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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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

* * * * *

DAILY COPY
MAY 1, 2008

* * * * *

On the 1st day of May, 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. All right. Send
3 it in. Hello. Let's see. Wendy Laubach.

4 MS. LAUBACH: Present, Your Honor.

09:01 5 THE COURT: Robert Black.

6 MR. BLACK: Present, Your Honor.

7 THE COURT: Christopher Johnson.

8 SPEAKER: He has not joined yet.

9 THE COURT: Alan Gover.

09:01 10 MR. GOVER: Present, Your Honor.

11 THE COURT: Ana Acevedo.

12 MS. ACEVEDO: Present, Your Honor.

13 THE COURT: Allison Byman.

14 MS. BYMAN: Present, Your Honor.

09:01 15 THE COURT: Ira Herman.

16 MR. HERMAN: Present, Your Honor.

17 THE COURT: Francine Brodowicz.

18 SPEAKER: Francine Brodowicz is not on.

19 THE COURT: John Driscoll.

09:02 20 MR. DRISCOLL: Here, Your Honor.

21 THE COURT: Brett Young.

22 MR. YOUNG: Present, Your Honor.

23 THE COURT: Wei Wang.

24 SPEAKER: He has not joined yet.

09:02 25 THE COURT: Heather Muller.

1 MS. MULLER: Present, Your Honor.

2 THE COURT: Heather Zelevinsky.

3 MS. ZELEVINSKY: Present, Your Honor.

4 THE COURT: Ephraim Diamond.

09:02 5 MR. DIAMOND: Good morning, Your Honor.

6 THE COURT: Kim Christensen.

7 SPEAKER: She cancelled her appearance,

8 Your Honor.

9 THE COURT: All right. Dominic Santos.

09:02 10 MR. SANTOS: Present, Your Honor.

11 THE COURT: Jacob Cherner.

12 MR. CHERNER: Present, Your Honor.

13 THE COURT: Joli Pecht.

14 MS. PECHT: Present, Your Honor.

09:02 15 THE COURT: Rocky Ho.

16 SPEAKER: He has not joined.

17 THE COURT: Dan Kamensky.

18 SPEAKER: He has not joined.

19 THE COURT: Eric Waters.

09:02 20 MR. WATERS: Present, Your Honor.

21 THE COURT: Kyung Lee.

22 SPEAKER: He has not joined.

23 THE COURT: David McLaughlin.

24 MR. McLAUGHLIN: Present, Your Honor.

09:02 25 THE COURT: Todd Hanson.

1 MR. HANSON: Present, Your Honor.

2 THE COURT: Steven Church.

3 MR. CHURCH: Present, Your Honor.

4 THE COURT: Steven Crane.

09:03 5 MR. CRANE: Present, Your Honor.

6 THE COURT: James Delaune.

7 MR. DELAUNE: Present, Your Honor.

8 THE COURT: Anyone else on the phone?

9 MR. TENEBBAUM: Alan Tenebaum.

09:03 10 THE COURT: All right. Thank you, sir.

11 In the courtroom.

12 MR. JORDAN: Shelby Jordan, Pete Holzer
13 as co-counsel for the Palco Debtors. Also on behalf
14 of -- as co-counsel for Palco Debtors on behalf of Baker
09:03 15 Botts is George Lamb with Lucky McDowell.

16 THE COURT: All right.

17 MS. COLEMAN: Good morning, Your Honor,
18 Kathryn Coleman, Rich Doren, Eric Fromme of Gibson, Dunn
19 & Crutcher on behalf of Scotia Pacific Company.

09:03 20 MR. JONES: Good morning, Your Honor,
21 Evan Jones of O'Melveny & Myers representing Bank of
22 America.

23 MR. PASCUZZI: Good morning, Your Honor,
24 Paul Pascuzzi for California State Agencies with our
09:03 25 co-counsel Michael Neville from the California Attorney

1 General's office.

2 THE COURT: Thank you.

3 MR. BRILLIANT: Good morning, Your Honor,
4 Allen Brilliant and Brian Hale for Goodwin Proctor on
09:03 5 behalf of Mendocino Redwoods Company.

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

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

09:03 10 THE COURT: Thank you.

11 MR. HOORT: Good morning, Your Honor,
12 Steven Hoort representing interested party Harvard
13 Management Company. We have with us today also our
14 local counsel Susan Brand.

09:04 15 THE COURT: All right. Thank you.

16 MR. FIERO: Good morning, Your Honor,
17 John Fiero for Pachulski Stang along with Max Litvak for
18 the Committee.

19 MR. PENN: Good morning, Your Honor, John
09:04 20 Penn, David Neier, Carey Schreiber, who will be here
21 eventually, and Steve Schwartz on behalf of Marathon.

22 MR. GREENDYKE: Good morning, Judge, Bill
23 Greendyke, Fulbright & Jaworski, for Bank of New York as
24 Indenture Trustee for the timber Noteholders. I am
09:04 25 joined today by my partner Richard Krumholz. He is out

1 of the courtroom and he will return shortly. And I
2 don't know if Mr. Pachulski is making an appearance.

3 MR. PACHULSKI: We have filed a pro hac
4 motion yesterday. I don't know whether the Court had a
09:04 5 chance to look at it.

6 THE COURT: No one is opposed to it, are
7 they? You're in.

8 MR. PACHULSKI: Thank you, Your Honor.

9 MR. GREENDYKE: Thank you, Judge.

09:05 10 THE COURT: Okay. Mr. Jordan.

11 MR. JORDAN: Your Honor, if I can take
12 just a moment to report to the Court what we have been
13 reporting on a 24-hour basis for the last two days. We
14 have -- and let me explain who "we" is. The Mendocino

09:05 15 Redwood Company, Marathon term lender with the approval
16 of the official unsecured creditors committee, although
17 they're not assigned a party, on one part Maxxam as
18 defined as the Maxxam entities, those are certain
19 affiliates, and the Debtors, Palco Debtors as they have

09:05 20 been defined in this case are parties to an agreement
21 that we executed at various times during the evening,
22 actually during early morning up until just recently
23 that concludes our negotiations and allows us to at
24 least announce to the Court and to circulate to the

09:05 25 parties for their review the term sheet that has

1 resulted.

2 I want to just briefly report to the
3 Court where that is. It will have an impact and I don't
4 want the Court to have to wonder what the Palco Debtors
09:05 5 position is with respect to witnesses evidence or
6 matters that are developed for the remainder of this
7 hearing so if I can just briefly report to the Court the
8 following.

9 Palco's position in this entire process
09:06 10 has been motivated by its desire to include a plan that
11 in fact most closely track the MRC and the Marathon
12 joint plan. That is one that preserves our town, our
13 employees, our operations, our mill, and keeps us tied,
14 as we have said, to the hip of the timber that we have
09:06 15 to have to be a profitable operation.

16 However, throughout this process, aside
17 from what has been described as my whining that no one
18 will talk to us, throughout the process has been our
19 firm position that everything that had been offered to
09:06 20 date was insufficient. It simply did not result in the
21 kind of funding that was justified based on the
22 positions of the parties and the desire to accomplish
23 what we believe is an exit that will meet the
24 requirements of the law, the needs of the parties and of
09:06 25 course, public purpose of a plan.

1 We think we have done that. Our fear
2 was, of course, with the Marathon/Mendocino plan was the
3 cash, which was followed by some pick notes. We value
4 those as others had. There was going to be a serious
09:07 5 dispute over that. We knew that. We also knew that
6 that serious dispute were sufficient enough, along with
7 other issues, that could block the confirmation of that
8 plan. That could potentially default to what we believe
9 is the worst of all and that is a conversion such that
09:07 10 the Noteholders are simply put in a position of being
11 able to foreclose on the forest without any tie to an
12 actual operation.

13 We have negotiated, Your Honor, which I
14 think was brought about by your last order of mediation.
09:07 15 Again, we weren't invited to that but we have gotten
16 used to that position, but it did allow the parties to
17 come back and re-evaluate. We started that process
18 early this week and I want to report to the Court that
19 just the dynamics of what has happened. We have agreed,
09:08 20 MRC and Marathon are substantially modifying their plan,
21 the economics of their plan, that is, to improve the
22 exit posture and to improve the consideration, the
23 economics that will result, we believe, in a confirmable
24 plan that we can support and in fact we will support.

09:08 25 We have agreed for some substantial

1 agreements on behalf of Palco and on behalf of Marathon.
2 Excuse me, on behalf of Maxxam. The most important of
3 which was to allow to expire the executed \$150 million
4 exit financing that we had to have and that we got to
09:08 5 continue the fight for our amended or what we call our
6 stand-alone plan. We have agreed that that will expire.
7 And I have not heard the report but I suspect it has. I
8 suspect with this announcement it will certainly have.

9 We have also required that the official
09:08 10 unsecured creditors committee approve all of these terms
11 so that we have the complete consensus of the parties
12 who have to date supported the Mendocino/Marathon plan
13 and as we amended it now our consensus.

14 Our position on value, let me just
09:09 15 address that. We are today going to move to withdraw
16 all of our proffers on value. I don't want to tell the
17 Court that that is to accomplish what we think is
18 important. Aside from the fact that as of yesterday
19 when we listened to proffers placed -- put into evidence
09:09 20 by Scopac, everyone felt necessary to impeach them in
21 any event. Our position on value has always been
22 problematic only from this perspective. We have gotten
23 expert reports that we believe have and deserve due
24 consideration. However, we have always had the Chapter
09:09 25 11 problem of feasibility. We have always known that

1 our values could not cash flow. That is somewhat
2 different, but in a unique asset and in the environment
3 of Chapter 11 without the ability to cash flow the
4 values, we knew that that would -- because this is a
09:10 5 long-term play, this is a 50-year asset. I think the
6 evidence so far has been they're often held 20 years
7 plus. This asset has been held since the mid '80s, that
8 that defect was one of our serious problems about the
9 value information that we -- valuations that we were
09:10 10 putting forward.

11 The second, Your Honor, was the
12 problematic was the fact that though we gained access to
13 the exit financing that we would have to have, it still
14 required a couple of processes that we are not sure we
09:10 15 could ever accomplish. First of all, even though we are
16 now giving up that, our amended plan required that we --
17 that the Scopac alternative plan be confirmed. We
18 know -- we knew that the Noteholders were going to fight
19 that. We know that Marathon would fight that. We
09:10 20 watched yesterday as they -- as Scopac attempted to
21 prove its values, and in fact, both the Noteholders and
22 Marathon/Mendocino opposed that and attempted to impeach
23 those values.

24 So we are -- we were concerned that
09:11 25 notwithstanding the fact that we have our financing and

1 the cost and expense that we would only continue the
2 fight as we would have to do through modification of our
3 plan. We also knew that we had to have a voting class.
4 We expected with the financing that we could either take
5 care of the obligations to Marathon and in such a
6 fashion that they would vote for a plan. We could never
7 reach that conclusion.

8 We also believe that we could do the cash
9 equivalent to the creditors committee so that we had all
10 the cash plus a promise to pay 100 cents on the dollar
11 which we would have had to have done under the active
12 prior rule. And we did not believe that we could get
13 there with the committee. They simply didn't turn down
14 the cash but we didn't negotiate the promise for the
15 balance. The results, Your Honor, the agreements is
16 that, is the following and this is why I want -- this is
17 really the purpose of my report.

18 We will immediately withdraw all our
19 support for our plans, every one that has been filed,
20 along with our co-proponent, Maxxam, and I won't read
21 the document numbers for the various plans. We will
22 immediately withdraw the stand-alone plan that Palco has
23 filed. We will immediately withdraw, Maxxam also will
24 withdraw all objections to file to the MRC/Mendocino
25 plan. We will immediately support -- we withdraw any

1 support for proffers that had any joint impact and we
2 withdraw all proffers that have not yet been admitted
3 into evidence on behalf of the Palco Debtors, and if the
4 Court recalls, I have continued to come to the podium
09:12 5 and announce to the Court that we were in a stand-down
6 position until events occurred, which then changed after
7 the exit financing.

8 We have prepared and circulated with
9 respect to any of the proffers, Your Honor, we don't
09:13 10 believe any Palco proffers have been put into evidence.
11 To that extent we withdraw them. To the extent that any
12 of them are in evidence or to the extent that any of
13 them have any evidentiary impact later on in this -- to
14 conclude this hearing, we no longer will -- they will
09:13 15 not be supported by Palco.

16 Finally, Your Honor, we have agreed to
17 and have withdrawn our \$150 million exit financing such
18 that we have put our entire support behind the Mendocino
19 and MRC plan. Let me also mention, though, that because
09:13 20 this is only a report, there is an element we will be
21 circulating today the terms of this term sheet that we
22 have all executed, missing Exhibit A. And it is missing
23 Exhibit A for the reason that -- and you will see in the
24 terms that Palco and Maxxam have required that the terms
09:13 25 of that plan be -- excuse me. The general terms of that

1 plan be the economics that we have agreed to and we know
2 it will be. In fact, we understand it may have been
3 better than what we have insisted on.

09:14

4 Secondly, we have the right to consent to
5 any modifications that doesn't meet that provision. And
6 the Palco and Maxxam Debtors, although we are obligated
7 to give our consent reasonably, we want to see the
8 actual plan before we circulate to everyone what the
9 terms of that plan will be. I'll defer to Marathon or

09:14

10 Mendocino to let the Court know, but I suspect it will
11 be filed today or within today or tomorrow.

12 The process -- let me address just very
13 briefly the process that we contemplate. The plan will

09:14

14 be amended but it is being amended so as to improve
15 positions. There will be no need, we believe, in fact
16 there will be no term that we believe will be modified
17 that would require any type of renotice. Consistent
18 with or accompanying the amended plan most likely filed

09:15

19 this afternoon or tomorrow will be our motion to
20 compromise under 9019 the various issues of litigation
21 between the parties and to -- in exchange for the
22 consideration that we are putting forward to the terms
23 of this plan.

09:15

24 We intend that the 9019 motion run
25 parallel with any confirmation, and I simply want to

1 announce to the Court because I believe counsel for Bank
2 of America, if I got that one right this time, wanted to
3 know about closing arguments, so also we would like to
4 be certain that our motion to approve the 9019
09:15 5 compromise, that is this compromise and the terms of
6 this compromise simply follow parallel to any
7 consideration of entry for order of confirmation.

8 This is a package deal between the 9019
9 motions that resolve and settle disputes and the
09:15 10 confirmation of the Mendocino Redwood and Marathon plans
11 so that we would end up, whether it's at oral arguments
12 when we set our motion, we would just assume so that
13 there's no criticism of timing that we have due notice
14 of 20 days and we set then at the time the Court
09:16 15 concludes oral arguments, which I suspect will be in the
16 next two weeks, that we have then the hearing on the
17 9019 motion so when you consider what plan you are going
18 to confirm and you consider the terms and various
19 requirements of confirmations that we have before the
09:16 20 Court our 9019 motion at the same time so that it is
21 considered at the same time.

22 Your Honor, I believe that's the extent
23 of my report this morning. And let me -- let me just
24 mention one of the dynamics that I think the Court
09:16 25 probably knows, probably figured out faster than most of

1 us here in the courtroom. Is that when our equity,
2 which is Maxxam, effectively gave us the ability to
3 withdraw representation based on these values of equity,
4 and that is to -- as the Court is aware, our fiduciary
09:16 5 obligation as a debtor in possession flows to every
6 constituency, unlike the rest of the constituencies that
7 simply have their fiduciary obligations to, if they do
8 at all to their members, we owe a fiduciary duty to
9 every creditor and to the extent that there's equity, we
09:17 10 owe a fiduciary duty to our equity.

11 When we received from Maxxam the consent
12 to allow us to pursue our negotiations and their
13 negotiations to conclude this settlement, that freed us
14 up to represent now our fiduciary obligations to simply
09:17 15 the creditors of our estate, which is the Maxxam --
16 excuse me, which is the MRC and Marathon plan. Those
17 are now, we believe, our only constituencies. By that
18 same token, by freeing that up, we pass this equity down
19 to Scopac the obligation as a right to represent only
09:17 20 those interests, notwithstanding the fact that there is
21 clear testimony of some equity that the Court will be
22 considering, that frees up Scopac to represent only
23 their constituencies, which is the reason they're not a
24 member or a part of this settlement agreement. Their
09:17 25 constituencies are the Noteholders and whoever may flow

1 from the Noteholders if there is equity in that estate.
2 It would be whatever that counsel believes their
3 fiduciary obligations are owed to.

4 As a result of that, the Court will
09:18 5 notice that we will not be examining or cross-examining
6 witnesses. We will not be supporting issues that may or
7 may not to this point, notwithstanding Scopac's
8 announcement of its intention to establish values, it's
9 opposed by everybody but assuming that that issue comes
09:18 10 forward to the Court in other capacities, we will not be
11 supporting any of those positions and we will not be
12 taking a position that supports any aspect of this case
13 other than the approval of the new amended modified plan
14 of Mendocino Redwood and Marathon.

09:18 15 THE COURT: All right. Yes, sir.

16 MR. BRILLIANT: Your Honor, Allen
17 Brilliant on behalf of Mendocino Redwood. Your Honor,
18 we agree with the report from Mr. Jordan and would also
19 like to report to Your Honor that we either have filed
09:18 20 or in the process of electronically filing at this time
21 and will circulate as soon as we have copies of a
22 modified plan from Mendocino and Marathon.

23 As Mr. Jordan indicated, we have worked
24 very hard with the parties to try to reach a resolution
09:19 25 of all of the issues with respect to the plan to the

1 extent that we could. With, you know, great effort we
2 have reached an understanding with Maxxam which is
3 subject to the Court's approval pursuant to 9019,
4 pursuant to which Maxxam has agreed for certain
09:19 5 consideration contained in the settlement to provide a
6 tax indemnity to Mendocino and Marathon which will
7 resolve the one main diligence contingency that we were
8 not able to get our arms around in this process.

9 One of the disadvantages of having a
09:19 10 competing plan, basically being a hostile acquirer is
11 sometimes you don't get the cooperation that you need in
12 order to -- not that people didn't give us all the
13 information that we wanted but we didn't get all the
14 information in the way that it was necessarily useful to
09:19 15 us and understandable to us. By their giving us this
16 tax indemnity, we are pleased to report to Your Honor,
17 also having heard Your Honor's comments at the end of
18 the first week of trial that we raised the total
19 consideration that would be going to the Noteholders.

09:20 20 As Your Honor, I'm sure, is aware, the
21 plan that was on file prior to the modification provided
22 for \$175 million in cash and \$325 million of notes and
23 the notes were subject to a purchase price adjustment
24 based upon, among other things, any income tax issues
09:20 25 that might arise.

1 Based on the agreement with Marathon and
2 Marathon's -- I'm sorry, with Maxxam and Maxxam's
3 willingness to provide the tax indemnity, we're pleased
4 to report to Your Honor that we're willing to remove the
09:20 5 \$325 million of notes and replace it with \$355 million
6 of cash for a total of \$530 million of cash. In
7 addition, we are going to be eliminating the purchase
8 price adjustment solely as it relates to taxes which
9 will benefit all the parties. The only changes to the
09:21 10 plan will be these changes.

11 And in addition to that, we are pleased
12 to report that the official creditors committee has
13 agreed to be a co-proponent of our plans not to the
14 extent that we thought that there was any standing
09:21 15 issues but with respect to the plan as it relates to
16 Scopac, but I think it is unquestioned that the official
17 creditors committee is a party of interest in the Scopac
18 case and that will put that case -- that issue to rest.

19 Your Honor, based upon the amendment, you
09:21 20 know, we -- you know, to the plan which will be filed as
21 soon as we can get the electronics worked out, Your
22 Honor, we believe we have enhanced the valuation to the
23 full extent that we possibly can. We believe that given
24 the valuation testimony, that to the extent there was
09:21 25 any question as to whether the plan was confirmable is

1 now confirmable and obviously we would like to proceed
2 to the end of the hearing so Your Honor can rule.

3 MR. NEIER: Good morning, Your Honor,
4 David Neier on behalf of Marathon. We echo everything
09:22 5 that Mr. Brilliant said. To be precise, the total cash
6 consideration being provided -- or the total
7 consideration being provided, I guess is the best way to
8 put it, is \$580 million of which \$530 million would go
9 towards the Noteholders.

09:22 10 THE COURT: All right.

11 MS. COLEMAN: Good morning, Your Honor,
12 Kathryn Coleman for Scopac. Well, Your Honor, I'm not
13 going to echo what anybody else just said, which may or
14 may not come as a relief. Scopac, Your Honor, would
09:22 15 simply like to point out that it has always been about
16 value in this case and Scopac's view of its position
17 since it owns the timberlands, which are the principal
18 driver of the value of its estate and therefore, both of
19 the estates, has always been the issue here.

09:22 20 And Scopac has always been of the view
21 that its obligation is to maximize that value. So I
22 just want to make it very clear that although Palco's
23 withdrawal may change some things, what it does not
24 change is Scopac's valuation in the case. The proffers
09:23 25 that have been put in on value are Scopac proffers, as I

1 think Mr. Jordan acknowledged, for the simple reason
2 that Scopac owns the assets as to which these proffers
3 are being offered. Scopac's view given -- given its
4 being told by its equity that equity is no longer
09:23 5 interested in pursuing any value for itself is that
6 these assets actually should be subject to a full, free
7 and fair auction. And I think what Mr. Brilliant just
8 said actually confirms that because he's kind of
9 conducting an auction here in the courtroom by upping
09:23 10 his bid as it were.

11 To show that that is not a waste of time
12 and we have had discussions the Noteholders have brought
13 in someone who is willing to serve as a stalking horse
14 and there's been a lot of discovery and discussion about
09:23 15 that. But it's not simply a pipe dream. The Beal bid
16 is not the only one. There are other parties who are
17 interested and what Scopac is intending to do is support
18 the concept of a full and fair auction and I think that
19 it would be appropriate now for Harvard Management's
09:24 20 attorney to briefly address the Court to show that this
21 is something that we really ought to pursue in the
22 next -- in the next little time.

23 I also want to say, Judge, that I don't
24 think this changes what we're doing here. We clearly
09:24 25 are here on a valuation hearing that is kind of

1 disguised as a confirmation hearing but I think that we
2 ought to go forward on that and finish the evidence. So
3 I don't mean to say that we ought to interrupt the
4 process for that but I do think that it's important that
09:24 5 an auction is something that can really happen here and
6 that is really going to maximize the value for all the
7 estates.

8 MR. BRILLIANT: Your Honor, Allen
9 Brilliant on behalf of Mendocino Redwoods. With respect
09:24 10 to Harvard, if Scopac wants to amend their witness list
11 and they want to call someone from Harvard as a witness,
12 we believe we should have the right to, you know, take
13 their deposition, you know, prior to their testimony.
14 This is not a situation where parties can just come in
09:25 15 who are not objectors, who are not plan proponents and
16 just, you know, show up and tell the Court what they
17 might be willing to do or what they are willing to do.
18 You know, the only thing that Your Honor should consider
19 other than the argument of counsel which Your Honor
09:25 20 understands is argument, is evidence. And, you know,
21 counsel coming up and making a presentation as to what a
22 potential bidder might be prepared to do is not
23 appropriate. It's not -- it's not argument because it's
24 designed to be evidence. And it's not putting it into a
09:25 25 situation in this context where parties, you know, have

1 the right to cross-examine, you know, the witnesses. So
2 we would object, Your Honor, to --

3 THE COURT: Well, the statements of
4 counsel are not evidence and you are correct about that.

09:25

5 Whether or not we ought to let them say something, I'm
6 not sure what the benefit of it is other than -- I mean,
7 you are correct that if you want me to consider that
8 there are other bids out there and that there are people
9 who, you know, then that should be done in an

09:26

10 evidentiary manner. However, we're sort of here in the
11 middle of a trial where people are making statements
12 about changing plans, and in that context -- I don't
13 really have a problem with Harvard wants to say -- is
14 this the big Harvard or that just happens to be the

09:26

15 name?

16 MR. GREENDYKE: It's the big Harvard.

17 THE COURT: It's the big Harvard. I

18 don't have a problem with them, you know, making a
19 statement. It is of no evidentiary value. You are

09:26

20 correct. And there's really no precedent for somebody
21 who's not a party to a hearing to come in and make
22 statements either. However, this is an unusual hearing
23 and I kind of -- I kind of like to, you know -- I mean,
24 it's not going to hurt. I mean, I'm not going to

09:26

25 consider this evidence but they're here.

1 MR. JORDAN: If I can point out about
2 half the Palco Debtors and I'm sure --

3 THE COURT: Maybe once he speaks I can
4 put in my resume that I'm Harvard trained.

09:27 5 MR. JORDAN: I just echo that you have
6 the issue and the obvious problems with initiating some
7 sort of auction process. This is not an auction for a
8 single asset here or there, this is an auction for the
9 entire company.

09:27 10 THE COURT: I understand. It is true,
11 and I did ask the Noteholders if they'd like to buy the
12 Mendocino/Marathon position in their plan for a higher
13 price. And they didn't want to. That was their
14 official position. So --

09:27 15 MR. JORDAN: I just want to point out for
16 the Court we had an opportunity for the last two days to
17 come in and start promising what we were going to do and
18 we didn't do that because until it was signed off, ready
19 to be filed and being filed, our position is exactly
09:27 20 precise.

21 THE COURT: Mr. Greendyke, what did you
22 want to say?

23 MR. GREENDYKE: I'd like to say I
24 completely agree with Ms. Coleman. We obviously want
09:27 25 the auction process. This is a very --

1 THE COURT: Okay. So we now have -- see,
2 this is the great thing about bankruptcy. People don't
3 understand. Is how -- I mean, this case started off
4 with everybody against the two Debtors, now we've got
09:28 5 half the people over here with one of the Debtors and
6 the other half with the other Debtors so, you know,
7 these things have a way of changing throughout, which is
8 interesting.

9 MR. NEIER: Your Honor, should we
09:28 10 rearrange the tables?

11 MS. COLEMAN: I still like Mr. Jordan.

12 MR. GREENDYKE: I have some comments
13 about what Mr. Brilliant said and what Mr. Jordan said
14 but I would love to hear what the Harvard people have to
09:28 15 say.

16 THE COURT: Okay. And then I'll let you
17 say something.

18 MR. HOORT: Steven Hoort of Ropes & Gray.
19 Harvard came here today prepared to submit an offer that
09:28 20 was higher than the prior MRC/Marathon offer and we came
21 here with a mill partner with a view that we were sort
22 of duplicating the Mendocino Redwood approach but at a
23 higher price. Harvard is a serious institution. It has
24 5 billion in investment in forestry right now. The
09:29 25 managing director of Harvard is with me but I think,

1 though, before we proceed further with this discussion,
2 we really need to see the revised proposal and the
3 economics of it and study it and see if an auction makes
4 sense. Thank you.

09:29

5 THE COURT: So you are potentially a
6 party who might take the Mendocino/Marathon plan under
7 the same terms at a higher price?

09:29

8 MR. HOORT: That's correct, Your Honor.
9 And we have a very, very credible mill partner here with
10 us, Sierra Pacific. Thank you.

11 THE COURT: All right. Thank you. Now
12 Mr. Greendyke.

09:29

13 MR. GREENDYKE: Thank you, Judge, Bill
14 Greendyke for the timber Noteholders. We were probably
15 the last person in the room to hear about the deal or
16 the terms of the deal because we weren't involved in the
17 negotiations, which is not a problem. We're delighted
18 to hear about the deal, but at some level we're going to
19 need a little bit of time to reflect internally upon
20 what we've just heard today and how we should respond to
21 it. I do agree, as I said --

09:29

22 THE COURT: I can pretty much predict
23 that your Noteholders will not take that deal until they
24 have heard from Harvard.

09:30

25 MR. GREENDYKE: Take what deal?

1 THE COURT: That was just announced.

2 MR. GREENDYKE: I don't know what the
3 deal is. The only objection that I have from what I
4 heard this morning is with regard to withdrawal of the
09:30 5 proffers. We would like to think about that. I'm not
6 sure if we agree with that.

7 THE COURT: We have time to deal with all
8 of that.

9 MR. GREENDYKE: And that's the only
09:30 10 exception I want to make. Otherwise, we have got to see
11 everything in writing and understand that. We would
12 like. If the Court pleases, to have a short break to
13 just digest internally what we just heard.

14 THE COURT: Before we go to the first
09:30 15 witness?

16 MR. GREENDYKE: Yes, sir.

17 THE COURT: Who is going to be the first
18 witness?

19 MR. FROMME: Your Honor, Eric Fromme of
09:30 20 Gibson, Dunn & Crutcher on behalf of Scopac. Scopac
21 would like to call Mr. Clark as its first witness.

22 MR. GREENDYKE: We understood that.

23 THE COURT: Okay. So before we question
24 Mr. Clark, you want some time.

09:30 25 MR. GREENDYKE: Can we have about 15

1 minutes, Judge?

2 THE COURT: We can have 15 minutes.

3 MR. GREENDYKE: Thank you.

4 (A recess was taken.)

09:44 5 THE CLERK: All rise.

6 THE COURT: Be seated.

7 MR. JONES: Your Honor, I think someone
8 has gone to get the Noteholders. I don't think they're
9 back yet.

09:44 10 THE COURT: Just for my edification, did
11 Mendocino talk to Harvard during the break? Don't know?
12 Just wondering. Did you need to say anything?

13 MR. GREENDYKE: No, sir.

14 THE COURT: So are we ready to go? All
09:45 15 right. So we're ready to call Mr. Clark?

16 MR. FROMME: Your Honor, Eric Fromme,
17 Gibson, Dunn & Crutcher on behalf of Scotia Pacific
18 Company. We call Gary Clark to the stand.

19 GARY CLARK,
09:45 20 having been first duly sworn, testified as follows:

21 MR. FROMME: Your Honor, Mr. Clark's
22 declaration or proffer is Exhibit No. DX-39 in the
23 Debtor's book.

24 THE COURT: Any objection to its
09:46 25 admission?

1 MR. FROMME: Your Honor, there are
2 changes in Mr. Clark's declaration and I'd like to walk
3 through with him on the stand.

4 THE COURT: Do we have a new one?

09:46 5 MR. FROMME: We do not, Your Honor. He
6 made the changes this morning based on what happened
7 this morning.

8 THE COURT: Okay.

9 MR. FROMME: Is that okay if we walk
09:46 10 through that?

11 THE COURT: Fine with me.

12 DIRECT EXAMINATION

13 BY MR. FROMME:

14 Q. Mr. Clark, did you make changes to your
09:46 15 declaration DX-39 this morning?

16 A. Yes.

17 Q. Okay. Can you walk the Court through -- do
18 you have a copy of your declaration in front of you with
19 those changes?

09:46 20 A. Yes, I do.

21 Q. Can you walk the Court through and everybody
22 here what those changes are?

23 A. Sure. Paragraph 3, I am no longer an officer
24 of Scopac.

09:46 25 Q. So on paragraph 3 where it says "I am a chief

1 financial officer of Scopac," you delete the reference
2 to Scopac?

3 A. Yes.

4 Q. What's your next change?

09:46

5 A. Paragraph 5, I didn't rewrite this, but the
6 Scopac Debtors are current on all administrative
7 expenses, the Palco Debtors are not current on all
8 administrative expenses. And the reason for that is
9 because of the default under the dip, just to explain.

09:47

10 We have -- we did not pay all of the professional fees
11 that were due last week and we haven't paid any yet this
12 week so we're not current.

13 Q. Are there any other changes to paragraph 5?

09:47

14 A. Only in the last sentence, the last two
15 sentences where it says that "the cash balances is" --
16 it should be "was" in both sentences.

17 Q. To reflect the date the declaration was
18 signed?

19 A. Yes.

09:47

20 Q. Do you have any other changes, Mr. Clark?

21 A. I have to delete paragraph 7, paragraph 9 and
22 paragraph 10.

23 Q. With those changes, is this declaration a true
24 and accurate reflection of your testimony?

09:47

25 A. Yes, it is.

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

3 THE COURT: All right.
4 Cross-examination.

5 MR. KRUMHOLZ: This may not be as clean
6 as I wanted it to be because of some changes, but I'll
7 try to get through it as efficiently as I can, Your
8 Honor.

9 THE COURT: All right.

10 CROSS-EXAMINATION

11 BY MR. KRUMHOLZ:

12 Q. Good morning, Mr. Clark.

13 A. Good morning.

09:48

14 Q. So when did you resign as an officer of
15 Scopac?

16 A. This morning.

17 Q. So you were the CFO, Vice President of Finance
18 and Administration for Scopac last night and all the way
19 back to 1998, true?

09:48

20 A. To be precise, I was the Vice President of
21 Finance and Administration of Scopac back to 1993 and I
22 was the CFO from -- I don't know exactly when that took
23 place but that's a different time. It was over the last
24 four or five years.

09:48

25 Q. Okay. Up until, I guess, this morning, all

1 the officers of Scopac, except for Mr. Barrett, served
2 as officers of Palco as well; is that right?

3 A. Yes.

4 Q. And then we talked about this a little bit in
09:49 5 your deposition, but after bankruptcy, you understood
6 you had heightened duties that are fiduciary in nature
7 to the creditors of Scopac?

8 A. Yes.

9 Q. And you understood that each of the officers
09:49 10 of Scopac had those duties?

11 A. Yes.

12 Q. While at the same time having similar duties
13 to Palco, right?

14 A. Yes.

09:49 15 Q. Okay. And so you had those fiduciary duties
16 to Palco's creditors and to Scopac's creditors?

17 A. Among others, yes.

18 Q. Among others. I'm not trying to eliminate
19 anybody or forget anybody. Now, have you reviewed
09:49 20 generally the Marathon/MRC plan?

21 A. Generally, yes.

22 Q. You understand generally what happens in
23 connection with that plan if it were to be confirmed?

24 A. Generally.

09:49 25 Q. You understand that it actually takes the

1 assets of Scopac and the assets of Palco and puts it
2 into a new company called Newco?

3 A. Yes.

4 Q. And do you understand that that would include
09:50 5 the commercial timberlands?

6 A. Yes.

7 Q. And so the owners of Newco would then have
8 ownership over the entity that owned all of Scopac's
9 assets, right, as you understand it?

09:50 10 A. Yes.

11 Q. And, of course, the owners of this Newco are
12 MRC and Marathon, right?

13 A. Yes.

14 Q. And MRC doesn't have any ownership at all in
09:50 15 the Scopac assets right now, true?

16 A. That's correct.

17 Q. And Marathon doesn't have any interest at all
18 in the Scopac assets now, true? Let me rephrase that.
19 They don't own the Scopac assets now?

09:50 20 A. That's true.

21 Q. But after the -- if this plan is confirmed,
22 obviously they would have an ownership interest through
23 this Newco?

24 A. Yes.

09:50 25 Q. Okay. Now, according to Scopac's experts,

1 Scopac's assets are worth \$1.4 billion, true?

2 A. According to the experts, yes.

3 Q. And you have relied up until this morning, I
4 guess, on that asset valuation, true, as an officer of
5 Scopac?

09:51

6 A. As an officer of Scopac I had not previously
7 read the reports, nor did I hear any -- have any
8 conversations with anybody, any of those experts and I
9 heard their testimony yesterday. So --

09:51

10 Q. But you knew about the \$1.4 billion expert
11 evaluation performed by the Scopac experts, right?

12 A. Yes.

13 Q. And you also knew that the commercial
14 timberlands that were part of that valuation were valued
15 at somewhere around \$900 million by the experts for
16 Scopac, right?

09:51

17 A. That's what I had heard, yes.

18 Q. Okay. Now, based upon those experts numbers,
19 if Marathon or MRC, if their plan is confirmed and

09:52

20 assuming those experts' numbers are somehow correct,
21 then who would get the difference in value between the
22 billion dollars or \$900 million that the Scopac experts
23 suggested as the value for those timberlands and the
24 \$500 million nominal value that up until, I guess, this

09:52

25 morning was proposed under the Marathon/MRC plan?

1 A. Well, that value is not absolute. I mean,
2 that value is theoretical but it would accrue to the new
3 owners.

4 Q. And who would that be?

09:52

5 A. Under the plan that is proposed it would be
6 MRC and Marathon.

7 Q. And you understood that your experts -- I
8 don't me now, but prior to this morning, Mr. Zelin had
9 suggested that these new notes that are still part of

09:52

10 the plan, as I understand it, but may not be part of the
11 new plan, had a face value of \$325 million but
12 actually --

13 MR. SCHWARTZ: Your Honor, I object to
14 this line of questioning. I haven't seen the plan.

09:53

15 There are no -- I think as said by Mr. Brilliant, there
16 are no notes in the new plan, it is a total cash deal.
17 I think any testimony related to notes is irrelevant.

18 THE COURT: I'm not sure if they have now
19 taken the notes off the table. I mean, there are lots
20 of things we could say about the notes, but they're not
21 on the table anymore.

09:53

22 MR. KRUMHOLZ: That's fine.

23 Q. (By Mr. Krumholz) Now, we have talked about
24 this, as you put it, theoretical value but it was your

09:53

25 experts, that is, Scopac's experts' best estimate of the

1 value, right?

2 A. Yes.

3 Q. Okay. And you were officer during that time
4 frame when you-all hired those experts and told this

09:53 5 Court what these values were, right?

6 A. Yes.

7 Q. Now, and the reason that Scopac didn't support
8 the Marathon and the MRC plan was because of that
9 difference in value; isn't that right, sir?

09:54 10 A. I don't know that I can testify to that.

11 Q. You can't testify to that as an officer of
12 Scopac?

13 A. As an officer of Scopac --

14 Q. At the time?

09:54 15 A. As an officer of Scopac, I believe that it was
16 the obligation of the independent directors and of
17 Scopac to seek the highest value.

18 Q. And the highest value, according to Scopac,
19 was \$900 million, is \$900 million, right?

09:54 20 A. I can't testify to that. I think that number
21 is -- there's lot of different numbers that were put out
22 yesterday.

23 Q. But you could testify to that when you were an
24 officer just before this morning. You did it in your
09:54 25 deposition, right?

1 A. I don't think I ever testified that I thought
2 it was \$900 million.

3 Q. What we just said was is that based upon your
4 experts --

09:54

5 MR. FROMME: Your Honor, objection, this
6 witness is not being offered as an expert witness on
7 value.

8 MR. KRUMHOLZ: And I'm not saying that.

09:55

9 Q. (By Mr. Krumholz) Mr. Clark, I guess maybe
10 this is the best way to put it. As an officer of
11 Scopac, you understood that the company that you had a
12 fiduciary duty to wasn't supporting the MRC/Marathon
13 plan because they didn't believe it provided sufficient
14 value regardless of your individual views today, true?

09:55

15 A. Yes.

16 Q. And if that value is correct, you can kind of
17 understand that because that would be taking value of
18 these folks over here, that is the Noteholders, and
19 putting it in the pockets of Mr. Dean and putting it in
20 the pockets of Marathon, right? You can understand why
21 Scopac as a company wouldn't do that?

09:55

22 A. If that value is correct, yes.

23 Q. And that's why you didn't intervene and do
24 anything different while you were a Scopac officer,
25 right? You didn't object, you didn't file anything with

09:55

1 the Court saying, hold on, Your Honor, there's something
2 going on here and I have a real problem with this. We
3 didn't hear about any different view, if there is one.

09:56 4 A. It wouldn't have been my place to have done
5 that, no.

6 Q. But you didn't do it in all of these
7 affidavits and declarations, etcetera that we have seen
8 with the Court, right? You filed a few, right?

9 A. Yes.

09:56 10 Q. Okay. Now, I just have a few more lines of
11 questions. There was some mention, I think it was by
12 Mr. Schwartz, that contingent liability, the Headwaters
13 litigation, wasn't on the balance sheet. And that's
14 true, right?

09:56 15 A. That is true.

16 Q. Because it's contingent liability; is that
17 right?

18 A. Because it's a contingent asset.

09:56 19 Q. Excuse me. A contingent asset. Thank you for
20 that clarification. And that's just not something the
21 company does even if it believes it has substantial
22 value, right?

09:57 23 A. Well, I'm not an accountant, but it doesn't
24 follow GAP so it doesn't get recorded on the balance
25 sheet.

1 Q. But you believe it does have value?

2 A. Yes, I do.

3 Q. And because you authorized the complaint
4 that's been filed in California, right?

09:57 5 A. I personally didn't authorize it.

6 Q. But the company did while you were an officer?

7 A. Yes.

8 Q. Okay. The only thing else I want to talk to
9 you about really is that I spent some time last night

09:57 10 going through some of the financials that we have

11 discussed previously and I just want to make sure I

12 understand the ones that are of import.

13 MR. KRUMHOLZ: Jamie, if you could put up
14 Exhibit 67.

09:57 15 Q. (By Mr. Krumholz) And this is -- what do you
16 call these documents, MOR, monthly operating reports?

17 A. That's what they're called, yes, MORs.

18 Q. Okay. And I want to call your attention --
19 and this is one that was filed just recently, correct,

09:57 20 or submitted?

21 A. Yes.

22 Q. And you prepared this or it was under your
23 direction?

24 A. It was prepared under my direction, yes.

09:57 25 Q. As the CFO at the time?

1 A. Yes.

2 Q. And it says "income before interest
3 depreciation tax" on that second line of this grid. Do
4 you see that?

09:58 5 A. Yes.

6 Q. And it says -- what is the number as of the
7 filing date? That is, as of December 31, 2007, what as
8 the EBITDA for this company?

09:58 9 A. That's very hard for me to read from this far
10 away, but it looks like it's in excess of \$22 million.

11 Q. Can you read it on the screen that's right in
12 front of you?

13 A. I'm sorry. That's much better. \$22,032,034.

09:58 14 Q. So Scopac was -- had earnings of EBITDA anyway
15 of over \$22 million as of the end of last year, correct?

16 A. Yes.

17 Q. Okay. And it's also true, is it not, that as
18 of the end of December of 2007 it had net cash flow that
19 was positive if you take out professional fees?

09:59 20 A. Yes.

21 Q. I'm not denigrating your professional fees,
22 but if you take that out and you just look at operating
23 cash flow, it was substantially in the positive, true?

24 A. I believe it was positive, yes.

09:59 25 Q. And let's go to page 7 and see if we can

1 confirm that. So this is page 7 of this MOR, Exhibit
2 67. And can you just describe generally what this chart
3 talks about.

09:59

4 A. This is a cash flow by receipts and
5 disbursements. It recaps the receipts and disbursements
6 of cash for the year 2007.

7 Q. And what it says here is that the net cash
8 flow after professional fees is well over \$11 million,
9 true?

09:59

10 A. I don't think it says that.

11 Q. Well, we did that for you, but that's what it
12 shows if you subtract those two numbers, right?

13 A. I believe it's true, yes.

10:00

14 Q. Okay. So as CFO of Scopac at the time, net
15 cash flow was positive over \$11 million; is that right,
16 absent --

17 A. Yes, without getting out my calculator and
18 doing the math, yes, it appears that's true.

19 Q. And of course that's less professional fees?

10:00

20 A. Unfortunately, yes.

21 Q. Okay. And if we go to -- now, you filed one
22 just recently, another one of these, right?

23 A. Yes, we did.

24 Q. I think it was yesterday pretty late?

10:00

25 A. It was late and yesterday, yes.

1 MR. KRUMHOLZ: If we could move for the
2 admission of Exhibit 67. We have an agreement and all
3 that.

10:00

4 MR. NEIER: We're not objecting to the
5 monthly operating reports.

6 MR. KRUMHOLZ: Okay. Good.

10:00

7 THE COURT: All right. We sort of
8 piecemealed the exhibits and I was worried about that,
9 so my hope is that somebody is going to announce to me
10 all of the exhibits that are admitted and all of those
11 that aren't at some point.

12 MR. KRUMHOLZ: We have an agreement, Your
13 Honor. The only thing we're waiting on is to get the
14 actual list in order. By lunchtime that should happen.

10:00

15 THE COURT: We might have three new plans
16 by then.

17 MR. KRUMHOLZ: By the way, Your Honor, I
18 admit I practice in state and federal court outside of
19 bankruptcy most of the time and it's not even close to
20 as fun as this morning.

10:01

21 THE COURT: That's pretty much the
22 purpose.

23 MR. KRUMHOLZ: Things don't change quite
24 that much in my arena.

10:01

25 Q. (By Mr. Krumholz) Sir, if we can go to

1 Exhibit 231.

2 MR. KRUMHOLZ: So is Exhibit 67 admitted,
3 Your Honor?

4 THE COURT: It is.

10:01 5 Q. (By Mr. Krumholz) Okay. Exhibit 231,
6 Mr. Clark, can you identify that for us?

7 A. It appears to be the MOR for Scotia Pacific
8 for the month of March.

9 Q. And as of the end of March of this year, can
10:01 10 you see there what the EBITDA is for Scopac?

11 A. You mean since the filing.

12 Q. Just that second line there. Am I missing
13 something?

14 A. It's since we filed bankruptcy through the end
10:01 15 of March.

16 Q. Yes.

17 A. \$24.7 million.

18 Q. Exactly what I mean. So it's well over \$24
19 million, right?

10:02 20 A. Yes.

21 Q. Okay. If we go to the net cash flow on
22 page 7. And what we have done, again, on page 7 of this
23 MOR is take this \$10,809,000 number and subtract it from
24 the professional fees -- or actually, just add those two
10:02 25 numbers together, I guess, or subtract them. I don't

1 know. You're the CFO, you can tell us. What's the net
2 cash flow for Scopac as of the end of March of 2008 if
3 you subtract out the professional fees?

