And you base that on your sampling?

09:21 15 A. I do.

16 MR. DOREN: Thank you, Dr. Iles.

17 THE COURT: Is there any more -- anyone
18 else have direct? Nothing. Okay. So you're up.

19 MR. SHIELDS: Todd Shields for Bank of New
09:21 20 York Indenture Trustee for the timber noteholders.

21 CROSS-EXAMINATION

22 BY MR. SHIELDS:

23 Q. Good morning, Dr. Iles.

24 A. Good morning.

09:22 25 Q. I already introduced myself for purposes of the

1 record. I met you about a month ago, I think, in San
2 Francisco, right?

3 A. That's correct.

4 Q. Will you talk slower for me than you did in
09:22 5 Mr. Doren's examination?

6 A. I'll speak slower if you'll listen fast.

7 Q. Thank you. I want to turn your attention to a
8 particular aspect of your work in this engagement, and
9 that is the growth rates that you observed in 2007. I'll

09:23 10 come back to how you went about doing your work on growth
11 rates, but first of all, I heard you say in response to
12 Mr. Doren's questions that you suggested that the growth
13 rates be checked in addition to doing a timber volume
14 inventory?

09:23 15 A. Yes, we were out there anyway.

16 Q. Is the answer to that yes?

17 A. Yes.

18 Q. Okay. And were you at that point in time
19 looking at growth rates that were already being used by
09:23 20 Scopac?

21 A. No, I was just suggesting that we measure the
22 growth rates that were out there on the ground.

23 Q. Okay. All right. That would be called an
24 observed growth rate, right?

09:24 25 A. Yes.

1 Q. Okay. Now, I know from having seen your report
2 in this case that at some time in 2007 you did sort of a
3 rough check against some growth rates that Dr. Reimer was
4 using in his analysis, correct?

09:24 5 A. I don't know what --

6 Q. Let me -- I'm sorry. I'll try to make my
7 question clear. When you were first retained in this
8 case, the lawyers for your clients, Scopac, filed an
9 affidavit with the Court in which they described the
10 scope of your engagement and what you were going to do
11 and, you know, presumably got Court approval for your
12 involvement.

13 In that affidavit, there was mention of your
14 intention to look at the forest timber volume inventory
09:25 15 for Scopac. There was no mention of your doing any work
16 to purport to look at growth rates that might be
17 developed or used by Dr. Reimer, another person engaged
18 by your same client, correct? That was something you
19 must have been asked to do later than at your original
09:25 20 retention. That's all I'm trying to establish?

21 A. My work had nothing with him developing,
22 merely --

23 Q. I understand that. But somebody asked you to
24 look at the growth rates that he told you he was using.

09:25 25 Who asked you to do that?

1 A. I don't think anybody asked me to do that. I
2 think --

3 Q. Did Donnie Ray Reimer ask you to do that?

4 A. No.

09:25

5 MR. DOREN: If the witness could be
6 permitted to finish his answer.

7 MR. SHIELDS: I'm sorry. I apologize.

8 Q. (By Mr. Shields) Please, I don't mean to cut
9 you off. Well, of course, for the record, you and

09:25

10 Dr. Reimer are friends and neighbors and you worked with
11 him quite a bit in the past, right?

12 A. Yes.

13 Q. All right. And at some point in this
14 engagement he mentioned to you the growth rates that he
15 was using as part of his harvest forecast analysis,
16 correct?

09:26

17 A. Yes.

18 Q. All right. And then after he did that, you
19 observed some growth rates in the forest and reported

09:26

20 back to him or to your client that you saw a rough
21 correlation between what you saw on the ground and what
22 he appeared to be using as growth rates, right?

23 A. That's correct.

24 Q. That's the topic I want to get into. I'm

09:26

25 sorry. It took me that long to get back to that. As I

09:27

1 understood what you were saying about how you did your
2 timber volume evaluation, your evaluation of Scopac's
3 timber inventory in your 2007 work, you developed the
4 sample grids of roughly 100 plot clusters or areas out in
5 the forest, right, and you ended up using one of them?

6 A. There were 200 in total.

7 Q. Right.

8 A. We used roughly 100, yes.

09:27

9 Q. All right. And each one of those two grids had
10 roughly 100 plot clusters, right?

11 A. That's right.

12 Q. In fact, I think the number is 96; is that
13 right?

14 A. That's approximately it.

09:27

15 Q. So what you did was with these timber cruisers
16 and check cruisers and other people that you trained and
17 exercised oversight of, while you're out checking the
18 timber volume inventory, you also are doing these bore
19 samples and observing the growth, right?

09:27

20 A. That's correct.

21 Q. All right. You're counting the rings, right?

22 A. Yes.

09:28

23 Q. All right. And what you did, you went
24 obviously to the same locations, the 96 plot clusters
25 that you had randomly selected for the timber volume

1 inventory to do this bore drilling and observance of
2 growth rates, right?

3 A. Yes, they were on the same plots.

4 Q. All right. Now, when you took the core

09:28 5 samples, you did the core samples to measure growth at
6 the basal area of the tree, right?

7 A. Yes, the cross-section area.

8 Q. All right. And the basal area forest

9 biometricians such as yourself, that's toward the base of
09:28 10 a tree, but it's at a standard level, DBH, right?

11 A. That's correct.

12 Q. And tell the Judge what that means.

13 A. Diameter breast height.

14 Q. Okay. But it's four and a half feet off the

09:28 15 ground, isn't it?

16 A. It is, yes.

17 Q. All right. Now, did you make any distinction
18 in -- well, let me back up.

19 All right. You're in the plot clusters,

09:29 20 your cruisers are in there and they're selecting trees.

21 Did you say eight inches or higher?

22 A. We processed the ones eight inches and larger,
23 yes.

24 Q. Okay. Did you tell them to do eight inches and
09:29 25 not 12 inches?

1 A. No, I told them to choose a random tree.

2 There's a process for doing that.

3 Q. Okay. Was the minimum size of the tree that
4 they were to select eight inches or 12 inches?

09:29 5 A. No, I think they took them all the way down to
6 two inches, if that was the random tree, but the ones
7 that we processed to do the analysis were for eight
8 inches and larger.

9 Q. Okay. Now, did you make any distinction
09:29 10 between trees that were natural growth trees versus
11 cultivars?

12 A. No.

13 Q. Okay. For purposes of cultivars, I'm going to
14 use the shield household definition of trees grown from
09:29 15 supposedly genetically improved seedlings. Is that what
16 a cultivar is?

17 A. That's your definition.

18 Q. That's the one I use. Is that all right with
19 you?

09:30 20 A. For the moment, yes.

21 Q. Okay. So your answer is -- do you know -- were
22 there any cultivars in the sample?

23 A. We didn't keep track of that. It was strictly
24 a sample of what happened to be there.

09:30 25 Q. Okay. All right. So then what you do in

1 observing a growth rate is you have the plot clusters
2 that are picked at random, they're all over the forest,
3 right?

4 A. They are.

09:30 5 Q. Are some of them in the no cut areas?

6 A. Yes, they're in any areas.

7 Q. All right.

8 A. Of course.

9 Q. And you take the basal samples, you count the
09:30 10 rings. You're looking for growth in the previous ten
11 years, right?

12 A. That's right.

13 Q. All right. Then you average all those up and
14 you come up with an overall observed growth rate for the
09:30 15 forest, right? That's what you did?

16 A. That's what I did, yes.

17 Q. Okay. And what you observed based on those
18 measurements of the -- it was 258 trees, right? It
19 wasn't 400. For some reason some of them didn't get in
09:31 20 the analysis.

21 A. That's right, about 250 were actually used in
22 the analysis.

23 Q. All right. So you average up the observed
24 growth rate in the 258 sample trees and you come up with
09:31 25 a 3.76 percent observed growth rate in the previous ten

1 years in the sample trees, right?

2 A. Yes.

3 Q. All right. Now, in your expert report, you
4 mention that you had talked to Dr. Reimer in 2007 and he
09:31 5 had said that he was using a growth rate of 3 percent for
6 Douglas Fir trees in his analysis, right?

7 A. Overall, yes.

8 Q. I think I said that wrong. Yeah, 3 percent.
9 And 4 percent for redwood?

09:31 10 A. That's my understanding.

11 Q. The average being somewhere between those two,
12 correct?

13 A. Yes.

14 Q. All right. And so what you were able to do was
09:32 15 say that there was a reasonable correlation between the
16 growth rates Dr. Reimer tells you he was using in his
17 analysis of between 3 and 4 percent and what you could
18 see out there on the ground in the forest on a random
19 sample basis, right?

09:32 20 A. Correct. Yes.

21 Q. Because 3.75 percent would be between the 3 and
22 4 percent he says he was using.

23 A. (Witness nods his head affirmatively.)

24 Q. All right. So to the extent that your
09:32 25 on-the-ground cross check supports a growth rate of 3.75

1 percent, that Dr. Reimer may have used as some part of
2 his analysis, it would likewise provide support for 3.75
3 percent growth rate that Mr. Fleming may have used in his
4 analysis, correct?

09:33 5 A. I don't know if it would support that.

6 Q. If he was using it?

7 A. Yes, that would seem reasonable to me.

8 Q. Okay. Now, I want to draw a distinction, which
9 I think you'll agree exists, for the benefit of this
09:33 10 proceeding. Between the process of observing growth

11 rates on the ground at a point in time in 2007 and
12 developing guide curves or yield curves that a forest
13 biometrician such as yourself might use to develop
14 harvest schedules decades into the future, 40 or 50

09:34 15 years, that's the top. You would not, as a forest
16 biometrician, if you were going to try to do a harvest
17 analysis and use growth rates to project growth in a
18 dynamic environment like a forest, 40 or 50 years into
19 the future, you would want to develop guide curves and

09:34 20 yield curves in a different manner than you went about
21 observing growth rates in the forest at one point in
22 time, right?

23 A. They're different processes, yes.

24 Q. All right. And you know, the reason that you
09:34 25 would want to do that is that growth rates are not stable

1 in a forest, right? They change over time and they
2 change based on a lot of different parameters, don't
3 they?

4 A. Of course they do.

09:35 5 Q. And if you were trying to develop growth rates
6 to use as a predictive tool far into the future, you
7 would want to be able to take into account all of those
8 many variables and you might well use computer modeling
9 to help you do that, right?

09:35 10 A. That's the process, yes.

11 Q. And another thing that you would want to do is
12 probably check -- cross check against any published yield
13 curves what your computer model was telling you, right?

14 A. If you thought that was appropriate, yes.

09:35 15 Q. Well, I think you mentioned it's appropriate in
16 your work. Isn't that an appropriate thing to do, to
17 check a yield curve or a guide curve against published,
18 accepted guide curves that are out there?

09:36 19 A. Well, providing, of course, that they are the
20 same species, same situation.

21 Q. Of course.

22 A. That sort of thing. You're not looking at any
23 egregious difference in soil types or whatever, yes.

09:36 24 Q. You are familiar with the Lindquist and Palley
25 guide curves that were developed in particular with

1 respect to California redwoods, aren't you?

2 A. I've seen them before but I'm not really
3 familiar with them.

4 Q. Now, what you did in examining observed growth
09:36 5 rates in trees in the forest in 2007 would not be the
6 basis for Dr. Reimer's growth projections if he used
7 guide curves that were developed from modifications of a
8 computer model like Dr. Jim Arnie's SPS system, right?

9 A. It was not designed to check his curves, no.

09:37 10 Q. Okay. My point is observed growth rates seen
11 in the forest is not the basis of anything Don Reimer
12 did, as far as you know, right?

13 A. It's only a check of what his results were.

14 Q. Now, when I took your deposition about a month
09:37 15 ago, you didn't know how Dr. Reimer had developed his
16 growth rates, did you?

17 A. I'm not sure how he developed them, no.

18 Q. He just told you what they were, right?

19 A. He just told me that he had them, yeah.

09:37 20 Q. Okay. And you're not here in court today to
21 give -- well, let me restate that.

22 As part of your work in this case, you didn't
23 do any evaluation of the growth rates that were prepared
24 by Dr. Reimer?

09:37 25 A. I did not.

1 Q. Okay. What you did was take Dr. Reimer's
2 assumed growth rates and site indexes and merely check
3 those with the actual measurements of trees on the ground
4 that you observed, right?

09:38 5 A. That's correct.

6 Q. Again, just a couple of questions to establish
7 this. You don't know how Dr. Reimer developed his growth
8 rates that he used in his analysis, correct?

9 A. No.

09:38 10 Q. You didn't know it in 2007 and you don't know
11 it today, do you?

12 A. Never bothered.

13 Q. All right. And you never reviewed his report
14 in this case, right?

09:38 15 A. I don't think I've read his report, no.

16 Q. Okay. And you never have seen his materials
17 underlying that report that might relate to growth rates,
18 right?

19 A. It's not pertinent to my work.

09:38 20 Q. And you have no idea how Dr. Reimer's growth
21 rates that he used in his analysis might match up with
22 published yield tables such as Lindquist and Palley and
23 others, correct?

24 A. No.

09:39 25 Q. I take it then that having done merely a cross

1 check of the growth rates that Dr. Reimer reported to you
2 that he was using and not some evaluation of them, you're
3 not in court today to testify one way or the other about
4 the methodology that Dr. Reimer may have used in
09:39 5 developing those growth rates and whether it was sound or
6 not sound, right?

7 A. Not the methodology.

8 Q. In fact, you don't know the particulars of how
9 Dr. Reimer may have developed the growth rates for the
09:39 10 portion of his projection period that would cover the
11 forest in the years 2047 and later, right?

12 A. I do not know his procedure.

13 Q. All right. Now, I brought this up before, and
14 I don't mean to make too big of a deal of it, but you and
09:40 15 Dr. Reimer are friends, you're neighbors in Nemo, right?

16 A. Yes, we both live in the same town.

17 Q. Okay. And in fact, in this engagement,
18 Dr. Reimer suggested that you double your normal hourly
19 rate, correct?

09:40 20 A. Yes, he did.

21 Q. And you did that?

22 A. I did.

23 Q. So he's popular around the Iles' household,
24 right?

09:40 25 A. No, that has nothing to do with that.

1 Q. All right. Thank you very much.

2 MR. SHIELDS: That's all I have.

3 THE COURT: Any other questions? Any
4 other cross? Okay. Mr. Neier.

09:40

5 CROSS-EXAMINATION

6 BY MR. NEIER:

7 Q. Good morning, Dr. Iles.

8 A. Good morning.

09:41

9 Q. David Neier on behalf of Marathon. You're not
10 an appraiser, correct?

11 A. I'm not.

12 Q. And you don't operate timberlands?

13 A. I don't.

14 Q. You don't operate mills?

09:41

15 A. I don't.

16 Q. You're not a forester?

17 A. I am a forester.

18 Q. For inventory purposes? You check inventory?
19 That's your expertise, correct?

09:41

20 A. Yes, but my degree is in forest management.
21 I'm a forester.

22 Q. You don't have any licenses or certifications
23 in appraisal or evaluation?

24 A. Not my field.

09:41

25 Q. And you don't have any licenses or

1 certifications in appraisal or evaluation of forest
2 properties and commercial timberlands, correct?

3 A. No.

4 Q. You've only represented one purchaser or seller
09:41 5 of timberlands in your entire career; is that correct?

6 A. No, that's not correct.

7 Q. Do you have your deposition up there?

8 A. I do.

9 Q. Can you turn to page 104.

09:42 10 A. Yes. I have it.

11 Q. I'm sorry. Can you turn to page 111.

12 A. I have that, too.

13 Q. The bottom of page 111, line 23.

14 Question: "Have you represented purchasers of
09:42 15 timberlands in the past or been involved in the
16 acquisition of timberlands?"

17 Answer: "Once. There was a sale in California
18 to the Campbell Group who called me and asked me for my
19 advice about how to check the volume that was on the land
09:42 20 base. They had an agreement on both sides and both sides
21 had stated that it would be checked later so they called
22 me to ask how I would go about checking it. Other than
23 that, I can't remember a purchase that I've been involved
24 with."

09:43 25 Was that your testimony?

1 A. Well, I think if you put a common between the
2 once and there it would be, yes. That was an example of
3 when I have done that.

09:43

4 Q. You know, Dr. Iles, I asked you have you
5 represented purchasers of timberlands in the past or been
6 involved in the acquisition of timberlands, and you said
7 once.

09:43

8 A. Well, the punctuation in the testimony is not
9 always the same as I would have put it. My answer yes.
10 Example, once. Example, instances, there was. The
11 answer to your question is that is what I said. That's
12 not the punctuation I would put there, but I have
13 represented several people who have bought lands.

09:43

14 Q. I mean, Dr. Iles, page 112, line 6, "Other than
15 that I can't remember a purchase that I have been
16 involved with." Is that your testimony?

17 A. I didn't at the time. Yes, that's true.

18 Q. So you wish to change your testimony?

19 A. No. That's what I remembered at the time.

09:44

20 Q. You remember something different now?

21 A. Well, I remember that I've been involved in
22 purchases and sales. I don't know if you'd call
23 representing someone with selling an area, representing a
24 purchaser. I represented people who have sold areas. I
25 have represented people who have done both at the same

09:44

1 time and I have represented -- I have worked with people
2 who were buying areas. Whether they -- or were
3 attempting to, whether they did or not. This is the only
4 one I recall where I did both of them for sure.

09:44 5 Q. So your memory is better now than it was in San
6 Francisco a month ago is what you're telling me?

7 A. Of course it is.

8 Q. Okay. Your job here was not to determine
9 valuation of the forest, correct?

09:44 10 A. No, it wasn't.

11 Q. Now, you mentioned that you were involved in
12 the company's inventory or inventory check, I guess it
13 was, in 2001; is that right?

14 A. Yes.

09:45 15 Q. And I believe you said that the margin of error
16 in 2001 was one and a half percent; is that correct?

17 A. That's the standard error for the inventory,
18 yes.

19 Q. In 2001?

09:45 20 A. In 2001.

21 Q. The margin of error in your report is 13 and a
22 half percent; is that right?

23 A. No.

24 Q. It's not right?

09:45 25 A. Not right.

1 Q. So your conclusion here wasn't within a margin
2 of 13 and a half percent, margin of error within 13 and a
3 half percent?

09:45 4 A. There were two reported analysis there. One
5 was a very simple one where you took just the simple
6 average. If you take just the simple average, pay no
7 attention to all the other ancillary information and use
8 that, then for my work, not for the 2001 inventory but
9 for my check of 100 locations, it was plus or minus
09:46 10 approximately 13 percent.

11 Q. 13 and a half percent, right?

12 A. Yes.

13 Q. Potentially a swing of 26 percent, one way or
14 the other?

09:46 15 A. Well, of course.

16 Q. Okay. So 13 and a half -- the forest is about
17 4 billion board feet; is that right?

18 A. Yes.

19 Q. I think it's 4.3 billion board feet?

09:46 20 A. Roughly.

21 Q. So 13 and a half percent is about 500 million
22 board feet; is that right?

23 A. I take your word for it.

24 Q. Well, you tell me. I mean, 10 percent of 4.6
09:46 25 billion is 460 million board feet, right?

1 A. Okay.

2 Q. Does it sound right that it would be about 500
3 million for 13 and a half percent?

4 A. Without running a calculator, I suppose, yeah.

09:46

5 Q. Okay. And you just measured inventory on a
6 gross basis, correct? You didn't do it by species in
7 your report?

8 A. In my report I only did it by total conifer,
9 yes.

09:47

10 Q. And assuming a price of about \$200 a board foot
11 for all species, redwood, Doug Fir, whitewood, hardwood,
12 does that sound like an average price?

13 A. Per thousand?

09:47

14 Q. Yeah, per thousand board feet. Does that sound
15 about right?

16 A. I don't really know.

17 Q. Okay. But 500 million board feet at \$200 per
18 thousand board feet, that would be a swing of about \$100
19 million, right?

09:47

20 A. Not for my work, no.

21 Q. Well, when you have a forest of 4.3 billion
22 board feet, okay, and you have a 13 and a half percent
23 margin of error, okay, there is a significant amount of
24 value between 13 -- in a margin of error of 13 and a half
09:47 25 percent one way or the other, potentially a swing of 26

1 percent, correct?

2 A. That's not referring to my work but that would
3 be mathematically correct.

4 Q. Why is it not referring to your work?

09:48 5 A. Because I don't use the simple average. And I
6 don't suggest a change at all.

7 Q. The margin of error in your report is 13 and a
8 half percent.

09:48 9 A. No. The margin of error in my report for the
10 simple average is that. For the process that I did and
11 that I would do and reported it was about 9 and a half
12 percent. And if you don't change the answer at all, it's
13 one and a half percent.

14 Q. Can you turn to page 92 of your deposition.

09:48 15 A. I have page 92.

16 Q. Line 17. "Tell me why -- how the -- use a
17 simple arithmetic average of 96 plot clusters and you say
18 that confirms the 2007 inventory. Why? Why do you reach
19 that conclusion?"

09:49 20 Answer: "It's within a few percent of that
21 answer, plus or minus something like 13 percent."

22 Question: "Plus or minus what?"

23 Answer: "13 percent."

09:49 24 Was that your testimony, sir? It's a yes or no
25 question. Was that your testimony?

1 A. I have a problem and the --

2 Q. It's a yes or no question. Was that your
3 testimony? Let's establish that first.

4 A. Yes, of course, yes.

09:49 5 Q. Is it still your testimony?

6 A. Oh, yes.

7 Q. Okay. What is your problem --

8 A. Well, that --

9 Q. -- with your testimony.

09:49 10 A. That's right, I'm not fit.

11 THE COURT: I think you should rephrase
12 the question.

13 Q. (By Mr. Neier) You wish to -- you wish to
14 supplement your testimony.

09:49 15 A. Well, I wish to point out that what was asked
16 of me there was what would be the sampling error of the
17 simple average. I did a process which corrected it in
18 several phases. The simple average had a sampling error
19 of 13 percent if you apply just that 100 clusters but
09:50 20 that is not what I am suggesting in my report.

21 Q. Okay. I understand that you're not suggesting
22 that in your report. But you have a sampling error of
23 plus or minus 13 and a half percent, potentially a swing
24 of 26 percent?

09:50 25 A. If I was to use that process or apply those

1 answers, that would be the case.

2 Q. Sir, isn't this just basic statistics? You
3 teach statistics, correct?

4 A. Well, apparently I'm not doing it very well.

09:50

5 Here's the situation. You can analyze this in two
6 different ways. You can take a simple average or you can
7 do a more complicated process. The more complicated
8 process gives you a sampling error of ten percent because
9 it uses more and is more precise. The very simple one,

09:50

10 which I was asked to testify to here was if I took a
11 simple average. If you only take a simple average of the
12 100 plots, which I would not do, you do get plus or minus
13 13 percent. That's correct.

14 Q. Okay. Well, you did a sampling of 96 plot
15 clusters, correct?

09:51

16 A. I did.

17 Q. And that's about .0 -- .05 percent or a very
18 small portion of the forest, correct?

19 A. Of course it is, yes.

09:51

20 Q. And there's a sampling error?

21 A. There is.

22 Q. There's a margin of error when you only look at
23 samples of a forest of 209,000 acres, correct?

24 A. Of course there is.

09:51

25 Q. All right. And I believe your testimony is --

1 or you tell me. But I believe that you're only 67
2 percent confident that it's within an average or a margin
3 of error of 13 and a half percent; is that right?

4 A. No. If you applied the analysis that I suggest
09:51 5 you use, it would be a 68 percent confidence that you
6 were within plus or minus about 9 and a half percent.

7 Q. Okay. Well, let's --

8 A. But it is one sampling error.

9 Q. Let's take that figure of 9 and a half percent,
09:52 10 which I don't believe you testified to in San Francisco;
11 is that right?

12 A. I wasn't asked about that.

13 Q. Okay. So 9 and a half percent, that's about --
14 let's say that's 10 percent. Of a forest of 4.3 billion
09:52 15 board feet, that's going to be 430 million board feet,
16 correct, plus or minus?

17 A. It is correct that if you apply that average
18 and use that henceforth, you would have that sort of
19 sampling error, that's correct.

09:52 20 Q. So potentially a swing of 20 percent of the
21 forest, correct?

22 A. If that number was applied and you change the
23 total of the forest, that would be correct.

24 Q. And if you value the forest, you have -- and
09:52 25 it's based on the inventory in the forest, you have

1 potentially a 20 percent swing in the value of the
2 forest, correct?

3 A. Well, certainly in the available volume. How
4 much you log of that, of course, develops the cash flow
09:52 5 and the value. But certainly the volume would be
6 affected by that amount.

7 Q. Now, when you did your report, you chose to
8 only look at the gross conifer volume of the entire
9 forest; is that right?

09:53 10 A. That's correct.

11 Q. You didn't look at the inventory of redwoods?

12 A. Individually?

13 Q. Individually.

14 A. I didn't report it individually. Of course I
09:53 15 looked at it.

16 Q. Well, you didn't report -- it wasn't important
17 to your purposes to look at the various species and the
18 inventory of the various species, correct?

19 A. After I had looked at it, it wasn't important
09:53 20 to report it, no.

21 Q. It's not in your report at all as to what the
22 inventory is of the various species. You didn't -- you
23 didn't distinguish that at all in your report.

24 A. That is correct.

09:53 25 Q. Does a company sell or pay for logs on a net or

1 gross basis?

2 A. We normally doing it on a net basis.

3 Q. Okay. And are timber appraisals done on a
4 gross or net volume basis?

09:53 5 A. I would think they were normally done on a net
6 basis.

7 Q. But you checked the gross volume, correct?

8 A. Of course.

9 Q. And when you looked at the entire forest and
09:54 10 looked at the inventory in the entire forest, you
11 included the MMCAs as part of -- you understand what I
12 mean by MMCAs, right?

13 A. I do, yeah.

14 Q. And you looked at the entire forest which
09:54 15 included the MMCAs, correct?

16 A. Yes, I looked at the entire land base.

17 Q. In fact, all the non-harvestable areas of the
18 forest were included in your report?

19 A. All of the areas in the forest were included in
09:54 20 my report.

21 Q. You did not simply look at the inventory in the
22 harvestable areas, correct?

23 A. When you say "look at the inventory," I
24 didn't -- I didn't --

09:54 25 Q. You did not -- let me rephrase the question. I

1 think I appreciate what you're saying.

2 You did not distinguish between the
3 harvestable areas and the non-harvestable areas in terms
4 of inventory in your report, correct?

09:54 5 A. Not for checking the overall volume, no, I
6 didn't.

7 Q. I'm sorry. What was the answer?

8 A. Not for checking the overall volume, no, I
9 didn't.

09:55 10 Q. It's not in your report at all as to what the
11 inventory is in the harvestable areas, correct?

12 A. No, my report is about the volume of the entire
13 area.

14 Q. And there's a significant amount of this forest
09:55 15 that cannot be harvested, correct?

16 A. I would think so, yes.

17 Q. The MMCAs can't be harvested?

18 A. Not at present, no.

19 Q. And there are a lot of other areas that cannot
09:55 20 be harvested?

21 A. Of course.

22 Q. In fact, 27 percent of the acres cannot be
23 harvested?

24 A. I take your word for that, yes.

09:55 25 Q. And 35 percent of the volume cannot be

1 harvested; is that right?

2 A. I think so.

3 Q. The inventory doesn't change materially in the
4 non-harvestable areas, correct?

09:55 5 A. The inventory doesn't change?

6 Q. Yeah, the forest doesn't really change in the
7 non-harvestable areas, correct?

8 A. I don't see any reason to conclude that.

9 Q. Well, it's true that in the non-harvestable
09:56 10 areas, there's a significant amount of old growth
11 redwood, correct? That's why they're not harvestable.

12 A. No, that's not why they're not harvestable.

13 Q. Okay. But they're not harvestable pursuant to
14 state regulation and federal regulation, correct?

09:56 15 A. In normal circumstance like this, there's lots
16 of reasons why areas may not be harvestable. They may be
17 quite young, close to water forces or any number of other
18 things.

19 Q. Okay. And this may sound like a tautology but
09:56 20 trees aren't harvested in the non-harvestable areas,
21 correct?

22 A. Yes, but that doesn't mean that they don't
23 change in those areas.

24 Q. It's true that trees die, correct?

09:56 25 A. And they grow.

1 Q. And they grow. So there's some change.

2 A. Of course there is.

3 Q. Okay. But compared to the harvestable areas,
4 isn't it a fact there's a lot more change in the areas
09:56 5 where they're cutting trees?

6 A. Well, yes, when you cut the trees, there is a
7 great change.

8 Q. I would think so. But you only measured the
9 forest on the -- without distinguishing the harvestable
09:57 10 and the non-harvestable areas?

11 A. When I sampled, I sampled the entire area,
12 that's correct.

13 THE COURT: Maybe I'm missing something.
14 He didn't check any trees that were cut, did he? He only
09:57 15 cut -- he was checking growth rates. I don't know. I
16 mean -- a cut tree doesn't grow, does it?

17 MR. NEIER: I think I can ask the witness
18 this.

19 Q. (By Mr. Neier) You checked two things in your
09:57 20 report. You checked -- you checked the 2001 inventory,
21 correct?

22 A. I checked the updated 2001 inventory to 2007,
23 yes.

24 Q. And you checked the growth rates?

09:57 25 A. I checked the growth rate, yes.

1 MR. NEIER: Those are the two things in
2 his report, Your Honor.

3 Q. (By Mr. Neier) And both were done for the
4 entire forest, harvestable and non-harvestable?

09:57 5 A. Of course, yes.

6 Q. And both were done without regard to species in
7 your report, correct?

8 A. I didn't report them by species, no.

9 Q. Now, are you familiar with the fact that under
09:58 10 the Reimer plan for the forest, the species mix is going
11 to change, correct?

12 A. Well, I would expect the species mix to change
13 in any forest that was managed, yes.

14 Q. Significantly change, materially change?

09:58 15 A. Perhaps so.

16 Q. Well, you tell me. Is the Reimer plan based on
17 planting a lot of redwood where Doug Fir currently grows?

18 MR. DOREN: Your Honor, the witness has
19 already testified he hasn't read Dr. Reimer's report. At
09:58 20 least lay a foundation that he had any knowledge of that.

21 THE COURT: Well, you can ask him a
22 hypothetical if you want.

23 Q. (By Mr. Neier) You didn't read the Reimer
24 report?

09:58 25 A. No.

1 THE COURT: You can still ask him a
2 hypothetical.

3 MR. NEIER: Yes, I can, Your Honor.

09:58

4 Q. (By Mr. Neier) If -- hypothetically, if
5 someone harvests Doug Fir and then plants those same
6 areas with redwood, the species mix in the harvestable
7 areas of the forest is going to change, correct?

8 A. Yes.

09:59

9 Q. Okay. And if that is the plan of the debtors,
10 that is, to regenerate or replant areas that currently
11 have Doug Fir with redwood, that would change
12 significantly the inventory in the forest?

13 A. It would change the mix, yes, it would.

14 Q. The species mix of the inventory of the forest?

09:59

15 A. Yes, it would. I'm assuming that you think
16 that the harvestable areas are going to relatively fixed
17 over time.

18 Q. Do you think differently?

19 A. Oh, yes.

09:59

20 Q. You think the harvestable areas of the forest
21 are going to include some of the non-harvestable areas of
22 the forest?

23 A. Yes.

24 Q. And when do you think that's going to happen?

09:59

25 A. When the owl circles move.

1 Q. When the what?

2 A. When the owl circles move.

3 Q. The owl circles. Are you referring to the
4 MMCAs or are you referring to something different?

10:00 5 A. Spotted owls.

6 Q. Are you referring to the spotted owls circles
7 that are going to change in ten years?

8 A. Yes, some places that are unharvestable are
9 unharvestable in a particular time span and they move
10:00 10 over time, and they will change over time. Regulations,
11 of course, also change. But in a general sense, what
12 you're saying is true, if you cut one species and replace
13 it with another, you expect the species mix to change,
14 yes.

10:00 15 Q. Well, there are going to be owl circles for
16 well out into the future, perhaps forever, correct?

17 A. Well, perhaps.

18 Q. They may change in location but they're going
19 to be there?

10:00 20 A. Yes, that's right. So the harvestable areas
21 will change.

22 Q. All right. And I think you already covered
23 this, but when you look at growth rate, there's no way to
24 tell in your report what the growth rate is in the
10:00 25 harvestable areas and there's no way to tell what the

1 growth rate is with respect to a particular species from
2 your report.

3 A. Not in my report, no.

4 Q. You also -- or did you make any

10:01 5 distinguishing -- did you -- did you distinguish between
6 those areas of the forest that are owned by Palco as
7 opposed to those owned by Scopac?

8 A. No.

9 Q. You're aware that there are approximately

10:01 10 10,000 acres of the forest that are owned by Palco which
11 Scopac has the right to cut timber on them?

12 A. Yes, the database makes that distinguishment,
13 but I don't.

14 Q. But you also included the inventory that is on

10:01 15 Palco's land, not just on Scopac's land, correct?

16 A. Yes, my understanding was that they were
17 managing that land, so I checked the entire managed base.

18 Q. Okay. So just because we're talking about the
19 inventory in this case, we're talking about the

10:01 20 particular assets that are owned by Scopac, but you
21 didn't look at the particular assets that are owned by
22 Scopac, you looked at the entire forest, including
23 property owned by Palco, correct?

24 A. I looked at the wooded land base and whatever

10:02 25 those plots fell on the wooded land base, that's what I

1 checked, yes.

2 Q. Whoever they were owned by?

3 A. Whoever they were owned by.

4 Q. Now, I understand my knowledge of statistics is

10:02

5 pretty low, but I want to try and figure out or get a
6 lesson at least. Is it correct to say that your report
7 is based on either you're 67 percent or 68 percent sure
8 of your conclusion. Is that the right way to phrase it?

9 A. Are you -- are you thinking that my conclusion

10:03

10 is the corrected value using the 100 plots leading to the
11 2.4 increase in the volume?

12 Q. Yes.

13 A. If you were to apply that, then the difference
14 is an unknown amount. But if you had to estimate it, how
15 far it was off, you would know how to fix it. But if you
16 were going to estimate how far that might be off, I would
17 estimate it at one standard error, which is a 68 percent
18 confidence level, yes.

10:03

19 Q. Or one standard of deviation would be another
20 way to phrase in statistics, right?

10:03

21 A. In statistics you'd call it either a standard
22 deviation of the mean or a standard error. Those would
23 be the technical terms.

24 Q. So you're 67 percent confident with a plus or
25 minus 13 and a half percent swing, correct?

10:03

1 A. No.

2 Q. Not correct?

3 A. Not correct.

4 Q. What is the correct answer, as far as you're

10:03 5 concerned?

6 A. The statistical reasonable phraseology would be

7 I'm 68 percent sure that the answer is not off by 9 and a

8 half percent.

9 Q. Do you have your deposition in front of you

10:04 10 still?

11 A. I tried to mention before that I don't seem to

12 have the same page numbers as you do. I'm not sure why

13 that's true. I thought this is what -- it's marked as my

14 deposition but I don't get the same page numbers that you

10:04 15 apparently do.

16 MR. NEIER: May I approach?

17 THE COURT: You can approach.

18 Q. (By Mr. Neier) This is your deposition? This

19 is Mr. Matthews's deposition.

10:04 20 A. That explains it. Oh, thank you.

21 Q. I can understand why you would be confused

22 about your testimony.

23 A. I can see it on the screen here but I couldn't

24 make it match in there.

10:05 25 THE COURT: If you're comfortable with the

1 screen you're welcome to use it, either one.

2 Q. (By Mr. Neier) Now, you're 68 percent
3 comfortable that this is your deposition?

4 A. Yes, reasonably so after a considerable check
10:05 5 of the material, yes.

6 Q. Okay. If you could turn to page 169. And you
7 can refer to the screen if it helps.

8 A. If you don't mind, I'll just move these other
9 things so this doesn't happen again.

10:05 10 Q. Take your time.

11 A. Quite a clutter of material up here. 169?

12 Q. Yes.

13 A. I think I have that.

14 Q. Line 17, question: -- do you have that in
10:05 15 front of you?

16 A. I do.

17 Q. All right. "And the reason you think it's of
18 no consequence is that you're comfortable being 67
19 percent sure with a 13 percent plus or minus swing."

10:06 20 Answer: "I'm comfortable with the fact that
21 the difference is 2 percent in two different analysis.
22 One is very simple, one more complicated, and if you
23 don't want a better sampling error, then you surely don't
24 multiply two to get a better sample error. You surely
10:06 25 put in more plots in order to reduce the sampling error."

1 Was that your testimony?

2 A. It was, yes.

3 Q. Okay. And it's correct that you could have
4 done better than being 67 percent sure with a 13 percent
10:06 5 plus or minus swing if you sampled more plots, correct?

6 A. Well, you always have 68 percent. That stays
7 stable. The actual number that you're using becomes
8 smaller. By the way, I use 9 and a half rather than 13
9 but the principle is the same.

10:06 10 Q. You used 13 percent during your deposition and
11 I could cite you 100 examples in your deposition that you
12 used 13 percent plus or minus.

13 THE COURT: Do we have to go through the
14 whole deposition and find out if you were asking about
10:06 15 the simple average or asking about his more complicated
16 procedure that you use an average plus other things to
17 narrow it down to 9 and a half?

18 MR. NEIER: Okay. Well, it doesn't really
19 matter because 9 and a half percent is fine with us,
10:07 20 Judge, because that's 430 million board feet.

21 THE COURT: Okay. Let's get off the 13
22 stuff.

23 A. I reviewed the deposition carefully and you did
24 ask about the simple average regarding 13 percent, so 9
10:07 25 and a half is more appropriate and I'm happy to use that,

1 too.

2 Q. Okay. 9 and a half percent, that's swing of
3 400 million board feet one way or another, correct?

4 A. If you apply that correction, yes, it is.

10:07 5 Q. How much did the company harvest last year?

6 A. I don't know.

7 Q. Does 74 million board feet sound about right?

8 A. I don't know.

9 Q. You have no idea?

10:07 10 A. Not a clue.

11 Q. How do you check inventory without knowing what
12 the company's harvested?

13 A. You check what's supposed to be there versus
14 what you find there.

10:07 15 Q. Okay. So you're unaware of what the company
16 harvested between 2001 and 2007?

17 A. No, my check wasn't on the harvest of the
18 company, it was on the inventory of the company.

19 Q. I'm just asking you a simple question.

10:08 20 A. The answer is no.

21 Q. Now, I don't have the chart in front of me that
22 Mr. Doren used when he was examining you. But I think
23 those -- that chart is based on your report, correct?

24 A. Yes, it is.

10:08 25 Q. It's derived from your report, if you will?

1 A. It is.

2 Q. Okay. And what you did is you did three
3 adjustments to what you found with respect to the
4 inventory?

10:08 5 A. I suggested that you could do three
6 adjustments, yes.

7 Q. You suggested. So you're not saying that you
8 should do those adjustments, you're just suggesting them?

9 A. Yes, I'm suggesting it would be appropriate to
10:08 10 look at those three. And if you did use them all, you
11 would find out that you have about two and a half percent
12 more volume than was in the inventory.

13 Q. So the first -- the first thing you did is you
14 took the 97 -- or the 96 plot clusters and you increased
10:09 15 your finding by 5 and a half percent?

16 A. I checked them in the field and that indicates
17 a 5 percent increase, yes.

18 Q. Okay. And a \$4.3 billion -- or 4.3 billion
19 board feet forest, what you did is you increased by
10:09 20 approximately 250 million board feet?

21 A. I didn't increase anything, but the data
22 increased. It indicates there's more volume there.

23 Q. The data increased?

24 A. Yes.

10:09 25 Q. Then you did a second adjustment, correct?

1 A. Yes, I did.

2 Q. And that was based on just 15 plots?

3 A. 15 clusters, yes.

4 Q. 15 clusters. How much is 15 clusters of the

10:09 5 entire forest?

6 A. Well, not that it matters, but it's a very

7 small percentage, and if you're doing point sampling

8 there's really a point and there's no percentage.

9 Q. Okay. And based on this second adjustment just

10:10 10 on 15 clusters, you adjusted the inventory a further 4.4

11 percent upwards?

12 A. That was what the data suggested, yes.

13 Q. So adjustment one is 5 and a half percent

14 upwards?

10:10 15 A. Yes.

16 Q. Adjustment two based on 15 clusters was 4.4

17 percent upwards?

18 A. Yes.

19 Q. Okay. And then you made a third adjustment

10:10 20 based on 39 trees that you cut, correct?

21 A. Yes.

22 Q. And that adjustment was a decrease of 6.6

23 percent?

24 A. Sounds right, yes.

10:10 25 Q. So you adjusted upwards based on -- of the

1 entire inventory of the forest based on 96 plot clusters?

2 A. Yes.

3 Q. You then adjusted upward again based on 15 plot
4 clusters?

10:10 5 A. Yes.

6 Q. And then that's like a total 10 percent
7 increase in the inventory. And then you decreased that
8 inventory by 6.6 percent based on 39 trees?

9 A. Yes.

10:10 10 Q. In your report, if you could turn to the bottom
11 of page 7 -- I'm sorry, that's not the right one. Let me
12 see if it is. Yeah, page 7 there's a graph on that page
13 at the bottom, correct?

14 A. Yes.

10:11 15 Q. What does this graph show?

16 A. This shows the volume that was found by the
17 field crew when they put down a cluster in the portion of
18 the stand versus what the database thought should be
19 there in that stand as an average.

10:11 20 Q. If I understand this correctly, these are all
21 96 clusters?

22 A. I think so, yes.

23 Q. And the vast majority of the clusters, would
24 you say, are in the 40,000 board feet per acre range,
10:12 25 right over here where I'm indicating, correct?

1 A. Yes. The vast majority of them fell in the
2 stands that had that kind of volume, yes.

3 Q. Okay. And this is of the entire forest?

4 A. Yes.

10:12 5 Q. And very few of the clusters, in fact, only 3
6 of the 96 clusters are over 100,000 board feet per acre;
7 is that right?

8 A. That's right.

9 Q. And is it fair to say that you believe this was
10:12 10 a correct way to sample the entire forest?

11 A. Unquestionably so.

12 Q. Okay. So currently speaking, you believe that
13 the vast majority of the forest is in this 40,000 board
14 feet per acre range, correct?

10:12 15 A. I don't have a belief about that. The database
16 will tell you what that situation was, but the sample
17 certainly fell in that range, yes.

18 Q. Okay. And is that sample good enough for you?

19 A. Indeed it is, yes.

10:13 20 Q. Okay. So very, very little of the forest is in
21 the 100,000 or more board feet per acre or has more than
22 100,000 board feet per acre, right?

23 A. That's correct, yes.

24 Q. I have only one last conclusion based -- or one
10:13 25 last question based on Mr. -- well, no, that's not true.

1 I can ask some more questions.

2 I think Mr. Doren asked you whether -- or you
3 stated that it was your impression that the company was
4 maintaining its inventory base between 2001 when its full
10:13 5 inventory was done and 2007 when you did your check,
6 correct?

7 A. That they were maintaining it?

8 Q. Yes.

9 A. Yes.

10:13 10 Q. And it was your impression that they were doing
11 it correctly?

12 A. I think they were doing it quite reasonable,
13 yes, a good job.

14 Q. But that didn't matter to you, correct?

10:14 15 A. Well, it wouldn't matter to the analysis if,
16 for instance, they were cut -- if they maintained it
17 poorly, they would have a smaller volume and the check
18 would find a larger volume and would correct for that.

19 Q. Isn't it correct that at the time of your
10:14 20 deposition you really did not know what they had done to
21 maintain their inventory database between 2001 and 2007?

22 A. I didn't know the exact procedure, no, I
23 didn't.

24 Q. Okay. So that's something you learned after
10:14 25 your deposition?

1 A. Well, I learned it before but had no memory of
2 it and I never sought out the particulars because they
3 didn't matter to the analysis.

10:14

4 Q. Okay. Now, this is my last question. I'm
5 being paid good money to ask this question.

6 A. So I understand.

7 Q. Mr. Shields asked you about measuring trees at
8 breast height, correct?

9 A. Yes.

10:14

10 Q. And that's to avoid butt flare. That's okay,
11 you don't have to answer. Butt flare of trees.

12 A. That, too.

13 CROSS-EXAMINATION

14 BY MR. FIERO:

10:15

15 Q. Hi, Dr. Iles, I'm John Fiero, we met at your
16 deposition.

17 A. We did.

18 Q. When you did this work, were you acting as a
19 forester?

10:15

20 A. Acting as a forester?

21 Q. Yes.

22 A. Well, there are legal implications about acting
23 as a forester. I think you meant whether I'm a

24 registered professional forester. I'm acting as a forest
25 biometrician.

10:15

1 Q. Okay. No, I'm interested in whether you viewed
2 the work that you did as forestry.

3 A. Forestry, under some legal definition or
4 forestry in general?

10:15 5 Q. No, under the definition that you would apply
6 on an everyday basis, was this forestry work, sir?

7 A. That I would apply?

8 Q. Yes, sir.

9 A. Yes, it's forestry work.

10:15 10 Q. Okay. And you're not licensed as a California
11 forester, are you?

12 A. No.

13 Q. And are you aware of whether or not
14 California's laws would allow you to do this sort of work
10:15 15 in the State of California without being a registered
16 professional forester?

17 A. Most of my work wasn't done in California but I
18 don't propose to do it on a professional basis as a
19 forester. I'm a professional forest biometrician, which
10:16 20 is different.

21 Q. That wasn't my question. My question was
22 whether or not you are aware of whether or not the laws
23 of California would allow you to do this sort of work in
24 California.

10:16 25 A. No.

1 Q. All right. You don't know one way or the
2 other?

3 A. I don't.

10:16

4 Q. If -- you understand that -- do you understand
5 how Dr. -- how Mr. Yerges used your forest biometrics
6 work?

7 A. I assume that he used it simply to verify that
8 the database of the company was adequate to do his work.

10:16

9 Q. Okay. But you don't know that for sure one way
10 or the other?

11 A. I haven't read his report either.

12 Q. You didn't read Mr. Yerges's report or
13 Dr. Reimer's report?

14 A. No.

10:16

15 Q. Okay. So I'd just like to pose a hypothetical
16 then to you. If I told you that Dr. -- I'm sorry,
17 Mr. Yerges chose not to value the MMCAs and certain land
18 surrounding them, would you think it was appropriate to
19 exclude those plots that fell within the MMCAs and
20 surrounding areas that he didn't value in that context of
21 his appraisal work?

10:17

22 A. The question is complex and I'm not quite
23 clear. I wouldn't propose to tell him how he should use
24 my data. He has data on individual polygons which he
25 uses in whatever way he does. My work simply indicates

10:17

1 that the overall total was good. If he was concerned
2 about the particular ones, he would check perhaps just
3 those.

10:17

4 Q. All right. You know, I guess I'd like to back
5 up for a minute because I was struck by something that
6 you said. You said this set of data was perfectly
7 adequate for doing planning and projections.

8 A. I believe so.

9 Q. Do you remember that testimony?

10:17

10 A. Yes.

11 Q. Okay. Do you understand that Mr. Yerges is not
12 doing planning and projections?

13 A. Yes.

10:17

14 Q. All right. You understood that -- or do you
15 understand now that what he was doing is seeking to
16 predict what a willing buyer and seller would do with
17 regard to the Scopac timberlands?

18 A. Yes.

10:18

19 Q. All right. So would you agree with me then
20 that the work you were trying to perform and the
21 conclusions you reached about the adequacy of the data
22 don't match the goals of what he was trying to do?

10:18

23 A. No, I think they're simply independent of the
24 goals he was trying to use. My work would be used
25 directly by Dr. Reimer and Dr. Reimer's work would

1 probably be used in the evaluation.

2 Q. Well, you understand, don't you, that when an
3 appraiser is trying to assess the value of a given
4 property, all he cares about is what a willing buyer and
10:18 5 seller would do, am I right?

6 A. I take your word for that.

7 Q. All right. And the notion that your work is
8 only good enough for planning and projections and not
9 what a willing buyer and seller would do, does that
10:18 10 trouble you at all?

11 A. I don't think it's only good enough for that
12 but no, it doesn't trouble me.

13 Q. Let's go back to the 96 plots that you did use.
14 If you were to remove from the sample of 96 the ones
10:19 15 which fell within the MMCAs or other areas that
16 Mr. Yerges chose not to value, that would increase the
17 risk of error in your conclusion, wouldn't it?

18 A. I don't know. If they were extreme values, it
19 would probably reduce the risk of error.

10:19 20 Q. Sir, you believe that reducing the number of
21 plots would -- could actually increase the likelihood
22 that your answer is correct?

23 A. Oh, yes.

24 Q. Do you believe, Dr. Iles, that your sample
10:19 25 inventory here conformed with industry standards applied

1 by active timber investors?

2 A. I'm not performing it for active timber
3 investors and I don't know that there is any standard,
4 but I believe that it's a perfectly reasonable approach
10:20 5 to the problem, yes.

6 Q. Okay. That wasn't my question. My question
7 was: Do you believe that an active timber investor would
8 have used your approach and accepted your margins of
9 error and your degree of confidence?

10:20 10 A. I would suggest that he could, yes.

11 Q. No, that's not what I said.

12 A. Well, I --

13 Q. I said: Do you believe that active timber
14 investors are doing that today, sir?

10:20 15 A. I simply have no idea what active timber
16 investors are doing today in regard to my work.

17 Q. So you don't know what the industry standards
18 are that active timber investors are applying when they
19 buy and sell timberlands, am I right?

10:20 20 A. I don't think that there are those, but no, I
21 don't know them.

22 Q. Did Dr. Yerges tell you to do -- I'm sorry,
23 Mr. Yerges. Did Mr. Yerges tell you to do anything in
24 particular with regard to your appraisal -- I'm sorry,
10:20 25 your sampling?

1 A. Not that I recall, no.

2 Q. Okay. So you got no special instructions from
3 Mr. Yerges?

4 A. No.

10:21 5 Q. Did you get any from Dr. Reimer?

6 A. No.

7 Q. You worked independently?

8 A. I did.

9 MR. FIERO: Pass the witness, Your Honor.

10:21 10 THE COURT: All right. Any other cross?

11 All right. Redirect.

12 REDIRECT EXAMINATION

13 BY MR. DOREN:

14 Q. Dr. Iles, let's just go ahead and start with
10:21 15 Mr. Shields, some of the topics he raised, and those were
16 primarily focused around growth rates. And through the
17 course of your work is it fair to say that you were
18 looking at the average growth rate for all species across
19 the property?

10:22 20 A. For all species for the last ten years across
21 the property, yes.

22 Q. And within that property, will the growth rates
23 vary from site to site?

24 A. Of course.

10:22 25 Q. And will it vary -- and what are some of the

1 factors that will impact whether or not that varies?