4 A. Since filing it appears to be about \$9.7
10:02 5 million.

6 Q. So it's net cash flow positive?

7 A. Positive.

8 Q. And you project all the way out to, what is
9 it, June at this time, cash flows?

10:02 10 A. Yes, we have projected Scopac's cash flows to
11 the end of June.

12 Q. And their net cash flow positive absent
13 professional fees?

14 A. I believe so. But I don't have the numbers in
10:03 15 front of me, so it's very difficult to -- I mean,
16 professional fees will have to be deducted from the cash
17 flows. And we are authorized to cash flow. We are
18 utilizing the SAR account, but I believe that the --

19 Q. If you didn't have those professional fees,
10:03 20 that wouldn't be the case?

21 A. If I didn't have professional fees, it would
22 make a significant difference in the cash flows.

23 Q. And it would be way positive?

24 A. I can testify that it would make a significant
10:03 25 difference, without having those numbers in front of me.

1 Q. Okay. And I may get those out at some point.
2 I probably won't. I think they're already in evidence
3 and we can argue from them.

4 A. Yes.

10:03

5 Q. And that's going to be true for the
6 foreseeable future less professional fees is your best
7 estimate, right?

10:03

8 A. Well, for the foreseeable future, as far as
9 cash flow positive, we're coming into the heavy harvest
10 season so I would be speculating. But I know that there
11 would be a considerable amount of the cash flow from
12 Scopac would be tied up in inventory of logs.

10:04

13 Q. Let me just interrupt you. And I hate to
14 interrupt you, but since you're speculating, we don't
15 need to get into that.

16 A. Okay.

10:04

17 Q. Okay. Let me go through my notes. As he was
18 deleting all those paragraphs from your proffer, I was
19 kind of doing the same thing.

20 MR. KRUMHOLZ: Mr. Clark, I think that's
21 all I have for now. Thank you very much. Are you
22 retired?

23 THE WITNESS: Yes.

24 MR. KRUMHOLZ: Congratulations.

10:04

25 THE WITNESS: Thank you.

1 CROSS-EXAMINATION

2 BY MR. SCHWARTZ:

3 Q. Good morning, Mr. Clark.

4 A. Good morning.

10:04 5 Q. Steve Schwartz, Winston & Strawn on behalf of
6 Marathon. Just so we're clear, you have been the CFO
7 since at least 1978 -- 1998? I'm sorry. Is that right?

8 A. I think I became CFO some time after that. It
9 was probably 2002, 2003.

10:05 10 Q. And that was CFO of both Palco and Scopac,
11 correct?

12 A. Yes.

13 Q. And as CFO, I assume that you are familiar
14 with the financial operations of both Scopac and Palco?

10:05 15 A. Yes.

16 Q. Okay. Now, in your proffer in paragraph 5,
17 you stated that the Debtors will have sufficient
18 liquidity through May 2008. And I want to understand,
19 given the difference you alluded to between Palco and
10:05 20 Scopac when Mr. Fromme was questioning you, how does all
21 that change?

22 A. Scopac does not change. Scopac's latest cash
23 collateral order goes through the end of June and
24 provides for utilizing up to, I believe, it's 11.9
10:05 25 million of the SAR account. So I believe we have

1 sufficient liquidity to meet all of our obligations to
2 the end of June.

3 Q. And what about on the Palco side?

4 A. The Palco side, these projections were done in
10:06 5 early April, the proffer -- with this proffer. Since
6 that time, we have paid all of our bills. We have no --
7 we have no backlog in accounts payable. But we have
8 agreed with Marathon not to pay any more professional
9 fees last week and this week and going forward utilizing
10:06 10 the carve out and utilizing a pareta (phonetic) so that
11 everybody gets paid an equal amount.

12 We haven't paid any bills because we don't
13 want to do anything that's not fair. So we have stopped
14 making those payments until we can work out the details.
10:06 15 So I still believe, though, that there will be enough
16 cash first to pay for the logs that are due Scopac on
17 the 20th of May. And I believe that we would have
18 sufficient liquidity to get through the month of May.

19 Q. What about beyond the month of May?

10:07 20 A. Haven't looked at those numbers because I've
21 been here. I know these numbers have been worked on. I
22 really can't say at this point in time.

23 Q. Now, what, in your view, as the CFO, would be
24 the impact on financial viability of Palco should either
10:07 25 the Scopac alternative plan or the Scopac only

1 Noteholders plan be confirmed?

2 A. Well, as I understand it, that would leave --
3 that would leave Palco with no plan and it would mean
4 probably that we would run out of cash very soon after
10:07 5 that, after that -- after that Scopac plan would be
6 confirmed. We would not have sufficient cash flow going
7 forward. My understanding is the mill would probably
8 shutdown. I really can't speculate on what might happen
9 to Palco, but I believe that we would be -- I believe
10:07 10 strongly we would not have sufficient cash to continue
11 to operate.

12 Q. Palco would not have liquidity to operate?

13 A. That's correct.

14 Q. And you think that would happen relatively
10:08 15 quickly, don't you?

16 A. Yes, I do.

17 Q. Now, you talked a little bit about the cash
18 flows when Mr. Krumholz was questioning you. I just
19 want to follow-up on that. Is there any seasonality to
10:08 20 Palco's cash flow?

21 A. Yes, there's seasonality to both.

22 Q. Can you explain that?

23 A. Yes, generally they are inverse to one another
24 in that the heavy season for selling lumber is usually
10:08 25 in the first part of the year, in the spring and in

1 early summer so the cash flows to Palco are at their
2 height at that point in time. Traditionally in the
3 summer and fall, late summer and fall, Palco would be
4 building a log deck and a lumber deck so they would be
5 utilizing a lot of cash to build inventory and pay
6 Scopac for logs. That has changed somewhat because of
7 the way in which we are now operating with respect to
8 the Scopac log deck.

10:08

9 But there's still that seasonality. The best
10 time for producing revenues for Palco is in the spring
11 and in the summer. For Scopac, the seasonality is the
12 flow of logs and the flow of logs is at its peak in
13 July, August, September and October. So the cash needs
14 of Scopac would be at their peak demand during that
15 period of time.

10:09

10:09

16 Q. So if I understood you correctly, the early
17 months in the calendar year, let's say January through
18 April, would be the low point for cash flow for Scopac?

19 A. Actually, no. For Palco -- for Palco it would
20 be the peak.

10:09

21 Q. I said the low point for Scopac.

22 A. It would also be the best cash flows in the
23 early part of the year for Scopac because going forward
24 basis because they would be selling off their inventory
25 and the harvest level is lower. They would not be

10:10

1 spending as much money on harvest so they would have
2 better cash flows at that same time in spring and in
3 early summer.

10:10

4 Q. What period of time is the worst time for
5 Scopac's cash flow?

6 A. It would be July, August, September and
7 October.

10:10

8 Q. Okay. Now, if the Noteholders plan is
9 confirmed, do you understand that there will be a
10 mocking process for some period of time?

11 A. Yes, as I understand it.

12 Q. And that period of time would cover those
13 months you just alluded to?

14 A. Yes.

10:10

15 Q. Which would be the low point for Scopac's cash
16 flow, correct?

17 A. Yes.

10:10

18 Q. Now, would that require Scopac to dip into the
19 SAR account more than it currently has to pay operating
20 expenses?

21 A. Yes.

22 Q. Now, let's talk about the SAR account for a
23 moment. Do you know the approximate amount of the Bank
24 of America claim?

10:10

25 A. I believe its approximately amount is about

1 \$37 million.

2 Q. And what is the current balance in the SAR
3 account?

4 A. I believe as of today -- and this is an
10:11 5 estimate because I don't have any numbers in front of
6 me. It's probably between \$23 and \$24 million.

7 Q. So there's approximately a \$13 to \$14 million
8 deficiency in the SAR account?

9 A. With respect to the obligation to pay Bank of
10:11 10 America, yes.

11 Q. And Bank of America has first rights to the
12 money in the SAR account, right?

13 A. Yes, I believe that's true, yes.

14 Q. Okay. Thank you. Just one last series of
10:11 15 questions. You were asked about Scopac's experts. Did
16 you have any role in retaining the valuation experts
17 that Scopac has presented to this Court?

18 A. No.

19 Q. Did you have any -- did you work with them at
10:12 20 all in their -- with respect to them getting their
21 reports together and being filed?

22 A. No.

23 Q. Did you assist them in any way in preparing to
24 testify at trial?

10:12 25 A. No.

1 Q. Did you have any role in deciding who would be
2 Scopac's experts?

3 A. No.

4 Q. Did you -- were you required as the CFO to
10:12 5 take any position at any time with respect to the value
6 of the Scopac assets? Let me ask it a different way
7 since you seem a little confused by my question.

8 Did you ever offer an opinion as to the value
9 of the Scopac assets?

10:12 10 MR. FROMME: Objection, Your Honor, this
11 witness is not offered as an expert.

12 MR. SCHWARTZ: That's what I'm asking
13 him.

14 THE COURT: I think he just asked if he's
10:12 15 ever offered an opinion. Have you ever offered an
16 opinion to that?

17 THE WITNESS: No.

18 MR. SCHWARTZ: I have no further
19 questions.

10:13 20 THE COURT: Yes, sir.

21 MR. BRILLIANT: Your Honor, I just have
22 just a few quick questions.

23 THE COURT: Okay.

24

25

1 CROSS-EXAMINATION

2 BY MR. BRILLIANT:

3 Q. Mr. Clark, Allen Brilliant. I represent
4 Mendocino Redwoods Company. I just have a few
10:13 5 questions. As the former chief financial officer of
6 Scopac, are you aware of the capital expenditure
7 requirements for Scopac?

8 A. Yes.

9 Q. Isn't it true that Scopac has some obligations
10:13 10 under its environmental agreements with various parties
11 to build roads and do various other things that cause
12 use of cash that would be booked as capital
13 expenditures; isn't that right?

14 A. Yes.

10:13 15 Q. And has Scopac over the last couple of years
16 had to get extensions of its time to perform certain
17 obligations to build roads and do other things as
18 required under its environmental agreements?

19 A. I don't know whether we've had to get
10:13 20 extensions, but I believe that we have used up most of
21 the time that's been available to get the work that was
22 required done. We may be at the end of that time frame.

23 Q. So is it your understanding that over the
24 next, you know, six or eight months the company is going
10:14 25 to have to -- Scopac will have to expend significant

1 amounts of money on capital expenditures to remain in
2 compliance with its environmental agreements?

3 MR. KRUMHOLZ: Your Honor, I will object.
4 There was no testimony. It is clear he is speculating.

10:14 5 MR. BRILLIANT: I believe he can answer
6 this question, Your Honor.

7 MR. KRUMHOLZ: I will take him on voir
8 dire real quick. He clearly doesn't have the answer.
9 We established he doesn't have a foundation.

10:14 10 THE COURT: Well, do you know the answer
11 to these questions?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Ask the questions.

14 MR. KRUMHOLZ: Based on what?

10:14 15 THE COURT: Lay a foundation.

16 Q. (By Mr. Brilliant) Isn't it true that over
17 the next six to eight months given the fact that the
18 company doesn't have much more remaining time to build
19 these roads and provide other capital expenditures that
10:14 20 Scopac will have to expend significant amounts of cash
21 to remain in compliance under its environmental
22 agreements?

23 MR. KRUMHOLZ: Your Honor, I'll object as
24 leading now his own witness. It's not an adverse
10:15 25 witness now. I object to leading. He asked a question,

1 he can ask it open-ended. If the man knows, that's
2 fine.

3 THE COURT: I don't think this is an
4 adverse witness in that sense.

10:15 5 MR. KRUMHOLZ: Right.

6 THE COURT: So perhaps you should
7 rephrase the question.

8 MR. BRILLIANT: Sure.

9 Q. (By Mr. Brilliant) Mr. Clark, does the
10:15 10 company -- I think you just testified the company has
11 environmental obligations or capital expenditure
12 obligations --

13 THE COURT: Why don't you just ask him
14 how much is it going to cost to fulfill their
10:15 15 environmental obligation over the next six months. Does
16 he know the answer?

17 MR. BRILLIANT: I don't know if he knows
18 specifically, Your Honor, this is not my witness.

19 THE COURT: I know it's tough to ask the
10:15 20 question when you don't know the answer. That's the
21 first rule of a trial lawyer, but you're wanting --
22 that's the answer you want and you're wanting to ask
23 him. He's objecting to it because you're leading him.
24 I mean, I don't know. Do you know the answer to that?

10:15 25 THE WITNESS: I have an estimate of that

1 number, yes, sir. Yes, sir.

2 MR. KRUMHOLZ: I'll object because we
3 haven't seen it, we haven't been able to cross-examine
4 this witness on it. I mean, there's a change in dynamic
10:16 5 here, Your Honor, because he has already said he doesn't
6 know. It's not an environmental regulation guy.

7 THE COURT: I admit there have been far
8 more testimony about that there are deferred -- I don't
9 know if you want to call it deferred capital expenses or
10:16 10 deferred maintenance on the forest or whatever you want
11 to call it in terms of things of that sort. There was
12 testimony from the Mendocino people. There are
13 testimony from -- I think if he knows the estimates of
14 what that's going to cost, I think he can testify to
10:16 15 that. So do you know? What are they?

16 MR. KRUMHOLZ: I renew my objection.

17 THE WITNESS: I believe \$8 to \$10
18 million, Your Honor.

19 THE COURT: Okay. Go ahead.

10:16 20 Q. (By Mr. Brilliant) I'm sorry. You said \$8 to
21 \$10 million?

22 A. Yes.

23 Q. And is it your expectation that that will be
24 expended over what time period?

10:16 25 MR. KRUMHOLZ: I'll object to foundation

1 again, Your Honor. If I have a running objection, I'll
2 stop doing this.

3 THE COURT: You can have a running
4 objection.

10:16 5 A. For the year 2008.

6 MR. KRUMHOLZ: So it's overruled, Your
7 Honor?

8 THE COURT: What did you say?

9 THE WITNESS: For the year 2008.

10:16 10 MR. BRILLIANT: I have no further
11 questions, Your Honor.

12 THE COURT: Okay. Do you want to ask him
13 some questions now since that was sort of outside the --

14 MR. BRILLIANT: Your Honor, it wasn't my
10:17 15 outside the scope of counsel's questions. Counsel asked
16 him about cash flows over the next several months. He
17 put up graphics, he left out the -- he left out the
18 capital expenditures, Your Honor, I just brought it to
19 Your Honor's attention.

10:17 20 THE COURT: Okay. But now that we have
21 brought up capital expenditures, I'm going to let him
22 ask a couple of questions about that. Yes.

23 MR. JONES: Your Honor, I just wanted to
24 make sure you saw up here, I don't care what order I go
10:17 25 in, but at some point I do have some questions.

1 THE COURT: I think the creditors
2 committee wants to ask questions.

3 MR. KRUMHOLZ: I'll wait.

4 THE COURT: No, you're fine.

10:17

5 CROSS-EXAMINATION

6 BY MR. KRUMHOLZ:

7 Q. Mr. Clark, you're not an expert on
8 environmental regulation, true?

9 A. That's true.

10:17

10 Q. All of what you based those expectations and
11 thoughts on was from others, right, based on facts from
12 others?

13 A. It was based on a budget that was put together
14 for the company, yes.

10:17

15 Q. By others, based upon facts from other people,
16 true?

17 A. Some of those others are my staff.

18 Q. Right. But the point is that you got it
19 through conversations with others, right? You didn't

10:18

20 know it from your own personal knowledge, right?

21 A. That's true.

22 Q. Okay. And --

23 MR. KRUMHOLZ: Your Honor, that was the
24 reason for my objection, just so -- it's obvious it's

10:18

25 hearsay.

1 THE COURT: I mean, I don't know. Again,
2 you're having fun in bankruptcy court, but I can't
3 recall a case where I wouldn't allow the CFO of a
4 company to testify about the budget of the company, even
10:18 5 though he might not have totally made it up, there were
6 other people that gave it to him. So it is true it's
7 hearsay but is there some reliability, it should go to
8 the weight I should be giving it. I agree with you he's
9 not an environmental expert, I don't consider him to be
10:18 10 an environmental expert.

11 MR. KRUMHOLZ: I think I have a more
12 pertinent point, Your Honor.

13 Q. (By Mr. Krumholz) Just a minute ago I asked
14 you if you had any cash flows out a certain number of
10:18 15 months. You don't have cash flows out eight to ten
16 months. You don't have a budget eight to ten months
17 out, right? True?

18 A. Not exactly true, no. We don't have weekly
19 cash flows --

10:19 20 Q. The ones that Mr. Brilliant asked you about?

21 A. I would like to answer the question, if you
22 would allow me.

23 Q. Well, you did. You said not exactly true.
24 Right now --

10:19 25 MR. BRILLIANT: Your Honor --

1 THE COURT: You're arguing with the
2 witness now.

3 MR. KRUMHOLZ: I pass the witness.

4 MR. BRILLIANT: He's not my witness, Your
10:19 5 Honor, but you made my objection for me.

6 MR. KRUMHOLZ: He is your witness.

7 THE COURT: The creditors are up.

8 CROSS-EXAMINATION

9 BY MR. FIERO:

10:19 10 Q. Good morning, Mr. Clark.

11 A. Good morning.

12 Q. If you sell logs in the market in northern
13 California, you sell them on a delivered basis, right?

14 A. Yes.

10:19 15 Q. All right. And right now that price is
16 between \$650, \$700, \$1,000 delivered?

17 A. I believe that was the number that we had
18 experienced probably in March in getting indications
19 from people. I can't testify that that's the number
10:19 20 today.

21 Q. Okay. When your deposition took place in
22 March, that's what you testified to?

23 A. Yes.

24 Q. Okay. Thanks. And if you were to disconnect
10:20 25 the forest and the mill such that the mill no longer had

1 ready assurance of being able to buy those logs and went
2 out of business, what would happen to that 75 million
3 board feet of wood that Palco -- or that Scopac would
4 ordinarily cut?

10:20

5 MR. KRUMHOLZ: I object, Your Honor, it
6 lacks foundation. He is not an expert on whether these
7 logs can be sold to third-parties and at what prices or
8 anything else.

10:20

9 THE COURT: I don't know what the
10 question is.

11 MR. FIERO: I have a different question.

12 THE COURT: Okay.

10:20

13 Q. (By Mr. Fiero) In addition to the Palco mill,
14 how many other mills in the north coast area mill
15 redwood?

16 A. I believe it's four in addition.

17 Q. Okay. And do you know whether those mills
18 could absorb an additional 75 million board feet worth
19 of redwood?

10:21

20 MR. KRUMHOLZ: I'll object to foundation,
21 Your Honor. He's not an expert in this area.

22 A. I don't believe they could.

23 Q. Okay. And that's going to put a plethora
24 of redwood --

10:21

25 MR. KRUMHOLZ: I move to strike that last

1 answer, Your Honor. I didn't get a ruling.

2 THE COURT: Well, he is the CFO of this
3 company.

4 MR. KRUMHOLZ: But he knows about other
10:21 5 mills, Your Honor, four other mills in northern
6 California and what they can absorb?

7 THE COURT: I agree that probably there
8 is an issue there of what weight to be given to his
9 testimony, but I'm not going to -- I'm not going to
10:21 10 strike it. So go ahead.

11 Q. (By Mr. Fiero) Are you aware of any lack of
12 supply to those other redwood mills?

13 A. No.

14 Q. And is it your belief that the marketplace
10:21 15 would face a plethora of redwood logs and it would drive
16 down the price of redwood logs?

17 MR. KRUMHOLZ: I'll object for the same
18 reasons, he's just not an expert in this area. It's
19 completely inappropriate questioning of this witness.

10:21 20 THE COURT: I agree that he is not an
21 expert in -- but I do believe that he can probably
22 testify to the impact of -- you know, he has to make
23 these financial decisions for the company all the time,
24 doesn't he?

10:22 25 MR. KRUMHOLZ: He has to assess whether

1 these four mills can process it? Does he even know what
2 these mills have in its log deck?

3 THE COURT: Rephrase the question.

4 Q. (By Mr. Fiero) Are you aware of the --

10:22

5 MR. KRUMHOLZ: What period of time? I
6 mean -- I'm sorry, go ahead.

7 THE COURT: Go ahead.

8 Q. (By Mr. Fiero) Are you aware of the supply
9 and demand situation for redwood in the north coast
10 area?

10:22

11 A. Generally, yes.

12 Q. Okay. And are you aware that the price
13 fluctuates with the demand of the sawmills?

14 MR. KRUMHOLZ: And I'll object to leading
15 his own witness.

10:22

16 MR. FIERO: This isn't my witness, this
17 is Scopac's witness, Your Honor.

18 THE COURT: Well, Scopac has joined the
19 committee in supporting the plan.

10:22

20 MR. FIERO: I understand that, Judge.

21 THE COURT: Scopac called him, but he
22 doesn't even work for Scopac anymore, he works for
23 Palco. So I mean, I think probably it will be fair to
24 not lead him. He's not an expert so don't lead him.

10:23

25 Q. (By Mr. Fiero) All right. Do you have your

1 deposition in front of you?

2 A. Yes, I do.

3 Q. Okay. If we could take a look at page 150 of
4 your deposition.

10:23 5 MR. KRUMHOLZ: You can't go looking at a
6 deposition. Objection, Your Honor, improper use of a
7 deposition. If he has a question to ask the man, he's
8 live. He can ask the question.

9 THE COURT: You're supposed to first ask
10:23 10 him the same question.

11 MR. FIERO: Your Honor, I have asked the
12 question. I have asked the questions. One of them he
13 answered differently, particularly with regard to the
14 number of mills that cut redwood. And I want to put
10:23 15 that testimony in front of the Court.

16 THE COURT: Call his attention --

17 MR. KRUMHOLZ: It's a leading question
18 about the number of your own -- I just want to know.

19 MR. FIERO: He's not the committee's
10:23 20 witness, Your Honor.

21 THE COURT: Okay. I'm not sure where
22 you're going. So where are you in the deposition?

23 MR. FIERO: I'm at page 150 at the top.

24 THE COURT: So what does it say?

10:24 25 MR. FIERO: "Now, if you take the sawmill

1 out of the equation and the Palco sawmill is not bidding
2 in the marketplace for those logs, there's not a place
3 for 75 million board feet of logs to go. There are
4 three sawmills that cut redwood. They all have an
10:24 5 adequate supply of redwood. They don't need more.
6 That's going to put a plethora of redwood logs on the
7 marketplace and drive down the price of redwood logs, in
8 my opinion."

9 THE COURT: This is his answer?

10:24 10 MR. FIERO: Yes, it is.

11 MR. KRUMHOLZ: I will object and move to
12 strike that. I mean, he doesn't have the expertise,
13 Your Honor, he simply doesn't. I don't care if you see
14 it or not. That doesn't mean that he has expertise
10:24 15 about supply and demand in northern California or
16 anywhere else in this country of redwood. It means he
17 knows about the finances of the company.

18 MR. FIERO: Your Honor, it's the second
19 largest redwood company in the world. He's been the CFO
10:25 20 for almost ten years.

21 MR. KRUMHOLZ: That's improper use of a
22 deposition.

23 THE COURT: I mean, whether this is an
24 opinion, just general opinion testimony or whether
10:25 25 it's -- I mean, I don't think he's an expert in redwood

1 pricing. However, I think as CFO, he can talk about
2 the -- those issues that he deals with on a regular
3 basis.

10:25

4 MR. KRUMHOLZ: Maybe we should ask the
5 current CFO, if there's going to be one, you know, so we
6 can get some real numbers as opposed to one that's
7 biased and now sitting in this camp about the issues
8 about --

10:25

9 THE COURT: Okay. Those are all issues
10 that go to credibility, weight to be given, etcetera,
11 but I don't think that these are unfair questions to ask
12 of this witness. So move on. Let's go.

10:25

13 MR. FIERO: Your Honor, Mr. Clark was not
14 biased when he gave this testimony. He worked for
15 Scopac at the time.

16 MR. KRUMHOLZ: It's just improper.

17 Q. (By Mr. Fiero) Mr. Clark, was that the
18 testimony that you gave at the time?

19 A. Yes.

10:25

20 MR. FIERO: No further questions, Your
21 Honor.

22 THE COURT: Now Bank of America.

23 MR. JONES: Thank you, Your Honor.

24

25

1 CROSS-EXAMINATION

2 BY MR. JONES:

3 Q. Good morning, Mr. Clark.

4 A. Good morning.

10:26 5 Q. Evan Jones on behalf of Bank of America. I
6 observed earlier that Corpus Christi is an interesting
7 place but it must be getting really interesting for you.

8 A. Yes.

9 Q. Mr. Clark, I have a number of questions, I
10:26 10 hope really basic questions and I hope they won't draw
11 objections, but I was trying to figure out who's minding
12 the store today. I gather this morning that you
13 concluded, given the change of position of Palco on the
14 various plans that it's no longer appropriate for you to
10:26 15 be an officer of both entities; is that fair?

16 A. Yes.

17 Q. Does Scotia have a new CFO, to your knowledge?

18 A. No.

19 Q. Do they have an active president, to your
10:26 20 knowledge? Did the president resign this morning also?

21 A. I do not know.

22 Q. Okay. Do you know if Scotia plans to appoint
23 a new CFO?

24 A. I do not know.

10:27 25 Q. You're familiar with Ms. Strand at Bank of

1 America who I know you speak with frequently about
2 Scotia. If Ms. Strand were to send me a Blackberry
3 message this morning saying who do I now talk to about
4 Scotia, do you know the answer to that question?

10:27

5 A. Yes.

6 Q. With whom should she speak?

7 A. She would speak with me.

8 Q. Okay. Even though you are not the CFO of
9 Scotia anymore?

10:27

10 A. Yes.

11 Q. Okay. Do you retain any title at Scotia?

12 A. No, but we have a services agreement where we
13 are required under that agreement to provide any
14 services to Scopac that are not provided by Scopac,
15 including management, accounting, information,
16 technology, a lot of other fields. We are obligated to
17 do that under existing agreements.

10:27

18 Q. Okay. So through this services agreement,
19 unless and until Scotia decides to appoint a new CFO,
20 you will be providing that function; is that fair?

10:28

21 A. I think that's fair, yes.

22 Q. Okay. Who directs Scotia's counsel now, do
23 you know?

24 A. I believe it's the independent directors.

10:28

25 Q. But, again, just at the most fundamental

1 level, for example, as you well know for about a year
2 now every month I send you my bill. I should continue
3 to send you my bill, right?

10:28

4 MR. KRUMHOLZ: Is this what this is all
5 about?

6 MR. JONES: It's a personal privilege. I
7 think it rises to the very highest level.

8 A. Yes, Evan, that would be a good idea.

10:29

9 Q. In all seriousness, if we have questions about
10 the finances of Scotia at this point, they're still
11 going to go to you?

12 A. As I understand it, yes.

13 MR. JONES: Your Honor, I have no further
14 questions.

10:29

15 THE COURT: All right. Anyone else? Do
16 we have redirect? Or is Palco going to question him?
17 Now that you -- no? Okay.

18 MR. KRUMHOLZ: Can we get the deposition
19 testimony off the board.

10:29

20 MR. FROMME: Eric Fromme, Gibson, Dunn &
21 Crutcher on behalf of Scotia Pacific, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. FROMME:

10:29

24 Q. Mr. Clark, are you familiar with the Palco
25 mill?

1 A. Yes.

2 Q. Do you know whether it can operate on more
3 than one shift?

4 A. Yes.

10:29 5 Q. Has it done so in the past?

6 A. Yes.

7 Q. Do you know how many shifts it can operate at?

8 A. I think it was built to operate on three
9 shifts.

10:29 10 Q. Three shifts a day?

11 A. Yes.

12 Q. What is it currently operating at today?

13 A. Today is Thursday. I think it's one shift.

14 Q. Does it work on more than one shift in any
10:30 15 other day?

16 A. It's just because we just started the sawmill
17 back up that I was thinking about that.

18 Q. It's been working on one shift for some time
19 now?

10:30 20 A. Yes.

21 Q. Since at least August?

22 A. Since -- I believe they were shutdown for a
23 period of time around August. Well, it started back up,
24 which might have been early September. I really can't

10:30 25 recall but it's been on one shift since, say, some time

1 in the third quarter of last year.

2 Q. Mr. Fiero asked you a few questions about
3 redwood mills in the area of Scotia?

4 A. Yes.

10:30 5 Q. Do you recall that? I think you said there
6 were four others?

7 A. In northern California, I think.

8 Q. Are you familiar with their capabilities? Let
9 me ask it slightly -- do you know whether they can
10:30 10 operate on more than one shift or not?

11 A. I think they're all capable of operating on
12 more than one shift, yes.

13 Q. Is there an advantage to a sawmill to
14 operating on more than one shift?

10:31 15 A. Generally, yes.

16 Q. What's the advantage?

17 A. You spread your fixed costs over more
18 production.

19 Q. It becomes more profitable?

10:31 20 A. It should, yes.

21 Q. Do you know whether other sawmills in northern
22 California -- let me rephrase.

23 Do you know if redwood logs became available,
24 a substantial supply, such that other redwood mills in
10:31 25 northern California could operate on a second shift,

1 whether they would be interested in doing that.

2 A. I do not know.

3 Q. It's a possibility that they would?

4 A. First of all, I don't know how many shifts

10:32 5 they're operating today, so I don't know if they would
6 have available shifts to operate in addition to what
7 they're currently doing. I just don't know that answer.

8 Q. Right. Hypothetically, if they were only
9 operating one shift.

10:32 10 A. Hypothetically, then that should be true, yes.

11 Q. Thank you. You testified that Scopac would
12 have a -- I think -- I'm calling it cash flow drain in
13 the months of July through September.

14 A. It was my estimate that that would be the
10:32 15 case, yes.

16 Q. And why -- why would that be the case again?

17 A. Because they would be building -- they would
18 be -- first of all, it's the heaviest time of the year
19 for harvest so Scopac would be building a log deck in
10:32 20 July, August, September and October.

21 Q. And Scopac pays the cost of logging hauling;
22 is that right?

23 A. Yes.

24 Q. And it would -- it still plans to -- does
10:33 25 Palco still plan to buy logs from Scopac?

1 A. Yes.

2 Q. And Scopac's cash flow drain would be caused
3 by temporarily during those months because it would be
4 harvesting more logs than Palco is willing to buy during
10:33 5 those months?

6 A. Because they would be building a log deck,
7 yes.

8 Q. They would be storing the logs on the log
9 deck?

10:33 10 A. Yes.

11 Q. And the value on that log deck?

12 A. Yes.

13 Q. Is there anything Scopac could do to alleviate
14 that cash flow drain?

10:33 15 A. Yes.

16 Q. What could it do?

17 A. It could sell logs into the open market.

18 MR. FROMME: No further questions, Your
19 Honor.

10:33 20 THE COURT: Anyone else?

21 MR. KRUMHOLZ: Your Honor, I think I
22 forgot to offer Exhibit 231. Again, we had an
23 agreement, but I just wanted to --

24 THE COURT: Okay. Well, nobody is going
10:34 25 to get surprised because somebody is going to give me a

1 list of all the exhibits and marked as admitted or not
2 admitted before we close, I thought today. Isn't that
3 right?

4 MR. KRUMHOLZ: Absolutely, Your Honor.

10:34 5 But is that one admitted?

6 THE COURT: There was no objection. It's
7 admitted. Let me ask. Now, let's talk first about
8 Palco. How much is it going to cost -- what cash flow
9 shortage will there be to operate Palco next month, if
10:34 10 any?

11 THE WITNESS: Next month being May or
12 June, Your Honor?

13 THE COURT: Well, we're in May, so let's
14 say May, okay?

10:34 15 THE WITNESS: I think that Palco will
16 require about \$6 million. That's an estimate.

17 THE COURT: For May?

18 THE WITNESS: For May, yes.

19 THE COURT: How much in June?

10:34 20 THE WITNESS: Approximately the same
21 amount.

22 THE COURT: Okay. Will that go up or
23 down on a monthly basis into the future?

24 THE WITNESS: That's -- the cash flow
10:35 25 requirements of Palco will be relatively stable as I see

1 them going forward. Based on --

2 THE COURT: You're going to have a
3 shortfall of \$6 million.

10:35

4 THE WITNESS: No, it takes \$6 million to
5 operate the business.

6 THE COURT: Okay. So what is this cash
7 shortfall in Palco going forward from today?

10:35

8 THE WITNESS: I believe we have enough
9 cash and liquidity to get through most of the month of
10 May.

11 THE COURT: Without dipping into the SAR
12 account?

13 THE WITNESS: Well, Palco doesn't have a
14 SAR account.

10:35

15 THE COURT: Okay. No help from anything
16 other than sale of logs.

10:35

17 THE WITNESS: Sale of logs, but we have
18 not other source of cash other than sale of logs, sale
19 of lumber and perhaps a sale of gravel. That's all we
20 have.

21 THE COURT: Okay. So what is going to be
22 the shortfall? You don't think there's any shortfall in
23 May?

10:35

24 THE WITNESS: I think that -- again,
25 we're not paying professionals currently.

1 THE COURT: Well, that's part of the
2 shortfall. What's the shortfall going to be?

3 THE WITNESS: I think not paying the
4 professionals, we could have a shortfall in May in
10:36 5 excess of \$1 million.

6 THE COURT: In May without paying -- so
7 if you paid the professionals, what would the shortfall
8 be?

9 THE WITNESS: I'm sorry.

10:36 10 THE COURT: You think the million
11 includes the professionals?

12 THE WITNESS: I think the million
13 shortfall includes not paying the professionals.

14 THE COURT: Okay. So how much is the
10:36 15 shortfall if you paid the professionals?

16 THE WITNESS: I think I'm totally
17 confused. I'm sorry. You're asking good questions, I'm
18 not giving you clear answers and I apologize.

19 THE COURT: And it's probably because I'm
10:36 20 not an accountant so I'm probably asking you a question
21 that doesn't make any sense.

22 THE WITNESS: No. When I think about it,
23 your question makes sense. I think I just gave you the
24 incorrect answer.

10:36 25 THE COURT: Okay.

1 THE WITNESS: If we pay the
2 professionals, we would be in excess of \$1 million short
3 for the month of May.

4 THE COURT: And then in June?

10:36 5 THE WITNESS: In June I think it would be
6 in excess of a couple \$3 million short.

7 THE COURT: \$2 to \$3 million?

8 THE WITNESS: \$2 to \$3 million short.

9 THE COURT: In July, is it ever going to
10:37 10 flatten out or is it going to start getting bigger?

11 THE WITNESS: You know, I haven't looked
12 recently at July or August or September for Palco. And
13 we haven't calculated beyond the end of June for Scopac
14 and we haven't calculated beyond the end of May for
10:37 15 Palco. But I would expect that that shortfall would
16 continue, yes.

17 THE COURT: Okay. Now looking at Scopac,
18 what shortfall, if any, will there be, without dipping
19 into any SAR account, will there be in May? Zero?

10:37 20 THE WITNESS: Well, we would not have
21 enough cash at Scopac to get through May without dipping
22 into the SAR account. And our budget contemplates
23 dipping into the SAR account in the month of May.

24 THE COURT: How much?

10:37 25 THE WITNESS: I believe we drew down

1 about \$2 million this week at Scopac and I believe it
2 would require an additional draw of about \$2 million to
3 get through the month of May. That's --

10:38

4 THE COURT: So there's a \$4 million
5 shortfall in May?

6 THE WITNESS: Coming from the SAR
7 account, yes.

8 THE COURT: And how much will it be in
9 June?

10:38

10 THE WITNESS: I think in June -- I
11 believe that we -- it will be very close to break even
12 cash in the month of June at Scopac because we'll have
13 some cash coming out of May that we have drawn from the
14 SAR account and I believe our revenues and expenses in
15 June will be approximately normal expenses, about the
16 same, so I believe we will not need any more draws on
17 the SAR in the month of June. I don't have anything in
18 front of me, that's just my best estimate off the top of
19 my head.

10:38

10:38

20 THE COURT: Okay. Going forward from
21 June, what do you anticipate?

22 THE WITNESS: Well, in July and August
23 and September and October when the harvest season is at
24 its peak and under the current operating environment
25 where Scopac is paying for the logging and the hauling,

10:39

1 I believe that -- I have not run those numbers, but I
2 believe that there will not be sufficient cash available
3 without use of the SAR to pay the expenses at Scopac for
4 that period.

10:39

5 THE COURT: So how much?

6 THE WITNESS: It could be \$2 and a half
7 to \$3 million a month short, perhaps a bit more. And
8 that depends on professional fees.

10:39

9 THE COURT: All right. You can step
10 down.

11 THE WITNESS: Thank you.

12 MR. KRUMHOLZ: I have a follow-up
13 question for the witness in light of Your Honor's
14 questions.

10:39

15 THE COURT: Well, we don't normally do
16 that, but I'm trying to be nice. I'll let you.

17 RECROSS-EXAMINATION

18 BY MR. KRUMHOLZ:

10:39

19 Q. Mr. Clark, the inventory at Scopac continues
20 to increase during the summer months when you're
21 concerned about some of the cash flow?

22 A. Yes.

10:40

23 Q. And you make up that in the fall, the cash
24 flow, because you can actually sell some of this
25 inventory?

1 A. Well, as I testified just a few minutes ago, I
2 guess it could be made up by selling logs to
3 third-parties or it will be made up probably in the
4 winter months or the spring when the logs would be used.

10:40

5 MR. KRUMHOLZ: That's all, Your Honor.

6 THE COURT: Okay. You may step down.

7 Next witness.

8 MR. PENN: Your Honor, if I could
9 interrupt Mr. Fromme just for moment. We have filed the
10 amended plea.

10:40

11 THE COURT: All right. So you can give
12 copies to the parties.

13 MR. PENN: First of all, clean and red
14 line. I thought the Court might like one.

10:41

15 THE COURT: Who's the next witness? Do
16 we have a witness?

17 MR. FROMME: Yes, we do, Your Honor.
18 Eric Fromme, Gibson, Dunn & Crutcher representing Scotia
19 Pacific. We call Dr. Jeffrey Barrett.

10:41

20 THE COURT: All right. Dr. Barrett.

21 MR. FROMME: Your Honor --

22 JEFFREY BARRETT, Ph.D.,
23 having been first duly sworn, testified as follows:

24 MR. FROMME: Your Honor, late last night

10:41

25 we filed a supplemental declaration of Dr. Barrett.

1 It's Exhibit No. DX-38. It's not in your book. May I
2 approach?

3 THE COURT: Yes, you may.

4 MR. FROMME: All parties got it last
10:41 5 night. So, Your Honor, in addition to that supplemental
6 declaration Debtors Exhibit No. DX-38 is Mr. Barrett's
7 original declaration.

8 THE COURT: All right. Any objection to
9 any of those?

10:42 10 MR. NEIER: No, Your Honor.

11 THE COURT: All right. What about the
12 Noteholders?

13 MR. KRUMHOLZ: No, Your Honor.

14 THE COURT: All right. They're admitted.

10:42 15 MR. FROMME: I pass the witness, Your
16 Honor.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. NEIER:

10:42 20 Q. Good morning, Dr. Barrett.

21 A. Good morning, Mr. Neier.

22 MR. NEIER: David Neier on behalf of
23 Marathon, Your Honor.

24 Q. (By Mr. Neier) Do you have your declaration
10:42 25 that you filed late last night with you?

1 A. Yes, sir.

2 Q. Okay. Can you turn to paragraph 3. You state
3 that when Scopac was preparing its Option A, it was
4 determining the maximum harvest permitted under state
10:43 5 law; is that right?

6 A. Yes, sir.

7 Q. And you believe in general what the company
8 should be doing is to permit or to harvest the maximum
9 permitted under state law?

10:43 10 A. Not necessarily. I think the obligation of
11 Scopac to -- Scopac's obligation is to try to maximize
12 the revenue that it generates from the timberlands.

13 Q. Okay. But you don't think much of the idea of
14 perhaps working with the regulators and harvesting
10:43 15 something that may be less than the maximum extent
16 permitted under state law, but reducing the friction
17 with regulators. That's not something you would agree
18 with that philosophy?

19 A. I wouldn't say that, no.

10:44 20 Q. Right. Because as far as you're concerned if
21 the law permits you to do it, you ought to be able to do
22 it?

23 A. I'm sorry, I think you misunderstood my
24 response. I would not agree with the characterization
10:44 25 that you gave me. I see some value in an alternative

1 way of doing business but I understand that the current
2 business model, and especially historically to our
3 obligations to Noteholders and the need to generate
4 revenue to meet our debt payments, that a business model
10:44 5 that tried to maximize revenue, which is generally
6 coincident with maximizing harvest was the right
7 approach. A different landowner may have different
8 priorities.

9 Q. And you would agree that the companies had
10:44 10 quite a bit of friction with its regulators over the
11 past several years, correct?

12 A. I would say in general friction with all of
13 the agencies has diminished greatly, but certainly going
14 back over the last two or three years, there have been
10:44 15 frictions, as always, with any regulated community.

16 Q. Well, the companies have sued the state for
17 \$700 million, correct?

18 A. I believe that's correct.

19 Q. And that would be some form of friction, I
10:45 20 would think?

21 A. I think that's a fair characterization, sir.

22 Q. Okay. Now, in paragraph 4, you state that you
23 directed Scopac's foresters to establish a ten-year
24 harvest plan; is that right?

10:45 25 A. Yes, sir.

1 Q. And who set the harvest rate for that -- for
2 that ten-year harvest plan?

3 A. I directed the forestry staff working with the
4 science and inventory GIS folks to try and identify what
10:45 5 we thought was the maximum feasible harvest rate for
6 that initial ten-year harvest period.

7 Q. And so I think what you're saying is that it
8 was you who set the harvest rate working with your
9 staff?

10:45 10 A. I set the objective and then the staff
11 identified a means to achieve that objective.

12 Q. Okay. So by objective, you mean the harvest
13 rate?

14 A. I never said -- I don't mean to be difficult.
10:45 15 I never said a hard number, but I did set as the company
16 priority that we would try and maximize the harvest
17 rate, whatever that might be after they were done with
18 their analysis.

19 Q. Okay. And that's the way it's typically done.
10:46 20 The head guy sets the objective and then a plan is
21 developed to meet that objective?

22 A. I can't speak for other companies, sir.

23 Q. Okay. But in your experience that's how it's
24 been running at the Debtors, correct?

10:46 25 A. Yes, sir.

1 Q. Okay. And that updated -- or that ten-year
2 harvest plan, that was given to Dr. Reimer; is that
3 right?

10:46

4 A. Eventually that was given to Dr. Reimer. I
5 think this paragraph refers to an effort by Dr. Reimer
6 to help us develop the first of those ten-year harvest
7 plans.

8 Q. Right. But the first ten years he used
9 Scopac's model, correct?

10:46

10 A. We gave him the ten-year harvest plan, the
11 latest version of it, as he was developing his model,
12 yes.

13 Q. Okay. And you state that Options -- this is
14 in the bottom of your declaration filed last night. You
15 state that the Options model -- it's the last sentence
16 really on page 2, paragraph 4. "Thus, the Options model
17 is now an important planning and decision support tool
18 for Scopac because of its demonstrated accuracy in
19 projecting permissible harvest on Scopac lands given the
20 various environmental and regulatory constraints."

10:47

10:47

21 Correct?

22 A. Yes, sir.

23 Q. Okay. But you would agree there are sometimes
24 that you would not follow Dr. Reimer's Options plan for
25 this company, correct? There are operational needs to

10:47

1 differ from the model, correct?

2 A. Yes, sir.

3 Q. In fact, you would have to go off model for
4 operational reasons?

10:48 5 A. Absolutely.

6 Q. And in fact, the company would always choose
7 to implement a projected harvest for a particular year
8 over a longer period of time to take care of some of the
9 problems that we saw in terms of moving from selective

10:48 10 harvesting to clearcutting and then back to selective
11 harvesting, correct?

12 A. I think that's a fair characterization, yes,
13 sir.

14 Q. And the company would also smooth out for
10:48 15 operational reasons, that is, go off model for
16 operational reasons to take care of the various changes
17 in which species you're going to harvest because under
18 Dr. Reimer's model, you're going to switch species
19 occasionally during the 50-year forecast, correct?

10:48 20 A. Again, I think that's a fair characterization,
21 yes.

22 Q. And we saw that sometimes in the model
23 prepared by Dr. Reimer there's things like using a
24 helicopter to get four board feet, and Mr. Yerges said,
10:49 25 well, you would never do that operationally. You would

1 agree with that, right?

2 A. That specific example, yes, sir.

3 Q. So you would go off model and operationally
4 you wouldn't do those things?

10:49 5 A. Yes. I think the reality is you have to look
6 at the feasibility of harvest, but there are other
7 factors as well. For example, weather can change what
8 you end up doing in an individual year, market
9 conditions, etcetera. So broadly speaking, sir, I would
10:49 10 agree with your characterization that you would not be
11 bound to the model but would instead bring various other
12 sort of components, considerations and so on into your
13 actual harvest plans.

14 Q. Right. You would not switch species if it
10:49 15 was, for instance, uneconomical to harvest Doug Fir in a
16 particular year? You would not switch from redwood to
17 Doug Fir and cut a significant portion of Doug Fir in
18 any particular year if it was just completely
19 uneconomical due to market conditions?

10:50 20 A. Yes, sir.

21 Q. And you heard Dr. Reimer state that the way
22 they calculate -- or the way the costs were used by him,
23 it was the same cost to get a tree that's in a sliver as
24 the cost used to get a tree in a large stand that was
10:50 25 due to be harvested, correct?

1 A. I think the testimony I heard was that the
2 cost to harvest slivers was not different. I don't know
3 about the rest of your characterization.

10:50

4 Q. Okay. And if the cost of getting that sliver
5 was not different in the model but it was uneconomical
6 for the company or just not operationally feasible for
7 the company to go and get that sliver, of course you
8 would not go and get that sliver, correct?

9 A. Yes, sir.

10:50

10 Q. Now, you state that -- well, one more thing on
11 this issue. You know, is it fair to say that what
12 Options is giving you is the potential for the harvest?
13 It's giving you the maximum potential?

10:51

14 A. Options can be set up to identify the maximum
15 potential, but as Dr. Reimer testified, as he's prepared
16 the model, he's actually backed off of that maximum for
17 various reasons to be conservative, to build certainty
18 into the system and so on. Your general
19 characterization that Options gives you a good idea of
20 what is possible, however, is correct, sir.

10:51

21 Q. Okay. And in fact, things can change on the
22 ground. For instance, the company projected originally
23 that it was going to harvest, and I believe you
24 testified to this when you testified earlier, the
25 company originally projected it was going to harvest 105

10:51

1 million board feet in 2007 and in fact it harvested
2 something around 74 million board feet in 2007, correct?

3 A. Yes, sir.

4 Q. Now, in paragraph 5 of your new declaration,
10:52 5 you state that the overwhelming majority of Scopac's
6 timberlands is readily accessible by road for harvest
7 operations, correct?

8 A. Yes, sir.

9 Q. And you may have heard Mr. Doren ask the
10:52 10 question yesterday of Mr. Yerges where he said the
11 property is well roaded, correct?

12 A. Yes, I heard that response, sir.

13 Q. And -- but there is in fact a \$15 million
14 backlog of required roadwork to comply with the HCP; is
10:52 15 that right?

16 A. I think my best estimate is actually about \$14
17 million, but yes, there is a backlog.

18 Q. And you're required to do that roadwork under
19 the HCP?

10:52 20 A. Either under the HCP or cleanup and abatement
21 orders with water quality or as timber harvesting plan
22 requirements. So that's a collective backlog, not just
23 an HCP, sir.

24 Q. And in fact, the clock is sort of running on
10:53 25 your time to do that maintenance, that backlog; is that

1 right? And I believe you testified to this earlier.

2 A. Yes, the clock is different for the three
3 different programs, HCP, THP and water quality. But all
4 of them have timeliness requirements.

10:53 5 Q. And you've sought an extension on at least
6 some of those requirements, correct?

7 A. Yes, sir.

8 Q. And you're now in the extension period, if you
9 will, for some of them?

10:53 10 A. For some of them, yes, sir.

11 Q. And in paragraph 6, you state that foresters
12 have been planting cloned trees of species other than
13 redwood for decades; is that right?

14 A. Yes, sir.

10:53 15 Q. But how long has cloned redwoods been planted?

16 A. I don't claim to know the field thoroughly. I
17 am aware of plantings that date back to at least the
18 early '90s.

19 Q. How about at Scopac, how about the cultivars
10:54 20 or the cloned redwoods they're using at Scopac?

21 A. Beginning in about 1996 or so, the company
22 that really led the way in cultivars, which is at the
23 time Simpson Timber Company, would occasionally sell
24 lots of excess cultivars and we were aggressive in

10:54 25 purchasing those. So the first plantings of cultivars

1 on the Scopac timberlands started about 1996 and
2 occurred sort of opportunistically after that. Our own
3 program really ramped up starting about five years ago
4 with significant outplantings beginning approximately
10:54 5 2004, 2005. You plant in the winter. So in the winter
6 of 2004, 2005, sir.

7 Q. And so if I can understand what you're saying,
8 what you're saying is about ten years ago the company
9 started purchasing the cloned redwoods and about five
10:54 10 years ago it went operational, it went from an
11 experimental phase to an operational phase?

12 A. Yes, sir.

13 Q. And the company today does not have any stands
14 of cloned redwood trees that are ready for harvest,
10:55 15 right? They have really only been around for five to
16 ten years?

17 A. That's correct.

18 Q. And these trees, they're in their early stage
19 of growth, right?

10:55 20 A. Yes, sir.

21 Q. And trees are like children, they grow a lot
22 in the first few years, correct?

23 A. Actually, trees grow best as teenagers, if you
24 want to put it that way.

10:55 25 Q. So do my teenagers, but that's okay. But

1 they're like children?

2 A. Very much --

3 Q. They grow the most in their early years?

4 A. Yes, sir.

10:55 5 Q. I mean, I'm growing one way these days and
6 it's not vertical.

7 A. I share that problem, Mr. Neier.

8 Q. And is it the same for a tree, that is, the
9 growth sort of slows down when you reach middle age?

10:55 10 A. Yes, sir.

11 Q. Okay. And you state that you are planting
12 these cloned redwoods or cultivars in areas that are
13 previously dominated by Doug Fir or hardwoods; is that
14 right?

10:56 15 A. Yes, some of our cultivar outplantings are to
16 Douglas Fir hardwood ground or to prairies where there
17 are no trees.

18 Q. Okay. And you're planting them -- where do
19 redwoods, natural redwoods, where do natural redwoods
10:56 20 grow best?

21 A. The distribution on the north coast is
22 eclectic so it's hard to sort of give you anything
23 golden. What I would say in general is redwoods are
24 found where there is at least occasional summer fog and
10:56 25 so one normally thinks of them being located within

1 about ten, maybe at the most 15 miles from the coast.
2 But in our own ownership, we have lands quite near the
3 coast that are in fact Douglas Fir hardwood because the
4 micro climate of those zones is dryer and warmer. So
5 more generally what I would say is redwoods are in
6 cooler, foggy kinds of places. Douglas Fir hardwood, at
7 least on the Scopac timberlands, are found in sunnier
8 and warmer locations.

9 Q. And you're planting some of these cloned
10 redwoods in the drier and warmer planting sites as well,
11 correct?

12 A. Yes, sir.

13 Q. And is there any record or track record that
14 would indicate that that's going to be a successful
15 practice?

16 A. Well, it's -- I'm a scientist by background so
17 you won't be surprised to hear that we're treating it as
18 an experimental program, trying to learn as we go. What
19 we have found is that in most sites where we have
20 planted the redwoods, they're doing well. Most of them
21 are less than five years of age, so I have to fess up
22 and say it's early on. But in some places where we
23 planted them, they have not survived even for a year or
24 two and we're taking a look at things like slope and
25 aspect and soil conditions to try and understand why

1 they're making it in some areas and not in others.

2 Q. All right. And just like we were talking
3 about children before, you don't really know if the
4 growth rate is going to continue to be at the same level
10:58 5 or an accelerated level when the tree matures, correct?

6 The growth rate of these cloned trees could change?

7 A. Yes, sir.

8 Q. And you state that using these cultivars, the
9 total number of redwood dominate acreage in areas in and
10:58 10 around the Bear-Mattole watersheds is going to increase
11 from 2 percent today to 25 percent in 2057, right?

12 A. That is my testimony, yes, sir.

13 Q. And I assume the Bear-Mattole or 25 percent of
14 the Bear-Mattole is more than 400 acres, correct?

10:58 15 A. Yes, sir.

16 Q. Significantly more?

17 A. Yes, sir.

18 Q. Did you hear Dr. Reimer say that what he was
19 going to do is that there were only going to be these
10:58 20 redwoods added to the 400 acres?

21 MR. DOREN: Objection, Your Honor, that
22 mischaracterizes his testimony. He said they would
23 harvest 400 acres in the year 2046.

24 Q. (By Mr. Neier) Okay. Did you hear what
10:59 25 Mr. Doren said?

1 A. I did.

2 Q. And assuming that was the testimony, is it
3 correct to say that a lot more than 400 acres in the
4 Bear-Mattole watershed is going to have to be planted to
10:59 5 get to 25 percent of the Bear-Mattole watersheds having
6 redwoods on them, correct?

7 A. Yes, sir.

8 Q. Okay. Now, in paragraph 8 of your
9 declaration, you talk about paying critical vendors,
10:59 10 right?

11 A. Yes, sir.

12 Q. And the company made, in its business judgment
13 made a determination which vendors were truly critical,
14 and those vendors in the beginning of this case were
10:59 15 paid on a post petition basis for their prepetition
16 claims against the company, correct?

17 A. Yes, sir.

18 Q. But there were some vendors that were not paid
19 because they were not truly critical in the company's
11:00 20 business judgment at that time, correct?

21 A. I would say -- that is certainly a true
22 statement. I would point out, however, that there were
23 some critical vendors that we tried to designate the
24 creditors disagreed were critical. So the rejection was
11:00 25 not unilaterally by the company, sir.

1 Q. I see. So some critical vendors were not paid
2 in full -- or some critical vendors were not paid their
3 prepetition claims really against your business
4 judgment?

11:00 5 A. I'd like to reword that slightly. There were
6 some vendors that company personnel believed were
7 critical that our creditors did not agree were critical
8 and they were not ultimately paid, sir.

9 Q. Okay. And would you agree with me whether
11:00 10 they're critical or not, there is a rather sort of
11 limited supply of vendors for the company in Humboldt
12 County; is that right?

13 A. That is generally quite true, sir, yes.

14 Q. And would you agree with me that it would be
11:01 15 good for the reorganization efforts of the company if
16 those people receive a substantial portion of their
17 claims against the company upon the reorganization of
18 these Debtors?

19 A. Yes, sir.

11:01 20 Q. And the vendors work for Palco, but performed
21 services for both Palco and Scopac, correct, and then
22 there are some other vendors that just work for Scopac?

23 A. That is correct, sir.

24 Q. Now, in the bottom of paragraph 9, you talk
11:01 25 about how -- well, you have the model from Dr. Reimer,

1 the Options model, you can go off model based on
2 operational needs or desires, correct?

3 A. Yes, sir.

4 Q. And if I understand you correctly, if you're
11:02 5 going to have an issue with respect to moving from
6 selection cutting to clearcutting, what you're going to
7 do is you're going to spread that over time to assist
8 the company operationally; is that right?

9 A. Yes, sir. And also its contractors, it would
11:02 10 be not only feasible but difficult to ask our
11 contractors to go from entirely one set of harvest
12 practices one year to largely a different set the
13 following year. So I think it would be mutually
14 beneficial for both company operations and the
11:02 15 contractors on which it depends.

16 Q. Why is that? Why is it necessary to smooth it
17 out for the contractors' benefits?

18 A. Generally speaking, selection harvest -- in
19 this particular example in my proffer, selection of
11:02 20 harvest is slower and puts a premium on having usually
21 more mobile crews and mobile equipment. And that way a
22 contractor can move quickly from job to job to job.
23 There are certain kinds of harvesting equipment. For
24 example, something called buncher, or fellow bunchers
11:03 25 that work particularly well for selection or thinnings

1 that may be ideal for clearcutting. Clearcutting by
2 contrast is better set up for, you know, heavier, larger
3 equipment that stays in one place for a given period of
4 time. So kind of like rapid strike force for a
5 selection versus the entrenched army for the
6 clearcutting. How's that?

11:03

7 Q. Okay. And then in paragraph 11 you were a
8 little bit critical of Dr. Tedder's estimate of -- or
9 saying that \$195 per 1,000 board feet and hauling costs
10 was not in line with Scopac's costs, correct?

11:03

11 A. Yes, sir.

12 Q. But in fact, in 2007, just looking at tractor
13 and yarder-based logging, not including helicopter
14 logging, which is much more expensive, your costs were
15 \$207 per 1,000 board feet, correct? I'm sorry, that was
16 in 2005; is that right?

11:04

17 A. Yes, sir.

18 Q. And if you were to include helicopter logging,
19 it would, of course, be higher than that, correct?
20 Because that's the most expensive form of logging?

11:04

21 A. Yes, sir.

22 Q. And the same thing is true in 2007, if you
23 were to include helicopter logging, the cost would be
24 higher than what you experienced which was \$194 per
25 1,000 board feet in 2007, correct?

11:04

1 A. Yes, sir, for 2007 if you add helicopter back
2 in, you would go from approximately \$194 per 1,000 board
3 feet to \$214 per MBF, sir.

11:04

4 Q. Okay. And the various methods, particularly
5 tractor and helicopter, that requires equipment that
6 uses diesel; is that correct?

7 A. Yes, sir.

11:05

8 Q. And in fact, all methods really require
9 diesel, including the cable logging, right? At least
10 that's the way it looks on Ax Men on the History
11 Channel.

12 A. Well, I'm not an expert on aviation fuel but
13 even our helicopter vendors use diesel-powered
14 equipment.

11:05

15 Q. And what's the price of diesel today in
16 Humboldt County?

17 A. When I left town, I think it was about \$4.35
18 per gallon, sir.

19 Q. That's a significant increase, isn't it?

11:05

20 A. It's a very significant increase, yes, sir.

21 MR. NEIER: I'm sorry, Your Honor, we
22 only got this last night so I'm just sort of speeding
23 through it. And there was a lot going on last night.

11:06

24 Q. (By Mr. Neier) In paragraph 18 of your
25 proffer, you indicate that you think that some of the

1 slivers at least can be harvested economically; is that
2 right?

3 A. Yes, sir.

4 Q. Approximately 40 percent?

11:06 5 A. One analysis that I had conducted which
6 involved one of my best GIS analysts and one of my best
7 foresters identified 40 percent that they could readily
8 say were operable.

9 Q. And by "operable," what you mean is they're
11:07 10 near a road?

11 A. Generally that's true, yes, sir.

12 Q. And that doesn't mean it's economical to
13 harvest those amounts that are near the road. That just
14 means it's capable of being done?

11:07 15 A. You've caught me being sloppy with my terms.
16 Operable does tend to mean feasible. However, as the
17 assignment was defined for them, I asked them to make
18 sure they thought it would be economically worthwhile
19 doing. So with respect to the assignment, operable
11:07 20 included a cost efficiency consideration.

21 Q. Okay. But there's 60 percent of the slivers
22 are not economical to harvest, at least in your view?

23 A. They did an initial review and said they could
24 conclude that 40 percent were operable, including this
11:07 25 cost consideration without further work. They believed

1 that additional work, including especially on the ground
2 evaluations would be necessary before you could make a
3 go, no-go decision on the remaining 60 percent. So I
4 would certainly agree, sir, that some proportion of that
5 60 percent is not feasible to harvest either
6 operationally or economically, but I'm not sure the
7 proportion as I sit here.

11:08

8 Q. And do you know if Dr. Reimer excluded 60
9 percent of the slivers from his model?

11:08

10 A. I do not know.

11 MR. NEIER: I have no further questions,
12 Your Honor.

13 THE COURT: All right. Does Mendocino
14 have any questions?

11:08

15 MR. HAIL: Briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. HAIL:

18 Q. Mr. Barrett, I'm Brian Hail representing the
19 Mendocino Redwood Company. If you wouldn't mind turning
20 to paragraph 3 of your new supplemental declaration.
21 And specifically the first sentence. You've worked with
22 Dr. Reimer since 2003, correct?

11:08

23 A. Yes, sir.

24 Q. In -- you've used Dr. Reimer's model to help
25 forecast harvest schedules, correct?

11:09

1 A. Among other things, yes, sir.

2 Q. And those are harvest schedules going out
3 years in the future, correct?

4 A. Yes, sir.

11:09 5 Q. Okay. And since 2003 did you also use
6 Dr. Reimer's models to help model forecasts in, say,
7 2004?

8 A. No. We did not use Dr. Reimer's model for
9 that purpose until 2005.

11:09 10 Q. In 2004 you were -- which models were you
11 using?

12 A. We were using Options but we were using it for
13 long-term harvest planning only. Your question referred
14 to a following year's harvest, that short-term harvest
11:09 15 planning. We did not use Options for short-term harvest
16 planning until 2005.

17 Q. Putting aside short-term harvest planning, say
18 in 2004 then, what were you using Options for? Why
19 don't you tell me that.

11:09 20 A. In 2003-2004, the primary assignment for
21 Dr. Reimer was to assist us in preparing and validating
22 our Option A document to the California Department of
23 Forestry. And that involved harvest scheduling, to use
24 Dr. Reimer's term, over 100-year period as required by
11:10 25 the rules related to Option A filings.

1 Q. And when you said not in the short-term
2 harvesting, what would be the window that you meant for
3 a short-term harvest schedule?

4 A. Oh, I would think anything -- there's no --
11:10 5 there's no standard definition. I would think that
6 anything within 3 to 5 years would be short-term.
7 Others might argue that it's one year, others might
8 argue ten years, but I think most would agree anything
9 beyond ten years is probably longer term planning.

11:10 10 Q. Do you recall -- so just so I understand it
11 correctly, then if you're looking at in 2004 you weren't
12 using Dr. Reimer's model then for a three to four year
13 window of harvest scheduling?

14 A. That's correct.

11:10 15 MR. HAIL: Okay. I have no more
16 questions, Your Honor.

17 THE COURT: All right.

18 MR. FIERO: Just a couple, Your Honor.

19 CROSS-EXAMINATION

11:10 20 BY MR. FIERO:

21 Q. Mr. Barrett, I'm going to ask that Mr. Penn
22 put on the screen the disclosure statement in this case.
23 And I want to go over some things with you that I went
24 over in your deposition. So in just a moment you'll
11:11 25 have it on the screen in front of you.

1 A. Very good, Mr. Fiero.

2 Q. And what we want to look at is page --

3 THE COURT: Can I just ask a general
4 question of the Noteholders perhaps. Is there among the
11:11 5 documents submitted in this case a copy of the original
6 Securities Exchange Commission filing for the original
7 note offering?

8 MR. FROMME: Your Honor, the Debtors did
9 submit that exhibit number and I can get you that
11:11 10 exhibit number in just a moment.

11 THE COURT: Okay.

12 Q. (By Mr. Fiero) Okay. Do you recall,
13 Mr. Barrett, during your deposition when we took a look
14 at this chart which is Mendocino's projection of
11:12 15 expenses associated with its operation of what we'll
16 call Newco?

17 A. Generally I do, yes, sir.

18 Q. Okay. And with regard to the line item for
19 road costs, do you see that in the expense section?

11:12 20 A. I do, sir.

21 Q. Okay. And you see that for the first partial
22 year, the expenses are projected to be \$9,270,000?

23 A. Yes, sir, I do see that.

24 Q. Isn't it true that you agree that that's a
11:12 25 likely expenditure for anyone who operates the

1 timberlands during this calendar year?

2 A. Yes, sir.

3 Q. All right. And for the following year,
4 there's a similar amount. Don't you agree that that's a
11:12 5 reasonable budget estimate?

6 A. Yes, sir.

7 Q. Okay. And with regard to the other cost
8 items, ignoring the cut projections which I know you
9 disagree with, are there any line items here for the
11:13 10 years projected with which you substantially disagree?

11 A. As I told you during my deposition, no. I
12 think these are generally indicative of the kinds of
13 costs we've been incurring. However, you'll recall in
14 my testimony I offered the opinion that we have had
11:13 15 generally declining costs in most cost centers and that
16 I was optimistic that these numbers could probably be
17 reduced with effective management if that program
18 continues, sir.

19 Q. And it's also true that certainly as discussed
11:13 20 by Mr. Neier that with respect to the cost of diesel
21 it's likely to go the other way?

22 A. It certainly has been going the other way,
23 yes, sir.

24 Q. Now, with regard to your proffer, I'd like to
11:13 25 direct your attention to paragraph 2.

1 MR. FROMME: Which one?

2 MR. FIERO: I'm sorry, your supplemental
3 proffer. The one we got last night. Actually, I got it
4 in the morning. I confess.

11:14 5 Q. (By Mr. Fiero) Now, the first sentence says
6 "the program of environmentally protective management
7 measures and monitoring strategies created under the
8 habitat conservation plan for Scopac's timberlands is
9 unprecedented in California in that no other timberland
11:14 10 owner in California has ever committed to such an
11 extensive system of science based monitoring and
12 adaptive management." Now, it's true, isn't it, that
13 Green Diamond actually has more land base under an HCP
14 at this time?

11:14 15 A. They do have more acres under their HCP, that
16 is true, sir.

17 Q. Okay. And that HCP was agreed to by Green
18 Diamond last year?

19 A. The timing got very gray, but I'll take your
11:14 20 representation that it was last year. That seems right,
21 sir.

22 Q. And some of that land base is redwood?

23 A. Yes, sir.

24 Q. Now, with regard to the last sentence in the
11:15 25 paragraph, "thus, Scopac's HCP provides considerable

1 certainty with respect to the amount of timber it can
2 harvest in the future." Do you see that sentence?

3 A. Yes, sir.

4 Q. Now, the HCP doesn't provide absolute
11:15 5 certainty, does it?

6 A. No, sir.

7 Q. In fact, there are other hurdles that one must
8 clear, even with the presence of an HCP and after a THP
9 has been approved, am I right?

11:15 10 A. Yes, sir.

11 Q. Including the regional Water Quality Control
12 Board?

13 A. Yes, sir.

14 Q. All right. And that's one of the reasons that
11:15 15 the company has elected to sue the state of California?

16 A. Yes, sir.

17 Q. All right. So are you comfortable with your
18 consideration that the HCP provides considerable
19 certainty with respect to the amount of timber it can

11:15 20 harvest in the future?

21 A. I think it does provide considerable
22 certainty, given the rule changes that we've seen at the
23 state level for which lands covered by HCPs have been
24 exempted and given the safe harbor provision of our

11:16 25 state and federal ITPs, incidental take permits. It

1 certainly doesn't cover all eventualities. We certainly
2 have experienced impacts on our operations that the HCP
3 did not address, as I testified for you. But
4 nonetheless, I do think that any redwood landowner right
5 now that has an HCP is in much better shape in terms of
6 predicting the future than landowners that do not have
7 one.

8 Q. Including Green Diamond?

9 A. Yes, sir.

10 Q. Now, moving to paragraph 3 of your
11 supplemental proffer. The last sentence says
12 "specifically Dr. Reimer worked extensively with
13 Scopac's forestry team to create customized growth and
14 yield curves for Scopac timberlands, and those growth
15 and yield curves were approved by the California
16 Department of Forestry in connection with the approval
17 of the Option A." Do you see that, sir?

18 A. Yes, sir.

19 Q. All right. Now, you aren't suggesting that
20 the California Department of Forestry has blessed in any
21 way, for instance, the growth rates of the cultivars?

22 A. I would not agree with that characterization.

23 Q. All right. It's your belief that the
24 California Department of Forestry has approved the
25 proposed -- the projected growth rates of the cultivars?

1 A. The California Department of Forestry, when it
2 reviewed our Option A, had as part of that Option A a
3 series of growth curves. I believe 30 or 32 different
4 curves, different -- actually, it's over 100, but let's
11:17 5 just say for now that there were a large number of
6 growth curves and that part of their review and approval
7 was to review those curves and see if they believed that
8 they reflected something that was achievable and
9 reflected what they believed to be an accurate
11:17 10 representation. I can't speak precisely as to the level
11 of detail of that review, but I'm confident in saying
12 that CDF did review those growth curves as part of their
13 review of the Option A.

14 Q. Are you testifying that included in Option A
11:18 15 were growth curves for cultivars?

16 A. I believe that our Option A talked about the
17 growth rates of cultivars, yes, sir.

18 Q. Are you sure, sir?

19 A. No.

11:18 20 Q. Now, moving on to paragraph 5 of your
21 supplemental proffer. It says "specifically" -- the
22 second sentence -- "over 76 percent of the Scopac
23 timberlands is located within 500 feet of an existing
24 road." If you were to change the term timberlands to
11:18 25 volume, do you know what would happen to the percentage

1 of volume that's located within 500 feet of an existing
2 road?

3 A. I certainly don't know with any precision. I
4 could offer a general perspective.

11:19 5 Q. It's likely to go down, right?

6 A. Actually, I think it would go the other way.

7 The great preponderance of volume in the Scopac

8 timberlands is in Elk and Freshwater. Conversely, some

9 of the lowest volume per acre is in the Bear-Mattole.

11:19 10 Elk and Freshwater are very highly roaded basins and the

11 Bear-Mattole has got some of the lowest road densities

12 on the ownership so my general perspective would be that

13 it would probably be about the same or perhaps rise

14 slightly.

11:19 15 Q. But even then, the proximity to a road isn't

16 the only thing which determines whether or not something

17 is easy to cut, right?

18 A. No, sir.

19 Q. There's the -- there are sensitive areas,

11:19 20 there's the steepness of the slope and other things

21 which affect your ability to log, right?

22 A. Yes, sir.

23 Q. And that's not taken into account in this

24 particular calculation of 76 percent?

11:19 25 A. No, sir.

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

2 THE COURT: All right. Yes, sir.

3 MR. PASCUZZI: Your Honor, Paul Pascuzzi
4 for the California state agencies.

11:20

5 CROSS-EXAMINATION

6 BY MR. PASCUZZI:

7 Q. Good morning, Mr. Barrett -- or Dr. Barrett.

8 A. Good morning, Mr. Pascuzzi.

9 Q. Do you have your original proffer up there?

11:20

10 A. Yes, sir.

11 Q. Okay. I'd like to direct your attention to
12 paragraph 7, which I believe discusses your

13 responsibilities at Scopac. Those responsibilities, I
14 believe it says, include "the implementation of and

11:21

15 compliance with all environmental and regulatory
16 programs and requirements of Scopac"; is that correct?

17 A. Yes, sir.

18 Q. And that includes the HCP or the Habitat
19 Conservation Plan?

11:21

20 A. Yes, sir.

21 Q. And so you must be familiar with the
22 implementation agreement for the Habitat Conservation
23 Plan?

24 A. Yes, sir.

11:21

25 MR. PASCUZZI: And for the record, Your

1 Honor, that's California State Agency Exhibit 1.

2 Q. (By Mr. Pascuzzi) You would also be familiar
3 with the state and federal incidental take permits; is
4 that correct?

11:21 5 A. Generally familiar. They're long and often
6 wordy as lawyers tend to be, sir, but I have certainly
7 reviewed them and have a passing knowledge of them.

8 Q. Well, I'm not going to ask you a lot of
9 questions about them, so don't worry about that. And
11:21 10 for the record, that's California State Agency Exhibit
11 4, that state incidental take permit.

12 And would you be familiar with the agreement
13 relating to the enforcement of AB 1986?

14 A. Yes, sir.

11:21 15 Q. And that, for the record, is California State
16 Agency Exhibit 2. And are you aware that the agreement
17 relating to the enforcement of AB 1986 is reported in
18 the real property records as what we call conditions,
19 covenants and restrictions that run with the land?

11:22 20 A. That is my understanding, yes, sir.

21 Q. And AB 1986, that was the assembly bill that
22 was passed around 1998, I believe, that allocated the
23 state's portion or the funds for the purchase of the
24 Headwaters forest; is that correct?

11:22 25 A. Again, that's my understanding, yes, sir.

1 Q. Okay. And that bill, AB 1986 contains certain
2 conditions to the funding of the purchase. Are you
3 familiar with that?

4 A. Yes, sir.

11:22 5 Q. For the record, AB 1986 is California State
6 Agency Exhibit 3. Those conditions were basically
7 certain minimum protections that were to be required to
8 be included in the final HCP. Are you familiar with
9 that?

11:22 10 A. Yes, sir. And two general categories, a
11 series of restrictions that would apply before watershed
12 analysis and then there were some restrictions that
13 applied regardless of the outcome of watershed analysis,
14 as I recall, sir.

11:23 15 Q. Okay. Back to the HCP for a minute. It
16 covers all of Scopac's timberlands; is that correct?

17 A. I believe there may be still a small amount of
18 acreage that is non-HCP acreage but it would be a very
19 small proportion of the total timberland, sir.

11:23 20 Q. Okay. And the HCP covers all of Palco's
21 lands; is that right?

22 A. I believe that's true, yes, sir.

23 Q. Including the town?

24 A. Yes.

11:23 25 Q. And the -- Palco does own some timberlands,

1 right?

2 A. Yes, sir.

3 Q. And those are covered lands under the HCP?

4 A. Yes, sir.

11:23 5 Q. Do you know about how many acres of Palco
6 timberlands that is?

7 A. I believe it's somewhere in the neighborhood
8 of about 9 to 10,000 acres, if I recall correctly.

9 Q. Okay. Let's talk about transferring lands
11:23 10 covered by the HCP for a second. Palco or Scopac have
11 sold lands that are covered by the HCP in the past; is
12 that right?

13 A. I don't want to quibble. We have sold lands
14 that were initially covered by the HCP, but upon
11:24 15 transfer of the HCP, no longer applied.

16 Q. And you were involved in those transfers?

17 A. Yes, sir.

18 Q. And so are you familiar with the process under
19 the implementation agreement for obtaining state and
11:24 20 federal agency approval for those transfers?

21 A. Generally. However, there's more one
22 mechanism. Because of the nature of those particular
23 transactions, I have the greatest familiarity with those
24 provisions for land sales that relate to transferring,
11:24 25 if you will, non-HCP lands into HCP coverage and

1 removing HCP lands from HCP coverage. Colloquially, I
2 think we just call them SWABS. Since that's what we
3 actually did that's where my knowledge is greatest. My
4 knowledge of the other methods is more passing, sir.

11:25 5 Q. Okay. Do you recall the Rigley transaction?
6 I believe it happened during this bankruptcy case?

7 A. Yes, sir.

8 Q. And you were involved in that?

9 A. Yes, sir.

11:25 10 Q. Do you recall how long it took to get state
11 and federal agency approval for the Rigley transaction?

12 A. An extended period, sir.

13 Q. Would you say greater than 60 days?

14 A. Yes, sir.

11:25 15 Q. Greater than 90 days?

16 A. Yes, sir.

17 Q. And would you consider that a simple
18 transaction or a complicated transaction?

19 A. We thought it would be a simple transaction,
11:25 20 but I think in hindsight one would have to conclude it
21 was a complex transaction.

22 Q. Okay. And you agree that any transfer of
23 lands that is covered by the HCP does require certain
24 state and federal agency approvals, right?

11:25 25 A. As I understand the controlling documents,

1 that's correct, sir.

2 Q. And the controlling documents would be the
3 implementation agreement for the HCP?

4 A. Yes.

11:25 5 Q. And the agreement relating to the enforcement
6 of AB 1986?

7 A. Yes, sir.

8 Q. Okay. And my office, on behalf of the
9 California state agencies, filed a brief in connection
11:26 10 with this confirmation hearing and so did the lawyer for
11 the federal agencies. Did you happen to read those, by
12 any chance?

13 A. It's been some time, sir, but yes, I did.

14 Q. Okay. Would it be fair to say that approval
11:26 15 from the state and federal agencies would require a
16 finding from them that the protections under the HCP
17 would be equal to or greater than the existing
18 protections?

19 MR. KRUMHOLZ: Your Honor, I will object
11:26 20 as to calling for a legal conclusion.

21 THE COURT: What's that?

22 MR. KRUMHOLZ: It calls for a legal
23 conclusion, Your Honor. I'm objecting to the question.

24 MR. PASCUZZI: I'm asking for his
11:26 25 understanding. He obviously has experience of that.

1 THE COURT: Okay. I won't consider it a
2 legal opinion but you're right, go ahead, you can answer
3 the question if you know the answer.

4 A. Could you please repeat for me.

11:26

5 Q. Sure, sure. Would it be fair to say that
6 approval would require finding -- a finding from the
7 agencies that the protections under the HCP would be
8 equal to or greater than the existing protections?

9 A. That is my understanding, yes, sir.

11:27

10 Q. Okay. And this approval would have to be
11 obtained prior to any transfers occurring; is that your
12 understanding?

13 A. That is also my understanding, yes, sir.

11:27

14 Q. Okay. Do you think in your experience that
15 the state and federal agencies would approve a transfer
16 that compromised the effectiveness of the HCP?

17 MR. KRUMHOLZ: I'll object as it calls
18 for speculation and a legal conclusion and I don't think
19 his understanding in this respect --

11:27

20 THE COURT: Okay. There is speculation
21 and there is speculation but is there anybody in this
22 room that thinks that California would approve something
23 that compromised the HCP, the environmental provisions
24 of it? I mean, that's sort of a rhetorical question.

11:27

25 MR. KRUMHOLZ: I must admit, Your Honor,

1 I didn't understand that until now.

2 MR. PASCUZZI: Thank you, Your Honor,

3 I'll move on.

4 Q. (By Mr. Pascuzzi) If you know, Dr. Barrett,
11:27 5 is the Scopac plan going forward?

6 A. I know that there are serious considerations
7 and discussions underway. I can't tell you the status
8 of that. But I know that we are considering not moving
9 that plan forward. That is one of the things that I've
11:28 10 been part of discussions for.

11 Q. Okay. Well, I guess since there's still a
12 possibility it would be moving forward, I just have a
13 few other questions. The Scopac plan provides for a
14 transfer of the timberlands to the Noteholders, do I
11:28 15 have that right?

16 A. That's my understanding.

17 Q. Okay. And are you aware that the Scopac plan
18 does not expressly acknowledge that those -- that
19 transfer of the timberlands to the Noteholders is
11:28 20 subject to prior approval of the state and federal
21 agencies?

22 A. I am surprised to hear that since I was part
23 of the team that drafted language that we thought was
24 protective of the state agencies position in any part of
11:28 25 our plan, so --

1 Q. I think to be fair, it is in the disclosure
2 statement, it's just not in the actual plan. So if the
3 Scopac plan did not provide for the prior approval from
4 the state and federal agencies, it would not comply with
5 the non-bankruptcy requirements; is that correct?

11:29

6 A. As I understand them, that's correct, sir,
7 yes.

8 MR. PASCUZZI: I'll pass the witness,
9 Your Honor.

11:29

10 THE COURT: All right. Anybody -- did
11 you have some questions?

12 MR. KRUMHOLZ: I have some questions,
13 Your Honor.

14 THE COURT: All right.

11:29

15 CROSS-EXAMINATION

16 BY MR. KRUMHOLZ:

17 Q. This is going to be a little disorganized,
18 Jeff, but bear with me, if you would. Just to touch on
19 a couple of Mr. Pascuzzi's questions. These
20 requirements that you've talked about under the HCP and
21 other environmental regulations, do you remember that
22 general discussions just a moment ago?

11:29

23 A. Yes, sir.

24 Q. Those would apply to any buyer, including MRC;
25 is that right?

11:29

1 A. Yes, sir.

2 Q. Do you have any reason to believe based on
3 your experience in dealing with these environmental
4 regulations the state would be in any way arbitrary or
11:30 5 unreasonable in approving the process so that it would
6 show favoritism in any way?

7 A. I think the state would not do those things,
8 sir.

9 Q. I also want to touch on some questions that
11:30 10 were asked of Mr. Clark earlier. You may be a little
11 bit more familiar with redwood mills in the area of
12 northern California; is that right?

13 A. I would not put myself forward as an expert on
14 mills, but you can't live in Humboldt County for ten
11:30 15 years in this business and not know something, sir.

16 Q. There are actually about seven to nine mills
17 in the northern California area for redwood; is that not
18 right?

19 A. I can't confirm that number. The mills sort
11:30 20 of wink in and out, at least some of them, on what
21 they're cutting or even in the case of hardwood, for
22 example, whether or not they're operating, but there are
23 certainly a number of mills.

24 Q. A number of mills that have the capacity to
11:30 25 mill redwood?

1 A. Yes, sir.

2 Q. Let's go through some of them just to see if
3 we can get through them quickly. Are there two owned by
4 California Redwood Company?

11:31 5 A. That's correct.

6 Q. The Korbelt and the Orick?

7 A. That's my understanding, yes, sir.

8 Q. And then of course there's the Palco mill,
9 correct?

11:31 10 A. Yes, sir.

11 Q. And then we have the Willits redwood mill; is
12 that right?

13 A. Yes, sir.

14 Q. So that makes four. Then the MRC mill that we
11:31 15 have heard so much about here in this courtroom, right?

16 A. Yes, sir.

17 Q. And then of course we have Agwood, Ukiah; is
18 that right?

19 A. Ukiah.

11:31 20 Q. Thank you. And that would be six, right?

21 A. Yes, sir.

22 Q. And then Redwood Empire happens to have a
23 couple, do they not?

24 A. Yes, sir.

11:31 25 Q. And that would be seven and eight, right?

1 A. Yes.

2 Q. Cloverdale and Philo, is that how you say it?

3 A. Yes.

4 Q. And then Big Creek Lumber has one near Santa

11:31 5 Cruz; is that right?

6 A. That's my understanding, yes, sir.

7 Q. Great. I wasn't reading off my Blackberry if

8 that's what it looked like. Now, your role with the

9 company, as I understand it, you pretty much run the

11:32 10 timberlands. I think we've talked about that before,

11 operationally?

12 A. Yes, sir, I operationally run the timberlands.

13 Q. And you've done that for how many years?

14 A. Over three years now.

11:32 15 Q. All right. And can you give us a little

16 deeper flavor for what you do in that role? Kind of

17 what you do day-to-day taking care of that forest and

18 figuring out operationally what is best.

19 A. Sure. First of all, the groups that I

11:32 20 supervise probably tell a lot about the position. I

21 have -- I supervise the science group, the forestry

22 group, our silviculture and reforestation group, our GIS

23 and database group, and until recently managed the

24 logging and roads group, now oversee the logging roads

11:33 25 work that's done for Scopac without managing the groups.

1 So very generally, you could lump that together and say
2 I manage the timberlands. Pretty much anything and
3 everything that needs to be done on the timberlands, up
4 to and including delivery of logs to mills has
11:33 5 traditionally been within my area of responsibility. In
6 some cases, it's very focused on harvesting, writing
7 permits and getting approvals to do the harvesting and,
8 as I said, overseeing the roads and harvesting work to
9 do it.

11:33 10 In other cases the work is not related to
11 harvesting. For example, the ACP has numerous
12 affirmative duties for monitoring and research and so
13 on, whether we conduct any harvest or not. So if I was
14 trying to put a big bow on it, I would say we take care
11:33 15 of the timberlands in all the ways that it's required to
16 be taken care of and we focus commercially on trying to
17 harvest logs and deliver them to mills.

18 Q. How did you become interested in forestry? I
19 mean, anybody who's deposed you, you've been in the
11:34 20 courtroom over the past year plus knows you have a
21 passion for it. How did you get interested in this
22 business?

23 A. I did my graduate work in the North Carolina
24 forest and looked at the interaction between land use
11:34 25 and fish populations. That was a start. I had always

1 wanted to move to Seattle, did so, worked as an
2 environmental consultant. A lot of the work in Seattle
3 is related to forest and ecosystems. I had the good
4 fortune to work on several projects in southeast Alaska
11:34 5 and the Pacific Northwest on timberlands. And I just
6 thought it was very neat. It's an ecosystem that's very
7 interesting to the biologist and scientist in me. But
8 it's also a commercial enterprise and one that's
9 important and valuable to society, and the interface
11:34 10 between those two is not overly calm and unfounded, and
11 therefore, it was a great fit for me.

12 Q. Is there anyone who knows the timberlands
13 better than you do in your mind?

14 A. We have been down this line before so I'm
11:35 15 going to follow what I have told you before. There are
16 certainly individuals in the company that know more
17 about different aspects of the company than I do. Our
18 logging manager knows tremendously more about the
19 logging and logging history than I do. We have
11:35 20 scientists that are more knowledgeable than I am in
21 certain fields, etcetera.

22 Q. But overall, with respect to the management
23 and operation of the timberlands, is there anyone that
24 knows more than you? I know you don't like to pat
11:35 25 yourself on the back, but in your mind?

1 A. If you consider the overall aspect of the
2 timberlands, then I would -- I would pause at myself as
3 probably the most knowledgeable person in the company,
4 yes, sir.

11:35 5 Q. And to maximize the value of the timberlands,
6 what have you projected in terms of harvest levels that
7 you invest in that regard? In light of all the
8 regulations and environmental issues, which you're
9 passionate about, right?

11:35 10 A. Yes, sir.

11 Q. In light of that.

12 A. I believe that from a straight economics
13 forestry point of view, the timberlands can sustain
14 harvest of 85 to 90 million board foot regularly but at
11:36 15 high cost. High cost meaning that you have more
16 helicopter or more difficult permitting and so on. So I
17 think my past testimony and certainly my current opinion
18 is that consistent harvesting in the neighborhood of
19 about 75 to 80 million board foot a year is feasible.

11:36 20 It meets all of our environmental commitments and can be
21 done in a way that generates significant revenue, sir.

22 Q. And simply put, is that why you don't believe
23 that the 55 or so million board feet suggested by
24 Marathon or MRC is the appropriate number?

11:36 25 A. It's a loaded question. And I'm not going to

1 give you a simple answer. I believe that we can harvest
2 at 75 to 80 million board foot a year and meet all of
3 our environmental objectives and be a good cooperate
4 neighbor, okay? So the environment has to come first
11:36 5 and I believe you can achieve those environmental
6 objectives at a harvest level of 75 to 80 million board
7 feet a year.

8 I also think since we're commercial
9 timberlands that we should manage those timberlands to
11:37 10 maximize the production of resources that our society
11 values. When you put those two together, I would rather
12 see harvest at 75 million board foot a year than at the
13 55 million board foot a year being proposed by the
14 Marathon/MRC plan, sir.

11:37 15 Q. Mr. Barrett, I have a few questions regarding
16 vendor issues, and I must admit these are notes taken
17 from bankruptcy lawyers so bear with me.

18 Now, there are national vendors that were
19 prepetition vendors, true?

11:37 20 A. That's my understanding, yes, sir.

21 Q. And do you have any reason to believe that
22 national vendors would not do business with Scopac if
23 they're not paid prepetition claims?

24 A. I'm trying to remember the list of critical
11:37 25 vendors, and I'm failing in doing so, so I can only

1 offer a general answer, which is, no, I don't think they
2 would refuse to do business with us on that basis.

3 Q. Can you identify any of those types of
4 vendors; that is, vendors, national vendors who have
11:38 5 refused to continue to do business with you despite
6 non-payment of those claims?

7 A. As I sit here right now, no, I cannot, sir.

8 Q. And I presume many of the vendors for -- is
9 Scopac the largest -- I assume it's the largest
11:38 10 timberlands company in Humboldt County?

11 A. No. As a matter of fact, Green Diamond has
12 that distinction. We're only number two.

13 Q. Okay. But it obviously controls a massive
14 amount of acreage, correct?

11:38 15 A. It's a very significant amount of acreage for
16 Humboldt County commercial timberlands, yes, sir.

17 Q. And so vendors that actually are in Humboldt
18 County need Scopac in large part?

19 A. We certainly hope so. I'm sorry, I don't mean
11:38 20 to be flippant. I think depending on the business, the
21 dependance or interest in doing -- having us as a
22 customer varies, certainly for those businesses that
23 focus on timberlands and forest management. We're a
24 very, very valuable client. We're also a valuable
11:39 25 customer to smaller firms for whom our business can

1 represent a significant portion of their revenues.

2 Q. Are there any vendors with prepaid -- excuse
3 me, prepetition claims against Scopac who no longer do
4 business with Scopac, to your knowledge?

11:39 5 A. I believe that there were one or two, but sir,
6 as I sit here, I cannot identify them.

7 Q. But there were former employees who were not
8 paid their claims because Marathon objected; is that
9 right?

11:39 10 A. Yes, sir. That's my understanding.

11 MR. KRUMHOLZ: Nothing further, Your
12 Honor.

13 THE COURT: All right. Anyone else? Any
14 redirect?

11:40 15 REDIRECT EXAMINATION

16 BY MR. FROMME:

17 Q. Eric Fromme, Gibson, Dunn & Crutcher on behalf
18 of Scotia Pacific. You were just asked, Dr. Barrett, a
19 few questions about critical vendors. Do you remember
11:40 20 back in January 2007 when this case was first filed?

21 A. Yes, sir.

22 Q. You personally reviewed the list of vendors
23 and determined who was critical and which ones were
24 critical, which ones were not?

11:40 25 A. Yes. Your question infers I was the only

1 person to do so or that it was done without input and I
2 would not want to concur with those implications but I
3 certainly reviewed the list and made recommendations,
4 sir.

11:41 5 Q. With regard to Scopac, you personally reviewed
6 the list of critical vendors for Scopac; is that right?

7 A. Yes, sir.

8 Q. Are you aware of any critical vendors that you
9 identified for Scopac that were not paid? Do you
11:41 10 remember?

11 A. I'm trying to remember if Scopac designated
12 HSN as a critical vendor. That's the only one that I
13 can think of right now. And I'm not sure, sir, whether
14 or not they were designated as critical for their Scopac
11:41 15 claims. I'm sorry.

16 Q. You were asked a few questions -- you were
17 asked questions about sawmills in northern California.
18 Do you remember that?

19 A. Yes, sir.

11:41 20 Q. Somebody -- Mr. Krumholz identified a sawmill
21 in Santa Cruz. Is that anywhere near Scotia?

22 A. No, sir.

23 Q. It's very far away, isn't it?

24 A. It's a very long drive, sir.

11:42 25 Q. It's not economical to sell logs from Scotia

1 to Santa Cruz; is that right?