2 A. Age of trees, site index principally.

3 Q. And in developing a harvest plan, is it
4 important to take the variability in that growth rate
10:22 5 into account?

6 A. Oh, yes.

7 Q. He also asked you whether you had taken
8 cultivars into account, I believe. And I believe you
9 also testified that you have only measured trees of eight
10:22 10 inches or greater in diameter, correct?

11 A. I only did the analysis on trees eight inches
12 or greater.

13 Q. And do you know whether there are any cultivars
14 on the property currently with diameters greater than 8
10:22 15 inches?

16 A. I don't know.

17 Q. So if there were not, you would not have used
18 them in your analysis, correct?

19 A. I would not have used them if they didn't fall
10:22 20 on my plots and I would have used them if they did.

21 Q. If they were greater than eight inches.

22 A. If they were, yes.

23 Q. And if you had not included any cultivars in
24 your sample, is it -- do cultivars tend to grow faster
10:23 25 than natural redwoods?

1 A. I would think so, yes.

2 Q. And so inclusion of cultivars in the growth
3 rate calculation would actually increase the overall
4 growth rate; is that right?

10:23 5 A. If I had them in my sample it would have
6 increased the growth rate almost surely.

7 Q. Now, there was some discussion about the use of
8 gross versus net conifer volume. Do you recall that?

9 A. Would you repeat that.

10:23 10 Q. There was some discussion about your
11 measurement of gross versus net conifer volume. Do you
12 recall that?

13 A. Yes, I do.

14 Q. Do you consider it appropriate to be measuring
10:23 15 gross volume when doing a validation of an inventory?

16 A. Oh, yes.

17 Q. Why is that?

18 A. Well, the gross to net ratio on a large
19 property like this is very stable. And in fact, when we
10:23 20 checked it in the data, it was approximately the same in
21 the data as it was in the overall process.

22 Q. All right. And is it customary in the industry
23 to use a formula or a translation formula of some sort to
24 translate gross to net volume?

10:24 25 A. I don't know if it's customary, but it's

1 certainly possible to do that, particularly when that
2 data is not readily available.

3 Q. All right. And is that something that you see
4 done regularly?

10:24 5 A. I see it done, I don't know if it would be
6 regularly or not.

7 Q. All right.

8 A. In most cases you measure net volume directly.
9 If you had the time and the quality control procedures to
10:24 10 do that.

11 Q. Now, is it the case that most timber companies
12 estimate net volume?

13 A. Yes, that's all you can do.

14 Q. Okay. And how do you estimate net volume?

10:24 15 A. You would look at visible defects on the trees
16 and make an estimate of how much wood that puts into a
17 call category and you put that down as an estimate.

18 Q. All right. Now, there are also some questions
19 about whether -- I took them to be whether or not the
10:25 20 inclusion of the MMCAs somehow overstated the inventory
21 or rather made your inventory more certain than it might
22 otherwise be. Do you recall that topic generally?

23 A. Yes.

24 Q. And there was also a discussion more broadly
10:25 25 about non-harvestable areas, correct?

1 A. Yes.

2 Q. Now, in addition to the non-harvestable areas,
3 there are, for example, stream buffers that cannot be
4 harvested; is that correct?

10:25 5 A. Yes.

6 Q. And you mentioned also that there are owl
7 circles, correct?

8 A. Yes.

9 Q. And I believe you also said that owl circles
10:25 10 actually tend to move around the forest. Did I hear that
11 correctly?

12 A. They can, yes.

13 Q. And why is that?

14 A. Well, because the owls migrate, die, move on.

10:25 15 Q. So as the owls move, the circles move; is that
16 right?

17 A. Yes.

18 Q. And so what is harvestable or not harvestable
19 in a stream buffer or an owl circle will vary depending
10:25 20 on the state of the forest at that time?

21 A. Depends on biology and regulations in all
22 cases, yeah.

23 Q. And so the growth rates in the inventory within
24 those areas, are they -- are they fairly dynamic?

10:26 25 A. As an average, you mean?

1 Q. In other words, the inventory in owl circles
2 and in stream buffers and the other areas you've
3 described, do you consider that to be any more static
4 than the forest as a whole?

10:26

5 A. No.

6 Q. Now, Mr. Neier asked you some questions --
7 Mr. Neier asked you some questions about page 92 of your
8 deposition where you talked about a 13 percent margin of
9 error. Do you recall that?

10:27

10 A. I do. I don't have it on my screen, by the
11 way.

12 Q. All right. Well, if you can read that screen
13 or flip to it now that you have the transcript in front
14 of you.

10:27

15 A. What was the page on the transcript?

16 Q. Page 92, line 17.

17 A. Yes, I have that.

18 Q. Now, Dr. Iles, when you were talking about the
19 13 percent margin of error, you stated expressly that
20 that related to the simple arithmetic average that was
21 the first adjustment you made, correct?

10:27

22 A. Yes.

23 Q. In fact, let me show you, if I may, page 10 of
24 your report. If we can get that over on the top, please.

10:28

25 And you see in your report where you state "for each of

1 the three correction rates there is a standard error due
2 to sampling variability"?

3 A. Yes, I do.

4 Q. "I calculate that the overall standard error
10:28 5 for the combined correction multipliers is plus or minus
6 9.7 percent."

7 A. Yes.

8 Q. And is that in fact what you told Mr. Neier
9 today about the overall margin of error after you go
10:28 10 through all three corrections?

11 A. I tried my best, yes.

12 Q. But Mr. Neier didn't show you this page from
13 your report, did he?

14 A. No.

10:28 15 Q. Though he did show you some charts from your
16 report, correct?

17 A. Yes.

18 Q. Now, Dr. Iles, were you conducting a new
19 inventory or checking the validity of an existing one?

10:28 20 A. Checking the validity of an existing one.

21 Q. And if you leave the original inventory at its
22 current level, would the original margin of error stay
23 the same?

24 A. Yes, exactly so.

10:29 25 Q. So why did you do the validation?

1 A. Just to find if there were any egregious errors
2 so that I could assure the Court that I had personally
3 checked all of the phases of the inventory and found the
4 result to be very close to the original.

10:29 5 Q. Now, did anyone tell you how to design your
6 valuation test?

7 A. No.

8 Q. Did you design a test that you felt in your 35
9 years of experience was appropriate to generate a
10:29 10 statistically meaningful check on the inventory?

11 MR. NEIER: This is not proper redirect.
12 It wasn't covered in any of the crosses or anything like
13 that.

14 MR. DOREN: Your Honor, the entire cross
10:29 15 was about the sufficiency of his test model, his margin
16 of error and those are the points I am covering here.

17 MR. NEIER: He's now asking --

18 THE COURT: I think he can he ask that
19 question, so go ahead.

10:29 20 MR. DOREN: Thank you, Your Honor.

21 Q. (By Mr. Doren) You designed a test that you
22 felt was appropriate to generate a statistically
23 meaningful check on the inventory?

24 A. I did.

10:29 25 Q. And if you had felt that additional plots

1 needed to be sampled, would you have sampled them?

2 A. Yes, I would have.

3 Q. Why didn't you?

4 A. Because the results were very close to the

10:30 5 original inventory, 2 and a half percent more, and there
6 were no really surprising relationships or sets of data
7 anywhere in here.

8 Q. And now that we've established that your final
9 margin of error was about 9 and a half, 9.7 percent, is

10:30 10 there an equal chance that the inventory, based on your
11 100 plots, is greater than lower?

12 A. It would be greater or lower than the plus 2.4,
13 yes.

14 Q. Thank you. And again, why are you comfortable
10:30 15 that that margin of error offers a sufficient validation?

16 A. 2.4 percent?

17 Q. Plus or minus 9.5 percent.

18 A. Well, that's simply what the data came up with.

19 The real issue is the 2.4 percent. And if you don't
10:30 20 change the inventory, as I suggest you didn't, that
21 doesn't -- that 9.5 percent doesn't apply anyway. If I
22 had felt that you needed a better answer, I simply would
23 have put in more plots.

24 Q. Now, we also talked about your confidence

10:31 25 level, if you will. I believe it was about 67 percent.

1 A. Yes.

2 Q. What was that based on?

3 A. It's a mathematical issue. When you state one
4 standard error, then you are that percentage sure, 68
10:31 5 percent, that the error is not more than the number
6 you're stating.

7 Q. And what would you have done to get to, for
8 example, a 95 percent confidence rate?

9 A. Well, you simply multiply by 2.

10:31 10 Q. All right. Would that have changed the results
11 of your analysis?

12 A. No, it doesn't change either the 2.4 percent
13 nor any hypothesis test that you might do. There's no
14 change at all.

10:31 15 Q. Well, why not?

16 A. Well, a hypothesis test would simply ask if
17 you're inside that range, and you're inside that range of
18 a plus or minus 1 standard error and you're certainly
19 within a plus or minus 2.

10:31 20 Q. Now, again, Dr. Iles, in your professional
21 opinion, is the 2007 inventory reliable and appropriate
22 for long-term harvest plan?

23 A. Yes, in my professional opinion, it is. The
24 difference I found was very small and I would ignore it
10:32 25 and I would use the original inventory with 10,000 plus

1 plots.

2 Q. Thank you, Dr. Iles.

3 MR. DOREN: Your Honor, I have no further
4 questions.

10:32 5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Next witness.

8 MR. DOREN: Your Honor, we call Dr. Don
9 Reimer.

10:32 10 DON REIMER, Ph.D.,
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DOREN:

14 Q. Good morning, sir, would you please state your
10:33 15 name.

16 A. Donnie Ray Reimer.

17 Q. And what is your profession?

18 A. I'm a forest biometrician and a forest resource
19 economist.

10:33 20 Q. And do you have a particular emphasize in those
21 fields?

22 A. Yes, sir, I worked mostly in my career in doing
23 long-term harvest scheduling and harvest planning on
24 forest land basis and I do growth and --

10:33 25 Q. Okay. If you could please speak into the mic a

1 little bit. Thank you. And how long have you been in
2 that line of work?

3 A. Over 35 years.

4 Q. Could you please tell the Court your
10:33 5 educational background.

6 A. Yes, sir. I have a bachelor of science in
7 forest management from Northern Arizona University. I
8 have a masters in forestry in Yale with an emphasis in
9 biometrics and economics. I have a Ph.D. from Purdue
10:33 10 University in resource economics and biometrics.

11 Q. And could you please tell the Court your
12 employment background.

13 A. Upon graduation I worked for 14 and a half
14 years for MacMillan Bloedel. And in that capacity I was
10:34 15 responsible for growth and yield research during the time
16 I was there, as well as long-term harvest planning.

17 Q. And what was the land base there at MacMillan
18 Bloedel?

19 A. They operate in Canada, four and a half million
10:34 20 acres in British Columbia and 1.5 million in
21 Saskatchewan.

22 Q. And I'm sorry, I just want to make sure I
23 heard. MacMillan Bloedel is a timber company in Canada?

24 A. Yes, sir. They are a large timber company.

10:34 25 Q. And were you personally responsible for all

1 long-term harvest levels?

2 A. Yes, sir.

3 Q. And were you personally responsible for all
4 growth and yield work at that company?

10:34 5 A. Yes, sir.

6 Q. And when you left the company after 14 and a
7 half years, how large was the staff that reported to you?

8 A. 42.

9 Q. Now, when did you leave MacMillan Bloedel?

10:34 10 A. 1983.

11 Q. And what you did do?

12 A. I started a consulting company.

13 Q. Is that called DR Systems?

14 A. Yes, sir.

10:34 15 Q. And could you please briefly describe the
16 business of DR Systems.

17 A. We do similar things to what I did when I was
18 working for MacMillan Bloedel. We do long-term harvest
19 planning for timberland owners and we do growth and yield
10:35 20 research.

21 Q. And we've heard a lot about computer modeling,
22 different computer models and whether computer models are
23 needed. Do you use a computer model in generating
24 harvest projections?

10:35 25 A. Yes, sir.

1 Q. And what's it called?

2 A. It's called Options.

3 Q. And where did you get it?

4 A. We developed it ourselves.

10:35 5 Q. And is it available for purchase on the market?

6 A. Yes, sir.

7 Q. And how long has that been the case?

8 A. Over 20 years.

9 Q. And is Options a linear mathematical optimizer?

10:35 10 A. No, sir.

11 Q. What is Options?

12 A. It's a simulator with GIS based special
13 analysis capabilities.

14 Q. And how does Options work?

10:35 15 A. It's a framework of architecture in which you
16 input the growth and yield projections you wish to use
17 for the subject property. You use the subject property
18 standing inventory. You use the GIS files that are
19 appropriate to that property for physical characteristics
10:35 20 as well as things that are of concern or environmental
21 regulations. And you apply the forest management
22 strategies or the forest management treatments that the
23 client wishes to pursue.

24 Q. Now, is Options better suited for large land
10:36 25 bases like Scopac's than a linear mathematical optimizer?

1 A. Yes, sir, in my opinion it is.

2 Q. And why is that?

3 A. You can certainly address more complexity on
4 the land base and you can take into account all the

10:36 5 dynamics and the feedback related to the biology as well
6 as the spacial interactions.

7 Q. Now, how many land bases has Options been used
8 on over the years?

9 A. Hundreds.

10:36 10 Q. And how many total acres has it been used on?

11 A. Over 500 million worldwide.

12 Q. And has it been used on properties other than
13 Scopac's that have habitat conservation plans?

14 A. Yes, sir.

10:36 15 Q. And can you give us an example of one of those?

16 A. Probably the most important -- or
17 well-recognized was Plum Creek's Cascades HCP.

18 Q. And Cascades, is that in Washington State?

19 A. Yes, sir, east of Seattle.

10:36 20 Q. And how large was the land base that you worked
21 on there?

22 A. The planning land base was 650,000 acres and it
23 covered -- it was a multi species HCP.

24 Q. And how many species did that habitat

10:37 25 conservation plan encompass?

1 A. 285.

2 Q. And how does that compare to the number covered
3 by the HCP on Scopac's property?

4 A. I understand there are 18 species involved.

10:37 5 Q. At Scopac?

6 A. 18.

7 Q. And when did you put or assist in putting the
8 harvest planning in place for the Plum Creek HCP?

9 A. In 1994 to 1996.

10:37 10 Q. Now, it's been about ten years. How long a
11 period did you project?

12 A. We predicted 50 years for it. That was the
13 term of the HCP.

10:37 14 Q. Have you had an opportunity to assess how your
15 projections are turning out at the ten-year mark?

16 A. Yes, sir, last year there was an official
17 ten-year review of that HCP and the results of that as
18 far as stand structure and habitat and projections, our
19 projections were slightly conservative. The forest was
10:37 20 doing better than we had forecast.

21 Q. Now, prior to this bankruptcy case, had you
22 worked with Scopac before?

23 A. Yes, sir.

24 Q. And when was that?

10:38 25 A. 2003. I worked on their Option A.

1 Q. And can you tell the Court -- tell all of us
2 frankly, what is an Option A?

3 A. It's a state sanctioned procedure by which for
4 a particular land base. You determine a sustainable
10:38 5 harvest plan as well as a sustainable forest management
6 strategy.

7 Q. And what work did you do on that Option A?

8 A. We developed the growth and yield curves that
9 were be to used on Scopac's land base and we did all the
10:38 10 modeling and the analysis to develop the harvest plan and
11 the management strategy.

12 Q. All right. Now, in relation to this bankruptcy
13 proceeding, what have you been asked to do?

14 A. Develop a harvest schedule appropriate for the
10:38 15 land base in question.

16 Q. And how did you decide what harvest level would
17 be appropriate for this land base?

18 A. I determined, based on my professional opinion,
19 that the harvest schedule that was sustainable that met
10:38 20 all the legal requirements as well as a maximized net
21 cash flow would be the most appropriate.

22 Q. Now, did anybody tell you to select that
23 regime?

24 A. No, sir.

10:39 25 Q. You selected that based on your opinion?

1 A. Yes, sir.

2 Q. And why did you select that regime?

3 A. It's been my experience that in most industrial
4 land bases the owner is obviously interested in

10:39 5 developing a return on the asset base and that was the
6 basis.

7 Q. Now, upon the completion of your work, did you
8 submit a report?

9 A. Yes, sir.

10:39 10 Q. And I believe you have in front of you Exhibit
11 DX-2. Is that your report?

12 A. Yes, sir.

13 MR. DOREN: Your Honor, I move for
14 admission of Dr. Reimer's expert report.

10:39 15 THE COURT: Any objection?

16 MR. SHIELDS: No objection.

17 MR. NEIER: No objection.

18 THE COURT: All right. It's admitted.

10:39 19 Q. (By Mr. Doren) And Dr. Reimer, did you also
20 draft and execute a proffer?

21 A. Yes, sir.

22 Q. And is that in front of you as Exhibit DX-45?

23 A. Yes, sir.

10:39 24 MR. DOREN: Your Honor, I move for the
25 admission of DX-45.

1 THE COURT: Any objection?

2 MR. SHIELDS: This is the document that
3 was served Monday night at 5:45?

4 MR. DOREN: That's the next one. This is
10:39 5 the first one.

6 MR. SHIELDS: Okay. The first one is
7 okay.

8 MR. NEIER: No objection, Your Honor.

9 THE COURT: All right. So it's admitted.

10:39 10 Q. (By Mr. Doren) And Dr. Reimer, do you also
11 have in front of you DX-109, which is your supplemental
12 proffer?

13 A. Yes, sir.

14 MR. DOREN: All right. And I would also
10:40 15 move the Court, Your Honor, to admit DX-109 into
16 evidence.

17 MR. SHIELDS: Your Honor, I object to the
18 admission of DX-109. It was served at 5:45 p.m. Monday
19 afternoon and it goes into matters that were covered in
10:40 20 his deposition in March that have been in the case for
21 months and months. It could have been in the original
22 declaration that was filed on time. This was belated.
23 We haven't had time to deal with it, it serves no
24 purpose. I object.

10:40 25 THE COURT: What's the purpose?

1 MR. DOREN: Your Honor, Dr. Reimer's
2 supplemental proffer is primarily in the form of rebuttal
3 testimony. It would be our hope to keep these
4 proceedings moving along. We would not have to recall
10:40 5 Dr. Reimer in order to get that proffer admitted and
6 we're hoping --

7 THE COURT: Do I have a copy of it?

8 MR. DOREN: You should, Your Honor, but we
9 can provide you one now. May I approach?

10:41 10 THE COURT: You may. So this is his
11 testimony about Mr. Fleming?

12 MR. DOREN: LaMont and Dean, Your Honor.

13 THE COURT: LaMont and Dean?

14 MR. DOREN: Yes, Your Honor.

10:41 15 THE COURT: I'll overrule the objection.

16 MR. DOREN: Thank you, Your Honor. And
17 Your Honor, I would also move the Court to permit
18 Dr. Reimer to testify as an expert witness.

19 THE COURT: Any objection?

10:41 20 MR. SHIELDS: No objection, Your Honor.

21 MR. NEIER: No objection, Your Honor.

22 THE COURT: Okay.

23 MR. DOREN: Thank you, Your Honor.

24 Q. (By Mr. Doren) Now, Dr. Reimer, did you use
10:41 25 Options to assist you in formulating your opinions in

1 this matter?

2 A. Yes, sir.

3 Q. And what information did you input into Options
4 for your work?

10:42 5 A. I input the growth yield curves we developed
6 for Scopac's Option A analysis. I input the January 1,
7 2007 forest inventory. I input the GIS data that was
8 pertinent to the land base with respect to the physical
9 characteristics infrastructure and any areas that were of
10:42 10 concern or under regulation by state or other HCP.

11 Q. All right. Well, let's take those one at a
12 time and let's talk first about growth curves.
13 Dr. Reimer, is what we have on the screen here an example
14 of growth curves?

10:42 15 A. Yes, sir.

16 Q. And were the growth curves that you
17 developed -- well, first of all, what growth curves did
18 you use for this project?

19 A. I used the ones we developed for Scopac's
10:42 20 Option A.

21 Q. All right. And were those curves tailored to
22 Scopac's land?

23 A. Yes, sir.

24 Q. And how were they developed?

10:42 25 A. We spent quite a bit of time developing these

1 curves specifically for Scopac's land base. We started
2 by using Dr. Jim Arnie's SPS model because it's been
3 calibrated for Northern California, the redwoods. We ran
4 projections with that. We compared those projections to
10:43 5 the forest inventory, the standing inventory to see for
6 the existing natural stands how the model compared. And
7 then we compared it against the published curves of
8 Lindquist and Palley as well as the recent bond developed
9 by Berkley folks called Crepets.

10:43 10 Q. All right. Were these curves -- and how many
11 curves in total did you develop?

12 A. Well over 100.

13 Q. I'm sorry, did you say over 100?

14 A. Yes, sir.

10:43 15 Q. So what we're looking at here is just an
16 example?

17 A. There are five curves there. Those are for
18 redwood, one curve for each site class, the bottom curve
19 is poor, then low, then medium, then high, then very
10:43 20 high.

21 Q. All right. Now, did the State of California
22 review the 100 growth curves that you developed?

23 A. Yes, sir.

24 Q. And did they approve their use by Scopac?

10:43 25 A. Yes, sir.

1 Q. And did the State of California give you any
2 feedback or reactions to those growth curves?

3 A. Yes, sir, they did.

10:44

4 MR. SHIELDS: Your Honor, I'm going to
5 object to this as hearsay. This is not in his report.
6 We're hearing it for the first time. There is no way to
7 effectively cross-examine him.

8 MR. DOREN: Your Honor, he's an expert
9 witness.

10:44

10 THE COURT: I think that hearsay exception
11 doesn't apply to expert witnesses in terms of what
12 information they collected.

10:44

13 MR. SHIELDS: All right. Thank you, Your
14 Honor. But if he had validation for some work he did in
15 2002, why isn't it in his report? This is a total
16 surprise. I object to it. And he shouldn't be permitted
17 to testify.

10:44

18 MR. DOREN: Your Honor, it's been clear
19 that he used his growth curves on his Option A work.
20 We're simply discussing that process. This is the last
21 question on this line. We're moving on through.

22 THE COURT: All right. Go ahead and ask
23 the question.

10:44

24 Q. (By Mr. Doren) Dr. Reimer, did the State of
25 California have any reactions or feedback for you on

1 these growth curves?

2 A. Yes, sir, they thought that our analysis was
3 very thorough and they felt the curves were slightly
4 conservative.

10:44 5 Q. Now, how do you assign growth curves across the
6 property?

7 A. How do you assign them?

8 Q. How do you assign growth curves to different
9 places in the property?

10:45 10 A. They are assigned by species and site index.

11 Q. And why are growth curves important?

12 A. They're critical to the future forecast that
13 you would make. They're the drivers for the long-term
14 forecast.

10:45 15 Q. Because they show the rate of growth depending
16 on the species and the location?

17 A. That's correct.

18 Q. Now, you also spoke of using Scopac's
19 inventory. Can you tell us what's contained in that

10:45 20 inventory information?

21 A. That's -- we used the extrapolated inventory,
22 the January 1, 2007 inventory, their current inventory.
23 That contains information on a stand-by-stand basis, by
24 species, by age, by site index and by volume, and volume,
10:45 25 volume per acre.

1 Q. Thank you. And again, why is the site index
2 important?

3 A. That tells you the productivity and the
4 expected future potential growth rate of that particular
10:45 5 forest stand.

6 Q. And as you tell by the growth curve, does that
7 vary from site index to site index?

8 A. Yes, sir.

9 Q. Now, let's talk about the GIS data you used.

10:45 10 Did you work with Scopac's GIS specialist to develop a
11 visual representation of the GIS data that you used in
12 Options?

13 A. Yes, sir.

14 Q. And can we start with an aerial photograph here
10:46 15 of a portion of the property. Where is this?

16 A. This is in the freshwater and Elk drainage.

17 Q. And approximately how many acres are we looking
18 at here?

19 A. Something over 10,000 acres.

10:46 20 Q. All right. Now, does the GIS data that you
21 used include roads and streams?

22 A. Yes, sir.

23 Q. And how do you represent those on this photo?

24 A. They are represented, the roads are black and
10:46 25 the streams are blue.

1 Q. Now, under the HCP, are there no cut buffers
2 around the streams?

3 A. Yes, sir.

4 Q. And do you represent those in red here?

10:46 5 A. Yes, sir, they're in red.

6 Q. And are there any other buffers around the
7 streams?

8 A. Yes, there are selection cut buffers, areas
9 where you can do partial harvesting.

10:46 10 Q. All right. And so these -- you can do partial
11 harvest within the yellow areas?

12 A. Within the orange, yes.

13 Q. Now, does Options take into account both types
14 of buffers?

10:46 15 A. Yes, sir.

16 Q. We've heard some talk about owl circles. Are
17 they included within the Options data?

18 A. Yes, sir.

19 Q. And do these represent owl circles?

10:47 20 A. Yes, they do.

21 Q. Can you describe what these different circles
22 represent?

23 A. The red, small red circles are essentially the
24 areas around the actual nest site which are no cuts. The
10:47 25 yellow circle around that or the orange is an area where

1 you can do selective harvesting. The two white circles
2 are areas that identify where you can do crew cuts as
3 well as selection cuts, subject obviously to all the
4 other restrictions that are present on the land base and
10:47 5 maintaining a certain amount of owl habitat in each
6 circle.

7 Q. I also notice that some of these owl circles
8 don't have the white circle, why is that?

9 A. Those are category 2 or category 3 owls in
10:47 10 which legally you do not have to address habitat beyond
11 the two inner circles.

12 Q. Is it also the case that category 2 and
13 category 3 owls are seasonal rather than year-round?

14 A. That's correct.

10:47 15 Q. Now, did you also include things called mass
16 wasting areas of concern?

17 A. Yes, they're called MWAX, and they are
18 identified in this slide as the purple areas and in those
19 areas you're only allowed to do selection harvesting or
10:48 20 any harvesting at all subject to geologic review by
21 geologists.

22 Q. And these are accounted for in the Options
23 data?

24 A. Yes, sir.

10:48 25 Q. Did you also include other steep slope areas?

1 A. Yes, sir.

2 Q. And why?

3 A. The same rules apply on those. You have to
4 have a geologic review and then you can do possibly
10:48 5 a selection harvest or possibly a clearcut.

6 Q. Now, does Options include each of these areas
7 in each of these regulations in its modeling?

8 A. Yes, sir.

9 Q. And did you also include areas for the water
10:48 10 quality regulations?

11 A. Yes, sir.

12 Q. And are those represented in the lighter blue?

13 A. Those are, yes.

14 Q. And what are the restrictions related to those
10:48 15 areas?

16 A. Those are the tier 1, 2 areas. They are
17 identified based on slope and possibility for
18 sedimentation into the stream. Upon scientific review,
19 they could be relifted. In our modeling we kept them
10:49 20 deferred for 25 years.

21 Q. Has Scopac in fact been able to harvest in some
22 of those areas?

23 A. Yes, they have. On the basis of their
24 scientific studies, they have had a number of these
10:49 25 restrictions lifted.

1 Q. All right. And finally, do you take into
2 account the slopes in these areas?

3 A. Yes, sir. We use --

10:49

4 Q. And is all this data inputted into Options as
5 well?

6 A. Yes, sir.

7 Q. And for what purpose?

8 A. The slopes are used to determine harvest
9 method.

10:49

10 Q. That looks like a lot going on. Where can you
11 harvest?

12 A. Actually, there are a lot of restrictions but
13 the green areas are areas that you can actually clearcut
14 subject to all applicable restrictions.

10:49

15 Q. Well, now let's take it from a very large area
16 to a smaller area. How large an area do these -- does
17 this outlined area represent?

18 A. This represents one cut block within a THP,
19 that's approximately 16 acres.

10:49

20 Q. And 16 acres for all five of those subparts?

21 A. Yes, sir.

22 Q. All right. And how many data fields does
23 Options maintain for each of these polygons?

24 A. We maintain approximately 80 data fields.

10:50

25 Q. All right. Let me show you, are these a list

1 of some of the data fields that you maintained for each
2 of these areas?

3 A. Yes, sir.

4 Q. And are these the data fields that you

10:50 5 maintained for that one polygon?

6 A. Yes, sir.

7 Q. And that's about half an acre of land?

8 A. That's correct.

9 Q. And is it the case that for different polygons

10:50 10 around the property different fields will be filled in to

11 represent different restrictions?

12 A. Yes, sir.

13 Q. And how many of these polygons does Options

14 account for across the property?

10:50 15 A. In this analysis, we were running just over

16 540,000 polygons.

17 Q. 540,000 polygons, each with some variation of

18 the 80 fields or so?

19 A. Yes, sir.

10:50 20 Q. Now, against all this, how are harvest

21 projections run?

22 A. Well, they're run by using the same data we

23 talked about inputting. And we use Scopac, Palco

24 forestry, defined about 35 different kinds of management

10:50 25 regimes. And we used those -- the model essentially

1 applies those management regimes subject to all the rules
2 and regulations, rules and regulations of the drivers.
3 The final activity that the model would perform is a
4 harvest.

10:51 5 Q. Now, Dr. Reimer, you evaluated harvest across
6 two different scenarios, correct?

7 A. That's correct.

8 Q. What was the first scenario?

9 A. It was a -- the total timberland base was
10:51 10 included in the scenario with the exception of the MMCAs.
11 They were deferred from harvesting for the full period.

12 Q. And what we have up here is figure 1 from your
13 report; is that right?

14 A. That's correct.

10:51 15 Q. And does this reflect your long-term harvest
16 projections for the scenario you just described?

17 A. Yes, sir.

18 Q. And what was the second scenario that you
19 analyzed?

10:51 20 A. We started with the same land base, but we
21 took -- we deferred, in addition to the MMCAs the
22 proposed higher and better land -- higher and better
23 lands, higher and better use lands.

24 Q. And approximately how many acres was that?

10:51 25 A. I think it was around 21,500.

1 Q. And I'm showing you figure 2 from your report.

2 Does this represent your forecast scenarios from that?

3 A. Yes, sir.

4 Q. And I notice in both of these scenarios,

10:52 5 there's a sharp increase in harvestability about the 2046

6 range. Do you see that?

7 A. Yes, sir.

8 Q. What accounts for that?

9 A. They have approximately 60,000 acres of conifer

10:52 10 forests that is of age, sufficient age to be mature,

11 considered harvestable at that point.

12 Q. And are those trees in the ground today?

13 A. Yes, sir.

14 Q. All right. So those are trees in the ground

10:52 15 growing; is that right?

16 A. That's correct.

17 Q. And they come to maturity and harvestability

18 out in this time frame?

19 A. Yes, sir.

10:52 20 Q. In your professional opinion, would a

21 projection that failed to take into account this increase

22 in harvestable volume out of 2046 be reliable or

23 appropriate?

24 A. If it took that into account?

10:52 25 Q. If it failed to take it into account.

1 A. Failed? It would be conservative, it would not
2 be reliable.

3 Q. Would it be overly conservative?

4 A. Yes, sir.

10:52 5 MR. DOREN: No further questions, Your
6 Honor.

7 THE COURT: All right. Cross.

8 CROSS-EXAMINATION

9 BY MR. SHIELDS:

10:53 10 Q. Todd Shields, Fulbright & Jaworski, Houston,
11 counsel for Bank of New York Indenture Trustee for the
12 timber noteholders. Good morning, Donnie Ray.

13 A. Good morning, Mr. Shields.

14 Q. How are you doing?

10:53 15 A. I'm doing fine.

16 Q. The solemnity of the proceedings may require
17 that I refer to you as Dr. Reimer. I hope you won't take
18 offense. Jim Arnie is here with me, one of the many
19 tutors I have had. There are some others around the
10:53 20 courtroom. He told me, by the way, that he wants you to
21 negotiate all his future fee arrangements.

22 A. Okay.

23 Q. And he also told you he's been over all my
24 questions very thoroughly and that the answer to all of
10:53 25 them is yes, so if you can just go with me on that.

1 A. I'll take that under advisement, sir.

2 Q. Let's talk about your background and
3 experience. Your resume does not explicitly mention that
4 you have any prior redwood experience. And in fact,
10:54 5 except for the prior engagement you had with Scopac and
6 Palco, you've not had any, correct?

7 A. That's correct.

8 Q. And you are not a registered professional
9 forester in the State of California, correct?

10:54 10 A. That's correct.

11 Q. And as a consequence of that, Dr. Reimer, any
12 harvest plan prepared solely by you and signed solely by
13 you would not be approved by the California Department of
14 Forestry, correct?

10:54 15 A. That's correct.

16 Q. And in direct examination, you said that the --
17 after the filing of Option A, there was some feedback
18 that you received from the State of California with
19 respect to the Option A filing. That would have been a
10:55 20 filing that would have been made over the -- in premature
21 approval and attestation of California registered
22 professional foresters, right? In other words --

23 A. Restate the question.

24 Q. It's the company's filing, it's not Don
10:55 25 Reimer's, right?

1 A. Yes, sir.

2 Q. Okay. And their registered professional
3 foresters had to be the one to vouch for it, right?

4 A. That's correct.

10:55 5 Q. Okay. Now, this feedback that you have
6 referred to from the State of California, did it come in
7 the form of a letter?

8 A. Not that I recall. We had a meeting with them.

9 Q. All right. Or an e-mail or a memo or anything
10:55 10 else you produced in this litigation?

11 A. There might have been an e-mail or something
12 from those folks, but not to me. It would have gone to
13 Palco.

14 Q. Assuming that there was not, how do we check
10:56 15 the truth of the way you're describing this feedback?

16 A. You'll have to check them. You'll have to look
17 me in the eye and ask.

18 Q. Well, it wasn't in your report.

19 A. No.

10:56 20 Q. There was no way to check it out. If you had
21 put it in your report, we would have had that
22 opportunity, but as it is, we don't.

23 Now, the point is, what they are giving
24 feedback on is the company's Option A program, not Don
10:56 25 Reimer's specific guide curves as such, right?

1 A. I was referring to what they told me about the
2 guide curves.

3 Q. All right. Now, let's talk for just a minute
4 since I'm at that point in time on Option A. This
10:56 5 company originally had a sustained yield plan that would
6 have been sort of an umbrella of regulatory approval
7 against which these foresters, registered professional
8 foresters would submit timber harvest plans, right?

9 A. I have not seen that, but that's -- yes.

10:56 10 Q. All right. You may not have seen it, but when
11 you had that engagement back in -- was it 2002, 2003?

12 A. Yes, sir.

13 Q. Okay. When you had that engagement, the reason
14 that you were called in is because notwithstanding that
10:57 15 the company's sustained yield plan had been approved by
16 the regulatory authorities, they couldn't use it because
17 they were locked up in a court challenge brought by an
18 environmental group, right?

19 A. I don't know the details of that but I know
10:57 20 that I was brought in to develop the Option A.

21 Q. And that's as an alternative to an already
22 approved plan, right?

23 A. That's my understanding.

24 Q. All right. Now, what were the levels of
10:57 25 harvest that are permissible within the broader umbrella

1 of a sustained yield plan? Pardon me, the Option A.

2 Sorry.

3 A. The Option A?

4 Q. Yes, sir.

10:57 5 A. The exact number, I think, was around 170, I
6 believe.

7 Q. 170 million board feet a year?

8 A. Yes, sir.

9 Q. Okay. And when you got involved in this
10:58 10 litigation engagement in 2007, was the company harvesting
11 anything near the authorization under Option A?

12 A. No, sir.

13 Q. I kind of got off on a tangent there. Let me
14 get back to what I was covering, which is your general
10:58 15 topic is background qualifications and experience. And
16 we've talked about redwood experience and whether or not
17 you're a registered professional forester in California,
18 which you're not.

19 But I want to establish another thing,
10:58 20 Dr. Reimer, and that is that you are not claiming that
21 you have special expertise regarding what all the
22 applicable governmental regulations might be that would
23 apply to commercial timber operations in northern coastal
24 California in general or how those regulations would be
10:59 25 interpreted and applied to Scopac's land base in Humboldt

1 County in particular, correct?

2 A. That's correct.

3 Q. All right. That's something you, for purposes

4 of this engagement, you had to rely on personnel at

10:59 5 Scopac to supply you with that type of information,

6 correct?

7 A. That's correct.

8 Q. Now, this has been a very valuable engagement

9 to Don Reimer and DR Systems?

10:59 10 A. Yes, sir.

11 Q. Okay. It has, hasn't it?

12 A. Yes, sir.

13 Q. And in fact, and those firms, just for the

14 record, are owned solely by you and your wife, right?

10:59 15 A. Yes, sir.

16 Q. All right. Assuming that your bills have been

17 or will be paid, you're going to make \$400,000 on this

18 engagement, aren't you?

19 A. That's the gross revenue the company will

11:00 20 receive, yes.

21 Q. All right. And in addition to suggesting that

22 Dr. Iles double his billing rate throughout this

23 engagement, you have billed your rates at a substantial

24 premium to your normal rates, correct?

11:00 25 A. That's correct. But that's the rate I always

1 use for legal cases.

2 MR. SHIELDS: Objection as nonresponsive.

3 THE COURT: The jury will not listen to
4 that last answer.

11:00 5 MR. SHIELDS: Yeah, please.

6 Q. (By Mr. Shields) And not only did you charge
7 your time at a substantial premium to your normal rates,
8 you billed out the time of all of your support people and
9 tech people at these litigation premium rates, right?

11:00 10 A. Correct.

11 Q. And they don't have the experience you have, do
12 they?

13 A. Not quite -- no, they're not as old as I am.

14 Q. And not as experienced, right?

11:01 15 A. Yes, sir.

16 Q. Now, let's talk about the general background of
17 this engagement. When you were retained in 2007,
18 Dr. Reimer, you knew that the harvest forecast that you
19 were being asked to prepare were going to be used for
20 purposes of developing an appraisal of the value of
21 Scopac's timberlands for use in a reorganization
22 litigation, right?

23 A. Yes, sir.

24 Q. And you knew that Scopac's management wanted a
11:01 25 harvest schedule that would help with that

1 reorganization, correct?

2 A. In general, yes.

3 Q. All right. And I heard Mr. Doren elicit

4 testimony from you to the effect that you decided that

11:02 5 the primary driver of maximizing cash flow, you know, in

6 compliance with all applicable regulations was something

7 you came up with on your own, but it's true, Dr. Reimer,

8 that when I deposed you and you were describing this

9 engagement, that management not only told you that they

11:02 10 wanted a harvest schedule that would help with that

11 reorganization, they implied to you that a maximum cash

12 flow type of regime would be appropriate?

13 A. I don't think they implied that at all.

14 Q. Okay. This will be No. 9. It's 256, lines 21

11:02 15 through 25. It's actually Mr. Neier's question.

16 (Videotape excerpt played.)

17 "One of the things you mentioned earlier

18 is the objective for your schedule was really a

19 reorganization of the company; is that correct?"

11:03 20 "I don't say that was necessarily the

21 objective of the scenarios. The company was -- told us

22 they were going to go through a reorganization and they

23 wanted a harvest schedule that would help with that

24 reorganization and they implied to me, my interpretation

11:03 25 would be a maximum cash flow type of a regime. It would

1 be a regime that would allow them to meet their
2 environmental requirements, supply -- do the best that
3 you could for social requirements such as jobs for Scotia
4 and places like that and generate the best cash flow you
11:03 5 could for the company."

6 (Videotape excerpt ended.)

7 Q. (By Mr. Shields) Okay. That was true
8 testimony when you gave it and it's true today, right?

9 A. Yes, sir. Now, can I clarify one thing?

11:04 10 Q. Mr. Doren, I'm sure, will help you clarify that
11 if you feel the need. I would ask you this follow-up if
12 you'd like. Whether or not Scopac directed you to do
13 your study in a certain way or not, you did understand at
14 the outset of the engagement that an implication could be
11:04 15 drawn that a maximum cash flow approach would be
16 appropriate. That much you knew, right?

17 A. They didn't say anything about a maximum cash
18 flow.

19 Q. They implied it?

11:04 20 A. That was my interpretation of what they said.

21 Q. Okay.

22 A. I just wanted to get that out.

23 Q. Fair enough. Thank you. Now, on the topic of
24 top down directives that you may have received at the
11:04 25 outset of your engagement about the importance of your

1 work or how you ought to go about it, you attended
2 several meetings with Maxxam at the very outset of this
3 engagement, didn't you?

4 A. Yes, sir.

11:05 5 Q. And Charles Hurwitz was lurking around at those
6 meetings, wasn't he?

7 A. At two of them.

8 Q. All right. And in addition to that, you met
9 Emily Madison, the CFO of Maxxam?

11:05 10 A. At one of the meetings.

11 Q. And you also had several follow-up discussions
12 with Emily Madison in which she discussed with you the
13 objectives of the reorganization, correct?

14 A. In a very general way, yes.

11:05 15 Q. And also you did, to this extent, receive a
16 directive from Scopac about how to do your analysis in
17 the sense that they asked you to look at a second
18 alternative that would have excluded a redwood preserve
19 development?

11:05 20 A. That's correct.

21 Q. All right. Bear with me for just a moment. If
22 I do this in order, it will make it easier for everybody.
23 Just a couple of quick follow-ups.

24 Back to the Option A time period again. This
11:06 25 is your consulting engagement for the company in the

1 2002-2003 time frame. In developing guide curves that
2 were used for the Option A filing, you used -- you
3 started -- your starting point was Jim Arnie's SPS
4 computer model as modified, right?

11:07 5 A. Yes, sir.

6 Q. And in fact, you had modified that original SPS
7 program by the point in time that you had this Scopac
8 engagement in 2002-2003, right?

9 A. What do you mean by modified?

11:07 10 Q. Well, you guys can talk about it out in the
11 hall, but I believe that if one were to run Jim Arnie's
12 SPS model and whatever you were using in 2002-2003,
13 they're not going to produce exactly the same output
14 because you had tweaked your iteration of it over the
11:07 15 years, correct?

16 A. No. Actually, I used the -- Mason, Bruce &
17 Girard at that time were maintaining SPS and I used the
18 version that they were maintaining. SPS 4.1 version H, I
19 believe it was.

11:07 20 Q. Okay. By the way, another thing that you
21 described that you did on guide curves, and we'll go back
22 into this in great detail, I promise you, but you
23 compared the Option A guide curves with the published
24 guide curves in the Lindquist and Palley report, right?

11:08 25 A. That's correct.

1 Q. And that's an authoritative famous report
2 published in the '60s by some guys at Cal Berkley, right?

3 A. That's correct.

4 Q. All right. Let's go back to the general
11:08 5 methodology that you used in doing your analysis. Again,
6 Dr. Reimer, you knew that what your analysis was going to
7 be used for was a set of data that would be given to
8 Mr. Yerges at KPMG, for him to develop a valuation model
9 for use in this reorganization litigation, correct?

11:09 10 A. Yes, sir.

11 Q. And in particular, you knew that your harvest
12 forecast work would become a key input to any cash flow
13 model that Mr. Yerges might develop as part of his use of
14 an income approach to valuing the Scopac timberlands,
11:09 15 correct?

16 A. That's correct.

17 Q. Now, this is from your executive summary at the
18 front of your report. I tried to stay in the executive
19 summary, I'll admit to that. What you did -- let's get
11:09 20 some terminology first.

21 A harvest schedule, as I think you're using the
22 term in your report, would be a general term referring to
23 harvest forecasts over a period of time, right?

24 A. That's correct.

11:10 25 Q. All right. And what you were doing in your

1 work in this case was to prepare harvest level forecasts
2 of a feasible, sustainable harvest levels on Scopac's
3 land base using as your starting point the 2007 timber
4 volume inventory that Scopac was using and Dr. Iles had
11:10 5 analyzed and said was appropriate, right? That was a
6 starting point?

7 A. Yes, sir.

8 Q. All right. And then you also loaded -- well,
9 let me -- I'm getting -- I'm tripping up here.

11:11 10 You loaded onto the Options software the
11 company's ten-year log plans, right?

12 A. That's correct.

13 Q. All right. Now, before I get into that, I want
14 to establish something. This Options software is
11:11 15 proprietary software that you developed, right?

16 A. Yes, sir.

17 Q. And you marketed it and then you charge a
18 licensing fee for that, right?

19 A. That's correct.

11:11 20 Q. This is a significant part of your income,
21 right?

22 A. It's a portion, yes.

23 Q. Well, it's significant. I mean, you --

24 A. Yes, sir.

11:11 25 Q. All right. And you also -- in fact, not only

1 do you get income from licensing it to users, but you
2 also get income for providing them with annual
3 maintenance updates or whatever the right terminology,
4 correct?

11:12 5 A. That's correct.

6 Q. Now, as part of the Option A work consultation
7 that you've done for Scopac back in 2002-2003, they
8 became a non-exclusive licensee of the Options model,
9 right?

11:12 10 A. That's correct.

11 Q. And that means they had the right to use it and
12 any time they wanted because they paid for it, right?

13 A. That's correct.

14 Q. And in fact, they had also paid the annual
11:12 15 update fees since that time, right?

16 A. Yes, sir.

17 Q. All right. And you explained to the Court in
18 response to Mr. Doren's questions that Options is just an
19 architecture, it's a framework. I know that you're proud
11:12 20 of it and it's got lots of things it can do, but the
21 starting point is it's a base architecture and it has to
22 be programmed or worked with to deal with the specific
23 situation, right?

24 A. That's correct.

11:13 25 Q. All right. And so when you started this

1 litigation assignment in 2007, even though Scopac paid
2 the big fees charged in 2002 and the \$15,000 a year
3 maintenance fee every year, you didn't start with their
4 iteration of the Options model, you started with a
5 brand-new plain vanilla Don Reimer off-the-shelf that had
6 to be loaded up with all of this stuff, right?

7 A. That's correct.

8 Q. At 250 bucks an hour for your tech people,
9 right?

10 A. That's right.

11 Q. And it took a long time, right?

12 A. That's right. They required me to provide an
13 independent -- an independent evaluation.

14 MR. SHIELDS: Excuse me. I'm going to
15 object to a nonresponsive answer.

16 Q. (By Mr. Shields) Mr. Doren and you can work
17 all of this out on redirect.

18 Now, the -- it took like six weeks to input the
19 data into the Options model when you were doing this
20 engagement, right, about six weeks?

21 A. It was six weeks to load up the data plus do --
22 build the new regimes, plus check that the data that we
23 had loaded was correct, etcetera, yes, sir.

24 Q. And I think I've already established that one
25 of the things you input were the company's existing

1 ten-year logging plans, right?

2 A. Yes, sir.

3 Q. And those are actually referred to in your
4 report, aren't they, Dr. Reimer?

11:14 5 A. Yes, sir.

6 Q. All right. I'm jumping around. I'm going to
7 quit doing that. I'll do this in order.

8 So you input into your Options model the
9 company's ten-year logging plans. You input into the

11:15 10 Options model this GIS data that you referred to. I
11 think we ought to get out on the record for a lot of
12 people's benefit maybe, GIS is an acronym that stands for
13 what?

14 A. Geographic information system.

11:15 15 Q. Okay. And in getting the data that you
16 programmed back into Options, the GIS data that the
17 company already had, you told them what you wanted,
18 right?

19 A. I asked them to do an overlay analysis of a
11:15 20 variety of layers, yes, sir.

21 Q. Yeah. The point I'm making is there are all
22 sorts of GIS layers, if you will, that the company
23 maintains on that database. The ones that got loaded
24 were the ones that you requested that they provide you

11:16 25 and then had loaded, right?

1 A. That's correct. That's correct.

2 Q. All right. And then you also had to -- because
3 you wanted to generate a range of scenarios that would
4 indicate to you feasible, sustainable harvest over a
5 period of time, that encompasses the concept that they
6 are feasible from a regulatory standpoint, right?

7 A. That's correct.

8 Q. That they've got to be in compliance with all
9 the government regulations as interpreted and applied to
10 a particular land base, right?

11 A. That's correct.

12 Q. All right. And you already told us that you
13 relied on Scopac personnel to give you that information,
14 right?

15 A. That's correct. There's the little red book.

16 Q. We don't have time between now and Friday
17 afternoon to go through all of this, but suffice it to
18 say, that in addition to federal statutes and state
19 statutes, your particular concern in dealing with the
20 Scopac land base will be the California Forest Practice
21 Rule, right?

22 A. That's correct.

23 Q. And you also are concerned when you're on the
24 Scopac land base with the North Coast Water Board, and
25 that may be a generic term for all I know, but you're

1 concerned with their rules, right?

2 A. That's correct.

3 Q. Now, tell me, I know I'm just -- probably don't

4 get it, but how do you get a model to take into account

11:17 5 all of these different statutes and regulations? Does

6 somebody type them all up and load them into the

7 computer? Is that how it's done?

8 A. Not quite.

9 Q. Okay. Well, do they -- if they don't type them

11:18 10 all up, do they type up or develop some rule that they

11 think encapsulates and captures what rule it is and how

12 it actually applies on the land base?

13 A. There's two ways a lot of those rules get in.

14 The regulations get in. One, many of those regulations

11:18 15 are spatial and they will be captured in the GIS files

16 that the company will have built, like the buffers on

17 streams, for example, and the steep slopes. That's all

18 GIS data that comes from the GIS information. The rules

19 around how you manage the timber on those areas will be

11:18 20 rules you do have to input into the model.

21 Q. But even on the GIS data, somebody had to get

22 it right on that database before you recorded it into

23 yours, right?

24 A. Yes, that's correct.

11:18 25 Q. Now --

1 A. And that is a lot of work.

2 Q. And truth be told, if they messed it up, you
3 don't have the expertise to know that, do you? You have
4 to rely on it?

11:19 5 A. I would know if the GIS files were technically
6 incorrect. Whether they were appropriate polygons
7 identified for the relatively steep slopes, no, I would
8 not. I would have to rely on their data.

9 Q. And you told me -- I don't know if there's any
11:19 10 dispute about it. These governmental regulations that
11 apply to the Scopac land base, many of them clearly
12 affect harvest ability, right?

13 A. Yes, sir.

14 Q. They act as constraints on harvest ability,
11:19 15 right?

16 A. They certainly do.

17 Q. They keep the timber operator from perhaps
18 harvesting as much as the timber operator would like to,
19 right?

11:19 20 A. That's correct.

21 Q. That's the whole point. Now, so if your model
22 hasn't properly captured the regulatory restraints on
23 harvest ability and is allowed harvest ability to go on
24 at levels that exceed what's actually permitted under the
11:20 25 applicable regulations, it's wrong to that extent, right?

1 A. That would be correct.

2 Q. Okay. There's something else I don't

3 understand about this. I still don't understand the

4 model, how you take into account all of these

11:20 5 regulations. It's a combination of rules and importing

6 GIS data that hopefully already takes it into account,

7 right?

8 A. It's a combination.

9 Q. Okay. You said -- I hope that's my water --

11:20 10 that you -- in loading up all this data on Options and in

11 determining how to run all these scenarios, that the

12 driver was the -- is it maximum net cash flow or words to

13 that effect?

14 A. That's the -- that's the primary management

11:21 15 driver, yes, sir.

16 Q. All right. Well, you made it the driver of

17 your Options model, too, right?

18 A. Of the management portion, yes.

19 Q. Okay. And -- but you also said in your report,

11:21 20 Dr. Reimer, that when you loaded the company's ten-year

21 logging plan into the Option model, you assigned it a

22 priority in terms of the way the model would run, right?

23 A. That's correct.

24 Q. Okay. And of course, the ten-year logging

11:21 25 plans would have -- when would they end? I mean, had

1 they -- were you in year three or --

2 A. I think we were in year one so I think they
3 ended in 2016, I believe.

4 Q. Okay. In looking at the output of your model,
11:22 5 and actually, you had a couple hundred different outputs,
6 didn't you?

7 A. Yes, sir.

8 Q. From which you chose one, right?

9 A. Chose two.

11:22 10 Q. Two. Okay. I apologize for that. Chose two.
11 Did you note instances in which in that first ten-year
12 period covered by the company's existing ten-year logging
13 plans there were instances in which the objective, the
14 driver of maximizing cash flow overrode the company's
11:22 15 ten-year logging plans?

16 A. Yes, sir.

17 Q. When did that happen?

18 A. It started the very first year.

19 Q. And did that cause the harvest levels that were
11:22 20 reflected in the ten-year logging plans to be reduced or
21 were they increased as a result of maximizing cash flow?

22 A. My scenarios resulted in a reduced --

23 Q. Excuse me. Can you answer that? Did it reduce
24 it or allow it to be bigger?

11:23 25 A. It reduced it.

1 Q. How, if a company has authority, umbrella
2 authority under Options A to harvest 165 million board
3 feet a year and you're running a model that is supposed
4 to maximize cash flow, why in the world would it maximize
11:23 5 cash flow to not log or harvest at the level -- at a
6 higher level than the company already has this log
7 planned?

8 A. Well, there are two reasons. One, there are a
9 lot of restrictions on the land base. Secondly, the
11:23 10 model takes into account these restrictions and all the
11 management rules you have to apply to. And secondly,
12 just maximizing the volume you want to cut is not
13 necessarily the same as maximizing net cash flow.

14 Q. Okay.

11:24 15 A. In fact, it's not the same.

16 Q. Okay. And what you found in those ten-year
17 logging plans was that Scopac was not running that land
18 base to maximize cash flow for its own timber operations.
19 It was maximizing volume for the mill, right?

11:24 20 A. You could make that generalization.

21 Q. Well, you did when I took your deposition a
22 month ago, didn't you?

23 A. Yes, sir.

24 Q. Okay. Do you know the value -- or just a
11:25 25 range. I may have a demonstrative. It's not of a

1 beautiful sun-lit redwood forest but I may actually have
2 something to show you. I've been working on this.

3 A. You had a good tutor.

4 Q. I've got a lot of good tutors. They have all

11:25 5 been frustrated and upset throughout this whole process,
6 but I've had good tutors.

7 You do recall that Mr. Yerges came up with an
8 alleged value of the Scopac land base in the \$900 million
9 range?

11:26 10 A. I understand that, yes.

11 Q. Okay. And do you believe that if Scopac's
12 timberlands were sold in an open auction process with
13 competitive bidding, they would be likely to realize a
14 price in excess of \$603 million?

11:26 15 A. I'm not an evaluator.

16 Q. Well, if Mr. Yerges is right or even close to
17 right, they're going to get more than \$603 million,
18 aren't they?

19 A. If Mr. Yerges is right and you like his
11:26 20 analysis, that is correct.

21 Q. I think we liked it in some part above \$600
22 million. Okay. Do you want to spend an hour and a half
23 on owl circles?

24 A. Whatever it takes.

11:27 25 Q. That was an attempt at humor. I do want to

1 establish this, though, Dr. Reimer. You developed the
2 Options software and we have now been given sort of an
3 explanation of how it works. I do want to establish that
4 for it to work properly as a predictive tool, it's got to
11:27 5 be loaded with the right data and it's got to be run in a
6 competent manner, right?

7 A. That's correct.

8 Q. And in fact, to the extent you're not getting
9 licensing fees for Options, you're getting consulting
11:28 10 fees to help them run it, right?

11 A. That's correct.

12 Q. This thing doesn't run itself. You know, you
13 don't just load it up and it goes on down the road. It's
14 pretty complicated, isn't it?

11:28 15 A. Yes, sir.

16 Q. All right. And if the data that's loaded into
17 the Options software for a particular land base is flawed
18 or they, on their own, because they were too cheap to
19 hire you to help them, they messed it up, it's no better
11:28 20 than the data that's been put in it and the people that
21 run it, right?

22 A. To a degree.

23 Q. Well, it's garbage in, garbage out. You would
24 agree with that, wouldn't you?

11:28 25 A. That's correct, but the model has -- okay.

1 I'll stop.

2 Q. The but part. Well, you know, there's another
3 point. I think you're going to agree with this.

4 Remember the answers are always yes. Even though --

11:29 5 THE COURT: You've asked him no questions.

6 MR. SHIELDS: I have asked some no
7 questions? Actually, that's correct. Some of the no's
8 can be agreed with that is of the agreement with me.

9 THE WITNESS: It's okay to say a no once
11:29 10 in a while.

11 MR. SHIELDS: If it results in accepting
12 my position, yes. Thank you, Your Honor.

13 Q. (By Mr. Shields) All right. The focus that I
14 have on this line of questions is that however good the
11:29 15 Options software is, even, you know, assuming it's got
16 the right data and it's got you earning your fees to help
17 them run it and everything else, it doesn't insulate this
18 process from the effects of human judgment and experience
19 of the operator, right?

11:30 20 A. That's correct.

21 Q. And I got a bunch of examples of that, but
22 since you've agreed with that, I'll only do a few of
23 them. It's going to shorten it up. But for example, you
24 ran 200 scenarios through the Options model, and from
11:30 25 those you selected the ones that you found were most

1 satisfactory, I think that's the term you used. Do you
2 agree with that?

3 A. Yes, sir.

4 Q. And that's a judgment call, right?

11:30 5 A. To a degree, yes, sir.

6 Q. And to run this Options model for your purposes
7 in this engagement, you also selected to run first the
8 ones that you thought would be reasonably close to where
9 you thought the model might end up, right?

11:31 10 A. That's correct.

11 Q. And that's judgment and experience of Donnie
12 Ray Reimer, right?

13 A. Yes, sir.

14 Q. Okay. In running the model, your objective was
11:31 15 to develop a range of scenarios for harvest schedules
16 that would be -- pardon me, harvest plans that would be
17 sustainable and feasible, right?

18 A. That's correct.

19 Q. And there are no published standards on how one
11:31 20 prepares a harvest forecast, are there?

21 A. No, sir.

22 Q. And back to this question I asked you early on.
23 Did you use your judgment in some instances to override
24 what the output of the model was suggesting would be
11:32 25 appropriate, in particular when you reduce the harvest

1 levels?

2 A. I think you could say yes, there's certainly an
3 element of judgment used in reducing the numbers because
4 you're looking for a balance.

11:32 5 Q. Okay. And in making the number one priority or
6 driver of running this Options model, at least as far as
7 management regimes to be to maximize cash flow, you
8 recognize, don't you, that you are possibly setting up
9 the computer model to run in a way that would assume that
11:33 10 Scopac's operations will take place in the future in a
11 manner that might be quite different from the way it's
12 currently taking place on the land, correct?

13 A. Could you ask that question one more time.

14 Q. I tell you what, I got it. I got all these in
11:33 15 the depositions. Do you want me to show it to you?

16 A. Well, I don't have a -- what I'm saying, when
17 you run the scenario.

18 Q. Right.

19 A. The scenario is assuming for the purposes of
11:33 20 that scenario that the management strategy will be the
21 same for the duration of the strategy.

22 Q. Okay. And implicit --

23 A. That's not exactly the same when you said it.

24 Q. Okay. Well, let's just see. Let's look at the
11:34 25 transcript. I'm sleep deprived. My terminology might be

1 fuzzy, but I believe that what you told me -- I'm sorry,
2 page 159. It's clip 34. Let's look at --

3 A. 24?

4 Q. Yeah, the yellow highlight.

11:34 5 A. Yes, sir.

6 Q. All right. "Did you have to override that to
7 make it have a referent" -- bad court reporter -- "in
8 reality to the way the timber" -- keep going -- "owner
9 was really operating the property?"

11:34 10 "No, you don't actually just set and override
11 the model, you put in the model rules."

12 "Okay."

13 And then I think it starts at line 9. Start at
14 line 9.

11:35 15 "So what that could mean, if I understand this,
16 that could mean that you're running the model in a way
17 that assumes that the operations will take place in the
18 future in a manner that's very different" -- did I skip?
19 No, that's different, pardon me. "Than the way it would

11:35 20 currently actually taking place on the land, right?"

21 And the answer was: "Possibly."

22 Right?

23 A. That's correct.

24 Q. All right. That's all I meant to ask you.

11:35 25 Sorry about that.

1 A. That's okay. That's correct.

2 Q. Now, back to the topic of programming options
3 to properly reflect the existing governmental regulations
4 and so forth.

11:35 5 A. Okay.

6 Q. What you did in that regard with the help of
7 the Scopac people that you already told us you had to
8 rely on, you input the current habitat conservation plan
9 and the existing regulations and restraints that Scopac

11:36 10 told you existed, right?

11 A. That's correct.

12 Q. All right. And that would include the universe
13 of all those regulations we discussed a minute ago as
14 well as how they were interpreted as applying to the
15 particular land base, right?

11:36 15 particular land base, right?

16 A. That's correct.

17 Q. All right. And you assumed in running 50 years
18 of projections that that habitat conservation plan and
19 those existing regulations and restraints would be the
20 same throughout the entire 50-year period, right?

11:36 20 same throughout the entire 50-year period, right?

21 A. That's correct.

22 Q. And it's true, therefore, that if there was an
23 increase in the regulatory restraints on harvest
24 production in the next 50 years that actually affect

11:37 25 harvesting, that would have the effect of causing the

1 projection in your analysis to be overestimates to that
2 extent, right?

3 A. That assumes -- you're assuming, if I
4 understand this correctly, you're asking me if --

11:37 5 Q. Do you want to see it?

6 A. I'm just -- okay. Sure.

7 Q. I'm sorry. You load it up with the existing
8 regulatory constraints as you're advised by the company?

9 A. Including --

11:37 10 Q. And you don't make an assumption in the model
11 that they change over the 50-year projection period.

12 That's the first point, right?

13 A. Correct.

14 Q. Okay. The follow-up question is, if they do
11:37 15 change in the projection period and they change in a way
16 that acts as an additional or further constraint on
17 harvesting, that's going to affect your analysis to that
18 extent, right?

19 A. Only to the extent that they exceed the HCP.

11:37 20 Q. Let's just look at your answer. I mean, it's
21 clip 36. Actually, this is -- I'm sorry, it's page 142,
22 lines 3 through 11.

23 (Videotape excerpt played.)

24 "And so it would be true then that if there is
11:38 25 an increase in the regulatory restraints on harvest

1 production during the next 50 years, that would have the
2 effect of causing your projections to be overestimates to
3 that extent, right?"

4 "That's correct. Assuming those restrictions
11:38 5 actually affected the harvest."

6 (Videotape excerpt ended.)

7 Q. (By Mr. Shields) I told the guy to get all of
8 those pauses out of there.

9 A. That's okay, I had to think about it anyway.

11:39 10 THE COURT: You told the videographer to
11 manipulate the --

12 MR. SHIELDS: I did, Your Honor. I told
13 him to remove all of my pauses just in the interest of
14 time. I was sleep deprived then, too. There was a lot
11:39 15 of stumbling around. I was trying to pull that part out.
16 I wasn't going to change the content.

17 THE COURT: Okay.

18 A. I thought pauses had a big effect on content.
19 Maybe that's only in a comedy act, right?

11:39 20 Q. So as a follow-up to the last questions, if
21 government regulation on the Scopac timberlands were to
22 be more stringent in the future than they are today,
23 that's something that's not accounted for in your model,
24 right?

11:39 25 A. That's correct.

1 Q. All right. And you told me during your
2 deposition that in general, and leaving aside the effect
3 of the company's habitat conservation plan, your general
4 expectation would be that the level of regulation on
11:40 5 coastal redwoods in California is likely to be more 20
6 years from now than it is today, right?

7 A. Leaving aside the HCP, correct. That's
8 correct.

9 Q. And you know, that doesn't -- that doesn't end
11:40 10 it, does it, because even if you're in full compliance
11 with all the regulations, you've got to deal with the
12 environmentalist groups, don't you?

13 A. Yes, sir.

14 Q. And as Scopac knows from its own experience,
11:40 15 even though they have a sustained yield plan approved,
16 they never got to use it because it got challenged in
17 court, right?

18 A. That's correct.

19 Q. And that doesn't even take into account civil
11:40 20 disobedience, right?

21 A. That's correct.

22 Q. You've got the tree huggers, you've got Julia
23 Butterfly Hill.

24 A. That was only one tree, sir.

11:40 25 Q. Yeah, well, it's 35 acres of an easement they

1 gave over to Julia and her friends. It's right here on
2 the Palco, Scopac land base, right? There she is. She
3 wasn't even from Humboldt County and she lived in that
4 tree for 763 days or something, right?

11:41 5 A. If you say so.

6 Q. Well, it's -- you can Google for it. I'm not
7 making it up. And the company dealt with that by giving
8 some group an easement of 35 acres around that tree.
9 It's called Luna, by the way, if anybody is interested.

11:41 10 It's still there. And so you've got to deal with those
11 people, too.

12 A. Yes, sir.

13 Q. Okay. On the -- we've seen enough of Julia.
14 Let's talk -- returning to the topic of the importance to
11:42 15 the accuracy of your model output to have it properly
16 consider all existing regulations in the way they apply
17 to the land base. Let's examine that in the context of
18 the so-called adjacency rules.

19 A. Yes, sir.

11:42 20 Q. All right. I call those neighboring green-up
21 constraints, but you call them adjacency, as we see that
22 in some of the output from your model, right?

23 A. Yes, sir.

24 Q. And the California Forest Practice Rules that
11:42 25 apply and establish adjacency, do you know whether or not

1 they actually use the word adjacency?

2 A. I think they do, but I wouldn't swear to it.

3 Q. You just did. And they don't.

4 A. They call them green-up rules?

11:43 5 Q. No, that's something Jim Arnie gave me. But in
6 common practice they're called adjacency rules and
7 because of some of the acronyms and things that are in
8 your model output use ADJ. Adjacency is certainly fine
9 with me.

11:43 10 A. Yes.

11 Q. Let's talk about how the model took into
12 account adjacency. As you described it -- well, first of
13 all, let's establish the concept of adjacency. And I'll
14 take a run at it and you tell me if for purposes of our
11:43 15 discussion it's close enough. Adjacency addresses the --
16 among other things it may be addressing, the issue of
17 what happens when a harvest block is clearcut, what you
18 do with buffer zones that are around the area that you
19 just finished subjecting to that kind of a cut, right?

11:44 20 A. That's correct.

21 Q. And it imposes some restraints on when you can
22 harvest in the buffer zone that relate back to the growth
23 that takes place in the interim in the area that had just
24 been cut, right?

11:44 25 A. That's correct.

1 Q. And it sets some alternative parameters in
2 terms of height of trees and an age -- you know, a time
3 period, right?

4 A. That's correct.

11:44 5 Q. Okay. Now, when I talked to you about this has
6 last month, you said that the way Options took into
7 account the way the adjacency rules would apply to Scopac
8 land base is that one of your analysts set a rule in the
9 model that would handle adjacency by providing that one
11:45 10 may not log a stand of timber next to a stand that had
11 recently been logged until trees are either "so old or so
12 high you get to pick." And you described the rule that
13 went into the model in this engagement to take into
14 account adjacency constraints as being "ten feet tall
11:45 15 and/or three years," which you explained to me that the
16 upcoming new stand in the area log has to be ten feet
17 tall or at least three years old, whichever is more
18 restrictive, right?

19 A. That's correct.

11:46 20 Q. So it's ten feet tall or at least three years
21 old?

22 A. Uh-huh.

23 Q. Look at pages 48 and 49 of your report. Do you
24 have that up there? Have you got your report up there?

11:46 25 A. Yeah.

1 Q. Have you got Chris Matthews' depo up there?

2 A. No.

3 Q. Have you got anything else other than your
4 report and your deposition?

11:46 5 A. I've got my stuff only. I moved the rest.

6 Q. But do you have the deposition in case?

7 A. Yes.

8 Q. All right. And your report?

9 A. Yes, sir.

11:46 10 Q. Okay. All right.

11 MR. DOREN: Page numbers?

12 MR. SHIELDS: It's pages 48 and 49 of his
13 report.

14 Q. (By Mr. Shields) All right. I am referring
11:47 15 to -- this is an example of some of the output scenarios
16 that you did in the engagement, right?

17 A. Yes, sir.

18 Q. Okay. And you ran 200 of them, right?

19 A. Yes.

11:47 20 Q. You got output for 200 scenarios?

21 A. Yes.

22 Q. Okay. Not all of them ended up in the report
23 obviously, that's the point I'm trying to make.

24 A. Yes.

11:47 25 Q. This particular one relates to the Bear-Mattole

1 Watershed, right?

2 A. In a liquidation scenario, yes, sir.

3 Q. In a liquidation scenario. Okay. Thank you
4 for that. And that's a primarily a Douglas Fir growing
11:48 5 area, right, currently?

6 A. Yes.

7 Q. Okay. It doesn't currently have a lot of
8 redwood on it, right?

9 A. It has some.

11:48 10 Q. But not a lot?

11 A. That's correct, sir.

12 Q. Okay. Now, in the run name you've got a bunch
13 of acronyms and the one I want to focus on is right
14 there, ADJ 10. That is a reference to the adjacency rule
11:48 15 that was used in running that scenario, right?

16 A. That's correct.

17 Q. And what does the 10 refer to there?

18 A. Ten-foot.

19 Q. Ten-foot and ten-foot would mean that the
11:48 20 tree -- I'm sorry. Go ahead.

21 A. There's a second part.

22 Q. Okay. What's the second part?

23 A. Within the model itself.

24 Q. Right.

11:48 25 A. It's a ten acre -- it takes a ten acre --

1 Q. I'm get to go that.

2 A. Okay.

3 Q. That's my next question.

4 A. Okay.

11:48 5 Q. Thank you.

6 A. Next page.

7 Q. It must be the next page.

8 A. It is.

9 Q. Okay. Adjacency. It's actually this one right
11:49 10 up here, ten-foot delay in threshold, ten acre maximum
11 area, right?

12 A. Yes, sir.

13 Q. Now, what does the ten acre maximum area refer
14 to?

11:49 15 A. Okay. Within -- there's a reason why we're
16 running a 10 and not something that's 20 or 15 or
17 something like that. In the model, you set an adjacency
18 rule and it runs that rule strictly. But in a THP,
19 within the THP boundaries there's no adjacency rules
11:49 20 applied.

21 Q. Stop. Just for the record, I'm probably the
22 only one in the room that doesn't know. THP is timber
23 harvest plan, right?

24 A. That's correct.

11:49 25 Q. Okay. All right. Go ahead. I'm sorry.

1 A. It's a block, an area that a forester puts
2 together and it goes through an official review process,
3 etcetera.

4 Q. Right. And you can't sign one of those?

11:50 5 A. No, sir.

6 Q. Because you're not a California registered
7 professional forester?

8 A. That's correct.

9 Q. And you have never filed one in California for
11:50 10 that reason?

11 A. That's right.

12 Q. Okay. So all these harvest forecasts, if you
13 put them in a timber harvest plan, you couldn't file them
14 with the State of California, right?

11:50 15 A. That's correct.

16 Q. You distracted me. Back to the adjacency rule.

17 A. Okay. Within --

18 Q. I'm sorry. Is the ten-acre maximum area a part
19 of the adjacency rules?

11:50 20 A. Within the model, yes.

21 Q. But is that in the regulations?

22 A. No, sir.

23 Q. Okay. And the ten-foot height, is that the
24 same ten-foot delay?

11:50 25 A. No. That's -- yes, that's the height delay.

1 Q. Okay. Now, if the actual constraint is -- in
2 terms of height is other than ten feet --

3 A. You'd have to change that number. I put 10 in
4 as a conservative.

11:51 5 Q. Excuse me, I wasn't through with the question.

6 A. I'm sorry, my apologies.

7 Q. If the actual number in the California Forest
8 Practice Rules, the constraint for adjacency that relates
9 to height as opposed to years was different than ten

11:51 10 feet, then this model has not been programmed correctly
11 to take into account adjacency, right?

12 A. It depends on your definition of correct.

13 Q. Well, I'm going to show you something. I think
14 we can all be able to agree on what's correct. But the
11:51 15 point is this presupposes that when we look into the
16 California Forest Practice Rules on adjacency, we're
17 going to see a ten-foot constraint, right?

18 A. No.

19 Q. Okay. What will it say?

11:51 20 A. I don't get it.

21 Q. There are alternative constraints. It's the
22 more restrictive as you've described it of a growth
23 height limitation, which you call ten feet.

24 A. Yes.

11:51 25 Q. For a number of years, right?

1 A. Yes, sir.

2 Q. Okay. Let's cover that. Do the rules that you
3 set for the model, that take into account the concept of
4 adjacency deal with this alternative of years?

11:52 5 A. It can.

6 Q. Did it in this analysis?

7 A. We did both. In this scenario.

8 Q. What did you assume --

9 A. In this scenario --

11:52 10 Q. I'm sorry. What did your rule assume was the
11 correct time period?

12 A. It had to be longer than three years.

13 Q. All right. And what did it assume as to
14 height? Ten, right?

11:52 15 A. Ten.

16 Q. All right. Let's look at the -- I've got a
17 little excerpt from the California Forest Practice Rules,
18 and I've got the book, too. It's IT Exhibit 25. Look at

19 A. Do you see at least five years of age for average at
11:53 20 least five feet tall? Do you see that?

21 A. Yes, sir. And the second part says "and three
22 years from the time of establishment."

23 Q. You got that one right, maybe, but you didn't
24 get the height one right, did you?

11:53 25 A. No, I used a more conservative estimate.

1 Q. Can you just answer the question. You didn't
2 get it right, did you?

3 MR. DOREN: Your Honor, objection. The
4 witness has explained why he used the number he did.

11:53 5 It's not a matter of right or wrong. He said he used a
6 conservative --

7 THE COURT: I think that he's entitled to
8 ask questions, but the question has to be one that
9 properly can be answered because if we all agreed that
11:53 10 the model had to have the same as the California Forest
11 Practice Rules, then he didn't get it right.

12 MR. SHIELDS: He didn't get it right. And
13 I'm not offering --

14 THE COURT: I don't think that's what he
11:54 15 agrees. And so right -- I mean, did he coincide with the
16 rules? No.

17 MR. SHIELDS: Right. Thank you very much.
18 And the point I'm trying to make goes to credibility of
19 this model that he says is dependent on properly taking
11:54 20 into account these regulations. He's defending the
21 mistake as being one that was in our favor. I want to
22 show the mistake.

23 THE COURT: I understand, but you have
24 pointed out that there was a five foot California
11:54 25 silvicultural practice rule and that in his model he used

1 ten foot.

2 MR. SHIELDS: Okay. Thank you.

3 THE COURT: I have no idea what the impact
4 of that would be, whether it's -- I could guess. It
11:54 5 would be a mistake for me to do that, so go ahead.

6 Q. (By Mr. Shields) All right. I want to turn to
7 the question of your harvest forecast over the period
8 covered by your analysis, which I believe used a 50-year
9 projection period, right?

11:55 10 A. That's correct.

11 Q. Now, I'm not asking you about all the reasons
12 you could come up with today, but I do want to establish
13 that when I ask you about the specific reasons or
14 rational for picking a 50-year projection period for your
11:55 15 analysis, that your answer was that you thought that you
16 just picked it with no particular specific reason or
17 rational, correct?

18 A. Correct. That's what I said.

19 Q. Now, we've got a chart that I think Mr. Doren
11:56 20 actually discussed with you. It's figure -- I think it's
21 figure 1 in your report. Can we put up figure 1 in his
22 report. Let me get you a page. Roman IV. All right.
23 The thing I want to direct your attention to is year
24 about 2046.

11:57 25 A. Yes, sir.

1 Q. Where there is a -- what I'll call a big jump
2 in the harvest level from a little less -- well, it
3 actually goes from 80 to 140 in one year. Do you see
4 that?

11:57 5 A. Yes, sir.

6 Q. And it's true, isn't it, Dr. Reimer -- I heard
7 what you said to Mr. Doren about all this forest growing
8 for 46 years and it was just going to come on-line in 46
9 years down the line.

11:57 10 But as far as your expert report filed on March
11 14, 2008, there's nothing in this report that would tell
12 you what causes that big jump up, is there?

13 A. That's correct.

14 Q. Now, the species mix that you are projecting
11:58 15 would exist in 2046 would be almost 100 percent redwood,
16 wouldn't it?

17 A. The species mix?

18 Q. Yes.

19 A. On the total forest?

11:58 20 Q. Yes.

21 A. No.

22 Q. Okay. Among those areas that you're going to
23 harvest, right?

24 A. No.

11:58 25 Q. Okay. Well, let's just look at -- I must be

1 confused. Let's look at clip 40. It's page 169, lines 7
2 through 13.

3 (Videotape excerpt played.)

4 "The species mix that would be harvested
11:59 5 in 2046 is primarily redwood."

6 "That's correct, the species harvested."

7 (Videotape excerpt ended.)

8 Q. (By Mr. Shields) You're assuming that the
9 harvest that would be done in 2046 would be almost 100
11:59 10 percent redwood?

11 A. That's correct.

12 Q. Okay. Now, what I'm trying to establish with
13 the next question -- I can just ask you. In terms of
14 overall species mix in the forest, it's not 99 percent
11:59 15 redwood, it's 57 percent redwood, right?

16 A. It's 57 today.

17 Q. Okay. Now, there are a lot of sites on the
18 Scopac land base that are not suitable to grow redwood,
19 right?

11:59 20 A. That's correct.

21 Q. And yet -- and we saw one of them, the
22 Bear-Mattole, that has very little redwood on it, right?

23 A. Today.

24 Q. What your report presents, though, is a
12:00 25 hypothetical -- well, let me retract the word

1 hypothetical. What your report presupposes is that the
2 Scopac land base could be managed in such a way that you
3 would change the overall species mix, at least as to the
4 way it's harvested, right?

12:00 5 A. That's correct.

6 Q. From what it is today?

7 A. Uh-huh.

8 Q. And actually, although Scopac has been trying
9 to do that for about five years, they have been working

12:00 10 hard at it, they haven't been successful, have they?

11 A. No, that's not true.

12 Q. Okay. Let's look at clip 42.

13 MR. DOREN: Page?

14 MR. SHIELDS: Page 172, lines 5 through

12:00 15 13. And 174, 4 through 19.

16 (Videotape excerpt played.)

17 "But your results here assume that 100
18 percent of the harvest will be redwood, doesn't it?"

19 "Close. At 140, yes. But that doesn't

12:01 20 mean you're harvesting the whole land base. You're only
21 operating on a small percentage of the land base."

22 "Would you agree that that is a
23 hypothetical harvest strategy that has never been
24 utilized on this particular land base up to today,
12:01 25 right?"

1 "I don't know about that."

2 MR. DOREN: Could you finish his answer
3 there?

12:01

4 MR. SHIELDS: How about clip 44? I think
5 this will respond to what you're saying.

6 MR. DOREN: Just finish his answer. You
7 cut his answer off.

8 MR. SHIELDS: Do you want to interrupt me
9 now to read something?

12:02

10 MR. DOREN: All I'm saying is he said "I
11 don't know about that." You said "well" --

12 MR. SHIELDS: I have a follow-up question
13 that I want to present.

12:02

14 MR. DOREN: And it's customary to read the
15 entire response.

16 MR. SHIELDS: If you establish under the
17 document of optional completeness that I was inaccurate
18 that would be fine, but I'm not.

12:02

19 MR. DOREN: Your Honor, I apologize for
20 not addressing the Court. I would just object the entire
21 response wasn't read into the record.

22 THE COURT: Well, is it significantly
23 different than what we just heard? Read it. What does
24 it say?

12:02

25 MR. DOREN: The only addition is "I don't

1 know about that. They cut a lot of redwood in the past
2 20 years." That's it.

3 THE COURT: Okay. Go ahead.

4 Q. (By Mr. Shields) And the follow-up is:

12:02 5 (Videotape excerpt played.)

6 "You don't have any knowledge that that
7 strategy of, you know, 99 plus percent harvest of
8 redwoods is one that's ever been utilized on this
9 property. Whether it has or has not, you don't know?"

12:02 10 "What we do know is their objective is to
11 harvest as much redwood as possible."

12 (Videotape excerpt ended.)

13 MR. SHIELDS: Clip 43. This is page 173,
14 lines 17 through 23. Starting on 17 -- can you play the
12:03 15 video part of that, Jamie?

16 (Videotape excerpt played.)

17 "Did you do any specific work as part of
18 this litigation engagement to determine whether it would
19 be consistent with proper forestry management techniques
12:03 20 to take a land base that has 57 percent redwoods and over
21 a 40-year period manage it such that 40 years out you're
22 going to be harvesting 100 percent redwoods? Did you do
23 any work to test that particular aspect of your forecast
24 that I just described?"

12:04 25 "We did some testing of that. The rules

1 in the model are basically set to the rules that the
2 Scopac forestry staff are trying to apply on the ground."

3 "Well, they're not applying them on the
4 ground now."

12:04 5 "This is what they're trying to do."

6 "Harvest only redwoods?"

7 "Correct."

8 "How long has that been the case?"

9 "That's -- I'd say it's been an objective
12:04 10 that they've talked about for five years, that I know of.
11 And they're working hard at trying to be able to do
12 that."

13 (Videotape excerpt ended.)

14 Q. (By Mr. Shields) But you have no knowledge
12:04 15 that they have ever achieved a harvest level comprised of
16 99 percent redwood, right?

17 A. That's correct.

18 Q. Now, you're also not familiar with any large
19 land base comparable in size to Scopac's in which a
12:04 20 harvest level comprised the 99 percent redwoods has ever
21 been accomplished, right?

22 A. That's correct.

23 Q. Okay. I want to talk to you for a moment about
24 growth curves.

12:05 25 THE COURT: What is your time schedule?

1 MR. SHIELDS: It's, of course, the
2 Court's, but I am within, I believe, two or three
3 minutes.

4 THE COURT: Oh, okay.

12:05 5 MR. SHIELDS: If he just says yes, it's
6 going to go real fast.

7 THE WITNESS: My apologies.

8 Q. (By Mr. Shields) All right. A little
9 terminology first. Guide curves and yield curves are
10 used -- those are terms that somebody like, you know, the
11 forestry guys use synonymously?

12 A. Basically that's correct.

13 Q. Okay. Whereas a growth rate would be a data
14 point in time on one of these guide curves or yield
15 curves, right?

16 A. That's correct.

17 Q. All right. Now, the -- does Options, does it
18 have some internal algorithms that purport to allow the
19 user to calibrate and develop guide curves?

12:06 20 A. It has some.

21 Q. Well, you market it that way, don't you?

22 A. Yes, sir.

23 Q. But you didn't use those in this engagement,
24 your own model, right? You develop your guide curves
12:06 25 using SPS. Jim says you modified it, but whatever.

1 That's what you used to develop your guide curves or
2 yield curves for this analysis, right?

3 A. That's correct.

4 Q. All right. Now, you say in your report that in
12:06 5 developing guide curves, one of the things you want to do
6 is compare the guide curves, yield curves that are
7 developed with published growth and yield projections,
8 right?

9 A. Yes, sir.

12:06 10 Q. And you cite the Lindquist and Palley report in
11 your report itself, right?

12 A. That's right.

13 Q. And it's cited as a reference you have, right?

14 A. Yes, sir.

12:07 15 Q. And Mr. Doren brought that out in direct
16 examination, that there was a comparison made to
17 Lindquist and Palley, right?

18 A. Yes, sir.

19 Q. Now, I want to show you a plot. We're going to
12:07 20 do a little comparison of your guide curves to the
21 Lindquist and Palley guide curves. So let's see here.
22 Let's take Arnie's graph simplified.

23 Dr. Reimer, assume with me -- first of all,
24 site 3 is a -- when you refer to site indexes in the
12:07 25 forest, it's sort of a -- it deals with the issue of

1 productivity of an area, right?

2 A. Correct.

3 Q. All right. And site index 3 would be a medium

4 productive area. It's not a very high, a high, but it's

12:08 5 above the poor and the very poor or whatever the other

6 ones are, right? It's in the middle.

7 A. That's correct.

8 Q. Okay. And site 3 is the dominant one on the

9 Scopac land base, isn't it?

12:08 10 A. That's correct.

11 Q. All right. Assume for purposes of this

12 question that the site 3 curve that is the bold black

13 line is what Lindquist and Palley in their authoritative

14 report expect the -- I think it's redwood trees to grow

12:08 15 in site 3, okay? Will you assume that?

16 A. This is a growth curve?

17 Q. Yes, sir.

18 A. No, is this volume? This is gross. Okay.

19 Q. Okay. Now, you see these plots here for 2017,

12:09 20 20 -- 2007, 2017 to 2027, they're all actually below on a

21 comparison basis with what the Lindquist and Palley guide

22 curves would suggest, right?

23 A. What are those numbers?

24 Q. Say it again?

12:09 25 A. What are the 2007, 2017?

1 Q. These are taken out of your report.

2 A. The dots?

3 Q. I think so, yeah.

4 A. I don't know how you got them.

12:09 5 Q. Well, let me illustrate it this way. Look at
6 2047 and 2057. If you assume that those represent your
7 expected harvest level or your volume of growth, that is,
8 in those years, you are way, way above what the
9 comparison with the Lindquist and Palley would suggest
10 for that time period, right?

11 A. I would be assuming -- I presume. I don't know
12 how you derive these numbers. But let me answer your
13 question, all right, or at least ask you another question
14 maybe. What you're saying is that in 2047 and 2057 from
12:10 15 medium site, for stands that are 45 years old, the guide
16 curves that I have in the model are projecting higher
17 than the growth rates that are implied in Lindquist and
18 Palley.

19 Q. That's right, that's exactly what I meant to
12:10 20 say.

21 A. Okay. And did the Lindquist and Palley curves
22 you used have cultivars in them and planted stands? No,
23 they didn't. There was natural stands only.

24 Q. Excuse me. This will be for redirect. Your
12:11 25 projections are way above the published curve of

1 Lindquist and Palley, right?

2 A. For a medium site at that age, correct, but
3 they're not --

4 Q. 2047 and 2057, they're way above, right?

12:11 5 A. But they are for different stands. Lindquist
6 and Palley did not have planted stands or cultivars in
7 there.

8 Q. Okay. You're telling me the reasons why you
9 think it's okay for your projections --

12:11 10 A. No, I'm telling you --

11 Q. -- to be above the curve, but the point is they
12 are above the curve?

13 A. Well, back up. Why are the ones that are
14 below?

12:11 15 Q. Excuse me. Is it true that your projections on
16 a comparison basis, which you can explain the differences
17 if you want to on redirect.

18 THE COURT: The question is -- the
19 question is are the two dots above the line?

12:11 20 THE WITNESS: They're not appropriate for
21 that curve to comparison --

22 THE COURT: The question wasn't whether
23 they were appropriate. The question -- and he's entitled
24 to an answer. Are they above the line? Everybody in the
12:11 25 room can see they're above the line.

1 THE WITNESS: Sure.

2 THE COURT: It's sort of reluctant for you
3 to say they are above the line and it's somewhat damaging
4 to you. I mean, because there may well be a good reason,
12:12 5 but if you don't just say, yeah, they're above the line,
6 then you must be worried about saying that. I don't know
7 why.

8 THE WITNESS: I'm not worried.

9 THE COURT: They're above the line. Right
12:12 10 there. Above the line.

11 MR. SHIELDS: Thank you, Your Honor.
12 That's all I have.

13 THE COURT: That's just my general rule
14 about witnesses. They ought to be willing to give the
12:12 15 obvious answer, otherwise I'm going to think there's some
16 reason why they don't want to say it.

17 MR. SHIELDS: Thank you, Dr. Reimer. As
18 always, it was a pleasure to talk to you. I feel like I
19 learned a lot. Thank you.

12:12 20 THE WITNESS: You're welcome, Mr. Shields.

21 THE COURT: Okay. And my little lecture
22 there had nothing to do with -- I mean, that's just a
23 general rule that we all learn and hopefully everybody
24 follows it because we get through quicker if they do.

12:12 25 That's the other reason why you just answer the simple

1 question.

2 THE WITNESS: It's getting close to lunch,
3 too.

12:12

4 THE COURT: I don't mean to try to teach
5 you, though, how to be a witness on the stand. Any other
6 questions then?

7 MR. NEIER: Yes, Your Honor.

8 THE COURT: And how long are you going to
9 be?

12:13

10 MR. NEIER: A couple hours.

11 THE COURT: Okay. Anyone else going to
12 question?

13 MR. FIERO: Your Honor, the Committee has
14 probably got 20 minutes, maybe longer.

12:13

15 THE COURT: So what do we want to do here?
16 I mean, is it reasonable for them to go next?

17 MR. DOREN: It's reasonable from my
18 perspective, Your Honor. The question is, is would this
19 be an appropriate time for a lunch break?

12:13

20 THE COURT: Well, I was thinking maybe
21 that would be the idea. And how long do you want?

22 MR. DOREN: 90 minutes?

23 THE COURT: How much?

24 MR. DOREN: 90 minutes?

12:13

25 THE COURT: 90 minutes. Okay. Is that

1 good with everybody? All right. Thank you.

2 (A recess was taken for lunch.)

3 THE CLERK: All rise.

4 THE COURT: Be seated. All right. The

01:44 5 witness is still under oath, and he's in the witness box,
6 or did you want to say something.

7 MR. DOREN: No, I just wanted to make a
8 request. If we could release Dr. Iles, so he can leave
9 town.

01:44 10 THE COURT: Anybody want Dr. Iles for
11 recall?

12 MR. GREENDYKE: No, Judge.

13 MR. NEIER: No.

14 THE COURT: All right. He's released.

01:45 15 All right. Mr. Neier.

16 CROSS-EXAMINATION

17 BY MR. NEIER:

18 Q. Good afternoon, Dr. Reimer.

19 A. Good afternoon, sir.

01:45 20 Q. David Neier on behalf of Marathon. Dr. Reimer,
21 are you an appraiser?

22 A. No, sir.

23 Q. And are you an expert on valuation?

24 A. No, sir.

01:45 25 Q. And if I understood what your testimony was

1 this morning, the objective that you had here was to
2 determine a harvest schedule for Scopac on a reorganized
3 basis?

4 A. That's correct.

01:45 5 Q. And to do that, you used your Options program
6 to set a harvest schedule?

7 A. That's correct.

8 Q. Did you set the harvest rate, or was that given
9 to you by Scopac?

01:45 10 A. No, I set it.

11 Q. The company didn't come to you and said: We
12 need to make so much revenue per year, which means we
13 have to cut so many trees per year; tell us the best way
14 to do that?

01:46 15 A. No.

16 Q. So you set the harvest rate in addition to
17 everything else?

18 A. Correct.

01:46 19 Q. And would you agree with me that harvest rates
20 are set by people based on their own objectives?

21 A. To a degree, yes.

22 Q. So, for instance, the Nature Conservancy might
23 not have the same harvest rate as Scopac?

24 A. Certainly.

01:46 25 Q. And you were here when Mr. Dean testified. He

1 has a different harvest rate in mind based on his
2 objectives?

3 A. Yes, sir.

4 Q. And it's really how the operator of the

01:46 5 forest -- you know, what their objectives are that's
6 going to determine what the harvest rate will be,
7 correct?

8 A. Depends on the objectives that you're trying to
9 achieve on the land base, right.

01:47 10 Q. And given the fact that your objective was to
11 maximize cash flow for Scopac on a reorganized basis,
12 that's not necessarily what a likely buyer or a likely
13 seller would do?

14 A. I don't know that for sure.

01:47 15 Q. I mean, they may have a different harvest rate
16 in mind just like you've heard testimony about today?

17 A. Yes.

18 Q. Or in this court?

19 A. Yes, they might.

01:47 20 Q. Did you make any -- did you make any effort to
21 determine what a likely buyer or a likely seller might
22 do?

23 A. No, sir.

24 Q. Now, I believe you also testified this morning
01:47 25 when Mr. Shields was asking you questions that the

1 objective that you set for the company in terms of
2 maximizing cash flow was to maximize the harvesting of
3 redwood as opposed to the harvesting of Doug Fir?

4 A. That's correct.

01:48 5 Q. And that's because -- or is it correct that's
6 to say that's because redwood is a more valuable product?

7 A. Yes, sir.

8 Q. And under -- under your plan for Scopac, the
9 forest will be transformed from a mixed species of Doug
01:48 10 Fir and redwood to redwood?

11 A. That's not exactly true.

12 Q. Okay. Well, where did I get it wrong?

13 A. It won't be transformed to a pure redwood
14 forest. You may harvest redwood, but a lot of the forest
01:48 15 you don't harvest on.

16 Q. Okay. So the harvestable areas -- is it
17 correct to say that the harvestable areas will be
18 transformed from where they are today, about 57 percent,
19 to almost 100 percent redwood?

01:48 20 A. No, that's not true. 73 percent redwood.

21 Q. Is where it will end up?

22 A. Yes.

23 Q. So the harvest -- the harvest will be 100
24 percent redwood?

01:48 25 A. It could be -- in some years it will be.

1 Q. And, in fact, the company is harvesting
2 virtually all redwood today?

3 A. They're trying to.

01:49

4 Q. Right. And going forward, it will harvest only
5 redwood, but the species mix on the harvestable lands
6 will continue -- will grow from 57 percent to about 73
7 percent?

8 A. That's correct.

01:49

9 Q. Okay. And it's not only going to be -- the
10 harvestable sections which are going to have redwood are
11 not only going to have redwood; they're going to have
12 cultivars?

13 A. That's correct.

01:49

14 Q. Because when the company harvests logs today,
15 it's replanting or regenerating that space with these
16 cultivars, correct?

17 A. On the better sites where it can grow redwood.

01:49

18 Q. Okay. And is it correct to say -- or is it
19 fair to say that when you say cultivar, you're talking
20 about a genetically enhanced redwood?

21 A. That's correct.

22 Q. So if we can look at your report -- and we can
23 start on page 16 of your report. I'm sorry. Do you have
24 your report still?

01:50

25 A. Yes, sir.

1 Q. Make sure it's not somebody else's report.

2 A. I got rid of all the other reports.

3 Q. Okay. When we look at page 16 of your report
4 and we have -- I'm just going to wait for it to get up on
01:50 5 the screen. You have that in front of you, right?

6 A. Yes, sir.

7 Q. And the bottom table --

8 A. Yes, sir.

9 Q. This one right here.

01:50 10 A. Yes.

11 Q. This is for redwood; is that correct?

12 A. That's correct.

13 Q. And is it -- is it fair to say that after 50
14 years -- well, let's start -- let's start so that
01:51 15 everybody understands this. Do you see on the right-hand
16 side there's a P, L, M, H and VH?

17 A. Yes, sir.

18 Q. What does that stand for?

19 A. It stands for site class.

01:51 20 Q. And by site class, you mean how much growth
21 there?

22 A. Productivity class; that's correct.

23 Q. And VH would be very high?

24 A. Yes, sir.

01:51 25 Q. And H would be high?

1 A. Yes, sir.

2 Q. And M would be medium?

3 A. Yes.

4 Q. Would M, medium, be the same thing as what

01:51 5 Mr. Shields used, which was, I think, site 3 on his last
6 graph?

7 A. It's slightly different. I don't know.

8 California -- the state of California is a site 3 class.

9 That could be different than Palco's site 3 class. These

01:51 10 class were set up specifically for Palco's land base.

11 Q. Okay. But you used M for medium?

12 A. Correct.

13 Q. So if we look at for age 50, right, we're

14 seeing an average of maybe -- in the medium, for the

01:52 15 medium?

16 A. Yes.

17 Q. We're seeing about 50,000 board feet per acre?

18 A. That's correct.

19 Q. And for -- just as a comparison, if we were

01:52 20 looking at high, we would be looking at -- on this chart,
21 the light blue line, right?

22 A. Yes.

23 Q. And for 50, it would show about 100,000 board

24 feet per acre?

01:52 25 A. Just under, yes.

1 Q. And if we turn to page 19 of your report -- do
2 you have that?

3 A. Yes.

4 Q. Okay. And you're looking at this designation
01:52 5 up here; it says group RWX?

6 A. That's correct.

7 Q. That's not redwood; that's redwood --
8 genetically enhanced redwood, cultivars?

9 A. That's correct.

01:52 10 Q. Okay. So now we're talking about a completely
11 different growth yield because you're using a different
12 form of redwood to yield a higher and better redwood?

13 A. That's correct.

14 Q. Okay. So now at age 50, for the medium, which
01:53 15 is this red line, it's now at 100,000 board feet per
16 acre; is that right?

17 A. Yes, sir.

18 Q. The medium is the M right here?

19 A. Yes.

01:53 20 Q. That red line?

21 A. Just under 100 at 50, yes.

22 Q. Just under 100 at 50, you're right.

23 A. That's correct.

24 Q. Like 90,000?

01:53 25 A. Close.

1 Q. Close. And then for the high, we're looking at
2 age 50 at right around 150,000 board feet per acre?

3 A. That's correct.

01:53

4 Q. So, you know, if we went back to the other
5 table -- and I'll just ask you -- we went from, you know,
6 on the medium, we had a significant increase, right? We
7 went from, you know, 50,000 board feet per acre to 90,000
8 board feet per acre, almost double?

9 A. That's right.

01:54

10 Q. And then on the high, we're just using it for
11 comparison's sake, we went from 100,000 board feet an
12 acre to 150 board feet per acre, right?

13 A. That's correct.

01:54

14 Q. So your plan, if you will, is based on these
15 genetically enhanced redwood, which are going to grow
16 much faster and much taller and have more volume when
17 they grow up 50 years from now?

18 A. To a degree that you plant those species, they
19 enhance, that's exactly right.

01:54

20 Q. Okay. And although we're really cutting
21 redwood, we're not cutting Doug Fir -- and if you could
22 turn to page 22 of your report, and I think in this case
23 it's the top table, not the bottom table. This is --
24 this is ordinary Doug Fir, correct?

01:54

25 A. Yes, sir.

1 Q. Natural Doug Fir?

2 A. That's correct.

3 Q. Okay. And so for the medium, what we have is
4 at age 50, we have something like 30,000 board feet per
5 acre, something like that?

01:55

6 A. Yes, sir.

7 Q. And then for the high, we have 50,000 board
8 feet per acre?

9 A. Yes, sir.

01:55

10 Q. And if you were to turn to page 25 of your
11 report?

12 A. Okay.

13 Q. I think that's the right page.

14 A. Yes, sir.

01:55

15 Q. It's the bottom table, I think is the relevant
16 one now.

17 A. That's right.

18 Q. Well, this is -- when you have DFX up here, is
19 that Doug Fir genetically enhanced?

01:55

20 A. No, that's improved seed. They don't have any
21 clones, but it's improved seed.

22 Q. Basically it's theoretically a taller, faster,
23 more volume Doug Fir?

24 A. That's correct.

01:55

25 Q. Okay. And is the company planting these as

1 well?

2 A. Yes, sir.

3 Q. And how long have they been planting these
4 genetically enhanced redwood?

01:56 5 A. From improved seed?

6 Q. No. For the redwood Firs?

7 A. Redwood?

8 Q. Yeah.

9 A. The clones?

01:56 10 Q. Yeah, the clones.

11 A. At least five years that I know of.

12 Q. Okay. And how long have -- so five years that
13 you know of. How about for the improved seed for the
14 Doug Fir?

01:56 15 A. I don't know when they started that.

16 Q. Okay. But on this table, we would go to age
17 50, we would have a little over -- about -- what would
18 you say, about 70,000 board feet?

19 A. At age 50?

01:56 20 Q. Yes.

21 A. For medium site.

22 Q. For medium?

23 A. Isn't it closer to about 55?

24 Q. 55. Okay.

01:56 25 A. Yes, sir.

1 Q. And for the high, we would have about 100,000
2 board feet; is that right?

3 A. Yeah, just under.

4 Q. Okay. So the Doug Fir is being replanted with
01:56 5 this improved seed, okay?

6 A. Where they can on better sites.

7 Q. Where they can on better sites. And they're
8 going from, you know, 35 -- from -- at age 50 we're going
9 from 35 to like 55 on the medium and from -- on the high,
01:57 10 we're going from 50,000 to 100,000; is that right?

11 A. About 90.

12 Q. About 90?

13 A. Yes. That's correct.

14 Q. So a significant improvement?

01:57 15 A. Yes, sir.

16 Q. And the idea or the theory is that you're going
17 to have a lot more volume from this -- from the clones
18 and from the improved seed?

19 A. That's correct.

01:57 20 Q. Okay. And that's what your plan is based on?

21 A. To a degree that you plant those species,
22 that's correct.

23 Q. If we can turn to page 27 of your report.

24 Let's bring up the graph. Now, this graph, which is on
01:58 25 page 27 of your report, there are like all these little

1 blue diamonds. Do you see those?

2 A. Yes, sir.

3 Q. What do these indicate?

4 A. Those indicate the population of stands in

01:58 5 natural redwood of medium site class on Scopac's

6 property.

7 Q. Okay. So we're talking about -- first of all,

8 we're not talking about clone; we're talking about the

9 natural redwood?

01:58 10 A. That's correct.

11 Q. Are we talking about as of today?

12 A. Yes, sir, as of January 2007.

13 Q. As of January. I'm sorry. As of January 2007

14 when your report --

01:58 15 A. The inventory, that's correct.

16 Q. So the vast majority of your -- of what exists

17 today, the natural redwood is down here in the, shall we

18 say, the 60,000 board feet per acre and below?

19 A. That's correct, because they're younger.

01:59 20 Q. Well, the amount of old growth redwood is

21 virtually nonexistent in the harvestable areas; is that

22 right?

23 A. That's true.

24 Q. Well, we can get to that. What is the red

01:59 25 yield curve over here? What does that indicate?

1 A. That's the medium site graph from the natural
2 stands for redwood that was in the earlier pages that you
3 looked at.

4 Q. Okay. So this --

01:59 5 A. Just a different scale, so it shows it a little
6 bit different.

7 Q. Okay. So this is showing where natural redwood
8 would grow based on the yield curve --

9 A. That's correct.

01:59 10 Q. -- that you had for natural redwood?