2 A. I can't imagine that it would be, no, sir.

3 Q. Not all of the mills that Mr. Krumholz

4 identified would be interested in buying logs from

11:42 5 Scopac because they're too far away, is that fair to

6 say?

7 A. That could be a consideration in whether or

8 not they would purchase, yes, sir.

9 Q. You were talking about harvest levels at 75

11:42 10 million board feet. Do you remember that?

11 A. Yes, sir.

12 Q. Were you referring to harvest levels in the

13 near term or the long-term?

14 A. I was referring to harvest levels over the

11:42 15 next ten years.

16 Q. In your opinion -- in your opinion, what is

17 the productivity of Scopac's lands?

18 A. I think they are some of the most productive

19 timberlands anywhere, certainly in my experience, they

11:43 20 are some of the most productive timberlands even for

21 redwood lands. I believe they are some of the best

22 redwood lands in existence with respect to productivity,

23 sir.

24 Q. Did you review the harvest schedules of

11:43 25 Dr. Reimer in his report?

1 A. Yes, sir.

2 Q. Do you believe that Dr. Reimer's harvest
3 schedules are reasonable?

4 A. Yes, sir.

11:43 5 Q. You were talking about what was maximally and
6 legally permissible to harvest. Do you remember that?

7 A. Yes, sir.

8 Q. How do Dr. Reimer's harvest schedules compare
9 to that?

11:43 10 A. They are -- they are below those maximal --
11 maximally permissible harvest levels.

12 Q. Do you think that they're a reasonable
13 projection?

14 A. Yes.

11:44 15 Q. In your practice in working with Options, have
16 you found it to be a reliable prediction tool?

17 A. Yes, sir.

18 Q. How have you determined that?

19 A. A couple of different ways. One is just what
11:44 20 your staff tell you. I mean, some of my staff have
21 expertise in modeling and I don't, so you talk to them
22 and say what do you think, and they're very

23 complimentary of the model. But more to the point, and
24 I think something that really, I think, confirmed in my

11:44 25 mind that Options was doing a good job was in 2005 to

1 2007 when we were developing our ten-year harvest plans,
2 the foresters and the science staff and had tentatively
3 identified where we wanted to harvest. And then ran the
4 Options model and did a comparison. And in 2005 and
11:44 5 especially in 2007, there was a remarkable concurrence
6 between the areas that my staff thought were ideal for
7 harvesting in the next decade and those areas that were
8 identified by the model. That was a fairly impressive
9 fete and I think cemented in my mind that the model is
11:45 10 very good at predicting how you can harvest on our lands
11 given the environmental restrictions.

12 Q. You were asked some questions about the 2007
13 harvest forecast and in comparison to the actual harvest
14 forecast. Do you remember that?

11:45 15 A. Yes, sir.

16 Q. Can you tell the Court what the reasons for
17 the reduction in 2007 harvest from the projection to
18 what was actual?

19 A. Sure. The greatest preponderance of that
11:45 20 difference was the failure by the North Coast Regional
21 Water Quality Control Board issued what are called tier
22 2 permits in the Elk and Freshwater basins. I used to
23 know the number exactly but if we said that's at least
24 14 million board foot of the deficit that would cover
11:45 25 it. We also chose to reduce the amount of helicopter

1 harvest, which as I recall that was another three to
2 four million board feet. We had early rains in October,
3 something that has never happened in my ten years at
4 Palco before -- Scopac, excuse me. And unfortunately,
11:46 5 we're bringing in two million a week during that part of
6 October. Those rains shutdown all of our operations on
7 our dirt roads. The HCP cuts off that road use after
8 October 15th. We didn't recover from that. That was
9 another two to three million board feet. And the
11:46 10 remainder of the difference was a market-based decision
11 not to pursue Doug Fir, a hardwood harvest given the
12 prices that developed in the late summer and early fall.

13 Q. How would you characterize the harvest
14 projection of 100 million board feet in 2007?

11:46 15 A. I think the best way is -- to describe it is
16 if everything goes right, here's how much we can
17 harvest, maximally possible and legally permissible.

18 Q. So harvest rate of -- the actual harvest rate
19 of 700 for 2007 would have been a more reasonable
11:47 20 forecast?

21 A. Yes, sir.

22 Q. You were asked some questions about the
23 Scopac's plans to replant redwood. Do you remember
24 that?

11:47 25 A. Yes, sir.

1 Q. I'm sorry. In areas that not previously had
2 redwood?

3 A. Yes, sir.

4 Q. Is Scopac doing that today?

11:47 5 A. Yes, we are, sir.

6 Q. How is it determining where to plant redwood
7 trees where redwoods trees are not growing?

8 A. Following harvest are the cessation of
9 harvesting opportunities -- or activities. Generally
11:47 10 one of our reforestation foresters will go out and walk
11 the site. He's looking -- and they are all he's right
12 now. He's looking at site conditions, slope, aspect,
13 and general soil conditions. Often those field visits
14 are backed up in the office with a review of the soil
11:48 15 maps for the property. And based on that, the forester
16 will make a recommendation on whether or not he believes
17 the site is suitable for redwood.

18 Q. Has Scopac's efforts in this regard been
19 successful or not?

11:48 20 A. I would definitely consider it a success, yes,
21 sir.

22 Q. Are -- is Scopac replanting redwood in the --
23 in and around the Bear-Mattole Watershed?

24 A. Yes, sir.

11:48 25 Q. What's the current acreage of redwood dominant

1 stands in the Bear-Mattole?

2 A. Less than two percent of the land area in and
3 around the Mattole is currently redwood dominant.

4 Q. What's the acreage of the Bear-Mattole
11:49 5 Watershed approximately?

6 A. I'm sorry, I'm not going to be able to get
7 that number right sitting up here.

8 Q. Is it more than 30,000 acres?

9 A. Yes, sir.

11:49 10 Q. Do you know what the projection of redwood
11 dominant stands would be in 2046 on a percentage basis?

12 A. Yes, sir. We did a modeling exercise in-house
13 based on input from the reforestation foresters and
14 working with the GIS staff. We came up with an estimate
11:49 15 of 25 percent.

16 Q. Is that a -- is that reasonable in your
17 opinion for in and around the Bear-Mattole area?

18 A. Certainly reasonable based on what we have
19 done so far. It's reasonable based on the rate at which
11:49 20 you would be converting those lands. That's less than
21 one percent a year over the next 50 years. My personal
22 opinion is I think it's conservative. I think that as
23 we develop some of these dry land cultivars which are
24 not yet being outplanted, we should be able to expand
11:50 25 where we're currently planting redwood in other areas.

1 So call it a target that I'm hoping to beat, but a
2 target I'm confident we can hit.

3 Q. You were asked some questions about -- by the
4 California State Agencies counsel about the Rigley
11:50 5 transaction. Do you remember that?

6 A. Yes, sir.

7 Q. That transaction involved a settlement of a
8 lawsuit, didn't it?

9 A. Yes, sir.

11:50 10 Q. In your opinion, did that add to the
11 complexity of the transaction?

12 A. Yes, sir, very much.

13 MR. FROMME: I have no further questions,
14 Your Honor.

11:50 15 THE COURT: All right. You can step
16 down. Let's see. Are we down to Mr. Zelin?

17 MR. DOREN: Your Honor, we will not be
18 calling Mr. Zelin.

19 THE COURT: Okay. So all you have left
11:51 20 is Mr. Mundy who's tomorrow?

21 MR. DOREN: That's true, Your Honor, and
22 we are trying to achieve an agreement by which we may be
23 able to submit Dr. Mundy's testimony and those of the
24 related rebuttal witnesses on the papers, but we aren't
11:51 25 there yet.

1 THE COURT: Okay. Do we have another
2 witness?

3 MR. NEIER: Your Honor, I would request a
4 brief break for a minute. We have an issue that has
11:51 5 just arisen and we would like to discuss.

6 THE COURT: Okay. Talk amongst yourself
7 and we'll break, what, about ten minutes?

8 (A recess was taken.)

9 THE CLERK: All rise.

12:05 10 THE COURT: Be seated.

11 MR. NEIER: Your Honor, we have people
12 still congregating in the hallway.

13 THE COURT: Okay.

14 MR. FROMME: Your Honor, you asked about
12:05 15 the memorandum that is DX-88, Debtors' Exhibit 88. I do
16 have a copy for you.

17 THE COURT: There may have been some
18 confusion about whether you can bring food or soft
19 drinks into the courtroom. You can't do that. You can
12:06 20 bring water into the courtroom. You're welcome to

21 have -- you know, I know we kind of have a schedule, but
22 if you've got blood sugar problems, you may have to have
23 something to eat. You're certainly welcome to have food
24 outside somewhere, but you need to leave the courtroom

12:07 25 to do that. We don't -- I don't think anyone allows

1 food in the courtroom in Corpus. Go ahead.

2 MR. NEIER: Your Honor, this is sort of
3 the fill-the-void testimony. This would normally be on
4 our rebuttal case after the Debtors have finished their
12:07 5 case, but, you know, just trying to work with the
6 schedule so we're calling Dr. Tedder.

7 THE COURT: All right.

8 PHILIP TEDDER, Ph.D.,
9 having been first duly sworn, testified as follows:

12:07 10 DIRECT EXAMINATION

11 BY MR. NEIER:

12 Q. Good morning, Mr. Tedder.

13 A. Good morning.

14 Q. Mr. Tedder, can you tell me your educational
12:08 15 background?

16 A. I have a bachelor's degree and master's degree
17 in forest management and Ph.D. in agricultural economics
18 with a specialty in mathematical economics.

19 Q. And can you tell me your professional
12:08 20 experience.

21 A. Professional experience is university
22 professor at the University of Arkansas and Oregon State
23 University, president of a consulting company, senior
24 vice president of Seneca Sawmill Company, Seneca
12:08 25 Timberlands, Seneca Livestock, Seneca Engineering, and

1 an airplane. And then also after that, I was the
2 president and chief operating officer of Pacific Lumber
3 and Shipping Company.

12:08

4 Q. Is that related to Pacific Lumber in this
5 case?

6 A. No, it's not. And then I was interim there
7 for a chief executive officer of Centralia Sawmill
8 Company, and now I am the general manager and chief
9 operating officer of Gravelle Steel Company.

12:09

10 Q. Okay. And have you had any military
11 experience?

12 A. Yes.

13 Q. And what was that?

14 A. I was a captain in the Marine Corps.

12:09

15 Q. Okay. And did you serve in Vietnam?

16 A. Yes.

17 Q. Do you have any -- do you belong to any
18 professional societies or hold any certifications?

12:09

19 A. Yes, I belong to the American Society of
20 Appraisers. I currently am an accredited appraiser
21 awaiting my forest status as a accredited senior
22 appraiser, but I have to write a new timberland exam for
23 new members.

24 Q. To maintain your senior appraisership?

12:09

25 A. That's correct.

1 Q. And by way of contrast, is Mr. Yerges a member
2 of the American Society of Appraisers?

3 A. No.

4 Q. Is he affiliated with that organization at
5 all?

6 A. He is an affiliate.

7 Q. Is he allowed under American Society of
8 Appraisers regulations to do appraisals?

9 A. No.

10 Q. How many years, just in sum total, of
11 professional consulting and academic experience do you
12 have in forestry management?

13 A. We counted that up this morning and,
14 unfortunately, it's 39 years.

15 Q. Now, were you engaged in this matter?

16 A. Yes, I was.

17 Q. And what were you engaged to do?

18 A. Among other things, I was engaged to review
19 Mr. Yerges's opinion of value.

20 Q. And did you review Mr. Yerges's two reports,
21 that is, his earlier report and then his report -- his
22 later report dated March 14, 2007 -- or 2008?

23 A. Yes, I did. And as a parallel to that, I had
24 to review Dr. Reimer's report also.

25 Q. And so did you review the two reports by

1 Dr. Reimer as well?

2 A. Yes.

3 Q. And did you attend their depositions?

4 A. Yes.

12:10 5 Q. And were you present for their testimony?

6 A. Yes.

7 Q. Now, with respect to Dr. Reimer, have you
8 looked at his harvest schedules, and particularly the
9 time period after the first 40 years?

12:11 10 A. Yes.

11 Q. And what would you characterize that harvest
12 schedule for years 40 to 50? That's the big spike that
13 we saw in the chart the other day?

14 A. I characterize that harvest schedule as a what
12:11 15 if harvest schedule.

16 Q. What do you mean by what if?

17 A. It's what if the cultivar stop takes and grows
18 to fruition where they can harvest it. It's what if the
19 current young stands grow on the SPS yield tables.

12:11 20 Q. Is that the table that Mr. Shields had up
21 there the other day?

22 A. That's correct. And approach to normality a
23 very rapid rate after partial removals. It's based
24 upon -- what I -- it's based upon exchanging Douglas Fir
12:11 25 stands to redwood stands. I understand that a little

1 bit more after the -- after the testimony this morning.
2 So it's replacing some of the Douglas Fir stands on
3 Douglas Fir sites with redwood, not all of them. And
4 it's also what if you can clearcut all of the small
12:12 5 slivers. And there are several other things, but it's a
6 what if thing. And you purchase and you appraise
7 timberlands on what the timberlands can do now, not what
8 you think they might be do based upon some sort of
9 future re -- current research that might work or might
12:12 10 not work.

11 Q. And you heard that -- or you were present when
12 Dr. Reimer testified that he set the harvest schedule
13 for the timberlands using the -- I believe it's the
14 MacMillan Bloedel -- forgive me for my pronunciation --
12:12 15 model?

16 A. Well, no, it's MacMillan, Bloedel Company that
17 he said he set the harvest schedules on.

18 Q. I apologize.

19 A. Right. And I was present at that.

12:12 20 Q. And is it your opinion that Dr. Reimer
21 actually sets harvest schedules?

22 A. You know, as a person that has had the
23 executive responsibility of setting a harvest schedule
24 on timberlands, and my consulting over the years with
12:13 25 other executives, the setting of the harvest schedule or

1 how much you're going to harvest in any one year on your
2 timberlands is a really high level executive decision.
3 It impacts the company for that year and many years into
4 the future.

12:13 5 So if Dr. Reimer was an executive in that
6 company, then I suspect that he probably did set it. If
7 he wasn't an executive in that company, I suspect that
8 he just supplied the harvest schedule to the executives
9 in the company where they could make that decision.

12:13 10 Q. Okay. And the senior executive types that
11 you're talking about are people like Mr. Dean?

12 A. That's correct.

13 Q. And you heard Dr. Barrett's testimony this
14 morning about how the harvest schedule is set for the
12:13 15 first ten years by Scopac. Would that be consistent
16 with your opinion as to how these schedules are set?

17 A. I think that's -- for the first ten years, I
18 think he indicated that he had a ten-year moving
19 average. I think that's probably the way that you would
12:14 20 do that, yes.

21 Q. You heard Dr. Reimer's testimony about -- or
22 you saw the various methods that he was going to use to
23 harvest, that is, going from selective harvesting, then
24 to clearcutting, and then back to selective harvesting
12:14 25 throughout the 50-year period, correct?

1 A. Yes.

2 Q. And what do you think about that? Do you
3 think that's an easy thing to do for a timber company in
4 your experience?

12:14 5 A. No.

6 Q. Why not?

7 A. Well, you know, basically if you look at the
8 clearcut -- and assume he's going to cut 80 million
9 board feet. Average board foot breaker is 40,000 feet.

12:14 10 That's 2,000 acres. Maximum clearcut size is 20.

11 That's 100 different logging sites in a year to
12 clearcut. Now, I may be off a few here or there. But
13 that's 100 different logging sizes at 20 acres a whack
14 that you're going to remove. Now, if you go to

12:15 15 selection harvest where you're moving anywhere from,
16 say, 30 to 50 percent of the stands with a cable setup,
17 then you have to expand that area to get the volume.

18 And you need more people and you need more time. So I
19 don't know that --

12:15 20 Q. How much more volume would you have to cut in
21 order to achieve the same harvest rate?

22 A. Well, you'd have to go from 2,000 acres to
23 4,000 acres if you're going to remove half the stand.

24 So I don't think there 's enough people in that county

12:15 25 to do that -- enough logging contractors there or enough

1 trained logging contractors to do selection removal at
2 those levels.

3 Q. And is there -- is there any example that you
4 can point to in this case where you have contractors
12:15 5 that are performing services for the company and either
6 they're either not busy or busy as a result of changing
7 harvest levels and changing methods of logging?

8 A. Well, I don't -- I don't -- I don't know that
9 there was -- there's something that I read and I think
12:16 10 Dr. Barrett just testified about that, about this
11 creditor business or people getting paid, you know, and
12 I think there was something in there that they were
13 worried a little bit about not paying their logging
14 contractors for fear that they would go away. That's
12:16 15 just on the clearcut maintenance of the site. So I
16 think there's a concern there about the supply of
17 contractors that actually could even do the
18 clearcutting.

19 Q. Are there any other issues you have with
12:16 20 respect to Dr. Reimer's harvest plan?

21 A. Well, there's two, and they're sort of
22 interrelated, yes.

23 Q. And what are they?

24 A. Well, the first one is the different harvest
12:16 25 and species from one period to the next. It's like

1 redwood halves and Douglas Fir doubles, and then the next
2 year redwood is back up again and Douglas Fir is down.

3 Q. And why is switching -- why is switching
4 between harvest year over year, why is that an issue for
5 a timber company?

6 A. Well, it's kind of a market issue that, you
7 know, you're going to supply somebody a lot of redwood
8 one year and the next year you say no. And, you know, a
9 lot of your -- the customers, when you do a customer
10 survey or something like that, and the ones that I've
11 done myself personally, you know, usually the first
12 question that your customer asks you is: Are you going
13 to be in business next year at the same amount of level?

14 In other words, if I'm selling a customer 10 million
15 board feet a year, he's going to want to know whether or
16 not I'm going to make 10 million board feet next year
17 that will be available to sell him. And if I tell him
18 no, I'm not going to do that next year, go find another
19 10 million board feet from somebody else, it's not --
20 it's not really good customer service.

21 Q. I take it from your testimony the customer who
22 wants to buy redwood is not going to suddenly take Doug
23 Fir in place of redwood?

24 A. That's correct, yes.

25 Q. And are the customers the same for Doug Fir

1 and redwood?

2 A. No.

3 Q. You mentioned in addition to this problem

4 about large swings and which species you're going to

12:18 5 harvest year over year, that there was another concern

6 that you had?

7 A. Well, the other concern was -- has to do with

8 that infamous four board feet being logged by a

9 helicopter. Now, the problem that I have with those two

12:18 10 things and how they're interrelated and through my

11 experience in harvest scheduling is that those results

12 were okay to do the valuation on, but once they were

13 pointed out, they says: Oh, we're just going to smooth

14 those out over year over year. Now, when you --

12:18 15 Q. Were you present for Dr. Barrett's testimony

16 in other areas where they're going to go off model, if

17 you will?

18 A. Right.

19 Q. And what's the issue on that?

12:19 20 A. The issue on that is, you know, from a

21 theoretical standpoint and a technical and applicational

22 standpoint is that when you start smoothing things out

23 like that, your cut goes down and the cost goes up.

24 Q. Why is that?

12:19 25 A. Well, you just -- you smooth -- you can show

1 Dr. Reimer's cut levels. If you mash those down, then
2 you're cutting the stands match out this way, you're
3 cutting them younger.

12:19

4 Q. Okay. And would they also be an operational
5 issue in terms of, you know, going after the slivers,
6 using helicopters for four board feet and those things?

12:19

7 A. Well, you know, like I said, it seems like
8 that -- it seems like the model is really good. It's
9 operational feasible because that's what Dr. Reimer
10 testified about his model is that it's operational
11 feasible. It's good. We ground truth it. We check it
12 and then you say, well, that's a problem, just mash it
13 down and smooth. It's okay to do a valuation on, but
14 it's not okay -- you know, it doesn't look right, and so
15 we'll go off and do something else with it. You know,
16 my experience in doing harvest schedules for people and
17 also valuing timberland is that you either got to
18 harvest schedules with what works or you don't.

12:20

12:20

19 Q. Now, Dr. Reimer testified that this problem
20 with the helicopter going after four board feet, that
21 was only for his liquidation scenario, not for his
22 scenarios one or two; do you recall that testimony?

23 MR. DOREN: I'll object to that, Your
24 Honor. That was actually Mr. Yerges.

12:20

25 MR. NEIER: You're right.

1 Q. (By Mr. Neier) You heard Mr. Yerges say that
2 that was only for his liquidation scenario. Of course
3 Dr. Reimer did not do a liquidation scenario.

4 THE COURT: We have an objection.

12:20 5 MR. CLEMENT: Your Honor, I'm simply
6 point out that they have been at it well past, I think,
7 15 minutes and that this is --

8 MR. NEIER: I'm almost done.

9 MR. CLEMENT: This clearly exceeds the
12:21 10 proffer.

11 THE COURT: Okay.

12 MR. NEIER: He's a rebuttal witness, so I
13 don't know what that means.

14 THE COURT: Getting a proffer on a
12:21 15 rebuttal witness --

16 MR. NEIER: We had a declaration last
17 night of Dr. Barrett.

18 THE COURT: I'll let you finish.

19 MR. NEIER: Thank you.

12:21 20 Q. (By Mr. Neier) Can you prove that it was --
21 that it was in his non-liquidation scenarios?

22 A. No.

23 Q. Why not?

24 A. The data that he provided in scenario one and
12:21 25 two did not break it out, the solution out by a

1 watershed. Now, if they did the whole harvest schedule
2 on the conglomerated watershed, you will not be able to
3 do that. However, it's my opinion as an expert in
4 harvest scheduling that he should have done it by
5 watershed where you could pick that out. And my
6 suspicions are is that if you are able to see what the
7 harvest was on the Bear-Mattole in scenario one and two,
8 I don't think that there would be much difference in the
9 results as compared to the liquidation value.

12:21

12:21

10 Q. Okay. Let's switch quickly to Mr. Yerges.
11 You heard Mr. Yerges' testimony in court, correct?

12 A. Yes.

13 Q. And you've reviewed his report and attended
14 his deposition as well, right?

12:22

15 A. Yes.

16 Q. Do you think -- do you agree with Mr. Yerges'
17 1.5 percent real increase year over year for 50 years?
18 Do you agree that's going to happen?

19 A. No.

12:22

20 Q. Why not?

21 A. You have to take into account structural
22 changes in your market. You know, in forest products
23 you have the '81, '82 recession; you had the Forest
24 Service reduction in harvest and the liquidation of the
25 timber under contract. You had the liquidation of the

12:22

1 virgin no growth. And so all that brought up it kind of
2 comes up to a point about '92, '93 when that occurred.
3 And so there was all those capacity changes, structural
4 changes in the markets. So you have to look at a time
12:22 5 period where the structural changes are steady such that
6 you can do your growth rate and determine whether or not
7 there's a real price growth rate. And so I think that
8 going back to 1977 includes time periods that have
9 nothing to do with what's going on right now.

12:23 10 Q. And in addition, with respect to SBE prices,
11 you heard that -- you heard testimony that Mr. Yerges
12 used SBE prices. Did that affect his valuation? Do you
13 agree with his methodology there?

14 A. Well, I think the methodology was all right,
12:23 15 but I couldn't figure out where he got the prices
16 actually. If you're looking at the SBE prices. And
17 secondly, you know, anybody that's going to buy the
18 timberlands, they're not going to look back ten or 15
19 years at what the prices are. They're going to really
12:23 20 look at what happened during the short-term business
21 cycle, say, about the last three years.

22 Q. Go ahead.

23 A. So the prices that he used were much higher
24 than what the last three years average was SBE. I don't
12:23 25 know where they came from.

1 Q. With respect to Mr. Yerges' use of a discount
2 rate of 6 percent, do you agree with that?

3 A. No.

4 Q. Why not?

12:24 5 A. I think that's been over, but basically the
6 areas that he used was from Oregon and Washington. And
7 none of them had HCPs and sustained yield plans and
8 timber harvest plans, and I think there's an additional
9 element of risk associated with that. That's --

12:24 10 Q. What was the effect to Mr. Yerges's evaluation
11 in your opinion by having a 1.5 percent real increase
12 for 50 years on redwood prices?

13 A. It's about \$160 million.

14 Q. And what was the effect of using SBE prices
12:24 15 that you can't verify on his valuation?

16 A. Well, that's a little over \$200 million.

17 Q. And what was the effect of using a 6 percent
18 discount rate on Mr. Yerges's evaluation?

19 A. That's \$53 million.

12:24 20 Q. And, in addition, you also were present for
21 the testimony of Mr. Fleming; is that correct?

22 A. Yes.

23 Q. And have you looked at Mr. Fleming's harvest
24 schedules and heard his testimony on the harvest
12:24 25 schedules?

1 A. Yes.

2 Q. And do you have any opinion with respect to
3 that work?

4 A. I don't think they'll work.

12:25 5 Q. Why not?

6 A. Well, if you look at Dr. Reimer's harvest
7 schedule, his is like 80 million. And nobody really
8 mentioned or not, but basically his objective was
9 maximize cash flow subject to a kind of a semi

12:25 10 non-declining even flow, and which was about 80 million.

11 And you heard Dr. Barrett talk this morning about their
12 cut level is about 75 to 80. I don't see how he can cut
13 80 million thereabouts in the first ten years and then

14 assume it jumps up to 100 million because if you look at
12:25 15 Dr. Reimer's harvest schedule based on time, I don't see
16 where you could get the 100 million. If we could get
17 the 100 million, he would have. The model would have, I
18 think.

19 MR. NEIER: Okay. May I approach the
12:25 20 witness, Your Honor?

21 THE COURT: You may.

22 Q. (By Mr. Neier) Dr. Tedder, I'm showing you
23 what's been previously marked as MMX 5. Do you
24 recognize that as your proffer in this case?

12:26 25 A. Yes.

1 Q. Dated April 4, 2008?

2 A. Yes.

3 Q. And is that your report attached to it, the
4 report you prepared with respect to Mr. Yerges's first
12:26 5 report?

6 A. Yes.

7 MR. NEIER: I don't know if we're still
8 asking for these things to be admitted, but I'd ask that
9 they be admitted.

12:26 10 THE COURT: Any objections?

11 MR. DOREN: No objection.

12 THE COURT: It's admitted.

13 MR. NEIER: And, Your Honor, I'd ask
14 that -- I'd ask that Dr. Tedder be admitted as a witness
12:26 15 as well -- or deemed a witness as well, expert witness.

16 THE COURT: He's testified. He's a
17 witness.

18 MR. NEIER: That's true. He is a
19 witness, Judge.

12:26 20 THE COURT: I will deem him a witness.

21 MR. DOREN: May I proceed, Your Honor?

22 THE COURT: Yes, go ahead.

23 CROSS-EXAMINATION

24 BY MR. DOREN:

12:26 25 Q. Richard Doren on behalf of Scotia Pacific.

1 Good afternoon, Mr. Tedder.

2 A. Good afternoon.

3 Q. How are you today?

4 A. Fine, thank you.

12:27 5 Q. Good. Now, it's been an incredibly long week,
6 while still just a few days, so just bear with me and
7 we'll get through this as quickly as we can. You said
8 that, among other things you've been asked to do,
9 conduct an appraisal review, correct?

12:27 10 A. Correct.

11 Q. In fact, were you originally retained by
12 Marathon back in 2007?

13 A. Yes.

14 Q. And in that capacity or at that time were you
12:27 15 retained as a consultant?

16 A. Yes.

17 Q. And were you retained primarily as a
18 consultant regarding advising Marathon on Palco's mill
19 operations?

12:28 20 A. Yes.

21 Q. And at that same time -- now, you have a
22 business relationship with Mr. LaMont, don't you?

23 A. Yes.

24 Q. Could you describe that, please.

12:28 25 A. Our original business relationship was that we

1 were partners in a consulting firm. After I went to
2 Seneca Sawmill Company and was in the corporate world, I
3 got -- I got out of that business. And then after I
4 finished one corporate stint, I put together a business
12:28 5 which is Philip Tedder, Incorporated. And Rick LaMont
6 maintained the other company. So we still have a
7 business relationship in that we work together on
8 projects. We're not -- we don't have a company that we
9 share together at this time. But we do work together
12:28 10 with one another.

11 Q. So if I got it right, the two of you were
12 partners in Resource Economics?

13 A. Correct.

14 Q. And then you went on to a new position. You
12:29 15 formed your own consulting corporation, and you
16 continued to do consulting work with Mr. LaMont?

17 A. That's correct.

18 Q. Now, when you were retained in 2007 to advise
19 on the mills, Mr. LaMont was also retained by Marathon
12:29 20 at that time, correct?

21 A. That's correct.

22 Q. And he was retained to advise them on the
23 forest; is that correct?

24 A. Correct.

12:29 25 Q. And then in about January 2008 the two of you

1 attended a meeting with Marathon and Mendocino Redwood,
2 correct?

3 A. That's correct.

12:29

4 Q. And then shortly after that, your consulting
5 work tapered off, if you will, and you became an
6 independent third-party expert witness, correct?

12:29

7 A. You know, that's a good question. I tried to
8 remember when that was. But I think my consulting work
9 on that tapered off early some time in December or
10 November. I'm not quite sure. We can -- there's no
11 question that we continued to -- and the dates get a
12 little fuzzy with me. We met in Dallas and when we were
13 in Dallas wherever that was, it was still a consulting
14 thing on the mills and the timberlands.

12:30

15 And then there was a time period in there
16 where we knew -- I think that I knew that Mendocino
17 Redwood Company had come on board or was thinking of
18 coming on board. And the roles switched during that
19 time period.

12:30

20 Q. All right. Fair enough. I appreciate that
21 description. So when you joined that meeting with
22 Mendocino and Marathon, you were still a consultant to
23 Marathon?

24 A. Yes.

12:30

25 Q. And then some time after that, you became an

1 independent third-party expert witness?

2 A. That's about it, yes.

3 Q. All right. And in that role as an independent

4 third-party expert witness, your job was to conduct an

12:30 5 appraisal review of the combined efforts of Mr. Yerges

6 and Dr. Reimer; is that fair?

7 A. That's correct. That's correct.

8 Q. Now, in the last five years or so, you

9 personally have conducted about three timber appraisals

12:31 10 in California, correct?

11 A. Well, it's three timber appraisals on the same

12 property, but that's correct.

13 Q. All right. Fair enough. And where is that

14 property?

12:31 15 A. In northern California.

16 Q. And it was not a redwood property, though,

17 correct?

18 A. That's correct.

19 Q. All right. And in terms of appraisal reviews,

12:31 20 this is the second one you've ever done?

21 A. You know, I did one a long time ago, and I

22 tried to find out who it was. I know I did it, but I

23 couldn't find it. And this is the second appraisal

24 review; that's correct.

12:31 25 Q. And that first one was about 15 years ago,

1 maybe a little longer?

2 A. I think I said something about that in my
3 deposition, but that sounds about right, yes.

4 Q. All right. Now, have you ever -- just to

12:31

5 touch on a couple of points at the outset. Have you
6 ever had any -- have you ever conducted any survey in
7 Humboldt County about available logging contractors?

8 A. No.

9 Q. And so when you were testifying earlier about

12:31

10 whether there would or wouldn't be enough logging
11 contractors in Humboldt County, if Scopac were to ever
12 have to actually selectively harvest 40 million board
13 feet, you didn't really know one way or the other
14 whether that work, of course, was there, did you?

12:32

15 A. I think that's a fair statement.

16 Q. Okay. So, for example, you haven't really sat
17 and thought about how Mendocino Redwood that intends to
18 selectively harvest 55 million board feet each and every
19 year, thereby requiring a far greater workforce to

12:32

20 complete that work would or would not have a sufficient
21 workforce in Humboldt County, correct?

22 A. Well, yes, I have talked about that actually.

23 Q. Do they bus them up from Mendocino or --

24 A. No. It's this. It's if you're going to

12:32

25 clearcut, then you had to instruct your people on how to

1 clearcut. If you're going to selection harvest, then
2 you have to instruct your contractors on how to
3 selection harvest. If they don't know what they're
4 going to do from year to year, it becomes difficult.

12:33 5 It's an operational and a quality control problem. If
6 they know every year that we're going to do selection
7 harvest this year, next year, next year, next year, it's
8 not an operational and a quality control problem -- or
9 it still is, but it's not as big as switching from year
12:33 10 to year. And that's kind of what my point was.

11 Q. I appreciate that. I appreciate that. And
12 so, again, operationally, those issues would have to be
13 addressed going forward?

14 A. That's correct.

12:33 15 Q. But you don't know whether there's an actual
16 issue there or not in terms of --

17 A. Other than my assumption that -- no, I don't
18 in terms of the number of contractors.

19 Q. Thank you, sir. Now, do I have it correct
12:33 20 that you believe that the key to any opinion of value
21 for timberlands when using a discounted cash flow method
22 is a harvest schedule that's developed?

23 A. On timber and timberland, yes.

24 Q. Yes, sir. That's what I'm talking about. You
12:34 25 can assume for the rest of our discussion I'm not

1 talking about condos. And the harvest schedule that
2 Scopac has used was projected by Dr. Reimer, correct?

3 A. Yes.

4 Q. And if we can put up paragraph 15 in your
12:34 5 proffer. Just bear with us a minute here. And if you
6 can follow with me, please. You stated in paragraph 15
7 that "Dr. Reimer's stated objective was to maximize cash
8 flow, not value or profits." Correct?

9 A. Yes.

12:35 10 Q. And you considered that to be -- I believe
11 your statement in the first sentence of paragraph 15,
12 you considered that to be a fatal flaw, correct?

13 A. Hang on a second. Let me -- let me read that.
14 It's fatally flawed subject to his objective function,
12:35 15 correct.

16 Q. All right. And so you believe that Dr. Reimer
17 should have considered profits as opposed to maximizing
18 cash flow and conducting his harvest schedule?

19 A. No, that's not what I said. I said his
12:35 20 objective was to maximize cash flow, not value or
21 profits.

22 Q. And you consider that to be a fatally flawed
23 approach?

24 A. No. I'm saying that his results -- his
12:35 25 results are fatally flawed subject to his objective

1 function, which would maximize cash flow --

2 Q. All right.

3 A. -- is what I'm saying.

4 Q. So if I understand then what you're saying is

12:36 5 his results don't maximize cash flow?

6 A. I don't think so.

7 Q. Okay. And have you done -- have you ever

8 worked with Options?

9 A. No.

12:36 10 Q. Have you ever conducted any analysis with

11 Options?

12 A. No.

13 Q. Have you ever worked with any client that's

14 ever worked with Options?

12:36 15 A. No.

16 Q. And you do agree, though, that --

17 A. Wait.

18 Q. Sorry?

19 A. I have worked with some of the clients that

12:36 20 use Options, but not on Options with them, so --

21 Q. And you know that Dr. Reimer is well-known in

22 Canadian forestry circles, correct?

23 A. Yes.

24 Q. And do you know that he's also well-known in

12:36 25 American forestry circles?

1 A. Yes.

2 Q. And you know, for example, that he's worked
3 with the State of Washington on projecting harvest
4 capabilities on over 2.1 million -- or 2.1 million acre
12:36 5 land base?

6 A. You know, he said he did. I'm not quite sure
7 what it was that he did do on that. I'm familiar with
8 their ACP and the lawsuits that the county had to get
9 the ACPs, and I don't recall that they used the Options
12:37 10 to set the harvest schedule in their ACP. But I'm not
11 sure.

12 Q. All right. That's fair enough, sir. Why
13 don't we pull up DX 99, which I will represent to you is
14 a Bureau of Land Management publication. And
12:37 15 specifically if we can go to page 1552. Just go ahead
16 and pull up --

17 A. I'm sorry, I just can't read this.

18 Q. We'll see if we can make that a little bit
19 bigger, please. Does that help, sir?

12:37 20 A. Yes, thank you.

21 Q. You get. Now, are you aware that the Options
22 model is a spatially explicit dual-based land management
23 simulation model?

24 A. That's what I read, yes.

12:37 25 Q. All right. And did you know that before

1 reading it in the course of this case?

2 A. No, I really didn't, to be honest with you.

3 Q. And did you know that Options as developed by
4 DR Systems has been in use for more than 20 years and is
12:38 5 regularly updated and refined to reflect current
6 knowledge, issues in land management, and modeling
7 techniques?

8 A. I can see that right here. That's correct.

9 Q. Before reading that, you never knew that?

12:38 10 A. Oh, no, I read his -- what was it? It was his
11 original report, and it had it in there. Sure.

12 Q. And before reading that report, though, you
13 didn't know that about Options?

14 A. I had heard about it, but I didn't pay much
12:38 15 attention to it, to be honest with you.

16 Q. All right. And before reading Dr. Reimer's
17 report, did you know that the model has been used to
18 develop land management strategies and operationally
19 feasible plans on more than 500 million acres throughout
12:38 20 North America, South America, the South Pacific, and
21 Asia?

22 A. Well, I know that his model replaced my model
23 that the BLM was using.

24 Q. All right. And where was that, sir?

12:39 25 A. Where was that?

1 Q. Yeah, State of Oregon?

2 A. The Bureau of Land Management.

3 Q. All right. And did you know then, of course,
4 in terms of Western Oregon, that most of these projects

12:39 5 involve complex multi resource objectives and
6 environmental regulations, correct?

7 A. Yes, they do. You bet.

8 Q. And let's go on to the next paragraph, if we
9 can. Mr. Tedder, before reading Dr. Reimer's report,

12:39 10 did you know that in the western United States Options
11 has been used for a wide-range industrial and
12 governmental analyses?

13 A. Before reading his report did I know that?

14 Q. Yes.

12:39 15 A. No. No.

16 Q. And you've been in the timber business for
17 more than 20 years, correct?

18 A. Oh, yes. Uh-huh.

19 Q. And did you know that Options -- those

12:39 20 analyses have included land appraised, evaluation of
21 lands for sale and purchase, and the development of
22 sustainable multi resource management plans?

23 A. That's what -- that's what it says there.

24 That's correct. Yeah.

12:39 25 Q. Did you know that before reading that here?

1 A. Well, you know, it's kind of one of these
2 things. It's where -- no, I didn't know that before
3 reading it here, but now that I've read it here and seen
4 what's going on with this, you know, I'd like to
12:40 5 probably investigate it a little bit further.

6 Q. All right. So in order for you to be able to
7 formulate a concrete opinion on Options capabilities and
8 upon the output of Dr. Reimer in this case, you'd like
9 to investigate a little further; is that right?

12:40 10 A. Well, you know, for example --

11 Q. All right. Well, sir, if I can just --

12 MR. NEIER: Excuse me, let him finish his
13 answer.

14 MR. DOREN: To quote everyone else that's
12:40 15 been up here, he said yes to the answer, Your Honor, and
16 they can redirect.

17 THE COURT: I think this is going along
18 nicely. Let's continue it along. So far we're doing
19 fine.

12:40 20 A. I have a problem with it. And here's my
21 problem, I mean, that I'd like to investigate it. You
22 swear up and down that it's not a linear programming
23 system, that it's not an optimization system, but then
24 he turns around and he maximizes cash flow. So, okay,
12:41 25 so I hear him saying one thing, and he doesn't do it.

1 Then you do it.

2 Q. Mr. Tedder, you understand, first of all, he
3 was maximizing net cash flow, correct?

4 A. He's maximizing cash flow is what he said.

12:41 5 Q. All right. So you do not believe -- even
6 after sitting here and listening to Dr. Reimer's
7 testimony under oath that he was maximizing net cash
8 flow taking harvest methods into account; is that your
9 testimony?

12:41 10 A. Yes.

11 Q. Okay. Good. Now, let's go on and let's talk,
12 were you aware that the models used in Plum Creek's
13 Timber Company in 1997 cascades habitat conservation
14 plan for Central Washington?

12:41 15 A. No.

16 Q. All right. So you didn't know that he was
17 involved with the habitat conservation plan that was the
18 first major multi species habitat conservation plan
19 developed in the U.S.A.?

12:41 20 A. You know, I don't know whether it was the
21 first one or not, but, no, I didn't know -- I wasn't
22 aware of it.

23 Q. Did you know that the Plum Creek HCP won the
24 1997 U.S. Wildlife Stewardship Award?

12:42 25 A. No, I did not know that.

1 Q. All right. Did you know that Options was also
2 used by the Washington State Department of Natural
3 Resources 2004 sustainable forest management harvest
4 calculations?

12:42 5 A. No, I did not know that.

6 Q. All right. Did you know that Options, the
7 sustainable forest management harvest calculations
8 applied an alternative based approach for developing a
9 long-term, sustainable, multi resource forest management
10 plan on approximately 2.1 million acres of Washington
11 State trust lands?

12 A. Well, that's the same sentence as the one
13 before, and I didn't know the answer to that one, so --
14 I mean, that's -- Washington State Department of Natural
15 Resources is the same as the Washington State trust
16 land.

17 Q. Fair enough. So you didn't know that he did
18 the work at all, much less it involved 2.1 million acres
19 for the Washington State trust lands, correct?

12:42 20 A. That's correct. I was busy running companies
21 at that time, and I didn't really know whether or not he
22 was doing it or not.

23 Q. Well, Mr. Tedder, you also didn't know -- you
24 also didn't know that as a result of the work of the
12:42 25 Washington State trust lands, the approved management

1 plan approved net revenues from the state trust lands by
2 more than 40 percent or more than \$50 million per year
3 while providing increased wildlife habitat and riparian
4 resource protection, did you?

12:43 5 A. Yeah. I would have to research that one in
6 order to answer that truthfully because there was a
7 problem up there with the breach -- DNR breach of their
8 fiduciary responsibility to provide money to the
9 school --

12:43 10 Q. You're unaware of the work he did --

11 THE COURT: Hold on. Let's don't argue.
12 You asked him if he was aware of that. In other words,
13 you're sort of asking him is he sure that that's true.
14 I don't know if --

12:43 15 MR. DOREN: Fair enough. Thank you, Your
16 Honor.

17 A. There was an export problem with the DNR. I
18 think their cut level was 750, and they said they were
19 going to export 250, and there was some legal things
12:43 20 going on like that. And during that time period they
21 dropped their cut. So I don't know whether the increase
22 in the cut had to do with his Options model or it had to
23 do with the time period where they reduced their cut and
24 then they used his model, and the cut went up. I don't
12:44 25 know the answer to that.

1 Q. So you don't know -- you don't know whether
2 Dr. Reimer, in fact, was hired to address exactly the
3 decrease in cuts that you just described?

4 A. That's correct.

12:44 5 Q. You would expect that when the Bureau of Land
6 Management made this statement and elected to replace
7 your model with his, that they would have known,
8 correct?

9 A. Well, that's not the Bureau of Land Management
12:44 10 up there, but, you know, if they replaced his model -- I
11 mean, my model with his, you know, that's good for him.

12 Q. All right. Now, let's go on down. There's a
13 discussion of Palco. Let's go on down to the bottom
14 paragraph of the page. Although, by the way, just a
12:44 15 pause on Palco. You see the model was also recently
16 used in Pacific Lumber Company's 2005 long-term
17 sustainable yield calculation. Do you see that?

18 A. Yes.

19 Q. Now, that's the Option A work we've heard
12:44 20 about, correct?

21 A. Sure.

22 Q. All right. And now let's go down to the last
23 paragraph here. We see that currently the model is also
24 being used by the University of Georgia to analyze the
12:45 25 impacts of proposed regulations and policies on the

1 state's long-term timber supply. Did you know that
2 Options was being used by the University of Georgia for
3 the state of Georgia?

4 A. Yes, I did know that one actually.

12:45 5 Q. All right. You knew that one before you came
6 in here?

7 A. Yeah.

8 Q. We'll come back to that one in a minute.

9 A. Okay.

12:45 10 Q. And did you know that -- that Options was also
11 being used by the California Department of Forestry in a
12 pilot project investigating new approaches to the
13 state's sustainable yield calculations?

14 A. Not before I came in here, no.

12:45 15 Q. All right. All right. And did you also know
16 that Options was used in numerous operational analyses
17 in Washington, Alaska, and British Columbia, Canada?

18 A. No. But that -- you know, again, it doesn't
19 surprise me.

12:45 20 Q. And do you know that it's been used in
21 Argentina?

22 A. In Argentina?

23 Q. Yes, sir.

24 A. I do now.

12:45 25 Q. And do you know that it's been used in Chile?

1 A. No, I didn't know that either.

2 Q. Did you know that it's been used in millions
3 of acres in China?

4 A. No.

12:46 5 Q. Did you know that it's been used on acres in
6 New Zealand?

7 A. No.

8 Q. Did you know that it's been used on acreage in
9 Manitoba?

12:46 10 A. No.

11 Q. And Saskatchewan?

12 A. No.

13 Q. In fact, millions and millions of acres in
14 both of those provinces?

12:46 15 A. No.

16 Q. Did you know it's been used in the Yukon and
17 millions more?

18 A. I didn't really -- in the Yukon?

19 Q. Yes, sir.

12:46 20 A. No.

21 Q. All right. Now, DR Systems' expertise in
22 partnership with BLM staff in using the Options model to
23 analyze alternative management strategies for the
24 western Oregon plan revision. Now, that is, in fact,

12:46 25 the replacement of your model with Dr. Reimer's,

1 correct?