11 A. That's right.

12 Q. The clones would have a completely different
13 yield curve?

14 A. Yes, it would be higher.

01:59 15 Q. It would be about double? I mean, we saw
16 earlier that it was about double?

17 A. 40,000 higher, not quite double.

18 Q. Well, most of these blue diamonds are in the
19 40,000 per acre -- 40,000 per acre?

02:00 20 A. Yes, at age 50. Yes, sir.

21 Q. And I think we saw that under -- using the
22 genetically enhanced or the cloned redwoods, you'd have
23 about double that?

24 A. That's correct.

02:00 25 Q. Okay. And you know, we can -- we can look at

02:00

1 Dr. Iles' report for a second. This is page 7 of
2 Dr. Iles' report. This table in your report is
3 consistent with what Dr. Iles had. Dr. Iles found that
4 the vast majority of the forest right now, the entire
5 forest, is in the 40,000 board feet per acre, correct?

6 A. That's correct.

7 Q. And very little of the forest is above 100,000
8 board feet per acre?

9 A. That's true.

02:00

10 Q. But with this genetically enhanced redwood that
11 you're going to be planting, the clones, and the improved
12 seed, you're going to tremendously increase the volume of
13 this over time. That's your plan?

14 A. For those areas that you plant to those
15 species; yes, sir.

02:01

16 Q. Are you a geneticist, by the way?

17 A. No.

18 Q. Okay. Are you somebody who specializes in
19 growth rates for forests?

02:01

20 A. Yes, sir.

21 Q. And can you tell me with absolute certainty
22 that these clones that the company has been using for the
23 last five years are going to have this tremendous growth
24 when they reach age 50?

02:01

25 A. No.

1 Q. First of all, I should -- I apologize. Let me
2 withdraw that question. Let me ask you the first
3 question. Are you somebody who is qualified to testify
4 about the growth rate of cloned redwoods?

02:01 5 A. No, sir.

6 Q. Okay. Who is that person, just so I know?

7 A. Who would be that person?

8 Q. Yeah.

9 A. You would have to talk to the science folks at
02:01 10 Palco, Scopac.

11 Q. Okay. So you got -- if I understand, you got
12 the information about the growth rate for the redwood
13 clones from your client?

14 A. Correct.

02:02 15 Q. Okay. And is the same thing true with the
16 improved seed?

17 A. Yes, sir.

18 Q. Okay. So now I'm going to ask you my question
19 I was asking you before, which is: Can you tell me with
02:02 20 absolute certainty that the company is right, okay, and
21 that the redwood trees, the cloned redwood trees are
22 going to grow about double what the natural redwood trees
23 grow about?

24 A. You can never predict that with absolute
02:02 25 certainty, but I have no reason to not believe that, to

1 doubt the information that they have.

2 Q. I think I asked you a yes or no question. It
3 was very simple. Can you tell me with certainty that a
4 cloned redwood is going to produce double the volume of
02:02 5 board feet that a natural redwood produces 50 years from
6 now?

7 A. No, you can't.

8 Q. No, I can't. I know I can't.

9 A. I can't.

02:02 10 Q. Okay. Can you?

11 A. Good question. Sorry. Yes.

12 Q. I definitely know I can't. And just looking at
13 this -- looking at this, I think we've established
14 there's very little today that exists. This is the
02:03 15 entire forest, of course. It's not just redwood. It's
16 not cloned redwood. It's not natural Doug Firer or
17 improved seed Doug Fir. It's everything?

18 A. That's -- actually, that graph there are the
19 100 sample points from Dr. Iles' study. It's not the
02:03 20 whole forest, but it's representative; so I'd say
21 percentage wise, it's probably not bad.

22 Q. Okay. And, I mean, Dr. Iles says he didn't
23 read your report. Did you read Dr. Iles' report?

24 A. Parts of it.

02:03 25 Q. All right. Did you read the part where he

1 talked about growth rate?

2 A. Yes.

3 Q. What was his -- what was his growth rate?

4 A. I think average across the forest is something

02:03 5 like 3.75 or 3.76.

6 Q. Well, let's turn to page -- let's turn to page

7 3 so we can break it down -- sorry, page 11. Page 11.

8 MR. DOREN: What document?

9 MR. NEIER: Top of page 11.

02:04 10 MR. DOREN: Which document?

11 MR. NEIER: Dr. Iles' report.

12 Q. (By Mr. Neier) Okay. Just the top there, it's
13 3.76 is what he found looking at 258 trees larger than 12
14 inches in diameter. That's what you're talking about,
02:04 15 right?

16 A. Yes, sir.

17 Q. And if we were to break that down in species a
18 little bit, we would see that -- or he didn't actually
19 break it down in species. I apologize. What he did is
02:04 20 he looked at your growth rates and said they were very
21 close to 3.76; is that correct?

22 A. They bracketed 3.76.

23 Q. Right, because it's 3 percent for the Douglas
24 Fir and 4 percent for the redwood?

02:04 25 A. That's correct.

1 Q. Okay. But those aren't the growth rates for
2 the cloned redwoods?

3 A. No, sir.

02:04

4 Q. Those aren't -- no. Right. Okay. And those
5 aren't the growth rates for the improved seed Doug Fir,
6 is it?

7 A. No, sir.

02:05

8 Q. All right. What is the growth rate that the --
9 I believe you said you got all of this information from
10 the company, correct?

11 A. Yes, sir.

12 Q. Okay. So what is the growth rate the company
13 gave you for cloned redwood?

02:05

14 A. They didn't give me a growth rate. They gave
15 me an expected volume projection at different ages. You
16 can calculate a growth rate from that, but I didn't.

17 Q. Okay. But do you have any -- do you think it's
18 about double in terms of growth?

02:05

19 A. Yes, sir. Well, I don't know the percentage.
20 The volume that you would harvest would be about double,
21 but the percentage may not necessarily be double,
22 depending on the age you're looking at.

02:05

23 Q. Okay. Maybe we can -- we'll try and go a
24 little deeper in that. But -- and the growth rate for
25 the improved seed Doug Fir is not 3 percent, right?

1 A. No, it will probably be slightly higher.

2 Q. Slightly higher?

3 A. Well, whatever it takes to double your cut.

4 Q. Double your cut. Okay. If we can switch back

02:06 5 to your report now. And if we can go to page 7 of your

6 report. And we have -- what is this -- this graph?

7 A. The dashed black line is an example of a guide

8 curve.

9 Q. Okay. So -- but when you say the dashed black

02:06 10 line, you're talking about this little line here?

11 A. Yes, sir.

12 Q. Okay. And what are the two red lines?

13 A. The two red lines are example trajectories of

14 what you would see from inventory stands that are at --

02:06 15 start at those different numbers.

16 Q. Okay. And is there -- is there a difference

17 between the two?

18 A. Pardon?

19 Q. Well, you have a red line up here?

02:07 20 A. Yes, sir.

21 Q. And you have a red line down here?

22 A. Yes, sir.

23 Q. I'm asking you, is there a difference between

24 the two?

02:07 25 A. Of course.

1 Q. All right. What's the difference?

2 A. The difference on the bottom stand, you see
3 it's starting -- it's fairly close to the guide. Here it
4 starts slightly below, and it slowly trends over time to
5 follow the curve.

02:07

6 Q. Okay. And what's --

7 A. The higher curve is starting higher curve than
8 the guide curve, and it slowly trends down, and that's
9 called the trend normality.

02:07

10 Q. Okay. And is there some way -- is this the
11 clones, or is this something different?

12 A. No, this is totally different. This has
13 nothing to do with clones. This is how stands progress
14 over time.

02:07

15 Q. Okay. If I'm at -- if I'm at 30 years, is that
16 the bottom dot there?

17 A. It looks like it, yeah.

18 Q. Okay. And this is board feet per acre,
19 correct?

02:07

20 A. That's correct.

21 Q. So from -- from, say, about 15,000 board feet
22 per acre to year 80 -- I'm sorry, to -- yeah, to year 80?

23 A. That's 60 right there. You're at the dot.

24 Q. I'm sorry. Let me see if I can really

02:08

25 understand this. Can you tell me what the growth rate is

1 right here in this portion right here?

2 A. Off the top of my head, I can't. You'd have to
3 calculate it. You could by looking -- if you wanted to
4 calculate it for ten years, look at the volume at 40 and
02:08 5 the volume of 50, which gives you the difference divided
6 by -- to give you the compound interest.

7 Q. If we say this is, I don't know, about 10,
8 12,000 board feet per acre?

9 A. That's maybe 15.

02:08 10 Q. 15,000 board feet per acre, and then we're
11 going to -- we're going to age 60, say, which is right
12 about here, about 80,000 board feet per acre; is that
13 right?

14 A. Close. Close. Maybe 75.

02:09 15 Q. That's not a 3 percent growth rate?

16 A. No. What's the span of time?

17 Q. You're going from age 30 to age 60.

18 A. So you're going three decades. No, that's
19 probably growing faster than that. That's a very high
02:09 20 site, you realize. That's site index 145.

21 Q. Okay. And what is site index 145?

22 A. That is trees on that site index at 50 years
23 best that age will be an average 145 feet tall.

24 Q. Okay. So --

02:09 25 A. That's very high site. That's higher than

1 Palco's average.

2 Q. I mean, that's a -- this is -- this is growth
3 on steroids, isn't it?

4 A. No.

02:09 5 Q. It's about 6 and a half percent?

6 A. It's not growth on steroids.

7 Q. Okay.

8 A. High site --

9 Q. It's a lot higher than 3 to 4 percent?

02:09 10 A. Correct, but that's not an average -- that's
11 not an average stand, and that's not meant to be an
12 average stand. We put a high site on there so you could
13 actually see some curvature.

02:10 14 Q. Okay. But it says an example by curve, and
15 what we're talking about is a growth rate that's a lot
16 bigger. This is without clones and without --

17 A. That's correct.

02:10 18 Q. -- without steroids, without improved seeds,
19 without any of that stuff, and we're talking about a
20 growth rate that's very high?

21 A. Yeah.

02:10 22 Q. Okay. Now, if we can turn to page Roman IV,
23 the very beginning of your report. I think Mr. Shields
24 asked you some questions, so I'm hoping to save some
25 time. What is being shown on this graph here? This is

1 Figure 1 of your report.

2 A. This is a 50-year harvest schedule, or harvest
3 levels. It's the harvest volume that would be achieved
4 on a land base over 50 years.

02:11 5 Q. Right. And the big thick red line, that's
6 total cut?

7 A. Yes, sir.

8 Q. That's total harvest over that time?

9 A. Of all species. That's correct.

02:11 10 Q. Okay. And there's this light green line, which
11 I don't really see, but --

12 A. No, it's not -- it's not on there. We didn't
13 allow for salvage.

14 Q. Okay. What is salvage?

02:11 15 A. It's if trees die or --

16 Q. You pick it up?

17 A. Yeah, you pick it up.

18 Q. Thinnings? What's thinnings?

19 A. It's thinnings of stands that are under
02:11 20 rotation age, so it would be a regular commercial
21 thinning usually you're thinning the smaller trees to
22 improve the remaining stand.

23 Q. Okay. So it's not getting you additional
24 harvest really; it's -- what it's used for is to help the
02:11 25 other trees grow?

1 A. You will get some additional harvest out of it.

2 Q. Some additional harvest?

3 A. Right.

4 Q. But you're cutting very young trees?

02:12 5 A. Yes. In this case I think mostly between 35
6 and 40.

7 Q. Right. Probably not economical really?

8 A. Redwood, you can make some money off of it.

9 Q. Some?

02:12 10 A. But not a lot.

11 Q. What's selection harvest?

12 A. Selection harvest is essentially a partial
13 harvest of older stands, stands that are beyond rotation
14 age in this case.

02:12 15 Q. Okay. And we've had some testimony about
16 selective harvesting; is that right?

17 A. Yes, sir.

18 Q. And selective harvesting as opposed to clearcut
19 is a method that some people use in forest practices?

02:12 20 A. Yes, sir.

21 Q. And that's a way that some people believe that
22 you can maybe get a little bit of a break from the
23 regulators, maybe save some watersheds, things like that,
24 is that right?

02:12 25 A. That's their opinion, yes, sir.

1 Q. Yes. And second growth, what's that mean?

2 A. Second growth clearcut.

3 Q. Okay. So when you say second growth, you mean

4 clearcut, and that's where you're taking down the same

02:13 5 trees or approximately the same trees you would be taking

6 down in selective harvesting, right?

7 A. Selective harvesting you could be taking down

8 larger trees.

9 Q. Okay.

02:13 10 A. They would be older than -- second growth

11 clearcut are second growth stands that are rotation age.

12 They may be slightly older rotation age, but they're

13 clearly second growth. Selection cut, the stands are

14 always of rotation age.

02:13 15 Q. Okay. So they -- they overlap somewhat?

16 A. Yes, sir.

17 Q. But the idea is these are two different methods

18 of harvesting, clearcut and selective harvesting?

19 A. That's correct.

02:13 20 Q. Okay. And then we have old growth down here?

21 A. Yes, sir.

22 Q. Now, old growth is this purple line all the way

23 down here. There's not very much of that, right?

24 A. That is correct.

02:13 25 Q. And why is that?

1 A. That's what I defined as stands that they
2 harvested that -- some volume that they harvested that
3 was in stands that were over 100, 100 years old, so it's
4 all in how you define the term "old growth."

02:13 5 Q. Okay. And you could, as a company, like
6 Mr. Dean intends, have an old growth practice where you
7 don't cut these old growth redwood trees, correct?

8 A. Yes, you could also do a selective kind of old
9 growth.

02:14 10 Q. Right. And presumably, as I said earlier, each
11 operator of a forest will have different methods?

12 A. That's correct.

13 Q. Nature conservancy, universities, you know,
14 Mendocino, they might have different ideas about whether
02:14 15 or not you cut old growth redwood?

16 A. That's correct.

17 Q. And they may have different reasons for doing
18 what they're doing?

19 A. Yes, sir.

02:14 20 Q. But they're their reasons?

21 A. Yes, sir.

22 Q. Okay. But the major methods are really
23 selective harvesting and clearcut, correct?

24 A. That's correct.

02:14 25 Q. That's how you're going to get your harvest?

1 A. That's correct.

2 Q. Okay. So what accounts for these lines that
3 indicate a sharp drop in clearcutting? Like, for
4 instance, in this 2020, you have this huge spike
02:15 5 downwards for clearcutting. You're going from what looks
6 like 80 million board -- not 80 million. You're going
7 down 40 million board feet just before 2020, and then in
8 2020 you're going right back up. What accounts for that?

9 A. Most likely in this case adjacency accounts for
02:15 10 that. You can't clearcut -- clearcut triggers adjacency
11 rules. Selective cut doesn't. The model is trying to
12 maximize net cash flow. So rather than smooth that out,
13 I let the model essentially show you what potentially can
14 happen.

02:15 15 Q. So what's involved -- have you ever operated a
16 forest?

17 A. As a general manager?

18 Q. Yeah.

19 A. No.

02:15 20 Q. What's involved in switching from selective
21 harvesting at 80 plus million board -- I'm sorry. That's
22 not really the right way to look at it. You know, 50
23 million board feet in selective harvesting for a few
24 years and then going right back up to it. What's
02:16 25 involved?

1 A. You would end up hiring a contractor to do
2 selection cuts. Most likely -- I'm just speculating here
3 on what the foresters might want to do -- they would look
4 at that and then say -- and we can do this in the model
02:16 5 if we wanted to -- but that hides the dynamics of the
6 forest, and you need to see that. They would probably
7 smooth that out, that 40.

8 Q. Right. I mean, is this really operationally
9 feasible to have your clearcutting going from, you know,
02:16 10 down 40 million, then back up 40 million two years later
11 than approximately ten years later you're going down 40
12 million again, and you're going sort of all over the map
13 on your clearcutting?

14 A. As long as the cut -- the drop in the cut in
02:16 15 the model is for a short period of time, a year, maybe
16 two, it's not operationally going to end up being a
17 problem.

18 Q. But your objection was to maximize cash flow?

19 A. That's correct.

02:17 20 Q. Now you're hiring outside contractors to come
21 in and perform this clearcutting?

22 A. But the cost of that extra selection cut is in
23 the model. It costs you more to do selection cut than
24 clearcut.

02:17 25 Q. Okay. But we were talking about clearcut?

1 A. Yes.

2 Q. Okay. Now let's look at the selection cut.

3 This costs more, correct?

4 A. That's correct.

02:17 5 Q. And presumably you would use -- I know you're
6 not an operator, but presumably you would use your
7 regular staff to do the selection harvesting?

8 A. You may or you may not. That's up to the
9 company.

02:17 10 Q. Well, it's your more expensive cut, right?

11 A. Regardless of how you do it, it's going to cost
12 you more.

13 Q. Okay. So you've also got these spikes. And
14 why does it cost more?

02:17 15 A. Because you're not taking out all the trees.
16 You take out part of the trees. You have to build more
17 road. You have more road to operate. You have the same
18 volume.

02:17 19 Q. Okay. So let me -- let me see if I got that
20 right. You have more road?

21 A. More area you're going to have to harvest on.

22 Q. More area. And that's just because I've got to
23 hit more of it to get the same volume?

24 A. That's correct.

02:18 25 Q. Okay. So I've got to have more roads, I've got

1 to cover more area to get my same trees, right?

2 A. Uh-huh.

3 Q. Instead of cutting, say, 100 acres clearcut,
4 I've got to cut two acres, 35 each?

02:18 5 A. Sure. That sounds good.

6 Q. Okay. So more roads, more volume. What else
7 do I have to do?

8 A. You have to be more careful because you don't
9 want to damage the residual trees, so it would cost you
02:18 10 more to actually do the logging.

11 Q. Right. So I've got to work around the trees
12 that are going to be left standing?

13 A. Yes.

14 Q. Okay. So what accounts for these changes in
02:18 15 selective harvesting?

16 A. Well, obviously the priority of the model is
17 going to assume since we're trying to maximize net cash
18 flow, it is going to do as much clearcutting as is
19 allowed within the adjacency rules and all the other
02:18 20 regulations of the land base, and it's going to pick that
21 up, a selection cut on stands that it can make money on.

22 Q. Okay. So but -- now looking at -- and I just
23 want to make sure I understand this graph correctly.

24 Just after 2010 here, a couple years from now, you've
02:19 25 got -- you've got virtually zero selective harvesting?

1 A. In 2011.

2 Q. 2011 to 2012; see that?

3 A. Yeah.

4 Q. Is that right?

02:19 5 A. Yes, sir.

6 Q. And then what I've got is 80 plus million board
7 feet of clearcut for a couple of years?

8 A. That's correct.

9 Q. Okay. So I'm going to stop selective
02:19 10 harvesting, and I'm going to clearcut my entire harvest?

11 A. Uh-huh.

12 Q. Because this is virtually -- this is at zero,
13 correct?

14 A. It looks like it.

02:19 15 Q. Is any operator going to do this?

16 A. It depends on if they got contractors that do
17 the selection cuts for them, they can start and stop the
18 contractor. Would they do that in reality? Probably
19 not. They would probably slow that down a little bit,
02:19 20 but it's not going to affect your cash flow over time.

21 Q. Why isn't it going to affect -- well, it's
22 going to affect your near term cash flow?

23 A. Yes, it will. That's why I'm going to try --
24 it's going to try to not do that.

02:20 25 Q. It's going to try --

1 A. The model will try to focus your priority on
2 clearcuts. That's exactly right.

3 Q. This is from your model, right?

4 A. Yes, sir.

02:20 5 Q. Okay. So -- but any operator, you know, is not
6 going to one year clearcut and then the next year
7 selective -- go do selective harvesting?

8 A. They do to some extent, yes.

9 Q. But switching the entire forest?

02:20 10 A. We didn't switch the entire forest.

11 Q. Switching -- switching your method of
12 harvesting this radically, you think that's what an
13 operator does?

14 A. They certainly switch you back and forth
02:20 15 between clearcutting and selection cuts as the conditions
16 allow.

17 Q. All right. And it's your contention that this
18 is the way to maximize cash flow?

19 A. The harvest levels that you achieve -- this is
02:20 20 a strategic model you've got to remember. That's the
21 whole idea behind the plan, so if you look at it over a
22 five-year period, if you wanted to average that over a
23 five-year period, you can do that. I could have done
24 that in the model, but I didn't want to do that because
02:21 25 it's important for the client to see the dynamics of the

1 land base.

2 Q. And when we say maximize cash flow, you've
3 thrown in here the regulatory and environmental
4 constraints. That's part of your Options program, right?

02:21 5 A. That's exactly right.

6 Q. So this -- to your way of thinking, this is not
7 only operationally feasible; it's feasible with the
8 regulators?

9 A. It's feasible with the regulators.

02:21 10 Q. And who told you it's feasible with the
11 regulators?

12 A. Nobody told me that. We put in all the rules.
13 It follows all the rules. It does all the rules first.
14 The last thing it does is harvesting.

02:21 15 Q. Well, but where did the rules come from?

16 A. Rules come from the interpretation of the rule
17 book by Scopac foresters.

18 Q. Okay. Because you're not an expert in
19 California forestry rules, correct?

02:21 20 A. That's right.

21 Q. By the way, what would be the impact if you
22 couldn't do -- if you couldn't do all that clearcutting
23 in 2010 because the regulators said no, what would be the
24 impact in your model? What if you had to do selective
02:22 25 harvesting?

1 A. Well, it would cost you -- it would cost you
2 more money.

3 Q. Now, in order to make your model work, you need
4 cost data?

02:22 5 A. Yes, sir.

6 Q. You need data on how much it costs for the
7 logging, correct?

8 A. Yes.

02:22 9 Q. You need data on how much it costs for the
10 roads, correct?

11 A. You need the overall forestry costs, yes.

12 Q. All right. And you may have heard testimony
13 they have a huge backlog in the roadwork that they're
14 required to do under their timber harvest plan, correct?

02:22 15 A. Yes.

16 Q. Okay. And you need data on how much the
17 science cost; all these plans have to be prepared by the
18 foresters?

19 A. That's right.

02:23 20 Q. Where did you get all that input?

21 A. From Scopac, the 2006 cost data.

22 Q. Okay. And where did you get the inventory
23 levels from? They didn't come from Dr. Iles, right?
24 They came from Scopac as well?

02:23 25 A. Scopac's 1-1-2007 inventory.

1 Q. Okay. And with respect to the properties that
2 are in your analysis, you got that from Scopac as well?

3 A. Yes, sir.

02:23

4 Q. Okay. So they told you what they could cut on,
5 whether it was Scopac or Palco owned properties, and
6 that's what you used as your input?

7 A. Yes, sir, what they -- what they considered the
8 harvestable land base.

9 Q. Okay.

02:23

10 A. The gross harvestable land base.

11 Q. Right. And how about the harvest methods that
12 are used; where did that data come from? I mean, you
13 have -- what are the harvest methods, by the way?

14 A. Well, they have tractor, cable and helicopter.

02:24

15 Q. Okay. So with respect to tractor and cable and
16 helicopter, do they have different costs?

17 A. Definitely.

18 Q. Which is the cheapest?

19 A. Tractor.

02:24

20 Q. And which is the -- which is the most
21 expensive?

22 A. Helicopter.

23 Q. And you said cable is in the middle?

24 A. Yes, sir.

02:24

25 Q. Okay. So who told you what harvest method to

1 use when you're doing your clearcutting and your
2 selective harvesting?

3 A. Nobody.

4 Q. Okay. So that's something that you determined
02:24 5 as part of your model?

6 A. We used a slope glass to determine that.

7 Q. Okay. So if there's a different slope for the
8 particular area you're harvesting, that dictates a
9 different use of equipment?

02:24 10 A. Yes, sir.

11 Q. But, of course, selective harvesting and
12 clearcutting have to use different equipment, right?

13 A. Yes, sir.

14 Q. It's more expensive to do selective harvesting
02:24 15 in part because the method you use cannot be by cable?

16 A. Yes.

17 Q. All right.

18 A. You can selectively harvest flat land or cable
19 land, too.

02:25 20 Q. But you can use a tractor?

21 A. On flat land.

22 Q. Yes.

23 A. Yes.

24 Q. Okay. And who gave you the information on the
02:25 25 environmental constraints, that is, the adjacency rules,

1 the watersheds, and all the other things that are going
2 on on this property in terms of the environmental
3 constraints?

4 A. That came from Scopac.

02:25 5 Q. Okay. So the clones came from Scopac, that is,
6 the growth rate for clones, that came from Scopac?

7 A. The expected volume projections came from
8 Scopac. I didn't calculate the growth rates.

9 Q. Okay. It's an input?

02:25 10 A. Yes, sir.

11 Q. From the company?

12 A. Yes, sir.

13 Q. The improved seed came from Scopac?

14 A. Yes, sir.

02:25 15 Q. And the growth rates from it. The inventory
16 came from Scopac. The environmental constraints came
17 from Scopac. This's all correct?

18 A. Yes, sir.

02:26 19 Q. Okay. And then what you did is you said, okay,
20 I'm going to tell you how to harvest it, that is,
21 clearcutting, selective harvesting?

22 A. Uh-huh.

23 Q. And I'm going to tell you what equipment to
24 use?

02:26 25 A. Not what equipment, but the methodology.

1 Q. The method?

2 A. Yeah.

3 Q. And how many scenarios did you run to come up
4 with the correct schedule going out 50 years?

02:26 5 A. On this particular scenario here?

6 Q. No. In your work, in your report.

7 A. We ran over 200 across a whole lot of things,
8 not just this scenario.

02:26 9 Q. Not just this scenario. This is -- can you
10 tell from all the numbers up top in this Figure 1 how
11 many scenarios were run for this?

12 A. I think for this to derive this harvest
13 schedule for the land base was about -- took about 15, 12
14 to 15 scenarios.

02:26 15 Q. Okay. And just so we understand, and I think
16 Mr. Shields asked you about this, you have this big
17 spike --

18 A. Yes, sir.

19 Q. -- in 2040 of your total cut?

02:27 20 A. That's correct.

21 Q. And you've got a huge spike in your clearcut
22 method, right?

23 A. That's correct.

24 Q. Your cut in year 2045?

02:27 25 A. 2046, somewhere around there, yeah.

1 Q. In year 2046, you're going to clearcut 120
2 million board feet?

3 A. That's correct.

4 Q. And why is that huge spike exist?

02:27 5 A. Because you've got about 60,000 acres of Palco
6 land that's now rotation age and older in that time
7 period.

8 Q. But isn't it a fact the reason that you have
9 this volume to harvest is because you've used your
02:27 10 genetically enhanced cloned redwoods and your improved
11 seed?

12 A. Not necessarily. Most of the majority of that
13 land base is naturally occurring stands that are recently
14 well stocked.

02:28 15 Q. Okay. And this isn't just redwood, right?
16 This is all wood?

17 A. Redwood plus Doug Fir.

18 Q. But really what it's going to be is nearly 100
19 percent redwood?

02:28 20 A. Right. That's exactly right.

21 Q. Because the plan going forward is to cut only
22 redwood?

23 A. Well, cut as much as you can.

24 Q. Cut as much as you can?

02:28 25 A. Sure.

1 Q. And by cut as much as you can, you mean cut the
2 highest percentage?

3 A. Yes, sir.

4 Q. Right. And I take it that there's nowhere in
02:28 5 your report other than looking at those charts that we
6 looked over earlier where we can see what you think the
7 growth rate would be for the cloned redwoods?

8 A. That's correct.

9 Q. Okay. And do you know that figure off the top
02:28 10 of your head?

11 A. What's that?

12 Q. The growth rate for cloned redwood?

13 A. Not the growth rate. I didn't calculate that.

14 Q. Okay. I understand you didn't calculate it.

02:29 15 A. But I don't know that.

16 Q. You don't know?

17 A. No.

18 Q. And the same thing for improved seed?

19 A. Yes, sir. They gave me what the volume
02:29 20 projection that they expected.

21 Q. Okay. When you say they, you mean Scopac --

22 A. Scopac.

23 Q. -- or Palco? Are you familiar with the term
24 "slivers"?

02:29 25 A. Yes, sir.

1 Q. And what are slivers?

2 A. They're usually very small. They come as a
3 result of doing GIS analysis and a combination of that
4 plus how you do your harvesting. And they're usually
02:29 5 small, very small isolated parcels that end up being
6 isolated because of either harvest practices,
7 regulations, or just how you did your GIS.

8 Q. And when you say harvest method, what you
9 really mean is if I clearcut -- that's the blue line. If
02:29 10 I clearcut in a particular land, because of a slope or
11 something else there's going to be some trees left over
12 in that land?

13 A. Could be.

14 Q. A few trees. Could be?

02:30 15 A. Yes.

16 Q. Are slivers -- is it economical to go after
17 slivers?

18 A. It depends on where they are and how large they
19 are.

02:30 20 Q. I mean, if I have -- and I don't know trees,
21 okay, but let's talk about tomatoes. If I've got a patch
22 of tomatoes that are growing outside my back door, it's a
23 lot cheaper for me or more efficient for me to pick those
24 tomatoes that are right outside my back door that are all
02:30 25 growing in a patch than to walk a couple hundred feet and

1 get one tomato that's growing off by itself on one plant?

2 A. Yes, sir.

3 Q. Okay. Now, when you got these cost inputs from
4 the company, did you use the same cost inputs for the
5 slivers as you used for the large patches that could be
6 economically cut?

7 A. Yes, I did.

8 Q. So, in other words, if the company goes out and
9 gets a sliver, even though it may not be economical to
10 get that sliver, under your model it's using the exact
11 same costs that it is to get the trees that are all
12 together in a nice package ready to be clearcut?

13 A. If the sliver is available, yes.

14 Q. Okay. But an operator, okay, would say well,
15 gee, I'm not going to go out and get that sliver because
16 it's not economical for me. Some scientists may have
17 said that the average cost to get all these trees is so
18 much per tree, but it's definitely not economical to go
19 after that small patch of trees right over there as
20 opposed to the big patch right in front of me, right?

21 A. Yes, an operator could say that.

22 Q. But there's no accounting for that in your
23 mind?

24 A. No, sir.

25 Q. How much slivers exist on Scopac's lands?

1 A. Relatively few that are not accessible.

2 Q. That's your opinion?

3 A. No, that's a fact.

4 Q. By the way, this large spike that exists right

02:32 5 here --

6 A. Yes, sir.

7 Q. -- is that because the Palco properties come
8 on-line, that is, the trees are old enough now to be cut?

9 A. Palco?

02:32 10 Q. Yes.

11 A. I don't know. I just know in the total land
12 base there's approximately 60,000 acres that's now old
13 enough to be harvested.

02:32 14 Q. But you don't know if those trees belong to
15 Scopac or Palco?

16 A. Well, Palco owns at most, what, 10,000 acres.

17 Q. Yes.

18 A. So obviously by far the large majority of
19 that's going to be on Scopac.

02:32 20 Q. Well, but you don't recall, and there's no way
21 to tell from your report where these genetically enhanced
22 cloned redwoods are?

23 A. No.

24 Q. Now, the cloned redwoods that exist today --

02:33 25 A. Yes, sir.

1 Q. -- that's a very small percentage of what --
2 compared to the natural redwoods, right?

3 A. That's correct.

02:33

4 Q. How much approximately are we talking about
5 when we talk about the cloned redwoods?

6 A. Off the top of my head, I don't recall. But it
7 is a small number.

02:33

8 Q. Right. I mean -- I mean, Dr. Iles doesn't have
9 anything in his report about these cloned redwood trees,
10 right?

11 A. That's correct.

12 Q. And his growth rate doesn't have anything with
13 respect to these cloned redwoods?

14 A. That's correct.

02:33

15 Q. Okay. Because they're really to use --

16 A. Young.

17 Q. Young. And to use Dr. Iles' phrase,
18 statistically insignificant. Would that be fair to say
19 today?

02:34

20 A. On an acreage basis you could probably say
21 that, yes.

22 Q. You know Dr. Iles pretty well?

23 A. Reasonably well, yes, sir.

02:34

24 Q. He's not an appraiser or somebody who's an
25 expert in valuation?

1 A. No.

2 Q. But he's also not a genetic scientist, right?

3 A. No.

4 Q. He can't tell you whether a cloned redwood is

02:34

5 going to grow any faster than a natural redwood?

6 A. No.

7 Q. Every time I touch a piece of paper, it shrieks

8 at me.

9 THE COURT: Usually we get some sort of

02:35

10 feedback from Blackberries.

11 MR. NEIER: Mine is not up here, Judge.

12 THE COURT: Okay. Does anybody have their

13 Blackberry on? I think it's a new rule, you're not

14 allowed to touch paper.

02:35

15 Q. (By Mr. Neier) I believe in your report you

16 mentioned that the company cut -- or was intending to cut

17 its harvest projection for 2007 was 85 million board

18 feet?

19 A. That was the original projection, yes.

02:36

20 Q. That was the original -- actually, the original

21 projection --

22 A. Was 104 or something.

23 Q. 105, right?

24 A. Yes, sir.

02:36

25 Q. That's what Dr. Barrett actually testified to

1 when he testified.

2 A. Yes, sir.

3 Q. And then it was reset at what the number you
4 have in your report, which is 85 million board feet?

02:36 5 A. I think they cut 74 actually, cut conifer.

6 Q. Right, because at the time of your report you
7 estimated it would be 85 million board feet?

8 A. That's correct. That was my original estimate.

9 Q. And it ended up being, I think, what you just
02:36 10 said, 75 million or 74 point something --

11 A. Yes.

12 Q. -- board feet? So you've designed a harvest
13 schedule that cuts a certain amount of harvest --

14 A. Yes, sir.

02:36 15 Q. -- every year, but not everything goes as
16 planned, correct?

17 A. That's correct.

18 Q. And, in fact, in this year when all these
19 scientists and everybody else is working on Scopac, they
02:36 20 still can't get their harvest rate quite right?

21 A. That's correct. They have had their trouble.

22 Q. And as far as you're concerned -- well, let me
23 take a step back. You're familiar with Mr. Yerges,
24 right?

02:37 25 A. Yes, sir.

1 Q. And Mr. Yerges is the person that took your
2 information and did an appraisal of the forest, of
3 Scopac's property, correct?

4 A. That's correct.

02:37 5 Q. And you may not be an appraiser, but to your
6 knowledge, isn't it a fact what an appraiser is supposed
7 to do is it's supposed to tell you the fair market value
8 of the property that's being appraised, correct?

9 A. That's correct.

02:37 10 Q. What a likely buyer would pay for that
11 property, what a likely seller would sell that property
12 for, correct?

13 A. A fair market value.

02:38 14 Q. Okay. But, in fact, what you did -- if we can
15 go back to the deposition testimony that Mr. Shields
16 showed you earlier, and I'm sorry to say it was my
17 question, was you looked at the reorganization of Scopac
18 and determined what would be the best harvest schedule
19 for the reorganization of Scopac, correct?

02:38 20 A. I didn't look at the reorganization of Scopac.
21 I looked at what you could do on the land base that would
22 maximize net cash flow and meet all the environmental and
23 social objectives that you're trying to achieve.

24 Q. You did a harvest plan?

02:38 25 A. I did a harvest schedule.

1 Q. All right.

2 A. I didn't do the plan.

3 Q. Who did the plan?

4 A. The foresters would do the plan.

02:38 5 Q. And the foresters are Scopac?

6 A. Correct.

7 Q. And are you familiar with what I'm going to
8 call the kingdom home plan?

9 A. No, sir.

02:38 10 Q. When I say familiar, generally familiar. I'm
11 not asking you --

12 A. The kingdom home plan?

13 Q. The redwood ranch development program?

14 A. I know nothing about that other than --

02:39 15 Q. Building homes in the forest?

16 A. I've heard people talk, but I know nothing
17 about it.

18 Q. Well, it's a plan for building some luxury
19 homes in part of the forest?

02:39 20 A. I have heard that there is such a plan, but I
21 have not read anything and I know nothing about it. I
22 just want to make sure you know I don't know what you're
23 talking about.

02:39 24 Q. Many people do not know what I'm talking about,
25 so it's okay.

1 A. I know the acreage. I know the acreage that's
2 involved.

3 Q. Okay. But your part of the plan, if I
4 understand it correctly, is not your part of the redwood
02:39 5 ranch development plan. Your part of the plan for the
6 forest is to take the forest, cut only redwood, plant as
7 much cloned redwood as you can, and harvest that?

8 A. That's correct.

9 Q. Okay. To transform the forest from what it is
02:39 10 today into a genetically enhanced forest?

11 A. I would say that's a stretch.

12 Q. What would you say?

13 A. You want to definitely enhance the redwood
14 percentage of the existing forest. You do want to plant
02:40 15 clones where you can grow clones, but you're not creating
16 -- by any stretch are you creating a genetically modified
17 forest because less than half the forest will be
18 modified.

19 Q. Less than half the forest is a large part of
02:40 20 the forest, correct? We're talking about 4 billion board
21 feet, you know, in the harvestable areas having, you
22 know, over 2 billion board feet certainly?

23 A. Correct.

24 Q. You're talking about a large portion of the
02:40 25 forest that is going to have these cloned redwoods on it,

1 and that's what you're going to harvest?

2 A. Maybe a quarter.

3 Q. But your plan -- your plan to maximize cash
4 flow is based on these cutting only redwood and cutting
02:40 5 the genetically enhanced redwood when it grows up 50
6 years from now?

7 A. Cutting as much as you can, yes.

8 Q. Are you familiar with Dolly the sheep?

9 A. Yes, sir.

02:40 10 Q. Dolly the sheep --

11 A. Not personally.

12 THE COURT: You happen to have a picture.
13 I'm not going to touch that.

14 MR. NEIER: I don't want to touch it
02:41 15 either.

16 Q. (By Mr. Neier) But Dolly the sheep was a
17 cloned sheep, correct?

18 A. Yes, sir.

19 Q. And I don't know if it's possible to see from
02:41 20 the photograph, but Dolly the sheep is now stuffed and
21 mounted?

22 A. Yes, sir.

23 Q. Dolly the sheep is no more?

24 A. That's correct.

02:41 25 Q. And that's because Dolly the sheep died at age

1 7 of progressive lung disease?

2 A. Correct.

3 Q. An early death?

4 A. Yes.

02:41 5 Q. Okay. And a lot of people think it's because
6 Dolly was genetically modified, and it didn't quite take?

7 A. That's right.

8 Q. What is it that says that we're growing these
9 cloned redwoods and that 50 years from now they're going
02:42 10 to have the kind of volume that you're talking about?

11 It's not you who says that, right?

12 A. Well, I tend to believe those numbers. I have
13 no reason to doubt them.

14 Q. A lot of people believed Dolly --

02:42 15 A. There's a couple of things that you need to
16 keep in mind. One, we're not trying to grow these clones
17 out to a very old age. The rotation age for the clone
18 stands is 35, for the medium and higher sites which is
19 where we're going to be planting them. So 35 years is a
02:42 20 lot less. Maybe it's equivalent to seven in Dolly years.

21 Q. Okay. But 50 years ago there were no cloned
22 redwood trees or --

23 A. That's true.

24 Q. All right. So it's new science?

02:42 25 A. That's correct.

1 Q. And new science doesn't -- I mean, like Dolly
2 is stuffed and mounted. New science doesn't always work
3 out --

4 A. That's correct.

02:42 5 Q. -- the way it should?

6 A. But there's been enough vegetative propagation
7 done on many species to show it works extremely well.

8 Q. Okay.

9 A. But it didn't work on Dolly.

02:43 10 Q. No, but Dolly is probably the first sheep they
11 tried it on.

12 A. It didn't work on the first trees they tried it
13 on 35 years ago either.

02:43 14 Q. It's only worked five years on Scopac's
15 property?

16 A. Well, that's what I said. I don't know how
17 long they've actually been working on genetically or
18 vegetatively producing redwood. It might be a lot
19 longer.

02:43 20 Q. Okay. I think I asked you earlier whether any
21 of the cloned redwoods were on Palco's lands, and you
22 didn't know?

23 A. That's right, I don't.

02:43 24 Q. Do you know how many cultivar types or genetic
25 types Scopac is planting on Scopac's lands?

1 A. No, I do not.

2 Q. Could it be 1 to 4?

3 A. I have no information on that.

4 Q. Did you consider in your Options model what

02:43 5 will be a change in the model output if you were to get a
6 disease or a pest or some other problem with the cloned
7 redwoods?

8 A. No, not with the cloned, but across the total
9 land base, we did have some conservative assumptions, not

02:44 10 specifically related to disease, but related to
11 recoverable volume.

12 Q. I believe some people asked you about polygons
13 earlier, correct?

14 A. Yes, sir.

02:44 15 Q. What is a polygon?

16 A. It's an enclosed area encountered by lines.

17 Q. The polygons in your report?

18 A. Yes, sir.

19 Q. What's their size approximately?

02:44 20 A. Oh, they range in size from very small to 10 to
21 12 acres probably.

22 Q. 10 to 12 acres being --

23 A. The very outside largest.

24 Q. What's the average? Two acres? Three acres?

02:45 25 A. No, the average is probably -- well, if you

1 divided 210,000 acres by 450, you get something less than
2 half an acre.

3 Q. Half an acre?

4 A. Well, that's the average.

02:45 5 Q. Right. Can you economically cut one polygon if
6 its average is half an acre?

7 A. You probably wouldn't do that, and the model
8 doesn't necessarily do that either.

9 Q. Doesn't necessarily do that?

02:45 10 A. No. It prioritizes stands based on the timber
11 stands, and there's 9,000 timber stands on the land base.

12 Q. Okay. So it uses average costs, so if it's
13 going after -- if it's going after stuff that's nearby
14 and stuff that's far away, it's the same cost as far as
02:45 15 your model is concerned?

16 A. If it did that, that's correct.

17 Q. Okay. But it's not going after things
18 polygon-by-polygon, is it?

19 A. It's going after polygon by --

02:46 20 THE COURT: I have no clue.

21 MR. NEIER: Judge, it's not me, I want you
22 to know.

23 A. It's going after things polygon-by-polygon,
24 but --

02:46 25 THE COURT: Let's hold on. Let's see. We

1 probably need someone to come adjust the microphones.

2 Let's continue. Test. I don't understand. It sounds as

3 though we've got --

4 MR. NEIER: I'm really at the end, so I

02:46 5 can ask the last question.

6 THE COURT: Okay. Go ahead.

7 A. Can I answer the last question?

8 Q. You can.

9 A. You've got to tell me what the question was

02:46 10 again.

11 Q. I was asking whether in your model it
12 essentially calculates the harvest or determines where to
13 harvest based on polygon-by-polygon?

14 A. To a degree. The thing to keep in mind is that
02:46 15 the forest inventory is one GIS layer, so all the
16 stand -- all the polygons that are associated with a
17 given stand are together.

18 Q. Right.

19 A. So yes, it might do a polygon to polygon, but
02:47 20 it tends to do a group at a time.

21 Q. But if I'm -- and --

22 THE COURT: Go ahead. Just ask the
23 question.

24 Q. (By Mr. Neier) If I'm a forester --

02:47 25 A. How is that? Is that okay?

1 Q. It's okay for me.

2 THE COURT: Try it. Actually, this is the
3 last question.

4 MR. NEIER: Yeah, it is.

02:47 5 Q. (By Mr. Neier) If I'm a forester, I'm not
6 going to harvest things on a polygon-by-polygon basis
7 ever, right?

8 A. Heavens, no.

9 MR. NEIER: That's it.

02:47 10 THE COURT: Some of these microphones were
11 being -- mine was doing it just a minute ago. You hear
12 that? Just for a second didn't. Now it's not. Is there
13 someone on a court call on the line? Court call.

14 SPEAKER: Yes, sir.

02:47 15 THE COURT: Are you getting any indication
16 of feedback from any of the phones?

17 SPEAKER: No.

18 THE COURT: Okay. So it's probably
19 something in the courtroom. We'll start the next
02:48 20 questions and see what happens.

21 MR. FIERO: Give me just a second, Your
22 Honor. When you go third, it's very hard not to repeat
23 stuff unless you're a little bit careful, and I like to
24 be careful.

02:48 25

1 CROSS-EXAMINATION

2 BY MR. FIERO:

3 Q. Good afternoon, Dr. Reimer. I'm John Fiero,
4 counsel for the committee. We met at your deposition.

02:48 5 A. Yes, sir.

6 Q. I wanted to go over a little bit of your
7 testimony and clear up a couple of things that I haven't
8 figured out or that I think might be helpful to the
9 Court, and I'd like to start with Mr. Neier's question to

02:49 10 you, which was: Did you at any time try to project what
11 a buyer would do if it was looking at the forest? Do you
12 remember that question?

13 A. Yes, sir.

14 Q. Okay. Do you remember your answer, sir?

02:49 15 A. No.

16 Q. Your answer was no. If you wouldn't mind,
17 please, pull out your report.

18 THE COURT: You remember your answer, and
19 it was no. When you asked him, you said: Do you
02:49 20 remember your answer? You said no. What you meant by
21 that was yes, and my answer was no.

22 THE WITNESS: Correct. Sorry.

23 Q. (By Mr. Fiero) Your answer was no. Please
24 take a look at page 43 of your report. Do you see right
02:50 25 here, sir, where you said on page 43 of your report: "I

1 assume that a prudent perspective purchaser would base
2 his evaluation on a non-declining harvest level which
3 could realistically be achieved under Scopac's current
4 regulatory and environmental operating conditions." Do
02:50 5 you see that, sir?

6 A. Yes, sir.

7 Q. So it is true that in one instance,
8 specifically with regard to your liquidation analysis,
9 that you considered what a buyer would do; am I right?

02:50 10 A. That's correct. I was earlier referring to the
11 first two scenarios.

12 Q. I'm sorry, say it again.

13 A. Earlier I was answering questions relative to
14 the first two scenarios.

02:50 15 Q. Okay. All right. And is there anything wrong
16 with looking at the use of a forest the way a buyer
17 would?

18 A. No, not at all.

19 Q. Okay. And then explain for me, if you would,
02:51 20 paragraph 15 of your supplemental declaration. Do you
21 have that? If not, I'll scare up a copy.

22 A. I think I've got it here. Page 15.

23 Q. Yes. Do you see --

24 A. Paragraph 15.

02:51 25 Q. Yes, sir.

1 A. Okay.

2 Q. Okay. Do you see here where you took

3 Mr. LaMont to task for using a non-declining even flow

4 harvest schedule assumption?

02:51 5 A. Yes, sir, I do.

6 Q. And based over a 50-year period?

7 A. Yes.

8 Q. And you criticized him saying that he was

9 necessarily constrained to begin his projection period

02:51 10 and continue to use harvest levels low enough such that

11 they would always go up and never decline?

12 A. Yes, sir.

13 Q. And then say "this assumption" -- and skipping

14 some text, I'm sorry, "leads Mr. LaMont to derive overly

02:52 15 conservative harvests in the earlier years of his

16 projection"?

17 A. That's correct.

18 Q. Isn't that exactly what you did sir, on page 43

19 of your report when talking about how you dealt with

02:52 20 liquidation analysis?

21 A. Yes, sir.

22 Q. The next thing I want to talk to you about are

23 assumptions. Do you remember your deposition testimony,

24 sir, where you testified that the Options model, which is

02:52 25 the software that you've developed over the years,

1 contains no assumptions?

2 A. Yes, sir.

3 Q. Okay. And you believe that's a true statement?

4 A. Yes, sir.

02:52

5 Q. But the truth is that until you feed

6 assumptions into the model, the model doesn't project

7 anything, does it?

8 A. That's correct.

9 Q. All right. So in any effort to use the model,

02:52

10 you do, in fact, use assumptions?

11 A. In using the model, yes, you do.

12 Q. All right. And those assumptions in this case

13 were provided to you almost exclusively by the managers

14 at Scopac?

02:53

15 A. When you define assumptions, how do you define

16 assumptions.

17 Q. Well, let's talk about the regulatory

18 constraints, for one?

19 A. Yes, sir.

02:53

20 Q. All right. The cost for harvest?

21 A. Yes, sir.

22 Q. All right. You didn't go out and independently

23 determine what third parties were spending to do their

24 logging, did you?

02:53

25 A. No.

1 Q. All right. And with regard to the regulatory
2 constraints, you didn't undertake an independent analysis
3 of what the state of California might or might not
4 require?

02:53 5 A. That's correct.

6 Q. Or what the water board might or might not
7 require?

8 A. That's correct.

9 Q. You relied on the company?

02:53 10 A. Yes. Yes, sir.

11 Q. And you didn't check the accuracy of any of the
12 statements made by management, did you? You didn't go
13 out and independently verify that when Scopac told you
14 these constraints would apply, that, in fact, they were
02:53 15 applicable?

16 A. We did do some field trips where we checked for
17 pairing zones and where they actually logged and harvest
18 blocks. So that would be an indirect check, I guess you
19 could say, but not -- there was no formal review across
02:54 20 the whole property or across all the rules.

21 Q. You didn't sit down with any regulators?

22 A. No, sir.

23 Q. And your only redwood experience, sir, relates
24 to the Scopac forest, am I right? You haven't worked on
02:54 25 other redwood projects?

1 A. That's correct.

2 Q. And I believe you testified before, but I just
3 want to make sure it's real clear. You're not qualified
4 to determine or predict what regulations the state of
5 California would apply to any given ten acre parcel on
6 Scopac's lands, are you?

7 A. No.

8 Q. And among the reasons for that are you're not a
9 registered professional forester in California?

10 A. That's correct.

11 Q. And this is the only job you've worked on
12 involving redwood?

13 A. That's correct.

14 Q. Okay. Now I want to talk to you a little bit
15 about how the model works. When you sifted through the
16 200 different scenarios that you ran to find the two that
17 you deemed to be the most optimal, in sorting through
18 them and in programming the Options software to consider
19 the various assumptions provided to you, you didn't
20 include any minimums which would have limited the size of
21 any cut block, right?

22 A. How do you mean?

23 Q. Well, you didn't tell the computer not to
24 select harvest areas smaller than an acre?

25 A. That's correct.

1 Q. And in instances the computer did, in fact,
2 select harvest areas smaller than an acre, didn't it?

3 A. That's correct.

02:55

4 Q. And you've already agreed with Mr. Neier,
5 haven't you, that it's not economic to cut a one acre
6 parcel standing alone?

7 A. That's correct. Not normally.

02:56

8 Q. And that's because the fixed cost of writing a
9 THP or getting equipment in place or the other precursors
10 to preparing property for logging are just too high to
11 cut parcels that small, aren't they?

12 A. Yes, sir. As a general rule, that's correct.

02:56

13 Q. Now, am I right that when you told the computer
14 how to look at future harvests after year 10, you didn't
15 impose any minimum constraints at all? In your words,
16 you turned the computer loose, right?