2 A. No. That's not what that's talking about
3 there.

4 Q. All right. But that is what happened
12:46 5 ultimately in western Oregon?

6 A. Yeah, that's correct.

7 Q. All right. Now, if I could direct the Court's
8 attention to Exhibit DX 92, please. Now, Mr. Tedder --

9 MR. NEIER: Dr. Tedder.

10 MR. DOREN: Now that I'm questioning him
11 he's Doctor. Fair enough. That's fine, sir.

12 MR. NEIER: I called Dr. Reimer Doctor.
13 You should do the same courtesy.

14 Q. (By Mr. Doren) Dr. Tedder, I noticed everyone
12:47 15 calls you Mr. Tedder. What would you prefer? I'm happy
16 to --

17 A. It's whatever. Just don't call me names.

18 Q. I tell you what I noticed. It's in your
19 report. When you talked about Mr. Yerges relying on

12:47 20 Dr. Reimer, you put Dr. Reimer in quotes. So I was just
21 wondering.

22 A. No, now, that's certainly not -- to achieve a
23 Ph.D. in forest biometrics, it's a tough curriculum, and
24 anybody that does that deserves that.

12:47 25 Q. And you're right, so it's Dr. Tedder from here

1 on out. Now, you mentioned that you knew that Options
2 was used by the state of Georgia, correct?

3 A. Right.

4 Q. And were you aware that that was for the

12:47 5 evaluation of the sustainability of the harvest

6 practices within the state of Georgia?

7 A. Yes.

8 Q. All right. And have you ever read this

9 article in the forest ecology and management journal?

12:48 10 A. I read it yesterday.

11 Q. Okay. Fair enough. Now, is that when you
12 learned about this, by the way?

13 A. No, I knew about that long before that.

14 Q. All right. So now when you read this

12:48 15 article -- and let me just flip you, if I can -- and by

16 the way, actually, do you recognize any of these

17 authors?

18 A. Oh, yes.

19 Q. Do you know Mr. Borders, for example?

12:48 20 A. I know Clutter. I knew his father.

21 Q. Okay. You know Clutter. Is Mr. Clutter one

22 of the principal, if you will, timber experts in the

23 south?

24 A. You know, I don't know exactly what -- his dad

12:48 25 did harvest scheduling and was pretty good at it, so I

1 suspect that he probably is, too.

2 Q. All right. And you know Mr. Borders?

3 A. No, I don't think so.

4 Q. All right. Fair enough. Well, come with me,

12:48 5 if you will, to page 349 of Exhibit DX 92. And we can
6 pull that out, please. Now, with the spatially explicit
7 long-term objectives in mind -- and that would be the
8 author from the University of Georgia, correct?

9 A. Uh-huh.

12:49 10 Q. You set -- is that a yes, sir?

11 A. Yes. Excuse me.

12 Q. You set out to research tools that were

13 capable of landscape level simulations with GIS
14 capabilities. "After extensive research on forest

12:49 15 estate models, we selected Options from DR Systems, Inc.
16 as the most comprehensive and spatially explicit forest
17 estate model." Were you aware of the evaluation they
18 had made and that they had reached this conclusion?

19 A. Well, actually, yes, I have been reading about
12:49 20 that one.

21 Q. All right. And, again, that's over the last
22 couple of days?

23 A. No, way before that.

24 Q. All right. Good enough. Now, they went on to
12:49 25 state that "Options can be used to examine different

1 forest management scenarios, including financial,
2 industrial, and policy related decisions and
3 sustainability analysis. The simulator is based on
4 forecasting information for individual polygons. Each
12:49 5 piece of information is processed per annual cycle,
6 record by record. It is a simulator (without
7 optimization) with SIG functionality." Do you see that?

8 A. Uh-huh.

9 Q. Now, do you figure that the authors of this
12:50 10 article would have taken on substantial research to
11 identify the appropriate research tool for their work
12 got confused as to whether or not Mr. Reimer's model was
13 an optimizer?

14 A. No. Actually, if you want to go on in this
12:50 15 article, they refer to my model in here, too.

16 Q. Is that right? And this is another instance
17 then where they picked his over yours?

18 A. No, no, no. My model, the Forest Service uses
19 it to forecast timber supply, which is --

12:50 20 Q. I tell you what --

21 MR. DOREN: Your Honor, can we wait for a
22 question?

23 THE COURT: Yeah. He's not supposed to
24 answer until you ask some questions. But let's move on.

12:51 25 Q. (By Mr. Doren) Answering without a question

1 is otherwise known as just talking.

2 A. Okay. Thank you. Sorry.

3 Q. Now, in your opinion, Mr. Yerges had no reason
4 to doubt that Dr. Reimer is competent, correct?

12:51 5 A. I'm sorry, I didn't hear the last --

6 Q. I apologize. In your opinion, Mr. Yerges had
7 no reason to doubt that Dr. Reimer is competent,
8 correct?

9 A. That's correct.

12:51 10 Q. Now, you did not actually -- Dr. Tedder, now,
11 you did not actually assess specific guide curves used
12 by Dr. Reimer, correct?

13 A. Could you ask that question again, please.

14 Q. Yeah, let me try and put it a little bit
12:52 15 differently. As you tried to deduce the growth rates
16 that Dr. Reimer was using for a 40-year stands, you did
17 not analyze specific growth rates, correct?

18 A. The only one I used was in his report. In
19 answer to your question, that's correct.

12:52 20 Q. And that was the first report issued by
21 Dr. Reimer?

22 A. That's correct.

23 Q. And did you hear the testimony yesterday that
24 that curve was, in fact, a curve that was not specific
12:52 25 to the Scopac properties?

1 A. Yes, I did hear that.

2 Q. And that's just an example that he had used
3 when he had picked a particularly extreme curve so that
4 people could see how the two lines on it interrelated?

12:53 5 A. I think what he said was that he picked those
6 two curves where he could show how the normality worked
7 on the one -- on the volume that wasn't considered
8 normal to that particular curve. That --

9 Q. Sorry.

12:53 10 A. The end.

11 Q. And that that was, as I recall, from a site
12 145 curve, correct?

13 A. You know, I can't remember.

14 Q. All right. We can look at it if we have to,
12:53 15 but you would agree, wouldn't you, that he testified
16 that that curve had no relation to the Scopac
17 properties?

18 A. That's correct.

19 Q. Now, after using that curve, you set out to
12:53 20 deduce what the volume per acre on a 40-year-old stand
21 would be 40 years from today, correct?

22 A. Correct.

23 Q. And I want to make sure I understood what you
24 did there because I am not a biometrician, and I do not
12:53 25 have a doctorate, so if we could walk through that a

1 little bit. But if I understand your conclusion, and if
2 we could just put page 36 of your report up on the
3 screen here. If I understand your conclusion -- if we
4 pull this out, please -- that this deduce yield -- and
12:54 5 that was your effort to deduce the yield at age 40, plus
6 or minus 76,000 board feet per acre is 3.91 times the
7 current average yield per acre for the subject
8 timberlands. That was the conclusion you reached after
9 your process of deduction?

12:54 10 A. That's correct.

11 Q. All right. Now, let me try and understand
12 what that process was.

13 Now, first, you assumed that Scopac harvested
14 only 55-year-old stands in 2007, correct?

12:55 15 A. Was it 55 years old? I think it was --

16 Q. I tell you what --

17 A. -- 40-year-old stands, I think, is what I
18 assumed.

19 Q. Let's take a look at the top here, see if we
12:55 20 can help each other out. You say that utilizing the
21 information in Figure 6, the average volume per acre for
22 those stands over 55 years of age is just over 43,000
23 board feet per acre; do you see that?

24 A. Yes.

12:55 25 Q. Now let's go over and look at Figure 6 for a

12:56

1 second. And if we can right here -- and we pull this
2 out, please, it shows for stands 55 years and over, the
3 inventory is just slightly over 43,000 board feet. Does
4 that refresh your recollection that for purposes of last
5 year's harvest kind of the starting point of your
6 projection, you used 55-year-old stands?

7 A. Yes.

8 Q. And you did?

12:56

9 A. I assume that that's what the model was
10 cutting, the 55-year-old stands.

11 Q. That was your -- and why did you make that
12 assumption?

13 A. Because that's the only numbers that I had
14 from Mr. Yerges's report.

12:56

15 Q. All right. And so what you assumed was that
16 55-year-old stands were being cut last year. And when
17 you say the only number you had from Mr. Yerges, what
18 are you referring to?

12:56

19 A. Well, the numbers that I used in my report
20 were those that were used in his report.

21 Q. But Mr. Yerges didn't state anywhere that the
22 only thing that was harvested in 2007 was 55-year-old
23 stands, did he?

24 A. That's correct.

12:56

25 Q. Okay. Now let's go back, if we can, to page

1 36 of the report. All right. If we can, go back up
2 again to the top paragraph. And after you had deduced
3 that in 2007 Scopac harvested only stands that were over
4 55 years of age, each of which had just over 43,000
12:57 5 board feet per acre, the next step you took was you
6 divided the total harvest in that year by the average
7 board feet per acre and that would have been 43,000; is
8 that correct?

9 A. Well, that was the -- that was from the other
12:57 10 table, so, yeah.

11 Q. I'm just trying to understand the process.

12 A. That's correct.

13 Q. I'm not disputing the number. You divided the
14 total harvest in the first year by the average board
12:57 15 feet per acre, and that indicates an initial harvest of
16 about 1820 acres; is that correct?

17 A. Yes.

18 Q. And if I understand what you did here, you
19 took basically the 74 million acre -- or excuse me, the
12:58 20 74 million board foot harvest and divided it by 43,000
21 and concluded that based on that volume, that would have
22 taken 1820 clearcut acres; is that right?

23 A. Yes.

24 Q. All right. So at 1820 acres harvested in
12:58 25 2007 -- and by the way, did you ever ask anyone at

1 Scopac how many acres had been harvested in 2007?

2 A. I don't remember whether I asked them or not.

3 You know, I didn't know I was looking through the

4 information that was on the Internet to try to find the

12:58 5 exact number of acres that were harvested. And to be

6 honest with you, I can't recall whether I found them or

7 not; but I thought this was a fairly reasonable number.

8 Q. You think 1820 acres is a pretty fair number

9 for 74 million board feet?

12:58 10 A. It depends on -- excuse me. It depends on how

11 many acres that they thinned and selection harvested.

12 So if they didn't do any of that, it's a close number.

13 Then again, it could be a big number. I don't really

14 know.

12:59 15 Q. And if the volume were 43,000 board feet?

16 A. That was average.

17 Q. And if I understood your last answer, you

18 don't know if this tracks reality or not, correct?

19 A. No, I don't.

12:59 20 Q. In fact, you don't know if, in fact, the

21 company harvested 3,280 acres in 2007, do you?

22 A. If they harvested what?

23 Q. 3,280 acres in 2007?

24 A. Clearcut harvest, 3,000 acres?

12:59 25 Q. Harvested 3,280 acres to achieve the 74

1 million board foot harvest; do you know whether they did
2 that or not?

3 A. No, I don't.

4 Q. All right. Now, after identifying this base

12:59 5 number of acres of 1820, you assumed that they were all
6 immediately replanted, correct? Let's go down to the
7 next paragraph. And you say in the harvest schedule
8 these acres are most likely immediately planted and
9 linked to a yield curve as mentioned previously,

12:59 10 correct?

11 A. Correct.

12 Q. So you harvested them and replanted them in
13 year one, correct?

14 A. Yes.

01:00 15 Q. And we're still talking about the 1820 acres.
16 And then these acres are assumed to be harvested again
17 in 40 years or in 2046. Now, first of all, do you
18 realize that Scopac has a rotational age for natural
19 stands of 45 years?

01:00 20 A. I heard that in the testimony, yes.

21 Q. All right. Did you know that at the time you
22 were completing your report?

23 A. No.

01:00 24 Q. All right. Now, in 2046, the total harvest is
25 138 million and change board feet, correct?

1 A. Yes.

2 Q. And you've got that from Dr. Reimer's
3 projections?

01:00

4 A. Well, it was in the appendix of Mr. Yerges's,
5 but they were Dr. Reimer's projections, yes.

01:00

6 Q. All right. And then assuming that the entire
7 1820 acres are clearcut harvested again -- so if I'm
8 tracking, what you're saying is in order to understand
9 the yield on the property of a 40-year-old stand, you
10 cut all the 55-year-old trees in a stand in year one.

01:01

11 You calculated the volume based on 55-year-old trees.
12 You then grew them out -- you replanted, grew it out 40
13 years and harvested the exact same stand, the exact same
14 1820 acres and achieved a harvest of 138 million board
15 feet, correct?

16 A. Correct.

01:01

17 Q. And then you did the same exercise you did
18 before, which is you divided the number of acres into
19 the number of board feet, correct?

20 A. Correct.

21 Q. And that is how you reached your conclusion
22 that the total board feet per acre in 2046 would be
23 76,000 board feet per acre, correct?

24 A. Correct.

01:01

25 Q. Now, did you ever ask anybody how many acres

1 they expect to harvest in the year 2046?

2 A. No.

3 Q. So if the number of acres they intended to
4 harvest in year 2046 were over 6,000, that would

01:01 5 fundamentally change the number of board feet per acre
6 that you would have calculated, correct?

7 A. On the average, it sure would.

8 Q. And that would also change your conclusion
9 that the growth rates projected by Dr. Reimer were 3.91

01:02 10 times or the volume projected by Dr. Reimer was 3.91
11 times what it is today, correct?

12 A. That's correct.

13 Q. Now, do you know what the actual harvest ages
14 are that are employed by Scopac?

01:02 15 A. I heard 45 years on management -- I mean, on a
16 managed plantation, and that's really the only ones that
17 I know about.

18 Q. Okay. You don't know what their rotation age
19 would be for cultivars, correct?

01:02 20 A. That's correct.

21 Q. And you don't know what their rotation age is
22 for different parts of the properties, is that correct?

23 A. Let me re-answer that other one. I don't know
24 what their rotation is for cultivars, and I don't think

01:03 25 they do either because they're only about five years

1 old. So I don't know the answer to that.

2 Q. Do you know whether Scopac has a rotation age
3 for cultivars?

4 A. I don't know.

01:03 5 Q. Did you ever ask anybody?

6 A. No, I did not.

7 Q. And you never asked anybody about the rotation
8 age on natural stands; you just heard it here in trial,
9 correct?

01:03 10 A. You know, now that I sit and think about it, I
11 think we probably discussed what the rotation ages were
12 when we were on the field trip to look at the place, but
13 I don't remember them.

01:03 14 Q. You don't because if a natural stand rotation
15 age is 45, you employed one of 40, right?

16 A. That's correct.

17 Q. All right. Now, you've never analyzed the
18 actual yield curves developed by Dr. Reimer as part of
19 the Option A process either, have you?

01:03 20 A. I didn't have them.

21 Q. Now, you also -- and I believe you discussed
22 it in your direct -- critiqued the species mix of the
23 harvest schedule, correct?

24 A. Correct.

01:04 25 Q. And it's your opinion that Dr. Reimer's

1 harvest schedule moves the harvest to a monoculture; is
2 that correct?

3 A. You know, that was my assumption based upon
4 the results that were printed in Mr. Yerges' appendix
01:04 5 because of the fact that the Bear-Mattole in particular
6 in the final ten years of the harvest, 90 to 95 percent
7 was redwoods. So because Dr. Reimer did not print or
8 publish in his report the levels of inventory, I made
9 the assumption that the whole Bear-Mattole was replaced
01:04 10 with redwood.

11 Now, after listening to the testimony today to
12 indicate that only 25 percent of the Bear-Mattole would
13 be planted to redwood, of which I find -- I would say
14 that it's not moving the Bear-Mattole to a monoculture.

01:05 15 However, if you continue to harvest your redwood from
16 only 25 percent of the property, I would suggest that it
17 might become a Douglas Fir monoculture after a while.

18 Q. So now you flip. Now you're going from a
19 redwood monoculture to a Douglas Fir monoculture?

01:05 20 A. I didn't have the data to do that.

21 Q. All right. But now we're at risk under
22 Scopac's harvest plan of having a Douglas Fir
23 monoculture all over the property?

24 A. Well, I don't see how you can continue to cut
01:05 25 all redwood from the Bear-Mattole on just 25 percent of

1 the property. I don't understand that one.

2 Q. But now let's -- when you talk about a
3 monoculture, though, you, in fact, meant that you
4 expected the same species to be throughout the entire
5 property, not just the Bear-Mattole, correct?

6 A. Well, no, that's not what I'm saying. What
7 I'm saying or you're implying is that I thought the
8 Bear-Mattole was going to a full redwood monoculture and
9 based upon the data that I had available to me when I
10 did my analysis, so did I.

11 Q. And so in your initial analysis, your
12 conclusion was that the entire forest was moving to a
13 redwood monoculture, correct?

14 A. Yes.

15 Q. And you changed that opinion now, correct?

16 A. Yes.

17 Q. And now you think we might be moving towards a
18 Doug Fir monoculture, right?

19 A. Just on that one particular piece because if
20 you continue to cut redwoods on only 25 percent of your
21 property, you're going to -- and the rest is Douglas
22 Fir, you're going to be out of redwood soon.

23 Q. Do you currently have any opinion on what the
24 future species will be -- mix will be outside the
25 Bear-Mattole?

1 A. Yes, I do have an opinion on that, actually.

2 Q. And do you still believe it's moving towards a
3 monoculture?

4 A. No.

01:06 5 Q. All right. Now, do you know what percentage
6 of inventory is currently redwood on the property, the
7 entire property?

8 A. You know, I think it's something around about
9 60 percent.

01:07 10 Q. 57, 60, somewhere in there?

11 A. 57 sounds familiar, yes.

12 Q. And do you know that Dr. Reimer projects and
13 Scopac projects that the timberlands will be about 72
14 percent redwood in 2057?

01:07 15 A. Yes, I've heard that testimony.

16 Q. And that means that 27 percent of the property
17 will still be in other species, correct?

18 A. Correct.

01:07 19 Q. And that's including the Doug Fir that you
20 think Scopac should be cutting out some of those later
21 years where they're taking primarily redwood, correct?

22 A. Yes.

23 Q. And do you know what the redwood inventory was
24 on Scopac's land in 1986?

01:07 25 A. Yes.

1 Q. And was it in the mid 80 percents?

2 A. No.

3 Q. You do not -- it's your testimony that the
4 percent of redwood in the inventory of Scopac in 1986
01:07 5 was not in the 80 percent relative to other species?

6 A. That's right.

7 Q. All right. And what do you believe it was,
8 sir?

9 A. The redwood component in 1986?

01:08 10 Q. Yes, sir.

11 A. I think, if I remember right, it was somewhere
12 about 90 something percent.

13 Q. All right. All right. Fair enough. So if
14 the forest were 72 percent redwood in 2057, it would
01:08 15 still have less redwood on it 50 years from now as a
16 percentage than it did in 1986, correct?

17 A. That's correct.

18 Q. And it's appropriate, isn't it, to replant
19 redwood where it may have been harvested and that volume
01:08 20 and that species lost?

21 A. You know, there's some places, you know -- I'm
22 sorry. I lost the question.

23 Q. It's appropriate to replant redwood where it
24 once was, but it was harvested historically and other
01:08 25 species took over, correct?

1 A. Well, you know, you ordinarily try to do that
2 when it happened, but you're correct.

3 Q. All right. And, in fact, Mendocino Redwood
4 has some 73,000 acres out of their 230,000 or so that
01:09 5 are in hard woods, right?

6 A. You know, I don't know. I don't know that.

7 Q. You don't know their property?

8 A. No.

9 Q. Okay.

01:09 10 A. I'm sorry. I know their property, but I don't
11 know the percent of hardwood.

12 Q. All right. Do you know that they currently
13 have a hack and squirt program where they're killing off
14 the hardwoods and replanting redwood clones?

01:09 15 A. I understand that they are doing some
16 management silviculture prescriptions according to that,
17 yes.

18 Q. Okay. The hack and squirt and the replanting
19 with clones, right?

01:09 20 A. Yes. Excuse me. I don't know if they're
21 replanting with clones or not. I know they're doing a
22 hack and squirt.

23 Q. All right. And Mr. Dean testified that that
24 was being done because the original conifer population
01:09 25 had been harvested, it wasn't replanted, and the

1 hardwoods were taking over areas, correct?

2 A. Yes.

3 Q. And you don't know what acreage in Scopac's
4 property was once redwood but is now primarily other
01:09 5 species, do you?

6 A. It kind of depends on what time you're talking
7 about.

8 Q. Well, we know compared to 1986, today there's
9 a lot less redwood growing on the property, correct?

01:10 10 A. That's correct.

11 Q. Now, despite your concerns that this might all
12 lead to a monoculture, you didn't dispute Dr. Reimer's
13 harvest projections that there would be almost a billion
14 board feet of Doug Fir and Whitewood left in the 40th
01:10 15 year, correct?

16 A. Could you say that again?

17 Q. Sure. In your report, after stating that you
18 were concerned we would be moving towards a monoculture,
19 you also noted that after the pure stands of redwood are
01:10 20 reached through the second rotation of the acres cut in
21 the first 39 years of the analysis, the Doug Fir and
22 whitewood species are ignored even though when combined
23 the two species represent about one billion board feet
24 of timber. Do you recall that?

01:10 25 A. I think you're mischaracterizing what I said

1 about the monoculture as it relates to the Bear-Mattole.
2 But the answer to your question is, yes, I'm aware the
3 fact there's a billion feet of Doug Fir and whitewoods
4 left on the property.

01:11 5 Q. In year 40?

6 A. Yes.

7 Q. In fact, one of your primary complaints about
8 the model is that those billion board feet aren't being
9 cut out there in year 2050 or so?

01:11 10 A. It's not a complaint about the model. It is
11 an observation as to I didn't understand why we would go
12 through the whole redwood inventory in 40 years, cut a
13 lot of Douglas Fir in the beginning, and then tail it
14 off and leave a lot of Douglas Fir out there. I didn't
01:11 15 understand that.

16 Q. And is that what you think happened? Do you
17 think the entire redwood inventory is depleted in 40
18 years?

19 A. The initial -- during the first 40 years,
01:11 20 there was more volume harvested than there was in the
21 beginning. I understand growth and all of that kind of
22 stuff, and I'm saying there was an extra billion feet, I
23 think, that was removed relative to the starting
24 inventory.

01:12 25 Q. All right. Trees grow, correct?

1 A. (Witness nods his head affirmatively.)

2 Q. Now, let's talk a little bit about Doug Fir
3 pricing just for a moment. Would you agree that Doug
4 Fir sells for less than redwood?

01:12 5 A. A Doug Fir, a loss, sells for less than
6 redwood; that's correct.

7 Q. And that's always been the case, right?

8 A. As far as I know, yes.

9 Q. And based on your 39 years in the business?

01:12 10 A. Yes.

11 Q. And, in fact, you expect based on that 39
12 years for that to continue to be the case in the future,
13 correct?

14 A. I would assume so, yes.

01:12 15 Q. So all else being equal, including harvest
16 costs for this discussion, it's more profitable to
17 harvest redwood than it is to harvest Doug Fir, right?

18 A. You know, you can't -- you can't say that.
19 Obviously harvesting redwood right now for Palco doesn't
01:13 20 seem to be a very profitable deal.

21 Q. A lot more profitable than harvesting Doug
22 Fir, isn't it?

23 A. I don't know. There's a lot of Douglas Fir
24 being operated right now, and it really all it has to do
01:13 25 with the conversion efficiencies of that capacity.

1 Q. All right. Now, Dr. Tedder, redwood is worth
2 more, right?

3 A. Redwood logs are worth more than Douglas Fir
4 logs, correct.

01:13 5 Q. And assuming harvest costs are equal, the
6 revenue realized from the harvest and sale of those logs
7 will be greater for redwood, correct?

8 A. That's correct.

01:13 9 Q. Now, in performing your review of Mr. Yerges'
10 analysis, you prepared your own about home valuation,
11 correct?

12 A. I developed an opinion of value in my review
13 of his opinion value.

01:14 14 Q. But in doing that, you did create your own
15 harvest projections, right?

16 A. That's correct.

17 Q. You didn't use Mr. LaMont's harvest
18 projections?

19 A. That's correct.

01:14 20 Q. Instead, for the first 38 years, you used
21 Dr. Reimer's projections, correct?

22 A. That's correct.

01:14 23 Q. And you consider the first 38 years of
24 Dr. Reimer's projections to be a reliable basis for
25 evaluation, correct?

1 A. That -- in the context of my appraisal review
2 and the restrictions that I have in doing appraisal
3 review and listening to what Dr. Barrett had to say this
4 morning, you know, I don't know, if you wanted to get 80
01:14 5 million off of it, I think you might be able to do that.

6 I don't know. But that's what I used. So I used his.

7 Q. Well, so today you think it may be reasonable,
8 correct?

9 A. It might be. I don't know the answer to that.

01:14 10 Q. All right. And back when we took your
11 deposition from your perspective what the first 38 years
12 did was it basically maintained the harvest schedule
13 within the current standard that exists out there today,
14 right?

01:15 15 A. You lost me. I just used Dr. Reimer's harvest
16 schedule for the first 38 years.

17 Q. Why don't we go ahead and put up page 151 line
18 17. Sir, do you have your deposition up there with you?

19 A. Oh, boy. No, I don't think so.

01:15 20 MR. DOREN: Your Honor, may I approach?

21 THE COURT: You may.

22 Q. (By Mr. Doren) Here you are, sir.

23 A. I thought it was bigger than that.

24 Q. Sir, we can just read together --

01:15 25 A. What page?

1 Q. Yes, sir, 151. And we're just going to read
2 from 151, line 17, to page 152, line 6. And this is
3 quoting from your report: "In so doing, I utilized" --

4 A. I'm sorry, I haven't found it.

01:16

5 MR. DOREN: May I approach again, Your
6 Honor?

7 THE COURT: Yes, you may.

8 Q. (By Mr. Doren) I'll help you out.

01:16

9 A. Well, that's not very good, I can't even find
10 the page number. Thank you.

11 Q. Are you with me now, Dr. Tedder?

12 A. Yes, thanks.

01:16

13 Q. Now, if we start at page 151, line 17, and
14 we're quoting from your report here. It says: "In so
15 doing, I utilized the harvest schedule developed by
16 Dr. Reimer and used by Mr. Yerges. However, on the
17 outer years, starting 2046 and in the future were not
18 used." And then you acknowledge that, correct?

19 A. Yes.

01:17

20 Q. And then the next question is: "Is what he
21 described there a reliable basis, in your opinion, for
22 the value you came to over on page 43 of your report?"

23 Answer: "I think it is a reliable basis, yes.

01:17

24 And that basically what it does is it maintains the
25 harvest schedule within the current stand that exists

1 out there today. For example, the trees that we're
2 going to harvest 35 years from now are already in the
3 ground growing, and they know where they are. So you
4 typically want to cut that off before you get out into
5 the future when you're replacing them with guide curves
6 that don't relate to existing conditions." Was that
7 your testimony, sir?

8 A. Yes.

9 Q. All right. Does that refresh your
10 recollection at the time you gave your deposition you
11 believed that for the first 38 years, Dr. Reimer's and
12 Mr. Yerges's projections were a reliable basis for
13 projections?

14 A. Well, I don't -- I'm sorry, but I don't think
15 that I said they were unreliable basis for projections.
16 But to answer your question, yes.

17 Q. Fair enough. And, by the way, I just wanted
18 to make sure we were on the same page in terms of what
19 you had said. And even though that took a while, I
20 still thought that was the most efficient way to do it.

21 Now, one of the reasons that you think that
22 that 38-year projection period is a reliable basis is
23 because there we're dealing with the trees that we're
24 going to harvest 35 years from now, which are already in
25 the ground growing, correct?

1 A. Correct.

2 Q. And one of the benefits of timber is that when
3 those trees are in the ground growing, you can pretty
4 much count on them being there for you in 35 years,
01:18 5 right?

6 A. That's correct.

7 Q. Now, you stopped your projection period at 38
8 years; is that right?

9 A. Yes.

01:18 10 Q. And that's where we saw that increase in
11 harvest in about 2046?

12 A. That's correct.

13 Q. And at that point that's where you established
14 your reversion and applied a capitalization rate,
01:19 15 correct?

16 A. Correct.

17 Q. And so you did not go out to 50 years,
18 correct?

19 A. That's correct.

01:19 20 Q. Nor did you stop at 10, correct?

21 A. Correct.

22 Q. You just stopped at 38?

23 A. Yes.

24 Q. Now, Dr. Tedder, you don't dispute, do you,
01:19 25 that over the last 30 years redwood pricing has had real

1 growth?

2 A. Over the last 30 years --

3 Q. Yes.

4 A. -- redwood pricing -- redwood lumber pricing

01:19 5 or redwood --

6 Q. Timber?

7 A. Timber?

8 Q. Yes, sir.

9 A. No, I don't.

01:19 10 Q. And you based your conclusion and your rework
11 evaluation that there would be no real increase in the
12 price of redwood on -- and you base that on an analysis
13 of redwood prices for the last ten years, correct?

14 A. That's correct.

01:20 15 Q. And you had two reasons for picking that
16 ten-year period, correct? And again, I'm referring back
17 now to when we -- actually, when --

18 A. Yeah, I'm trying to remember what the second
19 one was. But, yes.

01:20 20 Q. Okay. Well, one of them was that 1998 was the
21 earliest transaction used by Mr. Yerges in his
22 comparable sales analysis, correct?

23 A. That's the one I just remembered. That's
24 correct.

01:20 25 Q. All right. So one of your two reasons for

1 picking that ten-year period is that Mr. Yerges had
2 picked a comparable transaction from 1998?

3 A. Yes.

4 Q. And the other was that as of the mid 1990s,
01:20 5 and if I got this right now, the committed timber volume
6 in the national forest had been harvested, correct?

7 A. Yes.

8 Q. And, in your opinion, that meant that the
9 market had changed, right?

01:20 10 A. Yes.

11 Q. And from that date forward, at least for the
12 next 38 years and, in fact, with your reversion, really
13 out over all time, there would no longer be any real
14 price growth on redwood, correct?

01:21 15 A. On mine, yes.

16 Q. And you had no other reason for your selection
17 of that ten-year average that you used to project your
18 harvest -- excuse me, your redwood pricing, did you?

19 A. Other than those two, no.

01:21 20 Q. Now, you don't know what the market dynamics
21 will be over the next 50 years, do you?

22 A. No, I don't.

23 Q. What we know over the last 30, though, is that
24 they've changed from time to time, correct?

01:21 25 A. That's correct.

1 Q. And that through those changes there have been
2 times, and we saw it yesterday if you had gone back
3 about ten years, it would be about flat, right?

4 A. Yes.

01:21 5 Q. If you went back five, there would be a
6 significant increase in prices, right?

7 A. On --

8 Q. Redwood timber?

9 A. You know, I don't -- I don't think so.

01:21 10 Q. All right.

11 A. I think that line is flat there except for
12 that bump in it.

13 Q. Okay. So you think there is no -- there's
14 been no real dips and falls and rises and slopes in
01:22 15 pricing since 1998; is that right?

16 A. Well, there was -- there was an increase and a
17 decrease in the mid time period there, yeah, but then it
18 went back -- then it went back to where it was.

19 Q. All right. And if we pick that mid time
01:22 20 period for a projection instead of ten years, we would
21 have shown significant real growth in prices, right?

22 A. If you would have picked that time period,
23 then that's what it would some shown; that's correct.

24 Q. And if we had picked an earlier time period,
01:22 25 earlier than 1998 where you had prices below the 1998

1 level, then we'd show real price growth again, now it's
2 2008, correct?

3 A. That there would be some, that's correct.

4 Q. And all of those rises and falls going back 30
01:22 5 years all reflect different forces at play in the
6 marketplace, right?

7 A. That's correct.

8 Q. Let's talk a little bit, if we can, about cost
9 data, the cost data that you used in your report -- I'm
01:23 10 sorry that you evaluated Mr. Yerges's use of. And, in
11 your opinion, the cost data used by Mr. Yerges was lower
12 than the cost information supplied to you by Scopac,
13 correct?

14 A. That was my -- that was my findings, yes.

01:23 15 Q. Okay. And for 2008, Mr. Yerges used logging
16 and hauling costs of about \$195 per thousand board feet,
17 correct?

18 A. Yes.

19 Q. All right. If we could please pull up page 28
01:23 20 of the report. And while Scopac's -- did you use a
21 three-year average for costs?

22 A. No.

23 Q. How did you evaluate what costs to put into
24 your rework valuation?

01:23 25 A. Wait a second. You know what, I may have

1 averaged a couple years cost there. I can't basically
2 remember on these costs. Maybe we can take a look.

3 MR. DOREN: Can we pull out that table
4 just a little bit, please, recognizing that we need the
01:24 5 whole thing, so however big you can get it.

6 Q. (By Mr. Doren) And what you have for logging
7 costs there at Figure 5 is 2006 and 2005. Do you see
8 that?

9 A. Yes.

01:24 10 Q. And are these the years that you used?

11 A. I believe that's what I did use, yes.

12 Q. All right. And in 2005, you show actual
13 harvest costs of \$270.83, correct?

14 A. Yes.

01:24 15 Q. And in 2006 we see that the costs have fallen
16 about 12 percent to \$237. Do you see that?

17 A. Yes.

18 Q. And do you know what the harvest levels were
19 in 2005 and 2006?

01:24 20 A. I think they were up to, what, 100 million or
21 something like that. They were higher than 75.

22 Q. Maybe 145?

23 A. It could have been.

24 Q. Now in 2005 is it correct that there were
01:25 25 about 54 million board feet harvested by helicopter?

1 A. Oh, that is the board foot, yes, that's
2 correct, uh-huh.

3 Q. And that was at a cost of almost \$20 million?

01:25

4 A. Somebody highlight the cost for me. Oh, there
5 it is down below. Yes, that's correct. \$20 million,
6 yes.

7 Q. All right. And then we go to 2006, we see the
8 helicopter logging is about 14.2 million board feet. Do
9 you see that?

01:25

10 A. Yes.

11 Q. And at a cost of almost \$6 million, correct?

12 A. Yes.

13 Q. Now, do you know what the level of helicopter
14 logging was in 2007?

01:25

15 A. No, I do not.

16 Q. Do you know what the level of helicopter
17 logging is anticipated to be in 2008?

18 A. No, I do not.

01:25

19 Q. Have you heard here in this courtroom that
20 Scopac is projecting that helicopter logging will be
21 about 2 percent or less of their future harvesting?

22 A. I haven't heard that, but I have heard that
23 they are projecting that the harvest costs will go down.

01:26

24 Q. All right. And it wouldn't surprise you to
25 hear that they intend to do a lot less helicopter

1 harvesting than 54 million board feet for 14.2 million
2 board feet, would it?

3 A. You know, it wouldn't -- the question is
4 whether or not I'd be surprised. You know, I don't
01:26 5 know. I'm surprised that it went from 54 to 14. That's
6 a big drop.

7 Q. Yeah.

8 A. You know. If it was me, I would certainly
9 stay away from the helicopter logging because of the
01:26 10 costs.

11 Q. All right. So you think kind of a best
12 practice if you're trying to maximize net cash flow
13 would be to minimize the helicopter logging?

14 A. I'd stay away from those, yes.

01:26 15 Q. All right. And, in fact, when you do that and
16 you're down to tractor harvesting, you currently have in
17 2006 the cost was \$194 per thousand board feet, correct?

18 A. Correct.

19 Q. Let's go on to page 29 of the report, please.

01:27 20 And so what I'd like to talk about for just a moment is
21 your road expenditures and your reforestation
22 expenditure assumptions. And if we can start by pulling
23 out this area, please, which is capital expenditures.
24 And does that relate primarily to the roads?

01:27 25 A. I would say, yes, primarily to the roads.

1 That's correct.

2 Q. Okay. And what you show is that here you use
3 three years instead of two, correct?

4 A. That's correct.

01:27 5 Q. All right. And what we found is that over
6 those three years, the total average for capital
7 expenditures is \$7 million, correct?

8 A. Yes.

01:27 9 Q. Now, are you aware that two of those years,
10 2004 and 2005, were years with particularly high road
11 costs due to high harvest levels?

12 A. Could you say that again?

13 Q. Sure. Do you know what the impact to harvest
14 levels was on the road costs in 2004 and 2005?

01:28 15 A. I don't know -- on that, that they are -- no,
16 I don't. I guess it's curious you'd say it's high cut
17 levels and high numbers, but 2006 is bigger than the
18 2004 and '5.

19 Q. We'll get to 2006.

01:28 20 A. Okay.

21 Q. Right now I'm just asking about 2004 and 2005.
22 Do you know what the harvest levels were on those years?

23 A. Well, we just looked at them on the other page
24 there.

01:28 25 Q. Actually, we only have '05 and '06.

1 A. I don't know. I don't remember what it is for
2 2004, no.

3 Q. Now, you've heard testimony that there's a
4 backlog of roadwork to be completed on the Scopac
01:28 5 property, right?

6 A. Yes.

7 Q. And that in 2006 they spent 7.3 million, they
8 had started to dig into that backlog, right?

9 A. You know, I think there was some of that being
01:29 10 done, yes. I think Dr. Barrett indicated that there was
11 a little bit of that had been done, yes.

12 Q. About \$7 million worth?

13 A. \$7 million worth? No, I don't think \$7
14 million worth.

01:29 15 Q. And did you also hear that Scopac expects to
16 work off that backlog in the next two years?

17 A. Yes, I did.

18 Q. And that by 2010 Scopac expects its road costs
19 to be \$4 million per year?

01:29 20 A. I don't recall hearing that one, but if that's
21 what they expect that it's going to be, then that's what
22 they expect it's going to be.

23 Q. And that would be in line with Mr. Yerges's
24 3.96 million, correct?

01:29 25 A. Those two numbers are very close to one

1 another; that's correct.

2 Q. Now, let's go down, if we can, to the next
3 table on the page and talk about reforestation costs for
4 a moment. Now, you also stated that you believe that
01:29 5 Mr. Yerges's use of 1.5 million for reforestation costs
6 is out of line because the actual average costs over the
7 last three years have been 1.7 million?

8 A. Well, I don't think I said his was -- I don't
9 think I used the words "out of line." I said they're
01:30 10 lower, I believe, is what I said.

11 Q. Okay. They're lower than you would have had
12 him use?

13 A. I would have had him use?

14 Q. Yes.

01:30 15 A. I'm looking at 1.7 million from the company
16 data.

17 Q. And that's what you used?

18 A. That's correct.

19 Q. Okay. But your goal in picking 1.7 wasn't so
01:30 20 much to get it right for '04 and '05 and '06; it was to
21 get it right for '08, '09 and '10 and on out those 38
22 years, right?

23 A. That's correct.

24 Q. Now, is it fair to say that reforestation
01:30 25 costs are tied directly to harvest levels?

1 A. There's a direct tie to that; that's correct.

2 Q. And that's because the more trees you cut
3 down, the more acreage you have to replant and trees?

4 A. Generally speaking, that's a correct
5 statement, yes.

6 Q. And back in these years when we're talking
7 about harvests at 140 and then north of 100 million
8 board feet, there would, therefore, be higher
9 reforestation costs in any year where you're harvesting
10 74 million board feet, correct?

11 A. That's correct.

12 Q. All right. So if, in fact, the reforestation
13 costs at a level below 100 million board feet are more
14 in the range of 1.5 million, and if that's what Scopac
15 told Mr. Yerges, then his costs would, in fact, more
16 accurately reflect the expected reforestation costs for
17 a 75 or 80 million board foot harvest going forward,
18 correct?

19 A. That's correct.

20 Q. Let's talk for a moment about discount rates.
21 And you used a 6 percent discount rate; is that correct?

22 A. No. No.

23 Q. What discount rate did you use?

24 A. I believe it was 7.

25 Q. You're absolutely right.

1 A. That's a trick question there.

2 Q. I wish it was a trick question.

3 A. Not paying attention.

4 Q. I appreciate that. Mr. Yerges used 6 percent,

01:32 5 and you used 7, correct?

6 A. Yes.

7 Q. And Mr. Yerges considered four different data

8 sources in determining his discount rate?

9 A. Yes.

01:32 10 Q. He looked at the weighted average cost of

11 capital, transaction return calculations, REIT returns,

12 and he conducted investor survey?

13 A. That's correct.

14 Q. And you have no objection to the investor

01:32 15 survey that Mr. Yerges conducted, do you?

16 A. No.

17 Q. In fact, you agree with the rates that he

18 obtained in that survey?

19 A. Well, I don't know how he obtained those

01:32 20 rates, but generally speaking from my knowledge, I don't

21 disagree with the numbers. I don't know how he got

22 them.

23 Q. I mean, they're what you would be expecting to

24 see out there among investors?

01:32 25 A. Yes.

1 Q. And overall, getting -- leaving aside asset
2 specific or Humboldt County specific adjustments, you
3 have no objection to Mr. Yerges initially using a 6
4 percent real discount rate to determine the present
01:33 5 value of the future stream of income from Scopac's
6 forest, correct?

7 A. Leaving aside what?

8 Q. Let's make it easy. We're both getting a
9 little punchy here. If we can put up page 38 of the
01:33 10 report, please.

11 And if we can go right here, please: "Overall
12 I have no objections to initially using a 6 percent real
13 discount rate to determine the present value of the
14 future stream of income from these forests implied in
01:33 15 the TIMO survey."

16 A. That's correct.

17 Q. And that accurately reflects your opinion,
18 right?

19 A. Yes.

01:33 20 Q. Now, your concern is that Mr. Yerges, in your
21 opinion, did not address the impact to the habitat
22 conservation plan and other regulatory factors, correct?

23 A. That's correct.

24 Q. And, in your opinion, the proper adjustment
01:34 25 for those figures or for those factors is 1 percent, and

1 that's what gets you to 7 percent?

2 A. Yes.

3 Q. And one reason for that is what you see -- let
4 me back up here. And one of the reasons that you see

01:34 5 for that in your opinion is perceived animosity between
6 Scopac and the water board?

7 A. One of the things, that's correct.

8 Q. But you haven't done anything to analyze the
9 relationship between Scopac and the water board

01:34 10 personally?

11 A. I have talked to several people in town about
12 that particular relationship, but in terms of going out
13 and analyzing the watershed, I have not done that.

01:34 14 Q. Or talking with anyone specifically at the
15 water board?

16 A. That's correct.

17 Q. And prior to issuing your report, you had
18 never read Scopac's habitat conservation plan, correct?

19 A. That's correct.

01:34 20 Q. Have you now?

21 A. No.

22 Q. And one of the main factors in adding that one
23 percent addition is you talked with various people, and
24 one of those -- and perhaps you tell me if I'm wrong,

01:35 25 but the principal person you have in mind is Mr. Russ

1 Forseberg?

2 A. I talked with Russ Forseberg, yes.

3 Q. And he's a local forester in Eureka?

4 A. That's correct.

01:35 5 Q. And you and Mr. LaMont went to lunch with him?

6 A. Correct.

7 Q. Spent about an hour together chatting?

8 A. Yes.

01:35 9 Q. And you didn't provide Mr. Forseberg with my
10 written materials, correct?

11 A. Correct.

12 Q. And he had never given you any back, correct?

13 A. That's correct.

01:35 14 Q. But after that discussion, you concluded you
15 should add one percent to your discount rate?

16 A. After that discussion, I concluded that adding
17 one percent to the discount rate was a reasonable thing
18 to do in this area, yes.

01:35 19 Q. Now, Mr. LaMont assisted you with your
20 appraisal review of Mr. Yerges' appraisal, correct?

21 A. No. Excuse me. He did -- he edited it,
22 reviewed it for completeness and corresponded -- or I've
23 lost the word -- that was USPAP compatible.

24 Q. And, in fact, on page 80 --

01:36 25 A. If I missed something, I missed it, so --

1 Q. I just want to make sure I understand what you
2 did. And at page 80 of your report you state that
3 "Mr. Richard LaMont provided appraisal review assistance
4 for my review," correct?

01:36

5 A. Yes.

6 Q. And that was true at the time; that's true
7 today, right?

8 A. That's correct.

01:36

9 Q. And you discussed your graph report with
10 Mr. LaMont, correct, as part of that assistance?

11 A. He reviewed my appraisal under the -- under
12 the guidelines of standards 3 of Uniform Standard
13 Professional Appraisal Practices.

14 Q. And he reviewed your graph report?

01:36

15 A. That's correct.

16 Q. Now, both you and Mr. LaMont used a 7 percent
17 discount rate, correct?

18 A. Correct.

01:37

19 Q. And you used a 38-year projection period while
20 Mr. LaMont used a 50-year projection period, correct?

21 A. That's correct.

22 Q. And Mr. LaMont based his pricing on something
23 called Pacific Rim Wood Market while you used SBE
24 prices, correct?

01:37

25 A. Correct.

1 Q. And Mr. LaMont included the MMCAs in his
2 valuation while you excluded them from yours, correct?

3 A. Well, I don't know whether he included the
4 MMCAs or not. I don't know.

01:37 5 Q. Fair enough. His report. And your
6 recalculation of the value of the timberland, leaving
7 out gravel, traction, and cell towers was \$436 million,
8 correct?

9 A. That sounds correct, yes.

01:37 10 Q. While Mr. LaMont's using the different
11 assumptions we just talked about, for the same interest
12 was \$430 million, correct?

13 A. I believe that's -- I believe that's right.

14 Q. Just a \$6 million difference?

01:37 15 A. Yes.

16 Q. After you both did your completely independent
17 analysis?

18 A. Yes.

01:38 19 MR. DOREN: Thank you, sir. I pass the
20 witness, Your Honor.