17 A. That's correct.

02:57

18 Q. Okay. If you wouldn't mind looking with me at
19 your report and in particulate page III. I just want to
20 go over what it was that you were tasked with doing.
21 First of all, I just want to make clear, I think you
22 answered this question for Mr. Doren, but Mr. Yerges
23 didn't tell you what to do, did he?

24 A. No, sir.

02:57

25 Q. All right. So if it was important for

1 Mr. Yerges to understand what a buyer was going to do,
2 that wasn't a direction that he passed along to you so
3 that you could consider it in preparing your report?

4 A. No, sir.

02:57 5 Q. Okay. Looking at the second paragraph, you
6 sought to determine the annual feasible harvest levels
7 for 50 years under the two different alternatives. Okay.
8 I want to talk to you about what feasible means to you
9 and in the context of this report. What you were talking
02:57 10 about when you say feasible is physically possible; am I
11 right?

12 A. That's correct.

13 Q. All right. And that means that, for instance,
14 if a specific area was selected for logging by the
02:58 15 computer, it was one that a human being could by building
16 a road or driving on a road travel to, set up logging
17 equipment, log, physically remove the logs and take them
18 out without violating any environmental rule, am I right?

19 A. That's correct.

02:58 20 Q. Okay. But feasible doesn't necessarily mean in
21 your mind, does it, that it is the most economic logging
22 activity to undertake?

23 A. That's correct.

24 Q. Now, it's true that in the process of getting
02:59 25 ready to issue your report or at the beginning of this

1 engagement at least, you met with the company and others
2 involved in the appraisal process once in Seattle and
3 once in San Francisco, am I right?

4 A. That's correct.

02:59 5 Q. And both times Mr. Hurwitz was present?

6 A. He was there at least for part of the meetings.

7 Q. And you've never met with Mr. Hurwitz in the
8 state of Texas, have you?

9 A. No, sir.

02:59 10 Q. You would agree with me, wouldn't you, that
11 there are some sites where Doug Fir grows today or where
12 Doug Fir once grew, where redwood will never grow?

13 A. Yes, sir.

02:59 14 Q. And do you know what the company's experience
15 has been when it comes to planning redwood on places that
16 Douglas Fir has traditionally grown?

17 A. They've had quite a bit of success. They've
18 also had some failures. And in the scenarios we ran, we
19 only converted Doug Fir to redwood in the higher north
03:00 20 slope sites, in Mattole, for example, the better areas.

21 MR. FIERO: Pass the witness, Your Honor.

22 THE COURT: All right. Anyone else over
23 here? Anyone over here? All right. Redirect.

03:00 24 MR. DOREN: Your Honor, is there a chance
25 of letting the witness stretch for ten minutes before?

1 THE COURT: Do you want to stretch for ten
2 minutes? Do you need to stretch for ten minutes?

3 MR. DOREN: Entirely up to you.

4 THE WITNESS: I'm okay. How long is this
5 going to be?

6 MR. DOREN: We'll see.

7 THE WITNESS: I may be sorry.

8 REDIRECT EXAMINATION

9 BY MR. DOREN:

10 Q. Dr. Iles, I would like to take a moment to work
11 through things, to some extent chronologically here.
12 And, first of all, Mr. Shields suggested that you and
13 your wife stood to make a handsome sum out of this. And,
14 first of all, what's your hourly fee in this case?

15 A. 250.

16 Q. And is that the fee that you normally charge in
17 litigation-related matters?

18 A. Yes, sir.

19 Q. And how many staff members have you had work on
20 this matter with you?

21 A. Four.

22 Q. And they earn salaries from you?

23 A. Yes, sir.

24 Q. And benefits from you?

25 A. Yes, sir.

1 Q. And we also heard Mr. Shields ask a line of
2 questions that he said went to the credibility of the
3 Options model. Do you recall that generally?

4 A. Yes, sir.

03:02 5 Q. I'd like to talk -- and he also said that we
6 had to look at your judgment and experience as someone
7 who has predicted harvest levels. Do you recall that
8 generally?

9 A. Yes, sir.

03:02 10 Q. And also it was commented that you've never
11 operated a forest, but have you, in fact, been
12 responsible for the harvest levels and projections of
13 harvest levels for a 6 million acre land base?

14 A. Yes, sir.

03:02 15 Q. And how long did you have that responsibility?

16 A. 14 years.

17 Q. Now, we talked during your direct about the use
18 of Options on the Plum Creek habitat conservation plan in
19 Washington State. Has your project or has Options been
03:03 20 used for any other projects in the state of Washington?

21 A. Yes, sir, it has.

22 Q. And can you tell us what significant projects
23 it's been used on in the state of Washington?

24 A. Probably the other sort of major significant
03:03 25 project was for the state of Washington for their state

1 trust lines.

2 Q. And how much land was involved in that project?

3 A. 1.5 million acres.

4 Q. And what was the purpose of that work?

03:03 5 A. To look at establishing a sustainable harvest
6 level that would maximize cash flow off of the state
7 lands which was used to pay for public education.

8 Q. So the purpose of the harvest from those lands
9 was to pay for public education in the state of

03:03 10 Washington?

11 A. Yes, sir.

12 Q. And did your harvest projections assist the
13 state of Washington in increasing harvesting and thereby
14 increasing the funding for public education?

03:03 15 A. Yes, sir.

16 MR. NEIER: Your Honor, I don't understand
17 why we're talking about the state of Washington and a
18 particular project he worked on. How is that proper
19 redirect?

03:04 20 MR. DOREN: Your Honor, we've had a
21 line -- several lines of questions that goes specifically
22 to whether this isn't about Dr. Iles or Dr. Reimer,
23 excuse me, and his wife sitting in the British Columbia
24 working on this model for this project. And I want to
03:04 25 put it in context. I won't take more than a few minutes.

1 I promise I'll move it right along.

2 MR. NEIER: I don't think anybody has
3 suggested anything like that.

03:04

4 MR. DOREN: Well, I -- Your Honor, I think
5 the record will speak for itself.

6 THE COURT: I didn't recall those
7 questions either, but he said he did. So I guess --
8 we're not going to be able to go back through this and
9 figure out whether he did or not. I don't think so. If
10 you're just going to take a few minutes, then go ahead.

03:04

11 MR. DOREN: Thank you, Your Honor. I will
12 be brief. I appreciate the Court's comments.

13 Q. (By Mr. Doren) Now, have you also done work in
14 the state of Georgia?

03:04

15 A. Yes, sir.

16 Q. And what is the timber industry like in the
17 state of Georgia?

18 A. It's the most significant economic sector in
19 the state.

03:05

20 MR. NEIER: Your Honor, I don't remember
21 anything about Georgia coming up either.

22 MR. DOREN: Once again, Your Honor, it's
23 simply to put this witness's work and experience and the
24 use of Options in context.

03:05

25 MR. NEIER: What is the context of

1 Georgia?

2 MR. DOREN: It will take me less time to
3 work him through these questions than to argue the
4 objections.

03:05 5 MR. NEIER: I understand it takes less
6 time to ask an improper redirect question than it is to
7 argue about it, but that doesn't mean it's proper.

8 THE COURT: And you have --

9 MR. SHIELDS: My objection is a little
03:05 10 different. This same stuff he's getting ready to go into
11 is in this midnight proffer that they got into evidence.
12 There's just no reason to take up the Court's time.

13 THE COURT: So you don't have to go over
14 the substance in your proffer.

03:05 15 MR. DOREN: And, Your Honor --

16 THE COURT: It's all in evidence.

17 MR. DOREN: And Your Honor -- fair enough,
18 Your Honor. I appreciate that.

19 Q. (By Mr. Doren) And Dr. Reimer, have you also
03:05 20 done work for the Bureau of Land Management in the state
21 of Oregon?

22 A. Yes, sir.

23 Q. And what work have you done for the Bureau of
24 Land Management in the state of Oregon?

03:05 25 MR. SHIELDS: Your Honor, excuse me.

1 THE COURT: Is that in there also? I
2 haven't read it.

3 MR. SHIELDS: I believe it is, but now is
4 not the time to prove up his qualifications. Nobody --

03:06 5 THE COURT: I don't think they've really
6 called in question his qualifications.

7 MR. SHIELDS: Nor will we on the next guy.
8 You don't need to ask permission for him to be designated
9 an expert.

03:06 10 MR. DOREN: Your Honor that's fine. There
11 were moments in the record where Mr. Shields --

12 THE COURT: Let's move on.

13 MR. DOREN: Very well. Very well.

14 THE COURT: I think that the things they
03:06 15 brought out were the issue of whether or not this -- the
16 projections that he did through his model were the kinds
17 of projections that could lead to fair market value
18 valuation of the value of the property.

19 MR. DOREN: Understood, Your Honor.

03:06 20 THE COURT: That's one big area that they
21 brought out. I would focus on that.

22 MR. DOREN: I appreciate that.

23 Q. (By Mr. Doren) Now, Dr. Reimer, you testified
24 earlier that you input data from Scopac directly into a
03:06 25 stand-alone version of Options on your -- at your office;

1 is that correct?

2 A. That's correct.

3 Q. And why did you elect to do that?

4 A. We were asked to provide an independent

03:07 5 evaluation, and that's what we did.

6 Q. And did you take steps to validate that data?

7 A. How do you mean?

8 Q. The data received from Scopac?

9 A. Yes, sir.

03:07 10 Q. That it was accurate? And can you tell us --

11 tell the Court what you did to validate the data received

12 from Scopac?

13 A. On three different equations -- three different

14 occurrences that I can recall we went out into the woods,

03:07 15 and we took with us GIS maps of their areas, and we

16 checked the boundaries. What we were checking was the

17 accuracy of both the maps and a cursory check of the

18 inventory, although Dr. Iles had already checked that.

19 We were looking at the boundary, cut block boundaries and

03:07 20 see how they actually -- on the ground how they related

21 to what was on the map.

22 Q. Now, there's been discussion about your

23 objective about coming up with a harvest projection that

24 would maximize net cash flow. Do you recall that

03:08 25 generally?

1 A. Yes, sir.

2 Q. Now, what does it mean -- maximizing cash flow
3 I understand broadly, but what does Options do to insure
4 the maximization of net cash flow?

03:08 5 A. It looks at the copy -- value of the timber
6 stand as far as the species go, the size, the volume per
7 acre, and then it evaluates the cost, and it ranks stands
8 on that basis.

9 Q. So a few minutes ago you were discussing the
03:08 10 fact that it would be uneconomic in some cases to harvest
11 stands of less than an acre. Do you recall that?

12 A. Yes, sir.

13 Q. Does Options take that into account when
14 prioritizing and establishing harvest priorities?

03:08 15 A. It does to the extent that it looks at the
16 whole stands as far as setting up priorities on a value,
17 and it tends to -- a stand may be -- by the overlay
18 process may have many pieces carved out of it because of
19 different regulations and different situations. It tends
03:08 20 to group all of those together and harvest as many as
21 possible in one spot.

22 Q. There was also -- Mr. Fiero was asking you
23 about comments in your liquidation analysis about looking
24 at a non-declining even flow harvest. Do you recall
03:09 25 that?

1 A. Yes, sir.

2 Q. Why did you elect to use -- look at a
3 non-declining harvest for liquidation purposes?

4 A. My understanding was that the liquidation would
03:09 5 be very short period, time period be allowed, and my
6 experience has been that under a very short timetable,
7 buyers will tend to look at a non-declining even flow as
8 the cheapest way or the most inexpensive way for a
9 purchase. In other words, it's a guaranteed low cost.

03:09 10 Q. And did you consider that most relevant to a
11 liquidation scenario?

12 A. Yes, sir.

13 Q. In terms of a sale of the property with
14 sufficient time and time to put the property to market,
03:09 15 do you consider a non-declining even flow harvest to be
16 the relevant measure?

17 A. Well, it might be a starting point, but it
18 would be very rare if you were able to purchase the land
19 on that basis.

03:10 20 Q. You also discussed with Mr. Fiero this notion
21 of feasibility. Do you recall that?

22 A. Yes, sir.

23 Q. And along with considering the physical
24 feasibility of whether something could occur on the land,
03:10 25 did you also consider the economic feasibility?

1 A. Yes, sir.

2 Q. And how did you do that?

3 A. Well, economic feasibility is a subset of what
4 I would call physical feasibility. And so the economic
03:10 5 feasibility was basically triggered by the fact that we
6 set a priority in the model to maximize net cash flow.

7 Q. And so it wasn't simply a matter for your -- in
8 terms of the operation of your model as to whether
9 something could be physically achieved on the ground?

03:10 10 A. No. A combination of physical achievement plus
11 economics.

12 Q. Now, you were -- it was pointed out several
13 times that you ran approximately 200 scenarios over the
14 course of your work. Do you recall that?

03:11 15 A. Yes, sir.

16 Q. Why did you run so many scenarios?

17 A. We looked in the earlier parts of the analysis.
18 They gave us a variety of different combinations of HBU
19 lands and so many -- most of the scenarios were actually
03:11 20 run looking at the impact of different HBU combinations.

21 Q. And once the boundaries were determined for the
22 HBU boundaries, if you will, and you're referring there
23 to the proposed redwood development?

24 A. Yes, sir.

03:11 25 Q. Once those boundaries were determined, how many

1 scenarios did you have to run to achieve the results that
2 you presented here today?

3 A. I think as I mentioned earlier, we ran, as I
4 recall, between 12 and 15 different scenarios on each of
03:11 5 the scenario one and scenario two.

6 Q. And how -- and can you describe the process by
7 which you narrowed in on, again, your conclusions?

8 A. Typically I would start with a high level of
9 harvest that I know is not really achievable and see what
03:11 10 actually the model actually does. Then you would adjust
11 the harvest down relative to the constraints and the
12 conditions that actually caused a fall down in harvest
13 below this so-called high target. You drop that down
14 until you have a sufficient cushion that you feel that
03:12 15 there is a cushion between what the model is projecting
16 and what's actually on the ground so that you can achieve
17 that subject to all the things that you can't model.

18 Q. And that is how you got the results that you
19 presented to the Court today?

03:12 20 A. Yes, sir.

21 Q. Now, there was a discussion about the potential
22 for future environmental regulations. Do you recall
23 that?

24 A. Yes, sir.

03:12 25 Q. And have you evaluated the extent of the

1 environmental restrictions and the HCP compared to those
2 provided under California law in general?

3 A. In general, yes. They're more restrictive.

4 Q. Under the HCP?

03:12 5 A. Yes, sir.

6 Q. And did that factor into your decision not to
7 increase the extent of restrictions over the next 50
8 years?

9 A. Yes, sir.

03:13 10 Q. And how so?

11 A. Two factors. One, the HCP is more restrictive
12 than the current regulations that apply at the state
13 level. Secondly, Palco has had surprisingly good success
14 in adaptive management aspects of the HCP, and they've
03:13 15 gotten relief from a number of restrictions based on
16 science that's allowed them to increase their harvest.
17 So, to me, it seemed prudent if you kept the same
18 restrictions that are on there now over the 50 years.
19 That's a fairly reasonable approximation.

03:13 20 Q. Now, when does the HCP expire?

21 A. It expires, I believe, in -- I'm not sure of
22 the exact. It's 41 years from now, I think.

23 Q. 41 years from now, but you did a 50-year
24 projection; is that correct?

03:13 25 A. That's correct.

1 Q. Did you leave the HCP restrictions on the
2 property even after the expiration of the HCP?

3 A. Yes, sir.

4 Q. And why did you do that?

03:13 5 A. Just as a conservative. We didn't feel -- I
6 didn't feel it was prudent to think that you would
7 eliminate the HCP.

8 Q. And are there any other adjustments that you
9 made to your information to assure conservative
03:14 10 achievable harvests?

11 A. Yes, there were a number of things we did.

12 Q. Did you make any reductions on the harvest
13 projections to allow for regulatory delay or other
14 unknowns?

03:14 15 A. Yes, sir. We reduced the recoverable harvest
16 by 8 percent in the first five years and 10 percent in
17 each -- 8 percent in the first decade and 10 percent
18 thereafter.

03:14 19 Q. Now, do you recall -- and by the way, what
20 impact does that have on the harvest levels? That
21 reduces them by 8 percent and then later 10 percent a
22 year?

23 A. It reduces a recoverable volume off a piece of
24 land by 8 percent and 10 percent.

03:14 25 Q. And why did you consider that to add a

1 conservative element to your projections?

2 A. Two reasons. One, there are always issues that
3 you cannot map that show up when you -- to actually go
4 and log a piece of land. There are always little items
5 that show up that cause additional restrictions.

6 Secondly, there may be other regulatory issues that arise
7 on the land base when you go to actually do harvesting.

8 So those two main factors were the primary -- plus give
9 you a cushion.

10 Q. And so you created a cushion in your
11 projections to allow for those?

12 A. That's correct.

13 Q. Did you make -- now, Mr. Shields took you
14 through a lot of adjacency issues and pointed out, for
15 example, that you used a 10-foot adjacency measure. Do
16 you recall that?

17 A. Yes, sir.

18 Q. What's required under California law for
19 adjacency?

20 A. Five feet.

21 Q. And can you describe for the Court, again, just
22 what the adjacency standard is and how it applies to a
23 harvested area?

24 A. Basically you cannot clearcut an area adjacent
25 to one that has been clearcut until either three years

1 have passed and/or the trees are five feet tall -- until
2 the average height is five feet.

3 Q. So under state law it has to be at least three
4 years later, and the trees on the harvested site must be
03:15 5 at least five feet tall?

6 A. Correct.

7 Q. And how did you add a conservative element to
8 that standard?

9 A. We put in that the height had to be ten feet.

03:16 10 Q. And why did you do that?

11 A. The primary reason is that the heights in
12 the -- the height in the -- for planted stands would come
13 off of the yield tables, and the yield tables are a site
14 height. The regulations are for the average height of
03:16 15 the pull down trees, so not every tree is going to be ten
16 feet tall. So if you put in ten feet, then you've got a
17 pretty good assurance that your 280 or whatever your
18 required stocking trees are going to average five feet or
19 better.

03:16 20 Q. Now, by adding five feet, if you will, to the
21 height requirement, do you extend the period before
22 neighboring polygons can be harvested?

23 A. That effectively extends the period by a year
24 or two.

03:16 25 Q. And does that add another element of

1 conservatism to your projections?

2 A. Yes, sir.

3 Q. Now, did you also attach adjacency requirements
4 to a smaller acreage than is required under state law?

03:16

5 A. Yes, sir, within a THP, no adjacency
6 requires -- actually, apply within a THP. THP timber
7 lots can be up to 20 acres for clearcutting, up to 30
8 acres for a selection cut. And we ran a 10-acre trigger.
9 So as soon as you accumulated an area within an area that

03:17

10 was ten acres as far as the model was concerned, that
11 would set adjacency.

12 Q. And so once again as you ran the model, it
13 would foreclose harvesting in areas for projection
14 purposes that could actually have been under -- and could
15 be undertaken in the ordinary course?

03:17

16 A. That's correct.

17 MR. NEIER: Objection, leading.

18 THE COURT: I think he can lead his expert
19 witness.

03:17

20 MR. DOREN: Really? Thank you, Your
21 Honor. I apologize.

22 Q. (By Mr. Doren) Dr. Reimer, did you make any
23 conservative assumptions regarding the Tier 2 areas?

24 A. Yes, we did.

03:17

25 Q. And can you describe for the Court what a Tier

1 2 area is?

2 A. Well, my understanding a Tier 2 area is that
3 they're related to stream sedimentation pollution
4 requirement, pollution problem, potential pollution
03:18 5 problems.

6 Q. And do these relate in part to water board
7 requirements?

8 A. Yes, sir, stream quality.

9 Q. So the idea is to keep sediment from getting
03:18 10 into the streams?

11 A. Correct.

12 Q. And, again, in -- as a practical matter, how
13 does Scopac release or what is the process, if you will,
14 for releasing restrictions in the Tier 2 areas?

03:18 15 A. They have a whole series of water quality
16 analysis and monitoring sites on the property. And as
17 the science behind those proves out, then they get relief
18 from the Tier 2 requirements and those get lifted. An
19 they've had quite good success at that.

03:18 20 Q. So once they prove that harvesting can be done
21 without damaging the streams, they're permitted to
22 harvest in those areas?

23 A. That's correct.

24 Q. Now, what assumptions did you make for purposes
03:18 25 of your model related to the Tier 2 areas?

1 A. All the ones that are identified as Tier 2, we
2 deferred for 25 years.

3 Q. And did you do that to add an element of
4 conservatism to your projections?

03:19 5 A. Yes, sir.

6 Q. Did you alter at all the growth curves for
7 planted stands of redwood from the Option A curves that
8 were approved by the state of California?

9 A. Yes, sir. The -- for the planted stands only,
03:19 10 we reduced the projections by 10 percent, just to provide
11 a bit of conservative estimate.

12 Q. So you reduced the anticipated growth rate or
13 the height, the slope, if you will, of the growth curve
14 by ten percent?

03:19 15 A. No, we reduced the volume that you would expect
16 to harvest by ten percent. That's beyond the ten percent
17 we have in the final.

18 Q. So that's a ten percent cushion on top of the
19 ten percent cushion for natural stands; is that right?

03:19 20 A. No. That's for planted stands.

21 Q. Sorry?

22 A. That's for planted stands, yes.

23 Q. And what is a planted stand?

24 A. This is planted stands that are planted back
03:19 25 with seed, normal nursery stock. We did not reduce the

1 clone projections.

2 Q. Okay. Now, let's talk about cultivars for a
3 minute. We had a lot of talk. And if I follow the line
4 of questioning, in seven years we're going to stuff and
5 mount the entire forest.

03:20

6 A. Well, not quite.

7 Q. Now, first of all, cultivar growth curves, were
8 they developed by Scopac and DR Systems?

9 A. The cultivar curves, yes, we put those
10 together.

03:20

11 Q. And those were used -- were they developed with
12 information from Scopac and with published data?

13 A. Yes, sir.

14 Q. And were those also presented to the California
15 Department of Forestry with the other Option A curves?

03:20

16 A. Yes, sir.

17 Q. And were those also approved by the State of
18 California for use?

19 A. Yes, sir.

03:20

20 Q. And did the State of California also consider
21 those curves to be slightly conservative?

22 A. Yes, sir, they did.

23 Q. So when we're shown curves that show the
24 cultivars have potentially twice the volume at 40 or 50
25 years in the natural redwood, that conclusion and that

03:20

1 projection is consistent with the growth curves approved
2 by the State of California; is that correct?

3 A. That's correct.

4 Q. We heard Mr. Dean talk about the cuttings

03:21

5 program or the trimmings program. Are trimmings
6 essentially being taken from existing redwood trees and
7 then being cloned?

8 A. That's my understanding.

9 Q. And are the growth projections for those trees

03:21

10 then based on the growth results of the tree from which
11 the cutting was taken?

12 A. I'm not sure exactly how they determined that.
13 I haven't participated in those studies.

14 Q. Fair enough. Fair enough. Now, you noted that

03:21

15 the rotation ages for cultivars are set at 35 years; is
16 that correct?

17 A. That's correct.

18 Q. So, again, when we see the double volume

03:21

19 numbers over here, in fact, those are more hypothetical
20 than how the forest would actually be managed with
21 cultivars?

22 A. That's the intent.

23 Q. And what is the -- under state law, is there a
24 rotation age for cultivars under a sustained yield plan?

03:22

25 A. No. Under any sustained yield plan or Option A

1 plan, the company or an organization develops, you can
2 propose any rotation age that you can support subject to
3 the state approving.

03:22

4 Q. And if there is no sustained yield plan, does
5 the state require a minimum rotation age for cultivars?

6 A. I don't know about cultivars, but in general,
7 they require a 60-year rotation age.

03:22

8 Q. All right. Thank you. And you've expressed
9 confidence that cultivars will work on the Scopac land.
10 Why so?

11 A. There have been a number of species widely
12 planted that are based on vegetative propagation, and
13 it's used in lots of -- many parts of the world, so I see
14 no reason why it wouldn't work here.

03:22

15 Q. Is this used with other types of timber?

16 A. Yes, sir.

17 Q. And how long has it been used with other types
18 of timber?

03:23

19 A. One of the oldest actual plantation that I
20 actually looked at is probably now about 50 or 60 years
21 old.

22 Q. And what species type was that?

23 A. That was Douglas Fir.

03:23

24 Q. And has that species type succeeded in its use
25 in commercial forest land or timberland?

1 A. Yes, sir, it has.

2 Q. Are there other timber species that have
3 succeeded based on cultivars or clones over the last
4 several decades?

03:23 5 A. Yes, there are quite a wide range of pines that
6 are used that way.

7 Q. Is there any reason that you're aware of to
8 believe that redwoods are somehow different or less
9 susceptible or amenable to harvest or use of cultivars?

03:23 10 A. None that I would know of.

11 Q. And in fact --

12 MR. NEIER: Your Honor, he's not an expert
13 in genetic enhancement. We already established that.
14 Why is he answering these questions?

03:23 15 THE COURT: Well, somebody asked him
16 questions bout that.

17 MR. NEIER: No, we asked him if he was an
18 expert. He said no. Now he's asking his opinion on
19 genetic science.

03:23 20 MR. DOREN: Your Honor --

21 THE COURT: I agree. You probably can't
22 do that.

23 MR. DOREN: I'm moving on, Your Honor.

24 Q. (By Mr. Doren) Now, Dr. Reimer, again, we're
03:24 25 presented with the visage of your model being dependent

1 on the entire forest being planted in cultivars. And,
2 first of all, is that what you project in Options?

3 A. No.

4 Q. What do you project in Options in terms of the
5 use of cultivars?

6 A. We -- in the model rules, we are regenerating
7 redwood to cultivars in the medium and bigger sites where
8 we can. And we're -- the actual acreage that gets
9 planted back to cultivars by 2057, I don't know the exact

10 number, but we do change the forest from a 57 percent
11 redwood to a 73 percent redwood composite across the
12 total forest base. My understanding is that the
13 cultivars go from a very small percentage to something
14 between 15 and 20 percent of the land base.

15 Q. So by the year 2057, by your projections under
16 Options, cultivars on the total land base will be 15 to
17 20 percent of the inventory?

18 A. That's what I remember.

19 Q. And does that include trees that are already in
20 the ground?

21 A. Yes, sir.

22 Q. And you had mentioned previously in your
23 testimony that there are currently some 60,000 acres of
24 stands of 10 to 15 years that will be coming on a line
25 around 2046, correct?

1 A. Yes. 15 -- yeah, just about. That's correct,
2 60,000 acres.

3 Q. And so that 50- to 60,000 acres alone is
4 greater than 15 to 20 percent of the entire land base;
03:25 5 correct?

6 A. Yes, but they're not all clones.

7 Q. Now, under the Option A, do you know what level
8 of cultivar planting the State of California approved?

9 A. No, sir.

03:25 10 Q. But do you know whether you have applied a
11 percentage that is lower than that which is permitted
12 under Option A?

13 A. Yes, sir.

14 Q. And have you?

03:25 15 A. Yes.

16 Q. And so you, for purposes of your projections,
17 are using a percentage of cultivars that is less than the
18 state has approved in the Option A process?

19 A. Yes, sir.

03:26 20 Q. Now, in addition to the various elements of
21 conservatism we've already talked about, did you extend
22 the harvest age of some trees to add an additional
23 element of conservatism?

24 A. Yes, for sites that -- lower sites we extended
03:26 25 the rotation ages from what was in the Option A.

1 Q. And by how much did you extend those harvest
2 areas?

3 A. Between 10 and 15 years.

03:26

4 Q. And under Option A, was there -- did the state
5 approve the conversion of land to redwood from Douglas
6 Fir?

7 A. Yes, sir.

03:26

8 Q. And for purposes of your projections, did you
9 assume a lower rate of conversion than that which had
10 been approved by the state?

11 A. Yes, sir.

12 Q. And again, did you do that to add conservatism
13 to your projections?

14 A. Yes, sir.

03:27

15 Q. Now, does the -- does Options A permit Scopac
16 to convert prairie lands to conifer forests?

17 A. Yes, it does.

18 Q. Now, do you assume that will occur for purposes
19 of your projections?

03:27

20 A. We allowed a small amount.

21 Q. Less than was approved by the state in the
22 Option A process?

23 A. About ten percent.

24 Q. Ten percent of the approved level?

03:27

25 A. Yes, sir.

1 Q. And again, did you do that to add a level of
2 conservatism to your projections?

3 A. Yes, sir.

03:27

4 Q. Now, there was some discussion about the
5 objective to harvest 99 percent redwood by the time we
6 get out to 2046, 2047. Do you recall that generally?

7 A. Yes, sir.

8 Q. And does that mean that the forest itself will
9 be 99 percent redwood?

03:27

10 A. No.

11 Q. What does it mean?

12 A. It means that you're going to be able to
13 harvest 99 percent redwood.

03:27

14 Q. Now, you're also shown some of your deposition
15 testimony about it's the current objective of the company
16 to harvest only redwood. Do you recall that testimony?

17 A. Yes, sir.

18 Q. Was that the objective today for 50 years from
19 now?

03:28

20 A. I couldn't answer that directly. Their
21 objective is to grow and plant and harvest as much
22 redwood as feasible.

23 Q. And Dr. Reimer, I guess what I'm asking is when
24 you said it was their objective, you didn't -- did you
25 mean to say it was their objective in 2007, or was it

03:28

1 their objective to work towards that goal?

2 A. It was their objective to work towards that
3 goal.

4 Q. If we could please go to Figure 1 from your
03:28 5 report. Now, you spent a fair amount of time discussing
6 this table with Mr. Neier and I think appropriately so.
7 And I just want to talk through the different issues or a
8 couple of the different issues that the two of you had
9 addressed.

03:29 10 And one area that Mr. Neier focused on was
11 right in here, year 2015. And can you remind us what's
12 going on here?

13 A. What the model is doing there is it's
14 essentially reducing the clearcut harvest and increasing
03:29 15 the selection cut harvest.

16 Q. All right. And is this the result in terms of
17 how to manage the forest that year in 2017 that must
18 occur under your model?

19 A. No, it would occur under the rules that the
03:29 20 model is running under with the adjacency rules that are
21 in the model. That doesn't necessarily mean that's what
22 would happen on the land base.

23 Q. Now, you could have smoothed this out in
24 running projections under Options; is that correct?

03:29 25 A. Yes, that's very easy. You just set a limit on

1 what you would allow for a selection cut.

2 Q. Why didn't you do that?

3 A. Well, as far as a strategic planning tool, it's
4 important that the land managers see the dynamics of what
03:29 5 is happening on the land base with a given set of rules.
6 You certainly could run something that would then say,
7 okay, we'll take this number and we'll take this scenario
8 and flatten those out and smooth out the harvest level as
9 far as the swap between clearcuts and selection.

03:30 10 Q. Now, if you did that, if you were to reduce
11 clearcuts in earlier years or reduce selective cuts in
12 earlier years, would that change the overall volume
13 harvested during the projection period?

14 A. I don't expect so.

03:30 15 Q. And why not?

16 A. Well, you still have the same land base. You
17 still have the same trees in the land base. All you're
18 doing is shifting the harvest around. It should not
19 affect the long-term cut.

03:30 20 Q. Now, there is also -- and by the way, down here
21 at the 40 million board feet of selective harvest, you
22 had a discussion about the expense of selective harvest.
23 Do you remember that?

24 A. Yes, sir.

03:30 25 Q. Now, were you here when Mr. Dean testified that

1 Mendocino Redwoods intends to, in fact, do selective
2 harvest on a steady state basis up around 55 million
3 board feet?

4 A. Yes, sir.

03:31 5 Q. So, in fact, harvesting 40 million board feet
6 by a selective harvest, would that be economically
7 feasible in your opinion?

8 A. Yes, sir.

03:31 9 Q. And, in fact, is there any selective harvest
10 level that you have here in your model that you concluded
11 was not economically feasible?

12 A. No, sir.

03:31 13 Q. And did the model Options run these scenarios
14 in a way that made money net cash flow, in other words,
15 off of these selective harvest levels?

16 A. Yes, it did.

17 Q. We also again had the discussion about the
18 increase in harvest out here. Now, is that attributable
19 solely from the presence of cultivars on the property?

03:32 20 A. No, sir.

21 Q. What is that increase in harvest attributable
22 to?

23 A. It's attributable to the distribution of H
24 classes that currently exist on Scopac's land base.

03:32 25 Q. And what is the rotation age that you used to

1 establish this increase in harvest out of 2046?

2 A. Most of those stands are being cut at
3 between -- around 45 or 50 years of age.

4 Q. So these would have been trees that were
03:32 5 planted back around 1995 to 2001?

6 A. Yes, sir.

7 Q. And so, again, if somebody wanted to go out and
8 walk the property and see these trees to establish that
9 they were there and that that inventory would be there,
03:32 10 they could do that?

11 A. They can go back -- you can go and look at
12 today's inventory, and you can see that the acres are
13 there that are going to contribute to the harvest in
14 2046. Yes, sir.

03:32 15 Q. If you wanted to go out on Scopac's land and
16 walk it, you could actually see those trees; is that
17 right?

18 A. That's correct.

19 Q. And by the way, Scopac Palco, we heard
03:32 20 discussion about 10,000 acres owned by Palco. Do you
21 know whether Scopac owns the harvest rights on that
22 property?

23 A. Yes, sir, Scopac does. I modeled land basis
24 that Scopac owns, either owns the land outright but also
03:33 25 owns the harvest rights.

1 Q. And do you know whether owning the harvest
2 rights is more significant than owning the dirt under
3 them?

4 A. It all depends on what you think's important.

03:33

5 Q. Fair enough. Fair enough. There is also --
6 you can take that down. There is also some discussion
7 about slivers. Do you recall that?

8 A. Yes, sir.

03:33

9 Q. And in your opinion, can slivers be harvested
10 in an economically feasible manner?

11 A. If they're in a location that you can reach as
12 part of an operation; yes, sir.

13 Q. So, in other words, if there are operations in
14 the area, it may be economically feasible?

03:34

15 A. Yes, it may be.

16 Q. And if they are within reach of a road, it may
17 be economically feasible?

18 A. Yes, sir.

03:34

19 Q. And when Options selects what we're now calling
20 slivers for harvest, does it do it when that is
21 economically feasible to do?

22 A. To the best of the ability of the rules that
23 are in the model.

03:34

24 Q. And do you know if Scopac's property is well
25 roaded?

1 A. Yes, sir.

2 Q. And do you know how much of the land is within
3 500 feet of a road?

4 A. Yes, I think we did a query, and I think it was
03:34 5 76 percent of the operable land base.

6 Q. Now, at the end of -- well, actually, let me
7 direct your attention, if I can, please, to page 7 of
8 your report. And I'll just put it on the Elmo. And
9 Dr. Reimer, you were shown this slide. Do you recall
03:35 10 that?

11 A. Yes, sir.

12 Q. And you were asked questions about the volume
13 per acre based on these curves. Do you recall that?

14 A. Yes, sir.

03:35 15 Q. Do these curves have anything to do with
16 Scopac's property specifically?

17 A. No, sir.

18 Q. And I notice you called them an example guide
19 curve-based projection?

03:35 20 A. Yes, sir.

21 Q. So these -- and where did you get this example?

22 A. We ran it for high site, site index 145 as just
23 an example of what a high site -- what a stand would look
24 like, what it would grow. So you had enough -- a steep
03:35 25 enough growth rate you could see some change in

1 curvature.

2 Q. And if I understood what you just said, you
3 used this curve, this specific guide curve at a steep
4 enough level to be able to actually show something that
03:36 5 the reader could observe; is that correct?

6 A. That's correct. We don't use that curve for
7 growth reductions in sites, this particular project at
8 Palco.

9 Q. And at the end of Mr. Shields' examination, you
03:36 10 were shown some guide curves with some dots in various
11 places. Do you recall that generally?

12 A. Yes, sir. Page 27.

13 Q. And specifically you were asked some questions
14 about the Lindquist and Palley medium site growth curves.
03:37 15 Do you recall that?

16 A. Yes, sir.

17 Q. And first of all, when were the Lindquist and
18 Palley growth curves generated?

19 A. In the '60s.

03:37 20 Q. And, in fact, I believe you saw 1963 on
21 Mr. Shields' curve, correct?

22 A. That's correct.

23 Q. Now, did Lindquist and Palley's data include
24 any planted trees, any planted stands?

03:37 25 A. No, sir, that was for natural.

1 Q. And natural meaning that redwood trees
2 resprout?

3 A. Or regenerate, yes.

03:37

4 Q. And is it common today for stands to be
5 planted, in other words, for people to plant seed or
6 seedlings?

7 A. Yes, sir.

8 Q. And is that considered good forest management?

9 A. Yes, sir, it is.

03:37

10 Q. And are the growth curves different for planted
11 stands than for natural stands?

12 A. They're usually higher.

13 Q. And did Lindquist and Palley include any
14 cultivars in their growth curves?

03:37

15 A. No, sir.

16 Q. And can we please put up growth curves from the
17 Option A?

18 A. I can't see that.

03:38

19 Q. You can't see too much here, Dr. Reimer, but I
20 see you've got a line here, along with a curve in the
21 middle. Can you please describe what we're looking at?

22 A. Okay. This is a scanned image of an Option A
23 report. The -- on the right there's a legend. A little
24 bit hard to read. But the diamonds are the Palco medium
25 site or site index 111 curve for medium site redwood

03:38

1 natural stands. The squares are for Lindquist and Palley
2 site index 106, I believe, and those are the ones that
3 run just along the bottom. And the ones you can't -- you
4 can barely see are Lindquist and Palley site index 122
03:38 5 which go up from there. And the range of site we picked
6 106 versus 122 is that -- they had actual projections in
7 their tables with those site curves, and they bracket the
8 111 that we're using.

9 Q. All right. Now, let me see if you can walk me
03:39 10 through this. This is a Lindquist and Palley growth
11 curve, is that correct?

12 A. No, the solid dark line is a Palco line.

13 Q. And Lindquist and Palley are the two on either
14 side of that; is that correct?

03:39 15 A. That's correct.

16 Q. And rather than them being called medium, or
17 high or low, you have numbers here, 111, 122 and 106. Do
18 you see that?

19 A. Yes, sir.

03:39 20 Q. Can you describe for us what the reference is
21 to 106 and 122 refer to?

22 A. Well, the reason we use an actual index number
23 is that the Lindquist and Palley site classes that they
24 used were statewide site classes developed by the State
03:39 25 of California. The site classes we used on Palco's land

1 base were specific to Palco's land base.

2 Q. All right. So let me stop you there. When
3 Mr. Shields showed you the site 3 Lindquist and Palley
4 curve in 1963, was that related specifically to Scopac's
5 property?

03:40

6 A. No, sir.

7 Q. What was that related to?

8 A. Well, I'm not 100 percent sure, but if it's a
9 statewide site class 3, then it would be a state class 3
10 and relative to the state class 3, Palco's land base is
11 class 2.

03:40

12 Q. And, again, walk me through that. How was the
13 productivity of Scopac's land compared to a state
14 standard site 3 class under the Lindquist and Palley
15 curves?

03:40

16 A. Palco's land is more productive. Scopac's land
17 is more productive.

18 Q. So for Scopac then -- does Scopac have its own
19 gradations of site index 1, 2, 3, 4, and 5?

03:40

20 A. Site classes 1, 2, 3, 4, 5? Yes, sir.

21 Q. And I appreciate the distinction you're drawing
22 there. We saw earlier site classes, it is 1 through 5.
23 Here we're dealing with something called a site index.
24 What's the difference between the two?

03:41

25 A. The index is the actual number, and the site

1 class relates to a range. And 11 is the average, is the
2 actual site index number we're using to represent medium
3 site on Scopac's land base.

03:41

4 Q. And so you did, in fact, refer to the Lindquist
5 and Palley site indexes when you were looking to some of
6 the growth curves on Scopac's property, correct?

7 A. That's correct, for redwood, for natural
8 redwood.

03:41

9 Q. For any others did you use Lindquist and
10 Palley?

11 A. No.

03:41

12 Q. And for natural redwoods, is it correct that
13 you found that the growth curve at -- on Scopac's
14 property, in fact, split the difference, if you will,
15 between Lindquist and Palley site index 106 and 122?

16 A. That's correct.

17 MR. DOREN: Thank you, Your Honor. I have
18 no further questions.

03:42

19 THE COURT: All right. That's -- did he
20 exceed your cross-examination? And you didn't object.

21 MR. SHIELDS: I didn't object, but I
22 assumed I would be entitled to cross-examine.

03:42

23 THE COURT: That's not the way we've
24 normally done it. I don't know that I've done that yet,
25 but --

1 MR. SHIELDS: Well, he --

2 THE COURT: Normally we would just let
3 direct, cross, and redirect. So what are you --

4 MR. SHIELDS: He actually has -- he's --
03:42 5 about five minutes worth, if I could, Your Honor.

6 THE COURT: Let's see what your -- I'll
7 give you five minutes. Go ahead.

8 MR. SHIELDS: Thank you. Put back up
9 Arnie's chart 1.

03:42 10 RE-CROSS-EXAMINATION

11 BY MR. SHIELDS:

12 Q. Okay.

13 A. That's not the one that was up this morning.

14 Q. The simplified chart. I'm sorry.

03:43 15 A. That's okay.

16 Q. It has less lines on it.

17 A. I like this one better.

18 Q. Okay. At the request of counsel in the case,
19 you made your Options software model available for the
03:43 20 various parties' consultants to operate themselves, run
21 the model, and get all of the output, right?

22 A. Yes, sir, I did.

23 Q. Assume with me that what you see on these plots
24 for 2047 and 2057 are the result of taking your Options
03:44 25 model on April 4th with your colleague, Mark Purdue,

1 present?

2 MR. DOREN: Your Honor, is this the way
3 we're going to do it? We'll put it up at the end of
4 direct. We won't say what it is, and then we'll come up
03:44 5 on redirect and take him on on this and explain to him
6 what it is, and then try to get him to explain it on the
7 fly? That's not what the scope of my cross -- or of my
8 redirect.

9 MR. SHIELDS: The suggestion has been made
03:44 10 that this has been made up. This is his own output.
11 That's all I'm trying to show, that these plots way above
12 Lindquist are from his own --

13 THE COURT: He thought that you left the
14 impression that they didn't use the Lindquist Palley
03:44 15 stuff. I use the word "stuff" in the kindest legal sense
16 of the word. And so, I mean, and he went back to show
17 where he used it. Now, I don't know --

18 MR. SHIELDS: Well, he referred to Options
19 A, which is a regulatory umbrella that's made in a
03:44 20 100-year period and doesn't involve approval of the
21 details by guide curves and sitings. What I wanted to
22 show -- they left the impression by going through all of
23 this, oh, no, we track Lindquist and Palley. And all I'm
24 trying to show is, Your Honor, when our experts were
03:45 25 allowed to run his model with his data, this is run 32 J

1 that's in the executive summary. Here's the comparison.

2 MR. DOREN: Your Honor, I would be pleased
3 to cross-examine Mr. Shields on this for all of Option A.

4 THE COURT: Okay. Is that a question?

03:45 5 MR. SHIELDS: That was a question.

6 THE COURT: Okay. Did you hear what he
7 was saying? Is that true?

8 THE WITNESS: I have no idea what he's
9 talking about.

03:45 10 THE COURT: Okay.

11 Q. (By Mr. Shields) It's true that all the
12 plantations harvested in 2045 were in the inventory that
13 was loaded in your Options program, right?

14 A. Yes, sir.

03:45 15 Q. And Options writes all of the harvest by year
16 to the database, right?

17 A. That's correct.

18 Q. And it's true that Options writes out ten-year
19 periodic standing inventory volumes to the database,
03:45 20 right?

21 A. That's correct.

22 Q. Would you concede that these files can be
23 summarized to produce standing volume and growth?

24 A. Yes.

03:46 25 Q. Okay. And hypothetically if that's what Jim

1 Arnie did to develop these plots, 2047 and 2057, they are
2 way above the Lindquist and Palley line, correct?

3 A. They should be.

4 Q. All right. Thanks.

03:46 5 A. They're supposed to be.

6 THE COURT: All right. Any other -- all
7 right. You can step down. We'll take a 15-minute break.

8 THE CLERK: All rise.

9 (A recess was taken.)

04:07 10 THE CLERK: All rise.

11 THE COURT: Be seated. All right. Are we
12 ready to proceed? We may have solved the screech. Who's
13 next?

14 MR. DOREN: Mr. Jim Yerges, Your Honor.

04:07 15 THE COURT: All right. Has he been sworn?

16 JAMES YERGES,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DOREN:

04:08 20 Q. Good afternoon, sir. Can you state your name.

21 A. James Richard Yerges.

22 Q. And where are you employed?

23 A. At KPMG in Seattle, Washington.

24 Q. And what's your position at KPMG?

04:08 25 A. I lead the valuation services practice there as

1 a principal in the firm.

2 Q. And how large is the group you're in charge of?

3 A. I have 15 professionals in that office.

4 Q. And what's your personal area of expertise?

04:08 5 A. I specialize in the valuation of complex
6 properties and companies.

7 Q. And does that include the valuation of
8 timberland assets?

9 A. It does.

04:08 10 Q. And how long have you been a valuation
11 professional?

12 A. Over 25 years.

13 Q. Prior to joining KPMG, where else had you
14 worked?

04:08 15 A. Prior to KPMG I was at Kroll Associates, Inc.
16 for a little less than five years. Prior to that I was
17 the leader of Arthur Andersen's valuation practice in
18 Seattle, Washington for ten years, and prior to that I
19 was at American Appraisal Associates.

04:08 20 Q. Let's turn to your work in appraising large
21 timberlands. Could you please generally describe your
22 work in that area for the Court.

23 A. Sure. I get retained by clients to value
24 timberlands for various purposes, including purchase
04:09 25 price allocations, reorganizations, tax planning and

1 corporate planning.

2 Q. And have you personally issued certified
3 appraisal reports for large timberlands?

4 A. I have.

04:09 5 Q. And could you please give us a couple examples
6 of your work in that regard.

7 A. Sure. When Weyerhaeuser acquired MacMillan
8 Bloedel, I had to do a valuation of the timberlands to
9 assist in the allocation purchase price for financial
04:09 10 reporting as well as tax purposes. There was
11 approximately 625,000 acres involved in that valuation.

12 When Plum Creek did a merger consisting of timberlands in
13 four separate states, they needed a valuation of the
14 timberlands, again, for financial reporting purposes.

04:09 15 Additionally, I've been doing bi-annual valuations for
16 Hampton Resources, Inc., one of the largest privately
17 held timber companies in the United States, where I
18 valued their capital stock on a bi-annual basis.

19 Q. Thank you. Let's turn to your assignment in
04:10 20 this matter. When were you retained?

21 A. The summer of 2007.

22 Q. And what were you asked to do?

23 A. I was asked to value the entirety of the Scotia
24 Pacific timberlands.

04:10 25 Q. And did you consider more than one scenario?

1 A. I did. I considered two scenarios, one was the
2 entirety of the timberlands, the other was a scenario --
3 sorry, it was the entirety of the timberlands not
4 including the MMCAs. The other was a scenario whereby we
5 included -- or excluded not only the MMCAs, but also
6 approximately 21,500 acres for the Redwood Preservation
7 Community.

04:10

8 Q. And were you also -- did you also work up a
9 third scenario for liquidation values?

04:10

10 A. I did.

11 Q. Now, in your valuation work, did you also
12 consider the value of non-timber assets of Scopac?

13 A. I did.

14 Q. And what were those assets?

04:11

15 A. Those other timberland related assets included
16 rock and gravel revenues from coring those resources as
17 well as communication tele leases.

18 Q. And did you work with other experts in the
19 course of this project?

04:11

20 A. I did.

21 Q. Can you please describe that for the Court.

22 A. Yes. I worked with Dr. Kim Iles to establish a
23 starting point relative to the inventory of the property.

24 And I worked with Dr. Don Reimer in establishing

04:11

25 projections to develop into cash flows for the property.

1 Q. And Mr. Yerges, have you completed your
2 valuation work?

3 A. I have.

4 Q. And have you formed opinions on the value of
04:11 5 Scopac's assets?

6 A. I have.

7 Q. And what are those opinions?

8 A. In scenario one, the conclusion of value was
9 \$941 million.

04:11 10 Q. And again, that scenario is the entirety of the
11 timberlands minus the MMCAs?

12 A. That's correct.

13 Q. All right.

14 A. In scenario two, the valuation conclusion was
04:12 15 \$854 million.

16 Q. And that would be the timberlands minus the
17 MMCAs and approximately 21,500 acres?

18 A. That's correct.

19 Q. Would you please take a moment to review
04:12 20 Exhibit DX-1. And is that the report that you issued in
21 this matter?

22 A. It is.

23 Q. And could you also please take a look at
24 Exhibit DX-48. And is that a copy of a declaration or a
04:12 25 proffer that you completed in this matter?

1 A. It is.

2 Q. And could you please also take a look at
3 Exhibit DX-108. Is that a supplemental proffer that you
4 completed in this matter?

04:12 5 A. Yes, sir.

6 MR. DOREN: Your Honor, we would move for
7 admission of these three exhibits.

8 MR. SHIELDS: No objection.

9 THE COURT: They're admitted.

04:12 10 MR. DOREN: And we would also move the
11 Court to permit Mr. Yerges to testify as an expert
12 witness.

13 MR. SHIELDS: Excuse me, Your Honor, I
14 have never objected to a question to a judge before.
04:13 15 There is always a first. This isn't an appropriate part
16 of the process. Nobody is even questioning his right to
17 be presented as a potential --

18 THE COURT: I think what's happening here
19 is because of my procedure of declarations that you're
04:13 20 somehow confused -- not confused but I think he's
21 thinking that he needed to go through all those
22 procedures, and we haven't normally done that. If his
23 declaration is accepted, he's an expert. We're moving
24 on.

04:13 25 MR. DOREN: Your Honor, to be honest with

1 you, I only did that because folks were doing that two
2 weeks ago.

3 THE COURT: Okay.

04:13

4 Q. (By Mr. Doren) Now, Mr. Yerges, what
5 methodologies can you use to arrive at your valuation
6 opinions?

7 A. I considered two approaches to value, the
8 income approach --

04:13

9 THE COURT: Do I have a copy of his
10 second --

11 MR. DOREN: Your Honor, it has been filed
12 but we will get you a copy.

04:13

13 THE COURT: I don't think it's in --
14 unless I didn't go far enough. I don't think I have the
15 extra --

16 MR. DOREN: Very well, Your Honor.

17 THE COURT: We need a copy of that.

18 MR. DOREN: We'll hand that up, Your
19 Honor.

04:14

20 THE COURT: All right. Go ahead.

21 Q. (By Mr. Doren) Mr. Yerges, what methodologies
22 did you use to arrive at your valuation opinions?

04:14

23 A. There were two approaches to value used in the
24 valuation. The first was an income approach to value,
25 the second was a sales comparison approach to value.

1 Q. And did you perform a discounted cash flow as
2 part of your income approach?

3 A. That's correct.

4 Q. And in the few minutes we have here today,
04:14 5 let's focus on that discounted cash flow analysis. You
6 stated earlier that you worked with and relied upon the
7 work with Dr. Reimer; is that correct?

8 A. That's correct.

9 Q. Now, how does an appraiser usually obtain
04:14 10 inventory data and harvest work items?

11 A. Appraisers will oftentimes obtain the inventory
12 data and the forecasts from the company's management
13 relative to the property being appraised.

14 Q. And why did you elect to work with the timber
04:14 15 harvest expert in this instance?

16 A. Given the nature of this project, I felt it was
17 important to have an independent analysis of the
18 projections for this property, taking into account the
19 attributes of the property as well as things such as
04:15 20 regulatory issues.

21 Q. And did you and Dr. Reimer visit the
22 timberlands together?

23 A. We did.

24 Q. And did you review Scopac's GIS data together?

04:15 25 A. We did.

1 Q. And did you meet with Scopac's foresters?

2 A. Yes, we did.

3 Q. And how many times have you and Dr. Reimer
4 either met or conferred in relation to this project?

04:15 5 A. It's about 15 to 20 times.

6 Q. And did you take steps to assure that
7 Dr. Reimer's projections were a reliable basis for your
8 valuation?

9 A. Yes, I did.

04:15 10 Q. How did you do that?

11 A. First, at the beginning of the project I met
12 with Dr. Reimer and Dr. Iles to ensure that the scope of
13 the project included those things that I felt were

14 important in terms of being able to reasonably accept the
04:15 15 inventory as well as the projections. Additionally, I

16 worked with Dr. Reimer through the course of the
17 engagement to make sure that those things that I became
18 aware of; i.e., the regulatory issues were being

19 considered. And then thirdly, at the conclusion of his
04:16 20 analysis, we validated an audit on his output.

21 Q. And did you conclude the Dr. Reimer forecast
22 were dependable and reasonable for your purposes?

23 A. Yes.

24 Q. Now, after Dr. Reimer had developed an estimate
04:16 25 of future harvests, what did you do to determine the

1 price of the harvested logs?

2 A. I considered the SBE, State Board of
3 Equalization pricing data.

4 Q. And why SBE pricing?

04:16

5 A. Well, unlike other wood commodities, logs,
6 redwood is not tracked by commercial services like reseed
7 or log lines, so I had to find another authoritative
8 source to rely on. I found that the SBE source was
9 authoritative and reliable for a number of reasons. One

04:17

10 of which there was data available over a long period of
11 time that could be analyzed. Additionally, the method of
12 collection of that data whereby companies and individuals
13 harvesting timber need to report that as mandated for --
14 by law for tax reporting purposes. Additionally, the

04:17

15 data provided information that was useful for the
16 valuation, including such things as log size as well as
17 locale.

18 Q. And after establishing the starting point, if
19 you will, for log pricing, did you determine what the
20 long-term pricing trend should be?

04:17

21 A. I did.

22 Q. And how did you do that?

23 A. I considered the 30-year pricing history of
24 both Douglas Fir as well as redwood. And considered that
25 relative to inflation.

04:17

1 Q. And did you, again, use SBE pricing for that
2 purpose?

3 A. That's correct.

04:18

4 Q. And what long-term real growth rate did you
5 determine for Douglas Fir?

6 A. Zero percent.

7 Q. And again, that's in terms of real long-term
8 growth?

9 A. That's correct.

04:18

10 Q. And is that the same long-term growth rate that
11 Mr. LaMont arrived at?

12 A. I believe that's true.

13 Q. And just slightly above what Mr. Fleming
14 arrived at?

04:18

15 A. Yes.

16 Q. And what did you determine the price growth
17 rate to be long-term for redwood?

18 A. 1.5 percent real growth.

19 Q. And how did you calculate that rate?

04:18

20 A. Similar to the Douglas Fir, looking at the
21 30-year history and comparing it to inflation.

22 Q. And so you used the same methodology for both
23 Douglas Fir and redwood; is that correct?

24 A. That's right.

04:18

25 Q. And you were consistent therefore, between the

1 two species?

2 A. Yes.

3 Q. Now, we've heard testimony here that you should
4 only look at the last ten years in determining what the
04:18 5 price growth rate might be for the next 50 years. Do you
6 agree with that?

7 A. No, I do not.

8 Q. Why not?

9 A. Well, when we are looking at a 50-year
04:19 10 projection period, it's considerably a long period of
11 time. To look at a ten-year period doesn't match up the
12 long-term period versus a considerably shorter term
13 period so it doesn't make any sense.

14 Q. What impact can that have on the long-term
04:19 15 projections?

16 A. Well, it could have a positive or a negative
17 impact, depending upon what that shorter term did. And
18 also the volatility occurring during that period of time.

19 Q. Now, we both mentioned now a 50-year projection
04:19 20 period. And is that in fact the period that you and
21 Dr. Reimer used?

22 A. It is.

23 Q. And why did you select that 50-year period?

24 A. Two reasons. Number one, because it includes
04:19 25 at least one crop rotation. Secondly, in the Pacific

1 Northwest, it's pretty much a standard to use a 50-year
2 projection period.

3 Q. Have you ever seen a timberland appraisal in
4 the Pacific Northwest that uses a shorter period than 50
04:19 5 years?

6 A. I haven't.

7 Q. Have you ever seen a timber appraisal in the
8 Pacific Northwest that has used longer periods than 50
9 years?

04:20 10 A. Yes, I have.

11 Q. Let's move now to the discount rate. What
12 discount rate did you select for your discount cash flow
13 analysis?

14 A. 6 percent.

04:20 15 Q. And how did you determine that 6 percent was
16 the appropriate discount rate?

17 A. I used four methods to determine the discount
18 rate. The first was to consider a weighted average cost
19 of capital whereby I look at publicly held companies in

04:20 20 the United States that own timberlands. Another method
21 was to look at the yields associated with timber rates.
22 Again, rates in the United States that own timberlands.

23 A third method was to conduct a survey amongst market
24 participants in the United States who are actively
04:20 25 involved in the buying and selling of timberlands. And

1 the fourth method was to consider transactions where I
2 could get the data to actually have internal rates
3 occurring or discount rates available.

04:21

4 Q. And how did you factor each of those categories
5 of data into your evaluation?

6 A. I relied primarily on the survey and the
7 comparable sales information.

8 Q. And why was that?

04:21

9 A. Because I felt that the -- those two methods
10 were the most reliable and the most comparable to the
11 subject whereas the weighted average cost of capital
12 method and the REIT dividends or REIT yields were just
13 not comparable for a variety of reasons.

04:21

14 Q. Now, did you select a baseline discount rate
15 from your analysis of these sources?

16 A. That's right.

17 Q. And what was that?

18 A. 6 percent.

04:21

19 Q. And did you take additional steps to evaluate
20 your discount rate in the context of asset specific
21 factors?

22 A. Yes.

23 Q. And let me show you, if I may, a list of the
24 factors that you have laid out on page 31 of your report.

04:22

25 Are these the factors that you considered?

1 A. They are.

2 Q. And when you identified species type, what
3 specifically are you referring to?

04:22

4 A. That takes into consideration that most of the
5 transactions are not redwood and are other commodities
6 not as desirable as redwood. And so therefore, because
7 the subject is redwood, that's a downward influence on
8 the discount rate.

04:22

9 Q. So what are some of the positive qualities of
10 redwood?

11 A. There are a number. First of all, it's a rarer
12 species than some of the other commodities.
13 Additionally, redwood is insect resistant, rot resistant,
14 fire resistant.

04:22

15 Q. Fair enough. Now, this being a property in
16 California, did you also consider the regulatory
17 environment?

18 A. Indeed I did.

04:23

19 Q. And I note here it's referenced as having an
20 upward impact on the discount rate. Is that -- was that
21 in fact the case?

22 A. Yes, it is.

23 Q. And why was that?

04:23

24 A. Again, because of the environment in Northern
25 California, a highly regulated environment, it was

1 necessary to reflect that investors in the property would
2 certainly take that into consideration.

3 Q. Now, at the end of the day, you kept your
4 discount rate at 6 percent; is that correct?

04:23 5 A. Yes, sir.

6 Q. And why did you do that or how did you arrive
7 at that conclusion in the context of the asset specific
8 factors?

9 A. Well, when you consider the attributes of the
04:23 10 property and you look at all the downward influencing
11 factors and then you consider the regulatory environment
12 factor, they basically outweighed one another.

13 Q. Kind of a washing, in your opinion?

14 A. Yes.

04:23 15 Q. Now, did you also consider a comparable sales
16 analysis to check the results of your DCF?

17 A. I did.

18 Q. And can you just describe briefly what you did
19 in that regard.

04:23 20 A. Sure. I collected a number of sales that were
21 relatively large in size in terms of acreage, and
22 compared that data set to the subject.

23 Q. And for what area was that initial data set?

24 A. It was basically the western United States.

04:24 25 Q. All right.

1 A. I then narrowed that data set down to be
2 California specific and analyzed the comparability of
3 those properties relative to the subject. And then
4 lastly, I narrowed the data set down to be redwood
04:24 5 specific and compared that data to the subject.

6 Q. And after completing your comparable sales
7 analysis, what did you conclude?

8 A. I concluded a value of approximately a billion
9 dollars, but basically that told me that that method
04:24 10 buttressed the income approach conclusion.

11 MR. DOREN: Thank you, sir. Your Honor, I
12 pass the witness. Your Honor, may I hand up the
13 supplemental proffer?

14 THE COURT: You may.

04:25 15 CROSS-EXAMINATION

16 BY MR. SHIELDS:

17 Q. Todd Shields, Fulbright & Jaworski, Houston,
18 for Bank of New York Indenture Trustee for the timber
19 noteholders. Hi, Mr. Yerges.

04:25 20 A. Hello, Todd.

21 Q. How are you doing?

22 A. I'm well, thank you.

23 Q. I'm going to try to keep this at a pretty high
24 level and just focus more on the areas in which there may
04:25 25 be disagreement. I'm going to squelch my normal desire

1 to just go after every single thing about an expert
2 that's called adversely so to get through this quickly.

3 A little bit about your background and
4 qualifications. You work for KPMG in the economic and
04:26 5 valuation department under the tax department, right?

6 A. That's correct.

7 Q. You're a principal in the firm, not a partner
8 in the firm as KPMG uses those terms, right?

9 A. That's correct.

04:26 10 Q. You're not a CPA?

11 A. Correct.

12 Q. You're not an accountant?

13 A. Correct.

14 Q. You're not a registered professional forester
04:26 15 in the State of California?

16 A. No, sir.

17 Q. You're not a licensed real estate appraiser?

18 A. No, sir.

19 Q. You're not a member of the appraisal institute,
04:26 20 or MAI, and therefore, whatever professional standards
21 apply to real estate appraiser such as Jim Fleming, those
22 standards don't apply to your work in this case, right?

23 A. Yes, sir.

24 Q. You did agree as part of this litigation
04:26 25 engagement to discount your normal rates by over

1 one-third, correct?

2 A. That's correct.

3 Q. And in the valuation work that you do at KPMG,
4 you don't limit your valuation work to real estate
04:27 5 valuations, do you?

6 A. No, I do not.

7 Q. And you agree, don't you, Mr. Yerges, that the
8 valuation of redwood timberlands presents special issues
9 for a person doing an economic valuation, right?

04:27 10 A. Yes, sir.

11 Q. And in fact, because you thought familiarity
12 with redwood timberlands would be particularly helpful to
13 the consulting team that KPMG was putting together, you
14 had originally proposed that the clients consider some
04:27 15 individuals from the Portland, Oregon area that you were
16 familiar with who did have redwood specific experience,
17 right?

18 A. Yes, I did.

19 Q. And that didn't work out because of some
04:27 20 conflict issue, right?

21 A. Correct.

22 Q. All right. We heard your opinion as to the
23 value of the timberlands. And the way you define that in
24 your report is the -- it's a synonym for the commercial
04:28 25 timberlands, it's the total Scopac land base excluding

1 the MMCAs, the Marbled Murrelet Conservation Areas,
2 correct?

3 A. That's right.

4 Q. All right. So when I say timberlands or
04:28 5 commercial timberlands, that's the way I'm going to use
6 it, the way you did in the report.

7 THE COURT: What was that?

8 MR. NEIER: Someone on the phone, Your
9 Honor.

04:28 10 THE COURT: Okay. Go ahead.

11 Q. (By Mr. Shields) Okay. And coming up with the
12 valuation of the timberlands, I think Mr. Doren took you
13 through the different methods that can be used. Maybe
14 you didn't cover all of them but we all know there are
04:28 15 cost income approach and then a market value approach,
16 right?

17 A. That's right.

18 Q. All right. And on the market value approach,
19 one way to do that is with comparable sales, right?

04:29 20 A. Yes, sir.

21 Q. And you purported to do your work, coming up
22 with a fair market value of the commercial timberlands,
23 and that's what your assignment was, right?

24 A. That's right.

04:29 25 Q. All right. You did it both with the income

1 approach and with the market approach, right?

2 A. Yes.

3 Q. And on the market approach, you did it with
4 comparable sales, right?

04:29 5 A. That's right.

6 Q. All right. Now, you know that one of the other
7 experts in the case, who unlike you, is a licensed real
8 estate appraiser, Jim Fleming, declined to use that
9 approach because he felt there were not adequate

04:29 10 comparables to support such an approach, right?

11 A. I'm familiar with that. He did that, yes.

12 Q. All right. Now, I'll just leave it at that and
13 we'll stay away from the comparable sales approach. We
14 presented our thoughts on that with Mr. Fleming.

04:29 15 I do want to talk to you a little bit about the
16 income approach. That, as I think Mr. Doren explained,
17 is -- proceeds from the theory that an income producing
18 property has a value today that can be calculated by
19 looking at its earning potential into the future, right?

04:30 20 A. That's correct.

21 Q. Actually, into perpetuity, right?

22 A. If that's what the asset will do, yes.

23 Q. Okay. And you were asked questions about a
24 50-year projection period and a ten-year projection
04:30 25 period. I want to make sure it's clear about

1 terminology. You used an initial projection period of 50
2 years to capture the first 50 years into perpetuity,
3 right? And then a reversion period and analysis for the
4 balance of perpetuity, right?

04:30 5 A. That's correct.

6 Q. Okay. Mr. Fleming used a ten-year projection
7 period and then did his reversion analysis from year ten
8 to perpetuity, right?

9 A. I believe that's true.

04:31 10 Q. Okay. So both approaches purport to cover the
11 income producing ability of the property to the end of
12 time, they just slice the difference between an initial
13 projection period and the reversion period differently,
14 right?

04:31 15 A. Very true.

16 Q. Okay. Now, you came up with a value of \$938
17 million for the timberlands using the income approach,
18 943 perhaps?

19 A. I believe it was 941.

04:31 20 Q. Okay. To do the discounted cash flow analysis,
21 you need to consider the cost of the property that's
22 being evaluated and also the income that it will produce,
23 the revenues and then you come up with net cash each
24 year, right?

04:32 25 A. That's correct.

1 Q. Discount it back to the valuation date. That's
2 the way it's done, right?

3 A. Right.

4 Q. Using a discount rate. All right. Now, in --
04:32 5 on the cost side of your discounted cash flow analysis,
6 you made the assumption -- I know you may have studied up
7 to see if you thought it was a reasonable assumption, but
8 it's an assumption, that the current costs that Scopac is
9 incurring in operating that land base would continue for
04:32 10 the period of your projection, which is in perpetuity,
11 with any increases exactly tracking those of a general
12 inflation rate of 3 percent, right? So they just wash?

13 A. Not necessarily true.

14 Q. That's what you told me in the deposition.

04:32 15 A. Okay.

16 Q. Okay. And on the revenue side, though,
17 particularly as to redwood prices, you made the
18 assumption that for redwood, it would -- it was described
19 as 1.5 percent, but that is a real rate. The nominal
04:33 20 rate was 4 and a half percent, which compared with a 3
21 percent general inflation rate means that you are
22 projecting redwood prices on a combined annual growth
23 basis every year for the full 50 years of your projection
24 to beat inflation by 50 percent, right? That's what your
04:33 25 model does?

1 A. That's correct.

2 Q. All right. And when I took your deposition,
3 you knew of no commodity that has ever done that, right?

4 A. When you took that deposition, that's correct.

04:33 5 Q. I bet you've done some work on it. We'll let
6 Mr. Doren go into that. And you were aware of no
7 publication that would support that sort of behavior of a
8 commodity, right?

9 A. At that time, that's correct.

04:34 10 Q. Okay. Let's turn to your report back where --
11 you have your report there, don't you, and your
12 deposition?

13 A. I do.

14 Q. And that's all? Is that all you have up there?

04:34 15 A. I also have the proffers.

16 Q. You've got the proffers. Have you got anything
17 else?

18 A. That's it.

04:34 19 Q. Your water bottle. I'm referring to paragraph
20 4.1, page 5 of your report. "The purpose of this report
21 is to provide my expert opinion of the market value of
22 the fee simple interest in and the timber harvest rights
23 pertaining to the timberlands." That's with a capital T
24 defined as we talked about. Effective date January 1,
04:35 25 2008, right?

1 A. Yes.

2 Q. And then in paragraph 4.4 you say that the
3 definition of market value that you used in your report,
4 as is now on page 6, "the most probable price which a
04:35 5 property should bring in a competitive and open market
6 under all conditions requisite to a fair sale, the buyer
7 and seller each acting prudently and knowledgeable," so
8 forth. And then in item 4 -- pardon me, 3 under there it
9 says "a reasonable time is allowed for exposure in the
04:35 10 open market."

11 Now, if this Court were to confirm a
12 reorganization plan that allowed a party to buy the
13 Scopac timberlands out of this proceeding at a value of
14 \$430 million or \$500 million, they would be getting that
04:36 15 property at a value far below the \$943 million that you
16 said is fair market value in an open competitive process
17 exposed to the market, right?

18 A. That's correct.

19 Q. And do I take it then that you believe the way
04:36 20 to maximize value on this Scopac timberlands is to expose
21 it to the market and see where that fair market value is
22 in a competitive process, whether it be at your 943, \$943
23 million or not, that's the way to maximize value and come
24 closest to your opinion, correct?

04:36 25 A. I believe that's what the premise is based on,

1 is open market to all possible investors.

2 Q. Thank you.

3 THE COURT: Okay.

4 MR. NEIER: I thought Mr. Shields was just
04:37 5 getting warmed up, Your Honor, so give me a second.

6 MR. SHIELDS: I can do some more stuff.

7 THE COURT: I was wondering why the
8 noteholders were not going to cross-examine this witness,
9 but -- so now it's your shot.

04:37 10 CROSS-EXAMINATION

11 BY MR. NEIER:

12 Q. Good afternoon, Mr. Yerges.

13 A. Mr. Neier.

14 Q. How many years of professional service did you
04:38 15 say you had had?

16 A. I said I had over 25 years as a valuation
17 expert.

18 Q. And you've never represented a borrower in
19 appraising timberlands, correct?

04:38 20 A. That's correct.

21 Q. And you've never represented a lender in
22 appraising timberlands; is that correct?

23 A. Also correct.

24 Q. And you've never represented a seller of
04:38 25 timberlands; is that correct?

1 A. Not in a sales transaction.

2 Q. If we can go through your proffer, which I
3 forgot to bring up here. This is on page 4 of your first
4 proffer. And this is paragraph 10. When you worked for
04:39 5 Plum Creek timberlands, you were looking at highest and
6 best use for alternative uses including subdivision and
7 development, correct?

8 A. That's right.

9 Q. That's like a ranch development project in a
04:39 10 forest?

11 A. It could be.

12 Q. It could be. But it's not appraisal of
13 timberlands?

14 A. That's correct.

04:39 15 Q. Okay. And now we look at 10(b), and you
16 provided an opinion of fair market value of Riley Creek
17 Lumber Company, but that was for a divorce case, correct?

18 A. It was.

19 Q. And when we look at the appraisal of the equity
04:39 20 of Human Resources, Inc., that was for federal gift and
21 estate tax purposes, correct?

22 A. It's Hampton Resources.

23 Q. Hampton Resources.

24 A. You are correct.

04:39 25 Q. Thank you. And we look on the next page,

1 paragraph 10(d), as in dog, the valuation, once again, a
2 valuation of timberlands acquired by Plum Creek, that was
3 for purchase price allocation purposes, right?

4 A. Right.

04:40 5 Q. For financial reporting?

6 A. As well as tax.

7 Q. As tax, right. Tax basis, correct?

8 A. Yes.

9 Q. And the same thing with 10(e) for Weyerhaeuser,
04:40 10 what you did is you did an appraisal for tax reporting
11 purposes in the United States and Canada, correct?

12 A. Yes, sir.

13 Q. Okay. And with respect to 10(f) where you
14 worked for the Campbell Group, that was for audit
04:40 15 purposes, correct?

16 A. Yes, sir.

17 Q. Is that the sum total of your, I'll call it
18 valuation work with respect to timberlands?

19 A. There may be one or two others that I can't
04:40 20 recall but I think that represents the bulk of it.

21 Q. Okay. So others, you don't really recall, not
22 in your proffer, but that's it?

23 A. Well, for example, I do recall that in addition
24 to doing this valuation for Weyerhaeuser listed in 10(e),
04:41 25 in the last 12 months I also reviewed the entirety of

1 their timberlands on a worldwide basis for financial
2 reporting purposes because they were representing to us,
3 KPMG as the auditors of what the fair value of those
4 timberlands was.

04:41 5 Q. It's fair to say that your work with respect to
6 timberlands is really with respect to the financial
7 aspects of timberlands, correct? You're not a forestry
8 appraiser such as Mr. Fleming or Mr. LaMont or
9 Dr. Tedder, any of those people?

04:41 10 A. I am not a forester.

11 Q. Yeah. And the bulk of your work is considered
12 to be on these financial reporting, state tax, gift,
13 divorce type issues, financial issues, correct?

14 A. It has been.

04:42 15 Q. Now, if we turn to page 24 of your report. Do
16 you have your report up there?

17 A. I do.

18 Q. And we have a Figure 14?

19 A. Yes.

04:42 20 Q. Now, can you tell me what's being shown here in
21 Figure 14.

22 A. Yes. This represents the historical pricing
23 for redwood and for Douglas Fir per the California State
24 Board of Equalization data. It shows both the pricing

04:43 25 over 30 years. Actually, 31. And then it also shows the

1 trend lines associated with that pricing over that period
2 of time.

3 Q. And by trend lines, what you've done is you've
4 somehow taken these different lines over here for Douglas
04:43 5 Fir and redwood and you've sort of indicated what they
6 would look like if they were smoothed out to show the
7 trend, correct?

8 A. That's right.

9 Q. And your conclusion from this is that there
04:43 10 should be an increase, a real increase, over and above
11 inflation in the price of redwood, correct?

12 A. Yes.

13 Q. And that adds approximately \$150 to \$200
14 million to your valuation, correct?

04:43 15 A. Adds it to what?

16 Q. Adds to the value of your valuation.

17 A. But --

18 Q. You're going out 50 years and you're applying
19 an increase in the value of redwood, the real -- the real
04:44 20 price that can be achieved from selling redwood, correct?

21 A. Yes.

22 Q. And that's going to add like \$150 million to
23 \$200 million to your ultimate valuation, correct?

24 A. May I interpret what I think your question is?

04:44 25 Q. Okay.

1 A. I think you're saying if redwood was at zero
2 percent inflation, would the value be less than my
3 conclusion by \$150 million? Is that what you're asking?

4 Q. If you want to say it that way, that's fine.

04:44

5 A. Then that would be correct, if in fact I used
6 zero percent inflation -- I'm sorry, zero percent real
7 appreciation in redwood, it would have a profound impact
8 on the value.

04:44

9 Q. Profound impact. Has any other expert in this
10 case applied a real appreciation to the price of redwood
11 in their valuations?

12 A. I can't say for sure, but I don't think so.

04:45

13 Q. Now, can you tell me -- do you see this chart,
14 this figure 14 in your report, the red line is redwood,
15 correct?

16 A. It is.

04:45

17 Q. And the price of redwood, notwithstanding the
18 fact that you've smoothed it out to indicate a trend, the
19 price of redwood has an enormous increase in about 2001.
20 Do you see that?

21 A. I do.

22 Q. Followed by an even larger decrease. Do you
23 see that?

24 A. I do.

04:45

25 Q. And why did that happen?

1 A. There are several theories as to why that
2 happened. One theory is that it was a result of the
3 temporary market and balance caused by the Palco deal
4 with the government in selling the Headwaters. But
04:45 5 clearly there's some sort of market and balance taking
6 place at that point in time.

7 Q. Okay. And there could be several explanations
8 for it, but you haven't reached any conclusion as to what
9 is the cause of this or the causes of this?

04:46 10 A. I have not.

11 Q. And if you look, the price of redwood today, or
12 at the end of your chart in December 31st, 2007 is
13 approximately the same as it was in 1992; is that right?

14 A. That's right.

04:46 15 Q. And yet --

16 THE COURT: And this chart, you've got the
17 linear price mislabeled, right? Am I correct? It's
18 mislabeled? The bottom one, the fat one -- wait a
19 minute. Okay. I'm reading it.

04:46 20 MR. NEIER: Your Honor, maybe we should
21 have the witness go through this.

22 Q. (By Mr. Neier) The fat black line is for Doug
23 Fir; is that right?

24 A. Yes.

04:46 25 Q. The dark trend line?

1 A. That's right.

2 THE COURT: The green one and the fat one.

3 Okay. I'm sorry, I just misread.

04:46

4 Q. (By Mr. Neier) And the thin black line is for
5 redwood, and those are the trend lines, correct?

6 A. That is correct.

7 Q. So the trend line is this one over here?

04:47

8 A. Yes, so clearly you see that redwood
9 appreciates and is expected to appreciate at a rate
10 higher than redwood -- I'm sorry, than Douglas Fir.

11 Q. Because you went back to 1977?

12 A. As far as the data went.

04:47

13 Q. And if you were to look at 1992 through
14 December 31st, 2007, the price of redwood is flat at 800,
15 correct?

16 A. For that period of time, that's correct.

17 Q. And what is the price of redwood today? Is it
18 up or down since December 31st, 2007?

04:47

19 A. The price of redwood since December 31st, 2007
20 has declined slightly.

21 Q. Only slightly?

22 A. According to the SBE data.

23 Q. Do you want to give me -- well, according to
24 the SBE data, that's trailing six months, correct?

04:47

25 A. Right.

1 Q. Do you have any idea of the market price for
2 redwood today?

3 A. Today being late April?

4 Q. Yes, today.

04:47

5 A. No.

6 Q. Your client, of course, is aware of what the
7 market price for redwood is today, correct?

8 A. I don't know that to be a fact, but I think
9 it's a fair assumption.

04:48

10 Q. Well, they operate in the redwood business.
11 One would assume that they know what the market price of
12 their chief product is, correct?

13 A. That's why I said it's a fair assumption.

14 Q. By the way, while we're on this page, the green
04:48 15 line, the thin green line, that's Doug Fir, correct?

16 A. Yes.

17 Q. What is the trend of Doug Fir since 1992?

18 A. Since 1992 it has decreased.

19 Q. It's decreased from 650 to -- for 1,000 board
04:48 20 feet to about 250, correct?

21 A. That's right.

22 Q. And yet you've got a trend line that's going up
23 because you went back to 1977, correct?

24 A. Correct.

04:49

25 Q. And what's the price of Doug Fir from December

1 31st till today? Is it up or down?

2 A. I couldn't tell you.

3 Q. Now, during this -- during this period -- where
4 were we? During this period over here, do you know of

04:49 5 any changes in the redwood market that may have occurred?

6 A. Not specifically.

7 Q. Well, do you know what old growth redwood is?

8 A. Sure.

9 Q. And is old growth redwood to the extent it's

04:50 10 available, is that more valuable than young growth

11 redwood?

12 A. Because of the size of it, I would say yes.

13 Q. I know you're not a forester, but old growth

14 redwood is a larger size and that's better for when

04:50 15 you're making boards out of it, correct?

16 A. Yes. There's more heart wood and, therefore,
17 it's more valuable.

18 Q. Because it's really the center of the redwood
19 that's -- you know, that's known as value, right?

04:50 20 A. Yes, redwood is graded at different levels and

21 the center part, the heart wood, is considered the most
22 valuable, the most desirable.

23 Q. Right. One of the most desirable woods in the
24 world, correct?

04:50 25 A. Yeah.

1 Q. And the young growth redwood, that has got a
2 lot of sap in it, right?

3 A. I don't know if sap is so much the issue, but
4 it's -- it's less desirable.

04:50 5 Q. It's less desirable. Okay. We can agree with
6 that. Do you know if old growth redwood is still
7 available for sale?

8 A. In limited quantities.

9 Q. Is it for sale at Scopac?

04:51 10 A. In limited quantities.

11 Q. Now, what we're looking through is from the
12 Marathon/Mendocino Exhibit 14, and this is page 14 of MMX
13 14. And you see this legend down here, do you see how
14 the purple is old growth redwood?

04:51 15 A. Yes.

16 Q. And do you see how the old growth redwood has
17 declined so it's nothing by 2004. Do you see that?

18 A. I do.

04:52 19 Q. And do you see that young growth redwood, on
20 the other hand, that's what's -- that's what's making up
21 the harvest of Scopac. Do you see that?

22 A. That's what the chart says.

23 Q. Yeah. And so when we look at the price
24 increases that existed, okay, and then the prices are
04:52 25 flat since 1992, that's when old growth redwood is going

1 down, the most valuable wood, correct?

2 A. According to the chart, yes.

3 Q. Okay. By the way, this is the last year in
4 this chart. This is an estimate of harvest for 2004. Do
04:52 5 you see that, it's 165 million board feet?

6 A. Yes.

7 Q. What's the current harvest of the company
8 today?

9 A. As of April, I don't know.

04:52 10 Q. Well, what's the -- you heard the testimony
11 that the harvest for 2007 was 74 million board feet?

12 A. That's correct.

13 Q. So in fact, the company is now harvesting about
14 half of what it harvested even in 2004?

04:53 15 A. That would be less than half.

16 Q. Less than half. Can we go back to the prior
17 figure from his report. Do you know of any other changes
18 that may have occurred that increased the price of
19 redwood from 1977 to 1992?

04:53 20 A. Not specifically.

21 Q. Do you know generally?

22 A. Well, there are many external forces that
23 affect the price of wood, including redwood. The
24 economy, you know, the relative supply and demand for
04:53 25 redwood, depending upon, you know, how much is occurring

1 in terms of growth in housing as well as remodeling,
2 interest rates, I suppose can affect redwood. I mean,
3 there's -- it's like a lot of commodities, there are many
4 factors that can impact it.

04:54 5 Q. So there are price changes, you don't know why
6 they occur. Prices have remained flat since 1992
7 through -- through December 31st, 2007. Since December
8 31st, 2007, they have gone down and yet it's your
9 testimony that the general trend is up?

04:54 10 A. Yes, sir.

11 Q. Do you think that if you were to go to people
12 in the appraisal field, they would agree you should look
13 at commodity prices over that length of period to
14 determine whether or not there should be an increase
04:54 15 going out 50 years?

16 A. I do.

17 Q. Have there been any changes in environmental
18 constraints that have taken place during this period?

19 A. Certainly.

04:55 20 Q. Would you say the trend for environmental
21 constraints is greater in this period?

22 A. Oh, yes, sir, I would.

23 Q. And would you say that there's some controversy
24 about whether you should be able to harvest old growth
04:55 25 redwood that exists now?

1 A. Just like other old growth wood, yes.

2 Q. And would you say that redwood, in general, now
3 has competing products that it did not have before, such
4 as plastic decking and cedar and teak and mahogany and
04:55 5 Brazilian wood and pressure treated lumber that people
6 use in fencing and decking?

7 A. No. I would I say other than the composite
8 material you mentioned, most of those other products have
9 been around for a while, too.

04:56 10 Q. Do you know whether the market for -- what's
11 the primary market for Scopac's properties? Is it
12 fencing and decking?

13 A. Primarily.

14 Q. And do you think that the market for the
04:56 15 company's primary markets, the market share that it has
16 gotten bigger or smaller?

17 A. I would say with the advent of the composite
18 materials, it's probably gotten smaller.

19 Q. Do you think the same controversy that exists
04:56 20 for redwood exists for cedar and pressure treated lumber
21 and teak and mahogany and those things?

22 A. If you're talking about old growth cedar,
23 absolutely.

24 Q. What about regular market cedar, cedar that
04:57 25 people use for fencing and decking purposes?

1 A. That type cedar is also harder to come by and
2 has been replaced with other competing products.

3 Q. Okay. What about the other materials that we
4 mentioned, pressure treated lumber, for instance, is
04:57 5 there any controversy there?

6 A. Oh, sure.

7 Q. So you're saying the market share has gone down
8 and there's a controversy for every product?

9 A. In some ways. I mean, like all competing
04:57 10 products, there are advantages to some of the products
11 and disadvantages to others.

12 Q. Where is the -- where is the market for redwood
13 fencing and decking? Is that nationwide at this point?

14 A. I really couldn't tell you how wide that market
04:57 15 is.

16 Q. Why not? You're doing an appraisal of a
17 company. You should know where their market is.

18 A. I wouldn't be able to comment on where the
19 sales are, you know, on a state-by-state basis, where
04:57 20 they're strongest and where they're not. I think it's
21 fair to say that the western United States is a primary
22 market but to narrow it down any further than that, I
23 can't really say.

24 Q. Can you turn to page 25 of your report. Now,
04:58 25 what you've got here is you've got a description of costs

1 of goods sold, operating expenses and capital
2 expenditures. Do you see that?

3 A. Yes.

4 Q. And you've got an estimate that costs are
04:58 5 supposed to grow by 3 percent, correct?

6 A. Right.

7 Q. And operating expenses, they don't grow at all
8 in real terms?

9 A. With the exception of the management services
04:59 10 agreement fees.

11 Q. And capital expenditure, they don't grow at all
12 in real terms?

13 A. That's right.

14 Q. Okay. Where is the data for that in your
04:59 15 report?

16 A. Well, if you go to the cash flows, you will see
17 that data.

18 Q. No, I asked -- and I apologize, I probably
19 didn't ask the question. Where is it that you calculate
04:59 20 out the costs showing, for instance, for costs of goods
21 sold, THP preparation, road repairs, maintenance,
22 silvicultural, reforestation, botany, geology, hydrology,
23 fisheries, watershed, GIS, wildlife security, timber
24 inventory, government relations, all those things. Where
04:59 25 is the data for that in your report?

1 A. Do you mean on an item by item basis?

2 Q. Yes.

3 A. There is no itemization.

04:59

4 Q. So you put in the conclusion as to how much
5 cost of goods can increase, you put in the conclusion
6 that operating expenses don't grow at all in real terms
7 except for one exception, and you've put in the
8 conclusion that capital expenditures don't grow at all in
9 real terms, but none of the backup or data is in your
10 report, correct?

05:00

11 A. Well, again, if you go to the cash flows, you
12 see them on a year by year basis.

13 Q. But the cash flows only indicate on a gross
14 basis each of these items, correct? They don't indicate
15 what the data is behind each one of those numbers.

05:00

16 A. Well, in the case of capital expenditures, I
17 think they do, it does. In the case of the management
18 fees, we talked about the two percent being calculated on
19 revenue. So certainly that's easy enough to figure out.

05:00

20 In terms of some of these other costs that you're
21 referring to like the forestry or the silvicultural
22 costs, for example, no, there's not an item by
23 itemization breakout in the report.

24 Q. Can you turn to page 21 of your report and look
25 at Figure 13. Now, what is being shown in this Figure

05:01

1 13?

2 A. That's the annual projected conifer harvest by
3 species.

05:01

4 Q. Okay. And so in 2008, you're projecting the
5 company will cut 80 million board feet but 60 million of
6 it will be redwood according to this chart, correct?

7 A. As derived from the Options model prepared by
8 Dr. Reimer, yes.

9 Q. Okay. So this is data from Dr. Reimer?

05:01

10 A. Yes, it is.

11 Q. Okay. And by the end, 50 years, virtually
12 everything that's harvested will be redwood, correct?

13 A. That's correct.

05:01

14 Q. There's almost nothing in terms of whitewood or
15 Doug Fir, correct?

16 A. Right.

17 Q. And the harvest will be 140 million board feet
18 and it will all be redwood?

19 A. Mostly, or nearly entirely, yes.

05:02

20 Q. Okay. Did you do anything to verify or check
21 Dr. Reimer's conclusions with respect to this harvest
22 forecast?

23 A. Yes.

24 Q. What did you do?

05:02

25 A. Well, certainly when I saw the output of that,

1 I had to ask why, you know, we saw such an increase in
2 the amount of wood, and as Dr. Reimer explained here a
3 little while ago, it's primarily the result of having
4 younger trees in the ground that will be available for
5 harvest beginning in 2047.

05:02

6 Q. And trees that will produce a lot of volume,
7 correct?

8 A. Yes.

9 Q. And what you did then is you performed a
10 discounted cash flow analysis using the high volumes that
11 are going to be available beginning in, you know, 2047,
12 and you discounted that back to the present time,
13 correct?

05:02

14 A. Right.

15 Q. And how much of your valuation, how much of
16 your report is based on using 140 million board feet of
17 redwood and then discounting it back to present day?

05:03

18 A. Maybe the way I can answer your question is to
19 say if you look at the residual value, which --

05:03

20 Q. Your terminal value, is that what you're
21 talking about?

22 A. That's correct. Which anticipates, of course,
23 that that wood will be available and then capitalizes
24 that into perpetuity, you can see what that terminal
25 value is on a present value basis relative to the overall

05:03

1 conclusion. And you see that that's 144 million out
2 of -- in the case of this schedule, 928.

3 Q. Okay. So you have a profound increase in
4 valuation as a result of assuming a price increase in
05:04 5 redwood, something that hasn't moved since 1992. And now
6 you have another \$144 million increase based on having a
7 large harvest of 140 million board feet available to you
8 of all redwood beginning in year 2047, correct?

9 A. First, you made a statement, something about
05:04 10 the price of redwood not moving since 1992. If you look
11 at that chart, clearly redwood has moved since 1992.

12 Q. But the price is the same as in year 1992.
13 There's no increase in price from 1992 through December
14 31st, 2007, correct?

05:04 15 A. Yeah, if you pick 1992, that would be correct,
16 there's no movement in price from that date.

17 Q. Well, that's a 15-year period.

18 A. From present date to '92.

19 THE COURT: However, in your question, you
05:04 20 assumed if you take out the appreciation of the price,
21 part of that would be the 144 million terminal price,
22 too. Some of that -- you couldn't just add those two
23 figures together, in other words.

24 MR. NEIER: It could be right.

05:05 25 THE WITNESS: Well stated.

1 THE COURT: If you had a lower price for
2 redwood, it wouldn't be 144 million.

3 MR. NEIER: I would say they compound each
4 other and overlap, yes.

05:05 5 THE COURT: Right.

6 Q. (By Mr. Neier) But the price increase is each
7 and every year, right, so there's a 3 percent increase in
8 price every year?

9 A. 1.5 percent.

05:05 10 Q. I'm sorry, 1.5 percent in real terms.

11 A. Correct.

12 Q. Okay. So in real terms there's a price
13 increase of 1.5 percent, so by the time you get to your
14 terminal value, the price of redwood has moved up,

05:05 15 according to you, by 50 percent? No, I'm sorry, 75
16 percent.

17 A. Okay.

18 Q. I'm asking you. 2008 to 2056, each year having
19 a 1.5 percent increase, correct?

05:06 20 A. Yes.

21 Q. And so the price of redwood from 2008 to 2056,
22 maybe a little higher. It's 30 years, correct? That's a
23 45 percent increase?

24 A. I'll let you go with that. We can spend a lot
05:06 25 of time talking about compounding prices. It's actually

1 more than 45 percent. 1.5 percent a year as it compounds
2 year after year is not 30 times 1.5.

3 Q. You would have to use a compounded annual
4 growth on the price?

05:06 5 A. Right.

6 Q. So you would have 1.5 and the next year you
7 have 1.5 on top of that?

8 A. Right.

9 Q. So what is the price increase in redwood when
05:06 10 you go to your terminal value? How much has it
11 increased?

12 A. I can't tell you looking at this chart.

13 Q. Is there anything in your report that would
14 tell us?

05:07 15 A. Well, you could calculate looking at what the
16 final log price is in that last year and comparing it to
17 the starting price in 2008, and that would tell you, but
18 I haven't calculated that.

19 Q. Well, what is the price in your final year, in
05:07 20 your terminal -- your terminal value year?

21 A. If you look at schedule 1-A, page 5 of 5.

22 THE COURT: Is there a number? Where is
23 that? Is that in the back?

24 THE WITNESS: Yes, it is, Your Honor.

05:08 25 THE COURT: Okay. 1-A.

1 THE WITNESS: 5 of 5. Do you see the row
2 marked 50 -- sorry, the column marked 50 at the top. And
3 you can see there the detail of the pricing on a real
4 basis for redwood and you see that it's broken down by
05:08 5 three categories. 0 to 24 inch, 25 to 49 inch and 50
6 inch and over. And there you see the prices on a real
7 basis.

8 Q. (By Mr. Neier) Okay. And so your total --
9 your total revenue is \$270 million annual revenue,
05:08 10 correct?

11 A. Right.

12 THE COURT: To see the percentage you
13 would have to go to 1, which is -- so it goes from 936 to
14 1941. It's about -- it's more than 100 percent.

05:09 15 THE WITNESS: A little more than double,
16 yes.

17 THE COURT: More than double. Okay.

18 MR. NEIER: 211.

19 Q. (By Mr. Neier) 211 percent, does that sound
05:09 20 about right?

21 A. No. It's 111 percent. Get that man a
22 calculator.

23 THE COURT: Well, to get it, you would
24 have to multiply it by 2, by 2.11. That's his point.

05:09 25 THE WITNESS: I understand.

1 THE COURT: So whether you call that 211
2 percent or it's 111 -- 122 percent increase or whatever,
3 115 or whatever interest.

4 THE WITNESS: Factor of 2.11 or 111
05:09 5 percent increase.

6 Q. (By Mr. Neier) Now, you were present when
7 Dr. Reimer testified --

8 THE COURT: But I mean, while you're on
9 the point, now, when you do the terminal value, are you
05:10 10 increasing it still or do you assume a constant price
11 from there on out?

12 THE WITNESS: It's a constant from there
13 on out.

14 THE COURT: Okay. So you don't compound
05:10 15 the error -- if it's an error, I'm not saying it is but
16 if it's an error you don't compound it once you get
17 there, it's just in getting there, you set a price if
18 you're incorrect about it going up.

19 THE WITNESS: That's right.

05:10 20 Q. (By Mr. Neier) A terminal value would
21 essentially be a sale of the entire forest at that point,
22 correct?

23 A. That's the theory is you're saying what would
24 the selling price be at the time if you're calculating
05:10 25 that terminal value.

1 Q. And that's why there would be no increase
2 beyond the terminal year in 2056?

3 A. Well, I don't know if that's why there would be
4 no increase but there is no increase.

05:11 5 Q. You heard Dr. Reimer testify about how the
6 company is regenerating or replanting the forest with
7 redwood trees when it harvests today, correct?

8 A. Yes.

05:11 9 Q. And in fact, areas of the forest that currently
10 have Doug Fir on them are going to be replanted and
11 regenerated with redwood, correct?

12 A. Some areas.

13 Q. Okay. Well, are you familiar with the Bear
14 Creek Timberlands?

05:11 15 A. I am.

16 Q. And you did some work on the Bear Creek
17 Timberlands in your liquidation analysis; is that right?

18 A. That's right.

05:11 19 Q. And if you could turn in your report to I guess
20 it's Exhibit 4-A, and we can start on page 1 of 5. In
21 the very first column, 2008.

22 A. Okay.

23 Q. Now, we've got -- this is for Bear Creek,
24 correct, the Bear Creek Timberlands?

05:12 25 A. Yes, this is the liquidation scenario for the

1 Bear Creek Timberlands.

2 Q. And you've got --

3 THE COURT: On Exhibit what, 4-A?

4 THE WITNESS: Yes, Your Honor, 1 of 5.

05:12

5 THE COURT: Okay. These things are so
6 hard to read. I'm there. Go ahead.

7 Q. (By Mr. Neier) Okay. The total redwood in
8 Bear Creek in 2008 that's going to be harvested, that's
9 26,267 board feet, correct? This is not in thousands.

05:13

10 We had some issue about that at one point.

11 A. We did. That's correct. It's 26,267.

12 Q. And the total Doug Fir that exists in Bear
13 Creek that's going to be harvested in 2008 is 5,225,946
14 board feet, correct?

05:13

15 A. Yes.

16 Q. And if we can go then to year 50, which is on
17 the last page of Exhibit 4-A in your report, which will
18 be 2057?

19 A. Correct.

05:14

20 Q. And you would see that redwood, which was only
21 26,000 board feet is now harvested, you're harvesting
22 20,729,584 board feet, correct?

23 A. Right.

24 Q. And the Doug Fir, on the other hand, has

05:14

25 declined to only 990,427 board feet from when in 2008 it

1 was at 21 million, correct?

2 A. That's right.

3 Q. So what's happened in Bear Creek, which is a
4 watershed, correct?

05:14 5 A. It is.

6 Q. And what's happened in the Bear Creek watershed
7 is we've gone from cutting 99 percent -- or a large
8 percentage of Doug Fir. And over the 50 years what's
9 going to happen is we're going to cut 99 percent or a
10 large percentage of redwood in year 50, correct?

05:15

11 A. That's correct.

12 Q. And what information do you have to tell us
13 that that's going to be feasible?

14 A. Well, I can tell you that in talking to the
15 foresters at Scopac and understanding what goes on at
16 Bear Creek and also conferring with Dr. Reimer, that the
17 upper portion of Bear Creek is in fact hospitable to
18 redwood and there is the planting regime to basically
19 have that redwood. The southern portions of the

05:15

05:15

20 Bear-Mattole, as it's referred to, are not as hospitable
21 to redwood and will likely be Doug Fir. So that means,
22 of course, because the model seeks the highest level of
23 profitability associated with the forest land, that it
24 will focus on those upper portions of Bear Creek where
25 the redwood will be as opposed to the southern portion

05:16

1 where the Doug Fir is.

2 Q. Okay. And it sounds like what you're saying is
3 information provided to you, it's not within your
4 purview, it's not within your expertise, correct?

05:16 5 A. I'm not a forester.

6 Q. If we can go back to page 1 of 5 of this same
7 exhibit. We've already established that this is just in
8 simple numbers, it's not thousands or anything like that,
9 correct?

05:16 10 A. Right.

11 Q. Okay. We can go to the last column on this
12 page or column 11.

13 A. I'm sorry, I lost my place. Where are we?

14 Q. Page 1 of 5 of Exhibit 4-A in your report.

05:16 15 A. 4-A, 1 of 5. Okay.

16 Q. You've got this -- if you can go all the way
17 left for a second. Just go to the legend. You've got
18 three methods of harvesting broken out over here, skid
19 load, cable load and helicopter load, correct?

05:17 20 A. Yes.

21 Q. And I think you heard Dr. Reimer say that skid
22 load or tractor load is the cheapest method, cable load
23 is the next cheapest method and helicopter load is pretty
24 expensive?

05:17 25 A. That's right.

1 Q. That's where a helicopter has to come in and
2 pick up the tree?

3 A. That's correct.

05:17 4 Q. And in 2010, two years from now, well, less
5 than two years from now, you're going to harvest 20 board
6 feet of redwood by helicopter, correct?

7 A. No.

8 Q. Not correct?

05:17 9 A. No. That's what the model says, but of course,
10 that's not going to really happen.

11 Q. Okay. Well, why are we doing something
12 different than the model? I thought the model was going
13 to tell us what to do to maximize cash flow.

05:18 14 A. It does. But Dr. Reimer explained this to me
15 as well. That that 20 feet --

16 MR. NEIER: Judge, we've had a microphone
17 malfunction.

05:18 18 THE COURT: For everyone's purpose, the
19 microphones are really just to record, not to amplify, so
20 people should speak as though they're talking to

21 Mr. Clements in the back and not as though they're
22 talking to the microphone. And then stay away from the
23 microphone so you don't hit it and you won't feedback if
24 you stay away from the microphone and project to

05:18 25 Mr. Clements. All right.

1 MR. NEIER: Okay.

2 Q. (By Mr. Neier) So you wouldn't do this. I
3 think you were about to give your answer and you said
4 Dr. Reimer told you something. What is that answer?

05:18 5 A. Yeah. Basically what the model has done here
6 is it has essentially rounded up to a goal in terms of a
7 smooth harvest rate. And so it found the last place that
8 it's economically feasible to harvest redwood and it
9 happened to be the Bear Creek area in that particular
05:19 10 year.

11 Q. So if I could just try and understand this.
12 What you're saying is the model says this, but nobody
13 would do this, correct?

14 A. Right.

05:19 15 Q. Because it would be economic suicide to use
16 helicopters to go out and get 20 board feet of lumber?

17 A. That's correct.

18 Q. Okay. In fact, if you go further now to the
19 columns that were over here, in year 2018 you're going to
05:19 20 use a helicopter to get four board feet, correct?

21 A. That's what it says.

22 Q. That's what it says. And four board feet is
23 literally -- you know, it's four feet of board, correct?

24 A. Right.

05:19 25 Q. And we're going to take a helicopter, go into

1 the forest and go get four board feet?

2 A. Of course not.

3 Q. This model that is in your report, this is what
4 you relied on in doing your valuation, correct?

05:20 5 A. It is.

6 Q. And I know you had some mathematical errors in
7 other sections, but those have been corrected. This
8 model is still the model you're relying on as part of
9 your valuation?

05:20 10 A. As far as the projection is concerned, that's
11 right.

12 Q. And if you could turn to Exhibit 1-A; which I
13 think comes after this; is that right? It comes before
14 this. Sorry. Let's start with Exhibit 1. It's a one
05:21 15 page -- sorry. It's 1 of 4.

16 A. All right.

17 Q. This is your discounted cash flow schedule?

18 A. It is.

19 Q. And you're projecting for 2008 that the company
05:22 20 will have EBITDA of 35 million -- 35.72 million of
21 EBITDA, correct?

22 A. Right.

23 Q. But in your earlier report, which we can show
24 you if you wish, you had an EBITDA production for 2007, a
05:22 25 prediction for 2007, correct?

1 A. I believe that's true.

2 Q. And it was for 33 million, 33.82 million?

3 A. Okay.

4 Q. I'm asking you. Do you recall that?

05:22 5 A. Not specifically.