21 THE COURT: All right. Anyone else over
22 at this table? Anyone else have any questions?

23 MR. CLEMENT: We have no questions, Your
24 Honor.

01:38 25 THE COURT: Anyone else have any

1 questions? Any redirect?

2 MR. NEIER: Very brief.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

01:38 5 BY MR. NEIER:

6 Q. Dr. Tedder, what -- well, I should go back to
7 with respect to your qualifications. You were asked
8 some questions about doing appraisal reviews. How many
9 appraisals have you done?

01:38 10 A. I had 50 in one document and 100 in another,
11 which indicates that I've lost count of how many that
12 I've done. But it's over 50.

13 Q. And have you done appraisals for purchasers
14 and sellers?

01:38 15 A. Yes.

16 Q. And you mentioned the uniform standards -- or
17 you mentioned USPAP. Can you tell me what does USPAP
18 stand for?

01:39 19 A. Uniform standard of professional appraisal
20 practice.

21 Q. And they have different standards, correct?

22 A. That's Correct.

23 Q. And the standard that you used is which
24 standard?

01:39 25 A. Standard 3.

1 Q. Is that the same standard that Mr. LaMont
2 used?

3 A. No.

4 Q. What standard did he use?

01:39

5 A. He had used Standard 1 -- Standards 1 to do
6 the appraisal and Standards 2 to write the appraisal.

7 Q. So what is Standard 1 and Standard 2?

01:39

8 A. Standard 1 is the guidelines for developing
9 the appraisal. Standard 2 is -- are the guidelines of
10 writing the appraisal.

11 Q. Okay. And what is Standard 3, the standard
12 that you used?

01:39

13 A. Standards 3 is a combination of Standards 1
14 and 2. In Standard 3, it tells you how to do an
15 appraisal review and how to write an appraisal review.

16 Q. So is an appraisal review different than an
17 appraisal?

18 A. Yes.

01:40

19 Q. What is the difference between an appraisal
20 and appraisal review?

21 A. In an appraisal review you may only use the
22 data that was available or used by the person that you
23 are reviewing.

01:40

24 Q. So you're not allowed to use outside data in
25 developing your review of somebody else's appraisal; you

1 have to stick with that appraisal and the data used in
2 it?

3 A. That's correct. That's correct.

01:40

4 Q. Now, you mentioned that -- or Mr. Doren asked
5 you questions about how much -- whether the forest in
6 the 1980s had 90 percent redwood. Do you recall that?

7 A. Yes.

8 Q. And that's higher than the percentage of
9 redwood that exists currently today?

01:40

10 A. Yes.

11 Q. Why is that?

12 A. Because they cut the redwood trees down.

13 Q. Because they cut the old growth redwood trees?

14 A. Cut the old birch and redwood trees down.

01:40

15 Q. Right and what they have left is none of that
16 old growth redwood?

17 A. There's some left, yes, but not very much.

18 Q. You testified that you believe that some of
19 the changes that have been made in prices are

01:41

20 structural, right?

21 A. Yes.

22 Q. And Mr. Doren took you through various
23 different points along the chart with respect to prices.

24 He didn't show you the chart, but he talked about the

01:41

25 various different swings in redwood prices. Do you

1 recall that?

2 A. Yes.

3 Q. Okay. Are all changes in prices structural?

4 A. Are all changes in prices --

01:41 5 Q. -- of redwood structural?

6 A. Of redwood? No.

7 Q. Okay. Are some changes cyclical?

8 A. Yes.

9 Q. So what is the difference between a cyclical

01:41 10 price -- or a change in price that is cyclical as

11 opposed to a change in price that is structural?

12 A. Well, I think probably what you're referring
13 to is secular. Secular as opposed to cyclical --

01:42 14 Q. I think what I'm trying to get at is what is
15 the difference between a structural change and a
16 non-structural change. Whether it's secular or some
17 religious change, I don't know.

01:42 18 A. Secular is long-term. Cyclical is what
19 happens in between. So what I'm talking about here and
20 what I said was -- is that because the '82 and '82
21 recession, a lot of people went out of business.

22 Q. Okay.

01:42 23 A. Okay. Because of the fact that the Forest
24 Service stopped harvesting timber, a lot of the capacity
25 dropped out.

1 Q. When you say the Forest Service stopped
2 harvesting timber, was that on particular land? Was
3 that land on --

01:42

4 A. On the national forest in the redwood area,
5 they stopped.

6 Q. So in my simplistic way, they took a lot of
7 capacity out of the system?

01:42

8 A. There was capacity that went out of the
9 system, that's correct. And that's kind of a supply
10 side reaction that would cause the price to change or
11 react on the supply side.

12 Q. And because of that, prices go up obviously.
13 If you take capacity out of the system, you take volume
14 out of the system, prices have got to go up, correct?

01:43

15 A. Well, you know, not necessarily.

16 Q. Okay.

17 A. I mean --

18 Q. All right. But --

01:43

19 A. It's based on the external demand factor as
20 well. So you can take capacity out. Demand falls off
21 like we have right now, and price goes down. So, you
22 know --

01:43

23 Q. Fair enough. Fair enough. But I guess what
24 you're saying is the change that happened with respect
25 to removing the U.S. Forest Service lands was a

1 permanent change; is that what structural means?

2 A. Permanent, structural change in the market;
3 that's correct.

4 Q. Okay. So some changes are permanent, never
01:43 5 come back, like no more old growth redwoods or very
6 little old growth redwoods, or taking the property of
7 the U.S. Forest Service out of the system. And some
8 changes are not permanent changes. Is that a fair way
9 to say it?

01:43 10 A. I hope the one we're going through now is not
11 a permanent change for sure, but, yes, to your question.

12 MR. NEIER: All right. Thank you very
13 much.

14 THE COURT: All right. You can step
01:44 15 down. I think we'll probably break now for lunch. I'm
16 not sure what -- what do we have in the way of
17 witnesses?

18 MR. NEIER: Well, we can -- we can
19 continue to fill the void, if that's what the Court
01:44 20 would like.

21 THE COURT: I want to finish.

22 MR. NEIER: We would really like to
23 finish.

24 THE COURT: Okay. I think everybody
01:44 25 would like to finish. I think we need to break for

1 lunch and then we take everyone that we can until we
2 drop tonight.

3 MR. NEIER: Here's what we could do if
4 everybody is agreeable, okay. We have another rebuttal
01:44 5 witness, who's Jeff Johnson who could testify now. But
6 in all fairness, we gave out his proffer literally while
7 we were going on in court today because he prepared it
8 last night, and we gave it out this morning. So if
9 everybody is agreeable, we can put him on and go
01:44 10 forward.

11 THE COURT: Even by California time, it's
12 now 11:45, so it's lunchtime. And if you're from New
13 York, you're probably growling. So why don't we break
14 for lunch, and then you'll be ready hopefully this
01:45 15 afternoon to finish the witnesses and give me the
16 announcement about the documents that are admitted. And
17 he looks like -- Mendocino looks like he wants to say
18 something.

19 MR. BRILLIANT: I just want to give you a
01:45 20 report on something. Your Honor had asked before the
21 break this morning for us to meet with Harvard. We gave
22 them a copy of the amended plan, and they asked a few
23 questions which we answered for them. They indicated to
24 us that based on the information we gave them, it was no
01:45 25 longer worth their time to stay and that they were

1 leaving. And I understand that they have now left.

2 MR. KRUMHOLZ: That's actually not --

3 Mr. Gerber was present during that conversation. He

4 wanted to make sure that we fully told the Court what

01:45 5 they said, so I'm just going to read it. It's my

6 understanding they said that while right now they don't

7 see why they would stay for today, they're still very

8 interested subject to the settlement approval and the

9 plan approval. That was as I understand it. I wasn't

01:46 10 there, but I was told to communicate that.

11 THE COURT: They're not interested in

12 some sort of arrangement whereby Mendocino participates

13 and they participate and Marathon participates, and it

14 satisfies the Noteholders because it increases the price

01:46 15 to something they would be happy with?

16 MR. GREENDYKE: I don't know what the

17 discussion was, Judge. I wasn't part of it. My

18 understanding is they want to see how this --

19 THE COURT: Might as well ask for the

01:46 20 world, you know.

21 MR. GREENDYKE: I think they want to see

22 how this fight comes out.

23 THE COURT: If anybody is smart enough,

24 surely it's Harvard to work out a deal.

01:46 25 MR. BRILLIANT: I think all that's

1 important, Your Honor, is we don't expect before we
2 close the evidence that --

3 THE COURT: Can we then do this, take an
4 hour and a half for lunch. Come back here. It's 1:45.

01:47 5 Whatever time that is. That makes it 3:15, I think. We
6 come back at that time. Hopefully you-all have reviewed
7 the proffer. You'll be able to put him on. We'll be
8 able to go forward with that. I don't know if there are
9 any other witnesses, but somebody will give me an
01:47 10 announcement about the exhibits, and we'll discuss
11 whether or not you've worked out the details of the rest
12 of your witnesses, the deposition evidence that you
13 have. You can pass that in, those sorts of things. See
14 where we are.

01:47 15 MR. GREENDYKE: I think -- I would kind
16 of like to explore this a little bit more fully before
17 we break for lunch.

18 THE COURT: Okay.

19 MR. GREENDYKE: To figure out what we're
01:47 20 going to do. I know they have one more witness,
21 Marathon has one more witness.

22 THE COURT: Okay.

23 MR. GREENDYKE: Mr. Johnston, the one
24 we --

01:47 25 MR. NEIER: We may have an additional

1 witness to that, but we haven't figured that out. I
2 think I mentioned yesterday.

3 THE COURT: One, maybe two. All right.

4 MR. GREENDYKE: We expect Mr. Cherner to
01:47 5 come tomorrow at some point. I'm not sure when he's
6 going to get here, but it will be tomorrow morning.

7 From yesterday's conversation, I understood that if
8 Mr. Cherner, then they'd put Mr. Dean on --

9 THE COURT: That's right.

01:47 10 MR. GREENDYKE: -- as a rebuttal witness.
11 So I think we have three more witnesses, but we also
12 have the amended plan, and we also have --

13 MR. NEIER: Dr. Mundy.

14 MR. GREENDYKE: I don't know how we deal
01:48 15 with Mundy.

16 MR. NEIER: We call Mundy on Friday is
17 what we understand.

18 MR. GREENDYKE: But I think we ought to
19 call the folks from out of town first. Anyway, I think
01:48 20 we can work through the witnesses, but we have a 9019
21 motion that's going to be filed some time soon. Then
22 we're going to have to have another hearing to coincide
23 with the confirmation hearing, which means we may, if we
24 have an objection, need some more evidence in connection
01:48 25 with either cleaning up or rebutting the plan testimony

1 and doing a 9019 testimony and then reargue. I've
2 talked to Debtors' counsel, and we're suggesting as we
3 thought we were going to talk about this morning when we
4 first came in, that we try and find a date to complete
5 the 9019 process, to have an argument, with enough time
6 as what they've asked for was a 20-day opportunity to be
7 heard with regard to 9019 and come back.

01:48

8 MR. BRILLIANT: The 9019 motion is not a
9 condition to the confirmation of our plan.

01:49

10 MR. GREENDYKE: That's what you said.

11 MR. BRILLIANT: No, I did not say it. It
12 is not a condition to the confirmation of the plan.

13 THE COURT: Somebody wanted to hear it at
14 the same time.

01:49

15 MR. BRILLIANT: Yeah, Mr. Jordan did.

16 THE COURT: Right now the next -- looks
17 like the next available date -- next week is
18 unfortunately out of the question. It looks like
19 Thursday, the 16th is the next. And it just depends. I

01:49

20 have hearings set on Thursday in the Valley, but I can
21 probably miss them.

22 MR. GREENDYKE: Is Friday available as
23 well? What I'm wondering is if we finish all the
24 evidence --

01:49

25 THE COURT: You think it will take two

1 days more?

2 MR. GREENDYKE: I'm trying to figure out
3 when we argue and how much it will take and how much
4 time it will take to finish this part of the hearing,
01:49 5 which would include --

6 MR. BRILLIANT: Your Honor, I would hope
7 this hearing, that all the evidence will be closed
8 tomorrow at 3 o'clock. And then we just come back for
9 argument.

01:49 10 THE COURT: That would be the normal
11 situation, that we would close the evidence tomorrow. I
12 mean --

13 MR. JORDAN: And that's been the
14 direction all week is to close the evidence now, not
01:50 15 leave it open so someone can start up --

16 MS. COLEMAN: Well, Your Honor,
17 Mr. Greendyke's and my problem with that is that it says
18 in the term sheet that we just got for the first time
19 this morning: "The parties shall seek to have a
01:50 20 settlement motion in 9019 heard and approved in a
21 parallel track with the MRC Marathon plan such that an
22 order approving settlement is entered contemporaneously
23 with an order confirming the MRC Marathon plan." That's
24 not fair if -- we're not going to close our case on
01:50 25 confirmation if we're also going to have some issues on

1 the settlement.

2 MR. BRILLIANT: Your Honor, those are
3 rights that belong to Maxxam and Palco, Mendocino and
4 Marathon. The agreement that we have is that we will
01:50 5 try to have Your Honor, you know, schedule them. But
6 the agreement is not we're going to, you know, leave
7 open the whole thing, the evidentiary portion of the
8 confirmation hearing.

9 THE COURT: I don't know that we have to
01:50 10 deal with that issue until tomorrow. I don't know what
11 it is that we're leaving open after tomorrow, okay? It
12 may well be that it will be important to have some
13 additional evidence on the issue of the 9019 motion. I
14 don't know. I don't know what the status of that is and
01:51 15 nobody's had the opportunity to either see it or reply
16 to it. I am open to scheduling it quickly.

17 And I'm open to demanding that you
18 respond to it quickly and that we hear it and get it all
19 over with not next week but the following week. And as
01:51 20 I recall -- I'm not sure, but when I looked at the
21 16th -- let me just look at the 17th. 15th is a
22 Thursday. The 16th is an Asarco Encycle day. Is that
23 really happening?

24 MR. NEIER: Your Honor, I think the issue
01:51 25 is one of incredible -- incredible amounts of people

1 that you have to bring if the record remains open in the
2 confirmation hearing. We think that evidence will
3 close.

01:52

4 THE COURT: I agree, but I can't -- I
5 can't decide today whether to -- I mean, my intent was
6 to finish all the evidence on confirmation this week.
7 And I certainly hope we'll do that.

8 MR. NEIER: Good, because otherwise --

01:52

9 THE COURT: But I don't know what impact
10 this new motion and this new plan has had on that. I've
11 got to give them a reasonable opportunity to reply to
12 issues that have come up. I don't know if there are.
13 But that reasonable opportunity, I mean, perhaps they
14 can do it by tomorrow. I don't know.

01:52

15 MR. NEIER: No one is saying that the
16 record for the 9019 motion is being made here. This is
17 just confirmation.

18 THE COURT: Right.

19 MR. NEIER: And the evidence --

01:52

20 THE COURT: We ought to try to make the
21 record.

01:52

22 MR. GREENDYKE: I'm not agreeing with
23 what he just said. Sorry to interrupt the Court. The
24 9019 motion directly impacts your confirmation plans or
25 not, and if it reflect as I believe it does

1 consideration flowing to Maxxam, where does that
2 consideration come from unless it comes from ostensibly
3 somebody's analysis or estimate of the value that
4 they're requiring through the forest and the acquisition
5 of the. I mean, it's theoretically -- arguably our
6 value that's being passed upstream, and we want to know
7 about it. And I think it directly impacts and overlaps
8 the confirmation, analysis.

9 MR. NEIER: Your Honor, it has nothing to
10 do with the record of confirmation. It has to do with
11 whether or not they want to put on a new record with
12 respect to 9019.

13 MR. GREENDYKE: You will not know that
14 until we're done.

15 THE COURT: What?

16 MR. GREENDYKE: You will not know that
17 until we're done.

18 MR. NEIER: I just don't see the logic of
19 that. We have a number -- like 50 percent in this room.

20 THE COURT: I don't have to decide this
21 right now. It seems we have to decide this by tomorrow,
22 and that in general, I want the record to close
23 tomorrow. Now, if there's not a way to do that, if
24 somebody needs to analyze because you think you need an
25 expert on the issue of how much consideration is flowing

1 up to Maxxam, and thereby violating -- you want to argue
2 that violates the absolute priority rule or something,
3 you know, fair and reasonable, whatever you want to do,
4 I mean, I will try to make that witness available
01:54 5 tomorrow. I mean, let's get it done. Let's try to get
6 it done. I know that you just got it, and it may not be
7 fair. And if it's not fair because you made a
8 reasonable effort and weren't able to do it and you're
9 still going to put that on, it might well be that I
01:54 10 would allow you to reopen the record and to do that.

11 MR. NEIER: Well, just taking your
12 hypothetical, Your Honor, which is that somehow we're
13 violating absolute priority, that might -- if that was
14 true, which we don't think it is, absolutely not, that
01:54 15 might be a denial of the 9019, but that doesn't have
16 anything to do with the plan. So I don't see how
17 keeping the record open on the plan has anything to do
18 with that issue. If the settlement agreement violates
19 absolute priority, you might reject the 9019. But that
01:54 20 doesn't have anything to with the record and the
21 evidence that's being put on today and this week for the
22 plan.

23 THE COURT: Maybe I'm stupid here, but
24 the compromise -- the issue of whether the compromise
01:55 25 should be accepted is one issue. The issue of whether

1 the plan violates absolute priority by virtue of some
2 other compromise is sort of a part of the plan --

3 MR. NEIER: That's not part of the plan.
4 There's been no amendment to any section of the plan in
01:55 5 respect to the term sheet.

6 MR. BRILLIANT: Your Honor, maybe what
7 makes the most sense is for us to give Your Honor a copy
8 of the term sheet. We'll explain to you and the court
9 and then deal with this after lunch.

01:55 10 THE COURT: Right.

11 MR. BRILLIANT: Just so Your Honor knows,
12 it's really very simple. Maxxam is giving to Mendocino
13 and Marathon an indemnity for taxes. We are paying them
14 \$2.25 million for that.

01:55 15 THE COURT: For tax protection.

16 MR. BRILLIANT: For tax protection. In
17 addition to that, we are agreeing that we will buy --
18 you know, they have been financing Palco indirectly by
19 buying logs. Well, I think their concern, rightfully
01:55 20 so, is that if their plan is not confirmed, you know,
21 Palco -- you know, Maxxam plan is not confirmed, they're
22 going to be stuck with a whole bunch of logs. We have
23 agreed that we will -- Mendocino has agreed, whether our
24 plan gets confirmed or not, that we will buy, you know,
01:56 25 their logs. If our plan is confirmed, we will pay them

1 a little bit more for the logs. We will pay them their
2 cost, what they have paid for them. If not, we're going
3 to pay a discount because we're going to have to move
4 the logs. And that is the deal.

01:56 5 In addition -- that's the deal that we
6 have with Maxxam. In addition, Palco as part of all
7 this is exchanging releases with -- you know, with
8 Maxxam. And Marathon, Mendocino, and Maxxam are also
9 exchanging releases. And it's all subject to -- other
01:56 10 than a few of the agreements, our agreement to purchase
11 the -- you know, the logs for them, everything else --
12 in exchange of releases that we are doing with Maxxam,
13 everything else is a 9019 and not subject to the
14 confirmation --

01:56 15 THE COURT: Yeah. Well, here's what's
16 happening. This was announced this morning. So good
17 lawyers for this side are thinking of every possibility
18 that might go wrong and want to make certain that their
19 clients are protected. As we know more about the deal,
01:57 20 then maybe they won't be as concerned about it. I don't
21 know. But, you know, we've had 15-minute breaks a
22 couple of times for them to think about it. Otherwise,
23 hopefully they're thinking about what's going on.

24 So now we're going to break for an hour
01:57 25 and a half, and they may have more time to think about

1 it. They may be less concerned about the agreement. I
2 don't know. I'm not ruling anything here. I have
3 always tried to be -- you know, not allow the rule -- I
4 mean, the rules are important, of course. And we follow
01:57 5 them here. We try to follow them. But when there's a
6 good reason to maybe hold something open or do something
7 a little bit different, we try to take a practical
8 approach. I don't know that there's a good reason. I
9 would like this over, too. I'd like this to move on.
01:58 10 It seems like the closer we get to the end, the better
11 the deals get. Maybe they'll even get better. I don't
12 know. Maybe we got the best possible deal on the table
13 from you and from you. I don't know.

14 MR. GREENDYKE: Our request is we just
01:58 15 have time to analyze.

16 THE COURT: Right. You're going to have
17 at least tonight and you have hour and a half during
18 lunch.

19 MR. GREENDYKE: We'll be preparing.

01:58 20 THE COURT: I'm not going to make the
21 decision right now. Right now my inclination is to have
22 the case close Friday, and we argue it on Thursday, and
23 then I make a decision.

24 MR. GREENDYKE: We would only ask --

01:58 25 THE COURT: If we need to have a 9019

1 motion in there, and it's important to timing, I'll make
2 the time available.

3 MR. GREENDYKE: And we would only ask
4 that you keep an open mind about closing the record on
01:58 5 the confirmation until we determine whether or not
6 there's an overlap. And that's my only request.

7 THE COURT: Open mind is my middle name.

8 MR. JORDAN: And my motion -- I'm the
9 only one that has not said a word. That's why I stated
01:58 10 in the morning and explained to the Court why we drafted
11 it the way we did so that there wouldn't be an excuse to
12 say keep the record open because the delay of the
13 confirmation hearing is exactly what we don't want.

14 THE COURT: And I would be thinking as we
01:59 15 get towards the confirmation hearing for everyone to be
16 able to discuss with me all of the practical problems
17 for not confirming a plan as well as what happens when
18 we do confirm a plan and why they ought to be condition
19 confirmed. We're in a mess, in other words. So we need
01:59 20 to see how things are going to. We've now argued until
21 2:00, so we'll give you until 3:30.

22 MR. BRILLIANT: Your Honor, I understand
23 the term sheet was given to you. Apparently the amended
24 plan and the term sheet were handed to you.

01:59 25 THE COURT: Here it is right here.

1 MR. BRILLIANT: Thank you, Your Honor.

2 (A recess was taken.)

3 THE CLERK: All rise.

4 THE COURT: Be seated.

04:55 5 MR. KRUMHOLZ: Your Honor, we have an
6 announcement concerning the exhibit list.

7 THE COURT: Okay.

8 MR. KRUMHOLZ: Mr. Lamb has been -- he
9 chose the shortest straw.

04:55 10 MR. LAMB: I have been the shepherd on
11 this one, Your Honor.

12 THE COURT: All right. Good.

13 MR. LAMB: Except as I'm about to tell
14 you, the parties have stipulated to the admission of
04:55 15 nearly all their exhibits. They have asked me to recite
16 the following, which is "by so stipulating the parties
17 do not concede the truth, reliability or relevance of
18 the information contained in every admitted exhibit and
19 reserve the right to argue the truth, reliability and
04:55 20 relevance of any exhibit as well as the weight the Court
21 should afford any exhibit. This reservation of rights
22 includes reservation of argument that an exhibit should
23 be given no weight because it is hearsay in whole or in
24 part." We hope that that's consistent with the Court's
04:55 25 prior rulings and guidance on hearsay objections.

1 THE COURT: All right.

2 MR. LAMB: With that in mind, the parties
3 have stipulated to the admission of the Marathon
4 Exhibits 1 through 79 except 13, 18 through 24 and 58
04:55 5 are withdrawn. I would note 18 through 24 are
6 deposition transcripts, excerpts of which will be
7 offered in a different form.

8 The Indenture Trustee's exhibits 1
9 through 233 are stipulated for admission except 26-A and
04:55 10 B, 123-A, 123-B, and 221 have been withdrawn. And that
11 leaves objections to the following exhibits which are
12 the only exhibits to which objections remain.

13 THE COURT: All right.

14 MR. LAMB: Those are 23, 24, 60, 62, 84
04:55 15 and a group of hearing transcripts that have been marked
16 as 164 through 203.

17 MR. KRUMHOLZ: Which are also going to be
18 designated -- portions of which will be designated and
19 hopefully an additional agreement will be reached.

04:55 20 THE COURT: And you're objecting to their
21 depositions?

22 MR. LAMB: I am not.

23 THE COURT: Somebody is.

24 MR. SCHWARTZ: They're hearing
04:55 25 transcripts and they are going to provide us

1 designations. We haven't seen them yet.

2 THE COURT: Oh, you're withholding, okay.

3 And 23, 24, 60, 62 and 84, what are they?

4 MR. SCHWARTZ: I can address that, Your

04:55 5 Honor. Steve Schwartz for Marathon. 23 and 24 are
6 documents that were prepared for the mediation back in
7 November or December, whenever it was of 2007 and so we
8 don't think it's appropriate for those to be admissible
9 under Rule 408. Documents 60, 62 and 84 were documents

04:55 10 prepared by the Indenture Trustee's counsel. I view
11 them as demonstratives, which they used with witnesses
12 which is fine as demonstratives, I just don't think as
13 demonstratives they should be admitted into evidence.

14 And one other thing. One comment on Mr. Lamb's 227, 228
04:55 15 and 229 of Indenture Trustee's documents we have not
16 seen yet. We were just given them. We're going to look
17 at them tonight and see if we're okay with them.

18 THE COURT: Okay. So do you agree that
19 that 60, 62 and 84 are just demonstrative?

04:55 20 MR. KRUMHOLZ: No, Your Honor.

21 MR. SHIELDS: No. Could you put 60 up?

22 Your Honor, whether they were demonstrative or not

23 doesn't address the issue whether they should be

24 admitted when we offer them, of course. In 60 is this

04:55 25 spreadsheet chart that just recaps the assumptions that

1 the various witnesses made.

2 THE COURT: Okay. And 62? Let's see 62.

3 And let's see 84. Okay. Those objections are

4 overruled. Those are admitted. Now what about 23 and

04:55 5 24? They say that they were prepared -- were these

6 petition papers for the mediation?

7 MR. SCHWARTZ: No, it was work done, as

8 we have seen, by Alix Partners, Marathon's expert at the

9 time and we can see on the top it was prepared for the

04:55 10 mediation. And 23 and 24 are both of that type.

11 THE COURT: Okay. So why do you think

12 they're admissible?

13 MR. KRUMHOLZ: Why don't you argue the

14 objection, we know what the context is.

04:55 15 MR. BOLTON: Your Honor, Jonathan Bolton

16 for the Indenture Trustee. These exhibits, although

17 prepared for mediation were prepared in conjunction with

18 all the materials we designated as public material so

19 the Noteholders would not be restricted. They are all

04:55 20 filed on the docket. And in fact, they're on the docket

21 right now. The Marathon exhibit is on the docket. The

22 redacted version is on the docket currently. It's a

23 public record.

24 MR. NEIER: That's not the redacted

04:55 25 version, I'll tell you that.

1 MR. SCHWARTZ: Frankly I don't think it
2 matters, Your Honor. We had this discussion, if you may
3 recall, on the context of the portions of Mr. Daniel's
4 proffer that referred to the remediation and you excised
04:55 5 that one paragraph -- I think two sentences from it
6 because it referred to the mediation. The fact that the
7 Indenture Trustee filed something on the docket doesn't
8 change the fact that they were prepared for the
9 mediation and therefore should not be admitted under any
04:55 10 circumstances.

11 MR. KRUMHOLZ: Your Honor, my
12 understanding is when you redacted the proffer of
13 Mr. Daniels, you did so conditionally, depending upon
14 this argument, what we're having right now. At the time
04:55 15 you said we'll get to it later if we need to reassess
16 this but for now I'm going to admit the exhibit.

17 THE COURT: Is it true that this was a
18 document that was prepared for mediation?

19 MR. KRUMHOLZ: It was prepared for the
04:55 20 mediation, Your Honor, and that's not disputed. In
21 fact, Mr. Bolton just said so. The issue is this, the
22 date -- it's my understanding there were conversations,
23 and I wasn't involved in the case, Jonathan, but there
24 were conversations about disclosing the documents and
04:55 25 uploading them and that it would no longer be

1 confidential which is the issue with respect to
2 mediation. I mean, there are underlying facts and
3 opinions that are in here of Marathon's experts. The
4 redacted version.

04:55

5 MR. SCHWARTZ: That's not --

6 THE COURT: Everybody is talking at once.

7 MR. KRUMHOLZ: So this is 24.

8 MR. BOLTON: This is the one that's

9 public, Your Honor. It's on the docket right now

04:55

10 currently. It's been out there.

11 THE COURT: On the docket of the case?

12 MR. BOLTON: Yes, Your Honor.

13 THE COURT: It was filed in the case?

14 MR. BOLTON: Yes.

04:55

15 MR. NEIER: Because the Noteholders

16 wanted to be unrestricted in trading so they demanded

17 from the Debtors the right to file certain documents

18 that were prepared for mediation but that doesn't turn

19 it into a document that should be introduced as evidence

04:55

20 and admissible. It's Rule 408.

21 THE COURT: Why do you want this

22 admitted? For what purpose is this being offered?

23 MR. KRUMHOLZ: Well, I think they had

24 made certain admissions in here as to certain values.

04:55

25 THE COURT: Was that the only place they

1 made the admissions?

2 MR. KRUMHOLZ: Yes.

3 MR. BOLTON: Yes, Your Honor, it also has
4 to do --

04:55 5 MR. KRUMHOLZ: It's not confidential.

6 MR. NEIER: Judge, they could have
7 cross-examined any witness on the contents of this
8 document. Isn't it a fact that's the value, but they
9 didn't do that. This is completely improper to use the
04:55 10 document from the mediation. They could have

11 cross-examined any witness on the fact or on their
12 belief that somehow we had a different valuation at one
13 time. There is no valuation in there but he said there
14 was, they could have cross-examined the witness on it.

04:55 15 We would have perfectly allowed those questions but they
16 cannot put in a document that was prepared for
17 settlement. It is a settlement offer document. Judge
18 Houser asked us to prepare this document to give to the
19 other parties as part of our proposed settlement.

04:55 20 THE COURT: Now, what is 23?

21 MR. KRUMHOLZ: 23 we're withdrawing.

22 THE COURT: 23 what?

23 MR. KRUMHOLZ: We're withdrawing 23, it's
24 just 24 because it's not redacted. Judge, just to

04:55 25 Mr. Neier's point, we could have asked it on cross of

1 one of their experts about mediation, and for whatever
2 reason that somehow it's still confidential, but now we
3 can't introduce and admit it even though everybody knows
4 who prepared it? It doesn't make any sense.

04:55

5 MR. NEIER: It makes perfect sense.

6 THE COURT: There are lots of conditions
7 that everybody knows were taken in mediation, I suspect,
8 but they're still not -- I mean, if it's a mediation --

04:55

9 MR. KRUMHOLZ: This is not a mediation
10 proposal.

11 MR. NEIER: It absolutely is. That's
12 exactly what it was prepared for. That's why it says
13 outline for mediation.

14 THE COURT: Don't get all upset.

04:55

15 MR. NEIER: But we don't need to misstate
16 things in open court with argument, okay? This document
17 was prepared for mediation. Everybody in this courtroom
18 knows it.

04:55

19 MR. BOLTON: Your Honor, it's a public
20 record and the reason that Marathon wants to argue so
21 hard to keep this out is this document says that they're
22 going to layoff a bunch of employees going forward and
23 they don't want the Court and people to know that that's
24 their business plan going forward.

04:55

25 MR. NEIER: Go ahead, show the page to

1 the Judge where you think where it says that.

2 MR. SCHWARTZ: It doesn't matter what it
3 says.

4 MR. NEIER: They asked for a valuation.

04:55 5 There's no valuation. Now they're talking about whether
6 they says we layoff people. That's not valuation.

7 MR. BRILLIANT: Your Honor --

8 THE COURT: Do we have a document of this
9 document I can just look at it and I can see what we're
04:55 10 talking about.

11 MR. KRUMHOLZ: It's in the book. Can I
12 approach the bench? Can I approach the bench?

13 THE COURT: Sure.

14 MR. BRILLIANT: Your Honor, Allen
04:55 15 Brilliant on behalf of Mendocino Redwoods. I don't want
16 to get involved in this argument but there are, you
17 know, people in the courtroom or people on the telephone
18 who don't know what the facts are and may report things
19 in the newspapers or otherwise which could affect the
04:55 20 business. This is not the business plan of Mendocino.

21 At the time that this was done, Mendocino wasn't even
22 involved with Marathon and this is not -- you know,
23 there is no --

24 THE COURT: So we're looking for the
04:55 25 Noteholders No. 24. Let me see. MRC. Do you see

1 Noteholders?

2 MR. SHIELDS: We have it right here.

3 We'll bring it up to the bench, Your Honor.

4 THE COURT: All right. Somebody has got

04:55 5 it.

6 MR. KRUMHOLZ: Now that Mr. Clement is

7 here --

8 THE COURT: Let me have a copy of the

9 order of mediation.

04:55 10 MR. NEIER: Yes, Your Honor, we can get

11 you a copy. It's on the docket.

12 THE COURT: I know it's on the docket,
13 but I'd like to review what the terms of the orders say.

14 MR. NEIER: It's exactly the same as the

04:55 15 amended order for the new mediation, Judge, but we'll

16 find it.

17 THE COURT: All right. If anybody has
18 got that order, either one of those orders will work.

19 MR. NEIER: We may not be able to print

04:55 20 it out. Do you want us to read it to you or give you --

21 THE COURT: That's fine, too.

22 MR. BRILLIANT: Put it on the screen.

23 MR. NEIER: I believe it's the next

24 paragraph. Your Honor, as you can see, it says "shall

04:55 25 be confidential and shall not be admissible in evidence

1 or the subject of any discovery in any proceeding." So
2 what they're trying to do is they are trying to link the
3 two, shall be confidential and shall not be admissible,
4 but as far as we're concerned this lawyer says shall be
04:55 5 confidential and shall not be admissible meaning that
6 it's not admissible in evidence regardless of whether
7 it's confidential or not. The fact that they wanted to
8 put it on the record and they filed it on the record
9 should not prejudice us.

04:55 10 THE COURT: All right. I want to hear
11 one more argument now.

12 MR. KRUMHOLZ: However, any document that
13 is otherwise discoverable, it's discoverable because
14 it's on the web is not shielded --

04:55 15 MR. NEIER: It's not on the web, Your
16 Honor.

17 MR. BOLTON: It is on the web.

18 MR. KRUMHOLZ: It is, that's how we got
19 it.

04:55 20 MR. NEIER: Oh, it's on the court docket
21 which they filed so they caused the release of a
22 confidential document so now it's admissible.

23 THE COURT: Okay. I think -- okay.

24 Anything further now? Yes, sir. Mr. Clement has got
04:55 25 the floor.

1 MR. CLEMENT: Your Honor, I was asked to
2 say what's the significance of this document. The
3 significance of the document is that once upon a time
4 Marathon came to us by themselves and said in essence
04:55 5 this is a really valuable company. And this report and
6 this projection explains all of that. Later when they
7 got married to Mendocino, they said it's a much less
8 valuable company. And so this is a very highly
9 substantively significant document.

04:55 10 Next, Your Honor, I have seen within the
11 last week, and Mr. Bolton has this, although he tells me
12 it's not present here in the court at the moment, an
13 e-mail in which Mr. Penn representing Marathon sends
14 this very document out to me, others, Mr. Neier, saying
04:55 15 this is the one that we have redacted and we're now
16 going to put on the public record. Anybody let me know
17 if you have any objections. So Marathon's counsel was
18 involved with agreeing that this redacted version of
19 this document would go on the public record. Mr. Bolton
04:55 20 has this document. He can show it later on in the
21 hearing today. It's not here at this moment, I'm told.

22 THE COURT: It's not this document, it's
23 a redacted version?

24 MR. CLEMENT: Your Honor, if we go
04:55 25 back --

1 MR. KRUMHOLZ: This is redacted.

2 MR. CLEMENT: -- to the actual document
3 we're arguing about, that document is an attachment to
4 this e-mail and the e-mail says from John Penn, counsel
04:55 5 for Marathon, "this is the one in essence we have all
6 agreed upon. Let me know if there's any concern about
7 it going on the public record."

8 So Marathon's counsel participated in
9 putting this out there and it's been on the public
04:55 10 record since November, this document.

11 MR. NEIER: Three things. Number one,
12 this document doesn't say anything that Mr. Clement
13 says. It doesn't have any valuation in it whatsoever.
14 It has a business plan for the mill. There's nothing
04:55 15 about Scopac's value or the valuation issues before this
16 court. It is simply a business plan which Judge Houser
17 asked us to prepare and show to the other parties to see
18 if there was some way that Marathon could reach a
19 settlement with the Noteholders. That was the purpose
04:55 20 of the document and everybody knows it.

21 Okay. With respect to filing it on the
22 record, the bondholders demanded that any documents that
23 they wished to show their constituency, the actual
24 Noteholders who were present at the mediation had to be
04:55 25 part of the public record. We said we can't file, we're

1 not allowing that document to be filed. They insisted
2 because -- and that was the only way that their
3 Noteholders could see the document. And we said we'll
4 give you a redacted version but we're not filing it, so
04:55 5 then they filed it.

6 Okay. And they filed the redacted verse.
7 So now we're down to the redacted version but they
8 haven't gotten over the fact that it says "shall not be
9 admissible." Now, if they wanted to cross-examine
04:55 10 witnesses on value or something else in the document,
11 that was perfectly acceptable. And that would have been
12 fine. But putting the document in evidence is not
13 admissible.

14 THE COURT: I think the intent of the
04:55 15 mediation was that they could not cross-examine a
16 witness on some representation of value at the
17 mediation. If they have made some representation to
18 value somewhere else, then that's a different thing, but
19 not at the mediation.

04:55 20 MR. CLEMENT: Your Honor, can I make one
21 suggestion?

22 THE COURT: Yes.

23 MR. CLEMENT: If consideration of this
24 one document can be put off to give Mr. Bolton an
04:55 25 opportunity to bring the e-mail at issue, it's very

1 clear from this e-mail that Marathon agreed that this
2 would be made part of the public record.

3 MR. NEIER: He's back to confidentiality.
4 He's not addressing admissibility. It's a settlement
04:55 5 document. It's federal rule of evidence 408.

6 THE COURT: All right. Well, out of an
7 abundance of caution, I'll allow you to bring in the
8 e-mail and let me see if that affects my decision but
9 everything else is now either admitted or it will be
04:55 10 withheld until they actually see the documents. Is that
11 correct or is there any more?

12 MR. NEIER: Your Honor, we do have some
13 additional documents that we'll bring tomorrow. They're
14 SBE pricing documents and they're with respect to
04:55 15 Debtors Exhibit 81. And we'll show those around to the
16 parties tonight. They're on the web.

17 THE COURT: All right. But now we will
18 have this list of documents now that we can actually
19 give to Frenchie.

04:55 20 THE CLERK: I have them.

21 MR. LAMB: Each of the four parties I'm
22 addressing, Your Honor, will present a written list
23 reflecting these exceptions.

24 THE COURT: All right.

04:55 25 MR. KRUMHOLZ: And just to be fair, we

1 are calling a rebuttal witness tomorrow, Your Honor, and
2 we may have two or three additional exhibits which will,
3 like Mr. Neier, will --

4 THE COURT: That's fine.

04:55

5 MR. LAMB: To continue on, Your Honor,
6 parties have stipulated to the admission of now Scopac
7 Exhibits 1 through 116 except 5, 8, 18 through 24, 40,
8 6, 49, 105 through 107, 12 and 113 are withdrawn.

04:55

9 And the California State Agencies, we
10 have stipulated to the admission of their Exhibits 1
11 through 9. Their Exhibits 10 and 11 are withdrawn.
12 Those again are depositions that they may or may not
13 decide to designate excerpts from.

04:55

14 THE COURT: Okay. Let's go back the
15 Debtors exhibits, that 1 through 16 are admitted except
16 5, 8, 18 through 24, 40, 46 -- or just 46?

17 MR. LAMB: 6. Sorry, it's out of order.

18 THE COURT: Oh, 6 was back there?

19 MR. LAMB: Yeah.

04:55

20 THE COURT: 5, 6, 8, 18 through 24, 40,
21 49, 108.

22 MR. LAMB: 105.

23 THE COURT: 105 to 107 and 112 to 113.

04:56

24 Okay. Now, is there some argument then about 5, 6, 8,
25 18 to 24?

1 MR. LAMB: No.

2 THE COURT: Those are being withdrawn.

3 MR. LAMB: Those are withdrawn.

4 THE COURT: All right. So the only

04:56 5 argument right now about -- is there any other exhibits?

6 MR. LAMB: That's it.

7 THE COURT: So the only thing we're

8 arguing about now is this one mediation exhibit.

9 MR. SCHWARTZ: Correct, Your Honor. If I

04:56 10 may address one other point, Your Honor. We withdrew

11 our exhibits that were depositions. We have designated

12 as we discussed yesterday with Your Honor.

13 THE COURT: I'm not sure why you're

14 withdrawing them. Traditionally what I've done is

04:56 15 they're just exhibits.

16 MR. SCHWARTZ: What we had on our exhibit

17 list was the full deposition and so what we have now

18 done is designated the portions.

19 THE COURT: Much better. Okay. So you

04:56 20 now have exhibits that are the designation of the

21 deposition.

22 MR. SCHWARTZ: Right, and they're in this

23 binder for Your Honor, if I may.

24 THE COURT: All right. You may hand

04:56 25 those up.

1 MR. SCHWARTZ: They're highlighted.

2 THE COURT: And all of those are by
3 agreement?

04:56

4 MR. SCHWARTZ: We provided them, I think,
5 two days ago to the other parts.

6 THE COURT: Are any additions to those?

04:56

7 MR. KRUMHOLZ: We have some cross
8 designations and original designations as well that are
9 in the courtroom and just need to be collated and we'll
10 give you a copy.

11 THE COURT: Okay.

12 MR. NEIER: Your Honor, I don't know if
13 you want to do it now but Mr. Penn has that e-mail that
14 Mr. Clement thinks --

04:56

15 THE COURT: Let's look at that e-mail.

16 MR. NEIER: We can put it up on the
17 screen.

04:56

18 MR. SHIELDS: I think Mr. Clement and
19 Mr. Bolton went to get the e-mail so they're the ones
20 that are familiar with it.

21 MR. NEIER: He's outside.

04:56

22 MR. SHIELDS: Do you want me to go get
23 him? They told me they were going to get the e-mail. I
24 just would like them to be here since it's an important
25 e-mail.

1 MR. NEIER: We'll leave it on the screen
2 for you.

3 THE COURT: And 24 is this redacted
4 version; is that correct?

04:56 5 MR. PENN: Yes, Your Honor.

6 THE COURT: There's the actual e-mail,
7 Mr. Clement.

8 MR. CLEMENT: That's the e-mail, Your
9 Honor.

04:56 10 THE COURT: Right. That's why --

11 MR. CLEMENT: That's it.

12 THE COURT: All right.

13 MR. CLEMENT: And Your Honor, what's
14 attached there, that pdf attachment is version B, which
04:56 15 is the redacted version, which is the one that's being
16 offered.

17 THE COURT: Which is Exhibit 24.

18 MR. CLEMENT: Yes, sir.

19 THE COURT: Even though it doesn't say
04:56 20 redacted version.

21 MR. CLEMENT: If it says B on it, that's
22 the one that's the redacted version.

23 THE COURT: Oh, 4.1B.

24 MR. CLEMENT: That's the redacted
04:56 25 version, Your Honor, and that's what was attached to

1 that e-mail.

2 MR. NEIER: That's different from the one
3 that's Exhibit 24. I'm just telling you what's on the
4 screen.

04:56 5 MR. CLEMENT: If we put in 4.1 it's the
6 unredacted version. If you'd like to have that in we're
7 happy to substitute it.

8 THE COURT: But 4.1 was Exhibit 23 which
9 you're withdrawing. 24 is 4.1B which is the exhibit
04:56 10 that you're offering.

11 MR. CLEMENT: It's the redacted one, Your
12 Honor.

13 MR. NEIER: May I see that one, Your
14 Honor, just to make sure?

04:56 15 THE COURT: Sure.

16 MR. NEIER: It seems different from the
17 one in Mr. Penn's e-mail.

18 THE COURT: Okay.

19 MR. NEIER: Your Honor, this is the
04:56 20 redacted version. It's different than the one that's in
21 Mr. Penn's e-mail but this is the redacted version.

22 THE COURT: Okay.

23 MR. CLEMENT: B is the redacted version,
24 and honestly, it's all we're offering. If they want to
04:56 25 put in 4.1, it's unredacted. 4.1B is the redacted

1 version.

2 MR. NEIER: Okay. But apparently it's
3 not the one that was filed with the Court.

04:56

4 THE COURT: The one says redacted draft
5 4.1B. That one says redacted draft 4.1. So is that 24?

6 MR. NEIER: That was not filed with the
7 Court, Your Honor.

8 THE COURT: Okay.

04:56

9 MR. NEIER: My guess is there were some
10 further changes.

11 THE COURT: All right. What else? I
12 still have to rule on this.

13 MR. KRUMHOLZ: I'm handing out the
14 deposition designations.

04:56

15 THE COURT: You've got yours done?

16 MR. KRUMHOLZ: Here is the Court's copy.
17 I really don't know how the Court wants to handle those
18 in terms of the record. If you just want to deem them
19 admitted or however you would like to do it.

04:56

20 THE COURT: Well, I would mark them as
21 additional exhibits and it would be -- I mean, are there
22 four people that are depositions being offered?