6 Q. Can we get his earlier report, same exhibit,
7 page 1 of 4, first report. No, that's Yerges. I tell
8 you what, since I'm just refreshing your recollection,
9 I'm going to hand you my copy.

05:23 10 MR. NEIER: May I approach, Your Honor?

11 THE COURT: You may.

12 A. Okay.

13 Q. Okay. What was EBITDA in your first report for
14 2007?

05:23 15 A. 33.82 million.

16 Q. Now, did the company have 33.82 million? That
17 is, Scopac, did Scopac have 33.82 million of EBITDA in
18 2007?

19 A. I don't know.

05:23 20 Q. You don't know?

21 A. No.

22 Q. Did you include 2007 in your final report?
23 That is, your report dated May 14?

24 A. No.

05:23 25 Q. Why not?

1 A. Because the date of the report was January 1,
2 2008 so the projection period went from that point in
3 time forward.

05:24

4 Q. Okay. Well, let's look at 2008. For 2008, you
5 project there's going to be \$35.72 million of EBITDA for
6 2008, correct?

7 A. That's right.

8 Q. But in your earlier report, you projected that
9 there would be \$42 million of EBITDA; is that right?

05:24

10 A. Correct.

11 Q. Why is there a decline?

12 A. I don't know exactly. I'd have to compare the
13 two side-by-side with some analysis, but I did see that
14 there was a difference in revenue. That may have had an
15 impact.

05:24

16 Q. It's a 30 percent decline or a 25 percent
17 decline, correct, from 42 to 35, seven million?

18 A. Okay.

05:24

19 Q. It's a pretty healthy decline in EBITDA, don't
20 you think?

21 A. Definitely material.

22 Q. Okay. Why the change? Why did EBITDA -- why
23 did your projection for EBITDA go down?

05:25

24 A. Again, the underlying factors clearly are the
25 reason, but I can't tell you those factors.

1 Q. But it didn't have any impact on your ultimate
2 conclusion of value in this case?

3 A. No. The inventory analysis and projection
4 associated with that was beginning 2008. I did not
05:25 5 attempt to do a forensic analysis to determine why it
6 changed from 2007 to 2008 in the updated version.

7 Q. But in the first year of your report, you have
8 a material misstep in EBITDA in your projections and yet
9 it doesn't change your conclusion?

05:25 10 A. I wouldn't call it a misstep. Again, the
11 projections change, the inventory changed. I mean, there
12 were a number of factors that changed between the 2007
13 forecast period and the 2008 forecast period.

14 Q. And that could happen in every year of your
05:26 15 model, correct?

16 A. Sure.

17 Q. Now, you heard Dr. Reimer testify that he
18 prepared his harvest schedules on a reorganization basis,
19 correct?

05:26 20 A. I heard him say that.

21 Q. And we know that other people have talked about
22 different harvest schedules that they would have based on
23 their own -- their own business plan, correct?

24 A. Yes.

05:26 25 Q. For instance, Mr. Dean testified that he would

1 have a business plan and he would set the harvest rate
2 and schedule pursuant to that business plan because he
3 believes that's the right way to go in his view?

4 A. I heard him testify to that.

05:27

5 Q. And that's true for any operator of this
6 forest, they would have their own harvest rate, it could
7 be very high, very low, but it would be based on what
8 they thought would maximize value?

05:27

9 A. Based on what would maximize value, I won't
10 agree with that.

11 Q. I'm sorry, I take that back. And why wouldn't
12 you agree with that? But I agree with you.

05:27

13 A. Well, there may be other reasons that someone
14 is interested in buying the timberland. Somebody may
15 want to buy it and never harvest a stick out of it.

16 Q. The Nature Conservancy or somebody like that
17 could easily buy the forest and have a completely
18 different set of assumptions and justifications for those
19 assumptions?

05:27

20 A. Buyer motivations differ.

21 Q. Okay. But Dr. Reimer's harvest rate and
22 schedules were not based on what a likely buyer or a
23 likely seller -- what a likely buyer would have, correct?

05:28

24 They were based on what Scopac advised him would be best
25 for them and then he did maximize cash flow under that

1 schedule?

2 A. No, I disagree.

3 Q. Okay.

4 A. I think Dr. Reimer's projections --

05:28 5 Q. Let me take a step back. I withdraw. You can
6 answer that if you wish. Go ahead, I'm sorry.

7 A. Thank you. I think Dr. Reimer's projections
8 are meant to show what the productivity of the forest can
9 yield in terms of somebody who wants to buy the property,
05:28 10 maximize the profitable cash flow associated with that
11 property while maintaining the sustainable business going
12 on into the long-term, incorporating all the regulatory
13 issues associated with it.

14 Q. But he didn't sit down -- he just testified.
05:28 15 He didn't sit down and say, I think a likely buyer would
16 do this, right? That wasn't his goal. His goal was I
17 think reorganized Scopac should do this, correct?

18 MR. DOREN: Your Honor, Dr. Reimer's
19 testimony speaks for itself.

05:28 20 THE COURT: If he knows the answer. I
21 mean, he relied on Dr. Reimer. If he knows it, he can
22 answer.

23 A. Yeah, I disagree. That may be your
24 interpretation of what Dr. Reimer testified to but that
05:29 25 was not the intent as he and I were working together in

1 developing these projections.

2 Q. Well, you've heard Mr. Fleming testify and
3 you've heard Mr. LaMont testify and they have different
4 harvest rates in mind, correct?

05:29 5 A. They certainly do.

6 Q. And those harvest rates were based on their
7 opinions as to what a likely buyer would do, correct?

8 A. I believe that's true.

9 Q. Do you think that Dr. Reimer said the same
05:29 10 thing?

11 A. I do.

12 MR. NEIER: One moment, Your Honor.

13 THE COURT: Sure.

14 MR. NEIER: Your Honor, I have no further
05:30 15 questions at this time.

16 THE COURT: All right. Let's see. We've
17 taken this table and this table.

18 MR. FIERO: Your Honor, I just have a few
19 questions.

05:30 20 THE COURT: Okay. Good.

21 MR. NEIER: I was blocking.

22 THE COURT: All right. Go ahead.

23 MR. FIERO: I wasn't going to let him
24 block.

05:30 25

1 CROSS-EXAMINATION

2 BY MR. FIERO:

3 Q. Good afternoon, Mr. Yerges, I'm John Fiero.

4 A. Mr. Fiero.

05:31 5 Q. In listening to the questioning previously, we
6 got a pretty good look at the things you're not. You're
7 not a forester, you're not an appraiser, you're just -- I
8 just want to flesh out a little bit there. With regard
9 to the appraisal of real estate, are you licensed to
05:31 10 appraise real estate in any state in the union?

11 A. No.

12 Q. Okay. And that would include the state of
13 Washington, your home state?

14 A. That's right.

05:31 15 Q. And it's true, isn't it, that in the state of
16 Washington, you cannot appraise real estate?

17 A. No, that's not true.

18 Q. You disagree with that assertion?

19 A. Yes.

05:32 20 Q. You believe that it would be appropriate for
21 you to appraise real estate in the state of Washington in
22 a court of law like this?

23 A. It depends upon the purpose of the transaction.

24 Q. Now, I want to go back to the basis for your
05:32 25 appraisal. And the question that Mr. Doren asked you was

1 that you concluded that Dr. Reimer's forecasts were
2 dependable and reasonable. Do you recall that testimony?

3 A. I do.

4 Q. All right. Now, what professional basis did
05:32 5 you use to make that conclusion?

6 A. The basis of being involved from the beginning
7 of the project until the end.

8 Q. Okay. So you didn't use any particular
9 forester expertise?

05:33 10 A. Dr. Reimer's forestry expertise, Dr. Iles'
11 forestry expertise.

12 Q. No, sir, I'm asking you what forestry expertise
13 you exercised in determining that Dr. Reimer's
14 projections were dependable and reasonable. Did you
05:33 15 exercise forestry expertise?

16 A. I don't have my own forestry expertise.

17 Q. And with regard to the questions asked to you
18 about the prices of redwood and Douglas Fir, do you
19 recall that you were asked about current prices and you
05:33 20 didn't know the answer?

21 A. Yes.

22 Q. Okay. Why is that, sir?

23 A. The valuation date was January 1, 2008. I have
24 not researched where prices are as of the end of April.

05:33 25 Q. Okay. So you didn't believe it was at all

1 relevant or important for your testimony here today to
2 understand current market prices?

3 A. Not as of today.

4 Q. Okay. But you do understand that they're down
05:34 5 from the last time you checked?

6 A. If that's what you're representing to me.

7 Q. No. I'm asking you whether or not you know
8 that today, sitting here in the witness stand.

9 A. Not as a fact.

05:34 10 Q. Now, did you also hear Drs. Iles and Reimer
11 testify that they did not take instruction from anyone,
12 including you?

13 A. I did.

14 Q. Okay. And why was it that you chose to allow
05:34 15 them to operate independently rather than dictating the
16 fashion in which they helped you build your appraisal?

17 A. Well, just because they didn't take direction
18 from me doesn't mean that we didn't work together.

19 Q. Well, they didn't in any instance except for
05:34 20 one, and that would be the liquidation analysis
21 projection prepared by Dr. Reimer consider what a buyer
22 would do, did they?

23 A. I disagree. I think Dr. Reimer did consider
24 what a buyer would do.

05:35 25 Q. Well, that wasn't his testimony, sir. So I'll

1 just move on. Now, you understand, don't you, that the
2 way Dr. Reimer built his projections was by using the
3 Options software?

4 A. Yes.

05:35

5 Q. Okay. And that's a program that Dr. Reimer,
6 for lack of a better term, is the father of?

7 A. Okay.

8 Q. The proud father.

9 A. The proud owner.

05:35

10 Q. And Scopac is an owner of a license of the
11 products as well. Do you know that to be the case?

12 A. I do.

13 Q. Okay. Do you also know it to be case that
14 Scopac does not use Options as its primary harvest

05:35

15 schedule?

16 A. I do not.

17 Q. Okay. So you also don't know what the reasons
18 are behind the scientists at Scopac's decisions not to
19 use Options as their primary harvest schedule, or do you?

05:35

20 A. No, I do not.

21 Q. Now, is there a reason why you didn't ask
22 Drs. Reimer and Iles to consider what a buyer would
23 likely look at when preparing their reports for you?

24 A. Well, certainly Dr. Iles was irrelevant in

05:36

25 terms of what a buyer's objectives would be because his

1 purpose was to validate the inventory.

2 Q. And you heard him say, didn't you, that he
3 doesn't know what the investment community is doing?

4 A. I heard him say something to that effect.

05:36 5 Q. Okay. And with regard to Dr. Reimer?

6 A. With regard to Dr. Reimer, I guess I need you
7 to repeat the question.

8 Q. My question is: Why didn't you ask Dr. Reimer
9 to think like a buyer in preparing the harvest and growth
05:36 10 assumptions for the property when he prepared his report
11 for you? You knew what you were going to do is try and
12 figure out what a willing buyer and seller would do,
13 right?

14 A. So when Dr. Reimer and I conferred and talked
05:37 15 about this valuation assignment, the goal was to put
16 together a model that was going to project the maximally
17 productive use of these timberlands. In other words,
18 what a buyer would be willing to invest based on the
19 ability to generate the maximum profitability associated
05:37 20 with the property.

21 Q. So it's your testimony, is it, that what a
22 buyer would do is ask the Scopac scientists for their
23 best estimates, do no checking of their own and then plug
24 the Scopac scientist's estimates into a simulator?

05:37 25 A. I wouldn't say that, no.

1 Q. But that's what Dr. Reimer did.

2 A. I don't believe that's true.

3 Q. Now, going back to this question of price

4 appreciation for redwood. I just want to make sure

05:38 5 everyone understands your testimony. You agree that

6 between 1992 and 2007 if you were to just look at those

7 two points, the line between them for the price of

8 redwood would be perfectly flat?

9 MR. DOREN: Objection, asked and answered.

05:38 10 THE COURT: He didn't ask it, but -- I

11 mean, it is true that's what somebody else asked and we

12 all got that. He gets to ask the good questions, too.

13 Q. (By Mr. Fiero) It's a real quick answer. It's

14 yes, right, sir?

05:38 15 A. That's correct.

16 Q. Okay. And with regard to the next 50 years

17 under your projection, notwithstanding that last 15 year

18 experience, the price of redwood will compound upon

19 itself at a 1 and a half percent real rate?

05:38 20 A. Correct.

21 Q. And what timber investors did you speak to in

22 preparing your appraisal who told you that they were

23 using a similar assumption for the price of redwood?

24 A. I did not speak to any timber investors on what

05:39 25 their expected appreciation for the price of redwood

1 would be.

2 Q. Okay. You did some checking around, though,
3 on, for instance, discount rates, right?

4 A. Yes.

05:39 5 Q. You talked to other appraisers?

6 A. Right.

7 Q. You talked to investors?

8 A. Yes.

05:39 9 Q. And at no point in time did anyone suggest to
10 you that they believed that the price of redwood was
11 going to appreciate on a real basis by one and a half
12 percent compounded for the next 50 years, am I right?

13 A. During the course of that survey, I did not get
14 any of that data, no.

05:39 15 Q. Okay. Instead, you chose to extrapolate that
16 data from a longer history of the price of redwood,
17 correct?

18 A. That's correct.

05:40 19 Q. Can you tell me how common it is in your
20 experience for timber investors to project real growth in
21 the price of any timber product for 50 consecutive years?

22 A. I'd say it's fairly common.

23 Q. Okay. Describe for me the transactions in
24 which the buyer did that.

05:40 25 A. You want them by name?

1 Q. Yeah, that you're aware of, the transactions
2 you know about where the buyer computed in its
3 calculations a real growth in the price of the product
4 every year for 50 years.

05:40 5 A. Every year for 50 years? Well, I can tell you
6 that I have reviewed some valuations by the Campbell
7 Group prepared internally, which included projections.
8 And while the projections actually varied from year to
9 year in terms of what that real growth would be, it was
05:40 10 positive.

11 Q. Was it as much as one and a half percent
12 compounded for 50 years or 111 percent?

13 A. No, sir, it wasn't redwood.

14 Q. And do you believe that redwood should
05:41 15 appreciate at a price which is greater than that of other
16 products such as Douglas Fir?

17 A. Most definitely.

18 Q. Now, looking at the discount rate that you
19 chose to apply, you chose 6 percent, right?

05:41 20 A. That's correct.

21 Q. Do me a favor and take a look at page 14 of
22 your first proffer.

23 A. Yes.

24 Q. Okay. Now, if we -- if we go over here and we
05:42 25 look at the average and the median, these are at 6 and a

1 half percent, am I right?

2 A. That's correct.

3 Q. Okay. And you've chosen 6 for the Scopac
4 timberlands, correct?

05:42 5 A. That's right.

6 Q. All right. Is that because you perceive that
7 the Scopac timberlands present less risk to the investor
8 than do transactions in these less regulated states,
9 namely Washington and Oregon?

05:42 10 A. No, it's not.

11 Q. Okay. How is it, sir, that in Oregon and
12 Washington where everyone agrees that regulation is less
13 than the transactions have indicated a higher discount
14 rate than the one you've chosen to use for redwood in the
05:42 15 most highly regulated county in the country?

16 A. Well, I see two that are actually considerably
17 less, and one that is equal. I also know by looking at
18 these dates that we have seen increasing demand for
19 timberlands in the United States by timber investment
05:43 20 management organizations as well as investors and that
21 there's been a downward pressure on those discount rates
22 over a period of this time.

23 Q. Well, let's first talk about the situation with
24 the average and the median here. You would agree with me
05:43 25 that this is a higher discount rate than the one that

1 you've chosen to apply, and that it relates to sales in
2 the states which are less regulated than Humboldt County?

3 A. Yes.

4 Q. And then with regard to the recent transaction
05:43 5 between Sierra Pacific and the Campbell Group, are you
6 familiar with the specifics of that transaction?

7 A. Sierra Pacific and Campbell Group, no. I'm
8 familiar with the Sierra Pacific and Rayonier deal, but I
9 don't know Sierra Pacific, Campbell Group transaction.

05:43 10 Q. Okay. This is the transaction in which there
11 was no purchase of the redwood component of the
12 transaction. Are you aware of this?

13 A. I guess I'm not aware of it.

14 Q. In other words, the buyer just was unwilling to
05:44 15 buy the redwood being offered?

16 A. I can't testify to that.

17 Q. Okay.

18 THE COURT: Just while I'm thinking of it.
19 The chart on the trends and prices, that is not adjusted
05:44 20 for inflation? Or it is adjusted for inflation.

21 THE WITNESS: The chart is not adjusted
22 for inflation.

23 THE COURT: Okay.

24 Q. (By Mr. Fiero) Sir, you indicated that your
05:44 25 report was USPAP compliant, am I right?

1 A. No.

2 Q. Your analysis does not comply with the Uniform
3 Standards of Professional Appraisal Practice?

4 A. The report does not comply with the USPAP.

05:45 5 Q. What does, sir?

6 A. The process by which the appraisal was done.

7 Q. Okay. So you believe that your math would
8 comport with the standards of USPAP, but there are
9 deficiencies in your report which would prevent it from

05:45 10 being USPAP compliant; is that right?

11 A. The report was not intended to be USPAP
12 compliant in that certain elements were not included.

13 Q. Okay. And are you aware of the competency
14 provision of the USPAP?

05:45 15 A. I am.

16 Q. Can you recite it?

17 A. No.

18 Q. Now, earlier Mr. Neier went through your
19 experience in other transactions trying to identify

05:45 20 whether or not you had represented a purchaser or seller
21 in the list of transactions described in your proffer.

22 Do you recall that?

23 A. Yes.

24 Q. Okay. Now, is it fair to say that with regard
05:46 25 to the major timberland deals conducted in the Pacific

1 northwest, Oregon, Washington, northern California in the
2 past five years, that you haven't represented either the
3 buyer or the seller in those deals?

4 A. It is fair to say that.

05:46

5 Q. Is it fair to say that you didn't assist any
6 unsuccessful bidders in those transactions?

7 A. True.

05:47

8 Q. One of your two methods for appraising the
9 timberlands simply carved out a big chunk of the
10 timberlands and left that value for Mr. Gurnee or
11 Mr. Mundy or someone else, am I right?

12 A. It was excluded from the analysis.

05:47

13 Q. Okay. Now, and you did that because you felt
14 someone else was more qualified than yourself to appraise
15 that portion of the property?

16 A. No. I did that because it was requested by the
17 client that I exclude that portion.

05:47

18 Q. Can you identify for the Court any other large
19 redwood landholders who are contemplating a program
20 similar to that of the redwood ranch development?

21 A. No, I can't testify that I know of anyone
22 that's actively involved in that process today.

23 Q. Going to page 2 of your proffer, sir, paragraph
24 5 in particular. I see that you've got --

05:48

25 THE COURT: What page of the proffer?

1 MR. FIERO: Page 2, paragraph 5, Your
2 Honor.

3 THE COURT: Okay.

05:48

4 Q. (By Mr. Fiero) I see that you've got a value
5 conclusion which is right around \$4,700 per acre?

6 A. Yes.

7 Q. Can you identify a single timberland deal
8 anywhere in the United States with more than 100,000
9 acres that had a price that high?

05:48

10 A. On a time adjusted basis, I certainly can.

11 Q. Okay. And you're assuming that the price of
12 timberlands has gone up, notwithstanding recent changes
13 in the market for Douglas Fir and redwood?

14 A. I certainly am assuming that.

05:48

15 Q. But the truth is you can't point to a sale
16 where a \$4,700 an acre price can be imputed just based on
17 the purchase price and the number of acres transferred?

18 A. No, nothing has reached that level that I'm
19 aware of.

05:49

20 Q. Isn't it true that if a sale like this were to
21 close at the value that you suggested, that it would be
22 in fact the highest price ever paid for an ownership of
23 this size?

05:49

24 A. If you exclude the time adjustment factor,
25 probably so.

1 Q. Isn't it true that the highest price large land
2 deals done in the west coast recently are the Manasha
3 deals and the Longview fiber deal, and that neither of
4 them traded anywhere near \$4,700 an acre?

05:49 5 A. And neither of those included redwood.

6 Q. And just to amplify your prior testimony, you
7 believe that redwood makes a property more valuable?

8 A. Yes, I do.

9 Q. Just so I understand, you didn't do anything to
05:50 10 check that the assumptions that Dr. Reimer took from the
11 scientists at Scopac and plugged into his model were in
12 fact correct recitations of the constraints on the
13 property, did you?

14 A. No, that's not true. I did do some checking on
05:50 15 that.

16 Q. So you matched up the constraints applied by
17 the Options software with the actual legal constraints
18 and had someone with a legal background tell you that in
19 fact they were correct?

05:50 20 A. I didn't say that.

21 Q. Okay. What did you say?

22 A. I said that I did check on some of the inputs
23 that were provided by the company to Dr. Reimer.

24 Q. Okay. Tell us how you did that.

05:50 25 A. For example, some of the inputs included GIS

1 information on slopes. At the beginning of the project I
2 looked at the slope maps provided by Scopac and paired
3 those up against my inspection of the property so that I
4 could visualize what those slopes looked like on the map
05:51 5 versus, you know, what a 30 degree slope really looks
6 likes in person.

7 Q. And what about with regard to the environmental
8 regulations and the limitations on cutting, what
9 independent verification did you do?

05:51 10 A. Well, I actually read a primer on HCP so I
11 understood what the HCP included. And, again, I worked
12 with Dr. Reimer to ensure that my interpretation of that
13 HCP primer was consistent with the information that was
14 going into the Options model.

05:51 15 Q. But you can't manipulations Options, right?

16 A. Oh, no.

17 Q. So you had to take his word for it?

18 A. Yes.

19 Q. All right. And you're aware, aren't you, that
05:51 20 it wasn't Dr. Reimer who actually input all of those
21 constraints, it was his assistants?

22 A. I'm not able to testify to that.

23 Q. You got your costs for your model -- and right
24 now I'm speaking about page 10, paragraph 24 of your
05:52 25 proffer. You got them from Scopac, right?

1 THE COURT: What page are we on now?

2 MR. FIERO: Page 10, paragraph 24.

3 Q. (By Mr. Fiero) The costs are based on current
4 actual costs as provided by Scopac?

05:52 5 A. That's correct.

6 Q. What did you do to match those up against the
7 experience of other timber owners and redwood owners in
8 the community?

9 A. Well, in one case we had the SBE costs relative
05:53 10 to hauling and logging, and so I compared those against
11 the SBE prices to get a sense of how realistic they were.

12 Q. You mean you used SBE prices for hauling and
13 logging to assess whether or not the company's
14 projections of its costs were, in fact, accurate?

05:53 15 A. In fact reasonable.

16 Q. In fact reasonable. Did you do anything else?

17 A. No.

18 Q. So you don't know what any other redwood
19 company experiences in terms of costs for any of the cost
05:53 20 items associated with bringing trees to a mill?

21 A. I don't have that data.

22 Q. And the reason you don't have that data, sir,
23 is you're not a forester and you're not experienced in
24 these areas; isn't that right?

05:53 25 A. No, that's not the reason.

1 Q. Isn't it true that the only access you had in
2 terms of data was SBE data?

3 A. No. There were many, many places where I could
4 have obtained data.

05:54 5 Q. But you chose not to?

6 A. That's not true. I obtained data from many
7 sources.

8 Q. Well, I asked you what data you had, what
9 third-party data. All you identified was SBE data with
05:54 10 regard to costs. Is there more?

11 A. If we're confining data to costs and pricing,
12 then the answer is no. There are many, many other data
13 elements that I obtained from other sources.

14 Q. My question is about costs, and I believe your
05:54 15 answer is no; would you agree?

16 A. Yes.

17 Q. What conversations did you have with investors
18 about the discount rate that they would use for north
19 coast redwood forests?

05:54 20 A. I didn't identify the property as north coast
21 redwood forests. The purpose was to identify the
22 discount rates that investors are using on average.

23 Q. Okay. And what you found out was that on
24 average they're higher than the one that you applied to
05:55 25 Scopac?

1 A. If you're referring to that chart that had the
2 6.5 percent average?

3 Q. Yes, sir.

4 A. That's actually -- that's actually not true.

05:55 5 Q. I'm sorry. Did I misunderstand your chart?

6 A. You did misunderstand the chart. If you look

7 at the timberland investment survey, which was the

8 discussion with market participants who are actively

9 involved in buying and selling lands, you'll see on page

05:55 10 30 of my report that that averages 5.595 percent and that

11 the range was from 4 to 7 and a quarter percent.

12 Q. I'm having trouble getting to page 30.

13 THE COURT: Well, it's on page 16 of his

14 proffer.

05:57 15 Q. (By Mr. Fiero) Moving on to page 45 of your
16 report. You did undertake a liquidation analysis of the
17 timberlands, didn't you?

18 A. I did.

19 Q. And rolling together the timberlands

05:57 20 themselves, the gravel extraction and the cell tower

21 leases, you found that the Chapter 7 liquidation value of

22 the assets is \$381 million, am I right?

23 A. First of all, I don't know that it's Chapter 7

24 per se. The theory is that it would be liquidated under

05:57 25 a term shorter than what would be reasonable and

1 customary for this type of property.

2 Q. Okay. I'm taking a look at 12.01. It says "to
3 derive the liquidation value, I considered a hypothetical
4 liquidation under Chapter 7 of the United States

05:58 5 Bankruptcy Code."

6 A. I did.

7 Q. So this is what might happen in a Chapter 7
8 case?

9 A. Assuming it's that period that I assumed of 90
05:58 10 days, yes, it would be.

11 Q. Do you have some doubt about that in looking at
12 your report?

13 A. No.

14 Q. Turning your attention to page 17 of your
05:58 15 proffer, paragraph 36, it says, "Furthermore,
16 institutional investors value the ownership of timberland
17 because it is a stable, predictable and long-term
18 investment and typically hold it for 10 to 20 years."

19 Has that been Scopac's experience, that it's a
05:59 20 stable, predictable and long-term investment?

21 A. It depends how far back you want to go.
22 They've been around for 130 years.

23 Q. Has that been its experience for the last 20
24 years? Has there been anything predictable about life in
05:59 25 Humboldt County in the last 20 years, sir?

1 A. It rains.

2 Q. Anything else?

3 A. I'm not an expert on what else is predictable
4 in Humboldt County.

05:59 5 Q. Okay. I think the last thing I want to draw
6 your attention to is page 42 of your report in the
7 reversion value. I don't want to misstate your
8 testimony, but I think what I heard you say is that you
9 did not compound forever in calculating the reversion the
06:00 10 one and a half percent growth rate that you assumed for
11 the first 50 years of operations by Scopac under your
12 appraisal?

13 A. Sorry. You referred to page 42 of the report.
14 Okay. I got it. All right. Sorry.

06:00 15 Q. Okay. I just want to start by making sure I
16 didn't misunderstand. I think what you said was, no, I
17 didn't presume that forever the price would continue to
18 increase?

19 A. Correct.

06:00 20 Q. Okay. And how can that be where on your
21 calculation here, g here, the long-term annual growth
22 rate is 3 percent, am I right?

23 A. It is.

24 Q. And the inflation adjusted rate is 6 percent?

06:01 25 A. No.

1 Q. What is the inflation adjusted rate?

2 A. Zero.

3 THE COURT: Zero minus 3 would give you a
4 negative number.

06:01 5 Q. (By Mr. Fiero) So it's your testimony that you
6 haven't baked into your terminal value a presumption of
7 continuing increasing prices for redwood?

8 A. I just took that last year and capitalized it
9 into value using a 7 percent capitalization rate and
06:01 10 discounting it back at 6 percent.

11 Q. Okay. One more question about your use of SBE
12 to project costs. When you use SBE, you're looking at
13 the past and asking to predict the future, am I right?

14 A. That's correct.

06:02 15 Q. And is that always a reliable way to do things?

16 A. Generally speaking, I'd say yes.

17 Q. It didn't really work out for the price of
18 redwood over the last 15 years, did it?

19 A. I'll look at the chart and give you that
06:02 20 comment. I need to look at the 15-year period.

21 THE COURT: That would be --

22 MR. FIERO: I think this is the chart we
23 have talked about before.

24 A. That would be correct.

06:03 25 Q. And that's certainly not how one, for instance,

1 picks mutual funds, is it?

2 A. Actually, that is the way that one would pick
3 mutual funds, is to look what the past performance of
4 what the mutual fund has been.

06:03 5 Q. And that's exactly why they say in all mutual
6 fund advertisements that past performance is not an
7 indicator of future appreciation?

8 A. That would be the proper disclaimer.

9 MR. FIERO: Okay. No further questions.

06:03 10 THE COURT: Okay. Is there anything
11 now -- anyone else have questions besides redirect?

12 REDIRECT EXAMINATION

13 BY MR. DOREN:

14 Q. Mr. Yerges, just as an initial matter,
06:03 15 referring back to Dr. Reimer's objectives in setting his
16 harvest level projections, could you describe again what
17 the objectives were for those projections as you
18 understood them?

19 A. Yes. The objective of those projections was to
06:04 20 determine what an investor would consider in terms of
21 buying that property to generate the maximum return
22 associated with the property.

23 Q. And Dr. Reimer, as we heard, was looking to
24 maximize net cash flow within all of the regulatory and
06:04 25 legal constraints, correct?

1 A. That's correct.

2 Q. And you, as the person who was using that to
3 assign a value to the timberlands, did you consider that
4 to be a reasonable measure of what a reasonable purchaser
06:04 5 would be looking to do with the property?

6 A. I would consider that the utmost importance.

7 Q. And did you consider that to be the appropriate
8 standard to apply when evaluating the market -- a market
9 value to the property?

06:04 10 A. Yes, I did.

11 Q. And if someone purchased the property and
12 elected not to cut a tree or to cut only 55 million board
13 feet a year, would that impact the intrinsic value of
14 those timberlands?

06:05 15 A. No, it would not.

16 Q. Now, I was a little disappointed that Counsel
17 elected to ask you questions about Dr. Reimer's
18 projections and some of the results of his projections
19 when he could have asked Dr. Reimer just a few minutes
06:05 20 before.

21 MR. NEIER: If that was a question and not
22 a statement, objection.

23 Q. (By Mr. Doren) But there are a couple of
24 questions I'd like to ask you.

06:05 25 THE COURT: We don't need to be

1 argumentative in the sense you're not arguing with the
2 witness, you were arguing before me about your --

3 MR. NEIER: Disappointment.

4 THE COURT: About your disappointment. So
06:05 5 let's just ask the question.

6 MR. DOREN: I consider it more along the
7 lines of sharing an emotional state, Your Honor.

8 MR. JONES: Your Honor, on behalf of the
9 California lawyers, we don't all do that.

06:05 10 Q. (By Mr. Doren) Now, Mr. Yerges, among other
11 things, you were asked about this notion of harvesting
12 20.7 million board feet of redwood out of the
13 Bear-Mattole area in 2057. Do you recall that?

14 A. I do.

06:06 15 Q. Now, if you would assume for me an inventory of
16 about 50,000 board feet an acre, how many acres would it
17 need -- would need to be harvested to reach 20 million
18 board feet?

19 A. 400 acres.

06:06 20 Q. And isn't it true that the Bear-Mattole is
21 about 35,000 acres?

22 A. That's right.

23 Q. Now, as the person relying on Dr. Reimer's
24 projections, does it strike you as unreasonable or
06:06 25 untoward that he proposes the 400 acres of redwood be

1 harvested out of those 35,000 50 years from now?

2 MR. NEIER: Your Honor, there's leading
3 and then there's suggesting an answer onto an area that
4 he doesn't have any expertise in. And I think we've
06:07 5 reached that line.

6 THE COURT: I think it is true that he
7 done have expertise in this area, so I mean, I think you
8 can make that argument.

9 MR. DOREN: Fair enough, Your Honor.

06:07 10 THE COURT: But we can all add and
11 subtract and divide and multiply.

12 Q. (By Mr. Doren) Well, similarly you were shown
13 instances where in a couple of years out of 50 for a
14 couple of places and you saw references to four board
06:07 15 feet being harvested by helicopter in one year?

16 A. Yes.

17 Q. And 20 board feet in another; is that correct?

18 A. Correct.

19 Q. First of all, were those in your valuations for
06:07 20 the entire timberlands or were those in valuations for
21 liquidation scenarios?

22 A. That situation only occurred in the liquidation
23 scenario where we broke the property up.

24 Q. Now, did the fact that the projection showed
06:07 25 four board feet of helicopter harvesting in a year change

1 your valuation of the property at all?

2 A. None whatsoever.

3 Q. Now, we also heard Counsel query your

4 experience in looking at and evaluating timber

06:08 5 properties. And you have done work for Weyehaeuser; is

6 that correct?

7 A. That's correct.

8 Q. And can you please describe the work you have

9 done for Weyehaeuser?

06:08 10 A. Well, in addition to the work that I did for

11 MacMillan and Bloedel or including MacMillan and Bloedel?

12 Q. Including, please.

13 A. Okay. In the MacMillan Bloedel transaction, my

14 job was to assign the fair market value to the entirety

06:08 15 of the assets appraised on basically an asset-by-asset

16 basis. MacMillan and Bloedel at the time consisted of

17 timberlands, 620 something thousand timberlands in

18 British Columbia were part of my assignment, as well as

19 sawmills, box plants, etcetera.

06:08 20 All of those assets had to be appraised in

21 order to allocate the purchase price to those assets

22 based upon their fair market value. So the process was

23 to essentially appraise all of those assets and determine

24 their fair market value in order to do that.

06:09 25 Q. And did you, in fact, conduct appraisals of

1 those assets?

2 A. Yes.

3 Q. And did you have the benefit of any other
4 appraisals in doing so?

06:09 5 A. No.

6 Q. You did just a ground up appraisal; is that
7 correct?

8 A. That's correct.

9 Q. You've also described -- on direct you
06:09 10 described work for Plum Creek related to about 650,000
11 acres; is that correct?

12 A. That's correct.

13 Q. And then I believe on cross you also talked
14 about a highest and best use analysis you did for Plum
06:09 15 Creek involving about 100,000 acres; is that correct?

16 A. I believe it was less than 100,000, but it was
17 fewer acreage than certainly the timber appraisal I
18 mentioned.

19 Q. And did both of those projects require that you
06:09 20 conduct appraisals of the properties at issue?

21 A. They did.

22 Q. And did you have the benefit of any other
23 appraisals in that work?

24 A. No.

06:10 25 Q. And so did you conduct ground up appraisals of

1 each of those properties?

2 A. Yes.

3 Q. And similarly, you've done work for Riley
4 Creek; is that correct?

06:10 5 A. Yes.

6 Q. And can you please describe what Riley Creek
7 is?

8 A. Riley Creek is a sawmill and timber company in
9 Laclede, Idaho.

06:10 10 Q. All right. And was this the marital
11 dissolution that you testified about on
12 cross-examination?

13 A. That's right.

14 Q. And can you describe please what you did in
06:10 15 relation to Riley Creek?

16 A. Yes. In order to determine the value of the
17 marital estate, amongst other things, what had to be
18 valued was the sawmill and the timberlands. In order to
19 do that, it required a base line valuation of those
06:10 20 assets.

21 Q. And, again, did you have the benefit of any
22 other appraisal materials?

23 A. No.

24 Q. And so you conducted ground up appraisals on
06:10 25 those timberlands and that mill?

1 A. That's correct.

2 Q. And though it was in the context of a marital
3 dissolution, it was important that you identify the fair
4 market value of those materials?

06:11 5 A. That's what the dissolution would be based
6 upon.

7 Q. And in addition to performing appraisals, have
8 you also conducted appraisal reviews?

9 A. I have.

06:11 10 Q. And can you please give us an example of a
11 client for whom you've done appraisals reviews?

12 A. Most recently I have done several reviews of
13 the Campbell Group transactions.

14 Q. What is the Campbell Group?

06:11 15 A. Campbell Group is one of the largest timber
16 investment management organizations. Their headquarters
17 are in Portland, Oregon.

18 Q. And what sort of reviews have you done or what
19 sort of transactions have you done appraisal reviews for
06:11 20 in relation to the Campbell Group?

21 MR. NEIER: Your Honor, this is just a
22 repeat of his introduction of the witness and, you know,
23 we've heard a lot of it, but it's getting so repetitious
24 at this point and at such a late hour.

06:11 25 THE COURT: Well, there was a lot of

1 questioning about the limitations of all of these things,
2 so I think he should have some latitude to question him
3 about it in return.

06:12

4 A. To answer your question, in an audit support
5 role to our auditing, it was my job to validate that the
6 valuations prepared or provided to us were in fact
7 reasonable and were adequately done.

8 Q. And were these large transactions?

06:12

9 A. Very large transactions. Again, Campbell Group
10 is actively involved in extremely large transactions in
11 the United States. I think their largest one was Temple
12 Inland, which was 1.5 million acres in the southeast U.S.

13 Q. And you conducted the appraisal review in that
14 matter?

06:12

15 A. I did.

16 Q. Now, we have also heard some questions about
17 licensing requirements in Washington, and I thought
18 Mr. Fiero might have accused of you breaking the law.
19 I'm not sure. So let's talk about that for a moment.

06:12

20 First of all, as a principal of KPMG, do you have an
21 equity stake in the firm?

22 A. Yes.

23 Q. And what's the difference between a principal
24 and a partner?

06:12

25 A. The only difference is the partners have CPAs,

1 principals do not.

2 Q. And as the head of KPMG Seattle Economic
3 Evaluation Services Practice, are you required to be
4 licensed to perform valuations and appraisals?

06:13 5 A. No.

6 Q. Why not?

7 A. There are only a few instances when that
8 licensing issue really comes up, and that's when dealing
9 with federally related transactions such as financing
06:13 10 provided by banks that are FDIC insured.

11 Q. So, for example, Mr. Fleming who does local
12 appraisals would need to be licensed so as to be able to
13 do appraisals for sales and purchases involving
14 financing, correct?

06:13 15 A. Correct.

16 Q. Now, have you ever held yourself out to be a
17 licensed appraiser?

18 A. No.

19 Q. Were any members of the KPMG team that assisted
06:13 20 you in this matter licensed California appraisers?

21 A. Yes, they were.

22 Q. And who are those people?

23 A. Sam Romanagi who is one of the senior members
24 of the team is a California licensed appraiser. Also,
06:14 25 Frank DeLogue is a California licensed appraiser. Both

1 of those individuals are identified in the certification
2 of the report.

3 Q. And I'd like to just take a moment to touch on
4 the reversion rate you applied in your analysis. There
06:14 5 was some discussion about that in your cross-examination.
6 What reversion rate do you apply?

7 A. Well, the capital --

8 Q. I apologize. That's the history major. What's
9 the cap rate that you applied to the reversion period?

06:14 10 A. 7 percent.

11 Q. And is that the same cap rate or capitalization
12 rate as applied by Mr. LaMont?

13 A. I believe it is.

14 Q. And so if I understand then, you applied a
06:14 15 discount rate of 6 percent to year 50 and then you used a
16 capitalization rate of 7 percent from that point forward;
17 is that correct?

18 A. And then present value of that capitalization,
19 of that amount at a 6 percent discount rate.

06:15 20 Q. Now, could we please put up the harvest
21 projection slide. You heard a few questions about
22 Mr. Fleming's ten-year projection period. And there were
23 other discussions about when the young timber that's in
24 the woods now comes on-line out in 2046. Using a
06:15 25 ten-year projection period, did Mr. Fleming take this

1 increase in volume in 2046 into account?

2 A. I don't see how.

3 Q. And do you know whether Mr. LaMont took this
4 increase in timber volume into account in his
06:15 5 projections?

6 A. I don't think he did.

7 Q. You also heard a few questions about whether or
8 not any other appraiser had a value similar to yours --
9 or strike that -- a harvest projection similar to yours.

06:16 10 Do you recall what Mr. Fleming's harvest projections are
11 for the first ten years?

12 A. Yeah. I thought they were actually fairly
13 similar to mine.

14 Q. About 85 million board feet a year?

06:16 15 A. Roughly speaking.

16 Q. And then from that point out, about 100 million
17 board feet a year?

18 A. Yes. He then takes it up another step to
19 something more in the 100 million board feet a year,

06:16 20 which is comparable to the same harvest rate that we had
21 over that period of time.

22 Q. Now, could we please go to the pricing. And if
23 you can pull that out, please. Now, you got a number of
24 questions about how if we were to pick 1992 as a starting
06:17 25 date and to compare it to today, we wouldn't see any real

1 price increase. Do you recall that?

2 A. I do.

3 Q. Now, if we had picked 2002, would we have --
4 would we see some real price increase?

06:17 5 A. We've seen a lot of price increase.

6 Q. And if we had picked 1997 or 1990, would we
7 have seen a real price increase?

8 A. No question about it.

9 Q. And if we had picked 1986, the same thing?

06:17 10 A. I'd say so.

11 Q. So if you could pick any one, any number of
12 arbitrary points along there, you could actually show
13 significant price decreases if you would pick June 31st,
14 2000, couldn't you?

06:17 15 A. You sure could.

16 Q. But instead, what did you elect to do?

17 A. I elected to look at the entire long-term
18 period from when the data was first available to current
19 data.

06:17 20 Q. And did you do that specifically to eliminate
21 those short-term and arbitrary ebbs and flows in pricing?

22 A. Yes, I did.

23 Q. Is timber pricing inherently cyclical?

24 A. Oh, yes.

06:18 25 Q. So is it necessary to look at a long-term

1 period in order to smooth out those cycles?

2 A. I think that would be the only prudent thing to
3 do.

4 Q. And you mentioned the Campbell Group as an
06:18 5 entity that you're aware of that has taken similar steps
6 in establishing its pricing; is that correct?

7 A. I did.

8 Q. And what has the Campbell Group done in
9 evaluating long-term pricing trends?

06:18 10 A. Well, as part of the audit support process that
11 I mentioned, one of the properties that they're involved
12 in is the Uzal property, which is 50,000 plus acres in
13 Mendocino County. And as part of the materials that they
14 provided to us, they actually provided an analysis that
06:18 15 they had conducted of redwood pricing. This was not made
16 available until I was able to do this survey -- sorry,
17 until I was able to do this review, but did find that it
18 was actually published in -- in late 2002, I believe it
19 was.

06:19 20 Q. And how did the Campbell Group determine future
21 pricing trends for redwood?

22 A. They used a real price increase of 1.2 percent.

23 Q. All right. And if you can please turn on the
24 Elmo. And Mr. Yerges, is this how the Campbell Group
06:19 25 determined and forecasted future pricing for redwood?

1 A. It is. You see the historical period from 1978
2 until --

06:19

3 MR. NEIER: Your Honor, this is not a
4 document that exists anywhere but in a private report
5 that's never been shared or disclosed with any of us,
6 never produced by Mr. Doren, it's never been --

06:19

7 MR. DOREN: Your Honor, it's a publically
8 available document, but I'm only using it as a
9 demonstrative to support and illustrate Mr. Yerges's
10 testimony.

11 MR. NEIER: How is that a demonstrative?

12 THE COURT: It sounds to me like you want
13 me to consider this to be supportive of his position as
14 to the price increase of redwoods.

06:20

15 MR. DOREN: Your Honor, what I'm asking --

06:20

16 THE COURT: If you can validly get it
17 admitted, of course, you would have had to have given it
18 to the other side first, but then you also would have had
19 some exception to the hearsay rule. And it would be
20 admissible if you could do that. But it's not
21 demonstrative. It's not like you're just using it as a
22 chart of what he's writing down.

23 MR. DOREN: Fair enough then, Your Honor.

24 I didn't intend to make a run of it.

06:20

25 Q. (By Mr. Doren) Mr. Yerges, what I want to know

1 --

2 MR. NEIER: We would like it off the
3 screen now, Your Honor.

4 THE COURT: Take it off the screen.

06:20 5 MR. NEIER: The jury might be swayed.

6 Q. (By Mr. Doren) Mr. Yerges, how did the
7 Campbell Group determine future pricing trends for
8 redwood pricing?

9 A. They looked at the long-term history.

06:20 10 MR. NEIER: Your Honor, now he's
11 testifying as to the same thing that was on the screen.
12 None of this was ever disclosed to us and it's a report
13 from --

06:20 14 THE COURT: Why would he be allowed to
15 testify to this now?

16 MR. DOREN: Your Honor, he has been
17 deposed. He has talked about it.

18 THE COURT: About this subject?

06:21 19 MR. DOREN: He wasn't asked about this
20 topic, Your Honor.

21 THE COURT: He was asked about this in his
22 deposition?

23 MR. DOREN: He was not asked about this
24 topic, Your Honor.

06:21 25 MR. NEIER: He was not.

1 THE COURT: But you didn't put it in his
2 report. If you thought there was another analysis that
3 coincided with his -- with his --

06:21

4 MR. DOREN: I'm happy to move on, Your
5 Honor.

6 THE COURT: Normally you would have put
7 that in his report, I would have thought.

8 MR. DOREN: I'm happy to move on.

06:21

9 MR. NEIER: It's Rule 26, Your Honor. Any
10 data that he relied on is supposed to be available and
11 produced.

12 THE COURT: Move on.

06:21

13 Q. (By Mr. Doren) Mr. Yerges, I believe you heard
14 some questions from Mr. Shields about commodities
15 pricing. Do you recall that?

16 A. I do.

06:21

17 Q. And I believe that you testified that -- and
18 you recall that at your deposition you were unaware of
19 any commodities that had increased at a price at one and
20 a half times greater -- or one and a half percent greater
21 than inflation. Do you recall that?

22 A. I had not looked at any other commodities.

23 Q. And have you done any investigation on that
24 point since?

06:22

25 A. Yes.

1 MR. SHIELDS: Your Honor, pardon me, the
2 late hour. But under the rules of engagement where I
3 don't get to get back up, this is beyond the scope of the
4 cross-examination. I asked him only about his
06:22 5 deposition. And the proffer that they filed on April 4,
6 they touch on the topic of other commodities, it's
7 paragraph 23 page 10. If he wanted to bring this up, he
8 could have brought it up in the direct today and then I
9 could have cross-examined him. Under these procedures,
06:22 10 I'll have to sit here and listen to it for the first
11 time. It's blatantly unfair.

12 MR. DOREN: As Mr. Shields says, it is in
13 his proffer. As you will recall, he said when he asked
14 the witness the question that he'll let Mr. Doren get
06:22 15 into it. And now -- it's just a couple of questions.
16 They're only facts in the proffer before the Court.

17 THE COURT: I'm not sure where we're going
18 here. He asked him a question about something that he
19 said in his deposition and he answered, correct? That is
06:23 20 correct?

21 MR. SHIELDS: And that was it.

22 MR. DOREN: And then the witness told him
23 that he was now aware of commodities that had increased
24 in price. And Mr. Shields said he would --

06:23 25 THE COURT: You opened the door by asking

1 him?

2 MR. SHIELDS: Actually, he didn't say
3 that. He implied that he may have done some late work.

4 THE COURT: You didn't want him to answer
06:23 5 that, you just wanted the answer.

6 MR. SHIELDS: But that doesn't mean I have
7 to sit here and listen to it, Your Honor. It's not in
8 his proffer.

9 THE COURT: You don't have to sit here and
06:23 10 listen to it. I have to sit here and listen to it. Go
11 ahead and ask the question.

12 MR. DOREN: Thank you, Your Honor.

13 Q. (By Mr. Doren) Mr. Yerges, as you sit here
14 today, are you aware of any commodities that have
06:23 15 increased at rates of greater than 1.5 percent over
16 inflation?

17 A. I'm not so sure. Well, yes, I am aware of some
18 commodities that have appreciated more than 1.5.

19 Q. And what examples do you have?

06:23 20 THE COURT: What period of time are we
21 talking about?

22 MR. DOREN: Thank you, Your Honor.

23 Q. (By Mr. Doren) What period of time are you
24 talking about, Mr. Yerges?

06:24 25 A. The same period of time that was used --

1 THE COURT: I can pretty much stipulate
2 that copper has increased higher than 1.5 percent.

3 Q. (By Mr. Doren) And, in fact, Mr. Yerges, is
4 copper one of your examples?

06:24 5 A. It is.

6 MR. SHIELDS: It's in the proffer. It
7 says, "I compared to test the premise that commodity
8 prices rise faster than inflation over a long-term, I
9 compared the prices of moderately scarce resources like
06:24 10 metals, oils, gasoline, copper, gold plating, platinum,
11 zinc. Each of these commodities out-paced the rate of
12 inflation over a 30-year period."

13 THE COURT: Let's not go over the
14 testimony if it's in his proffer.

06:24 15 MR. DOREN: I'm fine with Mr. Shields
16 reading it for you, Your Honor.

17 THE COURT: Anything else?

18 MR. DOREN: Just a couple more points,
19 Your Honor.

06:24 20 Q. (By Mr. Doren) Mr. Yerges, you received some
21 questions about products that are competitors of redwood?

22 A. I did.

23 Q. And specifically you got questions about, for
24 example, pressure treated timber. Do you recall that?

06:24 25 A. I do.

1 Q. Or pressure treated lumber rather?

2 A. Yes.

3 Q. And you said that there was controversy around
4 pressure treated lumber. What did you mean by that?

06:25 5 A. Well, pressure treated lumber is treated with a
6 toxic material. And as a result, I find it difficult to
7 compare with redwood.

8 Q. And is it suitable for decking?

9 A. Not really.

06:25 10 Q. And you also got some questions about plastic
11 and composite decking. And let's talk specifically about
12 Trex because I believe --

13 MR. NEIER: Your Honor, the witness
14 admitted that he was not an expert on this subject, so
06:25 15 I'm not real sure why he's talking about it.

16 MR. DOREN: Your Honor, he was asked about
17 competing products.

18 THE COURT: I don't know what he's going
19 to ask the question, but he was asked about these issues
06:25 20 on cross, so I think he can redirect him. But I don't
21 think you can ask him expert opinions about decking. And
22 I don't know that he's a carpenter or a home builder. I
23 mean, but go ahead and ask your question. Stay away from
24 expert opinions.

06:25 25 Q. (By Mr. Doren) My question is simply this: Do

1 you know how the pricing on Trex relates to the pricing
2 on redwood?

3 A. I do.

4 Q. And how does it relate?

06:26 5 A. It's basically twice as expensive as redwood on
6 a per cubic inch basis.

7 Q. So in formulating your valuation analysis, do
8 you consider this product that is at a price twice of
9 redwood to be asserting a downward pressure on redwood
06:26 10 pricing?

11 A. No.

12 MR. DOREN: Just one last area, Your
13 Honor.

14 Q. (By Mr. Doren) If we can please look at the
06:26 15 investor survey. Mr. Yerges, you recall Mr. Fiero
16 showing you one of the tables from your report. And then
17 you directed him to Figure 20 on page 45, correct?