23 MR. KRUMHOLZ: Well, I think --

04:56

24 THE COURT: You've got four. Do they
25 have four also?

1 MR. SCHWARTZ: We have five, Your Honor.
2 Marathon has five.

3 THE COURT: And you have added to four of
4 them.

04:56 5 MR. KRUMHOLZ: We have some originals,
6 Brice and O'Brien and we then have cross designated for
7 two and Wilshire and DiMauro, and just so the Court will
8 understand, the cover page to each of the designations
9 is both page and line numbers and then it's highlighted.

04:56 10 THE COURT: And you didn't have any cross
11 designation of Jack Webb's.

12 MR. KRUMHOLZ: Actually, I was told that
13 out in the hallway, and we're actually going get the
14 Court one tomorrow morning.

04:56 15 THE COURT: So there are actually going
16 to be five sets of people in which there will be --

17 MR. KRUMHOLZ: Cross designations or
18 original designations.

19 THE COURT: There will be depositions.
04:56 20 And these are just parts of the deposition.

21 MR. KRUMHOLZ: You have an entire set of
22 depositions that we have highlighted the portions that
23 we designated and they have done the same thing.

24 MR. SCHWARTZ: Correct.

04:56 25 MR. KRUMHOLZ: If we had been more

1 coordinated, we would give you one set with all of the
2 highlights. We apologize.

3 THE COURT: I can figure it out. Okay.
4 But I would like to mark -- I don't care if we mark them
04:56 5 whatever, Deposition Exhibits 1 through 5-A and B or
6 each person's -- the designation and then the cross
7 designation. Whatever you want to call them, they need
8 to be marked and they're admitted just like the
9 proffers.

04:56 10 MR. KRUMHOLZ: Let's just figure that out
11 tonight and we'll do something on the record tomorrow.

12 THE COURT: All right. What else? So
13 I'm just missing one other.

14 MR. KRUMHOLZ: The cross designation and
04:56 15 literally I think it's going to be like five or six
16 questions. I think we're done.

17 THE COURT: Do we have another witness
18 today? We're ready for him.

19 MR. SCHWARTZ: We call Mr. Jeff Johnston.

04:56 20 THE COURT: All right.

21 JEFFREY JOHNSTON,
22 having been first duly sworn, testified as follows:

23 MR. GREENDYKE: Judge, this is Bill
24 Greendyke for the Bank of New York as Indenture Trustee.

04:56 25 I wanted to make a brief objection to the record to this

1 proffer and this presentation and this rebuttal witness.
2 As before he's going to try and identify the witness and
3 introduce the proffer. I'd like to direct your
4 attention, Steve, and give you copy of the proffer.

04:56 5 MR. SCHWARTZ: It was just admitted into
6 evidence as Exhibit 78.

7 THE COURT: Go ahead.

8 MR. GREENDYKE: If you look at paragraph
9 2 it says "the Indenture Trustee has submitted no
04:56 10 evidence demonstrating the amount the Noteholders will
11 actually receive purchase of the timberland for \$603
12 million. Mr. Matthews testified he did not know how
13 much the Noteholders would receive on a net basis from
14 the proceeds." And then it goes on to explain what the
04:56 15 purpose of the proffer is. And I guess at some point
16 I've got to say how do you rebut no evidence. What's
17 the point of rebutting something that really has no
18 particular purpose and there's no evidence been offered.
19 Is he complaining because we didn't carry a burden --

04:56 20 THE COURT: Well, first of all, I'm not
21 sure what that means, no evidence. We know that you
22 submitted evidence of the price.

23 MR. GREENDYKE: Right.

24 THE COURT: Of the offer. We know that
04:56 25 you -- there has been some evidence of what the

1 administrative costs are and some other things. I mean,
2 there is no clear evidence -- you cannot sit down and
3 calculate from the evidence before me, I cannot
4 mathematically calculate the amount the Noteholders will
04:56 5 receive under this -- under that offer. However, I
6 mean, I can certainly induce or deduce or whatever you
7 want to say, a figure of about how much they will get.
8 So I mean, I don't know that there's no evidence, but I
9 mean, I think if -- but I don't know.

04:56 10 MR. GREENDYKE: My only objection, Judge,
11 is the purpose of a rebuttal is to supply evidence where
12 there was none before in their argument and we have no
13 burden to supply evidence. There was no obligation to
14 supply evidence about that value.

04:56 15 THE COURT: You don't have a burden and
16 you don't have to worry about it if there's no evidence.

17 MR. GREENDYKE: Again, for the record I
18 expected the Court to rule this way but for the record
19 we object, we think it's improper. That's it.

04:56 20 THE COURT: I'll have to hear what he
21 says.

22 DIRECT EXAMINATION

23 BY MR. SCHWARTZ:

24 Q. Good afternoon, Mr. Johnston.

04:56 25 A. Good afternoon.

1 Q. Do you have your proffer?

2 A. I do not.

3 MR. SCHWARTZ: May I approach, Your
4 Honor?

04:56 5 THE COURT: You may.

6 Q. (By Mr. Schwartz) And Mr. Johnston, I know
7 you've testified before, but can you just briefly for
8 the Court briefly remind the Court by whom you are
9 employed and what your business is.

04:56 10 A. Yes. I am a managing director at Alix
11 Partners. The firm is in restructuring. I specialize
12 in restructuring and solvency services as well as
13 business valuation.

04:56 14 Q. Now, is what I have handed you that's been
15 marked as Exhibit 78 your rebuttal proffer in this
16 matter?

17 A. Yes.

18 Q. And can you explain briefly what the reason
19 for this rebuttal proffer is.

04:56 20 A. The purpose of the proffer is to rebut the
21 testimony of the Indenture Trustee, specifically the
22 testimony of Mr. Matthews and Mr. Cherner regarding the
23 amount that the Noteholders would receive under the
24 Scotia Redwood Foundation, Inc. term sheet.

04:56 25 Q. Now, if you would take a look at page 2 of

1 your proffer, paragraph 3.

2 A. Yes.

3 Q. And it says there that you concluded that the
4 net proceeds as you define them would be \$563.5 million.

04:56 5 Can you explain briefly how you arrived at that figure.

6 A. Yes. The debt calculation is based on the
7 gross proposed proceeds of \$603 million and then there
8 are certain deductions, namely expenses of the sale
9 process as well as various claims that are paid prior to

04:56 10 any distributions to the Noteholders under the Indenture
11 Trustee plan.

12 Q. And if we can turn to page -- to paragraph 14
13 on page 7 does this chart reflect your calculation of
14 the deductions of gross proceeds of \$603 million?

04:56 15 A. That's correct.

16 Q. And if we can just go through each one
17 quickly. The first one is Houlihan Lokey's sales agent
18 fee. How did you determine what amount to use there?

04:56 19 A. That is the estimated commission to Houlihan
20 Lokey for functioning as sales agent. It's based on a
21 standard formula for determining investment banking fees
22 called the Lehman formula.

04:56 23 Q. Do you know if there has been any agreement on
24 what Houlihan Lokey's fee as sales agent would be in
25 this case?

1 A. I've heard the testimony, and I'm not aware of
2 any agreement, although there has been testimony of
3 various amounts but that testimony frankly I thought was
4 inconsistent.

04:56 5 Q. Okay. And is that why you used the Lehman
6 formula because there was no clear answer from the
7 testimony that you saw?

8 A. That's correct.

9 Q. Now the second item is professional fees. How
04:56 10 did you calculate the \$3.75 million?

11 A. This was based on a range, an estimated range
12 of fees between two and a half million and five million
13 for the entire sale process, the midpoint of which is
14 3.75 million.

04:56 15 Q. And the next item is the plan agent's fee of
16 1.5 million. How did you calculate that?

17 A. That is based on \$150,000 per month for the
18 combined plan agent and special plan agent and assuming
19 the -- an entire period of employment of ten months. So
04:56 20 ten months at \$150,000 per month.

21 Q. Now, why did you use \$150,000 per month?

22 A. It's my understanding that -- I believe that's
23 the fee that the plan agent and special plan agent has
24 either agreed to or has been allocated for that
04:56 25 function.

1 Q. And by allocated, that's by the Indenture
2 Trustee, is that your understanding?

3 A. Yes.

4 Q. Okay. And then we go to the waterfall
04:56 5 deductions. There's been some testimony about that.

6 Let's just go through those briefly. How did you arrive
7 at the administrative expense deduction of \$10 million?

8 A. That was from the joint disclosure statement
9 that's a stated amount of the -- of claims for that
04:56 10 class in the joint disclosure statement of the Indenture
11 Trustee.

12 Q. And in an effort to speed this up, other than
13 2(a) the SAR deficiency, is it right, all the other
14 numbers in the waterfall come from the disclosure
04:56 15 statement?

16 A. That's correct.

17 Q. Okay. So let's just talk briefly about the
18 SAR deficiency. Can you explain your understanding of
19 what the SAR deficiency is and how you arrived at your
04:56 20 number?

21 A. Yes. The SAR deficiency is the difference
22 between the amount owed to Bank of America under the
23 Scopac line of credit and the balance in the SAR
24 account. I obtained current information for both the
04:56 25 balance owed to Bank of America as well as the balance

1 in the SAR account. I then added to -- which was
2 approximately \$12 million, a current deficiency of
3 approximately \$12 million. Bank of America is owed
4 roughly \$37 million. There's about \$25 million in the
04:56 5 SAR account. To that, I added accrued but unpaid
6 professional fees for the Indenture Trustee,
7 approximately \$2,250,000 and then an additional \$2
8 million for future fees for the Indenture Trustee. So
9 those numbers added together aggregated the \$60 million
04:56 10 SAR deficiency.

11 Q. Were you here when Mr. Clark testified about
12 the deficiency in the SAR account?

13 A. Yes.

14 Q. And you heard that he said it was around \$13
04:56 15 to \$14 million, correct?

16 A. Yes.

17 Q. Okay. Now, after you reached your net
18 proceeds of \$563 million, what did you do to determine
19 the current value of what the Noteholders would receive
04:56 20 if the Scotia Redwood Foundation proposal was actually
21 consummated?

22 A. Well, the \$563 million is the amount that
23 would be available to the Noteholders at the time of
24 closing. And after these -- obviously these deductions
04:56 25 had been paid. And that is at some point in the future.

1 I have estimated that the actual proceeds would make
2 their way into the hands of the Noteholders
3 approximately ten months after the confirmation hearing.
4 Therefore, to determine the value today, I needed to
04:56 5 calculate the present value of that \$563 million. And
6 the present value calculations, specifically the
7 discount rate, took into account three primary
8 components. One --

9 Q. Excuse me, I'm sorry for interrupting. Before
04:56 10 we get to the discount rate, can you just tell me why
11 you used ten months as your time period?

12 A. Yes. The sale process, I believe, has been
13 estimated at approximately six months. There are other
14 processes and other items that need to be completed
04:56 15 before the cash actually is available for the
16 Noteholders, including court approval, including
17 regulatory approval. And I thought a range of time,
18 somewhere between 8 to 12 months, was reasonable. That
19 is, two to four months beyond the six month sale period,
04:56 20 midpoint of that range was ten months.

21 Q. Okay. Thank you. Now, I'm sorry I
22 interrupted you. You were starting to explain the
23 factors that went into your discount rate. Can you
24 continue with that?

04:56 25 A. Yes. Three primary factors to determine the

1 value of this \$563 million in the future, the value
2 today of that amount. The first factor, time value,
3 money. The second factor, business operating risks of
4 the business itself, and then third, the risk that the
04:56 5 transaction does not close. I believe the discount rate
6 and a determination of the value of this offer must take
7 into account the possibility that the transaction does
8 not close.

9 Q. And if we can take a look at page 8, paragraph
04:56 10 16 of your proffer.

11 A. Yes.

12 Q. Do the bullet points in paragraph 16 reflect
13 the risk that you took into account in assessing what
14 the discount rate should be?

04:56 15 A. Yes, and I identify those as transaction
16 risks.

17 Q. And the transaction risks are the first three
18 or they're all seven, correct?

19 A. All seven of them are transaction risks. The
04:56 20 first three are those that I considered to be within the
21 control of Scotia Redwood Foundation. And the last four
22 that I considered to be outside of Scotia Redwood
23 Foundation's control.

24 Q. And what did you conclude in doing your
04:56 25 analysis was an appropriate discount rate to use to

1 present value the \$563 million that would be received
2 approximately ten months from confirmation?

3 A. I believe -- excuse me. I concluded that a
4 discount rate somewhere in the range of between 12 and
04:56 5 16 percent would be appropriate to account for these
6 risks, with one exception. And the midpoint of that was
7 14 percent.

8 Q. And before we get to the exception, applying
9 that midpoint discount rate of 14 percent, what did you
04:56 10 conclude was the present value of the amount that the
11 Noteholders would receive ten months from now?

12 A. Based on the 14 percent, the present value of
13 that \$563 million would be approximately \$505 million.

14 Q. Now, if we could turn to page 10, paragraph
04:56 15 21, that \$505 million is reflected there at the end of
16 paragraph 21; is that correct?

17 A. Yes.

18 Q. Now, in paragraph 22 you say that the
19 regulatory approval risk has not been included
04:56 20 essentially in this analysis. Can you explain why not?

21 A. Yes. One of the conditions of the -- of the
22 term sheet is that -- well, let me be clear. The
23 transaction is subject to regulatory approval. There is
24 the possibility the regulatory approval does not occur
04:56 25 and the transaction does not go forward. I am not an

1 expert in the regulatory approval process. However,
2 based on the information that I have obtained in the
3 case, I understand that that is a significant and a risk
4 with significant uncertainty. However, as a result of
04:56 5 the fact that I really am not an expert, I was unable to
6 quantify that risk and therefore, did not include it in
7 the calculation of discount rate, but wanted to
8 highlight that fact and the significance of it.

9 Q. And is it fair to say that if you quantified
04:56 10 the risk from a regulatory approval, the possibility
11 that there would not be regulatory approval it would
12 have the effect of reducing the \$505 million number that
13 you valued?

14 A. That's correct, consideration of the
04:56 15 regulatory approval risk would lower than that number.

16 Q. And depending on how great somebody decided
17 who had the expertise, the regulatory risk was, it could
18 be a significant deduction from the \$505 million; is
19 that correct?

04:56 20 A. That's correct.

21 Q. Okay. Now, one other thing in your proffer
22 which I'll go through quickly. You calculated the
23 proceeds to the Noteholders under a Chapter 7. Can you
24 explain briefly what the impact is on sales of assets in
04:56 25 a Chapter 7 as compared to a Chapter 11?

1 A. Well, it's my experience that asset sales in
2 Chapter 7 fetch less than asset sales in Chapter 11.
3 And I believe that is reflected in liquidation analysis
4 work that's been performed in this case.

04:56 5 Q. And did you make a calculation using the
6 liquidation analysis in the disclosure statement?

7 A. Yes.

8 Q. And if you could turn to paragraph 24 at the
9 bottom of page 10 of your proffer. Can you tell the
04:56 10 Court what your conclusion was using the liquidation
11 analysis?

12 A. The joint disclosure statement reflects a
13 liquidation value for the timberlands of between \$358
14 million and \$445 million, or a midpoint of \$402 million.

04:56 15 Q. And how much of that in your analysis would
16 the Noteholders receive in Chapter 7?

17 A. Approximately \$388 million.

18 Q. And that's set forth in the disclosure
19 statement; is that correct?

04:56 20 A. That is correct.

21 Q. And you also did a second analysis for a
22 Chapter 7, which assumed that the Scotia Redwood
23 Foundation bid of \$603 million actually was consummated
24 in a Chapter 7; is that right?

04:56 25 A. That's correct.

1 Q. Based on your experience in bankruptcy cases,
2 do you believe that that's a likely event?

3 A. No, I don't.

4 Q. Why not?

04:56 5 A. Well, for the reason we spoke about earlier.
6 And more specifically, there are many factors that arise
7 in a Chapter 7 context that depress value. For example,
8 the business itself may no longer operate. So I believe
9 that were a sale to occur in a Chapter 7 proceeding, it
04:56 10 would take place at something less than the proposed
11 term sheet value.

12 Q. Even if the Scotia Redwood Foundation \$603
13 million proposal was consummated in a Chapter 7, did you
14 calculate what the present value to the Noteholders
04:56 15 would be if there is such a sale?

16 A. Yes.

17 Q. And what did you conclude?

18 A. Well, using the same methodology I described
19 earlier, various deductions for sale expenses, Chapter 7
04:56 20 administrative expenses, the net proceeds on a present
21 value basis, again, using the same methodology to the
22 Noteholders would be approximately \$501 million.

23 Q. Now, finally, are you familiar with the
24 financial terms of the MRC/Marathon plan that was filed
04:56 25 this morning?

1 A. Yes.

2 Q. And under that plan, how much cash are
3 Marathon and MRC putting into Newco under the plan?

4 A. \$580 million.

04:56 5 Q. And how much of that is earmarked for
6 distribution to the Noteholders?

7 A. \$530 million.

8 Q. And are there any adjustments to the \$530
9 million number?

04:56 10 A. Yes.

11 Q. And what are those adjustments?

12 A. There are several adjustments to the \$530
13 million. The major categories of adjustments pertain to

14 any deficiencies in the SAR account. That would reduce
04:56 15 the amount payable to the Noteholders to the extent

16 there was a deficiency. In addition to the extent that
17 the Scopac administrative claims exceed \$5 million, that

18 would be another deduction. And then there is a further
19 adjustment to the extent of any intercompany claims

04:56 20 between Scopac and Palco. I estimated what that
21 adjustment would be based on the current information and

22 concluded that the adjustment would approximate \$13
23 million, thereby reducing the amount payable to the

24 Noteholders under the MRC/Marathon amended plan from

04:56 25 \$530 million to \$517 million.

1 Q. Now, so you've concluded that under the
2 MRC/Marathon plan the Noteholders would receive cash of
3 \$517 million; is that right?

4 A. That's correct.

04:56 5 Q. Did you do any present value discount for the
6 amount to be received under the MRC/Marathon plan?

7 A. No.

8 Q. Why not?

9 A. It's my understanding that MRC and Marathon is
04:56 10 prepared to close within a very short period of time
11 measured in days.

12 MR. SCHWARTZ: Thank you, Your Honor, my
13 15 minutes are up. I have no further questions.

14 THE COURT: All right. Mr. Greendyke.

04:56 15 MR. GREENDYKE: Thank you, Judge, Bill
16 Greendyke for the Indenture Trustee.

17 CROSS-EXAMINATION

18 BY MR. GREENDYKE

19 Q. Mr. Johnston, I probably heard this before and
04:56 20 I just missed it. Tell me a little bit about what your
21 educational background is. What are your
22 certifications, qualifications?

23 A. I am a certified public accountant. I
24 graduated from the Michigan State University with a
04:56 25 bachelor of arts degree in accounting.

1 Q. How long have you been with Alix Partners?

2 A. Since December of last year.

3 Q. Okay. How long have you been doing bankruptcy
4 work?

04:56 5 A. In excess of 20 years.

6 Q. What type of bankruptcy work do you do?
7 What's your experience, bankruptcy wise?

8 A. I have been in the restructuring and
9 turnaround field for that period of time. I've been in
04:56 10 bankruptcy specifically. I have represented debtors as
11 financial advisor, I have represented unsecured
12 creditors, secured creditors, trustees.

13 Q. You're not a lawyer, though, are you?

14 A. That's correct.

04:56 15 Q. Okay. Have you ever been a Chapter 7 trustee?

16 A. No.

17 Q. Have you ever been involved in a Chapter 7
18 case?

19 A. Yes.

04:56 20 Q. On behalf of who?

21 A. I have represented trustees as financial
22 advisor, accountant to Chapter 7 trustees.

23 Q. Okay. I'm going to look at your proffer for a
24 few questions. I kind of want to go through some of the
04:56 25 things that they talked to you about. And kind of

1 related to your background, have you ever worked with
2 debtors in asset sales in bankruptcy cases?

3 A. Yes.

4 Q. And in the normal process of working with the
04:56 5 debtor, as much as you've seen today in court, the whole
6 point is to maximize value, whether it's for the
7 creditors or for the equity or whoever, right?

8 A. Yes.

9 Q. I mean, that's the whole point of bankruptcy
04:56 10 is to try to maximize value to maximize distribution,
11 right?

12 A. I agree.

13 Q. Don't you, based upon your experience, find
14 that an orderly sales process is the best way of
04:56 15 obtaining maximum value?

16 A. Well, it depends upon the circumstances.
17 Oftentimes it is.

18 Q. If there's no open marketing process, that's
19 not a very good way of having a maximization of value,
04:56 20 is it?

21 A. I would agree with that.

22 Q. If you have one bidder process, you don't ever
23 test the market, do you?

24 A. I would agree with that.

04:56 25 Q. Have you been in court all week?

1 A. No.

2 Q. When did you show up this week?

3 A. In court, I did participate by phone in, I
4 believe, the hearing on Tuesday. But today is my first
04:56 5 day physically.

6 Q. So you heard Chris Matthews' testimony on
7 Tuesday?

8 A. That's correct.

9 Q. And you heard the Harvard lawyer show up on
04:56 10 Tuesday and make an appearance for the Harvard Endowment
11 Fund, right?

12 A. I believe that happened today. I thought I
13 saw someone today from Harvard.

14 Q. I'll let the record stand but I'll represent
04:56 15 to you I think he's appeared in court then on behalf of
16 Harvard. Were you here the first week of the
17 confirmation hearings to watch all the testimony in
18 that?

19 A. Yes.

04:56 20 Q. Okay. And you testified then, too?

21 A. That's correct.

22 Q. Attached to your proffer are two exhibits, A
23 and B, right?

24 A. I think three exhibits.

04:56 25 Q. Okay. The first two are A and B, correct?

1 A. Yes.

2 Q. And A is the calculation you make in the event
3 of a successful Scotia Redwood Foundation bid, right?

4 A. Exhibit A is a calculation of the amount that
04:56 5 the Noteholders would receive.

6 Q. I didn't mean to mislabel it but that's in the
7 event of a successful Scotia Redwood Foundation bid,
8 right?

9 A. That's correct.

04:56 10 Q. And Exhibit B is in effect what happens in
11 your opinion in a Chapter 7?

12 A. No, not my opinion of what would happen in a
13 Chapter 7.

14 Q. What the expenses would be?

04:56 15 A. Well, Exhibit B, to be clear, is an estimate
16 of what the Noteholders will receive if the Scotia
17 Redwood Foundation bid at \$603 million occurred in a
18 Chapter 7, which as I testified, I do not believe would
19 be very likely.

04:56 20 Q. Okay. I'll get back to that. But the numbers
21 between A and B, the deducts are different, aren't they?

22 A. Yes.

23 Q. And in both instances, looking at Exhibit A
24 and Exhibit B, we're not talking about \$603 being fair
04:56 25 market value, we're just using the \$603 number that

1 Scotia Redwood Foundation bid, correct?

2 A. That is correct.

3 Q. What is your estimate for how long it's going
4 to take to accomplish an orderly sales process? I've
5 seen a couple of different numbers. I'm looking at
6 eight months on page 4 of your proffer and I know that
7 tables, I think, are calculated at least for purposes of
8 plan agent fee, that we've been shown for Exhibit A,
9 it's been calculated for ten months. What is the

10 estimate?

11 A. My estimate of the all in process, that is,
12 the time it would take to actually -- for this cash to
13 be available to the Noteholders is between eight and 12
14 months. The midpoint being ten months, and that's what
15 I used for purposes of my calculations, ten months.

16 Q. Okay. And you've really -- one of the line
17 items you talked about was whatever it would cost the
18 estate, if you will, the Noteholders in either event for
19 a transaction fee for Houlihan Lokey. And for that
20 purpose, you used the Lehman analysis or the Lehman
21 formula; is that correct?

22 A. That is correct.

23 Q. You don't know what the deal is between
24 Houlihan Lokey and the Noteholders, do you?

25 A. That is correct.

1 Q. If you look at footnote one to your proffer on
2 page 4, I mean, you cite the conflicting testimony.
3 There is no clear answer about what that deal is, do you
4 know?

04:56 5 A. I agree.

6 Q. Okay. You don't know whether or not there is
7 a special deal or not between Scotia Redwood Foundation
8 or CSG or Beal Bank and Houlihan in the event of a
9 successful Scotia Redwood Foundation bid, do you?

04:56 10 A. No.

11 Q. And you don't know whether or not that same
12 fee, whatever it might be, would apply across the board
13 to any type of transaction even, if there is a fee for
14 that matter, do you?

04:56 15 A. I'm sorry, could you clarify that question.

16 Q. It was a bad question. I'm sorry. You don't
17 even know whether there is a transaction fee. You're
18 assuming there's a transaction fee, right?

04:56 19 A. Well, I believe the testimony has been that --
20 I think it's been consistent that everyone is
21 acknowledged there is or will be a fee.

22 Q. But no one has testified about how much that
23 fee will be or what the formula is, correct?

04:56 24 A. Well, there has been testimony about what the
25 fee will be, including two to three percent.

1 Q. But you don't know because that's what
2 footnote one says, right?

3 A. That's correct.

04:56

4 Q. Okay. On page 8 of your proffer, you talk
5 about risk. And you talked a little bit about
6 regulatory risk. And I agree, I looked through your
7 proffer and there is nothing there that talks about how
8 to quantify the regulatory risk but I think the first
9 thing I want to know is, where did you get your sense of
10 regulatory risk? Did you get it from testimony in court
11 or did you get it from discussions you had outside of
12 court with somebody?

04:56

13 A. My understanding of that subject --

14 Q. I asked you where you got your understanding.

04:56

15 A. I was about to answer it.

16 MR. SCHWARTZ: Let him answer the
17 question.

04:56

18 A. My understanding of that subject has been
19 obtained from my involvement in the case generally,
20 including what's been discussed in court, what's been
21 discussed with other experts in the case, what's been
22 discussed with MRC and Marathon. So from a variety of
23 sources.

04:56

24 Q. Okay. Did you talk to either of these two
25 lawyers over here, Mr. Pascuzzi who is outside counsel

1 for the state or Mr. Neville who works for the Attorney
2 General's office?

3 A. No.

4 Q. Did you talk to anybody from the Resources
04:56 5 Department of the State of California about what the
6 regulatory risk was?

7 A. No.

8 Q. When you talk about regulatory risk, are you
9 talking about the risk that the state wouldn't allow
04:56 10 transfer of title to the property or are you talking
11 about the risk that the state might take some time to
12 decide whether or not a perspective buyer like Scotia
13 Redwood Foundation would actually be able to utilize the
14 timber harvest permits or whatever the appropriate name
04:56 15 is to say that they would be able to lumber on the
16 property. What's the risk that you're seeing and
17 perceiving in trying to analyze?

18 A. Well, certainly the risk that the land will
19 not be conveyed because approval is not forthcoming, but
04:56 20 I would not limit it to those risks. I think it's fair
21 to say that whatever contingencies are present as a
22 result of the existence of the state and federal
23 agencies and their bearing on this transaction, I'm
24 including in the category of regulatory approval risk.

04:56 25 Q. Okay. Did you hear Jacob Cherner's testimony

1 Friday, two weeks ago, the first week of confirmation
2 hearing when he testified about his company bidding on
3 the property, the 603?

4 A. I did read that testimony.

04:56 5 Q. Did you see in his testimony -- I can't quote
6 it. I don't have it with me, to the effect that he
7 would wait as long as it took to get the regulatory
8 authority to lumber, to cut the trees? It didn't matter
9 how long it took to him?

04:56 10 A. I don't remember that specific testimony.

11 Q. You don't have any reason -- going back to
12 your comment that there might be some risk of the state
13 not allowing the transfer of title or the federal
14 agencies not allowing the transfer of title, you don't
04:56 15 have any reason to think the state is going to be
16 unreasonable with a perspective buyer, do you?

17 A. No.

18 Q. You don't have any reason to think the state
19 is going to act arbitrarily, do you?

04:56 20 A. That's correct.

21 Q. Do you have any reason to think the state is
22 going to play favorites between MRC and any other
23 perspective buyer like Harvard or Scotia Redwood
24 Foundation or the Nature Conservancy, do you?

04:56 25 A. No.

1 Q. So there really isn't a risk, is there? I
2 mean, if you're assuming the state is going to act
3 reasonably in accordance with their regulations and
4 their laws, then they're going to do the right thing,
5 right?

04:56

6 A. Well, I guess the problem is I don't know what
7 the right thing is. And that's wherein the risk lies.
8 The ability to -- assuming the state doesn't play
9 favorites, acts reasonably doesn't mean that approval
10 will be forthcoming. And it's that risk, it's not the
11 risk of waiting it out, it's a risk of will it ever
12 happen that I'm trying to identify here.

04:56

13 Q. Okay. But just so that we can finish up this
14 loop of talking about what the regulatory risk is, isn't
15 the question that you've talked to people about this
16 regulatory approval and the transfer of title, isn't the
17 question on behalf of the state, one, whether the
18 perspective buyer has the financial wherewithal to
19 complete -- keep up with the commitments that are
20 required to be made under the conservation plan?

04:56

04:56

21 A. I don't know what the approval process
22 entails.

23 Q. Let's look at some of the transaction risks
24 that you've talked about. One of the risks that you
25 talked about is a condition that "Scotia Redwood agree

04:56

1 on the definitive acquisition documents on or before May
2 30, 2008." Did you listen to the testimony of
3 Mr. Matthews on Tuesday this week?

4 A. Yes.

04:56

5 Q. Did you hear his testimony that he didn't
6 think that was a risk, that that wasn't a big deal at
7 all?

8 A. Again, I don't remember his specific words.

04:56

9 Q. But you haven't heard any evidence that that's
10 going to be a problem, have you?

11 A. Well, we won't know if it's a problem until --

12 Q. Answer my question, please. Listen to my
13 question. You have not heard any evidence that that is
14 going to be a problem, agreement upon the documents for
15 purposes of an acquisition agreement?

04:56

16 A. The reason I'm hesitating is I don't know -- I
17 don't know if the documents exist.

18 Q. It's yes or no. It's yes or no. You say a
19 condition that SRF agree on the definitive acquisition
20 documents on or before May 30. My question is: You
21 have not heard any evidence that that's going to a
22 problem, have you? Yes or no.

04:56

23 A. That's correct.

24 Q. Thank you. The next risk is that "SRF may
25 experience buyers remorse and willfully fail to

04:56

1 consummate the transaction." You haven't heard any
2 evidence that Scotia Redwood is experiencing any buyers
3 remorse, have you?

4 A. That's correct.

04:56 5 Q. They showed up the day before the confirmation
6 hearing started with a bid, right, for \$603 million,
7 right?

8 A. I believe so.

9 Q. Midstream in that week they filed an amended
04:56 10 bid and then came and testified, right?

11 A. I believe that's correct.

12 Q. Jacob Cherner has given his deposition twice,
13 right, one week before the confirmation hearing and
14 during the first week of confirmation hearing he was
04:56 15 deposed. Do you remember that?

16 A. I do remember that he was deposed.

17 Q. And then there's been a third bid, another
18 second amended bid that was attached to the proffer of
19 Chris Matthews this week, right?

04:56 20 A. That's correct.

21 Q. That doesn't sound like somebody that's having
22 hesitation problems or buyers remorse, right?

23 A. It remains a risk.

24 Q. Okay. Have you ever met Andy Beal?

04:56 25 A. No.

1 Q. Do you know anything about his personality?

2 A. No.

3 Q. You don't know how strong a personality he is
4 or how determined he is to get something done once he
04:56 5 puts his sights on it, do you?

6 A. That's correct.

7 Q. Let's go down the list a little bit more. We
8 talked about regulatory authority a little bit already.
9 And I know you haven't ascribed any value to that risk.

04:56 10 One of the risks you have is that "the Indenture Trustee
11 will be obligated to credit bid resulting in no cash
12 proceeds to the Noteholders." What's the risk there?
13 I'm trying to understand how that's a risk to the
14 Noteholders. How is that --

04:56 15 A. That is --

16 Q. Go ahead, I'm sorry.

17 A. That is a risk to the proposal from Scotia
18 Redwood Foundation.

19 Q. Okay.

04:56 20 A. Which is what I'm trying to identify.

21 Q. Okay. How about the next one, the risk that
22 Scotia Redwood will not obtain the \$420 million in
23 finances that is required to finance the Scotia Redwood
24 purchase, and therefore will be unable to purchase, or
04:56 25 consummate the transaction is how you wrote it. My

1 question is: What if no loan is necessary in order to
2 fund the purchase, is there a risk there anymore?

3 A. If there is no loan, then the -- this risk
4 would -- this risk would not exist.

04:56 5 Q. Thanks. What kind of -- I'll withdraw that.
6 I withdraw that. Do you have your proffer in front of
7 you?

8 A. Yes.

9 Q. Look at page 10, paragraph 23. And you're
04:56 10 talking about your Chapter 7 analysis. And you say in
11 that analysis the very last sentence in paragraph 23,
12 and I'm leaving off a couple of words but you say "I
13 assume that SRF will not pay \$603 million for the
14 timberlands in a Chapter 7 scenario." I'm trying to
04:56 15 understand what you mean by that. And I want to reflect
16 back on Jacob Cherner's testimony when asked by counsel
17 whether or not he would make the same \$603 million bid
18 in the context of a Chapter 7 and he said yes. Did you
19 hear that testimony or have you read that testimony?

04:56 20 A. I did read his testimony. I don't remember
21 that specific exchange.

22 Q. Okay. I'm not sure how I understand that
23 answer. Were you aware that he testified to the Court
24 that way?

04:56 25 A. I don't remember that testimony as I sit here

1 today.

2 Q. So why are we making a Chapter 7 analysis if
3 you don't remember that testimony?

4 A. Well, the purpose of this analysis was to
04:56 5 estimate the amount that would be available to the
6 Noteholders if the transaction -- if the proposed
7 transaction from Scotia Redwood Foundation went off in a
8 Chapter 7 at \$603 million. I have also commented that
9 based on my experience that would be very unlikely.

04:56 10 Q. Okay. Why would that be unlikely? Why do you
11 think it would be unlikely?

12 A. Based on my experience, asset sales in Chapter
13 7 generally fetch less than in Chapter 11 for numerous
14 reasons.

04:56 15 Q. Okay. Let's look at Exhibit A, please. This
16 is the chart that shows the bid, the \$603 million bid
17 and your opinion of the appropriate items that ought to
18 be deducted from that bid to show a net value to the
19 Noteholders, right?

04:56 20 A. Yes.

21 Q. The \$603 is the bid amount. It's not an
22 opinion on your part of fair market value, right?

23 A. That is correct.

24 Q. The \$6,130,000 is your investment banking
04:56 25 transaction fee that's based upon an agreement that you

1 don't know about, right?

2 A. No, it's based on --

3 Q. It's based on the Lehman?

4 A. The Lehman formula.

04:56 5 Q. Right. So if Houlihan has a different deal,
6 that number is going to change, right, or could change?

7 A. Yes.

8 Q. Okay. The \$10 million for professional fees,
9 administrative claims, is that for both cases? Is that
04:56 10 for Palco and Scopac?

11 A. No.

12 Q. Just for Palco? I mean, just for Scopac?

13 A. Yes.

14 Q. Look at your chart down below, the range of
04:56 15 present net values. You have months to close, eight,
16 nine, ten, 11 and 12. If you assume with me that Scotia
17 Redwood Foundation would be willing to have a quicker
18 pace to the sales process than six, eight, nine, ten
19 months, why did you not analyze what the value might be
04:56 20 on a sale that was held on a more quick basis than one
21 that you've assumed here? Why not a three-month table
22 or a four-month table or a five-month table?

23 A. I don't think it's within the discretion or
24 election of Scotia Redwood Foundation to dictate the
04:56 25 time frame. I think it's a function of the sales

1 process that is conducted and there's been a fair amount
2 of testimony regarding the timeline for that. So what
3 I've tried to do is base my analysis on the timeline
4 that has generally been outlined.

04:56 5 Q. Okay. Let's look at Exhibit B. You have the
6 same investment banking transaction in Exhibit B, right?

7 A. Yes.

8 Q. Okay. And you have a Chapter 7 trustee fee,
9 right?

04:56 10 A. Yes.

11 Q. And that's a 3 percent statutory formula,
12 correct?

13 A. Yes.

14 Q. I mean, we have scaled well out of \$100,000
04:56 15 and a million dollars, we're up in the three percent
16 category and that's what the statute said, correct?

17 A. Yes.

18 Q. The Court is not required to award that much,
19 is it? That's just what the Court can do, correct?

04:56 20 A. That's the statute.

21 Q. Doesn't the Court have the discretion to
22 change that amount, given circumstance?

23 MR. SCHWARTZ: Your Honor, he testified
24 he's not a lawyer.

04:56 25 MR. GREENDYKE: I'll withdraw it. I'll

1 withdraw it. Thank you. I agree with you.

2 Q. (By Mr. Greendyke) The Chapter 7 trustee
3 advisor fees, why are they so much?

4 A. Well, the Chapter 7 trustee would -- I have
04:56 5 assumed would hire professionals, lawyers, financial
6 advisors, potentially consultants with expertise in
7 timberlands. So this is an estimate of the costs of
8 that help that the Chapter 7 trustee would, I assume,
9 would seek.

04:56 10 Q. But all of these assumptions here on Exhibit
11 B, these are assumptions that, for instance, the Judge
12 is going to convert the case to a Chapter 7, the U.S.
13 Trustee is going to pick somebody off the panel to be a
14 Chapter 7 trustee and that Chapter 7 trustee is going to
04:56 15 hold the property. You would assume he doesn't run the
16 property, right?

17 A. Well, I have said that's one of the reasons
18 why assets fetch less in Chapter 7 than Chapter 11. I
19 have not made that specific assumption here, however, in
04:56 20 this analysis.

21 Q. But Exhibit B is all based upon we're going to
22 run through a Chapter 7 sale, right?

23 A. At \$603 million.

24 Q. Right. Okay. Fair enough. Do you remember
04:56 25 what Mr. LaMont's value was that he told Judge Schmidt

1 this property was worth? It was \$430 million, wasn't
2 it?

3 A. That's correct.

4 Q. Do you remember how much the debt amount is
04:56 5 that's owing to the timber Noteholders?

6 A. Between \$7 and \$800 million.

7 Q. Okay. Why would a Chapter 7 trustee be
8 allowed to sell this property if there was no equity for
9 the benefit of the estate and the Chapter 7 trustee

04:56 10 couldn't get anything out of it for the benefit of
11 creditors?

12 MR. SCHWARTZ: Your Honor, again, I think
13 it's a legal issue.

14 MR. GREENDYKE: It's a business question
04:56 15 and if he wants me to explain it, I will lay the
16 predicate.

17 THE COURT: I think you can ask him the
18 business question.

19 Q. (By Mr. Greendyke) Let's assume that the law
04:56 20 is such that the timber Noteholders could file a motion
21 the moment the case is converted to a Chapter 7 saying
22 there is no equity and perhaps even for sake of argument
23 the property is diminishing in value for whatever
24 reason, and that the Court should lift the stay to allow
04:56 25 them to foreclose on their state law rights rather than

1 have a Chapter 7 trustee sell the property. Okay. Do
2 you assume all that with me? And assume he grants that
3 order. If he signs that order and the property leaves
4 the bankruptcy estate for foreclosure in California, we
04:56 5 don't have to worry about Exhibit B, do we?

6 A. Well, it is true that some of the assumptions
7 in Exhibit B would not apply because under your
8 hypothetical, the business would not be in Chapter 7.
9 It doesn't mean --

04:56 10 Q. You don't have -- we don't have to pay a
11 Chapter 7 trustee fee if the property is released from
12 bankruptcy, right? I mean, based on your experience,
13 right?

14 A. That's correct.

04:56 15 Q. And we don't have to pay advisors for the
16 Chapter 7 if the property is released for bankruptcy,
17 right?

18 A. That's correct.

19 Q. And you don't know whether or not Houlihan
04:56 20 Lokey gets anything in the event of a foreclosure, do
21 you? It's not merger and acquisition, is it?

22 A. It presumably would be a sale and investment
23 bankers are hired to sell assets.

24 Q. Okay. So basically in Exhibit A you've tried
04:56 25 to evaluate what the net proceeds of or return to the

1 timber Noteholders would be in connection with one bid,
2 right? Correct?

3 A. In Exhibit A --

4 Q. Right.

04:56 5 A. -- I have attempted to do two things. One is
6 quantify the amount that would be available for the
7 Noteholders. And then tried to value the bid based upon
8 the various risks that we have discussed and value the
9 bid as of today.

04:56 10 Q. My question was: There's one bid, right, 603?

11 A. That's correct.

12 Q. Correct? See that lawyer in the corner back
13 there? He represents the Nature Conservancy. That's a
14 potential bidder. Harvard was here today. That's a
04:56 15 potential bidder. Isn't that right?

16 A. I don't know the status of them as bidders.

17 Q. Okay. When we started this trial, weeks ago
18 now, the offer on the table from your client to my
19 client wasn't even an offer, it's what they were going
04:57 20 to force on us. I'm being argumentative and I
21 apologize. Was about \$500,000 -- \$500 million worth of
22 cash payments and some notes that even your client said
23 he wouldn't buy. Do you remember that? It was the
24 notes with the pick toggle and the extended term and the
04:57 25 negative amortization. That was the first plan,

1 correct?

2 A. I remember the new timber notes, yes.

3 Q. Okay. Today -- and that's based upon -- that

4 first offer was based upon Mr. LaMont's testimony that

04:57 5 the properties were worth \$431 million, right? We have

6 heard LaMont's testimony back to back with yours, I

7 think, or pretty close back to back with yours the first

8 week of the case, right?

9 A. What are you asking me? I'm sorry.

04:57 10 Q. Did you hear Mr. LaMont's testimony that the

11 property was worth \$431 million?

12 A. Yes.

13 Q. And the offer, based upon that testimony, was

14 the \$500 million cash note, right, and their timber

04:57 15 notes?

16 A. I don't know that the offer was based on

17 Mr. LaMont's testimony.

18 Q. That's the plan. Well, that's the plan that

19 followed the testimony, right? That's the plan that the

04:57 20 testimony supported, right?

21 A. I believe that's correct.

22 Q. And today we hear word that the offer has gone

23 to \$530 that you've just testified to with some

24 reductions for the SAR account, professional fees,

04:57 25 right? So we're looking at 517 today?

1 A. In terms of what the Noteholders would
2 receive, that's correct.

3 Q. Right. Under the MRC plan, right?

4 A. Yes.

04:57 5 Q. But the day before the hearing started, way
6 back in early April, Beal shows up with a \$603 million
7 bid, right?

8 A. Approximately, yes.

04:57 9 Q. Nature Conservancy has been here, Harvard
10 shows up today. We're kind of having a little mini
11 auction here, right here, aren't we? Hasn't your
12 client's bid changed over the course of the case by
13 watching this activity?

04:57 14 A. The plan proposed by MRC and Marathon has
15 changed.

16 Q. How would you, reflecting on Exhibit A, how
17 would you evaluate a \$650 million bid? Have you thought
18 about evaluating any bid other than the \$603 million
19 bid? I'm asking you two questions and I keep doing it.
04:57 20 I'm sorry. I apologize. How would you evaluate a \$650
21 million bid?

22 A. Show me the bid.

23 Q. So that's no, thank you?

24 A. No. I think in order to value any bid, I
04:57 25 need to see the bid and I would then make an evaluation.

1 Q. All right. Are you familiar with the
2 Indenture Trustee and the requirements of the indenture
3 trust agreement -- the trust indenture? I'm sorry.

4 A. No.

04:57 5 Q. Okay. You talked about the risk of credit
6 bidding. You talked about this a little bit earlier in
7 your cross-examination. What's your understanding of
8 what's supposed to happen with the credit bid in the
9 event of a sales transaction as proposed by the timber
04:57 10 Noteholders in your plan?

11 A. My understanding is that the trustee is
12 obligated to credit bid unless he receives instructions
13 from at least 66 and two-thirds percent of the holders
14 not to credit bid.

04:57 15 Q. Okay. If a credit bid gets made, though,
16 those are -- those are real dollars in terms of debt
17 that would be bid against the value of the property,
18 right?

19 A. Real dollars in terms of debt, yes.

04:57 20 MR. GREENDYKE: Can I have a moment?

21 THE COURT: Sure.

22 MR. GREENDYKE: Thanks, Judge, we're
23 going to pass the witness.

24 THE COURT: All right. Anyone else?

04:57 25 Yes, sir, come on down.

1 CROSS-EXAMINATION

2 BY MR. JONES:

3 Q. Good afternoon, Mr. Johnston. Evan Jones on
4 behalf of Bank of America. Mr. Johnston, I think I only
04:57 5 have a few questions and I think they're all going to be
6 about paragraph 13 of your proffer. Mr. Penn can put it
7 up if you want. I don't care. I do it the
8 old-fashioned way. Mr. Johnston, if you see there in
9 the second sentence it says "per the joint discloser
04:57 10 statement the balance of the Scopac line of credit claim
11 is \$37.6 million." You didn't get that number from me
12 or anyone other B of A representative, did you?

13 A. That's correct.

14 Q. Would it surprise you if I told you that I
04:57 15 don't think that number includes the accrued interest or
16 fees that are due?

17 A. I don't know.

18 Q. Mr. Johnston, I'll just make it clear, I want
19 to make sure that no one ever seeks to stop my client
04:57 20 with that number because I'm not sure it does include
21 everything.

22 MR. JONES: I'll just represent to the
23 Court, Mr. Neier has been bugging me since I got here to
24 get a final number, and unfortunately I don't have a
04:57 25 one, Your Honor, but I don't want any misunderstanding

1 on that 37.6.

2 Q. (By Mr. Jones) Mr. Johnston, in the next
3 sentence, you say "according to the information received
4 from Bank of America's representatives, the current
04:57 5 balance in the SAR account is approximately \$25.8
6 million." Did you get that from me?

7 A. I believe it was from an e-mail that you sent.

8 Q. And who did I send that e-mail to?

9 A. I may be mistaken on that, but that's my
04:57 10 recollection. And I don't recall who the recipient was.

11 Q. If I told you that I sent an e-mail to
12 Mr. Neier saying that Mr. Young, who is a professional
13 for the debtor had told me that it was approximately
14 \$25.8 million, would that sound right to you?

04:57 15 A. That does refresh my memory.

16 Q. Okay. So again, just to be clear, that's not
17 a number that Bank of America represented, that's a
18 number that we passed on from Mr. Young, the 25.8?

19 A. It sounds like that was the case.

04:57 20 Q. And in fact, you actually, I think, heard
21 Mr. Clark this morning testify that the number is less
22 than 25.8; is that correct?

23 A. That's correct.

24 Q. Okay. So again, if I were to say to you don't
04:57 25 try and bind me or Bank of America with that \$25.8

1 million, you would agree with that, wouldn't you?

2 A. Yes.

3 Q. Okay. And the last question I have, you have
4 referred at various points through here to the SAR

04:57

5 deficiency. And I just want to make sure that we're
6 using that in the same sense. You're not suggesting by
7 that that B of A's lien, it's not a normal deficiency
8 claim where our lien is limited with the SAR account,
9 you're just saying that everyone knows we're going to go

04:57

10 to the SAR account first but we still have liens on
11 everything else; is that correct?

12 A. That's my understanding.

13 MR. JONES: Okay. Your Honor, I have no
14 further questions. I thank you for the opportunity to
15 clear those points up.

04:57

16 THE COURT: Okay.

17 MR. FROMME: Your Honor, Eric Fromme,
18 Gibson, Dunn & Crutcher on behalf of Scotia Pacific
19 Company.

04:57

20 CROSS-EXAMINATION

21 BY MR. FROMME:

22 Q. Hi, Mr. Johnston, I have a few questions for
23 you. You have reviewed the expert testimony in this
24 case?

04:57

25 A. Much of it.

1 Q. Now, if you turn to page -- turn to paragraph
2 18 in your proffer. You have reviewed the expert
3 testimony of Mr. LaMont, correct?

4 A. Yes.

04:57 5 Q. And the expert testimony of Mr. Tedder?

6 A. Yes.

7 Q. You were present today for Mr. Tedder's
8 testimony?

9 A. Actually, I wasn't.

04:57 10 Q. Did you listen to it?

11 A. No.

12 Q. So you didn't review his testimony, but did
13 you review his report?

04:57 14 A. I reviewed his report at some point in the
15 past.

16 Q. How about Mr. Fleming's report, did you review
17 his?

18 A. Yes.

19 Q. Did you review his testimony?

04:57 20 A. I was present for some of Mr. Fleming's
21 testimony.

22 Q. How about Mr. Yerges's report, have you
23 reviewed his?

24 A. Yes.

04:57 25 Q. Okay. And did you listen or were present for

1 Mr. Yerges's testimony?

2 A. No.

3 Q. Did you review it at all?

4 A. No.

04:57 5 Q. You are familiar with his analysis, though,
6 right?

7 A. Generally.

8 Q. Looking to paragraph 18 of your report you
9 start off with a discount rate of 11.2 percent and that
04:57 10 was calculated by Mr. Daniel; is that right?

11 A. That's correct.

12 Q. And that was the expert of the Noteholders
13 from Houlihan Lokey; is that right?

14 A. Yes.

04:57 15 Q. So Mr. Daniels had a nominal discount rate of
16 11.2 percent and if we adjusted that at 3 percent for
17 inflation, that would roughly be a 8.2 percent discount
18 rate; is that right?

19 THE COURT: What?

04:57 20 Q. (By Mr. Fromme) If you deducted 3 percent for
21 inflation and adjusted it, you would have roughly an 8.2
22 percent discount rate; is that right?

23 A. I believe that's correct.

24 Q. And you realize that Mr. LaMont used a 7
04:57 25 percent discount rate when valuing Scopac?

1 A. I believe that's correct, yes.

2 Q. And Mr. Tedder also used a 7 percent discount
3 rate?

4 A. I don't recall his offhand.

04:57 5 Q. Okay. Do you remember Mr. Fleming's discount
6 rate at 6.25 percent?

7 A. It's been a while. I cannot remember Mr.
8 Fleming's discount rate.

9 Q. Do you remember Mr. Yerges's discount rate of
04:57 10 6 percent? He only testified yesterday.

11 A. I wasn't here for his testimony.

12 Q. Did you read his report?

13 A. Yes.

14 Q. Okay. Do you remember his discount rate of 6
04:57 15 percent?

16 A. I think that's correct.

17 Q. So you chose to use the highest discount rate
18 of any expert in this case to start your analysis here,
19 is that right, in paragraph 18?

04:57 20 A. No. What I did was I used Mr. Daniel's cost
21 of capital for Scopac, that business entity. I believe
22 he was the only one that actually valued the business
23 entity with and calculated a weighted average cost of
24 capital. I don't believe anyone else performed that
04:57 25 analysis, which I thought was most relevant for purposes

1 of what I was seeking to do.

2 Q. But that number was higher than Mr. LaMont's,
3 Mr. Tedder's, Mr. Fleming's and Mr. Yerges's; is that
4 right?

04:57 5 A. I think you're comparing apples and oranges
6 but it is higher in terms of raw numbers, that's true.

7 Q. The next thing you did in paragraph 18 in your
8 report is you made an adjustment downward for the
9 short-term, I guess the ten months you considered a
04:57 10 short-term. Am I understanding that correctly?

11 A. That's correct.

12 Q. So you end up down to 8.67 percent; is that
13 right?

14 A. Yes.

04:57 15 Q. Then in paragraph 19 you adjust upward for
16 your asset specific risks, do I understand that right?

17 A. In paragraph 19, I adjust upward for
18 specifically the transaction risks excluding the
19 regulatory approval risk.

04:57 20 Q. And that's a 7 -- a 3 to 7 percent increase?

21 A. That's correct.

22 Q. And that's excluding this regulatory risk,
23 right?

24 A. Yes.

04:57 25 Q. I want to ask you some questions about that.

1 What is the regulatory risk that you're referring to?

2 A. The regulatory risk is that Scotia Redwood
3 Foundation is not -- let me put it another way. That
4 approval is not forthcoming for the transfer of the land
04:58 5 from Scopac to Scotia Pacific -- Scotia Redwood
6 Foundation by the state or the federal agencies that
7 control that title transfer.

8 Q. Anything else?

9 A. Whatever other inhibitions on -- anything else
04:58 10 that could inhibit the closing of the transaction on
11 account of regulatory factors would be included in that
12 risk.

13 Q. Well, what are they? What did you have in
14 mind, sir?

04:58 15 A. Well, I specifically talked about a lack of
16 consent to transferring the title.

17 Q. Other than the lack of consent by the federal
18 and state agencies, what else did you have in mind?

19 A. Well, as I've testified, I'm not an expert in
04:59 20 regulatory matters. So whatever is out there, if
21 anything else, would be included.

22 Q. Do you have anything specific in mind other
23 than the risk of non-approval by the federal and state
24 agencies, anything specific?

04:59 25 A. Well, for example, the HCP. I'm not an expert

1 in it, but it's my understanding that there are certain
2 elements of that where consent is required. I can't
3 speak to it more specifically than that, but that would
4 be another instance, I believe, of where regulatory
04:59 5 approval is required.

6 Q. Because -- because the Scopac lands are
7 governed by the HCP, they -- for them to be transferred,
8 they require state and federal authority or approval for
9 that transfer; is that what you're referring to?

05:00 10 A. As I say, I'm not familiar enough with the
11 regulations or the agreements to articulate more
12 specifically than I already have.

13 Q. So you got -- you have some uncertainty
14 whether the state or federal government is going to
05:00 15 approve the transaction and then some other stuff that
16 you don't know about that may be out there. Is that a
17 fair representation of what your understanding is?

18 A. Anything that could prevent the -- from a
19 regulatory standpoint that could prevent the transaction
05:00 20 from being consummated is what I'm referring to.

21 Q. Sir, do you have any experience managing
22 timberlands?

23 A. No.

24 Q. You're not the timber appraiser, right?

05:00 25 A. That's correct.

1 Q. You didn't review the Headwaters agreement,
2 did you?

3 A. That's correct.

4 Q. You didn't review the HCP, did you?

05:01 5 A. That's correct.

6 Q. You didn't review the implementation agreement
7 to the Headwaters agreement?

8 A. No.

9 Q. And you didn't review AB 1986?

05:01 10 A. No.

11 Q. What was that?

12 A. No.

13 Q. Did you review any regulatory -- any documents
14 governing the -- relating to the regulations of Scopac's
05:01 15 lands?

16 A. Yes.

17 Q. Which ones?

18 A. The information that was included in the joint
19 disclosure statement. Throughout the course of the

05:01 20 case, I saw other references to the regulations,

21 probably in pleadings. So I certainly have come across

22 numerous documents referencing the various agreements,

23 summarizing them, describing them so that -- that's my

24 experience in terms of documents.

05:02 25 Q. And I asked you which documents did you review

1 that govern the regulation -- govern the regulations
2 that govern Scopac's lands and you told me about
3 documents that describe them like the disclosure
4 statement.

05:02 5 A. If I misunderstood your question --

6 THE COURT: Why don't we get through this
7 whole regulatory business. He didn't assign anything to
8 it in his report, number one. But is there anyone that
9 doubts that there are some regulatory requirements for a
05:02 10 closing? I mean, isn't that just a -- the State of
11 California agrees that -- do you agree that anyone can
12 buy this property or do you even agree that Beal Bank
13 can buy this property.

14 MR. PASCUZZI: I hope there's no doubt,
05:02 15 Your Honor, that the approval is required and there's
16 been --

17 THE COURT: Okay. And you will not
18 unreasonably withhold that.

19 MR. PASCUZZI: That's correct, Your
05:02 20 Honor.

21 THE COURT: What about Mr. Tenebaum, do
22 you-all have any legal requirement to approve of a sale?
23 Have we lost Mr. Tenebaum?

24 MR. McCLAIN: This is Brian McClain
05:03 25 standing in for Mr. Tenebaum for the Department of

1 Justice. The Fish and Wildlife Service does have a
2 process, and I'm not able to speak to the specifics.

3 THE COURT: Okay. And there is no -- is
4 there a pre approval process?

05:03 5 MR. McCLAIN: I do not -- I'm sorry, I'm
6 not prepared to speak to the --

7 THE COURT: All right. What about the
8 State of California?

9 MR. PASCUZZI: I'm not sure I understand
05:03 10 pre-approval process, Your Honor. Nobody has approval
11 right now.

12 THE COURT: No one has been approved,
13 right?

14 MR. PASCUZZI: No one has been approved.

05:03 15 THE COURT: All right. Now, is there
16 anybody who takes the position -- I don't know. I think
17 this stuff has come up in the context of FCC licenses
18 but in a bankruptcy court order the sale of this
19 property to someone?

05:03 20 MR. NEIER: Your Honor, whether it can or
21 can't, we're not seeking that right.

22 THE COURT: Okay.

23 MR. NEIER: We're going through the
24 process.

05:03 25 MR. GREENDYKE: We have promised the

1 State that the State gets to approve the sales
2 transaction. We won't ask you to do that.

3 THE COURT: Thank you so much. All
4 right. Go ahead.

05:04 5 MR. FROMME: Thank you, Your Honor,
6 that's exactly what I was trying to demonstrate.

7 THE COURT: Okay. But he's not an expert
8 on any of that.

9 MR. FROMME: Exactly, Your Honor, thank
05:04 10 you.

11 THE COURT: He's pointed out in his
12 report -- we're spending so much time. I think that all
13 those of you who are spending time trying to show how
14 little he knows about the regulatory requirements are
05:04 15 sort of making that regulatory issue a bigger issue
16 perhaps than it ought to be. But if you want to do it.

17 MR. FROMME: That's not my intent. My
18 intent is to minimize that.

19 THE COURT: Okay. Well, you've asked
05:04 20 lots of questions about it.

21 MR. FROMME: Thank you, Your Honor. I
22 just have a couple of extra questions, not relating to
23 regulatory issues.

24 THE COURT: Is there a possibility also
05:04 25 that the State could allow the transfer and then not

1 approve cutting?

2 MR. PASCUZZI: Your Honor, that is a
3 possibility. There are timber harvest plans that have
4 to be submitted to deal with specific cutting.

05:04 5 THE COURT: Right. Okay. Go ahead.

6 Q. (By Mr. Fromme) You had some questions about
7 the sales agent fee, Mr. Johnston. Do you remember
8 that?

9 A. Yes.

05:05 10 Q. That's that fee that you calculate is a
11 hypothetical fee, is it not?

12 A. It's an illustrative fee.

13 Q. It could be lower; isn't that right?

14 A. It could be, yeah.

05:05 15 Q. There could be no sales agent fee possibly,
16 right?

17 A. I would be very surprised at that.

18 Q. Well, you don't know whether the Noteholders
19 have struck a deal with Houlihan, as Mr. Greendyke asked
05:05 20 you; is that right?

21 A. I think what I indicated to Mr. Greendyke is
22 the testimony has been from the Noteholders
23 representatives that there would be a fee, but there's
24 been no agreement as to the amount.

05:05 25 Q. Thank you. And if the Debtors advisors

1 conducted the auction, you don't know what that fee
2 would be either, do you?

3 A. If the Debtors advisors conducted the auction?

4 Q. Correct.

05:06 5 A. That is correct.

6 Q. You don't know what the fee would be if an
7 independent or third-party sales agent conducted the
8 auction, what that fee would be either, would you?

9 A. That's correct.

05:06 10 MR. FROMME: No further questions, Your
11 Honor.

12 THE COURT: You only know what the fee
13 would be if the Court conducted an auction. Anyone else
14 have any questions? Your witness.

05:06 15 REDIRECT EXAMINATION

16 BY MR. SCHWARTZ:

17 Q. Mr. Johnston, Mr. Greendyke asked you some
18 questions about whether it was the purpose of bankruptcy
19 to maximize value. Do you recall that?

05:06 20 A. Yes.

21 Q. Is it also the purpose of a bankruptcy to try
22 and reorganize companies so they are profitable and
23 operating going forward?

24 A. Yes.

05:06 25 Q. Now, it's not true that every bankruptcy

1 results in a sale process, is it?

2 A. That's correct.

3 Q. Do you have any opinion, based on your
4 experience in bankruptcy, as to what percent of the
05:06 5 bankruptcies actually going to a sale rather than a
6 reorganization?

7 A. Not specifically, but I have worked on
8 numerous cases that did not involve a sale of the assets
9 as the outcome.

05:07 10 Q. Now, are you familiar with any prior attempts
11 to sell Scopac and/or Palco prior to the bankruptcy?

12 A. Yes.

13 Q. And just tell me what your understanding is.

14 MR. GREENDYKE: Judge, I'm going to
05:07 15 object.

16 THE COURT: You're exceeding the scope of
17 the cross-examination. Is that your objection?

18 MR. GREENDYKE: That's my objection.

19 THE COURT: Sustained.

05:07 20 Q. (By Mr. Schwartz) Mr. Greendyke referred a
21 couple of times to the Nature Conservancy and Harvard.
22 Do you recall that?

23 A. Yes.

24 Q. Now, you heard that -- you were here when
05:07 25 Harvard was here this morning?

1 A. Yes.

2 Q. Are you aware that Harvard has left the
3 building?

4 A. I have heard that.

05:07 5 Q. Okay. Are you aware of any bid by Harvard to
6 purchase the Debtors assets? Well, maybe my question --
7 you look confused, let me rephrase it.

8 Are you aware whether Harvard came into this
9 court and made an offer to purchase the assets to the
05:08 10 Court?

11 A. I'm not aware of that.

12 Q. Are you aware of whether the Nature
13 Conservancy has done that?

14 A. Not to my knowledge.

05:08 15 Q. Okay. Now, if you could pull up paragraph 16
16 of your proffer. And going down to the bullet points,
17 Mr. Greendyke asked you a few of these, about a few of
18 these such as buyer's remorse and definitive
19 documentation and whether you knew how likely those
05:08 20 risks were. Do you recall that?

21 A. Yes.

22 Q. Are you familiar with transactions in the
23 marketplace generally that were on the brink of closing
24 that ended up failing?

05:09 25 A. Yes.

1 Q. Can you give the Court some examples of those?

2 A. Well, some recent examples of committed deals
3 that fell apart would be United Rentals, Clear Channel,
4 Delphi Automotive. Those are three rather significant
05:09 5 recent deals that were committed and did not close.

6 Q. And those transactions involved some of the
7 most major players in the financial industry; isn't that
8 right?

9 A. That's correct.

05:09 10 Q. Now, Mr. Greendyke also asked you some
11 questions about foreclosure, state foreclosure sales.
12 Did you do any analysis of what the results would be in
13 a state court foreclosure?

14 A. I did not.

05:09 15 Q. Do you know if it would take longer or shorter
16 in a state court foreclosure to sell the assets?

17 A. I'm not familiar with what the redemption
18 period would be, so I really don't know what the time
19 period would be.

05:10 20 Q. Mr. Greendyke also asked you some questions
21 about Mr. Beal and his desire to close on this
22 transaction. Do you recall that?

23 A. Yes.

24 Q. And you testified you didn't meet Mr. Beal; is
05:10 25 that right?

1 A. That's correct.

2 Q. Now, Mr. Beal, to your knowledge, hasn't been
3 in this courtroom at all during the two weeks of the
4 confirmation process, right?

05:10 5 A. That's correct.

6 Q. Mr. Beal hasn't testified about the -- his
7 willingness or ability to close on the transaction; is
8 that right?

9 A. Yes.

05:10 10 Q. Did you have any role in determining what the
11 MRC/Marathon plan would look like in terms of how much
12 the Noteholders would get, either its original plan or
13 the plan filed this morning?

14 A. No.

05:11 15 Q. If there is a credit bid by the Indenture
16 Trustee, there would be no cash proceeds for the
17 Noteholders, right?

18 A. That's correct.

05:11 19 Q. They would have to monetize that down the road
20 somehow through some sales process later on, right?

21 A. Yes.

22 Q. Mr. Jones asked you some questions about the
23 default interest in fees on deficiency in the SAR
24 account. Do you recall that?

05:11 25 A. Yes.

1 Q. Okay. Now, if you added default interest in
2 fees, that would just increase the deficiency, right?

3 A. That's correct.

05:11

4 Q. And that would increase the deductions from
5 what the Noteholders would get?

6 A. Yes.

05:11

7 Q. Mr. Fromme asked you several questions about
8 discount rates and you referred at one point to
9 Mr. Fromme as mixing apples and oranges. Can you
10 explain what you meant by that?

05:12

11 A. Well, I believe what he was trying to do was
12 compare the discount rates used by the various experts.
13 And the point I was making was that the discount rate
14 used by Mr. Daniels was a weighted average cost to
15 capital. I did not believe that the discount rates used
16 by any of the other experts were weighted average costs
17 of capital.

05:12

18 Q. Now, Mr. LaMont, Mr. Tedder, Mr. Fleming and
19 Mr. Yerges, who Mr. Fromme referred to, they were
20 valuing the value of the property, correct?

21 A. That's correct.

22 Q. That's not what you're doing in your analysis,
23 right?

24 A. That's correct.

05:12

25 Q. You're not an expert in valuing timberlands,

1 correct?

2 A. Correct.

3 Q. So you don't know whether the same discount
4 rate should apply to valuing timberlands as to doing a
05:12 5 discount rate analysis that you did; is that correct?

6 A. I do not believe they are related.

7 MR. SCHWARTZ: Thank you, I have no
8 further questions, Your Honor.

9 THE COURT: All right. You can step
05:13 10 down. Well, I did want to ask one question. Did you --
11 perhaps I missed it or something. But did you say that
12 the administrative costs for the -- in the disclosure
13 statement for Scopac are \$10 million but that the offer
14 only is conditioned on them being \$5 million?

05:13 15 THE WITNESS: No. What I said, Your
16 Honor, is that the MRC/Marathon plan has an adjustment
17 to the amount due the Noteholders. And that adjustment
18 is equal to -- the adjustment to the extent the
19 administrative claims exceed \$5 million.

05:13 20 THE COURT: Okay. That's what I said.
21 Okay. So that's that one. End of point.

22 THE WITNESS: There would be a deduction.

23 THE COURT: But in the disclosure
24 statement are they estimated at \$10 million?

05:13 25 THE WITNESS: Yes.

1 THE COURT: Okay. So you believe the
2 disclosure statement, the offer is not really \$530 but
3 \$525.

4 THE WITNESS: That would be true.

05:14 5 However, I would just point out that the current
6 estimate of the unpaid Scopac administrative claims is
7 about \$6 million, it's not \$10 million.

8 THE COURT: Okay. All right. You can
9 step down.

05:14 10 MR. NEIER: Your Honor, we have -- I
11 believe we filled the void as much as we can with
12 respect to witnesses. If anybody else has any other
13 witnesses, that's fine.

05:14 14 THE COURT: So we're down to two
15 witnesses or one?

16 MR. NEIER: I do think that it would be
17 helpful -- we learned some information after Mr. Clark
18 testified and Your Honor asked Mr. Clark some questions
19 about the availability of cash. I think it would be
05:14 20 helpful for all the parties concerned, it was certainly
21 information that we found critical, if the Court could
22 recall Mr. Clark to maybe supplement his answer to Your
23 Honor's question in one respect. It should take only
24 two minutes and I think it really is critical
05:15 25 information for all the parties.

1 THE COURT: You want to recall Mr. Clark?

2 MR. NEIER: Yes, I do, Your Honor.

3 THE COURT: Any objection?

4 MR. GREENDYKE: I have one unrelated

05:15

5 request, that we have an opportunity to break, the

6 Noteholders and our side have an opportunity to break.

7 There's something that I need to confer with my partners

8 with and then come back to the Court, so I don't want

9 the Court to finish with this and then just dash off.

05:15

10 We would like to take a break either now or after

11 Mr. Clark, I don't care anything about --

12 THE COURT: So how long of a break do you

13 need?

14 MR. GREENDYKE: Ten or 15 minutes.

05:15

15 MR. NEIER: I can go now or later. It's

16 up to you.

17 THE COURT: I don't care either. So

18 which would you prefer?

19 MR. GREENDYKE: Let's take a break.

05:16

20 THE COURT: Okay. 15 minutes.

21 (A recess was taken.)

22 THE CLERK: All rise.

23 THE COURT: Be seated. Yes, sir.

24 MR. GREENDYKE: This is Bill Greendyke

05:29

25 for the Indenture Trustee. At the appropriate time I

1 have a question for the Court. If this is it, that is
2 fine.

3 THE COURT: Is this a personal question?

4 MR. GREENDYKE: No. A couple of times,
05:29 5 once today and once, as I'm reminded -- I don't think I
6 was at the particular hearing, but prior to the
7 mediation, the Court asked a question of us, of the
8 timber Noteholders as to whether or not we would be
9 willing to step into the Marathon/MRC position or plan.

05:29 10 And I'm paraphrasing, and I apologize for doing that.

11 Our clients are not often here, but they
12 are on the phone and they are listening and they do talk
13 and communicate a lot, and that's where I'll go after
14 court to talk to them again and report to them and get
05:30 15 some sense of where they are.

16 Collectively, they have asked us to ask
17 you what you meant by that and to help explain that
18 question and let you think about what the answer might
19 be, if you can even answer the question. You know,
05:30 20 obviously our clients are very interested in buying in
21 some form or fashion, whether it's through Scotia
22 Redwood or whether it's through a third-party, having
23 some marketization, some monitorization of the timber
24 properties.

05:30 25 Obviously you also have another case

1 involving Palco that involves a mill, a town, a co-gin
2 plant and everything else. And it also has a separate
3 credit for Marathon. I'm not meaning to argue, but I'm
4 just saying that's the way it is. There's a whole bunch
05:30 5 over here and over here.

6 Is the question one of do we have the
7 ability, do we have the sense that there's some interest
8 in the marketplace for a third-party, whether it's a
9 group of Noteholders or whether it's somebody like
05:31 10 Sierra Pacific who was here with Harvard today who might
11 be interested in acquiring the mill, setting up a
12 transaction like that that resembles what MRC is doing
13 with Marathon. Or is there some ability on our part to
14 take care of what I argued in opening argument, and I
05:31 15 don't I argued today, but was characterized as the
16 business decisions of Marathon.

17 The question, again, is what did you mean
18 by that when you said are you-all interested in stepping
19 into the shoes of Marathon or MRC?

05:31 20 THE COURT: Okay.

21 MR. GREENDYKE: I don't mean to put you
22 on the spot.

23 THE COURT: What is equity? Let's start
24 from that standpoint. And I don't have -- I mean, I --
05:31 25 of course, you know, if you want to go to Schmidt on

1 Bankruptcy -- and we have talked about this before -- is
2 that this is a system set up for people to make
3 agreements. And in the -- and the dynamics are such
4 that hopefully there is a playing field for everyone to
5 make agreements.

6 And if you don't make agreements, then I
7 make decisions. And my decisions aren't to split the
8 baby. I don't have that choice. I have to choose what
9 the law and what the facts require. That's not always
10 satisfactory. However, I have lots of guidelines. If
11 you look at equitable considerations, it depends on who
12 you are. But if you're the County of Humboldt, the
13 major equitable considerations is making certain that
14 there is a continuing timber operation.

15 Now, you say, you've got these trees and
16 they're going to be there forever, of course, there will
17 be timber operations here. That may well be true, but
18 the operation of the forest and the operation of the
19 town and the mill, there is a connection between those.

20 Now, whether it's sufficient to justify one plan for all
21 those when you-all made a deal to have a separate
22 special corporation with a single purpose corporation
23 and made a contract for all of those sorts of things,
24 all the time we change contracts in bankruptcy.

25 Now, whether or not that is sufficient --

1 and I'm not making any kind of comment on the relative
2 strength or the legal arguments, but there certainly
3 is a -- there certainly is at least a strong equitable
4 interest in preserving both sides of this equation. And
05:33 5 a plan that just deals with the forest probably
6 liquidates the mill. What does that mean? That means
7 somebody gets to buy it a fire sale? Maybe. Maybe that
8 means we're going to have a bunch of people who work
9 from paycheck to paycheck out of work from six to nine
05:34 10 to 12 months, whatever, two years while they finally get
11 it back on or maybe redo it or build another one. Who
12 knows, it may fall apart. I don't know.

13 I'm just saying that one possibility,
14 just like I gave you-all lots of other possibilities,
05:34 15 one possibility is that while it's way more complicated,
16 you-all have sufficient minds to figure out how to do
17 it, is that you come up with a better deal for both
18 places. Now, whether you can do that in the context of
19 this plan or not, I don't know that either. I mean, but
05:34 20 that's one thing you could do. Another thing you could
21 have made a deal to come in for some other downside.
22 There might have been some other way to share this with
23 you so that you-all don't take the big hickey. I don't
24 know that you're taking the big hickey, but you believe
05:34 25 you are if this plan is confirmed, correct?

1 MR. GREENDYKE: We are. We will if it
2 does.

3 THE COURT: Okay. So that's the --
4 that's the only interest in that comment was to see
05:35 5 where that was. I mean, Marathon hadn't -- doesn't own
6 the forest, but they know the importance of, I guess, of
7 the mill to the forest, and so that's why they went out
8 and found somebody to operate it so that they can do a
9 deal that takes care of both parts of it.

05:35 10 And you-all didn't come up with that
11 because maybe you thought there were legal impediments
12 of doing that. There are ways to do it, but you didn't
13 come up with that plan. And maybe -- again, maybe
14 because you feel like it's important to have two
05:35 15 separate entities. I don't know. And I don't have a
16 feeling on what's the right answer to all of that.
17 That's all I meant.

18 So I'm not suggesting anything. I'm just
19 saying there's a possibility. I don't know whether
05:35 20 that's a possibility. I don't know. I know they're
21 going to be concerned about who it is that's operating
22 it. There are lots of things that a lot of people in
23 this case -- it's not like you just, you know, pick a
24 manager to run the corporation, like we do in smaller
05:36 25 bankruptcies. There are going to be people that have

1 got to have a track record with all of the environmental
2 problems and things of that sort. All right. Did
3 that -- is that --

05:36

4 MR. GREENDYKE: I think it does. Thank
5 you for your patience. Thank you.

6 THE COURT: Okay. Our next witness?

7 MR. HAIL: Your Honor, Brian Hail from
8 Mendocino Redwood Company. We would like to recall
9 Mr. Clark.

05:36

10 THE COURT: And I guess at the expense of
11 saying too much, it's just like nobody seemed to think
12 that Mendocino is a bad operator. They seem to be
13 somebody everybody helped, likes. So maybe there's some
14 way that Harvard can help out Mendocino operate it and

05:36

15 they can help out to put together a deal that gives more
16 to these people. I don't know. And still keeps -- I
17 don't know whether they want to operate it or maybe they
18 just want to own it. I don't know. Maybe Mendocino
19 would just like to operate it and not necessarily own it

05:37

20 and have to put all of that cash in it. I don't know.
21 But those are opportunities, another opportunity because
22 we're going to have another, looks like, week or two
23 hiatus. All right. You're still under oath.

24

25

1 DIRECT EXAMINATION

2 BY MR. HAIL?

3 Q. Mr. Clark, do you remember discussing earlier
4 with the Judge the balance in the SAR account?

05:37 5 A. Yes.

6 Q. And do you recall discussing with the Judge
7 about the balance of the SAR account and the
8 availability of cash in that account?

9 A. Yes.

05:37 10 Q. And when did you think that the available cash
11 in the SAR account would run out?

12 A. Through the end of June.

13 Q. Now, are you familiar with the assets that are
14 currently sitting in the SAR account?

05:37 15 A. Yes.

16 Q. And what are those assets?

17 A. It's a little over \$3 million of cash and
18 about \$21 and a half million of auction rate securities.

05:37 19 Q. So the SAR account owns auction rate
20 securities, correct?

21 A. Yes.

22 Q. And are you generally familiar with auction
23 right securities?

24 A. Very general.

05:37 25 Q. And has there been some dislocation or trouble

1 in the auction rate securities market?

2 A. Yes, there has.

3 Q. And has that affected both purchasers of
4 auction rate securities and lenders under auction rate
05:38 5 securities?

6 A. Yes.

7 Q. And in connection with those auction rate
8 securities, in the last two weeks have you learned of
9 potential liquidity problems with those securities?

05:38 10 A. In the last two weeks I learned that we had
11 them, first; and secondly, that they were possibly very
12 liquid, yes.

13 Q. What can you tell the Court about the
14 liquidity problems associated with those securities that
05:38 15 you've learned in the last two weeks?

16 A. The last we were able to sell -- I found out
17 the last time we were able to sell any of those for cash
18 in the marketplace was back in February.

19 Q. So the available cash in that account, you
05:38 20 project, would run out in June, correct?

21 A. Yes.

22 Q. At the end of June?

23 A. Yes.

24 Q. And after that, the assets available in the
05:38 25 SAR account would be the assets represented by the

1 auction rate securities, correct?

2 A. Yes.

3 Q. And do you know if you'll be able to modify
4 those securities into cash?

05:38 5 A. Based on a recent experience, I would say no.

6 Q. And do you know the mechanism by which those
7 securities could be monetized or somehow turned into
8 cash?

9 A. I don't know the frequency, but I know that
05:39 10 there are auctions that are scheduled for those
11 particular securities. And when the auctions come up,
12 if somebody would bid on those securities, they could be
13 sold.

14 Q. But when was the last time such security was
05:39 15 sold out of the SAR account, to the best of your
16 knowledge?

17 A. I believe they were sold in February.

18 Q. And have there been auctions in the last
19 several weeks or months that have not cleared?

05:39 20 A. My understanding is yes.

21 Q. And do you know the frequencies of those
22 auctions?

23 A. No. I know there's three more coming up, but
24 I don't know the frequency. About a week apart, I
05:39 25 think.

1 Q. And do you expect those auctions to clear?

2 A. I don't.

3 MR. HAIL: No more questions, Your Honor.

4 THE COURT: Anyone else have any

05:39 5 questions on auction rate securities?

6 MR. HAIL: One more question, Your Honor.

7 Q. (By Mr. Hail) If you may, Mr. Clark, after

8 June 31st, you're going to need continuing access to

9 cash in the SAR account, correct?

05:40 10 A. Access to cash, yes.

11 Q. And I think you testified that you would need

12 approximately \$2 million of cash each month?

13 A. Two and a half, I think, or three. I can't

14 recall exactly. Yes.

05:40 15 Q. And that would be July, August, September; is

16 that right?

17 A. October, yes.

18 MR. HAIL: No more questions, Your Honor.

19 THE COURT: Okay. Does anybody have any

05:40 20 questions? All right. Come on down.

21 MR. JONES: Your Honor, I'm hesitant --

22 Evan Jones on behalf of Bank of America.

23 CROSS-EXAMINATION

24 BY MR. JONES:

05:40 25 Q. Mr. Clark, I'm a bit hesitant to ask this

1 question because I don't want it to be construed as an
2 offer. Have you looked into the possibility of using
3 those auction rate securities as collateral to obtain a
4 loan if you need cash?

05:40 5 A. I personally have not, but the person who
6 manages the cash in Houston has been told by BONY, which
7 is where these investments are, that they would be
8 willing to lend \$4 million against \$12 million of the
9 auction rate securities.

05:41 10 MR. JONES: Your Honor, I have no further
11 questions.

12 THE COURT: Yes, sir, Mr. Greendyke.

13 CROSS-EXAMINATION

14 BY MR. GREENDYKE:

05:41 15 Q. Mr. Clark, how long has this SAR account been
16 funded with auction rate securities?

17 A. I honestly don't know.

18 Q. From the start of the bankruptcy case?

19 A. What I do know -- I could tell you what I do
05:41 20 know.

21 Q. Okay. That's helpful.

22 A. They have been classified as cash equivalent
23 investments. And under the indenture, they qualify as a
24 permitted investment in the SAR account. They have been
05:41 25 recommended by the Indenture Trustee as an investment.

1 The Indenture Trustee verified in February that it
2 was -- they were still good investments and they should
3 be rolled over. The court order that we have from day
4 one on how to invest our money and what bank accounts
05:41 5 and what we are able to do allows us to do -- to
6 continue investing as we have done in the past. That's
7 all I know.

8 Q. Was it ever identified -- I wasn't here then,
9 and I know you were. Was it ever identified in those
05:42 10 first day hearings or first day pleadings that
11 authorized you to maintain your accounts and do things
12 in the ordinary course of business, does it specify that
13 these were auction rate securities at that point so the
14 U.S. Trustee could see it and the Court could see it?

05:42 15 A. I think what was specified was that they were
16 securities and they were cash equivalents and they were
17 AAA rated. And I believe those were the requirements,
18 some of the requirements under the indenture. They
19 certainly met all of the requirements of what we have
05:42 20 been investing in the past.

21 Q. Tell me again, I didn't hear your testimony
22 when you first started. I saw what the balance was or
23 heard what the balance was for auction rate securities.
24 What's the cash balance in the SAR account?

05:42 25 A. I think it's just 3 and a half, a little over

1 \$3 million, around three and a half as of today. I
2 think we took -- I did not know the exact number, but I
3 thought we took out \$2 million this week. It turns out
4 it was only a million two, so I think we have about
05:43 5 three and a half million of cash in the account.

6 MR. GREENDYKE: Thank you. I have no
7 other questions, Judge.

8 THE COURT: All right.

9 CROSS-EXAMINATION

05:43 10 BY MR. FROMME:

11 Q. Eric Fromme, Gibson, Dunn & Crutcher on behalf
12 of Scotia Pacific. Hi, Mr. Clark.

13 A. Eric, how are you?

14 Q. Good. Have you done anymore cash flow
05:43 15 forecasts for Scopac past June of 2008?

16 A. I think I testified no.

17 Q. And do you know what the interest rate on the
18 auction rate securities is?

19 A. I do, but I don't know if it's being paid.
05:43 20 It's 18 percent.

21 MR. FROMME: Thank you.

22 CROSS-EXAMINATION

23 BY MR. NEIER:

24 Q. Just very briefly. Are these -- are these
05:43 25 securities still considered cash equivalents?

1 A. I'm not sure.

2 Q. Has anything changed with respect to their
3 status as cash equivalents that you're aware of?

4 A. Well, the market has been very volatile.

05:43 5 There has been great difficulty in the ability to have
6 these securities continue to trade. I don't know if
7 anybody has declared them no longer cash equivalents,
8 but I do not know that answer.

9 MR. NEIER: Thank you.

05:44 10 CROSS-EXAMINATION

11 BY MR. FIERO:

12 Q. Mr. Clark, I didn't think we'd ever see you up
13 there again.

14 A. John, I was thinking the same thing.

05:44 15 Q. Whose idea was it, if you know, to invest the
16 SAR monies in auction rate securities?

17 A. To the best of my knowledge, what I was told,
18 was that these were recommended by the Bank of New York.

19 MR. FIERO: Thank you.

05:44 20 THE COURT: Anyone else? All right. You
21 can step down.

22 THE WITNESS: Thank you.

23 THE COURT: Is this the last witness we
24 have available today?

05:44 25 MR. GREENDYKE: Yes, Your Honor.

1 THE COURT: Okay. Now what do we think
2 we have for tomorrow? Do you know that you're going to
3 call your witness or not?

05:45

4 MR. DOREN: Your Honor, I've been looking
5 for counsel I've been negotiating with, but I think the
6 odds are close to certain that we will not need to call
7 our witness. We can submit onto paper; and therefore,
8 the three rebuttal witnesses will also submit onto
9 paper, so I think that takes care of at least those four
10 witnesses.

05:45

11 THE COURT: Is there any other witnesses
12 anyone -- that anyone has thought of?

05:45

13 MR. GREENDYKE: Judge, this is Bill
14 Greendyke for the Indenture Trustee. Mr. Doren is
15 referring to a deal, I think, he's making with Todd
16 Shields, one of our litigators. And I know it's in the
17 works, but I don't know where it is. I'm frankly -- I
18 wish Mr. Shields were here.

05:45

19 Mr. Cherner is coming. I sent him an
20 e-mail earlier saying what time he expected to be here.
21 I think he thought that Mr. Mundy was going to testify
22 and he might be second, but I can't -- I don't have any
23 information to tell you whether he's going to be here --
24 I don't know when the first plane in is. At any rate,
25 he is our only remaining witness. And we want to call

05:45

1 him. And when we do call him, I know that Marathon and
2 MRC will call Mr. Dean.

3 MR. NEIER: May.

4 MR. BRILLIANT: We may call Mr. Dean. We

05:46 5 have not seen the amended proffer from --

6 THE COURT: May or may not call Mr. Dean.

7 MR. GREENDYKE: That was their expression
8 yesterday. So we have one more witness other than this
9 little thing.

05:46 10 THE COURT: So do we want to say 9

11 o'clock and hope he gets here? And if not, then you-all
12 can talk to me about market rate securities or auction
13 rate securities again or whatever you want.

14 MR. GREENDYKE: I'm game to do that. I'm
05:46 15 game to go at 9:30 or 10:00 or whatever.

16 THE COURT: Do we know where he's coming
17 from?

18 MR. GREENDYKE: He's coming from Dallas.

19 THE COURT: From Dallas on American?

05:46 20 MR. GREENDYKE: He's coming on Southwest.

21 THE COURT: Oh, he's coming on Southwest?

22 I don't know Southwest schedule. Does anybody know the
23 first Dallas flight? I think it's 9:30, isn't it?

24 MR. PENN: I think it's 9 o'clock.

05:46 25 THE COURT: If it comes in at 9 o'clock,

1 so he'll be here by 9:30. By the time we get the names
2 on the record and everything else, it will be time for
3 him to testify.

05:46

4 MR. NEIER: Your Honor, David Neier on
5 behalf of Marathon. With respect to this arrangement to
6 not call what I'm going the call the MMCA witnesses or
7 the ranch development witnesses, that's fine, but we
8 haven't really considered whether or not we agree with
9 the deal to just do it on proffer. Obviously we have a
10 right to cross-examine those witnesses. We're prepared
11 to cross-examine those witnesses. But we'll talk to
12 Mr. Shields and Mr. Fromme and find out what they have
13 in mind. We really haven't been a party to those
14 conversations about just doing it on proffer.

05:47

05:47

15 THE COURT: Okay.

16 MR. NEIER: I'm not trying to anticipate
17 a problem. I'm preserving my right.

18 THE COURT: I understand.

05:47

19 MR. BRILLIANT: I think, Your Honor, we
20 had started the discussion right before lunch about
21 closing the evidence tomorrow. It would appear with the
22 number of witnesses we have that we're going to be --

05:47

23 THE COURT: The rule is we'd like to
24 close it tomorrow. If somebody thinks they're not going
25 to close tomorrow, they're going to have to explain to

1 me why it is that doesn't happen, and they can do that
2 tomorrow.

3 MR. BRILLIANT: Thank you, Your Honor.

4 MR. NEIER: Your Honor, assuming that we
05:48 5 only have one or two witnesses in the morning, are you
6 going to expect closing arguments tomorrow whether or
7 not --

8 THE COURT: Again, that again -- I mean,
9 the earliest we can argue is either Thursday or Friday
05:48 10 of the following week. You can have all day Friday, you
11 can have half a day Thursday, plus Friday.

12 MR. NEIER: I'm sorry, is that Thursday
13 and Friday of next week or the following week, May 16?

14 THE COURT: May 16, 15th and 16th. You
05:48 15 can have half a day Thursday and all day Friday or you
16 can have all day Thursday and Friday if we actually
17 needed it. I do have a Chapter 13 docket in the morning
18 on Thursday in the Valley. However, I mean, my 13
19 docket is more administrative than judicial.

05:48 20 MR. GREENDYKE: Judge, again, with the --

21 THE COURT: I mean, I do it all the time
22 without a judge, so they can handle that and I'll be
23 here and if they need me, they get me on the video.

24 MR. GREENDYKE: We would request that we
05:49 25 start on Thursday afternoon after you finish your 13

1 docket and we keep Friday open, if the Court's calendar
2 permits. Again, I'm right back where I was before. I
3 haven't read the 9019 motion yet. If the 9019 motion
4 solves problems related to the plan, I don't know how we
05:49 5 divorce those two and while we say we're done with
6 regard to --

7 THE COURT: I'm inclined to think that we
8 better to go in two weeks because, first of all, it's a
9 big pile of depositions that I'd have to read tonight
05:49 10 before tomorrow. And in addition to that, I probably
11 would be in better shape to have questions that I want
12 answered by that time. And, of course, although I don't
13 expect it, there could be a settlement between now and
14 then also.

05:49 15 MR. GREENDYKE: Right, there could.

16 MR. BRILLIANT: Your Honor, I think we
17 said earlier before we went to lunch, I think our
18 interest is just closing evidence.

19 THE COURT: What's that?

05:50 20 MR. BRILLIANT: It's just having evidence
21 closed so that --

22 THE COURT: Right. I'm saying the
23 general rule is we're closing the evidence tomorrow.

24 MR. BRILLIANT: Thank you, Your Honor.

05:50 25 THE COURT: Of course, you know, even if

1 we close it tomorrow, then there's even a heavier burden
2 for them -- I mean, for them to argue in two weeks we'd
3 like to re-open the evidence. But it's possible. But
4 my preference is to close the evidence tomorrow so that
05:50 5 then we're all talking and you're giving me the briefs
6 in between there on the legal issues. And we're down to
7 one big legal issue. Well, maybe more, but at least one
8 big legal issue on your plan. And we've got lots of
9 factual issues, okay?

05:50 10 MR. GREENDYKE: Again, I don't mean to
11 argue with the Court, but I feel I have to respond. I
12 just think that the 9019 motion is so related to this
13 case.

14 THE COURT: Okay.

05:51 15 MR. JORDAN: I thought we'd argue that
16 tomorrow.

17 THE COURT: We will. And I understand
18 that that's coming.

19 MR. JORDAN: It's my motion. Can I start
05:51 20 on the argument? I want to say something, but I know
21 the Court has told us three times wait until tomorrow.

22 MR. GREENDYKE: We'll wait until
23 tomorrow.

24 THE COURT: We'll wait until tomorrow on
05:51 25 that. Anything else then? Okay. 9 o'clock. And we'll

1 hope the witness gets here by then. If he doesn't, he's
2 not going to be penalized.

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1 THE STATE OF TEXAS:

2 COUNTY OF NUECES:

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4 I, SYLVIA KERR, Certified Court Reporter in and for
5 the State of Texas, do hereby certify that the above
6 foregoing contains a true and correct transcription, to
7 the best of my ability, of all portions of evidence and
8 other proceedings requested in writing by counsel for
9 the parties to be included in this volume of the
10 Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court and were
12 reported by me.

13

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SYLVIA KERR, Texas CSR #4776

Date of Expiration: 12/31/08

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