18 A. Yes.

19 Q. And then we moved on quickly to page 49. But
06:27 20 is this your timber investor survey results?

21 A. It is.

22 Q. And it shows an average rate of return sought
23 by those investors of about 5.59 percent?

24 A. That's correct.

06:27 25 Q. And did you consider this highly relevant in

1 reaching your determination on an appropriate discount
2 rate?

3 A. Highly relevant.

4 Q. And then lastly, Mr. Yerges, you mentioned a
06:27 5 recent transaction involving Rayonier. Do you recall
6 that?

7 A. I do.

8 Q. And could you describe that transaction for the
9 Court, please.

06:27 10 A. Yes. It's a relatively recent transaction
11 where Rayonier Timber, which is a REIT, bought the Sierra
12 Pacific Timberlands in western Washington. The
13 timberlands are primarily Douglas Fir and other lesser
14 quality species.

06:28 15 Q. And do they have any redwood on them?

16 A. No.

17 Q. And do you know what the price per acre was on
18 those transactions?

19 A. It was about \$3,800 per acre.

06:28 20 Q. And lastly, there was talk about pricing and
21 current pricing, that is. And first of all, would it
22 surprise you if redwood pricing had dropped during the
23 winter months?

24 A. No, not at all.

06:28 25 Q. Why not?

1 A. It's a seasonal thing. Typically the log decks
2 are filled up during the cutting season. By the time we
3 get to the dead of winter, there's plenty of supply. And
4 so typically at that point of the year timber prices for
5 redwood especially are lower because of lack of demand.

06:28

6 Q. Now, are Doug Fir prices particularly impacted
7 by the current housing market situation?

8 A. Oh, yes, they are.

9 Q. And how have you taken that into account in
10 your discounted cash flow analysis?

06:29

11 A. Well, when you look at what I had done with the
12 price of Doug Fir, you would see that I use the SBE
13 price, which is basically at a 17 year low for Doug Fir.
14 And I think this's probably a pretty severe condition.

06:29

15 And I calculated a slight recovery for the next two years
16 of Douglas Fir and then appreciated it on a real basis
17 after that of zero.

18 Q. And so you incorporated potential impacts on
19 Douglas Fir from the housing market for the next two
20 years?

06:29

21 A. Not so much that it was housing market driven,
22 but that there would be some recovery of the pricing.

23 MR. DOREN: All right. Thank you very
24 much.

06:30

25 THE COURT: I hate to ask you a few

1 questions, but the one area that I didn't hear questions
2 about are the expenses. Was there an attempt to -- I
3 mean, the model that was used to forecast the harvesting
4 and the amount of timber that was harvested, computer
06:30 5 model, did it also spit out the relative costs of doing
6 that, the expenses?

7 THE WITNESS: Yes, sir, it did.

8 THE COURT: So all of the figures in the
9 costs are pulled from the model using some analysis of
06:30 10 how much of it is done by helicopter, how much is done by
11 line or how much is done by dragging or whatever?

12 THE WITNESS: That's correct, Your Honor.
13 If you look at the cash flow analysis, you will see that
14 the costs associated with those types of activities are
06:31 15 identified.

16 THE COURT: And have they increased? Is
17 there some sort of increase in the cost?

18 THE WITNESS: No. That was kept at -- on
19 a real basis of zero percent inflation.

06:31 20 THE COURT: Zero percent inflation. So
21 they increased with inflation?

22 THE WITNESS: Correct, at the same rate.

23 THE COURT: Okay. All right. You can
24 step down. All right. Where are we now? Do we have a
06:31 25 short witness?

1 MR. DOREN: Your Honor, I'm not sure any
2 witness is short.

3 MR. NEIER: He's not short, he's about
4 average height.

06:31 5 MR. DOREN: Your Honor, I think we made
6 fabulous progress today. And we've also --

7 THE COURT: Let's look at the list. Let
8 me go back to my list. All right. How many more
9 witnesses do you intend to call?

06:31 10 MR. DOREN: Your Honor, we will be calling
11 Mr. Lumsden.

12 THE COURT: Thomas Lumsden.

13 MR. DOREN: Yes, sir. Mr. Zelin.

14 THE COURT: Steven Zelin.

06:32 15 MR. DOREN: Mr. Clark.

16 THE COURT: Gary Clark.

17 MR. DOREN: Mr. Barrett.

18 THE COURT: Jeffrey Barrett.

19 MR. DOREN: And we think each of those
06:32 20 will be shorter than any of the witnesses today. And
21 then, Your Honor, we have an additional witness, Dr. Bill
22 Mundy, who will be coming in tomorrow evening to testify
23 Friday morning.

24 THE COURT: Okay.

06:32 25 MR. DOREN: But we should be able to

1 complete the balance of these witnesses.

2 THE COURT: Are those all the witnesses
3 that the timber noteholders were intending also?

06:32

4 MR. KRUMHOLZ: Your Honor, we do have some
5 submissions by deposition. Other than that --

6 THE COURT: But if you've got those, you
7 can hand them in because I could be reading those.

8 MR. KRUMHOLZ: Correct.

06:32

9 THE COURT: I mean, just identify what you
10 want me to read or all of it and just hand them in. Make
11 sure they get copies. And if they want to somehow
12 address other parts --

06:33

13 MR. KRUMHOLZ: We're waiting for
14 objections to designations by the parties. And as soon
15 as that's done, we'll hand them to the Court.

16 THE COURT: Okay. Do you-all have -- are
17 these all the witnesses that you intend to cross-examine
18 also?

19 MR. NEIER: Yes, Your Honor.

06:33

20 MR. KRUMHOLZ: And there may be one other
21 rebuttal witness. I apologize.

06:33

22 MR. SHIELDS: Actually, there are several
23 rebuttal, but we're trying to work something out with
24 Dr. Mundy that would alleviate the need to call several
25 rebuttal witnesses. We are negotiating.

1 MR. BRILLIANT: Can we inquire as to who
2 the rebuttal witnesses are so we can plan?

3 THE COURT: Apparently someone that's
4 going to reply to Dr. Mundy.

06:33 5 MR. SHIELDS: Absolutely. Three persons.
6 I've told Rich it's Jim Fleming, Walter Keizer and Alan
7 Waltner. But hopefully we can work something out and
8 none of them will come on.

9 THE COURT: Okay.

06:33 10 MR. NEIER: David Neier, Your Honor, on
11 behalf of Marathon.

12 MR. KRUMHOLZ: There is one more, Your
13 Honor. Jacob Cherner may be recalled. We don't know
14 that yet.

06:34 15 MR. NEIER: We would like to depose him
16 again. No.

17 MR. KRUMHOLZ: We would love that.

18 MR. NEIER: Your Honor, we have two
19 rebuttal witnesses and then we have depositions which
06:34 20 we're -- we have sent designations over to the parties
21 and we're hoping to get that worked out. The two
22 rebuttal witnesses, in addition to witnesses, that we may
23 do some direct on that Mr. -- that the debtors are
24 calling. The two rebuttal witnesses are Dr. Tedder who
06:34 25 submitted a proffer and an expert report rebutting

1 Mr. Yerges from the get-go. And Mr. Johnston who has
2 already testified once and he will now testify again on
3 rebuttal.

4 THE COURT: Okay. So --

06:34

5 MR. NEIER: I'm sorry. We may also need
6 to call Mr. Dean back again, especially if they're going
7 to call Mr. Cherner.

8 THE COURT: So it now sounds as though we
9 have to get four or five of those done tomorrow.

06:35

10 MR. NEIER: Your Honor, I don't know about
11 other parties, but our cross-examination of Mr. Lumsden
12 will take about ten minutes.

13 MR. KRUMHOLZ: I think we should go ahead
14 with Mr. Lumsden and then break and start again tomorrow
06:35 15 morning.

16 THE COURT: Can we do that? What about
17 your cross-examination of Mr. Lumsden?

18 MR. SHIELDS: I was going to let him do
19 it.

06:35

20 THE COURT: You were going to let him do
21 it?

22 MR. KRUMHOLZ: I've been sitting on my
23 hands. I don't like doing nothing.

06:35

24 THE COURT: All right. Any problem with
25 that? Let's call that witness, if you don't mind. I

1 don't know whether this is out of order or whether --

2 MR. DOREN: It's in order, Your Honor.

3 THE COURT: Good. Then no harm.

4 MR. NEIER: I should say, Your Honor, the

06:35 5 debtors advised us of Dr. Mundy's schedule, so we may

6 call Dr. Tedder out of turn just to fill the void.

7 THE COURT: That's fine. Right. I

8 understand.

9 MR. DOREN: Your Honor, I call Mr. Tom

06:36 10 Lumsden.

11 THE COURT: All right. Mr. Lumsden, if

12 you'll raise your right hand to be sworn.

13 (The witness is sworn in.)

14 THE COURT: All right. He's being called

06:36 15 as to valuing the lawsuit?

16 MR. DOREN: That's correct, Your Honor, as

17 to the damages suffered as a result of the claims

18 asserted in the lawsuit. That's right.

19 THOMAS LUMSDEN,

06:36 20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DOREN:

23 Q. Can you please state your name, please.

24 A. My name is Thomas Lumsden.

06:36 25 Q. And where are you currently employed?

1 A. FTI Consulting.

2 Q. And what is your position there?

3 A. I'm a senior management director.

4 Q. And what is your area of emphasis?

06:37 5 A. I work in the corporate finance division with a
6 focus on troubled companies in bankruptcy and valuation.

7 Q. And when did you join FTI?

8 A. I joined FTI in August of 2002.

9 Q. And prior to joining FTI, where did you work?

06:37 10 A. I was a partner with PricewaterhouseCoopers for
11 about 17 years; and prior to that with Coopers and
12 Lybrand.

13 Q. And, sir, do you have any certifications?

14 A. Yes, I do.

06:37 15 Q. And what are they?

16 A. I'm a certified public accountant licensed to
17 practice in California. I'm also a certified solvency
18 and restructuring advisor and have a certification in
19 distress business valuation from the AIRA.

06:37 20 Q. And have you been recognized in any way for
21 your body of work in bankruptcy?

22 A. Yes, I have.

23 Q. And how so?

06:37 24 A. I was admitted as a fellow in the American
25 college of Bankruptcy in 2000.

1 Q. And have you been engaged as an expert witness
2 by Scopac and Palco in relation to the Headwaters
3 litigation?

4 A. Yes, I have.

06:38 5 Q. First, could you describe generally what the
6 Headwaters litigation is.

7 A. Headwaters litigation is a lawsuit filed by
8 both Scopac and Palco that alleges breaches of contract
9 and various other claims with respect to violations by
06:38 10 the State of California and its agencies in complying --
11 or not compliance with the Headwaters agreement.

12 Q. And what were you asked to do?

13 A. I was asked to review the complaint and
14 essentially make my own independent assessment and
06:38 15 determination of the damages incurred by both Palco and
16 Scopac associated with that complaint.

17 Q. And have you performed damages valuations in
18 the past?

19 A. Yes, I have.

06:38 20 Q. And have you ever been asked to evaluate the
21 impact of regulatory frameworks on businesses?

22 A. Yes, I have.

23 Q. And have you completed those analyses in the
24 past?

06:38 25 A. Yes, I have.

1 Q. And have any of those matters involved the
2 impact of governmental breaches or changes in
3 regulations?

4 A. Yes, they have.

06:39 5 Q. And how many times have you been designated as
6 an expert witness in bankruptcy matters?

7 A. Perhaps 50 times or so.

8 Q. And how many of those have involved valuation
9 issues?

06:39 10 A. I would say most of them involved valuation
11 issues.

12 Q. Now, have you formed opinions as to the amount
13 of damages incurred by Scopac and Palco due to breaches
14 of the HCP by the State of California as outlined in the
06:39 15 complaint?

16 A. Yes, I have.

17 Q. And if I could direct your attention to the
18 summaries set forth in Section 4.0 of your report. First
19 of all, is this the expert report that you completed in
06:39 20 this matter?

21 A. Yes, it is.

22 Q. And does this report --

23 THE COURT: Do I have a copy of the
24 report? It wasn't attached to his proffer. Some of the
06:39 25 other ones did have them.

1 MR. DOREN: Your Honor, it's Exhibit 7, DX

2 7.

3 THE COURT: Okay. Thank you.

4 Q. (By Mr. Doren) And Mr. Lumsden, what

06:40

5 conclusions have you reached as to the present value of
6 economic damages suffered by Scopac?

7 A. I've concluded that the damages range from 388
8 to 399 million dollars for Scopac.

9 Q. And what conclusions have you reached about the
10 present value of economic damages suffered by Palco?

06:40

11 A. I concluded that the damages suffered by Palco
12 range from 227 to \$251 million.

13 Q. And is Exhibit DX 7 your expert report in this
14 matter?

06:40

15 A. Yes, it is.

16 Q. And is Exhibit 42 the proffer you prepared in
17 this matter?

18 A. Yes, it is.

19 MR. DOREN: Your Honor, I'd move for
20 admission of both those exhibits.

06:40

21 THE COURT: They are already admitted.
22 Isn't that true? Haven't we already admitted everybody's
23 exhibits?

24 MR. KRUMHOLZ: Your Honor, we're real
25 close.

06:41

1 THE COURT: Okay. Any objection then to
2 those exhibits?

3 MR. SCHWARTZ: No objection, Your Honor.

4 THE COURT: All right. They're admitted.

06:41 5 MR. DOREN: Thank you, Your Honor.

6 Q. (By Mr. Doren) Now let's turn to the basis of
7 your opinion. When was FTI retained on this matter?

8 A. We were retained in June of 2007.

9 Q. And did you undertake a factual investigation?

06:41 10 A. Yes, we did.

11 Q. And what did you do to familiarize yourself
12 with the matter when you first became involved?

13 A. First obtained a copy of the complaint and
14 reviewed the complaint as well as copies of the
06:41 15 Headwaters agreement, the HCP, the SYP, and various
16 background and financial information for both Palco and
17 Scopac and reviewed that information and had discussions
18 with plaintiff's counsel with respect to the issues
19 underlying the complaint and the associated regulations.

06:41 20 Q. And did you do any field work in Scotia?

21 A. Yes, we did.

22 Q. And could you describe that, please.

23 A. Both myself and staff team from FTI conducted
24 on-site field review both interviewing various levels of
06:42 25 management and various classifications of management

1 ranging from forestry types to financial types to
2 operating types, sales production, etcetera, to
3 understand their businesses and understand the impact of
4 the regulation and the breaches by the state on the
5 business of both Scopac and Palco.

06:42

6 Q. And have you also consulted with other experts
7 retained by the debtors?

8 A. Yes, I have.

9 Q. Have you consulted with Dr. Iles?

06:42

10 A. Yes, we have.

11 Q. In what respect?

12 A. We've reviewed both the methodology followed by
13 Dr. Iles, as well as the results of his work in attesting
14 to the validity of the starting inventory for January of
15 2007.

06:42

16 Q. And have you conferred with Dr. Reimer?

17 A. Yes, we did.

18 Q. In what respect?

19 A. We conferred with Dr. Reimer in covering two
20 areas. One, Dr. Reimer produced the going forward
21 harvest plan for Scopac, which served as a foundation
22 piece for determining what was the projected level of
23 harvest and resulting cash flows associated with
24 operating the timber operations for Scopac. And we also
25 engaged with Dr. Reimer to have him run various model

06:43

06:43

1 simulations to determine on a with-and-without basis the
2 impact of various adjustments to the SYP involving both
3 owls, adjacency, and modifications of stream
4 classifications.

06:43 5 Q. And have you also consulted with KPMG?

6 A. Yes, we have.

7 Q. And in what respect?

8 A. We reviewed KPMG's valuation, as well as some
9 of their components involving revenue and costs just to
06:44 10 understand their methodology and support to assist us in
11 developing our own determination of what the type of
12 revenues and costs and cash flows that would be yielded
13 from the Scopac assets.

14 Q. And during the course of your work, did you
06:44 15 develop a damages model?

16 A. Yes, I did.

17 Q. And how did you organize your damages model?

18 A. Well, the damages model was developed
19 separately for both Scopac and for Palco. For Scopac we
06:44 20 developed a model that covered the historical period from
21 the data the Headwaters agreement in March of 1999
22 through 2006 and now 2007. And then for -- and then
23 secondly, a second piece that addresses the what we call
24 the go-forward period, which is the future forecast
06:44 25 covering January 1 of 2008 to the balance of the

1 Headwaters agreement term or about 40 years. And then
2 for Palco, a similar time sequence model covering both
3 historical as well as future periods.

06:45

4 Q. And how did you assess damages for each of
5 these periods? And let's focus initially on Scopac.

06:45

6 A. For Scopac we -- for the historic period we
7 know what the actual cash flows from Scopac have been
8 resulting from the actual harvest and the revenues and
9 costs associated with that harvest. We went back and
10 took a look at what the harvest levels since the bulk of
11 the complaint alleges impacts that were limiting the
12 level of harvest. We went back and looked at what the --
13 what the harvest that was to have been obtained under the
14 SYP. We valued the types of factors that would have
15 impacted the ability of Scopac to achieve that harvest
16 and determined that there were adjustments that needed to
17 be made to the SYP to arrive at what we believed would
18 have been a but for level of harvest. And then went
19 through that process.

06:45

06:46

20 Q. All right. And if we could take a look,
21 please, at Figure 8 from your report. Does this reflect
22 the adjustments that you made regarding the conifer
23 harvest volume?

06:46

24 A. Yes. In the left-hand column, alternative 25
25 lists what the original expected harvest levels would

1 have been in the first decade averaging 178 million board
2 feet per year. And then we made various adjustments, one
3 for inventory adjustments that were determined as a
4 result of the 2001 inventory in which there was a
06:46 5 reduction of the volume as well as classification of
6 inventory. And that, therefore, has an impact in the
7 level of harvest under the adjusted SYP. Then we made
8 various adjustments for land sales, for lands that were
9 not covered under the HCF or SYP, and then as I referred
06:46 10 to various adjustments in determining the adjustments
11 necessary to exclude acreage associated with streams,
12 owls, and adjacency factors.

13 Q. And after making these adjustments, how did you
14 calculate damages for this historic period? In other
06:47 15 words, the period through 2007?

16 A. We compared the average harvest during the
17 first decade and, of course, then carried this out for
18 succeeding decades. But for historic period we compared
19 the average harvest 150 million board feet compared to
06:47 20 the actual harvest and then applied in this case what
21 would have been average trending of redwood and redwood
22 and Doug Fir pricing during that time period average
23 harvest costs to arrive at a but for cash flow. And then
24 compared that cash flow to the actual cash flow from the
06:47 25 harvest.

1 Q. So for the historic period, you looked at
2 actual results; is that right?

3 A. That's correct.

06:47

4 Q. All right. And in terms of future damages, did
5 you make assumptions regarding log pricing?

6 A. Yes, we did.

7 Q. And what assumptions did you make?

06:48

8 A. We assumed log pricing based on long-term price
9 growth for redwood of 4.5 percent nominal. And then for
10 Doug Fir, I believe it's a 3 percent nominal.

11 Q. And what was your basis for those assumptions?

06:48

12 A. That was based on the redwood based on
13 long-term SBE pricing history that's similar to what
14 Mr. Yerges was identifying in his testimony. We looked
15 at the SBE pricing for redwood. And for Doug Fir, once
16 again looked at long-term Doug Fir pricing in the
17 marketplace.

18 Q. And did you select SBE pricing because KPMG had
19 done that?

06:48

20 A. No. We selected SBE pricing because that is
21 the -- that is the transfer price that's utilized for the
22 transfer of logs, intercompany pricing between Scopac and
23 Palco. And it also provides a consistent long-term
24 index.

06:48

25 Q. Now, in addition to looking at a lost revenue,

1 did you also conclude that Scopac had incurred any higher
2 expenses as a result of the breaches just outlined in the
3 complaint?

4 A. Yes, we did.

06:49 5 Q. And what types of expenses did you consider?

6 A. Well, we looked at number of types of expenses,
7 some of which THP costs both in terms of the time and the
8 absolute cost for preparing the THPs in the historic
9 period and going forward. Also we looked at the

06:49 10 watershed analysis cost, compared to what was expected or
11 what would have been the norm versus what was actually
12 incurred. And there was various other one-time costs
13 associated with complying with certain regulations,
14 refinancings, consulting costs, and, of course, some
06:49 15 costs associated with the bankruptcy.

16 Q. And if I could direct you to Exhibit 4 of your
17 report. And is this the damages valuation summary
18 contained in your report?

19 A. Yes, it is.

06:49 20 Q. And what are your conclusions as related to
21 historic damages to Scopac?

22 A. As contained in the left-hand column, we see
23 that the damages associated with for Scopac on a historic
24 period some \$204 million.

06:50 25 Q. And that's reflected right here?

1 A. Correct.

2 Q. And did you accrete any interest to those
3 damages for the passage of time?

4 A. No, we did not.

06:50 5 Q. All right. So this is just a pure damages
6 number, if you will, without any additional interest?

7 A. That's correct.

8 Q. And for future years, what damages did you
9 calculate?

06:50 10 A. For Scopac, similarly methodology for both the
11 differential and cash flows resulting from a harvest as
12 well as various other costs, including THP preparation
13 cost. The damages ranged from 184 to \$194 million.

14 Q. And, by the way, we've heard testimony about a
06:50 15 projected increase by Dr. Reimer in the harvest levels in
16 2046. Have you heard that testimony?

17 A. Yes, I have.

18 Q. How does that impact your damages calculations?

19 A. Well, there are a number of years of that
06:51 20 increased harvest in the -- in 2046 or whatever that fall
21 within the Headwaters agreement term. So, therefore,
22 that was considered in our analysis. And it actually
23 served -- it actually produces as a result of both the
24 volume of redwood as well as the price of redwood at that
06:51 25 point creates additional value for Scopac compared to

1 what it would have been expected to achieve under the
2 SYP. And therefore, has an impact of reducing the amount
3 of damages.

4 Q. So for -- in terms of your damages calculation,
06:51 5 the increase in timber inventory and harvesting in 2046
6 puts a downward pressure on the damages?

7 A. Yes, it does.

8 Q. Can you also describe for the court how you
9 calculated Palco's damages?

06:51 10 A. Similarly we -- Palco acquires the bulk of its
11 logs from Scopac. So, we went back on that score and
12 analyzed Palco's operations from the data of the
13 Headwaters agreement through 2007. We assessed the
14 impact of the shortfall and harvest at Scopac flowing
06:52 15 through the Palco mills and all of the inventory
16 calculations necessary for that. We made some
17 adjustments for third-party log purchases during that
18 time period and essentially came up with a calculation of
19 the net impact on Palco's cash flow as a result of the
06:52 20 shortfall in the harvest attributable to the regulation
21 breaches.

22 Q. And what damages number did you calculate on
23 that basis?

24 A. We calculated a damages -- historic damage
06:52 25 figure for Palco of about \$155 million. And then

1 similarly, we looked at the going forward harvest impact
2 for Palco for -- on Palco from Scopac. And that produced
3 a discounted -- a present value of damages for the future
4 period of 71 to \$95 million for Palco.

06:53 5 Q. And, again, as to the historic damages, did you
6 accrete any interest to them?

7 A. No, we did not.

8 Q. And as to the future damages, those are
9 discounted back to present value?

06:53 10 A. Yes, they are.

11 Q. And what is the total damages that you
12 calculate incurred by Scopac and Palco?

13 A. The total damages range from 625 million to
14 \$639 million.

06:53 15 Q. And in terms of the historic damages, what
16 element of that sum is historic damages?

17 A. Historic damages are more than half comprising
18 \$359 million.

06:53 19 Q. And, finally, I just want to talk to you for a
20 moment about the status of the lawsuit. Have you become
21 familiar with that in the course of your work?

22 A. Yes, I have.

23 Q. And if I could show you, please, Exhibit DX 95.
24 And are you aware that the state had filed a motion for
06:54 25 judgment on the pleadings as to the complaint in this

1 matter?

2 A. Yes, I have.

3 Q. And do you know that the trial court has issued
4 a tentative ruling in response to that motion?

06:54 5 A. Yes, I am.

6 Q. And specifically do you recognize DX 95 as the
7 tentative ruling related to that motion?

8 A. Yes, it is.

9 Q. And in this ruling the Court states that it is
06:54 10 inclined to deny the motion for judgment on the pleadings
11 as to the first, second, and third causes of action, but
12 to grant the motion with leave to amend as to the fourth
13 and fifth causes of action, but with leave to amend; is
14 that correct?

06:54 15 A. Yes, that's my understanding.

16 Q. And when was the hearing on this motion?

17 A. I think it was listed as March of 2008, March
18 13th.

19 Q. And let me also direct your attention, please,
06:54 20 to Exhibit DX 96. And if we can pull that out, please.
21 And are you familiar that the trial date in this matter
22 has been set for January 26, 2009?

23 A. Yes, that is my understanding.

24 MR. DOREN: Thank you. No further
06:55 25 questions.

1 CROSS-EXAMINATION

2 BY MR. KRUMHOLZ:

3 Q. Mr. Lumsden, I'll be brief. I'm Richard
4 Krumholz on behalf of the Indenture Trustee, Bank of New
06:55 5 York. Now, this is not the first time that you have
6 analyzed damages in connection with the lawsuit; is that
7 right?

8 A. That's correct.

9 Q. In fact, you've done it many times in complex
06:55 10 litigation; is that right?

11 A. Yes, I have.

12 Q. Approximately how many times given your
13 position at FTI?

14 A. Of this size, magnitude, three or four times.

06:56 15 Q. Okay. So you have some experience in this
16 regard?

17 A. Yes, I have.

18 MR. KRUMHOLZ: And, Jamie, if you could
19 pull up page 6 of the report. And call out that 4.0.

06:56 20 Q. (By Mr. Krumholz) Can you see that,
21 Mr. Lumsden?

22 A. Yes.

23 Q. I think his counsel had this same section on
24 the board. According to your analysis, the damages that
06:56 25 Scopac has incurred as a result of these breaches is

1 somewhere between \$388 million and \$399 million; is that
2 right?

3 A. That's correct.

06:56

4 Q. And obviously you've interviewed anyone you
5 wanted to interview at the companies as the basis for
6 your analysis; is that right?

7 A. Yes, I had access.

06:56

8 Q. If you owned a substantial interest in this
9 litigation and for some reason it was taken away from you
10 for nothing, it would not be fair value in your mind,
11 true?

12 A. I'm not sure if I'm in a position to respond to
13 that.

06:57

14 Q. In other words, while -- and I understand that
15 you haven't assessed liability in connection with this
16 litigation, is that right?

17 A. That's correct.

06:57

18 Q. All right. But the bottom line is if you owned
19 an interest in this litigation, for whatever reason, a
20 substantial interest, and a court or whatever reason that
21 interest was taken away from you and you were given no
22 value for it, you would not believe that that would be
23 reasonable consideration?

06:57

24 THE COURT: You mean like the state court
25 granted judgment on the pleadings?

1 MR. KRUMHOLZ: No, Your Honor. For
2 example, if it was collateral.

3 THE COURT: That was a rhetorical
4 question.

06:57 5 MR. KRUMHOLZ: I'm sorry. Sorry about
6 that.

7 A. Well, as I say, the -- I have not -- I'm not in
8 a position to render an opinion on the merits of -- the
9 legal merits of the claim. But based on the damage
06:58 10 calculations I have done and the work I have done, I
11 would expect that there is certainly some considerable
12 value associated with this claim.

13 Q. Some substantial value, according to your own
14 summary, correct?

06:58 15 A. Yeah, I would call it substantial value.

16 MR. KRUMHOLZ: Pass the witness. I have
17 one more question.

18 Q. (By Mr. Krumholz) Do you know whether the
19 first, second, and third causes of action are for breach
06:58 20 of contract?

21 A. The first cause is for breach of contract. The
22 other two -- second and third causes -- second is
23 derivative of that. The third cause -- the third cause,
24 I can't recall.

06:58 25 MR. SHIELDS: It's on the page of the

1 complaint that Richard put up.

2 MR. KRUMHOLZ: It's in the record.

3 Thanks.

4 THE COURT: Has the fourth been amended?

06:59 5 They were granted a chance to amend. Did they amend?

6 THE WITNESS: I'm not sure that it's been
7 amended.

8 THE COURT: Go ahead. Your questions.

9 CROSS-EXAMINATION

06:59 10 BY MR. SCHWARTZ:

11 Q. Good afternoon. Steve Schwartz for Marathon.
12 We met at your deposition. I also will try to be as
13 brief as I can. You testified just now that you have
14 done no assessment on the merits of the litigation,
06:59 15 correct?

16 A. That's correct.

17 Q. So you don't offer an opinion on the likelihood
18 that any party will succeed on -- in this litigation,
19 right?

06:59 20 A. I'm not in a position to do that.

21 Q. You're not qualified to do that, are you?

22 A. No, I'm not.

23 Q. And you made no assessment on the damages for
24 the various potential outcomes in the litigation? For
06:59 25 example, should one count survive and another count be

1 dismissed, you have made no analysis of that either,
2 correct?

06:59 3 A. Well, I've gone back and looked. I'm not sure
4 if it was you or someone else at my deposition asked that
5 question. I've gone back and re-reviewed the complaint,
6 and I believe that there certainly -- there is some
7 counts -- some elements of the claim could be dropped.
8 And something such as the first cause of action such as
9 breach of contract would support the damage calculations
07:00 10 I've completed.

11 Q. And none of that analysis is contained in your
12 report, correct?

13 A. No.

07:00 14 Q. And none of that analysis is contained in the
15 proffer that was submitted to this Court, correct?

16 A. No, I don't believe it was.

17 Q. And you've never in your career have given any
18 opinion on the likelihood of success of any litigation,
19 correct?

07:00 20 A. No.

21 Q. Now, you were asked about the status of the
22 litigation, about the complaint. Do you know the status
23 of discovery in the litigation?

07:00 24 A. I believe it's open, but I don't know more
25 details than that.

1 Q. And facts could come out in discovery that
2 could affect your damages assessment, correct?

3 A. Yes, that's correct.

4 Q. In fact, do you have your report in front of
5 you?

6 A. I do have a copy, yes.

7 Q. And it's titled Interim Report, correct?

8 A. That's correct.

9 Q. Why is it called interim?

10 A. Well, the -- both, as you say, the discovery
11 period is still open, and there's additional information
12 could come out that would affect the later conclusions.
13 Also, the report is predicated on damages for future
14 periods; and one benchmark of measuring that damages was
15 predicated on the debtor's plan of reorganization, which
16 is Dr. Reimer's harvest plan.

17 Q. Okay. Let's just focus on the state court
18 litigation for a second. This is not going to be your
19 final report that's going to be used in that litigation,
20 right? It's going to change?

21 A. Well, I don't even know if this report will be
22 used in the litigation. I presume some of the underlying
23 work may be used. The experts have not been selected for
24 that.

25 Q. So you don't know if you're going to be an

1 expert in the litigation?

2 A. No, I do not.

3 Q. Okay. But you prepared an interim report under
4 the assumption you probably will be, correct?

07:01 5 A. No. I've prepared the interim report at the
6 request of counsel for the presentation in the bankruptcy
7 proceeding.

8 Q. Well, maybe I misunderstood your answer, but
9 you said it was interim because things may change in the
07:02 10 litigation. If the report was only for this bankruptcy
11 case, why isn't it a final report?

12 A. Well, it represents my conclusions as of today.
13 But for purposes of going forward, it may well be that
14 either FTI or some other expert completes further work
07:02 15 that would modify some of those conclusions, such as the
16 outcome of the bankruptcy or further discovery or further
17 analysis of some of the complaints in the case.

18 Q. Okay. So the facts that come out in discovery,
19 if you were the expert in the state court litigation,
07:02 20 could have an impact on your analysis in your damage
21 conclusion, correct?

22 A. Yes, it could.

23 Q. And perhaps the opinions of the state's experts
24 in that case could have an impact?

07:02 25 A. It could.

1 Q. Now, your damage analysis assumed -- we saw the
2 chart. I think if you could put it up, it was page 25 of
3 your report. It is debtor's Exhibit 7 that Mr. Doren
4 asked you about. Do you recall this chart?

07:03

5 A. Yes.

6 Q. And just if I understand it correctly, your
7 damage analysis assumes that Scopac but for the claims of
8 violation of the Headwaters agreement would have
9 harvested 140 -- 154 million board feet every year going
10 forward -- in the past and going forward; is that
11 correct?

07:03

12 A. This covers just for the first decade of the
13 Headwaters agreement.

14 Q. For the first decade?

07:03

15 A. Correct.

16 Q. 154 million board feet?

17 A. Correct.

18 Q. Do you have any idea whether that number of
19 board feet is economically feasible on the property?

07:03

20 A. Well, yes, I do.

21 Q. Do you have any experience to reach -- any
22 expertise to reach a conclusion on the feasibility of
23 harvesting 154 million board feet on the Scopac
24 timberlands?

07:04

25 A. Well, first of all, we did look at the historic

1 harvest levels on the property. We also looked at the
2 harvest levels that were achieved during this time
3 period. And there were several -- a couple of years in
4 which the company achieved at that level or close to that
5 level. And prior to 1999, the company had been
6 harvesting up in the 250 million board feet per year.

07:04

7 Q. And when you harvest that amount of timber,
8 then you have to wait quite a number of years before you
9 can harvest more timber from that same area, correct?

07:04

10 A. Yes, although the SYP had been prepared
11 contiguous with that and included those timber harvest
12 calculations in a long-term figure.

07:04

13 Q. Excuse me. I thought you were done. I'm
14 sorry. Has any expert in this case testified that this
15 property could economically or practically sustain a
16 harvest level of 154 million board feet in any year?

17 A. You mean today, or are you referring -- under
18 the --

19 Q. Yes.

07:05

20 A. Well, people have testified and presented
21 reports with respect to harvest plans going forward, but
22 those are under a more set of restrictive regimes than
23 was consecrated under the original SYP.

07:05

24 Q. And it's your opinion that the only reason for
25 the difference is the state's alleged violation of the

1 Headwaters agreement?

2 A. Yes, more restrictive restrictions that have
3 been applied since the Headwaters.

4 Q. And it's nothing to do with the age

07:05

5 classification of the timberlands; it has nothing to do
6 with amount that can be harvested under the regulations
7 that haven't been breached? None of those other factors?
8 It's all because of the state's violations?

9 A. Those are already contemplated in the

07:05

10 adjustments that we've made.

11 Q. Now, you testified that you're a CPA and a
12 certified restructuring advisor, right?

13 A. Yes.

14 Q. And you have expressed opinions on business

07:06

15 valuation and financial restructure before, correct?

16 A. Yes, I have.

17 Q. Are you familiar generally with the generally
18 accepted accounting principles under which a party can
19 place a litigation on their balance sheet?

07:06

20 A. Yes, generally.

21 Q. And have you considered or reached any opinion
22 as to whether this litigation is an asset that under GAP
23 is allowed to be put under Scopac's balance sheet?

24 A. Well, it certainly is an asset of the estate.

07:06

25 Without having the legal assessment of the merits and

1 conclusion, I wouldn't be in a position to make a comment
2 as to whether it would qualify for recording under GAP
3 purposes or not.

4 Q. So you haven't considered that?

07:06 5 A. No, I have not.

6 Q. Okay. And do you know that, in fact, in the
7 disclosure statement filed with this Court, that the
8 litigation was not listed as an asset on the debtor's
9 balance sheet?

07:06 10 A. I believe that's correct.

11 MR. SCHWARTZ: I have no further
12 questions, Your Honor.

13 THE COURT: All right. Anyone else?

14 MR. HAIL: Your Honor, I have a few
07:07 15 questions.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. HAIL:

19 Q. Mr. Lumsden, I'm Brian Hail representing
07:07 20 Mendocino Redwood Company. You've studied the complaint
21 in the Headwaters case, correct?

22 A. Yes, I have.

23 Q. Okay. And it's attached actually to your
24 report as Exhibit 3, correct?

07:07 25 A. That's correct.

1 MR. HAIL: And would you mind pulling it
2 up, Exhibit 3 to his report.

3 Q. (By Mr. Hail) There are two plaintiffs in the
4 Headwaters case, correct?

07:07 5 A. At least.

6 Q. There's Pacific Lumber and Scotia Pacific.
7 Page 1. I can put it up on the Elmo real quick if that's
8 easier. There it is. So there's two plaintiffs, right?

9 A. Yes, that's correct.

07:08 10 Q. And then actually if you go down a little bit,
11 the complaint then defines Pacific Lumber and Scotia
12 Pacific together as one entity, Pacific Lumber, isn't
13 that right? If you come down, I think it's actually in
14 the first paragraph. It's right there.

07:08 15 A. Yes, that's the term they use.

16 Q. Okay. And then throughout the complaint, the
17 parties are referred to together as Pacific Lumber,
18 correct?

19 A. Yes.

07:08 20 Q. And, in fact, if you turn over to the causes of
21 action, the first cause of action, which is page 12 of
22 the complaint, they're asserted jointly on behalf of the
23 Pacific Lumber; isn't that right?

24 A. That's my reading of it.

07:08 25 Q. Okay. And that's true for the second cause of

1 action and the third cause of action, right?

2 A. That's my reading of it.

3 Q. Okay. If you turn over to the prayer for
4 relief which is on page 21 of the document, the prayer

07:09 5 for relief is framed in terms of Pacific Lumber, which is
6 both Palco and Scopac, right?

7 A. That's my understanding.

8 Q. And you have calculated damages, though, to
9 each entity, Palco and Scopac separately, right?

07:09 10 A. Yes, we calculated the impact of damages on
11 their individual operations.

12 Q. Okay. And if you take a look back at your
13 summary, which I think your counsel has on page 6 of your

07:09 14 report you calculated that for Palco at least, your
15 estimate of present value of the damages was a range

16 between 227 million and 251 million, correct?

17 A. That's correct.

18 Q. And those are damages just for the Palco
19 entity, right?

07:09 20 A. Yes.

21 MR. HAIL: I have no more questions, Your
22 Honor.

23 THE COURT: Okay. California wants to
24 weigh in?

07:09 25 MR. NEVILLE: I have a few questions, Your

1 Honor.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. NEVILLE:

07:10 5 Q. Good afternoon, Mr. Lumsden. I'm Michael
6 Neville. We met a few weeks ago at the deposition in San
7 Francisco.

8 A. Yes, we have.

9 Q. Mr. Lumsden, I will -- well, just for
07:10 10 clarification, I will call this litigation the Fresno
11 litigation. It is sometimes referred to as the
12 Headwaters litigation, but as there is another piece of
13 litigation that's pending now before the California
14 Supreme Court that is informally known by that same name,
07:10 15 and it's quite different from this one. This
16 is -- just for the record, to make it clear, this is the
17 damages action that was filed about Christmastime in
18 December 2006, less than a month before the filing of
19 bankruptcy. Some call it the Christmas lawsuit. I guess
07:11 20 we could call it the Fresno litigation. It was filed in
21 Superior Court in Fresno.

22 So you understand that when I speak of the
23 Fresno litigation, I'm speaking of the litigation which
24 was the -- which you assumed, I guess, would be -- would
07:11 25 be won by plaintiffs, and that was the basis for your

1 damages calculation.

2 A. Yes.

3 Q. Do you understand your counsel put on a motion

4 for judgment on the pleadings and a tentative opinion

07:11 5 with respect to that motion. Do you understand the

6 meaning of tentative?

7 A. The tentative ruling?

8 Q. Yes.

9 A. Yes, I do.

07:11 10 Q. You understand that that was an indication of

11 what the Court thought it might rule, but it has not made

12 a final ruling?

13 A. I have not seen his final ruling at this time,

14 so I'm not sure whether they have or have not.

07:12 15 Q. And you also understand that -- I know you're

16 not an attorney, but under California state procedure,

17 that a motion for judgment on the pleadings is a

18 preliminary vehicle that simply says that even if all of

19 the facts were true in this -- in this complaint, it

07:12 20 cannot -- it cannot state a cause of action. Do you

21 understand that?

22 A. Yes, I understand what you're saying.

23 Q. Do you understand that there more substantial

24 motions and vehicles that could follow a judgment on the

07:12 25 pleadings, including summary judgment and all the way up

1 to trial?

2 A. As I say, I'm not an attorney, so I don't have
3 a view on that.

4 Q. And did you ever -- well, strike that. You

07:12

5 have stated that -- well, let me go back. You
6 understand, and it wouldn't surprise you to know that the
7 state agencies that were sued in this lawsuit vigorously
8 dispute all of the allegations in the complaint?

9 A. That does not surprise me.

07:13

10 Q. Your damages analysis assumes that the state
11 breached the Headwaters agreement, correct?

12 A. It -- yes, it calculates that the damages
13 resulted from a breach.

14 Q. And you don't have any expert opinion as you
07:13 15 sit here today or in your report or in your proffer as to
16 whether or not there were any breaches of the Headwaters
17 agreement, do you?

18 A. I don't have the legal expertise to make that
19 assessment.

07:13

20 Q. And in thinking about the plaintiffs'
21 likelihood of success in the Fresno litigation or lack of
22 success, you don't have an opinion as to the likelihood
23 of success, do you?

24 A. No, I do not.

07:14

25 MR. NEVILLE: Thank you, Your Honor.

1 THE COURT: Okay. Any other questions?

2 MR. DOREN: No, Your Honor.

3 THE COURT: Okay. Again, let me just ask
4 you a couple of questions. This -- the Headwaters
07:14 5 agreement of '99?

6 THE WITNESS: Yes, March of '99.

7 THE COURT: When did Maxxam buy Palco?

8 THE WITNESS: I think it was back in the
9 early '80s.

07:14 10 THE COURT: And you seem to suggest that
11 they cut as much as 250 million -- how many board feet
12 prior to '99 on an annual basis?

13 THE WITNESS: There's a chart in my report
14 that reflects the historical cut levels, if you look at
07:14 15 Figure 1. And for 1994 through 1997 they were cutting
16 around 250 million board feet per year.

17 THE COURT: And is there anything before
18 '94, from '80 to '94, for instance?

19 THE WITNESS: Before '94 they were still
07:14 20 at very high levels. I don't have the figures in front
21 of me.

22 THE COURT: When was Scopac formed?

23 THE WITNESS: Scopac goes back 100 years.

24 THE COURT: No. Palco goes back 100
07:15 25 years. When was Scopac formed?

1 THE WITNESS: I think somewhere -- I'm
2 trying to think if it was -- the time of the acquisition,
3 which would put it around '86. It was either '86 or at
4 the time the timber notes were put in place, redone,
07:15 5 which would be around 1998.

6 THE COURT: So the timber notes were
7 redone in '98?

8 THE WITNESS: Yes, that's correct.

9 THE COURT: But there was some financing
07:15 10 that was done in the '80s when Maxxam purchased --

11 THE WITNESS: Yes.

12 THE COURT: And the timber notes were
13 redone in '98 to pay off the original financing and do
14 new financing?

07:15 15 THE WITNESS: Yes. And at that time there
16 was -- it was done --

17 THE COURT: Did you look at that
18 transaction?

19 THE WITNESS: Yes, I did.

07:15 20 THE COURT: And so what was the -- what
21 was the original amount of the timber notes in '98?

22 THE WITNESS: Off the top of my head, it's
23 up in the 800 or \$900 million range.

24 THE COURT: 8 to 900 million. Do you know
07:16 25 what the original purchase price was in the '80s?

1 THE WITNESS: Not off the top of my head.

2 THE COURT: Do you know what the original
3 financing was in '80?

4 THE WITNESS: No, I can't recall.

07:16 5 THE COURT: Do you know how much was paid
6 off in '98 when they refinanced?

7 THE WITNESS: Well, the refinance was done
8 whereby there was -- I think there was additional cash
9 yielded.

07:16 10 THE COURT: Right. So there was -- I
11 mean, the 8 or 900 million didn't pay off 8 or 900
12 million in bonds or whatever they were that financed it.
13 That was cash taken out of the deal at some point either
14 for capital or for -- or to spend?

07:16 15 THE WITNESS: Yes.

16 THE COURT: Whatever.

17 THE WITNESS: Yes.

18 THE COURT: Okay. Thank you. You may
19 step down. All right. So now we're down to -- that was

07:17 20 Mr. Lumsden. It looks as though we've got four more
21 witnesses for the debtor, is that correct, four more
22 witnesses, one of which will not testify until Friday?

23 MR. DOREN: That's right, Your Honor.

07:17 24 THE COURT: So we know we have three that
25 we can put on tomorrow, and we've got three or four more

1 that might be available in the event that -- is that
2 right?

3 MR. DOREN: I believe.

07:17

4 MR. KRUMHOLZ: Your Honor, can we take two
5 minutes because I need to find the exhibits, too, and
6 before we break and before we don't get an opportunity to
7 talk to you again.

07:17

8 THE COURT: Right. I just want to be
9 sure. It looks as though -- that was such a fast
10 witness, I'm just wondering -- usually, you know, my
11 experience is the later you go, the faster the witnesses
12 go. We might be able to take two or three more if we
13 just went ahead and took them now.

07:18

14 MR. KRUMHOLZ: That was always going to be
15 a fast witness.

07:18

16 MR. NEIER: I haven't mentioned this since
17 the beginning of trial. We have a whole bunch of other
18 witnesses that relate just to Palco's side of things, and
19 we're still putting that on hold. And we think it will
20 probably be unnecessary, but still got those waiting in
21 the wings.

22 THE COURT: You want to -- we'll take two
23 minutes or take five minutes. You can talk about
24 exhibits or schedules or whatever.

07:24

25 (A recess was taken.)

1 THE CLERK: All rise.

2 THE COURT: Be seated. What did we
3 decide?

07:24

4 MR. KRUMHOLZ: Your Honor, we have an
5 agreement on exhibits, but we're going to dictate the
6 stipulation into the record tomorrow morning.

7 THE COURT: Excellent.

07:24

8 MR. KRUMHOLZ: Other than that, I don't
9 think we have a witness lined up. We're still talking
10 about it. So I think we can end for the day and resume
11 tomorrow morning.

07:24

12 MR. SCHWARTZ: I have one question, Your
13 Honor, a logistical one in terms of how you want the
14 deposition designations. Do you want copies of the
15 transcript highlighted with page and line or on a disk?
16 Do you care?

07:25

17 THE COURT: The easiest thing is to
18 highlight them, but you don't have to go through -- you
19 can also just provide me with a list of what I'm supposed
20 to read.

21 MR. SCHWARTZ: The page and line number?

07:25

22 THE COURT: Or you can take -- you know,
23 you can just write on the side and bracket them if you
24 wanted to. But just so they know -- so that everybody
25 else gets a chance to designate more if they think it

1 needs to be.

2 MR. SCHWARTZ: We have given them to the
3 other side already, so it's a question of giving them to
4 you.

07:25 5 THE COURT: I would just assume -- you
6 know, I could have read them tonight, for instance, but
7 I'll read them tomorrow night if you'll give them to me
8 tomorrow.

9 MR. KRUMHOLZ: We do have to make sure
07:25 10 that it's part of the trial somehow, either through --

11 THE COURT: Well, they're going to be
12 admitted. I mean, that's going to be just like a
13 proffer. It's going to be admitted, I would assume.

14 MR. KRUMHOLZ: We'll put it in the form of
07:25 15 a proffer.

16 THE COURT: It needs to be a part of the
17 trial record. So the easiest thing to do as far as that
18 is concerned is to make it an exhibit and put it on a
19 disk. But I would prefer to just be able to read them.
07:25 20 I don't mind reading from the disk, but if I'm going to
21 probably do this tomorrow night at home, I hate using my
22 little laptop to read, so it would be easier for me to
23 just go through the deposition.

24 MR. SCHWARTZ: We'll give you a hard copy
07:26 25 and a disk.

1 THE COURT: If that's not a problem.

2 MR. KRUMHOLZ: Of course not.

3 MR. PENN: Does the Court have a
4 preference between full size or mini, condensed?

07:26 5 THE COURT: It doesn't matter. Either way
6 you got it is fine. I can read it. With the appropriate
7 glasses, I can read either one. Anything else? Yes,
8 sir? You look like you want to say something.

9 MR. KRUMHOLZ: I think somebody else had
07:26 10 something. I'm not sure.

11 THE COURT: Anybody else have anything
12 else?

13 MR. FIERO: Your Honor, if we can just
14 make sure we understand what the order is going to be
07:26 15 tomorrow.

16 THE COURT: Tomorrow there's going to be a
17 stipulation on the record; is that correct?

18 MR. KRUMHOLZ: Yes.

19 THE COURT: On the exhibits. And then all
07:26 20 the exhibits will be either admitted or objected to. And
21 then what else have we got? We have Barrett, Clark,
22 Mundy and Zelin, but Zelin is going to be -- who is the
23 one that's going to be Friday?

24 MR. DOREN: Mundy, Your Honor. And we're
07:26 25 talking about whether we can work an agreement with the

1 Court, maybe it will consider his testimony on the
2 papers, but we aren't there yet.

3 MR. SHIELDS: Along with the rebuttal
4 witnesses.

07:27 5 MR. DOREN: Along with rebuttal witnesses,
6 yes, Your Honor.

7 MR. NEIER: So the first witness is going
8 to be who tomorrow?

9 MR. DOREN: Clark, Barrett, Zelin.

07:27 10 THE COURT: Clark, Barrett, Zelin. Okay.

11 MR. NEIER: And Your Honor, we will go
12 after that maybe just to fill the void with our --

13 THE COURT: Because remember we've only
14 got until 3 o'clock on Friday. Okay.

07:27 15 MR. NEIER: We thank you for that.

16 THE COURT: Thank Judge Hinojosa for that,
17 25 years of service on the Bench.

18 MR. JONES: Your Honor, if I may. If I
19 may inquire. I'm sorry, Your Honor. It sounds like
07:27 20 we're going to have to come back for at least closing
21 argument. And given reservations, I don't know if the
22 Court can indicate what day that might be. My assumption
23 is we're not going to get all the witnesses done and
24 closing on Friday. Maybe we are.

07:28 25 THE COURT: Okay. I don't know what my

1 schedule is. I know I go to the Fifth Circuit conference
2 in early May, so I have to do that.

3 MR. JONES: Yes, Your Honor.

4 THE COURT: And then I have a few other

07:28

5 cases, but I know that there are three days available in
6 May if this thing had to get continued, but I would
7 prefer to argue soon rather than later. So if we're just
8 arguing, you know, I think we can do that -- we can find
9 a time to do that right away. But I'll get the date for

07:28

10 you tomorrow because Letty is not here tonight.

11 MR. JONES: I understand, Your Honor.

12 Thank you.

13 THE COURT: But that's a good point.

14 MR. JONES: Plane reservations and hotel.

07:28

15 MR. BRILLIANT: Is Monday available?

16 THE COURT: It will be in Point Clear,
17 Alabama, but I'll be at Point Clear, Alabama at a Fifth
18 Circuit conference. I'm sorry. Anything else? Thank
19 you.

20

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